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Moral Rationalism and Independent rationality as a source of Sharī a in Shī ī uṣūl al-fiqh; In search of an Adliyya reading of Sharī a

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Moral Rationalism and Independent rationality as a source of *Sharīʿa* in Shīʿī *uṣūl al-fiqh*; In search of an ʿ*Adliyya* reading of *Sharīʿa*

Ali-reza Bhojani

Abstract

Within Shīʿī works of *Sharīʿa* legal theory (*uṣūl al-fiqh*) there is a theoretical space for reason as an independent source of normativity alongside the Qur'ān and the Prophetic tradition. This space stems from a meta-ethical moral rationalism considered fundamental to Shīʿī theology. The position holds that unmediated reason is capable of understanding the morally praiseworthy and the morally blameworthy independently of revelation. Describing themselves as ʿ*Adliyya* (literally the people of Justice) this meta-ethical position allows the Shīʿa to attribute a substantive rational conception of justice to God, both in terms of His actions and His regulative instructions (*aḥkām*).

Despite the Shīʿī adoption of this meta-ethical position, and the jurisprudential space held for independent rationality that implies rational morality must be a condition for the validity of any *Sharīʿa* precept attributed to a Just God, independent judgements of rational morality play little or no role in the actual inference of *Sharīʿa* norms within mainstream contemporary Shīʿī thought. As part of a search for an ʿ*Adliyya* reading of *Sharīʿa*, this study examines the theoretical reason for why this moral rationalism plays no substantive role in the actual inference of *Sharīʿa* precpets through a close examination of the notion of independent rationality as a source in modern Shīʿī *uṣūl al-fiqh*.

The obstacles preventing the ʿ*Adliyya* moral rationalism from impacting the reading of *fiqh* in modern Shīʿī thought are shown to be purely epistemic. In line with the 'emic' approach adopted through the study, these epistemic obstcales are revistsed with the view of identifying scope for allowing a reading of *Sharīʿa* that is consistent with the fundamental theological moral rationalism of Shīʿī thought. It is argued that judgements of rational morality, even when not definitively certain, can not be ignored in the face of the apparent meaning of texts that are themselves also not certain. A move towards an ʿ*Adliyya* reading of *Sharīʿa* demands that the strength of independent rational evidences be reconciled against the strength of any other apparently conflicting evidences such that independent judgements of rational morality act as a substantive condition for the validity of precpets attributed to a Just and moral God.

Moral rationalism and independent rationality as a source of *Sharīʿa* in *Shīʿī uṣūl al-fiqh*;

In Search of an *ʿAdliyya* reading of Shariʿa.

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Notes

The transliteration style used in this thesis follows what is now recognised as standard conventions for Arabic. The *tāʾ marbūṭa* is left as *–a*, as opposed to *–ah*, except in cases of *iḍāfa* constructions before *ḥamzat al-waṣl*. All dates are noted in the format of Hijrī Qamarī/Common Era, unless qualified otherwise.

Citations from the Qurʾān are noted by reffering to the number of the *ṣūra* followed by the number of the *āya or āyāt*, for example mention of *āyāt* 65-82 of *ṣurat al-Kahf* appears as Qurʾān 18:65-82.

References are provided in full as a footnote on the first citation including the full name of the author and other additional details. Subsequent citations of the same source are provided in an abbreviated manner.

1. General introduction

1.1 Introduction

Twelver Imāmī Shīʿa scholars[1] have been concerned with making space for the role of *al-ʿaql* (reason or rationality) as a normative source since the very earliest moves towards a systematization of their ideas in *uṣūl al-fiqh* first began[2]. *Uṣūl al-fiqh* is the theoretical discipline that studies the general principles involved in the inference of religious instructions, or orthopraxic precepts (*Sharīʿa aḥkām*), from their sources. As the discipline of *uṣūl al-fiqh* developed it was not long before *al-ʿaql,* as an independent source of *Sharīʿa aḥkām,* became explicitly incorporated into this theoretical system in the form of what modern Shīʿī legal theorists (*Uṣūliyūn*) now refer to as *al-mustaqillāt al-ʿaqliyya* independent rationality.

The theoretical role of *al-ʿaql* as a normative source of *Sharīʿa*, alongside the Qurʾān and Sunna[3], is linked inextricably to the Shīʿī acceptance of the theological doctrine of the rational intelligibility of the praiseworthy and the blameworthy (*al-ḥusn wa al-qubḥ al-ʿaqliyān).* This meta-ethical doctrine, often identified as a Muʿtazilī position and referred to as a 'rationalistic objectivism'[4], is a kind of moral rationalism, a cognitivist theory of ethics that maintains that the values of acts are knowable through natural human reason. This offers a rational moral framework for the *Sharīʿa* in contrast to the position now dominant across

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[1] Henceforth referred to simply as Shīʿa or Imāmī .

[2] For the early formulation of Shīʿī legal theory and the consciousness of a need to accommodate a role for rationality see; M. Aftab Uddin Ahmed, 'The Origin of Shīʿī *Uṣūl al-Fiqh* and its Systematization up to the 5th Century, A.H.', unpublished MA thesis, (Montreal, McGill University, 1970) and Norman Calder 'The Structure of Authority in Imāmī Shīʿī Jurisprudence', unpublished PhD dissertation, (London, School of Oriental and African Studies, 1980), especially chapter VIII 'Reason and Revelation' pp. 206-222.

[3] Technically, *Sunna* consists of the statements (*aqwāl*), actions (*afʿāl*) and tacit approvals (*taqrirāt*) of the Prophet Muḥammad and the Twelve Imāms. See ʿAbd al-Hādī al-Faḍlī, *Mabādi al-uṣūl* (Qum, Matbūʿāt Dīnī, 1962) p. 22. To reflect this specific notion of sunna (literally custom or practices) referred to in the context of this study, the transliteration of the term has been capatilised.

[4] George Hourani, *Islamic Rationalism* (Oxford, Clarendon Press, 1971), p. 10.

Muslim thought, a position largely sharped by the contrasting Ashʿarī conception of value[5].

The Ashʿarī 'theological voluntarism' or 'divine command theory'[6] holds that the praiseworthiness and blameworthiness of acts are predicated solely on the basis of God's 'subjective' command, and are unknowable except through revelation. In contrast to this, the substantive notion of justice generated in the position taken by the Shīʿa and the Muʿtazila (collectively known as the *ʿAdliyya*, literally the people of justice) holds the theoretical foundations for what may be termed a 'moral jurisprudence', where a conception of rational morality is not only a substantive independent source of *Sharīʿa* but also a condition for the validity of *Sharīʿa* precepts derived from textual sources provided by a God who is Just in His Essence, His Actions and His Commands.

Yet despite this meta-ethical position, and the resultant inclusion of *al-ʿaql* as an independent source of religious precepts in Shīʿī jurisprudence, independent normative judgements of morality seem to have little or no impact on the actual inference of religious regulations found in the corpus of *Sharīʿa* precepts properly referred to as *furūʿ al-fiqh* or simply *fiqh*. A legal positivism theoretically associated with the Ashʿarī meta-ethics[7], in the sense that considerations of legal validity are detached from moral worth, appears as prevalent in Shīʿī *fiqh* as it does in any other Muslim legal school. Shīʿī theologians do recognise that the principle of the independent intelligibility of moral values is foundational to their theology, influencing their conception of God, the nature and purpose of Prophecy, the objectives of *Sharīʿa* and the theoretical role of rationality as a source of *Sharīʿa*. Yet when it comes to the actual inference of *Sharīʿa* precepts,

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[5] For a survey of different ethical trends and the dominance of the Ashʿarī theory of value see George Hourani, *Reason and Tradition in Islamic Ethics* (Cambridge, Cambridge University Press, 1985). In contrast Al-Attar sees the historical dominance of an Ashʿarī meta-ethics as being only perceived, arising from a misreading of Muslim intellectual history, see Mariam al-Attar, *Islamic Ethics; Divine Command Theory in Arabo-Islamic thought* (Oxon, Routlegde, 2010).

[6] For an overview of this contrasting meta-ethical position as described in Philosophy of Religion see Mark Murphy, 'Theological Voluntarism', Stanford Encyclopaedia of Philosophy, [http://plato.stanford.edu/entries/voluntarism-theological/], 2 November 2008.

[7] The link between Ashʿarī theology and legal positivism has been well noted, see George F. Hourani, 'Ethics In Medieval Islam: A Conspectus' in George F. Hourani (ed.) *Essays on Islamic Philosophy and Science* (New York, State University Press, 1975), pp. 128-135 and Hourani, *Reason and Tradition in Islamic Ethics*, pp. 57-66.

the influence of independent judgements of reason are almost non-existent. Muḥammad Bāqir al-Ṣadr (d. 1400/1980), author of one of the most widely taught Shī'ī courses of *uṣūl al-fiqh*, explicitly accepts that independent rationality is nothing more than a *potential* source of *Sharī'a* and that it was not referred to as a source for any of his own *fiqhi* judgements[8]. This apparent tension between theoretical resources and actual juristic practice offers the context for the central question this study aims to engage with.

After the schools historic decline, the influence of Mu'tazilī thought amongst Sunni Muslim intellectuals took on renewed importance with the emergence of Islamic modernist thinking in the latter part of the nineteenth century. Although few modernist thinkers explicitly identify themselves as Mu'tazilī, Mu'tazilī 'rationalism and free-thinking' have been described as becoming 'symbols' upheld by a range of Muslim intellectuals that demonstrate 'the ability of Muslims to encounter change and external challenges in ways that can be construed as Islamic'[9]. With this symbolic background and the typical eclecticism of much Muslim modernist discourse, Muslim scholars and intellectuals have been selectively employing 'particular aspects of Mu'tazilī doctrine and intellectual history' as a platform to offering Muslim religious thought an alternative paradigm to the dominant readings of *Sharī'a*[10]. Despite the breadth of resources held within the Mu'tazilī tradition, it is the potential specifically in the *'Adliyya* meta-ethical doctrine of the rational intelligibility of the praiseworthy and the blameworthy (*al-taḥsīn wa al-taqbiḥ al-'aqliyān),* with its corresponding role for reason as an independent source, which seems to hold the key to offering a more morally and rationally informed reading of *Sharī'a.* Acknowledging the presence of these pre-existing resources that can offer a framework for a

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[8] *Al-Durūs fi'ilm al-uṣūl* (Qum, Markaz al-Abḥāth wa al-Darāsāt al-Takhuṣṣaṣiyya lil Imām al-Shahīd al-Ṣadr, 2003) Vol. 2, p. 203; *al-Fatāwa al-wāḍiha (Beirut, Dār al-ta'āruf lil-matbu'āt, 1983)* p. 98 and Hossein Modarressi Ṭabātabā'ī, *An Introduction to Shī'ī Law* (London, Ithaca Press, 1984) p. 4.

[9] Richard C. Martin, Mark R. Woodward and Dwi S. Atmaja, *Defenders of reason in Islam; Mu'tazilism from medieval school to modern symbol* (Oxford, Oneworld Publications, 2003) p. 200. For a comparative discussion of the 'eclecticism' within the interpretive schemes of Muslim 'modernists' see Abdullah Saeed, 'Some reflections on the Contextualist approach to ethico-legal texts of the Quran' *Bulletin of SOAS*, Vol. 71 2 (2008), pp. 221–237.

[10] *Ibid*, pp 200-217. For a comparative discussion of the 'eclecticism' within the interpretive schemes of Muslim 'modernists' see'Abdullah Saeed, 'Some reflections on the Contextualist approach to ethico-legal texts of the Quran' *Bulletin of SOAS*, Vol. 71 2 (2008), pp. 221–237.

theological interpretation of *Sharīʿa,* capable of addressing many of the concerns arising from the practice of *Sharīʿa* in the contemporary world, does however raises the question of why this potential has not yet been realised even by proponents of this meta-ethical theory themselves[11]. Examination of the impact of moral rationalism on Shīʿī readings of *Sharīʿa* seeks to explain this gap in a tradition that maintains a Muʿtazilī like moral rationalism *and* a living and vibrant *fiqhi* system adhered to by millions of Muslims around the world.

Although moral rationalism is undoubtedly a characteristic feature of Muʿtazilī theology, it is not a doctrine that the Muʿtazila alone can claim to hold. Despite the persisting stereotypical demarcation of a dividing line in ethical theory between the Ashʿarī and the Muʿtazlī schools, it has been shown that throughout the history of Muslim religious scholarship adherents to a moral rationalism can be found from a range of scholars hailing from across Sunni theological and legal school affiliations[12], whilst the fundamental position of a moral rationalism in Shīʿī theology- as shall be shown in this study- is beyond question. This study aims to demonstrate the reasons why the potential in this moral rationalism has yet to be realised at the level of *furūʿ al-fiqh* in the Shīʿī tradition, identifying both the epistemic obstacles to this potential and the scope for overcoming them. Not

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[11] A distinctive system of law was never developed by the Muʿtazila, even the giant Muʿtazilī theologian Qāḍī ʿAbd al-Jabbār pronounced his legal verdicts on the basis of the Shāfiʿī school of *fiqh*. For the 'theocentric nature of Muʿtazilite moral enquiry' see Sophia Vasalou, *Moral Agents and Their Deserts; The Character of Muʿtazilite Ethics* (Princeton, Princeton University Press, 2008) pp. 12-26, and for a more general discussion of the relationship between theology and law in Muslim thought see Fazlur Rahman, 'Functional Interdependence of Law and Theology' in G. E. Von Grunebaum (ed.), *Theology and Law in Islam* (Wiesbaden, Otto Harrassowitz, 1971) pp. 88-99.
[12] That the theory has a long history of proponents beyond the Muʿtazila and the Shīʿa has now been well noted. Ibn Taymiyya, in his *Minhāj al-Sunna,* lists Sunni scholars from across the Karrāmiyya, Hanafī, Mālikī, Shāfiʿī and Hanbalī schools all of whom upheld a rationalist meta-ethics and even describes how some of them actually accused al- Ashʿarī of being amongst the *ahl al-bidʿa* (people of reprehensible innovation) on account of his theistic subjectivism. Elsewhere, in his *Kitāb an-Nubūwwāt,* Ibn Taymiyya makes clear that he too rejects the Ashʿarī position and affirms that 'good' and 'evil' are not dependent on divine commands and prohibitions, see George Makdisi, 'Ethics in Islamic Traditionalist Doctrine' in Richard G. Hovannisian (ed.) *Ethics in Islam* (Malibu, Undena, 1985), pp. 47-63. For a more extensive study showing the range of Sunni legal thinkers who adopted what is here being described as an *ʿAdliyya* meta-ethics see Kevin, A. Reinhart, *Before Revelation; The Boundaries of Muslim Moral Thought* (New York, SUNY Press, 1995). However, according to Khalid Abou El Fadl, it seems that this breadth of early and classical Muslim scholarship addressing the question of the intelligibility of the praiseworthy and theblameworthy has been 'dogmatically ignored' by contemporary Sunni traditionalist legal scholarship; *Speaking in God's Name; Islamic Law, Authority and Women* (Oxford, Oneworld, 2003), p. 160.

only can this be instructive of possible shifts in the actual body of *furūʿ al-fiqh* for adherents to the Shiʿī tradition but it can also be instructive of fertile trajectories for the broader on going efforts for alternative, theoretically consistent and justifiable, readings of *Sharīʿa* which seek to build their hermeneutics from the theological conception of a Just and moral God.

The moral rationalism from which such conceptions of Divine Justice stem offer a framework for what may be termed an *ʿAdliyya* reading of *Sharīʿa,* where independent judgements of rational morality are afforded the status of an independent source for *Sharīʿa* precepts, and where the interpretation of religious texts can *only* be deemed valid *if* they do not contradict basic and rationally determined principles of morality. Yet rational morality seems to play little or no role in the actual inference of *Sharīʿa* precepts in mainstream Shīʿī fiqh. This study is directed then to understanding the reasons why a distinctively moral or *ʿAdliyya* reading of *Sharīʿa* - which would incorporate a substantive role for independent judgements of *al-ʿaql* - has not emerged, despite the existence of the aforementioned fundamental resources in Shīʿī theological and jurisprudential thought. With the recognition of my own positioning as an active participant within the contemporary Muslim scholarly discourse - more of this positioning and its implications for the study will be said in the section dealing with methodological concerns - it is somewhat natural that this central question be annexed with a further normative concern- how *can* the theological resources, of an acceptance of the intelligibility of praiseworthy and blameworthy actions, fundamental to the *ʿAdliyya* tradition come to have a greater bearing on the independent role of *al-ʿaql* in contemporary Shīʿī readings of *Sharīʿa* ?

1.2 Research Context

The implications for such a reading of *Sharīʿa* are of course broad reaching, but it is unsurprising that the ethical theory upon which it is based, claiming that basic moral values are universally and independently intelligible, has been picked up by theorists searching for cross cultural or plural foundations for the human

rights discourse[13]. A rights discourse grounded in a theological and philosophical conceptual infrastructure native to Muslim religious thought is likely to be more effective in Muslim societies than a discourse fundamentally rooted in a euro-centric philosophical and theological framework, and also more effective than a discourse claiming no philosophical foundations at all[14]. Abdul Aziz Sachedina identifies the *'Adliyya* theological framework as being pivotal to a reading of Islamic thought that can provide such a foundation;

> Islamic political theology based on the central doctrine of a just and merciful God bound by His own moral essence to guide humanity to create a just public order can serve as the major theological-ethical foundation for human rights and its prerequisite, namely, democratic governance in Muslim societies[15].

Although this is a framework for an 'Islamic political theology' which is intrinsic to Muslim thought and deeply rooted in the Qur'ān, Sachedina claims that as its fundamental components were only upheld by the Muʻtazila and the Shīʻa, its potential impact was never felt.

> The Muʻtazilī and Shīʻite theology, with its emphasis on a substantial role for human reason to discern moral truth, and with its potential to expound a thesis about the teleological understanding of nature within the parameters of revelation was abandoned in favour of a divine command ethics...[16]

The divine command ethics characteristic of the Ashʻarī theory of value that came to bear, all be it in differing degrees, upon almost all readings of *Sharīʻa* meant that the recognition of inherent human dignity in Muslim societies 'had to await a

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[13] For a preliminary argument demonstrating the 'conceptual resources to explicate and justify contemporary human rights discourse', by reference to the Muʻtazilī tradition, see John Mikhail, 'Islamic Rationalism and the Foundation of Human Rights' in Arend Soeteman (ed.) *Pluralism and Law: Proceedings of the 20th IVR Congress*, *Global Problems*, Vol. 3, (2005) pp. 61-70.

[14] Whether a 'foundationless' theory of human rights is actually possible is still up for debate. For a prominent argument in favour of such a formulation see the two essays of Michael Ignatief and the responses to them in Amy Gutman, (ed.) *Human Rights as Politics and Idolatry* (Princeton University Press, 2001).

[15] *Islam & the Challenge of Human Rights* (Oxford, Oxford University Press, 2009), p. 25.

[16] *Ibid.* p. 86.

modernizing human rights discourse'[17]. Although Sachedina's analysis reflects a concerted and welcome effort to offer a reading of Muslim theology and scripture which may succeed in engaging Muslim intellectuals and secularists proponents of Human rights in a constructive dialogue towards enhancing a global human rights regime, it leaves many questions relevant to the current study, and to the success of his own project unanswered.

Despite claiming to be 'non sectarian'[18] in his approach he identifies the pivotal notion of an innate human ability to discern moral values as solely being a doctrine of the Mu'tazila and the Shī'a, failing to identify the breadth of classical scholarship which accepted this notion from beyond these groups[19]. What is of greater concern, both in terms of the prospects of Sachedina's own thesis and in the context of the aims of this study, is that there seems to be little engagement with the problematic of why and how the Shī'a (and historically the Mu'tazila) can have a *fiqhi* or juridical system which is as problematic with respect to human rights as any other Muslim legal system. This being the case despite the Shī'a and Mu'tazila affirming that humans have an innate ability to discern moral values and their upholding of the 'doctrine of a just and merciful God bound by His own moral essence'[20]- the two theological pillars upon which Sachedina wishes to build his new Islamic political theology.

Sachedina does identify what he considers to be 'the epistemic problem' confronting Muslim jurists, in that they need to find a way to re-establish the 'historically severed connection between theological ethics... and prevalent Islamic jurisprudence'[21]. It seems clear that any such attempts would benefit greatly from an investigation in to why schools of thought who do adhere to the theological notions of a rational morality, and a correspondingly Just God, have not adopted a jurisprudential system significantly shaped by these theological doctrines. The *fiqhi* opinions of the Shī'a, and historically the Mu'tazila, are testament to the fact that a theological position conferring human reason with

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[17] Sachedina, *Islam & The Challenge of Human Rights*, p. 86.
[18] *Ibid,* p.19.
[19] See *supra* 12.
[20] Sachedina, *Islam & The Challenge of Human Rights,* p. 25.
[21] *Ibid,* p. 109

the ability to understand good and bad coupled to a notion of a Just God, on their own, does not necessitate a 'moral' jurisprudence.

To come to an understanding of how such theological principles have, or have not, informed Muslim religious jurisprudence calls for an in depth analysis of the hermeneutical theories which govern the respective systems of interpretation - and thus requires engagement with the traditional literature of *uṣūl al-fiqh* and *fiqh*. The absence of such an endeavour in Sachedina's work is all the more surprising in view of his claim to having mastered the juridical tradition of Islam[22], and his aim of engaging in his conversation, not only secularists and Muslim intellectuals, but also traditional seminarians[23]. Although in my view he falls some way short of achieving a meaningful engagement with these seminarians, he is absolutely right in identifying them as key actors in legitimising any movements within Muslim religious discourse that seek broad appeal. It is the voice of the traditionalist Muslim scholars, or ʿ*ulamā,* which is still the most authoritative in the religious affairs of Muslim societies, and their 'language' of choice is still predominantly embedded in the frameworks of *fiqh* and *uṣūl al-fiqh*[24]. It is the continued importance of this framework which calls for a detailed examination of the role of independent rationality as a source of *Sharīʿā* precepts in *uṣūl al-fiqh* for one in search of anʿ*Adliyya* reading of *Sharīʿā*. *Al-ʿaql* represents the theoretical source of *Sharīʿā* which directly relates from ʿ*Adliyya* theological ethics and thus offers an ideal prism through which one can asses why these theological premises have not informed Muslim understandings of religious normativity, simultaneously offering insights into how the development of a moral jurisprudence may emerge from within the most authoritative discourse of Muslim religious thought itself.

The importance of examining the role of *al-ʿaql* in *uṣūl al-fiqh* has not gone unnoticed. Anver Emon uses natural law as an 'analytic concept' to investigate how pre-modern Sunni *uṣūl al-fiqh* dealt with the notion of reason as an

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[22] Sachedina, *Islam & The Challenge of Human Rights,* p. 42.
[23] *Ibid,* p. 113.
[24] It has been convincingly argued that *uṣūl al-fiqh* is the Wittgentsteinian 'language game' of Shīʿa jurists. Seyed M. Ghari S. Fatemi, 'A Hermeneutical Amalgam: A Conceptual Analysis of the Shīʿīte *Uṣūl al-Fiqh'*, unpublished conference paper presented at the Durham University International conference *Seminary Education; Shia and Christian perspectives*, (Durham, 2010)

authoritative source of *Sharīʿa*. Demonstrating that debates on the issue 'were fundamentally linked to theological and philosophical considerations'[25], he rightly identified that it was how jurists engaged with the theological question of moral epistemology at the heart of this study, 'whether their use of reason (*ʿaql*) alone can be the basis for knowing the good (*ḥusn*) and the bad (*qubḥ*)'[26], which was the frame for their deliberations. Again he notes that the justification of rationality as a source of *Sharīʿā* was not unique to any particular school; rather what he terms the 'fusion of fact and value' which allowed natural reasoning in cases where textual sources are silent can be seen in 'jurists of varying theological and legal school affiliations'[27].

The varying modes of natural reasoning that he describes within the dual typology of either a 'hard naturalism' or a 'soft naturalism', did however justify themselves in terms of quite different theological premises- premises which have impacted on the extent to which natural reasoning is actually afforded a space within the respective methodologies. The 'Hard Natural Law' of al-Jaṣṣāṣ (d. 370/980), Qāḍi ʿAbd al-Jabbār (d. 415/1025) and Abū al-Ḥusayn al-Baṣrī (d. 477/1085) was formulated on distinctly *ʿAdliyya* theological principles; 'that God only does good and is incapable of doing evil'[28]. Although 'Voluntarist jurists' were vociferous in their critique of what was deemed a doctrine that undermined God's omnipotence, they 'were not so jurisprudentially naive as to assume that sufficient source-texts exist[ed] to address every potential legal issue'[29].

This pragmatic recognition leads to the first of two 'ironies' described by Emon. Despite their theological stance, the voluntarist's still managed to 'fuse fact and value', allowing space for *al-ʿaql* to act as a source of natural reasoning. This was achieved with only a subtle twist to the Hard Naturalist theological premise whilst preserving the voluntarist concern for maintaining Gods absolute omnipotence. Although the voluntarist jurists continued to uphold that God was not *obliged* to act in line with 'the good', they argued that due to His evidentially

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[25]Anver M. Emon, *Islamic Natural Law Theories* (Oxford, Oxford University Press, 2010), p.3.
[26] *Ibid,* p. 21.
[27] *Ibid,* p. 189.
[28] *Ibid,* p. 25.
[29] *Ibid*, p. 31.

consistent grace (*faḍl or tafaḍḍall*), it could be seen that nature has indeed thus far been imbibed with a constant good. The resultant picture of nature was one that can be empirically investigated to demonstrate that 'God created the world for the purpose of supporting, maintaining and preserving the interests of people'[30]. This second model of fusing fact and value is designated 'soft' by Emon, as although it also deems nature a source of normative value and thus subject to investigation through independent rationality, 'it is not an unchangeable, indubitable good'[31], the value in nature investigated by *al-ʿaql* is a contingent quality still dependent on, and subject to God's will.

Although not referred to by Emon, it has been previously shown that it is not only the natural, or independent, reasoning of soft naturalists that display the 'irony' which required the recourse to God's grace to circumvent. Aron Zysow showed that the much more central legal mode of reasoning by analogy (*Qiyās*) in its *munāsaba* or 'appropriateness' form, as preferred by the Voluntarist jurists discussed by Emon, also raised such issues by demonstrating 'an apparent incompatibility between Ashaʿrite ethics and that method of analogy which embodies legal rationality'[32]. The fusion of fact and value that this form of reasoning necessitates identifies God's purposes with those of man. This has clear implications to the congruence between theology and legal method, '[i]n identifying God's purposes with those of man, the Ashʿarites admitted that there were common standards for rational human action. But they could do so only by retreating from the ethical relativism'[33]. Despite the sophisticated means of reconciling such inconsistencies described by Emon, Zysow noted that 'the bulk of jurists seem to have proceeded without regard to the question' of how to reconcile their legal practice with the demands of their theological premise regarding moral cognition[34].

Although Emon shows that both groups of Sunni jurists, Hard and Soft Naturalists, did in fact accord reason a role as a source of *Sharīʿā*, he is at pains to

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[30] Emon, *Islamic Natural Law Theories* p. 32.
[31] *Ibid,* p. 33.
[32] Zysow, Aron, 'The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory', unpublished PhD thesis (Harvard University, 1984), p. 341.
[33] *Ibid,* p. 347.
[34] *Ibid.*

point out that the differing theological premises they set out from did have a significant impact upon how the role of reason was subsequently developed or, in the case of Soft Naturalists, circumscribed. 'The poignancy of this ironic congruence in natural law theories, given the fierce theological differences between both groups is undercut by the theories of practical reasoning developed by Soft Naturalists'[35]. With the exception of al-Tūfi (d. 716/1316), the soft naturalists examined by Emon 'developed theories of practical reasoning that *limited* the epistemic role of reasoned deliberation of the law'[36] (emphasis added). The resultant theories of practical reasoning through *maṣlaḥa* (public or societal utility) as 'a mediating concept between the purposes of the law (*maqāṣid*) and the *ratio legis* of a new rule of law (*ḥukm*)'[37], was a means for jurists such as al-Ghazāli (d. 04/1111), al-Rāzi (d. 605/1209), and according to Emon even al-Shāṭibi (d. 790/1388) 'to circumscribe the role of reason, permitting reasoned deliberation only on the most serious and necessary matters affecting a polity'[38]. This resonates with Zysow's 'contention' that ʿAshʿarī scholars of *uṣūl al-fiqh* were not unaware of the apparent theological complications inherent in the *munāsaba* model of analogy, which itself is at the heart of the *maṣlaḥa-maqāṣid* hermeneutic, and that in fact 'significant developments in their theory were meant to resolve this'[39].

The second of Emon's two ironies stems directly from this recognition that the model of natural reasoning developed by Soft naturalists was expressly designed to curtail the scope of such natural reasoning. Yet the current trend of an ever-increasing reference to the *maṣlaḥa-maqāṣid* model by a range of Muslim reformers is being employed to legitimise the very manor of reasoning which 'the pre-modern theorists who articulated the *maqāṣid-maṣlaḥa* model' actually aimed to limit and proscribe[40]. David Johnston has also shown how developments in the current discourse of *Maqāṣid* assume an implicit shift

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[35] Emon, *Islamic Natural Law Theories,* p. 194.
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*
[39] Zysow, 'The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory', p. 341.
[40] Emon, *Islamic Natural Law Theories,* p. 195.

towards the ʿ*Adliyya* objective moral framework[41]. Emon describes this only as ironic, but this description seems to underplay the significance of what I have referred to elsewhere as a theoretical inconsistency [42] . Not only are contemporary efforts to expand the scope of the *maṣlaḥa-maqāṣid* model subject to this criticism, but the similarly important trend of 'contextualist' readings of the Qur'ān also seem to fall foul of the same concern.

From amongst the many diverse contextualist approaches to reading Muslim normativity that have emerged, the work of Fazlur Rahman still seems to be most influential[43]. In line with his 'double movement theory'[44] contextualists, who are often more focussed on the Qur'ān than the Sunna, give special attention to both the specific context and the broader context of religious source texts. The specific context refers to the particular situation that the text is believed to have responded to whilst the broader context refers to both the socio historical context of the revelation and that of the reader[45]. Contextualists aim to extract the principles informing the specific response of the Prophet Muḥammad to the situations he encountered and seek to actualise these principles in the current context even if this requires *different* means for their fulfilment.

Underpinning both the contextualist and the *maṣlaḥa-maqāṣid* hermeneutical approaches is an aim to understand God's purpose and/or to 'create good and just societies'[46]. However the substantive usage of terms such as *purpose*, *good* and *just* within these emergent hermeneutical methods cannot be supported by the Ashʿarī meta-ethical theory that formed the theological premise of Emon's 'Soft Naturalist'. Both the method and the language used to describe the contextualist and the evolving *maṣlaḥa-maqāṣid* models assume a shift towards

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[41] David Johnston, 'A Turn in the Epistemology and Hermeneutics of Twentieth Century *Uṣūl al-Fiqh*', *Islamic law and Society*, Vol. 11 (2003), pp. 233-282.
[42] Ali-reza Bhojani, 'Critical Realism: from legal positivism in Muslim jurisprudence towards a natural law reading of Sharīʿa', unpublished paper presented to the Warwick Law School Conference '*re-imaging Sharīʿa*' at the Palazzo Pessaro-Pappafaaza, Venice (2009).
[43] For a brief biographical survey of Fazlur Rahman, his scholarly contribution and influence see Ebrahim Moosa, 'Foreword' in Fazlur Rahman, *Major Themes of the Qur'ān* (Chicago, University of Chicago Press, 2009) pp. *ix-xiv.*
[44] For the 'double movement theory' of interpretation see *Islam and Modernity; Transformation of an Intellectual Tradition* (Chicago, University of Chicago Press, 1982) pp. 5-8.
[45] Abdullah Saeed, 'Some reflections on the Contextualist approach to ethico-legal texts of the Quran' *Bulletin of SOAS*, Vol. 71 (2008), p. 223.
[46] *Ibid.*

an ʿAdliyya meta-ethics. Until this theoretical inconsistency between the methodological assumptions and actual method of interpretation are resolved it is difficult to see how these emerging hermeneutical methods can compete with the legitimacy of traditional text based interpretations of Sharīʿa.

Modern Shīʿa thought recognises the meta-ethical doctrine of the intelligibility of moral values and the subsequent affirmation of a substantive morality to God as fundamental to their system of theology. Unlike the Muʿtazila, the 'legal' Sharīʿa tradition within Shīʿa thought continues to flourish having significant influence on the manner in which Islam is understood and practiced by both individuals and nation states across the world. Its rich legal and jurisprudential tradition offers a great resource for identifying any theoretical obstacles within the traditional theory itself that may be preventing the ʿAdliyya theological premises from allowing the development of a moral reading of Sharīʿa that affords al-ʿaql an independent role in the inference of aḥkām. Identifying these obstacles, the primary aim of this study, will not only offer insight into how a moral reading of Sharīʿa may come to inform the Shīʿa vision of Islam but may also be invaluable in demonstrating to the wider Muslim discourse the complexities, challenges and potential that traditional Muslim theological discourse has in offering a theoretically consistent, rational and moral interpretation of Sharīʿa.

1.3 Methodological concerns

The study seeks to explore the apparent distance between the ʿAdliyya theological assumptions, with its fundamental role for rational morality, and the actual process employed by Shīʿa jurists in the interpretation of Sharīʿa - a process that marginalises independent rationality and seems to produce an amoral reading of Sharīʿa. First and foremost this analysis will seek to explain this distance through an examination of the jurisprudential obstacles as determined in the modern Shīʿī theory of uṣūl al-fiqh itself. Thus, in terms of Kenneth Pike's dual distinction of approaches to the study of behaviour, the current analysis represents an 'emic' or 'insider' approach, seeking to outline the elements of a system as propounded by the proponents of that system

themselves rather than contextualizing the ideas within a broader scheme of comparative analysis that an 'etic', or 'outsider', approach would adopt[47].

My attempt to provide this 'emic' account recognises that any explanation of religious ideas in a language other than the primary language of that religion is necessarily going to employ a linguistic framework and thus an underlying conceptual framework alien to the system under investigation, raising doubts as to whether a truly 'emic' account is possible at all. However the method of analysis can at least be described as 'emic' in the sense that it aims only to explain how Shīʿa scholars themselves justify the positions they adopt, and resists any detailed comparison of their ideas with either the many historical competing Muslim trends or with the relevant contemporary ideas found in ethics, epistemology and legal philosophy - all of which would have much to say on the central issues at hand.

Whether the study of Muslim religious thought in the West is yet to emerge from the shadow of Orientalism is still up for debate. Methodological criticism of Orientalism, 'the colonial and postcolonial project to recover and reconstruct the classical religions and civilizations of colonial subjects'[48], has been an established project in itself for some time now[49]. The birth of what Hallaq describes as the constructed tradition of 'Islamic legal studies', the discipline within which this study may be situated, was inextricably linked to the political motivations of that colonialist enterprise;

> This tradition, to be sure, was not constructed for its own sake, nor was it
> merely an appurtenance of intellectual curiosity in European academe; for
> it would be naive of us to think that the fields nowadays subsumed under
> the humanities and social sciences were created in isolation from the
> colonial project, itself subordinate to the larger project of modernity.
> Thus, due to sheer relevance- quite evident when compared, say, to

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[47] For the coining of 'insider' and 'outsider' accounts of behaviour as 'emic' and 'etic' respectively, see Kenneth L. Pike 'Etic and Emic Standpoints for the Description of Behaviour' in Russell T. McCutcheon (ed.), *The Insider/Outsider Problem in the Study of Religion* (London, Casell, 1999), pp. 28-36.
[48] Martin et al, *Defenders of reason in Islam*, pp. 2-3.
[49] For one of the earliest and certainly the most famous 'deconstruction' of Orientalism see Edward W. Said, *Orientalism* (London, Routledge & Keegan Paul, 1978).

psychoanalysis- the tradition came to serve (in the most systemic, though not always systematic, of ways) the imperatives of the colonialist project. The invented narrative of "Islamic legal studies" aided not only in fashioning colonialist policies that transformed the native legal cultures, but also in shaping the culture of empire itself[50]

Despite the increased awareness of the power relations involved in these processes, and the resultant gradual dismantling (or at least rebranding) of the Orientalist infrastructure, there still seems to be a range of legitimate concerns over the study of Muslim religious thought in a post–orientalist environment. Amongst these concerns is a 'neo-orientalism' that had initiated an editing out of all but the most 'traditionalist' readings of Muslim religious thought, even before 9/11[51]. This study of, both the centrality and the implications, of *al-'aql* in Shīʿī thought- a Muslim tradition which is itself increasingly subject to the reductionism entailed in prevalent political science approaches to Islamic movements- can be seen as a counterweight to such discourse.

In the light of such competing and problematic discourses, and the tentative aim of an insider or 'emic' account, a phenomenological approach to the study of the texts in question may have seemed appropriate. Phenomenology proposes techniques for understanding the insider position whilst suspending judgement with regards the truth claims of a believer and his system of thought. This is aimed to be achieved through imaginative re-experience and non-critical, empathetic descriptions[52]. However its goal of objectivity and proposed 'methodological agnosticism'[53] may not take seriously the epistemic critique that the deconstruction of Orientalism rested upon. Within the discipline of the History of Religions or the Sciences of Religion, phenomenology emerged in response to the reductive tendencies of the then prevalent naturalistic approaches to understanding religion. Phenomenologists' had as a central concern something that they believed the naturalists had completely ignored,

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[50] Wael B Hallaq, *Sharīʿa* (Cambridge, Cambridge University press, 2009) p. 10.
[51] Martin et al, *Defenders of reason in Islam*, p. 5.
[52] Russell T. McCutcheon, 'General Introduction' in Russell T. McCutcheon (ed.), *The Insider/Outsider Problem in the Study of Religion* (London, Casell, 1999), p. 3.
[53] See Russell T. McCutcheon 'Neutrality and Methodological Agnosticism; Introduction' in *Ibid.*, pp. 215-220.

and due to their methods of choice, were incapable of detecting. This central concern, which the naturalists were deemed to be oblivious to, was the very essence of religion- something which phenomenologists often located within religious experience.

However in trying to intuit the essence of religious phenomena, phenomenologists may have been prone to inserting their own normative and subjective conclusions about religion into their descriptive endeavours[54]. Acknowledging the historicity of any process of knowledge production and at least a degree of the epistemic relativism so emphasized in post-modern discourse necessarily tempers the extent to which one can accept that phenomenology can give an unadulterated and completely non-judgemental insider account. Beyond this the notion associated strongly with the phenomenology of religion that the essence of religion is non-rational, does not suggest that the techniques proposed therein will be ideally suited for a study explicitly attempting a critical appraisal of issues related to the role of *al-ʿaql,* a faculty widely conceived as rationality, in an intellectual and philosophical discipline such as *uṣūl al-fiqh.*

More appropriate may be the adoption of a methodological framework that takes account of my own complex position *vis-a-vis* the research subject, namely that of insider with respect to being a Muslim seeking religious responses to modernity, an active participant within the tradition I engage in, and outsider with respect to the distance, in both time and social space, from my primary source material. Whether one is aware of it or not, negotiating such dynamics may be inseparable from the very endeavour of Muslim scholarship in the contemporary context. Ebrahim Moosa recognised the complexity involved in such scholarship in a way that resonates with my own methodological dynamics when he said;

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[54] In his phenomenological move towards a theology of world religions Wilfred Cantwell Smith emphasized the personal aspect of the faith of individuals, repelling against the impersonal concept of 'reified' religion. However whether, and to what extent, his protestant background informed the tone of such a movement is an open question. On Wilfred Cantwell Smith in the context of the development and debates in phenomenological approaches to the study of religion see; James L. Cox, *A Guide to the Phenomenology of Religion; Key Figures, Formative Influences and Subsequent Debates* (London, The Continuum International Publishing Group, 2006) pp. 171-208.

'I bring to the enterprise at least two epistemic languages: the conceptual tools and interpretive frameworks derived from a multiplicity of Muslim traditions as well as those of Western traditions. They reflect my own multiple locations and experiences of living in a *dihlīz*, an interspace'[55].

An established meta-theory which can accommodate these complexities, accounting for the reflexivity of the researcher whilst still maintaining the usefulness and relevance of the knowledge produced as being more than just a narrative of self disclosure, is far from fully developed for the study of religion, let alone post-oriental/colonial Muslim studies of Islam. In view of the apparent lack of such an established framework, I tentatively employ the post-phenomenological and dialogical approach to understanding my source material offered by Gavin Flood, which emphasizes the possibility that an inquiry into religion 'can be reflexively aware of its assumptions and limitations, and rather than a proclaimed value-free description, can consciously bring to its object paradigms external to it'[56].

My engagement with the source material does not then need to assume the possibility of neutral critique or goal of objectivity, but can engage in a consciously reflexive critique or 'dialogical reflexivity'[57] somewhat akin to the method of analysis within *uṣūl al fiqh* itself, but with a heightened appreciation of the role of ones own positioning. It is hoped that this may account for a seamless oscillation between "research" and "search" throughout the different stages of this study allowing a critical engagement with my source material, with a conscious recognition of my complex positioning as an active part of the discursive tradition with which I engage.

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[55] Ebrahim Moosa, *Ghazālī & The Poetics of Imagination* (Chapel Hill, North Carolina, 2005) p. 34.
[56] Gavin Flood, *Beyond Phenomenology; Rethinking the Study of Religion* (London, Cassell, 1999), p. 223.
[57] *Ibid.* p. 226.

1.4. The function and relevance of *Uṣūl al-fiqh*

The aim of seeking to explore the jurisprudential obstacles in Shīʿī uṣūl *al-fiqh* which prevent ʿ*Adliyya* notions regarding moral epistemology from impacting the actual role of reason as a source of *Sharīʿa* precepts in contemporary Shīʿī thought, necessitate that the study is primarily conducted through an analysis of modern Shīʿī *uṣūl al-fiqh*. Although the influence of ʿ*Adliyya* theological ideas upon Shiʿī jurisprudence is not restricted to the role of independent rationality as a source of Sharīʿa, the identification of *al-mustaqillāt al-ʿaqliyya* as a direct jurisprudential consequence of theʿ*Adliyya* meta-ethics[58] makes a detailed study of how Shīʿī *uṣūl al-fiqh* conceives of its role as a source of *Sharīʿa* an ideal fulcrum for engaging with questions that drive at the heart of the relationship between theology, ethics and law in Shīʿī thought. However at another level using the treatment of *al-ʿaql* as a source of *Sharīʿa* in *uṣūl al-fiqh* to try to shed light on specific aspects of the relationship between theology and *fiqh* is not so straightforward, due to the underlying assumptions this approach implies regarding the somewhat disputed function of *uṣūl al-fiqh*. The literature of *uṣūl al-fiqh* itself sees the function of its discipline in decidedly unambiguous terms with a seemingly universal agreement 'that the raison d'etre and sole purpose of *uṣūl al-fiqh* is the formulation of positive law'[59]. Yet scholars of Islamic legal studies have shed considerable doubt on this depiction, in some cases describing it as nothing more than a 'fiction'[60].

Despite the considerable debate over what influence *uṣūl al-fiqh* has played *historically* in informing the actual process of interpreting and deriving Muslim religious normativity (*aḥkām*) form its sources, it will be argued that the discourse of *uṣūl al-fiqh* is now, and will be increasingly, central to any significant shifts which are currently occurring in how Muslims engage with the central questions of their religious normative system. This makes understanding the jurisprudential obstacles found in *uṣūl al-fiqh* especially relevant to an

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[58] Muḥammad Riḍā al-Muẓaffar, *Uṣūl al-fiqh* (Qum, Intishārāt Ismāʿīlīyān,1970), Vol. 1 p.185.
[59] Wael B. Hallaq, '*Uṣūl al-fiqh*: Beyond Tradition' *Journal of Islamic Studies*, Vol. 3 (1992), p. 183 found in Wael B. Hallaq *Law and Legal Theory in Classical and Medieval Islam* (Aldershot, Variorum, 1994).
[60] Sherman A. Jackson, 'Fiction and Formalism: Towards a Functional Analysis of Uṣūl al-Fiqh' in Bernard G. Weiss (ed.) *Studies in Islamic Legal Theory* (Leiden, Brill, 2002) p. 178.

examination of why the foundational theological resources of the ʿ*Adliyya* tradition – the recognition of independent epistemic access to moral values and the affirmation of a substantive notion of justice to God - have not led to the employment of rational morality as an independent source of *Sharīʿa* normativity in Shīʿī thought. This is especially so when the study is being conducted with the explicit objective of investigating *if* and *how* these resources could come to inform fresh readings of Sharīʿa.

1.4.1 The relation between *uṣūl al-fiqh* and *fiqh* as seen in Islamic legal studies

Despite the characteristically hair splitting debates which have evolved within the discipline of *uṣūl al-fiqh* regarding the intricacies of the definition of *uṣūl al-fiqh* and the precise nature of its subject matter[61], the general picture of the function of *uṣūl al-fiqh* amongst its theoreticians is largely uncontested. It is a discipline aimed at offering a systematic method of interpretation, a hermeneutic methodology which allows the fully versed to derive *Sharīʿa* precepts from their sources. Hallaq writes that this portrayal, 'on first impression' gives a picture in which the one who has mastered this science could, with the necessary exertion of effort and the proper application of theory to the raw materials, produce the entire system of *fiqh* from scratch[62]. Despite there being 'little in the discourse of legal theory to forewarn the jurist-*mujtahid* of the hermeneutical need to reckon with a formidable pre-existing body of *fiqh* law'[63], this does not mean that the serious student of *uṣūl* would ever have been so naive as to think that his mastering of the science would actually lead him to such an independent construction. The study of *uṣūl al-fiqh* has always gone hand in hand with *fiqh,* and in fact the very existence of *uṣūl al-fiqh,* as an independent discipline at least, emerged through the developments in the discipline of *fiqh*. However the

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[61] These debates over the definition of *uṣūl al-fiqh*, within the Imāmī context at least, have seen a shift in the identification of its subject matter-for those who believe that it is necessary for a discipline to have an identifiable subject matter rather than simply an overriding objective that is- from an early focus upon the sources of *Sharīʿa aḥkām* themselves to now centring on the 'common elements' in the inferential process of *aḥkām* and not simply the sources. For a brief review of this progression form Sharīf al-Murtaḍā (d. 1044/436) to Bāqir al-Ṣadr see ʿAbd al-Hādī Al-Faḍlī, *Durūs al-uṣūl al-fiqh al-Imāmiyya* (Beirut, Markaz al-Ghadīr, 2007) Vol. 1 pp. 105-109.
[62] *Sharīʿa*, p. 76.
[63] *Ibid,* pp. 75-76.

recognition of this emergence of the discipline of *uṣūl al-fiqh* subsequent to the discipline of *fiqh* brings into focus the concerns of many regarding the function of *uṣūl al-fiqh*, if *fiqh* existed before *uṣūl al-fiqh*, what actually does *uṣūl al-fiqh* do?

The position of a great deal of early western scholarship on the relation between *uṣūl al-fiqh* and *fiqh* can be readily inferred from the statement of Jospeh Schact that 'common legal theory, the discipline of *uṣūl al-fikh*, has little relevance to the positive doctrine of each school'[64]. Developments in the field of Islamic studies in general and within Islamic legal studies in particular, have ensured that any further unqualified endorsement of this opinion is now quite unlikely. Despite some rigorous contributions to the field, on this point at least, Schacht's position reads as a paradigmatic example of an essentialising trend within the Orientalist scholarship of old, a scholarship which Wael Hallaq identified as commencing from a premise which dismissed the very possibility of any originality within Muslim religious thought[65].

Hallaq has engaged consistently with the still under researched question of the function of *uṣūl al-fiqh* and its relationship to *fiqh*. His early scholarship on the matter strongly challenged the received wisdom of his predecessors in the field, asserting that it 'cannot be assumed that Islamic legal theory as a hermeneutical logical and ultimately juridical system is disconnected from actual reality and positive law'[66]. His critique of the aforementioned Orientalist reading of this relationship introduced an element which he felt had been seriously ignored by Western scholarship in their appraisal of the intellectual output of Muslim thinkers in general, and Muslim jurisprudential thought in particular, an element he referred to in his concept of the 'worldliness' of scholarship[67].

The 'worldliness' of an author is the very source of originality that Hallaq claimed had previously been undervalued or ignored. Any analysis of *uṣūl al-fiqh* must account for the impact of this element 'defined as the aggregate of the components of reality surrounding and affecting, directly or indirectly,

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[64] Joseph Schact, *An Introduction to Islamic Law* (Oxford, Clarendon Press, 1964), p. 60.
[65] See '*Uṣūl al-fiqh*: Beyond Tradition'.
[66] *Ibid,* p. 177.
[67] *Ibid.*

consciously or subconsciously, the thinking processes and hence the intellectual production of the *Uṣūlī*[68]. His reading of the 'inextricable'[69] relationship between *uṣūl al-fiqh* and *fiqh*, informed by developments in the field which 'increasingly and consistently point in the direction of a close link between positive law and socio-economic, political and other realities', seems to be a direct function of his recognition that 'juridico-social reality constitutes the most obvious element of worldliness for an *Uṣūlī*'[70].

This strong affirmation of a necessary relationship between *uṣūl al-fiqh* and *fiqh* does not mean to say that scholars of Islamic legal studies have jettisoned the early position, represented above in the words of Schacht, altogether. A prevalent scepticism still remains in endorsing the view of the relationship between *uṣūl al-fiqh* and *fiqh* as portrayed by the scholars of *uṣūl al-fiqh* themselves. Islamic legal studies has continued to criticise how participants within the discipline portray the function of the discipline, and often in uncompromising terms. Sherman Jackson argues that 'the commonly accepted dictum that Islamic legal theory (*uṣūl al-fiqh*) is the exclusive determinant of the content of Islamic law' is no more than a 'fiction'[71]. In the context of a tension between the demands of legal practicalities and the desire for a theoretical consistency in the hermeneutic of interpretation, *uṣūl al-fiqh* is primarily concerned with attempting to systematically justify the pre-occurring legal disposition found in early *fiqhi* doctrine or the actual social practice of Muslim communities. Thus for Jackson the entire endeavour that *uṣūl al-fiqh* 'routinely amounts to [,] is little more than a sophisticated exercise in "theory talk"... [I]n this capacity, it's essential function is to establish and maintain the parameters of a discourse via which views can be validated by rendering them *legal*'[72]. He sees *uṣūl al-fiqh* as a normative means of rendering constraints to the process of validating those responses to circumstances which can be considered 'acceptable (if not true) embodiments of

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[68] '*Uṣūl al-fiqh*: Beyond Tradition', p. 177
[69] *Ibid*, p.182.
[70] '*Uṣūl al-fiqh*: Beyond Tradition', p.178. Beyond the juridico-social reality, amongst the other factors highlighted by Hallaq as influencing this 'worldliness', are the intellectual traditions drawn upon by the Uṣūlī and the audience to which he speaks.
[71] Sherman A. Jackson, 'Fiction and Formalism: Towards a Functional Analysis of *Uṣūl al-Fiqh*' in Bernard G. Weiss (ed.) *Studies in Islamic Legal Theory* (Leiden, Brill, 2002) p. 178.
[72] *Ibid*, pp. 178-179.

scriptural intent' as distinguished 'from the views that are, say, scientific, ideological or simply pragmatic'[73].

This view does not contradict the above cited position of Hallaq where he argues that the two disciplines are 'inextricably linked'[74], for to say that there is a relationship between the two disciplines does not necessarily mean this association is as it is conceived by the scholars of *uṣūl al-fiqh* themselves, it simply states that there is some form of relationship. Despite bemoaning the continued ambiguity over how this relationship has been viewed by non-Muslim scholars[75], in his later work we find Hallaq also describing the function of *uṣūl*, at least partially, in a manner which resonates highly with Jacksons portrayal when he identifies the early legal theory as being 'normatively' and 'eclectically' descriptive[76].

Aside from this descriptive element, Hallaq does however maintain that the prescriptive function of *uṣūl al-fiqh* is more sophisticated 'than we have thus far allowed for, and, juridically speaking it had far-reaching consequences'[77]. It is this prescriptive function which takes centre stage in most definitions of *uṣūl al-fiqh*, conferring the notion that it is a theory which 'was intended to afford jurists all the interpretive tools needed to address any eventuality, from those novel unprecedented cases to the pre-existing ones that require a minor or not so minor hermeneutical tweak'[78]. There is little doubt in the validity of Hallaq's appraisal that the actual application of this theory to novel cases was relatively rare and that the theory pre-dominantly serviced the pre-existing type. However the vast political, social and cultural changes experienced by Muslim societies means that it is this aspect of *uṣūl al-fiqh* that is now taking centre ground. Rather than having become 'largely decimated' as Hallaq claims[79], *uṣūl al-fiqh* is increasingly pivotal- in ways which it previously may never have been- to Muslim

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[73] 'Fiction and Formalism', p.179.
[74] Hallaq, '*Uṣūl al-fiqh*: Beyond Tradition', p.182.
[75] According to Hallaq this ambiguity persists largely on account of two factors; the theological prism through which *uṣūl al-fiqh* has become increasingly viewed and the persistence of colonialist assumptions regarding the irrelevance of *fiqh,* and thus by priority *uṣūl*, to social and political reality, *Sharī'a*, p. 73.
[76] Hallaq, *Sharī'a*, pp.73-74.
[77] *Ibid,* p.75.
[78] *Ibid,* p. 76.
[79] *Ibid*.

endeavours of understanding and implementing their normative ideals[80]. Hallaq's engagement with *uṣūl al-fiqh*, although impressively deep, has been predominantly in historical and Sunni trajectories, neither of which are a direct concern here. However the findings pertaining to the function of Sunni *uṣūl al-fiqh* through the history of Muslim religious thought are not entirely without relevance to the question of the function of Shīʿī *uṣūl al-fiqh*. There is little doubt that the Shīʿī *uṣūl al-fiqh*, particularly in its formative period, evolved within and subsequent to the context of developments in the Sunni field[81]. Yet the current state of Shīʿī and Sunni *uṣūl al-fiqh* is clearly not entirely analogous for a plethora of reasons, reasons whose investigation here would require a substantial and unwarranted diversion, and it is to an examination of how the function of *uṣūl al-fiqh* is described in the Shīʿī context that needs to be the immediate focus for further deliberation here.

Serious engagement with Shīʿī *uṣūl al-fiqh per se,* never mind the specific question of the function of *uṣūl fiqh* in Shīʿī thought, is still a relatively underdeveloped area of study within Islamic legal studies. The works of Robert Gleave, along with his late doctoral supervisor Norman Calder, are amongst the most important of the scarce engagements with Shīʿī *uṣūl al-fiqh* from scholars who would not somehow position themselves within the folds of the tradition itself. As seen in the case of the Sunni theory, Gleave notes that the presentation of the dual aim of *uṣūl al-fiqh* as being on one hand 'prescriptive', in a normative sense of how *fiqh* ought to be derived, and on the other as justificatory, 'justifying the law as it is already known', and how these aims relate to others genres, is a 'debated point'[82]. Hope of resolving such debates is not limited solely by the scarcity of

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[80] For an explicit example of the recognition of this centrality within Sunni discourse see Imran Ahsan Khan Nyazee, *Theories of Islamic Law; The Methodology of Ijtihād* (Kuala Lumpur, The Other Press, 2002), where he states 'It will not be an exaggeration to say that any development in Islamic law today depends upon the comprehension, development, and adaptation of *uṣūl al-fiqh*' p. 8.

[81] In *al-Dharīʿa ilā uṣūl al-Sharīʿa*, arguably the earliest systematic treatment of Shīʿī *uṣūl al-fiqh*, al-Sharīf al-Murtaḍā makes reference throughout to a range of Sunni authorities. Although this engagement is undoubtedly a critical one, particularly with regards to the issues of *ijtihād* (Independent Juristic reasoning), *qiyās* (syllogistic reasoning) and *al-khabar al-wāḥid* (Isolated reports of the Sunna), al-Murtaḍā's treatment is to a large extent shaped by his response to the established positions in the prevalent Sunni discourse of the day. Also See ʿAbd al-Hādī Al-Faḍlī *Durūs al-uṣūl al-fiqh al-Imāmiyya* (Beirut, Markaz al-Ghadīr, 2007) Vol. 1 pp. 68-69.

[82] *Inevitable Doubt*. p.3.

research in the area, but also by the individual nature of the Muslim scholarly endeavours in question, so much so that generalisations about the relationship between *uṣūl al-fiqh* and *furūʿ al-fiqh* are noted to become 'difficult'[83] even within a distinct scholarly trend of a particular tradition. This study being concerned with the potential in modern Shīʿī *uṣūl al-fiqh* to offer an *ʿAdliyya* reading of *Sharīʿa* thus warrants a brief sketch of how the function of *uṣūl al-fiqh* and its relation to *fiqh* is portrayed within Uṣūlī thought, the dominant juristic tradition of contemporary Shīʿī thought[84].

1.4.2 The relation between *uṣūl al-fiqh* and *fiqh* in modern Shīʿī scholarship

That a detailed discussion of the relationship between *uṣūl al-fiqh* and *fiqh* is rarely found in the advanced works of modern Shīʿī *uṣūl al-fiqh*, particularly in view of its tendency to dissect and analyse even the most tangential of discussions, suggests that it is a relationship whose nature is largely uncontested and, in the eyes of scholars of *uṣūl al-fiqh* themselves at least, one which is obvious to all but the uninitiated. Bāqir al-Ṣadr's treatment, interestingly included only in the most elementary level of his three part text book *al-Durūs fi ʿIlm al-Uṣūl*, gives a sophisticated analysis of how this relationship has come to be viewed amongst the contemporary theoreticians themselves. *Uṣūl al-fiqh*, defined by him as 'the knowledge of the common elements (*ʿanāsir al-mushtarika*) in the process of inference of religious regulation (*al-ḥukm al-sharʿī*)'[85], is described as the *manṭiq* or logic of *fiqh[86]*, where *fiqh* is understood as the actual process of inference of *aḥkām*[87].

For Bāqir al-Ṣadr, just as the discipline of *manṭiq* engages in the study of general principles whose application ensures that one's modes of thinking or deductive reasoning *per se* be correct, the discipline of *uṣūl al-fiqh* studies those general

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[83] *Inevitable Doubt*, p. 3.
[84] For discussion on the development and ascendency of the Uṣūlī 'rationalist' school see Zackery Hearn, *Uṣūli Shīʿīsm: The Emergence of an Islamic Reform Movement in Early Modern Iraq and Iran*, Unpublished PhD Dissertation (Department of History, University of Utah, 2011).
[85] *Durūs*, Vol 1. p.46.
[86] *Ibid,* Vol. 1 p. 50.
[87] *Ibid,* Vol. 1 p. 45.

principles whose purpose is to ensure that one's *fiqhi* reasoning is correct- and thus *uṣūl al-fiqh* can be termed the logic of *fiqh*[88]. The relationship between the two interrelated disciplines is one of 'theory and application'[89], where both the theory (*uṣūl al-fiqh*) and its proper application (*fiqh*) require their own intellectual exertion (*juhūd ʿilmī*) for their proper formulation[90].

Bāqir al-Ṣadr's picture of *uṣūl al-fiqh* as governing the appropriate mechanics and thus offering the theoretical framework for the actual practice of *fiqh* does not entirely ignore the concerns raised by scholars of Islamic legal studies regarding the historical reality of the existence of the discipline of *fiqh* prior to that of *uṣūl*. In his definition of *uṣūl al-fiqh* Bāqir al-Ṣadr indeed recognises this priority, for *uṣūl al-fiqh* is characterised as the study of the common elements found in the actual inferential process that is *fiqh*. Yet this does not preclude a mutual interplay between the two disciplines, for although *uṣūl al-fiqh* as an independent disciple emerged subsequent to *fiqh*, *fiqh* was never practised in complete isolation of the theoretical questions that would later become the subject matter of *uṣūl al-fiqh*;

> The discipline of *uṣūl* emerged within the embraces (*aḥḍān*) of the discipline of *fiqh*, just as the discipline of *fiqh* emerged within the embraces of the discipline of *ḥadith*.

> At first, the science of *uṣūl* was not independent of *fiqh*, as the discipline of *fiqh* developed and the horizons of *fiqhi* thought broadened, general trends and common elements became revealed and apparent[91].

It was the recognition of these common threads within the inferential process, 'without which the *Sharīʿa* precepts could not be extracted' that signalled the birth of the independent discipline of *uṣūl al-fiqh*, a discipline which would allow these theoretically common elements to be discussed and analysed in isolation of the specific cases dealt with in *fiqh*[92].

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[88] *Durūs,* Vol. 1 p. 50.
[89] *Ibid,* p. 54.
[90] *Ibid,* p. 53.
[91] *Ibid.*
[92] *Ibid,* p. 54.

Accepting Bāqir al-Ṣadr's explanation of the manner of the development of *uṣūl al-fiqh*, somewhat tempers the impact of the primary historical data referred to by scholars of Islamic legal studies who have questioned the function of *uṣūl al-fiqh* based on their observation that 'the legal doctrine represented by *fiqh* historically preceded the conscious, deliberate and discursive elaboration of *uṣūl al-fiqh* theory'[93]. Bāqir al-Ṣadr's point is that although the discipline of *uṣūl al-fiqh* emerged subsequently, the practice of *fiqh* was never possible without engagement with the theoretical questions and presupposition which form the subject matter of *uṣūl al-fiqh.* In the formative years the theoretical issues of *uṣūl al-fiqh* were not isolated from the applied questions of *fiqh.* The theoretical elements that are now the subject matter for the independent discipline of *uṣūl al-fiqh* were an integral part of the actual process involved in *fiqh* during those formative years albeit in a simpler and less sophisticated form than they would later take on. In this early period the need to independently explicate, codify and elaborate these principles had not yet been felt, a need that would subsequently increase with the ever widening distance between the revelatory period and those seeking to interpret and practice *Sharīʿa*.

Bāqir al-Ṣadr's depiction of the relation between *fiqh* and *uṣūl al-fiqh* although convincingly arguing for a concomitancy between theory and application since the earliest developments of *fiqh*, does not engage with questions of whether the role of this theory historically was actually more justificatory, normatively descriptive and directed to providing a hermeneutic for rendering particular norms legal and authoritative rather than being an actual independent engine room for the production of norms as depicted in his characterisation of the discipline as 'the *manṭiq* of *fiqh'*. It is more than plausible that on occasions the driving force in this dialectic was an established *fiqhi* position which needed justifying and legitimising whereas at other times it was the theoretical position determined in *uṣūl al-fiqh* which genuinely drove the opinion in *fiqh*. It is conceivable that such a variation between the direction of the driving force in the relationship was likely even within a particular jurists' thought, however such complexities in the relationship between the two disciplines are yet to be

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[93] Hallaq, *Sharīʿa*, p. 73.

explored through the detailed and rigorous scholarship that such questions demand.

A solitary study contributing to this question within the Shīʿī context is Gleave's comparative work on the impact of legal theory on positive law across the Akhbārī-Uṣūlī divide, where he examines the question of the permissibility of marrying more than one Fāṭimid women in the thought of Yūsuf Baḥrāni (d. 1185/1772) and Waḥīd Biḥbahānī (d. 1205/1791)[94]. Gleave sees Baḥrāni's approach to the particular legal issue at hand representing 'a direct application of the principles of *uṣūl* to a matter of *furū*'[95], furthermore in this particular instance the work of *furūʿ al-fiqh* seems to be used as an opportunity to reaffirm and justify distinctive Akhbārī positions in *uṣūl al-fiqh*. In an ironic contrast to this, Biḥbahānī's appraisal of the question is characterised as *madhhab*-driven. Although Biḥbahānī's arguments contain sophisticated argumentation based on *uṣūl al-fiqh* theory, the theory does not seem to play a causal role in the inference of the *fiqhi* position, rather it is the limits of school tradition which are the driving force in an argument which proceeds from *madhhab* to *uṣūl* rather than from *uṣūl al-fiqh* to *fiqh*[96].

 Whether this single case is indicative of the nature of the relationship between *uṣūl al-fiqh* and *furūʿ al-fiqh* in each case of the vast body of issues which make up *furūʿ al-fiqh*, even for Biḥbahānī himself, never mind wider *Uṣūlī* discourse, cannot be established from this study alone- such a generalisation would need a greater body of evidence to support the breadth of its claim. Yet these findings do reiterate the caution necessary in accepting the almost rhetorical depiction of a causal relation between *uṣūl al-fiqh* and *fiqh* still found in the contemporary literature of scholars who would firmly position themselves within the a tradition whose contemporary dominance owes much to the scholarly endeavours of Biḥbahānī himself[97].

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[94] Robert Gleave, 'Marrying Fāṭimid Women: The relationship between Legal Theory and Substantive Law in Shīʿī Jurisprudence' *Islamic Law and Society*, Vol. 6 (1999), pp. 38-68
[95]*Ibid,* p. *49.*
[96] *Ibid*, pp. 66-67.
[97] On Biḥbahānī, his influence and most important students see Heern, *Uṣūli Shīʿīsm,* especially chapters 2 and 3, pp. 25-87.

In *Inevitable Doubt*, a broader ranging theoretical comparative study of the same two thinkers encountered in *Marrying Fatimid Women*, Gleave's treatment of *uṣūl al-fiqh* 'as a largely independent genre, works of which were written and taught in an educational setting, the main aim of which was to hone the intellectual skills of students'[98] does not seem entirely consistent with his earlier findings. Having established the complexity and differing function of *uṣūl al-fiqh* between the two thinkers, and having noted the difficulties of generalisations regarding the role of *uṣūl al-fiqh*, to then apparently treat the role of the discipline in both cases of Baḥrāni and Biḥbahānī to a closed intellectual exercise is a curious step.

This is not to say that the impact of the purely pedagogical element of *uṣūl al-fiqh* should be underestimated, for it is well known that *uṣūl al-fiqh* is amongst the peak of the sciences studied in the Muslim scholarly milieu, a priority which is arguably more pronounced in a Shīʿī educational context which continues to be driven by the need to produce *Mujtahid*'s in the absence of the Twelfth Imam[99]. This intellectual exercise, has produced an output whose relevance to the inference of Sharīʿa *aḥkām* at times may well be only oblique, but whose contributions to wider philosophical and theological issues, particularly questions of philosophy of language and hermeneutics, are vast and as yet relatively unexplored. Amongst the subsidiary outcomes envisaged for this study is to demonstrate the relevance of *uṣūl al-fiqh* beyond its core remit of how to interpret normative implications of the *Sharīʿa* sources by demonstrating that the theological questions and issues of moral philosophy entailed within discussion of the rational intelligibility of the praiseworthy and the blameworthy are approached with a sophistication in *uṣūl al-fiqh* which advances the engagement found within other disciplines.

1.4.3 The continued relevance of *uṣūl al-fiqh* to questions of Muslim normativity

Despite any persistent doubts which may remain over the picture offered by insider accounts of the role *uṣūl al-fiqh* has played historically in determining the

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[98] *Inevitable Doubt,* pp. 3-4.

[99] On the occultation of the Imām see Jassim M. Hussain, *The occultation of the Twelfth Imam: a historical background*. (London, Muḥammadi Trust, 1982).

positive doctrine of *fiqh,* its current and future relevance in this regard cannot be underestimated. Differences of opinion amongst the major Shīʿī jurists in recent times can often be directly attributed to their different theoretical positions in *uṣūl al-fiqh*[100]. That these *uṣūl* driven differences exhibited in positive doctrine may still be firmly within *madhhab* boundaries, and thus not completely refuting the implications of Gleave's findings with respect to Biḥbahānī's *madhhab* driven approach to *furūʿ al-fiqh*, reaffirms the necessity of further close study of the relationship between the two disciplines of the theoretical *uṣūl al-fiqh* and the applied science of *fiqh*. Yet it is not based on the historical role that *uṣūl al-fiqh* might have played in determining *fiqh* that this study seeks to justify its tenability. It is only the *potential* of *uṣūl al-fiqh* in the contemporary Shīʿī context to maintain, rediscover or even apply in previously only theoretically conceived ways, its prescriptive function that this study needs to assume to justify its endeavour.

In a context where Muslims have and continue to experience change in previously unprecedented ways, the prescriptive element of *uṣūl al-fiqh* theory is becoming ever more important. In fact it matters not whether changes in the theory of *uṣūl al-fiqh* can actually be prescriptive (in the sense of a *manṭiq* of fiqh) or whether they would simply reflect the needed justification for a changing body of juristic opinion, a body of opinions which in itself is intimately related to the social reality of the opinion seeking Muslims. Many of these opinion-seeking Muslims may be unsatisfied with traditional interpretations, yet still seek to live their lives in a way that is perceived as authentically legitimised within a *Sharīʿa* framework. Ultimately, all questions regarding interpretation of *Sharīʿa* and all efforts to interpret *Sharīʿa* require or assume methodological discourse. The vast array of emerging and evolving hermeneutical techniques, some well grounded in traditional discourse others explicitly distancing themselves from the vast

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[100] For example in the context of *al-dalīl al-ʿaql* (rationality as a source) different opinions regarding the Uṣūlī question of *mas'alat al-ḍid*, which asks whether a command upon a thing necessitates (*iqtiḍā*) a prohibition upon its opposite, leads to differing opinions at the level of *fiqh*. Those who affirm that such a necessitation exists reject the validity of supererogatory fasts whilst one has an unfulfilled duty for an obligatory fast pending, whereas those who don't accept the necessitation maintain that the supererogatory fast can be valid. For further details on, and an outline of debates regarding the form of such rational hermeneutics see Chapter 2.

body of historical tradition[101], necessarily engage with core questions of *uṣūl al-fiqh* such as; what are the sources of normativity and how should they be interpreted? Whether the emerging *maqāṣidī*, contextualist Qur'ān centred readings, or neo-Muʿtazilī approaches can challenge the dominance of the range of traditional 'textualist' methods, which still command such authority throughout Muslim societies, is to a large extent dependent on these emerging hermeneutical techniques being supported through a rigorous theoretical framework. A theoretical framework that may be referred to as an *uṣūl al-fiqh*.

Shī'ī *uṣūl al-fiqh* as it stands, having continued to be infused with a philosophical impetus and method throughout its development to a much greater extent than in the Sunni equivalent, has much to offer these new emerging methods. This study wishes to demonstrate that it also has a hitherto unrealized latent potential to inform a significant shift within the traditional theory itself, the importance of which should not be underestimated at a time where the authority of tradition is still paramount for many Muslims. It is shifts from within the traditional discourse and in the language of the traditional discourse that are most likely to maintain the legitimising quality and authoritative significance for the widest range of both interpreters of, and would be adherents to, the *Sharīʿa*. With such a context, examining the reasons why the *uṣūl al-fiqh* of modern Shīʿa scholars has not allowed the rich theological resources of the *ʿAdliyya* tradition to bear fruit with a substantive role for rational morality in the interpretation of *Sharīʿa*, and an exploration of how these resources cold come to significantly impact the *fiqhi* process is, I feel, more than well justified.

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[101] For example in *Radical Reform; Islamic Ethics and Liberation* (Oxford, Oxford University Press, 2009) Tariq Ramadan sets out his agenda and indicates a methodology for change which is placed firmly within the context of classical debates in *uṣūl al-fiqh*. On the other hand the diverse projects of thinkers such as Asma Barlas, or in the Shīʿī, context Abdul Karim Saroush, are explicitly anti-traditionalist. Such anti-traditionalist approaches, which admittedly range in their rigour and scope, still have to directly deal with the questions regarding method and methodology of interpreting the relevant sources of knowledge that may come to inform our understanding of religion and revelatory texts- all of which are questions that lie at the heart of the remit of *uṣūl al-fiqh*.

1.5 Sources, structure and outline of the study

Despite significant internal diversity amongst contemporary Shīʿī scholarship on issues of both *fiqh* and *uṣūl al-fiqh*, the overall framework within which this diversity is limited is shaped by the continued dominance of what Modarressi terms 'The School of Shaykh al-Anṣārī'[102]. The developments in *uṣūl al-fiqh* seen through the works of Murtaḍā Ibn Muḥammad Amīn al-Anṣārī (d. 1281/1864), and his students, represents the culmination and re-establishment of the Uṣūlī theory as the dominant authoritative trend in Shīʿī thought[103]. The works of Anṣārī himself are still central to the training of Shīʿi scholars and the epistemic framework that he set out has become paradigmatic of the modern period of *uṣūl al-fiqh*. This epistemic framework emphasised the sharp distinction between certainty (*qaṭʿ*) and all forms of probable or suppositional knowledge (*ẓann*), where the ultimate criterion for authority of religious sources is considered to be *qaṭʿ* and any less than certain sources of knowledge are deemed to require a certain validation before they can be considered authoritative. Not only are these epistemic ideas, which will be examined at length in what follows, paradigmatic of modern and contemporary Uṣūlī thought, they are pivotal to explaining the systemic redundancy of independent rationality as a source of *Sharīʿa* across a the vast majority of contemporary Shīʿī scholarship. Attempts to explain the theoretical reasons why the ʿ*Adliyya* moral rationalism fundamental to Shīʿī thought has not resulted in independent rationality playing a substantive role in the inference of *fiqh,* are here thus focussed primarily on the study of modern Shīʿī *uṣūl al-fiqh.* The continued dominance of Anṣārī's epistemic scheme is all the more vivid for the fact that even those contemporary Uṣūlī scholars such as Mohsen Kadivar or Yusef Saanei, who claim or have been described to have adopted significant shifts in their theory from the characteristic picture of modern Shīʿī *uṣūl al-fiqh,* still seem to operate within Anṣārī's epistemic framework[104]. Such diversity and dynamism within Shīʿī *uṣūl al-fiqh* means that

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[102] *An Introduction to Shīʿī law*, pp. 57-58.

[103] For a dedicated study dealing with theoretical aspects of the thought of Anṣārī and his most important students, along woth the socio-political context in which they emerged, see Heern, *Usuli Shīʿīsm.*

[104] For Mohsen Kadivar's theory of 'Islam as an End in Itself' see his 'From Traditional Islam to Islam as an End in Itself' *Die Welt des Islams,* Vol. 51 (2011) pp. 478-483 and Yasuyuki Matsunaga,

this framework is being increasingly challenged and reconsidered, both directly and indirectly, yet this study will limit its focus to examining the reasons why independent rationality is redundant through examination of the ideas represented in modern works of Shīʿī *uṣūl al-fiqh* situated firmly within the school of Anṣārī.

Accordingly one of the central sources relied upon in this study, particularly when it comes to analysis of the epistemic framework for the authority of sources of *Sharīʿa* knowledge, is of course the seminal collection of Anṣārī's own work, *Farāʾid al- uṣūl* also known simply as *al-Rasāʾil*. The next most important work of modern Shīʿī *uṣūl al-fiqh*, both for the value of the text itself and the numerous sophisticated and in depth commentaries to which it has given rise, is the *Kifāyat al-uṣūl* of Muḥammad Kāḍim Al-Khurasānī (d. 1329/1911). This study has referred extensively to both the commentaries and the *Kifāyat al-uṣūl* itself. However the pivot upon which the study revolves has been neither the work of Anṣārī nor Khurasānī, but instead centres on a close reading of the treatment of independent rationality as found in one of the more recent of 'the most important works'[105] of modern Shīʿī *uṣūl al-fiqh*, Muḥammad Riḍā al-Muẓaffar's textbook *Uṣūl al-fiqh*.

Muḥammad Riḍā Muẓaffar (d. 1384/1964) is arguably one of the most influential figures of modern Hawza history. His pivotal role in the twentieth century moves to reform religious learning in Najaf and beyond, initially through his educational society *Muntaḍā al-Nashr* and later through the *Kulliyāt al-fiqh*, saw the successful implementation of what was seen as radical changes which built on earlier calls for reform from Lebanese scholars such as Muḥsin al-Amīn[106], and to

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'Human Rights and New Jurisprudence in Mohsen Kadivar's Advocacy of "New-Thinker" Islam' *Islam Die Welt des Islams*, Vol. 51 (2011), pp. 358-381. Although Kadivar refers to the ʿ*Adliyya* heritage of independent rationality as a central theme in his hermeneutics, he explicitly does so only when judgements of rationality are 'definitive' or certain, thus reflecting his continued debt to the epistemic framework of Anṣārī.
For an account of the 'paradigm shift' in the thought of Saanei see Hamid Mavani, 'Paradigm Shift in Twelver Shiʾī Legal Theory (*uṣūl al-fiqh*): Ayatullah Yusef Saanei' *The Muslim World*, Vol 99 (2009), pp. 335-355.
[105] For Modaressi'is list of the sixteen 'most important' works of modern Shīʿī *uṣūl al-fiqh* see *An Introduction to Shīʿī law,* pp. 10-12.
[106] See Sabrina Mervin, 'The clerics of Jabal 'Amil and the Reform of Religious Teaching in Najaf since the Beginning of the 20th Century,' in Rainer Brunner and Werner Ende (eds.) *The Twelver Shia in Modern Times: Religious Culture & Political History*, (Leiden, Brill, 2001), pp. 79-93.

a lesser extent Muḥsin Sharāra[107]. Amongst the successes of the movement was the establishment of a number of primary and intermediate level schools throughout Iraq where students could study a range of modern disciplines including foreign languages, psychology and sociology alongside their study of Arabic syntax, grammar, literature and Islamic jurisprudence[108]. Within the Hawza itself he was also able to drive changes to both the method and substance of instruction in the elementary and intermediate stages of an age-old Shī'ī religious higher learning system. Regular examinations would come to feature as a check on the progress of studies that had been broadened to include previously sidelined disciplines, such as philosophy, within the central remit of Hawza training.

As a precursor to these changes Muẓaffar's society set about writing a new range of text books to replace the sometimes centuries old texts which had become the staple of the Hawza education. Two texts written by Muẓaffar himself, *al-Manṭiq* and *Uṣūl al-fiqh*, eventually achieved widespread recognition and both continue to be a central part in the training of Shī'a scholars to this day, playing an extensive role in shaping the thinking of contemporary Shī'ī scholars prior to their entry into the most advanced (*khārij*) level of their studies.

The continued centrality of Muẓaffar's *Uṣūl al-fiqh* within Shī'ī higher learning and the fact that it is written as a textbook with a systematic approach more accessible than many modern works of *uṣūl al-fiqh,* are not however the primary reason for selecting it for a close reading here. Rather it is the unique way in which Muẓaffar deals with the issue of independent rationality (*al-mustaqillāt al-ʿaqliyya)* itself that makes it an ideal source from which to build the intended analysis. As has already been indicated, in their treatment of questions pertaining to independent rationality as a source of *Sharī'a* precepts scholars of *uṣūl al-fiqh* have engaged with, and sometimes significantly advanced, the conception of the theological presuppositions of the issue entailed in the question of the

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[107] See Werner Ende, 'From Revolt to Resignation: The Life of Shaykh Muḥsin Sharāra' in Asma Afsaruddin and A.H. Mathias Zahniser (eds.), Humanism, Culture and Language in the Near east, Studies in Honour of Georg Krotkoff (Eisenbrauns, 1997) pp. 61-70.
[108] Robert Riggs, 'Re-establishing the Foundations: Reformism and Continuity in the Hawza of Najaf', *Shī'a Studies*, Vol. 1 (April-June 2011), pp. 9-12.

intelligibility of the praiseworthy and the blameworthy (*mas'ala al-taḥsīn wa taqbiḥ)*. However the theological aspects of the discussion are often treated in a peripheral manner within a discussion of independent rationality which itself is often subsumed within some other debate[109]. Muẓaffar on the other hand treats *al-mustaqillāt al-ʿaqliyya,* not only as an independent debate, but he also explicitly engages with the theological presuppositions of the issue, allowing him to approach the topic 'from all its aspects, in detail'[110] for the stated reason that such a detailed and systematic exposition cannot be found in any other texts of *uṣūl al-fiqh* of equivalent level[111].

The study commences in chapter two with an analytical survey of the development of the concept of reason as source of *Sharīʿa* precepts through the history of Shīʿī *uṣūl al-fiqh*. Survey of the deep historical ambiguity surrounding the concept of *al-dalīl al-ʿaql* will show that resolution of this ambiguity only occurred with the onset of the modern era of Shīʿī *uṣūl al-fiqh* through the sharp distinction of *al-dalīl al-ʿaql* into non-independent and independent categories. Conceptual analysis of both types of rational indicator will suggest that the first category, although deeply sophisticated, are more akin to rational hermeneutical principles aiding the interpretation of texts rather than sources of *Sharīʿa* in their own right. The independent category of *al-dalīl al-ʿaql*, which is exclusively a corollary of the theological acceptance of the principle of the intelligibility of the praiseworthy and the blameworthy, will thus be identified as the subject of subsequent analysis which seeks to explain the lack of impact of the Shīʿī *ʿAdliyy*a heritage in providing reason a role as a source of *Sharīʿa* alongside the Qur'ān and Sunna.

It is the theological adoption of the meta-ethical moral rationalism entailed in the principle of the intelligibility of the praiseworthy and the blameworthy that

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[109] For example within the detailed and extensive commentaries found on the *Kifayat al-uṣūl* of Muḥammad Kaḍim Khurasāni the issues of *al-ḥusn wa qubḥ al-ʿaqliyain* and the correspondence between judgements of reason and judgements of the Divine Legislator are treated within the discussion of certainty (*qaṭ*ʿ) under debates pertaining to the phenomenon of *tajjarī* (Apparent Insolence) rather than as an independent topic. See al-Shāhruwardī, *Buḥūth fi ʿilm al-uṣūl,* Vol. 4 pp. 40-49 and Muḥammad Ḥusayn al-Isfahānī, *Nihāyat al-Dirāya fi sharḥ al-Kifāya* (Beirut, Muʾassasat Ahl al-Bayt li Iḥyāʾ al-Turāth, 2009) Vol. 3 pp. 28-32.
[110] *Uṣūl al-fiqh*, Vol. 1 p. 184.
[111] *Ibid.*

makes space for independent reason as a source in Shīʿī *uṣūl al-fiqh*. In order to set the ground for analysis of the influence of this principle on independent rationality as a source of *Sharīʿa*, chapter three steps outside of the discourse of *uṣūl al-fiqh* to first examine the development of arguments for the justification of the Shīʿī moral rationalism itself as found in Shīʿī theological thought. Outlining the fundamental and progressively sophisticated treatment of this theological principle sets the ground for assessing the central questions of this study, offering a prism to asses the Uṣūlī's contributions to the theological questions and providing a base from which to asses the reasons for an apparent redundancy of independent rationality in modern Shīʿī *uṣūl al-fiqh*.

Chapter four examines how modern Shīʿa scholars of *uṣūl al-fiqh* have conceptualised the nature of moral values and rationality, in turn affecting the mechanics of how independent rationality may actually come to impact the inference of *Sharīʿa* precepts when it comes to *fiqh*. It will be shown that scholars of *uṣūl al-fiqh*, within their works of *uṣūl* rather than *kalām* (rational theology), seem to have significantly advanced the debates around the conception of the theological principle of the intelligibility of the praiseworthy and the blameworthy as part and parcel of the theorisation of their jurisprudential concern for the role of reason as a source of *Sharīʿa* precepts. These debates have shown the emergence of two sharply different views regarding the nature of morality and rationality amongst modern scholars of Shīʿī *uṣūl al-fiqh* - all of whom still affirm the rational intelligibility of the praiseworthy and the blameworthy but who seem to hold radically different conceptions of how and when this is the case- directly impacting on their ideas about *al-mustaqillāt al-ʿaqliyya* and the claimed correspondence (*mulāzama*) between judgments of human reason and judgments of the Divine legislator.

Chapter five examines the notion of the authoritativeness (*ḥujjiyya*) of potential sources of Sharīʿa knowledge in general, and the *ḥujjiyya* of *al-dalīl al-ʿaql* in particular. Despite alternative trends in the history of Shīʿī legal thought that validated less than certain knowledge in its own right, it is shown that in the modern framework a source is only considered as authoritative if it relies upon certainty. Either a source must produce certain knowledge regarding a *Sharīʿa*

precept or it must rely upon certainty in the Divine Legislator's consent to it being considered a valid source. It is these purely epistemic considerations that act as the major theoretical obstacles to either conception of morality surveyed in the previous chapter from playing a substantive role as an independent source in the actual *fiqhi* process of *Sharīʿa* inference, rendering independent rationality effectively redundant as a source of *Sharīʿa* precepts. The authoritativeness of *al-dalīl al-ʿaql* is seen as a function of it being certainty bearing, yet the epistemic conditions for determining a certain judgment of rational morality are so high that effectively any potentially relevant judgment of reason is considered less than certain and hence non-authoritative.

Within the context of the 'emic' approach adopted in this study, chapter six concludes by outlining the scope internal to the Uṣūlī tradition itself to reassess the epistemic obstacles preventing the *ʿAdliyya* moral rationalism from allowing independent rationality a substantive role in the inference of *Sharīʿa* precepts. The purely epistemic obstacles identified in Muẓaffar's theory are re-examined, with particular attention given to the requirement of certainty as the basis for the authoritativeness of independent rationality arising out of inferences from basic rational moral principles. Demonstration of the scope for an *ʿAdliyya* reading of *Sharīʿa* emerges by drawing on, amongst other things, the key elements of 'the theory of *insidād*' as a pragmatic justification for the authority of *ẓann* (less than certain knowledge), irrespective of its source. In this way it is argued that inferences of *Sharīʿa* precepts can not ignore judgements of rational morality such as 'an equal right to divorce is an instance of justice' or that 'restricting autonomy in the choice of religion, through the threat of death, is an instance of oppression' in the face of apparently conflicting textual evidences which are themselves also not certain. Instead, sound inferences of *Sharīʿā* precepts ought to result from a consideration of rational morality as a necessary qualification to the interpretation of other evidences, thus ensuring that precepts considered rationally immoral are not attributed to a Just and Moral God.

2. Reason as a source of *Sharīʿa* in *uṣūl al-fiqh*:

al-dalīl al-ʿaql

2.1 Introduction

This study is concerned with examining the role of *al-ʿaql* as an independent source of *Sharīʿa* (*al-dalīl al-ʿaqlī*) as listed alongside the Qurʾān, the Sunna and *al-Ijmāʾ* (specific juristic consensus). To identify exactly what is meant by *al-dalīl al-ʿaqlī*, in the sense of reason as one of the four sources or indicators to the *Sharīʿa*, it is important to first note that reason and rationality have a remit within *uṣūl al-fiqh* which goes beyond its theoretical inclusion as an independent source to *Sharīʿa* precepts. *Uṣūl al-fiqh* itself may be considered an *ʿaqlī* or rational discipline. It is a system developed through a form of philosophical analysis applied to socio-linguistic principles (*uṣūl al-lafḍiyya*) and rational norms (*banā al-ʿuqalā*) in order to determine general rules for the interpretation of what may largely be reduced to the apparent meaning of texts (*ẓahūr al-alfāḍ*) and rational correlations (*mulāzamāt al-ʿaqliyya*).

Not only is the method of analysis in *uṣūl al-fiqh* based on rational/non-textual argumentation and analysis, the method that it accords for the inference of *Sharīʿa aḥkām*, theoretically at least, is firmly entrenched within a framework shaped by a continued adherence to the Muslim interpretation of Aristotelian logic. The theory of *uṣūl al-fiqh*, both in the manner in which it is developed and applied, has come to operate within a methodological framework which privileges syllogistic forms of reasoning that aim to ensure certainty in ones reasoning process. The extent to which this is actually achieved is open to question, a question whose further examination would be tangential to the main concern here- for this study is concerned with the role of *al-ʿaql* not as a method or source of analysis, but as an indicator to, or a source of, the *Sharīʿa* precepts themselves.

In arguably the most extensive treatment of *al-ʿaql* found in any of the textbooks of *uṣūl al-fiqh* currently taught in the Shīʿī seminaries, Muḥammad Riḍa Muẓaffar defines *al-dalīl al-ʿaqlī* when considered 'in contrast to the Book and the Sunna' as;

> [E]very judgement of *al-ʿaql* that necessitates certainty in *Sharīʿa* precepts. In a second formulation, it is every rational proposition through which certain knowledge of *Sharīʿa* precepts are attained[112].

This chapter will offer a preliminary conceptual analysis of the source of *Sharīʿa* precepts defined in this way. The analysis will outline the difference and the commonality between two categories of *al-dalīl al-ʿaql*, the non-independent rational indicator (*ghayr mustaqillāt al-ʿaqliyya*) and the independent rational indicator (*al-mustaqillāt al-ʿaqliyya*). An overview of each of the major discussions treated within the category of non-independent rational indicator will demonstrate that this is not the form of rational indicator whose influence this study seeks to trace. It is a category that does have significant impact in the inference of *Sharīʿa* precept but its non- independent nature raises questions as to whether the knowledge of *Sharīʿa* precept acquired through it is a result of reason as a source, or reason as an interpretive tool.

It shall be shown how it is actually only the second of the two types of *al-dalīl al-ʿaql,* the independent rational indicator (*al-mustaqillāt al-ʿaqliyya*), that is the central remit of this study and how this theoretical source is conceived of as being inextricably linked to the *ʿAdliyya* doctrine of the intelligibility of the praiseworthy and the blameworthy, thus setting the ground for the subsequent analysis of this doctrine and its impact on the inference of *Sharīʿa* in Shīʿī thought. To a large extent the manner in which the concept of *al-dalīl al-ʿaql* has come to be understood and classified into the dual categories of non-independent and independent rational indicators seems to be in response to the ambiguity of how the notion has been portrayed historically by Shīʿa scholars of *uṣūl al-fiqh*. Thus before engaging with how the modern Shīʿī scholars understand and explain the notion of *al-dalīl al-ʿaql*, it is to this historical understanding that we first turn.

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[112] Muẓaffar *Uṣūl al-fiqh*, Vol. 2 p. 105

2.2 *Al-dalīl al-ʿaql* through the history of Shīʿī *uṣūl al-fiqh*

Although Muẓaffar claims that the early Shīʿa scholars (*al-mutaqadimūn*) restricted the four sources of of *Sharīʿa*, or *al-adilla al-arbaʿa,* to the Qurʾān, Sunna, *al-Ijmāʾ* and *al-ʿaql,* his own brief historical survey of the conception *of al-dalīl al-ʿaql* casts serious doubt over the extent to which the early theorist saw *al-dalīl al-ʿaql* in the sense defined above. As Muẓaffar himself notes 'many of them did not mention it as one of the sources (*adilla*), or did not explain it, or explained it in a manner inappropriate for it to be considered a source (*dalīl*) in contrast to The Book and The Sunna'[113].

The earliest of Shīʿī writings in the field of *uṣūl al-fiqh* to reach us is a short treatise (*risāla)* attributed to the Shaykh al-Mufīd (d. 413/1022) as transmitted by his student al-Karājakī (d. 449/1057) in the collection *Kanz al-Fawād*[114]. Although al-Mufīd mentions the role of *al-ʿaql*, he does not describe it as an independent source to *Sharīʿa* precepts, for he sees the sources of *Sharīʿa* precepts as being only three and not four; 'Know that the sources (*uṣūl*) for the *Sharīʿa* precepts are three things; The Book of Allah, glorified is He, the practice of His Prophet and the statements of the Pure Imams who came after him'[115]. Implicitly, Mufīd here reaffirms a theological stance of his that asserts that *al-ʿaql* has no independent ability to determine religious responsibility[116]. Al-Mufīd however was no naive traditionist, he recognised that the authority of revelatory texts needed to be established from outside of the text and that proper access to the knowledge within these texts required some level of rational interpretation. Accordingly he follows his list of the three sources by stating that 'the means of reaching knowledge of that which is legislated in these *uṣūl* are [also] three. One of these is *al-ʿaql* which is the means to recognition (*mʿarifa*) of the authoritativeness of the Qurʾān and the indication of the *Akhbār* (Prophetic and

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[113] Muẓaffar, *Uṣūl al-fiqh*, Vol. 2 p. 102.
[114] See Muḥammad bin Ali bin Uthmān al-Karājakī, *Kanz al-fawāʾid* (Beirut, Dār al-aḍwāʾ, 1985) 2 vols.
[115] Muẓaffar, *Uṣūl al-fiqh*, Vol. 2 p. 102, *Kanz al-fawāʾid,* Vol. 2 pp. 15-30.
[116] See *'Awāʾil al-maqālāt fī madhāhib al-mukhtārāt'* in Abbāskuli Vāʿiz Charandābi (ed.) *Awāʾil al-maqālāt fī madhāhib al-mukhtārāt wa Sharḥ ʿaqāʾid al-Ṣadūq aw Taṣḥīḥ al-ʾittiqād,* (Tabriz, n.d.), pp.11-12.

Imamate reports)'[117]. Thus al-ʿaql was considered a necessary pre requisite to establishing the provenance of religious texts and a tool for interpreting them, but was not explicitly listed as a source or *dalīl* to the *Sharīʿa* precepts themselves.

Sharīf al-Murtaḍā (d. 436/1044), in al-*Dharīʿā ilā uṣūl al- Sharīʿa,* and his student Shaykh al-Ṭūsi (d. 460/1067), in *al-ʿUdda fi uṣūl al-fiqh*, authored the earliest Shīʿī works dedicated to the exposition of a comprehensive Imāmī *uṣūl al-fiqh*. ʿAbd al-Hādī al-Faḍlī considers the first of the early Shīʿa scholars to have categorised the sources of *Sharīʿa* into four types (*aqdama man rubbaʿa al-adilla*) to be al-Murtaḍā[118]. However, this is not based on al-Murtaḍā's ideas as expressed in the only one of his dedicated works of *uṣūl al-fiqh* to have reached us[119]. One cannot find in *Al-Dharīʿa,* nor in *al-ʿUdda* of Shaykh al-Ṭūsī for that matter, any explicit inclusion of *dalīl al-ʿaql* as a source of Sharīʿa alongside the Qur'ān and the Sunna. Al-Faḍlī bases his reading of Murtaḍā's inclusion of *al-dalīl al-ʿaql* amongst the four sources of Sharīʿa upon a passage found in another of his works as included and published within the *Rasā'il al-Sharīf al-Murtaḍā.*

Amongst the most notable positions held by Sharif al-Murtaḍā in *uṣūl al-fiqh* was his denial of the authority of the isolated reports (*al-akhbār al-aḥād*), those traditions that have been reported by an insufficient number of independent chains of transmission to yield certainty in the soundness of their transmission. His rejection of the isolated report was associated with his insistence on ʿilm (sure knowledge) as the basis of action in religious matters, a level of knowledge that he believed was not supplied by the isolated report. In the context of his rejection of the isolated report and his restriction of the sources of *Sharīʿa* to the certain evidences of the Qur'ān and the Sunna, where the latter include the opinions of the Prophet and the impeccable Imams of the Twelver tradition as discovered through a consensus of Imāmi scholarly opinion, al-Murtaḍā posses a hypothetical question- the response to which relates to his conception of the role

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[117] Muẓaffar, *Uṣūl al-fiqh*, Vol. 2 p. 102.
[118] ʿAbd al-Ḥādi al-Faḍlī *Durūs al-Uṣūl al-fiqh al-Imāmiyya* (Beirut, Markaz al-Ghadīr, 2007) Vol. 1 p.243.
[119] Two other works of *uṣūl al-fiqh* are attributed to Sharīf al-Murtaḍā, although there are no known manuscripts of either. See Subḥānī '*foreward*' in Al-Sharīf ʿAli bin al-Ḥusayn al-Musawī Al-Murtaḍā, *al-Dharīʿa ilā Uṣūl al-Sharīʿa* (Qum, Muassasat al-Imām al-Ṣādiq, 2008) p. 21.

of *al-ʿaql*. Owing to the technical nature of the discussion, the passage in question is relayed here in full;

> If it is said: What do you say with regards to a *Sharīʿa* question over which the *Imāmiyya* are in disagreement, and there is no indicator from The Book, nor certain Sunna which pertains to it, what is the means to truth in such an issue?

> We say: This issue which you suppose, its occurrence has been safeguarded. For we know that Allah, exalted, has not left the one vested with responsibility (*Mukallaf*) without an evidence to rely upon (*ḥujja*), nor without a means to *ʿilm* (sure knowledge) in that which he has been made responsible for.

> This issue (*al-ḥāditha*) which you have mentioned, if Allah, exalted has a religious precept *(ḥukm sharʿī)* regarding it and the Imāmiyya of our time are in disagreement over it- and such it is not possible to rely upon their consensus as one which we are certain contains a reliable evidence (*ḥujja*) due to the existence of the Imam amongst them- then it is necessary that there be in regards to this question a certain indicator from the Book of Allah or from the Sunna in which we are certain of. Such that the one vested in responsibility is not devoid of a means to *ʿilm* through which he may reach his responsibility.

> Of course, unless it is said; indeed we assume the existence of an issue (*ḥāditha*) regarding which the Imāmiyya have no opinion, either by way of agreement or disagreement. It would be possible according to us in such a case, if it is agreed that Allah exalted has no religious precept in that issue *(an lā yakūnu lillāhi tʿālā fihā ḥukm sharʿī)*, should we not find in the evidences which necessitate sure knowledge a means to knowledge in the precept for this issue, then with regards to it, we would be upon that which *al-ʿaql* necessitates, and [be] upon its judgement.[120]

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[120] *Rasāʾil al-Sharīf al-Murtaḍā* (Beirut, Muʾassat al-Nūr lil-maṭbūʿāt, N.D) Vol. 1 p. 210.

Despite the hypothetical nature of this final paragraph, Al-Faḍlī feels that it represents the first reference by a Shī‘a scholar to *al-‘aql* as the fourth source of *Sharī‘a*[121]. However whether the text itself supports this interpretation is not entirely clear. In the early part of the passage al-Murtaḍā repeats his well known thesis that the *aḥkām* of *Sharī‘a*, or as he puts it 'that which Allah has a *ḥukm sharʿī* in', can only be known through sure knowledge attained from the Book of Allah and the Sunna whose transmission be deemed certain, a means to which is an absolute consensus of the *Imāmiyya*. His introduction of *al-‘aql* as a source of normativity is explicitly only in the case where it be agreed 'that Allah exalted does not have a *ḥukm sharʿī* regarding it'[122]. Thus it seems that in the hypothetical situation that the *Imāmiyya* have no opinion regarding an issue, al-Murtaḍā would rely upon *al-‘aql* as an action-guiding source of normativity but *without* according its judgement the status of being amongst God's *Sharī‘a* precepts. If this reading is sound it would suggest, in a manner consistent with his teacher al-Mufīd and his own writings in *al-Dharī‘a*, that Murtaḍā did not accord *al-‘aql* a role as a source of *Sharī‘a* precept. Instead, in a fashion that would seriously challenge the maximalist scope of *Sharī‘a* envisaged by most modern jurists, it appears that he admits that the scope of *Sharī‘a* precepts is limited and that issues falling outside this scope are not subject to a specific *ḥukm* of Allah. Where no *ḥukm Sharʿī* is identified through the revelatory sources of Qur'ān and Sunna, reason or rationality would be left to judge the appropriate course of action. However for Murtaḍā, although this gives *al-‘aql* an independent role as an action guiding source of normativity, it would seem that its judgements are not considered *Sharʿī* and hence are not attributable to God. Contrary then to Faḍlī's assertion that al-Murtaḍā was the first amongst the Shī‘a to categorise the sources of Sharī‘a as four, it seems that instead it is the position which holds that the first explicit reference to *al-dalīl al-‘aql* as a source of *Sharī‘a* actually came later which is the more tenable[123].

Although Shaykh al-Ṭūsī differed from his teacher al-Murtaḍā on numerous issues pertaining to *uṣūl al-fiqh*, not least with regards the authority of the

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[121] Al-Faḍlī, *Durūs al-uṣūl al-fiqh al-Imāmiyya*, Vol 1. P. 243.
[122] *Rasā'il al-Sharīf al-Murtaḍā,* Vol. 1 p. 210.
[123] See Muẓaffar, *Uṣūl al-fiqh* Vol. 2 p. 102.

isolated report, he too did not explicitly list *dalīl al-ʿaql* as a source of *Sharīʿa* precept alongside the Qurʾān and Sunna. This is not to say however that al-Ṭūsī does not make any reference at all to *al-ʿaql* within his *uṣūl al-fiqh.* In fact the final section of the final chapter of *al-ʿUdda* is dedicated to distinguishing that which is known by reason (*al-ʿaql*) from that which is known by *al-samʿ* [124], where *al-samʿ* can be understood as the transmitted revelatory sources of knowledge. In distinguishing between that which is known by revelation and that which is known by reason, he reminds his reader of the basic epistemological division between axiomatic and non-axiomatic knowledge. Axiomatic knowledge, which by definition excludes any reliance on revelatory input, includes knowledge of basic logical propositions, such as 'a single body cannot be in two places whilst in a single state'[125] and the knowledge of basic moral propositions such as;

> The knowledge of the obligation to return a deposit, to thank the benefactor and [toward] justice, and the blameworthiness of oppression, lying and purposelessness and whatsoever occurs in its fashion from that which is necessitated by the completion/perfection of rationality[126]

It is based on the legal implications of these axioms of practical rationality, acknowledged by Ṭūsī, which later scholars of *uṣūl al-fiqh* would start to describe as the form of *al-dalīl al-ʿaqlī* that is an independent source, or indicator, to precepts of *Sharīʿa*. It is this form of rational indicator that stems from the *ʿAdliyya* moral rationalism fundamental to *Shīʿī* theology and it is this form of independent rationality that this study is ultimately concerned with.

As an example of non-axiomatic knowledge, Ṭūsī holds that *al-ʿaql* unaided by revelation is responsible for establishing those theological precepts that form the prerequisite for establishing the veracity of revelatory knowledge. The rational pre-requisites to establishing the veracity of revelation that he mentions pertain to the existence of God and His nature, a nature which is conceived of in

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[124] Muḥammad bin Ḥasan al-Ṭūsī, *al-ʿUdda fi uṣūl al-fiqh* (Qum, Matbaʿa Sattāra, 1996) pp. 759-763.
[125] *Ibid*. p. 759.
[126] *Ibid.*

distinctly 'Adliyya terms and which will be analysed in greater depth in the next chapter which focuses on the Shīʿī treatment of the theological aspects of their moral rationalism. If isolated from the rest of the discussion, these comments regarding al-ʿaql may well be deemed to have been more appropriately placed in a work of ʿilm al-kalām, however there is no denying the fiqhi import of his comments when read in the context of the whole section. For in highlighting the theological responsibilities of al-ʿaql he creates space for emphasizing those known entities pertaining to fiqh and uṣūl al-fiqh which can only be known through al-samʿ, setting the grounds for a textualist theory of law within a rationalist theological framework.

Despite his resounding emphasis on samʿ in the domain of aḥkām, Ṭūsī does however mention that the blameworthiness (and thus the prohibitory nature or ḥurma) of killing and oppression are established by al-ʿaql and that the sources/indicators necessitating of knowledge are known through al-ʿaql[127]. As already stated it is the implication of the first type of rational judgements that are the central concern of this study, but it is the second type that may have been more pivotal to the concerns of al-Ṭūsī. This latter statement seems to follow al-Mufīd's designation of al-ʿaql as the means to establishing what constitutes a valid source of the Sharīʿa aḥkām. However al-Ṭūsī's position reflects a developing sophistication in that despite stating this, he also states that in some cases it is only through revelatory sources that one can come to know of the indicators/sources to the aḥkām[128]. In these apparently conflicting comments a turn in Shīʿī uṣūl al-fiqh towards incorporating speculative knowledge (ẓann) as a reliable means to knowledge of the Sharīʿa can be detected[129]. Ṭūsī maintains that al-ʿaql is the means to understanding those sources, which necessitate sure knowledge, but in other cases where the adilla are not bearing of sure

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[127] al-Ṭūsī, al-ʿUdda fi uṣūl al-fiqh, pp. 761-762.
[128] Ibid. p. 761.
[129] For further detail on the shift towards a reliance on ẓann and for details of the development of a fully blown theory of ijtihād in Imāmī thought see Norman Calder, 'Doubt and Prerogative: The Emergence of an Imāmī Shīʿī Theory of Ijtihād' Studia Islamica, No. 70 (1989), pp. 57-78.

knowledge- such as in the isolated report- we may know of their validity through *al-samʿ* [130].

Calder argues that al-Ṭūsī's defence of the isolated report was part of an agenda to account for difference of opinion (*ikhtilāf*) amongst Shīʿī scholarship and to broaden the scope of clerical authority[131]. Al-Ṭūsī's circumscription of the role of *al-ʿaql* at the level of *aḥkām* lends support to the second part of this thesis. The maximalist scope of a textualist interpretation of *Sharīʿa* envisaged by Ṭūsī, in contrast to the picture offered by al-Murtaḍā, can be seen in his position on the question of the status of an act through which benefit is sought, whilst it not be known whether that act is considered *ḥasan* (good) or *qabīḥ* (bad). This is a dilemma that intersects with the question of the status of acts before revelation (*qabla warūd al-sharʿ*) examined by Reinhart[132]. In both situations scholars took one of three positions. Some held that such acts were considered proscribed (*maḥzūr*) due to the known possibility of a detriment within them. Others argued that such acts were to be considered to be permissible (*ʿalal-ibāḥā*) based on a variety of predominantly rational evidences. The third group adopted the position of *waqf* or no-assessment, i.e. that one cannot judge whether these acts are permissible or prohibited until we are informed of their status through revelatory means. In the context of before revelation, *waqf* is the position associated with the Ashʿarī ethical voluntarists[133] and asserts an almost absolute reliance on revelation as the provider of information about the status of acts. In contrast to al-Murtaḍā who took the position of *ibāḥā*, Ṭūsī's adoption of *waqf* in the question of the status of acts through which benefit is sought whilst it is not known if they are either *ḥasan* or *qabīḥ* demonstrates his restriction of the role of unmediated reason and his broadening the scope of the authority of revelatory knowledge- a body of knowledge which only the *fuqahā* are considered capable of properly interpreting.

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[130] al-Ṭūsī, *al-ʿUdda fi uṣūl al-fiqh,* p. 761.
[131] See Calder, 'Doubt and Perogative'.
[132] See Kevin A. Reinhart, *Before Revelation; The Boundaries of Muslim Moral Thought* (New York, SUNY Press, 1995).
[133] *Ibid,* p. 62.

The first Shī'a scholar of *uṣūl al-fiqh* to unambiguously mention *al-'aql* as one of four sources of Sharī'a *aḥkām* was Ibn Idrīs al-Ḥillī (d. 598 A.H.) In the introduction to his work of *furū' al-fiqh*, Ibn Idrīs has a brief discussion regarding both the sources upon which he relies and the method he employs in their interpretation.

> Surely the truth is not absent from four paths: Either the Book of Allah, glorified is He, or the Sunna of His Prophet which is agreed upon and *al-mutawātir*[134], or *al-Ijmā'*, or *al-dalīl al-'aql*. If the [first] three are exhausted then that which is relied upon in religious issues (*masā'il al-shar'iyya*) amongst the researching experts (*al-Muḥaqqiqīn al-bāḥithīn*) of the *makadh al-Sharī'a*, is by way of reference to *al-dalīl al-'aql* with regards to it[135].

Ibn Idrīs was extremely critical of the manner in which the *Imāmiyya* had come to almost exclusively rely on the opinions of al-Ṭūsī. Accordingly the rest of his introduction reads as an attack on certain methodological positions of Ṭūsī, not least his acceptance of the isolated report, and features extensive reference to al-Murtaḍā. In the brief quote above relating to *al-'aql* there are two important points to note. Firstly unlike al-Murtaḍā, he explicitly states that the judgements of *al-'aql* do have *shar'ī* status. However this is not as a source alongside Qur'ān, Sunna and *Ijmā'*, but as a source that is relied upon only in the absence of any certain evidences from these three primary sources. Despite the explicit inclusion of *al-'aql* as a source, for an indication of what may have actually been intended by *dalīl al-'aql* requires one to look beyond Ibn Idrīs.

The most prominent of the next generation of Imāmī scholars, Muḥaqqiq al-Ḥillī (d.676 A.H.), stated that the *dalīl al-'aql* is of two types. The first of which amount to basic linguistic principles based upon which the *Khitāb*, religious addresses from the Qur'ān and Sunna, are understood[136]. Although referred to as *dalīl* these linguistic principles do not amount to a source or indicator of Sharī'a precepts.

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[134] *Mutawātir ḥadīth* are reports that have been transmitted by numerous independent chains, to the extent that the number of independent chains yields certainty in the soundness of the reports transmission.

[135] *Kitāb al-sarā'ir*, (Qum, Mu'assasat al-Nashr al-Islāmī, 2007) Vol 1. 38-39.

[136] Muẓaffar, *Uṣūl al-fiqh* Vol. 2 p. 102-103.

Muḥaqqiq's second type of *dalīl al-ʿaql* however, is the more relevant to our investigation, for as he states 'it is that which *al-ʿaql* independently indicates upon, and which is restricted to being in respect to *al-ḥusn* (praiseworthiness) and *al-qubḥ* (blameworthiness)'[137], thus the independent axiomatic judgements of moral status referred to by al-Ṭūsī, started to be explicitly described as an instance of *al- dalīl al-ʿaql.*

What was already an ambiguous term, clearly used in reference to a broad range of disparate concepts until that point, was not simplified by Shahīd al-Awwal's (d. 786 A.H.) elaboration on Muḥaqqiq's dual classification of *dalīl al-ʿaql*. He added to both categories other more sophisticated examples of rational interpretation including the issue of the obligatory nature of a prerequisite to obligation (*muqaddamāt al-wājib*) into the first category, and the principle of presumed continuity of state (*al-istiṣḥāb*) into the second- thus blurring somewhat further Muḥaqqiq's previous categorisation[138].

The inclusion of linguistic principles, rational interpretive judgements and independent judgements of *ʿaql* all within the tem *dalīl al-ʿaql* lends support to Muẓaffar's claim that until this point what was intended by the usage of the term *al-dalīl al-ʿaql* had not yet been made absolutely clear. Even the much later authoritative figure of Mīrzā Qummī (d. 1231 A.H), who offered a succinct definition of that *dalīl al-ʿaql* which may be considered a source alongside the Qur'ān and Sunna as being 'that rational precept through which the *Sharīʿa* precept is reached and by which one is transferred from knowledge of a rational precept to knowledge of a *Sharīʿa* precept'[139], managed to refer to the implicit indications of textual evidences (*mafāhīm*) as also being the result of *al-dalīl al-ʿaql*[140].

The somewhat uncharacteristically loose usage of the terminology pertaining to *al-dalīl al-ʿaql* amongst Shīʿa scholars of *uṣūl al-fiqh*, made the concept of the role of *al-ʿaql* a somewhat easy target for the polemical attacks of the more textually

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[137] *Ibid,* p. 103.
[138] Muẓaffar, *Uṣūl al-fiqh*, Vol. 2 p. 103.
[139] *al-Qawānīn al-muḥkama fil-uṣūl il-matqana, al-juz' al-thālith* (Qum, Mu'assasat Iḥyā al-Kutub al-Islāmī, 2009) p. 7.
[140] *Ibid.*

inclined Shīʿa of the Akhbārī school[141]. Although the Akhbārī were largely defeated, there is no doubt that the intense debates between the two camps of Akhbārī and Uṣūlī have left an indelible mark upon contemporary Shīʿī *uṣūl al-fiqh*[142]. Seeking to understand to what extent these debates impacted upon the Uṣūlī conception of *dalīl al-ʿaql* would be beyond the remit of this study, however it is clear that it is only subsequent to the period of intense rivalry between the two schools that the ambiguity entailed in the employment of the term *dalīl al-aql* has been clarified. This clarification has entailed classifying the *dalīl al-ʿaql*, explicitly referred to as a source of Sharīʿa precept and not the linguistic principles used to understand the apparent meaning of textual evidences, as being either non-independent rational judgements or independent rational judgments.

2.3 Two forms of *dalīl al-ʿaql*

Modern Shīʿa scholars of *uṣūl al-fiqh* classify *dalīl al-ʿaql*, understood as a rational judgment that leads to certain knowledge of a *Sharīʿa* precept, into one of two categories. Either it is that which is attained through an independent judgement of *al-ʿaql*, and hence referred to as *al-mustaqillāt al-ʿaqliyya* (independent rational indicator or independent rationality) or it is not attained through the independent exercise of rationality and hence referred to as *ghayr mustaqillāt al-ʿaqliyya* (non-independent rational indicator or non-independent rationality). As shall be shown, this division tidies up much of the ambiguity surrounding the historical usage of the term; however the technical nature of the division warrants a degree of explanation.

According to Muẓaffar knowledge of *Sharīʿa* precepts, being contingent (*mumkin*), cannot arise without a cause (*ʿilla*)[143]. Reflecting the deep influence Aristotelian logic still holds over the epistemological ideas of Shīʿī thought, he

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[141] For example, see Yūsuf al-Baḥrānī, *al-Ḥadāʾiq al-nāḍira* (Qum, Muʾasasa Al-Islāmī, 1957) Vol. 1 p.40-59.

[142] For an introductory survey on the Uṣūlī- Akhbārī dispute see Hossein Modarressi, 'Rationalism and Traditionalism in Shīʿī Jurisprudence: A Preliminary Survey', *Studia Islamica*, Vol. 59 (1984), pp. 141-158.

[143] Muẓaffar, *Uṣūl al-fiqh*, Vol 1. p. 181.

goes on to state that the cause for accentual knowledge (*ʿilm al-tasdīqī*) is necessarily born out of one of three types of reasoning; deductive syllogism (*qiyās*), induction (*istiqrāʾ*) or analogy (*tamthīl*). Neither the inductive *istiqrāʾ* nor analogical reasoning- referred to as *tamthīl* in logic and *qiyās* in *uṣūl al-fiqh* - lead to conclusions which can be deemed certain, and thus both are rejected as potentially valid methods of reasoning which may be employed in pursuit of valid knowledge of Sharīʿa precepts. The 'cause for knowledge of Sharʿī precepts' is hence theoretically restricted to being exclusively through deductive logical syllogisms *(al-qiyās al-manṭiqī)* [144].

If both minor and major premise in the syllogism are of textual origin and hence non-rational, the evidence or argument (*dalīl*) attained by way of the syllogism is considered *sharʿī* as apposed to being *aqlī*. Such syllogisms of entirely non-rational content are considered *dalīl sharʿī*. On the other hand if either one, or both, of the premises are rationally attained, the knowledge acquired through the syllogism is considered as a *dalīl ʿaqlī*. In the case where both premises of the *dalīl al- ʿaqlī* are rational, it is of the category referred to as *al-mustaqillāt al-ʿaqliyya* (independent rationality). Consider the following example;

> Minor premise; Justice is praiseworthy according to *al-ʿaql*
> Major premise: Everything that is praiseworthy according to *al-ʿaql* is rationally praiseworthy according to *al-sharʿ*
>
> Conclusion: Justice is praiseworthy according to the judgment of *al-sharʿ*

Needless to say there is much debate over the validity of the content of the mentioned premises and over whether theses premises are indeed rational or not- contentions that will both be analysed in depth in subsequent discussions. However if taken at face value, it is clear how the resultant *Sharīʿa* precept regarding the praiseworthiness of justice can be said to have come about from independent rationality or *al-mustaqillāt al- ʿaqliyya*, for both minor and major premises are claimed to be purely rational.

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[144] Muẓaffar, *Uṣūl al-fiqh*, Vol 1 p. 181.

On the other hand if only one of the two premises is rational, the other being non-rational, the overall *dalīl al-ʿaqlī* is classified as a judgment of non-independent rationality or *ghayr al-mustaqillāt al-ʿaqliyya*. Consider the following example;

> Minor premise: Ḥajj is obligatory upon the one who has attained the capability (*al-mustaṭī)*
> Major premise: The necessary prerequisites (*muqadamāt al-wājib*) for any *sharʿī* obligation are rationally also a *sharʿī* obligation
>
> Conclusion: The necessary prerequisites for Ḥajj are a *sharʿī* obligation upon the *mustaṭī*

The minor premise- that it is obligatory for every Muslim who attains the capability, and thus becomes in legal terms *al-mustaṭī*, to perform the Greater pilgrimage to Mecca- is a *Sharīʿa* precept established through textual revelatory evidences. However the major premise in the syllogism is a rational precept not dictated by revelatory means. As discussed further below, some scholars hold that this rational precept states that it is rationally obligatory to fulfil the necessary prerequisites to every *sharʿī* obligation. Thus the necessary prerequisites to the performance of the Ḥajj, e.g. securing a visa and reaching Mecca on time for the commencement of the pilgrimage season, are considered a *sharʿī* obligation upon the *Mustaṭī*. This *dalīl al-ʿaqlī* is classified as a non-independent judgement of rationality, a result of *ghayr al-mustaqillāt al-ʿaqliyya,* for the conclusion is not attained through the exercise of reason only, rather it is a judgement which requires a precept established through revelatory knowledge as one of its two premises.

2.4 *Al-dalīl al-ʿaql* as rational correlations

The discussions of both *al-mustaqillāt al-ʿaqliyya* and *ghayr al-mustaqillāt al-ʿaqliyya* are often subsumed by Shīʿī scholars of *uṣūl al-fiqh* under a single title referred to as *al-mulāzamāt al-ʿaqliyya* or the rational correlations. This is due to

the validity of the syllogism in both above cases being dependent upon the assumed existence of a *mulāzama* (necessary correlation) between the judgement of *al-ʿaql* and the judgment of *al-sharʿ*. In the first case this correlation reads as; everything that is praiseworthy according to *al-ʿaql* is praiseworthy according to *al-sharʿ,* and in the second case it reads as; the necessary prerequisites for any *Sharʿī* obligation (*muqadamāt al-wājib*) are rationally also a *Sharʿī* obligation. Both cases affirm the occurrence of a rational correlation between an initial precept, established by either *al-ʿaql* or by *al-sharʿ*, and a second *Sharʿī* precept reached by way of that rational correlation. This is seen in the claimed rational correlation between the rational precept that justice is praiseworthy and the corresponding *Sharʿī* precept stating the same, just as it is seen in the rational correlation between the *Sharʿī* obligation to perform the Hajj and a corresponding *Sharʿī* obligation to fulfil its necessary pre-requisites.

ʿAbd al-Hādī al-Faḍlī states that the judgement of 'al-ʿaql which is considered a source of legislation and a *fiqhi* indicator is this very rational correlation'[145] and it is this correlation which is the fundamental content to the major premise within the reasoning of both *al-mustaqillāt al-ʿaqliyya* and *ghayr al-mustaqillāt al-ʿaqliyya*. The correlation is often rephrased in the form of a general principle referred to as *al-qāʾidatu al-mulāzama* (the principle of correlation)*,* and formulated as follows; everything that is judged by *al-ʿaql*, is judged by *al-Sharʿ*. The nature of this correlation, what is exactly intended by *al-ʿaql* and whether or not knowledge of *Sharīʿa* precepts attained through recourse to this correlation is actually authoritative, are questions taken seriously by Shīʿa scholars of *uṣūl a-fiqh* and they are discussed extensively within their treatment of the *ḥujjiyya* (authoritativeness) of *dalīl al-ʿaql.*

Exactly how Shīʿa scholars of *uṣūl a-fiqh* deal with these questions is imperative to this study and thus they will be tackled at length in subsequent chapters. However in line with the treatment of *al-ʿaql* found in the work of Mohammad Riḍā al-Muẓaffar, some further identification of the instances of the minor premises within these syllogisms is in place. Examining the particular instances of the minor premises (*tashkhīs al-sugriyāt*) to which these correlations may

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[145] *Mabādī al-uṣūl*, (Qum, Matbuʿāt dīnī, 1962) p. 90.

apply will further demonstrate the difference between *ghayr al-mustaqillāt al-ʿaqliyya* and *al-mustaqillāt al-ʿaqliyya* and the fundamental relation between the category of *al-mustaqillāt al-ʿaqliyya* and the ʿAdliyya theological premises regarding the nature of morality. A central concern of this study is to demonstrate how and why this independent category of *dalīl al-ʿaql*, which is intimately related to the theological ethical rationalism of the ʿAdliyya, actually plays little significant role in the practical inference of *Sharīʿa* precepts within the mainstream framework of contemporary Shīʿī thought. With respect to the alternative category of the non-independent rational indicator, a brief survey of the issues discussed within its remit will bring into question the extent to which they can actually be considered the use of reason *as a source* of *Sharīʿa* precept. As shall be seen, they may be more appropriately regarded simply as issues pertaining to the rational interpretations of textual evidences as attested to by those scholars who discuss them not as rational correlations but instead within and amongst the section of *uṣūl al-fiqh* which treats the linguistic discussions (*mabāḥith al-lafḍiyya*) regarding the interpretation of texts.

2.5 The non-independent rational indicator; *Ghayr al-mustaqillāt al-ʿaqliyya*

The category of *al-dalīl al-ʿaql* referred to as *ghayr al-mustaqillāt al-ʿaqliyya* are those in which *al-ʿaql* does not independently reach knowledge of the *Sharīʿa* precept. Rather its conclusion is attained by way of recourse to an already established judgement of *Sharīʿa*, a minor premise within a syllogistic model of reasoning whose major premise claims that there is a rational correlation between the initial *Sharīʿa* precept and a second *Sharīʿa* precept discovered by way of this correlation. There are number of possible occurrences of this rational correlation which are debated by modern Shīʿa scholars of *uṣūl al-fiqh*, the following section will give an overview of the most important of these instances and give a sense of the, often rather technical, debates conducted under the hubris of *ghayr al-mustaqillāt al-ʿaqliyya*. The question will then be raised as to how appropriate it actually is to consider the *ghayr al-mustaqillāt al-ʿaqliyya* as a

source of *Sharīʿa* precept alongside Qur'ān and Sunna, or whether they are instead more appropriately considered to be questions which pertain to the rational interpretation, or even linguistic signification, of textual evidences.

2.5.1 The sufficiency of acts performed according to secondary precepts; *al-Ijzā'*

A proper appreciation of the question of *al-Ijzā'* in *uṣūl al-fiqh*, requires some preliminary notes about how the nature of *aḥkām* are envisaged of by scholars of *uṣūl al-fiqh*. Sharīʿa *aḥkām* are the orthopraxic precepts broadly defined as 'regulating instructions from Allah whose purpose is to order the lives of human beings'[146]. These *aḥkām* include the imposition of duties (*takālīf*) upon those who are deemed vested with responsibility *(mukallafīn)*[147]. In any particular case of a duty resulting from a divine imperative (*amr*), the duty that is sought is the performance of *al-amr al-ikhtiyārī al-wāqiʿī* (the unconstrained actual imperative) that is the imperative issued for an unconstrained situation as consistent with the actual imperative in the knowledge of God. The corresponding *ḥukm* to this command is referred to as the primary actual precept (*al-ḥukm al-awwali al-wāqiʿī*). Performance of an action in accordance with this primary actual precept would relieve the duty incumbent upon the *mukallaf*. However, if it is not possible to fulfil the unconstrained actual imperative, due to either a suitably qualified obstacle or because of ignorance of that actual law, the required duty upon the *mukallaf* is considered to change to the fulfilment of a secondary precept (*al-ḥukm al-thānawī*).

In the case of a constraint or obstacle to the performance of the primary actual precept, such as if one cannot find water for the performance of the minor ritual ablution required prior to canonical prayer, the duty upon the *mukallaf* changes to a required fulfilment of the command for constrained circumstances (*al-amr al-iḍṭirārī*), and in our example the alternative procedure of *Tayyammum*- which

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[146] Al-Faḍlī, *Mabadi al-Uṣūl* p.7.
[147] There are numerous general conditions that need to be met by an individual before he or she is considered to be a *Mukallaf* and hence vested with *Sharīʿa* responsibility. As with most things in *uṣūl al-fiqh* and *fiqh,* there is debate both across the schools and within them as to the what these conditions actually are, amongst those commonly listed by Shīʿa are; capacity (*qudra*), legal maturity (*balūgh*) and sanity *(ʿaql)* .

does not require water- should be performed instead of the normal ablution with water. In cases where one is ignorant of the primary actual precept, the *mukallaf* is required to fulfil the apparent imperative (*al-amr al-ẓāhirī*) and act in accordance to an apparent precept (*ḥukm al-ẓāhirī*) legislated to allow the one vested with responsibility with a practical means of resolving doubtful or unknown situations of duty. For example, based on the juristic principle that 'everything is ritually pure (*ṭāhir*) for you, until you know that it is not'[148], if one were to find a container of water the purity of which was uncertain, it may be assumed to be pure and hence suitable for use in ritual purification. Should this water have actually been impure, then according to the actual primary precept ablution performed with this water would not have fulfilled the required actual duty. However due to the ignorance of its true status, using the impure water is in accordance with requirements of *al-amr al-ẓāhirī* (the apparent imperative) and thus the performance with the impure water suffices for the *mukallaf*'s obligation as established in the apparent precept (*al-ḥukm al-zāhirī*).

With this prelude it is now possible to outline the question which is debated under the title of *al-Ijzā'*, and how it is conceived of as a discussion of *ghayr al-mustaqillāt al-ʿaqliyya*, the non-independent rational indicator. A debate arises as to the status of an act performed in accordance with a secondary imperative-issued either due to constrained circumstances preventing fulfilment of the primary actual imperative or in the context of ignorance of the actual imperative-when the obstacle to the actual precept is subsequently removed or, in the second case, when the knowledge of the actual situation becomes realised. Putting these situations into the context of our examples; with respect to the *al-amr al-iḍṭirārī*, what is the status of the prayer performed with *Tayammum*, due to an initial absence of water for ablution, when water subsequently becomes available? And with respect to the *al-amr al-zāhirī;* what is the status of that prayer performed with ablution made with water which was assumed to be pure, but whose actual impurity subsequently becomes known? Does the performance

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[148] For debate and details regarding the juristic principle of purity (*qāʿidut al-ṭahāra*), including discussion of its content, basis, scope, conditions and examples of its application see Bāqir al-Irwānī *Durūs tamhīdiyya fi al-qawāʿid al-fiqhiyya* (Qum, Muʾasasat al-Fiqh lil-Ṭibāʿa wa al-Nashr, N.D.) Vol. 2 pp. 43-56.

of the secondary precept suffice for the primary imperative when the cause for the activation of the secondary precept, which was the constraint or the ignorance, is no longer present?

Muẓaffar rephrases this dilemma in terms of the question regarding the existence, or non-existence, of a rational correlation;

> The reality of it is a discussion with regards to the establishment of a correlation- rationally- between the performance of an act commanded by way of a constrained or apparent imperative, and the sufficiency of this act to discharge the responsibility of the primary unconstrained actual imperative [should the constrain or ignorance have passed][149].

Modern Shīʿa scholars of *uṣūl al-fiqh* are largely in agreement that performance of the *al-amr al-iḍṭirārī*, that is the imperative issued for a situation of constraint, rationally suffices for the performance of *al-amr al-awwalī al-wāqiʿī*, even if the means for its full performance subsequently becomes possible. The central justification for this position is that the *aḥkām al-iḍṭirārī* have been legislated for the very purpose of giving ease, relieving duty and establishing leeway for the one vested with responsibility in the course of the acquisition of the benefits of duty (*maṣāliḥ al-takālīf*) when they find themselves in constrained situations[150]. This giving of ease and leeway is in line with the tone of Qurʾān 2:185 which, whilst discussing alleviations for those who have obstacles to performing the prescribed fasting of the month of Ramaḍān, states; 'Allah desires for you ease, and He does not desire for you hardship'. It could hardly be considered a requirement of ease if the *mukallaf* was giving the responsibility of having to perform a second duty in accordance with the primary precept after having already completed one act in accordance with the precept for constrained circumstance. Accordingly, the act which was performed to discharge the duty imposed by the precept of constrained circumstance is considered sufficient, and

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[149] Muẓaffar, *Uṣūl al-fiqh*, Vol 2, pp. 213.
[150] Al-Faḍlī, *Mabādī al-uṣūl,* p. 96.

hence in our cited example a prayer performed with *Tayyammum* is sufficient even if water subsequently becomes available[151].

As for the question of the sufficiency of the act performed according to the apparent precept (*al-ḥukm al-ẓāhirī*) when knowledge of the actual precept (*al-ḥukm al-wāqiʿī*) subsequently becomes realized; the most popular opinion (*al-mashhūr*) is that this performance is not rationally sufficient for the discharge of duty[152]. This is as result of it becoming clear to the *mukallaf* that he was certainly false in his prior assumption. On the certain disclosure of his mistake there is no longer scope for him to rely upon the apparent precept. In this situation of knowledge the actual precept becomes an active duty upon him regardless of whether he brought about any other act in its place. Thus, if one had performed a prayer whose ablution was conducted with water assumed to be pure, but then it becomes subsequently known that this water was defiantly impure- the duty to perform prayer with proper ritual ablution still rests upon the *Mukallaf* and he or she would need to repeat the acts for discharge of this duty[153].

2.5.2 The pre-requisites of an obligation; *Muqadamāt al –wājib*

The pre-requisites to an obligation are those 'acts without which an obligatory act cannot be properly fulfilled'[154]. If a particularly act is considered obligatory and the performance of that act requires certain preliminaries or pre-requisites, it is held that all rational beings would deem it rationally necessary to fulfil these preliminaries or prerequisites[155]. What is at dispute and taken up for a point of debate in *uṣūl al-fiqh* is whether this rational necessity calling for the performance of the pre-requisites to an obligation reveals a corresponding religiously ordained, or *sharʿī*, necessity for the performance of these pre-requisites. The point of dispute again, according to Muẓaffar at least, amounts to

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[151] For a more extensive account of the intricacies of the debate see Muẓaffar, *Uṣūl al-fiqh* Vol 1. pp. 212-215.
[152] Al-Faḍlī, *Mabādī al-uṣūl* p. 97
[153] Again for a more extensive account of the intricacies of the debate, and differences of opinion see Muẓaffar, *Uṣūl al-fiqh*, Vol 1. pp. 212-215.
[154] Al-Faḍlī *Mabādī al-uṣūl* p. 97.
[155] See Al-Faḍlī *Mabādī al-uṣūl* p.97, Jaʿfar Subhāni *al-Mūjiz fi uṣūl al-fiqh* (Qum, Muʼasat al-Imām al-Ṣādiq, 2008) p. 45, and Muẓaffar *Uṣūl al-fiqh* Vol. 1 p. 225.

a question of the correlation between the judgment of *al-ʿaql* and the judgement of *al-sharʿ*. Formulating it as a question pertaining to the existence of a rational correlation we may ask, does the rational necessity to perform the pre-requisites of a *sharʿī* obligation rationally correspond to, and reveal, a concurrent *sharʿī* duty obliging the performance of these pre-requisites?

On the face of it at least, this may seem like a rather pointless discussion. For either way, whether one affirms the existence of this rational correlation or not- one has to complete the pre-requisites of an obligation in order to discharge the duty of that obligation. The only difference being that based on an affirmation of this correlation the pre-requisites would be deemed ordained by both *al-sharʿ* and *al-ʿaql,* rather than being deemed necessary only by *al-ʿaql* in the case of those who deny the correlation. In view of this apparent redundancy of the issue and particularly since the discussion is 'amongst the most famous of the discipline [of *uṣūl al-fiqh*], and its most delicate and most extensively discussed'[156], Muẓaffar feels the need to justify its relevance. This relevance lies in the fact 'that the issue has many theoretical benefits even if it does not have practical benefits', what's more these theoretical benefits are associated with a number of issues, the essence of which are indeed practical when considered at the level of *furūʿ al-fiqh*[157]. These involve discussing the nature of and distinguishing between numerous different categories of pre-requisites and conditions to obligations, such as devotional and non-devotional types or expiring and non- expiring types. Amongst other categories, these discussions even include the question of the philosophical possibility of a category of conditions that are performed *after* the obligatory act instead of before it![158]

It is almost to be expected with the reputation of *uṣūl al-fiqh* for producing oblique and hair splitting debates, that even in an issue with only limited direct practical benefits to the inference of *Sharīʿa*, that we can find a vast range of

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[156] Muẓaffar *Uṣūl al-fiqh*, Vol. 1 p. 227.
[157] *Ibid*. pp. 227-228.
[158] A situation where the condition for the proper completion of an obligation is brought about after the act itself includes the condition of a major ablution performed in the night after a fast has been completed by a women experiencing non-menstrual bleeding as a requirement for that fast to be considered valid. Another example is the post-validation of a contract of sale by a rightful owner, in a case where an unlicensed representative without the owner's knowledge has already conducted the sale on his behalf.

scholarly opinions on the matter. This range of opinions reveal between ten and twelve different distinct positions regarding the core question of the existence or otherwise of the debated correlation between the rational requirement to perform pre-requisites to obligation and the obligation to perform them in the eyes of the *sharʿ*[159].

Muẓaffar's own position is that there is no correlation, in any circumstance, between the rational necessity to perform the pre-requisites to an obligation and the existence of an obligation to fulfil these prerequisites from the commander of the obligation. Following a line of recent luminaries, including Muḥsin al-Ḥakīm (d. 190/1970) and Abū al-Qāsim al-Khoei (d. 1413/1992), Muẓaffar cites an argument for this position attributed to Abūl Ḥasan al-Isfahānī (d. 1365/1946)[160]. The judgement of reason which calls for the performance of pre-requisites to an established obligation is a judgement which is sufficiently motivating for the *mukallaf* to require him to perform the desired acts, such that there is no need for a further devotional command (*amr al-mawlawī*) from the legislator to bring about these pre-requisites. This is all the more apparent where it is assumed that the one to whom the devotion is owed (*al-Mawlā)*, being omniscient, is fully aware of the existence of this motivation. 'As the devotional imperative- be it for [an act] itself or for [the purpose of] another [act]- is stipulated by *al-Mawlā* for no other reason than for the purpose of eliciting a movement of the *mukallaf* towards acting out that which has been commanded' it would be redundant with the existence of a rational motivation towards the performance of the object of command. There is no need for such a devotional command when the required motivation already occurs as a result of the judgement of reason. In fact the issuance of such a *sharʿī* command is considered impossible as it would be a case of *taḥsīl al-ḥāsil*, the bringing about of something which already exists and hence an action without purpose, something- which according to the ʿAdliyya at least-, cannot be attributed to a Wise and Knowing God. In summary then, according to Muẓaffar, there is no correlation between

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[159] Faḍlī mentions ten distinct opinions and Muẓaffar twelve. These different opinions emerge from the distinctions made between different types of obligations and the different type of pre-requites which they may entail. See *Mabādī al-Uṣūl,* p. 100 and *Uṣūl al-fiqh,* pp. 254-257.
[160] *Uṣūl al-fiqh,* Vol. 1 p. 255.

the rational necessity to perform the pre-requisites of an obligation and a shar'ī necessity to perform these very acts. This is because the judgement of reason is sufficiently motivating to impel one towards their performance and any corresponding *shar'ī* command would be rendered redundant without purpose and hence unattributable to a Wise God.

2.5.3 The indication of a prohibition to corruption: *Dalāla al-nahī 'ala al-fasād*

The discussion of *dalāla al-nahī 'ala al-fasād,* is another undertaken under the title of *ghayr al-mustaqillāt al-'aqliyya* and again is considered to be one of the more important discussions found in *uṣūl al-fiqh*, having extensive- and this time more obvious- implications for a range of positions reached in *furū' al-fiqh*[161]. The wide-ranging discussions undertaken centre around responding to the following question; does a prohibition directed toward an action indicate, or necessitate, its corruption and invalidity if performed by a *mukallaf*? Reformulating the issue in terms of a question with regards to a rational correlation the question posed asks; is there a rational correlation between the prohibition of a thing and its invalidity? Accordingly the debate was re-termed by Muḥammad Kāḍim al-Khurasānī, in his famous *Kifāyat al-uṣūl*, as a question of the *iqtiḍā or* rational necessitation of the prohibition to corruption, rather than the question of its *Dalāla,* a term which usually implies only linguistic signification[162].

The question is tackled with respects to two different categories of act, acts that are devotional (*al-'ibāda*) and acts that are non-devotional (*al-mu'āmalāt*). Here devotional acts may be considered to be those acts whose validity requires that their performance be undertaken with a specific intention of seeking proximity to Allah (*bi qaṣd al-qurba*). Of course a central notion in Islam is that all wholesome actions, however mundane they may seem, should be performed with the intention of seeking proximity to Allah, and any act performed in this manner deserves the title of *al-'ibāda*. However this is *'ibāda* in a more general

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[161] Subḥāni, *Al-Mūjiz*, p. 70.
[162] *Kifāyat al-uṣūl,* Vol. 1 p. 249 and Muẓaffar, *Uṣūl al-fiqh*, Vol 1. p. 306.

sense that that which requires an appropriate intention as a necessary condition for its validity, such as in case of the canonical prayers (*al-Ṣalāt*) or canonical fast (*al-Ṣawm*).

The prohibition to fast on the two days of Eid[163], the prohibition to perform canonical prayer in misappropriated clothes (*al-libās al-maghṣūb*) and the prohibition preventing a women from performing canonical prayer during her menstrual cycle are all examples of a prohibition occurring upon devotional acts. The prohibition may be directed towards either the devotional act itself, a part of an act, a condition for an act or upon an attribute of an act[164]. The position adopted in all such cases is that the prohibition does necessitate the invalidity of the devotional act. Should a *mukallaf* bring about a prohibited devotional act, that act would be deemed invalid. Hence, fasting on either of the days of Eid, the canonical prayer performed in misappropriated clothes and the canonical prayer of a woman during her menstrual cycle[165], are all considered void and invalid.

Amongst the justifications offered for this position is that;

> [T]here is an obvious mutual conflict between a devotional act- through which proximity to Allah is sought, and [through which] His pleasure [is sought]- and the prohibition, the contravention of which moves one away from Allah, exalted, and is a cause for His displeasure. It is impossible to seek proximity through something that moves one away, and [to seek] pleasure by that which displeases[166].

The prohibition upon an act is considered to reveal God's dislike of that act, demonstrating that its performance would actually moves one away from Him and elicit His displeasure. As the devotional act is intended to be a means of approach and a means of acquiring Gods pleasure, it becomes clear that one

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[163] The two Eids are the festival days of celebration, one of which marks the day of sacrifice during the Ḥajj season whilst the other marks the completion of the month Ramaḍān.
[164] Muẓaffar, *Uṣūl al-fiqh*, Vol. 1 pp. 307-308.
[165] It is worth noting that the prohibition preventing women from performing the canonical prayer during their menstrual cycle is seen as a dispensation, and does not in any way belittle their potential relationship with God- a relationship which may be just as intimate with a God, described by the Qur'ān as being closer to human beings than their jugular veins, whether one is in a menstrual cycle or not.
[166] Muẓaffar, *Uṣūl al-fiqh*, Vol. 1 p. 308.

cannot seek this approach through an act, which due to its prohibition, is disliked by God and actually takes one away from Him. Thus the existence of a rational correlation between prohibitions directed towards devotional acts and the corruption or invalidity of these acts is affirmed.

In the case of the prohibition upon non-devotional acts, two distinct situations are discussed. Either the prohibition may be upon an initiatory contract (*al-ʿaqd al-inshāʾī*) or upon a non-devotional act itself *(nafs al-muʿāmala)*. An example of a prohibition upon an initiatory contract is the prohibition to selling at the time of the call to the Friday prayer, as inferred from Qurʾān 62:9 which states; 'when the call to Friday prayer is proclaimed, hasten to the remembrance of Allah and leave sale'. According to Muẓaffar the opinion deemed most appropriate by the scholars (*al-maʿrūf*) in this situation is that there is no rational correlation between prohibition and invalidity[167].

> Because there is no contradiction, not rationally nor conventionally (*lā ʿaqlan wa lā ʿurfan*), between a contract and the causation through it being disliked and between its validation by The Legislator when the said contract is otherwise fulfilling all the stipulated conditions – in fact the opposite is established, e.g. in the prohibition of *Ẓihār[168]*, which does not negate the resultant effects of it with respect to separation.[169]

Just because the initiation of a contract is disliked does not mean that it is necessarily invalid. The difference between this situation and the prohibition upon the devotional act is that the very purpose of a devotional act is to seek the pleasure of God, something that cannot be attained through something disliked. Whereas in the case of a disliked contract, which fulfils all necessary conditions of validity, the contract is still effective in initiating its consequence and hence

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[167] Muẓaffar, *Uṣūl al-fiqh*, Vol. 1 p. 311

[168] *Ẓihār* refers to an act prevalent in the pre- Islamic society, in which A husband would renounce conjugal relations with his wife by stating that His wife was to to him like the back (ẓihār) of his mother. The Qurʾān explcictly prohibits this practice, but it does maintain the effects of the impermissible declaration to stand until the husband has offered expiation, see. Qurʾān 58:3. Reference to this example here as part of a justification for a position in *uṣūl al-fiqh* may be indicative of a case where the positions in *furuʿ al-fiqh* drove the positions in *Uṣūl al-fiqh*, rather than the other way round. For a discussion of the complex and variable relation between *furūʿ and uṣūl* see above pp. 25-37.

[169] Muẓaffar, *Uṣūl al-fiqh*, Vol. 1 p. 311.

the prohibited initiatory contract is deemed to maintain its validity. Although the prohibition reveals that to trade at the time of the call to prayer on a Friday is disliked, and hence a sin, any sales which are conducted at this time are considered valid and maintain their legal effect.

As for the prohibition upon a non-devotional act when the object of the prohibition is not an initiatory contract, but the act itself (*nafs al-muʿāmala*) – there is a greater difference of opinion as to whether the prohibition is deemed to invalidate the act or not[170]. However both Bāqir al-Ṣadr and Muẓaffar are of the opinion that if the prohibition is directed towards the very existence of the non-devotional act, such as in the example of the prohibition attached to selling copies of the Qurʾān, it would invalidate the action[171]. For both scholars such a prohibition reflects what ultimately refers to some unfulfilled condition, or obstacle *(māniʿīyya)* to the validity of the contract itself. Authority (*sulṭāniyya*) and a right to utility (*ḥaq al-taṣarruf*) are basic conditions for the validity of a non-devotional act or transaction. According to Muẓaffar the prohibition from God is a devotional obstacle to the *Mukallaf*'s action that undermines his authority and right of utility over that act/transaction, thus violating a necessary condition of the validity of the non-devotional act and resulting in its invalidity[172].

2.5.4 The status of the opposite to that which has been commanded; *al-ḍid*

Within the debates discussed under the category of *gayr mustaqillāt al-ʿaqliyya* is the issue referred to by scholars of Shīʿa *uṣūl al-fiqh* simply as *masʾala al-ḍid.* The discussion centres around the question as to whether or not an imperative or command toward a thing rationally necessitates a prohibition upon its opposite (*hal yaqtaḍī al-amr al-nahī ʿalā ḍiddihi am lā*). Here the term *ḍid* refers to an absolute opposition or negation. The usage then is more general than the employment of the same term in logic where it refers only to an existential

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[170] Al-Faḍlī, *Mabādī al-uṣūl,* p. 111.
[171] *Durūs fi ʿilm al-Uṣūl,* Vol. 1 p.353, *Uṣūl al-fiqh* Vol. 1 p. 311.
[172] *Uṣūl al-fiqh* Vol. 1 p. 311.

opposition e.g. black and white[173]. The question here relates to both this case of opposites and the case of opposition referred to as *naqīḍ*, a non-existential opposition, e.g. black and non-black. Accordingly the discussion in *uṣūl al-fiqh* is at two levels, first it is asked if a command to a thing necessitates a prohibition against the non-existential opposition of the commanded thing, referred to as *al-ḍid al-ʿām.* Put more simply, does the command toward an action also necessitate a devotional prohibition against leaving or avoiding that action? The second level of question asked is whether or not a command toward an action necessitates a prohibition against any actual existential act brought about, referred to as *al-ḍid al-khāṣ,* which is contrary to the act commanded.

With respect to *al-ḍid al-ʿām*, that is the necessitation of a command towards a prohibition upon avoidance of the commanded act, the most prevalent position is that it does occur[174]. Thus the existence of a command to perform an action also necessitates that there is a concurrent devotional prohibition against avoiding that action. Muẓaffar disagrees with this position claiming that there is no rational correlation between the occurrence of a command towards a thing and a *sharʿī* prohibition of avoiding it;

> Because the very commanding of a thing itself, when at the level of obligation, is sufficient [impetus] to restrain from abstention [of that act]. Thus there is no need for the stipulation from the Legislator of a prohibition against leaving that act above and beyond the command to that action.[175]

Despite Muẓaffar's disagreement with the mainstream, as Al-Faḍlī points out, the conclusion in both cases is the same- one is prohibited from performing the *ḍid al-ʿām*. For those who affirm the correlation, this is by way of an independent devotional prohibition from the Legislator. For those who deny this correlation, the nature of the initial command itself is strong enough to prevent us from

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[173] For the different categories of opposition (*aqsām al-taqābul*) and their definitions see Muḥammad Riḍā al-Muẓaffar, *al-Manṭiq*, (Qum, Initishārāt Sayyid al-Shuhadā, 1959) pp. 44-45.
[174] Al-Faḍlī, *Mabādī al-Uṣūl* p. 103, Bāqir al-Ṣadr, *Durūs*. Vol. 1 p. 349.
[175] *Uṣūl al-fiqh,* Vol. 1 p.260.

avoiding the action and there is no need for the issuance of an independent prohibition[176].

The status of *ḍid al-khāṣ*, an existential opposite to a commanded thing, follows and is based on the position adopted with respect to the necessitation of a command to a prohibition upon its *ḍid al-'ām*. For those like Muẓaffar who claim there is no necessary correlation between a command towards a thing and another devotional prohibition against avoiding it, then by priority there cannot be a corresponding devotional prohibition against bringing about any action contrary to that which has been commanded[177]. However those who affirm that a command to an action does necessitate a devotional prohibition to abstain from an act, can argue that this prohibition extends to the bringing about of an action contrary to that which was commanded. This is justified by either one of two theories. The first claims that there is also a further correlation between the *ḍid al-khāṣ* and the *ḍid al-'ām*, making both subject to the same precept i.e. prohibition. The second conceives of the avoidance of the *ḍid al-khāṣ*, as a pre-requisite to the performance of the commanded act. As the pre-requisites of an obligation are considered also a devotional obligation according to some[178], avoidance of the *ḍid al-khāṣ* becomes obligatory and its performance prohibited.

In this brief description it is plain to see that this is another hair splittingly sophisticated theoretical discussion. However again, it is not without practical relevance. An affirmation of a prohibition to the *ḍid al-khāṣ* has extensive implications to the positions attained in *furū' al-fiqh.* For scholars of this theoretical opinion, as the prohibition is deemed to necessitate invalidity, acts performed which are contrary to an active obligation are rendered invalid. Accordingly the performance of any supererogatory acts instead of active obligatory acts, or the performance of obligatory acts which are not immediate in their requirement of discharge in favour of those which are immediate in requirement- are all deemed invalid. For example, based on the immediate obligation to remove impurities (*najāsa*) from within the Mosque, if one was to

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[176] *Mabādī al-uṣūl,* p. 103.
[177] *Uṣūl al-fiqh,* Vol. 1 p. 261.
[178] See the discussion above on an the alternative view of the status of the preliminaries for an obligation (*muqaddamāt al-wājib*)

ignore this obligation in favour of the performance of a canonical prayer (*al-ḍid al-khāṣ*), this prayer would be deemed null and void. If one has sufficient capability to perform the obligatory major pilgrimage (*al-Ḥajj*), but chooses to perform the recommended minor pilgrimage (*al-ʿumra*) or a visitation to the shrines of the Imāms (*al-ziyāra*) instead- the minor pilgrimage or visitation would be deemed invalid and void.

2.5.5 The simultaneity of an imperative and a prohibition: *Ijtimāʿ al-amr wa al-nahī*

The question of the possibility of the simultaneity (*Ijtimāʿ*) of a command and a prohibition pertaining to a single thing has been a point of discussion in Shīʿa scholarship even before the formal systematisation of their ideas in *uṣūl al-fiqh* began[179]. It is a discussion that amounts to what may be described as a conceptual analysis of the possibility and nature of a particular type of conflicting duty. The discussion gives support to the theses that the product of the jurists reading of *Sharīʿa* is not a simple deontological system, but is instead rather more akin to a system of prima facie ethics as associated with W.D. Ross[180]. The exact nature of the conflict (or simultaneity) under discussion here is whether or not it is philosophically, or rationally, possible that a single act be at the same time commanded from one perspective and yet prohibited from another.

To clarify the point of dispute, scholars of Shīʿa *uṣūl al-fiqh* first distinguish between at least two types of simultaneity[181], a real simultaneity (*Ijtimāʿ ḥaqiqī*) and a circumstantial simultaneity (*Ijtimāʿ mawradī*)[182]. The *ḥaqiqī* or real simultaneity, also referred to as *al-Ijtimāʿ al-maʾmūrī*, refers to a situation where there is a single source of command and prohibition (in this case Allah, the *Mukallif*) directed to the same responsible individual (*mukallaf*), at a single time

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[179] Subhani cites the relevant opinions of both Faḍl bin Shādhan (d. 260/873) and al-Kulayni (d. 328/941) along with a list of prominent Shīʿa scholars from throughout the subsequent generations, see *Al-Mūjiz* pp. 67-68.
[180] George Hourani notes this resemblance in his study of Muʿtazilī Ethics see *Islamic Rationalism*, (Oxford, Clarendon Press, 1971).
[181] Subḥāni mentions three types, but it is only the two outlined here which are relevant to the debate at hand. See *al-Mūjiz*, p. 67.
[182] Muẓaffar, *Uṣūl al-fiqh*, Vol. 1 p. 275.

with different referents. For example if there was a legal address to a responsible individual which stated 'Pray! And do not misappropriate! *(Ṣallī wa lā taghṣib*)', we have a single individual with two responsibilities; one being to perform his prayer and the other being to ensure that he does not misappropriate. There is no philosophical problem with the issuance of such a command along with such a prohibition, however the question arises as to the status of the duties if at a point in time the responsible individual brings about the object of both duties (or as the scholars of *uṣūl al-fiqh* put it, both titles,ʿ*anwānain*) in a single act- i.e. what is the status of performing ones prayer in a misappropriated place? Are both the command and the prohibition still active and hence simultaneous? Or is such a simultaneity impossible, leaving one of the two duties suspended in favour of the other? It is these questions that are the central issues in the discussion of the 'simultaneity of a command and a prohibition'. In order to further appreciate the issue of 'a real simultaneity' and how some resolve it, it is important to also explain the circumstantial simultaneity.

The circumstantial concurrence is when the object, or titles *(ʿanwān*), of both duties concur at a single instance but not as a result of a single action. Rather it is a case where there are two actions at a single time, one of which is the object of a commanded duty and another is the object of a prohibited duty. The classic example offered to highlight this category of concurrence is if one were to gaze at an unrelated woman (*ajnabiyya*) whilst performing his canonical prayer. In this example the gaze towards the women, which is assumed to be lustful, is considered a prohibited act whilst the performance of the canonical prayer is deemed obligatory- thus there is an apparent simultaneity between prohibition and command. However, gazing and praying are not considered to be the result of a single act, rather they are viewed as two independent actions- one of which is prohibited and the other obligatory. It just so happens that the responsible individual brings about both acts at the same time, the simultaneity of command and prohibition is thus deemed circumstantial and yield's no 'real simultaneity'. Unlike in the above example where the very act of praying is also an act of misappropriation, here there are two discrete acts and hence the *mukallaf* is

deemed to be sinning with respect to his lustful gaze and obedient with respect to the performance of his prayer.

The possibility of a real or *ḥaqiqī* simultaneity between a command and prohibition are extensively discussed in *uṣūl al-fiqh*, discussions which both Bāqir al-Ṣadr and Muẓaffar subsume within the discussion of non-independent rationality[183]. It is an issue that has produced an array of opinions, some arguing for and some arguing against the possibility in accordance with various permutations of how the simultaneity arises. For further analytical exposition of the question, the real simultaneity is also considered to be of two types; either the situation of simultaneity is brought about by the *mukallaf* despite an alternative means of discharge (*maʿa mandūḥa*), or the situation of concurrence comes about due to a constraint beyond the control of the *mukallaf* (*maʿa iḍṭirār*).

An example of the case where the *mukallaf* has an alternative means of discharge is a prayer performed on misappropriated land, despite there being sufficient time for him to be able to perform the prayer in a permissible place before its designated time elapses. For those who deem that the simultaneity between command and prohibition is possible- ultimately reducing all real simultaneity to circumstantial simultaneity - the *mukallaf* will be obedient with respect to the performance of the prayer and disobedient with respect to his misappropriation of the land[184]. Further implications of this discussion raise their head for those who argue that the simultaneity is not possible, if and when the commanded act is a devotional one. As outlined above devotional acts are rendered void by a prohibition, thus in the situation of simultaneity described, not only would the individual have sinned by way of using misappropriated land, but his prayer would also be deemed invalid.

In cases where the simultaneity is due to a constraint beyond the control of the *mukallaf,* the constraint may have either come about through one's own volition, or due to no prior fault. Examples of the latter include the case of the performance of an obligatory prayer by one who has been wrongfully

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[184] For details of how this position is justified see Muẓaffar, *Uṣūl al-fiqh*, Vol. 1 p. 275

imprisoned in a cell built on misappropriated land, or in the case of a prohibition against leaving ones prayer at the last possible point of discharge coinciding with the obligation to save the life of one drowning in a nearby stream. In such cases of conflict, for those who believe that both prohibition and command cannot occur simultaneously, the active obligation is the one that is based on the most important criteria (*milāk*). The duty considered rationally most important (*aham*) is deemed active, and so fulfilling the obligation to saving the life rather than respecting the prohibition against leaving ones prayer would become the required duty from the *Mukallaf*.

2.5.6 Non-independent rational indicator: source or interpretation?

The foregoing section has outlined the major topics discussed under the category of source described as non-independent rational indicator. The sufficiency of acts according to secondary precepts, the pre-requisites of an obligation, the indication of a prohibition to corruption, the status of the opposite to that which has been commanded and the simultaneity of an imperative and a prohibition are all debates which in some form or another ask of the presence of a rational correlation between an established *Sharīʿa* precept and a second *Sharīʿa* precept discovered by way of this correlation. This outline was not intended to be a conclusive discussion of each issue, rather it aimed only at giving an overview of the potential instances, or minor premises, of the category of *al-dalīl al-ʿaql* classed as non-independent rationality. Even in this brief overview of the debates, it can be seen that each of the five discussions relies on sophisticated, and often hair splitting, analysis. The sample of the debates, taken here from amongst the works of modern Shīʿī scholars, reflects the development of the intellectual efforts of over a thousand years of Muslim scholarship.

Despite the undisputed complexity in the discussions, it is quite reasonable to ask whether these issues can actually be considered instances of rationality as a source of precept or whether they are rather simply rational interpretations, either of linguistic evidences for *Sharīʿa* precepts or of *Sharīʿa* precepts themselves. From the earliest scholars of *uṣūl* through to modern authorities, we

find many of these discussions treated within the section of *uṣūl al-fiqh* referred to as *mabaḥith al-alfāḍ*, the linguistic discussions[185]. Such scholars treat the discussion either within the discussion of the linguistic signification of the imperative or of the prohibition. Muẓaffar argues that even the presence of a single opinion in each case which claims that it is a rational correlation, rather than a linguistic implication, which is the link between the textual evidence or established *Sharīʿa* precept and the newly discovered precept, is enough to justify the treatment of the issues within a discussion of rational correlations rather than linguistic significations[186].

Despite raising this question, it is however clear that each of the cases discussed does potentially fall within the definition of *dalīl al-ʿaql* offered by Mīrzā Qummī and developed by Muẓaffar into the form which considers 'every rational proposition through which certain knowledge of the Sharīʿa precept is attained[187]' to be an instance of *al-dalīl al-ʿaql*. They key term here is that *dalīl al-ʿaql* is defined as anything 'through which (*yatawaṣṣul bihā*)' one leads to knowledge of a *Sharīʿa* precept. Thus rational interpretations of textual evidences- such as the case of the pre-requisite to obligation- or the rational interpretation of the implications of existing *Sharīʿa* precepts- such as in the status of the opposite to that which is commanded- can all be subsumed into *dalīl al-ʿaql*, albeit into the *dalīl al-ʿaql* which is explicitly categorised as being non-independent.

As has been shown through the survey of issues, this category of *dalīl al-ʿaql* does have direct implications and significant impact upon the actual inference of *Sharīʿa* precepts in the domain of *furūʿ al-fiqh*. In fact there is little doubt that the Uṣūlī school of Shīʿī legal theory upholds an extensive role for *al-ʿaql* as an interpretive tool or hermeneutical device in their reading of the Qurʾān and Sunna- the discussions and the opinions adopted within the non-independent

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[185] Review of the contents of, for example, the early work of Murtaḍā, *Al-Dharīʿa,* and the contemporary *al-Mūjiz of* Subhāni's will be sufficient to demonstrate how each of the issues of non-independent rationality have been treated by many within discussions of the linguistic signification of textual evidences rather than as instances of the non-independent category of *dalīl al-ʿaql.*
[186] Muẓaffar, *Uṣūl al-fiqh*, Vol. 1 p. 289.
[187] *Ibid,* Vol. 2 p. 105.

rationality are all prime examples of this rationalistic approach to the interpretation of texts. Of course the stated focus of this study is not to investigate the role of *al-ʿaql* as an interpretive tool, but rather to investigate its role as a truly independent source. By highlighting that the non-rational indicator is far from being such a source it is hoped that we can come to a better conception of what *is* understood by the Shīʿī scholars to be an independent rational source of *Sharīʿa* precepts and thus we turn to the independent rational indicator or *al-mustaqillāt al-ʿaqliyya*.

2.6 The independent rational indicator (*al-mustaqillāt al-aqliyya*)

Reason as a source of *Sharīʿa* precept, or *al-dalīl al-ʿaql,* has come to be defined as 'every rational proposition through which certain knowledge of the *Sharīʿa* precept is attained[188]. When both minor premise and major premise within the syllogistic reasoning which brings forth this knowledge are both non-textual precepts the judgement is classified as *al-mustaqillāt al-ʿaqliyya*, an independent rational indicator. Unlike the category of non-independent rationality, such judgements are clearly sources of *Sharīʿa* that may be classed as evidences alongside the Qur'ān and Sunna, instead of being merely a means of interpreting either these sources or the precepts established therein. The major premise in the *mustaqillāt al-ʿaqliyya* pertains to the existence of a correlation between the judgement of *al-ʿaql* and the judgement of *al-sharʿ*. Whether this correlation (also assumed within the major premise of non-independent rationality) actually occurs, what its nature is and whether or not it is an authoritative means of discovering knowledge of the *Sharīʿa* are all issues yet to be discussed. After having outlined above the instances of the minor premise in the non-independent rationality, this final section of the current chapter will identify the scope of instances of the minor premise in independent rationality setting the scheme for the subsequent engagement with why this theoretical source does not seem to impact on the inference of *Sharīʿa* precepts.

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[188] Muẓaffar *Uṣūl al-fiqh*, Vol. 2 p. 105.

The exclusive instance of minor premises for independent judgements of rationality, from which knowledge of *Sharīʿa* precepts is attained, according to Muẓaffar, is a result of a single type of rational judgement. These are judgements of the praiseworthiness or blameworthiness of voluntary actions, based on the theological premise that the praiseworthy (*al-ḥusn*) and the blameworthy *(al-qubḥ*) are indeed intelligible independent of revelation. Discussion of this theological premise is referred to as *mas'alat al-taḥsīn wa al-taqbīḥ al-ʿaqliyain,* the issue of the intelligibility of the praiseworthy and the blameworthy. Summarising a previously cited example; assuming that rationality can independently affirms that 'justice is praiseworthy', and that there is a rational correlation between this judgement of reason and the judgement of *shar*ʿ, it can be known through reason -independently of transmitted revelatory sources- that according to the *Sharīʿa* justice is considered praiseworthy.

Muẓaffar identifies four lexically ordered questions that need solving posed in the process of establishing the space for such independent rational indicators to *Sharīʿa* precepts. Muẓaffar's treatment of each will be examined more closely in subsequent chapters, being employed as a platform to address the primary concerns of the study in explaining the apparent redundancy of rational morality and independent rationality as a source of *Sharīʿa* precept. Briefly noting the four levels of discussion here will however set the scene and identify the scope of the instances of independent rationality within the dual category of *dalīl al-ʿaql*. The first level of discussion is regarding an ontological question regarding the moral status of acts. 'Do voluntary actions, irrespective of any precept from the Divine Legislator and attachment of any legal address to them, have a rational status as either praiseworthy or blameworthy?'[189]. This is the classical question which forms a dividing line between the meta-ethical theories of the Ashʿarī and ʿ*Adliyya* theologians, and upon which their respective conceptions of the nature of God's justice depends. Indeed the ʿ*Adliyya* call themselves ʿ*Adliyya* – literally the people of Justice- by way of the substantive conception of justice that they subscribe to God, a notion premised on their affirmation that the praiseworthy and the blameworthy are intelligible independent of revelation.

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[189] Muẓaffar *Uṣūl al-fiqh*, Vol. 1. p.186.

The second lexical question raised by Muẓaffar, and described as a dividing line between scholars of the Akhbārī and Uṣūlī schools, is that 'after having assumed that actions in themselves are either praiseworthy or blameworthy, is it actually possible for *al-ʿaql* to perceive the aspects (*wajūḥ*) of their praiseworthiness and blameworthiness independently of any instruction or explanation from the Divine Legislator?'[190]. Although this may be seen as a discrete question of moral epistemology in contrast to the first question which focuses on moral ontology, it shall be demonstrated in what follwos that the *ʿAdliyya* affirmation of voluntary actions having moral status irrespective of any Divine Legislation is inextricablly linked to their position with regards moral epistemology.

Resolution of these theological questions regarding moral ontology and moral epistemology allows for the occurrence of the minor premises within the *mustaqillāt al- ʿaqliyya,* such as justice and kindness are praiseworthy or oppression and lying are blameworthy. Having established that such propositions are rational, according to Muẓaffar, one can then move to the two remaining questions. Both of the subsequent questions may properly be considered to fall within the remit of *uṣūl al-fiqh* instead of the theological discipline of *ʿilm al-kalām,* the primary forum for debate of the initial questions pertaining to moral ontology and epistemology*.* The first of the two questions of *uṣūl al-fiqh* takes on the major premise in the *mustaqillāt al-ʿaqliyya*, i.e. it is with regards to the claimed rational correlation between the judgement of *al-ʿaql* and the judgement of *al-sharʿ*. As Muẓaffar puts it, 'when *al-ʿaql* judges of the praiseworthiness or the blameworthiness of a thing, is it also rationally necessary according to it [*al-ʿaql*] that the judgement of the Divine Legislator is in accordance with its judgement [of praiseworthiness or blameworthiness]?'[191]. Assuming that such a rational correlation can be substantiated, a final point of dispute arises regarding whether or not knowledge of *Sharīʿa* precepts attained through this means are authoritative or not? Can one rely upon this means to knowledge as conferring accountability (*munajjaziyya*) or excusabillity (*muʿadhariyya*) with regards to responsibilities before God? The question of the

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[190] Muẓaffar *Uṣūl al-fiqh*, Vol. 1. p.186*.*
[191] *Ibid.*

authority of the knowledge acquired by means of this rational correlation is what is referred to as the question of *ḥujjiyya*.

As already stated, one of the central reasons for basing the narrative of this study around Muẓaffar's treatment of *al-mustaqillāt al-ʿaqliyya,* is that in his *uṣūl al-fiqh* he offers an extensive exposition of the theological assumptions as a prelude to his engagement with the questions of *uṣūl al-fiqh* proper. In fact he claims that much of the confusion and debate pertaining to the questions surrounding the role of independent rationality as a source in *uṣūl al-fiqh*, stems from misconceptions in the theological premises[192]. It shall be shown that his conception of the nature of moral propositions and the nature of rationality are instrumental in determining how and when the judgement of *al-ʿaql* can correspond to the judgement of *sharʿ*and that the epistemic conditions of validity to ensure that such judgements are authoritative are so high, that ultimately *al-ʿaql* is left redundant as a source of *Sharīʿa* precept in the actual inference of *furūʿ al-fiqh*. Muẓaffar's treatment of the nature of morality and rationality and their impact on the role of *al-ʿaql* in the inference of *Sharīʿa* precepts reflects not only a culmination of the relevant theological and philosophical ideas developed through the history of Shīʿī thought, but also marks a development in these ideas.

The exposition of these ideas in the discipline of *uṣūl al-fiqh*, and the subsequent criticisms that they received by other scholars of *uṣūl*, demonstrate the centrality of this discipline within contemporary Shīʿī thought. However, before a detailed analysis of these ideas of Muẓaffar and their criticisms is embarked upon, a thorough conceptual analysis of how the principle of the intelligibility of the praiseworthy and the blameworthy has been conceived of through the history of Shīʿī theological thought will ground the fundamentality of the principle within Shīʿī thought, and allow the contributions and developments brought to the issue by modern scholars of *uṣūl al-fiqh* to be seen in greater relief. What's more it is this very principle whose influence this study wishes to trace in its search for an ʿ*Adliyya* reading of *Sharīʿa*. Both the centrality of this principle in Shīʿī theology and the potential that it holds for a moral reading of *Sharīʿa* call us to temporarily

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[192] Muẓaffar *Uṣūl al-fiqh*, Vol. 1. p. 185.

move away from *uṣūl al-fiqh* and into the treatment of the issue in one of the central arenas for Shī'ī theological and philosophical thought; *'ilm al-kalām*.

3. The intelligibility of moral values

in Shīʿī theological thought

3.1 Introduction

Qāʿidat al-taḥsīn wa taqbīḥ al-ʿaqliyain, may be literally understood as the principle of the rational intelligibility of 'good' and 'bad'. As shall be seen in the subsequent analysis, what is intended here by 'good' and 'bad', or *ḥusn* and *qubḥ* is quite specifically targeting the usage of the terms in relation to the moral status of voluntary actions. Broadly speaking, the principle asserts that the moral value or status of some actions, that is their praiseworthiness or blameworthiness, can be understood by humans independent to revelation. It is this principle which provides the theoretical underpinning to the distinctive Shīʿī and Muʿtazilī doctrine of Divine justice, by which they call themselves *ʿAdliyya* (The people of Justice) and it is on the basis of this principle that Shīʿa scholars of *uṣūl al-fiqh* claim that reason has a theoretical role as an independent source of Sharīʿa leading to the category of *dalīl al-ʿaql* introduced in the previous chapter as *al-mustaqillāt al-ʿaqliyya*.

Of course all Muslim theologians ascribed justice to Allah, for *al-ʿAdl* is included amongst His *Asmā al-Ḥusnā*, His Most Beautiful Names. What was of contention between the *ʿAdliyya* and their interlocutors, in one of the earliest disputes of Muslim theology, revolved around what the ascription of justice to God actually meant. The belief of the *ʿAdliyya* is that Allah is Just in a substantive sense, that He, His actions and His commands are Just and that it is not permissible (*la yajūz*), or not philosophically possible, for Allah to act unjustly where just and unjust are understood in a specific sense. What is crucial here is that the terms just and unjust are used as notions that are independently understandable by human beings and not simply defined by revelation and divine command. To claim that God's actions must be just in this sense required from the *ʿAdliyya* a prior affirmation that justice/injustice, or moral values *per se*, have *some* reality or truth independent to God's command. And thus it was the discussions

regarding the normative assessment of God's actions that led to the formulation of the meta-ethical theory summed up by the principle of the intelligibility of the praiseworthy and the blameworthy.

This principle of the intelligibility of the praiseworthy and blameworthy has come to be described by contemporary Shīʿa scholars as one of the 'cornerstones' of Shīʿī thought[193]. It is a principle the influence of which is felt across a number of disciplines having particular significance in theology, ethics and *fiqh* [194]. Although the central concern of this study may be seen to be investigating the influence of this principle in the last of the above-mentioned disciplines through the medium of *uṣūl al-fiqh*, the interdisciplinary nature of the principle itself means that the study cannot be solely jurisprudential.

In fact the study as a whole, described as a search for an ʿ*Adliyya* reading of *Sharīʿa*, could be conceived as an attempt to assess the implications of Shīʿī theological and ethical assumptions upon jurisprudence and thus cannot observe the sometimes sharp demarcations drawn between each discipline. In fact it is explaining the apparent detachment of *fiqh* from theology and ethics that is at the heart of this study, a separation which renders Shīʿī moral rationalism redundant in the inference of *fiqh* and which the present study seeks to challenge through a close study of the role of independent rationality as a source of *Sharīʿa* precepts. In order to properly set the grounds for assessing the theological and ethical implications of the principle of the intelligibility of the praiseworthy and the blameworthy to the understanding of *Sharīʿa* in contemporary Imāmī Shīʿī thought, we are thus called to offer a thorough analysis of how this foundational principle has been conceived of in Imāmī thought.

This chapter will seek to uncover the development and increasing depth of sophistication with which this principle has been dealt with through the history of Imāmī thought. As the purpose of this survey is only to provide a conceptual prelude to the relevant debates in modern *uṣūl al-fiqh*, it does not aim to be, nor need to be, a comprehensive survey. Accordingly it is only a sample of key

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[193] Jaʿfar Subḥānī, *Risala fi al-taḥsīn wa al-taqbīḥ*, http://www.imamsadeq.org/ar.php/page,531BookAr68P1.html#3, p. 5.
[194] *Ibid*, p 3.

thinkers from what may be considered as three distinct periods in the intellectual history of the Imāmī Shīʿa, all of which represent streams of thought with significant impact and influence upon the shape of debate in modern *uṣūl al-fiqh*.

Although theological thought amongst the Shīʿa can be traced back to the earliest companions of the Imāms, there is little doubt that it was the occultation of the Twelfth Imām that gave Imāmī thinkers an unprecedented impetus towards the development of systematic and comprehensive approaches to their scholarly endeavours[195]. It thus seems appropriate to begin our analysis of the Shīʿī moral rationalism with a sample of how it was conceived of in this formative period. The second period of focus is what may be described as 'the classical period' of Imāmī theological thought, epitomised in the writings of ʿAllama Al-Ḥillī (d. 726/1325) and his teacher Naṣīr al-Din Ṭūsī (d. 672/1274). This classical period has been described 'as the last school of original thought in Imamite kalām'[196] representing a culmination of Imāmī theology which had by then become infused with a distinctively philosophical approach. The continued centrality of the output from this period within the curricula of contemporary Imāmī schools of learning is testament to its on-going influence, supporting well the assertion that Imāmī theology has experienced little substantive development since[197].

However there was a further important shift in the disposition of many Imāmī thinkers subsequent to this classical period. Although it is with ʿAllāma Ḥillī that theology and philosophy became firmly fused together in Imāmī thought, and despite few significant changes in the substance of the Imāmī theological positions since, the dramatic developments in *falsafa* epitomised in the works of Ṣadr al-Din al-Shirāz (d. 1050/1640) has had a large influence on how some have

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[195] For an insight into early theological dispositions amongst third century Shīʿa with specifc reference to debates regarding the nature and succession to the Imāms see Hossein Modarressi, *Crisis and Consolidation in the Formative Period of Shi'ite Islam: Abū Ja'far Ibn Qiba Al-Razi and His Contribution to Imamite Shi'ite Thought* (Princeton, Darwin Press, 1993), Part 1 pp. 1-105. Also for a brief general survey of early theological tendencies during and subsequent to the period of the Imāms see Murtaza Muṭahharī, *Understanding Islamic sciences: philosophy, theology, mysticism, morality, jurisprudence* (London, Saqi, 2002), pp. 75-79.
[196] Wilferd Madelung 'Imāmism and Mu'tazilite Theology', *Le Shīʿīsme Imāmite*, (Paris, Presses Universitaires de France, 1970), p. 27 found in Wilfred Madelung *Religious Schools and Sects in Medieval Islam* (London, Variorum Reprints, 1985).
[197] Madelung, 'Imāmism and Mu'tazilite Theology' p. 27.

approached the doctrinal positions established in that classical period. Accordingly, the third section of this chapter will examine the analysis of *Qāʿidatu taḥsīn wa taqbīḥ* provided by Ḥāj Mullā Hādī al-Sabzawārī (d. 1290/1873), a scholar who combined his deep understanding of Ṣadrian thought with an arguably stronger mystical influence than Ṣadra himself, often applying his vast scholarly tools in service of a vigorous defence of Imāmī doctrines, including the *Qāʿidat al-taḥsīn wa al-taqbīḥ*.

3.2 The intelligibility of the praiseworthy and the blameworthy in the formative years of Imāmī theology

Amongst the earliest intellectual figureheads of the Imāmī community to be associated with the reconciliation between Muʿtazilī thought and Imāmī doctrine was al-Mufīd. The fundamental point of concurrence between the two schools that was endorsed by al-Mufīd was with regards Divine Justice, the driving force behind the meta-ethical principle in question. Of course this did not imply that al-Mufīd was in complete concurrence with the Muʿtazila on every issue related to God's Justice, but he was certainly happy to consider the Imāmiyya and the Muʿtazila collectively under the title of *ʿAdliyya*[198]. Although McDermott gives huge insight into the place of al-Mufīd's theology with regards the diverse and competing intellectual tendencies occurring within Imāmī thought in the late third and early fourth centuries, his not unjustified characterisation of al-Mufīd as holding a position 'between the Imamite traditionists and the full Muʿtazilite stance adopted by Al-Murtaḍā'[199] has its limits. This can be quite clearly seen when it comes to al-Mufīd's position on the intelligibility of *ḥusn and qubḥ* as compared with his traditionist predecessor Muḥammad bin ʿAli bin Bābawayh (d. 381/991-2), commonly known as al-Ṣadūq. Al-Mufīd affirmed the picture of Divine Justice one may expect to see from a self professed member of the

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[198] The raison d'être of one of his most important creedal works, *Awā'il al-maqālāt fi madhāhib al-mukhtārāt,* is partly to distinguish exactly where the Imāmī differ from the Muʿtazila despite their common categorisation as ʿAdliyya.

[199] Martin J. McDermott, *The Theology of Al-Shaikh Al-Mufid* (Beirut, Dar al-Mashreq, 1978) p. 395.

'Adliyya[200], however his position on what is now considered by Imāmī thinkers to be a philosophical pre-requisite to that picture of Divine justice, the affirmation of the intelligibility of *ḥusn* and *qubḥ*, does not follow suit. Although not directly addressing the question of the nature of moral values and the possibility of epistemic access to such values, Al-Mufīd flatly denied any independent role for rationality in discovering duty[201].

Of course the general disposition of Al-Mufīd, 'theologian and traditionist', is far more inclined to the use of rationality than Ibn Bābawayh 'the traditionist'. However when it came to the possibility of reason determining the basis of value, we find the positions reversed. Despite his affiliation with the Baghdādi school of Muʿtazilī *kalām*[202] and his strong advocacy for the use of rationality as a method in establishing and defending doctrine[203], al-Mufīd is very careful to mention explicitly his denial of any possibility for *al-ʿaql* to act as an independent source of normativity. In a passage entitled 'Regarding the statement that *al-ʿaql* cannot be separated from *samʿ* (revelatory knowledge) and that *al-taklīf* (religious responsibility) is not appropriate/correct except through *al-rusul* (apostleship)' he states;

> The Imāmiyya all concur that *al-ʿaql*, in its knowledge and its conclusions, requires *al-samʿ* and that it cannot be independent from *samʿ*. The inattentive is reminded by it *(al-samʿ)* as to the manner of deduction and it is necessary in the initiation of responsibility, whilst its origination in the world is through a prophet[204].

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[200] See *'Awā'il al-maqālāt fi madhāhib al-mukhtārāt'* in *Abbāskuli Vāʿiz Charandābi (ed.) Awā'il al-maqālāt fi madhāhib al-mukhtārāt wa Sharḥ ʿaqā'id al-Ṣadūq aw Taṣḥīḥ al-'ittiqādāt, (Tabriz, n.d.)* p.24.

[201] *Awā'il.* pp. 11-12.

[202] Madelung describes a 'marked preference' for the Baghdadi Muʿtazila over the Basrans in Al-Mufīd's thought, *Imāmism and Mutazlite theology*, p.24. For a more extensive examination of his points of agreement with the Baghdadi school see McDermott, *The Theology of al-Shaikh al-Mufīd* (1978).

[203] Al-Mufīd argued against Ibn Babawayh's prohibition from rational debate regarding Allah, claiming that in its correct form rational debate in defence of doctrine was encouraged by the Qur'ān, practiced by the Prophets and praised by the Imāms. See *'Sharḥ ʿaqā'id al-Ṣadūq aw Taṣḥīḥ al-'ittiqād' in Abbāskuli Vāʿiz Charandābi (ed.) Awā'il al-maqālāt fi madhāhib al-mukhtārāt wa Sharḥ ʿaqā'id al-Ṣadūq aw Taṣḥīḥ al-'ittiqādāt, (Tabriz, n.d.).* pp. 26-27.

[204] *Awā'il.* pp. 11-12.

The explicit rejection of any independent normative role for *al-ʿaql,* and the firm denial of any responsibility prior to prophecy, although not found in the context of discussions on Divine justice, are more consistent with a voluntarist framework and sit in tension with al-Mufīd's adoption of an *ʿAdliyya* mantle.[205]

With somewhat surprising contrast to the above position of Al-Mufīd, and when speaking specifically in the context of Divine Justice, Ibn Bābawayh states that justice and injustice 'are based upon that which rationality considers is good and that which is bad'[206]. However indicative these comments may be to either the internal resources of Imāmī tradition with respect to a rationalist moral framework, or to the influence Muʿtazilī thought may have had even upon the traditionist Imāmī camp during these formative years, they do not amount to a detailed affirmation of *Qāʿidat al-taḥsīn wa al-taqbīḥ al-ʿaqliyain* formulated as a necessary premise to the *ʿAdliyya* theological position regarding Divine Justice.

With the known Muʿtazilī disposition of Sharīf al-Murtaḍā, the immediate heir of Mufīd's authority in the Imāmī community, it is unsurprising to find that his major theological work employs reasoning that repeatedly presumes that the moral values *ḥusn* and *qubḥ* are intelligible independent of revelation[207]. His treatise '*masʾala fi al-ḥusn wa al-qubḥ al-ʿaqlī*', published in a collected volume of some of his works, also seems to be the earliest dedicated Imāmī treatment of the issue[208]. In a style typical of the polemical form of *Kalām*, Murtaḍā responds to objections against the doctrine that arise from a Qurʾānic narrative of Moses and his mystical guide (presumed by most to be the Prophet Khizr), where Moses's guide performs a number of acts which at face value appear blameworthy to Moses[209]. However this brief treatise offers no systematic justification or even

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[205] Al-Mufīd explicitly affirmed that his position denying any independent normative efficacy to *al-ʿaql* was in line with the *Asḥāb al-Ḥādith*, *Awāʾil,* p. 12. In view of the close association between the *Asḥāb al-Ḥādith* and a voluntrist ethical framework it would be difficult to claim that al-Mufīd may not have been aware of the implication of his statement in this regard.
[206] Abī Jaʿfar bin ʿAli bin al-Ḥusayn Bābawayh, *Al-Tawḥīd* (Qum, Jāmiʿat al-Mudarrasīn, 1995) p. 395 and McDermot, *The Theology of Al-Shaikh Al-Mufid*, p. 350.
[207] For example see the discussion on 'the invalidity of religious responsibility beyond capability' in *al-Dhakhīrā fi ʿilm al-kalām* (Qum, Muʾassasat al-Nashr al-Islāmī, 1990) pp. 100-103.
[208] *Rasāʾil al-Sharīf al-Murtaḍā; Majmuʿa al-thālitha* (N.P., Dār al-Qurʾān al-Karīm, 1984) pp. 175-180.
[209] See Qurʾān 18:65-82.

conceptual analysis of a doctrine that would later be recognised as being fundamental to Shīʿī theological thought.

The traditionist and rationalist tendencies in early Shīʿī thought became increasingly synthesised in the thought of Muḥammad bin Ḥasan al-Ṭūsī. As seen in the previous chapters, and despite his efforts to expand the authority of tradition, al-Ṭūsī maintained that basic moral propositions were understandable by the intellect independently of revelation[210]. However it was not until what we are here describing as the classical period of Imāmī theological thought that the principle of the intelligibility of the praiseworthy and the blameworthy was given a systematic and comprehensive treatment as a principle philosophically fundamental and prior to the ʿAdliyya conception of God.

3.3 The intelligibility of the praiseworthy and the blameworthy in Classical Shīʿī thought

One of the earliest Imāmī expositions of the *Qāʿidatu taḥsīn wa taqbīḥ al-ʿaqliyain*, conceived as a necessary premise to theʿAdliyya position on Divine Justice, can be found in the concise work entitled *al-Yāqūt fi ʿilm al-kalām.* The importance of this text as an early Imāmī representation of a systematic and philosophically inclined approach to *Kalām*, has been well noted[211]. It represents a style of philosophical theology that would become the central approach to doctrinal works in Imāmī thought thenceforth and is a pre-cursor to the style adopted in the classical Imāmī works of theology penned by Naṣīr al-Dīn Ṭūsī andʿAllāma Ḥillī[212]. However this importance has been somewhat offset by confusion over both its author and its time of writing.

The work is most commonly ascribed to one Abū Isḥāq Ibrāhīm bin Nawbakht, in line with the opinion of ʿAllāma Ḥillī found in the preface to his commentary

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[210] *al-ʿUdda.* p. 759.

[211] In the foreword to the most recent edition al-Sayyid Maḥmūd Al-Marʿashī describes it as 'possibly the first of the Shīʿī works of Kalām', see Ziyāfī (e.d.) *Al-Yaqūt fi ʿilm al-kalām li Abi Isḥāq Ibrāhīm bin Nawbakht* (Qum, Maktaba Ayatulla al-Marʿashi Najafi, 2007).

[212] Henry Corbin believed that *al-Yāqūt* represented the first systematisation of Islamic Philosphy in an approach that would be followed and completed by Nasir al-Din Ṭūṣī, 'Imāmologie Et Philosophie' in Tawfiq Fahd (ed.) *Le Shiʿisme imamate* (Paris, Presses Universitaires, 1970) p.146.

upon the *Yāqūt* entitled *Anwār al-Malakūt fi Sharḥ al-Yāqūt*[213]. However some doubt has been cast over this due to later references to the author simply taking the form of Ibn Nawbakht[214], an Ibn Nawbakht interpreted by some as being other than the Abū Isḥāq Ibrahim mentioned by ʿAllama[215]. In his comprehensive survey of the Banū Nawbakht, Muḥammad Iqbāl Al-Ishtiyānī rejects the divergent opinions of the likes of Mīrzā ʿAbdullah Affendi al-Isbahāni, 'and those who followed him', as having no basis[216]. His preference for ʿAllāma Ḥillī's opinion is justified by way of three separate references to the full name Abū Isḥāq Ibrāhīm bin Nawbakht found in the writings of ʿAllāma and due to ʿAllama's closer proximity in time to the original source than the later opinions[217].

Just how close in time ʿAllama's writing actually was to the penning of the *Yāqūt* has also been a point of serious dispute. Ziyāfī discusses numerous opinions as to when the *Yāqūt* was actually written[218]. These opinions range quite dramatically with competing claims locating the book to have been a product of anywhere between the third century Hijri on one hand, and the late sixth century Hijri on the other. His review of the various prominent opinions concludes with him reaching the belief that the *Yāqūt* was written at some point between 550-650 A.H.[219]

In his initial justification for this Ziyāfī cites and follows the position of Wilferd Madelung, who argued that the *Yāqūt* must have been written later than the period of al-Mufīd (335-436A.H.). His reasoning was based on the fact that the opinions of the Banū Nawbakht were treated extensively in Al-Mufīd's comparative study of *ʿAdliyya* doctrine in his *Awāʾil al-maqālāt fi madhāhib al-mukhtārāt*, however those opinions bear little resemblance to the opinions of the *Ṣāḥib al-Yāqūt*, whose substance and style thus must reflect a later

[213] *Anwār al-Malakūt fi Sharḥ al-Yāqūt* (N.P. Initishārāt Raḍī Initishārāt Bidār, 1984/85) p. 2.
[214] Ziyāfī, Ali Akbar, 'muqaddama' in Ziyāfi (e.d.) *Al-Yaqūt fi ʿilm al-Kalām li Abi Isḥāq Ibrāhīm bin Nawbakht* (Qum, Maktaba Ayatullah al-Marʿashī Najafī, 2007), p. 13.
[215] ʿAbdullah Affendi al-Isbahānī attributes the *Yāqut* to Al-Shaykh Ismā ʿīl Bin Isḥāq Bin abi Saḥl Bin Nawbakht Al-Fāḍil, *Riyāḍ al-ʿ ulama wa ḥiyāḍ al-fuḍalā'* (Qum, Ṭib ʿat al-khiyām, 1980) Vol. 6 p. 38.
[216] *Kandāni Nawbakhtī*, (Tehran, Maktaba Ṭahwarī, 1966) pp.94-95.
[217] *Ibid.*
[218] Ziyāfī 'Muqqadama' pp. 15-18.
[219] *Ibid.* p.17.

provenance[220]. Ziyāfī furthers Madelung's justification for this later dating by making reference to the *Ṣāḥib al-Yāqūt*'s position regarding the criteria for contingency (*al-imkān*) as matching that which Naṣīr al-Dīn Ṭūsī categorised as the opinion held by the 'philosophers and *later* theologians'[221]. However both Madelung and Ziyāfī do recognise that the *Yaqūt* could not have been written after the second half of the seventh Muslim century, highlighting the known existence of a commentary on the work written by Ibn Abi al-Ḥadīd Al-Muʿtazilī, who died in 656 A.H.[222]

Having said all of this, the debate surrounding the exact date of the texts provenance does not significantly impact its relevance here. Whether it was written a few centuries, or only a few decades, before the works of Naṣīr al-Din Ṭūsī and ʿAllāma Ḥillī makes no difference to its presentation of *mas'ala taḥsīn wa taqbīḥ* in a manner not observed in the writings of earlier Imāmī scholars, a presentation that would be adopted and developed further by the scholars epitomising the Classical era of Imāmī theological writings and by Imāmī scholars of subsequent generations.

The discussion in question is treated within a section entitled 'The position with regards justice (*al-Qawl fi al-ʿadl*)'[223]. That the justice in question is indeed Divine justice is clear from the overall position of the section within the work. The section immediately follows sections dealing with the proofs for the existence of God, His Unity, His attributes and the necessity (*wajūb*) of these attributes[224]. As we have seen the opinions of Ibn Bābawayh and al-Mufīd regarding the intelligibility of *ḥusn and qubḥ* were not stated as a philosophical premise necessary in establishing their doctrine of Divine justice. However, Ibn Nawbakht explicitly precedes his discussion on Divine justice by first affirming the independent epistemic ability of *al-ʿaql* to determine *ḥasan* and *qabīḥ*, stating that '*al-ʿaql* can independently ascertain the blameworthiness of some actions

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[220] Madelung '*Imāmism and Mutazlite theology*', p. 15.

[221] Emphasis added. Ziyāfī 'Muqaddama' p.17, and, al-Khawāja Naṣīr al-Dīn, *Talkhīṣ al-Muḥaṣṣil; al-Maʿruf bi naqḍ al-muḥaṣṣal* (Beirut, Dār al-aḍwā'a, 1985) p. 120.

[222] Madelung '*Imāmism and Mutazlite theology*', p. 15and Ziafi, 'Muqaddama', p. 17.

[223] Abi Isḥāq Ibrāhīm bin Nawbakht *al-Yāqūt fiʿilmal-kalām,* (Qum, Maktaba Ayatulla al-Marʿashi Najafi, 2007) p.45.

[224]*Ibid*, pp. 38-44.

and not others, and the praiseworthiness [of some], such as oppression and equity and lying and truthfulness'[225].

Dealing with the epistemological question only, and not the question of the grounds for such judgements, Ibn Nawbakht thus affirms the partial affirmation (*ī'jāb juzī*) of the ability of *al-ʿaql* to understand the moral value of some actions, structured as the premise upon which he can later build his doctrine of Divine Justice. His somewhat densely stated justifications for this moral rationalism are described as follows;

> 1) Because it [the blameworthiness of oppression] is known, without having to rely on revelatory knowledge [as demonstrated] due to the blaming of *jāhiliyya* (the pre-Islamic community of Arabia) for it[226]. Thus it [i.e. the judgement of blameworthiness] must be from *al-ʿaql*.

> 2) And because we judge its blameworthiness [solely based] on its being oppression, the causative factor [of this judgement] must be its very oppressiveness.

> 3) Amongst us are those who claim the self-evidence (*al-ḍarūra*) of this, and that is the truth, due to which if we had doubted prophet hood the blameworthiness of adultery would be lifted but not [the blameworthiness of] oppression.

> 4) If praiseworthiness was due to the command, the actions of The Maker (*al-Ṣāniʿ*) would not be praiseworthy.

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[225] Ibn Nawbakht *al-Yāqūt,* p. 45.
[226] This reading of the text takes *Jāhillīyya* as the subject. An alternative reading is also plausible, where *Jāhillīyya* is taken as the direct object, rendering the sentence 'due to the blaming of *Jāhillīyya* for it'. This is still consistent with the line of argument for if moral values were not intelligible prior to revelation then *Jahillīyya* would be beyond reproach in their actions and not subject to blame, since they are subject to moral reproach they must have had access to the knowledge of moral values. The credit for bringing this reading to my attention belongs to Dr Ali Fanaei.

5) And [praiseworthiness due to] the absence of the prohibition correlates to blameworthiness in the absence of the command- which would make necessary that His actions are blameworthy. [227]

This concise treatment contains many of the key arguments adopted and developed by subsequent Imāmī thinkers in defence of their adoption of the moral rationalism entailed in the belief that the praiseworthy and the blameworthy, *al-ḥusn* and *al-qubḥ*, are understandable by reason independent of revelation. However, in line with the style of the work at large, the ideas have been presented in an extremely condensed fashion. ʿAllāma Ḥillī, arguably the paradigmatic figure of the classical period of Shīʿī theological thought, notes that the *Yāqūt* stands out amongst other early comparable works of theology in that it contains all of the most important issues of the discipline, and furthermore these are presented in the most beautiful of ways[228]. However this value is tempered by it being a text which is considerably short in length, and despite bearing 'vast knowledge, it is difficult to understand, [being written] at the height of brevity and concision (*gāyatu al-ījāz wa al-ikhtisār*), such that most onlookers would be prevented from understanding it'[229]. Accordingly ʿAllāma Ḥillī penned the above-mentioned commentary on the text, *al-Anwār al-malakūt fi Sharḥ al-Yāqūt*. It is to this commentary that we now turn, supplemented by other works of ʿAllama, with the aim of getting a fuller appreciation of the ideas encapsulated in the *Yāqūt* and how they were understood and developed by thinkers at the height of the classical era of Shīʿī theology.

ʿAllama Ḥillī's presentation of the question of the intelligibility of the praiseworthy and the blameworthy in *al-Anwār* provides a remarkably clear and well structured analysis of the relevant debates, even when compared to his other more famous works *Al-Bāb al-Ḥādī ʿashar* and *Kashf al-murād fi Tajrīd al-ittiqād* or the more extensive work *al-Manāhij al-yaqīn fi uṣūl al-dīn*. He commences by defining exactly what is intended by *al-ʿadl* (Divine Justice), and why a discussion of the intelligibility of the praiseworthy and the blameworthy is

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[227] Ibn Nawbakht *al-Yāqūt,* p.45. The numbering does not appear in the original text.
[228] Al-Ḥillī, *Anwār*, p. 2.
[229] *Ibid.*

required before the questions pertaining to God's justice can be properly engaged with. ʿAllāma Ḥillī explains that discussion of *al-ʿadl* refers to 'those things associated with the normative assessment of His actions (*al-lati lahā taʿaluq bi-aḥkām afʿāllihi*)' [230] dealing with the praiseworthiness of God's praiseworthy actions (*ḥusn al-ḥusn minhā*), the necessity of His necessary actions (*wajūb al-wājib*) and the denial of His performing any blameworthy actions *(nafā al-qabīḥ minhā)*[231]. The necessary link between discussion of God's justice in this sense and the philosophical requisite of a prior acceptance of the intelligibility of moral values is then drawn in what follows;

> The fundamental principle upon which the issues of God's justice rest upon is the knowledge that He, exalted, is wise (*mʿarifat kawnihi taʿāla hakīm^{an}*) and that he does not perform that which is blameworthy (*al-qabīḥ*) nor does He fail to do that which is necessary (*al-wājib*)[232].

Once this conception of Gods Wisdom or *Ḥikma* is established, the issues pertaining to God's Justice which are traditionally discussed by Imāmī theologians, such as the praiseworthiness of religious responsibility (*ḥusn al-taklīf*) or the necessity of grace (*wajūb al-luṭf*) may be discussed and justified. However ʿAllāma explains that this fundamental conception of God's Wisdom itself assumes, or even relies upon, a prior knowledge of that which is praiseworthy (*al-ḥusn*) or blameworthy (*al-qubḥ*) and an acceptance that these values are rationally intelligible (*ʿaqliyān*) independent of revelation. Accordingly any discussion of *al-ʿadl*, should be preceded with a discussion of the intelligibility of the praiseworthy (*al-ḥusn*) and the blameworthy (*al-qubḥ*).

With this prelude ʿAllāma moves on to define voluntary actions (*afʿāl al-ikhtiyārī*), categorising them as being either *ḥasan* or *qabīḥ;* 'The *ḥasan* is that [voluntary action] whose performance has no potential role (*madkhal*) in the desert of blame, and the *qabīḥ* is that [voluntary action] whose performance has a potential role (*madkhal*) in the desert of blame'[233]. Thus the *ḥasan* is not

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[230] Al-Ḥillī, *Anwār* p. 105.
[231] *Ibid.*
[232] *Ibid.*
[233] *Ibid.*

actually restricted to that which is praiseworthy, but includes those acts which do not deserve blame and whose status is often referred to as simply *mubaḥ* (permissible). The qualification of '*madkhaliyya*', which defines *ḥusn and qubḥ* based on an act either having or not having *a possible role* in the desert of blame, is intended to dispel the theological difficulties posed by those minor sins (*al-sagā'ir*) which ultimately might not lead to actual blame with all its eschatological consequence, but that do have a possible role in the desert of blame and hence can still be categorised as *qabīḥ*[234].

Before explaining and elaborating on the justifications for the intelligibility of *al-ḥusn* and *al-qubḥ* cited in the *Yāqūt*, ʿAllāma briefly points towards his conception of the ontological grounds for this moral rationalism;

> 'The Imāmiyya and the Muʿtazila hold that amongst actions are those which are deemed praiseworthy due to aspects (*wajūḥ*) occurring upon them... and amongst them are those deemed blameworthy due to aspects occurring upon them'[235].

The reference here to *wajūḥ*, demonstrates that ʿAllāma is referring specifically to the moral theory associated with the Basran school of the Muʿtazila. The Basran theory of *wajūḥ* was developed to counteract what they felt was the too rigid essentialist moral ontology of the Baghdādi Muʿtazila[236]. Despite describing the *Wajḥ* as 'an elusive, and perhaps vague, concept'[237] Reinhart goes a long way in explaining its implications to the moral theory of the Basran School[238]. For our purposes here it suffices to say that the *wajūḥ* of an act are attributes that manifest themselves only on the occurrence of an act, allowing the moral appraisal of the act and introducing a contextual element to what is still maintained as a realist moral ontology. As ʿAllāma explains, it is through coming to know the *wujūḥ* of an act that *al-ʿaql* can judge if an act is subject to blame or praise[239].

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[234] Al-Ḥillī, *Anwār* p. 105.
[235] *Ibid.*
[236] Reinhart, *Before Revelation*, p.146.
[237] *Ibid* p. 148.
[238] See *Before Revelation,* pp. 146-160.
[239] See *Manāhij al-yaqīn fi uṣūl al-dīn* (Qum, Yārān, 1995) pp. 229-230.

ʿAllama notes that amongst the proponents of this moral rationalism are those, such as the author of the *Yāqūt*, who believe that this position is self-evident (*ḍarūrī*), whereas others declare that it is not self evident and is in need of justification (*istidlālī*).[240] ʿAllāma then goes on to outline five justifications, all of which are alluded to in the concise passage of the *Yāqūt* reproduced above. Interestingly ʿAllāma ascribes theses justifications to the Muʿtazila and not to the author of the *Yāqūt*. For the author of the *Yāqūt* claims that the described moral rationalism is self evident, and thus he actually has no need of these justifications- thus in ʿAllama's somewhat sympathetic eyes, the listing of these arguments was not an inconsistency in the *Yāqūt* but simply an insight into how others had chosen to support this idea.

The first justification relies on an argument pointing to a claimed universality of basic moral judgements such as the blameworthiness of lying and oppression, and the praiseworthiness of truthfulness and justice. The possible sources of this knowledge are considered to be either rational (*al-ʿaql*) or revelatory (*al-sharʿ*). Now since people that do not recognise Prophetic or revelatory knowledge, such as the pre-Islamic community of Arabia *(al-Jāhillīyya)*, or those that deny the phenomenon of Prophecy itself still affirm that lying and oppression are blameworthy and that truthfulness and justice are praiseworthy- the knowledge of these moral values has to be accessible without recourse to revelation and thus must be the result of *al-ʿaql*. This argument by universality is one of the two central arguments that have been referred to by Imāmī scholars throughout the subsequent generations and up to the present day.

The second justification mentioned in the *Yaqut*, is described by ʿAllāma as a type of intuitive argument (*haddasiyāt*). The argument states that whenever we recognise an act as oppressive we judge that it is blameworthy and should this aspect of oppression no longer be present, and thus the aspect of blameworthiness not be there, we would no longer judge the act to be blameworthy. The relationship between oppression and blameworthiness is thus described by ʿAllāma as being like the relationship between fire and burning[241].

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[240] Al-Ḥillī, *Anwār*, p. 105-106.
[241] *Ibid,* p. 106.

Although it is not explicitly stated, presumably the establishment of a natural relationship between the aspect of oppression and the moral value of blameworthiness undermines the possibility that blameworthiness be determined by divine command and revelation (*shar'*), and hence supports the claim that they are rational categories.

The third argument points to a perceived difference between the blameworthiness of those actions considered blameworthy due to revelation and those actions deemed blameworthy due to reason. The argument states that if blameworthiness was solely dependent on revelation there would be no difference in the nature of the blameworthiness of that which was deemed blameworthy by *al-shar'* and that which is deemed blameworthy by *al-'aql*. However it is claimed that there is an obvious or even 'self evident' difference between these two categories; 'for if we should have doubt regarding revelatory knowledge (*al-shar'*) we may doubt the blameworthiness of adultery and of consuming wine, but we would still have no doubt in the blameworthiness of oppression and lying'[242].

The fourth argument employed in the justification of the intelligibility of praiseworthiness and blameworthiness is a form of *reductio ad absurdum;*

> 'If the praiseworthy was determined by revelation then the actions of Allah, exalted, would not be praiseworthy. The conclusion [of this conditional statement] is invalid by consensus, and thus the premise is likewise [invalid]'[243].

'Allāma goes on to explain why this absurdity is a logical consequence of the anti-thesis of his moral rationalism, 'praiseworthy according to them [i.e. non-*'Adliyya*] is that which is commanded, and Allah exalted, is not subject to any command, thus His actions would not be deemed praiseworthy'[244]. The consensus of Muslim theologians is of course that Allah's actions are indeed praiseworthy and hence the grounds of moral value cannot be solely due to divine command and revelation.

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[242] Al-Ḥillī, *Anwār*, p. 106.
[243] *Ibid.*
[244] *Ibid.*

The fifth argument is a justification that, albeit in slightly varied presentations, joins the first argument above in being central to almost all *ʿAdliyya* defences of their moral rationalism;

> If praiseworthy and blameworthy were not rationally intelligible, nothing from Allah, exalted, could be considered blameworthy. Thus it would be praiseworthy for him to send liars (*irsāl al-kadhāb*) and to contradict his own word. This would necessitate the lifting of the Promise and the Threat (*al-wʿad wa al-waʿīd*) and [lead to] the invalidity of responsibility (*takālīf*)...[245]

At its core this argument is aimed at highlighting that if basic moral values cannot be ascertained independent of revelation then God would be free from all moral considerations, ultimately undermining our trust in revelation itself.

Naṣīr al-Din Ṭūsī famously formulated a variation of this argument in a typically eloquent and concise statement; '*li intifāʾihimā muṭlaqan law thabatā sharʿan*'[246]. Although a literal translation is difficult the sentence, at least loosely, reads that *ḥusn and qubḥ* must be intelligible through reason '[D]ue to their nullification absolutely [through reason or revelation], if they [goodness and badness] are established by revelation [alone]'. The consequence of believing that moral values can only be established by revelation is seen as a type of moral scepticism, where neither reason nor revelation can be relied upon in determining the value of acts. What completes his argument, and is only implicit here, is that no Muslim accepts such a moral scepticism and thus the premise that moral values are only established through revelation, must also be rejected. As for why moral scepticism results from holding that *ḥusn and qubḥ* are known only through *sharʿ*, we can again turn to a commentary of ʿAllāma;

> If we did not know the praiseworthiness of some things
> and the blameworthiness of others- through reason, we
> would not be able to make the judgement of the
> blameworthiness of lying, and thus would allow for the

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[245] Al-Ḥillī, *Anwār*, p. 107.
[246] See al-Ḥillī, *Kashf al-murād fī tajrīd al-ʿittiqād* (Beirut, Dār al-amira, 2006) p. 59.

possibility of its [lying] occurrence from Allah, exalted be He from this, The High and The Great. And thus if we were informed [by revelation] that a thing be blameworthy we could not be certain of its blameworthiness, and if we were informed that a thing be praiseworthy we could not be certain of its praiseworthiness, due to the possibility of deception and because of our allowing for the possibility of being commanded toward the blameworthy and prevented from the praiseworthy on the basis of denying the wisdom (*ḥikma*) of The Most Exalted in this regard[247].

In this argument we see that not only is reason given a role alongside revelation in determining moral values, but the moral instructions of revelation are considered useless in the absence of a rational morality, due to our trust in revelation being itself reliant on our independent ability to discern the praiseworthiness and blameworthiness of acts. This fifth argument taken alongside the claimed universality of basic moral principles found in the first argument, form the two central and recurring justifications for the defence of the intelligibility of the praiseworthy and the blameworthy found throughout the subsequent history of Shīʿī theological thought.

What has been termed here as the classical period of Imāmī thought witnessed the development of a sophisticated conception, and defence, of the principle of the intelligibility of the praiseworthy and the blameworthy as a necessary philosophical premise to the ʿ*Adliyya* conception of the Justice of God. The distinctive approach to *Kalām* developed in this period, which culminated in ʿAllāma Ḥillī through the hands of Naṣīr al-Din Ṭūsī, infused a rigorous philosophical method to a traditionally polemical discipline. Although this approach to doctrine remains strong in contemporary Shīʿī thought, with the works ofʿAllāma Ḥillī and Naṣīr al-Din Ṭūsī still central in the curricula of Shīʿī higher learning, a further shift in the manner of defending the doctrines established in the Classical period was still to occur. It is to the contributions of

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[247] al-Ḥillī, *Kashf al-Murād* p. 59.

this later Shīʿī thought in developing the conception of the intelligibility of the praiseworthy and the blameworthy that we now turn.

3.4 Intelligibility of Praiseworthy and blameworthy in post-Ṣadrian Shīʿī thought: Sabzawārī on *ḥusn wa qubḥ*

Ḥāj Mullā Hādī Sabzawārī, a Nineteenth Century Shīʿa Philosopher-Mystic, was deeply ingrained with the now paradigmatic approach to *falsafa* in Shīʿī thought epitomised by the work of Ṣadr al-Din al-Shirāzī, more widely known as Mullā Ṣadra (d. 1049/1640). The School of Mullā Ṣadra can be characterised as an attempted synthesis between the three elements of Qurʾān, *ʿIrfān* and *Burhān*, i.e. Muslim scripture, mysticism and deductive reasoning[248]. It is a Muslim philosophical school that sees the culmination of knowledge only coming about by a combination of mystical intuition and philosophical rational analysis. Philosophical analysis in the absence of spiritual or metaphysical experience is considered ultimately redundant and mystical experience in the absence of rational and analytical appraisal more often than not simply illusory. The success of Mullā Ṣadra in offering a systematic philosophical system which could account for his own metaphysical experience and be consistent with Muslim scripture is testified to by the continued dominance of a school whose influence has been compared to the mark left by Aristotle upon the Greeks and Ibn Sīnā upon early Muslim philosophy. Sabzawārī is not only an important nineteenth century proponent of Ṣadrian philosophy, but in the words of Toshiku Izutso he represents the culmination of the school and 'precisely the highest peak reached by this philosophical tradition' up until that era[249].

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[248] For more on Mullā Ṣadrā in general, and this synthesis in particular, see Seyyed Hossein Nasr, 'Mullā Ṣadrā: his teachings' in Seyyed Hossein Nasr and Oliver Leamen (eds.) *History of Islamic Philosophy* (Qum, Anṣārīyan Publications, 2001), Part 2, pp. 643-662.
[249] See Toshiku Izutsu, 'The Significance of Sabzawārīan Metaphysics in *The Concept and Reality of Existence* (Kuala Lumpur, Islamic Book Trust, 2007), pp. 91-97.

Within his commentary on the invocation *Jawshan al-Kabīr*[250], Sabzawārī offers a short but incisive discussion on the theological disputes surrounding the praiseworthiness and blameworthiness of actions. The treatise gives a summary of the different positions found amongst Muslim theologians and directly tackles some of the most challenging disputes which have arisen both from across the *ʿAdliyya* and Ashʿarī divide and from amongst the *ʿAdliyya* themselves. He commences with a familiar classification of Muslims into two groups; stating that the philosophers, the *Imāmiyya* and the Muʿtazila have considered *ḥusn* and *qubḥ* to be *ʿaqliyān* (rationally intelligible) and that the Ashʿarī held that they are *sharʿīyān* (stipulated by revelation). He then mentions four different positions attributed to the Muʿtazila themselves. All of these accept the basic epistemological claim that moral values are rationally intelligible, yet each has a different notion of the ontology that forms the grounds from which these judgements arise. The earliest of the Muʿtazila (*al-aqdimūn minhum*) held that actions are either *ḥasan* or *qabīḥ* due to the essence of the action and not due to any specific attribute in them. Some others amongst the early Muʿtazila held that there are existential attributes within actions that necessitate the judgement of both *ḥusn* and *qubḥ*. The third opinion cited accepts the existence of an existential attribute but only in the *qabīḥ* and not in the *ḥasan*, for the absence of a *ṣifāt ul muqabbaḥa* (an attribute which gives rise to the judgement of *qabīḥ*) is sufficient in establishing that something is *ḥasan*. Whereas the fourth opinion holds that the *ḥusn and qubḥ* of actions was not determined by any existential attribute of the action but 'was due to considered aspects (*wajūḥ iʿtibāriyya*) and associated attributes (*ṣifāt iḍāfiyya*) which differ in accordance with the considerations (*iʿtibariyāt*)'[251].

3.4.1 Conceptual analysis of the debate

[250] For more on Shīʿī invocations in general, and *Jawshan al-Kabi*r in particular, see Colin Turner 'Aspects of devotional life in Twelver Shi'ism: the practice of *duʿā*' in Paul Luft and Colin Turner (eds.) *Shīʿīsm: Critical Concepts in Islamic Studies* (London, Routledge, 2008) Vol. 3, pp. 375-408.
[251] al-Sabzawārī, Ḥāj Mullā Hādī, *Sharḥ al-Asmāʾ aw Sharḥ duʿā al-Jawshan al-kabīr* (Tehran, Initishārāt Dānishghāh Tehran, 2006) pp. 318-319.

Moving beyond these ontological differences Sabzawārī goes on to explain his conception of the core epistemological theory at the heart of the doctrine, offering a conceptual analysis of what he feels is intended when it is stated that al-ḥusn and al-qubḥ are ʿaqliyān. For Sabzawārī then claiming that ḥusn and qubḥ are intelligible means that;

> It is possible for al-ʿaql to understand that a specific action (al-fʿil al-fulāni) is praised in a factual sense (fi nafs al-amr) and that another may be blamed, even if the most illuminating revelation has not yet brought knowledge of this . Or that it is possible for it [al-ʿaql] to understand the aspect (al-jiha) through which it deems the action good, thus being commanded to it, or bad, and thus being prohibited from it, even if this be after the occurrence of revelation. Its [ʿaql's] non-comprehension of the aspects of al-ḥusn and al-qubḥ in some actions does not reject their intelligibility, because it is known in general (ijmāl[an]) that had they been free from utility (maṣlaḥa) or detriment (mafṣada) it would have been blameworthy (qabīḥ) for The Most Wise (al-Ḥakīm) to have sought its performance or avoidance[252].

Thus the intelligibility of ḥusn and qubḥ means that al-ʿaql has the potential ability to recognise whether an act be praiseworthy or blameworthy 'in the realm of fact (fi nafs al-amr)'[253], that is in a factual sense, prior to the receipt of revelatory knowledge. In addition to this al-ʿaql has the potential ability of understanding why, through recognition of the relevant jiha (aspect), a particular act is considered praiseworthy or blameworthy even after revelation has already identified the moral value of that particular act.

 The final part of the quoted passage goes on to accept that the ʿaql does not always recognise these relevant aspects (jihāt)[254], but that this does not

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[252] *Sharḥ al-Asmāʾ,* p. 319.
[253] 'The realm of fact' is the translation offered for the term *nafs al-amr* by M. Mohaghegh & T. Izutsu in the glossary to their critical edition of the metaphysics component of Sabzawārī's *Sharḥ al-manzūma* see *Sharḥ-i Ghurar al-farāʾid or Sharḥ-i manzumah-i H.M.H. Sabzawārī Part One Metaphysics* (Tehran, Initishārāt Dānishghāh Tehran, 1991). A detailed conceptual analysis of what is intendd by 'the realm of fact' follows below.
[254] This reaffirms that the ʿAdliyya position was an *ījāb juzʾī*, a partial affirmation in contrast to the Ashʿarī *salb al-kulli*, universal or absolute negation.

undermine the position that *ḥusn* and *qubḥ* are *ʿaqliyān*. Allah as *al-Ḥakīm,* the Most Wise, is assumed to always do that which is in line with *maṣlaḥa* (utility) and against *mafṣada* (detriment). Thus even if the specific aspects which led to an act being commanded or prohibited are not identifiable, it is known that there must be an underlying benefit or detriment within these acts, without which it would have been unbefitting for The Most Wise to call us towards their performance or avoidance[255].

In this conceptual analysis of the intelligibility of *ḥusn* and *qubḥ*, Sabzawārī utilizes the notion of *nafs al-amr* stating that *al-ʿaql* can understand whether something is *ḥasan* or *qabīḥ* in *nafs al-amr,* the realm of fact. The notion of *nafs al-amr* is a concept not employed by the early or classical theologians in their discussion of *masʾala taḥsīn wa taqbiḥ* analysed thus far. However for Sabzawārī it is a concept central to his treatment of the issue and thus, despite appearing slightly tangential, the concept of *nafs al-amr* warrants further clarification.

3.4.2 *Nafs al-amr*, the realm of fact

Nafs al-amr, translated here as 'the realm of fact' in line with its philosophical usage, is a term that is found in both Muslim philosophical and mystical writings. Explanation of how Sabzawārī, who himself was both a philosopher and a mystic, uses this concept in the discussion of *ḥusn and qubḥ* is not helped by the fact that both philosophy and mysticism have employed the term to denote different things. Thankfully in the *Sharḥ al-Manzūma*, a poetic exposition of the core questions of Muslim philosophy with the author's own commentary, Sabzawārī himself explains the concept of *nafs al-amr* in more than sufficient depth to allow us to understand its relevance and usage with regards to the theological debates regarding moral ontology and epistemology at hand.

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[255] al-Sabzawārī, *Sharḥ al-Asmāʾ*, p. 319.

Discussion of *nafs al-amr* in *Sharḥ al-manzūma* occurs in the poem regarding the 'explanation of the criterion for truth in the proposition'[256]. The commentary pertaining to this passage makes explicit what Sabzawārī believes that criterion for truth is; 'the truthful [proposition], is the information/predicate that corresponds to reality (*wāqiʿī*)'[257]. The discussion summarised in the poem, and expanded on in the commentary, explains Sabzawārī's conception of a correspondence theory of truth, a theory of knowledge which was not only central to the epistemology of Muslim philosophers but has an implicit influence across almost the entire edifice of Muslim religious thought. Outlining his general theory of truth will allow us to better understand when and how he feels reason can independently ascertain the truth of propositions regarding *ḥusn and qubḥ* and help explain his conception of the ontological grounds for such propositions.

According to Sabzawārī propositions are of three types; *al-khārijī*, *al-ḥaqīqī* and *al-dhinī,* what we may term external, real and mental respectively. A proposition is *khārijī* when the instances of its subject are existent in the extra-mental realm in actuality (*al-mawjūda fi al-khārij muḥaqqiqatan*), such as when it is said that 'whoever is in the house has been killed'. The proposition is termed *al-ḥaqīqī* when the instances of its subject are again existent in the extra-mental realm, however this time their existence may be actual or hypothetical (*muḥaqqiqtan aw muqaddiratan*). Consider an example mentioned by Sabzawārī himself, 'every body has a limit (*kullu jism mutanāhī*)'[258] i.e. each and every body in the extra-mental realm, be it one that actually exists or one that hypothetically exists, is of limited dimensions. This differs from the initially described *khārijī* proposition, whose judgement does not extend to hypothetical instances- with reference to the example given for such a proposition above; it is only those who are *actually* in the house who are dead, with the judgement not extending to anybody who may be *assumed* to be in the house, unlike in the case of the *ḥaqīqī* proposition. The third type of proposition is where the instances of its subject occur only in the mind, e.g. 'Universals are either essential or accidental' or 'the essential is

[256]'Sharḥ gharar al-farā'id yā Sharḥ al-manzūma', in M. Mohaghegh & T. Izutsu (eds.) *Sharḥ-i Ghurar al-farā'id or Sahrh-i manzūmah H.M.H. Sabzawārī Part One Metaphysics* (Tehran, Initishārāt Dānishghāh Tehran, 1991) p. 9.
[257]*Ibid* p.82.
[258] Sabzawārī, 'Sharḥ gharar al-farā'id yā Sharḥ al-manzūma', p. 82.

either a genus or a differentia'[259]. The instances of the subject in both examples are purely mental considerations; with no extra-mental occurrence (actual or hypothetical), hence such propositions are termed *Dhinī*.

With this classification in mind, and based on his correspondence theory of truth, Sabzawārī goes on to formulate the necessary truth-conditions for each of these types of proposition;

> Truth in the *khārijiyya* [propositions] is determined by consideration of the relationship of its correspondence to that which is in the extra-mental realm. This is also the case for the *ḥaqiqiyya* [proposition], for it also contains a judgement about existents in the extra-mental realm, albeit actualised or hypothetical [existents][260]

Thus the *Khārijiyya* and the *Ḥaqīqiyya* propositions are true if and when their content corresponds to the situation in the extra-mental realm. Maintaining that correspondence with reality is the criterion for truth in such cases poses no difficulty in a pre-modern framework that does not take seriously the fallibility of knowledge. However the situation for the *Dhinī* proposition is, at least at first sight, not so straightforward.

As stated above, the subject matter for the *Dhinī* propositions are purely mental considerations, thus they have no extra-mental occurrence with which their correspondence (or non-correspondence) can be assessed. It is here that the notion of *nafs al-amr* comes into play, for the *Dhinī* proposition is considered true if and when it corresponds, not to that which is in the extra-mental realm, but rather to that which is in *nafs al-amr* or the realm of fact.

Sabzawārī does not attempt to give a complete logical definition for *nafs al-amr,* in the sense of genus and differentia, instead he somewhat obliquely states that the *nafs al-amr* of a thing is defined and understood 'by the definition of that which makes a thing that thing (*bi ḥad dhāt al-shay*)'[261]. Thankfully he does elaborate; 'What is intended here by *ḥad al-dhāt* is that which is in contrast to the

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[259] Sabzawārī, 'Sharḥ gharar al-farā'id yā Sharḥ al-manzūma', p. 82.
[260] *Ibid.*
[261] *Ibid.*

suppositions of one supposing (*farḍ al-fāriḍ*)'[262], i.e. the *nafs al-amr* is the purely objective, completely detached from any influence of the subject;

> 'It [*nafs al-amr*] encompasses the realm of *māhiyya* (quiddity), the extra-mental and the mental existences. Thus [the statements that] Human is an animal at one level, existent in the extra-mental realm, or a universal, existent in the mental realm, are all factual things [*min al-umūr al-nafsiyya*], for they are not simply due to the suppositions of the one supposing them, such as is the case in [the statement] Human is a solid entity'[263]

Predications that are dependent on the subject perceiving them are ruled out from *nafs al-amr* and are not considered factual. The 'solidity' of human beings is a notion relative to the observer and thus cannot be taken as factual, it is not of those things which are true *in themselves*, or as Sabzawārī initially put it *bi ḥad al-dhāt,* i.e. it is not true through the definition of that thing itself. The definition of 'human as rational animal' does not confer any necessary judgement regarding the solidity of humans. Offering further clarification he states; 'What is intended by *al-amr*, is the thing itself. Thus if it is said that the number four *fi nafs al-amr* is so and so, what is meant is that the number four through the definition of itself is such and such'[264]. According to Sabzawārī then the *nafs al-amr* is the factual reality of things, things as they are in themselves.

Sabzawārī now proceeds to explain the relationship between *nafs al-amr,* this realm of fact, and the realms of extra-mental existence and mental existence. The realm of fact is considered absolutely more general (*aʿam muṭlaqan*) than the realm of extra-mental existence, because everything that is in the extra-mental realm is also in *nafs al-amr,* i.e. it also has factual reality. More simply put, every externally occurring existent is a fact, but every fact is not an externally occurring existent.

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[262] 'Sharḥ gharar al-farā'id yā Sharḥ al-manzūma', p. 82.
[263] *Ibid.*
[264] *Ibid* p. 83.
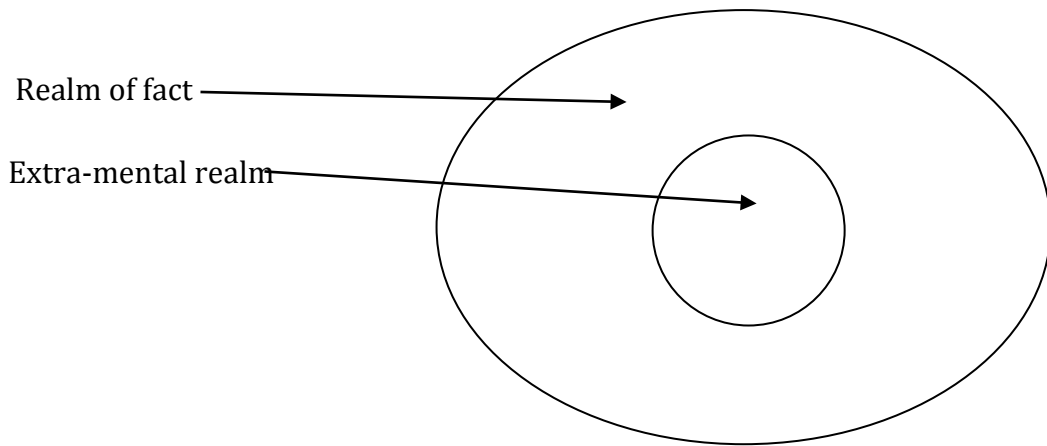
Fig. 1 The relationship between the realm of fact and the extra-mental realm.

The relationship between *nafs al-amr* and the realm of mental existence however does not follow suite, for the realm of fact can only be said to be more general than mental existence from a certain perspective (*aʿam min wajh*);

> In the case of truthful [mental] propositions, such as when we say that four is even, both [realms] concur…whilst in false [mental] propositions and with respect to Truth Absolute, esteemed be His Name, the two [realms] differ. In the false proposition (for example the number four is odd), the mental is actualised but not the factual. In the case of The Truth, Exalted, the factual is realized but not the mental, due to His being unqualified externality (*kharijiyyan mutlaqan*), neither is He encompassed by rationality nor by supposition (*la yaḥītu bihi ʿaql wa la wahm*)[265].

Accordingly, that which occurs in the mental realm may be factual (true in itself), e.g. the number four is even. On the other hand that which occurs to the mind may be non-factual, e.g. the number four is odd, such a mental proposition would only occur in the mental realm with no corresponding occurrence in *nafs al-amr*. Displaying his theological and even mystical inclinations Sabzawārī goes on to

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[265] Sabzawārī, 'Sharḥ gharar al-farā'id yā Sharḥ al-manzūma', p. 82

identify a third category in this relationship, that which occurs in *nafs al-amr* but does not occur in the mental realm. Allah, what Sabzawārī refers to as The Absolute Truth, is a fact. However the transcendence of this fact means that He cannot be realized in the mental realm.

The realm of fact
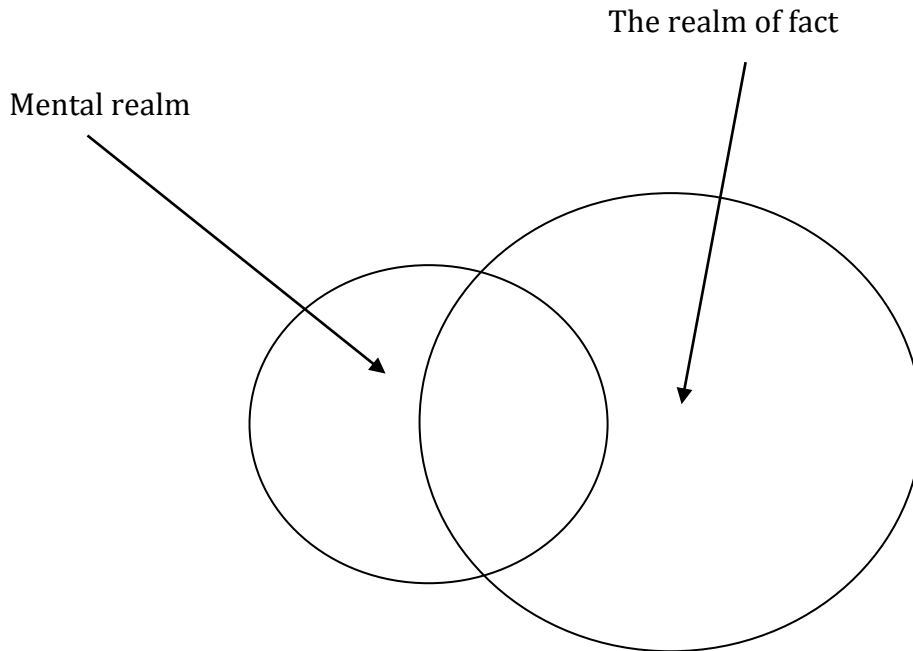
Mental realm

Fig. 2 The relationship between the realm of fact and the mental realm

Returning to Sabzawārī's conception of what is intended by the intelligibility of *ḥusn and qubḥ*, we can see that employing the notion of *nafs al-amr* allowed him to develop a more sophisticated conception of the issue than that found in the early and classical formulations of the doctrine. When he states that 'It is possible for *al-ʿaql* to understand that a specific action (*al-fʿil al-fulānī*) is praised in the realm of fact (*fī nafs al-amr*) and that another may be blamed'[266] he is asserting not only that moral values are discoverable by independent rationality but that they are 'factual'. As we have seen here his conception of fact, or *nafs al-amr*, is more general than existence (both mental and extra-mental) and thus for rationality to identify that an action is either praiseworthy or blameworthy does not require any existential attribute, essential or accidental, in the action that

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[266] *Sharḥ al-Asmā'*, p. 319.

gives rise to the moral judgement. The implications of this developed sophistication in the theory can be seen further not only in his own response to Ashʿarī criticisms, but it is also sets a precedent for a trend observed in the analysis of *masʾala taḥsīn wa taqbīḥ* employed by modern Shīʿa scholars of *uṣūl al-fiqh* and impacts the disputes surrounding the implications of the principle to *fiqh.*

3.4.3 The role of revelation

Having established himself firmly in the ʿ*Adliyya camp*, in line with the Muʿtazlia and his predecessors from amongst the Imāmiyya, by affirming the intelligibility of *ḥusn and qubḥ*, Sabzawārī goes on to briefly discuss the common concern with the implications this position holds regarding the role of revelation. For those that claim that *ḥusn and qubḥ* are rationally intelligible do not think that *al-sharʿ* or revelation, is superfluous or redundant when it comes to our knowledge of moral values. Accordingly Sabzawārī outlines exactly what the role of revelation is perceived to be for those who accept this position;

> Revelation is a discloser (*kāshif*) and a clarifier (*mubayyin*) of the *ḥusn* and *qubḥ* established for it in the realm of fact and it is not possible that an action which has been commanded be prohibited in that time in itself, likewise neither can that which has been prohibited be commanded, although it is possible if the time has changed as is the case of abrogation (*naskh al-aḥkām*)[267]

Moving into what may be deemed a more polemical tone, and setting it up for a rebuttal, he contrasts this with the Ashʿarī position, where;

> Revelation is the establisher (*al-muthbit*) for it and not the discloser. *al-ḥusn* and *al-qubḥ* do not refer to any real issue in the action prior to the occurrence of revelation. And the aforementioned reversal is possible, as there is no necessary relation (ʿ*alāqa lazūmiyya*) between prayer and

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[267] *Sharḥ al-Asmāʾ*, p. 319.

entering paradise nor between consumption of the property of orphans and the consumption of fire in the belly[268].

Moving to the refutation of this position Sabzawārī tries to demonstrate what he considers are the unacceptable implications of this;

> Thus if Allah were to cause the devout ascetic believing worshipper to enter the fire and the polytheist unbeliever to enter paradise, it would be considered appropriate by the proponents of this school in contrast to the *madhhab al-taḥqīq[269]*.

Despite his deep inclinations towards discursive philosophy, here Sabzawārī gives us a paradigmatic example of the use of polemics in Muslim theological writing. His refutation of the Ashʿarī position, does not employ the deductive reasoning championed by the philosophers, but rather attempts to undermine the Ashʿarī position using propositions which they would apparently accept, disregarding whether this line of argumentation can establish the truthfulness of his own position or not. Sabzawārī's argument against the Ashʿarī appraisal of revelation being the establisher (*muthbit*), rather than a discloser (*kāshif*), of *ḥusn and qubḥ* and their denial of any necessary correlation (*ʿalāqa lazūmiyya)* between actions and their other-worldly effects, relies on reference to the authority of revelation and prophetic narration. Of course his own argument for the intelligibility of *ḥusn* and *qubḥ*, claims that one cannot rely on scripture in the initial premises of one's moral reasoning.

He argues that the Qur'ān repeatedly asserts and establishes a correlation 'between good actions and blissful forms' on one hand, and also 'between bad actions and blameworthy forms' on the other[270]. Although the textual evidences he cites do suggest such a correlation,[271] they fail to make clear whether this correlation is a necessary or natural one, and thus at least on this point he does

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[268] *Sharḥ al-Asmāʾ*, p.319.
[269] *Ibid* p. 320.
[270] *Ibid.*
[271] Of the 'many verses' of the Qur'ān indicating this correlation, Sabzawārī explicitly mentions only the following as examples; 32: 17, 9: 95, and 4: 95, along with the following statement attributed to the Prophet Muḥammad 'They are nothing other than your actions being returned unto you'.

not seem to significantly dent the Ashʿarī position. The Ashʿarī do not deny a correlation established by revelation- they only deny the necessity of this correlation. For the Ashʿarī, one is rewarded in accordance with what one does simply because Allah wills this to be the case, and not due to any intrinsic relationship between actions and their effects.

3.4.4 Justifying the intelligibility of ḥusn and qubḥ

After this initial criticism of a somewhat stereotypical and simplified Ashʿarī position, Sabzawārī mentions his justification for adopting the ʿAdliyya position of affirming that al-ḥusn and al-qubḥ are rationally intelligible. The arguments mentioned differ only in formulation to those cited in the defence of the doctrine offered by the likes of Naṣīr al-dīn Ṭūsī and ʿAllāma Ḥillī examined above. Sabzawārī follows the classical triple justification of firstly claiming the self-evident nature of basic moral values, secondly claiming a universality of basic moral judgements, and thirdly by arguing that any trust in the veracity of scriptural morality must be initially dependent on an independent non-scriptural morality.

The first two arguments are relayed in a fairly straightforward manner, resembling very closely the formulations of his predecessors;

> The truth is that al-ḥusn and al-qubḥ are rationally intelligible, due to the self-evident knowledge of the desert of praise upon justice and goodness, and [the desert] of blame upon oppression and enmity. This knowledge is acquired by every rational person, even if he does not live in accordance to a religion, and due to this also being the judgement of those who deny the revealed religions (munkar al-sharāʾiʿ), such as the Barāhima[272].

The third argument, which was always the least straightforward but probably the most convincing of the three, is formulated slightly differently to the versions expounded by Naṣīr al-Din Ṭūsī and ʿAllāma Ḥillī. Eloquently, although again rather polemically, Sabzawārī uses the famous formulation for the Ashʿarī theory

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[272] *Sharḥ al-Asmāʾ*, p. 320

of meta-ethics within his justification for the ʿAdliyya stance stating that 'knowledge of the praiseworthiness of that which the legislator has made praiseworthy or the blameworthiness of that which he has made blameworthy' depends upon the a priori acceptance of the following propositions;

i) 'Lying is blameworthy (*qabīḥ*) and does not occur from Him' [273]
ii) 'commanding the blameworthy and prohibiting the praiseworthy are a foolishness and futility which can not be associated with Him'[274]

Knowledge of these propositions is assumed to only be able to arise from one of two ways; either through *al-ʿaql* or *al-sharʿ*. If it is known through *al-sharʿ* (revelation) we are returned to our original question, i.e. we again do not know how we can trust this revelatory knowledge without the two prior assumptions. Therefore knowledge of these propositions must come through *al-ʿaql* and hence *al-ḥusn* and *al-qubḥ* must be rationally intelligible independent of revelation.

3.4.5 Objections to the intelligibility of *ḥusn and qubḥ*

Sabzawārī discusses two important and recurring Ashʿarī objections against the intelligibility of *al-ḥusn* and *al-qubḥ*, and it is in his attempted resolution of these objections that make apparent his novel contribution to the debate. His discussion of the two objections will take on greater relevance when we see their influence upon the heated debates regarding the conception of *al-ḥusn wa al-qubḥ al-ʿaqliyān,* and its subsequent influence upon *al-ʿaql* as an independent source of *Sharīʿa* precepts, found within the modern Shīʿī *uṣūl al-fiqh* literature.

The first of the Ashʿarī objections relayed by Sabzawārī is based on their analysis of the different meanings or usage of the terms *al-ḥusn* and *al-qubḥ*. In defence of their ethical or theological voulntarism, Ashʿarī scholars distinguished between three different meanings of the two oppositional terms. The first of which is when *al-ḥusn* and *al-qubḥ* is used to describe an attribute of perfection (*ṣifāt al-kamāl*) or an attribute of imperfection (*ṣifāt ul-naqṣ*). The second meaning of *al-*

[273] *Sharḥ al-Asmāʾ,* p. 320.
[274] *Ibid.*

ḥusn and *al-qubḥ* is when something is either consistent with an objective or contrary to it, thus when something is deemed to have utility (*maṣlaḥa*) it can be termed *ḥasan* and when it is deemed a detriment (*mafṣada*) in may be termed *qabīḥ*. According to Sabzawārī, the Ashʿarī accept that these first two types of *ḥusn and qubḥ* are perceived by the ʿaql[275].

The third meaning of *al-ḥusn* and *al-qubḥ* is 'the deserving of reward and punishment from Allah in accordance with his regulative system (*aḥkāmihi*)'[276]. Thus, if ones actions deserve divine reward they are *ḥasan*, and if they deserve divine punishment they are *qabīḥ*. It is only this third meaning of *al-ḥusn* and *al-qubḥ* which is the subject of controversy (*maḥal al-nizāʿ*) and it is instances of this third meaning alone which the Ashʿarī believe cannot be *ʿaqlī* i.e. they claim that knowledge of whether an act is deserving of divine punishment or reward cannot be intelligible without recourse to revelation.

With reference to the first justification for the intelligibility of *ḥusn and qubḥ,* which relied on a claimed self-evidence and universality of basic moral propositions, Sabzawārī cites the following Ashʿarī objection;

> The conviction of rational people as to the *ḥusn* or *qubḥ* of those things mentioned e.g. justice, kindness and their opposites, in the sense of their being either consistent with objectives or in opposition to them or that they be attributes of perfection or imperfection is accepted (*musallam*), but there is no dispute with reference to these two meanings [of *ḥusn* and *qubḥ*] and as for the disputed meaning it [the conviction of rational people independent of revelatory knowledge] is impossible.[277]

Although Sabzawārī acknowledges that this Ashʿarī analysis has caused problems for some of the proponents of the intelligibility of *ḥusn and qubḥ*, to say that he himself is dismissive of this objection does not quite capture the contempt with which he regards the argument. Before even beginning any refutation of the objection, Sabzawārī addresses his readers directly with 'And you are well aware

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[275] *Sharḥ al-Asmāʾ,* p.320.
[276] *Ibid.*
[277] *Ibid,* p. 321.

of the ease with which it is refuted'[278] almost implying that the flaw in the Ashʿarī position is so obvious that it is hardly worth mentioning.

Sabzawārī's dismissal of the Ashʿarī objection revolves around an initial premise that *ḥusn and qubḥ* in their first two meanings, which the Ashʿarī except are rational, 'when in voluntary actions, [ultimately] refer to [the qualities of] praiseworthiness or blameworthiness (*rajaʿat ʿilā al-mamdūḥiyya wa al-madhmūmiyya*)'. For example, accepting that kindness is rationally *ḥasan*, in the sense of being an attribute of perfection (*ṣifāt al-kamāl*), implies the acceptance of its praiseworthiness as a voluntary action (the act of *iḥsān*) also being rational. Having already described praise and blame as factual things *(min al-umūr al-nafsiyya)* he continues with 'Praise and blame are more general than being either from rational people or from Allah, exalted' meaning that if something is praiseworthy or blameworthy it is so, be it from the perspective of humans or from the perspective of Allah. Now moving from the factual to the normative (in a sense connecting the 'is' to the 'ought') Sabzawārī can conclude; 'And to be deserving of His praise and blame is to be deserving of His reward and punishment'[279].

In this way we see that for Sabzawārī, the Ashʿarī acceptance of the intelligibility of *ḥusn and qubḥ* in their first two meanings implies that they must also accept its intelligibility in the third meaning. Despite his initial claims regarding the simplicity of this argument, he does feel the need to rephrase and elaborate in an attempt to drive home his point absolutely clearly;

> Thus if you accept the intelligibility of the goodness of kindness (*ʿaqliyatu ḥusn al-iḥsān*) and the praiseworthiness of its performer, through rationality, in the sense of an attribute of perfection or consistency with objectives, it is necessary for you to recognise its intelligibility in the meaning of the praiseworthiness of its performer in the view of Allah, exalted[280].

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[278] *Sharḥ al-Asmā',* p. 321.
[279] *Ibid.*
[280] *Ibid.*

The reason offered for this necessary correlation is based on an Aristotelian foundationalist epistemological assumption, that pure reason must have epistemic access to facts;

> Because everything which is praised or blamed by pure reason (*al-ʿaql al-ṣarīḥ*), [i.e.] by way of self evidence or through sound deductive reasoning, is praised or blamed *fi nafs al-amr*. If not, it would then imply the paralysis of *al-ʿaql* and pave the way toward sophistry[281].

If pure reason, self-evidently or through sound deductive reasoning, determines the factual moral value of an act, as being either blameworthy or praiseworthy than this judgement can be considered to correspond to the judgement of Allah, 'otherwise it would necessitate His ignorance of that which is factual (*fi nafs al-amr*), exalted a great distance be He from this'[282].

From this response to the Ashʿarī objection to the intelligibility of *ḥusn and qubḥ* in its third meaning, we can gain greater insight into Sabzawārī's own conception of the issue. As previously noted, he refers to moral values as factual realities, *min umūr al-nafsiyya*, adopting the position that they are intelligible by rationality, unaided by revelation. However here he makes it clear that we can only ascertain for sure that a value is factual, independently of revelation, if it is the result of al-ʿaql al-ṣarīḥ or pure rationality. Accordingly if moral values are known self-evidently or through sound deductive reasoning, they can be considered as factual values, both from the point of view of humans and from the point of view of Allah. As shall be seen in the subsequent analysis, it is this epistemological criteria for the valid correspondence between judgements of reason and judgements of God which is the major obstacle for preventing the role of independent rationality (*al-mustaqillāt al-ʿaqliyya*) from playing any substantive role in the actual inference of *Sharīʿa*, rendering any relevant judgements of rational morality superfluous to considerations of the validity of precepts derived in *fiqh*.

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[281] *Sharḥ al-Asmāʾ,* p. 321.
[282] *Ibid.*

Sabzawārī also discusses, and responds to, a second objection to the ʿAdliyya theory of the intelligibility of moral values. Like the first objection, it is a challenge that has gone a long way in shaping the manner in which Shīʿa scholars have outlined their conception of the intelligibility of the praiseworthy and the blameworthy. As shall be seen in the subsequent chapters, it is a challenge which has led to much debate around the conception of rational moral judgements in *uṣūl al-fiqh,* the result of which also seems to have played a role in the curtailment of the extent to which these judgements actually impact the inference of Sharīʿa precepts in *fiqh*. Not only does Sabzawārī's incisive analysis of the issue allow an excellent backdrop for assessing these disputes in modern *uṣūl al-fiqh*, but they also offer a genuinely tenable route for resolution of the conflict.

The objection raised, and attributed to the Ashʿarī, is against the claimed self-evidence (*ḍarūra*) of basic moral propositions, a claim that we have seen is central to the justifications offered by the ʿ*Adliyya* in defence of the intelligibility of the praiseworthy and blameworthy. The objection relies upon a particular classification of propositions employed by Muslim philosophers and logicians, and which aims to point toward a category mistake in the ʿ*Adliyya* analysis. According to logicians, syllogisms may be used for a number of different purposes depending upon the content of the propositions that make up that particular syllogism. Depending upon the nature of its content (*mādat al-qiyās*), a syllogism may be employed for either deduction (*burhān*), polemics (*jadal*), oratory (*khitāba*), poetry (*shʿar)* or fallacies (*mughālaṭa*)[283]. Sabzawārī's account of the objection against the self evidence of basic moral propositions notes that the early Muslim philosophers (*ḥukamā*) have described statements such as 'justices is praiseworthy' and 'oppression is blameworthy', as being from amongst those propositions classified as *maqbūlāt al-ʿāmma* - generally accepted propositions whose validity is dependent upon a broad acceptance of the proposition- a form of proposition which provides the content to polemics (*al-jadal*) rather than to deduction (*al-burhān*)[284]. If this is the case, describing these

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[283] See Muẓaffar, *al-Manṭiq,* pp. 295-326.
[284] *Sharḥ al-Asmāʾ* p. 320.

propositions as being self-evident, a particular property of propositions which form the content to *burhān* and not a property associated with the *maqbūlāt al-ʿāmma* becomes 'nonsensical' (*gayr masmūʿ*) and hence unjustified[285].

One of the earliest to raise this objection, albeit in a slightly different form, seems to be the paradigmatic Ashʿarī theologian and jurist of his era, Abū Ḥāmid Al-Ghazzāli. In his *Muṣtasfā fi ʿilm al-uṣūl* he argues against the self eveidence of such propositions describing them instead as propositions which are popularly considered praiseworthy (*maḥmūda mashhūra*) [286], apparently making reference to a position attributed to Ibn Sīnā that has clearly raised challenges that have impacted the *ʿAdliyya* conception of the nature of moral propositions adopted by modern Shīʿa scholars of *uṣūl al-fiqh*. In his *Ishārāt wa tanbīhāt* Ibn Sīnā classifies basic moral propositions, like 'lying is blameworthy', as being examples of a 'popularly agreed upon' proposition referred to as *al-mashūrāt*. In the case of these moral judgements, these forms of *maqbulāt al-ʿāmma* are referred to as 'praiseworthy opinions' (*al-ārā al-mussammāt bil maḥmūda*). According to Ibn Sīnā these propositions are designated as *mashūrāt* for the reason that there is no ontological basis to them except for the popular consensus which gives rise to them (*la ʿumda lahā illa shūra*)[287]. They are thus portrayed as being purely inter-subjective, with an explicit recognition that should an individual human being have been brought up alone in isolation of society, despite possessing his faculties of reason, speculation and sense experience, 'he would not have been trained to accept or recognise such propositions'[288]. This conception of the nature of moral propositions undermines the claim that they are self evident to unaided reason, a central justification of the *ʿAdliyya* defence of the intelligibility of *ḥusn and qubḥ*.

Sabzawārī's response to this objection maintains that basic moral propositions are indeed self-evident propositions in the sense 'that they do not entertain

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[285] *Sharḥ al-Asmā'*, p. 320.

[286] Abū Ḥāmid al-Ghazzālī, *Al-Mustaṣfā min ʿilm al-uṣūl* (Beirut, Mu'assasat al-Risāla, 1997) Vol. 1, pp 115-119.

[287] Abū ʿAli Ibn Sīnā, *al-Ishārāt wa al-tanbīhāt l'Abi ʿAli bin Sīnā mʿa Sharḥ Naṣīr al-Dīn al-Ṭūsī, al-Qism al-awwal fil Manṭiq* (Beirut, Mu'assasat al-Nuʿmān, 1992) p. 351

[288] *Ibid.*

doubt'[289]. This recognition does not need to rely on speculative reasoning or intellectual deliberation, 'judgement of the axiomatic nature of these propositions is also axiomatic' (*al-ḥukm bi bidāhatihā ayḍ^{an} badīhīy^{un}*)[290]. His resolution of the apparent conflict between this position and the categorisation of such propositions as being from amongst the *mashūrāt* or *maqbūlāt* rests upon the nature of the rational judgement that recognises these moral propositions. Sabzawārī claims that these judgements are not purely the result of practical rationality (*al-ʿaql al-ʿamalī*), that function of reason which perceives those issues whose performance is either befitting or non-befitting, but that they are judgements which also fall under the domain of theoretical rationality (*al-ʿaql al-naẓarī*), the function of reason which perceives those things worthy of knowing. This is due to the implications of these basic propositions being of relevance to issues of general or social utility and detriment (*maṣāliḥ al- ʿāmma wa mafāṣidihā*). It is because of this social aspect, which falls under the remit of theoretical rationality, that philosophers have considered these propositions to be amongst the *maqbūlāt al- ʿāmma;* 'the purpose of which is nothing other than to draw out (*al-tamthīl*) the aspect of social utility or detriment whose criteria is an acceptance of the mass generality of human kind and not any particular group'[291].

However for Sabzawārī, that the social utility or detriment of a proposition (which is recognised by theoretical rationality) can only be established through a social consensus does not rule out that the proposition in itself may be self evident in its validity at an individual level. As he himself states;

> [T]his does not contradict their [i.e. basic moral propositions] being axiomatic (*gayr munāf li-badāhatihā*), because it is possible that a single proposition be classified as being of the certain propositions (*al-yaqīnīyāt*) and of the widely accepted propositions (*al-maqbūlāt*) from different respects, and hence it is possible to consider them in deduction (*al-*

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[289] *Sharḥ al-Asmā'*, p. 322.
[290] *Ibid.*
[291] *Ibid.*

burhān) and in polemics (*al-jadal*) through these different considerations.[292]

As shall be seen in the subsequent analysis, not all modern Shīʿa scholars of *uṣūl al-fiqh* have accepted that a single proposition can be from amongst the *yaqīnīyāt,* and hence self evidently intelligible, and at the same time be from amongst the *maqbūlāt al-ʿāmma* or *al-mashhūrāt* the knowledge of which requires a social context. This debate has led to much contention regarding exactly how rationality comes to judge the praiseworthiness and blameworthiness of basic moral propositions, reflecting a considerable diversity in the conception of the nature of morality and rationality amongst modern scholars of Shīʿī *uṣūl al-fiqh*. Sabzawārī's position sets an excellent backdrop for engaging in these elaborate discussions of modern *uṣūl al-fiqh-* debates to which we shall turn to in the next chapter.

3.5 Summary

A substantive notion of God's Justice has been a prominent feature of Imāmī theological thought since the formative period of the school. Even the traditionist Shaykh al-Ṣadūq, employed a conception of God's justice premised on the ability of human reason to understand moral values in his explanation and interpretation of Imāmī traditions. This early post-occultation period saw a range of different tendencies in Shīʿī thought. Yet, as can be seen in the doctrinal works of Al-Mufīd, the concept that it is not possible for God to commit blameworthy acts and that God always acts with purpose became a characteristic doctrine of the school and led to their self affirmation as *ʿAdliyya*. In the works of Mufīd's students, Shaykh al-Ṭūsī and Sharīf al-Murtaḍā, we find the acceptance that the knowledge of basic moral propositions is axiomatic and that the

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[292] *Sharḥ al-Asmāʾ*, p. 322*.* Also see, Ḥāj Mullā Hādī al-Sabzawārī, *Sharḥ al-Manzūma* (Qum, Initishārāt Luqmān, N.D) pp. 99-100, where Sabzawārī quotes the above mentioned passage form Ibn Sīnā and explicitly rejects his analysis of *mashūrāt* and *yaqīnīyāt* as being mutually exclusive categories of propositions. Here Sabzawārī affirms that the validity of moral propositions, in themselves, may be self evident (and hence from the *yaqīnīyāt*) and that judgements regarding their social utility or detriment require a social consensus (and hence form this respect they are from the *mashhūrāt*).

praiseworthiness and blameworthiness of actions is indeed *ʿaqlī* i.e. rationally intelligible independent of revelation.

By the classical period of Shīʿī theological thought scholars such as Ibn Nawbakht, Naṣīr al-Din Ṭūsī and ʿAllāma Ḥillī had developed a sophisticated and systematic defence of Imāmī doctrine. This included an explicit recognition that an *ʿAdliyya* conception of God's justice philosophically required a prior acceptance of a notion of God's wisdom (*Ḥikma*) that in turn depended on the affirmation of the intellects ability to understand basic moral values independent of revelation. This principle of the intelligibility of the praiseworthy and the blameworthy (*Qāʿidatu al-taḥsīn wa taqbīḥ al-ʿaqliyain*) was justified by a range of arguments that continue to be prominent in the thought of contemporary Shīʿī theologians. These justifications claim that the validity of basic moral propositions are axiomatic or self-evident, that knowledge of such propositions are universal and that in fact the very trust in the veracity of revelatory knowledge itself is reliant upon the possibility of the intelligibility of moral values independent to revelation.

Although Imāmī thinkers of subsequent generations have not significantly shifted their doctrinal positions, they did employ more sophisticated philosophical concepts in the defence of these doctrines. Sabzawārī describes moral propositions as factual (*min umur al-nafisiyya*), where the realm of fact is larger than the realm of existence. If moral propositions are factual in this sense and one comes to know, by way of pure or deductive reasoning, the moral value of an act, this knowledge is deemed to correspond to the judgement of God. For an all-knowing God is also aware of that which is praiseworthy and blameworthy in the realm of fact. Since God's judgement of praiseworthy and blameworthy relate directly to that which is deemed worthy of reward and punishment, it in turn becomes possible to have knowledge of that which is deemed by God to be the subject of Divine praise and reward or Divine blame and retribution, independent of revelation- *if* our judgements of praiseworthy and blameworthy are the result of pure rationality.

Sabzawārī also distances himself from Ibn Sīnā's description of moral propositions as having no purely rational basis beyond the social consensus which gives rise to them, a position highlighted by Ashʿarī scholars as undermining the possibility of moral propositions being self-evident. For Sabzawārī the truth of moral propositions can be known axiomatically and only require a social consensus for determining the broader social utility or social detriment of a particular voluntary action. Thus justice can be known to be praiseworthy axiomatically in itself, with only the recognition that justice is of social utility requiring a social context.

Such conceptual developments and the objections from which they have arisen have gone a long a way in shaping the debates regarding the nature of morality, rationality and the role of independent moral judgements in modern *uṣūl al-fiqh*. All of which bear directly upon the impact of reason as an independent source of *Sharīʿa* precepts. Despite the fundamental position that the principle of the intelligibility of the praiseworthy and the blameworthy has come to hold in Shīʿī theological thought, the concomitant notion of reason as an independent source of *Sharīʿa* precepts has little or no impact in the actual inference of Sharīʿa precepts in *fiqh*.

After having outlined the conception of the principle of the intelligibility of the praiseworthy and blameworthy in Shīʿī theological thought the subsequent chapters can now directly engage in how modern Shīʿī *uṣūl al-fiqh* has received, and developed, this heritage. This will allow us to ask why this notion has led to the acceptance of *al-mustaqillāt al-ʿaqliyya* (reason as an independent source of *Sharīʿa* precepts), the major jurisprudential implication of the principle, only as a theoretical source having little actual or practical influence upon the inference of *Sharīʿa* precepts in *fiqh*.

4. The nature of morality, rationality and independent judgments of rational morality in modern Shīʿī *uṣūl al-fiqh*

4.1 Introduction

We have seen in chapter two that Shīʿa scholars have been concerned with the role for reason in their method of interpretation of *Sharīʿa* ever since the systematization of their thoughts in *uṣūl al-fiqh* first began. The increasing sophistication with which this concern developed led to the drawing of a clear distinction between two categories of reason as a source of *Sharīʿa* precept; non-independent rationality (*gayr al-mustaqillāt al-ʿaqliyya*) and independent rationality (*al-mustaqillāt al-ʿaqliyya*). The inclusion of *al-mustaqillāt al-ʿaqliyya* as a valid source of *Sharīʿa* precepts is a direct implication of the Shīʿī meta-ethical rationalism summed up in the theological principle referred to as *qāʾidat al-taḥsīn wa al-taqbiḥ al-ʿaqliyain*, the principle of the intelligibility of the praiseworthy and the blameworthy. This principle is foundational to the theological conception of God in Shīʿī thought by which the Shīʿa describe themselves as *ʿAdliyya* and through which they ascribe a rationally intelligible conception of justice to God, in terms of His essence, His actions and His laws.

The centrality of the meta-ethical principle at the heart of *ʿAdliyya* doctrine led to its progressively sophisticated and philosophically nuanced defense and conception. As seen in the previous chapter this conception was shaped to a large extent by the polemical nature of the discipline of *ʿilm al-kalām* in which it was formulated and by the debates that ensued therein. These theological debates have left a great mark on how modern Shīʿa scholars of *uṣūl al-fiqh* have conceptualized the nature of moral values and rationality, in turn affecting the impact of how *al-mustaqillāt al-ʿaqliyya* may actually come to play a role in the inference of *Sharīʿa* precepts when it comes to *fiqh*. In fact scholars of *uṣūl al-fiqh,* within their works of *uṣūl* rather than *kalām*, seem to have significantly advanced the debates around the conception of the theological principle of the

intelligibility of the praiseworthy and the blameworthy as part and parcel of the theorisation of their jurisprudential concern for the role of reason as a source of *Sharīʿa* precepts. These debates have shown the emergence of two sharply different views regarding the nature of morality and rationality amongst Shīʿa *Uṣūliyūn* themselves- all of whom still affirm the rational intelligibility of the praiseworthy and the blameworthy but who seem to hold radically different conceptions of how and when this is the case- directly impacting their ideas about *al-mustaqillāt al-ʿaqliyya* and the claimed correspondence (*mulāzama*) between judgments of human reason and judgments of the Divine legislator.

The following chapter will outline the conception of the nature of morality, rationality and independent rationality as a source of *Sharīʿa* precept (*al-mustaqillāt al-ʿaqliyya*) in the thought of Muḥammad Riḍā al-Muẓaffar. This treatment shall be followed by what may be seen as a direct criticism of Muẓaffar's conception in the ideas of Muḥammad Bāqir al-Ṣadr, who on this particular issue represents the culmination of a markedly different strand of thinking to Muẓaffar. Explaining why the theological resources in the *ʿAdliyya* tradition have not allowed the notion of reason as an independent source of *Sharīʿa* precepts to significantly impact the reading of *fiqh* in Shīʿī thought is of course the driving question to this research, and thus references to these obstacles will be made throughout the forthcoming discussions. However, despite the radically different conception of the nature of morality and rationality amongst Shīʿī *Uṣūliyūn,* the fundamental obstacle to either conception playing a significant role in *fiqh* is a common epistemological criterion which demands *qaṭʿ* (certainty) as the ultimate basis for the validity (*ḥujjiyya*) of any source of *Sharīʿa* knowledge. The concept of *ḥujjiyya* generally and more specifically the *ḥujjiyya* of judgments of *al-mustaqillāt al-ʿaqliyya* thus demand a dedicated treatment. Prior to dealing with this pivotal question of the validity of the judgments of independent rationality we first need a detailed exposition of the different ways in which modern Shīʿa scholars of *uṣūl al-fiqh*, and principally Muẓaffar, described the nature of exactly what these judgments are, and how and when they are believed to arise.

4.2. Four levels of discussion

As stated in the discussion of sources relied upon for this study, Muẓaffar's treatment of independent rationality stands out amongst others, not only due to the continued importance of his text in training contemporary Shī'ī scholars, but also due to the depth and breadth of approach he brings to the question. Prior to commencing his detailed exposition Muẓaffar first outlines the earlier mentioned four questions or points of debate that pertain to the issue of the intelligibility of the praiseworthy and the blameworthy and its implications for independent rationality as a source of *Sharī'a* precept. As we return to a close examination of the question of independent rationality in modern *uṣūl al-fiqh* it is of value to examine this schematic of the four questions more closely. The question posed in the first debate, which may be described as an ontological question, asks whether actions have a rational status in terms of being praiseworthy or blameworthy irrespective of any judgment of the Divine Legislator. Rephrased the question asks;

> Are actions praiseworthy or blameworthy due to their own essence having an intrinsic value in the view of rationality (*fi naẓr al-'aql*) prior to the assumption of any judgment of The Divine Legislator upon them, or is this not the case and instead the praiseworthy is only that which The Divine Legislator has made praiseworthy and the blameworthy is only that which He has made blameworthy?[293] .

This of course refers to the classical meta-ethical debate about the nature of morality and Gods justice examined in the previous chapter through the lens of a survey of the historical development of the doctrine of the intelligibility of the praiseworthy and the blameworthy in Imāmī theological thought. Although Muẓaffar recognises that this is a question of *'ilm al-kalām* he still proposes to tackle it within his work of *uṣūl al-fiqh* due to it being from amongst the grounds or presuppositions (*min al-mabādi*) of the *Uṣūlī* questions, the proper resolution

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[293] *Uṣūl al-fiqh* Vol.1 p. 184.

of which requires a proper conceptualisation of its theological premises[294], and it is this analysis which will occupy the majority of the forthcoming chapter.

After having assumed or accepted that actions are indeed, with respect to their own selves, either praiseworthy or blameworthy the second question may be asked as to;

> [W]hether it is actually possible for rationality to perceive the aspects of praiseworthiness and blameworthiness independently of the Divine Legislators instruction and explanation or not? And if it is possible, is it appropriate for the one vested with responsibility (*mukallaf*) to refer to it without The Divine Legislators clarification or instruction, or is it not appropriate for him to do so either absolutely or in some situations'[295].

This epistemological question is cited by Muẓaffar as marking a major and famous point of departure between the Uṣūlī and Akhbārī schools of thought, with the latter denying that *al-ʿaql* has the actual capability of understanding the praiseworthy and the blameworthy, or that even if it could make such a judgment, one cannot rely on knowledge accessed in this way either absolutely or in certain situations. Again Muẓaffar sees this as a question for *ʿilm al-kalām*, however it's treatment here is necessary- for if rationality is incapable of perceiving the aspects of praiseworthy and blameworthy then there would be no instances of *al-mustaqillāt al-ʿaqliyya*, the legal status of which is the primary concern in *uṣūl al-fiqh*.

According to Muẓaffar the origin of this second debate is the occurrence of a fallacy in the minds of some scholars regarding the proper conception of the intelligibility of the praiseworthy and the blameworthy established in the aforementioned ontological question[296]. As shall be seen in the subsequent analysis, Muẓaffar's conception of the intelligibility of the praiseworthy and the blameworthy reduces the ontology of moral values to their epistemology, claiming that there is no reality to judgments of praiseworthy or blameworthy

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[294] *Uṣūl al-fiqh*, Vol. 1 p. 185.
[295] *Ibid.* p. 186.
[296] *Ibid.*

beyond the concurrence of the rational community - the affirmation of which leaves no scope for the second epistemological question.

Thirdly, after having affirmed that actions may be either praiseworthy or blameworthy and that rationality can perceive the praiseworthy and the blameworthy, it is possible to ask the jurisprudential or *Uṣūlī* question pertaining to the correspondence (*al-mulāzama*) between judgments of reason and judgments of The Divine Legislator. In Muẓaffar's words the question is; 'when *al-ʿaql* judges the praiseworthiness or blameworthiness of a thing is it also necessary in its view, rationally *(ʿaqlan)*, that The Divine Legislator has a judgment in accordance with it?'[297]. The question of the *mulāzama* is the central question pertaining to independent rationality in *uṣūl al-fiqh* and again marks an apparent dividing line between the Uṣūlī and Akhbārī schools, with only a rare exception from the former not affirming the existence of a correspondence between the judgments of *al-ʿaql* and judgments of the Divine Legislator[298].

The fourth question deals with the religious validity (*ḥujjiyya*) of this means of knowledge;

> After having established the existence of the correlation (*mulāzama*) and acquiring certainty (*qaṭ*) that The Divine Legislator necessarily judges in accordance with that which is judged by *al-ʿaql*, [one can still ask] is this certainty religiously valid (*ḥujjatan sharʿan*)?[299].

In other words, can one rely upon this certainty in the court of God where it would confer accountability (*munajjazīyya*) and/or excusabillity (*muʿadhdharīyya*) upon the one vested with responsibility (*mukallaf*)?[300] This

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[297] *Uṣūl al-fiqh*, Vol. 1 p. 186.

[298] *Ibid.*

[299] *Ibid,* pp. 186-187.

[300] In an otherwise incisive analysis, Rob Gleave seems to misinterpret this fourth question when he refers to Muẓaffar's schematic of the issue to frame his comparative study of 'rationalist morality' in the thought of the two eighteenth century scholars, Yūsuf al-Baḥrānī and Waḥīd al-Biḥbahānī. Gleave interprets the question as relating to whether 'the findings of *ʿaql* are logically related to the classification of the acts in the *Sharīʿa…* Does the fact that *ʿaql* finds that lying is evil mean that lying is *haram* (forbidden)? This, I presume, is what Riḍā means when he asks if the moral classification of the *ʿaql* is *sharʿi* in nature'. *Inevitable doubt*, p. 187. Although the interpretation may be only tentative (as seen in usage of such language as 'presume'), Gleave falls short in recognising that the fourth question is not about whether *ʿaql* reveals knowledge which is *sharʿī* (an issue rightly falling under question three, the question of the *mulāzama*), but rather

question arises due to various opinions attributed to a group from the Akhbārī School, who for a variety of reasons, seem to have denied the validity of relying on the judgments of reason despite their theoretical correspondence with the judgment of God[301]. The debates here hinge on the theory of the nature of, and the criteria for, the validity or authoritativeness of religious sources. For the scholars of the Uṣūlī school *qaṭ'* (certainty), viewed as the ultimate basis for validity, is deemed authoritative by its very essence and thus it is nonsensical to ask whether the certainty acquired regarding a correspondence between a judgment of reason and a judgment of The Divine Legislator is valid or not.

Muẓaffar treats this fourth issue, which deals with the authoritativeness or *ḥujjiyya* of *al-'aql*, independently from the discussions of the nature of morality, rationality and how and when independent rationality corresponds to the judgment of the Legislator. Our analysis here will follow this pattern, not only because it is the choice of presentation adopted by Muẓaffar, but because the epistemological criteria for authority adopted in the discussion of *ḥujjiyya* are pivotal to explaining the redundancy of *al-mustaqillāt al-'aqliyya* in both competing conceptions of the source amongst *Uṣūliyūn* and thus it deserves an independent treatment. The immediate concern here is to elucidate Muẓaffar's detailed response to the first three questions, revealing his conception of the nature of morality, rationality and how independent judgments of rational morality actually arise.

4.3. Muẓaffar on the intelligibility of the praiseworthy and the blameworthy

In his response to the first of the above mentioned discussions Muẓaffar offers a comprehensive analysis of the theological question regarding the nature of moral values dealt with in *mas'ala al-taḥsīn wa al-taqbiḥ*. He commences by settings out the two main positions taken on the issue. Initially he describes the claim of

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that the question is actually asking whether or not knowledge of *Sharī'a* accessed in this way can be relied upon, and hence whether it is deemed religiously *valid* or not, i.e. is it *ḥujja*? The question of the validity or authoritativeness of relying upon potential sources of *Sharī'a* is the question referred to as the question of *ḥujjiyya.*

[301] *Uṣūl al-fiqh*, Vol. 1 p. 186.

Ashʿarī theologians who hold that moral value follows the command of God. Accordingly they hold that the praiseworthy is nothing other than that which He makes praiseworthy, the blameworthy is nothing other than that which He makes blameworthy and that should He decide to make that which is blameworthy praiseworthy, or vice versa, this would be the case[302].

This is contrasted with the position adopted by the *ʿAdliyya*, whose doctrine is formulated by Muẓaffar as follows;

> Actions have an intrinsic value in the sight of *al-ʿaql*, regardless of any judgment from the Divine Legislator, thus amongst them is that which is praiseworthy in itself and amongst them is that which is blameworthy in itself, and amongst them is that which has neither of these two attributes. And The Divine Legislator does not command except to that which is praiseworthy and does not prohibit except from that which is blameworthy. Thus telling the truth is, in itself, praiseworthy and due its praiseworthiness Allah, exalted, has commanded it. It is not the case that Allah, exalted, has commanded it and then it became praiseworthy. And lying, in itself, is blameworthy and it is for this reason that Allah, exalted, has prohibited it, not that Allah, exalted, prohibited it and then it became blameworthy[303].

Muẓaffar recognizes that this brief outline is of course insufficient to allow one to judge in accordance with either camp, and thus sets out to engage in an extensive discussion of the nature of morality and the manner in which reason can come to understand it in accordance with the *ʿAdliyya* stance. Not only is this 'a necessary preliminary' to the jurisprudential questions pertaining to *al-mustaqillāt al-ʿaqliyya,* but it is a debate which he feels has not been given its proper due in the vast majority of texts written in either *uṣūl al-fiqh* or *ʿilm al-kalām[304]*.

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[302] *Uṣūl al-fiqh*, Vol. 1 pp. 188-189.
[303] *Ibid* p. 188.
[304] *Ibid.*

Muẓaffar commences his analysis with a discussion which we encountered briefly in Sabzawārī's treatment of the *mas'alat al-taḥsīn wa al-taqbiḥ* and which distinguishes between different meanings of the key terms of *al-ḥusn* and *al-qubḥ*. This preliminary conceptual analysis, which originated in response to Ashʿarī criticism[305], attempts to clarify what type of *al-ḥusn* and *al-qubḥ* is being referred to in the context of the current debate and seeks to identify exactly which of the meanings is relevant to the dispute between the *ʿAdliyya* and Ashʿarī camps. Muẓaffar's analysis differs from the one seen in Sabzawārī's treatment. Not only does he by provide a more detailed exposition of the different meanings but he also offers a distinct and somewhat unique conception of the third and most relevant usage of *al-ḥusn* and *al-qubḥ.* This stems from his particular understanding of the nature of moral propositions which, unlike Sabzawārī, closely follows the ideas of Ibn Sīnā. It is an analysis that is crucial in outlining the basis for Muẓaffar's distinctive conception of the nature of morality and the resultant mechanics of exactly how he believes judgments of rational morality arise, and how they may correspond with the judgments of the Divine Legislator.

The first usage of *al-ḥusn* and *al-qubḥ* described by Muẓaffar is when they are employed to refer to perfection (*kamāl*) or imperfection (*naqṣ*). He notes that this usage occurs to describe attributes for voluntary actions, such as when it is stated that 'learning is *ḥasan'* or 'negligence of learning is *qabīḥ'*, and to describe attributes for the objects of verbs (*mutaʿallaqāt al-afʿāl*), such as when it is said 'knowledge is *ḥasan'* or 'ignorance is *qabīḥ'*. Muẓaffar goes on to explain that many of the human moral dispositions (*al-akhlāq al-insāniyya*) are described as either *ḥasan* or *qabīḥ* in this sense, for example;

> [B]ravery, nobility, wisdom, moderation, justice and their like are
> described as *ḥasan* with respect to their being perfections for the soul and
> the strength of its existence. Likewise their opposites are [described] as

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[305] For the distinctions drawn between different types of *ḥusn* and *qubḥ* in the Ashʿarī or 'Voluntarist critique' of the *ʿAdliyya* position see Emon, *Islamic Natural Law Theories*, pp. 101-110.

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qabīḥ because they are imperfections in the existence of the soul and its strength.[306]

Muẓaffar makes two important comments before moving to the second category of usage. Firstly, if something is described as being *ḥasan* in this sense it does not necessarily mean that it cannot be *qabīḥ* in one of the subsequent usages of the term. As shall be seen in the examples that follow, the different usages of *ḥusn* and *qubḥ* are not mutually exclusive. Secondly, he notes that there is no apparent dispute with Ashʿarī theologians regarding the intelligibility of *ḥusn* and *qubḥ* in this sense, and that in fact some 'recognize that they are rationally intelligible (*ʿaqliyān*), because they are from amongst the certain propositions (*al-qaḍāyā al-yaqiniyāt*) behind which there is an external reality to which they correspond…'[307]. As seen in the treatment of the issue by Sabzawārī, and as shall be further demonstrated here, this statement reflects that the conception of how different judgments of *ḥusn* and *qubḥ* arise is intimately linked with the categorization of the different types of propositions determined in the traditional Muslim reading of Aristotelian logic found in *ʿilm al-manṭiq* under the discussion of the *mabādi al-aqīsa* (the preliminaries/components of the syllogisms)[308].

Moving to the second usage, we see that the two terms *al-ḥusn* and *al-qubḥ* may be employed with an intended meaning which refers to a compatibility or conduciveness to the soul (*mulāimatᵃⁿ lil-nafs*) on one hand, or a repugnance to the soul (*munāfiratᵃⁿ lahā*) on the other. In this second usage they can again be applied to both voluntary actions themselves or to the object of verbs (*mutaʿallaqāt al-afʿāl*). In the case of the latter one may say that a beautiful view is *ḥasan*, or that a sweet taste is *ḥasan*. In the case of an action itself one may say that drinking after thirst is *ḥasan*, or eating when hungry is *ḥasan*. Muẓaffar outlines that the root of such judgments (*aḥkām*) is 'that the soul is delighted by these things and enjoys their taste due to their conduciveness to it'[309]. The opposite of such examples, like when it is said that a view is *qabīḥ*, or eating on a

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[306] *Uṣūl al-fiqh*, Vol. 1 p. 189.
[307] *Ibid.*
[308] For a comprehensive discussion of Muẓaffar's categoristaion of the different types of propositions see his widely taught text, *al-Manṭiq* pp. 294-321.
[309] *Uṣūl al-fiqh*, Vol. 1 p. 189.

full stomach is *qabīḥ* arise 'because the soul is irritated and disgusted by them'[310]. Accordingly Muẓaffar explains that this second usage of *ḥusn* and *qubḥ,* in the sense of conduciveness or non-conduciveness to the soul (*mulāʾimat al-nafs wa ʿadamihā*), ultimately refers to pleasure and pain (*al-lidha wa al-ʿalam*)[311]. In the analysis of the three meanings of *ḥusn* and *qubḥ* offered by Sabzawārī, we saw that the second usage was not portrayed in this manner; rather it was described as being used in reference to the utility (*maṣlaḥa*) or detriment (*mafṣada*) of a thing[312]. Despite Muẓaffar describing the second usage as ultimately referring to pleasure and pain, through a conduciveness or non conduciveness to the soul, he too goes on to identify this usage with a notion of utility and detriment.

For Muẓaffar judgments of *ḥusn* and *qubḥ*, on the basis of pleasure or pain, are extended to also include those things whose indirect effects or subsequent implications may give rise to pleasure or pain. In fact sometimes there are things that in themselves are repugnant to the soul but whose pleasurable consequences and ultimate conduciveness to the soul is deemed of more significance than the initial displeasure- and hence they are considered *ḥasan*. Muẓaffar here cites the example of a bitter medicine; its consequences of leading to the pleasurable states of well being and restfulness are seen as rationally more important than the immediate discomfort caused by the bitterness of the medicine- and hence a bitter medicine is included in that which is deemed *ḥasan*. Or in the opposite case, a delicious morsel that is known to be of serious detriment to one's health is considered *qabīḥ* due to the greater significance of the ill health than the immediate pleasure of its taste. From this basis Muẓaffar moves to make the link in the meaning of *ḥusn* and *qubḥ* in the sense of pleasure and pain to its usage in reference to utility and detriment, for;

> Man, through his extensive experience and discriminatory rational faculties is capable of categorizing things and actions into three categories; that which is deemed *ḥasan*, that which is deemed *qabīḥ*, and that which has neither of these two distinctions. And he makes this

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[310] *Uṣūl al-fiqh*, Vol. 1 p. 189.
[311] *Ibid.*
[312] *Sharḥ al-Asmāʾ*, p.320.

division in accordance with that which is conducive to him or repugnant to him, whether this be by considering the immediate results or the distant [results][313]

Thus using the terms *ḥusn* and *qubḥ* to describe actions or things based on the accruement of pleasure and pain, immediate or otherwise, is for Muẓaffar nothing other than their use for the description of utility and detriment, for 'deeming utility (*maṣlaḥa*) as *ḥasan* is for no other reason than its conduciveness to the soul and deeming detriment (*mafṣada*) as *qabīḥ* is for no other reason than its repugnance from the soul'[314].

Like Sabzawārī[315], Muẓaffar notes that the Ashʿarī have no dispute with regards this second usage of *ḥusn* and *qubḥ* (conceived of in terms of pleasure/pain, conduciveness/non-conduciveness or utility/detriment), rather they too believe that in 'in this meaning' they are 'rationally intelligible', in the sense that 'they are among those things which can be perceived by rationality without relying upon a religious precept'[316]. The Ashʿarī concern is explicitly pertaining to the usage of *ḥusn* and *qubḥ* with regards the desert of Divine reward and punishment, and not with reference to a thing being deemed pleasurable or non-pleasurable or of it being of utility or detriment. Accordingly we find that Bāqillānī, Juwaynī and Ghazzālī, although in slightly different ways, all affirmed the independent intelligibility of this type of *ḥusn* and *qubḥ*[317].

The third and most relevant usage of the terms *ḥusn* and *qubḥ* is described by Muẓaffar as being that which is employed with the intention of praise (*al-madḥ*) and blame (*al-dhamm*). For Muẓaffar it is only this type of *ḥusn* and *qubḥ* which refers to the moral value of acts in terms of their deserts, for it is this type of *ḥusn* and *qubḥ* which is connected with reward and punishment and hence eschatological moral goodness and badness, accordingly it is only the intelligibility of this type of *ḥusn* and *qubḥ* which is at the heart of the differences in Ashʿarī and *ʿAdliyya* meta-ethics.

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[313] *Uṣūl al-fiqh*, Vol. 1 p. 190.
[314] *Ibid*.
[315] See *Sharḥ al-Asmāʾ*, p.320.
[316] *Uṣūl al-fiqh*, Vol. 1 p. 190.
[317] See Emon, *Islamic Natural Law Theories*, pp. 101-110.

Unlike the first two meanings, this third meaning of *ḥusn* and *qubḥ* cannot be applied to the objects of a verb, and is only applicable to voluntary actions themselves. Muẓaffar defines *ḥusn* and *qubḥ* in this sense as follows;

> The *ḥasan* is that through which the performer of an act deserves praise and reward in the sight of the collective of rational beings *('inda al-'uqalā' kāfat*[an]*), and the *qabīḥ* is that which is deserving of blame and punishment according to them [the rational beings] all together (*kāfat*[an]*).

> In an alternative formulation, *al-ḥasan* is that whose performance is considered befitting by the rational beings, i.e. rationality, in accordance with everybody (*'inda al-kul*), perceives that its performance is befitting. And *al-qabīḥ* is that whose avoidance is befitting according to them [the *'uqalā'*], i.e. rationality, in accordance with everybody, perceives that its performance is not befitting or that its avoidance is befitting[318].

In contrast to Sabzawārī, who was at pains to point out that *ḥusn* and *qubḥ* in this third sense referred to a factual notion of praise and blame in *nafs al-amr* (the realm of fact), in Muẓaffar's definition we see that he reduces the ontology of such judgments to their epistemology. He describes them as being that which is seen as deserving of praise and blame, not in accordance with the disclosure of that which is factual by *al-'aql*, but in accordance with the judgment of rational beings (*al-'uqalā)*. This apparently minor and subtle difference in terminology reflects a huge distinction in Muẓaffar's conception of the nature or grounds of moral judgments, a discussion directly addressed and elaborated upon below. However initially he wishes only to identify that it is this third meaning of *ḥusn* and *qubḥ* in the sense of praise and blame, that is the point of inter-school controversy, reaffirming that it is only the praiseworthiness and the blameworthiness of voluntary actions that Ash'arī scholars claimed cannot be understood without recourse to Divine revelation[319].

Before moving to discuss the grounds for each of these three different types of judgments of *ḥusn* and *qubḥ*, Muẓaffar highlights an important point that has

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[318] *Uṣūl al-fiqh*, Vol. 1 p. 191.
[319] *Ibid.*

already been alluded to above and which is instrumental in his conception of how reason comes to make the judgments of morality that are seen as relevant to *Sharīʿa*. A single act may be *ḥasan* or *qabīḥ* in all three of the above meanings. For example, learning and kindness can be termed *ḥasan* in all three senses of the word- both may be considered to be a perfection for the soul, both may be deemed pleasurable and conducive to the soul with respect to the benefit and utility which they bring about and they both may be judged by the *ʿuqalā* to be praiseworthy and befitting acts to be performed by human beings. On the other hand it is also possible that something be *ḥasan* in one of the three meanings yet not be *ḥasan*, or even be deemed *qabīḥ,* in accordance with the others. For example smoking or the use of certain drugs may be considered *ḥasan* with respect to the second meaning- a usage rooted in pleasure. Yet such acts are neither *ḥasan* with respect to bringing about a state of perfection or completion, nor are they *ḥasan* in the sense that all rational people would judge that they are befitting and praiseworthy acts to perform[320]. With this final comment regarding the three different meanings of the terms *ḥusn* and *qubḥ* and having identified that the point of controversy is only with respect to the rational intelligibility of the third meaning, i.e. the praiseworthiness and blameworthiness of voluntary actions, Muẓaffar moves on to elaborate upon the differing ontological basis or grounds for the respective judgments of *ḥusn* and *qubḥ* in order to clarify further the nature of the moral judgments whose rational status is at dispute.

4.3.2 The ontology of *al-ḥusn* and *al-qubḥ* in its different meanings

Muẓaffar continues his clarification of the conception of the difference between the three above meanings of the terms *al-ḥusn* and *al-qubḥ* by discussing the ontological basis, referred to as the *wāqʿiyya*, of each of the respective types of judgments. Through this distinction he sets out his distinctive and disputed conception of the nature of moral propositions.

For Muẓaffar it is only the judgments of *ḥusn* and *qubḥ* in its first meaning, in the sense of perfection and imperfection, which are purely objective with a

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[320] *Uṣūl al-fiqh*, Vol. 1 pp. 191-192.

grounding firmly rooted in the external world. It is only *ḥusn* and *qubḥ* in this sense that refers to 'a real existential property... not reliant upon the existence of the one who perceives it and intellects it'[321]. This denial of a pure objectivity of *ḥusn* and *qubḥ* in its two other usages, one of which is the usage of *ḥusn* and *qubḥ* in the sense of moral value and desert, seems initially at least to be in stark contrast to the general picture of *'Adliyya* meta ethics. An objective notion of morality is tied up with the popular portrayal of *'Adliyya* meta-ethics as reflected in Hourani's description of 'Abd al-Jabbār's meta-ethics as 'a moral objectivism'[322]. Muẓaffar's undermining of the objectivity of moral value is at the root of much of the criticism that he has received regarding his treatment of *mas'alat al-taḥsīn wa al-taqbiḥ* and his conception of *al-mustaqillāt al-'aqliyya* from within the circle of Shī'a *Uṣūliyūn* themselves- a body of criticisms which will be referred to when examining Bāqir al-Ṣadr's positions on the matter. However before moving to this critique, a fuller understanding of Muẓaffar's conception of how *ḥusn* and *qubḥ* can be rationally intelligible (*'aqliyān*), yet at the same time not be purely objective, deserves a fuller explanation- an explanation whose importance Muẓaffar himself is not unaware of. Thus after stating that only *ḥusn* and *qubḥ* in its first meaning refers to a 'real existential property', he moves on to describe the grounds for the other two types of *ḥusn* and *qubḥ*.

On consideration of the second type of *ḥusn* and *qubḥ*, when the terms are used to describe something which is conducive or non-conducive to the soul, Muẓaffar explains that the use of such language 'in itself has no correspondence in external reality to which it [directly] corresponds, which it reflects or parallels, although its origin is sometimes an external thing, such as [in our description of the *ḥusn* or *qubḥ* of] colour, smell and taste...'[323]. The appreciation of the *ḥusn* or *qubḥ* of any such thing depends upon either a common (*'ām*) or individual (*khāṣ*) taste. The appreciation of a painting or a melody as *ḥusn* or *qubḥ* is in relation to the individual perceiving them, should they be conducive to an individual's specific taste (*dhawq khāṣ*) they would be *ḥusn* for him, whereas the very same painting

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[321] *Uṣūl al-fiqh*, Vol. 1 p. 192.
[322] *Islamic Rationalism,* p. 10.
[323] *Uṣūl al-fiqh,* Vol. 1 p. 194.

or melody may be non-conducive to the taste of another and hence *qabīḥ* to that individual. In this way, with variations in the specific taste of people, a single thing may be *ḥasan* for some and at the same time *qabīḥ* for others. However should a group concur in its opinion regarding a thing due to a common taste (*dhawq ʿām*) that thing will be either *ḥasan* or *qabīḥ* to all of them.

Despite the fact that those things which give rise to such judgments (like a scenery being viewed or a melody being heard) may have an ontological existence in the objective, when it comes to the ontology of the judgments of *ḥusn* and *qubḥ* themselves they are entirely dependent on the subject;

> *al-ḥusn* in the meaning of conduciveness (*mulāʾima*) is not an ontological attribute (*ṣifat wāqʿiyya*) for things like [when used in the meaning of] perfection (*kamāl*), the ontology of such attributes is nothing other than the perception of man and his taste, if there was no man to taste and no one similar to man in his taste, then things would not be, in themselves, *ḥasan* in the sense of conduciveness[324]

Muẓaffar also points out that pleasure and pain, which are also referred to by using *ḥusn* and *qubḥ* in its second meaning, may well be existentially occurring but they are not attributes of things in the external, rather they are 'attributes of the perceptive soul' and thus again judgments of *ḥusn* and *qubḥ* of this type do not refer to any existential property in the objective[325].

As for *al-ḥusn* in its third and most relevant sense, defined by Muẓaffar as being used in the meaning of 'that which is befitting to be performed according to reason (*al-ʿaql*)'[326], it is also considered to have *no* objective ontological basis in external reality. Muẓaffar's position here seems to fly in the face of the 'moral objectivism' associated with the *ʿAdliyya* and warrants some explanation. For Muẓaffar the *wāqʿiyya*, or ontological grounds, of *ḥusn* and *qubḥ* in its third meaning is nothing other than the concurrence of the opinion of rational beings[327]- thus its ontology is reduced to its epistemology. Following Ibn Sīnā[328],

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[324] *Uṣūl al-fiqh*, Vol. 1 p. 192.
[325] *Ibid*, p. 193.
[326] *Ibid.*
[327] *Ibid.*

and unlike Sabzawārī, he categorises moral propositions regarding praiseworthiness and blameworthiness as being only from that category of propositions described as *Mashūrāt al-Ṣirfa*, purely popular held views that have no correspondence in external reality[329]. Ibn Sīnā and Muẓaffar explicitly define such propositions, in their works of Logic, as having no ontological basis except the concurrence of the rational people itself. The validity of such propositions is judged not in reference to correspondence with an external or factual reality but is judged with reference to its correspondence with the consensus of opinion held by the *ʿuqalā* (rational beings).

As seen in our analysis of Sabzawārī's treatment, this leads to the conclusion affirmed by Muẓaffar and quoted almost word for word from Ibn Sīnā, that an isolated individual who had no exposure to society cannot- through his rationality alone- come to the judgment that society deems the performer of justice praiseworthy and the performer of oppression as blameworthy[330]. Historically the categorisation of such moral properties as *mashūrāt* by philosophers such as Ibn Sīnā has been picked up on by Voluntarist Ashʿarī thinkers, such as al-Ghazzālī, in their critique of the ʿAdliyya position[331]. Indeed it was with reference to such criticism that Sabzawārī denied that the categories of *mashūrāt* (popularly held) and *yaqīnīyāt* (certain with objective/factual basis) need be mutually exclusive. Sabzawārī argued that from one perspective a proposition may be considered amongst the *yaīnīyāt*, having a factual reality to which it corresponds, and from another perspective it may be amongst the *mashūrāt*, the basis of which is nothing other than the concurrence of rational peoples[332].

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[328] *al-Ishārāt wa al-tanbihāt,* Vol. 1 p. 351.

[329] *Al-Manṭiq*, pp. 309-310 .

[330] Although largely quoting directly form Ibn Sīnā, and that without acknowledgement, Muẓaffar does add a sentence which may reflect that his view is slightly more nuanced than has been otherwise interpreted and actually closer to that of Sabzawārī than it first appears. He states that the inability of an isolated man, behind the 'veil of ignorance' to independently come to rational knowledge of the *ḥusn* of justice and the *qubḥ* of oppression- 'does not negate that he himself may deem the performer of justice as praiseworthy and the performer of oppression as blameworthy, yet this judgment is different from his judgment of a concurrence of opinion upon this', i.e. one may praise a just act independent of society but one cannot recognize that society deems justice praiseworthy in such circumstances. See *Al-Manṭiq*, p. 302

[331] al-Ghazzālī, *al-Mustaṣfā*, Vol. 1 p. 116 and Emon, Islamic Natural Law Theories 106-109.

[332] See *Sharḥ al-Manzuma,* pp. 99-100 and *Sharḥ al-Asma*, pp. 322.

Muẓaffar however maintains that both types of proposition, the *mashūrāt al-ṣirfā* and the *yaqīnīyāt*, are mutually exclusive. His depiction of moral propositions regarding *ḥusn* and *qubḥ* as being *mashūrāt* in this sense is important in his conception of both the theological question of the intelligibility of the praiseworthy and the blameworthy and the jurisprudential question of whether or not the judgment of God corresponds to the judgments of reason. In fact it is by way of this description of moral propositions as not having an objective reference in the external that allows him to build a theory of moral rationalism where human judgments of rational morality can correspond to Divine judgments of morality. As shall be further drawn out, Muẓaffar's conceptualization of *ḥusn* and *qubḥ* as being that which is deemed praiseworthy and blameworthy by *all* rational beings, allows him to argue that God 'the chief rational being', must also have the same judgment- for no consensus of rational beings is possible without His inclusion.

Thus far we have see that Muẓaffar identifies the point of dispute between the Ashʿarī and the ʿAdliyya theologians as being with regards to the meaning of *ḥusn* and *qubḥ* that refers to the praiseworthiness and blameworthiness of actions. For Muẓaffar it is this third meaning of *ḥusn* and *qubḥ* that refers to the moral value of acts. However, following Ibn Sīnā and his own most influential teacher Muḥammad Ḥusayn Isfahāni (d.1365/1945)[333], he has a somewhat distinct notion of the nature of such moral propositions. These moral propositions are classified as being form amongst those propositions that have no existential or factual reality to which they correspond except the concurrence of the rational people. This distinct, and disputed, conception of the nature of moral propositions shapes his understanding of both theological and jurisprudential questions at the heart of determining how he portrays judgments of rational morality to have the independent ability to reveal *Sharīʿa* precepts. However for Muẓaffar some questions still remain to be resolved at the theological level before moving to the jurisprudential questions of the correspondence between the judgment of *al-ʿaql* and the judgment of God; what types of rational judgments are the judgments of *ḥusn* and *qubḥ* in its third meaning? And what

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[333] *Nihāyat al-Dirāya,* Vol. 3 pp. 29-31.

are the *ḥusn* making properties or causes (*asbāb*) that lead to an action being deemed as praiseworthy?

4.3.3 Practical and theoretical rationality- the epistemology of *ḥusn* and *qubḥ*

Contrary to G.E. Von Grunebaum's assertion that the Muslim adoption of the Aristotelian distinction between theoretical and practical rationality had little influence on the ethical thought of Muslims[334], Muẓaffar's treatment of the theological questions relating to the intelligibility of *ḥusn* and *qubḥ* demonstrate that it is a pre-modern distinction which continues to be instrumental in how Shī'a scholars have conceptualised the epistemology of rational judgments pertaining to morality and how these judgments may potentially correspond to *Sharī'a* precepts. For before Muẓaffar moves from discussing the ontology of *ḥusn* and *qubḥ* to outlining the *asbāb* or causes which give rise to such judgments he states that; 'what is intended by *al-ʿaql*, when it is said that *al-ʿaql* judges the *ḥusn* or *qubḥ* of a thing in the third meaning of *ḥusn* and *qubḥ*, is *al-ʿaql al-ʿamali* (practical rationality) as oppose to *al-ʿaql al-naẓari* (theoretical rationality)'[335].

The particular interpretation of the distinction between the practical and theoretical elements of rationality offered by Muẓaffar is, like much of his conceptual analysis thus far, important in the mechanics of exactly how judgments of rational morality arise and how one may come to know of a correspondence between these judgments and the judgments of the Divine legislator. Muẓaffar follows early Muslim philosophers, such as al-Farābī (d. 338/950)[336], in making this distinction between practical and theoretical rationality solely on the basis of the object of perception (*mudrakāt*) rather than

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[334] The Concept and Function of Reason in Islamic Ethics, *Oriens*, Vol. 15. (1962), p. 4.

[335] *Uṣūl al-fiqh*, Muẓaffar, Vol.1 p.193.

[336] Considerable ambiguity and debate emerges in the writings of later Muslim philosophers over whether the distinction also pertains to different faculties or functions of reason, rather than simply being a distinction made on the basis of the object of reasons perception. Although Muẓaffar's definition follows Farabi closely in explicitly limiting the basis of the distinction to the object of perception, his own writing is riddled with signs of this historic ambiguity and repeatedly fails to clarify between the faculties of judging and perceiving. This is reflected in his use of the terms *idrāk al-ʿaql and ḥukm al-ʿaql* as synonyms on numerous occasions. For an overview of the differing ways in which Muslim philosophers have drawn the distinction between *al-ʿaql al-ʿamali and al-ʿaql al-naẓari* see Subhani, *Risāla fi taḥsīn wa taqbiḥ*, pp. 33-37.

based on any difference in rational function. Where the object of perception is pertaining to action, or more precisely in Muẓaffar words, when it is 'from amongst those things befitting to be performed or not performed, such as the *ḥusn* of justice or the *qubḥ* of oppression, its perception is termed practical rationality'.[337] On the other hand when the object of perception is 'from amongst those things befitting to be known, such as in their statement "The whole is greater than the part" which has no relationship with action, then its perception is termed theoretical rationality'[338].

Accordingly Muẓaffar explains that he has been using the terms *ḥukm al-ʿaql* (judgment of reason) and *aḥkām al-ʿaqliyya* (rational judgments) thus far as being specifically within the remit of practical rationality. The *ḥukm al-ʿaql* that has been referred to in the context of the third meaning of *ḥusn* and *qubḥ*, is for Muẓaffar 'nothing other than the perception that a thing be from amongst those things which are befitting to be performed or befitting to be avoided… And thus what is meant by *aḥkām al-ʿaqliyya* (rational judgments) is nothing other than the objects of perception of practical rationality and its opinions'[339].

With this distinction and clarification in place Muẓaffar can now go on to further discuss the mechanics of each of the other meanings of *ḥusn* and *qubḥ* with respect to the categories of *al-ʿaql al-ʿamali* and *al-ʿaql al-naẓari*. The *ʿaql* that is considered to perceive *ḥusn* and *qubḥ* in its first meaning is *al-ʿaql al-naẓari*, 'because perfection and imperfection are amongst those things befitting to be known and not from those things befitting to be performed'[340]. Of course if *al-ʿaql* perceives the perfection or imperfection of a thing it may also perceive that this thing is worthy of being performed or avoided, in which case 'practical rationality is aided by theoretical rationality, or it may be said that the acquisition of practical rationality has come about actually (*fiʿlan*) after the acquisition of theoretical rationality'[341]. The rationality that perceives *ḥusn* and *qubḥ* in its second meaning is also theoretical rationality. The conduciveness or

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[337] *Uṣūl al-fiqh*, Vol. 1 p. 193.
[338] *Ibid,* p. 194.
[339] *Ibid*.
[340] *Ibid.*
[341] *Ibid.*

non-conduciveness of a thing to the soul or considerations regarding utility and detriment are factors which are befitting to be known, although again, alongside these judgments there may well be a judgment of practical rationality that this thing is worthy of being performed or avoided in accordance with this theoretical knowledge.

By distinguishing between practical and theoretical rationality and drawing out the differences between his three meanings of *ḥusn* and *qubḥ* in this regard Muẓaffar seems to be attempting to allow for a distinction to be made between non-moral, morally relevant facts and the judgments of morality themselves. Judgments pertaining to *ḥusn* and *qubḥ* in its first and second meaning[342], which fall under the remit of theoretical rationality, are non-moral- they have no direct relationship to considerations of action. However these judgments are sometimes morally relevant and may give rise to the moral judgments of practical rationality that a thing ought to, or ought not to, be performed. Of course Muẓaffar's real concern is to identify if, when, and how, judgments of practical rationality (regarding the worthiness of action or inaction) can actually correspond to God's judgments regarding the value of acts- for it is this which is at the heart of the dispute. The *'Adliyya* position, which Muẓaffar is seeking to defend, does affirm this possibility, but it does not claim that *all* judgments of practical rationality have this potential correspondence. In an attempt to identify exactly which judgments of practical rationality regarding *ḥusn* and *qubḥ* in its third meaning, i.e. praiseworthiness and blameworthiness, have this potential correspondence he next distinguishes between the different causes (*asbāb*) that give rise to practical rationality's judgments regarding *ḥusn* and *qubḥ*.

4.3.4 The *asbāb* (causes) of judgments of practical rationality

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[342] Although judgements of *ḥusn* and *qubḥ* in its second meaning are described above as having no objective basis in the external- they may still be described loosely as facts. They are facts about a subjects state or preference, not facts about the external world, e.g. the proposition "I am happy", although having no correspondence with the external world may still be considered factual- if I am indeed actually happy.

In line with the Aristotelian tradition, Muẓaffar describes judgments of practical rationality as being responsible for those judgments pertaining to action and normativity- for it is the very perception of whether something 'ought to' or 'ought not to' be performed and thus whether an action be considered as either *ḥusn* or *qubḥ*, in its third meaning, which is described as being the judgment of practical rationality. What is important to note however is that with this analysis Muẓaffar does not intend to argue that every judgment of practical rationality regarding whether an action ought to, or ought not to, be performed is *purely* rational and hence can correspond to the judgment of the Divine legislator.

Muẓaffar wishes to argue that the '*Adliyya* claimed that only a specific type of moral judgment, those that are purely rational, have the quality of correspondence to the judgment of God. For according to Muẓaffar, the 'real' point of dispute between '*Adliyya* and Ash'arī camps was only over this category of judgment and it is only in these purely rational judgments of morality, or purely rational judgments of '*aql al-'amali* that the *Uṣūliyūn* argue for a correspondence between the judgment of human reason and the judgment of God. To clarify this position he outlines five different *asbāb* or causes that give rise to the judgments of practical rationality[343], identifying exactly which types of judgments regarding morality he believes to be purely rational. This typology sets the stage for his justification of the central jurisprudential concern in the issue of *al-mustaqillāt al-'aqliyya* (independent rationality as a source of Sharī'a precept)- which is the question of the correlation (*mulāzama*) between the judgment of *al-'aql* and the judgment of *al-shar'*.

The first of the five 'causes' which give rise to judgments of practical rationality is the perception, by theoretical rationality, that a thing is a perfection for the soul or an imperfection for it. As stated above, this perception may lead to a judgment of practical rationality regarding the praiseworthiness or blameworthiness (*ḥusn*

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[343] Muẓaffar notes that our knowledge of these five causes is '*bil-istiqrā*' (through induction)' i.e. it is not an exclusive list and the possibility remains that there may be more than the five mentioned 'causes' that give rise to the judgment that an action ought to, or ought not to, be performed. *Uṣūl al-fiqh,* Vol. 1 p. 196.

aw qubḥ) of the performance of those things as a means of acquiring that perfection or warding off that imperfection[344].

The second mentioned 'cause' is the perception that a thing is conducive or non-conducive to the soul, 'either in itself, or with respect to a general or particular benefit'[345]. This judgment of theoretical rationality is deemed a cause for the judgment of practical rationality whereby, 'the praiseworthiness or blameworthiness of performing that action is perceived with the aim of acquiring its utility or repelling its detriment'[346].

As shall be outlined shortly it is only when these first two types of causes are 'universal (*kullī*)' in their nature that the resultant judgment of practical rationality is deemed purely rational thus having potential correspondence to the judgment of the Divine Legislator. The other three causes for practical rationality mentioned by Muẓaffar are judgments that an action is worthy of performance or avoidance based on either;

- Human dispositions of character (*al-khulq al-insānī*),
- Human emotion or sentiment (*al-infi'āl al-nafsānī*),
- Or due to the custom and conventions amongst people (*al-'ādatu 'inda al-nās).*

The judgment that an act is worthy of doing or not doing, that an act is blameworthy or not blameworthy, may come about due to any of these above causes. Despite potential concurrence amongst the rational beings upon the value of actions due to these causes, unless the concurrence is a result of the rationality of those rational beings they are judgments pertaining to morality that are not relevant to our debate. Judgments of practical rationality that stem from a concurrence amongst people due to their dispositions of character, their emotions, or their custom are not purely rational and hence there is no basis to believe that God necessarily shares these judgments.

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[344] *Uṣūl al-fiqh*, Vol. 1 p. 195.
[345] *Ibid.*
[346] *Ibid.*

The purely rational judgments of morality arise for Muẓaffar from causes one and two- but only in certain circumstances. Judgments of practical rationality that arise due to considerations of perfection/imperfection and conduciveness/non-conduciveness may again be of two types. Either they result from the perception of an occurrence that is 'particular and specific (*juziyya khāsa*)' or they result from the perception of a 'universal issue (*amr kullī*)'[347]. Where the source is a particular and specific occurrence the judgment regarding its *ḥusn* or *qubḥ*, i.e. its worthiness of performance or avoidance, is motivated by considerations of 'personal utility (*maṣlaḥa shakhṣṣiyya*)'. Such judgments are not deemed by Muẓaffar to arise through the faculty of rationality; rather they arise as a result of the faculties of sense perception (*al-ḥiṣ*), supposition (*al-wahm*) and imagination (*al-khiyāl*). Although the perception of such particular and specific occurrences may be followed by a judgment that the one who performs these actions is worthy of praise or blame, according to Muẓaffar it is not befitting to term this judgment of praiseworthiness or blameworthiness 'rational'. These judgments are instead more appropriately termed 'sentimental' (*'āṭifī*) and accordingly they are not deemed to have any potential relevance to discovering the judgments of God through any necessary correlation[348].

On the other hand pure rational judgments of morality, which do arise from rationality qua rationality (*al-'aql bi-mā huwa al-'aql*) and thus properly deserve the title of rational, arise for Muẓaffar when the source of the judgment is a 'universal issue'[349]. Such pure rational judgments may arise when either an action is deemed to universally be a perfection or an imperfection for the soul, such as in the acquisition of knowledge or the avoidance of learning. Alternatively, in the second case, a purely rational judgment of morality may arise when the action is deemed praiseworthy due to a 'social utility' (*maṣlaḥa naw'iyya*), such as in the judgment regarding 'the utility of justice in preserving society and ensuring the preservation of the human race'[350]. Likewise the blameworthiness of an action may be purely rational in this manner when it

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[347] *Uṣūl al-fiqh*, Vol.1 p. 195.
[348] *Ibid.*
[349] *Ibid.*
[350] *Ibid.*

results from an action deemed a 'social detriment (*mafṣada naw'iyya*), like oppression'[351]. The claimed universal nature of these judgments leads Muẓaffar to believe that they arise as a result of the rational faculties in so far as they are rational, and accordingly these actions would receive praise or blame from *all* rational people. Neatly summarising Muẓaffar states;

> It is this praise and blame, concurred upon by the opinion of all rational people, due to that social utility or detriment (*al-maṣlaḥa aw al-mafṣada al-naw'iyyatain*), or due to that universal perfection or imperfection (*al-kamāl aw al-naqaṣ al-naw'iyyain*), that is considered the rational judgments (*aḥkām al-'aqliyya*) that is the point of dispute[352].

Tying together this epistemological discussion with the earlier discussion of the ontology of these judgments Muẓaffar refers back to the logical categories of propositions and states;

> These general rational judgments are termed *al-ārā'a al-maḥmūda* (praiseworthy opinions) and *al-ta'dibāt al-ṣalāḥiyya* (virtuous etiquettes). These fall under the category of *al-mashūrāt,* the category that first and foremost is in contrast to the category of *al-ḍarūriyāt* (necessary propositions)[353].

Necessary propositions are a type of *al-yaqīnīyāt* (certain proposition), that is they are proposition that leads to sure belief corresponding to an external or objective reality[354]. According to Muẓaffar it is a major category mistake to suppose that the purely rational judgments of morality just described are from amongst the necessary propositions, 'as many people, amongst whom are the *Ashā'ira,*' have claimed[355]. It is worth noting here, as already seen in Sabzawārī's thought, that many scholars from amongst the *'Adliyya* also describe basic moral propositions as being from amongst the *yaqīnīyāt* -a picture of the nature of morality much more commensurate with the moral objectivism traditionally

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[351] *Uṣūl al-fiqh*, Vol.1 p. 196.
[352] *Ibid.*
[353] *Ibid.*
[354] Muẓaffar, *Al-Manṭiq*, p. 295.
[355] *Uṣūl al-fiqh*, Vol. 1 p. 196.

associated with the ʿAdliyya. Yet Muẓaffar has been at pains to emphasize that the two categories of yaqīnīyāt and mashūrāt are indeed mutually exclusive. In fact it is from this conception of the nature of moral ontology and the classification of moral propositions as mashūrāt that he builds his legal epistemology of rational morality. Seeking authority to support his conception, Muẓaffar reiterates that it is because of this nature of such judgments of morality that Ibn Sīnā stated; 'an individual isolated from society, alone with his unadulterated rationality and [faculties of] supposition and sense perception, who was not trained to accept or recognise these propositions' would not be able to come to knowledge of them simply by way of his reason, speculation and sense perception[356]. Ibn Sīnā and Muẓaffar claim that judgments of rational morality regarding universal perfection/imperfection or social utility/detriment are of the widely accepted proposition, whose grounds is nothing other than the consensus of rational people- thus if one had never been part of this rational community, according to Muẓaffar, one would have no means of recognising that the rational community deems these things are either praiseworthy or blameworthy.

In the foregoing discussion of the causes of the judgments of practical rationality, Muẓaffar's aim has been to further his conceptual analysis of what is intended when it is stated that al-ḥusn wa al-qubḥ ʿaqliyān, identifying exactly what type of judgments of practical rationality was the point of dispute between the ʿAdliyya and Ashʿarī theologians;

> For not every ḥusn and qubḥ in its third meaning was the subject of dispute with the Ashāʾira, but it was specifically those whose cause was the perception of perfection or imperfection in a universal mode (bi naḥw al-kulli), and that whose cause was the perception of a conduciveness or non-conduciveness, again in a universal mode, with respect to social utility (maṣlaḥa nawʿiyya) or social detriment (mafṣada nawʿiyya). For surely it is the rational judgments arising from these causes that are the judgments of rational people, in as far as they are rational, and it is with

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[356] Uṣūl al-fiqh, Vol. 1 pp. 196-197

respect to these that it is claimed that the Divine Legislator necessarily follows them in their judgment[357].

Having clarified what he believed to be the actual point of theological dispute regarding whether actions in themselves have a value of being either praiseworthy or blameworthy in the sight of reason, he is now finally in a position to offer his justifications for the *'Adliyya* stance, justifications which are shaped to a significant extent by his particular conception of the nature of rational morality set out thus far.

4.3.5. Justifying the intelligibility of the praiseworthy and the blameworthy

In Muẓaffar's introduction to his treatment of the theological questions pertaining to *mas'alat al-taḥsīn wa al-taqbiḥ* he stated that in order to judge in favour of either position, *'Adliyya* or Ashʿarī, one needed a precise conception of the actual point of dispute. Having offered such a clarification in what has preceded he moves to justifying why he believes the position of the *'Adliyya* is the sound one. His conceptual analysis thus far, and his treatment of the arguments for and against the *'Adliyya* position in what follows, demonstrate the polemical context from which Muslim theological writing emerged, and to a large extent, is still shackled with. Yet despite the limits imposed by theological discourse shaped by the aim of defending historic boundaries of school position, the dialectical nature of the debates has been an impetus for the progressive development and increasing sophistication of the ideas being contested.

Although Muẓaffar gave his conceptual analysis *before* explicitly engaging with the Ashʿarī criticisms of the *'Adliyya* position, there is little doubt that he has developed this conception in direct response to, or at least in dialectic with, those criticisms. In fact, as shall be seen in the critique of Muẓaffar's positions by other *Uṣūliyūn*, it seems that some of his peers from within his own school may have felt that he went too far in modifying his notion of the nature of morality in order to satisfy Ashʿarī criticism and in doing so undermined the notion of objectivity

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[357] *Uṣūl al-fiqh*, Vol. 1 p. 199.

central to the classical *ʿAdliyya* doctrine regarding morality. Nevertheless Muẓaffar feels that his conception allows him to dispel the strongest of the Ashʿarī criticisms and maintain the strongest of the *ʿAdliyya* justifications for the intelligibility of the praiseworthy and the blameworthy. In a style clearly shaped by the discipline of *ʿilm al-kalām* from which these debates rightly belong, he commences his justifications by citing two major Ashʿarī criticisms of the *ʿAdliyya* position and responds to each in turn. He then cites variations on each of the classical *ʿAdliyya* arguments for the intelligibility of *ḥusn* and *qubḥ* and responds to some possible objections that may be raised against these.

Of course establishing how scholars of *uṣūl al-fiqh* deem the principle of the intelligibility of the praiseworthy and the blameworthy as justified is a necessary premise for discussion of how and when they believe this principle can influence the reading of *Sharīʿa* through the concept of *al-mustaqillāt al-ʿaqliyya,* warranting the discussion of these arguments here. However beyond this primary *fiqhi* significance, these debates and justifications, along with the detailed discussions which they have given rise to regarding moral ontology and moral epistemology, demonstrate that *uṣūl al-fiqh* is a crucial arena which houses much of the most advanced philosophical, theological and ethical thought of Muslim religious scholarship. Accordingly each of the arguments cited by Muẓaffar, those in denial, and those in support of the intelligibility of the praiseworthy and the blameworthy, will be examined here in turn.

4.3.5.1 Ashʿarī objection 1

If propositions regarding *ḥusn* and *qubḥ* are amongst those judged by *al-ʿaql*, then there would be no difference between its judgment of this proposition and the proposition that the whole is greater than the part.

But the difference is present for sure, because no two people disagree about the second, whilst there is dispute regarding the first[358].

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[358] *Uṣūl al-fiqh*, Vol. 1 p. 201.

Muẓaffar's response to this objection denies the validity of the conditional statement in the initial premise of the above argument[359]. As has been extensively outlined thus far Muẓaffar accepts, and in fact argues for, a fundamental difference between propositions regarding *ḥusn* and *qubḥ*, which are a specific type of *al-mashūrāt* termed *al-ta'dibāt*, and propositions such as 'the whole is greater than the part' which are a specific type of *al-yaqiniyāt* termed *al-awwaliyāt*. 'There is no correlation between them nor are they from a single category which would require that, should the first be understood by reason that there would be no difference between the two'[360]. For Muẓaffar the very nature of the two propositions in question *is* different, and this difference does not undermine that they may both be rationally intelligible.

To clarify further the distinction which Muẓaffar relied upon throughout his conceptual analysis of the nature of rational morality he summarizes the differences between the rational moral principles termed *al-ta'dibāt*, which fall under *al-mashūrāt,* and *al-awwaliyāt* which fall under *al-yaqiniyāt* in the following three key points;

> 1) 'The judge' (*al-ḥākim*) with respect to the relevant propositions of *ḥusn* and *qubḥ* in *al-ta'dibāt* is practical rationality, whereas in *al-awwaliyāt*, such as 'the whole is greater than the part', it [the judge] is theoretical rationality[361].
>
> 2) The purely rational propositions relating to *ḥusn* and *qubḥ,* referred to as *al-ta'dibāt,* 'have no reality except for the concurrence of opinion amongst rational people, whereas *al-awwaliyāt* have a reality [to which they correspond] in the objective'[362].
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> 3) In the case of *al-ta'dibāt*, and based on the statement of Ibn Sīnā, Muẓaffar claims that 'it is not necessary that every rational person

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[359] *Uṣūl al-fiqh*, Vol. 1 p. 201.
[360] *Ibid.* p. 202.
[361] The choice of the term *ḥākim* here reflects a residual ambiguity, or even an inconsistency in the way Muẓaffar is describing the function of *al-ʿaql*. Earlier he was quite explicit in stating that the role *of al-ʿaql al-ʿamalī* is nothing other than *idrāk mā yanbagi an yʿamul aw yatruk*, i.e*. perceiving*, and not judging, that which is worthy of performance or avoidance. Never the less here his intention is only to highlight the different nature of the subject matter in each of the propositions under consideration.
[362] *Uṣūl al-fiqh*, Vol.1 p. 202.

judges in accordance with them, should he have been isolated and alone and not trained to accept and recognize these propositions'[363]. This is of course contrary to the nature of self evident certain propositions such as the *awwaliyāt*, where the proper conception of the components is sufficient to give rise to an assent with regards their content, and thus they may be known by any rational person in any situation.

4.3.5.2 Ashʿarī objection 2

The second objection tackled by Muẓaffar through which Ashʿarī scholars deny the rational intelligibility of the praiseworthy and the blameworthy is cited as follows;

> If they [*ḥusn and qubḥ*] had been rationally intelligible (*ʿaqlī*) then the praiseworthiness of things and their blameworthiness would not change in accordance with the changing aspects (*al-wajūḥ*) and considerations (*al-iʿtibārāt*). For example truth telling is on one occasion praised but on another blamed- should there be within it a great harm. Likewise in the opposite way, the act of lying is blamed but is praised should there be great benefit within it[364].

This classical objection against the *ʿAdliyya*, which was often formulated in the context of the apparent praiseworthiness of lying to save the life of a Prophet[365], arose in the context of the early Baghadādī Muʿtazilī moral ontology. The rigid nature of this ontology, which left no room for any contextualism, led to the development in the Basran school of the theory of *wajūḥ*[366]. As seen in earlier chapters this Basran theory was adopted by the Imāmiyya and explicitly referred to in the classical era of Shīʿī theological thought by the likes of ʿAllāma Ḥillī[367]. With this turn, the qualities of *ḥusn* and *qubḥ* were no longer seen as being essential (*al-dhātī*) in the sense of being an intrinsic and necessary attribute of all

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[363] *Uṣūl al-fiqh*, Vol.1 p. 202.
[364] *Ibid*.
[365] For example see Al-Ḥillī, *Kashf al-murād,* p. 60.
[366] See Reinhart, *Before Revelation*, p.146.
[367] See Al-Ḥillī, *Anwār*, p. 105 and *Manāhij al-yaqin,* pp. 229-230.

actions regardless of the situation. Rather as Muẓaffar outlines, and in a manner more sophisticated than his intellectual predecessor Ḥillī, the praiseworthiness and blameworthiness of actions is in one of three possible modes;

1) An action may be a complete cause (*'illa*) in determining its praiseworthiness or blameworthiness. Such cases alone are referred to as 'essential' praiseworthy and blameworthy (*al-ḥusn wa al-qubḥ al-dhātiyain*), such as justice and oppression. They are referred to as essentially praiseworthy and blameworthy, not because of an existential quality within the essence of the act, but because;

> Justice in so far as it is just, can be nothing other than always *ḥasan*, i.e. whenever the title of justice is applicable, then necessarily its performer is considered praiseworthy in the view of rational beings and he would be considered a doer of good. Likewise oppression, in so far as it is oppression, can be nothing other than *qabīḥ*, i.e. whenever the title of oppression is applicable then they would consider its performer as blameworthy and he would be counted as a performer of evil[368].

2) Alternatively an action may be a causative factor (*muqtaḍ*) for the attributions praiseworthy and blameworthy, and thus its praiseworthiness and blameworthiness is termed *'araḍīyān* (accidental) in contrast to essential[369]. It is important to note however that both here and above the terms cause, causative factor, as well as accident and essential are not used in their technical philosophical sense. What is intended here by an action being either *ḥusn* or *qubḥ* 'accidentally' is that the title of this category of action is not deemed sufficient enough, in its self, to *always* deserve consideration as being either *ḥasan* or *qabīḥ*. However all things being equal, the action in its own right- prima facie if you like- would fall under either the category of *ḥusn* or *qubḥ* due to a more basic category. For example, the act of honoring a truthful person, when free from any other considerations and in its self, would fall under the category of a just act. Since justice is deemed 'essentially' praiseworthy- due to its general social utility- honoring a truthful person would thus be considered *ḥasan*. However if, due to

368 *Uṣūl al-fiqh*, Vol. 1, p. 199.
369 *Ibid*.

particular circumstances, the same act of honoring a truthful person becomes the cause for his imprisonment or death, it would be deemed a *qabīḥ* act- for it would now fall under the category of oppression, which is 'essentially' and hence always blameworthy.

3) The third category of action is that which is not causal (*lā ʿilliyya*), nor is it a causative factor (*lā iqtiḍā fihi*) in its own right for either the attribution of *ḥusn* (praiseworthy) or *qubḥ* (blameworthy). This type of act is morally neutral with respect to itself;

> [I]t is only deemed *ḥasan* if and when a praiseworthy title can be applied to it, such as justice, and it is only deemed *qabīḥ*, if and when a blameworthy title can be applied to it, such as oppression. And when neither a praiseworthy nor a blameworthy title is applicable to it, it is neither *ḥasan* nor *qabīḥ*[370].

The example mentioned by Muẓaffar, although potentially distasteful to contemporary liberal sensibilities, cites the example of hitting. Hitting with the intention of training (*lil-taʾdīb*) is praiseworthy, but hitting simply for the purpose of relieving ones distress or anger (*lil-tashaffi*) is blameworthy, whilst sometimes hitting is neither praiseworthy nor blameworthy, for example when hitting an inanimate object like in the tapping of a desk[371].

With this threefold categoristaion in mind Muẓaffar's response to the Ashʿarī objection becomes quite clear; 'The ʿAdliyya do not claim that all things are necessarily always given either the attribution of praiseworthy or blameworthy, in a way that would lead to the doubt which they have mentioned'[372]. For Muẓaffar, telling the truth and lying both fall under the second category of act, i.e. their praiseworthiness and blameworthiness is accidental *(ʿaradiyān)* and thus may change in accordance with the aspects and considerations of the act

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[370] *Uṣūl al-fiqh*, Vol. 1, p. 200.
[371] *Ibid*. Muẓaffar's example here raises some ambiguities. It seems from his typology that this third category of acts refers to those actions that, in and of themselves, have no predisposition to being either *ḥasan* or *qabīḥ,* instead they are theoretically morally neutral. However when actualsied in a context it does not seem reasonable that they can retain this moral neutrality, for if they are valueless when brought about they would be futile and purposeless- a category of acts that, within the ʿAdliyya tradition at least, would necessarily be deemed *qabīḥ*.
[372] *Uṣūl al-fiqh*, Vol. 1 p. 203.

performed in different contexts- thus the Ashʿarī objection regarding the contextual nature of moral judgments does nothing to undermine Muẓaffar's reading of the ʿAdliyya position regarding the potential rational intelligibility of the praiseworthiness and blameworthiness of actions[373].

4.3.5.3 ʿAdliyya Justifications

Muẓaffar's outline of the ʿAdliyya justifications follow very closely the arguments developed by classical Imāmī theologians examined in the previous chapters. He firstly argues that it is known *bil ḍarūra*, self evidently or necessarily, that some basic moral propositions are either praiseworthy or blameworthy. This claim is justified by arguing that knowledge of these propositions is universally accepted- even those who reject revelation agree upon these basic moral values. He then cites the classical ʿAdliyya argument that claims moral skepticism is the logical result of a belief that the only way of establishing moral values is revelation- since all Muslims reject moral skepticism, the premise that morality is determined by revelation must also be false[374].

Despite continuing in the trajectory outlined by his intellectual forefathers, Muẓaffar's distinct conception of the nature of moral propositions results in his preferred formulation of each argument being subtlety different from his predecessors. As found in most presentations of the ʿAdliyya justifications, the claim of self-evidence and the argument by universality are linked into a single argument;

> The praiseworthiness of generosity and the blameworthiness of oppression are amongst those things known necessarily (*ḍarūrat^an*) by every rational person without relying on revelation, for this is known by even those who deny scripture[375].

Muẓaffar denies that basic moral propositions are from the category of propositions which have an external reality to which they correspond, thus

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[373] *Uṣūl al-fiqh*, Vol. 1 pp. 202-203.
[374] Muẓaffar, *Al-Manṭiq*, pp. 296-297
[375] *Uṣūl al-fiqh*, p. 203.

moral propositions cannot be understood merely by properly conceiving of the component parts of the proposition. It is the distinct category of proposition, the *awwaliyāt* (such as 'the whole is greater than the part') that is properly axiomatic. Knowledge of *al-awwaliyāt* is referred to as being self evident or necessary i.e. *bil-ḍarūra,* as by definition they are those propositions where by simply a proper conception of the components of the proposition *necessarily* and *self evidently* leads to knowledge of the truth or falsity of that proposition[376]. In contrast to the classical portrayal, Muẓaffar argues that basic moral propositions are not of this category[377], but rather are classed as a type of *mashūrāt*, having no reality to which they correspond- except the concurrence of rational opinion. If this is the case, the question arises as to how can they be known *bil-ḍarūra*?

Although Muẓaffar does not directly respond to this concern he does elaborate on what he thinks was intended in the *'Adliyya* claim that basic moral judgments are self evident in a manner which is consistent with his conceptual analysis of the nature of moral propositions;

> Those who claim the necessity (*ḍarūra*) of the judgment of rational beings (*ḥukm al-ʿuqalā*) regarding the *ḥusn* of generosity and the *qubḥ* of oppression claim the necessity of their praise for the performer of generosity and the their blame for the performer of oppression[378].

From this it becomes clear that his interpretation of *ḍarūra* is not a notion of self-evidence as occurs in the axiomatic *awwaliyāt*. Rather Muẓaffar's understanding of *ḍarūra* here seems to be more in line with the literal connotation of the term denoting a 'necessary' judgment. In accordance with Muẓaffar's analysis thus far, the source of this necessary judgment cannot arise simply from a proper conception of the component parts of basic moral propositions, instead he cites the source of this 'necessity' as being due to *tawātur[379]*- that is the truth of these basic moral propositions is known *bil-ḍarūra,* necessarily*,* because they are

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[376] See Muẓaffar, *Al-Manṭiq*, pp. 296-297.
[377] Muẓaffar explicitly categorises these *mashhūrāt* as being in contrast to propositions that he terms as *ḍarūriyāt*;'They are from those widely accepted propositions (*al-qaḍāyā al-mashhūrāt*) which are a category fundamentally in contrast to the necessary propositions (*al-qaḍāyā al-ḍaruriyāt*)'. *Uṣūl al-fiqh*, Vol. 1 p. 196.
[378] *Ibid.*
[379] *Ibid,* p. 203.

examples of judgments which are so widely accepted that it is impossible that so many people may be mistaken or be colluding upon falsehood, and hence it is considered absurd to deny them[380].

Despite the apparent difference in the way Muẓaffar understands the *ḍarūra* of basic moral propositions from the way it seems to have been conceived of by early and classical Imāmī theologians, he does manage to give an interpretation of the classical argument 'by necessity' in a manner consistent with his own conceptual analysis. However his adoption of the classical claim that this necessity is justified by the universality of the acceptance of moral judgments does not fit as neatly with his own picture of the nature of rational morality. Having extensively and repeated argued for rational moral propositions being amongst the *mashūrāt*, he explicitly asserts that an isolated individual, who had always been alone and bereft of the training received through society, would not be able to recognize these propositions through his rationality alone[381]. His adoption of the classical argument by way of the universal acceptance of moral propositions thus needs a qualification; he can only claim that basic moral propositions are universally accepted by those rational beings living *in a social context* and not by every rational person.

The second *'Adliyya* justification cited by Muẓaffar argues that knowledge of moral values, *al-ḥusn* and *al-qubḥ*, would have been impossible if the only way of establishing these values was revelation. Muẓaffar notes that the explanation of why moral skepticism results from claiming the basis of morality is revelation has been formulated in a number of ways[382]. His preferred formulation varies slightly from those examined from the classical period where the arguments often centered on the necessity of being able to establish independently that it is blameworthy or *qabīḥ* for Allah to lie before one can have trust in the moral teachings of revelation. For if it is not *qabīḥ* for Allah to lie then there is no reason for us to assume He is telling the truth in His scriptural instructions regarding morality. Instead Muẓaffar raises the question of the source of two basic

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[380] *Uṣūl al-fiqh*, Vol. 1 p 203.
[381] *Ibid,* pp. 196-197 and p. 202.
[382] *Ibid*, p. 203.

obligations accepted by all Muslims, the obligation to obey God (*wajūb al-ṭāʿa*), and the obligation to know God (*wajūb al-mʿarifa*)[383].

It is accepted by both *ʿAdliyya* and Ashʿarī scholars that there is an obligation to gain knowledge of one's creator and that Muslims have an obligation to obey the commands and prohibitions of *Sharīʿa*. However Muẓaffar notes that the Ashʿarī position holds that the source of this obligation is non-rational or textual i.e. it is *sharʿī*. Muẓaffar then poses the question that if this is the case, 'from whence is this obligation established?'. The expected Ashʿarī response is of course that this obligation stems from a command from the legislator for, apparently at least, their system demands that obligation follows command. Muẓaffar then posses a second question through which he moves to the crux of his argument;

> From where does the obligation of obedience to this command come from? If this obligation is rational then that is what has been sought, but if it is again non-rational (*sharʿī*) then necessarily it must have a command which necessarily also requires obedience and then we can shift our question to it...and likewise we continue without limit. We cannot stop until we reach an obligation the obedience to which is rationally determined and does not depend upon the command of the Legislator. And that is what is sought[384].

Muẓaffar is demonstrating that if the authority of obligation can only stem from revelatory command, we are left with an infinite regress always questioning the source of the authority of each command in the chain. Ultimately the authority of any body of revelatory texts must be established from something outside that body of material. Summarising in typical *ʿAdliyya* style, Muẓaffar goes on to state that

> In fact the establishment of revelation in the very first place depends upon the intelligibility of the praiseworthy and the blameworthy, and had its

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[383] For the conception, influence and subsequent fate of two rational theories for the Obligation to obey God in Muʿtazilī thought see Aron Zysow 'Two Theories of the Obligation to Obey God's Commands' in Peri Bearman, Wolfart Heinrichs and Bernard Weiss (eds.) *The Law Applied; Contextualizing the Islamic Sharīʿa. A Volume in Honour of Frank E. Vogel* (London, I.B. Tauris, 2008), pp. 397-422.

[384] *Uṣūl-fiqh* Vol. 1 p. 203.

establishment been through the revelation itself, it would have been impossible to establish it- for we would shift our question to that revelatory means and be left with an infinite regress that has no limit[385].

4.4 The theological premises to *al-mustaqillāt al-ʿaqliyya*

Muẓaffar preceded his discussion of the jurisprudential questions pertaining to *al-mustaqillāt al-ʿaqliyya*- (reason as an independent source of *Sharīʿa* precept) by identifying that a necessary premise to these jurisprudential discussions is a clear conception of the theological questions pertaining to the intelligibility of the praiseworthy and the blameworthy. The theological questions were identified as two;

1) Do some actions, in themselves, have a status of being either *ḥusn* (praiseworthy) or *qubḥ* (blameworthy) in the eyes of rationality?

2) If this is the case is it possible for reason to actually perceive these values?

In the foregoing discussion Muẓaffar offered a thorough and detailed conceptual analysis of why he believes that the *ʿAdliyya* were correct in responding affirmatively to the first question, and that indeed some actions, in themselves, do have a moral status in the eyes of rationality regardless of divine command. Before embarking on that analysis he claimed that obtaining a proper conception of the ontological question regarding why and how actions may have a rational status of either *ḥusn* or *qubḥ* irrespective of divine command, is sufficient to demonstrate that there is actually no scope for the second epistemological question.

As we have seen in his conceptual analysis of the nature of rational morality, Muẓaffar makes no distinction between the ontology and the epistemology of the relevant judgments of rational morality.

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[385] *Uṣūl-fiqh* Vol. 1 p. 203.

> Because as has preceded, there is no ontology to *ḥusn* and *qubḥ* in the sense which is under dispute with the *Ashā'ira* (which is the third meaning) except for the rational community perceiving this and [except for] the concurrence of their opinion upon the desert of praise for the performer of *al-ḥusn* and the desert of blame for the performer of *al-qabīḥ*[386]

As Muẓaffar denies that the moral values of *ḥusn* and *qubḥ* in its disputed sense have any factual or existential reality except the judgment of the rational community, one cannot claim that actions have a rational status of either *ḥusn* or *qubḥ* and yet reason be incapable of understanding this *ḥusn* and *qubḥ*- 'unless it be possible to separate a thing from itself'[387].

Although this conceptual analysis is radically different from the picture offered in classical Shī'ī thought and developed by later thinkers such as Ḥāj Mullā Hādī Sabzawārī, it is a picture that allowed him to maintain a variation on the classical *'Adliyya* justifications for the fundamental principle of the intelligibility of the praiseworthy and the blameworthy. Moreover it is a conception of rational morality from which he can directly build his jurisprudential epistemology regarding the central *Uṣūlī* question in this regard; can these judgments of rational morality correspond to the judgments of the Divine legislator and thus become a potential source for knowledge of *Sharī'a* precepts?

4.5. The rational correlation between *al-'aql* and *al-shar'*

Having described his conception of the nature of rational morality, and why he believes that the relevant judgments of *al-ḥusn* and *al-qubḥ* are rationally intelligible, Muẓaffar moves to discuss the first of the two jurisprudential (*Uṣūlī*) questions necessary in affirming that independent judgments of reason have a role as a source of *Sharī'a* precepts by discussing what is referred to as *mas'alat al-mulāzama* i.e. the issue of the rational correlation. As outlined earlier, the question of the correlation between *al-'aql* and *al-shar'* is central to establishing

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[386] *Uṣūl al-fiqh*, Vol. 1 p. 205.
[387] *Ibid.*

both the independent and non-independent modes of *al-dalīl al-ʿaqlī* (reason as a source of *Sharīʿa* precept). The specific correlation whose existence is being questioned here, i.e. in the context of reason as an independent source, is 'whether or not reason's judgment of the *ḥusn* or *qubḥ* of a thing rationally necessitates that *al-sharʿ* judges in accordance with it?'[388] Rephrasing we may ask, is there a rational correlation that deems that the judgments of the Divine legislator correspond with the judgments of human rationality regarding the *ḥusn* or *qubḥ* of an action?

For Muẓaffar the presence of a correlation between the specific judgments of *al-ʿaql* under consideration and the judgments of the Divine legislator does rationally exist. The relevant judgments of the *ḥusn* or *qubḥ* of a thing have been carefully defined and outlined as being nothing other than;

> [T]he complete concurrence of opinion from the rational community, in so far as they are being rational (*bi mā hum ʿuqalā*), upon the *ḥusn* of a thing due that which is in it with regards to the preservation of social order and the perpetuation of the human species, or upon the *qubḥ* of a thing due to its disruption of these[389].

As these judgments are defined as being only those which reflect the concurring opinion of *all* rational beings then;

> [N]ecessarily the Divine legislator judges in accordance with their judgment, because He is from amongst them [i.e. the rational beings], and in fact He is the chief of them. He is in himself rational- and in fact the creator of rationality - thus like all rational beings, it is necessary that He judges in accordance with that which they judge. If we assumed that He was not joining them in their judgment then this judgment would not reflect the [concurring] opinion of all [rational beings]- which is opposed to the [initial] assumption[390].

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[388] *Uṣūl al-fiqh,* Vol. 1. p. 206.
[389] *Ibid.*
[390] *Ibid.*

Muẓaffar's argument for the *mulāzama* stems from his conception of God as a rational being coupled with his definition of *ḥusn* and *qubḥ* as being the concurrence of *all* rational beings upon the praiseworthiness and blameworthiness of an action. When judgments of *ḥusn* and *qubḥ* are universally concurred upon by all rational beings, then it follows that God must also share this judgment, for He is one of those rational beings. As we shall see other Shīʿa scholars of *uṣūl al-fiqh* have attacked this position on a number of counts, but in the context of the central questions of this study the most important thing to note here is that in Muẓaffar's justification for the theoretical correlation between judgments of reason and judgments of *Sharīʿa* is central in limiting the actual role of reason as a source of *Sharīʿa* precepts when it comes to the derivation of precepts in *fiqh*. Muẓaffar argues that any universally agreed upon judgment of reason includes, and thus reflects, the judgment of the Divine legislator- but the occurrence of such universally agreed upon judgments are so rare that the instances of a correlation between the judgment of *al-ʿaql* and *al-sharʿ* are so few and far between that they are seen to have little impact on the actual derivation of *Sharīʿa* precepts. This limit is compounded by the requirement that these rational judgments, the universal concurrence and the correlation, must be deemed to be certain (*qaṭʿī*) for them to be considered as a religiously valid means of *Sharīʿa* knowledge. This fundamental *Uṣūlī* criteria for the validity, or *ḥujjiyya,* of sources demands an independent analysis, an analysis which will be embarked upon after first examining some contrasting views regarding the *mulāzama* from amongst other Shīʿī *Uṣūliyūn* and the contrasting picture of rational morality that this entails.

4.6 Critique of Muẓaffar's conception

Muẓaffar's analysis of *mas'alat al-taḥsīn wa taqbiḥ* and *al-mustaqillāt al-ʿaqliyya* is undoubtedly one of the most systematic and extensive treatments of the subject amongst modern works of Shīʿa *uṣūl al-fiqh*. Yet the conception of morality, rationality and how rational judgments may correspond with the judgments of *Sharīʿa* developed therein is far from universally accepted amongst

Shī̈ī scholarship. Criticisms of Muẓaffar's position, from Shī̈a *Uṣūliyūn* themselves, have ranged from stating the there is some 'confusion'[391] in his writings to describing his ideas on the topic as being from amongst the 'strangest of discussions (*min ʿajāʾib al-kalām*)[392]. By following 'the basis popularly held by the philosophers'[393] in categorising the nature of moral propositions as being *al-mashūrāt al-ṣirfa* (purely popularly held views with no correspondence in objective reality beyond the concurrence of rational opinion) it is claimed that Muẓaffar's analysis does not establish that the praiseworthy and blameworthy are rationally intelligible (*al-ḥusn wa al-qubḥ ʿaqliyain*), rather his position actually amounts to stating that the praiseworthy and the blameworthy are a construction of the rational community (*al-ḥusn wa al-qubḥ al-ʿuqalāʾiyain*). This has been cited as bearing an unacceptable resemblance to the Ashʿarī position, for it simply amounts to a different form of positivism[394]. The Ashʿarī position holds that the praiseworthy and blameworthy are posited by the command of Allah, and –in the eyes of the critique- Muẓaffar is saying that they are instead posited by the rational community. Following both Ibn Sīnā[395], and his most influential teacher al-Isfahānī[396], Muẓaffar has classified moral propositions as *mashūrāt.* Accordingly moral values have no reality beyond the social rational consensus that gives rise to them[397], and thus by implication theses values have no reality prior to that social rational consensus, and these values may change with a change in social rational consensus[398]. For further exposition of an alternative view, which although not explicitly, seems to directly respond to Muẓaffar's disputed conception of the nature of morality, we turn to the views of Bāqir al-Ṣadr.

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[391] Muḥammad Sanqūr, *Al-muʿjam al-Uṣūlī* (Qum, Dār al-Mujtabā, 1999) p. 518.
[392] Nāṣir Makārim al-Shirāzi, *Anwār al-uṣūl* (Qum, Madrassat al-Imām Amir al-Muʾminīn, 1994**)** Vol.2 p. 512.
[393] Sanqūr, *Al-muʿjam al-Uṣūlī*, p. 519.
[394] *Ibid.* p. 516.
[395] *al-Ishārāt wa al-tanbihāt,* p. 351.
[396] *Nihāyat al-Dirāya,* Vol. 3 pp. 29-31.
[397] *Al-Manṭiq, pp. 309-310* and *Uṣūl al-fiqh* Vol. 1 pp. 193, 196 and 202.
[398] Sanqūr, *Al-muʿjam al-Uṣūlī*, p. 518.

4.7 Bāqir al-Ṣadr on rationality, morality and the correlation between *al-ʿaql* and *al-sharʿ*

Muḥammad Bāqir al-Ṣadr is far better known to readers of Muslim thought in general, and Shīʿī thought in particular, in the West than Muḥammad Riḍā al-Muẓaffar[399]. His political activism combined with a mastery of traditional Muslim studies and a willingness to seriously engage with shifting intellectual paradigms of his day have left a formidable intellectual legacy. That his intellectual output was brutally cut short, at the hands of Saddam's Baathist Iraqi regime, did not undermine the regard in which his work would be held both in traditional Muslim and wider circles, with commentators describing his contributions to twentieth century Muslim religious thought ranking 'as highly as the great reformists of the caliber of Jamāl al-Dīn al-Afghānī and Muḥammad ʿAbduh'[400].

Like Muẓaffar's text *Uṣūl al-fiqh*, Bāqir al-Ṣadr's three volume work on the same subject titled *al-Durūs fī ʿilm al-uṣūl* was also written in response to the perceived inadequacies of the traditional syllabus of his day and has subsequently come to have a central place in the training of Shīʿa scholars[401]. Although his treatment is extremely brief when compared to Muẓaffar, in the third and most advanced volume, he offers a concise critique of the conception of morality adopted by Muẓaffar, Isfahāni and Ibn Sīnā. This critique reveals his own conception of morality, which instead of following 'the basis adopted by the majority of philosophers' follows what is claimed to be 'the basis adopted by the majority of *Uṣūliyūn'* in its categorisation of the nature of moral propositions[402]. This conception of morality is arguably far more consistent with the objectivism

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[399] For brief biographical information and some general notes on Bāqir al-Ṣadr and his intellectual contributions see Parviz Mottahedeh, 'Introduction' in Muḥammad Bāqir as-Ṣadr, *Lessons in Islamic Jurisprudence Translated with an introduction by Roy Parviz Mottahedeh,* (Oxford, Oneworld, 2005), p.1-33 and Mohsen Araki 'A Short Biography of Martyr Ayatullah al-Ṣadr' in Hamid Algar and Saʾeed Bahmanpour (eds.) *Principles of Islamic Jurisprudence According to Shīʿī Law by Muḥammad al-Bāqir al-Ṣadr* (London, ICAS Press, 2003), pp.11-24. For a more extensive treatment of his life and intellectual contributions, particularly in the field of economics, see Chibli Mallat, *The Renewal of Islamic Law: Muḥammad Baqer as-Ṣadr, Najaf, and the Shi'I International*, (Cambridge, Cambridge University Press, 1993).
[400] Mallat, *The Renewal of Islamic Law,* p. 35.
[401] For an insight into Bāqir al-Ṣadr's views regarding the limitations of the then said curriculum in *uṣūl al-fiqh* and the motivation for writing his own work on the subject see *Durūs*. Vol. 1 pp. 17-38.
[402] Sanqūr, *Al-muʿjam al-Uṣūlī*, p. 519.

associated with the classical *ʿAdliyya* doctrine than that depicted by Muẓaffar. Despite these differences, as shall be seen in subsequent chapters, neither of these radically different views regarding the nature of morality result in *al-mustaqillāt al-ʿaqliyya* (independent judgments of rationality) playing a significant role in the actual inference of *Sharīʿa* precepts at the level of *fiqh* because of a common criteria of certainty (*qaṭʿ*) as the basis of validity (or *ḥujjiyya*) for sources of *Sharīʿa* knowledge.

Before engaging in his critique of the conception of *al-ḥusn* and *al-qubḥ* which he describes as *ʿuqalāʾiyyain* i.e. constructed and postulated by the consensus of the rational community rather than being *ʿaqliyain* and hence rationally intelligible by independent reason, Bāqir al-Ṣadr first clarifies his understanding of the distinction between theoretical rationality and practical rationality. Like Muẓaffar he too makes this distinction based on the object of perception (*al-mudrak*), but with some important differences. For Bāqir al-Ṣadr the judgement of 'theoretical rationality is the perception of that which is ontological (*idrāk mā yakūnu wāqiʿī^{an})'*, while the judgement of practical rationality is 'the perception of that which ought or ought not to occur (*idrāk mā yanbagi aw mā lā yanbagi an yaqʿa*)'[403].

With this initial distinction in place Bāqir al-Ṣadr starts to reveal his conception of morality, for he states that in this way defined judgements of practical rationality actually amount to judgements of theoretical rationality for they too are the perception of something with ontological reality;

> On analysis we see that the second [judgements of practical rationality] ultimately refers to the first [judgements of theoretical rationality]. Because it [practical rationality] is the perception of an ontological attribute in the action, and this is that it [either] ought to occur, and that is *al-ḥusn*, or that it ought not to occur, and that is *al-qubḥ*.[404]

Thus according to Bāqir al-Ṣadr, the moral values of *al-ḥusn* and *al-qubḥ* are real 'ontological attributes perceived by rationality just as it [rationality] perceives all

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[403] *Durūs*, Vol. 2, p. 305.
[404] *Ibid.*

other ontological attributes and things'. With the object of both theoretical and practical rationality being deemed ontologically occurring in this way, Bāqir al-Ṣadr explains that the only difference between the two judgements is that the subject matter of practical rationality 'due its nature, requires a specific practical implication' whereas the judgement of theoretical rationality does not[405].

Bāqir al-Ṣadr claims that the conception which deems *al-ḥusn* and *al-qubḥ* to be the result from the 'postulation of the rational community' based on their concurring judgements regarding social utility (*al-maṣlaḥa al-nawʿiyya*) or social detriment (*al-mafṣada al-nawʿiyya*) is flawed[406]. He offers two arguments here to demonstrate these flaws, one by intuition (*wijdān*ᵃⁿ) and one that he describes as being *tajrabat*ᵃⁿ, literally meaning through experience but what is actually intended here is a demonstration via a type of thought experiment[407]. The first argument seems to be directed against the notion of morality as being positive with the second undermining the apparent claim that *ḥusn* and *qubḥ* are based on purely utilitarian considerations of social or public *maṣlaḥa* (utility) and *mafṣada* (detriment). In a style typical of moral intuitionists his initial argument, or claim, resonates closely with the classic *ʿAdliyya* argument for the self-evident essential nature of basic moral knowledge; 'As for intuition (*wijdān*), it judges that the *qubḥ* of oppression is established irrespective of the postulation of any postulator, like the contingency of a contingent being (*k-imkān al-mumkin*)'[408]. Nothing, neither God, nor any rational consensus, designated oppression *qabīḥ*-oppression simply is *qabīḥ*.

Bāqir al-Ṣadr then employs a thought experiment to undermine what he sees as the purely utilitarian conception of morality adopted by Muẓaffar. Al-Ṣadr claims that on consideration of concrete cases we see that *al-ḥusn* and *al-qubḥ*, what ought or ought not to occur, does not exclusively follow the criterion of utility and detriment, and in fact 'sometimes the utility in the *qabīḥ* is greater than the detriment in it, and despite this the rational beings agree upon its *qubḥ*'[409]. To

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[405] *Durūs*, Vol. 2, p. 305.
[406] *Ibid*, p. 306.
[407] *Ibid,* pp. 306-307.
[408] *Ibid,* p. 306.
[409] *Ibid,* p. 306.

demonstrate he asks us to consider the morality of killing a human being to extract a specific medicine from his heart, through which two people could be saved from certain death.

> If viewed solely from the angle of utility and detriment, than the utility is greater than the detriment, despite which nobody doubts that this would be [an instance of] oppression and rationally *qabīḥ.* Thus *al-ḥusn* and *al-qubḥ* (what ought and ought not to occur) do not follow utility and detriment in a simple fashion, rather they [*al-ḥusn* and *al-qubḥ*] have a reality which concurs with [considerations of] utility and detriment in many instances, but which is at odds with these [consideration] in some cases.[410]

Assuming one accepts the epistemological value or claims of intuition, these two arguments certainly raise serious objections against the caricature of Muẓaffar's conception of morality as painted by those who oppose it. However it is a fallacy to accept that these criticisms justify any alternative conception[411]. Bāqir al-Ṣadr's own position, which receives no justification in his works of *uṣūl al-fiqh* other than the aforementioned critique on the competing conception, claims that *al-ḥusn* and *al-qubḥ* are ontological or factual properties[412]. This claim is coupled to a notion similar to that held by Sabzawārī regarding the scope of what he termed *al-nafs al-amr* (the realm of fact). For like Sabzawārī, Bāqir al-Ṣadr is well aware of the problems caused by any claims that place the locus of these values within the existential act itself. Accordingly he holds that *ḥusn* and *qubḥ* are indeed factually or ontologically established (*thābit*) properties, but that the realm of ontology is wider than the realm of existence (*lawḥ al-wāqiʿī awsaʿa min lawḥ al-wajūd*)[413].

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[410] *Durūs*, Vol. 2 pp. 306-307.
[411] The absence of any justifications for Bāqir al-Ṣadr's own conception of morality may demonstrate that he is engaging in pure polemics (*jadal*)- trying to justify his own position simply by undermining a contrasting (although not an opposite) view. On the other hand the absence of justifications for his position in his works of *Uṣūl al-fiqh* may reflect that he recognises such debates are actually outside what he conceives to be the poper remit of *uṣūl al-fiqh*.
[412] *Durūs*. Vol. 2 p. 305.
[413] See Al-Sharawurdī, *Baḥuth fi ʿilm al-uṣūl*, Vol. 4 p. 120.

Despite the absence of justifications, Bāqir al-Ṣadr's conception of morality is consistent with the classical ʿAdliyya moral objectivism adopted and developed through the history of Shīʿī theological thought. Whereas reconciling Muẓaffar's pure moral rationalism and the classical justifications for the doctrine of the intelligibility of the praiseworthy and the blameworthy, which relies on the self-evidence of basic moral properties, was far less straightforward. Of course the proper place for any conclusive resolution of debates regarding whether the ontology of basic moral values is something natural and objective, or whether these values are purely constructed through the social consensus of rational beings is certainly not within the discipline of *Uṣūl al-fiqh*. These questions are for moral philosophy. Although the extent of the debates here do demonstrate the broader relevance of *Uṣūl al-fiqh* to understanding Muslim religious, theological and philosophical thought, they also point to the underdevelopment of any science within Muslim thought which deals with these fundamental questions of moral philosophy in their own right. What is most relevant about this debate in the context of *Uṣūl al-fiqh* is that undermining Muẓaffar's conception of morality and proposing that moral values are natural ontologically occurring facts, also undermines Muẓaffar's argument for the *mulāzama* (rational correlation) between the judgement of reason and the judgement of the Divine legislator- an issue which is firmly within the remit of *uṣūl al-fiqh* and is a critical link in understanding how judgements of reason regarding rational morality can be considered an independent source of *Sharīʿa* precepts.

Muẓaffar argued that there is a correlation (*mulāzama*) between rational judgements of *al-ḥusn* and *al-qubḥ* and the judgements of the Divine legislator, because *al-ḥusn* and *al-qubḥ* are nothing other than the concurrence of all rational beings regarding the praiseworthiness or blameworthiness of an act- and Allah is one of the rational beings upon whose opinion this concurrence is based[414]. However, having described *al-ḥusn* and *al-qubḥ* as factual ontological properties that exist irrespective of any judgement of the rational community, Bāqir al-Ṣadr obviously cannot endorse such an argument for a *mulāzama*. The majority of Shīʿī scholars, irrespective of their position on the nature of morality,

[414] *Uṣūl al-fiqh*, Vol. 1 p. 206.

do affirm the correlation between judgements of practical rationality and the judgements of the Divine legislator[415], yet Bāqir al-Ṣadr does not[416]. That this denial is contrary to a popular position of the *Uṣūliyūn*, which is intricately linked to fundamental aspects of the Shīʿī theological tradition, says something about the honesty of Bāqir al-Ṣadr's scholarship. It is a central premise of this study that in practice independent judgements of rational morality have no significant impact on the actual derivation of Sharīʿa precepts and it would seem that in the denial of the *mulāzama* Bāqir al-Ṣadr accepts this[417].

As outlined above, Bāqir al-Ṣadr draws no substantive distinction between practical rationality and theoretical rationality, except that the subject matter of the former 'due to its self, requires a specific practical implication'[418]. He also notes that those who claim there is a correlation between practical rationality and judgements of the Divine Legislator describe the perception of utility and detriment- judgements that fall under the remit of theoretical rationality- to be the root of these practical judgements[419]. Accordingly to understand Bāqir al-Ṣadr's denial of the correlation in the case of practical rationality requires us to understand his ideas on the correlation in the case of theoretical rationality.

In line with his ʿAdliyya heritage, Bāqir al-Ṣadr affirms that 'the precepts of *Sharīʿa* follow utility and detriment'[420], i.e. there is wisdom and purpose behind these precepts. Accordingly, and in his typical style of using philosophical terminology to conceptualise the legislation process, he states;

> [W]henever a criterion (*milāk*), with all its particularities and conditions, is complete, and it be free from any obstacles (*mawāniʿ*) from its bearing effect it can be considered at the level of a complete cause (*al-ʿillat al-tāmma*) motivating the Master to stipulate a precept in accordance with it,

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[415] *Al-Durūs*, Vol. 2 p. 307
[416] *Ibid.*
[417] Elsewhere al-Ṣadr explicitly states that he does not rely on independent judgments of *al-ʿaql* in the *fiqhi* inference of even a single precept, *al-Fatāwa al-wāḍiha* p. 98. His position is also noted by Modarressi, *An Introduction to Shīʿī Law*, p. 4
[418] *Durūs*, Vol. 2 p. 305.
[419] *Ibid,* p. 307.
[420] *Ibid,* p. 305. It is interesting to note that despite his criticism of Muẓaffar's conception of *ḥusn* and *qubḥ* due to the intuitive concerns over a purely utilitarian conception of morality, Bāqir al-Ṣadr has no problems in identifying the criteria behind *Sharīʿa* precepts as being utility and detriment.

in a manner consistent with The Wisdom of The most exalted (*wafaq^an l-ḥikmatihi t'āla*)[421].

In simpler terms, whenever something is of benefit or detriment, and there is no other factors impeding that benefit or detriment, as Allah is Wise, He designates a *Sharī'a* precept urging us, or impelling us, to acquire that benefit or refrain from that detriment. With this premise, which accepts that there is criteria and wisdom behind the legislation of *Sharī'a* precepts, Bāqir al-Ṣadr goes on to accept that, 'Thus it is possible, *theoretically*, should we suppose that theoretical rationality perceives this criteria, with all its particularities and issues, that in such a case it discloses the *Sharī'a* precept'.[422]

Bāqir al-Ṣadr describes this 'theoretical' *mulāzama* as being an instance of where the *Sharī'a* precepts is discovered by 'moving from cause to effect', where the cause is knowledge of the criterion (*milāk*) and the effect is knowledge of the *Sharī'a* precept which it discloses [423]. However despite conceding to the theoretical possibility of such an independent disclosure of *Sharī'a* precepts, in practice such disclosure does not happen, for fulfilment of the conditions to reveal this correspondence are;

> [D]ifficult to actually occur with respect to the reality of most situations. Because the scope of rationality is constrained, and humans recognise that their perspective is limited... more often than not it is possible that his perspective has missed some of the relevant issues at hand'[424].

Bāqir al-Ṣadr affirms the wisdom and perfect rationality of God's law, but at the same time he is pessimistic about the epistemic value of any of human reason's attempts to independently properly understand this rationality and wisdom. Continuing in this tone he states;

> Sometimes he perceives the utility in an action, but usually he is not sure of its degree or the level of its importance, nor [is he sure] of the absence

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[421] *Durūs*, Vol. 2 p. 305
[422] *Ibid,* p. 306.
[423] *Ibid.*
[424] *Ibid.*

of any conflicts to it. And when there is no surety in all of these things, there is no disclosure [of the *Sharīʿa* precept][425].

For Bāqir al-Ṣadr then, despite the precepts of *Sharīʿa* being based on substantive objective criteria, in practice it is impossible to rely on our independent judgements regarding the criteria of these precepts due to a *lack of surety* in our judgments of reason. It seems that Bāqir al-Ṣadr does not actually deny the major premise in the *al-mustaqillāt al-ʿaqliyya* regarding a *mulāzama* between the judgements of reason and the judgements of the Divine Legislator- *if* we a sure with regards to the judgement of reason in the first place. He just sees the possibility of surety in these judgements as being near impossible, and thus practically something which cannot be relied upon.

Bāqir al-Ṣadr is not unique amongst the Uṣūliyūn in bringing up the question of the actual epistemic reliability of reason in his treatment of *al-mustaqillāt al-ʿaqliyya*. In fact, as shall be further outlined, it is paradigmatic of the modern Uṣūlī school that the validity of any source of *Sharīʿa* knowledge must ultimately rely on certainty, either a source of knowledge should be certainty bearing in itself or it should be deemed to be certainly validated. Whether one conceives of *al-ḥusn* and *al-qubḥ* as values resulting from nothing other than the concurrence of the rational community, or whether they be seen as factual ontologically and naturally occurring values, it is the criteria for validity or *ḥujjiyya* which are the real obstacles preventing independent judgements of rational morality from playing a role in the actual inference of precepts at the level of *furūʿ al-fiqh*. Bāqir al-Ṣadr effectively brought this criterion for validity into the question of the existence of the *mulāzama*. However, as mentioned at the outset of this chapter, Muẓaffar correctly identified that the question of the *validity* of knowledge gained through the *mulāzama* is a separate question from the theoretical possibility of a correlation between the judgement of reason and the judgement of the Divine Legislator.

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[425] *Durūs*, Vol. 2 p. 306.

4.8. Summary

The foregoing chapter has detailed a sample of the extensive debates and outlined two competing conceptions of morality and rationality adopted by modern Shīʿa scholars of *uṣūl al-fiqh*. We have seen that the ʿAdliyya meta-ethical tradition adopted and developed as a fundamental theological principle in Shīʿī thought has given rise to radically different conceptions of morality amongst modern Shīʿī scholars of *uṣūl al-fiqh*. Muẓaffar and Isfahānī describe *al-ḥusn* and *al-qubḥ* as having no objective reality beyond the concurrence of the rational community, whilst others such as Bāqir al-Ṣadr describe them as factual and naturally occurring ontological values. The conceptual analyses and debates regarding the nature of morality and rationality within *uṣūl al-fiqh* represent some of the most sophisticated contributions of Muslim thinkers to questions of moral philosophy. However resolution of debates about the nature of morality and rationality are clearly not questions within the core remit of *uṣūl al-fiqh*, and there is undoubtedly space within Muslim philosophical and theological scholarly endeavours for the independent treatment of these subjects.

The discussions here are explicitly in the context of their implications for the role of independent judgements of reason, or rational morality, being a source of knowledge of *Sharīʿa* precepts. Despite the upfront pessimism harboured by Bāqir al-Ṣadr with regards the limited scope and perspective of human reason, both he and Muẓaffar accept that a correlation between rational judgments of morality (however conceived) may, theoretically at least, reveal knowledge of *Sharīʿa* precepts. However the radically different conceptions of morality held by both scholars necessitates quite different approaches to conceptualising how and when this correlation may occur. As has been alluded to already, the fundamental reason why this theoretical correlation, in both cases, does not bear substantive effect in allowing independent judgements of rational morality to inform the interpretation of *Sharīʿa* is the epistemic criteria for the validity (*ḥujjiyya*) of sources of *Sharīʿa* knowledge. The importance of these criteria now demand us to move to an independent treatment of the concept of *ḥujjiyya* amongst Shīʿī *Uṣūliyūn* in general, followed by a more detailed account of its implications for reason as independent source of *Sharīʿa* precept.

5. The authoritativeness of sources of *Sharīʿa* knowledge and the *ḥujjiyya* of *al-ʿaql*

5.1 Introduction

This study set out in chapter two by identifying that the category of rational indicator (*al-dalīl al-ʿaqlī*) that may properly be considered an independent source of *Sharīʿa* precepts is only *al-mustaqillāt al-ʿaqliyya* (independent rationality), a direct function of the theological principle of the intelligibility of the praiseworthy and the blameworthy. The meta-ethical principle which has given rise to the theoretical space for this jurisprudential source has been conceived of and defended in increasingly sophisticated and nuanced ways through the history of Shīʿī theological thought. The resultant contributions to questions of the nature of morality and rationality found in modern *uṣūl al-fiqh* reflect a culmination of some of the most sophisticated ideas of Muslim thought on questions of moral philosophy. Despite radical differences emerging in the conceptions of morality held by different modern *Uṣūliyūn* we have seen a common affirmation of a theoretical correspondence between the judgments of reason and the judgments of Divine legislation, albeit argued for in different ways.

The study has thus discussed some of the different views of Shīʿī thinkers on the questions of moral ontology, moral epistemology and the correlation between judgments of rational morality and the judgments of *Sharīʿa*. However, as outlined in the fourfold schematic offered by Muẓaffar regarding the inclusion of *al-mustaqillāt al-ʿaqliyya* as a substantive source amongst the evidences employed in the inference of *Sharīʿa* precepts, there is still one outstanding and pivotal discussion remaining. The question of whether it is deemed acceptable to actually rely upon such independent judgments of reason in the process of Sharīʿa inference- the question of *ḥujjiyya*- has yet to be addressed.

As shall be seen it is the epistemic considerations of validity entailed in the discussions of *ḥujjiyya* which are the major obstacle preventing *al-mustaqillāt al-*

ʿaqliyya playing a substantive role in the inferential process of *Sharīʿa* precepts. Accordingly, and despite having already referred to the terms on numerous occasions, at this point a deeper analysis of exactly what the terms *ḥujjiyya* and *ḥujja* have come to mean in modern Uṣūlī discourse is called for. This will allow a discussion of the *ḥujjiyya* of the different relevant epistemic categories referred to by *Uṣūliyūn* that range from definitive knowledge or certainty (*qaṭʿ*) to probability or mere speculation (*ẓann*). This background will allow for a thorough treatment of the *ḥujjiyya* of *al-ʿaql* and the subsequent redundancy of independent rationality as a source of *Sharīʿa* precept. However, to further ground the treatment offered by the modern *Uṣūliyūn* on the subject, we will first give a short overview of how these key epistemic considerations have been conceived of through the history of Imāmi legal theory.

5.2 From surety to doubt and back again

Discussion of *ḥujjiyya* – which deals with the general and specific criteria for the validity of sources and methods employed in the actual process of inferring *aḥkām*- has gradually developed within the history of Shīʿī legal theory to the point where it is now recognized as being the pivotal discussion (*al-ʿumda fihā*) of *uṣūl al-fiqh*[426]. The context and the nature of these developments are no simple story. Despite Shīʿī legal theory emerging form within, being highly influenced by and having parallels in the debates that ensued from Sunni circles, there a number of issues particular to Shīʿī legal history which have played a central role in the manner in which these all important debates regarding the *ḥujjiyya* of the sources and methods employed by the *mujtahid* have taken shape. The history of Shīʿī legal theory can be vividly drawn according to the debates that have revolved around the central ideas of legal epistemology in general, and the criteria for *ḥujjiyya* in particular; what are the sources of knowledge upon which the *mujtahid* can rely, what type of knowledge do these sources produce and how can action in accordance with these sources of knowledge be justified or deemed valid? It is the question of justification or validity of the means by which

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426 Muẓaffar, *uṣūl al-fiqh,* Vol. 2 p. 7.

Mujtahid's reach their *fiqhi* opinions that is the question of *ḥujjiyya*, and as shall be seen, it is a question which cannot be separated from the ideas and debates held by Shīʿa thinkers about the nature of knowledge itself- be that knowledge from textual sources or from rational ones.

The early Imāmi rejection of sources of Sharīʿa *aḥkām* that were seen as less than certain (*ẓannī*), expressed through an attack on *Ijtihād*, *khabar al-wāḥid* and *qiyās*[427], is encapsulated well in al-Murtaḍā's statement that such sources 'can not lead to either knowledge or action'[428]. Zysow notes that al-Murtaḍā's teacher Al-Mufīd, can be traced as the source of influence to a long line of Imāmi scholars who sought 'an expulsion of uncertainty from the law'[429]. Although the early Imāmi rejection of *ẓann* in favour of *ʿilm* has continued to be a central motif under scoring Shīʿī jurisprudential endeavours to this day, it was an alternative epistemological trend to that represented by al-Murtaḍā that would come to bear most influence on modern ideas in Shīʿī *uṣūl al-fiqh*. This alternative trend would commence so soon that it was in fact a direct student of al-Murtaḍā, none other than Shaykh al-Ṭūsī who would commence a radical shift in the epistemology of Shīʿī legal theory[430]. Al-Ṭūsī began justification for the introduction of less than certain evidences through arguing for a juristic system with the speculative *khabar al-wāḥid* at its heart, a system which would be further developed into a fully blown theory of *ijtihād* by the time of ʿAllāma al-Ḥillī[431].

The culmination of the shift towards an incorporation of less than certain knowledge within the Imāmi theory of *ijtihād* to the point that it could be described 'as a methodology of doubt' was, according to Calder, given the most 'clearest possible expression' in the *Maʿālim al-Dīn* of Ḥasan bin Zayn al-dīn (d.

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[427] For more on the early Imāmī rejection of speculative sources of knowledge and qiyās in particular see Robert Gleave, ʿ Imami ShiʿI Refutations of Qiyas' in Bernard Weiss (ed.) *Studies in Islamic Legal Theory* (Leidan, Brill, 2000) pp. 267-291.

[428] *Rasāʾil al-Sharīf al-Murtaḍā,* p. 202.

[429] Zysow, *The economy of Certainty*. pp. 498-499.

[430] Different motives have been identified as the impetus for this shift; Zysow sees this as ultimately a function of 'practical pragmatic concerns', *Ibid*. p.510. Where as Calder brings to attention a desire to accommodate difference of opinion (*ikhtilāf*), and implications for the scope of clerical authority, see *Doubt and Prerogative.*

[431] See Calder, *Doubt and Prerogative*. In this context Calder demonstrates that for al-Ḥillī the very endeavor of *fiqh,* and the *ijithād* that produced it, was to produce less than certain opinion regarding normative questions, pp. 68-70.

1011/1602-3)[432]. It is within his arguments for the *ḥujjiyya* of relying on the *khabar al-wāḥid*, whose status 'is still at the heart of Imāmī legal theory'[433], that Ibn Zayn al-Dīn explicates a methodology whose justification rested on the absence of the very *ʿilm* that the early Imāmī claimed was the only source of valid normativity.

> The sphere of definitive knowledge (*bāb al-ʿilm al-qaṭʿī*) of those *aḥkām al-Sharʿiyya* that are not known by necessity to be a part of the religion (*al-dīn*) or the school (*madhhab*) of the Ahl al-Bayt is, in times like ours, certainly blocked off. For those of its indicators (*adillatihā*) that we do have provide nothing other than *al-ẓann*, due to the lack of the certainly transmitted (*al-mutawātira*) *Sunna*, the obstacles to establishing *Ijmāʾ* in most cases except through *al-khabar al-wāḥid*, the evident nature of the principle of excusabillity [also] providing nothing other than *al-ẓann* and [due to] The Book being of [only] *ẓannī* indication (*dallāla*)[434].

In a manner which would be further elucidated and then championed by Mīrzā Qummī, Ibn Zayn al-Dīn used this recognition of the impossibility of definitive knowledge, outside the essentials of religion and *madhhab* (school), as a platform for a pragmatic justification for the *ḥujjiyya* of *al-ẓann* in its own right, a justification which would in turn be used to accommodate reliance on the *ẓann* produced by the *khabar al-wāḥid*[435].

> If there *is* actually a blocking of access to sure knowledge (*Insidād bāb al-ʿilm*) in a *Sharīʿa* precept, then the responsibility (*al-taklīf*) with regards to it is, for sure, [to be ascertained] by means of *al-ẓann*. And reason judges with respect to *ẓann* that if there are numerous aspects to it, which vary in terms of strength and weakness, that turning away from the strongest [possibility] towards the weakest is blameworthy. And there is no doubt

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[432] *Doubt and Perogative*. p. 77.
[433] Zysow, 'The economy of certitutde', p. 503.
[434]*Maʿālim al-din fi uṣūl*, (Qum, n. p., n.d.) p. 192. In my translation of the passage I have benefitted from elements of Calder's rendering. In particular his translation of *bāb al-ʿilm al-qaṭʿī* has been preffered over a more literal rendering of the phrase. See *The Structure of Authority*. pp .236-237.
[435] For Mīrzā Qummī's championing of the unqualified validity of *ẓann* see *al-Qawānīn al-muḥkama fil-uṣūl il-matqana, al-juzʾ al-thālith* (Qum, Muʾassasat Iḥyā al-Kutub al-Islāmī, 2009), pp. 238-302.

that in numerous *akhbār al-aḥād*, the [strength of the] *ẓann* acquired by them is of that [strength] which is not acquired by any of the rest of the indicators, and hence it is obligatory to prefer acting in accordance with it [i.e. the *ẓann* of the *akhbār*][436].

To what extent this move towards justifying a recourse to less than certain knowledge from *akhbār* (transmitted reports), based simply on the strength of probabilities, opens up space for the *ḥujjiyya* of less than certain judgments of rational morality is a question that will be drawn out in subsequent discussions. At this stage it can be said that any potential shifts in this direction were hardly given chance to raise their head, for Ibn Zayn al-Dīn's 'summation of the tradition was scarcely complete' before 'it was attacked by the idealism of Mirzā Muḥammad al-Astarābadī' [437]. The Akhbārī movement spearheaded by Astarābadī (d. 1036/1627)[438] was directly aimed at the developments in *uṣūl al-fiqh* brought on by al-Ḥillī and his followers. Central to this critique was 'a rejection of *ijtihād* and the assertion of a binary epistemology between certain knowledge and ignorance'[439]. Although the subsequent polemics that ensued between Akhbārī and Uṣūlī have been well treated[440], little attention has been paid to the lasting impact Akhbārī ideas have had upon the epistemological ideas in the Uṣūlī thought of the contemporary era. A cursory survey of any advanced work of modern Shīʿī *uṣūl al-fiqh* will demonstrate that Akhbārī ideas still bear strongly upon the minds of the *Uṣūliyūn*, but the extent and nature of any influence is yet to be drawn out through the considered research that the question demands.

Despite Bihbahānī being widely acclaimed as the champion of the Uṣūlī school, two generations later, Murtaḍā Anṣārī still felt the need to offer a systematic

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[436] *Maʿālim al-din fi uṣūl*, (Qum, n. p., n.d.) p. 192.
[437] Calder, *Doubt and Prerogative*. p. 72.
[438] Gleave argues that, despite sporadic earlier references, it is only after Astrābādi that the term Akhbārī became associated with a defined intellectual trend with a known set of doctrines. See *Scriptualist Islam; The History and Doctrines of the Akhbārī Shīʿī School* (Leiden, Brill, 2007), pp. 1-30. For a contrasting view on the origins and nature of the Akbhārī school see Andrew Newman, *The development of political significance of the rationalist (Uṣūlī) and traditionalist (Akhbārī) schools in Imāmī Shiʿī history from the third/ninth to the tenth/sixteenth century A.D.* Unpublished PhD Thesis (Los Angeles, Universty of California, 1986) 2 Vols.
[439] Gleave, *Scriptualist Islam,* p. 30
[440] For example see Gleave, *Inevitable doubt.*

Uṣūlī response to Akhbārī ideas which attacked the non-certain and extra-scriptural elements of ʿAllama's system. The *Farāid al-uṣūl* of Anṣārī is the paradigmatic work of modern Shīʿī *uṣūl al-fiqh* and the influence of its author upon contemporary Shīʿī thought deserves far more attention than the context of this study can afford[441]. However it can be stated here that, beyond the extensive rebuttals of specific ideas attributed to Astarābadī and his like, the very structure of the work may well be seen as indicative of the culmination of the Uṣūlī response to these Akhbārī challenges.

In Anṣārī's thesis the 'procedural certainty' Bihbahānī emphasized as the means to overcome the concerns regarding the validity of doubt was given philosophical rigor[442]. Structuring his treatment according to the epistemological categories of *qaṭʿ*, *ẓann* and *shakk* (absolute doubt), Anṣārī explicitly re-infused *ʿilm* back into a methodology which once more, polemically at least, would be able to re-affirm the early Imāmi slogan which invalidated recourse to anything that was less than certain. Of course Anṣārī's rejection of *ẓann* could not be absolute, for not only did he want to maintain the authority of the *faqih* in cases which could be treated through considerations of speculative *akhbār*, but he also reinforced the authority of the *faqih* in areas of absolute doubt (*al-shakk*) through his re-theorization of the practical principles (*al-uṣūl al-ʿamaliyya*)[443]. Ultimately the recourse to *ẓann* in the absence of *ʿilm* had to be accounted for, but the subtle shift in Anṣārī's system was to make explicit that recourse to this *ẓann* would *only* be considered valid if their is *ʿilm*, sure or certain knowledge, regarding the *validity* or *ḥujjiyya* of these sources. As shall be seen, It is through claiming that there is surety or certain knowledge in the *ḥujjiyya* of the sources and methods employed by the *mujtahid* that allows him to maintain that even if his *ijtihād* produces *fiqhi* precepts which are not consistent with 'the real precept from Allah', both he, and those following his opinion would be excused from the responsibility of their error. Although relying on less than certain sources of

[441] Modarressi talks of 'modern *Shīʿī uṣūl al-fiqh'* as being in the context of 'the School of Anṣārī', *An Introduction to Shīʿī Law*, p. 11. For a survey of Anṣārī's work and influence see Zackery Heern, *Shīʿī Law and Leadership: The influence of Mortaza Anṣārī* (Saarbrucken, Lambert Academic Publishing, (2010).

[442] For Bihbahānī's procedural certainty see Gleave, *Ineivtable doubt*, pp. 23-28.

[443] For a brief outline of the *uṣūl al-ʿamaliyya* and their role in post-Anṣārī system of *Sharīʿa* inference see Fanaei and Bhojani, *'Ijtihād in Traditional Shīʿī thought.'* pp. 115-116.

knowledge necessarily introduces the risk of producing incorrect opinion, the risk is mitigated by a claimed surety that 'The Divine legislator is content with it [i.e. the source of speculative knowledge] being considered by us as a means to his precepts, and that he has designated it a *ḥujja* upon us'[444].

5.3 *Ḥujja* and *ḥujjiyya*

Even from this brief overview of some of the epistemological concerns held by Shī'ī *Uṣūliyūn* with regards to the validity of the sources and methods employed by a *mujtahid*, the centrality of the terms and concepts of *ḥujja* and *ḥujjiyya* becomes plain. *Uṣūliyūn* refer to a number of different usages of the term *ḥujja*, it is used both in its linguistic sense and in a number of more restricted technical usages. Central to the linguistic non-technical sense of the term *ḥujja* is a notion of 'overcoming' (*al-ghalaba*)[445], or to be 'victorious over another' (*al-ẓaffar ʿalā al-ghayr*)[446]. Muẓaffar defines the terms linguistic usage as referring to 'anything capable of being employed in an argument against another, in such a way that it would lead to victory over another in event of dispute with it'[447]. Anticipating debates about the technical usage of the term in *uṣūl al-fiqh*, Muẓaffar notes that any such 'victory' or means to winning an argument may be of two types; either the *ḥujja* may be employed to silence the dispute and show that it is void, or it may be employed to provide excusabillity (*muʿadhdhariyya*) on behalf of the one possessing the *ḥujja*[448].

Stemming from obvious associations to this linguistic meaning, Muslims have also employed the term with a variety of narrower technical meanings. Sanqūr mentions three distinct, but related, usages of the term *ḥujja* in logic, appreciation of which will help clarify the particular technical usage of the term in *uṣūl al-fiqh*. The first of these is used to describe 'any known assent (*maʿlūm taṣdīqī*) capable of establishing an unknown assent (*majhūl taṣdīqī*)'[449]. In other

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[444] Muẓaffar, *Uṣūl al-fiqh*, Vol.2, p. 3.
[445] Sanqūr, *Al-Muʿjam al-Uṣūlī*, Vol. 2 p. 10.
[446] Muẓaffar, *Uṣūl al-fiqh*, Vol.2, p. 12.
[447] *Ibid.*
[448] *Ibid,* p. 3.
[449] *Al-Muʿjam al-Uṣūlī*, Vol. 2, p 11.

words, any proposition capable of being used as a premise in a formal syllogism can be described as a *ḥujja*. A second usage of the term *ḥujja* is found where it is used to refer, not to the individual premises of the syllogism, but to the combination of the premises in a syllogism that leads to a conclusion[450]. Consider the following example;

Minor premise; the world is in motion

Major premise; every thing that is in motion is temporal

Conclusion; the world is temporal

In the first usage of the term both minor and major premises, even in isolation of each other, may be described as a *ḥujja*. Whereas in the second usage of the term it is the construction of the syllogism itself, the combination of minor and major, which is referred to as a *ḥujja*. Finally the logicians also describe the middle term (*ḥadd al-awsat*) of the syllogism as the *ḥujja*, in the above example the middle term is 'temporal'. It is through this middle term that the syllogism seeks to assert the conclusion, had the subject of the minor premise and the predicate of the major premise not shared in this middle term, it would not have been possible to argue that the world is temporal. In all three logical usages of the term, albeit in slightly different ways, the *ḥujja* is referring to a 'means of affirming a thing (*wāsita fil-ithbāt*)'[451].

Now in the specific *Uṣūlī* sense of the term, *al-ḥujja al-Uṣūlī*, the *ḥujja* again is a means of affirming a thing. However the type of affirmation is different from the affirmation in the logical usage of the term. For in *uṣūl al-fiqh ḥujja* is used to specifically refer to those evidences that *are not* conclusive or certain in and of themselves. Muẓaffar describes this specific technical usage of term *ḥujja* as being applicable to 'any thing that establishes its referent whilst not reaching the

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[450] *Al-Muʿjam al-Uṣūlī*, Vol. 2, p 11.
[451] *Ibid,* p. 12.

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level of certainty'[452]. It is the qualification 'whilst not reaching the level of certainty' that distinguishes the *ḥujja al-uṣūlī* from the usage of *ḥujja* in logic. For in this *uṣūlī* usage the *ḥujja* is explicitly *not* a means of attaining certainty in its referent, rather 'a *ḥujja* is anything that gives disclosure about another thing passing judgment over it, *as though* it is actually establishing it (ʿala wajh yakūnu muthbat*an* lahu)'[453]. There is actually no natural causative relationship between the *ḥujja* and its referent. The legal testimony (*al-bayyina*) of two just witnesses has no natural causative effect upon a liquid which they have testified as being alcoholic, but their testimony (*the ḥujja*) is deemed sufficient to be able to consider the liquid as being alcoholic even if it is not due to there being an external designation that deems the testimony of two just witnesses to be of evidential worth. Thus the *ḥujja al-uṣūlī* is that which establishes its referent due only to a designation from the Divine legislator that the one vested with responsibility may consider its disclosure to be actually true and reflective of *al-wāqiʿī* (reality)[454].

Despite the *Uṣūliyūn* using the term *ḥujja* in all of the above different ways in their writing in *uṣūl al-fiqh*, their ultimate concern when talking of *ḥujjiyya* is one, and that is to establish which types of arguments, evidences and methods of interpretation are authoritative when employed in the inference of *Sharīʿa* precepts. This notion of 'authoritativeness' is *ḥujjiyya*[455]. It is a quality described as yielding two components; accountability (*munajjaziyya*) and excusabillity (*muʿadhdhariyya*). The aspect of accountability refers to the liability before God for one vested with responsibility, God can hold one to account before an authoritative source of knowledge. Excusabillity, the flip side of the coin, gives the one vested with responsibility an excuse before God if action in accordance with that authoritative source actually led to an incorrect ruling or action. Thus something that has *ḥujjiyya* is an authoritative means by which God may hold responsible people to account and at the same time it is an authoritative excuse

[452] Muẓaffar, *Uṣūl al-fiqh*, Vol.2, p. 12.
[453] *Ibid.*
[454] *Ibid.*
[455] Although in this chapter I have refrained from offering a direct translation of *ḥujjiyya*, I do prefer Hallaq's translation of the term as 'authoritativeness', as found in 'On the Authoritativeness of Sunni Consensus', *International Journal of Middle East Studies*, Vol. XVIII p. 428, rather than Gleave's choice of 'probative force'. See *Inevitable Doubt*, p. 31 n. 9.

for the one vested in responsibility to seek exemption before God. To fully appreciate how the post-Anṣārī criteria for *ḥujjiyya* allows for a reliance on less than certain textual evidences but renders judgments of rational morality irrelevant to any considerations of *Sharī'a* inference, requires first a fuller exposition of the two key epistemic categories referred to by the *Uṣūliyūn*, *al-qaṭ'* and *al-ẓann*, and how they may be considered to be authoritative.

5.4 *Ḥujjiyya* of *qaṭ'*

In modern *uṣūl al-fiqh* the term *qaṭ'*, thus far translated as certainty or definitive knowledge, is often used synonymously with *'ilm*- the category of knowledge contrasted with the speculative, and at best probable, epistemological category of *ẓann*. Despite the ambiguity that sometimes arises in the usage of *qaṭ'* and *'ilm* within the discipline[456], the term *qaṭ'* does have a specific meaning in modern *uṣūl al-fiqh* that needs clarifying before moving to discuss the authoritativeness of this type of knowledge.

Qaṭ' refers to a psychological state of surety (*jazm*) established when one holds a belief and all alternative possibilities to that belief are 'cut off' (*yaqta'a*) and negated[457]- there is absolutely no scope for doubt in *qaṭ'*. This level of surety may arise in one of two situations; the psychological surety (*jazm*) may actually correspond with reality, in which case it is an instance of *yaqīn*- a true certain belief. On the other hand there may be *no* real corresponding basis to the surety, such as when it arises out of compound ignorance (*jahl murakkab*)[458]. In both cases the psychological surety (*jazm*), whether it is correspondent to a truth or whether it is baseless, is described by the *Uṣūliyūn* as *qaṭ'* [459]. As shall be further outlined, according to modern Shī'a scholars of *uṣūl al-fiqh* both forms of *qaṭ'* are

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[456] This ambiguity arises due to a number of reasons. In the case of *qaṭ'*, despite some overlap, the technical usage of the term in logic (which refers to the state arising form a *true* certain belief) is different to its technical usage in *uṣūl al-fiqh* (which is simply certain belief, whether it actually be true or not), and authors rarely state explicitly which usage of the term they intend. In the case of the term *'ilm*, not only is it subject to different implications across different disciplines, but it is also subject to a type of anachronistic usage when authors try to reclaim past conceptions of *'ilm* to equate to more modern conceptions.
[457] Al-Faḍli, *Durūs*. Vol. 1 p. 260.
[458] For the distinction between *yaqīn* and *jahl murakkab* see Muẓaffar, *al-Manṭiq*, pp. 14-16.
[459] Al-Faḍli, *Durūs*. Vol. 1 p. 260.

deemed to have the quality of *ḥujjiyya* and hence both are authoritative.

In line with the epistemological framework set out by Anṣārī, Muẓaffar sates that the *ḥujjiyya* of *ʿilm*, (and what is intended here by *ʿilm* is the broad *Uṣūlī* usage of *qaṭʿ* just outlined), is essential (*al-ḥujjiyat al-ʿilm dhātiyya*). This position is the foundation stone of the mainstream school of modern Shīʿī legal epistemology. Much of the discussion amongst modern *Uṣūliyūn* regarding the nature of *ʿilm*, in the sense of *qaṭʿ*, *and* how it is deemed authoritative employs Shaykh Anṣārī's comments on the matter as a starting point for further deliberation. Anṣārī states that;

> [T]here is no doubting the obligation to follow *qaṭʿ* and to act in accordance with it so long as it is present, because it is, in and of itself, a means (*ṭariq*) to reality (*wāqiʿī*) . And its instrumentality is not capable of stipulation from the Divine Legislator either in terms of affirmation or negation[460].

Anṣārī here asserts that *qaṭʿ* has a disclosive quality, described as the instrumentality (*ṭarīqiyya*) of *qaṭʿ* in revealing reality. He also claims that there is an obligation to follow this *qaṭʿ*. Muẓaffar recognizes that the description of *qaṭʿ* as having these two qualities is not free from ambiguity and it is not immediately obvious how they relate to the claim that psychological certainty is authoritative as a result of its own essence (*bi-dhātihi*)[461]. Somewhat sympathetically, Muẓaffar states that this ambiguity in Anṣārī's words arises only due to the strictures of the language being employed. For Muẓaffar, the proper conceptual analysis of *qaṭʿ* shows that;

> [T]here is no independent obligation associated with *qaṭʿ* other than the acceptance of the reality which is considered certain... there is nothing beyond the disclosure of reality for which man waits; if reality is disclosed to him, it is necessary (*lā budda*) that he accepts it[462].

This necessity (*lā buddiyya*) to accept the certain disclosure of reality is according to Muẓaffar a rational necessity whose origin lies in the fact that *qaṭʿ* is,

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[460] *Farāʾid al-uṣūl* (Beirut, Muʾassasat al-nuʿman, 1991) Vol. 1, p. 4.
[461] *Uṣūl al-fiqh*, vol. 2, pp. 20-21.
[462] *Ibid.*

in of itself, a means to reality. Thus Anṣārī's claim that there is an obligation to follow *qaṭʿ* can be reduced to the recognition that '*qaṭʿ* in itself is a means to reality, its essence being the very disclose of reality'.[463] The two aspects of *qaṭʿ* described by Anṣārī, its disclosive nature and the obligation to follow it, are according to Muẓaffar 'a single thing in reality' and hence it can be understood why Anṣārī stated that the obligation to follow *qaṭʿ* is a result of its essential instrumentality (*al-ṭarīqiyyat al-dhātiiyya*).[464]

The tone of Muẓaffar's prose somewhat betrays the ideological esteem with which *qaṭʿ*, and the *ʿilm* which it is considered reflective of, are afforded when he elaborates on the essential instrumentality of certainty in disclosing reality and impelling acceptance;

> It has already been said that that the essence of *al-qaṭʿ* is the disclosure of reality, this is because it is a pure luminescent reality, there is no darkness in it and no possibility of error is associated with it. This is because *ʿilm* is illuminating of its own self and illuminating of other than itself. Its essence is disclosure in its own right, and it is not that it is a thing that has disclosive properties[465].

Based on the philosophical premise of 'that which is essential is not caused (*al-dhātī la yuʿallul*)', this instrumentality of *qaṭʿ* can neither be affirmed nor negated; *qaṭʿ* simply is disclosive of reality. The emphasis this position receives in the works of the *Uṣūliyūn* may seem a bit much, even by Uṣūlī standards, at least until the context of Anṣārī's polemics against the Akhbārī school are revisited. One of the prominent contentions of the Akhbārī disposition refuted by Anṣārī in this analysis of *qaṭʿ* was that only certainty arising from specific textual sources is relevant in the inference of *Sharīʿa*, with the certainty arising from rational premises (*muqaddamāt al-ʿaqliyya*) not deemed relevant[466]. However the Uṣūlī position, informed by the forgoing conceptual analysis of *qaṭʿ*, holds that the instrumentality of *qaṭʿ* and the subsequent rational necessity to accept its

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[463] *Uṣūl al-fiqh*, Vol. 2 p. 21.
[464] *Ibid.*
[465] *Ibid,* p. 22.
[466] See Anṣārī, *Farāʾid al-uṣūl,* pp. 15-22.

disclosure is essential to *qaṭʿ* and thus it is not philosophically possible, and hence not actually possible, for God to remove this instrumentality of *qaṭʿ* from any source whatsoever -be it rational or textual.

The foregoing analysis of the nature of *qaṭʿ* leads to acceptance of the *ḥujjiyya* of *qaṭʿ*, in the sense of *qaṭʿ* conferring accountability and excusabillity. *Qaṭʿ* is considered by its own essence to be instrumental in disclosing reality and impelling the one who is certain towards accepting the object of certainty, thus whenever there is *qaṭʿ* in a duty that duty is considered to become an active (*munajjaz*) responsibility. The accountability side of *ḥujjiyya* becomes present. Due to the rational obligation to follow this certainty, even if the certainty actually leads to false action there can be no liability levied upon the individual for any resultant error. The epistemological value of *qaṭʿ* is so high that an individual has no option but to accept his certainty and God cannot expect him to do otherwise, hence the excusabillity element of *ḥujjiyya* is also present. Any source of knowledge producing *qaṭʿ* is thus considered a *ḥujja* by the *Uṣūliyūn,* it is a means of affirming *(wāsita fil-ithbāt)* the religious precept associated with any given instance and can be employed as a justified means of inferring *Sharīʿa* precepts. However describing a *qaṭʿ* producing source or evidence as a *ḥujja* is employing the term *ḥujja* in its linguistic or logical sense, for as described above, the *ḥujja al-uṣūlī* is a source which is deemed authoritative but *in themselves* does not disclose or affirm reality. It is to this pivotal category of the *ḥujja al-uṣūlī* and the means of justifying its validity that we turn to now when discussing, not the *ḥujjiyya* of *qaṭʿ*, but the *ḥujjiyya* of *ẓann*.

5.5 The *ḥujjiyya* of *ẓann*

Bāqir al-Ṣadr, although he himself is not a proponent of this line of reasoning[467],

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[467] Bāqir al-Ṣadr claims that *ḥujjiyya* is not simply a function of the discolsive properties of *qaṭʿ*, but rather it is a function of God's devotional right- his *mawlawiyya*. The disclosure of responsibility attained through *qaṭʿ* only confers *ḥujjiyya* if and when that responsibility comes from someone who is in a position of authority and to whom obedience is owed. According to Bāqir al-Ṣadr, in the case of God, this right of obedience (*ḥaqq al-ṭāʿa*) extends to such an extent that it includes not only responsibilities which one is certain of, but also suspected (*maẓnūn*) responsibilities and even doubted (*mashkūk*) ones. This novel position seems to extend the *fiqhi*

recognizes that the above position is the popularly held view (*al-mashhūr*) amongst modern *Uṣūliyūn* regarding the *ḥujjiyya* of *qaṭʿ*.

> With regards to accountability (*al-munajjaziyya*) they claim that it is an essential correlative of the very nature of *qaṭʿ*, and hence they believe that there is the absence of accountability in the absence of *qaṭʿ*. Accordingly it [the popularly held position] can be referred to in terms of the principle of the blameworthiness of punishment in the absence of explication [of responsibility] (*qubḥ al-ʿiqāb bi-lā bayān*).[468]

Framing the popularly held position regarding the *ḥujjiyya* of *qaṭʿ* in this way leads neatly into a discussion of the *ḥujjiyya* of *ẓann*. In terms of the epistemological hierarchy set out in *ʿilm al-manṭiq*, *ẓann* reflects a qualitatively lower category to that of *qaṭʿ*, for to have *ẓann* regarding something is described as the weakest form of assent (*taṣdīq*).[469] *Ẓann* by definition admits to the possibility of error but is of higher epistemological status than the absolute doubt (*shakk*) that is considered to arise as a result of being precisely midway between certain knowledge (*ʿilm*) and absolute ignorance (*jahl*). *Ẓann* implies some sort of preponderance (*rajḥān*) in the mind towards a position that, unlike *qaṭʿ*, accepts the possibility of alternatives to it (*iḥtimāl al-khilāf*)[470]. The term *ẓann* is then broad enough to cover the range of epistemic states which include mere speculation, as long as it is not entirely baseless, all the way to the highly probable- all of which are less than *qaṭʿ*. Thus to have *ẓann* regarding a *Sharīʿa* precept, means that one is less than certain with regards to its corresponding duty or status. It implies a case where there is no certain *bayān* or no full explication of responsibility. The mainstream *Uṣūlī* position on *ḥujjiyya* is described by Bāqir al-Ṣadr as operating under the principle of *qubḥ al-ʿiqāb bi-lā bayān*, whereby holding someone responsible in the absence of explication is

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depiction of the relationship between God and creation as analogous to the relation between master and slave to an even greater extent than that which may otherwise be seen in Uṣūlī discourse. See *Durūs.* Vol. 2, pp. 35-37. Despite his acknowledgement that even suspected or *maẓnūn* responsibilities are potentially authoritative, Bāqir al-Ṣadr comes back in line with the mainstream position on the inherent non-authority of *ẓann* due to textual evidences, see *Durūs.* Vol. 2, p 60.

[468] *Durūs.* Vol. 2, p. 47-48.

[469] Muẓaffar, *al-Manṭiq*, pp. 14-15.

[470] See Al-Faḍli, *Durūs fī uṣūl al-fiqh al-Imāmiyya*, Vol 1, p. 269.

considered an immoral act not attributable to a Just God. Accordingly to have *ẓann* regarding a duty (*taklīf*), to consider it as a possible or even a probable responsibility, is in itself not of sufficient epistemic strength for a Just God to hold one accountable before it. Any less than certain supposition regarding the existence of a duty does not reflect full explication or *bayān* – hence *ẓann*, in and of it self, is not capable of activating responsibility. Again referring to Bāqir al-Ṣadr's description, the commonly held belief regarding the relationship between *qaṭʿ* and *ḥujjiyya* is that *ḥujjiyya* is nullified in the absence of *qaṭʿ* [471], and hence the primary principle with respect to *ẓann* is that it is *not* authoritative *(al-aṣl ʿadam al-ḥujjiyyat al-ẓann)*.

As outlined in the brief historical survey of the shifting ideas in Shīʿī legal epistemology at the beginning of this chapter, the rejection of speculative or probable knowledge, in itself, being afforded the status of a valid source of *Sharīʿa* inference can be traced back to the earliest systematic Imāmi treatments of *uṣūl al-fiqh*. However the pragmatic necessity of incorporating sources of knowledge which could not attain the epistemic status of being 'certainty-bearing' within the Jurists interpretive arsenal led to a progressively explicit incorporation of *ẓann* as a valid means to establishing *Sharīʿa* precepts. In the post Akhbārī era of the school of Anṣārī, we see a conscious and explicit re-affirmation of the foundational principle regarding the inherent non-authority of *ẓann* before an argument is made for the all important exceptions to this rule which establish the authority of *specific* validated sources of *ẓann*. These specific validated sources, which are discussed further below, are referred to as *al-amārāt* (validates sources) whilst the substantiated speculative knowledge which they give rise to is termed *al-ẓann al-khāṣ* or *al-ẓann al-muʿtabar*.[472] Of course it is these less than certain sources of knowledge, and the *khabar al-wāḥid* in particular, that determine the content of the overwhelming majority of all *fiqhi* precepts and it is in the direction of offering justifications for the authoritativeness of these sources that this whole discussion of *ḥujjiyya* is ultimately directed. As shall be seen, the theoretical framework that validates

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[471] *Durūs*. Vol. 2, p. 46.
[472] Muẓaffar, *Uṣūl al-fiqh*, Vol. 2 pp.13-14.

speculative textual sources for the inference of *Sharīʿa* precepts simultaneously undermines the validity of any potentially relevant judgments of independent rationality. Before drawing out this 'epistemic discrimination'[473] there is still space for further analysis of the manner and tenability of arguments for the primary principle regarding the inherent non-authority of *ẓann* itself and exactly how the exceptions to this rule are made.

As we have seen, analysis of *qaṭʿ* and its inherent disclosive nature as the basis of *ḥujjiyya* provide a philosophical framework to reject any inherent authority of *ẓann*- an epistemic state which by definition does not provide the same level of disclosure as *qaṭʿ*, thus not entailing the corresponding obligation to accept its content and hence in itself conferring neither accountability nor excusabillity. However despite this philosophical premise, and again interestingly in view of Akhbārī- Uṣūlī polemics, it is actually textual rather than philosophical reasons which are most prominent in the modern *Uṣūlīyūn*'s justifications for the inherent non-authority of *ẓann*. In a manner typical of modern scholarship on the subject, Muẓaffar bases his primary rejection of the validity of *ẓann* upon textual evidences from The Qur'ān;

> It is not permissible to rely upon it [*ẓann*] in attempts to establish the reality (*al-wāqiʿī*) [of the *Sharīʿa*] due to the words of the Most Exalted "*assumptions (al-ẓann) can be of no value at all against the Truth*"[474]. And Allah, exalted, in His glorious book has blamed whosoever follows *ẓann qua ẓann*, such as in His words "*They follow nothing but speculation (al-ẓann); they are merely guessing*" [475], and He, exalted has said "*Say, 'Has God given you permission [to do this], or are you inventing lies about God?*"[476]... [477].

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[473] Fanaei and Bhojani, *Ijtihād in Traditional Shīʿī thought,* p. 121.
[474] Muẓaffar himself does not give the references to the verses of the Qur'ān cited in this passage. This first quote appears twice in the Qur'ān, 10: 36 and 53: 28. In his translation of the latter verse, M.A. S. Abdul Haleem uses the term 'Guesswork' for *al-ẓann* in place of his rendering of the term as 'assumptions' in the former.
[475] 6: 116. The exact same text is also found at 10: 66, where Abdul Haleem offers a somewhat different translation of the phrase rendering it as; "they are only following assumptions and telling lies".
[476] 10: 59.
[477] *Uṣūl al-fiqh*, Vol. 2, p. 16. Other verses of the Qur'ān mentioned in support of the textual prohibition of acting in accordance with *ẓann* also include 4: 157, 53: 23 and 17: 36, see Bāqir al-Irwānī, *Durūs tamhidiyya fi tafsir ayāt al-ahkam* (Qum, Dār al-fiqh, 2004), Vol. 2 pp. 695-696 .

At this point it is important to note that any hermeneutical system that fails to separate between first order questions of normativity and second order questions of epistemology leaves itself open to a degree of circularity, and this case of arguing for the invalidity of *ẓann* based on textual evidences is no different. If God is commanding what the primary epistemic principles of interpretation are to be through His textual dictates, what epistemic principles are to be applied in the interpretation of these commands? Yet basing the justification for the invalidity of *ẓann* on textual evidences gives the impression that the invalidity of relying on *ẓann* is considered a devotional duty commanded by God.

Despite also arguing for the invalidity of *ẓann* based on textual evidences, Bāqir al-Ṣadr does recognize that the 'prohibition of acting in accordance with *ẓann* is not a devotional prohibition'; rather it is what is referred to as a directive prohibition (*nahī irshādī*)[478]. *Irshādī* commands and prohibitions are those commands and prohibitions that, although emanating from Divine legislation, simply outline or reinforce a judgment of reason which was otherwise capable of coming to the very same position independently[479]. Bāqir al-Ṣadr's statement that the prohibition of acting in accordance with *ẓann* is 'nothing other than direction (*irshād*) to its non-validity', thus suggest that he recognizes that it is rationality which is the real source of the epistemic judgments regarding the invalidity of *ẓann*. However he does not take this reasoning to its logical conclusions that would suggest that if it is the epistemic principles of reason that are the actual source of the principle of the non-validity of *ẓann*, then any limits or exceptions to this principle should also be the subject of rational principles and not the subject of devotional dictates.

Despite emphasis on independent rationality and his use of the devotional-directive (*mawlawī-irshādī*) distinction elsewhere[480], these subtleties are not referred to in Muẓaffar's treatment of the textual bases for the principle of the

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[478] *Durūs,* Vol. 2 p. 60-61.
[479] Zysow terms the 'devotional' and 'directive' command as 'authoritative' and 'advisory', see 'Two theories of Obligation' p. 397. For more on the distinction see Muẓaffar, *Uṣūl al-fiqh*, Vol. 1 pp. 207-208 and Sanqūr, *Al-Muʿjam al-Uṣūlī*, Vol. 1 pp. 330-334, 336-337.
[480] *Uṣūl al-fiqh*, Vol. 1 pp. 207-208.

non-validity or impermissibility of relying upon *ẓann*. Elaborating on the latter of the three cited verses, Muẓaffar emphasizes this impermissibility in a manner that simultaneously starts to make room for justifying the exceptions to the general rule;

> In this last verse in particular that which has been permitted is placed as something which is in contrast to that which is 'attributing lies to Him', thus that which is not permitted by Him is necessarily to be considered the attribution of a lie, due to the oppositional relationship between the two. Thus if we were to attribute a judgment to Allah, exalted, without His permission, then without doubt, due to the verse, it would be a prohibited and blamed act of attributing a lie. There is no doubt that acting according to *ẓann*, considering it as though it is from Allah and a means of establishing His precepts, is a form of associating a judgment to Him without His permission, and thus it falls under the category of the prohibited attribution of a lie[481].

Ẓann is not authoritative in itself, it's employment in trying to establish *Sharīʿa* precepts has not been permitted and is non-sanctioned by God, thus its use in this way is condemned as being a prohibited case of *ifitirā*- attributing a lie to God. This line of analysis opens up the space for the assertion of exceptions to the general rule of the non-authoritativeness of *ẓann if and when* it can be established that God Himself has defiantly allowed or permitted its use;

> [I]f it is established through a definitive evidence and a certain argument that the Divine Legislator has designated a specific speculation (*ẓann khāṣ*), due to a particular reason, as a means to His precepts, and He considers it as authoritative upon them, being satisfied with it as a validated source (*amāra*), then it *is* to be referred to [in the process of *Sharīʿa* inference][482].

If God himself were to permit reliance on any particular non-certain source of knowledge as a means to establishing His *aḥkām*, there is no longer an objection to its employment. It is held that God's consent in allowing a specific speculative

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[481] *Uṣūl al-fiqh,* Vol. 2 p. 16.
[482] *Ibid.*

source to act as a validated means of understanding his *aḥkām* 'removes that particular *ẓann* from the scope of the primary principle, because [in such a case] it is not a guess, nor an estimate, nor the attribution of a lie'[483].

Although *ẓann* is unequivocally considered as non-authoritative in itself, due to the textual evidences cited from the Qur'ān, if through definitive evidence (*dalīl qaṭʿī*) it is established that God has consented to the use of a particular source of *ẓann* then it would attain the status of conferring accountability and excusabillity. Such certainly validated, but non-certainty bearing, sources are referred to by an array of terms including *amāra*, *ẓann al-khāṣ* and *ẓann al-muʿtabar*. Unlike a certainty bearing source, which as we have stated would be described as a *ḥujja* in the linguistic sense of the term, this type of evidence is described as a *ḥujja* in the specific *Uṣūlī* sense- it establishes its referent *without* reaching the level of *qaṭʿ*, providing disclosure *as though* it has established it.

Accepting the assertion that there is certain evidence that God has permitted the use of the *akhābr al-aḥād*, a source which by definition is *ẓannī*, even if the content of a particular report doesn't have the epistemic strength to establish that its content is actually real or true, the claimed permission from God endorsing the validity of the *akhbār al-aḥād* means that He has allowed us to assume that such reports are a justifiable means to His *aḥkām*. As a result, despite the absence of sure knowledge (*ʿilm*) and the known possibility that the report may be leading to false action, such sources of *ẓann* are accorded the quality of *ḥujjiyya* for they are in this way considered to be a *ẓann* which is grounded in *ʿilm*;

> And in reality relying on a validated source of speculative knowledge (*al-zann al-muʿtabar*) for which it has been established, by means of certitude, that it is a *ḥujja* is not like accepting speculative knowledge per se, even though its designation from the Divine Legislator is in respect to it being speculative. Rather it is [a case of] relying on definitive knowledge and certainty (*yakunu akhadh^{an} bil-qaṭʿ wal-yaqīn*)- the definitive knowledge that stands upon the designation of that particular cause of *ẓann*… and

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[483] *Uṣūl al-fiqh,* Vol. 2 p. 16.

definitive knowledge is authoritative due to its own self, requiring no stipulation from any one[484].

5.6 The ultimate criterion for authority

From that which has preceded we see that the *Uṣūliyūn* accept that there are two different epistemic categories of evidences which may be considered as authoritative means of coming to knowledge of the *Sharīʿa* precepts, authoritative in the sense that they confer both accountability and excusabillity. A *mujtahid* may employ evidences that are certainty bearing, those that produce *qaṭʿ* regarding a precept. Any such source is a *ḥujja* in the logical sense of the word and its *ḥujjiyya* stems from the inherent disclosive nature of *qaṭʿ*. The second epistemic category of evidence employed are those non-certain (*ẓannī*) sources of knowledge which have received certain validation. Sources of this category are referred to as a *ḥujja* in the technical *Uṣūlī* sense of the word. Although in themselves they are not of enough epistemic strength to confer accountability and excusabillity, due to certain evidence for the Divine validation of these speculative means, they are raised to a level where they are also believed to confer accountability and excusabillity.

The ultimate criterion for the authoritativeness (*ḥujjiyya*) of any source of *Sharīʿa* knowledge is thus *qaṭʿ*. In line with the aspirational attachment to *ʿilm* displayed throughout the history of *Shīʿī* legal thought, definitive knowledge or certainty becomes the claimed foundation stone of how the *Uṣūliyūn* justify their choice of the sources they refer to and the methods they employ in the inference of *Sharīʿa*. It is through this claimed ultimate recourse to *qaṭʿ* that their system is deemed authoritative, conferring accountability and excusabillity even in the cases when their inferred precepts do not correspond to the actual precept in the knowledge of God. With this outline of the basis by which any potential source of knowledge of *Sharīʿa* precepts may be considered authoritative, we can now engage with the question of the *ḥujjiyya* of the specific source that this study is concerned- the judgments of independent rationality (*al-mustaqillāt al-ʿaqliyya*) stemming from

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[484] Muẓaffar, *uṣūl al-fiqh*, Vol. 2 pp. 16-17

the ʿAdliyya meta-ethics central to Shīʿī theology.

5.7 The *ḥujjiyya* of *al-dalīl al-ʿaql*

The primary aim of this study has been to answer the question of why the *ʿAdliyya* moral rationalism fundamental to Shīʿī theology has not led to independent rationality playing a substantive role as an actual source in the process of inferring *Sharīʿa* precepts. Before tracing the increasing sophistication with which the principle at the heart of this moral rationalism has been conceived of in Shīʿī theological thought and then in modern *uṣūl al-fiqh* itself (chapters three and four), chapter two discussed the historical ambiguity with which the term *dalīl al-ʿaql* has been employed and how only subsequent to the Uṣūlī-Akhbārī polemics has this ambiguity come to be somewhat resolved in the writings of the modern *Uṣūliyūn*.

Following on from the preceding discussion of the ultimate criterion for *ḥujjiyya,* the earlier cited definition of *al-dalīl al-ʿaql* offered by Muẓaffar in his attempts to clear up this historical ambiguity should now fall into further relief. For Muẓaffar, the *dalīl al-ʿaql* that may be considered a source alongside, or even versus, the Qurʾān and the Sunna is 'any rational proposition which leads to *qaṭʿ* in a *sharʿī* precept'[485]. Thus *al-dalīl al-ʿaql* is no different from any other potential source of *Sharīʿa aḥkām* in the mainstream modern framework of *uṣūl al-fiqh*, for it is relevant only in so far as it relies on certainty. Of the two categories of evidence outlined above, from the definition offered by Muẓaffar we see that *al-dalīl al-aqlī* is considered authoritative when it is certainty bearing. The remainder of this chapter will move from its focus on the general criteria for *ḥujjiyya* to this specific case of the *ḥujjiyya of al-ʿaql*, again primarily centred on Muẓaffar's treatment, demonstrating that it is ultimately purely epistemological concerns which render the independent judgment's of rationality effectively redundant when it comes to the actual inference of *Sharīʿa* precepts.

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[485] *Uṣūl al-fiqh*, Vol. 2 p. 105. Bāqir al-Ṣadr's definition of *al-dalīl al-ʿaql*, 'any proposition perceived by reason, through which it is possible to infer a *sharʿī* precept', although not explicitly mentioning *qaṭʿ* is not substantively different from the one mentioned by Muẓaffar. See *Durūs.* Vol. 2, p. 221.

Qaṭʿ has been avidly described as *the* common element in the inference of *Sharīʿa aḥkām*[486], thus within a framework which sees *qaṭʿ* as the ultimate criterion for authority it is unsurprising that Muẓaffar makes it a central condition in his definition of that *dalīl al-ʿaql* which may be considered an authoritative source (a *ḥujja*) alongside the Qurʾān and Sunna.

> *Al-dalīl al-ʿaqli*, alongside the Qurʾān and the Sunna, necessarily cannot be considered authoritative unless it leads to *qaṭʿ*- which is authoritative due to its own self (*huwa ḥujja bi-dhātihi*). Accordingly it is not correct that it includes the non-certain (*ẓanūn*), nor that which is unable to attain *qaṭʿ* through rational premises.[487]

As shall be demonstrated the exclusion of any rational premises which lead to less than certain knowledge of the *Sharīʿa* precepts effectively renders any potentially relevant judgment of independent reason stemming from considerations of rational morality irrelevant as a source of *Sharīʿa* precept. This being said, the definition does not outline exactly what Muẓaffar has in mind by those rational judgments that *do* lead to certain knowledge of *Sharīʿa* precepts and accordingly *can* be considered a *ḥujja* alongside the Qurʾān and Sunna. Muẓaffar addresses this question in some detail 'crossing the t's and dotting the i's', or as he puts 'in order to place the dots upon their letters (*waḍʿ al-nuqāt ʿalā ḥarūf)'* and thus complete his discussion of *al-dalīl al-ʿaql*[488]*.* Despite the space afforded by Muẓaffar to the treatment of *al-mustaqillāt al-ʿaqliyya*- which included an extensive analysis and argumentation for both the theological premise of the principle of the intelligibility of the praiseworthy and the blameworthy and the jurisprudential question of the correlation between the judgments of rational morality and the judgments of the Divine legislator- somewhat ironically, his treatment of the question of the *ḥujjiyya* of *al-ʿaql* leads him to express a position regarding the nature of *Sharīʿa* which may be described as a radical positivism. Precepts are depicted as following only the dictates of the Divine lawgiver, accordingly knowledge of the precepts and their criteria is only

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[486] Bāqir al-Ṣadr, *Durūs.* Vol. 1 pp. 70-72.
[487] Muẓaffar, *Uṣūl al-fiqh*, Vol. 2 p. 105.
[488] *Ibid.*

accessible via His designated sources[489].

In an attempt to clarify his position regarding exactly which type of rational judgments do lead to certain knowledge of *Sharīʿa* precepts Muẓaffar returns to his reading of the Aristotelian distinction between theoretical rationality (*al-ʿaql al-naẓarī*) and practical rationality (*al-ʿaql al-ʿamalī*), examining the potential *ḥujjiyya* of each category of rational judgment in turn and identifying the rational correlations which he believes can indeed be a certain and hence authoritative means to knowledge of *Sharīʿa* precepts.

5.7.1 Theoretical rationality and knowledge of *Sharīʿa* precepts

Earlier Muẓaffar defined theoretical rationality as being 'the perception of those things befitting to be known'[490], within his discussion of the *ḥujjiyya* of *al-ʿaql* he re-cites this definition but furnishes it further by stating that this means 'the perception of those things which have reality'[491]. He then goes on to explicitly and absolutely reject any possibility of theoretical rationality independently perceiving or coming to now, from scratch, the content of *Sharīʿa* precepts. The reasoning he offers for this is related to his vision of the positive nature of *Sharīʿa* *aḥkām*. He describes the canonical regulative instructions as being 'dictated (*tawqīfiyya*)' from Allah, meaning that knowledge of them is *only* possible from transmitted or revelatory sources designated by Allah[492]. The importance of the relevant passage calls for its citation in full and it reads as follows;

> It is not possible to independently know the *aḥkām* of *Sharīʿa* from scratch (*ibtidāʾan*), that is there is no means for *al-ʿaql* to know, without re-course to the correlation (*al-mulāzama*), that the precept (*ḥukm*) of a given act is so and so according to the Divine Legislator. The secret behind this is clear, because the precepts of Allah are dictated (*tawqīfiyya*), and thus it is not possible to know them except by means of the transmitted sources (*al-*

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489 Muẓaffar, *Uṣūl al-fiqh*, Vol. 2 p. 105.
490 *Ibid,* Vol. 1 pp. 193-194.
491 *Ibid*. Vol. 2, p. 105.
492 *Ibid*. p. 105.

simāʿ) emanating from a propagator of the precepts that has been designated (*manṣūb*) as a source for their propagation by Him [Allah], exalted.[493]

The qualification 'without recourse to the correlation' is crucial here in leaving space for Muẓaffar to maintain that *al-ʿaql* can still have some sort of role as a source of *Sharīʿa* knowledge. However the thrust of the passage states, quite unequivocally, that it is impossible for theoretical rationality to come to *direct* knowledge of *Sharīʿa* precepts. Despite Muẓaffar's exhaustive efforts to outline the room for reason as a source of *Sharīʿa* alongside the Qur'ān and Sunna, the bowing to textual authority in this statement has led to it being held up by Bernard Weiss, an authoritative voice in Islamic legal studies, as the clearest 'endorsement of the textualist position as one could hope to find *anywhere* in the literature of Muslim jurisprudence' [494].

Muẓaffar's position here seems to stand in contrast to that of Bāqir al-Ṣadr. Despite being upfront about not employing independent rationality in even a single instance of his own *Sharīʿa* inferences[495], we have seen that Bāqir al-Ṣadr nevertheless maintains that 'although difficult to actually occur' it is at least theoretically possible to attain knowledge of *Sharīʿa* through unmediated judgments of theoretical rationality. [496] Alongside his pessimism about the efficacy of the actual exercise of the often mistaken faculties of human reason, Bāqir al-Ṣadr maintains that there is a rational criteria and wisdom behind the *Sharīʿa*, something which Muẓaffar rather counter intuitively seems to undermine as he elaborates on his above statement by further describing his conception of the nature of *Sharīʿa* precepts;

> Necessarily the *aḥkām* of Allah are not from amongst the primary propositions (*al-qaḍāyā al-awwaliyya*) [which can be known intuitively], nor can they be attained through the observations of vision and its like from amongst the external sensory faculties (*al-ḥiwās al-ẓāhira*) or even the

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[493] Muẓaffar, *Uṣūl al-fiqh*, Vol. 2 p. 105.
[494] *The Spirit of Islamic Law*, pp. 39-40. Emphasis added.
[495] *Al-Fatāwa al-wāḍiḥa,* p. 98.
[496] *Durūs*, Vol. 2 p. 306.

internal (*al-bāṭina*), and they also can not be attained through experiment (*al-tajraba*) or theoretical extrapolation (*al-ḥadas*). If this is the case, then how is it possible to have knowledge of them [the *aḥkām* of Allah] from other than the means of transmitted knowledge from their designated source (*ṭarīq al-simāʿ min mubalighihā*)! Their nature is like that of all postulated things (*al-majʿūlāt*) stipulated by man (*yaḍaʿahā al-bashr*) such as languages, signs, symbols and their like.[497]

This positivist depiction of the nature of *Sharīʿa* precepts stands in tension with any aspirations for a natural law reading of *Sharīʿa* rooted in an *ʿAdliyya* theology that offers a rational moral framework for the *aḥkām* of a Just and moral God. But it is not theology which drives Muẓaffar's positivism, it his epistemology;

> [T]he criterion (*al-milākāt*) of the *aḥkām*, like the *aḥkām* themselves can not be known except by means of transmitted knowledge from their designated source because we do not have a reliable principle through which we may know the hidden secrets of Allah's precepts, nor the criterion upon which He holds that the precepts are based, and "*assumptions (al-ẓann) can be of no value at all against the Truth*".[498]

With the Qurʾānic reference at the end of this quote (10:36 and 53:28) Muẓaffar brings us back to the epistemic principle of the invalidity of unsubstantiated *ẓann*. In the absence of definitive knowledge and surety, one has no basis to rely upon speculative judgments of theoretical rationality regarding what might be the *aḥkām,* or the criterion for the *aḥkām,* in any given instance.

So the position states that theoretical rationality cannot or does not *independently* lead to definitive certain knowledge of *Sharīʿa* precepts directly. However this does not prevent theoretical rationality from acting as a valid certainty bearing evidence by way of its ability to perceive, or come to know of, the existence of necessary correlations *between* precepts. Speaking in the context of *al-dalīl al-ʿaqlī* as being inclusive of both categories of rational indicator, non-independent rationality (*ghayr al-mustaqillāt al-ʿaqliyya*) and independent

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[497] *Uṣūl al fiqh*, Vol. 2 p. 105-106.
[498] *Ibid.*

rationality (*al-mustaqillāt al-ʿaqliyya*) Muẓaffar states;

> What we mean by *al-dalīl al-ʿaqlī* is the judgment of theoretical rationality
> regarding a correlation between established precepts, canonical or rational,
> and between another canonical precept such as its judgment regarding a
> correlation in the question of sufficiency (*al-ijzāʾ*) and the pre-requisites to
> an obligation (*muqaddamāt al-wājib*).… and like its judgment of the
> necessity of a concurring judgment of Allah when the rational community
> make a judgment in the case of *al-arāʾ al-maḥmūda* (universal rational
> moral propositions)[499].

In each of the mentioned cases it has been argued that there exists a necessary
rational correlation, which can be known by theoretical rationality. In the case of
the non-independent rational indicator, this correlation occurs between an
established canonical precept, for example a textual obligation to perform an act,
and another rationally determined canonical precept, which in this case may
state that the performance of the pre-requisites to this obligation are also a
canonical duty. In the case of the independent rational indicator the correlation
perceived by theoretical rationality is between two rational precepts where, for
example, the first may be that the rational community judges that justice is
praiseworthy and the second, being its correlate, that according to reason Divine
legislation must also consider justice as praiseworthy.

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[499]*Uṣūl al-fiqh*, Vol. 2, p.106.
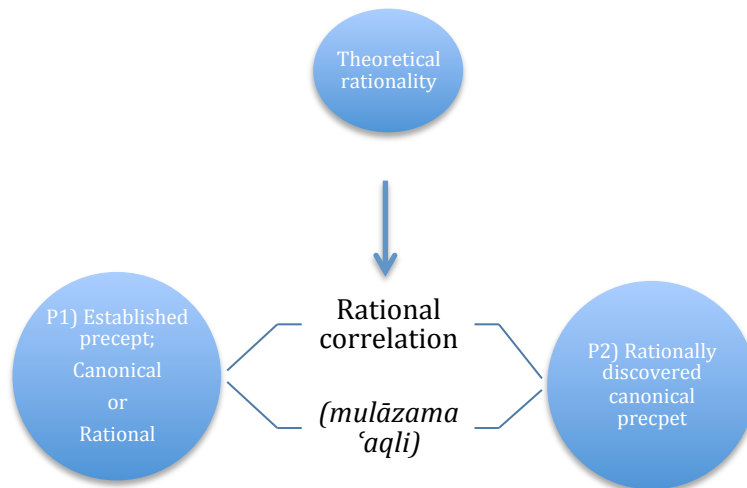
Fig. 3 Theoretical rationality and the correlation between judgments

As the rational correlations are conceived of as ontologically occurring real entities (*amūr ḥaqiqiyya wāqʿiyya*) these can be known by theoretical rationality. Theoretical rationality can come to know of the existence of necessary correlations between precepts either due to their self-evidence or through the application of reasoning (*bil-bidāha aw bil-kasab*) because, unlike the *aḥkām* themselves, these correlations are from amongst those certain proposition 'which can be known by reason with surety (*ʿala sabīl al-jazm*)'.[500] It is the possibility of knowing these correlations for sure, or for certain, that allow the knowledge of the rationally discovered precept (p2) to be an authoritative source, a *ḥujja*, which confers accountability and excusabillity.

> And if *al-ʿaql* is certain of the correlation (*al-mulāzama*)- which
> presupposes that it is certain of the precept necessitating the correlation
> (*al-malzūm*, P1)- then accordingly, necessarily, it becomes certain of the

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[500] *Uṣūl al-fiqh*, Vol. 1 p. 106.

affirmation of that which it correlates to (*al-lāzim*, p2), and that which it correlates to is the [newly discovered] precept of the Divine Legislator[501].

In what may seem like a rather convoluted manner, Muẓaffar here says that if one becomes certain of the existence of a correlation based on p1, which discloses p2, then for sure that yields certain knowledge of the existence of p2.

> With the acquisition of certainty, the certainty is authoritative and it cannot be prohibited, in fact it [certainty] is the basis of the authoritativeness (*ḥujjiyya*) of every authoritative source (*ḥujja*) in the manner previously explained[502].

It is theoretical rationalities certain knowledge of these rational correlations that are an authoritative means of discovering *Sharīʿa* precepts, and it is such judgments which are identified by Muẓaffar as being the *dalīl al-ʿaqlī* which is an authoritative source alongside the Qurʾān and the Sunna. Failure to recognize the distinction between the impossibility of theoretical rationality coming to direct knowledge of the *aḥkām* versus the possibility of it being able to attain knowledge of the *aḥkām* through the means of such rational correlations is, according to Muẓaffar, at the heart of the confusion of many who deny the authoritativeness (*ḥujjiyya*) of *al-ʿaql*[503].

Chapter two surveyed a number of instances of where knowledge of a *Sharīʿa* precept may arise through such correlations in the non-independent category of *al-dalīl al-ʿaql*. These reflect instances of where rational correlations are deemed authoritative and thus render significant impact on the actual inference of *Sharīʿa* *aḥkām*. However these authoritative instances of non-independent rationality are not the result of the aspect of rationality in *uṣūl al-fiqh* that stems from the *ʿAdliyya* heritage of a moral rationalism. The central concern of this study is to determine why the *ʿAdliyya* heritage of a moral rationalism, which leads to the *independent* category of rational indicator, does not seem to bear effect in the inference of *Sharīʿa* precepts. To address whether such judgments of rational morality, be they based on social rational consensus or reflect intuitively

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[501] *Uṣūl al-fiqh*, Vol. 2 p. 106.
[502] *Ibid.*
[503] *Ibid,* p. 108.

discovered facts, can lead to *authoritative* knowledge of Sharīʿa precepts needs us to first re-consider, not theoretical rationality, but practical rationality.

5.7.2 Practical rationality and knowledge of *Sharīʿa* precepts

We have seen that Muẓaffar maintained that practical rationality is a distinct category of judgment to theoretical rationality. Practical rationality is concerned with judgments regarding whether an act ought, or ought not, to be performed. Accordingly Muẓaffar considers it impossible for practical rationality to independently perceive whether God considers something as befitting to be performed or not, and hence it is impossible for it to come to independent knowledge of *Sharīʿa* precepts. Such judgments fall beyond the remit of practical rationality, for whether an 'act is considered befitting or un befitting specifically by the Divine Legislator is an ontological issues (*min al amūr al-wāqʿiyya*)'[504], it is a proposition which becomes the subject of knowledge and hence theoretical rationality, it is not directly something which is the subject of praxis- the remit of practical rationality.

> The whole remit of practical rationality is nothing more than to independently perceive that a particular act, in itself, is amongst those things that ought to be performed or ought not to be performed, irrespective of its relation to the Divine Legislator or any other judge for that matter. That is, practical rationality is the judge (*al-ḥākim*) with respect to the act, it is not disclosing of another judge (*ḥākiyᵃⁿ ʿan ḥākim ākhir*)'[505].

Practical rationality simply judges whether an act ought or ought not to be performed. As seen in the previous chapter this judgment may be based on a range of factors (*asbāb*) including, human disposition, sentiment, and custom. In addition to these 'causes' the judgment of practical rationality may arise due to the assessment that an act may lead to either perfection or imperfection and utility or detriment. According to Muẓaffar it is when these judgments of perfection/imperfection and utility/detriment are universal, such that all

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[504] *Uṣūl al-fiqh*, Vol. 2 p. 107.
[505] *Ibid*.

rational beings would consider the performance of the relevant act as either praiseworthy or blameworthy, that represent instances of purely rational judgments of morality[506].

Although judgments of practical rationality, in themselves, pertain only to whether an act is considered worthy of performance or otherwise, a judgment of theoretical rationality may follow them disclosing a correlation between the judgment of practical rationality and the judgment of the Divine Legislator as depicted in figure 3. As found in the previous chapter, Muẓaffar argues that a correlation between practical rationality and the judgment of the Divine Legislator *only* occurs in the case where the judgment of practical rationality is deemed purely rational, those universal moral judgments that are termed *al-ārā al-maḥmūda* and that arise out of an *absolute* rational concurrence.

That the occurrence of correlation between judgments of practical rationality and judgments of the Divine legislator occur only in the case of these *ārā al-maḥmūda* is identified as the reason why the theoretical space for the independent rational indicator (*al-mustaqillāt al-ʿaqliyya*) as a source of *Sharīʿa* is seen as being an exclusive corollary of the *ʿAdliyya* meta ethical principle regarding the intelligibility of the praiseworthy and the blameworthy. However here the question is not of the existence of the correlation but of the *ḥujjiyya* of any subsequent knowledge of *Sharīʿa* precepts that these judgments may give rise to, i.e. do they confer accountability and excusabillity?

When the judgment of practical rationality is what Muẓaffar deems a pure rational judgment of morality, being concurred upon by all rational beings, theoretical rationality judges that there is a correlation between this judgment and the judgment of the Divine legislator and thus 'the judgment of the Divine legislator is revealed in a manner which is certain', and of course certainty is the ultimate criterion for authoritativeness and *ḥujjiyya*.

Referring back to figure 3, if theoretical rationality is *certain* of a correlation based on the occurrence of P1, which in the case of independent rationality is a pure rational judgment of morality, then necessarily it leads to *certain* knowledge

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[506] *Uṣūl al-fiqh*, Vol. 1 pp. 195-199.

of P2- the corresponding judgment of the Divine legislator. Thus practical judgments of rational morality may lead to authoritative knowledge of *Sharīʿa* precepts by way of theoretical rationality perceiving the correlation that is deemed to exist ontologically between the two precepts.

5.7.3 Epistemic obstacles to the relevance of rational morality

Muẓaffar's treatment of the mechanics of how authoritative knowledge of *Sharīʿa* precepts may come about from judgments of rational morality is problematic on a number of levels. Of course it is heavily reliant on his conception of rational morality and how and when there is a correlation between these judgments and the judgment of the Divine Legislator. These elements of his theory were subject to detailed analysis in the previous chapter. Throughout Muẓaffar's treatment of the distinction between practical and theoretical rationality we find significant ambiguities arising, not least from the lack of precision in how he describes the different functions of perceiving and judging. We also saw how other *Uṣūliyūn*, such as Bāqir al-Ṣadr, have a very different understanding of the distinction between practical rationality and theoretical rationality reflecting a radically different conception of morality to that held by Muẓaffar. In the earlier discussions it was however noted that what amounts to judging between two different positions in moral philosophy, with basic morality being conceived as either the product of rational concurrence or as intuitively discovered facts, is outside the remit of *uṣūl al-fiqh*, and what's more it is a question which does not directly bear upon the central concern of this study.

The concern of this study has been to identify why practical judgments of rational morality, however conceived, have not borne fruit with a substantive impact on the actual inference of *Sharīʿa* precepts in Shīʿī thought. It seems that the reasons for this redundancy of independent rationality are purely epistemological. Whether practical rationality and theoretical rationality are different in the way described by Muẓaffar or whether there is no substantive distinction between the two are questions of epistemology which demonstrate the shackles that pre-modern Aristotelian ways of thinking still bear upon

contemporary Muslim scholarship. Serious attempts to resolve such questions must surely refer to, if not rely on, the developments and insights of cognitive science, the philosophy of mind and epistemology *per se* in order to produce justifiable foundations for their proper resolution. Yet beyond these issues, which again seem to fall outside of the scope of *uṣūl al-fiqh*, this chapter has also brought to light a theoretical obstacle that does fall within the core remit of the discipline and which prevents either conception of rationality and morality surveyed from having an impact upon the inference of *Sharīʿa* precepts. This obstacle is the foundation stone of what may be termed the Uṣūlī *legal* epistemology and lies in the identification of *qaṭʿ* as the ultimate criteria for the authoritativeness (*ḥujjiyya*) of any potential source of *Sharīʿa* precepts.

In his discussion of the correlation between judgments of rational morality and judgments of the Divine Legislator, Bāqir al-Ṣadr noted that acquiring certainty was elusive in light of human experience that has repeatedly demonstrated the errors and limited scope of rationality[507]. Muẓaffar on the other hand does not undermine the possibility of certainty in the correlation with regards judgments of practical rationality and judgments of the Divine legislator, but instead sets the epistemic standards to what constitutes a relevant and potentially authoritative judgment of practical rationality so high that it effectively renders judgments of rational morality irreverent as an actual source of *Sharīʿa* precept.

According to Muẓaffar a certain correlation between judgments of practical rationality and judgments of the Divine legislator does occur, and can be known, when the judgment of reason is purely rational. These purely rational judgments of morality, termed *al-ārā al-maḥmūda* or *al-taʾdibāt al-ṣalāḥiyya* are deemed to arise when there is absolute concurrence of all rational beings upon the praiseworthiness and the blameworthiness of an action. It is through this total concurrence that Muẓaffar makes his argument for the correlation, for the Divine Legislator is also a rational being or rather 'he is the chief rational being'[508]. If we can come to know, with certainty, that all rational beings agree on a moral proposition then this agreement must necessarily include and disclose, in an

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[507] *Durūs*, Vol. 2 p. 306.
[508] *Uṣūl al-fiqh*, Vol. 1 p. 206.

authoritative manner, the opinion of the Divine Legislator. However one is left with the question as to how many, if any, moral propositions are there that we can certainly know are agreed upon by *all* rational beings? Muẓaffar, falling in line with the classical Imāmi adoption of the ʿAdliyya meta-ethics, would of course affirm that there are some moral propositions which we can be certain of- however these are so few, and then so basic in nature, that they play no relevant role in the actual inference of *Sharīʿa* precepts when in comes to *fiqh*.

As Bāqir al-Ṣadr puts it, *uṣūl al-fiqh* is concerned with 'the common elements' in the process of inferring *Sharīʿa* precepts[509], thus its remit does not extend to identifying the actual instances (*al-ṣughriyāt*) of the rational moral propositions that can lead to authoritative knowledge of *Sharīʿa*[510]. However the epistemic conditions for validity described in *uṣūl al-fiqh* and analysed here justify limiting the possible occurrence of these precepts to the extent that they become irrelevant to the inference of precepts in *fiqh*. Shaykh al–Ṭūsī cites the most common examples of the rational precepts stemming from the ʿAdliyya moral rationalism in his *al-ʿUddat al-uṣūl* as including the praiseworthiness and moral obligation 'to return a deposit, to thank the benefactor and [toward] justice, and the blameworthiness of oppression, lying and purposelessness'[511]. Such basic judgements of morality are pivotal in the construction of theological doctrine, but have little relevance when it comes to *Sharīʿa* normativity inferred in *fiqh*. Although the blameworthiness of oppression can be established rationally in a manner that correlates to the *Sharīʿa* precept on oppression, it is a *Sharīʿa* precept that becomes toothless in any envisaged moral or ʿAdliyya reading of *Sharīʿa*. For whether a man's right to unilateral repudiate his wife, and whether a wife's unequal ability to seek divorce, despite being say beaten and raped by her husband constitute *instances* of oppression are all propositions deemed as non-certain and hence non-authoritative. In any potentially relevant judgement of rational morality that is not already dictated by textual evidences, or is apparently conflicting textual sources, the judgement of rational morality struggles to claim the epistemic status of being certain and thus is rendered non-

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[509] *Durūs*, Vol.1 pp. 46-49.
[510] *Ibid*. p. 313.
[511] *al-ʿUdda fi uṣūl al-fiqh*, Vol. 2 p.759.

authoritative in the face of textual evidences which are certainly validated. Any judgement of rational morality which is less than certain amounts to mere *ẓann*, and as the mainstream Uṣūlī position on *ḥujjiyya* would have it they fall under the scope of the verse of the Qur'ān which states "*assumptions (al-ẓann) can be of no value at all against the Truth*".

5.8. Summary

Justifying the authoritativeness (*ḥujjiyya*) of the sources relied upon by the *mujtahid* in the inference of *Sharīʿa* precepts is central to the Uṣūlī endeavour in *uṣūl al-fiqh*. With roots in the polemical and ideological tendencies of early Shīʿī legal theory, modern *Uṣūliyūn* have sought to ground their justifications for the authoritativeness of the sources and methods of *Sharīʿa* inference in a claimed surety of knowledge (*ʿilm*). This is despite the very early recognition that the vast majority of *fiqhi* precepts rely upon sources which are less than certain, the most notable example of which is the *khabar al-wāḥid*. As the Imāmi theory of *ijtihād* developed there was an increasing and explicit acceptance of the necessity of incorporating and justifying the use of non-certain sources within the juristic arsenal, to the extent that the likes of Ḥasan Zayn al-Dīn and Mīrzā Qummī would eventual argue for the pragmatic prima facie validity of non-certain knowledge due to an impossibility of certainty in the vast majority of cases. However this embrace of the authoritativeness (*ḥujjiyya*) of *ẓann* would not survive the intense period of polemics between the Uṣūlī and Akhbārī schools in the seventeenth and eighteenth centuries.

The modern paradigm of *uṣūl al-fiqh* epitomised in the works of Murtaḍā al-Anṣārī reasserts the early Shīʿī slogans of the prima facie invalidity of *ẓann*, claiming that *ḥujjiyya* (authoritativeness) is as an exclusive function of definitive knowledge or certainty (*qaṭʿ*). Certain knowledge confers accountability upon an individual before God, and simultaneously renders the individual excusable should his certainty be proved false. Certainty is conceived of as the ultimate criterion for authority. On the other hand, in line with their aspirational conceptions of sure knowledge and supported through the interpretation of

textual evidences, less than certain knowledge is rejected as being un-authoritative in itself, with its validity depending upon establishing the certain consent of the Legislator that this speculative means can be relied upon in the process of *Sharīʿa* inference. A potential source of *Sharīʿa* knowledge is valid then in either one of two situations. Either it is should be certainty bearing, or it should be certainly validated.

Despite the fundamental importance of a rational *ʿAdliyya* meta-ethics to Shīʿī theology and the theoretical space this affords independent rationality in *uṣūl al-fiqh*, these epistemic criteria for validity and authoritativeness (*ḥujjiyya*) render any potentially relevant judgement of rational morality redundant when it comes to the inference of *Sharīʿa* precepts in *fiqh*. Rational morality neither acts as a source in its own right, nor as a qualification to the interpretation of other textual evidence. Any potentially relevant judgements of rational morality not already found in textual evidences are deemed non-certain in themselves, and they have no certain validation for them to be considered as a valid speculative means. That the textual evidences which are employed in the face of potential conflicts with rational morality are themselves also *ẓannī,* and not certain, adds to the tension in a system whose epistemic principles prevent the potential in the *ʿAdliyya* meta-ethics from offering a rationally informed moral reading of *Sharīʿa*.

6. Reassessing the obstacles to the impact of independent rationality

6.1 Introduction

In what has preceded we have seen that Muẓaffar acknowledges that theoretically *dalīl al-ʿaql* does have an independent role, alongside the Qur'ān and the Sunna, as a source of *Sharīʿa* precept. This position, which is common to the majority of Uṣūlī scholars of legal theory, stems from the acceptance of a moral rationalism fundamental to Shīʿī theology. Although there is significant dispute about the nature, or ontology, of rational moral propositions- there is agreement that some judgments of rationality, however conceived, can correspond to the judgment of the Divine legislator and hence lead to knowledge of *Sharīʿa* precepts. The following is the paradigmatic example of a syllogism leading to knowledge of a *Sharīʿa* precept that is constructed solely from rational propositions and thus an example of independent rationality (*al-mustaqillāt al-ʿaqliyya*) as a source;

> Justice is praiseworthy according to the judgment of [pure] rationality
>
> Every [purely rational] judgment of reason is a judgment of the Divine legislator
>
> Therefore; Justice is praiseworthy according to the Divine Legislator

However, this theoretical space for rational morality as a source of *Sharīʿa* precepts is reduced by epistemic considerations to such an extent that any potentially relevant judgments of independent rationality are effectively rendered redundant when it comes to the actual inference of *Sharīʿa* precepts in the applied discipline of *fiqh*.

The basic moral judgments that 'justice is praiseworthy' and 'oppression is blameworthy' are considered fundamental moral propositions, and hence are

described by Muẓaffar as being examples of 'essential praiseworthy and blameworthy'[512]. We have seen that this non-technical usage of the word essential was described as reflecting a form of causality (*ʿilliyya*) between the subject (either justice or oppression) and its respective ruling (either praiseworthy or blameworthy)[513]. As a result *whenever* something is just it is rationally praiseworthy, and whenever something is oppression it is rationally blameworthy. Despite the fundamentality of these rational moral principles, in this form at least, they are too basic to have any significant impact upon the actual normative system of Muslim religious thought extrapolated through *fiqh*. Crucially, potential inferences to particular cases or applications of these general principles are not deemed to meet the epistemic standards required to satisfy the criteria set to establish that these are purely rational judgments which lead to authoritative *Sharīʿa* knowledge.

Consider the following inference from a basic judgment of rational morality;

> Justice is rationally praiseworthy

> An equal right to divorce is an instance of justice

> Therefore; an equal right to divorce is rationally praiseworthy

For Muẓaffar, like other *uṣūliyūn,* the first premise is a certain judgment of rational morality. The form of the syllogism employed is accepted as sound. Thus, in accordance with the deductive principles of logic embraced by scholars of *uṣūl al-fiqh, if* the second premise is also deemed valid the conclusion must necessarily be accepted[514].

Such a rational indicator, *dalīl al-aqlī,* would then be a relevant source of knowledge for a *mujtahid* seeking to determine the *Sharīʿa* precepts pertaining to divorce. This rational evidence would need to be reconciled with any textual evidences that may suggest that women should not have an equal right to divorce, for any interpretation of texts deemed rationally unjust or immoral can not be attributed to a Just and Moral God. Of course the question of how to

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[512] Muẓaffar, *Uṣūl al-fiqh* Vol. 1 p. 199.
[513] *Ibid.*
[514] On syllogistic reasoning see Muẓaffar, *Mantiq* pp. 212-217.

reconcile between apparently conflicting evidences is a complicated one. Yet dealing with conflicting evidences is already central to the *Mujtahid*'s practical endeavour of inferring *Sharīʿa aḥkām* from their sources, an endeavour that more often than not involves reconciling apparent conflicts between and within different types of textual evidences[515]. How the theoretical treatment of apparent conflicts and reconciliations would be impacted by a more substantive practical role for rationality is a critical question in any move towards a moral or *ʿAdliyya* reading of *Sharīʿa*. A full examination of if, and how, the current system of reconciliations needs to be adapted to systematically accommodate increased reference to rational morality is beyond the scope of this study, however it is hoped that this research will contribute to the grounds upon which such questions can be addressed.

What has been central to our concern has been to demonstrate that *uṣūliyūn* within the epistemological framework of Murtaḍā Anṣārī face no apparent conflict between such rational judgments and textual indicators because the authority of inferences from general rational principles of morality is undermined. In the example above, as well as in less controversial examples, it is at the level of the second premise that the epistemic obstacles we have been referring to in this study arise. Although there is an acceptance regarding the general proposition that *whenever* there is justice it is rationally praiseworthy, the problem comes on affirming that 'an equal right to divorce', or 'having freedom to change ones religion', are certainly instances of justice. If such propositions are not deemed certain, they cannot be considered *authoritative* judgments of rationality.

In the preceding chapters we have seen that the epistemic obstacles preventing inferences from the fundamental rational moral principles accepted by Shīʿa *uṣūliyūn* occur at two conceptually distinct levels. The first level is at the criteria to establish that a judgment of morality is indeed a relevant judgment of rational morality, whilst the second level of obstacle pertains to the criteria for the

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[515] For a survey of the key themes and strategies within the Uṣūlī discussion of conflicting evidences and their resolution, referred to as the discussion of *al-taʿādil wa al-tarājīḥ*, see Muẓaffar *uṣūl al-fiqh*, Vol. 2 pp. 167-212.

authoritativeness (*ḥujjiyya*) of when such a rational judgment can be relied upon as a valid means to *Sharīʿa* knowledge.

This final chapter will seek to build on the foregoing analysis by examining the scope for re-evaluating the key epistemic conditions Muẓaffar identified at each level. The limits of this study restricts us here to simply identifying possible trajectories of overcoming these obstacles and doesn't allow for the full and rigorous work up that these questions demand. A systematic and theoretically consistent reconsideration of Uṣūlī epistemology demands scholarship dedicated to the question. However the stated 'emic' approach of this study does allow space for a normative turn that can demonstrate that a reading of Shīʿī *uṣūl al-fiqh* that does not trivialise the role of independent rationality *is* possible, and that such an *uṣūl al-fiqh* can in turn produce a reading of *fiqh* that *is* consistent with the ʿAdliyya heritage fundamental to Shīʿī theology. The remainder of this chapter will thus seek to demonstrate that Muẓaffar's stated conditions for the validity and authority of independent rationality are *not* all necessary conditions for acquiring knowledge of *Sharīʿa* precepts setting the ground for the possibility of a moral or ʿAdliyya reading of *Sharīʿa* where independent rationality *does* play a substantive role in the inference of *aḥkām* attributed to a Just and Moral God.

6.2 The criteria for a relevant and authoritative judgment of rationality

In a passage arguing for the existence of a correlation between the judgment of rationality and the judgment of the Divine legislator, Muẓaffar summarises his conditions for exactly what constitutes a relevant judgment of rational morality;

> The truth is that the correlation (*al-mulāzama*) does rationally exist, for when *al-ʿaql* judges the praiseworthiness or the blameworthiness of a thing- that is when there is a concurrence of the opinion of all rational beings, due to their rational faculties, upon the praiseworthiness of a thing with respect to that which is in it relating to the preservation of society and the continuance of the species or upon the blameworthiness of a thing due to its disruption of these- then this judgment makes apparent the

opinion of all. It is then necessary that The Divine Legislator judges in accordance with their judgment, for He is amongst them and in fact The Chief of them[516].

Three conditions for establishing a relevant judgment of rational morality emerge form this passage. For a judgment of morality to be considered as correlating to the judgment of the Divine legislator, and hence a *Sharīʿa* precept, the judgment must be;

I.   Unanimous- i.e. it reflects the concurrence of *all* rational beings

II.   It must be of rational issuance- i.e. it should not be as a result of a concurrence based on things such as human emotion, sentimentality or imagination, for the judgment sought should be the product of purely rational faculties (*al-ʿaql bimā huwa al-ʿaql*).

III. It should be based on criteria of universal human welfare and societal preservation. Elsewhere Muẓaffar conceives of universal human welfare and societal preservation as being a function of universal social utility or detriment (*maṣlaḥa/mafsada nawʿiyya*)[517]. It has been seen earlier in this study that, in contrast to this view, Bāqir al-Ṣadr argues that a true rational moral judgment must correspond to a factual reality not necessarily dependent on utility and detriment[518].

These three conditions emerge at the first level of obstacle; identifying which types of judgments of morality are a relevant means to *Sharīʿa* knowledge by way of the existence of a correspondence between them and the judgments of the Divine Legislator. In addition to these criteria, as outlined in chapter five, there is a further condition that emerges when considering the basis for the authoritativeness, or *ḥujjiyya,* of potential sources of *Sharīʿa* precepts. This may be restated as a fourth condition;

IV.   There must be certitude in the existence of the correlation before it can be considered an authoritative means of *Sharīʿa* knowledge- and this

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[516] Muẓaffar, *Uṣūl al-fiqh*, Vol. 1 p. 206.
[517] *Ibid,* p. 199.
[518] *Durūs.*, Vol. 2 p. 302.

correlation is considered certain if, and only if, the purely rational judgment of morality is itself also certain.

With respect to Muẓaffar's conditions for identifying that a moral judgment is indeed rational and thus correlating to the judgment of the Divine legislator, it is the criteria of unanimity and rationality that prevent inferences from basic moral proposition to their possible instances. We have seen that other *uṣūliyūn* differ with Muẓaffar on his third criteria, arguing that instead rational moral judgments are disclosing of a factual reality that does not necessarily always relate to universal social utility or detriment. This dispute refers to the question of the nature of moral propositions rather than the epistemic obstacles to making sound inferences from basic moral propositions that are accepted as valid by *all uṣūliyūn* regardless of the debates about moral ontology. The immediate attention here is thus focused on the concern for the unanimity and rationality of a proposition before it can be considered to correspond to the judgment of the Divine Legislator. After pointing at the scope for re-assessing the necessity of these two conditions, we can then turn to the obstacle of the criteria of certainty as the basis for the *ḥujjiyya* of actually relying on this means of knowledge in the process of inferring *Sharīʿa aḥkām.*

6.3 Unanimity and rationality

Muẓaffar holds that there is a requirement for the unanimity of a judgment regarding the praiseworthiness or blameworthiness of an action before such a judgment can be considered to correlate to the judgment of the Divine legislator. Thus if there was rational consensus that 'an equal right to divorce is an instance of justice', then an equal right to divorce would be considered as something praiseworthy by both rationality and the Divine legislator. If authoritative (*ḥujja*), this knowledge would lead to a situation where the indication of any textual evidences apparently undermining an equal right to divorce would need to be reconsidered.   Such unanimity of opinion is elusive, and in the context of

even the slightest disagreement the judgment of morality is rendered irrelevant to the process of *fiqh*.

To seek absolute resolution and elimination of all disagreement seems untenable, however we may ask about the rationality of the disagreement. If the rejection of the moral inference is based on only non-rational reasons, such as a dream or through the ritual of *istikhāra*[519], or even the interpretation of a text, then we may still claim to have unanimity of *rational* opinion. Such a position does not imply that information gathered through such sources is certainly irrational, only that a rejection of a moral inference because of a dream, an *istikhāra* or through textual evidence is a rejection that has *not been* attained *through* reference to rationality. Despite the presence of non-rational disagreement, rational unanimity is thus still maintained and a potentially relevant judgment of rational morality can be preserved. Of course if the source of disagreement regarding a moral proposition cannot be reduced to non-rational reasons, on face value, Muẓaffar's system would not allow for it to have potential *Sharīʿa* significance. However we may seek to overcome this obstacle by asking whether the criterion for the unanimity of rational opinion is a substantive one or whether it is simply regulative.

Muẓaffar's positing of unanimity as a substantive criteria for the validity of a judgment of rationality has been described by Nāṣir Makārim al-Shirāzī as being one of the 'strangest of discussions (*min ʿajāʾib al-kalām*)', for in his view the criterion is nothing other than an individuals determination that a particular judgment is rational or not[520]. As we have seen, reading Muẓaffar's criteria for unanimity as a substantive criteria renders his whole treatment of independent rationality as trivial, allowing no significant impact for judgments of rational morality in the inference of *Sharīʿa* precepts. However, in line with the emic approach adopted here, if Muẓaffar's condition of unanimity is read as being only regulative, unanimity becomes simply a test to ascertain the rationality of a

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[519] *Isitkhāra* literally means seeking goodness. It is a ritual performed by some Muslims in order to seek guidance from God on specific issues through various ritual means including performance of prayer, or through reference to the Qur'ān and sometimes even through counting of beads and drawing of lots. For further details see Muḥammad Bāqir Haiderī, *Isitikhara* (Qum, Anṣārīyan Publications, 2002).

[520] al-Shirāzi, *Anwār al-uṣūl* Vol. 2 p. 512.

judgment and not actually a necessary condition for identifying a rational judgment at all. Rather, the substantive criterion for constituting a relevant rational judgment of morality should be nothing other than its rationality. Muẓaffar's positing of the criteria of unanimity may be read as being simply a means of ascertaining that a judgment is the result of the rational faculties instead of being a result of human emotion, sentimentality or imagination. In a manner consistent with Muẓaffar's system it seems reasonable to assert that if a judgment *is* rational, whether all people agree to it or not, God 'The Chief Rational Being' would also judge in accordance with it, and such a judgment of reason would then be disclosive of a potentially relevant judgment of *Sharī̒a*.

Within the traditional framework for *uṣūl al-fiqh*, the exercise of *ijtihād* required in the process of *fiqh* is seen as an individual enterprise. A single qualified individual exerts his utmost effort to determine *Sharī̒a* precepts from their sources. The individual *mujtahid* is either accountable or excusable based on the authoritativeness (*ḥujjiyya*) of *his* appreciation of the sources- regardless of disagreements amongst his peers[521]. Accordingly if the requirement of unanimity is seen as simply regulative, even in the presence of a rational disagreement upon a moral proposition, an individual *mujtahid* may come to knowledge of a *Sharī̒a* precept if he, as an individual, is sufficiently convinced that a proposition is rational- for according to Muẓaffar's argument for the correlation, if a proposition is rational, then for sure 'the Chief Rational Being' would also judge in accordance with it. Both with respect to their ideas in *uṣūl al-fiqh* and their reading of *fiqh*, Shī̒ī Uṣūliyūn operate in an epistemic environment where the presence of disagreement, be it from within the tradition or from without, is taken for granted. Accordingly there seems no reason to suggest that in the case

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[521] For an argument in favor of allowing moral intuitionists 'to retain their convictions in the face of rational disagreement, provided certain critical standards are met' see Robert Audi 'Intuition, Inference and Rational Disagreement in Ethics' *Ethics, Theory and Moral Practice*, Vol. 11 (2008), pp. 475-491. For a variety of views on the emergent discussions regarding the epistemology of disagreement in general, see Richard Feldman and Ted A. Warfield (Eds.) *disagreement* (New York, Oxford University Press, 2010).

of rational moral inferences an individual *mujtahid* should have to give up his convictions due to a lack of unanimity upon the validity of the judgment[522].

Through distinguishing between rational and non-rational disagreement, and by reading unanimity as a regulative criterion instead of a substantive one we see scope for overcoming the epistemic obstacles at the level of identifying a relevant judgment of rational morality that may correspond to the judgment of the Divine Legislator. However if such strategies are to be developed in a theoretically consistent manner, they immediately raise questions related to the next level of obstacle, the criterion for the authority of knowledge. As identified by proponents of the tenability of maintaining moral convictions in the face of a rational disagreement even with an idealised epistemic peer- there is recognition that the presence of such disagreement can weaken the 'degree of confidence' in moral judgments[523]. Makārim Shirāzī, who strongly criticises Muẓaffar's adoption of unanimity as a criterion, does so on the basis that the ultimate criterion for a relevant judgment of rational morality is an individual's certainty in its rationality[524]. This brings us back to the tension arising from what has already been described as the major epistemic obstacle to the efficacy of independent rationality within the dominant epistemological framework of Shīʿī *uṣūl al-fiqh*, and that is the criterion of a required certainty before any judgment of rational morality can be deemed to have potential *Sharīʿa* authority.

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[522] Wedgwood argues that even in the case where 'disagreement' is seen to come from an idealized 'epistemic peer' (equally rational and equally well informed), the presence of disagreement does not necessarily lead to a situation where one needs to give up ones conviction or suspend judgment. Nor is such a position on the possibility of rational disagreement necessarily inconsistent with a rejection of relativism. However the presence of a rational disagreement of this type may indeed require one to weaken ones strength of belief in the proposition at hand, bringing to the fore the importance of the next obstacle discussed- the requirement for certainty as the basis of the authority of judgments of rationality. Ralph Wedgewood ' The Moral Evil Demons' in Richard Feldman and Ted A. Warfield (Eds.) *disagreement* (New York, Oxford University Press, 2010) pp. 216-246.

[523] Wedgewood, ' The Moral Evil Demons', p. 244.

[524] al-Shirāzi, *Anwār al-uṣūl* Vol. 2 p. 512.

6.4 Certitude

We have seen that in the post-Anṣārī framework of *uṣūl al-fiqh* certain*ty (qaṭʿ)* is considered the ultimate basis for the authority of the sources of *Sharīʿa* knowledge. For a source of *Sharīʿa* knowledge to be considered authoritative before God, in the sense that it leads to accountability or excusabillity, it either needs to be certainty bearing, or have certain validation. In the case of *al-dalīl al-ʿaqlī* its potential authority is seen as being a function of the first of these two cases. Only when theoretical rationality is certain that there is a correlation between the judgment of practical rationality and the judgment of the Divine Legislator is the knowledge of this judgment considered authoritative. Even if there is near universal consensus on the rational validity of moral propositions such as 'an equal right to divorce is an instance of justice' or 'undermining freedom of conscience in the choice of religion, by threat of death, is unjust', the smallest possibility of doubt in these propositions renders them irrelevant to the inference of textually based *fiqhi* norms.

The apparent epistemic discrimination in rejecting less than certain indicators of rationality in favour of textual indicators that are also classified by *uṣūl al-fiqh* as less than certain, is justified by the argument that there is certain validation from God for the authority of relying on such non-certain textual indicators. The apparent meaning of the Qur'ān (*ẓawāhir al-Kitāb*) and isolated reports of the Sunna (*akhbār al-aḥād*) are by definition less than certain sources of knowledge (*ẓannī*), and it is through these less than certain means that the vast majority of *Sharīʿa aḥkām* are inferred. However, as there are claimed certain justifications for the validity of these specific sources of less than certain knowledge (*al-ẓanūn al-khāṣa*), they can be removed from the scope of the primary principle of the non-authority of *ẓann* and relied upon as authoritative sources in the inference of *Sharīʿa aḥkām*[525]. In the absence of such specific validation for non-certain judgments of rationality, any potentially relevant judgments of rational morality become rendered as non-authoritative resulting in an amoral reading of the textual evidences for *aḥkām*. The absence of a specific validation for less than

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[525] For further discussion of the authority of *akhbār al-aḥād* and *ẓawāhir al-kitāb* as specific sources of certainly validated *ẓann* see Muẓaffar, *Uṣūl al-fiqh*, Vol. 2 pp. 59-77 and 114-131.

certain judgments of rationality allow *Mujtahid*'s to entirely ignore inferences from rational moral principles such as 'An unequal right to divorce is rationally blameworthy' exclusively relying on textual evidences apparently conflicting this principle, even though they are texts whose transmission or indication (and sometimes both) are themselves not certain.

The epistemic obstacle of the requirement for certainty as the basis of *ḥujjiyya* thus becomes the major obstacle preventing the Shī'ī theological notions of moral rationalism and Divine justice from influencing their reading of *fiqh* through a substantive role for independent rationality. This obstacle is not theological nor is it, strictly speaking, jurisprudential. It is an obstacle that results from epistemological ideas about knowledge, the nature of certainty, its possibility and authority. A critical appraisal of Uṣūlī epistemological ideas and their tenability in the context of the developments in the field of epistemology *per se* is beyond the remit of this study. However, as in the case of the conditions of unanimity and rationality, the 'emic' approach adopted here does call for the identification of internal resources within Uṣūlī tradition that may allow for reassessing the requirement of certainty as the basis of authority, thus demonstrating the space for an '*Adliyya* reading of *fiqh* more consistent with the moral rationalism fundamental to Shī'ī theology.

6.4.1 Implications of the unqualified authority of *ẓann*

The preceding chapter outlines how the current paradigm of modern Shī'ī *uṣūl al-fiqh*, shaped by Murtaḍā Anṣārī in the wake of the bitter Akhbārī-Uṣūlī polemic, characteristically considers the ultimate criterion for authority (*ḥujjiyya*) to be nothing less than certainty (*qaṭʿ*). In order to demonstrate the scope for overcoming this epistemic obstacle it is important to restate that Anṣārī's theory of the foundational authority of *qaṭʿ* was preceded by an Uṣūlī embrace of an unqualified acceptance of the authority of less than certain knowledge (*al-ẓann al-muṭlaq*). Here we aim to indicate at the great scope this historic precedent has for invigorating a *fiqh* more consistent with the Shī'ī moral rationalism fundamental to Shī'ī theology.

In the survey of epistemological shifts through the history of Imāmi thought conducted in the previous chapter we have seen that the classical theory of Imāmī *Ijtihād*, shaped through the hands of Shaykh al-Ṭūsī and ʿAllāma Ḥillī, culminated in the theory of Ḥasan bin Zayn al-Dīn. In his influential work of *uṣūl al-fiqh*, Ibn Zayn al-Dīn premised his justification for the authority of the non-certain isolated report (*khabar al-wāḥid*) on the basis of an acceptance of the unqualified authority of *ẓann* (*ḥujjiyat al-ẓann al-muṭlaq*)[526]. Although it is considered untenable by the vast majority of scholars within the school of Anṣārī, it is a position whose acceptance holds that probable knowledge is authoritative in its own self- even without certain validation from the Divine Legislator. With the exception of those sources identified as unreliable by the Divine Legislator, all sources of probable *Sharīʿa* knowledge -be they textual or rational- are considered prima facie valid. Although it remains unclear exactly why proponents of this theory did not allow for its influence on *dalīl al-ʿaql*, this would suggest that in addition to the probable knowledge arising from textual sources, the probable knowledge acquired from inferences of rational morality are also potentially authoritative. In such a system a *Mujtahid* could not simply ignore a probable judgment of rational morality that apparently conflicts the indication of a less than certain text or texts. Instead, he would be forced to attempt reconciliation based on the strength of the probability of the conflicting indicators. This clear scope for overcoming the redundancy of independent rationality in Shīʿī *uṣūl al-fiqh* calls for a closer outline of the most famous argument for the prima facie authority of unqualified *ẓann*, the basis of its rejection within the school of Anṣārī and the tenability of its revival as a means of moving towards an *ʿAdliyya* reading of *Sharīʿa*.

6.4.2 *Dalīl al-insidād*

Dalīl al–insidād is the most prominent of a number of possible justifications discussed by the *uṣūliyūn* for the prima facie authority of unqualified *ẓann*, such that *ẓann* can be a reliable means to *Sharīʿa* knowledge irrespective of its

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[526] Ḥasan Ibn Zayn al-Dīn, *Maʿālim al-din fi uṣūl*, (Qum, n. p., n.d.) p. 192.

source[527]. This type of unqualified non-certain knowledge is referred to as *al-ẓann al-muṭlaq*. This unqualified form of *ẓann* is contrasted with specific sources of less than certain knowledge (*al-ẓann al-khāṣ)* deemed reliable due to certain or definitive (*qaṭʿī*) validation of their authority. What is meant here by *insidād*, literally a closure or prevention, is a closure of access to both definitive certain knowledge (*bāb al-ʿilm*) of *Sharīʿa* precepts *and* certainly validated means to knowledge (*bāb al-ʿilmī*) of *Sharīʿa* precepts, 'in the sense that there is an absence of *any* means by which sure knowledge (*al-ʿilm*) of *Sharīʿa* precepts is acquired'[528]. In a context of *insidād al-ʿilm* there is an obstacle to, or an absence of, definitive knowledge of *Sharīʿa* precepts. With *insidād al-ʿilmī* there is also an absence of the certain validation that can give sources of less than certain knowledge, like isolated reports (*akhbār al-aḥād*), the authoritative status of *al-ẓann al-khāṣ*.

The argument for the unqualified authority of *ẓann* by way of *insidād* is composed of either four or five premises depending on the form of its construction[529]. Accepting the validity of these premises leads to the conclusion of the unqualified authoritativeness of *ẓann*[530]*.* The argument claims that it is known that there are *Sharīʿa* duties, yet not known definitively what all these duties are. These duties cannot be discharged through always attempting the most cautious praxis, nor can they be ignored entirely. Reference to the second

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[527] Mīrzā al- Qummī describes *dalīl al-insidād* as 'the clearest', as well as 'the most well known' (*al-aẓhar wa al-ashhar*) argument for the unqualified authority of *ẓann*, *al-Qawānin al-muḥhkama fil-uṣūl,* Vol. 2 p. 420.

[528] Sanqūr, *Al-Muʿjam al-Uṣūlī* Vol. 1 p. 269 (emphasis added).

[529] For its four premise construction see Anṣārī, *Farāʾid al-uṣūl, Vol. 1 pp. 183-19 ;* Muẓaffar, *Uṣūl al-fiqh,* Vol. 2 pp. 27-28 and Sanqūr, *Al-Muʿjam al-uṣūlī* Vol. 1 pp. 368-375. For a five premise construction see Khurasānī, *Kifāyat al-uṣūl,* Vol. 2 pp. 92-93.

[530] Akhund Khurasānī's construction of a five premise version of *dalīl al-insidād* is as follows; 'i) It is known, in summary fashion (*ijmalan*) that there are extensive active religious responsibilities in *Sharīʿa*. ii) Access to definitive certain knowledge and to certainly validated knowledge in much of these [active *Sharīʿa* responsibilities] is inaccessible for us (*insadda alaynā*). iii) It is not possible for us to ignore these [active *Sharīʿa* responsibilities] or not to be concerned with their discharge outright. iv) *al-iḥtiyāt* is not obligatory for us with respect to the possibilities (*aṭrāf*) of our knowledge, in fact it is not permissible in this context at all. Likewise reference to [any] principle is also not permissible, be that continuity (*al-istiṣḥāb*), choice (*al-takhīr*), exemption (*al-barāʾa*) or caution (*al-ihtihyat*). Nor can reference be made to the opinion of one who [claims he] is in a state of [definitively] knowing the *aḥkām.* v) Giving preference to the less justified (*al-marjūḥ*) over the more justified (*al-rājiḥ*) is rationally blameworthy. In such a situation rationality independently asserts the necessity of suppositional obedience (*al-iṭāʿat al-ẓanniyya*) with respect to those known religious obligations.' *Kifāyat al-uṣūl,* Vol 2. pp. 92-93.

tier evidences of the *uṣūl al-ʿamaliyya* is not practical and referring to someone who claims that they know these *aḥkām* for sure, despite the belief that they are unknowable in that way, is nonsensical. In addition to all this, it is rationally blameworthy to prefer that which is less justified, or less probable, over something which is more justified or more probable. Accordingly, the only reasonable way to attempt discharge of the body of religious duties is to rely on *any* probable knowledge of the instances of these duties- no matter what that source may be, accepting the most probable and the most justified as authoritative.

The details and complexities of each component premise within this argument have received significant attention in the works of Anṣārī and his followers and analysis of the complex arguments put forward to undermine each of the initial premises is beyond the scope of the study[531]. However the second premise, which claims that the duties of *Sharīʿa* cannot all be known definitively, does deserve further attention here. Not only is it the central premise of *al-dalīl al-insidād*, but the rejection of *al-dalīl al-insidād* by post-Anṣārī Uṣūlī's rests on their attempt to undermine this central premise. Acting as the corner stone of *al-dalīl al-insidād*, this premise asserts that access to definitive or certain ʿilm in the majority of *aḥkām* is not possible in the context of our distance from the time of revelatory propagation. As already stated, this phenomenological epistemic block to definitive knowledge of *Sharīʿa aḥkām* is both with respect to certainty yielding evidences, such as through explicit verses of the Qurʾān and *tawātur Ḥādīth*, *and* through certainly validated yet non- certain means, such as through a reliance on the apparent meaning of the Qurʾān and isolated non-*tawatur* reports. Coupled with the other premises, this phenomenological epistemic block ultimately leads to a pragmatic necessity of relying on non-certain ʿilm and establishes the authoritativeness of *ẓann* irrespective of its source.

Both Ibn Zayn al-Dīn and Mīrzā Qummī referred to *dalīl al-insidād* and the unqualified authority of *ẓann* as a possible basis for accepting the authority of the

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[531] For a concise yet typically dense treatment of these arguments see *Kifāyat al-uṣūl,* Vol. 2 pp. 92-93.

isolated report[532]. However the implications of *al-dalīl al-insidād* as employed by both Ibn Zayn al-Dīn, Mīrzā Qummī and described by Anṣārī and Khurasānī does not end with validating the isolated report, for it is an argument which validates the authority of *ẓann* irrespective of its source, be it textual or rational.

If any source of probable knowledge is deemed potentially authoritative it becomes necessary for the *Mujtahid* to reconcile between apparent conflicts between the indication of non-certain textual evidences *and* the indication of non- certain rational evidences in the process of *Sharīʿa* inference. Referring back to our previously cited example, the *Mujtahid* would have to weigh the strength of the rational argument which states that an equal right to divorce is an instance of justice, and hence rationally and religiously praiseworthy, against the strength of any textual indicators which may suggest that women do not have an equal right to divorce as part and parcel of his inference of the relevant *Sharīʿa* precept. The *mujtahid* needs to weigh up the strength of the respective evidences, with the most probable or most justified being deemed authoritative.

As in the current system, where the *mujtahid* already engages in sophisticated reconciliation of apparently conflicting textual evidences, if the process of *tarjīḥ* (reconciliation) is inconclusive the *mujtahid* would need to refer to second tier evidences to resolve his situation of doubt. An already complex system exists in Uṣūlī literature for when and how to reconcile or give preference to conflicting evidences. This is a system that already includes the case of how to treat conflicts with rational indicators that are deemed definitive and certain. Although this system may need to be further refined in order to systematically accommodate reference to judgments of rational morality even if they are not one hundred percent certain, what becomes clear here is that such an acceptance of the unqualified authority of *ẓann* ensures that the *mujtahid* should no longer be in a position to entirely ignore judgments of rational morality in the face of non-certain textual indicators.

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[532] *Maʿālim al-din fi uṣūl*, (Qum, n. p., n.d.) p. 192; *al-Qawānin al-muḥhkama fil-uṣūl,* Vol. 2 pp. 420-429.

The scope for adopting such a turn in the inference of *Sharīʿa* precepts through reference to *dalīl al-insidād* and the unqualified authority of *ẓann* is of course faced with the problem of the outright rejection of *al-dalīl al-insidād* by Anṣārī and his followers. The pivot of this rejection relies upon undermining the second and central premise of *al-dalīl al-insidād*. In order to maintain the scope for a substantive role for rational morality in Shīʿī *uṣūl al-fiqh* through *al-dalīl al-insidād* it is thus necessary to critically consider this rejection and to demonstrate reasons for maintaining the tenability of a revival of *al-dalīl al-insidād* as a means to a moral or *ʿAdliyya* reading of *Sharīʿa*.

The central claim of *al-dalīl al-insidād* is that there is a phenomenological epistemic block to definitive knowledge of *aḥkām*, through both certainty-yielding evidences (*bāb al-ʿilm*) and through certainly validated means to knowledge (*bāb al-ʿilmī*). Anṣārī and his followers accept that attaining direct certainty in the majority of *aḥkām* is not possible in our context. However they maintain that access to knowledge of *Sharīʿa aḥkām* through sources that are certainly validated means to *ʿilm*, even if they are not certainty bearing in themselves, is open. It is the presence of *al-ẓanūn al-khāsa*, the specific sources of probable opinion which have been definitively or certainly validated by the Divine legislator which undermines *al-dalīl al-insidād* from the outset, or as Muẓaffar puts it 'burning' *al-dalīl al-insidād* down, 'from its very foundations'[533].

The claim is that we have specific sources of probable knowledge that God has definitively and certainly validated as authoritative means to His *aḥkām*. Even though such indicators may yield false information, they can be relied upon because of the claimed certainty that God has validated them. If these certainly divinely validated evidences lead to the issuance of an incorrect precept and result in practice which is actually contrary to the real precept in the knowledge of God, both the *mujtahid* and his followers would be excusable before God as they had relied upon evidences which God himself had certainly validated as authoritative. There is thus no scope for *al-dalīl al-insidād* and the unqualified

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[533] *Uṣūl al-fiqh*, Vol. 2 p. 27.

authority of *ẓann*, for God has validated a few specific sources of *ẓann* himself, a group of sources that does not include less than certain judgments of rational morality.

The most important of these divinely validated 'specific sources of probable opinion' is of course the isolated report (*al-khabar al-wāḥid*), also referred to as the report of a trusted source (*khabar al-thiqa*). The extent of the concern in Shīʿī *uṣūl al-fiqh* for the status of the authority of the isolated report is unsurprising having noted that it represents arguably the only independent source of *Sharīʿa aḥkām* for most *uṣūliyūn*[534], and that it is through the isolated report that the vast majority of the *aḥkām* in *furū' al-fiqh* are justified. Whether or not the justifications for the valid authority (*ḥujjiyya*) of the isolated report are certain and definitive is pivotal to the tenability of the second and central premise to *al-dalīl al-insidād*, a premise that negates access to *ʿilm* both directly *and* through certainly validated means. In the words of Anṣārī himself;

> The acceptance or the rejection of this premise can not become clear except after complete consideration and the exhaustion of utmost effort in considering… the evidences for the authority of the [isolated] Report and whether or not they establish the authority of these reports to a sufficient extent or not[535].

The importance of the basis for the authority of the isolated report is reflected in Shīʿī *uṣūl al-fiqh's* extensive treatment of a wide range of possible justifications. The authority or *ḥujjiyya* of the reports whose transmission, by definition, is non-certain is argued for by way of the indication of a number of verses of the Qur'ān, by reference to the Sunna, through a claimed consensus and through a form of rational convention termed *banā' al-ʿuqalā'*. Although Anṣārī understandably calls for a 'complete consideration and exhaustion of utmost effort'[536] in analysis of these justifications, here we will restrict ourselves to examining only the strongest of them. Demonstrating that the strongest of the evidences for the authority of the isolated report is not certain and definitive in establishing its

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[534] See Fanaei and Bhojani, *Obstacles and Inconsistencies,* pp. 118-121
[535] *Farā'id al-uṣūl* Vol. 1 p. 188
[536] *Ibid.*

claim is sufficient to challenge the notion of a certain validity for the authority of the isolated report, thus undermining the existence of *ẓanūn al-khāṣa*, This opens up the way for validating the unqualified authority of *ẓann* through *al-dalīl al-insidād,* allowing non certain judgments of rational morality to be considered as potentially authoritative.

The relevant verses of the Qur'ān, arguments from the Sunna and the claim of *Ijmā'* regarding the authority of the isolated report are all, according to modern *uṣūliyūn* themselves, subject to potential criticism in their ability to establish the claim of the authority of the isolated report[537]. The argument by rational convention however is seen as a cut above these aforementioned routes. Muẓaffar quotes one of his most influential teachers, Mīrzā Ḥusayn Nāʾīnī (d. 1276 A.H), in describing this not only as 'the most reliable evidence in this regard (*al-ʿumda fil-bāb*)' but also to explain why it stands out above the other means of justifying the reliability of the isolated report, for 'one can assume means of disputing all the others, [but] there is no scope for disputing the means of the established rational convention to rely upon the report of a trusted source'[538].

For Muẓaffar himself the justification of the authority of the isolated report through an argument by way of rational convention 'is a certain evidence, with no scope for doubt to enter into it, because it is composed of two certain premises'[539]. These two premises may be constructed as follows;

1. For certain, there is an established rational convention to rely and act upon the report of a trustworthy person.
2. The existence of this rational convention discloses, for certain, that the Divine legislator concurs with and partakes in this rational convention.

Accepting that these two premises are indeed certain leads to the certain conclusion that the Divine legislator considers reliance upon the report of someone who is trustworthy as a reliable and authoritative means to knowledge. The reasoning implicit within these two premises is somewhat reminiscent of the

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537 Muẓaffar, *Uṣūl al-fiqh*, Vol. 2 p. 78.
538 *Ibid*.
539 *Ibid.*

earlier discussed arguments put forward for a correlation between the judgments of rational morality and the judgments of the Divine legislator. If there is an established convention adopted by all rational beings, in this case the convention of accepting reliance upon the report of a trustworthy source despite the possibility of its falsity, then it is assumed that the Divine Legislator also accepts this rational practice. The assumption of Gods concurrence with the rest of the rational community in accepting the convention is based on the conception of His Rational nature, or as Muẓaffar puts it, 'because He is from amongst them and in fact the Chief of them'[540].

This line of argumentation, which claims to establish the certain validity of the authority of the isolated report, is the same line of reasoning put forward for what is arguably the strongest justification for the authority of the apparent meaning of the Qur'ān[541]. As a result followers of Anṣārī's epistemic framework claim that we can rely on such specific sources of probable knowledge (*al-ẓanūn al-khāsa*), for they are certainly validated means to *Sharīʿa* knowledge. Although direct access to definitive knowledge of *Sharīʿa* (*bāb al-ʿilm*) may well be closed with respect to the majority of *aḥkām*, we do have access to *Sharīʿa* knowledge through definitively or certainly validated sources of *ẓann* (*bāb al-ʿilmī*). This undermines the second premise of *al-dalīl al-insidād* leaving probable judgments of rational morality irrelevant to the process of inferring *Sharīʿa* precepts.

Despite the conviction with which the case is made, it seems that there is a major problem with the justification for the authority of these specific sources of *ẓann* through the argument by rational convention. With the ʿ*Adliyya* conception of God, the second premise in the argument is sound. At the most, as noted by Muẓaffar himself[542], it could be argued that this premise needs furnishing slightly with the additional clause that states; had God not wanted us to rely upon such conventionally accepted means of knowledge acquisition in the realm of religion, He would have informed us of this, and He has not. The problem instead lies with

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[540] *Uṣūl al-fiqh*, Vol. 2 p. 78.
[541] See Muẓaffar *Uṣūl al-fiqh*, Vol. 2 pp. 113-141.
[542] *Uṣūl al-fiqh*, Vol. 2 p. 79.

the first premise and the overly simple conception of what the rational convention with regards to reports from trusted sources actually is.

A full and proper analysis of conventions adopted by rational agents with regards to acting upon the reports of trusted sources is of course a question for social science and not *uṣūl al-fiqh*. However within the context of this study it is important to note the overly simplistic analysis of the rational convention described by the *uṣūliyūn*. It does seems reasonable to accept that there is a convention to rely upon a trusted source for information, regardless of the possibility that this report may be unsound or misunderstood by the recipient. As Muẓaffar states, social order and the communal lives of humankind rely upon the practical convention of relying upon isolated trusted sources, if human society exclusively relied upon certainty bearing information in every instances of information transmission, things would grind to a halt[543]. However, rational convention does not seem to rely upon isolated trustworthy sources *all the time* and in an unqualified manner. Rather it seems that rational agents only *ordinarily* rely on the isolated report of a trusted source *if* they have no other sources of conflicting knowledge.

Rational agents will not blindly follow an isolated report from a trusted source when they are aware of possible reasons why the report may be false. Accordingly the argument by rational convention, as constructed by *uṣūliyūn*, cannot establish the absolute and definitive authority of isolated reports, or for that matter the apparent meaning of the Qur'ān, irrespective of considering other sources of probable knowledge that may include judgments of rational morality. Undermining the claimed certain and definitive validation for the authority of specific sources of probable opinion in this way opens up the tenability of a revival of *al-dalīl al-insidād* and the unqualified authority of probable opinion.

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[543] *Uṣūl al-fiqh*, Vol. 2 p. 77.

6.5 Conclusion

The redundancy of rational morality that results from Muẓaffar's analysis of independent rationality, firmly within the bounds of Murtaḍā Anṣārī's school of Uṣūlī epistemology, seems to trivialise the very inclusion of independent rationality as a source of *Sharīʿa* precepts alongside Qur'ān and Sunna. Despite the fundamental position of an *ʿAdliyya* rational morality within Shīʿī theology and the acknowledgment of the theoretical role for rational morality as a source of *Sharīʿa* precepts in Shīʿī *uṣūl al-fiqh*, epistemic obstacles relating to what constitutes a relevant judgment of rational morality and the conditions for their authority (*ḥujjiyya*) stop the actual impact of these ideas at the level of *fiqh*. Within the epistemological framework of Murtaḍā Anṣārī, the criteria for the validity and authority of independent rationality act as obstacles to specific instances of rational morality playing a substantive role in the inference of *Sharīʿa aḥkām*. Although it is acknowledged that *whenever* something is just it is rationally praiseworthy, and *whenever* something is oppression it is rationally blameworthy, inferences from these general principles to specific instances become problematic rendering independent rationality effectively redundant.

The 'emic' approach that this study set out with demands that attempts be made to interpret Muẓaffar's position on independent rationality as substantive and not trivial. An emic approach allows for a reading of *uṣūl al-fiqh* that can regulate a body of *furūʿ al-fiqh* that is consistent with the fundamental *ʿAdliyya* conception of a Just and Moral God. Accordingly this concluding chapter has revisited the conditions and epistemic criteria set out by Muẓaffar that seem to be preventing independent rationality from having a substantive role in the inference of *Sharīʿa aḥkām* with a view to demonstrating the space and resources internal to Shīʿī legal theory that can allow for a reading of *Sharīʿa* more consistent with a theology which demands that precepts deemed rationally immoral cannot be attributed to God.

Through examining Muẓaffar's analysis of independent rationality as a source in *uṣūl al-fiqh* three key criterions became apparent as obstacles to the role of rational morality. Potentially relevant judgments of rational morality were

deemed as having to result from unanimity of opinion, be of rational issuance and be certain (*qaṭʿī*) or definitive in their nature. Through distinguishing between rational and non-rational disagreement and by reading unanimity as a regulative criterion, it becomes clear that an individual *mujtahid* does not necessarily need to rely on an almost unachievable absolute unanimity of opinion before considering judgments of rational morality to have potential *Sharīʿa* relevance. If an individual *mujtahid* considers that a judgment *is* rational, whether all people agree to it or not, in his view God 'The Chief Rational Being' would also judge in accordance with it, and such a judgment of reason would then be disclosive of a potentially relevant judgment of *Sharīʿa* for that *mujtahid*. Accepting the tenability of an individual *mujtahid* maintaining the validity of a judgment of rational morality in the face of rational disagreement does however raise the question of whether or not such disagreement may lead him to weaken his belief in the judgment of rational morality that he holds. This emphasises the necessity of examining the scope for reassessing the criteria of maintaining certainty (*qaṭʿ*) as the ultimate basis for authority of *Sharīʿa* sources in any attempts to allow for a more substantive role for rational morality in the actual inferences of *Sharīʿa aḥkām*.

Despite the fundamental place of the requirement of *qaṭʿ* as the ultimate basis for *ḥujjiyya* in the epistemic framework of the school of Murtaḍā Anṣārī, prior Uṣūlī tradition had embraced a system that culminated in the recognition of the unqualified authority of *ẓann*. This was an epistemic framework developed in the context of justifications for the authority of the isolated tradition, a textual source that by definition is less than certain in its transmission. Despite the concern with the isolated tradition, acceptance of the unqualified authority of *ẓann* is a position whose revival has huge scope in allowing a fuller role for independent rationality, for it considers any probable source of *Sharīʿa* knowledge as potentially valid- be it textual or rational.

The most important argument in Uṣūlī tradition for the unqualified authority of *ẓann* is referred to as *dalīl al-insidād*. The central premise refers to a phenomenological epistemic block to definitive knowledge of the majority of *Sharīʿa aḥkām*, both with respect to certainty yielding evidences, such as through

explicit verses of the Qur'ān and *tawātur* ḥadīth, and through certainly validated yet non- certain means, such as through the apparent meaning of the Qur'ān and isolated reports. Coupled with the other premises, this phenomenological epistemic block ultimately leads to a pragmatic necessity of relying on non-certain *'ilm* and establishes the authoritativeness of *ẓann* irrespective of its source. In such a framework a *mujtahid* cannot rely solely on less than certain textual evidences and justifiably ignore judgments of rational morality, even if they are not entirely certain. If inferred judgments of rational morality, such as 'an equal right to divorce is an instance of justice' or 'undermining freedom of conscience in the choice of religion, by threat of death, is unjust' are in apparent conflict with less than certain textual evidences, the *mujtahid* must seek to reconcile between the two forms of sources based on the strength of the respective evidence. If the strength of the judgement of rational morality is deemed greater than the strength of the apparent indication of the texts- the rational judgement must be favoured in inferring the relevant *Sharī'a* precept. In this way rational morality can be a qualification to the valid interpretation of texts, preventing the attribution of immoral precepts to a Just and moral God.

The main obstacle to the efficacy of *dalīl al-insidād* validating unqualified *ẓann* is the claim that there exists certain and definitive validation for specific sources of *ẓann*. It has been argued in this chapter that even the strongest of the justifications for the validity of specific sources of less than certain knowledge (*ẓanūn al-khāsa*) cannot establish this claim. Examining the argument for the authority of the isolated report by way of rational convention, it was argued that the overly simplistic reading of the rational convention of relying upon isolated trusted sources of knowledge is problematic. Although there is a rational convention to rely on isolated trusted sources for knowledge, despite the possibility that this information may be false and misconstrued, a problem seems to arise if this convention is seen as unqualified and unrestricted. It seems that rational agents only *ordinarily* rely on the isolated report of a trusted source *if* they have no other sources of conflicting knowledge. A rational agent will not blindly follow isolated reports, even from trusted sources, when they have conflicting reasons suggesting that the report might be false. Thus rational

convention cannot establish the definitive and absolute authority of the trusted report, or apparent meaning, in an unqualified manner.

The certainty that is a claimed criterion for the validity of judgments of rational morality is considered unattainable for the majority of *aḥkām* even through textual sources. In a context of phenomenological epistemic block to definitive knowledge, both directly and through certainly validated means, all sources of probable opinion are potentially valid. In the case of conflicts, the strongest source of probable opinion becomes authoritative. Even if it is accepted that inferences from basic moral propositions, such as the claim that an equal right to divorce is an instance of justice (and hence praiseworthy according to rationality and the Divine legislator), are not certain, they are a source of probable opinion which can not be ignored in the face of the apparent indication of a limited number of texts which might suggest otherwise. In cases of apparent conflict the *mujtahid* must weigh the strengths of the respective evidences, and if the judgment of rational morality is deemed stronger than the indication of the texts then he must issue his ruling in line with the judgment of rational morality. In accordance with the convention of rational beings, this means that reliance on isolated reports of trustworthy sources and the apparent meaning of textual evidences are still potentially authoritative, but *only actually authoritative* if there is no conflicting evidence of greater strength. Such a system would see judgments of independent rationality play a substantive role in the inference of Sharīʿa *aḥkām* and enable rational morality to actually be a condition for the validity of precepts attributed to a Just and Moral God.

6.6 Limits of the study and scope for further research

The stated aim of engaging in a consciously reflexive critique of the sources studied here can not be complete without commenting on the impact that the particular emic approach adopted here imposes on the findings of the study. We have argued for a substantive and relevant relationship between *uṣūl al-fiqh* and *fiqh,* yet the pattern of analysis within the discourse of *uṣūl al-fiqh*, at least when read in isolation from other areas of Muslim thought, does exhibit what Calder

described as a tendency to make it 'a closed and independent science'[544]. The nature of the Uṣūlī approach does not seek to take into account the context of knowledge production on the ideas and reasoning that emerge through its discourse and, accordingly, neither has this study.

Yet Muẓaffar's extensive treatment of rationality could not have emerged entirely divorced from a context. To what extent Muẓaffar's extensive discussion of independent rationality in his *uṣūl al-fiqh* is affected by the context of his attempts to engage Najaf and the broader Shīʿī higher learning system with the competing trends of modernity of his day is an open question. His particular treatment of the questions surrounding independent rationality may, or may not be, enriched through reference to his struggle to reform and modernise the Hawza. Clearly Muẓaffar dedicated much space to outline the concept of rationality as a source, emphasising a dynamic rationalism within Shīʿī thought at a theoretical plane yet simultaneously maintaining the scripture bound nature of a positivist theory of *Sharīʿa*, cementing the need for religiously trained experts in the textual and traditional sciences. Of course this study has not been an exercise in intellectual history or historiography, and accordingly it never set out to account for the relationship between the ideas produced by Muẓaffar in his *uṣūl al-fiqh* and Muẓaffar's own socio-political and intellectual context.

At the same time this study has been a reading of *uṣūl al-fiqh* that has also not emerged without a context. The study has been explicitly framed within a perceived tension between mainstream readings of *fiqh* and the fundamental Shīʿī theological presuppositions regarding moral rationalism and the justice of God. Not only did it seek to explain theoretical reasons for this apparent tension but also it embarked on a search for a means to overcome them. Will such a framing have impacted my reading of the sources? Undoubtedly yes. Does this undermine the relevance and rigor of the study? I believe not. The unavoidable phenomenon of bringing paradigms external to my source texts in the reading of these texts is not subversive to the tradition; rather it is part and parcel of the tradition. In fact it is this very practice that can be seen as central to both historical and contemporary development of ideas within the tradition of *uṣūl al-*

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[544] Gleave, *Inevitable Doubt*. p. 3.

fiqh. The apparently hermetically sealed, ahistorical nature of works of *uṣūl al-fiqh* (and to some extent *fiqh*) allows them to speak across horizons. Muẓaffar read his predecessors in a similarly decontextualised way, undoubtedly bringing to his analysis of al-Murtaḍā, al-Ṭūsī, Ḥillī, Mīrzā Qummī and Anṣārī concerns, approaches and indeed questions that may have been alien to these thinkers in their own time. The openness of the discourse in this way reflects a spirit of knowledge acquisition that allows for possibility of deeper understandings, or at least understandings more grounded and relevant to the time of their production, to continually emerge. It is in this spirit that this study has sought to identify the epistemic obstacles to the fundamental place of an *ʿAdliyya* meta-ethics impacting the reading of *Sharīʿa* through the paradigm of modern Shīʿī *uṣūl al-fiqh*. It is in this vein that this study has argued for the scope of allowing these resources to bear fruit, moving towards an *ʿAdliyya* reading of *Sharīʿa*, such that textually derived precepts considered to conflict with rational morality cannot be attributed to a Just and Moral God.

A systematic and rigorous framework for *Sharīʿa* inference developed out of the scope for an *ʿAdliyya* reading of *Sharīʿa* identified in this study still has many difficult questions to answer, questions that demand further research and debate. We have seen that presuppositions about the nature of morality and ideas about the nature of knowledge have been pivotal throughout the *uṣūlī* treatment of the questions at hand. Yet it is clear that not all of these questions fall within the remit of *uṣūl al-fiqh*, rather they fall in the domain of moral philosophy and epistemology. A theoretically consistent and justifiable system of *uṣūl al-fiqh* that allows for the theological resources of the *ʿAdliyya* tradition to impact the actual reading of *Sharīʿa* at the level of *fiqh* requires that these presuppositions are equally rigorous and justifiable. We have seen that the fundamentals of both moral philosophy and epistemology are recognised within the Shīʿī tradition as being meta- religious, in the sense that the basic axioms of each cannot rely upon revelation. Accordingly the strides in knowledge that have been made in such disciplines from outside Muslim religious scholarship cannot be ignored and must be seriously engaged with.

Beyond the need to independently, further explore the philosophical presuppositions influential in *uṣūl al-fiqh*, another key area that requires a concentration of attention in pursuit of a framework for an ʿ*Adliyya* reading of *Sharīʿa* is clarification and consideration of the system for reconciliation of apparently conflicting indicators to *Sharīʿa* precepts.   Reconciliation of apparently conflicting evidences is a core function of the *mujtahid* in his inference of *Sharīʿa* precepts, and modern Shīʿī *uṣūl al-fiqh* offers a sophisticated system in which this is conducted. Accepting the unqualified authority of *ẓann* increases the scope and nature for such conflicts to an extent that would call for greater theoretical deliberation on a system of reconciliation currently more concerned with conflicting textual sources, rather than conflicts between texts and rationality. Broadening the scope of potential indicators to include independent judgments of rational morality, even when not absolutely certain, demands consideration of previously ignored conflicts throughout the body of *furūʿ al-fiqh*. Of course distinctions need to be made between rational and non-rational areas of *Sharīʿa* regulation, with judgements of rational morality being only relevant to the former.

In addition to consideration of the system for resolving apparent conflicts between judgements of rational morality and other sources, there is a pressing need again to refer to disciplines such as moral philosophy and applied ethics to provide the content of potentially relevant judgements of rational morality. It is only after rational moral deliberation has taken place that textual evidences can be appraised for consistency with rational morality. Of course this does not mean to say that the judgments of rational morality will always be deemed stronger and more relevant than the apparent indication of texts, there may well be instances where the indication of textual evidences outweighs the strength of a rational moral argument and indeed instances where apparent conflict is irreconcilable- in which case, as in the current system of *Ijtihād*, reference would be made to the second tier evidences of the *uṣūl al- ʿamaliyya* (practical principles).

Undoubtedly achieving both tasks, firstly developing a rigorous system to allow for the theological moral rationalism of Shīʿī thought to impact the reading of

Sharī'a and then to actually apply this system across the breadth of *furū' al-fiqh,* is no small order. Not only are these theoretically challenging in themselves, but also they may be seen as practically daunting due to the extent of shift in positive doctrine that is likely to occur as a result. However the extent of the difficulties provides no justification to Muslim thinkers for not engaging the challenge. The very concept of the *Ijtihād* that *uṣūl al-fiqh* intends to regulate requires no less than a *complete* exhaustion of effort (*ifrāg al-wus'*) to infer *Sharī'a* precepts from their sources. Continuing to read *Sharī'a* precepts in a framework that ignores judgements of rational morality despite the fundamental *'Adliyya* theological resources in the Shī'ī tradition, allowing the possibility of attributing immoral precepts to a Just and moral god, undoubtedly falls short of the vigorous demands of *ijtihād* in the contemporary world.

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