

Essay

Rational Shari'ah: Ahmad Qabel's Reformist Approach

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Abstract: This article introduces the late Ahmad Qabel (1958–2012), a new figure among contemporary Iranian religious reformers. Qabel, a progressive *mujtahid*, proposed the creative theory of *Shari'at-e 'Aqlani* in order to reform stagnant *Shari'ah* rules and align the application of legal norms and precepts with the space-time considerations of modern life. Critical of the superficiality of traditional jurists, who led into abeyance the progressive rational praxis within classical Shi'i theology and jurisprudence, Qabel revived and employed these rational principles in his novel method of *ijtihad*. This paper has four sections: first, there will be a short biographical sketch of Ahmad Qabel. The second section surveys the trajectory of the development of Shi'i *fiqh* in order to set the backdrop for Qabel's arguments. Then, I will discuss some of the major rational principles which constitute the heart of Qabel's methodology. In the last section, the practical results of Qabel's *Shari'at-e 'Aqlani* are presented through some of his unconventional *fatwas*, which, though solidly based within the Shari'ah, took on controversial topics such as women's rights, religious minorities, *jihad*, and Islamic government.

Keywords: islamic reform; rationalism; Ahmad Qabel; Shi'ism; modern Shari'ah; ijtehad

1. Introduction

There is perhaps no aspect of Islam more widely contested in the modern era than Islamic law. Law is central to the agenda of Islamists aiming to create a new Islamic order that is as successful and prosperous as in the golden ages of Islamic civilization. These Islamists approach the Shari'ah as a repository of solutions for all the problems that Muslim societies grapple with, whether ethical, political, social, or economic. On the other hand, the significance of Islamic law is not lost on reformists, who seek to reinterpret and revise certain aspects of the existing Shari'ah that they consider impediments to reform and progress in contemporary Muslim societies.

Despite agreeing on the importance of Shari'ah, as well as its two primary sources, the Qur'an and Hadith, Islamists and reformists differ in their treatment of these texts, and in their understandings of the scope, nature, function, and applicability of Shari'ah in modern society. Since this chapter deals with a reformist case, it is important to broadly highlight the distinctive features of reformist legal discourse. The reformist approach to the Qur'anic legal texts, particularly socio-legal discourses and prophetic traditions, is flexible. Reformists value hermeneutics, applying methods of critical and historical analysis to religious texts and the inherited Shari'ah, whose historicity they highly emphasize. They believe that *fiqh* and *ijtihad*, both ongoing human endeavours, should deduce and formulate rules based on the objectives of the God-given laws. Unlike the literalist Islamist, reformists do not take specific socio-legal Qur'anic injunctions as objectives in and of themselves; nor do they accept or recommend the product of their predecessors' legal endeavours (historical Shari'ah) uncritically.

2. The Iranian Context

While both Islamist and reformist trends of thought are present in almost every contemporary Muslim society, there have not been many cases where the Islamist religious ideology obtains official

political power, which would allow them to implement the Shari'ah. The Islamic republic of Iran is a unique case in this respect, wherein the official custodians of the Shari'ah (*ulama'*) have been ruling and implementing classical Islamic laws for the last forty years. This lengthy period of continuous rule provides an opportunity to observe the applicability of the traditional Shari'ah in the modern time, and reveals both its potential and its limits. Iranian society has come a long way from enthusiastically and blindly embracing the ideological promises of Islamic order during the Revolution. Gradually realizing the impracticality of such an ideal, suggestions eventually emerged for a critical re-evaluation of Shari'ah, which would have the traditional law correspond more closely to modern societal values and standards. As a result of this political experience, debates about Islamic reform in Iran have grown into dynamic intellectual discourses in areas of theology, politics, epistemology and hermeneutics, law, ethics, and spirituality.

Almost all Shari'ah religious reformists advocate for re-interpretation of socio-legal rules such as those concerning women's rights and penal laws. However, this advocacy comes in various degrees and levels of depth. For instance, scholars such as Abdulkarim Soroush and Mohamad Mojtahid Shabestari recommend not only legal reform, but also reform of *Usul-al-fiqh* (Principles of Jurisprudence). They take their argument to profound epistemic levels that critically analyze the theology and ethics from which law stems. Others propose reinterpretation of certain laws based on contextual differences from the time of revelation and the classical jurists, but do not deem it necessary to reform the core theology or *usul al-fiqh*. The contextualist approach to Shari'ah is broadly referred to as *fiqh-e pouya* (dynamic fiqh) whose main thrust is consideration of changing time and place in *ijtihad*. The idea was first publicly proposed by Ayatollah Khomeini during his last years of life in order to ease the tension between the staunch traditionalists and the pragmatist ruling mujtahids. Yet, the traditionalists did not heed this and remained to be proponents of the static fiqh and the immutability of its established socio-legal precepts. After Ayatollah Khomeini's death and the rise of religious intellectuals and reformers during the 1990s, they did their best to suppress the reformist movement, but could not silence their voice. The reformist intellectuals could benefit from the freedom of speech and the press during Muhammad Khatami's presidency (1997–2005) to proliferate their ideas about historicity of religious interpretations and contextualization of shari'ah laws, particularly those regarding women. These "contextualists"—who should rightly be credited as some of the most articulate voices in the discourse of reform—come from diverse educational and professional backgrounds, ranging from clerical scholars to lay intellectuals. The grand Ayatollah Yousef Sane'i (d. 2020) was the highest ranking mujtahid who issued non-traditional fatwas with regard to some critical issues. He was a marja'-e taqlid (source of emulation) and had held high positions in the judicial system of the Islamic Republic. His insights seemed to be based on both his theoretical convictions as well as pragmatic experiences in implementation of traditional laws in a modern society. His non-conservative fatwas, regarding women's rights in particular, and his non-conformist political positions made him a very popular and celebrated reformist ayatollah but caused him marginalization by the official religio-political establishments.¹ Among less prominent clerical figures are: S. Mostafa Mohaghegh Damad (b. 1945), Hasan Yousefi Eshkevari (b. 1950), Mohammad Taqi Fazel Meybodi (b. 1953), and Mohsen Kadivar (b. 1956). Mohsen Kadivar is a better known figure and has been often listed next to lay religious intellectuals. Kadivar and Qabel were both students of the famous Grand Ayatollah Hossein Ali Montazeri, the dissident Ayatollah (1922–2009). However, they took more radical leaps forward in their reformist attempts, each in his own way. In the last two decades, Kadivar has dedicated his scholarship to the critical evaluation of a variety of social and political topics such as human rights, apostasy, women's issues, and political reform. However, Kadivar's most systematic contribution to reform discourse in Iran, undoubtedly, relates to *fiqh-e siyasi* (political jurisprudence). His numerous publication on systematic refutation of the theory of *vilayat-e faqih* (guardianship of the jurists), and

¹ For his views on Dynamic Ijtihad and human rights see his official webpage: <https://saanei.org/>.

meticulous studies of the early twentieth century constitutionalist ayatollahs, like Akhound Khorasani, are evidence of his pro-democratic thought in religion and politics. As his official website reveals, he is a very prolific writer and lecturer on matters of civil law and religious precepts in academic and non-academic circles. His earlier historical-analytical work on certain socio-legal topics and human rights in Islam situates him among the reformist contextualists. Although proposing some non-conventional views on important topics, Kadivar as a mujtahid, unlike Qabel, did not adopt a very technical jurisprudential approach in reform. Qabel aimed to reform the practice of *ijtihad* and to revive the rational methodology of classical Shi'i Usuli faqihs. Therefore, he went beyond explaining the contextual differences of the past and present that necessitates change. Qabel employed those rational assumptions and principles in his *ijtihad* and produced alternative fatwas. For the most part of his career Kadivar was a proponent of new *ijtihad* and defending *fiqh* in which he could see some potentials for reform. Nevertheless, it seems that a very recent shift (2015–2016) has occurred in his attitude toward *ijtihad*. Posted on his Persian official webpage (<https://kadivar.com/14485/>), there are two introductory pieces to his *fiqhi* opinions wherein he clearly states that he does not consider himself to be a “*mufti*” (a mujtahid who issues fatwas) nor does he intend to become a *marja' al-taqlid* (source of emulation) because he does no longer believe in the current traditional meaning and practice of *ijtihad* which he calls “*ijtihad dar forou'*” (*ijtihad* in derivative rules.) Rather, he believes in “*ijtihad dar usul'*” (*ijtihad* in the foundations and the principles of jurisprudence), something that Soroush and Shabestari have been saying for long. He does not clarify what he means by this and has postponed its elaboration to future.

As this brief exposition indicates, the range of reformist legal ideas, and the instances of laws for which they propose change, differ.² Nevertheless, there is a consensus that something should change, and on the reasons why it should change—however, it is not clear how this change ought to take place, nor what the *fiqhi* mechanisms are that can yield such transformation.

For the late legal reformer Ahmad Qabel (1958–2012), considering the history and context of laws related to human and individual rights is a necessary, but in and of itself insufficient, step in creating profound Shari'ah reform. Qabel's significance lies in the fact that—true to his roots as a *mujtahid*—he attempts to show how change can happen from within the established framework of Shi'i jurisprudence and *usul al-fiqh*. In what follows, I will present a brief biography of Ahmad Qabel; his rationale for the necessity of legal reform; and outline his project of “Rational Shari'ah” (*Shari'at-e Aqlani*). After discussing his major arguments for foundational legal reform, which situate him in the pedigree of the Shi'i Usuli and rationalist *fuqaha*, some of his exemplary fatwas will be presented.

3. Ahmad Qabel and His Legacy

Ahmad Qabel was a courageous religious scholar and *mujtahid/faqih* who sought reform of Shari'ah laws and Islamic jurisprudential methods. He studied in Qum Seminary under several famous grand Ayatollahs, mostly with the late grand Ayatollah Hossein Ali Montazeri, from whom he received his licence of *ijtihad*. Though technically a cleric and *faqih*, Qabel declined his clerical robe in order to be more like ordinary people. He was originally from Khorasan, where he eventually passed away at age 58 after undergoing brain surgery in Mashhad. Qabel was an Iran-Iraq war veteran who suffered permanent injuries and became an outspoken critic of the religio-political establishment of Iran, enduring multiple imprisonments and solitary confinements. He spent a few years (2003–2006) outside Iran, in Tajikistan, where he started posting his seminal writings on his weblog, “*Shari'at-e Aqlani*”, or “Rational Shari'ah,” until he was compelled to return to Iran for medical treatments.

Why are Qabel's ideas important, and where does he stand on the spectrum of religious reformers in contemporary Iran, and within the larger body of Shi'ite reform in general? Unlike other influential reformers of his time—lay religious thinkers such as Mehdi Bazargan, Ali Shari'ati and Abdulkarim

² For some Iranian cases, see: (Akbar and Saeed 2018). For non-Iranian cases, see: (Kazemi-Moussavi 2010).

Soroush—Qabel belongs to the traditional clerical intellectual tradition, and had official credentials in jurisprudential education. Although he believed in the viability of the Shari'ah if reformed and reinterpreted, Qabel rejected any prerogative for the *'ulama* to gain power in politics and civic administration (Qabel 2013b, p. 217). While reformists such as the philosopher Soroush and the former cleric and theologian Mohammad Mojtaba Shabestari adopted hermeneutical and epistemological approaches based outside of religion, Qabel's reformist approach came from within the tradition. Although the influence of the above-mentioned thinkers on Qabel is undeniable, the novelty and value of his project rests on his attempt to find religiously legitimate, feasible solutions to some of the most difficult socio-legal problems of his time, from within the system of Shi'i jurisprudence. He endeavoured to present a new method of exercising *ijtihad*, which, while based on the same axioms, would generate new fatwas. As a *mujtahid*, Qabel's fatwas had a binding effect on his followers, and opened new doors for the next generation of *mujtahids*³. Qabel set in motion a new wave of modernizing and rationalizing *ijtihad* among Iranian Shi'i *mujtahids*.

Qabel's rationale for legal reform stems from a deep commitment to justice and rationality, two prevalent themes in his work. Like others, he criticized the injustice of Shari'ah rulings that discriminated against certain members of society on the basis of gender or religion. His published writings and lectures reveal the broad scope of his concern about issues of social justice and human rights; as he repeatedly emphasized, "the main this-worldly objective of religion is justice" (Qabel 2013b, p. 201). He was equally adamant that religion does not teach anything contrary to human reason, lest it become unethical and undependable (Qabel 2013b, p. 206). Qabel argued that just as the content of revelation and early legislation was harmonious with the collectively accepted rational norms of its time, contemporary laws and interpretations of Qur'anic precepts should withstand the ethical and rational tests of their time—as such, reform is necessary (See for instance: Qabel 2012a, pp. 49–50; 2012b, pp. 6–7; 2013b, p. 206).

Qabel felt professionally obliged to redeem the tarnished reputation of Shari'ah and *fiqh* as being the stagnant rules and methods of a bygone past, incapable of properly responding to the needs of modern society. He saw it as his responsibility to revive the reputation of Shi'i *fiqh* as being a rational school of law, whose gate of *ijtihad* is open. Qabel's using the methodology of Shi'i Usuli rationalism and calling on other *mujtahids* to follow suit is a testament to his commitment going beyond mere lip service to rationalism and reform.

Before presenting Qabel's project of Rational Shari'ah (*Shari'at-e 'Aqlani*), a brief discussion of the trajectory of development of Shi'i *fiqh* and *ijtihad* is in order. Among other things, I will highlight the formation of Shi'i *usul al-fiqh*, focusing on how and when reason became a source of *ijtihad* in Shi'ism, as well as helping to situate Ahmad Qabel within the larger tradition of Shi'i Usuli *mujtahids*.

4. *Ijtihad* and Reason in Shi'i Jurisprudence

There are three distinguishing principles in Shi'ism that could help the modern endeavours toward reason-based *ijtihad*. Theologically, Shi'ism has been associated more with the *Mu'tazilah*, or rationalist school, which promotes free will and considers reason to be the determinator of ethical good and evil (vis-à-vis the pre-destinationalism of the *Ash'ari* school, to which the majority of Sunni theologians and jurists belong). Regarding Shari'ah and jurisprudence (*fiqh*), contrary to the public perception about the Sunni *ijtihad*, the Shi'is claim that the gate of *ijtihad* has not been closed among them⁴. Moreover, they consider independent reason as one of their sources of *ijtihad*, as opposed to

³ Although Qabel was not a *marja'i taqlid* (source of emulation- the highest position usually held by a few senior *mujtahids*), it is still religiously acceptable for people to practice according to his fatwas.

⁴ The closure of the so-called gate of *ijtihad* among Sunnis after the formative period of Islamic law is a contentious issue among the expert scholars of Islamic jurisprudence. For disproving the idea see for instance: Wael B. Hallaq, "Was the Gate of *Ijtihad* Closed?" *International Journal of Middle East Studies* 16 (1984), pp. 3–41. However, most Sunni reformers since the 19th century have been calling for the revival of practice of *ijtihad* as a way out of modern predicament.

analogical reasoning in Sunni *fiqh*. Despite the periodic changes in Shi'i jurisprudence that we will discuss below, these Shi'i theoretical principles have not always been employed to resolve problematics within historical Shari'ah, despite their potential to do so. Thus, the implications of *ijtihad* in such areas as social justice, human rights, treatment of religious minorities, and women's issues, remain much the same among the Sunnis and Shi'is.

For the first two centuries after the time of the Prophet Muhammad—the period before the establishment of any school of law—there was little non-political difference between the Shi'is and the Sunnis. However, the nucleus of Shi'i jurisprudence took shape in the second century through the efforts of Muhammad Baqir (d. 117/735) and Ja'far al-Sadiq (d. 148/765), the great-grandsons of the Prophet and the fifth and the sixth Imams of the Shi'is, respectively. Referred to as the *Imami* or *Ja'fari* School of Law, this developed into a fully-fledged, distinctive school after the fourth century of the Islamic calendar. While it continued to share with Sunni schools the legal, ritual, and moral content of the Shari'ah that is based on the Qur'an and *hadith*, the Shi'i school of law distinguished itself by assigning preference to the Imams as the most eligible exponents of the Shari'ah (Kazemi-Moussavi 1996, pp. 7–12). This was reflected particularly in the Imams' rejection of the practices of the *ijma'* (consensus of the community) and *qiyas* (analogical reasoning) among the companions of the Prophet such as Umar and Uthman and the successors, *al-tabi'un*. The authority of the Imam was ultimate in expounding the law.

At a time when schools of law were being established and *hadith* collection was gaining utmost importance as a primary source for Shari'ah, the issue for the Shi'is lay in determining the authenticity of *hadiths* and the trustworthiness of their transmitters. Therefore, the authority of the Imams, as inheritors of special knowledge from the Prophet, in rejecting or confirming a *hadith* and a narrated *Sunna* became crucial for the Shi'is. The Imams' expounding on the *hadiths* would add to its credibility, as they were the possessors of knowledge that they were said to have inherited from the Prophet. The Imams' companions and the graduates of their teaching circles created a body of *ijma'* (consensus) of the learned as an authoritative point of reference for Shi'i jurisprudence. Thus, as among the Sunnis, the primary sources of the Shi'i school of law remained the Qur'an and the prophetic *hadith*—along with the Imams' explication of them. In subsequent centuries, this practice laid the foundation for the development of Shi'i "traditionalism", which adhered to the authority of the *hadith* and Imams' sayings (*rivayyat*) or narrations (*akhbar*) (Kazemi-Moussavi 1996, pp. 15, 22). The traditionalist trend continued after the occultation of the twelfth Imam (847 CE) by qualified jurists, who were charged with preserving the charismatic authority of the Imam by reaching a consensus based on the Imam's words as the ultimate source of authority. In other words, the need for establishing principles and methods of jurisprudence (*fiqh*) was not considered applicable to the Imams' tradition—even after the occultation of the last Imam. This was contrary to Sunni practice of *ijtihad* that was based on their established *usul al-fiqh*. Five or six major periods, all centred on this maxim, are assigned to the historical development of the Shi'i legal system from the time of its founding Imams to the contemporary era, with significant changes being mostly related to a rising rationalist trend in Shi'i *usul al-fiqh*. (Kazemi-Moussavi 1996, pp. 18, 35)

It was not until the late fourth century/early fifth century of the Islamic calendar that the traditionalist jurist, Shaikh al-Mufid (d. 413/1020), produced "the first extant work on Shi'ite *usul al-fiqh* which shaped the Shi'ite conception of legal theory" (Moussavi, 24). Al-Mufid's role is crucial because his body of work, particularly his books *al-Muqni'a* and *al-Fusul*, went beyond mere reproduction of the tradition-reports of the Imams. He applied the rational Usuli arguments, already relatively familiar to Shi'is, to his rewriting of *fiqh*, emphasizing the role of *'aql* (intellect) in deducing rules where "there is no revealed judgment [including traditions] that applies exactly to the present case" (Kazemi-Moussavi 1996, p. 24)⁵. The time of al-Mufid and his pupil, al-Sharif al-Murtada (d. 436/1044) witnessed productive intellectual interactions with Sunni *Mu'tazili* theologians as well as Usuli jurists in the religious circles of Baghdad and Najaf (fa.wikishia.net accessed 18 February 2018). On the other

⁵ Moussavi quotes Martin McDermotte, *The Theology of Al-Shaykh al-Mufid*. Beirut, 1986, pp. 306–7.

hand, al-Mufid and al-Murtada greatly benefited from the support and patronage of the Shi'i Buyid rulers, whose pragmatic needs necessitated some flexibility in law. Although the work of al-Mufid and al-Murtada marked the beginning of a new phase in Shi'i law and its codification methods, it was Shaykh al-Ta'ifa al-Tusi (d. 460/1067), the towering figurehead of Shi'i jurisprudence, who perpetuated their influence by advancing their work, irrespective of his own middle-way position between the traditionalists and the Usulis.

After a century and a half of Tusi's reconciliatory methodology between traditionalism and Usulism maintaining dominance, Usulism and the role of *'aql* experienced a resurgence in popularity. This was thanks to Ibn Idris (d. 597/1202), who "forcefully argued for an independent authority for *'aql* (reason in its juridical sense) as a source of Shi'i law. His method of juridical analysis contributed to the rise of a strong Usuli juridical school in Hilla" (Kazemi-Moussavi 1996, p. 27). Perhaps the most important contribution of the Hilla circles' theological and juridical production was the adoption of *ijtihad* on a doctrinal basis by al-Muhaqqiq al-Hilli (d. 676/1277). His legitimization of *ijtihad*—which was already being practiced by Sunnis—was rooted in his conviction that legal norms could not be based merely on literal understandings of tradition-reports in the absence of the Imam and his righteous disciples. In al-Hilli's methodology, a special kind of reasoning—neither *qiyas* (analogical reasoning used by the Sunni jurists), nor pure *zann* (speculative opinion)—was given a prominent position (Kazemi-Moussavi 1996, p. 29). Moreover, by considering the *'ulama* (jurists) as deputies of the Hidden Imam, Muhaqqiq al-Hilli doctrinally legitimized *ijtihad*. Thus, the understanding of *mujtahids* as jurists invested with special authority was initiated. The advancement of al-Hilli's Usuli method was continued in the following century by scholars in the Hilla and Jabal al-'Amil quarters of Lebanon, culminating when "the first Shi'ite text of juridical rules (*Qawa'id al-fiqh*) which includes rational maxims beyond the semantics of *usul al-fiqh*" was published by Shahid I (d. 786/1384) (Kazemi-Moussavi 1996, p. 31). In the next three centuries, the developments made by Shahid II (d.966/1559) enhanced the legitimacy of the jurists by according them the authority of the Imam "in dealing with problems of declaring *jihad* and taking alms tax [*khums*]" (Kazemi-Moussavi 1996, p. 32)

While rational Usuli juridical methodology became established in Hilla and Jabal al-Amil, other jurists felt that it had neglected the way of the Imams by adopting too much from Sunni juridical methods. Traditionalist jurists, finding support mostly in Iraq, as well as in Bahrain and Iran, launched an opposing view aiming to revive the exclusive authority of the traditions of the Prophet and the Imams' sayings (*akhbar* and *rivayat*). Muhammad Amin Astarabadi (d.1036/1626) was the chief critic of the Usuli *mujtahids*, whom he charged as overly influenced by Sunnism. Moussavi considers this a new period, while other scholars, such as Modarresi Tabatabai and Ayatollah Janati, see it as a continuation of the traditionalist trend (For further information see Moussavi, 35). Moussavi refers to this trend as Neo-Akhbari Traditionalism (1018/1609–1186/1772), which gained momentum during the Safavid era (1502–1736 CE) when Shi'ism based on extreme devotion to Imams and popular religiosity became the state religion (Kazemi-Moussavi 1996, p. 32). The most significant contribution of the Akhbari/traditionalist jurists in this period was the production of authoritative volumes of the sayings of the Imams' and Prophetic *hadith*. These texts have remained in use up to the present day by both traditionalist and Usuli jurists. The largest collections are Muhammad Baqir Majlisi's *Bihar al-Anwar* (110 volumes), Muhammad al-Hasan al-Hurr al-'Amili's *Wasa'il al-Shi'a* (2 volumes), and Al-Fayd al-Kashani's *al-Wafi* (12 volumes). Nevertheless, the prevalence of the Akhbaris could not fully counter the Usuli trend, nor undermine the influence of some of its well-known proponents such as Shaykh Baha'i (d.1030/1631) and Shaykh Hurr al-'Amili.

5. Consolidation of the Usuli Position

The late eighteenth century witnessed a revival of Usulism among certain Shi'i jurists, which led to the supremacy of their juridical approach and eventually to "the establishment of a strong centralized position for the supreme *mujtahid*, known as *marja' al-taqlid* (source of emulation)" (Kazemi-Moussavi 1996, p. 35). This institution became the authoritative religious office in Shi'ite

juridical and religious hierarchy, and increasingly proved a powerful economic, social, and political force in Shi'i communities. While the Akhbaris' tradition-texts were valuable to the development of Shi'i *fiqh*, their failure to provide sufficiently relevant responses to emerging societal issues helped the rationalist Usuli *mujtahids* rise to prominence. The good relationship between Shaykh Yusuf al-Bahrani, the Akhbari scholar (d.1187/1772) who reemployed *ijtihad* in his writings, and his Usuli rival Muhammad Baqir al-Bihbahani (d. 1205/1791) created favorable conditions for the Usulis' cause to continue to advance.⁶

Under the leadership of al-Bihbahani, the Usuli *mujtahids* gained new authority, using their legal knowledge and employing analytical tools to make juridical rules where direction from tradition-texts was not available. This was not only an explicit break away from the Akhbari and middle-ground positions of previous scholars, but also a major step towards legitimizing rationalism in jurisprudence, opening doors to a new *ijtihad* (Kazemi-Moussavi 1996, pp. 36–38). The *mujtahids*' finances were then expanded by exercising their *ijtihad* in matters related to almsgiving and laws of transactions, which benefited them as deputies of the Imam and strengthened the position of *mujtahids* as an independent entity or institution (according to the Akhbaris, it was solely the prerogative of a living Imam to receive religious alms). Al-Bihbahani's students furthered the scope the Usuli *mujtahids* authority: Ja'far Kashif al-Ghita (d. 1228/1813) formulated the doctrine of *a'lamiya* (most knowledgeable), which dictated that the supreme jurist, who was authorized to issue binding rules (*fatwas*) for Shi'is, be the most learned *mujtahid*. Mulla Ahmad Naraqi (d.1245/1830) established that the most learned *mujtahids* and *faqih*s could assume the Imam's authority in its full sense (Kazemi-Moussavi 1996, p. 37). By the late nineteenth century, Usuli Shi'i legal theory and its practical principles were fully laid down, particularly thanks to the work of Shaykh Murtada Ansari (d. 1281/1864), who expressed the necessity for the lay Shi'i public to adhere to the legal opinions of the *mujtahids* (Kazemi-Moussavi 1996, p. 39). Thus, the institution of *marja' al-taqlid* (source of emulation) was created.

At the beginning of the twentieth century, with the onset of great social upheavals in Iran and Iraq and a crisis of political authority, this principle contributed to the advancement of the 'ulama's juridical authority into the political arena. In Iran, the 'ulama supported and played a central role in the Constitutional Movement (1906–1911). After decades of secularisation by the Pahlavi regime (1925–1979) which separated religion and state, the 'ulama's role in politics gradually began to increase in the 1960s. It eventually culminated in the 1979 Iranian Revolution, with the establishment of the first Shi'i jurist-based political system, called *Vilayat al-Faqih*, which operated on the theory of political guardianship under the most learned *mujtahid*, introduced by Ayatollah Khomeini (d. 1989). The participation of Shi'i *maraji'* (plural of *marja'*) in Iran's Constitutional Revolution and its aftermath began a new chapter for their involvement in the day-to-day life of Iran's rapidly secularizing society. Modernization programs required that the *maraji'* be vigilant in issuing relevant responses to the fundamental changes taking place in the country's economic, social, political, legal, and educational institutions. This gave the *maraji'* an opportunity to revise certain chapters of the *fiqh*, incorporating new *ijtihad* and *fatwas*. This primarily occurred in areas of politics and financial transactions, either legitimizing or banning modern institutions or practices such as Parliament, constitutional laws, modern systems of banking and insurance, the modern court system, and co-educational public schooling. The sporadic adoption of and adaption to modern realities is often the basis for Shi'i jurists' claim that Shi'i jurisprudence is rational and that the gate of *ijtihad* is open. The most serious challenge to be faced remains in the area of social justice, especially concerning socio-legal precepts that deal with the rights of individuals.

⁶ For an extensive coverage of Bihbahani's ideas and the emergence of the Usuli Shi'ism see: Zackery M. Heern. *The Emergence of Modern Shi'ism: Islamic Reform in Iraq and Iran*. London: Oneworld Publications, 2015.

6. What Is Shari 'at-e 'Aqlani?

Contrary to the proposition of Soroush and Shabestari's New Theology (*kalam-e jadid*) as being a pre-requisite to a new *usul al-fiqh* and a new *ijtihad*, Qabel believes that traditional sources and methods still sufficiently meet the jurisprudential needs of modern *ijtihad*. However, these must be carefully re-read and chosen in harmony with credibly authentic texts such as the Qur'an, *tafsir*, *hadith*, and *rivayat* of the Imams, and they must not be contradictory to the collective reason of the time (*aql-e mushtarak-e jam'i*) (Qabel 2012a, pp. 40–62). Nevertheless, Qabel still pays due attention to the theological foundations of *fiqh* by appealing to some of its principles. He invites Shi'i jurists to apply what he calls the "neglected" rational principles in their *ijtihad*, in order to improve the plausibility and validity of certain problematic *ahkam* (Qabel 2012a, pp. 63–64). Qabel criticizes Shi'i jurists who, despite theologically subscribing to *Mu'tazilah* rationalism, in their practice of *ijtihad* follow a path similar to the *Ash'ari* Sunni schools, heavily relying on *naql* (narrated traditions) rather than *aql* (reason). Qabel's theory of *Shari 'at Aqlani* which showcases the existing gap between theory and practice of Shi'i jurists is "the result of his decades of studies, hard work and contemplation on the Islamic texts." He emphasizes that his criticism is based on his study of Imams' *rivayaat* and *hadith* from both Shi'i and Sunni traditions, and not just those commonly used by jurists, known as *ahadith-e fiqhi* (Qabel 2012a, pp. 47, 49–50). Through the wide breadth and depth of his study⁷, Qabel reached certain conclusions upon which he built his jurisprudential project, the two most important of which I will now discuss.

7. Reason and Religion

Qabel asserts that God, the Prophet, and the Imams have unequivocally stated:

'*Aql* is a God-given, independent and innate *hujjah* [probative force for distinguishing right and wrong] and the prophets and their religions are the exterior *hujjah*. The exterior *hujjah* can legislate only on matters that do not fall in the domain of reason, like matters of worship and rituals. In all other cases religious precepts are obliged to confirm and to conform to rules of '*aql* (*hukm-e 'aql*). Therefore, '*aql* is the main and the primary (*asli* and *awwali*) *hujjah* (proof) and religion is the secondary *hujjah*. (Qabel 2012a, pp. 47–48)

Here, Qabel obviously subordinates religion and religious legislation to reason—a very unconventional position. He continues on to argue that the commonly accepted statement, that "*batin*/interior is the core and *zahir*/exterior should be at its service," remains true in relation to reason and religion. He emphasizes this as the main principle underlying his approach (Qabel 2012a, p. 48). In other words, Qabel's methodology of *ijtihad* is primarily founded on reason and rationality. Although reason is part of the Shi'i tradition—along with the Qur'an, *Sunnah*, and *ijma'*, it is one of the sources (*adelleh*) of *ijtihad*—Qabel's novelty is in his giving primacy to reason even in interpreting the text of the Qur'an. Shi'ite traditional *ijtihad* has often been criticised by religious modernists—such as Eshkevari, Soroush, Mutahhari and Shabestari—for the fact that, regardless of its theoretical recognition of reason, it does not employ reason in the practical process of *ijtihad* and when making *fatwas*, subordinating '*aql* to *naql*. In the same line, Qabel claims that religious teachings and the Shari'ah should first and foremost comply entirely with reason; otherwise, no religious precept and *fatwa* would be reliable (*mu'tabar*) and acceptable (*maqbul*). He emphatically announces his uncompromising position by saying that:

What I understand—and will continue to adhere to until I am proven wrong—is that the binding force (*hujjiyyat*) of reason runs paramount within the entire primary and secondary

⁷ Hasan Yousefi Eshkevari, a notable Mujtahid and commentator, acknowledges Qabel's expertise in hadith studies. He rightly recognizes that Qabel's interest in this field stems from his interest in the relation of Imams' *rivayaat* and hadith to *ijtihad* and was unlike the common studies of the traditions. This was so, because he had realized that the Shi'i *fiqh* extremely and fundamentally relies on the oral traditions (*naql*) and not on reason ('*aql*). See: (Yousefi Eshkevari 2012).

principles of religion and that religion has the right of legislation (*tashri'*) only in the *Mantaqih al-Faragh al-hukm-e 'aql*, i.e., zones left to it by reason. (Qabel 2012a, p. 49)

8. Legislative Limits of Religion and Reason

Qabel's argument prompts complex questioning. How does he prove his claim? What, exactly, does he mean by "reason"? And what issues fall under the respective domains of reason and religion? Like many others who advocate for reason and rationality within religion, Qabel refers his critics to the text of the Qur'an and the sayings of the Prophet and the Imams to support his argument (Qabel 2012a, pp. 48–49). He points out that more than half of the Qur'anic verses invite humans to use their intellect and contemplate the universe in order to find the truth. When discussing the concept of reason, he interchangeably refers to "independent human reason" (*'aql mostaqel bashari*) (Qabel 2012a, p. 48), "common human reason" (*'aql moshtarak-e bashari*), "commonsensical reason" (*'aql-e 'urfi*), and "common collective reason" (*'aql moshtarak-e jam'i*). Qabel elaborates on his notion of reason throughout his writings, and particularly in his book *Shari'at-e 'aqlani* (Rational Shari'ah), which also responds to critics of his theories. By discussing notions of knowledge (*'ilm*) and its different sources and types, such as *'ilm-e huzouri* (intuitive knowledge) and *'ilm husouli* (acquired/learned knowledge), Qabel further elaborates on his definition of reason. By *'aql*, Qabel refers to both the common-sense wisdom of a given time, and to the output of a combination of *'ilm huzouri* and *'ilm husouli* that encompasses the products of the humanities, social sciences and exact/experimental sciences. While the exact nature of Qabel's *'aql* is still somewhat ambiguous, he stays more or less within the limits of traditional definitions of reason, avoiding what is called "*'aql-e modern*"—modern rationality or autonomous reason, which he believes is no less ambiguous.

Although Qabel adheres to the primacy and independence of reason, he asserts that there is no such a thing as a purely non-religious reason. This is because when distinguishing between good and evil, human wisdom and reason are inevitably influenced by religious teachings and the collective religious experience of humankind, whether we acknowledge it or not. While accepting that rationality differs in degrees and stages between individuals and societies, Qabel says, "one cannot/should not conclude from this fact that still a common core of rationality does not exist among humanity" (Qabel 2012a, p. 60). Rather, the existence of common reason/rationality is a reality whose negation is neither rational nor scientific. There is a "minimal" rationality, but that does not prevent scholars and scientists from having personal differences (Qabel 2012a, pp. 60–61). Qabel calls this common rationality "*'aql-e 'urfi*" (commonsensical reason/wisdom) (Qabel 2012a, pp. 102–3) or "rational consensus" (*ijma' 'aqli*). Without making any absolute scientific claim, Qabel argues that this minimal common human reason is what Shari'ah should avoid contradicting, and strive to act in accordance and harmony with (Qabel 2012a, p. 48). He specifies that every individual is free to make decisions on matters where the collective *'aql-e 'urfi* is silent and does not offer any judgment. In such cases, believers may choose to follow the instruction of their religion.

Invoking the Usuli schemes of the dual legal domains of human life: *mantaqah al-faragh al-hukm-e 'aql* and *mantaqah al-faragh-e hukm-e Shar'*, Qabel identifies the legislative limits of reason and the Shari'ah (Qabel 2012a, p. 67). *Mantaqah al-faragh al-hukm-e Shar'* refers to areas wherein reason is the sovereign. *Mantaqah al-faragh al-hukm-e 'aql* refers to areas where legislation is left to the Shari'ah. In other words, religion rules where reason offers no clear solution—not vice versa. Qabel clearly asserts that in matters of worship (*'ibadat*), Shari'ah's independent presence and rule are undeniable. *Ahkam-e 'ibadi* (rules of worship and rituals that regulate the human-God relationship) essentially belong to the *mantaqah al-faragh al-hukm-e 'aql* and are solely legislated by religion (Qabel 2012a, p. 69). On the other hand, matters of *non-'ibadat* belong to the zone left to reason to regulate, *mantaqah al-faragh al-hukm-e Shar'*, and are in this sense secular. Both economic and socio-legal precepts, as well as the religious teachings found in the Qur'an, *hadith*, and *riwayat*, are in accordance with the standards set by the wisdom of the time of revelation or the time of the Imams and they have been compliant with the rationality of their time (Qabel 2012a, p. 49). So, does Qabel recognize the historicity of revelation and

religious legislation? Perhaps in a very broad sense, but certainly not in the same manner proposed by Soroush, Abu Zayd, Shabestari, and other reformers. However, Qabel does not go so far as to imply a role of human agency in the Revelation and Qur'an.

9. The Rule of Correspondence

Loyal to the framework of traditional Usuli *ijtihad*, Qabel invokes the rule of *mulazimah* (correspondence between reason and Shari'ah), which is a recognized theological jurisprudential rule (Qabel 2012a, p. 50). Regarding the compatibility of religious precepts with modern rationality, Qabel outlines three possibilities. If there is consistency between the two, complying with *ahkam* is completely rational and thus acceptable. If religious precepts are in agreement with certain rationalities and in disagreement with others, then it is obligatory to recognize the individual's right to choose or dismiss religious ways based on convincing arguments. If the precepts are incompatible with and contradictory to today's common rationality, then the religious rules should necessarily change. This attests to Qabel's view that religious laws are of a mutable nature (Qabel 2012a, pp. 40–46, 70). He maintains that the abandonment of *ahkam* that are contradictory to the consensual rationality of a given time is inevitable, even if they are stated in the Qur'an, because they are technically considered *marjough*, or not preferable (Qabel 2012a, p. 70). Qabel argues extensively that his findings and arguments are not new, and that similar opinions have been presented before by major Shi'i jurists and theologians. For instance, he quotes Sheikh Mufid, Sheikh Tusi, and Sayyid Murtada, who clearly stated that "if any Qur'anic verse [text] comes in contradiction with *adelleh 'uqoul* (rational arguments and evidences), it should be interpreted according to rational *adelleh*" (ibid. 68).⁸

As for those *ahkam* that are based on *naql* (*hadith* and *rivayat*), Qabel feels more free to argue for the primacy of reason. In his chapter "*Bazbini naql ba me'yar 'aql*" ("Examining the narratives with the criterion of reason"), he presents numerous arguments from Usuli jurists that recommend rejection of those *rivayat* that are inconsistent with human rational sense (Qabel 2012a, pp. 73–114). Situating his methodology and ideas in line with that of the outstanding Usuli jurists, Qabel showcases a line of continuity and originality. This also protects him from accusations of *bid'ah* (heretical innovation.) In Qabel's opinion, insisting on the preservation of inflexible traditional approaches to legal precepts that are incompatible with modern rationality is both irrational (*gheir 'aqli*) and religiously illegitimate (*gheir shar'i*) (Qabel 2012a, pp. 49–50). His insistence on the use of the principle of *mulazimah* (correspondence) confirms his approach (Qabel 2012a, pp. 70–71; 2013b, pp. 209–13.)

10. The Assumption of Rational Licence (*Isalah al-ibaha al-'aqliya*)

The other central principle of Qabel's jurisprudential project is the theological principle known as the "Assumption of Rational Licence" (*Isalah al-ibaha al-'aqliya*), which offers two major assertions. One is the assumption of a licence according to which everything that uses and benefits from the natural potential within the self and the universe is permissible, except for certain things or acts that are made forbidden through sound and convincing rational [and religious] reasoning (Qabel 2012a, pp. 50, 61, 71). The opposite of this "Assumption of Licence" is the "Assumption of Forbiddance" (*isalah al-hazr* or *man'*), in which every thing and act is rationally forbidden unless it is permitted by God and proven permissible through sound and convincing religious reasoning (Qabel 2012a, pp. 52, 72). Obviously, the adoption of either assumption will yield very different jurisprudential results. According to Qabel, more than ninety percent of Shi'i jurists and *Mu'tazilah* Sunni jurists have upheld the Assumption of Licence in theory, but when exercising *ijtihad* they practice according to the Assumption of Forbiddance. Thus, many of the current Shari'ah rules are not supported by assured reasoning, and do not stand up to the critical test of reason, therefore running contrary to human *fitra* (nature) (Qabel 2012a, pp. 51, 61, 62). Like Ayatollah Murtada Mutahhari,

⁸ Qabel refers to Tusi's *al-Rasa'il*.

Qabel criticises Shi'i jurists for abandoning the Assumption of License and adopting the Assumption of Forbiddance under the influence of the Akhbaris and the Ash'aris. (Qabel 2012a, p. 62; 2013b, p. 211)⁹

Qabel's theory of Rational Shari'ah invites both Sunni and Shi'i *fuqaha* to return to *Mu'tazila* and Shi'i theological principles, and demands their practical commitment to these principles when engaging in *fiqh* and *ijtihad*. Qabel believes that contemporary jurists, despite acknowledging the incongruity between their theological/theoretical and juridical/practical principles, do not pursue reform. This could be for several reasons: an "extreme *taqqiya*," or concealment of thought or belief out of fear of persecution; a fear of being charged by traditionalists with *bid'ah* (reprehensible novelty); or a reluctance to revise the more than eighty percent of existing *ahkam Shar'i* that require revision (Qabel 2012a, pp. 51, 62–66). In Qabel's eyes, none of these reasons justify the continuation of *ijtihad* that perpetuates dysfunctional laws in the modern era. Qabel was courageous in making these criticisms, unafraid of being considered a lone jurist scholar. While basing his arguments on the same traditional sources used by all jurists-Qur'an, but carefully chosen sound hadiths and rivayats)-, he demonstrated some different results that can be produced by his rational methodology of *ijtihad* adopting principles such as the Assumption of Rational Licence and the Rule of Correspondence. Indeed, the outstanding differences between his religious verdicts, and those commonly upheld by traditional Shari'ah jurists, are what makes Ahmad Qabel an exceptional *faqih*. Replying to a critical inquiry about the existence of any promising difference between his proposed rational methodology and the current practice of *ijtihad*, Qabel adamantly refers to "different results that his *ijtihad* produces" and provides a rather long list of his different or alternative fatwas to the current ones (Qabel 2012a, pp. 50–59). In another work (Qabel 2013b, pp. 169–209) he expounds on many of them first by reiterating the use of the rule of Assumption of Rational License in examining various Quranic exegesis and analysis of hadiths and rivayats. In what follows, I selectively present some of the practical conclusions/verdicts of Qabel's novel *ijtihad*.¹⁰ While the premises and principles of his method are clearly explained in previous sections, any detailed elaboration on how he reached these conclusions requires a different space and type of argument which is beyond the scope and the nature of this paper. However, brief explanations showing their differences with the current traditional fatwas will be provided to provide the context of difference.

11. Women

The very fact that Qabel's most extensive elaboration on any socio-legal topics—amounting to an entire volume of around 200 pages—was dedicated to women's issues indicates not only his understanding of the significance of the matter in contemporary situation, but also proves his intellectual and professional commitment as a mujtahid to bring about change in *fiqh-e banouvan* (women's jurisprudence)¹¹. Here, like in other cases, Qabel applies the principles of his rational *ijtihad* first by setting the foundational premise that all human beings are equal and then engages in re-interpretation of the contentious Qur'anic verses such as 4:30—the infamous men's superiority verse—inheritance, hijab, etc. Moreover, he examines hadiths and rivayyat as well as the historical contexts in which such traditional laws were deduced in the early periods of Islam. True to the core of his rational historical jurisprudential methodology, he argues that most of these traditional rulings

⁹ Qabel writes that only a few Shi'i jurists, such as Sheikh Mufid and Sheikh Tusi, remained undecided in choosing one assumption over the other. Only the Akhbari Shi'is and a very few Usuli Shi'is, as well as almost all *Ash'ari* Sunnis, choose the Assumption of Forbiddance. He refers readers to Sayyed Murtada's *Al-Dariah ila Usulal-Shari'ah* and to his own article, "Mabani Nazari Huquq-e fitri," presented at the International Conference on Human Rights held at Mufid University in Qum, 1382/2003.

¹⁰ Qabel's fatwas presented here and more are to be found in his various work. The sources from which this selection is taken are: *Shari'ate-'Aqlani: Maqalati dar Nisbat-I 'aql va shar'*, pp. 51–57; *Fiqh, Karkardha va Qabeliyyat-ha: Maqalat-I fiqhi va Pasokh be Purses-hay Dini*, pp. 169–209. He elaborates his fatwas regarding women in a separate volume of 228 pages specifically dedicated to the thorny issues of women's rights: *Ahkam-e Banouvan dar Shari'at-e Muhammadi*.

¹¹ (Qabel 2013a).

must change—and he proposes alternatives—because they have been reason-based and since some of these reasons are either eliminated or changed—like men being the sole financial provider for the family—they are no longer plausible and ethically undefendable. Below are some selective examples related to women’s laws.

- **Legal Age:** Traditional fiqh considers the age of maturity and thus assuming responsibility to be 9 for girls and 12 for boys. Qabel, recognizes the variable age of *bolough* (puberty)—which is different in individuals—as the criterion for becoming mature for observing matters of *‘ibadat*, religious worship. And believes in designating an equal age of minority in matters of socio-legal rights and punishments for both the male and the female.
- **Inheritance:** He introduces the possibility of changing (to the benefit of women) the traditional inheritance laws which considers a 2 to 1 ratio for male-female, which would alter the entire general economic relationship within the family system. As stated above, he argues that since the main reason for such inequality, i.e., men being the sole bread winner in the family, has vastly changed or been completely eliminated, equal shares should be allocated to both the male and the female.
- **Holding Public and Legal Positions of Power:** Advocating for the lawfulness of women becoming judges, *marja’-e taqlid* (the highest religious authority in Shi’i Islam), and holding public administration positions and offices. These are contrary to the traditional laws that do not allow women to be in a position of power exercising authority over men, nor do they allow women to be judges.
- Qabel furthers his position on women’s capability in judicial matters by accepting female witnesses in all matters where male witnesses are accepted (not just on exclusively female-related issues), and by recognizing the equal value of their testimony, contrary to the traditional rule that equates two female witnesses with one male witness.
- **Hijab:** Qabel considers it permissible for women to uncover their hair and neck, and recognizes the validity of the necessity of or preference for following the (*‘urf*) customs of time and place (e.g., Muslim women in non-Muslim majority countries), rather than observing the letter of the traditional Shari’ah precept. Here, his arguments emphasize the historical development of the notion and instances of head covering in early Islam. He also disagrees with those Qur’anic exegeses that prescribe hijab as a religious obligation for women.
- **Custody of Children:** Unlike the traditional jurists Qabel recognizes the prioritized right of the mother over the paternal grandfather to obtain custody of her children upon the death of her husband, unless she voluntarily gives up this right.
- **Retributive Penalties:** Advocating for the necessity of changing the 2 to 1 ratio of male-female *Diyyah* (blood money) by considering the different economic roles of men and women today compared to the times of Revelation and *rivayaat*, plus the lack of rational and ethical evidence for considering women’s life less valuable.

12. Religious Minorities

Physical relationship with non-Muslims is a very contentious chapter in books of Islamic law. The traditional views range from total avoidance to reluctant permissibility just in cases of necessity. Such rules, at best, limit the social interaction between Muslims and non-Muslims and puts the very observant Muslims in hardship to follow the laws of purity and impurity. Qabel rejects the opinion of traditionalist conservatives like Ayatollahs Khomeini and Khoi which assume physical and material impurity for the non-Muslims and the people of the book. Qabel, by resorting to the juridical principle of the Assumption of Rational Licence, critically examines Quranic verses in chapters six and sixteen that constitute the textual source of traditional fatwas, and also invokes a *rivayat* from Imam Sadiq which he considers to be sound. Then he approves:

- The innate/natural purity of all human beings regardless of religion or creed.

- Lawfulness of the meat of lawful animals that are slaughtered by non-Muslims for the purpose of selling in the market.
- Lawfulness of marrying followers of other religions, or any person who is in search of the Truth, is committed to rational and ethical principles, and avoids imposing his/her ideas on others (however, marrying inside the faith is preferable). (Qabel 2012a, p. 53; 2013b, pp. 178–82)

13. Purity and Impurity

- Qabel proposes a shift in the base criterion for determining purity and impurity of objects from mere religious reasons to scientifically proven ones. He only considers the contaminants to be religiously impure (*najes*) and that one should avoid contact with or if contacted should follow the ritual purifications.
- Therefore, alcoholic beverages are religiously pure and contact with them does not require extra ritual wash. However, drinking alcohol remains unlawful and forbidden. (Qabel 2012a, p. 52)

14. Apostasy, Slavery, Freedom of Religion

Based on his rational arguments, Qabel accentuates the primary right of human to freedom. Thus:

- Recognizing human freedom in choosing or abandoning a system of belief.
- Abandoning/discrediting the law of apostasy which according to him had political reasons specific to a certain time of religious wars in early Islam.
- Emphasizing the impermissibility of a return to the practice of slavery and the religious unlawfulness of violations of the human right to freedom. (Qabel 2012a, p. 52).

15. Violence

Qabel argues for:

- Prohibiting the attack on others, no matter the reason, but permissibility of self defense.
- Forbidding terrorism in any form. (Qabel 2012a, pp. 52–53).

16. Religious Taxes

- Traditional Shari'ah limits the applicability of *zakat* (religious tax) to certain goods designated by the Prophet and the early jurists- items such as precious metals, livestock, camels, and the grain. With the change in lifestyle these goods are no longer common form of wealth, Qabel argues for expanding the notion of *zakat* and replacing it with taxes paid to the government.
- Asserting the unlawfulness of *khums* (a specifically Shi'i practice of paying a religious tax equivalent of one fifth 1/5 of their annual savings) which usually are given to the 'ulama. Qabel first disapproves this blanket rate on one's annual savings by exempting several types of savings that one may accumulate over years for the purpose of future use for his own or family needs. Moreover, by highlighting the main purpose of *khums*, i.e., charity he approves its direct expending by the *khums*-payer to whomever considered needy, rather than paying it to the 'ulama (Qabel 2012a, p. 53; 2013b, pp. 194–95).

17. Political Authority

Qabel reiterates that Qur'an does not specify any type of government. However, he argues that in political matters the Qur'an and the Shari'ah provide nothing more than a few essential recommendations such as justice, order, public consultation and negation of authoritarianism and oppression. He explains that governance is a kind of social contract between most of the people and their rulers with mutual duties and responsibilities. As is repeated throughout his work, Qabel emphasizes that social rules of Islam are flexible and changeable in different times and places according to human conscience and nature. Therefore, if proven that certain instances of Shari'ah laws are not applicable

because they have lost their ethical and rational plausibility, no body and no government should impose them on the society. This is a direct rejection of religious dictatorship. Furthermore, by rejecting any prerogative for *fuqaha* (jurists) regarding governance and public administration, Qabel discarded the theory of *vilayet-e faqih*, the ruling regime introduced by Ayatollah Khomeini, a refutation for which he paid dearly. Based on his rational arguments as well as the Qur'anic injunctions on consultation (*shura*) Qabel refutes any kind of authoritarianism, including theocracy. He reveals his pro-democracy position by clearly stating that governance is the people's right and that the Qur'an urges them to choose rulers from among themselves.

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