

The History of 'Ilm'ul Usul

'Ilm'ul Usul developed in the lap of *'Ilm'ul Fiqh* just as the latter developed in the lap of *'Ilm'ul Hadith* (the science of traditions) as a result of the various stages through which *'Ilmush Shari'ah* passed.

By *'Ilmush Shari'ah* we mean the science that endeavors to come to know the laws which Islam has brought from Allah the Most High. The beginning of this science in Islam is represented by the campaign of a large number of narrators to preserve and collect the traditions (*al-AHadith*) that appear in the laws of the *Shari'ah*. Thus in the first stage *'Ilmush Shari'ah* was at the level of *'Ilm'ul Hadith*. At that time the basic task seems to have been confined to collecting the traditions and preserving their texts.

However as for the method of understanding the laws embodied in those texts and traditions, it was not so important at that stage, because it then consisted of nothing more than the simple method by which people understood the words of each other in their everyday conversation. Gradually the method of understanding the laws of the *Shari'ah* from the texts became more and more complex, until the derivation of laws from their legal sources became abstruse demanding profound and comprehensive knowledge.

Increasing and exhaustive efforts were made to acquire that profundity which the understanding of the laws of the *Shari'ah* from the texts and their derivation from their sources demanded. Thus the seedlings of academic legal thought developed and *'Ilm'ul Fiqh* was born. Then *'Ilm'ul Shari'ah* ascended from the level of *'Ilm'ul Hadith* (science of traditions) to that of deduction and of *Istidlal* (setting out proofs and reasoned arguments) which is abstruse.

During that growth and development of *'Ilm'ul Fiqh* and of legal thinking and the embarkation of the scholars of the *Shari'ah* upon carrying out the process of deduction and understanding the laws of the *Shari'ah* with the degree of profundity and depth demanded by the situation, the common threads (the common elements) of the process of deduction began to appear and to reveal themselves. This was how the birth of *'Ilm'ul Usul* took place and how the legal thinking of the outlook of *'Ilm'ul Usul* was adopted.

Hence we can say that the science of the principles of jurisprudence was born in the lap of *'Ilm'ul Fiqh*.

Thus, while previously' those carrying out the tasks of *Fiqh* were using the common elements in the process of deduction without completely grasping their nature and limitation and the significance of their role in it –the entrance of the trend of *'Ilm'ul Usul* onto the stage of the thinking of *'Ilm'ul Fiqh*, they began to pay attention to these common elements and to study their limitations.

We do not doubt that the seeds of the thinking of *'Ilm'ul Usul* were to be found with the jurists among the companions of the Imams since the days of the Sadiqain (Imam Muhammad Baqir and Imam Ja'far Sadiq) at the level of their legal thinking. Historical testimony to that is contained (among other things) in the books of *AHadith* (traditions) about the questions concerning some of the common elements in the process of deduction posed by a number of narrators to Imam Sadiq and other Imams and the answers received from them.¹

Those questions reveal the existence of the seeds of the thinking of *'Ilm'ul Usul* among them and their tendency to establish general laws and to delineate the common elements. This view is strengthened by the fact that some of the companions of the Imams like Hisham bin Hakam wrote booklets on some of the problems of *'Ilm'ul Usul*. Hisham wrote a book on 'Terms'.

However, in spite of that, the concept of common elements and the significance of their role in the process of deduction were not sufficiently clear and profound in the beginning. The elucidation of these characteristics and their increase in comprehensiveness took place gradually during the expansion of the tasks of *'Ilm'ul Fiqh* and the development of the processes of deduction. But the study of these common elements did not become a separate study, independent of the researches of *'Ilm'ul Fiqh*, until a long time had elapsed after the birth of the first seeds of the thinking of *'Ilm'ul Usul*. Thus the study of *'Ilm'ul Usul* remained for a long time mixed with the researches of *'Ilm'ul Fiqh* and not independent of it. The thinking of *'Ilm'ul Usul* in the meanwhile intensified its role with, increasing clarity until it reached the degree which enabled it to become independent of *'Ilm'ul Fiqh*.

It seems that up to the time *'Ilm'ul Usul* reached the level which qualified it for independence, it continued to waver between *'Ilm'ul Fiqh* and *'Ilm'ul Usul'ud Din* (science of theology).

Thus sometimes these researches were mixed with the researches of *Usul'ud Din* and *Kalam* (scholastic theology) as Sayyid Murtaza has indicated in his book on *'Ilm'ul Usul* called *al-Zari'ah* in which he says, "I have come across one who has devoted a book to *Usul'ul Fiqh* and its Styles and overstepped and exceeded its bounds extensively, and even though he was right in the detailed presentation of its meaning, principles and forms, yet he strayed away from *Usul'ul Fiqh* and its methods and overstepped and exceeded its bounds extensively. Thus, he discussed the limits of knowledge and speculation; how the theory of knowledge was formulated; the necessity of effect from cause, etc. which are exclusively the method of discussions belonging solely to *Usul'ud Din* and not *Usul'ul Fiqh*".

Now we find that the independence of *'Ilm'ul Usul* as the distinct science of the common elements in the process of deduction to derive the laws of the *Shari'ah*, and its separation from all other religious

sciences from *Fiqh* to *Kalam* was not accomplished until after the concept of the common elements in the process of deduction and the necessity of formulating a general system for them had become clearer.

This was the reason which helped in distinguishing between the nature of the studies of *'Ilm'ul Usul* and the studies of *'Ilm'ul Fiqh* and *Kalam*, and led consequently to the setting up of a separate science called *'Ilm'ul Usul'ul Fiqh* or *'Ilm'ul Usul*.

In spite of the fact that *'Ilm'ul Usul* was able to gain complete independence from *'Ilm'ul Kalam* (the science of theology, there remained in it some conceptual residue, the history of which goes back to the time when the two sciences (*'Ilm'ul Usul* and *'Ilm'ul Kalam*) were mixed. This residue continued to be a source of anguish. In that residue was the concept that the narrations termed Akhbar Ahad (single reports) cannot be used as proofs in *'Ilm'ul Usul*, as every proof about it has to be definite and decisive. The source of this concept is *'Ilm'ul Kalam*, because in this science the scholars had laid down that *Usul'ud Din* (the basic principles of Islam) require definite and decisive proofs.

Thus we cannot prove the Attributes of Allah or the life Hereafter with Akhbar Ahad. The mixture of *'Ilm'ul Usul'ud Din* and *'Ilm'ul Usul Fiqh* and their sharing the word *Usul* led to the generalization of that concept to apply to *'Ilm'ul Usul al-Fiqh* also. Thus we see that the books on *'Ilm'ul Usul* (i.e. *'Ilm'ul Usul'ul Fiqh*) up to the time of Muhaqqiq Hilli in the seventh century A.H. continued to criticize proving of the validity of the common elements in the process of deduction with Akhbar Ahad as a departure from the above concept.

We find in the book al-Zari'ah concerning the mingling of *Usul'ul Fiqh* and *Usul'ud Din* some relatively abstruse and limited conceptions of the common elements in the process of deduction. The author wrote, "You must know that the discussions of *Usul'ul Fiqh* are in reality discussions about the proofs of *Fiqh*. In view of what we have described, it is not necessary that the proofs, the methods of arriving at the laws and the existing branches of *Fiqh* in the books of the jurists, be of the nature of *Usul* (principles), because the discussions on *Usul'ul Fiqh* are discussions on the nature of the proofs by which these *Usul* establish laws, but not in a detailed manner. The proofs of the jurists are of the same pattern. But their discussions on the sum total are different from those in detail".

This quotation taken from one of the earliest sources of *'Ilm'ul Usul* in the *Shari'ah* heritage clearly includes the concept of the common elements in the process of deduction, calling them "The proofs of *Fiqh* (*Adillatul Fiqh*) in general". It distinguishes between the studies of *'Ilm'ul Usul* and *'Ilm'ul Fiqh* on the basis of the distinction between the proofs of the sum total and the proofs of the details, i.e. between the common elements and the particular elements in our terminology. This means that the concepts of common elements had developed to a great degree by that time. The same concepts found afterwards in the writings of Shaykh Tusi, Ibn Zuhrah, Muhaqqiq Hilli and others. They all knew *'Ilm'ul Usul* as "the science of the proofs of *Fiqh* in general". Thus they endeavored to express by this the concept of common elements.

In Kitab *al-Iddah*, Shaykh Tusi says, “*Usul’ul Fiqh*” are the proofs of *Fiqh*. Thus when we discuss these proofs, we discuss in general the obligations, recommendations, permissibility, etc. from different categories. It is not necessary that these proofs should lead to the branches of *Fiqh*, as the former are proofs on the delineation of the problems and the discussions about the sum total is different from the discussion in detail”.

Here the terms “the sum-total” and “the details” are used to denote the common and the particular elements, respectively.

From the above we come to the conclusion that the emergence of *‘Ilm’ul Usul* and the intellectual awakening to the common elements in the process of deduction depended on both the development of this process of deduction to a degree of abstruseness and extensiveness and the flourishing and increase in complexity of the thinking of *‘Ilm’ul Fiqh*. Thus it was no coincidence that the emergence of *‘Ilm’ul Usul* historically followed the appearance of *‘Ilm’ul Fiqh* and *‘Ilm’ul Hadith*. And that *‘Ilm’ul Usul* should develop in the lap of *‘Ilm’ul Fiqh* after legal thinking had grown and developed to the extent which permitted the observation of the common elements and their study through the methods of academic research, is again no coincidence. Hence, it was but natural that the concept of common elements should develop gradually and become more abstruse, with the passage of time, until it gained its distinct form and correct limits and was separated from the studies of both *‘Ilm’ul Fiqh* and *‘Ilm’ul Usul’ud Din*.

The Historical Necessity for ‘Ilm’ul Usul

The delay in the emergence of *‘Ilm’ul Usul* historically, after the appearance of *‘Ilm’ul Fiqh* and *‘Ilm’ul Hadith*, was not due only to the correlation between the outlook of *‘Ilm’ul Usul* and the relatively prior levels of legal thinking. There is also another reason that is of great significance in this regard. It is that *‘Ilm’ul Usul* was not found in the capacity of a kind of intellectual luxury, but was the expression of the dire need for the process of deduction for which *‘Ilm’ul Usul* was required to supply the indispensable common elements.

This means that the need for *‘Ilm’ul Usul* originated from the need of the process of deduction for the common elements which are studied and delineated in this science. This need of the process of deduction for the common elements in reality is not an absolute necessity but arose as a historical need.

In other words it was a necessity which was found and which became more severe after jurisprudence had become far removed from the period of the promulgation of the texts, This need was not found to that degree in the jurisprudence contemporaneous with the period of the promulgation of those texts.

To understand this concept clearly, suppose that you were living in the time of the Holy Prophet, in close proximity to him and used to hear the laws directly from him and to understand the texts given out by him owing to their clarity of language and your direct approach to contexts and their expressions. Hence, in such a case would you have been in need, in order to understand the laws of the *Shari’ah*, for taking

recourse to a common element of *'Ilm'ul Usul* like the validity of al-Khabar as a proof, bearing in mind that you either heard the texts directly from the Holy Prophet or they were transmitted to you by persons whom you knew directly and in whose truthfulness you had the least doubt?

Or would you have been taken recourse to a common element of *'Ilm'ul Usul* like the validity of al-Zuhur al-'Urfi as a proof, when you were directly and clearly perceiving (with the aid of your sense of hearing) the meaning of the texts issued by the Prophet, whose meaning was not at all doubtful most of the times owing to your knowledge of all the circumstances and contexts of those texts?

Or would you have required contemplation to formulate laws to explain abstract (*muhmal*) statements issued by the Prophet when you were in a position to ask him and seek clarification from him instead of harbouring doubts on those laws? This means that as man was nearer to the period of the promulgation of Islamic law and more conversant with the texts, the less was the necessity for his own judgment regarding general laws and common elements.

At that time the formulation of the laws of the *Shari'ah* would have been completed in a simple manner without jurists having to face numerous gaps and to contemplate filling them through the methodology of the elements of *'Ilm'ul Usul*. However as the jurists became far removed from the age in which the texts were issued, and were forced to rely on history on the historians, on the narrators and the Muhaddithin (traditionalists) in the matter of the transmission of the texts, they faced many gaps and missing links, forcing them to contemplate formulating laws. We may ask; "Was the transmitted text in reality given: by the Prophet or the Imam or did the narrator lie, or did he make a mistake in transmitting it?"

What did the infallible one mean by this text? Did he indeed intend the meaning I understand from the text when I read it, or did it contain some other meaning according to the circumstances and contexts in which it was issued and of which we are not aware? What does a jurist do when he is unable to find a text on a specific problem? " In this way man becomes in need of the elements of the validity of al-Khabar, or al-Zuhurul-'Urfi; etc. as proofs, from among the laws of *'Ilm'ul Usul*.

This is what we mean by saying that the necessity for *'Ilm'ul Usul* was historical, and connected with the extent of the distance in time of the process of deduction from the age of the promulgation of the *Shari'ah* and its separation from the circumstances and contexts of the texts of the *Shari'ah*. It is this separation in time that brings about the gaps and missing links in the process of deduction. It is these gaps that brought about the urgent necessity for *'Ilm'ul Usul* and its laws.

In order to fill up those gaps the need for *'Ilm'ul Usul* was perceived by the first pioneers of this science. Sayyid Jalil Hamza ibn 'Ali ibn Zuhrah Husayn Halabi (d. 585 A.H.) wrote in the first chapter of his book *al-Ghunya*: "Since the discussions on the branches of jurisprudence are based on the *Usul'ul Fiqh*, it is essential to begin with those *Usul* and then follow the branches of *Fiqh*. Any discussion on the branches, of *Fiqh*, without mastery of the *Usul* will not be fruitful. However some detractors had objected to it, saying, 'If, concerning the laws of the *Shari'ah*, you know only a statement of an infallible one, what is the need for *'Ilm'ul Usul*? Your discussions on it seem meaningless and useless".

In this text Ibn Zuhrah connects the need for *'Ilm'ul Usul* with the gaps in the process of deduction by referring to the necessity of the Imamiyah school of thought following the statements of the infallible Imam only. This is because as long as they continue following such statements they have no need for *'Ilm'ul Usul*. This is due to the fact that if the derivation of a law is based directly on the statement of the infallible Imam, then it is a simple task, containing no gaps, which demand contemplation to formulate laws and elements of *'Ilm'ul Usul* to fill them.

In a text of Muhaqqiq Sayyid Muhsin A'raji (d" 1227 A.H.) in his book on *Fiqh 'Wasa'ilush Shi'ah*", we find a complete awareness of the concept of the historical necessity for *'Ilm'ul Usul*. He spoke about the differences that arose owing to the distance in time from the age of the promulgation of the texts and its being far removed, from it as regards circumstances and contexts. Summing this up, he wrote, "What comparison is there between one favored with nearness in time and one afflicted by being far removed from it, so that they can be termed equals in, riches and poverty?"

No, there is a world of difference between them. Owing to the length of the period of separation, the severity of hardships, and the universality of tribulations; what has occurred would have led to a return to the period of *Jahiliyah* (Age of ignorance), had it not been for Allah and the blessings of His pious servants.

Languages have been corrupted, terminologies and usages changed, the contextual circumstances have disappeared, lies have increased, hypocrisy has spread and contradictions between proofs have become serious so much so that one is almost not able to find a law which is universally agreed upon, owing to the allegations of differences in it.

At the same time there is also no one to whom questions may be addressed. Suffice it to say that there is a distinction between the two groups –the contextual circumstances and what is perceived in speaking in detail and in brief. This is different from him who comes across only different narrations and contradictory traditions and needs to apply them to the Qur'an and the known Sunnah: For such an individual preparation, readiness and training in that field are necessary so that he may not make mistakes, because he has to select from the conflicting views".

In the light of this we come to know that the subsequent emergence of *'Ilm'ul Usul* historically was not only the consequence of its correlation with the development of legal thinking and the growth of deduction, it was also the consequence of the nature of the necessity for *'Ilm'ul Usul*. This necessity was historical and was found and developed in direct proportion to the distance in time from the period of the promulgation of the texts.

[Works on 'Ilm'ul Usul](#)

In the light of the preceding, which confirms that the need for *'Ilm'ul Usul* was historical, we are able to explain the separation in time between the heyday of *'Ilm'ul Usul* in the sphere of Sunni legal thinking

and its heyday in the sphere of our Imami legal thinking. History indicates that this branch of knowledge relatively thrived and flourished in the sphere of Sunni Jurisprudence before it did so in our Imami Jurisprudence. It is said that *'Ilm'ul Usul* in Sunni theology entered the phase of literary works in the closing stages of the second century (A.H.) when works in that field were written by al-Shafi'i (d. 189 A.H.) and Muhammad ibn Hasan al-Shaybani (d. 189 A.H.), while we don't find any extensive work on that subject in Shi'ah theology until just after the short occultation i.e. at the beginning of the fourth century (A.H.). However some essays on various topics of *'Ilm'ul Usul* by companions of the Imams do exist.

We have come to know that the development in the thinking of *'Ilm'ul Usul* was the result of the need for principles in the sphere of deduction, and that this need was historical. This need increased and became more severe as the distance in time from the age of the promulgation of the texts increased. Therefore it was only natural that this separation in time be found earlier in Sunni theology and that Sunni thinking on *'Ilm'ul Usul* should grow and expand before Shi'ah thinking, because Sunni theology claims that the age of the promulgation of texts ended with the death of the Holy Prophet.

Thus when Sunni legal thinking crossed the second century, it had become separated from the age of the promulgation of texts by a long period of time which had engendered gaps and missing links in the process of deduction. Thus there was the pressing need for the formulation of general laws of *'Ilm'ul Usul* to cover up the gaps and missing links. As regards the Imamis, however, they were at the time still living in the age of the promulgation of texts of the *Shari'ah*. This was due to the presence of the Imam as an extension of the stay of the Holy Prophet. Thus the difficulties faced by the Imami jurists in making deduction were very few; hence, the field did not permit severe necessity for formulating *'Ilm'ul Usul*.

Thus, we find that for the Imamis, the age of the promulgation of texts ended with the beginning of the occultation or with the end of the minor occultation more specifically, their thinking on *'Ilm'ul Usul* only then emerged and they began to study the common elements in the process of deduction. A number of distinguished pioneers from among our jurists established themselves as the leaders in this field, such as Hasan ibn Ali ibn Abi Aqil and Muhammad ibn Ahmad ibn Junayd Askafi in the fourth century (A.H.).

'Ilm'ul Usul then quickly entered the stage of literary works. Shaykh Muhammad ibn Muhammad ibn, No'man known as Shaykh Mufid (d. 413 A.H.) wrote a treatise on *'Ilm'ul Usul* in which he continued the line of thinking followed by Ibn Abi Aqil and Ibn Junayd, his predecessors. He criticized both of them for a number of their views. After him came his pupil Sayyid Murtaza (d. 436 A.H.) and he developed this line of thinking on *'Ilm'ul Usul*. On this subject he produced a relatively comprehensive work, which he called al-Zari'ah. In its preface Sayyid Murtaza mentioned that this work was unique in this sphere owing to the trends of *'Ilm'ul Usul* in it, which fully distinguished the Imamis from others. However Sayyid Murtaza was not the only one among the pupil of Shaykh Mufid to have developed this new science and done work in this branch. A number of other students of Shaykh Mufid also wrote on *'Ilm'ul Usul*. Among

them was Salar ibn Abdul Aziz Daylami (d. 436 A.H.) who wrote “al-Taqrīb fi *Usul’ul Fiqh*”.

Also among them was the jurist and Mujaddid Shaykh Muhammad ibn Hasan Tusi (d. 460 A.H.) who was recognized as the leader of the jurists after his two predecessors, Shaykh Mufid and Sayyid Murtaza. He wrote a book on Ilmu’l *Usul* called “*al-Iddah fil Usul*”. Through his efforts *‘Ilm’ul Usul* entered a new phase of intellectual maturity, just as with him jurisprudence also entered a higher level of expansion and extension.

In addition to research and studies in *‘Ilm’ul Usul* that age also witnessed an extensive effort to collect the traditions transmitted from the Imams of the Holy Prophet's progeny and to assimilate smaller collections of traditions into large and comprehensive ones. And before that age had come to an end, Imami intellectual thinking was enriched by the four comprehensive sources of traditions. These are “al-Kafi” by Thiqatul Islam Muhammad ibn Ya’qub Kulayni (d. 329 A.H.); “*Man la Yahzaruhul Faqih*” by Shaykh Saduq Muhammad ibn Ali ibn Husayn (d. 381 A.H.); “al-Tahzib” by Shaykh Tusi (which he wrote in the lifetime of Shaykh Mufid) and also “al-Istibsar” by Shaykh Tusi. These books are called in the terminology of the Imamis “al-Kutub al-Arba’ah (The Four Books).

The Development of the Knowledge of Theory and of its Application by Shaykh Tusi

Shaykh Tusi's work on *‘Ilm’ul Usul* was not merely as a continuation of the same line of thinking, but it may be considered as a new advancement altogether like a separate part of the extensive development of the whole of legal and intellectual thinking. This pioneering jurist was successfully able to accomplish it. The book ‘al-Iddah’ was an expression of this development on the subject of *‘Ilm’ul Usul*, whereas the book “*al-Mabsut fil Fiqh*” was an expression of the great development in the studies of *‘Ilm’ul Fiqh* at the level of application, in a manner parallel to the development in *‘Ilm’ul Usul* at the level of theory.

As regards the qualitative distinctions between the tendencies in the sphere of knowledge resulting from this new development and the preceding tendencies, we can consider Shaykh Tusi as the separating boundary between the two periods in the history of knowledge –the preparatory era and the era of maturity in knowledge. This pioneering scholar brought the preparatory era to close, and initiated that age of knowledge in which *‘Ilm’ul Fiqh* and *‘Ilm’ul Usul* became sciences with their own specific intellectual outlooks, their own art, and their own abstruseness.

In this connection perhaps the best of all possible methods to elucidate the tremendous development which knowledge underwent at the hands of Shaykh Tusi would be to examine two statements written by him– one in the Introduction to his book “*al-Iddah*” and the other in the Introduction to his book ‘*al-Mabsut*’.

He wrote in the introduction of *al-Iddah*: ” You (may Allah grant you support) have asked for a brief statement on *‘Ilm’ul Fiqh* encompassing briefly and concisely all chapters in, accordance with the views

of our school of thought and our principles. Whoever has written on this subject has done so along the lines dictated by his own principles (*Usul*) But none of our companions known to have written on this subjects except Shaykh Abu Abdillah in “*al-Mukhtasar*”, his book on *Usul’ul Fiqh*.

However he did not write with complete accuracy because certain irregularities have been transmitted from him and they necessitate rectification and revision. Sayyid Murtaza in most of his discourses had pointed out those irregularities. However, he has not written anything on this subject to which recourse may be taken or which can act as a central pillar to be relied on. Thus you may say, “It is essential to attach the greatest importance to this branch of knowledge because the whole of the *Shari’ah* is based on it and the knowledge of any aspect thereof is not complete without mastering the principles (of *Usul Fiqh*). And whoever does not master the principles of *Usul’ul Fiqh* can be a storyteller and a layman but not a scholar”.

This text of Shaykh Tusi reflects the extent of the importance of the development of *Usul’ul Fiqh* which he carried out in his book “*al-Iddah*” and his important role in this field and the importance of what he has derived through research on the formulation of the theories of *Usul’ul Fiqh* within the general religious framework of the Imami school of thought.

This text also re-affirms that Shaykh Mufid was in the forefront of the field of writings on *’Ilm’ul Usul* in the sphere of Imami theology. It also shows that Shaykh Tusi wrote “*al-Iddah*” or at least began writing it during the lifetime of Sayyid Murtaza, as he has prayed in it for the latter's long life. Perhaps, he did not at that time know of the existence of Sayyid Murtaza's book “*al-Zari’ah*” as he negated the existence of any book on *’Ilm’ul Usul* by the latter. This means that Shaykh Tusi began his book before Sayyid Murtaza wrote “*al-Zhari’ah*” or that “*al-Zhari’ah*” had already been written but had not been known or publicized, so that Sayyid Murtaza 's contemporary (Shaykh Tusi) did not know of it when he began writing “*al-Iddah*”.

In his great work on jurisprudence, “*al-Mabsut*.” Shaykh Tusi wrote, “I continue to hear a group of jurists and those associated with the study of jurisprudence who are opposing us, belittling the jurisprudence of our Imami companions and saying, regarding the paucity of branches (*Furu’*) of jurisprudence and of legal problems. They are the exponents of “insertion” and “competition”. Verily those who deny *Qiyas* (analogy) and *Ijtihad* have no means of solving many of the legal problems and of deriving the branches from the underlying principles (*Usul*), since the major part of these are based on the two principles of *Qiyas* and *Ijtihad*.”

This statement of theirs reflects ignorance regarding our school of thought and their lack of reflection on our principles. Had these critics only examined our traditions and our jurisprudence, they would have come to know that most of the legal problems mentioned by them are to be found in our traditions based on the authority of the Imams, whose statements, as regards proof, follow the course of those of the Holy Prophet, to specify, generalize, clarify or comment on them. And as for the majority of problems relating to the branches (*Furu’*) of jurisprudence with which their books are replete, there is no branch

which is not dealt with in our principles, and is not found in our school of thought. It is not dealt with on the basis of *Qiyas*. We follow the principle that to act according to obligatory knowledge is obligatory.

“Acquiring this knowledge is facilitated because it is based on the underlying principle (*a/-Asl*) and on meeting one's obligations etc. In addition, most of the branches of jurisprudence have their origin in the texts transmitted from our companions. However their number has multiplied at the hands of the jurists because of their approach to handle the legal problems, some based on others and their inter-relationships and abstruseness so much so that many of the clear problems have become abstruse owing to this kind of handling even if the problems themselves are familiar and clear.

“For a long time I had a keen desire to write a book covering that field. My desire was aroused but different circumstances interrupted me and other preoccupations kept me busy. Also the lack of desire on the part of this group for such a book and their lack of concern for it, was a setback for my intention. They had written down the traditions and their writings consisted of exact definite words, so much so that if a problem was presented in different words or put forward in a manner other than the usual, they became astonished and were unable to understand it”.

“Previously I had written the book “*an-Nihayah*” in which I had discussed all that was reported by our companions in their writings and all the problems they had dealt with together with their differences thereon. These I arranged in the order of the problems of *Fiqh* and I collected their views and arranged the books in the given order for reasons explained there. Hence, I did not undertake the branches of the problems nor writing the conclusions of different chapters nor arranging the problems, nor commenting on them, nor reconciling to their differing views. Instead I present all or most of them in the form of quotations, so that they may not have an aversion to that. At the end I wrote brief sentences of conclusion on *Ibadat* (acts of devotional worship) in which I preferred brevity and conciseness. I also wrote concluding sentences on the chapters related to *Ibadat* (prayers)”.

In “*an-Nihayah*” I promised to write a book especially on the branches of jurisprudence, which, taken, in conjunction with the former, would be complete and sufficient for all intents and purposes. Then I realized that would be incomplete, and to understand it would be difficult for the reader because a branch is understood only when viewed in conjunction with its underlying principle. Thus, I thought it only just that I should write a book encompassing all the works on jurisprudence written so far numbering about thirty and I that I should mention each of them, to the extent that its summarization is possible.

These are the works dealing solely with *Fiqh* and not with invocations or etiquette. I also felt that I should assign chapters, divide the legal problems, reconcile the differing views and treat the matter as exhaustively as possible also that I should deal with most of the branches of jurisprudence mentioned by our opponents, and state the view of our school of thought dictated by our basic principles, after mentioning the underlying principle of every problem.

This book, if Allah grants me the Grace to complete it, will be a work unmatched both among the works

of our companions as well as among those of our opponents. This is because I have not come to know so far of any single work by any jurist, which deals with the underlying principles as well as with the branches of jurisprudence exhaustively according to our school of thought. On the contrary their books, in spite of being numerous, do not encompass the underlying principles as well as the branches of jurisprudence in a single work. As for our companions they have no work on this topic worthy of reference; they give only summaries”.

The above quotation expresses the historical circumstances that occurred in the initial stages of the development of legal thinking, through which science of Islamic law expanded and developed in the Imami school of thought until it resulted in the likes of Shaykh Tusi, one of the illustrious scholars who expanded and extended it to a greater and deeper level.

From the above quotation it seems that the legal studies and research that preceded Shaykh Tusi (which he came across and felt anguished thereby) were confined mainly to the review of the traditions and texts. To this, Shaykh Tusi refers as the underlying principles (*Usul*) of the problems. This review of the data was restricted to the self-same forms that appeared in the original sources of those traditions. Naturally legal research and studies when confined to the underlying principles of the problems, given in a direct manner in the texts, and to the transmitted forms, will be very narrow and restricted with no scope for originality and extension.

In the scales of the development of knowledge, transforming legal thinking from its narrow limited scope dealing with the underlying principles of problems to a wider scope, in which the jurist deals with the branches of *Fiqh*, with details, with the comparison between laws and with the application of general laws, and also examines the laws of different occurrences and hypotheses in the light of the given data in the texts in these scales, the book “*al-Mabsut*” was a great and successful endeavor.

From a study of the texts of Shaykh Tusi, the eminent jurist in “*al-Iddah*” and in “*al-Mabsut*”, we are able to derive the following two facts:

Firstly, *‘Ilm’ul Usul*, in the stage of knowledge, which preceded Shaykh Tusi, was proportional to the level of legal research and studies which, at that time, were confined to the underlying principles of problems and the immediate data from the texts of the *Shari’ah*, and it was not possible for *‘Ilm’ul Usul* to develop considerably in that period. This is because the limited need for legal research that confined itself within the limits of the immediate data in the texts of the *Shari’ah* did not help such a development.

Thus naturally, *‘Ilm’ul Usul* had to await the expansion and development of legal thinking and its passing through those stages about which Shaykh Tusi felt annoyed and expressed his discontent, Secondly, the development of *Ilm’ul Usul*, which Shaykh Tusi presents in his book ‘*al-Iddah*’ followed a line parallel to the tremendous development which occurred in that period in the field of jurisprudence.

This historical parallelism between the two developments supports the view which we have previously put forward about the interaction between the thinking on *‘Ilm’ul Fiqh* and *‘Ilm’ul Usul*, i.e., between the

studies in theory and practice in the field of jurisprudence. Thus a jurist, who concerns himself with the limits of the meaning of a text and the immediate data either in the same words or in synonymous words, and, who lives at a time not far from that of the infallible ones, will not feel a great need for laws, However when he enters the stage of the branches of that text and the study of details and of putting forward new hypotheses to derive the laws, through whatsoever means, from the texts; he finds himself in great and urgent need of the common elements and the general laws.

The wide horizons of legal thinking then open up before him. We must not, however, conclude from the preceding quotations from Shaykh Tusi that the transformation of legal thinking from the stage of being confined to the underlying principles (*Usul*) of the problems and its Stagnation on the forms of the traditions to the stage of branches and of application of laws, took place suddenly at his (Shaykh Tusi's) hands without any prior preparation. In fact the development that Shaykh Tusi brought about in legal thinking had its seed sown before him by his two illustrious teachers, Sayyid Murtaza and Shaykh Mufid, and before them by Ibn Abi Aqil and Ibn Junayd as we have alluded to previously.

Those seeds had their own importance from the point of view of the developments of knowledge, so much so that Abu Ja'far ibn Ma'd Musawi (who came later than Shaykh Tusi) is reported to have come across the book on jurisprudence by Ibn Junayd called 'al-Tahzib' and to have remarked that he had not come across any book, more excellent, more eloquent, with better expression or with a more delicate meaning than that. This book deals with the branches of jurisprudence as well as the underlying principles, and shows differences in the problems and cites proofs, both according to the way of the Imamis as well as according to the way of their opponents. This testimony demonstrates the value of the seeds that grew until they bore fruit at the hands of Shaykh Tusi.

Then came Shaykh Tusi's book "*al-Iddah*", which represented the development of the thinking on '*Ilm'ul Usul*' as the fruit of those seeds, in compliance with the needs for extension and expansion in the legal research and studies. In this light we come to know that it is an error to say that the book "*al-Iddah*" severed the relationship between the development of '*Ilm'ul Fiqh*' and that of '*Ilm'ul Usul*' and established the possibility of the development of the thinking on '*Ilm'ul Usul*' to a considerable extent without thinking on science of jurisprudence. This is because Shaykh Tusi wrote "*al-Iddah*" in the lifetime of Sayyid Murtaza and at that time thinking on science of jurisprudence was in its initial stages and did not develop except in the book "*al-Mabsut*" which the learned Shaykh Tusi in the latter part of his life the reason why making such a statement is an error is that though the book "*al-Mabsut*" was chronologically younger than "*al-Iddah*", yet the former only embodied the extension and expansion of legal thinking which had begun to develop and branch out at the hands of Ibn Junayd, Sayyid Murtaza, etc,

Relative Stand Still in Knowledge

No sooner had the great Mujaddid (reformer) Muhammad ibn Hasan Tusi appeared than the study of '*Ilm'ul Usul*' and of applications in the sphere of *Fiqh* spurted out tremendously and he left behind an

enormous heritage in *'Ilm'ul Usul* as represented by "al-Iddah" and another enormous heritage in the sphere of applications in *Fiqh*, embodied in "*al-Mabsut*", However this enormous heritage remained at a standstill, without any further development, after the demise of the great Mujaddid for a century, both in the fields of *'Ilm'ul Usul* and *'Ilm'ul Fiqh* equally.

This fact, in spite of the stress of a number of scholars, is the basis for questioning ourselves about it. This is because the revolutionary movement, started by Shaykh Tusi, in the spheres of *'Ilm'ul Fiqh* and *'Ilm'ul Usul*, and the great achievements, which he accomplished, should expectedly have been a powerful force for knowledge and should have opened up wide horizons for subsequent scholars to exercise originality and creativity, and for continuing the journey on the track shown by the Shaykh. How is it that they did not associate with the views of the Shaykh and his researches that would naturally serve to urge and motivate towards following the same path?

This is the question that deserves an explicit answer. It is possible for us, at this juncture, to indicate a number of reasons that would throw light on the situation.

1. It is a historical fact that Shaykh Tusi migrated to Najaf in 448 A.H. as a result of the disturbances and strife that erupted between the Shi'ahs and Sunnis in Baghdad about 12 years before his death. In Baghdad he had become a centre of learning before his migration. He was very popular among the public as well as among the scholars, so much so that he gained the chair of "*al-Kalam wal Ifadah*" from the Caliph Qa'im bi Amrillah. The Caliph used to bestow this honor only on eminent and reputable scholars. Shaykh Tusi was not only a teacher, he was also an authority and a religious leader, from whom the Shi'ahs of Baghdad sought help in their various affairs after the death of Sayyid Murtaza in the year 436 A.H. Hence, his migration to Najaf served to free him from many duties and gave him the opportunity to devote himself completely to intellectual pursuits.

This helped him to perform his enormous intellectual role which raised him to the status of one of the founders, as alluded to by the Muhaqqiq Shaykh Asadullah Tustari in his book "*Maqabisu'l Anwar*" in the following words: "Perhaps it was the Divine Wisdom to allow Shaykh Tusi to free himself for the duties which he alone carried out in laying the foundation of the sciences of the *Shari'ah*, especially in the sphere of the problems of jurisprudence".

In the light of the above, naturally, the years which Shaykh Tusi spent in Najaf had a great influence on his intellectual stature and personality, as represented in his book, "*al-Mabsut*". This was the last work on jurisprudence written by him, as mentioned by Ibn Idris in "*Bahth ul-Anfal minas Sara'ir*". It was the last work written by him in his life as his biographers mention.

In addition to this, we see that Shaykh Tusi, by migration to Najaf, most probably separated himself from his students and his academic circle in Baghdad and began to develop a young circle around him from among his children or from those desirous of pursuing studies on jurisprudence from among the students at the sacred tomb of Imam Ali (a) at Najaf or the residents of nearby towns like Hillah etc. This circle

developed gradually in his lifetime and the Mash'had element (named after Mash'had 'Alawi) became prominent in it. The Hilli element from which the intellectual currents flowed to Hillah also came into prominence.

When we put forward the view that Shaykh Tusi, by his migration, separated himself from his original circle of students and founded a new circle in Najaf we are relying on a number of considerations. First of all, we see that the historians writing about the migration of Shaykh Tusi to Najaf do not at all indicate that his students in Baghdad accompanied him or that they joined him immediately after his migration.

Further, when we examine the list of the Shaykh's students mentioned by his biographers we find that the place of students is not mentioned except in the case of two persons about whom it is clearly mentioned that they studied under Shaykh Tusi at Najaf. They are Husayn ibn Hasan ibn Muzaffar ibn Ali Hamadani and Husayn ibn Hasan ibn Babwayh Qummi and most likely they were the new students of the Shaykh. Regarding Husayn ibn Muzaffar, Shaykh Muntajabuddin has mentioned in the former's biography in "al-Fihrist" that he studied all the Shaykh's writings under him at Ghara. Studying all the Shaykh's writings under him, at Najaf, increases the possibility that Husayn was one of his new students, who joined him after his migration to Najaf, since this student had not studied under the Shaykh before.

The probability of this is further increased by the fact that Husayn's father, Muzaffar also used to attend the lectures of Shaykh Tusi and prior to that, those of Sayyid Murtaza as Muntajabuddin mentions in al-Fihrist. This increases the probability that the son, Husayn, was from a later group of students than the one in which his father participated as one of the Shaykh's students. About Hasan ibn Husayn Babwayh (Qummi), we know from his biography that he was also a student of Abdul Aziz ibn B'arraj Tarabulusi and that he narrated traditions from Karachuki and Sihrishti. The latter three were all students of Shaykh Tusi. This means that Hasan who became a student of the Shaykh in Najaf was one of his later students since the former was also a student of the Shaykh's students.

Another fact, which increases the likelihood that the academic circle, which assembled around the Shaykh in Najaf, was wholly new, is the role played in it by his son Hasan, better known as Abu Ali. The latter assumed the leadership of the academic group after the demise of his father, migrated to Najaf, because although his dates of birth and death are not known, it is historically established that he was alive in the year 515 A.H., as is clear from a number of references in the book "Basharatul Mustafa, viz. that he lived for about seventy years after his father's migration to Najaf. About his education it is stated that he was a student of his father's classes, at the same time as Hasan ibn Husayn Qummi, who, we think, probably belonged to the later circle of students. It is also said that Shaykh Tusi granted the certificate of graduation to Abu Ali in 455 A.H. i.e. fifty years before the latter's death.

This fact agrees with the view that he was one of the new students. Thus knowing that Abu Ali succeeded his father in teaching and in intellectual leadership of the academic circle in Najaf in spite of his being one of the Shaykh's later students (as is most likely), we are able to estimate the intellectual level of that circle. Hence, the likelihood of its being a new formation is apparent.

The picture, which becomes clear to us, on the basis of the above is that Shaykh Tusi, by migrating to Najaf became separated from his original circle of students in Baghdad, and that he founded a new circle around him in Najaf. There he was able to find time for study and research, and for furthering the cause of knowledge. If this happens to be the true picture, then we are in a position to explain the phenomenon confronting us. Naturally, the new academic circle, which formed around the Shaykh in Najaf, because of its newness, was not able to rise to the level of creative interaction, with the development that Shaykh Tusi brought about in intellectual thought. As regards the original circle, having its roots in Baghdad, it did not interact with the ideas of the Shaykh because he was carrying on his work, cut off from it.

Thus even though his migration to Najaf prepared him for undertaking his great intellectual role, as it afforded him free time, yet it also cut him off from his original circle of students. Owing to this, the intellectual originality of the Shaykh in the field of *Fiqh* did not flow from him to that circle, as he was drawing his own conclusions and introducing his original ideas. And there is a great difference between a creative thinker putting forward his original ideas within the sphere of an academic circle and continuously interacting with that circle so that it participates in those original ideas with full consciousness and awareness and a creative thinker working outside the sphere of such a circle and far removed from it.

Thus, it was necessary, in order that creative intellectual interaction be effected, that youthful circle which developed around the Shaykh in Najaf should become powerful enough to reach that level of interaction on the intellectual standard.

Thus a period of apparent stagnation prevailed until that youthful circle matured to (reach) the required level. Thus the course of knowledge had to wait necessarily for nearly a hundred years to allow that circle to be mature enough to bear the load of the intellectual heritage of the Shaykh in a manner so as to act meaningfully on his views and then to spread his original creative thinking to Hillah. Meanwhile the old circle in Baghdad withered away and was totally cut off from intellectual creativity and originality of which the youthful circle in Najaf and its branch in Hillah especially, were the natural heirs.

2. A group of scholars attributes that strange intellectual stagnation to the great esteem that Shaykh Tusi enjoyed in the eyes of his students as he was above criticism in their views. They thus made his views and theories into sanctified things not open to objections nor fit for being subjected to a thorough examination. Thus in "Ma'alimuddin", Shaykh Hasan ibn Zaynuddin writes on the authority of his father that most of the jurists who came after Shaykh Tusi used to follow him and completely rely on his authority owing to their great reverence for him and their high opinion about him. It is also reported that Himsi who lived during that period, said, "Strictly speaking the Imamis have no Mufti (jurist) left; they are all narrators".

This means that the sentimental reaction to the new and original ideas of the Shaykh, as represented in that attitude of sanctification, prevailed over the intellectual reaction which should have been expressed

in the study of propositions and problems which the Shaykh had presented and in the continuity of intellectual development in the field of jurisprudence.

The attitude of sanctification reached such an extent in the minds of the Shaykh's contemporaries, that we read of those among them who spoke of the dream of the Commander of the Faithful in which Imam Ali (a) testified to the correctness of all that Shaykh Tusi had written in his book "*an-Nihayah*". This clearly shows the extent to which the intellectual and spiritual authority of the Shaykh was implanted in the depths of their minds.

However this reason given to explain the intellectual stagnation is interconnected with the first one, since the intellectual esteem, in which a jurist is held, no matter to what extent, is normally not enough to close for others the doors of growth and interaction with the views of that jurist in the sphere of legal thinking. This usually happens only when others are not at that intellectual level which qualifies them for such interaction. In such a case the esteem is transformed into complete faith and blind confidence.

3. The third reason can be deduced from two historical facts. The first is that the growth of thinking in *'Ilm'ul Fiqh* and in *'Ilm'ul Usul* with the Shi'ahs was not separated from the external factors which were aiding the growth and development of academic thinking and research. One of those factors was Sunni thinking because researches in *'Ilm'ul Usul* in the sphere of Sunnism and the development of these researches according to the Sunni school of thought continuously motivated the thinkers among the Imami jurists to study those researches within the framework of the Imami school of thought, and to formulate theories in accordance with Imami views on every problem and difficulty raised by Sunni research and to criticize the solutions put forward by others. Quotations from two eminent Imami jurists will be enough to establish the role of motivation played by Sunni thinking on *'Ilm'ul Usul*.

(a) Shaykh Tusi in the preface to his book *'al-Iddah'* says, justifying the step he had taken in writing this book on *'Ilm'ul Usul*, "Whoever has written on this subject has followed the lines dictated by his own principles (*Usul*). But none of our companions is known to have written on this subject".

(b) Ibn Zuhrih in his book, "*al-Ghuhyah*", has explained the intended objectives of research on *'Ilm'ul Usul*. We also have another objective in discussing *Usul'ul Fiqh* apart from what has already been mentioned. This is to show the incorrectness of many of the views of the schools of thought of our opponents and of many of their ways of reaching correct views.²

It is not possible for them to correct themselves nor for us to show them their incorrectness using any of the branches of jurisprudence. This is because knowledge of the branches without understanding the underlying principle is impossible. This major objective requires careful consideration of *Usul'ul Fiqh* and motivating towards a careful study of those *Usul* (underlying principles) ". This is the first of the two historical facts.

The second fact is that Sunni thinking on *'Ilm'ul Usul* began to decline in the fifth and sixth centuries A.H. and its power of revitalization began to stagnate and it more and more tended towards Taqlid (reliance

on authority) and this finally resulted in the official closing of the doors of *Ijtihad*".

The evidence pertaining to that period, from a Sunni scholar living at that time, is enough to establish this fact. Al-Ghazali (d. 505 A.H.), while discussing the pre-requisites for one participating in polemics, mentioned, "that the person engaging himself in polemics should be a Mujtahid who gives legal verdicts on the basis of his own opinions and not according to the school of thought of al-Shafe'i or Abu Hanifah or any other. Thus if it appears to him that the right verdict is in accordance with the school of thought of Abu Hanifah, he should abandon the corresponding views of al-Shafe'i and deliver his verdict in accordance with what he considers to be correct. However for him, who has not reached the level of *Ijtihad*, this law includes everyone in all periods. Then what is the benefit, for him in polemics?"

When we combine these two facts and realize that the Sunni thinking on *'Ilm'ul Usul*, which was a motivating factor for Shi'ah thinking in the same field began to decline and became stagnant, we would be able to conclude that, intellectual thinking by our Imami jurists thus lost one of its motivating factors. This, we can deem as a contributing factor for the stagnation in the development of knowledge.

Ibn Idris Describes the Period of Stagnation

Perhaps the best historical document concerning that period is the writing of the outstanding jurist, Muhammad ibn Ahmad ibn Idris, who lived during that period and played a major role in resisting the stagnation. He infused a new life into intellectual thinking as we shall come to know soon. In the preface of his book "*al-Sara'ir*, he wrote, "When I saw the indifference of the people of this age towards knowledge of the *Shari'ah* of Muhammad and of the laws of Islam, their sluggishness in seeking knowledge of it, their hostility towards that which they don't know and their neglect of that which they know and when I saw even in the elders of this age, the predominance of ignorance and their neglect of the demands of the time and their being satisfied with only that much knowledge which is obligatory on them so much so that they seem to be concerned with only today, and with the achievement of only this hour, and when I saw that knowledge was going to the depths of degradation, and the field of knowledge was devoid of security, I took the necessary steps to preserve the remaining signs of life, and restored life, which was at the point of cessation".

Renewal of Life and Vitality in Academic Research

However, a hundred years had not elapsed, when a new life flowed into the researches on jurisprudence and principles of jurisprudence in the sphere of the Shi'ite school of thought. It was at a time when Sunni intellectual research and study was stagnant, as described by al-Ghazali in the fifth century (A.H.).

The underlying factor for this difference in the state of Sunni and Shi'ite research and study is based on many reasons, which contributed to Shi'ite intellectual thinking regaining its vigour and vitality in the spheres of jurisprudence and principles of jurisprudence while Sunni intellectual thinking failed to follow suit. We shall mention the following two reasons for this:

(1) The spirit of Taqlid (following), which had pervaded the academic circle left behind by Shaykh Tusi, had penetrated in the midst of Sunni jurisprudence. However the nature of this spirit of Taqlid differed in the two cases. In the first case the spirit of Taqlid spread in the academic circle left behind by Shaykh Tusi because the former was not matured and could not readily interact with the new and original ideas of the illustrious Shaykh. Thus it was necessary for it to wait for sometime before it could grasp those ideas and before it could reach the level to interact with and influence those ideas. Thus by its very nature this spirit of Taqlid was only temporary. On the other hand in the Sunni juristic groups, the spirit of Taqlid spread because of their bygone days, when they had reached the peak of expansion and development, or after they had realized their objectives. We cannot elaborate on this point at this juncture because of the level of the present discussion. However, it was only natural that the spirit of stagnation and taqlid should become more firmly implanted in those groups with the passage of time.

(2) Sunni jurisprudence was the official jurisprudence adopted by the State and promulgated for the fulfillment of its religious obligations. Hence, the State was a factor for the motivation and development of Sunni jurisprudence. Thus, Sunni jurisprudence was influenced by political circumstances and flourished in times of political stability but its zeal was diminished in circumstances of political confusion and instability.

On the basis of the above, it was only natural that Sunni jurisprudence should lose something (no matter how much) of its vitality in the sixth and seventh centuries and afterwards as a result of political instability, and finally of the devastation at the hands of the Mongols who stormed the world of Islam and overthrew the governments.

On the basis of the above it was only natural that Sunni jurisprudence should lose something (no matter how much) of its setup. Nor did the Shi'ite jurists derive motivation and incentives for intellectual research and study from the needs of the political set-up. On the contrary they derived such motivation from the needs of the people who believed in the Imamate of the Ahlal Bayt (Progeny of the Prophet) and who took recourse to the jurists of the latter's school to solve their religious difficulties and to learn about the religious obligations according to the Shari 'ah. Hence, Shi'ite jurisprudence was influenced by the needs of the people and not by the political environment, as was the case with Sunni jurisprudence.

The Shi'ite jurisprudence, following the Ahlal Bayt, was in a state of continuous development. The relationship of the Shias with their jurists and their method of seeking and obtaining the jurist's verdicts was becoming more defined and expanded. In this light, we come to know that Shi'ite jurisprudence did not lose any of the factors propelling it towards growth and development, but that it expanded, with the expansion of Shi'ism and with the spread of the idea of Taqlid, in an organized manner. Thus, we come to know that Shi'ite intellectual thinking possessed factors of expansion and development internally owing to its growth and its attitudes on the road to development and also externally due to the relationships between the Shi'ite jurists and the Shi'ah sect and the ever-increasing needs of the latter.

The relative stagnation of Shi'ite jurisprudence after the death of the illustrious Shaykh Tusi was only for

the purpose of recouping its forces and of directing its development and growth to the level where it could interact with his views.

As regards the element of motivation represented by Sunni intellectual thinking, in spite of its being deprived of the Shi'ite intellectual thinking owing to the stagnation of the Sunni juristic groups, it then assumed anew form. This was because of the activity of religious confrontation taken up by the Shi'ahs. In the seventh century and thereafter they began the missionary role of inviting people to the Shi'ite school of thought. This missionary activity was carried on by our scholars like Allamah Hilli and others on an extensive scale. This in itself was enough to motivate Shi'ite intellectual thinking towards great depth and expansion, in the study of the underlying principles of the Sunnis, of their jurisprudence, and of their *Kalam* (scholastic theology). Thus, we witness a remarkable vigor and vitality in the studies on comparative jurisprudence undertaken by those scholars among the Shi'ite jurists, who were carrying out that missionary activity, like Allamah Hilli.

From the Author of Al-Sara'ir to the Author of Al-Ma'alim

Intellectual thinking began to emerge from the period of relative stagnation at the hands of that creative jurist, Muhammad ibn Ahmad ibn Idris (d. 598 A.H.) who infused new life into it. His book on jurisprudence, "*al-Sara'ir*" stated that the school of Shaykh Tusi had matured to the level where it could interact with, the Shaykh's ideas. He thoroughly examined them and even criticized them.

From a study of the book, "*al-Sara'ir*" and a comparison with "*al-Mabsut*" we are able to arrive at the following points:

1. The book "*al-Sara'ir*"; brings out the elements of *Usul'ul Fiqh* in the study of *Fiqh* and their relationship to jurisprudence in a more comprehensive manner than "*al-Mabsut*". For example we may mention that Ibn Idris brought out three rules of *'Ilm'ul Usul* while deducing the rules relating to "water" and linked his research on jurisprudence to them. However, we find no mention of any of these in the rules relating to "water" in the book "*al-Mabsut*", even though in a general theoretical way they were present in the books on *'Ilm'ul Usul* before Ibn Idris.
2. The arguments and proofs presented by Ibn Idris are more extensive than those in "*al-Mabsut*" and they include points on which Ibn Idris differs with the Shaykh extensively on the objections to and the accumulation of testimonies. This is to the extent that a problem (for example), the discussion of which may not exceed one line in "*al-Mabsut*" takes up a whole page in "*al-Sara'ir*". In this category is the question of the purity of contaminated water if the water of the cistern happens to be kurr (377 kilograms).

Shaykh Tusi's verdict was that the water remained impure and he explained the reason for his view in a single sentence. On the other hand Ibn Idris adjudged the water pure in such a circumstance and

extensively discussed the question. He concluded by saying, “On this question alone we have written about ten pages in which we reached our utmost limits, and we clearly proved our verdict thereon, elucidating various points, and giving proofs and testimonies from the verses of the Qur'an and the authentic traditions”.

Regarding the points, on which Ibn Idris differs from Shaykh Tusi, we observe a great care on the former's part to carefully examine all the arguments which could support the latter's point of view, and then to refute them. Either the arguments which he examines and refutes are the products of his own point of view, or they represent an opposition to the mode of thinking prevalent against the new views of Ibn Idris, i.e. that prevalent mode of thinking which these views aroused and which began to defend the views of Shaykh Tusi. Thus Ibn Idris used to collect the arguments of his opponents and then refute them. This means that Ibn Idris's views provoked a reaction and exercised his influence on the prevalent intellectual thinking and invited the scholars to confrontation.

We know from “*al-Sara'ir*” that Ibn Idris used to confront his contemporaries with his views and debate with them and was not solely preoccupied with the task of writing. Thus it was only natural that he should provoke reactions and that those reactions should express themselves in the form of arguments to support the views of Shaykh Tusi. Among those confrontations was the one mentioned in the chapter on Muzari'ah (contract of share-cropping) in “*al-Sara'ir*” wherein Ibn Idris wrote as follows about a juristic view which he disapproved: “The exponent of this view is Sayyid Alawai Abul Makarim ibn Zuhrah Halabi, whom I've seen and met. We corresponded and I made him aware of the mistakes he made in his writings and he excused himself (May Allah grant him mercy)”.

Similarly, we become aware from the researches of Ibn Idris what he had to do with those who relied on the authority of Shaykh Tusi and were completely devoted to his views, and how he was harassed by their stagnation. On the question of the least amount of water obligatory to be emptied from a well in which an unbeliever has died, Ibn Idris gave a ruling that it was obligatory to empty all the water, on the basis of the unanimously accepted argument that if an unbeliever falls into the water of a well while alive it is obligatory to empty all of it.

Thus emptying all the water when he dies is all the more so obligatory, This form of argumentation based on priority and precedence bears the stamp of intellectual courage when compared with the level of knowledge during the time of Ibn Idris who commented on that level as follows, “It's as if I am among those who listen to this statement and then shun it and set it aside, saying: who said this? Who has seen thus in his book? Who has referred to it from among the specialists who are the models to be followed in this field? “Sometimes we find Ibn Idris addressing those who rely totally on the authority of Shaykh Tusi by attempting to prove to them that the latter was also inclined to the same view, even though it needs a bit of interpretation. For example, on the question of water made impure.

About the contaminated water in the cistern, if it is a kurr he gives the verdict of its being pure and endeavors to prove that Shaykh Tusi also was inclined to the view of its purity. He wrote, “Shaykh Abu

Ja'far Tusi, who holds the opposite view and is followed by many on this question, has used arguments in many of his statements, which strengthen the view and the verdict that such water is pure. I shall explain that the fragrance of the complete acceptance of this point spreads from the lips of Shaykh Abu Ja'far, when his statement and writings are justly pondered over examined correctly and considered impartially”.

3. Historically the book '*al-Sara'ir*', was in a way contemporary to the book '*al-Ghunyah*' in which Hamza ibn Ali ibn Zuhrah Husayni Halabi started the study of '*Ilm'ul Usul*' as an independent branch of knowledge, because Ibn Zuhrah died only 19 years before Ibn Idris. Hence the two books belong to the same period.

If we examine the *Usul* (underlying principles) of Ibn Zuhrah, we find that he shares the distinction with Ibn Idris in that age of absolute reliance on the views of Shaykh Tusi. This distinction is the departure from or disagreement with the latter's views and the acceptance of points of view directly in conflict with the Shaykh's stand on '*Ilm'ul Usul* or *Fiqh*'. Just as in "*al-Sara'ir*" we see Ibn Idris trying to refute the Shaykh's arguments in the sphere of jurisprudence, similarly in *al-Ghunyah* we find Ibn Zuhrah criticizing the arguments of the Shaykh in his book "*al-Iddah*" and bringing forth arguments to support contradictory points of view. Not only that; he even raises new issues in '*Ilm'ul Usul*' not raised before in "*al-Iddah*" in that manner.³

This means that intellectual thinking had grown and expanded in both fields, '*Ilm'ul Usul*' and *Fiqh*, until it had reached the level enabling it to interact with the views of the Shaykh and to an extent to criticize them in both these fields, This only strengthens our view that the growth of thinking in '*Ilm'ul Fiqh*' and '*Usul'ul Fiqh*' proceeds along the parallel lines not differing greatly from each other, because of the interaction and inter-relationships between them.

The intellectual movement continued to grow, expand, and increase, generation after generation. In those generations there were some illustrious scholars, who wrote on '*Ilm'ul Usul*' and '*Ilm'ul Fiqh*' and showed originality in their work. Among them was Muhaqqiq Najmuddin Ja'far ibn Hasan ibn Yahya ibn Sa'id Hilli (d. 676 A.H.), who was a pupil of the students of Ibn Idris, He was the author of that outstanding book on jurisprudence, "*Shara'iul Islam*" which became the pivot for further research and study in the academic circle replacing the book "*an-Nihayah*" which Shaykh Tusi had written before "*al-Mabsut*".

This change from "*an-Nihayah*" to "*Shara'iul Islam*" indicates a tremendous development in the standard of knowledge, because the former was a book of law covering the basic questions in jurisprudence and principles of jurisprudence, On the other hand, "*Shara'iul Islam*" was an extensive work covering branches (*Furu'*) of jurisprudence as well as the derivation of laws along the lines laid down by Shaykh Tusi in "*al-Mabsut*". Thus the assumption by this book to the official position formerly held by "*an-Nihayah*" in the academic circle and the intellectual movement indicate that the movement for branching out from the general laws and deriving other laws had become widespread to the extent that the whole

academic circle was undertaking such activity. Muhaqqiq Hilli also wrote books on *'Ilm'ul Usul* among which are *'Nahjul Wusul ila Ma'rifatil Usul'* and *'al-Ma'arij.'*

Among those illustrious scholars was also the student and nephew of al-Muhaqqiq, known as al-Allamah. He was al-Hasan ibn Yusuf ibn Ali ibn Mutahhar (d. 726 A.H.)

He wrote a number of books on principles of jurisprudence of the nature of "*Tahzibul Wusul ila 'Ilm'ul Usul*", "*Mabidiu'l Wusul ila 'Ilm'ul Usul*", etc.

The intellectual growth in the fields of research on principles of jurisprudence continued till the end of the tenth century. The main representative of that growth in the latter part of the tenth century A.H. was Hasan ibn Zaynuddin (d. 1011 A.H.) His book on *'Ilm'ul Usul* was "*al Ma'alim*" in which he reflected the high level of *'Ilm'ul Usul* in his age in a simple style and a new arrangement and systematic order. This endowed the book with a great importance in the world of research on *'Ilm'ul Usul*, so much so that it became a textbook on this branch of knowledge and research scholars took it up for writing commentaries on it and criticizing it.

From the point of time "*al-Ma'alim*" was near to the book "*Zubdatul Usul*" written by eminent scholar, Shaykh Baha'i (d. 1031 A.H.), in the beginning of the eleventh century (A.H.).

The Shock Experienced by 'Ilm'ul Usul

After the demise of the author of "*Ma'alimuddin*", *Usul'ul Fiqh* experienced a shock that thwarted its growth and development and exposed it to severe attack. The attack was the result of the emergence of the movement of the Akhbaris (exponents of the traditions exclusively) in the beginning of the eleventh century (A.H.) at the hands of Mirza Muhammad Amin Istirabadi (d. 1021 A.H.) and the grave situation which developed after the demise of the founder especially during the latter part of the eleventh and the twelfth centuries. This attack had psychological motives which prompted the Akhbaris from among our scholars led by the Muhaddith Istirabadi to oppose *'Ilm'ul Fiqh* and rendered help in the relative success of their opponents. Among those motives we may mention the following:

1. The lack of comprehension of the concept of common elements in the process of deduction on the part of the Akhbaris. This caused them to think that attributing the process of deduction to the common elements and to the laws of *'Ilm'ul Usul*, results in disregarding the authentic texts of the *Shari'ah* and in lowering the importance of such texts.

Had they only grasped the concept of common elements in the process of deduction in the manner taught by the *Usuliyin* (the specialists in *'Ilm'ul Usul*) they would have come to know that both the common and the particular elements have their own fundamental role and importance and that *'Ilm'ul Usul* does not aim at replacing the particular elements by the common elements. On the contrary, it lays down the necessary laws for making deduction to derive the laws from those very particular elements.

2. Historically the Sunnis had before that pursued research in *'Ilm'ul Usul* and produced rich literature on it. Thus, in the minds of those opposing it, *'Ilm'ul Usul* had acquired the stigma of Sunnism, and they began to consider it to be a result of the Sunni school of thought. Previously we mentioned the historical priority of Sunni *Fiqh* in pursuing research on *'Ilm'ul Usul* did not result from any special link between *'Ilm'ul Usul* and the Sunni school of thought. On the contrary, it is related to the extent of the distance in time of the thinking on *'Ilm'ul Fiqh* from the age of the promulgation of the authentic texts it believed in.

The Sunnis believed that this age came to an end with the demise of the Holy Prophet (p). Thus they found themselves, at the end of the second century, far removed from the age of the promulgation of the authentic texts to such an extent that it set them thinking on establishing *'Ilm'ul Usul*. However at that time the Shi'ahs were still living in the period of the promulgation of the authentic texts, which in their view, extends up to the Occultation period. We find this notion clearly and explicitly in the following quotation from *al-Wasa'il* by the jurist, Muhaqqiq Sayyid Muhsin A'raji (d. 1227 A.H.) refuting the Akhbaris: "Our opponents, as they needed to give consideration to these matters before we did so, preceded us in the collection and compilation of traditions, as they were far removed in time from the companions of the Holy Prophet (p) and the rightly guided Imams (a).

They then opened anew field for the deduction of laws, covering many subjects abstruse in nature and of copious details, i.e. *al-Qiyas* (analogy). They were forced towards the compilation and collection of traditions because of great urgency, while at that time we were satisfied with living in the age of the promulgators of the *Shari'ah* (the rightly guided Imams), taking the laws from them verbally and coming to know what they desired directly. This continued up to the occurrence of the Occultation, when there was separation between the Imam of the age and us. Then we became in need of those subjects and our predecessors wrote on them. Those scholars included like Ibn Junayd and Ibn Abi Aqil, and those after them like Sayyid, the two Shaykhs, Abu Salah; Abu Makarim, Ibn Idris, the two Fazils and the two Shahids (*shahid awwal* and *shahid thani*), and others right up to the present day.

Do you think we should avoid those subjects in spite of the pressing need that we experience, just because our opponents have preceded us in that field? The Holy Prophet (p) had said, 'Wisdom is the lost property of the believer!' we did not enter those fields as followers, but we set about making the most careful research and investigation and did not give a ruling on any question until after we had advanced valid proofs and after we had made our method clear".

3. What served to support the stamp of Sunnism on *'Ilm'ul Usul* in the minds of these Akhbaris is that Ibn Junayd one of the pioneers of *Ijtihad* and of those who planted the seeds of *'Ilm'ul Usul* in Shi'ite *Fiqh*, was in agreement with most of the Sunni schools of thought in advocating *al-Qiyas* (analogy). But the fact that some ideas from the Sunni schools of thought were adopted by a person like Ibn Junayd does not mean that *'Ilm'ul Usul*, is intrinsically something like Sunnism. It is only a case of a later intellectual endeavour being influenced by earlier experiences in its field.

Since the Sunnis had prior experience in research on *'Ilm'ul Usul*, it is but natural that we find the

influence of this in some later researches. Sometimes this influence reaches the degree of adoption of some previous views, ignoring factual evidence. However this does not necessarily mean that the Shi'ahs acquired *'Ilm'ul Usul* from Sunni thinking or that it was imposed upon them from that source. On the contrary it was a necessity that the process of deduction and the needs of this process, imposed on Ja'fari jurisprudence.

4. The belief of the Akhbaris that *'Ilm'ul Usul* had a Sunni framework was supported by the spread of terminology from the Sunni researches on *'Ilm'ul Usul* to the Shi'ite specialists on this subject, and their acceptance of that terminology after it had developed and become delineated to devote concepts which were in agreement with the Shi'ah point of view. An example of this is the term '*Ijtihad*' which we have previously discussed. Our Shi'ah scholars took this term from Sunni *Fiqh* and developed its meaning. This caused the Akhbaris among our scholars, who did not perceive the fundamental change in the usage of this term to feel that *'Ilm'ul Usul* of our scholars had adopted the same general trends present in the intellectual thinking of the Sunnis. That is why they sharply criticized '*Ijtihad*' and opposed the research scholars among our companions regarding its permissibility.

5. The role played by reason in *'Ilm'ul Usul* was another thing which provoked the Akhbaris against this branch of knowledge, owing to their extremist view regarding reason, as we have seen in a previous discussion.

6. Perhaps the most successful tactics employed by Muhaddith Istirabadi and his colleagues to arouse the general Shi'ah view in regard to *'Ilm'ul Usul* was the exploitation of the modernity of the founding of *'Ilm'ul Usul*. It was a branch of knowledge that did not develop in the Shi'ite outlook until after the Occultation.

This means that the companions of the Imams and the jurists of their school of thought passed their lives without *'Ilm'ul Usul* and did not feel any need for it. The jurists among the students of the Imams like Zurarah ibn A'yun, Muhammad ibn Muslim, Muhammad ibn Abi Umayr, Yunus ibn Abdur Rahman, etc. were not in need of *'Ilm'ul Usul* in their *Fiqh*. Thus, there is no need to get entangled in that in which they did not involve themselves, and to say that deduction and *Fiqh* are dependent on *'Ilm'ul Usul* is meaningless.

We can realize the error in the light of the fact that the need for *'Ilm'ul Usul* was a historical one. Thus if the narrators of traditions and the jurists living in the age of the promulgation of the authentic texts of the *Shari'ah* felt the need to found *'Ilm'ul Usul*, it does not mean that the thinking on *Fiqh* would have no need to be removed in time from the contexts of the texts of the *Shari'ah*, particularly when this distance in time is daily increasing. This is because this great distance in time brings the gaps in the process of deduction and it then becomes obligatory on the jurist to formulate general laws of *'Ilm'ul Usul* to deal with those gaps.

The Alleged Roots of the Movement of the Akhbaris

Despite the fact that Muhaddith Istirabadi was the leader of this movement, he tried in his book *Fawa'idul Madaniyyah* to trace the history of the movement back to the age of the Imams and to prove that it has deep roots in Shi'ite jurisprudence, so that it might acquire the stamp of legality and respect. Thus, he would say that the Akhbari trend was the prevalent one among the Shi'ite jurists up to the age of Kulayni and Saduq and others who in Istirabadi's opinion, are among the representatives of this trend) but this trend did not make its presence definitely felt until the latter part of the fourth century and even afterwards when a group of Shi'ite scholars began to deviate from the lines of the Akhbaris and to rely on reason in making deduction and to relate researches in *Fiqh* to '*Ilm'ul Usul*', having been influenced by the Sunni method of deduction.

Thenceforth, this deviation began to expand and spread. In this context Istirabadi quotes a statement of Allamah Hilli (who had lived three centuries before the former) in which a group of Shi'ite scholars is referred to as "the Akhbaris". He used this statement to show the historical antiquity of the Akhbari trend. However, the fact is that in using the word 'Akhbaris' in his statement, Allamah Hilli was referring to one of the stages of the thinking on *Fiqh*, and not to a movement advocating a limited trend in deduction. From the earliest ages there were Akhbaris among the Shi'ah jurists representing the initial stages of the thinking on *Fiqh*.

Whereas these other Akhbaris are those who have been discussed by Shaykh Tusi in "*al-Mabsut*" about the narrowness of their horizons and their confirming their legal researches to the underlying principles (*Usul*) of the problems and avoiding the branches and extensions as far as application is concerned. In tough opposition to them are the jurists specializing in '*Ilm'ul Usul*' who think with its principles and apply themselves to the branches of *Fiqh* in an extensive sphere. The use of the word, "Akhbaris" in the olden days was only an expression to devote one of the levels of legal thinking and not one of the schools of thought.

This point has been emphasized by the eminent research scholar Shaykh Muhammad Taqi (d. 1248 A.H.) in his extensive commentary on "*al-Ma'alim*". Referring to this matter he wrote, 'If you say, 'from the olden days the Shi'ah scholars were divided into two classes, Akhbari and *Usuli*, as the Allamah has indicated in "*an-Nihayah*." and as others also have done then I would reply that even though our earlier scholars were divided in two classes and that the Akhbaris were one of them, yet their ways were not those as claimed by today's Akhbaris. Nay there were no differences between them and the *Usuliyun*, except in the extent of the scope of the branches of *Fiqh* and the extent of the importance given to the universal laws and to the power to derive branches from that.

Among them was a group who were the preservers of the authentic texts of the *Shari'ah* and the narrators of traditions. However many of them did not possess insight and depth to tackle intellectual problems. They mostly did not undertake the branches not dealt with in the texts. These are the scholars

known as the Akhbaris. Another group of scholars possessed insight, and, being inclined to research and deep study, investigated the problems to formulate the laws of the *Shari'ah* from the arguments available.

They had the ability to formulate principles and universal laws from the proofs and arguments existing in the *Shari'ah* and to apply them to the branches from that and to derive the laws of the *Shari'ah* accordingly. These are the scholars known as the *Usuliyun* (the specialists in the principles of jurisprudence), like 'Umani, Iskafi, Shaykh Mufid, Sayyid Murtaza, Shaykh Tusi and others who followed in their footsteps.

If you consider for a while, you will not find any differences between the two groups except that the latter carry on the research on problems and possess great insight to make necessary deductions and to derive the branches from the various laws. For this reason their scope was more extensive in research and insight and they took upon themselves the task of explaining the branches and the legal problems, and went beyond the scope of the texts of the traditions. Those Muhaddithin (traditionalists) mostly did not have the ability to do so, nor had that mastery over the art. Hence, they confined themselves to the literal meanings of the traditions and in most cases did not go beyond their literal contents, nor was their scope for discussing the branches on the basis of the laws extensive.

Since they lived at the beginning of the spread of *Fiqh* and of the emergence of the Shi'ite school of thought, they were concerned with checking the underlying principles of the laws that were based on the traditions narrated from the pious Ahl al Bayt (Progeny of the Holy Prophet). Thus they were not able to examine their contents more closely and to derive various branches from them. This was done in the later periods because of the continuous influx of ideas”.

The eminent jurist Shaykh Yusuf Bahrayni in his book “*al-Hada'iq*”, despite being in agreement with some of the views of the Muhaddith Istirabadi, accepts that the latter was the first to make the Akhbari outlook a separate school of thought and to create differences in the ranks of the scholars on that basis. He wrote, “The fame of these differences did not arise nor did this deviation occur before the author of “*al-Fawa'idul Madaniyyah*”, (may Almighty pardon him and grant him mercy). He was the one to open his lips to denounce the companions in elaborate detail. He is noted for his bigotry and fanaticism which was not becoming of a noble scholar of his status”.

Trends of Writing in that Period

If we study the intellectual achievements of that period, in which the Akhbari movement expanded, in the latter part of the eleventh and during the twelfth centuries, we would find an active trend at that time, confined to the collection of traditions and to writing voluminous extensive works on the traditions and narrations. It was during that period that Shaykh Muhammad Baqir Majlisi (may Allah bless him, d. 1110 A.H.), wrote the book, “*al-Bihar*”, which is the greatest of the extensive works on traditions with the Shi'ah. And Shaykh Muhammad ibn Hasan Hurr Amili (may Allah bless him, d. 1104 A.H.) wrote the

book “*al-Wasa’i*” in which he collected a large number of traditions related to *Fiqh*. Fayz Muhsin Kashani (d. 1091 A.H.) wrote “*al-Wafi*” containing the traditions mentioned in *al-Kutub al-Arba’ah* (The Four Books on Traditions). And Sayyid Hashim Bahrani (d. 1107 A.H. or thereabouts) wrote “*al-Burhan*”, in which he collected the narrations relating to the interpretations of the Qur’an.

However, this general trend of writing on the traditions in that period does not mean that the Akhbari movement was the reason for its coming into being, even though it was most probably a contributing factor, despite the fact that some of the most prominent authors in that trend were not Akhbaris. This trend was the result of a number of reasons, the most important of which was that a number of works on traditions were discovered during the century after the Shaykh and were not mentioned in *al-Kutub al-Arba’ah*. Hence it was necessary that extensive works might be composed encompassing those different books and containing all the investigation and thorough research in respect of traditions and books of traditions.

In the light of the above, we can consider the activity in writing those voluminous extensive works, which took place in that period, as one of the factors (in addition to the Akhbari movement) which opposed the growth and development of research on ‘*Ilm’ul Usul*. In any case this was an auspicious factor because the composition of those extensive works was useful in the process of deduction which ‘*Ilm’ul Usul* served.

Research on ‘Ilm’ul Usul in that Period

In spite of the shock experienced by research on ‘*Ilm’ul Usul* during that period, its flame was not extinguished nor did it come to a complete halt. Thus Mulla Abdullah Tuni (d. 1071 A.H.) wrote “*al-Wafiyah*” on ‘*Ilm’ul Usul*. After him there was the eminent research scholar Sayyid Husayn Khunsari (d. 1098 A.H.) who was known for his immense knowledge and erudition. He imparted a new vigour to the thinking on ‘*Ilm’ul Usul* as is evident from his ideas on that subject contained in his book on *Fiqh*, ‘*Mashariqush Shumus fi Sharhid Durus*”.

As a result of his great work in philosophical colour in a manner unmatched before him we say that it took on a philosophical colour and not a philosophical outlook, because this illustrious scholar was an opponent of philosophy and had long conflicts with its exponents. So his thought was not philosophical in the form of taqlid which philosophy had developed, even though it bore a philosophical colour. Thus when he undertook research on ‘*Ilm’ul Usul* this philosophical colour was represented in it and into ‘*Ilm’ul Usul* flowed a philosophical trend in thinking with a spirit of freedom from the forms of Taqlid, which philosophy had adopted in its discussions and research. This spirit of freedom exercised a tremendous influence in the history of knowledge afterwards, as we shall see Insha Allah.

It was in the time of Khunsari that Muhaqqiq Muhammad ibn Hasan Sherwani (d. 1098 A.H.) wrote his commentary on “*al-Ma’alim*”. After that we come across two works on ‘*Ilm’ul Usul*. The first one was carried out by Jamaluddin ibn Khunsari, who wrote a commentary on “*al-Mukhtasar*”. And Shaykh

Ansari has confirmed in “al-Rasa'il ” that Jamaluddin was the first to arrive at some of the concepts of *'Ilm'ul Usul*. The second of those two works was by Sayyid Sadruddin Qummi (d. 1071 A.H.) who was a student of Jamaluddin and wrote a commentary on Tuni's “*al-Wafiyah*”. Ustad Wahid Bahbahani was a student of Sayyid Sadruddin.

The fact is that the elder Khunsari, his contemporary Sherwani, his son Jamaluddin, and his son's pupil Sadruddin, despite living in the period when the Akhbari movement shook research on *'Ilm'ul Usul* to its roots, and when work on the traditions was spreading despite all this, these were the factors in furthering the thinking on *'Ilm'ul Usul*. They paved the way through their studies for the emergence of the school of Ustad Wahid Bahbahani, which initiated a new era in the history of knowledge, as we shall see later. Hence, we can deem the studies carried out by the four scholars as the main seeds for the emergence of this school and the last laurels won by intellectual thinking, in the second era, as a preparation for the changeover to the third era.

The Victory of 'Ilm'ul Usul and the Emergence of a New School

The Akhbari trend was able, in the twelfth century, to take Karbala (Iraq) as its centre. Hence, it was contemporary to the birth of a new school in *'Ilm'ul Fiqh* and *'Ilm'ul Usul*, which arose in Karbala also at the hands of its leader, the great Mujaddid Muhammad Baqir Bahbahani (d. 1206 A.H.). This new school set itself up to check the Akhbari movement and to secure victory for *'Ilm'ul Usul*, which it did until the Akhbari trend declined and suffered defeat. In addition this school began to advance the cause of intellectual thinking and to raise *'Ilm'ul Usul* to a very high standard, so that we can say that the emergence of this school and the co-operative efforts made by Bahbahani and the students of his school (who were great research scholars) formed a distinct dividing line between two eras in the history of intellectual thinking on *'Ilm'ul Fiqh* and *'Ilm'ul Usul*.

The positive role played by this school and the opening by it of a new era in the history of knowledge were influenced by a number of factors, among which are:

The reaction evoked by the Akhbari movement, especially when its exponents assembled at the same place as the group advocating *'Ilm'ul Usul* i.e. Karbala. This naturally led to an increase of tension and a multiplying of the strength of the reaction.

The need for producing new extensive works on the traditions had been sated and had ceased to exist, after the writing of “*al-Wasa'il*”, “*al-Wafi*” and “*al-Bihar*” except that the cause of knowledge should direct its intellectual vigour towards deriving benefit from those works in the process of deduction.

The philosophical trend in thinking, of which Khunsari had established one of the main bases endowed intellectual thinking with anew strength for development and opened a new field for originality. The school of Bahbahani was the heir to this trend.

The factor of place; the school of Ustad Wahid Bahbahani developed not far from the main centre of the

academic circle in Najaf, and this proximity to the centre was one reason for its permanence and continuity of existence through succeeding generations of teachers and students. This enabled it to continuously increase its knowledge of one generation of its scholars to be added to that of the succeeding generation, until it was able to make a great leap in advancing the cause of knowledge to the extent of giving it the feature of a new era. Thus Bahbahani school is distinguished from so many other schools which arose here and there, far from the centre of the academic circle, and which disappeared with the death of their founders.

Text Depicting the Struggle with the Akhbari Movement

Muhaqqiq Bahbahani, the founder of this school wrote a book on *'Ilm'ul Usul* named "al-Fawa'id al-Ha'iriyah" from which we come to know the strong motive of the struggle he waged against the Akhbari movement. Here we are selecting a passage from that book referring to some of the doubts of the Akhbaris and their arguments against *'Ilm'ul Usul*. Our previous explanation that the need for *'Ilm'ul Usul* was felt will become evident in refuting those arguments.

Bahbahani wrote, "As the age of the Imams receded into history and the characteristics and proofs of *Fiqh* which had been laid down by the jurists and openly accepted by them, became vague and indistinct owing to their demise, the centres of learning became empty, so much so, that most of their works became extinct, as was the case with previous nations and the fate of previous codes of law. When the age became more distant in time from the promulgator of its *Shari'ah*, the old concepts became vague and new ideas came into being until that *Shari'ah* disappeared altogether. Some imagine that Shaykh Mufid and the jurists after him up to the present day, were united in ruling that the original thinkers introducing new ideas were misguided that they were following the masses and opposing the way of the Imams and changing the latter's specific way in spite of their nearness⁴ in time to the age of the Imams, of their utmost glory, justice and knowledge of *Fiqh* and of the traditions, of their profoundness, piety and godliness".

He goes on to present the extent of the insolence of his antagonists against those great scholars and calls them to account for that insolence. Then he goes on, "Another of their doubts is that the narrators of these traditions did not know the laws of the Mujtahids⁵ (i.e. *'Ilm'ul Usul*) although traditions formed a valid proof for them. So we also like them, do not stand in need of any of the conditions of (*ijtihad*) and our circumstances are exactly like theirs. They do not direct themselves to the fact that those narrators were fully aware that what they had heard were the words of their Imam and that they were able to understand those words by virtue of their belonging to the literatures of the age of the infallible ones and were not beset with any of the confusions which you feel and thus did not need any remedy for them".

Summary

We are not in a position, at the level of this discussion to elaborate on the important role played by the

teachers as well as the pupils of this school and the development and profundity that it secured for the cause of knowledge. However, we can reiterate that what has preceded about the history of knowledge is that intellectual thinking passed through three eras:

1. The preparatory era –the age when the main seeds of *'Ilm'ul Usul* were planted. This era began with Ibn Abi Aqil and Ibn Junayd and ended with the appearance of Shaykh Tusi.
2. The era of knowledge– the age of the germination of those seeds and their bearing fruit. During this period the outlines of thinking on *'Ilm'ul Usul* became delineated and represented in the fields of research on *Fiqh* on a wide scale. The leader of this age was Shaykh Tusi and among its eminent scholars were Ibn Idris, Muhaqqiq Hilli, the Allamah, Shahid awwal and other illustrious scholars.
3. The era of perfection in knowledge– the age which was initiated in the history of knowledge by the new school which appeared in the latter part of the twelfth century at the hands of Ustad Wahid Bahbahani and which began the third era for knowledge, through its co-operative efforts in the fields of *'Ilm'ul Usul* and *'Ilm'ul Fiqh*.

These efforts were expressed in the thoughts and researches of the leader of the school, Ustad Wahid, and of the prominent figures, who continued the work of their leader for nearly half a century until the general characteristics of the third era were completed, and this age reached its peak. In this period, three generations of illustrious scholars followed.

The first generation is represented by the great research scholars among the students of Ustad Wahid, like Sayyid Mahdi Bahrul 'Ulum (d. 1212 A.H.), Shaykh Ja'far Kashiful Ghita' (d. 1227 A.H.), Mirza Abul Qasim Qummi (d. 1227 A.H.), Sayyid A'li Tabataba'i (d. 1121 A.H.) and Shaykh Asadullah Tustari (d. 1234 A.H.).

Representing the second generation are those illustrious scholars trained by some of the above, like, Shaykh Muhammad Taqi ibn Abdur Rahim (d. 1248 A.H.), Shariful 'Ulama Muhammad Sharif ibn Hasan Ali (d. 1245 A.H.), Sayyid Muhsin A'raji (d. 1227 A.H.), Maula Ahmad Naraq'i (d. 1245 A.H.), Shaykh Muhammad Hasan Najafi (d. 1266A.H.) and others. As regards the third generation, at its head was a pupil of Shariful '*Ulema*', the great research scholar Shaykh Murtaza Ansari who was born after the emergence of the new school in 1214 A.H. and whose level of education was contemporary to this school at the peak of its development and activity.

He was able to rise together with the cause of knowledge in its third era to the height at which the new school was aiming. *'Ilm'ul Usul* and intellectual thinking are still prevalent in the Imami academic circles which existed in this third era as initiated by the school of Ustad Wahid.

Our division of the history of knowledge into three eras does not preclude us from dividing each of these eras into various stages of growth, each stage having its own leader and director. On this basis, we deem Shaykh Ansari, (d. 1281 A.H., may Allah bless him), the supreme leader of one of the stages in

the third era, i.e. the stage representing intellectual thinking from more than a hundred years ago to the present day.

- [1.](#) Among these are the reports transmitted about dealing with contradictory texts, about the validity of the narrations of trustworthy narrators as proofs, about the genuineness of al-Bara'at (exemption), about the permissibility of using Ra'y and Ijtihad and other such propositions.
- [2.](#) Viz. throwing light on the incorrectness of many of their views which are put forth and they try to prove these, as correct views.
- [3.](#) There is no harm in citing two or three instances wherein the view of Ibn Zuhrah differs from that of the Shaykh Tusi. Among them is the question of the imperative mood indicating immediacy (to perform an act at once). Shaykh Tusi had given the ruling that the imperative mood indicated immediacy, which was denied by Ibn Zuhrah who said, "The imperative mood is neutral, indicating neither immediacy nor non-immediacy". There is also the question that prohibition from a certain act necessarily indicates its being corrupt. Shaykh Tusi had given the ruling that its being corrupt was necessarily implied in a prohibition. This was denied by Ibn Zuhrah, who made a distinction between illegality (al-Hurmah) and being corrupt (al-Fasad), and denied that one necessarily implied the other. Later on Ibn Zuhrah, in his researches on generality (al-'Am) and particularity (al-Khass), raised the issue of the validity as proof of a specific generality, outside the source of its specification, whereas this issue had not been raised in the book "al-Iddah".
- [4.](#) They are blamed, for their (unbecoming) attitude, in spite of their nearness in time, to the age of the Imam (P).
- [5.](#) 'Ilm'ul Usul is meant by the laws of the Mujtahids.

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