

از الهیات اعتزالی تا فقه شیعه

عبدالمجید مبلغی

هیأت علمی در پژوهشگاه علوم انسانی و مطالعات فرهنگی

این مقاله به تبارشناسی نضج یابی تاریخی حوزه های علمیه شیعه در ارتباط با دانش های خارج از خود و بررسی نحوه بروز و ظهور فقه شیعی در تعامل با رشته های نظری بیرون از محیط حوزه در دو سطح معرفت شناختی و روش شناختی اختصاص دارد.

نوشتار در تعقیب این هدف، بر اساس بازگشت به آبخوره های موثر در صورت بندی دانشی فقه شیعه، به نسبت آگاهی فقهی شیعی با دو دانش مرکزی کلام (در سطح معرفت شناسی) و اصول فقه (در سطح روش شناسی) می پردازد. دانش نخست بیانگر متافیزیک آگاهی در گفتمان فقه شیعه، از منظر نظام اعتقادات و مبادی و مبانی اندیشگی حاکم بر آن، بوده است؛ هم چنان که دانش دوم را باید معرف منطق روش شناختی موثر در پدیداری آگاهی در فقه شیعه، با توجه به ساختار تولید محتوای معتبر فقهی، شناسایی نمود.

نکته مهم آن که خاستگاه این دو دانش خارج، تا حد قابل توجهی، خارج از نظام اندیشگی حاکم بر شیعه در دوران تکون یابی آن، بوده است؛ به گونه ای که کلام موثر بر حوزه های علمیه عمدتاً وجهی اعتزالی داشته است و، به ویژه، در میان جریان های اعتزالی بغداد پرورده بوده است؛ در حالی که بخش قابل توجهی از دانش اصول فقه نیز، دست کم در عصر تدوین فقهی، به تلاش های مکاتب فقهی اهل سنت، به ویژه حنفیان و شافعیان، باز می گشته است.

مقاله، در شناسایی پویایی تاریخی حوزه های علمیه برای تعامل با دانش های بیرون از خود، به ظرفیت دانش کلام برای دفاع از مرزهای اعتقادی شیعه و به استعداد روش شناختی دانش اصول برای تجهیز فقه به فرایندهای کارآمد استنباطی می پردازد. به این ترتیب، بر اساس یافته های نوشتار، در نبود ارتباطی موثر با این دانش های بیرونی، فقه شیعه نمی توانست هم به فرایندهای پیچیده استنباط بپردازد و هم، در عین حال، مرزهای اعتقادی خود را تثبیت نماید. بنابراین رویکرد متعاملانه فقه شیعه با دانش های بیرونی، به گواه تاریخ، به تقویت نظام مند دانش فقه انجامیده است.

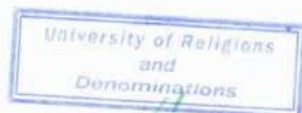
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### Certificate of Participation

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Alireza Imani  
Director of  
International and Academic Cooperation Office

## From Mu'tazilī Theology to Shī'ite Jurisprudence

Abdolmajeed Moballeghi<sup>1</sup>

The 4th century A.H. is the era of dialogue and interaction among Shī'ites with Sunnis and Mu'tazilites in 'Ilm al-Kalām (Islamic scholastic theology), 'Ilm al-Fiqh (Islamic jurisprudence), and 'Ilm al-Uṣūl al-fiqh (traditional methodological principles used in Islamic jurisprudence). By this century Shī'ites could promote their jurisprudence via referring to the Uṣūl al-fiqh and rationalist school of Mu'tazilī theology. The centrality of dialogue in Baghdad and the intellectual openness of the Shī'ah in the 4th century facilitated the emergence of a dialogue-based jurisprudence in this sect of Islam. Consequently Shī'ite jurisprudence, influenced by a theological effort begun by Shaykh al-Mufīd in the 4th century A.H., changed and evolved both externally (epistemologically via Islamic theology) and internally (methodologically via Uṣūl al-fiqh). The paper focuses on the formation of rationalist school of Shī'ite jurisprudence in Baghdad within this framework and through a chain of communications that grew between Shī'ites, Sunnis and Mu'tazilites. It first explains the position of Shī'ite jurisprudence during the era of access to the Imams. Then it addresses the problem caused by lack of this access, and ultimately it discusses how Shī'ite jurisprudence could overcome this harsh condition by introducing new epistemological and broadening its methodological horizons.

Key words: Shī'ite jurisprudence, Mu'tazilites, Sunnis, Uṣūl al-fiqh, Epistemology, Methodology, Theology

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## Imams and the formation of Shī'ite jurisprudence during the era of their presence (al-ḥuḍūr)

In the center of thoughts and rituals of Shī'ah, the concept of Imamate (imāmah) is located. Based on Shī'ite beliefs the Imams are appointed by the direct will of God and Imamate is considered to be an entirely divine institution. (al-kulīnī, 1388(SH.): 286) This concept ensures the continuation of the message of Islamic prophecy during the post-Prophet's time based on the doctrine of the theological necessity of the succession of the prophet to be chosen by direct will of God. According to this the initial Shī'ite jurisprudence discourse was established during the era of the presence of eleven Shī'ite Imams (11-260 A.H.). This discourse was about a variety of referrals to the present and accessible Imams. Situations, such as asking them directly or writing letters to them, attending their teaching circles, and participating in debates under their supervision were among the main ways of achieving to the Sharī'ah and juristic judgments (al-aḥkām al-shar'īyah). It was due to these practices and approaches that the jurisprudential rulings (al-fatāwī al-figh'īyah) appeared and the main structure of Shī'ite jurisprudence during the era of the Imams shaped. In this era there was a strong and, in many situations, face-to-face connection with the Imams in the center of Shī'ah. It meant the ability of jurisprudence to face the situations was a product of asking technical questions from the Imams and continuous efforts to expand ties with them. In this framework, initial and primary levels of Shiite knowledge was institutionalized during the "presence" of the Imams and according to their centrality at the heart of Shī'ah (al-Nu'mānī, 1422(A.H.) :141). This platform provided basis for expansion of what was later called the "Narrative-based jurisprudence" (al-fiqh al-ma'thūr) (al-Qādī ibn al-barrāj, 1411(A.H.): 12-13) which its vital orientation was the narrations of the words or actions of the Prophet of Islam or the twelve Imams of Shī'ah (Aḥādīth)( Ibn shahr Āshūb, 1380(A.H.): 3). For this one can say that Imams, by their sayings (sīrat al-'aqlī) and behaviors (sīrat al-fī'ly), shaped the Shī'ite jurisprudence in the era of their presence in the community.

## The crisis of the lack of access to Imam and the beginning of the era of Occultation (al-ghaybah)

The absence of the Twelfth Imam, namely the Minor Occultation (260-329 A.H.) (al- al-ghaybat al-ṣuḡhrā) or First Occultation (al-ghaybat al-ūlā), caused a critical concern for both Shī'ite community and jurisprudence (al-Shahristānī, 1364(SH.): 200). This began with the imamate of the twelfth Imam, al-Mahdī (255 A.H/-), who, unlike the previous Imams, was responsible for exercising duties of imamate behind the veil of Occultation as

the “Hidden Imam”. From this time direct access to the Imam was lost and connection between the Hidden Imam and his Shī'ite followers turned to a new form of communicating with him only through his deputies (nuwwāb). But the situation became even more difficult when, almost 60 years later, a new era for Shī'ites began. In this era the twelfth Imam was not supposed no longer to be represented even by a specific deputy. It was the beginning of the Major Occultation (329 A.H) (al-ghaybat al-kubrā) era (al-Shaykh al-ṣadūq, 1363(SH.): 516). In this era, which has continued technically to nowadays, no guaranteed methods was defined for any kind of definite access to the Hidden Imam. Shī'ah literature has depicted the role of the Hidden Imam in the community during this era as the sun behind the clouds, which everyone benefits from its light and warmness, but the source is hidden from the eyes.

The Major Occultation of the Hidden Imam caused a dramatic change in the Shī'ite jurisprudential mechanisms. In this new atmosphere, instead of the Imams, Aḥādīth (the record of the words or actions attributed to the Islamic Prophet and Imams) became the main source of jurisprudence. In other words, Aḥādīth, as a collection of texts expressing the speeches and behaviors of the Prophet and the Imams, replaced the former possibility of access to the Imams. Relying on Aḥādīth as the main foundation of jurisprudence required a well-organized interpretative system that could control and guide the logic and method of the whole process of formation and expansion of the jurisprudence during the era of Major Occultation. This meant that the knowledge of jurisprudence, in addition to the Aḥādīth, needed a set of rules and an efficient logic to regulate how to refer to Aḥādīth. This system of interpretation was partially developed among Shī'ites under the teachings of the Imams and during the era of their presence, however, now and because of lack of access to the Imam, referring to the experience of Sunnis seemed also to be necessary and vital.

### Empowering Shī'ite jurisprudence by applying Uṣūl al-fiqh to it

Sunnis had experienced a relatively similar conditions earlier. To understand this, one must keep in mind that in a comparable situation, but within different dimensions and conditions, Sunni jurisprudence developed without access to the Prophet and its Companions. In that situation they focused on improvement and promotion of a special methodology. This methodology was designed specifically to face and solve the problem of lack of access to the main source of jurisprudence. This methodological discipline was called Uṣūl al-fiqh (the principles of jurisprudence). Of course it is not precise if one mark the discipline of Uṣūl al-fiqh entirely as a product of the efforts exercised by Sunni scholars and ignore the

role played by Shī'ites, during the time of the Imams like Imam Muḥammad al-Baqir (57-114 A.H.) and his son Imam Ja'far ibn Muḥammad al-Sadiq, (83-148 A.H.)(Al-Dhahabī: 166) in expanding some of the most important concepts and identical elements within the Uṣūl al-fiqh (Al-ḥillī, 1413(A.H.): 237), however the key point here is that some of the methodological considerations regarding understanding a text in the time of impossibility of access to the source of the text, or as it is called in fiqh "owner of the text" (mātin), had grown predominantly by Sunni jurisprudential schools due to their earlier lack of access to the Prophet and Companions. Based on that, it would be more precise to say that the final structure of this specifically developed parts of Uṣūl al-fiqh as a special methodology to guide the process of referencing to Aḥādīth was mostly in the 4th century product of Sunnis'. After the lack of access to the Hidden Imam, approaching these parts of Uṣūl al-fiqh was necessary for Shī'ite jurisprudence. This approach helped Shī'ah to overcome the crisis happened by the Major Occultation of the Hidden Imam. This methodology, through a series of pre-prepared and theoretically developed studies, not only improved the ability of Shī'ite jurisprudence to examine the authenticity of Aḥādīth but also provided Shī'ites with a more consistent, reliable, and comprehensive method to face Aḥādīth. It is important to mention that all branches of Shī'ite Ulamā didn't accept this approach without hesitation, but one can say, after considering important function of Uṣūl al-fiqh in jurisprudence and also some harsh controversies, the solution that the Shī'ites of the 4th century A.H. relatively could come to agree on was using Uṣūl al-fiqh in order to face the crises of lack of access to the Hidden Imam during the era of Major Occultation. In any way some Shī'ites, mostly adherents of the Aḥādīth-oriented School of Qum, (Newman, 2000) refused (Al-Muqaddasī, 1991: 395) to be a part of this approach (al-Shaykh al-ṣadūq, 1993: 43). Even though by the pass of time, these objections became less and less important, and Uṣūl al-fiqh, turned to be a significant part of Shī'ite jurisprudence.

Approaching Uṣūl al-fiqh, from the very beginning, seemed to be, in a paradoxical way, problematic as well. Indeed application of Uṣūl al-fiqh to fiqh, while containing a solution to the problem of lack of access to the Hidden Imam, created a significant concern about the possibility of Shī'ite jurisprudence to be absorbed and immersed in Sunni jurisprudence. The problem was driving from the risk that attitude toward Uṣūl al-fiqh could reshape the structure of Shī'ite jurisprudence and rebuild its architecture according to the Sunni jurisprudence. Many feared that fiqh of Shī'ites would come under the control of Sunni jurisprudence and ultimately lose its independent identity. Approaching to the Mu'tazilī theology was an effort by Shī'ite jurisprudence to reduce this risk; a solution that also contributed to the emergence of a rationalist discourse in Shī'ite jurisprudence during the 4th centuries A.H.

### Mu'tazilī theology and the emergence of Shī'ite rationalist jurisprudence

The Mu'tazilī theology, one of the two main branches of Islamic theology in the 4th century, did not have a Shī'ah or Sunni character and was promoted by the two sects of Islam. Specifically the school of Mu'tazilī theologians of Baghdad included distinguished scholars who were among the important faces of both Islamic sects (al-Shaykh al-Mufīd, 1413(A.H.): 100). Many of Shī'ite theologians of the Mu'tazilites were well-known jurisprudents as well (al-Baghdādī, 1401(A.H.): 113). Some of these theologian/jurisprudents were determined to find a way between two central areas of Islamic knowledge: jurisprudence and theology (al-Khayyāt, 1989: 156). Accordingly, a movement was formed which sought to study Shī'ite jurisprudence by relying on the Mu'tazilites' understandings (Ibn abī al-ḥadīd, 1404(A.H.): 7). At the head of this important historical approach were Shaykh al-Mufīd (336-413 A.H.) and two of his most important students Sharīf al-murtizā (355-436 A.H.) and Shaykh al-Tūsy (385-460 A.H.).

Al-Mufīd was not only a great jurisprudent, but also an important Islamic theologian who could, beyond sectarian attitudes, communicate effectively with the various Islamic divisions within the framework of the larger Islamic theology. He was able to view Shī'ite jurisprudence from the Mu'tazilī point of view (al-Shaykh al-Mufīd, 1993: 34) in order to open up new horizons in this knowledge (Al-Sharīf al-murtizā, 1376(SH.): 430-431). Based on that he found out that protecting Shī'ite beliefs in the context of jurisprudence (Fāzil Miqdād, 1405(A.H.): 254) is possible from the perspective of rationality (McDermott, 1978) which also to a significant extent reflected the Mu'tazilī theological logic (Al-ṭusī, 1416(A.H.): 122) as well. The main characteristic of this approach was to prioritize Mu'tazilī and Shī'ite rationality over Textual interpretation mechanisms within the framework of fiqh. This connection between Mu'tazilites and Shī'ites led to a special consequence for Shī'ah as the main minority school of thought in Islam: creating a theoretical and philosophical framework for Shī'ite jurisprudents to defend Shī'ite beliefs while using the Sunni Uṣūl al-fiqh as the central methodology in Shī'ite jurisprudence. It helped Shī'ite jurisprudence to organize itself in accordance with some philosophical foundations appropriate to its set of beliefs and guaranteed the placing this Shī'ite beliefs in the basis of fiqh during the critical situation of lack of access to the infallibles (Twelve Imams of Shī'ah). It defined some identical border for fiqh as a Shī'ite knowledge and shaped Shī'ite jurisprudence in relation with its vital principles in the field of theology. Efforts of al-Mufīd and his students to guide fiqh from the perspective of theological beliefs during the 4th and 5th centuries A.H. led also to a historic transition from an Aḥādīth-based fiqh to a rationalist fiqh which was the beginning of a new phase in Shī'ite jurisprudence;

a shift that influenced the Shī'ite jurisprudence forever and its effect is remained alive until now. Later, Shī'ites became the main developers of Uṣūl al-fiqh, and some significant theories and doctrines within this methodological discipline promoted by Shi'ites. Even some Sunni scholars turned to this heritage of Shī'ites and used it.

### Formation of Shī'ite jurisprudence as a result of its epistemological and methodological openness:

Here's an important question to be asked: how does the presence of Uṣūl al-fiqh and Mu'tazilite theology in jurisprudence, in addition to its historical impact on the formation of the Baghdad school of Shī'ah (as explained in the previous sections of this paper), became possible. In other words by and through which mechanisms this system of knowledge could embrace both Uṣūl al-fiqh and Mu'tazilite disciplines? To find an answer to this question, one must return to the basic concept of jurisprudence in its most implicit way. Jurisprudence, in its first place, focuses on religious duties of the obligated ones (mukallafīn) while doing their religious actions and daily behaviors (a'māl) (Al-Qazālī: 33). To meet this need fiqh deals with the collection of Aḥādīth that describe duties of individuals (takālīf) in accordance with their actions and behaviors (Al-baḥrānī, 1405(A.H): 90-91). Problem appears when new actions and behaviors are offered to fiqh (due to changes in time and place). The problem can be better understood when we notice that the quantity of Aḥādīth is limited to what jurists have received from the time of the Imams. The solution reached by Shī'ites in the 4th century was expansion of horizons of approaching Aḥādīth both internally and externally:

- Methodological impact on jurisprudence via Uṣūl al-fiqh (Internal level): the methodological approach to Uṣūl al-fiqh helped Shī'ites to expand the horizons of interpretation of Aḥādīth by relying on some hermeneutical and text based analysis from one side and some logical analysis from other side. In both cases, the study of fiqh was essentially methodological and its focus was on the process of understanding Aḥādīth
- Epistemological impact on jurisprudence via Mu'tazilite theology (External level): The epistemological approach toward fiqh contributed Shī'ites to define an epistemic and philosophical framework for their jurisprudence. It paved the way for Shī'ites to stabilize their position as a minority with a special set of beliefs with a special knowledge of fiqh.

With that in mind, we can come to the conclusion that Mu'tazilite epistemological approach increased the ability of fiqh to promote a certain level of rationality within its framework, while the methodological approach of Uṣūl al-fiqh strengthened its ability to refer to the



Aḥādīth, which, after the beginning of the Major Occultation, was the only inheritance left by the Imams for their followers (Shī'ites). The term "two principles" (al-ūṣūlayn), which refers to the principles of jurisprudence (Uṣūl al-fiqh) and the principles of belief (theology), addresses this two-level of approach fiqh in the 4<sup>th</sup> A.H. century (Al-ḥillī, 1413(A.H.): 37).

### An approach to the future by relying on a historical capacity for dialogue between Shī'ites and Sunnis

It is clear that the historical expansion of the Shī'ite fiqh in terms of epistemological (external level) and methodological (internal level) in Baghdad was achieved through interfaith dialogue. It showed the possibility and usefulness of common scientific approach between Shī'ites and Sunnis as the two main and historical sects of Islam many centuries before happening of a chain of superficial political conflicts between them recently. It means, contrary to the simple views of extremists in both sides, there is some reliable roots for an interactive and critical dialogue-oriented culture within both sides; a culture that played a role in shaping these schools of thought in their first place. In fact, in a chronological view, one can find out that the expansion of Shī'ite and Sunni knowledge are linked together and they are separated from a same tree of thought. What happened in the 4<sup>th</sup> A.H. century, and then followed in the next century, indicates the existence of a really important significant chance for starting a new level of dialogue nowadays. It shows not only effective dialogue between these two main sects of Islam is essential for both to understand each other, but it is also very beneficial and essentially constructive for both to find a way forward as well.

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