

# Muḥammad Bāqir al-Bihbihānī's *Risālat al-ijtihād wa-l-akhbār*<sup>1</sup>

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## Abstract

Taking a treatise of the Shī'ī theologian Waḥīd ad-Dīn Muḥammad Bāqir b. Muḥammad Akmal al-Bihbihānī (1116/1704–1205/1791) as its point of departure, this article deals with some of the developments in Shī'ī *uṣūl al-fiqh* from the 12th/18th century onwards, showing the importance of closely studying them for writing the history of *uṣūl al-fiqh* in general, Sunni and Shī'ī alike. The character and content of the treatise of al-Bihbihānī are addressed and fundamental common features of Sunni and Shī'ī *uṣūl al-fiqh* made apparent. Moreover, some elements of the discussion about the epistemic status of the sources for the practical norms of revelation are summarised.

## Keywords

Islamic law; Islamic theology in the 18th and 19th centuries, *uṣūl al-fiqh*, Shī'ī and Sunni; Muḥammad Bāqir b. Muḥammad Akmal al-Bihbihānī; epistemic discussions in Islamic law; supposition (*ẓann*) and certainty (*'ilm*).

## 1 Introduction

### 1.1 The Principles of Practical Theology (*uṣūl al-fiqh*)

In this article I will examine a treatise from the field of Twelver-Shī'ī *uṣūl al-fiqh*. The principles of practical theology (*uṣūl al-fiqh*) are one of the eight basic disciplines of classical Sunni theology, which for our purposes here is understood as the form of theology that prevailed in the Sunni world between the 7th/13th and

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13th/19th centuries.<sup>2</sup> This form of theology is regarded as a scientific theology because it:<sup>3</sup>

- is integrated with the profane sciences to form a single scientific paradigm;<sup>4</sup>
- applies the same epistemology as the profane sciences;<sup>5</sup>
- applies the same philosophy of science as the profane sciences;<sup>6</sup> and
- stipulates that the veracity of revelation must be proven by purely rational arguments.<sup>7</sup>

In this paradigm, *uṣūl al-fiqh* is defined as the science of the principles that must be observed when deducing practical propositions of revelation from the sources of revelation. For example, in a classical standard work<sup>8</sup> on *uṣūl al-fiqh*, the

- 2 On the “classical theology of Sunni Islam” and its extension in time and space see Jens Bakker, *Normative Grundstrukturen der Theologie des sunnitischen Islam im 12./18. Jahrhundert*, Berlin 2012, pp. 601–626, pp. 695 f., pp. 765 ff., and p. 847; idem., “*The Meaning of the Term Ṣarī‘ah in the Classical Theology of Sunnite Islam*”, in: Hikma, Zeitschrift für Islamische Theologie und Religionspädagogik, 3 (2012) 5, pp. 187–203; idem., “*Kurzer Überblick über die klassische Theologie des sunnitischen Islam*”, in: Hikma, Zeitschrift für Islamische Theologie und Religionspädagogik, 4 (2013) 7, pp. 179–192, here: pp. 181 ff. On the concept of *uṣūl al-fiqh* within classical Sunni theology, see Bakker, *Normative Grundstrukturen*, passim, including “*Index ausgewählter Begriffe*”, p. 1010 f.; idem., “*The Meaning of the Term Ṣarī‘ah*”, p. 188; idem., “*Kurzer Überblick*”, p. 187; Jens Bakker/Hakkı Arslan, “*Übersetzung von ‘al-Waraqāt fī uṣūl al-fiqh’ des Imām al-Ḥaramayn Abū l-Ma‘ālī ‘Abd al-Malik b. Abī Muḥammad ‘Abd Allāh b. Yūsuf al-Ḡuwaynī*”, in: Hikma, Zeitschrift für Islamische Theologie und Religionspädagogik, 5 (2014) 9, pp. 166–191, here: pp. 166 f.; Hakkı Arslan, *Juridische Hermeneutik (uṣūl al-fiqh) der hanafitischen Rechtsschule am Beispiel des uṣūl al-fiqh-Werks Mirqāt al-wuṣūl ilā ‘ilm al-uṣūl von Mulla Ḥusraw (gest. 885/1480)*, Frankfurt 2016, pp. 11 f. and pp. 16–29. For a discussion of the translations of the designations of the classical theological disciplines, see Bakker, *Normative Grundstrukturen*, pp. 586 ff.
- 3 On these four points, see Jens Bakker, “*Übersetzung von al-Ḥarīda al-bahiyya von Aḥmad b. Muḥammad ad-Dardīr (gest. 1201/1786)*”, in: Hikma, Zeitschrift für Islamische Theologie und Religionspädagogik, 9 (2018) 2, pp. 260–288, here: pp. 262 f.
- 4 See Bakker, *Normative Grundstrukturen*, pp. 521 f., pp. 525 f., pp. 569–582, pp. 595 f., pp. 628–636; idem., “*Kurzer Überblick*”, p. 183. The “profane sciences” mean the philosophical sciences (*al-falsafa/al-hikma/al-‘ulūm al-hikmiyya*).
- 5 On the epistemology applied by classical Sunni theology, see Bakker, *Normative Grundstrukturen*, pp. 100–234, and especially pp. 158 f., and pp. 628–636 on how it compares to the epistemology of the profane sciences.
- 6 On the philosophy of science applied by classical theology, see *ibid.*, pp. 516–519, pp. 613–621, and the “*Index ausgewählter Begriffe*” under the entry “*Wissenschaftstheorie*” (p. 1026).
- 7 See, for example, *ibid.*, pp. 201–218; idem., “*The Meaning of the Term Ṣarī‘ah*”, pp. 202 f.; idem., “*Kurzer Überblick*”, pp. 188 f.; idem., “*Geistes- und theologischeschichtliche Gemeinsamkeiten zwischen lateinischem Westen und islamischer Welt*”, in: Mohammad Gharaibeh et al. (eds.), *Zwischen Glaube und Wissenschaft. Theologie in Christentum und Islam*, Regensburg 2015, pp. 41–55, and the article by Nicholas Heer, “*The Priority of Reason in the Interpretation of Scripture: Ibn Taymīyah and the Mutakallimūn*”, in: Mustansir Mir/Jarl E. Fossum (eds.), *Literary Heritage of Classical Islam, Arabic and Islamic Studies in Honor of James A. Bellamy*, Princeton, NJ, 1993, pp. 181–195.
- 8 “Standard works” are texts used over a long period of time and on a large geographical scale as textbooks for teaching and studying. A standard work obtains its status solely by the reception and popularity it enjoys because there are no institutions that could prescribe them. For this see Bakker,

*Mukhtaṣar*,<sup>9</sup> Abū 'Amr 'Uthmān b. 'Umar b. al-Hājib (d. 646/1249)<sup>10</sup> defines *uṣūl al-fiqh* as follows:

Its definition [i. e. the definition of *uṣūl al-fiqh*] as a designation [for this theological discipline] is 'the science of the principles by which the practical propositions of revelation are derived from their respective sources of knowledge'.<sup>11</sup>

The same understanding of *uṣūl al-fiqh* is valid for Twelver Shī'ī *uṣūl al-fiqh*; this discipline is still taught in the Shī'ī *madrāsah* (*hawzah*),<sup>12</sup> and a definition similar to Ibn al-Hājib's can be seen in a work written by a pupil of the author of the treatise that will be examined here, al-Wahīd al-Bihbihānī, namely Abu l-Qāsim b. Muḥammad Ḥasan al-Jilānī ash-Shaftī al-Qummī, who is known as "al-Muḥaqqiq al-Qummī" (d. 1231/1815),<sup>13</sup> which has been a standard work for quite a long time.<sup>14</sup>

*Normative Grundstrukturen*, § 4.1, where the concept of "standard work" and the function of this kind of texts are explained. See also *ibid.*, § 4.2, for a list of standard works for the theological sciences. See also *idem.*, "Kurzer Überblick", pp. 181 ff., and *idem.*, "Übersetzung von al-Ḥarīda al-bahīyya", p. 264.

- 9 That this text has been a standard work has been shown in Bakker, *Normative Grundstrukturen*, pp. 765 ff.
- 10 Ibn al-Hājib was born in Esna and died on the 26 Shawwāl 646/11 February 1249. On his life and works see for example H. Fleisch, "Ibn al-Hājjib, *Djamāl al-Dīn Abū 'Amr 'Uthmān b. 'Umar b. Abī Bakr al-Mālikī*", in: *IE*<sup>2</sup>, vol. III, p. 781; Carl Brockelmann, *Geschichte der arabischen Litteratur*, vol. 1, Leiden<sup>2</sup>1943 (den Supplementbänden angepasste Auflage); vol. 2, Leiden<sup>2</sup>1949 (angepasste Auflage); vol. 1 (Supplementband), Leiden 1937; vol. 2 (Supplementband), Leiden 1938; vol. 3 (Supplementband), Leiden 1942, I, 367–373 (margin. 303–306), no. 7 (8); Supplement I, 531–539. The bibliographical data for *IE*<sup>2</sup> are: The *Encyclopaedia of Islam*, New Edition, Leiden: vol. I, A–B, 1960; vol. II, C–G, 1965; vol. III, H–Iram, 1971; vol. IV, Iran–Kha, 1978; vol. V, Khe–Mahi, 1986; vol. VI, Mahk–Mid, 1991; vol. VII, Mif–Naz, 1993; vol. VIII, Ned–Sam, 1995; vol. IX, San–Sze, 1997; vol. X, T–U, 2000; vol. XI, V–Z, 2002; vol. XII, Supplement, 2004; Index Volume, 2009.
- 11 'Abd ar-Rahmān b. Aḥmad al-Ījī, *Kitāb sharḥ al-'Aḥud 'alā Muḥtaṣar muntaḥā al-wuṣūl wa-l-amal fī 'ilmay al-uṣūl wa-l-jadal li-l-Imām Abī 'Amr Jamāl ad-Dīn 'Uthmān b. 'Umar al-ma'rūf bi-Ibn al-Hājib*, edited by 'Alīy b. 'Abd ar-Rahmān Bassām al-Jazā'iri, 2 vols., Cairo/Beirut 1437/2016, vol. 1, p. 108: "ammā ḥadduhū laqaban: fa-l-'ilmu bi-l-qawā'idī llatī yutawassalu bihā ilā stinbāṭi l-aḥkāmi sh-shar'iyyati l-far'iyyati 'an adillatihā t-taḥṣīliyya." For a German translation of this definition, see Bakker, *Normative Grundstrukturen*, p. 681.
- 12 On *uṣūl al-fiqh* in the contemporary curriculum of Shī'ī theology see, for example, Muḥammad as-Sayyid al-Gharawī, *al-Hawzah al-'ilmīyya fī an-Naḡaf al-aṣraf*, Beirut 1414/1994, URL: <https://alfeker.net/library.php?id=4025>, pp. 256 ff.; Hauzah.net, *Kotob-hā-ye darsī-ye ḥouze-hā*, URL: <https://hawzah.net/fa/Article/View/6340/حوزه-های-علمیه-شیعه> (all accessed February 1st, 2024) without pagination, under the heading *oṣūl-e-feqh*.
- 13 For his biography see Āqā Buzurg aṭ-Ṭahrānī, *Ṭabaqāt a'lām al-shī'a*, 17 vols., here: vol. 10: *al-Kirām al-barara fī al-qarn al-thālith ba'd al-'ashara (alif-hā')*, Beirut 1430/2009, pp. 52 ff. This and the following volumes of this work can be found online at URL: <http://alfeker.net/library.php?id=3324> (accessed February 1st, 2024). According to the computation tables in Ahmad Birashk, *A Comparative Calendar of the Iranian, Muslim Lunar, and Christian Eras for Three Thousand Years (1260 B.H.–2000 A.H./639 B.C.–2621 A.D.)*, Costa Mesa, CA/New York 1993, the year 1151 AH extended from 21 April 1738 to 9 April 1739 AD, and the year 1231 AH from 3 December 1815 to 20 November 1816.
- 14 On Abū l-Qāsim al-Qummī's *al-Qawānīn al-muḥkama* and that it has been a standard work see aṭ-Ṭahrānī, *Ṭabaqāt a'lām ash-shī'a*, vol. 10, p. 53, where he says: "wa-lahū mu'allafātun hāmmatun

[*uṣūl al-fiqh*] is the science of the rules that are formulated to derive [p. 34] the practical propositions of revelation.<sup>15</sup>

A slightly extended definition is found in al-Ākhūnd Muḥammad Kāzīm al-Khurāsānī's (d. 1329/1911) *Kifāyat al-uṣūl*, a standard work on this discipline which is still in common use today.<sup>16</sup>

The scientific discipline which is concerned with the principles that are to be used to derive the [practical] norms [of revelation] or that are to be applied in a situation in which action is needed [if there is no respective source of revelation].<sup>17</sup>

That there is a strong historical connection between Shī'ī and Sunni *uṣūl al-fiqh* is shown, on the one hand, by the congruent definitions of this discipline, and on the other hand by the fact that the *Mukhtaṣar* of Ibn al-Ḥājib on *uṣūl al-fiqh*, along with the commentary of 'Aḍud ad-Dīn 'Abd ar-Raḥmān b. Aḥmad al-Ījī (d. 756/1355 in Īj, which is close to Shīrāz),<sup>18</sup> was for many centuries a standard work for this discipline both for Sunnis<sup>19</sup> and, according to the editors of *Ma'ālim ad-dīn* of al-Ḥasan b. ash-Shahīd ath-Thānī Zayn ad-Dīn al-'Āmilī, for Shī'īs.<sup>20</sup> The claim

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*wa-asfārun jalīlatun tamūju bi-miyāhi t-taḥqīqi wa-t-tadqīqi wa-hiya dalīlu 'ilmihī l-jammi wa-tabaḥḥurihī l-kathīri ahammuhā wa-ashharuhā 'l-Qawānīnu l-muḥkama' fī l-uṣūli ṭubi'a mirāran 'adīdatan wa-huwa min jalā'ili kutubi hādihā l-'ilmi wa-aw'āhā li-daqa'iqihī wa-ghawāmidihī wa-qad ruzīqa hādihā l-kitābu ḥaẓẓan wāfiran wa-lāqā qabūlan ḥasanan haythu aṣbaḥa mina l-kutubi d-darsiyati fa-lā yastaghni 'an qirā'atihī ṭālibun min ṭullābi l-'ilmi ilā 'aṣrinā illā anna ustādhanā l-ḥujjata l-Mawlā Muḥammadan Kāzimani l-Khurāsāniyya lammā allafa 'l-Kifāyata' da'ufat raghabtu n-nāsi bihī li-tūlihī wa-ttajahū ilā 'l-Kifāyati' ttijāhan mā."*

- 15 Abū l-Qāsim al-Qummī, *al-Qawānīn al-muḥkama fī uṣūl al-fiqh*, edited by Riḍā Ḥusayn Ṣubḥ, 3 vols., ar-Ruways (Lebanon) <sup>3</sup>1431 AH, vol. 1, pp. 33 f.: "*fa-huwa l-'ilmu bi-l-qawā'idī l-mumahhidati li-stinbāḥi [p. 34] l-aḥkāmi sh-shar'iyyati l-far'iyya.*"
- 16 On *Kifāyat al-uṣūl* and its status as a standard work see aṭ-Ṭahrānī, *Ṭabaqāt a'lām ash-shī'a*, vol. 10, p. 53. On its still being in use see for example, al-Gharawī, *al-Ḥawzah al-'ilmiyya fī an-Najaf al-ashraf*, pp. 256 f.; Hauzah.net: *Kotob-hā-ye darsī-ye houze-hā*, without pagination, under the heading "*oṣūl-e feqh*". The reference for the biographical dates of al-Ākhūnd al-Khurāsānī is given below.
- 17 Al-Ākhūnd Muḥammad Kāzīm al-Khurāsānī, *Kifāyat al-uṣūl*, published by Mu'assasat Āl al-Bayt li-lḥyā' at-Turāth, Beirut <sup>3</sup>1429/2008, URL: <http://alfeker.net/library.php?id=3168> (accessed February 1st, 2024), p. 9: "*shīnā' atun yu'rafu bihā l-qawā'idu llati yumkinu an taqa'a fī tariqi stinbāḥi l-aḥkāmi awi llati yuntahā ilayhā fī maqāmi l-'amal.*"
- 18 Al-Ījī was born in Īj as well, probably after 680/1281. On his life and works see J. van Ess, "*al-Ījī, 'Aḍud ad-Dīn 'Abd ar-Raḥmān b. Rukn al-Dīn b. 'Abd al-Ghaffār al-Bakrī al-Shabānkārī*", in: EI<sup>2</sup>, vol. III, p. 1022; idem., *Die Erkenntnislehre des 'Aḍudaddīn al-Īcī, Übersetzung und Kommentar des ersten Buches seiner Mawāqif*, Wiesbaden 1966, pp. 1–7; Brockelmann, *Geschichte der arabischen Litteratur*, vol. II, pp. 267–271 (margin. 208–209), no. 1a, and Supplement II, pp. 287–293, no. 1.
- 19 That the *Mukhtaṣar* of Ibn al-Ḥājib and its commentary by al-Ījī has been a standard work for the Sunnis is shown in Bakker, *Normative Grundstrukturen*, pp. 765 ff.
- 20 See al-Ḥasan Najl al-Shahīd al-Thānī Zayn ad-Dīn al-'Āmilī, *Ma'ālim ad-dīn wa-malādh al-mujtahidīn (al-muqaddima fī uṣūl al-fiqh)*, edited by Mu'assasat an-Naṣr al-Islāmīy at-Tābi'a li-Jamā'at al-Mudarrisīn bi-Qumm, Beirut 1435/2014, p. wāw. The editors do not cite a reference for this claim, but the editor of al-Qummī, *al-Qawānīn al-muḥkamah*, vol. 1, footnote 4, pp. 26 f.,

that the *Mukhtaṣar* of Ibn al-Ḥājjib, together with its commentary by ‘Aḍud ad-Dīn al-Ījī, was a standard work for Shī‘īs, is substantiated, for example, by the fact that the great Shī‘ī theologian al-Ḥasan b. Yūsuf b. al-Muṭahhar, known as al-‘Allāma al-Ḥillī (d. 726/1325 in al-Ḥillah),<sup>21</sup> wrote a commentary on the *Mukhtaṣar* of Ibn al-Ḥājjib,<sup>22</sup> and that there are many Shī‘ī commentaries on the *Mukhtaṣar* of Ibn al-Ḥājjib, together with its commentary by al-Ījī.<sup>23</sup> Also al-Waḥīd al-Bihbihānī, whose treatise *Risālat al-ijtihād wa-l-akhbār* will be the focus of this article, wrote a commentary on a supra-commentary to al-Ījī’s commentary.<sup>24</sup>

## 1.2 The Aim of the Article

In this article I will examine the *Risālat al-ijtihād wa-l-akhbār* of al-‘Aghā al-Ustādḥ al-Akbar Waḥīd ad-Dīn Muḥammad Bāqir b. Muḥammad Akmal al-Bihbihānī<sup>25</sup> (d. 1205/1791).<sup>26</sup> I will show that:

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makes the same statement and references to Muḥsin al-Amīn, *A ‘yān ash-shī‘a*, edited by Ḥasan al-Amīn, 12 vols., Beirut 1403/1983–1413/1993, URL: <http://shiaibooks.net/library.php?id=9733> (accessed February 1st, 2024), vol. 5, 96b; there (ll. 16–18), in the biographical article on al-Ḥasan b. ash-Shahīd al-Thānī Zayn ad-Dīn al-‘Āmilī, while mentioning his *Ma‘ālim ad-dīn* in the list of the books he has written, it is said that the *Mukhtaṣar* of Ibn al-Ḥājjib, its commentary by al-Ījī and another book have been standard works: “*Ma‘ālimu d-dīni wa-malādhū l-mujtahidīn*’ baraza minhu juz’un fī uṣūli l-fiqhi yu’rafu bi-*Ma‘ālimi l-uṣūli*’ šara’ alayhi l-mu’awwalu fī t-tadrīsi min ‘aṣrihi ilā l-yawmi ba’da mā kāna t-tadrīsu fī sharhi l-‘Amīdiyyi ‘alā Tahdhībi l-‘Allāmati wa-l-Ḥājjibiyyi wa-l-‘Aḍūdiyyi.” Upon which information this statement is founded is not explicitly stated, but it seems obvious that it has its justification in a broad knowledge of historiographical and theological sources.

- 21 Al-‘Allāma al-Ḥillī was born in 648/1250 in al-Ḥilla. On his life see Sabine Schmidtke, *The Theology of al-‘Allāma al-Ḥillī* (d. 726/1325), Berlin 1991, p. 9.
- 22 Cf. *ibid.*, p. 66. This commentary of al-‘Allāma al-Ḥillī has also been a standard work for the Shī‘īs, see al-‘Āmilī, *Ma‘ālim ad-dīn*, page *wāw*. For an edition of this work of al-‘Allāma al-Ḥillī see al-Ḥasan b. Yūsuf b. al-Muṭahhar al-‘Allāma al-Ḥillī, *Ghāyat al-wuṣūl wa-īdāh as-subul fī sharḥ mukhtaṣar as-su’l wa-l-amal fī ‘ilmay al-uṣūl wa-l-jadal*, edited by Ā. Mardānpūr, 2 vols., Qom 1430 h. q./1387 h. š, URL: <http://tohid.ir/shialibrary/feqhh.html>, vol. 1: <http://tohid.ir/fa/index/book?bookID=360>, vol. 2: <http://tohid.ir/fa/index/book?bookID=361>; and <http://alfeker.net/library.php?id=5493> (all accessed February 1st, 2024).
- 23 See al-Tahrānī, *adh-Dharī‘a ilā taṣānīf ash-shī‘a*, 28 vols., third edition (vols. 1–7, 9/3, 9/4, 16, 18) and second edition (vols. 8, 9/1, 9/2, 10–17, 19–25), Beirut 1403/1983, URL: <http://alfeker.net/library.php?id=3133> (accessed February 1st, 2024): vol. 6, p. 75 f., pp. 128–132; vol. 13, p. 180. A searchable digital version of this work can be found on the website <http://shiaonlineibrary.com>. I used this website to find the mentioned occurrences in *adh-Dharī‘a*.
- 24 See Muḥammad b. Ismā‘īl al-Māzandarānī al-Ḥā‘irī, *Muntahā al-maqāl fī ahwāl ar-riḡāl*, published by Mu’assasat Āl al-Bayt li-Ihyā’ at-Turāth, 7 vols., Qom 1416 AH/1374 hš/1998 AD, URL: <http://shiaibooks.net/library.php?id=8383> (accessed February 1st, 2024), vol. 6, p. 182, ll. 8–9: “*wa-hāshiyatun ‘alā ḥāshiyati Mīr-zā Jān ‘alā l-Mukhtaṣari l-‘Aḍūdiyyi wajīzatun laṭīfatun.*”
- 25 One finds several vocalisations of the *nisbah* “al-Bihbihānī”; I use here the version that Robert Gleave consistently employs in his work.
- 26 He was born in 1116, 1117 or 1118/1704–1707. For the dates of his birth and death, see Robert Gleave, “*Muḥammad Bāqir al-Bihbihānī* (d. 1205/1791)”, in: Oussama Arabi/David S. Powers/Susan A. Spectorsky (eds.), *Islamic Legal Thought. A Compendium of Muslim Jurists*, Leiden/

- *Risālat al-ijtihād wa-l-akhbār* treats certain issues relating to the science of *uṣūl al-fiqh* or are crucial to laying foundations for this discipline; it seeks to refute central propositions of the Akhbāriyyūn,<sup>27</sup> and contributed to the emergence of a strong movement of thinking and writing in the field of Shī'ī *uṣūl al-fiqh*;
- the study of the development of Shī'ī *uṣūl al-fiqh* from Muḥammad Bāqir al-Bihbihānī to ash-Shaykh al-A'zam Murtaḍā b. Muḥammad Amīn al-Anṣārī (d. 1281/[1864])<sup>28</sup> and his pupil al-Ākhūnd Muḥammad Kāzīm al-Khurāsānī (d. 1329/[1911])<sup>29</sup> is important for studying the history of Shī'ī as well as Sunnī *uṣūl al-fiqh*;
- the scientific structure of Shī'ī theology, as pursued by the *mujtahidūn/uṣūliyyūn*,<sup>30</sup> belongs to the same paradigm as classical Sunni theology.

## 2 Shī'ī *uṣūl al-fiqh* from the 11th to the 14th Centuries AH<sup>31</sup>

To be able to understand and contextualise the treatise of al-Bihbihānī, some minimal hermeneutical prerequisites have to be provided. To this end, two of the oldest modern historiographical accounts of the history of Shī'ī *uṣūl al-fiqh* and one more recent one will be consulted. Arguably the oldest of the modern assessments of the history of Shī'ī *uṣūl al-fiqh* is given by Maḥmūd ash-Shihābī,<sup>32</sup> who, in his in-

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Boston 2013, pp. 415–432, here: p. 421 (first paragraph) and 422 (towards the end of the first paragraph).

- 27 The term Akhbāriyyūn is a designation for a trend or school of thought within Twelver Shiism, as will become clear in the following.
- 28 Āghā Buzurg aṭ-Ṭahrānī has a biographical article on ash-Shaykh al-A'zam Murtaḍā al-Anṣārī in his *Ṭabaqāt a'lām ash-shī'a*, vol. 12: *al-Kirām al-barara fī al-qarn ath-thālith ba'd al-'ashara ('ayn-yā')*, Beirut 1430/2009, pp. 487–490. He was born in 1214 AH, according to the tables in Birashk, *A Comparative Calendar*, the year 1214 extends from 5 June 1799 to 24 May 1800. He died on Saturday, 18 Jumādā II 1281 [18 Nov 1864]. Dates in squared brackets ([...]) are calculated according to Birashk; dates not in squared brackets are taken from the source mentioned.
- 29 He died on Tuesday, 20 Dhū l-Hijjah 1329 [12 Dec 1911]. For his biography see aṭ-Ṭahrānī, *Ṭabaqāt a'lām ash-shī'a*, vol. 17: *Nuqabā' al-bashar fī al-qarn ar-rābi'a 'aṣar (fā'-yā')*, Beirut 1430/2009, pp. 65 ff.
- 30 What is meant by *mujtahidūn/uṣūliyyūn* will be explained below.
- 31 According to Birashk, *A Comparative Calendar*, the 11th century AH begins on Saturday, 19 October 1591 AD and ends on Monday, 25 October 1688 AD; the 12th century AH begins on Tuesday, 26 October 1688 AD and ends on Thursday, 3 November 1785 AD; the 13th century AH begins on Friday, 4 November 1785 and ends on Saturday, 11 November 1882 AD; and the 14th century begins on Sunday, 12 November 1882 and ends on Tuesday, 20 November 1979. In the following summaries of modern historiographic expositions, the AD dates for these gross time spans are not repeated, and for the sake of accurateness only the AH dates are given because these historiographic accounts do not mention the AD dates. However, the corresponding AD dates for narrower periods will be mentioned in the footnotes.
- 32 Maḥmūd-e Shehābī was born in Torbat-e Ḥaydariye in Khorāsān in 1282 h. sh. [22 March 1903–21 March 1904]. He studied the classical sciences and theology in Mashhad and became a *mujtahid*. In about 1305 h. sh. [22 March 1926–21 March 1927 AD], he went to Eṣfahān to extend his studies, especially in philosophy. In autumn 1308 h. sh. [1929 AD], he left for Teheran, where he

roduction to Muḥammad 'Alīy al-Kāzimī al-Khurāsānī's *Fawā'id al-uṣūl* (dated on 20 Rabī' II 1368/[19 Feb. 1949]), divided the time span of the 11th to the 14th centuries AH with regard to the history of *uṣūl al-fiqh* into three periods. He calls the first the period of stagnation (*marḥalat al-but' wa-t-tawaqquf*); the second the period of expansion and progress (*marḥalat al-baṣṭ wa-t-taqaddum*); and the third the period of refinement (*marḥalat at-tahrīr wa-t-talkhīṣ*). The first period (stagnation) covers the 11th and 12th centuries AH, and ash-Shihābī assumes that the inactivity in the field of *uṣūl al-fiqh* in this period was due to the predominance of the theological school of the Akhbāriyyūn at that time.<sup>33</sup> Ash-Shihābī hints at the view the Akhbāriyyūn held on *uṣūl al-fiqh* by saying that they were mostly concerned with the traditions of the Imams,<sup>34</sup> and a few lines below he then alludes to them as opponents of *uṣūl al-fiqh* (*khuṣamā' al-uṣūl*).<sup>35</sup> We will soon see that the Akhbāriyyūn rejected *uṣūl al-fiqh*.

Ash-Shihābī explains that the period of stagnation was brought to an end by the activities of al-Ustādḥ al-Akbar Āqā Muḥammad Bāqir al-Bihbihānī, who died in 1206 AH or 1208 AH.<sup>36</sup> He says that al-Bihbihānī was able to use his teachings and writings to refute the opponents of *uṣūl al-fiqh* (*khuṣamā' al-uṣūl*), and thus inaugurated the period of expansion and progress of *uṣūl al-fiqh* which extends

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founded a *hauzah*, and in 1310 h. sh. [22 March 1931–20 March 1932 AD] he accepted an offer from the newly established faculty of theology (Dāneshkade-ye manqūl va ma'qūl). After Teheran University was opened in 1313 h. sh. [21 March 1934–21 March 1935], he was appointed professor at that institution. From 1320 h. sh. [21 March 1941–20 March 1942 AD] to 1350 h. sh. [21 March 1971–20 March 1972 AD], he was professor at Teheran University's faculty of law. After the Islamic Revolution in 1357 h. sh. [21 March 1978–20 March 1979 AD], he left Iran to live in the UK and then in France, where he died on the 4 Mordād 1365 [26 July 1986]. These biographical data are taken from the article محمود شهایی in the Persian internet encyclopaedia Wikinoor (URL: [https://wikinoor.ir/محمود\\_شهایی](https://wikinoor.ir/محمود_شهایی), (accessed February 1st, 2024)). Another internet source for his biography is the Persian Wikipedia (URL: [https://fa.wikipedia.org/wiki/محمود\\_شهایی\\_خراسانی](https://fa.wikipedia.org/wiki/محمود_شهایی_خراسانی) (accessed February 1st, 2024)), which says that he is mentioned by Āghā Buzurg aṭ-Ṭahrānī in his *Ṭabaqāt a'lām ash-shī'a*, vol. 15: *Nuqabā' al-bashar fī al-qarn ar-rābi'a 'aṣar (ṣād-'ayn)*, Beirut 1430/2009, p. 1128. There we find in the short biographical article on his father 'Abd al-Salām b. 'Alīy Akbar at-Turbatī (no. 1641), who died in 1372 AH [21 Sept 1952–9 Sept 1953], that Maḥmūd ash-Shihābī was born in 1321 AH [30 March 1903–17 March 1904]. Āghā Buzurg aṭ-Ṭahrānī also has an entry for the son Maḥmūd in vol. 17, p. 300, no. 412, under the name Mīrẓā Maḥmūd ash-Shihābī at-Turbatī, where he mentions some of his works and says that he was professor at Madrased-ye Sepahsālār, which is called Dāneshkade-ye ma'qūl va manqūl, but does not mention the dates of his birth and death.

33 See Muḥammad 'Alīy al-Kāzimī al-Khurāsānī, *Fawā'id al-uṣūl*, compiled from the lessons of al-Mīrẓā Muḥammad Ḥusayn al-Gharawī an-Nā'inī, edited by Raḥmat Allāh ar-Raḥmatī al-Arākī, 2 vols., Qom 121438 AH, URL: <http://alfeker.net/library.php?id=4611> (accessed February 1st, 2024), vol. 1, pp. 13, ll. 7–10.

34 See *ibid.*, vol. 1, pp. 13, ll. 9–10.

35 See *ibid.*, vol. 1, pp. 14, l. 1.

36 According to Birashk, *A Comparative Calendar*, the year 1206 AH begins on Wednesday, 31 August 1791 AD and ends on Saturday, 18 August 1792, the year 1208 AH begins on Friday, 9 August 1793 AD and ends on Monday, 28 July 1794 AD.

through the 13th century AH.<sup>37</sup> Ash-Shihābī identifies the beginning of the third period as the end of the 13th century AH, associating it with the works of al-Ākhūnd Muḥammad Kāzīm al-Khurāsānī (d. 1329/1911),<sup>38</sup> in particular his book *Kifāyat al-uṣūl*.<sup>39</sup>

Another of the earlier modern scholars who occupied himself with the history of Shī'ī *uṣūl al-fiqh* is the well-known as-Sayyid ash-Shahīd Muḥammad Bāqir b. Ḥaydar aṣ-Ṣadr (killed together with his sister Bint al-Hudā by the Ba'ṯh regime sometime between 5–10 April, 1980),<sup>40</sup> whose *al-Ma'ālim al-jadīdah li-l-uṣūl* (appeared first in 1385 AH [2 May 1965–21 April 1966]) provides a more elaborate account: He states that, beginning in the first half of the 11th century, the emerging movement of the Akhbārīs (Ḥarakat al-Akhhāriyyah) delivered a severe blow to the development of *uṣūl al-fiqh*; the trend to reject the method of *ijtihād*, which is discussed in the science of *uṣūl al-fiqh*, became predominant during a large part of the 11th and the 12th centuries AH. Their repudiation of this discipline was based *inter alia* on their judgment that *uṣūl al-fiqh* was originally a Sunni discipline and in contradiction to Shī'ī principles.<sup>41</sup> As another reason for the stagnation of the development of *uṣūl al-fiqh*, ash-Shahīd aṣ-Ṣadr proposes that the scholars of that time were more preoccupied with the study of Ḥadīth at the expense of *uṣūl al-fiqh*.<sup>42</sup> However, according to ash-Shahīd aṣ-Ṣadr, in this period, which although unfavourable for *uṣūl al-fiqh*, there were still some developments in this field, which

paved the way for the appearance of the school of the Ustādh al-Wahīd al-Bihbihānī that opened a new era in the history of the discipline, as we will see. Hence, these discussions can be seen as the basic seeds for the emergence of this school and the last step [p. 85] which contributed to the scientific thought of the second age [of the development of *uṣūl al-fiqh*] the disposition to move to the third age.<sup>43</sup>

Ash-Shahīd aṣ-Ṣadr says that the centre of the *Akhhāri* movement was the city of Karbalā', where this new school of al-Wahīd al-Bihbihānī itself was born and would go on to dispute the predominance of the Akhbārīs and defend the science

37 See al-Kāzīmī, *Fawā'id al-uṣūl*, vol. 1, pp. 13, 1.11–14, 1.2.

38 The precise date of his death has been just mentioned above.

39 Cf. al-Kāzīmī, *Fawā'id al-uṣūl*, vol. 1, p. 14 (section 12).

40 For Muḥammad Bāqir aṣ-Ṣadr see Chibli Mallat, *The Renewal of Islamic Law. Muhammad Baqer as-Sadr, Najaf and the Shi'i International*, Cambridge 2003, pp. 8–19. He was born on 25 Dhū l-Qa'dah 1353/1 March 1935 in al-Kāzimiyya. The dates of his death are given by Mallat only according to the AD calendar. Referring to Birashk, *A Comparative Calendar*, 5 April 1980 corresponds to 19 Jumādā I 1400 and 10 April 1980 to 24 Jumādā I 1400.

41 See Muḥammad Bāqir aṣ-Ṣadr, *al-Ma'ālim al-jadīdah li-l-uṣūl*, an-Najaf 1385 AH, URL: <http://shiabooks.net/library.php?id=10326> (accessed February 1st, 2024), pp. 76–79.

42 Cf. *ibid.*, pp. 82 f.

43 *Ibid.*, pp. 84 f.: “*wa-qad mahhadū bi-buḥūthihim li-zuhūri madrasati l-ustadhi l-Wahīdi l-Bihbihāniyyi llatī ftatahat 'aṣran jadīdan fī tārikhi l-'ilmi kamā sawfa narā wa-bi-hādihā yumkinu 'ūbāru tilka l-buḥūthi l-budhūra l-asāsiyyata li-zuhūri hādhihī l-madrasati wa-l-ḥalqata l-akhīrata [p. 85] llatī aksabati l-fikrata l-'ilmiyyata fī l-'aṣri th-thāni l-isti'dāda li-l-intiqāli ilā 'aṣrin thālith.*”

of *uṣūl al-fiqh*. These efforts of the al-Waḥīd al-Bihbihānī school proved successful, and the Akhbārī movement all but disappeared.<sup>44</sup>

According to the judgment of ash-Shahīd aṣ-Ṣadr, al-Bihbihānī and his pupils, besides supplanting the Akhbārī movement, broadened scientific thought and lifted *uṣūl al-fiqh* to a higher level, which led to the start of a new era of scientific thought in the fields of *al-fiqh* and *uṣūl al-fiqh*.<sup>45</sup> Ash-Shahīd aṣ-Ṣadr suggests four factors that may have contributed to this development:

- the response to the challenge posed by the ideas of the Akhbārī movement;
- the fact that the achievements in the field of Ḥadīth-studies of the preceding period had reached a sufficient level which opened the way to using the collections for the aims of *al-fiqh*;
- the influence of philosophical deliberations; and
- the proximity of the school of al-Waḥīd al-Bihbihānī in Karbalā' to Najaf, the main centre of Shī'ī learning, which facilitated exchange.<sup>46</sup>

The new age in the history of *uṣūl al-fiqh* that al-Waḥīd al-Bihbihānī and his pupils inaugurated is, according to the outline given by ash-Shahīd aṣ-Ṣadr, its third basic era, which he considers to be ongoing and whose specific achievements cannot be explained in the framework of *al-Ma'ālim al-jadīdah*.<sup>47</sup> He also stresses that the division of the history of Shī'ī *uṣūl al-fiqh* since the 11th century AH into three periods is a primary division, and that each of these three periods can itself be divided into sub-periods.<sup>48</sup>

Furthermore, he holds that the third age reached its zenith with the achievements of Murtaḍā al-Anṣārī (1214–1281 AH),<sup>49</sup> who belongs to the third generation of pupils after al-Waḥīd al-Bihbihānī, i. e. the generation who were pupils of the generation who had been pupils of al-Bihbihānī's pupils, and who opened a new and ongoing stage within the third era.<sup>50</sup> If we compare the expositions of ash-Shihābī

44 Cf. *ibid.*, p. 85.

45 Cf. *ibid.*: “*wa-qad qāmat hādhihī l-madrasatu ilā ṣaffi dhālika bi-tanmiyati l-fikri l-‘ilmiyyi wa-l-irtifā’i bi-‘ilmi l-uṣūli ilā mustawān a’lā, hattā anna bi-l-‘imkāni l-qawla bi-anna zuhūra hādhihī l-madrasati wa-juhūdahā l-mutaḍāfirata llatī badhalahā l-Bihbihāniyyu wa-talāmīdhatu madrasatihī l-muḥaqqiqūna l-kibāru qad kāna ḥaddan fāṣilan bayna ‘aṣrayni min tārikhi l-fikri l-‘ilmiyyi fī l-fiqhi wa-l-uṣūl.*”

46 Cf. *ibid.*, pp. 85 f.

47 Cf. *ibid.*, pp. 87 ff.

48 Cf. *ibid.*, p. 89.

49 According to Birashk, *A Comparative Calendar*, the year 1214 AH begins on Wednesday, 15 June 1799 and ends on Saturday, 24 May 1800. The year 1281 AH begins on Monday, 6 June 1864 and ends on Friday, 26 May 1865.

50 Cf. aṣ-Ṣadr, *al-Ma'ālim al-jadīdah li-l-uṣūl*, p. 89. For ash-Shahīd aṣ-Ṣadr's estimation of the role of Murtaḍā al-Anṣārī see the following statement in: *ibid.*: “*wa-‘alā hādihā l-asāsi na ‘tabiru sh-shaykha l-Anṣārīyya quddisa sirruhū l-mutawaffā sanata 1281 rā’ idan li-arqā marḥalatin min marāḥili l-‘aṣri th-thālithi wa-hiya l-marḥalatu llatī yatamaththalu fihā l-fikru l-‘ilmiyyu mundhu kthira min mi’ati sanatin hattā l-yawm.*”

and ash-Shahīd aṣ-Ṣadr, it is clear they both agree that al-Wahīd al-Bihbihānī inaugurated a new era in the science of *uṣūl al-fiqh*. However, ash-Shahīd aṣ-Ṣadr holds that Murtaḍā al-Anṣārī started a new period within this era, while ash-Shihābī assigns this role to the pupil of Murtaḍā al-Anṣārī, al-Ākhūnd Muḥammad Kāzim al-Khurāsānī.

Neither ash-Shihābī nor ash-Shahīd aṣ-Ṣadr provide detailed evidence for their respective claims, but it is obvious that they are relying on their vast knowledge of *al-fiqh*, *uṣūl al-fiqh* and the biographical literature. To illustrate their assessment, we may consider a statement by an earlier historiographer who deals with the period in question: Moḥammad ebn-e Soleymān-e Tonekābonī (d. 1302/[1885]).<sup>51</sup> In his *Qeṣaṣo l-‘olamā’*, a Persian collection of biographies of Shī‘ī scholars, he writes:

The science of *uṣūl al-fiqh* before the founder Behbehānī had not been that detailed and was not that precisely and profoundly explicated.<sup>52</sup>

Tonekābonī writes in his short biographical entry on Murtaḍā al-Anṣārī about al-Anṣārī’s achievements in the field of *uṣūl al-fiqh*:

In fact, he was a founding figure in *uṣūl al-fiqh*, especially [considering what he said] about the necessity to regard supposition [of a practical norm of revelation] as binding (*hojjiyat-e zann*), about the principle of the preponderance of non-obligation (*aṣl-e barā’at*), and about the presumption of continuity (*esteṣhāb*).<sup>53</sup>

Āghā Buzurg aṭ-Ṭahrānī (d. 1389/1970)<sup>54</sup> says about ash-Shaykh Murtaḍā al-Anṣārī:

51 Soleymān-e Tonekābonī died on Tuesday, 26 Jumādā II 1302 [14 April 1885]. See his biography in aṭ-Ṭahrānī, *Ṭabaqāt a lām ash-shī‘a*, vol. 17, pp. 212 ff. The date of his death is mentioned in vol. 17, p. 214. Tonekābonī wrote an autobiography in Persian, see Moḥammad ebn-e Soleymān Tonekābonī, *Qeṣaṣo l-‘olamā’*, Moḥammad Reżā Bozorg Ḥāleqī/‘Effat Karbāsī (eds.), Teheran 1383, pp. 83–107 (no. 4); Arabic translation of this book: Muḥammad b. Sulaymān at-Tunikābunī, *Qīṣaṣ al-‘ulamā’*, translated by Mālik Wahbī, Beirut 1413/1992, pp. 78–103 (no. 4); Tonekābonī says that he was born in 1234 AH [31 October 1818–19 October 1819] or 1235 AH [20 October 1819–8 October 1820], (see p. 87, l.3; Arabic translation: p. 81).

52 This statement is not found in the biography of al-Wahīd al-Bihbihānī in Tonekābonī’s *Qeṣaṣo l-‘olamā’*, rather it is found in that of another scholar, Muḥammad Bāqir al-Majlisī (no. 36, in the Arabic translation: no. 34), p. 259 (Arabic translation: p. 221): “‘alāve, ‘elm-e oṣūl qabl az mu‘asses-e Behbehānī, be īn naḥv-e mofaṣṣal wa bā taḥqīq wa tadqīq nabūde.”

53 Tonekābonī, *Qeṣaṣo l-‘olamā’*, p. 129: “va fī l-ḥaqīq, dar ‘elm-e oṣūl, ya ‘nī dar hojjiyat-e zann va aṣl-e barā’at va esteṣhāb mo‘asses būde”. Another English translation of this passage can be found in Hamid Dabashi, “Lives of Prominent Nineteenth-Century ‘Ulamā’ from Tunikābunī’s *Qīṣaṣ al-‘Ulamā’*, translated and edited by Hamid Dabashi”, in: Said Amir Arjomand (ed.), *Authority and Political Culture in Shi‘ism*, Albany 1988, pp. 305–328, here: p. 324.

54 A son of Āghā Buzurg aṭ-Ṭahrānī, ‘Alīy-Naqīy Munzawī, included a biographical article on his father as an introduction to the first volume of his father’s *Ṭabaqāt a lām ash-shī‘a*: *Nawābigh ar-ruwāt fī rābi‘at al-mī‘āt*, Beirut 1430/2009, pp. ٢ [9]–٤ [46]. The dates of his birth and death are given on page ٤ [10]. The number values of the letters are given according to Wolfdiétrich Fischer, *Grammatik des klassischen Arabisch*, Wiesbaden <sup>2</sup>1987, p. 5. Munzawī writes that his father was born on 11 Rabī‘ I 1293/7 April 1876, and died on Friday, 13 Dhū l-Ḥijjah 1389/20 Febr. 1970.

He is one of the founders who nobody earlier or later has surpassed, as everyone can see from his printed works: the *Rasā'il*, *al-Makāsib*, *aṭ-Ṭahārah*, and the Appendixes of the two last mentioned works.<sup>55</sup>

And Āghā Buzurg aṭ-Ṭahrānī remarks on the book *Kifāyat al-uṣūl* by al-Ākhūnd Muḥammad Kāzīm b. Mullā Ḥusayn al-Khurāsānī (d. 1329/[1911]),<sup>56</sup> which ash-Shihābī mentions in connection with al-Ākhūnd al-Khurāsānī's role in the development of *uṣūl al-fiqh* while enumerating the works that al-Ākhūnd al-Khurāsānī has written:

[...] and *Kifāyat al-uṣūl* ([mentioned in] *adh-Dharī'a ilā taṣānīf ash-shī'a*, vol. 18, 88, no. 810),<sup>57</sup> which has become the basis of discussion and teaching in the following, and commentaries are written on it.<sup>58</sup>

Taking these statements into consideration, it becomes more convincing that the claims of ash-Shihābī and ash-Shahīd aṣ-Ṣadr are strongly justified in the interpretation of the relevant sources from the period in question, while their different opinions concerning the role of Murtaḍā al-Anṣārī and al-Ākhūnd al-Khurāsānī may only be due to some differences in the criteria applied to divide a stage within an era, which however they do not explicitly explain.

Also, a much more recent author of a detailed monograph on the history of *uṣūl al-fiqh*, Mahdī 'Alīpūr, is following the lines of ash-Shihābī and ash-Shahīd aṣ-Ṣadr, and he begins, as ash-Shahīd aṣ-Ṣadr, a new stage with Murtaḍā al-Anṣārī, and introduces further divisions into the era that ash-Shahīd aṣ-Ṣadr calls the third period.<sup>59</sup> The historians of *uṣūl al-fiqh* cited here may have a bias in favour of the Uṣūliyyūn and against the Akhbāriyyūn, which could lead them to make more positive statements about the former while simultaneously concealing less favourable aspects.<sup>60</sup> But this cannot diminish their importance for the task of the present

55 Aṭ-Ṭahrānī, *Ṭabaqāt a'lām ash-shī'a*, vol. 12, p. 489: “*wa-huwa mina l-mu'assīsina wa-lladhī lam yasbiḥ aḥadun mina l-mutaqaddimīna wa-l-muta'akkkhirīna, yarāhu kullu dhī 'aynin, mim mā jubī'a lahu mina r-rasā'ili wa-l-makāsibi wa-ṭ-ṭahāratī wa-mulḥaqātihā.*”

56 Al-Ākhūnd al-Khurāsānī died on Tuesday, 20 Dhū l-Ḥijjah 1329 [12 Dec 1911]. For his biography see aṭ-Ṭahrānī, *Ṭabaqāt a'lām ash-shī'a*, vol. 17, pp. 65 ff.

57 *Al-Dharī'a ilā taṣānīf ash-shī'a* is another monumental work of aṭ-Ṭahrānī's. It is a bibliographical encyclopaedia of Shī'ī literature. It is accessible on the internet, see URL: <http://alfeker.net/library.php?id=3133> (accessed February 1st, 2024).

58 Aṭ-Ṭahrānī, *Ṭabaqāt a'lām ash-shī'a*, vol. 17, p. 67: “*wa-kitābu Kifāyati l-uṣūl ([adh-]Dharī'a ilā taṣānīfi ash-shī'a) 18, 88 raqam 81) alladhī ṣāra madāra l-baḥṭhi wa-l-tadrīsi ba'dahū, wa-'alayhi yuktabu l-hawāshī wa-sh-shurūḥ.*”

59 Cf. Mahdī 'Alīpūr, *Dar-āmadī be tārikh-e 'elm-e oṣūl*, Qom 1382 [2003–2004], pp. 275–448; Arabic translation: Mahdīy 'Alīy Pūr, *Tārikh 'ilm al-uṣūl*, translated by 'Alīy Zāhir, Beirut 1431/2010, URL: <http://alfeker.net/library.php?id=3241> (accessed February 1st, 2024), pp. 249–391.

60 Heern, for example, concludes that al-Wahīd al-Bihbihānī has ordered the killing of Akhbāriyyūn from the fact that he is reported to have a militia at his disposal, see Zackery M. Heern, *The Emergence of Modern Shi'ism, Islamic Reform in Iraq and Iran*, London 2015, p. 82. Heern bases his assertion on Hamid Algar, *Religion and State in Iran 1785–1906, the Role of the Ulama in the Qajar Period*, Los Angeles/London 1980, pp. 35 f., who refers to Tonekābonī's *Qeṣaṣo l-'olamā'*

article, because it is not my goal to investigate the events that led to the virtual disappearance of the Akhbāriyyūn, at least from Karbalā' and an-Najaf; rather, it is my aim to study some developments within the science of *uṣūl al-fiqh*, and in this regard, the views of the mentioned authors seem to accurately describe a trend in the history of this science, as is also evident from the amount of writing activity on *uṣūl al-fiqh* by the generation of pupils of al-Wahīd al-Bihbihānī onwards.<sup>61</sup> And what further strengthens this impression is that this achievement of the al-Wahīd al-Bihbihānī school seems to have set a socially relevant trend within the community of Shī'ī scholars, namely that *uṣūl al-fiqh* is a field in which many Shī'ī scholars of the 14th/20th century have left works of considerable size, suggesting that this discipline has achieved the status of a leading science within modern Shī'ī theology.<sup>62</sup>

From what we have learned from ash-Shihābī and ash-Shahīd aṣ-Ṣadr, it seems to be obvious that the Akhbāriyyūn rejected *ijtihād* and *uṣūl al-fiqh*, the theological discipline which treats the principles of *ijtihād*. To better understand the issue, it may be useful to examine the concept of *ijtihād* adhered to by the Shī'ī scholars. In a short standard work on *uṣūl al-fiqh*, *Ma'ālim ad-dīn* by al-Ḥasan b. ash-Shahīd ath-Thānī Zayn ad-Dīn al-Āmilī (d. 1011/[1602]),<sup>63</sup> which has been widely in use until recent times,<sup>64</sup> we read the following definition:

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albeit in an old edition I could not find. Algar mentions only the page of this reference (148) and I have been unable to locate the relevant passage in *Qeṣaṣo l-'olamā'*. In my view it thus remains unclear if these allegations are justified. Any further considerations would lead us beyond the scope of this article.

- 61 It is outside the scope of this article to identify the vast number of works on *uṣūl al-fiqh* by the pupils of al-Wahīd al-Bihbihānī and, in turn, their own pupils, but an impression can be obtained from the authors and titles mentioned by 'Alīpūr, *Dar-āmadī be tārikh-e 'elm-e oṣūl*, pp. 284–337; Arabic translation, pp. 255–298.
- 62 An impression of the extent of the work on *uṣūl al-fiqh* in the 14th/20th century can be gained from 'Alīpūr, *ibid.*, pp. 414–486 (Arabic translation: pp. 360–434), and from a search for books on *uṣūl al-fiqh* on websites like <http://alfeker.net/> and <http://shiaibooks.net/>.
- 63 For the status of this text as a standard work see al-Amīn, *A yān ash-shī'a*, vol. 5, 96b. In the biographical article on al-Ḥasan b. ash-Shahīd ath-Thānī Zayn ad-Dīn al-Āmilī, previously referred to in showing that the *Mukhtaṣar* of Ibn al-Ḥājjib and its commentary by al-Ījī are standard works, al-Amīn says that the teaching of *uṣūl al-fiqh* is based on it, and indeed from the time it became well known during the author's life until his own day: “*Ma'ālimu d-dīni wa-malādhū l-mujtahidīn 'baraza minhu juz 'un fī uṣūli l-fiqhi yu 'rafu bi- 'Ma'ālimi l-uṣūli' šāra 'alayhi l-mu 'awwalu fī t-tadrīsi min 'aṣrihi ilā l-yawmi ba 'da mā kāna t-tadrīsu fī sh-sharḥi l- 'Amīdiyyi 'alā tahdhībi l- 'Allāmāti wa-l-Ḥājjibiyyi wa-l- 'Aqūdiyyi.*” In the same article, at 92a, we find the birth and death dates of al-Ḥasan b. ash-Shahīd ath-Thānī Zayn ad-Dīn al-Āmilī: he was born on 27 Ramaḍān 957/[16 Sept 1552] and died on 1 al-Muḥarrām 1011/[21 June 1602]. On the status of *Ma'ālim ad-dīn* as a standard work see, for example, also the statement of Maḥmūd ash-Shihābī in al-Kāzimī al-Khurāsānī, *Fawā'id al-uṣūl*, vol. 1, p. 12 (section 10).
- 64 That *Ma'ālim ad-dīn* of Ibn ash-Shahīd ath-Thānī has been in use until recent times can be seen on [Hauzah.net](http://Hauzah.net): *Kotob-hā-ye darṣī-ye ḥouze-hā*, without pagination, the first paragraph under the heading “*oṣūl-e feqh*”.

The linguistic meaning of *al-ijtihād* is to spend effort, that is to bear hardship for the sake of something; one says [for example]: ‘he spent effort to carry something heavy’, and it is not said for something mean. In technical usage it means that the practical theologian (*al-faqīh*) exhausts his efforts to gain supposition (*aẓ-ẓann*) of a norm of revelation.<sup>65</sup>

In the aforementioned *Mukhtaṣar* of Ibn al-Ḥājjib, we find a similar definition of *ijtihād*:

*Al-ijtihād* means in the technical usage that a practical theologian (*al-faqīh*) exhausts his efforts to gain supposition of a norm of revelation.<sup>66</sup>

This means that the result of *ijtihād*, at least according to this shared Sunni and Shī‘ī definition, is always supposition (*ẓann*). This reminds us of the already cited statement of Tonekābonī that one of the special achievements of Murtaḍā al-Anṣārī was his discussion of the necessity to regard supposition of a practical norm of revelation as binding (*ḥujjiyyat aẓ-ẓann*), and suggests that supposition in connection with the derivation of practical norms of revelation may have been, amongst other aspects, a point of difference between the school of al-Bihbihānī and the Akhbāriyyūn, and one of the sources of dispute which in turn triggered a vivid and productive discussion within the school of al-Bihbihānī and led to a tangible progress in *uṣūl al-fiqh*.

To further substantiate this hypothesis, let us consider the work of Mahdī ‘Alīpūr who summarises some of the points of difference between the proponents of *ijtihād*, who he calls Uṣūliyyūn and *mujtahidūn*,<sup>67</sup> and the Akhbāriyyūn; according to ‘Alīpūr, the Akhbāriyyūn say that *ijtihād* is not a way to derive norms of revelation for actions because it is only able to sustain supposition, and supposition is not sufficient for the cognition of norms of revelation which requires certain knowledge (*‘ilm*).<sup>68</sup>

Another difference between the Akhbāriyyūn and their opponents ‘Alīpūr sees is that the Akhbāriyyūn regard the words and actions (*Sunna*) of the infallible Imams (*al-a‘imma l-ma‘šūmūn*) as the only source for norms of revelation.<sup>69</sup> From this it becomes clear that the Akhbāriyyūn interpret the Shī‘ī dogma—that the infallible

65 Al-‘Āmilīy, *Ma‘ālim ad-dīn wa-malādh al-mujtahidīn*, p. 238. Relevant passage is at the beginning of *al-maṭlab at-tāsi‘ fī l-ijtihād wa-t-taqlīd*: “*al-ijtihādu fī l-lughati: taḥammulu l-juḥdi wa-huwa l-mashaqqatu fī amrin. Yuqālu: ijtahada fī ḥamli th-thaqīli, wa-lā yuqālu dhālika fī l-ḥaqīri. Wa-ammā fī l-iṣṭilāhi fa-huwa stiḥrāghu l-faqīhi wus‘ahū fī taḥṣīli ẓ-ẓanni bi-ḥukmin shar‘iyyin.*”

66 Al-Ījī, *Kitāb sharḥ al-‘Aḥud ‘alā Mukhtaṣar muntahā l-wuṣūl wa-l-amal*, vol. 2, p. 917: “*al-ijtihādu fī l-iṣṭilāhi: istiḥrāghu l-faqīhi l-wus‘a li-taḥṣīli ẓannin bi-ḥukmin shar‘iyyin.*”

67 Cf. ‘Alīpūr, *Dar-āmadī be tārikh-e ‘elm-e oṣūl*, p. 215 and p. 222; Arabic translation: p. 195 and p. 201.

68 Cf. *ibid.*, *dars-e hashtom, dowre-ye čahārom*, p. 218: “*akhbārīhā bar īn bāwar-and ke chūn ejteḥād wa estenbāt-e eṣṭelāhi, ẓanni ast, be ʿour-e kullī ḥojjat nīst wa dar kashf-e aḥkām-e shar‘ī tawwasol be estenbāt-e ẓanni jā‘ez nīst; zīrā taḥṣīl-e ‘elm be aḥkām lāzem ast.*” Arabic translation (*al-faṣl ath-thāmin, al-marḥala al-khāmisa*), pp. 197 f.

69 Cf. *ibid.*, p. 220: “*az dīdgāh-e akhbāriyān tanhā manba‘-e shenākht-e aḥkām-e shar‘ī, sonnat-e A‘emme-ye ma‘šūm – ‘alayhemo l-salām – ast.*” Arabic translation, p. 199.

Imams are the safeguard ensuring the religion which the Messenger of God has revealed will not be changed—<sup>70</sup> in a particular way, namely, the Imams are the only access to gain an understanding of revelation, or as ‘Alīpūr summarises it: Only the interpretation given by the infallible Imams ensures that religion is understood in the correct way, because it is only they who are addressed by the Qur’ān and the *Sunna* of the Messenger of God, which excludes, for persons other than the infallible Imams, other sources than the *Sunna* of the Imams, as the *Sunna* of the Prophet and the text of the Qur’ān without interpretation by an infallible Imam.<sup>71</sup> The Akhbāriyyūn, as we have seen, assert that only what they regard as certain knowledge can establish a norm of revelation for actions. Therefore, single attested traditions (*khabar al-wāḥid*) which can sustain only supposition are unable to establish a norm of revelation for action.<sup>72</sup> Moreover, the Akhbāriyyūn hold that the traditions of the Imams found in the four books<sup>73</sup> are certainly transmitted reports of their words and deeds and that their meaning can be established with certainty due to contextual elements. By contrast, the defenders of *uṣūl al-fiqh* hold that the majority of these reports substantiates only supposition with regard to their transmission and their meaning.<sup>74</sup>

Some studies on the Akhbāriyyūn go into greater detail and differentiate between the views of certain proponents of this school.<sup>75</sup> However, for the purposes and

70 On the infallibility of the Imams see Miqdād b. ‘Abdallāh as-Suyūrī, “*an-Nāfi’ yawma l-ḥashr fī sharḥ al-bāb al-ḥādīya ‘ashar*”, in: al-‘Allāma al-Ḥillī, *al-Bāb al-ḥādīya ‘ashar li-l-‘Allāma al-Ḥillī ma’a sharḥayh an-nāfi’ yawma l-ḥashr fī sharḥ al-bāb al-ḥādīya ‘ashar li-Miqdād b. ‘Abdallāh as-Suyūrī wa-Miftāḥ al-bābi li-Abī al-Faṭḥ b. Makhḍūm al-Ḥusaynī*, edited by Mahdī Moḥaqqueq, Tehran 1365 h. ۱۳۸۶ AD, pp. 1–59, p. 42, l.16, to p. 43, l.18, where as-Suyūrī discusses the proposition that the Imam must be infallible because he must ensure that the religion will not be adulterated. This book has been a standard work for Twelver Shī’ī dogmatics, see, for example, [Hauzah.net: Kotob-hā-ye darsī-ye ḥouze-hā](https://hawzah.net/fa/Article/View/6340/کتابهای-درسی-حوز-د-های-علمیه-شیعه/6340) (URL: <https://hawzah.net/fa/Article/View/6340/کتابهای-درسی-حوز-د-های-علمیه-شیعه/6340>) (accessed February 1st, 2024), without pagination, under the heading “*‘elm-e kalām*”.

71 Cf. ‘Alīpūr, *Dar-āmadī be tārikh-e ‘elm-e oṣūl*, p. 220; Arabic translation, pp. 199 f.

72 Cf. *ibid.*, p. 221: “*5 – khabar-e vāḥed-e ḡannī ḥojjat nīst. Akhbāriyān chūn mo’taqad be ‘elm dar kashf-e ḥokm-e shar’ī hastand, az īn rū akhbār-e āḥād-e ḡannī-rā ḥojjat ne-mī-dānand;*” Arabic translation, p. 201.

73 These four collections of Ḥadīth are identified by Hossein Modarressi Tabātabā’ī, *An Introduction to Shī’ī Law. A bibliographical study*, London 1984, pp. 4 f. Gleave has published an article on these four collections, see Robert Gleave, “*Between Ḥadīth and Fiqh. The ‘Canonical’ Imāmī Collections of Akhbār*”, in: *Islamic Law and Society* 8 (2001) 3, pp. 350–382.

74 Cf. ‘Alīpūr, *Dar-āmadī be tārikh-e ‘elm-e oṣūl*, pp. 221 f.; Arabic translation, p. 201.

75 See for example the following works: Etan Kohlberg, “*Aspects of Akhbārī Thought in the Seventeenth and Eighteenth Centuries*”, in: Nehemia Levtzion/John Voll (eds.), *Eighteenth Century Renewal and Reform in Islam*, Syracuse 1987, pp. 133–160; Andrew J. Newman, “*The Nature of the Akhbārī/Usūlī Dispute in Late Ṣafawid Iran, Part 1: ‘Abdallāh al-Samāḥijī’s ‘Munyat al-Mumārīsīn’*”, in: *Bulletin of the School of Oriental Studies* 55 (1992) 1, pp. 21–55; *idem.*, “*The Nature of the Akhbārī/Usūlī Dispute in Late Ṣafawid Iran, Part 2: The Conflict Reassessed*”, in: *Bulletin of the School of Oriental Studies* 55 (1992) 2, pp. 250–261; Robert Gleave, “*Akhbārī Shī’ī uṣūl al-fiqh and the Juristic Theory of Yūsuf b. Aḥmad al-Bahrānī*”, in: Robert Gleave/Eugenia Kermeli (eds.), *Islamic Law, Theory and Practice*, London/New York 2001, pp. 24–45;

the framework of this article, the preceding acquaintance with the aforementioned teachings of the Akhbāriyyūn and their opponents, which is based on the exposition of 'Alīpūr, suffices to engage with the *Risālat al-ijtihād wa-l-akhbār* of al-Waḥīd al-Bihbihānī.

### 3 Structure and Content of *Risālat al-ijtihād wa-l-akhbār* by al-Waḥīd al-Bihbihānī

In the last twenty years, al-Waḥīd al-Bihbihānī, his pupils, and their influence have attracted the interest of researchers in the field of Islamic Studies. Robert Gleave has published a number of works in which he speaks about al-Bihbihānī,<sup>76</sup> and in 2015 Zackery M. Heern published a monograph with the title *The Emergence of Modern Shi'ism* about the movement that, as he argues, was started by al-Bihbihānī and his pupils. He regards it as a reform movement that had repercussions in the political sphere, which in turn ultimately led to the 1979 Islamic Revolution in Iran.<sup>77</sup>

In an article on al-Waḥīd al-Bihbihānī, Gleave gives, in addition to information about his disputes with the Akhbārīs, an overview of the available data on his life. He says that al-Bihbihānī was born in 1116, 1117 or 1118 AH/1704–1707 AD in Isfahan. At an unknown date, al-Waḥīd al-Bihbihānī moved with his father to Bihbihān. He also studied in an-Najaf, returned to Bihbihān, and stayed there for about thirty years. Between 1165/1751 and 1170/1757 he went to Karbalā' where he remained until his death in 1205/1791.<sup>78</sup>

If this information which Gleave has found is reliable, it becomes clear that al-Waḥīd al-Bihbihānī wrote his *Risālat al-ijtihād wa-l-akhbār* in Bihbihān about ten years before he left the city to settle in Karbalā', stating in the postscript that he finished it on 13 Rajab 1155 [11 September 1742].<sup>79</sup> The text is available in a critical edition and spans 225 pages. It is divided into eight parts of different lengths.

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Robert Gleave, *Inevitable Doubt. Two Theories of Shī'ī Jurisprudence*, Leiden/Boston/Cologne 2000; idem., *Scripturalist Islam. the History and Doctrines of the Akhbārī Shī'ī School*, Leiden/Boston 2007.

76 See Gleave, "Akhbārī Shī'ī uṣūl al-fiqh and the Juristic Theory"; idem., *Inevitable Doubt*; idem., *Scripturalist Islam*. Gleave has also written an article about al-Waḥīd al-Bihbihānī, see Robert Gleave, "Muḥammad Bāqir al-Bihbihānī (d. 1205/1791)", in: Oussama Arabi/David S. Powers/Susan A. Spector (eds.), *Islamic Legal Thought. A Compendium of Muslim Jurists*, Leiden/Boston 2013, pp. 415–432.

77 Cf. Heern, *The Emergence of Modern Shi'ism*, pp. 9–10, p. 72.

78 Cf. Gleave, "Muḥammad Bāqir al-Bihbihānī", pp. 420 ff.

79 Cf. Muḥammad Bāqir al-Waḥīd al-Bihbihānī, "Risālat al-ijtihād wa-l-akhbār", in: idem., *ar-Rasā'il al-uṣūliyya*, published by Mu'assat al-'Allāma al-Mujaddid al-Waḥīd al-Bihbihānī, (= Manšūrāt Mu'assat al-'Allāma al-Mujaddid al-Waḥīd al-Bihbihānī; 7), Qom 1416, URL: <http://alfeker.net/library.php?id=3623> (accessed February 1st, 2024), pp. 1–229, here: 229.

At the beginning of his treatise, al-Waḥīd al-Bihbihānī says that this is a *risāla* about *ijtihād* and traditions and that he has divided it into seven parts.<sup>80</sup>

In the first part (pp. 5–8) he explains that his contemporaries are responsible to act according to the norms God has revealed, just as the contemporaries of the Messenger of God and of the Imams once were, and that this responsibility continues until Judgement Day. Therefore, the people have to search or to ask for these norms. This responsibility is to be found in the content of Qurʾān-Verses, the traditions, that there is a consensus with regards to it, and it is sustained by deliberation. The second part (pp. 8–15) addresses the obligation to obtain knowledge (*al-ʿilm*) or supposition, which, as identified by revelation, is known to be of a kind to qualify as a source (*aḏ-ḏann al-ladhī yuʿlam iʿtibāruh sharʿan*) of what the Messenger of God and the Imams have said with regard to the norms which are binding until the Day of Judgement (see p. 8). Here, al-Waḥīd al-Bihbihānī specifies that the supposition (*ḏann*) of a norm of revelation for actions is relevant only if it is known with certainty that this kind of supposition is identified by God to serve as a source for practical norms:

And it also became obvious that obedience to God and his deputies—bliss be theirs—is a duty which can only be realized by doing what they demand. Therefore, it is necessary to obtain knowledge or supposition of what they demand of which [i. e. of this kind of supposition] is known that revelation has identified it as relevant.<sup>81</sup>

He continues by explaining that in the Verses of the Qurʾān and the words of the infallible Imams, we find the interdiction to act, give a *fatwā* or issue a judgement in court based on belief in the grounds of authority (*at-taqlīd*) or according to supposition (*aḏ-ḏann*),<sup>82</sup> and he adduces verses and Ḥadīths with this content (pp. 8–12). He concludes that, in principle, supposition (*aḏ-ḏann*) is not sufficient to cognise a norm, and that this is consensus among all who use rational or theological arguments, and that everybody who has relied on supposition in a certain instance has done this because of a certain reason, vindicating the reliance on supposition in this certain instance.<sup>83</sup>

The third part (pp. 15–28) is dedicated to showing that the methods which are subsumed under the term *ijtihād* and consist in gathering and considering together all possibly relevant sources, are the only possible way to derive norms for actions

80 Cf. al-Bihbihānī, “*Risālat al-ijtihād wa-l-akhbār*”, p. 1. The editor says in footnote 1 that this introductory sentence was found in only one manuscript. He divides the text into eight parts: the eighth part begins on p. 112 and bears the title “the eighth part” (*al-faṣl ath-thāmin*). That it is not enclosed in brackets means that the editor has identified it as part of the original text.

81 Al-Bihbihānī, “*Risālat al-ijtihād wa-l-akhbār*”, p. 8: “*wa-ayḏan: ḏahara anna fāʿata llāhi wa-hujjijihī – ʿalayhimu s-salāmu – wājibatun wa-hiya lā tataḥaqqaqu illā bi-l-ityāni bi-murādihim, wa-l-ʿamali bihī fa-lā budda mina l-ʿilmi bihī awi ḏ-ḏanni lladhī yuʿlamu ʿtibāruhū sharʿan.*”

82 Cf. *ibid.*, pp. 8 f.

83 Cf. *ibid.*, p. 12: “*maʿa anna l-aṣla ʿadamu ḥujjīyati ḏ-ḏanni wa-huwa maḥallu tūfāqi jamīʿi arbābi l-maʿqūli wa-l-manqūli; idh kullu man qāla bi-ḥujjīyati ḏannin fī mawḏiʿin qāla bi-dalīlin atā bihī lahū, kamā lā yakhfā ʿalā l-muṭṭali.*”

from the sources of revelation. On p. 19, after adducing some verses and Ḥadīths as examples, he says:

There are so many similar cases to what has been mentioned that one can say that there are almost no sources of revelation that are not as we have said [i. e. that need not be considered together with other sources for revelation]. For this reason, you can see that the vast majority of the propositions of practical theology, if not virtually all of them, are derived by gathering the sources of revelation and considering them together, as, for example, searching for specifying or qualifying statements (*at-takhṣīs wa-t-taqyīd*), or to interpret them in terms of recommendability, inadvisability, neutrality, alternative choices or the likes.<sup>84</sup>

Three pages before, al-Waḥīd al-Bihbihānī outlines the major goals of his *Risāla*:

We say: In times like ours it is due to the laws of nature not possible to receive a norm from the revealer by being directly addressed, and the propositions of practical theology are not self-evident. Therefore, it is necessary to search for the sources of cognition for the practical norms. To this also points what is well known from the experts in this field, namely that there are five kinds of sources of cognition.

Furthermore, it is necessary to examine the sources of cognition with regard to their yielding cognition and if they yield certainty or supposition, and if it should be supposition, it should be asked if there is a reason for their being regarded as relevant.<sup>85</sup>

On p. 19, al-Waḥīd al-Bihbihānī gives further reasons for the necessity of considering together all possibly relevant sources for revelation and also for why they are not able to constitute certainty. He says for example:

And among them [i. e. among the reasons for the necessity of *ijtihād*] is the fact that the gate to gain knowledge is almost always closed and that there is mostly only supposition left, and that different kinds of supposition are needed as for example the information given by lexicographers and grammarians, the principle of the primacy of not being, the principle of the primacy of continuity, and other things like that, and that it is even not possible to gain with regard to each of these [kinds of] suppositions certainty that it is identified by revelation to be relevant.<sup>86</sup>

84 Ibid., p. 19: “*wa-amthālu mā dhukira fī ghāyati l-kathrati ḥattā annahū lā yakādu yaslamu ṭarīqun mina t-turuqi ‘ammā dhakarnā, wa-lidhā tarā anna julla l-aḥkāmi l-fiqhiyyati, bal kāda an yakūna kullahā mina l-jam ‘i bayna l-adillati, wa-min jumlati l-jam ‘i: t-takhṣīsu wa-t-taqyīdu, wa-l-ḥamlu ‘alā l-istiḥābi wa-l-karāhati, wa-l-ibāḥati wa-t-takhyīri, wa-amthālu dhālika.*”

85 Ibid., p. 16: “*fa-naqūlu: akhdhu l-ḥukmi mina sh-shāri ‘i mushāfahatan muḥālun ‘ādatan bi-n-nisbatī ilā amthāli zamāninā, wa-laysa l-aḥkāmu l-fiqhiyyatu badhiyyatan fa-lā budda mina l-fahṣi wa-t-tajassusi ‘ani t-turuqi l-mūsilati ilā ma ‘rifati l-aḥkāmi, wa-yushīru ilayhi aydan mā shā ‘a mina l-fuqahā ‘i l-māhirīna fī l-fiqhi wa-l-a ‘immati l-mutabaḥḥirīna fī hādihā l-fanni, min anna t-turuqa muta ‘addidatun, wa-annahā khamsatun. Thumma innahū lā budda min mulāḥazati ḥāli t-turuqi, wa-annahā muwaṣṣilatun am lā, wa-aydan lahā bi- ‘unwāni l-qaṭ ‘i awi z-zanni wa-idhā kāna bi-z-zanni fa-hal yakūnu dalīlun ‘alā ‘tibārihī am lā?*”

86 Ibid., p. 19: “*wa-minhā saddu bābi l- ‘ilmi illā nādīran wa-nhiṣāru t-ṭarīqi fī z-zanni ghālīban wa-l-iḥtiyāju ilā zunūnin shattān mithla qawli l-lughawīyyi, wa-n-naḥwīyi, wa-ṣ-ṣarfīyi, wa-aṣālati l- ‘adami wa-aṣālati l-baqā ‘i, wa-amthāli dhālika ma ‘a ‘adami tayassuri ḥuṣūli l- ‘ilmi bi-ḥujjiyyati amthāliḥ wa- ‘tibāriḥ shar ‘an li-kulli wāḥidin.*”

Al-Waḥīd al-Bihbihānī dedicates the rest of part 3 (pp. 19–28) to showing that it is almost impossible to gain knowledge of norms for actions and that, to obtain cognition of them, it is necessary to follow the methods of *ijtihād*, which consist in gathering all possibly relevant sources of revelation and considering them together, thereby correctly applying the required expertise in different fields relevant to understanding the sources for revelation.

If these statements of al-Waḥīd al-Bihbihānī are seen in the light of what we have learned from al-Shihābī, al-Shahīd aṣ-Ṣadr and ‘Alīpūr, it seems to be obvious that he is arguing against the views of the Akhbāriyyūn without employing the denotation “Akhbāriyyūn”,<sup>87</sup> namely that *ijtihād* is a mistaken method, that supposition of norms of revelation is not binding, and that the meaning of the sources of revelation can be understood with certainty because there are contextual elements that are readily evident to determine the meaning.

He also seems to pick up an idea from the Akhbāriyyūn, namely that, as a basic principle, an action is only allowed when it accords with knowledge, but he qualifies this maxim with the principle that supposition is binding if it is known that a specific supposition has been identified by God as relevant for the cognition of norms for actions. Thus, while he does not stipulate certain knowledge of the norms, as the Akhbāriyyūn do, he demands knowledge of the fact that the kind of supposition of a norm is regarded by revelation as relevant for the cognition of norms.

In part 4 (pp. 28–41) al-Waḥīd al-Bihbihānī turns to the issue that the sources of revelation for practical norms can almost only substantiate supposition. At the beginning he says:

Know that the vast majority of the sources of cognition of revelation for the practical norms in times like ours can only substantiate supposition, as we have said before, and we will point to this again. We say: Each of the principles as the principles of non-obligation, abstaining from a decision, continuity of a known issue [p. 29] and the like, if we assume that they are relevant arguments, can certainly substantiate only supposition, as is obvious to everyone who is acquainted with the matter. The same is true for a consensus passed down by single attested reports (*al-ijmā’u l-manqūlu bi-khabari l-wāḥidi*). The meaning of the Qur’ān is only supposition as is obvious and widely accepted as will be seen from the discussion of this issue in connection with the Ḥadīths. The Ḥadīths are for us [i. e. for the Shī’īs] the main source for practical norms, but they substantiate only supposition with regard to the reliability of their transmission, as is obvious and as we will show in our elucidation that the science of the transmitters is a necessary prerequisite [for deriving norms], and also with regard to their meaning. This is obvious as well, but we will explain it clearly because of reasons you will understand in the following.<sup>88</sup>

87 Ibid., pp. 24 ff., where al-Waḥīd al-Bihbihānī mentions several times that he is defending the *mujtahidūn*.

88 Ibid., pp. 28 f.: “*wa-lam: anna ghāliba ṭuruqi ma’rifati l-ahkāmī fī amthāli zamāninā hādihā ṣanniyyatun wa-qad asharnā ilayhi wa-nushūru ilayhi ayḍan fa-naqūlu: kullu wāḥidin mina l-uṣūli mithla aṣli l-barā’ati awi t-tawaqqufi awi l-istiṣhābi* [p. 29] *wa-naẓā’irihā law kāna ḥujjatan yakūnu ṣanniyyatan qat’an kamā lā yakhfā ‘alā l-muṭṭali’i, wa-kadhā l-ijmā’u l-manqūlu bi-khabari l-wāḥidi, wa-ammā l-kitābu fa-ṣanniyyu l-dilālati kamā huwa zāhirun wa-musallamun,*

At this point, given the constraints of our framework here, the remainder of the treatise will not be discussed; instead, just two more of his statements will be mentioned which are helpful to reach the goal of this article. In part 8, which runs from pages 112 to 229 in the text edition, he says:

The response to the second argument, I mean his words: ‘because they [i. e. the Ḥadīths] confirm each other’ is that this is true if the transmitters of the respective Ḥadīths are different persons [for each Ḥadīth of the Ḥadīths that confirm each other] in each generation [of transmitters], and it is impossible that they [i. e. the transmitters of the Ḥadīths in each generation] can convene in something false, because this would be a multiple attested report (*al-mutawātir*) about which there is no dispute that it does not need the science of the transmitters [to determine its reliability], but if this is not the case then it is possible that each one of the transmitters may have relied on supposition or on something which does not yield certainty or something else.

And to the third [argument], namely that a trustworthy transmitter does not transmit in his book something which he does not see fit to be binding to act according to it, may it be generally [p. 143] or in his lifetime, [can be answered] that it is not known that the transmitter was not of the opinion that it is necessary to act according to single attested reports (*akhbār al-āḥād*). And we will explain that they [i. e. the transmitters] have been acting according to them and according to other suppositions, as our scholars of the later ages did.<sup>89</sup>

These arguments of al-Waḥīd al-Bihbihānī show that, by using the terms “single attested report” (*khabar al-wāḥid*) and “multiple attested report” (*al-khabar al-mutawātir*) in connection with supposition and certainty, he is assuming the same epistemology as classical Sunni theology. These two concepts are an integral part of the classical epistemology and cannot be used in the present meaning without accepting the whole of this theory of knowledge.<sup>90</sup>

Therefore, we may conclude that al-Waḥīd al-Bihbihānī, and those who agree with his epistemological principles, are subscribing to the same scientific outlines of *uṣūl al-fiqh* and even theology in general as classical Sunni theology, a conclusion

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*wa-sa-ta'rifu ḥālāhū min ḥāli l-khabari. Wa-ammā l-khabaru wa-huwa l-'umdatu fī thubūti l-aḥkāmi 'indānā, fa-huwa ḡanniyū s-sandi, kamā huwa ḡāhirun, wa-sa-nuthbituhū 'inda bayāni l-ḥājati ilā r-rijāli fī ḡhayati l-baṣṭi, wa-mā'a dhālika ḡanniyū d-dilālāti ayḡan, wa-huwa wa-in kāna ḡāhiran ayḡan, illā annahū nuthbituhū mashrūḡan; limā sa-ta'rifu wajḡahū fī ṡayyi l-kalāmi."*

89 Ibid., pp. 142 f.: “*wa-l-jawābu 'ani th-thāniyati – a'nī qawlaka: 'wa-minḡa ta'āḡudi ba'ḡihā bi-ba'ḡin –: inna rijāla l-aḡādīthi l-muta'āḡidati in kānū mukhtalifīna fī jamī'i t-tabaqāti, wa-staḡā-la tawāṡu 'uhum 'alā l-kadhībi fa-hādḡā huwa l-mutawātiru, wa-lā kalāma fī stiḡhnā 'ihī 'ani r-rijāli, wa-illā fa-ḡtimālū 'imāḡi kullī wāḡidin mina r-ruwāṡi 'alā ḡ-ḡanni aw 'alā mā lā yuḡidu l-ḡa' a aw ḡayri dhālika ḡāḡunā ayḡan ḡā'imun. Wa-'ani l-thāliḡhati: anna th-thiḡata lā yanqulu fī kitābihī illā mā yujawwizu l-'amala biḡi; immā muṡlaḡan aw [p. 143] ḡāla ḡayātiḡi, wa-min ayna 'ulima annahū mā kāna yujawwizu l-'amala bi-akḡbāri l-āḡāḡi? Wa-sa-nadhkuru annahum kānū ya'malūna biḡā wa-bi-ḡ-ḡunūni, kamā anna 'ulamā'anā l-muta'akḡḡirīna kānū kadhālik."*

90 For *khabar al-wāḡid* and *al-khabar al-mutawātir* see Wael B. Hallaq, “The Authenticity of Prophetic Ḥadīth. A Pseudo-problem”, in: *Studia Islamica* 89 (1999), pp. 75–90; Bernard Weiss, “Knowledge of the past: the theory of *tawātur* according to *Ghazālī*”, in: *Studia Islamica* LXI (1985), pp. 81–105. With regard to the epistemology which is applied by the classical Sunni theology and how the concepts of *al-khabar al-mutawātir* and *khabar al-wāḡid* are embedded in it see Bakker, *Normative Grundstrukturen*, pp. 100–234.

incipiently foreshadowed in the congruent definitions of *uṣūl al-fiqh* and *ijtihād*, and that the Akhbāriyyūn seem to have developed a theology that does, at least partly, not subscribe to the same epistemology and philosophy of science. Thus, we see that al-Waḥīd al-Bihbihānī is justifying the classical epistemological analysis of the sources of practical propositions of revelation which was common to Shī'ī and classical Sunni *uṣūl al-fiqh* against the Akhbāriyyūn with what seems like their partly non-classical objections. This may also be further substantiated by the following statement of al-Waḥīd al-Bihbihānī towards the end of his *Risāla* where the Akhbāriyyūn are mentioned explicitly:

Then know the following: If the Akhbāriyyūn mean by 'knowledge' (*al-'ilm*) when they say: 'Our Ḥadīths are known with regard to their transmission and their meaning' the generally understood meaning of 'knowledge', namely the univocal and stable belief which is congruent with reality, then it is as we explained in this treatise, even every argument that we have brought forth shows the falsity of their teachings, albeit this is essentially something self-evident which does not need any hint, and it seems to be obvious that their later proponents are agreeing that this is false. But even if they should mean by it merely the contentedness of the mind, and any univocal judgement, may it be stable or not, congruent with reality or not, as one of their later proponents has explained it, but which does not conform to the obvious meaning of their expressions, that does not change anything, and the matter remains as we have explicated it, and this explanation is of no avail for them.<sup>91</sup>

As we have seen, al-Waḥīd al-Bihbihānī is dealing in his *Risāla* with the method of *ijtihād* and the epistemological status of the sources of knowledge for practical norms of revelation and their normative character. From this, it becomes clear that, taking into account what has already been said on the classical concept of *uṣūl al-fiqh* of Sunnis and Shī'īs alike, he is discussing issues of this science or at least questions pertaining to its foundations. And it also becomes apparent that the treatise of al-Waḥīd al-Bihbihānī is pursuing the aim to defend the method of *ijtihād*, which implies the theological discipline of *uṣūl al-fiqh*, against fundamental criticism formulated by the Akhbāriyyūn.

A look into the whole of the text, which unfortunately cannot be expounded in the framework of this article, shows that al-Waḥīd al-Bihbihānī presupposes, on the side of the reader, an acquaintance with theology and its epistemological prerequisites. To prove his claims, he gathers a great bulk of material from the Ḥadīth Corpus and from the works on transmitters of Ḥadīth, most of which is alluded to in

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91 Al-Bihbihānī, "*Risālat al-ijtihād wa-l-akhbār*", p. 215: "thumma 'lam anna murāda l-Akhbāriyyīna mina l-'ilmi fī qawlihim: 'akhbārūnā 'ilmiyyatu s-sanadi wa-d-dilālati' in kāna huwa l-ma 'nā l-ma 'rūfa – a 'nī l-i 'tiqāda l-jāzima th-thābita l-muṭābiqa li-l-wāqi 'i – fa-l-amru 'alā mā dhakarnā fī hādhihī r-risālati, bal kullu wāḥidin wāḥidin mim mā dhakarnā yunādī bi-fasādi madhhabihim, 'alā anna hādihā mina l-badīhiyyāti llatī lā taḥtāju ilā t-tanbīhi, wa-z-zāhiru min mutakkhīrīhimu l-i 'tirāfu bi-l-fasādi 'alā hādihā t-taqdīri. Wa-in kāna murāduhum minhu mujarrada sukūni n-nafsi, wa-baḥta jazmihā; thābitan kāna am lā, muṭabiqan li-l-wāqi 'i am lā – 'alā mā wajjaha kalāmahum ba 'ḍu mutakkhīrīhim, wa-in abā 'anhu zāhiru 'ibārātīhim – fa-l-amru aydan 'alā mā dhakarnā, wa-lā yanfa 'uhumu t-tawjīh."

an abbreviated way. In response to the arguments of the Akhbāriyyūn, he develops an exposition which seems, if compared in a first and possibly superficial impression with classical expositions, to view this discipline from a fresh perspective by selecting and combining discussions which, while not entirely new, are assembled and discussed in a new way, one that lays the basic foundations for the discipline of *uṣūl al-fiqh* vis-à-vis the theories of the Akhbāriyyūn.<sup>92</sup>

From what we have looked at in this article and from this overall feature of the *Risālat al-ijtihād wa-l-akhbār*, we can conclude that this text is a specific scientific treatise dealing with foundational questions of *uṣūl al-fiqh*, and is not only meant to refute other positions but also to further develop the discussions of classical *uṣūl al-fiqh*, whereby these features of the text are obviously to a great extent also due to the challenge posed by the Akhbāriyyūn.

In order to show that a lineage can be plotted from this text to further developments in the school of al-Waḥīd al-Bihbihānī, we can focus on a special proposition of his *Risāla*, namely that supposition of a norm is only binding if it is known with certainty from revelation that this kind of supposition is regarded by God as relevant. This position was questioned and discussed in detail by one of his aforementioned prominent pupils, al-Mīrẓā Abū l-Qāsim b. Muḥammad Ḥasan al-Qummī (d. 1231/1816), evident in the statement of a scholar who is also to be counted to the school of al-Waḥīd al-Bihbihānī as outlined by ash-Shahīd aṣ-Ṣadr: al-Mawlā Aḥmad b. Muḥammad Maḥdīy an-Narāqī (1185–1245 AH),<sup>93</sup> who was mainly a pupil of pupils of al-Waḥīd al-Bihbihānī but is reported to also have studied with him.<sup>94</sup> As he explains at the beginning of his *Asās al-aḥkām*, he wrote this work to prove, in a way that nobody has expounded before him, that single attested reports (*khabar al-wāḥid*) of words and deeds of the Imams are principally sources of cognition for norms of revelation for actions. This proof is mostly necessary to prove the binding character of other sources for the cognition of the norms of revelation. Moreover, he aims to examine other questions of the discipline of *uṣūl al-fiqh* that are connected with this issue.<sup>95</sup> His exposition begins with a discussion

92 This is a more hypothetical observation I put forward, one that may result from my insufficient familiarity with the classical works on *uṣūl al-fiqh*.

93 According to Birashk, the year 1185 AH extends from 16 April 1771 to 4 April 1772 AD, and the year 1245 AH from 3 July 1829 to 22 June 1830 AD.

94 For his biography see aṭ-Ṭahrānī, *Ṭabaqāt a 'lām ash-shī'a*, vol. 10, pp. 116 f.

95 See al-Mawlā Aḥmad an-Narāqī, *Asās al-aḥkām*, published by Markaz Iḥyā' at-Turāth al-Islāmī at-Ṭābī li-l-Markaz al-'Āli li-l-'Ulūm wa-th-Thaqāfah al-Islāmiyya, Teheran/Qom 1433/2012, URL: <http://alfeker.net/library.php?id=3405> (accessed February 1st, 2024), p. 32 f.: “*thumma lammā naẓartu ilā mā dhakarāhū l-qawmu fī ḥujjiyyati khabari l-wāḥidi lladhī 'alayhi l-madāru ghāliban fī ḥādhihī l-azmāni, wa-bidūnihā lā yathbutu ḥujjiyyatu ḡayrihā mina l-adillati aydan fī l-akthari 'inda t-ta'ammuli wa-l-im'āni [p. 33] fa-lam a'thur 'alā shay'in tāmmīn yaşluhu li-l-i'timādi [fī l-matni: 'al-i'timādi'] wa-l-i'tibāri, aw yaḥşulu li-n-naḡsi bihī l-iṭmi' nānu wa-l-qarāru, fa-akhadhtu fī l-jiddi wa-l-jihādi wa-s-sa'yi wa-l-ijtihādi ḥattā anjaza llāhu lī wa 'dahū lladhi dhakarāhū bi-qawlihī subḥānahū: 'wa-lladhīna jāhadū finā la-nahdiyannahum subulanā', wa-awḍaḥa lī sabīla l-hudā, wa-kashafa 'an başirati ḡhiṭā a l-'amā, wa-alhamanī bi-tawfiqihī ṭarīqa*

to prove that supposition is principally not binding (*aṣālat 'adam ḥujjiyyat az-ẓann*),<sup>96</sup> mentioning the statement of al-Wahīd al-Bihbihānī from p. 12 of his *Risālat al-ijtihād wa-l-akhbār*, cited above:

And one of the nearly contemporary *mujtahids* said in his *Risāla* on *ijtihād* and traditions, after he has quoted the Verses of the Koran and the traditions that are saying that it is forbidden to act according to supposition: ‘Furthermore, in principle supposition is not sufficient as cognition of a norm, and this is consensus among all who use rational or theological arguments, and everybody who has relied on supposition in a certain instance has given a [specific] reason for that’.<sup>97</sup>

Some pages further on an-Narāqī says that Abū l-Qāsim al-Qummī holds another view in this respect:

Know that a learned contemporary<sup>98</sup>—may God bless him—who insists on proving that supposition [of a norm of revelation] is principally binding (*aṣālatu ḥujjiyyati ẓ-ẓann*) and who is in fact the founder of this theory (*al-mu'assisu li-hādihā l-asās*), has tried in his book to refute the proof that supposition is principally not binding (*aṣālatu 'adami ḥujjiyyatih*) which is based on Verses of the Qur'ān and Ḥadīths in a lengthy discussion which is not pleasant to have a look into it.<sup>99</sup>

This shows that new discussions were opened by propositions found in the *Risālat al-ijtihād wa-l-akhbār* which can be traced in the subsequent generations of scholars who concern themselves with *uṣūl al-fiqh*. An-Narāqī says that al-Muḥaqqiq al-Qummī is the founder of the theory that supposition of practical norms of revelation is principally binding. It is not clear if an-Narāqī is referring only to the Shī'ī context or also to the history of Sunni thinking.

I am not aware if this question has been discussed under this specific general heading by Sunni authors, but I have found one sentence in the commentary of the Sunni theologian Tāj ad-Dīn Abū Naṣr 'Abd al-Wahhāb b. Taqīy ad-Dīn 'Alīy as-Subkī (d. 771/1370)<sup>100</sup> on the *Mukhtaṣar* of Ibn al-Ḥājjib which runs as follows:

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*ithbātī aṣālati ḥujjiyyati l-akhbāri 'alā naḥwin qaṭ'iyin, lam yasbiqnī 'alayhi aḥadun min qablī, fa-aradtu an ūdī'a dhālika fī kitābin ma'a sā'iri mā yata'allaqu bi-hādihā l-bābi, bal mā huwa l-aṣlu fī stinbāṭi aḥkāmī rabbi l-arbāb.*”

96 Cf. *ibid.*, pp. 37 f.

97 *Ibid.*, p. 38: “*wa-qāla ba'du mujtahidī muta'akhhirī l-muta'akhhirīna fī risālatihī fī l-ijtihādī wa-l-akhbāri – ba'da dhikri l-āyātī wa-l-akhbāri l-dāllati 'alā ḥurmati l-'amali bi-ẓ-ẓanni –: 'ma'a anna l-aṣla 'adami ḥujjiyyati ẓ-ẓanni, wa-huwa maḥallu tīfāqī jamī'i arbābi l-ma'qūli wa-l-manqūli; idh kullu man qāla bi-ḥujjiyyati ẓannin fī mawḍi'in qāla bi-dalīlin'.*”

98 The editor of *Asās al-aḥkām* remarks in footnote 1 on p. 54 that an-Narāqī means Abū l-Qāsim al-Qummī.

99 An-Narāqī, *Asās al-aḥkām*, p. 54: “*'i lam anna ba'da afāḍilī ahli l-'aṣri – sallamahū llāhu ta'ālā – lladhī huwa mina l-muṣṣirīna 'alā ithbātī aṣālati ḥujjiyyati ẓ-ẓanni, bal huwa l-mu'assisu li-hādihā l-asāsi ḥaqāiqatan, ḥāwala fī kitābihī radda l-istidlālī bi-hādihī l-āyātī wa-l-akhbāri 'alā aṣālati 'adami ḥujjiyyatihī, wa-baṣaṭa l-kalāma baṣtan lā targhabu t-ṭibā'u ilā r-rujū'i ilayh.*”

100 Tāj ad-Dīn 'Abd al-Wahhāb as-Subkī was born in 727, 728 or 729/1327–1329 in Cairo, and died on 7 Dhū l-Hijjah 771/2 July 1370 in Damascus. For his biography see Brockelmann, *Geschichte der arabischen Litteratur*, II, pp. 108 ff. (margin. 89–90), no. 13, Supplement II, pp. 105–107, no. 14; J. Schacht/C. E. Bosworth, “*al-Subkī*”, in: *EI*<sup>2</sup>, IX, pp. 743 ff.

The theologians hold different opinions about the question if it is principally necessary to act according to supposition as long as there is no source of cognition which proves that it should be discarded or if supposition should not be followed until there is a source of cognition that proves that one should act according to it.<sup>101</sup>

From this author, writing about four hundred years earlier, it becomes clear that this question in its more abstract version had already been discussed by Sunni thinkers long before, a fact that may also hold true for Shī'ī theologians. Whatever the case, it is obvious that studying the school of al-Waḥīd al-Bihbihānī is important for examining the history of *uṣūl al-fiqh* as a whole, Shī'ī and Sunni alike, because it is in this framework that some questions have been discussed in greater detail from new perspectives and generalisations; moreover, the knowledge gained from investigating the school of al-Waḥīd al-Bihbihānī may prove helpful in exploring the eras preceding it, while it simultaneously constitutes the point of departure for more recent discussions in the Shī'ī context.<sup>102</sup>

#### 4 Results

The following four interconnected points can be summarised as a result of this article:

- 1) The treatise *Risālat al-ijtihād wa-l-akhbār* is a specific scientific text addressing specific contemporary challenges by discussing foundational issues of the theological science of *uṣūl al-fiqh*; in doing so it contributes to a further development of this discipline within a trend that ash-Shahīd aṣ-Ṣadr has termed the school of al-Waḥīd al-Bihbihānī;
- 2) The influence of this treatise can be traced in subsequent discussions;
- 3) The concept of *uṣūl al-fiqh* which the school of al-Waḥīd al-Bihbihānī advocates belongs to the same scientific paradigm as classical Sunni *uṣūl al-fiqh*; and

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101 As-Subkī, *Raf' al-hājib 'an mukhtaṣar Ibn al-Hājib*, edited by 'Alīy Muḥammad Mu'awwad and 'Adil Aḥmad Abd al-Mawjūd, 5 vols., Beirut 1419/1999, vol. 2, p. 314, at the end of the commentary on the *mas'alah 'qad yaḥṣulu l-'ilmu bi-khabari l-wāḥidi l-'adli bi-l-qarā'ini li-ghayri t-ta'rīfi*: "wa-qadi khtalafa ḥamalatu sh-shar'ati fi annahū hali l-aṣlu l-'amalu bi-z-zanni illā ma qāma d-dalīlu 'alā ihmāliḥi aw ihmālu z-zanni [fi l-matni: 'wa-ihmālu z-zanni'], illā mā qāma d-dalīlu 'alā i māliḥi?"

102 Robert Gleave has published a diachronic study on more recent developments in Shī'ī *uṣūl al-fiqh* with regard to a distinct question in his article "Modern Shi'ite Legal Theory and the Classical Tradition", in: Elisabeth Kendall/Ahmad Khan (eds.), *Reclaiming Islamic Tradition, Modern Interpretations of the Classical Heritage*, Edinburgh 2018, pp. 12–32. In this article, Gleave concentrates on the time from al-Ākhūnd al-Khurāsānī onwards and does not take the school of al-Waḥīd al-Bihbihānī, as delineated by al-Shahīd aṣ-Ṣadr, into consideration. Aron Zysow includes in his monograph *The Economy of Certainty, an Introduction to the Typology of Islamic Legal Theory*, Atlanta 2013, which deals with epistemological discussions in mainly Sunni *uṣūl al-fiqh*, a section on Shī'ī *uṣūl al-fiqh*; pp. 282–293.

- 4) The study of the school of al-Waḥīd al-Bihbihānī is important for studying the history of *uṣūl al-fiqh* as a whole.

Over the course of this article it has become obvious that it is a useful and at once challenging approach to integrate the investigation of the developments in Shī'ī *uṣūl al-fiqh* into the writing on the history of this discipline, with a view to assessing its real scope, nature and potential; what emerges is that there have been considerable new developments in the Shī'ī discussions from the later 12th/18th century onwards, discussions which were partly or even mainly triggered by the critique formulated by the Akhbariyyūn movement against some basic teachings of traditional *uṣūl al-fiqh*.