Then and Now: A History of *Ijtihad* in Twelver Shi'ism

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It is often assumed that *ijtihad* is practiced by Shi'is and that the gates of *ijtihad* have been closed in Sunni Islam. Recent scholarship has challenged the later part of this assertion. However, little research has been done on the history of *ijtihad* in Shi'ism. This chapter will examine the development and gradual deployment of *ijtihad* by Shi'i jurists. It will be seen that most of the early Shi'i jurists rejected *ijtihad* and that the vacuum created by the occultation of the Imam plus the necessity to respond to the community's increasing needs forced the jurists to invoke principles of *ijtihad* in Shi'i Islam.

Ijtihad During the Times of the Imams

Lexically, the term *ijtihad* is derived from the root *jhd*, denoting the exertion of effort in doing something. In the classical period of Islam, the term *ijtihad* was part of a longer formulation, namely: *ijtihad bi al-ra'y*, which means 'putting in utmost effort in the exercise of personal reasoning and analogy'. With time, *ijtihad* took a wider meaning and came to refer to a rational process that attempts to extrapolate juridical injunctions from the revelatory sources. More specifically, *ijtihad* came to be seen as a jurist's exertion of his mental faculties to arrive at an absolute proof based on the interpretation and application of the authoritative sources of Islamic law: the Qur'an, *sunna* (Traditions of the Prophet and, in the Shi'i case, Imams), and *ijma'*(consensus of the scholars). The purpose of the exercise is to arrive at a legal injunction that reflects God's will.

After the demise of the Prophet Muhammad in 632, the need for *ijtihad* was felt more acutely by the majority of the Muslims (later identified as Sunnis). This was because, for them, divine guidance in the form of authoritative texts (*nass*) had ceased with the Prophet's demise. For most Muslims, they could only approximate the divine will by resorting to rational faculties when an issue could not be found in the Qur'an and *sunna*.

During the times of the physical presence of the Imams (up to 874 CE), the Shiʿis rejected *ijtihad* since the presence of an infallible Imam negated the need to resort to human reasoning which is, after all, considered to be faulty and liable to arrive at conclusions based on probability rather than certitude. Statements of the Imams (*qawl*), their acts (*fiʾl*) and approval (*taqrʾir*) were considered by them to be as authoritative as those of the Prophet, and hence as part of the *sunna*. Indeed, terms like *ijtihad* and *mujtahid* do not appear in any of the traditions (*ahadith*) narrated from the Imams. Neither were the Imams known by the epithet '*mujtahid*' nor did they ever use it to refer to the legal scholars they trained.

However, as I have argued elsewhere, even during the times of the Imams, some of their disciples resorted to independent reasoning despite the fact that they were rebuked and, at times, cursed by the Imams.[1] Another evidence of the existence of independent reasoning during the era of accessibility to the Imam are the juridical opinions (*fatwas*) issued by some of the disciples of the Imams. The following tradition is an example of this:

> Mu'idh ibn Muslim said: "Al-Imam al-Sadiq said to me, `I have been told that you sit in the mosque and give *fatwa* to the people'. I said, `Yes, I do it.' Then I said, `Before I leave you I have to ask you a question: (My practice is that) When I sit in the mosque (giving *fatwas*) a man comes and asks me a certain question. If I know that he is one of your

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[1] Liyakat Takim, The Heirs of the Prophet: Charisma and Religious Authority in Shi'ite Islam (Albany: SUNY, 2006), pp. 94-106.

opponents and does not act according to your views, I narrate to him a *fatwa* which is acceptable in his legal school. If I know that he is one of your followers, I give a *fatwa* in accordance with the Shi'i school. But if I cannot find out to which group he belongs I explain to him various *fatwas* putting in your views among them.' The Imam replied, `Carry on in the same fashion, for such is also my method.'"[2]

The Imams also encouraged and commanded their companions to derive rulings on the basis of the principles that they had explicated. For example, Imams Ja'far al-Sadiq (d. 765) and 'Ali al-Rida (d. 818) are reported to have said: 'It is for us to set out foundational principles (*usul*) and it is for you to derive the legal rulings.'[3] It should also be noted that *ijtihad* at this time was used in the sense of personal judgment that included *ra'y* and *qiyas* and hence deemed impermissible.[4] Due to its conjunction with *qiyas* and *ra'y, ijtihad* was rejected by the Shi'is as it leads to a probable cause of a precept, not to a certain one. It is for this reason that Shi'i theologians like the Nawbakhtis, and 'Abd al-Rahman al-Zubayri wrote tracts refuting the validity of *ijtihad*.[5]

According to Sharif al-Murtada (d. 1044), disciples of Imams like Yunus b. 'Abd al-Rahman (d. 823) and Fadl b. Shadhan (d. 873-4) had also used *qiyas* on certain occasions. Indeed, according to him, Yunus resorted to *qiyas* in his legal inferences.[6] It was due to this factor that a prominent *rijal* scholar, Muhammad Bahr al-'Ulum (d. 1797), admitted that Ibn al-Junayd al-Iskafi (d. 991), who was

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[2] Muhammad b. al-Hasan al-Hurr al-'Amili, *Wasa'il al-Shi'a ila Tahsil Masa'il al-Shari'a* (Beirut: Dar Ahya Turath al-'Arabi, 1967), vol. 18, hadith # 37.

[3] Muhammad b. Ahmad b. Idris *Mustatrafat al-Sara'ir* (Qum: Madrasa al-Imam al-Mahdi, 1987), p. 575.

[4] Hossein Modarressi *An Introduction to Shi'i Law: a Bibliographical Study* (London: Ithaca Press, 1984) , 29.

[5] Ibid., 30.

[6] Cited in Muhammad al-Mahdi Bahr al-'Ulum, *al-Fawa'id al-Rijaliyya* (Najaf: 1965), 3:215 (quoting from an unpublished text of al-Murtada's *Risala*).

accused of employing *qiyas* in his legal formulations, had prominent predecessors in the application

of *qiyas*. These included erstwhile figures like Fadl b. Shadhan who had based some of his rulings on

divorce and inheritance on independent reasoning.[7] Ibn Shadhan's employment of *qiyas* in resolving

legal issues is also mentioned by al-Saduq in his juridical text, *Man La Yahduruhu'l-Faqih*. At one

point in this work, al-Saduq rejects an opinion on inheritance that was expressed by Fadl b. Shadhan.

In his refutation, al-Saduq states, "This [conclusion] is reached [only] by *qiyas*."[8]

Ijtihad during the Occultation of the Twelfth Imam

At the beginning of the minor occultation (874-940), due to the availability of many

textual sources including the four hundred *usul* works (*al-usul al-arba'u mi'a*)[9] Shi'i scholars did

not have recourse to rational sources. Most Shi'i jurists in this period devoted their efforts to

collecting and recording traditions from the Imams. They were not concerned with rational

argument in religious matters; rather, they contented themselves with collecting and compiling

traditions based on their subject matter. At this point in time, legal deduction was free of the later

technical complexities.

The emergence of new issues and the need to go beyond traditions reported from the

Imams made the task of deducing laws from existing textual sources more difficult for Shi'i

jurists. During the twelfth Imam's prolonged occultation (*ghayba*), the resulting vacuum in the

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[7]   Bahr al-'Ulum, *Fawa'id*, 3:215-19. See also Modarressi, *Introduction*, 30. Sharif al-Murtada was also criticized for arriving at legal opinions based on *ra'y* without textual documentation or demonstrating precedents for his rulings. See Devin J. Stewart, *Islamic Legal Orthodoxy: Twelver Shiite Responses to the Sunni Legal System* (Salt Lake City: The University of Utah Press, 1998), 106.

[8] Al-Saduq, *Man La Yahduruhu'l-Faqih* (Qum: Imam al-Mahdi, 1983), 4:197.

[9]   An *asl* refers to a notebook which comprises of traditions that were heard directly from the Imams. A *kitab*, on the other hand, may include *hadith* reports from the Imams but is transmitted through an intermediary. There is much controversy within the Shi'i ranks on the merit of the *usul* works. However, the authors of the *usul* works enjoy a higher prestige than other authors as they are seen as reflecting the Imams' exact sayings and transmitting their teachings. See Takim, *The Heirs*, chapter four.

leadership of the community was gradually filled by the 'ulama' who claimed to be his deputies until his return, using both rational and traditional evidence. The traditionalist school of thought,[10] which was based in Qum and remained dominant until the tenth century, asserted that there is no need to apply reasoning or critical thought in religious discourse during the Imam's absence. To support their case, they cited traditions attributed to the Imams which condemned Sunni hermeneutical procedures of analogical deduction (*qiyas*) and independent inquiry (*ra'y*). As a result, *ijtihad* acquired a negative connotation and was used in a pejorative sense by Shi'i scholars until the twelfth century.[11]

The first Shi'i jurist to use *ijtihad* in a limited capacity was Abu Muhammad al-Hasan ibn 'Aqil al-Hadhdha, known as Ibn Abi `Aqil (floruit in 9th century). He wrote a book on this subject entitled *al-Mustamsik bi habl Al al-Rasul* which is mentioned by the Shi'i biographer Ahmad b. 'Ali Najashi (d. 1058-9) as being one of the most famous and well-known Shi'i works. In this book Ibn Abi `Aqil examined the various aspects of the principles related to the process of legal deduction. Although he wrote many books in almost every field of Islamic sciences, his fame rests mostly on his studies of *ijtihad.* Ibn Abi 'Aqil is considered a pioneer in the field because no one before him had composed a tract that treated Shi'i *fiqh* in a comprehensive manner.

After Ibn Abi `Aqil, the next person to venture into this domain was Abu 'Ali Muhammad ibn Ahmad al-Katib al-'Iskafi (d. 991), known as Ibn Junayd. In his endeavor to establish legal studies on the principles and rules of *ijtihad,* he wrote a number of books on the

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[10] The Traditionalist school of Qum refers to those scholars who based their juridical and theological formulations primarily on the Qur'an and Traditions from the Imams rather than on rational grounds.

[11] Devin J. Stewart, *Islamic Legal Orthodoxy:* 15-16.

subject. The most important of them are *Tahdhib al-Shi`ah li ahkam al-Shari`ah* and *al-Mukhtasar al-Ahmadi li al-fiqh al-Muhammadi.* Abu Ja'far ibn Ma'd al-Musawi, who claims to have seen Ibn Junayd's work, says that he had not seen a better book among Shi'i works. He adds that *al-Mukhtasar al-'Ahmadi* was a popular textbook during the time of 'Allama Hilli (d. 1325). Although both were dialectic theologians and practiced rational reasoning in legal thought, there were some differences in their approach to law. Ibn Abi 'Aqil relied on general Qur'anic principles and widely transmitted *(mutawatir)* traditions. He did not consider "single" reports *(khabar al-wahid)* as valid in legal matters. Ibn Junayd, on the other hand, relied on rational analysis and tried to discover the rationale of precepts. In contrast to Ibn 'Aqil he upheld the validity of *khabar al-wahid* as a source of law. The works and legal opinions of these two scholars in their time, when the school of traditionists had gained control over the Shi'i community, did not receive much attention.

The Contribution of Shaykh Tusi

As noted, up to the tenth and eleventh centuries the term *ijtihad* was used in the sense of *qiyas* and *ra'y*. Early anti-Sunni polemics by Shi'i scholars reflect the existence of idealistic slogans notably, rejection of *qiyas, ijtihad* and *khabar al-wahid.* Regarding *ijtihad,* Sharif Murtada (d. 1044) stated:

> "As to *ijtihad* clear proofs reveal the falseness of what you (sc. 'Abd al-Jabbar) call *ijtihad.* One of these proofs is that *ijtihad* in the *Shari'a* is, according to you, a seeking for a dominant opinion *(ghalabat zann)* in matters which have no clear indicator *(dall).* But opinion *(zann)* has no place in the *Shari'a:* and it is not valid that the juristic status of a thing should be established by opinion.[12]

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[12] Sharif al-Murtada, *al-Shafi 'i fi'l Imama* (Tehran: n.p. 1886), 31-2.

Similarly, the famous Shiʻi jurist Muhammad b. al-Hasan Abu Jaʻfar al-Tusi (d. 1067), in his *'Uddat al-Usul*, devotes a chapter to *ijtihad* where he dismisses it as personal reasoning that has no basis in the textual sources. He says: 'This controversy [on *ijtihad*] is basically uncalled for because, as we have proved earlier, *qiyas* and *ijtihad* are absolutely impermissible in the *Shariʻa*."[13] Tusi's book has another chapter titled "Did the Prophet practice *ijtihad*, and whether it was legitimate for him to practice it? Was it legitimate for the companions of the Prophet to practice *ijtihad* when they were away from him or were in his presence?" Tusi's remark shows that in his time, *ijtihad* was rejected and often conjoined to notions of *ra'y* and *qiyas*.

Paradoxically, it was Tusi who first applied the general principles of jurisprudence to derive new rulings. In the preface to his seminal work *al-Mabsut*, he complains that the adversaries of the Shiʻis mock them, claiming that the Shiʻis do not have the capacity to deduce the *furu`* (derivatives) from *usul* (principles), and that they confine themselves to the texts (*nusus*) related by their traditionists.[14]

He further states: 'I heard from the *'amma* (i.e. the Sunnis) the criticism that our *fiqh* (jurisprudence) is limited because we do not practice *qiyas* and *ra'y* and is therefore inadequate to respond to new problems. For many years, I wanted to write a work on legal deduction without having recourse to *qiyas* and *ra'y*, deducing in it particular rules from the fundamental general principles that we have been taught in traditions. However, various preoccupations and hindrances prevented me [from doing it].' Then he adds, 'My determination was further weakened by the absence of any desire on the part of this sect (the Imamiyya) towards it and

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[13] Muhammad b. al-Hasan Tusi, *'Udda al-Usul* (Qum: Sitare, 1995), 2/733.

[14] Muhammad b. al-Hasan Tusi, *Al-Mabsut fi Fiqh al-Imamiyya*, 8 vols. (Tehran: al-Matbaʻa al-Haydariyya, 1967), 2.

their indifference in this regard.'[15] Tusi makes it clear that the biggest impediment in his writing of such a book was that it was not customary among the Shi'is to practice *ijtihad* and to deduce particular rulings from universal ones.

In this work, Tusi also expanded the scope of Shi'i *fiqh*, for he utilized the theoretical foundations which had been laid by predecessors such as Ibn Abi 'Aqil and Ibn Junayd al-Iskafi. The major effect of Tusi's work was to emancipate the study of *fiqh* from their traditional confines – wherein scholars relied primarily on the interpretation of traditions. His work represents the point of departure in the expansion of Shi'i *fiqh* and *usul al-fiqh* (the science of inferring juridical rulings from textual and rational sources) which was made possible by the pre-liminary work done by earlier scholars.

Rejection of *qiyas*, *ra'y* and *ijtihad* became items that Shi'is could use in the sectarian disputations against the Sunni other. This was part of the ongoing polemic, asserting that Shi'i law was free from the doubts and *ikhtilaf* (differences) that had characterized much of its Sunni counterpart.

The Rehabilitation if *Ijtihad* in Shi'i Jurisprudence

After Tusi, Shi'i legal thought entered a period of stagnation. Many Shi'i writers describe this as the period of imitation (*taqlid*), by which they meant the *taqlid* of Tusi. There was a general uncritical submission to his statements.[16] This submission was partially mitigated by the vociferous attacks of Ibn Idris al-Hilli against Tusi, especially the latter's acceptance of *khabar al-wahid*.

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[15] Tusi, *Al-Mabsut,* 2.
[16] Norman Calder, "Doubt and Prerogative: The Emergence of an Imami Shi'i Theory of *Ijtihad*," *Studia Islamic*, 70, 1989, 182.

Two centuries after the demise of Tusi the issue of deploying rational tools in deducing laws was finally resolved by the jurists of the school of Hilla. The most important figures of this period were Ja'far b. al-Hasan (Muhaqqiq) al-Hilli (d.1277) and his nephew and student 'Allama al-Hilli (d. 1325). Muhaqqiq collected and rearranged Tusi's opinions on various subjects and defended his legal doctrine which had been attacked by Ibn Idris al-Hilli.

Muhaqqiq redefined *ijtihad* in the sense of "the endeavor and effort undertaken for deducing a ruling (*hukm*) of the *Shari'a* through means and sources which the *Shari'* (lawgiver) considered as valid proofs." To substantiate this claim, Muhaqqiq made a distinction between speculative component (*zann)* on the one hand and *qiyas* and unrestricted reasoning *(ra'y)* on the other. Based on this distinction, *ijtihad* was defined as valid *zann*, that is knowledge based on probability as opposed to arbitrary speculation or analogy. *Ijtihad* was now construed as an effort to establish the probability of truth based on speculation that was approved by the lawgiver. Thus, the *ijtihad* allowed by Shi'is was seen as *al-ijtihad al-shari'* (reasoning based on revelation) rather than *al-ijtihad al-'aqli* (reasoning based on the intellect). The latter was equated with inductive reasoning (*qiyas*) whereas the former was equated with deductive reasoning.

Muhaqqiq's adoption of *ijtihad* seems to originate from his conviction that most legal norms are to be derived from textual rather than rational sources and that this was permitted by the lawgiver. He was the first Shi'i scholar to adopt *ijtihad* in this sense. His nephew, 'Allama Yusuf b. Mutahhar al-Hilli incorporated newer rational principles into Shi'i jurisprudence. 'Allama also legitimized *ijtihad* as a potent source of law and argued that the actions of the Shi'i populace was to be based on the *zann* of the *mujtahid*. In the process, he divided the community into *mujtahids* and their followers.

Thus, starting with Muhaqqiq al-Hilli, Shi'i scholars gradually transitioned from the principle of certitude in deriving legal norms to probable opinion, which was eventually formally adopted in the fourteenth century when 'Allama Hilli's *ijtihad* was finally accepted.[17] From this time onwards the term *ijtihad* was no longer used in the sense of *ra'y* and *qiyas* and connoted the scholarly effort in discovering the rulings of the *Shari'a*. With this change, *ijtihad* was accommodated in Shi'i jurisprudence.

'Allama also established new terminologies for the organization and evaluation of traditions. He was the first Shi'i scholar to divide traditions into sound, weak, good, all of them derived from Sunni sources.[18] It was probably because of this that Muhammad Amin Astarabadi (to be discussed below) accused 'Allama of claiming that most Shi'i traditions were not authentic.[19] 'Allama also tried to expand Islamic law on the basis of the Tusi's legal doctrine. He enlarged the section on legal transactions and introduced advanced mathematical rules in the relevant legal subjects such as the law of inheritance, the times and direction of prayer.

For Muhaqqiq, the *Shari'a* was not a stable or clear structure. It had large elements of uncertainties. However, this doubt had been approved by the lawgiver, he insisted. 'Allama went even further, claiming that since most Shi'i traditions singular, the legal tradition was based on *zann*. He further claimed that the *'ulama'* were allowed to deduce values based on conjecture.

There is much evidence to suggest that both Muhaqqiq and 'Allama appropriated Sunni legal theory in their methodologies. A comparison of *Ma'arij al-Usul* by Muhaqqiq and

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[17] Robert Gleave, *Scripturalist Islam: The History and Doctrines of the Akhbari Shi'i School* (Boston: Leiden, 2007), 4-8. Hasan b. Mutahhar al-Hilli, "'Allama al-Hilli on the Imamate and Ijtihad," in Sa'id Arjomand (ed.), *Authority and Political Culture in Shi'ism* (Albany: State University of New York Press, 1988), pp. 240-49; and Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam: From the Office of Mufti to the Institution of Marja'* (Kuala Lumpur: ISTAC, 1996), pp. 61-77.

[18] Bahr al-'Ulum, *Fawa'id*, 2/260.

[19] Norman Calder, "The Structure of Authority in Imami Shi'i Jurisprudence," unpublished thesis (School of Oriental and African Studies, 1979), 230-1.

Tahdhib al-Wusul of 'Allama with *al-Mustasfa'* and *al-Mankhul of Ghazali* (d. 1111) indicates that Ghazali's conceptions of *zann* and *al-i'tibarat al-nazariyya* (theoretical considerations) had direct bearings upon the two Hillis' approaches in their conceptualization and acceptance of *ijtihad*.[20] They also seem to have followed Fakhr al-Din Razi (d. 1210). He had composed one of the most extensive works on the legal methodology in which the concepts of *zann* and *ijtihad* are clearly defined.[21]

After 'Allama, Shams al-Din Muhammad ibn Makki al-'Amili (d. 1384), known as al-Shahid al-Awwal (the First Martyr) (d. 1384) also applied *ijtihad* based on the *usuli* principles of Muhaqqiq and 'Allama. He went further, composing the first Shi'i text of juridical rules (*qawa'id al-fiqh*) which stipulated the rational maxims that jurists should use in their derivation of juridical laws. Henceforth, not only was *ijtihad* accepted in Shi'ism, its domain was gradually expanded.

Akhbarism and *Ijtihad*

In the seventeenth century, the Shi'i rationalist movement and the reliance on *usul al-fiqh* was challenged by the resurgence of the Akhbari movement. The Akhbaris rejected *ijtihad* since it produced only conjecture. Instead, they proposed a legal methodology that was couched on certainty based on narrative reports from the Imams. For them, it is only the traditions from the Imams, rather than the Qur'an and *sunna*, that provide substantive legal knowledge.

The chief proponent of Akhbari ideas, Muhammad Amin al-Astarabadi (d. 1626), attacked the *Usuli*s for their dependence on *ijtihad* and the application of reason in Shi'i

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[20] Moussavi, *Religious* Authority, 170.

[21] Ibid. 170.

jurisprudence. *Usul al-fiqh*, Astarabadi claimed, relies on probability sacrificing, in the process, certitude. Astarabadi also claimed that the *usuli* methodology was responsible for the issuance of conflicting legal opinions, which could not lead to an understanding of the divine intent.[22] He further argued that the rationalists' dependence on reason had led them to issue rulings and hold positions that went against the traditions from the Imams on many doctrinal and juridical points.

He categorically rejected the concept of imitation (*taqlid*) of a *mujtahid* as an innovation in faith. No one has any right to follow anyone except an infallible Imam. He also claimed many innovations had crept into Shi'i jurisprudence and *usul al-fiqh*. These included the acceptance of *ijtihad*, considering the *zawahir* (apparent meanings of the Qur'anic verses) to be of binding authority, classifying *ahadith* into weak and strong, inquiring into the reliability of transmitters of *ahadith* etc. Such principles came into Shi'i usage because the *fuqaha'* had followed the practitioners of *qiyas*, philosophers and logicians who rely upon reason.

Astarabadi argued forcefully to disprove the authority of reason in matters which are not perceptual or derived from sense-experience. It has to be remembered that tension between the rationalist and traditional schools in Shi'ism was not new. Even during the times of the Imams, there were discussions between the close associates of the Imams about the roles of *al-'aql*, the authority of human reasoning, and *akhbar* the exclusive reliance on traditions from the Prophet and Imams, in the derivation of juridical rulings.[23] After the occultation of the twelfth Imam the eminent Shi'i jurist-theologian al-Mufid (d. 1022) was very critical of the traditionalists,

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[22] See Devin Stewart, *Islamic*, p. 186.

[23] Takim, *The Heirs*, pp. 94-103.

especially of his own teacher, Shaykh al-Saduq in his tract, *Tashih al-I'tiqadat*.[24] Al-Mufid's student, Sharif al-Murtada (d. 1044), even labeled the scholars of traditions in Qum as deviants.[25]

Later Akhbari jurists softened their stance toward *ijtihad*. Yusuf Bahrani (d.1772), for example, was the first Akhbari jurist to write a comprehensive book on *fiqh*. In this work, he had to use *ijtihad* in the interpretation of the Qur'an and tradition-reports. Although rejecting the role of *ijma'* (consensus) and *'aql* (intellect) Bahrani applied and defended *ijtihad* in deriving legal rulings in applied law. In his *al-Hada'iq al-Nadira,* Bahrani posed the question of how to derive the law when the possibility of acquiring knowledge no longer existed with the occultation of the Imam. He suggested that the community must await the return of the Imam or it must have recourse to *ijtihad.* He pre-ferred the latter.[26]

The Akhbari school sustained its supremacy for only a few decades, for the eminent scholar Muhammad Baqir al-Bihbahani (d. 1790-1) revived rationalism in Shi'i jurisprudence and the legitimacy of using reason in deriving legal rulings. In his most celebrated work *Risalat al-Ijtihad wa'l-Akhbar* Bihbihani set forth the argument that the *zann* of the *mujtahids* was the only valid avenue for acquiring knowledge during the occultation of the Imam. His belief in the *mujtahid's* ability to establish proof led him to consider the *mujtahid* as the vicegerent of the Prophet.[27]

This stance gradually became the distinctive hallmark of Shi'ism: *ijtihad* was both

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[24] Hossein Modarressi *An Introduction to Shi'i* Law, 40-41.

[25] Ibid., 41.

[26] Moussavi, *Religious Authority*, 102.

[27] Ibid., 103.

permissible and considered a perpetual imperative, as it was indispensable for dealing with novel issues and contingencies. The triumph of the *Usulis* at the beginning of the 19th century not only enhanced the position of the *mujtahid* in the community but placed the doctrine of *ijtihad* in the center of the Shi'i juristic structure of authority upon which the subsequent institution of *marja'iyya* had to be built. Henceforth, the position of *mujtahid* survived under the shadow of the office of *marji ' al-taqlid*.

In the second half of the 19th century, the usage of *ijtihad* was further enhanced through the efforts of Shaykh Murtada Ansari (d. 1864). He advocated the usage of four major rational principles when texts were silent on an issue. These were *bara'a*,[28] *takhyir* (choice)*, ihtiyat* (precaution) *and istishab* (presuming continuation of the previous condition of a thing). Juridical argument, henceforth, was not only based on the regular *usuli* principles, but rather on the proper employment of diverse kinds of *istishab.*

Ansari intensified the use of *ijtihad* and rational principles by setting forth various possible scenarios and hypothetical situations. He also posited *taqlid* as a binding principle for all lay Shi'is who wished their religious duties to be accepted.[29] In this vein, the contribution of Ayatollah Yazdi (d. 1919) was significant. He dedicated the first chapter of his celebrated *al-'Urwa* to the problem of *taqlid* and *ijtihad* in which he explicitly ruled that the practice of the Shi'i layman was vain without following a *mujtahid* or in the absence of prudent observation. Most commentators of this book expanded this dictum to include all actions performed by a layman in the Shi'i community.

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[28] The presumption that unless there is an explicit interdiction, an act has been approbated by the lawgiver.

[29] Moussavi, *Religious Authority*, 175.

The development of Shiʿi *usul* from the 10th to the 16th centuries can be seen as a transition from an initial desire to preserve '*ilm* throughout the law to a later realization and acceptance that the true law can never be realized or known. Rather, it was the prerogative of the *mujtahid* to approximate that law, based on the tools of *ijtihad* at his disposal.

It is important to understand that the hermeneutical principles embedded within *ijtihad* allow for different understandings of the Islamic message. Invoking principles that are embedded in *ijtihad* Muslim jurists need to go beyond the interpretation and explication of the texts. For the Islamic message to be viable and applicable in modern times, it is essential that scholars continue to review and revise the law in keeping with the dictates of changing circumstances