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دائرة المعارف الوحيدية

جمع وترتيب

محمد نوري

مركز كربلاء للدراسات والبحوث
دار القارئ للمحفل الأشرف

بسم الله الرحمن الرحيم

سلسلة آثار المؤتمر العالمي للعلامة المجدد الوحيد البهبهاني

(٧)

دائرة المعارف الوحيدية

جمع وترتيب

محمد نوري

مركز كربلاء للدراسات والبحوث دار التراث النجف الأشرف

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رقم الإيداع في دار الكتب والوثائق ببغداد (١٨٤٩) لسنة ٢٠١٥ م

ـــــــ الدراسات المنشورة لا تعبّر بالضرورة عن وجهة نظر الناشر ـــــــ
جميع الحقوق محفوظة لا يسمح بإعادة إصدار هذا الكتاب أو أيّ جزء منه أو تخزينه في نطاق استعادة المعلومات أو نقله بأيّ شكل من الأشكال دون إذن خطّي سابق من الناشر
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كَلِمَةُ رَئِيسِ المُؤتَمَرِ الْعَالَمِيِّ
لِلْعَلَّامَةِ الْمُجَدِّدِ الْوَحِيدِ الْبِهْبَهَانِيّ

مرّت الحركة العلمية في كربلاء المقدسة بمراحل متعددة بين ازدهار تارة وانحسار تارة اخرى وفقاً للأحوال الاجتماعية والسياسية التي مرت بها المدينة، ففي القرن الرابع الهجري ازدهرت كربلاء وأخذت بالتوسع والعمران ونشطت فيها التجارة فضلاً عن انها أصبحت محط انظار كثير من ارباب العلم والمعرفة بفنونها كافة وعلى الخصوص العلوم الدينية.

وبالرغم من ان نشاط المؤسسة الدينية في بغداد كان هو الأبرز بوجود الشيخ المفيد فيها، إلا ان كربلاء لم تقل أهمية عن بغداد لمكانتها الروحية والعقائدية لدى اتباع الامامية إذ تزعم حميد بن زياد النيبوري الحركة العلمية فيها وانصب سعيه على انشاء جامعة علمية دينية يحاضر فيها العلماء والفقهاء من مختلف البلدان. وبذلك تبوأت كربلاء مكانتها العلمية لمدة ناهزت النصف قرن. ومن ثم نشطت الحركة العلمية في النجف الاشرف على يد الشيخ الطوسي سنة ٤٤٣ هـ.

وخلال هذه الفترة مرّت حوزة كربلاء بمتغيرات عدّة تعرضت من خلالها الى الفتور العلمي الى ان ظهر في ساحتها العلمية وحيد عصره وفريد دهره العلامة البهبهاني في القرن الثاني عشر الهجري فعاد بريقها يشع في سماء العلم والمعرفة على يد هذا المعلم العظيم الذي كان لظهوره الايذان ببدء التغيير في الاتجاه الاصولي بعد ما كان التيار الاخباري في أوج بروزه وامتداده فلقب بـ (مجدد الفقه الامامي). ولقد قال

علي الشرقي بحقه : فكان للشيعة في كربلاء مدرستان تتزاحمان مدرسة الأخباريّة ومدرسة الأصولية وكان الرجحان للمدرسة الأخباريّة، حتى بعث الله ذلك المجدد الكبير، والمصلح الشهير العلامة المعروف بالأغا البهبهاني فبعد ان برز فيها بلغت على يديه الحركة العلمية أوج نشاطها حتى تحولت كربلاء في عهده الى حومة للبحوث العقلية والنقلية ومعهد للدراسات الفلسفية وتتلمذ على يديه كوكبة من المجتهدين والفقهاء والعلماء.

واطلق على عالمنا النحرير (استاذ الكل) و(الأستاذ الأكبر). وقال الشهيد السعيد السيد محمد باقر الصدر في المعالم الجديدة عن عصر البهبهاني: كان عصر الكمال العلمي. ولما كان من مهام مركزنا إحياء تراث كربلاء المقدسة الزاخر بالكنوز الكثيرة فقد انصب سعينا على احياء ذكرى الشيخ محمد باقر البهبهاني الذي ترك بصماته الواضحة في سماء التشيع ، فشرعنا وبدعم لا محدود من قبل سماحة الشيخ عبد المهدي الكربلائي (دام عزّه) الأمين العام للعتبة الحسينية المقدسة لعقد مؤتمر عالمي حول شخصية الوحيد البهبهاني فتظافرت الجهود لإعداد المؤتمر منذ اذار عام ٢٠١٣ وليومنا هذا لإظهار المؤتمر العالمي بمستوى يتناسب ومكانة الوحيد البهبهاني، وقد وجدنا في مؤسسة دار التراث في النجف الاشرف خير معين على تحقيق ما نصبوا إليه فلله درّهم على كل ما بذلوه معنا.

عبد الامير عزيز القريشي

مدير مركز كربلاء للدراسات والبحوث

التابع للعتبة الحسينيّة المقدسّة

كَلِمَةُ مُدِيرِ اللَّجْنَةِ الْعِلْمِيَّةِ لِلْمُؤتَمَرِ الْعَالَمِيِّ

لِلْعَلَّامَةِ الْمُجَدِّدِ الْوَحِيدِ الْبِهْبَهَانِيّ ﷺ

الْوَحِيدُ الْبِهْبَهَانِي هَذَا الاسْمُ الْعَظِيمُ ـ كَانَ وَلَا يَزَالُ ـ يُذْكَرُ مَقْرُوناً ـ وَبِكُلِّ إِجْلَالٍ ـ بِمَا لَهُ مِنْ مَسَاعِي مُبَارَكَةٍ وَجُهُودٍ جَبَّارَةٍ قَامَ بِهَا قِبَالَ الْجُمُودِ الْفِكْرِيِّ لِطَائِفَةِ الأَخْبَارِيَّةِ، هَذَا التَّفَكُّرُ المَحْظُورُ الَّذِي هَيْمَنَ عَلَى الْحَوزَاتِ الْعِلْمِيَّةِ الشِّيعِيَّةِ طَوَالَ قَرْنٍ مِنَ الزَّمَنِ تَلَاشَا وَانْمَحَى بِبُزُوغِ نَجْمِ هَذَا الرَّجُلِ الْعَظِيمِ فِي سَمَاءِ الْفَقَاهَةِ وَالتَّفَكُّرِ وَالإِيمَانِ، وَكَانَ لِلتَّصَلُّبِ الْعِلْمِيِّ لِلْمَرْحُومِ الْوَحِيدِ ـ رِضْوَانُ الله تَعَالَى عَلَيهِ ـ وَإِرَادَتِهِ الجَبَّارَةِ أَكْبَرُ الأَثَرِ فِي تَبْيِينِ مَفَاسِدِ الْقَوْمِ وَزَيْفِهِمْ مِنْ جَهَةٍ، وَضَلَالِ هَذَا الطَّرِيقِ وَضَعْفِهِ مِنْ جَهَةٍ أُخْرَى، مِمَّا أَوْجَبَ عَلَيْنَا الْيَومَ أَنْ نُشِيدَ ذِكْرَاهُ وَنَبْحَثُ آثَارَهُ، وَذَلِكَ مِنْ خِلَالِ مَا حَوَاهُ مِنْ خَزَائِنَ عِلْمِيَّةٍ وَافِرَةٍ وَمَا كَانَ لَهُ مِنْ تَوفِيقٍ فِي مَوقِفِهِ ـ وَبِكُلِّ شَهَامَةٍ وَقُدْرَةٍ عِلْمِيَّةٍ وَعَمَلِيَّةٍ ـ فِي مَيَادِينِ التَّطَاحُنِ مَعَ المَدَارِسِ المُنْحَرِفَةِ، بِتَشْيِيدِهِ وَإِحْيَائِهِ تِلكَ المدْرَسَةَ الْفِقْهِيَّةَ الإِمَامِيَّةَ الَّتِي تَمْتَازُ فِي قِبَالِ سَائِرِ المَدَارِسِ بِخُصُوصِيَّةِ التَّعَقُّلِ وَالتَّفَكُّرِ..

وَقَدْ قَامَتْ الْعَتَبَةُ الحُسَيْنِيَّةُ المقَدَّسَةُ مُتَمَثِّلَةً بِـ: «مَرْكَزِ كَرْبَلاء للدِّرَاسَاتِ وَالْبُحُوثِ» بِعَقْدِ مُؤْتَمَرٍ عَالَمِيٍّ حَولَ هَذِهِ الشَّخْصِيَّةِ الْعَظِيمَةِ بِعُنْوَانِ أَوَّلِ مُؤْتَمَرٍ مِنْ مُؤْتَمَرَاتِهَا حَولَ الْعُلَمَاءِ الْكِبَارِ مِنْ دُفَنَاءِ الْعَتَبَةِ الحُسَيْنِيَّةِ المقَدَّسَةِ، وَذَلِكَ بِمُعَاوِنَةِ «مُؤَسَّسَةِ دَارِ التُّرَاثِ» فِي النَّجَفِ الأَشْرَفِ؛ وَذَلِكَ لِلْأَهْدَافِ التَّالِيةِ؛

الرؤَى والأَهْدَافُ لانْعِقَادِ هَذَا الْمؤتَمَر:

١. التَّعْرِيفُ بالسيرَةِ الذاتِيّةِ مِنْ حَياةِ العَلّامَةِ البِهْبَهانِي.

٢. التَّعْرِيفُ بِآراءِ وأفْكارِ العلّامَةِ البِهْبَهانِي، وَبالعلُومِ الّتِي ابْتكَرَهَا وَنَشَرَهَا.

٣. التَّعْرِيفُ بِمَدْرِسَتِهِ العِلْمِيَّةِ وأساتِذَتِهِ وَتَلامِذَتِهِ.

٤. تَكريمُ مَقامِهِ الْعِلْمِيّ وَالأخْلاقِيّ.

٥. تَعْرِيفُهُ بِما هُو قُدْوَةٌ في العِلمِ والثَّقافَةِ لِشبابِ الْيَومِ.

٦. التَّعْرِيفُ بِعُلماءِ الحَوزَةِ الْعِلمِيَّةِ الْمُبارَكَةِ الْكِبارِ في كَربلاءِ المقدَّسَةِ وَالْعالَمِ الإسْلامِيِّ.

٧. التَّعْرِيفُ بِعَوامِلَ السُّمُوِّ إلى القِمَّةِ في الحَوزَةِ العِلْمِيَّةِ، وبِعَوامِلَ التَصدِّي إلى إنخِفاضِ الْمُسْتَوى العِلمِي في الْحَوزَةِ الْمُبارَكَةِ ـ لا سامَحَ الله ـ.

وقَدْ قامَ مَركَز كربلاء للدراساتِ والبحوث و دَارِ التُّراثِ بِتَشْكِيلِ اللُّجَان الْعِلمِيَّةِ فِي الْعَراقِ وَإيرَانِ وَأُورُوبَا، لِجَمعِ البُحُوثِ وَالمَقَالَاتِ وَالْكُتُبِ، وَلِاسْتِخْرَاج مَحاوِر البَحثِ حَولَ سِيرَةِ الوحيدِ البِهبَهانِي وَ آرائِهِ وَأفكارِهِ؛ فَاسْتَخْرَجنا المَوضُوعَاتِ الكُلِّيّةِ وَالجُزئِيّةِ، ثُمَّ بَدَأنا بِالبَحثِ عَن الخُبَراءِ في كُلِّ من مُحاوِرِ الْمُؤتَمَرَ وَ الَّذِين لَهُم تأليفٌ أو مَقالَةٌ أو دِراسَةٌ حَولَ تِلكَ المحاوِرِ، وَاستَكْتَبْناهُم وَأجابُونا أكثَرُهُم وَزَوَّدُونَا بِبُحوثٍ وَمقالاتٍ وَكُتُبٍ ـ وَلله دَرُّ هُمْ وَعَلَيهِ أَجْرُهُم ـ.

وَالْمُحاوِرُ الرَّئِيسِيَّةُ أَرْبَعَةٌ؛ وَهِيَ ما يَلِي:

المِحوَرُ الأوّل: حَيَاتُه وَآثَارُهُ؛ فِيهَا بُحُوثٌ مِثْلُ: شَخْصِيّتِهِ الْعِلْمِيَّةِ وَالْعَمَلِيَّةِ، وَالْبارِزِينَ مِن تَلامِذَتِهِ وَالْمُؤَثِّرِينَ مِنهُم، وَعَصرِ الوَحِيدِ الْبِهْبَهانِيّ وَأوضَاعِهِ التَّأرِيخِيَّةِ وَالسِياسِيَّةِ، وَتَأثِيرِ التَّحَوُّلاتِ التأرِيخِيَّةِ عَلَى الاتِّجاهَاتِ الْفِكْرِيَّةِ لِلوَحِيدِ البِهْبَهانِي، وَالصِراعِ الفِكرِي بَينَهُ وَبَينَ الأخْبارِيّين، وَعلمِ الأخلاقِ عِندَهُ اِستِناداً إلى الآثارِ الْمَكتُوبَةِ وَالتَّقارِيرِ التّارِيخِيَّةِ.

المِحورُ الثَّانِي: الآراءُ الفِقْهِيَّةُ وَالأُصُولِيَّةُ لِلوَحِيدِ البِهْبَهَانِيّ؛ فِيهَا بُحُوثٌ عنه مِثْلُ: مَكانَةِ الْقُرآنِ فِي استِدْلَالَاتِهِ، وَالشَّواهِدِ الْقُرآنِيّةِ، وَالْمُقَارَنَةِ بَينَ مَدْرَسَتِهِ الأُصُولِيَّةِ وَسائِرِ المَدارِسِ، وَمَدْرَسَتِهِ الفِقْهِيَّةِ وَتَأثِيرِهَا عَلى الْمُعَاصِرِين لَهُ وَالْمُتَأخِّرِينَ عَنهُ، وَدَورِهِ فِي تَنقِيحِ وَتَطوِيرِ عِلْمِ الأُصُولِ، وَإبدَاعَاتِهِ فِي مَجَالِ الفِقهِ وَالأُصُولِ، وَنُقُودِهِ عَلَى الأخْبارِيِّينَ فِي الْمَسائِلِ الأُصُولِيَّةِ (حُجِّيَّةُ الظَوَاهِرِ الْقُرآنِيَّةِ، حُجِّيَّةُ الإجْمَاعِ، حُجِّيَّةُ

أَدِلَّـةِ الْـبرَاءَةِ .. وَأَمْثَالُـهَا)، وَشَرَائِـطِ الِاجْتِهَـادِ وَوَظـائِفِ الْـمُجْتَهِدِ، وَتَرتِيـبِ الـمُرَجِّحَاتِ، وَأَسْبَابِ اخْتِلافِ الحَدِيثِ فِي مُؤَلَّفَاتِهِ، وَالْـمَنْهَجِ الْاجْتِهادِي وَأَسَالِيبِ الِاسْتِنبَاطِ عِندَهُ، وَمَكانَتِهِ وَدَورِهِ فِي تَطَوُّرِ تَارِيخِ عِلمِ الأُصُولِ وَالْفِقْـهِ لَـدَى الشِّـيعَةِ، وَالتَّعَدِّي عَن مَورِدِ النَّصِّ وَمَـوارِدِهِ فِي آثَـارِهِ، وَمَكانَـةِ العُـرفِ فِي اسْـتِنْباطِ الأَحْكَـامِ الشَّرْعِيَّةِ، وَالحُسنِ وَالقُبحِ (التَحسِينُ وَالتَّقْبِيحُ) العَقْلِيَّانِ، وَالإجمـاعِ وَحُجِّيَّـةِ الإجمـاعِ الْـمَنقُولِ، وَتَنْجِيزِ الْعِلمِ الإجْمَالِي عِندَ الْوَحِيدِ البِهْبَهانِي، وَقاعِدَةُ قُبحِ الْعِقابِ بِلا بَيـانٍ (مِن إبتِكارَاتِهِ فِي عِلمِ الأُصُولِ).

المِحْوَرُ الثالِثُ: الأَفكَارُ الرِجَالِيَّةِ وَالْـحَدِيثِيَّةِ؛ فِيهَـا بُحُـوثٌ مِثْـلُ: مَكَانَـةِ الوَحِيـدِ البِهْبَهانِيّ فِي تَطَوُّرِ عِلمِ الرِّجَالِ عِندَ الشِّيعَةِ، وَالتَّوثِيقَاتِ العَامَّةِ عِنْدَهُ، وَالْـمُصْطَلَحَاتِ الْـحَدِيثِيَّةِ فِي مُؤَلَّفَاتِهِ.

المِحْوَرُ الرَّابِعُ: آثارُ الْوَحِيدِ الْبِهْبَهَانِيّ الكَلَامِيَّـةِ؛ فِيهَـا بُحُـوثٌ مِثْـلُ: دِراسَـةِ آثَـارِهِ الكَلَامِيَّةِ (أُصُـولُ الـدِّينِ، الإمَامَـةُ، نَفْـيُ الرُّؤْيَـةِ، الجَـبْرُ وَالِاخْتِيـارُ)، وَتَـأثِيرِ الآرَاءِ الْكَلَامِيَّةِ عَلى اسْتِنْبَاطِ الْأَحكَامِ الشَّرْعِيَّةِ (آرَاءُ العَلّامَةِ الْوَحِيدِ البِهْبَهَانِيّ أُنْمُوذَجاً).

لَقَدْ تَمَّ إنجَازُ العَدِيدِ مِن الْأَعْمَالِ، وَلَكِنَّ الَّـذِي صَـعَّبَ عَلَيْنَـا العَمَـلُ فِي مَـدَارِ أَعْـمَالِ الْـمُؤْتَمَرِ هُو تَعْرِيبُ جَمِيعِ الآثَارِ مِن الْفارْسِيَّةِ وَالإنْجِلِيزِيَّةِ إلى الْعَرَبِيَّةِ؛ حَيثُ صَارَ الْإِتِّفَـاقُ عَلَى إصْدَارِ الأَعْمَالِ بِاللُّغَةِ العَرَبِيَّةِ، فَأَرى مِنَ الوَاجِبِ أَنْ أَشْكُرَ كُلًّا من الأُسـتاذِ الـدُّكْتُورِ عَقِيل خُورْشَا والسَّيِّد حَسَنٍ عَلِيٍّ مَطَرِ الهَاشِمِيِّ لِجُهُودِهِمَا فِي تَعْرِيبِ الآثَارِ.

وَأَخِيراً.. صَدَرَ عَنْ إِدَارَةِ الْمُؤتَمَرِ مَا يَلِي مِنَ الأَعْمَالِ حَوْلَ العَلَّامَـةِ المحَقِّـقِ الوَحِيـدِ الْبِهْبَهَانِي ـ رَحِمَهُ اللهُ تَعَالَى ـ:

الأَوَّلُ: الكُتُبُ وَالدِّرَاسَاتُ الْمُسْتَقِلَّةُ

خَصَّصْنَا لِكُلٍّ مِنَ المَحَاوِرِ الرَّئِيسِيَّةِ الأَرْبَعَةِ الْـمُتَقَدِّمَةِ للمُؤْتَمَرِ مُجَلَّدَاتٍ مُسْتَقِلَّةٍ مُرَقَّمَـةً

عَلَى حَسَبِ المَوَاضِيعِ بَادِءً بِحَيَاتِهِ وَخَاتِماً بِدَرَاسَاتِهِ عَلَى حَسَبِ الأَهَمِّيَّةِ؛ فَهِيَ كَمَا يَلِي:

١. أُسْتَاذُ الكُلِّ الْوَحِيدُ البِهْبَهَانِي؛ تَأْلِيفُ: الْـمَرحُومِ الشَيخ عَلِيّ الدَوَانِيّ.

٢. الوَحِيدُ البِهْبَهَانِي رَجُلُ الْعَقْل؛ تَأْلِيفُ: عَبَّاسٍ عَبِيرِي؛ تَعْرِيبُ: كَمال السِيِّد.

٣. الوَحِيدُ البِهْبَهَانِي فِي كُتُبِ التَرَاجِمِ؛ تَأْلِيفُ: مَهْدِي صَفَرزَادِه الهَشْتْرُودِي.

٤. أَعلامُ أُسْرَةِالوَحِيدِ البِهْبَهَانِي؛ تَأْلِيفُ: عَبدُالْحُسَين جَوَاهِركَلام.

٥. تُراثُ الوَحِيدِ البِهْبَهَانِي وَأَولادُهُ؛ تَأْلِيفُ: السَيِّدِ جَعفَرِ الحُسَيْنِي الإِشْكوَرِي.

٦. تَلَامِذَةُ الوَحِيدُ البِهْبَهَانِي؛ تَأْلِيفُ: عَبدِالحُسَيْنِ جَوَاهِركَلَام.

٧. دَائِرَةُ الْـمَعارِفِ الْوَحِيدِيَّةُ (بِاللُّغَةِ الإِنْجِلِيزِيَّةِ)؛ جَمْعُ وَتَرْتِيبُ: مُحَمَّد نُورِيّ.

٨. الوَحِيدُ البِهْبَهَانِي وَآرَاؤُهُ الأُصُولِيَّةُ (جَمْعٌ وَعَرْضٌ)؛ تَأْلِيفُ: سَعِيدِ رَزْمجُو.

٩. مَصَادِرُ استِنْباطِ الأُصُولِيِّين وَالأَخْبَارِيِّين؛ تَأْلِيفُ: مُحَمَّدِ مُحسِنِ الغَرَاوِيّ.

١٠. الوَحِيدُ البِهْبَهَانِي وَآرَاؤُهُ الأُصُولِيَّةُ (دِرَاسَةٌ وَتَحْلِيلٌ)؛ تَأْلِيفُ: مُحَمَّدِ مُحسِنِ الغَرَاوِيّ.

١١. شَرحُ الوَافِيَةِ فِي الأُصُولِ (مُجَلَّدَانِ)؛ تَأْلِيفُ: السَيِّدِ صَدرِ الدِّينِ مُحَمَّدِ بنِ مُحَمَّد باقِرِ الحُسَينِيّ الرَّضَوِيّ القُمِّيّ النَّجَفِيّ، أُستَاذُ الوَحِيدِ البِهْبَهَانِيّ، مَعَ حَوَاشِي الوَحِيدِ البِهْبَهَانِيّ، وَالمِيرْزَا أَبُو الْقَاسِمِ القُمِّيّ وَالشَّيخِ مُرْتَضَى الأَنصَارِيّ، تَحْقِيقُ: السَيِّدِ مُحَمَّد حَسَنِ المُوسَوِيّ آلِ قَارُونِ الزَّاهِدِ البَحْرَانِيِّ.

١٢. الوَحِيدُ الْبِهْبَهَانِي وَآراؤُهُ الْفِقْهِيَّةُ؛ مُحَمّد مَهدِيّ رَفِيعپُور.

١٣. مُنْتَهَى الْمَرَام فِي صَلَاةِ الْقَصْرِ وَالإِتْمام؛ تَأْلِيفُ: السَيِّدِ صَدرِ الدِّينِ مُحَمَّدِ بنِ مُحَمَّد باقِرِ الحُسَينِيّ الرَّضَوِيّ القُمِّيّ النَّجَفِيّ، أُستَاذُ الوَحِيدِ البِهْبَهَانِيّ، تَحْقِيقُ: السَيِّدِ مُحَمَّد حَسَنِ المُوسَوِيّ آلِ قَارُونِ الزَّاهِدِ البَحْرَانِيِّ.

١٤. الوَحِيدُ البِهْبَهَانِيّ مُحَدِّثاً؛ تَأْلِيفُ: أمِين حُسَينِ بُورِي.

١٥. الوَحِيدُ الْبِهْبَهَانِيّ وَآرَاؤُهُ الرِّجَالِيَّةُ؛ تَأْلِيفُ: رُوحِ اللهِ شَهِيدِيّ.

الثَّانِيُ: المَقَالاتُ وَالْبُحُوثُ

رَتَّبْنَا الـمَقَالاتِ عَلَى حَسَبِ المَحَاوِرِ الأَرْبَعَةِ الـمُتَقَدِّمَةِ فِي مُجَلَّـدَاتٍ مُسْـتَقِلَّةٍ، ثُـمَّ رَتَّبْنَا المَقَالاتِ في كُلِّ وَاحِدٍ مِنَ الْمَحَاوِرِ تَرْتِيباً مَنْطِقِيّاً عِلْمِيّاً عَلى حَسَبِ تَرْتِيبِهَا فِي ذَلِكَ الْـمِحَوَرِ، فَصارَتْ مَجْمُوعَةُ الْـمَقَالاتِ فِي ٨ أجزَاءٍ؛ كَالتَالِي:

١. مَجْمُوعَةُ المَقَالاتِ فِي التَرَاجِمِ وَالبِبْلِيُوجِرافِيَا (مُجَلَّدٌ وَاحِدٌ).

٢. مَجْمُوعَةُ الْـمَقَالاتِ فِي الحَدِيثِ وَالرِّجَالِ (مُجَلَّدٌ وَاحِدٌ).

٣. مَجْمُوعَةُ الرَّسَائِلِ وَالْـمَقَالاتِ الْكَلاَمِيَّةِ (مُجَلَّدٌ وَاحِدٌ).

٤. مَـجْمُوعَةُ الْـمَقَالاتِ الأُصُولِيَّةِ (٣ مُـجَلَّدَاتٍ).

٥. مَـجْمُوعَةُ الْـمَقَالاتِ الْفِقْهِيَّةِ (مُجَلَّدَانِ)

الثَّالِثُ: مَجَلَّةُ الـمُؤْتَمَر

قُمْنا بِطِباعَةِ مَجَلَّةٍ خَاصَّةٍ بِأَخْبَارِ الْـمُؤْتَمَرِ مُنْذُ القِيَامِ بِأَعْمَالِهِ حَتّىٰ زَمَانِ انعِقَادِهِ، كَـمَا أَضَفْنَا عَلَيهِ فَوَائِدَ وَزَوَائِدَ كَثِيرَةٍ حَولَ الوَحِيدِ البِهْبَهَانِيّ، والأَعْمالِ السّابِقَةِ عَـن الْمُؤتَمَر كَمَا قُمْنَا بِطِبَاعَةِ نُصُوصٍ لِقَاءَاتٍ عَدِيدةٍ مَعَ الشَّخْصِيَّاتِ العِلْمِيَّةِ الكَبِيرَةِ حَولَ الوَحِيدِ البِهْبَهَانِي فِي هذهِ المَجَلَّةِ.

الرّابِعُ: الفِلْمُ الوَثَائِقِيّ

تَمَّ إِنْتَاجُ فِلْمٍ وَثَائِقِيٍّ عَنِ الوَحِيدِ البِهْبَهَانِيّ بَادِئاً بِحَيَاتِهِ وَمُنْتَهِياً بِدُرُوسِـهِ وَعُلُومِـهِ، وَفِيهِ لِقَاءَاتٌ مَع كَثِيرٍ مِـنْ الشَّخْصِـيّاتِ الْعِلْمِيَّـةِ الْـمَعْرُوفَةِ، وَأَفْـلَامٌ مِـن الأَمَـاكِن التَأرِيـخِيَّةِ الَّتِي لَها عَلاَقَةٌ بِهَذَا العَالِمِ الْعَظِيمِ، وَيُنْشَرُ هَذِا الفِلْمُ عَلَى شِكْلِ قُرْصٍ مُمَغْـنَطٍ وَفِي الْيُوتِيُوبِ وَالقَنَوَاتِ الفَضَائِيَّةِ.

وَنَظَراً لأَهَمِّيَّة هَذَا المؤْتَمَرِ الدُّوَلِي فَقَدْ سَعَيْنَا جَاهِدِينَ إِلَى تَحصِيلِ مُوَافَقَةِ اللُّجْنَةِ الإِسْتِشَارِيَّةِ الدُّوَلِيَّةِ لِبَرَنَامِجِ ذَاكِرَةِ الْعَالَمِ التَّابِعِ لِمُنَظَّمَةِ الأُمَمِ الْمُتَّحِدَةِ للتَّرْبِيَةِ وَالثَّقَافَةِ

وَالْعُلُومِ الْيُونسْكُو فِي إِدْرَاجِ هَذَا المؤتمَرِ وَكُلِّ مَا يَتَعَلَّقُ بِهِ مِنْ مَقَالَاتٍ وَبُحُوثٍ وَدِرَاسَاتٍ وَكُتُبٍ فِي بَرنَامَجِهِ لِلذَّاكِرَةِ الْعَالَمِيَّةِ، وَبَعْدَ جَهْدٍ مُضْنِي وَمَسَاعٍ حَثِيثَةٍ فَقَدْ اسْتَحْصَلْنَا عَلَى مُوَافَقَةِ مُنَظَّمَةِ الْيُونِسْكُو عَلَى ذَلِكَ وَتَمَّ إِرْسَالُ شُعَارِ المنَظَّمَةِ لإِرْفَاقِهِ فِي كَافَّةِ إِصْدَارَاتِ المؤتمَرِ، وَلله الْحَمْدُ.

شُكْرٌ وَعِرْفَانٌ

وَهُنَا أَرَى مِنَ الْوَاجِبِ أَنْ أَتَقَدَّمَ بِخَالِصِ الشُّكْرِ وَبَالِغِ الاحْتِرَامِ إِلَى كُلِّ مَنْ آزَرَنِي فِي إِنْجَازِ هَذه الْأَعْمَالِ مِنَ العَامِلِينَ فِي مَكْتَبَةِ الْعَلّامَةِ الْمَجْلِسِيِّ فِي قُم المُقَدَّسَةِ وَمَرْكَزِ كَرْبَلاءِ لِلدِّرَاسَاتِ وَالبُحُوثِ وَدارِ التُراثِ فِي النَّجَفِ الأَشْرَفِ، وَاللُّجانِ الْعِلْمِيَّةِ لِلْمُؤْتَمَرِ، وَالبَاحِثِينَ وَالمؤسَّسَاتِ العِلْمِيَّةِ فِي الْعَرَاقِ وَإِيرَانِ..

وأَخُصُّ بِالذِّكْرِ سَمَاحَةَ حُجَّةِ الإِسْلامِ وَالمسلِمِينَ الشَّيْخِ عَبْدِ المهْدِي الْكَرْبَلَائِيّ (وَكِيلَ المرْجَعِ الدِّينِيّ الأَعْلَى سَمَاحَةَ آيَةِ الله العُظْمَى السَّيِّدِ عَلِيٍّ الحُسَيْنِيِّ السِّيسْتَانِي ـ حَفَظَهُ اللهُ ـ الأَمِينِ العَامِّ لِلْعَتَبَةِ الحُسَيْنِيَّةِ المقَدَّسَةِ)..

كَمَا لَا أَنْسَى جُهُودَ وَمُتَابَعَةَ الأَخِ العَزِيزِ الأُسْتَاذِ الْفَاضِلِ عَبْدِ الأَمِيرِ الْقُرَيْشِي ـ (مُسْتَشَارِ الأَمِينِ العامِّ وَرَئِيسِ مَرْكَزِ كَرْبَلاء للدِّرَاسَاتِ وَالْبُحُوثِ فِي الْعَتَبَةِ الْحُسَيْنِيَّةِ المقَدَّسَةِ لِشُؤُونِ الإِعْلَامِ وَالْعَلَاقَاتِ الدُّوَلِيَّةِ) الَّذِي لَهُ الْأَيَادِي الْبَيْضَاءُ فِي إِحْياءِ تُرَاثِ مَدِينَةِ الإِمَامِ الحُسَينِ بْنِ عَلِيٍّ صَلَوَاتُ الله عَلَيهِمَا.

حَيَّا اللهُ الْعَامِلِينَ عَلَى إِحْياءِ تُرَاثِ أَهْلِ الْبَيتِ عَلَيهِمُ السَّلامُ وَوَفَّقَهُمْ لِبَثِّ عُلُومِهِمْ وَنَشْرِ مَعَارِفِهِم.

وَكَتَبَ

حَسَنُ الموسَوِيُّ البُرُوجِرْدِيُّ عُفِيَ عَنْهُ

أَوَّلُ رَمَضَانِ المبَارَكِ سَنَةَ ١٤٣٦ هـ

المقدمة

آغا محمد باقر البهبهانى (المتوفى سنة ١٢٠٥ هـ) المعروف بالـ (وحيد البهبهاني) أو (العلامة وحيد البهبهاني) والملقب بالـ (آغا) عرف في الأوساط الشيعية بصفته فقيه أصولي مؤلف ومحي للتراث. ليس هذا فحسب بل ذاع صيته في الأوساط العلمية الغربية ايضا إذ اشتهر في الغرب بصفته عالم ذو نزعة عقلية ومجدد العلوم والآراء الشيعة الأمامية. فقد عمدو الى دراسة أفكاره وآرائه.

يجمع هذا الكتاب البحوث والدارسات التي أنجزها المفكرون والباحثون الغربيون باللغة الانكليزية وإن الصفة المشتركة في هذه النصوص هي أنها باللغة الانكليزية. يعد الباحثون الغربيون جهود الوحيد البهبهاني وآرائه في غاية الأهمية ويعولون عليها في تحليل أحداث القرنين الأخيرين في تاريخ التشيع.

إن أهمية العلامة وحيد البهبهاني حتمت على الأوساط العلمية الشيعية أن تقوم بخطوات جادة في العراق وايران وأن تبادر الى اقامة مؤتمر علمي عنه للتعريف بآرائه وبجهوده العلمية بصورة أفضل من قبل.

إن إدارة المؤتمر تهدف إلى استثمار هذه الفرصة بأفضل ما يمكن بغية التعريف بمدرسة العلامة وبآرائه للساحة العلمية. لذا تجنبا للترف وبدلا عن الانشغال بالأمور الجانبية وضعت الجوانب العلمية وطباعة المؤلفات المهمة في الأولوية وبعين الاعتبار. واهتماما بالجوانب المستقبلية فقد خصصت ادارة المؤتمر ايضا مشروعا لتجميع النصوص الانكليزية المكتوبة عن العلامة البهبهاني.

محمد باقر وحيد البهبهاني العالم الامامي في القرن الثاني عشر. ولد في مدينة اصفهان سنة (١١١٦) أو (١١١٧) أو (١١١٨). ذكر حفيده في كتاب (مرآة الأحوال) بأنه ولد سنة (١١١٧). كان أبوه (المولى محمد اكمل الاصفهاني) من تلامذة العلامة المجلسي. ذكر الوحيد البهبهاني أباه في اجازته لبحر العلوم ووصفه بـ (الأعلم الأفضل الأكمل، استاذ الأساتيذ الفضلاء). أم الوحيد البهبهاني هي ابنة (الآغا نور الدين بن ملا صالح المازندراني) وبما أن زوجة الملا صالح المازندراني هي (آمنة بيكم). ابنة (الملا محمد تقي المجلسي) وشقيقة (الملا محمد باقر المجلسي) لذا فان الوحيد يعد المجلسي الأول جده والمجلسي الثاني خاله الأكبر.

قضى البهبهاني صباه وبداية فترة شبابه في اصفهان وأخذ العلوم العقلية في بادىء الأمرعن أبيه. بعد وفاة أبيه وو تدهور الاوضاع في اصفهان اثر اجتياحها من قبل (محمود افغان) سنة (١١٣٥)، هاجر الى العراق وتتلمذ في موطنه الجديد على يد والد زوجته (السيد محمد

الطباطبائي البروجردي). وفي النجف حضر في مجلس درس بعض الأساتذة كالسيد صدرالدين القمي الهمداني، شارح وافية الأصول. كان صدر الدين من كبار علماء عصره وممن جمع بين المعقول والمنقول، فقد هاجر الى النجف الاشرف بعد هيمنة محمود الافغان على ايران. سوى أنه كان يميل الى الاخبارية. ولذلك كان لتلميذه (الوحيد) في بادىء الأمر نفس هذا الاتجاه. ولكنه غير مسلكه بعد فترة ومال للاجتهاد. بعد أن اكمل دروسه في النجف هاجر الى مدينة بهبهان وحسب قول (أحمد آقا) مكث فيها اكثر من ثلاثين سنة ولذلك اشتهر بـ (البهبهاني) ؛ عندما حاصر كريم خان زند هذه المدينة سنة (١١٧٠ هـ) كان الوحيد موجودا فيها. لا يوجد دليل واضح على سبب هجرته الى بهبهان، ولكن يبدو أن السبب الأهم هو هدوء هذه المدينة وموقعها المعزول فقد أصبحت ملجأ العلماء بعد تدهور الأوضاع في اصفهان. كما وأن التصدي للنهج الاخباري يمكن أن يكون سببا آخر لهجرته الى هذه المدينة ففي ذلك الوقت كان كبير الاخباريين والمدافع عنهم، الشيخ عبدالله السماهيجي البحريني (المتوفى سنة ١١٣٥ هـ) يقطن في بهبهان وبعد وفاته تولى مكانه واستمر بنهجه، تلميذه السيد عبدالله البلادي (المتوفى سنة ١١٦٥ هـ).

لم يتبوأ العلامة الوحيد البهبهاني وحده مكانته المرموقة بين العلماء الامامية بل وان بعضا من ابناءه واحفاده ايضا اشتهرو بالعلم والفضل مما

أصبحت أسرة البهبهاني من اكبر الأسر العلمية الشيعية وأشهرها. ولده الأكبر (آقا محمد علي) كان فقيه مرموق في مدينة كرمانشاه. وابنه الثاني (آغا احمد) ايضا كان مشهور لدى الناس. وقد ذكر الأخير شقيقا له يدعى (آغا عبد الحسين) عرف بالزهد والسلوك والعرفان والمجاهدة وقد تولى في زمن مرجعية والده مهام الأمور المالية والاستفتاءات. وقد كان للوحيد بنت تزوجها (مير سيد علي الطباطبائي) صاحب كتاب الرياض. ويذكر للوحيد ولد آخر يدعى (السيد محمد مجاهد) المتوفى سنة ١٢٤٢ هـ، صاحب كتاب المناهل والذي اصدر فتوى الجهاد ضد روسيا القيصرية في زمن الملك القاجاري فتحعلي شاه.

المؤلفات التي تركها الوحيد البهبهاني في شتى العلوم الدينية تدل على تبحره في هذه العلوم واحاطته بها. ان بحوثه الفقهية في شرحه على ابواب العبادات في كتاب (مفاتيح الشرائع) للفيض الكاشاني وحواشيه على كتاب مدارك الأحكام للسيد محمد العاملي تؤيد ذلك. كما وقد كان متمكنا في علم رجال الحديث فقد وردت بحوثه في هذا المجال خلال تعليقه على كتاب (منهج المقال) للأستر آبادي. حاول الوحيد جاهدا وبسعة نظره وباستخدامه للقرائن أن يوثق الرواة الذين لا يوجد دليل واضح على ثقتهم ولذلك تعرض للنقد من قبل علماء الرجال المتأخرين. ترك الوحيد البهبهاني ١١٩ رسالة وكتابا وقد طبع بعض منها.

الوحيد والإخبارية:

الميزة الرئيسة التي برز بها الوحيد هي تصديه للإخباريين وتأسيسه منهجا أصوليا جديدا في الفقه الأمامي. إن النهج الإخباري الذي هيمن على الأوساط العلمية الشيعية ما يقارب القرنين من الزمن قد تبلور على يد الملا محمد امين الاستر آبادي (المتوفى سنة ١٠٣٣ أو ١٠٣٦) وسبب في زوال الاجتهاد المبتني على علم الأصول. الأساس الذي قد بني عليه هذا النهج هو التأكيد على اتباع الروايات وعد الروايات الواردة في كتب الحديث وخاصة في الكتب الأربعة قطعية الصدور حتى ادى الأمر بالبعض منهم الى الاعتقاد بعدم جواز الاستدلال بالقرآن الكريم الا في البديهيات. لقد هيمن الإخباريون على الساحة العلمية في العراق وخاصة في النجف وكربلاء بحيث قد هجرت كتب الفقهاء الأصوليين. لقد شرع الوحيد بالتصدي للاخباريين خلال اقامته الطويلة في بهبهان. كانت مدينة بهبهان آنذاك وبسبب هجرة علماء البحرين اليها، مركزا لنشاط أتباع النهج الاخباري وان الوحيد البهبهاني في مثل هذه البيئة أقام حلقات الدرس وصلاة الجماعة وتولى الشؤون الدينية والأهم من كل ذلك تولى مهمة التأليف لبيان ونقد آراء الاخباريين. لقد ألف كتاب (الاجتهاد والأخبار) في الدفاع عن منهج الاجتهاد سنة ١١٥٥ وذلك خلال إقامته في بهبهان وقد انتقد فيه مبادىء النهج الإخباري. يذكر الوحيد في هذا الكتاب نماذج من أقوال الإخباريين التي لا تستند على شيء وكذلك مناظراته معهم وينقد بشدة تعامل الإخباريين المشين مع

علماء الدين. ان اقامة الوحيد الطويلة في بهبهان وتردد أهل العلم عليه وتنشأته للكثير من التلاميذ وتأليفه الكتب القيمة، كل ذلك ادى الى أن يذاع صيته في النجف وكربلاء. بعد دخوله الى كربلاء حضر لفترة في مجلس درس الشيخ يوسف البحراني (المتوفى سنة ١١٨٦ هـ) عميد فقهاء عصره وآخر عالم من علماء النهج الاخباري. ثم اعلن بأنه يرغب في القاء المحاضرات بدلا عن البحراني لفترة وجيزة وطلب من البحراني أن يوصي تلامذته بالحضور في مجلس درسه. البحراني الذي كان اخباري معتدل وحسب تعبيره كان قد اختار طريق الوسط (الحدائق، ج١، ص١٥) كان ينتقد تقسيم علماء الشيعة على اخباريين واصوليين ويرفض بشدة التطاول على مجتهدي الشيعة الكبار. لذا سلم مجلس درسه للوحيد اذ كان يعد أكبر حلقة درس آنذاك. وما كان للوحيد الا أن قام بشرح نظرية الاجتهاد ونقد آراء الاخباريين فخلال ثلاثة أيام حول ثلثي تلامذة البحراني وأصرفهم عن الاعتقاد بالنهج الاخباري.

دخل الوحيد مع البحراني ومع سائر العلماء الاخباريين في نقاشات ومباحثات طويلة ووجه انتقاداته اليهم علنا وحذر طلابه من الحضور في مجالسهم واستطاع أن يسلب رونق هذا النهج في الساحة العلمية. في هذه الأثناء كان الشيخ يوسف البحراني يساعد بصورة غير مباشرة في تقويض أسس النهج الاخباري ونمو مدرسة الاجتهاد وذلك من خلال تهيأة الأجواء الاجتماعية لنفوذ الوحيد واجلال مكانته العلمية.

بقي الوحيد في كربلاء اكثر من ثلاثين سنة وتمكن خلال هذه الفترة من ازالة المنهج الاخباري واقامة مدرسته الاجتهادية / الأصولية. من أهم كتب الوحيد في الرد على الاخباريين هو كتاب الاجتهاد والأخبار ويأتي من بعده كتابه (الفوائد الحائرية). لقد دون الأخير في مرحلتين : المرحلة الأولى كانت سنة (١١٨٠ هـ) وتضمن ٣٥ مطلبا تحت عنوان (الفائدة) وقد عرف بـ (الفوائد الحائرية القديمة) وقد ألف القسم الآخر من الكتاب في أواخر القرن الثاني عشر الهجري وقد عرف بـ (الفوائد الجديدة) أو (الملحقات) وقد لخصه أحد طلاب الوحيد (محمد حسن ابن معصوم القزويني، المتوفى سنة ١٢٤٠ هـ) في قسمين يتضمنان ثمانون فائدة وسمى الملخص بـ (الفوائد السنية) وأضاف اليه شرحا بعنوان (تنقيح المقاصد).

يرى الوحيد في كتبه الأصولية، وعلى خلاف رأي الأستر آبادي واتباعه، بأن الاستنباط والاجتهاد كان رائج في عصر الأئمة المعصومين وهذا ما يدل على وجود اصول الفقه في ذلك العصر وان مهمة الأصوليين كانت تتلخص في توسيع وتدوين مباحث علم الأصول والتعمق فيها. ولذا فأن رأي الأستر آبادي في نسبة بداية الاجتهاد واصول الفقه الى ابن جنيد والى ابن ابي عقيل ومن بعدهما الى الشيخ المفيد وثم الى العلامة الحلي (المتوفى سنة ٧٢٦ هـ) هو رأي خاطىء. فعلى سبيل المثال ان قضية نقل حكمين متعارضين من امام واحد ومنهج معالجة هذا التعارض من خلال ذلك الامام او الأئمة من بعده هو

بحث أصولي. كما وأن قضية حجية الخبر الواحد او حجية الظواهر القرآنية كانت قضية مطروحة في عصر الأئمة. والأهم من ذلك فان استخدام بعض المناهج الاجتهادية كالقياس من قبل فقهاء السنة ــ الذي كان يسلم به سهوا بعض من اتباع الأئمة ــ ونفي الائمة لهذه المناهج في بعض المواطن، كل هذه القضايا ترجع الى المباحث الأصولية. يشير الوحيد في بداية الاجتهاد والاخبار الى أن الفرد المسلم لا بد وأن يلتزم بالتكليف الشرعي وبما أن هذه التكاليف توقيفية فعليه أن يبحث في تلك التكاليف ويعرفها. في الفصل الثاني من الكتاب تناول الوحيد مسألة حجية قول المجتهد ويبطل رأي الاخباريين القائل بإمكانية رجوع الجميع الى كتب الحديث لمعرفة تكاليفهم الشرعية. كان الأستر آبادي لا يرى أية حجية لقول المجتهدين وكان شخص الفقيه عنده هو من يتمكن من اخبار الناس بالاحكام المطابقة للأحاديث وذلك من خلال التأمل والتفحص الدقيق في الأحاديث. في حين ترى نظرية الاجتهاد، وجود الحجية في قول المجتهد وان المكلفين يؤدون تكليفهم الشرعي من خلال العمل بهذه الحجية. لقد جاء الوحيد بأدلة وأمثلة كثيرة ليؤكد على عواقب رأي الاخباريين في نفي الاجتهاد والتقليد وافصح عن تدهور الأوضاع والهرج والمرج الذي يسببه ترك التقليد. لقد أشار الى أن الأئمة المعصومين عليهم السلام استخدمو منهج التدريج لبيان الأحكام الشرعية ولم تسنح لهم الفرصة ليبينو للجميع كافة الاحكام الحقيقية وذلك بسبب المضايقات السياسية والاجتماعية. فضلا عن

ذلك فانه لم يصلنا كل ما ذكروه لأصحابهم وتلامذتهم الذين كانو يأخذون العلم كل حسب استيعابه ومكانته العلمية. ومن جانب آخر فان الأحداث التاريخية وضياع المدونات وكتب الأصحاب والنقل الشفوي للروايات في كثير من المواطن يدل على أن الكثير من الروايات لم تصل الى مدوني الأحاديث أو أنهم لم يذكروها في كتبهم لأسباب كثيرة ولربما يوجد الكثير من اصول استنباط الحكم في هذه الاخبار المفقودة. كما وأن ظهور العلوم الجديدة والأسئلة الجديدة على مر الزمان تجعل الحاجة اكثر الحاحا للاجتهاد واصول الفقه اذ لا بد من معرفة مبادىء واصول استنباط الأحكام. المسألة الأخرى التي تناولها الوحيد في معرض رده على الاخباريين هي مسألة الاعتقاد بقطعية صدور الأحاديث. فبعد ما أن يثني على مؤلفي كتب الحديث وبيان أهمية جهودهم يؤكد على مسألة ظنية صدور رواياتهم ويذكر بأهمية البحوث الرجالية والروائية رافضا الادعاء القائل بتكوين العلم من خلال مجموع الروايات. كما وانتقد رأي الاخباريين القائل بأن الشرع قد منع العمل بالظن وان قول المجتهدين يوصل الى الظن فقط ومن خلال الرجوع الى الاخبار يمكن الحصول على العلم بالأحكام وأوضح بأن المجتهدين قد قدمو ادلتهم القاطعة على صحة العمل بالظنون المعتبرة وبمجرد الرجوع الى الأخبار لم يصل أحد الى نتيجة قطعية اذ يمكن تغيير الرأي بتتبع وتأمل اكثر. رغم كل ذلك فانه ليس لدينا يقين بوجود كافة الاحكام الواقعية التي يحتاجها المكلف في مجمل الأحاديث. لقد صاغ

الوحيد خلال عرضه الجديد لمنهج الاجتهاد مصطلحين جديدين وهما «الدليل الاجتهادي» و«الدليل الفقهي». وكان يقصد من «الدليل الاجتهادي» ما هو موجود في القرآن والحديث وان المجتهد من خلال البحث فيهما يصل الى الحكم الظني. وقصده من الدليل الفقهي هو المسائل التي لم يتحصل حكمها مباشرة من مصادر الاستنباط وان الفقيه يستخدم في مثل هذه المسائل اصل البرائة والاستصحاب والتخيير ويقدم منهجا عمليا لذلك. لقد تناول الوحيد المصطلح الأخير من لفظة «الفقهائي» الواردة في (شرح زبدة الأصول) لجده الملا صالح المازندراني. فرغم عدم صحة اللفظة حسب قواعد علم الصرف (الصحيح هو : الفقاهي) فانها دخلت كما هي في الكتب المتأخرة كـ (فرائد الأصول) للشيخ الأنصاري المتوفى سنة (١٢٨١ هـ) و(قوانين الأصول) للميرزا القمي (المتوفى سنة ١٢٣١ هـ). واجلالا لمكانته فقد وردت هنا أيضا كما أوردها في كتبه. ان نجاح الوحيد الباهر في تقويض النهج الاخباري نفى الحاجة من اعادة ذكر ونقد آراء الاخباريين لدى الفقهاء من بعده اذ اكتفو بذكر الاخباريين من الجوانب التاريخية فحسب.

وبهذا فقد تخلصت الأوساط الشيعية والتشيع من داء التحجر المهلك وذلك بجهود الوحيد الفكرية والعملية. فانه الداء نفسه الذي ابتلي به السنة والذي تمظهر على صورة (طالبان) وانتشر كالعضال في المجتمع السني.

اذا كان التشيع قد واجه احداث حقبة المشروطة وعشرات الاحداث التاريخية المهمة الأخرى بكل اقتدار واعتزاز واذا كانت الثقافة الشيعية في الأوساط العلمية والثقافية العالمية قد اشتهرت بصفتها ثقافة متمكنة من الاجابة على اسئلة عصر الحداثة وحل مشاكل العصر فان ذلك كله يعود الى جهود العلامة الوحيد البهبهاني. فلذلك نرى المراكز الأكاديمية العالمية قد اهتمت بالعلامة البهبهاني اكثر من اهتمامها بالشيعة أنفسهم وقد ألفت في الغرب بهذا الصدد العديد من الكتب والرسائل الجامعية والمقالات.

تنفيذ المشروع:

تمت قراءة كافة المقالات والكتب والرسائل الجامعية المدونة باللغة الانكليزية في مختلف البلدان عن الوحيد البهبهاني وتم تجميع أهم هذه النصوص وتنظيمها في سبعة فصول وادراجها في هذه الموسوعة.

ويمكن ادارج أهم الخصائص التي اتصف بها هذا المشروع كالتالي:

ـ البحث الشامل في المكتبات والمواقع الالكترونية على شبكة الانترنت.

ـ نظرا للتفاوت الاملائي في اسم العلامة البهبهاني باللغة الانكليزية فقد تم الاعتماد على مفردات رئيسة متعددة عند البحث في المكتبات والمواقع الالكترونية. فقد ورد اسم العلامة البهبهاني في النصوص الانكليزية وفق المفردات التالية:

Behbahani / bihbahani / behbihani / bihbihani / bahbahani

كما وقد ورد اسم «وحيد» و«باقر» وفق المفردات التالية :

Vahid / Wahid / Baqir / bakir / bagher

ـ سعى القائمون على هذا المشروع أن لا يفوتهم أي مصدر ؛ لذا تم الاعتماد على كافة المفردات الانكليزية آنفة الذكر بصورة مفردة أو مركبة.

ـ مراعاة الأمانة في نقل النصوص فقد اقتبست النصوص نفسها ومن دون أي اضافة او نقصان.

ـ بعد اكمال عملية البحث الشامل تم الحصول على ما يقارب ١٢٠ كتاب و٢٠ موسوعة و١٧ رسالة جامعية وما يقارب ٤٠ مقال، ورد في بعض منها اسم العلامة الوحيد البهبهاني مرة واحدة على اقل تقدير. لقد صنفت المعلومات الواردة في كافة هذه النصوص على سبعة أقسام ونظرا الى أن معظم عملية البحث قد تمت في مواقع الكترونية كبيرة ورصينة كـ google books و scholar google التي تتضمن معظم المكتبات الأوربية فيمكن أن يتوقع بنسبة اكثر من ٩٠٪ بأن العدد الحقيقي للكتب المدونة في هذا الموضوع هو العدد المتحصل نفسه ولكن بسبب عدم توفر كافة الرسائل الجامعية على شبكة الانترنت فيمكن توقع وجود عددا اكثر من الرسائل الجامعية المكتوبة عن هذا الموضوع. وكذا الحال بالنسبة للمقالات. من كل هذه الكتب والمقالات تم ذكر المؤلفات التي بحث في اكثر من فقرة عن العلامة الوحيد البهبهاني واختص بقية الكتاب او المقال عن موضوعات أخرى ترتبط به.

ـ أغلب المصادر التي تم اعدادها قد كتبت في الموضوعات التالية : تاريخ التشيع ؛ تاريخ الشرق الأوسط ؛ تراجم رجال الدين والمراجع ؛ التيارات الفكرية ؛ الفقه واصوله. أي ان قسم واحد من هذه المصادر هو عن الوحيد. اما المصادر التي اختصت بأكملها بالوحيد البهبهاني هي المقالات الواردة في الموسوعات (فيما يخص المقالات) وكتاب «رابرت غليو» (فيما يخص الكتب) ورسالة «زكريا همين» (فيما يخص لرسائل الجامعية).

ـ تتضمن الموسوعات سبعة مداخل مستقلة عن العلامة البهبهاني. رغم أن بعضا من هذه المقالات قصيرة وفي بعض الأحيان تأتي مكررة ولكن قد ذكرت في ضمن الكتاب لكونه سيكون كتاب مرجع / مصدر.

ـ فيما يخص دور النشر فان منشورات بريل الهولندية (في مدينة ليدن) قد نشرت معظم هذه الكتب ومن بعدها تأتي دور النشر التابعة لبعض الجامعات المهمة كجامعة كمبرج وجامعة ييل وجامعة شيكاغو.

ـ أهم المؤلفين المختصين بالوحيد أو بتعبير أدق من أهم الغربيين الذين بحثو في الوحيد هم : روبرت غليو، زكريا هين، دنيس مك كوئين، موجان مومن، جون كول، احمد كاظمي موسوي، مبير ليتواك وعبدالفتاح عبده. كل هؤلاء الباحثين هم اوربيون أو أمريكييون سوى باحثين أحدهما من ايران والآخر من مصر فقد هاجرا الى اوربا. في القسم الأخير من هذا الكتاب وردت معلومات تخص السوابق العلمية والبحثية لعدد من أبرز الباحثين المختصين بالوحيد.

ـ في هذا المشروع وقع الاختيار على اكثر من ١٠٠ نص قد استخرجت من ما يقارب ٥٠ مصدر / مرجع (كتاب أو رسالة جامعية أو مقال) وقد تم تصنيف هذه النصوص في سبعة فصول.

ـ اختص الفصل الأول المعنون «شخصية الوحيد البهبهاني» بترجمة الوحيد وآرائه واعماله.كما وقد وردت في هذا الفصل المقالات المنتقاة من الموسوعات. الفصل الثاني بعنوان «الخلفية التاريخية لمدرسة الوحيد البهبهاني» قد اختص بأسرة الوحيد وتلامذته. اما الفصل الثالث فقد اختص بالدعائم الاجتماعية وتحديدا الحوزات العلمية الشيعية ومؤسسة المرجعية. كما وقد تم البحث في مكانة مدرسة الوحيد والتيارات المخالفة والموافقة وبعبارة أخرى في التيارات الأصولية والاخبارية ضمن الفصل الرابع. وقد تناول الفصل الخامس الدعائم الثقافية والدينية للنهج الأصولي والمدرسة الوحيدية. فيما تناول الفصل السادس النتائج الثقافية والنتاج العلمي الذي خلفته مدرسة الوحيد. أما الفصل السابع والأخير والمعنون بـ «الباحثون المختصون بالوحيد» فقد بحث في السوابق العلمية لأبرز المحققين والدارسين الذين اختصو بالعلامة الوحيد البهبهاني.

ـ وفي نهاية الكتاب ورد تقرير مقتضب باللغة العربية عن كل من النصوص التي وردت في متن الكتاب. فكل تقرير يختص بنص واحد ويقدم ملخصا عن ما ورد فيه وفيما لو وجد في النص أية مشكلة أو خطأ سيتم التنويه اليه ضمن الملخص.

ـ لقد وردت كافة النصوص كما أوردها أصحابها بما فيه تمييل الألفاظ الفارسية والعربية واستخدام بعض الحروف كـ (ā / ī / ū).

ـ لقد وردت كافة الهوامش الواردة ضمن النصوص كما هي في نهاية كل مقال. والجدير بالذكر بأن طريقة ذكر الهوامش والإحالات أيضا قد وردت كما أوردها أصحابها وتم مراعاة الأمانة العلمية في ذلك. فلذلك يبدو وجود اختلاف في هوامش المقالات.

ـ تم ذكر المعلومات الخاصة بمصادر النصوص كافة في نهاية الكتاب.

الغاية من هذا المشروع هو جمع وتوثيق الجهود العلمية للباحثين الغرب الذين اختصوا بشخصية الوحيد البهبهاني وآرائه ومؤلفاته. لقد حاولنا أن نجمع أهم البحوث والمؤلفات وعرضها في كتاب واحد ليتسنى للأساتذة وطلبة الجامعات الوصول الى ما يبحثون عنه بصورة أسرع وأفضل. لم تكن الغاية مطلقا هو نشر ابحاث الآخرين بل أردنا أن نعرف شخصية الباحثين الأفاضل وأبحاثهم وجهودهم والذين اختصوا طيلة سنوات عديدة بالعلامة الوحيد البهبهاني. حيث ان هذا الكتاب سينشر على نطاق محدود وسيتناوله المختصون بالوحيد فقط.

خصوصيات النصوص المدرجة: ذكرنا بعض المسائل حول هذه المجموعة، لكن بقيت أمور أخرى ينبغي الاطلاع عليها قبل قراءة هذه النصوص:

ـ تحتوي هذه المجموعة على أهم النصوص المنتشرة في الغرب عن

الوحيد البهبهاني وعن مجريات الاتجاهين الأصولي والإخباري. نعم هي لا تحتوي جميع ما دوّن في هذا المجال؛ إذ هناك نصوص ـ كالرسائل الجامعية ـ نشرت على نطاق محدود. وعليه فالهدف من هذه المجموعة هو التعريف بالنصوص التي تركت أثراً في المحافل الفكرية في الغرب، أو تلك التي ستكون مؤثّرة في المستقبل.

وبما أنّ الرسائل الجامعية غالباً ما تكون مركّزة، وتأتي كثمرة لجهود سنوات بذلها المؤلف أثناء دراسته بمشاركة علميّة من بعض أساتذته المخضرمين، فهي حائزة على جانب كبير من المتانة العلمية والعمق. ولكن، بما أنّ هذه الرسائل لا تطرح لعموم الناس، فلن يكون بالإمكان استفادة الجميع منها. ومع ذلك فقد حاولنا أن نرفع هذه الإشكالية وأن نضع بين أيدي المحقّقين الرسائل المتاحة المرتبطة بالعلامة البهبهاني.

ـ لقد ذكّرنا فيما سبق بأنّا قد استفرغنا تمام وسعنا في المحافظة على المميّزات الأساسية لهذه النصوص. لذا، لم يحصل أي تصرّف فيها، بل أدرجت كما هي؛ لأننا نحترم حقوق المؤلف ولا نريد أن نقدّم رأينا في أي مسألة على رأي المؤلف. من هنا، لم نتصرّف في الإحالات الواردة في النصوص، بل حافظنا عليها وإن كانت غير هامة بالنسبة إلينا؛ فمثلاً أحياناً يحيل المؤلف أثناء كتابته إلى فصل آخر من الكتاب، ولكن بما أن هذه المقالة كانت جزءاً من كتاب كامل، فتكون هذه الإحالة صحيحة فيه، أما بعد أن اقتطعت من الكتاب فقد تكون الإحالة إلى فصل غير مذكور مستهجنة، لكن مع ذلك لم نعمل أي تغيير حتى في مثل هذه

الموارد، احتراماً لجهود المؤلّفين.

ـ نعود ونؤكّد على أننا حاولنا احترام المؤلّفين قدر الإمكان، فعرضنا آراءهم كما هي، وإن كانت مخالفة لما نراه نحن. لذا نطلب من المحقّقين والمترجمين الذين يريدون الاستفادة من هذه النصوص أن يلاحظوا وضعية الشرق الأوسط والمجتمع الشيعي، وأن يعتبروا جهودهم هدية لهذا المجتمع. وقد حاولنا فعلاً أن نقدّم تعريفاً بشخصية وآثار هؤلاء المؤلفين إلى المحقّقين الشيعة والحوزات العلمية. لذا فقد أوردنا في نهاية الكتاب فصلاً في التعريف بهم.

التقرير العربي ليس ترجمة حرفية للنصوص الانكليزية، بل هو مجرّد تعريف بالنص والمؤلف فقط ليتسنّى للمحققين الوصول إلى هذه النصوص. من هنا، فقد أجرينا تصرّفاً عليها، خلافاً للتقرير الفارسي؛ فقمنا بعرض المحتوى تارة من منطلق تاريخي، وتارة أخرى من منطلق أهمية الحدث، كما قمنا أحياناً بمناقشة الكاتب فيما ذكره.

ـ يشار إلى أنّ عناوين الفصول الموجودة هنا ـ خلافاً لما هو المتعارف في الكتب التأليفية ـ ليست دقيقة؛ بمعنى أن العنوان قد لا يكون جامعاً لجميع ما ورد في الفصل، أو قد يكون أعم مما ورد فيه؛ وذلك لأنا قسّمنا المقالات إلى مجموعات أدرجت تحت هذه العناوين.

ـ ينبغي قبل قراءة هذه المجموعة أن يتعرّف القارئ على نمط التحقيقات والإشارات التي يقدّمها الباحث الغربي، إذ ليست تحقيقات الغربيين مثل تحقيقات الشيعة في إيران والعراق، فإنّهم عندما يتعاطون

مع أحداث الإخبارية والأصولية، أو عند قراءتهم لمواجهات العلامة الوحيد البهبهاني، يسلّطون الضوء على أمور ومسائل لا نلتفت إليها أبداً؛ فيربطون بين بعض التغيّرات الحاصلة في العالم وبين حركة الوحيد والاتجاه الإخباري، والحال أننا لا يمكن أن نتصوّر هذا الترابط بينهما.

وكنموذج على ذلك: يرى الغربيون أنّ انتصار الأصوليين على الاتجاه الإخباري هو بمثابة انتصار الاتجاه العقلي (Rationalism)، كما يعتقدون بأنّ ظهور فرقتي البابية والشيخية إنما هو من آثار العقلانية؛ معتقدين بأنّ هذه الفرق تبتني على مناهضة الرجعية.

وعلى كل حال، فقد حاولت هذه المجموعة الوصول إلى الأهداف التالية: التعريف باشتباهات الباحثين الغربيين، الالتفات إلى التحقيقات المرجعية المنتشرة في العالم، التعرّف على كيفيّة تعاطي الغربيين مع الموضوعات الشيعية والتاريخ المعاصر للشيعة، الاطلاع على المصادر غير الإسلامية في هذا المجال.

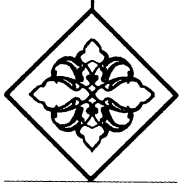
ان القائمين على هذا المشروع هم مجموعة من الباحثين ويفرضون على أنفسهم احترام حقوق المؤلفين المادية والمعنوية. وفيما لو افترضتم ضياع حق احدهم فنقدم خالص اعتذارنا ولكن رغم كل الأحوال فان نمو البحوث الدينية متوقفة على اتخاذ بعض الأساليب والمناهج كاعداد الموسوعات. ان من أهم الفوائد الذي يقدمه هذا النهج هو التعريف بمؤلفي سائر البلاد والثقافات لطلبة الجامعات.

ان ثمن بعض من الكتب المذكورة يبلغ ٣٠٠ دولار وان الطلبة

العراقيين أو الايرانيين أو المصريين الذين يكتبون رسائلهم عن الوحيد البهبهاني لا يتسنى لهم الحصول على عدد من هذه الكتب. غير أن طريقة اعداد الموسوعات سيساعد امثال هؤلاء الطلاب في الوصول الى المصادر والمراجع النادرة وباهضة الثمن.

ختاما نقدم فائق شكرنا وتقديرنا للسيد رئيس اللجنة العلمية حجة الاسلام والمسلمين السيد حسن الموسوي ومساعده حجة الإسلام والمسلمين السيد حسين الموسوي اللذين ازالا العقبات في سبيل انجاز هذا المشروع بمتابعتهما المستمرة وبجهودهما المضنية. كما وقد ساهم خمسة عشر شخصا لانجاز هذا المشروع وبمختلف الاختصاصات ضمن عدد من الفرق طيلة تسعة أشهر، فعليه نقدم فائق شكرنا وتقديرنا لهم.

محمد نوري ـ أباذر نصر



ملخص المقالات الانجليزية
حول العلامة الوحيد البهبهاني

(١)

سيرة الوحيد البهبهاني

(١١١٨- ١٢٠٦ق / ١٧٠٦- ١٧٩١م)

عبدالفتاح عبده

هذا النصّ هو جزء من أطروحة علماء إيران في القرن التاسع عشر الميلادي: تحقيق الآثار العلمية، من تأليف عبد الفتاح عبده Abdelfettah Abada. عنوان هذه الأطروحة وخصائصها الأخرى وردت بالإنكليزية كالآتي:

The'Ulama'of Iran in the ١٩th century hagiographical literature, Diss, Durham University, ١٩٨٩.

بدأ المؤلف رسالته هذه بذكر اسم وشهرة عائلة الوحيد البهبهاني والمكانة التاريخية لهذه العائلة. فقد ذكر بأنّ الشيخ محمد باقر البهبهاني المعروف بالوحيد والأستاذ الأكبر ولد بين سنة ١١١٦ و١١١٨ هـ في مدينة أصفهان. أبوه الملا محمد أكمل البهبهاني، وهو من أحفاد الملا محمد تقي المجلسي من ناحية أبيه وأمه أيضاً. بعد أن أمضى طفولته في أصفهان، انتقل آية الله البهبهاني مع والده إلى بهبهان. كان والده عالماً كبيراً، وكان لديه إجازة من أستاذه محمد باقر المجلسي، إضافة إلى إجازات من علماء آخرين أمثال آقا جمال الخوانساري، الملا ميرزا

الشيرواني والشيخ جعفر القاضي.

تناول في الفصل التالي مسألة هجرة البهبهاني إلى بهبهان، واشتغاله بالتحصيل في حوزة بهبهان ووصوله إلى مقامات ومدارج علمية مرموقة. وصف صاحب الذريعة هذه المرحلة من حياته بقوله: على الرغم من أنّ أغلب كتّاب السيرة أشاروا إلى تتلمذ البهبهاني عند والده فقط، لكنهم عدّوا الملا صدر الدين الرضوي والسيد محمد البروجردي من ضمن أساتذته أيضاً. كان لديه ثلاثة إجازات من والده وأساتذته الرضوي والبروجردي. أما إجازته في الرواية، فكانت باباً للوصول إلى مجموعات الروايات والتدقيق فيها؛ مثل مجموعة المجلسي المعروفة (بحار الأنوار). كان يحضر في بهبهان درس الشيخ يوسف البحراني الذي كان معروفاً بميوله الإخبارية. ويعتقد المؤلف بأنّ العلامة المجلسي كان مؤثراً في فكر البهبهاني في هذه المرحلة؛ فإنه بالإضافة إلى كونه من أحفاده؛ فقد كان معجباً بطريقة المجلسي الروائية.

يكمل المؤلف ـ خلافاً لكتّاب السيرة الذين أشاروا إلى وقوف البهبهاني في مقابل الأخباريين في بهبهان ـ بذكر موضوع مهم آخر، وهو المقارنة بين البهبهاني وأساليبه الثقافية والاعتقادية وبين علماء الشيعة في العهد الصفوي والقاجاري، مستخدماً طريقة القراءة التطبيقية في المقارنة بينهما.

يدور الفصل اللاحق حول سفر الوحيد البهبهاني إلى كربلاء واشتغاله بالتدريس والنشاطات الدينية الأخرى فيها؛ حيث كان مطّلعاً على الفكر

الإخباري بشكل كامل؛ نتيجة وجود الإخباريين ونشاطاتهم الواسعة في بهبهان. وقد كانت الحوزة العلمية في كربلاء تحت إشراف الإخباريين أيضاً. لذا فقد بدأ البهبهاني نشاطاته في مواجهة الإخباريين منذ دخوله كربلاء.

أشار عبد الفتاح بعد ذلك في مقالته إلى أساليب مواجهة البهبهاني للإخباريين؛ حيث يؤكّد على أنّ هذه الطرق والأساليب لم تكن علمية بحتة وسلمية دائماً، بل إنه استفاد من جميع الإمكانات والفرص المتاحة؛ لأنه كان يرى خطر الفكر الإخباري على أنه خطر كبير وأساسي وشامل. وقد ثبت صحّة تحليله ونظريته مع مرور الزمن.

أما الأساليب فكانت كالتالي: ١- انتقاد الفكر الإخباري عند فضلاء الحوزة والعلماء. حيث كان ينتقد ويرد على مباني وادعاءات الإخباريين؛ وذلك عبر استخدام المنطق والاستدلال في دروسه ومحاضراته وحواراته العامّة والخاصّة. وقد كتب عدّة كتب ورسائل في نقد هذا الفكر أيضاً. ٢- مناقشة ومحاججة رؤوس الإخباريين وزعماءهم، حيث كان يستخدم هذا الأسلوب مع الأشخاص الذين يرى أنهم من أهل الفكر والمنطق. ٣- المواجهة العملية مع الإخباريين المتشدّدين، لقد استخدم البهبهاني أسلوباً آخر مع الإخباريين الذين كانوا يستخدمون العنف، ويقدمون على أعمال عنف كي يصلوا إلى نشر الفكر الإخباري، حيث اعتمد أسلوباً قاسياً وعنيفاً في الرد عليهم ومواجهتهم. ومن هذا الباب ادعى المؤلّف أنه كان يرافق البهبهاني أشخاص أقوياء البنية، وكانوا يوسعون كلّ إخباري متشدّد ضرباً مبرحاً.

كان البهبهاني مضطراً لكي يستخدم هذا الأسلوب أن يختار أشخاص غير مثقفين، لديهم عقلية استخدام الضرب والقوة والعنف ويستعين بهم. فشخص كمحمد الأخباري الذي كان يضرب المخالفين له ويحبسهم ويقتلهم، كان لا بد من إيقافه بأساليب عملية وعنيفة أحياناً، أو على الأقل، أن لا يُترك حتى يقوم بهذه الأفعال. ٤- تعبئة وحشد العلماء الأصوليين وقيادة الحوزة ضد الفكر الإخباري، فقد استطاع البهبهاني أن يوجّه العلماء نحو الأصول بسرعة وأن يذكّرهم برسالتهم التاريخية، وعلى هذا كان يجلس معهم ويقسّم المسؤوليات والأعمال بينهم.

تناول المؤلف في الفصل الأخير من المقالة قضيّة تأليفات وآثار الوحيد البهبهاني. فذكر من كتبه العديدة: شرح المفاتيح، أبطال القياس، أصول الإسلام والإمام، الاجتهاد والأخبار، رسالة عبادات الجاهل.

ذكر تعريفات مختصرة لخمسة من مؤلفاته من بين مائة مؤلف تقريباً.

الفقرة الأخيرة في هذه المقالة هي حول تاريخ وفات البهبهاني ومحل وفاته.

والخلاصة لقد استطاع أن يلخّص نجاحات الوحيد البهبهاني في غلبة وطرد الإخباريين وتأسيس خطّ معتدل جديد باسم الخطّ الأصولي، وأن يربّي تلاميذ أقوياء من الناحية العلمية، وأن ينقذ التراث الشيعي لعدة قرون من يد الآفات الارتجاعية وغير العقلية.

(٢)

تطبيق الوحيد البهبهاني للنظرية الفقهية

زكريا هيرن

عاش الوحيد البهبهاني في عصر كان فيه المجتمع الشيعي في العراق وإيران غارقاً في حالة من التخلف، وليس لديه القابلية للتطوّر. مع أنّ أوروبا كانت في نفس هذه الفترة ـ أي في القرن الثامن عشر والتاسع عشر ـ تتطوّر بشكل سريع وملفت. من جهة أخرى كان العالم الإسلامي يشهد نموّ حركتين إصلاحيتين في المجتمع السني: السلطة العثمانية والحركة الوهابية. أما الدولة القاجارية في إيران، فكانت في حالة خمود ورخاء وتخلّف ذاتي، وكذلك الحال في العراق الذي كان تحت سيطرة العثمانيين؛ حيث كانت الحكومة فيه مشغولة بخدمة الامبراطورية العثمانية. فكّر العلامة البهبهاني ليجد حلاً، فرأى أنّ أهمّ مشكلة تكمن في أصول الفقه والفقه.

سلّط زكريا هيرن في مقالته هذه الضوء على المواضع التي اهتم الوحيد البهبهاني بإصلاحها.

هذه المقالة هي جزء من رسالة التخرج لزكريا ام. هيرن (Zackery M. Heern، اختلف في تلفظ اسم: Zachery فهناك عدة

احتمالات لتلفظ هذا الاسم باللغة العربية: زكريا، زاكري، زكري). ورد اسم المقالة وخصائصها باللغة الانكليزية كالآتي:

Usuli Shi 'Ism: The Emergence of an Islamic Reform Movement in Early Modern Iraq and Iran, Diss, University of Utah, ٢٠١١.

أي: أصول فقه الشيعة: ضرورة القيام بحركة إصلاح إسلامية في العراق وإيران الحديث، رسالة التخرج في جامعة يوتا، ٢٠١١م.

اعتنى قسم من هذه الرسالة بعرض الآراء الفقهية والأصولية للوحيد البهبهاني. وعنوان هذا القسم كالتالي:

«Vahid Bihbihani's Theoretical Approach to Islamic law»

أي: الإنجازات النظرية للوحيد البهبهاني في موضوع الحقوق الإسلامي (الفقه).

بعد المقدّمة، عمل المؤلّف في تسعة فصول على تحقيق أبعاد وجوانب العملية الإصلاحية في الفكر الشيعي في موضوعي أصول الفقه والفقه. بدأ مقدمته ببيان ضرورة وأهميّة إصلاح الفكر الشيعي في ذلك العصر، معتبراً أنّ هيمنة التيار الإخباري على المجتمع الشيعي آنذاك كان المانع الأساسي من حصول أي تطور فيه؛ باعتبار أنّ قادة الاتجاه الإخباري أعادوا صياغة العناصر الأساسية للفقه وأصول الفقه طبقاً لمذاقهم وآرائهم. فقد جعلوا المصدر الأساسي للاستنباط منحصراً بالروايات والأحاديث فقط، دون أن يجعلوا للعقل أي أهمّية. ونتيجة لهذا لم يكن لديهم أي نظرة واضحة للمسائل الجديدة والمستحدثة، بل

كانوا يروّجون لنظرية الاحتياط؛ نتيجة تمسكهم بالاحتياط في هذه الموارد.

رأى العلامة البهبهاني أن علاج المشاكل يبدأ في إصلاح الفكر الشيعي، وإعطاء الأهمية للقرآن والعقل والاجماع، مع الاهتمام بالسنّة والأحاديث على أساس الضوابط الأصولية. وقد بحث المؤلّف نظريّات العلامة البهبهاني في مواضيع اللغة، الاجماع، العرف، العقل، القرآن والحديث؛ انطلاقاً من كتبه؛ مثل: فوائد الحائرية، الرسائل الفقهية والرسائل الأصولية. والأهم أنّه عمل على تحقيق وتحليل ارتباط هذه النظريات مع إنشاء الخط الإصلاحي الشيعي.

بحث في الفصل الأول موضوع العلم. وحقّق في العلم ومدى ترابطه مع الواقع والحقيقة من وجهة نظر البهبهاني. وفي الحقيقة إنّ أساس النزاع بين التيارين الأصولي والإخباري هو العلم؛ فالإخباريون يقولون بأنّ جميع العلوم التي يحتاجها الإنسان يستطيع تحصيلها من الأحاديث، وأنّ المعصومين عليهم السلام قد أودعوا لنا جميع المعلومات والأحكام التي نحتاجها في الأحاديث. نعم قد يكون هناك بعض المصادر الروائية التي فُقدت ولم تصل لأيدينا. وفي المقابل، يقول الأصوليون بأنّ وظيفة المجتهد هي استنباط الأحكام بالاعتماد على المصادر التالية: القرآن، السنة، العقل والإجماع، مع إضافة العرف واللغة أيضاً. نعم بعض الأحكام وصلتنا عن طريق الأحاديث، لكن المسائل الجديدة والمستحدثة يجب أن يستنبطها المجتهد.

هذا الفصل هو أطول فصل في هذه المقالة، وقد طرح فيه المسائل الأساسية والمبنائية من وجهة نظر البهبهاني وعمل على تحليلها وتحقيقها. حاول هيرن أن يستخرج نظريات البهبهاني المهمّة من بين صفحات كتبه ورسائله. وخلاصة هذه الآراء كالتالي:

ـ وجود تمايز بين العلم والحقيقة. فبحسب نظرية البهبهاني قد يكون العلم مطابقاً للحقيقة وقد يكون بينهما تباين.

ـ من الممكن بالنسبة للفقيه أن يفهم رأي الشارع من خلال مطالعته للقرآن والأحاديث، ومن الممكن أيضاً أن يشتبه ويمشي في طريق خاطئ، وأن لا يصل إلى الحكم الإلهي الواقعي.

ـ لم يقبل البهبهاني بنظرية الإخباريين في كون باب العلم مغلقاً، بل قال بإمكانية حصول العلم عن طريق الأحاديث القطعية، ظواهر القرآن، أو بمساعدة الإجماع والعقل. وكان يرى أنّ الظنّ نوع من العلم أيضاً.

ـ ألف الوحيد البهبهاني كتاب الفوائد الحائرية لكي يوضح أخطار وعواقب نظريات الإخباريين. وكان البهبهاني يدّعي أن خطورة الخطأ في علم الفقه أكبر من خطورة الخطأ في علم الطب؛ لأنّ أخطاء علم الطب تنحصر أضرارها بالجسم والبدن، والحال أنّ أخطاء علم الفقه تؤثّر على العلاقات الاقتصادية والاجتماعية أيضاً.

ـ الأسوأ من هذا، هو أنّ انحراف فقيه ما بإمكانه أن يفضي إلى نتائج كارثية في المسائل الاعتقادية، ويعتقد البهبهاني أنّ الرفاهية الاجتماعية والسعادة الأبديّة منوطة بالقيادة الحكيمة للمجتهدين على أنهم أطباء

فقهيين، لا أطباء عاديين أو سياسيين أو أصحاب وظائف أخرى. بالإضافة إلى ذلك، وبحسب رأي البهبهاني، فتأثير الطبابة سواء كانت نتائجها جيدة أم لا فهي قصيرة الأمد، وتبقى كحد أقصى إلى آخر عمر الإنسان. أما التأثير الإيجابي للتطبيق الفقهي، فيوصل الناس ـ لأجيال عديدة ـ إلى التعالي، ويمكن لأثرها أن يبقى إلى آخر الزمان. والحاصل أنّ البهبهاني كان مؤيّداً لتداوم تأثير المجتهدين.

ـ يستدل البهبهاني على ذلك بأنّ الوصول إلى العلم المطلق في الفقه أصعب بكثير منه في الطب والعلوم الطبيعية. ويقول بأنّ العلوم الطبيعية لا تحتاج إلى جهود كبيرة؛ لأنّها لا تحتوي على تناقض.

ـ يرى البهبهاني أنّ العالم الطبيعي منطقي تماماً، وبالتالي فهو قابل للتنبؤ. أما المصادر الفقهية (القرآن والحديث) فهي على العكس تماماً؛ إذ وجود التناقضات هنا يستلزم المصالحة والجمع بينهم. ولذا فالاختلاف بين العلوم الطبيعية وعلم الفقه يكمن في أنّ العلوم الطبيعية مبنية على أُسس عقليّة ومنطقية، أما علم الفقه فهو مبني على أساس المصادر النصية التي تحتوي على معطيات غير متناسبة أحياناً.

ـ يؤمن البهبهاني بأنّ الحكم بتكفير الإخباريين ضروري؛ لأن الإخباريين فقهاء عاجزون، ولديهم نظريات تنتج عواقب وتأثيرات غير محمودة. فمع الأخذ بعين الاعتبار قوله عز وجل في القرآن الكريم: ﴿ومن لم يحكم بما أنزل الله فأولئك هم الفاسقون﴾. يرى البهبهاني أنّ كلّ من لم يحكم بالعدل هو كافر وخارج عن الدين، ويشير أثناء بحثه

إلى أنّ الإخباريين كافرون ولا يعرفون الله؛ لأنهم يصدرون أحكاماً غير عادلة بسبب اتباعهم طرق ملتوية.

ـ لم يكتفِ البهبهاني بتوجيه تحذير بسيط للشيعة بأن لا يتبعوا أحكام الإخباريين الخاطئة، بل كان يقول بصراحة بأن أحكامهم الخاطئة تجعلهم كافرين، ويجب التعامل معهم على هذا الأساس.

يدور الفصل الثاني من الكتاب حول تحقيق مصادر المجتهدين الشيعة للوصول إلى الأحكام والمعارف. يبحث الأصوليون في أربعة أو خمسة مصادر: القرآن، السنة، العقل والإجماع. أما القياس فهو محلّ خلاف بين أصوليي الشيعة والسنّة؛ حيث لا يرى الشيعة صحة العمل بالقياس (التشبيه)، ويستدلون على ذلك بالأدلة العقلية والنقلية. وقد أتى السيد هيرن بآراء البهبهاني في هذا الموضوع وناقشها وحللها.

يتمحور الفصل الثالث حول القرآن كونه مصدراً مستقلاً لاستخراج أحكام المسلمين وتكاليفهم. لكن هل القرآن هو مصدر مستقل في حدّ ذاته وذو أولوية عالية كما يقول الأصوليون، أم أنه يقع في سلّم الأولويات بعد الحديث، ويكون غير مستقل كما يقول الإخباريون؟ وهل أن ظواهر القرآن حجة أم لا؟ كما تناول في دلالته وصدوره على طبق رؤية الأصوليين، الذين يقولون بأنّ القرآن قطعي الصدور وظني الدلالة. فقد بحث المؤلف جميع هذه المسائل من وجهة نظر البهبهاني، وقارن بينها وبين آراء الإخباريين مثل الاستر آبادي وحلّلها وبيّنها.

أما الفصل الرابع فيدور حول الحديث والسنّة. حيث يرى الكاتب أنّ

اختلاف الآراء بين كلا التيارين وآراء البهبهاني في عدة مواضيع مثل: ملاك حجية الأحاديث، الخبر الواحد وحجيته، الحديث الحسن والصحيح والضعيف وملاكاتها، العلاقة بين الحديث والقرآن، كما بحث عن التقية أيضاً، وأشار إلى أنّ التقية بحسب رأي البهبهاني لا تستطيع أن تحلّ تناقضات الأحاديث.

الفصل الخامس يدور حول الإجماع وأنواعه وحجيته. يقول: لم يقبل الإخباريون بالإجماع بتاتاً بل شككوا في حجيته وفي حصول اتفاق بين الفقهاء على موضوع واحد، أما الأصوليون فقد قبلوا به بشروط ويرون حجيته. لدى البهبهاني آراء واضحة وحازمة في هذا الموضوع وقد تعرض المؤلف لها جميعاً، ثم سجّل اعتراضاً على البهبهاني بأنّه كيف قبل بإجماع أهل السنة؟

لخّص هيرن آراء البهبهاني في باب الإجماع في عدة نقاط:

ـ يعد الإجماع ـ بنظر الأصوليين ـ أهم مصدر للفقه من بعد القرآن والأحاديث المتواترة. وقد استفاد البهبهاني من الإجماع باعتباره مصدراً معتبراً مكملاً للنصوص. فقد وضح لازم الاجماع في اصطلاحات عملية عديدة. من باب المثال، يُقر البهبهاني بأنّ التدقيق في أفعال أصحاب الأئمة يُظهر لنا كيف أن الوضوء واجب قبل الصلاة.

ـ أيّد الأئمة عليهم السلام الإجماع في الأحاديث الواردة عنهم. يدعي البهبهاني أنه لا يوجد أي اختلاف بين الشيعة على أن الإجماع يمكن أن يكون حجة.

ـ يرى البهبهاني أن عمل المجتمع الإسلامي الأول بشكل موحّد في موضوع معيّن باعث على اليقين المطلق، ففي نظرة أولية لتفسير البهبهاني للإجماع يمكن أن يكون منطلق تفسيره هذا أصولياً؛ لأنه لا يقبل بالتفسير الحالي للنصوص بما يتوافق مع التفاسير التي كان المسلمون الأوائل يقبلون بها.

ـ يدافع البهبهاني عن النظرية القائلة بأنه يجب على الشيعة أن يبتعدوا عن البدع الفقهية والأفعال المغايرة لتلك التي كانت في المجتمع الاسلامي الأولي. ويرى أنّ إجماع العلماء هو سند كاشف عن الحقيقة، ويستعمل في كشف الحقائق أو في تفسير الأحداث.

الفصل السادس حول العقل. يعتقد البهبهاني أنّ بإمكان الفقهاء أن يصدروا الفتاوى بالاعتماد على مصادر غير نصيّة. وهذا الموضوع مهم جداً؛ وذلك لأنّ الكثير من الأصوليين يعتقدون بأنّ العقل والمصادر الأخرى تستطيع فقط أن تخدم بصفتها أدوات مفسرة لا أكثر. ويرى البهبهاني أنّ العقل هو مصدر مستقل للعلم والمعارف، وعلى هذا الأساس، فإنه بإمكان المجتهدين أن يصدروا الفتاوى استناداً إلى العقل فقط؛ لكن بشرط أن لا تكون هذه الأحكام قد وردت بشكل صريح في النصوص، ولم يكن هناك اجماع على خلافها أيضاً. يقول البهبهاني إنّ أكثر الأخبار الصحيحة تدل على أنّ العقل حجّة، وضمن هذا البحث، يدعي البهبهاني أنّ استخدام العقل ضروري، وبالإضافة إلى ذلك، يوضح أيضاً أنّ العقل هو أمر حقيقي، وبالتالي فهو مصدر للسعادة. من

هنا يعتبر البهبهاني أنّ العقل حجّة، وبدونه لا يمكن العمل بالفقه الإسلامي. واحتمال صدور الخطأ من العقل على نسبة واحدة من وجود احتمال تفسير خطأ لمصادر النصوص الفقهية.

يقبل البهبهاني ـ كسائر الأصوليين السابقين ـ بإلهيات الإمامية ـ المعتزلة بشكل عام، ويعتقد بأنّ الله عز وجل هو وجود عاقل مطلق.

يعرض البهبهاني تفسيراً للعقل، يتبع بشكل كبير مسألة الخير والشر التي تمّ تفصيل الكلام فيها وشرحها من قبل محقّقي المعتزلة القدامى. ويقول في هذا البحث رداً على مزاعم الأشعريين: بأنّه قد يتم غضّ النظر عن المحاسن والإيجابيات الموجودة في عبادة شخص ما؛ لأنّ سائر الأشخاص لم يدركوها إدراكاً منطقياً، ويضيف بأنّ الغفلة عن العبادة في نفسها ليست شراً، إلا إذا كانت تكليفاً معيّناً من جهة الشارع.

فمن وجهة نظره، العلم الأولي يحصل بواسطة العقل، من دون الحاجة إلى الوحي. وبعبارة أخرى، إنّ العقل قادر على تحصيل العلم دون واسطة الوحي. لكنّه يوافق الإخباريين في أنّه يجب على الفقهاء أن يعملوا بجميع الأحكام التوقيفية، وإن كان البهبهاني يعتقد بأنّ المسائل التي تكون مرتبطة بالعبادة هي توقيفية بطبعها؛ كونها وجبت بواسطة الوحي. كما يعتقد بأنّه يمكن الاعتماد على وسائل أخرى ـ كالعقل ـ للاستفادة منها في العبادة أيضاً، وذلك لكي تتّضح لنا بعض تفاصيل هذه التكاليف.

يوضح البهبهاني أنّ المعجزات ليست ضمن إطار المنطق الإلهي، بل

يدّعي أنّ نفس النصوص تحتوي على دليل عقلي، وهذا هو المبرّر للأحكام الشرعية. وفي الواقع، يعتقد بأنّ لكل دليل عقلي يوجد دليل شرعي. لكن العكس ليس صحيحاً؛ لأنّ لدينا كثيراً من المصادر النصية التي ليست عقلية بالضرورة. ويبدو أنّ هذا الأمر يتناقض مع القبول بوجود ملازمة بين العقل والوحي عند البهبهاني.

وهو يعتقد بأنّ الحكم الذي يكون شاملاً لدليل عقلي ونصّي يقع ـ من الناحية المعرفية ـ في مرتبة أعلى من الحكم الذي يحتوي على دليل نصّي فقط.

الفصل السابع حول القياس، العرف وتنقيح المناط. في الحقيقة يحاول المؤلف في هذا الفصل أن يستكشف من مجموع كتب البهبهاني وآرائه، طرق الاستنباط وأساليبه التي تتوافق مع أصالة الدين والمذهب، والتي يمكنها أن تنطبق على خصوصيات الزمان والمكان، ثم يحلّلها ويبيّنها.

لقد استخرج هيرن من النصوص التي ألفها البهبهاني والتي عدّها من آرائه القطعية الموارد التالية:

ـ رفض البهبهاني قياس السنّة، مثل باقي فقهاء الإمامية؛ لأنّ القياس الصحيح يجب أن يكون مشتملاً على علّة قطعية وصحيحة، في حين أنّ الفقه السني يعترف بأنّه من الممكن تطبيق القياس عند الوصول إلى العلّة الظنية فقط. لكن البهبهاني وأكثر فقهاء الشيعة يعتقدون بأنّ العلّة يجب أن تكون قطعية، وإن كان البهبهاني يقبل بالظنّ في مواضع

أخرى، لكنّه يرفض الاعتماد عليه في موضوع القياس بالذات.

ـ حسب نظرية البهبهاني الفقهية، فإن أقرب أصل من الأصول في فقه الشيعية للقياس عند السنة هو التعْدية، وقد ذكر البهبهاني عشرة طرق للتعدية، رُتبت في ثلاث مجموعات أساسية:

التعدية المشتقّة من العقل واللغة والإجماع. أكثر مباحث البهبهاني في تعدية حكم ما تبتني على حكم آخر مربوط باللغة والعرف، ويخرج بنتيجة مفادها أنّ اللغة والعرف هما مفتاحان ضروريّان لفهم ما يريده الشارع في النصوص.

ـ يعتقد البهبهاني بأنّه يجب على المجتهدين التبحّر في علوم اللغة، بل يقول بأنّ من الشروط الأساسية لوصول المحقّق إلى الاجتهاد هو تعلّم علوم اللغة، والدليل العقلي الذي يستند إليه البهبهاني في بيان أهمية اللغة والعرف هو أن الرسول والأئمّة عليهم السلام لا يمكن أن يفيدوا الناس شيئاً إلا إذا كان كلامهم مفهوماً من قبل الناس.

ـ يرى البهبهاني أنّ كلام النبي محمد صلى الله عليه وآله والأئمّة عليهم السلام تابع لفهم الناس في زمانهم. والظاهر أنّ البهبهاني يتفق مع المحققين ـ مثل أبو زيد الكرمي ـ القائلين بأنّ الله عز وجل قد لاحظ مستوى فهم واستيعاب الناس.

ـ يقول البهبهاني أنه بناءً على أنّ الله عز وجل قد اختار اللغة ليوصل أحكامه إلى الناس، فلا بد أن يكون كلام الرسول مراعياً للقواعد الأساسية والاصطلاحية للغة. وهو يرى أن استعمال مصطلحات اللغة

والعرف ينبغي أن تعود إلى عرب القرن السابع الميلادي، فهم الذين يطلق عليهم تسمية أهل اللغة. وعليه فإنّ البهبهاني يرى أنّ تفسير الكلمات الواردة في الأحاديث بواسطة أهل اللغة أمر ضروري.

ـ يعمل اللغة والعرف عمل الإجماع في رأي البهبهاني، فهو يعتقد أنّ الإجماع مفتاح فهم القوانين الإلهية؛ لأنّ الإجماع كاشف عن كيفية فهم أكثر المسلمين للقوانين المنزلة من الله عز وجل في زمن نزولها. لذا يحذّر البهبهاني بأنّ الابتعاد عن المعنى اللغوي والعرفي غير جائز أبداً، ويؤدّي إلى نقض المراد قطعاً، وعليه فالبهبهاني في هذا المجال يعدّ تقليدياً تماماً.

ـ يعتقد البهبهاني بلزوم تفسير النصوص حسب الشروط الزمانية والمكانية التي صدرت فيها، لكنّه في نفس الوقت يدّعي أنّ أوامر الله عز وجل كلّية. من باب المثال، يقول البهبهاني بأنّه بناءً على أنّ الصلاة واجبة، ولا نقاش في ذلك، إذن فجميع الناس مكلّفون بالصلاة إلى يوم القيامة.

ـ يوضّح البهبهاني بشكل خاص كيف يمكن استخدام الأحكام الكلية الإلهية في مواضع التعدية. ويشير البهبهاني ـ في مجال تأييد رأيه ـ إلى الحديث النبوي القائل: حكمي لشخص هو حكم للجميع.

ـ يعتقد البهبهاني أنه حتى لو ذكر الله عز وجل جميع أوامره بشكل واضح ومرتب، فإن المحققين دائماً ما يختلفون في معانيها؛ حيث يدّعي أنّ اختلاف الآراء في الآيات النصيّة يكشف في الواقع أنّ بعض

المحقّقين لم يوفّقوا لتفسيرها بشكل صحيح. إضافة إلى ذلك، فهو يعتقد بأنّه لا يمكن أن يُضاف شيء إلى الاصطلاح الخاص أو يحذف منه.

ـ يعتقد البهبهاني أنه بالإضافة إلى المصطلحات العامّة والخاصّة، تحتوي النصوص على معاني مضمرة ومستعارة. لكنّه لا يحدّد إطاراً خاصاً للفقهاء لتشخيص المصطلحات التي يجب تفسيرها بالاستعارة أو بغير ذلك، لكنّه يشير إلى أنّ أكثر آراء الشارع غير مضمرة؛ خصوصاً عندما تكون راجعة إلى الأحكام العبادية. بل يعتقد بأنّ المصطلحات التي تستعمل في الأحكام العبادية لا تنسجم غالباً مع المعاني المضمرة.

ـ يجب على الفقيه ـ بحسب رأي البهبهاني ـ أن يتوصّل إلى الأحكام الاجتماعية من العبادات والمعاملات، لذا بدلاً من أن يتم طرح تكاليف اجتماعية عامّة، لا بد أن يجري الفقهاء تشاورات فيما بينهم في موارد العبادات والمعاملات للوصول إلى تلك الأحكام، ويوضح البهبهاني أنّ الاختلاف في الحكم بين العبادات والمعاملات يكمن في أن الأول يحصل بمعنى خاص في ذهن الشارع، بينما الحكم في المعاملات يكون مفهوماً من قبل كل عاقل.

الفصل الأخير يدور حول سلطة المراجع والمجتهدين. يعني كيف استطاعوا أن يتغلبوا على التيار الإخباري، بل قد زادت قوّتهم وحضورهم الاجتماعي لدى الناس في العهد القاجاري، حتى استلموا القيادة في بعض الأحداث التي جرت؛ مثل قيادة الحركة الدستورية في

إيران، أو قيادة المواجهة ضد الوهابية في العراق. ومن جهة أخرى عملوا على توسيع الحوزات العلمية ومهّدوا الطريق لنشر المرجعية.

فقد صرّح في كتابه الفوائد الحائرية بجواز إصدار الفقهاء آرائهم الفقهية المبنيّة إما على أساس النظر العلمي أو الظن. يقول الإخباريون بأنّ المجتهدين يدّعون بأنّ الظن هو بمنزلة العلم اليقيني، والإخباريون وإن كانوا يقولون بأنّ جميع أحكامهم مأخوذة من الأدلّة النصيّة فقط، لكنهم في الحقيقة يستخدمون استنتاجهم الخاصّة بهم، وإن كانت بطرق خاطئة.

بعد النصوص والإجماع، يضع البهبهاني تكليف الشيعة على أساس ظنّ المجتهد، حيث يشبّه ظنّ المجتهد بشهادة شاهدين في مسألة قضائية، واللذان يؤتى بهما كمدرك مقبول أمام القاضي، فكلٌّ منهما على حدى لا يفيد إلا الظن، لكن اجتماعهما معاً يفيد العلم القطعي.

إن قبول البهبهاني للظنّ يعطي تعريفاً جديداً لقدرة المجتهد، حيث يرى العلم مرادف لظنّ المجتهد، والذي قد لا يكون متطابقاً تماماً مع الحقيقة الموجودة عند الشارع، بل يرى بأنّ المجتهد عندما يستخدم أدنى مدرك، لكنه من جهة أخرى، يستفرغ تمام وسعه في الوصول إلى الحكم الإلهي، ففي نهاية الأمر سوف يتجلّى له هذا الحكم في ما يختاره، وإن كان يعتقد بأنّ ظن المجتهد في البداية لا يوصله إلى مرحلة اليقين.

النتيجة:

لقد كان البهبهاني وفياً للسنة ومصادر الفقه الشيعية، كما أنه وفيّ أيضاً لإجماع العلماء الشيعة. من هنا، فقد سعى إلى إيجاد نوع من التوازن بين السنة والتغيير، وبين النص والعقل. ومن وجهة نظر أوسع، إن الرؤية النظرية للبهبهاني إلى السنة الشيعية أشبه ما تكون بتصرّف العقلاء الذين ينطلقون في تعاملهم من منطلق خاص. لذا كان اهتمام البهبهاني منصباً على تفسير الفقه تفسيراً لا يؤدي إلى الخدشة به، ويمكنه أن يقود المجتمع نحو التطوّر والرقي.

من هنا، يحمّل البهبهاني الإخباريين المسؤولية في تعقيد ظروف تقدّم المجتمع الشيعي؛ وذلك بسبب نظرتهم الضيقة إلى الفقه الإسلامي والتعامل الساذج معه، دون الأخذ بعين الاعتبار المباني والظروف المحيطة بالمجتمع.

لقد اهتم الكاتب في القسم الأعظم من هذه المقالة بأسس التشيّع الأصولي بصفته حركة فكرية إصلاحية، مادحاً أفكار الوحيد البهبهاني؛ لما لها من أهمية وتأثير في ترقي المجتمع، حتى أنها تركت آثار كبيرة بعد وفاته أيضاً.

ولكي يقوّض البهبهاني أركان البناء الإخباري، فقد عمل على عرض قدرة الفقهاء في كتاباته، كما عكف فيها على بيان الاختلاف بين الأصوليين والإخباريين.

يعتقد هيرن بأن البهبهاني عمل ضمن إطار تقليدي، دون أن يدرك

التحوّلات الأساسية التي سيتركها تحرّكه هذا.

لقد فتح الدكتور زكريا هيرن الباب واسعاً أمام البحث في فكر آية الله الوحيد البهبهاني، فقد ترك العديد من الكتابات في الفقه، أهمها كتاب الفوائد الحائرية. والكتابات الأصولية الأخرى التي تركها البهبهاني تهدف إلى الكشف عن المنافع غير المعتبرة للعلم وللمرجعية، وأهم هذه الكتب: الرسالة الأصولية والرسالة الفقهية.

يعتقد المؤلّف بأنّ البهبهاني استطاع أن يكسر جليد الجمود والرجعية في الثقافة الشيعية، وأن يفتح الطريق أمام الإصلاح والتغيير وتقدّم المجتمع الشيعي. وهذا ما أثبتته الأحداث الجارية في القرنين اللاحقين؛ حيث كشفت تلك الأحداث عن أن فريقاً من الفقهاء الأصوليين الذين انتهجوا منهج العقلانية للوحيد البهبهاني، قد أكملوا نهجه الثقافي وعملوا على تطوير الفضاء الثقافي للمجتمع. وهناك فريق آخر من الفقهاء أكملوا نهجه السياسي وأولوا أهمية لتولّي السلطة، فعملوا على تشكيل حكومة بواسطة الولي الفقيه.

(٣)

المصادر اللفظيّة للفقه من وجهة نظر البهبهاني والبحراني

روبرت غليف

هذه المقالة لـ روبرت غليف (Robert Gleave) وهي جزء من كتاب: نظريّتان في فقه الشيعة. وقد نشر هذا الكتاب باللغة الانجليزيّة بالهويّة التالية:

Inevitable Doubt: Two Theories of Shī'ī Jurisprudence, Brill, ٢٠٠٠.

تشتمل هذه المقالة على فصلين ومقدّمة واستنتاج، في المقدّمة يبيّن الكاتب مصادر الفقه ويقسّمها، ويرى أنّ هناك ثلاثة مصادر لفظية لدى الفقهاء، هي الكتاب والحديث والإجماع، أمّا العقل فهو مصدر يختلف ذاتاً عنها، ويسمّى اصطلاحاً مصدراً أو دليلاً لبّياً لا لفظياً.

بيّن الكاتب بدقّة جهات اختلاف الآراء بين العلاّمة البهبهاني (رئيس الأصوليّين) والشيخ يوسف البحراني (رئيس الأخباريّين) في مصادر الفقه.

يرى البحراني أنّ الأدلّة والمصادر اللفظيّة مقدّمة على العقل، وأنّه ينبغي للفقيه أن يعطي الأولويّة لها ويستفيد منها قبل غيرها. أمّا البهبهاني فيرى أنّه يمكن الاستفادة من القرآن والروايات بمساعدة

العقل. بمعنى أنّ الأدلة على مستوى واحد، دون أن يكون بينها تقدم وتأخر على مستوى الاستنباط؛ وذلك لأنّ الفقيه يقوم بتفسير المعطيات الفقهيّة في القرآن أو الأحاديث بمساعدة العقل، كما أنّه لن يكون لآيات الأحكام والروايات الفقهيّة قابلية للاستنباط من دون التعقّل والتفكير. لكن يوجد اختلاف بينهم في المصادر اللفظيّة؛ فالبحراني يعتقد بأنّ الروايات هي الأصل، وأنّ آيات القرآن تُفهم وتقسّم بمساعدة الروايات، فإذا كان لدينا آية لم يبيّن المعصوم عليه السلام بشأنها أي شيء، فلا يستطيع الفقيه في مقام الاستنباط أن يستفيد من تلك الآية.

لذا يعتقد البحراني بأنّ للأحاديث قيمة ذاتيّة، يعني أنّه ينبغي الاستفادة من جميع الأحاديث التي وردت في المجاميع الروائيّة الشيعيّة، بدون غربلة ومعرفة صحيحها من سقيمها. أمّا البهبهاني فإنّه يقبل الروايات بشرطين ويمكن الاستفادة منها بعد تحقّقهما: أولاً: ينبغي أن لا تكون متعارضة مع ظواهر القرآن، ثانياً: ينبغي أن تكون مما تمّ فيها مراعاة ضوابط عِلمَي الرجال والدراية. بمعنى أن تقبل كلّ رواية حائزة على ضوابط القبول الرجاليّة والدرائيّة ويستفاد منها في مقام الاستنباط والاجتهاد، وإلاّ فإن كانت ضعيفة ويوجد في سلسلة أسنادها أفراد كذابون فلا يمكن الاستفادة منها.

بعد المقدّمة، تناول المؤلف في الفصل الأوّل آراء البحراني، فالشيخ يوسف البحراني (أو البحريني، ١١٠٧ ـ ١١٨٦ هـ) من عائلة آل عصفور المشهورة، كان فقيهاً ومحدّثاً ومؤلّفاً شيعيّاً بارزاً، أمضى أكثر عمره في

حوزة كربلاء العلميّة بالتحقيق والتأليف والتدريس. أهمّ آثاره الحدائق الناضرة في أحكام العترة الطاهرة.

كان يوسف البحراني إخباريّاً، وكان له في البداية ميل شديد نحو الإخباريّة، لكنّه اعتدل رأيه بعد سنوات من المحادثات مع الأصوليّين، حتّى أنّه كان يذمّ الأخباريّين الإفراطيّين وينصحهم. نشر كتاب الحدائق الناضرة بداية في ١٣١٥ إلى ١٣٨١ هـ في النجف وتبريز في عشرة أجزاء، وطبع فيما بعد بشكل آخر. لكنّه يعتبر فاقداً للمباني القويّة، وضعيفاً في إحكام استدلالاته الفقهيّة، حتّى أنّه حذف بعض أبواب الفقه؛ مثل الجهاد؛ لأنه بحسب قوله ليس له تطبيق في الوقت الحاضر. وهذا يكشف عن عدم القدرة على الإجابة عن المسائل الحديثة؛ لأنّ الشيعة كانوا بحاجة إلى أحكام الجهاد والحرب في هذا الزمان؛ بسبب حملات الوهّابيين والغربية على المقامات المقدّسة في العراق وايران.

إنّ أهمّ طريق للوصول إلى آراء الشارع والأحكام الشرعيّة في زمان الغيبة، الذي لا يمكن فيه الوصول إلى الإمام المعصوم عليه السلام هو الأحاديث. إذ يمكن لمجموع الروايات الموجودة في الكتب الروائيّة أن ترشد الشيعة إلى الأحكام الشرعيّة، وتقتصر وظيفتهم فقط على اتّباع وتقليد المعصومين عليهم السلام. لقد بيّن البحراني هذه النكتة ووضّحها بالتفصيل في أبواب مختلفة من كتابه الحدائق الناضرة.

أمّا الوحيد البهبهاني فقد أثبت أنّ الطريق الصحيح للوصول إلى العلم بالشريعة والأحكام هو اجتهاد الفقيه على أساس الضوابط، بمعنى أن

على الفقيه أن يصل إلى الأحكام من خلال سعيه الدؤوب واستفراغ وسعه في مراجعة المصادر الفقهيّة (القرآن، السنّة، العقل والإجماع، العرف وغيرها). لذا يعتقد الأصوليّون بأنّ طريق الوصول إلى العلم مفتوح بشكل كامل في زمان الغيبة، خلافاً للإخباريّين الذين يعتقدون بانسداد طريق العلم، وقد أثبت البهبهاني حجيّة هذا الطريق في كتبه المدونة؛ والتي منها: كتاب الاجتهاد، وأبطل طريقة الإخباريّين.

يعتبر الشيخ يوسف البحراني أنّ اتّباع المعصومين عليهم السلام وإطاعتهم واجب، ويؤكّد كثيراً على هذا الموضوع. وقد حاول الإخباريّون أن يظهروا أنفسهم على أنّهم متّبعون للإمام المعصوم عليه السلام ومطيعون له، وأنّ الأصوليّين متّبعون للمجتهدين غير المعصومين، والحال أنّ الأصوليّين أيضاً يعتقدون بوجوب اتّباع المعصومين ويعتبرونه حكماً واقعيّاً، إلاّ أنّهم عملوا في زمان الغيبة بأوامر خلفاء المعصومين (الفقهاء والمجتهدين)؛ بسبب اضطرارهم، وبأمر من المعصومين أنفسهم.

أتى المؤلف ببيان موسّع لاختلافات الإخباريّين الأخرى ـ وخاصّة البحرانيّ ـ مع الأصوليّين، وقام بتحقيق آراء البحراني ونقدها، ويمكن أن نشير إلى بعض المباحث المهمّة في هذا البيان على شكل عناوين الفصول وبصورة مختصرة:

يذهب الإخباريون إلى أنّه ليس للعقل وللمدركات العقليّة أي حجيّة شرعية، ولا يمكن للإنسان أن يسعى إلى فهم الشريعة والأحكام من خلال العقل، بينما يعتقد الأصوليّين بأنّ العقل معتبر في إدراك حسن

الأشياء وقبحها، وعليه ففي رأي مخالفي الإخباريّين، يعتبر العقل منبعاً مهمّاً لمعرفة الحكم الشرعي.

يرى البحراني والاستر آبادي وسائر الإخباريّين أنّ اجتهاد الفقهاء وسعي الفقهاء من أجل استنباط الأحكام الشرعيّة أمر محرّم وغير مشروع، بينما الأصوليّون يعدّون الاجتهاد واجباً كفائيّاً أو عينيّاً.

لا يعتبر الإخباريّون حجية لظواهر القرآن، بمعنى أنّه لا حجيّة لفهم معاني القرآن، ويعتقدون بأنّ الإنسان غير معصوم لا يستطيع الوصول إلى معاني القرآن، وعليه، فإن بيّن المعصومون عليهم السلام رأيهم في آية أو سورة، أمكننا عندئذ الاستفادة من تفسيرهم، أمّا نحن فلا يمكننا الأخذ من القرآن مباشرة.

يرى الإخباريّون ـ أمثال البحراني ـ أنّ جميع الأحاديث المندرجة في المجموعات الروائيّة، وخصوصاً الكتب الأربعة، واجبة الاتّباع وحجة ومعتبرة، في حين أنّ الأصوليّين قسّموا الأحاديث إلى عدّة مجموعات ولم يروا حجيّة واعتباراً للأحاديث الضعيفة.

تحديد وظيفة المسلم في الشبهات التحريميّة والشبهات الموضوعيّة. حيث يعتقد الإخباريّون بأنّ وظيفته هي الاحتياط، بينما يرى الأصوليّون أنّها البراءة.

قام الكاتب بمراجعة شاملة لآثار مختلفة للبحراني والإخباريّين الآخرين والأصوليّين، وخلص منها إلى عرض بيان جامع لآراء الشيخ يوسف البحراني.

تناول الكاتب في الفصل الثاني المصادر النصّية للحقوق من وجهة نظر آية الله البهبهاني. حيث يؤكّد الدكتور غليف على أنّ نظريّة المعرفة عند البهبهاني أكثر تعقيداً؛ لأنّ الوصول إلى العلم بالأحكام وكشف حجيّتها واعتبار سندها، فضلاً عن تشخيص الحجيّة المحتملة، له طريقة معقّدة في مدرسة الوحيد والأصوليّين. بينما طريقة الوصول إلى الأحكام في المدرسة الإخباريّة مبسّطة؛ حيث يكفي أن يضع الفقيه أربعة كتب روائيّة أمامه، ثمّ يقدم على استنباط الأحكام منها. ويعتقد الأصوليّون بأنّه يجب على الفقيه أن يتعلّم عدّة علوم على نحو المقدّمة؛ مثل علوم اللغة، الرجال، الدراية، علوم الحديث، علوم القرآن، وأصول الفقه، وبعد أن يحصّل القدرة على استنباط الأحكام، يمكنه أن يبدأ بالاستنباط عبر بذل جهد كبير.

طبعاً بعض الأخباريّين يعتقدون أنّه يمكن تفسير القرآن مباشرة وبدون الاستعانة بالأخبار، لكن هذا الرأي قريب من الرأي الأصولي للبهبهاني ومخالف لمباني الإخباريّين. يعتبر الإخباريون أنّ الأخبار كلها ـ حتّى الخبر الواحد ـ حجّة، وقد اعترض عليهم البهبهاني بشدّة، وتساءل: كيف يمكن ردّ سند ومدرك مثل القرآن بخبر ضعيف (الخبر الواحد).

لذا يؤكّد العلاّمة الوحيد على أنّه لا يمكن جعل حجيّة القرآن موضعاً للسؤال كما فعل الإخباريّون؛ لأنّ القرآن من حيث الصدور قطعيّ، كما أنّه واضح من حيث دلالة آياته وسوره في كثير من الموارد. نعم يوجد

إبهام في بعض الموارد القليلة بسبب عدم العلم بمعاني الآية، أو لكونها متشابهة وأمثال ذلك، وقد بيّنت الكتب الخاصة بعلوم القرآن ما ينبغي عمله في هذه الموارد، كما أنّ المعصومون أنفسهم بيّنوا وظيفة المسلمين فيها أيضاً.

يركّز بيان الكاتب على القرآن والحديث والإجماع، ويتعرّض أثناء هذه المباحث الأساسيّة إلى العقل، العرف، الاجتهاد، وشروط الحجيّة، وأمثال ذلك.

بسبب المساعي الحثيثة التي بذلها الوحيد البهبهاني في هذا المضمار، التفتت الحوزات الفقهيّة ـ في النهاية ـ إلى أنّ مواكبة الفقه للاحتياجات المعاصرة تحتاج إلى «الأصول» و«الاجتهاد»؛ لأنّ الطريقة التي كان يقدّمها الإخباريّون كانت تردي الفقه في مشاكل كثيرة. وكان بعض الإخباريّين أنفسهم ـ مثل الشيخ يوسف البحراني ـ قد وقفوا على المشاكل التي تسبّبها طريقتهم العلمية، لذا فقد تراجعوا أمام الأصوليّين، وانكسرت شوكتهم المتحجّرة مع قيام علماء أصوليين بعملية توسيع لدائرة الفقه الشيعي.

لقد بدأت مواجهة الإخباريين برجوع محمد باقر البهبهاني إلى العتبات المقدسة، حيث كتب رسالتي الاجتهاد والأخبار والفوائد الحائريّة، لإعادة الاعتبار إلى ظنّ المجتهد في زمان انسداد باب العلم؛ أي في غيبة الإمام عليه السلام. في هاتين الرسالتين، يضع البهبهاني ظنّ المجتهد في موضع «العلم العادي» الذي يعتمده الإخباريّون، ويعتبر العلم

الإجمالي كافياً بسبب حصول الظنّ الشرعي فيه. لم يترك البهبهاني اثراً فقهيّاً مهمّاً غير هاتين الرسالتين، وإن كان له نصيب وافر من التدريس والمباحثة مع رؤساء الأخباريّين.

عمل البهبهاني على تربية علماء تتلمذوا على يديه، حيث كانوا رأس ماله العلمي. وصرف تمام قدرته في توسعة أصول فقه الشيعة. لقد كتب الشيخ جعفر بن خضر النجفي (م ١٢٢٨ هـ) كتابَي كشف الغطاء والحقّ المبين، وطرح فيهما مسألة لزوم تقليد المجتهد الأعلم، واعتبرها منصباً خاصّاً بمجتهد الزمان.

الملاّ أحمد النراقي (م ١٢٤٥ هـ) تلميذ آخر للبهبهاني، لم يضع فقط حداً جديداً في استخدام الأصول وبسط الظنّ، بل إنّه قد طرح ولاية الفقيه. فقد قسّم النراقي ولاية الفقيه إلى قسمين: عامّة وخاصّة، اعتبر في قسم الولاية العامّة أنّ للفقيه المسلم الجامع للشرائط كلّ مناصب الإمام عليه السلام، أما في قسم الولاية الخاصّة فعمل على تحقيق موارد خاصّة بولاية الفقيه.

لقد أدّى ظهور محمّد باقر البهبهاني كأستاذ للجميع إلى تهيئة المناخ المناسب لتثبيت مقام المجتهد كمرجع تقليد في عصر الغيبة، بالإضافة إلى تأكيد العلماء الأصوليين على اعتبار ظنّ المجتهد الأعلم وثبوت ولايته العامّة في الأمور الشرعيّة.

في الخلاصة أورد غليف جميع هذه المباحث كنتائج لتحقيقاته.

(٤)

تكليف الجاهل في القانون الإلهي

روبرت غليف

كاتب هذه المقالة هو روبرت غليف الذي حاز على دكتوراه في الدراسات الإسلاميّة من جامعة مانشستر، ويشغل حالياً كرسي أستاذ بجامعة أكستر (Exeter) في بريطانيا. تتمحور مقالته هذه حول دراسة التشيّع، حيث يتوفّر على العديد من البحوث والمصنّفات في هذا المجال، وقد عكف في فترة تُناهز الثلاثين سنة على دراسة كلّ من الاتّجاهين الأصولي والإخباري، وقدّم لنا كتباً قيّمة عنهما.

هذه المقالة هي مقطع من كتابه: «نظريّتان في أصول الفقه الشيعي» الذي طُبع في اللغة الأصلية بالهوية التالية:

Robert Gleave, Inevitable Doubt, Two Theories of Shi'I Jurisprudence, Brill, ٢٠٠٠.

وتبحث هذه المقالة ـ تحت عنوان «رأي البهبهاني والبحراني حول تكليف الجاهل في القانون الإلهي» ـ عن مسألة مهمّة شكّلت محوراً للنزاع بين التيّارين الإخباري والأصولي؛ ألا وهي: تكليف العامّي والجاهل في العبادات. وقد عُنونت هذه المقالة في اللغة الإنجليزيّة بهذا الشكل:

"Bahrani and Bahbahani on the status of the one ignorant of god' s law"

ففي كلّ نظام فقهي وقانوني، ينبغي تشخيص وظيفة النخبة من الفقهاء وكذلك وظيفة عامّة الناس، وتحديد ما يُتوقّع من كلّ واحد منهما. وهذا أمر ينطبق أيضاً على المدرستين الإخبارية والأصوليّة.

ويتعرّض «غليف» في هذا البحث ـ وفقاً لمصادره الخاصّة ـ لبيان آراء اثنين من أبرز الشخصيّات الأصوليّة والإخبارية؛ أي البحراني والبهبهاني. ويبقى أنّه اقتصر هنا على البحث عن التكاليف والوظائف المنوطة بالجاهل وعامّة الناس، وفي مجال العبادات فقط. ولهذا، نجده قد استخدم لفظة (god' s law) في عنوان مقالته.

برأي البحراني وبقيّة الإخباريين، فإنّ الحلّ المشروع ينحصر في الرجوع إلى الأحاديث، حيث بإمكان الشيعي العامّي الرجوع للكتب الروائيّة من أجل تشخيص تكاليفه؛ إذ إنّ الاعتماد على الأحاديث والأخبار الصادرة عن أهل بيت الرسول ﷺ هو المصدر الوحيد للعلم بالأحكام الشرعيّة والتخلّص من الجهل. لقد تمّ تصنيف الكتب الروائيّة في فترة سابقة، لكن مع استقرار الدولة الصفويّة في إيران، انطلقت نهضة جديدة لتأليف موسوعات حديثيّة جديدة؛ هذا من جهة، ومن جهة أخرى، فقد عمل بعض الفقهاء في كربلاء وإيران على الدعوة إلى التوجّه نحو الأحاديث ونقد مباني الأصول. وكان هذا سبباً في تشكّل الحركة الإخبارية وانتشارها بشكل سريع، حيث تأسّس هذا التيّار على يد الملاّ محمد أمين الأسترآبادي الذي بدأ دراسته للفقه في المدرسة

الأصوليّة، غير أنّه أدرك بشكل جيّد مقتضيات عصره، والمتمثّلة في اعتراف الجميع بضرورة توحيد منهج الاستنباط في الفقه الشيعي عن طريق نفي اعتبار الاستدلالات الظنّية والرجوع إلى المصادر الروائيّة؛ فعمل على تأسيس مدرسته ذات التوجّه الإخباري، مستفيداً في ذلك من العواطف والإحساسات الناشئة من تعلّق الناس بأهل بيت النبوّة ومحبّتهم. كما أنّه كان على اطّلاع جيّد بكيفيّة ظهور التيّار الأصولي وتطوّره، وسعى إلى إظهار مواطن ضعفه واقتباسه من فقه العامّة.

ويعتقد الإخباريون أنّ الاعتراف المطلق بالأخبار كمصدر للعلم يُغنينا عن التمسّك بالظنّ ويُجنّبنا الاختلاف في الرأي، حيث يعدّون «اليقين المتعارف» و«العقل الحسّي» معياراً لأجل فهم الأخبار ــ أو بعبارة أحسن: تحديد مستوى فهم الأخبار ـ. ومن هنا، فإنّهم يُرجعون معيار الفهم إلى «العلم المتعارف» للفقهاء بدلاً عن علم الأصول والدراية والرجال. وقد بلغ اعتمادهم على النصوص الروائيّة إلى حدّ؛ منعوا معه الاستنباط المباشر من القرآن، الذي رأوا بأنّ حجّيته محدودة بنطاق الأحاديث فقط.

لقد أثّرت آراء كلّ من الشيخ يوسف البحراني والملاّ أمين الأستر آبادي في الحوزات الفقهيّة الشيعيّة بشكل سريع. ولا يخفى أنّ ابن أبي جمهور الأحسائي سعى قبل الأستر آبادي سابقاً (في أواخر القرن التاسع الهجري) إلى جمع الروايات وتصنيفها وفقاً لمنهجيّة جديدة، غير أنّ أفكار الأستر آبادي سرّعت أكثر من مسار الاعتماد على الروايات.

ويبقى كذلك أنّ هذه الأرضيّة كانت متوفّرة في عصر المجلسي الثاني، الذي اعترف بدوره بأنّ التوسّل بأحاديث أهل البيت هو الطريق الوحيد للخلاص، فعمل على تجميع الروايات وتأليف الموسوعة الكبرى: بحار الأنوار. ففي هذا الكتاب، عمل المجلسي على إعادة التحقيق في التراث الشيعي ليُقدّم لتاريخ التشيّع معطيات جديدة؛ فلم يكن المجلسي يسعى في البحار إلى إعادة كتابة الفقه الجعفري فقط، بل كان يرنو أيضاً إلى تجديد الفكر الشيعي برمّته.

ونظراً لاعتماد الإخباريين على الأحاديث المأثورة، كان من الضرورة بمكان أن يتمّ تصنيف الأحاديث بنحوٍ يسهل معه الوصول إلى كلّ حديث، وذلك عن طريق وضعه تحت عنوان يكون له ارتباط بمضمونه. وقد تحقّق هذا الأمر في كتاب وسائل الشيعة، وذلك بالاستفادة من الدقّة التي كان يتّصف بها محمد بن الحسن الحرّ العاملي (ت ١١٠٤ هـ ق) وحسن سليقته.

وابتداءً من نصف القرن الحادي عشر، نشأ فرع جديد من الفقهاء الإخباريين في البحرين والجزائر (خوزستان) تزعّمهم كلّ من زين الدين علي بن سليمان بن درويش البحراني (ت ١٠٦٤ هـ ق)، نعمة الله ابن عبد الله الجزائري (ت ١١١٢ هـ ق)، سليمان بن عبد الله البحراني الماحوزي (ت ١١٢١هـ ق)، عبد الله بن صالح اللاهيجي (ت ١١٣٥هـ ق)، وآخرهم الشيخ يوسف ين أحمد البحراني (ت ١١٨٦ هـ ق)، غير أنّ الشيخ يوسف سعى ـ بدلاً من إعادة كتابة الأحاديث وتصنيفها ـ إلى

تأليف كتاب عظيم في الفقه الاستدلالي سمّاه الحدائق الناضرة، فاتحاً بذلك فضاءات جديدة أمام الفقه الشيعي.

لقد انصبّت كامل جهود البحراني ـ وبقيّة زعماء الاتجاه الإخباري ـ نحو صرف الناس عن الرجوع إلى المجتهدين الأصوليّين، وحثّهم على الرجوع مباشرة إلى الروايات من أجل تحصيل العلم الشرعي.

وفي مقابل ذلك، بدأ العلاّمة محمد باقر البهبهاني حملته في مواجهة تحجّر الإخباريين، حيث كتب كلاً من رسالة الاجتهاد والأخبار، والفوائد الحائريّة، من أجل إعادة النظر في اعتبار ظنّ المجتهد في زمن انسداد باب العلم (غيبة الإمام عليه السلام)؛ ففي هاتين الرسالتين، سعى البهبهاني إلى تبديل مصطلح «العلم المتعارف» الذي اعتمد عليه الإخباريون بـ «ظنّ المجتهد»، معتقداً بكفاية العلم الإجمالي في حصول الظنّ الشرعي.

لقد خاض البهبهاني في أبحاث ومناظرات واسعة مع علماء الإخبارية، وسبّب في انفعالهم وإثارة غضبهم. لكن حينما لجأ الإخباريون إلى استعمال العنف، وسعوا إلى الانتصار لمدرستهم عن طريق التخويف، ردّ عليهم الأصوليّون أيضاً بنفس الأسلوب.

وُلد محمد باقر البهبهاني (الوحيد البهباني) في سنة ١١١٦ / ١٧٠٤ أو ١١١٨ / ١٧٠٦ في مدينة أصفهان، حيث كان يصغر سنّاً عن البحراني بعشر سنوات. في الأوّل، درس الوحيد عند أبيه، ولا نعلم أنه بعد انتقاله إلى كربلاء، متى بدأ في تدريس أصول الفقه، غير أنّه من المعلوم أنّ

ذلك لم يكن مباشرة بعد دخوله للمدينة؛ لأنّ المدن المقدّسة كانت تحت سيطرة الإخباريين في ذلك الزمان، فلم يكن البهبهاني ـ بصفته طالباً شابّاً ـ قادراً على التدريس فيها.

لكن حينما بلغ البهبهاني سنّ السبعين، أصبحت الأوضاع الاجتماعيّة والزعامة العلميّة في مدينتي النجف وكربلاء ملائمة أكثر، حيث أفضت المساعي والجهود التي بذلها إلى القضاء على الإخباريين.

وقد عمل على تأليف كتاب الفوائد الحائريّة ـ بمنهجيّة مختلفة تماماً ـ في نقد الإخباريين والردّ على زعمائهم ـ أي البحراني والأستر آبادي ـ، حيث يتشكّل هذا الكتاب من قسمين: الفوائد الحائريّة والفوائد الجديدة (ص ٩٩).

فقد سعى البهبهاني في كتاب الفوائد الحائريّة إلى الردّ على جميع المسائل التي بحثها البحراني ونقدها في الفوائد المدنيّة. وممّا لا شكّ فيه أنّه في بعض المواضع من هذا الكتاب، نرى أنّه في الوقت الذي كان على البهبهاني أن يقرأ بعض المقدّمات، أو الاطّلاع عليها على الأقلّ، كان البحراني يعمل على تدريس موضوعات تلك المسألة. ولهذا السبب، حينما كان يُصدر تفنيداً بهذا الأمر، كان يبدو أنه ذات طابع جدلي؛ حيث كان البحراني يعمد إلى نقد المناهج الاجتهاديّة السابقة، فيلجأ البهبهاني إلى الردّ على هذه النقود. ففي مثل هذه النصوص الجداليّة، لن يكون مدعاة للتعجّب أن يُعرض الطرفان عن الموضوعات ذات الاهتمام الخاصّ ولو بنحو الإشارة العابرة؛ إذ إنّ هدف المؤلّف

ينحصر في ردّ آراء الخصم، وبالتالي سينصبّ أكثر اهتمامه على الحطّ من المنزلة العلميّة للطرف المقابل.

ونُشاهد هذه المسألة عند البحراني في موقفه من البهبهاني بنسبة أقلّ، حيث انصبّ اهتمامه أكثر على دراسة المنهج الأصولي المأثور عن العصور السابقة.

يتمحور موضوع هذه الدراسة حول جهل المكلّف، وبمعنى أدقّ: جهله بالقانون الإلهي؛ فإذا كان المؤمن جاهلاً بالقوانين الإلهيّة، وارتكب معصيةً ما بسبب جهله بهذه القوانين، فما هو تكليفه في هذه الحالة؟ وما هو نوع العقوبة التي يستوجبها (في هذا العالم أو في العالم الآخر)؟ وهل سيُعفى عنه لعدم اطّلاعه على الحكم، أم لا؛ بمعنى أنّه لن يتمّ القبول بأيّ تبرير لعدم هذا الاطّلاع؟ لقد تعرّض كلّ من البحراني والبهبهاني لبحث هذه المسألة، غير أنّهما توصّلا لنتائج مختلفة تماماً.

ويُمكن العثور على رأي البهبهاني حول مسألة المكلّف الجاهل في الفوائد الجديدة، حيث يُعدّ هذا الرأي من ضمن الآراء الأُول التي ردّها البحراني. ويتركّز بحثه بشكل أساسي حول حاجة العامّي للارتباط بمرجع ديني وأنّ العمل وفقاً لتفسير هذا المرجع هو من الأوامر الإلهيّة.

وخلافاً للبحراني، لا يعتمد رأي البهبهاني على الانشقاق الجزئي للأوامر الإلهيّة بحسب روايات الأئمّة عليهم السلام. وهذا لا يعدو كونه حواراً استدلاليّاً تمّ في ضمنه اختيار موضوعٍ له ارتباط ببقيّة المجالات النظريّة للبهبهاني، وتمّت في ضمنه أيضاً الاستفادة بين الحين والآخر

من روايات الأئمّة لأجل إثبات مجموعة من الموضوعات الخاصّة. فهذه الموضوعات لم تُطرح كنماذج للتفسير الإلهامي، بل هي عبارة عن جدالات استُعمل في ضمنها الشهود في الوقت المناسب؛ وهذا لا يعني أنّ الشهود الإلهامي لم يكن مهمّاً بالنسبة للبحراني وكان مهمّاً بالنسبة للبهبهاني، بل يعني أنّ المنهجين ــ الذين يعكسان رأيي المؤلّفين ــ مختلفان، حيث يسعى البحراني لأن ينظر القارئ إلى رأيه كمحاولة لتقنين الشهود الإلهامي، بينما يُريد البهبهاني أن يُبرز رأيه بشكل منطقي وبالاعتماد على المباني الشهوديّة. فهذا الاختلاف بينهما ليس مجرّد مسألة أسلوب، بل يرجع إلى الملاحظات التعليميّة التي نشأت اعتماداً على رأي كلّ واحد من المحقّقين حول نظريّة القوانين المذهبيّة.

ويشرع البهبهاني في استعراض رأيه على أساس أنّ كلّ شخص يحمل على عاتقه تكليفاً معيّناً. ومن هنا، يُمكننا تحديد ما هو المعنى من الجهل بالتكاليف، حيث يكون لازماً على كلّ شخص أن يسعى لتعلّم ما أوجبه الله تعالى عليه، وما حذّره منه.

وحينما يُقصّر الإنسان في مجال تعلّم هذه القوانين مع توفّر الإمكانيّة لذلك، فلا يُمكننا أن نعدّ وجوب الامتثال للأوامر ساقطاً بسبب مجرّد عدم الاطّلاع عليها. وتصدق هذه المسألة حتّى في المحرّمات.

ويضرب البهبهاني مثالاً بالسيّد الذي يُعطي لعبده كتاباً وضع فيه جميع التكاليف الملقاة على عاتقه، ثمّ يقول لهذا العبد: «سوف أعاقبك إذا اطّلعت على أوامري وتمرّدت عليها». فالعبد يعلم بأنّ أوامر سيّده

موجودة في الكتاب، غير أنّه إذا لم يفتحه ويطّلع على تلك الأوامر، فإنّه سيُعاقب حتماً تهاونه بها وعدم الاطلاع عليها؛ «فالعلم الإجمالي الذي يعلم الإنسان بمقتضاه أنّ عليه تكاليف معيّنة يعني بحدّ ذاته أنّ ذلك الإنسان مطّلع على تكاليفه»، ويعترف البهبهاني بأنّه إذا تعذّر على الإنسان العلم بتكليفه بالقيام بأمر ما، فلا شكّ في سقوط التكليف في هذه الحالة؛ فإذا وقع شخصٌ ما في مثل هذا الجهل، فإنّه سيكون مجازاً للقيام بذلك العمل بشكل يُعدّ معه في رخصة؛ ويبقى أنّ البهبهاني يعتقد بندرة حصول مثل هذه الحالة.

وبرأي البهبهاني ـ شأنه في ذلك شأن البحراني ـ فإنّ القانون يتوفّر على مرتبتين: القانون بمعناه الحقيقي، والقانون بتلك الصورة التي يُفهم فيها؛ وعلى أيّ حال، يعدّ البهبهاني النوع الثاني محدوداً بفهم المجتهد واستنباطه.

ويعتقد البهبهاني أنّ بعض المجتهدين سعوا إلى التمييز بين التكاليف التي وضعها القانون الديني، حيث يُقسّم القانون إلى قسمين: التكاليف العباديّة (العبادات) التي يُعدّ القيام بها مسألةً بين العبد وربّه، والتكاليف الاجتماعيّة (المعاملات) التي تُحدّد العلاقة بين الناس؛ فتكون ـ بالتالي ـ مسائل بمستوى اهتمام اجتماعي، وينبغي العمل بها في المجتمع.

يرفض البهبهاني هذا الرأي، ولا يرى وجود أيّ اختلاف بين هذين النوعين من التكاليف حينما يبحث عن موضوع العفو والمسامحة عند القيام بالتكليف وارتكاب المعصية؛ ودليله على هذا الأمر هو ضرورة

الرجوع إلى المجتهد في كلا المجالين من القوانين الشرعيّة. بطبيعة الحال، فإنّ البهبهاني يُخصّص البحث أكثر عن موضوعات العبادات؛ لوجود اتّفاق في الرأي بينه وبين ندّه حول المعاملات.

والمسألة التي تبدو غير متجانسة بالنسبة للبهبهاني هي: مع أنّ الإخباريين يرفضون كلّ عمل لا يكون صحيحاً بحسب عقائدهم، فإنّهم يُرخّصون للعصاة الجهلة في مخالفة القوانين من دون أن يُعاقبوا عليها. ولا يُشير البهبهاني بشكل مباشر لتقسيم الجهلة من وجهة نظر البحراني، لكنّه يرى عدم ارتباطه بهذا الموضوع بشكل محدّد، غير أنّه يعتقد بأنّه من غير الممكن أن يطّلع المجتهد على مسألة معيّنة ـ بصفتها مسألة بارزةً ـ من دون أن يُبدي رأيه حولها، ولو كان رأياً ضعيفاً ومتعلّقاً بموضوع خاصّ.

نتيجة:

من مجموع الأبحاث التي طرحها البحراني والبهبهاني، يخلُص «غليف» إلى وجود اختلاف في التفسير بين العلمين حول تكليف المؤمن الجاهل؛ فبحسب البهبهاني، يكون المؤمن الجاهل هو الذي يُقدم ـ باختياره ـ على كسب العلم خارج النظام الوحيد المعتمد لدى الشريعة؛ أي نظام المجتهد ـ المقلّد؛ فالمقلّد يسأل المجتهد من أجل التعرّف على القوانين، والمجتهد يضع بين يديه الجواب المناسب.

ويبقى هناك نقاط مشتركة بين آراء البحراني والبهبهاني، حيث يعتقد كلاهما بوجود اختلاف بين القانون كما هو عليه في الواقع وبين القانون

كما يُفهم. وبحسب البهبهاني، فإنّ الشكّ يرتفع باليقين، ولحصول ذلك، ينبغي طيّ مسار خاصّ يكمن في اقتداء الإنسان بآراء المجتهد؛ وهو مسار مشخّص وواضح، ولو كان المجتهد غير مشخّص ولا محدّد. ويرى البحراني أنّ اليقين ممكن الحصول (لكن في مقام العمل وليس فقط على مستوى القوانين)، خلافاً للبهبهاني الذي لا يمتلك مثل هذا الرأي (حيث يكون باب العلم بالنسبة إليه موصداً). البحراني يتهيّب من الشكّ، بينما نجد أنّ البهباني يُرحّب به، مع أنّه يضعه في قالب محدّد حتّى لا ينجرّ الأمر إلى فوضى معرفيّة.

(٥)

الاخلاق العقلانية

رابرت غليو

مقال بعنوان (Rationalist Morallty) يتناول احدى الموضوعات الخلافية المهمة بين انصار الحديث (الاخباريون) وانصار العقل (الأصوليون) وهي قضية الأصول الأخلاقية أو ضوابط المدرسة الأخلاقية. هذا المقال هو جزء من الكتاب التالي:

Robert Gleave, Inevitable Doubt: Two Theories of Shī'ī Jurisprudence, Brill, ٢٠٠٠.

رابرت غليو حاصل على شهادة الدكتوراه في الدراسات الاسلامية من جامعة مانشستر ويعمل استاذا في جامعة اكستر (Exeter) البريطانية في قسم الدراسات العربية ـ الإسلامية. إن اختصاصه العلمي الدقيق هو التشيع وله أبحاث ومؤلفات واسعة في هذا المجال. بحث في موضوع الاخباريين والاصوليين طيلة ثلاثة عقود وألف كتبا جيدة في هذا المجال. يتناول غليو في هذا المقال قضية التفاوت بين الأخلاق المبني على العقل والأخلاق المبني على النص والحديث. هنا تجدر الإشارة الى أن الاختلاف بين تياري الاخباري والأصولي لا ينحصر بالأحكام الشرعية والفقه بل قد تعدى هذا الخلاف الى سائر الأسس العقائدية في

المذهب. فللمذهب الشيعي ـ كسائر المذاهب ـ ثلاثة أقسام رئيسة وهي الفقه والأخلاق والعقائد. إن كل من التيار الإخباري والأصولي يستند على منهجه وفكره ومعطياته الخاصة ليؤسس منظومته الفقهية والأخلاقية والعقائدية. إن البهبهاني شرع في بادىء الأمر بتنظيم المبادىء، أي المنطق الخاص بأخذ العلم والاستنباطات الشرعية. يسمى هذا المنطق اصطلاحا بـ (أصول الفقه). قضى البهبهاني عمره بتدريس كيفية استخدام الأصول في الفقه والاجتهاد ولكن تلامذته نقلو الأصول إلى سائر فروع المذهب وعمموه. فعلى سبيل المثال اهتم الملا احمد النراقي والملا مهدي النراقي بالأخلاق أكثر من غيرهم وسعيا في تقديم منهج أخلاقي مبني على الأصول تكون فيه حيوية وملائم مع العصر الذي هو فيه. ألف «الملا أحمد النراقي» بهذا الصدد كتاب (معراج السعادة) وألف «الملا مهدي النراقي» كتاب (جامع السعادات).

يشير المرحوم «كلانتر» في مقدمة جامع السعادات الى أثر هذا الطرح ودوره في الحركة الأصولية. ان دور العقل والعلوم البشرية في تشخيص الأمراض الروحية وطرقها العلاجية دليل على اهتمام النراقي بتعميم المدرسة الأصولية في مجال الأخلاق. يتناول «غليو» في الصفحات الأولى من مقاله بعضا من مباحث فلسفة الأخلاق مثل دور العقل في الأخلاق والتحسين والتقبيح العقليين والشرعيين والملازمات العقلية والمسلمات الأصولية والخير والشر وآراء المعتزلة والأشاعرة في الأخلاق، مستعرضا آراء علماء الأخلاق الأصوليين المتقدمين ومحللا

كلا منها وصولا الى عصر البهبهاني.

يرى الاخباريون بأن العقل لا يستطيع معرفة الحسن والقبح (الجيد والسيء) وليس له القدرة على ذلك. ومن مصاديق الحسن والسيء في الأخلاق هو الكذب والسرقة والتملق ازاء الشجاعة والصدق والعشرات من الصفات الأخلاقية الأخرى. لذا فان عقل الانسان ليس بامكانه ادراك هذه الخصال الأخلاقية وعليه الاستعانة بالمعصومين عليهم السلام واتباعهم في ذلك. لكن الأصوليين يعتقدون بأن دور العقل واضح ومبرهن في تشخيص مصاديق الحسن والقبح وفي طرق علاج الأمراض الأخلاقية والروحية وفي التخطيط لمكافحة المفاسد الأخلاقية ونشر محاسنها في المجتمع.

بعد مقدمة طويلة ينتقل غليو الى بيان آراء الأشاعرة والمعتزلة الى أن يصل إلى عصر البهبهاني ثم يتناول في فصل طويل آراء الوحيد حول العقل ومكانته في الأخلاق شرحا وتحليلا وفي النهاية يقدم الاستنتاجات.

(٦)

تلامذة الوحيد البهبهاني في إيران والعراق

زكريا هيرن

يُعدّ مؤلّف هذه المقالة زكريا هيرن من بين أشهر المحقّقين الغربيّين المعاصرين المختصّين في دراسة آراء الوحيد البهبهاني، وقد كان موضوع رسالته في الدكتوراه ــ التي حصل عليها من جامعة يوتا ــ يتمحور حول الوحيد البهبهاني والاتجاه الأصولي؛ وتُعتبر هذه المقالة جزءاً من تلك الرسالة، حيث وردت هويّتها بالنصّ الأصلي على الشكل التالي:

Heern, Zackery, Usuli Shi'ism: The Emergence of an Islamic Reform movement in Early Modern Iraq and Iran, Diss, University of Utah, ٢٠١١.

كان الوحيد البهبهاني يعتبر الإخبارية تيّاراً مضلاً وخطيراً جدّاً؛ فعندما كان متواجداً في بهبهان، عقد العزم على مواجهة هذا التيّار بشكل واسع وفعّال؛ ولهذا السبب، هاجر إلى كربلاء التي كانت معقلاً للإخباريين في ذلك الوقت. وقد تعدّدت الطرق والمناهج التي استعملها في مواجهتهم؛ ممّا يعني أنّه كان يسعى لحشد جميع الطاقات والإمكانيّات والعوامل المساعدة. ومن بين هذه الطرق، عملُه على تربية مجموعة من التلامذة وزيادة الطاقات البشريّة. لقد كان أسلوبه في التدريس وفنّه في

الخطابة جذّاباً وقويّاً، بحيث استطاع في مدّة وجيزة استقطاب عدد كبير من فضلاء الحوزة.

توزّع تلامذته بعد ذلك على مختلف المدن، حيث سعوا إلى المحافظة على المدرسة الأصوليّة وتطويرها بشكل أكبر، كما استطاعوا تحقيق منجزات جديدة؛ فعملوا بذلك على الزيادة من قدرة العلماء الشيعة والالتفاف أكثر حول زعامة المرجعيّة.

في بداية هذه المقالة، لجأ «هيرن» إلى تحليل أسلوب الوحيد البهبهاني في تربيته لتلامذته وعملِه على استمرار المواجهة عن طريق تطوير الحوزات العلميّة، وسعى إلى التقصّي عن هذه المسألة من جوانبها المختلفة. بعد ذلك، قام باستعراض ثلّة من تلامذة البهبهاني البارزين، والبحث عن سجلّهم الحافل، حيث تعرّض في هذه المقالة لكلّ من بحر العلوم، كاشف الغطاء، الطباطبائي والشهرستاني.

العلاّمة بحر العلوم: يُعدّ السيّد محمد مهدي (١١٥٥ ــ ١٢١٢ هـ ق) ابن السيّد مرتضى البروجردي الطباطبائي من بين أبرز تلامذة البهبهاني. كان فقيهاً، محدّثاً، عارفاً وأديباً، وتنتمي عائلته إلى السادات الطباطبائيّين الذين هاجروا في وسط القرن الثالث الهجري من الحجاز والعراق إلى إيران، واستقرّوا بدايةً في أصفهان، ثمّ أقاموا بعد ذلك في بروجرد. رحل أبوه السيّد مرتضى (ت ١٢٠٤ هـ ق) من بروجرد إلى العراق، حيث اختار السكن في كربلاء ووافته المنيّة هناك. كان للسيّد مرتضى ولدان؛ أحدهما السيّد جواد (ت ١٢٤٨ هـ ق) الجدّ الأكبر لآية الله السيد

حسين البروجردي (ت ١٣٨١ هـ ق/ ١٣٤٠ هـ ش)، والآخر هو السيّد محمد بحر العلوم. درس السيّد مهدي مقدّمات العلوم ــ نظير الصرف والنحو والأدب والمنطق والفقه والأصول ــ عند كلّ من أبيه والشيخ يوسف البحراني (ت ١١٨٤ هـ ق)، وشدّ الرحال إلى النجف في سنة ١١٦٩ هـ ق، بينما لم يكن عمره يتجاوز الخامسة عشر. بعد مدّة من الزمن، رجع إلى كربلاء، والتحق بمجلس درس الوحيد البهبهاني (ت ١٢٠٨ هـ ق)، وفي السنوات التي رجع فيها إلى كربلاء، تعلّم الحكمة والكلام عند الميرزا أبي القاسم المدرّس الذي أخذ عنه بدوره الفقه والأصول. لم يمرّ زمان طويل حتّى صار السيّد محمد مهدي من أبرز علماء عصره في مختلف العلوم الدينيّة، إلى درجة أنّه حاز على إجازة في الاجتهاد من ثلاثة علماء شيعة كبار ــ وهم أبوه والشيخ يوسف البحراني والوحيد البهبهاني ـ وهو لا يزال شابّاً يافعاً. بعد أن أتمّ دراسته في كربلاء، رحل إلى النجف التي جعل منها موطنه الدائم، غير أنّه سافر في العام ١١٨٦ هـ ق برفقة عائلته إلى مشهد بإيران، والتقى هناك بالميرزا محمد مهدي الأصفهاني ـ المعروف بالميرزا مهدي شهيد (ت ١٢١٨ هـ ق) ـ الذي كان بدوره فقهياً عارفاً، حيث أطلق عليه هذا الأخير اسم بحر العلوم والسيّد بحر العلوم؛ وبعد إقامته سبع سنوات في مشهد، رجع في العام ١١٩٣ هـ ق إلى النجف عن طريق أصفهان. لم تمرّ فترة طويلة حتّى تمكّن السيّد بحر العلوم من الحصول على سلطة وتقدير بين الشيعة، إلى أن انتقلت إليه الزعامة والمرجعيّة الشيعيّة بعد ارتحال

الوحيد البهبهاني. وما إن حصل له هذا الأمر حتّى شرع في إجراء إصلاحات واسعة على مستوى إدارة الحوزة وأسلوب تقسيم الحقوق الشرعيّة بين العلماء الشيعة الكبار.

فضلاً عن العلوم الدينيّة، كان لبحر العلوم اهتماماً أيضاً بالأدب والتاريخ، كما كانت له بعض الأشعار. كانت له عناية خاصّة بالمعوزين، حيث كان يحمل صرّة الطعام ـ اقتداءً بأمير المؤمنين عليه السلام ـ ليوزّعها على منازل الفقراء والمحتاجين، وقد عمل على ترميم العديد من المباني في كلّ من مكّة والمدينة والنجف؛ من جملتها ضريح الشيخ الطوسي بالنجف. وبالرغم من أنّ بحر العلوم لم يُعمّر طويلاً، إلاّ أنّه خلّف الكثير من الكتب، حيث ألّف العديد من المصنّفات الأصوليّة في سبيل دعم المدرسة الأصوليّة ونشرها. وفي عهده تطوّرت الحوزتان العلميّتان في النجف وكربلاء، وازدهرتا على جميع المستويات والأصعدة.

لقد تمكّن السيّد بحر العلوم من عرض مدرسة العلاّمة البهبهاني الأصوليّة للناس بشكل عمليّ، وساهم في تطوير حياتهم وأمورهم المعيشيّة.

كاشف الغطاء: يُعدّ الشيخ جعفر النجفي المعروف بكاشف الغطاء (ت ١١٥٤ ـ ١٢٢٤ هـ ق) ابن الشيخ خضر الجناحي التلميذ الآخر للعلاّمة البهبهاني والسائر على دربه وخطاه. وُلد في النجف، واكتسب العلوم عند كلّ من أبيه والوحيد البهبهاني والسيّد مهدي بحر العلوم؛

فمع أنّه كان يكبر بحر العلوم في العمر إلاّ أنّه تتلمذ على يديه، وحين تحمّل بحر العلوم مسؤوليّة المرجعيّة، انخرط كاشف الغطاء في العمل بالهيئات المرتبطة بالمرجعيّة آنذاك.

ويكمن السبب في اشتهاره بكاشف الغطاء بسبب تأليفه لكتاب تحت عنوان: كشف الغطاء عن مبهمات الشريعة الغرّاء؛ الذي حاول فيه إزاحة الستار عن المسائل الغامضة في الشريعة، وقد نسب إلى كتابه هذا بسبب ما ناله من شهرة واسعة، وقد ألّف الشيخ جعفر هذا الكتاب خلال إحدى سفراته؛ وهو كتاب متين ومعتبر في الفقه الشيعي. كانت للشيخ جعفر الغطاء معرفة تامّة وعميقة بالأحكام الدينيّة، حيث كان يُعدّ من الأساتذة المرموقين في الفقه والكلام، وكان في عصره موضعاً لاحترام وتقدير العامّ والخاصّ.

لقد كانت الغيرة الدينيّة تغلي في عروق الشيخ جعفر، حيث يُذكر في هذا المجال أنّه وقف بشدّة في وجه الزحف الوهّابي نحو النجف، وتمكّن ـ عن طريق التوحيد بين العلماء والناس ـ من طردهم عن المدينة. كما يُشار أيضاً في مجال حميّته على المذهب إلى مواجهته للميرزا محمد الإخباري الذي كان من المخالفين الحقيقيّين لفقهاء الشيعة ومراجعهم، وكان يعمل على الدعوة إلى الإخبارية المفرطة، حيث سافر الشيخ كاشف الغطاء إلى الريّ لأجل ذلك، وعمد إلى تأليف العديد من الرسائل المطوّلة في الردّ على الميرزا محمد الإخباري ومذهبه. ويصفه المصنّفون في سير العلماء بكونه ذا أخلاق متّزنة،

ويتحدّثون كثيراً عن ورعه وتواضعه وسخائه وكرمه.

للشيخ جعفر كاشف الغطاء ثلاثة أولاد كلّهم من الفقهاء ومن المجتهدين الشيعة المعروفين، وهم: الشيخ موسى، الشيخ علي والشيخ حسن، أكبرهم الشيخ موسى الذي كان أبوه يكنّ له احتراماً بالغاً ويعدّه أعظم من جميع الفقهاء، سوى الشهيد الأوّل والمحقّق. وكان للشيخ جعفر ثلاثة أنسباء كانوا بدورهم من الفقهاء الشيعة المعروفين؛ وهم: الشيخ أسد الله التستري الكاظمي صاحب كتاب المقابيس، الشيخ محمد تقي الرازي صاحب الحاشية على المعالم والسيّد صدر الدين العاملي. كما كان له العديد من التلامذة الذين كان أغلبهم مجتهدين ومن الشخصيّات الشيعيّة البارزة؛ من جملتهم: السيّد جواد العاملي مؤلّف كتاب مفتاح الكرامة، الشيخ محمد حسن النجفي الجواهري مؤلّف الموسوعة الفقهيّة الشيعيّة جواهر الكلام، السيّد محمد باقر صاحب الأنوار، محمد إبراهيم الكرباسي صاحب إشارات الأصول، ومجموعة أخرى من الفضلاء والأعلام.

لم تكن للشيخ جعفر كاشف الغطاء تأليفات عديدة، غير أنّ كلّ ما ألّفه يُعدّ قيّماً ومتّصفاً بالجودة العالية؛ وأبرز كتبه وأرفعها هو كتاب «كشف الغطاء عن مبهمات الشريعة الغرّاء» الذي يتضمّن العبادات إلى آخر باب «الجهاد»، وأُضيف إليه في الأخير كتاب «الوقف». وأمّا كتبه الأخرى، فهي عبارة عن: شرح قواعد العلاّمة، كتاب الطهارة، بُغية الطالب في الطهارة والصلاة، العقائد الجعفريّة في أصول الدين، غاية

المأمول في علم الأصول، شرح الهداية، الحقّ في تصويب المجتهدين وتخطئة الإخباريين، الذي يُعدّ كتاباً استدلالياً في الردّ الإخبارية والإخباريين، رسالة منهج الرشاد لمن أراد السداد في الردّ على الوهابيّة.

تحمّل كاشف الغطاء مسؤوليّة المرجعيّة بعد بحر العلوم (السيّد مهدي أو السيّد محمد مهدي)، وكان على عهده في مواجهة وجدال مع تيّارين رئيسين: الوهابيّة والإخبارية.

فقد أقدم الوهابيّون ـ تحت ذريعة إصلاح الفكر الإسلامي والدعوة إلى التوحيد ـ على القيام بإجراءات خطيرة جدّاً؛ من بينها: وصف جميع العتبات الشيعيّة بأنها مباني شرك، ودعوا إلى هدمها. ومن هنا، فقد عمدوا إلى الهجوم على كلّ من كربلاء والنجف لهذا الهدف.

لقد بلغت المواجهات بين المرجعيّة الشيعيّة والوهابيّين أوجها على عهد كاشف الغطاء، والذي كان يلزم عليه ـ من جهة ـ تقوية الفكر والثقافة الشيعيين وفقاً للمباني والمبادئ الأصوليّة، وكان ينبغي عليه ـ من جهة أخرى ـ الوقوف بوجه الهجمات المسلّحة للوهابيّة.

وإلى جانب مواجهته للوهابيّين، سعى كاشف الغطاء أيضاً إلى مواجهة الإخباريين، سواءً من الناحيتين الفكريّة والنظريّة، أو من الناحية العمليّة؛ ففي تلك الفترة، شرع الإخباريون في مرحلة جديدة، إذ انتقلوا من المواجهة النظريّة والفكريّة إلى المواجهة المسلّحة والقتل والاغتيال، أو كحدّ أقلّ إلى الدعاية الواسعة وتلويث الأجواء وافتراء الكذب ضدّ المرجعيّة الشيعيّة. وقد كان الشيخ محمد الإخباري هو من تزعّم هذه

الحركة الإخبارية، حيث كان يتّصف بالقسوة، ويرى ضرورة اللجوء للقتل والاغتيال والمواجهة الشاملة للأصوليّين. ففي مثل هذه الظروف، أصبح الأمر معقّداً بالنسبة للشيخ كاشف الغطاء الذي سعى إلى الاستفادة من جميع الطاقات والإمكانيّات والعوامل المساعدة من أجل تحقيق الأهداف الشيعيّة، إلى درجة أنه التجأ إلى الملك القاجاري فتح علي شاه وطلب العون منه.

السيّد علي الطباطبائي: يُعدّ السيّد علي بن محمد علي (المعروف بصاحب الرياض) من أحفاد أبي المعالي الكبير الطباطبائي، ومن مشاهير الفقهاء والأصوليّين، حيث وُلد بالكاظميّة، وشرع في تحصيل العلم بعد بلوغه سنّ العشرين بإصرار من خاله الآغا محمد باقر البهبهاني؛ وقد درس بدايةً عند ابن خاله الآغا محمد علي، ثمّ التحق بعد ذلك بحوزة خاله المؤسّس البهبهاني، وكان يذهب خُفيةً في الليل لحضور درس صاحب الحدائق على الرغم من منعه من مجالسة الإخباريين، وكتب بخطّ يده دورة كاملة من الحدائق. وفي ذلك الحين، عكف على التدريس، وتخرّج من حوزته الدرسيّة جمعٌ كثير من الأفاضل، حيث حصلت مجموعة منهم على إجازته. وهم: السيّد إبراهيم القزويني صاحب الضوابط، الشيخ أحمد الأحسائي، الشيخ جعفر الخوانساري، الحاجّ محمد إبراهيم الكلباسي، حجّة الإسلام الشفتي، الميرزا محمد تقي النوري، الملاّ محمد تقي القزويني الشهيد الثالث، الملاّ محمد جعفر الأستر آبادي.

من بين المصنّفات التي خلّفها، هناك: شروح على مبادئ الوصول إلى علم الأصول للعلاّمة، حواشي على المدارك، رسالة في الإجماع والاستصحاب، رسالة في أصالة براءة ذمّة الزوج عن المهر، رسالة في التحقيق عن حجّية المفهوم الموافق، رسالة في حجّية الشهرة، شرح مفاتيح الفيض ورياض المسائل في بيان أحكام الشرع بالدلائل، الذي يُعدّ شرحاً على النافع في مختصر الشرائع للمحقّق الحلّي؛ وهذا الكتاب معروف بالشرح الكبير. وبسبب تأليفه لهذا أُطلق على صاحب الرياض هذا الاسم؛ وقد طُبع في قمّ مؤخّراً مع تحقيق شامل من قبل مؤسّسة آل البيت عليهم السلام. وتُوفّي صاحب الرياض في كربلاء سنة ١٢٣١ هـ ق، حيث تمّ دفنه في الرواق الشرقي للحرم إلى جانب قبر خاله، وذلك بعد أن تقلّد زمام المرجعيّة والزعامة الشيعيّة لسنوات طويلة. وبعد وفاته، سعى أبناؤه إلى السير على دربه والاستمرار على نهجه. لقد تمكّن صاحب الرياض ـ بسبب اطّلاعه على أفكار الإخباريين ـ من إيراد العديد من الانتقادات الجوهريّة في كتبه على هذا التيّار؛ ممّا ساهم في تقوية المنهج الأصولي.

محمد مهدي الشهرستاني: هو الميرزا مهدي (أو محمد مهدي) ابن أبي القاسم الموسوي الأصفهاني الشهرستاني الحائري الذي يُعدّ من أبرز العلماء الشيعة في أوائل القرن ١٣ الهجري. وُلد في أصفهان سنة ١١٣٠ هـ ق تقريباً، ونشأ فيها. ويُحكى أنّ فتنة الأفغان حصلت في فترة طفولته، حيث تعرّض الصفويّة ومدينة أصفهان إلى إغارة من قبل

الأفغان الذين أعملوا فيها القتل والفساد. وفي فترة شبابه، هاجر إلى العراق، حاطّاً رحاله بمدينة كربلاء المقدّسة، حيث حضر دروس مجموعة من الأساتذة العظام؛ ليصل بذلك إلى أعلى الدرجات العلميّة. لقد حاز الشهرستاني ـ فضلاً عن المنزلة العلميّة الرفيعة ـ على درجات عالية من الزهد والتقوى والورع، وكان أحد تلامذة الوحيد البهبهاني الأربعة العظماء الذين يحملون اسم «مهدي». والثلاثة الباقون هم: السيّد مهدي بحر العلوم، الشيخ مهدي النراقي، والشهيد السعيد مهدي الأصفهاني المشهدي، حيث يُعبّر عن الجميع بالمهديين الأربعة. وكان الشهرستاني معاصراً ومعاشراً لثلّة أخرى من العلماء الأفاضل؛ منهم: الشيخ جعفر كاشف الغطاء، الشيخ حسين نجف، والسيّد علي الطباطبائي صاحب الرياض، والشيخ أسد الله الدزفولي صاحب المقابيس. ومن بين الأساتذة الآخرين للشهرستاني، هناك: الشيخ يوسف البحراني صاحب الحدائق والشيخ مهدي الفتوني العاملي (ت ١١٨٣ هـ ق)، حيث أخذ عنهما إجازة في الاجتهاد؛ وقد خلّف الشهرستاني مجموعة من المصنّفات، يُمكننا أن نعدّد منها: المصابيح في الفقه الاستدلالي، الفذالك في شرح المدارك، حاشية على مفاتيح الشرايع، وتفسير لبعض سور القرآن الكريم. ومن الأمور التي تميّز بها الشهرستاني هي علاقته الوثيقة ببحر العلوم، بحيث أنّ الأخير أخبر بعضَ خواصّه في أواخر عمره أنّ الشهرستاني هو من سيُصلّي عليه؛ وقد كان هذا التوقّع مدعاةً للتعجّب؛ لأنّ الشهرستاني كان يسكن في

تلك الأثناء في مدينة كربلاء، لكن حينما توفّي بحر العلوم، وحملوا جنازته إلى الصحن المطهّر لأمير المؤمنين عليه السلام، وأقاموا الصفوف للصلاة عليه، فإذا بالميرزا مهدي الشهرستاني ـ الذي قدم إلى النجف لعيادة صديقه الحميم بحر العلوم ـ يدخل فجأةً من باب الصحن، فيُقدّمه علماء النجف لإقامة الصلاة عليه. وافت المنيّةُ الميرزا مهدي الشهرستاني في كربلاء سنة ١٢١٦ هـ ق، حيث دُفن هناك بجوار الضريح المطهّر للإمام الحسين عليه السلام.

ولا يخفى على أيّ أحد الدورُ الذي لعبه الشهرستاني في بقاء المدرسة الأصوليّة واستمرار آراء الوحيد البهبهاني وتطويرها؛ فقد كانت له ـ إلى جانب بقيّة العلماء والمراجع المقيمين بالعتبات المقدّسة ـ مواجهات شديدة مع الإخباريين.

ونظراً لتتلمذ الشهرستاني على يد الشيخ يوسف البحراني، فقد كان يمتلك اطّلاعاً وافراً على مباني الإخباريين وأفكارهم. بل نستطيع القول ـ بحسب رأي صاحب المقالة ـ أنّه كان يتوفّر في بداية مسيرته على بعض النفس الإخباري؛ حيث كتب شرحاً على اللمعة الدمشقية بالاستفادة من الأخبار والأحاديث.

لقد كان هؤلاء الأربعة من بين أبرز تلامذة البهبهاني الذين سعوا إلى السير على دربه، والاستمرار على نهجه، والمحافظة على شعلة مصباح الأصوليّة متّقدة ووهّاجة.

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تراث الشيعة

ليقات تكيم

مقال بعنوان (The Heirs of the Prophet) وهو جزء من كتاب للمؤلف نفسه، حيث نشر بالعنوان الانكليزي التالي:

Liyakat N Takim, the Heirs of the Prophet: Charisma and Religious Authority in Shi'ite Islam, SUNY Press, ٢٠٠٧.

الدكتور ليقات تكيم استاذ الدراسات الاسلامية بجامعة مك مستر في كندا واستاد قسم الدراسات المذهبية في جامعة دنفر بولاية كولورادو الأمريكية. انه على المذهب الشيعي ومن اصول تنزانية. حاز على شهادة الدكتوراه من كلية الاستشراق بلندن وباختصاص كتابة السير والتراجم. حاضر في الجامعات الأمريكية لمدة ٥١ عاما ويعمل في الوقت الحاضر بكندا في المجالات الدينية والاعلامية وعضوا في الهيأة العلمية لجامعة هملتون الكندية.

له اكثر من خمسون كتابا بحثيا في مختلف الموضوعات منها: الاسلام في امريكا، تعريب المسلمين في امريكا (تطبيع المسلمين الأمريكيين بالثقافة الاسلامية)، الحوار في امريكا بعد الحادي عشر من سبتمبر، الحرب والسلام في الروايات الاسلامية، مكانة المرأة في

النصوص الفقهية الاسلامية، الفقه الاسلامي، نصوص علم الرجال الاسلامي، الاصلاحات في العالم الاسلامي، الجهاد في الفقه الشيعي، الانجذاب المعنوي للإنسان المقدس وثقافة الزيارة، الروايات الاسلامية الرمزية والجوانب المختلفة في تاريخ التشيع وخصوصياته. ألقى الكثير من المحاضرات في مختلف الاختصاصات الاسلامية وأعد درسا في موضوع المذاهب التطبيقية. يعمل في الوقت الحاضر على اكمال كتابه الثاني المعنون (تجربة الشيعة في امريكا) وترجمة الجزء الرابع من تفسير العلامة الطباطبائي الكبير.

هذا النص هو جزء من الفصل الأول من كتاب (ميراث النبي: الانجذاب والمرجعية الدينية في الاسلام الشيعي) تأليف (ليقات ان. تكيم) (نيويورك، جامعة نيويورك ٢٠٠٧). يبحث هذا الكتاب في كيفية استفادة مختلف المذاهب والفرق الاسلامية من السنة النبوية في صدر الاسلام. فبعد رحيل النبي الأكرمﷺ ادعت كل من الفرق الدينية في المجتمع الاسلامي امتلاكها التركة المعنوية للنبي الأكرمﷺ. يدرس المؤلف وبالاعتماد على المصادر السنية والشيعية كيفية نشوء مختلف الطبقات والفرق الاسلامية من خلفاء وعلماء ومتصوفة وائمة الشيعة واتباعهم، والذين تنافسو في سبيل الحصول على ميراث النبيﷺ. يبين هذا الكتاب بأنه كيف أصبح ميراث النبيﷺ وسيلة جدلية لإلزام الآخرين على الوفاء بالمجتمع الاسلامي وذلك من خلال الاستسلام ازاء التفسير الأصيل للنصوص الاسلامية المقدسة والمعتقدات

والفروض الدينية. المؤلف من خلال عرضه لمسألة التنافس على منصب الخلافة يدرس منهجية الشيعة الخاصة في احتواء هذه القضية ويعده عاملا مهما في تبلور الزعامة الشيعية المتميزة. انه من خلال دراسة بنية المرجعية الدينية في الاسلام والنضال من اجل الحصول على الشرعية يتوصل من جديد الى اعتبارية النصوص الدينية في الاسلام. لقد هذا الكتاب بالاعتماد على أمهات المصادر المختصة بأئمة الشيعة (عليهم السلام) وكبار اصحابهم.

يشرح الكتاب كيفية تأسيس وشرعنة مؤسسة المرجعية حسب ما ورد في كتب الشيعة الفقهية والتفسيرية والكلامية وآلية ايجاد أرضية ملائمة لهذا الأمر. يذكر المؤلف في الفصل الأول وفي ذيل المبحث المعنون بـ (ورثة النبي) بأن لهذا العنوان آثار واسعة. فقد أشار من خلاله الى كل من يعد نفسه وارثا للنبي طيلة القرون الاسلامية المتلاحقة. ويختص قسم من هذا المبحث بآراء علماء الشيعة حول هذا الأمر وقد ذكر بهذا الصدد كل من المحقق الحلي والمحقق الكركي ومحمد باقر البهبهاني وصنفهم ضمن العلماء الذين عدوا أنفسهم ورثة النبي (صلى الله عليه وآله وسلم). ثم ينتقل الى مرجعية العلماء الفقهية، مستعرضا آراء محمد باقر البهبهاني حول امكانيات المجتهد أو حجيته وخصائص المدرسة الأصولية والاجتهاد وشرعية زعامة الفقهاء واحقية انتقال المرجعية الدينية من الامام الغائب الى الفقهاء.

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الوحيد البهبهاني: شخصيته، أسرته، آرائه ومؤلفاته

مجموعه من النصوص والمقالات القصيرة التي تتناول الجوانب العامة من شخصية الوحيد البهبهاني وحياته ومؤلفاته وجهوده العلمية. تخصص اغلب الموسوعات العلمية والمعاجم ومصادر تراجم الأعلام والقواميس وغيرها من الموسوعات المختصة بالقضايا الاسلامية والفقهيه والتشيع والشرق الأوسط والتاريخ المعاص، مقالات تمهيدية عن الوحيد البهبهاني والتيار الأصولي والاخباري وغيرها من الموضوعات ذات الصلة بهذا المجال.

الخصائص البارزة لهذه المداخل والمقالات التمهيديه هي أنها قصيرة ومدونة لارشاد الباحث. أي أنها تستعرض معلومات عامة ورؤوس اقلام عن الموضوع.

هذه المقالات غالبا ما تعتمد على المصادر التالية:

١٤ ـ محمد باقر البهبهاني، رابرت غليو

Stanley Nider Katz (Ed), The Oxford international encyclopedia of legal history, Oxford University Press, ٢٠٠٩.

١٥ ـ وحيد البهبهاني، كريستين فان غوردر

A. Christian Van Gorder, Christianity in Persia and the Status of Non-muslims in Iran, Rowman & Littlefield, ٢٠١٠.

١٦ ـ محمد باقر البهبهاني، موجان مومن

Phyllis G. Jestice (Ed), Holy people of the world: a cross-cultural encyclopedia, ABC-CLIO, ٢٠٠٤.

١٧. آغا السيد محمد باقر البهبهاني، حامد الكار

Ehsan Yarshater, Encyclopedia Iranica, ١٩٨٢, Vol. IV, Fasc. ١.

١٨. محمد باقر البهبهاني، حامد الكار

Robin Jeanne Lewis, Encyclopedia of Asian History, vol. ١, ١٩٨٨.

١٩. آغا السيد محمد باقر البهبهاني، فان دهسن

Christian D. Von Dehsen and Scott L. Harris (eds), Philosophers and Religious Leaders, Vol. ٢, Greenwood Publishing Group, ١٩٩٩.

٢٠. محمد باقر البهبهاني، رابرت غليو

David Powers and Susan Spectorsky (Eds), Islamic Legal Thought: A Compendium of Muslim Jurists, Brill, ٢٠١٣.

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تلامذة العلامة البهبهاني

عبد الفتاح عبده

يتناول هذا المقال المستمرين بالمدرسة الأصولية ويعرف مجموعة من تلامذة الوحيد البهبهاني. اقتبس هذا المقال من اطروحة المؤلف التي قدمها بالعنوان التالي:

Abdelfettah Abada, The'Ulama'of Iran in the ١٩th century hagiographical literature, Diss, Durham University, ١٩٨٩.

لا توجد معلومات كثيرة عن المؤلف. فانه حائز على شهادة الماجستير من قسم الدراسات الفارسية بجامعة دورهام (المركز التخصصي للدراسات الاسلامية والشرق الأوسط) وذلك في عام ١٩٨٩.

يتضمن هذا المقال كل من الخاتمة والاستنتاجات التي توصل اليها في رسالته في مرحلة الماجستير المقدمة الى جامعة دورهام.

عنوان هذه الرسالة هو (علماء ايران في القرن التاسع عشر: دراسة بيوغرافية) يتناول الباحث من خلالها تراجم مجموعة من أبرز علماء الشيعة في ايران خلال القرن التاسع عشر الميلادي الذين كان لهم دور كبير في ظهور ونمو ظاهرة الزعامة الدينية في الأوساط الشيعية.

الفصول الأخرى من هذه الرسالة تتضمن مباحث مرتبطة بمحتوى المقال آنف الذكر. ففي الفصل الأول يتناول الباحث تاريخ رجال الدين والمرجعية الدينية وعلاقة الدولة بالعلماء منذ العهد الصفوي حتى العهد القاجاري مستعرضا كيفية نشوء المدرسة الأصولية كفكر مهيمن على الفقه الشيعي. وفي الفصول التالية استعرض الباحث سيرة حياو ثلاث مجموعات من المجتهدين الذين قسمهم على ثلاثة أجيال. ذكر في الجيل الأول كل من العلامة البهبهاني والملا محمد مهدي النراقي والسيد محمد مهدي بحر العلوم والشيخ جعفر النجفي والسيد علي الطباطبائي والميرزا القمي. فيما ذكر في الجيل الثاني كل من السيد محمد الطباطبائي والملا احمد النراقي والملا محمد باقر الشفتي والحاج محمد ابراهيم الكلباسي والملا محمد تقي البرغاني والملا محمد جعفر الأستر آبادي. كما وقد ذكر في الجيل الثالث والأخير كل من الشيخ محمد حسن النجفي والسيد ابراهيم القزويني والشيخ مرتضى الانصاري والميرزا محمد حسن الشيرازي والآغا النجفي الاصفهاني.

غير أن النص المقتبس هذا قد تضمن ترجمة لمجموعة من تلامذة العلامة محمد باقر البهبهاني وهم كل من: الآخوند الملا محمد مهدي النراقي، السيد محمد مهدي الطباطبائي بحر العلوم، والشيخ جعفر النجفي (كاشف الغطاء) والآغا السيد علي الطباطبائي (صاحب الرياض) (زوج شقيقة العلامة البهبهاني) والميرزا ابوالقاسم القمي (الفاضل القمي). أشار الباحث ضمن ترجمة كل من هؤلاء الى دور العلامة

البهبهاني في تنشئة شخصيتهم العلمية متحدثا عن جهودهم العلمية في نشر مبادىء المدرسة الأصولية بعد استاذهم البهبهاني.

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ماهية النهج الأصولي والاخباري في اواخر العهد الصفوي

اندرو نيومن

مقال بعنوان The Nature Of The Usulī Dispute In Late Safawid/ Akhbārī للباحث اندرو نيومن وقد نشر في الكتاب التالي:

Andrew J.Newman, «the Nature of the Akhbārī/Usūlī Dispute in Late Safawid Iran. Part ١:'Abdallah Al-Samahiji's'munyat Al-Mumarisin' », Bulletin of the School of Oriental and African Studies, University of London ٥٥, ١٩٩٢, ٢٢-٥١.

الدكتور اندرو نيومن، استاذ مساعد في اختصاص الدراسات الاسلامية والفارسية بجامعة ادينبورو. حائز على شهادة الليسانس في التاريخ من كلية دارتموس بالولايات المتحدة والماجستير في الدراسات الاسلامية من جامعة كاليفورنيا والدكتوراه في الاختصاص نفسه ومن الجامعة نفسها. مجمل ابحاثة تصب في مجال تاريخ الشيعة الامامية وتاريخ الفقه الاسلامي والسير التكاملي الشرعي والنظري والعملي للطب الاسلامي وتاريخ ايران واللغة الفارسية وآدابها والادب العربي المعاصر. ومن مؤلفاته: فترة تكوين التشيع الامامي الاثنى عشري، الحوار الحديثي بين قم وبغداد، المجتمع والثقافة في الشرق

الأوسط المعاصر، دراسات عن ايران خلال العهد الصفوي والطب الاسلامي هو طب الائمة

يرى نيومن بان الخلاف بين مدرستي الاخبارية والاصولية قد انتهى في القرن الثالث عشر الهجري كما وأن المدرستين قد نشأتا في القرنين الحادي عشر والثاني عشر الهجريين. ان التعاون المستمر بين العلماء الاصوليين والمصاهرة والعلاقات الأسرية الوطيدة فيما بينهم ادى الى قوة موقف المجتهدين ووحدتهم ضد المدرسة الاخبارية. يسعى الباحث أن يعلل الانتماءات المناهضة للاخبارية لدى رجال الدين في العهد القاجاري وذلك من خلال تتبع علاقاتهم الأسرية والمصاهرات فيما بينهم. وقد طبق هذه المنهجية عند تحليل النصوص المناهضة للاخبارية في كتاب روضات الجنات للخانساري ودراسة العلاقات الاسرية لمؤلف هذا الكتاب مع سائر المناهضين للاخبارية وجعل نتيجة هذا المبحث أساسا لسائر محاور بحثه.

يبدأ هذا المقال كالآتي: أشرت في مقالي المنشور عام ١٩٩٢ في باب الصراع بين المدرسة الاخبارية والاصولية الى أن محمد باقر الخانساري (المتوفى سنة١٣١٣هـ/١٨٩٥م) ذكر في سيرته الذاتية المسماة بـ (روضات الجنات) ملخصا للمحاور الأربعين المتعلقة بالخلاف بين المدرستين والتي ذكرها عبدالله السماهيجي (المتوفى سنة ١١٣٥ هـ / ١٧٢٢م) في كتابه منية الممارسين، فقد لخصها الخانساري في ٢٩ محور. ان الاعتماد على ملخص الخانساري الذي حذف بعض

الجزئيات المهمة في موضوع النزاع بين المدرستين في اواخر القرن الحادي عشر واوائل القرن الثاني عشر يجعل القارىء ان يظن بأن الخلاف بين الاخباريين والأصوليين اختصر على مسائل فقهيه بسيطة ولم يتعد الى جوانب الحياة الاجتماعية الأخرى. النسخ المعدودة لكتاب السماهيجي تدل على أن هذا الكتاب لم يكن في متناول الجميع وان اغلب الملخصات والحواشي الواردة عن هذا الكتاب قد تبلورت فيما بعد على شكل نصوص معتبرة موثقة.

التقارير الرسمية التي تحكي عن خلافات التيار الاصولي والاخباري تشير الى مجموعة من الانتقادات التي وجهها الآغا محمد باقر البهبهاني (المتوفى ١٢٠٥هـ) للاخباريين والتي اطاحت بهذه المدرسة حيث قضي عليها نهائيا بعد مقتل الميرزا محمد بن عبدالنبي النيشابوري سنة (١٢٣٣هـ). يبدو أن الخانساري قد أعجب بمثل هذه الأخبار الواردة عن زوال الاخباريين لذلك حررا تقريرا كاملا ودقيقا عن القضية. كما فعل السماهيجي قبل قرنين، عندما نوه الى المحاور الرئيسة التي اختلفت فيها المدرستين. ولكن يبقى التساؤل مطروحا عن موقف المدرسة الاخبارية وسبب عجزها عن تبوأ المكانة المرموقة في الأوساط الشيعية الاثنى عشرية رغم أنها بدأت نشاطاتها منذ بدايات العهد الصفوي. أو عن سبب تأجيجها للصراع الذي اطاح بها بمقتل النيشابوري.

أشار نيومن في قسم آخر من بحثه الى رغبة الخانساري في البحث عن الاخباريين ومناوئته لهم، فقد تبلور ذلك في نصوص كثيرة من كتابه

(روضات الجنات). وحسب نيومن فقد يتوقع أن يكون لهذا الأمر جذور قابلة للتتبع وان تكمن فيه علاقة المؤلف مع بعض رجال الدين في القرن الثالث عشر الهجري، أي المناوئين الرئيسيين للشيخية وأنصار المدرسة الأصولية. لقد استعرض الباحث في هذا السياق شجرة انساب الخانساري وقد ذكر مرارا وتكرارا اسم العلامة البهبهاني. ومن هذه النصوص:

الحاج الميرزا زين العابدين والد صاحب الروضات، ولد في خانسار سنة ١١٩٠ أو ١١٩٢ للهجرة وتتلمذ على يد أبيه السيد أبو القاسم (١٢٤٠ ـ ١١٦٣). حاز السيد ابوالقاسم اجازة في الاجتهاد من السيد محمد مهدي بحر العلوم (١٢١٢هـ) في طريق سفره الى مدينة مشهد. كان لبحر العلوم قرابة أسرية مع محمد تقي المجلسي وكان أول من اشتهر في العتبات المقدسة بصفته خلفا لأستاذه البهبهاني. كما وقد تتلمذ زين العابدين على يد الميرزا محمد مهدي بن ابوالقاسم الشهرستاني، احد تلامذة البهبهاني. ولا يخفى بأن الشهرستاني الذي كان يسكن في كربلاء، كان أحد تلامذة يوسف البحراني ومن مريديه وقد مارس دورا مهما في زعامة أتباع البهبهاني في كربلاء بعد وفاته سنة (١٢٠٥). ومن اساتذة السيد أبو القاسم نذكر مير سيد علي الطباطبائي (المتوفى سنة ١٢٣١) فقد كان من أسرة اصفهانية وصهر البهبهاني وزعيم أتباع الوحيد بعد وفاة الشهرستاني. لقد تولى المرجعية العليا في النجف بعد رحيل كاشف الغطاء. قدم ابنه السيد محمد (١٢٤٢) الى

كربلاء في ايام الصراع ليتولى شؤون الأسرة، وقد اشتهر علم الأصول في هذه المدينة وخلال هذه الفترة.

وحسب ما ورد في روضات الجنات، فان السيد ابوالقاسم توفي في اصفهان سنة ١٢٤٠ وعاد ابنه زين العابدين الى اصفهان ليسكن فيها. لقد سافر الى العتبات المقدسة حدود سنة ١٢١٠ وهو ابن العشرين، ثم عاد الى اصفهان وتوفي في المدينة ذاتها. لقد حصل على اجازة في الاجتهاد من بعض العلماء من امثال السيد صدرالدين محمدبن صالح الموسوي العاملي (المتوفى سنة١٢٤٦ هـ) والحاج محمد ابراهيم بن محمد حسن الكلباسي (المتوفى سنة ١٢٦١) والسيد محمد باقر بن محمد نقي الموسوي الشفتي (المتوفى سنة ١٢٦٠).

من بين هؤلاء العلماط كان السيد صدرالدين من اصول لبنانية ومن منطقة جبل عامل ويعود نسب والدته الى زين الدين علي، الشهيد الثاني، (المتوفى سنة ٩٦٥ هـ). ولد سنة ١١٩٣ وهاجر في الرابعة من عمره (سنة ١١٩٧) مع والده من لبنان الى بغداد والكاظمية. تلقى العلوم الدينية هناك عند الشيخ جعفر النجفي كاشف الغطاء (المتوفى سنة ١٢٢٨هـ) وهو أحد تلامذة البهبهاني ومن ألد اعداء الاخباريين وتزوج بأبنته. كان كاشف الغطاء نفسه تلميذا لبحرالعلوم، أي أستاذ جد الخانساري.

كما وقد تتلمذ صدرالدين عند بحرالعلوم وميرسيدعلي الطباطبائي، صهر البهبهاني (أحد اساتذة الخانساري). وبعد هجرته الى اصفهان

تلقى دعما من السيد الشفتي، حيث قدم له الأخير عددا من الدور السكنية. هاجر صدر الدين سنة ١٢٦٢ من اصفهان الى الكاظمية وتوفي فيها بعد سنوات. تزوج أحد أبناءه المسمى بـ السيد محمد والمعروف بالآغا مجتهد (المتوفى سنة ١٢٧٤) بابنة السيد الشفتي وتزوج ابنه الآخر، أبو جعفر (المتوفى سنة ١٢٢٤هـ)بحفيدة السيد الشفتي (بنت ابنه الأكبر). وبزواج ابنة السيد صدر الدين مع الشقيق الأصغر لصاحب الروضات، المسمى بـ «محمد هاشم» والمتوفى (سنة ١٣١٨ هـ) تحققت مصاهرة بين أسرة الخانساري وأسرتين علميتين بارزتين أخرى.

ولد الحاج محمد ابراهيم الكلباسي، (الأستاذ الآخر لزين العابدين) في مدينة اصفهان سنة ١١٨٠ وهاجر مع والده الى كرباس من توابع مدينة هرات بخراسان. بعد وفاة والدة سنة ١١٩٠ عاد الى اصفهان ومنها هاجر الى العتبات وتتلمذ في كربلاء على يد بحر العلوم وكاشف الغطاء ومير سيد علي الطباطبائي. ان تتلمذه على يد البهبهاني دليل على وجوده في مدن العتبات منذ الخامسة والعشرون من عمره. غير أنه يشير الى عدم حصوله على أية اجازة من البهبهاني او بحر العلوم، رغم أنهم كانو مستعدين لمنحه هذه الاجازة. ولكنه حصل على الاجازة من كاشف الغطاء ومن الشيخ احمد الاحسائي، مؤسس الشيخية. بعدها عاد الى ايران وحضر في درس الميرزا القمي (المتوفى سنة ١٢٣١) أحد تلامذة البهبهاني. يدعي مؤلف روضات الجنات بأن الكلباسي رغم

ذهابه الى قم ولكنه درس في اصفهان وتولى امامة الصلاة الجماعة في مسجد الحكيم بهذه المدينة. كما وان التناكبني ايضا قد درس عند الكلباسي وان احدى بنات الآخير قد تزوجها أحد تلامذة البهبهاني.

نيومن سلسله تبار روحانيون مشهور وارتباطات سببي ونسبي آنان را به خوبي موشكافي وتحليل كرده تا از محتواي آن مشاجرات وتضادهاي اين دو جريان را بهتر بشناسد.

لقد عمد نيومن الى دراسة سلالة العلماء ورجال الدين وعلاقاتهم الأسرية بكل دقة ليتوصل الى محتوى هذه الخلافات والصراعات بين هذين التيارين بصورة دقيقة وواضحة.

(١٧)

الاخلاق والمباحث الفلسفية خلال القرن الثامن عشر في ايران

جان كول

مقال بعنوان Ethics, and Philosophical Discourse in Eighteenth Century Iran (الايديولوجيا، الاخلاق والخطاب الفلسفي في ايران خلال القرن الثامن عشر الميلادي) طبع في العدد٢٢ من مجلة دراسات ايران (سنة١٩٨٩). يرى الباحث بان تدوين تاريخ التشيع خلال القرن الثامن عشر قد تركز على توثيق المباحث الفقهية. لقد تمحورت جهود العلماء في بداية هذا القرن حول المنهج الفقهي للمدرسة الاخبارية ومن ثم حول افكار المدرسة الاصولية. والدليل على ذلك يتمثل بالنتائج المتحصلة من دراسة سيرة علماء ذلك العصر بالأخص المفكرين والعالمين البارزين في ذلك العصر، الشيخ يوسف البحراني ومحمدباقرالبهبهاني. كان البحراني عالم اخباري اشتهر في العتبات المقدسة بصفته زعيم ديني ذا مكانة مرموقة. وكان البهبهاني في بادىء الامر طالب قادم من اصفهان الى العتبات المقدسة لتعلم العلوم الدينية. يستعرض الباحث بعض الآراء لكل من البحراني والبهبهاني ويدرس التشيع وفق منهج تاريخي.

(١٨)

شرعية الفقيه وسلطته

رابرت غليو

مقال بعنوان (The Authority Of The Jurist) وهو جزء من كتاب (نظريتان في فقه الشيعه) الذي نشر بالعنوان الانكليزي التالي:

Robert Gleave, Inevitable Doubt: Two Theories of Shī'ī Jurisprudence, Vol. ١٢, Brill, ٢٠٠٠.

الباحث هو البرفسور «روبرت غليو»، رئيس مؤسسة الدراسات العربية والاسلامية بجامعة اكستر في لندن خلال الأعوام ١٩٨٩ الى ٢٠٠١ م. وقد عمل أيضا بصفته استاذ زائر وباحث في مجال الدراسات العربية والاسلامية في جامعة بريستول واكستر ومانشستر ولنكشاير ولستر وويلز ومتروبولتين في مانشستر.

لـ «روبرت غليو» بعض المقالات والكتب في مجال تاريخ الشيعة وأسسهم الحقوقية والفقهية.

يتناول هذا المقال الذي هو بعنوان «سلطة الفقيه» معنى الاجتهاد ومفهومه، مستعرضا التطورات التاريخية التي طرأت على قضية الاجتهاد ويعرف الاجتهاد بأنه عبارة عن الجهود التي يبذلها الفقيه للحصول على الأحكام الشرعية. ثم ينتقل الى دراسة مقام مرجع التقليد وشروط احراز

هذا اللقب وفق الفقه الشيعي، مشيرا الى آراء الاخباريين والأصوليين في هذا المجال. ففي البداية يستعرض رأي الشيخ يوسف البحراني حول حق الاقتداء ومكانة الفقهاء ومن ثم يتناول رأي العلامة البهبهاني في هذا المجال. يعتمد الباحث خلال حديثه عن هذا الموضوع على كتاب الفوائد الجديدة للعلامة البهبهاني ويقتبس منه وظائف عالم الدين عندما يكون (فقيها أو مجتهدا او قاضيا) ويفصل القول في علاقة المجتهد بالمقلد، مشيرا الى ما ذكره البهبهاني بهذا الصدد في كتابه آنف الذكر. كما ويستعرض خلال مبحث فرعي بعنوان (أصول المعرفة) رأي البحراني والبهبهاني ومنهجهما في هذا المجال.

(١٩)

العلماء الشيعة عبر التاريخ

مير ليتواك

مقال بعنوان (The Shi'i 'Ulama', in history) وهو جزء من كتاب (علماء الشيعة خلال القرن التاسع عشر في العراق). طبع هذا الكتاب بالعنوان التالي:

Meir Litvak, Shi'i Scholars of nineteenth-century Iraq: the'ulama'of Najaf and Karbala', Vol. ١٠, Cambridge University Press, ٢٠٠٢.

ليتواك مختص بتاريخ الشيعة الامامية وعمل بصفة استاذ وباحث في جامعات فلسطين المحتلة. نال شهادة الدكتوراه من جامعة هارفارد الأمريكية.

يتناول ليتواك في هذا الكتاب سوابق علماء الشيعة عبر التاريخ، مبينا ومحللا دور هؤلاء في كل حقبة زمنية. هذه الدراسة تبدأ من سنة (٢٦٠هـ)، بداية عصر الغيبة وصولا الى العصر الحاضر. كما وتطرق البحث الى حركة تطور نظرية الاجتهاد ومؤسسة المرجعية، مستعرضا الخلاف بين تياري الاخباري والأصولي والخلاف بين كل من الأسترآبادي والبهبهاني. ورد في قسم من هذا المقال ما يلي «(ان أول من تصدى لهيمنة الاخباريين في العتبات بصورة جادة وعلنية هو الآغا

محمد باقر البهبهاني.) ويستمر بذكر سيرة مقتضبة للبهبهاني، مشيرا من خلالها الى حياته وتنقلاته ودراسته وأساتذته وآرائه في الاجتهاد وخلافاته مع الاخباريين. وفي قسم آخر من المقال وخلال الحديث عن تاريخ العتبات، يستعرض الباحث جهود تلامذة البهبهاني في تعضيد ونشر المدرسة الاصولية.

(٢٠)

المدرسة الأصولية

عصمت السادات طباطبائي لطفي

مقال بعنوان (The Renewal of the Usuli School) وهو جزء من أطروحة السيدة طباطبائي بعنوان:

Tabatabaei Lotfi, Esmat Al-Sadat. Ijtihad in Twelver Shi'ism: The Interpretation and Application of Islamic Law in the Context of Changing Muslim Society. Phd Diss. University of Leeds, ١٩٩٩.

السيدة طباطبائي لطفي، استاذة مساعدة في قسم الالهيات بجامعة آزاد الاسلامية في مدينة قم. هذا النص هو جزء من أطروحتها آنفة الذكر التي قدمتها للمناقشة بعنوان (الاجتهاد عند الشيعة الاثني عشرية: تفسير الفقه الاسلامي ودوره في تغيير المجتمع الاسلامي) لنيل شهادة الدكتوراه باختصاص الالهيات والدراسات الدينية من جامعة ليدز البريطانية سنة ١٩٩٩.

في الفصل الثاني من هذه الأطروحة درست الباحثة مفهوم الاجتهاد في المجتمع الشيعي دراسة تاريخية مشيرة الى تياري الاخباري والأصولي خلال مبحث بعنوان (تجديد المدرسة الأصولية) مبينة دور العلامة البهبهاني وتلامذته بصورة مقتضبة.

(٢١)

مناهج تلقي العلم

أحمد كاظمي موسوي

أحمد كاظمي موسوي من أشهر الباحثين في مجال الفقه الشيعي وصاحب الكثير من المؤلفات فقد اشتهر في الأوساط العلمية والآكاديمية الغربية. تدرج بالدراسة الآكاديمية في جامعة مك غيل الكندية ونال شهادة الدكتوراه بعد أن قدم أطروحته للمناقشة بالعنوان التالي:

Ahmad Kazemi- Moussavi, The Struggle for uthority in the Nineteenth Century Shi'ite Community: the Emergence of the Institution of Marja'-I TaqlĪd, Phd Diss, Institute of Islamic Studies McGill University, ١٩٩١.

هذا المقال هو بعنوان (The Akhbari-Usuli Controversy over Clerical Authority and the Methods of Acquiring Knowledge) وهو جزء من أطروحته لنيل شهادة الدكتوراه.

يتناول الباحث في الفصل الأول من هذه الأطروحة السوابق التاريخية لمؤسسة المرجعية ويستعرض في الفصل الثاني الصراع بين الاخباريين والأصوليين على السلطة والزعامة الدينية وكذلك خلافهما في مناهج كسب المعارف الدينية. ركز الباحث عند حديثه عن الخلاف بين

المدرستين على الخلاف في مناهج كسب المعارف الدينية. يقول الدكتور كاظمي موسوي في جزء من مقاله: على خلاف الصراع بين الأصوليين والمتصوفة، فان المواجهة بين التيار الاخباري والأصولي لم يتوقف حيث تركز معظمه على قضية الاجتهاد حتى اوائل القرن التاسع عشر الميلادي، كما وتطور الصراع الى اتهام بعضهم البعض بالارتداد وحتى الصراع الجسدي. العالمان اللذان أوصلا المباحث الخلافية بين الاخباريين والأصوليين الى ذروتها هما محمد باقر البهبهاني والشيخ يوسف البحراني. كان للبهبهاني دور مهم جدا في نشر وتعضيد التيار الأصولي في المجتمع الشيعي.

يتضمن هذا المقال أحد أهم المباحث في فقه الشيعة، أي: (جهود الفقيه العلمية للبحث عن الأحكام الشرعية) ويتبعها مبحث بعنوان (مؤسسة المرجعية عند الشيعة الامامية).

لقد توصل الأصوليون والفقهاء منذ قرون الى أن مجموعة الأدلة التي تشمل الروايات والاجماع والقرآن والعرف والعقل، تعطي للمجتهد في كل مسألة شكا باطنيا أو يقينيا. الفقيه بعد أن يعلم بأن مجموع الأدلة التي توصل اليها بالاجتهاد قد وصلت الى رأي الشارع المقدس وبعد أن يطمئن الى الأمر يبادر الى بيان الحكم الالهي. ولكن عندما يعتريه الشك أو حتى الظن (أي العلم الأعلى من الشك والأدنى من اليقين) يراجع الأصول العلمية، أما اذا توصل الى الظن أو اليقين يصدر الحكم مستندا الى أسس القواعد المتينة.

لكل من الأصوليين والاخباريين آارء متباينة في هـذا المجـال أي: ان المصادر والأدلة التي توصل الفقيه الى الاطمئنان هي محل خـلاف. لأن الاخباريين يقولون بحجية الأحاديث فحسب، لكن الأصوليين يعتمدون على حجية أربعة أنواع من الأدلة على أقل تقدير.

كمـا وأن هنـاك خلافـات اكثـر جـدلا فـي بـاب العقـل والقـرآن، فالاخباريون لا يعدون شأنا للعقل ولكن الأوصوليين يقولون بحجيته في غالب الأحيان.

الخـلاف الثـاني يتمثـل بالأصـول العمليـة عنـد الشـك. الاخبـاريون يقولون بالاحتياط لكن الاصوليين يقولون بالبراءة، الذي هو قريـب مـن العلم، غير أن الأخباريين يعدونه رأيا باطلا.

فضلا عن الاستحواذ على العلم فان الفقيه المجتهـد وخاصـة مرجـع التقليد يجب عليه حل مشاكل الناس اليومية وان يجيـب علـى المسـائل المستحدثة ويتولى زعامـة المجتمـع وهدايتـه. ومـن جانـب آخـر فـان الوسيلة الرئيسة لمثل هذا الزعيم تتمثل بالعلم والمعرفـة. الاخبـاريون لا يملكون أسسا متينة للبحث عن العلم وفي الوقت نفسـه يشـككون فـي زعامة الفقهاء والمراجع وادارتهم وينقدون ذلك. لأنهم يحرمون التقليـد وتبعية عامة النـاس للمراجـع ويعتقـدون بعـدم جـواز التقليـد إلا تقليـد المعصوم.

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الخلاف بين الأصوليين والاخباريين

عبدالفتاح عبده

عبد الفتاح عبده، باحث في جامعة دورهام. حصل على شهادة الماجستير سنة (١٩٨٩ م) من معهد الدراسات الاسلامية والشرق الأوسط التابع لهذه الجامعة. نشرت رسالته بالعنوان التالي:

Abdelfettah Abada, The'Ulama'of Iran in the ١٩th century hagiographical literature, Diss, Durham University, ١٩٨٩.

هذا المقال هو جزء من الفصل الأول (من أصل خمسة فصول) من رسالته آنفة الذكر التي نشرت بعنوان (علماء ايران خلال القرن التاسع عشر: دراسة بيوغرافية). استعرض الباحث في هذه الرسالة سيرة مجموعة من أبرز العلماء الشيعة في ايران خلال القرن التاسع عشر الذيم كان لهنم دور كبير في ظهور مفهوم الزعامة الدينية. (زعامة رجال الدين).

يتناول الباحث في هذا المبحث (المقال) السوابق التاريخية للمرجعية الدينية، مبينا علاقة العلماء بالحكومة، ابتداءا من العهد الصفوي ومرورا بالعهد القاجاري ومشيرا الى انتشار المدرسة الأصولية بصفتها النظرية الرئيسة والمهيمنة في الفقه الشيعي. كما وقدم الباحث خلال هذا المقال

دراسة مقتضبة عن أوجه الخلاف والصراع بين التيار الاخباري والأصولي. ولما كان زعيم الحركة المتصدية للتيار الاخباري هو العلامة الوحيد البهبهاني لذا فقد استعرض الباحث بعضا من آرائه في هذا الجزء من رسالته.

(٢٣)

الحوزة العلمية والاخباريون والاصوليون

غلامعلي حداد عادل

نشر هذا لمقال لأول مرة في موسوعة العالم الاسلامي، وبعد فترة من نشره اضيفت فيه بعض النصوص وتمت ترجمته للغة الانكليزية ونشر في كتاب بالعنوان التالي:

Adel, Gholamali Haddad, Mohammad Jafar Elmi, and Hassan Taromi– Rad, eds. Hawza-yi 'llmiyya Shi'i teaching institution: An Entry from Encyclopedia of the World of Islam, EWI Press, ٢٠١٢.

احدى مباحث هذا الكتاب هو بعنوان (Period of Subordination and Stagnation) يتناول الباحث فيه الحوزة العلمية في كربلاء والنجف، مشيرا الى كل من التيار الاخباري والأصولي. يبدأ المؤلف بالاشارة الى هيمنة الاخباريين على الحوزة العلمية ويقول بهذا الصدد: خلال العقد الرابع من القرن الحادي عشر الهجري، انتشر الخلاف حول مسألة الاخباريين في حوزة النجف كسائر الحوزات العلمية الشيعية. كان محمد أمين الأستر آبادي (المتوفى سنة ١٠٣٣هـ) هو أكثر العلماء تأثيرا خلال هذه الفترة. لقد تتلمذ الأسترآبادي في حوزة النجف وكانت له اجازات في رواية الحديث من صاحب المعالم ومن صاحب المدارك. ألف كتاب الفوائد المدنية سنة (١٠٣٠هـ) ووجه فيه نقدا شديدا للنهج

الأصولي والاجتهادي الذي تبناه الكثير من المجتهدين الشيعة حيث ورثوه من شيخ الطائفة الطوسي مؤسس حوزة النجف. نقد الأستر آبادي في كتابه الكثير من العلماء من امثال ابن جنيد وابن عقيل والشيخ المفيد والسيد المرتضى والشيخ الطوسي وخاصة العلامة الحلي واتهمهم بالانحراف عن كريق ائمة آل البيت عليهم السلام. حيث عد استنادهم الى الكلام والى الاصول الفقهية المبنية على الافكار العقلية واستخدامهم للقياس، بدعة. انتشر النهج الاخباري بسرعة في النجف وفي سائر المدن العلمية في العراق وايران والبحرين وانجذب اليه الكثير من الفقهاء.

لقد تعرض علم الأصول الى الكثير من الصدمات والانتكاسات جراء انتشار التيار الاخباري ولم تكن حوزة النجف بمنأى عن هذا الأمر. ولكنه لم يندحر تماما حيث برز في النجف خلال هذه الفترة بعضا من العلماء دونو مؤلفات مهمة في مختلف الحقول المعرفة الدينية. من أشهرها كتاب مجمع البحرين للشيخ فخر الدين بن محمد علي الطريحي النجفي (المتوفى سنة ١٠٨٥هـ) وموضوع هذا الكتاب هو شرح الالفاظ الصعبة في القرآن الكريم والروايات. كما وقد كان فاضل الشرواني (المتوفى سنة ١٠٩٨ هـ أو ١٠٩٩ هـ) عالم كثير التأليف خلال هذه الفترة ومن تلامذة حوزة النجف، حيث هاجر الى اصفهان وتتلمذ على يده الكثير من العلماء وألف الكثير من الكتب كـ (شرح الشرائع) و(الحاشية على شرح التجريد للقوشجي).

الصراع المستمر بين الصفويين والعثمانيين للهيمنة على العراق وخوف الناس من الهجرة اليه والضغوطات المتواصله على علماء الشيعة من قبل العثمانيين وغيرها من الأحداث الطبيعية كتفشي الوباء، كل ذلك أثر على ركود الحركة العلمية خلال هذه الفترة مما ادى الى اضعاف حوزة النجف وانتقال مركزية العالم الشيعي الى مدينة كربلاء.

أدى محمد باقر بن محمد اكمل المعروف بالوحيد البهبهاني (المتوفى سنة ١٢٠٥هـ) دورا مهما في الاطاحة بالاخباريين وسلب قوتهم. كانت مدن العراق، خاصة كربلاء والنجف مليئة بالعلماء والطلاب الاخباريين، الذين وصل بهم الأمر الى أنه من كان يريد حمل كتاب في الأصول كان يتحتم عليه حمله بمنديل أو قطعة قماش كي لا تتنجس يده ! الحركة التي شرع بها البهبهاني في كربلاء أعطت ثمارها في النجف فبقدوم محمد مهدي بحرالعلوم (المتوفى سنة ١٢١٢ هـ) ـ احد تلامذة الوحيد البهبهاني ـ، خلفت حوزة النجف حقبة مليئة بالصراع بين الأصوليين والاخباريين وبدأت دورة جديدة.

ولكن في الوقت نفسه فان انتقادات الاخباريين ومؤلفاتهم وجهود فقيههم الأخير، الشيخ يوسف البحراني وما قدمه في كتابه (حدائق الناظرة) قد أثر تأثيرا كبيرا في نمو الفقه الشيعي وازدهاره.

رغم كل ذلك فان حوزة النجف قد استعادت عظمتها وازدهارها بجهود العلامة بحر العلوم وغيره من الفقهاء الذين تتلمذو على يد الوحيد البهبهاني حيث عادت النجف مرة أخرى مركزا علميا للعالم

الشيعي. لقد تركزت جهود تلامذة الوحيد بصورة مباشرة وغير مباشرة على التصدي للنهج الاخباري والاجابة على شبهاتهم مما تتطلب الأمر استخدام القواعد الأصولية. لقد أثمرت هذه الجهود وأدت الى تنشيط علم الأصول وانفتح باب البحث والنقد والتحليل في مجال الفقه وظهر اتجاه يميل الى البحث في آراء وأدلة المتقدمين وبالتالي رغم عدم زوال التيار الاخباري الا انه ضعف بشدة وقلت هيمنته.

ان المنهج العلمي الذي أرسى قواعده الوحيد البهبهاني أنتج كتبا هامة معتبرة. فالعلامة بحر العلوم ومن بعده الشيخ جعفر بن خضر النجفي المعروف بكاشف الغطاء ساهما بمؤلفاتهما في بسط الزعامة الدينية للحوزة العلمية مما أدى الى افشال محاولات الميرزا محمد النيشابوري (المتوفى سنة ١٢٣٢هـ) الذي سعى كثيرا في احياء المدرسة الاخبارية فقد توسل بكل الأساليب كلجوئه الى الحكومة القاجارية. كتب كاشف الغطاء رسالة للملك القاجاري فتحعلي شاه بعنوان (كاشف الغطاء عن معايب الميرزا محمد عدو العلماء) لكي يطرده الملك من بلاطه. كما وقد ساهم سائر العلماء في حوزة النجف في نقد الفكر الاخباري ونشر علم الأصول. وذلك من أمثال: محمد تقي الاصفهاني (المتوفى سنة ١٢٤٨هـ) في كتابه هداية المسترشدين في شرح معالم الدين، محمد حسن الاصفهاني في الفصول الغروية، حجة الاسلام السيد محمد باقر الشفتي (المتوفى سنة ١٢٦٠ هـ) في الزهرة البارقة، الشيخ محمد ابراهيم الكلباسي (المتوفى سنة ١٢٦١ هـ) في اشارات الأصول، السيد محمد

مجاهد الطباطبائي سبط الوحيد البهبهاني في كتابه مفاتيح الأصول، الميرزا ابوالقاسم القمي في كتابه قوانين الأصول وأخيرا الشيخ مرتضى الأنصاري (المتوفى سنة ١٢٨١ هـ) في كتابه فرائد الأصول (المعروف بالرسائل).

بانتشار المدرسة الأصولية في الساحة العلمية بدأ فصل جديد في تاريخ الشيعة وتاريخ ايران والعراق. ان الثورة الدستورية في ايران والثورة العراقية هي من أهم الأحداث التي أفرزتها هيمنة المدرسة الأصولية على الفقه الشيعي.

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الاتجاه العقلاني والتقليدي في الفقه الشيعي

السيد حسين مدرسي طباطبائي

السيد حسين مدرسي طباطبائي، باحث ومؤلف مختص بالقضايا الدينية واستاذ في جامعة برينستون. ولد في مدينة قم والتحق بالحوزة العلمية بعد اكماله الدراسة الأولية في المدارس الحكومية. تردد على الجامعات البريطانية للدراسة منذ عام ١٩٧٧ وسكن في هذا البلد لاكمال دراسته الأكاديمية منذ عام ١٩٨٠. نال شهادة الدكتوراه من جامعة آكسفورد سنة ١٩٨٢ ودعي لالقاء المحاضرات في جامعة بريتستون الأمريكية وبقى مقيما في الولايات المتحدة منذ ذلك الحين وشغل كرسي (Bayard Dodge) في هذه الجامعة. كما وشغل في آن واحد كرسي مهدى في كلية الدراسات الدولية بجامعة كلمبيا في مدينة نيويورك وكلستانه في كلية سن أنطونيو بجامعة آكسفورد. عمل أستاذا في كلية الحقوق بجامعة ييل وهارفارد واختير عضوا في المجلس الرقابي بجامعة هارفارد طيلة تسعة سنوات.

كتب منذ أيام شبابه (في منتصف الستينيات) الكثير من المقالات الاجتماعية والدينية في الصحف والمجلات الدينية (مثل مجلة مكتب

الاسلام) واستمر بكتابة البحوث التاريخية ونشرها في المجلات الأدبية بطهران (مثل مجلة الوحيد ومجلة الدراسات التاريخية). نشر خلال السنوات (١٩٧٢ الى ١٩٧٧) عددا من الكتب والوثائق التاريخية حول تاريخ مدينة قم. تركزت جهوده العلمية خلال العقود الثلاث الأخيرة على تاريخ التشيع، حيث نشرت له عددا من المؤلفات، ترجم بعض منها الى اللغة الفارسية وهي كالآتي: الأرض في الفقه الاسلامي، مقدمة على الفقه الشيعي، الدين والكمال فقد أعيد طباعة ترجمة هذا الكتاب سنة ١٩٩٧، بعد ١٣ سنة من انتشاره الأول وحقق مبيعات عالية ولفت الأنظار في حينها.

هذا البحث هو بعنوان (الأصولية والاخبارية في الفقه الشيعي: دراسة أوليه) يتضمن هذا المقال المحاور التالية: مصادر فقه الشيعة (القرآن، السنة، العقل، الاجماع)، المؤلفات الرئيسية في اصول الفقه الشيعي (دراسة في كتب علم الأصول بدءا من الأدوار الاسلامية الأولى وصولا الى القرن الحاضر «مدرسة الشيخ الانصاري»)، الصراع بين تيارين في الفقه الشيعي (دراسة الآراء المتعلقة بالقياس والرأي والاجتهاد و...)، دراسة في علم الأصول من بعد ائمة أهل البيت عليهم السلام وصولا الى زمن الاخباريين، دراسة في التيار الأصولي والتيار الاخباري.

نشر هذا البحث بالعنوان الانكليزي التالي:

Modarressi, Hossein. «Rationalism and traditionalism in Shīʿī jurisprudence: a preliminary survey», Studia Islamica, ١٩٨٤.

(٢٥)

التنظير الفقهي للوحيد البهبهاني ودوره في الفقه

احمد كاظمي موسوي

الباحث هو السيد احمد كاظمي موسوي، استاذ الحقوق الاسلامية واللغة الفارسية في عدد من الجامعات الآسيوية والأروبية كالجامعة الاسلامية الدولية في ماليزيا (٢٠٠٥ ـ ١٩٩٢) وجامعة فاتح (خلال صيف عام ٢٠٠٠). حصل على شهادة الليسانس في القانون من جامعة طهران وتقاعد عن وظيفته في وزارة الخارجية الايرانية سنة (١٩٨٠) واكمل دراسته في جامعة مك غيل بمدينة مونترال في كندا وحاز على شهادة الدكتوراه من هذه الجامعة سنة ١٩٩١. له أبحاث وكتب نافعة في مجال الفقه الاسلامي وحقوقه. منها (السلطة الدينية في الاسلام الشيعي / ١٩٩٦) (علماء الشيعة والسلطة السياسية / ٢٠٠٤) و(المواجهة بقبلة واحدة /٢٠٠٥). كما وقد نشر اكثر من خمسين مقالا في مختلف المجلات العلمية والثقافية. يعمل حاليا استاذا في جامعة مريلند الأمريكية.

هذا المقال بعنوان (The Periodization of Shi'ite Legal Thought) وهو جزء من اطروحته لنيل شهادة الدكتوراه التي خضعت للمناقشة

بالعنوان التالي:

Kazemi –Moussavi, Ahmad. The Struggle for Authority in the Nineteenth Century Shi'ite Community; the Emergence of the Institution of Marja' TaqlĪd. Phd Diss. Institute of Islamic Studies McGill University, ١٩٩١.

العنوان العربي لهذه الأطروحة هو (صراعات حول المرجعية في المجتمع الشيعي خلال القرن التاسع عشر: ظهور مؤسسة المرجعية). يؤرخ هذا المقال ظهور مؤسسة المرجعية وتطورات الفكر الفقهي الشيعي. يعتمد الباحث على كتاب الدكتور شهابي المعنون (ادوار الفقه، تاريخ الفقه الشيعي) ويقسم الفقه على دورتين رئيسيتين: أ ـ عصر النبي الأكرمﷺ) حتى رحيله. ب ـ عصر التفسير بدءا من سنة ١٣ الهجرية حتى عصرنا الحاضر. ويضيف تقسيما فرعيا آخر على ما ذكره الدكتور محمود شهابي حيث قسم الدورة الثانية على أربعة مراحل رئيسية، يكون عصر الغيبة ضمن المرحلة الرابعة. كما وقد قسم هذه المرحلة الأخيرة على أربعة أدوار أيضا: تبدأ الدورة الأولى من الغيبة الكبرى وتستمر حتى عصر شيخ الطائفة محمد بن حسن الطوسي (٤٦٠هـ). فيما تبدأ الدورة الثانية من وفاة الشيخ الطوسي حتى زمن العلامة الحلي (٧٢٦هـ). اما الدورة الثالثة تبدأ من زمان العلامة الحلي حتى تاريخ وفاة العلامة البهبهاني (١٧٩١هـ) وتبدأالدورة الرابعة والأخيرة من وفاة العلامة البهبهاني وتستمر مع انتشار المدرسة الأصولية الى عصرنا الحاضر (قبيل الثورة الاسلامية الايرانية.)

يشير الباحث في سياق بحثه الى تقسيم آية الله ابراهيم جناتي الذي

ذكره لأدوار الفقه الشيعي المتلاحقة. يتبلور في التقسيم الأخير دور العلامة البهبهاني خلال الدورة السادسة للفقه، فيما تبرز خلال الدورة السابعة نتائج جهوده في اطار المدرسة الأصولية.

وفي جزء آخر من البحث يستعرض الباحث تقسيما ثالثا للسيد حسين مدرسي الطباطبائي. في هذا التقسيم يذكر الطباطبائي دور العلامة البهبهاني ضمن الدورة السابعة، مسميا اياها بدورة مدرسة العلامة الوحيد البهبهاني.

ينطلق الدكتور كاظمي موسوي من بيان هذه الأدوار المختلفة لدراسة عصر العلامة البهبهاني لوجود جذور من أفكار الأخير في تاريخ الفقه ولكون التيار الأصولي له خلفية تاريخية عميقة في الحوزات العلمية في مجمل أدوار الفقه الامامي، مثل ما تكون الاخباريون الجدد على أسس الاخباريين المتقدمين. بمعنى أن التيار الاخباري والتيار الأصولي لم يظهرا فجأة خلال القرنين الثاني عشر والثالث عشر الهجريين ولم يهيمن على الحوزات العلمية اعتباطا. بل أن لكل من هذه الأحداث والوقائع في الساحة العلمية جذور في الماضي.

(٢٦)

الشيعة الأصوليون

زكريا هيرن

مقال بعنوان (Usuli Shi'ism) وهو جزء من اطروحة الباحث لنيل شهادة الدكتوراه المعنونه:

Zackery M. Heern, Usuli Shi'īsm: The Emergence of an Islamic Reform Movement in Early Modern Iraq and Iran, Diss, University of Utah, ٢٠١١.

الدكتور زكريا هرن، استاذ في جامعة مري في ولاية كنتاكي الأمريكية وباحث مختص بشؤون الشرق الأوسط. حاز على شهادة الدكتوراه في التاريخ من جامعة يوتا في مدينة لوغان بولاية يوتا الأمريكية. له العديد من المؤلفات في الاسلام والتشيع منها: الثورة الاسلامية، ظهور الشيعة الأصوليون في العراق، فقه الشيعة وزعمائها، جهود الشيخ مرتضى الأنصاري، الأقليات المذهبية في الشرق الأوسط.

هذا المقال هو مقدمة الأطروحة آنفة الذكر والتي هي بعنوان: (الشيعة الأصوليون: نشوء الحركة الاصلاحية في العراق وايران المعاصرين). يؤرخ الباحث في هذه المقدمة للتشيع والاسلام المعاصر والاسلام السياسي المعاصر والحركات الاسلامية. ويؤكد على أن غايته من هذه المقدمة هي دراسة احد أهم وأقوى الحركات الاسلامية في تاريخ

الاسلام الا وهي مدرسة الشيعة الأصوليين. يستعرض الباحث من خلال هذه المقدمة أسباب نشوء هذه الحركة خلال النصف الثاني من القرن الثامن عشر. نظرا الى أهمية العلامة البهبهاني ودوره الكبير في تأسيس المدرسة الأصولية فان المحور الرئيس لهذه الأطروحة يدور حول افكاره وجهوده. يشير الباحث الى هذا الهدف بقوله: يتركز هذا البحث بالدرجة الأساس على بيان نشوء المدرسة الأصولية التي تكونت في اوائل القرن التاسع عشر. بعبارة أخرى فان دراستي حول المدرسة الأصولية تتحدد بدراسة الأفكار والجهود المبذولة من قبل عميد الأصوليين الجدد، العلامة محمد باقر البهبهاني وتلامذته.

(٢٧)

عصر الحداثة (١٨٣٠ ـ ١٩٢٠ م)

أنطوني بلاك

الدكتور أنطوني بلاك المستشرق والعالم الشهير في مجال الدراسات الاسلامية والخبير في تاريخ الفكر السياسي بجامعة داندي الاسكتلندية. له العديد من المؤلفات كـ: تاريخ الفكر السياسي الاسلامي، الغرب والاسلام. تاريخ الفكر السياسي في العالم، تاريخ الفكر السياسي القديم.

هذا المقال هو بعنوان (The Age of Modernism) وهو جزء من كتاب (تاريخ الفكر السياسي الاسلامي: من عهد النبي «صلى الله عليه وآله وسلم» الى اليوم)

نشرْ هذا الكتاب بالعنوان التالي:

Antony Black, the History of Islamic Political Thought: From the Prophet to the Present, Edinburgh University Press, ٢٠١١.

يطلع هذا الكتاب قارئه على تاريخ الفكر البشري في اطار الحضارة الاسلامية وينقسم على خمسة أقسام وستة وعشرون فصلا. يتناول المؤلف في القسم الخامس المعنون بـ (الاسلام والغرب) علاقة الاسلام والغرب ففي فصل مستقل من هذا القسم يتحدث عن عصر الحداثة

(١٨٣٠ ـ ١٩٢٠). في جزء من هذا الفصل، يشير المؤلف الى الى علاقة الحكومة مع العلماء خاصة في العهد القاجاري في ايران ويقول بهذا الصدد: ان العلماء كانو المخالفين الوحيدين المؤثرين خلال العهد القاجاري، فقد كانت تحركاتهم ومواقفهم تمثل خطرا وتهديدا لسياسة الدولة. فان طريقتهم تتمثل باصدار الفتوى وتحشيد الناس ضد اعمال الحكومة. ان أهم قضية طالبو بتحقيقها خلال هذه الفترة هي تحجيم نشاطات المتصوفة الكبار والبهائيين وسائر المجاميع غير الدينية وغير الاسلامية. لم يكن غالب العلماء على نهج فكري واحد فقد كانت لهم آراء مختلفة تصل الى نشوء خلافات شديدة فيما بينهم. فمثلا كان الآغا محمد باقر البهبهاني، هو أحد المجتهدين الذين يقولون بأن المجتهد منصب من قبل الامام ويجوز له اصدار التوجيهات الاجتماعية للملك أو الحاكم. على أن لا يكون الملك أو الحاكم ظالمين. بمعنى أن الملك يحصل على الشرعية وتقبل تصرفاته واعماله عندما لا يكون ظالما وعندما يكون خاضعا لامرة الفقيه والمجتهد.

عندما رفض رأي الاخباريين القائل بتحريم تقليد الفقهاء والمراجع وبوجوب التقليد المباشر من شخص المعصوم، برزت نظرية الاجتهاد والتقليد التي تبناها الأصوليون. فحسب هذه النظرية على الناس بمن فيهم شخص الملك أن يطيعوا فقيه زمانهم فلا فرق بين الموضوعات الشخصية والاجتماعية، أي على الملك أيضا أن يطيع. تطورت هذه النظرية فيما بعد وتبلورت في اطار نظرية ولاية الفقيه.

(٢٨)

بيان النص، فقدان النص، تعارض الفقه وابهام النص

روبرت غليو

يدرس المؤلف القضايا الأساسية والبنيوية التي اختلف فيها كل من الوحيد البهبهاني ومخالفيه. روبرت غليو هو أحد الباحثين الغربيين الذين اختصو بدراسة الوحيد البهبهاني، حيث أمضى عقدين من حياته العلمية في دراسة التيار الأصولي والاخباري وشخصية الوحيد البهبهاني.

هذا المقال هو جزء من كتابه المعنون:

Gleave, Robert. Inevitable Doubt: Two Theories of Shī'ī Jurisprudence. Vol. ١٢. Brill, ٢٠٠٠.

يدرس هذا المقال الأطوار الأربعة الشهيرة في الفقه الامامي مبينا دور العقل في كل منها. لقد قال فقهاء الامامية منذ القدم بأنه عندما يعرض أي قضية او موضوع على الفقيه فانه القضية لا تخرج عن أربعة أوجه:

١ ـ يوجد رأي شرعي حول هذه القضية

٢ ـ لا يوجد أي دليل أو رأي شرعي حول هذه القضية

٣ ـ يوجد نصوص أو أدلة ولكنها مبهمة.

٤ ـ يوجد عدة نصوص ولكنها متعارضة.

لقد اختلف الاخباريون مع الأصوليين اختلافا جذريا في كل من هذه الأوجه الأربعة.

يستند روبرت غليو الى كتب زعماء الاخباريين والأصوليين ويحلل بدقة كل من هذه المسائل الأربعة، ثم يستعرض رأي المدرستين مع ذكر الأدلة. وفي الختام يقيم آراء الفريقين ويعد آراء الأصوليين أمتن اكثر فائدة.

(٢٩)

الصراع بين الأصوليين والاخباريين والعلاقة بينهما

شبلي ملات

مقال بعنوان (The relevance of the Usuli /Akhbari controversy) وهو جزء من كتاب (تجديد الفقه الاسلامي: محمد باقر الصدر بين النجف وشيعة العالم). الكتاب هو بعنوان:

Mallat, Chibli. The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shii international, Vol. ٢٩, Cambridge University Press, ٢٠٠٤.

المؤلف هو شبلي ملات من الباحثين المختصين في مجال الدراسات الاسلامية ـ الشيعية. انه من أصول لبنانية وعلى الديانة المسيحية. كان أبوه رئيسا للمجلس اللبناني لعدة سنوات. كما وأنه المحامي الدولي الرسمي لأسرة السيد موسى الصدر. بعض مؤلفات الدكتور ملات هي كالتالي: الفكر الشيعي من جنوب لبنان، التشيع والتسنن في العراق، محمد حسين فضل الله، يعد شبلي أول من ألف في بعض الوضوعات والقضايا الشيعية مثل كتاباته عن الآراء الفقهية للشهيد محمد باقر الصدر.

ترجم هذا الكتاب الى اللغة العربية وطبع ونشر بالعنوان التالي:

تجديد الفقه الاسلامى: محمدباقر الصدر بين النجف والشيعة العالم،

بيروت، دارالنهار، ١٩٩٨م.

كان هذا الكتاب اطروحة المؤلف لنيل شهادة الدكتوراه. ترجمه للفارسية السيد محمد نوري وسيتم نشره قريبا. يعد هذا الكتاب وثيقة مهمة حول حياة وافكار محمد باقر الصدر. يرى المؤلف بانه يمكن الوقوف على جزء مهم من الفقه الشيعي من خلال دراسة المدرستين الاخبارية والأصولية. فلذلك خصص في كتابه جزءا مستقلا لبيان الصراع بين التيار الاخباري والتيار الأصولي ويؤرخ باختصار لكلا الفريقين مبينا آرائهم وأوجه الخلاف بينهما. من هنا ركز على آراء العلامة البهبهاني وخلافاته مع محمد أمين الأستر آبادي محددا خلافهما في بعض القضايا كفهم الحديث والقياس والاجتهاد.

(٣٠)

الاجتهاد والتقليد

دوين جي. استوارت

نشر هذا المقال بالعنوان التالي في موسوعة الفكر السياسي الاسلامي لجامعة برينستون:

Bowering, Gerhard, et al. eds. The Princeton encyclopedia of Islamic political thought. Princeton University Press. ٢٠١٢, pp ٢٤٨-٢٤٥.

رئيس تحرير هذه الموسوعة هو الدكتور غرهارد باورينغ، استاذ الدراسات الاسلامية في جامعة ييل الأمريكية. تعد هذه الموسوعة مصدرا متكاملا، تمكن الباحثين من الوقوف على السياسة المعاصرة في العالم الاسلامي ففيها ٤٠٠ مدخل مبوب حسب حروف الألفباء، دونها مجموعة من الباحثين متعددين الجنسيات. تركز هذه الموسوعة على بيان جذور الأفكار والنظريات السياسية الاسلامية ويستطرد فيها موضوعات ذات صلة كالمفاهيم والشخصيات والحركات والأماكن والمدارس الفكرية في التاريخ الاسلامي.

الدكتور دوين جي. استوارت، استاذ الدراسات العربية والاسلامية في جامعة اموري الأمريكية. اختصاصه الدقيق هو الفقه الاسلامي والاسلام الشيعي والقرآن الكريم واللهجات العربية. نال شهادة الدكتوراه

في اختصاص الأدب العربي والدراسات الاسلامية في جامعة بنسلفانيا سنة ١٩٩١. له عددا من المؤلفات، منها: ردود الشيعة الاثني عشرية على النظام الحقوقي لدى أهل السنة، السجع في القرآن، علم العروض وبنيته، فهم القرآن في اللغة الانكليزية. الدكتور استوارت هو أحد الباحثين الرئيسيين المشاركين في اعداد موسوعة برينستون. يبين في مقاله آنف الذكر مفهوم الاجتهاد والتقليد ويؤرخ لهذين المفهومين في الاسلام والثقافة الشيعية كما ويستعرض في جزء من مقاله عقائد وآراء الشيعة الاثني عشرية حول هذه المصطلحات ويقدم تقريرا مقتضبا عن حركة الاجتهاد التي برزت لدى هذه الطائفة، مشيرا الى الخلاف بين محمد أمي الأستر آبادي والعلامة البهبهاني.

(٣١)

علماء النجف وانتصار المدرسة الاخبارية

فؤاد جابر كاظم

مؤلف هذا المقال هو فؤاد جابر كاظم من أصول يمنية وعلى المذهب الشيعي. أكمل دراسته الأكاديمية في جامعة اكستر البريطانية ونال شهادة الماجستير سنة ١٩٨٠. يعمل بصفة باحث في آكاديمية دراسات الشيعة في لندن.

هذا النص هو جزء من رسالته لنيل شهادة الماجستير التي قدمها للمناقشة بعنوان:

Kadhem, Fouad Jabir. The Sacred and She Secular: The 'ulama of Najaf in Iraqi Politics between ١٩٥٠ and ١٩٨٠. Phd Diss, University Of Exeter.

عنوان هذه الرسالة هو (المقدس والعلماني: علماء النجف وسياسة الحكومات العراقية من ١٩٥٠ الى ١٩٨٠). يؤرخ هذا المقال لمدينة النجف مستعرضا واقع هذه المدينة وعلمائها خلال العهدين الصفوي والقاجاري ومشيرا الى المدرستين الأصولية والاخبارية. كتب الباحث بهذا الصدد: لا شك في أن انتصار المدرسة الأصولية على المدرسة الاخبارية كان بجهود شخصية كبيرة وورعة، والتي تمثلت بـ (محمد باقر البهبهاني). كان البهبهاني يهدف الى ازالة التيار الاخباري ومحو آثاره.

مارس الاخباريون آخر ضغوطاتهم على الأصوليين من خلال الميرزا محمد الاخباري الذي أرغم فتحعلي شاه على اعمال ضغط اكبر على الأصوليين، ولكن محاولاتهم آلت الى الفشل بجهود الشيخ جعفر كاشف الغطاء، أحد تلامذة العلامة البهبهاني.

(٣٢)

الحوزة العلمية والحركتين الإخبارية والأصولية

جوانا دي غروت

كاتب هذه المقالة هي الدكتورة جوانا دي غروت؛ أستاذة التاريخ في جامعة يورك في إنكلترا. وقد تخصّصت في التاريخ الإيراني، وبالأخص تاريخ إيران في القرنين الثامن عشر والتاسع عشر. وعادة ما تعكف في كتاباتها وتحقيقاتها على دراسة وتحليل التغييرات السياسية والاجتماعية والثقافية في إيران.

لقد وردت هذه المقالة بعنوان: A story of distinctive institutions and vested interests، وهي قسم من الفصل الثالث من كتاب: الدين، الثقافة والسياسة في إيران من القاجارية إلى الخمينية، وهوية الكتاب الأصلي هو:

De Groot Joanna, Religion, Culture and Politics in Iran: From the Qajars to Khomeini, IB Tauris, ٢٠٠٧.

تناولت هذه المقالة دراسة بعض المؤسّسات الخاصّة لدى الشيعة؛ كرجال الدين الشيعة، والمؤسّسات التابعة لهم وللمرجعية الشيعية، وذلك من منطلق تاريخي واجتماعي، كما شملت دراستها هذه المدارس والحوزات العلمية وأماكن الزيارة والأوقاف؛ كونها من

المؤسّسات التي تركت أثراً خاصّاً في الفترة المعاصرة.

كذلك بحثت ـ ضمن تعريفها للبازار ـ علاقة السوق بالعلماء ورجال الدين في القرنين الثامن عشر والتاسع عشر، كما تناولت المؤلفة عند تعريفها بمؤسّسة المرجعية: الحركة الإخبارية والأصولية، وأشارت إلى بعض ما قام به الوحيد البهبهاني في القضاء على الاتجاه الإخباري في الحوزة العلمية. وقد تعرّضت الكاتبة ـ كسائر المحققين الغربيين المعاصرين ـ إلى بيان بعض العوامل، بالإضافة إلى إشارتها في بعض الموارد إلى القسوة والقمع الذي مارسه الوحيد البهبهاني بحقّ خصومه، واستفادت في إثبات ذلك من إرساله تهديدات لرموز الإخباريين في كلّ من: أصفهان وكرمان وتبريز وقزوين.

لقد اعترض بعض المحلّلين على استخدام البهبهاني للقوّة في مواجهة خصومه، معتبرين أنّه لا يمكن الاستفادة من هذه القدرات في أي مورد أبداً. لكن بعضاً آخر من المحقّقين؛ كالدكتورة دي غروت، اعتبر أنّ استخدام القوّة في هذا المورد بالذات أمر ضروري لمواجهة هذا الاتجاه؛ لأن الإخباريين أنفسهم ـ وبالأخصّ محمد الإخباري ـ قد استخدموا القوّة في تثبيت فكرهم، وعملوا على نشر هذا الاتجاه من خلال إرهاب الآخرين وتهديدهم، بل ومحوهم من الوجود. لذا كان لزاماً على زعماء الحركة الأصولية أن ينظّموا جيشاً عسكرياً للعمل على حفظ النظام والأمن والقانون في المجتمع.

(٣٣)

ولاية الفقيه في فقه الإمامية

عبد العزيز ساتشدينا

يقدّم كاتب هذه المقالة عبد العزيز ساتشدينا مسألة السلطان العادل أو ولاية الفقيه العامة على أنّها إحدى النتائج الهامة للأصولية. الدكتور عبد العزيز ساتشدينا هو أستاذ الدراسات الدينية في جامعة فرجينيا، وقد شملت أعماله الانتشار الواسع للتحقيقات المرتبطة بالإسلام المعاصر. وقد اهتم بموارد عديدة، منها: الإسلام السياسي، حلّ النزاعات السياسية بواسطة تحليل السنن القضائية في الإسلام، الأصول الإسلامية للدين والتعدّدية السياسية وحقوق الإنسان في الشرق الأوسط وباكستان وأفريقيا الشرقية. كما كتب العديد من المقالات حول المسلمين الشباب، الفلسفة السياسية في الإسلام، رأي الإسلام في الاستنساخ، ومسائل مرتبطة بالربا في الإسلام، وبالإيمان والقانون في الإسلام.

هذه المقالة عبارة عن قسم من مقدمة كتاب: «السلطان العادل عند الشيعة: ولاية الفقيه العامة في فقه الإمامية»، وقد نشر باللغة الإنكليزية بالعنوان التالي:

Sachedina, Abdulaziz Abdulhussein, The just ruler (al-sultān al-

ādil) in Shaiite Islam: The comprehensive authority of the jurist in Imamite jurisprudence, Oxford University Press (New York), ١٩٨٨.

لقد أورد الكاتب تحت عنوان «السلطان العادل» بحث نيابة الفقهاء الشيعة وولايتهم وقيادتهم بناء على فقه الإمامية؛ حيث يعرض في البداية تاريخاً مختصراً عن مراحل فقه الإمامية، ثم يطرح بحث ولاية الفقيه في العصر الحديث. يعتبر المؤلف في هذا القسم بأنّ التدوين والاستفادة من علم الأصول هما الأساس في التحوّل الذي شهده الفقه الشيعي، ويشير في هذا الصدد إلى دور البهبهاني في ذلك. كما يبيّن بشكل مختصر التحوّلات التي أحدثها السجال الذي دار بين الأصوليين والإخباريين.

لقد طرح النراقي ـ تلميذ العلامة البهبهاني ـ موضوع ولاية الفقيه كما هي عليه اليوم، وعمل على تحليل الأبعاد المترتبة عليها، حيث يرى بأنّ أحد نتائج غلبة الاتجاه الأصولي على الاتجاه الإخباري هو تقوية شوكة الفقهاء وعلماء الدين الشيعة. ومن الطبيعي أن تؤدّي قوّة الفقهاء وتسلّطهم إلى ولاية الفقيه؛ أي سلطة وحكومة الفقيه على المجتمع الشيعي.

وقد سعى الكاتب أن يربط بين فكر العلامة البهبهاني والاتجاه الأصولي وبين ولاية الفقيه.

(٣٤)

السلطة السياسية لعلماء الدين الإمامية في إيران

منصور معدل

كاتب هذه المقالة هو الدكتور منصور معتدل؛ أستاذ ومحقّق إيراني في جامعة ميشيغان في أمريكا، وكان قد تخرّج من جامعة كولومبيا.

وقد ألّف في مجال تاريخ وسياسة إيران، وأيضاً في تاريخ الأحداث الإسلامية. وعنوان هذه المقالة هو: The Political Power of the Shi'I Ulama in Iran

وهي قسم من مقالة «المجتمعات الإسلامية الشيعية» والتي نشرت في مجلات أمريكية. يعكف المؤلّف على دراسة الأماكن الهامّة لاجتماع الشيعة في العالم؛ كإيران والعراق، وكذا يبحث في علاقة الشيعة بالسنّة. ويتناول في جزء من المقالة تحليل السلطة السياسية لعلماء الشيعة في إيران في العهد القاجاري، ويرى أنّ سلطة العلماء في تلك الحقبة تعود إلى غلبة الفكر الأصولي الذي قاده الوحيد البهبهاني في مواجهة الإخبارية، ومن هنا يحاول التعريف بما جرى من أحداث بين الإخباريين والأصوليين في العهد القاجاري، ويشير إلى أثر الجهد الذي بذله الوحيد البهبهاني في القضاء على الاتجاه الإخباري في الحوزات العلمية؛ إذ استفرغ البهبهاني تمام وسعه في مواجهة

الاتجاهين الإخباري والصوفي، وأصدر حكماً بتكفير أتباعهما. وقد استند الدكتور معتدل إلى كتابات بعض المحققين؛ من قبيل: نيكي كدي وحامد ألكار، في إطلاق صفة «قاتل الصوفيين» على البهبهاني.

لم يكن يرى الإخباريون أي مؤسسة لعلماء الدين، بل كانوا يرفضون أي عملية تنظيم للحوزات العلمية، ومن الطبيعي أنه عندما يُفقد التنظيم، سوف تنتفي معه القدرة والسلطة؛ باعتبار أنّ الإخباريين يرون بأنّ كل فرد من أفراد الشيعة مكلّف باتّباع المعصوم عليه السلام وتقليده مباشرة وبلا واسطة، وأنّ تقليد أي مجتهد آخر حرام. في حين يرى الأصوليون بأنّ الشيعة ينبغي أن يكونوا إما: مجتهدين أو مقلّدين. وبما أنّ للمجتهدين تخصّص بالقرآن والحديث وسائر النصوص الدينية، فبإمكانهم استنباط الأحكام التي يحتاجون إليها من هذه المصادر، وعلى الناس العوام أن يقلّدوهم فيها. ويلزم من هذا الفكر ضرورة أن يتم تنظيم علماء الدين في مؤسّسة مرجعية، تعمل ـ بالإضافة إلى بيان المسائل الشرعية ـ على القضاء بين الناس وجمع أموال الخمس والزكاة وصرفها. من هنا، بدأ الكاتب بتحليل الفكر الأصولي؛ كونه يشكّل الغطاء النظري لسلطة العلماء والمرجعية، ثم أشار فيما بعد إلى الآثار التي تركها هذا الفكر في المجتمع الشيعي.

(٣٥)

علوم الشيعة ومرجعيّتهم

زكريا هيرن

تتناول هذه المقالة الأسس التاريخية للاتجاهين الأصولي والإخباري، ولمدرسة الوحيد البهبهاني وآثاره والنتائج المترتبة على غلبة منهجه الأصولي.

الدكتور زكريا هيرن أستاذ في جامعة مري في ولاية كنتاكي في أمريكا. وهو متخصّص في شؤون الشرق الأوسط والعالم الإسلامي، ودارت أكثر دراساته حول تاريخ الشيعة وثقافة مجتمعهم. نال شهادة الدكتوراه في التاريخ من جامعة ولاية يوتا؛ إحدى جامعات الولايات المتحدة الأمريكية الواقعة في مدينة لوكان. وقد صدر عنه العديد من الكتابات حول الإسلام والشيعة؛ منها: الثورة الإسلامية: ظهور الأصولية الشيعية في العراق، الفقه الشيعي والقيادة: تأثير الشيخ مرتضى الأنصاري، الأقليات الدينية في الشرق الأوسط، وغيرها من الأبحاث.

وردت هذه المقالة كقسم من رسالة التخرج التي قدمها بالمشخصات التالية:

Heern, Zackery M, Usuli Shi'īsm: The Emergence of An Islamic Reform Movement in Early Modern Iraq and Iran, Diss, University of Utah, ٢٠١١.

حمل الفصل الرابع من هذه الرسالة عنوان: الشيعة الأصوليين: ظهور الحركة الإصلاحية الإسلامية في العراق وإيران. وتناول في جزء من هذا الفصل هذه المقالة التي بين يديك. وقد أشار في هذا الفصل إلى المصادر الثلاثة للعلوم الشيعية، كما تناول فيه سير الأحداث منذ القرون الأولى للدعوة الإسلامية إلى عصر العلامة الوحيد البهبهاني، مبيّناً أسباب ظهور المدرسة الأصولية في عصره.

يهدف المؤلّف للحصول على إدراك واسع لأسباب نشوء علم الأصول على يدي العلامة البهبهاني وتلامذته، وما رافقه من تشكّل فكر شيعي جديد يتناسب مع هذا العلم. لقد سعى علماء الإسلام على امتداد التاريخ إلى الإجابة على هذا السؤال، وهو: كيف يمكن الوصول إلى علم مطمئن في ظلّ غياب النبي الأكرم والأئمّة عليهم الصلاة والسلام؟ وكان لهذا السؤال أثر كبير في الكثير من المباحث العقلية في الإسلام. لكن أجاب العلماء الشيعة على هذا السؤال بالرجوع إلى المصادر الثلاثة: النصوص الدينية (النقل؛ القرآن والحديث)، التفسير العقلاني (العقل)، والكشف عن الحقائق عبر السير والسلوك القلبي (الكشف الشهودي).

ثم يشرع المؤلف ببيان هذه المصادر الثلاثة، ويسعى في نهاية الفصل الخامس لأن يقدّم رؤية تاريخية لكيفية تشكّل الفكر الشيعي، فيقسّم التاريخ إلى عصور خمسة:

ـ العصر الأول: عصر الحديث (٧٠٠ إلى ١٠٠٠ م)، يبدأ من عصر

الإمام الباقر عليه السلام إلى الإمام الثاني عشر، حيث نشط في هذا العصر بيان الأئمة للأحاديث وتدوينها وضبطها، كما أثّر حضور الإمام الحيّ في الإجابة بشكل مباشر على أسئلة الناس.

ـ العصر الثاني: تأسيس مدرسة العقل (١٠٠٠ إلى ١٢٠٠ م) وهو العصر الذي برز فيه الشيخ المفيد وما بعده، وأثّر على نفوذ المدرسة الروائية والنقلية التي قادها أمثال الشيخ الصدوق.

ـ العصر الثالث: عصر العرفان والاجتهادات الجديدة (١٢٠٠ إلى ١٦٠٠ م)، وهو العصر الذي برز فيه أمثال ابن إدريس الحلّي ونصير الدين الطوسي والسيد حيدر الآملي والسيد محمد نور بخش والمحقق الحلّي.

ـ العصر الرابع: الاتجاه الإخباري ومدرسة أصفهان (١٦٠٠ إلى ١٨٠٠م)، وهو عصر برز فيه علماء كـ: محمد أمين الأستر آبادي، ومحمد تقي المجلسي والشيخية، كما أدى إلى ظهور العلامة الوحيد البهبهاني وتلامذته، والشيخ يوسف البحراني وتلامذته.

ـ العصر الخامس: إحياء علم الأصول والشيخية (١٨٠٠ إلى الوقت الحاضر)

لقد تناول المؤلف في الفصول الثلاثة الأولى السير التاريخي للأحداث إلى عصر الوحيد البهبهاني، بينما تناول في الفصلين الرابع والخامس فكر الوحيد والمنهج الأصولي، ومحاولات الإخباريين في مواجهتهم.

ولا يخفى أنّ تاريخ تطوّر الفكر الشيعي قُسّم بتقسيمات مختلفة من قبل محقّقين ومؤلّفين مختلفين، لكن انصبّ اهتمام الدكتور هيرن في هذا التقسيم على الأحداث التي جرت بين الإخباريين والأصوليين.

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الهرمنيوطيقا وتفسير لغتي البهبهاني والبحراني

روبرت غليف

يبحث روبرت غليف في هذه المقالة حول الاختلاف الموجود بين الوحيد البهبهاني والشيخ يوسف البحراني في خصوص جانب الهرمنيوطيقا. وهي قسم من كتاب: «الشك غير القابل للاجتناب: نظريتان في الفقه الشيعي»، وعنوانه الأصلي باللغة الإنكليزية:

Gleave, Robert, Inevitable Doubt: Two Theories of Shī'ī Jurisprudence, Brill, ٢٠٠٠

وأما عنوان المقالة الأصلي فهو:

Linguistic Interpretation: Bahrani's and bihbahani's

شغل البروفسور غليف منصب أستاذ ورئيس المؤسسة العربية والدراسات الإسلامية في جامعة أكستر في لندن، وعمل بين سنتي (١٩٨٩ ـ ٢٠٠١ م) كمدرّس ومحقّق في مجال الدراسات الإسلامية والعربية في جامعات: بريستول واكستر ومنشستر ولنكشاير ولستر وويلز وجامعة متروبوليتن منشستر. وقد دوّن العديد من الكتب والمقالات في العلوم الشيعية والفقه وأصول الفقه عند الإمامية، نذكر بعضاً منها: «الشك غير القابل للاجتناب: نظريتان في الفقه الشيعي»، ليدن، ٢٠٠٠؛ «الدين والمجتمع في إيران في العهد القاجاري»، لندن،

٢٠٠٤ م؛ «الفقه الإسلامي: آراء ورسوم»، بمساعدة اي. كرملي، لندن، ١٩٩٧ م؛ «إجازة (رواية ونقل الحديث) يوسف البحراني للسيد محمد مهدي بحر العلوم»؛ «السجال الإخباري الأصولي في أدبيات الطبقات: تحليل لحياة يوسف البحراني ومحمد باقر البهبهاني»؛ «تفاسير الشيعة وتفسير الآية ٢٤ من سورة النساء»؛ «زواج النساء الفاطميات: نظرية فقهية وحقوقية في الفقه الشيعي»؛ «مباحثات الشيعة المعاصرين حول خبر الواحد: الصدر، الخميني والخوئي»؛ «التحسّس من الإخباريين بين العلماء القاجار: تحقيق حول محمد باقر الخوانساري»؛ «أصول الفقه عند الإخباريين والعدالة الاجتماعية عند يوسف بن أحمد البحراني».

نال روبرت غليف سنة ٢٠٠٩ م جائزة كتاب السنة من وزارة الثقافة والإرشاد في إيران، وذلك لتدوينه كتاب: «الإسلام النصوصي: تاريخ وعقائد المنهج الإخباري الشيعي». وكان هذا الكتاب قد نشر سنة ٢٠٠٧ م من قبل جامعة بوستن، وقد أعيد طبعه مرتين حتى الآن بعد تقويمه وتنقيحه. والعنوان الأصلي للكتاب باللغة الإنكليزية:

Scripturalist Islam: The History and Doctrines of the Akhbari School of Shii Thought

لقد عرض غليف في هذا الكتاب حاصل عشر سنوات من التحقيق الدؤوب الذي بذله حول المنهج الإخباري. وتناول في قسم منه كيفية تشكّل الاتجاه الإخباري في العهد الصفوي من خلال الاعتماد على شخصية محورية فيه هو الملا محمد أمين الاستر آبادي. وقد دوّن غليف كتابه هذا من عشرة فصول وثلاثة محلقات؛ تناول في الفصل

الأول منه تحوّل فقه الإمامية من عصر الغيبة الصغرى إلى أيام العلامة الحلّي من خلال حصول تحوّل في أصول الفقه الشيعي. ثم أشار إلى التغيّرات الأصولية التي جرت وموقف العلماء الإخباريين على هذه التغيرات. وقد خصّص الفصل الثاني للبحث في حياة محمد أمين زين الاستر آبادي، وفي الفصلين الثالث والرابع بحث في الآراء الأصولية والكلامية للأستر آبادي، وفي الفصل الخامس أشار إلى انتشار المنهج الإخباري بعد تدوين الاستر آبادي كتابه «الفوائد المدنية»، بالإضافة إلى البحث عن سائر الموارد المتعلقة به، وفي الفصل السادس تعرّض للنزاع الذي دار بين الإخباريين والأصوليين، والنقود التي وجهّها كلٌ منهما إلى الطرف الآخر، وقد دارت هذه النزاعات حول محور بعض الأشخاص؛ أمثال الشيخ صالح بن عبد الله السماهيجي والشيخ يوسف البحراني من طرف الإخباريين، واستمرار الدفاع عن المنهج الإخباري من قبل بعض العلماء؛ أمثال حسين الكركي مؤلف كتاب هداية الأبرار. كما عمل في هذا الفصل على بيان موارد اختلاف الإخباريين والأصوليين عبر تحقيق النصوص الإخبارية.

لكن من أهم إبداعات غليف في هذا الكتاب هو العمل على تحليل المباحث اللغوية وتفسير النصوص والألسنية، حيث استند علماء كلا المنهجين على نصوص حديثية أو قرآنية واحدة، وحاولوا فهم مراد الشارع من خلال تلك النصوص، معتبرين أنّ هذه الطريقة هي المثلى في الوصول إلى مقصود الشارع ومراده. ولهذا السبب كان للإخباريين

نظر في المواضيع الثلاثة التالية:

١. خصوصيات النصّ المطلوب والمقبول، ٢. طريقة قراءة النص، ٣. طريقة فهم النص.

كما قام الأصوليون في القسم الأول من علم أصول الفقه بتخصيصه بمباحث الألفاظ والمفاهيم والأوامر والنواهي، وسعوا في أن يخضعوا النص وفهم النص لقواعد واضحة، فعملوا على وضع ضوابط ومنطق صحيح لذلك.

وبعد أن قام غليف بدراسة كتب أصول الفقه الإمامية، وبالأخصّ كتب الوحيد البهبهاني، وقف على الاختلاف والتمايز بين مدرسة الوحيد وبين منهج البحراني، ثم عمل على تحليلها، والموارد التي وقف عليها هي:

مراد ومقاصد كاتب النص، القرائن الحالية والمقالية وأثرها في الكشف عن مراد الشارع، الدلالة اللفظية، المفهوم المخالف والمفهوم الموافق، تنقيح المناط، دلالة الإيماء والإشارة واختلافهما عن دلالة النطق، واختلاف هذه عن دلالة الكتابة، دلالة المنطوق والمفهوم، مفهوم الشرط ومقدّمات الواجب، الأمر والنهي، الصيغة والهيأة، الحقيقة والمجاز، الحقيقة الشرعية والحقيقة اللغوية، الاشتراك اللفظي، كلام الشارع وكلام الناس العاديين، الاشتراك، التخصيص، العام والخاص، التبادر والمتبادر.

لم يتّبع الإخباريون ـ ومنهم الشيخ يوسف البحراني والملا أمين

الاستر آبادي ـ منطقاً خاصّاً ومنهجاً واضحاً في فهم النصّ وتفسيره، ونظرياتهم في هذا المجال قليلة جداً وبسيطة، خلافاً للأصوليين ـ ومنهم البهبهاني ـ إذ لديهم نظريّات عمرها ألف سنة.

وقد بحث غليف آراء كلا الاتجاهين بدقّة كبيرة، وعرض زعماءهما، وبحث ذلك بالاعتماد على مصادرهم المعتبرة.

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approach the sources: it is a prerequisite that the would-be exegete have a thorough knowledge of the Arabic language (*'urfī* and *lughawī*). That at times such exegesis does not bring certainty as to the meaning of a text is problematic for Bahrānī, whilst the inevitability of uncertainty over the texts' meaning causes Bihbahānī little concern, since, from an epistemological perspective, opinion which is less than certain is acceptable.

to classification, in accordance with the principle of *al-barā'a al-asliyya.*[1] Since *al-barā'a* produces *zannī* results, one is left to presume that *mafhūm al-sifa,* for Bihbahānī, is acceptable if used to produce a *mujtahid's* opinion, but that it does not produce certainty.

The counter implication, *mafhūm al-laqab,* is based on a name given in the text. For example, "Give this to Zayd" means, do not give it to anyone else. This, Bihbaharu states, is even weaker *(ad'af)* than *mafhūm al-sifa:* "that a thing is proven does not [necessarily] negate that which differs from it".[2] A comment which could be applied to counter-implication generally.

From the above it is clear that Bihbahānī's account of linguistic exegesis, though fuller than Bahrānī's, is also less than comprehensive. As in Bahrānī's Prologues, topics found in other works of legal theory are either marginalised or ignored. The tendency appears to be to discuss debatable or controversial elements only. The result is a rather patchy description which the reader can only understand after a knowledge of the tradition in which Bihbahānī is writing has been obtained.

Conclusion

A comparison of the conclusions reached by both scholars elicits the general view that Bihbahānī is much more sanguine about the possibility of these interpretative principles producing results which may be of use to the jurist. Furthermore, the texts available for exegesis are expanded in one sense by his acceptance of the possibility of interpreting the Qur'ān and the Surma directly. For Bahrānī', a distinction is clearly made between these two sources and the *akhbār.* Only the latter can be understood, the meaning of the former sources is, essentially, unobtainable without the *akhbār.*

By admitting that it is possible for someone with knowledge of the "speech of the Arabs" to understand the Qur'ān, Bihbahānī is, in effect, rejecting the category of *al-haqā'iq al-shar'iyya* proposed by Bahrānī. What is dear, is that the techniques of linguistic exegesis for both scholars are entirely congruent with their conclusions elsewhere. For Bahrānī, the *akhbār* have a central exegetical role in the interpretation of the Qur'ān and Sunna, and this is reinforced by a distinction between the language of the former and the latter. When the language of the *akhbār* proves too difficult to comprehend with certainty, he recommends caution *(ihtiyāt).* Bihbahānī places no such emphasis on the *akhbār,* and hence has no use for the *shar'ī/urfī* (or *shar'ī/lughawī)* distinction. However, this does not mean that any person can

1. See above, p. 121-123.
2. Bihbahānī, *FH,* p. 185.

l) if Zayd is kind to you *(shmt)*

2) give him a dirham *(mashrūt)*

The counter-implication is "If Zayd is not kind to you, do not give him a dirham", and appears to be valid. However, for a counterimplication to be valid, the *shart* must be the only condition of the *mashrūt* The counter-implication in the following example is invalid:

1) if the water is found in a large amount (known as *kurr,* equivalent to 5 ass loads) *(shart)*

2) then it is prevented from being ritually defiled *(mashrūt)*

The counter-implication is "If the water is not found in a large amount, it is not prevented from being ritually defiled". This is invalid because water can be prevented from being ritually defiled by a number of means (such as it being running water), of which being found in the amount known as *kurr* is only one. The condition is valid, but the counter-implication is not because the *dhart* is not the only means of achieving the *mashrūt.* The crucial point is whether the speaker (in the case of the Shari'a, this is the Lawgiver) wishes to convey that the *shart* is the only means whereby the *mashrūt* might be effected. If this is the case, then the condition becomes general *('umum).* If it is not the case, and there are a number of possible conditions *(shurūt),* the counter-implication is invalid.

Unfortunately, Bihbahānī does not explain how one might discover whether the speaker intends the condition to be solitary (termed *fā'ida* by Bihbahānī), and hence the means of ensuring that *mafhūm al-shart* is accurately employed are unclear.

Bihbahānī is particularly circumspect about the use of counterimplication on the basis of an adjective (adjectival counter-implication or *mafhūm al-sifa).* The classic example, used by Bihbahānī (as by those before him), concerns the Prophetic statement *Zakāt* is due on free-roaming sheep" (found in a number of variants). If one accepts *mafhūm al-sifa,* one could argue that *zakāt* is not, therefore, due on domesticated sheep *(al-glanam al-ma'lūfa).* One must be certain that the Prophet's intention was to convey the idea that *zakāt* was only due on free-roaming sheep for the counter-implication to be valid. This certainty can only be gained by finding a report in which the Lawgiver said that *zakāt* was not due on domesticated sheep. In the event of such a report being unforthcoming, one has to content oneself with the lack of such a report, and whether this is sufficient seems a moot point. Bihbahānī appears more optimistic about the potential of this counter-implication than Bahrānī, because the original state of anything *(al-asl)* is that it is not subject

The meaning of *mafhūm* being a proof is that what is said has an indieatery function and ruling, whilst what is construed *(mafhūm)* has another indicatory function and another ruling. [*FH,* 185]

By this, Bihbahānī means that what is understood from the text is not always explicit in the text, but must be drawn out of it through a process of reasoning. The proponent of implication is, then, vulnerable to the accusation of "deviation from that indicated in the text", also termed *al-qiyās al-fāsid* (illegitimate *qiyās)* in FH17.[1] This is a criticism Bihbahānī is anxious to avoid, whilst maintaining the validity of some types of *mqfhūm.*

He attempts to escape such a condemnation by a discrete examination of each type of implication, considering some valid, some debatable and others weak. By using this discriminating approach to implication, Bihbahānī hopes to present himself as carefully testing each type of implication before accepting its validity.

First, we should note that *mafhūm al-muwāfaqa* is accepted as fully valid and operational: "There is no doubt as to its probative force", says Bihbahānī.[2] The other valid counter-implications are listed and include those types of counter-implication *(mafhūm al-mukālafa)* which delimit extent *(ghāya),* number *('adad)* and cause *('ilia).*

Three other types of implications are afforded greater comment.

These are:

a) *mqfhūm al-shart* (conditional counter-implication)

b) *mafhūm al-sifa* (adjectival counter-implication)

c) *mafhūm al-laqab* (nominal counter-implication)

Counter-implications, as these are, work in such a manner that the implied meaning is congruent with the explicit meaning, but concerns what is excluded from the original statement. Hence, if one accepts counter implication, one accepts that one is able to say something about what is not explicitly mentioned in the text.

Mqfhum al-shart, it will be recalled, was the only type of counterimplication accepted by Bahrānī.[3] His evidence for this was its explicit use by the Imams. For Bihbahanl, however, more explanation is needed: he proceeds first by defining a conditional sentence as "that which, when the condition *(shart)* is negated, the conditioned item *(mashrūt)* is also negated". Hence the sentence "Give Zayd a dirham if he is kind to you" can be divided into:

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1. See Bihbahānī, *FH*, p. 185.
2. *Ibid.*, p. 186. Tills type of implication is, however, treated in the concluding paragraphs of Bihbahānī's chapter.
3. See above, p. 153.

two commands have no exegetical relationship (and hence no *taqyīd).* They refer to different areas of the law. In the first, either a believing or unbelieving slave can be freed as penance, in the latter, only a Muslim slave will suffice. For *taqyīd* to function, the two rulings must have some legal connection.

Bihbahānī takes another example, but this time of effective *taqyīd.* If at one point a ruling is given "If you perform *zihār* (a discouraged type of divorce), then free a slave", and later a ruling is given "If you perform *zihār,* free a Muslim slave" one can deduce that:

a) One does not have to free two slaves, one of any kind and one Muslim. The second is clearly a *muqayyad* of the first.

b) One must free only one slave, who must be a Muslim.

How does one know this? Because there is an obvious legal connection between the rulings; the *taklīf* is the same. Legal connection is, then, a condition of effective *taqyid* occurring. In such cases, the *muqayyad* is, Bihbahānī says, stronger than the *muilaq,* since it contains the total data needed to formulate a ruling, whilst the *mutlaq* is incomplete. However, if there is any doubt as to whether or not the *taklīf* is the same, one must treat the two injunctions as separate commands, without an exegetical relationship. Unfortunately, Bihbahānī does not provide a list of the means of establishing a legal connection.

Bihbahānī's coverage of the *'āmm:khāss/mutlaq:muqayyad* topic is hardly comprehensive, and in the absence of a section on this topic in Bahrānī's Prologues, one is unable to determine with precision whether Bahrānī's position differs significantly.[1] Considering the importance of the topic, particularly in the resolution of conflicting *akhbār,* it is surprising that it does not receive greater coverage. This lack of coverage is, perhaps, an indication that this topic was not one of disagreement between Akhbārīs and Usulis, and in the polemic texts of Bahrānī and Bihbahānī, areas of agreement are always marginalised.

Implications

Bihbahānī's thoughts on implication are limited to what Weiss has termed "construed implication" *(dalālat al-mafhūm).*[2] Bihbahānī does not discuss the *dalālat al-mantūq* (as Bahrānī did), suggesting that they are either unimportant for the law or uncontroversial. The definition of construed implication found in FH17 is:

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1. See above, note 37, for a brief mention of this topic.
2. See above. Weiss, *God's Law,* p. 482.

the kind, and the definite article is designed to distinguish and show [the kind in general]. The literal meaning is the individual generic kind. [*FH,* 190]

The more specific use of the definite singular (such as "the King" in the above example) is in need of *qarā'in* to be understood. These can be elements of context *(siyāq),* such as time and place, which serve to situate the sentence, and make the specific referent of the definite singular explicit. However, these *qarā'in* serve to justify a non-literal meaning of this grammatical form; its assumed meaning in the absence of such *qarā'in* is general.

Having established, however briefly, the linguistic forms which designate the general, Bihbahānī, in FH19, explains the working of *takhsīs.* He begins by explaining that it is not permitted to act on the basis of a general expression until a search has been completed for a specific expression, which might restrict the general one. This search *(fahs)* can only be carried out by a *mujtahid,* and he has a number of issues to bear in mind. Bihbahānī lists them to remind the reader that *t.aJchN* is far from simple and the end result must be considered uncertain. The list includes:

a) Is the specifying element of the same certainty as the general element?

b) Are all the *rāwīs* (transmitters of the *khabar* in question) just in either the general or the specifying element?

c) Is the *matn* of the report the *rāwī's* own words, or the Imams'?

c) Is it possible that the specifying element is subject to *taqiyya?*[1]

e) Is it possible that there arc two contradictory specifying elements?

Takhsīs, then, is a *zannī* procedure, and can only be attempted by the adept, and even then the conclusion will be *zannī* in a large number of cases.[2]

The process of *taqyīd* is as problematic *as* that of *takhsīs.* In FJ12, entitled "The obligation to interpret the *mutlaq* according to the *muqayyad",* Bihbahānī criticises those who argue that a later revelation always qualifies an earlier one. For example, in Q58.3, the penance for making a futile oath is to free a slave. In Q4.92, the penance for erroneous killing is to free a Muslim slave. Some "mistaken" jurists have interpreted this latter verse as a sign that the slave in Q58.3 must be an unbelieving slave, otherwise the Lawgiver would have said "a believing or unbelieving slave."

Bihbahānī argues that such a conclusion *is* clearly fallacious because the

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1. See Bihbahānī, *FH,* p. 203-205.
2. For a more detailed discussion of takhsīs. see Zysow, "Economy of Certainty", p. 142-149.

b) How does one know that *takhsīs* has taken place?

The first of these is addressed in FH18 and FJ5; the second in FH19 and FJ12. Like most legal theorists, much of Bihbahānī's discussion is dedicated to the general expression, but much of what is said also applies to the unqualified expression.[1]

First, Bihbahānī simply lists words which an exegete should recognise as designating the general expression:

There is no dispute amongst [the scholars] that the plural [of a word), adorned with the definite article, signifies the general expression, just as is the case with an indefinite word in the context of negation, and the rest of the words [which indicate] the general such as "all", "whoever", "when", "whenever" and the like. [*FH,* 189]

When an exegete sees such words in a revelatory text, he is justified in presuming the ruling contained within them is general. The case of "an indefinite word in the context of negation" refers to the grammatical point, in Arabic, such that a general negation (such as "No man may enter my house") is intended, which is formed by the negative particle *(lā)* and the noun, in the singular without the definite article *(lā rqjul).*

There is, Bihbahānī claims, no debate about the words in this list bar one: the general designation of a singular definite noun, such as the word, "thief" in the phrase, "The thief, male and female, cut off their hands" [Q5.38]. How does one recognise that "the thief" here is general, whilst, for example, the word "King" in "the King said" [Ql2.54] is clearly specific, referring to a particular king? The grammatical forms in each example arc identical. Bihbahānī accepts that in many cases, context will make the meaning clear. However, both the specific and general understandings of a definite singular noun are possible. The issue for Bihbahānī is, which is a literal and which is a non-literal designation? In other words, which should one presume the definite singular to mean when there is no contextual evidence to support one or other interpretation?[2]

The truth is that [the definite singular noun) was originally designated to distinguish the generic kind, because the utterance of the singular designates

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1. For a discussion of *mutlaq* and *muqayyad*, see Kamali, *Principles*, p. 113-116. The concentration on the general.specific distinction rather than the qualificd.unqual¬ified distinction seems a feature of Amidi's presentation also, see Weiss, *God's Law*, p. 390.
2. This question-whether a singular definite article signifies the general form¬can be seen as a specific application of the debate over whether the linguistic forms of the general signify generality in a literal sense. See Weiss, *God's Law*, p. 401-406. For a discussion of the haqīqa:majāz. distinction after specialisation has occurred, see Zysow, "Economy of Certainty", p. l47-159.

refers to all members of a specified class. A specific expression *(khāss)* limits the applicability of the general expression.[1] For example, the expression "divorced women" in the verse, "Divorced women must observe three courses upon themselves" [Q2.228] is interpreted as general in intention, ie all divorced women are subject to this ruling. If there was no other relevant revelatory text, this ruling would stand and all divorced women would have to observe a waiting period of three menstrual cydes. However, in Q33.49 it states, "Oh believers, if you marry believing women and divorce them before you have touched them, then you should not count a period", This second verse shows that there is a restriction on the applicability of the first ruling. Divorced women who have not had a consummated marriage need not observe the three cycles. The second verse performs the act of specialisation (*takhsīs*) upon the first.

The unqualified expression refers to an expression which is not limited in any manner. The phrase, "Bring two witnesses amongst your men" [Q2.282] refers to the witnesses to a contract. The term witness is unqualified in that any two witnesses (it seems) will suffice. However, Q65.2 states that one should bring "two just witnesses" for a contract (in this case one of divorce). This second verse performs the act of qualification *(taqyīd)* on the first verse, meaning that the unqualified sense *(mutlaq)* has been restricted by the qualified sense of the second verse *(muqayyad)*. From this brief description one can see that, generally, *takhsīs* refers to exceptions to orders and *taqyīd* applies to adjectival qualifications.

That the processes of *takhsīs* and *taqyīd* were problematic is evidenced by the debate mentioned in Chapter Three, over whether a *khabar al-wāhid* report could perform *takhsīs* on a Qur'ānic dictum:

Bihbahānī, with his view on the range of permitted probative force accorded to texts, had faced the particular problem of whether equal authenticity was needed to perform *takhsīs* and *taqyīd*. For Bahrānī, of course, this was unproblematic since *khabar al-wāhid* were of equal probative force to the Qur'ān itself.[2] The issue here was the relative probative force of the two elements of the processes of *takhsīs* and *taqyīd*.

Two other issues emerge as important for Bihbahānī:

a) What are the linguistic indicators of the general expression?

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1. For a general account of 'āmm:khāss and the related topic of *mutlaq:muqayyad*, see Zysow, "Economy of Certainty", p. 126-152; Kamali, Principles, p. 104-113. For a full exposition of Āmidī's view (which is representative generally of Shafici thought), see Weiss, *God's Law*, p. 389-446; for Shī'ī legal theory, see Calder, "Structure of Authority", p. 179-182.
2. See above, p. 113-114 .

discussed by Bahrānī: *muqaddimāt al-wājib* and *iltiziām*[1]. His view is surprisingly conservative on these matters, stating that the proofs for them are less than complete *(ghayr tāmm).* He does not seem to reject them completely though; their application leads to (possibly acceptable) *zannī* conclusions.

In these conclusions, in his criticism of those who reduce imperatives to recommendations, and in his rejection of the view that an obligation is a non-literal interpretation, one sees, perhaps, the impact of the Akhbārī (and specifically Bahrānī's) critique on Bihbahānī. For both Bahrānī and Bihbahānī, Sāhib al-Ma'ālim's position is open to dispute, though in Bahrānī's account, the criticism is more vehement.

On other matters relating to commands, Bihbahānī's discussion is brief. In FJ22 he states (rather than proves) that an imperative does not necessarily indicate immediate performance *('alā al-fawr),* but it needs evidence *(qarīna)* before immediate performance can be deduced. In FJ3, he states that a limit indicated in a command is not assumed to be included as part of the command (ie "Fast until night" [Q2. 178] means fast until nightfall and not after that time), however, it is possible for the limit to be included, if there are *qarīna* to support such an interpretation. This makes the latter interpretation *majāz.* Conclusions such as these indicate how Bihbahānī's views on the meanings of such orders are less cautious than those of Bahranl, Though Bahrānī does not state it explicitly, his theory of *ihtiyāt* would seem to commit him to the view that an imperative implies immediate performance (and *qarā'in* are required for it to mean anything else) and that a limit is included in the command (unless there are *qarā'in* to prove otherwise). In this way the law can be fulfilled with certainty.

General and Unqualified Expressions

Amongst the means of reconciling contradictory elements of revelation mentioned by both Bahrānī and Bihbahānī were the processes of *takhsīs* and *taqyīd*-that is, treating one text as general and the other as specific (or one unqualified and the other qualified).[2] The manner in which this might effectively eliminate a contradiction is part of a more comprehensive understanding of the relationships between rules and exceptions to those rules. Neither Bahrānī nor Bihbahānī give definitions of the terms associated with these topics *('amm:khass, mutlaq:muqayyad),* presuming the reader has prior knowledge of their importance. A general expression *('āmm)* is one that

1. See above, p. 153-154.
2. See above, p. 113-114 and p. 136-137.

meaning of an imperative, but, on reflection, obligation makes up a particular, possible, implied meaning of an imperative. To inte.rpret an imperative as an obligation is not a diversion from its literal meaning, but a confirmation of a particular, possible, implied rneaning. This view of the imperative form differs from that of Bahrānī, since for him an imperative form either literally means an obligation, or caution dictates that it be treated as such. For Bihbahānī, one of the possible implications of the imperative is obligation. Both Bahrānī and Bihbahānī, however, would refute the view of the unnamed scholar that obligation is somehow a non-literal meaning of the imperative. Unfortunately, exactly how one is to recognise the obligation-implication over the recommended-implication is undear in *FH* and *FJ.* It appears to be the task of the *mujtahid* to deduce which possible implied meaning of the imperative form (be it obligation, recommendation or permission) is meant on a particular occasion--and hence one is forced to conclude that such a deductmn would be the *mujtahid's* own opinion.

Bihbahānī next turns his attention to the views of Sāhib al-Ma'ālim (Hasan b. Shahīd II), who the reader will recall, was heavily criticised by Bahrānī. Sāhib al-Ma'ālim's view, according to Bihbahānī, is that most of the imperatives used by the Imams are not obligations, but must be treated as recommendations, since a higher degree of confidence in the soundness of the *isnāds (wuthūq)* is needed to interpret them as obligations.[1] This view is criticised by Bihbahānī on slightly different grounds to those evident in Bahrānī's criticism. Bihbahānī argues that merely because in some (perhaps many) cases a recommendation is a justified interpretation of an imperative in the *akhbār,* this does not establish a general presumption *(asl)* that the Imams' imperatives are only recommendations. Each imperative must be examined and assessed on its own merits.

Sāhib al-Dhakhīra (Muhammad Bāqir al-Sabzawārī (d. 1090/1679)) in a similar vein to Sāhib al-Ma'ālim, except that he allows an obligation to be derived from an imperative only if the community accepts it to be so. This view is also unacceptable to Bihbahānī, who maintains his position that although some of the imperatives in the *akhbār* might be seen as mere recommendations due to defective *isnāds,* this cannot be the general presumption.

In the final section, Bihbahānī briefly considers the two principles also

1. Whether or not Sāhib al-Ma'āim's views correspond to Bihbahānī's portrayal here is, of course, irrelevant. It seems clear to me that Bihbahānī is presenting Sāhiib al-Ma'ālim's position in a manner which will enhance his own argument. See Hasan b. Shahīd II, *Ma'ālim*, p. 65-74, especially p. 74.

The first two of these occupy the most space, implications being discussed in a single *fā'ida.*

Commands

Bahrānī, the reader will recall, included only a brief section on commands *(amr* and *nahy),* confining his discussion to whether or not an order implied an obligation (and prohibition, a proscription) in a literal manner. Bihbahānī's account, though less than comprehensive, certainly encompasses more than Bahrānī's rather selective presentation.

Bihbahānī's aim in FH 13 is to refute the position that the imperative means, in a literal manner, a request *(al-talab),* and that when scholars interpret an imperative as an obligation, they are using a (possibly unjustified) non-literal meaning.[1] This position, held by an unnamed scholar, is at the other extreme to that of Bahrānī, The unnamed scholar proposes that the meaning of an imperative is indeterminate in terms of legal classification. He argues that the immediate impression gained in a hearer's mind (ie *al-mutabādir),* when an imperative is heard, is a request (rather than an obligation), and this is an indication of its literal meaning.

Bihbahānī considers this depiction of the imperative to be inaccurate. He agrees that the immediate impression made on the mind *(al-mutabādir ilā. al-dhin)* is of a request and not an obligation *per se.* However, the immediate impression on a hearer's mind is more tha~ this-it is a "request in terms of a lack of satisfaction" *(al-talab bi'anwān 'adam al-ridā)* produced from the non-performance of the act (or in the case of a negative imperative, from the performance of the act). This does not mean that an obligation is necessarily a non-literal meaning of the imperative form. Rather an obligation is a particular possible implication (*mafhūm*) of the imperative form .. The use of the term *mafhūm* here is, the reader is left to presume, linked to the implications *(mafāhim)* discussed below.

To illustrate how the imperative contains an implication of obligation, Bihbahānī uses an analogy. The word "horse" immediately conjures up in the mind a single image *(sūra wāhida basīta).* Reason *('aql)* then divides this image up into its constituent parts (colour, size, form etc), but the constituent parts are not what is jmmediately understood by the word "horse"; they are merely a confirrnauon of a particular implication of the word "horse" *(misdāqu mafhūmin).* Hence a brown horse, for example, is not a non-literal understanding of the word "horse", but is a particular, possible implication of .the word "horse". In the same way, an obligation is not the immediate

1. For the secondary literature un this topic, see above, notes 29 and 31.

Before leaving the topic of the literal and non-literal meanings of words, it is worth considering Bihbahānī's views on concurrent appellation. Bahrānī argued that due to the conflicting indicators in this area, one cannot be sure that an appellation (eg wife-beater) applies to one who is not performing the action at a particular moment. This lack of certainty leads one to exercise *tawaqquf* and *ihtiyāt,* and stipulate the need for *qarā'in* in appellation-hence one assumes that the appellation is *mqjāz.*

Bihbahānī, like Bahrānī, considers there to be no dispute that an appellation applied to someone or something whilst in a particular state is a literal use of the word. As for when the person or item is not in that state, there are five positions:

l) that the non-concurrent appellation is *majāz;*

2) that there is no difference between the concurrent and non-con· current appellations: both are *haqīqa;*

3) that the appellation is such that, if its opposite does not arise after the appellation has been used, then it is literal. If not, it is nonliteral;

4) that if the appellation is one with temporal extension (such as "he is speaking"), then it is non-literal to say he is a speaker when he is not;

5) that if the appellation is one which has legal consequences (such as the appellation "murderer"), then the non-concurrent appellation is literal.

Bihbahānī appears not to take a position on the issue, as he ends FH35 with the sentence "on [this matter] there is dispute, so consider *(fa-ta'ammal)",* but an earlier statement expresses his opinion more decisively:

So know that an appellation, whenever it wavers between the concurrent or the non-concurrent, such as a fruit-bearing [tree] which bears fruit only after it has been called such, then the second [ie nonconcurrent appellation] is agreed to be non-literal. It is different from the literal meaning, and does not come into existence except through evidence *(qarīna).* [*FH,* 332]

Hence, practically, Bahrānī's and Bihbahānī's positions are not dissimilar, though they reach them via different routes. Bahrānī considers non-concurrent appellations to be non-literal, because that is the most cautious course of action, whilst Bihbahānī considers them to be non-literal in principle (though he offers no clear argumentation for this position, and seems unwilling to claim it explicitly).

The remaining sections of *FH* and *FJ* devoted to linguistic understanding fall into three main categories:

l) commands (awāmir:nawāhī)

2) general and specific expressions *('āmm:khās)*

3) implications *(mqfāhīm).*

tinguish the literal from the non-literal. He will cause much havoc in the law, and perhaps be unable to distinguish one case from another ... [*FJ*, 326]

The rules are as follows:

1) If the sentence in the revelatory text has an explanatory gloss, such as "the name of this is X", then it is clearly literal.

2) The meaning of a sentence or word which appears in the mind immediately is the literal. This does not imply that the literal meaning is necessarily the best interpretation, merely that this is one means of discovering the literal meaning. If such a literal meaning makes no sense, and this lack of sense also appears immediately in the mind, then a non-literal meaning must be found.[1]

3) If the statement cannot be negated without the statement becoming untrue, then it is literal; if not, it is non-literal. If one says "That man is a lion", one could negate the statement ("That man is not a lion"), and it would be a true statement. From this one knows that the meaning of lion is non-literal here, if this statement is to be considered true.

4) The literal meaning has "continuity" *(ittirād)* whilst the non-literal meaning does not. By this, I take Bihbahānī to mean that a non-literal meaning makes the hearer stop and think, whilst the literal meaning does not (ie for the literal meaning the conversation continues uninterrupted). For example, the sentences "Ask the village" and "Ask the carpet" differ. The first has continuity, whilst the latter does not. This might be considered an unfortunate example since one may wish to argue that "Ask the village" is non-literal (the village standing for the people). However, Bihbahānī (like Bahrānī) considers this to be a case of implication *(mafhūm)*. This is ellipsis, not metaphor. "Ask the village" docs not prevent understanding, whilst "Ask the carpet" docs. The latter can only be understood if a non-literal meaning is discovered (one could conjure up the idea that the carpet stands for a group of people, rather like "Ask the throne" might mean "Ask the king", rather than "Ask the king's chair").

These rules, basic as they are, are those recommended by Bihbahānī. Once a non-literal use has been identified (and there will inevitably be many of these), *qarā'in* will come into play to determine which non-literal meaning is intended. Unfortunately, Bihbahānī does not outline the means whereby one non-literal meaning might be determined in preference to another. This task, it appears, is left to the *muitahid's* own investigation. The preferred meaning of such texts will then be subject to the *mujtahid's* exegetical powers; he will produce his opinion as to their most likely meaning. Hence the intended meaning, in the majority of such cases, will be less than certain, resulting from the *mujtahid's* efforts (ie they will be *zannī)*.

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1. This is also a sign of the literal meaning for Bahrānī. See above, p. 157.

are not open to rational analysis (and hence, their possible *majāz* meanings cannot be assessed). "Purity" does not mean purity in its usual sense, and "impurity" similarly has a special meaning. Such terms cannot be investigated in the usual (rational) manner. This bar on rational investigation into the meaning of terms concerning ritual worship *('ibāda)* makes these meanings *"tawqīfi":*

Perhaps the intended meaning· of what one of the Sinless Ones said is legal [and not ordinary]. This occurs through a designation of the Lawgiver alone ... When the categorisation applies to matters of worship *('ibādāt)* they are *tawqīfi.* [*FJ*, 465]

I have more to say about the term *tawqīfī* in the next chapter,[1] but it suffices to say here that in the cases of *'ibādāt,* Bihbahānī accepts that the Lawgiver's use of language is not identical with ordinary use. There were times when the Lawgiver utilised words in a technical way. But it is important to recognise that these usages were not literal, but non-literal. In such cases, which Bihbahānī restricts to matters of worship, the meanings of words are not gained through rational analysis, or through an examination of customary usage. In such cases, the meanings are "given" or "instructed" and in this sense are inescapably non-rational in their designation. In technical terminology, they are *tawqīfi.* In terms of Bihbahānī's linguistic analysis, *tawqīfī* words are those which have a non-literal meaning, the *qarāin* of which cannot be discerned th.rough rational investigation or examination of customary use-the meanings must merely be learned. This seems nearest to Bahrānī's category of *al-haqā'iq alshar'ryya* or revelatory-literal uses, except that unlike in Bahrānī's analysis, the teaching of the meaning of such words does not seem restricted to the Imams. It can be effectively performed by the Prophet and even God himself. It is God, the Prophet and the Imams who define what they mean by words such as "purity" in the ritual context.

Since Bihbahānī has demonstrated to his satisfaction that God, the Prophet and the Imams use customary language, and that such customary language is full of understandable, but non-literal meanings (excepting those words associated with *'ibādāt),* distinguishing between literal and non-literal meanings of words in the revelatory texts becomes essential to the exegetical task. In FH34, Bihbahānī outlines four means whereby literal and non-literal meanings might be distinguished. These are termed "signs of the literal and non-literal" *('alamāt al-haqīqa wa'l-majāz).* The importance for the *mujtahid* of using these rules is stressed:

Whoever docs not have knowledge of *usūl al-fiqh* will be unable to dis

1. See below, p. 213-218. Bihbahānī's use of the term *'ibādāt* is specific also.

distinguishable non-literal meanings (one of which is the legal-literal meaning mentioned above). This leads him to conclude that there are a large number of *mqjāzāt* (non-literal usages) in the revelatory texts, and hence recognising and defining them becomes of great importance. The Lawgiver speaks our language, but he speaks it with all the possible ambiguities and non-literal meanings that we employ in our language usage.

The term Lawgiver in these discussions clearly means God and the Prophet, as evidenced by Bihbahānī's examples. The Imams are not considered Lawgivers as such, since theologically they were not permitted to provide new revelation, merely to explain previous revelations. They, too, spoke in ordinary language according to Bihbahānī, as he explains in FJ27, entitled "That the Imams used to speak in the manner of customary convention *('alā tarīqat al-muhāwarāt al-'urfiyya)*".

In this section he argues that the Imams, like God and the Prophet, did not use terminology in a strange and impenetrable manner. Rather they spoke in the manner of customary speech-at times this was literal and at other times non-literal. When they said that the blood of a woman's period is black, and that the blood of one about to start her period is yellow (as reported in the *akhbār),* they were clearly using black and yellow in a non-literal manner, referring to the special position held by menstrual blood in the laws of purity. In the same way, when the Imams said, "one who ignores prayer is an unbeliever", they did not mean this literally. They meant that ignoring prayer leads to unbelief, and hence should be treated as if it is unbelief One (like Bahrānī) who claims that in a statement such as this, unbeliever is being used in a special manner (ie a *haqīqa shar'iyya* manner), resigns himself to all sorts of exegetical problems as to how to discover this special meaning. The preferable course of action is to accept that the Imams, like God and the Prophet before them, used words in the common linguistic manner (includ ing the *mqjāz* mode) so that the community might understand the Shari'a clearly.

The argument for this position appears entirely practical. To commit oneself to any other exegetical assumption would, inevitably, lead to obscurity and make interpretation more problematic. There are, however, limits to this practical identification of the language of the revelatory texts with customary usage. Bihbahānī recognises that, at times, it is undoubtedly difficult for the non-literal meaning of a word, as used by the Lawgiver or the Imams, to be known with precision, since the *qarā'in* which might pinpoint the meaning have been lost. This is particularly the case in matters of ritual worship, for in these matters, the meaning of the Lawgiver's words

unnamed writer who "stresses that most of the language of the Arabs, and most of the language usages of the Lawgiver are non-literal ones *(majāzāt)*".[1]

From this (undemonstrated) assertion, it becomes clear that Bihbahānī is actually criticising Bahrānī"s position concerning legal-literal meaning *(al-haqā'iq al-shar'iyya)*.[2] Bihbahānī rejects, it seems, the category of legal-literal meanings which are distinct from customary (or linguistic) literal uses. His assertion is that the Lawgiver participates in the same linguistic system, with the same rules concerning literal and non-literal meaning, as ordinary language users. Hence, if one knows the rules for customary usage, one knows the rules for the language of the Lawgiver. This makes the task of interpretation somewhat easier for Bihbahānī, as there is no need to know two sets of literal meanings-one customary and one legal (revelatory), merely one set of literal meanings and a number of possible non-literal ones.

Bahrānī's linguistic system admitted that there was a prevalence of homonymity *(ishtirāk)*-for many words had (at least) two literal meanings, one legal and one literal. For Bihbahānī, this is unacceptable, it seems, on purely practical grounds: a system with widespread homonymity is much more difficult to interpret and comprehend than one with literal and non-literal meanings. For Bihbahānī, "nonliteral interpretation is better than homonymity" *(al-majāz khayr mill al-ishtirāk)* because the latter hinders the exegetical process. If a word, such as *khamr,* has two meanings (one customary and one revelatory), and both are literal meanings, then it becomes impossible to formulate the ruling concerning the prohibition of *khamr* in any meaningful sense:

> From what we have said, it is clear that the Lawgiver, by simply using *the* word *kāfir* or *nāsib* or *khamr* or others with a meaning other than their linguistic or common ones, [makes it] impossible for there to be a ruling, due to it being a new [and hence unknown] literal meaning. In the same way, it is not possible in any of the *ahkām* to give a ruling if there is homonymity *(ishtīrāk)*. [*FH,* 115-6]

Bahrānī, it will be recalled, was keen to separate revelatory language use from customary. Hence the word *salāt* had two literal meanings-one was customary (ie prayer) and one legal (ie prayer in the legal sense of the five daily prayers). For Bihbahant, it seems more practical (and practicality seems to be his only reason for arguing thus) to conceive of the word *salāt* as having one literal meaning (the customary one) and a number of

1. Bihbahanī, *FH*, p. 114.
2. See above, p. 155.

sunna) generally. Bihbahānī's position, as we shall see, is more sanguine with respect to the possibility of understanding God's word directly, and underlying this optimism is a general theory of the nature of everyday language and its relation to that of revelation.[1]

Bihbahant's thoughts are, once again, scattered throughout *FH* and *FJ,* but the general thrust is laid down in FH5, the aim of which is to refute two commonly held misconceptions:

1) that the Lawgiver's use of language *(istilāh al-shāri"')* precedes that of ordinary people, but is comprehensible to them. Amongst the evidence for this position is that valid contracts of sale include elements of the Lawgiver's terminology. For a contract of sale to be valid, it must be fully understood by both parties. Hence the parties must understand the Lawgiver's terminology, and it precedes the language use of the parties, but is comprehensible to them.

2) that the Lawgiver's language use is in some way unique and incomprehensible to the ordinary person. It can only be understood after studying the *qarāin* which indicate that God's intended meanings arc different from those found in ordinary language.

These two positions represent extremes and arc clearly mutually exclusive. The second seems close to that adopted by Bahrānī, where the *qarā'in* for the Lawgiver's particular use of language are located in the *akhbār* of the Imams.[2] The proponents of this position, though not named, arc held in particular contempt by Bihbahanī, as indicated by his rather disparaging description of them as "those with limited abilities in legal theory" *(al-qāsirūn fl usūl al-fiqh).*

The first position is brusquely dismissed-the Lawgiver's terminology clearly does not precede that of ordinary people. It is merely the case that the parties in a contract identify the meaning of the Lawgiver's terminology accurately, and this identification *(ta'yīn)* is the same for both of them. The example, then, does not support the opponent's position.

The second position deserves a more expansive refutation. This position, which seems close to that of Bahrānī, is incorrect because "the manner in which the Lawgiver uses expressions is the manner common amongst the people" *(tarīqa mukālamāt al-shāri' hiya al-tarīqa al-muta'ārafa bayn al-nās).* The "manner common amongst the people" is, Bihbahānī claims, full of non-literal *(majāz)* usage. Bihbahānī' concurs with the findings of an

1. This view marries with Bihbahānī's views on the probative force of the Qur'ān. See above, p. 60-66.

2. It should be noted that Bahrānī does not view the *akhbār* as containing *qarā'in* of *shar'ī* meaning, for *qarā'īn* are used only for *majāz* meaning, and *al-haqā'iq al¬shar'iyya* are, by definition, not majāz. See above, p. 155-158.

be utilised by the interpreter, but even there, his discussion could hardly be considered comprehensive.[1]

Bahrānī's discussion of implication in M3 is, as has been noted, dictated in structure, but not in its conclusions, by Shāfi'ī presentations of language. His reasoning in selecting the three topics of the Literal nature of commands and prohibitions, the literal usage of words by the Lawgiver and the condition of current performance in M7, 8 and 9 respectively, is less clear. It is possible that these are the only areas of the linguistic sciences *(al-'ulūm al-lughawiyya)* which he considers worthy of comment, or that they are the only areas in which his position deviates from that of the established Imāmī view. What is clear is that his conclusions appear as logical extensions of his legal theory, as described in the other Prologues. In M1-6, the central role of the Imamic word (as distilled in the collections of *akhbār*) in understanding the Quranic text is stressed. Such emphasis is also found in Bahrānī's account of linguistic hermeneutics. The epistemology of certainty, found particularly in his account of *ihtiyāt*, is employed also in Bahrānī's attitude towards the non-Literal interpretation of words. It is not the case that *mqjāz* meaning is impossible; it is merely that it must be established with certainty before it is permitted. Hence a command literally means an obligation and a negative command literally a prohibition until there is counterevidence.

Finally, the procedure of caution (*ihtiyāt*) to be used when certainty is not established, restricts the meaning of words to the literal, unless there is good reason to divert the meaning elsewhere. Hence descriptions (such as adulterer) are only designations of habitual states after *qarā'in* have been produced.

These discussions of language, though limited, only seem incongruous in the Prologues in terms of style. In content and conclusions, they show the same epistemological concern with establishing certainty in interpretation as previous Prologues have done concerning fulfilment of the law.

Bihbahānī's Hermeneutics

The assumption underlying much of Bahrānī's exposition of language use was that the language of, say, the Qur'ān was difficult to understand without the explanation in ordinary language provided by the *akhbār* of the Imams. This, it appears, applied not just to those elements of God's word (and possibly that of the Prophet also) which are traditionally viewed as problematic *(mutashabihāt),* but to all sections of the Qur'ān (and Prophetic

1. For example, the issue of general and specific (*'amm:khāss*) is discussed in the eleventh principle; for the functioning of these principles, see below, p. 232.

Bahrānī, unclear whether a believer has to be continuously confessing his belief for him to be literally termed *mu'min.* The result of this variety in appellation is confusion and dispute; Bahrānī's response to such uncertainty is characteristic:

The *akhbār* of the *ahl al-dhikr* [the Imams], indicate that it is obligatory to build legal rulings upon certainty and knowledge. When this is absent, [one] must rest upon the shore of caution (*ihtītāt*). [*H,* 1, 124]

Bahrānī, for some reason, seems reticent when it comes to expressing his own opinion in the Prologues, and refers the reader to the *al-Durat al-nqjqfiyya.* There one finds a more explicit statement:

The truth, in my opinion, is that it is necessary for the literal linguistic truth of a meaning that . . . it remain in the state that is the reason for its current, truthful appellation.[1]

This rather prolix statement implies that Bahraru's position, notwith standing his criticism of Astarābādī in the *Hadā'iq,* is the second of those outlined above. Caution (*ihtiyāt*) dictates, it seems, that one presume that all appellations require a condition of current performance to be considered literal. Though a non-literal *(majāz),* habitual designation is not impossible, it requires justificatory evidence (*qarā'in*). This exegetical principle makes the interpretative task more difficult in one sense, for when the Imams decree a course of action (say, punishment) in response to a sin (say, adultery), it must be demonstrated that they are using the words which describe the agent in a non-literal manner. Bahrānī dearly considers it to be possible in the majority of cases to discover the necessary evidence for such a demonstration.

Bahrānī's exposition of linguistic hermeneutics is selective and incomplete when compared *to* that found in other works of legal theory. Though his coverage of implication is comprehensive, his discussion of *haqīqa* and *majāz*, and of the functioning of language[2] generally, assumes a basic knowledge of both technical terminology and concepts on the reader's part. The style of these sections is laconic and the exposition dense and brief The style differs significantly from that in the other Prologues, where Bahrānī expresses himself in an expansive manner, explaining concepts and terms with which the reader may be unfamiliar. To be fair, some of the lacunae in his discussion are treated in M11, under the aegis of exegetical principles to

1. Bahrānī, Durar, p. 19.
2. The term *al-lugha* does not appear in the Prologues, though its adjectival form lughawi is found. The idea of a "primordial" linguistic system seems presumed throughout On the *lugha*, see the references in note 6 above.

between the adjectival and nominal use of the active (or indeed the passive) participle in an appellation. Bahrānī expresses the issue in rather convoluted, technical language:

Is it a condition [of an appellation being literal] that the reason for the description remains valid [at the time of designation] so that after the basis [of the appellation] has disappeared, then the [literal] usage disappears also, or is it not conditional, and it is literal without reference to a condition [of current performance]? [*H*, 1, 121]

This rather complex presentation of the issue owes much to the lexicographical tradition of Islamic scholarship, and the various positions outlined by Bahrānī focus on whether or not the condition of current performance is necessary for a description to be classified as literal. It is important to recognise that none of the groups mentioned subsequently dispute that one can call someone who regularly beats his wife, a wife-beater, or someone who has committed adultery, an adulterer. They merely dispute the mode (*baqīqa* or *majāz)* in which this designation occurs.

Bahrānī outlines four main positions, and four additional refinements of these four positions. I will spare the reader the refinements, and concentrate on the four main views:

1) Most Imamis and many Mu'tazilis argue that there is no condition of current performance for a *haqīqa* appellation. To call someone who beats his wife a wife-beater is still a literal designation, whether or not he is currently performing the action.

2) Most Ash'arīs, and, significantly, Muhammad Amīn al-Astarābādī, argue that there is a condition of current performance for an appellation to be *haqāqa.*

3) Some unnamed scholars distinguish between descriptions of tern •. porary validity (such as sitting or standing) and other descriptions (such as speaking and informing). For the former to be literal appellations there is a condition of current performance, but for the latter there are no conditions (an informant is an informant literally, even when he is not actually informing).

4) There are those who suspend judgment on the issue, since the indicators conflict. Amongst this group are supposedly, Āmidī (Sayf al-dīn (d. 630/1232)) and Ibn Hājib (d. 646/1249).

After presenting four highly technical refinements of these positions, Bahrānī expresses his own preference. He argues that there are different types of appellation. Some require current performance as a condition of literal employment (such as cold or hot; or more legally relevant, menstruating or not); others do not require it (such as informant or speaker); and others are ambiguous (such as believer and unbeliever). It is, for

that Shaykh al-Sadūq approved of treating the orders of the Imams as recommendations. Bahrānī refutes this by claiming that Saduq only did this when there was evidence (*qarāi'in*) that an imperative was a recommendation; it did not form part of his *modus operandi.*

In M8, Bahrānī establishes that the Imams are central to the process of interpretation, since without them, we are unable to fully comprehend the words of God or the Prophet. In M7, he establishes that when examining the Imam's words, one is to assume that an imperative (of which there are many in the *akbār)* indicates an obligation, unless there is evidence that a recommendation is possible. Whether an imperative in the Qur'ān or in the Sunna entails an obligation is, it seems, dependent upon whether the lmams interpreted it as an obligation. The final topic selected by Bahrānī for particular attention may seem to have little legal relevance at first. His concern in M9 is to examine literal and non-literal uses of descriptions with regard to their time-based accuracy. For example, when describing a person as beating someone or something (say, his wife), one is, in effect, saying that, at this moment, he is performing the act of beating. However, if one describes someone as a wifebeater, one is saying something more than this: one is saying that the person habitually beats his wife. In Arabic the word for the adjective "beating" (in the sentence "he is beating") and the word for "beater" (in the sentence "he is a beater") are the same: namely *dārib.* The sentence *huwa dāribun* has, then, two possible meanings: he is hitting (at this minute), or he is a beater (habitually). In English, this possible ambiguity is circumvented by having a different form for the adjective and the noun, but in Arabic this is not the case. Even if one expresses the meaning in a verbal sentence, such as "he beats", the ambiguity remains in Arabic (as it does, in fact, in English): does this mean he is beating or that he habitually beats? Of course, this ambiguity can be eradicated by context ("he beats the drum" usually implies a present action, whilst "he beats his wife" implies a habitual one), but this is not Bahrānī's concern. He is keen to elucidate how the word *dārib* is used in such sentences: is the usage literal *(haqiqa)* or non-literal (*mqjāz*) when describing a noncurrent action? The legal relevance of this issue becomes clear when one considers that if a person is termed, for example, an adulterer (*zānī*), then he is due certain punishment. Must he be committing adultery at the time to be literally described as an adulterer? And if not, is God using the term *zānī* in a *majāz* manner when he said, "The *zānī*, male and female, lash each one of them I 00 times" [Q24.2]?

Debate surrounds the issue of whether or not there is a modal distinction

(including Q4.63 "obey God, obey his Prophet ... ") and eight *akhār* (which all refer to the obligation to obey the Imams). These general exhortations to obey God, the Prophet and the Imams are taken by Bahrānī to demonstrate that obedience to their commands implies that commands literally effect obligations.

There are, he says, "moderns", such as Sāhib al-Ma'ālim, who view the commands of God and his Prophet as implying obligations, but due to the weakness of the *akhbār,* consider those of the Imams to be only recommendations. Bahrānī's response is four-fold:

1) Orders are orders, and when contained in reports they are either accurate or inaccurate accounts of historical events. If they are inaccurate, they cease to be relevant to the law. "There is no difference, whether [the orders] were made by God the Most High, his Prophet or from them [the Imams]".[1]

2) An imperative can signify a recommendation, but for it to do so, evidence *is* required. Dubious provenance does not qualify as evidence of mere recommendation. It is evidence, possibly, of historical inaccuracy or fabrication.

3) Even if doubtful provenance is admitted as evidence of recom mendation, caution *(ihtiyāt)* would still dictate that one treat a command as an obligation, since it is possible that an obligation is intended. Without such caution, "There is no certainty of obedience to the Imams" *(lam yahsil al-'ilm bi-tā'atihim wa Iā al-yaqīn bi-mutāba'atihim).*[2]

4) The matter of whether or not an imperative means (literally) an obligation is, possibly, a matter of debate. *As* such it falls into the category of *shubha,* becoming one of the *mutashābihāt.* The rule in such cases is to proceed with caution, and this would require treating orders as obligations.

These four objections are basically two, as the first and second collapse into one, as do the third and fourth:

1) There is no justification for distinguishing between an Imam's order and those of the Prophet or God simply on the basis of possible historical inaccuracy.

2) Even if 1) is not accepted, to be certain of the law, one must adopt a cautious attitude and this entails assuming commands mean obligations.

M7 ends with a further criticism of a scholar (Abū Hasan)[3] who claimed

1. Bahrānī, *H,* 1, p. 115.
2. *Ibid.,* 1, p. 116.
3. That is, Abū Hasan al-Shaykh Sulaymān al-Bahrānī (d. 1121/1709), who appears to have taught Bahrānī's father (see Bahrānī, *Lu'Lu'a,* p. 8). In Abū Hasan's work, al-'Ashara al-kāmila, Bahrānī slates, that the author "supported *ijtihād,* hut the implication from all of his later chapters in this book. is that he referred to what approximates to the Akhbārī method". (*ibid.,* p. 10). See also Bilādī, Anwār, p.150-158.

language systems: the legal and the customary. The Imams knew the legal-literal and the customary-literal meanings of words, and hence were able to explain the former by means of the latter to the people. Thus the Imams become crucial to understanding God's will. Without them, one might never discover the legal meanings of words found in revelation.

M7[1] deals with a specific use of language-the imperative (its positive and negative forms, ie conunand and prohibition).[2] What is the literal meaning of this grammatical form (termed *sīghat al-amr*)? The question that particularly concerns Bahrānī is whether the command (*amr*) implies obligation literally or non-literally. For a word to signify a meaning other than the literal one, evidence is required to divert the assumed literal (be it legal or customary) meaning. This evidence is termed *qarīna* (pl. *qarā'in),* and can be derived from context, or from other clues which justify a diversion from the *haqīqa* meaning to a *majāz* one. A non-literal interpretation is only justified if there are *qarā'in* to accompany it. To take the classic example, in the sentence "That man Zayd is a lion" one must take lion, not in its literal sense, but in its non-literal sense, for we are talking about a man and to take it literally would entail a contradiction (a man--Zayd-is a lion).[3]

The question of the imperative (both in the form of commands and prohibitions) is important because if such commands do not literally mean obligation or prohibition, but something else (say, recommendation or discouragement), then all such orders in revelation are to be understood in this non-obligatory manner until it is proven otherwise. To take another example, when God says, "Pray your daily prayers", it is clearly obligatory to do so; but when he says, "Marry as many women as seem good to you, t:wo, three or four." [Q4.3], it is less clear. Does he mean all must marry; and furthermore, must all marry two, three or four wives? It would appear not; God here is recommending marriage, and permitting polygamy. However, the grammatical form used in each example is identical.

Bahrānī considers the literal (*haqīqa*) meaning of a command to be obligation.[4] The title of M7 expresses this conviction succinctly *inna madlūd al-amr wa'l-nahy haqīqatan, huwa al-wujūb wa'l-tahrīm* (The thing indicated by a command and prohibition is obligation and pro hrbition respectively). Bahrānī's evidence for this consists of five Quranic quotes

1. Bahrānī, *H*, l, p. 112-118.
2. For an account of amr and *nahy* in Shī'ī legal theory, see Calder, "Structure of Authority", p. 182-184.
3. For a fuller discussion of *qarīna*, see Hallaq, "Notes".
4. Bahrānī, then, holds a position similar to that of most Hanafīs, see Zysow, "Economy of Certainty", p. 116, and references cited therein.

meanings in a non-literal way *(majāz).* Hence they are not homonyms-one is a literal meaning and the other non-literal. The third position is that the manner in which the Lawgiver uses words is unknown *(ghayr ma'lūm),* and one should suspend judgment on this matter *(tawaqquf).*

Bahrānī makes his own position clear:

The clearest position, for me, is the first position. Of all the positions, it is the reliable one. We have, in support of it, the indicator of immediacy *(dalīl al-tabādur:* For them [the scholars of the language?], that is a sign of the literal. [*H*, 1 , 119]

The "indicator of immediacy" is the phrase used to describe the empirical fact that when the Lawgiver uses a word like *zakāt* or *salāt,* the technical, *shar'i* meaning appears dircctJy in the hearer's mind. This empirical evidence is used as proof that the meaning is literal. An objection to this proof, mentioned by Bahrānī, is that one needs to understand the customary usage of language to understand the Lawgiver's usage. The only way to comprehend the Lawgiver's language is through our own language system. Without reference to the customary language system) the Lawgiver is, in effect, speaking a different }and incomprehensible) language. Since the Lawgiver takes words in customary language and injects them with new meanings, one must say that his use of these words is diverted (*mqjāz*) from the literal, customary usage.

Bahrānī's reply to this objection is that the early Companions and Successors *(al-sahāba wa'l-tābi'īn wa jumla min af-salaf al-mutaqaddimīni* understood words such as *salāt,* when used by the Prophet, in a purely legal sense. When the Prophet spoke, they immediately knew that the legal meaning *(al-ma'nā al-shar'ī;* was intended. An example of this was when the Prophet was asked if *rokūe* and *sujūd* were revealed in the Qur'ān, These two terms refer to bowing and prostration, but in a legal sense, they mean the bowing and prostration performed during prayer. The Prophet's reply was in the affirmative) and as proof he recited the verse "Oh You who believe, bow and prostrate" [Q22. 77]. Clearly the Prophet meant to imply that the terms *rukū.'* and *sujūd* are present in the Qur'an, not with their customary meanings, but in their technical, legal senses, and these are literal in character.

Bahranī's view is that there is a disjunction between the legal-literal meaning of a word and the customary-literal meaning. How then do we gain useful knowledge of the legal-literal meaning, when we are only adept in the customary system of language? Bahrānī's answer is that we come to know legal-literal meaning through the Imams, who were, if you will, fluent in two

designated to [or placed upon it], then it is literal *(haqīqa),* and if not, then it is non-literal *(mqjāz).* [*H,* 1,118]

If it is literal, then it can be "literal through revelation" or "literal through custom or usage". It is literal through revelation *(haqīqa shariyya)* if the person who designated the meaning was God or the Prophet. It is literal through custom *(haqiqa 'urfiyya)* if it was designated with a meaning by anyone else.

Bahrānī appears to accept that the Arabic language existed before revelation, and that literal customary meanings were designated to terms in the pre-revelatory period. He also states that it is agreed (by the scholars of language?) that some words have meanings designated to them by the Lawgiver which are at variance with the pre-revelatory, customary meanings, and that the new meanings have passed into general usage such that most people now consider them to be the literal meanings. The example he provides is the word *"salāt",* which originally meant prayer in general, but after revelation came to mean exclusively the five daily prayers which are obligatory for all Muslims.

The debate, for Bahranl, only concerns the (perhaps academic) question of whether, when the Lawgiver used a word (like *salāt)* with a specific, new meaning, we can say he employed the word in a sense diverted from the customary meaning. The alternative is that we must say that his designation of meaning to a word is an innovative literal meaning. In technical terms, were *al-haqā'iq al-shar'iyya* (and are they now) considered *majāz.* usages of *al-haqā'iq al-'urfiyya* (or *al-haqā'iq al-lughawiyya)* or were they rather new literal meanings? The theological issue at stake here is whether God is constrained to communicate his will through pre-existent literal meanings (and the rules governing diversion from those meanings) or whether God can, in effect, invent a new set of literal meanings for pre-existent sounds (words), without reference, or connection, to the customary-literal meaning?[1]

Bahrānī lists three positions held by various scholars on this issue. The first position, described as the orthodox and dearest opinion, is that the Lawgiver's words which already have customary-literal meanings, also have other legal-literal meanings. Hence words like *salāt* have two literal meanings, one customary *('urfi* or *lughawi,* I see no distinction in Bahrānī's use of these terms) and one legal or revelatory (shar'f).[2] They are, then, homonyms.

The second position is that the Lawgiver uses words with established

1. This issue seems to have been discussed by other legal theorises, but without the same urgency as Bahrānī. Sec Weiss, *God's law,* p. 142-143.

2. Āmidī uses a slightly different terminology: *haqīqa 'urfiyya* and *haqīqa wad'iyya* (the latter term is absent from Bahrānī's account) are considered together to be *haqīqa lughawiyya* See *ibid.,* p. 143.

conclusions are not. *Mafhūm al-muwāfaqa* is, for Bahrānī, not a type of *qiyās,* but it is analogical (termed *tanqqīh al-manāt).*[1] Though he borrows the schema, he is not bound by its conclusions, and his exposition is, therefore, an interesting hybrid, which could *be* designated as a distinctive Imarni style of presentation.

The implications described above are, for Bahrānī, discoverable through reflection and the use of human reason, but are also (crucially it seems) sanctioned by the Imams. Revelation may come to confirm the validity of the procedure used to derive implied meaning, but a rational human being can, after considering the utterance, understand the intended meaning of the speaker. The hearer understands something in addition to the apparent meaning (as in the "Ask the village" example), but Bahrānī clearly does not consider this as a metaphor, but as an ellipsis. It is not that "the village" stands for the people of the village; it is that the words "the people" have been suppressed for some reason. Bahrānī, then, considers such examples as cases of implication, not metaphor. This is in tune with his general view that non-literal meanings are problematic.

In M7-9, Bahrānī deals with a different means whereby a meaning at variance from the literal meaning (ie the meaning assigned to it in the language system) might be acceptably obtained by the hearer. However, in these cases, the literal meaning is made redundant and a non-literal meaning is posited in the mind of the hearer. The discussion in these Prologues concerns the concepts of *haqīqa* (literal) and *mqjāz,* (diverted or non-literal) when applied to meaning. Though Bahrānī deals with the issue of whether or not a command literally *(haqiqatan)* designates an obligation in M7, I deal first with his discussion in M8, since it is in this section that he discusses the workings of the literal and non-literal more directly.

M8 is subtitled, "The legal theorists differ over how to demonstrate legal-literal rneanings't.[2] However, Bahrānī's account presumes the reader's knowledge of how Muslim legal theorists have characterised the manner in which words gain meanings. Words, for Bahrānī, as for most other thinkers in this area, have had meanings "placed" upon them by an agent. This, it appears, is how he views the origins of language.[3] A meaning, which has been placed upon a word, becomes its literal meaning:

The truth of the matter is that if an utterance *(lafz)* is used in the manner

1. See *ibid.*, p. 124-137.
2. Bahrānī, *H,* 1, p. 118-121.
3. For accounts of the dispute over the origins of language, see Weiss, "Muslim Discussions" and Weiss, *God's Low,* p. 117-150. For a brief account of *haqīqa* and *majāz.* in the Shī'ī tradition, see Calder, "Structure of Authority", p. 176-179.

appear to have lied) and a juridical problem (how to justify mafhūm *al-shart*).[1]

It is here one can discern Bahrānī's views concerning the rational basis of the procedure of juristic reasoning. Such implications are rationally plausible, but are only valid if confirmed by revelatory material. Bahrānī particularly criticises al-Hurr al-'Āmilī for his rejection of *mafhūm al-shart,* when it is clear that the Imams sanctioned this sort of implication.

In similar vein, Bahranī rejects the principles used by other Shiel jurists, such as *muqaddimāt al-wājib* (ie if an act is obligatory, then the prerequisites to that act being valid are also obligatory) and *iltiām al-amr wa'l-nahy 'an* diddihi (a command to perform an action necessitates a prohibition to perform its opposite):

As for what they say (about these two procedures] ... we have not found any trace [of their sanction] in the *akhbār,* even though the assessment of them [as prohibited procedures] leads to difficulty [in determining rulings from the texts]. [*H*, 1, 59]

Even though these procedures seem rationally plausible, without Imamic sanction, they cannot be considered valid.[2]

In sum, Bahrānī's discussion of implication seems, to an extent, confused and unclear. At times he presents implications, such as those described above, as derived purely from reason, and sees no need for revelatory sanction (as with those in the first category of "indicated at the point of articulation"). At other points, he rejects procedures because, however plausible they may seem, they are unsanctioned by the Imams (such as the various types of *mafhūm al-mukhālafa,* except *mafhūm al-shart).* Yet all of these discussions are situated under the heading of *dalīl al-'aql.* This ambivalence concerning reason's ability to deduce truths independent of revelatory sanction is a symptom of Bahrānī's unease over the Mu'tazili-Imamī tradition in which he was writing. These matters are discussed further in the next chapter.[3]

What is of interest to the study of the history of Muslim legal theory is the schema utilised by Bahrānī. Though the schema is clearly influenced by the Shaucl tradition of *usūl al-fiqh* (the distinction between *dalālat al-manūq* and *dalālat al-mafhūm* is clearly lifted from Shafī'ī tradition),[4] the

1. For a discussion of this verse in Sunni *tafsīr*, sec Calder, "From Tabarī to Ibn Kathīr", p. 101-106.
2. In this, Bahrānī differs from the Shī'ī position generally. See Modarressi, "Rationalism and Traditionalism", p. 142.
3. See below, p. 188-204.
4. See Kamali, *Principles*, p. 130-132.

was a linguistic inference and not a type of analogy, Bahram argues that it is a type of analogy, but one based on a "certainty of causality" in the original case. It is, in effect, a type of *tanqīh; al*manāt (as described in the previous chapter).[1] Whereas some Shāfī'īs argued this was a type of *qiyās,* Bahranl argues that *qiyās* is based on a less-than-certain presumption of the *'illa,* and *mafhūm al-muwāfaqa* has a certain *'illa;* hence it is not a type of *qiyās.* The result is a position distinct from those of the other major legal traditions, but based squarely upon the epistemological considerations which have dominated his discussion to date.

The second type of dalālat al-mafhūm is termed mafhūm al-mukhalafa.

Under this category a number of procedures are often included by Sunni jurists.[2] The basic form of the argument is that from any command, another contrary command can be deduced. Hence, when the Prophet said, *"zakāt* is owed on goats which graze", it can be deduced that *zakāt* is not owed on goats that do not graze. This type of reasoning is based upon a quality (sifa--goats which graze), but could be based on time *(zamān),* a place *(makān)* or numbers *('adad)* mentioned in the text. Bahrānī advises great caution in its utilization. The only type of argumentation he accepts under this category is when God (or the Prophet or Imams) use a conditional sentence (mafhūm al-shart).[3] The classic example of this type concerns God's statement "If they (divorced women{ arc pregnant, then provide them with maintenance until they deliver the child" [Q65.6]. The implied meaning being that if divorced women are not pregnant, the ex-husband need not provide for them. Though Bahrānī docs not use this example, it is clear he approves of its reasoning, though only because the Imams themselves sanctioned its use. He cites the following *khabar:*

God said, "The Big One of them did it, so ask them, if they speak". He [Imam Sādiq) said, "By God, the Big One did not do it, and Abraham did not lie." It was said, "How?". He said, "This Big One of theirs did it, if they speak. If they did not speak, then this Big One of theirs did not do anything." [H, 1, 58]

In this case, Bahrānī argues, the Imam clearly utilised mafhūm *al-shart* (conditional implication). The Big One did it only if they spoke; they did not speak, therefore the Big One did not do it (Abraham did). This cunning solution resolves a theological problem (Abraham, a prophet, should not

1. See above, p. 104.
2. For an account of this, see Zysow, "Economy of Certainty", p. 164-174 and Weiss, *God's Law,* p. 490-501.
3. Weiss, *God's law,* p. 491 and Kamali, *Principle,* p. 136.

"implications" (as a translation of *mqfāhīm).* In these examples, the functioning of reason is more obvious. These are given the general title dalālat *al-mafhūn* (literally, "the indication of what is understood"), and, Bahrānī tells us, they are divided into two types: *mafhūm al-muwāfaqa* and *mafhūm al-mukhālafa.*

The first of these types is identifiable in Western reasoning as the *a minori ad maius* and the *a maiori ad minus* arguments.[1] For example, when God says, "Do not say *uff* to your parents" [Q17 .23] (where uff is an insult), the implied meaning, on reflection, is "Do not even say *uff* to your parents", that is, actions more serious than saying *teff* (the classic example is hitting) are also prohibited by this command. Similarly, when God says, "Whoever has done an atom's weight of good will see it, and whoever has done an atom's weight of evil will see it" [Q99.7-9] (ie see it rewarded or punished by God), he means "Whoever has done even an atom's weight of good (or evil) shall see it rewarded (or punished) in the final judgment". Actions of much greater good (or evil) than an atom's weight will therefore be remembered on judgment day.

These types of juridical reasoning were the subject of some debate in Muslim legal history, not because of their validity (though some, such as the Zāhirīs, famously did reject them).[2] The greater debate within the tradition was whether these arguments were better classified as analogy rather than implication. The Hanafis generally argued that such implications were purely linguistic deductions, and hence not examples of analogy, whilst the Shafl"rs generally considered them to be examples of analogy (ie the *'illa* of "Do not say uff ... " is the obligation to be respectful to one's parents).[3]

Since Bahrānī rejects *qīyās,*[4] at least terminologically, he must reject the classification of *mqfhūm al-muwāfaqa* as *qiyās* if he wishes to accept such arguments as valid:

[*Mafhūm al-muwāfaqa*] is a proof, if it is certain-meaning that there is certainty as to the causality in the original case. For example [there is certainty that] more is implied in the prohibition to say uff ... As for when it [the causality] is less than certain *(zannī),* then it is included under the heading of forbidden *qīyās.* [H, l, 57]

Whilst the Hanafis (and some Shafrrs) argued that *mafhūm al-muwāfaqa*

1. See Zysow, "Economy of Certainty", p. 157-162 and Weiss, *God's Law*, p. 486-490.
2. See lbn Hazm, Ihkām, 2, p. 335-383; Zysow, "Economy or Certainty", p. 161-162; Hallaq, ':Juridiral Qiyās", p. 295, n. 2B.
3. Hallaq, 'juridical Oiyās", p. 289-296; Weiss, *God's Law*, p. 486-490; Zysow, "Economy of Certainty", p. 159-161.
4. See above, p. 103-105.

immediately, the process involves the hearer's rational capacity. This sub category is termed *dalāla* iqtidā' (literally, "the indication of necessity")[1] by Bahrānī (as it is by other legal theorists). In cases such as this the literal meaning is supplanted by the implied meaning.

2) those utterances in which an indication of causality can be legitimately derived. For example, when a bedouin told the Prophet that he (the bedouin) had had sexual intercourse with his (the bedouin 's) wife during Ramadan, the Prophet replied, "Free a slave", Though not explicitly stated, it can be known with certainty, that the Prophet's utterance was a response to the bedouin's words, and the reason for the command to free a slave was the bedouin's transgression of the rules of the fast. Though the Prophet did not say, "If you have legitimate sexual intercourse during the daylight hours of Ramadan, free a slave as penance", one can deduce this in a valid manner from the utterance: the sexual intercourse is the cause *('illa)* of the need for penance. This type of meaning derivation is described by Bahranl as a form of tanq'fl:z *al-manat.* In this context it is termed dalalat *al-tanbīh. wa'l-īmā* (literally, "the indication of exhortation and reference").[2]

3) those utterances in which a meaning is not intended by the speaker at the time of speaking, but the meaning of which is a necessary result of the context of the utterance. The example used concerns the minimum period of time for a pregnancy. God may not have intended to convey the meaning that the minimum time is 6 months when he said, "and [a child's] bearing and weaning is thirty months". However, he did so, for he also said, "[a child's] weaning is in two years". 30 months less 24 months (ie two years) is 6 months. This type of meaning derivation is termed dalāla *ishāra* ('indication of allusion").[3]

Bahrānī ends his description of the three types of indication by informing the reader that some scholars term these indications as implication *(mafāhīm),* a categorisation scheme he does not approve of since he separates those indications understood from articulation from implications understood only on reflection.

The second category is described as *"dalālat al-lafz;* Iā fī *mahāll alnutq"* (literally, "the implication of the utterance, not at the point of articulation") and refers to a meaning the hearer may not obtain immediately, but only upon reflection. For the sake of terminology, I shall term such indications,

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1. Weiss terms dalāla iqtidā "text-embedded implication" (*God's Iaw*, p. 483) whilst Kamali (Principles, p. 128-130) terms it "required meaning",
2. Weiss terms this "textually engendered implication" (God's Laui, p. 483).
3. Weiss terms this "non-integral implication" (*ibid.*, p.484) whilst Karnali (Principles, p. 126-127) terms it "alluded meaning".

meaning is intended (and signified by the speaker). Bahrānī is most concerned with those occasions when the language system seems to behave in a less than logical, but perfectly understandable, manner.

The means of deriving meaning through reason (dalīl *al-'aql)* are outlined in M3 and are subdivided into those meanings which are understood "at the point of articulation" (fi *mahall al-nutq),* and those which are not. Bahrānī is, I believe, trying to convey that even though a hearer of an utterance understands immediately the intention of the speaker (whoever he may be), this does not mean that reason is not being used: it is merely that the faculty of reason gains meaning with such speed that a rational human being may not even recognise the process occurring. This is when meaning is understood "at the point of articulation". The second category refers to occa sions when a meaning can be derived, but a more obvious process of reasoning occurs.[1]

It is dear from the examples used by Bahrānī that in both categories the meaning gained by the hearer is over and above that conveyed by the simple meaning of the words used-it is additional or surplus meaning, and it is perfectly valid (in Bahrānī's view) to recognise and act upon these surplus meanings. In technical terms, the indicatory capacity of the utterance *(*dalīl *l-Lafz,)* exceeds the obvious meaning of the words used, and an additional meaning can be legitimately deduced. These categories become somewhat clearer in the context of examples.

Bahrānī carefully categorises the ways in which a hearer should understand meanings which are not explicitly stated in the utterance.[2]

The first category, that is those meanings which can be understood "at the point of articulation", is further divided into three subcategories:

1) those utterances in which the truth or theological validity is dependent upon the addition of an implied word. For example, God, in the Qur'ān, puts the words "Ask the village" [Q12.82] in the mouth of one of Joseph's brothers when he clearly means "Ask the people of the village". The words "the people" *(al-ahl)* form an implied addition *(taqdīr).* Additions such as this are added by the hearer at the time of hearing, and though he does it

1. Kamali (*Principles*, p. 121-122) has, I feel, failed to convey this underlying dis¬tinction between *dalālat al-mantūq* and *dalālat al-mamthūm* by translating them as pro¬nounced and implied meaning respectively,

2. Bahrānī's obsession with establishing schemes of categorisation is, as has been noted, a reflection of the more common assumption in Muslim theological and legal writings that knowledge is gained through defining and efficiently categorising a complex corpus of information. To categorise something is, in effect, to know it. See Weiss, *God's Law*, p. 35-36.

utterance might understand its meaning. The meaning is uncompromisingly identified with the intended meaning of the speaker *(murād)*. This view of meaning *(ma'nā)* which Bahrānī shares with other legal thinkers, has been described as intenrionalist.[1] With regard to God, the Prophet and the Imams, the divine law can be discovered through obtaining the intended meaning of their utterances. These utterances are merely individual instances of the general method of linguistic communication, and hence some of his examples are drawn from the language used by less elevated individuals.[2]

Bahrānī's discussion of linguistic hermeneutics is found in two sections of his Prologues: in the last section of M3,[3] and in a series of short prologues (M7-9).[4] Though he does not state it explicitly, it is clear that there is a difference in the methods of gaining meaning from utterances outlined in M3 and those in the later Prologues. The difference appears to lie in the methods' origins. In M3, the methods are described as part of dalīl *al-'aql*, that is, they can be derived by a rational individual examining a particular utterance, and using his reason to deduce their meaning. The methods in M7-9 are not described in this way, and it appears under closer examination, that they can be deduced, not from independent rational thought, but by an examination of the manner in which language users employ the tool of language. In technical terminology, one is sourced in *'aql*, whilst the other is sourced in *'urf*---reason and custom. For Bahrānī, as for other legal theorists in the Shī'ī tradition, there is no question of reason (as a human faculty) being constructed, or controlled, by the established tradition of thought. What is reasonable or rational docs not become rational through a process of the sanctification of reason in the context of a tradition.

Inevitably, the methods described by Bahrānī are exceptions to the general means of communication. Muslim jurists, and as far as I can tell, Bahrānī concurs with tradition here, view language, and the Arabic tongue in particular, as a system of arbitrary signs. Each sign was designated at some point (by God, or by the early human community) as pointing towards a particular thing (action, concept, item etc).[5] In cases other than those instances exemplified below, one is to assume that the ordinary, grammatical

1. Weiss, *Spirit*, p. 52-65. See also Zysow, "Economy of Certainty", p. 85 -90.
2. Zysow nprcssc̄s this well: "It cannot be too much emphasised that the rules of interpretation arc presented as standing on their own. They emerge from the automatic understanding of language that we all have.", "Economy of Certainty, p. 86.
3. Bahrānī, *H*, l, p. 55-65.
4. *Ibid.*, l, p. 112-125.
5. For a general account of this, see Weiss, *God's Law*, p. 117- 150, particularly p. 117-120. Bahrānī seems to accept the fact of the linguistic system, and is uncon¬cerned with the more theological question of its origin.

opinion may not, as I have explained previously, be identical with the divine decree. However, if a jurist gives his opinion having failed to investigate the sources properly ,then this is an inexcusable dereliction of duty on his part. For Bihbahānī, interpreting the texts without a sound knowledge of the linguistic basis of those texts will not only lead to mistakes in exegesis, but is in itself an error {for a person bereft of the skills of exegesis should not embark on the task of interpretation, but defer to one who possesses those skills.

The evident importance of linguistic understanding to legal theory may cause the reader to wonder why I have left a discussion of this until now. The answer lies in the location of these discussions in Bahrānī's Prologues. Though part of M3 concerns linguistic interpretation, a large proportion of Bahrānī's discussion is placed after his examination of the procedure for validating the probative force of texts, and the procedure to be followed when the texts are obscure or contradictory. As we have seen, establishing the texts to be silent, obscure or contradictory, in itself, requires interpretation of those texts .By placing his discussion of these (seemingly logically prior) matters, after the discussion of probative force, one gains the impression that he views linguistic interpretation as unproblematic, and that his hermeneutic is minimal. This is confirmed by an examination of the substance of his discussions.

Bahrānī's Hermmeutics

Not only does Bahrānī situate his discussion of linguistic interpretation after his discussion of sources and texts, but he also gives a presentation that is brief, densely worded and, in comparison with other works of *usūl* al-fiqh , less than comprehensive. Issues normally discussed by other writers of legal theory are either ignored (such as the origin of language) or mentioned only in passing (such as the logical relationship between commands and prohibitions).[1] This could mean either that he considers such discussion to be irrelevant to his legal theory, or that he is writing within an established school tradition and considers these issues to have been settled, and thus requiring no further qualification.

Having said that, much of Bahrānī's exposition concerns topics familiar to anyone who has examined the issue of linguistic interpretation in other works of Muslim legal theory. His aim is to demonstrate how the hearer of an

1. Bahrānī would seems to be committed to a position which rejects a logical relationship between commands and prohibitions, this being a consequence of his theory of ihtiyāt. See above, p.105-1 12.

(36)
Linguistic Interpretation: Bahranī's and Bihbahanī's Hermeneutics*

Robert Gleave

The preceding chapters have concerned, in the main, the status (or probative force (of texts ,and their interpretation .I now turn to the use of language in these texts ,or rather the theory of interpretation of language outlined in the works of Bihbahānī and Bahrānī, In Western literary theory , the theory of interpretation is normally designated by the term hermeneutics; and for the overwhelming majority of Muslim scholars ,their hermeneutic was based upon a specific understanding of the manner in which oral communication functioned: ie a theory of language that was primarily oral in character ,not literary .

That language should form the basis of Muslim legal hermeneutics is not surprising .The texts which qualify as indicators of the divine law were first orally transmitted, and later committed to writing ,in a particular language (Arabic). Thus before these texts can be understood ,the linguistic system) of which the utterances of God ,the Prophet and ,for Shīīs the Imams also, are instances (must be understood .The importance of linguistic understanding to the process of interpretation is signalled in most works of Muslim legal theory by the presence of a number of chapters at the beginning of the work dealing with these issues. Bihbahānī's presentation is not at variance with this emphasis. He places proficiency in linguistic sciences*) al-'ulūm al-lughawiyya (*first in his list of the qualifications of a *mujtahid :*

[Of the prerequisites of a *mujtahid [*first, there is knowledge of the lin guistic sciences, for if] the *mujtahids* does not know these sciences well , perhaps he will make mistakes, err and be led astray. His error is not like that of a qualified jurist ... but is the mistake of a commoner, which is unforgivable [in a *mujtahid].* [*FH,* 335]

Bihbahānī's point here is that a qualified jurist may proffer his opinion (zann) after he has investigated the sources in the proper manner, and his

* Gleave, Robert .*Inevitable Doubt: Two Theories of Shī'ī Jurisprudence* .Vol. 12. Brill, 2000, pp 145-182.

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primarily on the basis of their outward knowledge and ability to interpret the sources based on reason. In this way, a rationalist-Usuli approach to knowledge and authority has come to dominate Shi'i thought and leadership for the past two centuries.

In a broad sense, the three sources of revelatory texts, reason, and intuition are a check and balance system for knowledge and authority. The texts preserve the tradition and place a check on unbridled reason and intuition. Put differently, revelatory texts provide a foundation, which actually gives the tradition its Shi'i /Islamic nature. Without the texts, there would be no Shii tradition. However, these texts must be translated into reality and social action. Therefore, they require interpretation. During the occultation of the twelfth Imam, the role of interpretation has generally been left to scholars and has formed the basis of their authority. Reason clearly protects against literal readings of the texts and functions as a way for jurists to apply the texts to real-life cases. Reason also prevents the development of personality cults that could develop on the basis of claims to intuitive knowledge. Intuition allows a creative, spiritual approach to the texts and has been an impetus for new developments in knowledge and authority. Just as reason can prevent literalism and superstition, intuition can prevent overly legalistic approaches and add new insights to the texts.

changes in the establishment.

Conclusion

Although claims to intuitive knowledge and authority are a phenomenon which is present throughout the whole of Shi'i history, they are especially prevalent in transitional periods. Put differently, intuition *(kashj)* facilitates change within Shi'i thought by adding authority to new interpretations of the tradition. Similar to reason, kashf is a means by which clerics can move beyond textual sources and challenge prevailing interpretations *(taqlid).* Even more than reason, kashf provides legitimacy to those who initiate changes in taqlid. Both Bihbihani and Khomeini challenged the establishment, but did not attempt to make any major changes within Usuli fiqh. But, in order to legitimize their changes, they are said to possess intuitive knowledge. Shaykhis attempted to incorporate kashf as a legitimate source of deriving new knowledge, just as Usulis adopted reason as a source of knowledge. However, by the time Shaykhis challenged Usulis for power, Usulis had already filled the power vacuum in each of the major Shii strongholds and they were unwilling to accept a source of official knowledge and authority that trumped reason.

In each phase of Shi'i thought, scholars created their own theoretical synthesis on how to derive knowledge, which almost always included some measure of the textualism, rationalism, and intuition. These three sources form a hierarchy of methods for determining knowledge and authority. Akhbaris promoted textual sources as the only means for arriving at perfect knowledge. Although, as Yusuf al-Bahrani pointed out, Akhbaris cannot avoid using reason in practice even if they may not admit it. And some Akhbaris accepted kashf, like Fayd Kashani. The majority of Usulis also accepted revelatory texts as the surest source of knowledge, although they promoted reason for cases that are not discussed in textual sources and for interpreting the texts. Many U sulis have also made appeals to intuition. Theosophers, including Mulla Sadra and Shaykh Ahmad, situated kashf at the top of their hierarchy of sources, but they also accepted that sure knowledge could be derived from the texts and reason, albeit to a lesser degree than intuition. It was precisely the Shaykhi acceptance of kashf into the theoretical approach to deriving knowledge that was unacceptable to Usulis. Had they accepted it, they would have also had to identify and accept a living perfect Shi'i, whose authority would not only rest on a deep knowledge of the texts and sound rational ability, but on intuitive powers. From Bihbihani's time until the present, mujtahids have been chosen

legal-rational authority. Attributions of kashfto Bihbihani and his successors, therefore, can be seen as an attempt to bolster their claims to legitimacy and an attempt to attract support. This is not to say that prominent mujtahids did not claim to kashf at all. However, those who did so, once again felt the need to make their claims in veiled language and not publicize their mystical experiences.

Recent Resurgence of Kashf

Significantly, as Ayatollah Khomeini was on the verge of initiating changes

within Shi'i establishment, he revived claims to kashf and even criticized Usulis for diminishing its importance. Soon after Khomeini made his way to Qom, he began studying philosophy and mysticism. In 1937 he even wrote a commentary on *Sharh al-fusus,* which was itself a commentary on Ibn al-'Arabi's *Fusus* by Sharaf al-Din Dawud Qaysari (d. 1350). As a result of his studies, Khomeini came to the conclusion that there is no contradiction between mysticism and Shari'a. Similar to many theosophists, Khomeini publicly conformed to mainstream legalistic Shi'ism, while privately leaning towards mysticism. He considered himself a follower of Mulla Sadra's Illuminationist philosophy[1] and became interested in the idea of the perfect man, first spoken oflbn al- 'Arabi as the pupil of God's eye. In his commentary, he even says that the perfect man "is the beginning and the end ... [and] whoever knows the Perfect Man has known God."[2] He also accepted the idea of cosmic guardianship (*wilayat al-takyiniy,* believing that guardians inherit Muhammad's mystical nature. These mystic saints are the Prophet's personal representatives and carry out his invisible governance, without which the world would fall into decay.

There is ample proof that Khomeini considered himself to be a perfect man and one of Muhammad's guardians and even to have reached the highest stage of mystical experience in which the mystic claims to be the truth.[3] In other words, Khomeini thought of himself as the source of perfect knowledge for Shi'is of his time. Because Khomeini was the most transformational figure since Bihbihani, it is no wonder that he made an appeal to intuition. His use of mystical claims once again adds evidence to the fact that kashf is often employed by Shi'i leaders attempting to make

1. Baqer Moin, *Khomeini: Life of the Ayatollah* (New York: LB. Taurus, 1999), 46.
2. Moin, *Khomeini*, 48.
3. This is confirmed by Mehdi Ha'eri Yazdi, the son of Ayatollah Ha'eri. See Moin, *Khomeini*, 51.

fact, when Sunni Ottoman forces attacked the 'Atabat in 1843, Sayyid Kazim attempted to mediate between Ottoman forces and Karbala, albeit unsuccessfully. Significantly, though, his followers were not attacked during the raid.[1]

Even though his thought may not have been aligned with his colleagues, Shaykh Ahmad's views were taken directly from the Shi'i repertoire. In other words, his synthesis and interpretation of fiqh and theology clearly differed from mainstream Shi'i thinkers, but were not made up of imported beliefs, un-indigenous to the Shi'i tradition. Even though he claimed that the ultimate source of his knowledge was derived from kashf, Shaykh Ahmad continuously based his arguments on textual sources and reason in order to stay within the Usuli framework in which he had been formally trained.

Sayyid Kazim Rashti succinctly describes the Shaykhi method of uncovering prefect knowledge. Similar to most Usulis, he explains that Shaykh Ahmad used both external reasoning and its internal meaning. The first four sources, he explains, are the same as those used by Usulis. In other words, Usulis and Shaykhis accepted the Qur'an, Sunna, reason, and consensus as the first four sources ofusul al-fiqh.

Breaking with Usulis, Sayyid Kazim explains a fifth source of law, which he calls the law of the universe *(al-ayat al-murattabafi al-afaq wa al-anfus)* and is taken from a verse in the Qur'an that says "We will show them Our signs in all the regions of the earth and in their own souls, until they clearly see that this is the truth."[2] It is not exactly clear what this means in practice, but with Shaykh Ahmad's claims to kashf it is most likely a claim that intuitive knowledge as a direct source of knowledge. Therefore, it represents a departure from the Usuli school and places Shaykhis within the Illuminationist tradition. Although Usulis claimed authority on the basis of kashf, they did not include it as a source oflaw. Shaykh Ahmad accepted kashf as a source of knowledge and authority. In other words, Usulis were not willing to allow claims of intuitive knowledge into the methodology of deriving knowledge as they did with reason, which they had accepted as the basis of their ability to go beyond textual sources.

After Shaykh Ahmad's time, there was a significant decrease in claims to kashf among orthodox Usuli clerics. As they had established their dominance throughout the Shi'i world, there was a decreased need for them to prove their charismatic legitimacy and they were able to fall back on

1. Mongol Bayat, *Mysticism and Dissent: Socioreligious Thought in Qajar Iran* (New York: Syracuse University Press, 1982), 41-42.
2Qur'an, 41:53.

middle. Shaykh Ahmad was the object of significant hostility and many scholars were alarmed at his theological views, but there is no clear evidence to suggest that the highest ranking mujtahids declared him an infidel *(kafir)*.

Disagreements between leading Usuli clerics and varying interpretations of Shi'i thought were not uncommon during this time and they did not necessarily lead to excommunication. At the same time, since Bihbihani declared takfir on Akhbaris, it became more commonly used by Usulis, especially as they were consolidating power in the early Qajar period. As noted above, Shaykh Ahmad belonged to the same circle of influential mujtahids that had been trained by Vahid Bihbihani's disciples. They would have been loath to excommunicate a popular student of eminent scholars, such as Kashif al-Ghita' and Bahr al-'Ulum. When Shaykh Ahmad did return to Karbala, however, some of the 'ulama tried to discredit him and even attempted to attract government support in Baghdad to bring him down. Apparently because of the hostility, Shaykh Ahmad left for Mecca in 1826 and died on his way there.

Although Shaykh Ahmad was not cast out of the Shi'i community by senior mujtahids, his successor, Sayyid Kazim Rashti, was. Sayyid Mahdi Tabataba'i put Sayyid Kazim on trial and questioned his theological views on the status of the Imams, the return, and the ascension of the Prophet. Sayyid Kazim admitted that some Shaykhi views were at odds with Usulism. Therefore, the Shaykhi challenge moved beyond a theological debate. Tabataba'i, Shaykh Muhammad Hasan Najafi, and other high-ranking Usuli mujtahids, issued the charge of infidelity *(takfir)* on all members of the Shaykhi community. Another Usuli scholar, Mulla Muhammad Ja'far Astarabadi, even wrote a refutation of Shaykhi thought. From this time, Shaykhis were harassed and violent clashes broke out between Shaykhis and Usulis. Sayyid Kazim was then compelled to leave Karbala.

Although theological issues were the pretext for the declaration of Shaykhi heresy, evidence suggests that during Sayyid Kazim's time, the Shaykhi-Usuli conflict became a struggle for leadership (similar to the Usuli-Akhbari dispute). That Sayyid Kazim was a serious threat to prominent clerics in Karbala seems to be more important a factor for Shaykhi excommunication than theological differences were. Whereas Shaykh Ahmad had avoided involvement in the Shi'i hierarchy of the 'Atabat, Sayyid Kazim directly engaged himself in such matters. Sayyid Kazim and Sayyid Ibrahim Qazvini competed for authority in the Iraqi centers of Shi'i learning with the aid of armed gangs. Additionally, Sayyid Kazim had the firm support of the governor of Karman and friendly relations with the governor of Baghdad. In

all the Imams as well as Muhammad. Al-Ahsa'i explains that he was even able to ask questions of the Imams in his visions. This led him to claim that his 'ilm was perfect and that he received an ijaza from each of the Imams, which surely superseded the ijazas that were granted him from above-mentioned scholars. As an affront to Usulis, he asserted that the arguments of the 'ulama based on human reasoning were faulty and therefore did not always produce knowledge that was absolutely certain. It seems to be this disagreement on how to produce perfect knowledge that led to the excommunication of Shaykhis by Usulis scholars.

While in Iran, Shaykh Ahmad was regularly the honored guest of government and religious figures. Qajar princes even lent him financial and moral support. His charisma and supreme debating skills brought him widespread fame and many followers. Some scholarly circles even called him the "philosopher of the age,"[1] thus putting him on par with Bihbihani as renewer of the century or mujtahid of the age. Similar to the disciples of Bihbihani, Fath 'Ali Shah invited Shaykh Ahmad to reside in Tehran as his guest, but he declined the offer. Like his colleagues, Shaykh Ahmad, however, did accept land and stipends from the Shah.

As Shaykh Ahmad's supporters grew, he was met with opposition. The beginning of his troubles with the clerical establishment is usually dated from 1824, when Shaykh Ahmad debated Mulla Muhammad Taqi Baraghani in Qazvin. After Shaykh Ahmad answered questions regarding the resurrection of the body, Baraghani declared takfir on the Shaykh because he did not think his views were acceptable according to Shii theology. M. Modarressi suggests that the 'ulama of Tehran and Karbala supported Baraghani and also declared Shaykh Ahmad an infidel.[2] Corbin disagrees with Modarressi's claim, arguing that Baraghani's issuance oftakfir was not supported by senior mujtahids and those that did challenge Shaykh Ahmad were not even qualified to discuss metaphysical questions as they had not reached the rank of mujtahids.[3] Macoein argues that Shaykh Ahmad's "orthodoxy does not seem to be in doubt among the leading 'ulama, who refused to sanction the takfir."[4] The truth seems to be somewhere in the

1. Todd Lawson, "Orthodoxy and Heterodoxy in Twelver Shiism: Ahmad al-Ahsai on Fayd Kashani (The *Risala al- 'ilmiyya*)." in *Religion and Society in Qajar Iran*, ed. Robert Gleave (London: Routledge, 2005), 129.
2M. Mudarrisi, *Shaikhigiri va babigiri* (Tehran, 1972), 48-49.
3. Henri Corbin, *L 'Ecole Shaykhie en Theologie Shi'ite* (Tehran, 1957), 19-20.
4. Dennis MacEoin, "Changes in Charismatic Authority in Qajar Shi'ism." In *Qajar Iran: Political, Social and Cultural Change: 1800-1925*, eds. Edmund Bosworth and Carole Hillenbrand (Edinburgh: Edinburgh University Press, 1983), 164

his status as an agent of God. Viewing him in such a light, Shi'is could more easily accept that he was sent to save the Shi'i community from Akhbaris and establish Usuli clerics as the rightful intermediaries of the Hidden Imam.

How then does kashf fit into Bihbihani 's conception of knowledge and authority? After considering Bihbihani's usul al-fiqh, his kashf experiences seem like an anomaly. His conception of jurisprudence is fully taken from his rationalist predecessors and his extant works do not delve into mysticism whatsoever. However, this does not rule out the possibility that he promoted his own charismatic authority among his followers by claiming to communicate with the Imams. In other words, Bihbihani employed kashf as a method of strengthening his authority, but not necessarily as part of his methodology for deriving perfect knowledge. Bihbihani's life was almost wholly devoted to overthrowing the Akhbari establishment in Najaf and Karbala and therefore his most important works are directed toward the Akhbari-Usuli debate. His successors saw him as the renewer *(mujaddid)* of the century and champion of the Usuli school. Therefore, he only included naql and 'aql in his theoretical approach to obtaining knowledge. However, claims to kashf did not decrease after Bihbihani 's death. His disciples were well-known for their spiritual adeptness, performance of miracles, and claims to divine knowledge. In fact, the Shaykhi movement, which attempted to incorporate kashf into the theoretical framework of Usuli thought, can partially be understood as a culmination of the charismatic claims made by Bihbihani's disciples. After the Usuli victory over Akhbaris, the last frontier for scholars on the path of gradually claiming the authority of the Imams was the ability to derive knowledge intuitively.

The Shaykhi school of thought, also known as Kashfiyya, grew directly out of the Usuli circle of Bihbihani and his disciples. The school's founder, Shaykh Ahmad alAhsa'i (d. 1241/1826), attended the classes of the most important Usuli scholars in the 'Atabat during his time, including Vahid Bihbihani, Sayyid Muhammad Mahdi Tabataba'i, Bahr al-'Ulum, Kashif al-Ghita', and Mir Sayyid 'Ali Tabataba'i. Most of the ijazas that Shaykh Ahmad received were from students ofBihbihani (Bahr al-'Ulum, Mirza Mahdi Shahristani, Sayyid 'Ali Tabataba'i, and Muhammad Ibrahim Kalbasi), indicating that his formal training was firmly in the Usuli school. However, al-Ahsa'i was not satisfied with his Usuli education and he does not mention any of these teachers in his autobiography.[1] Searching for perfect knowledge, his meditations on the Qur'an led him to have dreams of

1. Vahid Rafati, "The Development ofShaykhi Thought in Shi'i Islam," (PhD Thesis, UCLA, 1979), 42.

because it transcends personal guidance from the Imam. In effect, he claimed that the 'ilm in *Sharh al-mafatih* was not the result of textual research *(naql),* or even reason (*'aqli,* but divine inspiration *(kashj).* If all lay Shi'is must follow the pronouncements of a mujtahid and Bihbihani was the mujtahid of the age as Usulis have claimed, then Bihbihani's followers were bound to follow his *Sharh al-mafatih,* which was produced as a result of kashf. In other words, his followers were expected to emulate his kashf. In this way, the Imam was using Bihbihani as an intermediary to pass on perfect knowledge to the Shi'i community in the same manner that they had during the Minor Occultation.

This is certainly not the first example of a Shi'i scholar claiming that their scholarly work was the result of an intuitive revelation. As Shah 'Abbas was clashing with the Portuguese, Ahmad 'Alawi wrote a refutation of Christianity. 'Alawi claimed that two years before he began intensely preparing to write this text, he saw the Mahdi in a vision commanding him to write a refutation of Christianity. Therefore, upon completion of his *Misqal-i safa,* in which he attempts to prove the superiority oflslam over Christianity, he said that it was inspired by the Mahdi.[1] As mentioned above, Haydar Amuli claimed that *al-Fusus* was transmitted to Ibn 'Arabi in a dream of the Prophet and some of his own works were also the result of kashf. Shahid II also had a dream that amounts to kashf. In the dream Kulayni, the compiler of an early collection of hadith *(al-Kafi),* complains to Shahid II that the copies of his work that were available during Shahid II's time were poorly written and full of copyist errors. In an effort to reconcile the sorry state of his text, he gave the original copy to Shahid IL With the original, Shahid II was able to fix common errors in the existing versions of *al-Kafi.*[2]

Taking these examples into account, it is clear that stories attributing divine inspiration to scholars like Bihbihani, Shahid II, and others have become a common feature of Shii hagiography. However, none of Bihbihani's extant writings make references to his kashf experiences. Our only written record of his mystic proclivities are from his successors and Shi'i hagiographers. The above-mentioned experience of Bihbihani receiving a scroll from the Imam Husayn is found in *Riyadh al-Jinnah,* written by a student of Bihbihani. It seems, then, that Bihbihani 's kashf experiences were projected back on him by his successors for the purpose of bolstering his authority and

1. See Devon Stewart, "The Genesis of the Akhbari Revival." in *Safavid Iran and Her Neighbors*, ed. Michel Mazzaoui (Salt Lake City: The University of Utah Press, 2003), 79-81.
2. Stewart, "Genesis," 175.

mainstream 'ulama, such as Majlisi I and al-Hurr al-'Amili (d. 1690), who was the shaykh al-Islam of Mashhad.

Majlisi II is also a significant figure of this period, in part because he supported a synthesis of rationalist, traditionist, and illuminationist trends. His scholarship was mainly concerned with collection of hadith material. In fact, his *Bihar al-anwar* is one of the most important modem Shi'i collections of traditions. However, he also promoted Usuli rationalism and the necessity of mujtahids. Important for this discussion, Majlisi II also promotes the esoteric dimension of Shi'ism. In *Bihar al-anwar* he says that the goal of the life of every Shi'i is to emulate the Prophet and the Imams in order to reach their inner *(batin)* state. In fact, Majlisi II was the first to popularize otherworldly Shi'ism. As a result, the 'ulama were revered for their power of intercession *(shafa'a)* in the next world. Majlisi II argued that the elite *(khawass)* are fully capable of the possibility of accessing esoteric knowledge.[1] At the same time, he rejected the idea that the masses or even non-clerics (including political leaders) have the possibility to attain such powers.

This idea gained such authority that in the early 1800s, Prince Muhammad 'Ali Mirza purchased one of the gates of paradise from Shaykh Ahmad Ahsa'i (discussed below) and Sayyid Rida.[2]

Usuli Revival and Shaykhis: 1800-present

As discussed in Chapter II, Vahid Bihbihani ended a period of Akhbari predominance in Iraq by establishing the Usuli school of thought in the late eighteenth century. His approach to usul al-fiqh was taken directly from rationalists before him and has remained the predominant approach to Shi'i thought for the last two centuries. Since the rationalist approach has been discussed at length above and Chapter V focuses on Bihbihani 's approach to fiqh, this discussion of the rationalist Usuli revival will focus on Usuli claims to kashf. Bihbihani's successors have claimed that he was guided by mystic revelations (sing. *kashj)* and Bihbihani's disciples themselves also made significant claims to kashf.

The most important intuitive revelation attributed to Bihbihani was that his *Sharh al-mafatih* was given to him in a dream by the Imam Husayn as a scroll.[3] This claim differs drastically from his other kashf experiences

1. See Nasr, Shiism, 107.
2Arjomand, S. A., *The Shadow of God and the Hidden Imam: Religion, Political Order, and Social Change in Shi'ite Iran from the Beginning to 1980* (Chicago: University of Chicago Press, 1989), 219.
3. Davani, *Aqa Muhammad*, 137.

supervision and leadership in both religious and temporal affairs.[1]

Therefore, Mulla Sadra was attempting to revive the tradition of Ja'far al-Sadiq, discussed above, that in every generation there will be a renewer of Islam. Sadra explains that this renewer must be a saint who is a learned (*'alim*), enlightened knower (*'arif)* that "acquires his knowledge from Allah intuitively.[2] Thus, Mulla Sadra envisions that there is a living saint at all times, who does not obtain knowledge from the Imams or even Muhammad but directly from God. Sadra's hierarchy of Shi'i authority does include mujtahids, whose legal opinions should be followed only after saints. This does, however, place mujtahids higher than traditionists and folk Sufis, whom Sadra denounces as infidels. The distinction between popular Sufism and high-minded theosophy in Sadra's mind cannot be overstated. Similar to Bihbihani's successors, the nineteenth-century scholar Mulla 'Ali Nuri, who promoted Sadra's philosophy as well as fiqh, pronounced infidelity *(takfir)* on Sufis.[3]

Mulla Muhsin Fayd Kashani (d. 1680) was a student of Mulla Sadra and developed some of his ideas, such as transcendent wisdom (*al-hikma al-muta 'aliya*). Unlike Sadra, Kashani was a traditionist and an avowed Akhbari. However, his Akhbari credentials were questioned by Yusuf al-Bahrani in *Lu'Lu'āt al-bahrayn.* Also different from his teacher, Kashani enjoyed a high position at the Safavid court after Shah 'Abbas II (1052- 77 /1642-66) summoned him to live in the capital, where he advised the shah on religious matters and was the Friday prayer leader. Fayd Kashani accepted Mulla Sadra's general idea that there is always a perfect man, who is an intermediary between man and God and suggests that the perfect man may be from the 'ulama class, but is a general vicegerent of the Imam. As an Akhbari he does not include mujtahids in his scheme of authority and dismisses them as innovators.

Towards the end of the Safavid period there was a rise of Shi'i mystical thought, especially after the reign of Shah 'Abbas I. The School of Isfahan became so prominent that many government officials and mainstream Shi'i 'ulama embraced it, including Mulla Muhammad Taqi Majlisi I (d. 1070/1659) and Mulla Muhammad Baqir Sabziwari (d. 1090/1679), who was a shaykh al-islam oflsfahan. The school flourished, in part, as a result of patronage from Shah Abbas IL Such patronage was challenged by other

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1Muhammad ibn Ibrahim Sadra al-Din Shirazi ,*Sharh Usiil al-Kafi*(Tehran: Mu'assasa Mutal'at wa Tahqiqat Farhangi, 1987), 25, Quoted in Kazemi ,*Religious Authority*, 119-120.

2. Ibid., 26. Quoted in Kazemi, *Religious Authority*, 121.

3. See Kazemi, *Religious Authority*, 127.

time by Imami Shi'is in the same manner as rationalism and traditionism. In other words, it is difficult to point to a consistent theosophical school of thought throughout Shi'i history. To be fair though, it is also difficult to trace a consistent Usuli or Akhbari school prior to the seventeenth and eighteenth centuries. Had it not been for a disconnect between the School of Isfahan and Shaykhis (discussed below), perhaps a coherent theosophical trend would have been established. The fact that Vahid Bihbihani's overall framework was developed in the Hilla school and that Yusuf al-Bahrani identified with Astarabadi and his successors, seems to have lent consistency to Usulism and Akhbarism respectively. On the other hand, Shaykhis did not identify positively with their premodem theosophical predecessors and were often critical of the founders of the School oflsfahan.

Whatever the reason for the lack of a cohesive theosophical school of thought, greater importance was placed on intuitive knowledge *(kashj)* by scholars who made up the School of Isfahan, which initially developed under the patronage of Shah 'Abbas I (d. 1629). This school was a continuation of the Illuminationist *(ishraqi)* philosophy that originated with Shihab al-Din Yahya Suhrawardi (d. 1191), who promoted the idea that true knowledge was the result of both rational and intuitive emanations from the mind. The School of Isfahan was founded by Muhammad Baqir Astarabadi, better known as Mir Damad (d. 1040/1631). However, the main proponent of this school was Mulla Sadra Shirazi (d. 1050/1640), who promoted a cosmology that included rationalism and visionary experience and required purification of the soul through asceticism, mysticism and gnosis. Although his thought has been challenged by U suli jurists, aspects of his theology have been incorporated into Usuli Shi'ism. Still today, many Shi'i scholars consider Mulla Sadra's work *(al-Hikma al-muta'aliya fi al-asrar al- 'akliyya al-arba'ai* to be among the most advanced pieces of mystical philosophy *(hikmat)*[1] ever written.

Mulla Sadra also developed a new synthesis for Shii authority in the absence of an earthly Imam. He claims that

The earth cannot be devoid of a person upon whom the proof [*hujja*] of God rests ... Thus, in each time, there must be a saint *(wali)* who worships God by his personal experience and possesses the knowledge of the divine book as well as what the 'ulama and mujtahids have learned. He has absolute

1. Dennis MacEoin, "Mulla Dadrii SDHDiriizI Dadr al-Din Mu Dammad b. Ibrahim DawiimI SDhDiriizI." *Encyclopaedia of Islam*, Second Edition. online version, eds., P. Bearman, et. al, 2009.

rejection of juristic authority. Astarabadi was more concerned with how the jurist acquires authoritative rulings than the limits of the jurist's authority. However, the effect of this approach placed limits on the role of jurists. Whereas Usulis eventually argued that the mujtahids themselves are the authoritative references (sing. *marja* ')for the Shi'i community, Astarabadi explained that the hadiths are the marja' of the Shi'i community during the occultation. In other words, he rejected the rational thought of mujtahids and suggested that hadiths are the key source of knowledge and authority.

Astarabadi's challenge to rationalists spread quickly through a vast scholarly network established by Astarabadi and his ideas were adopted in many Shi'i centers of learning, including Bahrain and Karbala.[1] Muhammad Taqi al-Majlisi I (d. 1659) explains that the majority of students in the centers of Shi'i learning accepted Astarabadi's views. Majlisi I further explains that he chose a moderate position between Usulis and Akhbaris, although he admitted that most of what Astarabadi said is true.[2]

Majlisi I rejected qiyas and ra'y and only used ijtihad to reconcile contradictory hadith reports. The focus on traditions during this period brought new hadith reports to light. In fact, the most important collection of hadith during this period was compiled by Majlisi I's son and successor, Muhammad Baqir al-Majlisi II, in his *Bihar al-anwar.* Similar to his father, Majlisi II is often said to have taken a moderate path, adopting an Akhbari approach judicially, but a more Usuli stance in terms of clerical authority. The affect of the rise of the Akhbari school was to place emphasis back on the texts to the point that Bihbihani's Usuli school accepted the primacy ofrevealed sources over reason (similar to Shaykh al-Mufid).

Another development that occurred during the Safavid period, especially in the seventeenth century, placed an increased importance on intuition. The School oflsfahan overlaps with the rise of the Akhbaris. As mentioned above, Modarressi completely avoids scholars of the School of Isfahan and does not even include them under rubric of what he calls "those who held independent views" (presumably what he considers as neither Usulis nor Akhbaris).[3] These scholars are often overshadowed by the UsuliAkhbari debate. It may also be the result of the fact that scholars with a clear theosophical orientation have had a hard time finding a place within the larger context of Shi'ism, even iftheir thought gained widespread currency in their day. A coherent theosophical thread has not been sustained through

1. See Gleave, *Scripturalist Islam*, Chapter 5.
2. See Gleave, "Akhbari-Usuli Dispute," 94, and Kazemi, *Religious Authority*, 94.
3. Modarressi, *An Introduction*, 55.

but rationalist influence continued under the guidance of scholars in Jabal 'Amil. As mentioned in chapter one, some of these scholars played a prominent role in Iran during the Safavid period. However, initially, Sufi shaykhs had more charismatic authority than the juridical-minded rationalists. It was in this context that al-Muhaqqiq al-Karaki (d. 993/1534) and Zayn al-Din Ibn 'Ali al-Juba'i (d. 966/1558), known as Shahid II, a follower of the school of Shahid I, addressed problems that arose as a result of the adoption of Shi'ism as a state religion. At the heart of these matters were the limits of the power of the 'ulama.

It was Shahid II who originally formulated the theory of the 'ulama's status of general vicegerency *(al-niyaba al- 'ammai* on behalf of the Imam. Building on al-Allama Al-Hilli, he suggested that the 'ulama possess all the latent duties of the Imams, including declaration of jihad. Significantly, Shahid II, like previous jurists, was primarily concerned with the duties of the Imam that had practical implications for the state. These pragmatic Usulis did not include esoteric dimensions of the Imam's authority into their theoretical conceptions. In other words, they replaced the intuitive methods that the Imams had used to obtain knowledge with rational methods. However, their authority remained the same.

Akhbari School and School of Isfahan: c. 1600-1800

Since the tenth century, traditionist scholars have rejected the rationalist approach developed by Shaykh al-Mufid and the Hilla school. Traditionists maintained a reliance on the texts and charged rationalists with adopting Sunni methods of jurisprudence. The traditionist trend grew into what has become known as the Akhbari school after Muhammad Amin al-Astarabadi (d. 1626-7) articulated an attack on rationalist methodology.[1] He rejected ijtihad completely as a tool of Sunnis, which, he argued, did not produce perfect knowledge, but resulted in probability *(zann)* at best. Since Astarabadi did not think that the Qur'an could be understood directly by scholars, he argued that traditions are the real source of authority for Shi'is during the occultation. He replaced zann and ijtihad with ordinary certainty *(al-yaqin al- 'adiy* and sensible reasoning *(al- 'aql al-hissii,* which is actually not such a dramatic difference from the type ofreason employed by Usulis. Underlying Astarabadi's approach was the idea that a reliance on traditions will result in a more unified community than the acceptance of probable rulings arrived at by fallible scholars. This is not to be confused with a

1. For an overview of the development of the Akhbari school see Gleave, *Scripturalist Islam.*

the mountains of northern Pakistan.[1]

Developments in Shi'i law during this period were ushered in by scholars in the Shi'i strongholds of the aforementioned Hilla and Jabil 'Amil.[2] Al-Muhaqqiq al-Hilli's (d. 1277) formulation of fiqh moved even closer to that of Sunnis as he was weary of Shaykh al-Ta'ifa's reliance on the practice of early Shi'is. Al-Muhaqqiq al-Hilli used his knowledge of Sunni law to justify ijtihad and qiyas (vehemently opposed by Shi'is previously) as long as they were formed in the presence of an Imam. Thus, he became the first to adopt ijtihad into his theoretical scheme, which he legitimized on the basis of probability *(zann),* a principle later accepted by Vahid Bihbihani and his Usuli school.

Acceptance of probable knowledge is a groundbreaking development because it was an admission that certitude in law is not always accessible. Because of the importance that al-Muhaqqiq al-Hilli placed on ijtihad, he increased the authority of mujtahids, claiming that the 'ulama are the deputies of the Hidden Imam during the occultation. He said that the ruling *(fatwa)* of a judge *(mufti)* is the same as knowledge from God and that the issuance ofa fatwa is like "talking with the tongue of [God's] law."[3] This statement seems ironic, given Al-Muhaqqiq Al-Hilli's admission that the endeavors of a mujtahid may only result in probable knowledge and thus not always perfect knowledge.

Al-Muhaqqiq Al-Hilli's nephew, al-Allama al-Hilli (d. 1327), elevated the position of rational proofs to a new height. He claimed that reason was on par with revelatory texts. As a result he carved out an even larger niche for Shii scholars, arguing that only clerics who were skilled in applying rational proofs could interpret theological and judicial questions. Al-Allama Al-Hilli was the first to suggest that the Shii community be divided to mujtahids and muqallids (those who emulate mujtahids). He even suggested that if a muqallid failed to comply with the rulings (sing. *hukm)* of a mujtahid, he was a sinner. This is the general framework later accepted by Usulis and elaborated on by Bihbihani and Mortaza Ansari (d. 1864).

The school at Hilla was destroyed by the Shi'i Musha'sha' dynasty in 1449

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1. Andreas Rieck, "The Nurbakhshis ofBaltistan-Crisis and Revival of a Five Centuries Old Community," in *Die Welt des Islams* (Leiden: Brill, 1995).
2. According to Shi'i tradition, Jabil 'Amil has been an important Shi'i outpost since the seventh century CE, when Abu Dharr al-Ghafari, a companion of the Prophet and' Ali ibn Abu Talib settled there.
3. Quoted in Andrew Newman, "The Development and Political Significance of the Rationalist (Usuli) and Traditionist (Akhbari) Schools in Imami Shi'i History from the Third/Ninth to the Tenth/Sixteenth Century," (PhD Thesis, UCLA, 1986), 511.

support Isma'ili esoteric philosophy. He also wrote a treatise called *Rawdat al-taslim ya tasawwurat,* which is a guide for travelling from the physical plane to the spiritual world and includes a description of Shi'i cosmology. He explains that religious duties must be followed outwardly, but perfect knowledge only emanates from the esoteric path.[1]

Sayyid Haydar Amuli, mentioned at the outset of this chapter, is one of the most cogent theosophical Shii thinkers. He claimed that his spiritual mentors were none other than the Imams. Of his most important works is a commentary on Ibn al-'Arabi's (d. 1240) *Fusus* under the grand title "The Compendium of Esoteric Doctrines and the Source of Light" *(Jami' al-asrar wa manba' al-anwar*). An underlying theme in this text is that real Shiis are those who employ the inner reality *(batin)* of things transmitted from the Imams. Therefore, those who are concerned with religious doctrines and law are only probing the external *(zahir)* aspects of Shi'ism. More importantly for our discussion, though, he claims that Ibn al-'Arabi's book, *Fusus,* was an "inspired book" since it was transmitted to Ibn al-'Arabi by the Prophet after the Prophet had received it in the hereafter.[2] Amuli also explains that his own texts "form two categories: there are those

that can be considered as effusions from above, and those that emanate from within us. As to the effusions from above, these are the spiritual exegesis (sing. *ta 'wil)* from the Holy Qur'an."[3] He confirms that his commentary on the *Fusus* is in fact one of those that was "effused upon him from above" as a result of kashf, which he explains is open through Shi'i gnosiology (or the science of attaining intuitive knowledge) although the period of revelation is closed.[4] In other words, Amuli claimed that his knowledge was not the result of prolonged research, but divine revelation.

Sayyid Muhammad Nurbakhsh (d. 1463) stands out as a further example of this trend of combining rationalist Shii thought with Sufi mysticism. After having studied in the Shi'i school of Hilla, he claimed absolute authority of the Imam Mahdi, both mystically and judicially. Although Usuli scholars were alarmed at his proclamation, he was not considered an infidel because of his orthodox approach to both Sufism and the Shari' a.[5] A Sufi order named after Nurbakhsh has survived until the present in Baltistan, located in

1. Daiber, H. and Ragep, F.J. "al- DiisI, Naffir al- Din, Abu DjDaDfar Muhammad." *Encyclopaedia of Islam, Second Edition*, online edition, Edited by P. Bearman, et al. Brill, 2009.
2. Corbin, *Islam*. See also Nasr, *Shiism*, 192.
3. Quoted. in Nasr, *Shiism*, 192.
4. Nasr, *Shiism*, 193.
5. Khwansari, *Rawdat*, 498.

quite prominent during this era. Mufid, for example, supported the designation of gates (sing. *bah,* previously a term reserved only for the Prophet and Imams) to describe the special companions of the Imams, including the above-mentioned Jabir b. Yazid al-Ju'fi. Mufid explains that because of their close connection with the Imams, babs were able to perform miracles. However, by the end of this period, rationalists began to reject the term bab precisely because of its widespread usage by self-proclaimed babs. Shaykh al-Ta'ifa, for example, even used the word bab negatively,[1] indicating that the term had lost its meaning because of its widespread usage.

Mysticism and New Ijtihad: c. 1200-1600

The Mazyadid dynasty (961-1150) that ruled central Iraq established their capital at Hilla, which subsequently became an important Shi'i center of learning for a full three centuries. Ibn Idris al-Hilli (Muhammad Ibn Ahmad, d. 598/1202) was the first major scholar of the Hilla school and is credited for ending what is often described as a period of emulation *(taqlid)* of Shaykh al-Ta'ifa's formulation of Shi'i thought. Ibn Idris al-Hilli charged Shaykh al-Ta'ifa for introducing innovations into Shi'i thought. Rejecting the validity of isolated hadith reports, he and additional scholars of his time revived the rationalist method of Sharif al-Murtada.[2]

Arguably the most important thinker of this period was Nasir al-Din al-Tusi (d. 672/1274), who is not to be confused with Shaykh al-Ta'ifa al-Tusi discussed above. Nasir al-Din al-Tusi applied philosophical ideas from Avicenna and others to Shi'i theology after having spent considerable time with Isma'ilis in the famous Alamut fortress of the Nizaris.[3] Initially Tusi received patronage from the Isma'ili governor (Muhtasam Nasir al-Din 'Abd al-Rahim) and later became prominent in the government of the Mongol emperor Hulagu Khan (d. 1265). Tusi wrote on a variety of subjects, including mathematics, theology, astronomy, and philosophy. Therefore, he is often referred to as "the third teacher" *(al-mu 'allim al-thalith*), the first two being Aristotle and al-Farabi. Tusi was immersed in Shi'i theology and Sufi mysticism. Therefore, he came to the conclusion that the distance between philosophy and mysticism was not great.[4] In his autobiography, *Sayr wa-suluk,* Tusi explains how he rejected exoteric kalam and came to

1. See Abisaab, Converting, 62.
2. Moddarressi, An Introduction, 45.
3. Momen, *Shi 'i Islam*, 94.
4. William Chittick, "Islamic Mysticism Versus Philosophy in Earlier Islamic History: The Al-Tusi, Al-Qunawi Correspondence," in *Religious Studies* (Cambridge: Cambridge University Press, 1981).

of jurisprudence *(usul al-fiqh).* To this day, Usuli scholars accept the four sources of usul al-fiqh advocated in this text. Mufid's rationalist approach was taken from that of the Mu'tazilis and those that followed his approach were often distinguished by the titles Mu'tazila and Mutakallimun. In practice, this rationalist approach allowed for greater pliability of the law for the newly established Shi'i Buyid dynasty (945-1055) in Baghdad. In fact, this general rationalist approach would henceforth be preferred by dynasties sponsoring Shi'ism as the state religion (especially Safavids and Qajars as mentioned above), at least in their initial stage of development.

Mufid's student, al-Sharif al-Murtada (d. 1044), further developed the rationalist approach to jurisprudence and even argued for a more prominent role for reason. He claimed that perfect knowledge could be established by reason alone, but not by taqlid as traditionists had argued. Murtada (and Mufid) suggested that only traditions that are widely transmitted *(mutawatir)* are sure to produce perfect knowledge, whereas isolated reports *(al-akhbar al-ahad)* could not because they were probably the result of fabrication.

The third important rationalist of this period was Shaykh al-Ta'ifa al-Tusi (d. 1067), who applied the rational arguments of Mufid and Murtada to the traditions. However, he retained the authority of isolated hadith reports and developed a method to reconcile contradictory traditions. With an approach that combined rationalist and traditionist methods, he transformed Shi'i law to the point that his work was considered as authoritative for a full century after him, a period that is often described as a period of taqlid because of the overwhelming acceptance of his work and the lack of intellectual output. Shaykh al-Ta'ifa also compiled his own hadith collections *(Tahdhib al-ahkam* and *al-Istibsar)* and relied more on texts and less on reason than Murtada had. His development of usul al-fiqh was marked by acceptance of the practice of the righteous sect (*'amal al-ta'ifa).* He concluded that most traditions are isolated reports *(al-akhbar al-ahad),* but they are valid because previous generations of Shi'is accepted them. Rejecting any recourse to doubt *(shakk),* Shaykh al-Ta'ifa employed caution *(ihtiyat)* (a principle adopted by Akhbaris) in order to proceed when certainty cannot be determined.

During this period Sufism also became important as a popular form of religious expression, but remained closely connected to Sunni Islam. As such, it was rejected by Shiis of this age, who were suppressed by the Seljuqs. However, it meant that Shi'is had to compete with Sufis for the esoteric expression of Islam.

Therefore, claims to kashf and emphasis on inner knowledge *(batin)* were

others. Albeit to a lesser extent, some scholars claimed to perform miracles and communicate with the Hidden Imam. Tunikabuni's *Qisas al-'ulama,*[1] for example, contains numerous accounts of such supernatural feats. Of course, the historical validity of these miraculous feats is questionable and *Qisas al-'ulama* is hagiographical in nature. The importance of the miracles that Tunikabuni and others attribute to Shi'i scholars lies in the development of Shi'i thought and leadership. Because early scholars were said to have performed these feats, it became necessary for later scholars, especially those advocating change, to possess the ability to perform them as well. If a cleric did not have access to such specialized knowledge, how would lay Shi'is and other scholars know that he was a mujtahid of the age and the renewer oflslam? On what other basis could it be proven that he was authorized to initiate changes in the Shii establishment? Claiming access to kashf, then, is more important as a means of authority than as a source of knowledge.

Establishment of a Rationalist School: c. 1000-1200

Shi'i law entered a new phase when Shaykh al-Mufid (d. 1022) adopted rational Mu'tazili argumentation in his *al-Muqni'a.*[2] His text was the first to clearly move beyond the transmission of textual sources. Shaykh al-Mufid maintained the superiority of the foundational texts by arguing that reason needed the help of the texts, not the opposite. In practice, however, he does seem to use textual sources to back up his reasoning instead of using reason to expound on revelation. Prior to Mufid, the task of scholars was to collect traditions, not give their opinions on them. Al-Mufid harshly attacked scripturalists and accused them of being too liberal in their collection of traditions, without investigating or even thinking about what they were reporting.[3] He rejected their use of traditions transmitted by only one source *(akhbar al-ahad)* and instead relied on the Qur'an, widespread *(mutawatir)* traditions, and consensus *(ijma)* of Shiis as the first threes sources of law. Additionally, he saw 'aql (which included language *(lisan)* and textual criticism) as sources of Shi'i law that would help jurists make sense of the textual sources. These sources eventually became staples for U sulis, including Bihbihani (see Chapter V). Mufid put these ideas forward in his *al-Tadhkira bi usul al-fiqh,* making it the first known work on Shi'i principles

1. Tunikabuni, *Qiyas*. For an analysis of this and other such works see Gleave, "The Akhbari-Usuli Dispute."
2. Significantly, it was around this same time that the Sunni leader, Caliph al-Qadir (991-1031), repudiated the Mu 'tazila.
3. See McDermott, Theology.

granted the spiritual power to access the Imam's perfect knowledge through visions and dreams. Therefore, the deputies became intermediaries between the Hidden Imam and the Shi'i community by receiving intuitive knowledge *(kashj).* In fact, these deputies were not known for their learning but for their spiritual connection to the Imam. Like many hadith transmitters, the deputies were famous for possessing supernatural powers, such as divination, innate understanding of different languages, and clairvoyance.[1] The miracles that they performed provided proof of their claims of communication with the Imam. In other words, they established their authority on the basis of intuitive knowledge. The most important source of knowledge for the deputies was also intuitive *(kashfi).* This period stands out, then, as one of complete reliance on kashf. Since the four deputies provided a link to the Hidden Imam, this phase of Shi'i history is generally referred to as the Minor Occultation (874-941). Once the last deputy died in 941 without appointing a successor, the Major Occultation began.

At this point, leadership and guidance of the Shi'i community was placed squarely on the 'ulama. In addition to the countless scholars that lived in every generation, Ja'far al-Sadiq says "the religion will be carried in every century by an upright person through whom the invalid interpretations will be negated and the waywardness of the extremists and false claims of the ignorant will be refuted."[2] Although lacking infallibility (*'ismai,* scholars were left to fill the void of the Imams.

They had already served the Shi'i community as doctors of law and transmitters of traditions. But gradually Shi'i clerics argued that it was their prerogative to inherit all areas of leadership that were once the sole responsibility of the Imams. Therefore, Usulis eventually argued that scholars should carry out punishments, perform congregational prayer. collect and distribute zakat and khums, etc., thereby filling the void left by the occultation of the twelfth Imam.

Although scholars in the post occultation period are often referred to as successors of the Imams and (as noted above) as heirs of the Prophet, it is also accurate to say that they were the successors to the hadith transmitters. They transmitted the knowledge of the Imams to lay Shi'is and they had some of the diffused charisma of the Imams by way of kashf. Significantly, the Imams taught some of the transmitters more esoteric secrets than others. Some scholars claim to have reached a higher level of esotericism than

1. Ibid., 94.
2Kashshi, *Ikhtiyar,* 170. This concept of a generational or centennial renewer has already been discussed in chapter one in association with Vahid Bihbihani.

Muslim community.[1] Similarly, Al-Muhaqqiq al-Hilli (d. 1277) and Husayn b. al-Hasan al-Karaki (d. 1592-3) refer to jurists as heirs of the prophets.[2]

By the 'Abbasid period (750-1258), scholars emerged as an influential group. During the pre-occultation period, the primary role of Shi'i scholars was the transmission of legal traditions. The Imams also conferred some of their charismatic authority on them. In fact, miracles are often attributed to the transmitters as well as the Imams. As disciples of the Imams, they were often taught esoteric secrets. Ja'far al-Sadiq said that his disciples "are the repositories of my secrets and through them all innovations arenullified."[3] At this stage, the authority of the 'ulama primarily rested on their knowledge of the texts, not the performance of miracles. However, esoteric knowledge did continue to be an important source of knowledge for scholars.

There is no shortage of accounts in biographical literature depicting hadith transmitters as recipients of the miraculous powers of the Imams. For example, Imam al-Baqir extracted gold from the ground with his foot after Jabir b. Yazid al-Ju'fi (d. 745) complained of being poor. The Imam is also reported to have shown him the kingdom of heavens and the earth in a similar manner that God had shown Abraham. Apparently, Jabir al-Ju'fi was so special that he was allowed to visit kingdoms that Abraham was not shown.[4] Taking an additional step down the path of esoteric knowledge, disciples claimed to perform their own miracles. With "ilrn from the Imams, Maytham al-Tammar (n.d.) and Muhammad b. Sinan (d. 835) were able to predict the future. Salman al-Farisi (d. 644-647) had even greater spiritual powers. After Imam 'Ali taught him the greatest name of God *(al- 'ism al-'azami,* he could not only foretell the future, but could communicate with angels, a feat reserved only for Prophets and Imams.[5] This means that al-Farisi was gifted with the power of revelation *(wahy),* not just inspiration *(kashj).*

When the Twelfth Imam disappeared in 874, Shi'i scholars argued that it was impossible for him to be dead because the world would be deprived of a proof *(hujja).* Therefore, they argued that he was still alive, but in hiding. He would continue to provide guidance to four successive deputies, who were

1. Vahid Bihbihani, *Risala al-Akhbar wa al-Ijtihad* (Tab' -i Mahalli, 1895), 9.
2. See Devin J. Stewart, *Islamic Legal Orthodoxy: Twelver Shiite Reponses to the Sunni Legal System* (Salt Lake City: University ofUtah Press, 1998), 216. and Takin, *Heirs*, 35.
3. Muhammad b. 'Umar Kashshi, *Ikhtiydr m 'arifa al-rijal* (Mashhad,:Danishgah-e Mashhad, nd.), 137.
4. Nadia Abu Zahra, The Pure and Powerful· Studies in Contemporary Muslim (New York: Ithaca Press, 2001), xiv.
5. Taldn, Heirs, 92.

Shi'i law. Many of the scholarly companions of the Imams also debated theological questions, such as whether the Imams possessed infallibility (*'isma)* or if they were simply pious scholars with a comprehensive knowledge of the Qur'an and Prophetic traditions. At times, disagreements became so heated that they would result in one scholarly circle declaring infidelity *(takfir)* on another[1] -a practice that Bihbihani revived in his declaration of takfir against Akhbaris. A rift also occurred between hadith collectors and theologians. Some traditionists even fabricated traditions to defeat their rivals.[2] Needless to say, texts and reason played a fundamental role in the formulation of Shi'i theology.

In addition to his development of the initial stage of Shi'i law, Ja 'far al-Sadiq is also said to have possessed the white *jafr* (containing divinely revealed books, such as the Torah, Gospel, and Psalms) and other scrolls, which were handed down through the Imams and empowered him with prophetic vision.[3] Shi'is embraced the mystical tradition that was developed in this period and acknowledged that the Imams had supreme esoteric knowledge just as they had perfect exoteric knowledge. Imam 'Ali declared that the Imams "see what others cannot see and they hear what others do not hear. They have access to divine secrets."[4] In fact, this is the primary characteristic that differentiated Imams from others. Therefore, the primary source of knowledge and authority during this period was kashf - obtained by the Imams from God.

The Islamic tradition suggests that already in the Umayyad period (661-750), Shi'i scholars (as well as Sunnis) began challenging the religious authority of the Caliph and claimed to be the heirs of Muhammad. Therefore, Shi'i clerics before and after the occultation claimed to be successors of the Prophet instead of the Imams. Vahid Bihbihani, for example, argues that jurists "are successors of the Chosen Messenger [Muhammad], guardians of the Chaste Ones' orphans, cut off from them by occultation and concealment, treasures of the precious faith after the Prophet and the Imams, and custodians of the way of the saved sect among the

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1For references on takfir during this period, see Modarressi, An Introduction, 26.
2Ibid.
3. Muhammad b. al-Hasan al-Saffar, *Basa 'ir al-darajat fi Jada 'ii al-Muhammad* (Qum: Maktaba Ayat Allah al-Mar'ashi, 1983), 161-2. Andrew Newman, *The Formative Period ofTwelver Shi 'ism: Hadith as Discourse between Qumm and Baghdad* (Richmond: Curzon, 2000), 73- 75. Liyakat N. *Takim The Heirs of the Prophet: Charisma and Religious Authority in Shi'ite Islam* (Albany: SUNY Press, 2006), 28.
4. Quoted in Tak.in, *Heirs*, 57.

Collection of Hadith and Kashf from the Imams: c. 700-1000

The formative period of Shi'i thought was primarily informed by the succession of Imams. According to Shi'i teachings, the world cannot exist without a proof *(hujja),* which indicates certain knowledge (*'ilm*), including both exoteric *(zahir)* and esoteric knowledge *(batin).* Following the death of the Prophet Muhammad (the ultimate earthly purveyor of 'ilm), the Imams successively inherited and passed on perfect knowledge to the community through their infallible *(ma 'sum)* guidance. In fact, possession of infallible knowledge was one of the defining characteristics of the Imams. According to Imam Muhammad al-Baqir (d. 735), the family of the Prophet *(ahl al-bayt)* was the only source of knowledge. More specifically, only the designated living Imam possessed perfect knowledge. The Imam's brothers, for example, did not possess it.

According to tradition, Shi'i jurisprudence was first developed by Imams Muhammad al-Baqir (d. 732) and Ja'far al-Sadiq (d. 765). Thus, Imami law is often referred to as the Ja'fari school. Prior to this time, the only clear division between Shi'ism and the rest of the Muslim community was along political lines. Ja'far al-Sadiq saw part of the role of the Imams as administering justice and thus encouraged his followers to act in accordance with the Qur'an and Sunna. Rejecting the practice of commoners (i.e. proto-Sunnis) and the precedent of the Companions of the Prophet (especially 'Umar b. al-Khattab), he broke with mainstream Muslims. He even advocated that "the right path is found in those traditions which contradict the commoners.[1] Therefore, Shi'i 'ulama accepted the consensus *(ijma')* of the companions of the Imams.

According to traditional accounts, Shi'is rejected analogical reasoning *(qiyas),* explaining that qiyas only leads to probability *(zann,* i.e. not certain 'ilm). Similarly, they did not accept the use of personal judgment *(ray).* Qiyas and ra'y, which were accepted by proto-Sunnis, were also rejected by Shii scholars as part of the polemical debate between the majority of Muslims and followers of the Imams. Shi'i scholars of this time often used ra'y and ijtihad interchangeably. Therefore, the rejection of ra'y was a prohibition of ijtihad, the acceptance of which Bihbihani eventually made the centerpiece of his disputation with Akhbaris.

During this formative period of Shi'i thought, the majority of 'ulama were primarily concerned with which traditions of the Imam should be accepted in

1. Muhammad b. Ya'qub al-Kulayni, *al-Usul min al-kaji,* 2 vols., ed., 'Ali Akbar Ghaffari, Dar al-Kutub al-Islamiyya, Tehran 1984, 67-68. Quoted in Kazemi, *Religious Authority,* 12.

Usulis and Akhbaris). Therefore, theosophical trends are often glossed over or even ignored altogether. However, such ideas represented by the School of Isfahan, Shaykhis, and others became widely accepted in their day and have had a lasting influence on Shi'i thought. Furthermore, they represent esoteric trends that have been part of Shi'ism from its inception. Leaving out developments based on an intuitive approach from the historical development of Shi'i intellectual history leads to an incomplete narrative. Such a narrow approach presents Shi'ism squarely legalistic terms. The following will show that use of intuitive means to produce knowledge and bolster charismatic authority is consistent throughout Shi'i history.

Building on the periodization of Shi'i jurisprudence developed by scholars, such as Ahmad Kazemi Moussavi[1] and Hussein Modarressi,[2] which focus primarily on textual and rational approaches to knowledge and authority, the following will include developments by theosophists and factor intuition *(kashj)* and inner knowledge *(batin)* into Shi'i thought.

Henry Corbin and Seyyed Hussein Nasr are among the few scholars writing in Western languages that have focused on illuminationist trends in Shi'ism. Whereas Modarressi views Shi'ism through the lens of jurisprudence, Corbin concludes that "Shi'ism is, in essence, the esotericism of Islam."[3] In fact, Corbin divides the tradition into "four great periods," two of which he defines solely in terms of developments by theosophical thinkers. [4]

Emphasizing both the development of Shi'i jurisprudence and theosophism, the following will divide Shi'i thought into seven distinct periods, some of which overlap chronologically. The sources of naql, 'aql, and kashf are consistent in each era, although the role of each source changes from time to time. General patterns are clearly discernable among adherents of what have become known as Akhbarism, Usulism, and Ishraqism, regardless of the period in which they lived. There are also significant disagreements among scholars within each trend, which blur the lines between these three schools of thought.

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1. Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam: from the Office of Mufti to the Institution of Marja* (Kuala Lumpur International Institute of Islamic Thought and Civilization (IST AC), 1996) 18-19.
2. Hussein Modarressi Tabatabai, *An Introduction to Shi 'i Law: A Biographical Study* (London: Ithaca Press, 1984). Modarressi, "Rationalism and Traditionalism," 141-158.
3Henri Corbin, *History of Islamic Philosophy*, Trans., Liadain Sherrard (London: Kegan Paul Intl., 1993), 36.
4. Ibid., 32-35.

claims that 'aql, naql, and kashf are three methods of attaining knowledge, but only kashf leads to divine reality.[1] In other words, Amuli accepted all three sources, but favored divine inspiration.

At different times in Shi'i history, scholars who have represented the mainstream school of their day granted supremacy to textualism, rationalism, and intuition as the preeminent sources of sure knowledge. The dominant group of textualists has become known as Akhbaris and the term Usuli has become synonymous with those who accept reason. Those who have promoted intuition have not been categorized into such neat titles, but are generally known as theosophers or illuminationists *(hikmat al-ilahis* or *Ishraqis).* However, these titles (Usuli, Akhbari, and Ishraqi) can be misleading since scholars within each school of thought vary in their approach to the three sources considered here.

Even a cursory overview of the history of Shi'i thought shows that texts, reason, and intuition have formed a tripartite system of deriving knowledge and justifying clerical authority. The basis for authority in Shi'ism is the Imamate, an institution whose authority rests on the Imams' ability to infallibly interpret the Qur'an rationally intuitively. During the occultation of the twelfth Imam, authority has been delegated to Shi'i scholars, who justify their authority on the basis of their knowledge of the texts, superior rational ability, and intuitive experience. Of course, not all scholars claim authority on the basis of all three characteristics. In fact, it is rare for a scholar to make use of each source in this tripartite system. Most scholars place emphasis on one of the three parts, often the one they feel lacks emphasis by their peers and predecessors. However, if we take Shi'ism as a whole, it is clear that these three trends form the Shi'i approach to knowledge and authority. Although it is outside the scope of this study, these three sources also form the three overarching sources of knowledge and authority for Islam as a whole.

Periodization of Shi'i Thought

As noted in Chapter I, emphasis in the periodization of Shi'i thought is often placed on the tension between textualism and rationalism. This is largely due to the primacy of a legalistic approach to Shi'i thought. However, this approach leads to the misconception that the history of Shi'i scholarship is the result of two competing camps: rationalists and traditionists (i.e.,

1. Sayyed Haydar Amuli, *La Philosophie Shi'ite*, edited by Henry Corbin and Osman Yahia. Bibliotheque Iranienne, Number 16 (Tehran and Paris: Institut Franco-Iranien de Recherche 1969), 623.

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Three Sources
Of Shi'i Knowledge And Authority*

Zackery Heern

In order to gain a broader understanding of how the Usuli school, promoted by Bihbihani and his disciples, fits into the history of Shi'i thought, the following will present a periodization of Shi'ism based on its intellectual trends. Throughout Islamic history, scholars (*'ulama)* have been trying to answer the following question: in the absence of the Prophet and the Imams, how is sure knowledge (*'ilm)* derived? This question has been at the root of many intellectual Islamic debates. Assuming that the duty of producing an answer to this question is the responsibility of scholars themselves, the limits of their authority also came into question. Taking a broad historical approach, I argue in what follows that Shi'i scholars have derived knowledge and authority from three sources: the foundational texts *(naql,* i.e. the Qur'an and hadith), rational interpretation (*'aql),* and intuitive revelation *(kashf).* While these three sources have caused divisions among Shi'is and some scholars have categorically rejected one or more of them, many thinkers have accepted some synthesis of naql, 'aql, and kashf. Even when scholars have rejected one of these sources, they are often found to use it in practice. The following will illustrate that appeals to these three sources of knowledge and authority are made in each major period of Shi'i thought. Furthermore, periodic shifts are often the result of appealing to the authority of one of the three sources at the expense of the other two.

The fourteenth century Baghdadi scholar, Sayyid Haydar Amuli, is possibly the first scholar that explicitly included a synthesis of 'aql, naql, and kashf in his theoretical approach to knowledge. Therefore, we will take his explanation of these three sources as a point of departure. He argues that 'aql (the way of the philosophers), naql (the tradition of the theologians), and kashf (the. intuition of the mystical theosophists) are the three parts of metaphysics.[1] More importantly, in his *Risala fi ma'rifat al-wujud,* Amuli

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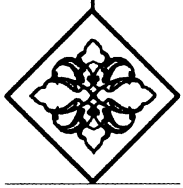
* Heern, Zackery M. *Usuli Shi'ism: The Emergence Of An Islamic Reform Movement In Early Modern Iraq And Iran.* Diss. University of Utah, 2011, pp 1-24.

1. Henri Corbin, *En Islam Iranien,* 4 vols (Paris: Gallimard, 1971-2). For English translation see Seyyed Hossien Nasr, Hamid Dabashi, and Seyyed Vali Reza Nasr, eds., *Shi 'ism: Doctrines, Thought, and Spirituality* (Albany State University of New York Press, 1988), 191.



Chapter 6:

The Scientific Bases and Achievement

jurisprudence was concluded at the center of the Shi'i learning in the *Atabat*– the Shi'i holy places in Iraq. At that time, the *ulama* were divided into three competing schools. The first was the *Akhbari* school, which denied any independent ruling on the part of the *ulama* above and beyond the Tradition of the Prophet and the Imams. The *Usuli* school, on the other hand, asserted the legitimacy of the function of the *mujtahids* in the interpretation of law and in making independent judgment. For the *Akhbaris*, the *ulama*'s basic function was the transmission of doctrine (*naql*) which was given precedent over the application of reason (*'aql*), and *ijtihad* or independent reasoning was considered unlawful innovation. While for the Akhbaris, all believers should be the followers (*muqallid*) of the Imam, who is in occultation, for the *Usulis*, all believers should choose a living *mujtahid* to follow his judgment, hence the divisions of the Shi'is into followers (*muqallid*) and the spiritual leader (*marja'*). Finally, there was Sufism. The Sufis were attached to the esoteric rather than to the Law. Sufism, basically rejected the validity of any interference of the *ulama* in worldly affairs, while claiming that the Sufi doctrine was identical with the esoteric knowledge of the Imams. The leading proponent of the *Usuli* position was a certain Aqa Muhammad Baqir Bihbahani (1705-1803), who ended the supremacy of the Akhbaris in the *Atabat*. He vigorously championed the *Usuli* position, and attacked both the *Akhbaris* and the Sufis by formally denouncing them as infidels (i.e., *takfir*). The means Bihbahani employed were often brutal. He was known as Sufi-killer (Algar 1969; Keddie 1972; Moaddel 1986).

Yet despite their organizational and social resources, the ulama seldom displayed a unified political action. They were subject to conflicting interests emanating from their ties to the state, landowners, and the bazaar. The emergence of opposing political tendencies among these social forces at different historical junctures often resulted in the emergence of politically diverse factions among the ulama, undermining their ability to control and supervise culture production. This disunity was particularly visible in virtually all the political movement that emerged in Iran in the nineteenth and twentieth centuries.

other hand, are better off than any other Shi'i community in the Persian Gulf region. They have encountered little visible persecution at the official and social levels. Unlike the Shi'i minority in Saudi Arabia, the Kuwaiti Shi'is are allowed to build mosques and community centers, observe their religious rituals, and teach their religion at school. The situation of the Shi'i minority in Lebanon is unique compared with the rest of the Arab world. While they have always been among the poorest and least-educated groups, they managed, in recent years, to amass considerable political power and influence. Their persistent resistance against the Israeli occupation of Southern Lebanon, which successfully forced the Israeli to withdraw from the country, enhanced their popularity among Muslim Arab population (Momen 1985; Fuller and Francke 1999).

The Political Power of the Shi'i *ulama* in Iran

The political power of the Shi'a community in Iran is due in large measure to the role played by the *ulama* –the learned religious scholars, jurists, and interpreters of the law. At the apex of the Shi'i clerical hierarchy were the few who attained a certain fame, the approval of a great body of jurists, or a level of intellectual competence to be able to settle differences and decide question of general discipline, and thus enjoyed the honorific title of *Shaikh ul-Islam* or *ayatollah al-ozma* (grand ayatollah). Like their Sunni counterparts in the pre-modern Islamic world, the Shi'i *ulama* owned considerable landed property, which was partly a Safavid legacy and partly the result of pro-*ulama* practices of Qajar rulers in the nineteenth century, and enjoyed a fairly close relationship with the ruling elite. Unlike their Sunni counterparts in other Muslim countries, however, the Shi'i *ulama* not only increased their power in nineteenth-century Iran but also managed to play a crucial part either in favor of the ruling monarch or in opposition to him in all significant political events that transpired in the country in the nineteenth and twentieth centuries.

The rise in *ulama* power is attributed to the interplay of several historical factors. One was the weakness of the Qajar state in the nineteenth century. Another was the *ulama*'s close ties to the bazaar merchants, the craft guilds, and the landowners. These classes often supported them financially in the form of gifts, donations, and religious taxes (*khoms* and *zakat*). They also received payments for performing various functions related to general economic and social exchange. Finally, doctrinal development and religious contention in Shi'i hierarchy also enhanced *ulama* power. In the late eighteenth century, a long standing controversy in the discipline of

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The Political Power of the Shi'i ulama in Iran *

Monsoor Moaddel

Iraq has been one of the most important centers of Shi'i learning since the early days of the tradition. The holy cities of Najaf and Karbala, known as the *atabat*, are where the shrines of Imam Ali and Imam Hussein, the first and third Imams, respectively, are located. These cities have always attracted pilgrims, theological students, and high-ranking Shi'i theologians. The Iraqi Shi'is have also been active in the politics of their country. In the twentieth century, they at first welcomed the British as deliverers from the yoke of Turkish domination, but later on became suspicious of British objectives in Iraq and began to express their opposition to their presence in the country and to the establishment of the Mandate of the League of Nations. Being predominantly of poor socioeconomic status, they supported the 1958 coup that brought the socialists and the communists to power. When the Ba'ath party came to power in the coup of 1963, they constituted 53 percent of the party. But gradually the Sunni element in the party predominated and by 1968, the Shi'i portion of the party membership had fallen to six percent. In the 1970s, the Ba'ath party's discriminatory policies resulted in the Shi'i population abandoning secular politics and participating in religious oppositional movements against the regime. These Shi'i political parties were repressed under the regime of Saddam Hussein, but flourished after the fall of his regime in 2003.

The situation of the Shi'is in Bahrain is even more repressed than in Iraqi. A Sunni ruling family, the al-Khalifa, dominated an autocratic political order that excluded Shi'i from participation in public life and discriminated against them economically. Likewise, the Shi'i population of Saudi Arabia has been subject to the government's discriminatory policies. Their community is the least integrated into the Sunni society and they are almost entirely denied the public expressions of their religious traditions. The Shi'is of Kuwait, on the

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* Moaddel, Monsoor. " Shi'a Islamic Societies", *The Oxford Handbook of Global Religions*, edited by Mark Juergensmeyer. Oxford: Oxford University Press.

Sharā'i' al-islam (The gems of discourse in elucidation of *Sharā'i' al-islam [of* al-Muhaqqiq al-Hillī]), in forty-two volumes, has overshadowed the important works of many of his contemporaries for example, Mullā Ahmad b. Muhammad Mahdi al-Narāqī al-Kāshānī (d. 1245/1829), and Shaykh 'Alī Kashif al-Ghitā' (d. 1254/1838).[47] Najafī's commentary on *Sharā'i'* has not been surpassed in its depth of discussion and encyclopedic information on the opinions of all the Imamite jurists up to his own time , actually citing their works carefully and even at times the oral communications of his contemporaries, including his teacher Bihbahānī. *Jawāhir* needs to be studied independently both to write the history of Imamite jurisprudence in its application, and also to analyze the principles of juristic practice used in the demonstrative jurisprudence of the lmamites as it culminated in Najafī's intellectual endeavors.

Najafī's position as a *marja' al- taqlid*) the most learned authority acknowledged among the Imamite jurists of his time ,whose rulings were followed by all the Shi'a, gave the position of a *mujtahid* among the Imamites an unprecedented recognition. Najafī's prestigious and well-deserved recognition among the Shi'a in general ,and among the scholars in particular ,was instrumental in the acknowledgment of his contemporary ,the great *mujtahid* Shaykh al-Ansarī ,as the leader of the lmamite community and as their sole *marja' al-taqlid* in Najaf around 1266/1849 before Najafī's death . By this time Najaf ,after the death of Tusī in the eleventh century , revived as the center of Shi'i learning ,more particularly of jurisprudenc, under the leadership of Ansārī .

the twelfth/eighteenth century for his very timely contribution in reasserting the fundamentality of *usūl* in the interpretation of law.[1] In addition, his efforts in establishing an Imamite jurist's candidacy to exercise power in an Imāmī state, and even regarding his rule as preferable to the rule of an unjust authority resulted in the subsequent consolidation of the guiding role of a *mujtahid* in the Imamite community.

15. Kāshif al-Ghitā', al-Shaykh Ja'far al-Kabīr (d. 1228/1813). Kāshif al-Ghita' was the student of Bihbahanī and al-Sayyid Mahdī b. Murtada Bahr al-'Uhūm (d. 1212/ 1797) in Karbala' and Najaf. Kāshif al-Ghitā' had maintained close relations with both the Ottoman authorities in Baghdad and the Qājār monarch of Iran, Fath 'Alī shah (1212-50/1797-1834). His public position on behalf of the Sunnī Ottoman governor of Baghdad to bring about a peaceful settlement with the Persian army advancing on that city arc all reflected in his rulings, in which he saw the leading role a *mujtahid* could play in the state affairs of a Muslim community.[2] His own involvement m lead mg a defensive *jihad* during the siege of Najaf by the Wahhābīs in 1220/1805 was dictated by his judicial decision in which a *mujtuhid,* qualified to issue legal opinions in his position as the deputy of the Hidden Imam, can give permission to the monarch to lead a *jihad* against the enemies of Islam, or even himself do so. Furthermore, he saw the possibility of having a just ruler, pending the return of the Hidden Imam, as is indicated in the dedication to Fath 'Alī Shah of his major *fiqh* work, *Kashf al-ghitā' 'an mubhamat al-shari'at al-ghurra* (Unveiling the cover from the ambiguities in the most illustrious Shari'a).

Kāshif al-Ghitā' was a leading jurist of Najaf in the line of *usūl al-fiqh.* His use of *ijtihād* in his ruling on *jihād,* and other issues related to the declaration of *jihād,* is evident in his treatise entitled *Jihādiyya.* It is explicit argumentation on the right of an Imamite jurist to authorize a qualified person to lead a *jihad,* which implies that a jurist, in the absence of the actual legitimate authority of the Imam, can legitimize the authority of an Imamite by supervising the public order. It was this comprehension of the role of the general deputy of the Imam that allowed Kāshif al-Ghitā' to authorize Fath 'Alī Shāḥ to undertake a *jihād* as a *sultān* against the Russians.[3]

16. Al-Najafī, al-Shaykh Muhammad Hasan (d. 1266/1849). Najafī was Shaykh Ja'far al-Kābīr's student in the tradition of Bihbahānī's Usūlī methodology. Najafī's monumental work, *Jawāhir al-kalām fī sharh*

1. Algar, *Religion and State*, p. 34.
2. Ibid., pp. 53-54. See the article "Kāshif al-Ghitā," in *EI2*, 4/703.
3. See blow, chap. 3.

dominant position as a *mujtahid* inspired and prepared a large number of his students who attained great influence in Iran during the Qājār period.[1]

A number of Usūlī jurists had studied, directly or indirectly, under teachers who favored Akhbārī methodology, as indicated by the fact that Bihbahānī studied under his father, Mullā Muhammad Akmal, who was Muhammad Bāqir Majlisī's student. Majlisī's close relationship with Safavid monarchs and his vast authority under them is reflected in his various rulings that deal with the authority of the *mujtahid* in an Imami state. Although Majlisī has not left any systematic work on jurisprudence, he has covered the chapters of Imamite *fiqh* in his multivolume *Bihar al-anwār,* recording all the *hadīth* reports, as was done in an earlier age by Ibn Bābūya. His political jurisprudence, with which we are concerned in this study, comes close to the political attitude of Sunnī jurist when dealing with those actually invested with power, the de facto *sultans.* Thus, he believed, like Ghazālī or Ibn Taymiyya, that tyrannical rulers and their oppressive officials should not be opposed; rather, he advises that one should employ *taqiyya* in their regard, to avoid exposing oneself to pointless harm.[2] His opinions favoring the all-comprehensive authority of the jurist have been criticized by some later authorities as springing from the love of power; but they were also reinforced by others, as witness Bihbahānī's rulings in this connection as handed down by his students.

Imamite political jurisprudence was bound to take into consideration the new exigencies created by the Imamite monarchs of the Safavid and Qājār dynasties who had also declared the Imamite school of jurisprudence the official source of law in their dominions. It is probably correct that Imamite jurists during this period saw a rare opportunity to implement the ideals of the Imamite system in the public order. To that end, both the interpreters of the system (that is, the jurists) and the method of interpreting the system itself had to be consolidated. Although the jurist, as a deputy of the Imam, needed to be buttressed with discretionary control over the affairs of the community (that is, *wilāyat al-tasarruf),* the legal system, which was being threatened by the rigidity and literalism of the Akhbārī trend, had to be salvaged. In achieving both these goals, Bihbahānī and his prominent students, like Kāshif al-Ghitā' and Najafī, played a crucial role. Indeed, Bihbahānī is regarded as a *mujaddid* (reviver) of the Imamite community in

1. Algar, *Religion and State,* p. 34.
2. Majlisī, 'Ayn al-hayāt, 560-7. For the Sunnī attitude to political authority in the medieval period, see A. K. S.. Lambton, *State and Government in Medieval Islam* (Oxford, 1981), pp. 108-29, 138-51.

methodology found support among some prominent jurists, including Muhammad Bāqir Majilisi (d. 1110/1698), for a considerable time, there was no way for Imamite jurisprudence to revert completely to the Akhbārī position, which tended to be more literalist and rigid in its juridical rulings. More significantly, total abandonment of the Usūlī methodology would have led to the imposing of limitations on furthering the authority of the jurist as a person who possessed qualifications to interpret the will of the Hidden Imam. On the other hand, conceding to the inherent limitations in *usūl* did not in any major way alter rulings derived through *ijtihād* based on the textual evidence preferred by the Akhbārī jurists. In the later works of Akhbārī *figh,* especially *al-Hadā'ig al-nādira* of Yusuf b. Ahmad al-Bahrānī (1186/1773), one can hardly distinguish major differences of opinion in the form of disputed questions between his work and that of an usūl jurist, although the use of *hadīth* in *Hadā'iq* is overwhelming.

14.Al-Sabzawārī, Muhammad Bāqir b. Muhammad Mu'min (d. 1090/1679).

Also known as al-Muhaqqiq al-Sabzawārī, he was another prominent jurist, who held an official position of *shaykh al-islam* in the Safavid administration. He had studied under Muhammad Taqī al-Majlisī (d. 1070/1660). Sabzawārī's two works on demonstrative jurisprudence. *Kifāyat al-akhām* (Exhaustive treatment of the ordinances) and *Dhakīrat al-ma'ād fī sharh al-irshād* (The provision for the day of resurrection on the elucidation of *al-irshad* [of 'Allāma]), have been cited frequently by later jurists.

The later part of the Safavid era saw much growth, both in the number and in the power of lmamite jurists. It was notably the schools of Isfahān and Najaf, and Karbala', that Trained .... in both the Usūlī and Akhbārī methodologies. However, during the period following the downfall of the Safavid dynasty and throughout the interregnum before the Qājār rule was consolidated in Iran, until the later part of eighteenth century the Akhbārī influence on Imamite jurisprudence prevailed.

It was Muhammad Bāqir b. Muhammad Akmal al-Wahīd al-Bihbahānī (d. 1208/1793), the outstanding mujtahid of the ... who almost completely uprooted Akhbārī influence from the holy cities of Iraq. It is reasonable to say that from Bihbahānī's time onward the UsūlĪ methodology became established as the sole authoritative method of Imamite jurisprudence,[41] although the *hadīth-related* sciences continued to develop as required by *al-ijtihād al-shar'i.*

Moreover . as a consequence and implication of the Usūl victory, functions of a *mujtahid* became defined with greater clarity at this time. Bihbahānī's

history, even during the Imamate of al-Bāqir and al-Sādiq, there were discussions between the close associates of the Imams about *al-'aql,* symbolizing the authority and even the priority of human reasoning, and *al-āthār* or *al-akhbār,* symbolizing the authority of revelation. During the presence of the Imams, the final decision on any disputable matter undoubtedly lay with the Imams, whose interpretations of the Qur'an and the Sunna were authoritatively binding because of the belief in their infallibility. However, when the twelfth Imam went into occultation, that certainty in the interpretation of revelation was unattainable. All the more so inasmuch as normal human reasoning was fallible and not protected by the grace of God.

In Imamite jurisprudence even *ijmā'* (consensus) had to be protected by the inclusion of the infallible Imam's opinion in it; otherwise that *ijmā.'* had no legal validity for deducing law. The, authority of the Imam's utterances, whether in the case of *akhbar* or *ijma',* was so central to the decision-making process in jurisprudence that even when *Ijtihād was* admitted as a valid intellectual process in deducing judicial decisions, it was, as pointed out above *al-ijtihād al shar'i* (reasoning based on the revelation), and not al-ijtihād *al-'aqlī* (reasoning based on the intellect) that was regarded valid. This latter *ijtihād* was equated with *qiyās-namely,* inductive reasoning-whereas the former type *of ijtihad,* in Imāmī Shi'ism was deductive reasoning to establish a judicial decision by indicating its conformity with the divine will With the development of *usūl al-fiqh,* espcc1ally the section that dealt with the accreditation and approbation of traditions through critical examination of the documentation appended to them (i .e., textual and contextual analysis), the authority of the traditions compiled by early authorities like Kulaynī and lbn Bābūya could not be maintained unquestioningly. In the fourth/tenth century, Qumm and Rayy scholars of Imamite learning were inclined to accept the authority of *akhbār* uncritically.

But Baghdad scholars, who had a thorough grounding in the rational side of transmitted sciences, like theology, were inclined to conduct rational investigation to ascertain the authenticity of traditions. The tension between the upholders of one or the other attitude toward compiled traditions attributed to the Imams, whether expressed or not, always remained latent in Imamite jurisprudence, because any challenge to the authority of the traditions was not without implications for the recognition of the Imam 's authority as the sole interpreter of revelation.[1]

Although the Akhbārī opposition to the well-established Usūlī

1. See w. Madelung, "*Akhbāriyya,*" in *EI2,* 5. For critique of the traditions transmitted by Bābūya, see Mufīd, *al-Masā'il al-sarawiyya,* pp. 55-56.

(33)
The Comprehensive Authority of the Jurist in Imamite Jurisprudence*

Abdulaziz Abdulhussein Sachedina

AI-Shahīd al-Thānī (or Shahīd II), Zayn Āl-Dīn al-'Amilī al-Jabā'ī (executed in Istanbul in 966/1558). Shahīd II was the contemporary of Muhaqqiq Karakī, but lived in Jabal 'Āmil. Shahīd II's career and contribution to Imamite jurisprudence in many ways resembled those of Shahīd I, whose academic work he continued by writing a detailed commentary on his *Lum'a,* and whose social work he continued by maintaining a good relationship with all Muslims of various Sunnī schools, mastering their major works and teaching them in his comparative lectures.

It is significant that Shahīd II was introduced to the illuminationist philosophy of al-Suhrawardī. He learned it in Cairo, where he studied mystical philosophy with al-Shaykh Muhammad 'Alī al-Gīlānī and al-Shaykh Shams al-Din Muhammad' b. Makkī.[1] In order to trace the development of rulings in regard to the authority of the jurist, I have made extensive use of Shahīd II's commentary on Shahīd I's *Lum'a,* entitled *Rawdat al-bahiyya* (the brilliant garden), and on Muhaqqiq's *Sharā'i,* entitled *Masālik al-afhām* (Methods of comprehension), the *ijtihād* of jurists like 'Allāma, Shahīd I and Shahīd II based on *usūl alfiqh,* refined the rough edges of political jurisprudence as it had continued up to this time. But toward the end of the Safavid era, under a prominent traditionist *(muhaddith),* Mullā Muhammad Amīn b. Muhammad Sharīf al-Astarābādī (d. 1033/1624), who had studied with Shahīd II's son, Jamāl al-Dīn al-'Āmilī, the role of *akhbār* (traditions) in the deducing of legal decisions was revived.

Debate over the relative fundamentality of *usūl* and *akhbā.r* in the derivation of judicial decisions had its roots in the theological debate about the priority of reason over revelation. From the early days of Imamite

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* Sachedina, Abdulaziz Abdulhussein. *The just ruler (al-sultān al-ādil) in Shaiite Islam: The comprehensive authority of the jurist in Imamite jurisprudence.* Oxford University Press (New York), 1988, pp 19-23

1. 'Āsifī' introduction to *Lum'a,* 1/166-67.

or accepted their spiritual leadership, and by the physical backing of urban toughs. Vahid Behbehani's use of *mir-ghazabs* (strongmen/ executioners) to intimidate Akhbari rivals prefigured similar practices by leading 'ulama in Isfahan, Kerman, Tabriz or Qazvin. The mobilisation of lutis and their strong-arm tactics aided the pursuit of personal and professional conflicts, whether competition among *mujtaheds*, *'ulama* manipulation of secular authorities, or support for anti-Babi, anti-s*ufi*, and anti-Jewish protests. In such protests and conflicts, the professional and spiritual strength of the *'ulama* was underpinned by their confrontational methods, their ability to bring supporters on to the streets, and their consequent leverage on government and community. The capacity of *mullas* to invoke shared authority was a collective and an individual asset. Although sometimes divided by personal or sectional differences and rivalries, *'ulama* could and did assert collective status and authority, grounded in history, ideology and their position in their communities.

'Ulama use of a collective approach was particularly visible when they perceived core interests and concerns to be in danger. When the doctrinal and spiritual explorations of Sayyid 'Ali Muhammad, the Bab, turned to criticism, and ultimately rejection, of established forms of *'ulama* authority and specialist knowledge, they responded by allying with secular authorities to repress his movement as subversive and heretical. Although doctrinal heterodoxy and esoteric speculation could be accommodated within the flexibility and pluralism of Shi'a practice, Babi challenges to the authority of *mujtaheds* struck at central features of that practice and at the vested interests of leading *'ulama*. While some lesser-ranking *mullas* and seminarians were inspired by the radical rethinking of revelation within Babism, the religious establishment was more likely to feel threatened. Although it moved cautiously and in tandem with government policy towards frontal condemnation of Babism, it is significant that both Shaikhi-oriented and orthodox mujtaheds contributed to its final expulsion from acceptable practice. Babism's challenge to ijtehad, and the expertise enshrined in the madrasehs, confronted leading *'ulama* with threats to their authority and identity as guardians, interpreters and transmitters of law, belief and tradition. As Amanat notes, this institutional challenge came at a time when the cohesion and confidence of the Shi'a establishment may have been weakened by the passing of a generation of strong leaders, leaving their successors somewhat defensive.[1]

1. Amanat, 'Madrasa and marketplace'; and *Resurrection and Renewal*, p. 294.

concern and a professional religious issue, figuring in the doctrinal concerns, rules for behaviour and textual discussions of purity and pollution. The semi-concealed but persistent interest in *irfan* (mystical knowledge), and the importance given to asceticism in religious practice, expressed intensely relevant responses to the personal challenge of self-control in sexual matters faced by adolescent males, as well as core concerns of the faith. The shared experience of negotiating a difficult part of the life-cycle in both personal and professional terms played its role in developing a shared identity, not to be trivialised by sexual voyeurism. Relative neglect of gender and sexuality in studies of the *'ulama* should not obscure an appreciation of their formative professional and institutional influence.

Depictions of organisation and relationships among religious specialists reveal only part of their professional position in the nineteenth century. *'Ulama* success in creating authoritative positions as definers, defenders and dispensers of moral, legal and doctrinal leadership and 'orthodoxy' rested on the relationships they developed with others as well as on self-development and self-definition as a professional and vested interest. The growth of a body of professionals with a common educational background, supportive occupational and family networks, and a clear ideological outlook was buttressed by the alliances they formed with the new dynastic regime, urban communities and local elites. As already shown, they integrated themselves with the *bazar* economy and craft and commercial groups. The more privileged propertied and wealthy sections of the *'ulama* became significant players in urban life, joining the networks of notables in roles that became increasingly normal and regular. Their legal expertise and authority provided judicial and regulating machinery for commerce and entrepreneurship through the legal registration of contracts and property, the management of trusts and the guardianship of orphans, minors and those deemed incompetent. Those who acquired property, wealth and hereditary claims to leading posts in mosques, courts and *madrasehs* joined local elites, wielding social and political influence that supported their professional roles and stimulated competition among rivals for such advantages. Intermarriage into landed, official and merchant families consolidated the place of senior 'ulama in the propertied and ruling establishment, just as family links between lower-ranking *mullas*, traders and lesser landowners or bureaucrats embedded them in their communities.

The social position of *'ulama* patricians combined professional expertise and solidarity with connections to fellow notables, buttressed by their following among students, and those who attended their mosques and courts,

believers from the 1880s to his death in 1895, included

links to *mujtaheds* in Kerman who taught and held the post of *imam jom'eh*

for two generations, and to the founder of the Babi movement.

Another significant feature of the relationships among the *'ulama* was the

all-male character of their training and profession. Its significance lies less in the defining fact of women's exclusion from *madraseh* education and religious office (although individual women, usually in *'ulama* or notable families, wrote, studied and gained religious reputations) than in the distinctive relationships and identities associated with single-sex institutions. Studies of such institutions – schools, colleges, military bodies, religious organisations – show how their gendered character shapes the formation of their members. In singlesex settings, daily life, work and relationships among all-female or all-male groups give distinctive strength and flavour to ideas and practices of male or female identity and solidarity. Those identities and solidarities are, of course, influenced by all the social settings from which entrants to armies, colleges or professions come, but in forming single-sex groups these institutions combine the distinctive experiences of sex/gender with their own aims and activities. People's sense of themselves as male or female is defined, confirmed and even sharpened as they undergo military training, formal education, religious initiation or professional development in single-sex settings. The resulting 'old-boy' networks, regimental loyalties or attachment to single-sex religious, legal and educational institutions, combine professional and occupational self-definition with sex/gender solidarity.

Thus the study-circle, madraseh and professional networks of *mullas* and

mujtaheds, which were all-male associations and institutions, gave a particular spin to the versions of masculinity available in Iranian society. Collegial/brotherly and fatherly/patron relationships were one facet of that experience; the role of gendered language in which females or feminine references are 'deviant', 'outside' or 'other' was another. The political and ideological positions on women taken up by the religious establishment illustrate the power of religious institutions and values in forming opinion, and their grounding in the exclusively masculine character of their profession.

One particular feature of the *madraseh* experience was the bringing together of *young* men to undertake formative training at the same time as the equally complex and challenging process of development into adult males. Learning to manage sexuality and purity was a profoundly personal

environment, kept the 'hierarchical'element fluid and partial. Confronted with the emergence of Babism, opposition to western competition among Iranian merchants, or the changing attitudes of rulers and government officials, a degree of adaptability was both a practical response and a defining characteristic of the *'ulama*.

The professional position of the *'ulama* was sustained through personal relationships with one another, and with the governments and communities with whom they lived and worked, as well as through organisation. Granted the limited character of the hierarchy, it is not surprising that *'ulama* solidarity relied extensively on personal networks. Student circles around leading scholar/teachers formed ties to one another and to their teacher which persisted as they took up legal and scholarly posts, carrying with them the affiliations, rivalries, ideas and texts which had shaped their training. Thus pupils of Behebahani and his followers spread *'Usuli* views, just as the pupils of Ansari, or the Shaikhi leaders Ahsa'i and Rashti carried their teachers' ideas into the communities where they established themselves. Combined with the use of the *ijaza* and methods of debate, question and answer in religious study, they personalized the professional and intellectual development of the *'ulama* through peer, patron–protégé and teacher–student relationships. Reputation, rivalry, respect, influence and patronage were as central to the professional lives of *mullas* as organised learning and authority.

This was reinforced by intermarriage and family connection. At the highest level there were prominent *mujtaheds* and holders of high offices who traced lineages to the seventeenth century or earlier. The nineteenth-century *imam jom'ehs* (chief prayer leaders) of Tehran, the *shaikh al-Islams* (chief judicial officers) of Isfahan, and leading *mujtaheds* of Kermanshah could all show descent from the Majlisi family who had been Safavid religious leaders. Other leading scholars and *mujtaheds*, such as the descendants of Behbehani, and Bahr al 'Ulum (major early protagonists of *'Usulism*) intermarried and had sons who pursued religious careers and intermarried with other clans of *'ulama* and *sayyids* (descendants of Muhammad) such as the Tabataba'is. *'Ulama* influence was consolidated by the intermarriage of new entrants into existing *'ulama* families and the establishment of hereditary claims to religious posts. The shared outlook and interests created through religious training and probation were strengthened by kinship links, although cross-cut by professional rivalry or religious differences. The kin network of Mirza Hasan Shirazi, recognized leader of Shi'a *'ulama* and

boundaries, rather than establishing binary oppositions between 'permissive' and 'dogmatic' versions of belief and practice.

This influenced the development of ideas and practices of leadership stimulated by the expansion of networks of *'ulama* holding office in Iranian communities, by the need to manage such networks, and to deal with government, with those whose money and support sustained the *'ulama*, and with charity and patronage. The *'ulama* leadership needed to adapt to the new roles of former students and associates, to a ruling dynasty with whom they established partnerships, and to the merchant and notable circles who were sources of support. Although there were matters of principle and ideology at stake in defining leadership within the *'ulama*, it also raised material and political issues.[1]

The ability to recognise and adapt to this situation underpinned the emergence of certain individuals as recognised 'leaders' of the learned Shi'a and of believers in general. The notion of *riyasat*/leadership, that is management of the networks of individuals and resources, and representing religious interests, played an increasing role among the *'ulama*, seen in biographies of the period. At times this had a collegial flavour when *'ulama* and believers recognized 'leaders' for particular centres, or cultural groups (Turki- or Arab-speaking *mullas* and communities). At other times, a single prominent *mujtahed* achieved recognition across groups and communities, as with Shaikh Murtaza Ansari in the mid-nineteenth century and Mirza Hasan Shirazi in the late nineteenth century. The leadership of the former rested on his learning and management of the 'Imam's share', while that of the latter rested on student networks and merchant support. In both cases the ability to attract and make judicious use of funds for religious institutions, activities and students played a central role.[2]

These variables created a visible hierarchy of leaders, *mujtaheds*, lesserranking *'ulama*, and students rather than a highly structured organisation of religious experts. It was supported by assertions of professional identity and the authority to identify 'right' belief and conduct, and by professional practices, including formal declarations of competence (*ijazeh*) or heresy (*takfir*), the expansion of *madraseh* education, the use of funds from believers, and consensus about leadership. This has been called a 'hierocracy', but it is arguable that the importance of pluralism, the traditions of *ikhtilaf* among *mujtaheds*, and constant shifts in the cultural and political

1. Amanat, *'Madrasa and marketplace'*.
2. Ibid.; Amanat, *Resurrection and Renewal*, pp. 34–69; Cole, *'Imāmi jurisprudence and the role of the 'ulama'*.

theology), as well as arguments for *ijtehad* going back to Safavid times.

The professional position of religious specialists, while resting on their role

and self-presentation as arbiters of orthodoxy, also benefited from their pluralism and the limiting of outright exclusion and demonisation of 'unorthodox' Others. Persecution of Sufis and heretics went along with strategies for containing them, and acceptance of a degree of co-existence. The Shaikhi and sufi communities of Kerman in the 1870s were listed by a local author as variants of Shi'ism alongside the 'orthodox' in recognition of diversity as a normal state of affairs, albeit broken by episodes of conflict. Shaikhi circles in Tabriz and Yazd, the revival of Sufism, and the acceptance among the learned men of 'freethinking', dissident individuals with possible Babi/Baha'i tendencies, bear witness to this tendency.[1] They can be seen as symptoms and causes of the rather unstructured character of religious specialists as a group. Although the *'ulama* are depicted as practising and defending 'proper' Twelver Shi'ism, the reality was diverse and fluid, encompassing continued interest in Sufi, esoteric or Akhbari ideas, as well as accommodation with newer dissident trends.

The emergence of the Babi movement in the 1840s as an explicitly radical (and anti-*'ulama*) alternative, proclaiming a revolutionary and messianic revelation and a break with the Shi'a past, did meet open confrontation and condemnation from the religious leadership, leaving the term 'Babi' as a lasting term of abuse for heresy, innovation and unbelief. However, it is notable that Shi'a leaders moved cautiously and gradually to outright condemnation, acting in conjunction with secular authorities, and that senior *'ulama* were divided from lower-ranking *mullas* and *tullab*, numbers of whom were attracted to the new movement. Following a period of confrontation and persecution and the expulsion of prominent Babis from Iran in the 1850s, the continuation of the movement rested on the use of taqiyeh (concealment) by sympathisers, which preserved overlaps between members of the *'ulama* and Babi or their successor Baha'i and Azali groups. In the 1880s Baha'i assemblies included mullas, and antagonism to Babis and Baha'is as heretics did not prevent interaction between Shi'a and alternative views.[2] The drive to monopolise and define conformity/'orthodoxy' co-existed with pragmatic adaptability and shifting ideological

1. Vaziri, *Jughrafiya yi-Kerman*, pp. 41, 44–54, 157, 159, 191; Amanat, *Resurrection and Renewal*, pp. 62–89; Bayat, *Mysticism and Dissent: SocioreligiousThought in Qajar Iran*.

2. Cole, *Modernity and the Millennium*, ch. 3; Bayat, *Mysticism and Dissent; and Iran's First Revolution*.

Shaikhi thought– named from its originator Shaikh Ahmad Ahsa'i – revived speculative, occult and intuitive traditions in Shi'a thought and emphasised the role of the charismatic guide (the 'Perfect Shi'a') as intermediary between the Hidden Imam and believers. It appealed to the spiritual and messianic aspects of Shi'ism less emphasised in the legal and rational approach of 'orthodox' *'ulama*. While its reliance on Twelver tradition and its intellectual quality aroused interest among some *'ulama*, Shaikhism was also treated as a challenge and condemned by senior *mujtaheds*, threatened by a rival for patronage and popular following. The even sharper confrontation of the Babi movement's messianic announcement of a new religious dispensation superseding Shi'a traditions, produced even stronger responses from the religious establishment. As with Shaikhism, the combination of a challenge to doctrinal and legal authority with the emergence of a social base for Babi–Baha'i views, and Babi armed uprisings, fused issues of social power, right belief and political order which that establishment could not ignore. The collective identity and authority of 'orthodox' *'ulama* was consolidated by condemnation of dissident or heterodox alternatives, and their confinement within the practices of concealment, of intellectual study circles or cautious nonconformity. Just as the giving and taking of *ijazehs* recognizing learned authority for *ijtehad* were links in a professional network, persecution of the 'unorthodox' as unacceptable 'Others' affirmed shared 'orthodox' identity and practice.[1]

To understand the religious specialists solely in terms of their opposition to and distinction from alternatives would be to underestimate the ways in which 'orthodoxy' emerged within a *spectrum* of influences, its flexibility and complexity, the limits of *'ulama* authority and dominance, and the unclear boundaries of 'professional' and 'orthodox' identity or authority. Shi'a *'ulama* drew on diverse resources inherited from the centuries of their history. The centrality of judicial expertise and authority to their development and identity should not obscure elements of asceticism and pious contemplation, willingness to work with the popular practices of divination or mourning for the Imams, or wider scholarly and literary activity. The reputations of major *mujtaheds* rested on visionary experiences, on command of broad scholarly knowledge, and even on poetry writing. Nineteenth-century writers on the *'ulama* used biographical accounts of networks of learned men, and of miracles, piety and *kalam* (speculative

1. See Amanat, *Resurrection and Renewal*, especially chs 1, 6, 9; MacEoin, 'Changes in charismatic authority in Qajar Shi'ism'; Arjomand, *The Shadow of God*, p. 245.

contribution to professional life in Iran, their roles as dispensers of resources and services, and their collective identity, were publicly recognised, for example. This reflected the position of *'ulama* with wealth and property who were involved in landholding or commerce, and marked their religious professional identity as a specific segment in the local establishment. Student–teacher and patron–client relationships likewise linked members of the *'ulama* through the transmission of expertise and learning, as well as socially and personally.[1]

One expression of professional identity was the expanded use of 'orthodox'

mujtaheds' exercise of *takfir* – the act of declaring opponents *kafir*/infidel or heretical. These powers were used against *sufis* in Kerman in the 1790s, Kermanshah in the early 1800s, in Gilan in 1819–20 and Tehran in the reigns of Fath 'Ali Shah (1797–1834) and the pro-*sufi* Muhammad Shah (1834–48).[2] While this did not eliminate sufi interests and beliefs, it sharpened ideas or boundaries of orthodoxy and the *'ulama*'s power to establish them. Similarly, the growing collective role of the *'ulama* was grounded in successful advocacy of *'Usuli'* arguments for active learned interpretation of doctrine and tradition to

reach legal and ethical judgments followed by ordinary believers. This opposed *'Akhbari'* arguments for acceptance of the 'traditions' reporting the views of the Prophet and the Imams as the sole basis for such judgments. The debates dated back to Safavid times, with Akhbari views achieving some dominance in the eighteenth century. The response to this, led by Aqa Muhammad Baqir Behebahani (revered as the founder/' renewer' of contemporary Shi'ism), combined doctrinal arguments for the use of deduction and reason with emphasis on the need for a specialised cadre of experts defined by learning and skill. Such cadres could claim religious authority in both legal and moral spheres, and hence leadership and material support in the community.[3]

The pattern set by early nineteenth-century confrontations between Twelver

'ulama and *sufi* and Akhbari rivals continued with the reaction of the 'orthodox' to the heterodox Shaikhi tendency from the 1820s and its fully dissident and ultimately separatist Babi and Baha'i offspring from the 1840s.

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1. See Tunakabuni, *Qisas al-'ulama*, pp. 125–98.
2. See note 7 and Malcolm, *History of Persia*, vol. 2, pp. 422–3; Arjomand, *The Shadow of God*, pp. 243–4.
3. Scarcia, 'Intorno'; Cole, 'Shi'a clerics'; Arjomand, *The Shadow of God*,chs 10, 11.

(32)
A story of distinctive institutions and vested interests*

Joanna De Groot

During the nineteenth century, the professional formation of religious specialists and their visible collective identity took increasingly stable and organized forms. As established *'ulama* mobilised resources from the new Qajar rulers, notables and the *bazar* community, they were able to attract and support growing numbers of students who went on to hold religious offices. The foundation or revival of *madrasehs,* the growth of structured religious study and increased recognition of the practice of *ijazeh* (the granting of permission by a teacher to a student to teach the field they had studied, or a statement of their ability to exercise *ijtehad*) established a framework of professional development for aspiring *'ulama.* The effective propagation of *'Usuli* arguments for the duty of pious Shi'a to seek and follow the legal and doctrinal judgments of a chosen living *mujtahed* created a growing need for such *mujtaheds* in urban centres. By the end of the nineteenth century, *mujtaheds* numbered some hundreds, compared with perhaps a tenth of that figure at the beginning.[1] There was cross-fertilisation between the growth of professional opportunity and training,

the arguments supporting them, and the communal and personal relationships created by religious specialists.

The growing number of students who studied and gained qualifications in

Iranian *madrasehs* or at the apex of the scholarly/doctrinal system in the shrine cities of Iraq came to occupy a number of positions, mainly in urban centres. As teachers in schools and *madrasehs*, as recognised experts on legal questions, and as holders of judicial and ritual posts in the gift of the government, they had a presence and status defined by learning and authority. Whereas, formerly, notables of *sayyid* descent with hereditary status, office and patronage, had been significant rivals to the Twelver *'ulama*, by the nineteenth century the *'ulama* were dominant. Their

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* De Groot Joanna, *Religion, Culture And Politics In Iran: From the Qajars to Khomeini.* IB Tauris, 2007, pp 89-96.

1. Arjomand, *The Shadow of God*,p. 246.

hands of Mirza Muhammad al-Akhbari who did his utmost to persuade the Qājār ruler Fath 'Ali Shah (1797-1834) to support the *Akhbariyya*. This was however, a failed venture as the *Usuliyya* School advanced in its way with the leadership of Shaikh Ja'far Kashif al-Ghita, the disciple of al-Bihbahānī.[1]

Shaikh Ja'far; now the head of the *Usuliyya* School in Najaf presents in his book *Kashif al-Ghita*, both his regard to the Qājār ruler Fath 'Ali Shah and his vehement argument against the *Akhbariyya*. Shaikh Ja'far went further in his support for the Qājārs when he granted the Qājār's rulers the representation of the Hidden Imām.[2]

Thanks to Fath 'Ali Shah, the wall of Najaf was re-built again and for the last time to survive until the mid of 1920s. Due to the fact that it is a flat area, Najaf seemed exposed to regular raids from the Bedouin tribes of the Arabian Peninsula. In order to secure the Shrine of Imām 'Ali and the city's inhabitants, the Shi'a princes and kings ordered this wall be built around the city. Time and again, Safavids, Qājārs and the kings of Oudha in India rebuilt the wall.This wall, which was reported by Ibn Hawkal, remained one of the main features of Najaf throughout its history, and has undoubtedly made the area safer against any raids. Thanks to the wall, Najaf defended itself quite well against the Bedouin tribes, the Wahabies, the Ottomans and later on the British forces in 1918.[3]

1. Kashif al-Ghita, M H, *al-'Abaqat al-'Anbarayya fil al-Tabaqat al-Ja'farayya*, al-Qazwini, J(edi), Beirut, 1998, pp.86-100.
2. Al-Qazwini, J, *Al-Marja'iyya al-Dinayya al-'Alya 'Ainda al-Shi'a al-Imāmayya,* Dar alRafidayin,Beirut, 2005,pp.179-89.
3. Wallis, E A, *By Nile and Tigris*, London, 1920, vol,11, p.275; al-Hassani, 'A R, *Mujaz Tarikh al-Buldan al-'Iraqiyah*, 2nd edition, 1933, Sidon; al-Mudhafar, M R in, Al-Najafi.M.H, *Jawaher al-Kalam*, Beirut, 1981, vol.1.p.11.

for support for two reasons; firstly, they needed the support of Najaf to offset the increasing power of *'ulama* in Iran. In fact, the community of Iranian *'ulama* succeeded in constructing a very distinct position during the Safavid rule onwards, forming a powerful class.[1] As the Qājārs cannot claim that they are descendents of the Prophet Muhammad, at least they can claim guardianship of Shī'īsm. Shī'ī *Usuli 'ulama*, in their turn, were attempting hard to bring the Qājāri shahs to their side particularly amidst their confrontation against what were considered heretic groups. In Iran and Iraq, Shī'ī *'ulama* condemned and even excommunicated groups like Sufis, Shaikhis and Babis under the pretext of preserving the good faith of the Shi'a community.[2] Therefore, one can talk of a mutual interest between Shī'ī *'ulama* and the Qājāri shahs according to which the *'ulama* remained the sole representatives of the Hidden Imām, recognizing at the same time the Qājār rulers as a legitimate secular authority who could protect Shi'a religion.[3]

The second reason that compelled the Qājārs to seek the support of Najaf is similar to the motivations that drove their Safavids predecessors pertaining to their constant struggle with the Ottomans. Najaf's *'ulama*, adopted, in this regard, a very cautios attitude and often sought to adopt a mediating role towards the Qājār-Ottoman conflict, unlike their outright hostility towards Russia where they called for jihad and granted the Qājārs full moral, religious and political support.

The rise of the Qājārs in Iran had coincided with the victory of the *Usuliyya* School over the *Akhbārīyya*. The fierce dispute between the *Usuliyya* and the *Akhbariyya* throughout the preceding centuries came to its end in the Qājār period. Algar argues that the *Akhbariyya* ascendance to the stage is associated to some degree with the exclusion of the *'ulama* 'from participation in the affairs of a Shi'a state, namely the interregnum between Safavid and Qājār rule'.[4]

Admittedly, the victory of the *Usuliyya* School had been accomplished by virtue of Muhammad Baqir al- Bihbahānī (1117/1705-1208/1803), the head of the *Usuliyya*, who sought to eliminate any influence of the *Akhbariyya* School. The *Akhbariyya* School exerted the last attempt to survive at the

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1. Martin, V, *Islam and Modernism, The Iranian Revolution of 1906*, pp.18-9; Ibrahim, F, pp.198-200.
2. Martin, V, ibid, pp.21-2; Ibrahim, F, ibid, pp.202-8.
3. Halm, H, *Shi'a Islam: from Religion to Revolution*, 1997, p.117. See also Martin, V, ibid, pp.22-30. For more details about the Qajar period, see Algar, Hamid, *Religion and State in Iran, 1758-1906: The Role of the Ulama in the Qajar Period*, Berkeley, 1969
4. Algar, H, ibid, p. 35; Momen, M, *An Introduction to Shi'i Islam* pp.130-142

(31)
Status consolidate: Najaf, The Safavids and The Qājārs*

Fouad jabir kadhem

Until the beginning of the 18th century, Najaf seems to have been marked by its Arab charecter and traditions. It was only following the collapse of the Safavid Empire in 1722 that Najaf came under a new wave of immigration from Iran. Since then the Shīī *'ulama* of Iran and particularly from Isfahan moved in a great numbers between 1722-1763 towards Najaf, Karbala and other Shi'a cities. As a result of political disturbances and disorder, many 'ulama in Iran preferred to leave towards Iraq. Persian immigrants increased notably after the ascension of Nadir Shah (1736-1747) to the throne. Indeed, the Persian immigrants had their own mark on Najaf, the city that up until that point was characterized by its Arab Bedouin tradition. The Arabic language, therefore, had to pay the price, as it became no longer the sole language in studying or even in the affairs of daily life. Thereafter, Arabic literature underwent a period of inactivity due to the fact that most of the Persians did not speak Arabic; hence did not appreciate classic Arabic poetry, rhetoric and grammar. Hirz-ul al-Din confesses that the massive immigration of the foreigners was the reason that caused such a situation in Najaf.[1]

Paradoxically, disorder and instability in Iran in the period between the collapse of the Safavid state and the emergence of the Qājārs served the Najaf's scholarly reputation. This was mainly due to the fact that a great number of the Persian *'ulama* were compelled to leave Iran, heading for the *Atabat* (threshold) of Iraq. Thus, the revival of religious studies in Najaf undoubtedly owes a lot to the mentioned immigrant scholars and students.[2]

In contrast to the Safavids who claimed descent from the seventh Shīī Imām, Musa al-Kadhem, the Qājār dynasty who ruled Iran from 1779 until 1925, was Sunni in origin. Surprisingly enough, they represented themselves as advocators of Shīīsm. For this reason, they looked to Najaf and Karbala

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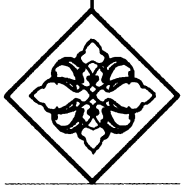
* Kadhem, Fouad Jabir. *The Sacred and The Secular: The 'ulama of Najaf in Iraqi Politics between 1950 and 1980.* Phd Diss, University Of Exeter, pp 32-35.

1. Harz al-Din, *Ma'rif al-Rijal*, vol, 3.p.137; Al-Turihi M K, ibid, p.35
2. Al-Mudhafar in, al-Najafi, M H, *Jawaher al-Kalam*, p.9; Litvak, M, *The Shi'i 'ulama of Najaf and Karbala*, ibid,p.170



Chapter 5:

The Historical, Social, Cultural Bases

necessity for all muftis to be endowed with ijtihād much more than contemporary Sunnis, and a diploma termed ijāzat al-ijtihād (diploma of ijtihād) recognizing the recipient's ability to derive legal opinions independently became a standard part of the Twelver system of legal education in the course of the 19th century. In the Sunni system, the parallel diploma, which had existed at least since the 13th century, was termed *ijāzat al-iftā'* wa-l-tadrīs, or "the license to grant legal opinions and teach law"; it did not mention ijtihād explicitly, and recipients were not automatically termed mujtahids.

Also in the 19th century, beginning with Muhammad Hasan Najafi (d. 1849- 50), a single high – ranking jurist held to be the most learned in the law was recognized as marja' al- taqlīd, or "the model of emulation." Shi'I laymen were obligated to follow the rulings of this greatest living authority or, if more than one were recognized, one of them. The hierarchical authority of the jurists was enhanced yet again with Ayatullah Khomeini's (d. 1989) theory of wilayat al- faqīh (guardianship of the jurist), which claimed for the most learned jurist the right to carry out most of the functions of the imam, including those that had fallen into abeyance, such as the ability to govern and to organize jihad. After the Iranian evolution (1978- 79) and the establishment of the Islamic Republic in 1981, his principle was enshrined in the Islamic republic's constitution, which assigned to the leading jurist the position of "leader" (rahbar) and granted him sweeping powers of control and oversight.

See also consensus; jurisprudence; al-Shafi'I, Muhammad b. Idris (767-820); shari'a

Further Reading

Norman Calder, "Doubt and Prerogative: The Emergence of an Imāmī Shī'Ī Theory of *Ijtihād*," *Studia Islamica* 70 (1989); Robert Gleave, "Conceptions of Authority in Iraqi Shi'ism: Baqir al- Hakim, Ha'iri and Sistani on Ijtihād, Taqlīd and Marja'iyya," *Theory, Culture, and Society 24*, no. 2 (2007); Wael B.Hallaq, *The Origins and Evolution of Islamic Law*, 2005; Idem, "Was the Gate of Ijtihād Closed?" *International Journal of Middle East Studies 16*. No. 1(1984); Joseph Schacht, *The Origins of Muhammadan Jurisprudence,* 1967; Devin J. Stewart, *Islamic Legal Orthodoxy*; Twelver Shiite Responses to the Sunni Legal System, 1998.

(30)
Ijtihād and taqlid*

Devin J. Stewart

Imami or twelver Shi'is originally had no need for ijtihad because pressing questions could be referred to the present imam, whose opinions were infallible. Even when the Twelfth Imam went into the Greater Occultation in 941 (a period of concealment that continues to the present) and all ordinary contact with him was cut off, Twelver jurists traditionally rejected ijtihād on the grounds that it was based on personal opinion or legal analogy, neither of which was sufficient to answer legal questions. In their view, legal rules needed to have a scriptural basis in the Qur'an or the akhbār, the oral reports of the 12 imams. Nevertheless, in the 10th and 11th centuries, Twelver theorists admitted that the jurists of the community could in effect act as legal authorities, granting legal responses to petitioners, drawing in part on reason ('aql). By the 13th century, 'Allama al-Hilli (d. 1325) used the term ijtihād in his works on legal hermeneutics to describe the interpretive activity of Twelver jurists in a departure from earlier Twelver legal doctrine, and his view became standard. The application of ijtihād and the clear division of the believing populace into mujtahids and muqallids that it entailed were strongly challenged in the 17th century by Muhammad Amin al-Astarabadi (d. 1635), who argued that authority lay in the akhbār of the imams alone and not in the ratiocinations of the jurists. His work al- Fawa'id al-Madaniyya (Medinan moral lessons) touched off what would become known as the conflict between Akhbaris, who upheld Astarabadi's views, and Usulis, who held the view that an education in legal hermeneutics (usūl al-fiqh) was what granted once religious authority. The Akhbaris remained influential for over a century and a half but were defeated. For the most part, by Muhammad Baqir al-Bihbihanai (d.1791), whose work Risalat al-Akbar wa-l-Ijtihad (Treatise on traditions and Legal reasoning) was a major statement in justification of the USULI POSITION, Perhaps as a direct consequence of the Akhbari-Usuli conflict. The Twelwers stressed and

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* Bowering, Gerhard, et al. eds. *The Princeton encyclopedia of Islamic political thought*. Princeton University Press. 2012, pp 248-245.

'This means the prohibition for the *faqih* to interpret and deduce (*ijtihad* wa *istinbat*) except in the limits drawn from the akhbar related to the Imams.

The third period introduced the compromising position of Yusuf al-Bahrānī. This 'stage of moderation' serves Bahr al-'Ulum as a model for the assessment of the controversy. The major differences between the two schools are analysed to show that they are in reality much less significant than the drawn out history of the tug-of-war between the schools seems to suggest.

The new analysis is nowhere more developed than in Muhammad Bahr al-'Ulum's recent reconsideration of the Akhbariyya.

The full singularity of Usulism appears in contrast to this aspect of the Akhbari argument. For the Usulis, *ijtihad* is necessary, and the specialist of *ijtihad* becomes ipso facto superior in knowledge and status to the nonspecialist, who is relegated to the second rank of imitator. Society is therefore divided between *muqallids* and *mujtahids*, and the *muqallids* must follow the *mujtahids* in the same way they follow the Imam. Another significant corollary of this supremacy of the *mujtahid* is the duty for the muqallid, not only to follow a *mujtahid*, but also to follow a living *mujtahid*. In Akhbari *Usul*, only the twelve Imams can be imitated, A fortiori, there is no requirement for the taqlid of any *mujtahid*, past or present. For the *Usulis*, in contrast, the imitation of the dead *mujtahid* is forbidden. The reproduction of *ijtihad* as a creative process is thereby guaranteed.

Thus appears, in Bahr al-'Ulum's account of 1964, the perception of the two schools of law and the significance of their differences. By the late 1970s, however, the picture had significantly changed. In a major work on *ijtihad*, published in 1977, the subject was again discussed, but Bahr al-'Ulum's assessment of the controversy was now clearly based on belittling the differences between Akhbarism and Usulism.

The argument proceeds in the chapter on 'The Akhbariyya and the prohibition of *ijtihad*' by a division of the long history of the Akhbari trend into three major periods. The first period is blurred in the sources. Perusal of the earliest texts mentioning Akhbarism shows a brief and inconclusive quotation of Hilli (d. 726/ 1325) and, in a much later text by the important Akhbari jurist mentioned earlier, al- Astarabadi (d. 1036/1626), Astarabadi's projection of his own Akhbari tenets back to the early scholars and compilers of recognised Shi'i *hadith* works, al- Kulayni and al- Qummi.

The second period is more significant. It starts with Astarabadi, who heavily criticised the Usulis in al- Fawa'ed al- Madaniyya:

The correct position was that of our Akhbari forebears ... the *Qur'an* has mostly come by way of obfuscation (ta'miya) of the people's minds (adhhan ar-ra'iyya), and so did most of the prophetic rules (sunan nabawiyya), and we have no way to know about legal rules, whether principal or secondary, except to hear the two Sadeqs [the two Imams Muhammad la- Baqer and Ja'far as-Sadeq]. It is forbidden to deduce theoretical conclusions from the manifest [texts] in the Qur'an, or from the manifest texts of the Prophet's Sunna as long as their contexts (*ahwal*) are not known according to the *ahl adh-dhikr* (the Imams).

This passage clearly shows, comments Bahr al-'Ulum, the only accepted sources for Akhbarism are the *Kitab* and the Sunna as told by the Imams.

supplemented by ijma' (consensus) and 'aql (reason). The role of the *mujtahid* and his practice of *usul* as an elaborate science of interpretation are paramount. The Qur'anic text will prevail over the more specific *hadith*, and it will be up to the *mujtahid* to reconcile the possible contradictions. On the social level, it is necessary to follow a living *mujtahid* like the Imam, and this rule is so important that it will be generally prohibited to be the follower (muqallid) of a dead scholar, however prominent he may have been: 'Imitation of the dead is forbidden'.

The most significant differences can be regrouped, from the perspective of the form of present Shi'i law, in the two following interconnected themes, which bear on the (1) legal- technical and (2) social structure of Shi'ism.

(1) Legal: The differences in legal interpretation derive from the acceptance by the *Usulis* of *ijtihad*. *Ijtihad* can be described as the elaboration of law with the help of logic, by a constantly creative process, The process of elaboration is necessary for the *Usulis*, and forbidden by the Akhbari. The sources of the law which are therefore acknowledged by the Akhbaris are reduced to the two which do not require (in theory) any interpretive effort, the Kitab (the Book, the Qur'an) and the Sunna. Some Akhbaris, according to Muhammad Bahr al-'Ulum, actually recognize only the Sunna as a source of law, because the Sunna is the only scientifically sound and non contradictable element, coming as it does without need for elaboration from the *Ma'sum* (the Imam). In contrast, the *Usulis* admit four basic sources of law, the *Kita*b, the Sunna, *ijma'*, and *qiyas*. *Hadith* is also matter for contention. The Akhbaris divide *hadith* into strong and weak, whereas the *Usuli*s distinguish between four *hadith* layers.

(2) Social: From these technical and legal differences, derive important consequences on the social structure of the Shi'i legal community. In the same way *ijtihad* appears as the central point of controversy between *Usulis* and Akhbaris, the existence and authority of the *mujtahids* are the dividing element in the social configuration resulting from the schools' differences. Since science is the prerogative of the sole Imam, the non- Imam will inevitably be a fallible judge. This is readily acknowledged by both schools, but the Akhbaris force the premise into its full logical conclusion, and science, as the knowledge of things certain, becomes therefore impossible for Akhbarism in the absence of the Imam. The whole society is bound to imitate the *Ma'sum*, and the fact of his absence during the *ghayba* does not alter the picture. Since only the *Ma'sum* is abreast of religious affairs, the role of any other person, including the most learned jurist, becomes superfluous. In Akhbari society, there is no place for the *mujtahid*.

and rendered the whole field of *usul* suspect. 'An example is the word *ijtihad*, which our Imami *'ulama* took from Sunni *fiqh* and developed. The Akhbaris, who did not realise the essential transformation in the meaning of the word, concluded that the science of *usul* among our pairs had adopted the same general direction followed by Sunni scientific thought. They therefore rejected *ijtihad*'.

In Bahr al-'Ulum's 1964 account, the essence of Akhbarism appears in the school's rejection of *ijtihad* in the interpretive process, and in its literal standing by the reports (*akhbar*) ascribed to the Prophet and to the Imams in the four Shi'i *hadith* compilations. For Akhbarism, as read by Bahr al-'Ulum, these texts are beyond questioning, and there is consequently no need to devise a science of interpretation that might endanger their authenticity by unnecessary glosses.

The room for interpretation generally accorded to the jurists by the Shi'is, through the combination of *ijtihad* as a general process and 'aql' as its primary tool, appears at the core of the eighteenth –century controversy between Astarabadi and Behbehani.

But the differences cover a much wider field, and extend to minute details in legal methodology, which tend to indicate that the depth of the rift between the two schools was important historically. But for modern Shi'i jurists, typified by Muhammad Bahr al-'Ulum, the rift appeared less and less considerable. The differences between Akhbaris and *Usulis* were slowly toned down by logical and legal arguments,

Akhbaris and Usulis: the differences

Some authors have reported up to several dozen major points of difference between Akhbarism and Usulism. Following Yusuf al-Bahrānī, Muḥammad Bahr al-'Ulum reduces them to twenty- nine points, which are added to the six historical and psychological differences that characterise the shape of the rift between the two schools. Akbarism, it is suggested, forbids *ijtihad*, reduces the sources of law to the Qur'an and the Sunna, and, for some Akhbaris, only to the Sunna. Only the twelve Imams' interpretation matters, and their manifest *hadith* will prevail over the uncertain or general text of the Qur'an. Indeed the whole discipline of *usul* is superfluous and both *usul* and *ijtihad* are rejected as Sunni devices which are alien to the Twelvers. The relationship of Shi'i society to the Hidden Imam during the Great Occultation is done through a literal and exclusive understanding of the texts of the Twelve Imams. No intermediary is needed, and no *mujtahids*.

For the *Usulis* in clear contrast, the Qur'an and the Sunna must be

perspectives in Shi'i circles on the controversy, has consisted of a series of studies over three decades by a jurist closely associated with the Najaf Renaissance, Muhammad Bahr al-'Ulum.

Born in 1927 to a family famous for its scholarship, Muhammad Bahr al-'Ulum appears already in the early 1960 as a close collaborator of *Ayat Allah* Muhsin al- Hakim (d. 1970), for whom he wrote a detailed critique of the personal status law just passed in Iraq. With the son of Muhsin, Mahdi (who was assassinated in the Sudan in 1988), he was one of the first *'ulama* of the Najaf Renaissance who took the route of exile after the access to power in Baghdad of the Ba'th party. After a period spent in Iran and in Egypt, where he submitted a doctoral thesis on *The Vices of Consent in Islamic Law*, he settled among the Iraqi exile community in England and acts as one of its leading spiritual guides.

Bahr al-'Ulum addressed the Usuli-Akhbari controversy on three occasions, in 1964, in 1978, and in 1987-8. In these essays, the historical core of the emergence of Akhbarism and its development has remained generally similar, but the areas of difference as he perceived them in the three instances were significantly different.

The renewal of Akhbarism manifested itself in the eleventh century AH in the writings of Mirza Muhammad Amin al- Astarabhadi, who, after studying in Najaf, went on to Medina and then to Mecca to found his own school.

Astarabadi was a 'dedicated Akhbari'[11], and he tried to find roots for his school in the early days of Shi'ism after the ghayba (the occultation of the twelfth Imam in the ninth century). He argued that the Akhbari school was dominant until Kulayni (d. 329 /941) and as- Saduq (d. 381/ 991), and that it only receded in the fourth century AH, after some Shi'i scholars started introducing the concept of 'aql (which can be translated briefly as reason, rationality) in the logical system of the law, the *usul.*

The struggle against the science of *usul* as then received was based on the rejection of 'common elements and *Usuli* methods that might distance them from the legal texts, and on Astarabadi's perception of an unacceptable... veering towards Sunnism by the propounders of *usul* among the Shi'i *'ulama*, Bahr al-'Ulum argues that the underlying reason for this struggle was related to the precedence of the Sunnis in developing *usul*, which the Shi'is did not need before the ghayba, since the Imams were still capable of decreeing the proper law to follow without any help from methodological construction This view is illustrated in the use by the Shi'is of Sunni *Usuli* concepts, a matter disfavored by purists like Astarabadi. For Astarabadi and the Akhbaris, Sunni precedence in the discipline meant Sunni pre- eminence,

(29)
The relevance of the Usuli / Akhbari controversy *

Chibli Mallat

A received notion of contemporary Shi'i law is the major division in the history of Ja'farism between two schools of law, the *Usuli* and the Akhbari madhhabs (schools), and the dominance of each alternatively since the emergence of Shi'i *fiqh*. Since the end of the eighteenth century however, it is generally acknowledged that Shi'i law came under complete control of the *Usuli* school.

Recently, there has been a renewed interest in the two schools, and some good research carried out on the earlier periods of Akhbari dominance, at the beginning of the Safavid period, as well as the critical period in the eighteenth century that saw the triumph of the eponym of the present *Usuli* school, Al-Wahid al –Behbehani, about whom very little is known.

The present analysis is less concerned by the establishment, rise and wane of Akhbarism and Usulism than with the present perception of the debate by modern Shi'i jurists. The emphasis on the contemporary perception is partly related to the difficulty in accessing early documents. But it is also premised on the necessity to emphasis methodologically the relevance of the controversy on the present structure of Shi'i law. Whatever the earlier dissensions and their historical dimension, the differences have to some extent become mooted, since the Akhbari school has been discarded for over two centuries. Usulism rules unchallenged. The extremely limited geographical sway of Akhbarism confines its role, by contrast, to that of a revelator of Usuli characteristics: the distinguishing features of contemporary Usuli Shi'i law can be more clearly perceived in the light of their contrast with Akhbarism.

It is not possible to find in the present legal texts of the Shi'i world a defence of Akhbarism in relation to any particular legal view. But in recent years, some Shi'i *'ulama* have 'revisited' the Akhbari –Usuli controversy. The most thorough testimony, and the one which tells most about the present

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uncertainty respectively, and as I hope is now clear, differing views as to the possibility of human knowledge.

school can be seen as a product of polemic with Usūlīs, but in certain areas the Usūlī school, post-Bahrānī, can also be seen as influenced by Akhbārī assertions.

When Bihbahānī later discusses "contradictory indicators and texts" m FH33, he comes to a similar conclusion:

There is no doubt that a contradictory text is not a proof: and that it is necessary to either reject [it] or to interpret *(ta'wīl)* (it). [*FH,* 320]

Conclusion

The above analysis demonstrates that the power of human reason to prove certain principles of exegesis (such as BA and *istishāb)* was conceived of in quite different ways by Akhbārīs and *mujtahids.* This in turn led to the conclusion that the legal theory of an Akhbārī was of quite different character to that of a *mujtahid.* The rejection of *ijtihād* had ramifications for all areas of *usūl al-fiqh.* Whether or not this affected the authority of the jurist or *mujtahid* in the legal process is not clear.[1]

Dalīl al-'aql, as stated at the outset, was not restricted to matters of *al-tahsīn ua'l-taqbīn.* It involved the demonstration of legal principles (discussed here) and linguistic interpretation (discussed in the next chapter). Though it did not include the means whereby contradictions between revelatory sources might be resolved, I have included an account of the two thinkers' discussions on this issue here because of Bahrānī's assertion that revelatory obscurity and revelatory contradiction are basically similar. His reason for asserting this similarity is that the solutions to each are broadly the same--*tawaqquf* and *ihtīyat.* Bihbahānī's solutions are different. Revelatory silence implies licitness, whilst resolving obscurity and contradictions involves *ijtihād.* However, silence can only be established after *ijtihād,* so in a sense, this involves *ijtihād* also.

There are similarities between the legal theories of the two scholars. For both, God's law is uncertain in areas of silence and contradiction; this uncertainty is not debilitating-for both writers a ruling can be determined. This ruling is not the law "in reality" *(fī'l-wāqi'),* but a human attempt to establish the law. Bahrānī and Bihbahānī' differ, of course, in how this recommendation is formulated. For Bahrānī, God, the Prophet and the Imams all recommended caution. For Bihbahānī', there is also a divine decree that when there is doubt, the qualified *mujtahid* must investigate the sources and discover the assessment which he considers most likely to be the ruling of God. Underlying the two positions is a fear and an acceptance of

1. This is discussed below, p. 237-245.

convert a Shī'a who had lost his faith. Bahrānī explained this as a proselytising tactic. Bihbahānī, on the other hand, says that the Shaykh 's use of the terms "probably" or "possibly" throughout the passage means that his recommendation was not definitive. It is possible that evidence *(qarā'in)* which might effect a reconciliation has been lost "by accident" *(bi-sabab al-hawādith).* Hence, for Bihbahānī, the Shaykh was not advocating *al-jam'* in all circumstances. Both Bahrānī and Bihbahānī are eager to show that their own rejection of *al-jam'* is not at variance with the views of al-Shaykh al-Tasr, though they achieve this by different means.

Bihbahānī then makes the following, apparently contradictory, statement:

Much of the law of the Shī"a *(fiqh al-shī'a)* is obtained from joining two indicators together, such that if [the Law] was not based on *aljam',* then there would be no snrr law at all. [*FH,* 233]

Hence, some processes of *al-jam'* are acceptable and others are not:

We say: *al-jam'* is a proof when it has supporting evidence *(shāhid)* from the two contradictory reports themselves, or from one of them, or from another [third] report, or from *ijmā'*-widesprcad or constructed[1]---or from certain rational judgements, or, after investigating the contradictory reports, it is immediately clear in the mind what the Imam meanssuch as particularisation (*takhsīs*) or conditionality *(taqyīd).* [*FH,* 235]

Attempting to reconcile two contradictory reports is a controlled process, operating under strict rules. These rules include the evaluation of evidence *(shāhid, qarīna),* the occurren_ce of consensus *(ijmā'),* the findings of human reason *'aql)* and particularisation and conditionality *(takhsīs* and *taqyīd).*[2] Any other types of hermeneutic activity which attempt to reconcile contradictory reports are invalid. It will be recalled that Bahrānī entertained none of these possibilities--*akhbār* cannot particularise *akhbār,* they can only particularise the Qur'ān. Some of Bihbahānī"s legitimate means of reconciliation would understandably be considered *ta'wīl ba'īd* by Bahrānī'.

It is interesting that both writers participate in a polemic against *aljam'*- both sec much contemporary practice as excessive interpretation. For Bahrānī, this is unsurprising since *al-jam'* was an *ijtihādf* process, and he was implacably opposed to *ijtihād.* For Bihbahānī, it is more surprising since he advocated *ijtihād.* It is possible that this is one area where Akhbarl polemic successfully moderated *mujtahid* views: the personal reasoning utilised in the indiscriminate elimination of contradictions in the *akhbār* was seen, eventually, by both Akhbaris and *mujtahids,* as invalid. The Akhbari

1. For a definition of these types of consensus, see above, p. 81-82.
2The latter two processes are discussed below, p. 174-178.

mujtahid" or *"mā huwa al-aqrab 'inda al-faqīh",* It is here, one assumes, that different *mujtahids* may arrive at different conclusions *(ikhtilāf),* though all are, in a sense, justified since they have expended their effort in discovering a ruling. They are not, however, all right in their assessment for, as Bihbahānī states, "truth is one for the Shī'a" *(al-haqq 'inda al-shī'a wāhid).*[1]

All of the discussion to date has been based on the view that in cases of contradiction, one of the reports must be rejected. On this, Bihbahānī and Bahrānī agree. Both consider contradictory reports to be, in many cases, irreconcilable, and hence one report must be rejected. However, the grounds on which a report is to be rejected differ. For Bahrānī, all the *okhbār* are historically accurate accounts of the Imams' words and actions. A report can only be rejected if it is identified as *taqiyya* (which is not always possible, hence the need for *tawaqquf* and *ihtiyāt).* Bahrānī is, then, primarily interested in the probative force *(hujjīyya)* of the reports in question. For Bihbahānī, some reports are inaccurate historical accounts, and these can be identified and rejected through an evaluation of the level of dissemination *(shuhra),* validity of provenance *(isnād)* and appropriateness of content *(matn).* Bihbahānī is, therefore, interested in determining the historical accuracy of a report, and from this assessment, the probative force of the ruling flows. *Taqiyya* can only be used as a factor when a report explicitly contradicts the Qur'ān or agrees with the Sunnis.

Another area of agreement between Bihbahānī and Bahrānī is that both are highly critical of attempts to join *(jam')* conflicting *akhbār* together by implausible means. Bahrānī had termed these implausible reconciliations *ta'wilat ba'tda.* In FH23, Bihbahānī discusses *al-jam' bayn al-khabarayn al-muta'āidayn:*

Know that it has become common practice in times like ours that when they [the scholars] sec two contradictory reports, they try to join them together by whatever means is acceptable, or by whatever conjunction they approve. They make this conjunction their *fatwā* and they base [their] action upon it. They make it God's ruling, arguing that 'joining, whenever it is possible, is better than rejection". We have found no indicator or dispensation from the Lawgiver which justifies this. Rather the opposite is clear from the *akhbār.* [*FH,* 233]

Bihbahānī then deals with the difficult fact that al-Shaykh al-Tusi appears to recommend *al-jam'* in the introduction to his *Istibsār.* This was also discussed by Bahrānī.[2] The Shaykh recommended *al-jam'* in order to re-

1. See above, n. 73.
2. See above, p. 114.

which their probative force is established. These include standard techniques of *'ilm al-rijāl* and *al-jarb wa'l-ta'dīl.* One assumes that an isolated report, with a stronger collection of signs, overrules one with a weaker collection, though Bihbahānī is unclear about how such a judgement of strength is to be made. In FH22, before the list of signs, Bihbahānī lists the non-transmitted criteria to be used when two reports *mutawātir* or *khabar al-wāhid)* conflict. This he states is a summary of a more extensive discussion in the *Ta'liqāt.*[1] as The criteria are as follows:

[I] Amongst [the criteria] is: the greater number of transmitters of one of [the reports) and the greater accuracy of the transmitters

[2] and amongst them is: the higher quality of the *isnād*

[3] amongst them is: the transmission of the words of the Imam is to be preferred over the transmission of his meaning alone

[4] amongst them is: the supporting indicatory value [of one of the reports] by means of an oath [by the transmitter] or some other means

[5] some writers of *usūl al-fiqh* argue that if the ruling indicated in one of the reports is literal *(haqīqī)* in meaning, and in the other is diverted *(mqjāzī)* r then the former is preferred] and similarly if one is a general statement which has not been particularised [it is to be preferred] over one which has been particularised-and likewise with conditionality

[6] amongst them is: the [report with] the purer language [overrules the report with less pure language] ...

[7] amongst them is: that the *asl* [of one] is more appropriate[2]

[8] amongst them is: agreement with the accepted doctrine of the early scholars

[9] amongst them is: agreement with the accepted doctrine of the later scholars. [*FH,* 223-4]

These nine criteria include tests of dissemination *(shuhra* [1]), provenance *(isnād* [2]), analysis of content *(matn* [3-7]) and consensus ([8-9]). The reader is not given any indication as to the relative strength of these criteria, though it is quite possible that they are in descending order of importance. What emerges though is a recommendation to the *mujtahid* to weigh the various criteria against one another and thereby determine the relative strength of the two conflicting reports. This process results in an opinion *(zann)* as to which is the strongest, or nearest, to God's own ruling. Bihbahānī expresses this final opinion as *"mā huwa al-aqrab 'inda al-*

1. See Bihbahānī, *Ta'līqāt,* P: 2-13.
2. This presumably is an 'aqlī test--dot's the command in one of the reports accord with what reason tells us about the nature of moral reality? See Chapter Five, p. 204-206.

since the report used to understand the Qur'ān could itself be *taqiyya.* Hence the Akhbārī position is contradictory and inevitably rejected.[1]

Bihbahānī lists the criteria used by the *mujtahids:*

As for the *mujtahids,* they base their method upon [valid] investigation and acquiring what is closest [to God's ruling] in their opinion, by means of provenance *(sanad),* indicatory value *(dalāla)* and careful instruction *(tawjīh).* They find no difficulty in these [contradictory] reports. The command in all of them is to follow what is closest [to God's ruling] in [the *mujtahid's]* opinion. [*FH,* 221]

The reports described in the table give seemingly conflicting advice; ironically the reports concern the method of resolution when *akhbār* give conflicting advice. Bihbahānī solves these conflicts by examining those elements which are common to the different reports and pronouncing those clements *mutawātir.* This produces two criteria: comparison with the Book of God and comparison with Sunni doctrine. All the other criteria listed in the *akhbār* are isolated *(shādhdh)* and hence rejected. Earlier, Bihbahānī had listed *shuhra* (dissemination) as a means of determining which *akhbār* had probative force.[2] He is here using *shuhra* to determine which clements of a number of *akhbār* have probative force. In his exegetical methodology, a report is not taken as a unit, which is either rejected or accepted, but is instead composed of elements, some of which might be accepted and others rejected. Dissemination can then be used as a criterion to determine probative force, not just on a report by report basis, but also on an element by element basis. Bihbahānī intends not only the reports themselves, but the commands *(awāmir)* within each report to be tested one by one. Bahrānī', it will be recalled, considered whole books of reports to be, *in toto,* sound or unsound.

In sum, the transmitted criteria whereby one report might be preferred over another are distilled to two in number-comparison with The Book and comparison with the Sunnis. The non-transmitted criteria are not to be found in the texts and are much more numerous.

Bihbahānī's thinking here is closely linked with his proposals, analysed in the last chapter, concerning the probative force of the *akhbār.*[3] A *mutawātir* re-port has greater probative force than an isolated report *(khabar al-wāhid)* and this is proven through reason. Isolated reports can, themselves, have varying levels of probative force depending on the signs *(amārāt)* upon

1. Bahranī anticipated such an objection, see above, p. 50
2. See above, p. 66.
3. See above, p. 66-79.

sources (in micro), but he has also decreed a general rule (in macro) that a *mujtahid* {and hence his *muqallids* also) should follow what he considers to be the rule-the lack of certainty does not lead to a suspension of duty:

The clear ruling of God is none other than the thing considered lo be the actual ruling of God (by the jurist],

hukm allāh al-zāhir laysa illā maznnūn hukm allāh al-wāqi'ī. [FH, 208]

God's ruling on a specific case may, or may not, agree with the conclusions of the jurist's endeavours+-however, God has issued a more general ruling that the conclusions of the jurist's endeavours (ie the *zann* gained from his *ijtihād)* can be used as the basis for action:

In sum, once one of the rulings has been overruled in the opinion of the jurist, then God's ruling is that it is not permitted for the jurist to issue a *fatwā* that [the overruled opinion] is the ruling of God. *[FH,* 208]

The preferred rulings *(al-rājih)* remains the *mujtahid's* opinion, but he is charged with following what he considers to be God's law. He is not charged with following God's law itself (for that would require unobtainable knowledge-*'ilm*-of every element of the Sharī'a), but to follow the law as he humbly conceives it.

The first duty, then, is to embark on *ijtihād* in an effort to decide which ruling is preferred *(rājih)* and which is to be rejected *(marjūh).* The tools available for this task arc listed in FH2 1 and FH22, and are divided into "transmitted" and "non-transmitted". The first are provided in revelation, the latter are the result of human contemplation on the resolution of *intra-akhbār* conflict.

In FH21, Bihbahānī first lists the *akhbār* relating to the resolution of conflict. They arc outlined in the table below. The differences *(ikhtilāf)* between the procedures advised by the Imams in these reports were solved by Bahrānī through an assertion that the Imams were not giving a procedure to be followed, but merely listing the criteria that one might use to resolve the conflict. However, Bahrānī does conclude that *some* criteria had priority over others (ie comparison with the Qur,an and comparison with Sunni doctrine). Bihbahānī demonstrates the contradictory nature of the Akhbārī position by means of a three step argument:

1) Comparison with The Book of God is the most important of the criteria, as testified in many and widespread reports *(al-akhbār al-mutawātira).*

2) The Akhbārīs may not disagree with these statements) but they also argue that the Qur'ān cannot be understood without the exegesis of the Imams *(tafsīr thābit min ahl al-bayt).*

3) If the report collections are full of undetectable *taqiyya akhbār* (as the Akhbārīs claim) then it is impossible to know the meaning of the Qur'ān,

rejecting one report as historically accurate but legally irrelevant. To determine which reports fell under this category, it was necessary to use the tests for *taqiyya.* It is significant that Bahrānī does not consider it important to attempt a reconciliation *(jam')* between the conflicting reports. Instead one is to be preferred and the other rejected (processes known as *tarjīh* and *tarh).*

The first two areas of *ta'ārud* identified by Bahrānī (intra-Quranic and Qur'ān-*akhbār* contradiction) are not discussed by Bihbahānī in a separate section. He does not discuss *naskh* (abrogation) at all---it appears that this was not, for him, a controversial subject. The general acceptance of the rules concerning abrogation, and the limited nature of the Quranic text, led to a curtailment of dispute on this matter.[1] The nature of the relationship between Qur'ān and Sunna is only ever discussed in terms of *taqyīd* and *takhsis* by Bahrānī. He does not appear to consider contradictions between Qur'ān and Sunna as ultimately possible, except in cases of *taqīyya.* It is the third area of contradiction (intra-akhbār) which dominates Bihbahānī's thinking, as it did for Bahrānī. Even in FH33, entitled *"Ta'āud al-adilla wa'l-nusūs",* there is no examination of either intra-Quranic or Qur'ānSurina contradictions. The term *nass* (text), though generic (meaning possibly Qur'ān, *sunna* or *ijmā'),* is taken to mean a "text of the Imams" throughout. Conflict between clements of the *sunna*-that is between the *akhbār* of the Imams (and occasionally those of the Prophet)-dominates.

Bihbahānī argues against a reliance on the *taqiyya* explanation of intra-*akhbār* conflicts. Some Akhbārīs (like Bahrānī) argue that *taqiyya* was a frequent tactic of the Imams. At times, the Imams agreed with the Sunnis to reduce the risk of persecution, but, argue the Akhbārīs, they also gave contradictory answers in order to fragment the Shī'a community, and thereby reduce the threat of the Shī'a, in the eyes of the Sunnis.[2] For Bihbahānī, only the first explanation is plausible, for the reason outlined in the last chapter.[3]

Taqiyya, for Bihbahānī, is, then, not a useful tool for determining which of two conflicting reports from the Imams is preferred (*tarjīh*). Bihbahānī has an alternative procedure. First, the *mujtahid* must perform *ijtihād,* and after this, the opinion which is strongest in his mind becomes his opinion as to the ruling of God *(hukm alāh).* This is not to say that this opinion is identical with the wishes of the Lawgiver; instead, the *mujtahid* is obligated to follow that opinion. God has decreed a rule which is perhaps unknown from the

1. Bahrānī's section on intra-Qur'anic conflict is short and laconic. See above, p. 112-113 and Bahranī, H, 1, p. 87.
2. For Bahrānī's account of *taqiyya*, see above, p. 32-39.
3. See above, p. 76-78.

following a *mujtahid:* he can be certain of having fulfilled the law if he does this, even though there is a possibility of the *mujtahid* being wrong. The *mujtahid* has discharged his responsibility as long as he has fulfilled the "conditions of *ijtihād" (sharā'it al-ijtihād)*[1] and "expended his effort" *(istifrāgh wus'ihi)* to find an assessment. Now, in his efforts the *mujtahid* may use *ihtiyāt,* if he considers it appropriate. One example of the appropriate use of BA, previously delineated by Bihbahānī', is the case of limited *(mahsūr)* uncertainty (e.g. the case of the two receptacles). *Ihtīyāt* is only one means of arriving at an assessment, and is, therefore, onJy recommended *(mustahabb):*

There is a difference for the *mujtahids* between *ihtiyāt* and obtaining *al-barā'a al-yaqīniyya.* For them, *ihtiyāt* is only recommended. It applies when there is a *zann ijtihād* as to how to [fulfil a duty]. [*FJ,* 445]

For example, some say X and others say Y, and both groups use equally plausible legal reasoning in the mind of the *mujtahid.* It is recommended, Bihbahānī states, that the *mujtahid* makes his own assessment on the basis of *ihtiyāt,* that is, that he establishes which, in his opinion, is more likely to fulfil the demands of the Lawgiver. *Ihtiyāt,* therefore, becomes one procedure (amongst many) available to the *mujtahid* in his search; it only applies, however, when two opinions *(zannān)* seem equally plausible to him. The techniques outlined by Bihbahānī (as discussed in this chapter and the following chapter) aim to reduce the possibility of this happening but it is nonetheless possible. In sum, *ihtiyāt* and *ijtihād* perform similar functions in the respective legal theories of Bahrānī and Bihbahānī-they enable the scholar to make a decision in the face of unclear revelatory texts. They both indicate an acceptance that the texts are limited, and at times confusing and unclear as to God's law. The difference between them lies in their willingness to tolerate the possibility of error.

Contradictions in Revelation

Bahrānī, the reader will recall, outlined a number of means whereby intra-revelatory conflicts might be resolved. Intra-Quranic conflicts could be resolved by abrogation *(naskh),* conditionality *(taqyīd)* or particularisation (*takhsīs*). Qur'ān-*akhbār* conflicts could be solved by the latter two procedures. Intra-*akhbār* conflicts, however, could only be resolved by

1. These are normally seen as qualifications which the scholar must attain before he is considered a *mujtahid.* However, I consider Bihbahani here to be referring to the procedures essential to the correct fultilment of a *mujtahid*'s duty. See Newman, "Akhbārī-Usūlī Dispute, Part 2", p. 257.

from at least the time of al-'Allama al-Hillī, However, that Bihbahānī 's theory is as I have described it, is demonstrated by the following citations:

You already know that *zann* has probative force, and that it is not permitted to act on it, except it be the *zann* of a *mtjtahid,* after he has expended his effort in attaining what is the strongest, and by right, what is the most appropriate and what, to him, is most clearly, the ruling of God the Most High. [*FH,* 207]

Not all *zann,* then, is a proof. Only the *zann* of a *mujtahid* may be used as a basis for the *muqallid's* action:

You already know that the basic difference between the Akhbārī and the *mujtahid* is *ijtihād* itself-in other words, action on the basis of *zann.* Whoever acknowledges action on the basis of it is a *mujtahid,* and whoever claims it to be forbidden, and that his action is rather based on *'ilm* and *yaqīn,* is an Akhbārī. [*FH,* 135]

The epistemological roots of the *Akhbārī-mujtahid* dispute are emphasised by Bihbahānī here. The Akhbārīs claim that action can only be valid (legal) if it is based on certain knowledge. The *mujtahids* argue that action can be valid if it is based on *zann*-providing it is the *zann* of the *mujtahid.* Finally:

Know that it is only permitted for a *mujtahid* to adopt BA after he has expended effort, and exhausted his search for indicators *(adilla)* and obtained an assessment. If no indicator of legal responsibility *(dalīl 'alā al-taklīf)* is found, then he adopts it [ie BAJ, for it will then not be in contradiction to any other indicator. *[FH,* 254]

BA, then, is the last resort, turned to only when no indicators can be found amongst the revelatory texts. Hence an assessment can always be given, even if it is ultimately based on BA. There are no circumstances, so it appears, where the *mujtahid* might be forced to suspend his judgement *(tawaqquf).* For every situation there is a ruling (as for Bahrānī, even for those situations where there is no textual indicator.

Bihbahānī does not, then, consider *ihityāt* to be of central importance in discovering the law.[1] He does, however, put forward *al-barā'a al-yaqīniyya,* defined as "certainty that one has fulfilled the duties of the law, even though these duties were established by the opinion of the *mujtahid*".[2] Since *ijtihād* is necessary (as demonstrated by *'aql,* texts and *fjma'),* one can discharge one's legal responsibility by following a *mujtahid,* even though a *mujtahid's* opinion is not certain *(qat'ī).* The commoner *(al-'āmmī)* is charged with

1. He does, however, consider it permissible for the *mujtahid* to give a ruling based on *ihtiyāt*, though only in certain circumstances. See above, p. 127.
2. Bihbahānī, *FJ*, p. 433.

only say that his assessment is, after an extensive and comprehensive search (termed "the exhaustion of his effort"), his own opinion (*zann*). He is bound by this opinion, as are those who have elected him, vicariously, to carry out the search. This election also involves a submission *(taqlīd)* by the *mujtahid's* followers *(muqallidūn)* to the *midtahid's* opinion. Other *m19/ahids* arc, theoretically, not bound by another *m'-dtahid's* opinion. Since they have the ability to perform their own *fjtihad,* they must not perform *taqlīd,* but carry out their own searches. Their *muqallids* are bound by their opinions, just as those of the first *mujtahid* are bound by his opinion.[1]

The techniques utilised by the *mujtahid* in his search for God's rule in a particular case can be divided into three categories. First, there are procedural techniques, through which the *mujtahid* can determine the epistemological status of texts purporting to be a record of revelation. lnduded in this category are the means of determining that the Qur'ān, *akhbār* and *ijmā'* of the scholars are reflections of the Iaw.[2] Second, there are exegetical techniques, which enable the *mrgtahid* to overcome the limited nature of the texts in his search for universally applicable rules. These include procedures such as *al-qiyās al-mansūs al-'illa* and *tanq'īh al-manāt,* or the means of resolving contradictions between texts *(tarājīh),*[3] or delineating the linguistic implications of the revelatory text.[4] Third, there are legal presumptions, which are utilised if the first two sets of techniques fail to produce an answer. These include BA and *istishāb.*

It is only after exerting all possible effort (the literal meaning of the term *ijtihād)* in this search, that a *mujtahid* can give an assessment. This assessment is given on the basis of indicators *(adilla)* derived from the texts and interpreted according to the rules of exegesis. If these indicators contradict, he must select the strongest *(alaqwā),* the clearest *(al-azẖ̣ar)* or the most appropriate *(al-ahwal).* The *mujtahid* is duty bound by such a final assessment, and is compelled to recommend it to his followers.[5]

Unfortunately, Bihbahānī does not spell out his theory of *ijtihād* in *FH* or *FJ.* He assumes the readership is familiar with the theory, as indeed it should be, considering that the adoption of *fjtihad* was a part of Shī'ī *Usūl al-fiqh*

1. The implications of this for the structure of authority are tackled in Chapter Six, below, p. 237-245.
2. These have been described in Chapter Two, above, p. 60-85.
3. See below, p. 164-144.
4. See below, p. 164-181.
5. That such an account of *ijtihād* was influenced by Sunni thinking is clear; see Calder, "Doubt and Prerogative", passim; Hallaq, *Legal* Theories, p. l 17-123; Weiss, *God's law,* p. 663-717; Chaumont, "Tout Chercheur"; Kamali, *Principles,* p. 366-394.

From this one deduces that in ablution with sand, one should act similarly.

These ten means of transference arc derived from reason or normal language *(al-lugha al-'urfiyya).* They involve no uncertainty as to the occasioning factor, and produce certain results when applied to specific cases, or when deriving general rules from specific rulings in revelation. They are dearly a means whereby the polemic against Sunni *qiyās* can be maintained, whilst incorporating elements of its operation. Without some sort of transference of rulings from case to case, the law would be impotent in the face of novel cases: analogy of some sort is necessary. When the Imams were present (and when the polemic against Sunni *qiyās* began), analogy was unnecessary, since the Imam could provide an answer. In his absence, the jurist must find a means of expanding the law, whilst remaining true to the words of the Imam.[1]

Ijtihād

As outlined in the opening chapter, *ijtihad* was a central area of dispute in the Akhbārī-Usūlī conflict:[2] it was perhaps the defining issue upon which a scholar was classified as an Akhbārī or Usulī by later tradition. Bahrānī wrote his *usūl* almost as if *ijtihād* had not been incorporated into Shi'ite legal discourse. His references to *ijtihād* are few, always pejorative and his aim is clearly to construct a legal themy in which *ijtihād* is unnecessary. He advocated *tawaqquf* when the texts of revelation were unclear, obscure or contradictory. *Tawaqquf* involved the suspension of the rule-making process. The obscurity of the texts meant that no rule could be made. Not even an informed guess as to a possible ruling was permitted. The lack of an indicated ruling, however, did not free the believer from legal responsibility. The Imams, he claimed, had advised caution (*ihtiyāt*)--the believer is to follow the course of action which is most likely to ensure complete fulfilment of the law *(al-ahwat).*

In contrast to Bahrānī's theory of *ihtiyāt* and *tawaqquf* is Bihbahānī's recommendation to the jurist to perform *ijtihād.* For Bihbahānī, *ijtihād* involves a suitably qualified jurist *(mujtahid)* searching through all the possible interpretations of the texts, and deriving the ruling or assessment *(hukm)* most likely, in his opinion, to be the ruling of God in the case under discussion.[3] He cannot decree that his ruling is the Lawgiver's ruling: he can

1. On the Shī'ī polemic, see Calder, "Doubt and Prerogative", p. 57-60.
2. See above, p. 6-8.
3. On these qualifications within the Sunni tradition, see Hallaq, "Was the Gate" and Weiss, *God's Law*, p. 684-687.

like *qiyās* except that the *'illa* derived from it is certain *(yaqīnīyya)*."[1]

4) *al-Qiyās al-mansus al-cilia.* Whilst Bahrānī identified this with *tanqqīh al-manāt,*[2] Bihbahānī makes a distinction. For Bihbahānī, *tanqīh al-manāt* is identified by reference to two texts of revelation which together enable the reader to identify the *'illa. Al-qiyās al-mansūs al-īlla* refers to a single text which provides, not only the ruling, but the reason for that ruling. The *'illa* is, however, still identified with certainty.

If a doctor says, "Do not eat this because it is sweet, or because it is bitter, one understands [from this one statement] that the doctor prohibits one from eating all sweet or bitter things". [*FH*, 147]

1) If the text expresses a general ruling, and is not a reply to a specific question, then the ruling is clearly universally valid, and hence can be transferred from the general to the specific.

2) *al-Qiyās bi-tarīq al-ūlā.* This is the *e maiot ad minus* argument discussed in the next chapter.[3]

3) A principle agreed by all the *fuqahā',* but not found in revelation, is accepted as universally valid.[4]

4) *Ittihād tarīq al-mas' alatqyn.* If two cases mentioned in revelation arc conjoined, the resultant general ruling is universally valid. This is exemplified as follows:

i) A woman is prohibited illicit sexual intercourse during her *'idda.* [text]

ii) The *'idda* is a prelude to divorce, and the same rules apply during it as during marriage. [text]

iii) One can deduce that the woman is also prohibited such actions whilst married [conclusion][5]

This, it appears, is merely a test case, to see if such reasoning is possible. That there are actually other texts prohibiting such behaviour confirms that one can use two texts to derive a general principle. It proves that the law is an integrated system of rules.

1) If a rule is established for the replacement of one duty with another (cg sand for water in ritual ablution), one can deduce that it is generally the case that sand can replace water.[6]

2) The rules for replacement rules are transferred from the replaced rules. For example, in ablution with water one should wash the left hand first.

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1. *Ibid.*, p. 147.
2. See above, p. 104.
3. For 5) and 6), see the next chapter, p. 174-179.
4. Strangely, the term ijmā' is not used here, but it is clear that it is implied, see Bihbahānī, *FH*, p. 149.
5. The reasoning behind this argument can be found in *ibid.*, p. 149.
6. Exactly why this is nor a case of a generạl ruling (as in 5)) is unclear to me.

turning into dust, oil turning into smoke).

In sum, then, Bihbahānī's argument against the Akhbārī rejection of *istishāb* is that the validity of such an assumption is proven by reason and revelation. This is undoubtedly *zannī,* but, for him, it is a justified assumption, and essential to the efficient working of the law. *Istishāb* is necessary in order to avoid the paralysis caused by the excessive caution of the Akhbārīs.

One area in which there is agreement between Bahrānī and Bihbahānī is in their assessment of *qīyās.* When they use the term *qīyās* they mean the *qīyas* of the Sunnis. For both, this is illegitimate because it involves an uncertain determination of the *'illa.* This does not mean that rulings cannot be transferred from an established case to a novel case. For Bahrānī, such a transference takes place through the procedure known as *tanqīh al-manāt.* Bihbahānī embellishes Bahrānī's theory and states that transference *(ta'diyya)* can occur in a number of ways, only one of which is *qiyās.* The law can be expanded from the specific to the general and *mce versa,* or from one case in revelation to a similar case unmentioned in revelation. However, there are restrictions on these procedures, the most important of which is *'ilm.* In (Sunni) *qiyās* the identification of the *'illa* is iannf-opinion based. For both Bihbahānī and Bahrānī the identification of the *'illa* must be certain. That this is the case for Bahrānī is unsurprising given his rigid epistemology. That it is so for Bihbahānī is, at first glance, strange since his *usūl al-fiqh* includes an attempt to incorporate *zann* into the legal system. His argument against *qiyas* is, however, that it involves two, mutually compounding assumptions: first, the assumption that a particular element is the occasioning factor; second, that the novel case falls under the same rule as the original case. It is the combination of these two assumptions which makes *qiyās* illegitimate.

If *qiyās* is rejected, then how is transference achieved? Bihbahānī lists the ways:

1) There may be a consensus *(ijmā)* that the explicit meaning of the words in the text of revelation give an indication of a general rule.

2) Reason may dictate that a specific ruling is generally applicable. For example, when a woman asked about the correct identification of menstrual blood, the Imam said, "If the rag comes out wrapped up, then it is [only] a circumcision wound". From this we can make a general rule concerning the distinction between menstrual blood and blood from a circumcision wound.

3) *Tanqīh al-manāt,* This term, used by both Bihbahānī and Bahrānī, refers to an analogy in which the *'illa* is known with certainty. *Tanqīh al-manāt* "is

requires a cause, and unless a cause is proven, the original ruling remains in force:

When the legal ruling has been proven, proving the reverse of the ruling requires another legal indicator. [*FH,* 277]

The revelatory proofs include seven *akhbār* in which the Imams are said to have given rulings based on *istishāb.* The following is an example of this:

A man asked Imam Sadiq, "I give a *dhimmī* my garment and I know he drinks wine [can I pray in it?]" Imam Sadiq replied, "Pray in it, and do not wash it on account of this. When you gave it to him it was pure, and you are not certain that it has been defiled. There is no harm in you praying in it unless you are certain that it has been defiled". [*FH,* 278-9]

This is an application of the third type of *istishāb* listed above. The Imam is advising that, although one knows that wine causes ritual impurity, one does not know that wine has been spilled on the garment by the *dhimmī.* The uncertainty does not concern the ruling, but the application of the ruling.

Bihbahānī concludes his discussion of *istishāb* by stating that some changes impede the operation of *istishāb.* As far as Bihbahānī is concerned, one cannot assume that the cloth hung out to dry was still damp when it came into contact with the excrement. One cannot assume this because there is a natural process occurring which prevents one from knowing that it was damp-the process of drying. That this process is presumed to have occurred is more persuasive than the ruling prompted by *istishāb.* If the case in question involves such a naturally occurring process, then the assumption of continuity cannot be applied Bihbahānī's advocacy of *istishāb* involves a typology of change *(taghayyur).* Some changes affect the previously established ruling, and others produce no effect. The jurist's task is to recognise which type of change has occurred and modify his assessment accordingly:

Know then that change is of different types: when *istishāb* is known to be valid

when it is thought to be valid

when it is doubtful

when it is thought not to be valid

when the *istishāb* of one ruling conflicts with that of another, and there is debate as to which is stronger and which weaker.

The *mujtahid* must consider this. [*FH,* 281-2]

The criteria for distinguishing different types of change are not outlined by Bihbahānī, though they would appear to include some type of naturally occurring change (his examples are: excrement turning into worms, carrion

proven to do so. Third, one could apply *istishāb* to cases of uncertainty in the application of a ruling to a specific circumstance. For example, one is certain that a particular action (eg urination) invalidates a state of ritual purity, but one is uncertain whether or not that action has occurred (ie one is uncertain whether or not a drop of urine has been emitted). *Istishāb,* in this case, decrees that one assume that it has not occurred, and the previous state of ritual purity continues. Whilst the defilement was uncertain, the purity was certain, and logically, an uncertainty cannot overturn a certainty. Fourth, *istishāb* could apply to a mutual exclusivity of assumptions, For example, a wet garment is hung out to dry. When it is found later, it has fallen from the line into some dry excrement. The garment is only considered to have been defiled if it was wet when it came into contact with the excrement. The problem is, which *istishāb* is assumed to be in force here-the presumption that the garment was wet when it fell into the excrement, or the assumption that it remains in its previous state (ie the state it obtained when it was hung out to dry, that is, purity)? *Istishāb* would seem to indicate that it is assumed to have been damp when it fell, and hence IS impure.

Bahrānī would, of course, consider *ihtiyāt* to provide certainty in these cases, whilst *istishāb* brings only *zarm.* Renewing one's state of purity would ensure that if something had occurred to invalidate purity, it was rectified.

Bihbahānī, also, does not accept all four examples of *istishāb.* The first three types of *istishāb* are valid, but the fourth is not. The fourth (the mutual exclusivity of assumptions) is not valid for two reasons: first, the change from wet to dry is a natural process which affects the ruling in this case. Such a natural process is, by using *istishāb,* assumed not to have occurred and this is not permissible. Second, *istishāb* here contradicts another principle, that of *asālat al-tahāra* (the assumption of purity). This latter principle is basically BA applied to matters of purity-an object is assumed not to invalidate a state of ritual purity unless there is certainty as to its power to cause impurity. In this example, the cloth which had come into contact with excrement is assumed to be pure unless certainty is obtained regarding its damp state when it fell from the line. *Asālat al-tahāra* is considered to be a stronger indicator than *istishāb,* and hence overrules the ruling based upon it.

The three valid examples of *istishāb* are demonstrated by both reason *('aql)* and revelation. The rational argument is simply that "A thing that remains docs not need an effective cause to remain" *(al-bāqī lā yahtāju fī baqā'ihi ilā al-mu'aththir).* In this case a ruling, once made, does not need an effective cause *(mu'aththir)* to remain in force. It is change in a ruling that

Unlimited uncertainty is a different matter. For example, one finds a piece of meat. One knows that carrion is forbidden, but one does not know if this meat is carrion. In such cases BA is operative because the risk is unknown; "Each *mukallaf* is a *mukallaf* by his own knowledge, and if there is no knowledge there is no *taklīf* upon him":

The lack of an obligation to avoid an action in cases of unlimited *shabha* has been agreed by all. There is no doubt in it, and it has been a central tenet of all Muslims in all places. [*FH*, 247]

Ihtiyāt, then, has a role in Bihbahānī's legal theory, but only in cases of limited uncertainty-a known risk requires caution, an unknown risk legitimises a presumption of permission. Bihbahānī does not give great details concerning how this limited/unlimited distinction is useful for the operation of BA, but one can deduce that the limited *snubha* refers to cases of *ta'ārod* and hence in such cases BA is not applicable.[1]

Bahrānī's argument against *istishāb* was based on the lack of certainty involved in the procedure. For him, *istishāb* involved the unjustifiable assumption that a ruling, once made, had temporal continuity even though there was no indication in the text that the ruling remained in force over time. This lack of indication makes the later ruling *zannī* and hence, according to his epistemological schema, invalid.

Generally speaking, Bihbahānī's account of *istishāb* admits that *zann* is involved, but, as we have seen, a *zanni* indicator is, for him, legitimate, providing there are no indicators which are stronger, or more likely. The assumption here is that unless the Imam explicitly stated that a ruling was time-limited *(muwaqqat),* it is assumed to be unaffected by the mere passing of time, and it is precisely this assumption that Bahrānī found unacceptable.

Bihbahānī recognises four elements of the law-giving process which could be subjected to *istishāb.* First, *istishāb*--the assumption of continuity-could be applied to the elements associated with the ruling. Under *istishāb* one assumes that the words in the texts of *akhbār* have the same meaning for the Imams as they do for the contemporary reader. In other words, one assumes that an item associated with the ruling (the words of the text) has remained unchanged. Second, *istishāb* could be applied to the ruling itself The example provided by Bihbahānī concerns someone who is uncertain whether or not a particular action invalidates a state of ritual purity. According to *istishāb,* the previous state (purity} is assumed to continue, that is, one assumes that an action docs not invalidate a state of ritual purity until it is

1. Bihbahānī outlines the procedures associated with *ta'ārud,* (*Ibid.*, p. 208-238) and, see above, p. 136-144.

harām and *halāl* on the one hand with *shubahāt* on the other. The intended meaning *(murād)* must be diverted *(majāz).* The phrase must be a warning not to rush into performing actions of doubtful legality; just as there is a warning not to go to the desert. You will not be eaten or robbed eve.ry time you go to the desert, but you put yourself at risk by so doing.

Fourth, the verse actually refers to actions which have contradictory rulings in the texts, not those which have no textual indicator (ie it refers to *ta'ārud,* not BA). Fifth, there is no evidence to demonstrate that once categorised as *shubha,* an action must remain so:

"One of the indicators [ie *kiāb, sunna* or *ijmā]* is sufficient to remove it from *shubha,* especially widely transmitted reports and consensus".[1] Sixth, the Imam makes it clear that if an agent performs a *shubha* action, he is not to be punished but censured. The Imam himself said, "In the *halāl* of the world there is reward; in the *harām* there is punishment; in the *shubha* there is censure".[2]

These six arguments prove, Bihbahānī claims, that the conception of BA outlined by Bahrānī (and by previous Akhbaris) is unjustifiable, rationally as well as textually. The proof text utilised by the Akhbaris actually proves the opposite to their claims-that it is possible for a believer to make a ruling in areas where there is uncertainty. This, as we shall see, is due to the activation of *ijtihād.*[3] Bihbahānī recognises BA as active in two cases: when there is no apparent textual indicator, and when there is uncertainty as to the correct application of a known rule. Bahrānī regarded *ihtiyāt* to be operative in the latter circumstance. If an action could be obligatory, then it should be performed. If it could be forbidden, then it should be avoided. Bihbahānī would not disagree, but for him it depends on the type of uncertainty which bedevils the action. *Shubha* which is permanent and irremovable demands such caution; but there are many cases in which *shubha* can be dissipated.

Bihbahānī describes two types of *shubha:* limited *(mahsūr)* and unlimited *(ghayr mahsur).* For example, if one knows that one of two cups is ritually impure (due, say, to contact with an impure substance), and one knows the rules concerning ritual purity, but one does not know which is impure, then this constitutes a case of limited uncertainty-limited to one of the two cups. If possible, one should avoid using either cup for one's ritual ablutions, not because the risk is high (and at 50°/o it is, indeed, a high risk), but because the risk is known. A known risk can be avoided.

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1. Bihbahani, *FH,* p. 244.
2. *Ibid.,* p. 245.
3. See below, p. 133-136.

FH23 refuting the Akhbārī restrictions on BA. These refutations are based around the Akhban interpretation of a series of texts *(akhbār* and Quranic verses) which prove that when the texts of revelation are silent, the Lawgiver wishes the maxim "When an assessment is not known, [*tawaqquf*] is obligatory"[1] to be enforced.

Jn particular, the following report is utilised by the Akhbārīs:

Permitted is clear, forbidden is clear and the uncertainties are between them. Whoever avoids the uncertainties is saved from the forbidden things, and whoever adopts the uncertainties, adopts the forbidden things, and perishes because he does not know *(lā ya'lamu).* [*FH,* 242]

This key text, used also by Bahrānī in his defence, justifies *ihtiyāt.* Bihbahānī attempts to nullify its importance by an alternative interpretation.

First, this report "does not indicate that *tawaqquf,* or considering [the action in question] to be forbidden, is obligatory. Rather, its apparent meaning is that if [the action] happens to be forbidden in reality *(fi'l-wāqi'),* then he perishes. If it is not, then he does not".[2] By this Bihbahānī means that when a person consistently performs uncertain actions, he is bound to perf onn a forbidden action at some point in time. If he takes such an approach, he will eventually fall foul of the law. However, this uncertainty *(shubha)* can be dispelled by investigation and hard work *(ijtihād).*

Second, the Akhbārīs argue that it is forbidden to perform *shubha* due to the risk of performing *muhanamāt* (forbidden actions). The report actually demonstrates the reverse. It states that there is a difference between *harām* and *shubha*-- the former is clear whereas the latter is unclear. To say that *shubahāt* are *harām* is, in effect, to disobey the Imam.[3]

Third, the phrase HHe who adopts the *shubahāt,* performs the forbidden" cannot be taken as it stands *(lā yakūnu qawluhu bāqiyyan 'alā zāhirihi):*

The clearest interpretation is that the meaning (of this phrase] is that he is on the point of performing a forbidden action ... although the report takes the form of a warning or a piece of guidance ... it is like when they say, "Do not go into the desert, for a lion will eat you and a thief will rob you". [*FH,* 243]

Bihbahānī's point is that the apparent meaning of the phrase is that performing an action which is *shubha* is equivalent to performing an action which is forbidden. This cannot be the meaning intended by the Imam, for this would mean that the Imam has contradicted himself by contrasting

1. Bihbahani, *FH,* p. 242.
2. *Ibid.*
3. Bahrānī's point, however, was not that they were forbidden, but that they should not be considered forbidden. Sec above, p. 98-100.

sit, or to eat is not proven by specific texts. Such actions are considered free of assessment in themselves, though their performance is subject to restrictions (such as the prohibitions on drinking wine or eating pork). The Lawgiver has allowed these actions to be free in themselves *al-barā' a al-asliya)* as a dispensation (*rukhsa*) to the believers.

3) The Prophet did not ask the Muslims to suspend judgement in certain areas of human activity. Instead he left some actions unassessed, and these had no legal consequence.

4) Reason dictates that an assessment remains in force until an indicator is found, or is revealed, that nullifies the first assessment and replaces it with a second. Since, in the cases of *mā la nass fihi,* there is no evidence that an assessment has been made, this lack of assessment continues (*istihbāb*) until a textual indicator is found or revealed. The presumption is, then, that the action is unassessed.

For Bihbahānī, these arguments prove the validity of BA, though he adds some exceptions:

Know, then, that conditions arc mentioned concerning the validity of BA:

[i] that *takrif* is not proven by some other [ie non-textual] means [ie reason]

[iiJ that there is no harm *(idrār)* to a Muslim [in adopting BA] ... There is a general dictum "harm and damage is forbidden", which is established by both reason and revelation.

[iii] the thing adopted by [BA] must not *be* an act of worship *['ibāda]* because they arc non-rational [*tawqīfiyya*]. [*FH,* 250]

These three conditions require some explanation. The first is related to the Irnāmī-Mu'tazilī belief that reason *('aql)* is a valid source of moral judgements alongside revclation.[1] The second refers to the general idea that the law exists to promote human well-being and not harm. Hence if the assessment reached by BA is adjudged to he harmful, then it is not justified to assume that it is *mubāh.* However, an assessment which is adjudged evil by reason (under condition [i]) will also fail condition [ii]-hence one might argue that there is considerable overlap between [i] and [ii]. The third stipulates that reason can have no power over the *'ibādāt* (ritual elements of the law) which arc by their nature non-rational (and occasionally irrational). There is no rational justification for performing the pilgrimage or prayer, except that these were commanded by the Lawgiver, and it is rational to obey him.

Having described both the Akhbarī and *mujtahid* positions and having produced arguments in support of the latter, Bihbahānī spends the rest of

1. See below, Chapter Five, p. 183-188.

is also evident in Bahrani's typology. However, none of these positions really represents that of Bahrānī. As far as Bahrānī is concerned, when there is no knowledge of a textual indicator, then one can assume purity and permittedness. *Ihtiyāt* becomes appropriate only when there is knowledge of the existence of an indicator, but uncertainty as to its meaning.

Bihbahānī does recognise that at times Akhbārī opinion falls outside the four doctrines listed above:

Some [of the Akhbārīs] explain that these [four] doctrines apply to that which is possibly forbidden *[ihtumila al-huma]* ... as for when obligation, or some other category is possible, then they, like the *mujtahids,* argue for BA. This is for matters on which there is a text. [*FH,* 240]

This, it appears, is precisely Bahrānī's position, which provides further evidence that Bihbahānī has Bahrānī in mind in his discussions in *FH* and *.FJ.* If there is doubt as to whether an action is obligatory or some other category, then the action is never assumed to be obligatory. The reason for this, as explained above, is that the Lawgiver would not tolerate a situation in which an obligation is not clear to his subjects. He would, however, tolerate a situation where a prohibition is undear.[1]

The *mujtahids'* arguments for BA are listed by Bihbahānī. They number four:

1) Reason, revelation and consensus all prove that there is no legally binding command from a just Lawgiver if there is no evidence {textual or otherwise) to support the existence of such a command. In Arabic this maxim is expressed *qabiha al-taklīf wa'lmu'ākhidha mā lam yakun bayān.* Actions for which there are no indicators *(adilla)* are outside the Lawgiver's sphere of interest, and hence are *mubāh.* The rational argument is, Bihbahānī states, that no period is devoid of a proof of God's law in the form of an Imam. This Imam teaches the people right and wrong. If there is no evidence that an Imam has expressed an opinion, then the subject in question is of no interest to the Imam. The Imam is the channel for the supreme Lawgiver's (that is, God's) intentions and actions which are of no interest to the Lawgiver are *mubāh.* The revelatory arguments consist of "many verses and *akhbār",* though Bihbahānī does not list them. The consensus is made up of opinions attributed to the major figures of early Shī'ī thought (Ibn Babuya, Kulaynī, al-Shaykh al-Mufīd and al-Shaykh al-Tusī).

2) Muslims, from the time of the Prophet until the return of the Twelfth Imam, do not suspend judgement on every action for which there is no explicit text. Actions such as movement, rest, drinking, sitting and eating are circumscribed by certain revelatory texts, but the permission to move, or to

1. See above, p. 97 and p. 109.

their *ijtihād,* we should not try to find them), we can still discover means whereby God's law might be fulfilled-over-eagerly perhaps, but nonetheless fulfilled. Ultimately, doubt as to the content of the law (in actuality) is inevitable, though certainty as to its fulfilment is gained through *ihtiyāt.*[1]

Bihbahānī on Silence, Obscurity and Contradiction in Revelation

The most convenient manner in which to compare Bahrānī's and Bihbahānī's views on elements of *dalīl al-'aql,* is to allow Bahrānī's structured discussion to control the order in which I analyse the relatively unstructured thoughts of Bihbahānī in *FH* and *FJ.*

Reoelatoty Silence

In FH24, Bihbahānī succinctly states his thoughts on the general legitimacy of BA. He considers it a prop or support *('umda)* in the derivation of legal assessments, though its use is limited to two distinct situations:

l) when there is no relevant text *(mā lā nass fihi)*

2) when there is uncertainty as to how to apply an already established ruling *(al-shubha fi mawdū' al-hukm).*[2]

In both cases, the initial assessment *(al-asl)* is that the action in question is "free" *(barī')* of categorisation and, therefore, considered permitted. The Lawgiver is uninterested in whether the agent performs or neglects to perf onn the action in question. This, Bihbahānī claims, is the position of the *mujtahids.*

He goes on to outline the Akhbārī position on the first of the above situations *(mā lā nass fihi).* There are four separate Akhbārī doctrines *(madhāhib)*:

1) In cases of *mā lā nass fihi,* one should suspend judgement *(tawaqquf).*

2) One should consider the action as outwardly forbidden *(harām zāhiran),* though it is possible that it is not forbidden.

3) The action is, in fact, forbidden *(harām wāqi'an)-ie* any action which is not permitted by a text is forbidden.

4) *Ihtiyāt* is obligatory.

The distinction between 2) and 3) involves the two-tier view of legal reality. An action may not be forbidden in reality *(wāqi'an),* but it should be treated as forbidden because its "real" status is unknown. This discrimination

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1. One possible objection, which Bahrānī does not consider, concerns the clar-ity with which one might know *al-ahwat.* What happens when it is less than obvious what the most cautious course of action is? This important issue is not, as far as I can tell, dealt with by Bahrānī.

2. This distinction corresponds to that made by Bahrānī when he states that uncertainty can pertain to the ruling itself, or to the application of a ruling. See above, p. 109.

abrogated. As for the others [ie the other verses], it is essential that a *tafsfīr* comes from the people of the house [of the Prophet]. If not, then one must suspend judgement *(tawaqquf)* ...

Then the preference is to compare [the reports] with the doctrine of the Sunnis, and take what opposes their doctrine, for the *akhbār* arc full or such advice ...

Then, if it is not possible to compare it to their doctrine, one should take what is agreed upon, except that in the present time, it is difficult to acquire this *ijmā'* [*H,* 1, 109]

These three rules are subject to qualifications. One can only refer to The Book on matters on which The Book is clear and on matters which the Imams have explicitly explained.[1] One can only refer to the Sunnis when they are united in one doctrine (however, as the Maqbūla states, the Sunnis differ so much amongst themselves). The type of *ijmā'* needed to fulfil the third criterion is difficult to certify in the present period. Hence, one can conclude, the number of cases of contradiction in which these three tests might prove effective is limited:

When it is not possible to express a preference on *the* basis of these three rules, then the preference is to stop on the shore of *ihtiyāt*.. Even though the recommendation of Kulayni to choose is not devoid of strength, the *akhbār* of *ihtiyāt* arc, both generally and specifically, more numerous, of clearer provenance and more decisive indication;[2] [H, 1, 110-111]

In theory, the three rules are decisive. In practice, most cases will result in *ihtiyāt.* All of this advice is aimed at the jurist or *muftī* who must give a *fatwā* to the people concerning a certain issue. It is clear that there is a hierarchical structure of power based on knowledge underlying Bahrānī's presentation here.

Bahrānī's theory, as it has been described until now, is an assault on uncertainty *(shubha). Shubha* can occur because the texts appear to be obscure. Bahrānī's principal aim is to abolish this uncertainty through his extensive theory of *ihtiyāt.* The Lawgiver has a rule for every action, but in some cases (one suspects a large number of cases) that rule is unclear. There is only one answer to every question of *fiqh* (*al-hukm al-shar'ī fī kull mas'ala wāhid),* but this one answer is not always clear. Though we will never know the answers to all these questions (and, unlike the Usulīs with

1. On the possibility of understanding the Qur'ān without the Imam's *khabar*, see above, p. 53-55.

2. Bahrānī is clearly contradicting himself here since he does not consider shuhra and isnad as criteria for deciding which *akhbār* are relevant and which are not. see above, p. 42-45.

though it is permitted for him to act on whichever of the two reports he wishes, on the basis of (his assessment of their] suitability. A group of our modern scholars has argued this also. [*H,* 1, 100]

However, he adds a caveat:

For me, this rro~ition[and the first position [outlined in 1) above], after thought and consideration, can be traced to a single order. That is that one should perform *irjā'* for *fatwās* and *takhyīr* for action only when the Imām is in hiding, or when it is not possible to go to see him. *[H,*1,103-4]

To summarise-if all the other procedures listed in the two reports fail to produce a preference, then the jurist must suspend his decision and not give *fajatwā irjā'* is treated as synonymous with *tawaqquf* by Bahrānī), He must then choose a course of action "on the basis of suitability". What this "suitability" entails is, predictably, clarified by Bahrānī:

These probabilities *(ihtimālat)* cause the above mentioned ruling to be classified as within the area of ambiguities, which [in turn] necessitates resting on the shore of *ihtiyāt* They are numerous. [H, 1, 105]

The jurist, then, is to make his choice *(takhyīr)* on the basis of *ihtiyāt,* which makes the *taJ:hyir* criterion identical with *al-ahwat.* In this way, the apparent *irjā' / takhyir* contradiction is resolved.

It is here, finally, that it becomes clear for whom the advice of this Prologue is intended. It is for the *faqīh,* the jurist. Though he may recommend a course of action, that course of action must be based on the criterion of caution. He is not permitted to give a *fatwā* in which he puts forward his opinion as to the actual intention of the Lawgiver. He is only permitted, it seems, to give an opinion as to the most cautious course of action from the range of possible actions advised by the contradictory texts. This is clearly in line with the slogan put forward by Bahrānī in his section on caution: *al-tawwaquf fi'i-hukm wa'l-ihtiyāt fi'l-fatwā.*[1]

In the last section of the Prologue, Bahrānī presents his view concerning the order of the three remaining criteria of preference+these are comparison with *kitāb,* opposition to Sunni doctrine and that which has been agreed upon *(al-muJma' 'alayhi).* His main argument is based on a passage from the introduction to Kulaynī's *al-Kāfī,*[2] not a report, but the statement of a collector of reports, which Bahrānī summarises:

It is obligatory, first of all, to refer to the Holy Book. This is because the *akhbār* arc full of such advice . . . this means referring to the clear verses *(muhkamāt)* and their texts, after knowing what abrogates and what is

1. See above, p. 99 and p. 105.
2. See Kulaynī, *Kāfī,* I, p. 8-9.

together to form a more complete list, but this does not constitute a procedure. It could be proposed that the report that fails more of the criteria on this composite list should to be rejected. This would be one way of expressing a preference. How would one proceed if the two reports failed an equal number of criteria? Bahrānī concludes, therefore, that there must be an order, but the Maqbūla and Marfū'a reports cannot be considered indicators of that order. The list of criteria upon which to decide a pref ere nee between conflicting reports are, then, (in no particular order): *mujma' 'alayhi,* agreement with *kitāb* and Sunna, opposition to the Sunnis, the most cautious, *irjā'* and choice.

Two of the criteria appear to be mutually exclusive: the Maqbūla recommends *irjā')* (suspension) whilst the Marfū'a recommends *takhyīr* (choice). Surely these are contradictory? How does one reconcile the recommendations to choose (freely) and to suspend judgement (and then choose the most cautious)? Bahrānī entertains a number of possible means of reconciliation:

1) *Irjā'* refers to when the Imam was present, *takhyīr* refers to the *ghayba.*

2) *Irjā* refers to matters of worship, *takhyfr* refers to matters of human intercourse *(huqūq al-ādamiyīn, mu'āmalāt).*

3) If there is no compulsion to perform either action, then *irjā'* is obligatory. If there is compulsion (ie if it is an action which must be performed) then *takhyīr* is obligatory.

4) *Irjā* is used when one of the actions prescribed by the reports might be recommended and the other permitted. *Takhyīr* is applied only when both reports indicate permitted actions.

5) The Imams first allowed *takhyīr,* but then recognised that it was unworkable. They then suggested *Irjā.*

6) *Irjā* is a warning against acting on one's own opinion. *Takhyīr* is really an exhortation to choose the most suitable report.

7) If the two actions prescribed in the two reports are not mutually contradictory-that is, if it is possible to perform both-then *Irjā* is applicable (ie one should suspend decision, and presumably do both out of *ihtiyāt.* If they are mutually exclusive, then one has to choose *(takhyīr)* which to perform.

Most of these seven suggestions are attributed to different scholars, and most are refuted by Bahrānī.[1] His own proposal is as follows:

One should use the report recommending *Irjā* fie the Maqbūla] for *fatwas,* and the report recommending *takhyīr* [ie the Marfū'a] for action: meaning that it is not permitted for a *faqīh* to give a *fatwā* or an assessment, even

1. See Bahrānī, *H,* l, p. I 00-103.

3) The ruling in report 13 (to take the "better" report *(akhyar))* is merely a general piece of advice to accept the report not issued under *taqiyya.* Hence this report cannot be said to be in conflict with the other recommendations.

4) The ruling in report 14 is rejected since it gives the impression that a later report is less likely to be *taqiyya* than an earlier report. This contravenes theological dogma and hence report 14 itself must be *taqiyya.*

Having disposed of these marginal criteria, Bahrānī concludes that only two of the reports remain to be interpreted. These arc the Maqbūla and the Marfū'a (reports 1 and 5 respectively). The remaining criteria are, then, as follows:

Maqbūla	Marfū'a
mujma' 'alayhi	opposinon to the Sunnis the most
agreement with *kitāb* (and	cautious choice
Sunna) opposition to the Sunnis	
irjā' (ie tawaqquf)	

The major points of divergence between these two lists are analysed by Bahrānī:

The Maqbula and the Marfū'a contain all relevant means of expressing a preference, but they differ over the order of these means. The former includes preference by probity, then by *mujmā' 'alayhi,* then by agreement with *kitāb,* then by opposition to the Sunnis. The latter includes preference by fame first, then probity and truthfulness [of the transmitter], then by opposition to the Sunnis and finally the most cautious. The latter does not mention preference by agreement with the Qur'ān, just as the first does not mention preference by the more cautious. [H, 1, 97-98]

The Maqbūla indicates *irjā* and *tawaqquf* after the other means of expressing a preference have been exhausted. The Marfū'a indicates choice ... [H, 1, 99]

These perceived contradictions between the reports are then resolved by Bahrānī:

First, it is possible to answer that the order *(tartīb)* is unclear in both [reports], because in truth, it [the order] occurs in the words of the questioner and not in the words of the Imam. The most that can be understood from [the reports] is that the order [given] is the order in which the criteria are mentioned, and that does not constitute a claim that this is the order in which preference should occur. [*H*, l, 98]

The Imam, then, was merely listing the criteria whereby one report might be preferred over another. He was not listing the order in which one should perform the procedure for expressing a preference. The two lists can be put

akhbār conflict, Bahrānī, apparently, does not consider them to be permitted in cases of two conflicting reports from the Imams. In fact, he rejects any attempt to interpret away conflicts between reports, describing them as "extensive interpretation" *(ta'wīl ba'īd).*[1] Contradictory texts should not be joined together *(al-jam'),* for to do so mixes the *toqiyya* with the true elements of the law.

All contradictions within the *akhbār* are, then, due to *taqiya.* To produce a clear indicator from the contradiction, one is required to locate the *taqiyya* report and reject it.[2] Once one report is known to be *taqiyya,* then the other report is "preferred" *(rājih).* The means of identifying the preferred report were, Bahrānī claims, laid down by the Imams, but there is a problem:

The sure method, for us, is to rely on what comes from the people of the house of the Prophet [in this matter]; the *akhbār* contain different ways of expressing a preference *(tarjīhāt).* However, these [reports] are not devoid of confusion. [*H,* 1, 90]

The irony is that the reports which outline the ways of establishing the preferred report are themselves contradictory. Bahrānī lists fourteen such reports, summarised in the table below.

Bahrānī's task is to devise a means whereby these reports might *be* seen as non-contradictory--unfortunately, he has no procedure for doing this, because the procedure is exactly what he is trying to prove. His opponents would undoubtedly assert that his argument (set out below) involves *ta'wīl,* and is therefore self-contradictory.

Bahrānī's reasoning proceeds as follows:

1) The ruling of the Imams that one should take the report of the more just or more famous transmitters was only in force until the time of Kulaynī. As demonstrated earlier,[3] Bahrānī considers Kulayni and the other early collectors of reports to have used these criteria in their selection of reports. Thus to repeat the processes would be fruitless (and possibly dangerous, since we do not have access to the relevant information).

2) The advice to wait until one meets the Imam can only be relevant to the time when the Imam is present. The Imams would not leave the community without advice on how to solve contradictions until the parousia,

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1. Bahrānī rejects the suggestion that al-Shaykh al-Tusī sanctioned *ta'wīl ba'īd,* saying that if it appears that he did so in his introduction to the *Tahdhīb* (see Tusī, *Tahdhīb,* 1, p. 2-3}, this is due to his attempt to re-convert a disaffected Shī'a, and was purely a tactic to win him back to the true sect.
2. It is, of course, possible that both are *taqiyya,* but Bahrānī does not, to my knowledge, consider this possibility.
3. See above, p. 43.

The external factors mentioned here are described in the next chapter.[1] Bahrānī also entertains choice as a possible point in the procedure, but he rejects it for reasons that arc not entirely clear.[2]

The remainder of the section deals with the vexed question of the ability of an isolated report *(khabar al-wāhid)* to particularise *(takhsīs)* that the the general rulings in the Qur'ān. Is *takhsīs al-qur'ān* possible for all *akhbār* or just for some?

There are those who consider such *takhsīs* possible (including Bahrānī himself), and those who consider it impossible (including Sayyid Murtada and al-Shaykh al-Tūsī). Those who take the latter view do so because of the supposed epistemological inferiority of the isolated report. The Qur'ān is certain *(qat'ī)* whilst the latter is not certain (being *zannī).* They argue that to allow the latter *to* affect the former would be to violate common-sense laws of epistemology. Bahrānī's answer, unsurprisingly, is that all the *akhbār* are of equal validity, and hence produce certain knowledge (*'ilm*) as to God's law. To consider the isolated report as less than certain is to commit "the error of Sunnis". The Qur'an can overrule the *akhbār,* as it is a test of whether or not the report is *taqiyya.* However, reports can never be rejected merely on the basis of the classification technique used by Usulis to weaken the status of certain elements of revelation. This technique has, Bahrānī states, been shown to be false in the preceding section of the Prologues.[3]

The section on conflict within the *akhbār* constitutes the most extensive of Bahrānī's examinations of intra-revelatory conflict. Resolving conflicts between the indicators derived from reports of the Prophet's and Imams' actions and words is the most controversial procedure. Bahrānī has already demonstrated that all conflicts within the *akhbār* are due to *taqiyya*--that is, the Imams' dissimulation in times of oppression. They arc not due to the inaccuracy of the reports themselves. Hence the methods of *isnād* criticism, and the tests of *tawātur* and *shuhra,* do not apply here. Another means of resolving conflicts between reports is interpretation *(ta'wil).* The processes of *takhsīs* and *taqyīd*[4] are two examples of *ta'wīl.* Though these are considered with respect to intra-Quranic conflict, and with respect to Qur'an-

1. See below, p. 160 -164.
2. It is quire possible, though Bal]ranr docs not state it explicitly, that the rea-son for the rejection of *ikhtīyār* as a means of resolving conflicts between the Qur,an and *akhbār* is his view Qur'ān, apart from the few clear verses, cannot be understood without the aid of the *akhbār.* It is, therefore, not possible to choose the Qur'ān in such a conflict, for one would not know what one was selecting. On his view of the relationship between the Qur'ān and *akhbār,* see above, p. 48-55.
3. This position was described in Chapter Two, above, p. 39-47.
4. These terms are discussed in more detail below, p. 174-178.

(adilla) produced by these sources. The three sections are of increasing length, indicating the relative importance of each of the types of conflict. In addition, the procedures suggested for resolving these conflicts are accompanied by increasingly comprehensive proofs, indicating that the final category of conflict is considered the most controversial (and hence in need of the greatest demonstration).

Intra-Quranic conflicts are solved by five possible means to be carried out in this order:

1) abrogation *(naskh)* of one verse by another on the basis of information which can be gained from the *akhbār*

2) abrogation, even though the *akhbār* may not specify which verse is abrogated, on the basis of the date of revelation

3) particularisation *(takhsīs)* or conditionality *(taqyīd)* of one verse by another

4) tauaqquf and ihtiyāt, if possible

5) choice (*ikhtiyar)* between the verses.

Though Bahrānī's expression of these rules is succinct, accompanied by no evidence for their authority, much can be deduced from them. First, to discover whether one verse abrogates another, one does not look first to the date of revelation (the usual method), but towards the *akhbār.* From these one can establish whether or not one of the Imams ever indicated that one verse was abrogated by another. This places the *akhbār* in a predominant role; evidence from which supersedes the usual date-based method of determining abrogation. Second, if means l) to 3) produce no satisfactory answer, then one must work out the most cautious course of action and suspend judgement. What is significant is that Bahrānī recognises that this may not be possible, since he adds a fifth point, which is free choice on the part of the believer. The choice is made on the basis of "appropriateṇess" *(min bāb al-taslīm).*

There is a similar procedure outlined for *Quranic-akhbār* conflicts, and again, there is little supporting evidence. Abrogation, however, is not a possibility. Clearly, for Bahrānī (as for most Shi'ites), Sunna cannot abrogate *kitāb,* or *vice versa.* Bahrānī does not claim this procedure to be his own:

What one of [or some of] our colleagues has [or have] mentioned is that:

[i] if one of [the texts) is unconditional *(mutlaq)* or general *('umūm),* then it is obligatory to add the exception (or condition) of the other. [ii] if not, then *ihtiyāt* is obligatory, if it is impossible to reconcile the two elements so that a strong opinion is obtained, or so that external factors *(qarā'in khārija)* are taken into account. *[H,* 1, 87]

The final section of M4 is an examination of the *akhbār* which, Bahrānī claims, support his theory. These number ten; some prove *ihtiyāt!* generally, and others demonstrate one or other of points 1) to 5) outlined above. The following will serve as an example:

From 'Abd Allāh b. Waddāh, "I wrote to the Imam: 'The disk of the sun disappears and night begins. The night sets in and the sun is hidden from us, but above the hills there is [still] redness [in the sky]. The cantors call us [to prayer]. Can I pray at that time, or break my fast if I am fasting, or do I break my fast when the redness, which was above the hills, has gone?' He wrote to me: 'I advise you to break your fast when the redness has gone, and to delay [the breaking of the fast] out of care for your religion.'" *[H,* 1, 74]

This is a case of *ihtiyāt.* The one fasting should delay the breaking of his fast until he is certain that the sun has set. He can only be certain of this when all the redness has gone from the sky. Hence, as a general rule, *ihtiyāt* is proven.

In this manner, a procedure for all areas of uncertainty *(shubahāt)* is produced. If the texts are unclear, *ihtiyāt* will ensure full compliance with the law. Indeed in such cases, the Imams themselves have decreed that a cautious approach should be employed.

Contradiction in Reuelation

In M6, Bahrānī concentrates on another cause of uncertainty-contradiction *(ta'ārud).* He outlines the procedures to be followed (preswnably by a jurist) when two texts of revelation indicate contradictory rulings. The full title of 1'[6 is "On the contradiction *(ta'ārud)* and the means of expressing a preference *(tarājīh)* between legal indicators". In this chapter he does not consider a conflict of text and *ijmā',* or a conflict of text and reason *('aql).* He clearly does not consider these to be legal indicators in any meaningful sense.[1]

Bahrānī outlines three types of conflict, which he deals with in three sections:

1) conflict between two Quranic verses *(ayātayn)*

2) conflict between a Quranic verse and a report from the Prophet or one of the Imams *(riwāyatayn)*

3) conflict between two reports *(khabarayn).*

Though he indicates that he is concerned with the conflict between the sources, he is actually concerned with conflict between the indicators

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actions as obligatory when it is quite possible that they are nor. See below, p. 224.

1. He does discuss text/ reason conflict in M10, analysed in Chapter Five.

then following ihtiyāt is only recommended. The action can be treated as obligatory or as recommended. The mukallaf has not sinned if he follows the jurist's opinion and does not perform the action, though it is recommended that he ignore the jurist's opinion, and perform the action.

Bahrānī makes a comparison with the butcher in the Muslim market *(sūq al-muslimīn).* Though there is no means of knowing whether the meat he sells is *halāl,* one is justified in treating it as *halāl.* Caution might dictate that one distrust the butcher, but this would lead to a paralysis in religious life-each believer would have to undertake all activities himself. Similarly, with regard to the *faqih's* opinion, though one is not certain that it is correct, one is justified in treating it as correct. Just as the believer is certain if he butchers his own meat, one is certain if one ignores the *faqīh's* opinion. However, this is not always possible, and the *faqfīh* acts as a facility for believers unable to discover the clear rulings for themselves.[1] Finally, it is important to note that a recommendation to treat an action as obligatory does not make that action obligatory in reality. There appears to be a distinction between what the law is in reality, and what it is for its subjects.

The incorporation of this theory of *ihtiyāt* makes the law twotiered, perhaps three-tiered. First there is the law in reality *(fi'lwāqi').* One can, it seems, know some of this law, particularly in instances where the texts are clear, and significantly where there is no juristic opinion to the contrary. However, portions of this law (Bahrānī does not indicate the proportion) are uncertain *(shubha),* such that the individual has doubt *(shakk)* as to the correct course of action. In these cases, it is obligatory to perform *ihtiyāt* When *ihtiyāt* becomes obligatory, then the *mukalla* is obliged to perform actions which may not be obligatory "in actuality". Hence things that are obligatory on the second tier need not be obligatory on the first tier. *ihtiyāt* brings certainty of the fulfilment of the law in areas of doubt, even though elements of the actions performed may be superfluous. The problem for the *mukallaf* is that he does not know which elements are superfluous, and hence must perform all elements to ensure total compliance. Bahrānī also seems to add a third tier-when no indicator of the law is known to the *mukallaf,* he is justified in presuming an action to be licit. He may be incorrect in this assumption (there may be an indicator or the law may be otherwise), but the crucial point is that he is "forgiven" for this transgression, or justified in his action.[2]

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1. The implications of this for the authority of the scholarly elite are explored in Chapter Six, below, p. 222-227.

2. The juristic class, whose task, it appears, is to pass on the first- and secondtier guidance to the community, are therefore invoked in a benign deception-describing some

The first three of the above cases relate to occasions when there is uncertainty over the ruling itself; the last relates to when there is uncertainty about the application of the ruling to a specific circumstance.[1]

The discussion becomes more complicated in cases of recommendation. The puzzling phrase is "the permitted reasons" *ial-asbāb al-mujawwaza).* The probability *(ihtimāl)* that there is an unknown indicator which contradicts the apparently decisive legal indicator *(dalīl shar'ī)* is justified by "the permitted reasons", though to my knowledge, Bahrānī does not describe them. The examples he gives provide the reader with a clue: a *mukallaf* has heard that a woman is related to him by fosterage, but there is no legal proof of this (legal proof would consist of witnesses). He is, therefore, recommended to perform *ihtiyāt* (and not marry the woman). However, if he does marry the woman, he has not transgressed the law, since there is no proof of a fosteragc relationship. It is unclear how accepting the wages of a tyrant *(jawā'iz al·jā'ir)* is an example of this, but it may be argued that though the texts indicate that it is not permitted to accept such a payment, avoiding such work would cause hardship to the community and suspension of important community activities (such as *qadā').* Hence one suspects that there is an indicator which permits taking up employment with a tyrant, but that the indicator has been lost. It is recommended, through *ihtiyāt,* that such a payment is not accepted, but one commits no sin or crime if the payment is accepted.

The final example is perhaps the most interesting. The opinion of a jurist that an apparent ruling has been overruled by another unknown indicator makes *ihtiyāt* recommended. The opinion of the jurist *(nazar al-faqīh)* can reduce a clear indicator to a doubtful one. One is still recommended to follow the apparent ruling, but one has committed no sin or crime if one follows the jurist's opinion. This, for an Akhbarf who is supposedly critical of imitation of the juristic class, is surprising, and instructive. It demonstrates that Bahrānī is trying to de-stigmatise the common practice of following a jurist's opinion (termed *taqlīd* in *ijtihād* theory), though it is reconunended that one follow the ruling of the known text, rather than the jurist's opinion based on an unknown, but probably existent, text.

Bahrānī goes on to concentrate on the juristic opinion:

5) If, as in case 1), there is uncertainty over whether an action is obligatory or recommended, then caution would dictate performing the action. However, if there is a juristic opinion that the action is only recommended,

1. One sees this typology evident in the question of blame and punishment for ignorance of the law. Ser above, p. 20-21.

even though the subject does not know this [with certainty]. Examples of this are the [permissibility of accepting] wages from the tyrant, and marrying a woman whom you have heard to be related to you by fosterage, but there is no legal proof of this. Also amongst these is when in the opinion of a jurist *(fī nazar al-faqīh),* the indicator [which appears to be effective] has been overruled *(marjūh).* [H, I, 68-69]

This obliquely worded passage seems to indicate that the difference between the occasions when caution is obligatory and when it is recommended corresponds to the difference between when a ruling is clearly uncertain and when the ruling appears to be certain, but for some reason or other, there is a probability *(ihtimāl)* that there is a contradictory ruling.

First, Bahrānī deals with those cases where *ihtiyāt* is obligatory, as these seem relatively unproblematic. He lists them as follows:

1) When it is uncertain whether an action is obligatory or recommended, then caution is obligatory, and the subject should perform the action. Similarly, if there is uncertainty whether an action is discouraged *(makrūh)* or forbidden, *the* subject should not perform the action.

2) When there is uncertainty whether an action is obligatory or forbidden, then caution is obligatory, and the subject should not perform the action.

3) When a general ruling is known, but there is uncertainty over what one needs to do to ensure compliance with the general ruling, then caution is obligatory and the subject should perform the action. For example, is it essential for the correct performance of Friday congregational prayer that the noon prayer is also performed? Caution would dictate that although a definitive answer is unknown, one should assume that it is essential to perform noon prayer.

4) When a general ruling is known with certainty from the sources, but there is uncertainty and doubt *(shakk)* over whether a particular action falls under this general ruling (ie there is a problem, not over knowledge of the law, but over its application), then caution is obligatory. Caution in such circumstances would dictate treating the action as if it is assessed by the general rule.

The reasoning here seems to be quite clear, and consistent with Bahrānī's findings on BA, particularly that outlined in 2). If there is doubt over whether an action is obligatory or forbidden, then one should treat it as forbidden because the Lawgiver would not leave the *mukallaf* in a situation of uncertainty over obligatory actions. Bahrānī seems uninterested in other possible uncertainties: for example, uncertainty over whether an action is *mubāh:* (neutral) or recommended, or whether it is neutral or discouraged. Presumably, one counts the action as recommended and discouraged respectively.

recommended), a list of six rules by which one can deduce the most cautious course of action and, finally, a citation of six *akhbār* which are interpreted to prove the legitimacy of *ihtiyāt.*

According to the Akhbarīs, *ihtiyāt* is obligatory in certain circumstances. Bahrānī's own position most closely correlates to the Akhbfirf position. If the revelatory text has a clear indicator as to the duty imposed upon the believer, then *ihtiyāt* is unnecessary. Uncertainty, however, leads to the need for *ihtiyāt.*

Doubt *(shaldc)* and uncertainty *(shubha)* in the law can emerge for a number of reasons (conflicting indicators, obscurity of indication etc). In such cases, Bahrānī argues, *ihtiyāt* is obligatory. Exactly what caution demands depends on the case in question, but in general terms it means selecting the course of action which places the greatest hardship on the individual, fulfilling both the certain and uncertain requirements of the law. By doing this, the believer will be certain of his compliance with God's commands. The duty to act with caution overrules the duty to follow the law, as described in the texts.

Bahrānī makes a distinction between occasions when *ihtiyāt* is obligatory *(wājib),* and when it is recommended *(mustal}.abb).* In terms of legal consequences, the distinction between the two categories appears to be in the punishment or reward given to the legal subject *(mukallaf):* in cases where caution is obligatory, the subject receives a reward for following *al-ahwat* and receives punishment for failing to do so. When caution is only *mustahabb,* he gains a reward for following *al-ahwat,* but no punishment for failing to do so.

How, then, does one recognise when *ihtiyāt* is obligatory or recommended?

[ihtiyāt is obligatory] when the subject hesitates over the assessment, be it due to the conflict of indicators, or their ambiguity and lack of clear indication, or the lack of a ruling altogether [in the texts], based on the rejection of BA,[1] or in cases where it is doubtful whether this or that element is included under one of the known general rulings of the assessment, or occasions like these ...

[ihtiyāt is recommended] when, although a legal indicator is established [for the classification of a particular action], there is doubt *(shakk)* over the probable existence of a contradictory [indicator]. It is highly probable, due to one of the permitted reasons, that [the action] is prohibited by the Lawgiver,

1. Bahrānī appears to contradict himself here, since he only rejects BA in cases of revelatory obscurity, not revelatory silence. See above, p. 96.

This is followed by a citation from the *mujtahid* camp (Muhaqqiq).[1] In this passage, Muhaqqiq argues that *ihtiyāt* is only recommended, not obligatory. Muhaqqiq uses an example: a dog licks a bowl, making it impure. How might one purify it? The *akhbār* give various answers, all involving washing the bowl. Different reports record that one, three and seven washes are required. Muhaqqiq argues that since the reports recommending three and seven washes are weak, one need only wash the bowl once. This is the most economic means of fulfilling the law (termed *barā'at al-dhimma).*[2] Three and seven washes are deemed unnecessary because "they require a hardship which the law docs not indicate".[3]

Bahrānī's rejection of Muhaqqiq's position serves to justify his theory of *ihtiyāt.* He makes four points concerning the latter's view:

1) This example is not a case of there being no indicator, but of there being conflicting indicators, and hence it should be dealt with differently.[4]

2) Muhaqqiq argues that the other reports are weak, but as Bahrānī has argued, they are, due to the validity of the early collections of *akhbār,* actually reliable.

3) Muhaqqiq claims that BA supports his position, but Bahrānī has already shown that BA, or at least the type utilised by Muhaqqiq here, is invalid.

4) Muhaqqiq claims that there is *ijmā* on the issue. Bahrānī counters this by saying that there is indeed *ijmā'* that at least one wash is required. There is, however, no consensus on whether more than one wash is needed.

These four points demonstrate succinctly how Bahrānī's theory of caution is tied into the other elements of his legal theory. The comprehensive validity of the revelatory texts,[5] his rejection of BA and other presumptions[6] and his suspicion concerning the validity of *ijmā'* as a source of law[7] are conjoined with his demand for caution. The *mukallaf* must perform all possible obligatory elements of an action in order to ensure that his responsibility to God is fulfilled. This attitude is termed *ishtighāl al-dhimma* ("the exhaustion of the responsibility") and can be seen as the opposite of *barā' at al-dhimma.* In the example used by Muhaqqiq, seven washes are necessary since this is the most cautious course of action.

The remainder of Bahrānī's discussion of *ihtiyāt* falls into three sections: an introduction (explaining when *ihtiyāt* is obligatory and when

1. The quotation is taken from Muhaqqiq, Ma'ānj, p. 216.
2. See Calder, "Khums", p. 41-4-2 and Kohlberg, "walad zinā", p. 255.
3. Bahrānī, *H,* 1, p. 65.
4Though, as we shall see, Bahrānī's solution also involves *ihtiyāt*, see below, p. 119-121.
5. See above, p. 32-47.
6. See above, p. 96-100.
7. See above, p. 55-60.

2. Substance Z (a novel case) also has the necessary element Y, and is therefore also prohibited.

Bahrānī's argument, though producing the same results, is as follows:

1) X is prohibited because of Y.
2) Therefore all cases where Y is present, are prohibited.
3) Z has clement Y.
4) Therefore Z is also prohibited.

Why Bahrānī prefers to express his argument thus is unclear, but he considers 'Allāma's formulation to be incorrect, though not as dangerously arbitrary as the Sunni method of *qiyās*. One possible explanation is that terms such as *tanqīh al-manāt* and *ta'diyya* are less ideologically loaded than *'illa* and *qiyās* (the latter two terms being inextricably linked with Sunni theories of analogy).

Caution and Suspension ef Judgemmt

An epistemological rigorism underlies Bahrānī's rejection of BA, *istishab* and *qiyās*. These procedures are rejected because they lead to uncertainty in the fulfilment of the law. If an agent *(mukallaf)* uses these procedures, he will be left in doubt as to his compliance with God's command. BA is, therefore, not valid. An action without a clear text-based ruling is uncatcgorisable and uncertain *(shubha)* and the *mukallaf* is charged with discovering the most cautious *(al-ahwat)* course of action. Since the most cautious action may go further than the ruling in the lost text, there can be no definitive ruling in such cases, only a preliminary, cautious assessment. This suspension of a definitive ruling is termed *tawaqquf.*

Ihtiyāt (caution) and *tawaqquf* form the basis of Bahrānī's legal recommendations for those cases which have no dear textual indicator (either because the indicator is unclear or because the texts are unclear as to the continuity of an assessment once made). Though *ihtiyāt* has played a greater role in Shī'ī legal theory than in Sunni *Usūl,* since al- 'Allāma al-Hillī (and possibly earlier), it has been eclipsed by processes such as BA, *istishāb al-hāl* and various types of analogy (though none that are explicitly termed *qiyās).* In Bahrānī's theory, caution comes to the fore. He begins, as usual, with an account of the differences of opinion over *ihtiyāt:*

Our colleagues have differed over whether *[ihtiyāt]* is obligatory or merely recommended. The *mujtahids* argue the latter, whilst the Akhbārīs argue that it is obligatory in certain circumstances. It is perhaps clear from the thought of some modern *mujtahids* that [in their opinion] it has no legal validity at all. [H, l, 65]

termed *mansūs al-illā* (literally "the recording of the causative element").[1] For Shi'ites, if the causative clement could be isolated with certainty, then the procedure of transferring the ruling was not the uncertain *qiyās* of the Sunnis, but a valid legal process. The only means through which the causative element can be known with certainty is if the Lawgiver himself gave an indication as to its identity-that is, if the *'illa* has been recorded *(mansūs).* Bahrānī examines the different Shi'ites opinions on the question of *mansūs al-'illa.* Murtada denied that the *'ilia.* could ever be established, whilst 'Allama and "a group of companions" claimed it could. For Murtadā, God gives rulings in two forms: a ruling may be a simple demand, or it may be a benefit *(maslaha)* for the people. These two elements may be present in one law, or only one of the two may be present. A believer, he claims, has no way of knowing which operates in a particular law, and hence has no means of knowing whether or not an apparently beneficial ruling can be transferred to a new circumstance.

'Allama and his companions, on the other hand, argue that those who deny *qiyās* do not deny the transferring *(tardryya)* of an assessment *per se.* They object to the transference of an assessment when the *'illa* is unknown (or not known with certainty). The debate is, therefore, whether, for example, wine can be proven (with certainty) to be forbidden due to its intoxicating quality. If this is so, then the prohibition can be transferred to all substances which have this attribute.

Bahrānī's position is that of Murradā--he maintains that to discuss the reasons why the Lawgiver gives a ruling is fruitless, perhaps blasphemous. Instead one must say that when one has discovered the causative clement with certainty, one has in fact discovered a general rule. So, when one discovers that wine is forbidden because it is intoxicating (a fact discernible from the text), one has in fact discovered a general rule that all intoxicating substances are forbidden. This general rule Bahrānī rather confusingly terms the *asl.* The *asl* is known with certainty *(bi'l-'ilm).* This process is termed *tanqīh; al-manāt al-qat'ī*[2] by Bahrānī. The processes of transferring an assessment is, therefore, analogy by syllogism. 'Allama's method of argumentation is:

1. Substance (or action) X is prohibited because of causative element Y, which is a necessary part of substance X (this is derived from a text).

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1. Bahrānī, *H,* 1, p. 63-65.
2. *Tanqīh al-manāt al-qatī,* though difficult to translate, can be described as "the certain identification of the ratio *legis* in so far as it is isolated from attributes that are conjoined with it in the- texts" (after Hallaq, *legal Theories,* p. 201), or more simply, "isolating the *'illa* with certainty" (after Kamali, *Principles,* p. 213).

indicators (since the *akhbār* in question, unfortunately, contain contradictory rulings from the Imam). Hence this is actually a case of *ta'ārud* (contradic tion), not *istishāb.*[1]

Finally, Bahrānī states (rather repetitively it might be argued) that there is a clear lack of certainty with regard to the second ruling and in such cases *ihtiyāt* is obligatory:

This *istishāb* is one case in which God's ruling is not known because there are no texts *(nusūs)* to prove it. *Akhbār* have been related, by numerous chains of transmission, that in such cases it is obligatory to perform *ihtiyāt* and *tawaqquf (H,* I, 55)

The procedure of *ihtiyāt* obviates the need for *istishāb* and gives the believer an assurance that he has not transgressed the law. Unless this continuance has a clear indication within the text in question, then a presumption of continuance is a violation of the certainty *('ilm, yaqqīn)* of fulfilment, which is, after all, the whole basis of Bahrānī 's legal theory.

Analo1g

One element of early Shi'ite polemic against Sunnis was their use of *qiyās. Qjyās,* or analogy, was seen by Shi'ites as, essentially, guesswork. The jurist makes a guess as to the causative clement *('ilia)* in one case (*asl*) recorded in the textual sources, that is, the element which causes the ruling (*hukm*) given by God, the Prophet or the Imam in the sources. The jurist transfers the ruling from the first case to a novel case *(far')* where the causative clement is also said to exist. Early Shi'ites argued that determining the causative clement was an uncertain process and hence the transference of the ruling was fraught with difficulty. The texts, then, do not always declare the causative element, and in the search for the *'illa,* the texts are unclear. To attempt to base a legal judgement on an obscurity within the texts is unacceptable, particularly for a theorist like Bahrānī who places an emphasis on certainty and knowledge.

The problem for later jurists was that much of the law was deduced by analogy; however, *qiyās* (at least terminologically) could not be validated for polemic reasons. The solution was to devise an alternative series of terms for the *qiyās* process, which would enable the jurist to elucidate the law, but preserve the slogan "no *qiyās*".[2]

Bahrānī's thoughts on *qiyās* are to be found at the end of M3, in a section

1. On *ta'ārud.*, see below, p. 112-121.
2. Anti-*qiyās* slogans were a common feature of early Shī'ī polemic, see Calder, "Doubt and Prerogative", p. 5Y 60.

after *tayammum* is not affected by the sighting of water, because the text contains no indicator proving that it is affected. Since it is uncertain *(shubha),* the believer should perform *ihtīyāt,* and in this circumstance caution would clearly indicate abandoning the first prayer, and beginning again after purification with the sighted water.

Bahrānī outlines six objections to *istishāb* in this example (and by implication in other instances). First, the assessment in the first instance is established by a textual indicator (the Quranic verse which permits purification by sand if water is unavailable), but the ruling in the second instance (that is, purification by sand is not affected by the sighting of water) needs a separate indicator. Since there is no dear indicator, the second ruling must be considered uncertain *(shubha)* and in cases of *shubha, ihtiyāt* is obligatory. Second, the *mujtahid* (note the terminology here), who rules according to *istishāb,* claims that the first ruling can only be obliterated by a ruling of equal strength, arguing that there is no clear indicator for the re-assessment of the first ruling. Bahrānī argues that though there is no clear indicator of a second ruling, there is a possibility *(imkān)* of a second, over ruling ruling. This possibility makes the validity of the first ruling doubtful, and in such cases caution becomes obligatory.

The third objection is pure polemic. The *mujtahids* are guilty of *qiyās. Qiyās* ,or analogy, is, by common agreement, an unacceptable procedure for the Shī'a. In particular, the *mujtahids* are guilty of *"qryās ma'a wug'ūd al-:fariq"* (analogy with a discrepancy); there is a discrepancy between the early and late cases-namely the existence of an immediately permanent indicator. The discrepancy makes the two cases non-analogous, and hence any attempt at transferring the ruling in one case to the later case is unacceptable. The *mujtahids* are at fault, not only because they use *qiyās* ,but because they use it incorrectly.[1]

Fourth, there is mere *zann* that the first ruling survives the change in circumstances, and *zann* is an insufficient basis on which to pefonn an action. Fifth, the case of the man sighting water whilst praying after *tayammum* is not a case of *istishāb* at all, but a case of contradictory *akhbār.* According to Bahrānī, there are reports about what a believer should do in such circumstances, but they are considered weak by the *mujtahids.* Bahrānī, who is less strict in his assessment of the validity of the *akhbār,* claïms that, in this case, it is not that there are no indicators, but that there are conflicting

1. On *qiyās ma'a wujūd al-fariq*, sec Karnali, Pnnriples, P: 206. The conditions under which an analogy may be considered valid are discussed by al-Amidī, see Weiss, *God's Law*, p. 563- 5 70, particularly p. 566.

unknown to him. The question is, then, is he obligated to repeat his prayer, having performed ritual purification with the new-found water, or is his sand purification still valid? The issue, in this classic example used by Bahrānī, concerns the nature of the ruling to perform *tayammum.* Does the dispensation continue to be valid after prayer has begun and water has been seen, or does the discovery of water invalidate the *tayammum?* If one accepts *istishāb al-hal,* then, Bahrānī states, the dispensation is unaffected. It is this principle that Bahrānī turns his attention to in the second part of his section on *dalīl al-'aql* in M3.

Though the term *istishāb* has a number of different meanings, only one has a specific juridical reference, which Bahrānī defines thus:

If a ruling is established at one time, and then another [later] time comes under scrutiny, and there is no indicator which negates that [original] ruling, then it is deemed that it [the ruling] remains as it was. [H, 1, 51-52]

By this definition he means that if a general ruling from the Lawgiver is proven, without any doubt, to be applicable to an action, or a state of affairs, at a particular point in time, then, according to the principle of *istishāb,* the ruling is presumed to continue to be in force at a later time, providing that it has not been negated by a change in circumstances.[1] This would seem to be a perfectly reasonable principle on which to make legal rulings--rulings, once made, remain in force until there is good reason to replace them with alternative rulings. Indeed this "assumption of continuity" as it is sometimes defined, would seem to be an inescapable clement of any workable system of evaluation. However, there was, according to Bahrānī, some debate about the validity of this principle. Most "traditionalists*)* "*muhaddithūn (*and "some Usūlīs" (amongst whom, Bahrānī claims were al-Muhaqqiq and Sayyid al-Murtada) considered it to be invalid, whilst others considered it to be "the preferred option" (including Hasan b. Shahīd II and Sahib al-Madārik).

When an indicator is found, and a ruling thereby deduced, is it essential that there be evidence (in the text from which the indicator was taken) that this ruling continues, unaffected by the mere passing of time? Or, put another way, is it permissible to assume that a ruling will continue through time, unless it is indicated in the text that it is time-limited in some way? Which assumption is considered primary here-the assumption of non-continuance or the assumption of continuance?

In the case of the man preparing for prayer who is forced to perform *tayammum,* Bahrānī considers it to be uncertain that the assessment of purity

1. For a discussion of *istishāb*, see Weiss, *God's Law*, p. 658-661 and Hallaq, *Legal Theores*, p. 113-115.

concluded that the indicator is ineffective in placing an obligation upon the *mukallaf* Whilst the earlier position argued that obscurity leads to the activation of the assumption of purity, for this refined position, obscurity entails, not the non-existence of a ruling, but the non-existence of a legal obligation arising from the ruling. The modem scholar who proposes this modified form of BA, does not use the phrase *'adam al-hukm,* but *'adam ta'alluq al-hukm* in his formulation.

Bahrānī also refutes this position. He, first, reinterprets the Quranic and lmamic reports used by the modern scholar. The scholar cited, "He has created for you what is in the world" [Q2.29]. This does not mean that everything in the world is free of categorisation by God, Bahrānī argues. The verse must be seen in the light of the Imams' interpretation of it, and Imam 'Ali stated that this verse meant that "God has created what is in the world, so that you might contemplate it". The Imamic reports cited by the scholar include a report from Imam Sādiq: "All things are unrestricted until they are assigned a restriction". Bahrānī states that, first, this report is isolated and the scholar in question normally rejects isolated reports as *zanni.* Second, this report does not apply to rulings, but to language (the use of the term *mutlaq* for unrestricted, provides Bahrānī with this possible avenue of criticism). Words and phrases in the texts of revelation are to be taken as general and unrestricted, unless there are other texts which provide restrictions. Finally, the argument that there is an ineffective ruling is, in truth, an evasion and no different from saying that there is no ruling.

In this section of M3, Bahrānī refutes, to his satisfaction, the arguments of the supporters of BA when applied to textual obscurity. He also refers to his alternative method of determining the correct course of action in the absence of a clear indicator from the text. This he terms *al-tawaqquf wa'l-ihtiyāt* ("suspension of judgement and caution"). The significance of these terms in Bahrānī's theory is clear from the fact that he devotes a whole prologue to their definition (M4)> which is analysed below. Before he embarks on this element of his theory, however, he deals with two other controversial ele ments of legal theory :*istishāb al-hāl* and *qjyās* .

Bahrānī moves on to discuss a particular instance of textual obscurity. If a ruling is clear from the texts, is it presumed that this ruling "continues" *(istashaba)* or is it time-limited? For example, a man prepares to pray, but finds no water with which to perform his ritual ablutions. He is permitted, according to a dispensation laid out in the Qur'ān, to perform the purification with sand *(tayammum)* instead. After ritual purification with sand, he begins to pray, but whilst praying he sees some water which was previously

can be translated as "uncertain ."

There are those who argue that in the absence of a clear indicator, actions are forbidden. Bahrānī considers this view to be weak and does not discuss it further. He immediately declares his allegiance to the second of the above positions. His reason for doing so is that "it is the one supported by the *akhbār* of the *ahl al-dhikr* (the lmams)".[1]

Bahrānī 's utilisation of the term *shubha* deserves some comment. He is not arguing that the matter has no classification (for the Shari'a is complete and all actions are classified by the Lawgiver); nor is he arguing that there is no textual indicator concerning the classification of the action. He is proposing that due to the inadequacies of our understanding, the classification indicated by the text is unknowable with the requisite certainty. This is not a case of obscurity due to conflicting indicators (we come to that later). It is a case of the absence of certainty concerning the classification indicated by an existent ruling. The Imams lived in difficult times, and though they knew the Sharifa in its entirety, they could not always communicate it with the necessary clarity:

They were in a time of *taqiyya* and *fitna.* Perhaps they answered a question with the real legal ruling; perhaps they answered it with the opposite, out of *taqiyya;* and perhaps they did not answer it at all. [*H,* 1, 45]

Not knowing which of the first two Imamic responses is reported in a particular *khabar,* gives rise to *shubha.* Bahrānī lists the revelatory proofs which justify the category of *shubha,* including a famous report from Imam 'Ali:

The permitted is clear, the forbidden is clear, but between them arc uncertainties *(shubahat).*

If BA is valid, then there is no such thing as an uncertainty, since all things which are *shubha* are assumed to be *halāl.* This three-fold division of "things" *(talhlīth)* is stressed by Bahrānī, With its Imamic sanction, it becomes an inviolable element of his epistemology. The second type of BA, whereby rulings that are obscure} but known to be existent (are considered to be rulings of permittedness, is rejected primarily because it conflicts with what Bahrānī considers to be the plain meaning of the *akhbār* from the Imams .

In the final section of his discussion of BA, Bahrānī considers a modified version of the second type of BA, which he also rejects. This "modern" position argues that though it is accepted that there is a ruling in cases where there is no clear indicator, because of the obscurity surrounding it, it must be

1. *Ibid.*, p. 44.

asliyya). It has, he claims, four basic meanings. It can mean indicator *(dalīl),* as in "the indicator in such and such an issue is the Qur'ān and Sunna"; it can mean "preponderant", as in "the preponderant interpretation of an utterance is the literal one"; it can mean "fundamental assumption", as in "the assumption is that trade between Muslims is sound"; and it can mean "continuance" *(istishāb)* It is the final definition which is of relevance to Bahrānī's discussion of BA .According to this definition, the classification of an action with no indicator (or no perceived indicator) is "permitted"*(mubāh). lstishāb* in this context refers to the continuance of a pre-revelatory assessment of permittedness after revelation, when revelation appears to contain no clear evidence that the earlier judgement has been changed. Whether this continuance is a valid assumption is at the heart of the debate around BA .

Bahrānī divides BA, thus defined, into two types:

1. the presumption that until an indicator is "proven" *(yuthbit),* there is an assumption that an action is not obligatory
2. the presumption that until an indicator is "proven", there is an assumption that an action is not prohibited.

By "proven" here, Bahrānī means proven to be directly relevant to the case in hand.

The first type of BA is, for Bahrānī, uncontroversial. To refute it would be to contradict the principle that God does not impose impossible duties upon the *mukallof (taklīf mā lā yatāq).* If God were able to do this, he would be unjust, and in line with Imārnī-Mu'tazilī thinking on the matter, Bahrānī considers this theologically unsound. He also cites *akhbār* which support such a view. Hence, for Bahrānī, it is perfectly legitimate to assume that an action which has no clear indicator in the texts is not obligatory.

However, to go further and argue that the action is, therefore, permitted (ie not prohibited) is a matter of dispute. There are basically three views:

1. There are those who argue that a lack of a clear indicator indicates a lack of assessment. For this group, revelatory obscurity, once discovered, is unproblematic. The action in question can inunediatcly be classified as permitted. Hence for them, "things" *(ashqyā',* ie actions and items) are either permitted or forgiven *(halāl* or *barām).*

2. There arc those who argue that revelatory obscurity leads to the action being of uncertain classification. Though it is certain that it is not obligatory, it is not certain that it does not fall into one of the other four categories *imustahabb ,muhāb ,makrū or harām.)* For this group, things can be classified into three groups :*halāl harām* and *shubha.* The last of these terms

ihtiyāt, comes into play.

These principles clearly restrict both excessive caution and excessive negligence with regard to epistemology. Excessive caution would dictate that one must avoid any action (or item) which is not explicitly categorised by the texts of revelation. These principles were revealed by the Imams, knowing that the texts might be incomplete,

in order to "repel the whispers of Satan" which might tempt the *mukallaf* to be excessively cautious. Excessive negligence, that is, action on the basis of *zann* ,is also restricted ,since the principles, in their application, yield certain results.[1]

Revelatory Obscurity

The assumption of pennittedness in the absence of a relevant textual indicator has been termed *al-barā'a al-asliyya* (hereon abbreviated to BA).[2] Bahrānī accepts this in some measure, and in this he is in agreement with the Shī'ī legal tradition of his time. His discussion is linked to the issue of the status of laws before revelation *(qabl wurūd al-shar's,* though he does not make this explicit.[3] is From M 11, discussed above, it is clear that Bahrānī accepts that BA is an acceptable principle on which to base action when the *mukallaf* perceives there to be no classifying text. There are some theorists who argue that this assumption should also be operative in relation to areas of textual obscurity-that is, when an indicator is known to exist, but there is uncertainty as to its ruling. BA can be translated as "fundamental freedom", that is, that one should presume that an action is not obligatory or forbidden (ie that it is "free" of assessment) unless one is certain that it has been established as such. This argument relates to the issue of the "form of the command" (*sīghat al-amr)* and its implications are discussed in the next chapter.[4]

BA is used by some theorists to argue that if, for example, it is established that there is an indicator of a ruling, but its content is uncertain, then, as in the case of there being no (perceived) textual indicator, one should assume perrnittedness (or in the case of an item, one should assume purity). This extension of BA is rejected by Bahrānī, and his reasons for doing so are outlined in the first section of the last part of M3.

Bahrānī first defines the term *asl* (as found in the term *al-barā'a al-*

1. See below, p. 234.
2. For a discussion of this concept, sec Loschner, *Die dogmatischen Gruudlagen.*
3. For an extensive discussion of the status of laws before the advent of revelation, sec Reinhart, *Before Revelation.*
4. See below, p. 158-160.

speaking, there is still room for doubt since the witnesses may be lying. Bahrānī argues that God has made it dear that the testimony of two witnesses establishes a legal proof, and that the *mukallaf* must act on its basis and not on any rational doubts he may have about the probity of the witnesses. Acting on the basis of two witnesses establishes a certainty concerning obedience to the law, that is, a procedural certainty is established even though the witnesses may be lying. lbn Barrāj's definition of certainty as rational certainty therefore makes his formulation unacceptable. The second position (that of Abu al-Salāh) is unacceptable because *;:.mm* is of a lower epistemological status than *'ilm,* and the principle had been established with *'ilm.* The third position is unacceptable because anything that is based on a "legal reason" is ,by definition, certain for Bahrānī ,

Bahrānī 's own view is, then, that only certainty can make this principle inoperative-certainty that there is an indicator in the texts which categorises the item. The *mukallaf* needs to know that the item is classified by the texts as pure or impure. Once he knows this, the principle ceases to be an appropriate basis for action. This certainty is easier to obtain, in Bahrānī's view, than the three jurists suppose because the number of texts which bring this certainty is larger than they had assumed .

The second principle concerning (the assumption that an action is permitted) is congruent with the above reasoning. This is justified by an lmamic report:

All things have within them *halāl* and *harām.* They are initially *halāl* for you until you know them to be *harām* specifically. [*H,* I, 140]

A *mukallaf* is justified in proceeding on the assumption that an action is permitted until he knows there to be an indicator which categorises it. These principles are proven both by reason (regarding issues relating to the justice of God) and by revelation (signalled by Bahrānī's reference to a large number of Imamic reports). In this one has a practical example of how reason and revelation interrelate in Bahrānī 's legal theory, an issue discussed further in Chapter Five. [1]

With regard to both of these principles, which are operative when the *mukallaf* perceives there to be no indicator assessing an action, Bahrānī is careful not to stipulate that the *mukallaf* need know with certainty the content of the ruling indicated by the text. I-le need only know that there is an indicator, and that the action or item is classified; he does not need to know into which category it might fall. As soon as this level of knowledge is gained, the principles are redundant, and another procedure, known as

1. See below, p. 188-191.

If the *mukallaf* is unaware of any indicator assessing an action, then he is justified in proceeding on the basis of an assumption of purity.

Second, this report refutes the position of some jurists (such as Shahīd II) that the prayer of a person who is in a state of ritual impurity, whether he knows it or not, is invalid. If Shahīd II was correct in this opinion, then God would necessarily be unjust. God would be asking an ignorant *mukallaf* to act on the basis of knowledge he does not have, and then punishing him (or at least not rewarding him) for his action:

Proving something to be impure, and describing it as such, is not equivalent to it simply being designated as impure in reality and by order [of the Lawgiver] alone Rather a thing is impure in relation to the one who knows it to have been declared so and pure in relation to one who does not know this. The Lawgiver does not make a ruling in this matter dependent upon reality alone. [*H,*1, 139-140]

However, there is a remaining issue to be resolved: how does one know when one must cease acting on this assumption? The simple answer is that when one has discovered an indicator, the assumption becomes ineffective. However, Bahrānī notes that Shī'ī discussions have generally considered this issue *to* be more complex .Does one, for example, need to be certain that one has found an indicator, or can one suspect (ie have a mere opinion--*zann*) that the texts contain an indicator relevant to the action, without having certainty? According to Bahrānī, Astarābādī argued that as soon as one is cer tain that an indicator exists, the principle becomes inoperative. One need not be certain as to the content of the indicator, merely certain that it exists. This, as will become clear, is also Bahrānī 's position .

Bahrānī lists three positions held by distinguished past jurists as to the level of certainty needed to make the assumption of purity inoperative:

i) Ibn Barrāj (Sa'd al-Dīn (d. 481/1088)) argued that there must be absolute certainty that an indicator has been found.

ii) Abu al-Salāh. al-Halabī (d. 447/1055) argued that an opinion *(zann)* that an indicator has been found is sufficient.

iii) 'Allārna argued that an opinion could invalidate the principle, but it had to be an opinion based upon a legal reason *(sabab shar'i).*

Bahrānī, it is clear, is dissatisfied with all these opinions. For him, this principle, the efficaciousness of which is established with certainty by means of the revelatory text quoted above, can only be rendered inoperative by certainty of the same level. He would appear, then, to support the first position. However, Ibn Barrāj defines certainty as rational certainty, and this does not persuade Bahrānī, For example, a man selling a liquid may claim it to be pure; he may have two witnesses to this effect. However, rationally

1. Anything that is not known to be impure, is pure until it *is* known to be impure.[1]
2. That which is not known to be forbidden, is permitted.[2]

Though the Sharī'a is complete, it is quite possible that the texts do not reflect all its rulings. This is due to *taqiyya:* "At times the Imams gave an incorrect answer, at times contradictory answers and at times no answer at all." The possibility of the Imams' silence concerning a ruling, makes textual (or revelatory) silence concerning a particular ruling also a possibility. The *mukallaf's* perception of silence may be silence "in reality" (rather than the *mukallaf's* inability to recognise an indicator) but this point is, for Bahrānī, irrelevant. For him there is no distinction between a mistaken perception of silence, and actual silence, as far as the culpability of the *mukallaf* is con cerned. His conviction that the ignorant *mukallaf* is forgiven (as outlined in Chapter One) leads him to concentrate on the term "known" in the above two principles, and the *akhbār* which support them: it is the *mukallaf's* knowledge that is stressed. If a *mukallaf* is ignorant of an indicator categorising an action or an item, then he is excused this ignorance and the transgressions of the law which flow from it.

Hence ,if the *mukallaf* perceives there to be no indicator in the texts of revelation which assesses a particular action, he commits no culpable transgression of the law when he performs that action. He is permitted to act on an assumption of permittedness, and in cases of ritual purity, on an assumption of purity .

Dealing first with the assumption of purity (I) above), Bahrānī cites the following lmamic report as evidence for the principle's validity:

All things are pure, until you know them to be impure. When you know (the latter to be the case, the thing in question] has become impure. [*H,* 1, 134]

From this report, he argues, two points become clear. First, it is apparent, by the Imam's use of the term "known", that it is the knowledge of the *mukallaf* which is the crucial issue, not the comprehensiveness of the texts of revelation themselves. By the phrase "when you know it, then it has become impure", the Imam is clearly indicating that purity or impurity is dependent on the awareness of the individual:

Impurity is not equivalent to impurity itself, being concerned with [a fact of] reality alone. Rather, [impurity] consists of both that [a thing] is impure and that the *mukallaf* knows it to be so. *[H,* 1, 136]

1. *Ibid.*, p. 134-140.
2. *Ibid.*, p. 140-142.

Revlatory Silence

For Bahrānī, that the texts of revelation may contain no indicator communicating God's assessment or ruling concerning an action, does not imply that there is no ruling for an action. "God has a legal ruling for every circumstance, even to the compensation due for a scratch."[1] The Shari'a is complete, and its author (God) has a ruling for every aspect of human existence.

Bahrānī never states what these rulings might be, but it is clear that he means the established five categories used to assess human action: prohibited *(harām),* disapproved *(makrūh),* permitted *(mubah),* recommended *(mustahabb)* and obligatory *(wājib).* The Lawgiver has, in theory, assessed every action, and placed it into one of these categories. By this, Muslim theorists mean that every action performed by every individual has been categorised by God, and that a believer will be judged at a time appointed by God on the basis of his actions. They also mean that God has ruled that actions of a particular type (eg drinking wine) fall into a certain category (eg drinking wine is forbidden). The extent to which reason can discover the moral/legal rulings concerning actions independent of revelation from God is discussed in Chapter Five.[2] Here Bahrānī is concerned with the solution to the problem of revelatory silence-that is, the correct procedure in cases of revelatory silence, or more accurately, perceived revelatory silence. Bahrānī, as we have seen in the last chapter, has a charitable view of the authenticity of much of the material in the *akhbār* collections, and hence, presuming there is no obscurity surrounding the rulings indicated by these reports, many rulings are known. There are, for Bahrānī, fewer areas of human activity on which there is revelatory silence than for a theorist who is more stringent in his assessment of the authenticity of the material in the collections .However, it is inevitable that the texts will appear silent on some areas of human activity, and it is in these areas that the principles of *al-barā'a al-asliyya* and *istishāb al-hāl* are considered to be operative by some authors. Interestingly Bahrānī does not discuss the case of revelatory silence directly in M3 .There he is more concerned with revelatory obscurity. He does outline the principles upon which a *mukallqf's* action should be based in MII, and, to put Bahrānī's discussion in M3 into context, an understanding of these is first necessary .

Bahrānī endorses two principles relevant to the issue of perceived revelatory silence:

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1. See Bahrānī, *H*, 1, p. 45.
2. See below, p. 188-204.

linguistic interpretation in any detail. These Prologues, together with a brief section on language in MS, are discussed in the next chapter.[1] My intention is to stay as close to Bahrānī 's presentation as possible; so however logical it may seem to me (and to other *usūl* writers) to discuss language before obscu rity and contradiction (because one cannot judge texts to be obscure or contradictory before one has determined how language operates), Bahrānī was of a different mind. By relegating his discussion of language to this position, he is, in my opinion, making it clear that he views the interpretation of the sources as relatively unproblematic. The fact that the texts do not cover every circumstance, and that at times they are contradictory, is a much more pressing problem. I return to this point in the next chapter.[2]

In the last part of M3 and the three subsequent Prologues Bahrānī discusses the issue of uncertainty in the texts. The most important causes of uncertainty for a believer, as far as Bahrānī is concerned, are:

1) that the texts appear silent on an issue

2) that the texts appear to contain an indicator, but the ruling (or assessment)[3] contained therein is unclear

3) that the texts appear to contain mutually exclusive rulings of the same action.

The first relates to revelatory silence, the second to obscurity and the third to contradiction. For Bahrānī, these three are considered together because they are examples of the same problem: the failure of the texts to provide a clear ruling.

I have used the word "appear" in the above typology because, for Bahrānī, whether the texts are actually silent, obscure or con tradictory is much less important than how they appear to the moral/legal agent who is subject to the law (the *mukallaf* .(As we saw in Chapter One, Bahrānī is primarily concerned with the law as it appears to the believer, and not the law "in reality".[4] Since God cannot ask a *mukallaf* to obey a rule of which he is ignorant) for to do so would make God unjust), the *mukallaf's* knowledge of the content of the law is, for Bahrānī, crucial in determining his culpability for transgressions. The distinction between the *mukallaf's* knowledge (*'ilm al-mukallaf*) and the law itself is also evident in Bahrānī's treatment of silence, obscurity and contradiction.

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1. Set below, p. 147-164.
2. See below, p. 147.
3. See above, p. I 5, for my justification of the use of ruling as a translation for *hukm*.
4. See above p. 16-18.

indicator, but it is unclear what the rule contained in the indicator might be, or because they contain more than one indicator and these indicators are contradictory. This is the second of the three parts of *dalil al-'aql* outlined above. In Chapter Four ,J discuss the hermeneutics of Bahrānī and Bihbahānī .By this I mean their theories of language-how it operates and how the rules of its operation might aid the understanding of the revelatory texts. This is the third of the three parts outlined above. In Chapter Five, I turn to human reason and its potential as a source of legal/moral rules. That is, is a rationalist morality possible in the views of Bahrānī and Bihbahānī? This is the first of the three parts outlined above. This may not appear a logical order in which to examine these areas of legal theory, but I am structuring my discussion around Bahrānī's own presentation of these issues and, as will become clear, he selected this structure for specific doctrinal reasons .

That these three areas of knowledge were a matter of some dispute amongst Shī'ī thinkers is clear from Bahrānī's own introduction to his section on *dalīl al-'aql* in M3:

Concerning *dalil al-'aql:* some have described it as *al-barāi'a al-aliyyya* and *istishab.* Others have limited it to the latter. A third group describe it as *lahn alkhitāb, fatwā. al-khitāb* and *dalil al-khitāb* [types of linguistic inference]. A fourth group, after *al-barā'a al-asliyya* and *istishāb,* include *al-talāzum bayn al-hukmayn* including in this *muqaddimdt al-wajib, istilzām al-amr bi'lshay' al-nahy 'an diddihi al-khāss* and *al-dalālat al-iltizāmiyya.*[1] [*H,*1, 40-4]

The differing opinions as to the constituent elements of *dalīl al-'aql* are here seized upon by Bahrānī: the supporters of *dalīl al-'aql* are disunited, and therefore the acceptance of *dalīl al-'aql* as a fourth source is in doubt. As much was admitted by Muzaffar Rida when he stated:

From what al-Shaykh al-Muhaddith al-Bahrānī says in his *Hadā'iq,* it is clear that there is no clarity on what is meant by *dalīl al-'aql*[2]

Bahrānī on Silence, Obscurity and Contradiction in Revelauon

Though writers of *usūl alfiqh* in the Shrr tradition normally begin their works with an examination of language, Bahrānī differs from this standard format. *As* analysed in the last chapter, he discusses the sources of law first, then concentrates on the issues of obscurity and contradiction in these sources, and then, only in M7-9, does he finally discuss language and

1. These terms are discussed below in Chapter Four, p. 153-154.
2. Ridā, *Usūl al-fiqh*, II, 3, p. 124.

(transmitted revelatory texts) as a means of obtaining knowledge. In the Shī'ī tradition, aql-human reason-was considered by many writers to have the ability to establish three broad areas of knowledge:

1. Perhaps most famously, reason can detect the moral/legal properties of some }though not all) actions by individuals. Revelation might declare lying to be morally reprehensible, but human reason, it was argued, had discovered this ethical truth prior to (chronologically) or independent from (logically) the delivery of knowledge from the Divine Being. This ability of human reason is termed *al-tahsin wa 'l-taqbīh* (literally "declaring (something) to be good or evil").

2. Reason can also "prove" certain maxims or principles. These maxims could then be used, in conjunction with the revelatory texts, to derive specific or detailed rules. For example, reason was held (by some authors) to be able to prove that when an action is not assessed as good or evil by revelation (ie it is not mentioned in the texts) or by reason (ie by *al-talisīn wa'l-taqbīih),* then that action is to be considered licit *(mubāh).* Similarly, if an action is assessed at one point in time (to be right or wrong), then that assessment remains valid unless it is established that circumstances have changed in such a way that the original assessment is no longer valid. These two principles (termed *al-bara'a al-aslīyya* and *istishāb al-hāl* respectively) were said to be proven by reason alone. Revelation was unnecessary to demonstrate that a jurist should act in accordance with them, though, as we shall see, the principles could also be derived from revelatory texts.

3. Finally, reason can also be used to detect linguistic and other •• facts" associated with the manner in which words are used, and when a meaning other than the literal meaning is implied or inferred. For example, when God said, "Ask the village" [Q12.82], through reason, one can deduce that his intended meaning was "Ask the people of the village". Similarly, God's prohibition, "Do not say *uff* to your parents." [Q17.23) is taken to mean "Do not *even* say *uff* to your parents"; that is, actions of greater severity than saying *uff* (such as hitting) are included in this prohibition. These implications arc, in a strict sense, deviations from the precise meaning of the words, but reason (for Shf"r jurists) can deduce when and how such deviations are justified.

These three broad areas of knowledge gained by reason are termed *'aqliyyāt.* Bahrānī discusses 2) and 3) first, in M3-9, and I) in M10.

In this chapter, I discuss the maxims or principles which may, or may not, be used to discover rulings when the revelatory texts are unclear-either because they appear to contain no ruling, or because they contain an

(28)
Silence, Obscurity And Contradiction In Revelation*

Robert Gleave

After *kitāb, sunna* and *ijmā',* Shī'ī jurists added a fourth "source" of law. This they termed *dalīl al-'aql* (literally "the indicator of reason"; it was also known as *al-dalīl al-'aqlī*-"the rational indicator"). The incorporation of this fourth source of law was, in part, an imitation of the Sunni four-fold typology of sources (though in the standard Sunni typology, it was *qiyās* which was named as the fourth source). The characterisation of this fourth source as *dalīl al 'aql* was due to the incorporation of much of Mu'tazilī theological doctrine by snr'r scholars in the Buyid period (334/945-447/1055). The relative importance of external influences (Sunni, Mu'tazilī or other thought) and internal generation in explaining the emergence of a distinctive Shī'ī tradition of *Usūl al-fiqh* is a contentious issue and one which is not directly relevant to my discussion here. By the time of Bahrānī and Bihbahānī, all Shī'ī *usūl* works included a section on *dalil al-'aql.* Even Akhbaris, who, it is claimed,[1] did not consider *dalīl al-'aql* (or, indeed, *ijmā')* to be a source of law, included a discussion of its validity within their works, even if their findings were largely negative.[2]

That human reason, without the aid of revelation from God, could discover certain truths was a central tenet of Mu'tazilism, and indeed was incorporated into some traditions of Sunni theology and legal theory. There were, of course, extensive disputes about what s011 of "truths" reason might discover, and whether these were relevant to the well-being (moral or spiritual) of the believer. However, these discussions had legal ramifications, and those Shi'a who held that morally (or legally) relevant information could be derived from reason were compelled to add *'aql* (reason) to *naql*

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* Gleave, Robert .*Inevitable Doubt: Two Theories of Shī'ī Jurisprudence* .Vol. 12. Brill, 2000, pp 87-143.

1. See Kohlberg, "*Taqiyya*", p. 397; Algar, *Religion and State*, p. 35; Amoretti, "The Heyday of the Safavid Era", p. 651-652: Madelung, "Irnamism and Mu'tazilite Theology", p. 21, n. I.

2. See, for example, the section on *'aql* in Muhammad Amin al-Astarābādī, *al Fawāid ai-madanīyya* ,p. 14 -18.

'abandoned sovereignty' because of 'the contention of the rulers with the ulama, leading to sedition and anarchy'. On the other hand, it is due to their 'inclination toward the baser world, that is mere worldly sovereignty' that rulers have abandoned religious Knowledge and 'made do with the science of politics only' (in Arjomand 1984: 226). This implied that the ulama are really superior. Kashfi did not, however, claim authority for them over kings under present circumstances, His ideal was, rather, cooperation: if they become 'mutually antagonistic', the 'ilm of the 'ulama stagnates' and rulers resort to brute force. In such a case, 'both groups [fall] short of discharging the office of vicegerency'. This was dualism of a sort.

The dualist view was reaffirmed by the Jurist 'Ali Kani (d. 1888) in a letter to the Shah (1873) at the time of the Reuters controversy (see below, p. 291). Shirazi, when as chief Mujtahid he was asked to intervene in a dispute about imported sugar, took a similar line: 'originally government (dawlat) and Religious Community (millat) were established in one place ... [and] political duties regarding this kind of general affairs (umur 'amma) were entrusted to the same person'. Shirazi ascribed their separation to 'the requirements of divine wisdom'. Once again, the ideal was cooperation: it is up to 'both these powers to aid each other in protecting the religion and worldly interests (din va dunya) of the servants of God'. But Shirazi seems to have thought that, if the government (in Arjomand's words) 'fails to carry out its duty of protection of religion and the interests of subjects, the millat will, under hierocratic leadership, do whatever is necessary, because it is responsible to the Lord of Time' (1984: 252). The 'ulama can override the ruler in an emergency (subsidiarity).

Thus, under the pressure of commercial problems affecting the national economy, some Mujtahids moved from dualism to hierocracy, giving themselves the ultimate authority. The language of this debate is reminiscent of medieval Europe and had no counterpart at this time anywhere else in the world.

traditional Jurisprudence as by circumstances, and thus also retained 'the attitude of pious antipathy to temporal power and of political indifferentism' (Arjomand 1984: 236). Conspicuous disengagement from the world of power had indeed been the basis of their popular following (Malcolm in Lambton 1970: 248). There was thus a division of opinion between, on the one hand, those religious leaders who became involved in politics, either because (in Lambton's words) 'they believed that they could exercise a restraining influence', or because 'they saw participation ... as the road to wealth and influence' and, on the other hand, those who took the view that 'sultans and governors cause all their writs and orders to run by tyranny' (early nineteenth –century Mujtahid). One Mujtahid who declined to participate observed that, if his advice were taken, 'the affairs of kingship will be held up', and if not 'I shall suffer contempt' (in Lambton 1970: 249). Thus Bihbahani's view was not widely accepted. Najafi himself demurred, he supported the doctrine of the general vicariate, but criticised some who shared this view out of 'love of leadership (riyasa) and power (saltana)' (in Arjomand 1984: 236, adapted). Ansari was opposed to involvement in politics and even to what he saw as excessive judicial activity by Mujtahids, he sought to 'depoliticize the clerical community' (Arjomand (ed.) 1988: 112) – out of respect for the Legal Sources.

There was no development of the theory of patrimonial monarchy during the nineteenth century. The few works written in the Advice-to –Kings genre lack all originality.17 But some Mujtahids did express views in line with the Irano- Islamic conception of monarchy. They developed a dualist theory of the vicariate of the Hidden Imam, according to which the 'ulama on the one hand and kings on the other each have a 'specified vicariate (niyabat-e khassa)'. That is, each acts on behalf of the true Leader in their own special field. This was an exact equivalent of the 'two-sword' theory held by some in medieval Europe. 'The Mujtahids and the rulers both hold the same office of Imamate' transferred to them from the Imam through vicegerency, and consisting of two pillars (rukn): knowledge of ... religion; and the implementation of this in... imposing order on the world, called kingship or sovereignty' (kashfi, d. 1850, in Arjomand 1984: 226). Or, as Ja'far (d.1812-13) put it in language even more reminiscent of medieval Europe: "knowledge" and the "sword" have become separated', so that norms 'which relate to the organ of the sword and the affairs of sovereignty and politics ... (relate to) the king and rulers'. Kashfi's, on the other hand, was not quite a 'two- sword' theory: for what he meant was that, ideally, there should only be one Deputy, as there was only one Imam, the ulama have only

(27)
The Age of Modernism (c. 1830-1920)*

Antony Black

In nineteenth century Iran, the 'ulama were the only national institution When Iran became prey to Russian expansion and British capitalism; they had the potential to represent national interests. During wars with Russia (1808-13, 1826-8) the Shah relied on the Mujtahids to declare Holy War, which they agreed to do, declaring this jihad to be 'individually incumbent' not only on volunteers but on every Shi'ite (Arjomand 1984: 242). Jihad was a prerogative of the Hidden Imam, so the Mujtahids were here putting into practice their belief in their collective vicariate, a doctrine which they were careful to explain on this occasion.

The 'ulama were the only effective opposition to the Qajar shahs, 'the only group who could act as a restraint on the government and who could put openly to the Shah and his advisers the dangers of a particular policy' (Lambton 1970: 249). They incited 'communal action through the mobilisation of the masses'. The first thing they did was to demand persecution of Sufis, Baha'i (babis) and non- Muslims generally. This indicated their view of the Iranian Shi'ite state; they had 'no conception of a secular society' (Arjomand 1984: 250-2).

On some political questions, opinion among the Mujtahids was divided. Aqa Muhammad Baqir Bihbahani (1705-91), one of the Mujtahids who had been instrumental in the triumph of the Principled in Iraq, is reported to have said: 'if the Mujtahid who is appointed by the Imam on the basis of general permission is appointed sultan or ruler (hakim) for the people of Islam, there will be no unjust rulers, as was the case with the children of Israel. This is so because the enforcer(s) (*hakim*) of the Holy Law (*al-shar'*) and of secular law (al-urf) are in such a case both appointed by the divine will (al-shar) (quoted by Najafi, in Sachedina 1988: 208, adapted). This presumably meant that a Mujtahid could be appointed ruler, certainly, that he could supervise those who were rulers.

On the other hand, Shi'ite political thought was driven as much b y

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* Black, Antony. *The History of Islamic Political Thought: From the Prophet to the Present.* Edinburgh University Press, 2011, pp 286-288.

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It should also be noted that because the Wahhabi, Usuli, and Idrisi movements were established on the eve of modernity and European colonization of the Middle East and North Africa, they eventually influenced responses to the growing Western presence in the region. More precisely, these Islamic movements were in a position to respond to the West in the nineteenth and twentieth centuries and are still vastly influential in defining the post-colonial Islamic world. When Western-style modernization projects did not pan out, heads of the reform movements were there to criticize them – especially when modernization meant secularism or adoption of Western ideas and institutions that were not germane to the Islamic tradition. This does not mean that the successors of eighteenth century reformers rejected everything modern or Western. In fact, leaders of the Usuli movement provided leadership for a successful indigenous constitutional movement in Iran at the turn of the twentieth century. Still today, the most anti-Western Islamic movements are very supportive of adopting technology developed in the West. As will be discussed in the final chapter (VI), these Islamic movements also evolved along two important lines – political and terrorist.

were attempts to reconcile Islam with modernity. Further, one might jump to the conclusion that the acceptance of rational thought, as in the case of the Usuli movement, must be a sign of the adoption of European Enlightenment philosophy. However, such assertions donot take into account the long tradition of rational thought in Islamic history and are often based on a Euro-centric view of world history.

In order to designate a scholar's or movement's reaction to the West, descriptors are often applied to modern Muslim scholars in order to specify their relational stance to the West. For example, Jamal al-Din al-Afghani (1838-1897) and Muhammad 'Abduh (1849-1905) are considered as accommodationists, whereas Ruhullah Khomeini (1902-1989) and the Muslim Brotherhood are termed rejectionists. Such designations are not useful for early modern Islamic reformers (including Bihbihani, Ibn 'Abd al-Wahhab, and Ibn Idris) because these scholars were not concerned with the West. If anything, they should be considered as "ignorers" of the West.[1] Ibn Idris, for example, was in Cairo when Napoleon Bonaparte invaded Egypt in 1798. However, his writings make no mention of the French incursion. The overwhelming majority of inhabitants of the Eurasian continent, east of Europe proper, simply were unaware of and unconcerned with the eighteenth century transformations that were taking place within Europe. Even to a fault, Middle Easterners and Asians thought Europe had nothing to teach them because it had been in the dark ages for so long.

Eighteenth century Islamic movements were concerned almost entirely with issues internal to Islamic society. As John Esposito puts it, "[Islamic] revivalism was primarily a response from within Islam to the internal sociomoral decline of the community."[2] This is illustrated by the fact that the enemies of early modern Islamic reformers were Muslims who resisted their reform efforts – not Europeans, Christians, or others living outside the Islamic world. As discussed in chapter VI, Ibn 'Abd al-Wahhab demonized the Sunni establishment in the Arabian Peninsula, Ibn Idris attacked popular Sufism, and Bihbihani declared that all Akhbari Shi'is were infidels (*kuffar*). Western influence in the Islamic world was not yet felt in the eighteenth century to the same extent that it was in the following centuries. The argument that eighteenth century Islamic revival and reform movements were reactionary to the West, then, is anachronistic.

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1. O'Fahey has already argued this fact for Ibn Idris. R. S O'Fahey, *Enigmatic Saint, Ahmad Ibn Idris and the Idrisi Tradition* (Evanston: Northwestern University Press, 1990), 5.
2. Esposito, *Islam and Politics*, 32.

arguing that it is based on Orientalist assumptions. Instead, they declare that the transformation of the eighteenth century Islamic world was the beginning of an Islamic Enlightenment. However, most scholars, including Bernd Radtke[2] and Rudolph Peters,[3] have rejected their Enlightenment theory. My position is that reducing the eighteenth century Islamic world to terms such as "decline" or "Enlightenment" is simplistic and does not add to a well-rounded understanding of the processes taking place in the early modern Islamic world.

It is more accurate to suggest that the political decentralization and fragmentation of the eighteenth century Islamic world gave rise to new social, cultural, religious, and political trends. Wahhabism, Usulism, and neo-Sufism represent socio-religious trends that develop during this period. As John Voll points out, political ineffectiveness, military defeats, and economic difficulties inspired a reconstruction of Islamic society.[4] It is clear that Islamic learning and scholarship was on the rise in the eighteenth century and the influence of Muslim clerics took a quantum leap throughout much of the Islamic world. Islamic reformations that began in this period, then, are directly correlated to political decentralization. Muslim scholars were attempting to provide answers to the challenges of a changing socio-political landscape and began filling voids in power.

Much of the confusion of associating the term Enlightenment with eighteenth century Islamic movements is that Enlightenment suggests both emancipation from tradition and acceptance of rational sciences. Neither of these are universal themes of the Islamic reformation in the eighteenth century. Most scholars actually embraced a return to tradition and some rejected reason altogether. Therefore, the terms revival and reform are more apt than Enlightenment, Renaissance, or decline in describing eighteenth century Islamic trends. After all, every reform-minded Muslim scholar was engaged in reviving and reforming a tradition within Islam.

An additional point of confusion in the historiography of modern Islamic movements is the assumption that they developed in reaction to the West or

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University Press, 1998).

1Reinhard Schulze, "Das islamische achtzehntes Jahrhundert: Versuch einer historiographischen Kritik," Die Welt des Islams, New Series, Bd. 30, Nr. ¼ (1990), 140-159. Reinhard Schulze "Was ist Die Islamische Aufklarung?" *Die Welt des Islams*, New Series, Vol. 36, Issue 3, (Nov., 1996): 276-325.

2. Bernd Radtke, "Erleuchtung und Aufklarung: Islamische Mystik und europaischer Rationalismus," *Die Welt des Islams*, New Series, Vol. 34, Issue 1 (Apr., 1994): 48-66.

3. Rudolph Peters, "Reinhard Schulze's Quest for an Islamic Enlightenment," *Die Welt des Islams*, New Series, Bd. 30, Nr. ¼ (1990): 160-162.

4. Voll, *Islam*, 29.

bureaucratic and military institutions, which allowed him to keep Ottoman forces at bay, drive out Portuguese merchants from the Hormuz Strait, and add the Caucasus and Iraq to the empire. Shah 'Abbas continued the religious policies of his predecessors by suppressing Sufi orders and Shi'i extremists. Shah 'Abbas placed pressure on the Ni'matu'llahi Sufis, with whom the Safavids had initially allied, until they eventually relocated to India. 'Abbas also built several seminary schools in Isfahan and encouraged scholars from Jabal 'Amil and Bahrain to study and teach there. As a result, Isfahan subsequently became the primary center of Shi'i learning. The School of Isfahan (see chapter IV) also arose during this period. By the end of Shah 'Abbas's reign, claims of the divinity of Safavid kings were fading.

By the eighteenth century, each of these empires was in the process of political disintegration or decentralization. The Safavid Empire fell in 1722 at the hands of Sunni Afghan invaders, which resulted in an interregnum that did not end until 1798 when the Qājārs reunified the Persian Empire. After 1725, the Mughal Empire began to fragment politically and was eventually colonized by the British. Although the Ottoman Empire did not fall until 1918, it was in a process of fragmentation and decentralization after the second half of the eighteenth century. Eventually, all three dynasties were ruled by weak rulers and fell victim to court infighting. Sectarianism also played a role in weakening governmental authority. Economically, each empire began to wane as well. Foreign trade decreased and often came under the control of European powers. No longer in their expansion phase, each empire also faced the reality of maintaining elaborate military and administrative systems with fewer resources. Additionally, at a time in which Europe was entering a phase of great cultural, economic, and technological advancement, the Islamic world did not always adopt new ideas and inventions such as the printing press.

Islamic Movements and the Decline-Enlightenment Debate

As Dana Sajdi has pointed out, narratives describing the early modern Middle East, particularly the Ottoman Empire, have focused almost entirely on the decline of the empire.[1] Sajdi suggests that although the Middle East may have undergone a process of political decentralization, everything associated with Islamic society and culture was not necessarily in a state of freefall. Peter Gran[2] and Reinhard Schulze[1] also reject the decline thesis,

1Dana Sajdi, *Ottoman Tulips, Ottoman Coffee: Leisure and Lifestyle in the Eighteenth Century* (London:Tauris Academic Studies, 2007), 2.

2. Peter Gran, *Islamic Roots of Capitalism: Egypt, 1760-1840* (New York: Syracuse

to wear a special red hat bearing twelve pleats, one for each of the twelve Imams. Therefore, Isma'il's supporters became known as the "red heads" (*qizilbash*). Isma'il took the ancient royal title of shah and adopted Imami Shi'ism as the state religion. During the opening decade of the sixteenth century, Isma'il and his Qizilbash warriors seized control of the Iranian plateau and beyond.

Shah Isma'il was the scion of a Sufi order tracing its ancestry back to Safi al-Din (1252-1334), from whom the imperial title Safavid (*safavi*) was derived. Shah Isma'il and successive Safavid shahs also claimed to be descendants of the seventh Shi'i Imam. Initially, Shah Isma'il even suggested that he was Muhammad al-Mahdi returned or even the incarnation of God. Isma'il's successors asserted their authority as representatives of the Hidden Imam and therefore claimed entitlement to infallibility ('isma). Qizilbash supporters fanatically accepted Isma'il's claims. They even believed that he made them invincible in battle. Such extremist propaganda was alarming to Shah Isma'il's Ottoman neighbors, who launched a full offensive against the Safavid startups. In 1514 Ottoman forces devastated the Qizilbash at the battle of Chaldiran, making use of artillery and firearms. The Qizilbash were aware of gunpowder technology, but rejected it because they believed the protective power of Shah Isma'il was a stronger weapon. Gunpowder weapons also seemed unmanly to them, although the Safavids did adopt gunpowder after the battle of Chaldiran.

Shah Ismai'l's son, Tahmasb (1514-1576), was ten years old when he came to power. Until Tahmasb came of age, the Qizilbash controlled the state. Inter-Qizilbash wars broke out during the first ten years of Tahmasb's reign and Persia was attacked by the Ottomans under the control of Sultan Suleiman – in 1548 and 1554. By 1555 Sultan Suleiman and Shah Tahmasb reached the Amasya treaty, which lasted until 1578. Similar to Shah Isma'il I, Shah Tahmasb's followers considered him a divine figure. However, different from his father, Tahmasb had no desire to play this role, which prompted him to suppress Shi'i extremism (*ghuluww*). He even crushed a Sufi faction that proclaimed him to be the Mahdi in 1554. Instead of Sufism, Shah Tahmasb promoted legalistic Imami Shi'ism by promoting scholars such as Muhaqqiq al-Karaki (d. 1533), who travelled throughout Iran to spread Imami Shi'ism.

The real architect of the Safavid Empire was Shah 'Abbas the Great (r. 1588-1629). He moved to the more central city of Isfahan and transformed it into an impressive capital. Shah 'Abbas also encouraged external trade, which was fueled at home by his monopoly on silk. Further, he rebuilt

functionary positions.

The Mughal Empire was another Islamic gunpowder state, established in northern India. The origin of the empire can be situated in 1526, when a descendent of both Tamerlane and Genghis Khan (Zahir al-Din Muhammad Babur, 1483-1530) established control of Delhi. Similar to the diversity of the population it ruled, Mughal governing elites were ethnically and religiously diverse. Different from Ottoman and Safavid populations, the majority of Mughal citizens were not Muslims. Unlike the people they ruled, the majority of the ruling class were Muslims, and government officials included Shi'is, Sunnis, Hindus, central Asians, Arabs, Persians, Rajputs, Brahmans, and Marathas. Loyalty to the ruler, "expressed through Persianate cultural forms,"[1] was the glue that held the regime together. Akbar (r. 1556-1605), the architect of Mughal military and administrative institutions, is a good illustration of such loyalty as well as the religious complexity of the Mughal period. Akbar mixed concepts from Shi'i, Sufi, Buddhist, Hindu, and other religious traditions to create a synthetic belief system known as the Divine Faith (*din-i ilahi*). Akbar welcomed ideas from every religious path and promoted himself as the head of the Divine Faith as well as the point of convergence for each of these traditions. Aurangzeb (r. 1659-1707) expanded the Mughal Empire across the entire Indian subcontinent. He also shifted away from Akbar's polices of pluralism in favor of a more fundamental reading of Islam. He used Islam to justify his imperial politics, but still relied on non-Muslims in his court.[2] Some historians pin the decline of the empire on Aurangzeb, but the reality is that the empire became too big to govern effectively. It began to break apart into smaller principalities and eventually fell into the hands of foreign British control. Overall, the Mughal period was one of intellectual and artistic output, often a result of cultural cross pollination.

The third Islamic gunpowder state, Safavid Iran, is closely related to the fate of early modern Shi'ism. Therefore, more attention will be focused on the Safavids here than the above-mentioned Ottomans and Mughals. After discussing the political development of the Safavids here, their influence on Shi'ism is also discussed at the outset of the following chapter (II). The origins of the Safavid Empire go back to a boy of fourteen years old, known as Isma'il I (1587-1524), whose army gained control of Tabriz (the key city in northern Iran) in 1501. Isma'il's father reportedly instructed his followers

1. Barbara D. Metcalf and Thomas R. Metcalf, *A Concise History of India* (Cambridge: Cambridge University Press, 2002).
2. Metcalf, *History of India*.

the establishment of sea passages linking the entire world, 2. the technological diffusion of gunpowder, 3. And the division of societies into centralized imperial states. The introduction of gunpowder put an end to instability of military-patronage states, which controlled the Islamic world prior to the early modern period.[1] Gunpowder weapons were only possessed by central governments during this period because of the high cost associated with manufacturing them. Such technology allowed central governments to subdue internal factions and defend against invaders. Global trade increased dramatically during this period, but the majority of state revenue was still generated from agriculture. Central governments, therefore, controlled all of the land in the empire, but granted use of it in return for taxation.

During the early modern period, the Islamic world was divided between the Ottoman, Safavid, Mughal empires, often referred to by historians as quintessential "gunpowder states."[2] Each empire began as a small warrior tribal principality, but eventually expanded through conquest. Rulers of each empire were descendents of Turkish and Mongol peoples who had embraced Islam in the medieval period. Generally, conquered people were granted protected status (dhimmi) and were not required to convert to Islam. In return for protection, non-Muslims were required to pay the jizya tax, which allowed them to retain the beliefs, practices, and culture of their religious community (millet). As these gunpowder states grew, they developed complex political and military institutions. Military success was often fueled by the incorporation of slave troops imported from abroad. In all, the central governments oversaw the development of prosperous societies and patronized art and science.

The Ottoman Empire was the longest lasting of the three Islamic empires. The dynasty began with Osman Bey in 1289 and continued until 1923. But, it was only after the capture of Constantinople in 1453 that the Ottoman dynasty developed into an empire with a highly centralized state. After this point, the Ottoman Empire grew to control most of the Arab world as well as much of Eastern Europe. Ottomans were also the first Islamic Empire to gain access to gunpowder. Ottomans supported Sunni Islam as the state religion, which meant that Sunnis were appointed as judges and other stated

1. James L. Gelvin, *The Modern Middle East: A History* (New York: Oxford University Press, 2005).
2. This term was coined by Marshall Hodgson. See for example, William H. McNeill, "The Age of Gunpowder Empires, 1450-1800," in Michael Adas, ed., *Islamic & European Expansion: The Forging of a Global Order* (Philadelphia: Temple University Press, 1993).

Sunni, and Sufi movements in the modern period. Each of these scholars established a widespread network of religious scholars that eventually created alliances with sources of economic and political power. These networks of Usulis, Wahhabis, and Idrisis contributed directly to the establishment of new kingdoms in Iran, Saudi Arabia, and Libya, respectively.

Political Landscape of the Early Modern Islamic World

In addition to being a study of socio-intellectual history, I hope that this project also contributes to the field of eighteenth century studies, a historical period that is often viewed as a no man's land between medieval and modern history. As a result, our understanding of the early modern period lags behind periods that are more neatly defined as classical, medieval, and modern. Transitional periods, such as the eighteenth century, are just as informative as "high" periods. For example, the transition from one dynasty or political administration to the next teaches us as much as the study of a golden age. In the case of Shi'ism, the late eighteenth century is the key period that established precedents for how Shi'ism would respond to the major questions of modernity. It is the historical moment in which Shi'i scholars challenged the accepted norms of the medieval period and began the process of reinterpreting the Shi'i tradition in an attempt to adapt it to modern challenges. Therefore, this project can also be considered as a case study in transitional history, specifically as it relates to the transition from medieval to modern.

Although I am primarily concerned with socio-intellectual history, the political changes of the early modern Islamic world must be clear from the outset. It is impossible to divorce social movements from their political milieu. Usuli Shi'ism is no exception. I argue that the rise of Usulism was partially a response to the political decentralization that took place over the course of the eighteenth century. Therefore, a brief overview of the political scene in the Islamic world leading up to the eighteenth century is crucial here.

By the medieval period, Muslims had created one of the most enduring civilizations in world history and had achieved impressive feats in science, art, literature, politics, etc. The legacy of this period lives on in the poetry of Jalal al-Din Rumi (d.1273), the medical achievements of Ibn Sina (d. 1037), and the creation of algebra by al-Khwarizmi (d. 850).

The era that followed, the early modern period, can roughly be situated between 1500 and 1800 CE. The key traits that define this period include: 1.

issues are discussed in Chapter II, where I analyze the socio-historical factors that allowed Bihbihani's rationalist school to overcome the Akhbari establishment.

I argue that one of the primary reasons for the longevity of the Usuli school is that Bihbihani trained a powerful network of disciples. This is the topic of chapter III. Bihbihani's death coincided with the establishment of the Qājār dynasty in Persia at the end of the eighteenth century. Bihbihani's successors were heavily courted by the Qājār court, especially Fath 'Ali Shah (r. 1797-1834), to play a legitimizing role of the newgovernment. Although they maintained a pious disdain for politics, Bihbihani's disciples supported the Qājārs, for example, by declaring jihad against Russia. In return, Fath 'Ali Shah supported these clerics economically and recognized them as the supreme sources of religious and legal authority in the Persian Empire.

In chapter IV, I situate Bihbihani's thought into the Shi'i scholarly tradition. On the basis of a historical survey of Shi'i scholars, I argue that there are three sources of Shi'i knowledge and authority: religious texts (naql, i.e., Qur'an and hadith), rational thought (*'aql*), and divine inspiration (*kashf*). Based on these three sources, I present a periodization of Shi'i thought. Further, I argue that the thought of Bihbihani and his students adhered closely to the Shi'i rationalist tradition that had been developing for nearly half a millennium. Although Usuli legal theory was (and still is) solely based on scripture (*naql*) and reason (*'aql*), Bihbihani and his disciples made use of divine inspiration (*kashf*) as a source of extra-scriptural authority. In other words, they derived knowledge on a legal-rational basis, but employed charismatic authority in order to bolster their legitimacy. This discussion continues in the following chapter (V), where I specifically focus on Bihbihani's methodology of producing perfect knowledge. I argue that his approach builds directly on the principles of Islamic law (*usul al-fiqh*) formulated by his rationalist predecessors and that his methodology was not new.

In the final chapter (VI), I situate Bihbihani and the Usuli revival into the wider context of the eighteenth century Islamic world. Recent scholars have presented competing metanarratives of the eighteenth century Middle East. I argue that political decentralization during this period contributed to an Islamic revival, which was generallydivided among Sunnis, Sufis, and Shi'is. I compare Bihbihani's movement with that of Muhammad Ibn 'Abd al-Wahhab (1703-1792) and Ahmad Ibn Idris al-Fasi (1760-1837), arguing that these three figures established the most influential, enduring Shi'i,

western scholar to have published a major work specifically on Vahid Bihbihani.[1] His Inevitable Doubt is an excellent comparison of the Islamic legal theories of Bihbihānī and Yusuf al-Bahrani (d.1777), the most accomplished eighteenth century Akhbārī Shī 'ī scholar. Additionally, Juan Cole, who has published extensively on Shi'ism, has written a number of important works on early modern Shī'īsm in India and the Usūlī-Akhbārī dispute.[2] Meir Litvak's research on Shi'i scholarship and finances in southern Iraq is also critical to an understanding of early modern Shi'ism.[3] However, no scholar has written a serious study on the emergence of modern Usuli Shi'ism or an assessment of the impact it has had on the Shi'i world. This is the lacuna I hope to fill in what follows.

Summary of Chapters

What accounts for the enhancement of the authority of Shi'i clerics, once relegated to the collection of hadith reports? A transformation of this socio-political magnitude required an equally grand reinterpretation of clerical authority. From the eighteenth century, Shi'i scholars began arguing for increased authority – and gradually appropriated the latent role of the Imams (such as declaring jihad and collecting charitable donations), which previous scholars had not already assumed. Usuli Shi'I sources unanimously agree that Muhammad Baqir "Vahid" Bihbihani (1704– 1791), was the primary catalyst for this sea change in Shi'i authority. In Persian and Arabic sources he is often lauded as the "teacher of all" and as the "reviver" of the twelfth Islamic century (roughly eighteenth century CE). He is described as the one inspired by God to re-establish the dominance of the rationalist (Usuli) school of Shi'i thought. Similarly, Western-language sources suggest that Bihbihani was indeed responsible for settling the dispute between Shi'i rationalists (Usulis) and scripturalists (Akhbaris) in favor of Usulis. These

1. Robert Gleave, "The Akhbari-Usuli Dispute in Tabaqat Literature: The Biographies of Yusuf al-Bahrani and Muhammad Baqir al-Bihbihani," *Jusur, 10, (1994): 79-109. Inevitable Doubt: Two Theories of Shi'I Jurisprudence* (Leiden: Brill, 2000). *Scripturalist Islam: The History and Doctrines of the Akhbārī Shī'ī School* (Leiden: Brill, 2007).

2. Juan Cole, Roots; "Indian Money and the Shi'i Shrine Cities of Iraq 1786-1850," MES 22:4 October 1986, pp. 461-80; "Shi'i Clerics in Iran and Iraq, 1722-1780: The Akhbari-Usuli Controversy Reconsidered," *Iranian Studies* 18:1 (1985): 7-34. Juan R. I. Cole and Momen, Moojan, "Mafia, Mob and Shi'ism in Iraq: The Rebellion of Ottoman Karbala, 1824-1843," *Past and Present 112* (1986): 112-143

3. Meir Litvak, *Shi'i Scholars of Nineteenth Century Iraq: The 'ulama of Najaf and Karbala*, (Cambridge: Cambridge University Press, 1997); "The Finances of the 'Ulama Communities of Najaf and Karbala, 1796-1904." *Die Welt des Islams, New Series*, Vol. 40, Issue 1, (March, 2000).

which has resulted in great animosity between Wahhabis and Shi'is, the memory of which still incites anger among the Shi'i faithful. To this day, Shi'is and Wahhabis have an adversarial relationship.

Studies that discuss broad trends in early modern Islam often ignore developments in Shi'ism altogether. For example, Fazlur Rahman's Islam thoroughly discusses Sufi and Sunni reformist trends in Arabia, Africa, and Asia, but does not mention Iran, Iraq, or any Shi'i movement.[1] Similarly, John Esposito's widely studied Islam and Politics does not take Shi'ism into account although an entire chapter is dedicated to "Revival and Reform," which includes sections on Ibn 'Abd al-Wahhab, Shah Wali Allah, and African jihad movements.[2] Esposito's only mentioning of Shi'ism in this chapter is to distinguish the difference between Sunni and Shi'i conceptions of the term Mahdi.[3] This discussion leads the reader to believe that the concept of a periodic Islamic renewer (*mujaddid*) is a Sunni one, not existent in Shi'ism. However, as I point out in Chapter I, Bihbihani is viewed by most Shi'is as the renewer of the twelfth Islamic century and the title of mujaddid is widely utilized by Shi'is. The one major exception to the general avoidance of Shi'ism in works dealing with eighteenth century Islam is John Voll, who briefly mentions Bihbihani and his role in establishing Usūlī supremacy over the Akhbārī school of Shi'ism.[4] Although Voll does not directly compare Bihbihānī with other eighteenth century reformists, he is the only scholar working on eighteenth century Islam to include Sunnīs, Sufis, and Shi'is in his narrative.

Many of the works on Shī'īsm covering the period between 1500 and the present include a line or two regarding Bihbihani's significance as the modern reviver of the Usūlī school of Shī'īsm. However, most of these studies are confined to developments within Shī'īsm and do not address Islam as a whole. Focusing entirely on Shī'īsm carries the risk of encouraging a disconnect between Shi'i and Islamic studies, which may lead to the misnomer that Shi'ism has evolved in a vacuum – unconnected to Sunni, Sufi, and other Islamic trends. In chapter VI, therefore, I attempt to draw parallels between the Usuli movement and comparable early modern Sunnī and Sufi movements.

The most important scholarship on early modern Shī'īsm is the work of Robert Gleave, who has written extensively on Shi'i law and is the only

1. Fazlur Rahman, *Islam* (Chicago: University of Chicago Press, 2002).
2. John L. Esposito, *Islam and Politics* (New York: Syracuse University Press, 1984).
3. Esposito, *Islam and Politics*, 34.
4. John Obert Voll, *Islam: Continuity and Change in the Modern World* (New York: Syracuse University Press, 1994), 82.

The most important primary sources for early modern Shi'ism are the Arabic and (to a much lesser extent) Persian writings of Shi'i clerics operating in this period. The majority of these works are treatises on Islamic law. These sources are a window into the development of Shi'i Islam and lay out the fundamental ideas associated with Usulism. Of these texts, the majority of my attention is placed on the writings of Bihbihani and his immediate successors, whom I argue established the baseline for modern Usuli thought. Indeed, some of their writings are still being studied in the Shi'i seminaries. Of additional import is the biographical (tabaqat) literature written in the nineteenth century by Usuli scholars. As Robert Gleave has already pointed out, tabaqat literature is often unscholarly and is written in the savior mold. However, this literature is critical to understand how Shi'is interpret their own tradition (see Chapter I). Vahid Bihbihani's grandson also wrote a family history, on which I heavily rely in constructing Bihbihani's biography.[1]

Historiography of Early Modern Islam

A striking feature of the historiography of early modern Islamic movements is the lack of reference to Shi'ism and its scholarly-clerical representatives. Vahid Bihbihani and the Usuli movement fit easily within the mold of eighteenth century Muslim reformers and reform movements (see Chapter V). Bihbihani is the most obvious choice as a representative of the inaugurator of the early modern Shi'i revival. Strangely though, he has received little scholarly attention. It seems that Shi'ism has remained outside most narratives because of an underlying assumption that the eighteenth-century Islamic reformation was a "Wahhabi" phenomenon in which reformers in various regions of the Islamic world either fully adopted Wahhabism or adapted a Wahhabi-type ideology to their tradition or regional movement. However, there is no basis to suggest that all reformers of this period were simply off-shoots of Wahhabism and that the most influential eighteenth century reformers mimicked the ideology or approach of Ibn 'Abd al-Wahhab. Certainly, because the Wahhabi movement eventually occupied a pride of place in Mecca and Medina, it did have added influence on many reformers. However, a deeper study of early modern Islamic movements shows that they were diverse in nature and not all were directly linked to the Wahhabi movement. There is no evidence to suggest that Wahhabis had any direct influence on any Shi'i scholar of import. In fact, Saudi-Wahhabi forces attacked the Shi'i stronghold of Karbala in 1802,

1. Aqa Ahmad Bihbihani, *Mir'at al-ahwal jahan-nama* (Tehran: Amir Kabir, 1370).

studies were largely related to topics linked to the outcome of the revolution itself. Additionally, Shi'ism has developed into a field of studyof its own. It is on this tradition of scholarship that I seek to build and add more nuance to our understanding of the Shi'i tradition.

Much of the literature on Shi'i thought either presents Shi'ism as essentially legalistic or essentially mystical. In other words, Shi'i studies has a tendency to dichotomize Shi'ism into its legalistic and mystical trends. Those emphasizing legalistic Shi'ism often focus on the Usuli-Akhbārī divide and those emphasizing mystical Shi'ism often focus on the relation between Shi'ism and Sufism. Western scholars who emphasize legalistic trends within Shi'ism are Hussein Modarressi, Robert Gleave, Devon Stewart, Norman Calder, and Etan Kohlberg. Scholars highlighting mystical trends are Seyyed Hossein Nasr, Henri Corbin, Mongol Bayat, Muhammad Amir-Moezzi, and Abdulaziz Sachedina. In many ways, these scholars represent the real divide that exists within Shi'ism itself. However, placing too much emphasis on legalism ignores the long tradition of Shi'i mysticism. Likewise, only focusing on mysticism may result in obscurantism.

I argue that neither the legalistic trend, nor the mystical trend can be separated from the historical reality of Shi'ism, even if they represent two parts of the same whole. Although legalistic and mystical trends are not often combined by Shi'i scholars themselves, both streams of thought represent the Shi'i experience (see Chapter III). Claiming that one trend or the other is the "true" Shi'ism would be essentialist. However, instead of debating which trend represents the "real" Shi'ism, the historian must accept that both are the product of the Shi'i tradition and therefore germane to it. This does not mean that Shi'i scholars will not continue to argue that one side or the other is illegitimate. Indeed, this has been the case for much of Shi'i history.

A third set of scholars tend to emphasize the relation between Shi'ism and politics. This trend is largely a result of scholars' attempts to make sense of the 1979 Islamic revolution in Iran in which the Usuli Shi'i establishment assumed political power. The outstanding scholars working in this field are Hamid Algar, Amir Arjomand, Nikki Keddie, Rula Abisaab, Andrew Newman, and Mongol Bayat. A fourth trend in Shi'i scholarship is concerned with Shi'i leadership and largely deals only with the highest echelon of the hierarchy of Shi'i scholars, including mujtahids (legal scholars who issue independent judgments), marja's, and Ayatollahs. Scholars working in this field include Meir Litvak, Linda Walbridge, Juan Cole, and Abbas Amanat.

second most important *hawza* is in Najaf,[1] followed by Karbala and Damascus. Part of the legacy of the Usuli movement, is that Shi'i power is in the hands of competing supreme exemplars (sing. *marja' al-taqlid*), often referred to as Ayatollahs. Students flock to the hawzas from all over the world and are educated in the principles of Usulism under the guidance of Ayatollahs. Additionally, lay Shi'is are required to pledge their allegiance (*taqlid*) to an Ayatollah of their choice, which includes following the legal judgments (sing. *fatwa*) of the Ayatollah and offering him a portion of their income (*khums*).

Given that Shi'i Muslims, particularly clerics, have played a relatively limited role in politics over the course of Islamic history, the recent spike in the socio-political involvement of Shi'i clerics is surprising. For much of Shi'i history, clerics have rejected worldly affairs and political involvement as a sign of piety. Many Shi'i scholars have also claimed that all governments are illegitimate until the promised Mahdi returns to establish everlasting peace and justice. Some scholars supported the dynastic rule of the successive Safavid and Qājār dynasties in Iran which accepted Shi'ism as the state religion. However, others piously rejected the authority of successive Persian dynasts.

In order to appreciate this transformation in Shi'i clerical authority, a critical understanding of the development of Usuli Shi'ism from the eighteenth century onwards is crucial. My hope is that the following contributes to a greater understanding of the revival and transformation of Islam over the past few centuries. In an even broader sense, I will consider this project a success if it adds to the discourse on the intersections between tradition and change, religion and authority. The Shi'i rationalist-traditionist dispute is certainly emblematic of the sociological forces of tradition and innovation. Usuli scholars since Vahid Bihbihani's time have continued to cling rigorously to the Shi'i tradition, but have transformed it to fit their role as supreme sources of knowledge and authority.

Historiography of Shi'ism

Shi'i studies has undergone a monumental development over the past thirty years. The Islamic-Iranian revolution in 1979 catalyzed Western scholars (writing primarily in English as well as French and German) into producing a wealth of studies related to Twelver Shi'ism. Initially, these

1. On the hawza in Najaf, see Zackery M. Heern, "Myth or History: The Origins of the Hawza in Najaf." In *The History and Development of the Hawza*. ed. Robert Gleave (Forthcoming).

political system. Although a census has not been done in Lebanon since 1932, Shi'is make up roughly a third of the total population. However, Lebanese Shi'is are generally under-educated and politically under-represented.

Significant populations of Shi'is exist in Syria, Bahrain, Saudi Arabia, North India, Pakistan, Afghanistan, and the gulf states.[1] Tens of thousands of Imami Shi'is live in Syria, especially in Aleppo. The Syrian government has been dominated by the 'Alawi Shi'i family of the current President Bashar al-Assad since the early 1970s. Like Iran and Iraq, the majority of the population in Bahrain is Shi'i. In fact, roughly two-thirds of Bahrainis, numbering approximately a million people, are Shi'i. However, they have been ruled by the Sunni al-Khalifa family since the eighteenth century and have been socially and politically marginalized – largely because of the Bahraini government's fear of Shi'is as a fifth column. The majority of Shi'is in Saudi Arabia live in the oil-rich Ahsā province. The puritanical Sunni-Wahhabi Saudi government prohibits Shi'is from openly practicing their faith. The epicenter of Shi'ism in India is Lucknow, once the capital of the Shi'i state of Awadh. In Pakistan, Shi'is are roughly 15% of the total population and primarily reside in Lahore. In Afghanistan, Hazaras and many Tajiks are Shi'is, although many have become refugees in Iran and Pakistan. The African Shi'I community is primarily composed of Indian Khojas, who are organized under the Federation of Khoja Shia Ithna-Ashari (Twelver) Jamaats of Africa. The largest communities are in Tanzania, Kenya, and Uganda although none of these communities number above tens of thousands.

One of the central arguments I seek to make in what follows is that therecent ascendancy of Shi'ism, especially in Iran, is partially the culmination of a process incepted by Vahid Bihbihani (1706-1792) and his disciples, who revived a rationalist school of Islamic thought (Usulism) in the eighteenth century. The overwhelming majority of clerics at the helm of power in Iran are Usulis and the network of Usuli Shi'ism has been the most powerful Shi'i organization in the world, although it is loosely structured and not necessarily unified. Outside the political sphere, the most important seat of power for Usulism is in Qom at the Shi'i seminary (*hawza*), which is roughly comparable to the Vatican for Catholics. The oldest, yet currently

1. No significant academic studies have been done on Yemeni Shi'ism or Bahrain Shi'ism. However, for a general overview see chapter 14 of Moojan Momen, *An Introduction to Shi'i Islam* (New Haven: Yale University Press, 1985). On North Indian Shi'ism, see J. R. I. Cole, *Roots of North Indian Shi'ism in Iran and Iraq: Religion and State in Awadh, 1722-1859* (Berkeley: University of California Press, 1988).

Shi'ism, the following will often refer to Imamis and Imamism simply as Shi'is and Shi'ism respectively from here on, unless otherwise specified. This is not to say that all of these Shi'is are Imamis or even Usulis. However, the majority of them are, especially in the Shi'i heartland (Iran, Iraq, Lebanon).

Although some statistics show that Shi'is are as little as 10% of the global Muslim population, this number obscures the importance of Shi'i studies and the impact of Shi'ism in the Middle East. More Muslims live in South Asia (east of Iran) than in the Middle East, the historical and cultural heartland of Islam. South Asians are relative newcomers to Islam. The majority of South Asia has only been converted to Islam in the past few centuries and most South Asian Muslims are Sunnis. The population of Shi'is in South Asia is well below 10%, whereas in the Middle East, the percentage of Shi'is is significantly higher (as much as 30%). This is not to say that there are not significant populations of Asian Shi'is. Recent reports indicate that the number of Asian students in the Shi'i seminaries (sing. *Hawza*) in Iran and Iraq have been steadily increasing.[1] The future can only tell how this might transform the Shi'i world.

Iran, Iraq, and Lebanon make up the heartland of Usulism in particular and Shi'ism in general. Over 90% of Iranians are Shi'is[2], the majority of whom are Usulis. Since the mid-twentieth century and especially since 1979, Iran has been the locus of the Shi'i world. After Iran, the largest ethnic group of Shi'is are Arabs, especially Iraqi and Lebanese. Roughly 60% of Iraqis are Shi'is, the majority of whom are Usulis and live in southern Iraq. Najaf and Karbala are among the oldest historical Shi'i cities in the world. Today Najaf is the most important center of Shi'ism in the world after Qom, Iran.Additionally, Iraqi Shi'is have benefited politically from the fall of the Saddam Hussein regime, in which Shi'is were scarcely represented. Shi'ism is one of the three major confessional groups in Lebanon, in addition to Christianity and Sunnism. According to the Lebanese constitution, the Speaker of the Parliament is to be a Shi'i, while the President is a Maronite Christian, and the Prime Minister is a Sunni. The Lebanese Shi'I population is somewhat of a contentious issue because of Lebanon's confessional

1. No systematic study on the makeup of students at the Hawzas has been undertaken. My assessment on the rise of students in the Hawza is based on conversations with students currently in Qom and Najaf. However, for a general study on the Hawza see Robert Gleave, ed. *Knowledge and Authority in the Hawza* (Forthcoming).
2. On contemporary Iranian Shi'ism, see Amanat, Apocalyptic Islam. On the conversion of Persians to Shi'ism, see Rula Abisaab, *Converting Persia: Religion and Power in the Safavid Empire* (New York: I. B.Tauris, 2004).

The most obvious reason for such a claim is the aftermath of the 1979 Islamic revolution in Iran that brought Usuli Shi'i clerics to power. Shi'i Muslims have also played a more central role in Iraqi society and politics since the 2003 American invasion and subsequent overthrow of Saddam Hussein. Additionally, Shi'is, including Hezbollah, have played an increasingly important role in Lebanon, the current president of Syria (Bashar al-Assad) is a Shi'i, and Shi'i resistance has been steadily growing over the past few years in Bahrain, Saudi Arabia, and Yemen. Marshall Hodgson referred to the tenth/eleventh century as the "Shi'i century." Only future historians will be able to assess whether the nineteenth/twentieth century, a millennium later, can also be considered a Shi'i century. Certainly, Shi'i influences in the Islamic world over the past three decades elicit mixed reviews at the moment. Additionally, many Shi'is can still be considered under the rubric of a persecuted minority in the Islamic world. It is clear, though, that Shi'ism is on the rise in the Islamic world.

Shi'ism, like any other religion, is not monolithic. Shi'is simply share a common tradition. At its core, this tradition is concerned with reverence to the Imams, whom Shi'is believe are the rightful, infallible (*ma'sum*) successors of Muhammad, the prophetfounder of Islam. The majority of Shi'is (Imamis or Twelvers) claim that there are a total of twelve Imams – the last of which, Muhammad al-Mahdi, has been in a state of spiritual occultation since 873 CE. In other words, the Mahdi (or *Qa'im*, lit. the one who will arise) did not die, but is not physically present in the world – although he allegedly may periodically manifest himself on the physical plane. According to Imami Shi'is, the Mahdi will return on the awaited day and establish everlasting peace and justice in the world. Since the majority of Muslims believe that Jesus Christ will also return as the Messiah, Shi'is often debate when and how the return of the Mahdi and the Messiah might play out. Interestingly, Mahmud Ahmedinejad (the current president of Iran) is part of a small order of Shi'is that is actively awaiting the coming of the Mahdi.[1]

The second largest group of Shi'is (Isma'ilis or Seveners) claim that the seventh Imam is in occultation. Therefore, Isma'ilis deny the legitimacy of the eighth through the twelfth Imams. Additional rifts as well as commonalities also exist among Shi'i communities. However, they are beyond the scope of this study. Because I am primarily concerned with Usuli

1. Abbas Amanat, Apocalyptic Islam and Iranian Shi'ism (New York: I. B. Taurus, 2009). Conferences and other activities are regularly held in Iran in order to discuss how to hasten the coming of the Mahdi.

(26)
Usuli shi'ism*

Zackery Heern

This study traces the initial development of one of the most powerful Islamic movements of the modern period, namely Usuli Shi'ism. In the second half of the eighteenth century, a debate between Traditionist (Akhbārī) and Rationalist (*Usūlī*) scholars played out in southern Iraq in the Shi'i strongholds of Karbala and Najaf. At its core, the Usūlū-Akhbārī dispute was a religio-intellectual debate in which the highest echelons of Shi'i scholars argued over proper methodologies for textual exegesis, the permissibility and limits of interpreting the texts with the aid of reason (*ijtihad*), and the overall authority of Shi'i scholars themselves. Although Akhbārism had been on the rise in the seventeenth and eighteenth centuries, Usulis emerged victorious by the late 1700s and have reigned supreme ever since. The impact of this debate has produced farreaching results over the past two hundred years, illustrating that ideas have immense power. Naturally, the tenor of Shi'i scholarship has changed as a result of Usuli success. Usulism has also greatly influenced the social and political fabric of the Shi'i world.

This study focuses primarily on the establishment and early development of Usulism, which occurred during the late eighteenth and early nineteenth centuries. In other words, my discussion on the Usuli movement as a socio-intellectual movement is largely limited to the founder of modern Usulism, Vahid Bihbihani (1704-1791), and his disciples. Other than discussions on Shi'i institutions, this is not a study in institutional history. Therefore, I do not delve deeply into political or economic trends. However, I hope to provide enough political background to give the reader a general context for the topic at hand.

Scholars have recently proclaimed that a revival of Shi'i Islam in Iran, Iraq, Lebanon and elsewhere has been underway for the past thirty years.[1]

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* Heern, Zackery M. *Usuli Shi'ism: The Emergence Of An Islamic Reform Movement In Early Modern Iraq And Iran*. Diss. University of Utah, 2011, pp 1-24.

1. See for example Vali Nasr, *The Shia Revival: How Conflicts within Islam Will Shape the Future* (New York: W. W. Norton & Co., 2006).

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development of *fiqh* and the role of jurisconsult entered a new era whose nature remains to be determined.

Sadrā.[1] In fact, the Islamic mystical approach had long been considered outdated by the modernizing Muslims who claimed that Sufism slowed the progress of modernization.

The most significant change evident in this period is the development of the political role of jurisconsult (faqīh). This role evolved mainly in reaction to Western influence as was historically manifested in the quarrel between Mirzā Hasan Shirazī and Nāsir al-Dīn Shah over the Tobacco Concession (1308/ 1891). However, in the Constitutional Movement of 1324/ 1906, this development acquired another justification: the cause of justice. In this movement, the ulama played a leading role in establishing a parliamentary system in Iran, and also demonstrated their institutional ability to function beyond governmental dominance.[2]

These events were followed by a series of religio– political theories to justify the means and ultimate goals of the ulama's political role. Ayatollah Nāīnī (d. 1355/ 1936) legitimized the elected assembly as a deterrent and preventive power which performed the task of 'isma during the absence of the Imam. However, this assembly was to be supervised by mujahids as the Imam's vicegerents (al-nuwwab al-'amma).[3]

Ayatollah Nūrī (d. 1328/ 1909), on the other hand, attempted to bring all public affairs including governance into the domain of mujtahids, regardless of an elected assembly.[4]

The failure of the ulama in the elected assembly, which is part of the overall failure of the parliamentary system in Shi'ite Iran, caused Ayatollah Khomeini, the new juristic theorist, to contemplate an absolute rule of the jurist as direct vicegerent of the Imam. Ayatollah Khomeini first developed this doctrine within an Usuli framework in 1329 sh/1950.[5] The scope of this doctrine, at that time did not appear beyond introducting the ulama as the source of legitimacy for state affairs. In 1349 sh/1970. Ayatollah Khomeini changed the scope of his doctrine by making it a practicable program.[6] By the time of the success of the Islamic Revolution of Iran in 1979, both the

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1. Ayatollah Khomeini found it a self- defeating act to continue teaching mystical texts in Qum; see Sayyid Jalāl Ashtiyanī, "Dar Rithā'-i Imam-i 'Arifan," *Kayhan-i Andīsha* 24/ (1989), p. 40.
2. See below, Part Two, Chapter Four.
3. Muhammad Husayn Nā'īnī, *Tanbīh al- Umma wa Tanzīh al- Milla*, ed. Mahmūd Taliqānī (Tehran: Shirkat Intisharāt Kitāb, 1955), pp. 56-59.
4. Shaykh Fadlullah Nūrī, *Majmu'a-yi Rasā'il I'lāmiyahā, Maktubat*. va Ruznama, ed. M. Turkamān, 3 vols. (Tehran: Rasā, 1983). v. 1. P. 59.
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6. Idem, Vilāyat-i Faqih (Tehran: Amīr Kabīr, 1979).

and Jabal 'Amil (656/ 1258 to 1018 to 1609).

Hilla, a small city in Mesopotamia, escaped the Mongol attacks which destroyed most eastern Muslim cities in 7th/13th and 8th/ 14th centuries. This city with a predominantly Shi'ite population, was also the beneficiary of generous financial endowments from the Imami vizier, Khwāja Nasir al-Dīn al-Tūsī who visited the Shi'i school of Hilla in 656/1258.[1] Tūslī reconstructed the Islamic kalām theology on a philosophical basis which had a direct impact on the Shi'ite theological approaches of Hilla.[2] Hilla also enjoyed the intellectual support of Bahreinī theologians such as Jamāl al-Dīn 'Alī b. Sulaymān al- Bahranī and his student Kamāl al- Dīīn Maytham b. 'Alī al- Bahrānī who established their teaching centers in Hilla in the middle of the 7th/13th century.[3] As a result of these special conditions, the Hilla school produced a range of prominent scholars who set a new pattern for both Shi'ite thought and its legal theory.

The access to printing facilities also contributed to the development of opinionative *fiqh* (al- fatwa'i)[4] at the expense of the analytic *fiqh* (al–istidlālī). The only exception to this generalization seems to be the book Mustamsik al- 'Urwa'l- Wuthqā by Sayyid Muhsin al-Hakım (d. 1390/ 1970) which can be considered a work based on juridical argumentations.[5] In fact, the analytic concern of most Shi'i authors was essentially focused on upholding Islamic tenets against the incursion of the Western value system or to find a compromise between these two. This feature is especially reflected in the writings of Muhammad Husayn Tabātaba'I (d. 1361 sh/ 1982), Murtadā Mutahharī (d. 1358 sh/1979) and Muhammad Baqir al- Sadr (d. 1399/ 1979).

Another characteristic of this period is the shift of interest from mysticism to jurisprudence. This fact is demonstrated most by the life of the late Ayatollah Khomeini who adopted an Usuli approach in 1365/ 1945, twenty years after being intiated in the theosophic approach of the school of Mullā

1Muhammad Mudarrisi Zanjānī, Sarguzasht va 'Aqāid-i Falsafi-yi Khwāja Nasīr Tūsī (Tehran: Dānishgah, 1956). pp. 44-46, 59. We considered the date of this visit as the beginning of the rise of the school of Hilla.

2. See Murtadā Mutahharf, Áshnáī bā 'Ulūm-I Islāmi (Tehran: Intishārat-i Sadrā, 1979), Part 3, "Kalām" p. 57; see also Wilferd Madelung, Religious Schools and Sects in Medieval Islam (London: Variorum Reprints, 1985), p. V. II/ 27.

3. See Nasīr al-DĪn Tūsī, Sharh Mas'alat al- 'Ilm, ed 'Abdullāh Nūrānī (Mashhad: Dāmishgāh, 1966), pp. 3-19.

4Examples of opinionative fiqh in the contemporary period are Minhāj al-Sāhhin by Ayatollah Ab'ūl-Qāsim Khū'I and *Tahrīr al- Wasila* by Ayatollah Khomeini.

5. See Muhammad Ibrāhim JannatĪ MasādĪq-i A'lam az Āghāz-i Ghaybat tā Kunūn", *Kayhan-i Andisha* 7 (1986) p. 20. Personal interview with Ayatollah Muhammad MahdĪ MūsavĪ KhalkhalĪ in Montreal, Dec 1989.

theological orientation which reached a new peak in the cosmological doctrine of Ibn Sinā (d. 428/ 1036). The Sunni orthodoxy reacted against the above attempt to subject Islam to an analysis from a philosophical point of view by upholding the tenets of Ash'arite theology, yet more important, by looking at Sufi approaches to spirituality. Abū Hāmid Muhammad al-Ghazalī (d.505/ 1111) decided to resort to Sufism during this time after several attempts to reformulate Shāfi'ite law, Islamic ethics and Ash'arite theology. For Ghazāli, Sufism entailed practice and experience (al- 'amal wa'l –hāl) rather than theory.[1] Despite Ghazālī's perception, the time was ripe for the theorization of the principles of Islamic mysticism. Shihāb al-Dīn Yahyā al- Suhrawardī (d. 587/ 1191) put the mystical experiences of Muslim sages into an illuminative mystical context by adapting elements borrowed from Neoplatonic,[2] essentially Platonic and Gnostic[3] premises.

With an ontological application of Qur'anic revelation and Neoplatonic self-manifestation, Ibn 'Arabī (d. 638/ 1240) propounded a hermeneutic system of being with which Islamic thought (especially Shi'i mysticism) could never dispense. Ibn 'Arabı's mysticism had something in common with Shi'ism especially with regard to notions of Muhammadan reality, Mahdism, infallibility of the Prophet's family, interior Imamate,[4] vicegerency of God and the perfect man which was applied interchangeably with the Imam or walī; although Ibn 'Arabı's own concept of walāya should be distinguished from Shi'ism.[5]

By the end of the 6th/ 12th century, the Shi'ite community began to re-evaluate the legal patterns set by Tūsī. Ibn Idrıs critical revision of *fiqh* and that of Ibn Zuhra on usūl,[6] terminated the period dominated by Tūsī's methodology. Ibn Idrīs not only expanded the scope of Imami law by giving an independent authority to 'aql (the intellect) as a source of Shi'i law[7], but he also paved the way for the growth of a new and stronger Usuli position in the Twelver Shi'ite community.

3. The Application of Ijtihād on a New Usuli Basis: The Schools of Hilla

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1. Abū Hāmid Muhammad b. Muhammad *al- Ghazālī, al- Munqidh min al- Dalāl* (Cairo: Maktabat al- Anjalu, 1952), p. 88.
2. Sayyid Jalāl Āshtiyānī, "Muqaddima." *Uthulūjiyā bā Ta'liqāt-i Qādi Sa'id Qummīī*, trans into Arabic by Ibn Nā'ima al- Hamsī (Tehran: Anjuman Falsafa 1977), p. 13.
3. Hermann Landolt, "Suhrawardi's Tales of Initiation," *Journal of the American Oriental Society* 107 (1987), p. 480.
4. Mustafā Kāmil al- Shaybī, *al- Sila bayn al- Tasawwuf wa'l –Tashayyu'* 2nd ed., (cairo: Dār al- Ma'ārif, 1969), pp. 376-79.
5. On this question, see below p. 59.
6. Jannātī, "Sayrī dar Advār-i Fiqh..."p. 24.
7. Idem., "Qiyām-i Akhbārihā 'alayhi Ijtihād," *Kayhān-i Andīsha* 13 (1987), p. 6.

appears to be based on the Shafi'ite systematization of the traditional proofs infused with doctrines from Mu'tazilite thought.

In addition to his doctrinal strength, Mufīd enjoyed support from the Buyid government (334/ 945- 447/ 1055) who assigned one of Mufīd's students, Sayyid Murtadā, as Qadi of Baghdad. Murtadā enhanced Mufīd's teaching in theology and legal theory. By writhing al-Dharī'a, Murtadā attempted to separating usūl from the above intertwined Islamic trends.[1] Nevertheless this work and 'Uddat al-Usūl written by his pupil Tusī, stil contains other elements which were omitted by later authors.

Shaykh Tūsī advanced the work of Mufīd and Murtadā, not only in theology and legal theory, but also in jurisprudence. By writing al- Nihāya and al- Mabsūt, he expanded Mufīd's method of writing *fiqh*, i.e., from one's own perception of the sources. Nevertheless, Tūsīī's effort to re-assert Imami Jurisprudence via a new series of Hadīth collection is noticeable. He first wrote Tahdhib al-Ahkām commenting on al- Muqni'a on the basis of the relevant tradition- reports,[2] later al- Istibsār in order to answer questions which had not been expounded by Mufīd.[3] Al-Mabsūt was written in Najaf where Tūsī had been forced to establish his teaching circle after the deterioration of the Shi'a center of learning in Baghdad with the collapse of the Buyid dynasty (447/ 1055). The impact of the Sunni revival during the Saljuq period is reflected in the two later works of Tūsī i.e. al- Khilāf and al-Mabsūt. He incorporated some of the Sunni (especially Shafi'te) views in these books although he refrained from employing the method of qiyās.

In addition to re-arranging the legal subjects. Tūsī established the Science of Principles 'Ilm al-Usūl and the validity of solitary traditions (khabar al-āhād) in his treatise, 'Uddat al- Usūl In doing this , he built upon the ground already paved by his masters, Shaykh Mufīd and Sayyid Murtadā. Tūṣī also incorporated a number of kalām theological principles into 'Ilm al-Usūl.[4]

The codification of Twelver Shi'ite law coincided with the development of Isma'ili thought during which al- Qādi al- Nu'mān al- Tamimi (d. 363/ 947) proposed Isma'ili *fiqh* in his Da'āim al- Islām.[5] Abū 'qūb al- Sijistāni (fourth/ tenth century) and Hamid al- Din al- Kirmānī (d. ca 411/1021), by applying Neoplatonic cosmology to Islamic thought, expounded a different

1. Abūl-Qāsim 'Alī b.al-Husayn al-Mūsawī al-Sharīf al- Murtadā, *al-Dharīa ilā Usūl al-Shī'a,* 2 vols. ed. A. Gurjī (Tehran: Dānishgāh, 1967). P. 2
2Tūsī, *Tahdhīb*. V. 1., p.4.
3. Idem, *al-Istibsār*. 2 vols. (Najaf: Dār al-Kutub, 1956). V. 1., p 2.
4. Idem, '*Uddat al- Usūl,* 2 vols. (Najaf: Āl al- Bayt, 1403), v.1, pp. 138-174.
5. al- Qādī al- Nu'mān b. Muhammad al- Tamīmī, *Da'āim al- Islām*, ed. 'Ārif Tāmir (Beirut: Dār al- Thaqāfa, 1960).

Kulaynī's al- Kāfīī includes several sections which reflect the socio – religious currents of his time, his chapter on Imamate (Kitāb al-Hujja) is an unprecedented work which echoes not only the Shi'i exaggerative (ghali) views but also the contemporary mystical conception of wali, a position imbued with the authority of divine wisdom. A comparison of the above chapter[1] and Khatm al- Awliyā' of Muhammad b.'Ali al-Tirmidhi (flourished in the second half of 3rd/ 9th century)[2] demonstrates a similar tendency towards investing ultimate religious authority in a singleindividual.

Ibn Bābūya Sadūq like Kulaynı, belongs to the Shi'i legal traditionist schools of Qum and Rayy. Although Sadūq's works are at variance with those of Kulaynī, the arrangement and chain of transmission for Hadīth resembles Kulaynı's traditionist approach. As the name of Ibn Bābuya's major book, Man lā Yahduruhu al-Faqih, suggests, he diminished the role of the jurisconsult (*faqih*) in the presence of the tradition- reports. Due to his reliable method of transmission of Hadīth and his moderate position between Mu'tazilite Usulists and the literalist traditionists, Sadūq is one of the most frequently quoted Shi'i authors concerning the problems of Imamate and Occultation. Sadūq's account of futuwwa also indicates the influence of Sufi ethics on Shi'ite juristic works.[3]

2. The Evolution of Usulism and the Codification of Shi'ite Law: The Schools of Baghdad and Najaf (408/1017 to 656/ 1258)

The exposition of Shi'ite jurisprudence entered a new phase when Shaykh Mufīd (d. 413/ 1020) applied the rational Usuli arguments in rewriting *fiqh* in his al- Muqni'a.[4] Before Mufīd, the Shieite community had been acquainted with the Science of Principles ('Ilm al-Usūl) as it was recorded in the practice of Ibn 'qīl and Ibn Junayd. However, it did not constitute a doctrinal basis for the Imamis as it did for Mufīd in his al- Muqni'a. This book seems to be the first Shi'ite book which is based on the author's own opinions acquired from the traditional sources, rather than representing the very text of the tradition- reports. Mufīd also wrote the first extant work on Shi'ite usūl al-*fiqh*.[5] The Shi'ite conception of legal theory at this juncture,

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1See Muhammad b. Ya'qūb al- Kulaynī, *al- Usūl min al-Kāfī 4 vols, ed. By Javād Mustafavī* (Tehran: Ahl-i Bayt, 1969), v.2, [chapters on *wālaya*], pp. 276-323. See below Part One, Chapter three.

2. See Abū 'Abdallāh, Muhammad b. 'Ali al- Tirmidhi, *Khatm al-Awliyā'*, ed. Uthmān Ismaīl Yahya (Beirut: Catholique, 1969), pp. 360-74.

3. Muhammad b. 'Alī Ibn Bābūya al-Sadūq, *ma'ānī al-Akhbār*, ed. 'Alī Akhbar Ghaffārī (Tehran: Matba'at al-Sadūq. 1969). pp. 19. 257.

4. Muhammad b. Muhammad b. al-Nu'mān known as Mufīd, *al- Muqni'a fi 'l-Usūl wa'l-Furū'*(Qum: Mar'ashī, Litho –reprint, 1984).

5. *Gurjī, nigāhī*, p. 29.

Shaykh Mufīd,[1] the reliance upon oral Hadīth and its subsequent collection remains the most salient feature of this period, despite the interference of several theological, rational and mystical currents in Shi'ite thought which were introduced by the mutakallim theologians, Usulists and Sufis respectively. Like its Sunni counterpart, it seems that this Imami trend was derived from the dominant Muslim concept of the time, namely, that 'ilm, was above all. knowledge of traditions, which could only be transmitted in the form of Hadīth. Shi'ire literary traditions appeared in the form of four hundred sources (*al- usūl al- arba'mi'a*) which comprised the utterances of the Imams.[2]

However, the main body of the Imams' teachings consist of the orally reported traditions whose collection in the fourth/ tenth and fifth/ eleventh century gave birth to Shi'ite literary jurisprudence (*fiqh*). It is remarkable that the first extant collections of Imami Hadīth reports were produced by the isolated traditionist centers of Ray and Qum, represented by Kulaynī and Sadūq.[3] Iraq, the birth place of rational trends, was at this time, fostering the seeds of Usulism as depicted in the works of Ibn ''qīl and Ibn Junayd. Nevertheless, it was the traditionists' collection and arrangement of Hadīth which embodied Shi'ite legal and ritual thought and its ultimate religious conception.

Kulaynī's general conceptualization of Shi'ite *fiqh* echoes contemporary Islamic traditionist currents which were reactions against Mu'tazilite rationalism by producing new collections of Hadīīth rearranged with new chpters.[4] Kulaynī's way of giving exclusive authority to the utterance of the Prophet and Imams indicate the influence of the general traditionist patterns on the Shi'ite thought.

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percentage of the Imam's discourse – writers (ashāb al- usūl), according to Shaykh Āqā Buzurg Tihrānī, belonged to the Shi'i Kūfan milieu. See Douglas Sloan Crow ''the Teaching of Ja'far al- Sādiq," M.A. (McGill University. 1980), P. 48; Shaykh Āqā Buzurq *Tihrānī, al- Dharī'a ilā Tasānif al- Shi'a,* 26 vols, (Beirut: Dār al- Adwā, 1983), V. 2, pp. 125-34.

1. The approximate date for this flourishing is 408/ 1017 when Shaykh Tūsī joined the teaching circle of Mufīd. This can be assumed as the year that Mufīd presented his *al-Muqni'a* to which Tūsī wrote a commentary, *Tahdhīb al- Ahkām.*

2. Etan Kohlberg, "al- Usūl al-Arba'u Mi'a." *Jerusalem Studies in Arabia and Islam* 10 (1987), pp. 128-65; Muhammad Kāzim Imām, "Dawra-y: Āghāz-i Fiqh," *Hizāra-I Shaykh-I Tūsī,* ed.'Ali Davānī (Tehran: Dār al- Tablīgh Islami, 1970). pp. 80-106.

3. There are a number of traditionists (*muhaddithūn)* such as Muhammad b. Hasan b. Furūkh al- Saffār al-Qummī (d. 290/ 902) who, before Kulaynī, began to collect traditions in his Basair al- Darajāt. See Muhammad 'Ali Mudarris Khiyābāni, Rayhanat al- Adab, 8 vols. (Tehran: Khayyām, 1967). V.3, p. 453.

4. E. g. see Muslim b. Hajjāj b. Muslim al- Qurashī, *Sahih,* 8 vols. (Cairo: Sabih, 1915).

In addition to Bihbihānī's "genius for rational argument and analysis" (p. 56) Modarrisi Tabataba'i considers the appearance of "a more moderate line" (p. 56) of the Akhbaris as the main element for the success of the Usulis in this period. Bihbihanı's prominent pupils completed his work in ''re-establishing the authority of reason and rational argument in law." (p. 56).

8. The School of Shaykh al- Ansārī (d. 1281/ 1864).

Modarrisi Tabataba'i regards the rise of Ansārī as the last fundamental change in Shi'i law. Ansārī extended "the most general principles of law (al-usūl al- 'amaliya) to a remarkable degree and used this method to restructure the law, especially the section of transactions." (p. 57).

It is clear from the above periodization that Modarrisi Tabataba'i considered ijtihād and rational reasoning to be the essential elements in the development of Shi'ite *fiqh* to the effect that even the presence of the Imams and the devotional attachment to the traditions of the Imams during the Safavid period did not dislodge them from their position in Shi'ite legal methodology. A thoroughly historical treatment of Shi'ite *fiqh* is beyond the scope of the present study; nevertheless, in offering a relevant periodization of Imami *fiqh* in relation to the overall context of the Shi'ite speculative thought, we propose the following outline:

1. The Period of the Traditionists and Collection of Hadīth: The Schools of Kūfa, Qum and Ray (132/ 749 to 408/ 1017).

2. The Evolution of Usulism and the Codification of Shi'ite Law:

The Schools of Baghdad and Najaf (408/ 1017 to 656/ 1258).

3. The Application of ijtihād on a New Usuli Basis:

The Schools of Hilla and Jabal 'Āmil (656/ 1258 to 1018/ 1609).

4. The Re-emergence of the Akhbari Traditionists:

The Schools of Karbalā and Isfahan (1018/ 1609 to 1186/ 1772).

5. The Establishment of the Usuli Position:

The Schools of the Holy Shrines ('Atabāt) (1186/ 1772 to 1318/ 1900).

6. The Summarizing of *Fiqh* and the Development of the Socio- Political Role of the Faqih: The Schools of Najaf and Qum (1318/ 1900 to 1400/ 1979).

1. The Period of the Traditionists and Collection of Hadīth: The Schools of Kūfa, Qum and Ray (132/ 749 to 408/ 1017).

From the time when Shi'ism found its doctrinal expression (approx 132/ 749)[1] until the flourishing of the rational Usuli school of Baghdad under

1. The year 132/ 749 is the approximate date of the trip made by Imam Ja'far al-Sādiq to Kūfa where the Imam's teaching was recorded on an systematic basis as a high

members of the Shi'a center of Qum, headed by Ibn Bābūya al-Qummi (d. 329/ 940), held an intermediate position between the traditionists and the Usulis. This school upheld the validity of traditions transmitted by one single source (al- āhād) yet simultaneously they followed the practice of ijtihād.

3. The Rationalists

According to Modarrisi Tabataba'i, this school of Twelver Imami Usulists was founded by the theologian and jurist al- Shaykh Muhammad al- Nu'mān al- Mufīd (d. 413/1022) and was continued by his pupil al- sharif al-Murtadā (d. 436/ 1044). The characteristic of this school is "their refusal to rely on the solitary tradition (al- āhād) as a source of law, and their involvement with hard theological debates." (p.43).

4. The School of Shaykh al- Tāifa al- Tūsī (d. 460/ 1067)

Tūsī combined the method of the rationalists with that of the traditionists Two of Tūsi's books al-Khilāf and al-Mabsūt. "were moddeled upon Sunni legal scholarship passed into Shi'i law facilitating its further development." (p.44).

Modarrisi Tabataba'i divides this stage into two phases: a- the disciples of Shaykh al- Tā'ifa, and b-the period of criticism. The latter phase includes the school of Hilla which consisted of scholars such as Ibn Idrīs al- Hillī, al-Muhaqqiq al- Hillī and al- 'Allāma al- HIllI.

5. The School of al- Shahīīd al- Awwal (d. 786/ 1384).

In reaction to the Sunni influence on the Shi'i expositions of law, which reached its zenith by the time of 'Allāma Hillī, Shams al- Din Muhammad b. al- Makkī al- 'Āmilī al- Shahīd al- Awwal" reformulated the fundamental rules and principles of Shi'i law and provided it with an independent identity." (p. 49).

6. The Law of the Safavid Period

This period is marked by Shaykh 'Ali b.Husayn al- Karaki (d. 940/ 1534), al- Muqaddas Ahmad b. Muhammad al- Ardabili (d. 993/1585) and Muhammad Amīn al- Astarābādi (d. 1036/ 1626) who were the jurists who either established or revived a school in Shi'ite legal thought during this period. Due to his adoption of the legitimacy of Friday prayer and his reformulation of the rules of land tax suitable to the new political situation, Karakī like Muqaddas Ardabīlī is considered to be one of those who refashioned Imami law because of his "independent rational arguments based on his personal juridical analysis." (p. 51). Astarābādī benefitted from "a suitable ground for the revival of the traditionist school ... and utterly dismissed the principles of usūl al-*fiqh*." (p. 52, 54).

7. The School of al- Wahīd al- Bihbihānī (d. 1205/ 1791)

'Allāma and continuing to the time of Muhammad Bāqir Bihbihānī (d. 1205/ 1791).

7. The stage of growth and perfection starting with Bihbihānı and continuing until the time of Shaykh Murtadā Ansāri (d. 1281/ 1864).

8. The stage of scrutinizing, beginning with Ansārī and continuing until the time of Muhammad Kāzim Khurāsānī (d. 1329/ 1911).

9. The stage of summarizing the *fiqh*, starting with the era of Khurāsānī and continuing until the present day (1405/ 1985).[1]

A comparison between the two above schemas of classification of the Shi'ite law demonstrates the similarity in their categorization which seems to be based exclusively on the Usuli conception of *fiqh*. Each period is characterized by an eminent juridical figure who affected the socio – religious currents of his time.

Demonstrating a bette grasp of the Shi'ite sources, Modarrisi Tabataba'i includes the Sunni–Shi'i interactions in his periodization. He proposes the following eight stages for the development of Shi'i law:[2]

1. The Period of the Presence of the Imam

This period is characterized by the prevalence of kalām (theology) reasoning and ijtihād (independent judgment which then was mainly based on analogy (qiyās) and personal opinion (ra'y). According to Modarrisi Tabataba'i, the Shi'ite community has never dispensed with ijtihād and independent reasoning even in the presence of the Imams. (p. 24).[3]

2. The First Century of Occultation

Three different legal schools may be discerned in this era:

A. The school of traditionists which was "a continuation of the conservative legal tendency of the period of the presence, and likewise devoted its efforts to collecting, recording and presenting the traditions from the Imams." (p.32).

B. Qadimayn (two forerunners of the Usuli school). Despite the prevalence of traditionists in that period, two legal- minded jurists represented two different Usuli approaches towards the legal problems. These were Ibn Abi ''qīl al-'Umāni (of the first half of the 4th/ 10th century) and Ibn al- Junayd al- IsKāfī (of the middle of the 4th/ 10th century) both of whom were kalām theologians.

C. The Intermediate School. Modarrisi Tabataba'i states that some

1. Idem, "Sayrī dar advār-i fiqh,'' *Kaybān-I Andīsha* 2 (1985), pp. 9-29.
2. Muhammad Hossein Modarrisi Tabataba'i, *An Introduction to Shi'i Law* (London: Ithaca. Press, 1984), pp. 25-52 [All following references to this source in this chapter will be noted parenthetically within the text itself.]
3See also blow Part Two, Chapter One.

460/ 1067).

ii- The period of Shaykh Tūsī and his followers ending at the time of al-'Allāma Ibn al-Mutahhar al-Hillī (d. 726/ 1325).

iii- Era of 'Allāma Hillī until the days of Muhammad Bāqir b. Muhammad Akmal al-Bihbihānī (d. 1205/ 1791).

iv. The period following the establishment of the Usuli school by Bihbihānī until the present time (before the Islamic Revolution of Iran (1979).[1]

The Usuli domination of Shi'ite thought is evident in the very last phases of Shihābī's chronology of Imami law (iii & iv). Since Shihābī, a few Imami scholars have reclassified the development of the Shi'ite law from different perspectives.

Among them, the classifications of Muhammad Ibrāhīm Jannāti and Muhammad Hossein Modarrisi Tabataba'i are noteworthy, although one must acknowledge that the works of Muhammad Bāqir al-Sadr,[2] Abū'l – Qāsim Gurji[3], Muhammad Abū Zahra[4] and 'Ali Kāshif al-Ghitā[5] cannot be ignored in a serious study of Shi'ite legal thought.

Ayatollah Jannāti proposes three kinds of categorizations of Shi'ite law according to: i) its generality, ii) ijtihād and iii) the manner of *fiqh* exposition.[6] Ayatollah Jannātī's general categorization of *fiqh* appears more comprehensive and is as follows:

1. The law giving period starting from 13/609 and ending 10/632.

2. The stage of explanation and collection from 10/632 until the Greater Occultation in 329/940.

3. The stage of classification and refinement from 329/ 940 until the time of Shaykh Tūsī (d. 460/ 1067).

4. The stage of expansion of subsidiary cases (furū') starting with Tūsī and extending to the life of Ibn Idrīs al- Hillī (d. 598/ 1201).

5. The stage of reasoning and inference crystallized by Ibn Idrīs and continued until the life of 'Allāma Hillī (726/ 1325).

6. The stage of extension of *fiqh* and argumentation in details, starting with

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1. Ibid

2. Muhammad Bāqir al-Sadr, *al- Ma'ālim al- Jadida li'l –Usūl* (Najaf: Nu'māni, 1965).

3. Abū'l –Qāsim GurjĪ, *NigāhĪ bi Tahavvul-i 'Ilm-I Usūl* (Tehran: Dānishgāh, 1973).

4. Muhammad Abū Zahra, *Muhādarāt fi Usūl al- Fiqh al- Ja'farĪ* (Cairo: Dirāsāt al-'Arabiya, 1956).

5. 'AlĪ b.Muhammad Ridā Kāshif al-Ghitā, *Adwār 'Ilm al- Usūl wa Atwāruhū* (Beirut: Dār al-Zahrā', 1979).

6. Muhammad IbrāhĪm Jannāti, "Advār-i kayfiyat-i Bayān-i Fiqh," *Kayhān-i Andisha 3* (1986), pp. 8-18; Idem, "Ijtihād dar Jāmi'a-yi IslāmĪ," *Kayhān-i AndĪsha* 10 (1987), pp. 6-18.

(25)
The Periodization of Shi'ite Legal Thought*

Ahmad Kazemi-Moussavi

Like its Sunni counterpart, Shi'ite law (*fiqh*) consists of the legal and ritual norms on which the whole Islamic ethical system is based. In its broad sense, *fiqh* either includes or provides an introduction to a variety of fields of learning and traditional sciences each of which employs the Qur'ān and the *Sunna*. These fields of learning and traditional sciences have evolved due to the efforts of Muslim speculative thought. Shi'i *fiqh* underwent several doctrinal stages spanning various historical developments. The significance of the new periodization of Shi'ite law for understanding the development of Imami legal thought was first brought to light by Mahmūd Shihābī in the early 1930's.[1] Shihābī divided the history of the Shi'ite *fiqh* into two major parts:

A. The law- giving period completed at the death of the Prophet 13/632.

B. The interpretation period from 13/632 until the present time. The latter period is divided into four main stages:

1. Era of the Companions of the Prophet from 13/632 to 93/711 the death of the last Companion.

2. Era of the Successors up to the Lesser Occultation of the Imam 260/ 873. This period should be subdivided into two phases:

i- Era of Imam Bāqir and Imam Sādiq.

ii- The post – Sādiqayn Imams.

3. Era of the special deputies from 260/ 873 to 329/ 940.

4. Era of the Great Occultation. This last priod is that which concerns us most and is divided into four phases:

i- Era of the forerunners beginning with the Greater Occultation and ending with the rise of Shaykh al-Tā'ifa Muhammad b. al- Hasan al-Tūsi (d.

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* Kazemi –Moussavi, Ahmad. The Struggle for Authority in the Nineteenth Century Shi'ite Community; the Emergence of the Institution of Marja'. Taqlīd. Phd Diss. Institute of Islamic Studies McGill University, 1991, pp 6-29.

1Mahmūd Shihābī, *Advār-I Fiqh*, 3 vols. (Tehran: Dānishgāh, 1950-62), v.1. pp. 382 388; see also his *Taqrirāt-I Usūl* (Tehran: Farbud, 1965), pp. 38-65.

century.[1]

The Akhbārī tendency gained supremacy in all Shī'ī centers of learning in the following century, and held Shī'ī law in its grasp for several decades until the second half of that century, when it again declined in the face of *usūli* resurgence. Bahrain was the stronghold of this school during this period and has remained so up to the present, after the demise of Akhbārīsm in Iran and Iraq.

In the second half of the 12th/18th century an outstanding jurist with a genius for rational argument and analysis suc-ceeded in dismantling the influence of the Akhbārī school and to oust it totally from the scene. This scholar was, as noted before, al-Wahīd al-Bihbahāni who established a new rational school in Shī'ī law.

Conditions for such a change were, to some extent, facilitated by some Akhbārī scholars in mid 12th/18th century. Scholars such as Sadr al-Dīn Muhammad b. Muhammad Bāqir al-Hamadānī (d. after 1151/1738-9) in his *Sharh. al-Wāfiya* and Yūsuf b. Ahmad al-Bahrānī (d. 1186/1772) in introduction to his al-l}ada'iq al-ruidira, accepted some arguments of the Usūlīs, rejected some extreme Akhbārī approaches and followed a more moderate line. Through severe continuous mental efforts, al-Bihbahānī managed to reestablish the authority of reason and rational argument in law and to revive the Usūlī or rationa-list school of Shī't jurisprudence. In the following century, the reconstruction of Shī'ī jurisprudence by al-Shaykh al-Ansārī resulted in a radical change in the whole system of Shī'ī law. Many new elements from Islamic logic and philo-sophy were introduced to the jurisprudence. The characteris-tics of this new rational school are to be explained on another occasion.

1. See al-Khwānsārī, I, pp. 134-5. Also 'Alī b. Muhammad al-'Āmilī, *al-Sihān al-māriqa* (MS 1576, Mar'ashī Library, Qum), fols. 7b-10a.

against rational analysis and reasoning as a means of discovering legal norms, and utterly dismissed the principles of *usūl al-fiqh* which had been evolved in order to define the rational method. This approach basically resembled the more radical wing of the early traditionalists which considered all traditions transmitted from the Imāms as authentic.[1]

The focus in Amīn al-Astarābādī's argument was on the invalidity and peccability of the Aristotelian logic which had been the basis for the Shī'ī jurists in their legal reasonings. The main difference between the two Shī'ī legal tendencies of Usūl! and Akhbārī was the validity or invalidity of reason in connection with religious matters, although many other points of disagreement, mostly of the same type, existed at the same time.[2]

The Akhbārī school found its way to Iraq in the fourth decade of the 11th/17th century and was followed by most of the jurisconsults of Najaf and other Shī'ī centers of learning in Mesopotamia.[3] In Iran the majority of the jurists of the provinces in the second half of the same century supported this tendency.[4] The religious academy of Isfahān, which was the largest center of Shī'ī learning, was dominated by the Usūlīs, although the first Majlist, Muhammad Taqt b. Maqsūd 'Alī (d. 1070/1659-60) inclined to Akhbārīsm, {2) and his son Muhammad Bāqir, Majlisī II (d. 1110/1699) suported a method between Akhbārīsm and Usūlism,[5] Zayn al-Dīn 'Alī b. Sulaymān b. Darwīsh b. Hātim al-Qadamī al Bahānī (d. 1064/ 1653-4) took Akhbārīsm from Iran to Bahrain.[6] During this century, the animosity between Akhbārīs and Usfiljs had not yet become strong. Sharper opposition between them, however, began to appear from the last decades of the same

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1. See al-*Wahid al-Bihbahānī*, *al-Fawā'id al-'attqa* (Tehran, 1270q), pp. 436-8; Muhammad Bāqir al-Khwānsārī, I, pp. 127-30.
2. See al-Jazā'irī, *Manba' al-Hayāt* (MS 2761/4, Majlis Library, Tehran), pp. 275-8; al-Samāhījī, *Munyat al-mumārisīn* (MS 1916/27, the same library), pp. 375-9 (also quoted in al-Khwānsārī, I, pp. 127-30); Shushtarī, *al-Dhakhtra al-bāqiya* (MS 1916/29, the same library), pp. 381-382; Shubbar, *Buqhyat al-tālibīn* (MS 3972, the same library), the whole work.
3. Muhammad Taqī al-Majlisī, *Lawāmi'-i sāhibqarānī* (Tehran, 133lq), I, p. 16; al-Khwānsārī, I, p, 137.
4. Muhammad Taqī al-Majlisī, *Rawdat al-mutiaqīn* (Tehran, 1393-9q), I, p. 21. (2) Idem, Lawāmi', I, pp. 16, 30; al-Khwānsārī, I, pp. 136-7, II, p. 119.
5. See his *Risāla dar sayr wa suluk* (MS 880, Mar'ashī Library, Qum), fol. 53a.
See also his *Zād al-ma'ād* (Isfahān, 13llq), pp. 557-8 (also quoted in al-Bahrānī, al-*Hadā'iq al-nādira* [Najaf, 1377q-], XII, p. 268.
6. Al-Bahrānī, *Lu'lu'at al-bahrayn* (Bombay, n.d.), p. 13; Tunukābunī, *Qisas al-'ulamā'* (Tehran, n.d.), p. 227; Aghā Buzurg al-Tīhrānī, XI, p. 76. The name "Bahrain" is used here in its old meaning which included the mainland of al-Qatīf and al-Ahsā' inhabited by Shī'īs,

The suitable ground for revival of the traditionalist school had gradually been provided since early 10th/16th century. It has been said that Ibn Abī Jumhūr al-Ahsā'īt, a Shī'ī theologian with sufī tendencies of early 10th/16th century, was a follower of the traditionalist school.[1] In the second half of the same century, Husayn b. 'Abd al-Samad al-'Āmilī, shaykh al-Islām of the Safavid court (d. 984/1576) criticized the legal method of Shī'ī jurists and blamed them for being imitators of the "ancients".[2] 'Abd al-Nabī b. Sa'd al-.Iazairt, a slightly later jurist, criticized the legal approaches of the Usult school in his *al-Iqtisād ft sharh al-Irshād*[3] (written in 1015/1606-7). A *sadr* (the chief religious dignitary) of the Safavid court in the first half of the 11th/17th century is quoted as having said that no Shī'ī *mujtahid* remained in Iran or the Arab world in his time.[4] Ahmad b. Muhammad al-Ardabīlī, known as al-Muqaddas, the religious leader of the Shī'ī community in his time and a prominent jurist (d. 993/1585), never hesitated to reject the opinions of all previous Shī'ī jurists wherever they excluded traditions on the basis of a rational argument.[5] His students like Muhammad b. 'Alī al-'Āmilī, author of *Madārik al-ahkām* (d. 1009/1600) followed the same line. 'Abd Allāh b. Husayn al-Tustarī, a prominent jurisconsult of early 11th/17th century (d. 1021/1612) made a great contribution to the revival of *hadīth.* literature.[6] Subjects such as the validity or invalidity of the traditions as a source of law had again become points of debate among the jurists of early 11th/17th century.[7] The value of logic and philo-sophy in Islamic scholarship had already come under question.[8] Elements such as these contributed enormously to the appearance of a new traditionalist school and its rapid development and predominance.

The new traditionalist school, which was now called by its other old name, *Akhbārī*, was, like its predecessor, opposed to the rational, analytical approaches to the law and adhered strictly to the outward, literal meanings of the traditions. In the above-mentioned work, Amin al-Astarābādī argued

1. Al-Nurī, III, p. 361.
2. See his *Risāla fī hukm al-husr wa'l-bawārī wa sahm al-lmām* (MS 1836/12, Majlis Library, Tehran), p. 217; *Tis' masā'il* (MS 1805/53, the same library), p. 256; *Risāla fī tahqīq ba'sd al-masā'il al-fiqhiyya* (MS 5960/3, the same library), pp. 123-124.
3. MS 5886/2, Majlis Library, Tehran, pp. 18-136.
4. 'Alī Naqī Kamara't, *Risāla dar ithbāt-i luzūm-i wujūd-i mujtahid dar zamān-i ghaybat* (MS 3813, Majlis Library, Tehran), pp. 2-3.
5. See his *Majma' al-fā'ida wa 'l-burhān* (Tehran, 1272q), passim.
6. See Muhammad Bāqir al-Khwānsārī, *Rawddat al-jannāt*, Ed. M. T. al-Kashfī and A. Ismā'tliyan (Qum, 1390-2q), IV, pp. 235, 240, 243.
7. See iu«, IV, p. 238.
8. Al-Shahīd al-Thānī, *Risāla fī taqlīd al-mayyit* (quoted in al-Māhūzī, *al-'Ashara al-kāmila* [MS 3866, Majlis Library, Tehran], p. 242).

his disciple al-Sharif al-Murtadā through their numerous polemical works and harsh criticisms of the principles of traditionalists, and their skillful emphasis on some unpopular theological opinions of the latter.[1] Al-Mufīd and al-Murtadā managed to revive the rational school of Shīī law. Aspects of this severe controversy are recorded in some of the sources[2] in which the traditionalists are referred to as the *Akhbārīiyya* and the rationalists as *mu'tazila* or *kalamiyya*.[3] Al-Mufīd and al-Murtadā too, speak of the approach of muiakallimtin and muhaqqiqtu: as against that of the "tradi-tionists."[4] In later Shīī sources, the adherents of this rationalist school are referred to by the terme *usuliyya*.[5]

The approach of the rationalists relied firmly on general Qur'ānic principles and on widely transmitted (*mutawātir*) traditions, and excluded those traditions which did not provide certainty (*āhād*). Instead of the latters, they conformed to those legal views which were accepted and continually practiced among Shīīs (*ijmā'āt*).[6] The process of inferring precepts from the appropriate sources was carried out through rational analysis, the procedures and rules of conduct of which were familiar to the theologicans because of the latters' daily involvment with difficult theological debate.

Around the middle of the 5th/11th century, Shaykh al-Tāifa established a more moderate legal school by combining methods of rationalists with that of the traditionalists. He maintained the validity of the traditions as a source of law while preserving the analytical and rational method of law. This remained characteristic of Shīī law up to the present time.

After the decline of the traditionalists school in the early 5th/11th century, a small number of its adherents survived, here and there, in the later period,[7] but they were not active and were, therefore, largely ignored by others. It was not until the beginning of the 11th/17th century that their school was revived by Muhammad Amīn al-Astarābādī (d. 1036/ 1626-7) through his book *al-Fawā'id al-Madaniyya*.

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1. See my An Introduction to Shīī Law (forthcoming).
2. E.g. al-Shahrastanī, p. 178.
3. Ibid., pp. 169, 178; Sharif al-Jurjānī, p. 629; Fakhr al-Rāzī, al-Mahsūl (quoted in al-Kāziimī, p. 203).
4. Al-Mufīd, *Awā'il al-maqālāt*, p. 98; al-Murtadā, *al-Masā'il al-Tabbāniyyāt*, fol. 2.
5. See for instance 'Abd al-Jalīl al-Qazwīnī, pp. 3, 178, 179, 190, 231, 235-7, 240, 272, 281, 284, 415-16, 459, 481, 504, 506, 528, 569; Ibn al-Mutahhar, *Nihāyat al-usūl*, fol. 200 b.
6. See works of al-Mufīd (e.g. *Tashīh al-i'tiqād*, pp. 179, 212, 227-9; *al-Tadhkira bi-usūl al-fiqh*, p. 193; *al-Masā'il al-Sarawiyya*, pp. 233-5; *Jawāb ahl al-Hā'īr*, pp. 112, 116) and al-Murtadā (e.g. *Jawābāt al-masā'il al-Mawsiliyya al-thālilha*, fol. 40a). Also al-Rāwandī, *Fiqh al-Qur'ān* (Qum, 1397-9q), I, p. 4.
7. 'Abd al-Jalīl al-Quzwīnī, p, 568.

theologians of the 4th-6th/10th-12th centuries, terms such as *hashwiyya*[1] and *muqallida*[2] together with the terms *ashāb al-hadīth*[3] and *Akhbārīiyya*[4] were applied to all the adhrents of the traditionalist tendency, even the more moderate group.[5]

At the same time when the traditionalists dominated Shīī academical circles, there existed a very few supporters of the rational tendency in the Shīī school of thought who, in their turn, differed among themselves. Some, like Ibn Abt 'Aqīl Abū Muhammad Hasan b. 'Alī al-Umanī al-Hadhdhā' (early 4th/10th century), rejected the validity of the traditions for law.[6] Others, like Ibn al-Junayd Abū 'Alī Muhammad b. Ahmad al-Kātib al-Iskāfī (mid 4th/10th century)[7] and Abū Muhammad Hasan b. Musa al-Nawbakhtī (early 4th/10th century)[8] recognized the traditions as valid legal sources. It is already well-known that much disagreement existed among the Mu'tazilī theologians of the time, too, about matters such as the validity of the traditions,[9] *qiyās* and the like.

In the last decades of the 4th/10th and early 5th/11th centu-ries, the school of traditionalists was swept away by the teachings of al-Shaykh al-Mufīd and

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⇦ al-Rāzī, *Tabsirat al-'awāmm*, ed. 'A. Hā'irī (Tehran, n.d.), p. 46.

1. Al-Mufīd, *al-Masā'il al-'Ukbariyya* (MS 2319, Central Library, University of Tehran), fol. 59 a; idem, *Awā'il at-maqālāt*, p. 86; idem, *Jawāb ahl al-Hā'ir*, ed. in 'Alī b. Muhammad al-'Amilī's *al-Durr al-manthūr* (Qum, 1398 9), p. 114; 'Abd al-Jalīl al-Qazwīnī, *al-Naqd*, ed. J. Muhaddith Urmawī (Tehran, 1358 sh), pp. 3, 235, 272, 285, 529. See also al-Muhaqqiq al-Hillī, *al-Mu'tabar*, p. 6; al-Fayd al-Kāshānī, *al-Usūl al-asīla*, ed. J. Muhaddith Urmawī (Tehran, 1390 q), p. 61.
2. Al-Mufīd, *Jawāb ahl al-Hā'ir*, p. 112; al-Tusī, *'Udda*, p. 54.
3. And similar terms such as *ashāb al- Akhbār*, *ahl al-hādīth*; *ahl al- Akhbār*, etc.
See al-Mufīd, *Awā'il al-maqālāt*, pp. 80-1, 87, 88, 89, 92, 101, 108, 118; idem, *Tashīh al-i'tiqād*, pp. 186, 222; idem, *al-Radd 'ala ashāb al-'adad*, ed. in al-'Amilī's *al-Durr al-manthūr* (Qum, 1398 q), p. 124; idem, *al-Masā'il al-Sarawiyya* (Qum, [1979]), pp. 222, 223; al-Murtadā, *Jawābāt al-masāil al-Mawsiliyya al-thālitha* (microfilm 1162, Central Library, University of Tehran), fol. 40 a; idem, *al-Radd 'aiā ashāb al-'adad* (the same microfilm), fol. 130 b; idem, *al-Masā'il al-Tarābulusiyyāt* (the same microfilm), fol. 110; idem, *al-Masā'il al-Tabbāniyyāt* (MS 2335, Library of the Holy Shrine, Meshed), fol. 2; al-Tusī, *al-Ghayba*, p. 3; idem, 'Udda, p. 248; Ibn Idrīs al-Hīllī, p. 249. See also al-Tusī, *al-Mabsūt*, ed. M. T. al-Kashfi and
B. al-Bihbudī (Tehran, 1387-93 q), I, p. 2.
4. Abd al-Jalīl al-Qazwīnī, pp. 3, 236, 272, 282, 285, 458, 529, 568-9; Ibn al-Mutahhar, *Nihāyat al-wusūl*, fol. 200 b. See also al-Shahrastanī, *al-Milal wa 'l-nihal*, ed. A. M. al-'ld (Cairo, 1977), p, 169, 178; Sharif al-Jurjanī, *Sharh al-Mawāqif* (Constantinople, 1286 q), p. 629; Fakhr al-Rāzī, al-Mahsūl (quoted in al-Kāzimī, p. 203).
5. For more details about the methodology and beiliefs of the adherents of the traditionalist school, see the works mentioned above by al-Mufīd and al-Murtadā,
6. Al-Tustarī, Qāmūs al-rijāl (Tehran, 1379 q-), III, p. 198.
7. See al-Mufīd, al-Masd'il al-Sarawiyya, p. 223.
8. Al-NajAshī, p. 50.
9. See 'Abd al-Majīd, *al-lttijāhāt al-flqhiyya 'ind ashāb al-hadtīn* (Cairo, 1979), p. 94.

transmitting traditions without any further inferential derivation of the law.[1]

After the period of the Imāms (ended 260/874), the traditiona-list school gradually gained control over the whole Shī'ī intellectual community, and totally suppressed the rational theological and legal tendencies which were based on reasoning. The school of Qum, which in those days was the most prominent religious center of the Shī'īs was completely dominated by this current and the Qummī scholars were all traditionalists[2] objecting to any kind of reasoning and analytical thought in the Shī'ī community. The overwhelming majority of Shī'ī jurists during this period and up to the late 4th/10th century were adherents of this school of thought.[3] Like their predecessors in the time of the Imāms, they devoted their efforts to collecting, recording and preserving the traditions from the Imāms. They, too, were not sympathetic to rational arguments in religious matters, and condemned even those efforts which applied rational argument to religious questions in order to strengthen the Shī'ī points of view.[4] This school resembled in its outlook the *Sunnī* school of "the traditionists", in which Ahmad b. Hanbal rejected *kalām* even when used in defence of Islam.[5]

In their legal approach, there were two groups of traditionalists who differed among themselves. One only accepted traditions related by transmitters whose reliability had been thoroughly examined, and recognized and implemented those principles of *usūl al-fiqh* which were mentioned in the traditions from the Imāms.[6] The other group followed traditions without compromise and completely ignored the principles of *usūl al-fiqh* and the rules by which a tradition could be examined. They completely ignored the procedures of debate, reasoning and recognized modes of discourse.[7] The extreme tendencies of these Shī'ī traditionalists were comparable to the tendency of *Hashwiyya* in Sunnism which was the most extreme and inflexible Sunnī traditionalist school.[8] However, in the works of Shī'ī

1. See also Khumaynī, *Risāla fī 'L-ijtihād wa 'l-taqlīd* (Qum, 1385q), pp. 125-8.
2. Al-Murtada, *Ibtāl al-'amal bi- Akhbār al-āhād,* fol. 142b; al-Futunī, p. 4. See also al-Tūsī, *K. al-Fihrist*, ed. M..Al Bahr al-'Ulūm (Najaf, 1937), p. 157.
3. Al-Tūsī, Uddat al-usūl, p. 248; Ibn al-Mutahhar, *Nihāyat al-wūsūl* (MS 1908, Mar'ashī Library, Qurn}, fol. 200b.
4. See Ibn Bābawayh, *al-I'tiqāddt* (Tehran, 1370q), p. 74. See also al-Mund, *Tashīh al-i'tiqād,* pp. 169-70; al-Tusī, *K. al-Ghayba* (Tabriz, 1323q), p. 3.
5. Ibn al-Jawzī, *Manāqīb al-imām Ahmad b. Hanbal* (Cairo, 1979), p. 205.
See also Ibn Qudāmā, *Tahrīm al-nazar fī kutub ahl al-kalām*, ed, G. Makdisī(London, 1962), p. 17.
6. Al-Kāzimī, pp. 207-14; 'Abd Allāh al-Tunī, *Risāla fī salāt al-jum'a* (MS 128/2 Imām Jum'a-yi Khu'ī, Majlis Library, Tehran), p. 97. See also al-Tusī, *Uddat al-usūl*, p. 248.
7. Al-Tusī, *Udda*, p. 248; al-Kazīmī, p. 202.
8. See al-Mufīd, *al-Ifsāh* (Najaf, 1950), p. 77; idem, *Awā'il al-maqālāt*, p. 65; Murtadā ⇨

in works written by Shīī theologians like the Nawbakhtīs,[1] 'Abd Allāh b. 'Abd al-Rahmān al-Zubayrī,[2] and Abu'l-Qāsim 'Alī b. Ahmad al-Kūfī.[3] Alī these were against *ijtihād* in the above sense. Otherwise *ijtihād*, as a rational mode of reasoning, was quite an acceptable phenomenon among many Shīīs from the 2nd/8th century onwards, and from late 4th/10th century it emerged as the only method by which legal subjects were approached.[4] These analytical and rational methods of Shīī scholars of the early centuries of Islam appeared to amount to *ra'y* and *qiyās* in the eyes of strict traditionalists who objected to the rational analytical modes of reasoning in law.[5]

In some traditions, it is reported that some companions of the Imāms practised *qiyās* on occasions when instructions over a particular problem were not explicitly and clearly given in the *Qur'ān* and Tradition,[6] and that some of them were practising the method of *ra'y*.[7] Some of the most knowled-geable companions of the Imāms whose opinions and judgments are cited in legal sources, have been accused of following the practice of *qiyās*.[8] It is almost certain that they were supporters of the analytical mode of reasoning and not of the Sunni concept of *qiyās*. Their judgments, many of which have been collected by Asad Allāh al-Kāzimī[9] confirm this point.

It is evident from what has so far been said that in the period of the presence of the Imāms, two legal tendencies existed in the Shīī community. One of them adhered to an analytical, rational approach toward legal problems within the framework of the general principles of the *Qur'ān* and Tradition. The other was a traditionalist approach which relied on

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1. Iqbāl, pp. 94, 117, 118, 120.
2. Al-Najāshī, p. 163.
3. Ibid., p. 203.
4. This is according to the predominant Usūlī school of Shīī law. The Akhbārīs rejected the validity of all kinds of rational argument in law, as noted before.
5. Books such as *al-Radd 'alā man radd athār al-Rasūl wa i'iamad 'alā najā'ij al-'uqūl* by Hilal b. Ibrahīm b. Abi 'l-Fath al-Madanī (al-Najashī, p. 344) are written with the same understanding.
6. Durust b. Abī Mansūr, *Kitāb Durusi b. Abī Mansūr* (Tehran, 137lq), p. 165; al-Barqī, *al-Mahāsin*, ed. J. Muhaddīth Urmawī (Tehran, 1370q), I, pp. 212-15; al-Himyarī, Qurb al-isnād (Tehran, n.d.), p. 157; al-Kashshī, p. 239; al-Mufīd, *al-Ikhtisās*, ed. M. M. al-Kharsān (Naja!, 1971), p. 275; Hurr al-'Amilī, XVIII, pp. 33, 38; al-Nūrī, *Mustadrak al-Wasā'il* (Tehran, 1382q), III, pp. 176-7; *Jami' al,ahādīlh al-Shī'a*, I, pp. 274-6.
7. Al-Barqī, *al-Mahāsin*, I, pp. 212-15; al-Kashshī, pp. 156-7
8. See Ibn Babawayh, *Man Iā yahduruh al-faqīh*, ed. H. M. al-Kharsān (Najaf, 1377q), IV, p. 197; al-Murtadā, *Ibtāl al-'amal bi-akhbār al-āhād* (microfilm 1162, Central Library, University of Tehran), fol. 142b; al-Futūnī, *Tanzīh al-Qummiyyīn min al-maīa'in* (Qum, 1328 sh), p. 44; Bahr al-'Ulūm, *al-Fawā'id al-rijāliyya*, ed. M. S. and H. Al Bahr al-'Ulūm (Najar, 1965-7), III, pp. 215-19; al-Kazimī, *Kashf al-qinā'* (Tehran, 1317q), p. 83. See also al-Tusī, *'Uddat al-usūl*, p. 51.
9See his *Kashf al-qinā'*, e.g., pp. 82-3, 198, 244.

qiyās in Islamic jurisprudence was rejected by the Shi'a from the time it came into Islamic law, in the 2nd/8th century,[1] because it leads only to a probable cause for a precept, not to the certain one. Some cases of *qiyās* in which the real cause of a precept is found are accepted in Shī'ī law.[2] In the first centuries, the traditionalists who were opposed to any kind of rational argument held that this mode of arriving at categorical judgments amounted to *qiyās* and was therefore unlawful.[3] Some later scholars called it permissible *qiyās*,[4] while in fact this mode of analysis bears no connection with the Sunnt concept of *qiyās*.[5] It seems that in the religious mentality of the Shī'a of the first centuries, all kinds of rational arguments were considered a kind of *qiyās*.[6] This was perhaps caused by some outward or terminological similarities. Then, traditionalists believed that the injunctions found in Shī'ī Tradition which forbade the practice of *qiyās* were also applicable to any other mode of rational analysis.

These traditions also forbid practising independent judgment, which is called *ra'y* in Islamic legal terminology. In the legal usage of the early periods, the term *ijlihād* was used[7] in the sense of personal judgments including *ra'y*.[8] This explains why Shī'īs refrained from the use of the term *ijtihād* until the 6th/12th century.[9] It also explains the objections raised in Shī'ī theological works toward *ijtihād*,[10] and the refutation of its legitimacy

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1. Ibn Hazm, *al-khām fī Usūl al-ahkām*, ed. A. M. Shākir (Cairo, 1345-8q), VII, p. 177; idem, *Mulakhkhas ibtāl al-qiyās*, ed. S. al-Afghanī (Damascus, 1960),
5.
2. Al-Karakī, *Tarīq istinbāt al-ahkām*, ed. 'A. al-Fadlī (Najaf, 1972), p. 17.
3. Ibid., because of the same interpretation, later Akhbārīs accused *Usūlīs* of following practice of *qiyās* in their legal judgements. See for instance Husayn al-Karakī, *Hidāyat al-abrār* (MS 3278/1, Mar'ashī Library, Qum), Chapter 8.
4. Ibn al-Mutahhar, *Ajwibat al-masā'il al-Muhannd'iyya* (MS 1474, Central Library, University of Tehran), fol. 92a; al-Shahid al-Thant, al-Ramda al-bahiyya (Najaf, 1386-90q), III, p. 65 See also al-Wal_ltd al-BihbahA.nt, Tal)qtq ft '1-qiyds (MS 458, Mar'ashī Library, Qum), fol. 85a.
5. Ibn al-Mutahhar, loc. cit.; al-Suyurt, fol. 3a; al-Wahīd al-Bihbahānī, fol. 85b.
6. See al-Kashshī, p. 189; al-Muhaqqīq al-Hlllī, *Ma'ārij al-wūsūl* (Tehran, 1310 q), p. 127.
7. See for instance Abu 'l-Husayn al-Basrt, *al-Mu'tamad fī Usūl al-fīqh*, ed. Hamīd Allāh (Damascus, 1964-5), pp. 689, 722, 762-6; Qādī Nu'mā, *Ikhtilāf usūl al-madhāhib*, ed. M. Ghālīb {Beirut, 1973), pp. 203-28; al-Mund, *al-Fusūl al-mukhtāra* (2nd edition, Najaf, n.d.), p. 68; al-Murtada, *al-Dhart'a*, pp. 672-3.
8. See further the article *idjtihād* in EI, 2nd edition, III, p. 1026.
9. See Muhammad Bāqir al-Sadr, *Durūs fī 'ilm al-*Usūl (Beirut, 1978), I, pp. 55-64.
10. See for instance al-Mund, *Awā'il al-maqālāt*, ed. 'A. Wā'iz: Charandābī and al-ZanjAnt (Tabrtz, 1364q), p. 127; idem, al-Fu11iil al-mukhitira, pp. 66-9. See also *al-Nu'mānī, al-Tafsīr*, ed. in Muhammad Bāqir al-Majlisī's, *Bihār al-anwār*, vol. XCII {Tehran, 1387q), pp. 95-6; al-Murtadā, *al-Dhart'a*, pp. 792-5; idem, al-Intishār (Najaf, 1971), p. 98.

followed what they advised as the correct method of reasoning and thus instructed their followers on the proper procedure for inference of legal precepts.[1]

Many of the Imāms' companions, who were the first generation of the Shī'ī jurists, were, at the same time, eminent kalam theologians[2] and held significant opinions on both legal and theological subjects, some of which have been quoted in the sources. Many other Shī'īs who gathered around the Imāms restricted themselves to the transmission of traditions and refrained from theological debates. They did not look favou-rably upon the Shī'ī theologians.[3] The theologians who were appreciated and favoured by the Imāms, strongly resented the reproaches directed against them by the traditionalists, and the Imāms consoled the accused[4] 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.[5] Some of the traditionalists of Qum too squabbled with theologians,[6] fabricated tradi-tions in condemnation of the latters and attributed them to the authority of the Imāms,[7] and wrote books in this vein.[8] On the other hand, the Imāms recommended their followers to refer to theologians and read their books.[9] They even encouraged the people of Qum to honour and respect Shī'ī theologians 'in spite of the fact that the traditionalists of their town were hostile to them'.[10]

As mentioned already, the inference of legal precepts in Shī'ī law is fundamentally based on logical analysis and reasoning within the framework of Qur'ānic texts and Tradition. Ratio-nal argument is accepted on the basis of Aristotelian deduction, which brings certainty according to the principles of that logical system. The kind of analogical reasoning which is entitled

1. See for instance al-Kulaynī, III, pp. 83-8; Hurr al-'Amilī, II, pp. 538-9, 542, 546, 547-8.
2. See Iqbāl, Khānidān-i Nawbakhtī (Tehran, 1345sh), pp. 75-84.
3. See al-Kashshī, pp. 279, 487-8, 496, 498-9 (for instance). See also Ibn Babawayh, K. *al-Tauhīd*, ed. H. Al-Husaynī al-Trhrānī (Tehran, 1387q), pp. 458-60; Ibn Tāwūs, *Kashf al-mahajja* (Najaf, 1950), pp. 18-19; Hurr al-'Amilī, XI, pp. 457-9.
4. See al-Kāshshī, pp. 498-9.
5. Ibid., p. 488.
6. Ibid., p. 489 (see also pp. 483, 506); Muhammad al-Ardabīlī, *Jami' al-ruwāt* (Tehran, 1331 sh}, I, p. 459, II, p. 357; Abū 'Alī, *Muntahā al-maqāl* (Tehran, 1300q}, p. 28.
7. Al-Kashshī, p. 497. For examples of these traditions see the same source, pp. 491-6, 540-4: al-Barqī, K. *al-Rijāl*, ed. J. Muhaddith Urmawī (Tehran, 1342 sh), 35; al-Bazantī, p. 478.
8. For example K. *Mathālib Hishām wa Yūnus* by Sa'd b, 'Abd Allāh al-Ash'arī, mentioned in al-Najashī's K. *al-Rijāl* (Tehran, n.d.), p. 134.
9. Al-Kashshī, pp. 483-5, 506; al-Najashī, pp. 346-8.
10. Al-Kashshī, p. 489.

Al-Shaykh Murtadā al-Ansārī, the great scholar and legal theoretician (d. 1281/1864), systematically revised and recons-tructed the methodology of Shī'ī law, and extended the horizons and imensions of this discipline. The collection of his treatises or *usūl al-fiqh*, entitled *al-Rasā'il or Farā'id al-usūl is* still used as a text-book in traditional academies of Shī'ī law.

In the school of al-Shaykh al-Ansārī which has continued up to the present date, the principles of *usūl al-fiqh* have been continuously subjected to scrupulous and minute examination by his disciples and followers. As a result of the emergence of great scholars such as Muhammad Kāzim al-Khurāsānī (d. 1329/1911) author of *Kifāyal al-usūl*, Muhammad Husayn al-Na'īnī (d. 1355/1936), Diyā' al-Dīn al-'Arāqī (d. 1361/1948) author of *Maqālāt al-usūl*, and Muhammad Husayn al-Istahānī al-Kumpānī (d. 1361/1947) author of *Nihāyat al-dirāya*, and through their incisive intellectual efforts, the methodology of Shī'ī law is now the most elaborate in Islamic scholarship, and is still subject to discussions and open to further development, changes and perfection.

III. Conflict between the two tendencies in Shī'ī jurisprudence.

It can be clearly seen from religious traditions that Shī'ī Imāms had persistently urged their followers to reason and use their minds. In the case of discussions on *Kalām* theology they praised and encouraged Shī'ī theologians of their times.[1] 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 Imams.[2] The Imams sometimes also explained in some points whenever faced by questions from their followers that the correct replies to their questions could be grasped and derived from the general Islamic legal principles.[3] On some occasions, the Imams themselves

1. See al-Kashshī, *lkhtisār ma'rifat al-rijāl*, ed. Hasan al-Mustafawī (Meshed, 1348 sh), pp. 268, 278, 484-6, 489-90, 538, 542; al-Kulaynī, al-Kdfī, ed. 'A. A. al-Ghaffārī (Tehran, 1377-9q), I, pp. 169-74; al-Mufīd, *Tashīh al-i'tiqād*, ed. 'A. Wā'īz: Charandābī (Tabriz, 1364q), pp. 171-2; al-Quhpā'ī, *Majma' al-rijāl*, ed. D. al-"Allāma (Isfahān, 1387q), VI, pp. 223-30, 293-307.

2. "'Alaynā īlqā' al-usūl ilaykum wa 'alaykum al-tafrī'" (we must give you the principles and you have to derive branches): al-Baztī, *al-Jāmi'* (the fragment inserted in Ibn Idrīs al-Hillī's al-Sard'ir), p. 477; al-Fayd al-Kashant, *al-Haqq al-mubīn*, ed. J. Muhaddīth Urmawī (Tehran, 1390q), p. 7; Hurr al-'Amīlī, *Wasā'il al-Shī'a*, ed. 'A. al-Rabbānī al-Shīrazī and M. al-RAzī (Tehran, 1375-89q), XVIII,

3. See for instance al-Kulaynī, III, p. 33; al-Tūsī, *Tahdhīb al-ahkām*, ed. 1;1. al-Mūsawī al-Kharsān (Najaf, 1958-62), I, p. 363; idem, *al-Istibsār*, ed. H. M. al-Kharsān (Najaf, 1375-6q), I, pp. 77-8; Hurr al-'Amilī, I, p. 327; *Jāmi' ahādtīh al-Shī'a*, vol. I (2nd edition, Qum, 1399q), pp. 116-18.

appeared on the works of al-'Allama, some of which are listed in Aghā Buzurg's *al-Dharī'a*.[1] Two of the most famous of these are the commentaries known as *al-Diyā'ī* and al-'Amidi[2] which had a notable influence on the develop ment of *usūl al-fiqh*. Al-Shahid al-Awwal, Shams al-Dīn Muhammad b. Makkī al-'Āmilī (d. 786/1384) assembled these two commentaries, together with some useful notes by himself, in a volume entitled *Jāmī' al-bayn*.[3]

Hasan b. Zayn al-Dīn al-'Āmilī (d. 1011/1602) paved the way for concentrated discussions on *usūl al-fiqh* by composing a systematic and well-arranged text as an introduction to his legal work *Ma'ālīm al-dīn*. Thereafter, numerous commen-taries and annotations were composed on this text, which has been a text-book in Shī'ī centers of learning since the 11th/ 17th century.

During the 11th/17th century, the most significant *usūli* views were put forward by Sultān al-Ulamā', Husayn b. Rafī' al-Dīn Muhammad al-Mar'ashī al-Māzandarānī (d. 1064/ 1653-4), one of the authors of the commentaries to *Ma'ālīm*. Zubda by Baba' al-Din Muhammad al-'Āmilī (d. 1030/1621) and Wafiya by 'Abd Allāh b. Muhammad al-Tunī (d. 1071/ 1660-1) are among the best known *usūlī* text of this century.

In the 12th/18th century, the Akhbārī school which repudiated the discipline of *usūl al-fiqh*, became predominant and inhibited its further development. It was, however, revived with the appearance of a prominent scholar in the last third of the same century, Muhammad Bāqir b. Muhammad Akmal al-Bihbahānī, known as al-Wahīd (d. 1205/1791), who strove vigorously to combat the influence of Akhbārīism and to propagate *usūl al-fiqh*. His students also devoted themselves to the same cause. Works such as *Qawānīn* by Abu'l-Qāsim b. Hasan al-Gilanī, known as al-Muhaqqiq al-Qummī (d. 1231/1816), *Fusūl* by Muhammad Husayn b. Muhammad Rahīm al-Isfahānī (d. 1250-4/1834-9), *Hidāyat al-muslarshidin* by Muhammad Taqī b. Muhammad Rahīm al-Isfahānī (d. 1248/1833), Mafalil) by Muhammad b. 'Alī al-Karbalā'ī al-Tabātabā'ī, known as al-Mujāhīd (d. 1242/1827) and *Dawābit* by Ibrāhīm b. Muhammad Bāqir al-Qazwīnī (d. 1262/1846), all of which were written by the pupils and followers of al-Bihbahant's school, were instrumental in the progress and the spread of Usult doctrine.

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1. Āgā Buzurg, VI, pp. 54-5; XIII, pp. 165-70; XIV, pp. 53-4.
2. That is *Munyat al-labib* by Diyā' al-Dīn 'Abd Allāh b. Majd al-Dīn Muharmmad al-A'rajī al-Husaynī, and *Sharh ai-Tahdhīb* by 'Amīd al-Dīn 'Abd al-Muttalīb b. Majd al-Dīn Muhammad al-A'rajī al-Husaynī, These two brothers were the nephews of al-'Allāma (Ibn al-Mutahhar), and both lived in the middle of the 8th/14th century.
3. Āgā Buzurg, V, pp. 43-4.

particular rules which are explained by a special branch of scholarship known as *Usūl al-fiqh*. This discipline is a collection of general rules and regulations on how to derive positive precepts from the sources. Some of these rules and principles have been borrowed from other disciplines like logic, philosophy, theology and philology.

II. Main works on Shī'ī *Usūl al-fiqh*.

In the early periods of Islam, Shī'ī scholars wrote treatises on some topics of *usūl al-fiqh*, which are mentioned in the sources.[1] But the oldest extant work in this context of Shī'ī scholars is *al-Tadhkira bi-usūl al-fiqh* by al-Shaykh al-Mufid, Muhammad b. Muhammad b. al-Nu'mān al-Baghdādī (d. 413/1022), a summary of which is included by al-Karajakt (d. 449/1057-8) in his book *Kanz al-fawā'id*.[2]

Next, there is a relatively voluminous work on this subject by al-Sharīf al-Murtadā, 'Ali b. al-Husayn al-Mūsawī (d. 436/1044), entitled al-*Dharī'a ilā usūl al-shari'a*.[3] The book of Shaykh al-Tā'ifa, Muhammad b. al-Hasan al-Tūsī (d. 460/1067), *'Uddal al-usūl*[4] is the most famous work on *U$Ul al-fiqh* of early periods. It was a text-book in Shī'ī centers of learning for a long time. Another rather old source is the relevant chapter of *al-Ghunya* by Ibn Zuhra al-Halabī (d. 585/1189-90).[5] K. *al-Masādir fi usul al-fiqh* by Sadīd al-Din Mahmud al-Himmasī, the Shī'ī theologian and scholar of the second half of the 6th/12th century is not extant, (5) but some paragraphs of it are quoted in Ibn Idris's *al-Sarā'ir*.[6] Next, the works of al-Muhaqqiq Ja'far b. al-Hasan al-Hillī (d. 676/1277) such as *Ma'ārij al-wusūl*, and then those of al-'Allāma Hasan b. Yūsuf b. al-Mutahhar al-Hillī (d. 726/1325) such as *Tahdhīb al-usūl*, *Mabādi' al-wusul* and *Nihāyat al-wusūl* contributed to the evolution of this discipline.

Following this age, many commentaries (*sharh*) and annota-tions (*hashiya*)

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1. See Hasan al-Sadr, *Ta'sīs al-Shī'a li-funūn al-Isām* (Baqhdad, 1951), pp. 310-12.
2. Al-Karājakī, *Kanz al fawā'id* (Tabrīz, 1322q), pp. 186-94. See also Brunschvig, "Les usūl al-fīqh Imāmites a leur stade ancien (xe et xie siecles)" in *Le Shī'īsme Imamate* (Paris, 1970), pp. 201ff.
3. Edited in Tehran, 1346/8 sh(l967/9) in two volumes. Al-Murtadā had written independent treatises on almost all the topics of *usūl al-fiqh* (see his introduction to *al-Dharī 'a*, I, p. 2). He also discussed the U§Ul topic of *Akhbārī al-āhād* in his *al-Dhakhtra*, formally a work of *kalām* theology (see al-Tusī, *'Uddat al-usūl* (Tehran, 1314q), pp. 34-7).
4. Edited in Tehran, 1314q and in Bombay, 1318q.
5. Edited in the collection of *al-Jawāmi' al-flqhiyya* (Tehran, 1276q), pp. 523-49. (5) Āqā Buzurg al-Tlhranī, *al-Dharī'a ilā tasānīf al-Shī'a* (Najaf and Tehran, 1353-98q), XXI, p. 95.
6. Ibn ldrīs al-Hīllī, pp. 409-10.

By 'reason' as a source[1] for Shī'ī law are meant categorical judgments drawn from both pure and practical reason. A clear instance is the judgment of practical reason that justice is good and injustice is evil.[2] In Shī'ī *usūl al-fiqh* there is a principle which states that whatever is ordered by reason, is also ordered by religion (*kull ma hakam bih al-' aql hakam bih al-shar'*). In accordance with this principle, which is known as the 'rule of correlation' (*qa'idat al-mulāzama*), religious rules may be inferred from the sole verdict of reason.[3] The correlation between the obligatoriness of an act and the obligatoriness of its prerequisites (*muqaddamat al-wājib*), or between prescri-bing something and prohibiting its opposite (*mas'alat al-didd*), or, the impossibility of combining command and prohibition in a single case from a single stand point (*ijtimā' al-amr wa'l-nahy*), are all rational precepts in the methodology of Shī'ī law and sources in the juridical efforts to discover legal rules, which are based on pure reason.

The inference of legal precept from these four sources, which are in some cases contradictory, is done through a kind of logical reasoning which in Islamic terminology is called *ijtihād.* According to Shī'ī teachings, it is always possible for scholars to practise this kind of rational argument in Islamic law, while Sunnis restrict it to some scholars of the early centuries of Islam. In confronting any legal problem, every Shī'ī jurist must personally investigate those legal sources to take his own decision upon it. Imitation of the opinion of a *mujtahid,* however great he is, by another mujtahid in legal matters is unlawful.[4]

The above mentioned mental exertion for discovery of legal norms follow

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1. As will be explained later reason, in Shī'ī jurisprudence, is also employed as the means for thinking, in which sense it simply means the rational argument.

2)See al-Muhaqqiq al-Hillī, *al-Mu'tabar* (Tehran, 1318q), p. 6; al-Shahīd al-Awwal, *Dhikrā al-Shī'a* (Tehran, 127lq), p. 5 idem, *al-Qaā'id wa'l-fawā'īd* (Tehran, 1308q), p. 25; Miqdād al-Suyūrī, *al-Tanqīh al-rā'i'* (MS 1725, Mar'ashi Library, Qum), 2b-3a; sāhib al-Madārik, *Hidāyat al-iālibīn* (MS 4641, Majlīs Library, Tehran), fols. 2b-3a; al-Qatīfī, *Kash al-fawā'id* (MS 81/2, Imām Jum'a-yi Khu'I, Majlis Library, Tehran), p. 130.

3. Muhammad Bāqir al-Sadr maintains that 'reason' is a potential rather than an acutal source for Shī'ī law. He says that although according to the methodology of Shī'ī law reason can,·on its own, discover an injunction and guide one toward a certain religous precept, this has never been actualized in practice and all religious commands which can be discovered through categorical verdicts derived from abstract thought (pure reason) are to be found in the *Qur'ān* and Tradition (Muhammad Baqir al-Sadr, *al-Fatāwā al-wādiha*)a (Beirut, 1978), I, p. 98.

4. All above-mentioned principles are according to Usūlī school of Shī'ī law. The Akhbārīs rejected *ijtihād* and prohibited the practice of rational argument in law. There are some objections to the practice of ijtihdd in the traditions from the Imāms and in early Shī'ī works, too. Most of these, however, refer to the Sunni version of ijtihdd which includes *qiyās* and *istihsān.*

(24)
Rationalism and Traditionalism in Shī'ī J'urisprudence: A Preliminary Survey*

Hossein Modarressi

I. The sources of Shī'īlaw.

As is elaborated in the works on Shī'ī *usūl al-fiqh*, the sources of Shī'ī law are the Qur'ān, Tradition, consensus of the Shī'ī jurists (*ijmā*) and reason (*'aql*).[1]

The Qur'ān, in its apparent literal sense, has shaped the spirit and foundation of Shī'ī law.

The Tradition, i.e. the statements, deeds and tacit consent of the Prophet or the Imāms, must be handed down by reliable narrators. In respect to this reliability, the doctrinal views of the transmitters are considered irrelevant. A tradition handed down by a reliable non-Shī'ī is viewed as sound and acceptable just as one transmitted by a veracious Shī'ī.

Ijmā'; i.e. the unanimity of the views of all Shī'ī jurists on a certain legal question, is not a source on its own but it can become a means through which the opinions of the Imams may be discovered. This function of *ijmā'* has been explained in various ways.[2] The most popular among these in con-temporary Shī'ī law holds that since *ijmā'* is the unanimity of the views of 'all' Shī'ī scholars, it naturally includes the views of those scholars who lived in the period quite close to the period of the Imams. Many of these were close compa-nions of the Imams and quite knowledgeable of their opinions. The consensus of these very early jurists, most of whom were absolute followers of the Imāms, normally demonstrates the view of the Imams.

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1. It should be noted that these are the sources of the predominant Usūlī school of Shī'ī law. The Akhbārī school resorted only to Tradition. The earliest legal work in which the four sources above are mentioned with the same order is Ibn Idris al-Hillī, *al-Sarā'ir* (Qum, 1390q), p. 3. The early shī'ī *usūl* works did not usually mention reason as a source of law. See further Muhammad Ridā. al-Muzaffar, *Usūl al-fiqh* (Najaf, 1967), II, p. 122.
2. See al-Muzaffar, II, p. 107.

Muhsin hakim as a part of cultural measures taken against the trend (Wiley, pp. 23- 24; *al- Mawsim*, no. 16 (1414/ 1993), pp. 307-309). The martyred Āyatullāh Sayyid Muhammad Bāqir Sadr also embarked upon the mission by authoring books lide *Falsafatunā wa Iqtisādunā wa 'l-Bank al- Lārabawt*.

authored as refutations on materialism, particularly owing to the fact that evolutionism were employed as a pretext by the adherents of materialism and the authors of the aforesaid books critiqued this hypothesis. In his exegetic work titled *Mawāhib al- Rahmān*, Sayyid 'Abd al- A'lā Sabziwārī, the contemporary religious authority (d. 1372/ 1952) attended to the critique of the aforesaid hypothesis (Rufā'ī, pp. 41-42; Āqā Buzurg Tihrānī, vol. 2, p. 447).

The most active scholar in the domain of guarding the Islamic and Shī'ī doctrine was Muhammad Jawād Balāghī. Besides the aforesaid trends of thought and the traditional rivals of the Shi'I practice of jurisprudence, i. e. Sunnism and Akhbārism, deviant sects like Qādiyānism, Wahābism, Babism, and Baha'ism emerged in the Islamic world in the last century. One the other hand, missionaries were freely active under the auspices of European colonialists. To confront their missionary and anti- Islamic propaganda, Balaghī learned English and Hebrew and authored numerous works, e.g. al- madras at al- Sayyāra, as refutations on the Jews and the Christians (*A'lām al- ma'qūl fi Madrasat al- Najaf*, p. 83). He wrote *Masābīh al- hudā* on the critique of Qādiyāniyya and Nasā'h al- Huda on the refutation of Bābis and Bahā'is (*A'lam al- Ma'qūl fi Madrasat al- Najaf*, loc. Cit). Sayyid Abū al- Hasan Isfahān, the eminent religious authority in Najaf, sent a number of the scholars of hawza to different regions in Iraq to engage in cultural confrontation with English missionaries. Habīb ibn Muhammad Muhājir, one of his representatives in the south of Iraq, made serious endeavours in this respect, among which mention may be made of foundation of hospitals, printing houses, publication of a periodical titled al-Huda, and foundation of a number of schools (Mawsū'a Tabaqāt al- Fuqahā' , vol. 14, section 1, p. 170). The Shaykhi movement also triggered reactions in the hawza of Najaf. Numerous works by the scholars of Najaf on the refutation of Wahhābism are available among which Manhaj al- Rashāb li-man Arād al- Sidād by Shaykh Ja'far Kāshif al- Ghitā' is the first Shi'I refutation of this sect (Amīn, vol. 4, p. 104; for other activities of Kāshif al-Ghitā' confronting with consecutive attacks of Wahhābis to Najaf, see Muhammad Husayn Hirz al- Dīn, vol. 2, p. 387).

During the years in which the propagation and propaganda of communist thought were so prevalent among Iraqi youth that even seminarians and the offspring of religious scholars were also attracted to it, the eminent religious personalities of the hawza of Najaf were concerned and confrontation with such propaganda constituted their focal point. Centres of scholarship and education at different levels were founded at the behest of Āyatullāh Sayyid

according to a number of sources, studying philosophy was rejected at the hawza of Najaf in the modern period (Najafī Qūchanī, p. 5^25). Nonetheless, endeavours were being made to study and teach this science; for instance, Shaykh Muhammad Taqī Gulpāyigānī Najafī (d. 1292 /1875) taught intellectual sciences (Amīn, vol. 9, p. 193 until Ākhūnd Mullā Husaynquli Hamadanī (d. 1311/ 1894), a student of Haji Mullā Hadi Sabziwari, settled in Najaf and acquainted his students with Mullā Sadra's Hikmat al- Muta 'aliyya (Rufā'I, p. 39); however, he is more famous for propagating the mystic school at this hawza (Mullā Husaynqulī Hamadānī; Mysticism/'Irfān).

Syyid Hasan Badkubi'I (d. 1358/ 1939) was the most influential personality in teaching and propagating intellectual sciences at the hawza of Najaf. Having studied at the philosophical hawza of Tehran, he emigrated to Najaf and studied jurisprudence and its principles with the professors of that hawza and then embarked upon teaching philosophical texts. His prominent students include the contemporary philosopher, Sayyid Muhammad Husayn tabātabā'ī.

It is also worthy of attention that a limited number of professors and graduated of the hawza of Najaf were involved in teaching philosophy prior to their return to their hometowns, Tehran and Isfahan and their arrival and settlements in these hawzas had impacts on their discussions on principles of jurisprudence. Thus, Ākhūnd Khurāsānī having studied philosophy with Hāji Mullā Hadī Sabziwārī and Mirzā Abū al- Hasan Jilwa, raised a number of philosophical views in his most prominent work, *Kifāyat al- usūl;* Shaykh Muhammad Husayn Isfahānī also pursued the same methodology in his discussions on principles of jurisprudence; Mawlā Mahdī Narāqī and his son, Mawlā Ahmad Narāqī authored numerous works on the exposition of philosophical texts; Mirzā Ahmad Āshtiyānī and Shaykh Muhammad Taqī Āmulī, two eminent religious authorities in the first half of the fourteenth/ twentieth century Tehran, who had studied the higher levels of independent legal reasoning in Najaf, taught philosophy and authored commentaries on philosophical texts.

In recent decades, the introduction of western philosophical systems encouraged the hawza of Najaf to present well measured response to the theories, hypotheses, and questions raised by western scholars, particularly those on materialistic philosophy (Rufā'ī, p. 42). *Naqd Falsafa Dārwin* by the eminent scholar of Isfahan, Āqā Muhammad Ridā Masjidshāhī (d. 1362/ 1943) written in 1331/1912 in Najaf (Evolution/ Takāmul, section 2) and *Anwar al- Hudā* by Muhammad Jawād Balāghā (d. 1352/ 1933) were both

still used as a textbook for higher levels of study and also serves as a standard in assaying seminarians' comprehension of questions in the domains of independent reasoning and jurisprudence. The subject matter of the work consists of transactions and the related discussions whose diverse aspects have been investigated

With a discursive method and the author explicitly reflects the impacts of precepts governing jurisprudence and principles of jurisprudence. The large number of commentaries and glosses written on this jurisprudential work indicates its significance in hawza scholarship.

The other point is that writing commentaries, glosses, and supercommentaries at the time, providing opportunities for studying and presenting novel views, was quite prevalent; for instance, many commentaries, glosses, and lecture notes written by Shaykh Ansāri's large number of immediate and indirect students at the hawza of Najaf are available (for details on some of them, see Āqā Buzurg Tihrāni, vol. 6, pp. 152-162; Taqrirat ["lecture notes"]) 'Urwat al- Wutbqā is the most famous work by Sayyid Muhammad Kāzim Yazdī Tabātabā'I which is devoted to legal opinions and decrees and stands out in terms of comprehensiveness, fluency, organization, embracing many a positive law (3260 positive laws on the jurisprudential chapters discussed in the work), particularly those concerning novel issues to the time of the author. The book was soon welcomed by jurisprudents and superseded *Sabih Ja'wāhir's Najaf al-'Ibād.* In recent times, Sayyid Abū al- Hasan Isfahāni's *Wasīlat al- Najāt* and above that Sayyid Muhsin Hakim's *Minhāj al- Sālibīn* enjoyed such prominence.

The science of transmission authorities (rijāl) as one of the branches of hadīth studies has attracted the attention of scholars of the hawza of Najaf and a number of comprehensive and monograph works in this domain have been the achievements of the this period in Najaf, amongst which mention may be made *of Risāla 'Adimat al- Nazir fī Ahwāl Abī Basīr* by Sayyid Abū Turāb Kh^{w}ānsāri, the eminent professor of transmission authorities; *Tanqih al- Maqāl* by Mawlā 'Abd Allah Māmaqānī; *Mu'jam Rijāl al- Hadīth* by Sayyid Abū al-Qāsim Khu'ī.

Other Sciences, Socio – Political Measures, and Educational Systems and Centres. The scholarly reputation and authority of the hawza of Najaf rested in narrational sciences, particularly jurisprudence and principles of jurisprudence, dynamic independent legal reasoning, and education of thinkers within the domains of these two sciences. The scholars who emerged in the horizon of intellectual sciences and their works are by no means comparable with the scholars of narrational sciences and their works;

been under the sway of the students of this school. Furthermore, following the reestablishment of the usūli methodology of inference and owing to Wahid Bihbahāni's contributions and their promotion with the emergence of Shaykh Ansārī, the hawza of Najaf turned into the focal point of Shi'i education system; one the one hand, graduates and teachers of other hawzas, like those of Isfahan, Tehran, Mashhad, and other cities of Iran, as well as the cities of Iraq and Lebanon, and the Shi'i settlements of India, Pakistan, and Afghanistan departed for Najaf in order to further their studies at higher levels and on the other hand, graduates and religious authorities of the hawza of Najaf, following their return to their hometowns or their settlement in other cities succeeded in promoting the scholarly niveaux of the existing hawzas or establishment of other hawzas (sections 2, 8, 9, 10 of the present article; Āqā Buzurg Tihrānī, *Tabaqāt A'lām al-Shi'*, vols. 13 and 14 titled al–*Kirām al-Barara wa Nuqabā' al- Bashar. And Mawsū'a Tahabāt al-Fuqahā'*).

The science of jurisprudence in this period of the history of the hawza of Najaf experienced the revival of the methods of the principles of inference in the domain of jurisprudential discussions. Miftāh al- Kirāma fī Sharh Qawā'id al- 'Allāma by Muhammad Jawād 'Āmilī (d. 1226/ 1811), a student of Wahīd Bihbahānī, is one of the jurisprudential works of the time embodying a compendium of the views of Shī'ī jurisprudents whose views on each subject are presented with brief, well- organised, and fluent texts. Mustanad al-Shī' fi Ahkām al-sharī'a by Mullā Ahmad Narāqī (d. 1245/ 1829), a graduate of the teaching circles of 'Allāma Bahr al- 'Ulūm and Kāshif al- Ghitā' in Najaf, is quite a prominent work embracing diverse aspects of each question and different views regarding the same (Narāqi, vol. 1, pp. 11-18; Nrāqi, Mullā Ahmad). Unrivalled and remarkable amongst the great jurisprudential compendia of the period in question, jawāhir al- Kalām fi sharh Sharā'ī' al-Islām presents earlier jurisprudents' views and arguments with reliable investigation and scholarly critique. The author of this great work is Shaykh Muhammad Hasan Najafī, well– known as Sāhih Jawāhir (d. 1266/ 1849), a student of Sayyid Muhammad Jawād 'Āmilī and Shaykh Ja'far Kāshif al-Ghitā'. His other jurisprudential work is Najāt al- 'Ibād fi Yawm al- ma'ād which is his practical treatise (risāla –yi'maliyya). Prior to the compilation of 'Urwat al-Wutbqā, it was one of the scholarly works used by jurisprudents and they wrote commentaries on it to explicate its intricacies (Amin, vol. 9, p. 149).

One of the most reliable and the most significant jurisprudential works of the hawza of Najaf at the time is Shaykh Murtadā Ansāri's Makāsib which is

Shaykh Ansārī's school of jurisprudence and principles of jurisprudence were established through the serious endeavours of a number of his prominent students of his headed by Mīrzā Muhammad Hasan Shīrāzī. Following the demise of Shaysh Ansārī, Mīrzā-yi Shīrāzi went to Sāmarrā' and founded a teaching centre there. It was at his behest that a number of scholars and religious authorities of the hawza of Najaf departed for Sāmarrā' and making use of Mīrzā-yi Shīrāzi's religious authority, they contributed to the codification and exposition of Shaykh Ansārī's views. In fact, the hawza of Sāmarrā' which lasted approximately for half a century was a part of that of Najaf and there was solely some spatial distance between the twain.

Although following the demise of Shaykh Ansārī other scholars authored book at the hawza of Najaf on principles of jurisprudence, but none of them were able to excel Ākhūnd Mullā Muhammad Kāzim Khurāsāni (d. 1329/ 1911). He received his education in Shaykh Ansārī's school of principles of jurisprudence, but his views are not at all times consistent with those of the former (for a comparative study of the views of the two scholars, see Sayyid Murtadā Fīrūzābādī's '*Ināyat al –Usūl*). In terms of influencing Shi'i hawzas of scholarship, he only stands second to Shaykh Ansāri. His *Kifāyat al-Usūl* encompasses innovative views and expositions, but owing to its conciseness, many commentaries, supercommentaries, and glosses have been written on it (Khurāsānī, Muhammad Kāzim; Kifāyat al-Usūl). The work in question is used as the most recent textbook of principles of jurisprudence at higher levels. The majority of the prominenet experts in the domain of principles of jurisprudence in the fourteenth/ twentieth century have studied in Shaykh Ansārī's school of principles of jurisprudence and most of them were students of Ākhūnd Khurāsānī. Hundreds of students studied with the latter and a number of them like Shaykh Muhammad Jawād Balāghī (d. 1352/ 1933), Abū al- Hasan Mishkini (d. 1358/ 1939), Muhammad Hasan Nā'īnī (d. 1356/ 1937), Muhammad Husayn Isfahānī (d. 1361/ 1942), Āqā Diyā' al-Dīn 'Irāqī (d. 1361/ 1942) , Sayyid Abū al-Hasan Isfahānī (d. 1365/ 1945), Shaykh Muhammad Husayn Āl Kāshif al-Ghitā" (d. 1373/ 1953), Sayyid 'Abd al-Husayn Sharaf al –Din 'Āmili (d. 1377/ 1957), and Hājj Āqā Husayn Burūjirdi (d. 1380/ 1960) attained to the highest level of religious authority (*Mawsū'a Tabaqāt al- Fuqabā'*, vol. 14, section 2, p. 789).

Generally speaking, the scholarly authority in the domains of jurisprudence and principles of jurisprudence following the demise of Shaykh Ansāri has been established on Khurāsānī's works and views and particularly the system of Shi'i religious authority since that time to date has

(Gurji, pp. 234-235). Such endeavours were fruitful: they perfected the science of principles of jurisprudence and opened the gate of discussion, critique, and analysis of topics and investigation of the views held by predecessors and their arguments (Bahr al-'Ulūm, p. 80) and finally the Akhbāri movement was severely restricted though it never faded away.

Following Wahīd Bihbahānī's scholarly methodology, invaluable works were written at the hawza of Najaf. 'Allāma Bahr al-'Ulūm's works contributed to the solidification of the school of independent reasoning (ijtihād) and the elimination of the Akhbāri movement. He was succeeded by Shaykh Ja'far ibn Khidr Najafī, well –known as Kāshif al- Ghitā', as the Imamī religious authority and the director of the hawza of Najaf. It was owing to his endeavours that Mīrzā Muhammad Nayshāūrī (d. 1232/ 1817), who struggled toward the preservation and invigoration of the Akhbārī school and in this vein he had also resorted to procuring support from the Qājār rule, failed to succeed in rivalry against Usūlīs. Kāshif al- Ghitā' tried to excommunicate him through sending his work titled *Kāshif al –Ghitā' 'an Ma'āib al-Mīrzā Muhammad 'Aduww al- 'Ulamā'* to Fath'alī Shah (Khwānsārī, vol. 2, p. 202; Amīn, vol. 4, p. 104). Other scholars of the hawza of Najaf, like Muhammad Taqī Isfahanī (d. 1248/ 1832) in *Hidāyat al– Mustarshidin fi sharh Ma'ālim al– Din,* Muhammad Husayn Isfahāni in *al–Fusūl al- Gharawiyya*, Hujjat al- Islām Sayyid Muhammad Bāqir Shfti (d. 1260/ 1844) in *al- Zahrat al–Bariqa,* Shaysh Muhammad Ibrāhīm Kalbāsī (d. 1261/ 1845) in *Ishārāt al- Usūl*, Sayyid Muhammad Mujāhid Tabātabā'I, Wahid Bihbahānī's grandson by his daughter, in Mafātīh al-Usūl, Mīrzā Abū al-Qāsim Qumī in Qawānin al-Usūl, and finally Shaykh Mrtadā Ansāri (d. 1281/ 1864) in Farā'id al –Usūl (known as *Rasā'il*) made significant contributions in presenting critiques of Akhbāri thought and development of the science of principles of jurisprudence.

Ansārī was a student of Sayyid Muhammad Mujāhid, Shaykh 'Ali Kāshif al-Ghitā' , and Shaykh Muhammad Hasan Najafi well– known as *Sāhib Jawāhir* in Najaf and following the demise of the latter in 1266/ 1849, he became the highest Shi'i religious authority (Hirz al-Din, vol. 2, p. 402). His work titled Rasā'il is considered as one of the most prominent Shi'i works in the field of principles of jurisprudence. His innovative plan in organizing discussions on argument (*hujja*) opened new horizons for jurisprudents and religious authorities. It is regarded as one of the main Shi'i textbooks taught at higher levels and many professors and religious authorities of the hawzas make use of this work as the basis for their lectures on independent reasoning in deriving religious laws.

authored books like *Sharh al-Sharā'I* and a gloss on *Sharh Tajrīd* by Qushchi and also taught prominent students like Mīrzā 'Abd Allah Afandī, the author of *Riyad al- 'Ulamā'*, Shaykh Hasan Balāghī, the author of Tanqīh al-Maqāl, and Mawlā Muhammad Akmal Isfahānī, the father of Wahīd Bihbahānī (ibid, vol. 9, pp. 142-143).

Incessant conflicts between Safavids and Ottomans over conquest of Iraq, fear emigration to Iraq, pressuring Shi'i religious scholars following the Ottoman conquest, and natural disasters like cholera had their impacts on the increase of scholarly stagnation at the time (Ahmad Majīd īsā, p. 732). These factors led to the decrease of the number of students frequenting between their hometowns and Najaf and the focal point of Shī'ism was even transferred to Karbalā (Faqīh, p. 134). Muhammad Bāqir ibn Akmal, well–known as Wahīd Bihbahānī (d. 1205/ 1790) played a significant role in elimination of the Akhbārīs' sway (Bihbahānī, Āqā Muhammad Bāqir). According to Abū 'Ali Hā'irī (d. 1216/ 1801), a student of Bihbahānī, Iraq , particularly Karbalā' and Najaf, prior to the arrival of Bihbahānī, abounded in Akhbārīs such that if someone intended to carry a book written by inferential jurisprudents, he had to hold it with a handkerchief to abstain from touching impurities (Māzandarānī Hā'iri, vol. 6, p. 178) The movement initiated by Wahīd Bihbahānī in Karbalā' bore fruits in Najaf and upon the arrival of Muhammad Mahdī ibn Murtadā, well– known as Bahr al-'Ulūm (d. 1212/ 1797), a student of Wahīd Bihbahānī, the hawza of Najaf bade farewell to the vicissitudes of the period of Akhbārism and entered a new era (Amīn, vol. 10, pp. 158-163). It is to be borne in mind that Akhbāri scholars' critiques and their scholarly heritage, particularly the endeavours of the last prominent jurisprudent of the movement, Shaykh Yāsuf Bahrānī and his significant jurisprudential work, al-Hadā'iq al-Nādira, made many a contribution in the thriving of the new era.

3. Religious Authority. The following period beginning from the thirteenth/ nineteenth century onwards may be regarded as the period of perfection and the zenith of glory and scholarly authority of the hawza of Najaf with the beginning of 'Allāma Bahr al-'ulūm's activities in Najaf and those of many a scholar and jurisprudents who had studied owing to the contributions of Wahīd Bihbahāni, the glory and grandeur of the hawza of Najaf were restored and once again it turned into the centre of scholarship in the Shi'i world. The endeavours of direct and indirect students of Wahīd Bihbahānī directed toward confrontation with Akhbārism and providing response for the doubts raised by them and substantiation of the need for precepts governing the principles of jurisprudence in the domain of inference

(23)
Period of Subordination and Stagnation*

Gholamali Haddad Adel

The period of Akhbārīs and their decline. Like other shi'i hawzas, the hawza of Najaf became involved in Akhbārī issues from the fourth decade of the eleventh/ seventeenth century. The most influential figure of the time was Muhammad Amīn Istarābādī (d. 1533/ 1623). Having studied at the hawza of Najaf and having received certificates to transmit hadith from the authors of *Ma'ālim* and *Madārik* (for his biography and works, see Istarābādī, Muhammad Amīn), he authored al-*fauā'id al- Madaniyya* in 1030/1620 in which he severely critiqued the methodology of shi'i jurisprudents in the domains of jurisprudence and principles of jurisprudence as the invaluable heritage of shaykh al- Tā'ifa Tūsī at the hawza of Najaf. He charged that scholars like Ibn Junayd, Ibn Abiī 'Aqīl, Shaykh Mufīd, Sayyid Murtadā, Shaykh Tūsī, and above all 'Allāma Hilli had deviated from the path of Imams (AS) and regarded their reliance on theology and jurisprudence based on discursive thought and belief in analogy (qiyās) as heresy (e.g. Istarābādī, pp. 37, 78, 96). The Akhbārī School soon wielded its sway in Najaf and other centres of scholarship in Iraq, Iran, and Bahrain and attracted the majority of jurisprudents (Tārumirād, vol. 2, pp. 96-110; Akhbāriyya).

The science of principles of jurisprudence and its experts incurred many a loss from the Akhbāri movement and the hawza of Najaf was not free from such losses either (Faqih, p. 128), but the hawza did not cease its activities and we come to the names of scholars and outstanding works in Najaf at the time; among which mention may be made of Majma' al- Bahrayn bu Shaykh Fakhr al- Din ibn Muhammad 'Ali Turayhi Najafi (d. 1085/1674), which is considered as one of the most significant works dealing with the intricate lexicon of the Qur'an and hadith (Amīn, vol. 8, p. 394). Fādil Shirwāni (d. 1098 or 1099/ 1686 or 1687) was one of the prolific authors of the time and a graduate of the hawza of Najaf who emigrated to Isfahan and

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* Haddad Adel, Gholamali, Mohammad Jafar Elmi, and Hassan Taromi- Rad, eds. *Hawza-yi 'Ilmiyya Shi'i Teaching institution: An Entry from Encyclopedia of the World of Islam.* EWI Press, 2012, pp 127-129.

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12. Tunukābunī, Mirza Muhammad b. Sulaymān. *Qisss al-'ulamā'.* (Tehran, n. d.).

Muhammad Mahdi Bahr al-'Ulūm, and *Mullā* Muhammad Mahdi Narāqī who became famous *usūlī* clerics and consolidated the teaching of the *usūlī* school among the Shī'ī community in Iraq and Iran.[1]

1. Cole, *Shi'i Clerics*, p. 21.

The *usūlī* scholars divided the Shī'ī community into *mujtahids*, (the professional trained jurists) and *muqallid* (laymen), demanding that the latter had to follow the former in all matters concerning religious law. They declared the mujtahids to be the representatives of the Hidden Imam, who speaks and act for him in exercising religious duties, such as in carrying out legal judgements in the performance of ruhng, in the collection and distribution of *zakāt* and *khums*, in the declaration of *jihād* and in leading the Friday prayers *imām jum'a*.[1]

Although the conflict between those two rival groups started over minor differences, it gradually increased and culminated in Bihbihānī declaring the Akhbārī *kuffār* (infidels).[2] In the course of the eighteenth century the *usūlī* s, headed by Bihbihānī, triumphed over the Akhbārīs and repulsed them from their strongholds in the *'atabāt*. Only the south of Iraq, Bahrayn and very few cities in Iran remained under Akhbārī influence for sometimes longer.[3]

After Bihbihānī had excommunicated the Akhbārīs he carried on Majlisi's attempt to restrict the doctrine of Twelver Shi'ism. Thus, in order to expel the Sufīs, whom he considered a fringe group and with whose principles of reasoning he disagreed, he declared as well *takfīr* against them, although Majlisī had accepted an agreement to tolerate different opinions.[4] Bihbihānī's strictness in his insistence on the principles of reasoning and *ijtihād* as potential sources of law, overshadowed the increase of influence and power of the *mujtahids* in the Qājār period and finally led to the emergence of *marja' al-taqlīd*. Later generations respected and acknowleged him as the *mu'assis* (founder) of the *usūlī*, *ustād al-kull*, (universal teacher), *as murawwij*, (propagater) of Usūlīsm and as *mujaddid* (renewer) of Islam in the thirteenth/eighteenth century.[5]

Bihbihānī not only renewed the theory of jurisprudence. In order to lay special emphasis on his concerns, he developed the religious execution of judgements as a means of enforcing his own decisions. Previously, the *'ulamā'* had to depend on secular authorities for this, whereas Bihbihānī, who was accompanied by *mir-ghazdbs*, carried out both corporal and capital punishments immediately and mostly under his supervision.[6] He succeded to influence a number of Bahrani's students to forsake the Akhbari school and attend his classes, such as Mirzā Muhammad Shahrastani, Sayyid

1. Ibid, pp. 452-59.
2. Tunukabuni, *Qisas*, p. 201.
3. Momen, *Introduction*, p. 127.
4. Arjomand, *Shadow*, pp. 217-219.
5. Tunukabunī, *Qisas*, p. 199.
6. Algar, *Religion*, pp. 35-36.

Shaykh Yāsuf ibn Ahmad al-Bahrānī (d.1195/1781) was among the first to flee to Karbalā' after his house was attacked and much of his property were looted in 1163/1750.[1] Due to the influence of his father and grandfather he abhorred Akhbārism initially and attended *usūlī* classes, but later he rejected his early learning and adopted Akhbārī scholarship. He converted to Akhbārism but interpreted Akhbārī theory in a more liberal and modified way. He constructed a neo-Akhbārī (moderate) movement denying the strict uncompromising Akhbari position, which although rejecting *usūlī* principles of using syllogistic methods and legitimizing the declaration of *jihād*, nevertheless continued some *usūlī* elements.[2]

During the interregnum period of the Afghans and the unstable time between the rule of Nādir Shāh and Karim Khān Zand, the Akhbārī scholars attempted to influence the Iranians who came to the *'atabāt* and particularly to Karbalā' to adopt the Akhbari school. However, it was only when Aqā Muhammad Bāqir ibn Muhammad Akmal, known as Wahid Bihbihāni (d. circa 1206/1791-92), consolidated the *'atabāt* as the domain of the *usūlī* school and Karbalā' as the formost centre of contemporary Shī'ī scholarship.[3]

From the middle of the Safavid epoch to the days of Wahid Bihbihani, Shī'ī scholarship was dominated by the Akhbari school. This school of traditionalists was revived by Muhammad Amin Astarābādī (d.1036/1626-27) in the early eleventh/seventeenth century. The Akhbāris based their interpretation of Shi'ism on a strictly restricted theoretical base. Two main issues were its foundation, but served also as a defence against the *usūlī* school. Firstly, Akhbārī scholars considered as the possible source of law exclusively the Qur'ān the traditions of the Prophet and the Imams, and restricted themselves to these only. Secondly they approved of the *muhaddith*, who is a direct intermediary from the Imams, exercising jurisprudence though this was prohibited to almost all other Shī'ī during the Imām's absence. Moreover, they disapproved of any splitting of the Shī'ī community into laymen and *mujtahid*, arguing that every believer must imitate the Twelver Imāms without any further intermediary.[4]

By contrast with the Akhbaris, the rationahst *usūlī s* emphasized that concensus among the mujtahids could also serve as a source of legal judgements just as well as could the independent reasoning of the jurists.

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1. " Bahrani", *Encyclopedia Iranica*, (London, 1985-88), *Fascicles 5*, Vol 3, p. 529.
2. Modarressi, *Rationalist*, p. 158; Cole, *Shī'ī Clerics* p. 14-15.
3. Momen, *Introduction*, p. 186.
4. Sayyid Muhsin al-Amin, *A'yān al-Shī'a*, Vol 17, pp. 452-59; Newman , *Development*, pp.
27- 38.

(22)
The Usuli-Akhbāri Conflict*

Abdelfettah Abdada

In the course of the second quarter of the eighteenth century a great number of Shī'ī clerics and merchants left Iran for the *'atabāt* (shrine cities of Ottoman Iraq). During the last period of the Safavid dynasty the *'ulamā'* of high rank in Iran had consolidated the *usūlī* school of jurisprudence, which allowed and justified the participation of the *'ulamā'* as legal authorities in society and allowed them to exercise *ijtihād* in a direct way by interpreting the Holy *Qur'ān* and the tradition.

The shrine centers of Iraq by comparison -ruled by the Sunni Ottomans- were dominated by the traditionalists.[1] With the decline of Shī'ī rule in Iran and the anti-Shī'ī attitude of the subsequent ruler, the *'ulamā'* lost completely their active social role in every respect. The emigration of many of the cleric families to the *'atabāt* brought them under the traditionalist influence.[2]

In 1110/1699 one of the most powerful flgures of the seventeenth century, Muhammad Bāqir Majhsī, a descendant of a cleric family of Isfahan, died. He was to exert great influence on the forthcoming eighteenth century and exemplified the *usūlī* ethos.[3] Due to the anarchical conditions during the first half of the eighteenth century, al-most no scholars of first rank arose. However, two of Majlisī's students namely Baha al-Din Muhammad Isfahani known as Fadil Hindī (d.1137/1724-25) author of *Kashf al-lithām dar sharh qawā'id al-ahkām*,[4] and Mullā Ismā'il Khwājū'ī (d.1173/1759-60) were of considerable importance.[5] When the hostile pohcies of Nādir Shāh towards Shī'ī scholars led the *'ulamā'* transferring the centre of Shī'ī scholarship from Isfahan to the shrine cities of Iraq e.g. Kāzimayn, Najaf and especially to Karbala', a crucial battle on how Shi'ism was to be interpreted began.

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* Abada, Abdelfettah .*The'Ulama'of Iran in the 19th century hagiographical literature* . Diss. Durham University, 1989, pp 28-39, pp 24-37

1. M. Fischer, *Iran from Religious Dispute to Revolution*, (Cambridge, 1980), p. 30.
2.) J. Cole, *Shī'ī Clerics in Iraq and Iran*, 1722-1780, (*Iranian Studies* 1985), Vol 18, p. 15.
3. Arjomand, *Shadow*, p. 186.
4. Tunukābunī, *Qisas*, p. 312; Aqa Buzurg, *al-Dharī'a*, Vol 18, p. 56.
5. Sayyid Muhsin al Amin, *A'yān al-Shī'a*, (Beirut, al-Ansaf, 1369/1950) Vol 13, pp. 118- 23; Khwansari, *Rawdāt*, Vol 1, p. 296.

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'Alī Shah.[1]

The intensive contest between Mirzā Muhammad Akhbāri and Shaykh Ja'far Kāshif al- Ghitā' for the same political patronage in an effort to consolidate their religious position exhibits the peak of a struggle which aimed at the institutionalization of their conflicting doctrines. Shaykh Ja'fa Kāshif al- Ghitā, as we will see in the second part of this study, is one of the most significant figures to pave the way for the emergence of the institution of *marja'-ī taqlīd.* By reformulating the principle of a'*lamīyat* (the idea that a mujtahid whose pronouncement set binding patterns must be the most learned one) contributed to the evolution of the concept of *marja'iyat* doctrinally. In practice, he also attempted to institute the authority of mujtahid as a locus of imitation by making it an obligation for the Shi'i public to pay the khums to the leading mujtahid. On the other hand, Mīrzā Muhammad Akhbārī not only credited himself with the extraordinary use of religious power (tasarruf) but was one of the first figures to propose the notion of "pillar of time" (*qutb al-waqt*) who should function as the gate (*bāb*) of the Imam of the Age for the sake of rectification of the community's daily affairs.[2] It is evident that Mirzā Muhammad Akhbārī by combining mystical notions with akhbari traditionalism, had been formulating his own doctrine of religious authority in which non Usuli avenues of acquiring knowledge such as occult sciences (*al- 'ulūm al-gharība*) and tradition – reports play a greater role.[3]

The political involvement of Mirzā Muhammad Akhbāri which cost him his life highlights the last phase of activist Akhbarism. Thereafter, Akhbari traditionalism survived only within the patterns set by Shaykh Yūsuf Bahrānī. However, the anti-mujtahid dimension of Akhbarism soon was renewed in another stream of Shi'ite thought, namely Shaykhism on which we will focus in the last chapter of this part of the present study.

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1. Khwānsārī, *Rawdāt al- Jannāt*, trans. Sā'idī Khurāsānī. V. 2, pp. 463-75.
2. Akhbārī, Mirzā Muhammad, *Tuhaf al- Amin*, quoted in Rawdāt al- Jannāt by Khwānsārī, v. 7, pp. 368-77
3. . It does not seem to be an accident that, in his treatise, MIrzā Mhammad Akhbārī makes references to Ibn "Arabi, "Alā al- Dawla Simnānī and Haydar 'Āmulī in order to prove the existence of the Twelfth Imam., Ibid.

On the basis of Bahrānī's analytic exposition of *fiqh*, we may conclude that Akhbari traditionalism had reached a point where it was able to concede to the jurisprudent the authoritative position similar to that given by the Shi'ite scholars of Jabal 'Āmil. Although Bahrānī's rational compromise with *ijtihād* was successful in the doctrinal sphere, it provided a gap in the Akhbari spiritual zeal[1]which was of benefit to Bihbihāni who also infued the Usuli rational argument with the new spirit. This spirit, although reinforced by Bihbihāni's students, did not go so far as to pronounce the Akhbaris as infidels.[2] In his treatise on *ijtihād.* Bihbihāni rebuffed the Akhbari rejection of zann but repeatedly called the Akhbaris "our *ulama*"[3] our master (*mawlānā*) Astarābādī"[4] and "may God forgive them"[5] with a compromising tone. In this work, we do not find any refutation of the Akhbaris as infidels or suggesting that they be excluded from the community.

This fact is equally true of another important Usuli polemical work, i.e. al-Haqq al- Mubīn by Bihbihāni's distinguished pupil, Shaykh Ja'far Kāshif al-Ghitā'. The idea of excluding the Akhbaris from the Shi'a community is not only alien to the language employed in this book but rather he opposed the condemnation of them because of their disagreements with the Usulis on minor points of religion.[6]

In order to place the Usuli reaction to the AKhbaris in its proper context, it seems essential to differentiate the politicized attitudes of Usulis from their religious disputes. Although related, the hostile attitudes hardly amounted to refutation of faith concerning Akhbari traditionalism. Nevertheless, in the case of Mirzā Muhammad Akhbāri (d. 1233/1178). The confrontation between him and Shaykh Ja'far Kāshif al Ghitā' was so politicized that the latter denounced the former as infidel in a letter sent to the Qajar king Fath

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1. See Muhammad Ibrāhim Jannātī. "Ghalaba-yi Ijtihād bar AkhbārīgarI," *Kayhān-I AndIsha* 14 (1987), p. 13.

2For rhetorical denunciation of Akhbaris as infidels see Madelung, "Akhbāriyya...", pp. 56-57; Kolberg, "Akhbāriyya ...," p. 716: Arjomand, *The Shadow of God.* pp. 145- 47; Moojan Momen, *An Introduction to Shi'a Islam: The History and doctrines of Twelver Shi'ism* (New Haven and London: Yale University Press, 1985), p. 127; Hamid Algar, *Religion and State in Iran 1785-1906. The Role of the Ulama in Qajar period* (Berkely: University of California Press, 1969), p. 35. Dr. Algar, at this point, confuses Muhammad Bāqir al- Bihbihāni with his son Muhammad 'Alī al- Bihbihāni. The latter although known publicly as Sufi- killer had no anti Akhbari sentiment. See Khwānsāri, *Rawdāt al- Jannāt,* 8 vols.. trans. Muhammad Bāqir Sā'idi Khurāsānī (Qum: Ismā'iliyān, 1980) v. 7, p. 384.

3Bihbihāni, Risālat al- Ijtihād w'al- Akhbār. p. 48.

4. Ibid., p. 47.

5Ibid., p. 16, 53.

6. Shaykh Ja'far Kāshif al- Ghitā. *al- Haqq al- MubIn* (Tehran: Lithograph, 1898), p. 3.

jurisprudence and consequently hindered the consolidation of a differentiated hierocracy of religious professionals.

Thus Akhbari traditionalism bore the imprint of the outlook of the clerical estate, which tended to prefer philosophy and hermeneutic and devotional mysticism, centering around the figure of the Imams, to the syllogistic hairsplitting of the jurists. Furthermore... it implied an essentially stratified model of the religious community. Separating the happy few, the intellectual virtuous capable of inner worldly salvation through gnosis and the mass of ordinary believers whose lot was the devotional piety to the figures of the Imams and the observance of their explicitly transmitted instructions.

The devotional attachment to the Imams also enhanced the hegemony of the sayyids of the clerical estate by strengthening their charisma of lineage...

Thus the important political consequence of Akhbari traditionalism was the enhancement of the charisma of the (purported) descendents of the Imams.[1]

The fact that the Akhbaris conceded de facto religious authority only to the compilers of tradition- reports can be substanitated by a number of Akhbari juridical works. In his *al-Fawāid al-Madaniya*, Astarābādī introduced transmitters of *hadīth* as authorities to whom one should refer on questions of a religious nature and for the position of qadiphip.[2] Also, al-Hurr al-'Āmilī who generally rejected the idea of following anyone but the infallible Imam, nevertheless, in the second chapter of his book on qadiship suggested the obligation of resorting to the transmitters of *hadīth* for qadiship.[3] Fayd Kashānī leaves no doubt that only compilers of *hadīth* are entitled to judge between people and to administer their daily affairs.[4]

Another focal point of the Akhbari- Usuli conflict for modern scholarship is the economical roots of Usuli strength. Juan Cole considers Bihbahāni's strong merchant contacts especially through the family ties which proved to be crucial in his victory over the Akhbaris. He says, "At some point Bihbahāni began to feel that he had enough students, monetary support, and security to challenge Bahrānī openly, an extent that led to the polarization of the scholarly community in Karbāla during the 1760's".[5]

However, Juan Cole does not concern himself with similar ties in the Akhbari camp as depicted in the biographies of Majlisīs Jazāiri and Bahrānī.

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1. Ibid., pp. 146-47.
2Astarābādī, *al- Fawāid al- Madanīya*, p. 150-51.
3. Hurr al-'Āmilī, *Wasāil al- Shi'a*, v. 18. p. 98.
4. Fayd Kāshāni, *Haqāiq*, trans by Sā'idi Khurasānī (Tehran: Sharns. 1961). P. 33, 39.
5. Juan Cole. "Shi'i Clerics in Iraq and Iran. 1722-178: The Akhbari – Usuli Conflict Reconsidered," *Iranian Studies* 18(1985): 20.

controversy. There were also a number of Usuli ulama who opposed performance of one or many of the above duties during the absence of the Imam. For example Sallar b. 'Abd al-'Azīz and Ibn Idrīs, both strict Usulis, opposed the performance of the congregational prayer during the occultation.[1] On the other hand, several Akhbari ulama like Shaykh Yūsuf and Shaykh Sulaymān al- Bahrānī approved of the execution of such duties by the *faqīh* during the occultation.[2]

Andrew Newman places emphasis on the anti- rationalist, individualistic as well as non– authoritarian and anti– accommodationist features of Akhbari traditionalism.

These features seem to be distinctive, only in the pre- Safavid era when the Akhbari trend was most characterized by piety and folk devotional Shi'ism. In the post- Safavid period, the doctrines and practices of Akhbari- oriented figures such as Majlisī the Elder, Fayd Kashānī, al- Hurr al-'Āmilī, Jazā'irī and Majlisī the Younger appear to be different. Each of the above jurists developed his own accommodationist and authoritarian attirudes which paralleled the Usuli's approach to authority.

The anti- rationalist aspect of Akhbarism seems to have stemmed from the deep rooted tradition of informality in Shi'ite thought. The Akhbari opposition to Usuli rational argumentation appears to be focussed on the formality of the Usuli approaches to the authority of both the Imams and their traditions. The attacks on Hillī's tendency to divide the community between mujtahidūn and muqllidūn and his invention of 'Ilm al-Dirāya demonstrate Astarābādī's focal points for opposition. From a juridical point of view, the Akhbaris aimed at a more informal presence of the Imam's authority by means of acceptance of the tradition- reports.[3] From a different perspective, Amir Arjomand examined the challenge of Akhbaris to the principle of legitimacy of "hierocratic authority." In his investigation of the norms of authority in Shi'ism, Amir Arjomand considers the Akhbari traditionalist conception of imamate as a rejection of any extension of the authority of the Imam during the occultation, while conceding de facto religious authority only to the compilers of tradition- reports.[4] fter quoting Astarābādī and Fayd Kashāni on the refutation of *ijtihād.* Amir Arjomand concludes that, thus Akhbari traditionalism posed a serious and direct challenge to the principle of legitimacy of hierocratic authority in

1Bahrānī, *al- Hadāiq*, v. 9, p. 393.
2. Ibid.
3See below Part Two, Chapter Four.
4. Arjomand, *The Shadow of God*, p. 13.

qadiship. Performing congregational prayer and collecting and distributing of khums alms.[1] Bahrānī legitimized the assumption of the Imam's authority on the basis of the principle of general vicegerency (*al- niyāba 'l-'āmma*) which indicates that he was more in line with the school of Jabal 'Āmil, especially that of al- Shahid al- Thānī, on the problem of juristic authority. Bahrānī's theoretical efforts to establish Akhbari law on a more suitable ground seem to have pulled the Akhbaris into a compromise –i.e.re-adoption of *ijtihād* to a limited extent- from which the Usulis benifited.

It should be noted that the Akhbari-Usuli confrontation was approached from different viewpoints by recent scholars such as Newman and Amir Arjomand. Newman emphasizes the political significance of this conflict especially regarding the nature of clerical authority.

the conflict comprised not only disagreement over the sources of the doctrine and practice, but disagreement also over the nature of clerical authority within the community during the period of the occultation (absence) of the Imam from his community for example, in the areas of leading of congregational prayer, the collation and distribution of alms and the revenues from special tax known as al- khums (the fifth), and the implementation of al-hudud (punishments), and the attitude toward secular authority.

In general, it may be said that the Akhbari polemic addressed itself to and opposed the Usuli incorporation of rationalist methods of analysis and interpretation into the exposition of Imāmi doctrine and practice, the monopolization of authority in day- to-day community affairs, both of which resulted in the development of a hierarchical structure of authority within the community as believers become distinguished as *faqīh* (legists, pl *fuqaha/ mujtahid* (practitioners of *ijtihād*) and muqllid (follower) with the latter required to follow the practice and rulings of the former, and the degree and extent of interaction between believers and secular authority the Usulis postulated as necessary during the occultation.[2]

The Akhbari opposition to the rationalist methodology of the Usulis in th exposition of Imami law was due primarily to the Usulis' monopolization of authority· in day – to- day affairs, as mentioned in Newman's second paragraph cited above.

Disagreements over congregational prayer, the collection of khums, administration of justice and the attitude towards secular power do not, however, seem to constitute a consistent characteristic of the Akhbari- Usuli

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1Bahrānī, *al- Hadā'iq,* v. 9 .p. 359

2. Newman, "The Development" ... pp 2-3.

factions.[1] By comparing al- Hadāiq al- Nādira with other juridical works of the Akhbaris, we find that Bahrānī was the first Akhbari jurist to write a comprehensive book on fiqh and for writing a full-fledged work of such nature he had to use his *ijtihād* in the interpretation of the *Qurān* and tradition- reports. Although rejecting the role of ijmā' (consensus) and 'aql (intellect),[2] Bahrānī applied and defended the usefulness of deriving legal rulings in applied law (*furū'*). In light of the above considerations, one can conclude that Bahrānī was the founder of a new juridical Akhbarism which had to compromise with some Usuli principles in order to establish its authority for developing a newer system of law. From an Akhbari point of view, the time was ripe to apply recently collected traditions for the exposition of law in a systematic manner, it was a compromise at the expense of some of the previously- held Akhbari tenets.

In his *al-Hadā'iq*, Bahrānī posed the question of how to derive law (*fiqh*) when the possibility of acquiring knowledge no longer existed with the occultation of the Imam. He suggested that the community must await the return of the Imam or it must have recourse to *ijtihād*. He, however, preferred the latter.[3] In fact, the manner in which Bahrānī expounded fiqh persisted among Akhbaris until the present time and even affected Usuli works despite the fact that Akhbarism was defeated at the hand of Bihbihānī.

Unlike Bahrānī, Bihbihānī did not spend his time writing *fiqh*; on the contrary his primary concern was Usuli polemics. In his most celebrated work *Risālat al- Ijtihād wa'l-Akhbār*, Bihbihāni set forth the argument that the speculation (*zann*) of the *mujtahids*' was the only valid avenue of acquiring knowledge during the occultation of the Imam from the community.[4] He argues that if the Akhbaris mean self- conviction (sukūn al-nafs) by their formula of customary knowledge (*al- 'ilm al- 'ādī*. It is the speculation of qualified mujtahids which leads to such conviction.[5] Bihbihāni's belief in the mujtahids ability to establish proof led him to consider the mujtahid as the vicegerent of the Prophet although he did not elaborate on this theme. Bahrānī, too, considered the jurists to be vicegerents of the Imams, possessing his high offices (al- manāsib al- jalila) such as

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1. Madelung, "Akhbāriyya," *Encyclopedia of Islam*. New Edition (Leiden: E.J.Brill, 1980) Supplement fol. 1-2, pp. 56-57.
2. Bahrānī, *al- Hadāiq*, v.1. pp. 35-40.
3. Ibid. , v. 6, p. 301.
4. Muhammad Bāqir Bihbihani, *Risālat al- Ijtihād wal- Akhbār* (Tehran: Lithograph, 1895), p.16.
5Muhammad Bāqir Bihbihani, *Risālat al- Ijtihād wal- Akhbār* (Tehran: Lithograph, 1895), p.16.

to the Imams while we consider it to be a product of such devotionalism.

The Usuli rational trend continued during the Safavid period and afterwards although it did not flourish. The most significant Usuli figures of this period are Shaykh 'Alīal-Karakī, Bahā' al-Dīn Muhammad b. Husayn al-'Āmilī. Husayn b. Jamāl al- Dīn Muhammad al- Khwānsāri (d. 1098/1687), al- Fādil al- Hindī (d. 1137/1725), Hasan b. Zayn al- Dīn al-'Āmilī Sāhib *al- Ma'ālim* (d. 1011/ 1602) and al- Muqaddas Ahmad b. Muhammad al- Ardabili. Each of the above scholars in one way or another re-expressed and refined Shi'ite law. Most of these jurists also were inclined towards mysticism or philosophy in addition to their Usuli orientation. It seems that an essential characteristic of Safavid doctrinal Shi'ism was its multifaceted system of thought which is evident in the fact that most Akhbai traditionists were also inclined towards a gnostic philosophy.

The unifying factor of these various inclinations was their anti- Sunni devotional attachment to the Imams. When this anti- Sunni tendency lost its momentum in the middle of the Safavid period, especially during the reign of Shāh 'Abbās II, the differences emerged clearly. It started with the anti-Sufi reaction of the Usuli ulama and soon turned into the Akhbari – Usuli controversy.

Unlike the Sufi-Usuli conflicts, the Akhbari- Usuli confrontation continued to be a doctrinal dispute over the application of *ijtihād* unitil the beginning of the 13th/ 19th century; this was followed by the accusation of heresy and physical clashes. The two men responsible for bringing the Akhbari- Usuli arguments to a climax are Muhammad Bāqir al-Bihbahāni and Shaykh Yusūf al- Bahrānī. The rise of Bihbahāni was important for the re-establishment of the Usuli position in the Twelver- Shi'ite community; yet a more important issue was the reason Bahrānī yielded ground which led to the success of the Usulis. Recent examination of Bahrānī' works indicates that perhaps he considered the Akhbaris to be guilty of creating division within the ranks of the Imamis in the latter part of his life.[1] One biographer has even suggested that Bahrānī had later changed his position and approved of the practice of *ijtihād* and the employment of Usuli arguments but hid this change from public view.[2]

Madelung's brief review of *al-Hadā'iq al- Nādira*, an extensive and popular fiqh work, touches the core of Bahrānī's dilemna Madelung stated that Bahrānī later espoused an intermediate position between the two

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1Kohlberg, "Akhbāriya...," p. 718

2. Jannāti, "Qiyām-I Akhbārihā..." pp. 13. 14.

the application of 'aql was continuously changed by later mujtahids, the Usuli confusion over the definition and limits of the use of 'aql led Astarābādi to discard 'aql in its Usuli sense.[1] However. Astarābādī adopted a concept which he termed rational sensation (hiss) which comes close to 'aql.[2] Etan Kohlberg has a passage which illustrates how this 'aql leads to knowledge:

The knowledge acquired in this way, while insufficient to lead to absolute certainty (yaqin wāqi'i) as to God's intent, does establish with certainty that the religious law conforms to the transmitted utterances of the Imams. It is this 'customary' (*'ādī*) certainty which matters for religious practice, not the preponderant probability (*zann*) which, according to the Usūlis, is the closest one can get to knowing the meaning of the tradition.[3]

It is noteworthy that the contemporary scholar, Ayatollah Muzaffar, after carefully evaluating the various Shi'i accounts of 'aql, was able to propose his own formula of it as a religious proof. He confined independent rational inducements to human conception of badness, and goodness, and considered the rest to be logical requirements (*al- mulāzimāt al- 'aqliya*).[4]

One of Astarābādī's followers, *Jazā'irī*, also accused the Usulis of not clearly stating what they meant by 'aql as a religious proof. Jazā'iri, however generally rejected logical inferences except in cases where the conclusion was self- evident.[5] Shaykh Yūsuf al- Bahrānī also rejected the validity of 'aql unless it is confirmed by inherent human rationale (al-'aql al- fitri).[6] Minimizing the authority of the human intellect to self- evident cases was a means by which Akhbari jurists tried to conform to folk currents of the devotional attachments to the Imams. By upholding the traditions, the jurists managed to both sustain their authority as reporters of traditions and to confront the extreme devotional religiosity of the time. With a different point of view, Amir Arjomand defines the role of "devotionalism" during the Safavid period: The devotionalism advocated by the proponents of traditionalism made it attractive to ordinary believers, and it grew into a movement of very considerable importance.[7] Amir Arjomand considers Akhbari traditionalism as a factor contributing to the devotional attachment

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1Astarābādī *al- Fawā'id al- Madaniya*. pp. 104-106. 133.
2Astarābādī *al- Fawā'id al- Madaniya*. pp. 104-106. 133.
3. Etan Kohlberg, "Aspects of Akhbari Thought in the Seventeenth and Eighteenth Centuries," in Eighteenth Century Renewal and Reform in Islam. ed. Nehemia Levitzion and John, Vol 1 (Syracuse: Syracuse University Press, 1987). pp. 133-161.
4. Muzaffar, *Usūl al- Fiqh*, pp. 112-115.
5. Jazāiri, *al- Anwār al- Nu'mānīya*. v. 3. pp. 129-133.
6Bahrānī, *al- Hadā'iq*, v.1, pp. 125-132.
7. Arjomand, *The Shadow of God*, p. 147.

jurisprudence.

The Akhbari refusal to apply the Usuli instruments does not mean that Akhbaris did not incorporate some of these instruments; they simply based their validity on a different source than the Usulis. For example, *asl al-Istishāb* (the principle of presumption of a past situation when there is no proof to indicate the change of condition), which is the most popular principle of the *al-usūl al-'amalīya*, was practised by later Akhbaris based on a new series of Traditions collected by Akhbari authors. By means of these tradition collections, Akhbari ulama re-established the validity of some of the Usuli principles with which they could not dispense[1] In fact , as Ayatollah Sadr suggested the Akhbari refusal of Usuli methods contributed to the discovery of a number of new traditions which were later used by the same Usulis to further their own ends with regard to *ijtihād*.[2]

The fact that a new generation of traditionists, especially Muhammad Bāqir Majlisī ,legitimized a number of Usuli principles through recollection of *hadīth*, confirms our earlier suggestion that the basis of the Akhbari- Usuli conflict centered on the means of acquiring both religious knowledge and authority.[3] The socio– religious conditions of the time determined the specific shifts in emphasis of the conflict. Nevertheless, either because of their unexplained rudimentary nature or because of the orthodox Akhbari approach to it, several Usuli principles could not escape the serious criticism of the Akhbaris. Among these principles is the Usuli doctrine of*' aql* (intellect). The concept of 'aql flourished in Shi'ite thought under the influence of Mu'tazilite intellectual arguments which found a place in the works of both Imami traditionists such as Kulayni and Sadūq and kalām theologians, such as Mufīd. Murtadā and Tūsī. But in the early stages of Imami thought, this notion of 'aql was treated in its general sense. '*Aql* as a source of Shi'ite law is employed as a means of deducing religious rulings and was explicitly identified as such only by Ibn Idris Hillī (d. 598/ 1201) in his al- Sāra'ir.[4] A century later, Muhaqqiq Hillī restricted the application of 'aql to two realms: verbal inferences such as the tone of religious discourse and independent rational inducements (*al-must Aqīllāt al- 'aqlīya*) such as the human conception of badness and goodness.[5] Henceforth, the scope of

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1Abū 'l-Qāsim GurjĪ, *Nigāhi bi Tahavvul-i 'Ilam-I Usūl va Maqām-i ān dar Miyān-I 'Ulūm-I DĪgar* (Tehran: Dānishgāh, 1973). p. 42.

2Sadr, al- *Ma'ālim al- JadĪda*, p. 82.

3. See Muhammad Bāqir MajlisĪ, *Bihār al- Anwār*. v. 2, pp 219-255. See also A.Gurji, *NigāhĪ bi Tahavvul-i 'Ilm-i Usūl* p. 42.

4. Muhammad Ridā al-Muzaffar, *Usūl al-Fiqh*. 3 vols. (Najaf: AmĪn, 1962), v. 3. p. 108.

5. Ibid., v.3. p. 109.

that the two traditions of Ibn Hanzala and Abū Khadija are referred to with a language similar to that of the Usulis.

It is evident that the focal point of Astarābādī's disagreement with Usuli mujtahids is not the authority fo the ulama per se but rather the means of acquiring this authority. Astarābādī consciously discarded the Usuli conception of developing religious knowledge (*ijtihād*) in favor of the tradition – reports which he declared to be the sole criterion through which to standardize Islam. He calls tradition–reports *marja' al-Shi'a* (authoritative reference of the Shi'is) during the occultation.[1] One reason for this change of emphasis lies in the changing mode of the Shi'i– Sunni interaction after the success of the Safavids. Some contemporary authors suggested that the widespread borrowing from the Sunni theory regarding *ijtihād* and *zann*, as well as the Shi'ite confusion over the definition of *ijtihād* made Astarābādī choose such an acute trend of traditionalism.[2] This kind of reaction can be seen in Muqaddas Ardabili's (d. 993/1585) mild Usuli rationalism. He rejected "the opinion of all previous jurists wherever they excluded traditions on the basis of a rational argument."[3]

The effect of Astarābādī's synthesis between contemporary folk Shi'ism and the advanced Usuli reliance on speculation and *ijtihād* was quick and widespread. According to the contemporaneous author, Muhammad Taqī Majlisī(d. 1020/ 1659), "the majority of the students in the Shi'ite centers of learning (Najaf, Karbalā and Kāzimayn) adopted Astarābādī's traditionism as soon as his book reached these cities. Indeed, most of what Astarābādī said is faithful to the truth although I have chosen a moderate position between exaggeration and shortcoming."[4] By this moderate position, he means to reject analogy (*qiyās*) and unrestricted reasoning (*ra'y*) and to confine *ijtihād* to the effort of harmonizing the apparently contradictory tradition reports.[5]

This mode of Shi'i traditionism brought to the fore the circulation of new tradition– reports which were not previously collected. As a result, another series of *hadith* collections were produced. The most important of these collections are the voluminous *Bihār al-Anwār* by Muhammad Bāqir Majlisī. *Al -Wāfī* by Mullā Muhsin Fayd Kāshānī and *Wasā'il al -Shi'a* by al-Hurr al'-Āmilī, all of which exhibit an Akhbari approach to Shi'ite

1Ibid., p. 2, 272.
2. Jannātī. "Qiyām-i Akhbārihā..." pp. 2-22.
3. Modarrisi Tabataba'i, *An Introduction*. p. 53.
4. Muhammad Taqī Majlisī, *Lawāmi'-i Sāhibqarānī al- Mushtahar bi Sharh al- Faqīh* (Tehran: 'Ilmi. N.d.) . p. 38.
5. Ibid., pp. 36-52.

hierarchical conception of authority which is often re-emphasized by the term dhū l-riyāsāt possessor of many offices.[1]

Muhammad Amīn Astarābādi (d. 1036/ 1626) was an Usuli student in his youth. The change in his juridical stance demonstrates the changing mode of religiosity at the beginning of 11th/ 17th century. The significance of Astarābādī's work is two- fold: first, he tried to adapt the nature of jurisprudential authority to the popular religious currents of the time; second he formulated theoretical bases such as the doctrine of customary certainty (*al- yaqīn al- 'ādī*)[2] and sensible reasoning (*al-'aql al- hissī*)[3] for the Shi'i traditionalism. By means of these doctrines Akhbarism had a new theoretical base which was able to pose a serious threat to Usulism.

By carefully examining al-Fawā'id al-Madaniya in which Astarābādī illustrated his firm grasp of Usuli- Sunni interactions as well as his anti-Sunni sentiments, it seems legitimate to claim that he sincerely tried to create a new uniformity in the Imami doctrine of acquiring religious knowledge although later he was generally accused of inciting division between Imamis. According to his methodological approach, outright acceptance of the tradition reports brings about more uniformity than application of preponderant probability because the latter results in circulation of various opinions.[4] In order to impose this uniformity, Astarābādī goes as far as to exclude the Qur'ān from among the direct sources of Shi'ite legal doctrine and practice. "The *Qur'ān* cannot be understood directly" Astarābādī said. We should obtain its true meanings from the tradition reports.[5] It is apparent from the above account that although Astarābādī expounded a well-grounded juridical argument, he was influenced by folk Shi'i ideas of supremacy of traditions over all the sources of the Shari'a. It is not an accident that he relies primarily on the popular traditions from al-Kāfī on this issue.

Astarābādī's vigorous attack on the office of mujtahid does not mean that he denied any juristic authority to the jurists during the absence of the Imam of the Age. In the chapter entitled "to whom should people refer for qadiship and issuing fatwās (legal opinion)" Astarābādī allowed the ulama to assume the Imam's duties with a similar Usuli argument.[6] It is noteworthy

1. Ibid., p. 2.
2Astarābādī, *al- Fawā'id al- Madanīya*. pp. 48-273.
3. Ibid. pp. 19. 02. 129. 130.
4Ibid., pp. 103-113. For a similar opinion by another Akhbari author see *al-Hurr al-'Āmilī, Wasā'il al- Shi'a*. v.18. p. 129.
5. Ibid., pp. 7, 41, 45.
6. Ibid., pp. 150-51.

responsibility. It is clear that there was a shift in the emphasis from the reported traditions to rational arguments. Although the reported traditions invested the ulama with scriptural authority, there was now a tendency to resort to the rational argument of necessity, in order to justify a kind of general vicegerency during the absence of the Imam. This gradual shift in emphasis, then, was a call for vesting the authority of the Imam in the community with the ulama having first priority in the assumption of such authority.

This mode of assuming juridical authority is evident in the writing of Shaykh 'Alī Karakī, another member of the school of Jabal 'Āmil who served under Safavid kings. With regard to the congregational prayer and land tax, Karakī seems to have put equal emphasis on reported traditions and the doctrine of general vicegerency.[1] But Modarrisi Tabataba'i understood from Karakī's comments that he sanctioned a full replacement of the Imam's functions by the ulama in all affairs where substitution was possible.[2] Reaction to the heightened Sunni–Usuli interaction in the school of Hilla became a point of departure for the new Akhbarism on the juridical level. It culminated with the rise of Astarābādī who re-established the juristic foundation of Imami traditionism. However, the trend was highly influenced by the spread of folk Shi'ism among Turkish tribes who eventually brought the Safavids to power in 909/ 1502. The folk extremist nature of early Safavid Shi'ism combined with their Sufi allegiance provided fertile ground for a broader reliance on the Imams traditions at the juristic level.

Before the emergence of Astarābādī Ibn Abī Jumhūr (of late 9th/15th century) began to recollect the relevant traditions employing methods similar to that of the Akhbaris. As reflected in the introduction to his 'A wālī. Ibn Abī Jumhūr evaluated the ulama for their interpretive role by means of using the method of dirāya (insightful evaluation of *hadīth*) and riwāya (reporting a tradition from the Prophet and the Imams). He also praised God for appointing the ulama as successors of the Imams in the interpretation of the *sharī'a*. It seems at first glance that Ibn Abi Jumhūr was trying to compromise between the two concepts of dirāya and riwāya. However, he concludes his introduction by emphasizing *al-sam' wa'l- ijāza* (hearing and permitting) which indicates his Akhbari tendency.[3] Nevertheless his way of equating the authority of the ulama with the Prophet and Imams indicates his

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1Said Amir Arjomand, *The Shadow of God and the Hidden Imam* (London and Chicago: University of Chicago Press. 1984). Pp. 141-42.

2. Hossein Modarrisi Tabataba'i, *Kharāj in Islamic Law* (London: n. p., 1983), p. 157.

3. Ibn Abi Jumhūr al- Ahsā'Ī, *'Awālī al- la'ālī al- Aziziya fi'l –Ahādith al-DĪnĪya, ed. Mujtabā al-'IrāqĪ* (Qum: n.p., 1983). V. 1. Pp. 1-3

which led to a great increase in the ulama's authority in the practical affairs of the community."[1] Another novelty introduced by Muhaqqiq and 'Allāma which was considered by later Akhbaris as a departure from the path of early Imamis, was the division of the community into two groups: mujtahids and their followers.[2] Indeed this indicates the enhanced position of the Shi'ite ulama; but it is important to consider this change in light of the overall conceptual evolution of the Muslims. Shi'ite jurists, on many points, especially those concerning *ijtihād* and its correlation to *taqlīd*, were strongly influenced by their fellow Sunni scholars, their introduction of new concepts or new definitions. Therefore cannot be isolated from the dominant Sunni environment.[3] In fact, it was Ghazāli who put emphasis on the idea of the incumbency of *taqlīd*, and the division of the community into the ulama and common men ('awāmm)[4] which was endorsed in Rāzī's chapter of al-Mufti wa'l- Mustaftī[5] and developed further in Sayf al-Dīn al-Āmidī's chapter on taqlīd.[6]

However, in the wake of the centralization of the Mongol political structure and the abrogation of the Caliphate, one can conclude that the Shi'ite ulama, like their Sunni counterparts enhanced their own authority on the basis of the development of rational arguments over the daily affairs of the community. During the following century, the school of Jabal 'Āmil sustained the conception of *ijtihād* and juridical authority expounded by the two Hillī's. Moreover, this school developed the doctrine of general vicegerency (*al- niyāba l- 'āmma*) in order to legitimize the authority of the ulama with respect to the collection and distribution of khums, qadiship and leading the congregational prayer.[7] According to this doctrine the ulama, because of their piety and knowledge of the Shari'a, stand among the first rank to assume the Imam's authority on specific cases which cannot be left without any custodian during the occultation. Next to the ulama, however, are "just believers" (*al-'udūl al-mu'minin*) who should assume this

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1Ibid. This "departure" seems to be a result of Shi'i – Sunni rapproachment. See below Part Two, Chapter One, pp. 117-27.

2. Muhaqqiq Hillī, *Ma'ārij al- Usūl*. p. 134 and 'Allāma al- Hillī, Mabādī al- Wusūl (Tehran: Lithograph, 1892), p. 53.

3It is noteworthy that al- Astārābādī in his sarcastic critism of Muhaqqiq and 'Allāma has barely isolated them from their Sunni environment as he names al- 'Adudī, Ibn Hājib, al- Āmidī, al- Taftāzānī and al- Rāzī as ones who set patterns for two Hillīs. See Astarābādī, *al- Fawā'id al- Madanīya*, especially p. 277.

4. Ghazālī, *al- Mustasfā*, v. 2, pp. 289-90.

5. Rāzī, *al- Mahsūl*, v. 2, pt. 3. p. 93.

6. Sayf al- Dīn 'Alī b. Abī 'Alī al- Āmidi, *al- Ihkām fi Usūl al- Ahkām*, 4 vols. (Cairo: Dār al- Hadīth, n.d.) v. 4, pp. 297-319.

7. Shahīd al- Thānī, *al- Rawda l-Bahīya*. pp. 255-65.

rationalism in Hilla. A new mode of Usuli rational argument flourished in the Shi'ite school of Hilla during the Mongol period. The most salient feature of this trend is the practice of *ijtihād* with a new definition and wider application. *Ijtihād* as an effort to establish the best probability through the use of Usuli rational instruments found a new component. i. e., zann or a valid speculation which contrasted with ra'y, unrestricted reasoning. The latter, *ijtihād al- ra'y* was rejected in the writings of Mufīd, Murtadā and Tūsī as an equivalent of *qiyās* (analogy). The way in which they equated *ijtihād* and *qiyās* reveals that they had not been aware of any other definition of *ijtihād* although they, especially Tūsī, practiced *ijtihād* in its new sense. What the outstanding scholars of the Shi'ite school of Hilla did. Especially Muhaqqiq and 'Allāma, was to separate *ijtihād* from ra'y and qiyās, and to adopt a new conception of *ijtihād* as formulated by Sunni scholars such as Ghazālī and Fakhr al-Dīn al-Rāzī.

There is much evidence that both Muhaqqiq and 'Allāma adapted their methodological theory along the lines of the legal theory expounded in usūl al- fiqh works in the Sunni community of the 5th/11th and 6th /12th centuries. A comparison of Ma'ārij al-Usūl[1] by Muhaqqiq and Tahdhīb al-Wusūl[2] by 'Aallāma with al-Mustasfā[3] and especially al-Mankhūl[4] by Ghazālī indicates that Ghazālī's conceptions of *zann* (valid speculation) and *al- I'tibārāt al- nazarīya* (theoretical considerations) bear directly upon the two HillĪs' approaches in settling new components for *ijtihād.*

Muhaqqiq and 'Allāma's way of conceptualizing topics of *'Ilm al-Usūl* indicates that they have not continued to follow the patterns set by Murtadā and Tūsī, rather they developed their own method under the influence of Sunni authors such as Fakhr al-Dīn Rāzī. Rāzī composed one of the most extensive works on 'Ilm al- Usūl in which the concepts of zann and *ijtihād* are clearly defined.[5]

As Wilferd Madelung has pointed out Muhaqqiq explicitly admitted that legal norms were ''often based on theoretical considerations not deduced from the literal meaning of the traditions texts.''[6] Such a statement can be considered a ''radical departure from the traditions of early Imami Shi'ism,

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1. Muhaqqiq HillĪ, *Ma'ārij al- Usūl.* pp. 117-121, 134-140.
2. 'Allāma HillĪ, *Tahdhīb al- Wusūl ilā 'Ilm al- Usūl* (Tehran: Litho, 1890), pp. 98-104.
3. GhazālĪ, *al- Mustasfā.* v.2, p. 350.
4Idem, *al- Mankhūl*, pp. 451-83.
5. Fakhr al- DĪn, Muhammad b. *'Umar al- RāzĪ, al- Mahsūl* 2 vols in 6 facsims (Riyād: Ibn Sa'ūd University, 1979), v.1, pt. 1. p. 102; v.2 pt. 3, pp. 7. 36. 55. 98.
6Wilferd Madelung, "Authority in Twelver Shi'ism." *La notion d'autorité au Moyen Age* (Paris: Presses Universitaires de France, 1982). p. 168.

such as *Kitāb al- Sarāir*, al- *Milal wa'l- Nihal* and *Kitāb al-Naqd* which indicate the presence of AKhbari- Usuli arguments, but all of these books were written by non- Akhbaris.[1] Shaykh Tūsī likened the contemporary Akhbaris (*muqallida* and *ashāb al- jumal*) to laymen and those tradition recite who stop short of reasoning and content themselves to what sound easy to them.[2] Shahrastānī put *akhbārīya* in the category of anthropomorphist (*mushabbiha*) and precedentists (*salafiya*), vis-à-vis kalāmiya.[3] 'Abdal- Jalil Qazwīnī, the author of *Kitāb al-Naqd*, referred to the Akhbaris in a pejorative sense by ranking them with exaggerative and heretical groups such as the Ghālīs and Hashwis.[4] This fact and the absence of any serious Akhbari work in this period account for the viewpoint of the late Ayatollah Sayyid Muhammad Bāqir al- Sadr who in his discussion of 'Allāma Hillī's account of the Akhbaris stated that:

The fact is that by the term Akhbaris, 'Allāma Hillī referred to a stage of juridical thought not to a movement or a school in Shi'ism. The Akhbari traditionalism represented the primitive phase of the Imami legal thought. It is this class of scholars which Tūsī describes as falling short in drawing secondary judgments. Thus Akhbaris in the early periods exhibit only a small degree of juridical thought.

Shaykh Muhammad Taqī al-Isfahānī (d. 1248/ 1832) in his commentary on Ma'ālim al- Usūl stated that one deviates from the truth if one assumes that Akhbari and Usuli trends among the Shi'is were always clear-cut. There is a big difference between the earlier and later Akhbari tendencies. Akhbaris of the earlier period had not been distinguished as a sect or school; but rather they were composed of people who could not deduce secondary judgment through the application of the Usuli rational methods. Because of their limited capacity, they had no choice but to content themselves with the text of traditions.[5]

In light of the above considerations, one can conclude that the AKhbarī resurgence during the Safavid period, among other things, gave the traditionist movement a new juridical basis. However, this movement materialized primarily in reaction to the renewed popularity of Usuli

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1. Etan Kohlberg, "Akhbāriya," *Encyclopadia Iranica* (London and New York, 1984†), v.1, p. 717.
2. Tūsī, '*Uddat al- Usūl*, pp. 348-49.
3. Muhammad b. 'Abd al- Karīm al- Shahrastānī, *al- Milal wa'l- Nihal*, 2 vols (Cairo: Maktaba Angelo, 1956), v.1, pp. 147, 154.
4. Abd al- Jalīl al- Qazwīnī al- Rāzī, *Kitāb al- Naqd* (Tehran: Sipihr, 1952), pp. 256 & 301.
5Sadr, *Ma'ālim al- Jadīda*, p . 80-81.

terms denotes one side of the rudimentary feature of the early Akhbari traditionalism which coincided with primitive Usuli rationalism.

The rational tendency of Shi'ite Usulism emerged in Baghdad, the center for *kalām*, which was under the influence of both *Mu'tazilite* thought and Shafi'ite jurisprudence. The towering figure who was responsible for the flourishing of this trend is Mufīd although there is evidence[1] that there had been limited practice of rational reasoning by earlier Usulis, especially by Ibn Abī 'Aqīl al-'Umānī and Ibn al-Junayd al-Iskāfi-Mufīd and his disciples Murtadā and Tūsī applied Usuli rational arguments in reporting the traditions and they also wrote the first Shi'ite works on 'Ilm al-Usūl. Mofīd wrote the first Usuli treatise which is included in *Kanz al- Fawā'id* by Karājakī and Murtadā wrote *al-Dharī'a* in which *'Ilm al-Usūl* is considered to be an independent discipline. However, I was Tūsī who implemented the Usuli principles by thoroughly rearranging the context of Shi'ite jurisprudence. This is why Tūsī is considered to be the first practitioner of *ijtihād* by later authors[2] even if he rejected *ijtihād* in its unrestricted form (*ijtihād al-ra'y*).[3] Tūsī also wrote a treatise concerning *'Ilm al-Usūl* in which he tried to create a preliminary framework for the Shi'ite conception of the rational argument yet it seems that he approached it in the same manner as Mufīd.

It should be noted that usulism, in this stage meant a limited use of rational argumentation. In this period, the focus of the juridical arguments in general and the Akhbari- Usuli dispute in particular, was on the method of elucidating fiqh as it was expounded by Tūsī in the introduction to his al-Mabsūt. Tūsī pointed out that some Imamis are not prepared to acknowledge that a religious question can be stated in a form other than direct citation of tradition–reports.[4] This feature remained the most characteristic of Akhbari-Usuli arguments although in response to later developments, there was a change of emphasis to other matters, such as the collection and distribution of khums (alms), the implementation of hudūd (punishments), leading the congregational prayer and the attitude toward ruling governments.[5]

The Akhbari trend seems to have lost its impetus by the end of the massive circulation of *hadīth* in the 4th/10th century. We do not come across any serious Akhbari work until the Safavid period. There are several evidences

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1. See Modarrisi Tabatab'i, *An Introduction*, p. 35.
2. *Jannāti,* "Ijtihād"..., p. 17.
3. Tūsī, 'Uddat al- Usūl, p. 39 and *Idem, al- Mabsūt,* v.1, p.2.
4Idem, *al-Mabsūt,* p.4
5. See Andrew Newman, "The Development and Political Significance of the Rational (Usuli) and Traditional (Akhbari) Schools in Imami Shi'i History from the Third/ Ninth to the Tenth/ Sixteen century," ph. D. (University of California, 1986), see part 1.

(21)
The Akhbari-Usuli Controversy Over Clerical Authority and The Methods of Acquiring Knowledge*

Ahmad Kazemi Moussavi

The dispute over the authority of the ulama and their methods of obtaining religious knowledge are demonstrated in the Akhbari–Usuli conflicts in the period during which the institution of *marja'ī taqlid* emerged. Akhbaris are the Shi'ite traditionists who hold the opinion that the existing tradition reports (*riwāyāt*) of the Imams provide sufficient religious knowledge without any need of applying the rational interpretive instruments employed by the Usulis.

It seems that the Shi'ite traditionist movement, like its Sunni counterpart, grew out of the broader *hadīth* movement which heightened in reaction to the dominant Mu'tazilite rational thought during the 3rd/9th century. This traditionalism among the Shi'is was primarily concerned with the collection and authentic transmission of *hadīth* as it is depicted in the writings of Kulayni and Sadūq. This can be seen in the writings of Sadūq who even diminished the role of the jurisconsult (*faqīh*) in the presence of his *Man Lā Yahduruhu'l- Faqīh*. The dominant Muslim concept then was that religious knowledge, in the first instance, was the knowledge of traditions which should be transmitted in the form of *hadīth*. The effort to collect *hadīth* at the early stage of Imami jurisprudence aimed at exposing religious knowledge rather than establishing or expanding upon it.

Our earlies references to the Akhbari traditionists are found in the writings of Imami kalām theologians such as *Mufīd*, Murtadā and Tūsī who occasionally addressed an opponent group in terms of *muqallida*, *ashāb al-jumal*,[1] *ahl al-akhbār and ashāb al-'adad*.[2] Each of the above mentioned

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* Kazemi- Moussavi, Ahmad. *The Struggle for uthority in the Nineteenth Century Shi'ite Community: the Emergence of the Institution of Marja'-I Taqlīd*. Phd Diss. Institute of Islamic Studies McGill University, 1991, pp 30-53.

1. Tūsī '*Uddat al-Usūl*, v.1, pp. 348-49

2. Muhammad. b. Nu'mān al- Mufīd, al- Radd 'alā Ashāb al-'Adad, quoted in Modarrisi Tabatabai, *An Introduction*, p. 33. The term *ashāb al-'adad* originally refers to those Shi'ite traditionists who caluculated the number of days in the month of Ramadān according to the traditions rather than their own sighting of the crescent. See *Tihrāni, al-Dhari'a*, v.10, p. 185.

guiding principles consisting of *al-bara'a, al-takhyir*, *al-istishab* and *al-ihtiyat* which are called *al-usul al-'amaliyya*. Each of these four principles has a special circumstance; these will be discussed briefly in the next chapter.

The School of Imam Khomeini

It is probably not yet acceptable to consider Imam Khomeini's approach to *fiqh* as a new school, since, in fact, he was a follower of Shaykh al-Ansari's school in the methodology of *fiqh*, and did not formulate a basically new method in *usul al-fiqh*. However, he brought to attention a novel aspect of *ijtihad* -"the role of the time and place in *ijtihad*" - on which other *'ulama* had not explicitly focused before. Hence, Imam Khomeini might be considered a founder of a new school of *Shi'i* law whose outcomes are set to emerge during the decades to come.

To sum up, it might be said that in Shi'ism *ijtihad* in its restricted sense, *ra'y* and *qiyās*, is condemned. In its general and wider conception of reverting the new *furu'* to the fundamental *usul* and discovering the Divine law through valid sources and logical method, *ijtihad* was practised even in the early period. At the time when the door of *ijtihad* was widely claimed to be closed in Sunnism, Utihad remained an open process among the Shi'ite scholars. Despite the fact that the Shi'i centres of law were dominated by Akhbarism for about two centuries, the *Shi'i 'ulama* renewed *ijtihad* constantly and produced ever more elaborate and refined literature on *usul al-fiqh* which will be discussed in the next chapter.

(20)
The Renewal of the Usuli School*

Esmat Al-Sadat Tabatabaei Lotfi

The School of al-Wahid al-Bihbahani

The eighteenth century is the critical period of Akhbarism. For the first time "an outstanding jurist", known as al-Wahid al-Bihbahani, managed to re-establish the authority of rational argument in law. Al-Bihbahani was from Iran. As a result of the Afghan turmoil he left Iran for Iraq, made Karbala the new centre of learning and tutored numbers of prominent pupils who carried on his school and spread his legal doctrine. He worked hard to rehabilitate the *usul al-fiqh* and produced many legal works which are representative of a logical law. Besides these, he led the intellectual combat against *Akhbarism*. In his *Risalah al-Ijtihad wa al-Akhbar* he attempted to invalidate the position of the *Akhbari* and to justify that of the *Usuli* school.[1]

The School of al-Shaykh al-Ansari

The last fundamental change in Shi'i law occurred with the reconstruction of the law and its methodology through the scholarly approach of al-Shaykh Murtada al-Ansari (d.1281/1864). He was one who, in the precision of his views has very few equals. Two of his books, *Fara'id al-Usul* (or *al-Rasa'it*) on *usul al-fiqh* and *al-Makasib*, on which many commentaries have been written by later 'ulama, are today's textbooks in Shi'i academic centres for higher religious students. Because of his contribution to *usul al-fiqh*, al-Ansari is called the *khatam al-fuqaha wa almuftahidin* (the seal of the jurisprudents and the *mujtahidun*). The contemporary scholars of the Shi'a are followers of his school.

Dividing legal decisions in to four categories, certain (*qat'i*), valid conjecture (*zann-i mu 'tabar*), doubt (*shakk*) and erroneous conjecture (*wahm*), Ansari contributed to the derivation of a set of principles to be used in formulating decisions in cases where there is doubt (*shakk*) and no guidance obtainable from the sources. In this connection he formulated four

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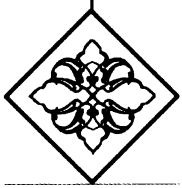
* Tabatabaei Lotfi, Esmat Al-Sadat. *Ijtihad In Twelver Shi'ism : The Interpretation And Application Of Islamic Law In The Context Of Changing Muslim Society*. Phd Diss. University of Leeds, 1999, pp 56-57.

1. For the names and works of his followers see Hossein Modarresi Tabataba'i, *op. cit.*, pp. 57-8.



Chapter 4:
The Akhbari-Usuli Controversy

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15. Zilfi, Madeline. "Elite Circulation' in the Ottoman Empire in the Eighthteenth Century," *JESHO* 26 (1983): 318-64.

state in Iran.[1] The reinstatement of Shi'ism as the state religion and the restoration of stability to the country prompted the return of 'ulama' from the shrine cities to Iran, opening a new era in the relations between state and religion in Iran, and in the relations of the shrine cities with their Iranian constituents. At the close of our period, the 1905 Constitutional Revolution in Iran marked a new era in the history of the 'ulama' in Iran and the shrine cities. Overall, the study examines a community during a period of transition and change, primarily in its relations with the outside world and other social actors, while still retaining many traditional characteristics in its internal structure.

1. In 1785 Aqa Muhammad Khan, founder of the Qajar dynasty, became the de facto ruler of most of iran, while in 1796 he officially assumed the title of shah.

Visitation to the shrines of the Imams in Iraq became a major feature of popular Iranian Shi'ism. It was intended to acknowledge the Imams' authority as leaders of the community, and to maintain the contract *('ahd)* between the Shi'i believer and the Imam, who would intercede with God on his behalf on the day of resurrection. Equally important, the visitation, particularly at Karbala', aimed at preserving Shi'i collective memory and group identity as distinguished from that of the Sunnis. Since it could be made throughout the year, the visitation became a most popular pilgrimage destination.[1]

Karbala' was the larger of the two towns, with a population of about 50,000 persons in the early 1900s, most of whom were Iranian pilgrims and immigrants.[2] Najaf, with a population of about 30,000 by the early 1900s, remained a predominantly Arab town with a strong tribal imprint on its society and culture.[3]

To sum up, the eighteenth century was a turning point in the history of the shrine cities, brought about through the confluence of several parallel processes. The fall of the Safavids and the crisis in Iran drove 'ulama' to migrate from Iran and Bahrayn to Iraq. The failure of Nadir Shah and Karim Khan Zand to take over Iraq and the weakness of the Ottoman-Mamluk regime in Baghdad gave the 'ulama' of the shrine cities sufficient latitude to build important centers of study without government interference. Growing pilgrimage and improved supply of water provided the necessary financial and physical infrastructure for learning. Finally, the reemergence of Usulism supplied the 'ulama' with doctrinal tools to exercise a greater and more active religious and communal role. Thus on the eve of the nineteenth century, the shrine cities faced a new era during which they would emerge as the two most important centers of learning in Shi'ism.

This study begins with the death of Muhammad Baqir Bihbihani in 1205/1791, and the emergence of a new generation of religious leaders in Shi'ism. This period roughly coincided with the rise to power of the Qajar

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1. Nakash, *The Shi'is*, 174; Arjomand, *The Shadow*, 168-69; Donaldson, *The Shi'ite Religion*, 90, 93-94.
2. Yahya Dawlatabadi, *Hayat-i yahya*, 4 vols. (Tehran, 1341s/1963) (hereafter HY), I, 77-78; Muhammad 'Ali Pirzadeh Na'ini, *Safarnamah-yi hajji pirzadeh*, 2 vols., ed. Hafiz Farman-Farmayan (Tehran, 1343s), II, 326ff. for the population figures based on the 1905 Ottoman statistics, see Lorimer, Gazetteer, Ii, 2A, 844.
3. For a manifestation of tribal practices see the "Constitution of the Buraq Quarter of Najaf" composed in 1916 in Great Britain, Administration Report, 1918, CO696/1, cited in Nakash, the Shi'is, appendix 1. See also the complaint of 'Ali Khaqani, *Shu'ara' al-ghari*, 12 vols., 2nd ed. (Qum, 1988), Xii, 457, that "most people of Najaf still live in tribal mentality."

Iraq and its economy.

Throughout most of the period of Ottoman rule (1533-1918) the territory of present-day Iraq was a frontier region in terms of distance and isolation from the Ottoman political center and by being a battle zone between the rival empires. During the years 1747-1831 the pashalik of Baghdad was ruled by Mamluk officers of Georgian origin, who enjoyed local autonomy but were an integral part of the Ottoman system.[1]

Economically, Iraq was one of the least developed areas of the Ottoman Empire. The weakness of the central government and the breakdown of the irrigation system confined agriculture to the vicinity of the cities. The country also suffered from major outbreaks of plague and cholera. Concurrently, Iraq served as a trade route from the Mediterranean to the Indian Ocean as well as being part of a regional market which encompassed Najd and the Gulf.[2]

The two brief periods of Safavid rule over the shrine cities (1508-1533 and 1622-1638) resulted in some construction, but the Safavids cultivated Isfahan and Mashhad as rival learning and pilgrimage centers for political and economic reasons.[3]

As the burial sites of the two most revered Imams, 'Ali and Husayn, Najaf and Karbala' rank after Mecca and Medina in holiness for Shi'is.

Whereas Shi'is revered Mecca and Medina out of religious duty, their feelings toward Karbala' were deeper and more emotional, due to their profound empathy with the tragedy of Husayn and its centrality in their religious life. Traditions attributed to the various Imams exalted the virtues of the pilgrimage *(ziyara)* and residence *(mujawara)* in the shrine cities, absolving the believers from all their sins and rewarding them generously in heaven.[4]

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1. For general surveys of Iraq under the Mamluks see 'Abbas al-'Azzawi, *Ta'rikh al-'iraq bayn al-ihtilalayn*, 8 vols. (Baghdad, 1375/1955), V-VII; Steven H. Longrigg, *Four Centuries of Modern Iraq* (Oxford, 1925); John G. Lorimer, Gazetteer of the Persian Gulf, Oman and central Arabia (London, 1972;repe.), I, 1B; A. K. S. Nawras, Hukm al-mamalik fi al-'iraq (Baghdad, 1972); Tom Nieuwenhuis, *politics and Society in Early Modern Iraq: Mamluk Pashas, Tribal Shaykhs and Local Rule between 1802 and 1831* (The Hague, 1981).

2. Charles Issawi, Iraq, 1800-1991: A Study in Aborted Development," *Princeton Papers in Near Eastern Studies*, No. 1 (1992), 74; Batatu, *The Old Social Classes*, 16; Luizard, La formation, 80; Hala M. Fattah, "the Development of the regional Market of Iraq and the Gulf 1800-1900" (Ph.D. diss., UCLA, 1986), xii.

3. Arjomand, *The Shadow*, 168-69, 190; Dwight M. Donaldson, *The Shi'ite Religion: A History of Islam in Persia and Irak* (London, 1933), 90, 93-94; Momen, Introduction, 119.

4. Donaldson, The Shfite Religion, 90, 93-94; Sachedina, *The Just ruler*, 79; ja'far Al Mahbuba, *Madi al-najaf wa-hadiruha*, 3 vols. (Najaf, 1955), I, 15-16.

generation of leading Akhbaris during the 1770s without leaving successors suggests the weaknesses of Akhbarism in that respect. Henceforth, Usulism has dominated orthodox shi'ism to the present day.

The shrine cities in history

The town of Karbala', which emerged around the grave of the slain Imam Husayn, is situated some 90 kilometers southwest of Baghdad. As early as 65/684-85 Husayn's grave became a pilgrimage site for Shi'is. The caliph al-Mutawakkil destroyed the tomb and its annexes in 236/850-51 and prohibited the visitations to the holy places in both towns, but the graves were subsequently rebuilt. In 369/979-80 the Buyid amir Adud al-Dawla built shrines over the graves of 'Ali in Najaf and Husayn in Karbala' which henceforth became the centers for Shi'i visitations.[1]

The town of Najaflies about 160 kilometers south of Baghdad and 9 kilometers west of Kufa on a flat barren height from which the name Najaf is taken. It came into existence during the reign of Harun al-Rashid, after a dome was built over Imam 'Ali's grave in about 170/ 786-87. Outside Najaf stretches Wadi al-Salam, which serves as a huge graveyard for pious Shi'is who wish to be buried near 'Ali's tomb.

Najaf's location on the old trade route from Basra to Baghdad and the pilgrimage route to the Hijaz compensated for its barren earth and the shortage of water.[2] Najaf emerged as a Shi'i center of learning when Shaykh al-Ta'ifa, Muhammad b. Hasan Tusi (d. 1067), moved there in 1056 after the pillaging of his house following the Seljuk takeover of Baghdad. During the Ilkhanid period (13th-15th centuries) it was overshadowed by Hilla and Aleppo.[3]

The rise of Safavid Iran in 1501 and the Ottoman turn to the east under Selim I and Suleiman transformed Iraq into a battle zone between the two rival empires. The struggle for political supremacy was expressed in terms of the Sunni-Shi'i strife, with the shrine cities perceived as a prize by the Safavids. Baghdad and the shrine cities changed hands several times between the Safavids and the Ottomans at a heavy cost to the population of

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⇦ *of Modern Democracy* (New York, 1962 repr.), 353, 365; cole, "Shi'i Clerics," 20 suggests that the 1772 cholera epidemic harmed the Arab Akhbaris more than the Iranian Usulis, but does not provide direct evidence for his assertion. In addition, the Akhbari-Usuli split did not fully correspond to the ethnic divide, as various important Akhbaris were Iranians, while Bihbihani had Arab students.

1. E. Honigman, s.v., "Karbala'," EI2.
2. Hasan al-Amin, *Islamic Sh'ite encyclopaedia*, 4 vols. (Beirut, 1973) (hereafter ISE), VI, 82; Luizard, *La formation*, 143.
3. 'Ali al-Bahadili, *Al-Hawza al-'ilmiyya fi al-najaf al-ashraf: ma'alimuha waharakatuha al-islahiyya*, 1339-1401/1920-1980 (Beirut, 1993), 74.

In addition, Bihbihani set out to refute Akhbarism and prove the validity of ijtihad. When he felt sufficiently confident, he openly challenged Bahrani to a public debate on the tenets of the two schools and to allow the latter's disciples to study under him.

Bahrani did not oppose Bihbihani's challenge and continued to maintain friendly personal relations with him, a plausible reaction considering his moderate Akbari views.[1] This story suggests that Bahrani in fact prepared the ground for the shift from Akhbarism to Usulism, which was, therefore, smoother than the picture presented by the hagiographic accounts of Bihbihani.

Bihbihani apparently had strong merchant contacts through his in-laws in Bihbahan and his half-brothers in Isfahan and Shiraz supporting him with charitable funds and seeking his rulings on commercial disputes. Such funds were crucial for attracting a growing number of students and providing them with stipends to live on. Consequently, whereas the first generation of Iranian refugees in the shrine cities may have felt obliged to accept Akhbari superiority and patronage, the second generation were probably more confident in reverting to the traditional Usuli approach, which gradually became the dominant school in the shrine cities.[2]

Akhbarism failed first and foremost because of its rigidity. For Bihbihani and his disciples the first priority was to use deductive reasoning to draw conclusions applicable to practical needs. The political changes and the crisis of legitimacy of the post-Safavid period required such an approach in order to give the 'ulama' the necessary means to play their part in the affairs of the world.[3] While the Akhbari disregard for such needs may have suited the small and isolated scholarly community of the shrine dities up to the eighteenth century, Usulism was better suited to a state-wide community with divergent constituencies.

Akhbari denial of the 'ulama"s authority to conduct Friday prayers and to collect and disburse the *khums* and *zakat* taxes went against the previous historical development of Shi'i doctrine. In the long run, to paraphrase Robert Michels' "iron law of oligarchy," no religious establishment would reject a system or a doctrine that provides it with power.[4] The passing of a

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⇦ *al-'ulum al-ma'ruf bil-fawa'id al-rijaliya* (Najaf, 1967), 34, who mentions such usulis. If true, then Bihbihani eas not the first Usuli teacher in Karbala', but rather the first who openly challenged the Akhbaris.

1. Davani, *Ustad-i kull*, 144-45, 165, 195-96.
2. Cole, "Shi'i Clerics," 20.
3. Amanat, *Resurrection*, 36.
4. Robert Michels, Political Parties: *A Sociological Study of the Oligarchical Tendencies* ⇨

authority to the 'ulama'.[1]

Akhbarism became the dominant school in the shrine cities since the 1730s. The fall of the Safavids dealt a serious blow to the Usuli school in Iran, Which argued that the central instiutions of the Islamic state can exist during the absence of the Imam, Henceforth, Usulism was taught only in a few provincial towns.[2] When the Iranian refugees came to the shrine cities, they adopted the Akhbarism of their local hosts. The most prominent eighteenth-century Akhbari scholar was Shaykh Yusuf Bagrani (1695-1772) of Karbala'. He pursued moderate Akhbarism, adopting a more selective approach toward the Traditions, and came close to adopting the Usuli position on the role of the jurist.[3]

The dominance of Akhbarism in the shrine cities was first openly challenged by aqa Muhammad Baqir Isfahani Bihbihani, whose personal biography largely reflects the history of Shi'ism during the eight eighteenth century. Born in Isfahan to a respectable 'ulama' family, Muhammad Baqir emigrated to Najaf following his father's death and the Afghan invasion. In Najaf he studied the Traditions with Sayyid sadr al-Din Qummi, under whose influence he became an Akhbari Following Nadir Shah's invasion of Iraq, he moved to Bihbihani in southern Iran, where he established links with the local elite by marrying the daughters of the headman of Qanawat quarter and of a respectable merchant.[4] In Bihbihan he reverted to Usulism, possibly following theological and communal clashes with Akhbari 'ulama' from Bahrayn who lived there. In the early 1760s he decided to settle in Karbala' either due to the worsening economic situation in Bihbihan,[5] of more probably because he realized that the struggle between the two rival schools would be decided in the learning centers of the shrine cities.

In Karbala' Bihbihani (as he was now called) began teaching Usuli texts in secret due to the great Akhbari hostility toward the Usulis. Although few Usulis reportedly still lived in Karbala', they had to practice dissimulation.[6]

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1. Etan Kohlberg, "Aspects of Akhbari Thought in the Seventeenth and Eighteenth Centuries," in Nehemia Levtzion and John O. Voll (eds.), *Eighteenth Century Renewal and Reform in Islam* (Syracuse, 1987), 133-60.
2. Mirza Abu al-Qasim Qummi reportedly studied the "old Usul" in Iran before coming to Karbala': see Muhammad Baqir Khunsari, *Rawdat al-jannatfi ahwal al-'ulama' wal-sadat*, 5 vols. (Tehran, 1962) (hereafter *RF*), V, 369.
3. Kohlberg, "Aspects," 148ff.; Amanat, *Resurrection*, 35.
4. Cole, "Shi'i Clerics," 15-16; On Aqa Muhammad Baqir, see 'Ali Davani, Ustad-i kull aqa muhammad baqir b. muhammad akmal ma'ruf hi vahid-i bihbihani (Qum, 1958) and the sources cited there.
5. Cole, "Shi'i Clerics," 15-16; Davani, *Ustad-i kull*, 128-30, 140-43.
6. *RJ*, II, 95; Davani, *Ustad-i kull*, 143. See Muhammad Sadiq Bahr al-'Ulum, "Muqaddima," in Muhammad Mahdi b. Murtada Tabataba'i, *Rijal al-sayyid bahr* ⇨

contradicted their beliefs.[1]

With the accession of Nadir Shah (1736-47) to power, the 'ulama' faced another danger. Nadir expropriated the religious endowments in Iran in order to sustain his massive armies, and to undermine the economic and political position of the 'ulama'. Seeking to preserve the unity of his religiously mixed army, he sought to reconcile Shi 'a and Sunna and to transform Shi'ism into the fifth legal school *(madhhab)* of Sunni Islam, instead of a separate sect.[2] A conference of Sunni and Shi'i 'ulama' which he convened in Najaf in 1743 produced an imposed agreement to that effect, but its impact was short lived as neither the Shi'i 'ulama' nor the Ottomans could reconcile themselves to it. Nadir Shah's policies collapsed with his assassination in 1747.[3]

Persecution by the Afghans and also by Nadir Shah as well as the worsening conditions in Iran resulted in a massive emigration of 'ulama, from Iran to the shrine cities and to India. This emigration together with the decline of learning in Iran transformed the shrine cities into the leading Shi'i centers of scholarship during the eighteenth century. Concurrently, these factors were largely responsible for the reemergence of the Akhbariyya as a major school in Twelver shi'ism.[4]

Akhbariyya had existed as the tradition opposed to the Usuli school since the Buyid era (945-1055) , and was revitalized by Mulla Muhammad Amin Astarabadi (d. 1033/1624 or 1036/1627). The differences between Usulism and Akhbarism revolved around three issues: the sources of low, the means of attaining knowledge, and the authority of the 'ulama' as heirs to the Imams. In contrast to the Usulis, Astarabadi argued that the single most important source of low was the Imams' traditions. The central idea underlying the Akhbari view was that there was no essential difference between the legal state of the community before and after the Occultation. The Imams made certain that all major questions which might arise in the future would be addressed in the traditions. Consequently, Akhbarism rejected the exercise of ijtihab, and with it the extension of the Imam's

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1. MacEoin, "Changes in Charismatic Authority," 158; Said A. Ariomand, "The Shi'ite Hierocracy and the State in Pre-modern Iran, 1785-1890," *Archives europeenes de sociologie* 20 (1981), 48.
2. Lawrence Lockhart, *Nadir Shah* (London, 1938), 99-101, 108; R. Sha'bani, "Siyasat-i madhhabi-yi nadir," *vahid 7:9* (1970), 1132-56.
3. For a detailed description of the Najaf conference see 'Abdallah al-Suwaydi, *al-Hujaj al-qat'iyya li-ittifaq al-firaq al-islamiyya* (Cairo, 1905); and Rasul Kirkukli, Dawhat al-wuzara' fi ta'rikh baghdad al-zawra', trans. M. K. Nawras (Beirut, 1963), 62-63.
4Cole, "Shi'i Clerics," 5ff.; Amanat, Resurrection, 36. On the 'ulama' from Bahrayn and al-Ahsa', see Juan R. I. Cole, "Rival Empires of Trade and Imami Shi'ism in Arabia, 1300-1800," IJMES 19:2 (May 1987), 187ff.

endorsement of Shi'ism marked a turning point in Iranian history by making it a central element of Iranian identity and culture, and by transforming the 'ulama' into a powerful social stratum.

To diffuse Twelver Shi'ism in Iran, the Safavids invited large numbers of Twelver Shi'sm 'ulama' from Lebanon, Arab Iraq, and Bahrayn. While the adoption of Twelver Shi'sm brought the Shi'i 'ulama' to unprecedented social and economic power, it simultaneously raised new problems, as the religious institutions in Iran were subordinated to the state, and the 'ulama' had to reconcile the charismatic bases of Safavid authority with Twever Shi'i beliefs.[1]

However, the newly arrived Arab 'ulama, were too dependent on the Safavids' patronage to challenge them on this issue. Nor did they wish to undermine the Safavid state which was propagating Shicism. Gradually, however, the 'ulama forged alliances with the merchant community and artisan guilds. They were also appointed as trustees of charitable endowments *(awqaf)* and were able to amass extensive wealth. In the decades after their accession to power, the Safavids suppressed the various Sufi orders whose messianism seemed to threaten the stability of the state, thereby eliminating a major rival to the 'ulama'.[2]

As Safavid rule weakened in the second half of the seventeenth century, the 'ulama' emerged as a hierocracy, that is, an establishment relatively independent of the state. As their power grew, the 'ulama' changed their attitude toward the legitimacy of the state, as some of them argued that the ruler should be both a sayyid and a senior jurisprudent.[3]

The fall of the Safavid dynasty in 1722 under the invasion of the Sunni Afghans began a prolonged period of wars and economic hardship in Iran. In addition to loss of life and property, the 'ulama' were deprived of government patronage. Concurrently, the fall of the Safavids advanced the 'ulama's monopolistic control over Shi'ism, as it dealt a mortal blow to the extremist heritage *(ghuluw)* in Shi'ism. They were also relieved of the anomalous position of legitimizing charismatic Safavid authority, which

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1. Arjomand, *The Shadow*, 211; Moojan Momen, An Introduction to Shi'i Islam (New Haven, 1985), 107-08.
2. For the relations between the Safavids and the religious establishment see Jean Aubin, "La politioue religieuse des Safavides," in T. Fahd (ed.), *Le Shi'isme imamate* (Paris, 1970): 236-45; Arjomand. *The Shadow*, part 2.
3. Arjomand, *The Shadow*, 105-08, 122ff., 178-79; Roger Savory, Iran under the Safavids (London, 1980), 238-39; John Chardin, *Voyages de Monsieur le Chevalier Chardin en Perse et autres lieux de l'orient* (Amsterdam, 1709), II, 206-07, cited in Juan R. I. Cole, "Shi'i Clerics in Iraq and Iran, 1722-1780: The Akhbari-Usuli Conflict Reconsidered," *IS* 18:1 (Winter 1985), 5.

Ijtihad developed in response to the changing needs of the Shi'i community, while also reflecting the need to assert and justify the 'ulama's general deputyship *(niyaba 'amma)* of the Imam in his absence. No question requiring ijtihad could be settled conclusively through the consensus of the 'ulama' without confirmation from the Imam. Ijtihad, therefore, must remain an open process in an effort to reach the closest approximation to the objective truth until the return of the Imam.

In the course of this process, the 'ulama' appropriated many of the Imam's prerogatives. The most important of these were the collection and distribution of alms *(zakat)* and the fifth (the *khums,* which every Shi'i is obliged to give to the Imam from his annual income); the administration of justice; the conduct of the Friday prayer; and the declaration of Jihad.[1] The assumption of these prerogatives gave the 'ulama' the power to legitimize Shi'i rulers. In addition, it advanced the process of professionalization of the 'ulama' since it established the jurisdiction of the calling, i.e. the particular areas of work with which it deals, and their restriction to eligible persons.[2]

The exercise of ijtihad was confined to qualified persons, while the ordinary believer was required to follow and emulate *(taqlid)* the decisions of those learned in law. The Usuli school, therefore, divided society into two strata: a majority of followers and emulators *(muqallidun)* and a minority of mujtahids who are to be followed *(muqalladun).* Since Islam theoretically encompasses all aspects of life, the mujtahids could combine religious and social leadership, thus enjoying greater authority than their Sunni counterparts.[3]

Concurrently, the individual practicing of ijtihad perpetuated the diffused nature of authority within the ranks of the Shi'i 'ulama'. Norms were derived by individuals and gradually accepted by a consensus, rather than by formal ecclesiastical bodies as in Christian churches.

The proclamation in 1501 by the new ruler of Iran, Shah Isma'il.

Safavi, of Twelver Shi'ism as the state religion marked a turning point in the history of both Shi'ism and Iran. Twelver Shi'ism was transformed from mainly an Arab minority sect to a state religion dominated by Iranians. The

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1. On the concept of *niyaba 'amma*, see above note 12. On the issue of *zakat*, see Norman Calder, "Zakat in Imami Shi'i Jurisprudence, from the Tenth to the Sixteenth century AD," BSOAS 44:3 (1981), 468-80. On the khums, see 'Abd al-'Aziz Sachedina, "Al-Khums: the Fifth in the Imami Shi'I Legal System," *JNES* 39 (1980), 276-89, and Madelung, "Authority," 169.
2. Andrew M. Abbott, "Introduction," *A System of Professions* (Chicago, 1988), particularly 22ff.
3. Madelung, "Authority," 169; Calder, "Doubt," 61.

(19)
The Shi'i 'Ulama', in history*

Meir Litvak

During the first three centuries of Islam the Imami Shi'i community followed the leadership of the infallible Imams, with the scholars remaining much in their shadow. The geographical expansion of Shi'ism in the third/ninth century and growing 'Abbasid persecution obliged the last three active Imams to delegate much of their authority to their disciples, the 'ulama'.[1]

The Imami community overcame the crisis caused by the occultation *(ghayba)* of the twelfth Shi'i Imam in 260/874 largely thanks to the leadership provided by the 'ulama'. The 'ulama', however, lacked the essential qualification on which the authority of the Imams rested, their infallibility. Their own authority, which rested on their knowledge of the transmitted commands and statements of the Imams as well as on their role as jurisprudents was legal-traditional rather than charismatic.[2] The dominant legal school in Imami-Twelver Shi'ism since the fifth/ eleventh century has been the *Usuliyya,* named after its reliance on *usul al.-fiqh* (principles of jurisprudence) as the methodology for deducing legal norms. The science of Usul was supposed to deal, on the basis of preponderant supposition *(zann),* with legal problems for which there were no clear answers in the Qur'an or Traditions *(akhbar).* The process of inferring legal norms using reason and relying on the other sources of law was called *ijtihad.*[3]

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* Litvak, Meir .*Shi'i Scholars of nineteenth-century Iraq: the'ulama'of Najaf and Karbala* . Vol. 10. Cambridge University Press, 2002, pp 11-18

1. Etan Kohlberg, "Imam and Community in the Pre-Ghayba Period," in Arjomand (ed.), *Authority and Political Culture*, 37-39.

2. Wilferd Madelung, "Authority in Twelver Shi'ism in the Absence of the Imam," in George Makdisi et al. (eds.) *La notion d'autorite du Moyen Age: Islam*, Byzance, Occident (Paris, 1982), 166; Dennis MacEoin, "*Changes in Charismatic Authority in Qajar Shi'ism*," in C. E. Bosworth (ed.), Qajar Iran: Political, Social and Cultural Change, 1800-1925 (Edinburg, 1983), 154.

3. Hossein Modaressi Tabataba'i, *An Introduction to Shi'i Law: A Bibliographical Study* (London, 1984), 4, 7-9, 23-58; Abu al-Qasim Gurji, "Nigah-i bar tahawul-i Hlm-i usul va-maqam-i an dar miyan-i 'ulum-i digar," *Maqalat va- barrasi-ha* 13-16 (1352/1973), 27-80; Norman Calder, "Doubt and Prerogative: The Emergence of an Imami Shi'i Theory of Ijtihad," SI 70 (1991), 57-78.

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law, if he has not followed a mujtahid in such matters, his performance is invalid. Juristic difference is inevitable, since all muitahids are attempting to discover the law in actuality, but are limited (on account of their human nature) in this search. The mechanism of following the most learned scholar could be seen as an attempt to reduce juristic difference, but the means whereby such a scholar might be recognised are so vague that, in practice, the emergence of a single scholar of recognised stature was rarely achieved.

discussion as something other than what he presents. This is possible, but speculative. Bihbahānī did wish to repel the Akhbārī threat, but not because it undermined the idea of the scholarly elite. We have already seen how Akhbārī prin-ciples could be married with an elitism in Bahrānī's theory. Bihbahānī rejects Akhbārī *usūl al-fiqh* because he considers it to be intellectually untenable. The certainty of knowledge which they claimed to have obtained, is, in many areas of the law, unobtainable. Bihbahānī proposed a more credible theory; that of *zann*---the result of *ijtihād*. If there was a hidden agenda in these discussions, it was not the authority of the elite as such, but the type of authority the elite could claim. For Bihbahani, authority came through the person of the *mujtahid*, and hence was restricted to the upper echelons of the schol-arly community. For Akhbārīs, it seems, it was more diffusive, spread throughout the scholars, stemming from their role as protectors of the religious texts and the knowledge contained within them.[1]

Conclusion

The major difference between Bahrānīf and Bihbahaānī on the matter of juristic authority is not whether the scholars have authority, but how they gain this authority. The debate between them (and by transference, the debate between Akhbārīs and Usūllīs) concerns the intellectual coherency of the justification for juristic authority. Bahrānī was eager to place supreme authority in the law itself---that is, the scholars have authority because they are the section of the community who will (or are most likely to) produce a correct formulation of the law. Their rulings demand obedience because they are the correct formulation of the law, and the more learned the scholar, the more likely his ruling is to be correct. Bahrānī does not discuss the possibility of juristic difference (*ikhtilāf*), and seems to consider it an impossibility if his legal theory is followed. Indeed Bahrānī claims that the scholars have been delegated the task of transmitting the law to the community, not of interpreting it.

Bihbahānī, on the other hand, invests the jurists with authority, first, because they are the people who are qualified to give opinions on the law and, second (for certain functions only, it seems), because they are the people to whom authority has been delegated by the Imam. The opinions are authoritative because the scholars have made them, not because they are necessarily right. Even though the mukallaf may act in accordance with the

1. Though Bahrānī, at times too, indicates his preference for the most learned, see above p. 22&-227.

incorrect opinions. In FH7, Bihbahānī corrects a misconception of the Akhbārīs concerning *ijtihād*. The Akhbārīs have failed to understand that the *mujtahids* do not consider *zann* to be correct; it is what appears to the muitahid to be correct. *Zann* is also not unbridled opinion making--it is the result of a procedure which is based upon the texts of revelation. Furthermore, the procedure itself is of certain validity, though the results are less than certain. Finally, to claim as some conciliatory Akhbārīs do, that their *'ilm* is equivalent to a mujtahid's *zann* (and the dispute is, therefore, linguistic rather than substantial) ignores the important difference between *'ilm* and *zann*, both in language and in *usūl al-fiqh*.

In FH8, Bihbahānī refutes the Akhbarf rejection of *taqlīd*. The Akhbārīs say they are *muqallids* to the Imams but:

In truth, this is a denial of *taqlid*, for *taqlid* to the Sinless Ones is not *taqlīd* at all. The basis of this ruling is that regarding the *usūl al-din*, since they are known, it is not permitted to perform *ijtihād* or taqlid. [*FH*, 131]

Furthermore, *taqlid* has a long pedigree in Shī'a history. The *akhbār* prove that *ijtihād* and *iftā'* are permitted, and that the early Shī'a followed the *fatwās* of the learned scholars. Women and non-scholars have always had to rely upon the *taqlid* to the learned classes. *Ijmā*, also demonstrates the permitted nature of *taqlid*. The truth of the matter is that Akhbārī denials of *taqlid* are disingenuous, because "the Akhbārī' only denies *[taqlīd]* with his tongue",[1] and follows the decisions of past scholars as slavishly as a *muqallid* follows the *mujtahid's* opinion. Some Akhbārīs even deny that one need be proficient in the linguistic sciences to understand the texts, though Bihbahānī accepts that this is not all Akhbārīs.[2] The need for knowledge of the linguistic sciences to gain an adequate understanding of the texts seems axiomatic to Bihbahānī.

These refutations are, bearing in mind *Bihbahānī's* legal theory, unsurprising. They follow a predictable pattern with predictable themes. What is of interest is that although Akhbārī views on *ijtihād* and *taqlīd* are refuted, there is little or no explicit engagement with the issue of juristic authority. The Akhbārī' position is refuted on epistemological grounds (ie that they have misunderstood the nature of *zann*), not because their theory threatens the authority of the jurist. It might be argued that the epistemological discussion is a foil for the threat to *mujtahid* authority, but for this to be the case, one would be forced to interpret Bihbahānī's

1. Bihbahānī, *FH*, p. 133.
2. This is confirmed by Samāhījī's text, see Newman, "Akhbārī-Usūlī Dispute, Part 1", p. 27 and p. 42.

rule is known with certainty (ie it is known, from the Qur'an, that the testimony of two witnesses validates a contract), but its application to a specific case is yet to be determined. In such cases it is the *qādī* who makes the decision. There is no *taqlid* as such, because the *qādī* (though he must be a *mujtahid*) is not acting as a *mujtahid* in such matters, but as a representative of the Imam. Hence the *mukallaf* must obey the *qādī's* decision, but he is not performing *taqlid* in so doing. The *qādī* represents the Imam, and thus if the *mukallaf* is following anyone here, it is the Imam himself.

This, then, appears to be Bihbahānī's view in sum: a *mujtahid* must meet certain conditions of education and personality, and once he has done this, he may perform certain functions in society. These functions fall into categories: those which have been specifically delegated to him by the Imam (such as *qadā*) and those which he undertakes as a *mujtahid* (such as iftā!). In the former case, he is representing the Imam, and his decrees are, in effect, the Imam's decrees, and survive his death. This is not to say that he is sinless (as the Imams were), merely that sin is an inappropriate category to use for any errors that he might make in such activity (unless, of course, he takes bribes and is corrupt).[1] The *qādī's* decision has the force of the Imam's decision.

As a *muftī*, however, he acts in a personal capacity as a learned person, attempting to discover the content of the law. His activity in such matters is his own opinion, and the need for such an opinion comes from one of his followers (*muqallidiin*). They follow his opinions as a matter of choice, unlike in the case of a *qādī*, where they have no choice. By choosing to follow the *mujtahid*, they bind themselves to him personally. His decisions are authoritative, not because they are necessarily right, but because he has made them. If at any point the muqallid discerns there to be a more learned *mujtahid* (*a'lām*), he must change his allegiance. Because the commitment is to the person and not the opinion, when the person dies, the *muqallid* must find another *mujtahid*.

However, the *muqallid* is not to follow the *mujtahid* in two specific areas. These are areas in which *ijtihād* does not operate: ie matters of religious belief and the application of rules to circumstances. The former are known through texts, and the latter are known as soon as the original rule is known. In either case it is inappropriate to talk of *ijtihād* and *taqlid*.

The remaining sections on *ijtihād* and taqlid in *FH* and *FJ* are rebuttals of

1. Ulrich Reibstock has explored the epistemological status of the *qādī's* error in "A Qādī's Error".

Bihbahānī's list of "the conditions of *ijtihād*" is, then, a reflection of his own view of the essential elements of a *mutahid's* training, and the curriculum is quite broad, including all the major elements of Islamic scholarship, except *tasawwuf* and *falsefa*. The breadth of learning required leads to a qualification with wide-ranging powers of interpretation. Elsewhere, Bihbahānī argues against the view that *ijtihād* can be segmented.[1] A *mujtahid* must be an expert in all areas of legal knowledge; partial *ijtihād* does not qualify as *ijtihād*. The interconnectedness of the *Sharī'a*, he argues, means that knowledge limited to the areas which appear relevant to, say, inheritance law, is insufficient to give authority to rulings in that area. The partial *mujtahid* (*al-mujtahid al-mutajazzī*) can never gain knowledge (*'ilm*) that he has exhausted all possible human effort in his search for a ruling. His *ijtihād*, if it is allowed to be called such, can never be equal to that of a total *mujtahid* (*al-mujtahid al-mutlaq*).

Bihbahānī, like Bahrānī, recognises that the duty of *taqlid* is only placed upon the *'āmmi* in matters pertaining to legal obligations (*al-umūr al-taklfjiyya*).[2] The reason for this is that in matters relating to religion (*usūl al-dīn*), there is knowledge ('ilm) as to what constitutes correct belief:

As for *usūl al-dīn*, there is no doubt that the door of knowledge is not closed in relation to such matters. [*FJ*, 494]

There is no *taqlid* in *usul al-din*, because there is no *ijtihād* of the *mujtahids*.

Bihbahānī mentions another area where there is no *ijtihād* or *taqlid*; that of the "placement of rulings" (*mawdū'āt al-ahkām*).[3] If a *mujtahid* rules that substance of type X purifies objects of type Y, the *muqallid* should follow this rule. However, whether a specific substance Xl has purified a specific object Yl is a matter of the "placement" of the *mujtahid's* opinion, and in such matters the *mukallaf* himself (whether he is a *mujtahid* or a *muqallid*) must make the decision. The *mujtahid*, it seems, only has opinions on the rulings themselves, not on their discrete application to specific circumstances.

In other matters, such as the testimony of two witnesses in a contract, the

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1. Bihbaharu, *Rasā.'il*, p. 66-86.
2. Bahrānī's position can be seen, from a terminological point of view, as the reverse of that of Bihbahānī, Bahranī allows *ijtihād* with respect to matters of religious belief In *'Aqd al-jawāhir al-nūraniyya*, he states that it is the duty of each *mukallaf* to discover religious truths, but he disallows *ijtihād* in matters of law. This terminological reversal, however, does not alter the fact that the positions of the two authors are substantially the same. See *'Aqd al-jawahir*, folio 114.16-120.2.
3. This corresponds to Bahrānī's second type of ignorance (or knowledge): when a ruling is known, but its application is negkctcd or ignored. See above, p. 20.

qualities associated with "holy strength" are decidedly subjective. However, Bihbahānī's view is clearly that the rank of *ijtihād* is not attained easily. He appears more concerned to justify the inclusion of certain disciplines in the list, than to explain what is required in each of them. The qualifications are each accompanied by a justificatory passage of varying length. For example, knowledge of *usūl al-fiqh* is justified in the following manner:

Amongst the conditions [of *ijtihād*] is *usūl al-fiqh*. The requirement of it is obvious, as scholars have explained in the past, and each of the sections which we have written [in this book] declare, in the highest voice, that [*usūl al-fiqh*] is needed in a number of ways. They [the sections] declare also that it is needed to protect one from ignorance and the error of neglect.[*FH*, 336]

Bihbahānī goes on to explain that *usū al-fiqh* is the most important of the qualifications (*a'zam al-sharā'it wa ahammuhā*).

Translating the term *sharā'it* as "qualifications" (as I have done up to this point) requires some explanation. Strictly speaking, *sharā'it* are "conditions"; that is, conditions which must be fulfilled before the title of *mujtahid* can be conferred upon a scholar.They are, if you like, a checklist which a non-mieftahid (or another member of the scholarly elite) might use to verify that a particular scholar is a potential *mujtahid.* As has been mentioned by other commentators, the means whereby a scholar becomes a *mujtahid*, in both *Sunni* and *Shī'ī* legal thought, are quite informal.[1] A scholar gains this status, it appears, through a general acceptance of his authority by the scholarly community, and later by the community at large. Bihbahānī does not explicitly state his support for such a process; in his *al-Risāla fī' l-ijtihād wa'l-akhbār* it appears that the means whereby a scholar gains the status of *mujtahid* (*ithbāt al-ijtihād*) is through inter-nal recognition by the scholar himself that he has fulfilled the requisite criteria, as they have been laid out by the culamii!.[2] If he is correct and honest in this internal recognition, the community, it appears, will naturally accept his authority as mrgtahid. It is, however, the scholar's task to put himself forward as a mujtahid before the com-munity can consider his claim. What is perhaps surprising about this account is the lack of reference to what we know about the mechanism of promotion in the Shrine Cities at the time: that is, the mechanism of *ijāzat al-ijtihād* given by a *muitahid* to his pupil.[3] There is clearly a disjuncture between the theory of attainment of *ijtihād* and the actual operation of the educational system.

1. See Makdisi, *Rise tf the Collges*, p. 270-276; Litvak, *Shi'i Scholars*, p. 21-44.
2. See Bihbahani, *Rasā'il*, p. 23-28.
3. See Litvak, *Shī'ī Scholars*, p. 1-19.

of *ijtihād*, analysed briefly in Chapter Three, establishes the authority of the jurists. It is clear, then, that the community is divided into *mujtahid* and *muqallid*; the latter need not understand the farmer's reasons for giving a ruling, they are commanded merely to follow it. The *muqallid's* opinion, from a legal perspective, is worthless:

You have learned that action on the basis of opinion is forbidden, except that it be the opinion of the *mujtahid* after he has expended effort in respect of all [the sources] which seem pertinent to him. [*FH*, 201]

How one becomes a *mujtahid* and, therefore, how one's decisions become authoritative was a matter of debate within the *Usūlī* tradition.[1] Bihbahānī presents his own assessment of the "qualifications of *ijtihād*" (*sharā'it al-ijtihād*) in FH36. The prospective *mujtahid* must have attained proficiency or "knowledge in" (*al-'ilm bi, al-ma'rafa bi*) a number of disciplines:

1) linguistic sciences (*al-'ulūm al-lughawiyya*)
2) the customs (of an area) in their general and specific aspects (*al-'utf al-'amm wa'l-khāss*)
3) theology (kalām)
4) logic (*mantiq*)
5) legal theory (*usūl al-fiqh*)
6) hadīth (but only those necessary for understanding the law-ma'rafat al-'ilm bi' l-hadīth al-muta'allaqa bi'l-fiqh)
7) exegesis (*tafsīr*)
8) the legal thought of the jurists (*ma'rafa fiqh al-fuqahā'*)
9) the science of transmission (*ma'rafat al-rijāl*).

Finally, he must have the quality termed "holy strength" (*al-quwwa al-qudsiyya*).

The last of these, "holy strength", consists of a number of char-acteristics, ome of which appear to be objective (eg the *mujtahid* should have sound sensory faculties), whilst others are more subjective (eg he should not be stubborn, impetuous or argumentative).

At the end of FH36, Bihbahānī lists additional qualities which are entitled "*muhammalāt al-ijtihād*". These, it seems, are not conditions of a *mujtahid* as far as Bihbahānī is concerned (though he mentions that some scholars have counted them as such), but additional "burdens" to the core ten qualities listed above. These supplementary skills consist of proficiency in areas such as medicine, astronomy and mathematics so far as they are useful to the study of the law.

These qualities may seem quite vague to the reader. Bihbahānī does not explain what is meant by proficiency in each of these areas, and many of the

1. This was the case in Sunni tradition. See Hallaq, "Was the Gate".

the most learned is unclear.

This rationale for juristic authority is not in operation with respect to the *qādī* or *hākim al-shar'*. In these roles, the *mujtahid* has authority, not because he is learned, but because it has been delegated to him by the Imām. As a *qādī* and as a *hākim al-shar'*, the mrgtahid's ruling outlives his death. His ruling is the final ruling permitted (in theory) upon the matter in hand. It is authoritative for both other *mujtahids* and *muqallids*:

After he has given his ruling, the *qādī* judgment lasts forever, even if he dies. Its status after his death is the same as when he was alive. His ruling does not die with him. [*FJ*, 501]

The reason for the more definitive stature of the *qādī* ruling (and that of the *hākim al-shar* also) is that, whilst the *muftī's* opinion is authoritative because the scholar is a *mujtahid*, the *qādī* 's opinion is final because he is "the representative of the Imām" (*nā'ib al-imām*) or "delegated by the Imām" (*masūb min al-imām*).[1]

This distinction reveals the two means whereby, according to Bihbahānī, the scholarly elite, and jurists in particular, have authority over the community in the absence of the Imam: through their learning and through delegation by the Imam. Both means are present in one individual (the *mujtahid*), but the status of his decisions differs according to the role he is performing. As a *muftī* he has authority because of who he is; as a *qādī*, he has authority because the Imams have given it to him. Since the *qādī*,.i is acting for the Imam, and not, in a sense, in his own right, his decision is, in effect, that of the Imam. Like the Imam's decision, it has a permanent quality. The *muftī* merely speaks for himself, whilst the *qādī* speaks for the Imam. The added responsibility of being a judge made Shīī scholars, in theory, reluctant to accept the role of *qādī*, since it was an additional burden (with the potential of additional punishment).[2] Interestingly, Bihbahānī states, in one of his few references to con-temporary times, that, "In these times, a *qādī* who will arbitrate (*qādī al-tahkīm*) cannot be found",[3] though it is unclear whether this is a lament for the unwillingness of the 'ulamā' to accept their responsi-bilities, or a comment on the paucity of qualified individuals.

Having made this distinction between authority through learning and authority through delegation, Bihbahānī concentrates entirely on the former in the other sections of *FH* and *FJ*. His purpose is to outline how the theory

1. See above, note 3 for the secondary literature on this topic.
2. I analyse these issues in Gleave, "Two Shīī Theories of Judicial Authority".
3. Bihbahānī, *FJ*, p. 501.

These various tasks, it seems, can only be performed by a member of the scholarly elite, more specifically a *mujtahid*. Bihbahānī notes though that the *mujtahid's* status changes dependent upon which of these roles he is performing. He is always a *mujtahid*, but he acts as a *qādī*, *muftī* or *hākim al-shar* in particular circumstances.

The major distinction is between the roles *faqih* and *muftī* on the one hand and *qādī* and *hākim al-shar'* on the other. In the first two roles, the *mujtahid* presents his opinion in areas where "the door of knowledge (*bād al'ilm*) has been closed". He presents both his reasoning and his conclusions, and the non-*mujtahid* (*al-'āmmī*) is to fol-low the latter without necessarily understanding the former. The mujtahid is not permitted to follow the opinion of another *mujtahid*, though he may look towards another's opinion for confirmation (*ta'yid*), just as he may look towards the findings of those who have written works in linguistics or the science of transmission. His use of this material does not represent *taqlid*, but the legitimate use, by a mujtahid, of the resources available in the formulation of a ruling. Finally, the *mujtahid* is not permitted to follow the rulings of a dead *mujtahid*. The reason for this is that when the *muqallid* follows the *mujtahid's* opinion he is investing authority not in the ruling directly, but in the person who issued it. The authority of the ruling is dependent upon the scholar, and if the scholar is dead, then the *muqallid* is not in touch with the *mujtahid*, and the ruling loses its authority. The *muqallid* must tum towards another *mujtahid*. Bihbahānī ends his account of the *mujtahid* acting as *faqih* or *muftī* by saying:

These are the characteristics of the *mujtahid* which he has because he is a *mujtahid*. They are not restricted to what has been said, indeed, perhaps, others could be found. Hence one should obey his opinions, and find amongst them that his word is a proof for the *muqallid*. It is obligatory for the *muqallid* to act on his word alone, forsaking all other *mujtahids* to whom he is not bound, or has not followed. When the most learned and most knowledgeable (*al-a'lam wa'l-afqah*) is found, following him is an individual duty, and if they are all equal, then one must choose. [*Fj*, 500-501]

The *mujtahid* commands this this authority because he is a *mujtahid*-that is, because of his learning. The *muqallid* attaches himself to the *mujtahid* ("he binds himself to him") and for that *muqallid*, the mry'tahid's word is a proof. If the *muqallid* perceives there to be a more learned *mujtahid*, he should change his allegiance: the ultimate decision as to who is the most learned seems to rest with the *muqallid*, though how he is able to recognise

gives rise to doubt as to the law's fulfilment, not certainty. They are then *zannī* rather than *'ilmī*. Unlike the accepted principles, they fail the rigid epistemological criteria demanded by Bahrānī's legal theory.

Since the scholar transmits this *'ilm* to the ordinary *mukallaf*, there should, ideally, be no variety of opinion (*ikhtīlāf*) amongst the scholars. Their rulings should be identical, and both they and the com-moners should be subject to them. It is in this sense that Akhbārīs such as Bahrānī understood the dictum "We are all *muqallids* to the Imam", not in the sense that there was no role differentiation between scholars and commoners.[1]

Bihbahānī's Theory of Juristic Authoriry

It is important to note from the outset that Bihbahānī recognises two modes in which the *'ulamā'* generally, and jurists (*fuqahā'*) in particular, have authority within the community: authority based on delegation from the Imam and authority based on learning. Educational qualifications in themselves provide authority, but they also allow entry into the class of people delegated by the Imam to carry out certain community functions during the occultation. That these two modes are, therefore, linked is dear, but the manner in which they operate is quite distinct in Bihbahānī's theory.

In FJ33, Bihbahānī presents the various duties a scholar might undertake in the community:

The *mujtiahid*, jurist (*faqīh*), jurisconsult (*muftī*), judge (*qādī*) and the designated trustee (*hākim al-shar'*) are, at this point, encompassed in one person.

With respect to the actual rulings, he is a *mujtahid* [ie one who attempts to discover the actual rulings of the law], since the door to knowledge has been closed.

With respect to the clear rulings, he is called a *faqīh*, for you know that he has acquired knowledge of the clear rulings in a prescribed manner.

With respect to when he offers his opinion, he is called a *muftī*.

With respect to when two litigants bring a case before him, he is called a qādī.

And irrespective of whether a case is brought before him or not, he is called *hākim al-shar'* in [matters] such as the care of orphans and those absent and in other countless matters in the law.

And with respect to the conditions of *ijtihād*, he is called an expert in traditions, theology, legal theory, transmission and other disciplines. [*FJ*, 499-500]

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1. For this dictum, see Newman, "Akhbārī-Usūlī Dispute, Part I", p. 26 and p. 41.

explanation) which is mentioned by Samahījī as an issue of dispute between the Akhbārīs and *mujtahids*.[1] The issue at hand is, must the Lawgiver always explain all the details of a ruling, for to give a ruling but not its details, would be asking the impossible from the *mukallaf*?

Bahrānī states that this is a Sunni doctrine, adopted by some *Shrī'a*.[2] It is invalid not just because it is a Sunni doctrine, but because of the issue of *taqiyya* (an issue not relevant to Sunni law). *Taqiyya* can prevent a full explanation of the law. It might be argued that delaying an explanation causes hardship to the *mukallaf* since he cannot fulfil the law (and hence be in contradiction to principle 7 in the accepted list). However, Bahrānī argues that this is not the case because:

A wonderful principle has been decided upon, by [the Imams] for cases such as this: following the way of *ihtīyāt* [*H*, 1, 160]

Hence, for Bahrāni, it is permitted for the Imams to delay an explanation because they have provided a solution to this legal lacuna in the form of *ihtīyāt*. To deny this is "pure *ijtihād*" (*ijtihad sirf*-note the pejorative use of the term here).

Rejected principle II concerns contract law. Some scholars have argued that an illegitimate condition in a contract nullifies the contract completely.

Bahrānī adheres to an alternative opinion: the condition alone is invalid but the contract generally is valid. The akhbār, he admits, arc unclear on this point, and hence it is necessary to perform *ihtiyāt*. *Ihtiyāt* in this case requires treating the contract as valid. The reason for this is that whether or not a contract with an illegitimate condition is valid is uncertain (*shubha*).

Treating it as invalid would expose the parties to a risk of non-fulfilment of the contract. To treat it as valid may also be a risk, but only to the extent of performing superfluous actions which are not contractually necessary.

Elsewhere I have demonstrated how this principle is, rather inexactly, utilised in Bahrānī's positive law.[3]

These principles are rejected, then, because they are unjustified by Imamic sanction; but more importantly, they are rejected because their application

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1. See Newman, "Akhbārī-Usūlī' Dispute, Part 1", p. 35 and p. 50, where the rejection of *ta'khir al-bayān* is associated with stricter Akhbaris such as Astarābādī. See also Weiss, *God's low*, p. 463-467.
2. The criticism of Usūlī thought as being Sunni in origin, was certainly an element in Akhbārī polemic, and this point is well expressed hy Stewart, *Islamic Legal Orthodoxy*, p. 185. He overstates the case by saying it was a major feature. Accusing one's opponents within Shī'īm of taking doctrine from the Sunnis was a common feature of classical Shī'ī jurisprudence. Akhbārīs were accused of this by Usūlīs (sec, for example, Khwānsārī, *Rawdāt*, I, p. 142 and p. 144-145, where Astarābādī is accused of being a closet Ash'arī).
3. Gleave, "Marrying Fatimid Women", p. 52-53.

the start of the appendix to M 11:

Other principles have become well known in the discussions of the Shi'ite scholars (may God be pleased with them), upon which they base rulings (*ahkām*). [*H*, 1, 160]

It is, then, the scholars who have the responsibility of basing rulings on principles. The scholars mentioned in the above quote have not deviated because they have issued rulings *per se*, but because they have based them on unjustified principles-that is, principles that arc not established by the *akhbār*.

The twelve principles listed by Bahrānī are:

1) It is not permitted to delay the explanation beyond the time of need.

2) Words in the *akhbār* should be interpreted according to their *haqīqa shar'īryya* meaning; and if not, then their specific customary meaning; and if not, then their linguistic meaning; and if not, then their general customary meaning.

3) Not finding evidence of a legal ruling is in itself evidence of a legal ruling of permittedness,

4) Two conflicting indicators should be harmonised rather than one rejected.

5) When *akhbār* conflict, and it is not certain that an action is obligatory or recommended, then BA dictates that we treat it as recommended.

6) For an order to be obligatory, *qarā'in* are required, otherwise a command is merely a recommendation.

7) If a report is weak according to the classification system of *akhbār*, then it can only produce a recommendation.

8) A request of an essential nature from the Lawgiver is assumed to include every action which falls under this category, because it is assumed that a request is unrestricted.

9) Of all the means of combining the *akhbār*, interpreting a com-mand as a recommendation is the clearest.

10) It is not a condition of a current description of a subject that he be performing the action at the moment of description.

11) If a contract contains an invalid precondition, then this nullifies the contract altogether.

12) A command to perform an action necessitates a prohibition on doing its opposite.

These rejected principles are also a strange collection. Most of them have been refuted by Bahrānī elsewhere in the Prologues, and he refers the reader to the relevant sections. The only new material introduced here is the refutations of principles 1, 8 and 11, and only the first and last receive any real comment or discussion.

Rejected principle 1 refers to the issue of *ta'akhīr al-bayān* (the delay in

Eat birds which flap their wings before those that glide in the sky.

Eat fish with fins before those without fins.

Each of these food laws is justified by reference to an lmamic report. Their placement in a general account of the law is perplexing.

Principle 19 enlightens us as to the reasoning behind such specific principles:

Whatever is more or less than the original state (*asl*) of a created being, is proven to be a defect, [*H*, I, I 5 7]

The accompanying report concerns a slave girl who has no pubichair growth. This is counted as a defect, and hence should be declared at the time of sale. The underlying reasoning here is that there is a created norm, and anything which deviates from that norm is a defect. Transferring this reasoning to principle 13, the created norm is for eggs not to be round, for birds to flap their wings and for fish to have fins. Hence these foodstuffs are preferable to those which deviate from this norm. However, this reasoning is not spelled out by Bahrānī.

Principle 1 7 appears as a specific application of the principle of *ihtiyāt* to a particular problem of law: that of the content of the noon prayer on Friday when the congregational prayer is also obligatory. The answer, unsurprisingly, is to perform the two doubtful prostrations.

Epistemologically speaking, these principles are certain (*yaqīn*) since they were explicitly spelled out by the Imams, therefore applying them to novel (unregulated) circumstances will, in itself, bring certain results. This reduces the exegete's role to a minimum, and might be said to thereby reduce his authority. However, the exegete must know these principles (that is, he must be trained) and must be able to recognise when and how a case falls under one of these principles. The exegete's opinion does not formally enter into the correct application of these principles, but the figure of the exegete, who passes on certain rulings to the community seems, to me, implicit in Bahrānī's exposition.

The principles generally serve to reduce the areas of the law which are subject to *ihtiyāt*. By developing principles to cover novel circumstances, Bahrānī has ensured that certain rulings can be found in a large number of cases not covered by the revelatory texts. As was the case at other points in his theory, he withdraws from a full-blown scepticism which would lead to an impractical level of cau-tion, and instead introduces elements which, though not invalidating *ihtjyāt*, certainly reduce its operation.

Bahrānī also discusses principles which are used by the scholars but which he rejects. The implicit assumption of an exegete or scholar is confirmed at

common the generality of their application. For example, principle 7 declares that Gad intends the law "to reduce hardship" (*raf' al-harj*). Two Quranic quotes are cited as proof of this principle. The *akhbār* cited next are direct interpretations of one of the Quranic verses. This, of course, is compatible with the prohibition on direct interpretation of the Quranic text:[1]

'Abd al-a'alā said to Imam Sādiq, "I stumbled and my fingernail was torn. I made a bandage for my finger. How can I perform *wudū*' (the ritual washing required before prayer)? He said, "[The answer] is known. Its reference is found in the Book of God, when he says, 'He has not made for you hardship in religion'. [Q22.78] So wipe (the bandage when you do *wudū*]". [*H*, 1, 151]

For this principle to be consistent with Bahranr's theory of il;.tiyii/, the case of the bandaged finger must be a case which is unmen-tioned in the sources, or at least perceived to be so. Reducing hard-ship is consonant with principles 1 and 2 (the assumption of purity), but these only apply to cases where there is no perceived relevant indicator. Principle 7 must also apply to such cases, for if there is an indicator, albeit an unclear one, then *ihtiyāt* is effective. *ihtiyāt* certainly does not reduce hardship---it imposes a greater burden upon the *mukallaf.*

Principle 12 (the general rulings of the author of the Sharī'a are certain and secure) is similarly general in its application.[2] Principle 14, where ignorance and forgetfulness and the inability to perform impossible demands are all forgiven, is clearly consistent with Bahrānī's views on the *mukallaf*'s knowledge as essential to the Lawgiver's apportionment of blame. Principle 15 establishes *taqiyya* when it is necessary, not just for the Imams, but also for the community. The final principle (no 21) establishes that the word of one who cannot be contradicted (such as the woman who says she is menstruating) is of certain validity. This is broadly in line with the principle of eliminating hardship. Though rationally it would seem acceptable to doubt a woman's word (she may be lying), for the purposes of the law, it would be impractical to practise *ihtiyāt* on such occasions. Her word is accepted. There are five convenient *akhbār* which support such a view.

Principles Relating to Specific Areas of Positive Law

Some principles listed in Ml1 are so specific in nature that they seem out of place. Whilst principles of the above two types could be applied to any area of law, these are restricted in their remit. For example, principle 13 is comprised of three linked rules:

Eat eggs which are not round before those that are.

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1. See above, p. 48-55.
2. For an account of general expressions in Bihbahānīs writings, see above, 174-178.

Principle 5 concerns the problem of pure items mixed with impure items in such a manner that they are indistinguishable and inseparable. Bahrānī distinguishes here between limited (*mahsūr*) and unlimited (*ghayr mahsūr*) mixing. For example, if the *mukallaf* knows that one of two identical cups has been ritually defiled, but does not know which, then this is an example of limited mixing. In such cases, *ihtiyāt* is necessary (and, in this example, neither cup should be used). However, when the mixing is unlimited, there is an assumption of purity, and , *ihtiyāt* is unnecessary. For example, there is some debate about the permitted nature of cheese, since it is made with rennet, and there is no certainty that the animal was slaughtered in the correct way. Hence cheese, a generally available commodity, represents a case of unlimited mixing. Although, one knows that some cheese is possibly unfit for consumption, one does not know which falls into this category. In such cases, there is an assumption of purity, until one knows (ie one has '*ilm*) that a particular piece of cheese is impure.

Finally, principle 18 commands the exegete to accept God's ambiguity and silence. This is a general exhortation, justified by three akhbār with no exegetical comment. It appears as a general criticism of those who attempt to deduce rulings on matters which God himself has remained silent (Bahrānī means those who practice *ijtihād*). In such cases the silence and ambiguity in God's word should be accepted. The means of sanctioning actions in such circumstances have already been examined.[1]

These principles can be seen as an elaboration of Bahrānī's thoughts on BA. They restrain the principle of *ihtiyāt*, limiting it to specific circumstances (ie when there is knowledge of the existence of a ruling, but uncertainty as to its content). Bahrānī realises, it seems, that *ihtiyāt*, if taken to its extreme, could lead to a paralysis in religious life and Muslim society more generally. One would be unable to attain certainty over ritual purity unless one personally cleaned the mosque and washed one's clothes, using water which one had per-sonally obtained in a matter which secured its ritual status. Even then, one might be racked by doubt that one had performed the ritual purification in the correct way. Though he places great emphasis on certainty, Bahrānī recognises a number of situations when cer-tainty can be assumed rather than proven, and naturally, the Imams, through the *akhbār*, have sanctioned every such provision.

General Principles

The general principles do not form a coherent category, but they have in

1. See above, p. 91-102.

c) Principles relating to specific areas of positive law (nos 1, 4, 13, 17, 19 and 20)

The manner in which a particular principle is justified follows a pre-dictable pattern:

1) Quranic verses relating to the principle
2) Akhbār explaining the meaning of the Quranic verses which also justify the principle
3) Exegesis of the material in 1) and 2)

The third section often consists of one line, or is missed out altogether, indicating that Bahrānī considers the revelatory material in l) and 2) to be self-explanatory. In what follows I analyse each category in turn.

Principles Relating to Epistemology

In Chapter Three, I discussed principles I and 2.[1] These relate to the acceptable method of proceeding when there is no (perceived) text which provides an indicator for a particular case. The conclusion was that in such circumstances one may legitimately presume an action to be permitted, or an item to be ritually pure. Principle 3 is pithily expressed as "certainty is not overturned by doubt" and refers to the *mujtahid* practice of modifying assessments established by a certain textual indicator with a *muitahid's* opinion. Bahrānī does, it appears, permit the modification of a certain assessment, but only through a textual indicator. Once a textual indicator is established as existent, then it is certain that the ruling in the text is modified. If the modifying textual indicator is unclear in some way, then, and only then, does *ilhtīyāt* come into force as a legal principle. The most obvious application of this principle concerns the assumption that a command effects an obligation.[2] For Bahrānī, a textual indicator (other than the command itself) must be established (with certainty) to modify the command from indicating an obligation to indicating permission or recommendation. The crucial point here is that mere opinion (*zann*) that a ruling indicated by a text is modified is insufficient.

There must be certainty that it is modified. However, Bahrānī goes on to say, certainty of the fact of modification does not necessarily entail certainty as to the nature of the modification. When there is doubt as to the latter, then *ihtiyāt* is applied. The certainty of the original ruling cannot be overturned by the certainty of modification alone; it must be certainty as to the nature of the modification.

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1. See above, p. 92-96.
2. See above, p. 158-160.

10) Caution (*ihtiyāt*) is obligatory at the appropriate times.

11) The ignorant *mukallaf* is forgiven his transgressions.

12) The general rulings of the author of the *Sharī'a* are certain and secure.

13) Rules concerning food laws: eat eggs which are not round before those that are; eat birds which flap their wings before those that glide in the sky; eat fish with fins before those without fins.

14) God has eliminated the blame for forgetfulness, ignorance and inability to perform actions.

15) Dissimulation is obligatory when it is necessary.

16) One can act on the basis of *al-barā'a al-asliyya* at the appropnate points in time.

17) If there is doubt over whether two or four prostrations are required for the noon prayer on Friday, the extra two should be performed.

18) Accept ambiguity in what God has made ambiguous and remain silent about that which God has remained silent.

19) What increases and decreases the created state of a thing is proven to be a defect.

20) All animals which chew the cud, their saliva and the food remain-ing after they have eaten is lawful.

21) Accept the opinion of one who cannot be contradicted.

These principles are a puzzling collection. Many of them only become clear after examining examples of their operation. Some appear as mere reformulations of others and the list generally lacks organisation. lt is quite possible that the list is a hastily constructed effort to cover those areas of legal theory which were not sufficiently described in M1-10 .In order to aid analysis of these principles, they can be divided into two initial categories:

a) those that are described and justified elsewhere in M 1-10

b) those that are introduced for the first time in M 11

Those in the first category (nos 9, 10, 11 and 16) are accompanied, not by a justification, but by a note from Bahrānī, directing the reader to the appropriate Prologue. Since I have discussed these previously, I concentrate here on the second category.

The second category (ie those principles not explicitly discussed in M1-10) can be subdivided into three:

a) principles relating to the problems of epistemology (nos 2, 3, 5, 6 and 18)

b) General principles (nos 7, 8, 12, I 4, 15 and 21)

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invalidates ritual purity, there is an issue over whether or not the one who faints (*al-mughmiy 'alayhi*) has violated his ritual purity. The *akhbār* seem to indicate that his ritual state is unaltered, his fainting being an "act of God", as it were. This is surprising since *ihtiyāt* would seem to indicate the need for a renewal of ritual purification. Bahrānī, H, 1, p. 152.

all juristic rulings are based".[1] There fol-lows a list of twenty-one (or twenty, depending on where section breaks are inserted) principles (*qawā'id, usūl*). The purpose of these principles is not entirely clear, but it appears that they perform both a descriptive and advisory function. They describe the rationale behind the law, as it has been presented (by God, the Prophet and possibly the Imams also); and they advise the manner in which the law might be interpreted and elaborated. That the latter function is included, is demonstrated by two, very similar reports from Imams sadiq and Ridā:

Imam Sādiq said, "We are only obligated to announce to you the principles (*al-usūl*). You are obligated to deduce (*tafarri'ū*)".

Imam Rida said, "We must announce the principles, you must deduce (*tefrī'*)". [H, 1, 133]

These principles, then, function as exegetical guides in the exposition of the law. That an exegete is permitted to use them is proven by the lmamic sanction that accompanies them. Having stated a principle, Bahrānī then produces *akhbār* which prove its validity. Before listing the principles, Bahrānī makes it quite clear that the principles of exegesis, as they are presented here, are the only valid principles upon which to base legal rulings. In a conclusion to M 11 (analysed below), Bahrānī lists twelve principles of exegesis which his colleagues (*ashāb*) claim to be valid, but which he considers to be invalid. I begin by listing the acceptable principles in paraphrase:

1) All things, which are not known to be impure, are pure until their impurity is known.

2) Anything which is not known to be forbidden is permitted.

3) Certainty is not dispelled by doubt.

4) Every agent is responsible for his actions, as long as the opposite is not proven.

5) One should rule that anything that appears to pollute, or appears to be forbidden, is actually pure and permitted (respectively), as long as it is not specified as such.

6) After having left something, there is doubt that it has remained in the same state.

7) An aim of the law is to eliminate hardship.

8) When *akhbār* conflict, use the recorded methods of preference (*murajjahāt*).

9) Forgiveness is requisite in that which "God is greater than".[2]

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1. Bahrāni, *H*, 1, p. 133.

2. The implications of this principle are not immediately obvious in translation. The principle refers to occassions when a *mukallaf* could not have acted otherwise. The justificatory *khabar* concerns the one who faints during prayer. Since sleeping

scholars excel in one of these qualities then one has a prob-lem (*ishkāl*).[1]

Some say *'adāla* takes precedence over all other qual-ities, but Bahrānī argues that *faqāha* is included in *'adāla*, and the most learned (*afqah*) must, therefore, be the most just also (*a'dal*). The privileged position given to learning in this hierarchy of quali-ties does, of course, emphasise that a scholarly education is essen-tial to the mechanism of expounding the law. Finally, the issue of whether one is permitted to follow the *fatwā*. of a dead scholar is addressed in question 4. The answer, for Bahrānī, is that one must follow the rulings of the Imams, which are transmitted to us by the early generations, and they are all scholars who are dead. He lists akhbār (including the *Maqbūla*) which emphasise that one must take into account the *fatwās* of the early generation.

Bahrānī, in these answers, adopts some of the terminology of the *muitahids* (eg *taqlid*, *al-a'lam*); but does not base the jurist's authority on ijtihad, but on the (possibly more vague) concepts of "learning" and "justice" or moral probity. These qualities are an indication that the scholar utlises (or utilised, in the case of a dead scholar) the cor-rect procedures for deriving *fatwās* from the sources. In Usūli' theory, the person of the *mujtahid* justifies the authority of his ruling; the ruling itself is only authoritative because he has issued it. Hence the *fatwā* of a dead *mujtahid* dies with him; it had authority because it was his ruling and not because it was, necessarily, the correct one. For Bahrānī, one needs to identify the scholar who will produce the correct ruling, and his ruling will have authority because it is the correct one.[2] One does not, in a sense, follow the scholar; one fol-lows the ruling, because it is a correct declaration of the law. The Imams delegated this role (*niyāba*) to the *'ulamā'* during the *ghayba*, as is indicated by the *Maqbūla*, and hence although the scholars do not have the same kind of authority as those in *mujtahid* theory, it would seem clear that they are an essential element of an Akhbārī legal theory such as Bahrānī's.

These are the only passages known to me in which Bahrānī explicitly addresses the issue of juristic authority in a manner recognisable from a reading of Usūli theory. The correct procedures for deduc-ing rulings, on which the scholars theoretically rely, are summarised in M 11, entitled "Concerning the legal principles and the complied-with precepts upon which

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Islam, p. 189-199 and Moussavi, *Religiow Authority*; p. ·H-183.

1. See the use of this term in the con text of revelation/ reason cnnffic ts, above 201-202. Bahrānī does not, to my knowledge. explain the theoretical significance of the term *ishkāl*. It seems to function like *ikhtilāf* in *ijtihād* hased theories, but with a determination that the correct solution is obtainable.

2. See below, p. 236-237.

in an area where there are no (*Shī'ī*) scholars, is he permitted to follow the established school doctrine (*al-mashhūr*), or must he follow *ilhitiyāt*? Bahrānī's answer is expansive, but in sum, he states that the mukallaf must search for a scholar, but whilst he is searching he must act on *ilhtiyāt* If he trans-gresses the law during this search, then he is forgiven, but he is not excused the task of searching for a scholar (*'alīm*). Just as was men-tioned in Chapter One, the scholar is essential to the ideal opera-tion of the law.[1] The *mukallaf* may consult works of fiqh in such circumstances (ie he may follow the *mashhūr*), but these works must be by authors who give direct and clear answers and not by those whose answers are clouded in extensive discussion. The implication is, then, that he must consult Akhbārī works of *fiqh* (like Bahrānī's own *al-Hadā'iq al-ādira*) and not those of the *mujtahids*.

Question 7 refers to whether a *mukallaf* may, after following one scholar, abandon him and follow another. Bahrānī's answer is that it depends upon the second scholar's credentials:

If the second scholar is one whom it is permitted to follow (*taqlid*), like the first scholar was, then there is no point in distinguishing between following him and the *fatwā* of the first.[2]

A scholar "whom it is possible to follow" (*yajūz taqliduhu*) is one who is worthy of *taqlīd* and who uses the correct methods of express-ing a preference between contradictory *akhbār* (*murajjahāt*):

If he does not have this rank (*al-martaba*), then it is not permitted to follow him at all (*bi'l-kulliyya*).[3]

Question 8 refers to the issue of whether it is obligatory to follow the most learned scholar (*al-a'lam*) when there are many scholars ('ulamā.') present. Bahranl's answer is instructive:

There is no doubt that [when they are in agreement], one can choose whichever fatwa one wishes. When [they disagree], then it can be deduced from the *Maqbula* [of lbn Hanzala] concerning this issue, that one should prefer the [*fatwā*] of the one who has more of the qualities [mentioned in the Maqbula] to one who has less.[4]

The qualities mentioned by Bahrānī are justice (*'adāla*), learnedness (*faqāha*), truthfulness (*sidq*) and piety (*war'*). These qualities are pre-sent in one who has "the right of delegation (*niyāba*) from the Imams".[5] If two

1. See above, p. 22.
2. Bahrānī, *'Aqd aljawāhir*, folio 65b, lnl8-20.
3. *Ibid.*, folio 64a, ln21.
4. *Ibid.*, folio 64a, ln4-10.
5The doctrine of *niyāba* is discussed extensively in Calder, "Structure of Authority", 66-170. See also, Calder, "Sabzavari"; Sachedina, *The just Ruler*, p. 119-173; Momen, *Shī'ī*

evidenced by the slogan used in connection with the theory of *ihtiyāt*:

al-tawaqquf fi'l-fatwā wa'l-ilhtiyāt fī'l-'amal.

Suspension of judgment in offering a ruling and caution in action.[1]

Such a procedure is recommended when the revelatory texts are unclear. By implication, then, when the revelatory texts arc clear, one need not suspend one's *fatwā*, but one can declare it with certainty. Bahrānī's use of the term *fatwā* assumes the presence of a *mufīī* who is in a position to advise the community on request as to the correct course of action. This fatwā, which Bahranf elsewhere calls an order (*amr*), is not mere scholastic opinion as to the content of the divine law, but a declaration as to the law in reality.[2] In cases where the law is unclear, the mefti cannot give such a definitive *Jatwā*, but he can give advice as to the most cautious (*ahwat*) course of action, which will ensure legal compliance. Such a second-tier *fatwā* also brings certainty, not of the law itself, but of obedience to the law. It does not appear that the scholar's role or prestige is diminished in such a procedure.

It might be argued that Bahrānī's use of the term *nazar alfaqih* in M4, and his proposal that the "opinion of the jurist" can be ignored (though it is not obligatory to do so) in cases of uncertainty, may mitigate these conclusions.[3] However, this is only the case if one interprets the rather vague term *nazar al-faqil*: as referring solely to a current jurist. Unfortunately Bahrānī does not (to my knowl-edge) elucidate what he means by *nazar al-faqih*, but it is perfectly possible that he means by this juristic opinion in the broader sense of the established legal norm. Such an interpretation would imply that it is permitted for a scholar, when searching for the most cau-tious course of action to recommend, to follow the established answer to the question at hand. However, it is recommended (though not obligatory) that he follow what he discovers to be *al-ahwat*. Outside of the Prologues, Bahrānī goes to great lengths to prove that it is permitted to contradict the opinion of past jurists, if they are shown to have been mistaken.[4]

The matter of whether Bahrānī, as an Akhbārī, has a theory of juristic authority is, in my opinion, settled by an examination of his work *'Aqd al-jawāhir al-nūrāniyya*.[5] This work is a series of answers to questions posed to him by his father's teacher, Shaykh Hasan, The first set of questions deals with matters of usul al-fiqh. The fifth of these questions relates to the issue discussed in Chapter One con-cerning the ignorant *mukallaf*. If a mukallof is

1. See above, p. 119 and Bahrānī', *H*, 1, p. 65-88.
2. Gleave, "Marrying Fatimid Women", p. 42.
3. See above, p. 109-111.
4. See Gleave, "Marrying Fatimid Women", p. 48-49.
5. Majlis Library, MS#633, Tabātabā'ī Collection. Hā'irī, *Fihrist*, 22, p. 335-340.

exegetical procedures outlined by Bahrānī, and who provides the community, on demand, with rulings which might enable them to follow the law with confidence of total fulfilment, or at least the knowledge that they are justified before God in their actions. In this section, I outline the evidence for this assumption.

Bahrani's concentration on the status of the ordinary believer should not lead us to conclude that the intended readership of M 1-10 is the community at large. His intended audience is undoubtedly the scholarly elite. It is true that Bahrānī, unlike Bihhahānī, upholds the doctrine that the *mukallaf*, ignorant of the existence of an indicator, is excused if he transgresses the law due to his ignorance.[1] Such a doctrine could be used to justify the, at best, incomplete adherence to the law exhibited amongst the general populace, and thereby obvi-ate the need to know the revelatory texts. The ignorant *mukallaf* is excused and forgiven for his transgressions, but there is no indication that this ignorance is a desirable state. A pardon for ignorance does not mean that scholarship and study of the texts are obsolete. Rather, it is the task of scholars to eradicate this ignorance. On more than one occasion, Bahrānī cites the following *khabar* from Imam Sādiq, who read in "the book of Imam 'Alī":

God did not take away a duty to search for knowledge (*talab al'ilm*) so that he might [also] take away [a duty to] spread knowledge to the ignorant from the scholars (*'ulamā*). [H, 1, 161][2]

The ignorant are excused from the search for knowledge, but the *'ulamā'* have a duty to pass on that knowledge to the ignorant. Bahrānī, of course, concentrates on the term *'ilm* in this report, and as we have seen 'ilm, in Bahrani's theory, is certain indubitable knowledge.[3] The scholars pass on their knowledge, gained from the texts, to the ignorant community. It could be argued that the authority of the scholarly elite is enhanced by such a system, since the scholars deal, not in their personal opinion (*zann*, as in *ijtihād*-based theories), but in knowledge. They are not dissimilar to the Prophet or the Imams, who, though they do not participate in the formulation of the divine law, gain prestige and charisma from being the mouthpieces of God's will.[4]

That this conception of juristic authority is assumed in M1-10 is also

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1. See above, p. 15-23.
2. See also Bahrānī, *H*, 1, p. 81.
3. See for example, above, p. 55-66.
4. This observation (with reference to Sunni theories of judicial authority) has been made by Baber Johansen in an unpublished paper presented at the Second Joseph Schacht Conference on the Theory and Practice of Islamic Law, Granada, Decem her I 99 7.

in certain exegetical techniques can deliver certainty of the law to the individual believer. Underlying his theory is an inescapable division of labour between the scholar, who provides the law (and also follows it), and the believer who follows the scholar's ruling. The idea that the Akhbārīs were essentially "egalitarian" or "anti-hierarchical" is, it is my contention, in need of reassessment. Supporting such a conclusion is the fact that none of Bihbahānī's criticisms of Akhbārī thought concern juristic authority.[1] The criticisms relate to errors in Akhbārī legal theory.

Bahranī's Theory of Juristic Authority

The procedures set out by Bahrānī in Ml-10 are designed to ensure that any legal question, whether addressed explicitly in the revela-tory texts or not, is answered. As discussed previously, these answers (unlike those of a *mujtahid*) are not intended to be reflections of the law in reality; at times an answer may stipulate a course of action which may not constitute simple obedience to the letter of the law. Instead, due to uncertainty as to what constitutes the law, a course of action which will ensure obedience, but may include supereroga-tory (or even superfluous) actions, is made obligatory.[2] At other times, when there is total ignorance of any indicator in the texts which might assess an action, it is permitted to act on the assumption that an action is permitted.[3] Bahrānī's concern in the instances when the texts are perceived to be silent or unclear is that the *mukallaf* is justified in his actions, even if they do not accord with the law in reality.

One question not addressed in Ml-10 is the means whereby these rulings are made known to the conununity. In Muslim legal theo-ries which incorporate the theory of *ijtihād*, the educational qualifications of a person entitle him to give an opinion as to the Lawgiver's assess-ment of an action. This qualified person (the *mujtahid*) acts as an interpreter of the law for the community.[4] For Bahrānī, and Akhbārīs generally, this avenue of justification was, of course, closed.

It is the case that Bahrānī, in M 1-10, does not explicitly address the issue of who is to carry out the necessary interpretative process to discover the most cautious course of action. However, there is, it appears to me, an underlying assumption that the interpreter is a scholar, who is trained in the

1. See below, p. 244-245.
2. See above, p. 105-112.
3. See above, p. 91-96.
4. For accounts of *ijtihād* in Sunni theory, see Hallaq, "Was the Gate"; Hallaq, Legal Theones, p. 117-124 and p. 199-205; Weiss, *God's Law*, p. 681-716; *Zysow*, "Economy of Certainty", p. 459-592.

position within the community; that is, he should be the source of imitation (*marja' al-taqlid*) for all Twelver Shī'ītes. Though, in prac-tice, selecting a single leader and maintaining his authority ran into problems, the ideal of Shī'ī community leadership was expounded by most nineteenth century writers of Shī'ī legal theory.[1]

The close link between juristic authority and the theory of *ijtihād* has led some commentators to argue that Akhbaris, who rejected *ijtihād*, also rejected scholastic authority, in favour of a more pop-ulist expression of Shī'īsm.[2] Akhbārīs rejected the division of the community into *mujtahid* and *muqallīd*, and it would therefore seem plausible to argue that, in so doing, they weakened the intellectual hegemony of the scholarly elite.

A number of factors cause me to doubt this line of argument. The biographies of a number of Akhbāris demonstrate that they were as eager (and at times as reluctant) as Usūlīs to adopt a position of community leadership (*shaykh al-islām, pishnamāz* etc).[3] Second, the Akhbārī position on matters such as the leadership of Friday prayer, the collection of community taxes and the administration of justice was not inimical to juristic authority (as some have argued).[4] Third, the rejection of *ijtihād* may have implied a rejection of a certain ideological justification for juristic authority, but it did not mean a rejection of authority *per se*. Of course, Akhbārīs did reject the *mujtahīd/ muqallid* division, but this did not lead to an automatic rejection of the scholar/layperson distinction. Finally, the rejection of the *muitahid's* ;cann as a legal proof did remove one of the epistemological elements of the theory of juristic authority, but this merely meant that Akhbārīs had to find other epistemological props (and this, as we shall see, was Bahrānī's tactic through his emphasis on legal certainty).

In this chapter, I demonstrate that Bahrānī's theory is not only thoroughly Akhbārī, but is also rooted in a presumption that only a person with training

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1. For the practicality of the *marja'iyya* doctrine after Bihbahānī, see Litvak, Shī'ī Scholars, p. 21-63 and Amanat, "Madrasa and Markerplace". For the development of the theory of *marja'iyya* and *a'lamiya*, see Lambton, "A Reconsideration"; Hairi, *Shī'īsm and Constuutionalism*, p. 62- 65; Moussavi, "Establishment of Marja'iyyat" and Moussavi, *Religious Authorty*, p. 185-216.

2. See Algar, *Religion and State*, p. 35 (The Akhbārī school's "whole tenrlencv was... to restrict the role of the ulama"); Newman, "Rationalist and Traditionalist Schools", introduction; Newman, "Akhbārī-Usūlī Dispute, Part 2", p. 258-260; Momen, *Shī'ī Islam*, p. 225: "The Akhbārī position severly restricted the prerogatives of the ulamā",

3. For example, al-Hurr al-'Amilī was *shaykh al-islām* of Isfahan; Muhsin Fayd al-Kashani (d. I 091/1680) had close relations with the Safavid state; Bahraānī himself sought the protection of political leaders. See above, p. 10.

4. See, for example, my analysis of Bahrānī's views; Gleave, "Akhbārī Shī'ī Jurisprudence", ch. 7 and B.

(18)
The Authority Of The Jurist*

Robert Gleave

Ijtihād, the name given to a jurist's efforts to find a ruling, utilising the available exegetical techniques and presumptions laid out in Bihbahānī's theory, was undoubtedly linked to a theory of juristic authority.[1] By specifying that only a jurist, trained in a particular manner and possessing certain qualities could interpret the sources of God's law, and that others must bind themselves to following the jurist's opinion, those that proposed the theory of *ijtihād* had acquired an ideological tool with which to promote juristic authority within the Shī'ī community over rival claims (such as those of Sufi shaykhs, tribal chiefs and would-be political leaders). The extent of the jurist class's success in this endeavour was dependent upon historical cir-cumstances, and the varying degrees of courage that scholars showed, at different points in time, in advancing their claims.[2] Developments in the theory of *ijtihād*, from its introduction into Shī'ī legal theory until the time of Bahrānī and Bihbahānī, display an ever increasing tendency to base claims to community leadership in the absence of the Imam upon a firm ideological footing.[3] After Bihbahānī and Bahrānī, this movement culminated in a loose, but recognisable, hier-archy within the scholarly class with the most learned scholar at the apex of a triangle, the base of which was occupied by the majority of students: lower levels deferring to higher ones. In theoretical terms, this was expressed in a theory of *a'lamiyya* (the leadership of the most learned) and the proposition that one scholar should hold a pre-eminent

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1. For Sunni theory and its link with juristic authority, see Calder, "*Ikhtilāf* and *Ijmā*'"; Stewart, *Islamic legal Orthodox*;·, p. 35-60 and p. 210-217; Weiss, Spirit, p. 113-144 and Kamali, *Principles*, p. 366-394.

2. Accounts of the Shī'ī *'ulamā*'s attempts at gaining increased community influence in the pre-modern period include Algar, *Religion and State*; Hairi, *Shī'īsm and Consututionahsot*; Arjomand, *Shadow ef God*; Litvak, *Shī'ī Scholar*, Mornen, *Shī'ī Islam*, 86- 146; Cole, *Roots*.

3. See Calder, "Structure of Authority", p. 171-243 and "Doubt and Prerogative". Other references for theoretical aspects of Shī'ī juristic authority include Eliash, "Ithnā'asharī-Shī"ī Juristic Theory"; Maddung, "Authority"; Sachedina, *The Just Ruler*, passim.

at a disadvantage. Niraqi's life and works help demonstrate the continued popularity in Isfahan, however, of a multiple code for religious discourse. Admittedly, this intellectual tradition was elitist, but enough of an elite survived 1722 to make its continuance possible. The rationalist-gnostic thinkers of Isfahan excoriated Akhbaris with their single code of discourse as narrow and stunted, prevented by their scripturalist pride from ascending, through the mastery of metaphysics and the philosophical sciences, into the realm of the angels. At any one time and place, these two sorts of discourse, based on a single code versus multiple codes, were taken up by social groups as elements of Identity and as means of differentiating themselves and even dominating other groups. Arjomand suggested an ethnic difference between Arab mojtaheds in Iran and local Iranian clerical notables who adopted Akhbarism in the seventeenth century. But the situation was far more complex than that, with ethnic groups, social classes, and even generational cohorts alternately adopting one or the other sort of discourse for their social and Intellectual purposes.

The strict constructionists, such as the conservative Akhbaris in Twelver Shi'ism or the Hanbalis in Sunnism, acted as a monolingual group. They wished to restrict discourse to those genres that could be elaborated by a common-sense, literalist approach to scriptural texts. They formed a social group, recognized one another, studied with one another, and often even intermarried with one another's families. Their approach required the least rigorous intellectual training and the least imagination, and it promised a minimum of doubt or cognitive dissonance. The divine scripture could answer all questions about human behavior unambiguously, if only the right passage could be found and literally applied, Akhbaris argued. As users of only a single code, Akhbaris or scriptural literalists manifested great distrust of those scholars who learned and accepted another cultural system, such as dialectical or demonstrative logic. On the other hand, rationalists or Usulis, as a class of clerical intellectuals, valued the freedom and mental challenge the learning of further cultural codes could bestow upon them. In the Safavid period, of course, the learning of multiple codes and code-switching attained something of a zenith in theosophists such as Molla Sadra, who drew on dialectical, demonstrative and mystical systems, mixing them together with the scriptural code. Such an ability required unusual intelligence and a high degree of training, and so attracted elite intellectuals and some clerics. Niraqi clearly belongs in this tradition, and in his work on ethics he self-consciously states that his definitions of virtue and the good are intended to be general enough to reconcile the views of three groups of scholars: the people of theoretical knowledge (*ahl an-nazar*), the people of ecstatic states (*ahl al-kashf wa al-hāl*), and the people of literalism (*ahl aā- zehir*). These are obviously the philosophers, the Sufis and the scripturalists such as the Akhbaris. (Jāmi', 1:72.) The strict constructionists with their monocode however, proved unreconciled and generally pilloried Molla Sadra and the theosophers in his tradition.

Thus, the advocacy of a single, scripturalist religious code can function as a social control mechanism. If an Akhbari such as Yusof al-Bahrani forbade the study of rationalist subjects such as philosophy and theology, the prohibition had to be policed. This gave ulama of the Akhbari school a platform to assert dominance over rationalist scholars, and, indeed, to stigmatize them as sinners. The conservative Akhbari ideology possessed the advantage of having a populist appeal, giving lay believers the right to make many decisions that Usulis said only elite mojtaheds were qualified to make. The Arab Shi'is in Karbala, with their ties to the local Arab populace, appear to have employed their monocode to place immigrant elite Iranian scholars

mystic knower and a true Sufi.

In thinking about these three camps of Twelver men of the cloth--the Akhbaris, Usulis, and Sufis, I would like to pursue the analogy I mentioned in the introduction with monolinguality and multilinguality. Sociolinguists have noted that persons who speak only one language tend to show suspicion toward the bilingual and multilingual. Those who command more than one language or code clearly are either "not from around here" or have fallen under foreign influences. Moreover, those who are fluent in more than one language tend to engage in code-switching. We have all heard Iranian immigrants to the United States mixing English words into their Persian sentences and vice versa. Again, the monolingual person shows disdain for this practice of code-switching, denigrating it with epithets such as "Pinglish" or, in another example, "Franglais." But code-switching has been shown to be a highly sophisticated practice, wherein borrowings are subconsciously guaged according to social context, rather than a random bastardization of the languages involved. Only someone who genuinely controls both languages can effortlessly (and sometimes unwittingly) move from one to the other in the midst of a sentence. Bilingual or multilingual speakers tend to switch codes only when conversing with another person who is bilingual. Thus, a French-educated Lebanese switches back and forth from Arabic to French with persons who have received a similar education. Code-switching can emphasize social solidarity among a group with a shared experience of bilinguality, an experience which helps to define them as an elite (as in the case of the French-educated Lebanese) or as a marginal group (as in the case of, say, gypsies).[1]

The analogy I propose is between monolingual communities and multilingual ones, on the one hand, and between scriptural literalists and cosmopolitan rationalists or mystics, on the other. Just as a language is a code governed by a system called grammar, I am suggesting, so the various religious disciplines mentioned above form part of cultural codes. Thus, dialectical discourse constitutes a code generated by a basic system of synthetic principles, and this way of thinking when switched with the scriptural code makes dialectical theology or kalam possible. Again, peripatetic philosophy is feasible only with the adoption of a code of communication generated by a system of demonstrative logic. Mystical and illuminationist thought often required the recognition of a code generated by deliberate contradiction, a blurring of the conceptual boundaries recognized both in common-sense discourse and in highly rational disciplines.

1. Gumperz, *Discourse Strategies*, especially chapters 3 and 4.

king acts in moderation, just as In the case of the irascible faculty itself, he provides protection to others in society from the Hobbesian war of all against all. If one sees the irascible faculty, on the Aristotelian scale of extremes, as a totem for the king, then Niraqi's seeming penchant for self-contradiction when discussing this institution evaporates. Kings are weak or oppressive or good depending upon where they fall on the scale of extreme and moderation, just as is the faculty that symbolizes them. Figure 1 expresses this argument with extension to other major social groups discussed by Niraqi.

Figure 1

Social Group	Faculty	Symbol	Extreme of Deficiency	Extreme of Excess	Golden Mean
ulama	intellective	angel	narrow	demagogue	polymath
Sufis	intellective	angel	antinomian	Claims revelation	theosopher
kings	irascible	predator	cowardice	tyranny	protector
merchants	appetitive	livestock	(laziness)	usury	provider
infidels	appetitive	livestock	(abasement)	false pride	convert

This attempt to systematize clues spread throughout Niraqi's book is, admittedly, not without problems. Sometimes he does not identify a social group in terms of a single faculty or attribute, and sometimes he gives only one extreme and the mean, without specifying the other extreme. Further, these social groups are made up of human individuals who possess all three faculties, which could easily complicate the analysis. But I maintain that Niraqi's discourse about these groups as groups betrays a tendency to employ the faculties as totemic operators. Like the faculties themselves, no social group is inherently worthless. Rather, it can become virtuous if it avoids the two extremes and attains a mean. This task might require a profound change in identity--Niraqi makes it clear that he thinks infidels can only attain virtue by converting. Further, ulama who restrict themselves to the transmitted sciences are not cultivating their intellective faculties as they would be in studying metaphysics and philosophical ethics. By definition, the strict Akhbari school commits a vice in failing to cultivate the intellective faculty, and conservative Akhbaris are therefore deprived of the mystical gnosis that lifts the theosopher to the realm of the angels. The Sufis, likewise, go astray if they forsake the rational sciences for an ecstatic antinomianism. On the other hand, there is no difference between an Usuli

perhaps others in his intellectual tradition, as totemic operators. Here the "nature" being drawn upon is human psychology as understood by the Greco-Islamic tradition, which they considered, despite its locus in humans, as no less a natural given than animal behavior. Moreover, it is perhaps not too far-fetched to see a genuinely totemic aura about these faculties. I want to draw attention once more to the adjectives by which Niraqi characterizes them. The intellect is angelic; the irascible faculty is leonine or predatory; the appetitive faculty is beastly (*bahimiyyah*; the word indicates quadrupeds, but its plural implies livestock or cattle); and the faculty of cunning is demonic. Here we have a symmetry in that the two extreme terms are represented by supernatural beings, angels and demons, whereas the two middle terms are represented by the natural animal categories, predators and livestock. These adjectives reinforce my argument that there is something totemic about the way Niraqi uses the faculties to explain social vices and virtues.

I find scattered evidence that particular groups of people, in Niraqi's view, exemplify the dominance of specific faculties. One difficulty here lies in the difference between the generally Platonic schema Niraqi inherits and transmits overtly, wherein the intellective faculty is associated with the king or philosopher, and the quite different schema Ntraqi subconsciously projects out of the social conditions of his own place and time, wherein kings were seldom philosophers.[1] If one follows the clues given by Niraqi's use of adjectives, it becomes clear that kings are actually analogous to the irascible faculty, with its characteristics of attack and self-defense. Ulama are symbolized by the intellective faculty. Merchants are associated with the appetitive faculty. Now, it must be remembered that the faculties' ethical evaluation is determined by a scale that includes two extremes and a mean betwixt them. Thus, a human being whose irascible faculty has gone to an extreme of deficiency would be a coward, whereas an extreme of excess would produce a tyrant. Normal human beings, who do not usurp others' rights but prudently defend their own, have conditioned their irascible faculties to moderation. The same dialectic of two extremes mediated by a mean appears to apply to the social groups Niraqi discusses. An atrophy of the irascible faculty would prevent the king from leading a just holy war, whereas its uncontrolled expression would turn him into a despot. When the

1. The overt statement Niraqi makes is that the intellective faculty is like a king (*malik*) or philosopher (*hakim*), the irascible faculty like a dog, the appetitive faculty like a pig, and the faculty of cunning like a demon; see Niraqi, *Jāmi'*, vol. 1, p. 63. Such language reinforces my general argument about the totemic nature of these categories.

monarch so as to receive his protection? Does he condemn wealth and the wealthy in one breath and praise merchants for providing food in the next? Are prayer leaders almost universally venal and yet are they both good and necessary? Are ulama both exempt from the pettiness of the zero-sum gain and yet subject to abasement through false pride? Is high position a curse or a blessing for the religious scholar? Are mystics charlatans or the only persons close to the angels?

One resolution of these contradictions, some of which are only apparent, would be to blame the adab method of quoting and excerpting from previous authors. Since Miskawayh and al-Ghazali did not always see eye to eye, drawing on both in the same compendium would open the way to many contradictions. But this approach requires the conclusion that the compiler had no sense of consistency, and did not weed out major contradictions when choosing or paraphrasing passages from diverse past works. Moreover, by insisting that the work can never overcome the atomization of information implied in the method of selective quotation, this objection reduces the text and its message to incoherence. Yet Niraqi, a man trained in logic and philosophy, seems unlikely to have produced or been satisfied with an incoherent treatment of ethics.

Rather, I believe that behind the seeming contradictions in Niraqi's views of society and ethics lies a coherent model that for the most part performs in a consistent manner. This model is the faculties of the soul themselves. Levi-Strauss and others have long since established the tendency of human beings to select an arbitrary set of natural symbols to represent social distinctions, a phenomenon in primitive societies called totemism. Thus (very simply put) lions are to eagles as tribe A is to tribe B.[1] Sociologist Barry Schwartz has argued that such analogies between natural conditions and societal divisions are employed by modern societies, as well. In particular, he has pointed to the use of spatial conceptions of "high" and "low" drawn from the physical world to indicate social dominance and inferiority. For instance, the U. S. electorate has tended to elect tall men president, and working classes are called "lower classes." In this case, he asserts, spatial differentiations are being used as "totemic operators" with which to think about social distinctions.[2]

I would argue that the faculties of the soul functioned for Niraqi, and

1. See Claude Levi-Strauss, *The Savage Mind* (Chicago: University of Chicago Press, 1966), especially chapter 2, "The Logic of Totemic Classifications."
2. Barry Schwartz, Vertical *Classification: A Study in Structuralism and the Sociology of Knowledge* (Chicago: Chicago University Press, 1981), pp. 28-29, 36.

short ethically, caught up in the zero-sum game of eighteenth century economic and political competition. Non-Muslims are afflicted with pride and rebellion. Even the Muslim rich fall into hypocrisy and the illusion that salvation can be had for a price. Muslim monarchs are often tyrants and despoilers (especially in the eighteenth century?). Sayyeds begin depending on their lineage for charisma rather than cultivating a personal sense of piety. Ordinary worshippers seek to be seen of men rather than of God. The ethical ideal of the God-realized scholar has a social location in the literate intermediate strata to which Niraqi belonged. His ethics are not as abstract as it first appeared. Yet, as I shall attempt to show below in my conclusion, such a surface reading of Niraqi's text does not clear up all the anomalies and seeming contradictions. We must seek further for the models by which he depicts social groups and the dynamics governing that depiction.

Conclusion

I hope I have laid to rest the myth of a narrow, literalist Akhbari culture dominating eighteenth century Iran before Behbahani's Usuli revival of the 1760s and 1770s. Some scholars of post-Safavid Isfahan, from Hazin Gilani to Esma'il Khaju'i and Mohammad Mehdi Niraqi, kept alive the cosmopolitan religious culture of the School of Isfahan throughout the eighteenth century. These polymaths excelled in every science from hadith-reports from the Prophet and Imams to Avicennian metaphysics, from Euclidean geometry to illuminationist mysticism. Contrary to the monochrome picture painted by Momen and Arjomand in the works cited above, the Isfahani and Kashani scenes appear to have been religiously diverse and intellectually rigorous. Philosophy (*hikmah*) was not dropped from the Isfahani seminaries' curriculum, and one does indeed find gnostic-rationalist mojtaheds on the pattern of Baha' ad-Din al-Amili, in the very persons of Hazin, Khaju'i, and Niraqi themselves.

Two final tasks, which I set myself at the outset, remain somewhat unfinished. First, Niraqi's attitude toward social groups, his ideological model if you will, remains a bit obscure because so many seeming contradictions remain in the way he depicts these groups. Second, I want to work out the social and linguistic meaning of the struggle between literalist Akhbaris and the rationalists a bit more rigorously. As to the issue of the depiction of social groups, we have to ask whether Niraqi simply contradicts himself. Does he say in one place that kings are usurping tyrants from whom gifts ought not to be accepted, and in another that a sovereign's justice is the most valued sort, and a believer must strive to gain the respect of his

nevertheless not be blameworthy. "Whoever achieves fame loses this world and the next, except for those whom God has made renowned in order to spread his religion, without any need to seek fame." (Jāmi', 2:360.) Again, the author appears to be making a distinction between those ulama mature enough to employ wealth and power as means to good ends, and those seduced by them as goals in themselves.

Niraqi's vision of religious institutional life, moreover, requires ulama to hold various offices and provide leadership. He believes in the necessity of holding Friday congregational prayers even during the Occultation of the Twelfth Imam, which in turn implies the post of Friday prayer leader in cities such as Isfahan, a powerful and visible religious office.[1] In a passage on the sin of rebelliousness (*al-baghy*) against the proper religious authorities, he says that Jews, Christians, and the Quraysh polytheists have all been consigned to eternal damnation because of their refusal to obey the Prophet and the Imams. Likewise, some Muslims (the Sunnis) have done wrong to other Muslims. Such rebelliousness, he prescribes, can be overcome by contemplating Qur'an verses and oral reports concerning the necessity of obeying God, the Prophet, the wielders of authority, and others, including the ulamā and Islamic legal specialists (*fuqahā*), who serve as the deputies (*nuwwāb*) of the Imams in the time of the Occultation. (Jāmi', 1:401.) Thus, Niraqi reveals his belief in taqlid, or emulation of ulama by lay believers, a largely Usuli doctrine. Its social implication is, obviously, a leadership position for Usuli mojtaheds.

This survey of attitudes toward various social groups demonstrates Niraqi's edited system of ethics to have a clear set of social biases. The best of men are those ulama who master all the sciences of revelation and philosophy, cognizing within themselves the universals and so attaining an almost angelic state. Such persons will have only middling wealth and status, enough to avoid shame but not enough to be seduced by this world. Yet even within the ulama, some pridefully restrict themselves only to the transmitted sciences of the revelation (one suspects he means the conservative Akhbaris), and so deprive themselves of an ability to cognize the universals which can only come from the philosophical sciences. Even some rationalist ulama are seduced by this world into becoming little more than demagogues in desperate search of authority over and recognition from the people.

Aside from the ulama and the sermonizers, other social groups often fall

1. Niraqi, *Jāmi'*, vol. 3, p. 360; for the eighteenth century controversy in Twelver Shi'ism over the legitimacy of Friday prayers during the Occultation, see Cole, *Roots of North Indian Shi'ism*, chapter 4.

Niraqi proves in the end, then, to be an Aristotelian after all in his attitude toward wealth and this world. He depicts the ideal style of life as that of the propertied intermediate strata. The poor masses have too little wealth and position to gain the sort of respect that allows a virtuous and rewarding life, whereas the truly rich and powerful are unduly tempted to see their treasures and authority as ends rather than means.

Elsewhere in his volume Niraqi gives a different picture of the ulama and mystics. He views envy, with its root cause of love of this world, as an affliction of almost all social orders and occupational categories. Every group envies its peers and competes with them. Niraqi sees society as a zero-sum game, in which a gain for any player comes at the expense of a loss for another. Any one person can acquire more money or a higher post only by depriving someone else of it. Such an economic and sociological theory is incorrect if applied to preindustrial societies indiscriminately, since economic growth certainly occurred and outpaced population increases in some eras and areas. But one suspects that eighteenth century Isfahan may well have approximated such a zero-sum society, given the economic dislocations caused by constant warfare and political instability.

In any case, Niraqi saw a contrast between most professions and religious scholarship. The next world, after all, is infinite and cannot be used up, not at all resembling a zero-sum game. Religious knowledge regarding the next world retains this remarkable inexhaustibility even if gained in this material world. One who loves the knowledge of God, his attributes and actions, will not envy someone else who also comes to know these things. For religious knowledge is not used up by many knowers. One object of knowledge can be known by a million knowers, and each is delighted that the others know it. Such religious knowledge is enriched, rather than diminished, by the fellowship of sharing. The ulama concerned with the next world, then, experience no envy. Their object of devotion has taken them out of the sordid zero-sum game played by the worldly. The only ulama who might experience envy are the ulama of this world, who employ their knowledge to seek wealth and high position, which lands them back in the zero-sum game. The mystic knowers (*al-'ārifīn*) are free of envy. (Jāmi', 2:209-10.) I stress the identity of the true ulama with the true mystics, since Niraqi frequently employs mystical and gnostic codes. He speaks of the highest stage of passionate love ('ishq) for God as the beatific vision (a Sufi doctrine legalist Imamis rejected), and talks about union (*ijtihāid*) with God, quoting Persian poetry. (Jāmi', 3:146.)

Moreover, some ulama who possess high position and wealth may

Niraqi proves critical, moreover, of his peers In the religious professions as weli, painting them as driven by petty jealousies and a desire for popular acclaim. He thinks very nearly all leaders of prayers afflicted by such vices, and discovers them in sermonizers as well. He also finds many of his colleagues insufferably narrow in their religious culture, yet convinced that they have mastered the essentials. He denigrates the self-proclaimed mystics, whether wandering mendicants or Sufi pirs who assert their own divinity and access to revelation. Even the worshippers who follow men of religion often fall victim to pride and hypocrisy.

Yet the portrait of Niraqi that emerges from these passages, as hostile to the wealthy and powerful (as well as to wealth and power), hypercritical of the ulama establishment, and anti-Sufi is something of a caricature. It must be tempered with many reservations. For instance, along with the image of the king as a grasping tyrant, many passages talk in a much more favorable manner about monarchs. Niraqi writes that "The most noble sort of justice is that of the king, which is also the best sort of politics." Elsewhere he observes that a man needs a king to protect him from rogues. (Jami', 1:121-22, 2:364). He also provides a place for merchants and the wealthy in the scheme of things, saying that God inspires merchants with a desire for wealth in order to assure food supply, since this desire causes them to endure the hardships of travelling over difficult terrain with foodstuffs from regions of abundance to those of scarcity. The reprehensible aspect of desire for wealth is only charging usurious interest. (Jāmi', 3:263.) For all his ascetic ardor, he does allow that a person needs at least a modest position in life. He cannot do without a servant to wait on him, a friend to help him, a king to protect him from the oppression of the wicked. He must therefore attain the sort of social position that will inspire loyalty in his servant, constancy in his friends, and a desire to defend him in his monarch. This sort of position is, like permissible wealth, a means to an end, not loved for its own sake. Niraqi observes that one keeps a toilet and a wife in one's house for the satisfying of needs, but one is hardly in passionate love with them for themselves. (Jāmi', 2:364-65). In the same way, a certain amount of wealth and position are ethically allowable, but only as means. In the introduction to his book, Niraqi notes that the Islamic philosophers generally supported an Aristotelian position that virtue and happiness apply to the body as well as the soul, and concurs as long as such bodily comforts are seen as means rather than ends. (Jāmi', 1:70-71.) Just incidentally, the analogy concerning wives speaks volumes for male conceptions of matrimony in eighteenth century Iran!

by saying that all wealth ultimately belongs to God. They claim the highest ranks of divine knowledge and certainty, even going so far as to assert ability to perform miracles and reception of revelation (*wahy*) from God. They deride the ulama as veiled from discourse about the Deity, and lord it over the lay believers, whom they dismiss as hired labor. Some deliberately commit public sins in order to achieve "humility." Although some have genuinely begun a spiritual regimen of strict discipline, they do not complete the journey. Ignorant that God is hidden in seventy veils of light, they think they have arrived at the divine presence after piercing only one or two veils. Those who pretend to be mystics dress and act in the same manner as the true mystics, foolishly hoping that outward imitation might result in inward illumination. (Jāmi', 3:25-29.)

Finally, Niraqi closes his discussion of the prideful with a few words about the wealthy. Some of these build mosques, seminaries, Sufi convents, and bridges with illicitly gained wealth out of a desire to immortalize themselves rather than with any pious motive. They vainly hope thus to win the forgiveness of God. Another sort of prideful wealthy person only gives to the needy if he can make sure they know the source of munificence, so he can attain fame as a philanthropist. The stingy are also afflicted with a sort of pride, refusing to spend money on their families or on pious duties such as performing the pilgrimage. (Jāmi', 3:30-31.)

These passages, some original and some edited from Kashani, suggest that Niraqi supports an attitude of world-rejection. He often links desire for wealth and high position with hypocrisy. Indeed, he depicts the possession of great affluence in itself as a sign of debasement and God's abandonment. Christian merchants are misled by their wealth into the false and sinful conclusion that God loves and approves of them, and the Muslim wealthy are tempted to attempt to bribe God with philanthropy into forgetting their moral lapses. Nor do the powerful escape criticism. Niraqi uses "tyrants and kings" (*zalāmah wa salātīn*) with a parallelism that suggests he sees them as identical, and suggests that it is sinful to accept patronage from such tainted sources. The very temptation to become close to kings constitutes a major source of clerical hypocrisy. The powerful Sayyeds, a caste of hereditary prominence in Muslim societies, does not escape his criticism for their assumption that piety can be had through lineage. Niraqi's ethics therefore have a built-in sociological bias against the values of the wealthy and powerful, for whom wealth and power are inherently good and signs of God's favor. Niraqi, as a middling sort of person, appears to be loading the dice against those who considered themselves his social betters.

commercial transactions in law and the judgment of court cases between litigants, exerting themselves only in handing down decisions. They neglect dogmatics and ethics, and perhaps even other issues in law such as ritual worship, and ignore their own hearts' need to acquire virtues. Some ulama very nearly achieve the roundedness necessary to virtue, but fail at the last moment. Some, for instance, master all the branches of the Islamic revelation except metaphysics (al-'ilm aI-ilhhi) and ethics, failing to preserve themselves from sin both internally and externally. Some go further and master all the sciences, both rational and revelational, and outwardly obey the law, but inwardly neglect the attributes of the heart. Within these ulama, Niraqi laments, traces of the satanic remain about which they remain unaware. (Jami', 3:15.)

Niraqi's discussion of the foibles of the ulama is not very original, but it is worth briefly reviewing for what it tells us about the criticisms he thought worth preserving. Unlike Molla Mohsen Fayz, Niraqi discusses the faults of ulama under the heading of haughtiness or *ghurar*. Aside from pridefully restricting the range of their religious culture, ulama fall into haughtiness in some other ways. Some prideful ulama secretly desire to become close to rulers and nobles, though outwardly they avoid doing so, because being seen as sycophants would detract from their station in the eyes of the common people. Hypocritically, despite the yearnings in their hearts, they then consider their own avoidance of the mighty to be the essence of piety. Prayer leaders often fall into pride. They think of themselves as those who spread and exalt the divine Word. But if someone enters the mosque who is more learned and pious than they, they are furious. They allow a sordid admixture of love for high position and leadership in their pious intentions. Niraqi thought it rare to see a prayer leader whose reason for leading prayers was simply a desire to draw near to God. (Jāmi', 3:19). Sermonizers form the fourth group of the supercilious. They are particularly given to false pride and hypocrisy. Some urge good qualities on people when they themselves possess fewer of them than ordinary Muslims. (Jāimi', 3:21-22.)

Not only the religious leaders, but also the followers could fall victim to pride. Worshippers sometimes went to extremes in worrying about ritual pollution, or fasted, prayed, and made the pilgrimage ostentatiously. (Jāmi', 3:23-25.) The penultimate group in this list of the chronically prideful are the self-proclaimed mystics or *mutasawwifah* (as distinct from genuine mystics or *'urafā'*). These include wandering mendicants such as the qalandars, with their noisy horns and antinomian ways. Some self-proclaimed mystics accept the wrongfully gained wealth of tyrants and kings, justifying it casuistically

His repetition of this old argument is, perhaps, an attempt to justify the pious poverty into which so many Twelvers had fallen as a true sign of God's grace, and to stigmatize wealthy Christian merchants as having been forsaken by the Deity to disport themselves as they pleased. The ascetic, world-denying thrust of his comments suggests a Platonic code, but, as we shall see, Niraqi's discourse is more complex than that.

The second contingent of the prideful is supplied by corrupt believers. These hold that merely because of their faith God will forgive their misdeeds. Some may also have too much pride in their high station, for instance the Sayyeds or descendants of the Prophet who do not live up to their lineage. Niraqi insists that God loves the obedient and hates the rebellious, without regard to ancestry. Attempting to live on one's ancestor's righteousness, he remarks, is like trying to live on the food they ate. (Jāmi', 3:11-12.) Here, again, a dimension of social conflict appears to underlie this attribution of the vice of pride to Sayyeds in particular. Said Arjomand has demonstrated that the mojtaheds of Safavid Iran had had to struggle against the charismatic Sayyeds for leadership and control of religious resources.[1] Niraqi, like Behbahani and several other major mojtaheds of the eighteenth century, made no claim to Sayyed status (as is witnessed in the preference for such titles as "Aqa" and "Molla," as opposed to "Mir"). Niraqi, as a first-generation cleric from a family of provincial Iranian bureaucrats, was clearly at a disadvantage within Isfahan's religious establishment in his competition with clerics from old ulama families of Sayyed background. The inclusion of this passage, echoing the traditions of the prophet about the criterion for prominence in Islam being piety rather than lineage, bolstered his own position.

The third group prone to pride is the religious scholars or people of knowledge. Niraqi follows Molla Mohsen Fayz in saying that one of their more common prideful practices is deliberately to restrict their range of knowledge for some worldly purpose. For instance, some study the rational sciences such as theology, but eschew philosophy, concentrating instead on dialectical debating techniques so that they can show off their sparring ability in gatherings. Some make the mistake of specializing in narrow preliminaries, such as grammar or logic or poetry, asserting haughtily that knowledge of the divine Law or philosophy depends on these skills. They remain unaware, Niraqi complains, that one should devote oneself only sparingly and as required to the means, focusing instead on the goal. Then there are the lawyers within the ulama, who restrict themselves to the art of

1. Arjomand, Shadow of God, pp. 144 ff.

emphases are often quite different.[1]

The definition of such pride, or, literally, self-deception, is to think one is doing the right thing when one is really giving in to passions. This surrender to the lower impulses occurs because of two ethical errors. First, the soul believes that it is doing good, when it is not. Second, the soul gives in to its love of things pleasing to the appetitive and irascible faculties, such as high position, in the mistaken belief that they will result in an eternal reward. The first error is a disorder of the intellective faculty, deriving from a misperception of evil as good. The second is a disorder of the appetitive and irascible faculties, in which they are allowed to go to extremes rather than being curbed. The opposite of pride is knowledge and self-denial (*zuhd*). (Jāmi', 3:3-4, 31).

Niraqi specifies seven groups of people who are especially prone to the sin of pride. The first consists of unbelievers or non-Muslims. Non-Muslims who attain great wealth often make the argument, he says, that their wealth Is a sign of God's love for and pleasure with them. Niraqi energetically disputes this quasi-Calvinist doctrine. Rather, he argues, a vast accumulation of material goods signals abasement, since God protects his loved ones from the things of this world-just as a kind father forbids a sick child rich and tasty foods. The cure for this sort of pride, he concludes, is the realization that success in this world is a sign of abasement, whereas detachment from material things can help one receive divine grace and draw near to God. (Jāmi', 3:9-10.)

Even if Niraqi here is transmitting received ethical tradition rather than originating a new argument, his inclusion of this passage indicates that it possibly held special relevance for his own, contemporary society. He lived at a time, certainly, in which thousands of old, established Twelver families in the Isfahan district were displaced and reduced to penury. Although the Armenians of Julfa and other mercantile non-Muslim groups also suffered during the eighteenth century, the general downward mobility of Twelver families may have highlighted the existence among the Christians of at least some very wealthy individuals. Armenian merchants, after all, had a mercantile network that stretched from Isfahan into the Ottoman Empire and Europe, on the one hand, and into Bengal and points east, on the other. Niraqi perceived non-Muslims' persistence in unbelief as an example of overweening pride, and their ability to point to worldly success at a time of economic hardship for most Iranians only compounded their haughtiness.

1. Mohammad Mohsen Fayz Kashani, *al-Mahajjah al-baydā' fi taMdhīb al-ihyā'*, 8 vols. (Beirut: Mu'assasah al-A'iami li'l-Matbu'at, 1983), vol. 6, pp. 291-357.

beneficial of all. (Jāmi', 1:53-59).

Niraqi organized his work in an original fashion, treating each vice or virtue according to the human faculty that generated it. He recognized the three Platonic faculties of the soul, as well as a fourth. These included the angelic intellective faculty, the leonine irascible faculty, the beastly appetitive faculty, and the demonic faculty of cunning. Despite some pejorative adjectives, Niraqi recognized that each faculty produced virtues when controlled and made moderate, and vices when allowed to go to extremes. The dynamics of his ethical psychology do not, then, differ from the Greek tradition. He noted that the purpose of ethics is not to abolish any of these faculties, but to keep them to the mean, avoiding excess. The destruction of the irascible faculty, for instance, would have the unfortunate effect of making holy war or jihad against the infidels impossible. (Jami', 1:58, 61.)

Niraqi's approach to ethics stands within the philosophical tradition of Avicenna, Miskawayh, Tusi, Molla Mohsen Fayz and other Twelver thinkers who switched scriptural and Greek philosophical codes. He accepts Greek ideas about the psychology of vice and virtue and about the definition of virtue as a mean. He propounds the "scientific mysticism" of the Avicennian tradition, which sees the cognition of universals as a way of perfecting the soul. He cultivated the study of metaphysics and the natural sciences, which aids in this cognitive ability, not only for secular, but also for theosophical purposes.

Pride and Social Groups

Obviously, a short study such as the present one cannot aspire to analyze the whole of Niraqi's massive three-volume opus on ethics. But in keeping with my concerns both with the social history of ideas and with the elaboration of cultural codes, I will focus on the way in which he relates ethics to contemporary social groups and the place he gives to the study of ethics as a cultural code. Of course, many of his discussions of particular vices and virtues have an abstract purpose in identifying from which of the faculties they derive and how they arise from shifts on the spectrum of moderate to extreme. But he treats some vices more concretely, talking of the manner in which specific occupational groups fall liable to them. The best example here is pride or conceit (*ghuruir*). Here he follows in a general way the discussion of this issue by the seventeenth-century Akhbari, Molla Mohsen Fayz Kashani, in his reworking of al-Ghazali's *Ihyā'* entitled *al-Mahajjah al-baydā'*; but Niraqi's organization of the material and his

gathered together in this book the essence of that which was revealed in the true Revelation, along with the cream of that which the mystics (*ahl al-'irfān*) and philosophers expounded, In a manner such that the eyes of seekers are attracted."[1] The book begins with an announcement of deliberate cultural code-switching, an art cultivated by practitioners of polite letters on the grounds that quotations from diverse genres were less likely to pall than uninterrupted expository prose. Literalist advocates of a scriptural monocode might find blasphemy in the juxtaposition of Qur'an verses and sayings of the Imams with ethical maxims drawn from Plato, Aristotle, Avicenna and Miskawayh, but rationalists such as Niraqi delighted in such diverse intertextuality, and thought their audience would, as well.

The solidly philosophical and theosophical basis of Niraqi's ethical system is demonstrated by his adherence to the doctrine of moral and intellectual perfection through the cognition of the realities of things. In the tradition of Avicenna and Miskawayh, the cultivation of the philosophical sciences was necessary, along with the curbing of extreme emotions and vices, for moral perfection. Niraqi explains that when the seeker loses his desire for material things altogether he is filled with divine knowledge (*al-ma'ārif al-ilāhiyyah),* as well as by ecstatic feelings of divine bliss. At this point the realities (*haqdi'q*) of things take root in the believer's intellect. "When he has reached this goal, he is ready to attain the highest stage, the vicinity of the host on high, which is ineffable." (*Jāmi'*, 1:68). Medieval Muslim authors, such as Miskawayh, identified this highest stage of human beings' moral evolution as the first angelic plane, and they referred to those few who attained it as divinized (*muta'allihūn*).[2] Niraqi keeps the general schema of the philosophers, wherein the cognition of universals plays a part in the salvation of the soul, leading the believer close to the divine.

Niraqi's beliefs about the power of Islamic and theosophical teachings to change character lead him to come down on the "nurture" side in the controversy over whether character is inherent or learned. He admits that some aspects of character, particularly the theoretical faculties, cannot be easily changed, and archly comments that quickness of mind cannot be altered, as is proven by some students. Because the study of ethics aims at improving character, upon which true life for human beings depends, Niraqi argues that this branch of knowledge is the most noble and the most

1. Niraqi, Jāmi' as-sa'ādat, 1:34. Hereafter references to this work will be given in parentheses in the text.
2. Abu Ali Ahmad ibn Mohammad Miskawayh, *Tahdhīb al-akhlāq*, ed. Constantine Zurayk (Beirut: American University of Beirut Press, 1966), pp. 69- 70, 169.

system to his society. Niraqi's attitudes toward monarchs, other clerics, Sufi mystics, and the wealthy tell us much about his values. My use of this book for the purpose of eliciting the attitudes of a particular era, it might seem, could be faulted. It can be objected that Niraqi's work is not particularly original, that he based it largely on Molla Mohsen Fayz Kashani's reworking of al-Ghazali's *Ihyā' 'ulūm ad-dīn* (The Revival of the Religious Sciences) and other sources. I would meet this important objection in several ways. First, the Idea that a work should transmit previous authorities rather than initiating an original argument is common to pre-print manuscript culture all over the world. Often, an author made a personal statement in what he chose to transmit and what he omitted. Moreover, few authors resisted the temptation to embellish, as well as to edit, the tradition, so that original thoughts often lie buried in works that are otherwise largely derivative. Second, literary theorists have stressed that even modern novelists largely rearrange and weave together literary codes already elaborated within their culture. All literature, they argue, consists of a scissors-and-paste job, the selective quotation of or reference to previous texts and conventions known to the audience, which they call "intertextuality." The contribution of most authors lies not in developing a new code or system, but in manipulating codes and genres already familiar to the audience.[1] Of course, the use of unacknowledged and extensive quotation typical of medieval works constituted a rather heavy- handed approach to the manipulation of conventions. But the idea of the continuing operation of intertextuality in modern writing suggests that Niraqi's own extensive quotation of and reference to other sources need not render his writing without interest or suggest he was engaged in a wholly different enterprise than twentieth century writers on ethics. Finally, that the intertextuality of Niraqi and his audience included ethics in the Ghazallan and philosophical modes is in itself an interesting datum.

The conventions of writing on ethics and polite culture (*adab*) demanded that the author begin with a statement of purpose. Niraqi, in his, says that since moral advice was scattered among many books, which were often inaccessible, he felt it necessary to assemble such advice in one place so that it might be more easily available to all. He continues, "I have therefore

1. For the text as an interwoven set of literary codes, see Roland Barthes, S/Z, tr. Richard Miller (New York: Hill and Wang, 1974) and J. Kristeva, *Semeiotike* (Paris: Seuil, 1969). For useful discussions of these issues see Jonathan Culler, *Structuralist Poetics: Structuralism, Linguistics and the Study of Literature* (Ithaca: Cornell University Press, 1975), p. 139, and the same author's *The Pursuit of Signs: Semiotics, Literature, Deconstruction* (Ithaca: Cornell University Press, 1981), chapter 5.

have found the Usuli Behbahani a more congenial teacher.

Mohammad Mehdi Niraqi then returned to his homeland, settling in Kashan for the last twenty-five years of his life. Karim Khan Zand had by now firmly integrated this city of 20,000 into his stable, increasingly prosperous state. In this center for the production of silk stuffs and carpets, Niraqi wrote a book in 1766 in Persian on commercial law for lay merchants, and in 1772 he wrote a work on the principles of jurisprudence entitled Anis al-mojtahedin. In Kashan he founded a center for religious study that survived him, and raised a son, Ahmad, who would become a prominent Kashani mojtahed or jurisprudent in his own right. In 1793, Niraqi visited Najaf with his son Ahmad, dying there the following year and being buried in Imam Ali's shrine city. His son stayed on to study with the Usuli greats.[1]

Let us consider Niraqi's 32 books.[2] He wrote seven on basic questions in Islamic law or fiqh, including matters of ritual purity, pilgrimage, prayer and commercial intercourse. He authored five works on principles of religion and principles of jurisprudence, approaching both in a rationalist manner and defending ijtihad and consensus in the interpretation of law. But his greatest output lay in the area of the philosophical sciences and metaphysics. He addressed issues in being (*wujūd*) and quiddity (māhiyyah), produced a commentary on Avicenna's metaphysical opus, ash-Shifa', discussed the theosophy of illumination in his *al-Lam'at al-'arshiyyah*, wrote on natural sciences, composed two works on cosmology and cosmography, and authored a huge three-volume work on philosophical ethics, as well as writing on Greek geometry and on mathematics. He also contributed to the fields of imamology and elegy for the imams, collected his sermons into a manuscript, and wrote on rhetoric. In short, this Twelver contemporary of Shaykh Yusof al-Bahrani sounds more like an Intellectual heir of Molla Sadra or Hazin Gilani than of Ibn Babuyeh and Mohamnmad Amin Astarabadi. Nor does Niraqi appear to have been unusual in his Interests for an Isfahani thinker of the eighteenth century.

Niraqi's "Compendium of Happiness"

I will now attempt to use Niraqi's work on ethics to examine how he employed diverse cultural codes to create a religious vision of the moral life. I will also be interested in how Niraqi related even a highly abstract ethical

1. *Ibid.*, p. 6; Mu'allim Habibabadi, *Makārim al-āthār*, vol. 2, pp. 360-64; for Kashan's commodities, Perry, *Karim Kh*an, p. 247.
2. The most complete listing is given in al-Mozaffar, "Hayāt al-mu'allif," pp. 13-16.

was killed in Kashan. His brothers wrote him, informing him of the death, and requesting his return home so that the inheritance could be divided up. Niraqi, however, had, in keeping with his ascetic bent and desire to be cut off from the mundane, begun refusing to read his mail. He deposited all letters, unopened, under his bed. The same fate befell a second entreaty from his brothers. Finally, in exasperation the brothers wrote to Esma'il Khaju'i, asking him to contact their unresponsive sibling for them. Khaju'i, fearful of delivering a shock to his student, told Niraqi that his father was wounded and he had best hurry home. Niraqi refused to take the hint, however, saying that he would nevertheless persevere in his studies in Isfahan. Khaju'i had no choice but to tell his stubborn pupil the whole truth about Abu Dharr's demise. Niraqi continued to Insist on remaining in Isfahan. In the end, Khaju'i ordered Niraqi home to take care of his obligations. Niraqi obeyed, but hurried to Kashan, had the estate divided up, and set out on the back-breaking return trip to Isfahan the very next day after his arrival.[1]

Again, the anecdote informs us of Niraqi's asceticism, his isolation from the practical world. Yet perhaps it tells us more than was intended. Niraqi's refusal to go to what he thought was his father's sickbed seems to indicate that he lost little love on the old man, nor does he appear to have squandered much affection on his brothers. The change of family profession from bureaucrat to cleric, and of dwelling place from Kashan to Isfahan, would make even more sense if we conclude that Niraqi did not get along with his family. Of course, his disinterest in being present for the division of the estate does also indicate a genuine ascetic disregard for worldly goods.

Niraqi lived in Isfahan, teaching, researching and writing, for thirty years, keeping a close association with his mentor, Esma'il Khaju'i. It appears that he stayed with Khaju'i until his teacher's death in 1759, living through the savage repression by Nader Shah of the revolt of 1744, the fluctuating uncertainties of political rivalry after the emperor's assassination in 1747, and both of Karim Khan Zand's conquests of the city in the early 1750s. Around 1759 Niraqi went to Karbala, where he studied oral reports with the Akhbari revivalist Shaykh Yusof al-Bahrani. He was by then middle aged and an accomplished author in his own right, of course. Many ulama enjoyed studying the transmitted sciences, such as oral reports, with their peers, since that often gave them an additional expertise and enlarged or reinforced the chain of transmission that linked them to the Prophet and the Imams. On Aqa Mohammad Baqer Behbahani's arrival in Karbala in the early 1760s, Niraqi switched to studying with him. As an Isfahani rationalist, he would

1. al-Mozaffar, "Hayat al-mu'allif," vol. 1, pp. 12-13.

which provided a background much admired in a successful Mollah."[1] The ideal of the starving student generated many anecdotes about hardship. It is said of Niraqi that he could not, as a student, afford oil or wax for his evening study and lucubrations. He therefore studied in the outhouse attached to his seminary, which was kept lighted all night. Too proud to let others know of his grinding poverty, he pretended, when anyone came into the outhouse, to be relieving himself. Or once a shopkeeper from whom he bought necessities took a liking to him and, noticing his frayed garments, bought him some clothes. Niraqi shortly thereafter returned them, explaining that he felt an unbearable sense of inferiority while wearing them, particularly when he came into the donor's shop.[2] The anecdotes about young Niraqi, preserved in family manuscripts, emphasize the contradictions in the apprenticeship of a divine, the humiliations he must bear even while approaching the exalted sacred texts, and Niraqi's own choice of private humiliation over the acceptance of charity from strangers.

Since one cannot imagine a good economic or social reason for this enforced immiseration of sons of the intermediate strata upon their enrollment in seminary, we might further consider cultural causes. Structural anthropologists argue that where humans believe in a divine other world distinct from the material world around them, they posit intermediaries between the two. They depict these intermediaries as having attributes of both dimensions, so that they can act as bridges.[3] These figures, whether prophets bothered by visions, or bleeding god-men, or monstrous mixtures of animal and human, stand at the intersection of two realities. The Twelver Shi'i clergy, in the absence of the hidden Imam, also functioned to some extent as intermediaries between the invisible and the visible world. By making crushing poverty part of their initiation into the world of religious learning, they emphasized their other- worldliness. This special appreciation of heroic poverty in youth had the undoubted benefit of not requiring a punishingly ascetic style of life in middle age.

Niraqi, then, left the impression on contemporaries of a serious-minded student, an ascetic, willing to cut himself off from the comfortable world of the intermediate strata for the sake of spiritual learning. A final anecdote underscores these attributes. While he was in Isfahan, his father, Abu Dharr,

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1. Roy Mottahedeh, *The Mantle of the Prophet* (New York: Simon and Schuster, 1985), p. 96; pp. 94-98 sum up the vicissitudes of a seventeenth-century cleric's life, that of the Akhbari Ne'matu'llah al-Jaza'er
2. al-Mozaffar, "Hayat al-mu'allif," vol. 1, pp. 11-12.
3. Edmund Leach, *Genesis as Myth and Other Essays* (London: Jonathan Cape, 1969), pp. 10-11.

of oral reports from the Prophet and the Imams bore special prestige in that many of them could trace their transmission of these reports through the widely respected Mohammad Baqer Majlesi. On the other hand, despite the assertions of Arjomand and Momen quoted above, scholars continued to cultivate the old Isfahani specialties of the philosophical sciences, theosophy, theology, and other rationalist branches of knowledge. Sufi mysticism left its mark even on the religious establishment, influencing at least one major leader of Friday prayers. One of Khaju'i's students, Molla Mehrab, was notorious for his belief in the Sufi doctrine of the oneness of being, considered heretical by many legalist clergy, and he had to hide his identity when he visited the conservative shrine cities.[1]

A modem biographer has referred to Niraqi as a "self-made man" ('e$jmO), which appears to mean that he was a first-generation cleric rather than deriving from an old family of divines.[2] His father, Abu Dharr, served as a minor functionary of the Safavid state in the Kashan district of west-central Iran, wherein was located the family's ancestral home, the village of Niraq. We do not know when Mohammad Mehdi Niraqi was born into this family of lower-level bureaucrats, but he probably came to Isfahan to study in 1730 or so, and was then, most likely, around fifteen years old. He formed a life-long affection for his teacher Esma'il Khaju'i, with whom he associated for thirty years. Khaju'i devoted much of his teaching effort to theosophical and philosophical works in the tradition of the School of Isfahan. Niraqi's stint studying religion was not unusual for members of the urban intermediate strata, and many sons of officials or merchants went to seminary for a few years before returning to a secular occupation. Occasionally, as in Niraqi's case, the avocation of religious study became a vocation.

During the period a young man spent poring over Qur'an commentaries and works of Islamic law he often lived in penury, even if from a wealthy background. The family expected the boy to subsist on the small stipends provided by the seminary or by teachers or patrons, or to eke out a meager living moonlighting as a copyist, apparently as a way of acquiring self-discipline. For those who wished to become professional clerics, such experiences provided "that sense of learning won through many ordeals

1. The prestige of Isfahani relaters of tradition is apparent in the biography of Hezarjaribi, cited above; Mu'allim Habibabadi, *Makārim āl-athār*, vol. 1, pp. 127- 29 also notes the accusations against Imam-Jom'eh Zayn al-Din Ali Khvansari Isfahani (d. 1787) that he had Sufi leanings; the information about Molla Mehrab comes from al-Mozaffar, "Hayāt al-mu'allif," vol. 1, p. 5.

2. al-Mozaffar, "Hayat al-mu'allif," vol. 1, p. 3.

The Life and Works of Niraqi

Niraqi, on aniving in Isfahan around 1730, began studying with scholars whose interests sound remarkably like those of Hazin. Niraqi's favorite teacher, the master of philosophy and rationalist theology Esma'il Khaju'i, lived through the Afghan siege of Isfahan In 1722. Unlike many Isfahani ulama who fled the capital for the shrine cities of Iraq or for the bejewelled courts of India, Khaju'i remained in a devastated Isfahan until his death in circa 1759. Niraqi appears to have remained there with him, as well. Among his other teachers were Shaykh Mohammad Mehdi Harandi and Shaykh Mohammad, son of the Avicennian physician Hakim Mohammad Zaman. Both were masters of the philosophical sciences (*hikmah*), and Niraqi's son singled them out along with Khaju'i as the most important of his Isfahan-era teachers.[1]

Unfortunately, I have been unable to ascertain in what seminaries Niraqi studied or taught, or anything about his institutional connections. The city's institutions certainly were disrupted in the eighteenth century. Isfahan probably declined from a population of 250,000 or so in 1720 to only 20,000 in the aftermath of the Afghan siege and conquest of 1722.[2] But, as I have noted elsewhere, a certain amount of continuity can nevertheless be perceived from the Safavid period, and Isfahanis often made their peace with the short-lived conquerors who succeeded one another so rapidly, so that their city's population gradually grew to some 50,000 by the end of the century. A branch of the Majlesi family continued to provide contenders for the post of Friday prayer leader, for instance. And one cannot assume that all the wealth of the landed clerics was usurped. Nader Shah himself made some use of prominent Isfahani clerics, appointing Mohammad Baqer Hezarjaribi (d. 1790) to an official judgeship, and the emperor was said to have shown great respect to Kha2u'i himself. One suspects that patronage formed one element of such "respect."[3]

Seminaries, then, continued to exist, though perhaps reduced in number and student and faculty population by ninety percent, like everything else in the former capital. The ten percent were able, nevertheless, to carry on a fairly lively intellectual life. Religious studies went on, and Isfahani relaters

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1. al-Mozaffar, "Hayat al-mu'allif," introduction to Niraqi, *Jāmi' as-sa'ādat*, vol. 1, p. 6.
2. Population estimates given in Perry, *Karim Khan Zand*, p. 238.
3. For Khaju'i's biography, see Khvansari, *Rawdāt al-jannāt*, vol. 1, pp. 114-19; for Hezarjaribi, see Mohammad Ali Mu'allim Habibabadi, *Makirim al-athār dar ahvāl-e rijāl-e dowreh-ye qājār*, 2 vols. (Isfahan: Matba'-e Mohammadi, 1958), vol. 1, pp. 235-39; for some of the points made about continuity see also Cole, "Shi'i Clerics in Iraq and Iran," pp. 7-9, 17.

last decades of Shah Sultan-Hoseyn's Isfahan can also be gained from the list of works that Mohammad Ali Hazin Gilani (circa 1691-1767) wrote.[1] Gilani was no outsider to the clerical and royal establishment, but a prominent young member of Isfahani society with strong links to the shah's court by the time he was in his twenties. An advocate of the Usuli school of jurisprudence, he defended the principle of *ijtihād*, or the derivation of Islamic law through the use of applied reason. He did, however, criticize too extensive a use of analogy in law (most Usulis forbade it where it was not mandated by the scriptural text). He also wrote on commonplace subjects such as ritual law and oral reports. But beyond such concerns, expected of a Twelver cleric, he commented on medieval works by the philosopher Avicenna and the illuminationist Suhravardi, defended the Sufi mystic Ibn Arabi to his detractors in Karbala, and wrote on the concordance of philosophy with the Islamic revelation. He had things to say about geometry and Aristotelian physics (as had his father, Abu Taleb Gilani), and about al-Kindi's work on psychology in the Greek tradition. He appears to have recognized the differences between Neoplatonism and the peripatetics, and attempted to reconcile them. He wrote a book of advice to the shah in the "Mirror for Princes" vein. Nor was Hazin's vast erudition limited to Islam and the Greco-Islamic philosophical tradition. He described Zoroastrian ideas on the beginning of the world, discussed prophecies of Mohammad in the Hebrew Bible and the New Testament, and refuted the Christian notion of persons in God. He also authored four divans of poetry, and, after his flight to India in the 1730s, lived in Delhi and ultimately settled in the Hindu pilgrimage city of Banaras. Since in India he concentrated on poetry, many of the religious works mentioned above appear to have been composed between 1715 and 1734, during Hazin's Iran period.

Hazin may not have been a typical late Safavid thinker, but he and the thinkers Corbin studied represented at the very least an important, continuing intellectual tradition in the capital. It seems clear, then, that late Safavid Isfahan, a wealthy and populous city of around a quarter-of-a-million inhabitants, supported a cosmopolitan religious and intellectual establishment, wherein thinkers supported by the court became competent in a wide range of cultural codes in addition to the transmitted sciences of scripturalist Islam. They studied and wrote on peripatetic, neoplatonic, illuminationist, and Sufi themes, exhibiting, in addition, an interest in Avicennian science and medicine.

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1. Mohammad Ali Kashmiri, *Nujūm as-samā'* (Lucknow: Matba'-e Ja'fari, 1302/1884-85), pp. 286-91.

circumstances, they have not merely acted according to his words, but have acted according to the words of God, his Messenger, and the sinless Imams.[1]

Majlesi the Elder, in short, finally reached the conclusion that laypersons must emulate a knowledgeable cleric, a position held by Usulis as well as by liberal Akhbaris such as Molla Mohsen Fayz. Conservative Akhbaris such as Astarabadi, it must be emphasized, rejected the requirement of such emulation, saying that all Twelvers should emulate the Imams. Majlesi the Elder was also clearly committed to a rational science of oral reports involving the weighting of some against others, another procedure rejected by strict Akhbaris. Mohammad Taqi Majlesi emphasizes that he follows a "middle way," suggesting no strong allegiance to either the Usuli or Akhbari schools.

Moreover, both Majlesi the Elder and his son Mohammad Baqer wrote on rationalist subjects like dialectical theology, and so cannot be categorized with strict Akhbaris such as al-Hurr al-Amili who forbade such subjects. The same holds, of course, in regard to Molla Mohsen Fayz, who, whatever his approach to legal interpretation, was no scriptural literalist in any other area of culture. Mohammad Baqer Majlesi, it is true, denounced the school of Isfahan and persecuted both Sufi brotherhoods and intellectuals who took their inspiration from Sufi gnosis (*'irfan*). But despite his prominence and power, Majlesi the Younger hardly controlled religious culture in Isfahan It seems unlikely that such witch-hunting continued after his death in 1699.

Not all clerical Shi'i writers have agreed with the generalizations about universally increasing Akhbari dominance in the late seventeenth and much of the eighteenth century. An Arab Imami, Yusuf Muhammad Amr, has argued that although an Akhbari movement dominated Karbala in this period, Najaf partially escaped Akhbari influence, and Isfahan remained almost untouched by it, a majority of scholars there steadfastly adhering to Usulism. Henry Corbin has also discussed rationalist thinkers of the early eighteenth century in Isfahan and elsewhere in Iran, such as Fazel-e Hindi, an Avicennian who was killed in Isfahan in 1722; Molla Na'ima Taleqani (d. after 1739), a theosopher who survived the siege of Isfahan but then emigrated to Qom; and the philosopher Molla Abd ar-Rahman Damavandi (d. circa 1737).[2]

rational sciences, including the Usuli principles of jurisprudence, In the

1. *Ibid.*, p. 38.
2. Yusuf Muhammad Amr, *al-Madkhal ilā usūl al-fiqh al-ja'fari* (Beirut: Dar az- Zahra', 1981), pp. 161-166; Corbin, *La Philosophie iranienne islamique*, pp. 300- 393. Cf. Nasr, "Spirituality," pp. 695-96 for "The later hakims of the Safavid period."

conservative one.[1] He gained a reputation as the follower of the literalist Akhbari Mohammad Amin Astarabadi largely because of a casual remark in a book written in 1655 not long before his death, showing appreciation for the work of Astarabadi. It is worthwhile quoting the passage at length. Majlesi the Elder explains that the Imams practiced pious dissimulation, so that oral reports transmitted from them cannot always be taken at face value. Their close companions knew which reports reflected dissimulation and which were true, but because of persecution this knowledge was lost by later generations, as were many books of oral reports. In the end, only a few such books survived, largely containing oral reports transmitted by only one believer in each early generation (it was preferable that a report be shown to have been transmitted by more than one source, so reinforcing the likelihood of its accuracy). Heretical schools arose among the Twelvers, and the ability to distinguish among oral reports disappeared. He continues,

Disputes arose among the Shi'is, and each practiced according to his own conclusions (*yafi*) from the Qur'an and hadith, and followers emulated them. Then about thirty years ago the great and erudite scholar Mohammad Amin Astarabadi began studying and comparing the oral reports from the sinless Imams, and denouncing the use of individual opinion and analogy. He knew the path of the companions of the sinless Imams, writing the Favd'id-i madaniyyeh and sending it to this land. Most of the people of Najaf and the exalted shrine cities thought well of his approach, and they had recourse to the oral reports. The truth is, most of what Mawlana Mohammad Amin said is correct. [2]

Akhbari apologists always excerpted just this much from the book when claiming Majlesi the Elder as one of their own. But let us quote the rest of the passage, which gives a much different final impression:

In sum, my own approach is a middle course between extremes, and I have demonstrated this approach gradually in my Rawdat al-muttaqrn, and, God willing, I will also recall it to mind in the course of this commentary. Its essence is that it is permissible to act according to the conclusions reached by someone who knows the favored path of the People of the House through assiduous study of their sayings, and who can reconcile these, and who is upright--or rather, has given up this world. Indeed, it is incumbent that the layperson act according to the conclusions of such a one. For under these

1. For Majlesi the Elder see Khvansari, *Rawdat al-jannat*, vol. 2, pp. 118-23; and Said Amir Arjomand, "Religious Extremism (*Ghuluww*), Sufism and Sunnism in Safavid Iran: 1501-1722," *Journal of Asian History 15* (1981), pp. 24-28.
2. Mohammad Taqi Majlesi, *Lavāmi'-e sāhibqirānī*, vol. 1 (Tehran: Baradaran-i 'Ilmi, 1963), pp. 37-38.

from the illuminationism and rationalism of the earlier School of Isfahan, and toward a literalist fundamentalism. In such an atmosphere, Momen suggests, the mammoth collection of oral reports from the Prophet and the Imams, *Bihār al-anwār*, was compiled by Shaykh al-Islam Mohammad Baqer Majlesi the Younger in the late seventeenth century.

Without wishing to deny the vitality of Akhbarism in some places among some scholars, I feel it Is necessary to bring into question some of these assumptions. First of all, this argument rests on the biographies of a very few individuals. Second, it is surely necessary to distinguish between Qom, with its millenium- old emphasis on the study of oral reports, and more cosmopolitan cities like Isfahan. Moreover, one wonders how representative the scholars named were of local ideas. Mohammad Taher of Qom was intellectually formed in the conservative environment of Shi'i Iraq, and al-Huff al-Amili came into Iran already an Akhbari from what is now southern Lebanon.

Another crucial observation is that Akhbarism simply was not a monolithic movement. The Akhbari scholar Mirza Mohammad Zaki Khan of nineteenth- century Lucknow pointed out that a middle path between strict, literalist Akhbarism and thorough-going, rationalist Usulism had been adopted by a number of scholars, beginning with Mohammad Taqi Majlesi (d. circa 1659), a Safavid Shaykh al-Islam and Friday prayer leader in Isfahan.[1] A similar conclusion has been reached recently by Etan Kohlberg.[2] Akhbari scholars could be divided into liberals, like Molla Mohsen Fayz, and conservatives such as Mohammad Taher Qommi. The liberals were often mystics, or even belonged to Sufi orders. They advocated the use of opinion (*ra'y*) in interpreting the Law. They recognized the Qur'an as an independent source of law in addition to the oral reports of the Prophet and the Imams. And they argued for the need of laymen to follow (*taqlīd*) the rulings of trained jurists. Liberal Akhbaris were just as open to the study of philosophy and theosophy as were Usulis. Only the strictly conservative Akhbaris rejected mysticism and the rational sciences altogether.

Isfahan cannot be shown to be dominated by conservative literalists in the late Safavid period. Mohammad Taqi Majlesi the Elder can only in a very marginal sense be considered an Akhbari, and he certainly was not a

1. Mirza Mohammad Zaki Khan Akhbari, "Majmūi'eh-ye rasā'el-e tahqiq-e maslak- e akhbiriyyin va usūiliyyīn," Lucknow, Nasiriyyah Library, Usul al-Fiqh Shi'ah, Persian MS. 28, foll. 4b-5a.
2. Kohlberg, "Aspects of Akhbari Thought," especially pp. 136-146.

Imam.[1]

It is often argued, however, that late Safavid Iran witnessed an increasing influence from the literalist, scripturalist Akhbari school of jurisprudence, along with a suppression of Sufism and philosophy. Arjomand remarked that, "the impact of the culture of the mandarins of the clerical estate, i.e., the philosophical tradition, on the outlook of the Shi'ite hierocracy did not prove lasting. In the subsequent generations, one was not to find mojtaheds who, like Baha'i and Mir Damad, were also gnostic philosophers."[2] Momen has written that from the time of Shaykh al-Islam Mohammad Baqer Majlesi (d. 1699), "Sufism was divorced from Shi'ism and ceased to influence the stream of Shi'i development. Philosophy was also down-graded and ceased to be an important part of studies at the religious colleges."[3] Momen says elsewhere of the school of Isfahan: "After being vigorously attacked by the orthodox ulama during the course of the 18th century, it began to re-emerge in the course of the 19th century."[4]

Among the figures often mentioned as Akhbaris from the middle of the seventeenth century are Mohammad Taqi Majlesi the Elder in Isfahan, al-Hurr al- Amili of Mashhad, and Molla Mohammad Taher Najafi and, surprisingly, Mohsen Fayz Kashani in Qom.[5] Since most strict Akhbaris forbade the study of the rational sciences, including philosophy, philosophical theology, and the principles of jurisprudence, Akhbari dominance would have taken Safavid high culture in a new direction, away

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1. For the School of Isfahan, see generally Said Amir Arjomand, *The Shadow of God and the Hidden Imam* (Chicago: Chicago University Press, 1984), pp. 145- 151; Henry Corbin, *La Philosophie iranienne islamique aux XVIIe et XVIJIe siecles* (Paris: Buchet-Chastel, 1981); S. H. Nasr, "Spiritual Movements, Philosophy and Theology in the Safavid Period," in P. Jackson and L. Lockhart, eds., *The Cambridge History of Iran, Vol. 6, The Timurid and Safavid Periods* (Cambridge: Cambridge University Press, 1986), esp. pp. 666-697; Fazlur Rahman, *The Philosophy of Mulla Sadra* (Albany: State University of New York Press, 1975); James W. Morris, *The Wisdom of the Throne* (Princeton: Princeton University Press, 1981); Andrew Newman, "Towards a Reconsideration of the 'Isfahan School of Philosophy': Shaykh Baha'i and the Role of the Safawid 'Ulama'," *Studia Iranica 15* (1986), pp. 165-199; Clifford Edmund Bosworth, *Baha' al-Din al-Amili and his Literary Anthologies* (Manchester: University of Manchester, 1989).

2. Arjomand, *The Shadow of God and the Hidden Imam*, p. 145.

3. Moojan Momen, *An Introduction to Shi'i Islam: The History and Doctrines of Twelver Shi'ism* (New Haven: Yale University Press, 1985), p. 116; Arjomand, *Shadow of God*, pp. 151-59, presents a similar picture of "The Final Onslaught and Triumph of the Hierocracy under the Leadership of Majlisi."

4. Momen, *Shi'i Islam*, p. 218.

5. Etan Kohlberg, "Aspects of Akhbari Thought in the Seventeenth and Eighteenth Centuries," in Nehemia Levtzion and John Voll, eds., *Eighteenth- Century Renewal and Reform in Islam* (Syracuse: Syracuse University Press, 1987), pp. 133-160.

a discourse about God and in deriving legal judgments from scriptural texts. Literalists wished to restrict religious discourse to a single code, drawn unreflectively from the Qur'an and the oral reports of the Prophet and the Imams. Rationalists wanted to import Greek logical and philosophical systems, with which they could elaborate genres or disciplines such as dialectical theology, Aristotelian ethics, metaphysics, and the principles of jurisprudence; these codes, they thought, should coexist with and be interwoven with the scriptural ones. Mystics wished to employ, in addition, illuminationist and Sufi codes that would allow a more ecstatic sort of discourse about the believer's relationship to the divine. Beyond asking if many of these codes may not have survived among clerics in Isfahan long after the early seventeenth century, I also wish to pose the question of how to understand the social conflicts involved with the struggle over permissible codes. I will argue an analogy between speakers of a single language and their resentment toward the multilingual, on the one hand, and users of several cultural codes, on the other. Moreover, I will suggest a similarity between the School of Isfahan's mixing of several codes (Qur'anic, Neoplatonic, Peripatetic, Illuminationist, Sufi) and the tendency of bilinguals and multilinguals to engage in "code-switching" or the alternation between two or more languages, sometimes within a single sentence.[1]

The Cultural Ambience of Isfahan

Before considering his life and work, it is necessary to raise some questions about Niraqi's discourse community of 30 years--the clerical networks of post- Safavid Isfahan. What sort of religious ambience did Niraqi encounter in this city on his arrival from the small town of Niraq around 1730? Although Western scholars without access to the manuscript libraries of Iran and Iraq are still not in a good position to answer this question fully, a general impression can be achieved, even at second hand. Isfahan in the high Safavid period conjures up for historians of culture the School of Isfahan, a combination of rationalist theology, Avicennian philosophy, scholastic Sufism, and illuminationism exemplified during the first half of the seventeenth century by the work of Sadra Shirazi, Baha' ad-Din al-Amili, Mir Damad, and Mohsen Fayz Kashani. As Newman has recently demonstrated, moreover, the members of this cultural movement often had strong ties to the Safavid state and argued vigorously for an expansion of the role of the Imami clerics in standing proxy for the Hidden

1. See John J. Gumperz, Discourse Strategies (Cambridge: Cambridge University Press, 1982), ch. 4, "Conversational Code-Switching."

Isfahan, Shiraz, Mashhad and Yazd--during the era of al-Bahrani's prominence in Karbala? Unlike specialists in literature or theology, historians are often impatient with the idea of a "canon" of great authors (such as al-Bahrani and Behbahani). Even minor writers can, they insist, help us understand the history of mentalities. The standard conception of eighteenth century Shi'ism, as I hinted above, is challenged by the intellectual biography of Mohammad Mehdi Niraqi, among others. This scholar studied in middle age with both al-Bahrani and Behbahani, but never acquired their authority. Both Niraqi and his son Ahmad produced major works on ethics in the tradition of Miskawayh and Tusi, as well as philosophical and gnostic writings. The existence of this oeuvre, elaborated in Isfahan and Kashan, comes as a shock to anyone familiar with the standard historiography on eighteenth century Iranian intellectual history, and the concerns of the Niraqis raise important questions. Has the demise of the philosophical high culture of early seventeenth century Isfahan been greatly exaggerated? Can a continuity of philosophical speculation be seen from the Safavid era, through the politically fragmented eighteenth century and right into the nineteenth century and modem times?

The second issue I will raise, about Niraqi's attitudes toward social groups, concerns the ideological aspect of his writing. I have already argued elsewhere that the techniques of social history can provide insight into the changing position of the clergy in the eighteenth century.[1] In studying thinkers, however, it would be perverse to ignore their thought. We must acquire an understanding of these writers' modes of discourse, the internal dynamics that shaped their conclusions. The task of isolating ideological elements in clerical discourse, suggested by such disciplines as the sociology of knowledge and the social history of ideas, requires both a social and a semiotic analysis of the semantic content of words describing social groups. I will suggest that the Platonic conception of "faculties" in which philosophical ethics was grounded provided a model for depicting social groups. Advances on the two fronts of codes and context must be built up on the foundation of many individual studies, and this look at Niraqi is meant as a first step.

Finally, I would like to address the general question of the social and linguistic meaning of conflicts over the permissible range of religious thought. There is no denying that the late Safavid period witnessed a recurrent struggle within Twelver Shi'i thought, over the number of cultural codes upon which religious scholars could legitimately draw in establishing

1. See Cole, "Shi'i Clerics in Iraq and Iran."

approach to ethics died out in the latter half of the seventeenth century, supplanted among Twelver scholars by an emphasis on the literal quotation of oral reports from the Prophet and Imams. The flights of metaphysical speculation, evoking the ghosts of the medieval Andalusian mystic Ibn Arabi and the Iranian philosopher-mystic Avicenna, it is held, gave way to the compulsive compilation of huge collections of oral reports.

Historiography on eighteenth century Shi'ism in particular has concentrated on legal thought, seeing a hegemony of the literalist Akhbari school of jurisprudence in the first part of the century, followed much later by a revival of the rationalist Usuli school. This depiction partially derives from the biographies of two major thinkers in the canon of eighteenth century writers still studied by Twelver ulama, Shaykh Yusof al-Bahrani (1695-1772) and Aqa Mohammad Baqer Behbahani (circa 1705-1790). Al-Bahrani became an Akhbari, perhaps in the 1720s, and established himself in the Iraqi shrine city of Karbala as a powerful religious and educational figure. His ideas had implications both for the interpretation of law and for wider culture, since he attacked the study of philosophy, theology, and Greek logic and confined the sources of law to a literal reading of the Qur'an and the sayings of the Prophet and the Imams.[1] In so doing he continued an intellectual tradition popular in the conservative shrine cities long before his arrival in Karbala. His younger contemporary, Behbahani, derived from Isfahan and studied in Iraq in the 1720s, but lived in southwestern Iran for thirty years before coming to Karbala to stage an intellectual revolt against al-Bahrani in the 1760s. Behbahani promoted the rationalist Usuli school, which allowed limited use of syllogism in legal reasoning and recognized the consensus of previous jurisprudents as a source of law. Behbahani's Usuli revival in Karbala had a lasting impact, since he and his close disciples in Mamluk Iraq trained a whole generation of Iranian clerics who went on to gain high posts under the rising Qajars in late eighteenth and early nineteenth century Iran.[2]

This sort of view, however, appears to limit the history of Twelver Shi'ism in the eighteenth century to events in the small Iraqi shrine city of Karbala. What sort of religious works, one wonders, did scholars produce in Iran--in

1. For Shaykh Yusof and his place in Eastern Arabian Shi'i tradition see Juan R. I. Cole, "Rival Empires of Trade and Imami Shi'ism in Eastern Arabia, 1300-1800," *International Journal of Middle East Studies* 19 (1987), pp. 196-98.

2. Juan R.I. Cole, "Shi'i Clerics in Iraq and Iran, 1722-1780: the Akhbari-Usuli Controversy Reconsidered," *Iranian Studies* 18, 1 (1985), pp. 3-34; and Juan R. I. Cole, "'Indian Money' and the Shrine Cities of Iraq, 1786-1850," *Middle Eastern Studies* 22 (1986), pp. 461-480.

institutional support for various sorts of writing, bureaucratic and religious. With patricians displaced and the economy in shambles, patronage became greatly reduced. The new rulers often proved hostile to the majority, Shi'i culture of Iran, promoting either Sunnism (in the case of the Afghans) or an ecumenical mixture of Sunni and Shi'i emphases (in the case of Nader Shah). Such rulers expropriated endowment funds for seminaries and other Twelver Shi'i institutions, helping impoverish clerical intellectual life and also making the preservation of manuscripts less likely.[1] Niraqi's works, however, appear to have survived in abundance, many of them in family hands in Iran. The rich Iraqi collections also contain manuscripts by him.

I want to use Niraqi's work to raise and resolve three issues, all of them related to the question of prevalent cultural codes. First, I will look at the question of whether scholars have oversimplified the intellectual history of late seventeenth and eighteenth century Iran in depicting it as dominated by narrow literalist and scripturalist methods in religious scholarship. For in contrast to the scriptural literalists, Niraqi's approach is firmly grounded in the Greco-Islamic philosophical and illuminationist traditions. Second, I have argued that some religious thought of the ulama can be seen as ideology.[2] I wonder if Niraqi's work can be analyzed so as to elucidate some of his attitudes toward various groups in society, despite the rather abstract tone of most passages. Finally, I wish to make better sense of the disputes in Safavid and post-Safavid Shi'ism over the permissibility of certain methods and disciplines in elaborating religious thought. Since this struggle centered on types of discourse, it seems to me legitimate to approach it with some tools deriving from sociolinguistic theories about discourse strategies.

The philosophical (or even theosophical) approach to ethics, employing Greek concepts and methods, possesses a distinguished pedigree in Twelver Shi'ism. Avicenna, Miskawayh, Nasirual-Din Tusi and Mohsen Fayz Kashani all produced ethical works that mixed Islamic scriptural moral concerns with Aristotelian and Platonic schemas and illuminationist mysticism. Scholars most often assume, however, that this rationalist-gnostic

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1. For the political and social history of eighteenth century Iran we have only a few published full-length academic works in Western languages, chiefly: Roger Savory, *Iran under the Safavids* (Cambridge: Cambridge University Press, 1980); Laurence Lockhart, *The Fall of the Safavi Dynasty and the Afghan Occupation of Persia* (Cambridge: Cambridge University Press, 1958); Laurence Lockhart, Nadir Shah (London: Luzac & Co., 1938); and John Perry, *Karim Khan Zand* (Chicago: University of Chicago Press, 1979).

2. See Juan R. I. Cole, *Roots of North Indian Shi'ism in Iran and Iraq: Religion and State in Awadh,* 1722-1859 (Berkeley and Los Angeles: University of California Press, 1988), esp. the introduction and chapter 6.

(17)
Ethics, and Philosophical Discourse in Eighteenth Century Iran*

Juan Cole

Intellectual biography as a discipline assumes that the life and thought of an individual can shed light on an epoch. In some cases such a claim is justified, especially where the epoch is obscure and the thinker genuinely representative of the culture of a profession in a city or region. I shall argue the validity of this principle with regard to eighteenth century west-central Iran and Mohammad Mehdi Niraqi (d. 1794), a prominent Imami Shi'i religious scholar who wrote prolifically and authored a huge three-volume work on ethics. Most of his voluminous writing remains in manuscript, but enterprising scholars in Najaf published the book on ethics, *Jāami' as-sa'ādat* (Compendium of Happiness), and it has recently been reissued in Beirut.[1]

The political turmoil of eighteenth century Iran at least partially explains the difficulty modem historians have in understanding its cultural history between the fall of the Safavids in 1722 and the rise of the Qajars around 1785. The confusing succession of rulers during these decades included Afghan tribal chiefs, the self-styled emperor, Nader Shah, the interregnum of 1747-1763 during which local pastoral nomad leaders and landed magnates exerted merely provincial authority, and the rise and fall of the Shiraz-based Zand viceregency over most of Iran. Such instability proved devastating to the written documents upon which historians like to depend. The many wars and sieges destroyed government archives, libraries, and books; and hundreds of thousands of refugees left cities such as Isfahan and Shiraz from the 1720s on, leading to the loss of memoirs, letters and other personal documents. Moreover, stable government helps assure the continuity of

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* Cole, Juan RI. "Ideology, ethics, and philosophical discourse in eighteenth century Iran ".*Iranian Studies*.٣٤-٧ :(١٩٨٩) ٢٢.١

1. Mohammad Mehdi Niraqi, *Jāmi' as-sa'ādat*, ed. Sayyed Mohammad Kalantar, intro. Mohammad Rida al-Mozaffar, 3 vols. (Beirut: Mu'assasat al-A'la lil- Matbu'at, 1985); al-Mozaffar's introduction is the best modem biography; Niraqi is also noticed in Mohammad Baqer Khvansari, *Rawdat al-jannāt fi ahwāl al- 'ulamā' wa's-sādāt*, 8 vols. (Tehran: Isma'iliyan, 1972), vol. 7, pp. 200-203.

The extreme rationalist *mujtahid*—whose clearly documented presence has already been noted—adhering to a more radical rationalist variant of the *Usūlī* polemic, stood at the other end of the religio-political spectrum.[1]

⇦ of this paper, and n. 19 above. Al-Bahrānīs status as a ' moderate' is also suggested by his position on al-khums and Friday prayer during the occultation in his *al-Hadā'iq*, on which see Sachedina, *The Just Ruler*, 244, 203. Al-Samahijrs reference to his teacher al-Mahuzi in number 39 as having held the same opinion on istishab as such a well-known rationalist scholar as al-Sayyid al-Murtada suggest al-Mahuzīs status as a ' moderate '. See n. 2, part 1 of the present paper.

1. Mullā Qāsim, a contemporary of'Abbās II (1052-77/1642-66), who argued that the Safawid shāhs were illegitimate rulers and ought to be replaced by *mujtahids*, may have been an example of this element. On Mullā Qāsim, named in the travel account of the Frenchman Jean Chardin who lived in Iran from 1664 to 1670 and again from 1671 to 1677, see A. K. S. Lambton,' *Quis custodiel custodes*: some reflections on the Persian theory of government', *Studia Islamica*, 6, 1956, 132; idem, *State and government in medieval Islam*: *an introduction to the study of Islamic political theory: the jurists* (London: Oxford University Press, 1981), 282; Arjomand, *The Shadow of God*, 185, 200. There is no reference to an individual of this name in the biographies listed in nn. 5 and 9 above.

Thus, al-Samāhījī's original number 31 offers significant insight into the nature of the Akhbārī/Usūlī dispute in this period. The link between the rationalist scholars' development of the subjective legal sciences, their postulation of ever-increasing authority for those trained in these sciences over both judicial interpretation, and matters of more practical, day-to-day import to the life of the community in the occultation and political quietism is now clear. Against this background al-Samāhījī's description of the categories of scholars—even if' ideal' types—advances a contemporaneous definition of the nature of disagreement among Akhbārīs and Usūlīs to supersede the vaguely defined categories presently on offer in the secondary sources. The *muhaddith* and the *mujtahid-muhaddith* are the ' pure' and the ' moderate' Akhbarī respectively, the ' pure' Akhbārī standing against both the *mujtahid-muhaddith* and his natural ally the *mujtahid* on matters of jurisprudence, practical authority over the daily affairs of the community, and relations with the established political institution. In number 31 al-Samāhījī, although later characterized as a ' pure' Akhbārī by al-Bahranī, noted the active presence of this group within the community-notably in Mashad[1]—but, pointedly, without identifying himself with them.[2]

⇦ with the political institution was less than consistently aloof: although he apparently distanced himself from the Safawid court, al-Astarabad! dedicated his Persian-language ' *Daneshnameh-yi Shāhī'*—completed after his *al-Fawā'idal-Madaniyya*—to one of the Indian Qutbshāh rulers. See al-Tehranī, 8:46; see n. 32 above.

1. Al-Samahījīs reference to al-Hurr al-'Amilī implies that he had studied with the latter. Thus he ought to have known some of al-Hurr al-'Amilīs ' pure ' Akhbārl students in Mashad. However, al-Samahijī named none of these individuals. Scholars often did not name their opponents. See, for example, my ' Towards a reconsideration', 182-5.

2. Of the Safawid-period Akhbārīs, Kohlberg ('Akbārīya', 718) identified as 'pure' only al-SamahijT himself, following al-Bahrānīs classification. Elsewhere, Kohlberg (' Aspects of Akhbārī thought', 146) described al-Samāhījī as among the ' more extreme ' Akhbārīs who maintained that the ' role of the religious scholar... was superfluous altogether'. In addition to the present reference, al-SamahijFs mention of his own preference for the *mujtahids* position on *al-ibāha* (permissibility) in number 37, his support of the performance of Friday congregational prayer during the occultation—which undoubtedly envisaged a role for the *faqih* in the service—and his acceptance of the court-appointed position of Shaykh al-Islam in the Safawid capital, further suggest the inappropriateness of labelling him a ' pure ' or otherwise 'extreme ' Akhbarl. Muhammad Tahīr al-Qummī—classified as a *mujtahid-muhaddith* by al-Samahiji and earlier biographers-and al-Hurr al-'Amilī—called a *mujtahid-muhaddith* by al-Samahījī—also supported the performance of Friday prayer in the occultation. By contrast, 'Abdallah al-Tunī and al-Qazwim, the latter classified as *mujtahid-muhaddith* by al-Samahijī and al-Hurr al-'Amilī, and the former called a 'moderate' Akhbarī in the secondary sources but & *faqīh* by his contemporaries (see nn. 19, 31 above), opposed it. On essays on this question by these scholars, see al-Tehranī, 15: 74, 72, 79, 74, 71. See also n. 33. Madelung (' Akhbariyya'), classified Yiisuf al-Bahrānī himself as initially' pure' but noted his later moderation. See also Kohlberg,' Aspects ', 145; n. 2, in part 1 ⇨

Samahijī also included Amīn al-Astarabadī in this category.[1]

By al-Samahījī's analysis in number 31 the most radical opponent of the *mujtahid* was the *muhaddith.* Unschooled in, and implicitly rejecting, the validity of the rationalist legal sciences, the *muhaddith* is depicted as relying solely on the Twelver-accepted revelation in all matters of doctrine and practice, perhaps—seemingly corroborating the suggestion, in number 2 in the original and the abridgement—rejecting the evidence of the Qur'ān. Disavowing the concept of *shara'it al-ijtihād,* the *muhaddith* necessarily also abjured both its corollaries, the extension of the authority of the *faqTh* as *jdmi' al-shara'it* over non-judicial affairs of daily import to the community and the accommodation with the established political institution, the latter a key factor in maintaining the *faqih's* authority in both spheres, especially in the Safawid period.[2]

⇦ *muhaddith* '. See al-Hurr al-'Amīlī, 2:252, 163, 336; Afandī, 5:47, 3:237, 5:253. See also nn. 19, 35. On al-Majlīsī see also my forthcoming paper on al-Kashanī. The ' cautious and moderate ' approach to the issue of the legitimacy of 'Uthmanic Codex of the Qur'ān taken by al-Kashanī, noted by Kohlberg, which was likely at least in part to have been a reaction to the position of extreme Akhbarīs on this question, further suggests the appropriateness of designating al-Kashānī as *mujtahid-muhaddith.* See n. 18 above and Kohlberg, ' Some notes on the Imāmite attitudes to the Qur'ān ', 217-18.

1. It has been noted that, like the authors of contemporaneous biographies, al-Samāhījī did not accord al-Astarābādī any special distinction within the broader Akhbārī movement and that in number 34 he depicted Muhammad Amīn as out of step with the majority of Akhbarls on the issue of *takhīr al-bayān.* Like those biographers, al-Samāhījī too did not name al-Astarābādīs teacher MIrzā Muhammad as an Akhbārī. A further indication of Muhammad Amīn's' moderation' may be his defensive reaction to the charge that he relied on *akhbār al-ahad.* In *al-Fawā'id al-Madaniyya* al-Astarābādī cited his Usul! contemporary Shaykh Bahā'ī as having said that most Twelver clerics had used such akhbar if the narrator were righteous and his allegiance to the faith were clear—the position of the *mujtahid* in numbers 5 and 29—and identified himself with Shaykh Bahāīs methodology. See Muhammad Amīn al-Astarābādī, *Al-Fawa'īd al-Madaniyyā*(Iran, n.d.), 53 f, also cited by al-Khwansari, 1:126-7. See also nn. 11 and 33.

2. In this period, therefore, ' pure' Akhbārīs may have supported, if not originated, the arguments against collection and distribution of *al-khums* and *al-zakāt* during the occultation referred to in al-Tehranī, 1:94, 4:380, 230. In his kharāj essay of 924/1518, in rebuttal of that of al-Karakī discussed above, Sulaymān al-Qatīfī (d. after 945/1539), by identifying the *nā'ib* as *hākim al-shar'*, with whom he equated the Hidden Imām's sufard (sg. *safīr*)—the last of whom had disappeared in 329/941—refused to identify the *faqih* as *na'ib al-Imam* in the occultation. Such a refusal represented a clear repudiation of both the *Usūlī*-inspired concept of na'ib 'amm and its corollary that the *faqih* was entitled to receive shares of al-zakdl during the occultation. See al-Qatīfī, 'Al-Siraj al-Wahhaj', in *Kalimāt al-Muhaqqiqin* (Qum, 1402), 309-10; Calder, ' *Zakat*\esp. 475 f.; see also n. 19 in the first section of the present essay, and nn. 15, 19, 24, 28, and 35 in the present section. On al-Qatlffs rejection of the other two pillars of the Usūlī polemic—rationalist jurisprudence and accommodation with the established political institution—see my ' The myth of the clerical migration to Safawid Iran'. Cf. Arjomand, The Shadow of God, 231, 125-7. Further confirming his ' moderate' status, Amīn al-Astarabāds relationship ⇨

of these clerics depended on the establishment and maintenance of close association with the Safawids, often including direct or indirect financial remuneration from the court. Such a relationship between cleric and court was tantamount to open recognition by these clerics and their like-minded co-religionists of the legitimacy of Safawid rule and the shahs' claims to status as protectors of the faith in the region, if not also—especially during the reigns of the first two Safawid shahs, Isma'Tl (905/1499-930/1524) and Tahmasp (930/1524-984/1576)—as *nuwwāb* of the Hidden Imam or the Imam himself.[1]

By the late Safawid period, as *jāmi' al-sharā'īt* the *mujtahid-muhaddith,* like the *mujtahid,* would have been cognisant of the connexion between the rationalists' jurisprudential analysis, their expansion of *the faqih's* authority in matters of both doctrine and practice and their accommodation with the established political institution, particularly throughout the preceding decades of the Safawid period. In the last analysis, the *mujtahid-muhaddith* of the Safawid period would have tended to identify himself, and be identified, both with the preservation of the jurisprudential and practical authority of *jami' al-shara'it* within the community and the close connexions between clergy and court which assisted, if they were not actually necessary for, the maintenance of this twofold authority in Safawid territory. In number 31 al-Samāhījī followed the lead of earlier Safawid-period biographers who classified some of those Safawid-period clerics—to date identified by Western-language scholars simply as Akhbārīs—as of the category of *mujtahid-muhaddith.* Among the clerics identified as such by al-Samahījī were Khalīl al-Qazwīnī, Muhsin Fayd al-Kashanī,

Muhammad Tahir al-Qummī, and al-Hurr al-'Amilī.[2]Interestingly, al-

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1. All three of these rationalist clerics had close court connexions and favoured an expanded role for the *fuqahā* in community affairs during the occultation. On al-Karakī and his support for the extreme manner of the early Safawids' association with the faith, see my ' The myth of the clerical migration to Safawid Iran'. On Shaykh Bahāī and Mir Damad, see my ' Towards a reconsideration', passim, esp. 181, and nn. 41, 92, 94. On the court connexions of Shaykh Bahāīs father Shaykh Husayn (d. 984/1576), see ibid, 169-71. The latter's subsequent unease with and repudiation of these connexions is discussed in my ' The myth of the clerical migration to Safawid Iran '.

2. Al-Hurr al-'Amīlī himself had described Muhammad Amīn, Fayd al-Kashānī, and Muhammad Tahīr al-Qummī each as ' *mutakallim* (theologian), *faqīh*, *muhaddith* ', assessments repeated by his non-Akhbari contemporary Afandl. Al-Hurr al-'Amill described Khalīl al-Qazwīnī in the same terms, although Afandī called him ' *mutakallim Usūlī.* See *al-Hurr al-'Amilī*, 2:246, 112, 305, 277- 8; *Afandī*, 5:35, 2:261, 5:180, 111. Al-Samāhijī did not designate as *mujtahid-muhaddith* the three Safawid-period clerics often identified as ' moderate ' Akhbārīs in Western sources—Muhammad Taqī al-Majlisī, al-Tunī, and al-Jaza'īrī. Indeed, al-Hurr al-'Amilī and Afandl classified al-Majlisī as a *'mutakallīm faqīh* ' and al-Tūnī as a 'faqih '. Afandī described al-Jaza'īrī as a *'faqīh* ⇨

Thus at least by early in the second Safawid century, rationalist scholars were employing the term *al-jāmi li'l-sharā'īt al-iftā*—used, for all practical purposes, virtually interchangeably with such terms as *nā'ib 'āmm, faqih,* and *alhākim al-shar'l*—explicitly to refer not only to the individual who had attained expertise in the rationalist religious sciences to practise *ijtihād* and who onsequently possessed jurisprudential authority within the community, but also to the individual who possessed authority in such other areas of affairs of import to the daily life of the community in the occultation as the implementation of *al-hudūd,* the performance of Friday prayer, and the collection and distribution of *al-zakāt* and *al-khums.* Indeed, certainly by this time, the two were seen as one and the same. Expertise in the jurisprudential went hand-inhand with authority in the practical.

As was noted above, al-Samāhijī described the *mujtahid-muhaddith* as being as equally well versed in the subjective religious sciences as the *mujtahid.* Both were understood to *be jāmi' al-sharā'it.* If the *mujtahid-muhaddith* then based his legal rulings on *al-riwāya,* there is no suggestion that he rejected the fact of his position as a source of legal authority in the community or the division of the community into *mujtahid* and *muqallid.* Certainly the *mujtahid-muhaddith* did not allow *al-'āmmī* the same scope of involvement in the judicial process as is prescribed by the Akhbārīs in numbers 12 and 24. At the same time, as *jāmi' alsharā'it* the *mujtahid-muhaddith* was certainly as aware as the *mujtahid* of the historical development of the concept of *sharā 'it al-ijtihād* and of the position of *jāmi' al-sharā'īt* as both the expert in the subjective religious sciences and *nā'ib 'āmm* in relation to the practical duties of the Imam during the occultation; for example, acting as *nā'ib* in the performance of Friday prayer, collecting and distributing *al-zakdt* and *al-khums,* and implementing *al-hudūd.* Indeed, number 31 contains no suggestion the *mujtahid-muhaddith* rejected the extension of the authority of *jāmi' al-sharā'it* over such associated activities of import to community life.

The extension of clerical authority over the jurisprudential and practical spheres of the life of the community had direct implications for the relationship of the *mujtahids* with the established political institution. In the Safawid period in particular, the maintenance and expansion of the *mujtahids'* authority was elaborated and implemented by such clearly rationalist clerics as al-Karakī, Shaykh Bahā'i, and Mir Damad. The careers

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⇦ Shaykh Baha'ī espoused similar views. See my' Towards a reconsideration of the " Isfahan School of Philosophy ": Shaykh Baha'ī and the role of the Safawid *'ulamā",* *Studia Iranka,* 15/2, 1986, esp. 191-6.

Jafariyya' essay on prayer, written in 917/1511, a year after completing the *kharāj* essay, al-Karakī stated that in the performance of Friday congregational prayer during the occultation the *nā'ib* of the Imām was *al-faqih al-jāmi' li'l-sharā'it.*[1] More than a decade later, in his *Jāmi' al-Maqāsid,* al-Karakī stated that *al-faqih al-md'mun* (the trustworthy *faqīh) al-jāmi' li-shard'it al-fatwā* was *mansub min qibal al-Imām* (designated by the Imām) and was, therefore, to be assisted in implementing *lhudud* and undertaking *al-qadā*[2]. Al-Karakī's contemporary Shaykh Zayn al-Dīn b. 'Alī, al-Shahīd al-Thanī,[3] stated that the *faqih* ' who possesses the qualities of *iftd*' was to undertake *al-qadā* during the occultation; the qualities specified included those cited by al-Samāhījī in numbers 10 and 28 as being required by the *mujtahids.* Elsewhere the Shaykh stated the revenues of *al-khums*were to be conveyed to the Imam's ' *nuwwdb* (sg. *nd'ib);* they are the just Imamī *fuqahā,* those who possess the *sharā'it al-fatwā,* because they are his [i.e. the Imam's] *wakils.*'[4] Nearly a century before al-Samāhījī composed ' *Munyat al-Mumārisin*', Muhammad Baqir b. Muhammad al-Husaynī, Mīr Damad (d. 1041/1631-32), permitted the individual who possessed *al-niyaba al-'āmma* to lead the Friday prayer service. This individual, explained Mir Damad,' is the mujtahid [by which] I mean the trustworthy faqih who combines (al-mustajmi") the disciplines (al- 'ulūm) of al-ijtihād and the characteristics of al-iftā.[5]

⇦ *'āmm* as cited by Calder, who noted the concept was further developed by *al-Shahīd al-Thanī.* See Calder,' Zakāt in Imamī jurisprudence ', 478-80, and nn. 28, 33. On the term *al-imām al-jā'ir* as reference to the early Safawid shahs, see my ' The myth of the clerical migration to Safawid Iran: Arab Shī'īte opposition to "AH al-Karakī and Safawid Shī'ism, Die Welt des Islams (forthcoming, 1993).

1. al-Karakī, ' *Al-Ja'farīyya fī l-Salāt'*, Cairo, Dār al-Kutub al-Misrīyya, MS 217*Q* Fiqh al-Shī'a, fol. 84a. On this essay, see al-Tehrānī, *al-Dharī'a ild Tasānīf ai-Shī'a* (Tehran and Najaf,1353-98). 5:110-11.

2. Idem, *Jāmi' al-Maqāsid*, Cairo, Dar al-Kutub al-Misnyya, MS 20306b, fol. 125a. On al-Karakīs position on these issues, see also my ' The Myth of the clerical migration to Safawid Iran '.

3. The original's number 25—already noted as having been dropped by al-Khwansārī—suggests that by al-Samahijfs time both Akhbārīs and Usūlīs agreed al-Karakī and al-Shahīd al-Thanī were Usūlis. See also references to these earlier scholars in numbers 31 and 39.

4. Calder,' Judicial authority ', 105; idem,' *Khums* in Imāmī Shī'ī jurisprudence from the tenth to the sixteenth century A.D. ', *BSOAS*, XLV, 1, 1982, 44-5, citing al-Shahīd al-Thanīs *al-Raudat al-Bahiyya.* Here also the Shaykh explicitly equated *al-hākim al-shar'ī* (the lawful ruler) with the faqīh. In *al-Raudat al-Bahiyya's* section on al-zakāt, he described *faqih shar'ī as nā'ib al-Imām* in the occultation, implicitly equating these with *nā'ib 'āmm* of the Imām. See Calder, ' Zakāt', 477-9.

5. Muhammad Baqir b. Muhammad al-Husaynl, Mir Damad, *Kitab al-Qabasat*, (ed.) Mehdi Muhaqqiq, (Tehran, 1356/1977), introduction, 39. Mir Damad's contemporary ⇨

the former. Ja'far b. al-Hasan, al-Muhaqqiq al-Hillī (d. 676/1277), stated that' the faqīh... who is aljami' li'l-siīdt al-mashruta fi'l-fatwā' (he who has attained the characteristics required to issue the fatwd) was permitted to undertake al-qadd in the occultation.[1] His student al-Hasan b. Yusuf, al-'Allama al-Hillī (d. 726/1325), equated the qddl al-mansub 'an al-Imām (designated on behalf of the Imam) with the faqīh al-jāmī' li-sharā'it al-iftā and defined al-sharā'it to include the disciplines specified by al-Samahījī in numbers 10 and 28. Al-'Allama also equated the faqih with the/afwā-giver, empowered him to implement al-hudūd (legal punishments) in the Imām's absence, and stipulated as necessary both for the faqih, the qddi and the Friday prayer leader, qualifications similar to those listed by al-Samāhījī as possessed by jāmi' al-sharā'īt.[2] Both al-Muhaqqiq and al-'Allama also designated the faqīh as having a role in the processes related to al-zakāt. [3] Later in the same century, Muhammad b. Makkīī, al-Shahld al-Awwal (d. 786/1384), stated that during the occultation al-qadā was to be undertaken by al-faqīh al-jāmi' li-sharā'it al-iftā.[4]

The tendency to endow the individual possessing authority in the jurisprudential sphere, that is, possessing *sharā'it al-ijtihād,* with authority in the practical continued in later centuries. In the early Safawid period, in his essay on *al-kharāj,* 'AIī b. 'Abd al-'Alī al-Karakī (d. 940/1534) argued that by right of *niyāba 'āmma* (general deputyship to the Hidden Imām during the occultation) certain individuals might receive *kharāj.* Al-Karakī's intention in referring to the general deputyship was made clear elsewhere in the same essay, where he equated the *nā'ib* and the *faqih* in stating that *al-faqih al-jāmi' li'l-sharā'it* might accept *al-zakdt, al-khardj,* and *al-maqāsama* from *al-imām al-jair* (the tyrannous imam), in the former's capacity as *nā'ib 'āmm* permitted to interact with *aljā'ir* during the Imam's absence.[5] In his' *al-*

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1. Ja'far b. al-Hasan, al-Muhaqqiq al-Hillī, *Sharāī al-hlam* (Najaf, 1389/1969), 4:67-9; see also 1:344-5. See also his *al-Mukhtasar al-Nāfīl* (Najaf, 1383/1964), 283'. Mashruta is derived from the same trilateral root as sharā'it.

2. Al-Hasan b. YOsuf, al-'Allama al-Hillī, *Qawāid al-Ahkām* (Qum, n.d.) 1:118-19, 2:200-2; idem, *Mukhtalaf al-Shi'a,* 2 vols. in 1 (Tehran, n.d.), 1:108-9. Cf. the discussion in Sachedina, The Just Ruler, 166.

3. Al-Muhaqqiq al-Hilli, *Sharā' al-Islām,* 1:164-5, 168; idem, *al-Mukhtasar al-Nāfī',* 87-8; al-'Allama al-Hillī, *Qawā'id al-Ahkām,* 1:57-9. See also Norman Calder, ' *Zakāt* in Imamī Shīī jurisprudence from the tenth to the sixteenth century A.D.', BSOAS, XLIV, 3, 1981, 476.

4. Muhammad b. Makki al-'Amilī, *Al-Luma'a al-Dimashqiyya,* (Qum, 1387/1967), 3:67. See also n. 34 in the first section of the present essay.

5. 'All al-Karaki,' Qati'at al-Lajaj', in *Kalimāt al-Muhaqqiqīn* (Qum, 1402), 173. 180. This essay, completed in 916/1510, predated by more than a decade al-Karakīs discussion of Friday prayer and *al-jihaām* his *Jāmi' al-Maqāsid* of the *faqīh* as *nā'ib* ⇨

In this regard, al-Khwansārī's exclusion of the entire text of the original's number 31 is perhaps the most important of his omissions. Number 31 provides Contemporaneous evidence of and definition for a moderate/ radical division among Akhbārīs. In doing so, number 31 also demonstrates that the supposedly scholastic disagreement between and among Akhbārīs and Usulīs in fact had roots in and implications for the alternative views of and within each fraction on such distinctly practical matters as the nature of clerical authority in the community and the relationship between that authority and the established political institution during the occultation.

The essence of number 31 is its discussion and definition of three groups of scholars. Of the three—the *mujtahid,* the *mujtahid-muhaddith,* and the *muhaddith*—it is clear that on purely scholastic grounds there was a distinct affinity between the *mujtahid* and the *mujtahid-muhaddith.* According to al-Samahījī, the *mujtahid* was to be well-schooled in the various rationalist subjective religious sciences and to have permitted recourse to *al-adilla al-'aqlīyya.* Al-Samahijī defined the *mujtahid-muhaddith* as a scholar as well versed in the same rationalist religious disciplines as the *mujtahid* in order to have attained the qualifications for practising *ijtihdd,* but basing his *ahkdm* (rulings) on the revealed sources. The affinity between the *mujtahid* and the *mujtahi-muhaddith* is all the more clearly evident in al-Samāhījī's use in number 31 of the term *jāmi' al-sharā'it* (he who has attained the qualifications) to refer to both. *Al-sharā'it* referred to *shara'it al-ijtihād* (the qualifications for *ijtihād),* a term, also used in number 31, entailing knowledge of and expertise in the rationalist subjective religious sciences, listed in number 10—where al-amāhījī referred to attaining ' the level of issuing a legal ruling and nowledge of the traditions', a phrasing similar to ' the level of *ijtihād*' used in number 12—and number 28.

This scholastic affinity between the mujtahid and the mujtahid-muhaddith had concrete practical roots and implications. Earlier generations of rationalist scholars had used the terms jāmi' al-shard'it and sharā'it al-ijtihād to denote not only the individual who had attained expertise in the rationalist subjective religious sciences to practise ijtihād, but also the individual endowed with an ever-expanding degree of authority in practical affairs of daily importance to the community during the occultation. Indeed, these scholars understood the two individuals to be one and the same, the authority in the latter identified with, if not flowing from, expertise and authority in

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⇦ "Aspects Of Akhbārī thought', 145, 148-51, and The description Of Momen (*Shī'ī Islam,* 118) Of all four of these clerics as 'either Akhbārī Or favourable to the Akhbārī position'. See also The discussion Below and nn. 4, 31-3, 35.

have agreed with the Akhbārīs.[1] In number 35 some—presumably ' extreme '—*mujtahids* are portrayed as claiming As a *hujja* (proof) Consensus on the Basis of an isolated tradition, a point excised in the abridgement.

Intra-fractional conflict: the *Mujtahid-Muhaddith* and the 'pure' Akhbārī

By contrast with his nearly complete excision of the original's references to splits among Usūlīs, al-Khwānsārī left some references to splits among Akhbaris intact, if somewhat 'watered-down'. Both the original's number 2 and its corresponding number in the abridgement indicate disagreement among Akhbaris over sources: some Akhbaris accepted the evidence of the Qur'ān while others relied solely on the revelation of the Imams.[2]

Al-Khwānsārī did, however, omit the references in the original's number10 to disagreement among Akhbārīs over the disciplines to be mastered by their clerics in which some Akhbārīs took what was clearly a more extreme position. The original's number 34 and its corresponding point in the later abridgement mention disagreement on *tā'khīr al-bayān* among Akhbārīs. Interestingly, in both the original and the abridgement Amfn al-Astarābādī is portrayed as having advocated the minority viewpoint on this issue, further confirming our earlier suggestion that Safawid-period Akhbārīs did not accord al-Astarabādī any special status vis-a-vis the movement, let alone view him as its reviver or founder.

Taken together this material clearly suggests the presence of moderate' and ' extreme/radical' tendencies within the Akhbārī movement. Indeed, Westernlanguage Scholars have referred to ' moderate' Akhbārīs In this period. These scholars have, however, failed to provide any definition of this moderation.[3]

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1. Al-KhwansarFs alterations to numbers 35 and 36 have already been noted. In the abridgement's Numbers 13 And 14—on *al-karāha* (aversion) And *taqlid al-mayyil*—references to a " majority' among the *mujtahids* were not present in the corresponding points in the original. The Motives behind these and other alterations made by al-Khwansārī—he appears to have added a point, number 12, Not found in the original, for example—are more properly the subject of a separate study of al-Khwansārī himself. His overt anti-Akhbārī proclivities have already been noted. See nn. 8, 12.

2. This may have some bearing on Kohlberg's suggestion that the legitimacy of the 'Uthmānic Codex was an issue in this period, although Kohlberg suggested the question of legitimacy was a bone of contention between Akhbārīs and Usūlīs, not among Akhbaris. The statement in number 16 that ' the only individual who knows the Qur'ān is he to whom it was spoken' may also be a reference to the Akhbarl position on this question. See Etan Kohlberg,' Some notes on the Imamite attitudes to the Qur'ān', in (ed.) S. M. Stern et al., *Islamic philosophy and the classical tradition* (Oxford: Cassirer, 1972), 217-18. See also n. 31 below.

3. See Madelung (' Akhbariyya ', 57), who characterized as ' moderate' 'Abdallah al-Tunī, alJaza'īrī, and Yusuf al-Bahranī. See Also the Description of Kohlberg ('Akbariya', 718) of those three and Muhammad Taqī al-Majlisī as 'moderate'. See also Kohlberg, ⇨

nearly all references in the original text to disputes among *mujtahids*, for example. In the original's number 22 some *mujtahids* are said to have permitted recourse to *khabar al-wāhid* (the singular of *akhbār al-ahād*); no such reference appeared in the corresponding point in the abridgement.[1] In number 26, al-Samahijī noted some disagreement among the mujtahids over the extent of the obligatory nature of *ijtihād*; no such split was noted in the corresponding point in the abridgement. Reference in number 34 to disagreement among mujtahids over *tā'khīr albayān* (delay of the explanation) was also omitted by al-Khwansārī. Although the original's numbers 35 and 36 dealt with disagreements among the *mujtahids* on issues related to consensus, the gist of the original's number 35 appeared in much-truncated form in the abridgement—the only instance in which al-Khwansārī retained references in the original to splits among Usulīs; number 36 was simply excised. Mention of disagreement among *mujtahids* over istishdb in the original's 39 was likewise omitted in the abridgement.

The original text also clearly denoted the existence of a formalized ranking among *mujtahids* based on technical ability. Al-Samahījī's number 9 noted the reference of the mujtahids themselves to ' an absolute mujtahid' and ' an inquiring *mujtahid*' as apparently separate ranks. In his abridgement, by contrast, al-Khwānsārī referred simply to the *mujtahids'* mention of ' the absolute *mujtahid*' Although al-Samahījī did not add any further, specific information on the nature of the distinction between the two, the authority of the latter within the community, if not equal to that of the ' absolute *mujtahid*' was doubtless understood as greater than that of the *muqallid.*

Where some of the material in the original excluded in the abridgement merely intimated the presence of splits among Usūlls, other such material explicitly referred to the presence of extreme rationalist elements among the *mujtahids* of the late Safawid period. The original's number 10—the bulk and detail of which were omitted by al-Khwānsārī—on the highly developed nature of the Usūlī rationalist religious sciences, clearly suggests some *mujtahids* required expertise in all of these. The original's number 14 also denoted the presence of an element dismissive of the need for recourse to any elements of the revelation in a distinctly less ambiguous fashion than the later abridgement: al-Khwānsārī omitted the key second sentence in the text of the original altogether. In numbers 35 and 36 in the original text disagreement among the *mujtahids* on issues relating to consensus is noted, and in both instances some—presumably ' moderate'—*mujtahids* are said to

1. See also n. 32 below.

explicit references to the importance Akhbārīs attached to the role of *al-'āmrni* in the interpretation of doctrine and practice. The sole reference to *al-'āmmi in* al-Khwansārī's abridgement, in number 20, was, by contrast, somewhat more oblique.[1] Numbers 21 and 40 in the original, if repetitive of each other, made explicit the mujtahids" debt to Sunn! Jurisprudence and the Akhbārī criticism thereof—a connexion and criticism which, although also made by Amīn al-Astārabādī himself, were omitted by al-Khwānsārī in his abridgement.[2]

The original's number 25, omitted by al-Khwansārī, demonstrates that the past was a crucial battleground for both Akhbārīs and Usūlīs in this period: al-Samāhījī depicted members of each fraction clearly seeking to legitimize their arguments by citing important scholarly figures in Twelver history.

Al-Khwansārī also omitted all the Qur'ān and *hadith* citations referenced by al-Samāhījī as marshalled by the Akhbārīs to support their arguments. These omissions included, for example, the reference in numbers 8 and 11 to the Akhbārīs' use of the well-known ' delegation ' tradition of 'Umar b. Hanzala against the *mujtahids*. Western scholars have fixed on the use of this text in particular by Usūlu scholars to support the expansion of the authority of the *fuqahā* (sg. *faqīh*) during the occultation.[3] The Akhbārī appeal to this *khahar* proves the—if commonsense then, to date, unspoken and unproven—assumption that this and other such revealed texts were at least as important to the Akhbārī polemic as to the Usulī.

Intra-fractional conflict: the mujtahids

Comparison of al-Samāhījī's original text with the later abridgement also reveals that al-Khwansārī excised much material relating to disagreements within each of the two fractions. Al-Khwansārī's abridgement excluded

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1. Al-Khwansārīs text in the abridgement reads: ' The Akhbārīs permit seeking the *hadīth* even from an *'āmmī Al-'amma*, as in numbers 20 and 40, referred to the Sunnīs. In the original's numbers 12 and 24, however, *al-'ammī* is clearly intended to refer to the ordinary—perhaps ' lay '—believer.

2. Al-Astarābādī's criticisms of the increasing reliance on subjective rationalism by generations of Twelver legists are well known from the secondary sources. See especially the sources cited in nn. 2 and 3 above.

3. See, for example, Joseph Eliash,' Misconceptions regarding the juridical status of the Iranian 'ulamā", *International Journal of Middle Eastern Studies*, 10/1, 1979, 9-25, and his translation of most of this khabar therein. See also Norman Calder, 'Judicial authority in Imāmī Shī'ī jurisprudence' *Bulletin of the British Society for Middle Eastern Studies*, 6/2, 1979, 104-5; Arjomand, The Shadow of God, 51, 141-2; and Sachedina's references to this *khabar* in his *The Just Ruler*, i39-42, 166. Interestingly, as seen in the *apparatus criticus* of the Arabic text in the first section of the present essay, the Majlis manuscript of the original text also excluded the Qur'ān and *hadith* citations.

immediately clear.[1]

Of the material excluded by al-Khwansārī several points and some of the detail may be said to have re-emphasized ideas made in other points, the texts or *gists of which were left largely intact in the later abridgement.* If numbers 5 and 8 in the original, for example, contained more detail than was available in the corresponding points in the abridgement, the crux of both was certainly available in the latter. Numbers 17 and 19, although not included by al-Khwansārī, were certainly implicit throughout the abridgement. The legitimacy of judicial error was covered in greater detail in the original—in numbers 3, 18, and especially 23 and 30—but was raised in corresponding points in the abridgement. The original's number 20, though dropped in the abridgement, may be said to be somewhat repetitive of ideas made in other points in the original and retained in corresponding numbers in the abridgement. The legitimacy of recourse to *akhbār al-ahād* (isolated *akhbār*, that is, traditions transmitted on the basis of a single individual), discussed in numbers 5, 12 and 22 in the original, was covered in the abridgement, if only in number 18. Al-Samahījīs numbers 32, 33, and 37, on *al-barā'a al-aslīyya*, were discussed in the later abridgement, although only in numbers 17 and 24.

Other material in the original excluded by al-Khwānsārī contains information which contributes to a more detailed, more interesting picture of the nature of the dispute in this period. The original's number 30, for example, was more forthcoming on the mujtahids" view of the nature of the Imam's infallibility and the nature of the Akhbārī denial of the status of the *mujtahid* as a delegated representative of the Imām than the corresponding point in the abridgement. Numbers 10 and 28 in the original, although somewhat repetitive of each other, included more detail than the abridgement on the nature of the subjective disciplines in which the *mujtahid* was expected to have expertise. Al-Samāhījī's numbers 12 and 24 contained

1. These points have been outlined in such Western-language sources as those cited in n. 4 in the first section of this essay and nn. 1, 2 and 3 in the present section. The references in the original's number 23 to *al-taqlya* (dissimulation) do not appear to support Kohlberg's suggestion that *altaqlya* was a ' major issue' of contention between Akhbaris and UsQUs. See his ' Some Imāmī Shīī Views on taqiyya ', *Journal of the American Oriental Society*, 95/3, 1975, 397-8, 398, nl8. See also idem,' Akbarīya', 717. In the former, Kohlberg's source was Falaturi (op. cit., 84), who listed as his sole reference *al-Fawā'id al-Madaniyya*. Kohlberg's supporting reference on this issue in his more recent 'Aspects of Akhbārī thought' (135nlO) was *al-Fawā'id al-Madaniyya* itself. It may be that this issue was of concern only to individual Akhbārī clerics; clearly, however, the issue merits additional research. Interestingly, al-Khwansārī dropped the references to *al-taqiya* in his later abridgement.

be considered the leading exponent of the Akhbāri polemic in late Safawid Iran, let alone its founder/reviver, it seems inappropriate to imply that *al-Fawā'id al-Madaniyya* was the first coherent statement of all the main elements of that challenge.

The original version of' Munyat al-Mumārisīn '

If Western scholars have focused on al-Astarābādī as the founder/reviver of the Akhbārī polemic, they have also referred to and/or relied on al-Samahijī's ' *Munyat al-Mumārīsīn'* as an effective summary of the principal points of disagreement between Akhbārīs and Usūlīs in the late Safawid period. To date, however—as noted in the first section of the present essay—the version of al-Samahijī's text utilized by those scholars has been the more easily accessible abridgement made by al-Khwānsārī some two centuries after al-Samahijī's death. Comparison of the abridgement with the full text of the seventh section of al-Samahijī's ' *Munyat al-Mumarīsīn'*—made available in Arabic and English in the first section of the present essay—demonstrates that although faithful to many of the points of disagreement noted by al-Samahijī, al-Khwansārī's abridgement omitted much detail and a number of points made in the original.

Examination of al-Samāhijī's full text does verify the evidence in the later abridgement that the Akhbārī/Usūlī dispute did involve disagreement over points of jurisprudential philosophy. Thus, as secondary-source authors relying on the abridgement have suggested, the original text confirms that the *mujtahids* argued for the necessity of recourse to subjective disciplines and rationalist principles—especially including *ijtihād*—in the analysis and application of the revelation, and that they classified the *akhbār* into four categories. In both the original and the abridgement the *mujtahids* were also described as viewing the community as divided either into *mujtahid* or *muqallid* (follower), permitting the *mujtahid* to err, allowing the presence of *ikhtilāf* (disagreement), permitting istishdb (continuance) and forbidding *taqlid al-mayyit* (following the fatwd of a dead *mujtahid*).

As for the Akhbārīs, in both the original and the abridgement they are seen denying the legitimacy of *ijtihād* and *al-adilla al- 'aqlīyya* (the rational proofs) and stressing the importance of sole recourse in judicial arbitration to the revealed sources, especially the *akhbār* of the Imāms. In both they are also portrayed as opposing the four-part *akhbār* classification system, accepting the traditions in the four early *akhbār* collections, not permitting *ikhtilāf*, opposing *istishāb*, permitting *taqlid al-mayyīt*, and requiring caution and hesitation in cases where the textual evidence on a issue was not

As part of their focus on the personality of al-Astarābādī, several Western scholars have also suggested that his interest in Akhbarism derived from external influence. As evidence is offered al-Astarābādī's statement in al-*Fawā'id al-Madaniyya* that he had written the treatise in Mecca in 1031/1622 at the behest of his teacher Mīrzā Muhammad b. 'Alī al-Astarābādī (d. 1028/1619) to 'revive' the AkhbarT tariqa (order).[1] Neither Safawid nor post-Safawid biographers mention any special encouragement toward Akhbarism *per se* given to Muhammad Amīn by his teacher. Nor, perhaps more importantly, do these authors note any expressly Akhbārī proclivities on the part of Mīrzā Muhammad himself. Indeed these sources record only Mīrzā Muhammad's interest in Twelver *rijāī* (men of distinction)."[2]

On balance, the special connexion between al-Astarābādī and eleventh/ seventeenth-century Akhbārism postulated by later Twelver and Western sources seems not to have been a universally recognized fact within the Twelver community during the century immediately following al-Astarabādī's death. If there is some question that Muhammad Amīn ought to

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⇦ *al-Fawā'id al-Madaniyya*, and attached importance to al-Astarabādīs criticisms. See, for example, al-Khwansārī, 1:136-7, 2:119; Madelung, 'Akhbariyya'; Kohlberg, 'Akbariya', 718; idem, ' Aspects of Akhbārī thought', 136-8; Arjomand, The Shadow of God, 146; Momen, Shī'I Islam, and nn. 3,4 and 5 above. On the nature and extent of al-Kashanīs and al-Majlis's interest in Akhbārism and al-Astarābādī, however, see both the discussion below and, especially, my forthcoming paper on al-Kashānī.

1. See, for example, Madelung,' Akhbariyya', 56; Kohlberg,' Akbarīya ', 717; idem, 'Aspects of AkhbarT thought', 133; Arjomand, *The Shadow of God*, 145.

2. On Muhammad Amīn, see the references cited in nn. 5 and 9 above. On Mīrzā Muhammad, see al-Madanī, op. cit., 499; al-Hurr al-'AmilT, 2:281; Afandī, 5:116; al-Bahram, 119-120; al-KhwansarT, 7:38. See also the biographical work of Muhammad 'Alī b. Muhammad Tahir Mudarris (d. 1373/1954), *Rayhanat al-Adab* (Tehran, 1328-33), 2:424-5, which, though not always a thoroughly reliable source, described MIrza Muhammad as an ' Usulī/a'/7)'. Muhammad b. 'Alī al-ArdabUī—like the author of *Riyādal-'Ulamā*, al-Mirzā 'Abdallah Afandī, a student of Muhammad Baqiral-Majlisī—in his biographical sketch of Mīrzā Muhammad copied the notice on him from an earlier biographical work without adding mention of any interest in Akhbārism or his having taught Muhammad Amīn. See his *Jāmi' al-Ruwāt* (Iran, n.d.), 2:156. Al-Ardabīlī offered no entry at all on Muhammad Amīn, either an indication of disapproval or the result of concentration on pre-Safawid Twelvers, entries on whom make up the bulk of the work. See also n. 32 below.

Muhammad Amīn's evocation of his teacher's name in a treatise written only several years after the latter's death may have been an attempt to bolster the legitimacy of *al-Fawd'id al-Madaniyya's* criticisms. Such an effort would understandably have been necessary, given the treatise's harsh criticisms of both prominent earlier Twelver clerics and such more recent scholars as Zayn al-Dīn b. 'All al-'AmilT al-Shahīd al-Tham (d. 965/1557) and Baha' al-Dīn Muhammad al-'Amill, Shaykh Baha'ī (d. 1030/1622), on whom see further our discussion below.

change in his own circumstances in the latter years of his life.[1] This subsequent disillusionment certainly informed al-Bahrāni's evaluation of al-Astarabādi in particular and the Akhbāri polemic in general.[2] As for al-Khwansārī, although the citations from *al-Fawā'id al-Madaniyya* and the inclusion of some scant biographical material on its author are useful, his' analysis' of Akhbarism and al-Astarābādī are particularly full of rhetorical invective.[3]

By contrast with post-Safawid-period biographers and Western scholars, the contemporaneous Twelver scholarly community does not appear to have shared this interpretation of al-AstarabadT's role in the Akhbārī polemic. The authors of several late-Safawid-period clerical biographies, for example, do not credit al-Astarābādī with establishing or reviving the Akhbari critique, let alone having been its chief spokesman.[4]

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1. Al-Khwansāri, *Raudāt al-Jannāt*, 8:203't; al-Bahrani, *Lu'lu'at al-Bahrayn*, 445-6. See also Kohlberg,' Akbariya ', 718, and idem,' Aspects of Akhbari thought * , cited in n. 3 above, 145, 148-51; Madelung, ' *Akhbariyya* '; Hamid Algar, *Religion and the state in Iran: the role of the ulamā in the Qājār period* (Berkeley: University of California Press, 1969), 34-6. Cf. Momen, An introduction to Shiī Islam, 331nl3. The strict Usulism of Yusufs father Ahmad may also have been an additional moderating influence on his son. On Ahmad al-Bahrānī, see al-Bahrānī, 93-5. On Yiisuf, see also nn. 19, 35.

2. To the extent that Tunukabūnī frequently echoed, if he did not repeat verbatim, al-Bahrānī's descriptions, frequently without attribution, his evaluations are also clearly more problematic than otherwise.

3. See al-Khwānsārī, 1:136, 6:285-6, and 3:341-3, where he alluded to connexions between the early ImamI ghulat and the Akhbārīs, the Shaykhī and Bahrānī movements, less by offering firm evidence of such connexions than by attempting to prove ' guilt by association'. The supposed connexion between Akhbārīsm and the Shaykhi and Bahranī movements has been a feature of Western-language discussions of Akhbārīsm. See, for example, M. le Comte de Gobineau, *Les religions et les philosophies dans I'Asie Centrale* (Paris, 1900), 31; Cl. Huart,' *Shaikhi'*, £Y(Leyden: Brill, 1934), iv, 279-80; Scarcia, ' Intorno alle controversie tra *'Ahbari e 'Usūli'*, p. 220, n. 2; Arjomand, op. cit., 153, 252-3. See also Henry Corbin, *En Islam iranien*, iv (Paris: Gallimard, 1972), 129, 249-52. See also James Winston Morris, *The Wisdom of the Throne: an introduction to the philosophy of Mulla Sadra* (Princeton: Princeton University Press, 1981), p. 47, n. 52, where Sadr al-Dīn al-Shīrāzī (d. 1050/1640) is said to have had Akhbārī tendencies. See also Arjomand, *The Shadow of God*, 253.

Al-Amīn also resorted to brevity to express his distaste for Akhbārīs: his entry on al-Astarābādī is less than a page while al-Khwansārīs is more than ten and includes lengthy citations from his work. See also n. 11.

4. See Sayyid 'All al-Madanī, *Kilāb Sulāfat al- 'Asr* (Cairo, 1324), 499. Al-Madanī completed this work in 1082/1671. See also Sayyid Muhammad b. al-Hasan al-Hurr al-'Amilī, *Kitāb Amal al-Amil* (Baghdad, 1385), 2:246, 244, 281, 310. As mentioned in n. 4 above, al-Hurr al-'Amili himself is often described as an Akhbārī. See also n. 35. See also al-MIrzā 'Abdallah al-Isbaham Afandl, *Rivad al-'Ulamā* (Qum, 1401), 5:35-7. Afandl, a student of Muhammad Baqir al-Majlisi (d. 1110/1699), died c. 1130/1718. See also n. 11 in the present section. Such later Safawid-period clerics as Muhammad Taqī al-Majlisi and Fayd al-Kashani, both often identified as Akhbaris, had clearly read ⇨

The several Other Twelver Scholars identified as Akhbārīs By Western-language Scholars nearly always post-date alAstarābādī.[1]

It is not surprising that Western-language scholars focus on al-AstarabadT as the chief exponent, if not the founder, of the Akhbārī critique. In their clerical biographies, some later Twelver scholars well known to Western scholars described al-Astarabādī in similar terms. In the twelfth/eighteenth century, Yūsūf al-Bahrānī called al-Astarābādī ' the first who opened the door of slander against the *mujtahidūn* and divided the saved sect [i.e. the Twelver Shī'a] into Akhbārī and *mujtahid*.' According to al-Bahrānī, most of al-Astarabadī's work was filled with al-tashni' (denunciation) of the mujtahids and accusations that they had destroyed the faith. Muhammad b. Sulayman Tunukabūnī (d. 1302/1884-1885) echoed al-Bahrānī's assessment in his well-known Persianlanguage *Qisas al-'Ulamā"*. Muhammad Bāqir al-Khwansārī al-Isbahani in his *Raudāt al-Jannāt* and Muhsin al-Amīn (d. 1373/1952) in his A'ydn al-Shī'a evaluated al-Astarabadī in similar, and similarly negative, terms. The latter called al-Astarabādī' the leader of the Akhbarīs in the eleventh century and the first who attacked the *mujtahids* '.[2]

While the factual information and the often lengthy citations from less accessible primary sources included in some Twelver clerical biographies render these biographies valuable, the subjective evaluations offered by their authors might best be treated with some care. Al-Bahrānī's Akhbārī proclivities came early in life and later gave way to disillusionment, perhaps as much a result of the violent turn the Akhbārī/Usūlī dispute took as a

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⇦ also 1921,161-2. In Russian, See A. M. Agakhi,' Znachenie Protivoborstva religiozno-filosofskikh techenii "akhbārī"' I " usulī" v ideologicheskoi bor'be svoego vremeni', in (ed.) N. A. Kuznetsova, Iran: Htoriya I Kul'tura V srednie veka I novoe vremya (Moscow: Oriental Institute Of the Academy Of Sciences Of the USSR, 1980), 3←18. My Thanks to Dr. Edmund Herzig For directing my attention to this latter article.

1. The other Twelver scholars identified as Akhbārīs in the secondary sources cited in the preceding notes include 'Alī b. Sulayman al-Bahrānī (d. 1064/1653-54), Muhammad TaqT al-Majlisī (d. 1070/1659-60), 'Abdallah b. Muhammad al-Tunī (d. 1071/1660-61), Khalīl b. Ghazī al-Qazwinī (d. 1088/1677), Muhsin Fayd al-Kasham(d. 1091/1680), Muhammad Tahir t, Muhammad Husayn al-Shīrāzī al-Qumrnī (d. 1098/1687), Muhammad b. al-Hasan al-Hurr al-'Amilī (d. 1104/1693), Ni'matallah al-Jaza'iri (d. 1112/1710); al-Samahijī himself, and Yusuf al-Bahrānī (d. 1186/1772). On the posible inclusion of Sadr al-Dīn al-Shīrāzī (d. 1050/1640) in this list, see n. 8 below.

2. Yūsuf al-Bahranī, *Lu'lu'at al-Bahrayn* (Najaf, 1969), 117-19; Muhammad b. Sulayman TunukabunT, *Qisas al-'Ulamā"* (Tehran, n.d.), 321-2, where he quoted al-Bahrānī verbatim and, as he often did, without attribution. See also Muhammad Bāqir al-Khwansārī al-Isbahanī, *Raudāt al-Jannat*, (ed.) M. T. al-Kashfī and A. Isma'īliyān (Tehran-Qum, 1390-92), 1:120; Muhsin al-Amīn, *A'yān al-Shī'a* (Beirut, 1960 f.) 43:333. Browne, *A literary history*, reproduced the statement of al-Bahranī/Tunukabunī in his description of al-Astarābādī. See also n. 7 below, and on al-Bahrānī, see also n. 4 above.

Astarābādī and the establishment of Safawid Akhbārāsm

In the Western sources the identification of al-Astarābādī with the formula-tion of the Akhbāri polemic is evident at least as early as the work of E. G. Browne who, in the 1920s, described al-Astarābādā as being ' generally accounted the founder' of The movement.

G. Scarcia's And A. Falaturi's Later evaluations Of Akhbārīsm Contained more Detailed discussions Of the Main elements Of the dispute. Nevertheless, both authors echoed Browne's assertions concerning the origins of the Akhbārī critique.[1]

Twenty years ago, Wilferd Madelung challenged the tendency to understand the Akhbārī/Usūlī controversy as' a phenomenon originating in Safawid times' by citing evidence of the presence of Akhbārism in the sixth/twelfth century.[2]

Later scholars, however, generally ignored such pre-Safawid manifestations of Akhbarism altogether, or—if only implicitly—characterized these as immature, embryonic forms of the critique which came to full term only with alAstarābādī's *al-Fawā'īd al-Madaniyya*?[3]

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1. E. G. Browne, *A literary history of Persia* (London, 1924, repr. 1953), iv, 374; Gianroberto Scarcia, ' Intorno alle controversie tra 'Ahbari e 'Usuli presso gli Imamiti di Persia', *Rivista degli Studi Orientali*, 33, 1958, 221-50, esp. 218 f.; Abdoljavad Falaturi,' Die Zwolfer-Schia aus der Sicht eines Schiiten: Probleme ihrer Untersuchung', in (ed.) E. *Graf, Festschrift Werner Caskel* (Leiden: Brill, 1969), 62-95, esp. 80-95. See also n. 4 of the first section of the present essay. On Browne's sources, see n. 5 below.

2. Wilferd Madelung, ' Imamism and Mu'tazilite theology', in *Le Shi'isme Imamite* (Paris: Presses Universitaires de France, 1970), 20-21. Madelung's key source was the sixth/twelfth-century *Kitāb al-Naqd* of 'Abd al-Jalīl al-Qazwīni al-Rāzī, (ed.) Jalal al-DIn Husayni Urmawl (Tehran, 1331), 2, 17 f.. where the author specifically disassociated himself from Twelver Akhbarism. See also Madelung, ' Akhbariyya ', £/(2nd ed.), sup. (Leiden: Brill, 1980), 56; n. 6 of the first section of the present essay.

3. See, for example, Norman Calder, ' The structure of authority in Imami Shī'ī jurisprudence ' (unpublished Ph.D. thesis, University of London, 1980), 23Inl8; S. A. Arjomand, The Shadow of God and the Hidden Imam: religion, political order, and societal change in Shi'ite Iran from the beginning to 1890 (Chicago and London: University of Chicago Press, 1984), 13, 145-6; idem (ed.). Authority and political culture in Shi'ism (Albany: State University of New York Press, 1988), 9; Moojan Momen, An introduction to Shi'i Islam (New Haven: Yale University Press, 1985), 117-18, 331nl2, 222-25; Etan Kohlberg, ' Akbariya', Encyclopedia Iranica (Leiden: Brill, 1985), I, 716-18; idem, ' Aspects of AkhbarT thought in the seventeenth and eighteenth century', in (ed.) Nehemia Levtzion and John O. Voll, Eighteenth-century renewal and reform in Islam (Syracuse: Syracuse University Press, 1987), 133. See, however, Erika Glassen, ' Schah Ismail I. und die Theologen seiner Zeit', Der Islam, 48/2, 1972, 267; 'Abdu'l Had! Ha'iri, Shi'ism and constitutionalism in Iran (Leiden: Brill, 1977), 66-7. See also Madelung, ' AkhbSriyya', 56-7. A. A. Sachedina alluded to earlier manifestations of the AkhbarT polemic, but, on the whole, followed the conventional interpretation of the dispute in his The Just Ruler in Shi'ite Islam: the comprehensive authority of the Jurist in Imamite jurisprudence (Oxford: Oxford University press, 1988), 135-6, 199, but see ⇨

(16)
The Nature Of The Akhbārī/ Usūlī Dispute In Late Safawid Iran, Part 2:The Conflict Reassessed*

Andrew J. Newman

The main purpose of this two-part essay is to reconsider the interpretation Western scholarship has generally placed on the Akhbārī/Usūlī confrontation in Twelver Shi'ism .To this end ,Part)BSOAS ,LV (1, 1991, 51-22 presented an edition and translation of the relevant section of' Abdallah al-Samahijī's twelfth/eighteenth-century treatise ',*Munyat al-Mumārisān* . The importance of this text to the present discussion is twofold .First ,Western scholars have considered this treatise to be a summary of the main points of Akhbārī/Usūlī disagreement ,the Akhbāri element generally being understood as having been given its earliest discrete form only a century earlier by Muhammad Amīn alAstarābādī; and secondly, discussion of al-Samahijī's treatise has relied primarily on an abridged version of the text written nearly two centuries later.

Part 2 will first consider the role post-Safawid Twelver and more recent Western scholars have attributed to al-Astarābādī as the reviver ,if not the founder ,of the Akhbāri critique ,and then suggest that this was not a status universally granted to him by Twelver scholars of the late Safawid period .A comparative examination of the original text of section seven of al-Samahijī's treatise and the later abridgement will then reveal the extent of the damage done to the original by the abridgement's author ,Muhammad Bāqīr al-Khwansārī al-Isbahānī (d. 1985/1313) .Missing in the abridgement is material in the original which confirms the inappropriateness of attributing to al-Astarabādī either the delineation or revival of the Akhbari critique , points to substantial internal disagreement among both Akhbārīs and Usūlīs , and demonstrates the implications of the inter -and intra-fractional disagreements for matters of eminently practical concern to the daily life of the community during the absence of the Imām. Muhammad Amīn al-

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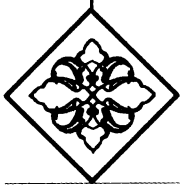
* Newman, Andrew J. "The Nature Of The Akhbārī/Usūlī Dispute In Late Safawid Iran. Part 1:'Abdallah Al-Samahiji's'munyat Al-Mumarisin'." *Bulletin of the School of Oriental and African Studies*, University of London 55 (1992): 22-51.



Chapter 3:
Shiite Seminaries

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16. Tunukābunī, Mirza Muhammad b. Sulaymān. *Qisss al-'ulamā'.* (Tehran, n. d.).

al-usul, an exegesis on the book of al-'Allamā al-Hillī.[1] In addition to these books Mirzā Qummi wrote many *Rasā'il* and a *diwān* consisting of five thousand verses.[2]

Mirzā Qummī had three daughters and one son. According to Tunukābunī, Fath 'All Shah wanted to make a family tie with Qummī's family by marrying his daughter to Mirzā Qummī's son, but his son drowned in a lake.[3] Mirzā Qummī died in 1231/1815-16 and was buried in Qum. He was portrayed by many *'ulamā* 'in their works, such as Hasan al-Sadr in his *al-Takmila*.[4]

1. Habibābādī *Makārim*, Vol 3, p. 914
2. Tunukābuni, *Qisas*, p. 11
3. Tunukābunī, *Qisas*, p. 11
4. Āqā Buzurg, *Tabaqāt*, Vol 2, p. 53

dynasty.[1] Because Fath 'Alī Shāh needed legitimation to secure his reign, he consulted the Shi'i hierocracy and many of the prominent mujtahids repUed favourably, especially Mirzā Qummī.

During the first decade of Fath 'Alī Shāh's reign Mirzā Qummī published the foundations of the authority of temporal rule. He did this by reiteration of the patrimonial theories of kingship. The basis of the ruler's authority was to be found according to Qummī in justice. He identified the position of the king with the shadow of God. However, he exphcitly insisted most strongly on the proper explanation of how he wanted this term to be interpreted and suggested three meanings of it by carefully trying to avoid any of the Safavid's claims. He rejected the Safavid claim of the Shah's infallibility. Qummī argued that the Shāh's reign should be regarded merely as an attempt to be infallible and he has to be held morally and ethically responsible for his decisions and actions and will be punished for abuses. Furthermore, he pointed out the interdependence of kingship and religion by specifying the role of the Shah in preserving order and that of the *'ulamā'* in protecting religion.[2] However only in a later generation of the hierocracy was this patrimonial theory adopted as an actual Shī'ī doctrine.[3]

The most intensive contributions to *ijtihād* and its related concept *taqlīd* are to be found in the works with a strong anti-Akhbārī notion, such as in Mirza Qummi's *Qawānin al-usūl*. In addition to this book Qummī wrote many important works such as *Hāshiyat al-qawānin*, concluded in 1277/1860-61 by Mullā Bāqir ibn Ghulām 'All al-Tustārī (d.1327/1909);[4] *Jāmi' al-shitāt fi ajwibat al-su'ālāt* consists of religious questions and answers in Persian and Arabic and of independent treatises organized by others into two chapters. The first chapter deals with religious faith, logic and a reply against Sufism which attacks some of their leaders such as Abu Yazīd al-Bastamī, Jalal al-Din al-Rumi and Muhyi al-Din al-A'rabī. The second chapter turns to legislative judgements classified according to all the books on *fiqh*.[5] Among his other works the following are the most worthy: *al-Ghanā'im* known as *Ghanā'im al-ayām*, printed in Tehran 1319/1901-02;[6] *Mu'īn al-khawāss* (Najaf 1227/1812);[7] *Murshid al-'awām*;[8] *Sharh Tahdhib*

1. Momen, *Introduction*, p. 194
2. Arjomand, *Shadow*, pp. 222-23
3. Āqā Buzurg, *al-Dharī'a*, p.174
4. Āqā Buzurg, *Tabaqāt*, Vol 2, p. 54
5. Ibid, Vol 16, p. 63
6. Ibid, Vol 21, p. 284
7. Ibid, Vol 20, p. 307
8. Ibid, Vol 4, p. 512

Shah's support for the *'ulamā'* emboldened their claims and strengthened their prestige. They repeatedly intervened on behalf of rebeUious princes and oppressed inhabitants and such interventions were generally succeessful.

Before Fath 'Alī Shāh assumed the throne he promised to pay special attention to the 'ulamd' dind, in accordance with this vow, he took special care of Qum where a large number of the *'ulamā'* had their residence, in particular Mirzā ī in whom he placed great trust.[1] Because Fath 'Alī Shāh wanted to intensify his relationship with the most famous 'ulamd', and to show his piety and religious policy, he encouraged *'ulamā'* to settle down in various places and particularly in Tehran. Moreover he appointed some of them to the posts of *shaykh al-islām* in order to gain their support such as Muhsin ibn Abn '1-Hasan al-Jazā'iri in Shushtar and Mullā 'Abd al-Ahad Kazāzī in Kirmanshah.[2]

When Fath 'Ali Shah had almost completed the Masjid-i jum'a of Tehran, he consulted Mirza Qummi to recommend an 'dlim who was suitable for this; the latter proposed Sayyid Muhammad Bāqir Shafti, but Shafti rejected the suggestion.[3] It could be that the main reason of Shafti's rejection was due to his religious position in Isfahan and that he would not want to be attached to the ruler, (see page 81-84).

Mirzā Qummī was highly respected and frequently consulted by the Shāh and the *'ulamā'*. For instance, when the Shah offered five thousand tumān to Mirza Shafi' to drink a cup of wine, the latter refused the proposal and took care to inform Qummī of his refusal.[4]

The real value of Qummī's personality became particularly obvious after his death. For instance the town of Qum had to suffer from an intellectual famine until the emergence of *Ayat Allah Khumayni* and the madrasas almost lost their reliability after Mirzā Qummī's demise, although some of the madrasas were restored and rebuilt under Fath 'Alī Shāh.[5] The latter had showed excellent sensitive ity and a personal capacity for understanding in building up his relationships with the 'ulamd' of his time. Most of all he approved greatly of and encouraged Mirzā Qummī and supported his revival of the madrasas after the long period of decay. It was *'ulamā'* such as Mirzā Qummī and Sayyid Ja'far Kashfi (d.1267/1850-51), who composed a fully developed Shī'ī theory of politics, giving a basic justification for the Qājār

1. Algar, *Religion*, p. 46
2. Kashmiri, *Nujūm*, p.333; Arjomand, *Shadow*, p. 218.
3. Tunukabuni, *Qisas*, p. 143
4. Algar, *Religion*, p. 70
5. Fischer, *Iran*, p. 109.

Qummi went back to Isfahan and purchased many books in order to complete his studies on his own. Eventually he returned to the village of Qal'at-bābū where he taught *fiqh* and *usul*.[1] Finally Mirzā Qummī was invited by the second Qājār ruler Fath 'Alī Shāh to settle down in Qum. There he taught first at the *madrasa* in *sutūh* (medium level), a post of teaching reserved only for a new *mujtahid*.[2] Later he succeeded in establishing a teaching circle which attracted a large number of students amongst whom were Sayyid Muhammad Bāqir Shaftī (d.1260/1844), Hajj Muhammad Ibrahim Kalbāsī, Mullā Muhammad Taqi Baraghānī and Hājj Mlrzā Masih (d.1263/1847-48)[3]

Mirzā Qummī was among those *'ulamā'*who could have succeeded Shaykh Ja'far Najafī, and this fact shows his importance and significance among the *'ulamā'*. He was the author of one of the most important and most influential works on usul. His book *Qawdnin al-usul* consisted of two volumes. It became the major source of jurisprudence and all the later studies on usul al-fiqh were based on it.[4]

The contemporaries of Mirzā Qummī wrote many commentaries on his Qawdnin al-usūl such as that of Muhammad Taqī Isfahanī (d.l248/ 1832-33) the grand father of Āqā Najafī - in his *Hāshiyat al-ma'ālim*, his brother Muhammad Husayn in his *al-Fusūl*, Muhammad Ibrahim Kalbāsī in his *Ishārat*, Ahmad Narāqī in his *al-Manāhīj*, Āqā Sayyid Ibrahim Qazwini (d.1262-64/1846-48) in his *Dawābit al-usūl*, and Shaykh Murtadā al-Ansārī (d.1281/1864) in his *Ishārāt al-usūl*. Tunukābunī said that "because so many prominent *'ulamā'* had commented on Qummī's book, I also did the same under the title *Muhkamāt min fudalā'i al-sab'a* Further on he said that Mulla Muhammad Salih Baraghani (d. 1283/1866-67) had told him that Mirzā Qummī wrote his book *Qawdnin* after he had become almost deaf; for that reason he responds to Narāqī's comment by writing.[5]

In addition to *Qawānīn* Mirzā Qummī had written another book on *usūl* called *Sharh tahāhib al-usūl*, Tunukābunī points out that although he had never seen this book, he had heard that *Tahdhīb al-usūl* was of greater quality than Qawānin al-usūl.[6]

The influence of prominent *'ulamā'*, like Shaykh Ja'far Najafī and Mirzā Qummī, grew and extended throughout the reign of Fath 'Alī Shāh. The

1. Tunukabuiil, *Qisas*, p. 181; Muhsin Amīn, *A'yān al-Shīa*, Vol 7, p. 143.
2. Momen, *Introduction*, p. 200.
3. Tabrīzī, *Rayhdnat*, Vol 4, p. 125.
4. Tunukabunī, *Qisas*, p. 182.
5. Ibid, p. 182.
6. Ibid, p. 132.

He was the son of Muhammad Hasan al-Gīlānī al-Shaftī al-Qummi, one of the pillars of religion and a famous scholar of the nineteenth century. Qummi's father Akhund Mullā Hasan was a native of Shafī in the province of Gilān and moved to Isfahān, where he studied under Mirzā Habib Allāh and Mirzā Hidayat Allāh. When his two teachers obeyed the order of the ruler and moved to Chapullaq for teaching, Mullā Hasan accompanied them. There he married the daughter of his teacher Hidayat Allāh. Qummī's father was a famous cleric who wrote a book on the metres of the *Kashkūl* one of Shaykh Bahā'i's books.[1]

Mirzā Abū '1-Qāsim Qummī was born in 1151/1738-9 in Chapullaq. He spent his childhood there and started his early learning under his father. Then he moved to Khwansār and studied *usūl* and *fīqh* under Āqā Sayyid Husayn Khwānsārī (d.1191/1771). He obtained an *ijāza* from him and married his sister.[2] He emigrated to Iraq and attended the classes of Āqā Muhammad Baqir Bihbihānī in Karbalā' from whom he obtained another ijazā.[3] Tunukābūnī states that when Mirzā Qummī was studying under Bihbihānī he lived a pious life in extreme poverty. Bihbihānī appointed him as imam (prayer leader), so that he could earn enough money to support himself.[4] In addition to the two mentioned *ijāzāt*, Mirzā Qummī obtained others, namely from Muhammad Mahdī al-Fatuni (d.1183/1769-70) and Āqā Muhammad Bāqir Hazārjarībī (d.1205/1790-91).[5] Probably he had studied under them while he was in Iraq.

After Qummī concluded his studies he returned to Iran. He stayed in his father's village, known as Darā-bāgh. Later he moved to another village named Qal'at-bābū and taught there. However, because of the lack of students [only two attended his classes] and the unsatisfying living conditions there, he set off to Isfahan where he taught at the *madrasa ḳāsah girān*. After having spent some time there a quarrel arose between him and some of the *'ulamā'*. For this reason he travelled to Shiraz where at that time Karim Khan Zand was the ruler of the South West of Iran and had his residence.[6] Mirzā Qummī remained in Shiraz for about three years. According to Tunukābunī he was not yet *mujtahid* by that time and after he had received an amount of roughly one hundred eighty to two hundred *tūmān* from a certain Shaykh Abd al-Muhsin and his son Shaykh al-Mufīd,

1. Tunukābunī, *Qisas*, p. 180.
2. Habibabadi, *Makārim*, Vol 3, p. 912.
3. Aqa Buzurg, *Tabaqāt*, Vol 2, p. 52; Muhsin Amin, *A'yān al-shī'a*, Vol 7, p. 142.
4. Tunukābunī, *Qisas*, p. 180.
5. Habibābādī, *Makārim*, Vol 3, p. 917; Āqā Buzurg, *Tabaqāt*, Vol 2, p. 52.
6. Muhsin AmIn, *A'yān al-Shī'a*, Vol 7, p. 143; Āqā Buzurg, *Tabaqāt*, Vol 2, p. 52.

Rasā'il. The most famous and influential is his book *Riyād al-masā'il fi bay ān ahkām al-shar' bi 'l-dalā'il*, by which he became known as *Sāhib al-riyād*. This book was written in two volumes and is also known as the *Sharh-i kabir*. He completed this book on Safar 27, 1192/ March 27, 1778 and it was printed many times such as in 1272/1855-56.[1] There are different opinions about the sources of this book. The author of *Rawdāt*, for instance, notes the opinion that " The book of Sayyid 'Alī is a summary of two books, namely of *Sharh-i lām'a and al-hadā'iq*, additionally it consists of some quotations from his uncle's book *Sharh mafātih* and *Kashf al-lithām* of Fādil al-Hindī (d.1137/1724-25). Further on he states that even its title *Riyād al-masā'il* is copied from the title of the book *Riyād al-dalā'il* wa *hujjat al-masā'il* of Shaykh Ahmad ibn Muhammad Khatī al-Bahrānī.[2] But Āqā Buzurg remarks that *Riyād al-masā'il* is said to be a commentary on *al-Mukhtasar al-nāfi'* of al-Muhaqqiq al-Hillī (d.676/1277-78).[3]

In fact this book reflects the high spirit and knowledge of Sayyid 'Alī. More over, because of its thoroughness and comprehensiveness this book became the most important source for the students on usul. Its importance was comparable to the *Qawānīn al-usūl* of Mirzā Qummi. Among his other books are :*Sharh kitāb mabādi'al-usūl* of al-'Allāma al-Hillī (d.726/1325-26)[4] as well some glosses on *al-Hadā'iq* of Shaykh Yusuf al-Bahrānī. In addition to these he composed many *Rasā'il* on var ious religious procedures.[5] Sayyid 'Alī held many debates, particularly with Mirzā Muhammad al-Akhbārī (d.1232/1816-17)[6]

Sayyid 'Alī died in Karbalā' in Muharram, 1231/ December, 1815 and was buried near the tomb of Bihbihānī.[7] He left two sons, namely, Sayyid Muhammad known as Sdhib mandhil (see page 62) and Sayyid Muhammad Mahdī, who supported the *takfīr* against Shaykh Ahmad Ahsā'i. Both became great clerics and succeeded him as leaders in Karbalā'. Sayyid 'Alī had also three daughters, who were married to 'ulamd'.[8]

Mirzā Abū '1-Qāsim Qummī

known also as Fādil Qummī. (b.1151/1738-39-d.1231/1815-16)

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1. Āqā Buzurg, al-*Dharī'a*, Vol 11, p. 336
2. Khwansārī, *Rawdāt*, p. 415.
3. Āqā Buzurg, al-*Dharī'a*, Vol 11, p. 336
4. Ibid, Vol 14, p. 53.
5. Kashmm, *Nujūm*, p. 340.
6. Tunukābunī, *Qisas*, pp. 179-80.
7. Tabriz!, *Rayhānat*, Vol 2, p. 429.
8. Habibābādī, *Makārim*, Vol 3, p. 910.

After Sayyid 'Alī had married the daughter of his uncle Bihbihani, he gave one of his daughters in marriage to Āqā Muhammad Ismā'īl, the grandson of Bihbihani.[1] The strong hnks and relationships between the *'ulamā'* which derive from such intermarriages is obvious. As MacEoin points out: "Sayyid 'Alī provides us with an excellent example of an increasingly common phenomenon in the period under review. The *'ālim* with close hnks not only by means of *ijāza* but also through physical descent and marriage with other 'ulamā"",[2] (see chart N 2.)

Although Sayyid 'Ali did not involve himself in political affairs, his influence increased to such an extent that he was among the 'ulamd' who could have succeeded Shaykh Ja'far Najafī. Due to his piety and fame, Karbalā remained an important centre of teaching after the demise of Bihbihānī. He established his own lecture circles in which, beside him, both his sons Sayyid Muhammad, known as *mujāhid* (d. 1242/1826-27) and Sayyid Muhammad Mahdi (d. 1260/1844-45) used to teach. According to his biographers he trained students including such outstanding figures as Shaykh Ahmad Ahsa'i,[3] Mulla Ahmad Narāqī,[4] Āqā Sayyid Ja'far al-Thānī, the grand father of Muhammad Khwansārī, the author of *Rawdāt al-jannāt*. The latter states that his grandfather had obtained an ijdza from Sayyid 'Alī which was the longest *ijāza* of his students.[5] Among Sayyid 'Alī's students were also HajjMuhammad Ibrahim Kalbasi who was also rewarded with an *ijāza* by him,[6] Mullā Muhammad Taqī Baraghānī (d.1263/1847),[7] Mullā Muhammad Ja'far Astarābādī (d.1263/1847).[8] And both of them had received *ijāza* from him. (see pages 89, 92)

The author of *Rayhānat al-adab* points out that Sayyid 'Alī witnessed the attack on Karbalā' dy the Wahhabīs 1216/1801-02. He states that after Sayyid 'Alī had sent his family out of the city he tried to save one child who was forgotten in the house and became surrounded by the Wahhābī troops in the house. He escaped the enemy by hiding himself and the child in a big basket.[9]

Sayyid 'Alī wrote some important works, most of them in the form of

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1. Ibid, Vol 3, p. 902-03.
2. Mac Eoin, *Shaykhism*, p. 36.
3. Āqā Buzurg, reiterated in *Tabaqāt*, Vol 2, p. 89; and confirmed in *al-Dharī'a*, Vol 1, p. 219.
4. Habibābādī, *Makārim*, Vol 3, p. 906.
5. Khwānsārī, *Rawdāt*, Vol 1, p. 127.
6. Tunukābunī, *Qisas*, p. 118.
7. Ibid, p. 19.
8. Āqā Buzurg, *Tabaqāt*, Vol 2, p. 253; Kashmīrī,*Nujūm*, p. 414.
9. Tabriz!, *Rayhānat*, Vol 2, p. 429.

Ibrahim Kalbāsī.[1]

When Shaykh Ja'far finally died in Najaf on Rajab 22, 1228/ July 21, 1813, he was buried in his cemetery near his house. Thousands of people attended his funeral and the whole country went into mourning for a long period. His perpetuity and fame was guaranteed by many writers who mentioned him in their introductions.[2] Shaykh Ja'far's descendants were *mujtahids* of the first rank in almost every generation, particularly his sons who succeeded him. The eldest son was Shaykh Musa (b.1180/1766-67-d.1243/1827-28). He took over the leadership role of his father. After his death he was succeeded by his brother Shaykh 'Alī (d.1235/1837-38). And the youngest one was Shaykh Muhammad Hasan (d.1262/1845-46) who was the religious leader in Hilla at first, becoming religious leader in Najaf in 1235/1827-28 after the death of Shaykh 'Alī.[3]

Āqa Sayyid 'Alī Tabātabā'ī

Known as Sāhib al-Riyād, (b. 1161/ 1748-d.1231/ 1815-16)

He was the son of Sayyid Muhammad 'Alī Tabataba'i, whose wife was the sister of Mulla Muhammad Bāqir Bihbihānī.[4] Sayyid 'Alī was born on Rabī' 112, 1161/ March 1, 1748 in Kāzimayn.[5] His early studies started under his maternal uncle's son Āqā Muhammad 'Alī Bihbihānī (d.1216/1801-02). After having reached a certain level of knowledge he attended the classes of his uncle Wahid Bihbihānii. The author of *Qisas al-'ulamā'* reports that Sayyid 'Alī studied under Bihbihānī after he grew older and after his son Sayyid Muhammad known as *mujāhid* was born (b.1180/1766-67). He attended the classes on his uncle's insistence.[6] Additionally, the author of *Rawdāt al-jannāt* states that among his teachers was Shaykh Yusuf al-Bahrānī (1186/1772) under whose instruction Sayyid 'Alī had written the whole of his *al-Hadā'iq al-nādira*.[7] However, because of the conflict which took place at that time between the Akhbārī and Usūlī *'ulamā'*, Sayyid 'Alī was strongly recommended by his uncle not to attend any further classes of Shaykh Yusuf al-Bahrānī. Having spent some time with his studies under Bihbihānī, Sayyid 'Alī occupied himself with writing books and teaching in Karbalā'.[8]

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1. Tunukābunī, *Qisas*, p. 118-20.
2. Habibābādī, *Makārim*, Vol 3, pp. 852-56; Muhsin Amin, *A 'yān al-Shī'a*, Vol 15, p. 413.
3. Habibabadi, *Makārim*, Vol 3, pp 856
4. Tunukābunī, *Qisas*, p. 175; Kashmīrī, *Nujūm*, p. 339.
5. Habibābādī, *Makārim*, Vol 3, p. 902.
6. Tunukābunī, *Qisas*, p. 176; *Habibābādī*, *Makārim*, Vol 3, p. 902.
7. Khwansārī, *Rawdāt*, p. 415.
8. Habibābādī, *Makārim*, Vol 3, p. 902.

'aduwwu al-'ulamā', he disapproved of Muhammad Akhbārī's teaching and accused him of having composed an anonymous commentary in the margins of a book which was intended to lessen the Shah's respect towards the *'ulamā'*. Akhbārī's sharp reaction influenced the Wama'against him and Shakh Ja'far pronounced him *kafīr* (infidel).[1] Thereafter Muhammad Akhbāri had to flee the *'atabāt* and seek protection in Tehran. Shaykh Ja'far warned the Shah about him and tried to influence him against the Akhbārī. When at last Muhammad Akhbārī was exiled to Iraq he feared the pupils of Shaykh Ja'far and withdrew to Baghdād.[2] However, later on he was killed by the followers of Shaykh Ja'far and his body was fed to dogs.[3] After his death the Akhbari school never again achieved any prominence.

In contrast to the Safavids, the Qajar dynasty could not claim hereditary charisma. As Weber remarks " if the legitimacy of the ruler is not clearly identifiable through hereditary charisma, another charismatic power is needed; normally this can only be hierocracy".[4] As the Qājār came to power under Aqa Muhammad Shah just on the basis of military force, the *'ulamā'* were responsible for the justification of their rule. This gave the *'ulamā'* some derived de-jure legitimacy for the Qājār government, such as the composing of legal decisions by Shaykh Ja'far.

Shaykh Ja'far left many important works which were widely known and consulted. Apart from his celebrated book *Kashf al-ghitā'*, which was published many times in Iran,[5] he wrote the following books. *al-Haqq al-mubin* (Tehran, 1316/1898-99);[6] *al-Qawā'id al-ja'fanyya* (1316/1898-99) on which his son Shaykh Hasan later did a commentary;[7] *Manāsik al-hajj*;[8] *Ghāyat al-ma'mūl*;[9] and *Minhāj al-rashād* 1343/1924-25)[10]

After Bahr al-'Ulūm had transferred the centre of Shi'i scholarship from Karbalā' to Najaf, it was Shaykh Ja'far who consolidated it. His teaching circle included such outstanding figures as: Shaykh Ahmad Ahsā'i,[11] Mulla Ahmad Narāqī,[12] Sayyid Muhammad Baqir Shaftī,[13] and Muhammad

1. Algar, *Religion*, pp. 64-65.
2. Habibābādī, *Makārim*, Vol 3, pp. 930-34.
3. Āqā Buzurg, *al-Dharīa*, Vol 18, p. 45.
4. Arjomand, *Shadow*, p.222
5. Ibid, Vol 17, p. 37-38.
6. Ibid, Vol 17, pp. 183-84.
7. Ibid, Vol 3, p. 133.
8. Ibid, Vol 16, p. 16.
9. Ibid, Vol 18, p. 45.
10. Ibid, Vol 23, p. 186.
11. Āqā Buzurg, *Tabaqāt*, Vol 2, p. 89
12. Ibid, Vol 2, p. 116.
13. Ibid, Vol 2, p. 193.

(a prayer leader) to each battalion, and the troops had to listen to a preacher once a week.[1]

The attitude of the Shah towards Shaykh Ja'far is given in an anecdote which relates how Fath 'Alī Shāh showed disrespect towards him and how, finally, his devotion caused him to regret having done so. According to Tunukābunī, Shaykh Ja'far undertook not only regular journeys to Iran to collect *zakāt* (the purifying tax) and *khums* (a fifth of any comercial profits) but is said to have gone so far as to consider anyone who refused payment of *khums* as a rebel against the Imām and his vicegerent. On one occasion Fath 'Alī Shāh was displeased with his action and when Shaykh Ja'far visited Tehran he refused to receive him and announced his intention publicly. Ignoring this refusal Shaykh Ja'far was respectfully allowed in by the servants and courtiers, and when he called out ya *Allāh*! the Shāh greeted him in his usual way.[2]

But it was not only the Shah who proclaimed his devotion and obedience to Shaykh Ja'far. When the mother of Fath 'Alī Shāh went to pilgrimage to the *'atabāt* she met Shaykh Ja'far in Najaf and begged him to pray for her and her son: " Since my son is king he commits much oppression and cruelty towards his subjects, I beg of you, contrive somehow that God allmighty may forgive our sins and resurrect us with Hadrat Fatima".[3]

From his widely read book, *Kashf al-ghitā'* 'an *al-sharī'at al-gharrā'*, a popular legal work dealing with *sharī'a* and *jihād* Shaykh. Ja'far and his family's name derived as *al-Kāshif al-Ghitā'*. The author of *Qisas al-'ulamā'* states that Shaykh Ja'far recommended to his family to spend at least two hours every night studying *fiqh* and preparing some food. His family respected his advice and carried out his request so that they all, both male and female, became *fuqahā'*.[4] Shaykh Ja'far stated that the science of *fiqh* was still young and that no one had studied it deeply except him, his oldest son Shaykh Mūsā (d. 1243/1827-28) and Shahīd al-Awwal (d.786/1384).[5] Through his book *Kashf al-ghitā'* Shaykh Ja'far gave reveahng remarks about religious law, and the book had an excellent range in religious sciences as well. Because of this outstanding work Shaykh Ja'far became known in Iraq and Iran as *Āyāt Allāh fi al-'dlamīn* (sign of God in the universe)[6]

In his second book *Kashf al-ghitā' 'an ma'āyab Mīrzā Muhammad*

1. Ibid, p. 191.
2. Ibid, p. 191.
3. Ibid, p. 191.
4. Ibid, p. 185.
5. Ibid, p. 183.
6. Kashmirī, *Nujūm*, p. 342

When the first war against the Russians broke out the crown prince 'Abbās Mīrzā, governor of Azarbayjān, asked his minister Mīrzā Buzurg Farāhanī to write to the *'ulamā'* of the shrine cities of Iraq and the *'ulamā'* of Iran in order to obtain a *fatwa* (religious decree) for the war. Shaykh Ja'far was among other *'ulamā'* who delivered the requested fatwa indicating the duties of *jihad.*[1]

Shaykh Ja'far pointed out in his *fatwa* that the war against the Russians is compulsory and gave Fath 'Alī Shāh the authority to lead the *jihād* against the Russians on behalf of the Hidden Imām. In his *fatwa* Shaykh Ja'far argues that his power to authorize the Shah is based on the agreement of all *mujtahids*, namely of *niyābat-i 'āmma*, (the general vice-gerency).[2] According to Shaykh Ja'far the power to authorize the Shah is founded in the sacred law, which during the occultation devolves upon the *mujtahids*, through the loyalty, courage and truthfulness of their collective office and on him as the agent of the Hidden Imam. Lambton suggestes that when Shaykh Ja'far uses the expression in his statement" I give permission " it carries with it the important corollary that they could give by this authorization validity, or at least temporary validity, to the rule of the Shah whom they appointed to engage in *jihād.*[3]

The impact of the *'ulamā'* on the Shāh is thus clear. Shaykh Ja'far, however, qualified his authorization for involvement in *jihād* according to Qā'im Maqam (d.1237/1821-22) who quotes him in a later passage of his book on jihdd as saying "If I be a man of *ijtihād* and worthy of the vicegerency of the Imam, peace be upon him: I give permission to the ruler....etc".[4]

In addition to Shaykh Ja'far's religious power he had his own armed following which was recruited from his students, and he made his house a store of armaments. He trained and paid the fighters and, apart from being a spiritual leader, he was also chief fighter, whose decisions were considered and taken into account. According to Tunukabunī, Shaykh Ja'far permitted Fath 'Ah Shah to mount the throne and appointed him as his deputy.[5] Thus the general character of Shaykh Ja'far's relationship with the Shah was indicated at the very beginning of Fath 'Alī Shāh's reign. The conditions which he allowed him to ascend the throne were the following: a *mu'adhin* (calling for prayer) had to be appointed to each brigade of the army, an *imām*

1. Algar, *Religion*, p. 79.
2. A. K. S. Lambton, *Qājār Persia*, (London 1987), pp. 197-98.
3. A. K. S. Lambton, *View of jihād*, (studia Islamica, 1970), Vol 32, p. 187-89.
4. Ibid, pp. 186-89; Arjomand, *Shadow*, p. 225.
5. Tunukābunī, *Qisas*, p. 191.

Faham (d.1205/1790-91), Shaykh Muhammad Mahdī al-Fatunī and Āqa Muhammad Baqir Bihbihānī.[1] Finally he was taught by Sayyid Muhammad Mahdi Bahr al-'Ulūm for at least half a year in order to gain blessings and holy guidance.[2] Bahr al-'Ulūm described Shaykh Ja'far as a great philologist and as a shining example of his age. Not only was he a genius but he was pious and obedient as well.[3] He was a great man of high aspirations and sublime courage, with great strength of intellect and insight. "Shaykh Ja'far had a strong appetite for Ucit sex and food, and for estabhshing links with kings and rulers, for the sake of the rehgious benefits he beheved to he therein".[4]

After Bahr al-'Ulūm had consohdated Najaf as a centre where Shīī scholarship was practised, Shaykh Ja'far succeeded him. He was the most eminent *mujtahid* of his time and the doyen of the hierocracy. He was the leader of the Shi'i, the most preferred and the most honoured *'ālim*, not only because of his vast rehgious knowledge, but also because his efforts at mediation prevented many wars. For instance he was closely connected with the defence of Najaf when the Wahhabīs attacked and surrounded Najaf in 1218/1803 and 1221/1806.[5] The Wahhabīs were repulsed due mainly to the fact that Shaykh Ja'far had command over the warriors. Later on he was involved in the incident of the *Shamarāt* and *Zakarāt* tribes in the history of Najaf.[6]

In 1219/1804-05 when the hostihties between Iran and Turkey had broken out and the Iranian army was approaching Baghdad, 'Alī Pasha, the governor of the city, sent Shaykh Ja'far to negotiate with the commander of the Iranian troops, Muhammad 'Alī Mirzā, Dawlatshāh, Governor of Kirmanshah, in order to bring about the release of Sulaymān Pasha the commander of the Turkish army who had been captured after he had penetrated into the Iranian territory.[7] Shaykh Ja'far's mission was successful and Sulaymān Pasha was set free.[8]

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1. Habibābādī, *Makārim*, Vol 3, p. 854. reak
2. Āqā Buzurg, *Tabaqāt*, Vol 2, p. 249.
3. Ibid, Vol 2, p. 248.
4. Cole, *Shīī Clerics*, p. 23.
5. Mirza Muhammad Taqī Sipihr, *Nāsikh al-tawarīkh*, (1337/1919). pp. 68-69; Busse, *History of Persia under Qājār Rule*, (New York / London 1972), p. 103.
6. Muhsin Amin, *A'yān al-Shī'a*, Vol 15, p. 424-432. Shamarat and Zakarat are two tribes in Iraq, probably used to live in Najaf. They were fighting each-others. A considerable account about the involvement of Shaykh Ja'far Najafi in this incident is provided in the above mentioned source.
7. Momen, *Introduction*, p. 315.
8. Sipihr, *Ndsikh*, pp. 91-91.

printed before 1320/1902-3; later on many exegeses were composed on this book.[1] The author of *Rawdāt al-jannāt* states that this book is still rehable and many 'ulamā' such as Shaykh Muhammad Hasan Najafī, the author of *Jawāhir al-kalām*, based their ideas on its contents.[2] *Fawā'id usūliyya* was printed in 1271/1854-5.[3] *Masdbih dar shark mafdtih*, supposedly edited by his student Shaykh Qāsim ibn Muhammad al-Dallīzī and printed in Rabī' II 18, 1231/ March 18, 18160. His son in law Sayyid Muhammad Tabataba'i (d.1242/1826), gave some of his book the same title.[4] (see page 68). Bahr al-'Ulūm wrote another book, a collation of his debates and arguments with the Jews. According to the author of *Rawdāt* this book was written by one of Bahr al-'Ulūm's students who was present at the debates.[5] In addition to these books he composed many *Rasā'īl* on different rehgious matters and an elegy on the Third Imam entitled *al-'Uqūd al-ithnā 'ashariyya*.[6]

Bahr al-'Ulūm spent his whole life reading, writing and teaching, especially after he succeeded Bihbihāni as the religious leader in the shrine cities. He was infected by a disease which led to his death on Jumādā I 24, 1212/ November 14, 1797 in Najaf and was buried in the *Masjid al-ūsī* which became a place of blessing. Bahr al-'Ulūm was succeeded by Shaykh Ja'far Najafī - who composed an elegy on his death- as religious leader for the Shi'i of Iran and Iraq.[7]

Shaykh Ja'far Najafī

known as *Kāshif al-ghitā'*, (b 1156/1743-4-dl228/1813) Shaykh Ja'far Najafī, known as *Shaykh al-kabīr*, was the son of Shaykh Khidr ibn Shaykh Yahyā ibn Sayf al-Dīn al-Malīkī. His origin goes back to the tribes of Banī Mālik, one of the tribe of Iraq. His father, Shaykh Khidr, migrated from Qināqiya to Najaf and had a strong interest in learning. He was considered as a religious leader distinguished by his reforms and piety.[8]

Shaykh Ja'far was born in 1156/1743-44 in Najaf.[9] He devoted his life to learning and studied first under his father.[10] He attended the classes of many scholars, such as Shaykh Muhammad Taqi al-Darūqī, Sayyid Sadiq al-

1. Āqā Buzurg, *al-Dharīa*, Vol 8, pp. 109-10.
2. Khwānsarī, *Rawdāt*, p. 680.
3. Āqā Buzurg, *al-Dharī'a*, Vol 16, p. 325.
4. Ibid, Vol, 21 p. 82.
5. Khwansārī, *Rawdāt*, p. 680.
6. Habibābādī, *Makārim*, Vol 2, p. 419.
7. Ibid, Vol 2, p. 426.
8. Muhsin Amin, *A'yān al-Shī'a*, Vol 15, p. 413; Āqā Buzrg, *Tabaqāt*, Vol 2, p. 248.
9. Habibābādī, *Makārim*, Vol 3, p. 853.
10. Muhsin Amin, *A'yān al-Shī'a*, Vol 5, p. 432.

and Iran.[1] He is generally regarded as one of the most learned mujtahids of the 'atabdt. He taught many famous 'ulamā' such as Shaykh Ja'far Najafi *Kāshif al-ghitā* who succeeded him, Mulla Ahmad Narāqī (d.1245/1829-30), Shaykh Ahmad Ahsa'I (d.1241/1825-26) (the latter had obtained an *ijāza* from him and was highly respected by Bahr al-'Ulūm) and Hajji Muhammad Ibrahim Kalbāsī (d.1262/1845-46).[2]

In 1186/1772-73 a catastrophic plague spread all over Iraq claiming an uncountable number of people.[3] This epidemic became more widespread because the Shī'ī 'ulamā' and aristocrats used to transport their corpses to the shrine cities for reburial. The 'ulamā' did their best to evacuate the inhabitants from the shrine cities and they themselves left the holy places. For example, Āqa Muhammad Baqir Bihbihānī strongly advised his son Muhammad 'Alī to leave Kazimayn for Iran.[4] Bahr al-'Ulūm set off with his family from his residence in Najaf to Mashhad. He remained there seven years, teaching and giving ijdza in Isfahan and Khurasan until his return in 1193/1779. On his way to Najaf Bahr al-'Ulūm passed through Isfahan where he obtained an *ijāza* from Āqa Mir 'Abd al-Baqī (d.1207/1792) the *Imāmjum'a* of Isfahan. From Najaf Bahr al-'Ulūm travelled to Mecca to perform his pilgrimage and he remained there two years teaching in the *Masjid al-Harām*, where he gathered a large number of students around himself.[5]

The 'ulamā' of the early Qājār period were predominantly pupils of Bihbihānī and, like their contemporary, held Bahr al-'Ulūm in extraordinary respect. Many miracles were attributed to him by some of his followers, and he was even regarded by some as the Hidden Imam himself.[6] In one of his biographies it is reported that one of the '*ulamā*'stated that, if he had claimed infallibility- an attribute which is attributed only to the Prophets and the Imams- this claim would hardly have been rejected.[7]

Bahr al-'Ulūm wrote relatively few books. Tunukābūnī justifies this by stating that he devoted his time to reading and solving ambiguous problems.[8] However, the author of *Makārim al-āthār* listes twelve titles, amongst which are the following: *al-Durra al-manzuma*; concluded in 1205/1790-91 but not

1. Kashmīrī, *Nujūm*, p. 316.
2. Habibābādī, *Makārim*, Vol 2, p. 423-25.
3. Ibid, Vol 2, p. 417.
4. Cole, *Shī'ī Clerics*, p. 21.
5. Habibābādī, *Makārim*, Vol 2, p. 41٧.
6. Tunukābunī, *Qisas*, p. 173.
7Habibābādī, *Makārim*, Vol 2, p. 41٧.
8. Tunukābunī, *Qisas*, p. 169.

Bahr al-'Ulūm, (b.ll55/1742-d.1212/1797-98)

Āqa Sayyid Muhammad Mahdī ibn Murtadā Tabātabāī Burūjirdī was born in Shawwal, 1155/November/December, 1742 in Karbala'.[1] Tunukabuni states that on the night of his birth his father Sayyid Murtadā saw in his dream the eighth Imam 'Ali Rida giving a candle to Muhammad ibn Ismaīl ibn Bazī (d.220/835) who lit it in Sayyid Murtadā's house.[2] Sayyid Murtada was a resident of Burujird and moved to Najaf in 1199/1784-85. He was one of the great scholars of his time. He remained in Najaf until he died in 1204/1789-90.[3]

Bahr al-'Ulūm's early learning started under his father. Then he continued his studies under Shaykh Yusuf al-Bahrānī (d.1186-87/1772-73), the author of *al-Hadā'iq al-nādira*. After having spent some time in Karbalā' studying, Bahr al-'Ulum set off to Najaf in 1169/1755-56 where he was taught by many prominent 'ulamd' such as Shaykh Muhammad Mahdī al-Fatuin (d.1183/1769-70), Shaykh Muhammad Taqī al-Daruqi and others. Then he returned to Karbala' and attended the classes of Āqa Muhammad Baqir Bihbihani and Āqa Mirza Abu '1-Qasim Mudarris (d. 1102/1787-80) for four years. However, Habibābādī states that both of them, Bahr al-'Ulūm and Mirza Abu '1-Qāsīm, taught each other:- Bahr al-'Ulūm taught him usulaxid fiqh, and he studied *hikma* and *kalam* under Abu '1-Qāsim.[4]

Bahr al-'Ulūm obtained many *ijāzat* Probably the first one was given to him

by his teacher Shaykh Yusuf al-Bahrani.[5] The other ijdzas were from Shaykh 'Abd al-Nabī al-Qazwrnr,[6] Muhammad Mahdī al-Fatum (d.1183/1769-70), Āqa Muhammad Baqir Bihbihānī and from Muhammad Baqir Hazārjarībī (d.1205-1790-91). The last one was dated in Jumada II, 1195/ June, 1781.[7] Because of his acquisition of wide knowledge, Muhammad Mahdi became known as Bahr al-'Ulūm.[8]

Having completed his studies, he returned to Najaf where he established his own classes. After the death of Bihbihānī, Bahr al-'Ulūm became the leading mujtahidoi the shrine cities of Iraq and was widely known in Iraq

1. Kashmiri, *Nujūm*, p. 315; Tabrīzī, *Rayhānat,* Vol 1, p. 144.
2. Tunukābunī, *Qisas*, p. 168.
3Habibābādī, *Makārim*, Vol 2, p. ١٧٩-١٧٨.
4. Ibid, Vol 2, p. 416.
5. Āqā Buzurg, *al-Dharī'a*, Vol 1, p. 266.
6. Ibid, Vol 1, p. 207.
7. Kashmirī, *Nujūm*, p. 294; Āqā Buzurg, *al-Dharī'a*, Vol 1, p. 147.
8. Habibābādī, *Makārim*, Vol 2, p. 416.

Tunukābunī reports that before Narāqī came to Kashan there was no *'ālim* to be found but, after his return, many *ulamā'*settled down there. Among the famous 'ulamā' who attended his classes were his son Mullā Ahmad Narāqī , the only *'ālim* who obtained an *ijāza* from him;[1] Hājjī Muhammad Ibrahim Kalbasī; and Hājjī Sayyid Muhammad Baqir Shaftī and others.[2]

In addition to his teaching he wrote various important books on commercial law for merchants and in defence of *usūl*(jurisprudence). Habībābādī enumerates twenty-seven titles of which the most noteworthy are the following:- *Anis al-tujjār*, a book on commerce which was concluded on Rajab 12, 1180 / September 14, 1766;[3] *Anis al-muwahhidīn*, on usūl, published in 1325/1916-17, written in Persian and translated into Arabic by Shaykh Abd al-Rasul al-Jawāhīrī;[4] *Jāmi' al-sa'ādāt*, concluded in 1196/1781-82, translated into Persian by his son Mulla Ahmad Narāqī, and published in Tehran in 1320/1911-12;[5] *Jāmi' al-afkār*, described by Āqa Buzurg as the most important and famous book on the subject of *Itbāt al-wājib*, concluded in Kashān in Rabi' II, 1193/1779;[6] and *Mushkilat al-*'ulum, which deals with different sciences and is comparable to the *Kashkūlof* Shaykh Bahā'ī.[7] Later on he composed many *rasā'ilon* different subjects. Habibābādī mentiones the following: *Risāla dar 'ibādāt*, *Risāla dar manāsik* and *Risāla dar Him al-'uqūd*.[8]

Apart from his first son, Mulla Ahmad Narāqī, he had two other sons. One was Abu '1-Qāsīm, who also became a famous clergyman and succeeded his brother Ahmad Narāqī from whom he obtained an *ijāza*.[9] He died in 1256/1840 after returning from Mecca. The other was Mulla Muhammad Mahdi who was born after the death of his father in 1209/1794-95 and studied under his older brother Mulla Ahmad. He obtained his *ijāza* from both his brother Mulla Ahmad Narāqī and Shaykh Ja'far Najafi *Kāshif al-ghitā'*.[10] He settled down in Kāshān and succeeded his older brother Abu '1-Qāsim as a religious leader in Kāshān. He died in 1268/1851-52 and was buried in Qum.[11]

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1. Habibābādī, *Makārim*, Vol 2, p. 364.
2. Ibid, Vol 2, p. 364.
3. 3. Āqā Buzurg, *al-Dharī'a*, Vol 2, p. 453.
4. Ibid, Vol 2, p. 466.; Habībābādī, *Makārim*, Vol 2, p. 361.
5. Āqā Buzurg, *al-Dharī'a*, Vol 5, p. 41.
6. Ibid, Vol 5, p. 58-59; Habibābādī, *Makārim*, Vol 2, p. 361.
7. Āqā Buzurg, *al-Dharī'a*, Vol 21, p. 66.
8. Habibābādī, *Makārim*, Vol 2, p.۴۶۲ .
9. Ibid, Vol 2, p. 364.
10. Ibid, Vol 2, p. 365-66.
11. Ibid, Vol 2, p. 366.

(15)
Students of Bihbihani*

Abdelfettah abada

Ākhund Mulla Muhammad Mahdī Narāqī, (d.1209/1794-5)

Muhammad Mahdī was the son of Abū Dharr ibn Hājj Muhammad Qummī.

He was born in Kāshān. According to the author of *Lubāb al-alqāb*, he lived approximately 60 years and died in 1209/1794-95. He was buried in Najaf.[1] His early studies took place in Isfahan under the theologian Mulla Isma'il Khwaju'ī (d.1173-77/1759-64) and lasted three years.[2] At that time he was very poor. Tunukabuni states that when he was studying he could not even afford enough money to buy a lamp for studying at night so he used to stay in the toilet, using its light.[3] From this statement one can infer Naraqī's love of knowledge. In Isfahan he attended the classes of some other outstanding 'ulamā' such as Mulla Muhammad Harandī (d.1203/1788-89), and Shaykh Muhammad Kāshānī (d.1205/1790).[4]

While Narāqī was studying in Isfahan his father was murdered. His family sent him a letter about the murder of his father. However, because he was very much concerned with his studies he did not read the message. Another letter was sent to Isfahan addressed to his teacher, asking him to inform Muhammad Mahdi about the death of his father and to send him back.[5] He returned to Kashan and remained there for three days. After he had fulfilled his mourrning duty for his father he went to Iraq where he studied under Shaykh Yusuf al-Bahrani and, when Bihbihani came to Karbala', Narāqī forsook the Akhbari classe for the Usūlī school.[6]

Having completed his studies in Karbala', he returned to Iran and settled down in Kashan where he established a teaching circle. His wide knowledge on various subjects attracted a huge number of students to his circle.[7]

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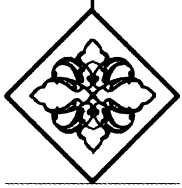
* Abada, Abdelfettah .*The'Ulama'of Iran in the 19th century hagiographical literature* . Diss. Durham University, 1989, pp 43-100.

1. Habibabādī, *Makārim*, Vol 2, p. 364.
2. Kashmirī, *Nujūm*, p. 319; Tunukābuni, *Qisas*, p. 132.
3. Tunukābuni, *Qisas* p. 132.
4. Habibābādi, *Makārim*, Vol 2, p. 360.
5. Tabrīzī, *Rayhānat*, Vol 4, p. 186.
6. See chap 1, of this thesis, p. 28.
7. Tunukābunī, *Qisas*, p. 133.



Chapter 2:
The family and students

determine that the object of [the Imams'] attention in these akhbār is the unqualified meaning [of qiyās]. [However] not all unqualified meanings are proofs. Rather the usage at the time [of the Imams] is the proof.

[G.2] It is [yet still] not clear that what the [Imams] meant by the word qiyās is the technical meaning, then it is also not clear that what they meant was the linguistic meaning. The fundamental lack [of an indicator here] in cases such as these is not proof [that what was meant was the general meaning]. This we have pointed out previously.

[G.3] If we say that the intended meaning here is the linguistic meaning, then we say that there can be no doubt that what they meant was the original meaning. [However] there is evidence of a diversion [away from the original meaning] to be found here, As for this specific case, if we do not argue that it is proven that the lack [of an indication is itself an indication of the general meaning], the case by which it is proven that what is meant is the second category [i.e., linguistic meaning] is not improved.

[G.4] Amongst the things we should mention is the case in which the reason for a [particular ruling] is explicitly stated. The discussion of this is well–known.[1]

[H. Concluding Remarks]

[H.1] Perhaps you, by looking at what we say here, are able to discern the true and the false in what the jurists may God be pleased- with them practice when they transfer [rulings] from a position in the text and the subject of the ruling. One could, perhaps, clarify the situation better than this at [a future] time when it is required- God willing.

[H.2] God is the One Who makes the right proper and makes the proper correct.

[H.3] This book was completed, with the aid of the generous Lord, in the year 1198 [AH].

1. See above, B.2 and B.3.

included in [the category of qiyās], then one's doubt over their inclusion [in the category of qiyās] is not inconsiderable, So it is possible that [implications] are included in [qiyās], and it is possible that they are not. Possibility alone, however, does not prove prohibition, as we have said on many occasions.

[F: Further Discussion of the Two Possible Meaning of qiyās in the Akhbār]

[F.1] We say that the linguistic meaning of qiyās is "estimation" and "equality", such as when one says, "I compared one sandal with another," meaning that [one compared] the size of one with the other, or when one says, "so and so cannot be compared to so and so, "meaning that they are not equal. In legal usage [however, qiyās] is as we have already described it.[1]

[F.2] It is agreed that some [scholars] give the name qiyās to the "implication of agreement," [and they do this] unconditionally, saying "this is qiyās." They call it "obvious qiyās, and "a minori ad maius."[2] However, this [type of deduction] does not depend on speculation and ijtihād to be known. This view can, therefore, be declared false, and whoever wishes to know more about it, can consult the proper place.[3]

[F.3] Once one knows this, then we say that [the answer] is obvious. What [the Imams] meant in these reports by the word "qiyās" is the meaning current within the law, and not the linguistic meaning. The way in which this becomes obvious is clear to anyone who has considered the matter, especially after having considered what we have said.

[F.4] So, by considering what we have indicated concerning the falsity [of qiyās], it is the second category that is the qiyās [intended by the Imams in the akhbār], not the first.31 This is supported by what we have said previously.

[G. The Opponents' Arguments and Their Refutation]

[G.1 One might argue]

[G.1.a] that it is not demonstrated which of the two [meanings] found at the time of [the Imams] is meant.

[G.1.b] We say [however] that this being the case is not a proof. It is such that one could consider [the meaning of qiyās] as both [the technical meaning] and the general meaning. The procedure in [such circumstances] is well known: [one should take] the unqualified meaning, such that one can

1. Here Bihbhānī is re-iterating the two different definitions of qiyās: the general, common usage and the specific legal –technical definition.
2. Al- tarīq al-awlā (see above).
3. Bihbihānī may be referring here to his other discussions of qiyās, notably Bihbihānī, al- Fawā'id al- Hā'iriyya, 451-3.

the basis of "implication of agreement"].

[D.3.d] with regard to the akhbār that indicate that it is prohibited to act on the basis of qiyās, one should not think that these indicate that it is prohibited to act on this basis unconditionally. Rather, one must first know what they [viz, the Imams] mean by the word "qiyās" in these akhbār, so that one can then rule that it is prohibited to use it.

[D.4] We say that it is obvious to anyone who reflects upon these akhbār that what they [viz., the Imams] mean by qiyās is what those who argued that qiyās had probative force said it was, that is, connecting a secondary case to an original case by speculation and ijtihād.

[D.5] They did not mean to prohibit] whatever can be understood from the words of the Lawgiver, in accordance with the understanding and practice of the common people, and all that one can understand from the mere operation of language. This was not an innovation [as qiyās is]. As with all implications, this does not require speculation, ijtihād or deduction. However, discussion, dispute and debate have increased concerning [qiyās], opinions have become confused and various unfounded views have been proposed.

[E: Additional Proofs for a Technical Interpretation of the Meaning of qiyās in the Akhbār]

[E.1] Amongst the things that prove what we say here are the condemnations [by the Imams] of Abū Hanifa and his confused opinions, and the many criticisms of him and his followers found in [the Akhbār].

[E.2] Also in [the Akhbār] are specific example [of qiyās] such as the qiyās of Satan comparing fire and earth, and the prayer of the menstruating woman compared with her fast in terms of compensation, and the comparison of the superogatory prayer and the recommended fast when one has not fulfilled one's obligation to its fullest extent. There are other examples.[1]

[E.3] If it is [still] not clear, after accepting and considering [the akhbār], that the linguistic and common sense implications [of language] are not

1. These are examples where qiyās indicates a ruling, but the Imams' explicitly state that another is the ruling of God. They are (1) the example of Satan (Q.38.76) where Satan claims superiority over Adam because he was made from fire unlike Adam who was made from clay. Qiyās decrees that fire is superior to earth, and hence Satan is superior to Adam. But of course he is not; (2) a menstruating woman must make up fasting days missed. Qiyās decrees she should also make up missed prayers, but this is not required; (3) an incomplete recommended fast which is intended by the worshipper, when his obligatory fast is not completed, must be made up, but an incomplete supererogatory prayer in similar circumstances need not be made up. Qiyās dictates that the two cases should be treated similarly.

[C.2] And from Muhammad b. al- Hakīm who says, concerning him [i.e., al- Imam al- Kāzim]: "I said to him: 'Make me your sacrifice! When we consider religion.[1] then one reaches the point where he says, "Then perhaps something is referred to us, and we have nothing concerning it from you or your fathers, Should we then look to the best option that presents itself to us, the most fitting thing, in accordance with what has come from you? And then take it?"

He [viz., the Imam] said, "How preposterous! What an idea![2]

[D: The Meaning of the Word qiyās in the akhbār]

[D.1] Let it not be said that the general reference [of these hadiths] includes the first type [of qiyās, mentioned earlier], as well [as the second],[3] even though [the general reference is taken as the meaning] if it is present, unless there is something which prevents it from coming to light.[4]

[D.2] For we say that the prohibition of qiyās is indicated by

[D.2.a] the consensus of the Shiā

[D.2.b] the principle that] legal rulings are not validated by supposition alone [bi- mujarrad al-zann]

[D.2.c] the evidence which] indicates that it is prohibited to act on the basis of supposition, and

[D.2.d] the akhbār which demonstrate that it is prohibited to act on the basis of qiyās.

[D.3] However;

[D.3.a] There is no consensus on the matter upon which we are deciding. The experts in the science of jurisprudence all agree that neither those who support qiyās nor those who deny it argue that it is prohibited to act on the basis of an "implication of agreement.[5]

[D.3.b and D.3.c] with regard to the second and the third [of the above points], neither the proofs for [the validity of] implications, nor common sense, indicate that there is any harm (darar) or any impediment [to acting on

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1. A large section of text is omitted here by Bihbhanī, as he considers it not relevant to his argument.
2. Kulayni, al- Kāfi, 1: 56-9.
3. The first "type" refers to linguistic implications, and the "second type" refers to strict analogical argumentation when the jurist performs ijtihād to discover the 'illa. See above, B.2 and B.3.
4. This is a formulation of the exegetical principle that general meanings ('umūm) are assumed to be the intended meaning of an utterance unless there is evidence that "prevents" one from making this assumption. Though Bihbhānī does not dispute this principle, he does dispute whether it is applicable in the case of the Imams use of the term qiyās.
5. Al- mafhūm al- murwāfiq, also known as mafhūm al- muwāfaqa, referring to the a minori ad maius argument.

b.Muhammad Akmal, and this is the conclusion to the comments I wrote on al-Dhakhīra.[1]

[B.2] When a ruling concerning a specific case comes from the Lawgiver, then if, when hearing of it, another specific ruling is understood and immediately comprehended by common sense and normal understanding, then this ruling that- is the second specific ruling is- one of the implications (mafahim) of the words of the Law. This is called the "implication of agreement", or "of disagreement", or "of quality", or "of a limit" etc.[2] The designation of the implication of agreement as qiyās, through the a minori ad maius argument is, perhaps, incontestable.[3] [B.3] If, when hearing of [the original ruling], this [immediate] understanding and comprehension do not occur, then it is not a legal proof, because there is both [1] no legal indicator and [2] a legal indicator that there is no [legal indicator].[4]

This is in accordance with the general meaning of [the reports from the Imams] which indicate that qiyās and other types [of legal reasoning] are prohibited.

[c. Proofs from the akhbār that qiyās is Forbidden]

[C.1] Al- Kulaynī, in al-Kāfi, relates from Samā'a b. Mihrān from [al-Imām] al- Kāzim (upon whom be peace). He says: "I said, May God the Most High bless you! We gather and we discuss a certain problem, and the only thing we can think of is that [the answer] is hidden. It is in circumstances such as this that God has shown us favor by giving us you [viz., the Imams]. When the slightest thing is referred to us, and we do not know have any answer, some of us consider the case, find another which is similar to it, and make an analogy with the better [attested] of the two.

He [viz., the Imam] asked "Why do you perform qiyās?" Then he [the Imam] said, "When something you know comes to you, affirm it. If something you do not know comes to you, then look here!" And he reached for his mouth with his hand.[5]

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1. This is a reference to the Dhakhirat al- Ma'ād of the Safavid jurist, Muhammad Baqir al- Sabzawārī (d. 1090/ 1679). Bihbihānī's comments on the Dhakhira remain unpublished, though manuscript copies exist. See Moddarressi, Introduction to Shi'ī Law. 85.
2. An account of these types of implication can be found in Weiss, The Search for God's Law, 484-502.s
3. Bihbihānī's reference here is to the so- called "awlā" argumentation, such as the implications drawn from Q. 1723 (concerning saying uff to one's parents), mentioned above.
4. Lam yakun hujja li- 'adam al- dalil, bal li-dalīl al- adm ayd. The fact that there is no indicator (textual or otherwise) of a particular thing, is itself an indicator that can be used in argumentation.
5. Kulaynī, al- Kāfi, 1:56, no. 13.

2. The reason why qiyās was forbidden is because of the harm (darar) that may result from ruling or acting on the basis of mere supposition (zann). It is clear that no such harm results from linguistic inference; therefore linguistic inference cannot be an element of what was prohibited by the Imams. (D.2. b-D. 2.c and D.3.b and D.3.c) Ironically, this is a case of a non-analogy being used to maintain the prohibition of analogical reasoning. Qiyās is forbidden because it causes harm. Linguistic inferences do not cause harm. Therefore they are not qiyās.

3. The Imams condemned Abū Hanīfa and his followers for adhering to qiyās; Abū Hanīfa's notion of qiyās was the technical legal definition of the term and not the general, unqualified meaning. (E.i, E. 2) Furthermore, proof as to what the meaning of qiyās might be in these akhbār cannot be abstracted from its historical circumstances. "The usage at the time of the Imams is the proof" (G.1.b). This usage indicates a legal technical meaning.

4. The Imams provided examples of the qiyās they condemned, none of which displayed linguistic inference. (E.2)

5. Qiyās, in the juristic literature, refers to rulings that are reached through a process of reasoning (ijtihād). Specifically, they require a jurist's effort. Linguistic inferences require no effort on the jurist's

Although Bihbihānī does not state this here, he argues elsewhere that deciding whether or not a particular deduction from a text requires ijtihād (ultimately whether or not it is qiyās) is, itself, a matter of the jurist's ijtihād. Therefore, the jurist maintains control of the interpretive process, and the rest of the community is systematically excluded from participation in the law- making process. It was this position that Bihbihānī argued for, and it is in this way that his treatise on qiyās contributes to the hermeneutic monopoly of the clergy that formed the basis of subsequent Shi'ī jurisprudence.

Treatise on qiyās

By Muhammad Bāqir b. Muhammad Akmal al- Bihbihānī[1]

[A: Introductory Prayers]

[A.1] In the name of God the Merciful, the Beneficent. Praise be to God, Lord of the Worlds, and may God bless Muhammad and his family, the Pure Ones.

[B. Introduction to the Treatise and Summary of qiyās]

[B.1] Now to our topic: this is an investigation of qiyās and a warning to those of weak and limited mind. I am the lowliest servant, Muhammad Bāqir

1. An edition of this work is found in Bihbihānī, al- Rasā'il al- Usūliyya, 309-16. The paragraph numbers and subject heading are my own, and are provided for reference.

al- Hilli onwards. It is in this latter tradition that Bihbihānī writes.

Bihbihānī argues that the Imams were prohibiting the specific legal technical device when they prohibited qiyās. This device can be defined as the transference of a ruling that is explicitly stated in the revelatory texts to a novel case unmentioned in the text, after a jurist postulates a reason for the textual ruling, and presumes it to be present in the novel case. This restricted definition, then, excludes a number of other devices that were classified as qiyās. Importantly of course, there are the Linguistic inferences drawn from the text. These may be called qiyās if one is using the term in its most general sense (according to Bihbihānī), but this is not what the Imams were referring to when they condemned *qiyās*. Also excluded from the category of qiyās are occasions when the text explicitly states the reason for the rulings, or when God makes a general statement which covers all items in a category. In the former, God (either directly or indirectly) says that a particular ruling has been given for a specific reason. By specifying the reason (rather than leaving it to a jurist's speculation), God is effectively saying that on all occasions when this reason is found, this ruling applies. In the latter case (a general statement), God is saying that all cases of a particular type have a common accompanying ruling (for example, all marriages between a man and his mother are forbidden). God does not need to give a reason for the ruling, since the process involves the application of a general statement to a specific case, not generalizing from one case to all similar cases.

In the treatise, argumentation for this position is rather convoluted.[1] Bihbihānī's arguments follow the citation of two relevant akhbār (Section C. below) in which "qiyās" is condemned. Whilst all Shī'a agree that qiyās is forbidden, he argues, there is no consensus about what is meant by qiyās in the abkhbār (D.2.a and D.3.a). In cases in which there is doubt as to the meaning of a word, there is a rule that one should take the most general meaning as the referent of the word, unless there is evidence that it is not the intended meaning. In the case of qiyās, there is much evidence to suggest that a diversion from the general meaning of qiyās has taken place. According to Bihbihānī, this evidence is as follows:

1. The Imams surely would not have condemned the ordinary, straight forward use of language. Linguistic inferences (mafāhīm) are just that, so it is extremely unlikely that the message they were meant to convey was that not only analogy, but also ordinary linguistic inferences, were forbidden. (D.4 and D.5).

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1. In the following summary, references (such as D. 2, D.3, etc.) refer to paragraphs in my translation below.

that Usulism flourished once more. Akhbarism is today restricted to a few villages in southem Iran, Bahrain and pockets of Akhbarism in India. Bihbihānī died in 1205/ 1791 (the dates 1206/ 1792 and 1208/ 1774 are also mentioned) and was buried in the Graveyard of the Martyrs in Karbala, next to his father.

Treatise On Qiyās

Bihbihāni's treatise on *qiyās*, translated below, was completed in 1198/ 1783-4, and was originally a postscript to his commentary on a work by Muhammad Bāqir al- Sabzawārī (d. 1090/ 1679). As mentioned above, *qiyās* was a Sunni technique that the Akhbārīs accused the Usūlīs of legitimizing, and this- the Akhbārīs argued- was in direct contradiction to the command of the Imams. As is well known, there are a large number of akhbār in which the Imams reject *qiyās* and criticize those who use it. A debate began early in Imāmī thought as to what was meant by qiyās in these reports, and the debate later formed an element of the Akhbārī polemic against the Usūlīs.[1] Despite never mentioning the Akhbārīs, it is clear that they are the primary targets of Bihbihānī's argumentation in this treatise. In his view, the intended meaning of "*qiyās*" in the akhbār is a technical, legal one, and not the general, unqualified meaning the Akhbārīs took the Imams to be referring to. Like most works of usūl al-fiqh, the treatise presents problems for a translator. Arguments are compressed, or referred to and rarely explicated in full. The audience is assumed to be aware of the niceties of juristic argument. Technical terms A matter of linguistic understanding. Cases such as this ("implications," *mafāhīm*, specifically "the implication of agreement") were counted as qiyās by *Shāfiīs* and Hanbalīs, and as an example of linguistic understanding by Hanafīs.[2]

The uncertainty as to what the Imams meant by their condemnation of qiyās is, then, set against this background of debate amongst the Sunnis. If the Imams were referring to qiyās defined in the most general manner, then a raft of useful interpretive techniques are prohibited for the Shiā. The Akhbārīs, already suspicious of interpretive techniques, generally considered this meaning of qiyās to have been intended by the Imams. On the other hand, if qiyās is defined in its most restrictive terms, the jurist had at his disposal a larger range of exegetical mechanisms whereby knowledge of the Sharia could be drawn from the revelatory texts. Unsurprisingly, this latter view was the thrust of Usūlī arguments concerning qiyās from al- 'Allāma

1. See, generally, Gleave, "Imāmī Shi'ī refutations of Qiyās"
2. See Hallaq, "Non- analogical Arguments," 291, n. 17.

legal rulings. When two reports did contradict each other, the jurist's task was not to contrive convoluted interpretations in an effort to harmonize their messages. Instead, the community had to accept that the akhbār corpus contained contradictions, and that this came about solely because of the Imams' need for *taqiyya* or precautionary dissimulation. The Imams, at times, had been forced to conceal the true interpretation of the sources, and therefore the *Shari'ā* of God itself owing to the oppression they faced from the Sunni majority. Since there was no certain way of knowing which akhbār were taqiyya –generated and which were not, the Imams had allowed the community to follow any of the two or more contradictory reports. Hence, Akhbārīs such as Yūsuf al- Bihbihānī eventually reached the conclusion that although, because of *taqiyya*, the Shari ' of God itself, may not be available, a justified course of action was in fact known and available. The Akhbārīs, eventually, also had to accept that on certain occasions, God's law is in doubt. In this, their position was not so different from that of the Usūlis. This was the juristic framework within which Bihbihānī began to teaching and argue for a return to Usulism.

Life And Travels

Bihbihānī's life and travels are described in a number of biographical notices devoted to him. However, these accounts do contradict each other and there is considerable uncertainty about the dates of the major events in his life.[1]

Of Bahrānī's Akhbārī scholars also died in the pague. For the next twenty years (until his death in 1205/ 1791), Bihbihānī trained scholars, taught in the madrasas and wrote additional works of jurisprudence. His pupils included Shaykh Kāshif al-Ghitā' (d. 1228/ 1813), who is credited with defeating Akhbarism in Iran; Abū 'Alī al-Hā'iri (d. 1215/ 1800), author of an important Usūlī work of *tabaqāt*; Muhammad Mahdi Bahr al- 'Ulūm (d. 1212/ 1797-8), who also gained an *ijāza* from Bahrānī; and Sayyid 'Alī al-Tabatabā'ī (d. 1231/ 1816), Bihbihānī's brother –in –law. All of these scholars participated in the Usūlī revival initiated by Bihbihānī. Some stayed in the 'Atabāt, but many of his pupils founded seminaries and teaching establishments in Iran. However, they themselves were always quick to identify themselves as the pupils of Bihbihānī and it is through their industry

1. Biograhical entries include (In Arabic): Amīn, A'yān al-Shīa, 9: 182; Khānsārī Rawdāt al-Jannāt, 21:91 and (in Persian) Tunkābunī, Qisas al- 'Ulamā ', 198: Qummī, Fava'id al- Radawiyya, 404; Tabrīzī, Rayhānat al-Adab, 1:51. An analysis of the biographical entries on Bihbihānī is found in Gleave, "The Akhbari – Usuli Dispute''.

that juristic and theological principles such as the impossibility of God charging an individual believer with something he is unable to perform (*taklif mā lā yutāq*) are justified and operative. They were not anti-rationalists, as is sometimes assumed,[1] and both groups of scholars employed elements of rationalism in their theology and in their legal theory. The difference between the schools was not over the validity of principles such as the impossibility of taklif mā lā yutāq. Rather, they differed over how such principles should be applied within their respective legal theories. That is, they differed over whether these principles should be used to defend certainty (as the Akhbārīs argued) or to accept (and embrace) the inevitability of doubt (as the Usūlīs argued).

Astarābādī's criticism of the Usūlī position quickly became popular in the Shī'ī world. There developed a tradition of Akhbārī scholarship and teaching which dominated Imāmī Shi'ī legal discourse, and, by the time of Yūsuf al-Bahrānī (d. 1186/ 1772), the great Akhbārī scholar with whom Bihbihānī did battle, it was said that those who studied Usūlī ideas had to do so in secret. Akhbārīs were openly declaring that mere contact with a work of Usūlī jurisprudence caused a minor ritual purity infraction. In the Atabāt, it is said Akhbārī scholars would carry Usūlī works in handkerchiefs in order to avoid their supposedly ritually polluting effect.[2]

Whilst there was much diversity within the Akhbārī school, the basic principles of the school were developed and elaborated by Astarābādī and his followers, who asserted that the akhbār of the Imams were the only legitimate sources of the law. This position gave the group its name. For Akhbārīs, the *Qur'ān* and even the Prophet's hadiths could not be interpreted directly but only through the prism of the Imams' statements. The Imams, due to their special knowledge of God's will, were cognizant of the true meaning of these texts, and hence their interpretation (*tafsir*) revealed the true meaning of God's revelation. In order to expand the material available to them in their search for "the Imam's tafsir," the Akhbārīs declared all akhbār found in the various collections made by the earliest Shi'ī scholars "sound" that is historically authentic and legally relevant. The Usūlī techniques of assessing a report in terms of its isnād (chain of transmitters) and matn (text) were rejected by the Akhbārīs, as they undermined the central role of the statements and actions of the Imams in the derivation of

1. Newman, "The Usulī (rationalist) and Akhbārī (traditionalist) Schools", passim; Modarressi, "Rationalism and Traditionalism," 154-5.
2. This story, possibly fabulous, is well –attested in the tabaqāt literature. See, for example, Tunkābuni, Qisas al- 'Ulamā, 201; Khwānsārī, Rawdāt al-Jannāt, 2:92

interpretation by expert jurists using interpretive tools. The texts he consults are the *Qurān*, the *hadīths* attributed to the Prophet Muhammad, and the *akhbār* attributed to the Shi'ī Imams. He is given the responsibility of using these interpretive tools, to "try his hardest" (*ijtihād*) to reach an opinion as to what God is communicating directly (in the *Qur'ān*) or through his messengers (the Prophet and the Imams). The tools in question included.

1. "reading into" a text an implication which is not explicitly expressed (*mafāhīm*).

2. "discovering" the "reason" (*'illa*) behind a ruling and generalizing the ruling to all cases that share this "reason" (known as *qiyās*, although, as we shall see, this was controversial, even amongst Usūlīs),

3. weighing the possible authenticity of contradictory texts, and deciding which takes prominence on the basis of the greater likelihood of its being authentic (*tarjīh*) and

4. joining together contradictory texts by what might be considered an over- interpretation of one of the texts, such that its meaning accords with or adds to (and no longer contradicts) the meaning of the other (*jam'*).[1]

Shī'i scholars, in particular al-'Allāma al-Hilli (d. 726/ 1325), employed these techniques, composing works of *usūl al-fiqh*, an example of which is al-Allāma's own *Mabādi' al-Wusūl ilā Ilm al-Usūl*.[2] Of course, these interpretive techniques were not available to all believers. As in Sunni legal theory, these tools required skilled operators who have undergone proper training. Only once qualified would a scholar be able to issue independent judgments (*fatāwā*) on the basis of his own reasoning. Believers who did not reach this level were commanded simply to follow (*taqlīd*) the rulings of those jurists who had (i.e., *mujtahids*).

Believers, he argues, are charged with following the Shari'a of God, not the mujtahid's opinion of the Shari'a of God. It is failure to obey God which leads to punishment, not failure to obey another human being's opinion of God's Sharī'a. The texts, Astarābādī argues, give us certain knowledge as to God's will for His creation. To posit that they do not, and so to argue for the necessity of a panoply of interpretive techniques, is to accuse God of vagueness, ambiguity, and (most tellingly) injustice. If He is to punish us for our failures, then He must have made clear, through his revelation, the duties we are required to perform. Astarābādi and his *mujtahid* opponents agreed

1. This description of jam' is, In part, an Akhbārī characterisation of this Usūli interpretive method. Usūlis see this process as a bone fide attempt to understand the true meaning of both contradictory reports. See Gleave, Inevitable Doubt, 142-4.

2. For a general account of how ijtihād became part of Imāmī legal thought, see Calder "Doubt and Prerogative."

the Akhbārī school was marginalized and defeated in the Shi'I heartlands of the 'Atabāt (the Shī'I shrines of Iraq) and the Iranian seminaries. The Usūlī school returned to the prominence it had enjoyed before the emergence of Akhbarism in the nth/17th century, and it has dominated Imāmī Shi'ism ever since. For these two achievements, then, Bihbihānī is called *al-mujaddid* ('the renewer') of the shī'ī madhhab in the 13th Hijrī century, or *al-mu'assis* (the re-establisher) of the true faith in the face of the Akhbārī heresy.

The Akhbārī -Usūlī Conflict

To assess the importance of Bihbihānīs achievements, then, an understanding of the Akhbāri- Usūlī dispute is essential since it was he (it is claimed) who brought it to an end in favor of the Usūlīs. There is some debate about when to date the beginnings of the Akhbāri- Usulī dispute.[1]

Some 7th/ 13th century texts talk of a dispute between two opposing groups of Imāmī Shī'is: the *akhbāriyyūn* and *usūliyyūn*.[2] However, it is not (yet) clear whether these two terms refer to schools as such. It seems more likely that these terms were amongst the many different names given to 'traditionist' (*akhbāriyya, ahl al-hadith* and *hashawiyya*) and rationalist (*usūliyya, kalāmiyya* or simply *mu'tazila*) tendencies in Shi'i theology, exegesis and law.[3] It is only with the emergence of Muhammad Amin al-Astarābādī (d. 1033/ 1624 or 1036/ 1627) that the usage of the terms Akhbāriyya/ Akhbāriyyūn and Usūliyya/ Usūliyyūn begins to stabilize, and one sees the beginnings of "schools" of thought demonstrating a measure of doctrinal coherence within each school, an internal (polemically driven) historical perspective and a nascent institutional school structure. Astarābādī championed a method of juristic interpretation that he termed "the way of the Akhbāris" (*tariqah-ye Akhbāriyya*), and he pitted this against the method of the Usūlīs, also called "*al-mujtahidūn*" (the mujtahids).[4] The Usūlīs had, in Astarābādis view, strayed from the path of true Shi'i jurisprudence by adopting a number of Sunni hermeneutic mechanisms in their interpretation of the sources of sharīa or divine law.

The Usūlī position, championed and reestablished by Bihbihānī, can be described as follows. The texts of revelation, from which God's law can be deduced, are, on certain occasions, unclear or silent. They are in need of

1. See Newman, ''The Akhbāri/ Usūli Dispute, pt. 2'', 250-1, and Gleave, Akhbārī Shi'i usūl al-fiqh, 24-8.
2. The texts include Shahrastānī, al-Milal, 172 and the Persian Kitāb al-Naqd of 'Abd al-Jalil al-Qazwini (d. after 565/ 1170). See, for example, Kitāb al- Naqd, 256 and 492.
3. Modarressi. "Rationalism and Traditionalism," 152-3.
4. Astarābādī, Dānishnāmih-yi Shāhī; f-3a. 12.

(14)
Muhammad Baqir Al-Bihbihānī*

Robert Gleave

Introduction

Muhammad Bāqir b. Muhammad Akmal al- Bihbihānī (d. 1205 / 1791), also known as al- Wahīd al-Bihbihānī (also spelled Bihbihānī, and known in Persian as Āghā-yi Bihbihānī), receives fulsome praise in modern Shi'i writings on two accounts. First, he was a prolific author, credited with at least 103 works. Most of these concern aspects of figh and usūl al- fiqh, but amongst them are also works of biography (*rijāl*) and theology (*kalām*). Many of these works are marginalia (hawāshī) on standard Imāmī works of fiqh or *usūl al- fiqh*. Others are substantial commentaries (*shurūh*) on these works, or short treatises (*rasā'il*) on particular topics.[1] In most of these works, his principal aim was to argue for (and thereby re-establish) the Shi'i juristic school known as the Usūliyya, which had been eclipsed in the preceding two centuries by the Akhbāriyya. Second, and perhaps more importantly, he is remembered for his teaching activities. In the biographical notices devoted to him, there are long and impressive lists of pupils, those who 'relate' from him (*al-ruwāt 'anhu*) and those who received his 'licenses' (*iyāzāt*).[2] Many of these pupils and followers became important Usūlī jurists in the following decades, and their dominance of the Shi'ī intellectual scene during the early years of the Qajar dynasty in Iran was perhaps Bihbihānīs most lasting legacy. Through the work of these pupils,

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* Powers, David, Susan Spectorsky, and Oussama Arabi, eds. *Islamic Legal Thought: A Compendium of Muslim Jurists*. BRILL, 2013, pp

1. Bihbihānī's works can be found listed in the entries in biographical compendia (Tabaqāt). For a list of such entries, see below, n. 15. However, these are usually partial. There is a book-length study of Bihbihānī in Persian (Davānī, Vahid- i Bihbihānī), hagiographic in tone, though containing useful Information concerning his life. The most complete list known to me is given in the editor's Introductions to the printed editions of selections of Bihbihānī's treatises: Bihbihānī, al-Rasāil al- Fiqhiyya, 31-6 and al-Rasāil al-Usūlīya, 59-64.

2. A shaykh or master would give a student a 'license' (ijāza) to relate hadith from him once he felt the student had reached a certain level of competence. This is normally described in tabaqāt works by the phrase "so-and-so relates from his master", so and so. On late classical Shi'i ijāzas, see Gleave, "The Ijāza", Schmitke, 'The Ijaza', and Salati, La Lu'lu'a".

For Futhter Reading:

Alger, hamid. *Religion And State In Iran*. Berkeley: university of California press, 1969.

Avery, peter. And Scanley I. Grossman, eds. *The Cambridge history of iran*, vol. 7. Cambridge: Cambridge university press, 1991.

executors of punishment, to carry out the sentences he deemed appropriate for heretics. Bihhihani was also a fierce opponent of the Sufi mystics, who challenged the authority of the *mujtahids* by claiming direct divine revelation and rejecting the necessary direction of the *Shariah*. His attacks against them became so brutal that he earned the appellate, *sufikush,* Sufi-killer.

Bihbihani died in Karbala around 1792 and was buried near the tomb of Imam Husayn.

Legacy

bihbihani's legacy is symbolized by his title mujaddid, renewer: his leadership secured the dominance of the Usuli school of Islamic jurisprudence over that of the Akbbari. He established a line of *mujtahid* jurists who were the religious rulers of the atabat until the last third of the twentieth century.

By establishing the Usuli *ijtihad* as the principal method of legal interpretation in the *atabat,* Bihbihani laid the foundation for the emergence of a dynamic and contextual approach to understanding the requirements of the *Shariah*. The insistence that *mujtahid* did not need to rely on fixed interpretations but could apply his own reasoning and expertise to articulate the demands of the law allowed the *Shariah* to address concerns unforeseen in the ancient text. In the event that *mujtahids* from different communities developed different interpretations, they would acknowledge that their opinions were *zann*, debatable opinions. The community, in turn, was to practice *taqlid,* compliance with the rulings of the *mujtahid* Thus, Bihbihani's model of jurisprudence construcred a community whose life was shaped by the *Shariah* but not stifled by it.

Bihbihani's suppression of the Akhbari school advanced Usuli theories in iran. Many of the cities of the *atabat* provided places for lranian *ulama* (religious scholars) to study. In Iraq, Bihbihani's ideas thrived among his students and the *mujtahids* who followed. Among these juridival leaders were his son, Mina Muhammad 'Ali, and Shaikh Ja'far al—Najafi. In the middle of the nineteenth century, Shaikh Murtaaa Ansari (d. 1865) consolidated religious authority by becoming the *marjar-i taqid*, the sole legal authority for the entire Shiite community. The rule of the mujtahids continued until the death of Ayatollah Burujirdi, the last *marja' taqid*, in 1962.

(13)
Bihbihani, Aka Sayyid Muhammad Bakir: Influential Shiite Legal Scholar (c.1705-c.1792)*

Von Dehsen

Life and work

Aka Sayyid Muhammad Bakir Bihbihani was a Shiite mujaddid(an inspired renewer of Islamic legal interpretation and practice). He established the role of the muj tabid, the authoritative practitioner of ijtihad (the rational interpretation of *shariah*, Islamic law).

Bihbihani was born in about 1705 in Isfahan (in present-day Iran). When he was still a young boy, his father, Mulla Muhammad Akmal, took him to Karbala in Iraq, one of the *atabat*, or shrine cities, that contained the Shrine of Imam Husayn, the grand son of MUHAMMAD, who was murdered there in 640. (according to Shiite tradition, an imam is a leader in the succession of Muhammad.) bihbihani had intened to return to Iran once his education was complete. However, before he could leave Karbala, he had a dream in which he was visited by the twelfth, and last, imam, Muhammad al-Mahdi (d. 941), who instructed him to settle there.

In karbala bihbihani led the Usuli school of legal interpretation against the then-dominant Althbari school over the question of *fikh*, islamic jurisprudence. The Akhbari school contended that no liltthet interpretation of law was necessary apart from the traditions (*akhbar*) developed by the leaders from Muhammad through the twelfth imam. The Usuli, in contrast, asserted that the *mujtahid* could interpret the *shariah* in light of new circumstances. Prior to Bihbihani's tenure as majrabzkd Shiites could not even walk in pub» lic with Usuli books visible.

Bihbihani broke Akhbari domination and established the supremacy of the Usuli *mujtahids*. His tactics ranged From scholarly writing and debate to blatant use of force. On the one hand, he produced many legal writings, including a strident refutation of the Akhbari theories in his most famous book, *al-Fawa'id al-Usuliyya*. (English title for this volum is unavailable.) on the other hand, when he traveled he took along several *mirghadabs*,

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* Von Dehsen, Christian D., and Scott L. Harris, eds .*Philosophers and Religious Leaders* .Vol. 2. Greenwood Publishing Group, 1999, p 29.

(12)
Bihbahani, Muhammad Baqir
(1704/1706-1792/1793)*

Hamid Algar

Iranian religious scholar who decisively vindicated the Usuli position in Shi'ite jurisprudence and secured for it the dominance it has ever since enjoyed in Iran. Born in Isfahan, he was taken as a child by his father — a pupil of Muhammad Baqir Majlisi — to Karbala in Iraq, which was to be his home for the rest of his life. After completing his studies in Karbala, Bihbahani first intended to return to Iran, but he decided to say behind to combat the rival Akhbari school of jurisprudence. A vigorous debater and prolific writer, he attained the goal he had set himself and uprooted the Akhbaris from Karbala and other centers of Shi'ite learning. The numerous pupils he trained returned to iran in the early nineteenth century to inaugurate a tradition of assertive religious leadership that has continued down to the present.

[*see also* Akhbari *and* Usuli]

Hamid, algar, Religion and State In Iran, 1785-1906 (1969).

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* Lewis, Robin Jeanne. *Encyclopedia of Asian history*, vol. 1, (1988), p 162.

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3. Abbās b. Moḥammad-Reżā Qomī, *Hadīyat al-aḥbāb*, Najaf, 1349/1930, p. 100.

4. Mīrzā Moḥammad-'Alī Modarres, *Rayḥānat al-adab*, Tabrīz, n.d., I, pp. 51-52.

5. Moḥammad-'Alī Mo'allem Ḥabībābādī, *Makārem al-āṯār dar aḥwāl-e rejāl dawra-ye qājār*, Isfahan, 1337 Š./1958, I, pp. 220-36.

6. A'yān al-š'a XLIV, pp. 94-96. Moḥammad Ḥerz-al-Dīn, *Ma'āref al-rejāl*, Najaf, 1384/1964, I, pp. 121-23.

7. Alī Davānī, Ostād-e koll Āqā Moḥammad-Bāqer Behbahānī b. Moḥammad-Akmal Behbahānī ma'rūf be Waḥīd Behbahānī, Qom, n.d. Hamid Algar, Religion and State in Iran, 1785-1906. The Role of the Ulama in the Qajar Period, Berkeley and Los Angeles, 1969, pp. 34-36.

appearance on the scene, the Aḵbārīs were so assured in their dominance of Karbalā' that no one dared openly to carry books of Oṣūlī *feqh*, but by the end of his life he had almost completely uprooted Aḵbārī influence from the 'atabāt. This achievement, combined with similar developments that were taking place in the Shi'ite centers of Jabal 'Āmal, established the Oṣūlī position as normative for the whole Twelver Shi'ite community. He was vigorous in debate and polemic, and also wrote a number of refutations of the Aḵbārī position: al-Fawā'ed al--oṣūlīya, a response to al-Fawā'ed al-madanīya of Mīrzā Moḥammad-Amīn Astarābādī, one of the main Aḵbārī texts; *Ketābal-ejtehād wa'l-aḵbār*; and *Ebṭāl al-qīās*. In all, he is credited with more than sixty works (for a partial list see Moḥammad-'Alī Modarres, Rayḥānat al--adab, Tabrīz, n.d., I, p. 52), some of which were preserved in autograph in the library of his descendants in Kermānšāh (see A'yān al-šī'a XLIV, p. 96). His writings on *oṣūlal-feqh* are said to have been compiled into a single work by a pupil, Sayyed Mahdī Qazvīnī. He died in 1206/1791-92 or, according to certain accounts, in 1208/1793-94, and was buried close to the tomb of Imam Ḥosayn, which he had diligently and reverently visited every day of his life in Karbalā'. He left behind a large number of influential pupils: his sons, Āqā Moḥammad-'Alī Behbahānī, Āqā 'Abd-al--Ḥosayn; Mollā Mahdī Narāqī, Mīrzā Abu'l-Qāsem Qomī, Shaikh Ja'far Najafī: Ḥājj Moḥammad--Ebrāhīm Kalbāsī; and Sayyed Moḥammad-Bāqer Šaftī. These exercised a determining influence on religious life in early Qajar Iran, but Āqā Moḥammad-Bāqer Behbahānī accomplished far more than the training of a generation of mojtaheds. Through his vindication of the Oṣūlī position and emphasis on the function of moj-tahed, he was in effect the forerunner of those numerous 'olamā' who since his time have sought to play a directive role in Iranian society.

(11)
Behbahānī, Mohmmad-Bāqer: Āqā Sayyed, Shi'ite mojtahed and champion of the O'ūlī school in Shi'ite law (feqh)*

Hamid Algar

BEHBAHĀNĪ, ĀQĀ SAYYED MOḤMMAD--BĀQER, Shi'ite mojtahed and champion of the Oṣūlī school in Shi'ite law (*feqh*). Often designated as Waḥīd-e Behbahānī (Behbahānī the unique) or Moḥaqqeq-e Behbahānī (Behbahānī the investigator), he is common-ly regarded as the "renewer" (*mojadded*) of the twelfth Islamic century (see opinion of Fāżel-e Darbandī quoted by Moḥammad Ḥerz-al-Dīn in *Ma'āref al-rejāl*, Najaf, 1384/1964, I, p. 121). He was born in Isfahan either in 1116/1704-05 or in 1118/1706-07. His father and first teacher, Mollā Moḥammad Akmal, took him first to Behbahān and then to Karbalā', which was destined to be his home for the rest of his life. There the young Behbahānī became his father's principal student, while studying also under Sayyed Ṣadr-al-Dīn Qomī. Mollā Moḥammad Akmal was a pupil of Mollā Moḥammad-Bāqer Majlesī, the great divine who had dominated Iranian Shi'ism in the late Safavid period, and had in addition married his niece; Āqā Sayyed Moḥammad-Bāqer, who came to exercise a similar dominant role at the close of the twelfth/eighteenth century, was thus both spiritually and genealogically a descendant of Majlesī. It is said that after completing his studies in Karbalā', Behbahānī intended to go elsewhere and teach, but a dream in which he saw Imam Ḥosayn instructing him to stay dissuaded him (Moḥammad--Bāqer Ḵ'ānsārī, *Rawżāt al-jannāt fī aḥwāl al-'olamā' wa'l-sādāt*, Tehran, 1304/1887, p. 122). Remaining in Karbalā', he began to do battle with adherents of the Aḵbārī school of *feqh*, which predominated at the time both in Karbalā', and in the other shrine cities of Iraq. The controversy between the Aḵbārīs and the Oṣūlīs, centering on various questions of *oṣūlal-feqh* and especially the problem of *ejtehād*, was an ancient one, but it had become particularly intense in the late Safavid Period. Before Behbahānī's

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* Yarshater, Ehsan, and I. I. CONTRACTS III—COTTON. "*ENCYCLOPZEDIA IRANICA*." (1982), Vol. IV, Fasc. 1, pp. 98-99

1772, Bihbihani was able to secure the triumph of the Usuli school at Karbala. He then spent the next twenty years, until his death in 1792, training the next generation of scholars in the Usuli school. It was this generation that took Usuli teachings to the whole of the Shi'i world and ensured its universal triumph. Bihbihani's writings defined the Usuli school and the role of the mujtahid (one who exercises *ijtihad*) for succeeding generations of Shi'i religious scholars.

See also: Islam and Holy People; Lawgivers as Holy People

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(10)
Bihbahani, Muhammad Baqir
shi'I muslim reformer, legist*

Moojan Momen

Sayyid Muhammad Baqir Bihbihani, known as Vahid (unique or peerless) Bihbihani, is regarded by Shi'is as the *mujaddid* (renewer) of Islam for the thirteenth Islamic century. He is also called Ustad-i Akbar (the most great teacher). He swung Shi'i Islam decisively away from the Akhbari school of law and toward the Usuli school, which has predominated up to the present day.

The Akhbaris favor a more cautious approach to jurisprudence, giving legal opinions only where there is a clear precedent for doing so in the traditions (*akhbar*) from the prophet and the imams. The Usulis widen the areas in which it is possible to give religious judgment through the use of *ijtihad*, the derivation of legal opinions using rational processes as part of the principles (*usul*) of jurisprudence.

Bihbihani was born in Isfahan, the capital of the Safavid Empire of Iran, in 1706 and is a descendant of the prophet Muhammad and of Shaykh al-Mufid, a prominent tenthand eleventh-century Shi'I scholar. His early years were, however, the dying days of that empire, and in 1722 Isfahan was taken by a Sunni Afghan army and the Safavids toppled from power. Bihbihani fled to Karbala in Iraq, where he obtained most of his religious education from the prominent Shi'i scholars in that city. At this time, the Akhbari school of law predominated at Karbala and in most parts of the Shi'I world, and Bihbihani adopted this teaching. By the 1730s, he had completed his education and moved to the small town of Bihbihan in southwest Iran, where he became a local religious leader.

He remained there for some years and at some time during this period

Changed over To the Usuli school Of law. In 1746, he returned to Karbala and began to teach. He found it difficult at first because of the predominance of the Akhbari school; however, after the death of Shaykh Yusuf Bahrani in

* Jestice, Phyllis G., ed .*Holy people of the world: a cross-cultural encyclopedia* .ABC-CLIO, 2004., pp 123-124.

(9)
Bihbahani, Vahid (Unique One)*

A. Christian van Gorder

Muhammad Baqir ibn Muhammad Akmal, also known as Murawwij and Ustad-i Akbar, b. 1706, Isfahan. After completing his studies, he returned to Bihbahan (Isfahan) where he remained for thirty years before moving to Karbala in 1746. He was responsible for the *Usili* victory over the *Akhbari* position and for defining the *Usili* system of jurisprudence and the role of the *mujtahid.*

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Usili School (*Usuliyah*): One of two schools of jurisprudence in Twelver Shi'ism, the Usilis are the "followers of principles" and the *Akhbaris* (*Akhbariyah*) the "followers of tradition." First taught by Agha Muhammad Baqir Vahid Bihbihani (1705–1803), the Usili branch gained dominance in Iran in the nineteenth century and led to the centralization of the religious establishment as the representatives of the Hidden Imam. It also justified the use of *ijtihad* by learned Mujtahid.

* Van Gorder, A. Christian .*Christianity in Persia and the Status of Non-muslims in Iran* .Rowman & Littlefield, 2010., p 292.

credited in Shi'I tradition with bringing about its demise.

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C. accomplishments and records

D.Generalities

(8)
Bihbahani, Muhammad baqir ibn Muhammad akmal (d. A.H. 1205/1791).*

Robert Gleave

The Imami jurist and teacher Muhammad Baqir ibn Muhammad Akmal al-Bihbihani is known in the Imami tradition as the *mujaddid* (renewer) of the thirteenth century, as he was active in Najaf around the turn of the thirteenth *hijrī* century. His major achievement was to reestablish the Usuli school secure the primary of the *mujtahid* scholar in Imami jurisprudence.

His theory gives the mujtahid (the scholar qualified to give personal legal opinions) a pivotal role in the dissemination of legal norms. According to bihbahani, all other Imamis should follow the *mujtahid*, and his argument for this view involved a type of Pascal's wager: a qualified scholar is more likely to interpret revelatory texts correctly than an ordinary believer, and the most learned scholar is more likely to do so than his less learned colleagues. Gence, following the legal opinion of the most learned scholar (*al-a'lam*) is the most rational action for the community. The *al-a'lam* legal opinion (*zann*) may not be identical with God's intended meaning, but it is the best opinion available to the believers.

By promoting this theory, bihbihani laid the intellectual foundations of the juristic prerogative, which pervades Imami legal theory. The argument was not novel, but bihbihani expressed it in a particularly clear and precise manner and he did so at a time when the Akhbari school, which rejected the mujtahid's exclusive role, dominated the Shi'I seminaries of Najaf and Karbala. The akhbaris argued that God had spoken clearly in revelation, that anyone who knew Arabaic could understand the texts, and that believers have certainty, not mere opinion, about God's intended meaning. Most of bihbahani's writings are refutations of the Akhbari position, and he is

* Katz, Stanley Nider .*The Oxford international encyclopedia of legal history* .Oxford University Press, 2009, p 291.

on the personal level because he is crushed and totally impotent in front of his enemies, surrendering to their demands. He lives in paucity because his enemies manipulate his life and the resources of his country. He gradually loses his religion because he was not committed to *jihad*, which strengthens religion and fortifies the believers.[1]

Another *hadith* states that if the believer is incapable of performing *jihad*, or if the objective circumstances preclude him from engaging in it, then, at least, he should live interacting with *jihad* and have the desire or intension to conduct it (as persuasive *jihad*), even if he communicated this desire to perform *jihad* within himself[2]: "If a person died and he did not participate in *jihad*, and did not even talk within himself about it, then he died the death of a hypocrite". This constitutes a different evaluation to life, preferring life with jihad in order to stand up for the right and dignity of the umma, as opposed to death in humiliation and capitulation, as Imam 'Ali had said: "Death is living your life crushed with humiliation, and eternal life is granted to you if you die while performing *jihad*".[3]

1. Ajami, op. cit., 43. See also Saad-Ghorayeb, op. cit., 295-298.
2. According to al-Sadr "Israel is the absolute evil, and dealings with it are haram (religiously prohibited)". See Halawi, op. cit., 147.
3. El-Khazen subscribes to this view. El-Khazen, The Breakdown..., 306.

3.Jihad in the way of God from a Shi'ite perspective[1]

The etymology of the word "*jihad*" is derived from the verb "*jahada*",which means to exert a person's energy or to do ones best to overcome trouble, difficulty, or hardship. *Jihad* is total devotion in performing one's religious duty, be it in action or in intention.[2]

3.1 The general Shi'ite understanding of *jihad* and its justification in the Qur'ān and *hadith*

The following Qur'ānic verse demonstrates the high stature of jihad and the mujahidin (those who carry out *jihad*) in Islam (9:88-89):

"But the Apostle and those who believe with him struggle [*jahadu*] with their wealth and their lives. To those are the good things reserved, and those are the prosperous. Allah has prepared for them gardens beneath which rivers flow, abiding therein forever. That is the great triumph!" The saliency of jihad is also noticed in a *hadith* attributed to the Prophet: "Heaven has a door called the 'door of the *mujahidin*'. When it opens, they go toward it, wearing their swords while the Angels are greeting them".[3]

Imam 'Ali enjoined jihad: "*Jihad* is one of the doors of Heaven, God opened it for his special saints. *Jihad* is the garment of the pious; it is God's shield and his assured Heaven". Another saying attributed to Iman 'Ali that conveys the paramount role of jihad is the following: "Belief has four pillars: patience, strong conviction, justice, and *jihad*". Imam Ja'far al-Sadiq exhorted believers to conduct jihad: "Jihad is the best thing after religious duties".[4]

A different hadith stresses that engaging in *jihad* leads to dignity, while not engaging in it leads to humiliation, loss, degeneration, and disintegration of the individual as well as the *umma*: "God clothes a person who leaves jihad with humiliation, poverty, and the destruction of his/her religion. God has dignified my [the Prophet's] *umma* with the hoofs of the horses[5] and the centres of the spears". The person who puts *jihad* aside will live humiliated

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1. Saad-Ghorayeb, op. cit., 295-298.
2Farid El-Khazen, "Lebanon's Communal Elite-Mass Politics: The Institutionalization of Disintegration". Beirut Review 3 (Spring 1992), 15.
3. El-Khazen argues AMAL is the military wing of Harakat Al-Mahrumin. El-Khazen, TheBreakdown..., 306. Also Shamran claims the same thing in Qudwat Al-Qada..., 16.
4. Al-Nahar 30 June 1975.
5. Al-Madini, op. cit., 35-39; 49-60. See also Abd Al-Ilah Balqaziz, Al-Muqawama wa Tahrir Al-Janub: Hizbullah min Al-Hawza Al-'Ilmiyya ila Al-Jabha [The Resistance and the Liberation of the South: Hizbullah from the Religious Seminary to the Battle Front]. Beirut: Markaz Dirasat Al-Wihda Al-'Arabiyya, 2000, 43-46. For the exact number of killed and wounded, see Halawi, op. cit., 217.

legitimacy of the legal speculation on the part of the *faqih* in the absence of the Hidden Imam. His emphasis on Prophet Muhammad's succession as being the prerogative of religious authority is of special importance since it brought the political dimension into the *wilayat al-faqih* doctrine. As such, al-Naraqi was the first to recognise the *faqih*'s right in *political authority*. Moreover, when he compared a *faqih* and a king, he placed the former above – not even juxtaposed to – the latter, thus, making him the supreme political figure of the community. And so, al-Naraqi was the first to stipulate that the political, religious, and social authority of the Hidden Imam can be transferred to and vested in the *faqih*.To recapitulate, his major contribution lies in adding the political dimension to the religious and social ones.[1]

Shaykh Muhammad Husayn Na'ini (1860-1936) became the leading *marja'* in Iran in 1920. Na'ini[2] stressed that in the Greater Occultation period, the best way to prevent an authority from becoming wayward is to abide by an Islamic constitution that guarantees the rights and duties of the citizens as well as those of the state. He recommended establishing a council comprised of leading *mujtahid*s, intellectuals, and wise men who act in the interest of the people by supervising the implementation of the constitution and the affairs of the state. Na'ini stressed *wilayat alumma 'ala nafsiha* (the governance of the umma by itself) as a legitimate right in the period of the Greater Occultation because this issue falls under the hisbi domain (things that God does not allow that we forsake)[3], rather than general *takalif* (delegated responsibilities, plural of *taklif*[4]) i.e. thegovernance of the *umma* by itself is a *political* and not a *shar'i* (religiouslegal) issue. Since it is a practical impossibility for a Shi'ite to have the delegated responsibility to establish God's Governance, then he has delegated responsibility to institute the political-hisbi domain in conformity with the interest of the *umma*. This implies that his enrolment in politics is for the sole purpose of transforming a tyrannical power to a democratic authority that represents the *umma*.[5]

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1. See Amin Mustapha, *Al-Muqawama fi Lubnan: 1948-2000 [The Resistance in Lebanon: 1948-2000]*. Beirut: Dar Al-Hadi, 2003, 572-574.
2. *Ibid.*, 270-271.
3. Al-Madini, *op. cit.*, 78, 89.
4. Cobban, "The Growth of the Shi'i Power..., 143-144. Halawi, op. cit., 136-137; 155-157. It is worth mentioning that Shaykh Na'im Qasim, Hizbullah's current deputy secretary general, actively worked with Imam Musa al-Sadr in the founding of Harakat Al-Mahrumin.
See http://www.naimkassem.org/materials/serathateya/sera.htm
5. Elizabeth Picard, *The Lebanese Shi'a and Political Violence*. UNRISD: Discussion Paper 42, 1993, 13. See also her article entitled Picard, "Political Identities..., 157-78.

turn.Historical survey of the wilayat al-faqih doctrine*

Joseph Elie Alagha

Wilayat al-faqih refers to the rule of the religious jurist. Throughout the course of history many Shi'ite *'ulama* have contributed to the *wilayat alfaqih* doctrine with varying degrees, from a rudimentary perspective to an evolutionary one.[1] The precursor who paved the way and laid the foundation of this doctrine is al-Karaki[2] (1465-1533) who pioneered the suggestion that the *'ulama* were the *na'ib al-'am* of Imam al-Mahdi. Al-Karaki's disciple, Shahid al-Thani (1506-1558) is considered as the founding father of the doctrine. His contribution to the *wilayat al-faqih* doctrine consists in that he "took the concept of *Na'ib al-'Amm* to its logical conclusion in the *religious* sphere and applied it to all the religious functions and prerogatives of the Hidden Imam. Thus, the judicial authority of the *'ulama* now became a direct reflection of the authority of the Imam himself...".[3]

Bihbahani (1706-1792) had the conviction in the *mujtahid*'s ability to establish *hujja*. Prior to that the title of *hujjat al-Islam* was only confined to Imam al-Mahdi. Moreover, in addition to his endorsement of the *Usuli* school on the right of the 'ulama in ijtihad, Bihbahani settled the way for recognizing the legitimacy of the transfer of the Hidden Imam's religious authority, but not his political authority. A *mujtahid* was no more considered a general deputy of the Hidden Imam; rather, *mujtahid* and *faqih* became one and the same. Thus, Bihbahani considered the *mujtahid*s as vicegerents of the Prophet in *religious matters* only. Therefore, his contribution lies in fusing the religious and social dimensions, but not the political.[4]

Mulla Ahmad Naraqi (1771-1829), Bihbahani's disciple, supported the

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* Alagha, Joseph Elie .*The shifts in Hizbullah's ideology: religious ideology, political ideology and political program* .Amsterdam University Press, 2006, pp 81-84.

1. Sharif al-Husayni, "Hizbullah: Haraka 'Askariyya am Siyasiyya am Diniyya? (Hizbullah: A Military or Political or religious Movement?)". Beirut: Al-Shira' (17 March 1986), 16.

2. Dissident Iranians also received military help from the Palestinian camps in Lebanon.

3. In the beginning of the Iraq-Iran war he died on board of an Iranian military plane that was downed by the Iraqis

4. Amir Taheri. The Spirit of Allah: Khomeini and the Islamic Revolution. London: Hutchinson,1985, 193. Shamran had a Ph.D. in electro mechanics and plasma physics from the university of California in the US. In addition to taking part in the founding of the Movement of the Deprived and AMAL with Imam Musa al-Sadr, in Iran he held prominent positions such as the deputy of the prime minister for the revolution issues (shu'un althawra), and was also Imam Khumayni's representative in the Higher Defence Council. See Mustapha Shamran, Qudwat Al-Qada [The Lead of the Leaders]. Beirut: Al-Mustashariyya Al-Thaqafiyya Lil-Jumhuriyya Al-Islamiyya Al-Iraniyya fi Lubnan, 2004.

claims that the imams were the exclusive heirs of the Prophet. Apart from the knowledge of the Prophet, the Shi'is maintained that the imams had the scrolls and weapons of the Prophet.[1] The Shi'is argued that the weapons would fit the imams only, thus providing incontrovertible proof as to who were the true heirs of the Prophet. In addition, as they belonged to the family of the Prophet, the *ahl al-bayt* (something that most caliphs and *'ulama* could not claim), the Shi'i imams contended that they were the Prophet's heirs based on lineal descent. I explore this theme further when I discuss the concept of the rise of the holy man in the next chapter.

The title "heirs of the Prophet" had far-reaching repercussions. The ramifications of the title extended beyond bestowing honorific epithets and authority to the *'ulama*. Since they Saw themselves as the custodians of the knowledge of the Prophet and the imams, Shi'i *'ulama* period also claimed to be heirs of the Prophet.[2]Al-Muhaqqiq al-Hilli (d.1277), for example, declares the jurists to be the heirs of the prophets. The sixteenth-century jurist Husayn b. al-Hasan al-Karaki (d. 1592–1593) refers to Himself as heir of the prophets[3] whereas Muhammad al-Baqir al-Bihbihani (d. 1791) refers to the jurists as the caliphs or successors of the Prophet.[4]Similarly, the contemporary Iranian scholar Ayatullah al-Muntaziri, interprets the *waratha* tradition as referring specifically to the jurists.[5]

Both the Sunnis and Shi'is cite various texts as theoretical justifications for the exclusive authority of the jurists. The main difference between them is that whereas the Sunnis present their exclusive authority as deriving directly from prophetic authority, Shi'i jurists present their exclusive authority as deriving from prophetic authority through the intermediate authority of the imams.

Some Shi'i scholars even claimed that they were intermediaries to the imams and the Prophet. According to the Safavid scholar Muhammad Baqir al-Majlisi (d. 1699), the *'ulama* were the doors to paradise; to insult them would cause the wrath of God to descend. It was through them that the imams could be accessed. It is to the authority of the holy man that I now

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1. Muhammad b. Ali b. al-Husayn al-Saduq, *Uyun Akhbar al-Rida* (Mashad:Chapkhane Zindagi, n.d.), 213.
2. According to Ayatullah Khumayni, (d. 1989) the *waratha* tradition refers to the scholars as the true heirs of the prophets. See his argument as cited in *Islam and Revolution: Writings and Declarations of Imam Khomeini,* trans. Hamid Algar (Berkeley: Mizan Press, 1981), 99–102.
3. See Devin Stewart, *Islamic Legal Orthodoxy: Twelver Shi'ite Responses to the Sunni Legal System* (Salt Lake City: University of Utah Press, 1998), 216.
4. Muhammad al-Baqir al-Bihbihani, *Risala al-Akhbar Wal-Ijtihad* (Tehran,n.d.), 9.
5. Devin Stewart, *Islamic Legal Orthodoxy,* 216.

shari' men. The rulers were to consult with and rely on the *shari'* men because the latter formulated, upheld, and executed God's law. After all, since Muslim societies Were based on the *shari'a* and the *shari'* men were the authoritative figures in matters pertaining to the law, it was obvious that the rulers needed to consult them in any matter that impacted the legal practices of the community.

Loyalty and obedience to the *'ulama* were based on the knowledge they possessed and the prophetic heritage that this symbolized. The laity's loyalty to the caliphs, on the other hand, was grounded in the *bay'a* that they gave to the caliph. Though arising from different origins, the sense of obedience entailed in the *bay'a* and the recognition of the prophetic heritage enhanced the authority of both the caliphs and the *'ulama.*

The designation "heirs of the Prophet" was clearly a popular and much coveted title, for, as I have discussed, the Umayyad and 'Abbasid caliphs and the Sunni scholars claimed it. Furthermore, the title could be used in the polemical discourses of various groups because it could be employed to exclude and mar-ginalize groups that did not have a strong basis for their claims to be heirs to the Prophet. In the next chapter, I will demonstrate how the Sufi holy men also claimed to be the true heirs of the Prophet.

The collective traits that the Shi'i imams had inherited also enabled them to lay claim to being the heirs of the Prophet. In Shi'i *hadith* literature, the *waratha* tradition appears in many texts.[1] Thus, in one tradition, Ja'far alSadiq is reported to have claimed that "We (the imams) are the true heirs of the prophets."[2]

Traditions such as this would serve to refute the Sunni and Sufi contentions that religious authority rested amid their ranks. Whereas Sunni scholars claimed to be heirs of the Prophet based on the prophetic knowledge that they had acquired and the functions they performed, the Shi'I imams claimed to be the heirs based on the traits and knowledge they had inherited from the Prophet. The concept of the imams as heirs to the religious and political leadership of the Prophet forms the basis for the legitimacy of the divinely appointed imam, source of learning and, as we will see in the next chapter, saintly mediation with the divine.

The Shi'is added extra dimensions to their arguments to vindicate their

1. See, for example, Kulayni, *al-Kafi,* 1:39. On the heirs tradition in other Shi'ite literature, see Shahri al-Muhammadi, *Mizan al-Hikma* (Qum: Maktab al-A'lam al-Islami, 1983), *Bab al-'ilm,* 6:456; Muhammad al-aqir al-Majlisi, *Bihar alAnwar:al-Jami'a Lidurari Akhbar al-A£imma al-Athar,* 110 vols. (Beirut: Dar al-Ihya al-Turath al-'Arabi, 1983), 2:92; al-Mufid, *al-Ikhtisas* (Qum: Maktaba alZahra, 1982), 4.
2. Al-Saffar, *Basa'ir*, 129.

of the Prophet. Their status was deduced from the following tradition reported from the Prophet: "*Al-ʿulama waratha al-anbiya*" (the scholars are heirs of the Prophets).[1] Although the *waratha* tradition, as it was subsequently called, may have been a polemical tool used by the *ʿulama* to wrestle authority from the caliphs and other contestants, the tradition emphasized that the Prophet had bequeathed knowledge only, knowledge that was now firmly in the hands of the *ʿulama*.[2] What distinguished the scholars from the rest of the community was their ability to interpret, define, and articulate the law. It was this factor that empowered the scholars to exercise religious authority over the community. The authority that the *ʿulama* exercised became an important vehicle for the transmission of prophetic knowledge.

As heirs to the Prophet, the scope of the *ʿulama*s authority was vast. One of their functions was to serve as the *shariʿ* men. It was the *shariʿ* men who performed the prophetic function of mediating between God and the community, Of elucidating and explicating the law. By continually citing the *waratha* tradition and reminding the community of their status based on the heirs tradition, the prestige and function of the *shariʿ* men were formalized and vindicated.

Crucially, the claim by the *ʿulama* that they were the exclusive heirs to the Prophet gave rise to the possibility of an extension of the Prophet's authority, since it signified that the *ʿulama* inherited not only the knowledge but also the authority of the Prophet as the guardians of the community. The heirs tradition further enabled them to claim the title of imams of the community. Even the ʿAbbasid caliph al-Mahdi used the term *aimmat al-haqq* (the imams of the true path) to refer to the scholars.[3] It was in this context that Ibn Hanbal stated that the role of the *ʿulama* was to guide the community and defend God's religion against "the errors of the extremists."[4]

As I have discussed in this chapter, the relationship between the two groups that claimed to be the heirs of the Prophet, the caliphs and the *ʿulamaf*, was often acrimonious. The *waratha* tradition was, to some degree, responsible for the juristic contention that the rulers were subservient to the

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1. Ibid., 98. For traditions on the scholars being heirs of the prophets in the Sunni tradition, see Arent Jan nsinck, *Concordance et Indices de la Tradition Musulmane* (Leiden: Brill, 1936), 7:321; Muhammad b. Ismaʿil ukhari, *Sahih, Bab al-ʿilm qabl al-qawl waʿl ʿamal* (Baghdad: Dar al-Fikr, 1986), 1:23; Muhammad b. Yazid al-azwini Ibn Maja, *Sunan* (Introduction) (Ihya al-Turath al-ʿArabi, 1975), 1:81.
2. For a later application of the tradition to Sunni jurists see Ibrahim b. Musa alShatibi, *al-Muwafaqat fi Usul al-Shariʿa,* 4 vols. (Beirut: Dar al-Kutub alIlmiyya, 1991), 4:179.
3. Crone and Hinds, *God's Caliph*, 98.
4. Ibn al-Jawzi, *Manaqib al-Imam Ahmad Ibn Hanbal* (Cairo: 1931), 167.

(7)
The Heirs of the Prophet*

Liyakat n. takim

Having discussed the concept of religious authority as advanced by various groups within the Muslim community, we are now in a better position to understand the ramifications of the title "heirs of the Prophet."This was an honorific epithet that conferred authority to those who claimed it. Various groups claimed to be heirs of the Prophet during the early period of Islamic history, thereby Validating their claims to religious and/or political authority. Even the philosophers claimed to be the heirs of the Prophet.[1]

There is significant evidence to suggest that both the Umayyad and ʿAbbasid caliphs sought this title. For the caliphs, their position as the political leaders of the Muslim community entitled them to the honorific epithet, since, as rulers of the community, they held the same office that the Prophet himself

Had occupied. As I have discussed, the caliphs also laid claims to be religious leaders who were divinely sanctified in their positions. The caliphs supported their claim to be inheritors of prophetic authority in different ways. They claimed, for example, to possess the cloak that the Prophet had worn.[2] AlMa'mun is reported to have stated that God had allowed the rulers to inherit the caliphate from the Prophet.[3] Some caliphs claimed the right to exercise *ijtihad* while others claimed to establish a *sunna*. The claim to be heirs of the Prophet also meant that the caliphs could demand obedience from the community. The caliphal image as religious figures was Devised probably to acquire religious prestige, rival the Shiʿi view of their imams, and collaborate on an equal footing with the *ulama*.

The *ʿulama*, the religious leaders, also laid claims to the religious authority

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* Takim, Liyakat N .*The Heirs of the Prophet: Charisma and Religious Authority in Shi'ite Islam* .SUNY Press, 2007pp 33-36

1. Seyyed Hossein Nasr, "The Full Flowering of Prophetic Philosophy in MullaSadra and the School of Isfahan," in *International Journal of Shiʿi Studies,* vol. 1, no. 2 (2003), 18.
2. Marshall Hodgson, *The Venture of Islam* (Chicago: University of Chicago Press, 1977), 1:292.
3. Crone and Hinds, *God's Caliph,* 81, nn.146, 147.

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after the death of Bihbihani's disciples, largely because they trained the next generation of scholars. Soon after the passing of Bihbihani's disciples, Shi'i leadership reached its highest potential in Mortaza Ansari (1799-1864), who was recognized as the head of the entire Shi'i world.[1]

Ansari collected funds from as far away as India and was looked upon to lead the international Shi'i community, thus assuming a position comparable to a Catholic Pope. Still, Shi'i leadership was not formally institutionalized, although Ansari's students inherited a unified community. Although Mortaza Ansari refused to entangle himself in politics, successive generations of Shi'i leaders became increasingly politically active. They often checked the autocratic power of the Iranian government and eventually led the Constitutional Revolution (1905-1911). The practice of emulation (taqlid) established by Bihbihani has continued to the present under well-known ayatollahs in Iraq and Iran. Given that Vahid Bihbihani initiated this process, it is no wonder that he is often referred to by Shi'is as the renewer (mujaddid) and reviver (murawwij) of the twelfth Islamic century.

1. For more on Ansari see Zackery M. Heern, *Shi'i Law and Leadership: The Influence of Mortaza Ansari* (Saarbrucken: Lambert Academic Publishing, 2010).

Conclusion

Vahid Bihbihani ushered in a new era of Shi'ism and his disciples presided over it. They presented themselves as the Hidden Imam's ultra-spiritual vicegerents. Many followers even supposed that Bahr al-'Ulum was the Hidden Imam and he would not have convinced them otherwise. The Shi'i biographical dictionaries often attribute esoteric knowledge (*kashf*) to Bihbihani's disciples, whether it is Shahristani's knowledge that Bahr al-'Ulum died without being told or Tabataba'i's ability to escape Wahhabi murderers as a result of God blinding them for him.

Not only did Bihbihani's successors ensure that Usuli Shi'ism would survive under the new Qajar dynasty, they justified Qajar rule, which was essential for the survival of the dynasty. Mirza Abu'l Qasim Qummi supplied the Qajars with such a justification, while Kashif al-Ghita' proclaimed that the Qajars were ruling on his behalf. In return, Fath 'Ali Shah was often deferential to the 'ulama and expended court funds on building projects that increased the prestige of leading clerics. Fath 'Ali Shah even allowed the dismissal of governors when Kalbasi and Naraqi were not pleased with them. When Fath 'Ali Shah's successor did not appear to be as accommodating, he suffered the price as Shafti threw his weight behind an anti-Qajar revolutionary movement.

As clerics such as Bihbihani had learned how to survive during the Safavid-Qajar interregnum, his successors continued practices that kept them independent of state control. The Qajars certainly contributed to the pool of funds at the disposal of clerics, especially in Iran. Likewise, clerics in Najaf and Karbala benefited from "Indian money." Individual contributions far exceeded state-sponsored funds, largely as a result of emboldened clerical policies, such as Kashif al-Ghita's that forcefully demanded followers to give the khums and absolution payments for wrongdoings. Muhammad Baqir Shafti rejected the pious idea of abstaining from worldly riches and amassed incredible personal wealth as the Shaykh al-Islam of Isfahan.

Although Bihbihani's disciples did not succeed in creating a systematic hierarchy in the Shi'i order, they did contribute to such a trend, even as the breadth of Shi'i leadership spread back to Iran. Bahr al-'Ulum's delegation of clerical duties was a step in this direction. Additionally, supreme leadership of the Shi'i world was narrowed significantly. In the generation after Bihbihani's death, Shi'i leadership was in the hands of a handful of his disciples. And for the first time, Sayyid 'Ali Tabataba'i was recognized as the head of both Karbala and Najaf.

Such a trend of narrowing the scope and terms of leadership continued

6. Shaykh Abu 'Ali Ha'iri (author of *Muntaha al-maqal*)
7. Mulla Muhammad Hezarjarabi
8. Sayyid Dildar 'Ali Nasir Abadi Hindi
9. Mir Hasan Isfahani
10. Shaykh Muhammad Taqi Isfahani
11. Sayyid Mohsen A'raji Kazimayni
12. Shaykh Asadollah Kazimi
13. Mulla 'Abd al-Jalil Kermanshahi
14. Mirza Mihdi Khorasani
15. Shaykh Muhammad Khorasani
16. Sayyid Muhammad Qasir Khorasani
17. Sayyid Ahmad Tabataba'i Najafi
18. Mirza Muhammad Taqi Qadi
19. Hajj Mirza Muhammad Hasan Qazvini
20. Sayyid Muhammad Shafi' Shushtari
21. Hajj Mirza Yusuf Tabrizi
22. Sayyid Muhammad Hasan Zunuzi

The following is a list of the major texts written by Bihbihani's students and followers

that promoted his legal doctrine:

1. Jawad 'Amili, *Miftah al-karama*
2. Bahr al-'Ulum, *al-Masabih*
3. Muhammad Taqi b. Muhammad Rahim al-Isfahani, *Hiddayat al-mustarshidin*
4. Muhammad Ibrahim Kalbasi, *Isharat al-Usul*
5. Kashif al-Ghita' *Kashf al-ghita'*, Anwar al-faqaha
6. Asad Allah b. Isma'il al-Tustari al-Kazimi, *Maqabis al-anwar*
7. Muhammad Hasan b. Muhammad Baqir al-Najafī, *Jawahir al-kalam*
8. Ahmad b. Muhammad Mahdi al-Naraqi, *Mustanad al-Shi'a* and *Manahij al-ahkam*
9. Mirza Abu'l-Qasim Qummi, Qawanin al-usul, Jami' ash-shalat, Ghana'im al-ayyam, and Manahij al-ahkam
10. Muhammad Baqir Shafti (Hujjat al-Islam), *Matali' al-anwar* and *Anwar al-faqaha*
11. Muhammad b. 'Ali Tabataba'i (Mujahid), *al-Manahil and Mafatih al-usul*
12. 'Ali b. Muhammad al-Tabataba'i al-Karbala'i, *Riyadh al-masa'il*

Isfahan that ensued following the death of Fath 'Ali Shah. He and 'Abdallah Khan Amin ad-Dawla (the last minster of Fath 'Ali Shah) supported Husayn 'Ali Mirza Farmanfarma (d. 1834) when he proclaimed himself the Shah of Shiraz. Muhammad Baqir Shafti's support was based on the fact that he rejected the authority of Muhammad Shah (Fath 'Ali Shah's successor) because of his tendency toward Sufism. Additionally, Shafti was motivated by the idea of gaining political and religious power for himself and for Isfahan. After Fath 'Ali Shah's death, Isfahan was overrun by gangs (sing.*luti*), who were known for mob violence both in Iraq and Iran and were often allied with the 'ulama. Muhammad Baqir Shafti supported the lutis as they murdered, robbed and raped without consequence. With his support, their booty was even stored in the congregational mosque of Isfahan.[1]

Especially because descendents of the Safavids were also involved in the mayhem, Muhammad Shah was especially alarmed. He feared that a tripartite alliance between lutis, high-ranking clerics, and descendents of the previous ruling dynasty could prove fatal to his Qajar government. Therefore, in 1836 he dispatched soldiers to apprehend many of the lutis, whose hands were severed as their punishment, but Muhammad Baqir Shafti's opposition continued. In 1837, he and Mir Muhammad Mihdi (the Imam Jum'a of Isfahan) led a revolt against the governor of Isfahan, Khusraw Khan, who tried to curb their influence in his city. Instead of succumbing to the governor, Shafti was emboldened to extend his activities with the lutis until an army was dispatched from Tehran and over 150 lutis were executed and even more exiled. At this point Shafti was Muhammad Shah's arch-enemy. According to *Qisas al-ulama*, Shafti retained an arrogant disdain for Muhammad Shah and when the monarch came to Isfahan to meet him; he was preceded by an Arab reading the Qur'ān. The Shah's soldiers and companions rushed to meet Muhammad Baqir Shafti and some even kissed the hooves of his mule.[2] Such was the loyalty shown toward the 'ulama in Iran at the time, even to a person that condoned unwarranted plunder. Muhammad Baqir Shafti died in 1844 and is still known as one of the first mujtahids to claim the title proof of Islam (*hujjat al-Islam*).

Additional students of Vahid Bihbihani are as follows:

1. Aqa Sayyid Jawad 'Amili
2. Hajj Mulla Muhammad Astarabadi
3. Sayyid Ahmad 'Atar Baghdadi
4. Muhammad Ali b. Muhammad Baqir Bihbihani
5. Shams al-Din b. Jamal al-Din Bihbihani

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1. Ibid., 110.
2. Tunikabuni, *Qisas*, 106.

Shah. In order to cultivate a relationship with Kalbasi, the Shah visited him in Isfahan and even dismissed a governor that Kalbasi did not get along with.

Aqa Sayyid Muhammad Baqir Shafti Isfahani

Muhammad Ibrahim Kalbasi and Muhammad Baqir Shafti (d. 1260/1844) studied together in the 'Atabat and remained good friends throughout their lives. Kalbasi's son even married Shafti's daughter. After finishing his studies, Shafti went to Isfahan and stayed with Kalbasi. Although they shared the leadership of Isfahan, Muhammad Baqir Shafti had much more influence there than did Kalbasi. Shafti was the first among many wealthy mujtahids in Iran and had a wide following, not only in Iran, but in Iraq and India as well. During his lifetime Najaf was still the primary center of Shi'i learning, but he ensured that Isfahan was the main center in Iran. Although Muhammad Baqir Shafti did not succeed in returning Isfahan to its previous status as the primary center of Shi'ism, he did challenge the dominance of the Iraqi shrine cities. Belittling Najaf and Karbala, he claimed that he learned more during his six month period of study in Qum under Abu al-Qasim Qummi than his entire stay in the shrine cities. This type of wrangling is also illustrative of Iraqi-Persian tension among high ranking 'ulama that has continued to the present day.

Muhammad Baqir Shafti was the Shaykh al-Islam of Isfahan and he used his position to amass more judicial, economic and political power than the local government. He was one of the first mujtahids in Iran to use his religious influence to become extremely rich. Governors in Isfahan were not even able to attract such wealth. In fact, they were often indebted to him. When Fath 'Ali Shah offered to relieve Muhammad Baqir Shafti of the taxes he paid on one of his villages, he refused the offer. Asserting his piety, he claimed that he did not want others to be forced to make up the amount. More probable, he did not want to appear to be in collusion with the government. Regardless of his reasoning, it would not have made much a difference in his vast wealth.[1] Vahid Bihbihani, Muhammad Baqir Shafti adopted the practice of carrying out his own judgments. Up to a hundred people suffered death as a result of his strict interpretation of Shi'i law.[2] In all, he proved that although reverence was primarily shown to mujtahids in the shrine cities, those in Iran were in a better position to influence Iran socially, politically, and economically.

Muhammad Baqir Shafti also played a leading role in the anarchy in

1. Tunikabuni, *Qisas*, 20.
2. Algar, *Religion and State*, 61.

Mulla Ahmad Naraqi was also similar to Qummi in the fact that he had a close relationship with Fath 'Ali Shah, who showed deferential respect to both of them. When Naraqi arrived in Kashan, he found a governor that was unsuitable to him and he expelled him from the town. Thereafter, Fath 'Ali Shah called Naraqi to Tehran to reproach him but the mujtahid retorted, "O God! This unjust king appointed an unjust governor over the people. I put an end to his oppression; and now this oppressor is angry with me."[1] Fath 'Ali Shah then backed down and appointed a new governor! Naraqi later returned the favor by translating a work on ethics for Fath 'Ali Shah from Arabic into Persian entitled *Mi'araj al-su'at*. The fact that Fath 'Ali Shah lent patronage to this and other works shows his genuine interest in Shi'ism.

Although Qom and Kashan were growing in importance as Shi'i centers at the beginning of the nineteenth century, Isfahan remained the most important Shi'i center of learning in Iran in the early stages of the century. It had been the capital of the Safavid Empire and developed as the preeminent Shi'i stronghold in the world over the course of the sixteenth and seventeenth centuries. Although the Shi'i establishment in Isfahan fell into disrepair during the interregnum between the Safavids and Qajars, it was revived in the nineteenth century by students of Vahid Bihbihani, especially Muhammad Ibrahim Kalbasi and Muhammad Baqir Shafti (Hujjat al-Islam).

Muhammad Ibrahim Kalbasi

Muhammad Ibrahim Kalbasi (1180/1766-1261/1845) was born in Isfahan and later went to the 'Atabat to study, where he joined the circle of Vahid Bihbihani and later Bahr al-'Ulum. He says that he did not ask them for an ijaza, but they would have given it to him had he had asked.[2]Kalbasi was among the scholars that went to Qum and Kashan to study with Mirza Abu al-Qasim Qummi and Mulla Ahmad Naraqi. Kalbasi's most famous text *isIsharat al-Usul*, which took him thirty years to write according to Qisas al-'ulama.[3]However, Isharat is not used by seminary students. According to Tunikabuni, this is because it is written in such eloquent language that it is hard to understand by people with average intellect.[4] Kalbasi also wrote a work on furu' al-fiqh entitled *Manhaj al-hidayat*.

Like other disciples of Vahid Bihbihani, who moved back to Iran after studying in the 'Atabat, Kalbasi had considerable influence over Fath 'Ali

1. Quoted in Algar, *Religion and State*, 62.
2. Muhammad Ibrahim Kalbasi, *Isharat al-usul* (Tehran, 1830) 2. Cited in Davani, Aqa Muhammad, 225.
3. Tunikabuni, *Qisas*, cited in Davani, *Aqa Muhammad*, 227.
4. *Ibid.*

'Ali Shah's desire for the 'ulama to legitimize the Qajar state. As a result of Qummi's cooperation, the Shah spent large amounts of money on Shi'i holy sites in Qom. With the patronage received by Mirza Abu al-Qasim Qummi from Fath 'Ali Shah, he was able to attract many students (including Muhammad Baqir Shafti and Muhammad Ibrahim Kalbasi) to Qom and establish it as a viable center of Shi'i learning. Therefore, when Fath 'Ali Shah completed the masjid al-jum'a in Tehran, it was Qummi who he asked to recommend an Imam Jum'a. He suggested his student, Muhammad Baqir Shafti, who was not known at the time. But the latter declined as he did not want to be seen as a pawn of the government and refused to leave Isfahan. Different from most 'ulama of his age, Mirza Abu al-Qasim Qummi was conciliatory towards the government and even produced a Shi'i political theory that justified Qajar rule, which was later developed more fully by Sayyid Ja'far Kashfi.[1]

Qummi wrote on a wide range subjects (including texts on waqf, taqlid, and an anti-Sufi tract). His most important work is *Qawanin al-usul*, which is one of the most important works on usul al-fiqh in the entire Qajar period. It was one of the fundamental textbooks for students of usul al-fiqh after his time and portions of it are still studied in the Shi'i seminary. Similar to Kashif al-Ghita', Qummi developed the concept of following the opinion of a superior mujtahid in doctrine and practice (*mutaba'a*), which contributed to the evolution of a Shi'i hierarchy in leadership.

Mulla Ahmad Naraqi

Mulla Ahmad Naraqi (d. c. 1245/1829) was the son of Mulla Mihdi Naraqi, who was among the initial students of Vahid Bihbihani. Ahmad Naraqi studied with Bihbihani as well and under his guidance became an expert in fiqh and usul. He was also something of a polymath as he wrote poetry and had a keen interest in philosophy, math, and comparative religions. In fact, his *Sayf al-'amma* (Sword of the Cause) is an apologetic work in response to a Christian missionary in Iran and makes use of Jewish and Christian sources. After his father passed away in 1209/1794 Mulla Ahmad Naraqi returned to his hometown in Iran and took his father's position as the most influential cleric in Kashan. Similar to Mirza Abu al-Qasim Qummi in Qom, Mulla Ahmad Naraqi's prominence made Kashan a center of Shi'i learning. Kashan never achieved the status of either Qom or Isfahan as a long-standing religious center in Iran, but it is significant that Kashan became a center of learning during this time simply because of the presence of Naraqi.

1. Momen, *Shi'i Islam*, 194.

dynasties have controlled posts as Shaykhs al-Islam and Imam Jum'as in Iran, no other dynasties have had similar status in the shrine cities, including the descendents of Vahid Bihbihani.

Leadership of Bihbihani's Students in Iran

The establishment of the Qajar dynasty and its patronage of Twelver Shi'ism, especially during the reign of Fath 'Ali Shah, prompted many of the 'ulama living in the shrine cities of Iraq to return to their hometowns in Iran. Far from becoming tools of the state, they kept a haughty disdain for the political establishment and cautiously ensured that they were not perceived as subordinate to anyone, even to the Shah himself. Therefore, although Fath 'Ali Shah often sought the approval of mujtahids and begged them to bestow him with their blessings, such as being his guests, they would often refuse his requests. The most prominent of Vahid Bihbihani's successors in Iran were Mirza Abu al-Qasim Qummi (d. 1816) in Qum; Ahmad b. Muhammad Mahdi Naraqi (d. 1829) in Kashan; Muhammad Ibrahim Kalbasi (d. 1845-6) and Muhammad Baqir Shafti (known as Hujjat al-Islam, d. 1844) in Isfahan.

Mirza Abu al-Qasim Qummi (Sahib al-Qawanin)

Mirza Abu al-Qasim Qummi (1152/1739-1231/1816) was a prolific scholar and became the leading disciple of Vahid Bihbihani in Iran. He initially studied with his father (Mulla Muhammad Hasan Gilani) and after studying in Khwansar with Sayyid Husayn Khwansari, he went to the 'Atabat and joined the circle of Vahid Bihbihani. Khwansari had taught Qummi fiqh and usul, so he was presumably an Usuli prior to his arrival in the Iraqi shrine cities. While in the 'Atabat, he obtained ijazas from Muhammad Baqir Hizarjaribi and Shaykh Muhammad Mihdi Futuni in addition to Bihbihani. From the 'Atabat, Qummi moved back to Iran, and settled in a village called Japulaq, where he remained poor and was harassed by local mullas. According to Tunikabuni, Qummi moved to Qom (which was a small town at the time) because the people in Japulaq were ignorant.[1] Qummi created a number of marriage alliances with the most important families in Qom. One of his daughters married Mirza Abu Talib Qummi, who was one of Qummi's students and whose family was one of the most important and oldest of Qom. Qummi's other daughters married into the Burujirdi, Naraqi, and Bahraini families, each of which were important clerical families.

Mirza Abu al-Qasim Qummi was one of the main beneficiaries of Fath

1. Tunikabuni, *Qisas*. Quoted in Davani, *Aqa Muhammad*, 202.

those who did not.

Sayyid 'Ali Tabataba'i was the leading cleric in Karbala when Wahhabis attacked the city on Ayd al-Qadr in 1802. As a result of the attack, an unknown number of inhabitants of the city died, including some Usuli scholars. According to Rawdat al-jannat , the Wahhabis attempted to kill Sayyid 'Ali Tabataba'i. Prior to their arrival at his house, Tabataba'i was apparently expecting them and sent his wife and children to a secure place. Tabataba'i remained in the house with an infant and hid upstairs behind a pile of wood, praying. The Wahhabi assailants entered the house, yelling for him. They came upstairs and began removing pieces of the wood that he was hiding behind but they left before finding him. Tabataba'i lived to tell the story and explain how God miraculously blinded the attackers so they would not see him and kept the child from crying.[1]

As all major clerics of this time are claimed to be endowed with supernatural abilities, this story also provides material for Tabataba'i's status as a legendary figure. Shortly after the raid, Tabataba'i received funds from *Awadh* to build a wall around Karbala for the purpose of protecting the city from Wahhabi raids.

After the deaths of Mirza Mahdi Shahristani (1800-1) and Kashif al-Ghita' (1812), Sayyid 'Ali Tabataba'i's preeminence was recognized in both of the shrine cities. Tabataba'i was the last of the older generation of Vahid Bihbihani's students and was certainly in the position to gain unmatched authority. In order to consolidate his position as the preeminent leader in the Shi'i world, he even sought to undermine his rivals. For example, he refused to accept the scholarship of 'Abd al-Samad Hamadani (who had also studied with Vahid Bihbihani) because of his inclination toward Sufism. Sayyid 'Ali Tabataba'i also forced Asadallah Tustari (Kashif al-Ghita's son-in-law) out of Karbala after simply claiming that he was unjust. In the end though, Tabataba'i's authority was not recognized throughout the entire Shi'i world. He did have a following in India and Iraq, but not necessarily in Iran, where many local mujtahids did not accept his authority.[2]His preeminence in Iraq also did not last long, since he died in 1815-6, which signaled the end of the leadership of Bihbihani's disciples in the shrine cities.

Nevertheless, each of the aforementioned leaders (Bahr al-'Ulum, Kashif al-Ghita', Mirza Mihdi Shahristani, and Sayyid 'Ali Tabataba'i) became heads of long-lasting 'ulama dynasties, which have produced numerous prominent mujtahids over the last two hundred years. Although similar

1. Khwansari, *Rawdat*. Cited in Davani, *Aqa Muhammad*, 191.
2. Litvak. *Shi'i Scholars*. 50.

funeral. Mulla Zayn al-'Abidin Salmasi, who was a student of Bahr al-'Ulum, explains that he was personally shocked that Bahr al-'Ulum chose Shahristani because the former was in Najaf, while the latter was in Karbala. Zayn al-'Abidin further explains that when Bahr al-'Ulum passed away, his followers in Najaf (including Shaykh Ja'far Kabir and Shaykh Hasan Najafi) began preparations for burial without informing Shahristani. After washing the body and putting it into a shroud, they were about to say the burial prayer when Shahristani appeared in the distance. He was walking from the east, clearly exhausted. Shahristani proceeded to lead the funeral prayers and Zayn al-'Abidin realized the greatness, not only of his teacher, but also of Shahristani.[1] The implication is that Shahristani knew Bahr al-'Ulum had died even though he had not been informed, which proves his great spiritual adeptness.

Sayyid 'Ali Tabataba'i (Sahib al-Riyadh)

Sayyid 'Ali Tabataba'i (1161/1748-1231/1815, also known as Sahib al-Riyadh (after the title of his book *Riyadh al-masa'il*) was the nephew and son-in-law of Vahid Bihbihani. As a teenager Tabataba'i was among the initial students of Bihbihani in Karbala that met in secret in fear of Akhbaris. Tabataba'i is the only student of Bihbihani that Abu 'Ali discusses in *Muntaha al-maqal* aside from Bahr al-'Ulum. Although 'Ali Davani suggests that this shows the importance of Sayyid 'Ali Tabataba'i,[2] plausible that Shaykh Abu 'Ali extensively praises him (and not other students of Bihbihani) because Tabataba'i was his teacher. This explains why Abu 'Ali says that Tabataba'i was the greatest of Bihbihani's students.[3]

Upon Mirza Muhammad Mihdi Shahristani's death in 1800-1, Sayyid 'Ali Tabataba'i inherited Shi'i leadership in Karbala and also succeeded Shahristani as the recipient of Indian money. Tabataba'i possessed all the elements to become the most prominent Shi'i leader of his time; he was a descendent of the Prophet Muhammad, he was a disciple of Bihbihani, and his scholarship was of first rank. His most important book is *Riyadh al-masa'il*, which applies Usuli concepts to *fiqh*. After the death of Bahr al-'Ulum, tensions arose between Sayyid 'Ali Tabataba'i and Kashif al-Ghita', which represent the rivalry between Najaf and Karbala and between mujtahids who claimed descent from the Prophet Muhammad (sayyids) and

1. Zayn al-'Abidin Salmasi, *Mustadrek*, unpublished. Quoted in Davani, *Aqa Muhammad*, 189.
2. Davani, *Aqa Muhammad*, 190.
3. Abu 'Ali, *Muntaha*. Quoted in Davani, *Aqa Muhammad*, 191.

Muhammad Mihdi Shahristani (d. 1215/1800-1) and Sayyid 'Ali Tabataba'i (d. 1231/1815-6). Shahristani was a descendent of an 'ulama family that was prominent during the Safavid dynasty. His family moved to Karbala from Isfahan after the Afghan invasion that toppled the Safavid dynasty. According to *Riyadh al-jannat*, Shahristani was the oldest student of both Yusuf al-Bahrani and Vahid Bihbihani and was one of the first students to join Vahid Bihbihani's classes.[1] Shahristani's son, Sayyid Muhammad Husayn Musawi Shahristani, also married Vahid Bihbihani's granddaughter (the daughter of Muhammad 'Ali Bihbihani).

Although Mirza Muhammad Mihdi Shahristani also obtained an ijaza from Bihbihani, his approach to fiqh remained close to his former teacher, Yusuf al-Bahrani. His book, *Sharh al- lam'ah wa qawa'id al-'ulama*, is primarily concerned with hadith. That Shahristani was from a leading Isfahani clerical family and he continued with his Akhbari leanings, as a student of Vahid Bihbihani no less, supports the idea (addressed in Chapter II) that Persian emigrants from clerical families in the Iraqi shrine cities were not simply reverting to the Usulism of their forefathers.

Shahristani's status as the leading cleric in Karbala was enhanced when he became a recipient of the so-called Indian money (*pul-e Hindi*) from rulers in the Shi'i kingdom of Awadh in India. Between 1786 and 1844 one million rupees flowed to the shrine cities from Awadh.[2] As a result, clerics in Karbala received more money from India than Iran during this period. Shahristani was the recipient of half of the total amount given during the first half of the nineteenth century (500,000 rupees). He received it from Assaf al-Dawla (the Nawwab of Awadh) and used it for the construction of the Hindiyya canal that brought water to Najaf and Karbala from the Middle Euphrates.[3] shahristani attracted the funds partially because he was already known in India. He had spent a few years in Delhi and Allahabad in the 1780s, after which he remained in contact with the Shi'i community in India through pilgrims and students. Although Shahristani set the precedent of using the funds for public works, his successors used the Indian money for more personal purposes, such as attracting students and thwarting enemies. Shahristani certainly did support his students financially, but he did not use the Indian money for this purpose.

Bahr al-'Ulum gave Shahristani the honor of leading the prayers at his

1. Zunuzi, *Riadh*. Cited in Davani, *Aqa Muhammad*, 187.
2. Meir Litvak, "The Finances of the 'Ulama Communities of Najaf and Karbala, 1796-1904," *Die Welt des Islams*
, New Series Vol. 40 Issue 1 (Mar., 2000): 47.
3. Ibid.

stockpiled weapons at his house and he even wore armor and went into battle against Wahhabis.[1]

As discussed above, Usulis had already defeated the Akhbaris in Iraq during Vahid Bihbihani's time. However, Mirza Muhammad Akhbari (mentioned above as a temporary student of Bahr al-'Ulum) attempted to revive Akhbarism in Iran after fleeing from Najaf when Kashif al-Ghita' declared him an infidel (*kafir*). In Iran, Akhbari sought the protection of Fath 'Ali Shah. At the same time Kashif al-Ghita' warned the Shah of his dangerous doctrines and supplied the monarch with one of his anti-Akhbari tracts to prove it. However, during the first Russo-Persian war, Mirza Muhammad Akhbari promised the Shah to use his supernatural powers to obtain the head of Tsitsianov, a Russian general who had been quite destructive during his campaigns in northern Iran. In return Fath 'Ali Shah was to make the Akhbari school the official doctrine of the state.

When Tsitsionov's head was in fact presented to Fath 'Ali Shah, interest in his movement was heightened. However, instead of honoring Akhbari and surely in fear of Usulis, Fath 'Ali Shah was taken aback and exiled him to Iraq. Avoiding the Shi'i strongholds, Akhbari then moved to Baghdad, where he ran for governor, but was murdered in Kazimayn after one of the gubernatorial candidates incited a mob to attack his house.[2] Mirza Muhammad Akhbari's death represents the final downfall of the Akhbari school. To this day there are only a handful of Akhbari scholars in the world, mainly in Bahrain.

Although Kashif al-Ghita' ensured the continued dominance of the Usuli school, his death in 1812 marked the end of religious consensus in Najaf and beyond. He did groom his son Musa to succeed him, but his son-in-law (Asadallah b. Isma'il Tustari) challenged Musa after Kashif al-Ghita's death. Eventually Mirza Abu al-Qasim Qummi (discussed below) was invited to Najaf to settle the dispute. After questioning them, he claimed that Musa was, in fact, more knowledgeable. However, neither of them could achieve the widespread authority of Vahid Bihbihani's students. Similar to the Bahr al-'Ulum clan, though, the Kashif al-Ghita' family has been a continuous force in the Shi'i establishment and has produced scholars of the first rank in nearly every generation since Kashif al-Ghita's death.

Mirza Muhammad Mihdi Shahristani

After Vahid Bihbihani's death, leadership in Karbala passed to Mirza

1. Bihbihani, *Mir'at al-ahwal*. Cited in Davani, *Aqa Muhammad*, 195.
2. Cited in Algar, *Religion and State*, 65-66.

accepted by his colleagues as the foremost Shi'i leader in Najaf was that he was the most favored student/colleague of his predecessor (Bahr al-Ulum) and he had been a pupil of Vahid Bihbihani.

At the beginning of Fath 'Ali Shah's reign, Kashif al-Ghita' announced that he was permitting the Shah to reign and appointed the monarch as his own deputy. He also required the Shah to ensure that a prayer leader was appointed to each brigade of the army and that troops listened to a preacher once a week.[1] Realizing the need for legitimacy and vindicating Kashif al-Ghita's position, Fath 'Ali Shah proclaimed that he considered his own kingship to be "exercised on behalf of (*ba niyabat-i*) the mujtahids of the age."[2] Prior to the first Russo-Persian war (1804-1813), Fath 'Ali Shah appealed to all of the preeminent mujtahids (most of whom were the disciples of Vahid Bihbihani) to get a declaration of jihad against Russia. Along with Sayyid 'Ali Tabataba'i, Kashif al-Ghita' was the first to be approached. Kashif al-Ghita's declaration of jihad was accompanied by an explanation, saying that Fath 'Ali Shah was authorized to wage war on behalf of the Imam of the age and that his own power to authorize the king to carry out the jihad was based on the mujtahids' collective office of the general deputyship (*niyaba 'amma*). Further, Kashif al-Ghita claimed that his own power rested in his position as the deputy of that office (*al-na'ib al-'amm*). Although this type of devotion and deference to mujtahids by a Persian monarch did not last much beyond the reign of Fath 'Ali Shah, it clearly illustrates the autonomy and influence that the clerical establishment had achieved in the wake of Vahid Bihbihani.

With such support and authority, Kashif al-Ghita' was free to continue carving out a greater sphere of influence for himself and thus for mujtahids to come. Although he was not fluent in Persian, he regularly traveled to Iran to collect khums and absolution payment, which ensured financial autonomy for himself and his students. He was so emboldened to consider those who withheld payment as rebels who had turned against the Imam and his vicegerent. He saw himself playing the role of the Imam's vicegerent and therefore obedience to him was tantamount to obeying the Hidden Imam. He also personally carried out jihad against Wahhabis, who repeatedly attacked Najaf and Karbala in attempts to extend their influence into southern Iraq in the early nineteenth century. According to Ahmad Bihbihani (student of Kashif al-Ghita' and grandson of Vahid Bihbihani), Kashif al-Ghita

1. Tunikabuni, *Qisas*, 141.
2. Rida Quli Khan Hidayat, *Rawdat as-Safi-yi Nasiri*, unpublished. Quoted in Algar, *Religion and State*, 56.

al-Ghita' was certainly aware of his own prominence as he was heard mumbling the following to himself by one of his students, "First you were Ja'far,then Shaykh Ja'far, after that the shaykh of Iraq, then the shaykh of Muslim shaykhs."[1] As the leading Shi'i scholar in Najaf, Kashif al-Ghita' also inherited the most prominent students of Bihbihani and Bahr al-'Ulum, in addition to upcoming scholars as his own disciples.[2]

His title "Kashif al-Ghita'" is derived from his most prominent work (*Kashf al-Ghita'*), which is one of the most renowned Shi'i texts of the entire Qajar period and is a prime example of anti-Akhbari literature of its time. The only other book he wrote was *Kitab al-qawa'id. Kashf al-Ghita'* is one of the most important fiqh books up to its time and students in Najaf used the methodology presented in it as their primary example during the first half of the nineteenth century. In this text, Kashif al-Ghita' attempted to further develop Shi'i leadership by expanding the idea of general deputyship (*niyaba 'amma*). He claimed that it was the collective duty of the 'ulama to rule on behalf of the Imam in his absence. Further, Kashif al-Ghita' suggested that a single mujtahid should have greater authority among the 'ulama. In this regard he asserts that "it is incumbent to give preference to the most just (*afdal*), or to him who is given permission by [the Imam]."[3] Since the Imam is hidden, it is impossible (unless by supernatural means) to determine whom the Imam prefers. In practice, knowledge (*'ilm*) has remained the primary theoretical determinant for Shi'is to discern who should be the deputy of the Imam. However, supremacy of knowledge is not always clear since there is no method in place, such as an exam, for mujtahids to distinguish themselves intellectually. In practice, mujtahids set themselves apart in this regard based on their literary output. This can be illustrated by the fact that Kashif al-Ghita' accredited himself as the "paramount Shaykh of all the Muslims"[4]only after he wrote *Kashf al-Ghita'* and received considerable acclaim for it. His claim was vindicated as he was recognized as the foremost mujtahid in the Shi'i world by Fath 'Ali Shah's minister and because he was the first to be called "deputy of the Imam" (*na'ib al-imam*) by his followers. However, the primary reason that he was

1. Quoted in Davani, *Aqa Muammad*, 195.
2. His list of students is impressive and includes some of Vahid Bihbihani's younger students as well as some of the most prominent scholars that carried on Bihbihani's school of thought for a third generation. Among Kashif al-Ghita's students were Muhammad Baqir Shafti (Hujjat al-Islam), Hajji Muhammad Ibrahim Kalbasi, Shaykh Muhammad Hasan Najafi, Sayyid Sadr al-Din Musavi 'Amili, and Shaykh Muhammad Taqi Isfahani.
3. Quoted in Litvak, *Shi'i Scholars*, 49.
4. Ibid.

about Ja'far al-Sadiq because of Bahr al-'Ulum, the prayer leader told Bahr al-'Ulum that he had become a Shi'i but was exercising taqiyya. An old man by this time, the prayer leader asked Bahr al-'Ulum to be the witness of his conversion. Apparently, when the prayer leader died, Bahr al-'Ulum washed his body and led the prayers at his funeral. Significantly, Tunikabuni says that the story is from an unknown source and he also does not mention the name of the converted prayer leader, which brings the veracity of the account into question.

Although not all high-ranking 'ulama were subordinated to Bahr al-'Ulum, most clerics, both in Iran and Iraq, espoused a reverent respect to his superiority. Even Mirza Muhammad al-Akhbari (who was the chief Akhbari opponent of Usulis in the early nineteenth century) studied under Bahr al-'Ulum simply because he saw the rarity of such an opportunity.[1] Similarly, Kashif al-Ghita', who was already a senior mujtahid, attended Bahr al-'Ulum's classes in order to receive the blessings for doing so. In this way, Bahr al-'Ulum inherited Vahid Bihbihani's disciples as his own.

With such support, Bahr al-'Ulum created a loose hierarchy of leadership under his command by assigning the 'ulama around him with specific roles. Shaykh Ja'far Kashif al-Ghita' was responsible for fatwas, taqlid and organization. Bahr al-'Ulum appointed Husayn Najafi as the prayer imam and his representative, and Sharif Muhyi al-Din was his chief judge and litigator. Bahr al-'Ulum himself took on the role as the supreme leader of the community. It seemed as though a nascent bureaucracy was developing in Shi'i leadership. However, this specific structure did not last beyond Bahr al-'Ulum and he did not attempt to formally institutionalize it. However, it represents a major sea-change in Shi'i leadership given that an informal hierarchical structure in the Shi'i establishment has continued to develop since Bahr al-'Ulum's time.

Kashif al-Ghita'

Shaykh Ja'far b. Khidr al-Najafi (1156/1743-1227/1812), known as Kashif al-Ghita', was one of the most illustrious students of Vahid Bihbihani, from whom he received an ijaza. After the passing of Bihbihani he became a disciple of Bahr al-'Ulum and his favorite student. Therefore, when Bahr al-'Ulum died in 1797, Kashif al-Ghita' was accepted as the head of the Shi'i establishment in Najaf, and therewith the majority of the Shi'i world. Kashif

1. Muhsin al-Amin 'Amili. *al-Shi'a fi masarihim al-tarikhi: muqaddimat A'yan al-Shi'a.* vol 58 (Beirut:Markaz al-Ghadir li al-darasat al-Islamiyya, 2000), 165. Quoted in Litvak,*Shi'i Scholars*, 47.

miracles were attributed to him, some thought he actually was the Hidden Imam. One of his students went so far to say that if he had claimed infallibility (*'isma*) nobody would have disputed it.[1] Shi'is only attribute infallibility to the Prophet Muhammad and the Imams, Bahr al-'Ulum would have had to proclaimed himself the return of the Hidden Imam in order to claim infallibility, which would certainly not have gone unquestioned.

Bahr al-'Ulum's authority was far-reaching. He was recognized in Iraq as the most senior Shi'i cleric. The 'ulama of Karbala even appealed to him to declare infidelity (*takfir*) on Sufis to which he agreed. Because of his own proclivity toward Sufism, he arranged for the Sufis to leave the shrine cities unharmed. Bahr al-'Ulum's relationship to Sufism is telling of an age in which most Usulis were not willing to accommodate Sufism. On one hand Bahr al-'Ulum gained untold respect as a mystic, but on the other he and his followers saw the Sufi establishment as a rival force to Usuli Shi'i authority. Therefore, although Bahr al-'Ulum was a Sufi in the basic sense of the term, he allowed the persecution of popular Sufism in order to bolster the authority of Shi'i mujtahids.

In *Qisas al-'ulama*, Tunikabuni devotes much of his entry on Bahr al-'Ulum to the latter's stay in Mecca. Tunikabuni includes a long story, which is clearly supposed to illustrate how Shi'is should interact with non-Shi'is, especially Sunnis. He first explains that Bahr al-'Ulum reached a high level of learning from Sunni scholars in Mecca and would exercise dissimulation (*taqiyya*) for the public, although he occasionally slipped and praised the Imam 'Ali in public, accidentally revealing that he was a Shi'i. On one occasion he greeted someone saying "peace be upon 'Ali" (*salam 'aliyya*) instead of "peace be upon you" (*salam 'alaykum*). At another time he started to address people at a meeting with "Oh 'Ali" (*ya 'Ali*). Worried that his Shi'i identity would be revealed, he corrected himself, claiming that he meant to say "Oh great ones" (*ya 'aali*).[2]

More importantly, Tunikabuni tells a story about Bahr al-'Ulum in which he converts the Friday prayer leader (*imam juma'*) of Mecca to Shi'ism. He explains that one day Bahr al-'Ulum followed the prayer leader to his house. The prayer leader then invited him to his library and said that he had every book his heart might desire. Bahr al-'Ulum then asked him for a book on Abu Hanifa, which the prayer leader admitted not to have. Bahr al-'Ulum explained to him that the book talks about Imam Ja'far al-Sadiq, whom Bahr al-'Ulum said was his own teacher. A year later, after becoming interested

1. Kashmiri, *Nujum*, 316-17.
2. Tunikabuni, *Qisas*, 213.

Usuli establishment, the Shah also financially supported individual Usuli scholars and built or rebuilt Shi'i seminaries, such as the Madrasa Faydiyya in Qom.

The combination of Bihbihani's Usuli triumph over Akhbaris and Fath 'Ali Shah's religious policies allowed an independent, ideologically unified Shi'i establishment to emerge at the beginning of the nineteenth century. The power of Shi'I 'ulama continued to grow throughout the course of the century as a result of the foundation laid by Vahid Bihbihani and his disciples. During this period, Najaf and Karbala remained the primary centers of Shi'i learning and teaching. However, largely as a result of Qajar support of Usuli scholars, many Persian 'ulama moved back to Iran, which began to reverse the migration of Persian scholarly families who had moved to southern Iraq from Isfahan in the wake of the fall of the Safavid Empire. This was only the beginning of a trend that returned the locus of Shi'ism back to Iran. Throughout the nineteenth century, Persian seminary students continued to study in the 'Atabat, but would often return to Iran after their studies. However, the most prominent Persian (and Arab) scholars remained in southern Iraq as heads of the seminary (*hawza*). This allowed them to remain independent of the Persian state, but still influence Persian society from afar.

Leadership of Vahid Bihbihani's Students in Iraq

Bahr al-'Ulum

The mujtahid recognized as Vahid Bihbihani's first successor was Muhammad Mihdi b. Murtada al-Tabataba'i (1155/1742-1212/1797), better known as Bahr al-'Ulum(lit. the ocean of sciences). He married Bihbihani's aunt and was a long-time student of Bihbihani, who had switched to the Usuli school after having studied with Yusuf al-Bahrani. Bihbihani repeatedly called him "my spiritual son" and considered him the most knowledgeable of his students, largely because he mastered multiple scholarly fields instead of just one like most students. Bahr al-'Ulum was born and raised in Karbala, which is also where he attended Bihbihani's classes. However, because Bahr al-'Ulum later changed his residence to Najaf, the primary center of Shi'i learning shifted with him and remained in Najaf until the twentieth century, when its preeminence was eclipsed by Qom.

Bahr al-'Ulum carried a reputation as a mystic. He is said to have reached the highest stage of Sufism, or annihilation in God (*fana'*). Many of his followers believed that he actually saw the Hidden Imam. Because many

(6)
Vahid Bihbihani's Disciples In Iraq And Iran*

Zackery M. Heern

Introduction

As the leading teacher in the foremost center of Shi'i learning (Karbala) during his lifetime, Vahid Bihbihani had numerous students, many of whom dominated the affairs of the Shi'i establishment following his death. As will be clear from what follows, students of Bihbihani became heads of each of the most prominent existing centers of Shi'i learning (Najaf, Karbala, and Isfahan) and even revived the importance of othercenters, most importantly Qom. Additional students of Bihbihani did not necessarily inherit his leadership but were authors of significant Shi'i texts that promoted his school of thought. This chapter will focus on Bihbihani's disciples who were the most prominent Shi'i leaders in the generation following his passing. They ensured that the Usuli revival would continue to dominate Shi'i learning and authority and presided over the persecution of challengers, including Sufis, Akhbaris, and Shaykhis. Their consolidation of Shi'i leadership in the first half of the nineteenth century ensured that Usulis would be at the forefront of socio-religious developments in Iran and southern Iraq for centuries to come.

Bihbihani's death coincided with the rise of the Qajar dynasty (1794-1925), which ruled Iran during the long nineteenth century. The Qajars were among the Turkoman tribes that allied with Isma'il I as he spread Safavid rule across Iran. The founder of the Qajar dynasty, Agha Muhammad Khan (r. 1794-1797), hastened the downfall of the Zand dynasty and was crowned shah in 1794. Agha Muhammad's successor, Fath 'Ali Shah (r. 1797-1834), was deferential to the 'ulama. He seems to have been a genuinely pious person. His patronage of Shi'ism was also a means of establishing his dynasty's legitimacy. In addition to making pilgrimages to Shi'i holy places, Fath 'Ali Shah repaired Shi'i shrines in Iran and Iraq. More important for the

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* Heern, Zackery M .*USULI SHI 'ISM: THE EMERGENCE OF AN ISLAMIC REFORM MOVEMENT IN EARLY MODERN IRAQ AND IRAN* .Diss. University of Utah, 2011, pp 63-87.

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20. Modarressi, Hossein, "Rationalism and Traditionalism in Shī'ī

It is clear that the difference between the means of proving *(tarīqat al-istidlāl)* for *'ibiida:* is different from the means of proving *mu'āmalāt.* Whoever does not know the difference between these two, and does not distinguish between them, will corrupt *ftqh* from beginning to end. [*FH,* lOO]

'Aql, for Bihbahānī, plays a pivotal role in understanding what it is God requires of humanity. It can be used before revelation to establish certain truths, which are essential if the individual is to accept the message of the Prophet. These truths are also found in God's revelation, and hence after revelation *'aql,* strictly speaking, is unnecessary. However, since *'aql* and revelation agree on all matters, *'aql* can be a short-cut to knowledge of God's law, dispensing with the need to search for a transmitted indicator. Those elements of the law which have no rational foundation (which is different from saying that they are irrational) must be broken down into discrete units which can be understood by a *mukallaf* The *'aql* comes into action again, since these discrete units are comprehensible by and through the *'aql.*

Conclusion

Perhaps the best way to understand the difference between Bihbahānī and Bahranī is not to say that one accepts reason and the other rejects it, but that one is optimistic and the other pessimistic con ceming the ability of reason to discover knowledge. They both differ from the Ash'arite tradition, which even in its most rationalist expressions, portrays reason's discovery of moral facts as irrelevant to the divine decree. For both Bihbahānī and Bahranī, moral facts are real qualities in the world and are not merely expressions of egotism *(pace* Ghazālī) or subjective opinions. Values truly exist in the world, waiting to be perceived by human beings. Both Bihbahānī and Bahrānī subscribe to an objective ontology of moral values.

This fundamental agreement on matters of ontology should not mask the difference in emphasis between the two thinkers, and between Akhbārīs and Usūlīs in general. Bahrānī restricts the use of reason to such an extent that it becomes useless in the derivation of legal norms. He ascribes to basic Mu'tazilī ideas, because he wishes to establish his link with shī'ī tradition. Yet he adjusts their impact upon his jurisprudence such that the flavour of his account of *'aql* is rigidly traditionalist. We have witnessed this technique of argumentation in other areas of his juristic theory. Bihbahānī, in response to the Akhbārī challenge, devised a more sophisticated account of *'aql's* ability and role in deriving the *ahkām,* where reason and revelation were seen not as competing sources of knowledge, but as mutually supportive structures, aiding the believer in his search for God's law.

(janāba), however, *ghusl* is used in a specific sense-certain actions will make the purification valid and others will not. *'Aql* aids the discovery of the first sense of *ghusl,* but not the second. Furthermore, purification from a major ritual impurity requires an intention-it is a duty in itself. Washing one's clothes requires no intention as such-it is a duty which is to be performed as a prerequisite for the valid perfomancc of a higher duty (ie prayer).[1]

Bihbahānī, rather confusingly, refers to these two sorts of duty as *'ibādāt* and *mu'malāt* respectively. He is not using these terms in the usual sense, though his meaning is linked to the distinction between cultic practices *('ibadat)* and social regulations *(mu'amalāt).* In brief, every obligatory duty of a *mukallaf* is an *'ibāda.* Every *'ibāda* is *tawqīfī* in that it has a textual indicator establishing it as obligatory. Every *'ibada* comprises of a series of actions which will ensure its valid performance. These actions are also duties which the *mukallaf* must perform. The commands to perform these actions, however, must be set in a language that a *mukallaf* can understand. The commands of God are set in technical language and must be reformulated in a manner such that the community can carry them out without errors of commission or omission. These detailed commands, which establish how the *'ibāda* is to be carried out, must be provided by the Lawgiver elsewhere in revelation. To leave them unexplained would mean that God was asking his servants to perform an action, the details of which they do not understand; this would imply injustice on God's part. These detailed commands are then expressed in a manner which the *'aql* can understand; they are not *tawqīfī* for no further elaboration of their meaning is incwnbent upon the Lawgiver. They are *mu'āmalāt.* Every *'ibāda* is made up of *mu'āmalāt* which

ensure its correct performance, and the *'aql,* through its knowledge of *lugha* and *'urf;* can understand these *mu'āmalāt. 'Aql* acts as a bridge between the technical language of revelation and the understanding of the community. Sometimes the conditions of an *'ibāda* are themselves *'ibāda* (as in the case of *ghusl al-janāba* as a prerequisite for prayer). These must also be reduced to *mu'āmalāt* before people can perform them; the Lawgiver must explain what it is he means by *ghusl al-janāba;* there must be no "frustration in action" *(ihbāt fi'l'amal,* the doctrine criticised by Jazā'irī in Bahrānī's citation, mentioned above).[2] Those who confuse the technical language of *'ibādāt* with the ordinary language of *mu'āmalāt* (Bāqillānī (Abu Bakr (d. 403/ 1013)) is mentioned as an offender) are bound to err in their jurisprudence:

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1. His discussion is found in Bihbahānī, *FH,* p. 96- 98.
2. See above. p. 1 91-192.

Oh you who believe, when the call to prayer is made on the day of *jum'a,* hasten to the remembrance of God and cease trad.ing. [Q69.9]

Bihbahānī comments:

As for the words "when", "day" and *"al-jum'a",* "trade" and the form of "cease" and things like this, they are not *tawqīfī* and the Lawgiver is not responsible for explaining them. Rather [their meaning] is found in *lugha* or *'uif* or one of the other things we have mentioned [like *'aql*]. As for the words "prayer" and "call"-if the *adhān* is meant here-and the remembrance of God-if prayer is meant by this-then they are *tawqīfī.* It is not possible for *'urf,* or *lugha,* or *'aql* or anything else to understand the essence of prayer and call as long as the *shar'* has provided no explanation. [*FH,* 97]

Any command is made up of words. For the command to make sense, and for the *mukallaf* to be able to follow the command correctly, he must know the meaning of these words. Bihbahānī' terms the meaning of these words *mawū'lat.* The command itself is *tawqīfī* ie a text of revelation (in this case a Qur'ānic verse) establishes it as a duty. The meaning of some words contained within a command also need an explanatory text before a *mukallaf* can understand them. For example the term "prayer" in the above command refers to the specific actions (prostration, recitation etc) encompassed in the Muslim act of worship. By referring to this verse alone, the *mukallaf* will acheive knowledge of these actions. He is in need of other texts of revelation to explain what prayer entails. These meanings *(mawdū'āt)* are *tawqīfī.* God was not obliged to command these particular actions as constituting prayer. However, not a11 the words in the command are of this sort. The word "trade", for example, is not used in a specific sense. The usual meaning of trade will suffice. To understand the command the *mukallaf* need not tum to other texts of revelation to discover what it is that he must cease doing. The meanings of these words are not *tawqīfī,* that is, they do not stand in need of an explanation from the Lawgiver. One can discover their meaning from *'urf, lugha* or *'aql. 'Aql,* then, can aid in understanding the details of a command.

Another example used by Bihbahānī is a comparison of two prerequisites for prayer: to wash clothes that have been soiled with an impure substance *(ghusl al-thawb al-nājis),* and to purify oneself, by washing, from a major impurity infraction *(ghusl al-Janāba).* Both commands are supported by revelatory texts: they are, then, both *tawqīfī.* The same word, *ghusl* (wash), is used in both commands, but its meaning differs. When washing one's clothes, it is used in a non*tawqifi* sense-the usual activities associated with washing will suffice. When purifying oneself from a major purity infraction

In short, every *hukm 'aqlī* is also a *hukm shar'ī* because there is always a revelatory indicator to support it. Bihbahānī implies, by his assertion that *bukm al'aql* becomes "one of the indicators of the ruling of the law *(min adilla hukm al-shar')",* that *'aql* can be used as a substitute for searching for transmitted indicators because, *de jure,* all *'aql's* conclusions will agree with the *ahkām shar'iyya.* It is also the case that one does not need *'aql* to prove the *ahkām shar'iyya* because all of its findings are concurrently evidenced by revelation.

Bahrānī' and Bihbahānī agree with respect to the assertion that all the *ahkām* are *tawqīfī.* They disagree on the relationship between *'aql* and these *ahkām.* For Bahrānī, *'aql* and *naql,* and *data 'aqli* and *dalīl naqlī,* can conflict and, in such circumstances, one should always prefer the latter over the former. For Bihbahānī, it is a logical impossibility that *'aql* and *naql* could conflict. If they could, that would imply that God gives orders in conflict with the *'aql,* which would compromise his status as the supreme rational being.

Returning now to Ridā's characterisation of the different positions of the role and abilities of *'aql* in the law, one can now locate Bibbahanr in relation to the third and fourth areas of dispute. The third concerned the doctrine of *mulazama*-the necessary correlation of reason and revelation. Bihbahānī explicitly supports this doctrine, whereas Bahrānī envisages circumstances in which a *dalīl 'aqlr* and a *dalīl naqli* could conflict. Bihbahānī takes an Usūlī line here. On the final question of the relationship between the findings of reason and the *shar':* categorisations, Bihbahānī states that *'aql* can be considered "one of the *adilla hukm al-shar'"*-meaning that it can bring, not just moral knowledge *(al-hasan* and *al-qabīh),* but also legal *(shar'ī)* knowledge. He, therefore, takes an Usuli position here. Ridā's characterisation of the differences between Akhbārīs and Usūlīs on the question of *'aql* is ,.once more, shown to be accurate.

Before departing from Bihbahānī's discussion of *'aql,* it is necessary to note that he also considers the rational faculty to be a means of gaining knowledge, not just of general moral commands, but also the specifics of certain duties. These duties are those termed *(ibaādāt,* and it is normally considered the case that independent *'aql* is unable to aid the *mukallaf* in understanding their nature. These duties are *tawqīfī* in the sense that revelatory texts are required to establish them as obligatory. However, reason *(raql),* language *(lugha)* and common custom *('urf)* are useful in understanding the specific duties of the act. For example, the Qur'ān establishes the duty of FRidāy prayer:

whole, *(bi-asrihā) tawqīfī,* and depend upon a text, be they *'ibādāt* or *mu'amalāt,*[1] in the five categories or in the *ahkām wad'iyya* . . . be they understood by *'aql* or not. This is because *'aql':* understanding on its own does not make a thing a *hukm shar'ī,* as long as there is no proof that the Lawgiver has ordered it. The shī'ī scholars and the Mu'tazila, when they say that there is a necessary correlation *(mulii~ama)* between the rulings of the *'aql* and the *shar,* and that the second uncovers the first and *vice versa,* they make the rulings of the *'aql* one of the indicators of the law's ruling, not [a ruling] in its own right *(la nafsahu).* [*FH,* 95]

Bihbahānī appears to contradict himself here, as he claims that all the *ahkām* are *tawqīfī,* but some of them are proven by *'aql.* Bahrānī used the term *tawqīfī* in contrast to *'aqli,* and claimed that all the *ahkām* were the former, not the latter. By this he meant that they were non-rational and proven only by means of transmitted indicators.[2] Now Bihbahānī uses *tawqīfī* in a slightly different manner. For him, a ruling being *tawqīfī* does not exclude it from being *'aqli* .. All the *ahkām* are *tawqīfī* in that there is a text *(nass)* which proves their validity. Some *ahkām* may also be attained through a different route, that of rational contemplation. This does not mean that they cease to be *tawqīfī* they are both *tawqīfī* and *'aqlī.*

Bihbahānī here states explicitly that he affirms the doctrine of *mulāzama--* the necessary correlation between the findings of *'aql* and the rulings of the *shar'.* Because the *'aql* and the *shar* are in total agreement, one may use either in deriving a *hukm,* though it is important to recognise that *'aql* is not a source in its own right, but a source because of the dogma that its findings necessarily agree with the *shar':*

Every place in which the *'aql,* by its understanding, or by something else, independently [attains knowledgeJ in the form of a decision *(jazin),* it is clear from another revelatory indicator that this is so. However, that which the *'aql* supports is certain *(yaqinī).* [*FH,* 96]

For every *dalīl 'aqlī,* there is a *dalīl shar'ī,* The reverse, however, is not the case because some *ahkām sharī'ya* are proven by transmitted (or revelatory) indicators alone. On the other hand, a *hukm* which has both types of indicator to support it is certain--*yaqīnī.* The meaning of this term is not explained by Bihbahānī. However, it is clear that a *hukm* with both (transmitted and rational) indicators reaches a higher level of epistemological provenance than that supported by a transmitted indicator alone.

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1. For Bihbahānī's rather eccentric use of these terms, see below, p. 216-218
2. Sec above, p. 195-196.

(al-lawn wa'l-tawbīkh) and forgiveness is possible after that; this is the opinion of the Shi'a, though some Shī'a agree with the first part [ie some say one deserves praise and blame before the sending of a prophet and forgiveness will not be given after revelation]. [*FJ,* 373]

Bihbahānī appears to be taking the line that before revelation there is no worldly punishment for wrong-doing. Presumably he is drawing on the Qur'anic idea that before the Prophet Muhammad there were nations who were called to follow God, disobeyed and hence were destroyed (ie given a worldly punishment). Most Shī'a, he claims, believe that although punishment is due for immoral actions before revelation, there is a possibility *(jawāz)* of forgiveness from God after revelation comes. Hence *'aql* can recognise punishment for the performance of evil actions, but that does not mean that the punishment will necessarily be carried out by God. This position is a more sophisticated version of the Usūlī position on the fourth of Ridā's questions.[1]

We are now in a position to make a judgement concerning Bihbahānī's views on two of the issues of dispute identified by Ridā, The first issue concerned the debate about the ontology of moral values (objectivism versus theistic subjectivism). Bihbahanī dearly sees good and evil as objective properties, independent of the *'aql's* recognition of God's designation of an action as good or evil. The second issue concerned whether or not God tutored or controlled the *'aql's* recognition of good and evil. An underlying assumption of Bihbahanī's argument is that human beings are able to recognise good and evil, as free and responsible agents. In FJ5, he argues strongly against Ash'arī conceptions of predetermination.[2] To discover his position on the third and fourth issues, one must turn to an analysis of the term *tawqīfī* in the early sections of *FH.*

FH2 is entitled: "On the refutation of two misconceptions". In this section Bihbahānī aims to refute, first, the misconception that "all things [meaning rulings] must be taken from the Lawgiver, and his dictat is *tawqīfī,* dependent upon a text"; and second, that "some of the *ahkām shar'īyya* can have their source in *'urf* (common practice)". The identities of the proponents of these two views are unclear, and no names are mentioned, though it could be postulated that the Akhbārīs, particularly Bahrānī, constitute the first group, and the *qādīs,* who rule in the courts according to *'utf,* are the second. Bihbaharu's refutation begins:

For both the *mujtahids* and the Akhbārīs, the *ahkām sha'iyya* are, as a

1. See above, p. 186-187.
2. Bihbahānī, *FJ,* p. 375-385.

greater evil occurring. The circumstances do not, however, make them good actions. Legally speaking, just as the *jāhil* was liable for *kaffāra* for his transgressions of the law, the person who commits a necessary evil cannot be considered to have done an absolute good if he lies to protect the Prophet. It may be a sin which is forgiven but nonetheless it is a sin.

The objection to Bihbahanl's position is that it entails a "cornbining of opposites" *(ijtimā al-nāqidayn).*[1] Something is both obligatory and forbidden at the same time. Bihbahānī's reply here is most interesting:

Not performing [an evil] may be good in essence *(bi'l-dhāt)* but evil by some non-essential characteristic *(bi'l-'arad).* For it is described as evil from the point of view of its concomitant *(bi-i'tibār lāzimihi),* and that is that it is a lie. There is, in truth, no combining of opposites here-just as one can describe someone as both sitting in a boat and moving simultaneously. [*FJ,* 373]

Bihbahānī here moves into metaphysics. Actions have essential characteristics and non-essential characteristics. The former are what give rise to judgements of evil; the latter cause evil actions to be permitted in specific circumstances. Though a man sitting in a boat is essentially stationary, it would not be wrong to describe him as also moving; though this latter description is non-essential or contingent *('aradī).* Similarly, an action may be essentially evil, though it would not be wrong to describe it as permitted, or even obligatory, in certain circumstances. It would be convenient if Bihbahanī stated clearly that essential properties *(hasan* and *qabīh)* are moral judgements, but legal categories *(wājib, mandūb* etc.) are contingent. Unfortunately, he is not so explicit, and one must settle for the view that this is one amongst other possible positions that Bihbahānī would have taken. His metaphysics is not particularly sophisticated, but it does demonstrate that he is willing to use the language of the philosophers to bolster his theory.

The chapter ends with a return to the subject of Ash'arism, The Ash'arites produced the verse "We [God] do not punish [a people] until we send a prophet" [QI 7.15]. If God does not punish until he sends a prophet, how can *taklīf* be established before revelation. Surely, they argue, this negates *al-tahsīn wa'l-taqbīh.* Bihbahanī responds:

The intended meaning of the verse is that there will be no worldly punishment *(al-'adhāb al-dunyawī)* for what has passed. How is there- no evil (before revelation] on account of punishment being only deserved after the sending [of the Prophet]? Rather before that one deserves praise or blame

1. Bihbahānī, *FJ,,* p. 373.

According to Bihbahānī, these mistaken Shi'a colleagues consider the other two positions to be unacceptable because they make *naskh* (abrogation) impossible. If an action is evil because of its essence (or because of properties inherent in its essence which give rise to a necessary description of the action as evil), then abrogation on the part of God is impossible. An action is good; God must rule that this action is obligatory. If later, he abrogates an obligatory action, he is ruling that a good action should not be performed. He is contradicting himself, and this is unthinkable in relation to God. If, however, one is a situationist, then an action is only obligatory in certain circumstances. God abrogates a ruling because of the need to adjust his law to take into account changing circumstances. The proponents of this position also reject the other two positions which tum the telling of lies to protect the Prophet into an evil act, because lying is essentially evil: "for this reason", Bihbahānī states, "they forgive someone who performs an evil action and do not forgive someone who tells the truth when it is necessary to do otherwise.[1] The legal consequences of such a position, according to Bihbahānī, include the idea that a person who is ignorant of the *ahkām* is forgiven (a position taken by Bahrānī) because of the circumstances of his ignorance. The identity of these mistaken Shī'a is not given, but it seems clear that Akhbārīs would be amongst them, since the doctrine of the "forgiveness of the *jāhil"* was a doctrine of Akhbārīsm.[2]

Bihbahānī attempts to devise a moral ontology which circumvents this position. He first ridicules their position, once again by exaggeration, saying that they cannot bring themselves to say that sexual impropriety, killing women and children or eating the flesh of dead children is wrong. They can only say it is wrong in certain circumstances. For Bihbahānī, this contravenes moral common sense.

He then states that although these actions are evil in essence, or more accurately, possess characteristics which give rise to a necessary judgement of them as being evil, that does not always mean that they are a prohibited course of action:

The reply to the examples of lying, killing or harming is that the essences of these actions, which are essentially [good or bad], are outweighed *(marjūha)* by the *'aql,* but this only *comes* about due to necessity *(fī l-darūrī).* For example, protecting the Prophet is to be preferred in most cases, but the one that is outweighed is not obliterated. [*FJ*, 371-2]

Killing and lying are evil, but at times they are necessary evils to prevent a

1. Bihbahānī, *FJ*, p. 371.
2. See above, p. 15-23, for Bahranī's defence of this doctrine.

wishes to demolish the Ashearī arguments as he portrays them, not as they may have been developed by individual thinkers.

Bihbahānī ends his rejection of the Ash'arī moral ontology with a *reductio ad absurdum* argument. The Ash'arites claim that a miracle establishes a would-be prophet as an emissary from God. The Qur'ān is the miracle *par excellence.* However, a miracle is, by definition, a deviation *(khāriq)* from God's customary way of acting *('ādat allāh).* How does a *mukallaf* know what God's customary ways are? It can only be through a process of (inductive) reasoning. This reasoning can only be carried out by the rational person's *quwwa 'āqila,* therefore, reason must come before revelation. The Ash'arī response that moral reasoning, not reasoning in general, cannot occur until after recognition, is absent from Bihbahanī's discussion.

Having dismissed the Ash'arī ontology, Bihbahānī considers alternatives. These comprise of three Mu'tazilī ontologies. First, there are those Mu'tazila who claim that good and evil are attributable to the essence of an action *(dhāt al-fīl).* An action is evil because it has, as part of its essence, the property of evil. It is evil because "that is what it is like" *(min haythu hiya hiya),* just as it may have other properties. The action of speaking a lie may be performed in a loud voice or in a particular language. These properties are of the same genus, according to this first ontology, as improbity, Second, there are those Mu'tazila who claim that an action is not evil in essence, but that it has properties that necessarily cause the *'aql* to label it as evil (properties such as "it is an untruth" or "it causes harm"). The character of the act necessitates its description as evil *(wasfuhu lāzim).* Finally, there are those who argue that the action of lying, in itself, is not evil, but it becomes evil when performed in certain circumstances, or as Bihbahānī puts it, "on account of aspects and perspectives *(bi'l-wūjūh wa'l-i'tibārāt)"* which pertain to the act. The combination of the action and the circumstances make it an evil act; these Mu'tazila are, then, situationists. Though Bihbahānī does not name them as such, it is possible to identify these positions as those of the Baghdadī, the early Basran and the later Basran schools respectively.[1]

As will become clear, Bihbahānī's position seems to have much in common with the first of these positions, though he does not claim it as his own. The first is not examined at all, but the third is examined because "some of our modem [scholars]" *(ba'd al-muta' akhkhirīn mimā)* have adopted it. He refutes their position first.

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1. so See Frank, "Fundamental Assumptions"; Peters, *God's Created Speech*, p. 3-6 and p. 16-19; McDermott, *al-haykh al-Mufid*, passim; Reinhart, *Before Revelation*, p. 138-160.

categorisation, then a prophet would be pointless. People would understand his words, they may even understand that he comes from the Creator, but they would not understand why they should obey him or God. The Prophet would be like a foreigner *(ajnabī)* to them.

These arguments hold an established place in *kalām* discussions. Some Ash'arites concede a certain ability to reason; they accept that reason can establish that an individual should be aware that God will send a messenger to the world, and hence reason can also establish that a would-be prophet's claims must be investigated and considered, for there is a possibility that he is a prophet.[1] Bihbahānī does not deal with this argument for it compromises the anti-rationalist straw man of Ash'arism that he has constructed.

The other Ash'arite response is that the individual is compelled to take heed of the Prophet because of his miracle *(wujūb al-nazar fī mu'ajizat al-nabī);* The principal miracle referred to here is the Qur'ān, which contains the imperative to contemplate *(anzar).* Because of this miraculous divine intervention, the individual is compelled to contemplate the Prophet's message and eventually adopt his moral system.

Bihbahānī's reply is that such a counter-argument is ineffective *(fāsid).* The mere imperative to contemplate is insufficient to establish an obligation to contemplate unless one accepts that reason comes prior to revelation:

When [a prophet] says to a *mukallaf;* "The one who created you, and created the world, has sent me to you. He created you for a purpose, so listen to me, contemplate my miracle and hear from me the purpose", then there is no doubt that the *'aql,* at that time, judges that it is obligatory to contemplate [his message] and after the message has been proven to be true, it is obligatory to follow him. [*fJ,* 369]

The putative Ash'arite claim that it is the miracle of the Qur'ān which establishes the duty to contemplate the truthfulness of a prophet is ineffective because one needs a general obligation, proven by independent reason, that pretenders to prophethood should be investigated. Without such a general obligation, "The *mukallaf* hears only an utterance; he understands only the meaning of that utterance. Nothing more than this."[2] No obligation to contemplate is established merely by hearing the command from a pretender to prophethood, "Contemplatel". That this argument has been proposed by Ash'arites in the past is, again, unimportant for Bihbahānī. He

1. This is in fact the position of Ash'arites such as Ghazālī (see Mustasfāa, I, p. 10- 12 and Reinhart, *Before Revelation*, p. 88-93) and, according to Weiss, Amidī also (Weiss, *God's Law*, p. 88-93).
2. Bihbahānī, *FJ*, p. 369

nizā' fīhi). The former is a matter of dispute *(al-hasan wa'l-qubh bi' l-ma'nā al-mutanāza' fīhi)* between the Ash'arites and the Shi'ites, The Ash'arite position is fallacious, Bihbahānī argues, because, if one needs the Lawgiver's decree to call an action good or evil, one would need two decrees for every action-one to say it is good and one to say neglecting it is evil. If the Ash'arite position is accepted, then when there is only one command (*amr*) in revelation concerning a particular action, the prohibition on ignoring that command becomes morally untenable, for it would need an additional indication from the Lawgiver.[1] This is obviously false. If, however, one accepts the two-tier system of moral ontologies, then one can say that reason designates obedience to one's master as good, and disobedience as bad, and the problem of such lacunae is avoided.

What, then, is the relationship between the moral knowledge gained through *'aql* {primary) and the moral knowledge gained through revelation (secondary)? God, it seems, sends prophets to inform the people of these secondary moral qualities, which arc not inherent in the actions, but arise from the Lawgiver's designation of them as obligatory or forbidden. This is the reason for sending prophets; rational beings already have an understanding that they should obey a prophet, but they cannot know through reason alone what God orders:

If the *'aql* could not [judge primary moral properties, like the duty of a slave to obey his master], the Prophets would be pointless and there would be no point in their mission or the *ahkām shar'iyya* . . . The Prophet did not talk to madmen and children who heard his words, understood his meaning, but did not learn that one should obey his command. [For them] the Prophet was like a foreigner who says, "you must do this and you must not do that". We hear his words and understand his meaning, but we do not see why we should obey him or follow his orders and prohibitions. [*FJ,* 368]

Bihbahānī means here that only a rational person can become subject to God's law (ie become a *mukallaf),* because an immature or insane person may hear the Prophet, and understand his words, but have no recognition that a person should obey his master. He docs not have this recognition because he does not have the potential to reach the independent rational deduction that a slave should obey his master, and, therefore, a human being should obey his creator. A rational person can reach these conclusions, and can, therefore, be considered a *mukallaf* If, as the Ash'arites claim) reason cannot establish these basic moral duties, and revelation must precede moral

1. See Hallaq, *Legal Theoris*; p. 47-58; Weiss, *God's Law*; p. 368-381; and above, p. 171-174 for a nahy from an amr and via versa.

after God has described it as such. The acts are not evil in themselves. Bihbahānī's conception of *'aql* as a faculty indicates that he does not differ from Bahrānī on this point.[1]

The Ash'arite reply to this is that to allow these things to be evil on account of real qualities attached to these acts is to open the door to the possibility that, for example, neglecting prayer or pilgrimage is permitted, because reason cannot recognise any benefit in them:

[They claim that] *'aql* has no aversion to things such as neglecting prayer or pilgrimage, things which are evil on account of the immediate truths of religion *(badahiyyāt al-dīn)*. Our rational powers cannot attain [knowledge] of their improbiry ... we accept this but the aversion of reason [to these things] is due to their being examples of disobedience to the Lord Most High in legal matters *(Shar'iyyāt)*. This is the nub of the issue: *'aql* can distinguish good from evil and there is no doubt that it can recognise the evil in any slave going against what his master orders or prohibits. For the order and the prohibition of the master are not good or bad in themselves. Obedience and disobedience are the reason for calling such things good and bad. *[FJ,* 366]

This argument establishes two types of moral property and hence two moral ontologies. First, there are those properties that exist independent of human or divine designation. Actions such as sodomy of one's children are evil essentially, that is, they have properties which either include improbity or necessarily give rise to a description of improbity. Second, there are actions whose improbity is not recognisable to reason except through the general command, deduced through reason, to obey one's master. Actions such as neglect of prayer and pilgrimage are not evil in themselves, but become evil when the Lawgiver so designates them as part of his unquestionable will:

Reason's judgement that neglecting pilgrimage and matters of *ta'abbud* (worship) like this are only evil after knowing that the *shāri'* has made them so ... without this, the *'aql* cannot distinguish between these and other permitted or forbidden actions. [*FJ*, 367]

These two moral ontologies are termed *mā udīfu ilayhā* (primary) and *idāfiyya* (secondary) respectively. One cannot understand the latter without the former. The Ash'arites consider only the second to exist. However, the reason for a person living by secondary moral properties is not because of some rationally-established rule concerning obedience to one's master, but simply because the Lawgiver is God. The secondary moral ontology is therefore described as undisputed *(al-hasan wa'l-qubh bi'l-ma'nā al-ladhī lā*

1. See above, p. 194.

Ash'arites) accept that *'aql* can recognise good and evil. Their denial is, however, a point of dogma, and if one examines their works (the *Ihyā* of al-Ghazālī (Abū Hamīd (d. 505/1111)), the *Futūhāt* of Ibn 'Arabī (Muhy al-dīn (d. 638/1240)) and the *Matlnawī* of Rumī (Jalal al-dīn (d. 672/1273)) are specifically mentioned) one finds that the Ash'arites utilise the idea of *'aql* having this power in many places but formally reject the doctrine. Whether this is an accurate portrayal of these scholars is not important for Bihbahanī's argument.

'Aql, he says, can perform *al-tahsīn wa'l-taqbīh;* just as the auditory sense can recognise the difference between noise and singing:

We find that we have a natural ability, a passionate ability, an evil ability and an angelic holy ability, which are called [collectively] *alquwwa al-'āqila* (the rational faculty) and we find that each of these has preferences and aversions, [an ability to recognise] necessities of existence and non-existence, and [when co] act and [when to} refrain from acting . . . the function of the rational faculty is to command what is wise and beneficial and all things that are good, and to avoid those things contrary to these, that is, all evil. [*FJ,* 363]

Though the Ash'arites deny the existence of such a faculty, or like Ghazalī, consider its findings legally unimportant,[1] they refer to it in their works. Bihbahānī states explicitly that *istihsān* and *qiyās* are dependent upon the existence and reliability of a faculty like the one conceived here: *istihsān* because it assumes that the jurist can select the most appropriate course of action, and *qiyās* because the recognition of the *'illa* is an act of the *'aql* itself The pmpose of these examples is to show that the Sunnis in general, and the Ash'arites in particular, denounce *'aql* with their tongue *(fīl-lisān),* but in fact the presumption in their *fiqh* is that *'aql* has cognitive ability.

Bihbahānī then asks us to imagine a man of unspeakable evil who sodomises his children and demands that his parents and grandparents sodomise him both in public and in private:

The rational faculty when it hears of such evil, or [even just] the most evil of these acts, it will be adverse to it; it will feel disgust and pro· hibit them. *[FJ,* 365]

The same would be true, but in reverse, of someone who did good works. Of course, Freud would be interested in the choice of exampie here. Bihbahānī is, however, using exaggeration (*tafrīt*) to demonstrate his point; his point being that for the Ash'arites such evil could only be labelled as evil

1. See Ghazālī, *Mustasfā*, p. 56-59; Hourani, *Reason and Tradition*, p. 135-167; Reinhart, *Before Revolation*, p. 70-75.

The *dalīl* of the *mujtahids* [concerning the validity of *al-barā'a*] is that *'aql* judges *taklīf*[1] and *mu'ākhadha* (moral blame) to be repugnant *(quhb* [ie unnacceptable]) when there is no elucidation [ie no explicit text establishing the command or blame]. Many verses in the Qur'ān and widely accepted *akhbār* also include [the proposition] that *taklīf* and *mu'ākhudha* are prohibited when [either] there is no knowledge and elucidation, and [ie or] when there is no Imam to teach the people what is and is not in their interests. A group of scholars also claim *ijmā'* on this matter. [*FH,* 240-1]

Bahrānī would have recognised this as a case of *dalīl al-'aql;* being placed before *dalīl al-naql* (both literally and epistemologically); the very practice he criticised in M10 analysed above. The *'aqlī* proof is mentioned first, the *naqlī* is recorded as supporting it.

The most significant thing about this passage is the issues Bihbahānī ommitted:

1) It is dear to the reader that, for Bihbahānī, *taklīf* and *mu'ākhudha* in the absence of elucidation are evil. He does not, however, produce the *'aqlī* reasoning to explain why this is so.

2) Taklīf and *mu'khudha* are to be classified as evil by the *'aql;* they are objectively evil. Bihbahanī entertains no possibility that the *'aql* may be mistaken, or its judgement subjective.

3) Because such impositions are objectively evil, they cannot be attributed to God, for God is, by his nature, just.

Now these issues are crucial to Bihbahānī's argument. Without a recognition of these premises, it would be difficu1r for a reader to grasp his point. As I have argued already,[2] the intended audience for the *Fawā'id* is probably Akhbārī contemporaries or students tempted to adopt Akhbārīsm. These points, all accepted clements of Imāmī-Mu'tazilī theology, are presumed to be common ground with the reader. There is no need to demonstrate them. This gives a further indication that it was not whether, but how *'aql* gains knowledge independent of revelation, that was the issue under discussion. These assumptions are, however, justified in *al-Fawā'id al-jadīda,* Bihbahānī's later work.[3] The main opponents there are the Ash'arites.[4]

Bihbahānī states at the outset that all the various sects (except the

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1For a definition of this term, see above, p. 23-24.

2. See above, p. 13-15.

3. Bihbahānī, *FJ,* p. 363-374.

4. The selection of the Ash'arites as opponents here might indicate that Bihbahānī is not only concerned to refute Akhbārīsrn, but also Sunni thought. It is possible that he sees an ideological linkage between the two.

amongst his successors. In the most influential work of *usūl al-fiqh* of the thirteenth century AH/nineteenth century CE (which continues to be a set text in theological seminaries), the *Farā'id al-usūl* of al-Shaykh Murtadā al-Ansārī (d. 1281/1864), there is a passage which specifically condemns Bahrānī's account of *dalīl al-'aql.*[1] After citing the final paragraph of the Prologue, analysed above, Ansārī says he does not understand how Bahrānī could prefer *dalīl al-naql* over immediate rational proofs (like "half of two is one"). This is not how I read Bahranl here; rational indicators of this sort (ie the immediate kind) do not, by design, conflict with transmitted proofs; it is other non-immediate rational proofs which might conflict with transmitted indicators. Ansārī also asserts:

The incomprehensible thing which he [Bahrānī] states is that there is a means, in cases of conflict between *'aql* and *naql,* of making a preference between these two certainties.[2]

Bahrānī does not designate the findings of *'aql,* in its general sense *(bi-qawlin mutlaqin),* as certain *(qat'ī);* transmitted indicators, however, are certain. Hence there is not a clash between two certainties, but a clash between a certainty (transmitted indicator) and a proposition, the certainty of which is unknown (not even probable). The difference between Ansārī and Bahrānī concerns the probative force of *'aql* in its non-immediate form the former claiming that it produces certainty (indistinguishable from *'aql* in its immediate form) and the latter claiming that it is of epistemological value only when it is not contradicted by a transmitted indicator. The citations of Bahrānī by Ansārī (and others) are not designed to present an unbiased account of his position, but are part of a polemic exercise through which the supremacy of one intellectual system (Usūlīsm) over another (Akhbārīsm) can be demonstrated. Ansārī's citation does, however, demonstrate that Bahrānī's account of *al-dalīl al-'aqlī* was considered to be in need of refutation well into the ninteenth century.[3]

Bihbahani's Discussion of 'Aql

In chapter 24 of *al-Fawā'id al-hā'iriyya,* Bihbahānī argues for the legitimacy of *al-barā'a al-aslīyya* as an interpretative device by which the limited nature of the texts (and hence the limited nature of the *dalīls* one might be able to draw from the texts) can be overcome. His arguments for the validity of *al-barā'a* are labelled "the proofs of the *mujtahids":*

1. Ansārī, *Farā'id.*, I, p. 18.
2. *Ibid.*, p. 18-19.
3. In the twentieth century also: Ridā, *Usūl al-fiqh*, II, 3, p. 124-125.

through revelation and his gift of reason, has failed to give sufficient guidance to humanity to solve a problem. He has left us in ignorance on such occasions, not only of his will, but also of any means of discovering his will.

We are now perhaps in a position to predict Bahrānī's responses to the fundamental questions of *dalīl al-'aql* as outlined by Muzaffar Ridā, and cited at the beginning of this chapter.[1] On the question of *'aql's* ability to perform *al-tahsīn wa' l-tuqbīh* , though he does not use the terms, he would come down on the side of the *'adliyya.* Reason can reach conclusions concerning the moral status of certain acts (if not, how could the possibility of it clashing with *dalīl al-naql* be entertained?). Specifically, reason can find that acceptance, submission and obedience *(qabūl, taslīm* and *inqiyād)* directed at God are obligatory. But this sort of reason is so rarely found amongst believers that the *ahkām* should be considered *as tawqīfī,* that is taught, instructed, even imposed by God. On the second question as to whether or not reason renders such judgements independent from God's instruction *(ta'līm),* Bahrānī is clearly an Akhbārī (according to Ridā's schema), since this *'aql* was placed in human beings by God himself. Furthermore, if my interpretation of the metaphor of *'aql* being "a light 'shining from him" is correct, then God controls the *'aql,* prompting it in the correct direction.[2] On the third question, "must God judge the same as the *'aqlī",* Bahrānī would probably answer that it is inconceivable that he would not, since the *'aql* is a means, controlled by him, whereby humans might come to know him. This is quite different, however, from the Usūlī assertion that God must rule in conformity with the *'aql* because his nature as the supremely rational being forces him to do so. On the final question, concerning the relationship between *hasan/quhb* and the *shar'ī* classifications, Bahranr's ref ere nee to *wqjh,* and his assertion that *'aql* cannot bring knowledge of God's *ahkām,* is evidence that he does not consider *'aql* to be able to deduce that an evil act is to be punished by God. However, his lack of precision in these matters, and his refusal to use established terminology, make a definitive statement of his position on these issues difficult. The fact that Bahrānī does not provide equivocaJ answers to Ridā's four questions is evidence that Rida's depiction is a reflection of what Usūlīs considered important in these matters; it is not a neutral description of the various positions on *'aql.*

Bahrānī's version of *dalīl al-'aql* did not, however, gain much support

1. See above, p. 184-186.
2. Once again Bahrānī does not use the terminology of *ta'līm* (instruction) found in *Ridā,* see above, p. 186-187.

knowledge, for Bahrānī, but it is knowledge of a specific sort, and it operates in a severely restricted arena. It cannot operate in the area most important for jurisprudence---the discovery of legal rulings. It has no role (lā *madkhal)* in that process. The most that rational indicators can do is to act as the deciding factor between two contradictory transmitted indicators.

A note also needs to be made about the term *ishkāl,* which I have translated as ambiguity. I consider this to be an accurate translation since *ishkāl* occurs when there are two mutually exclusive options which have equal probative force, that is, when two rational indicators (neither of which is supported by a transmitted indicator) contradict, and in the other circumstance, when a rational indicator derived from sound natural reason and a transmitted indicator contradict. In these cases the probative force of the two elements is equal (unlike in the cases where transmitted and rational indicators conflict). Now we have seen how Bahrānī's juristic methodology is based upon a polarisation of, and radical disjuncturc between, binary opposites (truth: falsehood, knowledge: ignorance, obligatory: forbidden).[1] *Ishkāl* occurs on those occasions when his binary system breaks down irretrievably. Since the normal processes of harmonisation (*ta'wīl* and *jam')* are explicitly rejected by Bahrānī, one is left with irreconcilable contradictions. Bahrānī does not seem unduly worried by such circumstances, since presumably they happen so rarely as to pose no threat to his overall system. In the case of sound natural reason, even if it does occur, it will be· recognised by a small proportion of the community, since sound natural reason is only obtained by them. However, what these examples of *ishkāl* do demonstrate is that there are limits to human knowledge of God's will. This is not quite the same as those cases which necessitated *tawaqquf* and *ihtiyāt;* there one had the possibility of choosing the more cautious option, of maximising one's chances of fulfilling the law as a result of one ruling being more extensive in scope than the other. In the cases of *ishkāl,* one ruling cannot be preferred over the other since they are equal in their epistemic status; they are unresolvable contradictions for human agents.[2] Since, for Bahrānī, jurisprudence is a science of knowledge, not opinion, the failure of the sources (reason or revelation) leads him to a conclusion which could be (and was) considered heretical by his opponents. Here, in these short passages on *ishkāl,* he admits the possibility that God,

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1. See above, p. 60.
2. It may be that Bahrānī has missed a trick here. It seems quite obvious that in cases such as the clash of a transmitted indicator with an indicator of sound natural reasoning, the most prudent course of action is to follow the transmitted indicator because one can never be sure chat one's reasoning is entirely free from prejudice and corruption.

immediate rational indicator is found, it is a sound base for action. Bahrānī does not consider that there is any possibility of a clash between such indicators, or a clash between them and a transmitted indicator. On the matter of non-immediate rational indicators (unfortunately Bahrānī gives no examples of what he means by "rational indicators that are not immediate [in the mind]"), if there are no contradictory indicators (of any sort), then they are also considered sound. If there is a rationa] indicator opposing the first rational indicator, then one is to look for a transmitted indicator to support one of the two. The one with the support is preferred. If there are no such supporting indicators, then there is ambiguity *(ishkāl).*[1] If a rational indicator and a transmitted indicator conflict, then one looks for a transmitted indicator to support the first. If one is found, then it is preferred. The crucial point being that in these circumstances, we are not talking about a *naqlī-'aqlī* contradiction as such, but a *naqlī-'aqlī* contradiction which is decided by the tiebreaker of a *dalīl 'aqlī.* If no transmitted indicator can be found to support the rational indicator, then the rational indicator is to be rejected.

As can be seen, rational indicators are allowed to have probative force as long as they do not contradict any transmitted indicator. *As* soon as they do this, the transmitted indicator is to be preferred. The most that *dalīl al-'aql* can do is act as the deciding factor between two transmitted indicators which are in conflict. Now here we have a genuine inconsistency in Bahrānī's theory. In M4 he lists the means by which conflicting elements of revelation (ie conflicting transmitted indicators) are to be understood.[2] He does not mention the ability of a rational indicator to decide between two conflicting transmitted indicators.

Finally, there is sound natural reason, which gives rise to indubitable indicators. This type of reason "is rare amongst the people" *(shadhdh wujūduhu fī'l-ānām).* It is a precious commodity, obtained by only a few, the rest have reason, but it is corrupt; corrupt to varying degrees perhaps, but nonetheless this type of reason is unable to produce true knowledge. This conception of sound reason is, perhaps, an indication of the authority theory inherent in Bahranr's epistemology. This is examined at greater length in the next chapter.[3] However, if this sound reason clashes with a transmitted indicator (a possibility that is unlikely in Bahrānī's view, since the *'aql* agrees with the *shar'),* there is ambiguity *(ishkāl)* once again.

From this one can dearly see that reason, or rational indicators, can lead to

1. For an analysis of this term, see below, p. 201-202.
2. Bahrānī, *H,* I, p. 87-111, see above, p. 112-121.
3. See below, p. 222-237.

If a transmitted indicator conflicts with it [the rational indicator], then if the rational indicator is also supported by a transmitted indicator then the rational indicator is given preference, except that this is, in reality, a case of *ta'ārūd, fī l-naqlīyyat* (conflict within transmitted indicators).

If there is no supporting transmitted indicator [for the rational indicator which clashes with the *dalīl naqlī],* then pref ere nee is given to the transmitted indicator ...

This refers to *'aqlī* in an unrestricted sense *(bi-qawlin mutlaqin).* As

for when I intend by [the word *'aqlī* the specialist meaning, which is natural and free from the wanderings of the whim and which is one of the proofs of God, and this [sort of *'aql]* is rarely found amongst the people, then there is ambiguity in giving preference to a transmitted [proof] over it. [*H*, 1, 132-3][1]

This passage is as complicated in the Arabic as it appears in my translation, but a detailed inspection further clarifies Bahrānī's position. It is represented in the diagram below. It is clear that here Bahrānī is using *'aql* and *dalīl al-'aql* in a number of ways. First, he refers to sound natural reason, which leads to knowledge of God *(qabūl, inqiyād, taslīm).* Second, he refers to *al-dalīl al-'aqlī badīhiyyan,* transmitted indicators which occur immediately (in the mind): the example being mathematical proofs. Third, he talks of other, nonimmediate types of rational indicator. The second and third categories are termed *"'aql* in an unrestricted sense,', the first having a restricted, specialist meaning. Fourth, and finally, by implication one has deductions which are called reason, but which are in fact corrupt.

Now the types of knowledge that such indicators yield are not elucidated by Bahrānī, However, it seems that the Mu'tazilī (and later the Sunni also) epistemology can be partially applied here. The first and third types of reason would approximate to acquired knowledge *('ilm iktisābī)*-knowledge acquired through reflection-like the existence of God and the duty to obey him. The second type of rational indicator, it seems clear, points to necessary knowledge *('ilm darūrī).*[2] The final type of rational indicator is corrupt and rejected (presumably because of its *zannī* quality).

Having already explained what he means by *al-'aql al-sahīh; al-fitrī,* Bahrānī moves onto the second and third types listed above. Briefly, if an

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1. This is one point of divergence between Bahrānī and (positions attributed to) Ghazālī, see Abrahamov, "Ibn Iaymiyya". Bahrānī takes a position not dissimilar to Ibn Taymiyya here.

2. For a description of this epistemology, see Weiss, *God's Law*; p. 37-41; Hallaq, *Legal Theories*, p. 38; Reinhart, *Before Revelation*, p. 220-221, n. 49. Reinhart says that *'ilm badahī* is "probably" equivalent to "*'ilm darūrī*",

useful to examine how Bahrānī conceives a *dalīl* (transmitted or rational) functioning. As mentioned earlier, he views *'aql* as a faculty of comprehension, naturally occurring in human beings, and placed in them by their creator. A *dalīl 'aqlī* is a piece of evidence that is recognised by the *'aql* as pointing towards a truth, hence my translation of it (following Weiss)[1] as an indicator. An indicator's function is to point towards a destination and in Bahrānī's case that destination is knowledge (*'ilm*). A rational indicator *(dalīl al'aql)* is one which points towards *'ilm* through the use of reason. A transmitted indicator *(dalīl al-naql)* is of the same genus, but it points towards *'ilm* by means of a revelatory source. Since, for Bahrānī, an indicator is only useful if it points towards knowledge and not opinion, indicators which are thought by Usūlī jurists to point towards opinion *(khabar al-wahīd,* for example) are either upgraded in Bahrānī's system, or rejected completely. Furthermore, since the indicators point towards knowledge and certainty, a single piece of evidence is sufficient to establish that knowledge. When two *dalīls* conflict, one must be in accordance with God's will, and the other must be rejected. The rejected one only exists in the revelatory text because of the Imams' need to dissimulate *(taqīyya).* The problem is discovering which is the *taqīyya* generated indicator. However, the *dalīls* cannot be interpreted *(ta'wīl)* or brought together *(jam');* such attempts to harmonise the *dalīls* are, for Bahrfini, attempts to change the meaning of the Imams' words, whether the indicator is transmitted *(naqlī)* or rational (*'aqlī*). The only difference between them is that rational indicators are not subject to *taqīyya.*

Reason, then (or more specifically, a rational indicator *(al-dalīl al'aqlī)*), can contradict revelation (or more specifically, a transmitted indicator *(al-dalīl al-naqlī)),* though when such a conflict occurs, the rational indicator cannot have arisen from pure natural reason:

> We say: There is no doubt that reason characterised in this way, which is clearly immediate [in the mind I, like their assertion "half of two is one" is a sound basis for action. If it is not (immediate], then, if there is no other indicator, rational (*'aqlī*) or transmitted *(naqlī),* which contradicts it, then similarly [it is a sound base for action].
>
> If, however, two rational indicators conflict, and one of them is also supported by a transmitted indicator, then preference is given to the one with transmitted support.
>
> If [there is no transmitted indicator supporting one of them] then there is ambiguity *(ishkāl).*

1. See Weiss, *God's law,* p. 42-46.

The most important term in this passage is *tawqīfi.* This can be translated as "instructed" or "taught" and has the connotation of something that is unable to be obtained through contemplation or rational thought. *Tawqīfī* rulings are essentially non-rational. They have no relationship with the findings of reason. Bahrānī's position is a stronger version of that of a previous Akhbārī thinker, the infamous, Muhammad Amīn al-Astarābādī:

Let it not be said that his [the Imam's] word, "All things are unrestricted *(tilq)* until a prohibition refers to them" nullifies [the proposition that] things are good or evil by their nature, because there are two matters here. One is the essential nature of good and evil and the other is the essential nature of obligation and prohibition. This [word from the Imam] means that the second is nullified, not the first. Between them is a great distance, for you see that most things which are evil according to reason are not forbidden in the Sharī'a, and similarly with respect to obligatory things.[1]

Astarābādī's point being that although reason can recognise good and evil, it cannot recognise *shar'ī* classifications such as obligatory or forbidden. Only the latter lead to reward or punishment and these are not essential to an act, but imposed upon it by the Lawgiver. Bahrānī gives a weaker role to reason than his Akhbārī predecessor; he implies that reason can only gain knowledge of the most basic human responses to God *(qabūl, inqiyād* and *taslīm).*[2]

Now here we seem to have a contradiction. At one point Bahrānī says *'aql* agrees with the *shar',* and at another he says *'aql* must play no role in the formulation of *ahkām.* Bahranī's position, then, is that *'aql,* in its pure natural state, does agree with the *shar',* but that does not mean that it should be used as an indicator *(dalīl)* of the legal status of certain actions; the implication is that although pure *'aql* docs lead to moral knowledge, one can never be sure that one is utilising pure *'aql* (one may be affected by the "filth of disobedence") and hence, in the derivation of the *ahkām,* one must only rely on revelatory proofs. *'Aql* can be trusted, it seems, to establish broad general duties (like obedience to God and submission to his will), but it cannot, with any certainty, bring detailed knowledge of God's law.

The final section of Bahranr's analysis of *dalil al-'aql* is an account of the procedure to be followed when a rational indicator *(dalīl al'aql)* conflicts with another indicator (be it rational or transmitted). It may at this point be

1. Astarābādī, *al-Fawā'id al-madaniyya,* p. 161.
2. Bahrānī's position has much in common with Ghazālī's suspicious recognition of 'aql's power, see Ghazālī, *Mustasfa,* p. 63 and p. 67 and Reinhart, *Before Revelation,* p. 75. It appears that Āmidī utilised the same argument, see Weiss, *God's law,* p. 92.

(learned, acquired) [from God]; they need the *samā'* (revelation) from the Preserver of the Sharr'a. For this reason there are many *akhbārī* which demonstrate this, already related co you in *muqaddima* rhree[1] they

[i] prohibit deducing the *ahkām shar'iyya* without a *samā'* from them [ie a *khabar* from the Imams], upon whom be peace, or an item of knowledge which has proceeded from them, may the blessing of God be upon them and

[ii] they [the *akhhār]* make it obligatory to perform *tawaqquf* and *ihtiyāt* when there is no easy road to knowledge *('ilm)* and [they]

[iii] make it obligatory to refer to them [the Imams] in all [matters]. The *'aql,* as it has been described, is unable to give knowledge con cerning their [the *ahkām's]* profundity and scope ... rather, if the *'aql* could do this, then the sending of prophets and the revelation of books would be pointless. For this reason, the *akhbār* denounce the *ashāb al-qiyās.* [*H,* 1, 131][2]

This passage is immediately followed by five *akhbar* which demonstrate these three assertions. Bahrānī then adds:

And there are other *akhbārī, mutawāitir* ones, which prove that the nature of the law *(kawn al-sharī'a)* is *tawqīfī,* and there is no place for *'aql* in elucidating a single one of its *ahkām* whatsoever. It is agreed that acceptance, obedience and submission *(al-qabūl wa'l-inqiyād wa'l-taslīm),* when they are required, are based upon it [*'aql*]. This is indeed one of the things the *adilla* [the citations from the Qur'ān and *akhbār* in the apodosis], which the opponents produced, prove; except that it *['aql]* leaves [unresolved] those things which are *tawqīfī.* [*H,* I, 131]

In these two citations, one has Bahrānī's clearest indication yet of what *'aql* can and cannot prove. It has no role in the discovery of legal norms *(lā madkhal lil-'aql fī istinbāt shqy'in min ahkāmihā)* because such norms are not based on reason but on revelation *(al-samā').* When revelation is found wanting, still there is no recourse to *'aql* since *tawaquf* and *ihtiyāt* are obligatory. If reason could reach the *ahkām,* then the sending of prophets with books would be pointless. Sound natural *'aql* can bring a person to know that they should accept *(qabūl)* and obey *(inqīyād)* God's commands and submit (*taslīm*) to his will. Bahrānī does not mention whether or not the *'aql* can perform further acts of *al-tahsīn wa'l-taqbīh,* though it seems clear that even if it can, these have no relation to the legal classification (that is, the *ahkām),* since he has asserted that *'aql* plays no role in the *ahkām shar'iyya.*

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1. Bahrānī, *H,* 1, p. 28-30, analysed above, p. 96-102.
2. This argument is usually termed. 'ahath., though Bahrānī does not use this term here. For a classical Ash'arī discussion, see Baqillānī, *Bayān,* p. 37-49.

shar'), and the law comes to confirm it. Perhaps it comes before it, and the aspect *(al-wqjh)* in them [rhe things] is hidden from it [*'aql*]. The law acts as an uncoverer *(kāshif)* and elucidator *(mubīn* [or possibly *mubayyin*]) of it. The most that these [*adila]* prove is that pure sound natural reason is approved of, so long as it is free from the wanderings of the whim and purified of the filth of disobedience. In this way, it is indeed a divine proof which attains, by the purity of its illumination and the essential character of its nature, some of the matters [with which human beings are J charged *(ba'dj al-umūr al-taklifiyya).* [*H*, 1, 131]

This passage has all the hallmarks of an *ad hommem* argument-there are those who credit their *'aql* with more than is pious or appropriate; they have been led astray by their own imagination. Despite its flowery language, this passage repays close inspection.

'Aql, as long as it is sound and natural, is one of God's proofs *(hujja min hujaj allāh).* The use of the term *fitrī* gives the impression that it is a natural faculty in human beings, created as a means of understanding God, and through it, humans make the appropriate response. The total harmony between this *'aql* and the revealed law is asserted. It can reach conclusions which are then confirmed by the law; on other occasions it reaches conclusions but the aspect *(wajh)* of them is hidden from it. Now, this use of the term *wajh* is never explained by Bahrānī, and is replete with (perhaps intentional) ambiguity. The most likely meaning of *wajh* here, in my view, is not the moral quality of an act (ie whether it deserves praise or blame), but the eternal consequences of its performance or omission (ie the reward or punishment to be meted out by the Creator).[1] The limitation of the *'aql's* competence to recognise an act's moral quality, but not its consequences, was not universally accepted by all Imami theologians, and it is the Akhbārīs who deny *'aql's* ability to do this in Ridā's fourth question.[2]

The caveat in all this is that this reason must be "sound" and "natural", "free from the filth of disobedience" and the like, and in this proviso, discussed below,[3] Bahrānī imposes narrow constraints on the power of *'aql.*

He continues:

There is, then, no doubt that the rulings of *fiqh (al-alhkām al-fiqhiyya)* concerning cultic practices *('ibādat)* and others, all of them are *tawqīfī*

1. For a summary of the debate about *'aql's* ability to recognise not only good and evil, but also reward and punishment (for performance of such actions), see (prior to Bahrānī) Tūnī, *Wāfīyya,* p. 172-177 and in the nineteenth century Qummī, qawānīn, 2, *al-maqsid al-rābī'* (pages not numbered).
2. See above, p. 186-187.
3. See above, p. 198.

It is not proven because people differ in their rational capacities, and what seems reasonable to one is not to another.

If the meaning [of *dalīl ai-'aql]* is "that which is acceptable to the one seeking to prove something by it", then it would not be possible for us co call the illuminationists and the atheists unbelievers, and not to show that the Ash'arites and the Mu'tazillites have gone astray". [*H,* 1, 128]

The reason being that if such *'aql* is a source of knowledge, then the various groups which are clearly outside the bounds of Islam cannot be condemned because they are all asserting "what seems reasonable to the individual". Both of these definitions are rejected because of the inherent subjectivism in recourse to *'aql;* this subjectivism leads to an epistemological pluralism in which the certain knowledge *('ilm)* advocated by Jazā'irī (and also by Bahrānī) is eroded. As I have already demonstrated, there is no room for pluralism, compromise and uncertainty in Bahrānī's Akhbarf system.

The citation from Imām Rāzī is similar in its message (which rather begs the question of why it is included):

These [rational} proofs, if they really were proofs, then all who heard them and studied them would be obligated to accept them. [*H,*1, 128]

Of course, Imam Rāzī comments that this is not the case, as one sees the *'uqalā'* arguing consistently; they cannot all be right since "this would necessitate the truth of two opposites, which is clearly false".

The final section of M10 is the most interesting, in that Bahrānī, having disposed of those who favour *'aql* over *naql* (through the arguments in the citations), expresses his own position on its role. It takes the form of an extended conditional sentence stretching over four pages.[1] The conditional is in the familiar "if you say . . . then I say ... " *(in qulta ... fa-qultu ...*) format. The apodosis consists of a number of Qur'ānic and *akhbār* references which recommend reason and contemplation to the Muslims, and may be summarised as "if you say that these indicators *(adilla)* approve the use of reason":

Then I say: there is no doubt that sound natural reason *(al·aql al· sahīh al-fitrī)* is one of God's proofs, may he be praised, and a light shining from him, may he be exalted. It agrees with the law *(al-shar'),* rather it is a law from the inside [of a person J, just as [*al-shar'*] is a law from outside [of a person], but only as long as it is not affected by the influence of evil imagination or changed by disobedience [to God] or the love of status or other stagnant prejudices. Perhaps it proves things before the law comes *(qabl wurūd al-*

1. Bahrānī, *H*, 1, p. 129-133.

authors: Ni'mat Allāh al-Jazā'irī and one Imām Rāzī (the latter being the Sunni, Fakhr al-din al-Rāzī (d. 606/ 1209)). Both citations are attacks on the idea that *'aql* can lead to knowledge. Citations from previous authors perform a number of functions in texts such as Bahrānī's *Hadā'iq*. Above all, they establish the writer as part of a tradition of learning, tracing ideas back through a network of previous thinkers. The first citation from Jazā'irī establishes a precedent for Bahrānī's position and (partially) defuses any accusation of innovation on his part. For Bahrānī, this is particularly important since he is developing an Akhbārī *Usūl* with a distinctive character, separate from the main tradition of Usūlī legal thought. The citation from Imam Razā is actually a direct quotation of a citation found in Jazā'irī's *al-Anwār al-nu'māniyya*.[1]

The quotations themselves do not contain particularly sophisticated arguments. Jazā'irī's quotation can be divided into three parts: an invective against those who promote *'aql,* and two examinations of possible definitions of *'aql* (both of which are rejected). It is important to bear in mind that Bahrānī offers no modification of Jazā'irī's views; he even expresses his unreserved approval of them *(ni'ma mā qāla).* The first section lists those who prioritise reason over revelation. This list includes the "people of *ra'y* and *qiyās",* natural philosophers *(ahl al-tabī'a)* and philosophers in general. Al-jazā'irī illustrates their heresy by citing a parable in which Plato is made to say to Jesus that "Jesus is a prophet to those who are weak of mind. As for myself and those like me, we have no need to know of the messages of prophcts".[2] An example of their faulty reasoning is, Jaza)iri argues, their refusal to accept that the Prophet made inadvertent errors *(al-sahw),* since, they suppose, allowing him this would lead to the possibility of mistakes in the *ahkām.* jazā'irī refers to, but does not cite, numerous *akhbār* which permit such mistakes as a *rahma* (mercy) for the community.[3]

He continues:

We ask them, "What is the meaning of *dalīl at-'aql?"* ... if they mean "that which is acceptable to most reasonable minds", then it is not proven. [*H*, 1, 127]

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1. Jazā'irī, *Anwār*, 3, p. 127-128. That this writer is indeed Fakhr al-dīn al-Rāzī is confirmed by Jazā'irī's reference to him elsewhere in the *Anwār* (*ibid.*, 1, p. 38-40). The editor expresses surprise that a Sunni author of philosophical bent should be cited to support a Shī'ī author's position (ibid., 3, p. 127, n. I).
2. Bahrānī, *H*, 1, p. 126.
3. It is considered a *rahma* (mercy) for the community since through the Prophet's minor errors, the believers discover the correct penance when they commit minor errors, See Madelung, "Isma", p. 182-184.

relying upon rational proofs when they and the transmitted proofs contradict. They interpret the latter so that they accord with the former, or [if such an interpretation is not possible], they rej cct th e latter completely. [*H,* 1 , 125]

He goes on to add that these scholars always list the rational indicators first: "most of them" give preference to "action on the basis of *al-barā'a al-asliyya, istīshāb* and other such rational indicators over a *khabar* which they consider weak, or even one they consider trusted *(muwaththaq).*"[1]

Bahrānī gives an example of the privileging of *'aql.* Al-Sayyid al-Murtadā stated that one may choose any pure liquid with which to eliminate impurity *(khabath),* saying that this permission of choice was the *ijmā'* of the Shi'ītes, Muhaqqiq, in his comment on this statement, replies that Murtada claimed this "because action based upon an indicator of *'aql* is one of our principles, as long as there is no [contradictory] transmitted indicator". In other words, Murtadā asserted this *ijmā',* not because the Shra agreed upon the permission to choose, but because they agreed on the probative force of *'aql* in cases of revelational silence. *'Aql,* he claimed, here clearly indicates that any liquid, as long as it is not itself impure, is efficacious in the removal of impurity. For example, vinegar *(al-khall)* can be used in such circumstances because it is as effective as water ("perhaps it is more effective", he suggests). Muhaqqiq disagrees, saying that *'aql* does in fact have the ability to distinguish between water and vinegar and obviously the former is more appropriate.

The disagreement here is not just about what *'aql* actually concludes (species), but the types of knowledge it can conclude (genus). Muhaqqiq says its scope is more extensive than Murtadā presumes, since it can distinuish between vinegar and water as purifying agents with different degrees of efficiency. In Bahrānī's view, however, there is little to distinguish between the two scholars:

> Notice that he [al-Muhaqqiq] agrees with 'Alam al-Huda [al-Murtadā] in what he relates concerning the principle of action on the basis of a rational indicator in matters of *furū'.* He only disagrees with him in detail *(fi'l-juz'ī)* ... in sum, [most scholars'] position, explicitly in some places and implicitly in others, accords with how we have described it. [*H,* 1, 126]

Bahrānī is clearly uninterested in the conclusion concerning the ability of some liquids to purify more efficiently than others. He is concerned with the principle on which both scholars (and other Shī'ī jurists also) agree-that *'aql* can be used to supplement *naql.*

This opening example is followed by two quotations from previous

1. *Ibid.,* p. 125.

If Bahrānī has a sophisticated psychology of *'aql,* he does not express it in his Prologues. He states explicitly that *'aql,* in its purest form, is considered "one of the proofs of God".[1] The phrase "one of the proofs of God" is ambiguous, and an examination of its context does not provide immediate clarification. It could imply that pure *'aql* is a system of reasoning that can reach conclusions concerning God (his existence or nature, for example). Alternatively, it might be read in a possessive sense in that God controls the functioning of reason, over which he is lord, and to which he is not subject. The reader is faced with the problem of the meaning of the genitive *hujaj allāh.*

I propose that Bahrānī means the latter of these two possible interpretations. My evidence for this is the metaphor he uses in conjunction with *hujaj allāh* to characterise *'aql: 'aql* is a light shining from his direction *(min jihatihi);*[2] that is, the light originates in God and illuminates our understanding. God is the source of the light rather than being illuminated by it. Bahrānī also says that *'aql* is a law *(skar')* from inside a person *(min dākhil).* It is, therefore, not imposed (upon the person, or upon God) from outside, but is a law that God (since he is the Creator of all things) has placed within human beings, which they can naturally access, and through which they can comprehend the correct response to him. This does not mean, however, that *'aql* is infallible. As discussed below, this "law from inside" can be corrupted by the individual, and hence can cease to be a means of understanding God. This is what I take Bahrānī to mean by *'aql.*

Bahrānī's treatment of the role of *dalīl al-'aql* in determining *alahkām al-shar'iyya* is short (eight pages in the printed edition, around half of which is made up of citations from other sources). He does not utilise the terminology of *hasan/qabīh* or *tahsīn/taqbīh.*. It is clear that the importance of this issue to previous authors does not impress itself on Bahrānī and he does not consider *'aql* to be a particularly useful source of legal knowledge. His opening statement sets the tone:

The Ninth Prologue on explaining the probative force, or lack of it, of *al-dalīl al-'aqlī.*

Relying on rational indicators *(al-adilla al-'aqliyya)* in *usūl* and *furū'*, and giving preference to them over transmitted indicators *(al-adilla al-naqlīyya),* has become common practice amongst most of our co-religionists *(akthar min ashābinā),* may God be pleased with them. Because of this, you see them in the two *usūl--usūl al-dīn* and *usūl al-fiqh-giv*ing preference to and

1. For a discussion of the meaning of this phrase, see below, p. 193-194.
2. Bahrānī, *H,* 1, p. 131.

the various linguistic inferences).[1] That *dalīl al-'aql* or *al-dalil al-'aql* (I detect no distinction between his use of these locutions) comprised of these interpretative devices was a matter of some disagreement amongst Shī'ī writers. *Dalil al-'aql* was a pliant term, moulded and transformed by successive generations of Shī'ī scholarship.[2] The glaring omission from Bahrānī's treatment of *dalil al'aql* in M3 of the *Hadā'iq* is, of course, *al-tahsīn wa'l-taqbīh,*. There is no discussion of the ability of *'aql* to attain moral or legally relevant knowledge independent of revelation (whether in areas of revelatory silence or in matters before the coming of revelation). The issues that are discussed in M3 are better characterised as interpretative devices (operating under principles derived from revelation) which provide indicators *(adilla)* for cases not explicitly covered in the texts of revelation. They are the means of expanding the relevance of revelation to new areas; they arc not new sources of knowledge in the sense that *'aql* is discussed here.[3]

Having said this, *al-barā'a al-asliyya* (and in a restricted way, *istishāb al-hāl* also) does have obvious conceptual links with the idea that *'aql* can be a source of knowledge independent of revelation. A less important link is that some jurists (Bihbahānī amongst them) claimed that the operation of this device could be legitimised by pure reason, as well as from the revelatory texts.[4] More importantly, however, the presumption that an action not specifically legislated for in revelation is permitted *(al-barā'a al-asliyya)* is based upon the premise that reason can discover that actions which cause no obvious harm are permitted. *Al-barā'a al-asliyya* can be seen as a specific application of the efficiency of independent reason.

Whatever the explanation for the omission of *al-tahsīn wa'l-taqbīh.* from M3, the issue is not ignored completely in the Prologues. It is tackled, though without extensive use of the established terminology, in M10. One should not necessarily see its appearance here as a demotion in importance as far as Bahrānī is concerned, but it is interesting to note that in Bihbahānī's work, *al-Fawā'id al-hā'iriyya,* issues of *al-tahsīn wa'l-taqīh* occupy the first four chapters, and appear repeatedly throughout the work in relation to other issues.

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1. See above, p. 90-112.
2. See Ridā, *Usūl al-fiqh*, I, 3, p. 121-125; Modarressi, "Rationalism and Traditionalism", p. 141-143.
3. Modarressi characterises the distinction between the conception of reason as a separate source of knowledge and devices like *istishāb al-hāl* and *al-barā'a al-asliyya* as the difference between pure and practical reason (*ibid.*, p. 142).
4See Bihbahānī, *FH*, p. 240 and above, p. 123. Hallaq implies that *al-barā'a al-asliyya* and *istishāb al-hāll* are identical principles (Hallaq, *Legal Theoris*, p. 113); this is dearly not the case in Shī'ī *Usūl.*

controlling activity of God. Ridā says that "some Akhbārīs" take this view. Usūlīs (and presumably other Akhbārīs) consider *'aql* to be independent of God's control.

All Akhbārīs (and a few Usulis also) agree, however, that even after *'aql* has discovered the moral properties of an action, God is not compelled to rule in revelation in accordance with these findings. This does not mean that he does rule, or has ruled, contrary to reason, but that there is no compelling reason why God, who is a free agent, must rule in this manner. He is free to demand irrational actions from his servants, even if he never does demand such irrationality. The majority of Usūlīs, however, contend that God must act in accordance with reason, since he is the supremely rational being. To allow even the possibility of God acting irrationally is to propose a defect in his nature. Reason and revelation are, for Usūlīs, entirely congruent, not merely by accident (in the philosophical sense of the word), but as a logical necessity. This doctrine is called *mulāzama*[1].

Finally, there is the question of whether or not the findings of *'aql* are logically related to the classification of acts in the Sharī'a (from obligatory through to forbidden). Does the fact that *'aql* finds that lying is evil mean that lying is *harām* (forbidden)? This, I presume, is what Ridā means when he asks if the moral classification of the *'aql* is *shar'ī* in nature. The Akhbārīs wish to reduce the compulsion on God to act in a particular manner, and hence they say that he may draw a distinction between an action that is evil and an action that is forbidden (entailing the punishment of the offender). The Usūlīs, keen to demonstrate the ultimately rational character of God, claim that it is not in his nature to make such a distinction, and that an evil act is a forbidden act. Performance of such an act (in the absence of revelation) leads not only to disapproval, but also to punishment.

The position of the various groups, as laid out by Ridā, is depicted in the diagram below. Ridā's intention, however, is not merely to describe the dispute. He wishes to criticise the Ash'arī and Akhbārī perspectives; for this reason his account may not tally with Ash'arī or Akhbārī writings on the subject. However, his depiction is useful as an introduction to the issues surrounding *'aql* and helps us to locate Bahrānī and Bihbahānī in the dispute.

Bahrānī's Discussion of 'Aql

In Chapter Three, I examined those elements of Bahrānī's legal theory which he describes as *dalīl al-'aql (al-barā' al-asliyya, istishāb al-hāl* and

1. See Modarressi, "Rationalism and Traditionalism", p. 142.

'aql can comprehend good and evil [without instruction from the Lawgiver], we must ask: when the *'aql* judges [an action], is there a necessary correlation between its judgement and the judgement of the law?, meaning when *'aql* judges a thing to be good or bad, is it a rationally necessary consequence that the Lawgiver must also judge in a like manner? This is the issue of jurisprudence *(al-mas'alat alusūliyya),* termed *al-mulāzama,* on which there is dispute. All the Akhbārīs, and some Usūlīs, like the author of *al-Fusūl,*[1] deny this necessary correlation.

(4) After *mulāzama* has been proven, and certainty has been attained concerning the fact that the Lawgiver must order in agreement with *'aql's* judgement, then [there is the question] is this certainty legal *(shar'an)?*[2]

From this account, it is clear that Ridā considers these four questions to have given rise to a number of positions on the role of reason in discovering knowledge.

First, there are the Ash'arites who consider actions to be good or evil only by God's decree. The moral qualities of actions are not essential characteristics of these actions, that is, they do not inhere in the actions themselves. The action of lying is not in itself evil, but only evil because (and after) the divine Lawgiver has decreed it as such. This position has been termed "theistic subjectivism",[3] for it is the subjective judgement of God which makes an action good or evil. Reason, unaided by revelation, is unable to deduce the moral designations of acts.

Second, there are the *'adhjya,* amongst whom are both the Mu'tazilīs and the Imamis, They consider actions to be good or evil by virtue of essential properties which inhere in acts; God plays no part in their designation as good or evil. For the *'adliyya,* lying and murder are inherently evil actions. Human reason can recognise these assessments without referring to the formal sources of revelation.

1 use the term "formal sources of revelation" because amongst the Imarnis are those who take the view that God has constructed the *'aql* in such a way that it can recognise moral properties. Furthermore,

he tutors and instructs the *'aql* in its response to acts, directing it in the moral (that is, legal) classification of these acts. The classification is not entirely the product of unaided human effort, and *'aql* works under the

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1al-Sayyid Muhammad Husayn al-Isfahānī (d. 1250/1833-34). The reference is to his *al-Fusūl al-gharawiyya Fi'l-usūl al-fiqhiyya*; the discussion on *al-tahsīn wa'l-taqbīh* is found in lsfahant's *Fusūl*, P: 316-351.

2. Ridā, *Usūl al-fiqh*, I, 2, p. 213-224.

3. See Hourani, *Reason and Tradition*, p. 59 and Reinhart, *Before Revelation*, p. 70-75 (on Ghazālī).

knowledge, but to reach legally relevant knowledge, such as the moral qualities of acts. In technical vocabulary, was *'aql* able to perform *al-tahsīn wa'l-taqbīh* (recognising something-usually an action-as good or evil)? An affirmative answer to this question, as that given by the Shī'a, was intimately linked to a number of related issues. Discussions included the meaning of good and evil, the ontology of these properties (do the characteristics inhere in the action, independent of recognition, or are they linked to a subjective assessment?) and the relation between *al-tahsīn wa'l-taqbīh* and the consequences of performance or non-performance (that is, reward or punishment) of an act. There was (and continues to be) a popular conception that Akhbārīs and Usūlīs adopted differing approaches to *'aql;*[1] though, as I demonstrate below, it was not a matter of one school rejecting and the other accepting *'aql* as a source of moral knowledge. Further evidence that their positions were more complex than simple acceptance or rejection can be found in the lucid summary provided by the twentieth century Usūlī writer, Muzaffar Ridā, For Ridā, any discussion of independent reason comprises solely of the issue of *al-tahsīn wal-taqbīh.* He lists four questions concerning *al-tahsīn wa'l-taqbīh:*

(1) Arc actions good or evil by virtue of their essences, having essential qualities recognisable by the *'aql* before the Lawgiver gives a ruling concerning them, or is this not the case, and good is what the Lawgiver deems good and evil is what he deems evil? ... This is the basic difference between Ash'arites and the *'adliyya.*[2] This is the question of *al-tahsīn wa'l·taqbīh* which is well known in the discipline of *kalām.*

(2) Given that actions are essentially good and evil, is the *'aql,* which comprehends good and evil, capable (*tamokkana*) independent of the Lawgiver's instruction and explanation or not? Also, on the matter or its construction, is the *mukallaf* [the morally responsible agent, charged with the performance of certain duties] able to obtain [this understanding] without the Lawgiver's instruction or not? ... This issue was a point of dispute between the Usūlīs and some Akhbārīs ...

(3) After accepting that good and bad are essential to actions, and that the

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⇦ I consider this usage to be most prevalent amongst non-Mu'tazilī authors, sec Smith, "The Concept of Shari'a", p. 39.

1. See Madelung, "Akhbārīyya", p. 56; Kohlberg, "Akbāriya", p. 716, where the opponents of the early Akhbārīs are termed Mu'tazila (signifying a distinctive position of *'aql.* See also Newman, "The Akhbarī-Usūlī Dispute, Part 2", p. 254.

2. The term *'adliyya* is used to describe those who assert that God must act in a just manner, ie the Mu'tazila and the Shi'ites. For an examination of the Sunni argument over the obligation of God to "create the best" for his creatures, see Brunschvig, "Mu'tazilism et Optimum" and Ormsby, *'Theodicy,* passim.

(5)
Rationalist Morality*

Robert Gleave

The manner in which the Shi'ites adopted and modified Mu'tazilī ideas has been the subject of a number of recent studies. A full description of the dynamics of this process is beyond the scope of this work.[1] However, the disagreements within Mu'tazilism often led to debates as vigorous as those that arose between Mu'tazilīs and partisans of other early Muslim theological trends, and an understanding of the different, and often contradictory, ideas encompassed under the term Mu'tazilī is pertinent to my analysis here.

I am principally concerned with the implications for jurisprudence of the Shi'i adoption of Mu'tazilī ideas. The doctrine that both revelation and reason can lead to knowledge *('ilm)* was central to Mu'tazilism, and was also accepted in modified form by later Muslim orthodoxy.[2] What was disputed was the manner in which reason and revelation interacted and the kinds of knowledge each could bring independent of the other. Such disputes arc also found in Imāmī theological writing.

In juristic terms, the doctrine of the epistemological efficacy of independent reason was incorporated into Shī'ī works of *usūl al-fiqh,* haltingly at first) and wholeheartedly later. As in Mu'tazilisrn, the issue at the centre of Shī'ī discussions was the ability of *'aql* (a tcnn not devoid of ambiguity, but usually translated as reason or intellect),[3] not only to reach

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* Gleave, Robert .*Inevitable Doubt: Two Theories of Shī'ī Jurisprudence* .Vol. 12. Brill, 2000, pp 183-217.

1. See Madelung, "Imamisrn and Mu'tazilīte Theology"; McDermott, al-Shaykh alMufid and Schmidtke, *Hillī.*

2. See Tritton, "Reason and Revelation"; Peters, *God's Created Speech*, p. 82-84 and p 91-93; Hourani, *Islamic Rationalism*, p. 57-67 and passim and Martin and Woodward, *Defenders of Reason.*

3. Reinhart argues against the translation of 'aql as "reason" since it fails to convey the flavour of the faculty, system of knowledge and, at times also, common sense. See Reinhart, *Refore Rrvelation*, p. xi, 188, 220-221. Peters settles for "intuition", see Peters, *God's* Created *Speech*, p. 82, n. 237. Bahrānī and Bihbahānī, and the Shī'ī tradition in general, use the tenn in a variety of different but related ways, and if there is ambiguity in the translation of *'aql* as "reason", and *dalīl 'aqlī* as "rational indicator", then, I feel it matches the ambiguity of the terms in the texts studied here. That *'aql* may also be seen as a verbal noun (the activity of "reasoning") is also recognised, though, with Smith, ⇨

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reality"- that is, the law of God. His task is to reach an opinion which he considers to be the best approximation of the law. Both he and his *muqallid* are bound by this opinion.

In comparing Bahrānī's and Bihbahānī's views, it is clear that there are some similarities: both recognise that there is a distinction between the law "in reality" and the law as it is perceived. Our perception must always be recognised as less than certain, and it is this that one must deal with through legal theory. For this reason, a for both thinkers. Their means of overcoming this doubt are, however, quite different: for Bahrānī, the doubt can be dispersed by performing more than is possibly obligatory; that is, by acting with caution (*ihtiyāt*). Certainty as to the content of the law is not always obtainable, but certainty as to the law's fulfillment is obtainable. For bihbahānī, the doubt is dispersed by a certainty that the action is performed in accordance with a certain procedure: the procedure of asking for and following a mujtahid's opinion. The procedure is certain, even if the *mujtahid's* opinion is not.

Underlying the two solutions, are two theories of knowledge. Bahrānī feels certainty is obtainable (but only in action, not in the law itself); Bihbahānī does not (for him, "the door of knowledge is closed").[1] Bahrānī is fearful of doubt, whilst Bihbahānī embraces it, albeit within a structure which prevents epistemological anarchy.[2]

1. That epistemology was central to the dispute is well argued in the best summary of Akhbārī doctrine, Kohlberg, "Aspects".

2. If one wishes for a cognate discussion in the (better documented) Sunni tradition of *usūl al-fiqh*, the *Zahiri-Sunni* dispute appears the closest, particularly in its epistemological aspects. See Goldziher, *zahiris*, passim, particularly p. 103-190. On uncertainty and opinion (or "probabilism" as Weiss terms it), see Weiss, *Spirit*, p. 88-112

This *Akhbāri* is quite possibly Bahrānī, who does, as we shall see, argue for both of these positions.[1] The incompatibility, for bihbahānī, is that whilst the *akhbāri*s reject any action which is not based on the *akhbāri* as invalid, they allow the ignorant *mukallaf* to transgress the law and not be punished. Bahrānī, of course, conquered this apparent contradiction by distinguishing between two types of ignorance — ignorance of a ruling and ignorance of how a ruling applies to a particular case. In only one of these was forgiveness granted.

Bihbahānī does not address Bahrānī's division of ignorance directly, but he clearly sees it as irrelevant. The *mujtahid*, if he perceives no legal indicator relevant to the case in hand, can declare an action to be permitted. If he perceives a possible indicator, then he must immediately perceive that it is an indicator of a possible ruling. That ruling is his option of the law in reality, and this he passes on to the *muqallid*. The *muqallid* merely obeys. Bihbahānī considers it impossible for a *mujtahid* to perceive there to be an indicator, but not have an opinion, however weak, about what it indicates or whether it applies to a particular case. Bahranī's second type of ignorance is, therefore, considered obsolete.

Conclusion

For bihbahānī and Bahrānī, then, the term *al-'āmmī al-jāhil* (the ignorant believer) means quite different things. For Bahrānī, an ignorant believer is one who is ignorant of the law "in reality". He is only forgiven if he is ignorant of the existence of a ruling given by the lawgiver (ie god, through the prophet and imams) which regulates an action he may have performed. If he knew of the ruling, but assumed it to be inapplicable to his particular circumstances, he is not forgiven, and his action has legal (and ultimately eschatological) consequences. He is not forgiven because he could have exercised (*ihtiyāt*), and treated the ruling as if it was applicable to his circumstances, even though he was unsure whether it was or not. For Bihbahānī, an ignorant believer is one who has opted out of the only valid means of gaining knowledge of the Sharī'a: the *mujtahid/muqallid* system. The muqallid asks the mujtahid for legal information, and the *mujtahid* supplies it.

For the *muqallid*, the only law that matters is the *mujtahid's* opinion. He can only fulfil his legal duties by following his *mujtahid*. These opinions are the only legal reality he needs. The mujtahid., however, has a wider perspective: he knows that his opinion is not identical with the law "in

1. See below, p. 55-60 p. 249-250.

investigation may not result in the law reality, but the procedure he follows, and the duty of the *muqallid* to follow him, isestablished. The law "in reality", thereby, drops out of the picture.

Some scholars, bihbahānī reports, have attempted to make a distinction among the duties imposed by the law. The law is divided into ritual duties (*'ibadat*), fulfilment of which is a matter between God and the believer, and social duties (*mu'āmalāt*), which concern the relation between human beings, and are therefore issues of public concern which must be decided publicly. Some have argued that ignorance regarding *'ibādāt* is forgivable, whilst that regarding *mu'amalāt* is not. This position is based on the belief that ignorance and transgression in *'ibādāt* are not matters of public concern, whilst they are regarding a transgression in *mu'amalat*. Bihbahānī rejects this view, making no distinction between the two sets of duties when discussing the matter of forgiveness for ignorance and transgression. His reason for doing so is that for both areas of the law, the *mujtahid* can still be consulted.

Bihbahānī, naturally, devotes much more space to discussing 'ibādāt, since he agrees with his opponents concerning *mu'āmalāt*. His argument is as follows: ritual duties require intention (*niyya*) to be valid; the person who is ignorant of some elements of prayer (a ritual duty) will be unable to intend to perform those elements. If, by chance, he performs them, he will still have failed to fulfil the duty, because he will have failed to intend an action which, accidentally, complies with the law:

> Intention is a condition in correct ritual performance. If he does not know that a particular action in the ritual performance is demanded of him, then when he performs it, how can he intend to perform it, and thereby follow God the Most High? [*FJ*, 420]

Hence elements of ritual law, as well as social law, are subject to the *mujtahid's* option. Without his option, the *mukallaf* is ignorant of the law as it appears to the *mujtahid*. If the *mukallaf* was forgiven these errors, with impunity, "it would necessitate the abolition of the duty to search for knowledge, awareness and sufficiency in obedience".[1]

Bihbahānī ends his discussion with a criticism of the *Akhbāri*s:

> One amazing thing is that a certain Akhbārī has argued that it is not permitted, in legal questions, to refer to anything other than the text of the Imam. It is not sufficient [for him] to refer to consensus, or to any other indicator of the *mujtahid*. Yet he argues that it is sufficient for the ignorant commoner to refer to his own opinion and prefer- ence. [FJ, 427]

1. *Ibid.*, p. 425

> There is no doubt that the 'ammi cannot know *fīqh*, by any means, except by following [*taqtīd*, ie following a *mujtahid*}. [*FJ*, 417]

The *mujtahid*, through his investigation and search, produces an opinion (*zann*) as to the law. This may not be the law in reality, but it is condidered option, and this is all we can work with in this world:

> We are legally obligated [*to follow*] the apparent duties, not the actual duties. By the apparent duties, I mean what appears to the *mujtahid* to be the law in reality. [*FJ*, 417-8]

For bihbahānī, as for Bahrānī, there are two tiers to the law: the law in reality and the law as perceived. Bihbahānī, however, restricts the latter to the *mujtahīd's* perception. As moral agents, charged by God to perform a duty (*taklīf*), we can only work within the second sphere of the law. The *mujtahid* searches the texts for an indicator (*dalīl*); this indicator is a clue as to what God's (or the Prophet's or the Imam's) ruling was on a particular matter. When he thinks he has found such an indicator, he produces his opinion. Of course some clues are more obvious than others. Some are so obvious that they are considered identical to the law in reality.

That the *mujtahid* may be wrong is unperturbing for Bihbahānī. His reasoning is that though a *mujtahid's* answer is not protected from error, the duty to investigate the sources is established as certain, and the follower of the *mujtahid* is similarly protected from blame. It is, for Bihbaham, known with certainty that one must follow the *mujtahid's zann*:

> *zann* is not valid, unless it is based on a legal indicator [found by the *mujtahid*}.... In reality, the action [based on *zann*] is certain, not mere option, for there is certainty in the procedure [of gaining the *zann*]. [*FJ,* 419]

There is a procedural certainty that a ruling based on a legal indicator found by a mujtahid is authoritative, even though the opinion may not accord with reality:

> It has been transmitted in the *akhbār* that one is only to refer to the Imam and no one else. It is not permitted to act on the basis of mere whim and opinion, and follow anyone else other than the Imam, even the jurists. However, following the jurists is, in reality, following the Imam, because one only follows them on [the Imam's] order and his permission. [*FJ,* 419]

Following the *mujtahid* is similar to believing the testimony of two witnesses. Though it is possible that the testimony of two witnesses does not accord with what actually happened, God has laid down that the testimony of two witnesses is sufficient to establish legal proof. Similarly, the *mujtahid's*

Bahrānī and not for Bihbahānī. It is that the manner in which the author's view is presented differs Bahrānī wishes the rerader to view his position as a systematisation of the revelatory evidence, whilst Bihbahānī aims to establish his position as rationally sound, supported by references to revelation. This difference is not merely stylistic — it is based on doctrinal considerations which reoccur through the two scholars' respective legal theories.

Bihbahānī begins his account with a discussion of what it is to know that one has a legal obligation (*taklīf*). From this, one can then determine what it is to be ignorant of such an obligation. Each person must expend effort to discover what God has made obligatory, and what he has made forbidden.

> If one falls short of this knowledge [of the law] when it is possible to gain it, the obligation [to do a thing] does not cease to be an obligation, merely because of this negligence. It is the same with a prohibition. [*FJ*, 415-6]

Bihbahānī takes the example of a slave-owner who gives his slave a scroll on which all the duties of the slave are listed. He says to the slave, "I will punish you if you know what my orders are and then disobey them." The slave knows that the master's orders are on the scroll, but if he does not open it, then he is surely punished for his transgressions: "a general knowledge that one has an obligation is [in itself] knowledge of an obligation".[1] Bihbahānī accepts that if it is impossible to know that one has an obligation to perform an action, then "there is no doubt that the duty has lapsed at that point."[2] If the person is in such a radical state of ignorance then he is to treat the action as permitted. But Bihbahānī considers such radical ignorance as rare:

> It is one of the essential elements of the Islamic religion, that the religion of Islam has many obligations and many prohibitions. These together are most numerous. It also appears in the Qur'ān and the assuredly-transmitted *akhbār* that "searching for knowledge is a duty on every male and female Muslim". [*FJ*, 416-7]

Since only a *mujtahid* is qualified to investigate whether there is a ruling from the lawgiver on a particular issue, and since the *'ammi* knows there are many obligations in Islam, there is no logical reason to forgive either of them for total ignorance of he law. The *'ammi* has a clear means of finding a ruling, that is, by following the *mujtahid*. If he fails to use this means, he is at fault:

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1. Bihbahānī, *FJ*, p. 416.
2. *Ibid.*

community.[1]

In sum, Bahrānī's position is as follows: whether the *jāhil* is excued his failure to fulfil the law (that is, whether there are legal consequences for his failure) depends on the type of ignorance which led to the failure. If it was ignorance of the existence of a ruling, he is forgiven. If it was ignorance of whether a known ruling is pertinent to the current circumstances, he is not forgiven because he could have followed a cautious course of action (ie presumed the ruling to be pertinent, even though it may not have been). If he acts with caution (*ihtiyāt*) he will, on a personal level, be certain of his fulfilment of the law, even though some of his actions may be superfluous. Bahrānī adopts this position, which is closest to the second outlined at the outset of M5, not because it is the most rational (though he clearly considers it to be), but because it best accords with the revelatory evidence, which, for him, consists of the imamic reports.

Bihbahānī on the status of the one ignorant of God's law

Bihbahānī's discussion of the issue of the ignorant *mukallaf* is found in FJ14. His position can be identified as the first of those rejected by Bahranī. Central to his argument is the need for an ordinary believer (*'ammi*) to attach himself to a learned scholar and follow that scholar's opinion on the law. This assertion, of course, has implications for juristic authority: the *'ammi* himself is unable to investigate the law, and hence must rely on someone who has acquired the necessary skills. The necessary skills are termed *shara'it al-ijtihād* and are discussed in chapter six. Here it is only necessary to say that Bihbahānī considers a scholar who has fulfilled certain academic and personal criteria to be qualified to investigate the sources of law (including the Qur'ān, the *akhbār* of the Prophet and the Imams) and decide whether or not they contain a ruling, or a hint of a ruling. Such a person is one qualified to perform *ijtihād* and is termed a *mujtahid.*

Bihbahānī's discussion of the issue, unlike Bahrānī's, is not structured around the detailed derivation of rules from specific Imamic reports. It is a more discursive discussion in which an argument is developed and linked to other areas of Bihbahānī's thought, with Imamic reports used at appropriate times to support a particular proposition. It is not presented as a simple piece of revelatory exegesis, but as an argument in which evidence is used at the appropriate times. It is not that the revelatory evidence is important for

1. See below, p. 222-237. Bahranī's endorsement of the role of the scholars in disseminating knowledge of the law, is also evidence that Akhbarīsm did not necessarily reduce the role of the *'ulamā'*.

outlined at the start of M5. He disagrees with the first because the *jāhil* is forgiven, providing he is ignorant of the ruling and not just of its application. He disagrees with the third, because intention to *fulfil* the law is, it seems, of crucial importance to him.

He is closest to the second position, but also has some differences with the proposers of this view:

> Their position is that the prayer of the [ignorant] commoner is valid, whatever it be like, even if it includes deviations from the obligatory actions. This is, in my opinion, in general terms, unproven. If the *jāhil* is forgiven merely because he is ignorant, and his prayer is as valid as that of a jurist who has all the requisite qualifications, and who performs all the obligatory actions, then legal obligation is completely destroyed. What then is the point of the lawgiver giving a ruling and distinguishing between *halāl* and *harām*? [What is the point] of following rulings at all? [What is the point] of him sending prophets and books?[1] [*H*, 1, 83-84]

The second position must be modified because to accept it makes revelation, law and moral duties pointless. One may as well remain in ignorance. Hence Bahrānī wishes to restate the second position with more precision. The one ignorant of a ruling is excused the transgression, but this does not make his actions correct: it makes them forgiven for being incorrect. Individuals should be taught those rulings of which they were previously ignorant:

> It is known that those who live in the desert, or in the countryside, are not acquainted with the law and its rulings, unlike those who live in cities and areas which have scholars and preachers, congregational prayer and Friday prayer and [law and order which] orders the good and prohibits evil, and such things. For this reason, the Lawgiver has prohibited living in the first area [ie the desert or countryside] and recommended moving to the latter. Simply by doing this [ie moving], one acquires the ways of the law, and learns acceptable morals, and information about the prophetic rulings. [*H*, 1, 85]

Hence the ignorant desert dweller may be forgiven, but his state is not recommended. He is encouraged to move a city where he can be taught by scholars, and thereby become a better believer. This passage exemplifies another aspect of Bahrānī's theory — that of juristic authority: the scholar has the responsibility for spreading knowledge of the law amongst the

1. This criticism of the second of Bahrarnī's positions is repeated by Bihbahānī. See below, p. 26.

> knowledge]." ['*Abd al-Rahman*] said, "For which ignorance is the man forgiven: ignorance that it was forbidden, or ignorance that she is in her waiting period?" he said, "one of the types of ignorance is less important than the other: that is, ignorance that god has made it forbidden. This is because [with this sort of ignorance] he was unable to perform *ihtiyāt* (caution)." [*H*, 1, 73-74]

This report summarises Bahrānī's epistemology: there are two types of ignorance: ignorance that marriage during the '*idda* is forbidden and ignorance that the woman was in her '*idda*. These correspond to two types of knowledge: knowledge of a ruling and knowledge of how to apply that ruling. This distinction is of great importance to Bahrānī, and one which reappears throughout his legal theory. If a person knows of no ruling concerning an action (that is, if he perceives the sources of revelation to be silent), then he is in an entirely different position from one who knows what the ruling is, but does not know how to apply it to a specific case. The difference is as follows:

1) the one who knows the ruling, but does not know if it applies in a particular case, can be cautious; ie he can act as if the ruling is in force and thereby ensure compliance with the law;

2) the one who knows nothing of the law (even if there is a ruling, the perceives revelatory silence) is not in a position to be caution. If he were cautious in all cases of perceived revelatory silence, he would treat all unsanctioned actions as forbidden. Life would be intolerably difficult.

Now, the person in the second position is excused by the Lawgiver, whilst the first is not. The second could not have avoided his transgression, whilst the first could have fulfilled the law by being cautious:

> It is understood from the *akhbār* that the one *jāhil* according to [the first meaning above] is not excused. Rather it is obligatory for him to investigate and search through the legal indicators or ask [the woman]. If there is no ruling found, then he must suspend making a ruling, or issuing an opinion, and rest upon the shore of caution in his action...
>
> As for the one *jāhil* according [to the second meaning above], there is no doubt that he is forgiven. [*H*, 1, 82-83]

Hence the person who did not know that it was forbidden to marry a woman during her 'idda is forgiven; but the one who knew this rule and did not investigate (and if no clear rule was forthcoming, did not act with caution) is not forgiven.[1]

From this it becomes clear that Bahrānī supports none of the positions

1. For a fuller discussion of *ihtiyāt*, see below, p. 112-115.

Bahrānī, throughout his Prologues, traces the origins of disputes to perceived contradictions in the *akhbār*. If these perceived contradictions can be resolved, the dispute disappears. Through his subsequent argumentation, Bahrānī considers himself to have resolved the contradictions, and thereby eliminated the dispute. This technique exemplifies a number of important elements of Bahrānī's theory. First, the source of the authority is nearly always Imamic reports. The *akhbār* of the Imams, and not human reason (*'aql*), or indeed the Qur'ān and Prophetic *Sunna* directly, are the basis of this proofs. The primacy of the evidence of the *akhbār* over other possible sources of evidence is characteristic of Bahrānī's argumentation. Second, he rarely engages in direct, ad hominem criticism of his opponents, preferring to label them as "a group of our colleagues" or "some of our fellow Shī'ā" or similar locutions. Other *Akhbāri*s had engaged in personal criticism of *mujtahid* scholars, vilifying and at times ridiculing their work. Bahrānī, though considering his *mujtahid* opponents to be incorrect, wishes to demonstrate that their theories are simply unsupported by the *akhbār*. Third, positions which appear to have no support from the *akhbār*, such as the third position outlined above, are not discussed further. Since they are unjustified by the most important type of evidence (Imamic reports), they do not even deserve criticism. They are, in effect, not even potentially valid Shī'i positions.

After citing eleven *akhbār*, and referring to many more, Bahrānī begin his own exposition:

> It is possible to combine [the messages of] these *akhbār* into a number of points, the most obvious of which is that, just as the term *jāhil* [ignorant] designates one who neglects the ruling completely, it also designates one who does not know the ruling, wethere he has doubt [*shakk* — as to its existence] or an opinion [as to its existence].[*H*, 1, 82]

These two types of ignorance (*Jahāla*) are exemplified by a report. 'Abd al-Rahman b. Hajjāj asked Abū Ja'far for his ruling concerning a man who had married a woman during her waiting period (*'idda*). The *'idda* is the period after a woman divorces, during which she is not permitted to re-marry. The man did not know the woman was in her waiting period, and the question, therefore, concerns whether or not illegitimate sexual intercourse had occurred (*zinā*):

> He [the Imam] said, "No. If it was out of ignorance, then he may resume sexual relations with her, after the *'idda* has finished. The people are forgiven for ignorance of what is beyond [their

mujtahid may know that his advice is merely his best effort to present the law, but this distinction has no relevance for the *mukallaf*.

In these three positions, one is dealing with different definitions of ignorance. Whilst the second and third groups are describing ignorance of the law in reality. the first group is describing ignorance of the *mujtahid's* version of the law. That is, the law is conceived as having two tiers: reality and perception (which at times may coincide, and at others may not — the crucial point being one does not know when this coincidence occurs — that knowledge is limited to God alone).

As will become clear, Bahrānī's own stance in this dispute is a nuanced version of the second position. He begins his discussion of the three positions by arguing that the dispute originates in apparently conflicting reports from the Imams concerning the status of the *jāhil*(*zawāhir al-akhbār fi'l-mas'ala lā takhlū an tanāqudin*). Some reports imply the validity of the first position, such as:

Imam Sādīq said, "People only perish because they do not ask." [H, 1, 78]

This is taken as evidence for the first position because it implies that if they ask, people will not perish. Those who should be asked are the imams (when present) or the *mujtahids* (when the imams are absent).[1]

Other reports support the second opinion:

> Someone asked the Imam], "A man forgets that he is in a state of ritual purity for pilgrimage and [forgets that he] has declared his intention to perform pilgrimage, or is ignorant [of the rules concerning the preparation for pilgrimage]; is his *tawwqf* and say [a reference to two pilgrimage rituals] valid?" he said, " his intention (*niyyatuhu*) compensates him. When he has expressed an intention to do [pilgrimage], men his pilgrimage is complete, even if the new moon has not set in." [*H*, 1, 79]

Even when the person performs the pilgrimage rituals incorrectly, even when he does it at the wrong time, if this intention is sound, then he is considered to have fulfilled the duty. If this is the case with pilgrimage, then by analogy, it is the case with other legal obligations. There are no *akhbār* quoted which support the third position, and Bahrānī discusses it no further.

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1. Whether such an implication is valid is disputed. The reasoning here is a type of conditional implication (*mafhūm al-shart*), one of the *mafāhim al-mukhālafa* discussed below, p. 153 and p. 179-180. The reasoning is as follows: if the people do not ask will they perish, therefore if they ask, they will not perish. This type of reasoning is accepted by Bahrānī, not because of its rational validity, but because the Imāms themselves legitimated its use. However, with respect to this particular report (*khabār*), he considers the implied order to ask to mean "ask the Imām" and not necessarily the *mujtahid*.

fingernails (eg he wishes to attack someone more effectively after he has finished prayer), but the fact of performance satisfies the law. Hence the mukallaf is forgiven for not fulfilling the law in terms of intention, as long as he fulfils it in terms of action.

The second group argues further that even if the *mukallaf* fails to clean his fingernails through ignorance that this is an essential element of the purifIcation ritual, he is excused any legal consequence of his failure: his prayer is valid. The intention to perform a valid prayer overrides any mistakes in the performance of the duty which came about through ignorance of the law in reality. Whilst the third group accepted a prayer as valid if the actions were performed, even though the intention was absent, the second group dispenses with the requirement of correct action, as long as the intention to perform prayer exists.

The first group argues that the status of the *mukallaf* depends on where the ignorance of the law in reality has originated. A *mukallaf* may be ignorant of the duty to clean one's fingernails because he has refused to seek guidance on the matter from an acknowledged authority (a *mujtahid*), or he may be ignorant of the duty because a *mujtahid* has wrongly informed him. The latter mistake is forgiven because the ordinary believer could not have done otherwise. The first type of ignorance is inexcusable. One who refuses to obtain for himself the guidance necessary to fulfil the law of God is not forgiven his errors. Even if by chance, some of his actions accord with the rulings of God, his intention is faulty. For the first group, all legal knowledge relevant to the *mukallaf's* obedience to God's law comes through the *mujtahid* who is best qualified to present the Shari'a to the *mukallaf*. If a *mukallaf* acts without consulting the *mujtahid*, he will have no knowledge of the law, and hence is not only extremely unlikely to perform the appropriate actions, but will also have failed the requirement of intention. Without the *mujtahid's* guidance, the individual does not know which actions he should intend to be part of his ritual performance, and which are dispensable. For this group, the *jāhil*, or ignorant one, is someone who has opted out of the system whereby legal knowledge is gained ("he is neither *mujtahid* nor *muqallid*"). He therefore has no legal knowledge even if, by chance, his actions might appear to conform to the law. As will become clear, in Bihbahanī's legal theory this does not mean that the *mujtahid's* view is equivalent to the law in reality. Bihbahānī recognises that scholars can, at times, be wrong about legal matters. The important element is that, as far as the *muqallid* (ie the *mukallaf*) is concerned, the legal advice of the *mujtahid* is all the law he needs to comply with his obligations before God. The

that the prayer of the ignorant believers (*al-'awamrri*) is valid, whatever it may be [ie whether it accords with the law or not].

[3] Some restrict [the forgiveness] to when it accords with reality only. [H, 1, 77-78]

The word "reality" here (*al-waqf*) refers to God's law: that is, the legal reality which forms a fundamental element of Bahrānī's (and for that matter Bihbahānī's) legal system. God has decreed the correct manner in which the duty of, say, prayer should be performed. Since God is ultimate reality, these rulings are a legal reality to which all humankind is subject. The three positions on the status of the ignorant believer (*al-'amml al-jāhil or al-mukallaf al-jāhīl*) centre around different answers to the question "what happens when a believer's actions transgress the law of God, not because he or she knows the law and wishes to avoid obeying it, but because he or she does not know what, in reality, God has ruled?" Or to put it another way, "what are the legal consequences for someone who is under the false impression that he has fulfilled the requirements of the law?"

For example, cleaning under one's fingernails is considered by some to be an essential element of the ritual purification of an individual preparing for prayer. However, to complete one's ritual purification correctly, one must not only perform certain actions: one must also intend that by performing these actions, one is effecting one's ritual purification in accordance with the law of God. It is this intention (*niyya*) which distinguishes cleaning the fingernails for the sake of personal hygiene and performing the same action as part of one's preparation for prayer. The first may be laudable, but does not form part of an act of worship (*ibadā*). The second is part of the means whereby an individual believer may perform his duty of prayer in a valid manner. Using this example, the three positions in the above quote can be illustrated in reverse order.

The third group considers ignorance to be forgiven (or excused — ie have no legal consequences) if the action performed out of ignoranee accords with the law. By this, I take Bahranī to mean that if a *mukallaf* does not know that cleaning one's fingernails is an element of the purification ritual, then if, when preparing to pray, the *mukallaf* happens to clean his fingernails, then his prayer is valid. That is, the *mukallaf* need not intend to prepare for prayer when he cleans his fingernails, but the fact that he has cleaned his fingernails is sufficient to ensure the validity of his prayer. For this group, then, as long as the correct actions are performed, with or without intention, then the duty is fulfilled and the *mukallaf* gains credit with God. Indeed, for this group, it seems possible for the *mukallaf* to have an evil intention in cleaning his

conveniently.[1]

The topic concerns ignorance: more specifically, ignorance of God's law. If a believer commits a transgression of the law because he is ignorant (*jāhīl*) of the law, what is his status? To what penalties (either in this life or in the next) is he subject? Is he forgiven his unwitting transgression, or is ignorance no defence? Both Bahrānī and bihbahānī discuss this issue and produce quite different answers.

Bahrānī on the status of the one ignorant of God's law

M5 is entitled "on the ruling concerning the one who is ignorant of God's rulings" (*fi hukm al-jāhil bil-ahkām*). The term translated as "ruling" here (*hukm*) could be translated as "assessment".[2] The reason why I translate *hukm* as ruling here rather than assessment is that in certain circumstances assessment can have the connotation of personal opinion based on a consideration of the evidence. Such a conception has no place in Bahrānī legal theory. Ruling, I feel, captures the authority Bahrānī places, not only on the legal rules made by God (and made known through the Prophet and the Imams), but also on the supposedly simple application of these rules in a human context. Therefore when the term ruling in this book, I am referring to the Arabic term *hukm*; and for the sake of consistency, I use this translation when discussing Bihbahānī's legal theory, where the element of personal opinion is more evident.

Bahrānī begins his examination of the one ignorant of God's rulings by describing the various Shīī positions on this issue. In choosing to begin his discussion in this manner, he is utilising a standard presentation technique in Muslim legal theory. There are, he states, three positions:

> [1] The predominant position amongst the scholars is that he [the ignorant one] is not forgiven [for his transgressions]... they [the supporters of this view] deduce from this that the ritual duties of an ignorant person are invalid, even if they happen to accord with the law in reality. [An ignorant person] for them is one who is neither a *mujtahid* nor a *muqallid* [one who follows a *mujtahid*].
>
> [2]... A group of modern scholars, and many after them, have argued that the ignorant one is forgiven. The most recent scholars rule

1. Reinhart's comment that areas of *usūl al-fiqh* are interconnected is accurate ("In Islamic Legal Thought, everything seems connected to everything else", Reinhart, Before Revelation, p. 125); however, I intend to use this topic to introduce the legal theories od bahrānī and bīhbahānī. As will become clear, this issue of the status of the ignorant *mukallafis* a camera obscura with which to view their two theories.
2. See *Ibid*, p. 185, n. 2.

FH1: on *fīqh* generally
FH2-5: on the relationship between reason and revelation
FH6-13: on the cause of uncertainty in *fīqh*
FH4-19: on linguistic exegesis
FH20-23: on contradictions in revelatory sources
FH24-33: comments on the four sources of law
FH34-35: further comments on linguistic exegesis
FH36 and conclusion: on *ijtihād*

FJ is similarly presented, consisting of 35 chapters, each titled. Its chapters follow a similar pattern to those of *FH*. My attempt to group the chapters is slightly forced, and it is perhaps more accurate to describe both books (FH and FJ) as random comments, which are possibly answers to unmentioned questions.

Though most areas associated with Muslim legal theory are discussed by Bihbahānī, and a position declared, compared with Bahrānī, the discussion is quite chaotic. I have, therefore, allowed Bahrānī's presentation to dictate the structure of this book, and will present Bihbahānī position, as laid out in the different chapters of *FH* and *FJ*, as a response to Bahrānī's theory. Nearly all of the issues dealt with by Bahrānī are also discussed in Bihbaham's work, at times in a manner which indicates that Bihbahānī has undoubtedly read the prologues, or at least heard Bahrānī teach the ideas contained within them, and is therefore presenting a refutation.[1] The texts have a polemic flavour. Bahrānī critiques previous *mujtahid* scholarship; the texts have a polemic flavor. Bahrānī critiques previous *mujtahid* scholarship; Bihbahānī critiques *Akhbāri* criticisms of *mujtahid* scholarship. In polemic texts like these, it is not surprising that areas of agreement are ignored or only mentioned in passing. The aim of the author is to refute an opponent's position, and hence the perceived weaknesses of that position constitute the major focus of attention. This is less true for Bahrānī than for Bihbahānī, as Bahrānī's presentation resembles more closely the models of the genre of *usūl al-fīqh* known from the classical period. However, there are lacunae in both accounts, particularly in the area of linguistic exegesis.[2] At times, therefore, it has been necessary to place the passages analysed in their theorical context, since the passages themselves are not self-explanatory.

In order to introduce the method of legal reasoning found in the two works of the two authors, I have selected one topic which can be isolated

1. See, for example, the story related in Davānī, vahid-e bihbahani, p. 124-125 in which bahrānī and bihbahānī argue about *dalīl al-'aql* all night in the courtyard of the *haram*.
2. See below, p. 147-164.

M4: "on caution"(*H*, 1, 68-77)

M5: "on the ruling concerning the one ignorant of rulings"(*H*, 1, 77-87)

M6: "on contradiction and preference amongst [conflicting] *akhbār*"(*H*, 1, 87-112)

M7: "that the positive and negative commands designate, literally, obligation and prohibition."(*H*, 1, 112-118)

M8: concerning the legal-literal meaning of words (*H*, 1, 118-121)

M9: concerning the legal application of descriptions (*H*, 1, 121-125)

M10: "on explaining the probative force, or lack of it, of the rational indicator" (H, 1, 125-133)

M11: " on all the legal principles and guiding rules upon which all juristic rulings are based"(*H*, 1, 133-166)

M12: "concerning the difference between the *mujtahid* and the *Akhbāri*" (H, 1, 167-170)

My analysis in the following pages generally follows Bahrānī's presentation. By adopting his schema, I hope to convery to the reader the general structure and formulation of argument in an Akhbārī exposition of *usūal-fīqh*. The first eleven Prologues can be grouped into four categories:

1) M1 -3 concerning the sources of law

2) M4 -6 concerning the legitimate means of resolving uncertainty in the texts of the sources

3) M7 -9 concerning legitimate exegesis

4) M10 -11 concerning means of deriving on matters of apparent textual silence.

I analyse this structure more thoroughly in my concluding remarks. Suffice to say here that this structure follows what is, for Bahrānī, a logical progression of ideas: textual sources — ambiguity in those sources — non-textual sources. This progression clearly aims to provide the reader with a comprehensive theory of law, through which the Shari'a might be known.

Bihbahānī's *al-Fawa'id al-ha'iriyya* is a very different composition. It consists of two parts, sometimes called *al-Fawā'id al-hā'iriyya* (heron *FH*)[1] and *al-Fawā'id al-jadīda* (heron *Fj*).

Fh is divided into an introduction, 36 chapters concerned with different areas of legal theory (each called a *Ja'ida* and numbered, hereon referred to as FH1, FH2 etc) and a conclusion. The 36 chapters are each given a short title. There seems to be no strict organizing principle behind these chapters, though they can be roughly grouped as follows:

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1. Some sources refer to these as *al-Fawā'id al-qadīma*. I follow the system of the editor of the volume which contains the two works.

some sources.[1]

The two works which form the focus of this book do not by any means exhaust the writings of either scholar. Since both wrote extensively on *usūl al-fīqh*, *fīqh* and other scholarly disciplines, it has been convenient at certain points to refer to their other works as a means of clarification.[2] However, the bulk of the following analysis is based on:

1) Bahrānī's introduction on *usūl al-fīqh*, found in volume one of his *al-Hadā'iq al-nādira fi ahkām al-'itra al-tāhira*.[3]

2) Bihbahanī's *al-Fawā'id al-hā'iriyya*, which includes, in the printed edition, his additional comments entitled *al-Fawā'id al-jadīda*.[4]

The reason for selecting these two works is that they represent the authors' fullest accounts of their legal theory. Both, it appears, were completed towards the end of their lives,[5] and although there are no direct quotations from one in the other, there is some evidence to suggest that Bihbahānī's work is a refutation of the legal theory laid out in *al-Hadā'iq*, or at least, that is a refutation of the scholarly tradition of which Bahrānī's writing forms an important part. Before embarking on an analysis of the works, it is perhaps useful to gain an understanding of their overall structure.

The introduction to Bahrānī's respected an still popular work of *furū' al-fīqh, al-Hadā'iq al-nādira* (hereon abbreviated to *H*), is divided into twelve sections, each called a *muqaddima* (or prologue, heron abbreviated to m). The Prologues are of varying lengh, and this variety, to an extent, represents Bahrānī's perception that some areas of *usūl al-fīqh* require more detailed analysis than others. The Prologues concern the following subjects:

Introduction and prayers (*H*, 1, 2-4)

M1: concerning the historical accuracy of the *akhbār* (*H*, 1, 4-14)

M2: concerning the division of the *akhbār* into four categories of varying reliability (*H*, 1, 14-26)

M3: "on the sources of the legal rulings" (*H*, 1, 26-68)

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1. See, for example, *khwānsārī, rawdāt*, 2, p. 93.
2. These works include Bahrānī's *al-Durar al-najafyya* (a compendium of various legal questions) and *'Aqd al-jawāhir al-nūrāwiyya* (answer to question from shaykh hasan). Additional works by Bihbahānī include a collection of treatises, recently published, entitled *al-Rasa'il al-usuliyya*, which includes *al-Risala fi'l-ijtihad wa'l-akhbar*, together with his introduction to the biographical dictionary, *Minhaj al-maqal*, by nasr allāh al-astarābādī, entitled *al-ta'līqāt al-bihbahāniyya*.
3. See *Tihrānī Dharī'a*, 6, p. 289-290.
4. *Ibid*, 16, p. 329.
5. This is demonstrated by references to previous works in both books. In the *Hadā'iq*, *Durar* is referred to at H, 1, p. 35, p. 78 and p. 125. In *al-Fawa'id*, there are references to the various *rasā'il* at *FH*, p. 133, p. 215, p. 310 and to *al-Ta'līqat āt* at *FH*, p. 143.

work on *al-Hadā'iq*, though he wrote a large number of other treatises on aspects of legal theory, applied legal theory, biography, some minor works on *kalām* and a work entitled *al-Kashkūl*, which is often compared to the collection of anecdotes of the same name by Shaykh al-Bahā'i.[1] After 36 years of teaching in Karbala and Najaf, Bahrānī died in 1186/1772.[2] Though his *al-Hadā'iq* was left unfinished, his students reconstructed parts of the remaining sections from his lectures. Muhammad Bāqir b. Muhammad Akmal al-Bihbahānī (also named al-Wahid al-Bihbahanī) was born in Isfahan in 1116/1704-6 or 1 1 18/1706-7.[3] He was, then, ten years Bahranī's junior. He studied with his father, who took him to the Shrine Cities at an unspecified date, where he stayed and studied. How long after his arrival in Karbala he began to teach Usūli thought, is unknown, but it cannot have been immediately, for the Shrine Cities were dominated by *Akhbārī*s, and Bihbahānī was probably only a young student. It is recorded that he began teaching in secret, but after againing a following, and after inducing some of Bahram's students to join his circle, he began to challenge Bahranī publicly, debating with him over matters of both *usūl al-fiqh* and *furū' al-fiqh*. After Bahrānīs death in 1186/1772, when bihbahānī was 70 years old, the stage was set for his unchallenged intellectual leadership in Karbala and Najaf. through his efforts, Usuli ideas began to be taught in most of the *madrasas* (seminaries) of the Shrine Cities, and *Akhbāri* students converted, it seems, in great numbers. He trained a generation of *mujtahids* who dominated religious life in both Iraq and Iran, spreading Usūli thought and eliminating the last remnants of *Akhbāri* legal doctrine. Considering his importance in reviving the Usūli school, his writings have not been published in large number, and many remain in manuscript form. He never wrote a work of *furū' al-fiqh*, though he did write a number of commentaries on parts of previous works as well as a large number of treatises on specific areas of law. His main literary output was in the area of legal theory, which included his famous *al-Risāla fi'l-ijtihād wa'l-akhbār* and *al-Fawā'id al-hā'irijya*, though his energy was channelled, in the main, into teaching and building a significant power base of supporters, both within and outside of the scholarly communities of the shrine cities. He died in 1206/1791-92, and is accorded the titles *mujaddid* (renewer) and *mu'assis* (re-founder) of the Usūli school in

1. See algar, *Religion And State*, p. 34.
2. For the earliest biographies of Bahrani, see Ha'iri, *Muntaha*, p. 334; Kashmin, *Nujum*, p. 279; Tunukabum, *Qisās*, p. 201-204; Khwansarī, *Rawdāt*, 8, p. 203-205.
3. For the earliest biographies of Bihbahani, see *Ha'iri,muntahā*, p. 29; kashmīrī. *Nijūm*, p. 305; tunukābunī, *Qiās*, p. 261-264; khwānsārī, *rawdāt*, 2, p. 93-95. See also the lengthy work, which places Bihbahānī in historical context, Davanī, *Vahld-e Bihbahānī*.

give quite different portrayals of Bahrānī and Bihbahānī.[1] Some describe them as bitter enemies, whilst others portray their relations as characterised by a *noblesse oblige*, where each viewed the other with learned respect. An account of how Bihbahānī led the prayers at Bahrānī's funeral gives credence to the latter representation.[2] The writers of the biographical dictionaries were writing from a position of the usūlī victory over the *Akhbāri*s in the early thirteenth cetury AH/nineteenth century CE, and this persoective clearly coloured their presentation of the last days of *Akhbāri* dominance in the Shrine Cities. They were also, generally, writing within a tradition of scholarship which dictated the structure of their works and the selection of information for inclusion. These factors mitigate an accurate reconstruction of both the lives of the two scholars, and their relationship, if indeed such a project is appropriate. What follows, then, is a brief resume of their careers as found in these sources.

We are fortunate in having a short autobiography of Yūsuf b. Ahmad al-Bahrānī, found at the end of his own biographical dictionary, *Lu'lu'at al-Bahray*.[3] In that autobiography, which forms the basis of many of the subsequent biographies of his life, he describes his turbulent childhood in Eastern Arabia. He was born in Māhūz, a village on the island of Bahrain, in1107/1695-6. Initially, he studied with his grandfather and father, but after the political upheavals in Bahrain, including the attacks by the Omanis (termed *khawārij* by Bahrānī) and the Persians, he moved to qatif on the mainland, where, after the death of his father, he studied with Shaykh Husayn al-Māhūzī. His scholarly training was hampered by the responsibilities left to him by his father, including looking after his step-brothers and sisters, but he quit Bahrain for Iran soon after the fall of the Safavids in 1135/1722. At this point he must have been in his late twenties. He gained some protection from local governors in Shiraz, and later in Fasa. In Fasa he began his major work of applied legal theory, *al-Hadā'iq al-nādira*. Having completed much of the first chapter on ritual purity, he was forced to flee once more, probably due to the disturbances which followed the death of Nādir Shāh Afshār (in 1159/1747). He went to the 'Atabāt, where he quickly rose to prominence as a teacher and writer, gathering a substantial number of pupils around him. This was the time of the preeminence of Akhbārī thought in the Shrine Cities, and Bahrānī is characterised as the greatest *Akhbāri* writer of this period. He continued his

1. See Gleaver, 'Akhbārī-Usūlī dispute'.
2. See Hā'Iri, *Muntahā*, p. 335; kashmīrī, *Nujūm*, p. 283; khwānsārī, *Rawdāt*, 8, p. 206.
3. Bahrānī, *Lu'Lu'at*, p. 442-449.

the law was not only unnecessary, but represented an encroachment on the central-ity of the Imam's position. certainly there were scholars with such views before Astarābādī, but, I would argue, the term *akhbārī* (both in sympathetic and antipathetic texts) only gains a coherent and exclusive meaning after Astarābādī and his critique of the Shīī legal theory dominant in his time. The fact that in the sources the *Akhbāri*- Usūlī conflict is normally referred to as the Akhbāri-*mujtahi*d dispute is, in my view, further evidence that the attitude towards *ijtihād* was considered the essential criterion in deciding whether a scholar was, or was not, an Akhbārī.[1]

Whether or not the *Akhbāri* school predates Astarābādi, it is clear that after Astarābādi it underwent a period of growth and increased popularity amongst the students and teachers in the major Shīī centres of learning. A number of important Iranian and Arab scholars in Iran during the Safavid period are identified as *Akhbāri*s, as were some scholars outside of Iran. In the shrine cities of Najaf and Karbala (termed the *'Atabāt*), in eastern Arabia (Bahrain and Ahsa) and elsewhere in the Shīī world, the Akhbārī school established itself as a viable alternative to the Usuli *mujtahids*. In the twelfth century AH/eighteenth century CE, Akhbārī dominance in the Shrine Cities resulted.[2] Some sources sedcribe Usūli *figh* being taught in secret, discrimination against Usūilis and students of Usūili *fiqh* having to hide their books with kerchiefs whilst walking in the streets for fear of attack.[3]

It was in this atmosphere that the two scholars whose writings form the subject of this book rose to prominence; namely, Yusuf b. ahmad al-Bahrānī and Muhammad baqir b. Muhammad akmal al-bihbahānī. Biographical sources describe the former as an Akhbārī, and credit the latter with the revival of the Usūlī *mujtahid* school in the Shrine Cities. The sources also describe how the two met, disputed with one another, vied for intellectual hegemony and competed for students. Elsewhere, I have examined how the biographical sources utilise the same historical data (with some variations) to

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1. Newman notices the use of the term *mujtahid* in Samahijl's text, but explains it through possible terminological variety: "Usūlī may not have been uniformly used in the late Safawid period", Newman, "Akhbarī-Usuālī Dispute, Part 1", p. 38, n. 6. I would argu that the use of the term, in Samahiji's text and elsewhere, is an indication that the key point of difference between Akhbārīs and their opponents was *ijtīhād.*

2. See Cole, "Shīī Clerics" and Roots, p. 31-32. Though Cole argues elsewhere that Akhban dominance was not established in Iran, see his "Ideology, Ethics and Philosophical Discourse", p. 32-34

3. The main source for such an account is Tunukabunī's *Qisas Al-'Ulama'*, though this text is, to an extent, problematic as a historical source (see Gleave, "Tunukābunī's *Qisās* al-*'Ulamā"*). See Tunukābunī, *Qisās*, p. 201 and also Khwānsārī, *Rawdāt,* 2, p. 95.

This difference of opinion amongst commentators is, it seems to me, a debate concerning the use of the term *akhbāri*: is there sufficient evidence in pre-Astarābādī texts to justify positing the existence of a recognisable, coherent school of thought within Shī'īsm termed "*akhbāri*"? I shall not attempt to offer a definitive answer to this question here, but it is clear that the answer will depend on the manner in which *akhbāri* beliefs are described, and how willing one is to subsume other terms, such as *hashawiyya* and *ashāb al-hadīth*, under the heading "*Akhbārī*". Furthermore, is it not presumptuous to assume that a single, coherent set of ideas was associated with the label akhban during Shī'ī history? What is needed is a detailed analysis of the term, as it is used in Shī'ī and non-Shī'ī works, from the earliest period onwards, and that has yet to be undertaken.

This study, since it concerns legal theory, inevitably tends towards the former of the two characterisations outlined above. This, I think, is more true to the portrayal of *Akhbāri*sm in Shī'ī texts, notwithstanding the use of the term akhbārī in pre-Astarābādī writings. Both Akhbārīs and usūli had an interest in portraying their ideas as having a long and distinguished pedigree, projecting them back to the earliest times, and after Astarābādī, both groups of scholars were involved in a heavy, at times labored, re-interpretation of Shī'ī history to support their own views.[1] Establishing such a pedigree, or more accurately, presenting one's ideas as being unoriginal and historically prior to one's opponents, is part of the conservatism which characterises much of classical (and indeed modern) Islamic literature. It should not dictate the manner in which an assessment of the *Akhbāri* school, outside of the Shī'ī tradition, is formulated. Of course, it is acceptable to describe, in general terms, Akhbārīs as traditionalists, for they argued that the *akhbār* of the Imams were sufficient sources of knowledge, and a jurist's opinion as to

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⇦ questioned the position of the 'ulama' as mujtahids". The denial of *mujtahid* authority should not necessarily be seen as a denial of scholarly authority. Litvak, *Shi'i Scholars*, p. 14: "Akhbārīs rejected the excercise of *ijtihād*, and with it the extension of the Imām's authority to the ulama". Moussavi's comments are more instructive; Moussavi, Religious Authority, p. 93: Astarabādi's denial of mujtahid authority "should not be viwed as a denial of any juristic authority for the jurists during the absence of the Imām". Stewart, though he criticises the use of the term jurist (Stewart, *Islamic Legal Orthodoxy*, p. 196, n. 75) when astarabādī means *hadīth* transmitters, generally concurs that the Akhbārīs had a conception of scholarly authority, which was to "stress the need to consult the transmitters of the traditions of the Imām concerning legal cases which arise during the occultation" (Stewart, *Ibid.*, p. 196. If this is meant to convey that Akhbārīs had no concept of a *faqīh* (jurist), this is certainly not the case with Bahrānī, see below, p. 222-237.

1. Stewart (*Islamic Legal Orthodoxy*, p. 202-207) assesses whether the Akhbārī version or history is an accurate one. I do not think this is a particularly useful exercise.

astarābādi is explicity associated with the founding of the Akhbārī school.[1]

An alternative view is that akhbarism predated Astarābādi, and encompassed more that just the rejection of *ijtihād*. Madelung cites a sixth AH/twelfth century CE text in which the term *akhbarī* is used to refer to a Shī'ī group which resisted the incorporation of Mu'tazilī ideas into Shī'ī thought (ie it began as a criticism of of *kalām*).[2] Newman has linked *Akhbārism*, at least in its extreme or pure form, with a rejection, not just of *ijtihād*, but of juristic authority more generally. Hence for newman, *akhbāris* of a more extreme kinde, rejected the role of the jurist in the collection of community taxes, the implementation of legal punishments and the congregation of Friday prayer (all of which were matters of some debate, since strictly speaking they were tasks reserved for the Imam).[3] Newman also hints that such extreme *Akhbāris* rejected the legitimacy of any government during the *ghayba* of the twelfth imam and considered cooperation with the existing political power to be forbidden. The issue of authority in the absence of the Imam had been discussed from the earliest times of the Shī'ī movement, even it seems when the Imams were present. If the *akhbāri* school is portrayed in this manner, then inevitably it predates Astarābādī's work.[4]

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1. Browne, *literary History*, 4, p. 374: astarabādī "is generally accounted as the founder of the Akhban school"; Calder, "Structure of Authority", p. 231, n. 18: "I think the Akhbari movement is best understood as beginning where Shi'ī historians see it beginning, with the attack of Astarābādī on 'Allāma's innovation"; see also similar comments in "Doubt and Prerogative", p. 68, n. 31. See also the notes in Newman, "Akhbārī-Usūlī Dispute, Part 2", p. 250, n. 1 and p. 25 1 , n. 3. Moussavi describes Astarabadi as providing a "new juridical base for akhbārism", moussavi, *Religious Authority*, p. 92.

2. Madelung, 'Imāmism and mu'tazilite theology", p. 21, n. 1.

3. Newman, "Akhbāri-Usūlī Dispute, Part 2", p. 261: "The *Muhaddith* and the *mujtahid-muhaddith* are the 'pure' and 'moderate' Akhban respectively", together with p. 260: "the *muhaddith* also abjured the extension of the authority of the *faqīh* over nin-judical affairs of daily import to the community and the accommodation with the established political institution".

4. This, indeed, is the pretext of Newman's extensive examination of the "Akhbārā' ' and "Usūli" schools in his doctoral thesis entitled, "The Development and Political Significance of the Rationalist (Usūli) and Traditionalist (Akhbārī) Schools in imāmī shī'ī history from the third/ninth to the tenth/sixteenth century", see particularly the introduction, p. 1-56. The title, of course, prejudges the issue of whether there were recognizable school during this period, also whether the schools" doctrines had political significance. This, in my opinion, over simplistic view, has become almost axiomatic for writers on Iranian and Shi'ite religious history. See algar, *religion and state*, p. 35; the akhbārīs' "whole tendency was to restrict the role of the *'ulamā'*, both theoretically and practically."; Kohlberg, "Akbarīya", p. 718: He speaks of the Akhbārīs' "refusal to consider any role for intermediaries between believers and the hidden Imām.' More circumspect is Hairi, *Shi'ism and Constitutionalism*, p. 66-67: the akhbārīs "seriously ⇨

and eighth century AH/thirteenth and fourteenth century CE jurists such as al-Muhaqqiq Jafar al-Hillī(d. 676/1277) and most famously al-'Allāma al-Hillī (d. 726/1325), who incorporated, first in a modified form, and then in a full-blown form, the theory of *ijtihād* in their legal writings. For 'Allāma in particular, much of the law was less than certain, and during the absence of the imam, Shīī jurists were left to base their rulings on their own *ijtīhād*, resulting in opinions (*zunūn*) rather than certainty (*'ilm, qat'*).[1] Until the eleventh century CE, *ijtīhād* was a central element of Shīī theory and the option of the *mujtahid* (the one qualified to perform *ijtihād*) was accepted as having probative force for the majority, non- scholarly community (termed *muqallīd*, literally, "one who follows").

Qjyās, at least formally, never reached such a position of acceptance for Shīī writers, which must be partly due to the uncompromising manner in which the Imams are reported to have condemned its use. The extent to which the incorporation of *ijtihād* into legal theory affected the writing of *furū' al-fiqh* is at present under-researched.

What is clear is that theorical juristic authority was justified in works of Shīī *usūl al-fiqh* (just as it was in Sunni works) by reference to this theory, and as the theory developed, so did the theoretical authority of the jurist class.[2]

In the eleventh century AH/seventeenth century ce, there emerged a challenge to this theory, dominant in Shīī *usūl* writing since the time of 'Allama. This challenge came in the form of what has been termed the *akhbāri* "school" or "movement" or "trend".[3] Characterisations of the *Akhbāri* "school", if it can be called such, vary amongst commentators. There are those who portray the school as beginning with the works of Muhammad amin al-astarābadi (d. 1036/1627) entiled al-*fawā'id al-madaniyya*. These writers generally view a rejection of *ijtihād* as central to *akhbāri* doctrine, and, of course, such a rejection is only possible after a theory of *ijtihād* was incorporated into Shīī legal theory. As evidence for this view, such writers cite a number of biographical works in which

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1. See Calder, "Doubt and Prerogative"; that it was epistemology which drove the rejection of *ijtihād* by Shīī jurists, and a modification of that epistemology which led to its acceptance, seems clear. That this modification was the result of practical considerations is argued by Zysow, "*Ejtehād*".

2. For an account of juristic authority, and a comparison of Sunni and Shīī views, see Stewart, *Islamic Legal Orthodoxy*, p. 209-217.

3. for "school', see modarressi, "*Rationalism And Traditionalism*", p. 156 and passim; for "movement", see moussavi, *Religious Authority*, p. 92: for "trend", see stewart, *Islamic legal orthodoxy*, p. 182. Stewart arhue that akhbārīsm was an *antimadhhab* (ie anti-school) trend, see *Ibid*, p. 194-197.

varied, thought the factors which affected this phenomenon are at present unclear and beyond the scope of this work.

If the bibliogaraphic references are to be believed, Shīītes began to write works of legal theory in the fourth century AH/ninth century CE, though none of these works have yet been discovered to be extant.[1] The earliest extant work is found only in abbreviated form— the *Tadhkira bi'l-usūl al-fīqh* of al-Shaykh al-Mufīd (d. 412/1022).[2]

The earliest works of *usūl al-fīqh*, with the recognisable elements of the genre as found in the Sunni tradition of the time, are al-Shanf al-Murtada's (d. 436/1044) al-Dhan'a ila usul al-sharī'a and Shaykh al-Ta'ifa Muhammad b. hassan al-Tūsi's (d. 460/1067) remains to be done on the development of early Shīī usul al-fīqh, but it seems clear that one of the emphases of early Shīī theory was a rejection of *ijtīhād* and *qiyās*, two elements of sunni theory.[3] Though the term *qiyās* was, in later Sunni works, applied to a range of interpretative procedures,[4] it can be defined, for the purposes of understanding the ShT'i polemic, as analogical reasoning.

Through qiyās, laws given in the sources might be extended to cases not mentioned in the sources, by determining the reason (*'illā*) why God decreed a certain known law, and discovering the same 'illa in a novel case.[5] *Ijtihād*, often used synonymously with qiyās in the earliest sunni and Shīī sources, designates the efforts of a suitably qualified individual (a jurist) to find a ruling in a novel case.[6] Shīī scholars, it appears, rejected these two procedures because the results were merely the jurist's opinion (*zann*), whilst they, with the words of their Imam, had a certain source of knowledge of the Shari'ā (the *akhbār*). This view was challenged in the works of the seventh

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1. For a brief account of the non-extant works of shi'I *usūl al-fiqh* listed in Ibn Nadīm's *Fihrist*, see Moussavi, *Religious Authority*, p. 76-79.
2. The *Tadhkira* is found in the *Kanz al-fawa'id*, a work by Muftd's pupil, Karājakī. See Karājakī, *Kanz al-fawa'id*, 2, p. 15-30. Due to it being in abbreviated form, it can hardly be considered a work of *usul al-fiqh* by the standards later set by the genre in Shīī jurisprudence. On its contents, see Brunschvig, "Les *usūl al-fiqh* Imāmites", p. 204-208. Stewart (*Islamic Legal orthodoxy*, p. 133-134) argues, quite persuasively, that the title of the work has been lost and the current title was that given by Karājikī, not Mufīd himself.
3. See Mǫdarressi, "Rationalism and Traditionalism", p. 143-146; Calder, "Doubt and Prerogative", p. 59-61 Moussavi, *Religious Authority*, p. 23-32 and p. 75-84.
4. See Hallāq, "Juridical *Qiyās*" ', p. 286-289, where he argues that *Qiyās* included arguments other than analogy.
5. Summaries of the use of analogy can be found in Goldziher, *zahiris*, p. 11-25; kamali, principles, p. 197-228; weiss, *God's Law*, p. 551-645; Hallāq, *Legal Theories*, p. 83-95.
6. The emergence of the doctrine of *ijtihād*, and juristic opinion generally, is analysed in Goldziher, *zahiris*, p. 6-40; Hallāq, "Was the Gate", p. 4-7 and *Legal Theories*, p. 117-124.

relationship between the genres of theoretical legal writing. Some research has been completed on the relationship between the theoretical genres (*usūl al-fīqh*, *furū' al-fīqh* and certain types of *fatāwā*) and the practical implementation of the law in history (as evidenced in court records, judges' decisions and other types of *fatāwā*) within the Sunni tradition.[1] I am most concerned here with the role and importance of legal theory. The writers of *usūl al-fīqh* (both Sunni and Shī'ī) normally present their works as descriptions of how a jurist might deduce rulings (or opinions) in areas where the revelatory sources of the law (ie the Qur'ān and the *Sunna* of the Prophet, and for Shī'īs, the example of the Imams also) provide no clear rulings. Some writers also present their works as explanations of how the law, which is already known to be true, was deduced by past scholars, who neglected to include their legal reasoning in their writings or rulings. *Usūl al-fīqh*, then, is presented as having a prescriptive aim (prescribing the method of interpretation that a jurist should use) and a justificatory aim (justifying the law, as it is already known.) whether these professed aims are accurate descriptions of the function of *usūl al-fīqh* in relation to the other legal genres is a debated point.[2] Elsewhere, with respect to the two writers featured in this book, I have tried to demonstrate that different writers utilised elements of legal theory in different ways when deducing the law. It is, I would argue. Difficult to make generalisations concerning the relationship between *usūl al-fīqh* and either the law as practiced, or the law as ideally conceived by the jurists in their works of *furū' al-fīqh*.

My approach in this book is to view *usūl al-fīqh* as a largely independent genre, works of which were written and taught in an educational setting, the main aim of which was to hone the intellectual skills of students. Undoubtedly many of those students went on to become judges (*qādīs*) and jurisconsults (*muftīs*), though with the present state of research, it is difficult to assess whether the skills they learned in their classes of *usūll al-fīqh* were actually applied to practical legal issues. The most likely, in my view, is that the influence of legal theory upon a judge's or jurisconsult's legal decisions

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1. The principal exponent of the view that there was a close relationship between theory and practice in Islamic Law is Professor Wael Hallaq. See Hallaq, "From Fatwds to *Furū*'" and "Murder in Cordoba".

2. For discussions of this issue, see Hallaq, "Usūl al-fiqh: beyond tradition" and legal theories, p. 162-206, where the presents the idea of the "worldliness" of writings of legal theory. For a different view, see calder, "Towards a Theory of ifta'", p. 160, n. 3, where he argues: "A full account of the 'function' and value of usūl would have also to take account of the tendency to make of it a closed and independent science". I have attempted to delineate this relationship with respect to Shī'ī jurisprudence in gleave, "marrying Fatimid women", esp. p. 68, n. 74.

forced the Imams at times to exercise what has been termed dissimulation (*taqiyya*). *Taqiyya* can be defined as outwardly conforming to the law of the Sunnis and their Caliph, whilst inwardly remaining implacably opposed to to their erroneous religious system. The Imams recommended such pretence to their followers, and as we shall see, *taqiyya* represents a particular problem for Twelver Shīʿī jurisprudence. Due to the doctrine of *taqiyya* (though the extent to which it was practiced was a matter of dispute), the Imams' words are always, potentially, irrelevant to the true law: they may have been mere pretence on the part of the Imams. The persecution was so intense, Twelvers believe, that the Twelfth Imam went into hiding (*ghayba*) and will reappear at some future point to rid the world of this persecution and establish true and legitimate leadership. The disappearance of the Imam, together with his continued claim on legitimate leadership, also represents a particular problem for Twelver Shīt jurisprudence: namely, who is to lead the community in the absence of the Imam? Though this issue emerged as a greater concern in Twelver writings of applied legal theory (*furū' al-fiqh*), rather than legal theory proper (*usūl al- fiqh*), the latter is also discussed in this book. Since Twelver Shīʿīsm is the only strand of Shīʿīsm that I am concerned with here, and for the sake of brevity, from hereon, the terms Shīʿīsm (a religious belief system), Shīʿīte (an adherent to that belief system) and Shīʿī (an adjective) all refer to Twelver Shīʿīsm.[1]

The origins of the belief system outlined above are the subject of much scholarly debate. Leaving this issue to one side, Shīʿīte scholars, after the Twelfth Imam's disappearance (in 260/874), developed the range of literary genres present in the Sunni scholarly tradition. Of particular concern here are the genres of legal writing, such as legal theory, applied legal theory and their subsidiary genres, including treatises (*rasā'il*), summaries of previous works (*mukhtasarāt*) and commentaries (*shurūh*). In these writing, Shīʿī legal scholars developed a conception of God's law (Sharīʿa) not greatly dissimilar from that found in contemporary Sunni sources. Given the present state of research, it is difficult to generalise about the relationship between these theoretical genres (which outlined an ideal conception of the Sharīʿa) and the law as it was applied by judges (*qudāf*) and the officers of the various Shīʿī-influenced states which appeared at different times after the Imam's disappearance. In my option, we are yet to have a clear idea of the

1. Introductions to the Twelver Shi'ite belief system have proliferated in recent years. The most comprehensive remains Momen, Shi'i Islam. See also Halm, Shiism; Jafri, Origins and Development and the collection of essays by Nasr, Dabashi and nasr, *Shi'ism* (and by the same authors, Expectatiori).

(4)
Bahrānī and Bihbahānī on the status of the one ignorant of God's law*

Robert Gleave

This book is about Twelver Shī'ī legal theory; more specifically, it is about a debate within Twelver Shī'ī legal theory, normally termed the Akhbari-Usuli conflict; more specific still, it concerns the manner in which two Shī'ī thinkers, each a protagonist of one of the parties in this dispute, constructed two very different theories as to how the law, revealed by God to the Prophet Muhammad, and known in its entirety by the Shī'ī Imams, is interpreted and promulgated to humankind.

Twelver Shī'ī belief is characterized by a conviction that during the Prophet's lifetime, 'Ali (his cousin and son-in-law) was designated as leader of the Muslim community, and Twelver Shī'ītes, unlike other Shī'ī groups, consider there to have been twelve such leaders (Imams) descended from (and including) 'All who were the rightful leaders of the Muslims. These These Imams shared some of the characteristics of the Prophet Muhammad (such as sinlessness — *'isma*) and their words and actions are considered (along with those of the Prophet) by Twelver Shī'ītes as sources of legal and religious guidance (*Sunna*). Their words and actions are recorded in books of reports, termed ahadīth (sing *hadīth*), or, more commonly, *akhbār* (sing *khabar*). The Imams differed from the Prophet in that they did not bring a revealed text (as the Prophet had done in the form of the Qur'ān, and usually associated with the term *wahy*) though they were blessed with a complete knowledge of the law (*Sharī'a*), given by God to humanity; and therefore their actions have revelatory status (they reveal the law to humanity).

The Imams were unable to assume their legitimate position as leaders due to the usurpation of power by the Sunni Caliphs. Only 'Alī was successful in becoming Caliph, and then only for a short period of time (35/656-40/661). Since they represented a threat to the Sunni Caliphs (who possessed political power), the Imams and their followers were persecuted; this persecution

* Gleave, Robert .*Inevitable Doubt: Two Theories of Shī'ī Jurisprudence* .Vol. 12. Brill, 2000, pp 1-28.

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are of equal probative force. For Bihbahānī, the dissemination, provenance and content of the report cause the quality (the probative force) to vary. Once the jurists have delineated the texts to be interpreted, the debate moves on to the rules and techniques of exegesis, and this as we shall see in the next chapter, is no less epistemologically driven.

probable consensus, and hence they will form and *ijmā'*, which will act as a proof. What is clear is that in matters of law, the latter (*zannī*) category are numerous (*huwa kathīr fī'l-fiqh*) and, therefore, as with indicators found in *surna*, the probative force of *ijmā'* is variable and disputed on a case by case basis.

Conclusion

Whether the two assessments of the textual sources of law described in this chapter have their basis in differing conceptions of community hierarchy is unclear. Certainly it would appear that Bihbahānī's view has the potential for a strict delimitation of the roles of the *mujtahid* and the commoners. The self-justification of *mujtahid* power in Bihbahānī's *Fawā'id* is all pervasive, affecting his assessment of the probative power of the Qur'ān, *sunna* and especially *ijmā'*. Whether or not this potential is absent from Bahrānī's system is analysed in Chapter Six.[1]

What is perhaps more striking is that the Akhbārī-Usūlī dispute described in this chapter concerns two radically different episte- mologies: one in which knowledge is the goal, and the other in which knowledge is recognised as an ideal, but a rare, commodity. The rules of *hadīth* criticism had been devised with the latter epistemology in mind. Bihbahānī works this tradition to expand the number of texts which can act as proofs, but also to relegate the probative force of many of these reports. Proof is not either absent or present in a report. In his nuanced epistemology, a report's force can and does vary, depending upon the probable authenticity of the source. The taxonomy of probabilities comes into play when considering contradictions between the sources, as we shall see in the next chapter.

bahrānī's search for certainty forced him to move the goal posts, or rather to pull them up and play a different game. *Hadīth* criticism is a dangerous science in which improbability is permitted to infect the law. By expanding the sources of the *sunna*, he is forced to relax the tests of authenticity meticulously developed in the main tradition. With this in mind he sets about eliminating possible challenges to the position of the *sunna* (such as *ijmā'*), or seriously reducing their potency (as in his discussion of the Qur'ān). The result is a description of the sources of law which can truly be labelled as Akhbārī, since the akhbar play a central exegetical role.

Both authors have established which texts have probative force and which do not; their assessments in quantitative terms do not differ. In qualititative terms, however, there is a significant difference: all the texts, for Bahrānī,

1. See blow, p. 222-237.

opinion (interestingly, this is also the point made by Bahrānī in his refutation of *ijmā'*).[1] "Knowing the opinion of the sinless one is impossible in our time or [in the ghayba in general]", and the possible existence of unknown *mujtahids* compounds the problematic nature of *ijmā'* during the occultation.

Bihbahānī's response is that this is indeed the case with a transmitted consensus. the Imam's opinion is difficult to obtain. However, this does not exclude the transmitted *ijmā'* from consideration — it merely makes it *zannī* not *'ilmī*. As in the discussion of *khabar al-wāhid*, the author of the *Madārik* is criticised for epistemological inconsistency, accepting *zann* in some areas but not in others. How ever, Bihbahānī goes on to state that an *ijmā'* which is transmitted through a large number of individuals—one that prevents collusion — can be a certain (*qat'ī*) proof, since it can be rationally demonstrated that it reflects (though not necessarily explicitly includes) the Imam's opinion:

'Ilm reached through conformity (*tazāfur*) and constant hearing (tasāmu') is achieved in *ijmā'* just as it is achieved in the necessities of religion. [*FJ*, 388]

The process of tawātur ensures the truth, and therefore the force of *ijmā'*.

The Akhbārī position, refuted in FJ10, is that *ijmā'* cannot be a proof because the scholars who participate in it are not sinless. If they are not sinless, then there is a possibility that they could agree upon an error. Bihbahānī refers the reader back to his arguments (both revelatory and rational) in *FH*, and adds a further counter argument: the Akhbarīs who attribute sinfulness and error to the scholars involved in an *ijmā'*, do not seem willing to accept error on the part of the scholars who collected the *akhbār*. He goads the Akhbarīs:

In general, the *faqīh* for [the Akhbarī] merely by transmitting a *hadīth* becomes sinless. Rather, the whole list of transmitters in the chain are sinless because they relate *hadīth*. But when they agree and concur upon a ruling, then they are mistaken! [FJ, 396]

In sum, then, consensus for Bihbahānī can be categorised into different forms. The fundamental distinction is between an *ijmā'* that acts as a certain proof (*ijmā' qat'ī*) and those that do not (*ijmā' zannī*). Within each of these categories there are different types of indicators which point towards an *ijmā'* having occurred. These same indicators might possibly demonstrate that an *ijmā'* will occur. The recognition of the indicators of a future *ijmā'*, however, becomes a self-fulfilling prophecy since according a current majority opinion probative force urges a future generation to consider it as a

1. See above, p. 56.

force is only *zannī*. Bihbahānī adds a word of warning—these procedures should be known only to the *mujtahids*, since only they can perform the weighing of different indicators (*tarjīh*) which will lead to a considered opinion. The followers of a *mujtahid* (the *muqallidūn*) are charged (*taklīf*) merely with following the *mujtahid*'s opinion on the matter.

On the issue of a past ijma' which is known only on the basis of an isolated report (*khabar al-wāhid*), Bihbahānī considers the probative force of such a consensus to be *zann*, since the report itself is of only possible authenticity:

The consensus transmitted by an isolated report is, in truth, a type of isolated report. [*FH*, 311]

And later in FJ10, he states:

[The evidence] which proves the probative force of the isolated report includes consensus transmitted by an isolated report. [*FJ*, 399]

The epistemological status of the report of a consensus dictates, *mutatis mutandis*, the epistemological status of the consensus.

Finally, Bihbahānī considers elements in juristic argumentation that are not *ijmā'* even though some jurists may use phrases which indicate that they might be:

Know that what they frequently claim as *ijmā'* is only general assent (*wqffaq*), not that it is a means of uncovering the opinion of the sinless one... they say, "the grammarians agree (*ajma'a*)" or "the legal the- orists (*usūlīyyīn*)[1] agree" or "the Companions came together (*ijtam'ā*) on the validity of what was soundly reported by so and so" or "the Shī'a agreed to act in accordance with the reports of so and so"... it is obvious that these instances of ijma' function as explanations when deducing opinions (*zunūn*), preferences (*rajahān*) and persuasive arguments [and not as *ijmā'*]. [*FH*, 313]

This does not mean that such "general assent" has no probative force — merely that it is not "legal" *ijmā'*. The considered opinion of the grammarians or the legal theorists is a persuasive piece of evidence, and their opinion may take precedence in certain circumstances over the opinion of others (*aqwā min kathīr al-zunūn*), but this is not *ijmā'* in its legal sense.

Later in *FJ*, Bihbahānī criticises two misguided opinions regarding consensus. In *FJ*8, he attacks Sahib al-Madarīk's "denial of the probative force of transmitted consensi", that is, consensi transmitted from previous generations. As Bihbahānī portrays him, the author of the *Madārīk* rejects these past consensi because they do not necessarily contain the Imam's

1. This is not a reference to the Usuli school, but the more common usage of usūlī, designating "one who writes *usūl al-fīqh*".

knowing that they have occurred:

What is obtained from agreement at the highest level of both the select few (*khawāss*) and the common folk (*'awāmm*) is called necessary (*darūrī*) knowledge—the necessary elements of religion and law ... at a slightly lower level, the knowledge of the elite is also called *ijmā'*. At the lowest level is *zann*, which is [the name] given to something which is widespread (*shuhra*) [but not unanimous], and the *ijmā'* which is related by one person only, [these are] called *ijmā' zannī*.

The agreements of all the community, when it is known, establishes that the opinion on which they are agreed is a "necessary element of religion and law". The *ijmā'* of the elite, meaning here the *'ulamā'*, is also evidence for knowledge, but it is not necessary, but acquired knowledge (*kasbī*, *iktisābī*). Bihbahānī says that it is acquired because it requires reasoning to understand that the consensus of the elite is an indicator of the Imam's opinion. However, after consideration it is impossible not to conclude that the consensus of the elite is also a proof. Finally, there are indicators that a consensus has occurred (or perhaps will occur) which do not bring certainty — they are termed *ijma' zannī* and they occupy the remaining sections of Bihbahānī's discussion of consensus.

In *FH*31, Bihbahānī examines those types of *ijma'* which give only *zann*. More accurately, Bihbahānī discusses those facts which indicate that an *ijmā'* has occurred. The first is an absolute majority of opinion amongst the scholars:

Know that *ijmā'* is perhaps obtained by the agreement of the majority (*ittifāq al-akthar*)... this [type of *ijma'*] is numerous in the law (*al- fiqh*). [*FH*, 309]

The key word here is "perhaps" (*rubbamā*) — indicating the possibility that majority agreement is an indicator of a consensus having occurred. The majority opinion is not a proof in itself — it is evidence (though not decisive evidence) that a consensus has taken place. Such majority opinions are widely used in the elucidation of the law (*kathīr fi'l-jiqh*).

Bihbahānī also states that the most popular opinion (which may not be an absolute majority) is also a possible indicator of consensus, as is a consensus which is constructed (*murakkab*) from the past writings of the scholars. This latter category is presumably established by means of a survey of previous on a question, and by recognizing the most popular past opinion, this opinion becomes a probable indicator of consensus. The results of procedures such asthese, however, are never certain, and only indicate the probability (or the reasonable assumption) that a consensus has been reached. Their probative

consensus on an issue that has been previously disputed — Bihbahānī writes:

When we see the Hanafīs agreeing unanimously upon a question, and the Shāfi'īs upon another question which is not the same that of the Hanafīs, then we decide that each of the two opinions is from their leader. What then do you think about the agreement of all the Muslims or the saved sect? When we see the followers of a *mujtahid* agree upon a way or a ruling, which distinguishes them from other groups, we conclude that this is from their *mujtahid.* So what do you think about the agreement of all the Muslims or the saved sect? [FH, 299]

If agreement is reached by a certain group upon an opinion which is unique to a certain group, then it is rational to view this opinion as one of the group's essential characteristics. What distinguishes one group from another is its founders, hence a unanimous opinion amongst the group must have its origins in the opinion of its founder. In the case of the Shī'a the founder is, of course, the Imam. Hence consensus, even if it does not (explicitly) include the opinion of the Imam, accords with his opinion and is therefore a proof. Attractive as this argument might appear, Bihbahānī, it seems, has not recognised that by forwarding it, he is, in effect, excluding all those in the past who have held opinions which disagree with the present consensus, even though their exclusion (which implies their heresy) was not known at the time of their writing.

From these argument, Bihbahānī concludes that ijma' has probative force:

There is, then, in general, no dispute amongst the Shi'a that *ijma'* is a proof. Dispute would, rather, be impossible for them because it is a means of uncovering the opinion of the sinless one. It is a means to a proof, like a report, and is a certain method (*tarīg ī.* [*FH*, 302]

It is like a report because, like a report, it describes (albeit by implicit approval) the Imam's opinion.

To recap then: the following types of *ijmā'* bring certain immediate knowledge:

1) Unanimous practice of the early community.

2) Unanimous practice of a later generation, which even if followed by dispute, can be shown to be the continuation of the practice of the earliest generation.

3) Unanimous agreement of a later generation upon the legal status of a particular practice, even if there has been debate in the past (despite the fact that such a position entails that those who disagreed with the eventual agreed opinion are *ex post facto* excluded from the community).

Now a *mujtahid*'s ability to use these ijma's is dependent upon him

uncertainty concerning the inclusion of the Imam's opinion. For Bihbahānī *ijmā'* has much greater potential. In FH30, bihbahānī give a purely rational argument for the authority — or probative force — of consensus. During the Prophet's life, the people followed his *sunna*. However, they did not pass on (in the form of reports) everything which the prophet said or did (ie our account of his *sunna* is incomplete). They did though continue to practice his *sunna* after his death. Similarly, the Shā'a followed their guide (the Imam) in all matters, but they did not record (in the akhbar) all the elements of this obedience. Instead they maintained the practice of the Imams within the community. If, argues Bihbahānī, one can gain knowledge of the practice of the Companions of the Imams, one can, at the same time, gain knowledge of the approved practice of the Imams. The uniform practice of the early community becomes a source of knowledge even if there is no historical evidence which suggests that this was also the Imams' practice, and "this we call *ijmā'*," states Bihbahānī:

In the time of the Imams, the truth was clear to the people since it had become a fundamental aspect of the Shī'ī faith. The situation of the Shī'a at such a time was like the situation of the community at the time of the prophet. Then, perhaps, the necessary knowledge became hidden in the second, third and fourth generations and so on until our time. However, by looking at the situation in the generation when the ruling was necessary knowledge, then perhaps certainty as to the truth of the ruling can be reached. [FH, 299]

If the reports of the early community's practice are sufficiently widespread, we can gain "certain, necessary (daruri) knowledge" of the early Shī'ī practice (and hence that of the Imam), "just like the knowledge of the existence of Mecca or basra", even though we have not been there. This is clearly identical to the process of tawa- tur — these are reports, the transmissions of which are sufficiently numerous to preclude the possibility of collusion.

Bihbahānī does not restrict himself to justifying the consensus of the early community. He endeavours to prove, again by rational argumentation, that the consensus of later generations, if it can be known, is also probative. Over the passage of time, he argues, disasters (*hawādith*) have led to an obfuscation and a concealment of the matters on which there was consensus. If it can be demonstrated that there was, at a point in the past, a consensus upon an issue, then this past consensus must reflect the practice of the early Shī'a, and therefore is evidence of the Imam's own *sunna*.

Concerning the *ijmā'* of the current generation of scholars — that is,

Bihbahānī's view of the differing levels of probative force available from reports of differing levels of probable authenticity.

When examining Bihbahānī's theory of the probative force of the *sunna* one sees a complex taxonomy. The first test whereby a text qualifies for examination is *taqiyya*: this involves an examination of the content (*matn*); to examine the *matn* one must resort to the hermeneutic principles so as to understand what the text means. Once it is established that the report is not *taqiyya*, then it is necessary to determine whether the report is widespread (*mutawātir*) or isolated (*khabar al-wāhid*). The former is certain, the latter gives rise to opinion only. This categorisation involves examination of the report's dissemination (*shuhra*). Isolated reports can, in turn, be divided according to varying degrees of coherence in their provenance (*isnād*). The most coherent (*sahīh*) give rise to a strongb probability of authenticity, and hence probative force. The less coherent (*muwaththaq* and *hasan*) are not rejected outright, but can gain probative force through a further and detailed analysis of their provenances (*al-tathabbut al- Zann*). However, it appears that they never gain the power to overrule those isolated reports which are more coherent (*sahīh*). The weak reports have no probative force in themselves. If the rulings contained within them are in accordance with the practice of the early community, they can be "repaired" (*injibār*) and thereby become stronger, not only than the *muwaththaq* and the *hasan*, but also than the *sahīh*. This test, like the first (for *taqiyya*), involves scrutiny of the *matn*, and to understand the *matn*, one has recourse to the hermeneutic principles Bihbahānī outlines elsewhere in *FH* and *FJ*. In this Bihbahānī can be seen to agree with the extremist Usūlīs (such as *Sahīb al-Madārik*) in their suspicion of the authenticity of isolated reports as a whole, but he disagrees with them regarding whether or not such reports can act as proofs. They can act as proofs, but with reduced force. Bihbahānī also agrees with the Akhbārī position that such reports can act as proofs, but disagrees with the Akhbārīs in that he believes they do not have a probative force equal to that of *mutawātir* reports—their ability to act as proofs is conditioned by the strength of other proofs which give rulings on the issue. Hence all the reports, from whateve source, are considered as texts worthy of interpretation, for they all need to be interpreted before they can be rejected (*taqiyya* reports), or accepted as certain (*mutawātir* reports), or provisionally accepted, subject to the relative strengh of other indicators *(khabar al-wāhid)*.

For bahrānī, the failure of community consensus (*ijmā'*) to achieve certainty (*qat'ī, yaqīn*), and hence probative force, was the result of the

ii) The Akhbārī position allows the possibility of there being two rulings on an issue which are both equally valid and have equal probative force. There is no means of deciding between the two. This effectively means that both are true, but Bihbaham states that "for us, the truth is one and the rest are false". If both are to be treated as true, then the people are likely to follow the easier (*ashal*, *akhaff*) ruling, and not the correct ruling.

These arguments prove that the Akhbārī view is untenable (*fasid*), but they simultaneously prove that Bihbahānī's view is correct. His '*aqlī* arguments are based upon the Mu'tazilī-Imāmī view that God's rulings have a purpose. The Imams did not (indeed, as God's agents, they could not) give misleading rulings unless there were valid reasons for doing so. The valid reason in these cases was fear of community persecution, which legitimised *taqiyya*. If the conditions which necessitated *taqiyya* cannot be demonstrated, then *taqiyya* could not have occurred.[1] Finding a report to be *taqiyya* immediately disqualifies it from having probative force, on that our two theorists agree. The difference between them lies in their optimism concerning the possibility of determining *taqiyya* on a case by case basis. Bihbahānī is much more optimistic than Bahrānī: a simple comparison with Sunni doctrine is sufficient to demonstrate that a report is potentially *taqiyya*. It becomes irrefutably *taqiyya* when contrasted with a report which contains an opposing ruling which does not agree with the Sunnis. *Tarjīh*, in its true sense, occurs between non-*taqiyya* reports. For Bahrānī, the reader may recall, *tarjīh* occurs only between *taqiyya* and non-taqiyya reports; determining *taqiyya*, when it is possible, is, for Bahrānī, the only means of determining probative force because all the akhbār are of equal historical authenticity.

Finally, for bihbahānī, determining the probative force of the indicator cointained within the report is normally a matter of *isnād* criticism; but with *taqiyya* reports this determination concerns the content (*matn*) of the report. The report, therefore, still has to be subjectedto exegesis before it can be determined as *taqiyya*. The *mujtahid* has to discover that the report is *taqiyya* before he can allow it to be a potential indicator of the law; and he can only do this by analyzing the report itself, by means of the hermeneutic described in the next chapter. Ironically then, although it appears as though Bihbahānī is going to rule out a large number of reports from being interpreted on the grounds of dissemination, provenence and content (*shuhra, isnād, matn*), when analysed closely it becomes clear that all reports are to be interpreted. Just as they are for bahrānī The difference between the thinkers lies in

1. Bahrānī also stressed this point in his argument. See above, p. 33-34.

Strictly speaking, *taqiyya* is, for Bihbahānī, not a method whereby one ruling might be preferred over another (*tarjīh*). Determining a report as non-*taqiyya* entitles it to be interpreted (assuming it is not a weak, "repaired" report). Unless it passes the test of being non- taqiyya, it has no potential probative force whatsoever.

In FJ2, Bihbahānī examines the "issue of a ruling being issued under dissimulation". He begins:

Know that a ruling is only *taqiyya* when it agrees with the doctrine of the Sunnis, either all of them or part of them. This is based upon what is well-known concerning the opinion of the ancient and modern scholars. However, one of the Akhbārīs does not agree, and he allows [the ruling] to be *taqiyya*, even if it does not agree with one of the Sunni doctrines. Rather [he allows it] merely as an addition to the doctrine of the Shī'a so that they do not know [the true ruling], will not adopt [it] and so not be killed. [FJ, 353]

The view of the unnamed Akhbārī described here is, though expressed in different terms, consonant with Bahrānī's view described above. The central point of the Akhbārī position is that taqiyya reports are difficult to identify since the Imams did not, it appears, follow a consistent procedure when issuing such rulings.

Bihbahānī gives four reasons for the illegitimacy of the Akhbārī viewpoint, two from revelation and two from reason:

1) Revelation:

i) The *akhbār* state that a ruling which disagrees with the Sunnis is right (*rushd*) and correct (*sawāb*). This does not mean that a ruling which agrees with the Sunnis is not sound or correct, merely that all rulings which disagree with the Sunnis are sound and correct.

ii) The Imams stated that one of the tests of authenticity was "comparison with sunni doctrine" (*madhhab al-'āmma*). If it were possible for two rulings both contra Sunni doctrine, to be taqiyya, then there would be no point in the ruling. The Imams did not give pointless advice.[1]

2) Reason:

i) The Sunnis have always insulted and attacked the Shī'a. The reason for them doing so was that Shī'ī practice differed from Sunni practice. *Taqiyya* was a means whereby these attacks might be avoided. If the Imams were to tell their followers to perform actions which were not in line with Sunni doctrine, but were also not in line with the true *Sharī'a*, this would serve no useful purpose (*naf'*). Therefore the Imams must have only issued *taqiyya* ruling which agreed with the Sunnis. [a variation on 1)i)]

1. This argument is actually found after the second rational argument: 2)ii).

conformant with the ruling in the report and concurrently there is the possibility (or perhaps the likelihood) that they acted in this manner because of the ruling, then the report has probative force, and the ruling gains authority. There need not have been an explicit expression of agreement with the ruling, though if there was such an expression this would raise the epistemological status of the ruling. Bihbahānī even admits that we need not be certain — that is, we need not have *'ilm* that the Companions acted in the manner attributed to them by the early historiographers; we need only a probability that they acted in this manner. Uncertainty, or rather the category of *zann*, which occupies a status less than certainty but not necessarily improbability, pervades Bihbahānī's analysis of this issue. He rejects the attempts of extremist Usūlīs to demand a high level of certainty (as they had done concerning the link between the actions of the Companions and the actions of the Imams and the demonstration that the Companions acted in this manner because of the ruling rather than merely in conformity with the ruling) whilst in other areas settling for mere *zann*. This, he argues, is inconsistent. If the door of knowledge is closed (*insidād bāb al-'īlm*), as he and the other Usūlīs agree, then it is closed across the whole spectrum of procedures in *usūl al-fiqh*. The *mujtahid's* task is not to discover the truth, but to consider all the sources which have probative force, weighing them against each other (*tarjīh*) in an attempt to find the most probable ruling. The means by which they are weighed is discussed in the next chapter.

In Bahrānī's account, analysed above, all the reports in the Four Canonical Books, and some in non-canonical works, were considered historically accurate (authentic) accounts of actual events in the lives of the Imams. The recognition of authenticity, however, did not lead to an immediate recognition of probative force. The barrier to such a causal mechanism was the prevalence of *taqiyya*. A report may be historically accurate, and therefore authentic, but it may not have the ability to act as a proof because the Imam may have been dissimulating at the time. *Taqiyya* reports are not, for Bahrānī, to be recognised by simple criteria (eg the questioner being Sunni or the presence of Sunnis on the occasion described). Imams, at times, gave *taqiyya* rulings outside of these circumstances. Now, for Bihbahānī, the issue of taqiyya also poses a problem. Ha had argued for a necessary link between possible historical authenticity and potential probative force. As we have been, the level of historical probability entails the level of probable probative force. This system does not avoid the possible destructive effect of the Imam's dissimulation. Unless *taqqiya* reports can be isolated easile, the potential probative force of the *akhbār* is in danger of being reduced further.

(*akhbār al-thiqāt*) and [if not, then] there were other factors (*qarā'in*) [demonstrating the probative force of reports from] other transmitters [who were less than sound]. They used to reject some reports, even if they were *tawātur*, because there were those who used to lie about the Imāms. These three types of report [ie those from sound transmitters, those from less than sound transmitters and those from liars] are hidden to us. It is not possible for us know (*'ilm*) about them [ie which they are] as has been shown in the [previous] sections. In some way the rulings of the Imāms are hidden from us. The way of knowledge (*'ilm*) is closed and the means of distinguishing these three types is by *zann*, just as in the rulings themselves. [*FJ*, 490]

The contemporaries of the Imāms may have been able to distinguish between reports which were sound or weak or downright lies, but we cannot. The way of *'ilm* is closed, and we must rely on *zann*. Indeed, when ther is a clash between a sound report (perhaps even a *mutawātir* report) and a repaired report (which accords with early Shīī practice), then the latter can overrule the former because it is more likely to be correct. On the balance of probabilities, the contemporaries of the Imams were more likely to act in accordance with the Imāms' wishes than the report of a liar is to be an authentic account of the Imam's words.

Is it, then, a condition of the repaired report obtaining probative force that the actions of the Companions be clearly based upon the ruling in this report? That is, must the Companions' actions not only conform to the report, but be shown to be based upon the report (ie that they cite the report to justify their actions)? Bihbahānī's answer is that it need not be so. Once again, there need only be a likelihood that the actions of the Companions are based upon the report, because there is only a probability that this is the Imām's ruling anyway. If the actions of the Companions do not contradict the report's ruling, then the report is established as a proof.

The second major criticism of the probative force of the repaired report is that it is, in effect, consensus. This is the position attributed to the author of the *madārik*.

From all that has been said already, the falsity of what he says in the *Madārik* is clear. [He says that] *shuhra*, when it reaches the point of being an *ijmā'*, is a proof [but the *ijmā'* is the proof], not the report. [*FJ*, 490]

bihbahānī's reply is that the repaired report can be a proof before it reaches the point of *ijmā'*. Though, as we shall see, *ijmā'* has extensive probative value for bihbahānī, it is not the only type of probative force. The repaired report can have probative force before it reached the level of (unanimous) *ijmā'*. When it is demonstrated that the early companions acted in a manner

force to a repaired report because they consider *khabar al-wāhid* to be a proof only if it has a sound *isnād* (ie the *'adāla* condition) or if it is confirmed by some oter epistermologically stronger source (such as the Qur'ān or *sunna mutawātira*—a process known as *tabayyun*). "God has elucidated one of two ways to accept a report-- *'adāla* and *tabayyun*", they argue.[1]

Bihbahānī position is that *'adāla* and *tabayyun* are not the only means by which an isolated report can become a proof. There are others, in particular, reparation (*injibār*) for reprts that are less than sound. There appears to be no reason why *hasan* and *muwaththaq* reports may not also be repaired, however, bihbahānī discusses only *da'īf* isolated reports. A *fortiori* it would appear that they must be capable of beinf "repaired". The opponents use two distinct arguments in their refutation of *injibār*. First, they claim that the practice of the companions does not necessarily reflect the practice of the Imams, that is, ther is a less than certain link between the two. Hence a khabar munjabir cannot be a proof, whereas validation of a report by *tabayyun* or *adāla* confers a higher epistemological status upon that report, making it a more convincing indicator of a ruling. Bihbahānī's reply is that, in the case of *tabayyun*—that is, confirmation by another (authentic) text—certainty is obtained:

There is no doubt that *tabayyun* achieves certainly (al-*yaqīn*) without [need of] *'adāla*, which otherwise would be a condition [of granting probative force]. [*FJ*, 489]

However, in the case of *adāla* being used as a means of obtaining the probative force of an isolated report, it is less than certain. He refers the reader back to the discussion in *FH*, where he demonstrates that ascertaining the probity of a transmitter is, in itself, an uncertain business.[2] Under the best circumstances it leads only to *zann*, hence the indicator is only ever *zannī*, and the ruling derived from the report is alson only ever *zannī*. However, for Bihbahānī, the lack of epistemological certainty is not a cause of lament, but is to be embraced by the *mujtahid* in his search for a ruling. If *zann* infects *'adāla*, then the fact that *zann* also afflicts the equation of early practice with the Imam's position does not, in itself, discount the report as a potential source of law: it does not extinguish its ability to act as a proof in certain circumstances:

The actions of the contemporaries of the Imams and those who were close to their covenant were always based upon [the reports] of sound transmitters

1. *Ibid.*, p. 48.
2. See above, p. 69-70.

proof... due to its attainment of *al-tathabbut al-zannī*... As for *al-hasan*, many of them are proofs and *al-tathabbut al-zannī* makes this clear... this method is the method of the *mujtahids*, past and recent, with the exception of only a few. [*FH*, 143]

By these means, *khabar al-wāhid* which are not *sahīh* become potential proofs, albeit of a weak (perhaps the weakest) kind, and gain only a low probability of being indicators of the divine law.

Finally, there is the category of *da'īf* — are there any means whereby a *khabar al-wāhid* which has a highly defective isnad can gain probative force? Surprisingly, the answer to this question is also in the affirmative. The weak *khabar al-wāhid* can have its defective *isnād* "repaired" (*injibār*) through it being demonstrated that the ruling to which the report's indicator points, was followed by the Companions of the Imams. The weak *khabar al-wāhid* can become a proof, not through the strengthening of the *isnād* (as with *muwaththaq* and hasan), but through an examination of its contents (*matn*) and the transmitters' conformity with early Shī'ī practice.

Bihbahānī mentions this process in FH10 saying, "The report which has been 'repaired' by the actions of the Companions is stronger than *sahīh*".[1] He devotes a whole section to the issue in *FJ*, realising perhaps that he has not explained the process fully in FH. Fj31 is an extensive examination of how a weak *khabar al-wāhid* can be "repaired". The process of comparing the report's ruling is termed *shuhra* by bihbahānī (liked with but not identical to the *tawātur* criterion)|. By this he means that the ruling was well-known (*mashhūr*) amongst the companions. Bihbahānī says that " all who have considered *khabar al-wāhid* to be a proof, both ancient and modern, have agree that the weak report, repaired by *shuhra* [amongst the companions], and by mechanisms like this, is a proof".[2] The "ancients" considered the repaired report and the sound report to be equal. The "moderns" consider the repaired report to have a greater probative force, and in cases of conflict, the repaired report overrules the sound *khabar al-wāhid.*

Bihbahānī considers Muhaqqiq and 'Allāma to have agreed with such a position, and "All the writings of the *fuqahā*' are based upon this principle".[3] Bihbahānī himself considers the position of the "moderns" (ie that the repaired report is stronger than *sahīh*) to be of "grater utility" (*azyadu fa*'ida). Bihbahānī's opponents here are not Akhbārīs but extremit Usīlīs (he explicity mentions the author of the *Madārik* again). They deny probative

1. *Ibid.*, p. 143.
2. *Ibid.*, p. 487.
3. *Ibid.*, p. 488.

The former consider all *akhbār*, including *khabar al-wāhid*, to be proofs of the divine law; they are all equally valid. The latter consider all *khabār al-wāhid* to be weak and therefore ineffectual as proofs. Bihbahānī's position is that they are proofs, but *zann* proofs. They have to be weighed (*tarjīh*) by the *mujtahid*. The ruling (*hukm*) to which the indicator (dalīl) within a report points, is only to be adopted if it is the most probable of the different indicators. Such *akhbār* texts are worthy of interpretation, but not necessarily decisive texts in the *mujtahid's* search for a ruling.

What, then, of the other *khabar al-wāhid* — those that are categorised as *muwaththaq*, hasan or *da'īf*? For the first two at least, there is also a possibility of them obtaining probative force. They can obtain this force by the process of *tathabbut*. The means of *tathabbut*—that is, the means whereby a *khabar al-wāhīd* which is *muwaththaq* or hasan can be utilized as a proof—are listed in FH22. They constitue a list of tests for the transmitters of a *muwaththaq* or *hasan* isolated report. The more of these texts the transmitters pass, the greater the *zann* of the *khabar al-wāhīd*. The tests number around 50 (around 50 as some collapse into one another). I give a selection here.

> Amongst the causes and indicators [of *tathabbut*] are:
>
> that the transmitter be one, about whom they say, "He is trustworthy in *hadith*" (*huwa thiqa Ji'l-hadīth*)
>
> that he be one about whom they say, "I relate from him"
>
> that he be one about whom they say, "there is no problem with him" (*lā ba's bihi*)
>
> that he be one about whom they say, "there is no problem in his doctrine or his transmission" (*lā ba's bi-madhhabihi aw bi-riwqyātihi*). [FH, 225]

If all of the transmitters in the *isnād* of a report are described in this manner, then the report is *sahīh*. Bihbahānī is concerned with those reports where this is not the case—where some of the transmitters are described in this manner, But not all. This list is a sort of code, a means whereby the terms utilised by *rījāl* authors might be understood and used to strengthen a *khabar al-wāhid* through shoring up the credentials of the transmitters. This process will not move the report out of the category of *muwaththaq* or *hasan*, but it will entitle it to be considered as a proof. The procedure, however, is called *al-tathabbut al-zanniyya*: it only makes the probative force of a report more probable; it does not make it a certain proof. Hence bihbahānī states:

From what has been said, it is clear that the *muwaththaq* [report] is a

Whether this clarifies the problem is debatable. A *khabar al-wāhid* can be either *sahīh* (that is, made up of trustworthy transmitters in a coherent *isnād*), or less than *sahīh* (that is, *muwaththaq*, *hasan* or *daīf*). The former can be a basis for action — that is, it has the potential to be a proof. The latter may also have the potential to be a proof, but only when the *akhbār* within the category have been tested further by a process known as *tathabbut*.

The two immediate issues that arise from this position concern the meanings of *'adāla* (justice) and *tathabbut* (confirmation). With regard to the first Bihbahānī states:

> *Zunūn* [plural of *zann*] are sufficient for establishing justice, which is a condition [of *sihha*—the reader is referred to passages where Bihbahānī argues for the permissibility of acting on *zann*][1]... generally speaking, the crucial point in [*'adāla*] is based upon *Zunūn*... the sufficiency for *'adāla* of *Zunūn* is due to the that if it was not sufficient, then ther door of responsibility (*bāb al-taklīf*) would necessarily be closed. [*FH*, 142]

One discovers a transmitter to be just or trustworthy through consulting the books of *rījāl*. The evidence culled from these books establishes his probity. One does not, however, need to know for certain that he was just; one only needs *zann* that he was so. Since *khabar al-wāhīd* is only of *zannī* probative force, and since the indicator drawn from it acts as a *zannī* indicator, it would be logically inconsistent, Bihbahānī argues, to demand 'ilm of the transmitter's probity. The probative power of the individual report will vary according to the number of times *zann* has encroached upon the process. *Zann* afflicts the *khabar al-wāhid*, but it can also afflict the determination of the probity of the transmitters in the *isnād* (and also in the interpretation of the text itself).[2] It is the varying levels of certainty that are juggled by the *mujtahid* in the derivation of a ruling. This procedure, whereby a *khabar al-wāhid*, which is *sahīh* is considered to be a proof, is, bihbahānī proclaims, "the principle of the *fuqahā'* through time and in different locations until the time of the author of the Madarik."[3]

From this criticism, it becomes clear that Bihbahānī is attempting to make out a middle way between the extreme textualism of the Akhbārīs and the extreme rationalism of *Usūlīs* such as the author of *Madārik al-ahkām* (Muhammad b. 'All al-'Amilī known as *Sāhib al-Madārik*, (d. 1009/1600)).

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1. I have summarised these arguments above, p. 24-25.
2. See, for example, below, p. 173
3. Bihbahānī, *FH*, o. 143.

Bihbahanī is dealing exclusively in *zann*. Whilst Bihbahānī is keen to demonstrate that *khabar al-wāhid* can be used as a proof, it is a proof of lower epistemological status than, say, the Qur'ān. For, bahrānī, since there is no recognized distinction between *mutawātir* reports and akhbar al-dhad, they occupy the same epistemological ground. That *khabar al-wdhid* should be considered a proof is established by three arguments:

1) The fact is, Bihbahanī states, the door of knowledge is closed, and therefore jurists have to operate with *zann*. The *zannī* nature of *khabar al-wāhid* is not in itself a bar to it being considered as a proof.

2) *Ijma'* (the probative force of which is discussed below"[1]) has been obtained on the basis that *khabar al-wāhid* can act as a proof: "it is only clear from *ijmā'* that [*khabar al-āhād*] have probative force in general, not that every *khabar al-wāhid* is proof. Rather, *ijmā* has been reached that not all [*akhbar al-āhād*} are proofs".[2] Hence a *khabar al-wāhid* can act as a proof, but will do so in every case. Its probative force is always dependent, first, upon the relative force of the other *akhbār* associated with the matter in question; second, Bihbahanī stipulates that the transmitters of the *khabar* be "trustworthy" (*thiqāt*). This second factor exemplifies the difference between *shuruh* and *isnād*. Whilst *khabar al-wāhid*, by definition, has failed the shuhra test, it has not necessarily lost all chance of being a proof. If it has a coherent provenance (*sihha*) then it may yet be a proof.

3) Q49.6: "If a sinner comes to you with some news, ascertain its truth." For Bihbahānī, this verse demonstrates the reverse also: if someone who is not a sinner comes with news, one need not ascertain its truth: one is permitted to believe the the news immediately. Hence a report with a sound isnād can be accepted.

Bihbahāni summarizes the results of his of this proof in the following passage:

> It is clear from the verse and from the *ijmā'* which is claimed by al-Shaykh al-Tusī in al-'Udda that there is a condition of justice (*ishtirāt al-'adāla*). But this is not '*adāla* as the author of the *Madārik* and his followers understand it to be. [They say] that the *khabar* of one who is not just is not a proof under any circumstances. Rather, the verse means that action on the basis of a report from one who is not just is [only valid] after *tathabbut*[3]... the condition of justice is a condition of acting on the *khabar* without the need to perform tathabbut. [*FH*, 1 42]

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1. See below. P. 69-85.
2. Bihbahānī, *FH*, p. 141.
3. See below, p. 71 for a definition of this term.

comparable probative force to the Qur'ān and *mutawātir sunna*. Rather, in line with his epistemology outlined in Chapter One, he hopes to establish *khabar al-wāhid* as texts worthy of consideration in the process of making a ruling — the process known as *ijtihād*. This is not to say that they are to be the only texts entertained in this process or that they will be the most influential of those texts. Bihbahānī seeks to demonstrate that *khabar al-wāhid* has probative force, but that this force, relative to other proofs, may be weak or strong. Bahrānī described the *akhbār* as, *in toto*, sound, and hence of equal probative force. The problem of conflicting proofs (hujaj), or more accurately conflicting dalils found in the proofs, can, for him, only be explained by *taqiyya*. Bihbahānī has a more sophisticated theory, stating that *akhbār* are of differing degrees of probative of probative force because they have differing degrees of authenticity. The means whereby such *akhbār* might be reconciled, or rather the *dalīl* of one *khabar* might bereconciled with the *dalīl* of another, is a matter of hermeneutics, and does not strictly concern establishing a *khabar* as having probative force.

It is generally the case that, for Muslim writers, the probative force of any potential proof of the law is established by three separate criteria: provenance (or coherence of *isnad* — *sihha*), extent of dissemination (*shuhra*) and dogmatic validity of content (*matn/ma'nā*). That the first two of these criteria became the most common means of establishing (or disproving) the historical authenticity and hence the probative force of reports is evidenced by the proliferation of works of *al-jarh wa'l-ta'dīl* and *rijal*, and the extensive discussions concerning khabar al-wdhid and the meaning of tawatur in works of *usul al-fiqh*. As we have seen, Bahrānī does not concern himself with the first two criteria, as he considered all the *akhbār* to be historically accurate and hence of potential probative force. As we shall see, his means of reconciling contradictory *akhbār* relies almost exclusively upon the content (*matri*) of the reports.

Bihbahānī begins *FH* 1 0, entitled *hujjiyyat al-khabar al-wāhid*, by stating that *akhbār al-dhad*, due to their lack of *shuhra*, give rise to *zann* not *'ilm*. By this he means that their authenticity (ie whether the event described in the report happened or not), and hence their probative force (ie their ability to act as a proof of God's law) is less than certain. Furthermore, some jurists have disputed whether a proof which is less than certain is admissable. "The dispute concerning the probative force of [*akhbār*] like *akhbar al-āhād* is well known".[1] Certain indicators only come from certain proofs, and onle texts of certain proofs. It is clear that in discussing *khabar* al-wdhid

1. Bihbahānī, *FH*, p. 141.

For most Muslim legal theorists, Bihbahānī included, other texts which achieve the level of certainty of the Qur'ān are not numerous. Apart from the Qur'ān and certain reports from the Prophet (and for Shī'ī jurists, from the Imāms also), most texts are of less than decisive probative force. It is clear that, for Bihbahānī, some of the *akhbār* have gained the status of certain authenticity, though he gives no indication as to their number in *FH*, or the means by which they obtain this status. He does use the term *mutawātir* to describe some rfeports (such as the *thaqalayn* report of the Prophet), but unfortunately he does not explain how the process of *tawātur* operates within the context of his legal theory. One is left to assume that it has a meaning commonly ascribed to it in Muslim legal writings, summarised by Weiss:

> According to the theory [of *tawātur*}, any text that was transmitted on a scale wide enough to preclude the possibility of collaborative fabrication had to be authentic."[1]

The debates concerning how wide such a scale has to be do not seem to concern Bihbahānī, at least not in *FH* or *FJ*.

It is texts which fail the test of tawātur which occupy Bihbahānī's attention. The Qur'ān and an unspecified number of akhbar are mutawatir, the rest of the *akhbār* are known as *khabar al-wāhid*. Literally *khabar al-wāhid* means "report of one" or an isolated report. this nomenclature is not to be understood literally. A *khabar al-wāhid* is not only a report transmitted by one person, but refers to all reports which fail the test of *mutāwatir*, as is clear from the central late Shī'ī *usūl* text of Hasan b. Shahīd II:

khabar al-wāhid is that which has not reached the level of *tawātur* whether is transmitters are many or few. Its subject matter is not accorded the status of knowledge (*'ilm*) in itself.'[2]

For Bihbahānī, texts which constitute potential indicators of the *sunna* are divided into *mutawātir* and *khabar al-wāhid*. The probative force of the former is not questioned, not even discussed, in *FH* since their authenticity is as certain as that of the Qur'ān. The issue which Bihbahānī turns his attention to with regard to these texts concerns establishing the circumstances under which a report which has failed the test of *tawātur* can act as a proof. How does one establish the *hujjiyya* of a *khabar al-wāhid*, and what sort of *hujjiyya* is it?

Bihbahānī endeavours to establish the probative force of the *khabar al-wāhid* category. It is essential to bear in mind that he is not seeking to establish *khabar al-wāhid* as a decisive source of the *sunna*, with

1. Weiss, "primacy", p. 89.
2. Hasan b. Shahīd II, *Ma'ālim*, p. 261.

force as a source of law independent from the *akhbār*, is that the Imām himself (in a report) said that this was so. For Bihbahānī, as for Bahrānī, the probative force of the Qur'ān is proven by a report (ie a *khabar*) from the Imam.

In sum, then, for Bahrānī, the Qur'ān cannot be understood in any legally relevant sense except with the hermeneutical aid of the *akhbār*, the *tafsīr* of the Imams. For bihbahānī, the Qur'ān is an entirely separate source of rulings-indeed it can act as a criterion for determining the validity and authenticity of a report. It need not be interpreted solely in the light of the *akhbār*, though there is a need for hermeneutical aid (such as the circumstances of revelation) in the pursuit of full understanding. The problems surrounding the authenticity of the Quranic text do not mitigate Bihbahānī's position, since the Imam has legitimated the use of any of the seven variants of the Qur'ān when deriving legal rulings.

What Bihbahānī has demonstrated to his own satisfaction is the probative force (*hujjīyya*) of the Qur'ān as a source of law. That is to say, if understood correctly, the Qur'ān, or more accurately verses from it, act as a proof (*hujja*). The means whereby it might be interpreted correctly — that is the hermeneutic through which the Qur'ān should be understood — is discussed below in Chapter Four.[1] The central point is that, as a proof, a Quranic verse provides an indicator (*dalīl*) of the law. these indicators can be obvious (*zāhir*) and hence certain (*qat'ī*), but in many cases they are less than obvious. In such circumstances, the text is authoritative, but what the text indicates is unclear and hence the subject of personal opinion (*zann*). This distinction between the probative force of the text as a source of law, and the ruling which the text indicates, is crucial for Bihbahānī. Whilst the former is established in the case of the Qur'ān, the latter remains to be demonstrated on a verse by verse basis. It is quite possible to accuse Bihbahānī of casuistry here. One might argue that there is little difference between saying that a text has probative force, but what it proves is a matter of dispute and uncertainty, and saying that the probative force of a text is disputed and uncertain, but for Bihbahānī the distinction is highly significant for he claims that the probative force of the text is known (*ma'lūm*), and hence it has the potential to provide certain indicators of the law. If the probative force of the text is less than certain, then under no circumstances can it provide certain indicators. Even if what the text indicates can be ascertained with certainty, the ruling which the text indicates will remain less than certain because the text from which it is drawn is less than certainly authentic.

1. See blow p. 164-181.

justify their view that the Qur'ān cannot be understood separately from the Imām's *tafsī*.

1) The Imams forbade *tafsīr bi'l-ra'y*, by which they meant *tafsīr* without reference to the *akhbār*. Bihbahānī replies that this is a reference to those who interpret without any contextualisation of the Quranic verses. It is possible to interpret the Qur'ān directly and it not be *tafsīr bi'l-ray* because "perhaps in the situation of the revelation of the verses (*hāl nuzūl al-āyāt*), there is evidence (*qarā'iri*) of the meaning [of the verse]." So Bihbahānī's answer is that *tafsīr* without any external aid is forbidden, but the essential exeget- ical aid need not be the akhbar of the Imāms.

2) Assigning certainty to the meaning of a verse excludes the possibility of there being an "interpretative report" (hadīthan yafassiruhu). Bihbahānī replies that it does not; it merely implies the rejection of a "report which opposes what the Qur'ān indicates". (*madlūl al-qurān*). This is a reference to the *tarjīhāt* — the ways in which a *mujtahid* can decide between conflicting rulings.

3) Some have argued that the obvious meaning of the Qur'ān (*zāhir al-qur'āri*) has no probative force, because the Qur'ān we have is not the orginal document (*sarīhuhu*). Since the Qur'ān is corrupt, they are uncorrupted. Bihbahānī replies that there is indeed corruption in the text of the Qur'ān, but that this does not impede legal understanding of the text.[1] There is, admittedly, dispute amongst the Qur'ān reciters and the early Sunnis as to whether or not one might act on the basis of a transmission of the Qur'ān outside of the accepted seven (or ten) variants, bu the the Shī'a position on these matters is made clear from the *akhbār*.

> It is clear from the many *akhbār* that [corruption] occurred... Our position is that it is permitted to act upon one of the famous seven variants [of the Qur'ān]. The indicator for this position is the statement, or rather the order, of the Imams that "you must recite as the people recite until the day of the return of the qa'im". [*FH*, 286]

If two of the seven readings give different rulings, then, according to Bihbahānī, one is permitted to choose whichever ruling one desires (*ayhumā shā'a*).

Hence the Qur'ān may not be uncorrupted, but it still has probative force. In a rather self-contradictory manner, the reason for its continued probative

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1. This supports Lawson's statement that the Shī'ī view of the qur'ān is that it is "simultaneously flawed and inerrent-inerrant for the purpose of *fiqh* but deficient as an explicit quide to the recognition of the locus and bearer of walaya." Lawson, "Notes for the Study", p. 295.

indicators which contradict the Qur'ān (I return to this later). Second, the decisive factor in classifying the verses was, for Bahrānī, the method by which the Qur'ān's meaning might be discovered directly: (through the Imams and Prophet), or not (since the meaning was known only to God). For bihbahānī, the criterion is the clarity of indication of the text; he considers some verses to have a meaning which is simultaneously present and unclear. Verses are classified according to the manner in which they aid (or mitigate) the discovery of a ruling; their utility to the *mujtahid* is the deciding factor. That the verses have indicatory potential is not questioned; it is the clarity of that indicatory potential which debated.

Bihbahāni analyses the third category in some detail. He concludes that the Qur'ān must overrule the report because, "it [the Qur'ān] is unambiguously understood (*mafhūm*) [to be] the words of the Lawgiver, which contradict the implication of words, of which we are uncertain whether [or not] they come from the lawgiver, for they may come from the transmitter." The Qur'ān, then, even if its meaning is unclear, overrules the *akhbār*, for the latter are epistemologically inferior to the former.[1]

Sometimes the Qur'ān indicates a ruling in a clear, unambiguous manner, and the reader is certain as to the Lawgiver's meaning (as in category i) above). At other times Qur'ān is less clear in what in indicates, but there is always one meaning which is more likely than the others (category ii) above). In yet other cases, there is a probable meaning, which contradicts a probable meaning of a report from the prophet or the Imams. In such cases the quranic probable meaning overrules the report's probable meaning, due to the former's superior epistemological status:

> It is possible that it is the transmitter's words, and that it is not from the Imam at all, or that it is from him but is transmitted by meaning only. [*FH*, 285]

This is a reference to the ways in which a text can be transmitted — by the exact words or by the meaning. Though the Imams permitted "transmission by meaning" (*al-naql bi'l-ma'nā*) as a dispensation (*rukhsa*), and indeed Bihbahānī considers this mode of transmission to be the most common, they only permitted it if the transmitted meaning did not contradict the certain or probable meanings of verse within the Qur'ān. There is, then, no hindrance to understanding the Qur'ān directiy, without the Imām's *tafsīr*, and without the *akhbār*. For "there is no doubt that even a child knows that in 'do not come nigh to adultery' [QJ7.12], God means that adultery is forbidden."

Bihbahānī then tackles three arguments, presumably used by Akhbaris to

1. See above, p. 61.

the the Qur'ān as an independent source which has probative force. Here he implicitly excludes the Akhbāris from the elite category of the Juqaha' of the Shi'a.

4) Reducto ad absurdum argument: The Qur'ān is certainly the word of God. Debating whether it is a proof is, in effect, debating whether or not God's word is authoritative and worthy of obedience (*ittibā'*). To contemplate (*ta'ammul*) such a possibility is to negate the difference between the unbeliever and the believer. Such a theologically absurd suggestion is unthinkable.

5) Which is of more certain validity, the text of the Qur'ān or the text of a report? In terms of both content (*matri*) and provenance (*isnād*) the Qur'ān is surely more authoritative, and hence should hold power over the reports.

The final three points, run together in a prosaic manner by Bihbahānī, exemplify the difference between Bahrānī and Bihbahāni. For Bahrānī, the akhbar, even isolated reports, are of certain validity and of equal epistemological status with the Qur'ān (perhaps they hold an even greater status, bearing in mind his elliptical comments concerning the authenticity of the text of the Qur'ān).[1] For Bihbahānī, the Qur'ān, both in content and provenance, holds an incontrovertible position whereas the status of the *akhbār* is debatable.

Bahrānī divided the verses of the Qur'ān into categories determined by the believer's ability to understand their meaning. Bihbahānī divides them according to the level of indicative potential (*dalala*)[2] of the verses:

i) those verses of certain indicative force (*qat'ī*)

ii) those verses of probable indicative force (*zannī fī ghāyat al-quwwa*).

iii) those that are *zannī* and oppose an indicator of similar indicative force (ie a *zannī* indicator) in the *akhbār*.

There are two interesting differences between Bihbahānī and Bahrānī on this division of Quranic verses. First Bihbahānī does not consider the possibility of a certain indicator from the akhbār contradicting an indicator (certain or probable) from the Qur'ān. This implies that he does not consider it possible for the *akhbār* to give certain indicators, or at least, not certain

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1. See above, n. 52.

2. A distinction needs to be made between *dalāla* and *hujjīyya*. In Bihbahānī's writings I take *dalāla* to refer to the potential of a text to provide a *dalīl* or an indicator of God's law. *Hujjīyya*, on the other hand, refers to the epistemological status of a text *vis-a-vis* the law. A text may contain a *dalīl*, and it may be obvious and certain what this *dalīl* implies for the law (ie the text may have dalala qat'iya), but if the text itself is of uncertain probative force (ie it does not have a strong *hujjiyya*) due to some other weakness, then it cannot contain an indicator of God's law.

systematic than Bahrani's Prologues. A direct comparison between his theory and that of Bahrani requires some selection. Bihbaham discusses the potential of the Qur'ān to be used as a proof in the deduction of the law in FH29 entitled *fi hujjiyyat al-qur'ān*. He begins by criticising the Akhbārī view:

> The Akhbarīs deny [the probative force of the Qur'ān] absolutely. This is most strange because this proof is the speech of God. The speech of the Prophet and the Imams is only a proof because it elucidates (*kāshif*) the speech of God the Most High. [*FH*, 283]

This, however, is only one of the views attributed to the Akhbārīs by Bahrāni, though admittedly it is near to Bahrānī's own position.[1]

It is possible that the view that one could interpret the Qur'ān directly, without the aid of the *akhbār*, was a minority Akhbari view, or more likely, such a view was too close to Bihbahānī's own Usūlī view, and not as useful in his polemic. Bihbahānī asks rhetorically, "How can one decide that it is not a proof on the basis of what one presumes [to be the meaning of] an isolated report? Furthermore, if [this report] is a clear text (*nass sarīh*) which proves the inability of the Qur'ān to act as a proof, how is it permitted act upon it?". Bihbahānī argues, then, that the reports which seem to cast doubt on the probative force of The Book are isolated, and hence they cannot challenge the Qur'ān, which appears to have *mutawātir* status.[2] Even if the report clearly indicates that Qur'ān has no probative force in itself, it still cannot prove this view because it is an isolated report.

Bihbahānī employs a number of arguments to demonstrate his position:

1) *Akhbār* based arguments: The Imams have said that any *hadīth* which does not agree with the Qur'ān should be "thrown against the wall". They also said, "If you do not find evidence (*shāhid*) from the Qur'ān for a report, do not act upon it." The point here is that the Imams clearly considered the Qur'āān to be an independent source which should be interpreted separately from the *akhbār*. If they did not have this view, then comparison would be impossible.

2) *sunna*: The Prophet said he left two weighty objects (*thaqalayn*): the Qur'ān and his family. By saying this he made them both proofs until the day of resurrection. Interestingly Bahrāni utilised this Prophetic report to prove the exact reverse.[3]

3) Shī'ī tradition: all the *fuqahā'* of the Shi'a, bihbahānī claims, have seen

1. See above, p. 48.
2. See below, p. 65-66.
3. See below, p. 49-50.

does not validate the principle of *ijmā* upon the *fatwā* of *mujtahid*. Tjis *ijmā'* upon one of two conflicting reports" is acceptable to Bahrānī and he designates it *al-ijmā' fi'l-akhbār*. It is *al-jma' fi'l-fatwā* which he considers to be "an invention and innovation of the Sunnis". Indeed *al-ijmā' fi'l-akhbār* was practiced by al-Shaykh al-Tūsī himself (prioritizing the early generation again). On *al-ijmā' ft'l-fatwā* Bahrānī states:

> In general, there is no ambiguity or doubt that there is no means of proving [the validity] of this ijm *ijmā'* in *kītāb* or *sunna*, and this [practice] is merely following the whims of Sunnis and their innovations. However, all of our scholars have negligently followed them in this practice, just as they have followed them in all of their usul, in contradiction to the *akhbār*. [H, 1, 39]

Consensus, then, for Bahrānī, is only valid:

1) with respect to the opinion of the early generations (though this is, in effect, a preservation of the Imam's own view)

2) for the determination of the correct ruling in a case of contradiction between the rulings contained in two or more akhbār.

Excepting such circumstances, the consensus of the scholars (and this is the only type of consensus entertained by Bahrānī) does not constitute a text worthy of interpretation, because it does not bring certainty as to the Imam's view. It is rejected, then, on purely epistemological grounds.

Bihbahānī'S Theory Of The Textual Source Of The Law

bahrānī theory of the probative force of the textual sources of law rested upon a series of binary oppositions: the akhbār are either, *in toto*, sound, authentic (and hence have potential probative force) or they are weak and religion is ruined; either the akhbār are essential to understanding the Qur'ān or they are superfluous (and hence interpreting the text is equivalent to arrogating oneself to the role of Imam); either there is certainty of the Imam's inclusion in a consensus (and hence the Imam's words are the proof) or there is only the possibility of his inclusion (and hence the community is basing its ruling on mere conjecture). That he advocates the first position in all of these antithetical pairings should not be surprising, bearing in mind the epistemological underpinnings of his legal theory. Bihbahānī's epistemology is more sophisticated in that there is a sliding scale from doubt to certainty, and hence a recognition of possible probative force when there is an absence of certainty and only probable authenticity.

As mentioned in Chapter One,[1] Bihbaham's work of usul al-fiqh is less

1. See above, p. 13-14.

appeared insufficient to the early generations on a certain issue, they resorted to the *fatwās* of 'Alī b. al-Husayn b. Bābūya.[1] [H, 1 , 36-37]

The *ijmā'* of the early generations is also a certain proof because they were known to be acting on the basis of the Imam's opinion. However, it is only certain if there is no report from the Imam contradicting it. The opinion of the early luminaries is considered authoritative because it reflects the unrecorded opinion of the Imam. Once again the practice of the early community is prioritised over the later (innovative) ideas of al-'Allāma and his followers.

For bahrānī, then, *ijmā'* is a text which is worthy of interpretation, but only the *ijmā'* of the early generations, and only then when there is no report from the Imam which contradicts it. The *akhbār*, even in their silence, have the ultimate arbitration role in the validation of the *ijmā'*. In fact *ijmā'* is not an independent means of discovering the Imam's opinion. The Imam's authority continues — it is merely presumed that the early community lived in obedience to him after the occultation. The practice of the community is a reflection of the Imam's opinion. This bears some resemblance to the justification of the *ijmā'* of the companions in sunni *fiqh*, more specifically the medinan *'amal* of Malikī doctrine.[2]

The *ijmā'* of the later generations, however, is not authoritative. The problem of "unknown *mujtahids*" prevents *'ilm* from emerging from such consensus. Bahrānī quotes, and explicitly concurs with, Hasan b. Shahīd IPs judgement:

If the final part of this examination of *ijmā'*, Bahrānī examines the *akhbār* which are claimed by some to prove the validity of the principle of *ijmā'*.

The true position is that there is no way of knowing *ijmā'* has occurred, except in the period of the Companions [to the Imām—*sahāba*]. At that time, the believers were small in number and it was possible to know them all.[3] [*H*, 1, 37]

In the final part of his examination of *ijmā'*, Bahrānī examines the akhbār which are claimed by some to prove the validity of the principle of *ijmā'*. The three reports relate to statements by the Imams in which they recommend subjecting conflicting reports to the consensus (signified by terms such as *mā ajma'a al-muslimun, al-mujma' 'alayhi and ittifāq al-jamī'*). Bahrānī replies that the most these akhbar prove is that ijma' can be employed as the deciding factor on occasions of conflict within the akhbār. It

1. 'All b. al-Hasan b. Bābūya (d. 329/949), father and teacher of Shaykh al- Sadūq.
2. See Schacht, Origins, p. 61-73 and Hasan, Ijmā', p. 98-101.
3. Hasan b. shahīd II, *Ma'ālīm*, p. 242.

Imam's opinion may be found amongst the scholarly elite, instead he argues that it is impossible to know that consensus has been reached.

Bahrani next states that is refusing to discuss two issues normally associated with *ijmā'*:

1) Is there compulsion on the Imam to appear and correct the people (*ra'iyya*) when they agree upon an error? This issue is clearly linked to the Mu'tazilī-Imāmī argument concerning the obligation on God to provide the best (*al-aslah*) for his people.

2) Does the Imam insert (*alqa*) his opinion amongst the opinions of the scholars to ensure that they do not agree upon an error? If this is so, should we not search the books of the scholars to discover those opinions which are not attributed to anyone in particular, for such opinions must be the opinions of the Imam? This rather quixotic procedure is attributed to "one of the moderns".

Bahranī's reason for not discussing these issues is unclear. He states, "It is not appropriate to incline towards them", that is, he appears to consider them unworthy of his time or comment.

Bahrānī then makes his clearest statement on *ijmā'*:

> Counting *ijmā' as an indicator* [of God's law] is nothing more than simply calculating numbers... for if [the Imam] is known to be included, then there is no discussion or debate — it is called *ijmā'* and it is proof. If [he is not known to be included], then it is *zann*. [*H*, 1, 36]

Since statement which are *zannī* have no probative force for Bahrāni, *ijmā'* is not a proof.

There may be an indication of the Imam's agreement with the scholars in the form of a report (*khabar*), but in such cases, the scholars are merely following (correctly) the opinion of the Imam, as indicated in the khaḇar. For Bahrānī, there is no independent validity to *ijmā'* and all the akhbār have the same epistemological value.

Bahranī does, however, recognise the probative force of consensus in certain circumstances:

> If a group of scholars, in the period close to the Imam, like the time of Sadūuq, Kulaynī and the other masters of transmission, give a fatwa which we do not find in any report [for the Imam], and there is no report from the Imams which opposes it, then this is also certain (*yaqta'u*) on account of the widespread knowledge that this is a proof and that the opinion of the Imam is included in the scholars' opinions... Because of this, a group of our scholars relate that the texts

sinless one. [If the opinion of] one hundred of our jurists (*fuqahā'unā*) does not include his opinion, then it is not a proof. If [his opinion] is included in merely two [scholars], then it is a proof, not because of their agreement, but because of his opinion [being included].[1]

Bahranī adds:

So the proof is his opinion, not the agreement alone. The discussion concerning the power of such *ijmā'* to prove [elements of the law] is dependent unambiguously on a report which is attributed to the sinless one. [H, 1, 35]

In Sunni *usūl*, *ijmā'* is a proof because the Prophet had sanctioned the procedure as a means of stabling certainty in a matter which previously had been disputed. In Shī'ī usūl, *ijmā'* appears to be a convenient means of discovering the previously unknown opinion of the Imam, be he absent or present.

Bahrānī then goes on the offensive. His first opponents are those who claim that *ijmā'* is a certain (*qat'ī*) source. This is not possible, he says, because it is difficult (*muta'adhdhir*) to verify (*tahaqquq*) the Imam's presence, and because it is difficult (*'aslr*) to convene the scholars in such a way as to ensure the Imam's inclusion:

It is known for certain (*yaqīnan*) that the scholars are dispersed and scattered (*tashattut al-'ulamā' wa tafarruquhum*) across the area of the world. They are isolated in the countries of the sunnis and they endeavour not to expose anyone [of them] in their beliefs and doctrines. [*H*, 1, 35]

The model of *ijmā'* that Bahrānī refutes is that of scholarly consensus. His opponents consider it to form a certain indicator (*al-dalīl al- qat'i*). Bahrānī does not reject the *ijmā'* of the scholars because of its supposed elitism.[2] He rejects it on epistemological grounds alone. Theoretically *ijmā'* is invalid because of the Imams' (and the scholars') *taqiyya*. Practically it is impossible due to the Shī'a being in diaspora. If the opponents were to argue that *taqiyya* is only a practical barrier, and hence *ijmā'* should retain its theoretical validity, Bahranī answers that to remove the cause of *taqiyya* (ie the oppression), removes the need for a source of law outside of Imam's option. The Imam is only in hiding to prevent the further oppression of his community. It is important to note that Bahranī does not dispute that the

1. The passage is from Muhaqqiq, *Mu'tabar*, p. 6.

2. If Akhbarism was anti-hierarchical, as proposed by Newman and others (Newman, "Akhbārī-Usūlī Dispute, Part 2", p. 258-259), then one would expect this to be Bahranī's line of attack. However, his argument is purely epistemological and seems to have no specific implications for the authority of the scholarly elite.

exegesis, favouring Astarābādī's position.

Shīīte discussions of the validity of *ijma'* demonstrate a certain ambivalence. With juristic authority centred, in theory, upon the Imam, it is difficult to see how the consensus of the community (whether in the form of *vox populi* or the agreement of the scholarly elite) might have probative force if the Imam is absent. In Sunni works of *usūl al-fiqh*, the justification was based upon the report, "My community will not agree upon an error". Though this report was of less than certain authenticity, and therefore of dubious probative force, it was generally accepted that three were sufficient other reports, identical in meaning thought not in words, which raised *ijmā'* to the epistemological status of certainty.[1] *Ijmā'*, then, was dependent upon the *sunna* for its legitimation. With the imitation of the structure of Sunni juristic works in the Shīī tradition, Shi'tes began to discuss the possible validity of the principle of *ijmā'*. The settled position by the tenth century AH/sixteenth century CE was that consensus was a proof as long as it included the opinion of the Imam. It was the inclusion of the Imam's opinion which ensured the consensus of a proof and not the consensus itself.[2] In the time before the *ghayba*, *ijmā'* was a proof if the Imam's opinion could be shown to have been included. Such early consensus was, however, difficult to verify. After the *ghayba* the problem was compounded by the Imam's absence, for his opinion was *de jure* unobtainable. Some jurists attempted to save *ijmā'* as a proof by saving that the unanimous opinion of the *mujtahids* must be a proof, since the Imam, though hidden from view, must be a *mujtahid*. Others were reluctant to accept this reasoning, stating that the Imam may be present but unknown: there was a possibility of unknown *mujtahids* (*mujtahidīn majhūlīn*) in the community. *Ijmā'*, then, could not be a certain (*qat'i*) proof; it could only be considered as presumptive (*zannī*). As we shall see, in Bihbahani's theory of consensus, this does not necessarily rob *ijmā'* of its probative force, since if one accepts *zannī* proofs, one can also accept *al-ijmā' al-zannī*. Bahranī, however, does not accept *zannī* proofs, and hence he rejects *ijmā'* as a source of law, though this rejection is not unqualified. The Shīī position is perhaps best summarised by al-Muhaqqiq in a much cited passage included by Bahranī at the outset of the second section of M3:

> As for *ijmā'*, it is a proof (*hujja*) for us through the inclusion of the

1. See Bernard, *L'accord unamme*, p. 13-16 (where Abū husayn al-Basrī argues that the traditions do not bring certainty, but are authoritative for guiding action); Hallaq, "Sunni Consensus", p. 438 and p. 444-448; Weiss, *God's Law*, p. 201-210.
2. See Brunschvig, "Les *usūl al-fiqh* Imāmites", p. 205 and p. 209; Calder, "Structure of Authority", p. 187-205; Sachedina, *Messianism*, p. 135-149.

This verse is tautologous in that it states that one can only legitimately kill on those occasions when God has given permission. It does not tell the reader who one has the right to kill; for that one needs the *akhbār*. The verse, on its own, is merely an exhortation to obey God's rulings on killing.

Bahrarnī's position, then, is a compromise between the two *Akhbārī* positions notwithstanding his criticisms of them at the outset of M3.[1] There are verses which can be understood without the aid of the Imam's *tafsīr*. However, it is the first of the Akhbārī positions that is clearly the most influential, for the unmediated meaning of these verses is of little probative value (though of hortatory use in encouraging the believer to follow God's commands). The only sure means of gaining knowledge of the commandments of God (as opposed to mere zann) is through understanding the Quranic verses in the light of *tafsīr* of the imams. Textually speaking, this *tafsīr* is to be found in the reports of the Imams' actions and words — the *akhbār*, and in this way the *akhbār* remain the principal source of the law and maintain their position as having ultimate probative force in the derivation of the rulings of the Sharī'a. in this, bahrānī can be seen to be in line with the *Akhbārī* position outlined by Samahijī 100 years earlier when he stated:

> The *mujtahids* permit taking the clear meanings of the Qur'ān without the necessary agreement of the *hadīth* with it... the Akhbarīs do not permit taking the clear meanings of the Qur'ān, except when its *tafsīr* has come from them (peace be upon them), or when it agrees with their reports (ahādīthahum). [H, 1, 29][2]

Bahranī himself mentions the two conflicting Akhbārī views in M12:

> Deriving indicator is reliant upon The Book and the *sunn*a alone for the Akhbārīs. Although there is dispute amongst the Akhbārīs. Some, such as al-Astarābādī, who was the rejuvenator of the school of the Akhbārīs in the later period, explained in this book, *al-Fawāīd al-Madaniyyā*, that it is not permitted to do anything [ordered] in The Book without it being explained by the sinless ones (upon whom be peace). Others restrict this to clear verses, and still others go so far as to be almost like the Imams (upon whom be peace) in explaining the [meaning of] unclear verses. [*H*, 1, 169]

On this issue Bahrānī stands squarely within the Akhbārī tradition of

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1. It is puzzling that Bahrānī criticises both the *Akhbārī* position when his own view is so clearly a fusion of them. His criticism of the *Akhbarī's* recurs in Ml 2 (H, 1, p. 170; on which, see below, p. 249). At other points he refutes *Usulī* doctrines
2. See Newman, "Akhbārī-Usulī Dispute, Part 1", p. 29.

> his revelation to them (*al-wahy ilayhim*) and the Imams due to inheritance (*al-wirātha*) from the Prophets. This is different from [Imam 'Alī's] second category. [*H*, 1, 34]

Here we have two ways in which the Imams gained knowledge of the meaning of Qurānic verses — first, through their having "pure minds", and second, through inheritance from the Prophets. These modalities of exegetical ability are quite different for Bahranī. In the first, the Imams interpret the Qur'ān in their capacity as sinless beings. In the second, their interpretation is part of the apostolic succession, of which the former Prophets and the later Imams are a part. For the believer, however, there is no need to distinguish between these two modalities. Though the process may be different, the believer follows the same course of action: adherence to the Imams' exegesis of the Qur'an. Of course, the Imams' interpretation of the Qur'an is to be found in their actions and words, the historical reports of which are the *akhbār*.

This leaves one category unaccounted for: the first category of al-Tūsī (i): those verses understood by God alone). Imam 'All seems to have missed these out:

> Perhaps his [Imam 'Alī's] neglect in mentioning the first category of the Shaykh is due to the rarity of their occurrence in the holy Qur'ān — they are restricted to the famous five;[1] or perhaps his intention is only to mention the types of verses which God has preserved from the machinations of those who wish to change [the verses in the Qur'ān]. [*H*, 1, 34]

The second of these possible explanations may be a reference to the Shī'ī belief that some verses in the Qur'ān had been expunged or altered by the Sunnis. Bahranī, it appears, considers some verses to have been "concealed" by God, to prevent sunni attempts to alter them.[2]

In sum, then, of the four categories described by al-Tūsī (a taxonomy to which Bahranī pledges his allegiance), one is irrelevant (since it can only be understood by God) and two can be understood only through the *akhbār* of the Imams and the Prophet. Some verse can be understood by the believer without the aid of the *akhbār*, but these are few and "general and unrestricted" (mujmal wa ʻāmm). An example of such a verse is given by al-Tusī:

> You shall not kill those whom God has forbidden [you to kill] except [if you have] the right. [Q.9.151]

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1. A reference to those things known only to God mentioned in Q31.34.
2. See above, note 1.

favours the first Akhbārī position: legal rulings cannot be derived with any accuracy from the Qur'ān. To gain knowledge of the legal rulings, the *sunna* (encapsulated in the akhbār of the Imams) is essential.

Bahranī's position is, though, more nuanced than the first Akhbāri position, as is evidenced by the closing paragraphs of the first section of M3.[1] He states that the true position on these matters (*al- qawl al-fasl wa'l-madhhab al-jazl*) is that of al-shaykh al-Tūsi who, in his *Tibyān*,[2] Divides the verses in the Qur'ān into four categories:

1) those which God alone understands, and "it is not permitted for anyone to discuss them"

2) those which are clear to anyone who knows Arabic (e.g. Q92.151)

3) those which are *mujmal* (without conditions) and for which one needs the "explanation of the Prophet" (*bayān al-nabī*)

4) those which have two possible meanings (*ma'nayn*). Only one is correct and in accordance with the practice of the Prophet and the sinless Imams.

This four-fold taxonomy is juxtaposed by Bahranī with a different taxonomy, given in a report from Imam 'All. For Imam 'Alī, verses can be divided into three categories:

1) those which a learned or ignorant person can understand

2) those which only one who is "pure in mind" can understand

3) those which God, his Prophets and "those steeped in knowledge" can understand.

Bahranī marries these taxonomies by stating that: first, al-Tūsi's second category (ii) is Imam 'All's first 1); second, al-Tūsi's fourth category (iv) is 'Alī's second 2). The explanation of this identity involves the fact that the only ones who are "pure in mind" are the Imams, and 'All must have been referring to the Imams when he said these words; third, al-Tūsi's third category (iii) is 'All's third category 3). That is, al-Tūsī's *mujmal* verses are described by 'All as those verses which only God, his Prophets and "those steeped in knowledge" can understand. The final locution is, predictably, code for the Imams. The Imams are the key to understanding two of 'All's categories and two of al-Tūsi's categories. However, the Imams gain this status by different means. In 'Alī's second category (al-Tūsi's fourth) they understand the verses because they are "pure in mind". In 'Alī's third (al-Tūsi's thirth) category they understand them because they have inherited this ability from the Prophet:

> No one understand [their meaning] except for God, his Prophets by

1. *Ibid*, p. 32-35.
2. Tūsī, *Tibyān*, 1, p. 5-6

making a decision. The process of *tawaqquf* is described in Chapter Three.[1]

What is clear from Bahranī's assessment of the first *Akhbārī* position is that it is not unsympathetic. He defends their view against possible attack and considers their view to be supported by more *akhbār*. This slippage (from describing the position, to supporting it) is also evident in his account of the second *Akhbāri* position — that the Qur'ān can be understood without the aid of the Imam's *tafsīr*. The second *Akhbārī* view is based upon four qurānic verses (once again, the *petition principia* is obvious):

1) We have revealed The Book in which everything is explained. [0,16.89]
2) We have left nothing out of The Book. [Q6.38]
3) Those who seek knowledge can learn it [the Qur'ān] from them. [Q4.83]
4) Will they not consider the Qur'ān or are their hearts locked? [Q47.23]

Bahranī states that the first two verses are evidence that the *ahkām* are to be found in the Qur'ān. However, they are not evidence that one can derive these directly from the Qur'ān, because "the verses in The Book which refer to legal rulings are, all of them, *mujmal* (without conditions), *mutlaq* (unrestricted), *'amm* (general) and *mutashābih* (unclear),[2] from which one cannot be guided except by recourse to the *sunna*".[3] Hence they are not indicators in themselves. The examples given here by Bahranī all exemplify the Imams' ability to explain unclear verses in the Qur'ān, such as the number of hills upon which Abraham was ordered to place portions of the four birds in q2.260 (the number designated by the imams was 10); or the number of battlefields upon which God helped his people in Q9.25 (the Imams declared it to be 80). These examples demonstrate the need for the *sunna*.

The third verse, Bahranī argues, must be taken in the context of the preceding verse, "If they [those who are ignorant of God's command] refer [their presumptions] to the Prophet and those in charge, then those who seek knowledge can learn it [ie the truth] from them [ie the prophet and those in change]". According to the imams baqīr and Ridā, these verses refer to the Imams, and stipulate the need to submit to them. Hence they prove the reverse of what the second group of *Akhbarīs* claim: the verses prove that the Imams' *sunna* is essential to understanding the Qur'ān. The fourth verse does indeed prove that one should obey the orders of God, but it is general and does not give extensive details of this order. From this it is clear that Bahranī

1. See below, p. 105-112.
2. For an examination of the meaning of these terms, see Weiss, *God's Law*, p. 389-447 and Hallāq, Legal Theories, p. 45-47.
3. Bahrānī, *H*, 1, p. 31.

Q.3.7) with the Imams is a standard element, perhaps a defining element, of Shī'ī exegetical writings. It is not surprising to find it utilised here. It is important to recognise that such evidence is, in effect, a *petitio principle*. The tafsir of the Imams is used to justify recourse to the *tafsīr* of the Imams, but the Qur'ān could not be used as a proof by this group of *Akhbārī* in any other manner. To appeal directly to a Quranic verse as proof of their view on the incomprehensibility of the Qur'ān without the *akhbār* would, of course, be a contradiction.

The *akhbār* which are marshalled in support of this view include the famous *thaqalayn hadīth* of the Prophet: "I have left you two weights: The Book of God and my offspring, the people of my house"; and the statement of 'All: "The Qur'ān is the silent book of God and I am the speaking book of God". Such reports are said to demonstrate the indispensability of the *akhbār* when understanding God's revelation.

The opponents of this position cite "those *akhbār* which have come [to us] concerning the comparison of the *akhbār* to the Qur'ān [in cases of contradiction, which advise] the adoption of that which agrees with the Qur'ān and the rejection of that which disagrees with it."[1] If one is to compare the *akhbār* to the Qur'ān, to determine which are accurate or non-*taqiyya* (as the Imams have recommended), then surely this would only be possible if one could understand the Qur'ān directly?

> The point of dispute is that, if one cannot understand a thing from [The Book] without their [the Imams'] tqfslr, then this denies the utility of comparing [the *akhbār* with The Book]. The reply is that there is no inconsistency here because their *tafsīr* is only an "account of God's intention" (*hikāya murād allāh*) and adopting their *tafsīr* is really adopting The Book. [H, 1, 30]

In the rather vague expression, "account of God's intention", Bahranī seems to assert that the text of the Qur'ān is open to a number of interpretations (in this sense it is not clearly comprehensible on its own). The *akhbār* from the imams determine which of these interpretations is God's intended meaning. Hence the text of the Qur'ān can be read and analysed, but a definitive answer as to its meaning (ie its legal relevance) is impossible without the Imams' explanation, found in the *akhbār*:

> As for when there is no *tafsīr* from the Imams referring to [a particular interpretation of the Qur'ān], then it is obligatory to suspend one's judgement (*tawaqquf*) [H, 1, 30]

Without a *tafsīr*, one cannot make a ruling; one is forced to suspend

1. Bahrānī, *H*, 1, p. 30.

a text "on which one should act and rely" in legal matters (*al-'amal bihiJf l-ahkām al-shafiyya wa'l-i'timād 'alayhi*). Some even list 500 verses which are pertinent (mifallaq) to legal matters.

2) Some Akhbārīs claim that not a word of the Qur'ān, even such seemingly clear statements as "*qul huwa allāh ahad*" ("Say he is God, one", [Q. 11 2.1]) are able to be understood correctly except with the aid of the explanation of the Imams (*tafsir ashab al-'ismā*), ie the *akhbār*.

3) 3) Other Akhbārīs claim that one can understand the Qur'ān clearly without the need for the Imams' *tafsīr*. Bahranī states that according to this view, the exegete is "equal" with the Imams in "interpreting the difficult parts of [the Qur'ān] and clarifying the inclarities in it" (*ta'wīl mushkilātihi wa hall al-mubhamātihi*).

Bahrani does not discuss the Usūlī view any further, concentrating on the two *Akhbarī* views and describing them, rather disparagingly, as "between excess and negligence" (*bayn ifrat wa tafrīf*). The debate here concerns which texts are the subject of exegesis: the first *Akhbarī* view asserts that the *akhbār* alone are to be interpreted, since *kitāb* is essentially incomprehensible, whilst those who hold the second view argue that both *kitāb* and the *akhbār* can be analysed. The central issue at stake is "Where does one look, ab initio, for the law — to the Qur'ān or to the *sunna* of the Imams?"

The reason for the dispute amongst the *Akhbarīs* is, according to bahrānī, than the *akhbār* give no clear indication as to the correct position on this matter. The *akhbā*r give differing advice to the Shī'a concerning the relative accessibility of the knowledge found in these sources. Some exhort the Shi'a to follow only the *tafsīr* of the Imams; others recommend recourse to The Book directly. Bahrani considers the *akhbār* supporting the first position to be more numerous.[1] The first *Akhbārī* position is supported by five (s̱uitably interpreted) Quranic verses and five reports from the Imams. Amongst the Quranic verses is:

> God is a sufficient witness between myself and yourselves, and those who know The Book. [Q.13.43]

The Imams, when speaking about this verse, state:

> {By those who know The Book] He [God] means us.

The identification of ellipitical phrases in the Qur'ān (such as "those who have knowledge in their hearts" Q.29.49 and "those expert in knowledge"

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1. It is unlikely that conflicting *akhbār* were the real reason for this dispute, though Bahranī may wish to portray it as such. The underlying reason would be the vexed question of the relationship between the Imāms and God: what was its

are, then, to be interpreted to establish which of the reports have probative force.

More significant though is the epistemology underlying Bahranī's analysis. The *akhbār*, in *toto*, give rise to certain knowledge (*'ilm*) as to the historical accuracy of the events they describe. This certainty establishes them as having potential probative force. They gain decisive probative force when they are determined asnon-*taqiyya* reports. This epistemology is also evident in Bahranī's criticisms of the *Usūlī* position. How can we be certain that the accounts found in the books of rijal are accurate? And if we cannot be certain of this, how can we determine the probative force of a report on the basis of *isnād* criticism? The *Usūlīs'* position, then, is inconsistent: they claim that one can be certain that a report is of uncertain authenticity, but by their own arguments, this type of certainty is generally unobtainable. It is better, argues Bahranī, to accept the certain authenticity of the *akhbār*, and thereby avoid such inconsistencies. To support such a view, he refers to the early, pre-'Allāma juristic tradition, rejecting the erroneous findings of the later Shī'ī jurists. This prioritizing of the early period is a theme which recurs throughout his work. In M3, Bahrānī turns his attention to the status of *kitāb, ijmā'* and *dalīl al-'aql*. Strictly speaking, *dalīl al-aql* is a term used to designate a number of methods of hermeneutical analysis, and is the subject of the next chapter. Here I concentrate only on the first two sources in this list. Once again, Bahranī is primarily concerned with the possibility of establishing these texts as worthy of consideration in the derivation of a ruling. Being worthy of interpretation, they immediately become potential proofs (*hujaj*) of the law. Hence before the methods of exegesis of these texts are discussed, the status of the texts must be established. an analysis of these is to be found in the first two sections of M3 on *kitāb* and *ijmā'* respectively.[1]

The status of the Qur'ān, or The book (*al-kitāb*), as a text worthy of interpretation might appear axiomatic in Muslim legal discussions. One of the defining features of these discussions is the commitment to this text as the ultimate revelation from God, and hence a source, or indicator, of God's will. However, within the Shī'ī tradition, and in particular it seems within the Akhbārī-Usūlī dispute, its status was discussed in some detail. Bahranī outlines three positions found amongst the Shī'a. It is not the status of the Qur'ān as revelation that is being discussed here (all parties affirm this), but its ability to provide guidance for action and performance:

1) The Usulīs, unanimously according to Bahranī, claim that the Qur'ān is

1. *Ibid.*, p. 26-40.

himself. The *akhbār* found in it agreed with those found in Man *Iā yahduruhu al-faqīh*, but had no *isnāds*. This then proves that collections external to the Four Books can contain true reports. In the conclusion (*tatimma*) to M2, Bahranī gives out contradictory signals. In the first part he accords certain authenticity to the Four Books (and nothing else), and it the second part he states that he agrees with those scholars who have validated other non-canonical books. A combination of these two seemingly contradictory views is possible, but not explicitly stated by Bahranī: all the *akhbār* in the Four Books are to be considered sound (without investigation), and *akhbār* in other collections are to be treated on a book by book basis (or possibly a report by report basis) and investigated. This investigation could be on the basis of comparison between the material in the non-canonical collections and that in the canonical collections (a procedure implied by Majlisī's comment that the reason for authenticating *al-Fiqh al-radawī* was that many of the *akhbār* were replicated but without *isnāds*, in the *Man Iā yahduruhu alfaqīh*). Though Bahrārnī's position is difficult to determine with absolute certainty, due to his elliptical style, it would seem that he is quite willing to accept as authentic *akhbār* outside of the canon, but not on a de *rigeur* basis. Material from outside the canon must tested, whereas that inside the canon is of guarenteed authenticity.

Bahranī's position, then, on the textual sources of the *sunna* stands in contrast to the established view in Shīī jurisprudence. He endeavours to prove that the quantity of texts which have probative force is great, and that these texts are of certain authenticity, describing the words and actions of the Imams with complete accuracy.[1] They are, therefore, all worthy of interpretation; they are all to be considered when attempting to determine a ruling. However, they are, it seems, not of equal probative force, since some were issued under *taqiyya*. Determining which *akhbār* are taqiyya is a procedure which belongs to the hermeneutical process, not *isnād* criticism. The practice of *isnād* criticism is, therefore, roundly condemned, as it is an expression of doubt in the authenticity of the *akhbār*. In Ml and M2, Bahranī is concerned only to demonstrate that the *akhbār* are historically accurate and sound (*sahīh*). Historical accuracy leads one to accept potential probative force, but actual probative force seems to be postponed until the issue of *taqiyya* is settled. The *akhbār*, both canonical and non-canonical,

1. Bahranī's position, then, would seem similar to that of Ibn Hazm, who argues that all reports with sound transmissions, whether *khabar wāhīd* or not, bring certain knowledge. See Ibn Hazm, *Ihkām*, 1, p. 115-133 and Turki, Polemique, p. 100-112. "toute tradition [*Khabar al-wāhid*] implique la connaissance certain et la mise en pratique.", *ibid.*, p. 100.

occurrence in order that they might be assigned a probative force. Without the four-fold categorisation (or something similar), this would be impossible. Bahranī's response is brief:

> You have already learned... that the *akhbār* in our famous books do include external evidence (qarā'in) that prove they are sound. Hence it is clear that the cause of the aforementioned division does not exist in the *akhbār* of these books. [*H*, 1, 23]

The external evidence which proves the authenticity of the *akhbā*r is, one assumes, the circumstances of their collection outlined in M1. The history of the early Shī'ī community is once again utilised by Bahrānī. As we have seen, his interpretation of this history is made to do much of the argumentative work in his account of the probative value of the texts of the *sunna*.

Bahrānī, then, uses these six criticisms of the procedure of classifying the *akhbār* to re-affirm his own position as given in Ml: that the *akhbār* are, in *toto*, sound. He goes further than this and identifies the content of the 400 *usūl*, works written by the early Shī'a and supposedly linked to the Imams themselves, with the content of the Four Books (the third point above). He has concretised the possibly ambiguous concept of "'*akhbār*" with a specific set of texts which are then endowed with a history of provenance and authority. The Four Books are thereby canonised as inscrutable sources of the *sunna*.

In the conclusion of M2, Bahrānī tackles the issue of non-canonical *akhbār* collections. He states that some scholars have limited their rulings to those found in the Four Books because "other books have not reached the accuracy or critical appraisal which makes reliance upon them obligatory".[1] This is, according to Bahrānī, the correct position (*al-haqq al-haqīq*). He then quotes a passage from Ni'mat Allāh al-Jazā'irī (d. 1112/1700), in which Jaza'irī claims authenticity for a number of other early collections of *akhbār* — *'Uyūn akhbār al-rīdā, al-Amālī, al-Ihtijāj and al-Fiqh al-radawī*.[2] After this citation, bahrānī states:

> He [Jazā'irī] was skilled in what he formulated, wrote and established. His explanation is clear and one should rely upon it. [//, 1, 25]

Bahrānī then cites Majlisī's introduction to his encyclopedic *akhbār* collection, *Bihār al-Anwār*. Majlisī is quoted as saying that he was given a copy of *al-Fiqh al-radāw*, part of which was written in the hand of the Imam

1. Bahrānī, *H*, 1, p. 25.
2. *Al-Fiqh al-radawi*, supposedly authored by the eighth Imām, 'Alī al-Ridā (d. 203/818)

accusation that the Shi'ī *akhbār* are full of lies. Without the *akhbār* to direct and guide the community, true religion will be unable to survive.

The method of determining the transmitter's reliability is flawed, and hence the basis on which a report is classified into one of the four categories is ineffective. Bahranī gives four reasons why this is so: (i) The transmitters were scattered over scatted over a large geographical area. Bahranī informs the reader that from Imam al-Sādīq there were 4000 transmitters alone, and there were more from the later Imams. With such a mass of transmitters, how can the Usūlīs be certain that a particular transmitter is sound or unsound, when it is possible, indeed likely, that he has a namesake? This is a similar argument to that used in the first criticism. (ii) How many times does a transmitter have to be described as sound by the different *rījāl* authors?

> you know that between the authors of these books [of *rījāl*] and the transmitters of the akhbār was a long period of time, how can they [the author] be certain of their [the transmitters'] characters to such an extent that they can say they were trustworthy or corrupt? [//, 1, 22]

The means whereby one might determine the reliability of a transmitter are themselves unreliable, and the evidence upon which a transmitter might be praised or condemned is suspect. Hence the categorisation is unsound. (iii) The proposersof the four-fold categorisation are inconsistent in that they sometimes accept *akhbār* which should (according to their rules) be categorised as unsound. Bahranī cites a number of examples. (iv) Finally, amongst the *Usūlīs* themselves, there is a dispute over who is reliable and who is unreliable. Since they cannot agree over which transmitters are trustworthy, their procedure produces more problems than it solves. These four criticisms are presented as cumulative evidence which further demonstrates that the categorisation is an invalid means of determining the reliability of the *akhbār*.

5) The proposers of the categorisation claim that the method is necessary due to the existence of "isolated reports (*khabar al-wāhid*) which are bereft of external evidence" proving their validity. By this, they mean that there are akhbār in the four collections which are not related by a sufficient number of people to bing about certainty in the mind of the believer (a process known as *tawātur*[1]), and also that there is no external reason (circumstantial evidence, for example) to consider them authentic. They are, then, of less than certain authenticity, such *akhbār* need to be assigned a probability of

1. On *tawātūr* generally, see Weiss, "Knowledge of the Past" (and also *God's Law*, p. 274-291) and Hallaq, "Inductive Corroboration".

opinion also]. (H, 1, 17]

> *Mujtahids*, like al-Shaykh al-Bahā'ī and Hasan b. Shahīd II, are guilty of an epistemological inconsistency, taking one statement of the early scholars as mere opinion, arising from *ijtihad*, and hence not authoritative, whilst accepting other statements as authoritative. Such inconsistency is unacceptable to Bahranī.

3) The scholars, Bahranī argues, have ignored the role of the 400 *usūl*. Bahranī cites passages from the writings of Shahīd II (Zayn al-dīn al-'Āmilī (d. 965/1558)) to support his position, outlined in M1. The 400 *usūl* represent an accurate account of the Imams' action and words, and they were used as a basis for the early collections of *akhbār*. Bahranī takes the argument one step further and states that "the best of what was collected from [the 400 *usūl*] are in al-Kāfī, al-Istibsār and Man Lā yahduruhu al-faqīh" (ie the four caonical books).[1] Bahranī also cites Hasan b. shahīd II and al-shayj=kh al-bahā'ī whose pronouncements on the validity of the 400 *usūl* seem to support his own view, even though other elements of their juristic theory are variance with his view. Indeed al-Shaykh al-Bahā'ī is cited as having recognised other early *akhbār* collections as originating with the 400 usūl, including *Madīnat al-'ilm, al-Khisāl*, *al-Amālī* and *'Uyūn akhbār al-rīdā*.[2] BAHRāNī, Then, Is Puzzled As To why, after such faith in the 400 *usūl*, these scholars insist on the categorisation of reports into four categories:

> If the situation is as they claim concerning the authenticity of the *akhbār* of the Imams, what is the reason for them following this innovatory practice? [*H*, 1, 20]

Particularly surprising for Bahranī is that al-Shaykh al-Baha'ī explicitly states, in his *Mashrīq al-shamsayn*,[3] that all the collections of akhbar come from the Imams, and yet in the same work advocates the fourfold categorisation. The proponents of the typology, once again, are inconsistent in their arguments.

4) "If what they say is true and what they decree is sound, then it follows that the Sharī'a is ruined and religion is nullified."[4] This is a pure consequentialist argument. The typology leads inevitably to the rejection of a number of *akhbār* in the Four Books. This gives credence to the Sunni

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1. Bahrānī, *H*, 1, p. 18.
2. *Madīnat al-'ilm*, *al-khīsāl* and *'Uyūn akhbār al-rīdā* of Ibn Bābūya; al-Amālī of al-shaykh al-TūSī.
3. Bahranī gives a summary of al-Shaykh al-Baha'ī's passage (Baha'ī, *Mashriq*, p. 488) in which the *sanad* of the Four Books is demonstrated to be sound.
4. Bahranī, *H*, 1, p. 21.

guarantees the authenticity of the reports is, as in Ml, that the collection of the *akhbār* into books was a process immune from corruption. The *qarā'in* which validate the *akhbār* as sound, are the careful procedures followed by the early collectors, underwritten by the divine assurance that no corrupt reports are included in the collections.

Bahrānī takes the four-fold categorization to be best expressed in the writings of two members of the *mujtahid* camp: al-Shaykh al- Bahā'ī (who was cited in evidence for Bahranī's position in Ml) and Hasan b. Shahīd II (author of the *Ma'alim*). In the quotations cited by Bahranī, these two authors argue that categorisation is necessary because the length of time which elapsed between the Imams and the writers (a period of 700 years) was such that the evidence (*qarā'in*) which might have proved the validity of the *akhbār* was lost: "They resorted to action on the basis of opinion (*zann*) for [they argued] knowledge (*'ilm*) had been lost." Al-Shaykh al-Bahā'ī adds that in utilising the categorisation, they are merely following the precedent of earlier scholars who were faced with the same problem.

Bahranī's six arguments against the position adopted by al-Shaykh al-Bahā'ī and hasan b. shahīd II are as follows:

1) The arguments in Ml demonstrate that *taqiyya* is the cause of contradictions within the corpus of *akhbār*, not the inclusion of weak reports by heretical sunnis or non-Imāmī Shi'ites.

2) The evidence that they adduce when categorising a report is based upon an assessment of the reliability (*al-tawthīq wa'l-jarh*)[1] of the transmitters. However, the information on the transmitters is taken from books of rījāl[2] composed by early Shī'ī scholars (*al-qudamā'*). Why, asks bahrānī, do they follow the *qudamā'* in their assessments of transmitters, but not in their views as to the authenticity and probative force of the *akhbār*? Since the early scholars of *rījāl*, such as al-Tūsī, considered the *akhbār* to give certainty (*qat'*, *yaqīn*) as to the rulings of the Imam, why do the later scholars feel the need to doubt their authenticity? If it is argued that declaring the *akhbār* to be sound, as the early scholars did, is a matter of *ijtihad* [and hence personal opinion] which we are not compelled to follow, then we say that their reports concerning the status of a transmitter, be he sound, or a liar or whatever, is also a matter of *ijtihad* [and hence a matter of personal

1. It is clear that this is identical to *al-jarh wa'l-ta'dil*, on which, see Robson, "*al- Djarh wa'l-ta*'dīl", p. 462.

2. Books of *rijāl* are basically biographical dictionaries which include entries, not just on the Companions of the Prophet (and in Shi'ism of the Imāms also) but also members of the scholarly elite including contemporaries of the writer. For early Shī'i *rijāl* works, see Sachedina, "Kashshīs *Rijāl*".

the exegesis of law; it also lays down the maximum probative force which a report may acquire. It does not guarantee that its ruling forms part of the law; it merely guarantees that it is considered along with other *akhbār* in the formulation of a ruling or assessment. Bahranī's rejection of the categorisation, indeed the whole process of *isnād* criticism, is an indication not so much of his concern with the historical accuracy of these texts (though he would undoubtedly argue that these are accurate accounts of past events), but with confirming that these texts are "worthy of interpretation" or that they have potential probative force; or more accurately, that they are texts which are to be subjected to the legitimate hermeneutical procedures (of which there are many).[1] His position is that once considered worthy of interpretation, all these texts occupy an equal epistemological status. They do not bring with them a baggage of probability, which can then be used to resolve internal inconsistencies within the corpus of *akhbār*.

Bahranī states his allegiance at the outset of M2:

> The right procedure (*al-haqq al-haqlq*) is to follow what the most recent scholars have argued, like our Shaykh al-Majlisī and those that take [their doctrine] from him. They follow the middle path between the disputed positions.[2] [H, 1, 14-15]

Majlisi's position was that of the *muhaddithūn*, whose procedure was that of al-Shaykh al-Tusī. Al-Tūsī, according to Bahranī, proposed that *sahīh* means a report which has been confirmed by external evidence (*al-qarā'in wa'l-amārāt*). What this might mean is not immediately clear; however, the thrust of Bahranī's position is that the soundness of a report is not to be determined by isnād criticism:

> We intend in [this book] to desist from discussing the *isnāds* of the reports, and thereby criticising them. Perhaps an ignorant observer might think that we do this through [intellectual] weakness, negligence or for some other reason. We thought we should here demonstrate that this [lack of discussion of isnāds} is simply due to the fact [first] that, for us, those reports have already been proven to be sound, [second] that they came from the Imams and [third] that they are certainly authentic. [*H*, 1, 15]

Bahranī gives six arguments against the four-fold classification of *akhbār*, and it becomes clear that the external evidence (*qarā'in, amārāt*) which

1. See below, p. 147-164.
2. Exactly what the disputed positions are is unclear at this point. If they are between akhbārīs and usūlīs, it is unclear how majlisī (as described by bahrānī) follows a middle path Bahranī, as will become clear, follows an Akhbārīline.

"all of the *muhaddiths* and a recent groups of *mujtahids* such as our shaykh al-Majlisī". If bahrānī is consistent in his use of terms, muhaddith here refers to the early collectors of *akhbār* as well as the later Akhbārīs. By describing the Akhbarīs as *muhaddithūn* he gives them an intellectual pedigree and confirms their doctrine as consistent with that of the early (pre-'Allāma) Shī'a. The later (and innovatory) *mujtahids* support the four-fold categorisation of reports.

The four categories under discussion here are *sahīh* (sound), *hasan* (good), *muwaththaq* (confirmed) and *da'īf* (weak).[1] By bahranī time the definitions of these categories appear to have stabilised in the juristic tradition. *Sahīh* refers to a report, the *isnād* (chain of authorities) of which stretches back to the Prophet or an Imam in an unbroken chain of transmitters, all of whom are known to be truthful and honest (a quality designated by the terms *thiqa* and *'ādil*). *Hasan* refers to a report, the *isnād* of which reaches back to the Prophet or the Imams, but in which the transmitters are not proven to be sound. *Muwaththaq* refers to those *akhbār* which are related, with a complete *isnād,* but included in the *isnād* is a non-Imāmī transmitter (who is nonetheless considered sound). *Da'īf* is used to describe any *hadīth* which fails the above criteria, including those akhbār transmitted by unknown or untrustworthy transmitters.[2] For classical Shi'ī jurists (from al-'Allāma onwards), the historical accuracy (and hence the probative force) of reports found in the collections of *akhbār* was determined by an analysis of their *isnāds*. Though implicit in these procedures was a means of determining historical authenticity, much more important was that these procedures determined the probative force of a report — that is, whether it might be used as a proof and whether it possessed the force required for the ruling contained within it to overrule a conflicting ruling found in another *khabar*. It is here that the problem of *taqiyya* appears once more. An historically accurate report is not necessarily a proof, since it may have been issued under *taqiyya*. It is sound but does not have probative force. Similarly, a report may be abrogated (though this applies only to Prophetic reports).[3] What *isnād* criticism does is establish that the report is to be considered in

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1. The definitions of these terms, and the category into which a report falls is the very stuff of juristic dispute. I have taken as my guide Shaykh Hasan b. Shahīd al-Thānī's (d. 1011/1602) work *Ma'ālim al-dīn*. This work continues to be a basic text for training Shī'ī scholars.

2. Hasan b. shahīd II, *Ma'ālim*, p. 296-297.

3. Brunschvig, "les *usūl al-fiqh imāmites*", p. 205; though the doctrine of *bada'* was an attempt to account for God appearing to change his mind, and was in some way linked to naskh, it appears that it was more theological than legal in its subject matter. See Sachedina, *Messianism*, p. 153-156.

the historical accuracy of all the *akhbār*. His intention in M1 was to discredit attempts to reduce the probative force of the *akhbār*, either by the simple means of identifying *taqiyya akhbār* (based upon the identity of the Imam's interlocutor), or, more treacherously, by *isnād* criticism. Both procedures, he feels, are satisfactorily rebutted by his arguments. A consequence of these discussions is, though, that Bahranī is forced to conclude that the Imams allowed *taqiyya akhbār* to be included in the 400 usūl, that is, they did not present their followers with an unequivocal account of the law, allowing contradictory *akhbār* to continue in existence, and hence permitting the possibility of the Shī'a following a ruling indicated in a t*aqiyya* report. Since a *taqiyya* ruling is not a reflection of the true sharī'a, but only a reflection of the Imam's dissimulation, then the conclusion must be that the Imams allowed the Shī'a to fail in their duty to follow the law. Bahranī attempts to salvage his position in the face of this powerful theological objection in M5, analysed in the next chapter. However, the uncomfortable theological objection remains; for bahrānī, the Imams allowed *taqiyya* reports to be preserved, and hence the possibility of the Shī'a falling into error is ever present. One might argue that this contravenes God's obligation to provide the optimum.

Second, Bahranī has yet to delimit which texts constitute the *akhbār*. In Ml, he cites passages from numerous sources: from the early collections of the Shī'a and from works of jurisprudence (such as al- Tusi's *'Uddat al-usūl*). He also maintains that the *akhbār* were oreserved and protect ed from corruption until the time of the three Muhammads. He draws, then, on a broad range of Shī'ī sources, indicating that he considers them all to be authoritative. He seems to have a rather indistinct conception of which texts constitute the *akhbār*, and hence the *sunna*, being willing to accept the authority of reports taken from a variety of sources. In M2, he gives a more precise account of which texts constitute the akhbār.

That akhbār should be analysed on a report by report basis, and not on a collection by collection basis, had been the settled position in Shi'ī jurisprudence before the rise of akhbarism. In M2, bahrānī embarks upon a sustained attack on this procedure, and, in particular, the practice of "dividing the *hadīth* into four categories" (tanw' *al-hadīth ilā al-anwā' al-arb'a*). "All of our colleagues", claims Bahranī, agree that either al-'Allāma or Jamāl al-dīn Ahmad b. Tāwūs ((d. 6673/1273 or 1274) and teacher of al-'Allāma) instituted this practice in Shī'ī legal theory. Before these two writers, scholars relied upon the method laid down by by al-Shaykh al-TūsT in his *'Uddāt al- Usūl*. Those who support the method of al-Tūsi comprise of

to the point of giving the names of untrustworthy transmitters. They were aware that fallacious *akhbār* would lead future generations astray. Bahranī asks rhetorically:

> Is it possible... that just, honest people [like the early transmitters], when they heard thoughts like these from their Imams, would, after [such advice] , approve of a report, the certainty of which they could not guarantee, and in the clear meaning of which they could not have confidence? Rather, it is certain and clear that transmitters like these had a custom (*'āda*). They did not mention or relate in their writings anything, if its provenance was not as clear to them as the truth... The Imams confirmed everything that may and may not be in the *Shari'a* for [the transmitters]... They [the Imams] are the preservers of the *Shari'a*, and its transmitters, guardians and protectors, and they have successors in this process in their reliable companions and the select few. They enlighten them (*yūhūna*) with the secrets of the rulings (ahkām) and set them aright upon the hidden depths of all that is forbidden and permitted. [*H*, 1, 10][1]

Finally, Bahranī lists the transmitters specifically rejected by later Imams as unreliable or liars, saying:

> It is obvious and indisputable that, considering the notoriety of the people mentioned here, not a single one of those who followed the Imams' instructions in transmission of akhbār, would have relied upon [the unreliable transmitters'] reports, wrote them in their usūl except when other factors [external to the transmission itself] had necessitated their surety and established them as proofs. [H, 1, 13]

He enlists support for this view from al-Shaykh al-Bahā'ī (Muhammad b. Hasan (d. 1031 or 1032/1622 or 1623), an interesting choice since Baha'ī was considered to have been an arch Usūlī), and ends Ml with an example from Saduq's *'Uyūn akhbār al-ridā*[2] in which a report with an *isnād* which included unreliable transmitters is given probative force (*hujjiyya*) because it had already been included in one of the 400 *usūl*, and therefore its accuracy had been guaranteed by an Imam.

Two observations need to be made before moving on to other matters. First, the issue of *taqiyya* has been eclipsed by Bahranī's concern to establish

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1. See above n. 20 for an explanation of this poetic style. From this it would appear that, for Bahranī, the Imāms, either personally or through some mystical "enlightenment" (*wahy*), ensured that the Companions passed on the true indicators of the Sharī'a. Whether or not the *taqiyya* reports are included in this is unclear.
2. A famous collection of akhbār, but also one which failed to be included in the canonical four books. See above, n. 15.

injustice on God's part.[1] The Almighty ensures the existence of a guide by preserving only the true *akhbār*. One might legitimately ask why God (and the Imams) allow *taqiyya* reports to be preserved if they do not reflect God's law. Surely the continued existence of *taqiyya* reports entails the risk that God's law will go unheeded, and that the Shīa will be led astray? If so, does this not infringe upon God's quality of justice? Unfortunately, bahrānī does not address this possible criticism.

Preservation of the true reports of the Imams is demonstrated not only by reference to divine assurance, but also by historical evidence. Bahranī draws on the account of the 400 *usūl* (*al-usūl al-arba'mi'a*).[2] according to shī'ī historiography, these were compendia of *akhbār* which preceded the existent collections:

> [The Companions] wrote the 400 *usūl*, all of which were recorded from the answers [of the Imams to questions]. [The Imams] used to declare that the transmissions which [the Companions] had deemed to be inaccurate, were accurate. [*H*, 1, 9]

Bahranī then recounts various reports of how, at different times, the 400 *usūl* were presented to the Imams for correction and certification. He further states that the Imams ordered their followers to "avoid liars and refer any report supposed to be from them to the holy book, the prophetic *sunna*, and to reject anything that contradicts either of these."[3] The accuracy of the *akhbār* is further confirmed the *bête noir* of early shi'ism, is criticised as an unreliable transmitter.[4] Although he tried to include fallacious *akhbār* in his collection, the Imams recognised this and warned the Shī'a. Bahranī cites further *akhbār* from Kulaynī's Kāfī which demonstrate that the Imams urged the Shī'a to collect their sayings in writing to prevent corruption and to preserve their example for future generations.

The evidence for the historical preservation, as well as the rational necessity of the divine protection of the *akhbār* are, for Bahranī, sufficient proof, indeed conclusive proof, that the *akhbār* are, in *toto*, sound. God himself inspired the early collectors, preventing error in transmission. The Imams checked *usūl* and coached their followers to recognize false reports,

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1. For the idea of a divine guide, and the (rational) necessity of an Imām who is occluded but present, see Sachedina, *Messianism*, p. 75-108.
2. See Kohlberg, "*al-Usul al-Arba'u Mi'a*".
3. Bahrānī, H, 1, p. 9.
4. See Madelung, "al-Mughīriyya", p. 347-348. Al-Mughīra b. Sa'īd (d. 120/738) was an extremist Shi'ite, whose views made him unacceptable as a transmitter of hadith. Muhammad b. 'Umar al-Kashshī (d.mid fourth/tenth century) compiled one of the most important early works of biography (*rijāl*). See below, n. 33.

2) that one can recognize *taqiyya* reports by determining that no sunni was present

3) that one can eliminate contradictions between different reports of the Imams through discrediting one as unhistorical due to a faulty chain of transmission.

His rebuttal of the last of these propositions is the most significant for it undermines the role of *isnād* criticism in determining whether or not a report can function as an indicator of the divine law. The uncertainty (*shubha*) which has afflicted the proponents of the third position is made worse by two factors: first, their belief that "opponents, degenerates and those well-known as liars" from heretical Shīī groups and the sunnis have fabricated reports, and second, a report from the Imam in which he says, "For every one of us [the Shī'a] , there is one who spreads lies about us".[1]

Bahrānī attempt to demonstrate that his oppoonents' suspicions are unfounded by briefly describing the transmission of the *akhbār* from the time of the akhbār being recorded in the Shi'ī collections. *Akhbār* because God has ensured their sound transmission from the time of the Companions of the Imams to the time of the "three Muhammads";[2] a period of more than 800 years. God achieved this by "illuminating the tombs [of the Imams] in such a way that the reports (*ahadīth*) have only reached us after eyes have carefully guarded their surety and bodies have wasted away in their careful revision".[3] The poetic flourish of the last two phrases illustrates Bahranī's penchant for expressing himself in rhyming couplets; such phrases are often difficult to translate and sometimes mask his meaning.[4] Here he envisages a supernatural intervention whereby the true reports of the Imam's actions and words are preserved through God inspiring the Shī'a to preserve only those *akhbār* which are historically accurate. Bahrānī, it seems, is relying on the established Mu'tazilī-Imāmī argument that God could not leave his community devoid of a guide after the *ghayba*, for to do so would entail

1. Bahrānī, H, 1, p. 8.

2. The "three Muhammads" refers to the three later collectors of *akhbār* whose works were used in later Shīī law instead of the canonical Four Books. Most of the traditions in these later collections are also found in the earlier collections. The three Muhammads were: Muhammad Muhsin Fayd al-Kasham ((d. 1091/1680) and author of Wasā'il al-Shi'a), and Muhammad bāqīr al-majlisī ((d. 1110/1699) and author of the voluminous and widely respected *Bihār al-anwār*).

3. Bahranī, H, 1, p. 8-9.

4. Bahrani regularly reverts to rhyming couplets and the usage of metaphorical language, particularly when describing divine intervention or other esoteric processes. This use of metaphor contrasts with his own literalist hermeneutic in the interpretation of revelation. His usual direct style is clearly insufficient to describe some of the more elevated elements of his juristic theory. For other examples, see below, p. 137.

> their (peace be upon them) akhbār. We recognise that we should expand on this idea by relating some of the akhbār which prove it, so that the reader does not think that we oppose these colleagues without reason, and thereby label us erroneous and mistaken. [//, 1, 5]

Following this statement, Bahranī lists six reports from various Imams found in the early works of Shī'ī authors (Kulaynī's *Kāfī,* Tūsī's *Tahdhīb* and *'Udda*, Tabrasī's *ihtijāj* and Sadūq's *Ma'ānī al-akhbār*).[1] All the *akhbār* refer to occasions when the Imam gave differentanswers to the same question on different occasions. From these examples, bahrānī argues that contradictions within the *akhbār* are solely due to *taqiyya*. If it can be determined which contradictory reports are *taqiyya*, one can decide which to reject. Bahrānī confidently states that "deciding between *akhbār* [which contradict each other] on the basis of one of them being *taqiyya* is the strongest means of deciding between the *akhbār* (*tarjīhat*) after comparison with the Holy Books"[2] He continues:

> Most of the contradictions which occur in our *akhbār*, no all of them, on consideration and research, come about simply because of *taqiyya*. [The existence of these contradictions] has caused uncertainty to enter into [the minds of] a group of modern scholars (may God be pleased with them). They have thought that these contradictions have come about solely because of the inclusion of the *akhbār* of liars within our *akhbār*. Hence they have used this insight to distinguish between sound and weak and useful and useless *akhbār*. [H, I, 8]

The opponents, unnamed here, but again a reference to the Usūlīs, mistakenly thought that when two reports contradicted each other, one must be historically accurate and the other inaccurate. The means of distinguishing between the two is to examine the *isnād*. For Bahrānī, this misses the crucial point that both can be historically accurate, but one (or both) was given by the Imam "due to dissimulation" (*bī'l-taqiyya*).

Bahranī, by citing these akhbār, proves to his own satisfaction that three of the commonly held beliefs amongst his Shī'ī colleagues are mistaken:

1) that one can recognise *taqiyya akhbār* by the identity of the questioner

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1. The first this list (Kulaym's *al-Kāfi* and al-Shaykh *al-Tusi's Tahdhīb*) are two of the Four Books which are the nearest Shī'ī scholars have come to delimiting a "canon" of the akhbār. For Bahrani's discussion of the importance of the four books, see below, p. 45-46. The third work (al-Tusī's *'Udda, al-usūl*) is probably the earliest comprehensive work of Shī'ī *usul al-fiqh*. The fourth, *al-Ihtījāj* of Ahmad b. 'All al-Tabrasī (d. 548/1153) is also a collection of akhbār. The last (Shaykh al-Sadūq, Muhammad b. 'All b. Bābūya's (d. 381/91 1) *Ma'ānī al-akhbār*) is one the ibn Babuya's collections of reports which failed to gain acceptability as one of the "canonical" Four Books.
2. Bahranī, H, 1, p. 8. See below, p. 112-121 for Bahranī's methods of *tarjīh*.

jurist, then, is not only concerned with the historical accuracy of a report of an Imam's words or deeds. His primary concern is the ability of the report to act as a proof, that is, its probative force (*hujjiyya*): does the report have the status of being a source, and hence an indicator of the law, or is it an indication of how the law was presented to others (non-Shī'īs)? Every report is potentially *taqiyya*, and hence potentially redundant as an indicator of the law. Bahrānī discusses the juristic implications of *taqiyya* reports further in his account of contradictions in the sources (*ta'ārud al-akhbār*).[1] A report is worthy of interpretation by virtue of its existence, whether or not it is *taqiyya*. This aspect of bahrānī's thinking brings into sharp relief the difference between his theory and that of Bihbahānī, where, as we shall see, a report is only worthy of interpretation after it has passed a series of preliminary tests.[2]

It is obvious, bahrānī begins, to anyone who has considered the history of the early Shī'ī community, that the Imams experienced suffering and oppression (*mihna wa baliyyā*), and hence they were forced to remain in "the seclusion of dissimulation" (*zāwiyyat al- taqiyya*). They also encouraged the Shī'a to accept such a lifestyle until the Imam's return. Only a few of religion's requirements (*ahkām al-dīn*) were known to the Shi'a and the prevalence of *taqiyya* meant that the true akhbār of the Imams were mixed with the akhbār of *taqiyya* (*imtizād akhbārihi bi-akhbār al-taqiyya*). Muhammad b. Ya'qūb al-Kulaynī (the early Shī'ī collector of *akhbār* (d. 328/939 or 329/940)) himself admitted to having been mistaken concerning his method of distinguishing between *taqiyya* and non-*taqiyya akhbār*. His method had been based on the transmission of the report (*al-tarjīhat al-marwiyyd*). Taqiyya reports, Kulaynī originally thought, could be recognized by the fact that enemies of the Imams were present on the occasion described in the report. He was followed in this by "some of our fellow Shi'a". However, Bahrānī argues, the Imams contradicted themselves even when there was no enemy present: "you see them answering one question with numerous answers, even when the questioner was not an enemy" (*mukhālif*, ie a *Sunni*).

One group of Shī'ī colleagues, in particular, receives bahrānī's criticism:

> Our colleagues, may God be pleased with them, have restricted taqiyya interpretation (*al-haml 'alā al-taqiyya*) to when the questioner was a Sunni (*min al-'amma*). This is in conflict with what a perspicuous mind and a diligent understanding would conclude from

1. Bahrānī, H, 1, p. 87-111 and, see below, p. 112-121.
2. See below, p. 67.

of his discussion of the textual sources to it. I follow bahrānī's order of analysis in what follows.

M1 and m2 deal exclusively with the status of the akhbār—the reports of the words and deeds of the Prophet and the Imams. Though the words and deeds of both the Prophet and the Imams are considered *sunna*, that is, an example to be followed, it is the reports of the imams which receive most of bahrānī's attention. The reason for this will become clear.

M1[1] represents bahrānī's attempt to establish an intimate connection between historical event and written record. For him, the akhbār are accurate reports of historical happenings. He begins with a discussion of *taqiyya*. *Taqiyya*, which has been translated as "pious dissimulation", is the term given by Shi'ites to the activity of hiding one's true beliefs so as to avoid persecution in a hostile environment. Shīī theologians and jurists agree that, at times, the Imams practiced *taqiyya*, not through fear for their own lives, but through fear that the community might be persecuted because of their actions or that it might be left without a leader. They also advised their followers to practise *taqiyya* as a means of preserving community well-being.[2]

Taqiyya presents a particular problem for for Shīī jurists when examining the *akhbār* as a means of gaining knowledge of the *sunna*. When an imam is reported as having made a particular statement, or performed a particular action, how is one to know that this statement or action is a reflection of the *sunna* and not due to *taqiyya*? If a statement is confirmed as *taqiyya*, does it immediately lose its status as "a text which indicates the *sunna*"? Might it be an indicator of the correct course of action (ie *sunna*] in circumstances of oppression; that is, can a *taqiyya-khabār* be an indicator of correct *taqiyya* behavior? Furthermore, how certain does one have to be of the *taqiyya* nature of the action described in the *khabar*? Is mere suspicion sufficient? These are crucial matters for the Shiī jurist, for they add a further test to the system of *hadith* criticism propounded by the sunnis, and accepted with some modification by the Shīa. After a Sunni jurist has determined the historical accuracy of a report (by means of *isnād* criticism),[3] excepting the possibility of abrogation, that report immediately becomes an indicator of the law. After a Shīī jurist has determined the accuracy of a report, the indicative capacity (*dalāla*) of the report is still in some doubt, for it may be the result of *taqiyya* and therefore not a true source of the law. The Shīī

1. Bahrānī, H, I, p. 4-14.
2. For *taqiyya* in general, see Kohlberg, *"taqiyya"*.
3. On which, see below, p. 42-45.

> Amongst the clearest of what they [the two parties] believe is a difference in substance: for the *mujtahids*, the indicators are four: *kitāb, sunna, ijmā'* and *dalīl al-'aql* — the last of these being *al-bara'ā al-asliyya* and *al-istishāb*.[1] The Akhbārīs accept only the first two. There is clear dispute on this issue. [H, 1, 167-8]

The remainder of this chapter concerns Bahrarnī's and Bihbahāni's thoughts on the first three sources of law: *kitāb, sunna* and *ijmā'*. These are distinguished from the fourth source by their textual quality — that is, they consist of statements imbued with legal authority. The fourth source, *dalīl al-'aql*, is properly speaking a collection of interpretative principles, and is, therefore, analysed in the next chapters.[2]

The issue for both our authors is how and when the written documents we possess (ie the words in the *Qurān*, the *akhbār* and the statements upon which there is consensus), might be considered legitimate representations of God's intentions (either directly in the *Qur'ān*, or indirectly through the Prophets, Imams or the community), and thereby become indicators of the law. We are not concerned here with how they are to be interpreted, but with how these texts become worthy of interpretation and how they gain the potential to prove or disprove certain legal norms. This probative force which the texts may (or may not) possess is termed *hujjiyya*, meaning literally "ability to act as a proof".[3] This chapter describes how these putative sources gain the status of proofs (and hence indicators) of God's law.

Bahrani'S Theory Of The Textual Sources Of Law

The usual order in which the sources are mentioned (*kitāb, sunna* and *ijmā'*) reflects an order of authority. Though mentioning the sources in this order was common amongst Shīī jurists from Ibn Idrīs onwards, bahrānī, in his analysis of these sources in the first three Prologues, adjusts the sequence to *sunna, kitāb, ijmā'*. As will become clear, his theory places the *sunna* in a pre-eminent position, and this, it appears to me, is the most plausible explanation for this modified order. Structure reflects message, and since, for Bahrānī, sunna forms the legal hub around which his jurisprudence revolves, it is perhaps not surprising that he considers the status of the texts which represent the *sunna* (the *akhbār*) first, and that he devotes around two thirds

1. For a discussion of the of these terms, see below, p. 91-102.
2. See below, p. 87-145 and p. 146-182.
3. The term *hujjiyya* is also translated as "authoritativeness" (see Hallaq, "Sunni Consensus", p. 428). "Probative force", however, captures, more specifically in my view, the ability of the source under discussion (*kitāb, sunna, ijmā"*) to act as as a proof in the process of legal reasoning.

Shī'ī *usul al-fiqh*. Initial rejection of the sunni model gave way to the incorporation, albeit in modified form, of the themes found in early Sunni works of legal theory.[1] By the time of Ibn Idns al-HillI (d. 598/1202), the sources of Shī'ī law were characterised as *kitāb*, *sunna*, *ijmā'* and *dalīl al-'aql*, a typology which mimicked that of the sunnis with the exception of *qiyās* (analogy) which was replaced by *dalīl al-'aql* (literally "the indicator of reason", a term which was itself the subject of some debate).[2] *Qiyās*, if not by name, then certainly in substance, was incorporated into Shi'ī legal theory; the inclusion of *ijmā'* in Shī'ī legal theory was also an imitation of Sunni *usūl* thought. The structure and central themes of Shī'ī works of *usūl al-fiqh* (though not necessarily the conclusions of the authors) reflected the generic characteristics of writings of non-Shī'ī legal theory. Though Imamī *usūl* was characteristically Shī'ī, the terms of refrence and the generic features of Shi'ī *usūl* works were heavily influenced by non-Shī'ī Muslim discussions.

The Akhbārī school challenged the four-fold characterisation of the sources of Shī'ī law. Astarābādī, and the jurists who followed his line, rejected *ijmā'* and *dalīl al-'aql*, claiming who followed his line, rejected *ijmā'* and *dalīl al-'aql*, claiming *kitāb* and sunna as the only legitimate sources of knowledge of and sunna as the only legitimate sources of knowledge of God's law. That this restriction was a prevalent element in Akhbārī-*mujtahid* polemic is evidenced by its appearance in a number of "lists" cataloguing differences between the two schools.[3] In the famous list of Samāhijī, the second point of difference between *mujtahids* and Akhbārīs is the following:

> The *mujtahids* say that the indicators which we have are four: *kitāb, sunna, ijmā'* and *dalīl al-'aql*. The Akhbārīs say only *kitāb* and *sunna*. Some of them even restrict them to *sunna* alone, because [the meaning of] kitāb is unknown to them, for it is not permitted to interpret (*tafsīr*) it [ie The Book] without [first] consulting [the Imams].[4]

Bahrani himself mentions this as the first, and hence for him probably the most significant, difference between the Akhbārīs and the *mujtahids*:

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1. Brunschvig, "Les *usul al-fiqh* Imāmites", p. 201-204. Many of the early (inextant) works of Shī'ī *usul al-fiqh* concentrated on a refutation of the "Sunni" doctrine of *qiyās*. Hence, even in these polemic documents, Shī'ī legal theory was basically reactionary.
2. Modarressi ("Rationalism and Traditionalism", p. 141, n. 1) states that Ibn idrīs was the first to list these sources in list order (Ibn Idrīs, *Sarā'ir*, 1, p. 42). For *dalīl al-'aql*, see below, p. 87-89. Amongst sunni writers, Ghazālī is, it would seem, unusual in proposing *dalīl al-'aql* as the fourth source (Ghazālī, *Mustasfā*, p. 80 and p. 159-165). The possibility of Ghazalī's formulation influencing Ibn Idrīs should not be ruled out.
3. See also modarressi, "rationalism and traditionalism", p. 141, n. 1.
4. Newman, "Akhbārī-Usūli Dispute, Part 1", p. 24-25.

(3)
Bahrani's And Bihbahani'S Theory Of The Textual Sources Of Law*

Robert Gleave

Introduction

Whatever the reasons for the emergence of the Shī'ī doctrine of the occultation of the Imam (*ghaybat al-imanī*), the juristic ramifications were extensive. In theory, the Imam when present, held theological, legal and ultimately political authority. In his absence, the community was forced to find alternative means of gaining knowledge of God's intentions. With remarkable alacrity, the Shī'ī scholars develpped a substitute for a charismatic Imam: texts. The residue of three centuries of community experience was endowed with the authority of the absent one. Though the Shi'a had engaged in some polemic with their opponents concerning the authenticity of the Quranic text, this was set to one side.[1] The texts, which recorded the sayings and actions of the Prophet (*hadīth*) were supplemented with those of his legitimate successors, the Imams (*akhbār*), and these together became authoritative sources of guidance in the absence of the guide himself. There is little doubt that the designation of the example of the Prophet and Imams as "*Sunna*" was in imitation of Sunni legal developments dating from *al-Shāfi'ī* (d. 204/820), and perhaps earlier.[2] The Sunnis had developed a third source from which god's law might be derived: the consensus (*ijmā'*) of the community. The various Shī'ī evaluations of *ijmā'* as a source of knowledge (theological or legal) typify the development of early

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* Gleave, Robert .*Inevitable Doubt: Two Theories of Shī'ī Jurisprudence* .Vol. 12. Brill, 2000, pp29-85.

1. For an examination of Shī'ī attitudes towards the Qur'ān, see Eliash, "the shi'ite Qur'ān; Kohlberg, "some notes,'; Lawson, "note for the study" and Gleave, "shi'ite Exegesis.

2. The literature on the development of the concept of *sunna* in early Islamic thought is extensive. The importance of Joseph Schacht's work cannot be underestimated (Schacht, *Origins*, *passim*, but especially p. 58-82) and has inspired a gamut of criticisms and refutations. The Shī'ī identification of text with *sunna* is less well documented in western languages, but, see lecompte, "Aspects de la literature", parucularly p. 101; calder, "Structure of Authority", p. 171-176; Modarressi, *Introduction*, p. 2-6 and Momen, *Shi'i Islam*, p. 173-175.

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12. Gleave, Robert. Inevitable Doubt: Two Theories of Shi'i Jurisprudence. Leiden: Brill, 2000.

Conclusion

Bihbihani clings to tradition as embodied in the foundational Shi'i texts as well as the consensus of Shi'i scholars. He also sees the necessity of interpreting the texts on the basis of the language and custom of 8th century Arabia. However, he also sees the necessity of establishing new cases. In his mind, any ruling that achieves consensus is part of the Shi'i tradition and cannot be changed. In practice, he suggests, few rulings have achieved this status. Establishing new judgments is in the hands of mujtahids. They must master linguistic and rational sciences in order to interpret the texts and establish new interpretations. In this way, Bihbihani attempts to strike a balance between tradition and change, text and reason.

In a broad sense, Bihbihani's theoretical approach to the Shi'i tradition is analogous to the manner in which most rationalists working within a given tradition might operate. He viewed the tradition as a framework or coherent pattern of arguments, practices, etc. This is a more dynamic view of tradition than simply adopting whatever the past seems to dictate. Similar to the way that Americans might approach the Constitution as the "sacred" text on which the American tradition is founded, Bihbihani assumed that any aspect of law that was not clearly outlined in the text was open to interpretation and reinterpretation until it gained universal credence.

Bihbihani's conception of Shi'i law shows that applying overarching postmodern divisions to the Usuli-Akhbari divide may lead to oversimplification. It may seem convenient to label Akhbaris as fundamentalist conservatives and Usulis as liberal rationalists. Bihbihani criticized Akhbaris for viewing Islamic law in black and white terms and accepting a literal reading of the texts. His Usuli system accepted that uncertainties must be overcome through reason and textual criticism and that there are shades of the truth, which may suggest that Usulis accepted a pluralistic view of knowledge. However, this division falls short when considering that it was Usulis, not Akhbaris, who issued death warrants on their enemies because of their false interpretations of the texts. Considering this fact outside the context of the Usuli approach to fiqh, one might suggest that Usulis are the fundamentalists, not Akhbaris.

assistance of the resources available to him (textual evidence, *ijma'*, knowledge of *'urf* and lugha, and the power of human reason).

For practical purposes and as far as lay Shi'is are concerned, the zann of the mujtahid is reality. Bihbihani even argues that once the mujtahid takes every piece of evidence into account and makes every effort, God's ruling appears in his decision.[1] Since there is no way to be absolutely sure of what is in the mind of the Lawgiver (other than the texts), the mujtahid is the final arbiter on matters that are not textually explicit, which are few in number according to Bihbihani.

Bihbihani argues that the zann of a mujtahid may not initially reach the state of certainty. As with any ruling, *ijma'* acts as a check on authoritative judgments. Similar to Qur'ānic verses and hadith reports, Bihbihani argues that there is a hierarchy of zann that results from ijtihad. Zann has the potential to become perfect knowledge, but does not always reach such a state. At the lowest level, zann is actually similar to doubt (*shakk*).

In order for zann to reach a higher state, Bihbihani explains that texts must be properly applied to real cases. He gives the example that if urine is impure, then semen, blood, and feces are as well.[2] In this case, the mujtahid must differentiate what is known for both the textual case and the novel case. Additionally, he must know the indicator (*dalil*) that allows him to produce the novel case from the textual case. The text indicates that urine is impure. Since semen, blood, and feces are similar substances, they are impure as well. Bihbihani argues that if a mujtahid produces a novel case when it is not permitted, it is no different from *qiyās* (which he theoretically rejects) and fiqh is ruined. Therefore, he suggests that if the zann of a mujtahid is not derived properly, it can lead to doubt. He does not call this type of zann doubt (*shakk*) though. He designates the lowest level of zann as dissemination (shuhra).[3]

Zann becomes stronger as it increases in consensus (*ijma'*) among mujtahids. Therefore, Bihbihani likens zann to hadith in that the more widespread the zann of a mujtahid is, the more certain it is. In other words, *zann* that has a high level of agreement carries similar authority to a widespread hadith report (*khabar mutawatir*). As with hadith reports, only opinions that achieve consensus (*ijma'*) reach the state of sure knowledge and have the same status as unambiguous rulings (sing. *hukm*) of God, as found in the Qur'ān.

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1. Bihbihani, *al-Fawā'id*, 138.
2. Bihbihani, *al-Fawā'id*, 291.
3. Bihbihani, *al-Fawā'id*, 301

addition to interpretation of the texts, it is the most important issue that divides the two schools. Bihbihani says Akhbaris argue that mujtahids claim that zann is sure knowledge ('ilm). He then explains that it is actually the opposite, because what Akhbaris call knowledge is in fact conjecture. Further, Akhbaris infer what, in reality, is the opposite of rational proofs.[1] In other words, Bihbihani argues that although Akhbaris claim to base their rulings wholly on textual evidence, they actually make inferences, albeit with flawed methodology. So, their rulings are, in fact, based on sources external to the texts even though they refuse to admit it. And since Akhbaris do not use exegetical methods to interpret the texts properly, their conjecture is less likely to coincide with the Lawgiver's truth than the conjecture of Usulis.

After textual sources and consensus (*ijma'*), Bihbihani bases the authority of Shi'ism on the opinions (*zann*) of mujtahids. He argues that the conjecture (*zann*) of a mujtahid is always a proof (*hujja*),[2] which is essential for determining divine truth. He does concede the possibility that the opinion of a mujtahid might not result in absolute divine truth. However, he claims that zann is necessary in order for Islamic law to function.[3] Similar to his argument in favor of reason ('aql), he employs the argument of necessity for zann.

Bihbihani likens the zann of a mujtahid to the proof of two witnesses, which is admissible evidence in a court case, because both are needed to provide definitive evidence. However, like the witness of two people, it is possible that the zann of a mujtahid will not lead to absolute truth. Still, Bihbihani argues that mujtahids who follow the right methods will result in certainty. But, just as it is possible for two witnesses to contribute to the execution of an innocent person, mujtahids can produce laws that are contrary to God's law. Taking his analogy a step further, the texts are similar to forensic evidence, which provide clues to the truth, but often require interpretation.

Bihbihani's acceptance of zann redefines the authority of knowledge (*'ilm*) produced by a mujtahid. Most Muslim scholars equate *'ilm* with God's reality. However, Bihbihani equates 'ilm with the opinion (*zann*) of a mujtahid, which may not conform to the reality in the mind of the Lawgiver.[4] Zann is the decision that the mujtahid arrives at with the

1. Bihbihani, *al-Fawā'id*, 127, 128.
2. Bihbihani, *al-Fawā'id*, 276.
3. Bihbihani, *al-Fawā'id*, 136.
4. Bihbihani, *al-Fawā'id*, 129.

commands oftendo not accord with literal meanings.[1]further he explains that what is understood from the texts is not always explicit in the text itself.[2] Therefore, additional concerns must be taken into account, such as custom and consensus.

In Bihbihani's mind it is necessary for the jurist to deduce rulings from cases of ritual duty (*'ibadat*) as well as non-ritual duties (*mu'amalat*). If they are divided, he argues, Islamic law (*fiqh*) is ruined.[3] Therefore, instead of deciding social duties publicly, Bihbihani favors a system in which mujtahids are consulted for 'ibadat as well as mu'amalat cases.[4]As alluded to above, Bihbihani explains that the difference between ruling on 'ibadat and *mu'amalat* cases is that the former often associated with a specific meaning in the mind of the Lawgiver, whereas a mu'amalat command is readily understandable to any rational person.[5]In other words, '*ibadat* commands require an explanation from the Lawgiver because they cannot be understood by logic (as noted above).

To illustrate this point, Bihbihani gives the example of ablutions (*wudhu'*) that are to be carried out before prayer, which is an '*ibadat* command. He argues that what can be clearly understood from the command "*al-ghasal lil-janaba*" is the expression "to wash" (ghasal), but what comes after ghasal is not clear. Therefore, the command is rationally incomprehensible. However, the correct understanding of ablutions was issued by an early judge, who clarified the linguistic meaning of the command. In this way, Bihbihani explains that an unclear '*ibadat* command becomes similar to a *mu'amalat* command.[6] This is a particularly significant ruling because all sources of law contribute to the final ruling. The original law is given in the text, but is unclear linguistically and rationally. Therefore, consensus of the original community is considered, which provides customary clarification that can be used at present to determine the proper practice of ablutions.

Authority of Mujtahids

In Fawa'id al-ha'iriyya, Bihbihani's discussion on the authority of mujtahids centers on the permissibility of jurists to issue legal opinions on the basis of their scholarly opinion or conjecture (*zann*). As with most of the topics he discusses, this is a divisive issue among Akhbaris and Usulis. In

1. Gleave, *Inevitable Doubt*, 168.
2. Gleave, *Inevitable Doubt*, 164.
3. Bihbihani, *al-Fawa'id*, 100.
4. Gleave, *Inevitable Doubt*, 26.
5. Bihbihani, *al-Fawā'id*, 98.
6. Bihbihani, *al-Fawā'id*, 98.

away from a specific term. In other words, mujtahids should always interpret a specialized term in accordance with its textual definition, unless it is clearly understood through its customary definition (discussed below). Terms defined in the text must be given precedence to what is known according to *ijma'*. In this case, the Qur'ān and Sunna trump consensus. Bihbihani argues that "if a term (*istilah*) does not appear from the Lawgiver, [it should be] interpreted through custom (*'urf*)."[1] Bihbihani spills a considerable amount of ink on his conception of general and specific terminology, there is little disagreement between Shi'i scholars on the topic.[2]

On the other hand, texts that contain a contradiction between custom and language are a divisive issue among Shi'i jurists. Bihbihani says that this is one of the "irritants" of interpreting hadith reports. Nonetheless, a jurist must make a decision.Acknowledging that this is a difficult issue even among Usuli scholars, Bihbihani explicitly states that custom should be preferred over language if they differ. In Bihbihani's words, "the fixed term of the Lawgiver is desirable unless it is clearly [understood by] custom (*'urf*)."[3]More specifically, he indicates that the custom of seventh-century Arabs should be taken into account.[4]He explains that some scholars prefer language because it is documentary proof, while others (like himself) prefer custom because it allows inductive reasoning. The author of *Jawahir al-kalam,* Muhammad Hasan al-Najafi, takes a similar position as Bihbihani, whereas 'Allama al-Hilli prefers language,[5] indicating that major figures in the Usuli school disagree on this issue.

In addition to general and specific terms, Bihbihani argues that the texts also contain figurative and literal meanings.[6] Although Bihbihani does not provide a framework for jurists to know which terms should be interpreted figuratively, he suggests that many of the pronouncements of the Lawgiver are non-literal,[7] especially when considering ordinances of worship (*'ibadat*). Bihbihani even argues that the terminology used in *'ibadat*

1. Bihbihani, *al-Risala al-fiqhiyya*, 104.
2. See similar explanations in Ruhullah Khomeini, *al-Bi' (Iran: Wiza□rat al-Thaqaı fah wa-al-Irshaı* d,1987), 381. Said Muhammad Taqi,*al-Usul al-'amma lil-fiq al-maqarin*, 422. Shahid al-Thani, *al-Rawdhaal-bahiyya fi sharh al-lam'a al-damashqiyya* , 64.
3. Bihbihani, *al-Fawa'id*, 106, italics mine.
4. Bihbihani, *Masabih al-zalam* (Qum: Mu'assasa, 2003), 14. Bihbihani, *al-Rasa'il al-usuliyya*, 21.
5. Shaykh Muhammad Hasan Najafi, *Jawahir al-kalam fi Sharh Shara'i' al-Islam*. ed. Abbas al-Quchani. 23 vols. (Tehran: *Dar al-Kutub al-Islamiyya*, 1972) v. 1, 189, 323.
6. Bihbihani, *al-Fawa'id*, 107, 114.
7. Gleave, *Inevitable Doubt*, 164.

some scholars have failed to interpret it correctly.[1] Further, disagreement is likely the result of a misunderstanding of custom and language. In fact, he says that the application, the meaning, and the whole argument of a ruling are tied to language. Therefore, it is necessary for jurists to rely on linguists and the commentary (*tafsir*) of other scholars.[2]

Bihbihani further explains why linguistic misunderstandings occur. He points out that if two people are in the same meeting and hear the same speech, there is a possibility that they will process the information differently, which is the result of varying levels of intelligence.[3] Therefore, it is not difficult for Bihbihani to understand why there are disagreements in interpretation of the texts, especially hadith reports. As explained above, Bihbihani claims that hadith reports have the dual problem of being the interpretation or understanding of the hadith reporter and subject to the reinterpretation of scholars since they have been collected. He explains "the way that [hadith] reporters understood speeches and correspondence was in the same manner as the people of custom (ahl al-*'urf*), not according to the rules of ijtihad and principles [of fiqh] that were established later."[4] Therefore, in order to properly understand the hadiths, it is necessary to interpret them as the narrators did.

Bihbihani admits that the texts are not always readily understood to the (untrained) rational mind. He explains that although the Qur'ān and hadith generally follow the rules of speech at the time in which they are handed down by the Lawgiver, they also contain specialized terms which are explained in the text.[5] Further, specialized terms are especially found in commands related to worship (*'ibadat*). He points out that understanding terminology, such as salah (prayer), nada' (call to prayer), and zikrullah (remembrance of God), is not possible through recourse to customary, linguistic, or rational methods. These terms are defined in the text. Because the Lawgiver did not want to simply decree that any type of prayer is lawful, he defined these terms in a specific way.

Textual sources are, therefore, composed of both general and specific terminology. The only way for a jurist to know whether a term is general or specific is to determine whether it has been given a special definition in the text. If the term is specific, the jurist must give it precedence over a general term. Additionally, Bihbihani points out that nothing can be added or taken

1. Bihbihani, *al-Fawā'id*, 113.
2. Bihbihani, *al-Fawā'id*, 109.
3. Bihbihani, *Al-Risa'il al-usuliyya*, 29.
4. Bihbihani, *al-Risa'il al-fiqhiyya*, 90.
5. Bihbihani, *al-Fawa'id*, 95-7.

context of the time and place of their issuance, he claims that God's commands are general.[1] His conclusion is based on his assumption that God's laws are universal. In other words, the language (Arabic) in which the law is revealed is relative and ever-changing, but the law itself is absolute and universally applicable. The laws brought by Muhammad were not simply meant for the community he established in the Hijaz –although the laws were initially directed toward them. As an example, Bihbihani suggests that "Since there is no dispute on the necessity of prayer, all are subject to its necessity...until the day of judgment."[2]By implication, then, anything that has achieved consensus can never be changed. Even when the Qa'im returns, he will not have the authority to alter what has been established by Muhammad's Companions. In this way, Bihbihani's view of what has already been established as part of the tradition is rigid, unchanging, and applicable until the end of days. Change, then, is relegated to issues that are not universally accepted by Muslims. It should be pointed out, though, that there are few universally accepted laws or obligations, such as prayer and fasting. Muslims even differ on the manner in which prayer and fasting are performed.

Bihbihani specifically explains how the universality of divine decrees can be applied in transference (*ta'adiyya*) cases. He argues that specific rulings given to individuals must be applied to everyone. To support this idea, Bihbihani cites the prophetic hadith, which says "my ruling for one is my ruling for all."[3] He even suggests that rulings specifically addressing men can also be applied to women and vice versa, unless the text specifically restricts the injunction to men, women, etc.[4] God's laws (as presented in the Qur'ān and hadith) are meant for all people for all eternity, they are to be applied universally – even when they appear to be addressing specific circumstances. As noted above, a ruling must become accepted through the process of on *ijma'* prior to achieving the status of a universal command.[5]

Bihbihani acknowledges that even if God packages his commands lucidly, scholars often disagree on the meaning of the texts. He points out that some scholars disagreement on the interpretation of a Qur'ānic verse or hadith report is an indicator that the text is ambiguous. Rejecting this analysis, Bihbihani claims that disagreement on a textual verse simply indicates that

1. Bihbihani, *al-Fawā'id*, 109.
2. Bihbihani, *al-Fawā'id*, 154.
3. Bihbihani, *al-Fawā'id*, 155.
4. Bihbihani, *al-Fawā'id*, 146, 154.
5. Bihbihani, *al-Fawā'id*, 201.

that scholars must consider the socio-cultural context in which something was written. In other words, the Lawgiver not only provides people with laws that suit their time and place, He packages them in the language (lugha) and custom (*'urf*) that is familiar to them. Similarly, Bihbihani argues that since God has chosen language as the medium in which to deliver His laws to the people, the speech of the Prophet follows idiomatic and grammatical rules of language.[1]

Bihbihani's usage of the terms language and custom clearly refers to that of seventh-century Arabs, whom he calls the ahl al-lugha wahidan.[2]In fact, one of the rules that he emphasizes for interpreting hadith reports is paying attention to the meaning of words and phrases at the time of their original issuance. The reasoning follows that since the meaning of words change over time, it is imperative to interpret texts within their original context. As Bihbihani puts it, the difference in hadith reports "is a result of change in terminology from the time of the Lawgiver or a well-known ruling in that time according to the issuance of the hadith."[3]Such a change in language over time can prevent a clear understanding of the text and lead to opposing interpretations. Bihbihani suggests, therefore, that it is imperative to interpret the terminology found in the hadiths in the same way as the ahl al-lugha (lit. people of the language, i.e., 7th and the Imams.[4]

In Bihbihani's approach, language and custom operate similarly to consensus (*ijma'*). As noted above, Bihbihani argues that *ijma'* is key to understanding God's laws because it represents how the majority of Muslims understood them when they were handed down from God. *Ijma'* is the collective interpretation of the Qur'ān and hadith according to Muhammad's community. And since God's speech was directed toward their customs and language, they must have understood the divine commands correctly and properly applied them to their lives and their social circumstance. Therefore, it is imperative that jurists today interpret terminology in the texts according to the customary and linguistic context of seventh-century Arabs. Bihbihani warns that "departing from linguistic and customary meaning is never permissible and it violation is absolute."[5] this case, Bihbihani takes a traditionist stance in the strict sense of the word. He argues for the preservation of the tradition as it was initially established.

Although Bihbihani argues for the necessity of interpreting texts within the

1. Bihbihani, *al-Fawa'id*, 106.
2. Bihbihani, *al-Fawa'id*, 106.
3. Bihbihani, *al-Rasa'il al-usuliyya* (Qum, 1416), 474.
4. Bihbihani, *al-Rasa'il al-usuliyya*, 21.
5. Bihbihani, *al-Fawā'id*, 145.

texts.[1]

The majority of Bihbihani's discussion on transferring a textual ruling to another case is tied to language (lugha) and custom (*'urf*). Bihbihani concludes that language and custom are necessary keys to understanding what the Lawgiver has laid down in the texts.[2]He explains that it is impossible to understand the Qur'ān, hadith, and *ijma'* without a clear understanding of the language (lugha) and custom (*'urf*) on which the Qur'ān and hadith are based. Therefore, it is imperative that jurists analyze the meaning of texts and not simply take them literally, which he suspects is the Akhbari method.

Bihbihani cites language and speech as sure sources of understanding the texts, which he bases on two hadith reports: "We did not receive anything from the Prophet of God except through his speech,"[3] and "God, the Almighty, the Most Exalted, addresses [the people] through speech and does not want from them other than [what is known] by their language and what they understand."[4] On the basis of these texts, Bihbihani argues that it is imperative for mujtahids to be proficient in linguistic sciences and suggests that linguistic training is a basic qualification for a scholar to become a mujtahid.

Bihbihani's rational argument in favor of taking lugha and *'urf* into account is that prophets and Imams are useless unless their message is understandable to the people. He points out that the role of prophets is to establish religious rules and thereby make life better for people in this world and the hereafter. Because God has chosen the medium of speech as the means by which to disseminate laws and establish norms, the Prophet and Imams must conform to the rules of common language. Therefore, Muhammad and the Imams used terminology, idioms, and grammatical constructions that would maximize understanding of God's intention.[5]

Bihbihani argues that the language of Muhammad and the Imams conformed to the people around them. Bihbihani seems to agree here with scholars such as Abu Zayd Karami, who argues that God takes the level of the comprehension of the people into account.[6] Karami further explains that texts are readily understood by the rational faculty. Significantly, he says

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1. Bihbihani, *al-Fawā'id*, 149.
2. Bihbihani, *al-Fawā'id*, 97.
3. Bihbihani, *al-Fawā'id*, 105.
4. Bihbihani, *al-Fawā'id*, 105.
5. Bihbihani makes this argument in several places: *al-Rasa'il al-usuliyya*, 29, *Hashiyya majma' al-fa'ida*,24,*Hashiyya al-wafa*, 205, *al-Fawa'id al-ha'iriyya*, 106.
6. Abu Zayd Tusit Muhammad Taqi Karami, *Majaleye noqd wa nazar*, 412. Karami explains that texts can easily be understood through textual and cultural context and the rational faculty.

that the 'illa is conjectural (*zanni*), whereas Bihbihani, and most Shi'i scholars, argue that the 'illa must be certain *(qati')*. Although Bihbihani accepts conjecture (*zann*) in other circumstances, he rejects it here. He argues that the Sunni form of *qiyās* is not permitted because it is based on two assumptions:

1. that the key element in the case is the occasioning factor.
2. that the novel case is classified within the same legal rubric as the original case.[1]

In Bihbihani's legal theory, transference (*ta'diyya*) is the closest element in Shi'i jurisprudence to the Sunni conception of *qiyās*. Ta'diyya is the broad term he uses to explain a number of different situations in which a novel case can be determined on the basis of revelatory texts. Bihbihani outlines ten methods for transference that can be divided into three general categories: those that are derived from reason, language, and consensus.[2]Each of these methods is a way for the jurist to produce general legal principles from specific cases and vice versa. The first five are derived from reason:

1. Reason *('aql)*: discussed above
2. Analogy in which the 'illa is certain and is identified by reference to two revelatory texts that allow the jurist to determine the 'illa. (*tanqih al-manat*)[3]
3. From general to specific, bigger to smaller, from the whole to the part, etc. (al-*qiyās* bi-tariq al-ula). Similar to e maiore ad minus.
4. From specific to general – opposite of #3
5. Transference of general rules to replacement rules.

The following three are derived from linguistic analysis (lugha):

6. A single text which provides the ruling and the reason for the ruling (al-*qiyās* al-mansus al-'illa). In other words, the text itself provides the 'illa.
7. A general ruling found in the text that can be transferred from a general norm to a specific case.
8. Two cases in the texts can be joined to form a general ruling (ittihad tariq al-mas'alatayn)The final two conditions of transference can be derived from consensus (*ijma'*):rule.
9. Consensus (*ijma'*) that coincides with a similar textual indication of the general
10. A general rule agreed on by all legal scholars, but not found in the

1. Gleave, *Inevitable Doubt*, 130.
2. These principles have already been listed by Robert Gleave, but he does not divide them into categories as they are here. See Gleave,*Inevitable Doubt*, 131-2.
3. Bihbihani, *al-Fawā'id*, 147.

sources and 'aql, language (*lugha*), and custom (*'urf*) can determine how prayer is to be carried out.[1] In all, reason and revelation both aid the mujtahid to understand God's laws as well as the intention of God's law. A mujtahid, however, cannot establish a new law that is not found in the texts based on reason alone.

Bihbihani explains that miracles are not part of God's rational framework.[2] However, in a seemingly contradictory statement, he says that one can only distinguish between real and false miracles (and real and false prophets) through the application of reason (*'aql*). Unfortunately, he does not explain how the rational faculty can explain or even understand something that is not rational (i.e. miracles). By definition, a miracle is supernatural and defies reason.

Bihbihani does explain that the texts contain rational indicators (sing. *dalīl al-'aqlī*), which provide an explanation for legal rulings. In fact, he suggests that there is an indicator from the Lawgiver (*dalil shar'i*) for every rational indicator (*dalīl al-'aqlī*). However, the reverse is not true because some textual references are not necessarily rational,[3]which seems to contradict Bihbihani's acceptance of agreement (*mulazama*) of reason and revelation. Bihbihani argues that a ruling (*hukm*) that has both a rational and textual indicator has a higher level of epistemological provenance than a hukm that only has a textual indicator.[4]

Transference (*ta'diyya*) vs. Analogy (*qiyās*)

Any dynamic legal system must include a method of ruling on cases that have no precedent. For this reason, Sunnis adopted analogy (*qiyās*) as the primary method of using the texts to formulate new rulings. Shi'is have rejected the Sunni conception of *qiyās* since the tenth century, partially in order to maintain a distinct legal system.[5] Initially, Shi'is also rejected ijtihad and akhbar al-ahad in order to differentiate Shi'i law from Sunni law. Bihbihani continues the tradition of rejecting the Sunni conception of *qiyās*. He rejects the Sunni form of *qiyās* because it does not require the determination of a veracious effect cause (*'illa*).[6]Sunni law generally accepts

1. Gleave, *Inevitable Doubt*, 216.
2. Gleave, *Inevitable Doubt*, 209.
3. Gleave, *Inevitable Doubt*, 214.
4. Gleave, *Inevitable Doubt*, 215.
5. Norman Calder, "Doubt and Prerogative: The Emergence of an Imāmi Shi'i Theory of Ijtihad." *Studia Islamica* 70 (1989): 57-78.
6. Gleave points out that Yusuf al-Bahrani and Vahid Bihbihani agree on this issue. See *Inevitable Doubt*, 130.

neglect one's prayers because one cannot rationally perceive their benefit. He actually agrees that the rational faculty does not perceive that prayers or other acts of worship are inherently beneficial. However, he argues that the rational mind knows that obedience is good and disobedience is bad.[1]Therefore, observing whatever the Lawgiver has enjoined and being obedient to Him equates to good. In other words, Bihbihani says that neglecting prayer is not evil on its own, but it becomes evil once the Lawgiver designates it as a duty.[2] For this reason, only a rational person (*mukallaf*) can be expected to abide by God's law,[3] whereas insane people are not bound by the law.

Bihbihani also provides a caveat for committing actions that are inherently evil if they serve a good purpose and vice versa. He says that any rational person can sense that killing and lying are evil, but these acts can be forgiven if they are committed to prevent a greater evil from happening.[4]For example, if someone lies to protect the Prophet, he has committed a sin. However, because this sinner protected the Prophet, God will forgive his transgression. Bihbihani claims that his position is not the "combining of opposites" and likens his position to "someone sitting (still) in a boat and moving at the same time."other words, it is possible for someone to be in a state of contradiction. Just as it is possible to say that a person in a boat is moving and still at the same time,[5] it is possible to commit a crime and a praiseworthy act at the same time. Bihbihani categorizes this type of moral knowledge as secondary (*idafiyya*), which, he explains, is not inherently moral from a rational point of view, but becomes so through revelation.

Bihbihani explains that primary (*ma'udifu ilayha*) knowledge is produced from 'aql and is apparent without the aid of revelation. In other words, Bihbihani argues that 'aql has the power to produce knowledge independent of revelation,[6] by Akhbaris. However, he does agree with Akhbaris that all rulings (*ahkam*) require jurists to refrain from issuing an opinion (*tawqifi*). For cases concerning worship (*'ibadat*), though, Bihbihani argues that they are only tawqifi because revelation has indicated them to be obligatory and he suggests that additional tools (including *'aql*, which is rejected lugha, and *'urf*) can be applied to 'ibadat cases to determine the specifics of these duties. Put differently, prayer is obligatory because it is found in revelatory

1. Gleave, *Inevitable Doubt*, 206.
2. Gleave, *Inevitable Doubt*, 207.
3. Gleave, *Inevitable Doubt*, 208.
4. Gleave, *Inevitable Doubt*, 211.
5. Gleave, *Inevitable Doubt*, 212.
6. Gleave, *Inevitable Doubt*, 215.

are universally agreed upon, such as fasting and the prohibition of alcohol, should never change.

Reason ('aql)

Bihbihani argues that it is clearly possible for jurists to make rulings on the basis of sources other than the texts. This fact is more significant than it may appear because many rationalists argue that reason and other sources can only be employed as exegetical tools. Bihbihani argues that reason is an independent source of knowledge and authority. Therefore, mujtahids can produce rulings based on reason alone – but only on cases that are not explicit in the texts and have not achieved the status of consensus (*ijma'*). Bihbihani suggests that there are many sound akhbar that indicate the validity of reason (*'aql*) as a proof (*hujja*). In service of this argument, Bihbihani claims that the continuous use of 'aql is necessary for liberation (*itlaq*). Further, he explains that reason (*'aql*) is Truth and therefore "the source of happiness."[1]Therefore, Bihbihani suggests that reason is a proof because of its necessity, without which it would be impossible for Islamic law to operate. In other words, he employs a utilitarian argument to suggest that reason is fundamental to Islamic law.

Similar to the possibility of false interpretations of the textual sources, Bihbihani suggests that the law is vulnerable to false logic. He argues that it is imperative to remove what has wrongly entered into the Shari'a as a result of false reason.[2] Therefore, he opens up the possibility of reinterpreting Islamic law through a process of purifying it from what has wrongly become part of the tradition.

Similar to his Usuli predecessors, Bihbihani generally accepts Imami-Mu'tazili theology and therefore believes that God is the ultimate rational being. Thus, God's revelation and reason are in complete agreement (*mulazama*). Bihbihani's explanation of reason (*'aql*) largely focuses on the question of good and evil, which was elaborated on by early Mu'tazali scholars. He argues that through reason it is possible to distinguish between good and evil (*al-tahsin wa al-taqbih*) just as ears can differentiate between noise and singing.[3]In other words, the rational faculty naturally senses something evil because it will lead to a disgusting feeling and something good will produce a positive feeling.

Bihbihani responds to the Ash'ari reply to this argument that one might

1. Bihbihani, *al-Fawā'id*, 109.
2. Bihbihani, *al-Fawā'id*, 96.
3. Gleave, *Inevitable Doubt*, 205.

an example, Bihbihani suggests that a survey of the companions of the Imams clarifies how ablutions before prayer are to be carried out.[1] He further explains that all Muslims agree on the five daily obligatory prayers and the call to prayer (*'azan*) because it was established by the "head" (*ra'is*) of the religion and, thus, became unanimously accepted by the companions.[2]Especially since the sayings of the Imams support *ijma'*, Bihbihani suggests that there is no disagreement among Shi'is on the ability of *ijma'* to act as a proof (hujja) of perfect knowledge.[3]

The uniform practice of the early community is a source of absolute certainty for Bihbihani. He states that "agreement between the early believers (*qudama'*) is stronger than what is closer to [the present] time ('ahd)."[4] Therefore, at first glance, Bihbihani's interpretation of *ijma'* may seem fundamentalist because he argues in favor of rejecting more current interpretations of the texts in favor of interpretations of the "original" community. However, he differs from many fundamentalist thinkers in that he does not believe that the past (i.e. the early community) holds all the answers for novel cases or cases that have not yet reached unanimous agreement. He does not suggest that the original community should be recreated in the present. However, he does argue that present and future communities must adopt practices on cases in which the early community was in agreement. Bihbihani favors the idea that Shi'ism must be purified from innovations of Shi'i law and practice that have been changed after the time of the original community. Cases on which the early community had either not confronted or disagreed must be resolved through the process of ijtihad. Once ijtihad is carried out, a mujtahid's decision has the power to become truth if it is universally agreed upon by the 'ulama – which is another form of *ijma'*. Therefore, in Bihbihani's terms, the consensus (*ijma'*) of the 'ulama provides evidence for absolute Reality (*haqiqa*).[5]

In practice, Bihbihani is open to reinterpretations of the texts. He relies on the *ijma'* of the past or interpretations of previous scholars when he thinks they represent established norms. However, he argues that it is the prerogative of mujtahids to establish new rulings on cases that are not yet settled. Therefore, Bihbihani does not take a fully fundamentalist position on this issue – in which it is generally necessary to return to the past in order to find answers for the present. However, he believes that certain norms that

1. Bihbihani, *al-Fawā'id*, 299.
2. Bihbihani, *al-Fawā'id*, 299.
3. Bihbihani, *al-Fawā'id*, 302.
4. Bihbihani, *al-Fawā'id*, 314.
5. Gleave, *Inevitable Doubt*, 81-2.

Similar to his approach to the hadith as a whole, Bihbihani's attitude towards akhbar al-ahad is formulated in service of his desire to limit the number of acceptable hadith reports and thereby undermine Akhbaris. Unlike most Akhbaris and some Usulis (such as Mortaza Ansari), Bihbihani generally rejects singular reports (*akhbar al-ahad*). The only cases in which he accepts akhbar al-ahad is when they are in agreement with the consensus (*ijma'*) of the companions of the Prophet and Imams, other well-known akhbar, or a Qur'ānic verse.[1] In practice, then, akhbar al-ahad are only useful to Bihbihani in providing support to established judgments. Conversely, if a singular hadith report (khabar wahid) does not contradict another acceptable report, *ijma'* or the Qur'ān, it only has the power to produce probable (zanni) knowledge. In Bihbihani's words "a singular hadith report (khabar wahid) produces conjectural (*zanni*) knowledge because of its chain of transmitters (*sanad*), text (*matn*), and proofs (*hujjat*) and if the opposite of what is verified from it is not opposed to a report (khabar), a Qur'ān verse, or conjectural consensus (*ijma'* zanni)."[2]

Consensus (*ijma'*)

Aside from the Qur'ān and widespread (mutawatir) hadith reports, consensus (*ijma'*) is the most important source in Bihbihani's fiqh. For him, the most valid consensus is the agreement of the companions of the Prophet Muhammad and the Imams. Additionally, he accepts the consensus of subsequent scholars. Bihbihani utilizes consensus as a complimentary source of authority to the texts. He argues that it is impossible to understand a ruling based on hadith, except with the aid of *ijma'*.[3] He also says that his own fiqh is from the sum of the companions of the Prophet (*riwayat*).[4] Further, what is obtained from agreement is higher than common knowledge (*badiha*) and becomes part of the Shi'i school of thought (*madhhab*).[5]

Bihbihani explains the necessity of *ijma'* in very practical terms. He says that although hadith reports are transmitted from one generation to the next and contain prophetic decrees, the exact intention or spirit of the injunction is not necessarily clear to someone reading it now. However, the believers that originally received the texts understood the intention behind the text and thus formulated the correct practice correlated to the textual command.[6] As

1. Bihbihani, *al-Fawā'id*, 119.
2. Bihbihani, *al-Fawā'id*, 140.
3. Bihbihani, *al-Fawā'id*, 296.
4. Bihbihani, *al-Fawā'id*, 298.
5. Bihbihani, *al-Fawā'id*, 301.
6. Bihbihani, *al-Fawā'id*, 297-98.

then the report is not sound and should be rejected. He writes that the Imams repeatedly professed that "any hadith which disagrees with the Qur'ān should be thrown against the wall," that "we never disagree with the Qur'ān," and "what is found in the hadith is a witness to the Qur'ān."[1] Significantly, however, he does not provide a reference the above-mentioned hadith reports, which form the textual basis of his argument. In all, though, he maintains that it is never acceptable to disagree with the Qur'ān.[2]

Given that Bihbihani rejects the ability of all hadith reports to produce certainty,he is baffled that Akhbaris would even consider accepting a hadith report if it contradicts a Qur'ānic verse. Dumbfounded, he wonders how Akhbaris can possibly accept a hadith report as a proof of absolute knowledge, but not a verse from the Qur'ān.[3] In this way, Bihbihani exaggerates the position of Akhbaris by suggesting that they reject the Qur'ān in favor of hadiths. He interprets the Akhbari system of law as almost entirely relying on one imperfect source of knowledge and authority – the hadith. The implication is that the Akhbari school is simplistic and unscholarly, whereas his Usuli system is complex, combining textual exegesis, rational thought, and other precise methods. Bihbihani seeks to make it obvious that Usulism, not the primitive Akhbari school, is the high-minded school that correlates to the high stakes of Islamic law.

Many Shi'i scholars have argued that contradictions between hadith reports akhbar) are the result of dissimulation (taqiyya). Shi'i scholars have also addressed the possibility that hadiths were fabricated by dissenting groups in order to support their position. The distance between the issuance of a report and the time of its collection is also often cited as a common reason for textual contradictions. Bihbihani argues that intra-akhbar conflicts cannot be explained by taqiyya. However, he claims that all contradictions that are found between the Qur'ān and hadith are a result of dissimulation (taqiyya). In fact, he claims that taqiyya can only be identified if a report contradicts the Qur'ān or agrees with Sunnis.[4] This statement is surprising since Bihbihani accepts the *ijma'* of Sunnis. However, he does not account for this non sequitur.

An additional problem that hadith scholars are forced to deal with is the fact that many hadith reports are only reported by one transmitter (akhbar al-ahad). Bihbihani dedicates an immense amount of attention to this debate.

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1. Bihbihani, *al-Fawā'id*, 284.
2. Bihbihani, *al-Fawā'id*, 284.
3. Bihbihani, *al-Fawā'id*, 285.
4. Gleave, Inevitable Doubt, 163.

stance, Bihbihani's approach to the hadith is a bit schizophrenic. On one hand, Bihbihani praises the hadith as the second most important source of knowledge. On the other, he emphasizes the pitfalls of extracting the truth from them as a way to undermine the authority of Akhbaris. As noted above, he suggests that most of the reports (*akhbar*) are authoritative. However, he explains that many reports did not survive and many of those that did survive were not properly examined by hadith collectors. Of the reports that were examined, he explains, it is difficult to distinguish between the words of the collector, narrator, and the original text of the hadith. Since it is difficult to determine what the original intention of the Lawgiver was, it is often impossible to extrapolate commands from individual hadith reports.[1] Further, Bihbihani claims that the interpretation of hadith reports (as well as many verses from the Qur'ān) was determined by the clashing opinions of the 'ulama, who would often produce opposing viewpoints.[2]

Bihbihani argues that additional alterations of hadith reports took place as a result of copyist errors, misspellings, misplacement of diacritical marks, and other elements of the text that were added or deleted.[3]

In Bihbihani's mind, the net result of these complications is that the original ruling was changed and what is now "known" from the hadith is not the same as the intended meaning of the Imams.[4] However, for Usulis and indeed for Bihbihani, this does not mean that all hadith reports should be thrown out. It simply means that there must be a system in place to differentiate between sound and dubious reports.

Because hadiths are much more problematic for Bihbihani (and *Usulis*) than they are for Akhbaris, Bihbihani adopted a more complex system for utilizing them in the process of producing 'ilm than did Akhbaris. Similar to Qur'ānic verses, he adopts a hierarchical scale for the hadith, which includes sound (sahih), fair (*hasan*), transmitted (*marsal*), documented (*mawthiq*), or week (*da'if*).[5] He only accepts widespread (mutawatir) hadith reports as authoritative and thus capable of producing 'ilm without the use of reason or other exegetical tools. Since Akhbaris claimed that their school of thought was based on the texts, they sought to maximize acceptance of hadith reports. In order to undermine Akhbari authority, Bihbihani problemitized the hadith and minimized the number of acceptable hadith reports.

Bihbihani clearly states that if a hadith report contradicts a Qur'ānic verse,

1. Bihbihani, *al-Fawā'id*, 118.
2. Bihbihani, *al-Fawā'id*, 118.
3. Bihbihani, *al-Fawā'id*, 118.
4. Bihbihani, *al-Fawā'id*, 119.
5. Gleave, *Inevitable Doubt*, 69.

suggests that Shi'is should read one of the known seven versions of the Qur'ān based on the Imami hadith "read as the people read during the time of the Qa'im."[1] He also concedes that not all Qur'ānic verses are necessarily clear to the intellect. However, even if the meaning of a Qur'ānic verse is unclear, it still overrules hadith reports, but is subject to the conjectural (*zanni*) ruling of a mujtahid.[2]

Traditions (hadith, Second Textual Source)

For Bihbihani, and indeed for the majority of Muslims, hadith reports are the second most authoritative source of knowledge and law. For Shi'is, this includes both prophetic hadiths (i.e. Muhammad's Sunna) and hadith reports from the Imams, which are rejected by Sunnis. In line with most Shi'i scholars, Bihbihani cites the Prophetic hadith in which Muhammad says he has left two things for the community: his book and his family (i.e. the Qur'ān and the Imams). Bihbihani uses this reference as proof that the hadith of the Imams (as well as the Prophet) are the second source of Islamic law.[3]

In Bihbihani's view, the Imams fit into the process of producing perfect knowledge by providing infallible interpretations of the laws already revealed by God via Muhammad. Therefore, he seems to indicate that it is not possible for hadith reports from the Imams to contain new rulings that are outside the purview of the Qur'ān. He explains that hadiths are a witness or supporting evidence (*shahadan*) of the Qur'ān.[4] In other words, hadiths are essential for explaining the correct implementation of Qur'ānic injunctions. They illustrate the method of carrying out what has been commanded in the Qur'ān. Bihbihani explains that the origin or initial intention of hadith texts was to explain the manner (*kayfiyyat*) of proper practice.[5] Therefore, he states that if a clear ruling can be found in a hadith report, it is legally binding.[6]

Bihbihani's critique on the manner in which hadith reports were collected is illustrative of his attack on the Akhbari school. Because of his polemical

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⇦ *the Qur'ān* as follows: "It is clear from the many akhbar that [corruption] occurred...Our position is that it is permitted to act uponone of the famous seven variants [of the *Qu'ran*]. The indicator for this position is the statement, or rather the order, of the Imāms that "You must recite as the people recite until the day of the return of the *qa'im*." Gleave, *Inevitable Doubt*, 64-65.

1. Bihbihani, *al-Fawa'id*, 286.
2. Gleave, *Inevitable Doubt*, 65.
3. Bihbihani, *al-Fawā'id*, 284.
4. Bihbihani, *al-Fawā'id*, 284.
5. Bihbihani, *al-Fawā'id*, 316.
6. Bihbihani, *al-Fawā'id*, 317.

Muslim scholars.

Like all Muslims, Bihbihani views the Qur'ān as the most authoritative source of knowledge. It is the word of God and the supreme source from which one can uncover God's reality and law. The Qur'ān is the divine command that came through Muhammad. Since the Qur'ān is the revealed intention of God, the Lawgiver, it is imperative for all to be obedient to its commands and not to question or speculate on the truth found within it.[1] In other words, reason or interpretation cannot be applied to the Qur'ān when its intention is clear. To illustrate this point, Bihbihani states that even a child can understand the intention of the Qur'ānic verse "Do not come nigh to adultery."[2] this statement is clear, it is not necessary to interpret it. Further, Bihbihani claims that whoever does not obey the commandments in the Qur'ān, does not revere God's speech in it, and is not satisfied with it. Therefore, he is an infidel (*kafir*).[3] This reference to infidelity is emblematic of Bihbihani's division of the Muslim community into believers and unbelievers, Usulis and Akhbaris.

The main argument that Bihbihani makes in regard to the *Qur'ān* is that it has probative force, which produces certainty.[4] This means that jurists are not bound to accept interpretations of the Qur'ān found in hadith reports. He charges that "Akhbaris forbid this completely, which is very surprising because the probative force (*hujja*) [of the Qur'ān] is the word of God."[5] Although the majority of Akhbaris do not, in fact, reject the Qur'ān as an independent source, this is Bihbihani's polemical argument. Supporting his claim, he says that each of the reports which suggest that the Qur'ān cannot be interpreted is not widespread and therefore dubious.

Although Bihbihani vehemently argues that the Qur'ān is the preeminent independent source of law, he acknowledges that Qur'ānic verses are not always clear and do not always produce an indicator (*dalīl*) of sure knowledge. In fact, he accepts three general categories of Qur'ānic indicators, namely definite (*qat'*), strong conjecture (*alzannal-qawi*), and conjecture (zanni).[6] Like many Shi'i scholars before and after him, Bihbihani also accepts that certain Qur'ānic verses (especially those that supported Shi'i claims) were not included in the canonized Qur'ān.[7] However, he

1. Bihbihani, *al-Fawā'id*, 284.
2. Qur'ān 17:32, Bihbihani, *al-Fawā'id*, 285.
3. Bihbihani, *al-Fawā'id*, 284.
4. This is the primary subject of section (*fa'ida*) 28 of *al-Fawa'id*, 283-287.
5. Bihbihani, *al-Fawā'id*, 283.
6. Bihbihani, *al-Fawā'id*, 284.
7. Bihbihani, *al-Fawa'id*, 286. Robert Gleave translates Bihbihani's position on ⇨

Akhbari approach to fiqh is not simply wrong but results in infidelity, even if the "rational" approach of Usulis can produce a variety of outcomes and may not coincide with divine reality. Additionally, Bihbihani does not simply warn Shi'is not to follow the incorrect rulings of Akhbari scholars. He clearly states that their false rulings make them infidels, who should be dealt with as such. This was the justification for his successors (especially his son Muhammad 'Ali Bihbihani) to issue death warrants to Akhbaris and Sufis.

Four or Five Sources of Usuli Shi'i *fiqh*?

Bihbihani's theoretical approach to Shi'i law was not drastically different from rationalist Shi'i scholars prior to his time. In fact, his conception of the sources of jurisprudence (*usul al-fiqh*) is best understood within this rationalist tradition. Far from rewriting the Usuli playbook, he takes a moderate position among rationalist scholars. He does not argue in favor of unbridled reason, nor does he call for an uncritical adoption of all textual sources. In descending order, Bihbihani (similar to the majority of Usulis) argued that the following four sources are the basis of Islamic law: the Qur'ān, Hadith, consensus (*ijma'*), and reason ('aql). Bihbihani formally and theoretically rejected analogy (*qiyās*) as a fifth source because of the long-standing Shi'i-Sunni polemic over the issue. However, he did support the transference (*ta'adiyya*) of existing judgments to new cases. One of the methods of transference he accepted was analogy, which he differentiates from Sunni *qiyās* (discussed further below). Because of the hairsplitting difference between his methods of "transference" and the Sunni conception of analogy is minute, it seems that Bihbihani rejected *qiyās* as part of the ongoing sectarian debate. However, in practice, he makes use of analogy without calling it *qiyās*.

The *Qur'ān* (First Textual Source)

The foundation of knowledge for Bihbihani, as for most Muslims is text-based (*naql*). Textual sources are the only direct connection to absolute truth because God sent the Qur'ān directly to Muhammad. The sayings of Muhammad and the Imams (*akhbar*) are infallible interpretations of God's word. The only proof of God's knowledge is what He says through Muhammad and the Imams. Additional sources are methods of understanding and interpreting the texts. Bihbihani, however, does accept reason (*'aql*) as a source of knowledge and authority independent of the texts (discussed below). Reason as an independent source can only be considered on cases that are not explicitly clear in the texts or unanimously accepted by

is theory or assumption," which is initially located in the realm of confusion, doubt, or even hallucination.[1] Like scientific theories, Islamic law must be tested and stand the test of time. If a theorem remains uncontested, it must be true. Thus, it is possible for mujtahids to elevate a legal judgment from doubt to certainty by virtue of their widespread acceptance (*ijma'*) of it. But, the only way to be sure that a mujtahid's judgment did, in fact, produce certainty is its widespread acceptance and longevity. Therefore, if a mujtahid's judgment is generally accepted by other scholars, it is the Truth. As explained below, this illustrates the importance that Bihbihani places on the legal principle of consensus (*ijma'*). Once a judgment achieves consensus, it becomes absolutely imperative for Muslims to follow it as precedent (*taqlid*).

At the end of the first section of *Fawa'id al-ha'iriyya*, Bihbihani states that if a physician is incapable or imperfect, he would be considered the enemy of the flesh. Likewise, if a jurist is incapable or imperfect, he becomes the enemy of religion and faith.[2] This position seems to go against the premise that a mujtahid who engages in ijtihad will receive one reward if he is wrong, simply for his effort, and two if he is right, which is widely accepted by Muslims.[3] However, Bihbihani's argument must be interpreted within the polemical milieu in which he was writing. In effect, he is saying that Usulis have the authority to produce correct legal judgments because their approach is rational, whereas Akhbaris are the enemies of religion because they have rejected the Usuli method.

This explains why Bihbihani felt it necessary to declare infidelity (takfir) on Akhbaris. In his mind, they were incapable jurists, and thus enemies of Islam. Citing the Qur'ānic verse that says "Whosoever judges not according to what God has sent down –they are the ungodly,"[4] Bihbihani explains that one must look at this verse until he realizes that "whoever rules unjustly becomes an infidel (kafir)."[5] Following this line of argumentation, he suggests that Akhbaris are ungodly infidels because they produce unjust rulings as a result of their unsound methods.

Although Bihbihani initially seems to argue that knowledge is relative, he ends up adopting a completely foundationalist approach. His line of reasoning for takfir is even fundamentalist, because it assumes that an

1. Bihbihani, *al-Fawā'id*, 93.
2. Bihbihani, *al-Fawā'id*, 94.
3. See Bernard Weiss, *The Spirit of Islamic Law* (Athens: University of Georgia Press, 1998)
4. *Qur'ān*, 5:47, Trans., Arberry.
5. Bihbihani, *al-Fawā'id*, 93.

in matters of faith.[1] In Bihbihani's mind, social well-being and eternal salvation depend on the wise guidance of doctors of Islamic law (sing. *mujtahid*), not on medical doctors, politicians, or any other professionals. If a mujtahid rules incorrectly, he might authorize killing innocent persons, forbid a permissible marriage, or take money from its rightful owner. Further, according to Bihbihani, the impact of medicine, whether good or bad, is short-term and at most can last a lifetime. However, the all-encompassing influence of Islamic law transcends generations and can even last until the end of time. In other words, Bihbihani accepts the eternality of the influence of mujtahids.

Bihbihani argues that arriving at absolute knowledge in fiqh is far more difficult than in medicine and the natural sciences. Physicians can use trial and error and other scientific methods in order to prove or disprove their theories, but legal scholars do not have such a luxury. Therefore, as Bihbihani asserts, science does not require great effort because it does not contain contradictions.[2]

In Bihbihani's mind, the natural world is perfectly rational and therefore predictable. Conversely, contradictions are found in the sources on which Islamic law is based (i.e., Qur'ān and *hadith*), which requires reconciliation. According to Bihbihani, then, the difference between science and Islamic law is that science is based on a rational world, whereas Islamic law is based on textual sources, which contain incongruous statements (as Bihbihani himself suggests).

Does this mean that Bihbihani rejects the idea that God is perfectly rational? If God is the supreme rational being, as Bihbihani asserts, why do the texts that He sent down contain contradictions? He reconciles these questions by explaining that all textual contradictions are a result of human errors, like copyist mistakes. Dissimulation (*taqiyya*) of the Imams has also created incongruous statements in hadith reports. Additionally, the texts contain allegorical statements, which cannot be understood through a literal interpretation. Only with the proper amount of reason and textual exegesis, which are the prerogatives of mujtahids, can God's true intention become clear.

Bihbihani puts the onus of resolving textual uncertainties on mujtahids, who are the only agency capable of uncovering God's will. Even after the mujtahid undertakes the great effort of discerning truth from falsehood, it is possible that doubt will remain. In fact, Bihbihani clearly states that "all fiqh

1. Bihbihani, *al-Fawā'id*, 91.
2. Bihbihani, *al-Fawā'id*, 93.

include divine inspiration (*kashf*) in his theoretical framework for deriving knowledge. Claims to divine inspiration, rather, are generally used by Usulis as a tool to reinforce the authority of their knowledge. So, if not through supernatural means, then where does his perfect, or relatively perfect, knowledge come from?

Ultimately, Bihbihani's link to God's reality is the word of God as found in the Qur'ān, Sunna of the Prophet Muhammad, and the hadith reports of the infallible (*ma'sum*) Imams. Since Sunni Muslims reject the legitimacy of the Imams as Muhammad's successors and possessors of perfect knowledge, they are deprived of access to ultimate reality (from a Shi'i perspective). But, Bihbihani also did not believe that Shi'is always attain the Truth (*haqiqa*), which coincides with the divine reality. In fact, he attacked Akhbari's because they did not interpret the texts properly. Therefore, Bihbihani's Usuli methodology of interpreting the texts and applying them to judgments is his basis for claiming his knowledge is more likely to conform to Reality than that of others, including Sunnis, Akhbaris, Sufis.

Bihbihani rejects the notion that the gate of knowledge (*bab al-'ilm*) is closed byclaiming that it is accessible through methods such as "the gate of evidence, the gate of hadith reports, or the gate of the conjecture (*zann*) of a mujtahid (*bab al-shahada, aw babal-khabar, aw bab al-zannun al-ijtihadiyya*)."[1] Through these "gates" or devices, Bihbihani suggests that it is possible to produce indicators (sing.*dalīl*) that lead to perfect knowledge. His acceptance of the opinions or conjectures (sing. *zann*) of mujtahids as an authoritative source of knowledge is his most critical contribution to Shi'i thought and leadership because it made mujtahids the final arbiter of the truth and gave them the ability to determine divine reality. This is also the most important distinguishing feature that separates Usulis and Akhbaris.

Vahid Bihbihani begins his Fawa'id al-ha'iriyya by explaining the grave dangers of interpreting Islamic law (*fiqh*) because of its complexity and long-term impact. He compares fiqh to medicine, explaining that both doctors of law and doctors of medicine hold a position of authority and have the power of authorization. Therefore, they both must use extreme caution because false theories can be disastrous and lead to eternal damnation.[2]However, Bihbihani claims that errors in law are far more dangerous than in medicine because mistakes in medicine can only lead to bodily harm, whereas errors in law affect social and economic relations. Even worse, the misguidance of a legal scholar can have calamitous results

1. Bihbihani, *al-Fawā'id*, 142.
2. Bihbihani, *al-Fawā'id*, 91.

will discuss his overall approach to knowledge and authority and his methodology of interpreting the foundational texts (i.e. *Qur'ān* and Sunna). As noted in Chapter I, Robert Gleave has laid groundwork for Bihbihani's thought.[1] I hope to build on his work.

Bihbihani wrote a number of works on Islamic law. His most important usul *al-fiqh* work is *al-Fawa'id al-ha'iriyya*. Like other works in the field of *usul al-fiqh*, Bihbihani wrote al-Fawa'id for the purpose of establishing and exploring authoritative sources of knowledge and authority. Additional writings of Bihbihani that will be considered here *areal-Risa'il al-usuliyya* and *al-Risa'il al-fiqhiyya*. Similar to al-Fawa'id al-ha'iriyya, these treatises are written for the purpose of undermining the Akhbari approach and asserting the veracity of Usulism. In these texts, he reaffirms the primacy of the Qur'ān and hadith. However, he calls the authority of many hadith reports into question, which serves to undermine the authority of Akhbaris since they claim to rely almost exclusively on the texts. Bihbihani also rejects a literal reading of the texts, which he suggests is the method of Akhbaris. Instead, he insists that the texts should be understood within the linguistic (*lugha*) and customary (*'urf*) context in which they were originally received. Therefore, Bihbihani suggests, it is necessary for mujtahids to rely on the consensus (*ijma'*) of the early Arab Muslim community and interpret the texts rationally.

Bihbihani's Conception of Legalistic Knowledge *('ilm*)

Bihbihani makes a critical distinction between knowledge ('ilm) and reality (*haqiqa, waqi'*). He clearly states that "knowledge is not what conforms to reality (*al-'ilm ma tabiq al-waqi'*)."[2] To clarify, he explains that Jews "know" that Muhammad is not a prophet and polytheists "know" that there is more than one god. In other words, knowledge (*'ilm*) is relative to the one who possesses it. Reality (*haqiqa*) is the ultimate truth, which is not relative. It is the truth according to God, the Lawgiver. At first glance, Bihbihani's view of knowledge may seem to conform to the postmodern notion of relativism, in which everyone's truth is equal. However, considering his cosmology, Bihbihani clearly believes that his (*Usuli Shi'i*) knowledge is superior to that of Jews, polytheists, and so on because he has access to the divine reality. Or at least his knowledge is in closer proximity to God's reality than that of others. Through what means does he have access to this superior knowledge? As outlined earlier, Bihbihani does not

1. Gleave, *Inevitable Doubt.*
2. Vahid Bihbihani, *al-Fawa'id al-ha'iriyya* (Qum: *Maja'al-Fikr al-Islami*, 1995), 130.

B. comments

(2)
Vahid Bihbihani's Theoretical Approach To Islamic Law*

Zackery M. Heern

Introduction

Since the majority of this study is concerned with the origins and development of the Usuli Shi'ism, which is an intellectual movement at its core, it is important to discuss Vahid Bihbihani's thought. As noted in Chapter II, Bihbihani's works have not been widely studied by Shi'is after his time. However, focusing on his scholarly opinion is warranted because he was the founder of the most dominant modern Shi'i trend. The Usuli-Akhbari debate was primarily concerned with knowledge and authority. For legalistic Islamic scholars (like Bihbihani and his Akhbari counterparts), knowledge and authority belong to the domain of law (*fiqh*). As a result of Bihbihani's desire to overthrow the Akhbari establishment, his writings are primarily concerned with the authority of jurists and the principles of Islamic law (*usul al-fiqh*), which were at the core of the Usuli-Akhbari dispute. Given that Muslims assert Islamic law as a comprehensive system that permeates social, political, economic life, the outcome of the dispute has been immense. Any shift in Islamic legal thought of this magnitude would have significant consequences. As a catalyst of the shift towards Usulism, a greater understanding of Bihbihani's thought is crucial.

Bihbihani operated almost entirely within the legalistic tradition that had been developed by Islamic scholars (especially *Shi'is*) long before his time. As outlined in the previous chapter, his approach to uncovering authoritative knowledge was based on the rationalist tradition of Shi'i scholars, which he revived. His Usuli school of thought has continued from his time until the present, albeit with a few of revisions. Based on Bihbihani's writings, the following will outline his theoretical approach to Islamic law. Specifically, I

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* Heern, Zackery M .*Usuli Shi'Ism: The Emergence Of An Islamic Reform Movement In Early Modern Iraq And Iran* .Diss. University Of Utah, 2011, 123-158.

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3. *Encyclopaedia of Islam.* Ed. C. E. Bosworth, E. Van Donzel, B. Lewis and Ch. Pellat. Supplement 1-4. (Leiden: E. J. Brill, 1980-81) proceeding.

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10. _____*Tabaqāt a'lām al-Shī'a.* Ed. 'Alī Naqī al-Munzawī. volumes consulted, 1 & 2, (Najaf: Matba'at al-Ilmiyya, 1954) and 4 & 8, (Beirut: Dār al-Kitāb al-'Arabī, 1390/1971).

11. Tunukābunī, Mirza Muhammad b. Sulaymān. *Qisss al-'ulamā'.* (Tehran, n. d.).

since he reformed and refashioned the bases of jurisprudence.".[1] Through his success in achieving his aims Bihbihānī became known as the *mu 'assis* (founder) and *mujaddīd* (renewer) of the nineteenth century by his contemporary *'ulamā'*.[2] The majority of the

admired Shi'i *'ulamā' oi the* early Qājār period studied under Bihbihānī and obtained their *ijāzat* from him. The most famous, cited by Tunukābunī, are the following: Bihbihānī's nephew and son in law Aqa Sayyid 'Ah Tabātabā'i (d.1231/1815-16);Sayyid Muhammad Mahdi Bahr al-'Ulūm (d.1212/1797-98); Shaykh Ja'far Najafī, known as *Kāshif al-Ghitā' (*d.1228/1813)- Mirza Abu 'l-Qāsīm Qummī (d.1231/1815-16); Mulā Muhammad Mahdī Narāqī (d.1209/1794-95); Mirzā Muhammad Mahdī Shahrastānī (d.1216/1801-02); and Hājjī Muhammad Ibrāhim Kalbasī (d.1262/1845-46). In addition to these *'ulamā'* Bihbihānī also taught his sons, Āqā Muhammad 'All, known as the *Sūfī-kush* (killer of the Sufi) (d.1216/1801-02) and 'Abd al-Husayn.[3] (for his students see chart I)

According to Bihbihānī's biographiers he left a precious bibliography. There are around sixty books attributed to Bihbihānī.[4] However, there is disagreement about the exact number of his books. For instance, whereas Muhammad 'Alī Tabrizī, the author of *Rayhānat al-adab,* estimates the number of books at twenty or more, Habibābādī cites forty-seven titles. It is not possible here to enumerate all his works but the outstanding ones are: *Sharh al-mafātih* (printed in 1195/1781 and 1206/1791-92;[5] and *Ibtāl al-qiyās,* which wrote as a conclusion to his commentary on *al-Dakhīra*;[6] and *Usūl al-islām wa'l-imān,* concluded on Rabi' I, 22, 1183/July,27, 1769.[7] The most important of his works are *al-Ijtihād wa 'l-akhbār,* concluded on 1155/1742 and printed in Iran 1314/1896-97,[8] and *Risālat 'ibādat al-jāhil,*copied by Sayyid Mahdī al-Musawī in 1225/1810.[9]

There are uncertainties concerning the death of Bihbihānī. Some put the date of his death in 1205/1790-91[10] while others put it in 1207/1792-93 or 1208/1793-94. He was buried in Karbalā'.[11]

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1. Mac Oein, *Shaykhism*, p. 26.
2. Āqā Buzurg, *Tabaqāt*, Vol 2, p. 172.
3. Tunukābūnī, *Qisas*, p. 202.
4. Kashmīrī, *Nujūm*, p. 305
5. Āqā Buzurg, al-Dhari'a, Vol 14, p. 75.
6. Ibid, Vol 1, p. 70.
7. Ibid, Vol 2, p. 177.
8. Ibid, Vol 1, pp. 269-270.
9. Ibid, Vol 15, p. 211.
10. Kashmīrī, *Nujūm*, p. 307; Āqā Buzurg, *Tabaqāt*, Vol 2, p. 172.
11. Tabrizī, *Rayhānat*, Vol 1, p. 22.

Thus he is considered as the connection between the *'ulamā'*of the late Safavid period and those of the early Qājār period. The author of *Makārim al-āthār* states that" if we did not possess the link of their *riwāya* (transmission) from him and if his *silsila* (chain) of transmission and one or two other chains apart from his did not go back to al-'Allāma Majlisī and certain others in the twelfth century, there might have been a break in the chain of transmission of the Shī'ī 'ulamā' during that troubled interval".[1] " Thus Bihbihānī was both spiritually and genealogically related to Majlisī".[2]

It is stated that after concluding his studies in Karbalā', Bihbihānī planned to leave the town but was advised against doing so by the appearance to him in a dream of the Third Imam.[3] Obeying the instruction of the dream, he remained and made Karbala' the foremost centre of Shī'ī scholarship.[4] However, from the second half of the Safavid rule to the early Qājār period, the Shī'ī centres both in Iran and in Iraq were dominated by the Akhbari school. Habibābādi states that the Akhbārīs were so assured of their dominance that anyone carrying with him books of *usūl al-fiqh* was obliged to hide them for fear of being attacked.[5]

While Bihbihānī stayed in Karbala' he was engaged in fierce conflict with the adherents of the Akhbārī school. Gradually Bihbihānī was able almost totally to succeed in uprooting the Akhbārīs and in eUminating their influence from the *'atabāt*.[6] He used various methods against the Akhbārīs. For instance, he pronounced

takfīr against them, and he composed treatises in which Akhbari ideas were categorically refuted, such as his book *al-Ijtihād wa 'l-akhbār.* Moreover, Algār records the statement by one of Bihbihānī's students that Bihbihānī was constantly accompanied by a number of *mir-ghazābs* (punishers) who would immediately execute any judgement that he passed.[7] These methods were followed by his students and by their disciples after him such as Shaykh Ja'far Najafī *Kāshif al-ghitā'* (see page. 50) and Sayyid Muhammad Bāqīr Shaftī (see page. 81).

Bihbihānī succeeded in reintegrating the role of the *mujtahīd* and "laid the basis for a system of *fiqh* which has been in use in Twelver Shī'īsm ever

1. Habibabadi, *Makārīm*, Vol 1, p. 231.
2. *Encyclopaedia of Islam*, New edition. Supplement, 3&: 4, p. 134.
3. Tunukābūnī, *Qisas*, p. 199.
4. Habibabādī, *Makārim*, Vol 1, p. 224.
5. Ibid, Vol 1, p. 224.
6. Āqā Buzurg, *Tabaqāt*, Vol 2, p. 172.
7. Algar, *Religion*, pp. 35-36.

(1)
Biography Of Bihbihānī, (b.1118/1706-7- d.1206/1791-2)*

Abdelfettah Abada

Āqā Muhammad Bāqir Bihbihānī, known as *Wahīd* and *Ustdā-i akbar,* the unique and great professor, was born in Isfahan some time between the years 1116/1704-05 and 1118/1706-07.[1] He was the son of Mullā Muhammad Akmal al-Isfahanī. On both his father's and mother's sides he was descended from Mullā Muhammad Taqī Majlisī (d. 1070/1659-60).[2] After Bihbihānī had spent his childhood in Isfahan he moved to Bihbihān, accompanied by his father. Bihbihāni's father was a great clergyman who had obtained an *ijāza* from his teacher Muhammad Bāqir Majlisi and also from other *'ulamā' such* as Āqā Jamāl Khwānsāri (d.1121-25/1709-13), Mullā Mirzā Shirwānī and Shaykh Ja'far Qādi (d.1115/1703-04).[3]

In Bihbihān, Āqā Muhammad was taught by his father before moving to Karbalā' where he attended the classes of great figures in theology such as Shaykh Yusuf al-Bahrānī.[4] However, Āqā Buzurg Tihrānī says that although biographers have not mentioned any of his teachers except his father, it seems that he was taught by Mullā Sadr al-Din al-Ridawī (d.1150-60/1737-47).[5] Bihbihānī obtained three *ijāzat,* the first two from his teachers; his father and Mullā Sadr al-Din. The third one was from Sayyid Muhammad Burujirdī.[6] Through his *ijāza* Bihbihānī possessed a chain of transmission *riwāya* going back to Mullā Muhammad Bāqir Majlisī.[7]

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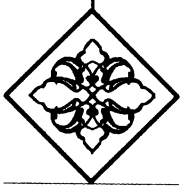
* Abada, Abdelfettah .*The'Ulama'of Iran in the 19th century hagiographical literature* . Diss. Durham University, 1989, pp 40-42.

1. Tunukābūnī, *Qisas*, p. 199, but 1117/1705 according to Algar, p. 34 without any source.
2. Cole, *Shī'ī Clerics*, pp. 6-9
3. Kashmīrī, *Nujūm*, p. 230.
4. Habibābādī, *Makārim*, Vol 1, pp. 223-224.
5. Āqā Buzurg, *Tabaqāt*, Vol 2, p. 171.
6. Habībabādī, *Makārīm*, Vol 1, p. 229.
7. Mac Eoin, Shaykhism, p. 25.



Chapter 1:
Overview

characters and endeavors in studying Vahid Bihbahani for many years.

The compilers of this collection are researchers themselves and respect the rights of the original authors; however, we would like to apologize deeply for the rights if not reserved unintentionally. Anyway, the development of the religious research is only possible through collecting and documenting the existing researches. The most important function of this method is introducing the authors of the world to students. Some of the books in this collection are priced about $300; therefore, an Iraqi, Iranian or Egyptian student whose thesis is on Vahid Bihbahani can never afford to buy such books. The methods of collecting and documenting help such a researcher access the resources easier.

At the end, we would like to express our gratitude to the respected head of the seminar Mr..... and the manager of the scientific board of the seminar Hojjat-ol-Islam wal-Muslemeen Hassan Mousavi and his assistant Hojjat-ol-Islam Hussein Mousavi, who paved the way for holding this seminar with their continuous pursuit and untiring efforts. We would also like to appreciate 15 specialists in different fields who have attempted in different groups for 9 months.

Mohammad Noori
Abazar Nasr

the most important Vahid researchers.

In the present project, more than 100 texts were identified and selected from around 50 sources (books, theses or papers) and were gathered and organized in seven chapters. The first chapter entitled 'The Character of Vahid Bihbahani' focuses on his biography, viewpoints, performance and practical record. In addition, this chapter includes encyclopidic papers. The second chapter entitled 'The Historical Backgrounds of Vahid Bihbahani's School' focuses on the family and students of Vahid. Chapter three is allocated to social backgrounds and particularly religious schools of Shia and authority of Marja' and clergy institutionalization. The position of Vahid's school in for and against movements, more specifically, the current trends of Usuli and Akhbari schools are investigated in chapter four. Chapter five focuses on cultural and religious backgrouknds of Usulism and the Vahid's school(Vahidism). Chapter six is about cultural and scientific implications and achievements of Vahid's school. Finally, the last chapter entitled 'Vahid's Researchers' [Vahidologists] focuses on scholarly research records of the most important active researchers in undrestanding Vahid Bihbahāni.

At the end of the book, a short Arabic report is presented about the discussed issues. Each report is about one text and tries to present an abstract of the discussions and there is a commentary on every critical issue.

All punctuations, spellings and phonetic symbolls used by the writers such as italicizing Persian and Arabic words and using some of the letters such as (ā / ū / ī) have been used without any alteration.

All the intertextual citations have been inserted precisely in the endnotes of each article. It is worth mentioning that no addition, deletion, or alteration is done in reference style of the article, and whatever the authors have written are recorded and quoted exactly. Thus, one may find the differences among the endnotes of the articles.

The related indexical bibliography of the texts is given at the end of the book.

The present project aims at collecting and documenting scholarly efforts of the western researchers about Vahid Bihbahani, including his character, ideas and works. We intended to present the most important works in a collection to pave the way for the respected students and professors in accessing the references and resources. As this collection will be published in a limited circulation and will be available only for Vahid researchers, our intention has never been to publish others' works, rather we have tried to introduce their works to the world and declare the writers and researchers'

name of Allameh Bihbahani has been spelled as follows:

Behbahani / bihbahani / behbihani / bihbihani / bahbahani

Vahid and Baqir were also spelled as follows:

Vahid / wahid/; Baqir / bakir / bagher

The researchers of this project attempted not to lose even one source; thus, all the above-mentioned keywords were searched separately or in combination. An attempt was made to be faithful to the original text, using the them without any addition or deletion.

Based on the investigations, about 120 books; 20 encyclopidias and lexicons, 17 theses and around 40 papers were recognized that at least once the name of Allameh Vahid Bihbahani has been mentioned in them. All the data of these works have been organized and divided into seven chapters. It is noteworthy to mention that based on the search in great digital sites such as 'google books' and 'scholar google' that contain most of European library sources, we are 90% sure that the number of books is the same as it was mentioned, however, because the fulltext of all English theses are not available on internet, perhaps the number of theses is more than what mentioned. The same is true about the papers as well. Out of all these works, the works that discussed Allameh Vahid Bihbahani at least in one or two paragraphs, and the rest of the text was the analysis of the topics about him were selected in this collection.

The collected refrences on the sources were books, paper and theses with the main topic of Shia history, middle east history,clergies and authority of marja', intellectual movements, jurisprudence, and principles of jurisprudence (Usul Feqh). In other words, a part of these resources were about Vahid.

Encyclopidias include seven different entries about Allameh Bihbahani. Although these articles are very short and sometimes have repeated information, they are used because of their importance as refrence books.

Focusing on publishers of the related books, Braille Publication (in Lydden, Netherland) has published most of the books. After this publication, there are some other publishers such as Cambridge university, Yale university and Chicago university.

The most important writers about Vahid, or better to say Vahid researchers in west are Robert Gleave, Zackery M. Heern, , Danis McQueen, Moojan Momen, juan Cole, Ahmad Kazemi Mousavi, Mier Litvak, and Abd al-Fattah Abdah. All of these writers are of European or American origin, except two of them who are origionally from Iran and Egypt. The last part of this collection has focused on the scientific and scholarly records of some of

are presented in Quran and hadith, based on which, and through investigating them, mujtahid reaches a zanni hokm(speculative decree). By 'dalil fiqahati', he means the issues that their decrees have not reached directly from deduction sources, and faqih by using jurisprudence principles (Usul Fiqh) such as Asl-e Bara'at(principle of acquittance), Istishab(the presumption of continuity), va Takh'eer(principle of choice) suggests a practical method. Vahid adopted the latter term from the term '*Foqaha'ei*' existing in the commentary of "*Zobdah al-Usul*" by his grandfather, Mollah Saleh Mazandarani. Although, this term was morphologically wrong (it must be Foqahi), in order to respect Vahid, it was used in the same form in the next books such as "*Fara'id al-Usul*" by Sheikh Ansari (d. 1281 A.H) and "*Qawanin al-Usul*" by Mirza Qomi (d. 1231 A.H). Vahid's success in dethroning the school of Akhbari was to the extent that the jurists after him in their Usuli works did not require reviewing and criticizing Akhbaris' ideas and they just focused on Akhbaris' saying from historical point of view. Thus, with Vahid's intellectual and practical attempts, Shiism and Shia community were relieved from the fatal disease of barbarity, the very problem that later Sunni community were faced in the form of Taliban, endangering the life of Sunnis like cancer.

If the Shia school has successfully passed the events of Mashrootiyyat (Iranian Constitutionalism) and tens of other important historical events with great honor and grace, and if the Shia culture came to be known as an authoritative culture among the scholarly centers of the world, being able to answer and find solution to the novel and modern questions and problems of world, all and all are because of Vahid Bihbahani's attempts and endeavors. Thus, all the academic centers of the world, more than the Shia community itself, have paid great attention to Allameh Bihbahani. Lots of papers, theses and numerous books are written in the western countries about Vahid Bihbahani.

The Project

All the texts in English including papers, books, and theses about Vahid Bihbahani in different countries were studied and the most important of them were collected in seven chapters and organized as the present collection. The characteristics of this collection are as follows:

In order to do this project, a comprehensive search was conducted through library and internet sources. Since there exist different spellings of the name of Allameh Bihbahani in English texts, different keywords were used in internet and library (indices& bibliographies) search. In English texts, the

referring to Hadith books. Astarabadi did not accept probative force of Mujtahids' saying.In his view, jurists are only those who can explore Hadith, extract the rulings from them and transmit it to others; whereas, in Ijtihad theory, jurist's saying has probative force (hojjiyyat), and the Muslims by following them perform their religious duties. Vahid brought up a lot of reasoning, evidences, and examples in order to demonstrate the implications and negative consequences of Akhbaris' view towards rejection of Ijtihad and Taqlid(following mujtahed's ruling) and revealed the chaos and disorder resulting from ignoring Taqlid. He points out that Imams have used the method of 'Tadrij' [gradual proclamation of religious decrees/obligations] in issuing the rulings and particularly because of political and social limitations, they could not talk about the 'real rulings' to all people. Besides, all the rulings they had transmitted to their students based on their epistemological capacity and knowledge have not been delivered, or reached to us. On the other hand, historical events, the lost books and notes of companions and in many cases transmitting by heart indicate that many hadiths did not reach to hadith-writers community, or lots of them have not been narrated by hadith community due to various reasons. Thus, it is possible that many presumptions and principles of rulings could have been found in the lost Akhbar. In addition, passing the time and the emergence of new questions and arguments reveal the true necessity to Ijtihad and Usul Fiqh and jurists have to explore the principles of ruling deduction. Vahid's another argument with Akhbaris concerned his rejection of Akhbaris' claim about the certainty of Hadiths. Although, acknowledging the authors of books and expressing their authority, he emphasized on the conjecture (Zanni al-Sodour) of their narrations, referred to the significance of the investigation on Ilm al-Rijal and Hadith studies, and rejected the claim that collection of Hadith could result in producing knowledge. Moreover, Bihbahani criticized the Akhbaris' claim that in Shar' one must not act according to 'Zann'(speculation), and that from Mujtahids' sayings, one can deduct only Zann; whereas, by referring to Akhbar it is possible to know the rulings. He reasoned that Mujtahids have presented certain proofs for the validity of acting upon authoritative speculations, and no one can reach certainty by referring to Akhbar, and by further contemplation and research, there exists possibility of changing attitudes. Furthermore, we are not certain that all true and necessary rulings could be found in Hadith communities. In his new explanation of Ijtihad, Vahid coined two new terms, namely Ijtihadi indicator (Dalil Ijtihadi) and jurisprudential indicator (Dalil Fiqahati). By 'dalil ijtihadi', he means the data and evidences which

prevented the development and progress of Akhbarism. In addition, Sheikh Yousef Bahrani acknowledged the scientific position of Vahid Bihbahani, paving the way for social influence of Vahid, and thus indirectly contributed in shaking the foundation of Akhbari school and so developing the school of Ijtihad.

Vahid stayed in Karbala for more than 30 years and finally he succeeded to overcome Akhbari movement, setting up his own Ijtihad scope. Vahid's most important book in rejection of Akhbaris after "*al-Ijtihad wal-Akhbar*" is "*al-Fava'id al-Ha'eriyyah*". Writing the latter book was accomplished in two phases: the first part of the book entitled "*al-Fava'id al-Ha'eriyyah al-Gadimiyyah*" was written in 1180(A.H) including 35 headings named 'Fa'idah'. He wrote the second part of the book entitled "*al-Fava'id al-Jadida*" also known as "*Molhaghat*" in late 12th century. Mohammad Hassan Ibn Ma'soum Ghazvini (d.1240 A.H), one of the students of Vahid wrote an abridged collection of the two books in 80 'Fa'idah' and named it "*al-Fava'id al-Sonniyyah*", and he himself added a commentary to it called '*Tanqih al-Maqasid*'.

Vahid in his Usuli works, contrary to Astarabadi and his followers, argues that deduction and Ijtihad were common at the time of Imams, and as a result, there has been Usuli Fiqh at that time, and the task of Usuli Mujtahids was just to develop and deepen the arguments and formulation of Usul knowledge. Thus, Astarabadi's saying in which he attributed the beginning of Ijtihad and Usul Fiqh to Ibn-e Jonayd and Ibn-e abi-Aqil and after them to Sheikh Mofid and Allamah Helli (d. 726) is wrong. For example, proposing two contradictory rulings from an Imam and the quality of resolving such contradictions by the same Imam or the next Imams is counted as an Usuli affair. The argument of 'Hojjiyyat Khabar Wahid' [probative force of Khabar al-Wahed], or ' Hojjiyyat Zahir' [probative force of obvious meaning of the Quran] was raised and widespread at the time of Imams. More importantly, applying some Ijtihadi methods such as analogy (qiyas) by Sunni scholars, sometimes ignorantly accepted by the companions of Imam, and the fact that Imams in some certain situations inevitably rejected these methods are all related to Usuli arguments. At the beginning of *al-Ijtihad wal-Akbar*, Vahid points out that a Muslim inevitably has to accomplish religious duties, and for these duties are Towqifi[exactly according to Share' explicit fixed ruling] one has to explore and recognize those duties. The second chapter of the book focuses on 'Hojjiyyat Qawl Mujtahid'[the probative force of the Mujtahids' saying] and rejects and nullifies Akhbaris' claim that everyone can recognize his religious duty by

Vahid & Akhbarism

Vahid Bihbahani's significant advantage in dealing with Akhbaris and establishing a new method of Usuli is in his Imami jurisprudential approach. Akhbarism which was dominant on Shia religious schools for about two centuries was emerged by 'Molla Mohammad Amin Astarabadi' (d.1033/1036 A.H) having caused the rejection of the Ijtihad with its basis in Usul. The bases of Akhbarism was on its emphasis on the narrations and the certainty of those Akhbar in Hadith books, specially the four books of Imami Hadith, to the extent that some of them did not refer to Quran as a poof except in some of the obvious cases. The cities of Iraq specially Karbala and Najaf were dominated by Akhbaris to the extent that the books of Usuli jurists were left away and obsolete. Vahid Bihbahani's challenge with Akhbaris started in Bihbahan where he was living for several years. Because of the immigration of a lot of scholars from Bahrain to Bihbahan, this city had turned out to be the center of activity of followers of the Akhbari theory. Vahid Bihbahani was in charge of teaching, congregational prayer, and religious affairs and the most important of all, he was writing books in order to clarify and criticize Akhbaris ideas. In 1155(A.H), he wrote his book *"al-Ijtihad wal-Akhbar"* which is sort of a defense of Ijtihad, in Bihbahan, and in that book he attacked the bases of Akhbari school. In this book, Vahid Bihbahani refers to some samples of illogical baseless ideas of Akhbari, and presents his own arguments with them and criticizes the offensive behaviors of Akhbaris with Ulama seriously. Vahid's long stay in Bihbahan, his relationship with religious scholars, training many students, and writing valuable books made him famous even in Najaf and Karbala. In Karbala, that was the concourse of Akhbari at that time, Vahid attended the class of 'Sheikh Yousef Bahrani' (d. 1186 A.H) who was a preeminent jurist of his own time and the last representative of Akhbaris. Then he announced that he is ready to teach instead of Bahrani for a short time, and asked Bahrani to encourage his students to participate in his class. Bahrani who was a moderate Akhbari and, as he stated himself, took the middle way, criticized the categorization of Shia scholars into Akhbari and Usuli, and also was against insulting the great Shia Mujtahids. Thus, he ceded his class which was the largest one in his own time to Vahid. In no more than three days, Vahid proposed the theory of Ijtihad and criticized the theories of Akhbaris and made almost two third of Bahrani's students against Akhbari school.

Through long discussions and argumentations with Bahrani and other Akhbari Ulama, Vahid criticized Akhbari school explicitly, and warned his students not to attend classes held by the Akhbari, and in this way, he

al-Oloom (D.1212 A.H), 'Abou Ali Mazandarani Ha'eri', the author of *"Montahi al-Maqal"*(D. 1215 A.H), 'Sayed Mohammad Javad Ameli', the author of *"Meftah al-Kiramah"* (D.1226 A.H), 'Sheikh Ja'far Najafi'- Kashef al-Qita' (D.1228 A.H), Mirza Abol-Qasim Qomi, the author of *"Qavanin al-Usul"* (D.1231 A.H), 'Mir Sayed Ali Tabataba'ei', Vahid's nephew and son-in-law, the author of *"Riaz al-Masa'el"* (D.1231 A.H), 'Sheikh Asadollah Kazemi', the author of *"Maqabes al-Anvar"* (D.1234 A.H), Mollah Ahmad Naraghi(D.1245 A.H), Sheikh Mohammad Taqi Isfahani, the author of *"Hedayat al-Mostarshedin"* (D.1248 A.H), Haj Mohammad Ibrahim Kalbasi Isfahani (D.1261 A.H), and Sayed Mohammad Hasan Zenozi Kho'ei (D.1246 A.H), the author of Riaz al-Jannah.

Not only in his own right, Vahid Bihbahani holds an outstanding position among Imami scholars, but also from among his children and his descendants great characters have raised, forming 'Bihbahani Family' as one of the greatest Shia scholarly families. Vahid's first son, 'Aqa Mohammad Ali', was an authoritative [Islamic] jurist(faqih) in Kermanshah. Among his children 'Aqa Ahmad' is also famous. Another son of Vahid was 'Aqa Abdol Hussein' and as 'Aqa Ahmad' has put it, he was a virtuous faithful person who's been always practicing pure piety and soul purification. In addition, when his father was Marja', he was in charge of financial affairs and answering religious questions. Vahid had also a daughter who was the wife of 'Mir Sayed Ali Tabataba'ei' (Sahib Riaz), and one of her children was Sayed Mohammad Mojahed (D.1242A.H), (Sahib Manahel), who was the person who issued a declaration of Jihad against Russia at the time of Fath Ali Shah Qajar.

The books of Vahid Bihbahani in different fields of religious sciences indicate his proficiency and knowledge. His jurisprudential research is obvious in his commentary on "abvab ebadat" (chapters on prayers) of the book "*Mafatih al-Shraye'* " by 'Feiz Kashani', and also in his annotations on "*Madarek al-Ahkam*" by Seyed Mohammad Ameli. He was also proficient in Ilm al-Rijal Hadith[the study of transmitters of hadith]. His Rijali researches were presented in Monhaj al-Maqal as a commentary on Astar Abadi's Rijal. With his intellectual consideration, and through the help of some evidence, he attempted to authorize the narrations of no clearly authenticity and credibility, and in this way he was criticized by the recent researchers of Ilm al-Rijal. Vahid Bihbahani has written 119 treatises and books that some of them have been published.

Mohammad Taqi Majlesi' ,and the sister of 'Mollah Mohammad Baqir Majlesi', Vahid mentioned the first Majlesi(the senior) as his grandfather and the second Majlesi(the junior) as his uncle.

Vahid Bihbahani spent his childhood and teenage years in Isfahan and learned rational sciences from his father. After the death of his father and the chaos in Isfahan due to the invasion and domination of Mahmoud Afghan in 1135, Bihbahani left Isfahan for Iraq permanently, and attended his father-in-law's (Seyed Mohammad Tabataba'ei Boroujerdi) classes. Then in Najaf, he attended the classes of the professors such as Sayed Sadr-al-Din Qomi Hamedani, the commentator of *" Vafiyat al-Usul"*. Sadr-al-Din was one of the great scholars of his own time and was perfect in rational and Hadith(tradition) studies. He had emigrated to the holy Najaf after the domination of Mahmoud Afghan over Iran. However, he had a tendency to Akhbari school. As a result, his student Vahid had the same tendency in his early studies; however, he changed his mind later, and accepted "Ijtihad" method. After completing his study in Iraq, Vahid went to Bihbahan and according to 'Aqa Ahmad' he stayed in that city for 30 years, and thus he was known as Bihbahani. When Karim Khan Zand in 1170 (A.H) surrounded Bihbahan, Vahid was living there. It is not very clear why he emigrated to Bihbahan; however, the most probable reason could be the peaceful situation of Bihbahan after the chaos and anarchy in Isfahan that made this city the refuge for [religious] scholars. Another reason was confrontation with Akhbari schools. At that time, the great scholar and supporter of Akhbari school, i.e. Sheikh Abdollah Samahiji Bahreyni (D. 1135 A.H) was in Bihbahan. After Sheikh Abdollah his student 'Sayed Abdollah Beladi (d. 1165 A.H) followed his path.

After a long stay and constant scientific confrontation with Akhbari school in Bihbahan, Vahid went to Karbala accompanied by a group of relatives and local nomads, and stayed there and in 1205 (A.H) passed away at the same place.

The contemporaries of Vahid Bihbahani and the scholars after him have acknowledged him with titles such as the Allameh Zaman(the learned of the time], Jame'e Oloum[perfect scholar], Allameh Thani[Allameh the second] and Mohaqqeq Thaleth[the third scholar]. Biographers have emphasized on the point that all the Shia scholars after him have benefited from his knowledge and have been trained in his school. Thus, he was recognized as Ostad-al-Kol Fil- Kol (the full professor in every field). Some of the famous Ulamas who benefited from Vahid Bihbahani are 'Molla Mahdi Naraqi' (D.1209 A.H), 'Sayed Mohammad Mahdi Tabataba'ei', known as Bahr

Introduction

Aqa Mohammad Baqir Bihbahani (d. 1205) known as Vahid Bihbahani or Allameh Vahid Bihbahani nicknamed 'Aqa', not only, is reputed as jurist, Usuli, reviver, and well-known author in the culture of Shia, but also he is famous in western culture and community. He is known as the rationalist thinker and reformer of the theoretical gaps of Shia culture. Many researchers have analyzed and investigated his thought and theories.

This center has collected the analysis of thinkers and researchers in western and English speaking countries. The main characteristic of these analyses is that the texts are in English. Western researchers have found Vahid's thoughts and attempts exceptionally important and believed that the events of the last two centuries of Shia world are pertinent to those thoughts and attempts.

The significance of Allameh Vahid made the elites of the Shia world think about taking some steps in Iraq and Iran by holding Allameh Bihbahani Seminar in order to introduce different dimensions of his thoughts and his contributions to the Shia world, more than ever before. The coordinators of this seminar with prudence and foresight try their best to take advantage of this opportunity as much as possible and introduce the school of Allameh to the scholarly centers to the best of their ability. To do so, rather than attending the formalities and decorations, the seminar gives priority to concentrating on scientific scholarly affairs and publishing the effective works. In addition, the organizers of this seminar with prudence and foresight intended a project to make a collection of English texts.

Mohammad Baqir vahid Bihbahani is an Imami(believing twelve Infallible Imams of the Shia school) thinker of 12th century (A.H). He was born in 1116, 1117, or 1118 in Isfahan. His descendants have recorded the year 1117 in *Mer'at al-Ahval*. His father Molla Mohammad Akmal Isfahani, was one of the students of Allameh Majlesi. Vahid Bihbahani in his Ijazeh to Bahr-al Ulum praised his father with the titles such as al-A'alam (the most knowledgeable), al- Afzal (the most virtuous), al-Akmal (the most perfect) and Ostad-al-Asatid al-Fozala(the teacher of the teachers of the virtuous knowledgeable people). Vahid Bihbahani's mother was the daughter of 'Aqa Nour-al-Din' Ibn-e [the son of] 'Molla Saleh Mazandarani'. Since Molla Saleh Mazandarani's wife, 'Ameneh Beygom' was the daughter of 'Mollah

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Edited by
Mohammad Noori & Abazar Nasr

بسم الله الرحمن الرحيم