

Brief History of Jurisprudence and Jurisprudents

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As we mentioned in the previous lessons, one of the preparations for learning about any field of knowledge is to pay attention to the famous personalities of that field, the views and ideas of whom were important, and to its important books.

Jurisprudence, the jurisprudence in which books have been classified and compiled that are still studied today, has a history of eleven hundred years, meaning that for eleven centuries, without a break, centres for the studying of jurisprudence and the related studies have existed. Masters have trained students and those students in their turn have trained other students, and this has continued down the ages until today. Furthermore, this relationship between master and pupil has never been broken.

Other fields, of course, like philosophy, logic, arithmetic and medicine have been studied for far longer, and books exist on these subjects that are older than the books that exist on jurisprudence. Perhaps in none of these subjects, however, can the guarding of the same kind of ever-present relationship between master and pupil be shown that has existed in jurisprudence. Even if such constant relationships existed in other subjects, still they are particular to the fields of Islamic studies. Only in the Islamic world does the system of teaching and studying have a continuous uninterrupted history going back over a thousand years

The Shi'ite Jurisprudents

We will begin the history of the Shi'ite jurisprudents from the period of the Imam's "minor occultation" (260-320 A.H.), and this we will do for two reasons:

First, the period previous to the "minor occultation" was the period of the presence of the holy Imams, and in the period of their presence, although there were jurisprudents and mujtahids who were able to make their own verdicts, who had been encouraged by the Imams to do so, yet due to the presence of the Imams they were nevertheless outshone by the brilliance of the Imams. That is, the referral of problems to the verdicts of the jurisprudents is because of there being no access to the Imams. In the period of the Imams' presence, however, people tried as far as possible to refer to the original sources of the Imams. Similarly, even the jurisprudents, bearing in mind distances and other difficulties, used to place their own problems before the Imams whenever they could.

Second, in the formal, classified jurisprudence, we are limited to the period of the minor

occultation, for none of the actual books in jurisprudence from that period has reached us, or, if any have, I have no information about it.

All the same, amongst the Shi'ites there were great jurists during the days of the holy Imams, whose value can become apparent and determined by comparing them with the jurists of their period from other sects. The Sunni, ibn Nadin writes in his book *Fihrist* about Husein ibn Sa'id Ahwazi and his brother, both notable Shi'ite jurists, "They were the best of those of their time in knowledge of jurisprudence, effects (i.e. writings and compilations) and talents," and, about 'Ali ibn Ibrahim Qumi he writes, "Amongst the 'ulema and jurists," and, about Muhammad ibn Hasan ibn Ahmad ibn Walid, "And he has amongst books the book *Jam'e fil-fiqh*".

Apparently these books were compiled of traditions on the varying subjects of jurisprudence that the compilers considered to be reliable, and to which they acted in accordance, together with the comments of the compilers.

The scholar Hilli, in the introduction to his book *M'utabar* wrote, "Bearing in mind that our jurists (God be pleased with them) are many and their compilations numerous and to narrate the names of them all is not possible, I will content myself with those who are the most famous in merit, research and good selection, and with the books of those paragons whose *ijtihad* is mentioned in other undoubtable books as reliable.

"Those I will mention include, from the 'earlier' period (i.e. the period of access to the Imams), Hassan ibn Mahboub, Ahmad ibn Ali Nasr Bazanti, Husayn ibn Sa'id, Fadl ibn Shathan, Yunis ibn 'Abd ur-Rahman and, from the later period, Muhammad ibn Babawayh Qumi (Shaykh Saduq), and Muhammad ibn Y'aqub Kulayni and from the authors of verdicts (fatwas) Ali ibn Babawayh Qumi, ibn Jamid Iskafi, ibn Ali 'Agil, Shaykh Mufid, Syed Morteza.' *Alam ul Huda* and Shaykh Tusi . . . "

Notice that although the first group are quoted as having their own views and good selection and *ijtihad*, yet they are not mentioned as being masters of verdicts. This was because their books, even though they were the summaries of their *ijtihad*, were in the form of collections of traditions and not in the form of verdicts.

Now we will look at the history of Shi'ite jurists, as I have said, from the period of the Imam's occultation . Ali ibn Babawayh Qumi, died in 329 A.H. buried in Qum. The father of Shaykh Muhammad ibn Ali ibn Babawayh known as Shaykh Saduq, who is buried near Tehran. The son was learned in Traditions, the father in jurisprudence and compiled a book of his verdicts. Normally this father and son are called Saduqayn.

'Ayashi Samarqandi, lived at the same time as Ali ibn Babawayh or a little before. The author of

a famous commentary of the Quran, though his speciality was commentary, he is still numbered amongst the jurists. He wrote many books in different fields including jurisprudence. Ibn Nadim writes that the books of this man were largely available in Khorasan, but I have not yet seen his views related anywhere, and his books on jurisprudence no longer exist.

'Ayashi was originally a Sunni Muslim but later became a Shi'ite. He inherited vast wealth from his father, and this he spent on collecting and copying books and on teaching and training his students.

Ibn Jamid-Iskafi, one of the teachers of Shaykh Mufid. It seems he passed away in 381 A.H. and it is said that his books and writings numbered fifty. His views have ever been subject to consideration in jurisprudence and still are to this day. Shaykh Mufid. His name was Muhammad ibn Muhammad ibn Naman. He was both a mutakalam (theologian) and a jurist. Ibn Nadim, in the section of his book Fihrist in which he discusses Shi'ite mutakalamin, calls him "ibn Mu'alim" and praises him. Born in 336 A.H. he passed away in 413. His famous book in jurisprudence, Muqna'ah, is still used today.

The son-in law of Shaykh Mufid, Abu Y'ala J'afari, tells us that Shaykh Mufid slept little at night, and spent the rest in worship, study and teaching or reciting the Quran.

Seyyid Morteza, known as 'Alam ul Huda, born 355 A.H. and passed away in 436 A.H. Allamah Hilli has called him the teacher of the Shi'ites of the Imams. He was a master of ethics, theology and jurisprudence. His views on jurisprudence are still studied by the jurists of today. He and his brother, Seyyid Razi the compiler of the Nahj ul-balagha, both studied under Shaykh Mufid. Shaykh Abu J 'afar Tusi, one of the shining stars of the Islamic world, wrote many books on jurisprudence and the principles of jurisprudence, Traditions, commentaries, theology and the transmitters. Originally from Khorasan (in east Iran), he was born in 385 A.H. and after twenty-two years emigrated to Baghdad which in those days was the great centre of Islamic studies and culture. He stayed in Iraq the rest of his life and after the demise of his teacher, Seyyid Morteza, the directorship of learning and the station of highest reference for verdicts (fatwas) was transferred to him.

Shaykh Tusi remained for twelve more years in Baghdad but then, due to a series of disturbances in which his house and library were ravaged, he left for Najaf where he formed the famous scholastic centre which still exists today. There, in the year 460 A.H., he passed away. One of the books which were compiled about jurisprudence by Shaykh Tusi was called An-Nahayeh, and was used as a textbook for religious students. Another, Masbut, brought jurisprudence into a new stage and was the most famous Shi'ite book of jurisprudence of its

time. In *Khelaf*, another of his books, he wrote about both the views of the jurisprudents of the Sunni schools and also those of the Shi'ite jurisprudents. He also wrote other books about jurisprudence, and, until about a century ago, whenever the name Shaykh was mentioned the man meant was Shaykh Tusi, and by Shaykhayn was meant Shaykh Tusi and Shaykh Mufid. According to what has been related in some books, it seems the daughters of Shaykh Tusi were also distinguished faqihat. [1]

Ibn Idris Hilli, one of the distinguished Shi'ite 'ulema. He himself was an Arab though Shaykh Tusi is counted as having been his maternal grandfather. He is known for the freedom of his thought; he broke the awe and reverence of his grandfather Shaykh Tusi and his criticisms of the jurisprudents bordered on impertinence. He died in 598 A.H. at the age of fifty-five. Shaykh Abul-Qasim J 'afar ibn Hasan ibn Yahya ibn Sa'id Hilli, known as Muhaqqeq Hilli. Author of many books about jurisprudence, amongst them: *Sharay'e*, *Ma'arej*, *Al-Mukhtasar an-nafi* and many others. He was the student of Ibn Idris Hilli, and the teacher of Allamah Hilli who we are to speak about. In jurisprudence he has no superior. Whenever in the terms of jurisprudence the word muhaqqiq is used it refers to him. Great philosophers and mathematicians used to meet with him and used to sit in his lessons of jurisprudence. The books of Muhaqqiq, especially the book *Sharay'i*, has been a textbook for students and still is, while his books have been subject to the commentaries of many other jurisprudents.

Ibn Hasan ibn Yusef ibn Ali ibn Mutahhar Hilli, famous as Allamah Hilli, one of the prodigies of the age. Books have been written by him about jurisprudence, principles, theology, logic, philosophy, transmitters and still other things. Around a hundred of his books have been recognised, some of which, I like *Tathkurat ul-fuqaha* are alone enough to indicate his genius. Allamah wrote many books on jurisprudence which have mostly, like the books of Muhaqqiq, been commented on by the jurisprudents who succeeded him. His famous books on jurisprudence include *Irshad*, *Tabsaratol Muta'alemin*, *Qawa'id*, *Tahrir*, *Tathhorat-ul-fuqaha*, *Mukhtalif ash-shia'* and *Mutaha*. He studied under various teachers: jurisprudence under his paternal uncle, Muhaqqiq Hilli, philosophy under Khawajeh Nasir ud-Din Tusi, and Sunni jurisprudence under the 'ulema of the Sunnis. He was born in the year 648 A.H. and passed away in 726 A.H.

Muhammad ibn Makki, known as Shahid Awal ("the First Martyr"), one of the great Shi'ite jurisprudents. He is of the rank of Muhaqqiq Hilli and Allamah Hilli. He was from Jabal 'Amel, an area in today's south Lebanon which is one of the oldest centres of Shi'ites and still is today a Shi'ite area. Shahid Awal was born in 734 A.H., and, in 786 A.H., according to the fatwa of a jurisprudent from the Maliki sect which was endorsed by a jurisprudent of the Shaf'i sect, he

was martyred. He was a pupil of the pupils of Allamah Hilli, amongst them Allamah's son, Fakhr ul-Muhaqqeqin. The famous books of Shahid Awal on jurisprudence include Al-lum'ah which he composed during the brief period he remained in prison awaiting his martyrdom. Amazingly, this noble book was subject to a commentary two centuries later by another great jurist who suffered the same fate as the author. He too was martyred and thus became called Shahid ath-Thani ("The Second Martyr"). The famous book Sharh ul-lum'ah which has been the primal textbook of the students of jurisprudence ever since is the commentary of Shahid th-Thani. Other books of Shahid Awal include Durou, Thikra, Bayan, Alfiyeh and Qawa'id. All of the books of the First Martyr are amongst the priceless writings of jurisprudence.

Shahid Awal came from a very distinguished family, and the generations that succeeded him preserved this honour. He had three sons who were all 'ulema and jurists, and his wife and daughter were likewise jurists.

Shaykh Ali ibn Abul ul-Ala Karaki, known as Muhaqqiq Karaki or Muhaqqiq Thani. One of the Jabal 'Amal jurists and one of the greatest of the Shi'ite jurists. He perfected his studies in Syria and Iraq and then went to Iran and for the first time the position of Shaykh ul-Islam went to Iran when it was entrusted to him. The order which the ruling king of Iran (Shah Tahmaseb) wrote in Muhaqqiq Karaki's name in which the king gave him complete control, declaring himself to be only his agent, is famous. A well-known book that is often spoken of in jurisprudence is Muhaqqiq Karaki's Jam'i ul-Muqasid, which is a commentary on the Qawa'id of Allamah Hilli.

The arrival of Muhaqqiq Thani in Iran and his establishing a religious university in Qazvin and then in Isfahan, together with his training of outstanding pupils in jurisprudence, caused Iran for the first time since the time of the Saduqayn to become a centre of Shi'ite jurisprudence. He died between the years 937 A.H. a-ns! 941 A.H. He had been the pupil of the pupil of Ibn Fahd Hilli, who had been the pupil of the pupils of Shahid Awal, such as Fazlel Miqdad.

Shaykh Zayn ud-Din known as Shahid Thani, the "Second Martyr", was another of the great Shi'ite jurists. A master of several sciences, he was from Jabal 'Amal and a descendant of a man called Saleh who was a student of Allamah Hilli. Apparently Shahid Thani's family was from Tus, and sometimes he would sign his name "At-Tusi Ash-Shami". He was born in 911 A.H. and martyred in 966 A.H. He travelled widely and experienced many teachers. He had been to Egypt, Syria, Hejaz, Jerusalem, Iraq and Istanbul, and wherever he went he learnt. It has been recorded that his Sunni teachers alone numbered twelve. Besides jurisprudence and principles he was accomplished in philosophy, gnosis, medicine and astronomy. Very pious

and pure, his students wrote that he used to carry wood at nights to support his household and, in the mornings, sit and teach. He compiled and wrote many books, the most famous of them in jurisprudence being Sharh lum'a, his commentary on the Lum'a of Shahid Awal. He was a pupil of Muhaqqiq Karaki (before Muhaqqiq migrated to Iran), but Iran was one place that he himself never went to. The author of M'alim which is about the Shi'ite 'ulema was Shahid Thani's son.

Muhammad ibn Baqer ibn Muhammad Akmal Bahbahani, known as Wahid Bahbahani, who came in the period after the fall of the Safavi dynasty of Iran. After that overthrow, Isfahan was no longer the centre of religion, and some of the 'ulema and jurists, amongst them Seyyid Sadr ud-Din Razawi Qumi, the teacher of Wahid Bahbahani, left Iran as the result of the Afghan turmoil and went to the atabat, the holy centres of Iraq.

Wahid Bahbahani made Karbala the new centre and there he tutored numbers of outstanding pupils, many of them famous in their own right. Besides this it was he who led the intellectual combat against the ideas of the akhbariyyin, which in those days were extremely popular. His defeat of the akhbariyyin and his raising of so many distinguished mujtahids has led to him being termed as "Ustad ul-kul" ("The General Teacher"). His virtue and piety was perfect and his students maintained profound respect for him. Shaykh Morteza Ansari, a descendant of Jaber ibn Abdullah Ansari, one of the great companions of the Holy Prophet himself. On a visit with his father to the atabat of Iraq at the age of twenty, the 'ulema, appreciating his genius, asked his father to let him stay. He remained four years in Iraq and studied there under the leading teachers. Then, due to a series of unpleasant events, he returned to his home. After two years he went once more to Iraq, stayed for two years, and again returned to Iran, this time deciding to benefit from the 'ulema in Iran. He set off to visit Mashhad and on the way visited Hajj Mulla Ahmad Nuraqi the author of the famous Jam'i S'adat in Kashan. This visit became a long stay as he benefitted from the teachings of Mulla Ahmad in Kashan for three years. He then went to Mashhad and stayed there for five months. He also journeyed to Isfahan and to Burujerd in Iran and the aim of all these trips was to learn from men of knowledge. Around 1202/3 A.H. he went for the last time to the atabat and began giving lessons. After the decease of Shaykh Muhammad Hasan, he became recognised as the sole authority for referral for verdicts.

Shaykh Ansari is called the Khatim ul fuqiha walmuitahidin (the seal of the jurists and the mujtahids). He was one of those who in the precision and depth of his views have very few equals. Two of his books, Risa'il and Mukassib are today's textbooks for (higher) religious students, and many commentaries have been written on his books by later 'ulema. After

Muhaqqiq Hilli and Allamah Hilli and Shahid Awal, Shaykh Ansari is the first person whose books have been so regularly subject to commentaries. He passed away in 1281 A.H., in Najaf where he is buried.

Hajj Mirza Muhammad Hasan Shirazi, known as Mirza Shirazi. His preliminary studies took place in Isfahan and he then went to Najaf and took part in the lessons of Shaykh Ansari and became one of the Shaykh's leading and outstanding students. After Shaykh Ansari's demise, he became the leading authority of the Shi'ite world, and he remained thus until his demise about 23 years later. It was by means of this great man's prohibition of tobacco that colonialism's famous monopoly agreement in Iran was broken. Hajj Mirza Husayn Naini, one of the great jurists and master of principles of the fourteenth century hejrat, a pupil of Mirza Shirazi, who became a highly valuable teacher. His fame is mostly in Principles, into which he introduced new views. Many of today's jurists were his pupils. He died in 1355 A.H. in Najaf. One of the books he wrote was in Persian and was called Tanaziyeh al-ameh or Hukumat dar Islam, which he wrote in defense of constitutional government and its roots in Islam.

Summary and Review

In total we have introduced sixteen of the faces of the recognised jurists from the time of the minor occultation until the end of the 13th century hejrat. We have only mentioned the jurists that in the world of jurisprudence and principles are very famous, whose names and fame have been continually mentioned in lessons and books from their own times until today. Of course, there are many other such names we could have mentioned, but from those we have reviewed, certain points became clear:

First, ever since the third century A.H., jurisprudence has had a continuous existence. Throughout the whole of these eleven centuries, schools have operated with no period of stand-still and the relationship between teacher-student in all that time has never been severed. If we start with my own teacher, the late great Ayatollah Burujerdi, we can trace the line of his teachers back over a thousand years to the period of the Imams. Such a constant chain seems to have existed in no culture and civilisation other than the Islamic one.

Of course, as we stated before, we did not appoint the third century to begin with for the reason that Shi'ite jurists began then, but because the period previous to that period was the period of access to the holy Imams, and during that time the brilliance of the Shi'ite jurists was always dimmed by the brilliance of the Imams, and the jurists had no independence of their own. Otherwise the beginnings of ijtihad and jurisprudence amongst the Shi'ites and the composing of books about jurisprudence occurred amongst the companions.

The first treatise on jurisprudence was written by Ali ibn Ali Raf'i who was the brother of Abdullah ibn Abi Raf'i, the scribe and accountant of Amir ul Muminin, Ali ('a) during the period of the Imam's caliphate.

Second, contrary to the perception of some, the Shi'ite sciences, amongst them jurisprudence, have not been developed and systemised solely by the 'ulema and jurisprudents of Iran. The 'ulema of Iran and the 'ulema of other lands have both shared in this great work, and, until the commencement of the tenth century and the emergence of the Safavi dynasty, non-Iranians were predominant. It is only since the middle of the Safavi period that predominance has been gained by Iranians.

Third, likewise, the centre of jurisprudence and of the jurisprudents has not always been Iran. At first Baghdad was the centre of Shi'ite jurisprudence, and then, by the action of Shaykh Tusi, the centre was transferred to Najaf. It was not long before Jabal 'Amal in today's south Lebanon became the centre. Then Hilleh, a small town in Iraq, and then for a while Halab, one of the districts of Syria. During the time of the Safavids it was transferred to Isfahan, while at the same time Najaf was revived by Muqaddas Ardebili and other greats and still functions today. Of the towns of Iran, it is only Qum that in the first centuries of Islam, due to men like Ali ibn Babawayh, was a minor centre of jurisprudence and the related studies while Baghdad was the main centre. During the time of the Qajar dynasty, Qum was revived due to the efforts of Abul Qasim Qumi and it was revived a second time in 1340 A.H. (i.e. 61 years before this translation) by the late Shaykh Abdul Karim Ha'iri Yazdi, and today it is one of the two great centres of Shi'ite jurisprudence. [2]

Fourth, the jurisprudents of Jabal 'Amal played an important role in the development of Safavi Iran. The Safavi dynasty, as we know, were inclined to Sufism. Their path was originally based on the methods and customs peculiar to Sufism. If they had not been corrected by the profound and unchallengable understanding of the jurisprudents of Jabal 'Amal, and if a profound centre of Islamic studies not been established by those jurisprudents, things would have led in Iran to the same kind of condition that now exists in Turkey and Syria. This action of theirs had many effects. Firstly, the population and government of Iran remained immune from that deviation, and, secondly, Shi'ite Sufism likewise followed a more reasonable path. Thus, for founding the religious university in Isfahan, the jurisprudents of Jabal 'Amal - Muhaqqiq Karaki and others - have a lot to be thanked for.

Fifth, as has been pointed out by others, Shi'ism in Jabal 'Amal existed an age before it did in Iran, and this is one of the definite proofs and reasons for rejecting the views of those who consider Shi'ism to have been formed in Iran. Some believe that the Shi'ite penetration into

Lebanon was due to the great companion of the Prophet, the mujahid Abuzar Ghaffari. During his stay in ancient Syria which included all or part of present Lebanon, at the same time as stiffly opposing the misappropriation of public wealth by Mu'awiyah and the rest of Bani .Umayyid, Abuzar also used to propagate the holy platform of Shi'ism