

Exploring the Mind of God

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Exploring the Mind of God

An Introduction to Shi'ite Legal Epistemology

By

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Preface

Shi'ite Muslims advocate that knowledge of Sharia (normally translated as Islamic law) can only be disclosed to believers by an infallible (*ma'sūm*) being. The condition of infallibility (*'isma*) ensures that Sharia knowledge is communicated in an accurate manner without any distortion. This is important because Sharia lays down guidance and instructions that ensure order and regulation in all spheres of a believer's life. If diligently followed, Sharia ensures that believers can attain prosperity and perfection in both spiritual and socio-communal aspects of their lives, together with being granted salvation in the hereafter. Shi'ites accept God, the Prophet Muḥammad (d. 632), and the Twelve Imams as infallible Divine Lawgivers (*shāri'*), who can never err in disclosing Sharia knowledge to believers. However, around the late 9th and early 10th century CE, Twelver Shi'ites lost direct access to infallible individuals. Since then, and until the present day, knowledge of Sharia is predominantly provided to the majority of Shi'ite Muslims by a clerical class of Shi'ite jurists-cum-theologians.¹

Modern, or post-19th century, legal discourse of Shi'ite clerics emphasises that all human actions are governed by Sharia precepts (*aḥkām*) that exist in objective reality (*wāqi'*) or in the Mind of God.² As such, actions are categorised as either being obligatory (*wājib*), prohibited (*ḥarām*), recommended (*mustaḥabb*), disliked (*makrūh*) or permissible (*mubāḥ*) by Sharia (or by God). For example, without considering any extenuating circumstances, the action of 'lying' is normally categorised as being prohibited by the Sharia, whereas the action of 'giving charity' is obligatory. These categorisations can be found in the works of *fiqh*, wherein learned clerics (also known as *fuqahā'*) present their deductions of Sharia knowledge in the form of edicts (*fatāwā*).

The process undertaken to deduce Sharia knowledge is known as *ijtihād*. The term *ijtihād* can be described as a fallible human endeavour of exploring the Mind of God (or objective reality) in the absence of an infallible guide. The practitioner of *ijtihād*, i.e., the cleric, is recognised as a *mujtahid* – a jurist, who

1 By jurists-cum-theologians I refer to Shi'ite scholars who, in addition to teaching and producing works in jurisprudence and/or legal theory, are also recognised for teaching and producing dogmatic and authoritative works in theology. Their juristic disposition is shaped by their theological commitments.

2 For instance, see Momen, *An Introduction to Shi'i Islam*, 187; al-Anṣārī, *Farā'id al-Uṣūl*, 4 vols., 1:25.

is typically a male person that has the necessary qualifications to deduce Sharia knowledge. He receives this recognition after graduating from traditional Shi'ite seminaries known as *Ḥawza 'Ilmīyya*. As a seminarian, he is exposed to a range of Islamic disciplines (*al-'ulūm al-Islāmiyya*) that aid and shape his exploration and deduction of Sharia knowledge. Some of the more common disciplines that are studied across different Shi'ite seminaries include, theology (*'ilm al-kalām*), Arabic morphology and grammar (*ṣarf wa nawḥ*), logic (*manṭiq*), and a study of juristic deductions (*fiqh*) of past clerics. Amongst these, an important seminarian discipline that has immense relevance in influencing and determining the outcome of juristic deductions is *'ilm uṣūl al-fiqh*.

Uṣūl al-fiqh, which I hereon refer to as legal theory, is defined as a study of general principles that provide a systematic framework for deducing Sharia knowledge. In other words, it is a discipline whose study provides clerics/jurists with a rationalist method of 'how' to deduce Sharia knowledge – or more specifically knowledge of Sharia precepts (*aḥkām al-Sharia*) – in the absence of an infallible guide. Muḥammad Bāqir al-Ṣadr (d. 1980), an illustrious Shi'ite legal theorist, famously compares the function of legal theory to the function of logic. He explains that just as logic (or the seminary study of *manṭiq*) provides general principles whose application ensures a correct way of thinking and rational deduction, legal theory provides general principles whose application ensures correct juristic deduction of Sharia.³ Saying this, Shi'ite legal theorists (also referred to as Uṣūlīs), such as Ṣadr, usually position themselves as fallibilists (*mukhaṭṭi'a*).⁴ By subscribing to the notion of fallibility (*takḥṭi'a*), they maintain that although it is epistemologically possible to know or deduce knowledge of Sharia precepts as they ontologically exist in objective reality or in the Mind of God through the process of *ijtihād*, the *ijtihād* of a jurist can either be accurate or inaccurate. If accurate, then a jurist's deduction corresponds to that which is in the Mind of God, and a jurist is rewarded for his efforts. However, if inaccurate, whereby a jurist's deduction fails to correspond with (or even contradicts) that which is in the Mind of God, then God has the right to hold him accountable for erring and possibly even subject him to chastisement in the hereafter. To be absolved from this accountability, the fallibilist position deems that a jurist must operate within stipulated boundaries of a rationalist legal theory. Since Shi'ite fallibilists theologically acknowledge God to be Just and Rational (or the Head of all rational beings), they propound that

3 al-Ṣadr, *Durūs fi 'ilm al-uṣūl*, 2 vols., 1:42–43.

4 See Damad, "The Reception of Factuality (*taṣwīb*) Theories of *Ijtihād* in Modern Uṣūlī Shī'ī Thought", 10–13, 16; Ṣadr, *Durūs*, 2:14.

if a jurist errs by following a legal theory whose assumptions and underpinnings are established with sound logical demonstration and rational reasoning, then he is not held accountable by God.

Considering the emphasis placed on having a sound legal theory, and the influence it has in shaping juristic deductions, I wish to introduce readers to the legal epistemology that is propounded within the modern Shi'ite disclosure of legal theory. My study presents what I term 'fundamental epistemological underpinnings' that are upheld by Shi'ite jurists-cum-theologians. These underpinnings include, 1) the non-authoritativeness of conjecture (*ẓann*), 2) the authoritativeness of certainty (*qaṭʿ*), and 3) the authoritativeness of substantiated conjecture (*ẓann al-mu'tabar*). Based on these underpinnings, Shi'ite legal theorists examine the evidentiary nature of different evidence (whether they are independent sources of evidence or hermeneutical methods of interpretation) and evaluate whether they are authoritative in disclosing Sharia knowledge. Only after evidence is determined to be authoritative can a jurist utilise it in *ijtihād*. My study, therefore, offers readers a critical presentation of how in the works of legal theory (*uṣūl al-fiqh*), prominent modern Shi'ite legal theorists argue for, and justify, these fundamental epistemological underpinnings.

I believe that this introduction is important because several commentators on Islamic or Muslim law, whether they be Muslim or non-Muslim academics, activists, journalists etc., often allude to its incompatibility (or the non-compatibility of Sharia) with several facets of modernity. They mostly claim that Sharia, or at least its orthodox interpretation, is responsible for creating fundamentalist tendencies that prevent Muslims from enjoying complete privileges of modernity that generally range from freedom of expression and thought to advancements made in areas of technology, science, politics, society, culture, and academia. Moreover, these tendencies feed the rise of terrorism and violence amongst Muslims, and escalate issues of sectarianism, poverty, ignorance, gender inequality, cultural segregation, and unaccountable political structures.⁵

For instance, an archetypal illustration of incompatibility between 'Islamic Law' and 'modernity' can be found in the orthodox understanding of Sharia precepts relating to apostasy. Muslim jurists normally describe an apostate as a Muslim who renounces or abandons Islam, irrespective of whether they subsequently embrace another faith. They assert that Sharia (or God) ordains a

5 For similar criticisms see Khan, "The Reopening of the Islamic Code: The Second Era of Ijithad", 341–85; Lewis, *What Went Wrong*.

fixed penalty (*ḥadd*) of death for a male apostate, and stipulates that it is the responsibility of a sovereign to execute it.⁶ Accordingly, the praxis of death penalty for apostasy is included as part of civil law in many majority-Muslim nation states.⁷ This praxis, however, contravenes ethical values and standards promoted by modern conventions and institutions that – at least in theory – propound that all human beings are entitled to fundamental freedoms and basic human rights. For example, the post-World War II construction of the Universal Declaration of Human Rights categorically stipulates that every human has the autonomy and freedom to choose or change his or her religion or belief.⁸ Although the notion of ‘universal’ human rights is sometimes criticised for being overly western/eurocentric,⁹ it, nevertheless, is adopted by many modern nation-states that are home to many Muslims. This highlights that the irreconcilability between Sharia and modernity not only has repercussions for believers who reside in Muslim nation states, but also for those who reside in non-Muslim states, as it creates a dichotomy between religious law and secular/civil law.

6 It must be noted that Shi’ite law forbids that a female apostate be executed by the death penalty; instead Shi’ite *mujtahids* have claimed that she should be punished with solitary confinement during which she should be beaten during the hours of prayer (*ṣalāt*). For a comprehensive overview of how laws of apostasy have been deduced by Muslim jurists and implemented by Muslim states, see Griffel, “Apostasy”. For authoritative work on Shi’ite juristic deductions (*fiqh*) regarding the law of apostasy see al-Najafi, *Jawāhir al-Kalām fi Sharḥ Sharā’i al-Islām*, 14:637–65. For a general overview of Shi’ite juristic opinions regarding apostasy see Azizan, *Thoughts on ‘Apostasy in Islam’*.

7 For countries that continue to criminalise apostasy see the 2014 report by The Law Library of Congress retrieved 19th June 2018, from <https://www.loc.gov/law/help/apostasy/apostasy.pdf>.

8 See Article 18 of the Universal Declaration of Human Rights, which states: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” The law of apostasy also opposes Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and the 1981 Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion and Belief. See Garces, “Islam till death do you part: rethinking apostasy laws under Islamic law and international legal obligations”.

9 See Ignatieff, “The Attack on Human Rights”; regarding how the modern discourse of human rights has been criticised to be incompatible with the Muslim tradition, see An-Na’im, *Toward an Islamic Reformation*, 162; Bennett, *Muslims and Modernity*, 65; regarding the critique on how the philosophical foundations of the modern discourse of human rights are Western and Eurocentric in nature, see Almond, “Rights.”

Progressive Muslim thinkers often assert that the gulf between Sharia and modernity is created by the orthodox juristic process of *ijtihād*.¹⁰ Specific access to progressive Shi'ite scholarship that carefully untangles the relationship between orthodox *ijtihād* and modernity in English language is scarce. Since Shi'ism has been adopted as the official state religion of Iran since around the 16th century, the majority of Shi'ite progressive thought, as one might expect, originates from Iran and/or is intertwined with Iranian politics. Nevertheless, some ideas of certain progressive Shi'ite public intellectuals, such as Abdolkarim Soroush, Mohsen Kadivar, Mohammad Mojtahed Shabestri, Abolqasem Fanaei, and Arif Abdul Hussain (who is not Iranian, though he studied in Qum, Iran) go beyond Iranian politics. In essence, their central point of contention with orthodox jurists is that in their process of *ijtihād* they overly rely on deducing Sharia knowledge from textual or revelatory sources of evidence (such as the Quran and *sunna*) and interpret them in their apparent literal meaning. For progressive Shi'ites, the literalist approach favoured by orthodoxy is perhaps the major factor that hinders their dynamism in finding adequate Sharia responses to challenges of modernity. As such, in their attempt to reconcile values promulgated by Sharia and modernity, progressive Shi'ites generally propose that jurists must deduce Sharia knowledge by utilising a wider range of rational (*ʿaqli*) evidence and hermeneutical methods of interpretation that promote reading textual sources in the context in which they were revealed.¹¹ However, because orthodox Shi'ite legal, social and authority structures have for centuries been embedded and justified with the traditional method of *ijtihād*, the opinions of progressive thinkers are perceived to challenge the existence of orthodox structures and the overall influence orthodox clerics enjoy over the Shi'ite laity.¹² The heterodoxic ideas of

10 For a comprehensive survey of the Progressive Muslim thought see Duderija, *Constructing Religiously Ideal "Believer" and "Woman" in Islam*; Esack, "In Search of Progressive Islam Beyond 9/11"; Moosa, "The Debts and Burdens of Critical Islam". Johnston, "A Turn in the Epistemology and Hermeneutics of Twentieth Century *uṣūl al-fiqh*"; Kalanges, "Sharia and Modernity"; Dahlen, *Islamic Law, Epistemology and Modernity*.

11 For instance, see Cooper, "The Limits of the Sacred"; Vakili, "Abdolkarim Soroush and Critical Discourse in Iran"; Soroush, "Intellectual Autobiography: An Interview", ix–xix; Vahdat, "Post-revolutionary Islamic modernity in Iran: the intersubjective hermeneutics of Mohamad Mojtahed Shabestari"; Hussain, *Islam and God-Centricity*; Kadivar, "Revising Women's Rights in Islam: 'Egalitarian Justice' in Lieu of 'Deserts-based Justice'"; Kadivar, "From Traditional Islam to Islam as an End in Itself"; also see Wielandt, "Main Trends of Islamic Theological Thought".

12 For a close study of how social, political, legal, and authority structures are embedded and justified within orthodox Shi'ite jurisprudence see Mavani, *Religious Authority and Political Thought in Twelver Shi'ism*.

progressive Shi'ite thinkers (including progressive seminarian insiders) have in many instances resulted in their excommunication or defrocking by the force of orthodox clerics.¹³ Whilst a critical study of the opinions and reception of progressive thinkers is both important and interesting, it nevertheless falls outside the scope of my study. Rather, by introducing readers to the orthodox discourse of legal epistemology, my study specifically focuses on how and why Shi'ite clerics justify their preference towards a literalistic approach in the process of *ijtihad*.

I maintain two important assumptions in my study. Firstly, I assume that the clerical class of Uṣūlī jurists represent Shi'ite orthodoxy. I understand that many writers claim that, unlike Christianity, Islam lacks the notion of orthodoxy; it does not devise official structures of religious authority, hierarchy, or an ecclesiastical office that oversees 'correct beliefs' or the 'official creed' of Islam. Despite this, however, many heterodox ideas, including those promulgated by Muslim progressives, are usually downplayed, or not adopted by Muslims.¹⁴ This has led some academics to rightly assert that Islam has a tacit notion of orthodoxy that is somewhat connected to the notion of authority and power.¹⁵ In the specific case of Shi'ism, it is found that in recent decades, due to the overwhelming centrality of Shi'ite majority countries in what may be described as the Middle Eastern Turmoil, there has been a significant inflow of important English-language works that critically describe its orthodox authority structures. These works rather unanimously place the clerical class of Shi'ite Uṣūlī (rationalist) jurists as respected political and/or religious leaders of a large portion of approximately two hundred million Twelver Shi'ite Muslims. They show that the continued bestowal of esteemed titles such as *marja' al-taqlīd* (Grand Ayatollah), *walī al-faqīh* (Guardian Jurist), *hujjat al-Islām* (Authority of Islam), *nā'ib al-imām* (Representative of the Hidden Imam) etc. signifies that Shi'ites around the world identify members of the clerical class as the voice of Shi'ite orthodoxy.¹⁶ Secondly, I assume that the discourse of legal theory (*uṣūl al-fiqh*) has relevance in determining the juristic outcomes of clerics.

13 As defrocking is officially recognised in Iranian law, we find many reports of cases where progressive Muslims have been defrocked from the clerical class, for instance see Amanat, *Iran*, 808; Parsa, *Democracy in Iran*, 77, 174.

14 See Langer and Simon, "The Dynamics of Orthodoxy and Heterodoxy"; Dnis MacEoin, "Orthodoxy and Heterodoxy in Nineteenth-Century Shi'ism"; Asad, "The Idea of an Anthropology of Islam".

15 For instance, see Asad, "The Idea of an Anthropology of Islam," 22–3; Langer et al. "The Dynamics of Orthodoxy and Heterodoxy", 281.

16 See Said Amir Arjomand, *The Shadow of God and the Hidden Imam Religion*; Sachedina, *The Just Ruler in Shi'ite Islam*; Moussavi, *Religious Authority in Shi'ite Islam*; Stewart, *Islamic Legal Orthodoxy*.

I am aware that some academic studies render the relevance of Muslim legal theory as being nominal. They claim that since its inception, Muslim legal theory never had a real impact upon determining juristic outcomes. Rather, it came into existence merely to offer systematic justifications to pre-occurring juristic deductions and prominent social practices of the formative Muslim society.¹⁷ Although this may be true, orthodox Shi'ite Uṣūlīs (such as the aforementioned Muḥammad Bāqir al-Ṣadr) continue to describe legal theory as a discipline that provides general principles whose application ensures the correct juristic deduction of Sharia knowledge.¹⁸ Moreover, as a graduate of a Shi'ite-seminary programme, I have personally witnessed numerous classes, seminars, and workshops wherein clerics make reference to concepts discussed in legal theory to support and justify their juristic opinions.

In chapter 1, I trace the origins and major developmental stages of Shi'ite legal theory across its formative, medieval, and modern periods of history. By largely focusing on secondary English literature, I examine how, after the major occultation of the Twelfth Shi'ite Imam, Shi'ite jurists-cum-theologians constructed a systematic discourse of legal theory that countered essential questions of how Sharia knowledge is accessed in the absence of infallible leadership, and who has the authority to access it. This chapter attempts to show that the creation of a sophisticated, yet reasonably comprehensive, legal theory has been a key feature that ensures that the clerical class of rationalist jurists continues to represent the voice of Shi'ite orthodoxy. In the final part of this chapter, I underline some prominent modern jurists-cum-theologians whose works on legal theory shape the orthodox discourse of Shi'ite legal epistemology. Using their respective works as primary sources, I explain how they understand the remit of legal theory (or the subject matter of *uṣūl al-fiqh*) and conceptually describe the important notion of authoritativeness (*hujjiyya*). Based on this, they effectively construct a legal epistemology that determines the evidence that can be utilised in the juristic deduction of Sharia knowledge (or *ijtihād*).

I present the first epistemological underpinning, known as '*adam al-hujjiyyat al-zann*' or 'the non-authoritativeness of conjecture,' in chapter 2.

17 For instance, see Schacht, *An Introduction to Islamic Law* 60; Sherman A. Jackson, "Fiction and Formalism: Towards a Functional Analysis of *Uṣūl al-Fiqh*" in Bernard G. Weiss (ed.) *Studies in Islamic Legal Theory* (Leiden: Brill, 2002), 178. Hallaq, "*Uṣūl al-fiqh*: Beyond tradition".

18 For instance, see Ṣadr, *Durūs*, 1:42–43; Rūḥallāh al-Khumaynī, *al-Rasā'il al-Ashra*, 3–4; Abū Qāsim al-Khū'ī, *Mabānī al-Istinbāt*, 1:4–9; Muḥammad Riḍā al-Muẓaffar, *Uṣūl al-Fiqh*, 2 vols. (Qum: Maktab al-Ā'lām al-Islāmī, 1964), 1:15–19, 2:15–18; Muḥammad Ḥusayn al-Iṣfahānī, *Nihāyat al-Dirāya fī Sharḥ al-Kifāya*, 1:39–40.

In accordance with this underpinning, it is impermissible for a jurist to utilise any evidence that generates conjectural (*ẓanni*) knowledge of Sharia in *ijtihād*. This underpinning is normally upheld as a distinctive core pillar of modern Uṣūlī legal theory. I start this chapter by explaining that modern Uṣūlīs understand the nature of conjecture in relation to their understanding of certainty. Thereafter, I examine the range of scriptural and contrasting rational arguments they offer to prove the non-authority of conjecture and thereby the impermissibility of the juristic utility of evidence that generates conjectural Sharia knowledge.

In chapter 3, I present the second epistemological underpinning of Shi'ite legal theory, known as '*ḥujjiyyat al-qaṭ'*' or 'the authoritativeness of certainty.' In accordance with this underpinning, a jurist must utilise any evidence that generates certainty-bearing or definitive (*qaṭ'*) knowledge of Sharia in the process of *ijtihād*. I divide this chapter into three parts. In the first part, I uncover how modern Uṣūlīs generally define certainty (*qaṭ'*) and describe its epistemological relationship with knowledge (*ilm*). In the second part, I critically evaluate the philosophical or epistemological justifications modern Uṣūlīs present to defend their claim that certainty (or evidence that generates definitive knowledge of Sharia), by its very existential nature, accurately reflects that which is in the Mind of God or objective reality (*wāqī'*). Based on their understanding of the existential nature of certainty, in the final part of this chapter, I present the range of arguments modern Uṣūlīs offer to formulate the authoritativeness of certainty (or definitive forms of evidence) in the deduction of Sharia and the obligatory nature (*wujūb*) of its juristic utility in *ijtihād*.

The final epistemological underpinning, known as '*ḥujjiyyat al-ẓann al-mu'tabar*' or 'the authoritativeness of substantiated conjecture,' is presented in chapter 4. In accordance with this underpinning, a jurist can deduce Sharia knowledge from conjectural forms of evidence whose authoritativeness is substantiated or sanctioned by God. In this chapter, I illustrate that despite upholding the general non-authoritativeness of conjecture, Uṣūlīs profess to two distinct theories that they claim, if applied correctly, can substantiate the authoritativeness of some conjectural forms of evidence and reveal that God approves their juristic utility in *ijtihād*. I divide this chapter into two parts. The first part introduces readers to the theory of *insidād*. According to this theory, unless proven prohibited by a definitive evidence, a jurist is permitted to utilise any form of evidence that generates conjectural knowledge of Sharia. In the second part, I introduce readers to the contrasting theory of *ẓann al-khāṣṣ*. According to this theory, unless proven permissible by definitive evidence, a jurist is prohibited to utilise any form of evidence that generates

conjectural knowledge of Sharia. Since the latter theory is profoundly advocated amongst modern Uṣūlīs, in the final section of second part I demonstrate how Muḥammad Riḍā Muẓaffar (d. 1964) in his *Uṣūl al-fiqh* attempts to substantiate the juristic utility of one of the most important and wildly utilised conjecture-generating forms of evidence – *al-khabar al-wāḥid*, or the ‘isolated report’ – that conveys the tradition (*sunna*) of the Prophet and Shi‘ite Imams.

As a Shi‘ite Muslim brought up in the West, I have been fortunate enough to receive two forms of education: orthodox Shi‘ite seminary (*Hawza*) and western academic. I have also directly experienced many theoretical and practical instances that emphasise the dichotomy between the orthodox understanding of Sharia and values promoted by, and within, western standards of modernity. Coming from an insider’s perspective, in chapter 5 I critically evaluate the central epistemological assumption which modern Uṣūlī legal epistemology hinges upon. I explore whether there is space and precedence within the rationalist discourse of Shi‘ite legal theory to adopt an alternative epistemological assumption (or epistemology) that facilitates Shi‘ite orthodoxy to display greater dynamism in the way it responds to inevitable challenges of modernity and analyse the potential impact this can have on the future of *ijtihād* and Shi‘ite authority structures.

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As I mention in the book, by the grace of the Almighty, I have been fortunate enough to receive two forms of education. I completed a traditional seminary (*hawza*) programme at Al-Mahdi Institute in Birmingham, UK, and I also undertook my postgraduate studies at the University of Warwick. The training I received from both these institutions enabled me to gain invaluable insights into how to analytically read and write about classical Islamic texts, particularly in the fields of Islamic legal studies (*uṣūl al-fiqh* and *fiqh*), theology, and philosophy. The book is closely based on my doctoral research, which I conducted under the supervision of Professor Shaheen Sardar Ali at the University of Warwick. In the book, I attempt to critically present the seminarian discourse of Islamic legal epistemology using an academic framework of writing and analysis.

It would not have been possible for me to embark on this project without the unwavering support and assistance that was provided to me at Al-Mahdi Institute. I am indebted to all my teachers and colleagues, both for encouraging me and for equipping me with the skillset required to understand classical Arabic seminary texts. I am exceptionally grateful to my uncle and mentor, Shaykh Arif Abdul Hussain, who spent numerous nights sitting by my side to teach me complicated excerpts from *Kifāyat al-uṣūl* and *Farā'id al-uṣūl*. This endeavour would also have not been possible without the help and guidance I received from Professor Mohammad Ghari Seyed Fatemi, Dr Abolqasem Fanaei, and Dr Ali-Reza Bhojani. I would also like to acknowledge the librarians at Al-Mahdi Institute, Mohsen Najafi and Adam Ramadhan, for finding and providing me with access to rich resources. A special thanks to Mr Sajjad Ebrahim, for patiently bearing with me over the many years it took for this book to be published.

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