

The Theory of *Maqāṣid al-Sharī'a* in Shī'ī Jurisprudence:

Muḥammad Taqī al-Mudarrisī as a Model

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Abstract

The emergence of the theory of *maqāṣid al-sharīʿa* as a legal theory, which is a purposive approach to the law in which the main purposes of the law are considered as deriving elements of the legal rulings, has occurred in a particular socio-political and cultural context for the Shīʿa and within a particular epistemological construction. Given the lack of a historical reading of Shīʿī jurisprudence and the limitations of the methodological approaches which have to date been employed, this research applies a holistic approach. “*The Bahbahānian paradigm*” is identified as the overarching epistemological paradigm in modern and contemporary Shīʿī jurisprudence. The Bahbahānian paradigm was formed during the eighteenth and nineteenth centuries and is arguably characterised as being a combination of Aristotelian epistemologically, formalist methodologically and soft utilitarianism. Within this paradigm in the context of the twentieth century, *maqāṣid al-sharīʿa* emerged in Shīʿī thought, especially in its systematic and comprehensive theorisation by Muḥammad Taqī al-Mudarrisī - a contemporary Shīʿī scholar. The introduction of the *maqāṣid al-sharīʿa* approach represents a paradigm shift that departs epistemologically, methodologically and functionally from the *Bahbahānian* paradigm. Mudarrisī’s *maqāṣid al-sharīʿa* paradigm is characterized as pragmatic epistemologically, more accessible and dynamic methodologically and employing a virtue ethic.

Mudarrisī’s *maqāṣid al-sharīʿa* reflects the eclipse of the quietist character of the previous paradigm and the ambition of the contemporary Shīʿī religious institution. This ambition comprises a more significant role in the public sphere, which is embodied in the application or renewal of the *sharīʿa* in reality on one hand, and confronting the systematical secularization of the modern nation-state of the public sphere on the other. Mudarrisī’s version of *maqāṣid al-sharīʿa* is obligated to challenge three intellectual enterprises; that is, the classical Shīʿī jurisprudential reasoning by embracing hermeneutical tools which are more accessible to religious knowledge; the Sunnī soft utilitarian *maqāṣidī* approaches by providing virtue ethical jurisprudence; and the secular nation-state by providing a flexible legal system.

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Notes

Transliteration style used in the thesis follows the well-known style in the field wherein no distinction is made between the *ā* from *alif* and *alif maqṣūra*, or from *tā' marbūṭa* unless there is an *iḍāfa*. The initial *hamza* is not transliterated whether it be *hamzat al-waṣl* or *hamzat al-qaṭ'*.

The Qur'ān is cited by reference to *sūra* number followed by *āya* or *āyāt* number, for example citation of the *āyāt* 1-3 of *sūrat al-fātiḥa* appears as: Qur'ān: 1:1-3.

I have used Haleem's translation of Qur'ān throughout the thesis. Concerning Mudarrisi's texts or any other primary text, I have translate them by my own.

General Introduction

1. General Introduction

There has been much debate in the last century about how to modernise Islamic law so as to make it appropriate for a changing society. Amongst the solutions that have been proposed is the theory of *maqāṣid al-sharī'a* as a legal theory for Islamic law. In general terms, the theory of *maqāṣid al-sharī'a* refers to the idea that the *sharī'a* as the legal element of God's message encompasses aims and purposes, which should be fulfilled, even indirectly, and through which God's will for humanity in this world and the hereafter will be achieved. This idea on the face of it, is not that different from the Muslim jurists' understanding of the *sharī'ah*. What makes the theory of *maqāṣid al-sharī'a* unique, compared to other theories, is its emphasis on practical solutions to legal challenges. *Maqāṣid al-sharī'a* was provided a mature expression in the words of an Andalusian Mālikī Sunnī scholar in the fourteenth century- Abū Ishāq al-Shāṭibī (d. 1388) - though its roots can be seen in earlier scholars' works such as al-Ghazālī (d. 1111) and al-Juwaynī (d. 1085)¹. Al-Shāṭibī argued that the *sharī'a* was established for the benefit of human beings and therefore all legal norms aimed to preserve three levels of benefits² for humans. The first level is that of necessities³ (*al-ḍarūriyyāt*) which comprises the five universals of which the "lack of all or any one of them in a community or society will lead to anarchy and great loss of life, as well as to loss of salvation in the hereafter"⁴. These five universal necessities are religion (*al-dīn*), life (*al-nafs*), progeny (*al-ird*), property (*al-māl*) and intellect (*al-'aql*). The second level of benefit pertains to 'what is needed' (*al-ḥājjiyyat*) which "signify those aspects of the law that are needed in order to alleviate

¹ Masud has studied the roots of *maqāṣid al-sharī'a* prior to al-Shāṭibī, see: M.K. Masud, *Islamic Legal Philosophy: A Study of Abū Ishāq Al-Shāṭibī's Life and Thought* (Delhi: International Islamic Publishers, 1989). pp 149-169.

² al-Shāṭibī, Ibrāhīm ibn Mūsā, *al-Muwāfaqāt fī Uṣūl al-Sharī'a*, vol. 2 (Cairo: Dār al-Fikr al-'Arābī). 6.

³ It is matter of debate how to translate these three levels of *maqāṣid al-sharī'a* into English. Scholars have translated them differently.

⁴ Ibrahim, Yasir S., "An Examination of the Modern Discourse on Maqāṣid al-Sharī'a" in *The Journal of the Middle East and Africa* 5, no. 1 (2014): 44.

hardship so that the law can be followed without causing distress or predicament”⁵, for example, “the abridgment of ritual obligations under circumstances of hardship and illness”⁶, such as praying without performing *wuḍū’* in case of lack of water. The third level, according to Shāṭibī, pertains to the improvements (*taḥsīniyyāt*) which “are not needed to such an extent that without them the law becomes inoperable or deficient, and relinquishing them is not detrimental to the *ḍarūriyyāt* or the *ḥājjiyyāt*, but they certainly *improve* the general character of the Sharī‘a”⁷. Examples of this are the legal issues of purifications (*al-ṭahārāt*) outside of performing the prayer, and considerations such as the social etiquette of eating. Al-Shāṭibī, although an Ash‘arī, based his theory theologically on a Mu‘tazilite view of the religion, in particular their view of the ontology of ethics, in which God’s legal will is based on moral rational foundations. As Johnston puts it “Whereas the Mu‘tazilites claimed an objective existence to ethical values which God takes into account in his dealings with people and his created order (objectivism), the Ash‘arites taught that these values may be defined only in terms of what God decrees (theistic subjectivism, or ethical voluntarism)”⁸. As a ramification of this attitude, Mu‘tazilites would believe that these moral values, especially in its basics, can be understood independently by individuals through the intellect (*‘aql*). Therefore, for al-Shāṭibī, the purposes and aims of the law (*sharī‘a*) underlining each legal ruling can be understood and should be the basis for any derived legal issue. He begins his second volume of his *uṣūl al-fiqh* work, which is advocated to deal with his *maqāṣid* theory, by providing a theological proof of this notion⁹. Interestingly, on the other hand, he proved the main idea of the theory and based his categories methodologically on an inductive method by surveying the *sharī‘a* legal instructions. He says, “If the induction proves this [that the *sharī‘a* is based on aims and purposes that benefit human beings], and it leads

⁵ W.B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge University Press, 1999): 168.

⁶ Ibid.

⁷ Ibid., 169.

⁸ Johnston, David, "A Turn in the Epistemology and Hermeneutics of Twentieth Century Uṣūl Al-Fiqh" in *Islamic Law and Society* 11, no. 2 (2004): 236.

⁹ al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī‘a*, 2: p 6-7.

to *‘ilm* within this subject, then we are certain that it continues throughout all *sharī‘a*’s particulars”¹⁰.

Khalid Masud, in his study about al-Shāṭibī entitled: *Islamic Legal Philosophy: A Study of Abū ‘Ishāq al-Shāṭibī’s Life and Thought*, argues that the rise of the theory of *maqāṣid al-sharī‘a* by al-Shāṭibī was a result of the socio-political and economic changes that happened in his society. These changes required a flexibility and adaptability from Islamic law to be compatible with the new reality at the time of al-Shāṭibī. That is to say, his “concept of *maṣlaḥa* in relation to his doctrine of *maqāṣid al-sharī‘ah* was the product of the need of his time to adapt Islamic law to the new social conditions”¹¹ These changes were the consolidation of political power to the Sultan, which affected the role of jurists, the “new educational system, judicial structure, penetration of *Ṣūfī ṭarīqas* and spread of liberal thought all supported by the political system”¹², in addition to the economic development¹³. Hallaq on the other hand argues that the rise of al-Shāṭibī’s theory “were by no means embedded in a desire to create a theoretical apparatus which would provide for flexibility and adaptability in positive law”¹⁴. These social conditions are two groups that adulterated the true law of Islam according to Hallaq’s reading, namely; “the lax attitudes of the jurisconsults and, far more importantly, the excessive legal demands imposed by what seems to have been the majority of contemporary *Ṣūfīs*”¹⁵.

Whatever the reasons behind the emergence of al-Shāṭibī’s theory of *maqāṣid al-sharī‘a* may have been, it did not spread within Sunnī legal theory as a distinct jurisprudential discourse until the modern era in the early twentieth century, through the efforts of Muḥammad ‘Abduh (d. 1905) and especially his student ‘Abdullāh Dirāz (d. 1932) who published al-Shāṭibī’s work *al-Muwāfaqāt* with his own commentary. Since then, the *maqāṣidī* tendency has become a popular legal discourse within, not only Sunnī legal thought, but also amongst intellectualists, so-called reformists and even

¹⁰ Ibid., p8.

¹¹ M.K. Masud, *Islamic Legal Philosophy: A Study of Abū Ishāq Al-Shāṭibī’s Life and Thought*. p. 25. Also, see: p.35.

¹² Ibid., p. 35.

¹³ Ibid., p. 36.

¹⁴ Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-fiqh*: p163.

¹⁵ Ibid.

Islamic movements. Masud argues that while the socio-political and economic factors were significant enough to account for the emergence of al-Shāṭibī's theory of *maqāṣid al-sharī'a*, it had failed to continue as a practical legal theory in Islamic law as "the basis of material and historical reasons will not be sufficient"¹⁶. Rather, he attributed its failure to Shāṭibī's legal philosophy and how his followers had understood it. Al-Shāṭibī was willing to develop his legal philosophy toward a positive Islamic law, Masud suggests. But his followers understood the concept of *maṣlaḥa* as the use of it in the case of the text's absence, which was in fact not the intention that al-Shāṭibī wanted, but rather a pre-Shāṭibī's legal theory¹⁷. Moreover, the ambiguity of his distinction, according to Masud, between two scopes of Islamic law, namely; *ibādāt* and *mu'āmalāt*, was another confusion that caused others to misunderstand al-Shāṭibī's legal philosophy¹⁸. Finally, the dependency of the *qāḍī* (judge) or *mufti* (jurist) in stating the legal issue for the present cases has "influenced the concept of legal obligation" in which it had been linked necessarily to religion and morality as an opposite to positive thought. This dependency would have been deconstructed if al-Shāṭibī had accepted the logical conclusions, as Masud understood, of his doctrine¹⁹.

Ḥubballāh agrees with Masud that the followers of al-Shāṭibī did not understand his theory as he had intended. However contrary to Masud, Ḥubballāh attributed it to the way in which al-Shāṭibī had presented his thought²⁰. Furthermore, he adds four more reasons for the decline of *maqāṣid al-sharī'a* in Sunnī legal theory²¹, but he insists that the primary one is the fact that the theory was born in a sterile environment. That is to say, the Ash'arī theology as a foundation of legal theory cannot bear the theory of *maqāṣid al-sharī'a* for the limitation of the role of reason in deriving legal issues. Ḥubballāh believes, similar to Masud's reading of al-Shāṭibī's thought of *maṣlaḥa*, that *maqāṣid al-sharī'a* are the source of legal issues based on human evaluation of real cases and not merely a framework to rationalise legal issues. This understanding of

¹⁶ Masud, *Islamic Legal Philosophy: A Study of Abū Ishāq Al-Shāṭibī's Life and Thought*: p. 322.

¹⁷ Ibid., p. 323.

¹⁸ Ibid., p. 325.

¹⁹ Ibid.

²⁰ Ḥubballāh, 'Alī, *Dirāsāt fī Falsafat Uṣūl al-Fiqh wa al-Sharī'a wa Naẓariyyat al-Maqāṣid*, 1st ed. (Beirut: Dār al-Hādī, 2005).p.87.

²¹ Ibid., pp.87-88.

maqāṣid al-sharī'a cannot be held up by Ash'arī theology, rather it is most likely to be compatible with Mu'tazilī and Shī'ī thought, according to Ḥuballāh²².

Having said that, *maqāṣidī* discourse's popularity in the twentieth is now such that the individual has a vast array of material to survey from what has been produced over the last century²³, though this is of course not the topic of the research here. However, its revival in the early part of the twentieth century has incited scholars to investigate the reasons behind this, especially since it is interesting that the *maqāṣidī* discourse has not been limited to the jurists, but also attracts interest from those deemed to be "liberals" or "reformists"²⁴. Moreover, it has become a significant discourse for, not only Muslim scholars in the east, but a notable trend of Muslim scholars who live in the West have also embraced the *maqāṣid* tendency²⁵. In the other words, there are two contexts, apart from the classical context of the medieval period where the original *maqāṣid* theory was produced, in which *maqāṣid al-sharī'a* has become a notable discourse. The first is the Eastern Muslim scholars, especially in the Arab world, and the second the Western Muslim scholars and intellectuals.

Many scholars believe that modernity, especially in the late colonial and early post-colonial period, was the main cause of the emerging *maqāṣidī* discourse amongst

²² Ibid., p. 88.

²³ The centre of *maqāṣid al-sharī'a* studies has produced a bibliography of *maqāṣid al-sharī'a (al-Dalil al-Irshādī Ilā Maqāṣid al-Sharī'a)* which surveys all the topics related to *maqāṣid*, and it is now available online in digital format. See: <http://www.al-furqan.com/maqasid> accessed: 18.2.2015.

²⁴ Hallaq has studied some of them such as Rashād Ridā, Khallāf, al-Fāsī and al-Turābī, on one hand. On the other hand, he has studied al-'Ashmāwī, Fazlur Rahmān and Shaḥrūr. See: Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh*: 214-53. Johnston has studied Muhammad 'Abduh, Muhammad Rashīd Ridā, 'Abd al-Razzāq Sanhūrī, 'Abd al-Wahhāb Khallāf, Muhammad Abu Zahra, and Muhammad Hashim Kamali. See: Johnston, "A Turn in the Epistemology and Hermeneutics of Twentieth Century Uṣūl al-Fiqh," 233-82. Also, in another article Johnston studied some other *maqāṣidī* thinkers such as Muhammad al-Ghazālī, Muhammad 'Amāra, Muhammad Talbi, Muhammad al-Mutawakkal, Rāshid al-Ghannūshī, Ebrahim Moosa and Khaled Abou El Fadl. See: "Maqāṣid al-Sharī'a: Epistemology and Hermeneutics of Muslim Theologies of Human Rights," *Die Welt des Islams* 47, no. 2 (2007): 149-87. In his recent article, he also studied a contemporary Sunnī scholar who embraces the *maqāṣidī* approach such as al-Qaraḏāwī, see: Johnston, David L. "Yūsuf al-Qaraḏāwī's Purposive Fiqh: Promoting or Demoting the Future Role of the 'ulamā'?", in *Maqasid Al-Shari'a and Contemporary Reformist Muslim Thought: An Examination*, ed. Adis Duderija (The U.S: Palgrave Macmillan, 2014).

²⁵ See for example, Tāriq Ramaḏān, Hashim Kamali and Ebrahim Moosa. For an analysis of Ramaḏān's work see: David Warren's chapter: Doha—The Center of Reformist Islam? Considering *Radical Reform* in the Qatar Context: Tariq Ramadan and the Research Center for Islamic Legislation and Ethics (CILE), in A. Duderija, *Maqasid Al-Shari'a and Contemporary Reformist Muslim Thought: An Examination* (Palgrave Macmillan, 2014). 73-100. For an analysis of Hashim Kamali's work, see: Adis Duderija's chapter: Islamic Law Reform and *Maqāṣid al-Sharī'a* in the Thought of Mohammad Hashim Kamali, in *ibid.*, 13-38.

Muslim scholars in the early part of the twentieth century. The falling of the Caliphate as a socio-political order for Muslims and the rise of the nation-state had led to serious and fundamental changes in the Muslim community. One of these changes was the codification of the state law, which was mainly not Islamic in a sense, but had been adopted from Western countries. This was seen as a challenge for the Muslim nations, especially for the religious institutions represented by the scholars, which in turn has provoked Muslim thinkers and scholars to propose an “Islamic” solution. March argues that “this meant theorizing a form of Islam that would serve the integrating and standardizing purposes of the modern nation-state. It also meant reformulating Islamic legal concepts in line with current normative conceptions of the “modern””²⁶. In this context, an old Islamic debate had been revived amongst whom were seen as reformists, that is to say, the Mu‘tazilī-Ash‘arī debate regarding the role of intellect in understanding God’s law. Muḥammad ‘Abduh is considered the main scholar who began to revive the Mu‘tazilī-like theological tradition and it is in this context that he encouraged his students to study al-Shāḥībī’s jurisprudential thought. Subsequently, his student ‘Abdullah Dirāz published a version of al-Shāḥībī’s jurisprudential book *al-Muwāfaqāt* with his own commentary. This intellectual line has continued with other thinkers and scholars such as Rashīd Riḍā (d. 1935), ‘Allāl al-Fāsī (d. 1974) and al-Ṭāhir Ibn ‘Āshūr (d. 1973). Although they all shared a *maqāṣidī* discourse, *maqāṣid al-sharī‘a* theory at that time was a framework which those thinkers and scholars were employing for the purposes of their socio-political context. Thus, not all of them have followed al-Shāḥībī’s legal theorisation in regards to *maqāṣid* and its categories and schemes, nor have they all agreed with his methodology of establishing the purposes of the *sharī‘a*. An example for this is what Hallaq has stated, arguably, that Riḍā’s thought of *maqāṣid al-sharī‘a* is a new development of the classical legal theory that goes beyond even al-Shāḥībī’s. This new development, Hallaq insists, by “the religious utilitarianists - Riḍā, Khallāf and others - pay no more than lip service to Islamic legal

²⁶ March, Andrew F. "Naturalizing Shari'a : Foundationalist Ambiguities in Modern Islamic Apologetics" *Islamic Law and Society* 22, no. 1-2 (2015): 48.

values; for their ultimate frame of reference remains confined to the concepts of interest, need and necessity”²⁷.

Johnston, more precisely, adds another context in which *maqāṣidī*-like discourse had emerged, in addition to the Mu‘tazilī-Ash‘arī debate which is the theological foundation of this debate, namely the absence or erosion of the central political order. Within this context, he sees the emergence and growth of *siyāsa shar‘iyya* literatures in the classical period, which were presented by al-Ghazālī through his emphasis on the role of public interest (*maṣlahā mursala*) and by Ibn Taymiyyah through calling for renewing *ijtihād*.

Johnston says: “Henceforth, reason and revelation renew their mutual cooperation, and especially in eighteenth and nineteenth century India and Egypt, when Muslims called upon an Umma in decline to shake off the straightjacket of *taqlīd*, and exercise *ijtihād* in order to face the challenges of western modernity”²⁸.

Amongst Muslim scholars and intellectualists in the west, the *maqāṣidī* discourse is notable, especially over the last three decades. Arguably, the most famous three are Tariq Ramadan²⁹ and Hashim Kamali³⁰. Despite their different approaches towards *maqāṣid al-sharī‘a*, they all share a notion that the *maqāṣid* project is the most compatible approach of Islamic law with their situation in the West, that is to say, in being a minority and having a different identity within a secular non-Muslim state and community.

In the contemporary Shī‘ī context, the calling for the *maqāṣid al-sharī‘a* project is happening in a particular socio-political and cultural context for the Shī‘a and within a particular epistemological construction. Accordingly, it has particular ramifications in

²⁷ Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh*: p.254. Yasir Ibrahim argues against this understanding of Riḍā, instead he believes that the better understanding is to deal with the concept of *maṣlahā* in Riḍā’s thought as a component of the greater framework, that is *maqāṣid al-sharī‘a*. For the fuller discussion see: Yasir S. Ibrahim, "Rashīd Riḍā and Maqāṣid al-Sharī‘a," *Studia Islamica* 102/103(2006): pp. 157-98.

²⁸ Johnston, "A Turn in the Epistemology and Hermeneutics of Twentieth Century Uṣūl al-Fiqh," p19. Hallaq also in his critical paper mentions the influence of modernity on the growth of *maqāṣidī* discourse, see: Wael Hallaq, "Maqāṣid and the Challenges of Modernity," *Al-Jami‘ah* 49, no. 1 (2011).

²⁹ See for example his work: T. Ramadan, *Radical Reform: Islamic Ethics and Liberation* (OUP USA, 2009).

³⁰ Kamali has written extensively on *maqāṣid al-sharī‘a*, the important work is: Kamali, M.H. *Maqāṣid Al-Sharī‘ah, Ijtihad and Civilisational Renewal* (International Institute of Islamic Thought, 2012).

regards to this context. It is seen as a paradox, as mentioned above³¹ in that the *maqāṣid al-sharī'a* project has emerged from an Ash'arī background, while that which is known as having 'Adlī tendencies, Shi'aism and Mu'tazilism, which are seen as epistemologically and theologically well-prepared for such discourse, did not take a risk to establish *maqāṣid al-sharī'a* as a legal system. This can be said especially for Shī'ism, which has survived not only as a theological doctrine, but also as a legal doctrine. The importance of this research is that it is an attempt to study this particular context and construction from which the Shī'ī *maqāṣid al-sharī'a* has emerged and to examine the nature of this Shī'ī version, especially that which has been provided by Muḥammed Taqī al-Mudarrisī (b. 1945) as it is the only comprehensive and systematic Shī'ī contribution to the subject. My research questions, therefore, are: what are the reasons behind the emergence of the Shī'ī *maqāṣid al-sharī'a* particularly in the contemporary era? What are the socio-political and intellectual factors that have caused the emergence of such a discourse? What does such a discourse mean for Shī'ī jurisprudence from a historical perspective? Furthermore, and most interestingly, how will the Shī'ī *maqāṣid al-sharī'a* deal with the *maqāṣid* affairs methodologically, despite the fact that Shī'ī jurisprudence has firmly rejected most methodological tools which are considered *maqāṣidī* tools in Sunnī legal theory, such as *al-qiyās* (legal analogy), *al-maṣāliḥ al-mursalah* (social welfare not mentioned in the text), and *sadd al-tharā'ī* (closing the gate to evil). In other words, what would be the Shī'ī methodological tools for the *maqāṣid al-sharī'a* and subsequently what are the outcomes of the Shī'ī version on the purposes of the law?

My hypotheses in examining these questions throughout the research are:

- Contemporary Shī'ī jurisprudence is an extension of and a development within a jurisprudential paradigm, which was constructed in the pre-modern age.
- Contemporary Shī'ī activism in the Middle East led by the jurists and culminated later on by the Islamic revolution in Iran 1979 was a turning point for Shī'ī jurisprudence. It was the most significant moment when Shī'ī Islam faced the

³¹ See on page 12.

challenge of modernity. It is in this context that the contemporary Shī'ī paradigm (which I will call the Bahbahānian paradigm) has witnessed a deep revision within the religious institutions.

- Al-Mudarrisī as a part of this contemporary construction, but associated to a different epistemological trend within Shī'ī thought, would represent a paradigm shift within the mentioned revision.
- Taking into account the different context in which al-Mudarrisī has discussed the issue of *maqāṣid al-sharī'a*, the outcomes of the Shī'ī version provided by him would be quite different from the Sunnī one. It would incline more toward a virtual trend rather than a positive utilitarian trend.

2. Research Context

The research intersects with two broad contexts within the literature in the field. Firstly, when dealing with the socio-political and historical factors that contributed to the emergence of the *maqāṣid al-sharī'a project*, it intersects with the fields of the history of Shī'ī jurisprudence and *uṣūl al-fiqh*, both being fields that provide an understanding of the developments of Shī'ī jurisprudence. Secondly, it intersects with the context of the literature within Shī'ī jurisprudence itself, which deals with the theories, conceptions and methodologies of Shī'ī *uṣūl al-fiqh*. In the following section, I will provide an overview and evaluation of these two contexts in order to allocate the contribution of the research to them and the gaps that it aims to fill.

As regards the first context, it can be said that the intellectual history of Shī'ī *uṣūl al-fiqh* as an area of study is relatively new; and thus it sometimes seems to be an exaggeration to call some works in this field intellectual history. Having said that, generally speaking, among the historians of Shī'ī *uṣūl al-fiqh*, there are four types of approaches that attempt to provide an understanding of the history of Shī'ī *uṣūl al-fiqh*.

2.1. The Comprehensive Approach

The comprehensive reading of the intellectual history of Shī'ī *uṣūl al-fiqh* is based on an assumption that Shī'ī *uṣūl al-fiqh* has its own history, features and problems. The

historians of this approach have attempted to provide a comprehensive account of *Shī'ī uṣūl al-fiqh*. Thus, they have dealt with different historical and intellectual issues such as the emergence of *Shī'ī uṣūl al-fiqh*, the theoretical developments, the variety of writings within *uṣūl al-fiqh* and their developments, and significant intellectual shifts. However, the contributions in this category vary in their number and depth as some scholars have dedicated a few pages, whereas others have written approximately a chapter of a book or a long article. The scholars who can be classified within this comprehensive approach category are al-Ṣadr³², al-Faḍlī³³, al-Mudarrisī³⁴, al-Karajī³⁵, al-Subḥānī³⁶, al-Qaṭīfī³⁷, Farḥān³⁸, al-Ḥakīm³⁹ and al-Zubaydī⁴⁰.

2.2. The Selective Approach

In contrast to the first category, this type of approach focuses on a particular issue of *Shī'ī uṣūl al-fiqh*, whether to provide a historical overview of the issue or to account for its history as part of addressing underlying issues. For example, there are some works which only address the issue of *al-khabar al-wāḥid* or *al-'aql*. This sort of approach to the intellectual history of *uṣūl al-fiqh* has witnessed an increase in contributions, in particular over the last decade. However, just like with the first category, they vary in their number and depth. Examples of this approach are the works of Ḥuballāh on the theory of *al-sunnah* in *Shī'ī uṣūl al-fiqh*⁴¹ and the works of Gleave on the *Uṣūlī-Akhhbārī* intellectual debate⁴².

³² al-Ṣadr, Muḥammad Bāqir, *al-Ma'ālim al-Jadīdah li 'Ilm al-Uṣūl*, 1st ed. (Tehran: Maktabat al-Najāh, 1975).

³³ al-Faḍlī, 'Abd al-Hādī, *Durūs fi Uṣūl Fiqh al-Imāmiyya*, 1st ed. (Qum, Iran: Mu'assasat Umm al-Qurā, 2000).

³⁴ Muḥammad Taqī al-Mudarrisī, *Fiqh al-Istinbāt: Dirāsah Fī Mabādī 'Ilm al-Uṣūl (Understaing the Derivation: Studying in the Principles of the Derivation)* (2010).

³⁵ al-Karajī, Abū al-Qāsim, "Naẓra Fi Taṭawwur al-Uṣūl," *Majallat al-Thaqāfa al-Islamiyya*, (1986). no. 7.

³⁶ al-Subḥānī, Ja'far, *Maṣadir al-Fiqh al-Islāmī wa Manābi'uhu*, 1st ed. (Beirut: Dār al-Aḍwā', 1999).

³⁷ al-Qaṭīfī, Munīr, *al-Rāfid fi 'Ilm al-Uṣūl*, 1st ed. (Qum: Maktab Āyatullāh al-Sayyid 'Alī al-Sīstānī, 1994).

³⁸ Farḥān, 'Adnān, *Adwār al-Ijtihād*, 1st ed. (Qum, Iran: al-Markaz al-'Ālamī lil 'Ulūm al-Islāmiyya, 1995).

³⁹ al-Ḥakīm, Mundhir, "Marāḥil Taṭawwur al-Ijtihād 'ind al-Shī'a al-Imāmiyya", *Majallat Fiqh 'Ahl al-Bayt*, no. 13-17.

⁴⁰ al-Zubaydī, 'Alī. *Tārīkh al-Ijtihād wa Manāhijuhu*, (Shabakat al-Imāmayn al-Ḥasanayn li al-Turāth wa al-Fikr al-Islāmī), website:

doi:http://www.alhassanain.com/arabic/book/book/letters_and_university_theses/tarekh_al_ejtehad_wa_manahijejoho/2.html. (accessed: 13.9.2012).

⁴¹ Ḥuballah, Ḥaydar, *Naẓariyyat al-Sunnah fi al-Fikr al-Imāmī al-Shī'ī*, 1st ed. (Beirut: Dār al-Intishār al-'Arabī, 2006).

⁴² Gleave has two important works in this regards, these are; Gleave, Robert, *Scripturalist Islam: The History and Doctrines of the Akhhbārī Shī'ī School* (Leiden: Brill, 2007), and: R. Gleave, *Inevitable Doubt: Two Theories of Shī'ī Jurisprudence* (Brill, 2000).

2.3. The Intellectual History of *Uṣūl al-Fiqh* Within the History of *Fiqh*

Although the history of Shī'ī *fiqh* has not received the attention it deserves, the number of works that have been produced in this field exceed those that deal with the intellectual history of Shī'ī *uṣūl al-fiqh*. Part of the reason for this sort of approach is the fact that there is a correlative relationship between *fiqh* and *uṣūl al-fiqh*, which means that anyone who has attempted to deal with the intellectual history of *fiqh* would have been obliged to address, to a certain extent, some issues of *uṣūl al-fiqh*. This might be attributed to the nature of *fiqh*, which relies on the sources and tools that have already been established in *uṣūl* in order to derive the law. Or on the other hand, since *fiqh* is deemed to be the arena within which *uṣūlī* concepts are applied and practiced, it would be inevitable for anyone seeking an understanding of the intellectual history of *fiqh* to have to deal with the intellectual history of *uṣūl al-fiqh*. The scholars who can be classified within this category are al-Āṣifī⁴³, al-Ḥasanī⁴⁴, al-Faḍlī⁴⁵ and al-Subḥānī⁴⁶.

2.4. The Intellectual History of *Uṣūl al-Fiqh* Within the Phenomenon of *Marjī'īyya*

As the *marjī'īyya* of the Shī'a has its own unique system and nature as a religious institution, many works have been written on this subject from different aspects in the last two decades. The majority of them have probably not been written by Shī'ī scholars, but it is notable that some Shī'ī scholars have been involved in this field as well. Whether the *marjī'īyya* is considered a socio-religious institution or a religious-academic one, the aspects of *uṣūl al-fiqh* that permeate it cannot be ignored. Therefore, in this sort of approach, *uṣūl al-fiqh* is understood to be an element of the institution. Many western studies of Shī'ism incline to this approach and there is some Arabic

⁴³ Al-Āṣifī, Muḥammad Maḥdī. *al-Rawḍa al-Bahiyya fi Sharḥ al-Lum'a al-Dimashqiyya*, 1st ed. (Qum,Iran: Maktabat al-Dawūrī, 1991).

⁴⁴ al-Ḥasanī, Hāshim Ma'rūf, *Tārīkh al-Fiqh al-Ja'farī*, 1st ed. (Beirut,Lebanon: Dār al-Ārif, 1987).

⁴⁵ It is worth mentioning that al-Faḍlī wrote several works in legal history for both *uṣūl al-fiqh* and *al-fiqh*. Thus, for his *fiqhī* legal history I have put him with this category. See: al-Faḍlī, 'Abd al-Hādī, *Tārīkh al-Tashrī' al-Islāmī*, 1st ed. (Beirut: Dār al-Naṣr, 1993).

⁴⁶ Same as what has been said for al-Faḍlī can be said for al-Subḥānī in regard to his various contribution in the legal history. al-Subḥānī, Ja'far, *Tārīkh al-Fiqh al-Islāmī wa Adwāruhu*, 1st ed. (Qum: Mu'assasat al-Imām Ja'far al-Ṣādiq, 1997).

literature inclining towards it too. The scholars who can be classified in this category are al-Qazwīnī⁴⁷ and Farḥān⁴⁸.

The limitation of these approaches is mainly methodological, which I will deal with in the next section. However, it is also true that time period that concerns our research is considered to be a constructive period within modern and contemporary *uṣūl al-fiqh*, especially since al-Waḥīd al-Bahbahānī has not been covered deeply by any of these works, except for Gleave's works, and they tend to be restricted primarily to Akhbārism.

As for the comprehensive approach, the writings are too generalised in that they have not given this time period much attention. The pitfall of the selective approach is that the literatures have honed in on one particular issue to which they have not been able to provide a paradigm with which to understand the underlying issue within the broader context. As for the *fiqhī* approach, needless to say, that period of interest has not been given much attention because it is considered as an *uṣūlī* period more than a *fiqhī* one. With regards to the institutional approach, though its methodology has been developed, the literatures have focused more on the political and *fiqhī* aspects of *marjī'iyya* and have not given the theoretical discussions much attention, especially the period of al-Waḥīd al-Bahbahānī.

As regards the second context, despite the increased interest in studying Shī'ī jurisprudence in the last two decades, there has not been any study of the *maqāṣid al-sharī'a* in Shī'ī jurisprudence, except for an article of Ḥasan Jābir's entitled: *al-Maqāṣid fī al-Madrasa al-Shī'iyya: Ishkālīyyat al-madhab wa al-Tasmiya*. Regardless of the fact that the article is short in length, it does not address the actual Shī'ī jurisprudential literatures regarding the *maqāṣid al-sharī'a*, except for mentioning some contributions from a few Lebanese scholars. Instead it addresses the obstacles of emerging Shī'ī *maqāṣid al-sharī'a*. Moreover, surprisingly, it does not even mention Mudarrisī's contribution. Thus, this particular research aims to fill this gap in the literature. Currently,

⁴⁷ Qazwīnī, Jawdat, *Tārīkh al-Mu'assasa al-Dīniyya al-Shī'iyya: min al-'Aṣr al-Buwayhī ilā Nihāyat al-'Aṣr al-Ṣafawī al-Awwal (300 A.H.-1000 A.H./912 C.E.-1591 C.E.)*. (Beirut: Dār al-Rāfīdayn, 2005). Also: Qazwīnī, Jawdat, *al-Marjī'iyya al-Dīniyya al-'Ulyā 'Inda al-Shī'a al-Imāmiyya: Dirāsa fī al-Taṭawwur al-Siyāsī wa al-'Ilmī* (Beirut: Dār al-Rāfīdayn, 2005)

⁴⁸ Farḥān, *Adwār al-Ijtihād*.

there is an article by Takim entitled *Maqāṣid al-Sharī'a in Contemporary Shī'ī Jurisprudence*⁴⁹, in which he attempts to review the current trend toward *maqāṣid al-sharī'a* by Shī'ī scholars. Takim focuses on the concept of *maṣlaḥa* as a mechanism of the *maqāṣidī* approach and how it has been used by some contemporary Shī'ī scholars in dealing with new issues. What can be a criticism of this work is that it limits the *maqāṣidī* approach to the concept of *maṣlaḥa* alone and, therefore, ignores the wider moral and jurisprudential discussions amongst Shī'ī scholars. These are discussions such as the position of the intellect as a moral resource for legal issues, the theory of constants and variables, resorting to the philosophy of fiqh, and the theory of the scope of a legislative void (*al-farāgh al-tashrī'i*). All of these discussions form part of contemporary Shī'ī debates within the *maqāṣid* discourse, which he has ignored. Moreover, he surprisingly did not mention Mudarrisī's work in this field, though he does draw on previous, much larger works of his. Therefore, this study aims to deal with these issues extensively in order to fill these gaps.

3. Sources, structure and outline of the research

The research aims to study the reasons behind the emergence of the *maqāṣid al-sharī'a* project within the discourse of Shī'ī *uṣūl al-fiqh*, as well as its characteristics. Based on the assumption that this sort of research is associated with intellectual history, the research will deal with the primary sources of the period under study, which has been witnessing an increase in recent publications after having existed only in the form of manuscripts for a while. These primary sources are those that were written in the later Safavid period and during the Qajar period. The principal materials are those of al-Waḥīd al-Bahbhānī and his students.

Furthermore, as the research has chosen Mudarrisī as the case study, for reasons that will be justified throughout the first chapter, it will deal primarily with his works - not only those which have direct relevance to the *maqāṣid al-sharī'a* project, but also the rest of his works, in order to properly analysis his thought. Moreover, the research will deal with

⁴⁹ Takim, Liyakat, "Maqāṣid al-Sharī'a in Contemporary Shī'ī Jurisprudence" in *Maqasid Al-Shari'a and Contemporary Reformist Muslim Thought: An Examination*, ed. Adis Duderija, (The United States: Palgrave Macmillan, 2014) pp. 101-126.

contemporary Shī'ī jurisprudential works of the generation prior to Mudarrisī's as well as his own in order to construct a broader backdrop of the environment from which he came. In addition to that, the research will deal with the secondary sources concerned with both modern and contemporary Shī'ī *uṣūl al-fiqh*.

Chapter One seeks to provide a historical reading of modern Shī'ī *uṣūl al-fiqh* in order to construct an intellectual analytical paradigm of modern Shī'ī *uṣūl al-fiqh*. It begins by examining the socio-political and intellectual factors surrounding the later Safavid and Qajar periods as the time when the new paradigm was formed, as the research argues for. After determining the characteristics of that particular paradigm, that is to say, its epistemological, methodological and functional frameworks, the research delves into what are deemed to be the modern challenges of the paradigm and the Shī'ī jurisprudential responses to them. In order to clarify Mudarrisī's position within these responses, the research will survey contemporary tendencies within Shī'ī jurisprudence that have been engaged in seeking a solution to those challenges. Thus, Mudarrisī's *maqāṣid al-sharī'a* project will be presented as a systematic contribution in Shī'ī *uṣūl al-fiqh* to those challenges.

Chapter Two is devoted to the review of Mudarrisī's intellectual biography within which the stance of his generation within the Shī'ī religious institution will be examined, resulting from the gradual engagement of the Shī'ī jurist in the public and especially the political, sphere, since the Safavid period. In identifying his intellectual position within his generation as well as within his socio-political environment, the research studies both the socio-political and intellectual scenes of each stage of his life and links them with his works in order to contextualise his position. This will demonstrate how his life has shaped his intellectual biography in such a way that his thought has become a challenge for the modern Shī'ī jurisprudential paradigm. Furthermore, it will clarify his intellectual attitudes toward contemporary Shī'ī thought which has been reflected in his jurisprudential work. In addition to that, the chapter studies his home environment, both from his father's and mother's sides, as an important element of the Shī'ī traditional training institution in the making of a Shī'ī scholar.

The research commences in Chapter Three with the detailed examination and analysis of Mudarrisī jurisprudential theory regarding *maqāṣid al-sharī'a*, focusing especially on the question of how Mudarrisī will deal with the classical Shī'ī jurisprudential theories, that is to say, what his position is regarding the Qur'ān, Sunnah, consensus and intellect as the sources of deriving legal rulings. The chapter traces his discussions regarding these matters and analytically demonstrates his new ideas, theories and conceptions, which are considered as the purposive (*maqāṣidī*) jurisprudential tools. Firstly, this will help us contextualise his position within Shī'ī jurisprudence and consequently how his jurisprudential thought differs. Secondly, as a part of the focus of our research as to what the Shī'ī methodological tools for the *maqāṣid al-sharī'a project* would be, the chapter will illustrate the *maqāṣidī* tools that have been provided by Mudarrisī.

The research in Chapters Four and Five deals with the core of his *maqāṣid al-sharī'a theory* by examining his understanding of the function of the *sharī'a*. This aims to answer the question about the outcomes of the Shī'ī version of *maqāṣid al-sharī'a* provided by al-Mudarrisī. To this end, Chapter Four studies his theory regarding the nature of the *sharī'a* and its components, and therefore its relationship with reality. To illustrate these, the study focuses on the meaning of the variables in Mudarrisī's thought, and what it requires intellectually and conceptually. The chapter will show his interaction with Western legal and moral philosophy on the one hand and Sunnī legal thought on the other, and how this has helped him depart from the classical framework of Sunnī *maqāṣid*. Chapter Five studies his practical thesis as an outcome of what he considered to be the purposes of the law (*maqāṣid al-sharī'a*). First, we will examine Mudarrisī's interpretation of the constants of *sharī'a* and his interaction with modern Western legal and moral thought. Next, we will demonstrate an outline of his understanding of what *maqāṣid al-sharī'a* actually are, through which I aim to show to what extent his contribution differs from the Sunnī one.

Using this structure, the research attempts to adhere to the methodological commitments in providing an analytical paradigm, which will facilitate the interpretation and significance of the emergence of the *maqāṣid al-sharī'a project* within modern Shī'ī

uṣūl al-fiqh, and especially Mudarrisi's contributions. Meanwhile, the research also takes into account the complexity of the human phenomenon and its agency within temporary construction. Thus, it begins with a broader framework and then narrows down to a small construction dialectically, that is to say, from the jurisprudential paradigm of the historical perspective, through the contemporary Shī'ī religious institution and ending up at a systematic contribution, namely Mudarrisi's as the primary case study.

1. Chapter One

The Formation of Modern Shī'ī Jurisprudence

1.1. Introduction

In its particular formation in Shī'ī jurisprudence, discussions around *maqāṣid al-sharī'ah* (the "purposes" of Islamic law) have emerged in a specific context that composes various socio-political as well as intellectual factors. The present chapter aims to examine these paradigm-creating factors. A key question will be how and when was the *maqāṣidī* discourse formed? Also, what are the main issues of the discourse? The ultimate goal in this chapter will be to identify characteristics of the *maqāṣidī* discourse which emerged in the twentieth century and which attempted either to reform and modify themselves within that paradigm or to shift from that paradigm to another one.

In this chapter, I will determine in Section 1.2 the socio-political and intellectual factors that formed the modern paradigm of Shī'ī jurisprudence (*uṣūl al-fiqh*). In Section 1.3 I will demonstrate the characteristics of the paradigm in three levels, i.e. epistemological, methodological, and functional. In Section 1.4 I aim to outline the challenges that faced the paradigm in the mid-twentieth century. Section 1.5 will examine three responses to the challenges of the paradigm in Shī'ī jurisprudential discourse in which *maqāṣid al-sharī'a* emerged.

The main argument presented in this chapter is that the paradigm which has been formed and viewed as dominant in contemporary Shīʿī jurisprudence is what I will term the 'Bahbahānian paradigm'. This paradigm derives its name from al-Waḥīd al-Bahbahānī (d. 1791), the famous Shīʿī scholar who is regarded as the founder of modern Uṣūlism. Here I am arguing against the dominant periodization of modern Shīʿī jurisprudence (*uṣūl al-fiqh*) which claims that modern Shīʿī jurisprudence was founded by Shaykh Murtaḍā Anṣarī (d. 1281/1864). Instead, what is argued here is that it is the Bahbahānian paradigm which has formed the modern framework of Shīʿī jurisprudence. This paradigm was formed gradually in the course of the Safavid period and emerged as a dominant paradigm in the middle of the eighteenth century. The Safavid period provides a backdrop to the three main factors that compose the paradigm under discussion. These factors are: (i) the growth of the philosophical tendency, (ii) the emergence of the Akhbārī school, and (iii) the juristic avoidance of politics and the institutionalising of the *marjiʿiyyah*. Each of these three factors provides a framework for the Bahbahānian paradigm. As I will aim to demonstrate, the philosophical tendency represented the epistemological framework, the emergence of Akhbārism represented the methodological framework, and political experience represented the functional framework.

Furthermore, I argue that the Bahbahānian paradigm encountered three serious challenges at the beginning of the twentieth century: (i) the rise of the nation state, (ii) the rejection of Aristotelian epistemology, and (iii) the rise of the modern Shīʿī political activities that ended up with the emergence of a republic in Iran in 1979. The crisis faced by the Bahbahānian paradigm has created the search for more appropriate jurisprudential frameworks. Three alternatives have been proposed, each of which feature *maqāṣid al-sharīʿah*. These can be characterised as: (i) an internal reform of the paradigm provided by Muḥammad Bāqir al-Ṣadr, Muḥammad Mahdī Shams al-Dīn (d. 2001), Muḥammad al-Shīrāzī (d. 2002), and ʿAlī Ḥubballāh; (ii) an alternative field provided by Mahdī Mahrīzī (b. 1962), Ḥaydar Ḥubballāh (b. 1973), and Muḥammad Muṣṭafawī; and (iii) a new paradigm provided by Muḥammad Taqī al-Mudarrisī (b. 1945). Although these three responses each feature *maqāṣidī* style juristic reasoning,

my argument is that al-Mudarrisi's systematic and detailed contribution represents a radical new approach to Shi'i jurisprudence and therefore it will constitute the case study under discussion in the current research.

Some scholars, coming from both Western academia and within the Shī'ī intellectual milieu, have tended to present that Shaykh Murtaḍā al-Anṣārī (d. 1281/1864) was the founder of modern Shī'ī jurisprudence (*uṣūl al-fiqh*). This view has been taken for granted in much of the literature. I will argue against this view, since, as I will demonstrate, the principal intellectual elements of Anṣārī's juristic system are entirely dependent upon the Bahbahānian paradigm. The importance of this for the current research is twofold. Firstly, if Anṣārī is considered the founder of modern Shī'ī jurisprudence (and not al-Bahbahānī as will be argued here), then our understanding of the factors which formed the school is impoverished. At best, such an analysis will focus on the intellectual and socio-political circumstances of the eighteenth century ignoring, more or less, the century before in which Shī'ī jurisprudence witnessed a rapid period of development. The elements of this development include the evolution of the Safavid empire into a Shi'i state and, most significantly, the emergence of the Akhbārī school. Changing the periodisation enables us to review the accepted account and posit a different one. Secondly, and following on from this, viewing al-Anṣārī as the founder of modern Shī'ī jurisprudence hinders a full understanding of the challenges that Shī'ī jurisprudence has faced in the modern period. *Maqāṣid al-sharī'ah*, the focus of the current research, is one of them. In what follows, I argue that an analysis which is based on the usual periodisation (in which al-Anṣārī is seen as the pivotal and founding figure), does not provide an adequate basis for understanding the epistemological foundation and functional framework of the modern Shī'ī jurisprudential school.

If we begin with Western scholarship, Hossein Modarressi claims that 'the last fundamental change which occurred in Shī'ī law and which led to the founding of a new school, was associated with the reconstruction of the law and its methodology through the scholarly approach of al-Shaykh Murtaḍā Muḥammad Amīn al-Anṣārī (d.

1281/1864). This resulted in a radical change in the system of Shī'ī law.⁵⁰ Moussavi concurs, stating that 'the contribution of the *uṣūlī* jurists of this period to the development of Shī'ī law did not go much beyond the articulation of what had been laid down by the schools of Ḥilla and Jabal 'Amil until the appearance of Shaykh Murtaḍa Anṣārī.⁵¹

In Shī'ī scholarship, however, the views in regard to this are various. On one hand, despite recognising the efforts of al-Anṣārī in articulating the new jurisprudential ideas and theories, al-Ṣadr,⁵² al-Qaṭīfī,⁵³ and al-Faḍlī⁵⁴ believe that al-Bahbahānī is the founder of modern Shī'ī jurisprudence, mainly for his rebuttal of Akhbārism and for his groundbreaking new theories. On the other hand, al-Ḥakīm,⁵⁵ al-Karajī,⁵⁶ and al-Āṣifī⁵⁷ believe that al-Anṣārī was the founder of modern Shī'ī jurisprudence, not only for his sophisticated intellectual articulation of jurisprudential ideas and theories, but also for his new thought.

Of all of those who dealt with the matter, Āṣifī was the only one who has provided a detailed and specific explanation for what are claimed to be al-Anṣārī's new ideas and theories in jurisprudence. Āṣifī studied the nature of legal evidence (*al-dalīl*) and legal justification (*al-ḥujjiyya*) in which he thinks that within this subject, which is considered to be the core body of jurisprudence, al-Anṣārī has provided new perspectives, ideas, and theories. He traced in detail al-Anṣārī's ideas with regard to these two issues. However, around nine years after publishing his article on al-Anṣārī, Āṣifī wrote an introduction to a new edition of al-Bahbahānī's book, *al-Fawā'id al-Ḥā'iriyya*,⁵⁸ where he changed his mind and believed that al-Bahbahānī was the real founder of the modern Shī'ī

⁵⁰ Tabātabā'ī, Hossein Modarressi, *An Introduction to Shī'ī Law* (London: Ithaca Press, 1984), p.57.

⁵¹ Moussavi, A. K, *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, 1996), p.37.

⁵² al-Ṣadr, Muḥammad Bāqir, *al-Ma'ālim al-Jadīdah li-'Ilm al-Uṣūl*, p.110.

⁵³ al-Qaṭīfī, Munīr, *al-Rāfid fī 'Ilm al-Uṣūl*, p.17.

⁵⁴ 'Abdalḥādī al-Faḍlī, *Durūs fī Uṣūl al-Fiqh al-Imāmiyyah* (Qum: Mu'assasat Umm al-Qurā, 2000), p.81.

⁵⁵ al-Ḥakīm, Mundhir, 'Maraḥil Taṭawwur al-Ijtihād 'ind al-Shī'at al-Imāmiyyah', *Majallat Fiqh Ahl al-Bayt*, vol. 17.

⁵⁶ al-Karajī, Abū al-Qāsim, 'Nazrah fī Taṭawwur al-Uṣūl', *Majallat al-thaqāfah al-Islamiyyah*, no. 7 (1986), p.275.

⁵⁷ Mu'assasat al-Nashr al-Islāmī, *Al-Shaykh al-Anṣārī wa Taṭawwur al-Baḥth al-Uṣūlī* (Qum: Mu'assasat al-Nashr al-Islāmī al-Tabī'ah li-Jamā'at al-Mudarrisīn fī Qum, 1995), p.73.

⁵⁸ al-Bahbahānī, Muḥammad Bāqir, *al-Fawā'id al-Ḥā'iriyyah* (Qum: Majma' al-Fikr al-Islāmī, 2003), pp.48, 49, 51, 61, 62.

jurisprudential school and al-Anṣārī was but a sophisticated articulator of the school. Ḥāshimī also traced in detail al-Bahbahānī's ideas and theories and accordingly realised the importance of him in founding the new school.

I argue here that the modern period of Shī'ī jurisprudence is best understood as beginning with al-Bahbahānī, as the epistemological foundations of the modern school were established by him. Al-Anṣārī is best seen as articulating the principles laid down by al-Bahbahānī rather than departing from them and forming a new school.. The claim rests not only upon Ḥāshimī's convincing comparison of al-Anṣārī and al-Bahbahānī, but also upon a socio-historical analysis of the circumstances of al-Bahbahānī's age to be detailed in the next section. I suggest that the reason why al-Anṣārī has been identified as the founder of the modern school is partly due to the fact that much of pre-Anṣārī works of *uṣūl al-fiqh* (including those of al-Bihbahānī and his pupils) were not available until relatively recently. Such works were mostly in manuscript form and not familiar to most students of the *ḥawzah*, and neither students within the *ḥawzah*, nor scholars working in Western academia were familiar with these works. This has changed in recent years with many of the works of al-Bihbahānī (and those who immediately followed him) being published in Iran and elsewhere. Furthermore, al-Anṣārī trained a significant number of students who went on to dominate the intellectual scene.⁵⁹ These students used and taught from his written work and thus propagated it to future generations of scholars in a way that assumed al-Anṣārī was an inventive force.

In the next section, I will attempt to provide an analysis of how al-Bahbahānī in fact founded a new school of Shī'ī jurisprudence, tracing the factors that contributed to the formation of what I will call the 'Bahbahānian paradigm' - using the term in the manner made famous by Thomas Kuhn.

1.2. The Formation of the Bahbahānian Paradigm

The Bahbahānian paradigm, in accordance with all epistemological frameworks, was not formed in a vacuum. Rather, it represented the outcome of both a long-term intellectual travail and an interaction between several socio-intellectual elements. By

⁵⁹ Al-Subḥānī mentioned fourteen influential students of al-Anṣārī. See Mu'assasat al-Nashr al-Islāmī, *Al-Shaykh al-Anṣārī wa Taṭawwur al-Baḥth al-Uṣūlī*, p.40.

determining these elements and examining the process of their interaction, the researcher can accordingly differentiate one paradigm from another and provide an account of their emergence, characteristics, and (perhaps) their future. Firstly, I will determine what can be deemed to be the main factors that resulted in the emergence of the Bahbahānian paradigm and secondly how its characteristics were constructed.

A brief introduction to the emergence of the Safavid empire will help in understanding the environment from which the Bahbahānian paradigm originated. The rise of the Safavid empire in the sixteenth century can be understood to be the result of widespread Shī'ī *ghulāt*⁶⁰ and Sūfī movements. These movements were flourishing gradually in Anatolia during the fourteenth and fifteenth centuries, where Shī'ī doctrine penetrated many Sūfī orders which developed a form of *ghuluww* doctrine under the framework of Sunnī legal schools (*madhāhib*), especially the Shāfi'ī school.⁶¹ The most dominant of these movements was the Safawiyya, which was established as a Sūfī order at the beginning of the fourteenth century by Şafī al-Dīn al-Ardabīlī (d. 1334). Over the course of about a century, the Safawiyya movement developed in two ways. The first type of development was intellectual, that is, the Safawiyya movement inclined towards Shī'ī *ghuluww* ideas, which were coated by the structure of a Sunnī Sūfī order. The second development was socio-political in that the Safawiyya movement became a military movement, especially after it gained the loyalty of Qizilbāsh tribes when it became very close to Ak Koyunlu's ruling elite in eastern Anatolia. This constituted a turning point in the Safawiyya movement under the leadership of Shaykh Junayd (d. 1460), the fourth leader of the order, who sought to establish his own empire. Shaykh Junayd's ambition was not realised until his grandson came to lead the order and, in 1502, succeeded in establishing the Safavid empire, taking almost all Iranian lands under his rule.⁶² With such a complex identity within the empire, mingled with the complicated surrounding geopolitical situation, the Safavids were forced to seek a new

⁶⁰ For further details on the *ghuluww* movement, see: Halm, Heinz, *al-Ghannūṣiyya fi al-Islām*, trans. by Rā'id al-Bāshsh, 1st ed (Beirut: Manshūrāt al-Jamal, 2003).

⁶¹ For more details on the flourishing of the *ghuluw* movement in Anatolia, see: al-Shaybī, Kāmil Muṣṭafā, *al-Şila Bayna al-Taşawwuf wa al-Tashayyu'*, 3rd ed., 2 vols. (Beirut: Dār al-Andulus, 1982), vol. 1.

⁶² For further reading on the Safavid dynasty and empire, see: Peter Jackson and Laurence Lockhart, eds., 'The Timurid and Safavid Periods', in *The Cambridge History of Iran*, 7 vols., vol. 6, (Cambridge: Cambridge University Press, 2006). Also see. Newman, Andrew, *Safavid Iran: Rebirth of a Persian Empire* (London: I.B. Tauris, 2009).

identity that could unite the empire. These factors also gave them a distinct character and legitimised their rule and, accordingly, they contacted the ‘Āmilī Shī‘ī scholars of Lebanon. Here was where an Arabic Shī‘ī Twelver juristic element merged with a Sūfī extremist (*mughālī*) element (Safawiyya) and eventually created the new identity of the new empire.

1.2.1. The Growth of a Philosophical Tendency

Contemporary Shī‘ī *usūl al-fiqh* reflects, to some extent, an engagement with the theories and concepts of Shī‘ī philosophy.⁶³ This, however, raises the question of the roots of this philosophical tendency, especially when compared with the existence of these philosophical elements in Shī‘ī jurisprudence in the fifteenth and sixteenth centuries. One possible explanation for this tendency, which I would argue for, is that the introduction of philosophical elements in Shī‘ī jurisprudence can be explained in terms of the growth of philosophy in the second half of the Safavid period and also the establishment of what is called the philosophical school of Iṣfahān in the seventeenth century.⁶⁴ This point of view, however, stands against the mainstream view in the history of Islamic philosophy which assumes that philosophical thought died with al-Ghazzālī’s (d. 1111) refutation of Averroes (d. 1198).⁶⁵ In contrast, philosophical thought did not die and it found its way into Persia through the work of Naṣīr al-Dīn al-Ṭūsī (d. 1274). Rizvi suggests that Corbin’s aim in distinguishing a philosophical school of Iṣfahān was ‘to insist that our academic understanding of philosophy in Islam was impoverished and that philosophy did not end in Islam with Ghazālī’s famous attack’.⁶⁶ Also the Safavid period witnessed a considerable growth in interest in philosophy, especially in Iṣfahān. Al-Ṭūsī’s works became central within Shī‘ī theological thought.

⁶³ al-Rifā‘ī, ‘Abd al-Jabbār, ‘Taṭawwur al-Dars al-Falsafī fī al-Ḥawza al-‘Ilmiyya’, in *Kitāb Qaḍayā Islāmiyya Mu‘āshira* (Beirut: Dār al-Hādī, 2005).

⁶⁴ I do not intend here to be limiting the rational tendency of the Safavid period to what is termed the philosophical school of Iṣfahān. I simply intend to mention the notable appearance of this particular rational tendency, whether it has united specific characteristics or not is not the concern of the present research. For more information about the philosophical school of Iṣfahān, see Seyed Hossein Nasr, ‘*Spiritual Movements, Philosophy and Theology in the Safavid Period*’, in Jackson and Lockhart, vol. 6, pp. 656-97.

⁶⁵ For a comprehensive discussion about this see al-Jābirī, Muhammad ‘Ābid, *Takwīn al-‘Aql al-‘Arabī* (Beirut: al-Markaz al-Thaqāfī al-‘Arabī, 1982) and *Bunyat al-‘Aql al-‘Arabī: Dirāsah Taḥlīliyya li-Nuḍum al-Ma‘rifa fī al-Thaqāfa al-‘Arabiyya*, 10th ed. (Beirut: Centre of Arab Unity Studies, 2010).

⁶⁶ Rizvi, Sajjad H. “Isfahan School of Philosophy,” *Encyclopædia Iranica*, online edition, 2012, available at <http://www.iranicaonline.org/articles/isfahan-school-of-philosophy> (accessed online at 22 May 2015).

This is especially the case for al-Ṭūsī's *al-Tajrīd* which can be considered the first Shī'ī theological text written in a philosophical way. *Al-Tajrīd* was circulated in Shī'ī religious institutes and many Shī'ī scholars wrote commentaries on it.

As mentioned above, Iran was a theatre for the activities of various spiritual movements. Under Safavid rule these movements were able to express themselves and they were encountered by some philosophical and theological movements in Iṣfahān. This saw exchanges between the different schools. Under the rule of Shāh ʿAbbās I, at a time when Iṣfahān was at its zenith, some scholars who were involved in these mixed movements, became dominant figures in the city and influenced its intellectual life. With Mīr Dāmād (d. 1631), and then Ṣadr al-Dīn Shīrāzī (d. 1640), commonly known as Mullā Ṣadrā, a particular philosophical tendency – which was, broadly speaking, Shī'ī – dominated intellectual life in this period. Subsequently, Iṣfahān became a stronghold of the rational tendency for Shī'ī thought in such a way that even in the golden age of an 'anti-rational' revival, Iṣfahān remained a rationalist stronghold. This characteristic made the city an intellectual centre for rational tendencies which provided Shī'ī intellectual history in this period with many ideas and figures who promoted and worked within the Bahbahānian paradigm.

Although the philosophical tendency mainly dealt with theological issues, the epistemological ideas which had been developed within this tendency were later on employed in jurisprudential issues, as we shall see below⁶⁷. In other words, the philosophical characteristics of the Iṣfahān school were later on represented in the epistemological framework of the Bahbahānian jurisprudential paradigm. This claim can be supported by reflecting on the intellectual life of Shī'ī thought in this period. It is noticeable that most rationalist contributions were attributed to scholars of Iṣfahān. Even at the peak of the Akhbārī school, which is considered by some as an anti-rational school,⁶⁸ Iṣfahān was the only city where *uṣūlī* works were produced. For example, the most important *uṣūlī* work in that period was *al-Wāfiyya* by ʿAbdullāh al-Tūnī (d. 1660),

⁶⁷ See: 46

⁶⁸ This is the typical understanding of Akhbārism, however Gleave demonstrates another understanding, see Robert Gleave, *Scripturalist Islam: The History and Doctrines of the Akhbārī Shī'ī School* (Leiden: Brill, 2007).

usually known as al-Fāḍil al-Tūnī, in addition to the work of Muḥammad Ṣāliḥ al-Māzandarānī (d. 1675), commonly known for his commentary on *al-Kāfī*. Moreover, the other *uṣūlī* works of the period, according to what is known and available to us to date, are from Iṣfahān. According to the research of Poor, such works include the works of Khalīl al-Qazwīnī, Ḥusayn al-Khwunsārī, and Jamāl Khwunsārī.⁶⁹ Furthermore, even the Akhbārī works, which were of a philosophical character, had their roots in Iṣfahān (i.e. the philosophical school of Iṣfahān) such as the work of al-Fayḍ al-Kāshānī (d. 1680).

A close reading of the biography of the founder of the Bahbahānian paradigm, al-Waḥīd al-Bahbahānī, shows that Iṣfahānī elements are apparent in his education and family network. Al-Bahbahānī was originally from Iṣfahān and had gained his primary religious education there from his close family, especially his father, and another Iṣfahānī teacher. From his mother's side he was a descendant of Muḥammad Ṣāliḥ al-Māzandarānī, who was one of the rational movement's figures in the Akhbārī period and who studied under his son Muḥammad Ḥusayn as well. Al-Bahbahānī was well aware of the thought of his uncle, al-Māzandarānī, as is evident from references to him in some of his *uṣūlī* works.⁷⁰ This much is with regard to al-Bahbahānī's educational and family ties to Iṣfahān; the epistemological ties of al-Bahbahānī to the philosophical school of Iṣfahān will be discussed in detail later on.

1.2.2. The Emergence of Akhbārism

Akhbārism is a Shī'ī jurisprudential school of thought which emerged at the beginning of the seventeenth century. Usually, the foundation of the school is attributed to Muḥammad Amīn al-Astarābādī (d.1036/1627). The least that can be said is that al-Astarābādī's thought constitutes an essential element of Akhbārism. The effects of Akhbārism on the thought of al-Bahbahānī cannot be denied. Some scholars might even go further and claim that the entirety of al-Bahbahānī's thought was a response to the challenges of Akhbārism. However, the manner in which the influence of Akhbārism (and not only the thought of al-Astarābādī) can be traced in al-Bahbahānī's thought

⁶⁹ Poor, *Tārīkh 'Ilm al-Uṣūl*, pp. 224-40.

⁷⁰ See, for example, *Risālat al-Ijtihād wa al-Akhbār* in al-Bahbahānī, Muḥammad Bāqir Akmal, *al-Rasā'il al-Uṣūliyya* (Qum: Mu'assasat al-'Allāmah al-Mujaddid al-Waḥīd al-Bahbahānī, 1995), p.26.

requires a nuanced analysis.. The central goal in this section will be to identify the role Akhbārism played in the formation of the Bahbahānian paradigm.

Many aspects of Akhbārī thought are considered as reactions against the formation of Shī'ī jurisprudence, which was formulated by Ḥasan ibn Yūsuf al-Ḥillī, famous as al-'Allāmah and his students. Consequently, it is a matter of debate whether the Akhbārīs were successful in providing an alternative jurisprudential theory or not. However, there are two points which cannot be denied. First, in terms of *uṣūlī* methodologies, Akhbārī challenges forced the Uṣūlīs to make a serious revision to their theories, concepts, and applications. Second, the huge and immense Akhbārī output during the second half of the Safavid period affected Shī'ī thought generally, including Shī'ī *uṣūl al-fiqh*. They were successful in producing three influential *ḥadīth* encyclopaedias: *al-Biḥār* by al-Majlisī (d. 1699),⁷¹ *al-Wasā'il* by al-Ḥurr al-'Āmilī (d. 1692),⁷² and *al-Wāfi* by al-Fayḍ al-Kāshānī (d. 1680).⁷³ The value of these *ḥadīth* encyclopaedias was such that no subsequent jurist could ignore them. These works became the primary sources for both deriving legal principles and reflecting on theological matters; they were also popular among ordinary Shī'ī believers.

A close reading of Akhbārī works shows that there are some elements which seek to espouse a pure Shī'ī identity as a reflection of the Safavid anti-Sunnī rhetoric. For example, accusations of the Uṣūlīs being influenced by Sunnī thought appear frequently in Akhbārī works. This can be seen in the methodological rejection of *zuhūr* (prima-facie meaning) of the Qur'ān unless it is interpreted by the Imām and the condemnation of consensus (*al-ijmā'*). Furthermore, Akhbārīs (and al-Astarābādī in particular) argued against the philosophical school of Iṣfahān and attempted to transcend the Aristotelian epistemological framework. Al-Astarābādī, for example, maintained that religious

⁷¹ al-Majlisī, Muḥammad Bāqir, *Biḥār al-Anwār fī Akhbār al-A'immat al-Aṭḥār*, vol. 74 (Beirūt).

⁷² al-'Āmilī, Muḥammad bin al-Ḥasan al-Ḥurr, *Tafṣīl Wasā'il al-Shī'a ilā Masā'il al-Sharī'a* (Iran: Mu'assasat Ahl al-Bayt li-lḥyā' al-Turāth, 1994).

⁷³ al-Kāshānī, Muḥammad Muḥsin al-Fayḍ, *Al-Wāfi* (Iran: Maktabat Amīr al-Mu'minīn, 1991).

knowledge (or at least divine law) is based on ordinary knowledge (*al-‘ilm al-‘ādī*) and not the Aristotelian concept of knowledge which dominated Shī‘ī *uṣūlī* thought.⁷⁴

In the light of the above, I would argue that the Akhbārī movement affected the Bahbahānian paradigm only in the methodological respect in which the Bahbahānian paradigm was formed later on. Its methodology was, to a considerable extent, a response to Akhbārī methodological challenges. This is because the main question of the Akhbārī movement was the validity of Uṣūlī methodology in deriving legal issues, and they were not so concerned about the theological or the philosophical framework of Uṣūlīsm except to the extent which it relates to methodological procedure. Gleave, in his excellent work on the Akhbārī school, has concluded that ‘the Akhbārī school is best seen as founded by Muḥammad Amīn al-Astarābādī (d. 1036/1626-7) and sees its fundamental doctrine as being the rejection of *ijtihād* as a legitimate legal mechanism for the production of legal rulings’.⁷⁵ This was precisely what concerned al-Astarābādī according to his work *al-Fawā‘id al-Madaniyya*.⁷⁶ Furthermore, Akhbārī figures were able to commit to, broadly speaking, one legal doctrine, but subscribed to a variety of theological and philosophical schools. It did not matter of whether an Akhbārī scholar was a Sūfī or a philosopher (associated to the philosophical school of Iṣfahān) or a theologian (*mutakallim*), as long as his legal doctrine was that of Akhbārīsm. Finally, the only ways Akhbārīsm provided an alternative to Uṣūlī thought was with respect to legal methodology and thus they were mainly a methodological movement. In effect, this was what the Bahbahānian paradigm was concerned with and responded to, as we shall see below⁷⁷ in detail.

1.2.3. Avoidance of Politics and Institutionalising the *Marjī‘iyya*

It is believed amongst some scholars that al-Muḥaqqiq al-Ḥillī (d. 1277) (and the School of al Ḥillah generally) was the first jurist to extend the authority of the Shī‘ī jurist in the

⁷⁴ al-Astarābādī, Muḥammad Amīn, *al-Fawā‘id al-Madaniyya*, 2nd ed. (Qum: Mu‘assasat al-Nashr al-Islāmī, 2005), p.105.

⁷⁵ See Gleave ‘Continuity and Originality in Shī‘ī Thought: The Relationship between the Akhbāriyya and the Maktab-i Tafkīk’, in Denis Hermann and Sabrina Mervin, *Shī‘ī Trends and Dynamics in Modern Times (XVIIIth-XXth Centuries)* (Beirut: Orient-Institut, 2010), pp.82-3. Also, Gleave, *Scripturalist Islam: The History and Doctrines of the Akhbārī Shī‘ī School*, esp. pp.10-31.

⁷⁶ See his preface in his famous work, al-Astarābādī, *Al-Fawā‘id al-Madaniyya*, p.28.

⁷⁷ See: 51

Shī'ī community by accepting *ijtihād* as a tool for deriving legal rulings and establishing their foundations.⁷⁸ This extended authority had become notable and significant both theoretically and practically in the Safavid period, when the Shī'ī jurist accepted the role of *nā'ib al-imām* and engaged with the Safavid regime. However, the experience did not end well, especially for the Arab Shī'ī scholars who came from Lebanon and were, in a sense, the leaders of the *uṣūlī* trend. After roughly a century of engagement with the Safavid court, the Arab Shī'ī scholars, namely the 'Āmilīs, decided to leave the empire. The remaining Uṣūlī scholars, who were at that time dominated by Persians, were left to face challenges such as Akhbārīm and Ṣūfīsm. This participation in, and resignation from, politics in the Safavid empire was, it can be said, later on theoretically represented as the functional framework of the Bahbahānian paradigm when it was formed in the early age of the Qājār period. Considering the Bahbahānian paradigm in terms of its functional extension, it seems that the paradigm tends to establish foundations for an independence of the Shī'ī jurist from the state. Furthermore, it would lead, and had led in effect, to the centrality of the jurist in the Shī'ī community and to an institutionalisation of the religious authority (*al-marji'yya*). Finally, it would operate to prevent the utilising of Shī'ī jurisprudence for political purposes by temporal regimes. Although the emergence of the Shī'ī *marji'yya* as a centralised authority in the eighteenth and nineteenth centuries could not simply be attributed to jurisprudential developments, the jurisprudential foundations were addressed as reflecting power relations.

Scholars who have studied the history of the Shī'ī *marji'yya* or the early Qājār period have noticed that Shī'ī scholars generally (and the religious institution specifically) gained, to a certain extent, an independence from the state, or at least there was a clear distance between them when compared with the Safavid period.⁷⁹ 'By the end of the nineteenth century the ground was prepared for the direct involvement of the '*ulama*' in the political currents of Iran and Iraq'.⁸⁰ In addition, they have noticed the emergence of

⁷⁸ Norman Calder, 'Doubt and Prerogative: The Emergence of an Imāmī Shī'ī Theory of Ijtihād', in *Studia Islamica*, vol. 20 (1989). Also, see: Moussavi, *Religious Authority in Shi'ite Islam: From the Office of Mufti to the Institution of Marja'*, pp. 29-30.

⁷⁹ Litvak, M, *Shī'ī Scholars of Nineteenth-Century Iraq: The 'Ulama' of Najaf and Karbala* (Cambridge: Cambridge University Press, 2002).

⁸⁰ Moussavi, *Religious Authority in Shi'ite Islam: From the Office of Mufti to the Institution of Marja'*: p. 4.

a centralised Shī'ī *marji'iyya* in a particular city, usually one of the Shī'ī shrine cities, in contrast to the pre-Safavid and Safavid period where there was a dominance of one city but not an institutional centrality. By studying the Bahbahānian paradigm, as we will do in detail later on⁸¹, it seems that the paradigm includes some fundamental ideas that interrelate somehow with the socio-political reality, especially the centrality of the Shī'ī *marji'iyya*. As Moussavi suggests, 'the crystallization of the offices of *mujtahid* and *marja'* in the post-Safavid era can only be fully understood with a full understanding of the popularity of *taqlīd* and the devotional attachment to the symbols of the Imam in the persons of his vicegerents'.⁸² For example, by means of the Bahbahānian paradigm, the concept of *ijtihād* and *taqlīd* became stricter such that each believer was obliged to follow a scholar for fear of invalidating his religious practice. This was later on added to by the compulsory following of the supreme and most knowledgeable scholar. Considering the mechanism for deriving legal rulings, the way of gaining the stature of *ijtihād* and the justification for following the scholar's opinion, it is clear how the Bahbahānian paradigm was functioning in a socio-political reality, as we shall later see in detail⁸³.

To sum up, the Bahbahānian paradigm, which was formed during the Safavid period and which emerged in the early Qājār age, was both a result of and a response to specific socio-intellectual circumstances. It consisted of three socio-intellectual factors: (i) the growth of philosophy amongst Shī'ī religious institutions by the philosophical school of Iṣfahān, (ii) the emergence of Akhbārism, and (iii) the avoidance of politics and the institutionalisation of the *marji'iyya* after the 'Āmilī's political experiences. These factors represent epistemological, methodological, and functional frameworks respectively. These frameworks will be studied in the following section to illustrate the characteristics of the Bahbahānian paradigm.

⁸¹ See: 53

⁸² Ibid., p.6.

⁸³ See: 53

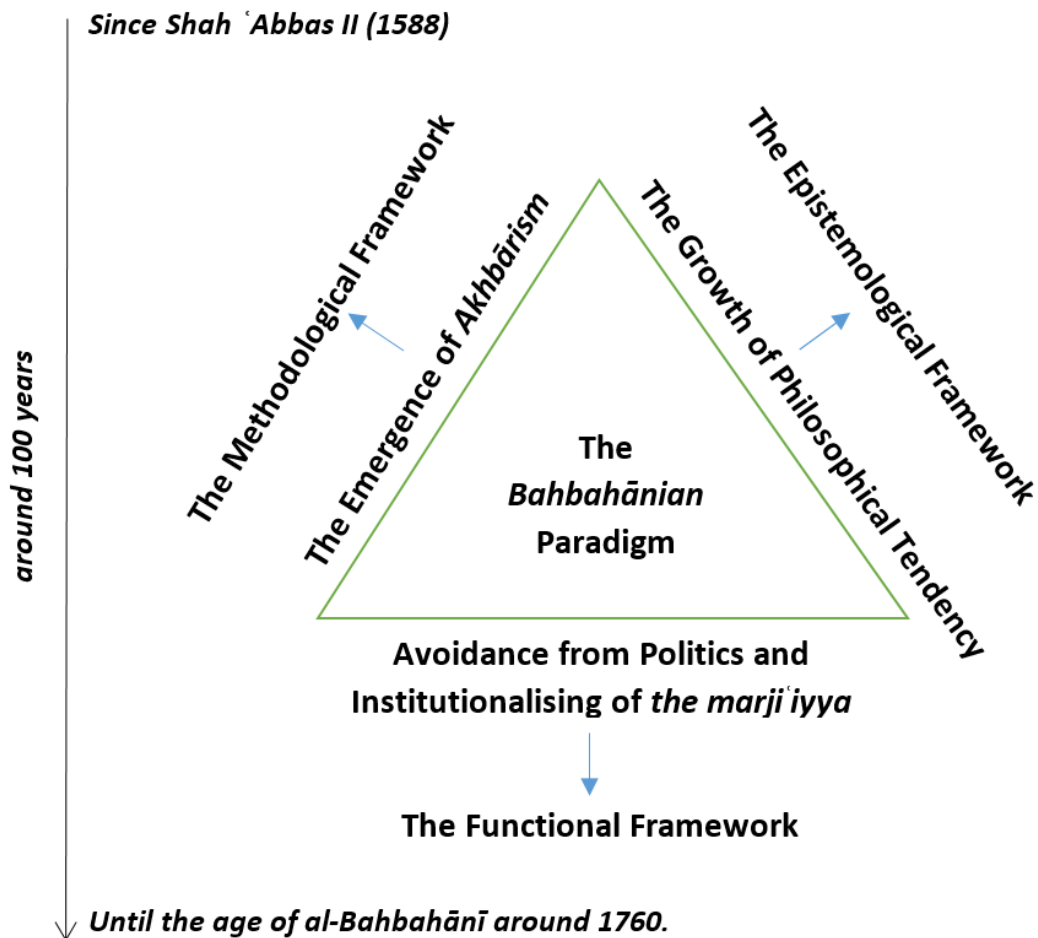


Figure 1. The Formation of the Bahbahānian paradigm and its intellectual reflections. The diagram shows the three factors that contributed in forming the Bahbahānian paradigm and then how each one of them later on became a framework. Thus, the growth of a philosophical tendency represents the epistemological framework, the emergence of Akhbārism represents the methodological framework, and, finally, the avoidance of politics and the institutionalisation of the *marji' iyya* represents the functional framework.

1.3. Characteristics of the Bahbahānian Paradigm

Having determined the socio-intellectual and historical factors, which formed the Bahbahānian paradigm, I will demonstrate the characteristics of the paradigm on three levels: (i) the epistemological, (ii) the methodological, and (iii) the functional. These three frameworks all together represent the Bahbahānian paradigm. The main argument to be presented in this section is that although al-Bahbahānī and his students are considered to be continuing the Uṣūlī tradition for their defeating of the Akhbārī school and their revival of Uṣūlī thought, the emergence of the Bahbahānian paradigm in those particular socio-intellectual and historical circumstances has distinguished it from the Uṣūlī paradigm. The distinctiveness of the Bahbahānian paradigm can be divided into the three areas outlined above (epistemology, methodology and function). In this section, I aim to show that the distinctiveness in each of these areas can be characterised in terms more familiar to the European intellectual tradition as follows. In epistemology, al-Bahbahānī and his followers embraced an Aristotelianism; in methodology, they adopted a type of legal formalism; in function, they employed a soft utilitarianism. How these descriptions are apt will become clear in the analysis below..

1.3.1. The Epistemological Framework of the Bahbahānian Paradigm

By ‘the epistemological framework’ I mean the theory of knowledge which determines its nature, value, and its sources. The Bahbahānian paradigm comprises, I would argue, a particular theory of knowledge and this was applied to *uṣūlī* concepts and theories, especially those which were a part of central jurisprudential discussions, i.e. the field of the theory of justification (*bāb al-ḥujaj / al-ḥujjiyya*) which discusses the sorts of evidences that can be reliable for deriving legal rulings. The epistemological framework was not only confined to what is called the theoretical reason (*al-‘aql al-naẓarī*), but also included practical reason (*al-‘aql al-‘amālī*) as a source to establish *uṣūlī* theories. It was first employed by al-Bahbahānī himself, but reached its mature and detailed form at the hand of his student Muḥammad Taqī al-Iṣfahānī (d. 1832)⁸⁴ which I will use here to

⁸⁴ al-Iṣfahānī, Muḥammad Taqī, *Hidāyat al-Mustarshidīn fī Sharḥ Ma‘ālim al-Dīn*, 2nd ed. (Qum: Mu‘assasat al-Nashr al-Islāmī, 2009).

demonstrate the epistemological framework of the paradigm. This is due to the fact that Muḥammad Taqī al-Ḥfahānī was, of al-Bahbahānī's students, the one who wrote with the greatest ability, and most extensively, about the epistemic foundation of legal evidence. Furthermore, his work, *Hidāyat al-Mustarshidīn*, is a commentary on a work of a scholar before the Bahbahānian paradigm, so it can show the differences between these two stages and support the argument that the Bahbahānian paradigm is different from the Uṣūlī paradigm it replaced.

This epistemological framework conceives knowledge as it was inherited from the philosophical school of Ḥfahān, which in turn was inherited from the works of Naṣīr al-Dīn al-Ṭūsī, who employed Avicenna's philosophy in Shī'ī theology. This conception of knowledge is mainly based on Aristotelian epistemology which can be found in his *Posterior Analytics*, specifically in his theory of demonstrations and demonstrative science⁸⁵ in his logical work, *Organon*.⁸⁶ This Aristotelian tradition found its way into Shī'ī thought through al-Ṭūsī's commentary of Avicenna's work *al-Ishārāt* and *al-Shifā'*. According to this tradition, the concept of scientific knowledge (*al-'ilm al-yaqīnī*) is confined to demonstrative knowledge (*al-'ilm al-burhānī*), which can be deduced through a demonstration (*apodeixis/burhān*). For a deduction to be demonstrative, its premises have to be self-evident (*dhātī*) or based on self-evident premises, and these premises constitute the demonstrative syllogism. Otherwise, what we acquire in another deduction would be less than scientific knowledge, that is, it might be supposition (*ẓunūn*) or delusion (*wahm*) (see Figure 2). In this case, it would not be classified under a demonstrative science. Rather, it would be categorised under what Aristotle called a dialectical argument.⁸⁷ This perception of knowledge was the central understanding of the Bahbahānian paradigm of scientific knowledge (*al-'ilm*), not only for theoretical reasons, but also because it transferred its understanding to practical reason (*al-'aql al-'amalī*). Practical reason is understood in this paradigm as moral reasoning which plays

⁸⁵ For further reading about Aristotle's theory of demonstrations and demonstrative science, see Robin Smith, 'Aristotle's Logic', *The Stanford Encyclopedia of Philosophy* (Spring 2012 Edition), ed. Edward N. Zalta, URL = <<http://plato.stanford.edu/archives/spr2012/entries/aristotle-logic/>>.

⁸⁶ 'Abd al-Raḥmān Badawī, *Manṭiq Aruṣṭū* (Kuwait: Wikālat al-Kuwayt lil-Maṭbū'āt, 1980).

⁸⁷ Abū Radgīf, 'Ammār, *al-Usus al-'Aqliyya: Dirāsa lil Muṭtalaqāt al-'Aqliyya lil Baḥth fi 'Ilm al-Uṣūl*, (Bierut: Dār al-Faqīh, 2005).

a crucial role in deriving many theological and jurisprudential concepts and theories. According to the Shī‘ī theological tradition, which was inherited from al-Ṭūsī and employed in *uṣūl al-fiqh*, the nature of practical reason’s judgements is demonstrative judgements as it was in theoretical reason, though the scope of each reason is different. This is what is meant in *uṣūlī* works by rational evidence (*al-dalīl al-‘aqlī*).⁸⁸ Thus, strictly speaking, the Aristotelian concept of knowledge in both theoretical and practical reasoning is that which resulted merely from self-evident (*burhānī*) premises.

Type of Knowledge Demonstrative Science Ordinary Science

Premise 1	Self-evident (<i>dhātī</i>)	Supposed (<i>maznūn</i>)
Premise 2	Self-evident (<i>dhātī</i>)	Supposed (<i>maznūn</i>)/self-evident
Conclusion	Certain (<i>burhān</i>)	Speculative (<i>ẓannī</i>)

Figure 2. An illustration of the concept of knowledge in Aristotelian epistemology. Each column represents a logical syllogism. The column headed ‘demonstrative science’ contains two self-evident premises. The column headed ‘ordinary science’ contains two less certain premises, which is why it is not a demonstrative science (*burhānī*), rather it is a dialectical science in logical terms and an ordinary science in jurisprudential terms.

Al-Ijtihād wa al-Akhhbār is a very important early treatise of al-Bahbahānī to which he often refers in his later works. *Al-Ijtihād wa al-Akhhbār* can be understood to contain the essence of al-Bahbahānī’s jurisprudential thought.⁸⁹ In it al-Bahbahānī determines the concept of knowledge (*al-‘ilm*) as it was found in the Aristotelian tradition. The reason for choosing this particular conception might be attributed to his concern for the challenges of Akhhbārism. One main challenge was the claim that it is only through *akhhbār* that we would gain certain knowledge, whereas the Uṣūlī approach only

⁸⁸ In modern Shī‘ī *uṣūl al-fiqh* there is a new trend which sees the nature of practical reason’s judgements not as a demonstrative judgment, but as a collective agreement. This trend is known as a trend of philosophers (*hukamā*), and its leading figure is Muḥammad Ḥusayn al-Iṣfahānī, along with his student Muhammad Riḍā al-Muẓaffar. For more details, see *ibid.*, pp. 97-149.

⁸⁹ Al-Bahbahānī, *Al-Rasā‘il al-Uṣūliyya*, pp.3-229.

provides supposition (*ẓunūn*). Hence, the best solution, he argues, would be to restrict the concept of knowledge (*al-ilm*) to a very limited scope by choosing the Aristotelian perspective and, therefore, to portray what is gained by most of the *akhbār* as a less than certain knowledge. In effect, this was what he did in this treatise. Al-Bahbahānī spent a large part of his treatise, providing extensive discussion, trying to prove that most of what we acquire from textual sources is not certain knowledge; rather it is mere supposition (*ẓunūn*). The reason is that certain knowledge is only rational knowledge (*al-ilm al-aqlī*) or what is based on it.⁹⁰ This kind of knowledge has to be followed rationally, because its authority (*ḥujjiyya*) is an essential proof (*dhātī*) and cannot be legislated from any external source. Accordingly, for any claimed evidence or method to be a source of religious knowledge, it has to be based on this kind of knowledge in order to gain religious authority (*ḥujja sharʿiyya*). This idea was developed and extensively discussed by al-Bahbahānī's students, and then it became the epistemological foundation of Shīʿī jurisprudence for more than a century before it was explicitly acknowledged in the twentieth century. The best proponent of this dimension of the Bahbahānian paradigm was al-Bahbahānī's student, Muḥammad Taqī al-Iṣfahānī, who wrote a commentary on a famous jurisprudential work, *Maʿālim al-Dīn wa Malādh al-Mujtahidīn*, called *Hidāyat al-Mustarshidīn ilā Maʿālim al-Dīn*. When al-Iṣfahānī reached the topic of consensus (*ijmāʿ*) as the first topic of non-hermeneutical evidence in *al-Maʿālim*, he devoted a separate treatise to discussing extensively the subject of supposition (*al-ẓann*). This treatise later on received a commentary excellently written by his son, Muḥammad Bāqir al-Iṣfahānī (d. 1884), which summarised the whole of the Shīʿī jurisprudential debate on the issue of supposition and knowledge in the eighteenth and nineteenth centuries.⁹¹

In Muḥammad Taqī al-Iṣfahānī's treatise, before he discusses its central topic, he provides five introductory points which represent the epistemological framework of his discussion. A summary of these points is as follows: the first is the meaning of the evidence; the second is that the evidence is divided into an essential proof and one

⁹⁰ Ibid., p.223.

⁹¹ Muḥammad Bāqir al-Iṣfahānī, *Sharḥ Hidāyat al-Mustarshidīn* (Qum: ʿAṭr al-ʿIṭrah, 2007).

which is based on the essential proof; the third is that the authority of any evidence is merely that which provides knowledge (*al-‘ilm*); the fourth is whether the reason for following the evidence, which provides the knowledge, is because it discovers the reality of religious rulings or because it provides practically apparent religious rulings; the fifth is whether the authority of a supposition (*al-ẓann*) in the period of the occultation is for all kinds of supposition or is restricted to particular ones. Then, he discusses the objections of following suppositions (*al-ẓunūn*), the evidences that support following the particular supposition (*al-ẓunūn al-khāṣṣa*), the refuting of the opinion of following any supposition, and finally discussing the authority of the fame (*al-shuhrah*).

By considering this treatise, and particularly the five points above, it can be argued that Bahbahānī’s employment of the Aristotelian concept of knowledge became the central epistemological foundation of his paradigm and a critical tool for establishing most of the influential *uṣūlī* theories. The effects of this epistemological framework can be seen, as ‘Abū Radgīf argues, in the two central bodies of Shī‘ī *uṣūl al-fiqh*, namely, the field of authority (*ḥujjiyya*) and the practical principles of religious duties (*al-uṣūl al-‘amaliyya*). Specifically, this epistemological framework has been employed in deriving a number of *uṣūlī* theories in these important disciplines: the authority of certitude or knowledge (*al-qatṭ‘/al-‘ilm*), the abnormal certitude (*qatṭ‘ al-qatṭ‘*), collective knowledge (*al-‘ilm al-ijmālī*), the inheritance between rational rule and religious rule (*al-mulāzama bayna mā ḥakama bihi al-‘aql wa mā ḥakama bihi al-shar‘*), the presumption (*al-tajarī*), the principle of exoteric meaning (*ḥujjiyya al-ẓuhūr*), and the principle of rational exemption (*al-barā‘a al-‘aqliyya*). Furthermore, this epistemological framework has formed the structure of Shī‘ī *uṣūl al-fiqh* in which after passing the hermeneutical section the sections begin with the most certain evidence to the most doubtful one. This epistemological characteristic represented and dominated the Bahbahānian paradigm until it faced the emergence of a new modern paradigm, as we shall see later⁹².

1.3.2. The Methodological Framework of the Bahbahānian Paradigm

By ‘the methodological framework’ here I mean the legal mechanism of deriving legal issues which the jurist is meant to follow. Therefore, it refers to the procedure, method,

⁹² See: 58

and structure of legal evidences. The Bahbahānian paradigm is methodologically characterised by several features. Firstly, if al-Majlisī's statement that Uṣūlīs forget their *uṣūl* when they do *fiqh* (by which he referred to the observation that many Uṣūlī concepts and principles had been established theoretically without any practical application in deriving legal issues) is accurate with regard to the paradigm of his time,⁹³ it is not accurate for the Bahbahānian paradigm. Shī'ī *uṣūl al-fiqh* before al-Bahbahānī was very much concerned with Sunnī dialogue in a way that many of its issues confirmed Shī'ī theological attitudes but in *uṣūlī* language. This clearly differentiated *uṣūl al-fiqh* and *fiqh* where many *uṣūlī* theories were useless in Shī'ī *fiqh*, such as the theory of consensus (*ijmā'*). With the Bahbahānian paradigm, the *uṣūlī* theories became leading tools in deriving rulings in a way that the differences between one jurist and another in *fiqh* can be attributed to their *uṣūlī* bases.

Secondly, the Bahbahānian paradigm firmly differentiates between two kinds of evidence: the first is what is called proof (*dalīl*) and the second is the principle (*aṣl*). Although this distinction existed before, the Bahbahānian paradigm contributed a theoretical framework, clarifying its characteristics and providing a clear procedure for applying it. Accordingly, this paradigm reflected a distinctive differentiation between two categories of evidence: the first is known as *al-adilla al-ijtihādiyya* and the other is *al-adillah al-faqqahatiyya*.⁹⁴

Thirdly, as a result of the previous point, the extension of the practical principles reflected a particular methodological mentality which dominated the Bahbahānian paradigm. This mentality is what is called cautious reason or what others described as the jurisprudence of constants.⁹⁶ It is characterised by seeking certainty in religious knowledge; in cases of uncertainty, the jurist is, supposedly, reluctant to use his personal reasoning to express a preference of one possible answer over another. Rather, he would methodologically seek to exercise caution by applying one of the

⁹³ Al-Majlisī, *Biḥār al-Anwār fī Akhbār al-A'immat al-Aṭhār*, vol.74, p.222.

⁹⁴ Al-Waḥīd al-Bahbahānī is said to have first distinguished these two kinds of legal evidence and the concepts have been given a sophisticated elaboration by Murtaḍā al-Anṣārī. See 'Alīpoor, *Tārīkh 'Ilm al-Uṣūl*, p.262.

⁹⁶ al-Mudarrisī, Muḥammad Taqī, *al-Tashrī' al-Islāmī: Manāhijuhu wa-Maqāṣiduhu*, 10 vols., vol. 2 (Tehran: Dār Intishārāt Mudarrisī, 1992), p.105.

practical principles in the case under investigation. This mentality was, I would argue, the result of two main factors: the first is an academic factor, which is related to the Uṣūlī-Akhhbārī conflict regarding the question of to what extent we can gain religious knowledge in the Imām's absence and whether knowledge is attainable or not. To answer this question, Uṣūlīs discussed in depth what is known in *uṣūlī* literature as the closing of the door of knowledge (*insidād bāb al-‘ilm*).⁹⁷ The second is a socio-political factor which is related to the religious institution's wish at the time to avoid being a part of any temporal regime and seeking to establish its centrality. This factor resulted in the derivation of rulings being restricted, as much as possible, to textual sources or practical principles such that the jurist is the only one who can do *ijtihād* and no one else. In spite of the cautious approach, methodologically the jurist in the Bahbahānian paradigm gained authority and in practice he would take into account several socio-political circumstances when he derived rulings as we shall see below⁹⁸ in our discussion on the functional framework of the paradigm.

Finally, as a result of the extension of the practical principles, the tendency of abstracting *uṣūlī* and *fiqhī* principles and rules (*al-qawā‘id al-uṣūliyyah wa al-fiqhiyyah*) featured in the Bahbahānian paradigm methodologically. Despite the existence of some works in *uṣūlī* and *fiqhī* rules before, in this paradigm it shifted profoundly in terms of quality and quantity. This can be seen in the literature written on the established 'non-harm' (*lā ḍarar*) rule and also it is obvious in Shaikh al-Anṣārī's (d. 1864) works, especially his book *al-Makāsib*. This reflects the point stated above about cautious reason in which the jurist attempts to be very close to the text and to abstract the rule that extends the scope of the text as much as possible before he goes to the practical principles. On the other hand, the tendency towards *al-qawā‘id* especially after Shaikh al-Anṣārī, indicated the limitation of the Bahbahānian paradigm's methodology. Hence, the jurist was confused between being close to the text as an expression of cautious reason and overriding the limitation of this methodology. The *qawā‘id* tendency was the middle way.

⁹⁷ The most extensive discussion of this topic can be found in al-Anṣārī's work. See al-Anṣārī, Murtaḍā, *Farā‘id al-Uṣūl*, vol. 1 (Qum: Majma‘ al-Fikr al-Islāmī, 1998), pp. 384-620.

⁹⁸ See on page 53

1.3.3. The Functional Framework of the Bahbahānian Paradigm

By 'the functional framework' I mean the relationship between the legal mechanism of deriving rulings and the social reality of the jurist and his society, which here refers to the Shī'ī or Islamic community generally. Accordingly, jurisprudence here is seen as an epistemological authoritative tool which can be used in society. From this perspective, I would argue that the Bahbahānian paradigm was characterised by two functional features, which were in effect correlating with the epistemological and methodological frameworks of the paradigm.

Firstly, in addition to the basic and assumed function of any Islamic jurisprudential system which is to provide legal rulings for the believer to follow, the character of the Bahbahānian paradigm is functionally more than that. That is to say, it was formed in a way that would centralise socio-political and religious authority under the Shī'ī religious institution represented by the Shī'ī jurist. The paradigm emphasises the provision of legal issues solely through the jurist (*mujtahid*) in which his opinion regarding legal issues have to be followed. This is apparent in the field of *ijtihād* and *taqlīd* and it might reflect the circumstances surrounding the emergence of the Bahbahānian paradigm where many parties sought to gain authority in Shī'ī society at that time. There were Shī'ī rulers represented by the Shāh, the leaders of Shī'ī Ṣūfī orders, and the transmitters of the accounts of the actions and words of the Prophet and Imams (the *muḥaddithīn*). The reason for this claim is that since the onset of the Bahbahānian paradigm the centralisation of Shī'ī religious institution can obviously be seen. Furthermore, the system of *taqlīd* has firmly been established under the shadow of this paradigm. Reflecting on some jurisprudential issues in this period, some support for this view can be found. For example, the issue of *ḥujjiyyat al-ẓann*, and the way that the Uṣūlīs have justified following it, would eventually assert the authority of the jurist's

opinion. For instance the idea of following interests (*al-maṣlahah al-sulūkiyya*),⁹⁹ *tanjīz al-wāqi' bi-qawl al-faqīh*, and *al-ijzā'* all assert the centrality of the jurist.

Secondly, although Shī'ī *uṣūlī* thought rejects the idea of public interest (*al-maṣlahah*) as the source of deriving legal issues, with the Bahbahānian paradigm this idea received significant attention theoretically and practically. Therefore, the concept of interest, especially the interest of Islam in general or the Shī'ī community in particular, became a crucial source for deriving legal issues, and in particular those issues which relate to socio-political affairs. This happened to the extent that it can be argued that interest in effect became the backdrop for the jurist in the Bahbahānian paradigm when he deals with public affairs. For example, the experiences of the Shī'ī jurists with the temporal state since the Ṣafavid era, demonstrate how the concept of interest was sometimes the general public interest, and sometimes specifically the interest of Shī'ism (as the jurists understood it).. The employment of the concept of interest can obviously be seen when we consider, for instance, the Tobacco Revolution of 1890, the Constitutional Revolution of 1907, and the Revolution of 1920 in Iraq and many public issues which are being dealt with in Iran and amongst Shī'ī political movements. Although the Bahbahānian paradigm methodologically established the the dual authority of the text (*naṣṣ*) and the principles (*uṣūl*), in a way that there is no space for making exceptions by invoking harm (*al-ḍarar*), some jurisprudential concepts were created to reinforce the practical application of the notion of interest. These applications are known as 'secondary rulings' (*al-aḥkām al-thānawīyya*), and are based on principles such as the principle of embracement (*al-ḥaraj*), necessity (*al-ḍarūra*), and the ruling of authority (*al-aḥkām al-wilā'iyya*). Before the Bahbahānian paradigm there were few discussions on these concepts. However, from the inception of the Bahbahānian paradigm onward these concepts became jurisprudential objects, and afterwards they became *fiqhī* objects. Moreover, they were profoundly developed on the theoretical level in a way that enabled the jurist to use them as tools when he dealt with public affairs. In a word, as a

⁹⁹ This term has been created by Murtaḍā al-Anṣārī as a solution to one of the famous jurisprudential problems that appeared with the Bahbahānian paradigm, specifically, how to council between the apparent judgment which results from legal evidence and the assumed real judgment (*al-ḥukm al-wāqi'ī*). See al-Ṣadr, Muḥammad Bāqir, *Durūs fī al-Uṣūl*, 2nd ed., 3 vols., vol. 2 (Beirut: al-Sharīkah al-Ālamīyyah lil-Kitāb, 1986), pp.17-23.

result of the political experience of the Shī'ī jurist since the Safavid era, the concept of interest was significantly developed not to be justified as a source of deriving legal issues. Rather, it was developed in order to be a practical tool in the hand of the jurist to fulfil the function of jurisprudence, which is the interest of the community, in a way that can be described in the Western tradition as 'soft-utilitarian'. This type of utilitarianism can be distinguished from 'hard-utilitarianism' which, according to the approach of Bentham, simply bases its moral foundation on pain and pleasure. However, soft-utilitarianism still allows individual and societal interest to be taken into account when legal rulings are issued.

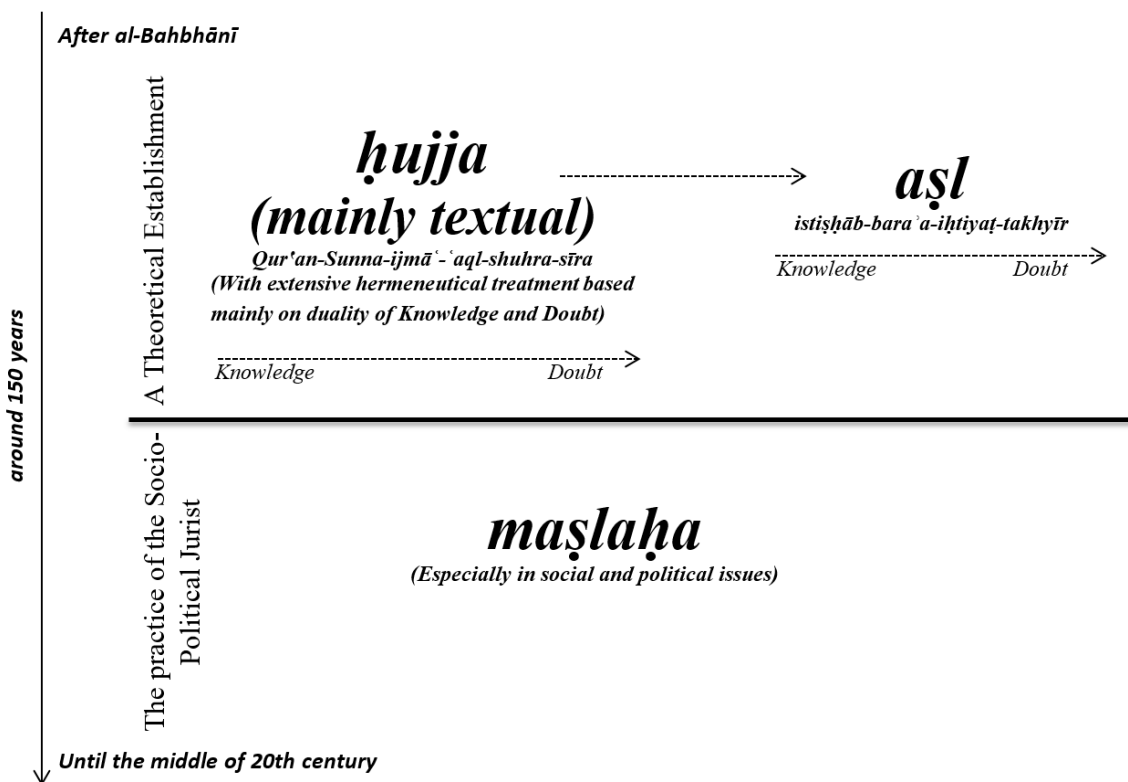


Figure 3. The characteristics of the Bahbahānian paradigm: epistemological, methodological, and functional frameworks. In the theoretical establishment, the diagram shows the epistemological framework which seeks the most certain knowledge and the methodological framework which proceeds from the text to the principle. In the practice of the socio-political jurist, the diagram shows the functional framework which underpins the theoretical establishment. Interest (maṣlaḥa) is a crucial element of this functional framework.

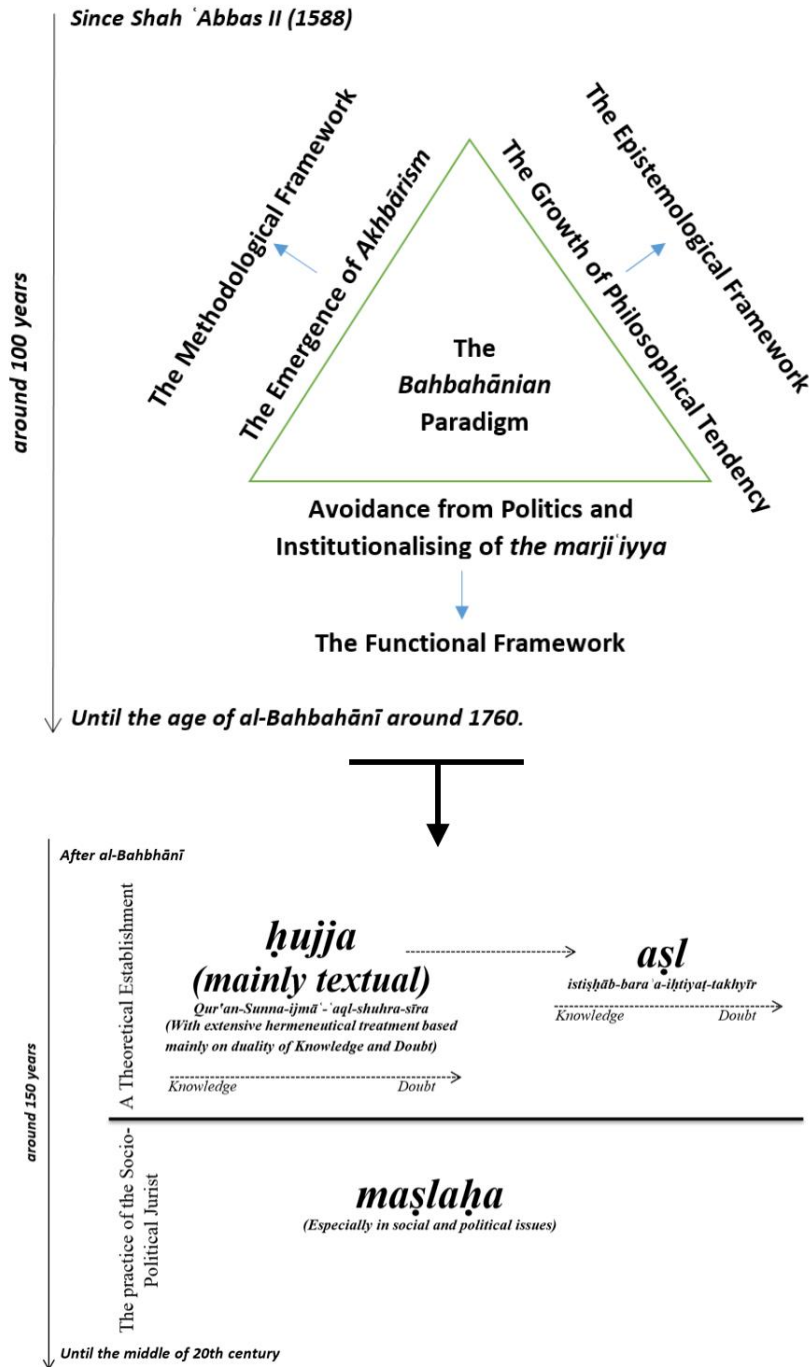


Figure 4. Overview of the formation and characteristics of the Bahbahānian paradigm. It is a combination of Figures 1 and 3, in which Figure 1 represents the socio-political, historical, and intellectual factors that contributed to the emergence of the Bahbahānian paradigm. Figure 3 represents its epistemological, methodological, and functional characteristics.

1.4. Challenges of the Bahbahānian Paradigm and the Tendencies of Reformation

The Bahbahānian paradigm became the dominant trend in Shī'ī jurisprudence in the middle of the eighteenth century and the works of its main figures were circulated in the Shī'ī religious schools in Iraq, Iran, Lebanon, and the Gulf. Using Kuhn's metaphorical conception of the paradigm formation process,¹⁰⁰ the Bahbahānian paradigm was established and progressed to a second stage where it would be circulated, taught, explained in detail, and institutionalised as it was the only valid paradigm for the field. This is exactly what happened to the Bahbahānian paradigm. The Uṣūlī schools dominated the Shī'ī learning cities, their works were the main textbooks for studying Shī'ī jurisprudence and they have been extensively commented on since then. However, this paradigm has encountered several challenges since the beginning of the twentieth century in the form of critique and attempted modification. Three main challenges have affected the Bahbahānian paradigm: (i) the fall of the Islamic caliphate and the rise of the nation state, (ii) the undermining of the Aristotelian epistemological paradigm and (iii) the rise of a modern Shī'ī state in Iran. Having mentioned these challenges, I would argue that the common point between them is that Shī'ī religious, as well as socio-political, experience has shifted from focusing on individuals and small communities to focusing on societal matters and the larger society. In the other words, the discourse of Shī'ī jurisprudence has shifted to the public sphere and societal concerns. Accordingly, this shifting required a modification of, or transfer from, the Bahbahānian paradigm to an alternative. At this stage, I will review the attempts suggested as alternatives to the Bahbahānian paradigm which can be summarised into three principal tendencies. These will be discussed below. I will then study one of them in detail as the case study of the research.

1.4.1. The Fall of the Islamic Caliphate and the Rise of the Nation State

¹⁰⁰ T. S. Kuhn and I. Hacking, *The Structure of Scientific Revolutions: 50th Anniversary Edition* (University of Chicago Press, 2012), pp.66-77.

The rise of the nation state after the fall of the Islamic Caliphate in the early decades of the twentieth century is seen as the beginning of secularisation of Islamic communities especially in the Middle East region. Although some might argue that the secularisation of Islamic communities began in the late period of the Ottoman Empire, or in the era of Muḥammad ‘Alī Bāshā for the Arab world, the falling of the Islamic caliphate made the process of secularisation systematic.¹⁰¹ In particular, for the Arab world and maybe partly for Iran, which are of interest here, the rise of the nation state and the systematic secularisation of the public sectors, especially education, represented a serious challenge for religious institutions. It was the moment when the question of the validity and consistency of religious discourse for the modern age insistently arose. Also, it was a moment of the manifesting of a new educated social class which had been challenging religious authority. In other words, the rise of the nation state is seen as a practical application of modernity in Islamic communities, especially in the public sectors. For Shī‘ī communities, especially in Iraq and Iran where the central learning cities were, the challenge of modernity was slightly delayed in comparison to the Sunnī experience. For Iran, it can be dated by the rise of the Pahlavi regime and for Iraq it was after the revolution of 1920. In any case, the secular state and the secularisation of the public sectors posed many questions in front of the religious discourse, of which the Bahbahānian paradigm at that time (in terms of Shī‘ī jurisprudence) was dominant. Accordingly, at this time, Sunnī as well as Shī‘ī religious debate witnessed considerable calls for the renewal of theology and law, so that they might be consistent with the modern age. These can be seen in the tendency to re-open the door of *ijtihād* in Sunni thought, for instance, and in calling for renewing the religious learning curricula, the need for new theology and the tendency to renew jurisprudence in Shī‘ī thought.

1.4.2. The Undermining of the Aristotelian Epistemological Paradigm

¹⁰¹ Bishārah believes that the relationship between religion and secularism can only be understood with a historical reading of the secularisation of the Islamic community. For that he proposed an intellectual project to study the matter. He suggests that the starting point of this historical reading should begin with the late period of the Ottoman Empire. See Bishārah, ‘Azmī, *al-Dīn wa al-‘Almāniyyah fī Siyāq Tārīkhī* (Qatar: Arab Centre for Research and Political Studies).

For a long time, Aristotle was seen as a symbol of a school of thought rather than as merely a great philosopher. Aristotelianism was not only seen to be a philosophical school which was confined to the topic of metaphysics, but it was also seen as a framework for many academic disciplines, including science as we know it today. For a long time Aristotelianism could be found at the centre of the curriculum of religious schools in Europe, whether Catholic or Protestant.¹⁰² The same can roughly be said of the curricula of Islamic schools. Subsequently, criticising the Aristotelian framework was seen as a sign of the beginning of the modern age in general and of science in particular. However, if criticism of Aristotelianism in science was felt to be paving the way to development, it was not seen to be doing so in religious matters. Criticising the Aristotelian framework raised many questions for religious thinking which, in some cases, led to profound theological change. Although the Christian world (and possibly the Jewish world as well) experienced this challenge early, the Islamic world possibly encountered this shift in the middle of the nineteenth century. However, it had become a serious intellectual challenge by the first quarter of the twentieth century, when Islamic scholars began to seek alternatives to, as well as solutions for, this challenge. Scholars started to call for a new Islamic theology which took into account scientific and intellectual changes when dealing with theological issues.¹⁰³ In the light of theological discussions, the concerns moved to other Islamic fields, of which jurisprudence was one. This was not surprising considering the correlation between the two fields.

Although Jamāl al-Din al-Afghānī's Shī'ism is a matter of debate, some prefer to date the beginning of Shī'ī disputes over modernity to the inception of his new theology. But the serious discussions (possibly accompanied by practice), as others would argue,¹⁰⁴ regarding the new theology amongst Shī'ī scholars started with the generation of al-Ṭabāṭabā'ī (d. 1981) and his students, followed by other scholars in Iraq and Lebanon.

¹⁰² R. Porter, K. Park, and L. Daston, *The Cambridge History of Science: Volume 3, Early Modern Science* (Cambridge: Cambridge University Press, 2006), p.26.

¹⁰³ For a comprehensive reading of the emergence of the so-called new theology in the Islamic context and how Muslim scholars conceived it, see al-Rifā'ī, 'Abd aljabār. *al-Ijtihād al-Kalāmī: Manāhij wa Ru'ā Mutanāwī'ah fī al-Kalām al-Jadīd* (Beirut: Dār al-Hādī).

¹⁰⁴ Ḥaydar Ḥubballāh argues that for the Shī'ī discourse, al-Ṭabṭabā'ī was the first to begin the trend of the new theology. See his *'Ilm al-Kalām al-Jadīd Qirā'ah Awwaliyyah*. <http://aafaqcenter.com/index.php/post/669>. Accessed: 02/07/2014.

Many topics have been discussed within the new field of theology. A heated topic of debate was the validity of legal methodology, which in effect relates directly to the essence of jurisprudence. Needless to say, also present was the question of the validity of the Aristotelian framework, especially in its Shī'ī version for jurisprudence.¹⁰⁵ The debate sometimes ensued by questioning whether Islamic texts were able to be read and interpreted by using the new methodologies.¹⁰⁶ Ultimately, I would argue that these debates, taking into account their intellectual premises, gradually represented a considerable pressure over legal and jurisprudential discussions during the second half of the twentieth century. This pressure could, to a certain extent, be deemed as a significant challenge to the Bahbahānian paradigm as it was the legal paradigm of Shī'ī jurisprudence which was in place at the time.

1.4.3. The Rise of the Modern Shī'ī State in Iran

Not only was the rise of the Islamic Republic of Iran in 1979 a significant event for the Shī'ah, it was also an important event for all Middle-Eastern Islamic nations. Islamist movements in the Middle East were especially influenced by the revolution. The Islamic Republic of Iran was seen as the first modern Islamic state since the fall of the Islamic caliphate in the early decades of the twentieth century. However, for the Shī'ī experience, the revolution was more significant. The Shī'ā had historical experiences of political participation with some regimes, both Shī'ī and Sunnī. Also, they experienced, to a significant extent, a clerical involvement in politics, especially with issues closely related to governmental affairs. The first political experience was with the Safavid empire during the seventeenth century. The second political experience was with the Constitutional Revolution of 1905 in the Qājār period. The rise of the Islamic Republic of Iran in 1979 was the first Shī'ī political experiment to be led by a Shī'ī jurist, seeking Islamic rule in a modern age. Interestingly, although the revolution was regionally in Iran, the most important Shī'ī regions and nations were involved with the revolution. Cohesion could be seen throughout Iraq, the Gulf, and Lebanon. Interaction took place not only in the nations and among ordinary people, but also in the elite classes of these

¹⁰⁵ *Al-Ijtihād al-Kalāmī: Manāhij wa Ru'ā Mutanāwi'ah fī al-Kalām al-Jadīd*, p.294.

¹⁰⁶ *Ibid.*, p.267.

nations. The participation of jurists in Shī'ī religious learning cities would affect not only the socio-political dimensions of these societies, but also the intellectual dimension of Shī'ī thought generally. In effect, what had happened, I would argue, was that the rise of the Islamic Republic of Iran in 1979 represented a real examination of a common slogan of the Islamist movement saying 'Islam is a solution', and in particular for Shī'ī jurisprudence. After the success of the revolution, many constitutional and legal issues appeared before Shī'ī jurists such that they were forced to revise every single traditional issue and attempted to provide an Islamic approach for the basic matters of the state. Rafsanjānī (b. 1934) said that they thought that by simply applying Islamic law, they would build a strong modern state, but the reality was shocking and more complicated.¹⁰⁷ Moreover, many scholars under these circumstances revised the validity of current Shī'ī jurisprudence in dealing with these types of modern problems and this led them to find a reforming or an alternative approach. For example, Sayyid al-Khomaynī (d. 1989) delivered an important speech on the effect of time and space on deriving legal issues.¹⁰⁸ Also, before this, Muḥammad Bāqir al-Ṣadr (d. 1980) wrote a paper on the Islamic constitution.¹⁰⁹ From this time onward, Shī'ī scholars began to take the matter of renewing the legal system in general, and jurisprudence in particular, seriously. This is reflected in the literature I will survey later, as well as in the conferences organised by, and the important speeches delivered by, influential scholars.

1.5. The Alternatives to the Bahbahānian Paradigm

Having discussed the challenges which were encountered by the Bahbahānian paradigm, there were several attempts to provide alternatives to the paradigm. Although all the alternatives somehow recognised the challenges, their approaches were different. In the sections below I will demonstrate three main tendencies which attempt to modify, or move on from, the Bahbahānian paradigm.

¹⁰⁷ al-Sayf, Tawfīq *Hudūd al-Dīmuqrātiyya al-Dīniyya* (Beirut: Dār al-Sāqī, 2008), pp.81-2.

¹⁰⁸ al-Khomaynī, Rūḥallah, *Ṣaḥīfat al-Imām*, 21 vols. (Tehran: Mu'assasat Tanzīm wa Nashr Āthār Imām Khumaynī), p.242.

¹⁰⁹ al-Ṣadr, Muḥammad Bāqir, *al-Islām Yaqud al-Ḥayāt*, 2nd ed. (Tehran: The Ministry of Islamic Guidance, 1982), pp.3-19.

1.5.1. Reform within the Bahbahānian Paradigm

This tendency argues that the Bahbahānian paradigm, especially in terms of its epistemological and methodological frameworks, is capable of functioning as a mechanism of deriving legal rulings. The only requirement is to improve some of its concepts and tools in addition to expanding its scope to accommodate modern issues. This means, according to this view, that the progress of Shī'ī jurisprudence happens quite normally as it responds to the challenges in each historical stage by improving its own concepts and tools. However, what is required now, given these modern challenges, is to expand the scope of the paradigm's effectiveness. This should take place through interaction with modern fields, especially those which relate to societal issues, such as the political institution, the economic system, and the judicial system. Here there are four principal scholars who can be associated with this tendency. They are Muḥammad Bāqir al-Ṣadr, Muḥammad Mahdī Shams al-Dīn (d. 2001), Muḥammad al-Shīrāzī (d. 2002), and 'Alī Ḥubballāh. The reason for choosing these scholars is that, despite differences, they each share a similar approach.

Muḥammad Bāqir al-Ṣadr carefully read the history of Shī'ī *uṣūl al-fiqh* and, therefore, was aware of its developments throughout Shī'ī history.¹¹⁰ Nevertheless, he believed in the capacity of the Bahbahānian paradigm, especially with Shaykh al-Anṣārī's contribution, though al-Ṣadr did not identify al-Bahbahāni with a general framework for Shī'ī jurisprudence as I am arguing here. Consequently, in terms of his *uṣūlī* research, there were a few attempts to improve the current Shī'ī *uṣūlī* thought. For example, he tried to reconstruct the structure of *uṣūl al-fiqh*, revise the nature of practical reason and its applications in the *uṣūlī* field, and to produce a few simple and new ideas in several *uṣūlī* issues. However, his real contribution lay not only in these ideas, but also in the way he invested *uṣūlī* tools in societal issues in which he examined the capacity of the Bahbahānian paradigm. This can be seen in his approach to ways of dealing with contradictory evidence where he argued that the purposes of the law (the *maqāṣid al-sharī'ah*) have to be a basis of weighing some evidence over others.¹¹¹ Moreover, it can

¹¹⁰ Al-Ṣadr, *al-Ma'ālīm al-Jadīdah li-'Ilm al-Uṣūl*.

¹¹¹ al-Ṣadr, Muḥammad Bāqir, *Buḥūth fī 'Ilm al-Uṣūl*, 7 vols., vol. 7 (Tehran: Mu'assasat Dār al-Ma'ārif, 1997), pp. 333-4.

be seen in his calling for a social reading of the holy texts.¹¹² Essentially, al-Ṣadr attempted to invest the *uṣūlī* concepts and tools in societal issues in a way which enables *uṣūl al-fiqh* to deal more with public concerns as well as with individual ones, with a confidence in the capacity of the Bahbahānian paradigm.

The approach of Muḥammad Mahdī Shams al-Dīn was similar to that of al-Ṣadr but he, in addition, addressed sensitive societal issues. He did not generally have a problem with the Bahbahānian paradigm. Rather, he appreciated the depth of Shī'ī *uṣūlī* scholars but questioned the extent to which philosophical ideas have been used in a field deemed to have a social scope.¹¹³ Shams al-Dīn wrote only a few short articles on *uṣūlī* issues and left no systematic work on *uṣūl al-fiqh*.¹¹⁴ However, he diligently used *uṣūlī* tools when he addressed societal issues, such as the Islamic social institution, the political theory of Islamic government, and what he described as sensitive women's and some economic issues. Although he had a sense of *maqāṣid al-sharī'ah* in his approaches to *fiqhī* matters, which he both dealt with and called for, he did not provide a theoretical jurisprudential framework.

In contrast to Shams al-Dīn, Muḥammad al-Shīrāzī has written extensively on *uṣūl al-fiqh*. Al-Shīrāzī's publications have followed a traditional course, both in terms of the way they have been structured and in terms of the way he has commented on the traditional textbooks of Shī'ī *uṣūl*.¹¹⁵ Although al-Shīrāzī did not attempt to provide new jurisprudential ideas he did expand the scope of the application of the Bahbahānian paradigm so that rulings pertaining to modern affairs could be derived. For example, he wrote Islamic laws (*fiqh*) pertaining to media, politics, globalisation, social institutions, traffic, liberty, Islamic government, the economy, the environment, and other matters. Thus, al-Shīrāzī, within this tendency, represents a model of a practical application, which has attempted to invest the capacity of the Bahbahānian paradigm as much as possible as a response to the challenges stated above.

¹¹² al-Ṣadr, Muḥammad Bāqir. *Ikhtarnā lakum*, (Beirut: Dār al-Zahrā', 1975), pp.90-9.

¹¹³ Qanṣū, Mahmūd, *al-Muqaddimāt wa al-Tanbīhāt fī Sharḥ Uṣūl al-Fiqh*, 8 vols., vol. 1 (Beirut: Dār al-Mu'arikh al-'Arābī, 2009), pp.5-34.

¹¹⁴ For an overview of Shams al-Dīn's jurisprudential opinions, see al-Mīlād, Zakī, 'Al-Shaykh Muḥammad Mahdī Shams al-Dīn wa al-Naqd al-Manhajī li-Uṣūl al-Fiqh', *al-Kalimah*, no. 74 (2012).

¹¹⁵ al-Shīrāzī, Muḥammad, *al-Uṣūl*, 8 vols.

The last example of this tendency is ‘Alī Ḥubballāh (b. 1961), who is a contemporary Shī‘ī Lebanese scholar. Although he is more recent than the other scholars mentioned, it is reasonable to associate his *uṣūlī* works with this tendency. In his extensive volume on *uṣūl al-fiqh, Dirāsāt fī Falsafat Uṣūl al-Fiqh wa al-Sharī‘a wa Nazariyyat al-Maqāṣid*,¹¹⁶ he discussed the issue of renewing Shī‘ī jurisprudence and attempted to provide recommendations for improvement. His main criticism was not levied against any of the foundations of the Bahbahānian paradigm’s frameworks (the epistemological, methodological, and functional frameworks already described). On the contrary, Ḥubballāh believes that the Bahbahānian paradigm has the capacity to generate new tools and concepts which are able to deal with modern issues. However, this generating capacity, according to him, has not correctly been activated. Ḥubballāh, sees his main task to be the reactivation of the generating capacity of the Bahbahānian paradigm and the establishment of new tools based on the paradigm’s foundation.¹¹⁷ In his view, the two principal requirements needed to activate a real sense of *ijtihād* are: (i) reintegrating intellectually with other Islamic legal schools by having comparative studies in jurisprudence, and (ii) embracing the theory of *maqāṣid al-sharī‘ah* with a Shī‘ī foundation.¹¹⁸

In summary, this tendency was a response to the modern challenges faced by the Bahbahānian paradigm. Although each of the four scholars discussed take a different approach to the challenge, they all, I would argue, believe in the generating capacity of the Bahbahānian paradigm. While some of the four scholars chose to work on *uṣūl al-fiqh* more than *fiqh* (and vice versa) the result has been the witnessing of partial changes in the Bahbahānian paradigm.

1.5.2. Calling for an Alternative Field to Reform

This tendency argues that the Bahbahānian paradigm has been firmly established and has provided many sophisticated tools, concepts, and theories, especially in linguistic analysis, the epistemological foundation of justifying the value of legal evidence (what is

¹¹⁶ Ḥubballāh, ‘Alī, *Dirāsāt fī Falsafat Uṣūl al-Fiqh wa al-Sharī‘a wa Nazariyyat al-Maqāṣid*.

¹¹⁷ *Ibid.*, p.10.

¹¹⁸ *Ibid.*, pp.11-12.

known as *al-ḥujjiyya*), and the practical principle of dealing with unknown cases. According to this tendency, the process of self-improvement within current Shīʿī jurisprudence is sufficient to meet challenges. However, according to this trend, dealing with modern challenges is not the business of *uṣūl al-fiqh* for both conceptual and practical reasons. With regard to conceptual reasons it is argued that the function of *uṣūl al-fiqh* is to determine the reliability of the legal evidence which may be used to derive legal rulings. The way to make legal rulings more consistent with the modern age and to be able to achieve the purposes of the law is not the prerogative of *uṣūl al-fiqh*. With regard to the practical reasons, it is argued that the field of *uṣūl al-fiqh* – with its extensive subject matter – is already at its capacity and unable to accommodate further demands. That is to say, the scholars and students of the field of *uṣūl al-fiqh* would normally take a quite long period of time to make adjustments to jurisprudential theories and concepts, let alone to applying them to theories in *fiqh*. It follows that there must be another field to deal with these issues. The process of creating another theoretical field, as the argument goes, is the natural process for all fields which have grown and expanded. Subsequently, this tendency calls for creating a new field and the most popular one which has received much attention and intellectual work is what is called ‘the philosophy of *fiqh*’. The famous scholars who represent this advocacy are Mahdī Mahrīzī (b. 1962),¹¹⁹ Ḥaydar Ḥubballāh (b. 1973),¹²⁰ and Muḥammad Muṣṭafawī.¹²¹

Several points have been addressed amongst the scholars who are interested in the philosophy of *fiqh*, the most important of which was the very question of the function of the field and its scope. With regard to the nature of the field, there is somehow a common agreement amongst the scholars that the purpose of the philosophy of *fiqh* is not the derivation of legal rulings. However, this is not to say that the philosophy of *fiqh* does not indirectly effect the derivation of legal rulings. This would happen, according to their argument, by making the jurist aware of what the epistemological, ethical, and

¹¹⁹ Mahrīzī, Mahdī, *Madkhal ilā Falsafat al-Fiqh*, trans. Ḥaydar Najaf (Beirut: Dār al-Hādī, 2002).

¹²⁰ Ḥaydar Ḥubballāh presented his ideas regarding the philosophy of *fiqh* in thirteen lectures. See Ḥaydar Ḥubballāh, ‘Falsafat al-Fiqh’, http://hobbollah.com/mohazerat_category/%D9%81%D9%84%D8%B3%D9%81%D8%A9-%D8%A7%D9%84%D9%81%D9%82%D9%87/. (accessed online at 22 May 2015).

¹²¹ Muṣṭafawī, Muḥammad, *Falsafat al-Fiqh: Dirāsah fī al-Uṣūl al-Manḥājiyya lil-Fiqh al-Islāmī* (Beirut: Markaz al-Ḥadārah li-Tanmiyyat al-Fikr al-Islāmī, 2000).

methodological assumptions of jurisprudence are. With regard to the scope of the field, the scholars advocating the philosophy of *fiqh*, who were mentioned above, have made different suggestions. Some have suggested the field should include more than ten subjects, whereas others have just suggested just a few subjects. The subjects of interest here are only three in number. Firstly, *maqāṣid al-sharī'a*: scholars have debated whether the purposes of the law are part of the field or whether they are a separate field as it is in recent Sunnī literature. Despite differing views, all are agreed that awareness of *maqāṣid al-sharī'a* is important when dealing with modern issues. Secondly, the relationship between *fiqh* and time: there is a common agreement that this subject should be including in the philosophy of *fiqh*. The basic question of this topic is how the changes that take place throughout the ages would affect the mechanism of deriving legal issues. Thirdly, hermeneutics: here, also, there is a common agreement on including this subject in the field. However, the question of hermeneutics in this context is different from the one which is usually dealt with in traditional jurisprudence. The question here concerns the relationship between the reader, who is here the jurist, as a person attached with a tradition and the text, which is here the holy text. There are other topics, which have been debated and discussed in the field, but these three are the most relevant to our interest as they reflect an alternative way of dealing with modern challenges.

1.5.3. Calling for a New Paradigm

In this tendency, the Bahbahānian paradigm is viewed as having reached a dead end in which it is epistemologically, methodologically, and functionally incapable of responding to modern challenges. It might be used to be consistent with a particular historical stage, but given all these new changes, the paradigm is not sufficient any more.

According to this tendency, which is represented by (and possibly only by) Muḥammad Taqī al-Mudarrisī (b. 1945), the Bahbahānian paradigm is characterised by three general features that make it both historically confined to a particular situation and functionally ineffective. Firstly, the Bahbahānian paradigm was formulated in particular historical circumstances, where the Shī'a were under the pressure of dictatorial and sectarian regimes. According to al-Mudarrisī, in these circumstances any group of

human beings would be expected to take a defensive position. In terms of jurisprudence, this means the derivation of a mechanism that would save the necessary elements of the group identity. Al-Mudarrisī calls this 'the *fiqh* of the necessity'.¹²² This character manifests itself in jurisprudence in many ways; one way, for instance, is the expansion of practical principles (*al-uṣūl al-'amaliyya*), something which has been very noticeable in Shī'ī jurisprudence over the last two centuries. The basic idea of practical principles is that if there is an absence of textual evidence determining the ruling for a specific matter the jurist should apply a practical principle to at least eliminate confusion and to at least provide practical instruction. This, in a sense, shows that the Shī'ī jurist is uncomfortable with moving away from textual evidence, by providing moral principles taken from the purposes of the law rather than a solely practical instruction. Furthermore, the dominance of a cautious mentality in the Bahbahānian paradigm is another manifestation of the influence of those historical circumstances which, according to al-Mudarrisī, reflect a desire to conserve the minimum elements of the group's identity. Secondly, the Bahbahānian paradigm was conceptually and functionally established to deal with the legal issues of individuals. As a result, its conceptual tools and theories were not able to address collective and societal issues whereas in modern societies any legal system would not be valid if it lacks societal as well as conceptual tools and theories in deriving legal rulings.¹²³ Thirdly, the Bahbahānian paradigm was in many parts based on, as al-Mudarrisī argues, a particular philosophical school which infiltrated Shī'ī thought theologically at the beginning, and then found its way to jurisprudence. This philosophical school, as al-Mudarrisī perceives it, is a Hellenistic Greek philosophy generally based on a polemic characteristic which is unproductive epistemologically especially in the legal system, in his view.¹²⁴

Given these criticisms, this tendency calls for a new jurisprudential paradigm which represents a break from the Bahbahānian paradigm and will be able to deal with modern issues. As for al-Mudarrisī, he proposes the *maqāṣidī* paradigm and suggests it

¹²² Al-Mudarrisī, *Al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, vol.2, p.34.

¹²³ *Ibid.*, pp.28-32.

¹²⁴ *Ibid.*, vol.1, p.77.

should be based on a new epistemological foundation. This proposed paradigm should have a social sense in deriving legal issues and should be characterised by a spirit of initiative.

1.6. Conclusion

This chapter has argued for four main points. Firstly, the Bahbahānian paradigm became the dominant paradigm in contemporary Shī‘ī jurisprudential discourse. Secondly, this paradigm is composed of three essential socio-intellectual factors which, in turn, have formed its characteristics on three levels: the epistemological, the methodological, and the functional. Thirdly, these characteristics consist of the Aristotelian framework epistemologically, the formalist framework methodologically, and the soft-utilitarian framework functionally. Fourthly, the Shī‘ī jurisprudential *maqāṣidī* discourse can be seen throughout alternatives to the Bahbahānian paradigm. However, al-Mudarrisī’s project is the only systematic contribution that represents the paradigm shift.

The following chapter will study the intellectual biography of al-Mudarrisī taking into account the socio-political and intellectual circumstances surrounding his insights. The ultimate goal is to examine how his thoughts have been constructed. This will pave the way for the following chapters in which I will study in detail his jurisprudential theories to see how he has shifted from the Bahbahānian paradigm on each level.

2. Chapter Two

Mudarrisī's Intellectual Biography

2.1. Introduction

The current chapter aims to examine the intellectual biography of Mudarrisī. The central argument postulated is that Mudarrisī is a product of the socio-political position of Shī'a scholars. This position has witnessed a remarkable transformation since the Safavid period, moving from isolation and passivity to participation in the socio-political arena and public life. This shift encountered specific socio-political conditions in the Arab and Islamic world in the 1960s, in a distinctive set of circumstances for the Shī'ī community, especially in Iraq. Accordingly, this context created a unique phenomenon within the Shī'ī religious institution that might be termed the "*political jurist*". Mudarrisī is a manifestation of this phenomenon, albeit in a distinctive manner and with unique characteristics. This argument as a whole gives rise to several questions, which collectively constitute the research questions of the present chapter, and which are as follows:

- (1) What were the transformations in the socio-political position of Shī'a scholars and how did these transformations create the phenomenon of the *political jurist*?
- (2) What is the unique contribution of Mudarrisī to the phenomenon of the *political jurist* and how has it been formed?

To find answers to these questions, the current chapter is divided into three sections, commencing with a brief account of the four most significant events in the socio-political position of Shī'a scholars. These are: (i) the emergence of the Safavid state, (ii) the Tobacco Revolution of 1891, (iii) the Constitutional Movement of 1907, and (iv) the Revolution of 1920. The second section explores Mudarrisī's extended family in order to highlight the primary environment of his intellectual development, bearing in mind that he is a descendant of the Mudarrisī family on his paternal side, the Shīrāzī family on his

maternal side and the Sabzawārī family on his aunt's side. The third section sheds light on his intellectual biography in parallel with the socio-political circumstances that surrounded each stage of his life. Aiming to examine his intellectual biography and its development in depth, this section - which mainly deals with his life - is further divided into three phases, each representing a distinctive stage of his life. This approach not only charts the intellectual development of Mudarrisī's thought throughout the course his life, but also demonstrates how he adapted the notion of *maqāṣid al-sharī'a* within Shī'ī thought. It also highlights the general characteristics of his approach to *maqāṣid al-sharī'a*, which in turn serves as an introduction to the following chapters, in which these characteristics will be analyzed in depth.

To begin with, Muḥammad Taqī al-Mudarrisī was born in 1945 in Karbala, Iraq into a scholarly family. At the age of eight, he started his religious learning under his father, Muḥammad Kāzīm (d. 1994), his uncle, Muḥammad al-Shīrāzī, and some other scholars in Karbala. It is claimed that he had attained the level of *ijtihād*¹²⁵ by his twenties. Since his first book in 1965, his output, both in books and in lecture notes transcribed by his students, has been voluminous. Since 1965, he has been credited with around two hundred books, both written by him as well as others' collections of transcriptions from his lectures. From the early period of his life, he was involved in socio-political activities in Iraq with his uncle Muḥammad al-Shīrāzī, and therefore much of his output has had a political element alongside his purely religious writings. In 1971 he emigrated to Kuwait with his uncle after a death sentence was issued against the latter by Saddam Hussain's regime. He stayed in Kuwait until 1979, when the Islamic Revolution led to the establishment of a new regime in Iran. He emigrated to Iran until the fall of Saddam's regime in 2003, after which he went back to Karbala and has been based there ever since, teaching and practicing his religious and political activities.

¹²⁵ L. Louér, *Transnational Shia Politics: Religious and Political Networks in the Gulf* (Columbia University Press, 2008), p. 93.

2.2. The Socio-political Position of the Jurist in Shī'ī Society

2.2.1. The Emergence of the Safavid State

The north-western Iranian city of Ardabīl, located in the mountains of Azerbaijan, was dominated by a Sufi order in thirteenth century¹²⁶ The Safavid Sufi order had been established by Ṣafīy al-Dīn al-Ardabīlī (1252-1334), and its leadership was based on an inheritance system, claiming descent from the Prophet's Household. When Shaykh Junayd (d. 1460), the fourth leader of the order, became the leader of the Safavid Sufi order, this was a shifting point in its history. He transferred the Safavid movement from a spiritual *ghulāt*¹²⁷ movement to a military one. Through the course of about fifty years the Safavid movement had managed to unite Iranian lands together with other surrounding lands under its rule. After 1501, and under the rule of Shāh Īsmā'īl I, almost all Iranian lands gradually came under the official rule of the Safavid Empire, the first large empire in history to adopt Twelver Shī'ī Islām as the official religion of the state.¹²⁸

In spite of the debate about whether the Shī'ī scholars were part of the ruling regime of the Safavid Empire from the beginning of its establishment or whether they came later on¹²⁹, Shaykh 'Alī al-Karakī (d. 1533/34) was one such scholar who played a significant role therein once he accepted the position of Shaykh al-Islām¹³⁰ of the Safavid state.

¹²⁶ For further reading on the Safavid dynasty and empire, see Peter Jackson and Laurence Lockhart, ed. *The Timurid and Safavid Periods*, 7 vols., vol. 6, *The Cambridge History of Iran* (The United Kingdom: Cambridge University Press, 2006). Also see Newman, Andrew, *Safavid Iran: Rebirth of a Persian Empire*, 1st ed. (London: I.B. Tauris & Co Ltd, 2009). Also see Darwīsh, 'Alī Ibrāhīm, *al-Siyāsa wad-Dīn fī Marḥalat Ta'sīs al-Dawla al-Ṣafawīyya 1501-1576*, 1st ed. (Qatar: Arab Centre for Research and Political Studies, 2013).

¹²⁷ For further details on the *ghulūw* movement, see Heinz Halm, *al-Ghannūṣīyya fī al-Islām*, trans. Rā'id al-Bāshsh, 1st ed. (Beirut: Manshūrāt al-Jamāl, 2003).

¹²⁸ Qazwīnī, *Tārīkh al-Mu'assasa al-Dīnīyya al-Shī'īyya : Min al-'Aṣr al-Buwayhī ilā Nihāyat al-'Aṣr al-Ṣafawī al-Awwal (300-1000 A.H./912-1591 C.E.)*, pp. 260-71.

¹²⁹ Qazwīnī argues that the Shī'ī scholars were not part of the Safavid regime from the beginning; he holds that they came later on after the Safavid regime had already established their authority. See *ibid.* p. 283..

¹³⁰ It is debatable whether the position, which 'Alī al-Karakī was given, was an official position of *Shaykh al-Islām* or whether he was only given a powerful religious and political authority within the system. Stewart believes that the first *Shaykh al-Islām* of the Safavid Empire "dates back to ca. 963/1555- 56, when Shāh Ṭahmasb appointed Shaykh Ḥusayn b. 'Abd al-Ṣamad al-Ḥārithī al-Amīlī (d. 984/ 1576) as *Shaykh al-Islām* of Qazvin". See Devin J. Stewart,

Shī'ī scholars had experienced close relationships with the ruling regime before the Safavid state, during the Buyid period in Baghdad¹³¹ as well as 'Ilkhanate dynasty in Iran.¹³² What was significant at this time was that, for the first time, the state officially claimed to adopt Twelver Shī'ī Islam as the religion of the state. In addition, the Shī'ī scholars were, not only consultants to the king, but they also held real authority within the state¹³³, at least in the first half of the history of the Safavid Empire.

As the Safavid state successfully accommodated the most significant sacred places for the Shī'īs as on various occasions, namely Najaf and Karbala, the Shī'ī scholars were compelled to engage in a debate on the legitimacy of the Safavid state. This led to two important effects on Shī'ī society generally, and on the scholarly class in particular. Firstly the practical effect was that Shī'ī scholars had to engage in day-to-day political life whereby they could no longer retreat from it, although they attempted to do so many times.¹³⁴ Hence, the Shī'ī community came to a situation in which it could not have changed without the participation of the scholars. Secondly, on a theoretical level, the consequence of the participation of the scholars in the running of the state opened many unanswered questions in Shī'ī political thought.¹³⁵ This led the scholars to

"The First Shaykh al-Islām of the Safavid Capital Qazvin," *Journal of the American Oriental Society* 116, no. 3 (1996). Al-Qazwīnī in contrast believes that al-Karākī was appointed as a *Shaykh al-Islām*, although his privilege of a notable religious and political authority was with Shāh Tahmasb I. See Jawdat Qazwīnī, "*Al-Marjī'iyya al-Dīniyya al-'Ulyā 'Inda al-Shī'a al-Imāmīyya: Dirāsa fī al-Taṭawwur al-Siyāsī wal-'Ilmī*" (Beirut: Dār al-Rāfidayn, 2005), pp. 140-46. Abisaab mentioned that al-Karākī was the first *Shaykh al-Islām* of the Safavid Empire, at least the first Āmilī scholar to be given this position. See Abisaab, *Converting Persia: Religion and Power in the Safavid Empire*. p. 27-28 and 153.

¹³¹ In this period Shaykh al-Mufīd and al-Sayyid al-Murtaḍā played an important role in building the relationship between the Shī'ī community and the state.

¹³² In this period Shaykh Naṣīr al-Dīn al-Ṭūsī and al-'Allāma al-Ḥillī played an important role in building the relationship between Shī'ī community and the state.

¹³³ Abisaab has tracked the religious positions held by Shī'ī scholars and who was appointed for each position; see Abisaab, R.J., *Converting Persia: Religion and Power in the Safavid Empire* (I. B. Tauris, 2004), Appendix II, Posts and Activities of the Emigré 'Amilī 'Ulama.

¹³⁴ For example, Kāzīm al-Yazdī attempted to remove the religious institution's involvement in political life by refusing the Constitutional Revolution in 1907, but he was not successful.

¹³⁵ The famous example of this is the debate between al-Karākī and al-Qaṭīfī during the Safavid period about the obligation of the Friday prayer. Al-Qaṭīfī's argument was that the Friday prayer should not be prayed unless the state is legitimate, and this in turn raised the issue of what then were the criteria for a legitimate state. For more details see

develop many aspects of Shīʿī political thought, which in the long term formed the role of the scholars in Shīʿī community, as we shall see when we discuss the biography of Mudarrisī¹³⁶.

One last point is worth mentioning here. The relationship between Shīʿī scholars and the Shah of the Safavid state did not continue as it had begun. This is particularly noticeable in the reign of Shah ʿAbbās I [1587-1629] through the conflict that existed between the religious authority, in the hands of the scholars, and the temporal authority held by the Shāh. Taking into account the fact that the central sacred places of Shīʿism had not experienced long-term stable rule as a result of the Ottoman-Safavid conflict, many Shīʿī scholars changed their attitude toward the Safavid state and decided to reside in Najaf or Karbala instead of Iran, making Iraq, especially Najaf and Karbala, a place where Shīʿī political decisions were made. Furthermore, it encouraged a huge emigration to these sacred places after the decline of the Safavid state.

2.2.2. The Tobacco Revolution of 1891

As a consequence of the developments during the Safavid period, Shīʿī scholars gained a significant political position in the community. Although the Qajar state attempted to limit the authority of Shīʿī scholars in comparison with the Safavid state, the importance and influence of Shīʿī scholars was still notable especially in the later Qajar period.¹³⁷ This probably increased when the Shīʿī scholars established a kind of central religious authority (*marjiʿiyya*), which was autonomous both in its political decision as well as in its economic support from the state.

As Litvak noted in his study¹³⁸, the nineteenth century witnessed a kind of centralisation of the Shīʿī learning place and leadership. This started with Shaykh Muḥammad Hasan Najafī (d.1850) followed by Murtaḍā al-Anṣārī. After that period, the Shīʿī scholarly

ʿIbrāhīm Fūʿād, *al-Faqīh wa al-Dawla: al-Fikr al-Siyāsi al-Shīʿī*, 1st ed. (Beirut: Dār al-Kunūz al-Adabīyya, 1998), pp. 153-59.

¹³⁶ See on page 86 (2.4.1.2.).

¹³⁷ See the introduction of Robert Gleave in *Religion and Society in Qajar Iran*, edited by Robert Gleave, (London ;New York : Routledge Curzon, 2005), p. 4.

¹³⁸ Litvak, *Shīʿī Scholars of Nineteenth-Century Iraq: The 'Ulama' of Najaf and Karbala'*.

community became a distinct religious and social institution, having independent political and economic power. What helped it gain such a position, perhaps, was the geographical location of Najaf and Karbala, being in a neutral zone between the Qajar and Ottoman states in terms of the political power of either side. In addition, the conversion of the tribes that dominated the south of Iraq¹³⁹ to Shī'ism, in which Shaykh Kāshif al-Ghiṭā' (d. 1813) had played a significant role, enabled a local power base.

After al-Anṣārī's death in 1864, Muḥammad Ḥasan al-Shirāzī (d. 1895) emerged as his successor. The Tobacco Revolution in 1891-1892, led by Shirāzī was the first example of the power of the *marji'iyya* against any state. The starting point was a concession granted to the British company of Major G. F. Talbot for a full monopoly over the production, sale, and export of the Iranian tobacco for fifty years by Nāṣir al-Dīn Shāh (d. 1896) on March 20, 1890. The Shāh considered this deal to be a support of his authority by making an alliance with Western countries, whereas the people in Iran, especially those who were badly affected by this deal, along with the scholarly community, considered it to be a material attack on the Iranian economy and a part of Western colonialism. People started protesting against the pact, led by some scholars, and they contacted Muḥammad Ḥasan al-Shirāzī for his opinion on the issue. Shirāzī on his part, sent a letter to the Shāh advising him to cancel the deal, but the Shāh did not heed his advice. Shirāzī himself was aware of his power and influence, and already had a negative view of Shāh Nāṣir al-Dīn. He was the only *mujtahid* of Najaf who refused to welcome the Shāh in public when he visited the shrine in 1870.¹⁴⁰ Bearing this in mind, together with the heavy support from the merchant community in Iran and some Shī'ī scholars (in particular Jamāl al-Dīn al-Afghānī¹⁴¹ [d. 1897]), Shirāzī issued a *fatwā* declaring the use of tobacco to be tantamount to war against the Hidden Imām. When the *fatwā* was circulated, people stopped the purchase and sale of tobacco and continued protesting for two months until the Shāh had to cancel the concession to the

¹³⁹ Ibid. p. 186.

¹⁴⁰ Ibid. p. 83.

¹⁴¹ To read more about the role of al-Afghanī in the Tobacco Revolution, see Ibrāhīm, Fū'ād, *al-Faqīh wa al-Dawla: al-Fikr al-Siyāsī al-Shī'ī*, 1st ed. (Beirut: Dār al-Kunūz al-Adabiyya, 1998), pp. 209-10.

British company. What is interesting to note is that the Shāh's own wife stopped smoking when she heard about Shīrāzī's *fatwa*.¹⁴²

What this event might suggest is that the authority held by the scholars at that time had reached the same level as the state and perhaps even greater. This might be attributed to the development of the Shī'ī religious institution as having a role in political life, in addition to the strong ties between the institution and the society, especially the merchant community. This is particularly noticeable with Shīrāzī who is considered as the first *marja'* to have legally enforced his agents to bring the 20% *khums* dues to himself or to get permission from him to distribute it.¹⁴³ On the other hand, this event encouraged the scholars who came after al-Shīrāzī to engage in political matters to a greater extent as we shall see below¹⁴⁴.

2.2.3. The Constitutional Revolution of 1907

Shīrāzī died in 1895, just a few years after the Tobacco Revolution, but the effects of its victory remained amongst Shī'ī religious institutions and in the collective consciousness of Shī'ī society in Iran and Iraq. Only a few months later, Shāh Nāṣir al-Dīn died had brought one of the most important periods of Iranian political history to a close. However, within about ten years, the jurist and the Shāh were at loggerheads again in a new battle with the events of 1905.

Muẓaffar al-Dīn Shah (d. 1907) succeeded his father in ruling the Qajar state. He was not decisive like his father and did not have his qualities of leadership. He was in actual fact weak and inclined to luxury by all accounts.¹⁴⁵ In order to reinforce his position, he chose to ally Iran with Western countries by giving them economic concessions, in return for which he received loans from them, as with Russia and Belgium. This shocked the people of Iran, and the situation worsened as in that year Iran witnessed a severe cold spell, ruining the agricultural crops of that season. The government was

¹⁴² Ibid. p. 211.

¹⁴³ Litvak, *Shi'i Scholars of Nineteenth-Century Iraq: The 'Ulama' of Najaf and Karbala'*, p. 85.

¹⁴⁴ See 76

¹⁴⁵ Tawfīq al-Sayf, *Ḍidd al-Istibdād: al-Fiqh al-Siyāsī al-Shī'ī fī 'Aṣr al-Ghayba*, 1st ed. (Beirut: al-Markaz al-Thaqāfi al-'Arabī, 1999), p. 55.

unable to respond and made various poor decisions, i.e. selling franchises to Western companies and borrowing more money from the West.¹⁴⁶ Therefore, the people chose, with the aid of the scholars, to start protesting, especially after the government had publicly punished ten important merchants. One of these merchants was killed as a result of the punishment.¹⁴⁷ This enraged the people, and was the starting point of a protest that gradually spread through all the main towns of Iran, demanding reformation of the political system.

While the situation was developing thus in Tehran, Najaf¹⁴⁸ was following the developments of the event. The three main scholars in Najaf were aware of what was happening with interest and supported the demands of the movement. These were: Mirzā Ḥusayn Khalīlī (d. 1908), Muḥammad Kāẓim al-Khurāsānī (d. 1911) and Muḥammad Ḥusayn al-Nāʾinī (d. 1936). At the same time, there was another group of scholars in Najaf led by Muḥammad Kāẓim al-Yazdī al-Ṭabāṭabāʾī (d. 1919) who were critical of the movement as it demanded constitutional reform. Regardless of the reasons for each group to support or oppose the constitutional movement, the point here is that the Shīʿī religious institutions in Iran and Iraq, whether of traditional or rationalist tendency, were all engaged in the event. This engagement was represented by social public debate, and even sometimes by public conflict and violence between the two groups. There was also much academic debate between the scholars in their respective learning circles and their written works, in addition to numerous poems penned at that time. Probably the most famous work regarding the event was the work of al-Nāʾinī: “*Tanbīh al-Umma wa-Tanzīh al-Milla*”, being a jurisprudential plea for a legitimate and constitutional government.

Although eventually Shāh Muẓaffar al-Dīn accepted the demand of the constitutional movement towards the end of his life, his son Muḥammad Alī Shāh (d. 1925) came to

¹⁴⁶ Ibid. p. 56.

¹⁴⁷ Ibid. p. 58.

¹⁴⁸ The role of Najaf in the Constitutional Revolution has not received enough attention as al-Sayf mentioned, so he gave the role of Najaf particular attention in his work regarding the Constitutional Revolution. See *ibid.*, pp. 65-102. He might not have been aware of the work of Hairi which is dedicated to Naʾinī's political thought. See Hairi, Abdul-Hadi, *Shīʿism and Constitutionalism in Iran: A Study of the Role Played by the Persian Residents of Iraq in Iranian Politics*, 1st ed. (Leiden: E.J. Brill, 1977)

power and succeeded in dividing the movement once again and sparking an open dispute between them. The dispute reached to the extent that Iranian society was divided into two groups, one called “*mashrūṭa*” (constitutional) and the other “*mustabidda*” (authoritarian). Furthermore, each of them constructed a military force and fought to achieve their demands in Ṭehran.¹⁴⁹ Eventually, the event ended with the execution of one of the leaders of the *mustabidda* - Faḍlullah al-Nūrī (d. 1909). This had a huge impact on the reputation of the movement in Iran and Iraq. An agreement had been made between Russia and Britain to divide Iran into a Russian zone in the North and a British zone in the South, and this was reflected in Najaf within the Shī‘ī religious institution. On the one hand, there was a feeling that the scholars were still retaining their power against the state and were successful at achieving their demands for a constitutional state. On the other hand, however, there was a feeling that the scholars had lost their power in the new context, particularly with the chaos that was ensuing in Iran after the division between Russia and Britain. Nonetheless, this experience, despite its consequences, was not the end of the relationship between the jurist and the state. There was another confrontation which was to influence the position of the jurist in the contemporary era, and which relates directly to our case study.

2.2.4. The Revolution of 1920 in Iraq

It can be claimed that the revolution of 1920 in Iraq had an influential role in forming general Iraqi society in the last century and Iraqi Shī‘ī society in particular. The uprising showcased both the position that Shī‘ī scholars had gained as well as the extent to which those scholars had an effect on Iraqi society. For this research, 1920 can be seen as the most significant event with regard to Mudarrisī in terms of time, place and family relationships.

Although the revolution started in May 1920, its causes had been developing since the British occupied Iraq in 1917. Regardless of whether the real causes of the revolution were nationalist feelings that had begun to spread across Iraq at that time, or some

¹⁴⁹ Ibid. p. 98.

other causes¹⁵⁰, the 1920 revolution started as a peaceful protest against British policies in Iraq. It soon developed into a military confrontation, as almost all Iraqis participated in the movement, regardless of their religion, sect, race, tribe or town. For these reasons, it is referred to as the Great Iraqi Revolution of 1920. By October of 1920, the revolution had achieved its demand for an Arab government calling for the Amīr Fayṣal b. Ḥusayn (d. 1933) to be the King of Iraq.

What is of interest to our research is the role that Shī'ī scholars played in the revolution. It is well-known that the *fatwā* issued by Mīrzā Muḥammad Taqī al-Shīrāzī (d. 1920) had a decisive influence on the development of the revolution, especially amongst southern Shī'ī tribes. But what is hidden behind the protests and military resistance is, probably, more important. It could be said that al-Shīrāzī politicised almost all religious elements, beginning with sacred places, and in particular Karbala (as it had become the capital of the revolution), through to religious rituals, such as 'Āshūra' protest, and finally ending with the religious seminaries (*Ḥawzas*). This picture is well described and illustrated by the Iraqi historian 'Alī al-Wardī (d. 1995) in his social history of modern Iraq, where he devotes a whole volume of his historical encyclopaedia to the revolution of 1920.¹⁵¹

In addition to Shīrāzī's letters to the British and to the tribes as well, al-Wardī uses manuscript memoirs of some of the religious leaders of the time to show the extent to which the scholars were involved in the details of the revolution and in leading the most important negotiations with the British rule. Many names have emerged during these events, and some of them played an important role after the revolution in developing the

¹⁵⁰ There is a debate whether the Revolution of 1920 was caused by the nationalist feelings that had begun to spread in Irāq at that time or whether it was caused by economic circumstances. Al-Wardī has discussed this issue in his work. To read more, see 'Alī al-Wardī, *Lamahāt ijtimā'iyya min Tārīkh al-'Irāq al-Ḥadīth*, 1st ed., vol. 5 (London: Kufān Publishing, 1991-1992), pp. 7-16. Also, Vinogradov has discussed three explanations of the revolution, see Amal Vinogradov, "The 1920 Revolt in Iraq Reconsidered: The Role of Tribes in National Politics," *International Journal of Middle East Studies* 3, no. 2 (1972). Abbas Kadhim in his recent book also discussed the causes of the revolution, see: A. Kadhim, *Reclaiming Iraq: The 1920 Revolution and the Founding of the Modern State*, (University of Texas Press, 2012), pp. 43-68.

¹⁵¹ Ibid.

religious seminaries as participants in political life.¹⁵² Furthermore, some scholars led military confrontations whilst cooperating with the tribes.¹⁵³

The engagement of the scholars with the details of the revolution, and with leading many elements of the movement had two significant impacts on their position. Firstly, scholars in general and the Shī'ī religious institution in particular, became responsible for political change in future Iraqi society, to an extent. Secondly, internally, the Shī'ī religious institution started to think seriously about its involvement in political life in modern Iraq, and this was independent of the pressure from Iran. In particular, during the events of the 1920 revolution, and for the first time in the Arab world, Shī'ī scholars had begun to think about what an "Islamic Government" might look like, as letters from Shī'rāzī himself indicated.¹⁵⁴ In addition, there was a collective feeling that the scholars who had participated in the revolution had achieved the inauguration of Amīr Fayṣal b. Ḥusayn as a king of Iraq. Some scholars considered it a failure as their demands had not been achieved, but at least the event made them think about the possibility of the scholars ruling the temporal state by themselves. This effect can be seen later, when the scholars started participating in an organised political action a short time after the revolution of 1920 by establishing the Muslim Youth Organisation in 1941¹⁵⁵ as well as other organisations. Finally, the effects of the political role for the Shī'ī scholar of the events of 1920 can clearly be seen when studying the life of Mudarrisī and his political thought, as we shall see below¹⁵⁶.

2.3. Mudarrisī's Family

¹⁵² For example, Hibat al-Dīn al-Shahristānī, Ja'far al-Khalīlī, Faḍlullāh al-Īṣfahānī, Muḥammad al-Ṣadr etc.

¹⁵³ For example, Muḥammad al-Ḥabūbī, Hadī al-Maqūṭar, etc.

¹⁵⁴ al-Wardī, *Lamaḥāt Ijtīmā'iyya min Tārīkh al-'Irāq al-Ḥadīth*, p. 5.

¹⁵⁵ The Muslim Youth Organisation was established in 1941 by 'Izz al-Dīn al-Jazā'irī as a sector organization against the Nationalist and Marxist movement. The slogan of the movement was 'Islamic society, Islamic state - the happiness of the world and the blessings of the Hereafter. For further details, see: Qazwīnī, "*al-Marji'iyya al-Dīniyya al-'Ulyā 'Inda al-Shī'a al-Imāmiyya: Dirāsa fī al-Taṭawwur al-Siyāsī wa al-'Ilmī*," pp. 266-68.

¹⁵⁶ See on page 86 (2.4.1.2.).

Having drawn an overall picture of the socio-political circumstances of the Iraqi and Iranian societies by focusing on their most significant transformations, this section focuses on Mudarrisī's family.

The names of the families in societies found in Iraq and Iran is not based only on biological relations or a place where a person spent his or her childhood. It also represents a place where the person's social status is created. This is especially true for the Shī'ī scholarly community, in which - for many historical and cultural reasons - a religious student's family plays two major roles in his life. First, in a scholarly family, a student is trained and qualified in order to carry forth the reputation of his scholarly family. The case of the al-Jawāhirī family is an obvious example in the Shī'ī context, in which the very name of the family was formed based on the work of Muḥammad Ḥasan al-Najafī, *Jawāhir al-Kalām*. Second, the social status that the student achieves can be created based on his family's status. Some families are famous for managing holy shrines, while others are famous for playing political roles within the Shī'ī scholarly community. Therefore, being a member of a famous scholarly family is an important component in developing the character of a Shī'ī scholar.

Accordingly, studying the complexity of Mudarrisī's family can shed light on several aspects of his character. His extended family includes the Mudarrisīs, the Shīrāzīs, and the Sabzawārīs, all of whom have migrated between Iraq and Iran and have played, to some extent, an important role in the most significant events that both societies have witnessed. Clarifying their relationships and some of their roles in Iraqi and Iranian societies helps in understanding how Mudarrisī's character was formed.

2.3.1. The Mudarrisī Family

In Arabic, *mudarris* means "teacher" (مُدَرِّس); when *ī* is added (ي in Arabic), it transforms the word from an adjective into a surname. This is one of the many ways in which names of families are made in Middle Eastern cultures. However, such surname designations make tracing family roots difficult because, when any number of people are doing same job at the same time (e.g., teaching), all of them are given the same surname. This is actually what happened in the case at hand. Today, the Mudarrisī

family is quite extensive and it includes many smaller families, who are unrelated by ancestry. The fame of the Mudarrisī family, which led people to start writing about them, might be attributed to the fame that Mudarrisī gained and the inter-marriage between the Mudarrisī family and the Sabzawārī family.

According to some sources¹⁵⁷, Muḥammad Jawād al-Mudarrisī is one of Muḥammad Taqī al-Mudarrisī's ancestors. It is not known when he was born or when he died, but it is clear from the sources that he had emigrated from Mashhad to live in Karbala and eventually died in Najaf. It can be estimated that he may have emigrated to Iraq at the beginning of the nineteenth century, when the sacred places in Iraq had witnessed a massive wave of immigration from Iran, especially by Shī'ī scholars, as Litvak demonstrated.¹⁵⁸

Mudarrisī's grandfather, Muḥammad Bāqir al-Mudarrisī – again whose dates of birth and death are unknown - was, according to some sources, a famous teacher in Najaf who later went on to become a Grand Ayatollah (*marjī'*) in Mashhad. He was a student of Grand Ayatollah Muḥammad Ḥasan al-Husaynī al-Shīrāzī (d. 1895) and a close colleague of Shaykh Faḍlullāh al-Nūrī. After the constitutional revolution, he moved to Tehran with him to support the revolution. When al-Nūrī was executed, Muḥammad Bāqir al-Mudarrisī emigrated to Mashhad, where he eventually died. However, his role in the constitutional movement is unclear, and the sources that discuss this period do not mention him. In addition, it is unknown what exactly his role was when he moved to Mashhad and whether he visited Iraq during this time or not. Based on the date of birth of his son Muḥammad Kāẓim (the father of Mudarrisī) in 1911, it can be estimated that Muḥammad Bāqir al-Mudarrisī was a young student when he participated in the 1906 revolution in Iran with Faḍlullāh al-Nūrī. After al-Nūrī's execution, Muḥammad Bāqir al-Mudarrisī continued his career as a clergyman in Mashhad. At this time he developed his relationship with the Shīrāzī and Sabzawārī families, into which both his son Muḥammad Kāẓim as well as his daughter, married in Iraq. Although the extent of his participation is ambiguous, the picture of Muḥammad Bāqir al-Mudarrisī's participation

¹⁵⁷ *Al-Marja' wa al-Umma*, 1st ed. (Karbala: Dār al-Hudā li al-Thaqāfah wa al-'Ilām, 2009), p. 20.

¹⁵⁸ Litvak, *Shi'i Scholars of Nineteenth-Century Iraq: The 'Ulama' of Najaf and Karbala*, p. 21.

in the constitutional movement and the subsequent retelling of his story amongst his family are important aspects that implicitly formed Mudarrisī's character. The marriages into the Shīrāzī family would also have had a considerable impact on Mudarrisī's life.

The most important person from the Mudarrisī family to have had an influential impact on Muḥammad Taqī al-Mudarrisī was his father, Muḥammad Kāẓim al-Mudarrisī, who was born in 1911 in Mashhad. In 1949, he emigrated to Karbala to continue his studies at the religious institution there.¹⁵⁹ It is obscure exactly why he chose to migrate to Karbala but the possible reasons for this are firstly, the family's relationships in Karbala that his father had previously established, and secondly, the fact that the Shīrāzī family also lived in Karbala at that time. After the death of Mīrzā Muḥammad Taqī al-Shīrāzī, Karbala had become the place where the Shīrāzī family had inherited *marjī'iyya*. At the end of the sixties, Muḥammad Kāẓim al-Mudarrisī moved to Kuwait with Muḥammad al-Shīrāzī before returning to his hometown Mashhad after the Islamic Revolution in Iran in 1979, where he died in 1994.

When Kāẓim al-Mudarrisī was in Mashhad prior to coming to Karbala, he met Mīrzā Mahdī al-Iṣfahānī¹⁶⁰ (d. 1946), who is well-known as the founder of the Tafkīkī School ("School of Separation").¹⁶¹ He studied under al-Iṣfahānī for about twenty years and was deemed to be one of his closest students. Although it is debatable whether or not Tafkīk is a suitable title for the school, its main claim is that all religious knowledge must be understood using solely religious methods, in that one should rely only on religious texts resulting from revelation (*waḥy*). According to Mudarrisī, he studied al-Iṣfahānī's thought, especially the theology therein, under his father, and asserted that al-Iṣfahānī's

¹⁵⁹ Personal interview with Hādī al-Mudarrisī, Muḥammad Taqī al-Mudarrisī's brother, in 2012.

¹⁶⁰ Zakariyyā Dawūd, "Al-Madrassa al-Tafkīkiyya wa al-Ta'ṣīl li al-'Aql al-Shī'ī", *al-Baṣā'ir*, no. 35 (2005), pp. 52-94.

¹⁶¹ For more details about the Tafkīkī School, see in English: Gleave, Robert, "Continuity and Originality in Shī'ī Thought: The Relationship between the Akhbāriyyah and the Maktab-i Tafkīk", pp. 71-92. In Arabic there is more literature now about the school and Mīrzā Mahdī al-Iṣfahānī. See, for example, Dawūd, Zakariyyā, "Al-Madrassa al-Tafkīkiyya wa al-Ta'ṣīl li al-'Aql al-Shī'ī", *Al-Baṣā'ir*, no. 35 (2005), pp. 52-94. See also: Markaz al-Ḥaḍāra, *Mīrzā Mahdī al-Iṣfahānī: Rā'd al-Tafkīk fī al-Ma'rifa al-Dīniyya* (Beirut: Markaz al-Ḥaḍāra li Tanmiya al-Fikr al-Islāmī, 2015).

school was the one that influenced his own thoughts.¹⁶² This will become clear when we study his intellectual development and actually examine to what extent al-Iṣfahānī's school impacted his thoughts, specifically in terms of jurisprudence with which this study is concerned.

2.3.2. The Shīrāzī Family

The Shīrāzīs are a well-known religious scholastic family from the city of Shīrāz in the south of Iran. The family originally settled in the Iraqī cities of Najaf, Karbala and Samarra at the beginning of the nineteenth century. The Shīrāzī family became well known after the events of the Tobacco Revolution in 1890, when Muḥammad Ḥasan al-Shīrāzī issued the famous *fatwā* against a British tobacco company. In contemporary Iraq, the Shīrāzī family reinforced its position in Iraqī society during the events of the revolution in 1920, when Muḥammad Taqī al-Shīrāzī declared a *jihād* against the British colonisation and called for Iraq's independence under an Arab government. Since that time onwards, the Shīrāzī family has been a crucial part of the Shī'ī religious community.

For the purpose of our study, the most important person from the Shīrāzī family is Muḥammad Mahdī al-Shīrāzī (d. 2002), who was the maternal uncle of Muḥammad Taqī al-Mudarrisī. Muḥammad Mahdī al-Shīrāzī was born in Najaf in 1928 as the oldest son of Mīrzā Mahdī al-Shīrāzī, who was at the time considered a *marji'* in Karbala. After the death of his father, Muḥammad al-Shīrāzī claimed his *marji' iyya* at the age of thirty-three, which is deemed by the institution of *marji' iyya* institution as a fairly young age for such position. He chose a unique pattern of *marji' iyya*, focusing on how he thought the *marji' iyya* should conduct itself in modern life. According to him, the *marji'* was one who engaged in political and social matters and sought to establish an Islamic state¹⁶³ by leading society both culturally and politically. This understanding of *marji' iyya* affected Shīrāzī's life in many ways, which can clearly be seen in his written memoirs¹⁶⁴ as well

¹⁶² Muḥammad Taqī al-Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, 1st ed., (Tehran: Dār intishārāt mudarrisī, 1996), v.4, pp. 5-6.

¹⁶³ Louër, *Transnational Shia Politics: Religious and Political Networks in the Gulf*, p. 88.

¹⁶⁴ Al-Shīrāzī has five memoirs, all published on his official website: <http://www.alshirazi.com/> [accessed 21.3.2012].

as his intellectual works, although his thought falls out of the scope of this study. He witnessed the constitutional and republican period of Iraq and was an active religious scholar¹⁶⁵ in both, but the most significant period for him was when he stood against the republican state in Iraq, especially during the period of the Bathist regime. As a rebel against the Iraqi regime, Shīrāzī was sentenced to death, but he fled to Kuwait with his family in 1970¹⁶⁶, which he found to be a good base for his *marji'iyya*. He spent nine years in Kuwait before moving to Iran after the Islamic Revolution in 1979.

Throughout his religious and political journey, Mudarrisī remained with his uncle, initially as his student, until Shīrāzī's death in 2001. At the beginning of his religious learning, Mudarrisī studied the traditional curriculum of *fiqh* and *uṣūl* under him until the higher level (*al-dars al-khārij*). He was also influenced by his uncle's political and intellectual thought. According to Mudarrisī¹⁶⁷, the study sessions with his uncle were divided into two parts: the traditional religious curriculum and current political affairs. Furthermore, another uncle of his, also called al-Mudarrisī, was the leader of the social political movement that had been established by Shīrāzī in Karbala and remained under his supervision.¹⁶⁸ The movement was part of Shīrāzī's activities as the modern social and political side of his *marji'iyya*; and its role was to accommodate young people and spread his *marji'iyya* among them. The movement was newly entitled the 'Islamic Action Organisation' (IAO) at the end of seventies, although it had previously been known amongst Shīrāzī's followers as the Movement of the Vanguard's Missionary, the MVM (*Ḥarakat al-Ṭalāṭ al-Risāliyyīn*), the *Marji'iyya* Movement (*Ḥarakat al-Marji'iyya*), or the Missionary Movement (*al-Ḥarakat al-Risāliyya*).¹⁶⁹ When Shīrāzī left Iraq to go to Kuwait, Mudarrisī both accompanied and worked with him until the beginning of the Islamic Revolution in Iran, when they fell into disagreement. Nonetheless, they still enjoyed a good relationship as kinsmen until Shīrāzī's death in 2002. Although Mudarrisī had disagreed with him towards the end, his uncle's great influence on his

¹⁶⁵ His activities can be seen in his memoirs.

¹⁶⁶ Louër, *Transnational Shia Politics: Religious and Political Networks in the Gulf*, p. 120.

¹⁶⁷ Muḥammad Taqī al-Mudarrisī, *al-Ma'had al-Islāmī Bayna al-Aṣāla wa al-Infītāḥ*, (1993).

¹⁶⁸ Louër, *Transnational Shia Politics: Religious and Political Networks in the Gulf*, p. 97.

¹⁶⁹ *Ibid.*, p 98.

thought and socio-political ideas is undeniable, especially during the early stage of his life. This influence is clearly evident when looking at his intellectual biography.

2.3.3. The Sabzawārī Family

The third family related to Mudarrisī is the Sabzawārī family, who are originally from Sabzawār in north-eastern Iran. The most famous scholar of the Sabzīwārī family in the contemporary era is ‘Abd al-A‘lā al-Sabzawārī (d. 1993), who came to Najaf at the beginning of the twentieth century. He studied under some of the most famous scholars of the time, such as al-Nā‘īnī, al-‘Irāqī, al-Iṣḥānī, al-Kunbānī, and al-Balāghī. Sabzawārī was well-known as a skillful teacher in the religious institutions in Najaf and later became a Grand Ayatollah (*marji‘*) after the death of Abū al-Qāsim al-Khū‘ī (d. 1992), but he died shortly after being *marji‘* in 1993. He married Mudarrisī’s aunt when he was in Najaf. Although he did not have a considerable impact on Mudarrisī in terms of either his religious training or his political thought, when Mudarrisī claimed *marji‘iyya* in 2002, his family relation to Sabzawārī, and consequently to Najaf, afforded him credit within the Ḥawza as part of the prestige of *marji‘iyya*.

To sum up, there were three major elements that Mudarrisī gained from his complex family structure. First, in terms of his intellectual background, he inherited the tradition of Tāfīkī thought from his paternal side – a school of thought deemed to be a critical movement within the Ḥawza. Second, his family’s involvement in politics, both his paternal and maternal sides, created a model for the jurist to pursue, unconfined to the teaching and religious scopes, but expanded to include the socio-political scope as well. Third, his family’s composition from three scholastic religious families gave him a social legitimacy and protection within the Shī‘ī scholarly community whilst further influencing his choices in terms of the social and intellectual role he could play.

This broad picture of Mudarrisī’s family represents the environment in which he was brought up. I have tried to illustrate how his family is related to other scholastic religious families on the one hand whilst also mentioning the roles that members of his extended family played in the most important events in Iraqi and Iranian society on the other hand, in order to clarify how it affected Mudarrisī’s character, both explicitly and

implicitly. The following sections explore the dialogue between these internal elements that contributed to Mudarrisī's character and the extensive external factors that have together shaped Mudarrisī's thought.

2.4. Mudarrisī's Intellectual Biography

As previously mentioned, Mudarrisī is examined here not merely as an isolated agent, rather as part of a greater socio-political and intellectual construct. Thus, I will study his intellectual biography synthetically with the socio-political events surrounding him and his own religious, social and political activities. In order to examine his intellectual development, I suggest dividing his life into three phases, namely; in Karbala and Kuwait between 1960 to 1979, in Iran between 1979 to the late 1990s, and in Iran and Iraq from the late 1990s to 2011. Each phase is characterized by the major events within it, which we will explore in the next sections.

2.4.1. In Karbala and Kuwait (1960-1979): The Search for a Project

This is the first phase of Mudarrisī's intellectual biography. It begins geographically in Karbala and ends in Kuwait. However, it begins intellectually with the search for a project within a dynamic area in the Middle East where several "projects" of renaissance were competing with each other, and ends with a distinctive Shīrāzī "project". The common characteristic of his thought during this phase was the quest for a socio-intellectual project where each place that he went to influenced his options to a certain extent. Similarly, each work that he produced contributed to his intellectual options.

2.4.1.1. Activities

Around 1960, in spite of his youth, Mudarrisī engaged in religious studies in Karbala. As mentioned above, Muḥammad al-Shīrāzī, his uncle, was the most influential person in his intellectual and social life, and he had a special relationship with him. Mudarrisī at this stage of his life was solely occupied with studying in the Ḥawza. At the age of around twenty, he began to become more socially and politically active alongside Shīrāzī. Although Shīrāzī was based in Karbala, his view of his *marji'iyya* extended regionally, if not internationally. He was, therefore, concerned with keeping up with the socio-political and intellectual trends and events that were happening across the region.

Mudarrisī was aware and interested in these events under the influence of his uncle who was teaching him at the time, and spending half of the sessions with him on politics and the other half on formal religious study. Furthermore, Shīrāzī was assigning him to some preaching tasks and mobilizing missions, and eventually appointed him as a leader of the MVM.¹⁷⁰

In the late fifties and during the sixties, the Middle-eastern region, especially the Arab world and Iran, were largely characterised by a preoccupation with the matter of “renaissance” and the role of religion. This issue was a subject of debate in the presence and effectiveness of three movements, namely, the Marxist, Liberalist and Nationalist movements. Both Sunnī and Shī‘ī thinkers participated in and contributed to the debate, with Ḥasan al-Bannā’ (d. 1949), Sayyid Quṭb (d. 1966), Malek Bennabi (d. 1973) and Abu Al-A‘lā al-Mawdūdī (d. 1979) representing the Sunnī side; ‘Alī Sharī‘atī (d. 1977), Murtaḍā Muṭahharī (d. 1979) and al-‘Allama al-Ṭabāṭabā‘ī (d. 1981) representing the Shī‘ī Iranian side, which was very close to the Iraqī regard; and Muḥammad Bāqir al-Ṣadr and Muḥammad al-Shīrāzī representing the Shī‘ī Arab side. The non-religious counterparts for the Islamist project were classified as internal or external rivals. Whereas this battle focused primarily on internal rivals, the Nationalist movement took place on the ground for the most part while the intellectual and external developments took place in the Marxist and Liberalist movements, respectively. However, the external rivals varied as Marxism was a strict philosophy whereas Liberalism was open to general principles. It is in this environment that Mudarrisī was engaged.

On the political side, however, the sixties marked the peak of Arab-Israeli conflict as it was the third decade of war between Arab and Israel after the wars of 1948 and 1973. The Arab-Israeli wars were not just a military confrontation, but rather a conflict of existence from one angle, and a representation of the relationship with the West or ‘the other’ from another angle. Furthermore, they were the subject of an ideological debate between the Islamist movement and the Nationalist one, particularly during this stage,

¹⁷⁰ The work of Laurence Louër is the most important work that studies the MVM. I refer to this work frequently for most of the events in Mudarrisī political life. See L. Louër, *Transnational Shia Politics: Religious and Political Networks in the Gulf* (Columbia University Press, 2008).

as the Arabs lost the battle with Israel in 1967, referring to it as “*an-Naksah*” (The Setback). Indeed, 1967 had profound implications for the Arab world not only on the political level, but also on the ideological one, especially since such events happened in light of the rise of the nationalist republican states of Egypt, Syria, Tunis, Libya, Algeria and Iraq.¹⁷¹ In Iraq, this phase marked the fall of monarchy and the beginning of republican rule through a nationalist movement before Iraq was taken over by the Bathist regime in 1958. The Bathist regime was well known for its deteriorating relationship with the Shī‘a, especially when Saddam Hussain took over the regime later on.

In response to these challenges and events, this phase witnessed the establishment of Islamist political activity in both sects in Iraq via the *Da‘wa* party¹⁷² (1957) and the Iraqi Islamic party (IIP 1960).¹⁷³ Mudarrisī, with support from Shīrāzī, had established *Ḥarakat al-Ṭalā‘ī al-Risāliyyīn* (MVM) in 1967¹⁷⁴ immediately after the Arab-Israeli war. This, in many ways, would explain why Mudarrisī became so intellectually involved with regional intellectual matters as the founder of *al-Ḥaraka al-Risāliyya*. It is worth mentioning too that during this stage, Iran witnessed considerable political activity among Shī‘ī scholars against the Shāh’s regime. In 1964 Khomeini was exiled from Iran to Turkey; and the following year he went to Iraq, where he lived for approximately fourteen years. Muḥammad al-Shīrāzī had a special relationship with Khomeini during that time, and it was then that Mudarrisī came into contact with Shī‘ī Iranian activism.

At the beginning of the seventies, Ba‘thisits having already taken over the country’s regime, chosen a policy of persecution toward the Shī‘a and a restriction of the religious institution. Thus, many scholars were imprisoned and some were displaced under the name of nationalism, especially from the Iranian community in Iraq. This period naturally

¹⁷¹ For a comprehensive study regarding the Arab–Israel conflict between 1948 and 1973, see Muḥammad Ḥasanayn Ḥaykal, *Sanawāt al-Ghalayān*, 1st ed. (Egypt: Markaz al-Ahrām li al-Tarjama wa al-Nashr Mu‘assasat al-Ahrām, 1988).

¹⁷² Ṣalāḥ al-Kharsān, *Ḥizb al-Da‘wa al-Islāmiyya: Ḥaqā‘iq wa Wathā‘iq*, 1st ed. (Beirut: al-Mu‘assasa al-‘Arabiyya li al-Dirāsāt wa al-Buḥūth al-Istirātījiyya, 1999).

¹⁷³ See the official website: <http://www.iraqiparty.com/main/> [accessed 17.06.2012].

¹⁷⁴ Louër, *Transnational Shia Politics: Religious and Political Networks in the Gulf*, p. 97-98.

sparked Shī'ī opposition to the regime. In 1970, the Bathist regime issued an arrest warrant for Muḥammad al-Shīrāzī and Mudarrisī, who remained in hiding for about four months before escaping to Kuwait.¹⁷⁵ As a result, Mudarrisī's family decided to emigrate from Iraq. Being of Persian descent, in addition to their political activities, made them easy targets despite having been based in Iraq for more than a century. Kuwait at that time was experiencing its brightest stages, where the state was aspiring to establish a modern country with urban and economic growth. This ambition enabled Kuwait to become a centre of attraction for an Arab labour force as well as intellectual academic elites, especially from Palestine, Egypt, Syria, Lebanon and Yemen. This situation led the political movements and activists to deem Kuwait as one of the best places for personal security and organisational growth. Thus, almost all political movements in the Arab world at that time, namely, nationalist, Palestinians, Brotherhood, Salafist, Party of Liberation, *al-Da'wa* party, some Iranian revolutionaries and MVM movements - had a considerable presence there, establishing their public bases and growing their cadres. In these circumstances, Mudarrisī arrived in Kuwait with his uncle, Shīrāzī, and his socio-political activities expanded and extended within the Gulf region. Mudarrisī's activities in Kuwait included setting up a Ḥawza, accommodating young people, publishing books and preaching in mosques and *ḥusayniyyas*. By late seventies, Mudarrisī had already expanded the MVM and established branches across the Gulf, especially in Saudi Arabia and Bahrain, but did not succeed as much in the UAE and Oman as in the rest of the GCC countries.¹⁷⁶ Being in Kuwait also gave him an opportunity and the MVM in general to make a contact with Sunnī activists such as the Muslim Brotherhood and the Palestinian movements, who also had political and organizational activities in Kuwait. Therefore, Mudarrisī had plenty of opportunity in Kuwait to familiarize himself with the Islamist intellectual discussions with regard to the "Islamic renaissance".

The renaissance movement, in terms of how Islamist thinkers attempted to form it, was preoccupied with several major issues. The first issue that occupies a significant

¹⁷⁵ Ibid. p. 120.

¹⁷⁶ Louër has studied how the MVM expanded in the Gulf during seventies, see *ibid.* pp. 120-49.

amount of space in Islamist thinkers' works was the "Other." Here, the "Other" refers to the civilisational other, namely, Western civilisation. Islamist discourse at the time was preoccupied with western civilisation, which was a natural result given that almost all Middle Eastern countries were under Western colonisation. Thus, works from this period commonly examine the nature of colonisation, its effects and residues, and how to confront it intellectually, especially in countries that had endured long periods of colonisation, such as Algeria.¹⁷⁷ The second issue focused on the "possibility" and/or the "validity" of the Islamic solution for the renaissance movement. Related approaches had two tendencies. The first tendency was defensiveness, concerned with defending Islamic thought against Marxism and Capitalism. This tendency can be seen in the works of Murtaḍā Muṭahharī, al-'Allama al-Ṭabāṭabā'ī and Muḥammad Bāqir al-Ṣadr on the philosophical level and Sayyid Quṭb and Malek Bennabi in criticising the socio-political institution of Marxism and Capitalism. The second tendency was concerned with constructing Islamic thought by examining the features of Islamic doctrine and the socio-political institution, although it is sometimes claimed in this discourse that Islam is the only solution for the modern world. Sometimes this tendency appears in the discourse on "originality" (*al-aṣāla/al-ta'ṣīl*), which argues for the necessity of institutionalising the renaissance movement. This issue was also given significant attention in Islamist thinkers' works.¹⁷⁸ The third issue of the renaissance movement focused on "contemporaneity" (*al-mu'āṣara*), which claimed to open a path to the achievements of current Western civilisation in attempting to transcend the traditional movement amongst religious circles. According to this discourse, openness constituted a part of the renaissance project, although there was much debate with regard to the concept of contemporaneity and its mechanisms.¹⁷⁹

¹⁷⁷ Malek Bennabi is the best representative of this point.

¹⁷⁸ The work of Muḥammad 'Ābid al-Jābirī is the best one to consult, especially his series on *Criticism of the Arab Intellect*. al-Jābirī, *Takwīn al-'Aql al-'Arabī*.

¹⁷⁹ For further information see *Naḥnu wa al-Turāth: Qirā'a Mu'āṣira li Turāthinā al-Falsafī* (Beirut: al-Markaz al-Thaqāfī al-'Arabī, 1980). Also, for literature in English, see C. Mallat, *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shi'i International* (Cambridge University Press, 2004), pp. 1-22.

2.4.1.2. Mudarrisī's Works

At the beginning of this phase, Mudarrisī was primarily concerned with establishing the correct defense for Islamic thought against the threat of non-Islamic ideologies, particularly Marxism. Yet, he was also occupied with revolutionising Shī'ī thought in order to establish his socio-political organisation and providing an intellectual methodology of reading Islamic religious texts to address contemporary issues. It was the first period of Mudarrisī's intellectual contribution, during which he published more than fourteen works. Some of these were motivational and mobilizing books, aimed at promoting and preaching his own and MVM's thought, while the others were foundational works, aiming to lay down the intellectual groundwork for his and MVM's thought as a distinct school of thought particularly within Shī'ī movements and Islamic movements in general. These works were separate from his private writings for the MVM, which cannot be studied here, as these writings are unavailable to the public.¹⁸⁰

The first of these foundational works was *al-Thaqāfa al-Risāliyya*¹⁸¹, which comprises of twelve chapters. Although this work is shorter than the others, it is Mudarrisī's most significant work in terms of giving us insight into his particular school of thought and the MVM's ideology in general. The first chapter is devoted to answering the question: "Why are Muslims today a backward community?" Mudarrisī claimed that Shī'ism as a reform movement in Islam could change this situation, but he argued that a divorce had taken place between Shī'ism and the Shī'a culture, as a result of which the Shī'a with its current distorted culture had become part of the crisis. He then defines ten concepts representing the essence of Shī'ism that had become distorted: divine guardianship (*al-wilāya*), leadership (*al-imāma*), infallibility (*al-iṣma*), occultation (*al-ghayba*), intercession (*al-shafā'a*), the period of occultation (*ʿaṣr al-ghayba*), the jurist (*al-faqīh*), innovation (*bid'a*), imitation (*taqlīd*) and waiting (*al-intizār*). In the remaining part of the second chapter, he analyses the causes of this deviation, concluding that it had

¹⁸⁰ Fu'ād al-Ibrāhīm, in his book *al-Faqīh wa al-Dawla*, mentioned some of them, although he did not mention the date of each one. See Ibrāhīm, *al-Faqīh wa al-Dawla: al-Fikr al-Siyāsī al-Shī'ī*.

¹⁸¹ Muḥammad Taqī al-Mudarrisī, *Bayyināt min Fiqh al-Qur'ān: Dirāsa Ta'tamid Istinbāṭ al-Sunan al-Ilāhiyya min al-Dhikr al-Ḥakīm: al-Ḥajj* (Beirut: Dār al-Maḥajja al-Bayḍā', 2012).

happened when Shī'ism had become the religion of the state. In the third chapter, Mudarrisī explains the manifestations of this deviation in practical culture, which can be boiled down to three phenomena: rumination on tragedies, repetition of theological arguments, and introversion into the self. In the fourth chapter, he explains how the Qur'ān was playing a crucial role in forming the Shī'ī culture, followed by a discussion of *fiqh* and its crisis in the fifth chapter. According to Mudarrisī, *fiqh* was devoid of its purpose and had come to be practiced superficially in reality. In order to reform this deviation, in the sixth through the ninth chapters, he concentrates on free will and personal responsibility, or what he termed "the responsible culture" (*al-thaqāfa al-mas'ūlah*). Meanwhile, he blamed a certain culture that had infused into Islamic thought destiny, mysticism and pantheism, all of which had come from Greek and Indian philosophy. Accordingly, he read all of these theological and philosophical debates from a cultural perspective and blamed them for withdrawing the Islamic socio-political reality. Therefore, the tenth and eleventh chapters are devoted to examining the manner in which Islamic thought and culture are purified from these deviations. He ends the book by exploring the importance of historical awareness, particularly of Shī'ī history, because this would give the Muslim or Shī'ī, according to Mudarrisī, the motivation to create his own reality and play a role in his current reality. Mudarrisī ultimately called for a re-reading of Shī'ī history in order to awaken the contemporary Shī'a.

The book *al-Thaqāfa al-Risāliyya* is arguably Mudarrisī's most important work, particularly in this period. This book was released in a period when almost all Islamist movements and trends had already established their activist theory. In Sunnī circles of the time, the Brotherhood movement had established its activist theory, which was probably the first of its kind. In the Shī'ī circles, Najaf also provided its own theory and established its movement through the efforts of al-Ṣadr in the *Da'wah* party. The Iranian Shī'a had also started their socio-political activities and provided their ideas regarding the renaissance. In this context, Karbala was the only part of the Islamic socio-political circles, especially Shī'ī circles, that had not yet established its activist theory. Therefore, providing such work was necessary for Karbala to be a part of the so-called Islamic Revival, especially if we keep in mind Shī'rāzī's discourse at that time, calling for

Muslims to awaken. This work of Mudarrisī's served to fill a gap in Karbala and created a cultural social identity amongst Shī'ī movements, especially considering that this book used to be private literature for the MVM before it became public.

From another angle, the significance of this work lies on the fact that it seems to be a summary of Mudarrisī's ideas. In other words, this work can be deemed to be a thesis plan or outline of Mudarrisī's intellectual and practical project. Throughout Mudarrisī's intellectual biography, every single chapter of this book was subsequently expanded upon, with some modification, being transformed into a significant intellectual work. This is not to say that Mudarrisī had a clear idea from the beginning about what he was going to produce in the future, but rather that this book left an indelible mark on his school of thought, giving it a particular characteristic.

Beside its functional and practical role, the contents of the book is an amalgamation of a critical Shī'ī school, the Tafkīkī school¹⁸² (school of separation), Shīrāzī's ideas of the Shī'ī renaissance and his own ideas consistent with the cross-regional trend of activism. The Tafkīkī school was founded by Mīrzā Mahdī al-Iṣfahānī around the 1940s as a critical move away from the dominant philosophical school within the Shī'ī learning institutions, Mullā Ṣadrā's philosophical school. As mentioned before, the school called for the separation of human knowledge (*al-'ulūm al-bashariyya*) from divine knowledge (*al-ma'ārif al-ilāhiyya*), and in so doing, repealed Mullā Ṣadrā's philosophical school which, according to the Tafkīkī school, had been heavily influenced by Greek philosophy which had penetrated into the Islamic civilizations during the era of translation. The main claim of the Tafkīkī school was that divine knowledge (*al-ma'ārif al-ilāhiyya*) has its own methods to interpret and understand its contents, and therefore does not need any support from human knowledge (*al-'ulūm al-bashariyya*). Although human knowledge is useful for other fields of knowledge, it is not valid for religious knowledge, according to the Tafkīkī school. That is why it is called the Tafkīkī school of separation, in which they separate between the nature of divine and human knowledge. Mudarrisī was heavily influenced by this school through his father, as mentioned in the

¹⁸² See footnote 151.

previous section. This influence and the elements of the Tafdīkī school will appear frequently in his works.

The second work of his is *al-Fikr al-Islāmī: Muwājaha Ḥaḍāriyya*¹⁸³ This work can be divided into three main parts. The first section discusses the issue of the theory of knowledge. It is obvious that the central concern of this part is to refute Marxist thought and philosophy in this field, although Mudarrisī also addresses other schools, such as ancient Greek philosophers and modern Western thinkers like Immanuel Kant and Descartes. Attacking Marxist philosophy in the 1950s and 1960s seemed to be a common phenomenon amongst Shī'ī scholars, and Murtaḍā Muṭahharī,¹⁸⁴ al-'Allāma al-Ṭabāṭabā'ī¹⁸⁵ and Muḥammad Bāqir al-Ṣadr¹⁸⁶ all addressed it. This might raise a question about Mudarrisī's motivation to discuss the subject, given that such extensive work had already been done in this field. Although many Shī'ī scholars had already addressed the issue, Mudarrisī approached it in a different way. Muṭahharī, Ṭabāṭabā'ī and Ṣadr took recourse to the Shī'ī theological and philosophical inventory, which had been established by Mullā Ṣadrā's School, in their discussion of Marxist theology, whereas Mudarrisī approached the issue by relying on the Shī'ī Tafdīkī school. Although a huge difference does not exist between these approaches in this particular field as they all have the common goal of refuting Marxism, the difference is clearly seen in the doctrine part of this work and later on when Mudarrisī wrote *al-'Irfān al-Islāmī*. The second section - according to my own estimation of the book's sections - comparatively discusses the concept of the worldview between Marxist and Islamic perspectives. This part is very similar to Ṣadr's work *Falsafatunā* and intersects with many of the critical Islamist contributions on Marxism during that period. The third section concentrates on Islamic doctrine from the Shī'ī viewpoint and its social dimensions, in which Mudarrisī attempts to defend the Islamic doctrine in the traditional

¹⁸³ *al-Fikr al-Islāmī: Muwājaha Ḥaḍāriyya* (1969).

¹⁸⁴ Muḥammad Ḥusayn al-Ṭabāṭabā'ī, *Uṣūl al-Falsafa wa al-Madhhab al-Wāqī'ī*, ed. Murtaḍā Muṭahharī, trans. Muḥammad 'Abd al-Mun'im al-Khāqānī, 1st ed., 3 vols. (Beirut: Dār al-Ta'āraf li al-Maṭbū'āt, 1981).

¹⁸⁵ Ibid.

¹⁸⁶ Muḥammad Bāqir al-Ṣadr, *Falsafatunā*, 3rd ed. (Beirut: Dār al-Ta'āraf li al-Maṭbū'āt, 2009).

way of arguing. In the last three chapters of this section, he argues that Islam includes a social institution that can be applied in the modern age and has some features that other contemporary institutions do not have. These features, according to Mudarrisī, are its comprehensiveness, its integration, its applicability for any time and place and, finally, its instinctiveness.

This work is a clear reflection of its phase, as previously mentioned. The book's title and its sections indicate to the general features of Islamist discourse: *al-Fikr al-Islāmī (Islamic Thought)* suggests the Islamic character of the thought. This indicates to the idea of "originality" where the thought should be rooted in Islamic sources. At the same time, it implies the concept of the Islamic "possibility" and/or "validity", where the Islamic solution is possible and valid, or sometimes even the best one for the modern age. Furthermore, the subtitle of the book, *Muwājahah Ḥadāriyya (Civilizational Confrontation)* indicates the intellectual concern of that period with "the civilizational other"— either the Western or the Eastern one (the Marxist movement at that time) - which is dealt with more within the contents of the first two sections. These two parts are generally characterised by the binary opposition of demolition and construction: demolition of the other's thought, especially for Marxist thought at that time, and construction of Islamic thought in an attempt to substantiate its competence in civilizational confrontation. In addition, the third section of the book clearly reflects the concept of an "Islamic solution", especially on the level of essential intellectual options in the doctrinal and ideological points of reference. This was one of the pillars of Islamic discourse at that time, which shifted theological arguments from a dialectical form into a social form by presenting Islamic doctrine as a social civilized institution. Indeed, Malek Bennabi expressed this when he said that "it is not important for Muslims today to have it proved to them that Allah exists, but rather to make them feel Him".¹⁸⁷ However, such a shift had practical demand too, requiring Islamist movements to formulate practical programs for their audience and preach their discourse. Moreover, this part of Mudarrisī's work displays the idea of "contemporaneity" in which he calls for the Islamic institution, and

¹⁸⁷ Malek Bennabi, *Wijhat al-Ālam al-Islāmī*. trans. 'Abd al-Ṣabūr Shāhīn, 5th ed. (Damascus: Dār al-Fikr, 1985), p. 54.

which pushed him to the frontline of the fight against traditional insights into religion held by general Islamic circles and Shī'ī circles in particular. Here he discusses the need to improve Islamic thought, differentiating between the constants and the variables in Islam, and the nature of Islamic laws. Although he briefly discusses these issues in the book, these matters took up a considerable amount of space in his subsequent works at both the intellectual and cultural levels, as well as the jurisprudential and legislative ones.

The final point worth noting with regard to this work is the question raised previously about the similarity between this book and Ṣadr's book *Falsafātunā*. Mudarrisī's book is quite similar to *Falsafātunā*, especially in the discussion of the theory of knowledge and the issue of the worldview in the its section, as well as a subsection in the final part where Mudarrisī explores the social problem of the modern human being. Furthermore, the structure of the two books is similar in terms of how the contents of the first section are arranged as well as similarities in the terminology used in both. Nevertheless, as previously emphasized, the approach of each work is different from the other. Yet the question remains: Why did Mudarrisī write the book given the existence of Ṣadr's book? There were probably three motivations to this. First, the book used to be private literature for MVM members to study and read within the organisational framework. As the MVM saw itself as a distinct movement among Iraqī movements, especially distinct from the *Da'wāh* party, the book played a motivational role in reinforcing the MVM's social identity amongst its own members as they were reading their own ideology and developing their organisational symbols. Second, Mudarrisī's approach differed from Ṣadr's, as previously indicated. His approach was associated with the Tafkīkī School, which Mudarrisī seemed to be willing to establish in Arab literature, as will be clearly seen in his subsequent contributions to the field of theology and philosophy that had a distinct effect on his school of thought. Finally, from a missionary perspective, he perhaps thought that the strength of the Marxist movement in Iraq at that time required redoubled efforts to stand against it; and providing numerous works against the problem would have been a kind of intellectual resistance.

Mudarrisī's third substantial work during this phase was entitled, '*al-Qiyāda al-Islāmiyya*'¹⁸⁸. Where the first work was important in criticising Shī'ī culture in order to release it from its past into the present, and the second work aimed to provide ideological insights into Islamic thought, the third work aimed to provide a political theory for Shī'ī activism. The book can be divided into four main parts, where the first part deals with the problematic absence of addressing the subject of leadership in Shī'ī thought. Mudarrisī attributed this absence to the deviation that infused Islamic culture, which he termed the "apologetic culture" (*al-thaqāfa al-tabrīriyya*), where Muslims justified their backward situation; and the subject of leadership - an essential matter for any society - falls under the influence of this culture. He then drew upon four methodological principles on which to base his work. The first principle is to establish all ideas of political leadership on Islamic sources: the Qur'ān, the Sunnah, consensus and intellect. The second principle is to ignore the false political applications in Islamic history as they do not necessarily reflect the true application of Islam. The third principle is to focus on the essence of the subject while overcoming the linguistic barriers between the religious text and modern concepts. The fourth principle is to ignore the form in which Islamic leadership should be applied in modern life as it is a variable matter and is only related to certain circumstances. The remainder of the first part of this work focuses on arguing whether a political institution exists in Islam or not. This debate represents the first foundation for establishing Mudarrisī's theory.

The second part of the book deals with the nature of the Islamic rule, beginning with the idea of divine sovereignty (*al-ḥākimiyya al-ilāhiyya*) as a result of the principle of Oneness (*tawḥīd*) in the political scope. Given that political life is a scope where Oneness can be applied by divine sovereignty, legislation has to be in accordance with God's will, which in turn, is expressed through the Prophet or Imām and, in his occultation, rests in the hands of the jurist (*faqīh*). Here, Mudarrisī provided the idea of the Guardianship of the Jurist (*wilāyat al-faqīh*), especially during his discussion of the qualifications of the leader of Islamic rule, emphasizing the conditions of justice and knowledge in the ruler.

¹⁸⁸ Muḥammad Taqī al-Mudarrisī, *al-Qiyāda al-Islāmiyya* (1970).

In the third part, Mudarrisī addresses several problematic issues that arose in the claim of Islamic rule, especially in Shī'ī thought. Central to these problematic issues is the balance between divine sovereignty and the popular one, which is embodied in many different forms of arguments, such as the balance between the leader (*Imām*) and the community (*al-umma*) as well as between freedom and obligation. Mudarrisī uses the whole of the third part to deal with these issues.

The final part of the book is devoted to a discussion of practical matters, e.g. can Islamic leadership be applied in the modern age and, if so, how? Here, Mudarrisī sought to provide a practical plan to apply the theory of Islamic leadership in the contemporary age by arguing that if the Islamic state or government is not possible now, we have to actively seek it out by involving the jurist in political activity in practice. This means that the jurist has to take responsibility to lead political activity for the Muslim or Shī'ī community, which is what Mudarrisī himself did when he founded the MVM.

This work highlights a few interesting points worth discussing as well. It was apparently the first work in contemporary Shī'ī thought, if any previous work existed, calling for the theory of the Guardianship of the Jurist (*wilāyat al-faqīh*). Although it is commonly believed in the scholarship of the field of Islamic studies that Khomeini was the founder of the theory in the contemporary age, this work of Mudarrisī's provides a different reading of the developments of this idea.¹⁸⁹ Mudarrisī's book was first published in 1969. It had been a private work for the MVM for about three years before it was published¹⁹⁰, meaning that Mudarrisī was twenty-three years old when he wrote it. In this book, Mudarrisī explicitly defines the concept of *wilāya* as a sovereignty (*siyāda*) and legislation (*al-tashrī'*) and refers them both to be in the hands of the jurist (*faqīh*).¹⁹¹ He claims that this *wilāya* is a continuity of God, the Prophet and the Imām's *wilāya*, which should now be for the jurist. However, he believed that because of the historical and cultural deviation that affected Shī'ī thought, this political understanding of *wilāya*

¹⁸⁹ Louër, *Transnational Shia Politics: Religious and Political Networks in the Gulf*, p. 97.

¹⁹⁰ Ibrāhīm, *al-Faqīh wa al-Dawla: al-Fikr al-Siyāsī al-Shī'ī*, p. 363.

¹⁹¹ Mudarrisī, *al-Qiyāda al-Islāmiyya*, p. 36.

was not clear for them.¹⁹² Moreover, and this may well be the most important part of his discussion, he discusses the contemporary situation regarding who should be the leader of the Muslims today, and he believed that this *wilāya* had to necessarily be established, and that it was up to the Muslim community to make it happen.¹⁹³ At that time, no one had claimed such a theory; even Khomeini's opinion on this issue was not yet known, and perhaps was not even fully thought through until he started his lectures in *fiqh* in Najaf after 1970. The Islamic Action Organisation (IAO)¹⁹⁴ mentioned this point explicitly when it republished the book in its second edition a year after the Islamic Revolution in Iran in 1980, concluding that the principle of Islamic Revolution in Iran - especially its theory of leadership - completely corresponded with the IAO's theory.¹⁹⁵

Yet, it can also be claimed that the emergence of such a theory in Shī'ī political thought at this particular time was the natural result of the dominant discourse in Shī'ī politics. With the presence of Marxist thought as a coherent ideology, surrounded by the circumstances of overthrowing the governments in Iraq, seeking an Islamic theory of government was an urgent matter. Furthermore, at that time, the Sunnī Islamist movement had already provided its theory regarding authority by claiming the idea of divine sovereignty, the need for an Islamic government and the implementation of *sharī'a* law. Therefore, it provoked Shī'ī thought, especially progressive trends, to produce its own theory and, in effect, almost all Shī'ī trends had to provide their attitude towards this issue.

From another angle, the formulation of the Guardianship of the Jurist (*wilāyat al-faqīh*) at that time was appropriate within the Shī'ī Iraqi context. As Mudarrisī was in Karbala and had already founded his movement - the MVM - he faced the challenge of constituting a legitimacy for political action, especially as he wanted to differentiate it from the *Da'wah* party. For the *Da'wah* party, at least initially, it was not necessary for political action to be under a jurist's supervision,¹⁹⁶ whereas for the MVM, which had

¹⁹² Ibid.

¹⁹³ Ibid. p. 92.

¹⁹⁴ The official political origination of the MVM for Iraq.

¹⁹⁵ Mudarrisī, *al-Qiyāda al-Islāmiyya*, p. 6.

¹⁹⁶ Ibrāhīm, *al-Faqīh wa al-Dawla: al-Fikr al-Siyāsī al-Shī'ī*, p. 332.

been established by the jurists and under the supervision of the *marji'iyya*, it was quite reasonable and expected for it to be inclined to be under the umbrella of the guardianship of jurists. Moreover, this is what Mudarrisī himself emphasized in the final chapter in the section entitled “Who is the Islamic leader today?” Since he did not believe in what he called ‘passive waiting’ for the hidden Imām and did not accept compromising solutions, which entailed cooperation with religious politicians to make an Islamic government as great as possible, the best solution was to extend the authority of the Prophet and the Imām to the jurist. Accordingly, in practical terms, this is how he formulated the organisational structure of the MVM, where the political action derived its legitimacy from the jurist, who was at the top of the pyramid, represented by Mudarrisī himself as the *mujtahid*, and secured socially by the *marji'iyya* represented by Shīrāzī. Thus, the theory with its structural support was to Mudarrisī's advantage for political and practical agendas.

Although the Guardianship of the Jurist (*wilāyat al-faqīh*) is considered to be one of the main characteristics of Mudarrisī's thought, especially his political and activist thought, after the success of the Islamic Revolution in Iran and the opportunity to put theory into practice, he sought to improve some parts of it and change others.

The fourth work was a short but important book dealing with the Qur'ān, that is, in effect, a summary of a series of lectures that Mudarrisī had given to some students at Baghdad University. He subsequently wrote the lectures in a book form. This book, *Buḥūth fī al-Qur'ān al-Ḥakīm*¹⁹⁷, is one of the most important works reflecting Mudarrisī's thought, and two notable characteristics thereof. First, his intellectual association with the Tafdīkī school, where he discusses the matter of intellect (*al-'aql*), ontology (*al-wujūd*) and how to know Allāh in a way that clearly reflects his adoption of the Tafdīkī principles. In discussing these issues, he implicitly criticised the dominant theological and philosophical trends in religious learning institutions. Second, his conviction in the concept of originality, which for him, meant the verification of whether an idea or theory had its roots in religious texts - the Qur'ān and the Sunnah - or not. Here, he created the concept of “*al-tadabbur*” to which he devotes half of the book. This

¹⁹⁷Mudarrisī. Muḥammed Taqī, *Buḥūth fī al-Qur'ān al-Ḥakīm* (n.p., 1972).

concept takes up considerable space in the majority of his works. It basically means pondering deeply and systematically on the Qur'ān in order to discover Qur'ānic theories and ideas for every aspect of life. Obviously, this technique cannot be done without conditions, including methodological and psychological conditions. He attempted to provide a concept for the Qur'ānic text, which gave it the capacity to contribute to the modern age. At the same time, he provided tools and techniques to bridge the gap between the Qur'ān and contemporary reality. By establishing this concept, Mudarrisī and his followers, the MVM, started to call their trend 'the Qur'ānic trend' or 'the Qur'ānic school', which subsequently became a part of the organisational growth of the MVM and a part of Mudarrisī's Ḥawza as well. Moreover, this book represents the methodology that Mudarrisī used in his exegesis of the Qur'ān and includes some concepts that would later be improved upon, in order to be employed in his insights into reforming *fiqh* and *uṣūl*, as we shall see below.¹⁹⁸

It is worth noting that henceforth Mudarrisī's effort focused on establishing intellectual contributions in several fields - namely, the Qur'ān, logic, jurisprudence (*fiqh*) and culture. This, in fact, represented continuity in expanding some ideas that he had initially outlined in his previous works *al-Thaqāfa al-Risāliyya* and *al-Fikr al-Islāmī*. It is also worth noting that the Qur'ānic project was crystallised as a strategic choice marking Mudarrisī's thought. The previous works were marked by an insistence in Mudarrisī's thought on the necessity of originality, purification of tradition and the search for ideas through reliance on religious texts, but methodological choices had not been determined once and for all. However, by writing his short and concentrated book *Buḥūth fī al-Qur'ān al-Ḥakīm* and then starting with his Qur'ānic exegesis, his methodological choices seem to have been determined. Although it is difficult to determine with certainty the factors that pushed him towards these choices, two factors most likely motivated Mudarrisī to choose this approach. First, it was probably at this time that he read the works of Malek bin Nabī and Sayyid Quṭb, who clearly advocated a "back to the Qur'ān" approach, especially in bin Nabī's *al-Zāhira al-Qur'āniyya*¹⁹⁹, in which he

¹⁹⁸ A comprehensive study of the concept of *tadabbur* and its role in Mudarrisī's thought will be carried out in Chapter Three, p 145-8.

¹⁹⁹ Malek Bennabi, *al-Zāhira al-Qur'āniyya* (Damascus: Dār al-Fikr, 1979).

attempts to combine adherence to religious texts with a rational approach. Second, Mudarrisī's background with the Tafkīkī school might have influenced his choices in terms of the Qur'ānic approach, as the Tafkīkī school calls for basing religious knowledge primarily on textual sources, especially the texts of the Prophet's household. Yet, some differences remain between Mudarrisī's approach and the Tafkīkī school as the former focused mainly on the Qur'ān and chose it as the starting point whilst the latter focused mainly on the Imāms' narrations.

From another perspective, Mudarrisī's Tafkīkī school background in theology and philosophy equipped him with a critical perspective, which is what enabled him to criticise the traditional trend that was dominant in Shī'ī religious learning circles at that time. This is to say that the Tafkīkī school itself was deemed to be a critical trend, especially for theological and philosophical traditions in Shī'ī thought, and Mudarrisī had grown up in such an environment, particularly in terms of theological demotion, which gave him - at least on the psychological level - a critical mentality overlapping with an ambition to develop and reform religious thought. As a result, his works during this period are marked by this critical feature, as evident in his book *Buḥūth fi al-Qur'ān al-Ḥakīm*, and his jurisprudential work as well as his work on logic,, which will be discussed below, where he overtly and explicitly criticizes Shī'ī religious thought. Therefore, it can be claimed that had it not been for his association with the Tafkīkī school, he perhaps would not have obtained this particularly critical and reformist thought toward Shī'ī religious thought or developed an ambition to modernise religious thought. He would also not have contributed to the further development of the Tafkīkī school.

The fifth work in this phase chronologically is a jurisprudential book called "*al-Fiqh al-Islāmī: Qism al-Mu'āmalāt al-Uṣūl al-'Āmma*", which is basically a commentary on the classical jurisprudential textbook "*Sharā'i' al-Islām*"²⁰⁰ written by al-Muḥaqqiq al-Ḥillī (d. 1277) used in Shī'ī religious learning institutions. In this work, Mudarrisī attempted to

²⁰⁰ Al-Ḥillī, Ja'far Ibn Ḥasan, *Sharā'i' al-Islām fi Masā'il al-Ḥalāl wa al-Ḥarām*, 2nd ed. (Qom: Intishārāt Istiqlāl, 1990). It is a well-known book in Shī'ī learning institutions and has had more than ninety commentaries written on it. The most famous commentary is by Muḥammad Ḥasan al-Jawāhirī, *Jawāhir al-Kalām fi Sharḥ Sharā'i' al-Islām*, (Tehran: Dār al-Kutub al-Islāmiyya, 1988).

provide a different approach to the commentary on *Sharāʿi al-Islām*, a well-known book with a long history of commentary. His commentary was based on attempting to survey the main principles in the field of transactions and to study each one separately by discussing its nature, limitation, extension and function. For example, instead of repeatedly studying the terms of the contract in every field (e.g., lease, sale, mortgage), he chose to study the principles of the contract and then generalise it to each field, unless there was an exception in certain fields. This is the way in which modern legal studies work, at least by Mudarrisī's estimation, where jurists may study, for example, the rule of coercion and its theoretical determinants and then generalise it to all the places where it can be applied. The roots of this approach can be found in Shaykh Murtaḍā al-Anṣārī's school, where it was applied in his famous book *al-Makāsib*.²⁰¹ Mudarrisī admired this work and considered it to be the first step toward principled jurisprudence (*al-fiqh al-qawāʿidī*), which bases the derivation of legal rulings on a base principle (*qāʿida*) that has been derived from the text rather than each individual ruling being derived from individual texts in turn. He also believed that this approach to jurisprudence was better than the traditional approach to studying it, as it would enable students to grasp it deeply and systematically whilst avoiding repetition. However, when he returned to his discussion of jurisprudential issues in 1980, he had improved his thesis in the framework of *maqāṣid al-sharīʿa*. Therefore, the issue was, not only a re-organisation of learning, but it was also a theory of understanding religion and improving jurisprudence, as we shall see²⁰².

Chronologically, the seventh work to be penned in this period was "*al-Manṭiq al-Islāmī: Uṣūluhu wa Manāhijuhu*"²⁰³, which consists of an introduction and seven sections, wherein he discusses procedural and conceptual issues in the introduction (e.g., the definition and object of logic and its relation to philosophy). Before that, however, he spends some time discussing his motivations for writing this book, which he summarises into three main reasons. The first was the quest for Islamic culture for the

²⁰¹ al-Anṣārī, Murtaḍā, *al-Makāsib*, 3rd ed. (Qom: Majmaʿ al-Fikr al-Islāmī, 2000).

²⁰² See on page 106 (2.4.2.2.).

²⁰³ Muḥammad Taqī al-Mudarrisī, *al-Manṭiq al-Islāmī: Uṣūluhu wa Manāhijuhu* (Tehran: Dār Muḥibbī al-Ḥusayn, 2003).

identity of the Islamic community (*umma*), a culture commensurate with the Islamic community to reinforce its self-confidence and which would initiate a civilizational dialogue. However, this could not be achieved, according to Mudarrisī, without trusting tradition whilst at the same time believing in methodological reformation. As the field of logic is a core subject, establishing it according to Islamic thought and improving it by benefiting from modern advances were things that he considered to be critical steps along this path.²⁰⁴ The second reason was to reform the methodology of religious learning. Mudarrisī believed that religious learning institutes had stagnated and become stuck in methodologies that no longer necessarily represented the religion and did not benefit the modern age. Therefore, they needed to be reformed.²⁰⁵ The third reason was the quest for integrity in modern education. As Muslim communities were open to modernity, especially at that time, when schools and universities were emerging as independent learning institutions, these new institutions represented challenges to the integrity of the Islamic notion of culture.²⁰⁶

By considering the book in its entirety, we can see the influence of the triad: the Other, original Islamic integrity and contemporaneity. The first part of the book represents the concern of the Other, as Mudarrisī explored the history of logical thought, beginning with the Greek school, through the Islamic civilisation, and then turning to medieval times, before ending up at modern logical thought. In each stage, he not only read it descriptively, but also normatively by evaluating the strong and weak points of each school or philosopher. The second part represents integrity and, in effect, can be deemed as the essence of his work as he argued in support of Islamic logic - what he termed "*The Principles of Islamic Logic*" (*Uṣūl al-Manṭiq al-Islāmī*). He built his argument on the claim that there has to be a special Islamic logic as Allah through his Prophet and his Imāms has given human beings everything that they need. Therefore, He would not have ignored this important field. Therefore, all we have to do is to discover these principles through the religious texts provided by the Prophet and his Imāms. Mudarrisī employed every available text related to the subject of logic in order to "discover" the

²⁰⁴ Ibid. pp. 8-10.

²⁰⁵ Ibid. pp. 16-19.

²⁰⁶ Ibid. pp. 20-22.

original Islamic principles of logic. The third part is devoted to a discussion of the psychological factors that cause human beings to fail in their thinking. Here, the extent to which Mudarrisī benefitted from modern advances in the social sciences, especially psychology, education, sociology and sociology of knowledge, is clear. From the third part onwards, the book highlights his interaction with these modern advances in social sciences. The fourth part discusses methodology and the issue of the relationship between the subject and its appropriate method, while the fifth part discusses the methods of induction and the experimental method. In the sixth part, he examines the methodology of social sciences, their feasibility and their scientific indicators, but devotes a significant part of the discussion to historical methodology. The final part of the book deals with the issue of analogy, including definition, deduction and mathematical logic.

As far as practicality goes, this book also contributed to Mudarrisī's reformation of the Ḥawza curriculum, in which the book was an alternative for existing books on logic. He replaced the common Ḥawza logic textbook with this one when he founded his own Ḥawza. The essence of the book's thesis will be discussed in further detail in Chapter Three when addressing Mudarrisī's theory of knowledge and his concept of reason (*'aql*).

The final works to be written by him in this period were a series of short books criticizing contemporary civilisation²⁰⁷. Each of these titles primarily discusses two issues: the deficiency of contemporary civilizations (either Western or Eastern) and the possibility of reviving Islamic civilization in our age based on the essential role of religion. In effect, the principal ideas of these books and much of their terminology are very similar to Malek Bennabi's thought, who significantly contributed to this field in what he called "*The Problems of Civilisation*".²¹² Furthermore, they are similar to the works of Sayyid

²⁰⁷ These series are: *Al-Binā' al-Ḥaḍārī Bayna Lā wa Na'am* (1978), *Ḥaḍāratunā fī 'Aṣr al-Bitrūl* (1978), *Ḥaḍāra bilā Maṣīr* (1978), *Ḥaḍāra fī Bayt al-'Ankabūt* (1978) and *Ḥaḍāratunā: Matā wa Kayfa?* (1978).

²¹² Malek Bennabi wrote a series of books entitled *The Problems of Civilisation*, which were translated from French into Arabic and have been published several times. See Malek Bennabi, *Shurūṭ al-Nahḍa*, trans. 'Abd al-Ṣabūr Shāhīn and 'Umar Masqāwī, 2nd ed. (Damascus: Dār al-Fikr, 1986).

Quṭb, who wrote *al-Islām wa Mushkilat al-Ḥaḍāra*.²¹³ These two thinkers had a profound influence on the Islamic discourse of the period, especially on this subject. This influence might be attributed to the fact that their writings were easy to read and grasp and both lived in the West for a while, which gives their ideas and critiques some credit.

2.4.2. In Iran (1979 – late 1990s): The Practical Experience

This is the second phase of Mudarrisī's intellectual biography, of which he spent the most part in Iran, immediately after the Islamic revolution until roughly the late nineties. The main characteristic of this phase is that Mudarrisī's thought had been put into practice in reality, be it his political activist thought or his reformation of religious education. As a pragmatic characteristic of his thought resulting from this practical experience, his legal and political philosophy began to change and develop further, whereby he sought to establish his theory of *maqāṣid al-sharī'a* whilst simultaneously revising his theory of the Guardianship of the Jurist (*wilāyat al-faqīh*). Furthermore, thanks to the new situation, his thought is characterized by his primary concern with the Shī'ī internal community and its issues. Towards the latter part of this phase and corresponding to some socio-political events, his thought and strategic choices inclined to a different stance, which will be discussed in the next section. It is difficult to determine an exact date for the new phase, because there was no single political or religious event that took place in order for such a date to be determined. Rather, it was a gradual process in the late 1990s that eventually led Mudarrisī to make a decision to declare his *marjī'iyya* during the lifetime of his uncle.

2.4.2.1. Activities

The most significant event at the beginning of this period was the Islamic Revolution in Iran since the success of the revolution in overthrowing the regime of Shah changed the map of one of the most vital areas, the Middle East. Simultaneously, at the Shī'ī level, the event meant that Iran became the first modern state based on Shī'ī doctrine and run by Shī'ī scholars, which gave Shī'ī communities a euphoria of victory and activated Shī'ī political action in Lebanon, the Gulf and Iraq. However, within two years of the

²¹³ Sayyid Quṭb, *al-Islām wa Mushkilāt al-Ḥaḍāra*, 11th ed. (Cairo: Dār al-Shurūq, 1992).

success of the revolution, the Iraq–Iran war had started, which had political and intellectual implications for the Shīʿī community. Almost all Iraqi Shīʿī political movements were engaged in the ranks of the war, either in a military form on the ground or in a political form in the media and diplomatic activities. This raised many questions regarding the legitimacy of *jihād* and who the leader of the Shīʿa was.

Mudarrisī, after the success of the revolution, left Kuwait in late 1979 with his uncle Shīrāzī. As the representative of the MVM, he participated in the state apparatus, particularly in the dialogue of drafting of the constitution. In the meantime, the MVM received some responsibilities within the state apparatus, the Arabic Radio, and was given a somewhat diplomatic position along with some sectors in the ministry of services. Moreover, at the beginning of the eighties, the MVM announced that the Islamic Action Organization (IAO) was now the official Iraqi wing of the movement.²¹⁴ Furthermore, this period witnessed the birth of the first religious learning institution, to be under the direct supervision of Mudarrisī - *Ḥawzat al-Qāʿim* - which created an opportunity for him to apply his insights to how the Ḥawza should be. Ḥawzat al-Qāʿim was not only a place of religious learning, but also a socio-political place for the MVM, which housed the different sectors of the movement.

At the Shīʿī level, there were dynamic political activities on the ground in Iraq, Lebanon, the Gulf and Iran, which in turn required intellectual theorisation, especially in political philosophy. This situation marked this period with a need to address political thought by raising questions about the state and its issues, as well as about political actions and related issues. Thus, at this time, perhaps almost all Shīʿī political movements had determined, generally speaking, their intellectual choices towards a certain political trend - the *Daʿwa* party was based on the work of al-Ṣadr, Iranian trends were based on Khomeini's thought and *al-Shirāziyya* was based on the works of Shīrāzī and Mudarrisī.

At the Arab level, this period witnessed firm contradictions. On the one hand, for the Arab nationalist, the residual of the seventies had led to the beginning of severe criticism of Arabic culture and thought. This criticism was intellectually opened through

²¹⁴ Louër, *Transnational Shia politics: Religious and Political Networks in the Gulf*, p. 98.

the works of the famous Arabic thinker Muhammad 'Ābid al-Jābirī²¹⁵, who published a series of books entitled *Naqd al-'Aql al-'Arabī*²¹⁶ (*Critique of Arabic Reason*). This development stemmed directly from what is called in Arabic literature as “Arab Impotence” toward the first and main problem for them: the Palestinian issue. At the same time, it stemmed from the conversion of revolutionary states into dictatorial states, which affected almost all political movements, activists, intellectualists and academics. On the other hand, this period witnessed the revival of the Islamists, which in turn resulted from a peace agreement with Israel, the Afghan war with the Soviet Union, and the Islamic Revolution in Iran.

For Mudarrisī, the late eighties and early nineties, was the time when the MVM had a profound disputes and disagreements.²¹⁷ The disagreement began with political attitudes of the MVM towards certain places, such as Saudi Arabia and Iraq, but then accelerated into an ideological and intellectual disagreement. As a result, the Saudi, Kuwaiti and some parts of the Iraqi sectors split from the MVM. They thought that the radical political discourse of the MVM was not suitable for the Gulf where the Shī'a were a minority. They preferred a more moderate discourse, compatible with the democratic and reformist discourse (i.e. human rights, citizenship and non-violent change). In fact, it seemed to be a common situation across Shī'ī activism. This period witnessed a retreat of activist trends, especially after the non-solution of the situation in Iraq, as most Shī'ī socio-political movements were concerned with it. At the same time, it was an opportunity for traditional trends to increase again as the result of the retreat of the other trends. This situation encountered the so-called period of revisions (*murāja'āt*), and Shī'ī discourse was engaged in these revisions, albeit in an adequate form for its own issues. Consequently, many intellectual issues were raised, such as the relationship between Shī'ī communities in secular states and the Shī'ī *marji'iyya*, the validity of Shī'ī *fiqh* for the modern age, the position of the jurist in the Shī'ī community and the legitimacy of Shī'ī political actions in their own communities.

²¹⁵ al-Jābirī, *Naḥnu wa al-Turāth: Qirā'a Mu'āṣira li Turāthinā al-Falsafī*.

²¹⁶ *Takwīn al-'Aql al-'Arabī*.

²¹⁷ Louër has studied this dispute in detail, see Louër, *Transnational Shia Politics: Religious and Political Networks in the Gulf*, pp. 222, 25-42.

Around the beginning of the 1990s, politics dominated the overall scene and had huge effects on the intellectual scene. This decade witnessed some political events that changed, broadly speaking, the socio-political map of the Middle East. The first of these events was the fall of the Soviet Union after its defeat in Afghanistan, which was not only a dramatic disintegration of a superpower, but also the collapse of an ideology and a global axis that had dominated approximately half the world throughout the last century. Immediately thereafter, the second event emerged: Iraq's invasion of Kuwait in 1990, marking the complete collapse of the nationalist project at a pan-Arab level. In addition, the invasion required international intervention by NATO, led by the U.S. This marked the beginning of the so-called New World Order, which resulted in intellectual and political indications of the existence of international forces in the Arabian Peninsula.

With regards to Iraq, the Second Gulf War meant that the Iraqi matter had entered a tunnel of non-solution as the state was besieged internationally, isolated regionally and controlled internally by a totalitarian regime. This situation affected the Shī'ī situation as well, especially in terms of the political and religious movements led by the rebels of the regime.

Subsequently, this phase witnessed a considerable shift in the intellectual scene, especially in Islamist discourse. Many works that were perceived to be a self-criticism of the discourse of the Islamic movement appeared, particularly after the Gulf War, when the New World Order was announced. It started with a work by the Kuwaiti Islamic thinker 'Abdullāh al-Nifisī (b. 1945) *al-Ḥaraka al-Islāmiyya: Ru'yā Mustaqbaliyya: Awrāq fī al-Naqd al-dhātī*²¹⁸ and was followed by many other works concerned with the same issue. Some intellectuals preferred to call this period the period of "revisions" as almost all Islamic movements, whether Shī'ī or Sunnī, started a self-criticism of their own discourse. Therefore, at that time, many issues dominated the intellectual scene, such as the relationship between religion and state, the possibility of applying *sharī'a*, multiculturalism within Islamic sects and the issue of *takfīr*, the relationship between Islam and the West and the legitimacy of political actions within the secular state. Both Shī'ī

²¹⁸' Abdullāh al-Nifisī, *al-Ḥaraka al-Islāmiyya: Ru'yā Mustaqbaliyya: Awrāq fī al-Naqd al-Dhātī*, 2nd ed. (Kuwait: Maktabat Āfāq, 2013).

and Sunnī intellectual revisions happened in conjunction with the increasing number of liberal movements in the Arab world generally and in the Gulf in particular, which in turn made the debate and revision occur in both theological and philosophical terms.

2.4.2.2. Mudarrisī's Works

During this phase, Mudarrisī was primarily concerned with the *new reality* challenging Shī'ī thought after the Islamic Revolution in Iran, namely, the relationship between religion and state. Yet, he was also focusing on building up and mobilising his movement (MVM).

This period lacks any significant intellectual works written by Mudarrisī himself, but it is full of a thematic series of his lectures that were collected for publication as a book or short series in small books. Yet, from an intellectual perspective, these thematic lectures are no less constitutive than those penned by Mudarrisī himself during the previous period. There are approximately thirty such works in total, including books and short series, and can be studied to determine why his works shifted in form during this period.

The first of these was a series of lectures delivered to various groups in Ḥawza al-Qā'im during the first year of its establishment 1979-1980. These were published as a book entitled *al-Tamaddun al-Islāmī: Ususuhu wa Mabādi'uhu*²¹⁹. In this series, Mudarrisī dealt with issues of Islamic law and its relation to modern life, including his insights into reform of Islamic jurisprudence, the relationship between the law and reality, how to provide law for a modern state and the position of the jurist in making a legal decision for the state. These lectures were the beginning of his journey in writing his jurisprudential work, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*²²⁰ which consists of ten volumes, initially made public in the 1990s and not finished until the late nineties. It is in this book that Mudarrisī presents his theory of *maqāṣid al-sharī'a*. These lectures perhaps marked a new stage in Mudarrisī's thought, characterised by the development

²¹⁹ Muḥammad Taqī al-Mudarrisī, *al-Tamaddun al-Islāmī: Ususuhu wa Mabādi'uhu* (1991).

²²⁰ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, p. 1.

of his jurisprudential insights by shifting from educational reform to methodological reform, and the development of his political thought regarding Islamic leadership.

Mudarrisī's witnessing of the Iranian experience in addition to his participation in the state apparatus kept him in touch with reality in examining the ability of religious institutions to run a modern successful state, like other thinkers calling for an Islamic solution. This "shock", if it can be so called, was expressed by many leaders of the Iranian experience²²¹, as they found a wide gap between what was written in jurisprudential books and the complicated reality of modern life. From this perspective, Mudarrisī started his lecture on "Islamic modernization", but found it was not enough given the depth of the challenge. Therefore, he went on to spend more than fifteen years on *al-Tashrī' al-Islāmī* project. The first volume of this project was published at the beginning of the 1990s. Yet, the project of reforming jurisprudence did not stop with the legal discussion; it reached out to the jurist and his position. This ultimately opened the political file again, as Mudarrisī started to revise his theory of "*wilāyat al-faqīh*". This revision developed in conjunction with the reformation of jurisprudence in *al-Tashrī' al-Islāmī* in the next decade. He began with *uṣūl* works, publishing the first volume of *al-Tashrī' al-Islāmī* in 1992. In the same year he published the second volume. Both volumes dealt with classical Shī'ī jurisprudential theories in an attempt to adopt them towards a *maqāṣidī* discourse. In 1995, he published the third volume, representing his new contribution to Shī'ī jurisprudence - at least that was the claim - his theory of *maqāṣid al-sharī'a* in the Shī'ī version. By this time, he had finished the *uṣūlī* part of his jurisprudential contribution, and from 1996 until 2004 he published the remaining six volumes of the project, presenting the *fiqh* applications of his *uṣūlī* theory. The content of this work will be examined in detail in the third, fourth and fifth chapters of this thesis.

The second of these sets of transcripts was a series of various lectures related to Islamic action and activist thought, in which he dealt with some activist and organizational topics from a religious perspective, in opposition to what were spread at that time, which were mostly Marxist. They were released to the public as part of the

²²¹ al-Sayf, Tawfīq *Hudūd al-Dīmuqrāṭiyya al-Dīniyya* (Beirut: Dār al-Sāqī, 2008), pp.81-2.

activist supply of the MVM, which had been accumulating for fifteen years (since the late sixties). These lectures clearly show the effort that Mudarrisī made to revolutionise Shī'ī religious concepts, using concepts like patience, integrity, prayer, action and intercession in the activist framework and concepts like community, loyalty, cooperation, defence, and *jihād* in the political framework. Several collections of lectures were published in this context, including the book *al-'Amal al-Islāmī: al-Munṭalaqāt wa al-Ahdāf*²²², published in 1981 and consisting of three volumes, all published within this decade. In addition, the book *al-Ba'th al-Islāmī*²²³, published in 1984, was devoted to dealing with the concepts of revolution and how to create a revolutionary believer. Furthermore, *'An al-l'ām wa al-Thaqāfa al-Risāliyya*²²⁴ was published in 1985, *Āfāq al-Ḥaraka al-Islāmiyya*²²⁵ in 1985, *Mustaqbal al-Thawra al-Islāmiyya*²²⁶ in 1985, *Hākadhā Yataḥaddā al-Fikr al-Islāmī*²²⁷ in 1986, *Baṣā'ir fī al-Taḥarruk al-Islāmī*²²⁸ in 1987, *al-Wa'y al-Islāmī*²²⁹ in 1989, and *al-Nahj al-Islāmī: Ta'ammulāt fī Masīra al-Ḥaraka al-Islāmiyya*²³⁰ was published in 1990. The rest were his cultural mobilising public lectures that he collected and published in written form. All these attempted to revolutionize religious concepts and mobilise activism.

Mudarrisī's works at this phase were characterized by an abundance of activist and political works compared to the previous two decades, which were practically devoid of such concepts. This seems to indicate the need for such works, as the Shī'ī political movement had been witnessing significant political dynamic activities in their areas. Particularly, with regard to the MVM, which was in its golden age at beginning and middle of the eighties in terms of its broad spread and organizational strength, this

²²² *al-'Amal al-Islāmī: al-Munṭalaqāt wa al-Ahdāf*, 3 vols., vol. 1 (np:np, 1981).

²²³ *al-Ba'th al-Islāmī*, (np:np, 1984).

²²⁴ *'An al-l'ām wa al-Thaqāfa al-Risāliyya*, (np:np, 1985).

²²⁵ *Āfāq al-Ḥaraka al-Islāmiyya*, (np:np, 1985).

²²⁶ *Mustaqbal al-Thawra al-Islāmiyya*, (1985).

²²⁷ *Hākadhā Yataḥaddā al-Fikr al-Islāmī*, (np:np, 1986).

²²⁸ *Baṣā'ir fī al-Taḥarruk al-Islāmī*, (np:np, 1987).

²²⁹ *al-Wa'y al-Islāmī*, (1989).

²³⁰ *al-Nahj al-Islāmī: Ta'ammulāt fī Masīrat al-Ḥaraka al-Islāmiyya*, (1990).

situation required an organizational mobilization and a feeding proportionate to its large scale, which may account for the abundance of activist and political works.

The third of these lectures was a series discussing societal issues entitled *al-Mujtama' al-Islami: al-Munṭalaqāt wa al-Ahdāf*²³¹ which were delivered to groups of students in Ḥawza al-Qā'im and then published in 1983. In this series, Mudarrisī discussed what an Islamic society should look like, including its main values and main purposes. He explored issues related to sociology and education in terms of the nature of society and the relationship between the individual and society. In addition, he examined the hierarchy within an Islamic society, the position of the scholars in it and the value of action and cooperation. Based on the content, he was clearly concerned with the new Islamic society created in Iran and attempted to provide insights into this “new” field.

The fourth of these lectures was a series related to Islamic history²³², entitled *al-Tārīkh al-Islāmī: Durūs wa 'Ibar*, dealing particularly with the period between 63 A.H. to 255 A.H. These lectures were in fact delivered when he was in Kuwait in the late seventies, but were published in the eighties. The principal idea of the book is to reread the history of the Shī'a Imāms based on the conviction that, although they lived in different circumstances and dealt with each period in a different way, they had one purpose that was embodied in several forms. From this perspective, Mudarrisī also re-reads the relationship between Shī'ī groups, mainly among the Ismailis, the Zaydis and the Twelver Shī'a (*ithnā 'ashari*), in which he claims that all these groups were in reality one group and were coordinating with each other, especially during the early stages of their establishment. The Ismailis and Zaydis engaged in military tasks under the order and supervision of the contemporary Imām of the time while the Twelver Shi'a adopted cultural tasks. However, these groups later separated for some reason, distancing themselves from one another. The point here for Mudarrisī, aside from what is deemed to be academically accurate today, was to address the Shī'ī individual and to change his outlook of his own history, which he has hitherto seen as a river of blood and

²³¹ *al-Mujtama' al-Islāmī: al-munṭalaqāt wa- al-ahdāf (the Islamic Society: Its Principles and Purposes)* (1983).

²³² *al-Tārīkh al-Islāmī: durūs wa- 'ibar*, (1984).

persecution. In addition, he wanted to reform the collective historical memory of the Shī'ī individual - the memory that had made him a passive actor in the modern age. Mudarrisī attempted to reform this memory by providing a reading that claimed that the actions of the Imāms were coherent and consistent, although varying and embodying several forms. It is an ideological reading of the history aiming to address the present Shī'ī community into being an active agent.

The fifth work, which is the only work written by Mudarrisī himself in this period, was the book *al-'Irfān al-Islāmī: Bayna Taṣawwūrāt al-Bashar wa Baṣā'ir al-Waḥy*²³³. Although the content of the book was provided to groups of students at Ḥawza al-Qā'im in a lecture format, the book was actually published in *al-Baṣā'ir*, a quarterly intellectual journal issued by Ḥawza al-Qā'im.²³⁴ The content of the book basically deals with theological and philosophical matters, in which Mudarrisī mainly criticizes, sometimes firmly, the philosophical tendency of studying Islamic doctrine. In particular, his criticism is directed at the Mullā Ṣadrā School, as he deemed – in keeping with the Tarkībī school – that it had been influenced by Greek philosophy and attempted to adapt religious texts and concepts to be consistent with it. He asserted that religious knowledge provided by the Imāms had its own method for the acquisition of religious knowledge and was completely different from human concepts and methods towards that end. Therefore, in this book, he addressed the history of theology in Islamic civilization and demonstrated how it was influenced by some philosophical trends. He then critically discussed some philosophical theories, including mystical ones, namely the philosophical informed mystical contemplation (*'irfān*). At the beginning of the book, he discussed his motivations for writing this book, explaining that the current political events, namely the Islamic Revolution in Iran, should not obviously distract scholars from cultural matters. By this, he questioned the cultural trend of the leaders of the Islamic Revolution to believe in philosophical and mystical tendencies in reading religious knowledge. He also seemed to say that, although he supported the revolution politically, his attitude regarding theological issues was distinct.

²³³ *al-'Irfān al-Islāmī: Bayna Taṣawwūrāt al-Bashar wa Baṣā'ir al-Waḥy*, (1985).

²³⁴ See: <http://www.albasaer.org/> [accessed: 1/9/2012].

Publishing such a book at this time was practically political suicide, as it was the complete reverse of the revolutionary situation. However, this book would have occupied considerable space among the MVM as it became a part of the Ḥawza al-Qā'im curriculum and spread the Tafdīkī thought amongst the MVM. In any case, the book showcases Mudarrisī's Tafdīkī background while simultaneously representing his idea of purifying the Islamic tradition, which he called for in his book *al-Thaqāfa al-Risāliyya*, in which he deems Greek philosophy to be a part of the deviations that had infused Islamic culture. However, the book has political agendas as well. By publishing *al-'Irfān al-Islāmī* and, before that, by presenting lectures in same field, he came to occupy a position distinct from both the traditional as well as the renaissance discourse at the same time. On the one hand, the traditional tendency did not agree with the new theological theses with their political dimensions, and the book preserved the traditional framework of theology; but on the other hand, the renaissance trend, especially the one leading the revolution, posed new theological theses in defining religion and its role, albeit related to the philosophical Shī'ī school, namely that of Mullā Ṣadrā represented by Muṭahharī at the time. Therefore, Mudarrisī's thesis in *al-'Irfān al-Islāmī* was a double confrontation of these two frameworks, whereby he criticized the former for its closed-mindedness and the latter for its adherence to the philosophical framework of Mullā Ṣadrā. This double confrontation liberated Mudarrisī from the weight of these two schools, traditional theology and Mullā Ṣadrā's philosophy, and made him both a spokesperson of the Tafdīkī School as well as its developer, and this was to be reflected in his contribution in the jurisprudential field also, as we shall see in the next chapters²³⁵.

One of the works of this period is a short written document regarding how the Ḥawza curriculum should be formulated. Mudarrisī wrote it as a statute for Ḥawza al-Qā'im's curriculum and it was, in fact, applied in the Ḥawza in Tehran. Although the document was published in the nineties as part of the book *al-Ma'had al-Islāmī Bayna al-Aṣāla wa al-Infitāḥ*²³⁶ which also includes Mudarrisī's weekly ethical lectures for the students of

²³⁵ See on page 136, 145 and 156.

²³⁶ Mudarrisī, *al-Ma'had al-Islāmī Bayna al-Aṣāla wa al-Infitāḥ*

Ḥawzat al-Qā'im, it was actually written in the eighties. In this book, he attempted to formulate a Ḥawza curriculum that balanced original Islamic integrity, missionary work, and openness. Therefore, he divided the curriculum into these three categories, with the first category including traditional classes (i.e., *fiqh*, *uṣūl*, logic and Arabic) in addition to the Qur'ān, *ḥadīth* and history. The second category consisted of missionary classes, which were, in fact, Mudarrisī's books, namely, *al-Fikr al-Islāmī* and *al-'Irfān al-Islāmī* as a theological class, *al-Manṭiq al-Islāmī* as a complementary class, and *al-Thaqāfa al-Risāliyya* as the Islamic culture class. The third category represented openness and consisted of modern subjects (i.e., politics, sociology and psychology) in addition to classes that discussed current affairs, such as Islamic movements and other political movements in the Middle East. The document also included some advice on the style of teaching, emphasizing the importance of developing students' critical thinking skills, and advice on the practical program in the Ḥawza, such as spiritual and cultural programs. This document was not merely a collection of theoretical ideas, but rather reflected the practical practices of Mudarrisī's Ḥawza at the time and his philosophy of religious education.

The sixth work of this phase was his set of political works. As Mudarrisī was a representative of the IAO, as publicly announced after the revolution, and the period became heated by the time of the Iraq–Iran war, he was targeted by the international media and did many interviews regarding current political issues. Accordingly, some of the works of this period were collections of these interviews, which reflect his political stances, including *al-Ṣaḥāfa Tuḥāwir al-'Allāmah Mudarrisī*²³⁷ published 1985, *'An al-'Irāq wa al-Ḥaraka al-Islāmiyyā*²³⁸ published in 1988, *al-Intifāḍa Al-Sha'bāniyya fī al-'Irāq: al-Asbāb wa al-Natā'ij*²³⁹ in 1991, *Aḍwā' 'Alā Azamāt al-Khalīj*²⁴⁰ in 1991 and *Hākadhā Nabnī 'Irāq al-Ghadd*²⁴¹ in 1993. These works focused on the Second Gulf

²³⁷ *al-Ṣaḥāfa Tuḥāwir al-'Allāma al-Mudarrisī*, (1985).

²³⁸ *'An al-'Irāq wa al-Ḥaraka al-Islāmiyya*, (1988).

²³⁹ Muḥammad Taqī al-Mudarrisī, *al-Intifāḍa al-Sha'bāniyya fī al-'Irāq: al-Asbāb wa al-Natā'ij*, (1991).

²⁴⁰ *Aḍwā' 'alā 'Azmat al-Khalīj*, (1991).

²⁴¹ *Hākadhā Yataḥaddā al-Fikr al-Islāmī*, (1993).

War and expressed the opinion of Mudarrisī and the IAO regarding Iraq's current situation. This collection was, in effect, his interviews with international media as a representative of the IAO. He also published some lectures regarding Lebanese political issues.

It is also worth noting that during this period a shift occurred in Mudarrisī's intellectual works. In previous periods, they had been the product of an individual effort by Mudarrisī himself, whilst in this period, after he moved to Iran, his works were a collective effort. Accordingly, there were very few intellectual works written by him personally, although every single lecture of his was reproduced in a book or a short book thanks to the human and organisational growth of the MVM, which had moved to Iran at that time and coalesced in the form of political, educational, cultural and media foundations. For example, some important active foundations at that time included Mudarrisī's office, *al-Shāhid* newspapers, Ḥazwa al-Qā'im and the IAO, which in turn made publishing more organised. Therefore, during this period, the number of Mudarrisī's works doubled. Moreover, Mudarrisī seemed to abandon the axis of "the Other", which had concerned him during the previous two decades, except for some political announcement, but he was still concerned with the other two axes, namely originality and contemporaneity. They appeared in his works in this phase, as we have seen. It might be attributed to the fact that his concern with the Other needed to convince the audience of the Islamist option. Once people chose the Islamist option, as evidenced by the success of Islamic Revolution in Iran, the Islamist project faced the challenge of originality and contemporaneity, which engaged Mudarrisī's focus on them further, and they continued to mark his work in the next phase. After the Islamic Revolution in Iran, Mudarrisī's intellectual works inclined towards an internal discourse aimed at the Shī'ī community. One final observation is that Mudarrisī's activist work in the latter part of this phase shifted from establishing insights on activist actions to providing the rationale and justification for Shī'ī activism. This, in effect, was a reflection of the soul of the nineties amongst the Islamist movements, and was clearly evident in Mudarrisī's work. The content of the work tells us a lot about this as he discusses the differences between political and religious actions, the balance between the elite class

and the laity, the balance between self-moral education and reforming society and so on. His titles clearly reflected his rationalising tendency in his activist work.

2.4.3. In Iran and Iraq (late 1990s – 2011): Towards *Marji'iyya*

This phase begins in Iran in the late 1990s and ends in Iraq in 2011 following the fall of the Bathist regime in 2003. Despite various events that took place in this period, the internal Shī'ī changes are the best vantage point from which to explain Mudarrisī's intellectual biography. In response to these changes, the common characteristic of his thought is the quest to establish his *marji'iyya* principally in Iraq. At the end of this phase, a crucial event occurred in the Middle East: the Arab Spring of 2011. As this would require a separate research paper in itself, the focus of the current research will end with this date.

2.4.3.1. Activities

At the beginning of this phase, Mudarrisī was in Tehran, teaching and following up the situation in Iraq. The most important event for him was the death of his uncle, Muḥammad al-Shīrāzī in 2002, which meant that it was an opportunity for him to declare his *marji'iyya* amongst the *Shīrāziyya* in particular, but also in general. On the other hand, this decade began with al-Qā'idah's attacks on the World Trade Centre complex in New York City on September the 11th, which led the U.S. to declare war on Afghanistan, followed by Iraq, under the title of: the War on Terror. These two wars were not just any war, if there is such a thing; they significantly changed the Middle East socially and politically, especially in the Gulf region. They also directly affected the Shī'ī situation, as Iraq, where most holy shrines and major Shī'ī *marji'*s are located, became a *free land* for the Shī'a. As a result of these wars, hidden sectarian wars emerged between the Shī'a and the Sunnīs in Iraq and Lebanon. Mudarrisī went to Iraq immediately after the invasion of the U.S and set up his office, Ḥawza and some political activities.

2.4.3.2. Mudarrisī's Works

During this period, Mudarrisī seemed to throw all his weight behind his jurisprudential project in the field of *fiqh*. He had almost completed his entire *uṣūl al-fiqh* project, *al-*

Tashrī‘ al-Islāmī in the previous phase and made remarkable headway in the field of jurisprudence. His success can be attributed to the real circumstances of the MVM in the nineties. At the end of the eighties, Muḥammad al-Shīrāzī, representing the *marji‘iyya* umbrella for the MVM, and Khomeini, representing the revolutionary umbrella for the MVM, fell into dispute. This put the MVM in a dilemma: by choosing Shīrāzī, they would lose their revolutionary legitimacy; by choosing Khomeini, they would lose their religious legitimacy. Thus, the only escape from the crisis was for Mudarrisī to take a bold and strategic step forward by declaring his own *marji‘iyya*, whereby he would both gain religious legitimacy and preserve internal unity, as well as finally open up new prospects for the MVM on the ground. However, this step required legitimate and academic proof in Mudarrisī’s favour in the *fiqhī* field, which he already had by reputation, but not on paper yet. Consequently, he put considerable effort into the *fiqhī* field, which might account for the amount of *fiqhī* works published during this period. His *fiqhī* effort doubled, especially after 2002. This might be due to practical necessity, as it is customary within the Shī‘ī intellectual tradition for the one declaring himself a *marji‘* to produce a *risālah ‘amaliyyah* as it is the essential channel between the jurist and his followers. Unless the succeeding *marji‘* was appointed by a will or by recommendation of the previous *marja‘*, the situation would be difficult. Mudarrisī was at least a candidate to receive a recommendation, if not by testament, of his uncle to be his successor, but this did not happen. Therefore, he was obliged to complete his *risālah ‘amaliyya* as soon as he could. Although he had completed the mission within a few years within this phase, he was still faithful to his approach toward the *fiqh*. He structured his practical manual (*risālah ‘amaliyya*) to be consistent with his *maqāṣidī* approach, whereby he starts his book with some Qur’ānic verses that are related to the field, followed by some *ḥadīth* as well. Before he moved on to examine legal rulings, he discussed the philosophy of the field and its legal rulings in several paragraphs. This order is an outcome of his theory, which was expounded in *al-Tashrī‘ al-Islāmī*. He began publishing his *risālah ‘amaliyya* in a short series of booklets called *al-Wajīz fī al-Fiqh al-Islāmī*, each of which dealt with one of the *fiqhī* fields (e.g., purity, prayer, fasting). By the end of 2001, Mudarrisī had successfully completed the fields of acts of worship in Shī‘ī *fiqh* in addition to some new topics that he created, such as *Fiqh al-*

Ḥayāt al-Ṭayyiba. He subsequently wrote another of his new innovated *fiqhī* fields. The death of his uncle al-Shīrāzī in 2002 allowed him to declare his *marji'iyā* publicly as his uncle's successor. He completed his *fiqhī* works dealing with both acts of worship as well as his new fields, and published them all in three volumes.

In response to the new situation in Iraq as well as in the *Shīrāziyya* movement born with the death of Muḥammad al-Shīrāzī, this phase witnessed three new shifts in Mudarrisī's work: political thought, a new Qur'ān exegesis and the classical *uṣūl* work. His first renewed interest led to the publication of two books related to political thought, the first being *Fiqh al-Dustūr: Aḥkām al-Dawla al-Islāmiyya*²⁴², which was in effect his jurisprudential lessons given in Karbala after the fall of Saddam's regime in 2003. In this book, he dealt with issues related to the state and the constitution, such as the purposes of an Islamic constitution, the source of legislation, the source of sovereignty and the goals of an Islamic state. He also discussed issues related to the state, such as property, wealth, rights, identity of the state and political participation. The second book, *al-Ḥukm al-Islāmī fī 'Ahd al-Imām 'Alī*²⁴³ was published in 2008 and included his lessons taught to groups of students in Karbala whilst writing the Iraqi constitution. Such efforts stemmed from the new situation in Iraq after 2003, as Iraq became an open area again after a long era as a non-solution state. However, what is notable in Mudarrisī's approach towards political thought is that it is distinct from his approach in previous phases, especially from the discourse of the seventies. While the political discourse of the seventies focused on the absolute guardianship of the jurist and the religious state, his discourse in this phase was more inclined to the nation state and its sovereignty. This might be a reflection of the current circumstances surrounding him. He showed a high degree of flexibility and amendment to his previous political stance and a quick response to new challenges. Therefore, it is highly possible that his political thought will change in the near future in conjunction with the Arab Spring and its new challenges.

Mudarrisī's second shift in thought led him to embark upon a new Qur'anic exegesis after he returned to Iraq in 2003, different from the old exegesis that had been written in

²⁴² *Fiqh al-Dustūr wa Aḥkām al-Dawlah al-Islāmiyya*, (2003).

²⁴³ *Al-Ḥukm al-Islāmī fī 'Ahd al-Imām 'Alī*, (2008).

the eighties. Mudarrisī called it *Bayyināt Min Fiqh al-Qurʾān*, then added the subtitle: “*Qurʾanic study derives divine cosmological laws based on the decisive verses of the Reminder*”. Although the methodology of this exegesis is ambiguous, it seems to include a shadow of some of the theories established by him in *al-Tashrīʿ al-Islāmī*, such as how to discover divine cosmological laws and how to interpret reality through the Qurʾan, which he called *taʾwīl*. Thus far, four *sūras* from the new exegesis have been published: *al-Nūr*,²⁴⁴ *Luqmān*,²⁴⁵ *al-Furqān*²⁴⁶ and *al-Ḥajj*.²⁴⁷ Although Mudarrisī started this new Qurʾānic exegesis, it is not exactly clear in what way it is new. Compared to the old Qurʾānic exegesis *Min Hudā al-Qurʾān*, whose methodology had been developed before he started to write it, the methodology of the new one is thus far too ambiguous to ascertain. It seems too early to understand it properly at the beginning of this project. It also raises a question as to whether the motivations for pursuing such a project are genuinely a new methodology that deserves to be called *new* or is it just that Mudarrisī is inclined to engage in Qurʾānic studies, given his high religious position in the Hawza? It is currently too early for academic answers to these questions.

Mudarrisī’s third and final shift in thought saw the publication of a jurisprudential work dealing with the issues of *uṣūl* according to the traditional order in Shīʿī religious learning institutions. The traditional order normally begins by defining *uṣūl al-fiqh* and its objective, then moves on to linguistic discussions, starting with how language had been created and ending with the issue of *al-mushtaqq*. In his book, Mudarrisī discussed these issues in detail whilst including some additional subjects, such as the history of *uṣūl al-fiqh*, some issues of modern linguistics and a particular chapter on the linguistics studied for the reading of *hadīth*. Although this book is, in effect, a compilation of lessons that he gave in Karbala for graduate students (*al-dars al-kharij*), he penned

²⁴⁴ *Bayyināt min Fiqh al-Qurʾān: Dirāsa taʾtamid istinbāṭ al-sunan al-ilāhiyya min al-dhikr al-ḥakīm: Al-Nūr* (Beirut: Dār al-Maḥajja al-Bayḍāʾ, 2011).

²⁴⁵ *Bayyināt min Fiqh al-Qurʾān: Dirāsa taʾtamid istinbāṭ al-sunan al-ilāhiyya min al-dhikr al-ḥakīm: Luqmān* (Beirut: Dār al-Maḥajja al-Bayḍāʾ, 2010).

²⁴⁶ *Bayyināt min Fiqh al-Qurʾān: Dirāsa taʾtamid istinbāṭ al-sunan al-ilāhiyya min al-dhikr al-ḥakīm: Al-Nūr*.

²⁴⁷ *Bayyināt min Fiqh al-Qurʾān: Dirāsa taʾtamid istinbāṭ al-sunan al-ilāhiyya min al-dhikr al-ḥakīm: Al-Ḥajj* (Beirut: Dār al-Maḥajja al-Bayḍāʾ, 2010).

down himself and called: *Fiqh al-Istinbāt: Dirāsa fi Mabādi' 'Ilm al-Uṣūl*²⁴⁸ which he published in 2010. It is quite obvious that authoring this book was in line with the objective of *marjiyya* and its prestige, which Mudarrisī is now seeking to strength. Any scholar claiming to be a *marja'* must necessarily produce respectable scholarly works in *fiqh* and *uṣūl* to prove and maintain his scholarly status. Usually, these *fiqhī* and *uṣūlī* works are taught in the *marji'*'s own Ḥawza as part of the legitimization of his *marji'iyya*. Mudarrisī seems to be inclining towards these requirements.

2.5. Conclusion

The gradual development of the Shī'ī jurist's position in relation to the temporal regime, from the Safavid period until the early part of the twentieth century, has formed the general structure of the emergence of the political jurist within the Shī'ī community. As mentioned in the chapter, four events have played a significant role in forming the so-called 'political jurist', namely the Safavid Empire, the Tobacco Revolution of 1891, the Constitutional Movement of 1907 and finally the Revolution of 1920. The product of this process was a jurist who was motivated to seek out his own state instead of remaining passive under the temporal regime. Mudarrisī was one such example of this phenomenon among Shī'ī scholars, whilst simultaneously contributing to it too. One significant contribution of his was his advocacy of the theory of the Guardianship of the Jurist (*wilāyat al-faqīh*) for the first time in contemporary Shī'ī thought - a theory that accounts for a considerable part of contemporary Shī'ī activism and political endeavours. Furthermore, his adaption of the theory of *maqāṣid al-sharī'a* in a Shī'ī version, which will be examined in the next chapters, is another contribution to the phenomenon of the political jurist. The theory is not merely legal, but also political, in some of the ways in which it defines the position of the jurist in the society.

As demonstrated in this chapter, Mudarrisī's thought was crystallised within this context and though his interaction with the socio-political context of the Arab world since the sixties over the course of forty years of intellectual and political activities. This was not merely a historio-political construction, but also an intellectual context, that provoked the

²⁴⁸ *Fiqh al-istinbāt: dirāsah fi mabādi' 'ilm al-uṣūl*.

Shī'ī jurist to form a legal political theory that enabled him to politicize his tradition in order to best interact with reality. During the early phase of his intellectual activities he was preoccupied with rational-philosophical concerns, in which he sought to establish a different epistemic philosophical project from the general trend within the Shī'ī religious institution. However, in the second phase of his intellectual activities, he was preoccupied with making political and legal philosophy interact with reality. This is where he underwent a thorough practical examination of his own thought in the context of the eighties and nineties of Iran and the Arab world, and adapted the theory of *maqāṣid al-sharī'a*. The third phase saw him focusing primarily on the internal Shī'ī context, occupied with establishing his religious status of *marjī'īyya*, and subsequently to find his position within the new situation in Iraq post-2003.

In order to fully understand his intellectual journey, from his epistemological concerns through to his political and legal thought, to his jurisprudential concerns finally, it is necessary to study his legal philosophy, especially the theory of *maqāṣid al-sharī'a*. Mudarrisī has employed many of his previous theories of epistemology and political thought in his legal theories, in addition to reflecting his actual social and political experience. In the next chapters, I will proceed to study his legal theories in detail.

3. Chapter Three

The Adaptation of Classical Shī'ī *Uṣūl al-Fiqh* towards *Maqāṣid al-Sharī'a*

3.1. Introduction

Before embarking on an examination of Mudarrisī's legal system, and the position of *maqāṣid al-sharī'a* within it, a methodological observation is in order. I am aware of the methodological issues which arise when studying religion in general²⁴⁹ and Islamic legal studies in particular²⁵⁰. The most pressing problem for this study concerns how one describes a religious system in a language, and more broadly, in an intellectual context quite different from the one in which the system itself developed. As has been recognized by many commentators²⁵¹ language is not a neutral communication tool, but is itself a crucial part of the cultural context in which it is used. With regards to Islamic legal theory, this is perhaps most obvious in the extensive lexicon of Arabic technical terms for which there are rarely simple English equivalents. The legal theorists themselves usually employ these terms with an assumption their audience is fully cognizant of the term itself and the technical context in which it is used. The challenge in a study such as this is to convey the contents of the religious system of a particular thinker, in this case Mudarrisī, in an intellectual and linguistic context quite different from that in which it was composed and on which it was intended to have an impact. This issue is linked to the famous "insider/outsider problem"²⁵², which has been occupied several academic disciplines including anthropology, philosophy and sociology to name only a few.

²⁴⁹ McCutcheon, Russell T., *The Insider/Outsider Problem in the Study of Religion: A Reader*. 2ed ed. (London, Casell, 1999)

²⁵⁰ Weiss, Bernard G., *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī*. (USA: International Institute of Islamic Thought, 2010).

²⁵¹ Weiss, *The Search for God's Law*. pp. 1-29. Also, see: Kim Knott, "Insider/outsider perspectives" and Douglas Allen, "Phenomenology of religion" in *The Routledge Companion to the Study of Religion* ed. John Hinnells. (London, Routledge, 2005), pp. 243-258, 181-209.

²⁵² McCutcheon, *The Insider/Outsider Problem in the Study of Religion: A Reader*. pp. 1-11.

What I am intending to do in the coming chapters – 3, 4 and 5 - is to provide an “explanation” or “interpretation” of Mudarrisī’s legal theory of *maqāṣid al-sharī‘a*. Obviously there must be a clear distance between my critical judgement of his ideas (i.e. whether it is convincing theory for a believer attempting to understand the world from within a religious tradition), and my best attempt to account and analyse his thought. Nonetheless, it is a perfectly acceptable, methodologically speaking, to try and understand Mudarrisī’s system of thought by focusing on how it operates as a (supposedly) coherent system, and how its development might appeal to the religious sensibilities of those he is attempting to convince.

My principal and primary job, then, is to explain and interpret how Mudarrisī’s thought has been constituted and formed in regard to his theory of *maqāṣid al-sharī‘a* with a view to understanding his overall project in presenting a work of Islamic legal theory. This makes my methodological approach here slightly different to the previous chapters. Chapter One, previously, has provided even a broader context in which Mudarrisī has come about. Chapter Two attempted to provide an analytical reading of Mudarrisī’s thought in relation to the socio-political circumstances surrounding him in each stage of his intellectual life. This can be deemed as an external (or say “outsider”) study of his thought. The following chapters, however, are an attempt to examine and explain his legal theory of *maqāṣid al-sharī‘a* in details. They are an attempt to understand Mudarrisī’s thought recognizing his theological commitments, the audience to which he wishes to appeal, and attempting to understand how his system might form a coherent whole, as this is clearly his intention.

Based on this methodological commitment, I will not confine myself to his legal works alone. Rather I will use a set number of his texts, i.e. philosophical, theological, exegetical and *fiqhī*. The reason for this approach is that these texts demonstrate and clarify his legal ideas, bringing out the organic correlation between them. Furthermore, Mudarrisī has discussed several schools of thought, whether Islamic, Western or Eastern, in several of disciplines, i.e. legal and moral philosophy. For the sake of explanation and analysis, not critical judgement, it is not my task here to examine the extent to which he was accurate in understanding these schools of thought. Rather, it is

even not useful for the purposes of this research to engage in such discussion. What concerns my investigation, then, is the question, “what do these ideas, figures and schools mean for him and how has he benefited from them and to what purposes?” In this context, I will refer as much as it is possible to the sources he has used in his arguments, whether in his discussion internally with Islamic thinkers and scholars, or externally with particularly Western schools of thought, philosophers and scholars. It seems that he was entirely dependent on the translated works of Western thought into Arabic, and to a lesser extent, in Persian. Therefore, whenever I refer to the original text in English or provide a further reference to the schools of thought or philosophers or thinker – it is merely to enable the English reader be familiar with them, though the reference here is not essential to understanding Mudarrisī’s main point in referring to them.

This approach is quite similar to some works have been done in Arabic and in English, for example, the important work of Badawī on Aristotle²⁵³ in which he attempted to show how the Arab understood these philosophers. In Western scholarship of Islamic legal studies, the work of Bernard Weiss on al-Āmidī has been highly influential in establishing the appropriateness of this expository method. Weiss explains his approach in a way that encapsulates my own approach to explaining and interpreting Mudarrisī’s legal thought, when he writes:

Just as this study is not fundamentally diachronic, so it is not fundamentally critical. I have attempted to make clear the foundations—premises, pre-suppositions, methods—underlying the system of jurisprudential thought that unfolds in Āmidī’s writings, but I have not undertaken to examine those foundations from a critical perspective concerned with issues confronting contemporary theory and methodology. Āmidī himself was very reflective about the methodological and epistemological underpinnings of his thought, and I have tried simply to present his thinking about those underpinnings, leaving it to my readers to respond critically in whatever way they choose. In elaborating here and there on the ramifications of certain ideas or principles found in Āmidī’s

²⁵³ Badawī, ‘Abdalrahmān, *Arusṭū ‘ind al-‘Arab*, 2ed ed. (Kuwait: Wikālat al-Kuwait li al-Maṭbū‘āt, 1978).

writings, I am not, I think, adopting an essentially critical stance. I am simply exploring the consequences these ideas or principles have for the process of formulating the law.²⁵⁴

The present chapter and the following two are divided in a way that, hopefully, allows the reader to get inside the system and understand Mudarrisī's position in the issues he has discussed. His legal thought can be viewed, as previously argued²⁵⁵, as a response to the challenges that faced what is referred to here as the Bahbahānian paradigm. It is not a partial response, but rather a systematic one that justifies its consideration as a paradigm shift from the Bahbahānian paradigm. As was mentioned in the first chapter, the distinctive elements of the Bahbahānian paradigm were its employment of particular epistemological, methodological and functional frameworks. Mudarrisī's legal philosophy as a paradigm shift, therefore, is presumed to represent a departure from these three levels. The second chapter attempted to provide an analytical reading of the socio-political and internal intellectual factors that constructed and formed the overview of Mudarrisī's thought. This analytical reading was designed to pave the way for this chapter where I will elaborate on the ways in which al-Mudarrisī has departed from the Bahbahānian paradigm on each level, and his adoption of classical *Shī'ī uṣūl al-fiqh* in a way accommodates his alternative, namely, the *maqāṣidī* project. Therefore, I will first describe in detail Mudarrisī's insights in connection with jurisprudential theory, beginning with his epistemological framework and its applications in jurisprudence. Then, I will move on to examine his methodological ideas. For each element of his thought, I will shed light on the way in which he departs from the Bahbahānian paradigm by constructing a context that allows for comparison. The third level, i.e. the functional framework, will be discussed in the subsequent chapters.

3.2. The Epistemological Framework of al-Mudarrisī

In Chapter One, it was argued that the Bahbahānian paradigm had a specific epistemological framework that crucially affected its methodological procedures²⁵⁷. I will

²⁵⁴ Weiss, *The Search for God's Law*. p. xxv.

²⁵⁵ See: p 59-60.

²⁵⁷ See: p 43-5.

here begin with Mudarrisī's epistemological framework as an expression of a paradigm shift from the Bahbahānian one. I will address the issue beginning with an overview of the position and the significance of epistemological discussions in Shī'ī jurisprudence. The ultimate aim here is to establish the context in which Mudarrisī's position can be placed. Following this, I will examine the way in which Mudarrisī addressed the question of epistemology, generally, as a foundation of his thought. This demands an analytical examination of the general characteristics of his epistemological attitude. Finally, I will investigate the way in which Mudarrisī employed this epistemological attitude in jurisprudential issues and the vision that it can be deemed as a paradigm shift from the Bahbahānian paradigm. Throughout this discussion, I aim to argue that Mudarrisī departed from Aristotelian epistemology under the influence of the Tafkīkī school. He adopted a new epistemology that allowed him to address jurisprudential issues in an innovative way that was congruous with his *maqāṣidī* approach to jurisprudence.

3.2.1. An Overview of the Epistemological Discussions in Shī'ī Jurisprudence

It is important here to closely identify what is meant by epistemological discussions in Shī'ī jurisprudence and also to make a clear distinction between reason (*al-dalīl al-'aqlī*) as one of the four sources of deriving *sharī'a* law and the epistemological foundation of justifying the *validity* of several sources of the *sharī'a*. Since the establishment of Shī'ī jurisprudence, considerable parts of Shī'ī jurisprudential discussions are considered to be 'a system developed through a form of philosophical analysis applied to socio-linguistic principles (*al-uṣūl al-lafẓiyyah*) and rational norms (*binā' al-'uqalā'*) in order to determine general rules for the interpretation of what may largely be reduced to the exoteric meaning of utterances (*ẓāhir al-alfāẓ*) and rational correlations (*al-mulāzamāt al-'aqliyyah*)²⁵⁸. These kinds of discussions, though they might include some textual bases, are what is meant by epistemological discussions or foundations of Shī'ī jurisprudence, i.e. the theory of knowledge that determines the nature of knowledge, its value, and sources. In this sense, what is known as reason (*al-dalīl al-'aqlī*) in jurisprudential literature would be an application of these epistemological foundations in

²⁵⁸ Ali-Reza Bhojani, *Moral Rationalism and Shari'a: Independent Rationality in Modern Shī'ī Usul Al-Fiqh*. (New York: Taylor & Francis, 2015).p. 49

specific areas of *uṣūl al-fiqh*. Although in modern and contemporary textbooks of Shīʿī jurisprudence most of these epistemological foundations are often discussed within the field of reason, specifically in the issue of rational correlations (*al-mulāzamāt al-ʿaqliyyah*), they are not confined to this field. In the pre-Anṣārī era, these the rational foundations of jurisprudence used to be debated within the issue of certainty (*qaṭʿ*) and speculative knowledge (*ẓann*), though their scope is vaster than these areas and goes throughout all the *uṣūl al-fiqh* as its theoretical foundations. In actual fact, in this era of the history of Shīʿī jurisprudence, the subject has witnessed considerable attention in that the issue of *al-qaṭʿ* and *al-ẓann* became a philosophical discussion and an analysis of the theory of knowledge rather than a legal discussion. However, before the emergence of the Akhbārī School, the discussions of the theory of knowledge were regarded as theological debate topics and had not noticeably been applied in jurisprudential discussions.

According to this understanding of the nature of epistemological discussions in Shīʿī jurisprudence, it would be misleading to simply confine the subject to the issue of reason. Such too would be the case if the Uṣūlī-Akhbārī conflict was merely considered a debate on whether reason can be counted as a source alongside the Qurʿan and *Sunnah*, rather than as a fundamentally epistemological debate. This understanding is what motivated some contemporary scholars to question, not only the position of reason in Shīʿī jurisprudential thought, but also the epistemological foundations of the majority of the *uṣūlī* fields as a rational mechanism of justifying jurisprudential theories²⁵⁹. Interestingly, some have argued that in effect the critiques of Akhbārism are deemed to be the first Islamic Shīʿī criticism of theoretical reason, comparable to the first Western critique of theoretical reason by Kant in the modern age²⁶⁰, which supports the idea that the debate goes beyond mere reason.

Identifying the subject as such, at the beginning of this research, I attempted to define the epistemological characteristics of current Shīʿī jurisprudence (which I called the

²⁵⁹ ʿAmmār Abū Radghīf wrote two books specifically on this issue, namely Radghīf, *al-Usus al-ʿAqliyya: Dirāsa lil Munṭalaqāt al-ʿAqliyya lil Baḥth fī ʿIlm al-Uṣūl, Dār al-Faqīh, 2005*. ʿAmmār Abū Radghīf, *al-Ḥikma al-ʿAmaliyya: Dirāsa fī al-Naẓariyya wa ʾĀthārahā al-Taṭbīqiyya*, 1st ed. (Iran: Dār al-faqīh, 2003)

²⁶⁰ Radghīf, *al-Usus al-ʿAqliyya: Dirāsa lil Munṭalaqāt al-ʿAqliyyah lil Baḥth fī ʿIlm al-Uṣūl*, p.106

Bahbahānian paradigm). I argued that it's epistemological features were as follows. The paradigm mainly formed a theory of knowledge as it was inherited from the philosophical Iṣfahānī school within the Aristotelian framework of theoretical and practical reason. This led the paradigm to be occupied with the duality of certainty (*al-qaṭʿ*) and speculative knowledge (*al-ẓann*), making this duality dominate almost all jurisprudential discussions, be they in the application of the theoretical or practical reason. These epistemological characteristics were clearly manifested in the pre-Anṣārī era in analyzing the nature of *al-qaṭʿ* and *al-ẓann*, as they were in Anṣārī's era, within the discussion on rational correlations (*al-mulāzamāt al-ʿaqliyyah*). However, the duality was manifested in the discussion on reason in the contemporary era were discussion included both independent rational and non-rational indicators (*al-mustaqillāt wa ghayr al-mustaqillāt al-ʿaqliyya*).

Examining this understanding of the nature of epistemological discussions in Shīʿī jurisprudence will pave the way for us to understand the reason why Mudarrisī has paid considerable attention to the field of epistemology, and the way in which he has infused this topic within his jurisprudential theories and discussions.

3.2.2. Mudarrisī's Epistemological Works

Among all of Mudarrisī's works (excluding Qur'anic and *fiqhī* works as they would naturally require a considerably quantitative approach), the epistemological works have the lion's share in both quantity and quality. He wrote three important books, which discuss epistemology (or the theory of knowledge as it is known in contemporary Arabic and Islamic literature). They are, respectively: *al-Fikr al-Islāmī: Muwājaha Ḥaḍāriyya*, *Buḥūth fi al-Qur'an al-Ḥakīm*, and *al-Manṭiq al-Islāmī: Uṣūluhu wa Manāhijuhu*.

Although *Al-Fikr al-Islāmī* was published before *Buḥūth fi al-Qur'an al-Ḥakīm*, it might be that the latter was written first, as it was in fact a transcription of a series of lectures delivered at Baghdad University. Moreover, in terms of the contents too, *Buḥūth fi al-Qur'an al-Ḥakīm* appears to have been penned earlier, as *Al-Fikr al-Islāmī* seems to be an extended application of the ideas of the former. In any case, these three works

represent three stages in Mudarrisī's epistemological thought, beginning with *Buḥūth fi al-Qur'an al-Ḥakīm* and ending with *al-Manṭiq al-Islāmī*.

In *Buḥūth fi al-Qur'an al-Ḥakīm*, Mudarrisī addressed the question of epistemology in the section entitled 'reason' – (*al-'aql*)²⁶¹, in which he discussed an ontological view of reason, the nature of rational judgments and the difference between reason and human will. Reflecting on the way in which he addressed these issues, one can conclude that his discussions were noticeably preoccupied with internal Shī'ī theological and philosophical debates on epistemology, which was directly relevant to theological attitudes. In a sense, he was preoccupied with Shī'ī-Shī'ī dialogues more than with establishing a theory in epistemology for general human knowledge²⁶². Moreover, it clearly reflects his Tafkīkī association, which is characterized by an anti-Aristotelian framework as an alternative to the mainstream in Shī'ī theology and philosophy.

In *Al-Fikr al-Islāmī*, Mudarrisī expanded his epistemological discussions both quantitatively and qualitatively. In terms of quantity, the epistemological discussion was introduced in the third one of this book, in which he set out to elaborate his ideas in detail. In terms of quality, he began a comparative analysis, measuring his own system against various schools of philosophical thought. Special attention was paid to Marxist thought as it was the dominant socio-intellectual trend in Iraq at that time, promoted by the nationalist and communist movements. Although he was comparing his thought with different Western and Eastern schools of thought, it is noticeable that his approach to the subject was defensive, and concerned with the socio-political circumstances of Iraq and generally of the Arab context.

His most qualitatively mature as well as his largest contribution as far as epistemology was concerned was *al-Manṭiq al-Islāmī*. The book consists of an introduction and seven chapters, which can be grouped into three main sections in addition to the introduction: history of logical thoughts, principles of Islamic logic, and the scientific

²⁶¹ *Buḥūth fi al-Qur'an al-Ḥakīm*, pp. 88-119

²⁶² An excellent review of this debate see: Radghīf, *al-Usus al-'Aqliyya: Dirāsa lil Munṭalaqāt al-'Aqliyya lil Baḥth fi 'Ilm al-Uṣūl, Dār al-Faqīh, 2005*. Also, 'Ammār Abū Radghīf, *al-Hikma al-'Amaliyya: Dirāsa fi al-Nazariyya wa Ātharahā al-Taḥqīqiyya*, 1st ed. (Iran: Dār al-faqīh, 2003).

methodologies of conducting research in the social sciences and humanities.²⁶³ Focusing on the field of epistemology, it seems that Mudarrisī was concerned with establishing an Islamic epistemological theory. He was confident that there should be an Islamic theory of the most important subject. He recognised a need for an Islamic epistemology, given that seeking knowledge was the most important task of the scholar.²⁶⁴ However, this theory could not be the Aristotelian framework as the latter had proved its limitations. At the same time, it could not be confined to religious fields either; rather, it had to be a theory that could be applied to all branches of knowledge. Thus, it required a constructive and critical integration of all logical ideas. He was aiming to develop a theory which was less a defence of Islam in the face of non-Islamic philosophies, but rather an Islamic theory of knowledge which integrated, when appropriate, the ideas current within certain non-Islamic philosophical trends. These were exactly what he provided in his book and what made it the most mature work out of all his epistemological contributions.

Considering these three experiences with their characteristics, Mudarrisī's epistemological attitude was characterized by several features, which he would employ in his jurisprudential analysis. In the next section, I will demonstrate the general characteristics of Mudarrisī's epistemology, followed by an examination of how he used them in the field of jurisprudence.

3.2.2. The General Characteristics of Mudarrisī's Epistemology

In terms of epistemology, Mudarrisī's attitude begins by providing an ontological view of reason (*al-'aql*), its relationship with the self (*al-nafs*), and its components. Finally, he ends with his view of the method as a scope of the activities of reason. I will therefore address each issue separately with the ultimate goal of demonstrating different dimensions of his view.

3.2.2.1. The Ontological View of Reason (*al-'aql*)

²⁶³ I discuss this work of his elsewhere in the research in terms of the intellectual biography of Mudarrisī, in painting a picture of and taking into consideration the socio-political context of his life. (See: p 96-8).

²⁶⁴ al-Mudarrisī, *al-Manṭiq al-Islāmī: Uṣūluhu wa-Manāhijuhu*, p. 25

The concept of reason and its applications across a variety of disciplines in Islamic thought has been a controversial and crucial issue. The issue used to divide the Muslim community, generally speaking, into two trends with the Shī'ī attitude standing in support of the authority of reason, to a considerable extent alongside the Mu'tazila. However, the situation has changed since the growth of philosophical theology and the role of reason in the discovery of religious knowledge. This had, for some time been the source of intra-Shī'ī debate. The situation went a step further with the emergence of the Akhbārī School, in that the dispute became a jurisprudential discussion as well. In this context, identifying the ontological concept of reason became a starting point in determining each position in the debate. Mudarrisī, following this pattern, begins with identifying an ontological position towards the concept of reason. His position has two claims on the nature of reason.

The first claim is that reason is a specific creation, distinct from the human soul. It consists of light, and is considered a spiritual (*rūḥānī*) entity, being the first of Allāh's creations²⁶⁵. Though these statements about the nature of reason are mainly founded on textual bases, Mudarrisī, following the Tāfīkī school, considers the religious texts involved in examining this issue to be texts of the "reminding" and "provoking" sort. Therefore, he, as well as the Tāfīkīs, attempts to provide a rational justification for this view based on a psychological analysis and what is claimed to be a 'primitive' or intuitional (*fiṭrī*) argument²⁶⁶. Viewing reason as a distinct creation stands against a wide range of philosophical views that see reason as a faculty inside the human being, and consequently, it results in a different analysis of the relationship between the agent and the known object. It would, of course, considerably affect any theory of knowledge. The psychological and 'primitive' argument regarding reason as a distinct creation argues that the absence of reason in childhood as well as in old age suggests that reason is not an intrinsic part of the human being, otherwise it would be present throughout the human lifespan. In addition, the absence of reason when consumed by anger or lust or any other similar situation is another indication of this. In a sense, reason is a gift from

²⁶⁵ *Buḥūth fī al-Qur'an al-Ḥakīm*, pp. 88-90

²⁶⁶ *Ibid.* pp. 99-100

Allāh, bestowed upon the human being in a particular situation at a specific time, especially when he/she is pious and seeking good²⁶⁷. Mudarrisī says:

“One of the facts that will be discovered when we reflect on reason through its effects, is the fact that reason is granted. After this bestowal, we come to the realization that the light of reason was absent in us, but then suddenly and without any kind of self-acquisition of it, it was given to us. Then, when we are unable to find it again at will, when attempting to remember something, for example, but forgetting it instead [...] here, we know that controlling reason is in someone else’s hand, that is, Allāh”²⁶⁸.

This leads to the second argument:

The second claim is that reason has particular moral characteristics that are considered intrinsic to it. If one relies on textual sources, as Mudarrisī does, these characteristics amount to about seventy-five moral characteristics, which stand opposite to which stand opposed to seventy-five "immoral" or "morally repugnant" characteristics linked to ignorance of human beings. Examples of these moral and immoral characteristics are good versus evil, faith versus disbelief, honesty versus lying, self-control versus anger and so on. As it was said above, the mention of these characteristics in the text is merely as a kind of reminder. This means that one can primitively discover these moral characteristics by referring to his/her intuition. Mudarrisī says:

“Since reason is a grant, it is absent in childhood, but is suddenly planted in the human being when s/he becomes mature [...]. At this stage, he/she feels a dazzling light immersing her/his heart and guiding her/him to (1) wisdom and (2) knowledge. The wisdom shows him/her good and evil, and virtue and vice, and guides him/her to goodness and happiness”²⁶⁹.

This viewpoint of reason leads to the second general theme of Mudarrisī’s epistemology, in which he addresses the causes of human faults in knowledge.

²⁶⁷ Ibid. pp. 101-10

²⁶⁸ Ibid. pp. 101

²⁶⁹ Ibid. pp. 103

3.2.2.2. Between Reason and Desire (*al-hawā*)

Based on the previous ontological overview of reason as the source of truth and moral attributions, the question that Mudarrisī raises here is that, having realized the ontological status of reason, what is the source of error for human beings in terms of knowing physical objects and moral judgments? Here Mudarrisī turns away from his purely epistemological perspective and provides a more detailed psycho-ontological view.

Mudarrisī believes that the human self (*al-nafs*) is an entity which consists of three elements: human will, reason and desire (*al-hawā*)²⁷⁰ (see figure 5). Human will is neutral and can be supportive either to reason or to desire depending on which of them takes over. However, the other two, namely reason and desire, have their own characteristics that affect human behavior, not only in everyday life, but also in epistemology. Accordingly, one has to firmly differentiate between conceptual ideas that emanate from reason and others that stem from desire, in order to avoid error in terms of epistemology. Based on this simple psycho-ontological view of the self, Mudarrisī makes two claims concerning human desire, followed by the assertion that most human errors over statements of knowledge can be attributed to psychological factors rather than mistakes in reasoning.

The first claim regarding the nature of desire is that desire is an intrinsic part of the human self²⁷¹. Its origins are the biological instincts of the human being, such as the desire to survive, eat and reproduce. When these desires are related to physical things, such as eating and reproduction, they are called *shahwa* in Islamic terminology. However, when related to non-physical things, such as the desire for power, to belong to a social group, money, learning and luxury, they are called *hawā*.

The second claim is that desire can affect the conceptual understanding of the individual when he/she is employing epistemological justifications. The nature of its

²⁷⁰ Ibid. p. 117

²⁷¹ *al-Manṭiq al-Islāmī: Uṣūluhu wa-Manāhijuhu*, pp. 186

representations is negative when seeking an objective truth, and it inclines to leading the human toward deviation²⁷².

Based on these claims, Mudarrisī argues that human knowledge is neither purely objective and nor can it detach rational activities from its psycho-social existence. Rather, it is affected to a large extent by its psycho-social activities, and therefore, these affect the conceptual understanding of the individual.²⁷³ In order for human knowledge to avoid errors, we have to distinguish between conceptual ideas that stem from reason and those that come from desire. To this end, Mudarrisī benefits considerably from psychological and sociological studies and theories that have researched the effects of society and self-awareness on the human being, especially in terms of epistemology. Thus, Mudarrisī argues that the mistake of Aristotelian logic is that it focuses on the form of knowledge, that is the form of deduction, and it ignores, or at least neglects, psychological factors²⁷⁴ in his view, major errors emanate from these psychological factors. In other words, reason has to be fully active to guide the human being through all stages of the deductive process. This requires the individual, and the analyst, to understand the psychosocial factors that are involved in the process of knowledge acquisition, and to control them such that reason or rationality determines the outcome. This would guarantee, as far as is possible, the avoidance of errors and would build a relatively coherent view in the subject of study. This approach might be very similar to some trends in the theory of knowledge in Western philosophy, such as coherentism²⁷⁵ or the reflective equilibrium²⁷⁶. However, in Mudarrisī's view, to make this epistemology work a reality, he calls for a specific *method* which brings us to the third element of his epistemology.

²⁷² Ibid. pp. 190-91

²⁷³ Ibid. pp. 205-14

²⁷⁴ Ibid. pp. 61

²⁷⁵ Olsson, Erik, "Coherentist Theories of Epistemic Justification", *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), Edward N. Zalta (ed.), forthcoming URL = <http://plato.stanford.edu/archives/spr2014/entries/justep-coherence/> (accessed: 12.12.2013)

²⁷⁶ Daniels, Norman, "Reflective Equilibrium", *The Stanford Encyclopedia of Philosophy* (Winter 2013 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2013/entries/reflective-equilibrium/>.(accessed: 12.12.2013)

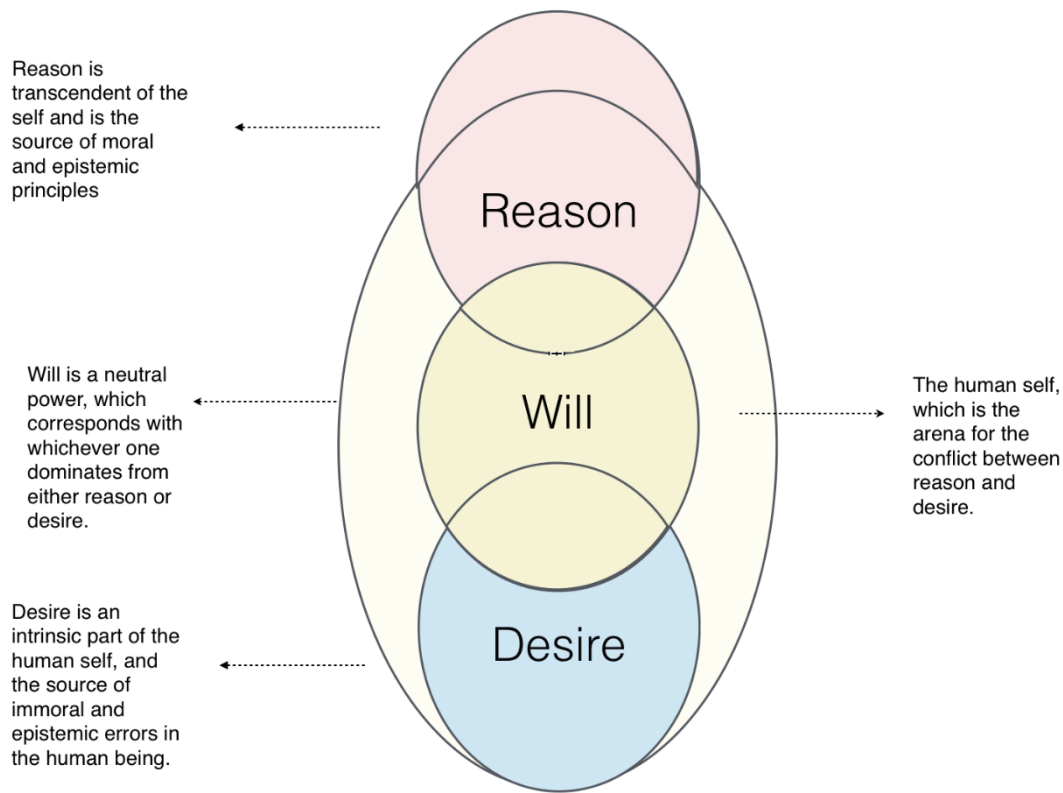


Figure 5 – This diagram shows the construction of the self and its components in Mudarrisī's view. The self in Mudarrisī's view consists from Will, Reason and Desire.

3.2.2.3. The Method and the Object

Based on Mudarrisī's previous arguments, particularly that reason is intrinsically different from desire and that the majority of human errors in terms of knowledge are attributable to psychological factors, Mudarrisī argues that calling for the application of this method would be a rational and practical way in which this theory can be represented and work properly. Calling for the application of this method simply means three things for him:

Firstly, the recognition that the Aristotelian endeavour of establishing a general and formal rule of deduction is applied to all disciplines is erroneous. Rather, the object of each research itself should specify which method of research and what sort of deduction would be most appropriate²⁷⁷. Here, he seems to resemble the pragmatic theory of knowledge and logic, especially John Dewey's; since he has cited him several times, that the object would itself specify the method. According to Mudarrisī, it would not be as problematic to get something wrong within the method as it would be if we got the actual method wrong²⁷⁸.

Secondly, that reason would be active and dominant at all stages of research, from going back and forth critically, to choosing an appropriate method, to forming a deduction, to considering the object of the research and to finally reaching a coherent conclusion. This would place the epistemological value of all elements of the research under the supervision of reason, depending on the case study²⁷⁹.

Thirdly, that as the subject matter dynamically follows the method, the inquiry has to be open to all available and appropriate methods in favour of finding the most correct answer to the research. Actually, this is exactly what Mudarrisī did in his work on logic. He examined various methods found in different disciplines, and sought to learn from all of them in composing a work on logic.

To sum up, the general characteristics of Mudarrisī's epistemology lie in the belief that reason is the source of truth, because reason is differentiated from desire as the source of error. He established this epistemology to be valid for all disciplines of knowledge, and therefore applied it himself in his theological as well as his jurisprudential work. In the following sections, I will examine how he has gone about applying his epistemology in jurisprudence and how it affects his opinions regarding rational evidence and its relevant issues.

3.2.3. Mudarrisī's Epistemology in Jurisprudence

²⁷⁷ Mudarrisī, *al-Manṭiq al-Islāmī: Uṣūluhu wa-Manāhijuhu*, pp. 371

²⁷⁸ Ibid. p. 340

²⁷⁹ Ibid. p. 342

Mudarrisī's attitude regarding epistemology has naturally been reflected in his jurisprudential works. Although the central concern of his jurisprudence is not epistemology as it was for the Bahbahānian paradigm, where the importance of gaining knowledge and especially religious knowledge was central, there are many issues in jurisprudence which need a clear epistemological position. Moreover, I argued above that challenging the epistemological framework represents a paradigm shift from the Bahbahānian one, and therefore any attempt to move away from the Bahbahānian paradigm requires a clear epistemological alternative. Therefore, Mudarrisī addressed several central jurisprudential issues in the field of Shī'ī jurisprudence, namely *al-ḥujjiyya*. These issues are the correlation between reason and *sharī'a* (*al-mulāzamāt bayna al-'aql wa al-shar'*), certainty (*al-qaṭ'*) and speculative knowledge (*al-ẓann*), sometimes called the *ḥujjiyya* of legal indicators (*ḥujjiyyat al-amārāt al-shar'iyya*). In the following sections, I will examine these three issues aiming to demonstrate Mudarrisī's opinions and to show how they fit in with his *maqāsidī* endeavour.

3.2.3.1. The Correlation between Reason and *Sharī'a* (*al-mulāzamāt bayna al-'aql wa al-shar'*)

The jurisprudential question here is simply whether or not the judgment of reason necessitates that the *sharī'a* judge in accordance with it? Though the question is as simple as that, an answer entails many prior philosophical stances regarding the nature of the judgments of reason, the nature of divine judgments, and the actual rational tools that have been employed in deriving the judgments of reason. Likewise, Mudarrisī structured his treatment of the issue, and paid special attention to the issue of certainty. In the following sections, I will demonstrate the first three issues, and then I will go on to deal with the topic of certainty in subsequent sections.

3.2.3.1.1. The Nature of the Judgments of Reason

There is a wide debate amongst Muslim scholars regarding the nature of the judgments of reason, namely whether it is only a discovery of existing divine moral judgments, or whether reason itself is a source of moral judgments independent of the divine? In other words, is reason merely an empty instrument like a torch or is it rather a source? Though whether reason is an instrument or a source it is not a significant issue

jurisprudentially for the camp of the *‘Adliyya*: ultimately they all agree that reason and *sharī‘a* are correlative. It is, though, a crucial point for the other camp as it is specifically based on this ground that they reject the correlation of reason and *sharī‘a*. Besides the historical and intellectual factors that rendered this issue so sensitive, the importance of the issue for Mudarrisī is represented by the fact that he, following the Tafkīkī school to a degree, embraces a particular conception regarding the nature of reason, as demonstrated above, that changes the whole discussion here. For him, reason is a source of moral judgments as well as an instrument of discovering reality in general, whether this reality be physical or social in general terms. Thus, in his view, the whole discussion that divides the scholars into two camps becomes meaningless, because for the Ash‘arī camp’s rejection of the authority of reason as the source, entails the whole grounds for believing in religion to be demolished. This is because reason is the very basis for proving the need for religion in the first place, not to mention the credibility of miracles and even the existence of God. For the *‘Adliyya* camp, it also becomes meaningless to confine the capacity of reason to being only a source or an instrument, because this is a sort of reduction of the various capacities of reason²⁸⁰. Having said that, there is another issue pertaining to the judgments of reason judgments, which will be dealt with later on – namely whether these kinds of moral judgments entail action in accordance with them, consequently making the agent deserving of reward or punishment.

Mudarrisī says, “Reason might pass a judgment about something, and when it does so, it judges assertively for the necessity of its implementation. However, this is different from legal obligation, which is what makes it deserving of reward for performing it or punishment for refraining from it.”²⁸¹.

This position will directly affect the following dimension of the issue.

3.2.3.1.2. The Nature of the Judgment of *Sharī‘a*

Identifying the nature of the judgment of the *sharī‘a* is Mudarrisī’s paraphrasing of the main question of the debate, which is usually posed as whether or not the judgment of

²⁸⁰ *al-Tashrī‘ al-Islāmī: Manāhijuhu wa-Maqāṣiduhu*, v.1, p. 89

²⁸¹ *Ibid.* p. 87

reason necessitates that the *sharī'a* judge in accordance with it and vice versa? However, he has chosen a different strategy to deal with the issue, by de-structuring the whole issue into separate elements, and then clarifying each one of them before re-structuring them again to make a judgment. This strategy avoids many misunderstandings surrounding the debate, and roots the discussion into an actuality and makes it practically relevant to the conceptions used. Rather than being too abstract and generalizing the concepts of the debate across all elements, Mudarrisī prefers to discuss what is really practised. Based on that approach towards the debate, Mudarrisī has two main arguments.

The first argument is that reason, in its characterization as a luminous moral spiritual creation, cannot conflict with *sharī'a*. Instead, what does conflict with *sharī'a* is the other faculty in the human being, i.e. desire (*al-hawā*), for the general contrast between good and evil²⁸². To link this idea to the Shī'ī jurisprudential debate, there is an extended discussion among Shī'ī scholars as to the nature of divine commandments (or instructions). Generally, they are divided into two broad categories. The first are guiding commandments (*al-awāmir al-irshādiyya*), and the second, establishing commandments (*al-awāmir al-mawlawiyya*). The guiding commandment - "whether its purport be rational judgments or positive legal judgments - its role will be one of reminding and guiding to rational judgment or positive legal judgment"²⁸³. For example, when the commandment instructs the human being to obey God, it is here a guiding commandment, because obedience to God is something that can be discovered by reason; and if it were to stem from the commandment itself, then it would lead to either circularity or to infinite regress. On the contrary, the establishing commandment is that which has been issued to motivate the human being to an action that, without this commandment, would not be known by any means, such as the ritual prayer, for example²⁸⁴.

Mudarrisī argues that the relationship between divine instructions (commandments) and reason is complex, and not a simple matter of God's command being subject to, or

²⁸² Ibid. p. 88

²⁸³ Muḥammad Ṣanqūr al-Baḥrānī, *al-Mu'jam al-Uṣūlī*, 2 ed., 2 vols., vol. 1, (Iran: Manshūrāt Naqsh, 2006), p. 330.

²⁸⁴ Ibid. 337

indeed outside of, the demands of reason. For him, the *Sharʿ* and reason are the same essence but with different manifestations, in which the *Sharʿ* is reason in textual form and reason is the *Sharʿ* in rational form within the human being. Thus, divine instructions awaken and remind about rational judgments that already exist inside the human being, and the judgments of reason judgment reveal about divine judgments, in addition to their conceptual role of understanding divine texts²⁸⁵. In this sense, he disagrees with the famous division mentioned above, because he argues that all religious texts, aside from their complexity and diversity, are simply another aspect of reason. Subsequently, the whole duality of divine instruction versus reason, in his view, is meaningless and would fundamentally be solved by his approach.

Based on this argument, Mudarrisī divides the role of reason into three dimensions. First, reason generally confirms revelation, i.e. based on the nature of the judgments of reason, religion can be confirmed or rejected as revelation from God. Second, reason is responsible for understanding divine law (*Sharʿ*), i.e. through the dialectical relationship between *Sharʿ* and reason, in which the religious text invokes reason and reason reflects the contents of divine law, it would eventually be possible to understand the principles of the *Sharʿ*. Third, through understanding the principles of the *Sharʿ*, the other role of reason would be to apply these principles in reality, i.e. it is the role of reason to allocate a particular principle to be applied in a specific context in reality. This view, breaking down the roles of reason, will be the basis of Mudarrisī's argument for the second point of the section, namely certainty (*al-qaṭʿ*)²⁸⁶.

Mudarrisī's second argument revolves around his assessment that the protagonists of the different views are based on a faulty presumption. This presumption is that there are areas where the *Sharʿ* does not have a specific legislation, and therefore reason would have to take the responsibility of making a judgment therein. Mudarrisī rejects this presumption from the ground and claims that there is no area that the *Sharʿ* does not cover²⁸⁷. He bases this argument on theological and textual foundations. As for

²⁸⁵ al-Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v.1, pp. 86-87

²⁸⁶ Ibid. pp. 43-53.

²⁸⁷ Ibid. pp. 89.

theological foundations, he argues for the perfection of religion, which means that Islam is the final and timeless message for humankind from God. Hence, there should necessarily be no area left that the *Sharʿ* does not cover²⁸⁸. Concerning textual foundations, he relies on extensive texts transmitted by the Imāms that state that the book (the Qurʿan) and the *Sunnah* have covered all that humankind need. Having said that, he does not reject the Shīʿī jurisprudential position first initiated by al-Ṣadr and further developed by Shams al-Dīn, who claimed that there are empty areas that God has intentionally left as such²⁸⁹. Rather, he holds that through the moral principles of the divine law, the jurist would be able to eventually discover all the needs of humankind, in a way that results in there being no empty areas. Insisting on this claim, Mudarrisī wants to change the debate around reason and revelation by eliminating the duality between the two. This alternative, according to him, would be included in the *maqāṣidī* project.

To sum up, Mudarrisī embraces a particular conception of reason, following the Tawkīfī school, that characterizes the nature of the specific features of the judgments of reason in a way that establishes a correlative relationship between reason and the *Sharʿ*. The nature of this relationship is that they share the same essence with a different manifestation. Adopting this approach, Mudarrisī determines three roles for reason toward the *Sharʿ*, i.e. confirming, understanding, and applying. Moreover, he argues that there is no area that the *Sharʿ* does not cover and through moral principles: the *Sharʿ* - with the help of reason – would, therefore, be timeless. However, this approach leads to the question that if reason does not conflict with the *Sharʿ*, what might the *Sharʿ* then conflict with? This leads us to the second point of the section.

3.2.3.1.3. The Judgment of *Sharīʿa* and Actual Rational Methods

In answer to the question of what the *Sharʿ* might conflict with, Mudarrisī provides an alternative reading for the history of Shīʿī jurisprudence pertaining to its attitude toward reason. Based on this reading, he builds his view regarding the relationship between reason and *Sharʿ*. He sees the negative Shīʿī jurisprudential attitude toward reason in

²⁸⁸ Ibid.

²⁸⁹ Muḥammed Bāqir al-Ṣadr, *Iqtīṣādunā*, 2nd ed. (Iran: Markaz al-Nashr al-Tabiʿī li Maktab al-ʿIlām al-Islāmī, 2005), pp. 380.

both early and modern stances to be mainly held by the Akhbārīs and some Uṣūlīs. This is attributed to the notion that they were not rejecting reason itself as a reliable faculty in the human, but rather that they were rejecting specific rational methods that were employed in reading the holy texts. These rational methods were the Greek rational traditions that were embraced by mainstream Uṣūlīs in the eighteenth and nineteenth centuries. In his view, it is this trend that Akhbārism was critiquing and, similarly, some Uṣūlīs, such as Muḥammad Ḥusain al-Iṣfahānī, the author of the *al-Fuṣūl al-Gharawiyya*²⁹⁰.

In addition to that reading, Mudarrisī also provides two arguments to support his claim that the *Sharʿ* would conflict only with the actual applied rational methods rather than with reason itself. The first argument is that these rational methods, especially the Greek rational tradition and particularly the Aristotelian epistemological framework, have not proved their reliability in any scientific, intellectual or philosophical field. Instead, they have proved their failure in all these fields. Here, he cites the Western experience of the Renaissance, which according to his understanding, built its civilization and its social and scientific advances by liberalizing itself from the Aristotelian framework. Mudarrisī argues that contemporary Muslim scholars, similarly, have found the Aristotelian perspective unhelpful and, therefore, rejecting its application to religious disciplines²⁹¹.

The second argument is that Islamic thought has a distinctive theory of knowledge, with its own methods for general human knowledge. In particular, Mudarrisī argues that it is this theory which is used to understand Islamic sources of knowledge (namely, the Qurʿan and the *Sunnah*).. Therefore, any employment of foreign methods in dealing with Islamic sources would naturally lead to a conflict between the *Sharʿ* and these methods²⁹². This is how he understands established jurisprudential topics such as the necessity of ‘hearing from the infallible’ (*al-samāʿ min al-maʿṣūm*) or ‘not receiving a prohibition from the *Sharʿ*’ (*ʿadam wurūd al-nahy min al-Sharʿ*) in choosing a particular

²⁹⁰ al-Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v.1, pp. 95-98.

²⁹¹ Ibid. p. 94.

²⁹² Ibid. p. 102.

method. For Mudarrisī, these ideas are a jurisprudential expression of the theological principle of guardianship (*wilāya*)²⁹³. The best example of this idea is the issue of certainty (*al-qaṭʿ*), in which the jurisprudential debates obviously show the tension between two tendencies amongst Shīʿī scholars. Mudarrisī uses this debate to demonstrate how the foreign methods have affected jurisprudential debates within which the scholars have been divided.

3.2.3.1.4. Certainty (*al-qaṭʿ*)

Although the issue of certainty (*al-qaṭʿ*) had been a central concern since the Akhbārī-Uṣūlī debate in the seventeenth century and became more obvious with the Bahbahānian paradigm, it has become a notable discourse with particular terminology since Shaykh al-Anṣārī published his famous work, entitled *Farāʿid al-Uṣūl*²⁹⁴. ‘Certainty’ in this discourse means by definition that one is a hundred percent certain and assured about the content of a particular statement²⁹⁵. The main question of the issue of certainty (*al-qaṭʿ*) in the field of jurisprudence is: does certainty have an authority (*ḥujjiyya*)? If so, what kind of authority does it have? From where has it gained authority? What is the legal status of someone who breaks from following the content of certainty? The importance of this issue is that it represents a foundation for the central issue of jurisprudence, that is to say, the issue of the authority of the legal evidence that is deemed valid evidence for deriving legal rulings. In addition, the jurisprudential debate regarding the relationship between reason and *Sharʿ* is usually discussed here. The mainstream body of Uṣūlīs, in contrast to the Akhbārīs, believe that the authority of certainty is self-evident. It is an essential proof (*dhātī*) that cannot be separated from it, though they disagree upon the nature of its authority and whether it is used to discover reality or merely to excuse the believer.

In this context, Mudarrisī tends toward the Akhbārī position and develops it further by enriching it with his epistemological background. The combination of his argument between these two elements represents that he relies on the Akhbārī position of calling

²⁹³ Ibid. p.103.

²⁹⁴ al-Anṣārī, *Farāʿid al-Uṣūl*, p. 1

²⁹⁵ Muḥammed Ṣanqūr al-Baḥrānī, *al-Muʿjam al-Uṣūlī*, 2nd ed. vol. 2 (Iran: Manshūrāt aqqsh, 2006), p.386

for applying the principle of guardianship (*wilāya*) and on the other hand on his epistemological understanding of human knowledge. Though he provides eight arguments to refute the authority of certainty, they can be summarized into three main arguments.

In his first argument, Mudarrisī challenges the notion of "certainty" employed by most protagonists in the debate. Mudarrisī believes that certainty (*qaṭʿ*) as a term comes from the Greek philosophical tradition, which Muslim scholars have adapted in their religious scholarship and through this adaptation the term has been blended with the concept of knowledge (*ʿilm*)²⁹⁶, especially when Shīʿī *uṣūl al-fiqh* was mingled with philosophical tendency, these terms and conceptions blended together to the extent that they could easily be interchanged in jurisprudential discussions. However, according to Mudarrisī's viewpoint, certainty (*al-qaṭʿ*) is merely a psychological status regarding a statement and in this sense it is not different from complex ignorance (*al-jahl al-murakkab*)²⁹⁷. But knowledge (*ʿilm*) is epistemologically a different level. It is discovering reality, i.e. religious reality. Therefore, once we have doubted the dominant status of certainty, viewing it as merely a psychological state, according to Mudarrisī, we can then embark on examining what kinds of knowledge are appropriate for religious topics. Simultaneously, following certainty (*al-qaṭʿ*) regardless of its foundations become illegitimate. This argument paves the way for some other arguments.

The second argument is a theological argument based on the Shīʿī theological principle of guardianship (*wilāyah*). The argument claims that once the overriding power of certainty has been undermined,, we should ask the legislator (*al-shāriʿ*) which kind of knowledge we should go through to obtain religious knowledge. Here, based on the textual evidences and the theological principle of guardianship (*wilāyah*), Mudarrisī argues that the method of knowledge has to be from the teachings of the Infallibles (the Prophet and Imāms)²⁹⁸. Providing this sort of method of understanding religion, Mudarrisī argues, is one of the most important roles of the Infallibles, which in Qurʾanic

²⁹⁶ al-Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v,1, p. 77

²⁹⁷ Ibid. pp. 38-39.

²⁹⁸ Ibid., 111.

terminology is called the role of teaching (*al-ta'lim*). Otherwise, it would have been enough for God to send a prophet who only recites the revelation (*wahy*) for the people²⁹⁹. Having said that, it is worthwhile mentioning that even though Mudarrisī argues that it is an obligation to heed the Infallible in choosing the method of religious knowledge, this does not mean that the provided method is not rational. Rather, it is rational in the sense that it both reminds humankind of their error in choosing some invalid methods such as analogy (*qiyās*) and also provides special methods that are compatible with religious knowledge specifically, such as the mechanisms of *al-muḥkam* and *al-mutashābih*, as mentioned earlier.

The third argument is a combination of theological and practical principles based on the actual practices of Shī'ī jurisprudence. The argument claims that, on the theological level, Muslims believe that there is no area that religion has not covered in terms of legislation, because if there was such an untouched area, it would entail the imperfection of the religion of Islam³⁰⁰. Furthermore, the juristic practice has shown, according to Mudarrisī, that the number of texts and the theoretical hermeneutical tools derived from them are sufficient to obtain reasonable and valid religious knowledge.

From this discussion about certainty (*al-qaṭ'*), one can see how Mudarrisī conceives the relationship between reason and the *Shar'*, in which he rejects the assumption that the *Shar'* has to follow reason regardless of what is claimed to be the root of these rational judgments. Rather, he believes that a specific concept of reason, which is neither the Aristotelian one nor any human conception, has to be followed not as a different source of knowledge, but because it is another manifestation of the *Shar'* itself.

3.2.3.2. The Authority of Legal Evidences (*al-amārāt al-shar'iyyah*)

The field of the authority of legal evidences (*ḥujjiyyat al-amārāt al-shar'iyya*) is deemed historically as the main core of Shī'ī jurisprudence, in particular within the Bahbahānian paradigm, and some contemporary Shī'ī scholars even consider it to be the real

²⁹⁹ Ibid., 114.

³⁰⁰ Ibid., 109.

objective of jurisprudence as an academic discipline³⁰¹. In this field, the scholars' discussion concerns whether certain theoretical tools or conceptions can be considered valid evidence for deriving legal rulings. However, this discussion always raises the question of the criteria that justify whether this or that can be valid legal evidence, and naturally it leads to the epistemological foundation of these justifications. In effect, with the Bahbahānian paradigm, the field became, to a considerable extent, a field of discussing the general theory of knowledge rather than merely being about the epistemic requirements for legal rulings. The significance of the field is that it would form the majority of the legal evidences that the jurist will use in deriving legal rulings and will define not only the actual claimed legal evidence, but also the potential evidence that can be used in *fiqh*. Mudarrisī has engaged in the debate a great deal and in the context of the argument of this section, this shows that Mudarrisī represents a departure from the Bahbahānian paradigm for the *maqāsidī* project, I will allocate his position in the context of Shī'ī jurisprudential discussion in order to show how he departs epistemologically.

The main idea that the Bahbahānian paradigm produced and which became the foundation for the whole field of the authority of legal evidences, was that almost all justifications of legal evidence have to be grounded under the conception of the norms proposed by "rational beings" (hereon "rational norms" - *binā' al-'uqalā'*).. Thus, several claimed legal evidences, such as the validity of the isolated report of the *Sunnah (al-khabar al-wāhid)*, common linguistic usage (*al-zuhūr al-'urfī*), consensus (*al-ijmā'*) and even many of the evidentiary principles (*al-uṣūl al-ithbātīyya*), such as the possession is a proof of ownership (*qā'idat al-yad*), permissibility (*al-ḥilliyya*), innocence (*al-barā'a*), which are all eventually based on the idea of trust, are based on what are called rational norms. Relying on the notion of "rational norms", scholars measured each particular case against these rational norms. However, the root of the idea of rational norms (*binā' al-'uqalā'*) itself rests on the principles of Aristotelian practical logic, as the Bahbahānian paradigm had inherited from that philosophical trend, as explained

³⁰¹ Muḥammad Riḍā al-Muẓaffar, *Uṣūl al-Fiqh*, v. 3 (Iran: Mu'assasat al-Nashr al-Islāmī al-Tābi'ah li Jamā'at al-'Ulamā' fī Qum), p. 7

above³⁰². The strictness of the concept of knowledge in the Aristotelian epistemological framework, with the desire of the Shīʿī scholar to support all claimed legal evidences with reports from the Infallibles, led to limitations of the legal evidences that can be used in deriving legal issues. Furthermore, it led to expanding the scope of the practical principles, which are used in case of a lack of textual evidence.

In this context, Mudarrisī generally accepts the main idea of rational norms as a foundation of claimed legal evidences. However, he disagrees with the Aristotelian epistemology on which it is founded. Therefore, instead of considering the Aristotelian framework as the grounds for rational norms, he believes that reason, as he has defined, has to be the foundation. What differentiates this concept of reason from the Aristotelian one is that it tends more toward being particularistic and contextualized in examining the case study and generalizing the validity of the principle or rule³⁰³. In other words, it is the reason of experience more than the reason of forms. For example, he accepts that the isolated report of the *Sunnah (al-khabar al-wāḥid)* is valid as legal evidence, but not generally for all cases. In some cases the isolated report is not sufficient to base a legal ruling on and this is attributed to the fact that the foundation of its validity, which is rational norms, would limit its validity in such cases. For instance, no rational person would declare a war based on an isolated report, because the evidence has to be consistent with the action³⁰⁴. A similar case can be said for legal evidences - that they are limited by reason in accordance with the case.

Based on this, Mudarrisī requires three conditions for legal evidence to be valid. First, the evidence has to be consistent with the whole context of Islamic thought³⁰⁵. The matter for him is not for the evidence to reach a merely high level of pure rational certainty as opposed to a lower degree of speculation. Rather, the point he wishes to argue for is that the evidence for a specific Islamic legal ruling is a complex construction. The evidence functions, he argues, in a theological and moral system, and is linked with other legal rules in other jurisprudential fields. He is, then, arguing against

³⁰² Radgīf, *al-Usus al-'Aqliyya: Dirāsa lil Munṭalaqāt al-'Aqliyya lil Baḥth fī 'Ilm al-Uṣūl*, pp. 107-49.

³⁰³ al-Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāshiduhu*, v.2, pp. 109-10.

³⁰⁴ *Ibid.*, 113.

³⁰⁵ *Ibid.*, 109.

an atomised notion of a single piece of evidence being the basis for a single legal rule, but rather than the evidence for each legal rule must cohere with both the theological and moral demands of the system as a whole, and the evidence for other legal rules. The evidence has to be considered through these elements.

Second, the evidence has to be consistent with, and assessed by similar evidences that are close and contiguous to it³⁰⁶. The point here is that each evidence has some similar evidence that shares its scope to a certain degree, and therefore the authority of each one is limited by another in a way whereby each one cannot have absolute authority. For example, the principles of proof, such as the hand, witnessing of two people and fame (*al-shuhrah*), cannot each gain absolute authority. Rather the weight of each one is identified in accordance with the other. Similarly this can be said for any claimed evidence.

Third, the evidence has to be consistent with its object and circumstance both in examining it historically and in applying it in reality³⁰⁷. The point here is that the nature of the object and its circumstances identify the limits of the authority of the evidence. For example, for the warfare issue, an isolated report cannot be valid in isolation, and similarly this can be said for things that are sensitive in religious terms, e.g. those that are related to marriage, death, crime and so forth. It is similarly said that it will be limited to the context of the object and the surrounding circumstances, not only in understanding the evidence within its historical context, but also in applying it in reality. For instance, the principle that possession proves ownership cannot be considered as evidence in the case of civil war, but rather, in these circumstances, for claiming the right of property, one has to provide several pieces of evidence.

3.2.4. Conclusions

Throughout the beginning of this section, there was an attempt to demonstrate how Mudarrisi's epistemological framework was constructed and formed. His relative association to the Tafkiki school helped him to liberate himself from the dominant epistemological framework in Shi'i theological and jurisprudential discourse, namely the

³⁰⁶ Ibid.

³⁰⁷ Ibid.p. 110.

Aristotelian framework. Moreover, his communication with modern and Western epistemological scholarship and debates with an ambition of a pure Islamic theory of knowledge has also enriched his critique of the Aristotelian framework and allowed him to construct his own epistemological view. Subsequently, it was characterized by his insistence on the psychosocial elements of human error, which he called desire (*al-hawā*) using Islamic terminology, and centralizing reason as being a critical tool for seeking knowledge. This centralization has been achieved through a combination of seeking out the best scientific method for its object of enquiry and calling for a holistic and coherent epistemic justification and judgment. Applying this approach to jurisprudential issues, Mudarrisī has provided a different foundation for some of the most important issues of Shīʿī jurisprudence, namely the relationship between reason and the *Sharʿ*, the validity of certainty and the epistemic foundation of legal evidences. Mudarrisī's approach, then, represents a departure from the epistemological framework of the Bahbahānian paradigm, in that he aims to dissolve the duality of certainty and speculation inherent in that paradigm. By doing this, he hopes to opens up the possibility of establishing legal rulings based on a less stringent form of certainty than that inherited by the Bahbahānian paradigm from the Aristotelian tradition. Moreover, it opens the door for seeking a different method that can lead to a reasonable level of acceptable knowledge from which to derive legal issues. These epistemological ramifications stand against some essential characteristics of the Bahbahānian paradigm, that is to say, quietism and the limitations of reaching the divine purposes. In the next section of the methodological issues, these applications will clearly be shown when Mudarrisī's methodological opinions are discussed in detail³⁰⁸.

³⁰⁸ See on page 176.

3.3. The Holy Qur'an

Mudarrisi's emphasis on the Qur'an as a crucial source of legal reasoning goes beyond the classical discourse of considering the Qur'an as the first source of deriving legal issues. As will be demonstrated below, the attachment to the Qur'an in Mudarrisi's thought has an influential effect, not only on his jurisprudential methodology, but also on his overview of the *maqāṣid al-sharī'a* project.

3.3.1. A Historical Overview of the Qur'an in Shī'ī Jurisprudence

The Qur'an is deemed to be the most essential source in the lives of all Muslims, be it in their intellectual life, i.e. theological, legal, moral, etc. or in their daily life situations. The question in jurisprudential discussion is that given the diversity of Qur'anic contents, how can the Qur'an be evidence for a legal ruling? This question has led Muslim scholars to question many other aspects related to the Qur'an and has also led to discussions about other subjects related to hermeneutics.

Since Shī'ī jurisprudence was established, the Qur'an as a source for legal rulings has not really been discussed in its own right in the literature of the field³⁰⁹. Instead, Shī'ī scholars have looked to the Qur'an as an Arabic linguistic phenomenon that has been constituted in a textual form. Therefore, they have studied, in the main linguistic understandings of meaning (specifically, those found in an Arabic linguistic context).. Nevertheless, they dealt with the Qur'an not only as a pure Arabic linguistic phenomenon, but also as a holy text for a legal purpose. Thus, a considerable part of jurisprudential content has been dedicated to examining linguistic issues, taking into account its legal nature. For example, the issues of command, prohibition, generality,

³⁰⁹ Here I have reviewed the Qur'an in jurisprudential context within Shī'ī scholarly tradition. Others were interested in examining the history of the *tafsīr* itself and its methods in the Shī'ī tradition. Surprisingly, these works have not considered the jurisprudential discussions nor the genre of *āyāt al-'ahkām* as a rich field where the Shī'ī scholars had discussed many methodological issues in regard to interpretation of the Qur'an. For these works, to name the important contributions, see: Bar-Asher, Meir M. *Scripture and Exegesis in Early Imāmī Shiism*. (Leiden, The Netherlands: E. J. Brill, 1999), Ayoub, Mahmoud, *The speaking Qur'an and the silent Qur'an: A study of the principles and development of Imāmī Shī'ī tafsīr*. In Rippin, Andrew (ed.) *Approaches to the History of the Interpretation of the Qur'an*. (Oxford: Oxford University Press, 1988), pp. 177–98. For the Sunnī jurisprudential discussions regarding Qur'an, Reinhart has done such research to examine the jurists' contributions, see: Reinhart, A. Kevin, *Jurisprudence*. In Rippin, Andrew (ed.) *The Blackwell companion to the Qur'an*. (United Kingdom: Blackwell Publishing, 2006), pp. 434-449.

particularity, implication of a condition and others have been discussed. Discussions were restricted largely to these matters throughout the fourth, fifth, and sixth centuries within Shī'ī *uṣūl al-fiqh*. In the seventh century, some developments took place, especially with the work of al-Ḥillah school starting with al-Muḥaqqiq³¹⁰ (d. 1277) and al-'Allāmah³¹¹. After this century, a separate section was devoted to the Qur'an within the literature. However, it did not amount to a significant change, since the only issue discussed in the section was the verification of the soundness of the Qur'anic text, known as the issue of recurrence (*tawātur*) of the Qur'an. This state of affairs lasted until the sixteenth century when new writings emerged as a new legal field, namely, the verses pertaining to legal rulings (*āyāt al-aḥkām*). The first Shī'ī scholar who started this sort of writing was Aḥmad al-Ardabīlī (d. 1585), as famous as al-Muqaddas al-Ardabīlī, for his book *Zubdat al-Bayān fī Aḥkām al-Qur'an*³¹². Although this work might be considered a legal (*fiqhī*) work, it somehow reflected the *uṣūlī* perspective toward the scope to which the Qur'an can be legal evidence. In effect, it could be a practical expression of an idea that had been discussed in *uṣūlī* writings about the extent of the essential knowledge needed by a jurist to become a *mujtahid*³¹³. In this debate, the scholars of the time, generally speaking, agreed that the jurist need only know around five hundred verses of the Qur'an, and this was sufficient for the jurist to be justified in his derivation of legal rules.

With the emergence of the Akhbārī school and its intellectual challenges in the eleventh century, the discussions on the Qur'an shifted in Shī'ī jurisprudence. One of the common ideas of Akhbārism was that the Qur'an itself, without help from the Imām's interpretation of it, could not be valid as legal evidence³¹⁴, because either the Qur'an

³¹⁰ Ja'far ibn Ḥusain al-Ḥillī, *Ma'ārij al-Uṣūl*, 1st ed. (Iran: Mu'assasat Ahl al-Bayt, 1983)

³¹¹ Ḥasan ibn Yūsuf al-Ḥillī, *Mabādi' al-Wuṣūl ilā 'Ilm al-Uṣūl*, (Beirut: Dār al-Aḍwā', 1986)

³¹² Aḥmad al-'Ardabīlī, *Zubdat al-Bayān fī Aḥkām al-Qur'an*, (Iran: al-Maktaba al-Ja'fariyya li Iḥyā' al-'Āthār al-Ja'fariyya)

³¹³ In the field of *ijtihād* and *taqlīd* there is a discussion on the essential knowledge needed for one to become a jurist (*mujtahid*). The scholars discuss to what extent the jurist should know the Qur'an. The common opinion is that he should know the verses of legal rulings, which are estimated to be around five hundred verses. See Ḥasan bin Zayn al-Dīn, *Ma'ālim al-Dīn wa Malādh al-Mujtahidīn*, (Iran: Mu'assasat al-Nashr al-Islāmī al-Tābi'a li Jamā'at al-'Ulamā' fī Qum), p. 240

³¹⁴ Gleave, *Scripturalist Islam: The History and Doctrines of the Akhbārī Shī'ī School*, pp. 216-44.

lacks supplementary clues and therefore its meanings cannot be fully constituted, or because the Imāms are the only people who can understand it. This led to a huge debate in *uṣūlī* works, which became the principal site for the discussion on the Qur'an over the last two centuries in Shī'ī literature. The debate was referred to as "the meaning of the Qur'anic text (*al-zuhūr*)". Other than the two issues of recurrence (*tawātur*) and the meaning of the Quranic text, Shī'ī *uṣūl al-fiqh* has not discussed issues in relation to the Qur'an as a source of law.

3.3.2. Mudarrisī's Ontological View of the Qur'an

By describing Mudarrisī's view of the Qur'an as "ontological", I aim to indicate how he conceives of the nature, characteristics and the function of the Quranic text. The importance of addressing Mudarrisī's ontological view is that it reflects the foundations of how he employs the Qur'anic text in jurisprudence.

Mudarrisī sees the Qur'an as the revelation from Allah to human beings, which represents the exclusive way of salvation for humanity³¹⁵. The Qur'anic text itself esteems itself as a source of guidance, knowledge and increase in faith. In his view, the Qur'an ontologically is the other side of intellect (*al-'aql*), and they both emerge from one root, namely, the light of Allah.³¹⁶ Thus, its interactions with certain historical events were carefully singled out from other events in order to be examples of the applications of revelation in reality. This idea leads to another idea that he emphasizes: that the Qur'an constitutes the legislative³¹⁷ Book of God, and the universe represents His natural Books³¹⁸. In a sense, this idea means that the content of revelation is consistent with natural law, which is not solely restricted to the physical world but also includes the general social institution of human beings.

This ontological view of the Qur'an differentiates him from other tendencies in the field, and leads him to a particular approach for jurisprudential issues. Firstly, since he believes in the self-value of the Qur'anic text, he emphasizes the centrality of the

³¹⁵ al-Mudarrisī, *Buḥūth fī al-Qur'an al-Ḥakīm*, pp. 9-10

³¹⁶ *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 1, p. 121.

³¹⁷ by legislative - *tashrī'ī* - he means more than solely the legal system. Rather it refers to the whole moral, political, philosophical, process of legislative knowledge.

³¹⁸ *Ibid.* v. 2, p. 278-80

Qur'anic text as legal evidence. Other scholars may believe in this centrality, but they also emphasize the position of the *ḥadīth* alongside it, which, in some cases, means that the *ḥadīth* takes on equal value and significance as a source of legislation³¹⁹. Secondly, his belief in the self-value of the Qur'anic text as being inclusive of the value of historical events mentioned in the Qur'an also differentiates him from other readings of the Qur'anic text, which limit it either partially or totally to a historical text³²⁰. Some scholars³²¹, not necessarily *uṣūlīs*, believe in the intrinsic value of the Qur'anic text but not literally. They see it as an excellent religious experience, but not entirely valid as legal evidence for every time and place. Thirdly, his belief that the Qur'anic text is the flipside of the intellect affects the way in which he addresses the famous issue of the relationship between revelation and intellect. Finally, it also leads to the belief that the sources of legal evidence are only two and not four as usually described in *Shī'ī uṣūl al-fiqh*. These sources are the Qur'an and the intellect, the *ḥadīth* then is deemed as an extension of the Qur'an and the consensus (*ijmā'*) as an extension of the intellect.

3.3.3. *Tadabbur*: The Way to the Qur'an

Here I will demonstrate the concept of *tadabbur*, its meaning, method, what it means for Mudarrisī in theory and practice, and the way in which it developed throughout his intellectual life. I argue here that *tadabbur* has developed from being an expression of an intellectual and practical interaction with the Qur'an to becoming an essential part of Mudarrisī's jurisprudential theory.

³¹⁹ This idea is expressed clearly in Shī'ī jurisprudence through the notion of the ability of the Sunnah to specify Qur'anic statements, which indicate that the two texts are equal. See Muḥammad Riḍā al-Muẓaffar, *Uṣūl al-Fiqh*, v. 1, (Iran: Mu'assasat al-Nashr al-Islāmī al-Tābi'a li Jamā'at al-'Ulamā' fī Qum), p. 216

³²⁰ This is generally the position of what is known as the reformist trends. Naṣir Ḥāmid Abū Zayd can be representative of this position. See Naṣir Ḥāmid Abū Zayd, *Mafhūm al-Naṣṣ: Dirāsah fī 'Ulūm al-Qur'an*, 1st ed. (Beirut: al-Markaz al-Thaqāfī al-'Arābī, 1999).

³²¹ This idea has been held by some Iranian reformist, famously 'Abdalkarīm Surūsh in which he has provided this theory in his book: *Basṭ al-Tajriba al-Nabawiya*, trans by Aḥmad al-Qabānchī, (Iraq: Dār al-Fikr al-Jadīd). Shabastri also has a similar position to Surūsh, but instead of considering the Qur'anic text as a spiritual experience he applied modern Western hermeneutics especially his understanding of Gadamer's thought. He provided his thought in his book: Shabastri, Muḥammad Mujtahid, *Hirmenyūtīfā al-Qur'an wa al-Sunnah*. (Beirut: Mu'assasat al-'Intishār al-'Arabī, 2013), For a detailed discussion on his approach see: Vahdat, Farzin, Post-revolutionary Islamic Modernity in Iran: The Inter-subjective Hermeneutics of Mohamad Mojtabeh Shabestari, in Taji-Farouki, Suha, ed. *Modern Muslim Intellectuals and the Qur'an*. (Oxford: Oxford University Press, 2004), pp. 193-224. Also, see: Dahlen, Ashk P., *Islamic Law, Epistemology and Modernity: Legal Philosophy in Contemporary Iran*. (United Kingdom: Routledge, 2004), pp. 163-186, especially for his hermeneutical approach for legal discussion see, pp.176-186.

In 1972, Mudarrisī published a small but critical book entitled *Buḥūth fī al-Qurʾan al-Ḥakīm*. In this book, he develops the concept of *tadabbur* (deep reflection), making it one of the hallmarks of his thought. *Tadabbur* in a common sense means a reflection on the Qurʾan, and with this sense it might not differ considerably from *tafsīr* (exegesis) generally. However, Mudarrisī transferred the concept from pure reflection on the Qurʾan to a particular theory about how to read the Qurʾan, whereby it is neither a professional exegetic process nor a simple thinking about the Qurʾanic content. In this book he defines *al-tadabbur* as a deep, concentrating and systematic reflection on the Qurʾan through which the reader is not only able to understand the apparent Qurʾanic content, but also to understand its deeper meaning and be able to apply it in practice³²². In order to justify and provide a practical guideline, he addressed a few issues. First, he attempted to differentiate sharply between *tadabbur* as a legitimate way of dealing with the Qurʾan and personal interpretation (*tafsīr bil-raʾy*) of the Qurʾan, which is forbidden in Islam generally and especially in Shīʿī thought³²³. Second, he provided an overview of the nature of the Qurʾan to help anyone wanting to reflect on it, such as the meaning of the exoteric (*zāhir*), the esoteric (*bāṭin*), the clear (*muḥkam*), the ambiguous (*mutashābih*) and seven letters (*al-ḥurūf al-sabʿa*)³²⁴. Finally, he ended with the required psychological and rational characteristics of the person endeavouring to reflect on the Qurʾan, with guidelines of how to apply the content of the Qurʾan practically³²⁵.

Publishing this book was only the beginning of Mudarrisī's discussions on the Qurʾan. On the theoretical level, through his engagement in this sort of reflection on the Qurʾan, and also by his group (i.e. his students and learning institution, Ḥawzā) on a general level, *tadabbur* has in itself become a theory of reading the Qurʾan. Many such theories and conceptual tools have been established with regard to the Qurʾan, such as the unity of the Qurʾanic *sūra*, topical reflection (*al-tadabbur al-mawḍūʿī*), the Qurʾanic context and its semantic web, and later on, thematic reflection. The gradual establishment of these theories and concepts has become a distinct intellectual framework in the Shīʿī

³²² al-Mudarrisī, *Min Hudā al-Qurʾan (From the Guidance of the Qurʾan)*, p. 96

³²³ *Buḥūth fī al-Qurʾan al-Ḥakīm*, pp.14-17

³²⁴ *Ibid.* pp. 23-29

³²⁵ *Ibid.* pp. 36-40

tradition with regard to Qur'anic studies over time ³²⁶. On the practical level, Mudarrisī's turning toward this method of *al-tadabbur* was an expression of his 'rebellion' from the Shī'ī traditional curriculum in the Ḥawza³²⁷. It took around ten years until he returned to jurisprudence (both *fiqh* and *uṣūl*), but this time with his Qur'anic encyclopedia known as *Min Hudā al-Qur'an* (*From the Guidance of the Qur'an*).

I present here a summary of the *tadabbur* method in its mature version, developed over time since 1972 by Mudarrisī and his students, especially Muḥammad Riḍā al-Shirāzī³²⁸ (d. 2008), and published in the latest edition of his Qur'anic encyclopedia in 2008³²⁹. The key concepts of the *tadabbur* method are as follows: first, each *sūra* of the Qur'an has one central theme, where the contents of all its verses correlate semantically in various ways to support the central theme. This idea is called the thematic unity³³⁰ of the *sūra*³³¹. Accordingly, the person reflecting on the Qur'an has to identify the central theme of the *sūra* in order to understand the relationships of its contents (i.e. the stories, examples, theological discussions and legal discussions). For example, Mudarrisī argues that the central theme of Sūrat al-Kahf (the Cave) is the relationship between faith and dealing with the adornment of this world³³². This central theme runs through all the contents of the *sūra*, namely the four stories: the account of the Seven Sleepers who rejected the persecution of an unjust ruler and abstained from society to preserve their faith; the dialogue between the two gardeners, whereby one thanks God whilst the

³²⁶ The mature expression of these ideas can be found in the new edition of Mudarrisī Qur'anic interpretation, opened up in an introduction that demonstrates them. See *Min Hudā al-Qur'an*, v 1, pp. 39-137

³²⁷ Mudarrisī mentioned this moment of turning toward the Qur'an twice, once in his jurisprudence work and the second time in an interview with him. See them respectively, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, 9: 3. See also: "*al-Tashrī' al-Islāmī wa Qaḍāyā al-'Umma*," *al-Baṣā'ir*, no. 26 (2002): pp. 24-59.

³²⁸ Muḥammad Riḍā al-Shirāzī has summarised a series of lessons provided by Mudarrisī when he was in Kuwait during the seventies, then he published it first under the title: *Kayfa Naḥam al-Qur'an*, but later on with some additions it was published under the title: *al-Tadabbur Fi al-Qur'an al-Karīm*. The book has been published several times. I will use here: al-Shirāzī, Muḥammad Riḍā, *al-Tadabbur fī al-Qur'an al-Karīm*, 3ed ed. (Beirut: Dār al-'Ulūm, 2010).

³²⁹ Mudarrisī, *Min Hudā al-Qur'an*, v 1, pp. 39-137

³³⁰ [Rippin](#) has studied this issue as a notable tendency in twentieth century. However, he focused on some Sunnī works and ignored the Shī'ī contributions in which Mudarrisī is deemed as the first Shī'ī scholars who interested in and applied it in his *tafsīr*. There are other Shī'ī scholars as well, famously Maḥmūd al-Bustānī in his book: al-Bustānī, Maḥmūd, *al-Manhaj al-Binā'ī fī al-Tafsīr*. (Beirut: Dār al-Hādī, 2001). For Rippin's paper see: Rippin, [Andrew](#), "Contemporary scholarly understandings of Qur'anic coherence" [Al-Bayan: Journal of Qur'an and Hadith Studies](#), 11:2 (2013), 1-14.

³³¹ Mudarrisī published a specific book that aimed to provide the theme of each *sūra* of the Qur'an. See: Mudarrisī, Muḥammed Taqī, *Maqāṣid al-Suwar fī al-Qur'an al-Karīm*, (Beirut: Dar al-Maḥajāt al-Bayḍā'a, 2013).

³³² Mudarrisī, *Min Hudā al-Qur'an*, v 5, pp. 9-14.

other does not; the story of Moses and al-Khiḍr which represents the dialectic of the exterior and interior of the world; and finally the story of ʿDhul al-Qarnayn, which presents an example of a just ruler. In addition, the *sūra* includes verses about the Hereafter, which is related to the central theme. Second, the theory of thematic unity of the *sūra* leads to the significance of context. Obviously, the importance of context is not a new idea, whether it be in Arabic linguistics or in *tafsīrs*, though ‘context’ here with the *tadabbur* method is more than just linguistic context. It focuses on the intellectual correlation within the *sūra*’s context in order to discover the various relationships between the verses that support the central theme. Third, based on this positional correlation, the reading has to move back and forth deeply and systematically between the verses to discover the contents of the *sūra*, such that not only the apparent meanings are uncovered, but also the deeper meanings underneath, which may be principal values, or universal societal or human rules. By following these steps, the reader will reach the fourth key idea of the *tadabbur* method, which is ‘interpretation’ (*ta’wīl*)³³³. Interpretation here means that after the reader has gained the deeper meaning of the *sūra* (or part of the *sūra*) that reflects the principal values, or the universal societal or human rules, he is now able to apply them in the external reality which includes people or socio-political cases and so on. The aim of this application is to connect the Qur’an to actual, practical Muslim concerns and to give guidance in dealing with these concerns. Needless to say that within this process and steps there are other ideas and techniques, but these are the key ones.

The above description of the concept of *al-tadabbur*, its meaning, method and how it has developed leads to two observations. First, that the beginning of the concept was mostly a practical guideline of how to interact with the Qur’an, whereas in its latest version, it became a theory about the nature of the Qur’an, and therefore how to read it in a particular way through certain protocols and steps. Second, the concept of interpretation (*ta’wīl*) began as an interpretative tool to bridge the gap between the Qur’an and practicality. However, through time it became an epistemological mechanism for religious knowledge, to understand the religious contents generally and

³³³ Mudarrisī, *Min Hudā al-Qur’an*, v 1. pp. 98-99.

to interface them with reality. This epistemological mechanism has certain characteristics and methods which Mudarrisī has employed as a jurisprudential tool for his *maqāṣidī* approach, as we shall see in the next section.

3.3.4. Interpretation (*ta`wīl*) as An Epistemological Mechanism

Here I will demonstrate Mudarrisī's theory regarding interpretation (*ta`wīl*). To show its characteristics, I will analyze it comparatively with the principal tendencies of interpretation in Islamic thought, broadly speaking. After defining his concept of interpretation, I will analyze it comparatively with Shī'ī scholars. Here I am arguing that the root of his conception goes back to some scholars in the sixties who applied it in *ḥadīth*. Yet, Mudarrisī developed and applied it in the Qur'an before he used it as a jurisprudential tool for his *maqāṣidī* approach. Following this, I will provide some examples of his method of interpretation in legal issues in order to illustrate how it works in practice.

3.3.4.1. Mystical Interpretation

In mystical thought (Sūfism) there are realms (or levels) of existence; every human who wants to reach happiness or truth must journey through these realms through a personal existential experience of the divine presence. The journey includes two parallel lines: the first starts off with practising a series of self-disciplinary techniques, which prepare the wayfarer to read the Qur'anic text, and the second line starts from the Qur'anic teachings of practising self-discipline techniques in order to reach a higher level of existence. From this perspective, the Qur'anic text becomes a symbolic path for individuals to discover and traverse from one status (*maqām*) to another. The number of these statuses varies depending on the type of order. However, they all agree that the goal is to reach the highest status. This is where interpretation (*ta`wīl*) becomes the means that the mystic uses in order to reach the secret of existence via special hermeneutical techniques. Here too, these hermeneutical techniques vary from one order to another, though they all agree that beneath the external reality of the Qur'anic verses there are esoteric meanings that summarise the status³³⁴. In the Sunnī tradition,

³³⁴ al-Jābirī, *Bunyat al-'Aql al-'Arabī: Dirāsa Taḥlīliyya li Nuzum al-Ma'rifa fī al-Thaqāfa al-'Arabiyyah*, pp. 251-316.

Ibn al-ʿArabī is considered to be the ideal representative of this kind of Ṣūfī school, with its own style of hermeneutics. Amongst Shīʿī scholars, there are Qurʾanic *tafsīrs* which feature mystical interpretation, but the most famous, and possibly the most developed one is *Tafsīr al-Mīzān* by Muḥammad Ḥusayn al-Ṭabāṭabāʾī³³⁵. He argues that there are exoteric (*ẓāhir*) and esoteric (*bāṭin*) levels in the Qurʾan. The exoteric is the Qurʾan itself; its teachings, stories, legal rulings and so on, whereas the esoteric is a special existence which is the source of all Qurʾanic knowledge, and which cannot be obtained through semantic processes. Rather, it is gained through self-discipline and self-disclosure (*kāshif*). In brief, the essential view of mysticism regarding interpretation³³⁶ is one whereby interpretation is merely a means to reach an existential level through the application of a special hermeneutical technique.

3.3.4.2. Linguistic Interpretation

Interpretation, here, can be defined as the use of the principles of Arabic linguistics, grammars and its ways of communicating in order to understand the Qurʾanic text. This is based on a theological principle that God speaks to people in a way similar to how they communicate with each other. Since He chose the Arabic language for the message of Islam, He used Arabic as a mode of communication in the manner which is common amongst the speakers of Arabic (*al-taḥāwur al-ʿurfī* or customary communication). As a result, any attempt to understand the Qurʾan entails the application of Arabic rules of communication; otherwise it becomes unfruitful. The interpretation is, accordingly, a means of communication in Arabic, and implies the harmonization of two initially contradictory texts of one person, and reliance on “acceptable” reason. In other words, one should interpret a text by relying on its apparent meaning (*ḥujjiyyat al-ẓuhūr*). This attitude towards *taʿwīl* is generally found amongst Sunni *uṣūlīs*, established by al-Shāfiʿī³³⁷ (d. 820), and also amongst Shīʿī

³³⁵ Muḥammad Ḥusayn al-Ṭabāṭabāʾī, *al-Mīzān fī Tafsīr al-Qurʾan*, v. 3, pp. 41-48, (Qum). Steigerwald attempted to study the Shīʿī *taʿwīl* and has mentioned al-Ṭabāṭabāʾī in her work, though only briefly. See: Steigerwald, Diana, Twelver Shīʿī *Taʿwīl*, in In Rippin, Andrew (ed.) *The Blackwell companion to the Qurʾan*. (United Kingdom: Blackwell Publishing, 2006), pp. 373-385.

³³⁶ A good description of mystical interpretation can be found in: Naṣr Ḥāmid Abū Zayd, *Falsafat al-Taʿwīl: Dirāsah fī Taʿwīl al-Qurʾan ʿInda Muḥyī Al-Dīn Ibn ʿArabī*, (Beirut: al-Markaz al-Thaqāfi al-ʿArabī, 2007)

³³⁷ al-Shāfiʿī, Muhammad Ibn Idrīs. *al-Risāla*, (Beirut: al-Maktabah al-ʿIlmiyya), pp. 21-85

scholars in their theological discussions³³⁸. However, it is worth noting here that metaphor (*al-majāz*) is considered part of linguistic appearance in accordance with this trend, and is different from symbolic interpretation, which is common to mystical interpretation³³⁹.

3.3.4.3. Mudarrisī and the Epistemological Interpretation

For Mudarrisī, interpretation is an epistemological mechanism, which either discovers the principle of an object then deems it as its *far‘* (corollary), or discovers the *far‘* and returns back to its principle. To elucidate this idea further, there are some elements that require analysis here: the exoteric (*al-zāhir*), the esoteric (*al-bā‘in*), the clear (*muḥkam*), the ambiguous (*mutashābih*), and Mudarrisī’s theory of the five vertical circles, and how he applies it in the context of *uṣūl al-fiqh*; and subsequently, how he adapted it in his *maqāṣid* context.

3.3.4.3.1. The Exoteric (*al-zāhir*), The Esoteric (*al-bā‘in*) and the Theory of the Five Circles

It is a common belief amongst Muslim scholars that the Qur’an has exoteric and esoteric meanings. However, they disagree about their precise definitions. Relying on some reports (*akhbār*) from Shī‘ī sources, Mudarrisī defines³⁴⁰ the esoteric as the scientific dimension of the Qur’an. There are four categories of reports; and by combining them we get a definition of the esoteric that consists of four characteristics. The first category indicates that each verse in the Qur’an has an esoteric and exoteric meaning; the second indicates that the exoteric is the revealed (*tanzīl*) and the esoteric is the interpretation (*ta’wīl*); the third says that the exoteric is the *ḥukm* (ruling) applying to those unto whom the verse had been revealed, and the esoteric applies to those who come after them, following this original ruling.; the fourth says that the exoteric is the *ḥukm* (ruling), and the esoteric is the knowledge (*‘ilm*).

These reports (*akhbār*) are as follows:

³³⁸ See: <http://imamsadeq.com/ar.php/page.531BookAr80P1.html#15> . Accessed: 21.4.2011.

³³⁹ al-Muḏaffar, *Uṣūl al-Fiqh*, v.3

³⁴⁰ Mudarrisī, *Min Hudā al-Qur’an*, v 1, pp. 75-76.

"All Qur'anic verses have both an exoteric (*ẓāhir*) and esoteric (*bāṭin*) meaning³⁴¹. The former is the revelation (*tanzīl*), whilst the latter is the interpretation (*ta'wīl*)³⁴². The exoteric addresses those unto whom the verse was revealed, while the esoteric addresses those who did like them³⁴³. Its surface is Allah's Judgement and its depth is Allah's knowledge³⁴⁴".

Mudarrisī deems³⁴⁵ the fourth category as the correct meaning of the esoteric, and that it, in turn, clarifies the other reports. However, to elucidate the basis from which he drew this conclusion, we must first refer to his theory of the five vertical circles.

He claims that, when revising the Qur'an, we find five vertical circles, starting from the top to the bottom as follows: one of the beautiful Names of God (*ism min al-asmā' al-ḥusnā*), the cosmological, societal or human laws (*sunnah kawniyyah*), the wisdom or the reason behind that law (*ḥikma*), the advice (*waṣiyya*) and the legal ruling³⁴⁶. These vertical circles are interrelated, where each one generates the other starting from the top. Mudarrisī argues that adopting this approach would provide the reader of the Qur'an a guide-line to understand it as coherent content. He provides an example of this theory from *Sūrat al-Isrā'*.

The verses (27-31) are as follows:

"Give relatives their due, and the needy, and travellers— do not squander your wealth wastefully: those who squander are the brothers of Satan, and Satan is most ungrateful to his Lord— but if, while seeking some bounty that you expect from your Lord, you turn them down, then at least speak some word of comfort to them. Do not be tight-fisted, nor so open-handed that you end up blamed and overwhelmed with regret. Your Lord gives abundantly to who- ever He will, and sparingly to whoever He will: He knows and observes

³⁴¹ al-Ṣaffār, Muḥammad Ibn al-Ḥasan. *Baṣā'ir al-Darajāt*, (Tehran: Manshūrāt al-'A'lamī, 1404 A.H), p. 216

³⁴² Ibid, p. 223

³⁴³ Ibid, p.223

³⁴⁴ al-Majlisī, *Biḥār al-Anwār fī Akhbār al-A'imma al-Aṭḥār*, v.74, p. 137

³⁴⁵ Mudarrisī, *Min Hudā al-Qur'an*, v 1, pp. 98-99.

³⁴⁶ al-Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 53

His servants thoroughly. Do not kill your children for fear of poverty a — We shall provide for them and for you—killing them is a great sin”³⁴⁷.

In light of these verses, he extracts the five vertical circles: the two beautiful Names mentioned here represent the first circle, namely, Acquainted and Seeing. As God attributes these specific two Names to Himself, they will be reflected in His creation such that He extends provision for whom He wills and restricts accordingly. This represents the second circle, i.e. the cosmological, societal or human laws (*sunna kawniyya*). Subsequently, the cosmological law generates a wisdom that people should embrace in their life, and here it is represented by the phrase: “do not make your hand [as] chained to your neck nor extend it completely”, which represents the third circle. The fourth circle is the general testament or advisory (*waṣīyya*), which is represented here by the command: “do not spend wastefully”, since the person is aware that God is Acquainted and Seeing. he is the one who extends provision and thus wisdom lies in being moderate in spending money; and the subsequent advice is to not waste your wealth. However, this has to be exemplified legislatively by the fifth circle where God details the legal rulings by saying: “give the relative his due, and [also] the poor and the traveler” and “speak to them a gentle word” in case you could not provide financial dues. Given that, he says³⁴⁸ that these five vertical circles do not always come together, rather that there are often three or four of them, or sometimes even less. Moreover, they do not have to be ordered consecutively. Rather, as with this example, they can be reversed or mixed up.

The second circle (that is, the cosmological, societal or human laws (*sunnah kawniyyah*)), involves the idea of Quranic knowledge - that is the Qur'an's esoteric aspect. The meaning of the *Sunnah* here is extracted from the Qur'anic term mentioned in different *sūras* in the Qur'an, which means the cosmological law of human beings which history repeatedly shows, e.g. the negative consequence of oppressors and the victory of vulnerable people. It might be that the most similar meaning of the *sunan* in Western scholarship is found within discussions in the field of the philosophy of history,

³⁴⁷ *The Qur'an*, trans. A.S.A. Haleem (Oxford University Press, UK, 2005). p. 177.

³⁴⁸ al-Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, pp. 54.

especially in the Marxist version. Through this, Mudarrisī, in light of this definition of the esoteric, is attempting to establish the validity of the Qur'an for every time and place, because then the verses would not die with the death of whom the verses were revealed about³⁴⁹. Instead, it becomes possible to reapply them again for new similar cases. However, this does not only hold true for moral issues; it is also applicable in the legal system. In other words, considering the Qur'an as a valid system of theological and ethical knowledge for every time and place as some scholars claim, it is also a valid legal system. In order to connect this concept with the legal system, Mudarrisī redefines the concept of the clear (*muḥkam*) and the ambiguous (*mutashābih*), and then relates them to *al-maqāṣid*. In the following, I will demonstrate his insights on these concepts, aiming to demonstrate how he utilizes them in his theory of interpretation, and subsequently in the *maqāṣidī* approach.

3.3.4.3.2. The Clear (*muḥkam*) and the Ambiguous (*mutashābih*)

While most Muslim scholars concentrate on the seventh verse of *Sūrat Āl-ʿImrān* to define and discuss the concept of the clear and the ambiguous verses, Mudarrisī utilizes the first verse of *Sūrat Hūd* to first define the verse of *Āl-ʿImrān*. The Qur'an says in the first verse of *Sūra Hūd*:

“Alif Lam Ra [This is] a Scripture whose verses are perfected, then set out clearly, from One who is all wise, all aware”³⁵⁰.

Mudarrisī locates the clear (or the definitive) in the opposite category to the elaborated³⁵¹. By that, he claims that all knowledge (*maʿārif*) in the Qur'an, including theological, moral and legal issues, have a root (*aṣl*) and elaboration (*furūʿ/tafṣīl*). The root represents the rule or the concept and the elaboration embodies the applications or examples. This may be a theological issue, such as an attribute of God's for example, with its application being a particular story in the Qur'an; or a moral issue, such as the value of truth and its application in contracts and transactions; or finally a legal issue, such as the value of writing down the agreement in transactions as the embodiment of

³⁴⁹ al-Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, pp. 171-73

³⁵⁰ *The Qur'an*: p. 136.

³⁵¹ al-Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 151

the fulfilment of the agreement. The clear verses are a reference to the elaborated verses and, as Mudarrisī argues, this is attributed to the fact that they are the basis (known as the Mother of the Book – *umm al-kitāb* in the Qur’anic term). The original meaning of mother (*umm*) in Arabic (*umm*) means the origin of something, and has been used to signify the human mother of any person because she represents his origin, i.e. where he physically came from. Therefore, using this word specifically in this context essentially implies the foundational role of the clear verses with respect to the elaborated, just as the former is the origin of the latter. Based on this viewpoint, the clear and ambiguous verses are not to be dealt with in a semantic dimension, but rather in their intellectual or epistemological dimension. Moreover, it means that in reality there are two categories of verses: the clear (that are a reference point for deducing the meaning of the elaborated verses), and the ambiguous (that operate as an elaboration of the clear verses). Sometimes the elaborated verses are called ambiguous (*mutashābih*), when they are being considered without reference to the clear ones. However, when considered with reference to the clear ones, they are called the “elaborated”. Therefore, the terms elaborated (*mufaṣṣal*) and ambiguous (*mutashābih*) refer to one and the same thing; it is just the vantage point that varies.

Having taken this into account, interpretation (*ta’wīl*) in this context then is neither a hidden meaning of the word or the sentence, nor an existential status. Rather, it is an epistemological mechanism of going back and forth between the principle and its application, whereby the reader of the Qur’an goes back and forth between practicality and the universal rule (*sunnah*). Similarly, the jurist does so by going back and forth between the principle (*aṣl*) and *the application* (*al-far’*), and then between the *far’* and a new legal case in order to derive the individual legal ruling. Mudarrisī extends the usage of this epistemological mechanism to almost the whole of religious knowledge in a way that makes it a hermeneutical tool for the reading of holy texts, especially the Qur’an. Subsequently, wrong interpretation (*al-ta’wīl al-bāṭil*) and invalid analogical reasoning

(*qiyās*) are processes that go against this mechanism by referring the elaborated verses back to other elaborated rather than the clear verses and vice versa.³⁵²

In the Shī'ī context, usage of this epistemological mechanism as a way of understanding religious knowledge goes back to a contemporary scholar considered to be the founder of the Tafkīkī School, Mīrzā Mahdī al-Iṣfahānī (d 1945). Al-Iṣfahānī, in his treatise entitled '*Risāla fī al-Ma'arīḍ*'³⁵³, addressed the question of how to understand the Imāms' reports especially when they contradicted each other. When addressing this issue, he came up with the idea of the principles (*uṣūl*) and their applications (*furū'*) in a way that makes it a central idea in the whole of his thesis. Although the notion of the principles (*uṣūl*) and their applications (*furū'*) already existed in Shī'ī literature and had been mentioned in the reports, the way in which Iṣfahānī defined and dealt with them was different, as we shall see in detail in the *Sunnah* section³⁵⁴. Iṣfahānī believed that each legal issue has its principle rooted in the Imāms' reports, and that the jurist has to find these principles first to be able to understand the *furū'*. Moreover, contradictions usually occur between the *furū'*, whereas the principles are clearer, more consistent and coherent. Thus, the real jurist is the one who can understand the method of reading the Imāms' reports in a way that refers the *furū'* back to their principle and vice versa; this method is called '*al-ma'arīḍ*'.

‘Ali al-Sistānī (b. 1930), the contemporary Shī'ī grand *marja'*, also addressed the same idea in an associated treatise concerning contradictory reports. Through his treatment of the issues of contradictory reports, such as the reason for the existence of contradictory reports, the ways in which they contradict each other, and suggested solutions to harmonize them, he addressed an opinion which he attributed to an early Shī'ī scholar called Ibn al-Junayd (d. 991 or 995), who had been accused by some Shī'ī scholars of having utilized the Sunni application of analogical reasoning (*qiyās*). Sistānī defended Ibn al-Junayd's attitude by interpreting his *qiyās* in a valid way. He claimed that Ibn al-Junayd had been utilising a particular way of analogy, by referring the applications (*furū'*) back to their principles (*uṣūl*). Furthermore, he claimed that that methodology

³⁵² Ibid. pp. 171-73

³⁵³ al-Iṣfahānī, Mīrzā Mahdī, *Risāla fī al-Ma'arīḍ*. Mashhad: the Central Library of Astan Quds Razavi, no. 13411.

³⁵⁴ See on page 186.

was precisely the import of the term ‘*qiyās*’ during that early period, especially amongst the Shī‘a, and was even encouraged by the Imāms as a valid way of dealing with contradictory reports³⁵⁵.

Whilst those Shī‘ī scholars applied this theory to the field of *ḥadīth*, Mudarrisī developed it to be applied to the Qur’an, and then further adapted it in favour of *al-maqāṣid* by claiming that the derivation process (*istinbāṭ*) of each legal ruling should be based on this methodology of dealing with the clear and elaborate or ambiguous verses, or the principles (*uṣūl*) and their applications (*furu‘*). As a result, he called this method *al-fiqh al-shajarī*³⁵⁶. In the following section, I will illustrate this method with examples to show how interpretation is an epistemological mechanism that generates religious meanings as well as legal rulings, and in the following chapters I will discuss his theory of *maqāṣid al-sharī‘a*.

³⁵⁵ For a comprehensive understanding of Sīstānī’s argument, see: al-Sīstānī, Ali, *Ta‘āruḥ al-‘Adilla*. This is a well-circulated treatise attributed to al-Sīstānī written by his student Hāshim al-Hāshimī. It can be found here: <http://www.tahkekat.com> (accessed: 26.5.2015).

³⁵⁶ Mudarrisī, *Fiqh al-Istinbāṭ: Dirāsa fī Mabādi’ ‘Ilm al-Uṣūl*, n.p., 2013), p 215.

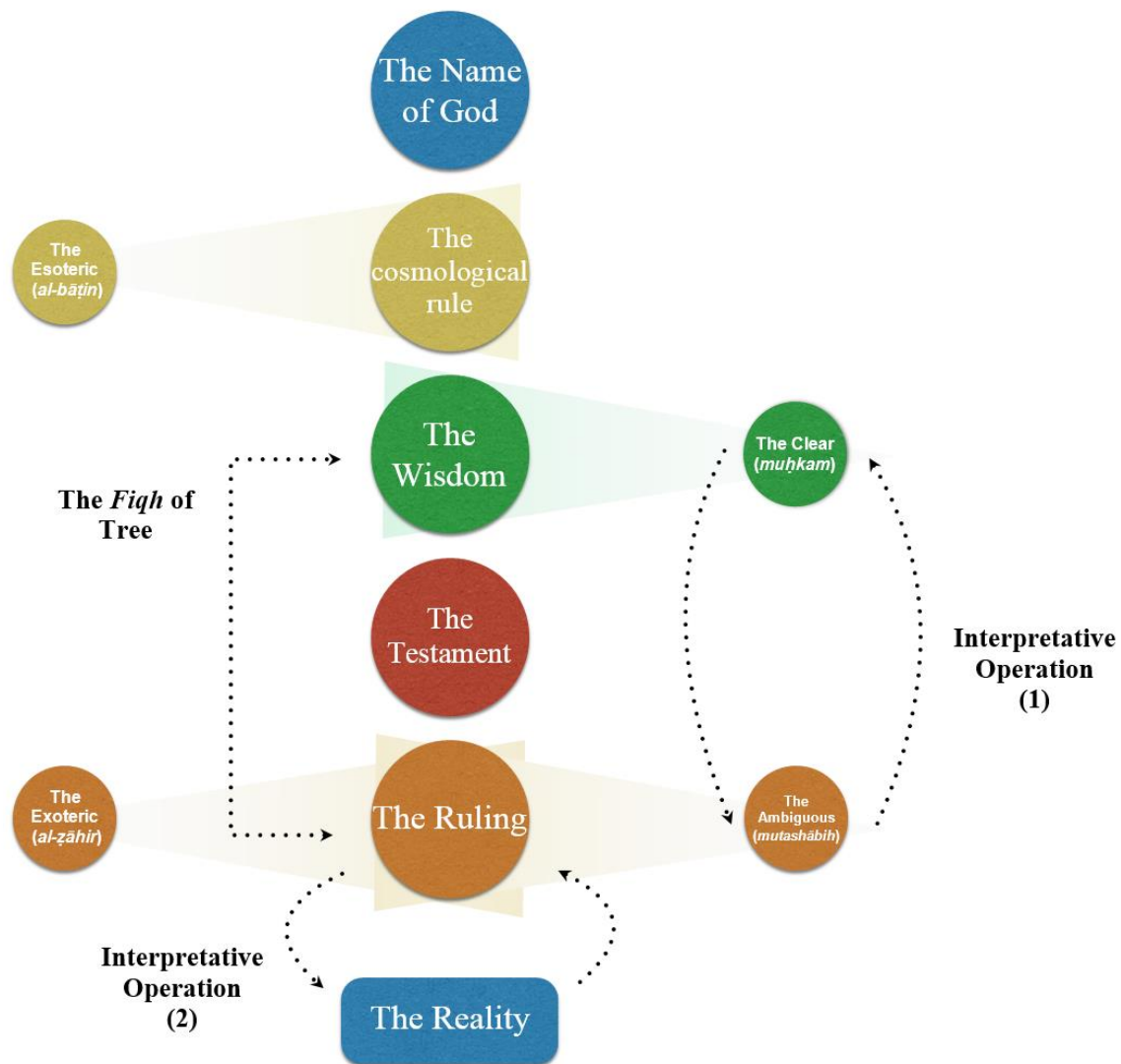


Figure 6 – Mudarrisī's epistemological interpretation (ta'wīl), which reflects his combination of the theory of five circles, the clear (muḥkam) and the ambiguous (mutashābih) verses, the esoteric (bāṭin) and exoteric (zāhir) verses and their interpretive operations.

3.3.4.3.3. Applications of Mudarrisī's Interpretation

Here, I will provide a practical application of the method of referring the *furū'* to the *uṣūl* and vice versa in order to illustrate its steps and to demonstrate how it works. To do so, I will study some examples provided by Mudarrisī and elucidate some conceptions where it is required.

The method of referring the *furūʿ* to the *uṣūl* is an interpretive process that goes back and forth through mainly seven steps. Though it is said that there are seven steps, the process is more complicated than simply going through these steps. Thus, it is slightly complex and it is useful to follow the diagram illustrating it.

- 1- The first step is to reflect (*tadabbur* as mentioned above) on the principles outlined in the clear verses (*muḥkamāt*) of the Qurʿan, and here the focus is on legal principles, even though they are related to moral and theological principles, which are above them. The assumption is that most of these legal principles are somehow obvious and understood by all people as they reflect common moral sense and intuition. Examples of these principles are justice, fairness, truth and so on.
- 2- The second step is to understand the meanings of these principles by reference to what is commonly understood by the community practice (*ʿurf*) and to support this understanding by studying the Qurʿanic context where they were allocated. Mudarrisī here is reflecting his attitude regarding the ruling that is arrived at through legal truth (*al-ḥaqīqa al-sharʿiyya*) in Shīʿī jurisprudence . In addition, it is to seek an understanding of the Qurʿanic meanings devoid of employing a reader's cultural bias.
- 3- The third step is to study the Qurʿanic legal examples of those principles, which are usually mentioned straight after mention of the underlying principles. These examples play the role of clarifying the meaning and the dimensions of the principle, which provide the jurist with a template to transfer it to new cases. In addition, they show some detailed and important aspects that are relevant to the case study.
- 4- The fourth step is to study the same principles (*muḥkamāt*) in the *ḥadīth* that are relevant to the case study. These principles integrate with those of the Qurʿan, and enrich the jurist's understanding of the dimensions of the principles.
- 5- The fifth step is to refer to common understanding (*ʿurf*) in studying whether the practical examples are actually associated with this principle or that. Here, again,

it is arbitrating with the public customary understanding to corroborate the meaning of the principle.

- 6- The sixth step is to trace the principle back to the principle which precedes it. As the principles are connected with each other hierarchically in the form of a tree, some principles come before others, until it goes back to the highest principle. This step helps the jurist to associate the principle at hand (the branch or *far'*) with a most basic principle (*aṣl*) on which it is based (this affects the idea of practical principles (*al-uṣūl al-'amaliyya*)).
- 7- The seventh step is associating the religious text (the *akhbār* and some verses) to their principle in the case study. In reality, for each legal ruling, there are many reports from the Imāms and verses in the Qur'an; in addition, these reports tend to be transmitted piecemeal and stripped from a much longer report. Thus, by re-allocating them to their textual context and then their intellectual context, i.e. the principles (*al-muḥkamāt*) to which they refer, helps the jurist to understand the ruling comprehensively. This, in turn, makes the derivation of legal rulings for new cases more effective.

Looking at these steps, one can argue that the second, fifth and seventh steps are not essential in the process. The second and fifth are more concerned with dealing with and enriching hermeneutical techniques, whilst the seventh is more about organizing the sources according to this paradigm rather than being an essential step in the process. Bearing this in mind, here is a practical legal example based on this process to demonstrate how it works.

The example is about legal rulings pertaining to dealing with parents. Mudarrisī provides this example partially in his book *Fiqh al-Istinbāt*³⁵⁷. The foundation of the relationship between a person and his parents is based on kindness (*al-iḥsān*), according to Mudarrisī, which is mentioned five times in the Qur'an (4:36, 6:151, 17:23, 29:8 and 46:15). In all these places, it says clearly that a person has to treat his parents with kindness, and then the verse starts to elaborate the detailed rulings. Thus, the first step

³⁵⁷ Ibid, p 40.

would be to study this concept in the Qur'an, which is, itself an application of the general principle of charitableness. The second step would be to study the relevant legal rulings mentioned in the Qur'an itself, and we find several rulings, some of which are relatively clear, whilst others are somehow less obvious. For example, the Qur'an requires from a person to be humble and merciful towards his parents and to pray for them. These rulings are somewhat obvious to common sense, but the Qur'an goes as far as to say: 'do not say to them a word of disrespect nor shout at them, but speak kind words to them'. The disrespectful word here is '*uff*', which means any small expression of dislike. This example from the Qur'an, according to Mudarrisī, helps the jurist to draw an analogy from which to derive a legal ruling. The third step is to study the principles (*al-muḥkamāt*) in *ḥadīth* literature pertaining to the subject.

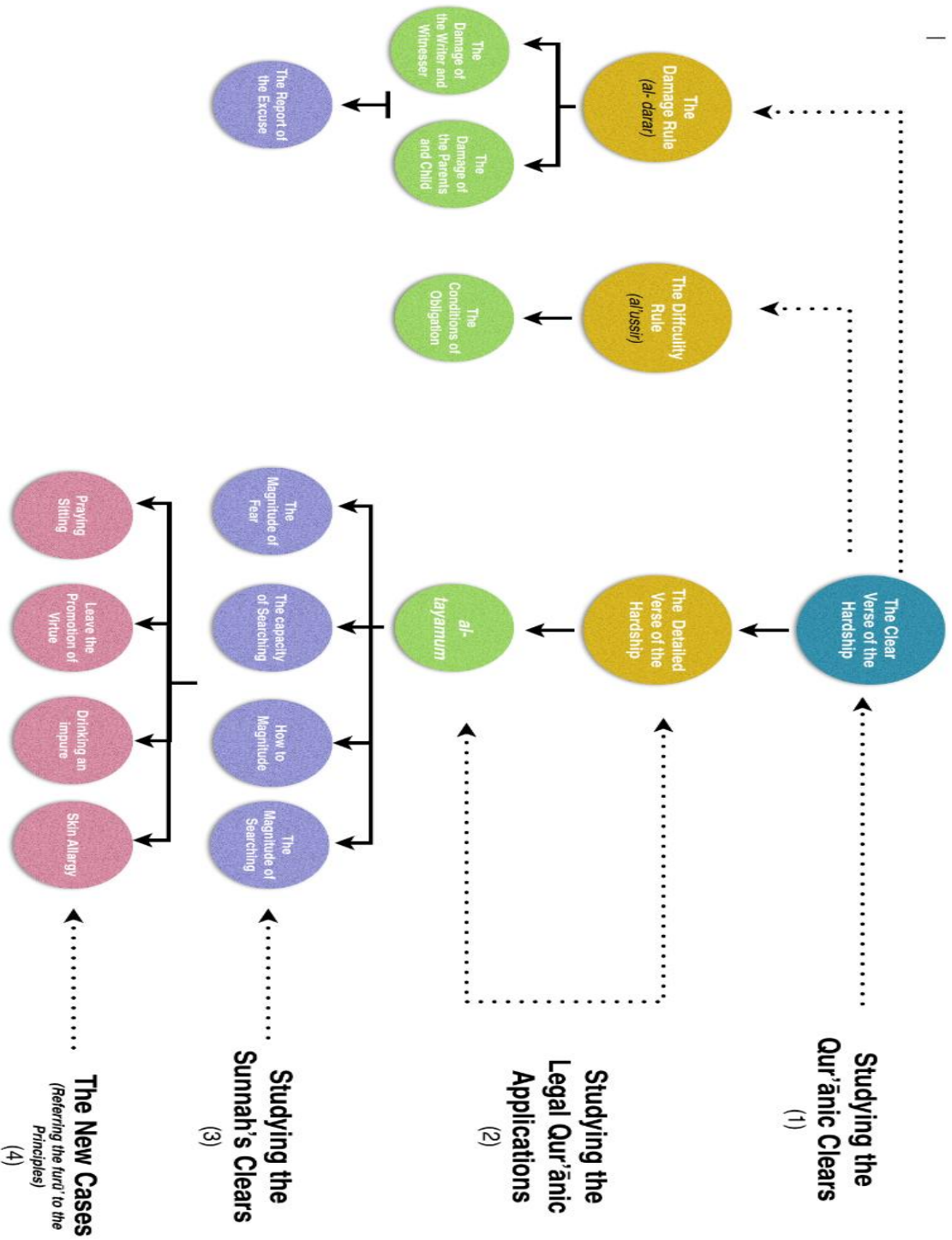


Figure 7 – The application of al-Mudarrisi’s epistemological interpretation on the verse of hardship.

3.3.5. Conclusions

Whilst the subject of the Qur'an in Shī'ī jurisprudence was on the whole limited to a few matters, Mudarrisī treats it as a central theme upon which he attempted to base the entire process of deriving legal rulings. Drawing on his ontological view about the Qur'an, he established a practical method to communicate with the Qur'an called '*tadabbur*' through which he then developed conceptual and hermeneutical tools to read the Qur'an. Interpretation (*ta'wīl*) gradually became the central tool for reading the Qur'an and applying it in reality. However, interpretation according to Mudarrisī is an epistemological mechanism rather than a linguistic or existential tool. His understanding of interpretation was inherited from his association to the Tafkīkī School, but, whilst the Tafkīkī conception dealt more with *ḥadīth*, Mudarrisī developed it to deal with the Qur'an. Through these developments, he attempted to make this mechanism favour his *maqāṣidī* project by redefining the concept of the exoteric (*al-zāhir*), the esoteric (*al-bāṭin*), the clear (*muḥkam*), the ambiguous (*mutashābih*), and Mudarrisī's theory of the five vertical circles. This establishment of the centrality of the Qur'an among the sources of legal evidence as well as the revived role given to it affects the system of derivation of legal rulings, especially with the *maqāṣidī* enrichment.

3.4. Theory of the *Sunnah*

Here, I will address the theory of the *Sunnah* in Mudarrisī's jurisprudential thought. As with the Qur'an, I will begin with a historical overview of Shī'ī jurisprudential discussion regarding the *Sunnah* in order to provide an essential background against which to place Mudarrisī's position within the tradition. I will, then, analyse his theory through addressing four aspects: his conception of the *Sunnah*, the divisions of the *Sunnah*, the relationship between the *Sunnah* and the Qur'an and Mudarrisī's own method of understanding the *Sunnah* in itself. Through this analysis, I am arguing that Mudarrisī has re-defined the conception of the *Sunnah* through reviving some old Shī'ī *uṣūlī* discussions regarding the nature of the Prophet's actions, through which he strengthens his argument by dividing it into several categories, and then providing a method of understanding the *Sunnah* which supports his *maqāṣidī* approach.

3.4.1. A Historical Overview of the *Sunnah* in Shī'ī Jurisprudence

It is unknown exactly when the slogan of the 'Qur'an and *Sunnah*' arose and dominated Islamic discourse, but what is clear is that this slogan has been used on many political and doctrinal occasions in the early period after the death of the Prophet. Likewise, this slogan seems to have existed in early Shī'ī traditions such as *al-Kāfi* in the section entitled: 'Everything can be found in the Qur'an and *Sunnah*'³⁵⁸. This means that *Sunnah* as a term was used and considered as an epistemological reference. In the *uṣūlī* usage, although the term '*Sunnah*' had been used in the early work, the term *khābar* (pl. *akhbār*) and *ḥadīth* (*aḥādīth*) were more popular. No explicit definition of *Sunnah* as a term can be found in Shī'ī jurisprudential works³⁵⁹ from al-Mufīd (d. 1022) until the period of Shaykh al-Bahā'ī (d. 1621). The latter, in his work '*Zubdat al-Uṣūl*'³⁶⁰, was the first scholar to provide a definition of it. Then the definition was used by al-Faḍl al-Tūnī (d. 1661) in his work '*al-Wāfiyya fī Uṣūl al-Fiqh*'³⁶¹, and then it later appeared in al-Qummī's (d. 1816) work '*al-Qawānīn*'³⁶². Finally, it appeared again with al-Muẓaffar (d. 1964)³⁶³. The definition provided by all these scholars was that the *Sunnah* refers to the sayings, actions and tacit approvals of the infallibles (the Prophet and the Imāms). During the period when there was no definition for the *Sunnah*, the dominating issue that had preoccupied the scholars regarding the *Sunnah* was its probative force (*ḥujjiyya*). Therefore, there were a lot of discussions on the issue regarding the way in which a *khābar* can be a proof - whether as a solitary transmission (*khābar al-wāḥid*) or whether transmitted through many chains of transmission (*shuḥrah/tawātur*). However, this is not to say that scholars were not concerned about the *Sunnah* itself and how it should be interpreted. They actually devoted quite a considerable space to textual

³⁵⁸ Muḥammad ibn Ya'qūb al-Kulaynī, *al-Kāfi*, 4th ed., (Tehran: Dār al-Kutub al-Islāmiyya, 1987), v. 1, p. 59

³⁵⁹ Here I am focusing on jurisprudential perspective of *ḥadīth*, for other perspective there are much literature have been produced last three decades in Western scholarship. To name a few, Kohlberg's works are significant, such as Kohlberg, Etan, "On the origins of Shī'ī *ḥadīth*", *The Muslim World* 88(2), 1998: 1665-84 and Newman, Andrew, *The Formative Period of Twelver Shī'ism: Ḥadīth as Discourse Between Qum and Baghdad*, (United Kingdom, Routledge, 2010).

³⁶⁰ Muḥammad ibn Ḥusayn al-Bahā'ī, *Zubdat al-Uṣūl*, 1st ed. (Qum: al-Sharī'a, 2005), p. 179

³⁶¹ 'Abdallah ibn Muḥammad al-Tūnī, *al-Wāfiyya fī Uṣūl al-Fiqh*, 2nd ed. (Qum: Majma' al-Fikr al-Islāmī, 1995), p. 157

³⁶² Abu al-Qāsim Muḥammad ibn al-Ḥasan al-Qummī, *al-Qawānīn al-Muḥkama fī al-Uṣūl*, 1st ed. (Qum: Iḥya' al-Kutub al-Islamiyya, 2000), v. 2, p. 338

³⁶³ al-Muẓaffar, *Uṣūl al-Fiqh*, v. 3, p. 64

interpretation within the section of hermeneutics (*mabḥath al-alfāz*), though this space was a common one shared by both the Qur'an and the *Sunnah*.

Having said that, there was a significant section in the Shī'ī *uṣūl al-fiqh* tradition that dealt with the actions of the Infallibles (the Prophet and the Imāms); in older works it was called the section of the actions (*bāb al-af'āl*). What is significant about this section, however, is that it was an extended area in early Shī'ī *uṣūl al-fiqh* works, in particular with al-Murtaḍā (d. 1044). Then it continued as an essential area in *uṣūl* until the period of Ḥasan Ibn Zayn al-Dīn (d. 1602) where it disappeared until today with some exceptions in Bahbahānī's (d. 1791) works in the Uṣūlī-Akḥbārī period, and al-Muḥaḍḍar (d. 1964)³⁶⁴, al-Ṣadr (d. 1979)³⁶⁵ and al-Ḥakīm (d. 2002)³⁶⁶ in the contemporary period. In this section, scholars raise the question of whether we have to follow all the deeds of the Infallible or whether there are some rulings that are specific to him? How can we differentiate between the rulings that are specific to him and those that apply to others? In addition, they ask what the general indicator (*dalāla*) of the action is, and what the Prophet and Imām's action's is in particular? And is it an indicator of obligation, permissibility or something else? How can we differentiate between an action that indicates to obligation, and another indicating to permissibility? Given the fact that this section existed in the early period of *uṣūlī* works and was continued thereafter as an essential area, the first definition of the *Sunnah* by al-Bahā'ī was in effect a normal result of this tradition. Likewise, the absence of the definition of the *Sunnah* from al-Qummī onwards does not affect the fact that the *Sunnah* still has its epistemological position as a reference for rulings and its definition as the sayings, actions and tacit approvals of the infallibles. On the other hand, however, the absence of this section affects the methods of interpreting the *Sunnah*, as we shall see below³⁶⁷. Nevertheless, this field witnessed extensive work regarding how to deal with the contradictory *akḥbār*, known as '*bāb al-ta'arūḍ*', which mainly addresses documentary and semantic issues.

³⁶⁴ Ibid. p. 66

³⁶⁵ al-Ṣadr, *Durūs fi 'Ilm al-Uṣūl*, v. 2, p. 365

³⁶⁶ Muḥammad Taqī al-Ḥakīm, *al-Uṣūl al-Āmma fi al-Fiqh al-Muqāran*, 2nd ed. (Qum: al-Majma' al-Ālamī li Ahl al-Bayt, 1997), p. 115

³⁶⁷ See on page 186.

3.4.2. The Concept of the *Sunnah* in Mudarrisī's Thought

Mudarrisī, like other scholars, believes in the probative force (*ḥujjiyya*) of the *Sunnah* generally. He believes that all attempts, both historical and contemporary, to deny the probative force of the *Sunnah* have failed. There are two schools when it comes to dealing with the *Sunnah*, according to Mudarrisī: first, those who exaggerate in following the *Sunnah* to the extent that some of them refuse to eat watermelon, for example, because they do not know how the Prophet ate it; and the second school, on the other side of the spectrum, reduce down the number of *akhbār* under the pretext that the transmission system is not reliable. Some proponents of this school would go as far as to claim that they do not trust any of the transmissions on the Prophet's authority, except for seventeen transmissions³⁶⁸. Mudarrisī believes that these two extreme schools were obliged to choose these positions because they did not define the *Sunnah* properly in the first place, and therefore had not differentiated between the constants and the variables of the *Sunnah*. Thus, Mudarrisī chooses to define the *Sunnah* as the sayings, actions and tacit approvals of an infallible *holistically*, that is to say, not every single action of the Prophet's is the *Sunnah* verbatim, such as the way in which he sleeps, eats, walks, etc. and nor is every word of his the *Sunnah*, such as words exchanged with his wives, friends, enemies etc., but rather his method and principles in friendship, for example, *holistically* embodies the *Sunnah*.

For example, in the Qur'an Allah says: "[Prophet], remember when you left your home at dawn to assign battle positions to the believers: God hears and knows everything"³⁶⁹.

In this verse, even though the Prophet went out to the battlefield early in the morning, it is not a *Sunnah* to go to the battlefield in the early morning; it depends on many circumstances, but what is the *Sunnah* is for the leader of the believers to supervise the war closely and to be with them³⁷⁰. Bearing that in mind, Mudarrisī distinguishes between the *Sunnah* itself and the applications of the *Sunnah*. So on the one hand, the *Sunnah* is the abstract principles that have been extracted from the words and actions

³⁶⁸ al-Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 147

³⁶⁹ *The Qur'an*: p. 43.

³⁷⁰ al-Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 150

that the Prophet was saying and doing constantly and frequently, and on the other hand, the applications of the *Sunnah* are his actions and words concerned with particular things, which might be determined by their historical contexts³⁷¹.

He maintains that there are three reasons to support his argument of defining the *Sunnah* as such. First, the historical and practical juristic treatment of the *Sunnah* proved that jurists rejected the use of some reports (*ḥādīth*), because they believed them to have been restricted to specific circumstances. This is what is known in jurisprudential terminology as the real case (*al-qaḍiyya al-ḥaqīqiyya*) as opposed to the case in an event (*qaḍiyyah fī wāqi‘iyya*). Second, the divisions of the *Sunnah* (which will be discussed below) indicate that some sections of the *Sunnah* are variable. Finally, the characteristic of the evidences of the probative force (*ḥujjiyyat*) of the *Sunnah* restricts its generalization³⁷². In this point he argues about the obligation of following the Prophet (*al-ta‘assī*) and claims that the verse “Indeed, in the messenger of God a good example has been set for you for he who seeks God and the last day and thinks constantly about God”³⁷³ does not conclude that we have to follow the Prophet in every single action. Rather, it indicates to following the Prophet in some circumstances. In order to strengthen his argument, he discusses the general indication of any action being one of permissibility according to what is commonly held in Shī‘ī jurisprudence, based on their belief that the action only indicates permissibility, not obligation or preference. Here he follows Muḏaffar’s argument. His embracing of this view raises the question of whether Muslims share common ground with the Prophet when it comes to legal rulings or not, i.e. whether the base principle (*al-‘aṣl*) is that the *Sunnah* has a generalization, or specificity. He concludes that the base principle is that legal rulings do not have a generalization. Rather, they are specific to the Prophet, unless there are evidences to generalize them to all Muslims³⁷⁴.

From this demonstration, I would argue that Mudarrisī, in order to establish his theory concerning the *Sunnah*, tactically managed to revive a forgotten topic in the field,

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Qur’an: 21:33

³⁷⁴ al-Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 166-71

namely the nature of the Prophet's action. Through the re-examination of this field with his *maqāṣidī* approach, he attempted to establish an understanding of the *Sunnah* that considerably takes historical context into account in order to determine the *ḥadīth* to its circumstances. Simultaneously, this approach enables the jurist to extract the values and principles underlying these words and actions. This understanding was established through his embracing of the nature of the Prophet's deeds and their specificity by claiming that some of them are confined to their historical circumstances, and was further enriched by epistemological interpretation, the mechanism of the clear and ambiguous verses. This approach makes the understanding of the *Sunnah* consistent with making the mechanism of deriving legal rulings purposeful (*maqāṣidī*), as it enables a comprehensive way of studying the reports whereby their treatment does not rely heavily on the quantitiveness of the reports' probative force (*ḥujjiyya*) and nor on the linguistic equilibrium. Rather, it relies principally and primarily on the *maqāṣid*, where the factors of the probative force (*ḥujjiyya*) and the linguistic equilibrium are supplementary factors. However, this depends on Mudarrisī's theory of the divisions of the *Sunnah*, which will be discussed below.

3.4.3. The Divisions of the *Sunnah*

Here, I will demonstrate Mudarrisī's theory of divisions of the *Sunnah*, which is based on his definition of the *Sunnah*. I will also show how he employed and then improved Iṣfahānī's theory of the *Sunnah* to be consistent with his *maqāṣidī* approach.

Based on the Prophet's roles as explained in the Qur'an, Mudarrisī divides the *Sunnah* into five categories.

1. **The exegesis of the revelation (*tafsīr al-waḥy*):** which represents the first role of the Prophet³⁷⁵. However, this category, in turn, is represented in three dimensions:

1.1. **Reciting the revelation (*tilāwat al-waḥy*):** where the Prophet recited the revelation to the people as he received it from God³⁷⁶. However, this is not

³⁷⁵ Ibid, p 151.

³⁷⁶ It could be said that reciting the Qur'an is not a part of *Sunnah*, but is indeed the Qur'an itself.

merely a reading. Rather, it is a specific reading within certain events and contexts that contribute to the meaning of the revelation.

1.2. Witnessing the revelation: by this, he refers to the term “*shahāda*”, which, in this context, means a commitment to and an application of the *Sharī‘a* in daily life, in which the Prophet should be looked upon as the model of religious morals, and, therefore, his behaviour is a model of religion.

1.3. Exegesis of the revelation (*tafsīr al-waḥy*): where the Prophet explains the content of the revelation to the people. This exegesis includes three main aspects: (i) the main values and teachings of the religion and its limitations (*al-ḥudūd*), (ii) the rituals (*al-sha‘ā’ir*) (iii) the religion’s teachings regarding the hereafter (*al-ghaybiyyāt*).

2. The interpretation (*ta’wīl*) of the revelation: here, it means the application of the revelation in reality whether it concerns events or persons. For example, when a verse described the attributes of the believer, the Prophet, in order to interpret it, would say that *‘Alī*, for instance, is the believer. Likewise, this can be applied to the concepts of revelation concerning events such as war, peace and so on³⁷⁷.

3. Purifying people: one of the Prophet’s roles, according to verse 62:2, is to purify people, and this is reflected in his sayings and words, as purifying people is not a one-off sudden action. It varies from one person to the other, and the words and actions of the Prophet are varied even within the one subject matter. Some of his words are suitable for some people, whereas others are not. Moreover, purification needs to be applied gradually; sometimes the teacher chooses to start from the hardest practice, whilst at other times he may prefer to start from easiest one³⁷⁸.

4. Leading people: the Prophet has a role to be the leader of the community. This leadership requires certain attitudes and decisions in specific circumstances, such

³⁷⁷ Ibid, p 153.

³⁷⁸ Ibid, p 156.

as leading wars or negotiations or extricating a community from economic or social problems. These events are reflected in the *Sunnah*³⁷⁹.

5. **Judgement:** one of the Prophet's roles is to adjudicate between people according to the *Sharī'a*.³⁸⁰

This division of the *Sunnah* raises a critical question in terms of jurisprudence that believes in the *Sunnah* as a sum total: how can jurists, in this case, approach the *Sunnah* in deriving legal rulings? Mudarrisī at this point refers³⁸¹ to and develops on Mīrzā Mahdī al-Iṣfahānī's theory about the *Sunnah*. Here, I will provide a summary of this theory, and then I will demonstrate how Mudarrisī has improved it in favour of his *maqāṣidī* approach.

Iṣfahānī provided a theory, which he called '*al-ma'āriḍ*' on how to understand the *Sunnah*. In his view, the nature of communication between people has different aspects; sometimes they deliver their ideas or needs explicitly and sometimes implicitly. The Prophet and Imāms have said that they sometimes make statements that can be interpreted with more than seventy meanings and all of them are correct. This phenomenon in the Imāms' *akhbār* reflects the innate social phenomenon where people are divided into two categories: those who have the capacity to learn and those who are ignorant. Aside from the fact that the Prophet and Imāms were perfect in speaking the Arabic language and they knew very well the different kinds of communication, their mentioning that they use *al-ta'āriḍ* suggests that we must look at their *akhbār* in different ways. Given that fact, he came to the conclusion that the *akhbār* of the Imāms are divided into two general categories. The first category is instruction (*ta'līm*) and the other is the issuing of a ruling (*iftā'*). By instruction, he means the main principles taught by them through which scholars can derive legal rulings from, so that the Imām, in the teaching of the *akhbār*, is targeting scholars on the one side, and intending to provide key elements of the subject on the other. In addition, in the instructive *akhbār*, it is possible and sometimes necessary to accommodate the whole subject and this can be

³⁷⁹ Ibid, p 158.

³⁸⁰ Ibid, p. 161.

³⁸¹ Ibid, p 177.

dependent on separated evidence (*dalīl munfaṣil*). By *iftā'*, he means the legal ruling (or an answer about theological issues) provided by the Imām to a certain person in a specific circumstance, where the statement of the Imām in this case cannot depend on separated evidence, because he does not provide it to the scholar. This classification led Iṣfahānī to draw some conclusions that affect the way that the *akhbār* can be understood. He concluded that interpreting any *khbar* that is in agreement with Sunnīs as being a *taqiyya* (dissimulation), which is the common method in Shī'ī jurisprudence, is not always right, because it might be a kind of '*iftā'*'. Furthermore, and possibly more interesting, is that the *ifta'* reports are not valid for the derivation of legal rulings from, and therefore, cannot be used as valid *akhbār* to outweigh others. The only valid *akhbār* which can be considered as evidence for legal rulings are the instructive *akhbār* and the more the jurist is successful in referring the *ifta'* to the teachings, the more he can benefit from them in expanding his understanding of the subject of study. So here again, as was mentioned in the Qur'anic section, the mechanism of the principle and the detailed, or the clear and ambiguous, appears too but under a different title: the instructive and the individual ruling *ifta'* or sometimes, as he called them *al-aṣl* (the root) and *al-far'* (the branch).³⁸²

Iṣfahānī's thesis seems to have different dimensions. The first is the theological dimension in how it sees the role of the Prophet and the Imāms, and their reports, therefore, have to be categorized according to this. In addition, in Iṣfahānī's theory of *sunnah*, there is a mixture of hermeneutical concerns with a historical understanding of the Prophet and Imāms' reports. This distinguished it from contemporary Shī'ī thinking on this topic.. Although the motivations of believing in this approach fall out of the borders of this study, this approach opens a door for other scholars to question and develop a different way to understand the *Sunnah*. And this is exactly where Mudarrisī makes his distinct contribution. He believes that Iṣfahānī provided a unique methodology in understanding the *Sunnah* and broke a static line in Shī'ī thought of how to address the *Sunnah*. However, he also believes that Iṣfahānī's approach reached a dead end as it was not able to answer the question of how to differentiate

³⁸² al-Iṣfahānī, Mīrzā Maḥdī, *Risāla fī al-Ma'arīf*. Mashhad: the Central Library of Astan Quds Razavi, no. 13411.

between these two categories of reports: instructive (*ta'lim*) and legislative (*iftā'*). Iṣfahānī raised this question in his treatise, but did not provide an answer. Mudarrisī believes that reaching this dead end was due to the fact that Iṣfahānī was focusing entirely on the field of *akhbār* and did not open his mind to the Qur'anic field, whereby if he had done so, he would have come up with conceptions, theories and mechanisms that provided an answer³⁸³. Subsequently, he himself attempts to provide a method of how to differentiate between these categories by studying the relationship between the *Sunnah* and the Qur'an.

3.4.4. The Relationship between the *Sunnah* and the Qur'an

Here, I describe Mudarrisī's view concerning the relationship between the Qur'an and the *Sunnah* by providing a detailed example. The example will illustrate this relationship in addition to the process of drawing a connection between them.

Mudarrisī strongly believes that the *Sunnah* is a commentary of the Qur'an in which the Qur'an has a centrality and dominance over the *Sunnah*. Accordingly, he conceives the relationship between the Qur'an and the *Sunnah* to be like the relationship between the parts of a tree, as he took this metaphorical image from the Qur'an itself. The main components of a tree are the roots, the trunk, the branches and the fruit. The relationship between them is in a vertical hierarchy where the root comes before others. It is, however, possible to have many trunks at the same time and likewise with the branches. Similarly, with the Qur'an and *Sunnah*, there are the clear verses (*muḥkamāt*) in the Qur'an, which are the reference points of the ambiguous verses (*mutashābihāt*); and likewise, in the *Sunnah* there are the clear points (*muḥkamāt*) and ambiguous points (*mutashābihāt*). The clear points of the *Sunnah* are a commentary on the clear parts of the Qur'an and, simultaneously they are, also reference points for the ambiguous points (*mutashābihāt*) in the *Sunnah*. The Qur'anic clear verses represent the branches, which might have other branches underneath, and the clear points of the *Sunnah* too represent branches that fork out from the Qur'anic one. Legal rulings represent the fruits, whilst the theological and moral foundations represent the roots and trunk. Discovering the Qur'anic clear verses and being successful in applying them to

³⁸³ al-Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 190

the ambiguous verses (*mutashābihāt*) will lead to a successful discovery of the *Sunnah*'s clear points, which will then refer to its ambiguous points (*mutashābihāt*). Nevertheless, each clear point (*muḥkam*) has another clear point above it and another below it, and sometimes one clear point can generate several other clear points that have related ambiguous points (*mutashābihāt*). Thus, in order for the jurist to derive a legal ruling, he has to undertake certain steps. These are: studying the clear points (*muḥkamāt*), studying the Qur'anic legal examples of those clear points and studying the clear points (*muḥkamāt*) in the *ḥadīth* and its details. According to Mudarrisī, this process solves Iṣfahānī's dead end, rebuilds the relationship between the Qur'an and the *Sunnah* and enables the legal system to deal with new cases based on the *maqāṣidī* approach.³⁸⁴

A detailed example of this process can be provided, based mainly on Mudarrisī's writing, which he provided as an illustration of the process of referring the *furū'* back to the principles in his *uṣūlī* work.³⁸⁵ Mudarrisī provides an example of the general principle in Islam called the rule of hardship (*al-ḥaraj*). In order to follow the steps that he mentioned previously, he starts off with what he believes to be the clear verse (*muḥkam*) regarding hardship, which says:

“And strive for Allah with the striving due to Him. He has chosen you and has not placed upon you in the religion any difficulty. [It is] the religion of your father, Abraham. Allah named you " Strive hard for God as is His due: He has chosen you and placed no hardship in your religion, the faith of your forefather Abraham. God has called you Muslimsb —both in the past and in this [message]—so that the Messenger can bear witness about you and so that you can bear witness about other people. So keep up the prayer, give the prescribed alms, and seek refuge in God: He is your protector—an excellent protector and an excellent helper”³⁸⁶.

³⁸⁴ Ibid. p. 191

³⁸⁵ Ibid.pp. 191-202

³⁸⁶ *The Qur'an*: p. 214.

Mudarrisī argues that this verse discusses the bestowals that Allah had granted Prophet Muḥammad’s nation (*ummah*), one of which being that Allah has not placed any hardship for them therein. Therefore, the absence of hardship is the clear fact extracted from the above clear verse about Allah’s bestowals. This clear verse has implications in the legal field, and subsequently some examples have to be mentioned in the Qur’an.

Here, Mudarrisī goes through the second step, which is to search for the Qur’anic legal applications of that clear verse, which are in effect the ambiguous verses (*mutashābihāt*). Here, he mentions the verse of purification, which says:

“You who believe, when you are about to pray, wash your faces and your hands up to the elbows, wipe your heads, wash your feet up to the ankles and, if required, wash your whole body. If any of you is sick or on a journey, or has just relieved himself, or had intimate contact with a woman, and can find no water, then take some clean sand and wipe your face and hands with it. God does not wish to place any burden on you: He only wishes to cleanse you and perfect His blessing on you, so that you may be thankful”³⁸⁷.

According to Mudarrisī, in this verse the Qur’an provides a legal application of the principle of non-hardship, which is dry ablution (*tayammum*). Additionally, the verse mentions the grounds for dry ablution, which are illness, travel and lack of water, as well as their pretexts, being any kind of impure bodily excretion and being filthy.

The principle alone in its general form would not be enough for the jurist to derive a legal ruling, as it is not clear how it works, though some applications have been provided. Here is where the role of the *Sunnah* as a commentary to the Qur’an comes into play, and this is the third step in Mudarrisī’s suggested process. By referring to the *Sunnah*, there are many reports concerning the rulings of *tayammum* dealing with several detailed questions. For example, how much effort has to be spent in searching for water? For the ill person, to what extent is harm considered an excuse for doing *tayammum* instead of *wuḍū’*? Are there other justifications for doing *tayammum* in addition to those mentioned in the Qur’an? According to Mudarrisī, by referring these

³⁸⁷ Ibid., p. 68.

reports back to the Qur'an and by considering the principle of non-hardship as a clear verse (*muḥkam*), the jurist is easily able to deal with the reports and find a solution for those reports that appear contradictory.

For the first question, there are various reports with contrasting content regarding the effort that needs to be exerted. One report says that the person should take a risk and try to search for water even though it might take considerable time and effort. In keeping with this, other reports emphasize that the person should even spend money, regardless of cost, to buy water to do *wuḍū'* with, and therefore, the scope of the excuse becomes very limited. On the other hand, there are some reports that cite the Imām as having told a person who was very close to a well that he does not need to exert effort in bringing water from the well. Alongside this, another report mentions the Imām as having told someone else not to even spend time in the quest for water whilst he was travelling. Mudarrisī's point here is that by referring these reports back to the Qur'an, especially to the verse of hardship as a clear verse, we know that the principle in all these cases is being in state of hardship, and that the situation varies from one person to another. Subsequently, the reports vary in their response to each individual's question in accordance with his/her situation. Moreover, studying these reports, which have many cases for legal rulings, both clarifies the Qur'anic principle and lifts away the contradiction between the reports. It is a back and forth dialectical process.

The fourth step now is to deal with new cases that the jurist must confront in reality. According to Mudarrisī, going through the suggested process step-by-step allows the jurist to refer new cases back to the principle of non-hardship, even if there be no specific text referring exactly to that particular case.

In addition to the above, Mudarrisī believes that discovering a Qur'anic principle, e.g. non-hardship, is an opportunity for further discovery of other principles which are relevant. For example, by considering non-hardship as a clear verse and therefore, generating a principle thereby, allows us to consider another principle, previously mentioned and which is relevant to the area of non-hardship, as a sub-principle of a clear verse. By doing this, the jurist manages to establish the limits of the other sub-

principles, such as the principle of harm (*al-ḍarar*) as well as difficulty (*al-ʿusr*). Then, by going through the same process which had been executed with non-hardship, each of these principles are then clarified in detail and eventually the whole field of emergency rulings, as Mudarrisī called it³⁸⁸, can be defined.

3.4.5. Conclusions

Mudarrisī began establishing his theory about the *Sunnah* by redefining the conception of the *Sunnah*. His revision of the definition of the *Sunnah* is based on reviving a forgotten area in Shīʿī jurisprudential scholarship, namely the nature of the Prophet and Imāms' actions. This led him, with some theological bases, to divide the *Sunnah* into several categories, some of which are constants and others variables. He further refined his categorization through a theoretical proposition furnished by a contemporary Shīʿī scholar Mīrzā Mahdī al-Isfahānī. However, he believed that Isfahānī's theory had reached a dead end as it had not been able to provide a clear method to differentiate between these categories. This is attributed, according to Mudarrisī, to the fact that Isfahānī was focusing on the *Sunnah* (*akhbār*), whereas the key solutions are to be found by approaching the issue through the Qur'an. Therefore, he provided what he thought to be a method of differentiation between these categories where the *Sunnah* is a commentary of the Qur'an.

Whilst Shīʿī jurisprudential discussions regarding the *Sunnah*, especially the Bahbahānian paradigm, were mainly concerned with discussion on the authoritativeness (*ḥujjiyya*), and, therefore, scholars were considerably preoccupied with issues such as *khbar al-wāḥid*, Mudarrisī, in contrast, did not pay any attention to this matter. Rather, being occupied with his *maqāṣidī* project, he devoted his efforts to developing an understanding of the *Sunnah* in relation to *maqāṣid al-sharīʿa*. Thus, he paid attention to semantic issues and to the relationships between the *Sunnah* and other pieces of legal evidence, especially the Qur'an, as discussed above. This supports the argument of this chapter, viewing the post-Bahbahānian paradigm as concerned with the function of jurisprudence more than with the legitimacy or authoritativeness of the jurisprudential process (*al-ḥujjiyya*). It was the latter which was

³⁸⁸ Ibid, p 191.

the centre of the methodological framework of the Bahbahānian paradigm. Furthermore, by establishing this relationship between the Qur'an and the Sunnah, where the Qur'an is positioned at the very top of the jurisprudential sources and the Sunnah becomes mainly complementary, and functions as a commentary to it, Mudarrisī challenges the current jurisprudential hierarchy of legal sources. For the Bahbahānian paradigm, the epistemological value of the texts of the Qur'an and the *Sunnah* are quite similar, where they are regarded as one text where hermeneutical tools are applied equally to both of them. Thus, although the vertical hierarchical order of the sources, beginning with the Qur'an can sometimes be seen, in effect they are ordered horizontally side by side. For Mudarrisī, the vertical hierarchical order is firmly established by positioning the Qur'an at the top and subsequently supplemented by hermeneutical tools to maintain the hierarchy. The ramifications of such an establishment will be seen when Mudarrisī's theory of *maqāṣid al-sharī'a* is discussed later on.³⁸⁹

3.5. Consensus (*ijmā'*)

Here, I will address briefly Mudarrisī's view regarding one of most debatable matters in Shī'ī jurisprudence, namely consensus (*ijmā'*). Similar to the previous sections, I will begin with the general context of the issue in the Sunni tradition, and then in the Shī'ī tradition in order to effectively allocate Mudarrisī's own position within it. Along with the main argument of this chapter, that Mudarrisī's is considered to be a departure from the methodological framework of the Bahbahānian paradigm, as well as an attempt to adapt the classic jurisprudential tools and theories in favour of his *maqāṣidī* project, I will demonstrate how he has done the same with *ijmā'*.

3.5.1. Historical Overview of Consensus (*ijmā'*) in the Sunnī Jurisprudential Tradition

The first emergence of consensus as an intellectual as well as a jurisprudential issue needing legitimate justification came with Ibn Idrīs al-Shāfi'ī in his *Risāla*. In al-Shāfi'ī's view, the concept of consensus was most concerned with the ways of knowing the *Sunnah* of the Prophet. Therefore, it overlapped with the discussion of *tawātur*. The question he posed was whether the consensus of the Prophet's companions on an

³⁸⁹ See: Chapter Four, p187.

action be a way of discovering the *Sunnah* of the Prophet? However, a few centuries later, the discussion shifted in other directions and extended to many different matters. These discussions revolved around a central theme: is consensus a separate legal source or it is merely a subsidiary deductive evidence for the *Sunnah*? Is valid consensus one that has been agreed upon in a specific place such as Madina or the two centres of Kufa and Basra, or should it be a consensus agreed upon by the entire Muslim community (*ummah*)? Does consensus include the whole community or is it only restricted to scholars or conveners (*ahl al-ḥall wa-l-ʿaql*)? Is it possible in reality for consensus to actually occur? Has it really occurred as such? What if some scholars remained silent? Is their silence considered as supportive of consensus or they are considered to be breaking it? Can consensus be justified by reason (*al-ʿaql*) or are its evidences only textual? All these issues were [and still are] matters of debate amongst Sunni scholars. Moreover, the analytical reading of the historical context and the motivation behind the emergence of consensus has been the focus of attention for many scholars.³⁹⁰

3.5.2. A Historical Overview of Consensus in the Shīʿī Jurisprudential Tradition

From the textual sources at our disposal, the first emergence of consensus in Shīʿī jurisprudence (*uṣūl al-fiqh*) seems to have been in the Baghdad school with al-Shaykh al-Mufīd (d. 1022). There is no reference to the matter in the second main Shīʿī centre of learning at that time, Qum. There were some references to the concept of consensus in the discussion on how to deal with conflicting transmissions (*akhbār*) as well as in some theological dialogues, but the concept was more about the majority of opinions (*al-shuhra*) than about consensus, which came to be point of discussion later on in the period of al-Mufīd. The Shīʿī attitude towards *ijmāʿ*, which was theoretically established by al-Mufīd and elaborated by al-Murtaḍā (d. 1045), can be summarized by the statement of al- Murtaḍā:

³⁹⁰ See Ḥallāq, Wāʿel, *On the Authoritativeness of Sunni Consensus*, International Journal of Middle East Studies, Vol. 18, No. 4 (Nov. 1986). See also Hourani, George, *The Basis of Authority of Consensus in Sunnite Islam*, Studia Islamica, No. 21 (1964)

“The action of the Infallible has a probative force (*ḥujjiyya*), but not the actions of others alongside him. There is no probative force (*ḥujjiyya*) to an action carried out by a group, wherein the inclusion of the Infallible is unknown, and nor does it have probative force (*ḥujjiyya*) if the Infallible is excluded.”³⁹¹

This attitude has been the standard Shī‘ī opinion since the fourth century up until now. The only change that happened lay in the extension of the debate and the ways of discovering the utterance of the Imām within *ijmā‘*. That is to say, Shī‘ī scholars have agreed that the essential idea behind accepting *ijmā‘* as a valid source of legal evidence is that it must include the utterance of the Imām. This raises a question about how we can possibly know whether the Imām was there amongst the agreed opinion. Moreover, they asked on which grounds these ways of discovering the Imām’s opinion could be justified. These two questions have dominated most of Shī‘ī jurisprudential discussions regarding consensus. With al-Shaykh al-Anṣārī the discussions became even more restricted to transferred *ijmā‘* (*al-ijmā‘ al-manqūl*). Notwithstanding, Shī‘ī scholars have discussed some matters that have, over time, come to be considered a part of *ijmā‘*, that is, the majority in opinion or the majority in transmission (*al-shuhra al-fatwā‘iyya and al-shuhra al-riwā‘iyya*). In these matters too, the common Shī‘ī view is that these tools are valid as long as they reflect and include the opinion of the Imām.

3.5.3. Mudarrisī’s View of Consensus

Mudarrisī stands alongside the common Shī‘ī attitude towards consensus, which rejects consensus as a valid source of legal evidence unless the Imām is included within it.³⁹² However, he notices that although in theory Shī‘ī scholars reject consensus, in practice when they derive legal rulings they use it considerably. In attempting to analyze this phenomenon, he suggests that there are several factors that have led to the emergence of this phenomenon. On the one hand, it is common for the real practice of a field of knowledge to usually be more developed than its theoretical bases. The same thing can be said about the relationship between *fiqh* and *uṣūl*. Scholars in *fiqh* dealing with real

391 ‘Alī ibn al-Ḥusayn Murtaḍā, *Rasā‘il al-Murtaḍā*, (Iran: Dār al-Qur‘an al-karīm), v. 1, p. 18

392 al-Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 131

evidences and cases that necessarily make them more developed rather than solely abstracting concepts and theories as they might do in *uṣūl*. Therefore, they may find that they are in need of tools such as *ijmāʿ*. On the other hand, the inclination towards using *ijmāʿ* in *fiqh* might reflect a psychosocial dimension of human beings where the scholar does not want to be alone in adopting a different opinion to the rest. This might also be an explanation of why some scholars who reject consensus have attempted to strengthen the probative force (*ḥujjiyya*) of the majority opinion (*al-shuhra al-fatwāʿiyya*) instead. Whatever the reasons behind this ironic phenomenon, in the final analysis, the common Shīʿī attitude towards consensus has been to reject it on a theoretical level.³⁹³

Having said that, Mudarrisī believes that the main misleading point in the whole discussion of *ijmāʿ* is attributable to the position that it has been allocated in jurisprudence. That is to say, from the beginning *ijmāʿ* was a practical tool for the Islamic community (*ummah*) to reach collective agreement regarding societal issues that they were faced with as a community. In other words, it was one element of the *shūrā* system. However, later on it was moved from being a tool used to deal with socio-political variables to become a source of legal evidence for the field of constants in Islamic law. Subsequently, the legitimacy of *ijmāʿ* for this status could not stand up against the sharp criticisms from scholars. Therefore, according to him, the best and most valid place for *ijmāʿ* within the mechanism of deriving legal rulings should be restricted to variable rulings. In this sense, *ijmāʿ* is a tool for the jurists of the Islamic community through which they can reach a collective agreement on the issues of the variables relevant to societal matters. Examples of these societal matters are decisions of war and peace, approval of the general policy regarding economic resolutions and so on³⁹⁴.

Later on, when I address³⁹⁵ Mudarrisī's theory regarding the system of *maqāṣid al-sharīʿa*, I will study in more detail the role of *ijmāʿ* and its relationship with the concept of the guardianship of the jurist (*wilāyat al-faqīh*). For the sake of this section, here are

³⁹³ Ibid. p. 127

³⁹⁴ Ibid. p. 138

³⁹⁵ See on page 217.

some comments and conclusions. First, it seems that Mudarrisī has not rejected *ijmāʿ* in totality the same way that Shīʿī scholars have typically done so. Rather, he seems to be accepting something closer to a Sunnī concept of *ijmāʿ* as an administrative or governmental mechanism for collective decision-making. Examining Mudarrisī's work, one can see that he has indeed consulted many Sunnī sources, especially those with *maqāṣidī* tendencies such as ʿAllāl al-Fāṣī (d. 1974), who actually held the same idea. This might support the conclusion that Mudarrisī, as a part of Shīʿī reformist tendency, was forced to open his mind to the Sunnī experience in order to benefit from it and to adapt it with Shīʿī establishments. Secondly, Mudarrisī with his *maqāṣidī* project attempts to find a different category for legal evidence that does not rely exclusively on the epistemological level as it had done so with the Bahbahānian paradigm. Rather, his category mainly depends on the category of values, whereby some of them are constant and therefore evidences for the same, and others are variable and subsequently act as evidence for their like, in turn. *Ijmāʿ*, in this context, is classified in the second category. This point will be discussed in more detail later on. Thirdly, in establishing jurisprudential methodology, Mudarrisī seems to be more concerned with establishing the sort of evidence that has a collective and societal nature to it in terms of mechanism for derivation of rulings and making legal sense, as we shall see in more detail in the next chapter.

3.6. Conclusion

The above detailed analysis demonstrates that, comparing the Bahbahānian paradigm and Mudarrisī's paradigm, what is the central core of one paradigm becomes peripheral for the other and vice versa. However, it is not simply a mere change in position, but also a shift from one world-view to another in a way that the change of position generates a new package of theoretical and hermeneutical tools.

Whilst the Bahbahānian paradigm was epistemologically concerned with the duality of the certain (*qaṭʿ*) and the speculative (*ẓann*), and sought to establish legal evidences based on certainty, Mudarrisī is more concerned with a practical method of knowledge that can open more possibilities for the jurist to acquire religious knowledge as much as possible. Moreover, whilst the Bahbahānian paradigm, through its epistemological

restrictions, made a quietist out of the jurist as a result of the limits of the scope of his agency, Mudarrisī's flexible epistemology allows the jurist to be ambitious and active by virtue of the wide scope that he can interact with.

As for methodological stances, whilst the central concern of the Bahbahānian paradigm was authoritativeness (*al-ḥujjiyya*), which formalised most of the jurisprudential debates regarding legal evidences, Mudarrisī's central methodological concern is the content of the sources. This has forced him, as was demonstrated in the chapter, to re-analyse what were deemed to be mere semantic tools within the Bahbahānian paradigm - such as interpretation (*ta'wīl*), the exoteric (*al-zāhir*), the esoteric (*al-bāṭin*), the clear (*al-muḥkam*), and the ambiguous (*al-mutashābih*), as well obsolete enquiries, such as the division of the *Sunnah* and the actions of the Prophet to serve as epistemological purposive tools used to understand the main sources, namely the Qur'an and the *Sunnah*. In addition, this has led him to reconstruct the hierarchy of legal sources according to their theological status and content, where the Qur'an is assertively placed at the top, followed by the *Sunnah*, rather than constructing them side by side according to their semantic values.

These differences in terms of epistemology and methodology between the Bahbahānian paradigm and Mudarrisī's have been the subject matter of this whole chapter. In brief, Mudarrisī's approach is a departure from the Bahbahānian paradigm both epistemologically and methodologically. In the next chapter, I will investigate Mudarrisī's theories regarding the issues of *maqāṣid al-sharī'a*, aiming to show how his insights are also a departure in terms of the functional framework of the Bahbahānian paradigm.

4. Chapter Four

Maqāṣid *al-Sharī'a*: The Nature of the *Sharī'a*

4.1. Introduction

In the previous chapter, the central argument postulated was that Mudarrisī, by calling for *maqāṣid al-sharī'a*, had departed from the epistemological and methodological framework of the Bahbahānian paradigm. This chapter continues this emphasis, with particular focus on Mudarrisī's departure from the functional framework. In addition, and in light of the above, the current chapter both analyzes and establishes the theoretical foundations of Mudarrisī's theory of *maqāṣid al-sharī'a*. The main argument at this stage is that the Bahbahānian paradigm ended up with a *soft utilitarian* functional framework, as was earlier discussed, in which common interest (*al-maṣlaḥa*) became the central discourse.³⁹⁶ Mudarrisī, on the other hand, departed from this framework, turning to a moral values discourse as the functional framework by calling for *maqāṣid al-sharī'a*. To demonstrate this framework, I will discuss Mudarrisī's view regarding the nature of the *Sharī'a*, which defines its functions. This will lead to several theoretical discussions that will show how the moral values discourse became the core of his functional framework.

4.2. The Nature of the *Sharī'a*

Although terminological discussions are important and, in effect, crucial at times in Islamic studies, Mudarrisī seems to not pay this aspect much attention. Instead, he appears to be more concerned with conceptual aspects than with terminological discussions. Therefore, he does not spend time distinguishing between the terms *sharī'a*, *fiqh* and *qānūn* (law). Rather, he sometimes uses them interchangeably. Having said that, he theoretically differentiates between three main fields: theology (*kalām* or philosophy), ethics (*akhlāq*) and *Sharī'a*. However, he argues that the way in which

³⁹⁶ See p 45-50.

these fields are studied in Islamic religious institutions makes them separate and incoherent fields; whereas he believes that religion is a general frame that includes theology (which is an equivalent field to theoretical reasoning discussions in philosophy), ethics (*'akhlāq*) (which is an equivalent field to the social and practical reasoning discussions in philosophy) and *Sharī'a (fiqh)* (which is an equivalent field to the philosophy of law and law in modern Western discourse).³⁹⁷ Mudarrisī argues that although these fields are separate when they are studied for practical and realistic reasons, they are interrelated in such a way that each one affects the other. In his view, even if they are separated in any other tradition, it is quite difficult, if not impossible, for them to be separated in the Islamic tradition³⁹⁸.

Based on this account of religion and what it constituent parts (namely, theology, ethics and law), Mudarrisī argues that the *Sharī'a* is a representation of the theological and moral contents of religion in the practical life of Muslims, both individually and socially. Taking into account the belief in the validity of Islam for all times and places as the final message from God, it is not surprising to observe that Mudarrisī believes in two broad categories in the *Sharī'a* which make it a timeless system. These two categories are “constants” (*al-thawābit*) and “variables” (*al-mutaghayyirāt*). It is also not surprising that he holds this belief since the idea of constants and variables has been a notable discourse in Islamic thought generally and in Shī'ī discourse in particular over the past four decades as a way of dealing with the modern age.³⁹⁹ Though the idea has been discussed from different angles and aspects and for several motivations, it is a notable discourse amongst Shī'ī scholars. However, what is of interest here is to see how Mudarrisī addresses this idea, i.e. how it fits in with his *maqāṣidī* project and, above all, how he defines these concepts differently from other thinkers.

4.2.1. The Constants (*thawābit*) of the *Sharī'a*

³⁹⁷ Muḥammad Taqī Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, 10 vols (Tehran: Dār intishārāt Mudarrisī, 1993), v. 3, p.13

³⁹⁸ Ibid. p. 14

³⁹⁹ The idea that in Islam there are constants and variables seems to be a notable discourse in Islamic thought both amongst Shī'ī and Sunnī scholars. For a detailed account of those scholars' ideas, see: Muḥammad 'Abd al-Qādir al-Najjār, *al-Masāḥa al-maftūḥa fī al-Tashrī' al-Islāmī*, (Beirut Dār al-Maḥajjat al-Baydā', 2013)

The concept of “constants” in Islamic thought has been discussed from different perspectives and for various motivations. In the Shī‘ī context, some scholars have discussed it in the framework of the religion as a whole, motivated by showing the flexibility of Islamic thought and focused on the notion of natural religion as one way of dealing with the question of the validity of Islam.⁴⁰⁰ Other scholars have discussed the issue from an epistemological perspective, motivated by recent theological debate on the constancy and/or changing of religious knowledge.⁴⁰¹ Yet other scholars have discussed the issue from a legal aspect motivated by the validity of Islam, not only as an ideological system, but also as an applied legal system that is compatible with the modern age.⁴⁰² In each of these perspectives, the concept of the constant is different depending on the angle through which the issue is addressed. That is to say, from a general religious perspective, the concept is more about the theological and moral content with some legal content, though the legal aspect would be of less concern. However, from an epistemological perspective, the concept of the constant is mainly based on the form and degree of religious evidence epistemologically, and then the discussions proceed to issues of certainty and its relevant debates. In the Sunnī context, the ‘constants-variables’ discourse has also been discussed in contemporary discussions. It can be found in the works of al-Ṭāhir ibn ‘Āshūr⁴⁰³ with firmly similar motivations of that of the Shī‘īs.

Mudarrisī addressed the concept from a purely legal perspective, motivated by the capacity of Islam as a legal system to be applicable in the modern age, as already mentioned. Consequently, he begins addressing the issue by asking a philosophical legal question, i.e. why do some parts of the law have to be constant? Having provided his answer to that question, he attempts to define the concept of the constant on three levels: (i) providing the method of discovering the constants; (ii) providing the philosophical theoretical worldview of the concept of the constant and, finally, (iii)

⁴⁰⁰ Muḥammad Ḥussain al-Ṭabāṭabā‘ī, I would argue, is considered within this category. See *ibid.* pp. 237-45

⁴⁰¹ Mālik Wahbī al-Āmilī, I would argue, is considered within this category. See Mālik Wahbī al-Āmilī, *Dawr al-‘Aql fi Tashkīl al-Ma‘rifa al-Dīniyya*, (Beirut: Dār al-Hādī, 2008)

⁴⁰² Muḥammad Bāqir al-Ṣadr, I would argue, is considered within this category. See al-Najjār, *al-Masāḥa al-Maftūḥa fi al-Tashrī‘ al-Islāmī*, pp. 215-36

⁴⁰³ Ṭāhir ibn ‘Āshūr, *Maqāṣid al-Sharī‘a*, 2nd ed. (Jordan Dār al-Nafā‘is, 2001), pp. 251-67

opening actual philosophical debates with several schools of thought both in ethics and in legal philosophy on constant values. Whilst the philosophical legal question and the first two levels will be discussed here, the third level will briefly be mentioned here and will be addressed in detail as part of the next chapter.

4.2.1.1. Why does the Law Have to Include Constants?

The question of the inclusion of constants in the law is associated with the field of philosophy of law in contemporary literature, which is in fact a mixture of moral, social and political investigation. According to Mudarrisī's understanding, there is a common convention among legal philosophers that law has to be characterized by constancy for two main reasons, notwithstanding their disagreement about the purposes of the law.⁴⁰⁴ First, the law has to be constant for the security and stability of society⁴⁰⁵, for if the law was to change quickly and did not have constant parts, it would make people unable to anticipate their future and subsequently unable to plan for their interests. Moreover, without constancy of law, people would not even be able to protect themselves, since the law, which defines their rights and duties, would be changeable, and this in turn would lead to a society that is insecure. Second, the constancy of the law will make the law a custom of society in the long-term, which in turn makes the law easily applicable and implemented. Otherwise, if the law were easily changeable, it would disrupt the motivation of individuals and social parties of society to implement the law.⁴⁰⁶

Mudarrisī agrees with the necessity of the constancy of the law and the reasons given for it. However, he attempts to provide Islamic grounds for this necessity by asking what Islam has established as the constant part of the law. He suggests three Islamic principles that secure the constant part of the law. First, Islam considers some moral values as fixed and constant and that cannot be changed whatsoever, such as justice, peace, honesty and so forth.⁴⁰⁷ The way in which these values have been established as fixed ones will be discussed elsewhere in this thesis⁴⁰⁸. Second, Islam considers

⁴⁰⁴ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, v. 2, p. 222

⁴⁰⁵ Ibid. p. 223

⁴⁰⁶ Ibid. p. 225

⁴⁰⁷ Ibid. p. 226

⁴⁰⁸ See on page 207.

right or the truth (*al-ḥaqq*) to be the centre and foundation of many regulations and ruling issues, and not people's desires and interest.⁴⁰⁹ Third, by confining legislation to Allah, Mudarrisī argues that Islam secures the law - as a main body - as constant. The principle of *ijtihād* is that the jurist attempts to discover the divine rulings, through his best effort coupled with the highest level of piety; otherwise, it would be a dereliction of his duty and he would be considered as a liar by Allah. This builds a significant distance between the jurist and the divine law, which can secure the law from being manipulated by the jurist's desires or interests.⁴¹⁰ Through these three principles, Mudarrisī argues that Islam has established a ground for the constancy of the law.

In light of the above, it can be argued that Mudarrisī discusses the issue of the necessity of the constancy of the law from a legal philosophical perspective by focusing on stability, security and implementation. On the contrary, other Shī'ī scholars (e.g. Muḥammad Ḥussain al-Ṭabāṭabā'ī and Mālik Wahbī al-Āmīlī) have discussed it from a purely philosophical perspective by focusing on natural religion. Moreover, Mudarrisī insists on providing an Islamic perspective regarding the issue. This might suggest that other scholars are in a defensive position to show the validity of Islam, whereas Mudarrisī, having already taken the validity of Islam for granted, takes a more constructive stance in building a theory regarding the nature of the *Sharī'a*.

4.2.1.2. What is the Method of Discovering the Constants of the *Sharī'a*?

As was discussed earlier, in Mudarrisī's epistemology⁴¹¹, he always tends to think about and address the issue dynamically and in a complex way rather than confining himself to one factor in constructing an idea or theory. Likewise, he does not believe that there is only one method through which the constants of the *Sharī'a* can be discovered. Rather, he thinks that there should be several methods, which collectively reflect different aspects and dimensions of reality in order to achieve coherence and equilibrium. These dimensions are reason (*al-'aql*), revelation (*al-wahy*) and reality (*al-*

⁴⁰⁹ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, v. 2, p. 227

⁴¹⁰ Ibid.p. 228

⁴¹¹ See on page 132.

wāqī). In his view, by combining these three dimensions, we achieve a coherent view of the constants of the *Sharī'a*.⁴¹²

Mudarrisī uses the term '*ʿaql* – reason' to include moral intuition (*al-fiṭra*), independent rational indicators (*al-mustaqillāt al-ʿaqliyya*) as well as reason's capacity for grasping, differentiating, understanding and so forth. Through this one word, he intends the moral and rational capacity of reason.⁴¹³ Mudarrisī uses the term '*waḥy* – revelation' to refer to the clear moral principles that have been mentioned in the sacred texts, i.e. the Qur'an and the Sunnah.⁴¹⁴ By '*al-wāqī* – reality', he implies the induction and careful reading of human moral experiences in different religions and systems of thought.⁴¹⁵ These human moral experiences, in his view, can be found in the fields of legal philosophy, history, moral philosophy and social philosophy. Thus, any mature method of seeking to discover the constants of the *sharī'a* has to be aware of how to combine these three methods.

Mudarrisī here seems to be thinking out loud or wanting the reader to share his intellectual journey of discovering the constants; or at least he looks like he wants to be honest in expressing exactly how he is going to go about discovering the constants, since the method that he provided here is precisely what he seeks out to undertake.

Compared to other Shī'ī scholars who dealt with the subject of the constants and variables, Mudarrisī seems to be the only one who, not only suggests several things as being constants of the *Sharī'a*, but also provides a method for discovering these constants. Others tend to only address the issue from a philosophical perspective by providing the main principles of differentiating between each category, but without providing a method of how to discover the constants or variables in each category. This point will be clarified throughout this chapter.

4.2.1.3. A Theoretical Worldview of the Constants of *Sharī'a*

⁴¹² Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, v. 2, p. 276

⁴¹³ Ibid.

⁴¹⁴ Ibid.

⁴¹⁵ Ibid.

Mudarrisī, like many Muslim scholars of his generation, (and this might be a common understanding of Muslim scholars generally) believes that the field of *sharīʿa/fiqh* is a consequence of a theological and moral attitude. Having said that, Muslim scholars obviously differ in how they theorize this relationship and some of them might not even be concerned with theorizing it. Mudarrisī is concerned with providing a theoretical worldview of the relationship between theology and morality on the one hand and *sharīʿa/fiqh* on the other. Unlike other scholars, who have dealt with the issue of the constants and variables, Mudarrisī, through theorizing this relationship, has specified the location of the constants in the architecture of this worldview.

Mudarrisī sees the world as created by Allah through His most beautiful Names (*asmāʾuhu al-ḥusnā*), and therefore every part of the world includes a complex element of these beautiful Names. Moreover, each beautiful Name reflects a cosmological rule (*sunnah kawniyya*) in both the physical and the social world. For example, his wisdom is reflected in the well-organized nature of the physical world and likewise his justice is reflected in the eventual victory of the vulnerable people over the oppressors. Now, each of these cosmological rules reflects “forms/types of wisdoms” (*ḥikma*) or values (*qiyam*). These constitute the moral principles of the legal issues in the *sharīʿa*. Previously I mentioned Mudarrisī’s hermeneutical methods of how to discover these values and derive legal rulings from them.⁴¹⁶ However, what is interesting here is that Mudarrisī believes that these wisdoms or values are the constants of the *sharīʿa*.

Proceeding from Allah’s cosmological rules in the human, society and history, and from His complete knowledge of all their dimensions, Allah has legislated legal rules for us and called them wisdoms. These proceed from His cosmological rule in the natural and human world. Also, these wisdoms do not change”.

These wisdoms are the background of the rulings of *sharīʿa*, the wisdom of respecting the human, e.g. his/her life, property, honour and dignity, the wisdom of

⁴¹⁶ See on page 167.

security, justice and charity, rejecting pre-Islamic fanaticism, the closest to Allah being the most pious, and the wisdom of praying and *zakāt*⁴¹⁷.

In addition, Mudarrisī believes that there are two other categories of constants within the *sharīʿa*. Though these are parts of wisdoms and values, Mudarrisī places extra emphasis on them. The first of these are the rituals of Islam⁴¹⁸, but not necessarily what is known in the field as acts of “worship” in jurisprudential books.⁴¹⁹ Instead, he means the purely ritualistic part of Islam, including prayers, fasting, pilgrimage and the places of worship (by which he means the mosques and shrines). He sees these as the social identity of the Muslim community that symbolizes the unity of the Muslim community.⁴²⁰ The second category includes those legal rulings that are termed in the Qur’an as the ‘*ḥudūd*’ – ‘limits’. Interestingly, however, Mudarrisī here does not mean the jurisprudential field of *ḥudūd* - limits, which basically deal with punitive measures. Instead, he argues that the *ḥudūd* that are mentioned in the Qur’an are concerned with legal rulings relevant to family law, namely, marriage, divorce, inheritance and such matters. So, in Mudarrisī’s view, punitive measures are not part of the constants of the *sharīʿa*.

To sum up, Mudarrisī’s worldview is that the essence of the *sharīʿa* is moral principles (wisdoms or values) and these moral principles are reflections of Allah’s cosmological laws, which are in turn, reflections of Allah’s most beautiful Names. Moreover, these moral principles in addition to the rituals and *ḥudūd*, which includes family law, are the constants of the *sharīʿa*.

In light of the above review, one can gather that amongst Shīʿī scholars who have dealt with the issue of constants and variables, Mudarrisī seems to be the only one who does not simply differentiate between them by considering the field of worship (*al-ʿibādāt*) as constants and the field of transactions (*al-muʿāmalāt*) as variables. Instead, he only

⁴¹⁷ Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 281

⁴¹⁸ Ibid. p. 282

⁴¹⁹ Shīʿī jurisprudence divides the sections of the law into two (sometime into three) categories, the first is what is known as ‘acts of worship’ (*ibādāt*) and the second deals with transactions (*muʿāmalāt*). The category of acts of worship includes ritual purification, prayer, fasting, *zakāt*, *khums*, pilgrimage and *jihād*. Mudarrisī has excluded *zakāt*, *khums* and *jihād* from this category.

⁴²⁰ Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 283

deems values, rituals and family law as constants. This has an effect on his concept of the variables, as we shall see⁴²¹.

4.2.1.4. A Practical Thesis Plan to Discover the Values of the *Sharī'a*

Having determined the methods of discovering the constants of the *sharī'a* in addition to providing a worldview of religion which specifies the position of the constants, particularly moral values, Mudarrisī also provides a practical thesis plan to discover the values of the *sharī'a*. As mentioned above, providing such a thesis plan, which was actually mentioned several times in his work, seems to indicate that Mudarrisī was thinking out loud: that he wanted the reader to share with him in his intellectual journey or at least he wanted to elucidate what his project was.

Mudarrisī's thesis plan claims that any project aiming to discover the constant values of the *sharī'a* must be undertaken in two steps. First, there should be a dialogue with the different traditions of moral philosophy on the one hand, and legal philosophy on the other. By carrying out this dialogue, a mature theory of value can be achieved, which would then constitute the essence of the values of *sharī'a*.⁴²² This mature theory can then be understood as constituting the purposes of the *sharī'a* (i.e. the *maqāṣid*). Secondly, the values of Islamic thought need to be determined, giving the Qur'an an intellectual centrality, and these need then to be linked to the values as determined by the dialogue between moral and legal philosophy. It is this, rather sketchy, procedure that Mudarrisī then aims to follow⁴²³.

Actually, this plan is precisely what Mudarrisī followed. He undertook a comparative study with moral and legal philosophy, with particular emphasis on the main values in each. Subsequently, he came up with the conviction that the main values of moral philosophy are three: love, justice and life.⁴²⁴ In legal philosophy, Mudarrisī argues that the main purposes of the law are three: security, justice and progress.⁴²⁵ He proceeded similarly in his plan for studying Islamic thought, particularly the Qur'an. He also claimed

⁴²¹ See on page 300.

⁴²² *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 3, p. 13

⁴²³ Ibid.

⁴²⁴ Ibid. pp. 187-91

⁴²⁵ Ibid. pp. 316-23

that the tree of values in Islamic thought begins with faith (*al-īmān*), then comes guidance (*al-hudā*) and finally success (*al-falāḥ*) from which many values are derived.

The above is just a brief survey of Mudarrisī's thesis plan to discover constant values. The following chapter is devoted to the analysis of this thesis plan in detail.

4.2.2. The Variables (*mutaghayyirāt*) of the *Sharī'a*

The second feature of the *sharī'a*, in Mudarrisī's view, is that it is changeable. As stated above, this is not an unusual idea in the discussion on the *sharī'a*. Rather, it seems to be a standard discourse of many reformist Muslim scholars - both Sunnī and Shī'ī - in the twentieth century. However, their approaches and concepts of the variables are different. Mudarrisī has a different concept and it is a key idea of his thought regarding the *sharī'a* and his *maqāṣidī* project. Here, I will demonstrate his conception of the variables and differentiate his view from those of others in this regard. Then, I will also demonstrate factors of the variables from his point of view.

4.2.2.1. The Concept of Variables

The mainstream understanding of the variables amongst Shī'ī scholars is that in the field of transactions (*al-mu'āmalāt*) the object of the legal ruling has changed in a way that requires new legal rulings. To demonstrate this view clearly, I will first clarify some assumptions here. There are many aspects as regards the nature of the legal ruling (*ḥukm*), which have been analyzed and discussed in jurisprudence. One of these aspects is the relationship between the legal ruling and its object. From an analytical perspective, the scholars conceive three elements in any legal ruling: the legal ruling (*ḥukm*) itself, the content of the legal ruling (*muta'alliq*), and its object (*mawḍū'*). For example, when analyzing the legal ruling of the prohibition of drinking wine, there are the three elements: the legal ruling, i.e. prohibition, the content of the legal ruling, i.e. drinking and the object, i.e. the wine.⁴²⁶ For the mainstream understanding of the variables, the scholars think that the variables of the *sharī'a* take place in the third element of, i.e. the object (*mawḍū'*). The scenario is that for various reasons, the object has changed in a way that requires it to be categorized under a different legal ruling. For

⁴²⁶ al-Baḥrānī, *al-Mu'jam al-Uṣūlī*, v. 2, pp. 455-56

instance, selling blood has been considered for a long time as a forbidden transaction, because blood did not have a value that justified it to be an object of a transaction. However, in the modern age, thanks to medical developments, blood has become a valuable object. Subsequently, the legal ruling has had to be changed from prohibition to permission⁴²⁷. This scenario repeats itself for myriad objects that are constantly changing and require new legal rulings.

Mudarrisī argues that this sort of variable is merely one kind of variable, also being the less important one, and cannot even be taken into account seriously without going through a particular procedure and taking a greater context into account. For Mudarrisī, the variable is the significant societal change that happens at a particular time and in a specific place, either because of an emergent situation or because of socio-political challenges to the extent that not only does the reality of the object change, but also the whole societal context. Also, this change does not simply need to refer the new conception of the object under an established title of the legal ruling. Rather, it requires specifying legislations that are related to priority values compatible with the societal stage, context and circumstances. This societal change might even require canceling the legislative body of current legal rulings and/or creating a new one. It is a matter of prioritizing the most relevant moral values of the *sharī'a* for particular societal circumstances over a period of time that might change after a while.⁴²⁸ It is this understanding of the variable that necessitates Mudarrisī revising the whole system of deriving the legal ruling, more than just attempting to provide a partial solution of referring the changed object under a different title of the legal ruling. Moreover, it is this understanding that requires him to call towards the *maqāṣidī* project, whereas others believed that the problem could be solved by improving the field of priority (*al-ahamm wa al-muhimm*)⁴²⁹, or dealing with every new variable by consulting the experts to identify new objects, whereby it would be easy to refer them to their suitable title.

⁴²⁷ al-Subḥānī, Ja'far, *Risāla fi ta'thīr al-zamān wa al-makān 'Alā Istinbāṭ al-Aḥkāṃ*, (Qum: Mu'assasat al-Imām Ja'far al-Ṣādiq, 1998), p 10.

⁴²⁸ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 235

⁴²⁹ The more recent extensive Shī'ī work that represent this sort of approach is Fāḍil al-Ṣaffār in his work *Fiqh al-Maṣāliḥ wa al-Mafāsid*. See Fāḍil al-Ṣaffār, *Fiqh al-Maṣāliḥ wa al-Mafāsid* (Beirut: Dār al-'Ulūm, 2008)

Proceeding from this conception of the variables, Mudarrisī believes that for the jurist to be able to deal with those variables he should first study the factors that cause these changes and then have a scientific way of understanding the current societal variable and what it requires. The former will be studied in the next section, whereas the latter will be discussed later on in the chapter, after discussing Mudarrisī's ideas on how to reconcile between the constants and variables of the *sharī'a*.

4.2.2.2. The Factors of the Variables

Needless to say, the study of social changes is closely related to the study of social sciences. However, legal philosophers, due to the interdisciplinary nature of human society, are interested in questioning what kind of social changes should be taken into account when considering the issue of legal practice.⁴³⁰ The same applies to Mudarrisī's question here. He argues that not all social changes are considered significant to the extent that requires having a new legislation. Instead, there are some sorts of social changes that should be considered as variable. Notwithstanding, there is a degree of variance as to their real influence and the societies are varied too in responding to these changing factors.⁴³¹ He mentions three main factors that cause a considerable social change to the extent of being deemed as variable.

4.2.2.2.1. Custom (*al-'urf*)

The role of custom (*al-'urf*) in the process of legislation has been considerably discussed in Islamic jurisprudential literatures and particularly in Sunnī jurisprudence⁴³². Though Shī'ī jurisprudential literature, broadly speaking, does not deem custom as a source for legal rulings⁴³³, there is a general consensus that custom has a role in identifying the objects of legal rulings.⁴³⁴ Mudarrisī agrees with this general mainstream and defines custom as a common moral sense of a particular society both in deeming

⁴³⁰ Mudarrisī here has benefited from the social school of the legal philosophy, especially Roscoe Pound whose thought will be discussed in the following sections. See on page 228.

⁴³¹ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, v. 2, p. 235

⁴³² The custom (*al-'urf*) is considered for some Sunnī legal theories as an evidence for the legal issue. This has opened a wide debate amongst the Sunnī scholars about its validity to be as evidence. See: Wahbah al-Zuhaylī, *Uṣūl al-fiqh al-Islāmī* (Damascus dār al-fikr 1986). 828-38.

⁴³³ al-Ḥakīm, *al-Uṣūl al-'Āmmah fī al-Fiqh al-Muqāran*, pp. 403-13

⁴³⁴ Ibid. p. 410

some actions as acceptable and in identifying some social rights and duties. In light of this definition, he sees custom as a sort of variable that has to be taken into account when issuing legal rulings. Therefore, some legal rulings might be applicable for some societies, while others are not.⁴³⁵

4.2.2.2. The Highest Benefits (*al-maṣāliḥ al-‘ulyā*)

The phrase ‘highest benefits’ in Mudarrisī’s view is used to refer to the socio-historical context of a particular society that requires a certain policy that entails a body of legislation. It could also be of a highest benefit not for the whole society, but merely for a considerable part of the society, such as labourers, investors, students, the medical sector, etc.⁴³⁶ The importance of this highest benefit and how it can be studied will be discussed later on in this chapter.⁴³⁷

4.2.2.3. Emergency Situations

The phrase ‘emergency situations’ is used to refer to situations where individuals or a group of people are in an extraordinary situation that require different legal rulings. This sort of variable is generally well established in Islamic jurisprudence, and is known as the legal issues of harm (*al-ḍarar*) or difficulty (*al-ḥaraj*).⁴³⁸ Mudarrisī here is re-inventing the wheel, i.e. he generally goes in line with the stream of jurisprudential Islamic thought. However, what distinguishes his approach from the mainstream is the way that he combines these elements of the variable together and the way he allocates each of them within the procedures of deriving legal rulings. This point will become clearer by the end of this chapter when the whole of his approach is demonstrated and analyzed.

4.3. The Reconciliation between the Constants and the Variables

Conceiving the nature of the *sharī‘a* as composed of constants and variables and for the *sharī‘a* to be applicable in reality, raises an important question: how is it possible to reconcile between the constants and the variables of the *sharī‘a*. The discussion here for Mudarrisī is somehow practical and is based on both the actual construction of

⁴³⁵ Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 237

⁴³⁶ Ibid. pp. 238-39

⁴³⁷ See on page 224.

⁴³⁸ Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, pp. 239-240

Islam's legal system as a part of the whole of Islamic thought and actual Islamic historical experience, especially the Shī'as. In a sense, Mudarrisī seems not to be concerned with the matter of reconciliation or raising purely theoretical epistemic discussions – discussions which have preoccupied, a great deal, if not all Shī'ī jurisprudential discourses in the fields of contradictions (*al-ta'āruḍ*) and conflict (*al-tazāḥum*). These are two fields in Shī'ī jurisprudence that discuss the issue of conflicting evidences. The first field deals with the clashing of evidences in theory as well as on the stage of deriving legal rulings, and is known as the field of contradictions (*al-ta'āruḍ*).⁴³⁹ The second field deals with the clashing of legal rulings in reality when they are applied and this field is known as conflict (*al-tazāḥum*)⁴⁴⁰. In both fields, Shī'ī jurisprudential discussions are mainly concerned with the epistemic value and the form of each evidence or legal ruling. Therefore, the scholars attempt to theorize general rules of how to strike a balance between them. This can be seen in its mature version in the field of contradictions in the work of Murtaḍā al-'Anṣārī⁴⁴¹ and in the field of conflict in a contemporary work of the Shī'ī Iraqī scholar al-Ṣaffār's⁴⁴² (b. 1962), which is deemed to be the most extensive and comprehensive work on this issue. Mudarrisī, on the contrary, does not consider the issue of reconciliation between the constants and the variables as applicable for any of these fields, though there are some sophisticated tools that could be used in some cases of the variables, as we shall see⁴⁴³. Rather, Mudarrisī is concerned with providing a practical approach that is based on the contents of the contradictory components. From this perspective, Mudarrisī sees that there are three theoretical elements that are embodied in reality in three particular formats, if they can be correctly described as such, and they have to be reconciled to reach a coherence or equilibrium. These formats are reason (*al-'aql*), which is embodied in moral values (*al-qiyam*), reality (*al-wāqi'*), which is embodied in the *shūrā* and revelation

⁴³⁹ al-Baḥrānī, *al-Mu'jam al-Uṣūlī*, v. 1:, p. 535

⁴⁴⁰ Ibid. p. 503

⁴⁴¹ Murtaḍā al-'Anṣārī, *Farā'id al-Uṣūl*, 4 vols., (Qum: Majma' al-Fikr al-Islāmī, 1998), v. 4

⁴⁴² al-Ṣaffār, *Fiqh al-Maṣāliḥ wa al-Mafāsīd*

⁴⁴³ See on page 233.

(*al-wāḥiy*), which is embodied in leadership (*Imāmah*).⁴⁴⁴ In the following sections, I will demonstrate these formats and analyze the relationships between them.

4.3.1. The Values and the Flexibility of the *Sharī'a*

In the context of identifying the values of the *sharī'a*, which constitute the first element of the reconciliation between the constants and variables, I will only address the general framework of the values, because they will be the central point of the following chapter.⁴⁴⁵

For Mudarrisī, value (*al-qīmah*, pl. *qiyam*) is the contemporary Arabic synonym of the Qur'anic term *al-ḥikma* (pl. *ḥikam*). This philosophical perspective begins with faith and considers it to be the relationship between the Creator and the creature. The essence of faith is recognition, whereby the human being recognizes the plurality and diversity of creation, which includes nature, the world of irrational creatures and the world of human beings. Through successive recognitions that begin with the physical world, the human being will attain the recognition of God and His beautiful names, which results in understanding divine cosmological laws in both the physical and the human world. This is where the agency of human beings becomes active in seeking proximity to God through following the *sharī'a*, particularly its moral values that are embodied within its legal rulings.⁴⁴⁶

This philosophical overview of religion and morality ultimately aims to apply moral values in reality, and therefore to consider the other elements (*shūrā* and *wilāya*) as complementary and procedural tools to apply the *sharī'a* in reality. To practice this in real life situations, Mudarrisī suggests a theory whereby both could practically be applied.

4.3.2. The Balance between *Shūrā* and *Wilāya*

⁴⁴⁴ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 243

⁴⁴⁵ See on page 281.

⁴⁴⁶ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, pp. 243-245.

As discussed above, *shūrā* and *wilāya* constitute the procedural device of reaching a sort of coherence or equilibrium in applying the *sharī'a*. *Shūrā*, on the one hand, represents the people and reality (as experts of the society), and *wilāya*, on the other hand, represents the authority of the religious institution as the expert of the *sharī'a*. Based on this, both sectors (people and jurists) are assumed to be sharing a common sense of the *sharī'a*'s moral values. Mudarrisi's aim here is to provide an insight on how to strike a balance between these two powers in a way that makes the *sharī'a* applicable without the religious overriding of society and vice versa. Thus, I will demonstrate and analyze his theoretical foundations of the consideration of each, and within that I will illustrate his balancing approach.

4.3.2.1. The Theoretical Foundations of the Consideration of *Shūrā*

Considering *Shūrā* to be the significant Islamic socio-political value or at least a part of the Islamic political system seems to be notable in the discourse of contemporary Muslim scholars, especially amongst the reformists.⁴⁴⁷ In this discourse, the *Shūrā* is presented as an alternative or as comparable to democratic discourse that has been seen as a challenge to Islamic thought. However, it has been considered as a political or intellectual matter, not as a jurisprudential one. Notwithstanding this, Shī'ī jurisprudence has, in great detail, discussed the matter of the authority of the experts in deriving legal rulings. This is especially true within the Bahbahānian paradigm as it was a part of the epistemic concerns of the duality of certain and speculative knowledge. This discussion considers the role of non-religious experts, e.g. the linguist as the famous example with regard to literature, in influencing religious experts, i.e. the jurists, in deriving the legal ruling.⁴⁴⁸ From this perspective, the democratic and the expert's discussions overlap in the debate over the role of the people who are out of the circle of the jurists in influencing the procedure of the legal system.

⁴⁴⁷ There are several contexts in which the *shūrā* is discussed in the contemporary Islamic discourse, mainly in the political discourse. However, some scholars are interested in providing it as a jurisprudential discourse, such as 'Allāl al-Fāsī. See 'Allāl al-Fāsī, *Maqāṣid al-Sharī'a wa Makārimihā* (Dār al-Gharb al-Islāmī, 1993), p. 118

⁴⁴⁸ For a comprehensive discussion of the role of linguistic experts in jurisprudence, see al-Anṣārī, *Farā'id al-Uṣūl*, v. 1, pp. 173-79

From this context, it can be argued that Mudarrisī in his discussion of the *Shūrā* was concerned with two lines of debate (the democracy/legitimacy-expertise): (i) participation seen as the ground of political and social legitimacy, on the one hand, and (ii) expertise, as the foundation of the knowledgeable and scientific plausible religious opinion, on the other. For Mudarrisī, the *Shūrā* is a part of the religious procedure in deriving legal issues and he provides two arguments to support this:

- a. The first argument is that of expertise: Mudarrisī argues that the *Shūrā*, by having people from different fields of expertise, represents the most knowledgeable understanding of reality possible, especially for the variables of society. This argument is, in effect, the continuity of the jurisprudential argument in connection with the consideration of the experts. However, by expanding the scope of the variables to include social changes in its complex terms, the scope of the experts' participation is necessarily expanded as well. In accurate terms, Mudarrisī has changed the conception of the real object (*al-mawḍūʿ*) of the legal issue by expanding the concept of the variable, and then established the jurisprudential argument for the authority of the expert, which is based on the authority of knowledge, aiming to support the position of the *Shūrā*. Mudarrisī says:

“There are thousands of cases in which society needs wisdom and rational opinion. Through the *Shūrā* and making people take responsibility for thinking for themselves, we can ripen such an opinion, especially in the more complicated cases such as the political, economic and generally humanitarian cases”⁴⁴⁹.

- b. The second argument is the participation one: Mudarrisī argues that the *Shūrā*, through people's participations in a 'civil society', i.e. unions, regional councils, organizations and so forth, and in identifying the current condition of society in broad terms, represents the most legitimate decision. As will be discussed later on, in Mudarrisī's view, there are some variables are established by a process in which people (through *Shūra*) play an important

⁴⁴⁹ Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2, p. 255

role. Thus, the *Shūrā* here represents the participation of the people. Moreover, this not only makes the legal ruling legitimate in this sense, but also makes it more implementable as it has been formulated in a collective and participatory manner. Mudarrisī says:

“Participation in the decision-making process would aid in its implementation, especially when society witnesses positive competition, which the world nowadays is based on. Positive competition will reduce the energy of positive conflicts and employ it in positive action, which would in turn push society’s wheel forward a great deal”.

“Consequently, *Shūrā* councils can become the channels that accommodate and systematise conflicts and contradictory opinions, and bring them under control. Subsequently, these councils can prevent them from corrupting societal morals or moving towards bloody conflicts or a civil war”⁴⁵⁰.

Therefore, Mudarrisī’s argument to establish the *Shūrā* is based on principles of both individual juristic expertise, and popular participation. Each of these is designed in his system to give the values determined through *Shūra* a high level of legitimacy. Having established that, Mudarrisī then provides what he considers to be an initial insight into the channel of the *Shūrā* in society.

◆ The Channels of *Shūrā*

From the very beginning, Mudarrisī states that what he attempts to provide is not a structure applicable and suitable to all societies *per se*. Rather, reality is more complicated and each society requires a different structure and procedure.⁴⁵¹ However, the principle is the same: participation and expertise. Thus, he argues that the more *Shūrā* channels a society has, the more that society is able to identify reality and have a proper legislation. For example, in questioning whether it is most beneficial for a society to have a free market or to nationalize the private sectors, Mudarrisī says:

⁴⁵⁰ Ibid. p. 257

⁴⁵¹ Ibid. p. 258

“These sorts of questions cannot be answered in an absolute manner, because each society has its own peculiarities and each condition has its own judgment. Therefore, let’s search for the answer within the community and the people for whom we are seeking to benefit first and foremost in this case”⁴⁵².

Based on this perception, any case has to go through four steps, as outlined below:

1. The concerned party, which might be the state or a regional council, poses the case forward to the people, whether directly through referendum or indirectly through representative advisory councils.
2. The civil society should then initiate an open discussion and debate through research centres, universities, leaders of tribes and so forth.
3. The debate should then be transferred to the form of a proposal that can be a subject for voting through representative councils. The proposal would be considered as an identification of reality for the jurist.
4. Finally, the voted proposal should go to the jurist as a representative of religious expertise. He has to study it carefully to make sure that the proposal does not contradict any of the principles of *sharī‘a* and that its legal writing is consentient with the *sharī‘a*.

Through these steps, Mudarrisī argues that “the principal dilemma of how to conciliate between the constant divine values and the variable interests or conditions can be resolved.”⁴⁵³ However, this approach raises the question of the authority of the jurist and its foundation, which will be addressed in the next section.

⁴⁵² Ibid.

⁴⁵³ Ibid. p. 259

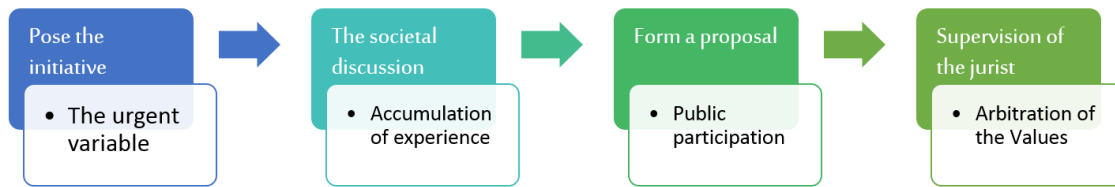


Figure 8 – The channels and stages of Shūrā and its intellectual principles

4.3.2.2. The Theoretical Foundations of Wilāya

The term *wilāya* here is used to refer to the authority of the jurist (*wilāyat al-faqīh*). The notion of *wilāyat al-faqīh* became famous and well-known after the Islamic Revolution of Iran in 1979, which adopted the notion as a doctrine for the political system after the revolution. The basic idea of *wilāyat al-faqīh* is that the Shīʿī jurist, who has gained certain religious and moral characteristics, is considered to be a representative of the twelfth Imām of the Shīʿa during his occultation, not only for religious matters, but also for political authority. Therefore, the jurist is the point of reference for both religious and political issues for the Shīʿī community. Elsewhere in this work⁴⁵⁴, I have argued that Mudarrisī was the first Shīʿī scholar in the modern age who has theorized for the notion of *wilāyat al-faqīh*, though it has been attributed in the Āyatallāh Khomeini in contemporary writings.

For Mudarrisī, the notion of *al-wilāyah* is not only a political system, but it is also a part of the theoretical foundation of the reconciliation between the constants and variables. It stands alongside the values of *sharīʿa* representing reason, and the *Shūrā* representing reality, whilst *wilāya* itself represents revelation (*al-waḥīy*). Considering it in this context, Mudarrisī did not pay significant attention to discussing the notion from its foundations. Rather, he only mentions the basic foundations. That is to say, the notion of *wilāya* is a continuity of the authority of the Prophet and Imām in the responsibilities that are attributed to them as leaders of the Islamic community, and it has been transferred to the jurist in the age of Occultation.⁴⁵⁵ Accordingly, he concerns himself primarily with two issues: (i) why *wilāya* is an important part of the reconciliatory system and (ii) how

⁴⁵⁴ See on page 92.

⁴⁵⁵ Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 2

we can be sure that *wilāya* will not become an authoritative power that might control society. To address these questions, Mudarrisī provides three arguments:

- (i) First, Mudarrisī argues that the position of the jurist in the Muslim community is not isolated from the moral values of the *sharīʿa*. Instead, it is based on them. Thus, it is restricted by these moral values and, because of its critical position, it is conditioned that the jurist who wants to hold this position has to be knowledgeable, just and qualified. Here, Mudarrisī wants to insist that the position of the jurist is not a theocratic system or any kind of monarchical ruling, where the position of ruling is confined to a specific dynasty or close circle. Instead, it is open equally and fairly to anyone who has acquired the necessary requirements. In addition and above all, the qualified jurist does not gain authority until he is chosen by the community; otherwise he would be considered to be an illegitimate ruler.⁴⁵⁶ To this point Mudarrisī pays considerable attention in providing several pieces of evidence from both the holy texts as well as the Islamic historical experience to prove that Islamic discourse insists on resisting the oppressive ruler more than on choosing the just ruler. For Mudarrisī, this is a proof that this critical position is not an authoritative position and should not be under any circumstances.

“Therefore, requiring certain qualities does not imply the obsolescence of the role of the people in political life, as Islam is based on responsibility and does not recognize any sort of determinism at all, especially the coercion of authority, which is totally rejected in Islam [...] I myself was wondering why the Holy Book has paid such considerable attention to the issue of resisting corrupt regimes more than simply establishing just regimes. After having undertaken social and historical research, I arrived at the conclusion that the need of human beings to fight oppressors, especially those who use the name of God in their ruling over people,

⁴⁵⁶ Ibid. p. 263

surpasses their need to establish a wise leadership, which can be done once people are rid of their fear of oppressors"⁴⁵⁷.

- (ii) Second, Mudarrisī argues that the qualities required of the jurist are not merely sought at the beginning of his rule or his being a source of reference (*marja`*), but they are also required throughout the period that he holds the position. Otherwise, in case he lacks any of these required characteristics, people would be obligated to stand against him and to remove him. However, Mudarrisī mentions that it is not easy for people to identify that the jurist is no longer qualified, especially with the knowledge that he has, which enables him to deceive and manipulate people. Here, he relies on the role of moral values and common moral sense that have been implanted in the collective consciousness of the Muslim community, especially through the Qur'an. Mudarrisī says:

This question, in my opinion, addresses the most important point in the field of political authority in Islam. To provide an answer to this question, we have to go back to the role of values, which we had previously spoken about [...] One of these values, or perhaps the greatest one, is the people's freedom of choice, and therefore if someone takes the reins under any pretext, people have the right to stand against him⁴⁵⁸.

- (iii) Third, Mudarrisī argues that the rationale behind the need of *wilāyat al-faqīh* is similar to needing the experts in any field of knowledge. The field of religion, especially in terms of understanding moral values and dealing with their priority and structure, is no less complex than any other field.⁴⁵⁹ Moreover, in order to achieve harmony between values and reality, the subject is a crucial one because it is related to the sacred area of religion. Therefore, the authority of the jurist as an expert is paramount.

⁴⁵⁷ Ibid. p. 266

⁴⁵⁸ Ibid. p. 268

⁴⁵⁹ Ibid. p. 270

The matter is related to the sacrosanct which no human being can address, because it is very sensitive to people and prone to disrespected altercations, which would have a completely counterproductive effect. Therefore, we must leave it to the experts in the field, who can only be the jurists⁴⁶⁰.

In light of these three arguments, Mudarrisī provides the theoretical foundations for the role of the jurist in reconciling between the constants and the variables.

4.4. The Mechanism of Studying the Variables

In light of the above definition of the variable, i.e. a socio-historical moment or change in a particular society that requires a certain course of action or a change to the real object of the law, Mudarrisī attempts to provide his vision of how to scientifically study the variable. As was discussed above, for him, the whole process of applying the *sharī'a* in the modern age relies on having a mature, rational and scientific approach to understanding reality, e.g. the variable, on the one hand, and on having a clear outline of *sharī'a's* moral values, on the other. The latter will be discussed in the next chapter, while the former will be demonstrated and analyzed here.

Having re-defined the concept of the variable, Mudarrisī concerns himself with providing a rational and scientific way of studying the variable. For the sake of clarification, the usage of the terms 'rational' and 'scientific' here is not laden with Western intellectual meanings. That is to say, it has nothing to do with the Western discussion on rationality or epistemology. Rather, it simply signifies a reasonable status of knowledge that legitimizes a certain understanding of a particular situation to be followed or to base a public policy upon. If we use Islamic jurisprudential terminology, it is the *hujjiyya*. However, the closest Western academic field to Mudarrisī's discussion here, perhaps, is the field of social epistemology and public policy.⁴⁶¹ In other words, he wants the jurist

⁴⁶⁰ Ibid.

⁴⁶¹ The field of social epistemology and public policy is that which concerns the relationship between science and public policy. Its main focus is the kind of evidences that are admissible in making public policy, although in addition to this focus, the field also explores the philosophical presumptions regarding the epistemic value of the evidence and social studies of knowledge. See: Kitcher, Philip, *Science, Truth, and Democracy*. (New York: Oxford University Press, 2001) and Pawson, Ray, *Evidence-Based Policy: A Realist Perspective*. (London: SAGE Publications, 2006)

to identify the variable not arbitrarily, but rationally through investigative means and through his own deduction upon which a great decision can be made. Two questions concern him here: (i) how the variable can be studied rationally and (ii) how the precedence of a certain variable over another can be identified.

4.4.1. The Method of Studying the Variables

In the context of studying the variables, Mudarrisī has benefited considerably from his open dialogue with Western debates on legal philosophy. This can be seen here in the discussion on what the ideal method to study the variables would be. He frames such variables as the socio-historical changes within the greater social construction, which is known in the literature of legal philosophy as the idea of "spirit of the people" or "national character". This idea was proposed by the German philosopher and theologian Johann Gottfried Herder⁴⁶² (d.1803), known in Germany as *Volksgeist*, and has then been developed by the historical school of law, the sociology of law and sociological jurisprudence. Mudarrisī argues that seeking the idea of the 'spirit of the people' was one of the most important motivations for the French philosopher of the Enlightenment, Montesquieu⁴⁶³ (d. 1755) to write his famous and influential work *The Spirit of the Laws*. Regardless of the motivations and developments of the idea, the general conception of the notion is that a certain society at a particular time and in a specific place passes through a socio-historical moment that requires specific needs, plans and policies, and therefore the law has to be an expression of this collective 'spirit'. Mudarrisī deems this sort of 'spirit' as a framework for society's variables that need a rational method through which it should to be studied.⁴⁶⁴ However, even though he relies on the idea of the 'spirit of people' as a framework for the variables, he does not follow all of its social, political and philosophical ramifications. Instead, he merely agrees with its establishment for the

⁴⁶² Johann Gottfried Herder is a German philosopher who lived in the eighteenth century (1744 – 1803). For more details, see Forster, Michael, "Johann Gottfried von Herder", *The Stanford Encyclopedia of Philosophy*, (Fall 2008 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/herder/> (accessed: 1.4.2014), aslo: Clark, Robert, Herder: His Life and Thought. (USA: University of California Press, 1955) and Adler, H., and W. Köpke. *A Companion to the Works of Johann Gottfried Herder*. (USA: Camden House, 2009).

⁴⁶³ Montesquieu is a French philosopher of the seventeenth and eighteenth century (1689 – 1755) who is associated to the Enlightenment philosophers. For more details, see Bok, Hilary, "Baron de Montesquieu, Charles-Louis de Secondat", *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2014/entries/montesquieu/>, (accessed: 1.4.2014)

⁴⁶⁴ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 3, pp. 341

ontology of social reality as a separate existence having its own constructions and manners. Then, he continues his open dialogue with different schools of thought on the nature of this spirit and the role of law in a society seeking to establish this method of studying the variables. Accordingly, Mudarrisī argues that the spirit of the people as the framework for the variables should be studied through three determining factors that collectively constitute the general spirit, in addition to a fourth determining factor, represented by the pure technical experts.⁴⁶⁵ These determinants are (a) the general trend, (b) the components of the society, (c) the most important need, and (d) the opinion of the experts. Although these determinants have been discussed in different fields and contexts, he argues that they can be integrated into a general framework to produce a mature understanding of society.

4.4.1.1. The General Trend

Mudarrisī here benefits from the work of the famous British philosopher of history Arnold J. Toynbee (d. 1975), entitled *A Study of History*, which focuses on the factors of the rise and fall of societies through studying 26 civilizations. Toynbee focuses on the factors of the challenge and response in the rise and fall of societies, and he concludes that under the leadership of the creative elite who successfully respond to internal or external challenges, society will rise.⁴⁶⁶ According to Mudarrisī's reading of Toynbee, these challenges provoke the spirit of the society by making the people seek to transcend by means of moral values, and therefore, responses become spiritual rather than material.⁴⁶⁷ This response in the context of that particular circumstance of the society would raise certain moral values and priorities. Although Mudarrisī does not agree with Toynbee in some aspects, he agrees with him that what emerges from the challenge-response process will constitute the spirit of people or what Mudarrisī prefers to describe as 'the general trend of the society'.⁴⁶⁸ However, he argues that it is only a part of the spirit of the people, because of the importance of the other determinants in constituting the whole spirit of people.

⁴⁶⁵ Ibid. p. 345

⁴⁶⁶ Ibid. p. 343

⁴⁶⁷ Ibid. p. 344

⁴⁶⁸ Ibid. p. 345

4.4.1.2. The Components of the Society

Each society has been created in a particular way in accordance with its historical context. The characteristics of each society are the subject of the social sciences in their widest terms. However, the relationship between the components of society and the law, which might well be a subject for legal philosophy or sociology of law or other fields, is what is intended here. Mudarrisī believes that the first philosopher who attempted to address this issue was Montesquieu in his famous work entitled *The Spirit of the Laws*⁴⁶⁹. Montesquieu, according to Mudarrisī's reading, attempted to study the relationship between the components of society in their wide terms, e.g. the natural environment, political regime, economic system, culture, tradition, religion, social institution, the legal system and so forth. Although Mudarrisī does not completely agree with all of Montesquieu's thought, claiming that some aspects of it are outdated, he argues that Montesquieu's contribution is invaluable and it has inspired many legal philosophers and sociologists to address his work.⁴⁷⁰ Moreover, he sees this sort of socio-legal study of society as being very crucial for understanding the variables, which vary from one society to the next in a way that affects the respective legal system of each society. Thus, studying this aspect helps in identifying the spirit of the people as the framework for the variables.

4.4.1.3. The Most Important Need

The "most important need" of a society here refers to the specific essential requirements that a society has at a given socio-historical moment.⁴⁷¹ In light of this definition, Mudarrisī differentiates between this sort of need and the general trend in terms that the latter is more about a great challenge that requires a collective response and that dominates the whole society. Though the most important need is more about societal need in a particular socio-historical context, it is somehow a part of the general trend. Mudarrisī here benefits considerably from the American legal philosopher Roscoe Pound (d. 1964), who is well-known for his contribution to legal philosophy through the

⁴⁶⁹ [Montesquieu](#), Charles Baron De. *The Spirit of the Laws*. Trans: Thomas Nugent. (New York, Cosimo Classic, 2011)

⁴⁷⁰ Ibid. p. 346-51

⁴⁷¹ Ibid. p. 358

establishment of sociological jurisprudence, i.e. the law as a means to social engineering and theory of interests.⁴⁷² For Pound, the law is an instrument of social control through which authority can achieve the purposes of the law in accordance with social need. However, social need varies according to the socio-historical conditions of a certain society. However, according to Mudarrisī, Pound has mentioned four main social needs, namely (a) social stability, (b) secure social institutions, (c) self-assertion and freedom, and (d) fulfillment of essential human needs.⁴⁷³ In spite of Mudarrisī's disagreement with Pound's legal thought, he emphasizes, alongside Pound, the influence of social need in shaping the legal system. Thus, studying social need is deemed to be part of understanding the spirit of the people as the framework for the variables.

4.4.1.4. Scientific Opinion

Mudarrisī assumes that there is a scope in the variables that is left to scientific experts to decide, and it is not a part of the spirit of the people. Rather, it is a very technical scientific scope that is mostly related to the natural sciences, not to the social ones assumed to play a significant role in the study of the spirit of the people.⁴⁷⁴ Having said that, he argues that science itself has become a sort of ideological discourse in which it seems to be an authoritative power, rather than as an instrument to help to implement the law. Therefore, although he recognizes the referencing of 'science' in certain areas, he argues that it has to be taken into account alongside the components of the spirit of the people. Mudarrisī says:

Of course, the specialized effects related to different sciences have to be studied in the centres of specialized research dedicated to those sciences in terms of their relationship with the law. However, these research centres have to work alongside the representative councils that have been elected by people. These

⁴⁷² For the ideas of Roscoe Pound, see James A. Gardner, *The Sociological Jurisprudence of Roscoe Pound (Part I)*, 7 Vill. L. Rev. 1 (1961)

⁴⁷³ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu* v. 3, pp. 352-357

⁴⁷⁴ *Ibid.* p. 363

centres derive the supreme moral principle from the scholars and wise people, who protect the supreme values of the society⁴⁷⁵.

4.4.1.5. Overview of the Study of the Variables

Seeking to understand the spirit of the people and its components represents the essence of Mudarrisī's thought on the variables. To this end, he proposes three essential factors in order to determine this spirit, namely, (i) the general trend, (ii) the components of the society and (iii) the most important need. However, repeating his epistemological approach of equilibrium or coherence, he argues that each of these determinants has to integrate with the others through a societal debate in the public sphere to reach a common overlapping and equilibratory consensus. Moreover, he assumes that for the general strategic issues of society, the leaders and the scholars remain in control. However, studying the components of society and their most important need is dependent on the people themselves through the representative councils and civil society, as they are the closest section of the society to these issues.⁴⁷⁶ The general purpose of the whole idea here, as he claims, is to have a legal system that is characterized by three features: (a) a clear outline of moral values, (b) flexibility in applying the law, and (c) a sound device for development.⁴⁷⁷

4.5. The System of Prioritization

This is the second part of Mudarrisī's discussion on the variables. The assumption here is that the variables, whatever they may be, in reality represent the moral values that have been imposed by certain socio-historical contexts. This is because in reality any action happens through a particular context that gives it moral meaning. Thus, reaching an equilibratory status in studying the variables will eventually end up with an advisory to implement a public policy at a certain time and in a specific place in a particular society, which in turn represents a moral value. This poses a question, which is in effect the main concern of this discussion: how to identify the precedence of a certain variable over another? However, this question re-assumes the notion that there is a hierarchy

⁴⁷⁵ Ibid. p. 364

⁴⁷⁶ Ibid. p. 363

⁴⁷⁷ Ibid. p. 364

within the moral values whereby a certain value can have precedence over another. Subsequently, the role of the jurist is to consider the hierarchy on the one hand, and the variables on the other, and then to decide which one should be given priority over the other in this context.

The debate over this issue has been a concern for many scholars who have been interested in the *maqāṣid al-sharī'a* project. It has been explored under various titles such as the *fiqh* of reality (*fiqh al-wāqi'*), *fiqh* of priorities (*fiqh al-awlawiyyāt*), implementing the *sharī'a* (*tanfīdh al-sharī'a*), fulfilling the principle (*taḥqīq al-manāṭ*)⁴⁷⁸ and other titles. Nonetheless, it was also a concern of the earlier scholars interested in *al-maqāṣid*, such as al-Ghazālī and al-Shāṭibī (d. 1388).

Mudarrisī might be the earliest contemporary Shī'ī scholar who addresses this issue. Surprisingly, however, he does not seem to have read the contemporary Sunnī contributions⁴⁷⁹ of his age during the writing of his works. This might be attributed to the fact that the topic was quite new at that time, even in Sunnī circles. Nevertheless, he has discussed two classical Sunnī scholars with regard to the prioritization of values, namely al-Ghazālī and al-Shāṭibī in addition to only one western philosopher, Ralph Barton Perry⁴⁸⁰ (d. 1957). As seems to be a feature of Mudarrisī's address of some of the *maqāṣid* issues, he does not go deeply and thoroughly into the topic at hand. Instead, he seems to prefer to provide an overview of it or a general insight. Thus, I will provide three characteristics of his dealing with the system of prioritization of values, followed by his critique of Ghazālī and Shāṭibī's contributions.

Mudarrisī's approach is characterized by three features:

⁴⁷⁸ These terms and conceptions have been introduced mostly within the Sunnī jurisprudential tradition and witnessed a notable growth in the contemporary *maqāṣid* discourse. Yūsuf al-Qaraḍāwī is well-known for his interest in this sort of research. See Yūsuf al-Qaraḍāwī, *Fi Fiqh al-Awlawiyyāt: Dirāsa Jadīda fī Ḍaw' al-Qur'an wa al-Sunnah*, 2nd ed. (Egypt: Maktabat Wahbah, 1996)

⁴⁷⁹ For example, he seems to be not aware of the whole works have been produced by International Institute of Islamic Thought (IIIT) nor of the work of al-Ṭahir Ibn 'Āshūr. These works were available when he was working on his own theory. See Bibliography for full bibliographical details of these works.

⁴⁸⁰ Ralph Barton Perry is an American new realist philosopher of the nineteenth and twentieth century (1876 – 1957). His work in morality and the issue of weighting between values can be found in his book: Perry, Ralph Barton, *General Theory of Value: Its Meaning and Basic Principles Construed in Terms of Interest*. (USA: Harvard University Press, 2013)

- I. Mudarrisī concentrates first and foremost on the content of the value more than its form when he prioritizes some values over others. Some scholars who addressed this issue focused on the form of the ruling, obligatory or permissible, limited or generalised, worship-related or transactional, related to the right of the God or to the right of fellow humans, and many other such forms of rulings.⁴⁸¹ The famous example for this ruling is one where the believer is in a situation where he must either perform his daily obligatory prayer or save a person in deadly danger, drowning in the sea for example. In contrast, Mudarrisī focuses on the content of the ruling, whether it is justice or freedom, security or instability and so on. Subsequently, he strongly insists that there is a hierarchy within moral values where security is more important than justice, and justice is more important than freedom.⁴⁸² However, one of the points that will be discussed in the following chapter is whether Mudarrisī was successful in providing an outline of this hierarchy or not, even though he certainly seems to have, or at least he strongly believes in, a sort of hierarchy within the moral values.
- II. In light of the essence of the previous feature, Mudarrisī's approach seems to be different from one of the most dominant discourses within both the Sunnī *maqāṣidi* and Shī'ī Bahbahānian paradigm. In these discussions, common interest (*maṣlaḥah*) is considered a final end of the sharī'a. Interest has, though, been intertwined with moral values making it very difficult to differentiate between them. In contrast, Mudarrisī deems common interest as one of the values that has to be taken into account, both in balance with other values as well as in the context of reality. In effect, I would argue that it is from that understanding or application of the legal system that gives this importance to common interest, that Mudarrisī has been motivated to find another way to make values both central and realistic when considering the reality of the variables.⁴⁸³

⁴⁸¹ This is how al-Ṣaffār has addressed the issue. See al-Ṣaffār, *Fiqh al-Maṣāliḥ wa al-Mafāsīd*

⁴⁸² Mudarrisī, *Al-Tashrī' al-Islāmī: manāhijuhu wa-maqāṣiduhu*, 3: 367.

⁴⁸³ *Ibid.*, 296.

III. As for the centrality of the values discussed above, Mudarrisī again believes in the necessity of reaching an equilibrious status in studying the variables and prioritizing one value over another. Even though, then, the values have their hierarchy, certain factors in specific instances will, for Mudarrisī, deactivate the hierarchy, switching the priority in which the values are located. Therefore, here additional elements such as the norm of quantity of effect, or the closest of all possibilities, or any other utilitarian norm, would play a role in giving precedence to one value over another⁴⁸⁴.

Based on these three features of his vision of the system of prioritization, Mudarrisī critiques the contributions of Ghazālī, Shāṭibī and Perry. He criticises Ghazālī for his quantitative norms, Shāṭibī for his hierarchical norms and Perry for his philosophical ground of moral values. Here I will study the first two, namely Ghazālī and Shāṭibī, whilst Perry's insights will be discussed in the following chapter, as Mudarrisī's criticism of him is more philosophical, in connection with his system of prioritization.

4.5.1. Mudarrisī's Criticism of al-Ghazālī

It seems that Mudarrisī has come to know Ghazālī's opinion through some contemporary Sunnī scholars who were interested in reviving or studying his thought. He relies particularly on 'Alāl al-Fāsī⁴⁸⁵ (d. 1974) and Ḥusayn Ḥassān⁴⁸⁶ (b. 1932). According to these scholars, Ghazālī was the only scholar who embraced the notion that there are two kinds of interests (*maṣlaḥa*): a general interest and a particular one. He believed that the greatest common interest that benefits the majority of people takes priority over one that benefits the minority. Ghazālī says:

“There is another division of interest, in addition to its clarification in terms of apparent and hidden meaning, that some interests are relevant to people in general, benefitting everyone, whereas others apply the majority, and yet others are relevant only to a particular person in a rare event”⁴⁸⁷.

⁴⁸⁴ Ibid.p. 365

⁴⁸⁵ al-Fāsī, *Maqāṣid al-Sharī'a wa Makārimihā*

⁴⁸⁶ Ḥusayn Ḥassān, *Naẓariyyat al-Maṣlaḥah fī al-Fiqh al-Islāmī* (Egypt: Maktabat al-Mutanabbī, 1981)

⁴⁸⁷ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 3, pp. 377

Al-Fāsī takes the idea further and claims that by giving priority to the greatest common interest, the state can make a public policy both economically and socially, based on this notion in a way that enables it to interfere in the market, e.g. in determining prices or nationalizing some public sectors.⁴⁸⁸ This understanding seems to be very similar to utilitarianism in the West. Mudarrisī claims that Ghazālī and his contemporary followers have taken the idea for granted, and therefore have not paid sufficient attention to prove it, and he believes that it should be proved in order to understand its dimensions. Thus, he himself attempts to provide three proofs in support of it, but simultaneously disproves them:

- (a) The rational argument, which holds that reason would prefer the benefit of the majority over the benefit of individuals, because society as a whole consists of a large number of individuals.

Mudarrisī argues that if this were the case, then it would have been mentioned in religious scripture, the Qur'an and Sunnah.⁴⁸⁹

- (b) The way of the *sharī'a*, that there are many cases where the *sharī'a* advances the benefit of the majority.

Mudarrisī argues that these cases, at best, can only be considered as indicators and not proofs, because they are an insufficient induction, which produces only speculative knowledge.⁴⁹⁰

- (c) The argument of customary practice, which claims interest is identified by custom (*al-'urf*). For Mudarrisī, the jurists' understanding of custom predominates, as they are always thought of as having the interests of the majority at heart.

Here Mudarrisī argues that whilst it is true that the interest of the majority is important, it is not a criterion and cannot be generalized. Furthermore, he argues that a distinction should be made between the greatest interest and the most important interest, where

⁴⁸⁸ Ibid. p. 378

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid.

the former is about sheer quantity and the latter about the value itself.⁴⁹¹ For example, according to Mudarrisī, the independence of the Islamic state is more important than its economic welfare, which might quantitatively have greater public interest.

In sum, Mudarrisī rejects Ghazālī's theory of how to prioritize one value over another. This theory, he believes, has been used in the interests of power, even by socialist parties, in which the true mechanism whereby values might be prioritised in particular circumstances has been ignored.⁴⁹²

4.5.2. Mudarrisī's Criticism of Shāṭibī

Shāṭibī is well-known for his influential jurisprudential work *al-Muwāfaqāt*, which is deemed to be the first systematic theory of *maqāṣid al-sharī'a* in Islamic thought generally. In his theory, he divides the *maqāṣid al-sharī'a* into three main categories: necessities (*al-darūrāt*), needs (*al-ḥajiyāt*) and luxuries (*al-taḥsīniyyāt*). Necessities are those essentials without which one cannot live. Needs are those things without which life becomes difficult. Luxuries are those things that add a sense of comfort to life. Bearing this in mind, necessities are further divided into those that preserve one's faith, soul, mind, wealth and offspring. In spite of the detailed discussions that Shāṭibī provides on the whole theory, and narrowing our discussion down to the system of prioritization, Shāṭibī relies on these three categories, respectively, i.e. necessities being the most important, followed by needs, and finally luxuries. Moreover, the same mechanism works within the necessities themselves whereby the preservation of faith is more important than the preservation of the soul, and similarly for the soul over the mind and so forth.⁴⁹³

⁴⁹¹ Ibid.

⁴⁹² Ibid. p. 380

⁴⁹³ For more details about Shāṭibī's life and thought see M.K. Masud, *Shāṭibī's Philosophy of Islamic Law* (Adam Publishers & Distributors, 2006). Also see W.B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge University Press, 1999), pp. 162-206.

Mudarrisī admires Shāṭibī's theory of *maqāṣid al-sharī'a* in general and particularly his system of prioritization, because of his focus on the content of the values rather than merely the form. However, he criticises his prioritization on two main points:

- (a) Mudarrisī disagrees with Shāṭibī's theoretical establishment of the level of *maqāṣid al-sharī'a*, which moves gradually from necessities to luxuries and similarly with the scheme of the levels within the category of necessities. He has come up with a different theoretical model for *sharī'a*'s moral values, which includes Shāṭibī's theory, but does not necessarily correspond with his outline.⁴⁹⁴
- (b) Mudarrisī argues that Shāṭibī has neglected the quantitative dimensions of moral values or interests in reality, and according to Mudarrisī, if these were to be taken into account, the formula might not work.⁴⁹⁵ For example, *jihād* is assumed in Islamic thought as a defense of the Muslim's faith, which is the first necessity in Shāṭibī's categories. However, if the case is that an unjust ruler has declared *jihād* for a small battle which will preserve the faith of a small number of Muslims. However, on the other hand participation in this battle might further empower the unjust regime, resulting in its longevity; and then the continuity of that unjust regime will affect the lives of a greater number of people than those whose faith was preserved by the battle, bearing in mind that preservation of people's wealth holds less priority than the preservation of their faith, according to Shāṭibī's categorisation. Here, Mudarrisī thinks that the quantity of the effect would change the formula, only because of the factor of the quantity.

Therefore, Mudarrisī argues that even though the contents of moral values are crucial, the quantitative dimensions have to be seriously considered when studying reality. This seems to be a sort of amalgamation of Shāṭibī and Ghazālī's theories, in addition to his own epistemological manner in which he attempts to reach a balanced opinion.

⁴⁹⁴ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v. 3, p. 376

⁴⁹⁵ Ibid.

4.6. Conclusion

The above analysis demonstrates that calling for *maqāṣid al-sharī'a* has required not only a new epistemic and methodological framework, but also a new functional framework, which provides a different understanding to the nature of *sharī'a*. Although the functional framework of the Bahbahānian paradigm was mainly characterized by being soft utilitarian, Mudarrisī calls for a moral or virtue-based functional framework. This understanding argues that theology, morality and law are one generating body where each one entitles the other in turn. Thus, the *sharī'a* is the practice of morality, which is, in turn, a reflection of the overall theological perceptions of religion. In order to make this understanding applicable, Mudarrisī, like many Muslim scholars of his generation, conceives that the contents of *sharī'a* are divided into two categories, i.e. constants and variables. However, contrary to other scholars, he sees the constants as abstract moral values of the *sharī'a*, whereas the variables are the socio-historical conditions to which moral values are applied. This definition of constants and variables has two impacts. On the one hand, it requires a mechanism that regulates the relationships between constants and variables, which is where Mudarrisī revives the Islamic idea of the *shūrā*, not as a political tool of governing the state, but as a jurisprudential tool that plays a crucial role in legislation and making public policy. On the other hand, it has changed the functional role of the *sharī'a* in reality and the role of the jurist, accordingly. The *sharī'a*, in this perspective, is not merely a passive reactionary force but rather an active institution that seeks to achieve particular purposes, i.e. moral purposes, to be implemented in reality. Similarly, the jurist in this functional framework is not a quietist anymore. Rather, he/she is an ambitious agent seeking to implement the *sharī'a* in reality. This perception of the *sharī'a* as a whole represents, I would argue, a departure from the functional framework of the Bahbahānian paradigm. Whilst this chapter has demonstrated in detail the mechanism of the variables, the following chapter will examine the constants, particularly their theoretical foundations and the tree of moral values of the *sharī'a* as depicted in Mudarrisī's version of the actual *maqāṣid al-sharī'a*.

5. Chapter Five

Maqāṣid al-Sharī'a: The Moral Values of the Sharī'a

5.1. Introduction

In the preceding chapter, I addressed Mudarrisī's view regarding the nature of the *sharī'a*. A number of themes were focussed upon, namely, the theoretical foundations of the nature of the *sharī'a*, its internal mechanism, its components, and the way in which it integrates with reality. One of the principal ideas Mudarrisī embraces regarding the *sharī'a* is that it consists of constants and variables. The constants represent general moral values, whereas the variables represent the applications of these moral values in reality at a specific time and in a specific place. The variables of the *sharī'a* were addressed in detail in the preceding chapter; this chapter aims to examine Mudarrisī's theory in connection with the constants of the *sharī'a*.

In general, studying the constants of the *sharī'a* in Mudarrisī's thought contributes to the current research in two ways. On the one hand, it is a natural continuation of one of the main arguments of the research, namely, Mudarrisī presents a paradigm shift for the *Shī'ī uṣūl al-fiqh* from the Bahbahānian paradigm. In particular, and in relation to the preceding chapter and this chapter, it presents his departure from the functional framework of the Bahbahānian paradigm. On the other hand, studying the constants of the *sharī'a* in Mudarrisī's thought, in a sense, can be deemed as the highlight of this research. That is to say, after examining Mudarrisī's critique of the current *Shī'ī uṣūl al-fiqh* methodology of deriving legal issues and discussing his alternative theoretical and conceptual tools (which are considered as different not only from the tradition of *Shī'ī uṣūl al-fiqh*, but also from the *Sunnī maqāṣidī* trend) we can now see his actual practical alternative to *maqāṣid al-ssharī'a*.

Accordingly, this chapter falls into two main sections. The first section examines Mudarrisī's theoretical discussion on values, which, in turn, includes two layers of

discussion: (a) the moral philosophical discussion and (b) the legal philosophical discussion. The second section provides an analytical examination of his actual practical outcomes of the constant values of Islam, which are considered as his alternative to both the Sunnī and Shīʿī jurisprudential understanding of the *sharīʿa*'s moral values.

5.2. Theoretical Discussion of the Values

This section introduces some theoretical discussions on the values that Mudarrisī engages with. The importance of studying these discussions lies in the idea that they demonstrate his understanding of the values, his justifications, and the main values in Mudarrisī's thought. In order to locate his position within this discussion, it is argued that Mudarrisī is engaged in two broad philosophical debates: (i) the moral philosophical debate and (ii) the legal philosophical debate. Throughout these extensive discussions, four significant points in Mudarrisī's moral theory are realised. These four points are central to Mudarrisī's project of *maqāṣid al-sharīʿa*, they are (a) his understanding of the moral faculty of the human being as a unique transcendental characteristic; (b) the dynamic feature of the sources of values which consists of intellect (*al-ʿaql*), reality (*al-wāqīʿ*), and revelation (*al-wahy*); (c) his theory of faith as the foundation of establishing an integrative moral theory; and (d) his understanding of the manner in which moral values integrate with legal purposes.

In order to illustrate these debates and ideas, this section will be divided into two further sections. The first subsection presents the moral discussion in which I address three issues from Mudarrisī's viewpoint, namely, (i) the nature of moral value, in which three points will be discussed: the conception of the value, the nature of the moral faculty, and the evaluation of contemporary moral discussions; (ii) the sources of justification of the moral value, in which he discusses the principal trend, i.e. subjectivism, and also provides an alternative foundation, i.e. theory of faith; and (iii) the essence of the moral theory in which he provides what he thinks to be the main moral values which generate other values. The second subsection introduces the legal philosophy discussion in which I study three themes: (i) the necessity of the purposes of legal theory and the

legal system, (ii) the necessity of having absolute moral purposes, (iii) Mudarrisī's virtue ethics theory as an alternative to contemporary legal philosophy discourse.

5.2.1. The Moral Discussion

According to Mudarrisī, engaging in broad moral discussion is necessary, not only for establishing a legal moral theory but also for answering essential human existential questions.⁴⁹⁶ Mudarrisī's view is that moral questions (i.e. regarding what we as human beings should do) represent second level existential questions after questions about our origins. In a classical Islamic framework, the moral question is connected with practical wisdom, that is, the field that deals with the foundation of human socio-political institutions. Though Mudarrisī's works repeatedly rejects many of the elements of the Aristotelian intellectual framework for other fields (e.g. metaphysics and epistemology) he did not reject the whole theoretical structure of dividing wisdom into theoretical and practical wisdom. Rather, by enriching the theoretical structure, Mudarrisī attempts to develop modern science and replace its terminology and concepts with the religious view. However, from another angle, he believes that engaging in such a broad moral discussion is essential, because this sort of discussion, with its invaluable content that has been built by different schools of thought, represents reality (*al-wāqī'*). By reality, Mudarrisī refers to a sort of socio-anthropological study of different societies and thoughts which constitute a source of moral reasoning. This in effect was one element of his method of discovering the constants of the *sharī'a* along with intellect and revelation, as stated before. Accordingly, Mudarrisī devoted a considerable part of his third volume of *al-Tashrī' al-Islāmī* to the debate in moral philosophy (and legal philosophy). He starts his discussion with defining the concept of 'value' and then examines the source of justifying values and finally ends with a comparative study of many different moral schools which are classified under three main categories: the transcendental, the natural, and the activist moral school. Having said that, it is worthwhile mentioning three points regarding Mudarrisī's moral discussion before outlining the issue that will be addressed here in this section.

⁴⁹⁶ Ibid., p.91.

First, Mudarrisī wrote the third volume of *al-Tashrīf al-Islāmī*, which is devoted to discussing moral philosophy, between 1991 and 1992. Since then, the study of morality has developed considerably not only in Western literature but also in Arabic discourse. Much research has been carried out in the past twenty years on the Islamic moral tradition and on the relationship between religion, in its broad sense, and morality.⁴⁹⁷ Mudarrisī's discussion of morality may, therefore, not match the expectations of every reader.

Second, most of Mudarrisī's moral discussions relate to Western philosophy. An explanation for this particular concern is provided elsewhere in this thesis.⁴⁹⁸ What matters here is that, at the beginning of his book, Mudarrisī complained that there were not enough resources available for him on moral philosophy.⁴⁹⁹ Similarly, he complained of the poverty of Islamic scholarship for not having serious intellectual work on moral philosophy.⁵⁰⁰ Mudarrisī decided to rely on Western works of moral philosophy that had been translated into Arabic and Persian. Unsurprisingly, misunderstandings can be seen in Mudarrisī's discussion of Western philosophy which result from his reliance on translation.

Third, what is of relevance to this thesis is Mudarrisī's thought regardless of whether he accurately understood the moral schools he was studying or not. That is to say, Mudarrisī was engaged in explaining and evaluating many moral issues, such as the moral faculty, the sources of moral value, and the moral schools. What matters is not to what extent he understood these issues accurately, but rather what his moral thought is regarding these moral issues which can be extracted from his exposition and his reviews.

Based on these observations, this section will address, as mentioned above, three dimensions of Mudarrisī's moral thought: (a) the nature of the moral; (b) the sources of

⁴⁹⁷ Ḥasan Bilūshī, 'A Methodological Approach to the Moral Tradition: A Critical Reading for Establishing Promises and Methodology', *al-Baṣa'ir*, no. 45 (2009).

⁴⁹⁸ See on page 87-90.

⁴⁹⁹ Al-Mudarrisī, *al-Tashrīf al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, vol. 3, p.5.

⁵⁰⁰ *Ibid.*, p.6.

justification(s) for the moral; and (c) the essence of the moral theory. Mudarrisī's exposition of moral theories will not be studied here, not only due to space constraints, but also because it is not required to deepen our understanding of his moral thought.

5.2.1.1. The Nature of Moral Value

Mudarrisī begins his moral discussion in a very typical Islamic, juristic, and traditional way. The discussion starts with providing a definition of the subject of research. At the end of his discussion of moral value a significant position is reached on his understanding of the moral faculty of the human being. This understanding can be deemed as a cornerstone of his moral thought. According to Mudarrisī, of the moral faculty is the means by which the human practices transcendence, moral representation, and sanctification. The moral faculty has a significant effect on his discussion of the sources of justifying moral values. Then, in light of clarifying the nature of the moral faculty, Mudarrisī provides an evaluation of the contemporary moral discourse which explains his concern with the *maqāṣid al-sshari'a* and reflects his vision of the legal and social prospects of the *maqāṣidī* discourse. In the following, I will address these subjects respectively, as stated above.

5.2.1.1.1. The Concept of Moral Value

Although the debate Mudarrisī aimed to engage in was primarily a philosophical one, he began his discussion of the concept of moral value with the field of social psychology. In attempting to differentiate between moral value and other close concepts, he relied on some social psychology research that had been done to study the development of moral values in the childhood period.⁵⁰¹ Within this research, the researcher was obligated to clearly differentiate between different concepts. Mudarrisī thought that it would be a useful starting point to begin this way so that he could identify the concept of the moral value. However, within his discussion on clarifying the concept, he moved from a social psychology discussion to a philosophical debate. Extracting the philosophical details

⁵⁰¹ Mudarrisī relies on the research of 'Abd al-Laṭīf Khalīfah. See 'Abd al-Laṭīf Khalīfah, *Irtiqā' al-Qiyām: Dirāsah Nafsiyya*, vol. 160, 'Ālam al-Ma'rifah (Kuwayt: al-Majlis al-Waṭani lil-Thaqāfah wa al-Funūn wa al-Ādāb, 1992).

from his discussion is the concern of the research here, especially in the discussion of the nature of the moral faculty.

The accepted definition of moral value for Mudarrisī is ‘a human belief or doctrine about holy or legitimate goals that provides criteria to judge things or actions as good or bad or as they should or should not be done.’⁵⁰²

In light of the above definition, Mudarrisī differentiates between moral value and some other concepts, as follows.

(a) Between Value and Need (*al-ḥāja*)

Moral value differs from need in that need has a biological nature, whereas value is a representation of biological and/or social need in a spiritual form. Therefore, it is different in its formation and in its ability to resist and transcend biological and social needs.⁵⁰³

(b) Between Value and Motive (*al-dāfi*)

Motive might consist of different components of which value can be one. However, value precedes motive in terms of level as it is a conception or a representation toward something. However, value preceding motive does not mean that it always constitutes it, as in many cases the value of an agent could be weak to an extent that it will not motivate him/her toward something or toward an action.⁵⁰⁴

(c) Between Value and Interest (*al-ihtimām*)

Value is more general than interest as the former is characterised by both being a social criterion of a transcendental nature and having a sort of hierarchal order within it. However, interest is merely an individual status and it does not have a hierarchal order within it.⁵⁰⁵

⁵⁰² Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, vol. 3, p.39.

⁵⁰³ Ibid., p.43.

⁵⁰⁴ Ibid., p.45.

⁵⁰⁵ Ibid.

(d) Between Value and Trait (*al-sima*)

Value is one of the components of trait. However, it is the conscious part of the trait which can be changed through the tools of changing the consciousness, say, through reflection, reasoning, thinking, and arguing.⁵⁰⁶

(e) Between Value and Belief (*al-mu'taqad*)

Value and belief share three features as both give criteria of the true and the false, give criteria of the good and the bad, and motivate the agent toward acting in a certain way. However, according to Mudarrisī, value is one part of the many manifestations of belief and it is exactly the manifestation of belief in the agent's behaviour. In the other words, it is the behavioural part of belief.⁵⁰⁷

(f) Between Value and Attitude (*al-ittijāh*)

Attitude is the collection of action toward several things. By this definition, Mudarrisī argues that value is conceptually narrower than attitude in which the value is a mental, psychological, and spiritual status that directs and constitutes the soul of attitude. In a way, attitude, as a collection of the agent's actions, represents the tools and/or applications of the value in reality. Here, Mudarrisī insists on the precedence of value over attitude, because of the philosophical difference between them in terms of their origin. Of these, the former is a downward operation that starts from the mental and rational concepts toward the psychological status and ends with action, whereas the latter is the opposite. Mudarrisī's insistence here reflects his philosophical stance against behaviourism.⁵⁰⁸

(g) Between Value and Behaviour (*al-sulūk*)

⁵⁰⁶ Ibid., p.47.

⁵⁰⁷ Ibid., p.49.

⁵⁰⁸ Ibid.

Mudarrisī also argues that behaviour does not always reflect the values of an agent. This is due to the fact that representing value in reality is constrained by the social context in a way that an action cannot tell which value it includes. Moreover, an agent might have a dichotomy in his/her character that makes him/her act differently from his/her values. Therefore, the agent believes that value is more general than behaviour. Here again, he attempts to maintain his philosophical position against behaviourism.⁵⁰⁹

5.2.1.1.2. The Nature of Moral Faculty

Mudarrisī's discussion on the concept of moral value shows just how significant the moral faculty is in his thought. On different occasions throughout his survey of moral theory and schools of thought, Mudarrisī repeatedly refers to the moral faculty and so it seems to be one of the cornerstones of his moral thought. Moreover, as stated above, based on his particular understanding of the moral faculty, he presents his vision of contemporary moral discussions and the prospects of the *maqāṣidī* project in Islamic thought.

Mudarrisī describes the special human moral sense as the property of representation (*al-tamthīl wa al-iqfā'*), transcendence, sanctification, inclining toward sublimation (*al-tasāmī*) and loving the transcendent. He uses these expressions interchangeably to refer to a special human property that differentiates him/her from other creatures by having an inner subjective faculty that enables him/her to transcend himself, add a sense of beauty to material things, sanctify the meanings represent his social relationships beyond its physical limits, and seek to transcend the physical components of things. In recognition of this sort of faculty, Mudarrisī is not the only one who sees the special 'inclination' in the human being. However, what differentiates him from others is his particular understanding of it. On the one hand, he argues that it is an inner component of the human being. However, it is not a biological component as some philosophical and scientific schools claim, in which they see that the only way of studying it, then, would be through its material manifestations (at the time when Mudarrisī was writing his work, this type of thought had not witnessed a significant

⁵⁰⁹ Ibid., p.53.

expansion as it has done today in different scientific fields, not least of which is neuroscience).⁵¹⁰ Rather, in Mudarrisī's view, it is a 'spiritual' component of the human being or a 'divine breath' (*nafḥa rabbāniyya*) or a 'spiritual immanence' (*muḥāyatha rūḥiyya*) or it might be called in Qur'ānic terminology 'the reproaching soul' (*al-nafs al-lawwāma*) or 'breaking into obstacle' (*iqtiḥām al-'aḡaba*).⁵¹¹ Mudarrisī here finds affinity with one of the main schools of thought concerning human nature, namely, dualism.⁵¹² Nevertheless, he also refers to his understanding of the intellect, which he sees as a divine light of God in the human being, as was previously discussed.⁵¹³

On the other hand, Mudarrisī argues that this faculty is not merely an inner faculty, as some philosophical schools, especially subjectivism, have claimed. Instead, he argues that this faculty is an inner component. However, and simultaneously, it is a part of the natural order of the existence as some naturalist schools have claimed.⁵¹⁴ That is to say, the moral faculty is not merely an inner, emotional, non-normative, and irrational faculty as some subjectivist moral schools have argued. Rather, he argues that, as with causality the moral faculty is a part of the natural order, the general will, or the universal soul in which there are some normative criteria of the true and the false and the good and the bad. If causal orders and systems are discovered through experimentation in the physical domain, they are discovered in the social domain through intuition, conscience, or reason. We may consider Mudarrisī to be referring to the intellect when he talks about discovering social causation and not negative faculties of the human

⁵¹⁰ For more details regarding the scientific trend of morality, see Mark Alfano and Don Loeb, 'Experimental Moral Philosophy', *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), ed. Edward N. Zalta, URL = <http://plato.stanford.edu/archives/sum2014/entries/experimental-moral/> (accessed: 1.7.2014). For further contemporary debates see: MacIntyre, Alasdair. *A Short History Of Ethics: A History of Moral Philosophy from the Homeric Age to the Twentieth Century*, 2ed (London: Routledge, 1998), Cappelen, Herman, *Philosophy Without Intuitions*. (United Kingdom: Oxford University Press, 2012) and Alfano, Mark, *Character as Moral Fiction*. (United Kingdom: Cambridge University Press, 2013).

⁵¹¹ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, vol. 3, p.176.

⁵¹² For more details regarding dualism as a philosophical foundation for several epistemic and moral discussions, see Howard Robinson, 'Dualism', *The Stanford Encyclopedia of Philosophy* (Winter 2012 Edition), ed. Edward N. Zalta, URL = <http://plato.stanford.edu/archives/win2012/entries/dualism/> (accessed: 14.3.2014).

⁵¹³ See on page 145.

⁵¹⁴ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, vol. 3, p.137.

being, such as *al-dahmā'*.⁵¹⁵ Here, Mudarrisī inclines toward the naturalist moral schools. However, he generally seems to take a middle position between subjectivism and objectivism.

In summary, the moral faculty as Mudarrisī conceives it, is an inner normative rational faculty in the human being amongst other faculties, and corresponds to the reproaching soul. Moreover, it is consistent with the natural order or the universal will in terms of having criteria and consisting of a causal order. The intellect as a partially separated element from the human being plays the role of connecting the inner moral faculty with the universal will to reach a reasonable moral judgment. This view can be considered as a middle position between two broad trends in moral philosophy, namely, subjectivism and objectivism.

5.2.1.1.3. Evaluation of Contemporary Moral Discourse

Based on his understanding of the moral faculty, Mudarrisī engages in an intellectual conversation with the French philosopher François Grégoire, whose book on moral philosophy, *The Grand Moral Doctrines*⁵¹⁶, represents one of Mudarrisī's main sources. At the end of his book, and after having introduced several moral schools, Grégoire provides an evaluation of contemporary moral discourse in order, he claims, to learn moral lessons from the extensive moral debates. Mudarrisī takes the opportunity to comment on Grégoire's evaluation thereby showing not only his opinion of contemporary moral discourse, but also his vision of the prospects for his *maqāṣid al-sharī'a* project.

Grégoire presents three conclusions regarding contemporary moral discourse, as follows.

⁵¹⁵ According to Mudarrisī, *al-dahmā'* is a word that was mentioned in a tradition. It refers to the bad faculty in the human being. See: *ibid.*, p.66.

⁵¹⁶ Mudarrisī, for Grégoire's thought, has relied on an Arabic translation of his book *Les Grandes Doctrines Morales*. Grégoire, François, *al-Mathāhib al-'Akhlaqiya al-Kubrā*. Trans, Qutaybah al-Ma'rūfi. (Beirut: Manshūrāt 'Uwidāt, 1984).

- a. Grégoire believes that the ambition of establishing a moral philosophy with a firm rational and scientific basis, had been abandoned in the modern era, especially after Kant.⁵¹⁷

Mudarrisī clearly disagrees with this conclusion. Conversely, he argues that this ambition is not only possible, but it is also still underway in the contemporary era.⁵¹⁸ This might be attributed to his approach of the source of moral reasoning, which will be discussed later,⁵¹⁹ which combines subjectivist schools and the natural school, especially with the assistance of religion in which the opportunity of reaching a level of stability in moral philosophy is very likely.

- b. Grégoire argues that of the transcendental, naturalist, and subjectivist moral doctrines the modern period is dominated by the latter and is seen in several moral theories. Thus, morality is looked upon as an inner individual matter more than as a rational and systematic social one.⁵²⁰

Mudarrisī again disagrees with this conclusion and thinks that all three grand moral doctrines are still alive and active, especially the transcendental schools which are based on religious teaching and thought. He argues that Grégoire has only reflected upon the course of moral philosophy in the West and this is obviously indifferent to other cultures and traditions.⁵²¹

- c. Grégoire argues that individuals nowadays struggle with being moral, which requires inner motivation, or what Kant describes as the moral dimension of duty (deontological), especially with the social constraints and impositions which, if followed without conviction, make the individual immoral.⁵²²

Here, Mudarrisī partially agrees with Grégoire. However, he argues that Grégoire's fault lies in his belief that to be moral, the individual has to be motivated solely from within.

⁵¹⁷ Ibid., p.177.

⁵¹⁸ Ibid.

⁵¹⁹ See on page 250.

⁵²⁰ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāshiduhu*, vol. 3.

⁵²¹ Ibid.

⁵²² Ibid.

Alternatively, Mudarrisī thinks that morality is a combination of inner and social motivations. As we shall see later on⁵²³, he thinks that there are three sources of moral reasoning. Therefore, for somebody to be moral, he/she has to combine intellect, nature, and revelation. Social constraints, especially if they are rooted in tradition, are right and proper tools to implement morality in society.⁵²⁴

Based on the intellectual conversation above, it might be argued that for Mudarrisī there is the potential to establish a rational, stable, and moral philosophy. Such a moral philosophy will be on a subjectivist basis but will also have a societal perspective. This, however, seems to be another expression of his *maqāṣid al-sshari‘a* project.

5.2.1.2. Sources of Moral Value

This section addresses sources of moral value in Mudarrisī’s thought. Mudarrisī has shown his opinion through an intellectual conversation with several moral philosophies, especially from the Western tradition. The importance of this section lies in showing the sources which Mudarrisī deems as valid foundations of moral reasoning. Moreover, through this comparative debate, he provides his understanding of faith; an understanding which he believes to be comprehensive and benefitting from various moral schools. It is this understanding of faith upon which Mudarrisī bases his inquiry into the moral values of the *shari‘a*.

Broadly speaking, moral philosophy can be divided into two broad positions regarding the source of moral value, an issue which is studied in the field of meta-ethics, as it is known nowadays. These two positions are subjectivism and objectivism⁵²⁵. Subjectivism argues that the source of moral value is a subjective matter for the human being. Differences in subjectivism regard intuition, emotion, good will, or even social construction as the evidence for moral judgment. Conversely, objectivist schools argue that the source of moral value is something beyond the human self. Objectivists can be divided into two broad types: (i) those who believe that the source of moral value is a

⁵²³ See on page 261.

⁵²⁴ Ibid., p.178.

⁵²⁵ For general debate on these topics see: Shafer-Landau, Russ, *Ethical Theory: An Anthology*, 2ed ed. (United Kingdom: Wiley-Blackwall, 2013). pp. 22-47, 71-126. For a discussion specifically on subjectivism and objectivism and related debates, see: Zimmerman, Aaron, *Moral Epistemology*, (United Kingdom: Routledge, 2010)

transcendent thing beyond the physical world (mostly people with religious commitments) and (ii) those who believe that the transcendent thing is not beyond the physical world, but it is rather something within the material world (mostly people with naturalist tendencies).

Mudarrisī, in his attempt to theorise the source of moral value, has discussed several positions in meta-ethics, giving considerable attention to the subjectivist schools. Mudarrisī discusses realism, Kantianism, and social constructionism in both its Durkheimian and positivist forms. Mudarrisī pays little attention to objectivist schools, providing only an evaluative overview of objectivism, mainly of a naturalist variety. Finally, he presents his theory of faith as an alternative to other moral philosophical doctrines. His theory, unlike the others, begins with belief in God, which in turn entails various interacting sources of moral reasoning.

In the following, I will demonstrate his views, as stated above, beginning with subjectivism and its types, namely, realism, Kantianism, and social constructionism. I will then move toward objectivism by introducing Mudarrisī's general observations, and finally I will end with his theory of faith.

5.2.1.2.1. The Subjectivist Schools

The subjectivist schools, broadly speaking, argue that the source of moral value is the human self, although their expressions regarding the components of the self vary. This is how Mudarrisī understands this position, and therefore he regards many philosophers under this category, such as Spinoza, Hegel, Kant, Dewey, and Perry. Before going through the intellectual conversation with these subjectivist schools, Mudarrisī provides five general evaluative observations on subjectivism, as listed below.

- (1) Mudarrisī believes that subjectivism, in its different versions, represents the essence of the materialist crisis of thought and that materialism is the source of the disadvantages of subjectivism.⁵²⁶

⁵²⁶ Ibid., p.57.

- (2) As an explanation of the preceding point, subjectivism, in its best version, is no more than an attempt to centralise the human being in the world. However, it entails neglecting the environment as well as other creatures (such as animals).⁵²⁷
- (3) Taken as the essence of the crisis of tendency, subjectivism, in its various versions, has not been successful in establishing a strong ground for morality beyond the individual utility through which it attempts to establish the social institution. However, according to Mudarrisī, this subjectivist individuality does not have sufficient philosophical foundations for preserving the continuity of the social institution beyond the axial of the self.⁵²⁸
- (4) Mudarrisī argues that the human self, whether represented by intuition, will, or conscience, has no priority over the general order. The self does not have a higher level of existence, nor is it more valuable in moral terms than other morally valuable items such as the general order of nature. The order of nature could be of greater moral priority since it is the starting point for all morality. According to Mudarrisī, the sort of philosophical moral reasoning where the self is viewed as the absolute value fails to recognise the position of the self within the grander order of existence.⁵²⁹
- (5) The natural result of subjectivism – in spite of its original idealistic aims of establishing a shared good and the morality of duty – is the nihilistic atheist existentialism of the twentieth.⁵³⁰

5.2.1.2.1.1. Realism

Realism has various forms, however, all of them share, according to Mudarrisī's understanding, an epistemological stand toward human knowledge. The epistemological stand makes a clear distinction between the subject and the object.

⁵²⁷ Ibid., p.58.

⁵²⁸ Ibid.

⁵²⁹ Ibid.

⁵³⁰ Ibid., p.60.

Thus, it maintains that for knowledge to be correct, it has to correspond with reality. However, it conceives that gaining knowledge and examining its correspondence is done through a sort of *relationship* between the subject and the object. According to Mudarrisī, moral realist philosophers have transferred this paradigm to moral reasoning, in which moral values are a sort of relationship that is constituted through selective operations and attitudes determining the morality of an action,⁵³¹ which is known in Western literature as cognitivism.⁵³²

Mudarrisī's evaluation of realism, and particularly moral realism, can be summarised in the following three points.

- (1) Mudarrisī agrees with realist epistemology, which argues that the reality of the object, and therefore the truth, is independent of the subject. Thus, the corresponding relationship is the criterion of the truth.⁵³³
- (2) Mudarrisī disagrees with the realist explanation of the relationships between the subject and the object. Realism, as he understands it, conceives the role of the human being in gaining knowledge as a passive role, in which the agent is only a receiver of reality's stimulus. Instead, Mudarrisī argues that although the truth is independent from the human being, knowledge is gained through an active role from the subject which happens through the intellect, which according to Mudarrisī's theory is a divine light that gives the human the ability of knowing. Subsequently, he denies what he describes as the camera–picture relationship between the subject and the object. Instead, he sees that the active role of the human gives him/her the feature and meaning of knowledge over the object. Having said that, he admits that there is a part of the human self which is responsible for reflecting reality or bad experience

⁵³¹ Ibid., p.65-9.

⁵³² For more information about the cognitivist version of moral realism, see Geoff Sayre-McCord, 'Moral Realism', *The Stanford Encyclopedia of Philosophy* (Summer 2011 Edition), ed. Edward N. Zalta, URL = <http://plato.stanford.edu/archives/sum2011/entries/moral-realism/> (accessed: 15.4.2014). Also, Brink, David, *Moral Realism and the Foundations of Ethics*. (New York: Cambridge University Press, 1989) and Shafer-Landau, Russ, *Moral Realism: A Defence*. (Oxford: Clarendon Press, 2005).

⁵³³ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāshiduhu*, vol. 3.

without a critical sense, which, in turn, would incline the human to make mistakes. This part is what he calls desire (*al-hawā*) or *al-dahmā*, which is different from intellect.⁵³⁴

(3) In a moral discussion with realism, Mudarrisī applies his criticisms to its moral applications. Thus, at the same time, he appreciates its insistence on the independence of moral truth. He also criticises what he thinks of as the passive realist view of human agency in gaining moral truth. The view that is entailed to relativism at the end in terms of moral reasoning, as Mudarrisī sees it, is the new realism of Perry in which the source of moral values is merely interest.⁵³⁵

5.2.1.2.1.2. Kant's Morality

Mudarrisī considers Kant's moral philosophy to be subjectivist. He addresses Kant's moral thought in two sections in his book: first when he deals with sources of moral value,⁵³⁶ and second when he studies moral schools.⁵³⁷ Although there is a distinction in terms of the quantity in each section, the points addressed are the same. He addresses three points in Kant's moral thought: the source of moral value, the good free will, and the categorical imperative. Below are further details on these themes.

(I) *The Source of Moral Value*

Mudarrisī, like many others, argues that Kant's contribution to moral philosophy was revolutionary. According to Mudarrisī, Kant was relatively successful in bringing about belief in the human as a rational creature and as a source of moral value.⁵³⁸ Kant's attempt to criticise pure/theoretical and practical reason was in a way seeking a source of moral value that does not depend on any material elements, such as human desire or experiment. Instead, it sought a prior rational foundation. Although it has been expressed variously, Kant, according to Mudarrisī's understanding, equates the source

⁵³⁴ Ibid., p.66.

⁵³⁵ Ibid., p.86.

⁵³⁶ Ibid., p.69.

⁵³⁷ Ibid., pp.152-9.

⁵³⁸ Ibid., p.152.

of moral value with a faculty of rational and free human beings which can establish a categorical imperative.⁵³⁹

(II) The Good Free Will

Mudarrisī argues that Kant's discovery of the fact that human beings are able to be a source of moral value resulted in him terming this feature 'good will'. This phrase is used to mean the will which demands an action, just because it is moral and not because of anything else. It has this feature because of following the rational faculty of the human being, namely, reason.⁵⁴⁰

(III) The Categorical Imperative

As good will is rooted in the human being as a rational creature, all human beings must share good will. Thus, it establishes a categorical imperative with which all human beings can discover and follow and subsequently it gives grounds for the co-existence between human beings in which they share the common or general good.⁵⁴¹

Mudarrisī seems to be content with providing a brief overall exposition of Kant's moral philosophy together with an overall evaluation. On the one hand, he appreciates Kant's attempt to identify the source of moral value for humans and especially his establishment of a transcendent faculty that is prior to, and independent from, any material components.⁵⁴² However, on the other hand, although Kant was relatively successful in discovering the value of reason, Mudarrisī argues that Kant does not provide a clear-cut definition of reason or intellect. Kant's reason is still, according to Mudarrisī, a part of the human self and not transcendent of it, that is, differentiating between reason and desire is not enough if reason is not a transcendent element. Even though Kant was aiming at a sort of categorical imperative, the philosophical

⁵³⁹ Ibid., p.154.

⁵⁴⁰ Ibid., p.70.

⁵⁴¹ Ibid.

⁵⁴² Ibid., p.71.

foundations of free will would turn again to be subjectivist. Similar could be said about his attempt to establish a priori knowledge.⁵⁴³

5.2.1.2.1.3. The Social Constructivist Morality

Mudarrisī addresses what is described in contemporary Western literature as the ‘social constructivist school’⁵⁴⁴ mainly through presenting the ideas of the French sociologist and philosopher Emile Durkheim (d. 1917). He first examines Durkheim’s philosophy of society, the social institution, and the social self. Following this, he studies Durkheim’s moral philosophy which ends up with a relativist and descriptivist view of morality, according to Mudarrisī. Finally, he provides his evaluation of the whole enterprise of social constructivist morality. Below are further details on these themes.

(I) The Philosophical Foundation of Social Constructivism

Social ‘construction’ or ‘constructionism’ or ‘constructivism’ are terms that have widely been used in the humanities and social sciences and applied to several objects to represent a philosophical understanding of human phenomena and, recently, even of natural phenomena.⁵⁴⁵ The core idea of social constructionism is that ‘some object or objects are caused or controlled by social or cultural factors rather than by natural ones.’⁵⁴⁶ Therefore, it aims to show ‘that such objects are or were under our control: they could be, or might have been, otherwise.’⁵⁴⁷ This understanding of social reality is attributed to the French sociologist and philosopher Emile Durkheim, who attempted to establish a theory of social ontology that argues for the real existence of society. Durkheim, in Mudarrisī’s view, presents society has being parallel to nature, featuring its own rules, constraints, motivations, and even logic that overrules and precedes

⁵⁴³ Ibid.

⁵⁴⁴ See: Shafer-Landau, *Moral Realism: A Defence*. pp. 39-50 and O’Neill, O., 1998, “Constructivism in Ethics,” in *Routledge Encyclopedia of Philosophy*, E. Craig (ed.), Vol. 2, London, 630–32.

⁵⁴⁵ Ron Mallon, ‘Naturalistic Approaches to Social Construction’, *The Stanford Encyclopedia of Philosophy* (Winter 2013 Edition), ed. Edward N. Zalta, URL = <http://plato.stanford.edu/archives/win2013/entries/social-construction-naturalistic/> (accessed: 1.5.2014).

⁵⁴⁶ Ibid.

⁵⁴⁷ Ibid.

individuals. Moreover, society is prior to individual ontology by which the individual constitutes his/her awareness about the self as a conscious entity, representations, and relationships. In a word, the individual's conception of the social (and maybe the natural) world are socially constructed. Mudarrisī argues that Durkheim goes even further by saying that even logical norms and concepts are determined by society.⁵⁴⁸

This is how Mudarrisī sees social constructivism (or what he describes as the social school of knowledge and morality), confining himself mainly to Durkheim's thought despite various developments in contemporary social philosophy.⁵⁴⁹ Accordingly, Mudarrisī builds his evaluation on the core claim of Durkheimian subjectivism that emphasises the powerful influence of society over the individual. Mudarrisī, on the one hand, argues that the social school was a revolution in social studies which focused on the significance of social factors in understanding many human phenomena. Subsequently, it has led to discovering many social rules that enable human beings to improve their life. On the other hand, Mudarrisī disagrees with the duality of the social school in which it is constituted from natural and social ontology, and sometimes it is only a social ontology that overrules even the individual's representations of the natural world. Instead, he argues for the triple ontology of existence which consists of individual ontology as an autonomous, free, and conscious agent and social ontology as a construction that has its own rule and system and natural ontology.⁵⁵⁰ Within this triple ontology, the agency of the human being is constituted. This agency might be overruled by social construction and in other cases individual agency constructs social ontology, and similarly with natural ontology. Furthermore, Mudarrisī argues that contemporary social sciences tend to support the agency of the individual in society, especially in fields such as education that are concerned with habits, traits, growth, and change.⁵⁵¹ Therefore, he rejects social constructivism as a hard determinism and accepts it as a soft determinism in which the social factor is a part of the elements that affect and constitute the agency of the individual.

⁵⁴⁸ Mudarrisī, *al-Manṭiq al-Islāmī: Uṣūluhu wa Manāhijuhu*, p.134.

⁵⁴⁹ Mallon, 'Naturalistic Approaches to Social Construction'.

⁵⁵⁰ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, vol. 3, pp.74-6.

⁵⁵¹ Ibid.

(II) The Moral Applications of Social Constructivism

Mudarrisī argues that social constructivism has two main applications in morality. These are as follows.

- (a) As society is the principal ontology that constitutes the consciousness of the agent of which moral value is a part, and because each society is determined by its circumstances, moral values are relative and determined by each society's conditions.⁵⁵²
- (b) Accordingly, the function of any social inquiry and moral theorisation has nothing to do with what the morals of society should or ought to be, i.e. normative inquiry. Rather, its function is to discover the reality of the actual morality of society, i.e. descriptive inquiry.⁵⁵³

Mudarrisī provides three objections to the above moral applications, as listed below.

(a) As for the result of relativity, Mudarrisī uses a classical objection to all relativist doctrines. He objects to the circular logic which states that if human representation is socially constructed it is therefore relative. Mudarrisī says that this idea itself is a human representation and is, therefore, according to the logic of social constructivism, itself relative. So, according to Mudarrisī it is rather the case that not all human representations are socially constructed.⁵⁵⁴

(b) With respect to the function of moral and social inquiry, Mudarrisī argues that though this idea started with Durkheim, it has been shaped to its extreme form with the extreme logical positivism which can be found in the social sciences. Although positivism in general, according to Mudarrisī, has provided significant contributions to human knowledge, especially in the social sciences, as a methodological enterprise it is

⁵⁵² Ibid., p.77.

⁵⁵³ Ibid.

⁵⁵⁴ Ibid., p.79.

confined to some parts of human knowledge and is valid only by integration with other philosophical perspectives.⁵⁵⁵

(c) Mudarrisī also argues that human experience, the historical understanding of human beings, and objective experiments confirm that there are some constant principles that generate moral and social values in society. Any rejection of these constant principles would put believing in the sociality of the human being in doubt. He wonders how we believed in the principle of sociality and then we disrupt the principle. Here, Mudarrisī again employs his principle of the intellect or the conscience in which he argues that it has discovered the sociality of human being, and it is also able to discover other aspects of the human being, including its individuality and the rule of the natural world and so forth.⁵⁵⁶

In the words of Mudarrisī,

the problem of philosophical schools is that when they advance proofs, they consequently reach a point where they rely on intuition or conscience, in which they all claim that their evidences are based on an intuitional dimension which is instinctively known. However, they do not rely on this intuition to begin with and accuse the one who relies on it as being naïve or non-scientific. Yet, intuition (or conscience, or knowledge in which there is no evidence except for the intellect) is the foundation of any knowledge.⁵⁵⁷

In addition, Mudarrisī says,

In spite of the differences in interpreting these principles as a direct result of the different social conditions involved, the unity of the general concept is evidence for the existence of constant human principles. One of these principles, perhaps, which the social school recognises and is very focussed upon, is the principle of sociality, in which you find people glorifying societal living. Is not this a firm value in the human self? Thus, how would it be

⁵⁵⁵ Ibid., pp.74-9.

⁵⁵⁶ Ibid.

⁵⁵⁷ Ibid., p.74.

explained if we did not say that it was a result of an intuitional sense of human beings?⁵⁵⁸

5.2.1.2.2. The Objectivist Morality

The essence of objectivism in moral philosophy is represented by the naturalist tendencies of morality which see the moral realm, and generally all areas of human identity, as being similar to natural reality. This follows from the view that natural scientific methods have to be used in any moral inquiry.⁵⁵⁹ In ancient philosophy, objectivism was represented by Epicureanism and in modern philosophy, especially since the eighteenth century, it was revived by individuals with quite different backgrounds, for example, Pierre Bayle,⁵⁶⁰ David Hume, and Claude Adrien Helvétius.⁵⁶¹ Later on John Stuart Mill and Joseph Fourier⁵⁶² gained their objectivism from psychology, whereas with Sigmund Freud it was from medicine. However, the most prominent objectivist tendency which remains today is utilitarianism. Though the term naturalism is problematic for describing these tendencies, generally they share an ontological view toward the reality of the human being, yet, they are different in their methodology. Based on this overall understanding of that tendency, Mudarrisī provides general observations on the relationship between moral philosophy, philosophy in general, and science. He then briefly studies several naturalist schools. What is of interest and relevance to the research here is the examination of his general observations on the relationship between morality and science, because it reflects his evaluation of naturalism as a source of moral value. Therefore, I will examine his general insights in this section.

⁵⁵⁸ Ibid., p.78.

⁵⁵⁹ For more details about moral naturalism, see James Lenman, 'Moral Naturalism', *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), ed. Edward N. Zalta, URL = <http://plato.stanford.edu/archives/spr2014/entries/naturalism-moral/> (accessed: 1.6.2014).

⁵⁶⁰ Pierre Bayle (1647–1708) was a French philosopher.

⁵⁶¹ Claude Adrien Helvétius (1715–1771) was a French philosopher.

⁵⁶² Joseph Fourier (1768–1830) was a French mathematician and physicist.

Mudarrisī argues that naturalism has provided some benefits to the field of moral philosophy especially given its emphasis on scientific rigour.⁵⁶³ However, he maintains that its benefits are confined to the investigation of society. Thus, it would help as a means to apply morality and to study objects of moral inquiry in reality. Having said that, from the ontological perspective, Mudarrisī sees ‘science’ as a non-normative power of the human being which enables human beings to discover and exploit reality. Thus, it needs to be guided by another wise power of the human being.⁵⁶⁴ Furthermore, science and scientific methods, as we understand nowadays, are quite changeable in their nature in a way that on some levels it becomes very difficult to depend on them completely. This is not only with regard to establishing a philosophical worldview, but also for establishing public policy in any given society. This point has been deeply discussed in contemporary discourse, especially in the field of social epistemology and public policy, as mentioned before. Finally, Mudarrisī argues that science lacks an essential feature of any moral philosophy, that is, commitment. Science and scientific methods, as we understand them nowadays, with their changeable features, lack the ability to provide a foundation for people to be committed to a certain morality. Instead, they incline toward being relative more than being constant and/or stable in practice.⁵⁶⁵ Drawing on this idea, Mudarrisī draws two conclusions.

(a) On the one hand, moral philosophy and philosophy in general have to concern themselves with the grand questions of human experience, that is, those questions which deal with the constant part of human life and are related to public policies. On the other hand, science has to concern itself with the variables and applications of morality and rendering services to philosophy.

(b) On the other hand, science has to have in an integrating, dialectical, and harmonious relationship with philosophy, in which science provides the discovered particulars that lead philosophy to build general convictions. On the other hand,

⁵⁶³ Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāsiduhu*, vol. 3, pp.137-40.

⁵⁶⁴ Ibid., pp.138-9.

⁵⁶⁵ Ibid., p.137.

philosophy provides general convictions that guide scientific inquiry and application.⁵⁶⁶ For example, if moral political philosophy comes up with the conviction that the state should interfere in society, then science, with the help of the utilitarian norms of pleasure and pain, can provide measurable methods to make public policy. The same can be applied to any philosophical conviction that would have an effect in society in the form of a policy.

5.2.1.2.3. Theory of Faith

Having discussed the source of moral value and the subjectivist, social constructionist, and objectivist schools, Mudarrisī turns to presenting his own theory of the source of moral value. I term this theory Mudarrisī's 'theory of faith'. This theory is drawn on the attempt to accommodate in an integrating way the contributions of the moral doctrines to the field in a way that establishes an open mind from the beginning, and is interactive and able to adopt a self-corrective methodology. Moreover, this theory depends on a triplet which Mudarrisī always and repeatedly mentions, that is, the triplet of revelation, reason, and reality. In the following, I will present the theory in detail.

One of the common distinctive features of religious discourse, especially Islamic discourse, is to consider religion, in its broad sense, as a vital source of moral reasoning. However, the way in which each tendency within the religious discourse theorises the details of its approach makes each contribution different from others.⁵⁶⁷ Mudarrisī believes that religion is represented by faith, as its essence is a vital source of both moral value and reasoning. However, in the details of his theorising, he provides a distinctive theory that has its features and ramifications in the whole moral thought and particularly in the *maqāṣid al-sharī'a*. This theory is drawn on two concepts (namely, the intellect⁵⁶⁸ and the moral faculty),⁵⁶⁹ one of which was discussed in Chapter 3, and the other of which was discussed at the beginning of this chapter. Although these concepts

⁵⁶⁶ Ibid., p.139.

⁵⁶⁷ For example, the Moroccan Islamic thinker, Ṭāhā 'Abd al-Raḥmān, is known for his moral enterprise of which the religion constitutes the main source. For more details, see Ṭāhā 'Abd al-Raḥmān, *Rūḥ al-Dīn min Dīq al-'Almāniyyah 'ilā Si'at al-'Imāniyyah* (Beirut: al-Markaz al-Thaqāfī al-'Arabī, 2012).

⁵⁶⁸ See on page 145.

⁵⁶⁹ See on page 247.

are ontologically united, they can be differentiated conceptually and intellectually. These concepts connect with three spheres from which they are generated. These spheres are faith as the longing for the transcendent; the most beautiful names of God as the order of the universe; and the human agency toward the infinite perfection.

Mudarrisī argues that from the beginning we should recognise that the intellect, conscience, intuition, or moral faculty (however we may term it) is the source of true human knowledge as well as of moral value. Contrary to other moral philosophies, Mudarrisī believes that this source is the ultimate source on which all moral philosophies eventually draw their morality. However, they only recognise it partially. For example, subjectivism recognises the good will and the cognitive relationship between the subject and the object; yet it rejects the sense of sociality and the compatibility with the natural world. Here exactly is where Mudarrisī insists on the centrality of the truth (*al-ḥaqq*), which is enlightened and discovered by the intellect (including all its capacity of moral and social senses). By such insistence, he thinks that the Islamic term for this notion is faith (*al-īmān*), which means believing in the total truth and therefore recognising its merits.⁵⁷⁰ The essence of faith, in his view, is the absolute submission to the truth, and then through this submission the human being will recognise the different sorts of existence in which they become the source of moral value.

Based on his understanding of faith, Mudarrisī argues that three spheres will be generated which collectively represent the concept of Islamic worship (*al-ʿibāda*). The first sphere is drawn from the most obvious fact and truth in the universe, that is, God. Under the intellect or intuition, the first and obvious truth is the existence of the perfect and absolute power in the universe, which is morally reflected in the sense of longing for the transcendent. This meaning includes a sense of the absolute need in the human for the provision of God. Here is where revelation (*al-waḥy*) becomes a source of moral value. The second sphere is drawn from the natural world in which the human being, by dealing with and reflecting on the natural world, recognises not only its existence and its

⁵⁷⁰ Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāsiduhu*, vol. 3, p.187.

components, but also its good design and beauty. This beauty of the natural world, Mudarrisī argues, reflects the most beautiful names of Allāh by which He created the world in a way that they constitute every part of it. Thus, it morally reflects the intellect, which recognises causality and the order of the world, in which the intellect becomes a source of moral value. The third sphere is drawn from reality by which he means recognising the incompleteness of the world and its ability to be invested for the good of the human being. This morally reflects reality as a source of moral value, which recognises the agency of the human being in investing the earth and in pursuing perfection.⁵⁷¹

Mudarrisī considers these three spheres as the essence of faith, in which faith means the absolute submission to the truth and the practical faith, which is the meaning of life and the philosophy of the creation, i.e. worship (*al-ʿibāda*). Thus, worship means the agency of the human being in processing through these spheres back and forth. This, in a whole, represents Mudarrisī's theory of faith as the source of moral value, in which there are three sources of morality, namely, the revelation, the intellect, and the reality. Mudarrisī, by this theory, wants to accommodate different moral thoughts in which each one of these sources reflects a main moral school respectively: the transcendental, the naturalist, and the subjectivist/voluntarist. Moreover, each of these sources and moral thoughts reflects, according to Mudarrisī's conclusion, a main moral value that represents the essence of morality (which will be demonstrated below) and these are love, justice, and life, respectively.⁵⁷² Nevertheless, in the view of Mudarrisī, these moral values as the essence of morality will be reflected in legal philosophy as the three main goals of any legal system. However, when they are reflected legally, they will be security, fairness, and advancement, respectively, as we shall see in the legal discussion⁵⁷³.

5.2.1.2.4. The Essence of Morality

⁵⁷¹ Ibid., pp.199-215.

⁵⁷² Ibid., p.187.

⁵⁷³ See on page 267.

Mudarrisī, after discussing the source of moral value and studying comparative moral philosophy, comes to a conclusion on the essence of morality. He argues that faith constitutes the essence of morality. Faith, according to his understanding, is the absolute submission to the truth, which follows recognition of its existence and the entitled requirements. This produces three main values, each of which generates several sub-values to which they are attached. In the following, I will demonstrate each value with its sub-values as seen by Mudarrisī.

5.2.1.2.4.1. Love

Love is the first component of the essence of morality, according to Mudarrisī, by which he means that love is a transcendence of the human self. Its root is attributed to the recognition that there are many other existences and the moment of transcending the self for the sake of the other is the manifestation of the value of love. Mudarrisī claims that love entails charity (*al-iḥsān*) for others and parents, asceticism, worship, love of Allāh and people, living for others, friendship, seeking the common good and utility and giving. Here, Mudarrisī attempts to reduce several values from different ethical systems to the value of love. He specifically mentions Christianity, Buddhism, Confucianism, and utilitarianism.⁵⁷⁴

5.2.1.2.4.2. Justice

The second component of the essence of morality is justice, by which Mudarrisī means giving everything that is deserved. Mudarrisī thinks that justice is rooted in believing in God and his most beautiful names through which he created the world and which are reflected in every part of the world and which are also constituted in every part of the world. This is what is called the natural order, which, in a sense, requires a recognition of its variety and is morally reflected in giving each constituent part what it deserves. Many values are generated from justice, such as making a balance, moderation, fulfilment, trust, and animal and environmental rights. Here, Mudarrisī again attempts to

⁵⁷⁴ Ibid., pp.187-8.

accommodate values from different moral backgrounds under the value of justice. This time he mentions Plato, Epicurus, and realism.⁵⁷⁵

5.2.1.2.4.3. Life

The third component of the essence of morality is life, by which he means the strong ambition in the human being to seek perfection and to invest in the earth. The root of the value of life is attributed to the fact that the reality of the human being and of the physical world has not yet been completed. There is still considerable room for the human being to seek a better and perfect life both individually and socially. This is morally reflected in the agency of the human which generates several other values, such as freedom, *jihād*, health, spiritual experience, advancement, productivity, and family. Here, Mudarrisī again attempts to reduce values from different ethical systems under the value of life, especially those which are associated with voluntary morality. In this regard Mudarrisī mentions Manicheanism, Nietzsche, existentialism, and socialism.⁵⁷⁶

⁵⁷⁵ Ibid., pp.188-90.

⁵⁷⁶ Ibid., pp.190-2.

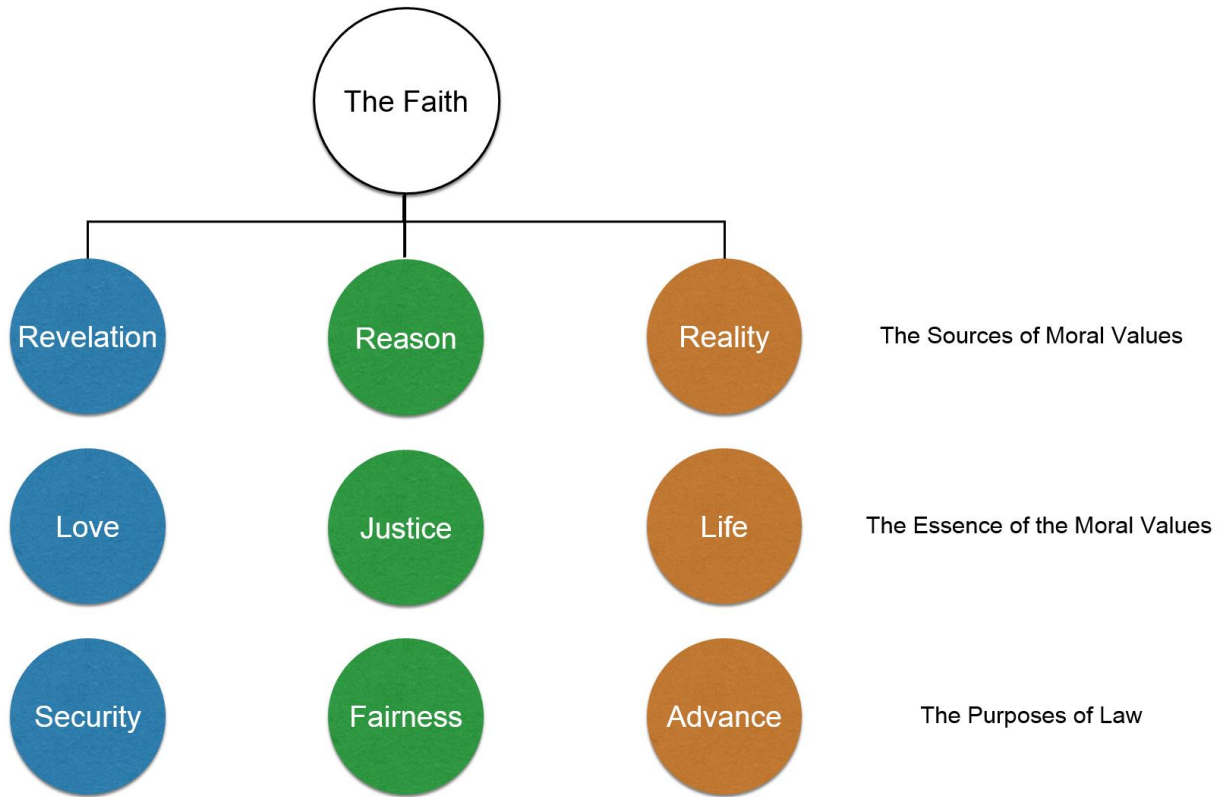


Figure 9. The sources of moral reasoning and its reflections on moral values and legal purposes according to the view of Mudarrisi.

5.2.2. The Legal Discussion

In his legal discussion, Mudarrisī seeks to make a comparative study of legal philosophy in order to identify the essence of the purposes of the law. Thus, he studies three main doctrines that have dominated legal philosophical debates, that is, natural legal theory, positivism, and social legal theory. Conducting a legal inquiry in this way allows Mudarrisī to integrate his moral discussion with his legal discussions which represent his theory of the nature and the purpose of the law (*sharī'a*). This integration reflects the idea that Mudarrisī seeks to break the impasse of duality in the individualist and social theories that have dominated legal philosophical debates (and somehow political philosophy as well). The solution which Mudarrisī provides is to call for virtue ethics or jurisprudence theory as a moral legal philosophy or the project of *maqāṣid al-sharī'a* if we use Islamic terminology. As for the purposes of the law, Mudarrisī resolves that there are three main integrative purposes of the law, namely, security (*al-amn*), fairness (*al-inṣāf*), and advancement (*al-taqaddum*) or the common good (*al-khayr al-mushtarak*).

As for the interest of this thesis, this section will not examine Mudarrisī's understanding and evaluation of legal philosophy. Rather, it will study his legal philosophical vision toward three important points. These are: (a) the necessity of the purposes of the legal theory and system, (b) the necessity of the purposes of being absolute moral purposes rather than being temporary positive purposes, and (c) Mudarrisī's virtue ethics theory as an alternative to the duality of individualist and social theories. These points will demonstrate Mudarrisī's critique of current legal philosophy to which he provided the project of *maqāṣid al-sharī'a* as the alternative. Moreover, it will show how he integrated moral and legal discussion in which he then provided the three main purposes of the law as the societal reflections of his moral theory. This, in turn, will show the difference between his theoretical discussions, which he introduced in moral and legal discussions, and his practical discussions, which will be studied in the next section and which represent his practical study of the *maqāṣid al-sharī'a* that was based on textual study.

5.2.2.1. The Necessity of the Purpose of the Legal Theory and System

Mudarrisī recognises that the relationship of morality and law is much debated, and in particular, there is the debate around whether law can be viewed as having a set of moral purposes or not. Some believe that morality is not the business of the law or, to be more accurate, the legality of any system of law does not depend on its merits. Rather, it has to do with its structure of governance. This view is widely held by legal positivism.⁵⁷⁷ For others, even though morality is not the business of the legal system, studying the purposes of the law is worthwhile. However, such study has to be done in the other fields of inquiry which are peripheral to law, such as political and moral philosophy. This view is widely held, according to Mudarrisī.⁵⁷⁸ For natural legal theory, moral discussions represent the essence of legal philosophy in which any legal system deserves its legality depending on its merits.⁵⁷⁹

In this context, Mudarrisī after studying three main positions (natural legal theory, positivism, and social legal theory) argues that studying the purposes of the law is a philosophical and pragmatic necessity even for the doctrines that reject the role of morality in the law. At this stage of his argument, Mudarrisī differentiates between the purposes and the values of the law in which the purpose might be temporary, partial, and related to a specific place. However, in the next section, he develops his argument further to claim the necessity of the purposes of the law to be absolute. Mudarrisī bases his argument on the common notion that morality forms a part of legal philosophy, whether completely or partially. It seems clear that Mudarrisī has neither read very recent legal philosophy – such as the critiques of hard legal positivism by Dworkin⁵⁸⁰ and Raz⁵⁸¹ – nor has he read the broad contemporary debates of political and moral

⁵⁷⁷ J. Penner and E. Melissaris, *McCoubrey & White's Textbook on Jurisprudence* (Oxford: Oxford University Press, 2012), p.40.

⁵⁷⁸ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, vol. 3, p.295.

⁵⁷⁹ Penner and Melissaris, *McCoubrey & White's Textbook on Jurisprudence*, p.11.

⁵⁸⁰ See for example, Dworkin, R., 'Hart's Postscript and the Character of Legal Philosophy' (2004) 24 *Oxford Journal of Legal Studies*. pp. 1-37. , Carrio, Genaro R. (1980) "Professor Dworkin's Views on Legal Positivism," *Indiana Law Journal*: Vol. 55: Iss. 2, 209-246.

⁵⁸¹ see: Leiter, B., 'Beyond the Hart/Dworkin debate: the methodology problem in jurisprudence' (2003) 48 *American Journal of Jurisprudence*. pp. 17-51.

philosophy which have a significant impact on legal debates and on such worldviews as Rawlsian moral liberalism⁵⁸² and MacIntyrean communitarianism.⁵⁸³ This might suggest that his conclusion is based only on his critique of Western modernity, on the one hand, and his embracing of the *maqāṣidī* project, on the other. In any case, based on this conviction, he argues that even for doctrines such as positivism and social legal theory, studying the purposes of the law is necessary. According to Mudarrisī's understanding, for the contractarian tradition the will of individuals and social parties – through social contract – constitutes the law. In the final analysis, Mudarrisī argues, questions of the objectives of these wills or the collective will are unavoidable. Otherwise, these wills or the collective will would be an arbitrary and meaningless will, which is against the belief of human rationality. Mudarrisī thinks that this conviction even becomes widespread amongst the contractarian figures in which he mentioned the ideas of Melvin Eisenberg,⁵⁸⁴ a German–American legal philosopher, as an example. As for the social theory of law, this is divided into two trends. In one, the law is conceived of as the product of social factors, and therefore describes the society rather than directing it. In the other, the law is thought to have a purpose, or purposes, making the study of the law more like moral or political philosophy. Thus, Mudarrisī argues that even the social theory of law has eventually been convinced of the necessity of the purposes of the legal system.⁵⁸⁵ As for utilitarianism, with its slogan of 'the greatest happiness for the greatest number', the discussion of the meaning of happiness has eventually to be done in order to apply the utilitarian doctrine in the legal system. This means, Mudarrisī argues, that the purposes of the law has become a necessary debate.⁵⁸⁶

Mudarrisī argues that there were several factors that have led to legal philosophy having a moral element. in the field of legal studies. He addresses some of them in his study of the manifestation of positivism which he mainly refers to in his discussion of the intellectual and social environment of the nineteenth century and the increase in the

⁵⁸² Freeman, Samuel. *Rawls*. (London: Routledge, 2007).

⁵⁸³ A. MacIntyre, *After Virtue* (Bloomsbury Publishing, 2013).

⁵⁸⁴ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, vol. 3, p.295.

⁵⁸⁵ Ibid.

⁵⁸⁶ Ibid.

material movement across Western thought.⁵⁸⁸ Having said this, he also believes that there are some objective obstacles which are related to the nature of the research itself, which makes it difficult and unpalatable for some, such as its interconnected nature.⁵⁸⁹ The philosophy of law, according to Mudarrisī, is in effect an overlapping field of study in which political, moral, and social philosophy are intersecting. This sort of research, in turn, requires a set of philosophical presumptions around epistemology, linguistics, and hermeneutics. The environment of the intellectual and philosophical inquiry of the nineteenth until the late twentieth century rejected this sort of interconnected research. However, the very late part of the twentieth century witnessed a return to interdisciplinary research in legal philosophy and its counterparts.

5.2.2.2. The Necessity for Legal Purposes to be Absolute

After arguing for the necessity of the purposes of the legal theory and system and after attempting to re-interpret legal doctrines in a way that confirm their compatibility with the purposive inquiry, Mudarrisī takes his argument further. His claim states *that any legal theory and system has to have not only temporary purposes for a particular time and place, but also absolute purposes with which the temporary purposes and entire legislative system have to be compatible.*⁵⁹⁰ To establish his idea that purposes are absolute, Mudarrisī chooses to engage with a figure from the social theory of law who has a broad tendency to reject the idea that legal theory needs to be concerned with absolute purposes. The figure in question is Roscoe Pound.⁵⁹¹

Pound, in his influential book, *An Introduction to the Philosophy of Law*,⁵⁹² argues that the purposes that jurists should be concerned with are temporary purposes. Mudarrisī quotes the following from Pound:

Philosophers have devoted much ingenuity to the discovery of some method of getting at the intrinsic importance of various interests, so that an absolute

⁵⁸⁸ Ibid., p.247.

⁵⁸⁹ Ibid., p.296.

⁵⁹⁰ Ibid., pp.298-301.

⁵⁹¹ Roscoe Pound (1870–1964) was an influential legal philosopher.

⁵⁹² R. Pound, *An Introduction to the Philosophy of Law* (Lawbook Exchange, 1922).

formula may be reached in accordance wherewith it may be assured that the weightier interests intrinsically shall prevail. But I am skeptical as to the possibility of an absolute judgment. We are confronted at this point by the fundamental question of social and political philosophy. I do not believe the jurist has to do more than recognising the problem and perceiving that it is presented to him as one of securing all social interests so far as he may, of maintaining a balance or harmony among them that is compatible with the securing of all of them.⁵⁹³

Mudarrisī attributes Pound's idea to two arguments. Firstly, Pound claims that there are profound disagreements amongst people and philosophers with regards to absolute purposes, to the extent that it is impossible or at least quite difficult to reach an agreement. Thus, these sorts of purposes should be left and jurists have to concern themselves with the temporary purposes over which a common consensus is very likely to be reached. Secondly, as absolute purposes can not really be a subject of agreement, in reality if a legal system has sought to identify such purposes and implement them, this would be a kind of dictatorial system.⁵⁹⁴

Mudarrisī raises four objections to Pound's arguments. Firstly, Mudarrisī maintains that the absolute purposes reflect the transcendent seeking of the human being for the meaning of life and existence which are unavoidable. Thus, any temporary solution, such as only focusing on temporary purposes, will not work over a long period.⁵⁹⁵ Secondly, there are countless other issues that jurists and philosophers have strongly disagreed about, such as the nature of the law. Yet, they have not been left for the reason of disagreement. Actually, if they were left for such a reason, there would be no legal studies.⁵⁹⁶ Thirdly, ignoring people's concerns, that is, the absolute purposes, is no less dictatorial than implementing certain purposes upon them.⁵⁹⁷ Finally, there is ample

⁵⁹³ Ibid., pp.95-6.

⁵⁹⁴ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, vol. 3, pp.298-300.

⁵⁹⁵ Ibid., p.300.

⁵⁹⁶ Ibid.

⁵⁹⁷ Ibid., p.301.

opportunity to reach an agreement regarding the absolute purposes and it could be quite possible if the political and legal system has been established legitimately through people's choice. Here, in fact, the discussion of absolute purposes becomes dynamic and necessary for establishing a common consensus and there will not be dictatorship, because the institution and the room of discussion have already been created based on people's choice.⁵⁹⁸

5.2.2.3. Mudarrisī's Virtual Doctrine of Legal Philosophy

Mudarrisī calls for what is termed in the Western tradition as the 'virtual doctrine' of legal philosophy (*al-madhab al-qiyamī*), which he suggests to be the solution to the impasse of the two prominent legal philosophies. It is worth mentioning that categorising Mudarrisī's theory in English is problematic as it is sometimes misleading to simply give a theory that was established in a particular context and culture a name from another particular context and culture. Thus, categorising Mudarrisī's theory as a virtual doctrine or as virtue jurisprudence might mislead the reader about the real content of the theory. However, the use of such labels, which have basically been formed in a Western context, is merely to approximate the meaning and to show some similarities between the theories. Mudarrisī based his choice of virtue jurisprudence on his critique of the two broad prominent legal philosophies on the purposes of the law, that is, subjectivist–individualist theory and social theory. In the following, I will briefly demonstrate his criticisms of these two trends and the outlines of his own theory.

5.2.2.3.1. The Subjectivist–Individualist Theory

The individualist theory is fundamentally a philosophical worldview of the human being that sees the human as a rational agent who is capable of thinking independently using reason and therefore making rational choices about his/her life. This philosophy is represented in moral philosophy by considering the human self, especially its reason, and free will as sources of moral values, as was previously mentioned. In political philosophy, it embraces the notion that individual rights are the foundation of the political social contract that legitimates the political institution and its legislative system

⁵⁹⁸ Ibid.

through representing a collection of individual wills. Although this philosophical worldview has several intellectual presentations, the Kantian tradition, and therefore the contractarian tradition, are deemed as their most faithful branches, according to Mudarrisī.⁵⁹⁹ As for legal philosophy, especially in relation to the purposes of the law, this trend, in its broad sense, believes that the individual is the end of any legal system. Thus, the whole legal system should seek to fulfil the individual's interests. This view has several ramifications in terms of social, political, and economic institutions.

Mudarrisī does not provide a detailed presentation of subjectivist–individualist theory. Instead, he only provides the outlines of its general ideas. Needless to say, the accuracy of Mudarrisī's understanding is not the concern of this thesis. Rather, his actual thinking on contemporary issues, as seen through his criticisms and evaluations, is of concern in this thesis. Mudarrisī provides two main criticisms for the subjectivist–individualist theory; one is related to the limits of justice and the other is concerned with the social nature of the human being which affects the foundation of social contract theory. For the first criticism, Mudarrisī claims that the centrality of the individual as the foundation of the political legal system will lead to a lack of justice in society. This is because the freedom of the individual is not necessarily consistent with societal interest, and therefore it has to be restricted. This contradicts the foundation of the subjectivist–individualist theory.⁶⁰⁰ As for the second criticism, Mudarrisī attempts to attack the subjectivist–individualist theory at its roots by claiming that the autonomous individualist view of the nature of human beings is fundamentally mistaken. Rather, Mudarrisī claims, the strength of human ties to his tradition, family, culture, and his/her entire social world is to an extent the factor that makes his/her individuality shrink, that is, fade away where his/her single action is not considered as an individual action. Rather, the individual's action is intersected with his social associations in which even the single contract made by the individual is done through society's supervision and affects not only the contractor, but also the whole society in general and his/her close ties in

⁵⁹⁹ Ibid., pp.302-6.

⁶⁰⁰ Ibid., p.305.

particular.⁶⁰¹ Here, Mudarrisī seems to be very close to the contemporary Western critique of liberalism, in particular the communitarian criticisms of the liberalist concept of the liberalist self. In any case, Mudarrisī sees that these criticisms are sufficient for not considering the subjectivist–individualist theory as a valid philosophical foundation for the legal philosophy of the purposes of the law.

5.2.2.3.2. Social Theory

In contrast to the subjectivist–individualist theory as a moral, political, and (therefore) legal philosophy, social theories such as socialism and communism have emerged. Mudarrisī does not pay attention to their philosophical foundations, except for two principles on which these sort of approaches are based, namely, the originality of society and social justice.⁶⁰² Mudarrisī instead focuses on the socio-political factors that contribute to the emergence of these approaches. In other words, he discusses the historical experience and application rather than the philosophical foundation as he did with the subjectivist–individualist theory. Mudarrisī argues that four main factors have contributed to the emergence of social theory in moral political philosophy generally and in legal philosophy particularly. These four factors, as outlined below, are recognised by Mudarrisī to concern different matters.

Firstly: the worst ramifications of the subjectivist–individualist theory the West has witnessed since the late nineteenth century, especially with the emergence of the industrial revolution. These ramifications were the exploitation of the vulnerable, the poor distribution of wealth, and extreme inequality.⁶⁰³

Secondly: spread of the national spirit among many nations, which was represented in the increase of nationalist ideologies. This manifestation of the national spirit was attributed either to the general feeling of indignity, as was the case in Germany, or to the spirit of ambition, as was the case in England.⁶⁰⁴

⁶⁰¹ Ibid., p.304.

⁶⁰² Ibid., pp.306-11.

⁶⁰³ Ibid., p.306.

⁶⁰⁴ Ibid., p.308.

Thirdly: exaggeration in seeking the moral purity of the self, which motivates the individual to transcend him/herself and melt into the community. Here is where religious teachings played a role, especially the Christian morality which calls its followers to melt into the community as a part of moral purification.⁶⁰⁵

Fourthly: the authoritative power that was given to the state in the Renaissance period which gave the ruler the absolute authority over the people. It was to the extent that the will of the ruler was considered as legislation and this was reflected intellectually in several works of philosophers especially Hobbes and Machiavelli.⁶⁰⁶

Despite the noble intentions of social theories, Mudarrisī argues that in reality the experience and application was worse than the experiences of the subjectivist–individualist theory. The implementation of social theories saw the state, under the slogan of social justice, gradually dominate all areas of the society. Thus, the state became the absolute power in society in a way that any vulnerable worker could not even complain about his situation. The clearest example for Mudarrisī is the experience of the Soviet Union.⁶⁰⁷

5.2.2.3.3. Virtue Jurisprudence as the Alternative

Mudarrisī introduces three projects which have been posed to solve the polarisation of the individualist–socialist discourse that has dominated legal political philosophy in the contemporary age. Needless to say, Mudarrisī refers to the legal political discourse prior to the 1990s given that this was the literature available to him at the time of his writing.

The first project is to not only embrace individualist discourse as a legal political philosophy, but to refine it by inflating the legislative body which protects individuals and social groups from the greed of capitalism. This project has been adopted, generally speaking, by Western countries in which the human rights discourse has been increased together with associated discourses.⁶⁰⁸ The second project is to embrace

⁶⁰⁵ Ibid.

⁶⁰⁶ Ibid.

⁶⁰⁷ Ibid., p.311.

⁶⁰⁸ Ibid., p.312.

socialist discourse as a legal political philosophy, but refine it in a way that allows room for individual initiatives. This project has been adopted, generally speaking, by countries like China, as a developed version of socialism, and some left or socialist movements in the West, such as the Italian Communist Party.⁶⁰⁹ Mudarrisī believes that both solutions are untenable and that they are only adequate until a crisis reoccurs.

The third project Mudarrisī embraces is what is called virtue jurisprudence. The core of this tendency is to claim that *there are a set of virtues which have to be sought only for the sake of their virtues*. That is to say, neither rights come first (as with the deontological and, later, liberalist claim) nor consequences (as with the consequentialist claims). Rather, virtue has to be first in establishing the normative legal political system. As mentioned above, it might be misleading to label Mudarrisī's *maqāṣid al-sharī'a* project as virtue jurisprudence. However, both *maqāṣid al-sharī'a* and virtue jurisprudence maintain that legal and political philosophy has to be based on moral value. Here, again we face both linguistic and cultural difficulties in presenting not only Mudarrisī's project, but also the whole *maqāṣid al-sharī'a* project. The difficulty in examining the linguistic and cultural context for Mudarrisī lies in the fact that in the Arabic and Islamic traditions the words 'morality', 'ethics' (*akhlāq*), 'value', and 'virtue' (*faḍīla*) are quite interchangeable linguistically and conceptually. Thus, in the Arabic and Islamic traditions, it does not make sense to make a conceptual distinction between morality and virtue.⁶¹⁰ This is not to say that, in Arabic and Islamic traditions there are not several systems or orders of morality in which the hierarchy of values differs from a certain moral order to another.⁶¹¹ But it is important to remember that labelling Mudarrisī's project, and possibly the *maqāṣidī* project in its entirety, as virtue jurisprudence will not be accurate. Nevertheless, virtue jurisprudence, as the legal application of the moral philosophical trend of virtue ethics, and Mudarrisī's *maqāṣid al-sharī'ah*, share the core claim that 'the fundamental concepts of legal philosophy should not be welfare, efficiency, autonomy, or equality. The fundamental notions of legal

⁶⁰⁹ Ibid.

⁶¹⁰ Bilūshī, 'A Methodological Approach to the Moral Tradition'.

⁶¹¹ Muḥammad 'Ābid al-Jābirī, *al-'Aql al-Akhlāqī al-'Arabī: Dirāsah Taḥlīliyyah Naqdiyyah li-Nuẓum al-Qiyam fi al-Thaqāfah al-'Arabiyyah* (Beirut: Centre of Arab Unity Studies, 2001).

theory should be flourishing, virtue, and excellence.⁶¹² Mudarrisī then claims that both the first and the second project are not sufficient, in his words:

At this point legal research connects with morality, which is considered as the principal subject of this volume. In order to identify the common criterion between the individual (citizen) and the state (as representative of the society), we have to investigate the meaning of the criterion (value) and its source of legitimacy, consequently identifying it accurately.⁶¹³

Thus, he identifies the solution so as to have a clear order of moral values which is looked upon as the criterion of the legal system and public policy, bearing in mind the difference in reality.⁶¹⁴ At the time of Mudarrisī's writing, taking into account the Western literature available to him, the trends which interested him in this approach included some legal philosophers who embraced social legal theory, most of which came from a sociology background. Thus, Mudarrisī mentioned several attempts in this context, such as those by Eisenberg, Gurvitch, and Pound. However, currently the virtue ethics approach is witnessing a revival in moral and political philosophy through the critical trend of the deontological and liberalist tradition and the work of Macintyre, Taylor, and Sandal.⁶¹⁵ In legal philosophy as well, virtue jurisprudence is considered as a new approach and has not been established as a standing theory yet. Salmon explains this as follows:

Virtue ethics has hardly vanquished deontology or consequentialism, but there has been a flowering of aretaic approaches in moral philosophy and productive dialogue between virtue ethicists, utilitarians, and deontologists. The best way to test the ability of virtue jurisprudence to contribute to legal

⁶¹² L. Huppes-Cluysenaer and N.M.M.S. Coelho, *Aristotle and the Philosophy of Law: Theory, Practice and Justice* (Springer, 2013), p.2.

⁶¹³ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, vol. 3, p.312.

⁶¹⁴ This point was discussed in the previous chapter, see: 196-204.

⁶¹⁵ This trend is called communitarian philosophy and is a rival philosophical trend to liberalism. For more information about the dialogue between these two trends, see S. Mulhall and A. Swift, *Liberals and Communitarians* (Wiley, 1996).

theory is to build an aretaic legal theory and evaluate the insights that it generates.⁶¹⁶

Based on this, moral values and their hierarchy are still two arguable issues raised in the context of the virtue jurisprudence project. Mudarrisī at this stage, that is, the stage of theoretical discussion, has proposed the main purposes of the law to be three, namely, security, fairness, and advancement (or common good). However, as he surveys the practical discussion, the map of his moral order changed profoundly, though these three values were still included in his moral map.

5.3. The Practical Discussion: The Tree of Values

The aim of this section is to demonstrate analytically the tree of values Mudarrisī has devised in order to explicate the purposes, or moral values, of the law – in other words, his version of the *maqāṣid al-sharīʿa*. This section presents Mudarrisī's theoretical jurisprudential discussion which grounds his *maqāṣid al-sharīʿa* project and its ramifications in the law (*fiqh*) and which can thus be considered as the climax of his theoretical discussion. This section will first provide some methodological considerations to connect theoretical jurisprudential discussion with practical discussion. Secondly, it will outline the map of values Mudarrisī has produced and their interrelations. This point will be done through (a) defining each value under discussion, its meaning and its position in the moral map, (b) providing the relevant legal/*fiqh* discussions, and finally (c) drawing some observations on how Mudarrisī has addressed the subject.

5.3.1. Methodological Considerations

As was discussed in detail in Chapter 3,⁶¹⁷ Mudarrisī has provided a package of epistemic, methodological, and hermeneutical conceptual tools as alternatives or developments of their current counterparts in Shīʿī jurisprudence. There were, for instance, the mechanism of the clear (*muḥkam*) and ambiguous (*mutashābih*), *al-bāṭin*, *al-zāhir*, *al-tadabbur*, the framework of the five circles, *al-maʿārīḍ*, and so forth. In the

⁶¹⁶ Ibid. p.6.

⁶¹⁷ See, 151-163.

practical discussion, Mudarrisī has employed these conceptual tools in his research on *maqāṣid al-sharīʿa*. In the following, I will mention some of them, to clarify how they work practically and I will begin with the most common and abstract and finish with the most procedural tools.

- (a) Mudarrisī considers that the intellect, revelation, and reality are sources of value in moral and legal discussion. This framework has been employed in his practical discussion in terms of building the concept of each value and its legal discussion and in terms of the presentation of moral values. Thus, as we shall see later on⁶¹⁸, in each discussion of the value, he attempts to combine three elements. Specifically, Mudarrisī bases his intellectual construction on Qurʾānic statements and *ḥadīth* texts while consulting modern legal discussions on the issue as it represents reality.
- (b) Mudarrisī has provided his insights on the relationship between the Qurʾān and *ḥadīth*, as was discussed in Chapter 3.⁶¹⁹ In his practical discussion, he attempted to keep this relationship as he had conceived it. Thus, in addition to consulting the books of traditions, he also attempted to base his hierarchy of moral values on the order in which they are discussed in the books of traditions. The traditions in these books are given a particular order, especially the sections on the characteristics of the believer (*ṣifāt al-muʾmin*). Mudarrisī particularly relied on the orderings of *al-Kāfī*⁶²⁰ and *al-Biḥār*.⁶²¹ Furthermore, he did thematic research in books of tradition on each value which he derived from the Qurʾān and then he attached it at the end of the presentation.
- (c) At the base of Mudarrisī's moral tree is faith. Mudarrisī has conceived of faith as the absolute submission to the truth, beginning with belief in God and his most beautiful names and encompassing recognition of others.

⁶¹⁸ See on page 282.

⁶¹⁹ See on page 190.

⁶²⁰ Al-Kulaynī, *Al-Kāfī*, p.1.

⁶²¹ Al-Majlisī, *Biḥār al-Anwār fī Akhbār al-Aʿimma al-Aṭḥār*, p.74.

The tree that begins with monotheism, as the theoretical faith, and ends with success (*al-falāḥ*), as the practical faith, in which both together bring about God's promise of the life of well-being (*al-ḥayāt al-ṭayyiba*)⁶²².

(d) Mudarrisī has employed his epistemic hermeneutical mechanism (*muḥkam*) and ambiguous (*mutashābih*) in his practical discussion. This mechanism begins hermeneutically with a deep linguistic reflection on the meaning of the Qur'ānic word, then it is followed by tracing the word throughout the Qur'ān by considering its position within its topical context together with the words which occur with it, followed by a thematic tracing. Throughout this process, he transfers from this hermeneutical linguistic technique to the epistemic mechanism, in which, after tracing the word throughout the Qur'ān, an intellectual concept is realised on the value, in which it has to be referred to its origin or principle and simultaneously has to be a principle from which the sub-value can be derived⁶²³.

Now, by dynamically combining this package of epistemic, methodological, and hermeneutical conceptual tools, Mudarrisī attempted over a number of years to draw the tree of moral values. This research took around ten years, whereby he applied his approach to drawing a tree of moral values. Eventually, Mudarrisī completed his intellectual journey and has illustrated the tree, as will be discussed in detail in the following section.

5.3.2. The Actual Tree of Moral Values

The tree of moral values devised by Mudarrisī consists of three main values, each producing sub-values, and some of the sub-values also produce further sub-values. These three main values are faith (*al-īmān*)⁶²⁴, guidance (*al-hudā*)⁶²⁵, and success (*al-falāḥ*)⁶²⁶.

5.3.2.1. Faith (*al-īmān*)

⁶²² Cross-RF

⁶²³ C-RF

⁶²⁴ Which he devoted volume four of *al-Tashrī' al-Islāmī* to discuss it.

⁶²⁵ Which he devoted volume five and six of *al-Tashrī' al-Islāmī* to discuss it

⁶²⁶ Which he devoted volume seven, eight and nine of *al-Tashrī' al-Islāmī* to discuss it

'Faith' here is used to refer to theoretical faith, that is, the concepts which believers hold regarding the creator and creation. It also refers to the practical faith which is represented by acts of worship, such as prayer, fasting, and *hajj*.

The meaning of faith is that it is the absolute submission to the truth which is manifested in its clearest image in God, the most truthful truth⁶²⁷. Based on the absolute submission to the truth, faith begins a continuing operation of recognition of created items whether they are humans, animals, the environment, material things, or spiritual entities. Considering God as the clearest truth and attempting to know Him through his beautiful names generates the concept of longing for Him and therefore finding the way to approach Him. Though Mudarrisī expresses this idea in modern language, it has been expressed in different ways in theological and jurisprudential literature, such as the obligation of thanking the giver (*wujūb shukr al-mun'im*) or the right of obeying (*ḥaqq al-tā'a*)⁶²⁸. In effect, this idea is considered as the cornerstone of many jurisprudential discussions on the concept of legal issues and the way of knowing God's will.

The reflection of these theoretical concepts of faith is represented in practical faith, that is, in worshipping God in practice. Here, Mudarrisī mentions⁶²⁹ four axes as the sub-values which are generated from faith. These are: remembering and thanking God, praying and supplication, forgiveness and repentance, and determination and infallibility. All these values and sub-values presumably require legal issues that organise and regulate them, as Mudarrisī readily admits. However, he maintains that this topic should be dealt with in a separate legal work because of the difficulty in accommodating all the legal issues of what is called in Islamic legal works *al-'ibādāt*, which is usually discussed at the beginning of a *fiqhī* work⁶³⁰. Thus, he settles for providing only the concepts of those values considering them as the foundation of the coming moral values.

5.3.2.2. Guidance (*al-Hudā*)

⁶²⁷ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, v 4. p. 17.

⁶²⁸ These expressions are well-known in theological discussions, see: AbuRadgīf, *al-Hikmaal- Amaliyya:Dirāsafīal-Nazariyyawa-Āthārihā al-Taṭbiqīyya*, pp. 19-139.

⁶²⁹ Mudarrisī, *al-Tashrī' al-Islāmī: Manāhijuhu wa Maqāsiduhu*, v 4. p. 233, 287, 359 and 391.

⁶³⁰ *Ibid*, 12.

Guidance here represents the learning aspect of the values or the theory of knowledge which creates the link between theoretical and practical faith (*al-falāḥ*), as Mudarrisī sees it. Accordingly, he addresses the meaning and the ways of guidance, in which he deals with two broad issues: guidance (*al-hudā*)⁶³¹ and knowledge (*al-‘ilm*)⁶³² and these occupy the fifth and sixth volume of his work, *al-Tashrī‘ al-Islāmī*.

On the topic of guidance, Mudarrisī addresses four issues. These are: the meaning of guidance⁶³³, the purity of the heart as the impact of guidance⁶³⁴, the covering (*al-rayin*) of the heart as opposed to causes of guidance⁶³⁵, and the cruelty (*qaswa*) of the heart as the impact of misguidance⁶³⁶. On the topic of knowledge, he addresses as well four issues: the meaning and the sources of knowledge, the light of knowledge as the impact of knowledge, the pact (*mīthāq*) of knowledge and disinformation (*al-ḍalāl*) as the opposite of knowledge.

Based on these two volumes, Mudarrisī begins to apply his theory in which he considers moral values as the source of legal issues and in which he attempts to derive legal issues from each value or sub-value. Also, he begins to apply his theory of the combination of revelation, reason, and reality in studying moral values and their entitled legal issues. Thus, his way of doing this is to begin with collecting as many Qur’ānic verses as possible which are relevant to the topic under study. Then, after reflecting on them to derive the meanings and the concepts of the moral value, he follows that by a section called the insights of the verses (*baṣā’ir al-āyāt*) in which he summarises his findings of the verses. In Mudarrisī’s terminology, this section can be considered as the section of unambiguous verses (*al-muḥkamāt*). This section is followed by a section entitled the legality of the verses (*fiqh al-āyāt*) in which he discusses the legal issues that can be derived from moral value. In this section, he begins with mentioning a verse or group of verses and then states the legal issues which these verses include. Moreover, in this section, he attempts to link legal issues with their discussion in

⁶³¹ He dealt with this in volume five, see: Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v 5.

⁶³² He dealt with this in volume six, see: Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v 6.

⁶³³ Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v 5, pp. 10-117.

⁶³⁴ Ibid, pp. 118-152.

⁶³⁵ Ibid, pp. 153-240.

⁶³⁶ Ibid, pp. 241-371.

religious legal literatures (the *fiqh* discussion) and sometimes with its positive or modern legal discussions. In doing that, he sometimes develops the religious legal discussion, on the one hand, and comparatively studies the legal issues with modern legal discussions, on the other. He follows this method constantly throughout all volumes, though the extent to which he expands the discussion varies from one topic to another⁶³⁷.

Having said this, although he followed the above mentioned method in these volumes, the legal issues that he 'derived' from the moral values under study were modest. They were mostly general statements and guidelines, though they were written in a legal language. Furthermore, he could neither link them with their religious legal discussions nor could he do so with the modern legal discussions. This might be attributed to the abstract nature of the topic (the theory of knowledge) or because it is a new topic for legal discussion. The following quotation offers some clarification. In his sixth volume, which regards knowledge, when Mudarrisī discusses the meaning of knowledge and its sources in the section of the *fiqh al-āyāt*, he says:

We conclude from the verse the value of education and that it is a human need and that its tools are hearing and vision. Furthermore, we infer that the creation of a human gradually benefits all human beings to know the Lord and His well-organised creation so that we might thank Him and know our own intrinsic inability. Moreover, to know that human knowledge (as well as ability) is a divine gift which God takes back when we become older.

Moreover, we conclude from that the forbidding of handing things to those who become older, at the age in which they cannot not grasp things and; therefore, establishing the rule of retirement in accord to the various conditions of the lives of human beings.⁶³⁸

5.3.2.3. Success (*al-Falāḥ*)

⁶³⁷ See for example, Mudarrisī, *al-Tashrī al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, v 6, pp. 35-41.

⁶³⁸ Ibid, p.81.

Success, *al-falāḥ*, is the label Mudarrisī gives to describe practical faith. That is to say, faith other than worship, which is one component of faith. The previous values were mostly abstract or theoretical. However, success represents practical faith, that is, faith in practice in everyday life whether individually or socially. Furthermore, in terms of quantity, it constitutes three volumes of the work in total: the seventh, eighth, and ninth volumes. In terms of quality, however, it almost accommodates all the classic sections of *fiqh* and adds some more sections as well.

Mudarrisī does not address the value of success itself. Instead, he addresses it through two subtitles as sub-values, which, in turn, include some other sub-values. These titles are (a) the pillars of faith (*arkān al-īmān*) and (b) the canons faith (*sharāʿ al-īmān*)⁶³⁹.

5.3.2.3.1. The Pillars of Faith (*arkān al-īmān*)

Under the title of the pillars of faith (*arkān al-īmān*), Mudarrisī devotes four sections which he considers to represent the pillars of faith. Each pillar is, in turn, sub-divided into some sub-values. Furthermore, these four pillars are the principles or interior (*al-bāṭin*) of the coming values, that is, the canons of faith. These four pillars are piety (*al-taqwā*), charity (*al-iḥsān*), *al-jihād* and following the best (*ittibāʿ al-aḥsan*). In the following sections, I will discuss these in detail.

5.3.2.3.1.1. Piety (*al-taqwā*)

The first pillar of the faith is piety. Although Mudarrisī addressed the title of piety in the fourth volume when he presented a theoretical discussion on faith, here piety is discussed as the manifestation of its origins or principles in social life in which it appears in four values. These are: (i) fulfilment of God's covenant, (ii) fulfilment of measurement and weight, (iii) return of something entrusted, and (iv) sincerity. Below is a detailed discussion of these⁶⁴⁰.

i. Fulfilment of God's Covenant (*al-wafāʿ bi-ʿahd allāh*)

There are some covenants which God has required the human being to fulfil, the first and foremost being the covenant of monotheism (*al-tawḥīd*). There are also some

⁶³⁹ Which he dealt with them both in volume seven, eight and nine.

⁶⁴⁰ *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāsiduhu*, v 7, pp. 9-60.

covenants which humans have made to others and which must be fulfilled. These sort of covenants constitute the largest part of the social life of the human being and give rise to many social, political, and economic entities.⁶⁴¹

ii. Fulfilment of Measurement and Weight (*al-wafā' bil-kayl wa al-mīzān*)

Fulfilment of measurement and weight in effect means being fair in the spiritual and material rights of people, though it mostly happens in financial matters. Examples of its applications in financial matters are giving money to those who deserve it, to do less than what is due (*al-taḥfīf*), or to weigh the goods unjustly. Mudarrisī deems this as the general rule which can be applied and guide the jurist to consider the variables in which fairness should be considered.⁶⁴²

iii. Return of Something Entrusted (*radd al-amāna*)

Returning something which has been entrusted is deemed as a branch of fulfilling the covenant, which means not only returning the entrusted item, but also taking care of it. In this sense, it is a support to fulfilling the covenant and measurement, and is therefore a sign of the piety, according to Mudarrisī.⁶⁴³

iv. Sincerity (*al-ikhḷāṣ*)

Sincerity means purifying religion from polytheism and being sincere to the religion of God, not only in rejecting any wrongful social authority (*al-ṭāghūt*), but also in the pure application of the *sharī'a*.⁶⁴⁴

In the course of his discussion of these titles, Mudarrisī addresses the *fiqhī* section of the covenant (*al-'ahd*) which is usually studied in the section of transactions (*ṭiqā'āt*). However, he expands the discussion to include political agreement (*al-bay'a al-siyāsiyya*), the social contract which establishes social foundations and international

⁶⁴¹ Ibid., pp11-33.

⁶⁴² Ibid., pp.34-9.

⁶⁴³ Ibid., pp.41-6.

⁶⁴⁴ Ibid., pp.47-60.

agreements⁶⁴⁵. These issues are considered as new issues for Islamic law which arose in the modern age. In the coming sections, Mudarrisī will apply his findings here in the issue of the legitimacy of the international court in solving conflicts, especially in warfare.

5.3.2.3.1.2. Charity (*al-iḥsān*)

The second pillar of faith is charity (*al-iḥsān*), which means giving more than what someone deserves. The concept of charity is a counterpart of justice, which means giving what someone deserves. In this sense, both are obligations in Islamic thought, except some sorts of the charity which are preferable (*mustaḥabb*). Though charity as a term sounds a merely preferable thing to do, throughout Mudarrisī's discussion, he attempts to show that the considerable part of it in principle is an obligation in Islamic morality which is reflected in legal rulings⁶⁴⁶.

Legally speaking, Mudarrisī mentions many legal issues that are applications of the principle of charity and others which are ruled by the principle. For example, he mentions that taking care of parents is an application of charity. Furthermore, the alimony which is given to the divorced wife in the particular period between the announcing of the divorce to the status of being totally divorced, which is known as *al-'iddah* in Islamic law, is also an application of charity. There are some examples of cases where the principle of charity is ruling the case, rather than being an application of it, such as the contract of the curious (*'aqd al-fuḍūlī*) and the limits of the trust of the trustee (*ḍamān al-amīn*). Moreover, Mudarrisī claims that the charitable activities of Muslims in society stem from the principle of charity, such as establishing charitable foundations, volunteering for social services, and so on. In his *al-Tashrī' al-Islāmī*, Mudarrisī is content with just mentioning these. However, in his detailed *fiqhī* work, *al-Wajīz fī al-Fiqh al-Islāmī*⁶⁴⁷ and in addressing the sections of the contracts, Mudarrisī categorises several contracts under the title of charitable contracts in an attempt to link legal rulings to their moral values. These contracts are debts or loans (*al-qarḍ* or *al-*

⁶⁴⁵ Ibid., pp. 20-31.

⁶⁴⁶ Ibid., pp. 75-83.

⁶⁴⁷ Mudarrisī, *al-Wajīz fī al-Fiqh al-Islāmī*, 6 vols., vol. 5 (Beirut: Dār al-Maḥajjah al-Bayḍā', 2014), pp.9-82.

dayn), lending (*al-‘āriya*), deposits (*al-wadī‘a*), mortgages (*al-rahn*), and gifts or presents (*al-hiba*). In addition, he considers the sections of donations (*al-ṣadaqāt*) and endowments (*al-waqf*) as applications of the principle of charity.⁶⁴⁸

5.3.2.3.1.3. *Jihād*

The third pillar of the faith is *al-jihād* which concerns protecting Islamic society from immoral influence. This can be by a social movement, and sometimes even military force against an external or internal threat. According to Mudarrisī, *jihād* has manifested firstly in responsibility, then respectively in calling for good (*al-amr bil-ma‘rūf*), migrating in the path of God, preparation, integrity, responding to *al-jihād*, and finally fighting. Mudarrisī does not confine his discussion to the narrow meaning of *jihād* – fighting – as most contemporary literature tends to do. Rather, he addresses the conception comprehensively from different angles, of which fighting is no more than one aspect. Therefore, *jihād* means making the utmost effort in defending the right values and calling for them, beginning with taking responsibility and ending with fighting.

It can be said that Mudarrisī’s work on the topic of *al-jihād* is the most comprehensive in modern Shi‘ī *fiqhī* literature. On the one hand, it is unlike the classic jurisprudential work on the topic which is rather limited. Instead, Mudarrisī expands the scope of the topic beyond solely the issue of fighting. On the other hand, Mudarrisī addresses many contemporary conceptions of warfare from the legal perspective, such as reasons for declaring war, the legitimacy of military interference (*al-jihād al-ibtidā‘ī*), the mechanism of solving conflicts, the legitimacy of referring to the international and criminal justice courts regarding military conflicts, the extent to which international covenants are binding, and prisoner of war regulations.⁶⁴⁹

5.3.2.3.1.4. The Following of the Best (*ittibā‘ al-aḥsan* or *al-ḥusnā*)

The fourth pillar of faith is the following of the best (*‘ittibā‘ al-aḥsan* or *al-ḥusnā*), which means that the believer seeks the best things in his/her speaking, acting, and

⁶⁴⁸ Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, vol. 7, pp.63-92.

⁶⁴⁹ *Ibid.*, pp.97-390.

appearance. In terms of speaking, it represents the value of good speech (*al-kalima al-ṭayyiba*), the beautiful speech (*al-qawl al-ḥasan*), not expressing bad speech, being wise in asking, and returning a greeting in the best manner. In terms of acting, it represents seeking good deeds, to hasten in good works, reformation and reconciliation, and warding away bad with good. In terms of appearance, it is represented in purity and adornment. These are the sub-values that branch from the fourth pillar.

In this pillar and its sub-values, Mudarrisī does not provide a legal discussion. Instead, his discussion is similar to his discussion of piety in which he provides general statements derived from his reflection of relevant Qur'ānic legal verses. This is except for the value of reconciliation, in which he addresses the classical *fiqhī* section of reconciliation (*bāb al-ṣulḥ*), which regulates legal issues about contentions and disagreements between people especially in financial affairs.⁶⁵⁰

5.3.2.3.2. The Canons of Faith (*Sharā'ī' al-Īmān*)

The canons of faith (*sharā'ī' al-īmān*) is the second section of the main value here: success (*al-falāḥ*). It means the details of the pillars of faith in human life. It is distributed into two axes of values: the first is peace from which several sub-values are branched in order to devote peace⁶⁵¹; the second is dignity from which several sub-values are also branched in order to enforce the dignity⁶⁵². Thus, peace is a dimension of the piety and charity from the pillars of faith, whereas dignity is a dimension of *jihād* and following of the best. The details of these are as follows.

5.3.2.3.2.1. Peace (*al-salām*)

The value of peace is conceived as the ideal value around which many other values are centred in the social life of the human being. These values pave the way for the second axis of the canons of faith, i.e. dignity. Each value of these then has a set of guidelines and legislations which contribute to its application. Mudarrisī mentions here sixteen values that centre on peace. These are: security (*al-amn*), truth (*al-ḥaqq*), legislation (*al-*

⁶⁵⁰ Ibid., pp.391-502.

⁶⁵¹ Which was dealt in volume eight.

⁶⁵² Which was dealt in volume nine.

ḥukm), justice (*al-ʿadl*), retribution (*al-qīṣāṣ*), the inviolability of life (*ḥurmat al-nafs*), innocence (*al-barāʿa*), fortification (*al-iḥṣān*), preservation (*al-ḥifẓ*), feeding (*al-iṭʿām*), living (*al-sakan*), health (*al-ṣiḥḥa*), education (*al-taʿlīm*), affection and religious brotherhood (*al-mawadda wa al-ukhuwwa al-īmāniyya*), ties of kinship and leadership (*ṣilat al-raḥim wa al-qawāma*), and children and offspring (*al-banīn wa al-dhurriyya*). Below are more details on these.

a. Security (*al-amn*)

Security here means more than the legal and political meaning of security in the modern usage of the term. Mudarrisī argues that the value of security in Islamic thought is more comprehensive than merely the protection of a person’s properties and self. Rather, it is ‘the other face of justice and fairness, as without fulfilling the total rights of people – beginning with the right of life and ending with the right of electing (the political and religious rights) and passing through all rights and sanctities – the individual cannot live securely.’⁶⁵³ Thus, he addresses the issue of security beginning with the holding of a right belief, as a source of mental and psychological security, and ending with preserving rights and sanctities.

b. Truth (*al-ḥaqq*)

Truth means the absolute submission to the truth and considering it as the centre from which the relationships of the people in society are constructed.⁶⁵⁴

c. Legislation (*al-ḥukm*)

Legislation means the centrality of the truth as the reference of the judgment and regulations which would happen through considering that God is the source of legislation. This can be done through referring to the sound sources of legislation, that is, the religious sources, the Qur’ān and *Sunnah*.⁶⁵⁵

⁶⁵³ Mudarrisī, *al-Tashrīʿ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, 1 ed., 10 vols., vol. 8 (Tehran: Dār intishārāt Mudarrisī, 2000)p.35.

⁶⁵⁴ Ibid., p.9.

⁶⁵⁵ Ibid., p.115.

d. Justice

Justice here constitutes the content and the purpose of the legislation and judgment which should be based on the fulfilment of rights and acting with fairness. Mudarrisī considers justice as the essence of faith which enforces security and paves the way to peace. Here, he addresses several dimensions of justice in Islamic law through discussing its principles in the legislation of politics, the economy, social institutions, the judiciary, and the family.⁶⁵⁶

e. Retribution (*al-qīṣāṣ*)

Retribution represents the tool by which justice is applied whereby rights are reserved and injustice is deterred. This includes both sanctions and punishments.⁶⁵⁷

f. The Inviolability of Life (*ḥurmat al-nafs*)

The inviolability of life means preserving human life which is considered as one of the most sacred sanctities in Islam, according to Mudarrisī. Here, he addresses the legal issues that are relevant to the inviolability of human life.⁶⁵⁸

g. Innocence (*al-barā'a*)

As a branch of the inviolability of human life, innocence means that the person in principle is innocent from any sin. Thus, he/she would not be assumed to be guilty except when convincing evidence proves the latter. Here, Mudarrisī mentions many legal rulings that confirm this idea of the innocence of the human-being.⁶⁵⁹

h. Fortification (*al-iḥṣān*)

As a branch of the inviolability of human life, fortification means the responsibility of the individual and the society to protect the person from potential dangers before they happen. Here is where Mudarrisī expands the conception of security, as the core value

⁶⁵⁶ Ibid., p.55.

⁶⁵⁷ Ibid., p.137.

⁶⁵⁸ Ibid., p.147.

⁶⁵⁹ Ibid., p.165.

of peace, to accommodate not only the protection of a person's properties, but also providing a secure environment that includes the protection of his/her intangible rights. It is represented in the sexual and intellectual fortification (*iḥṣān al-farj wa al-fikr*) and in defence.⁶⁶⁰

i. Preservation (*al-ḥifẓ*)

As a branch of the inviolability of human life, preservation means the responsibility of the individual and the society to preserve the person from potential dangers. The difference between fortification and preservation is that the former is a protection from a potential danger before it happens, whereas the latter is from the coming potential danger.⁶⁶¹

j. Feeding (*al-iṭ'ām*)

Starting from this value, Mudarrisī begins to discuss four values which he considers to be the basic needs of human beings. The first of these is the human need for food and drink. Under this title, he discusses several principles that regulate this value, such as the foundations of considering the feeding as the obligation of the society as a whole towards each other, especially towards those who are in real need. In addition, other considerations are the extent to which feeding should be provided, who is responsible for feeding, and to whom should food be provided. Furthermore, he discusses the principle of the permissibility of food and drink as the original principle in the field.⁶⁶²

k. Dwelling (*al-sakan*)

The second value of these basic needs is living, which means providing accommodation for the people. However, the conception is not confined to merely providing accommodation, but rather it means paying attention to providing the city with all the necessary resources, such as public utilities, good design, and so forth. Mudarrisī

⁶⁶⁰ Ibid., p.171.

⁶⁶¹ Ibid., p.198.

⁶⁶² Ibid., p.205.

mentions as well some legal rulings regarding the sanctity of the home and some of its decencies.⁶⁶³

I. Health (*al-ṣiḥḥa*)

The third value of these basic needs is health, which does not only refer to the need for physical health (manifested through hospitals and medical provision) but also general well-being (*al-ḥayyāh al-ṭayyiba*), which includes psychological health, providing treatments, and having a preventative health program. Thus, he mentions the legal rulings that are relevant to this value.⁶⁶⁴

m. Education (*al-ta'lim*)

The fourth value of these basic needs is education, which means providing primary learning and education for the person whereby he/she will be skilled enough for life. Mudarrisī here mentions the legal rulings that are relevant to the value, such as rulings relating to the role of scholars, parents, and the state in providing education.⁶⁶⁵

n. Affection and Religious Brotherhood (*al-mawadda wa al-ukhuwwa al-īmāniyya*)

Starting from this value, Mudarrisī begins to discuss three values which he considers to form a social framework for the values of peace which accommodate and enforce them. These values are related to the social domain and he begins with the wider concept and ends with the narrower. The first of these values is affection and religious brotherhood, which means that affection constitutes the foundation of the relationship between the believers. Then, it is manifested in the religious brotherhood, which means a sort of social authority (*wilāya*) amongst believers. Mudarrisī then mentions several legal rulings that are relevant to these values.⁶⁶⁶

⁶⁶³ Ibid., p.264.

⁶⁶⁴ Ibid., p.314.

⁶⁶⁵ Ibid., p.343.

⁶⁶⁶ Ibid., p.355.

o. The Ties of Kinship and Leadership (*ṣilat al-raḥim wa al-qaymūma*)

The second of these values is the ties of kinship as the framework of intuitive social relationships, which begins with the nuclear family and expands to include the larger family, such as the tribe and the clan. Here, Mudarrisī allocates the value of leadership (*al-qaymūma*) as the regulative value of the intuitive social relationship in the nuclear family. Accordingly, he discusses the legal rulings that are relevant to those values. In particular, he pays special attention to *al-qaymūmah*.⁶⁶⁷

p. Children and Offspring (*al-banīn wa al-dhurīya*)

The third of these values is children and offspring, by which he means the overview of Islamic thought regarding the seeking of having children, which is considered as the value of life. Mudarrisī provides the general principles of Islam and then some legal rulings that are relevant to it. He particularly discusses the issue of child support and custody.⁶⁶⁸

5.3.2.3.2.2. Dignity (*al-karāma*)

The value of dignity represents the second axis of the canons of faith under the main value of success (*al-falāḥ*). Dignity, according to Mudarrisī's thought, depends on three theoretical pillars and they are in turn manifested in three values that constitute the concept of dignity. These three pillars are: responsibility (*al-mas'ūliyya*); sending the prophets (*ba'th al-anbiyā'*) and the straightforward path (*al-sabīl al-qawīm*); and their three manifestations of honesty (*al-ṣidq*), aspiration (*al-taṭallu'*), and being virtuous (*al-tazayyun bil-faḍā'il*). Below are some details on these factors.

- **The Pillars of Dignity**

Mudarrisī argues that there are three pillars for human dignity, which are not values as much as they are theoretical backgrounds that establish the concept of human dignity. These are as follows: responsibility, meaning the freewill of the human, his/her ability of

⁶⁶⁷ Ibid., p.392.

⁶⁶⁸ Ibid., p.440.

possession, and his/her authority (*wilāya*) in which he/she is able to establish a social institution.⁶⁶⁹

- (a) The sending of the prophets (*ba‘th al-anbiyā*): this means that as the human owns dignity, God sent him/her the prophets to be examples and models. Thus, it means that the human has an ability to be better by his/her choice through following the teachings of the prophets.⁶⁷⁰
- (b) The straightforward path (*al-sabīl al-qawīm*): this means that the human is able to know the truth and falsehood by what he/she has been equipped with, that is, the intellect.⁶⁷¹

These are what Mudarrisī thinks of as the pillars of dignity. Its manifestations are as follows.

1) Honesty (*al-ṣidq*)

The first value which arises from human dignity is his/her honesty in seeking the truth and standing for it. This would appear in speaking and acting which should be in accord with the truth. Mudarrisī argues that this expresses the honour of the human and his/her uniqueness over other creatures. Subsequently, starting from this value, he opens a wide legal discussion on the legal rulings that are relevant to honesty, that is to say, the section of contract and covenant. As for contract, he extensively discusses the section of contract which itself has witnessed an extraordinary development in Shī‘ī *fiqh* since the work of Shaykh al-Anṣārī. Mudarrisī discusses the objects of the contract, which are known as *al-makāsib al-muḥarrama*, the form of the contract, the eligibility of the contractors, and the defect of the will which is known in Shī‘ī literature as *al-khiyārāt*. As for the section of the covenant, Mudarrisī discusses the legal rulings regarding promise, oath, and bail.⁶⁷²

2) Aspiration (*al-taṭallu*)

⁶⁶⁹ Mudarrisī, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, vol. 9, pp.15-69.

⁶⁷⁰ Ibid., pp.70-109.

⁶⁷¹ Ibid., pp.110-32.

⁶⁷² Ibid., pp.135-310.

The second value which arises from human dignity is that the human is an ambitious creature that seeks to achieve goals in the world and hereafter. From this three main sub-values arise. First, human beings are equal and they should be above class and racism and therefore they should seek to cooperate for mutual good. Second, human beings compete in investing the earth for their good and therefore they are concerned about time and good governance. Third, human beings seek to gain power for the service of the good and truth in which they recognise the real power, which is in the hands of God, and seek stable and independent political institutions.

As most of these values are not discussed in classical Islamic law, Mudarrisī attempts to provide legal rulings that are relevant to them, though they are provided as a general legal statement rather than as a detailed legal discussion.⁶⁷³

3) Being Virtuous (*al-tazayyun bil-faḍīla*)

The third value which arises from human dignity is that human beings seek not only to do the minimum of moral duties, but rather to be virtuous by commitment to a set of moral values which are more than required. Mudarrisī here mentions some of these values: peacefulness (*al-sakīna*), restraint (*kazm al-ghayz*), humility (*al-tawāḍu'*), and forgiveness (*al-'afw*).⁶⁷⁴

⁶⁷³ Ibid., pp.311-476.

⁶⁷⁴ Ibid., pp.477-520.

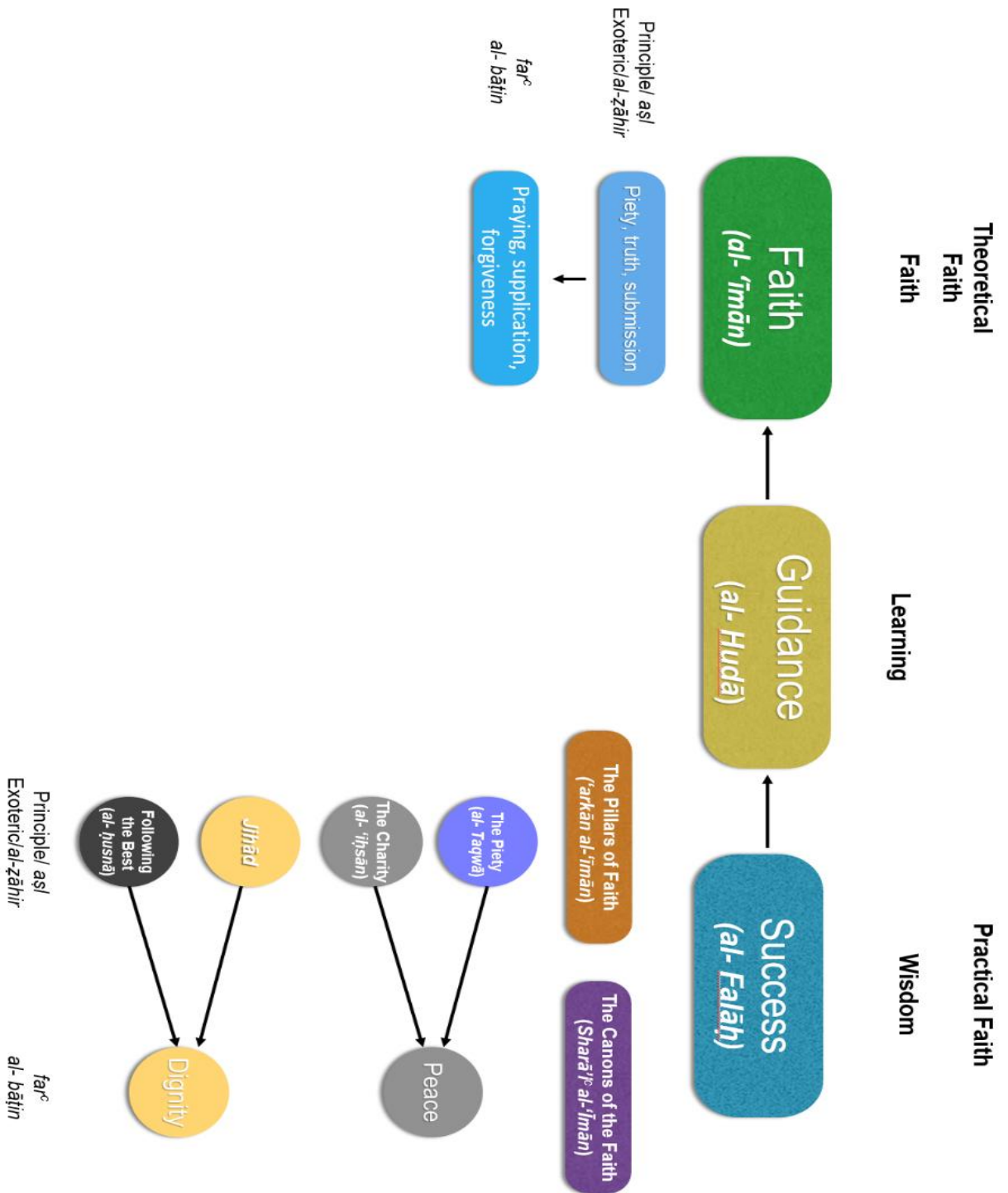


Figure 10. The overview of the tree of moral values in Mudarrisī's maqāṣid al-sharī'a.

5.4. Conclusion

The above presentation has explained and analysed Mudarrisī's theoretical and practical discussions of the constants of the *sharī'a*, in other words, the moral values. The theoretical discussion has engaged with moral and legal philosophy in which Mudarrisī sought, by doing a comparative study, to provide a theory about the sources and the essence of moral values and the main purposes of the law. He has devised a dynamic version of the sources of moral values which consists of revelation, reason, and reality. As for the essence of moral values, he has concluded that they are three, namely: love, justice, and life. However, in his philosophical and legal discussion, he has concluded that the three absolute purposes of the law are security, fairness, and advancement or common good. It seems that all these theoretical discussions are correlated; revelation generates love as a moral value and security as the purpose of the law. Similarly, reason generates justice and fairness and, finally, reality generates life and advancement or common good. Interestingly, the practical discussion has shown a significant difference with the theoretical discussion. The practical discussion has been achieved over years of research and was mainly based on close contact with tradition, aiming to create a link between jurisprudential discussion and moral values. Thus, the findings of such an approach have given rise to a different map of moral values, which are considered as Mudarrisī's version of *maqāṣid al-sharī'a*.

The moral map or what Mudarrisī prefers to call 'the tree of moral values' consists of three main moral values in which each generates some sub-values and so forth. These three values are faith (which is the origin of all values), guidance (which is the path to all values), and success (which is the actualisation of all values). Success, in turn, consists of four 'pillars of faith' (piety, charity, *jihād*, and the following of the best) and 'the canons of faith', which are centred in two main values from which many other sub-values are derived, that is, 'peace' and 'dignity'.

This tree of moral values can be considered as the first Shī'ī version of *maqāṣid al-ssharī'a*. Interestingly, while the general tendency within the *maqāṣidī* discourse tends to narrow moral values or the purposes of the *sharī'a* to as few as possible (for example

the classical theory sees five purposes⁶⁷⁵ and some contemporary theories consider four spheres),⁶⁷⁶ Mudarrisī seems to expand them and makes them more complex. This might be attributed to the fact that his practical discussion was quite close to the text and tradition on one hand, and to jurisprudential discussions on the other hand, in which he attempted to accommodate classical jurisprudential tradition and reconstruct it based on moral values. The others were either concerned with the theoretical discussion of the values or purposes of the *sharīʿa*, which is usually to a certain extent from practical discussion, or concerned with particular sections of the practical *fiqhī* discussion, and therefore were not able to provide a comprehensive framework.

⁶⁷⁵ As is the case with al-Shaṭībī and his followers.

⁶⁷⁶ As is the case with ʿAṭīyah's proposal, see Jamāl al-Dīn ʿAṭīyah, *Naḥwa Tafṣīl Maqāṣid al-Sharīʿa* (Damascus: Dār al-Fikr, 2001).

6. Conclusion

Whilst it is commonly held by scholars of Shī'ī jurisprudential studies that modern and contemporary Shī'ī jurisprudence is the outcome of the victory of the Uṣūlī school over the Akhbārī attack, and therefore a resulting revival of the old Uṣūlī school, research, however, has concluded a different perspective of the history of Shī'ī jurisprudence. This is a reading that does not see the field of jurisprudence as a closed academic field but, rather, as an element within a broader construction, which includes socio-political and intellectual components that contribute to the composition of the characteristics of this field within a particular historical context. Thus, it advocates that an understanding of the historical developments of Shī'ī jurisprudence is necessary in order to understand modern and contemporary discussions and theories within it. Committed to this methodological perspective, the research has concluded that the current Uṣūlī trend in Shī'ī jurisprudence is not merely a continuation of pre-Akhabārism, despite their sharing of a name and common slogans; it is, rather, a new paradigm with its own epistemological, methodological and functional frameworks.

There were several socio-political and intellectual factors particularly during the Safavid period that contributed to constructing this paradigm, better known as the Bahbahānian paradigm. This nomenclature goes back to a famous Shī'ī scholar in the eighteenth century Muḥammad Bāqir al-Bahbahānī (d. 1791), also known as al-Wahīd al-Bahbahānī and who is credited with the defeat of the Akhbārī school, and therefore, with having establishing modern Shī'ī jurisprudence. The Bahbahānian paradigm is characterised, the research argues, by being Aristotelian in its epistemology, formalist in its methodology and soft-utilitarian in its functionality. If there were particular objective conditions for the Bahbahānian paradigm that necessitated its existence, the twentieth century came along with its own particular requirements and challenges that necessitated a modification or breakdown of this paradigm. The essence of those challenges is the increasing participation of the jurist in public affairs, especially the 'political jurist' who engages in politics through the position of the religious institution in the Shī'ī community. In other words, it is identifying the distance between the religious

institution and the temporal power, and thereby the scope within which the jurist competes against the attempt of the modern nation-state to secularize the public sphere. Within that particular sphere, the Bahbahānian paradigm made the Shīʿī religious institution quietist.

In opposition, the essence of the response to these new challenges was a conviction that the Bahbahānian jurisprudential mechanism was insufficient to meet the requirements of the new reality. Thus, arose the call for a mechanism that was able to deal with the public sphere without accepting the secularization of religion whilst at the same time being characterised by initiative and effectiveness. These requirements were represented in the call for the *maqāṣid al-sharīʿa*. However, by surveying the attempts in this regard within the Shīʿī jurisprudential discourse, there was variation in the way that some of them were advocating for a modification of the Bahbahānian paradigm, whereas others were calling for the creation of a new field to deal with the *maqāṣid al-sharīʿa*, namely the field of philosophy of *fiqh*, and yet others called for a new paradigm altogether. In this context, Muḥammad Taqī al-Mudarrisī (b. 1945) is a scholar who not only called for a new paradigm, but who has also provided a systematic contribution towards it, - in theory and practice -, that advocates the abandonment of the Bahbahānian paradigm in favour of a virtue-ethics paradigm.

Committed to the same methodology, this research attempts to contextualise Mudarrisī as a thinker within a specific historical development of the Shīʿī institution. Here, the research concludes that the most effective context for interpreting Mudarrisī is the study of the political position of the Shīʿī jurist in the twentieth century and his ambitions. This position has been materializing since the initial participation of the Shīʿī jurist in the political regime of the Safavid Empire, which then developed through the Qajar period towards his becoming more independent, and finally ended with his ambition to create his own state, which happened with the Islamic revolution in Iran in 1979. Mudarrisī belonged to this latter generation.

However, his experience was characterised partially by his family's associations, where he is descended on both paternal and maternal sides from political and revolutionary

families, namely the Shirāzīs and the Mudarrisīs. Furthermore, his intellectual association to a specific theological-philosophical school within the Shī'ī scholastic circle, the Tafkīkī school, added a unique feature to his experience. Although the Tafkīkī school is not a political movement but rather an anti-political engagement, its theological rebellion against the dominant trend within the Shī'ī religious institution liberated him from traditional obstacles and allowed him to set out with wider scopes. Moreover, he was active within a particular context in the Middle East, namely the context of a confrontation with the West, represented by the liberation from the consequences of colonialism, especially the Israel-Palestinian conflict. This overall context had its conditions and requirements on both theoretical-intellectual and practical levels. As Mudarrisī is an intellectual and an activist, on the intellectual level he was preoccupied with the triad of originality, contemporaneity and the Other, specifically the 'Western' other. On the practical level, he established a socio-political movement, which had significant impacts on the history of the Shi'a in the Middle East, especially in Iraq, the Gulf and Iran.

This combination of intellectual and practical engagement was having to engage with real developments in the historical context in which the project of *maqāṣid al-shar'ā* was crystallised. More precisely, the project was crystallised when Mudarrisī witnessed the failures and challenges of the political and administrative experience of the Iranian revolution. As a response to those failures and challenges, Mudarrisī called for a particular version of *maqāṣid al-shar'ā*, a version that enabled the *shar'ā* to not only to be applied in the modern state, but to also be an engine for the renaissance of the Islamic nation.

The research concludes that the departure from the Bahbahānian paradigm requires a departure from the three frameworks that constitute the identity of the paradigm, that is, the epistemological, methodological and functional frameworks. Accordingly, this is what the research attempted to observe in Mudarrisī's contribution. In the epistemological framework, Mudarrisī attempted to depart from Aristotelian epistemology to a theory of knowledge characterised by a trusting of the intellect and a certain pragmatism in the quest for the truth, by which it would be possible to arrive at

the truth by constructing several factors and intersecting the methods. This epistemological commitment has an effect on reconstructing the relationship between intellect and religion, an issue that has a huge impact on jurisprudence. Furthermore, it has an effect on the constitution of the evidential basis of religious knowledge, which has enabled the jurist to reach a broader range of religious truths and knowledge than within the Bahbahānian paradigm.

At the methodological level, by comparing the Bahbahānian paradigm and Mudarrisī's, it is evident that there is a movement in the hierarchical position of the legal evidences, however, it is not merely a movement in position, but rather an essential change in the whole methodological framework. Mudarrisī determined the holy Qur'an to be at the top of the legal evidences, and introduced some Qur'anic hermeneutical tools that delve deeper into it and provoke religious meaning. Similarly, he handled the Sunna by differentiating between its constants and variables through dividing it into several sections, whereby the jurist is able to employ the hermeneutical tools to extract religious meaning thereof. As for consensus (*ijmā'*), Mudarrisī considered it an administrative tool of temporal conciliation for scholars regarding a specific legal issue. Through this theorisation, Mudarrisī departed from the formalist framework of the Bahbahānian paradigm to a methodological framework that is more complex in dealing with religious meaning, especially in discovering the purposes of the *sharī'a*. Furthermore, it has paved the way to depart from the functional framework, which redefines the nature of the *sharī'a*.

Here, the research attempts to examine Mudarrisī's theory regarding the nature of the *sharī'a*, a theory that departs, the research concludes, from the soft-utilitarian framework of the Bahbahānian paradigm to the moral functional framework of the *sharī'a*. This has required of Mudarrisī to not only provide the methodological perceptions regarding the means of deriving legal rulings, but also a theological theorisation for the nature of the *sharī'a*. Mudarrisī has presented a theory that sees the *sharī'a* as the practice of morality, which is in turn a reflection of the overall theological precepts of religion. Thus, these three elements, i.e. theology, morality and law, are one generative body whereby each one leads to the other. Accordingly, he divided the

sharī'a into constants and variables, and provided some theoretical and practical precepts of how to establish the relationships between them. The constants in essence are the abstract moral values of religion, whilst the variables are the socio-historical conditions in which the moral values are applied. By doing this, he abandoned the dual definition of the constants and variables that can be found in both the contemporary jurisprudential as well as the *maqāṣidī* discourse, which sees the former as the acts of worship (*al-ʿibādāt*) and the latter as the transactions (*al-muʿāmalāt*). This definition, according to Mudarrisī, is the narrowest definition of the variables, whereas the deepest one is to consider the variables as the scope whereby the *sharī'a* is applied in a specific socio-historical context. This requires from the jurist a real interaction with practicality by activating the *shūrā* mechanism through interactive dynamic relationships between the revealed texts and reality, in which each of them has an effective role in embodying the moral value in actual practice, and is not simply a reaction towards necessities under the name of *maṣlaḥa*. From this perspective, the jurist has an initiative for reality and is not merely a reactionary and quietist force as he was within the Bahbahānian paradigm.

This perception of the nature of the *sharī'a* requires, as it would require from any proponent of the *maqāṣidī* project, the provision of a clear vision of the actual purposes (*maqāṣid*) of the *sharī'a*. Here, Mudarrisī has provided his theoretical precepts through philosophical moral and legal discussions of values and then appended it with a practical discussion based on his methodological perceptions regarding the reading of religious texts and his former moral and legal philosophical discussions. Despite the overwhelming ambition of his theoretical discussion of the *maqāṣid al-sharī'a*, the practical discussion has proven the contrast between the theoretical discussion and practical inquiry. Through practical inquiry and through actual contact with the text and tradition, Mudarrisī has come up with a tree of values that presents the values of the *sharī'a* as three main moral values, each of which generates sub-values and so forth. These values are crystallised through rational reflection, actual contact with the human tradition - or what Mudarrisī prefers to call 'the reality' by which he means here the legal tradition - and revelation. These three values are faith, which is their basis, guidance, which is the path for them, and success, which is their practice in reality. From success,

four pillars of faith are derived, namely piety, charity, *jihād* and the pursuit of the best. Furthermore, the canons of faith are derived thereof as well, and which are centered on two main values from which many other sub-values are derived, and they are peace and dignity. These results, which Mudarrisī derived through around ten years of research, varied considerably from the theoretical results of moral and legal discussions.

That was at the level of the internal analysis of the findings of experience and its deep construction. As for the level of the relationship of the experience with the non-Shīʿī environment and its ramifications on the Shīʿī discourse and institution, it is possible to conclude the following:

Although the experience of *maqāṣid al-sharʿa* in Mudarrisī's version was in touch to a certain extent with the Sunnī jurisprudential tradition, especially the *maqāṣidī* tradition, it was in stark contrast to the other Shīʿī *maqāṣidī* experiences that were inclined towards the Sunnī *maqāṣidī* conceptions, especially those related to the derivation mechanism, in the Shīʿī version. Mudarrisī was attempting to prove the ability of the Shīʿī tradition to provide a different experience from the Sunnī one, and he relied especially on an intellectual Shīʿī school, the Tawkīkī school, which sought for Shīʿī originality. Thus, he attempted to establish the hermeneutical tools, the derivation mechanism and the moral construction based mainly on the Shīʿī tradition. Therefore, if we were to ask about the Shīʿī version of *maqāṣid al-sharʿa* - and this was of genuine interest to the research -, then Mudarrisī would be one of the models of that.

At the internal Shīʿī level, despite the internal complaints of the strain on the jurisprudential legacy to fulfil the requirements of the modern age and to attempt to provide alternatives, Mudarrisī's contribution, given an opportunity to prove itself clearly, represents a paradigm shift that would be shake Shīʿī jurisprudential foundations. That is to say, it is supposed that this approach would increase the role of the intellect (*ʿaql*), based on Mudarrisī's understanding, in legal system in which not only the jurist has a significant role practically, as it was previously, but also he would have such a significant role in creating the religious meaning. In a sense, the religious meaning

within this system is more reachable. Consequently, the whole field of practical principles (*uṣūl ‘amaliya*) will be reduced, as the field has been created and extended to limit the jurist in accessing the religious meaning. In contrast, it will allow to providing various hermeneutical approaches in order to derive the purposes of *sharī‘a*. These impacts, in effect, present new jurisprudential foundations or what was called thought the research a paradigm shift. However, at the *fiqhī* level, so far, it cannot yet be a serious contender against classical *fiqh*. Although there has been a shift in the foundations of jurisprudence, the actual *fiqhī* impacts that have presented so far are confined to reordering some of the classic *fiqhī* sections and introducing a few other sections, but have not been able to seriously put forth the other sections. Thus, it has not significantly changed the *mujtahid-muqallid* relationship.

Having said that, although the reception of Mudarrisī’s conception of *maqāṣid al-sharī‘a* has not been seen in either the Arab or Iranian Hawza, what is expected from such an experience is for it to primarily affect the *mujtahids* (jurists), then subsequently the religious learning institution - especially the new generation of students and senior scholars - and finally the activist religious social foundation more than actual classical *fiqh* itself. Furthermore, it would have a greater impact on the authoritative scholars who have a significant role in making public policy for their community such as in Lebanon, Iraq and Afghanistan. The ideal impact would be on the jurist who runs a state or on an Islamic social political movement striving for a political ruling.

From the same context, the *maqāṣid al-sharī‘a* can be seen as part of Mudarrisī’s reactive spirit, which has featured in his intellectual and practical projects. In a sense, calling for *maqāṣid al-sharī‘a* in this version can be seen as an advanced stage of the confrontation between the religious project and the processes of secularization that have appeared since the fall of the Caliphate and the consequence of the modern state. *Maqāṣid al-sharī‘a* is generally seen as an intellectual reaction to limit and surround the scopes of secularization and as an active contributor to the rehabilitation of religion in the public sphere. This is especially true of Mudarrisī’s version of *maqāṣid al-sharī‘a*, which differs from other *maqāṣid al-sharī‘a* projects. Where the latter attempt to liberalise Islamic discourse so as to be compatible with human rights discourses,

especially in their western versions, by deconstructing religious knowledge and bringing current discourse into it, his was quite strict in remaining close to religious tradition at the source level, especially the Qur'ān and Sunna, and at the same time maintaining flexibility in opening room for dialogue with others. Though it is difficult to speak about post-Mudarrisī for his contribution has not been seriously introduced to the debates within Muslim and particularly Shī'ī discussions, one can assume several ramifications on the current broader Islamic reform context. In line with the Qur'anic reform, the trend which seeks to establish primarily a Qur'anic reading of Islam as a way of originality and transience of the tradition, Mudarrisī has provided a serious discussion in this regard. His contribution brought out a jurisprudential argument for the position of Qur'an in contrast to the position of Sunnah and detailed hermeneutical tools (i.e. *tadabbur* and the epistemological interpretation) for how to read Qur'an. In line with various attempts of moral-cum-reading of Islam, he has provided, too, a detailed contribution (i.e. the theory of faith and his version of Islamic values) which would influence the current debate in several ways. To be precise, after Shāṭibī in Sunnī thought, he seems to be the first Muslim scholar from a Shī'ī background who elaborated a specific picture of the Islamic values which can be bases for jurisprudential derivation. Furthermore, his works in this regard contribute to theo-philosophical debate in the Islam-morality discussion both theoretically and practically; theoretically for his theory of the faith which engages in great deal with many discussions of Islam and ethics. However, for the practical discussions, i.e. the debate over what are the Islamic ethics and moral values, his practical thesis of the Islamic values (i.e. tree of values), if it is read properly, would contribute profoundly to this regard. Finally, Mudarrisī's approach to how the variables of *sharī'a* can be studied and reconciled with the constants and therefore the system he provided (i.e. the channel of *shūrā*) contributes to two main debates in contemporary Islam reform, namely; Islam and modern reality and the position of the jurist in the Muslim community. For the former, it contributes to the whole field of *fiqh al-wāqi'* which includes many modern issues regarding Islam and politics, medicine-bioethics and social changes. For the latter, it contributes to the profound discussion concerning the political role of the jurist in the Muslim, and particularly in the Shī'ī community, which in a sense touches the issues such as *wilāyat al-faqīh* and Islam and democracy.

Despite the limitations of the research, there is further scope for development and further research in order to address several questions that are relevant to the field of this study. The attempt of this research to provide a different reading of the history of Shī'ī jurisprudence demonstrates the possibility of an alternative reading of this intellectual history, especially by improving methodological approaches. This is especially true of the pre-Anṣārī period, which seems to have been neglected in the field, except in the interest of the Akhbārī-Uṣūlī disputes. As for *maqāṣid al-sharī'a* in Shī'ī jurisprudence, although the research has focused on what is considered to be the most systematic contribution to the field, i.e. Mudarrisī's, there are still several trends that merit study. Mudarrisī's is only one version of the Shī'ī *maqāṣidī* discourse and he has spent considerable effort to establish his project. Other versions are possible and will very likely come up with different methodological approaches as well as different moral values of the *sharī'a*. Furthermore, the *maqāṣid al-sharī'a* discourse shows a promising capacity of an overlapping dialogue not only within Islamic doctrine, but also interfaith and even within non-religious thinking. Thus, there is scope for further research into the epistemic, methodological and actual moral similarities and differences between several religious and non-religious ideologies.

Glossary

In this section, I provide a definition for important key concepts, figures and schools of thought that will help to clarify technical terms that feature in the thesis. Translating specialized terms is not an easy job to do and has been problematic for decades in Islamic studies. For Shīʿī jurisprudence, the standard translation of terminology used here is that provided by Roy Parviz Mottahedeh in his translation of al-Ṣadr's book of jurisprudence, *Lessons in Islamic Jurisprudence*⁶⁷⁷. Throughout the thesis, I will follow his translation. However, there are some cases where I might suggest an alternative translation or where the usage of the term by Mudarrisī requires another translation in order to clarify his opinion. And there are, of course, terms that have not been translated by Mottahedeh.

al-adilla al-ijtihādiyya and al-adilla al-faqāhatīyya

al-adilla al-ijtihādiyya in Shīʿī jurisprudence means a category of legal evidence whose function is to discover the reality of *sharīʿa*. *al-adilla al-faqāhatīyya*, on the other hand, are a category of legal evidence that function in providing procedural actions that one should follow in the absence of *al-adilla al-ijtihādiyya*.

bināʿ al-ʿuqalāʿ (rational norms)

bināʿ al-ʿuqalāʿ means rational norms that are held by the majority of people in qualifying the morality of an action. It is part of *al-dalīl al-ʿaqlī* in its second meaning, as mentioned above.

al-dalīl al-ʿaqlī

al-dalīl al-ʿaqlī has two meanings: the first refers to one of the four sources of deriving *sharīʿa* law, namely the Qurʾan, *sunnah*, *ijmāʿ* (consensus) and *ʿaql* (intellect); and the second refers to the epistemological foundation of justifying the validity of several sources of the *sharīʿa*. Throughout the thesis, I discuss the second meaning with regard

⁶⁷⁷ R. Mottahedeh, *Lessons in Islamic Jurisprudence* (Oxford: Oneworld Publications, 2003).

to the details in Chapter One and Chapter Three in comparing between Mudarrisī and Bahbahānian epistemology.

dhātī (self-evident)

dhātī means self-evident, which refers to a proposition that cannot be proved otherwise in any other higher field.

ḥujjiyya (authoritativeness/authority)

There are various different translations for this term in particular. Some might prefer to translate it as probative force or probativity. Throughout the thesis, I have used authority to indicate the crucial notion in Shī'ī jurisprudence. The notion is that for any candidate evidence to be admissible as legal evidence for legal derivation it has to reach a level of *ḥujjiyya*. In other words, it must be proven that following this sort of evidence will lead to certain knowledge (in pre-Anṣārī terms) or for the believer to be excused where he follows this evidence (from Anṣārī onwards).

al-‘ilm al-burhānī (demonstrative knowledge)

This refers to demonstrative knowledge in the Islamic philosophical tradition, which is a logical syllogism consisting of two self-evident premises and resulting in a certainty.

maqāṣid al-sharī‘a

maqāṣid al-sharī‘a refers to the idea that the *sharī‘a* as the legal element of God's message encompasses certain aims and purposes, which should be fulfilled, even indirectly, and through which God's will for humanity in this world and the hereafter will be achieved.

marji‘iyya

marji‘iyya primarily means a religious institution consisting of a class of scholarly jurists led by the most knowledgeable jurist (*marji‘*). The ordinary Shī'ī believer (non-*mujtahid*) refers to *marji‘iyya* primarily for his religious concerns. In modern time, some *marji‘iyya* might have had more than merely religious characteristics, such as social and political characteristics.

maṣlaḥa

maṣlaḥa linguistically means interest or benefit. Depending on the context, it sometimes refers to common and worldly interests of people or a particular community or individual. Sometimes it refers to the *sharʿī maṣlaḥa*, indicating to man's other-worldly interests that will benefit the believer in terms of his salvation in the Hereafter.

Mirzā Mahdī al-Iṣfahānī (d. 1946)

A Shīʿī scholar considered to be the founder of the Tafkīk School. He studied in Najaf, then went to Mashhad where he started to spread his ideas and attract students. One such student was Muḥammad Kāẓim al-Mudarrisī, the father of Muḥammad Taqī al-Mudarrisī. Mudarrisī was heavily influenced by the Tafkīk School through his father and by the work of Mirzā Mahdī al-Iṣfahānī.

Muḥammad al-Shīrāzī (d. 2002)

Muḥammad al-Shīrāzī was Mudarrisī's maternal uncle. He was born in Najaf 1928, then moved to Karbala where he studied. He became a *marjīʿ* after his father's death in his youth. He established one of the most influential religious and socio-political movement in Gulf, Iraq and Iran during the 1970s, 1980s and 1990s. He was the most influential person in Mudarrisī's life, and his influence is discussed in Chapter Two.

muḥkam (clear/decisive) and mutashābih (ambiguous)

As mentioned in *taʿwīl*, although *muḥkam* and *mutashābih*, generally speaking, refer to semantic and linguistic clarity or ambiguity, Mudarrisī's definition of these terms are epistemological. Thus, *muḥkam* is not simply a clear verse in terms of its meaning; rather it is the principle (*aṣl*) corresponding with the *mutashābih*, which means its application (*farʿ*). Through *taʿwīl*, a jurist refers the *muḥkam* back to the *mutashābih*.

mustaqillāt ‘aqliyya (independent rational indicators)

mustaqillāt ‘aqliyya refers to the independent rational indicators that can be understood without revelation (*wahy*) based on a person’s reason (‘*aql*). Thus, the legal proposition would consist of two rational premises.

mustaqillāt ghayr ‘aqliyya (non-rational indicators)

mustaqillāt ghayr ‘aqliyya refers to the non-rational indicators that can only be understood through revelation (*wahy*). However, they are assisted by rational indicators to constitute a legal proposition. Thus, the legal proposition would consist of two premises, one rational and the other legal (*shar‘ī*).

al-mulāzamāt al-‘aqliyya (rational correlations)

al-mulāzamāt al-‘aqliyya refers the rational correlations where, by analysis, one rational proposition would adhere to another as a logical consequence.

al-qaṭ‘ (certainty/ assurance)

Mottahedeh defines *qaṭ‘* as the legal agent’s firm subjective certainty about either the facts or the law, and is always a material circumstance that the jurist must consider⁶⁷⁸. This definition might have been suitable for the late understanding of *qaṭ‘* in Shī‘ī jurisprudence, Anṣārī onward. However, the pre-Anṣārī understanding of *qaṭ‘* was as a certainty and equivalent to certain knowledge (‘*ilm*). Mudarrisī’s definition is quite similar to Mottahedeh’s, in which he consider *qaṭ‘* as merely a psychological assurance.

Sunnah

The *sunnah* comprises everything known about the Infallibles that gives guidance for human conduct, including their sayings, actions and tacit approvals. Mudarrisī has differentiated between the actual *sunnah* and the application of the *sunnah*. Thus, he provides a slightly different definition of *sunnah*.

⁶⁷⁸ Ibid., p 174.

tadabbur (contemplation)

tadabbur in its linguistic Arabic usage means to think deeply about something in terms of its ends. Mudarrisī has used the term in a different way. For him, it means a particular hermeneutics through which the Qur'an is read and understood. This hermeneutics depends on some assumptions regarding the Qur'an, such as the unity of the *sūra* and the unity of the Qur'an as whole. The concept has been discussed in Chapter Three.

Tafkīkī School (School of Separation)

The Tafkīkī School was founded by Mīrzā Mahdī al-Īṣfahānī around the 1940s as a trend critical of the dominant philosophical school within the Shī'ī learning institutions, namely Mullā Ṣadrā's Philosophical School. The school advocated the separation of human knowledge (*al-'ulūm al-bashariyya*) from divine knowledge (*al-ma'ārif al-ilāhiyya*). According to the Tafkīkī school, this implied that Mullā Ṣadrā's Philosophical School had been heavily influenced by Greek Philosophy that had come to the Islamic Civilizations during the era of translation. The main claim of the Tafkīkī school was that divine knowledge (*al-ma'ārif al-ilāhiyya*) has its own methods to interpret and understand its contents, and therefore does not need any support from any other human knowledge (*al-'ulūm al-bashariyya*). Although human knowledge is useful for other fields of knowledge, it is not valid for religious knowledge, according to Tafkīkī. Hence it came to be known as the Tafkīkī School, the School of Separation, which separated or differentiated between the nature of divine and human knowledge.

ta'wīl (interpretation) ta'wīl

refers to a particular way of reading and understanding the Qur'an. It is not exegesis (*tafsīr*), rather it is the interpretation of the Qur'anic text. Throughout the thesis the term has been used differently depending on the context. I have dealt with three meanings of *ta'wīl*: mystical, linguistic and epistemological. Mudarrisī's definition of *ta'wīl* is the epistemological interpretation, which denotes the mechanism of referring each idea in

the Qur'an back to its principle (*aṣl*) or application (*far'*). Thus, *ta'wīl* according to him is not a linguistic tool to deal with unclear verses.

ẓāhir (exoteric) and bāṭin (esoteric)

Similar to the previous terms, here too Mudarrisī's usage of these terms differs from their classic usage. *ẓāhir* according to him is not merely the apparent meaning of the text. It is rather the legal ruling of the verse (*ḥukm*), whereas the *bāṭin* is the cosmological divine principle. Thus, it is neither the hidden nor unclear meaning of the verses, but again it refers to its principle and application. Where *muḥkam* and *mutashābih* referred to the principle as an *aṣl*/moral value and the *far'* as the legal ruling, here the reference is to the principle as the cosmological divine law and the *far'* as the legal ruling. All these technical terms related to his theory of five levels are discussed in Chapter Three.

al-ẓann (presumptive knowledge)

The intermediate alternative between *qaṭ'ī*, assured, in one direction, and *mashkūk*, doubtful, in the other.

Bibliography

Interview

Interview with Hādī al-Mudarrisī, brother of Muḥammad Taqī al-Mudarrisī, in Tehran, summer 2012.

Unpublished and Electronic Sources

Hubballāh, Ḥaydar, "*Falsafat al-Fiḡh*".

<http://hobbollah.com/include/mohazerat.php?cat1=11&cat2=13&cat3=61> (Accessed 1th June 2015).

al-Iṣfahānī, Mīrzā Maḥdī, *Risāla fī al-Ma‘arīḡ*. Mashhad: the Central Library of Astan Quds Razavi, no. 13411.

al-Zubaydī, ‘Alī. *Tārīkh al-Ijtihād wa Manāhijuhu*, (Shabakat al-Imāmayn al-Ḥasanayn li al-Turāth wa al-Fikr al-Islāmī), website:

:http://www.alhassanain.com/arabic/book/book/letters_and_university_theses/tarekh_al_ejtehad_wa_manahejoho/2.html. (accessed: 13.9.2012).

al-Sistānī, ‘Alī, *Ta‘arūḡ al-Adilla*, (A well-circulated work attributed to al-Sistānī written by his student Hāshim al-Hāshimī). <http://www.tahkekat.com> (accessed: 26.5.2015).

Mudarrisī’s website: <http://lib.almodarresi.com/View/ar/Default> (accessed: 1st June 2015).

The Collected Works of Grand Ayatollah Sayyid Muḥammad Taqī al-Mudarrisī. (Version 1.0) Windows (Tehran: Computer Research Center of Islamic Sciences (NOOR), n.d).

Mudarrisī’s Works

A few notes are worth mentioning about Mudarrisī’s works. Firstly, throughout the thesis, I have used the first edition of Mudarrisī’s works whenever possible. Secondly, most of Mudarrisī’s works do not have a place and publisher, and some of them mention the date of publication in the preface. Thirdly, Mudarrisī’s website has

published almost all his works, so they are available through his website, cited above. Fourthly, the Computer Research Center of Islamic Sciences (NOOR) in Iran recently produced a computer programme that includes all of Mudarrisī's available works. Thus, there are several way by which Mudarrisī's works can be accessed.

1. al-Mudarrisī, Muḥammad Taqī, Aḍwā' 'Alā' Azmat al-Khalīj (n.p., 1991).
2. ———, *Āfāq al-Ḥaraka al-Islāmiyya* (n.p., 1985).
3. ———, *al-'Amal al-Islāmī: al-Munṭalaqāt wa al-Ahdāf*, 3 vols. (n.p., 1981), vol. 1.
4. ———. *'An al-'Ilām wa al-Thaqāfa al-Risāliyya* (n.p., 1985).
5. ———, *'An al-'Irāq wa al-Ḥaraka al-Islāmiyya* (n.p., 1988).
6. ———, *al-Ba'th al-'Islāmī* (n.p., 1984).
7. ———, *al-Binā' al-Ḥaḍārī Bayna Lā wa Na'am* (n.p., 1978).
8. ———, *Baṣā'ir fī al-Taḥarruk al-Islāmī* (n.p., 1987).
9. ———. *Bayyināt Min Fiqh al-Qur'ān: Dirāsa Ta'tamid Istinbāṭ al-Sunan al-Ilāhiyya min al-Dhikr al-Ḥakīm: al-Ḥajj* (Beirut: Dār al-Maḥajja al-Bayḍā', 2012).
10. ———, *Bayyināt Min Fiqh al-Qur'ān: Dirāsa Ta'tamid Istinbāṭ al-Sunan al-Ilāhiyya min al-Dhikr al-Ḥakīm: al-Nūr* (Beirut: Dār al-Maḥajja al-Bayḍā', 2011).
11. ———, *Bayyināt Min Fiqh al-Qur'ān: Dirāsa Ta'tamid Istinbāṭ al-Sunan al-Ilāhiyya min al-Dhikr al-Ḥakīm: Luqmān* (Beirut: Dār al-Maḥajja al-Bayḍā', 2010).
12. ———, *Buḥūth fī al-Qur'ān al-Ḥakīm* (n.p., 1972).
13. ———, *al-Fikr al-Islāmī: Muwājaha Ḥaḍāriyya* (n.p., 1969).
14. ———, *al-Fiqh al-Islāmī: Qism al-Mu'āmalāt: al-Uṣūl al-'Āmma* (n.p. 1973).
15. ———, *Fiqh al-Dustūr wa Aḥkām al-Dawla al-Islāmiyya* (n.p., 2003).
16. ———, *Fiqh al-Istinbāṭ: Dirāsa fī Mabādi' 'Ilm al-Uṣūl*, n.p., 2010).
17. ———, *Fiqh al-Istinbāṭ: Dirāsa fī Mabādi' 'Ilm al-Uṣūl*, n.p., 2013).
18. ———, *al-Ḥukm al-Islāmī fī 'Ahd al-Imām 'Alī* (n.p., 2008).
19. ———, *Ḥaḍāra Bilā Maṣīr* (n.p., 1978).
20. ———, *Ḥaḍāra fī Bayt al-'Ankabūt* (n.p., 1978).
21. ———, *Ḥaḍāratunā fī 'Aṣr al-Bitrūl* (n.p., 1978).
22. ———, *Ḥaḍāratunā: Matā wa Kayfa?* (n.p., 1978).
23. ———, *Hākadhā Yataḥaddā al-Fikr al-Islāmī*, (n.p., 1986).

24. ———, *al-Intifāda al-Sha'bāniyya fī al-‘Irāq: al-Asbāb wa al-Natā’ij* (n.p., 1991).
25. ———, *al-‘Irfān al-Islāmī: Bayna Taṣawwurat al-Bashar wa Baṣā’ir al-Waḥy* (n.p., 1985).
26. ———, *al-Ma’had al-Islāmī Bayna al-Aṣāla wa al-Infitāḥ* (n.p., 1993).
27. ———, *al-Manṭiq al-Islāmī: Uṣūluhu wa Manāhijuhu* (Tehran: Dār Muḥibbīn al-Ḥusayn, 2003).
28. ———, *al-Mar’a fī al-Mujtama’ al-Islāmī* (n.p., 1977).
29. ———, *Maqāṣid al-Suwar fī al-Qur’an al-Karīm*, (Beirut: Dar al-Maḥajāt al-Bayḍā’a, 2013).
30. ———, *al-Mujtama’ al-Islāmī: al-Munṭalaqāt wa al-Ahdāf* (n.p., 1983).
31. ———, *Min Hudā al-Qur’ān*, 1st ed., 18 vols (Tehran: Dār al-Hudā)
32. ———, *Mustaqbal al-Thawra al-Islāmiyya* (n.p., 1985).
33. ———, *al-Nahj al-Islāmī: Ta’ammulāt fī Maṣīrat al-Ḥaraka al-Islāmiyya* (n.p., 1990).
34. ———, *al-Qiyāda al-Islāmiyya* (n.p., 1970).
35. ———, *al-Ṣaḥāfa Tuḥāwir al-‘Allāma al-Mudarrisī* (n.p., 1985).
36. ———, *al-Tamaddun al-Islāmī: Ususuhu wa Mabādi’uhu* (n.p., 1991).
37. ———, *al-Tārīkh al-Islāmī: Durūs wa ‘Ibar* (n.p., 1984).
38. ———, *al-Tashrī‘ al-Islāmī: Manāhijuhu wa Maqāṣiduhu*, 1st ed., 10 vols. (Tehran: Dār Intishārāt Mudarrisī, 1992-2002), vol. 1
39. ———, *al-Wa’y al-Islāmī* (n.p., 1989).
40. ———, *al-Wajīz fī al-Fiqh al-Islāmī*, 1st ed., 6 vols. (Beirut: Dār al-Maḥajja al-Bayḍā’, 2014), vol. 5

General Sources

1. ‘Abd al-Raḥmān, Ṭāhā., *Rūḥ al-Dīn Min Dīq al-‘Almāniyya ‘ilā Si’at al-‘I’timāniyya* (Beirut: al-Markaz al-Thaqāfī al-‘Arabī, 2012).
2. Abisaab, R.J., *Converting Persia: Religion and Power in the Safavid Empire* (I. B. Tauris, 2004).
3. Abu Radgīf, ‘Ammār, *al-Ḥikma al-‘Amaliyya: Dirāsa fī al-Nazariyya wa- Āthārihā al-Taṭbīqiyya*, 1st ed. (Iran: Dār al-Faqīh, 2003).

4. ———, *al-Usus al-‘Aqliyya: Dirāsa lil Munṭalaqāt al-‘Aqliyya lil Baḥth fī ‘Ilm al-Uṣūl*, (Beirut: Dār al-Faqīh, 2005).
5. Abu Zayd, Naṣr Ḥāmid, *Mafhūm al-Naṣṣ: Dirāsa fī ‘Ulūm al-Qur’ān*, 1st ed. (Beirut: al-Markaz al-Thaqāfī al-‘Arabī, 1999).
6. ———, *Falsafat al-Ta’wīl: Dirāsa fī Ta’wīl al-Qur’ān ‘Inda Muḥyī al-Dīn Ibn ‘Arabī* (Beirut: al-Markaz al-Thaqāfī al-‘Arabī, 2007).
7. Adler, H., and W. Köpke. *A Companion to the Works of Johann Gottfried Herder*. (USA: Camden House, 2009).
8. ‘Alīpoor, Maḥdī, *Tārīkh ‘Ilm al-Uṣūl*, Translated by ‘Alī Zāhir, (Beirut: Dār al-Walā’, 2010).
9. Alfano, Mark, *Character as Moral Fiction*. (United Kingdom: Cambridge University Press, 2013).
10. al-‘Āmilī, Mālik Wahbī, *Dawr al-‘Aql fī Tashkīl al-Ma’rifa al-Dīniyya* (Beirut: Dār al-Hādī, 2008).
11. al-‘Āmilī, Muḥammad ibn al-Ḥasan al-Ḥurr, *Amal al-Āmāl*, 1st ed., 2 vols. (Baghdad: Dār al-Andalus, n.d.), vol. 2.
12. ———, *Tafṣīl Wasā’il al-Sharī’a ‘ilā Masā’il al-Sharī’a* (Iran: Mu’assasat Ahl al-Bayt li Iḥyā’ al-Turāth, 1994).
13. al-Anṣārī, Murtaḍā. *al-Makāsib*, 3rd ed. (Qum: Majma’ al-Fikr al-Islāmī, 2000).
14. Ardabīlī, Aḥmad, *Zubdat al-Bayān fī Aḥkām al-Qur’ān* (Iran: al-Maktaba al-Ja’fariyya li Iḥyā’ al-Āthār al-Ja’fariyya, n.d.).
15. Al-‘Āṣifī, Muḥammad Maḥdī. Introduction to *al-Rawḍa al-Bahiyya fī Sharḥ al-Lum’a al-Dimashqiyya*, 1st ed. (Qum, Iran: Maktabat al-Dawūrī, 1991).
16. al-Astarābādī, Muḥammad Amīn, *Al-Fawā’id al-Madaniyya*, 2nd ed. (Qum: Mu’assasat al-Nashr al-Islāmī, 2005).
17. ‘Aṭīyya, Jamāl al-Dīn, *Naḥwa Taf’īl Maqāṣid al-Sharī’a*, 1st ed. (Damascus: Dār al-Fikr, 2001).
18. Ayoub, Mahmoud, The speaking Qur’an and the silent Qur’an: A study of the principles and development of Imāmī Shī’ī tafsīr. In Rippin, Andrew (ed.) *Approaches to the History of the Interpretation of the Qur’an*. (Oxford: Oxford University Press, 1988), pp. 177–98.

19. Badawī, ʿAbdalraḥmān, *Arusṭū ʿind al-ʿArab*, 2nd ed. (Kuwait: Wikālat al-Kuwait li al-Maṭbūʿāt, 1978).
20. Badawī, ʿAbd al-Raḥmān, *Manṭiq Arusṭū*, 1st ed. (Kuwait: Wikālat al-Kuwait li al-Maṭbūʿāt, 1980).
21. Bahāʾī, Muḥammad ibn Ḥusayn, *Zubdat al-Uṣūl*, 1st ed. (Qum: al-Sharīʿa, 2005).
22. al-Bahbahānī, Muḥammad Bāqir Akmal, *al-Rasāʾil al-Uṣūliyya* (Qum: Muʿassasat al-ʿAllāma al-Mujaddid al-Waḥīd al-Bahbahānī, 1995).
23. al-Baḥrānī, Muḥammad Ṣanqūr, *al-Muʿjam al-Uṣūlī*, 2nd ed., 2 vols. (Iran: Manshūrāt Naqsh, 2006), vol. 1.
24. ———, *al-Muʿjam al-Uṣūlī*, 2nd ed., 2 vols. (Iran: Manshūrāt Naqsh, 2006), vol. 2.
25. Bar-Asher, Meir M. *Scripture and Exegesis in Early Imāmī Shiism*. (Leiden, The Netherlands: E. J. Brill, 1999).
26. Belūshī, Ḥasan, "The Moral Tradition a Methodological Approach: A Critical Reading for the Establishing Promises and Methodology" [al-Turāth al-Akhlāqī Muqaraba Manhajīya: Qiraʿa Naqdiyya lil Munṭalaqāt al-Taʿsīsiyya wa Manhajī al-Baḥṭh] in *al-Baṣaʿir*, no. 45 (2009): pp. 157-80.
27. Bin Nabī, Mālik, *al-Zāhira al-Qurʾāniyya* (Damascus: Dār al-Fikr, 1979).
28. Bishāra, ʿAzmī, *al-Dīn wa al-ʿAlmāniyya fī Siyāq Tārīkhī* (Qatar: Arab Centre for Research and Political Studies, 2013).
29. Bhojani, A.R, *Moral Rationalism and Shariʿa: Independent Rationality in Modern Shīʿī Usul Al-Fiqh*. (New York: Taylor & Francis, 2015).
30. al-Bustānī, Maḥmūd, *al-Manhaj al-Bināʾī fī al-Tafsīr*. (Beirut: Dār al-Hādī, 2001).
31. Calder, Norman, "Doubt and Prerogative: The Emergence of an Imāmī Shīʿī Theory of Ijtihād" in *Studia Islamica*, no. 20 (1989): pp. 57-78
32. Carrio, Genaro R. (1980) "Professor Dworkin's Views on Legal Positivism," *Indiana Law Journal*: Vol. 55: Iss. 2, 209-246.
33. Cappelen, Herman, *Philosophy Without Intuitions*. (United Kingdom: Oxford University Press, 2012).
34. Clark, Robert, *Herder: His Life and Thought*. (USA: University of California Press, 1955).

35. Darwīsh, ‘Alī Ibrāhīm, *al-Siyāsa wa al-Dīn fī Marḥalat Ta’sīs al-Dawla al-Şafawiyya 1501-1576*, 1st ed. (Qatar: Arab Centre for Research and Political Studies, 2013).
36. Dāwūd, Zakariyyā, "Al-Madrasa al-Tafkikiyya wa Ta’şīl al-‘Aql al-Shī’ī" in *al-Başā’ir*, no. 35 (2005): pp. 52-94.
37. Duderija, A., *Maqāsid al-Shari’a and Contemporary Reformist Muslim Thought: An Examination* (Palgrave Macmillan, 2014).
38. Dworkin, R., ‘Hart’s Postscript and the Character of Legal Philosophy’ (2004) 24 *Oxford Journal of Legal Studies*. pp. 1-37.
39. al-Faḍlī, ‘Abd al-Hādī, *Durūs fī Uşūl Fiqh al-Imāmiyya*, 1st ed. (Qum: Mu’assasat Umm al-Qurā, 2000).
40. al-Faḍlī, ‘Abd al-Hādī, *Tārīkh al-Tashrī‘ al-Islāmī*, 1st ed. (Beirut: Dār al-Naşr, 1993).
41. al-Fāsī, ‘Allāl, *Maqāşid al-Sharī‘a wa Makārimuhā* (Dār al-Gharb al-Islāmī, 1993).
42. Farḥān, ‘Adnān, *Adwār al-Ijtihād*, 1st ed. (Qum, Iran: al-Markaz al-‘Ālamī lil ‘Ulūm al-Islāmiyya, 1995).
43. Freeman, Samuel. *Rawls*. (London: Routledge, 2007).
44. Grégoire, François, *al-Mathāhib al-‘Akhlaqīya al-Kubrā*. Trans, Qutaybah al-Ma’rūfī. (Beirut: Manshūrāt ‘Uwīdāt, 1984).
45. Gleave, Robert, *Scripturalist Islam: The History and Doctrines of the Akhbārī Shī’ī School* (Leiden: Brill, 2007).
46. Gleave, *Inevitable Doubt: Two Theories of Shī’ī Jurisprudence* (Leiden: Brill, 2000).
47. al-Ḥakīm, Muḥammad Taqī, *al-Uşūl al-‘Āmma fī al-Fiqh al-Muqāran*, 2nd ed. (Qum: al-Majma‘ al-‘Ālamī li Ahl al-Bayt, 1997).
48. al-Ḥakīm, Mundhir, "Marāḥil Taṭawwur al-Ijtihād ‘ind al-Shī‘a al-Imāmiyya", *Majallat Fiqh ‘Ahl al-Bayt*, no. 13-17.
49. Hallaq, W.B., *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge University Press, 1999).
50. ———, "Maqāşid and the Challenges of Modernity" in *al-Jami‘ah*, 49, no. 1 (2011): pp. 1-31.

51. Halm, Heinz, *al-Ghannūṣiyya fi al-Islām*, tr. by Rā'id al-Bāshsh, 1st ed (Beirut: Manshūrāt al-Jamal, 2003).
52. Ḥassān, Ḥusayn, *Nazariyyat al-Maṣlaḥa fi al-Fiqh al-Islāmī* (Egypt: Maktabat al-Mutanabī, 1981).
53. al-Ḥasanī, Hāshim Ma'rūf, *Tārīkh al-Fiqh al-Ja'farī*, 1st ed. (Beirut, Lebanon: Dār al-Ārif, 1987).
54. Ḥubballāh, Ḥaydar, *Nazariyyat al-Sunnah fi al-Fikr al-Imāmī al-Shī'ī*, 1st ed. (Beirut: Dār al-Intishār al-Ārabī, 2006).
55. Haykal, Muḥammad Ḥasanayn, *Sanawāt al-Ghalayān*, 1st ed. (Egypt: Markaz al-Ahrām li al-Tarjama wa al-Nashr, Mu'assasa al-Ahrām, 1988).
56. Hermann, D., and Mervin, S., *Shī'ī Trends and Dynamics in Modern Times (Xviiiith-Xxth Centuries)*, (Beirut: Orient-Institut, 2010).
57. Hinnells, John, *The Routledge Companion to the Study of Religion*. (London, Routledge, 2005).
58. al-Ḥillī, Ḥasan ibn Yūsuf, *Mabādī' al-Wuṣūl Ilā 'Ilm al-Uṣūl* (Beirut: Dār al-Aḍwā', 1986).
59. al-Ḥillī, Ja'far ibn Ḥusayn, *Ma'ārij al-Uṣūl*, 1st ed. (Iran: Mu'assasat Ahl al-Bayt, 1983).
60. Ḥubballāh, 'Alī, *Dirāsāt fi Falsafat Uṣūl al-Fiqh wa al-Sharī'a wa Nazariyyat al-Maqāṣid*, 1st ed. (Beirut: Dār al-Hādī, 2005).
61. Ibn 'Āshūr, Ṭahir, *Maqāṣid al-Sharī'a*, (Jordan: Dār al-Nafā'is, 2001).
62. Ibrāhīm, Fū'ād, *al-Faqīh wa al-Dawla: al-Fikr al-Siyāsī al-Shī'ī*, 1st ed. (Beirut: Dār al-Kunūz al-Adabiyya, 1998).
63. Ibrahim, Yasir S., "An Examination of the Modern Discourse on Maqāṣid al-Sharī'a" in *The Journal of the Middle East and Africa* 5, no. 1 (2014): pp. 39-60.
64. ———, "Rashīd Riḍā and Maqāṣid al-Sharī'a" in *Studia Islamica* 102/103 (2006): pp. 157-98.
65. al-Iṣfahānī, Muḥammad Bāqir, *Sharḥ Hidāyat al-Mustarshidīn* (Qum: 'Aṭr al-'Iṭrah, 2007).
66. al-Iṣfahānī, Muḥammad Taqī, *Hidāyat al-Mustarshidīn fi Sharḥ Ma'ālim al-Dīn*, 2nd ed. (Qum: Mu'assasat al-Nashr al-Islāmī, 2009).

67. al-Jābirī, Muhammad ‘Ābid, *Naḥnu wa al-Turāth: Qirā’a Mu‘āshira li Turāthinā al-Falsafī* (Beirut: al-Markaz al-Thaqāfī al-‘Arabī, 1980).
68. ———, *al-‘Aql al-Akhlāqī al-‘Arabī: Dirāsa Taḥlīliyya Naqdiyya li Nuḥum al-Qiyām fi al-Thaqāfa al-‘Arabiyya* (Beirut: Centre for Arab Unity Studies, 2001).
69. Jackson, Peter and Lockhart, Laurence, *The Cambridge History of Iran*, 7 vols. (Cambridge: CUP, 2006), Vol.6: The Timurid and Safavid Periods
70. Johnston, David, "A Turn in the Epistemology and Hermeneutics of Twentieth Century Uṣūl Al-Fiqh" in *Islamic Law and Society* 11, no. 2 (2004): pp. 233-82.
71. ———, "Maqāṣid al-Sharī’a: Epistemology and Hermeneutics of Muslim Theologies of Human Rights" in *Die Welt des Islams* 47, no. 2 (2007): pp. 149-87.
72. ———, "Yūsuf Al-Qaraḍāwī’s Purposive Fiqh: Promoting or Demoting the Future Role of the ‘Ulamā’?" in *Maqasid Al-Shari’a and Contemporary Reformist Muslim Thought: An Examination*, edited by Adis Duderija (USA: Palgrave Macmillan, 2014).
73. Kadhim, A. *Reclaiming Iraq: The 1920 Revolution and the Founding of the Modern State*. University of Texas Press, 2012.
74. Kamali, M.H., *Maqāṣid al-Sharīah and Ijtihad as Instruments of Civilisational Renewal* (International Institute of Islamic Thought, 2012).
75. Karajī, Abu al-Qāsim, "Naḥra fi Taṭawwur ‘Ilm al-Uṣūl" in *Majalla al-Thaqāfa al-Islāmiyya*, no. 7 (1986).
76. al-Kāshānī, Muḥammad Muḥsin al-Fayḍ, *al-Wāfī* (Iran: Maktabat Amīr al-Mu’minīn, 1991).
77. Khalīfa, ‘Abd al-Laṭīf, *Irtiqā’ al-Qiyām: Dirāsa Nafsiyya*, 1st ed. (Kuwait: al-Majlis al-Waṭanī li al-Thaqāfa wa al-Funūn wa al-Ādāb, 1992), vol. 160: ‘Ālam al-Ma’rifa
78. Kharsān, Ṣalāḥ, *Ḥizb al-Da’wa al-Islāmiyya: Ḥaqā’iq wa Wathā’iq*, 1st ed. (Beirut: al-Mu’assasa al-‘Arabiyya li al-Dirāsāt wa al-Buḥūth al-Istirātījiyya, 1999).
79. al-Khumaynī, Rūḥullāh, *Ṣaḥīfat al-Īmām*, 21 vols. (Tehran: Mu’assasat Tanzīm wa Nashr Āthār al-Imām al-Khumaynī).

80. Kitcher, Philip, *Science, Truth, and Democracy*. (New York: Oxford University Press, 2001).
81. Kohlberg, Etan, "On the origins of Shī'ī *hadīth*", *The Muslim World* 88(2), 1998: 1665-84
82. Kuhn, T.S., and Hacking, I., *The Structure of Scientific Revolutions: 50th Anniversary Edition* (University of Chicago Press, 2012).
83. al-Kulaynī, Muḥammad ibn Ya'qūb, *al-Kāfī*, 4th ed., 8 vols., (Tehran: Dār al-Kutub al-Islāmiyya, 1987), vol. 1
84. Leiter, B., 'Beyond the Hart/Dworkin debate: the methodology problem in jurisprudence' (2003) 48 *American Journal of Jurisprudence*. pp. 17-51.
85. Litvak, M., *Shī'ī Scholars of Nineteenth-Century Iraq: The 'Ulama' of Najaf and Karbala* (Cambridge University Press, 2002).
86. Louër, L., *Transnational Shia Politics: Religious and Political Networks in the Gulf* (Columbia University Press, 2008).
87. MacIntyre, A., *After Virtue* (Bloomsbury Publishing, 2013).
88. MacIntyre, Alasdair. *A Short History Of Ethics: A History of Moral Philosophy from the Homeric Age to the Twentieth Century*, 2ed ed. (London: Routledge, 1998).
89. Mahrīzī, Mahdī, *Madkhal ilā Falsafat al-Fiqh*, Translated by Haydar Najaf, 1st ed. (Beirut: Dār al-Hādī, 2002).
90. al-Majlisī, Muḥammad Bāqir, *Biḥār al-Anwār fī Akhbār al-A'imma al-Aṭhār*, vol. 74 (Beirut: n.p., n.d.)
91. Mallat, C., *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shī'ī International* (Cambridge University Press, 2004).
92. March, Andrew F., "Naturalizing Shari'a : Foundationalist Ambiguities in Modern Islamic Apologetics" in *Islamic Law and Society* 22, no. 1-2 (2015): pp. 45-81.
93. Masud, M.K., *Islamic Legal Philosophy: A Study of Abu Ishāq al-Shāṭibī's Life and Thought* (Delhi: International Islamic Publishers, 1989).
94. McCutcheon, Russell T., *The Insider/Outsider Problem in the Study of Religion: A Reader*. 2ed ed. (London, Casell, 1999).
95. Mīlād, Zakī, "al-Shaykh Muḥammad Mahdī Shams al-Dīn wa al-Naqd al-Manhajī li Uṣūl al-Fiqh" in *al-Kalima*, no. 74 (2012).

96. Moussavi, A.K., *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, 1996).
97. Montesquieu, Charles Baron De. *The Spirit of the Laws*. Trans: Thomas Nugent. (New York, Cosimo Classic, 2011).
98. Mottahedeh, R. *Lessons in Islamic Jurisprudence*. (Oxford: Oneworld Publications, 2003).
99. Mu'assasat al-Nashr al-Islāmī, *Al-Shaykh al-Anṣārī wa Taṭawur al-Baḥth al-Uṣūlī* (Qum: Mu'assasat al-Nashr al-Islāmī al-Tabi'ah li-Jamā'at al-Mudarisīn fī Qum, 1995).
100. al-Muẓaffar, Muḥammad Riḍā, *Uṣūl al-Fiqh*, 4 vols., (Iran: Mu'assasat al-Nashr al-Islāmī al-Tābi'a li Jamā'at al-'Ulamā' fī Qum), vol. 3
101. Mulhall, S., and Swift, A., *Liberals and Communitarians* (Wiley, 1996).
102. Murtaḍā, 'Alī ibn al-Ḥusayn, *Rasā'il al-Murtaḍā*, vol. 1 (Iran: Dār al-Qur'ān al-Karīm).
103. al-Muṣṭafawī, Muḥammad, *Falsafat al-Fiqh: Dirāsa fī al-Uṣūl al-Manhajīyya li al-Fiqh al-Islāmī*, 1st ed. (Beirut: Markaz al-Ḥaḍāra li Tanmiyat al-Fikr al-Islāmī, 2000).
104. al-Najjār, Muḥammad 'Abd al-Qādir, *al-Masāḥa al-Maftūḥa fī al-Tashrī' al-Islāmī* (Beirut Dār al-Maḥajjat al-Bayḍā', 2013).
105. Newman, Anderw, *The Formative Period of Twelver Shi'ism: Ḥadīth as Discourse Between Qum and Baghdad*, (United Kingdom, Routledge, 2010).
106. Newman, Andrew J., *Safavid Iran: Rebirth of a Persian Empire*, 1st ed. (London: I.B. Tauris & Co Ltd, 2009).
107. al-Nafīsī, 'Abdullāh, *al-Ḥaraka al-Islāmiyya: Ru'yā Mustaqbaliyya: Awrāq fī al-Naqd al-Dhātī*, 2nd ed. (Kuwait: Maktabat Āfāq, 2013).
108. The Office of Muḥammad Taqī al-Mudarrisī, *al-Marja' wa al-Umma*, 1st ed. (Karbala: Dār al-Hudā li al-Thaqāfa Wa al-I'lām, 2009).
109. Pawson, Ray, *Evidence-Based Policy: A Realist Perspective*. (London: SAGE Publications, 2006).
110. Penner, J., and Melissaris, E., *Mccoubrey & White's Textbook on Jurisprudence*, (Oxford: OUP, 2012).

111. Perry, Ralph Barton, *General Theory of Value: Its Meaning and Basic Principles Construed in Terms of Interest*. (USA: Harvard University Press, 2013).
112. Porter, R., Park, K., and Daston, L., *The Cambridge History of Science, Volume 3: Early Modern Science* (Cambridge University Press, 2006).
113. Pound, R., *An Introduction to the Philosophy of Law* (Lawbook Exchange, 1922).
114. Qanṣū, Mahmūd, *al-Muqaddimāt wa al-Tanbīhāt fi Sharḥ Uṣūl al-Fiqh*, 1st ed., 8 vols. (Beirut: Dār al-Mu'rrikh al-'Arābī, 2009), vol. 1
115. al-Qaraḍāwī, Yūsuf, *Fī Fiqh al-Awlawiyyāt: Dirāsa Jadīda fī Ḍaw' al-Qur'ān wa al-Sunna*, 2nd ed. (Egypt: Maktabat Wahba, 1996).
116. al-Qaṭīfī, Munīr, *al-Rāfid fī 'Ilm al-Uṣūl*, 1st ed. (Qum: Maktab Āyatullāh al-Sayyid 'Alī al-Sīstānī, 1994).
117. Qazwīnī, Jawdat, *al-Marjī'iyya al-Dīniyya al-'Ulyā 'Inda al-Shī'a al-Imāmiyya: Dirāsa fī al-Taṭawwur al-Siyāsī wa al-'Ilmī* (Beirut: Dār al-Rāfidayn, 2005).
118. Qazwīnī, Jawdat, *Tārīkh al-Mu'assasa al-Dīniyya al-Shī'iyya: min al-'Aṣr al-Buwayhī ilā Nihāyat al-'Aṣr al-Ṣafawī al-Awwal (300 A.H.-1000 A.H./912 C.E.-1591 C.E.)*. (Beirut: Dār al-Rāfidayn, 2005).
119. al-Qummī, Abu al-Qāsim Muḥammad ibn al-Ḥasan, *al-Qawānīn al-Muḥkama fī al-Uṣūl*, 1st ed. (Qum: Iḥyā' al-Kutub al-Islāmiyya, 2000), vol.2.
120. Quṭb, Sayyid, *al-Islām wa Mushkilat al-Ḥaḍāra*, 11th ed. (Cairo: Dār al-Shurūq, 1992).
121. Rafsanjānī, Hāshimī, *Ḥayātī*, Translated by Dalāl 'Abbās, 1st ed. (Beirut: Dār al-Sāqī, 2005).
122. Ramadan, T., *Radical Reform: Islamic Ethics and Liberation*, (USA: OUP, 2009).
123. *Religion and Society in Qajar Iran*, edited by Robert Gleave (London; New York: Routledge Curzon, 2005).
124. Reinhart, A. Kevin, Jurisprudence. In Rippin, Andrew (ed.) *The Blackwell companion to the Qur'an*. (United Kingdom: Blackwell Publishing, 2006), pp. 434-449.

125. al-Rifāʿī, ʿAbd al-Jabbār, *Taṭawwur al-Dars al-Falsafī fī al-Ḥawza al-ʿIlmiyya*, Kitāb al-Qaḍāyā al-Islāmiyya al-Muʿāšira, 1st ed. (Beirut: Dār al-Hādī, 2005).
126. Rippin, Andrew, “Contemporary scholarly understandings of Qurʿanic coherence” *Al-Bayan: Journal of Qurʿan and Hadith Studies*, 11:2 (2013): 1-14.
127. ———, *al-Ijtihād al-Kalāmī: Manāhij wa Ruʿā Mutanawwiʿa fī al-Kalām al-Jadīd* (Beirut: Dār al-Hādī, n.d.).
128. Rizvi, Sajjad H. “Isfahan School of Philosophy,” *Encyclopædia Iranica*, online edition, 2012, available at <http://www.iranicaonline.org/articles/isfahan-school-of-philosophy> (accessed online at 22 May 2015).
129. al-Ṣadr, Muḥammad Bāqir, *Ikhtarnā Lakum* (Beirut: Dār al-Zahrāʿ, 1975).
130. ———, *al-Maʿālim al-Jadīda li ʿIlm al-Uṣūl*, 1st ed. (Tehran: Maktabat al-Najāh, 1975).
131. al-Ṣaffār, Fāḍil, *Fiqh al-Maṣāliḥ wa al-Mafāsīd* (Beirut: Dār al-ʿUlūm, 2008).
132. Sayf, Tawfīq, *Ḍidd al-Istibdād: al-Fiqh al-Siyāsī al-Shīʿī fī ʿAṣr al-Ghayba*, 1st ed. (Beirut: al-Markaz al-Thaqāfī al-ʿArabī, 1999).
133. ———, *Ḥudūd al-Dīmuqrāṭiyya al-Dīniyya* (Beirut: Dār al-Sāqī, 2008)
134. Shafer-Landau, Russ, *Ethical Theory: An Anthology*, 2ed ed. (United Kingdom: Wiley-Blackwall, 2013)
135. Shafer-Landau, Russ, *Moral Realism: A Defence*. (Oxford: Clarendon Press, 2005).
136. al-Shāṭibī, Ibrāhīm ibn Mūsā, *al-Muwāfaqāt fī Uṣūl al-Sharīʿa* (Cairo: Dār al-Fikr al-ʿArabī), vol. 2
137. al-Shaybī, Kāmil Muṣṭafā, *al-Ṣila Bayna al-Taṣawwuf wa al-Tashayyūʿ*, 3rd ed., 2 vols. (Beirut: Dār al-Andulus, 1982), vol. 1.
138. al-Shīrāzī, Muḥammad, *al-Uṣūl*, 8 vols. (n.p., n.d.)
139. al-Shīrāzī, Muḥammad Riḍā, *al-Tadabbur fī al-Qurʿan al-Karīm*, 3ed ed. (Beirut: Dār al-ʿUlūm, 2010).

140. Stewart, Devin J., "The First Shaykh al-Islām of the Safavid Capital Qazvin" in *Journal of the American Oriental Society* 116, no. 3 (1996): pp. 387-405.
141. al-Subḥānī, Jaʿfar, *Maṣādir al-Fiqh al-Islāmī wa Manābiʿuhu*, 1st ed. (Beirut: Dār al-Aḍwāʿ, 1999).
142. al-Subḥānī, Jaʿfar, *Tārīkh al-Fiqh al-Islāmī wa Adwāruhu*, 1st ed. (Qum: Muʿassasat al-Imām Jaʿfar al-Ṣādiq, 1997).
143. Surūsh, ʿAbdalkarīm, *Basṭ al-Tajriba al-Nabawiya*, trans by Aḥmad al-Qabānchī, (Iraq: Dār al-Fikr al-Jadīd).
- 144.
145. Tabātabāʾī, Hossein Modarressi, *An Introduction to Shīʿī Law* (London: Ithaca Press, 1984).
146. Ṭabāṭabāʾī, Muḥammad Ḥusayn, *Al-Mizān fī Tafsīr al-Qurʾān*, Vol. 3, (Qum, n.d.)
147. al-Tūnī, ʿAbdullah Ibn Muḥammad, *Al-Wāfiya fī Uṣūl al-Fiqh*, 2nd ed. (Qum: Majmaʿ al-Fikr al-Islāmī, 1995).
148. Vinogradov, Amal. "The 1920 Revolt in Iraq Reconsidered: The Role of Tribes in National Politics." *International Journal of Middle East Studies* 3, no. 2 (1972): 123-39.
149. al-Wardī, Alī, *Lamaḥāt Ijtimāʿiyya min Tārīkh al-ʿIrāq al-Ḥadīth*, 1st ed. (London: Kufān Publishing, 1991-1992), vol. 5.
150. Weiss, Bernard G., *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī*. (USA: International Institute of Islamic Thought, 2010).
151. Zayn al-Dīn, Ḥasan ibn, *Maʿālim al-Dīn wa Malādh al-Mujtahidīn* (Iran: Muʿassasat al-Nashr al-Islāmī al-Tābiʿa li Jamāʿat al-ʿUlamāʾ fī Qum).
152. al-Zuḥaylī, Wahba, *Uṣūl al-Fiqh al-Islāmī* (Damascus: Dār al-Fikr 1986).
153. Zimmerman, Aaron, *Moral Epistemology*, (United Kindom: Routledge, 2010)