

al-Sayyid ‘Alī al-Ḥusaynī al-Sīstānī on *Uṣūl al-fiqh* in Twelver Shī‘ī Thought: Its Importance and Historical Phases

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What follows is a translation of the first, and part of the second, introductory discussions in the transcribed notes of al-Sayyid ‘Alī al-Ḥusaynī al-Sīstānī’s (b. 1930) advanced lectures on *uṣūl al-fiqh* published as *al-Rāfid fi’ilm al-uṣūl*. al-Sīstānī is one of the most authoritative and influential Twelver Shī‘ī jurists of the day. Although born and raised in Iran, he currently resides in Najaf, Iraq holding a seat of supreme religious authority with a global following.

The first section discusses the importance of *uṣūl al-fiqh* (referred to throughout as *‘ilm al-uṣūl*) in the Twelver Imāmī Shī‘ī school by responding to an internal Imāmī critique that claimed the discipline of *uṣūl al-fiqh* is little more than a needless concoction of issues brought together as a result of Sunnī influence on Shī‘ī scholars. al-Sīstānī’s unequivocal rejection of this position aims to set out the independence of *uṣūl al-fiqh*, its originality, early development and importance within Shī‘ī thought. The second section classifies the history of *uṣūl al-fiqh* in Imāmī thought into three phases. Each phase is characterized by distinct intellectual struggles impacting the progression of ideas within the discipline. For al-Sīstānī, the first phase was shaped by intra-Muslim debates whilst the second was shaped by intra-Shī‘ī ones. The third phase, mentioned only briefly here, is the current period in which we now live. According to al-Sīstānī, the mark of this contemporary phase in Shī‘ī jurisprudential thought is the need for it to develop, engage and respond to the broader economic, political and cultural challenges of the contemporary era.

The footnotes to the translation are limited to those found in the published Arabic version of the text, although they have been modified in form to fit the style of this publication and enable independent access to the sources mentioned. Dates of death for scholars have again only been included where they are present in the published Arabic text, although I have added the common era dates alongside the original Hijri ones.

‘Alī al-Ḥusaynī al-Sistānī, *al-Rāfid fī ‘ilm al-uṣūl*, Transcribed by
Munīr Qaṭīfī (Qum: Maktabat Āyatullāh Sistānī, 1993), 12–18

The Discipline of Legal Theory in the Imāmī School

The two schools from among the Imāmī scholars – the traditionists (*muhaddithīn*) and the legal theorists (*uṣūlīyīn*) – have differed with regard to the value of the discipline of legal theory, as well as to the extent of their emphasis upon it during the history of juristic (*fiqhī*) thought. We do not wish to delve too comprehensively into this discussion here, due to its irrelevance to our aim – which is to put forth our general thesis regarding the discipline of legal theory. However, as a prelude to entering into these core jurisprudential discussions, we will present some of the beneficial aspects in demonstrating the lofty status of the discipline of legal theory as well as its historical and current importance for the jurist (*faqīh*).

We begin by citing some words from al-Karakī’s book, *Hidāyat al-abrār*, as transmitted by al-Qaṭīfī (one of the teachers of the author of *al-Wasā’il*). He said,

Know that the discipline of legal theory has been concocted from various sciences and diverse issues, some of which are true and some of which are false. The Sunnī’s produced it due to the paucity of prophetic reports (*sunan*) in their possession that indicate to [Sharī’a] precepts (*aḥkām*).¹

He also stated;

The Shī’a had no authored works in legal theory for they had no need for it, due to the availability of all that they required of it being within the necessarily accepted axioms of religion (*al-ḍarūriyyāt al-dīn*) and its theories being in the principles relayed from the Imams of guidance. This was until Ibn Junayd came and examined the legal theory of the [Sunnī] Muslims, and took from them, composing books in accordance with that model – to the extent that he even acted upon analogical reasoning (*qiyās*).²

This statement can be broken down into three claims;

1. A denial of the independence of the discipline of legal theory, which in his view, is a concoction of diverse issues.
2. That the original composers of the discipline of legal theory were the Sunnī Muslims, and that the first Shī’ī author in the discipline was Ibn Junayd – who even acted upon analogical reasoning.

1 Ḥusayn ibn Shihāb al-Dīn al-Karakī, *Hidāyat al-abrār ilā ṭarīq al-‘aimmat al-‘aṭhār* (Baghdad: Mu’assasat Iḥyā’ al-Iḥyā’, 1977), 233–234.

2 Ibid.

3. That there is no need for the discipline of legal theory due to the presence of necessarily accepted axioms of religion and the theories of the discipline of legal theory being present in the relayed principles within the traditions of the Imams – upon them be peace.

The First Claim and Its Refutation

It is clear that there are many issues outlined in the discipline of legal theory that are not relevant to any other discipline, for example:

- The discussion on the conflicts between legislated evidence and the means of their reconciliation,
- The discussions pertaining to the authority of means and substantiated evidence; like the isolated hadith report, popular juristic opinion or consensus, and the discussion regarding conjecture when all forms of certain knowledge are deemed inaccessible (*ẓann al-insidādī*),
- The instances of applying linguistic principles such as in conflicts between the general and the specific, the unqualified and the qualified, and the abrogating and the abrogated.

All these discussions bear no relation to the discipline of linguistics, nor to juristic inference (*fiqh*), nor the biographical sciences (*rijāl*) nor any other subject, for they are all related to ‘the authoritativeness of juristic evidence’ (*hujjiyyat al-dalīl al-fiqhī*) which is the very criteria for a jurisprudential (*uṣūlī*) discussion, accordingly the appropriate [discipline] for them is the discipline of legal theory. The mere occurrence of some linguistic issues; such as postulation, usage, the real and the metaphorical – which are mentioned as preludes to certain jurisprudential discussions, and the mere occurrence of some theological and philosophical issues; such as the conformity between what is sought [by God] and [His] intention, and the discussion on the mental consideration of quiddity in unqualified and qualified notions – which are again mentioned as preludes or links to some jurisprudential issues, does nothing to remove the aforementioned issues from being jurisprudential, nor prevent the discipline in which they are found to be deemed an independent discipline in its own right – so long as the criterion for a jurisprudential issue is present therein, as will be demonstrated in what follows.

The Second Claim and Its Refutation

Here we mention two issues:

1. The earliest work in the discipline of legal theory of the Sunnī’s is the *Risāla* of al-Shāfi‘ī. In the same time period, the Shī‘a also wrote various treatises in the discipline of legal theory. Ibn Abī ‘Umayr (d. 216/831) and Yūnus ibn ‘Abd al-Raḥmān (d. 208/823) wrote on the reconciliation of conflicting traditions. They also both wrote on the topics of the general and the specific, as well as the abrogating and the abrogated, as can be seen by referring to their biographies

in the books of *rijāl*. al-Shāfi'ī was not from an earlier time than them, he was born in 150 AH, after the death of al-Ṣādiq (peace be upon him), whilst Yūnus ibn 'Abd al-Raḥmān met al-Sādiq (peace be upon him). Shāfi'ī died in 205 AH close to the time of death of Yūnus ibn 'Abd al-Raḥmān. Accordingly, it cannot be established that the original composers of the discipline of legal theory were the Sunnī school, rather it shows that the Shī'a wrote on the discipline of legal theory in the very same period of its emergence amongst the Sunnīs. Subsequently came Abū Sahl al-Nawbakhtī who wrote two treatises; one of which was regarding the invalidity of analogical reasoning and the isolated hadith report, and the other a refutation of al-Shāfi'ī's *Risāla*. Thereafter, the scope of the discipline of legal theory was broadened by Ibn Junayd, al-Mufid, al-Murtaḍā in *al-Dhar'ā* and al-Tūsī in *al-'Udda*. Accordingly, it also becomes clear to us that Ibn Junayd was not the first Shī'ī author in the discipline of legal theory.

2. Ibn Junayd is mentioned as having acted upon analogical reasoning (*qiyās*) in a number of books, however we hold the possibility that this attribution is out of place due to developments we have traced regarding the usage of the word *qiyās*. It is possible that what was intended by this word is what we now term 'consistency in spirit' (*al-muwāfaqa al-rūḥiyya*) with the Book and Sunna.

An explanation of this: The majority of the later legal theorists interpret traditions that command the checking of reports against the Book and the Sunna, such as "accept that which is consistent with the Book of Allah, and reject that which is inconsistent",³ as an explicit consistency and inconsistency (*al-muwāfaqa wal-mukhālafa al-naṣṣiyya*). This means that the report is compared with a specific Quranic verse and if the relationship between the two is incongruous (*tabāyun*) or even only partially overlapping (*'umūm min wajh*), then the report is discarded. If the relationship is congruent (*tasāwī*) or of absolute generality (*'umūm mutlaq*), it is accepted. However, we understand that what is intended by consistency is a consistency of spirit, i.e. that the content of the hadith is consistent with the general principles of Islam (*al-uṣūl al-Islāmiyya*), understood from the Book and the Sunna. Therefore, if the apparent meaning of a report suggests determinism, for example, then it is rejected due to the inconsistency with the belief in 'the middle stance between pre-determinism and absolute free will' as understood from the Book and the Sunna – without comparing the hadith to any specific verse per se. This notion that we have presented is what the later scholars of hadith termed 'holistic criticism' of a report (*al-naqd al-dākhilī*), i.e. comparing its content with the general principles and aims of

3 Muḥammad Bāqir al-Majlisī, *Biḥār al-anwār al-jāmi'a li durar akhbār al-a'imma al-aṭḥār* (Beirut: Mu'assasat al-Wafā', 1983), 2:235; al-Ḥurr al-'Āmilī, *Wasā'il al-shī'a ilā taḥṣil masā'il al-sharī'a* (Qum: Mu'assasat Āl al-Bayt, 1992), 27:118.

Islam. In source texts this is referred to as *qiyās*, for example, “compare it (*fa qiṣ-hu*) with the Book of God”.⁴ Accordingly, it is possible that what was intended by Ibn Junayd’s acting upon *qiyās*, was that he was from the school that was strict in its acceptance of traditions – that is those who required application of the theory of ‘holistic criticism’ to traditions and that there be ‘consistency in spirit’ with the Book and the Sunna – in contrast with the school of traditionists who believed in the certain issuance of the majority of traditions, irrespective of any consideration of them alongside the general principles of Islam. In support of what we have mentioned is that acting upon *qiyās* has been attributed to some of the greatest Imāmī scholars. For example, in the biographical work of Sayyid Baḥr al-‘Ulūm, he said, “Sayyid al-Murtaḍā has mentioned in his treatise on the isolated report that there are, amongst our reporters and transmitters of traditions, those who advocated *qiyās*, such as al-Faḍl bin Shādhān, Yūnus bin ‘Abd al-Raḥmān and a group of well-known scholars”.⁵ In *Kashf al-qinā’*, the author states, “Ṣadūq relates, in various places, that a group of their foremost scholars employed *qiyās*, and amongst these were some of the very first rank, such as Zurāra ibn A‘yan, Jamīl ibn Darrāj and ‘Abd Allāh ibn Bukayr”.⁶ It cannot even be entertained that these giants would have employed juristic *qiyās* (analogical reasoning) after pointing out that what was meant by *qiyās* at the time was a strictness in accepting hadith by employing the theory of holistic criticism. This is further supported by that which al-Muḥaqqiq states in *al-Ma‘ārij*: “The sixth issue: Our teacher al-Mufid said, “The isolated report which is definitive in providing an excuse [before God] is the one associated with evidence, consideration of which leads to knowledge; sometimes this [evidence] may be juristic consensus (*ijmā’*), a testament from rationality or a judgment from *qiyās*”.⁷

The Third Claim and Its Refutation

Here we present two points of consideration:

1. The presence of *Sharī‘a* principles in the traditions of the impeccable household (peace be upon them) does not render the discipline of legal theory futile

4 ‘Āmilī, *Wasā’il*, 27:123; Majlisī, *Bihār*, 2:244. [Translators note: The citations of the hadith are either from variant editions or not exact quotations. The relevant part of the cited hadith in the editions consulted reads; “If two conflicting traditions come to you, then compare them (*fa qiṣhumā*) to the Book of God and to our traditions ...” See ‘Āmilī, *Wasā’il*, 27:125–6 and Majlisī, *Bihār*, 2:244–5.

5 al-Sayyid Mahdī Baḥr al-‘Ulūm, *Rijāl al-Sayyid Baḥr al-‘Ulūm* (Tehran: Maktabat al-Ṣādiq, 1984), 3:215.

6 Asad Allāh bin Ismā‘īl al-Kāzīmī, *Kashf al-qinā’ ‘an wujūh hujjiyyat al-ijmā’* (N.p.: N.p., n.d.), 83.

7 al-Muḥaqqiq al-Ḥillī, *Ma‘ārij al-uṣūl* (Qum: Mu’assasat Āl al-Bayt, 1982), 187.

because the understanding of principles and rulings from the hadith relies upon several jurisprudential elements. These include;

- Verification of the apparent meaning in accordance with the linguistic discussions set out in the discipline of legal theory such as the discussions regarding the imperative and the negative imperative, implications, the general and the specific, the unqualified and the qualified,
- An understanding of the major premise regarding the authoritative nature of the apparent meaning [of linguistic evidence],
- An understanding of the authoritative nature of the isolated report,
- Application of the principles of conflicting evidence, should there be a conflict with the text.

These elements are all compiled within a single discipline: the discipline of legal theory. Accordingly, the mere presence of principles and rulings in the texts attributed to the impeccable ones does not nullify need for the discipline of legal theory.

2. The presence of jurisprudential principles themselves within the texts and the reports – such as reports indicating the authoritative nature of the isolated report, the non-authoritative nature of *qiyās*, the authoritative nature of the principles of exemption (*al-barāʿa*) and presumed continuity (*al-istiṣḥāb*), and the principles of conflicting evidence – do not nullify the value of the discipline of legal theory. Rather it emphasizes to us that this discipline has emerged from a pure source: the *Ahl al-Bayt* (peace be upon them), rather than it having come from any other school as some of the traditionists have claimed. The presence of jurisprudential issues in the texts, is like the presence of jurisprudential discussions within juristic discussions. An example of this is what al-Kulaynī mentioned from Faḍl bin Shādhān in *al-Kāfī* in the chapter of divorce, where he justified the invalidity of some forms of divorce due to ‘prohibition necessitating corruption’ (*al-nahy yaqtaḍī al-fasād*)⁸ which is a jurisprudential principle. Similar is that which we see in the work of the author of *al-Hadāʾiq* when he discusses the authoritative nature of *ijmāʿ* within his discussion of the Friday prayer.⁹ All of this does nothing to undermine the importance and independence of the discipline of legal theory versus other disciplines. The criterion for considering an issue to be of legal theory is that it discusses the authoritative nature of juristic evidence, whether this be mentioned in an independent form or within the context of a book of hadith, or within the context of a book of juristic inference. By nature, every discipline

8 Muḥammad ibn Yaʿqūb al-Kulaynī, *al-Furūʿ min al-Kāfī* (Tehran: Dār al-Kutub al-Islāmiyya, 1988) 6:93.

9 Yūsuf al-Baḥrānī, *al-Hadāʾiq al-nāḍira fī aḥkām al-ʿitrat al-tāhira* (Qum: Muʿassasat al-Nashr, 1984) 9:361–2.

develops towards completion in a gradual manner rather than instantaneously, as demonstrated in the case of the discipline of logic. Shaykh al-Ra'īs [Ibn Sīnā] mentions in *al-Shifā* that Aristotle did not compose the discipline of logic, he only perfected that which had reached him of the discipline.¹⁰ That some of the issues of the discipline of legal theory have been treated within various other disciplines, and were then brought together in a gradual manner into a single discipline referred to as the discipline of legal theory, due to them sharing a single common goal, does nothing to undermine the importance of the discipline and its independence.

The Phases of Jurisprudential (uṣūlī) Thought

The criterion for a phase, according to our conception of it, is not related to the time span of the discipline, as sometimes a period of time may pass without the attainment of any progress and renewal in the journey and development of that discipline. The only criterion for distinguishing one phase from another is the emergence of progressive theories that serve to propel the development of the journey of those ideas, and this usually only occurs as a result of intellectual competition and cultural development. Just as societies develop within the preserve of civilization, through economic and cultural competition amongst and between those societies, the development of any ideas requires a form of deep struggle between the founders of those ideas, that they may benefit from such struggle in the process of crystallising their theories and renewing their ideas. Accordingly it is upon this basis – that is the basis of intellectual struggles (*al-ṣirāʿ al-fikrī*) – that we shall delimit the phases of jurisprudential thought amongst the Imāmi Shīʿa.

The First Phase, Which Reflects the Stance of the Shīʿī Scholars in Contrast with Other Theoretical Schools as Well as Those Shīʿī Scholars Influenced by These Schools

Within the context of identifying *Sharʿa* precepts, there were two mutually competing schools, the school of opinion (*madrasat al-raʾī*) and the school of hadith (*madrasat al-ḥadīth*). As for the school of opinion, its mischief originated from some of the companions and caliphs who prevented the recording of the Sunna for specific political goals, whilst relying on their own personal opinions and ideas when it came to things related to public interest. This school continued into the second century whereby it became the general inclination of the Iraqis' following Abū Ḥanīfa who upheld the authoritative nature of analogical reasoning (*qiyās*) and juristic preference (*istiḥsān*), as well as requiring 'holistic criticism' (*naqd dākhilī*) of hadith by comparing them against

10 Shaykh al-Ra'īs Ibn Sīnā, *al-Shifā: al-Mantiq* (Qum: Maktabat Āyatullāh Mar'ashī Najafī, 2012) 2:356.

the general principles of Islam. As for the school of hadith, which emerged as a response to the continuity of the school of opinion and took form in the Hanbali and Maliki doctrinal schools (*madhāhib*) more so than any other, it was extreme in its reliance upon hadith simply as instances of a trustworthy report (*khabar thiqa*) without consideration of general principles.

Each one of these two schools influenced some Shī'ī scholars, as is attributed to Ibn Junayd with regard to his views on employing *qiyās* – if the attribution is correct – whilst that which resembles the opinions of the *Hashawīyya*¹¹ are attributed to some others. Accordingly, and from this starting point, Shī'ī scholars embarked upon a serious engagement into jurisprudential thought, with the first phase of the journey opposing the school of opinion, the school of hadith, and whoever from amongst the Imāmī scholars had been influenced by either of them. The biographical dictionaries record that some of the Banū Nawbakht, and others, wrote treatises on the in-authoritativeness of analogical reasoning and on [the issue of] conflicting hadith. al-Shaykh al-Ṭūsī in *al-Fihrist* and al-Sayyid al-Murtaḍā in *al-Intisār* mentioned the intense opposition to the method of Ibn Junayd,¹² whilst al-Shaykh al-Mufid wrote a treatise on the invalidity of analogical reasoning, as well as a book titled 'The Knowledge Trove of Light for Refuting the Traditionists (*Maqābis al-anwār fī al-radd 'alā ahl al-akhbār*)'.¹³ Such treatises gave jurisprudential thought a breakthrough and perceivable progress, as can be seen in the *Udda* of al-Shaykh al-Ṭūsī. After the passing of al-Ṭūsī, jurisprudential thought fluctuated between progress and stagnation. During the time of the Daylamites, further progress was made due to the presence of intellectual competition, however this progress stopped by the time of the Seljuks due to the existence of pressure and restrictions.

It [jurisprudential thought] was revived again after the battle of *al-Tutār* due to the greater scope for intellectual freedom. al-Muḥaqqiq, in *al-Tadhkira* and al-Allāma, in *al-Mu'tabar*, displayed the extent of the depth of jurisprudential thought in comparative juristic inference (*al-fiqh al-muqāran*). This period, although short, left its mark even upon the thought of scholars of other doctrinal schools. Abu Zahra, in his book *Ibn Taymiyya*, mentions that Ibn Taymiyya was influenced by the juristic thought of the Shī'a contemporary to him, as demonstrated in his juristic inference on some of the issues relating to divorce. After this period, jurisprudential and intra-school juristic thought returned to stagnation, and no sign of comparative juristic thought, nor points of Imāmī innovation in jurisprudential thought can be seen in the works of al-Shahīd

11 [Translators note: *Hashawīyya* is a pejorative term used here to refer to extreme traditionists]

12 Abū Ja'far Muḥammad ibn al-Ḥasan al-Ṭūsī, *al-Fihrist* (Qum: Mu'assasat al-Nashr, 1996), 209.

13 *Ibid.*, 338–339; Aḥmad ibn 'Alī al-Najāshī, *Rijāl al-Najāshī* (Qum: Mu'assasat al-Nashr, 1995), 399–402.

al-Awwal. In fact, al-Shahīd al-Thānī stated in his *Kitāb al-Qaḍā'* that it would suffice a student in logic and legal theory to study the *Mukhtasar* of Ibn Ḥājjib¹⁴ – even though this book demonstrates no Imāmī creativity.

The Second Phase, Which Marks the Intellectual Struggle between the Uṣūlī and Akhbārī Schools

After the Shī'a became politically established in the Safawid era at the beginning of the 10th century, there emerged from within them the Akhbārī school, epitomized by Mulla Aḥmad Amīn al-Astarabādī and those influenced by him; such as the two Majlisī's, Fayḍ al-Kāshānī, Ḥurr al-'Amilī and Shaykh Yūsuf al-Bahrānī. Among the factors that gave rise to the emergence of this school, per some Shī'ī scholars, was that the jurisprudential principles employed in inferring *Sharī'a* precepts relied upon theological and philosophical ideas, which resulted in distancing the *Sharī'a* precepts from their pure sources – the traditions of the *Ahl al-Bayt* (peace be upon them). From here began a deep intellectual struggle between the two schools, and jurisprudential thought made great progress through this struggle, taking remarkable steps forward at the hands of al-Wahīd al-Biḥbahānī, al-Muḥaqqiq al-Qummī, Ṣāhib *al-Fuṣūl* and al-'Allāma al-Anṣārī.

The Third Phase, Which Marks the Contemporary Era

The period in which we currently live, due to economic and political factors, has led to a deep struggle between Islamic culture and other cultures at various levels. Accordingly, it is necessary for the discipline of legal theory and its form to progress to a level appropriate to the conditions of contemporary life.

14 Zayn al-Dīn al-'Amilī, *al-Rawḍat al-bahiyya fī sharḥ al-lum'a al-Dimashqiyya* (Beirut: Dār al-'Ālam al-Islāmī, N.D.) 3:65.