# THE SIGNIFICANCE OF MUḤAMMAD SHAḤRŪR'S SCIENTIFIC-HISTORICAL METHOD IN CONTEMPORARY ISLAMIC LEGAL THEORY (*UṢŪL AL-FIQH*)

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## Abstract

The determination and application of Islamic legal rulings without causing turmoil in the modern world result in challenges continuing to be discussed. Since the methods for establishing modern Islamic law are not appropriately revised, the proposed measures tend to fail. The article examines the significance of upgrading the legal theory of Islamic law, known as the discipline of *uṣūl al-fiqh*. The theoretical upgrade is manifested in the application of both a critical-historical method and a scientific-historical method, the application of multiple contemporary academic approaches drawn from the humanities, social and positive sciences in addition to traditional religious knowledge and opinions from classical scholars. The issue of upgrading the discipline of *uṣūl al-fiqh* through the application of the

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scientific-historical method requires convincing scholars of the idea that the scientific-historical method is a prospective and integrative method for the contemporary discipline of *uṣūl al-fiqh*. The scientific-historical method is considered a new method in the discipline of *uṣūl al-fiqh* for three reasons. In the first instance, it is compatible with the principles of scientific democracy or pluralism (applying multiple approaches in problem-solving and adjudication). In the second instance, it is suitable for the demands of modern societies. In the third instance, it is suitable for the structure of modern states. In terms of the contemporary discipline of *uṣūl al-fiqh*, the article emphasizes the significance of Shaḥrūr's scientific-historical method in creating modern Islamic law. Nonetheless, the article still does not incorporate a concrete definition of Shaḥrūr's limits (*ḥudūd*) and does not provide examples of the use of the scientific-historical method in solving problems (e.g., eradicating legal corruption and promoting law enforcement in the Muslim world). Future studies may focus on the definition of Shaḥrūr's *ḥudūd* and the implementation of his scientific-historical method in solving problems of contemporary Islamic law.

Key Words: Scientific-historical method, Muḥammad Shaḥrūr, modern Islamic law, the state

## Introduction

Paradigmatic studies[1] of Islamic legal theory (*uṣūl al-fiqh*) are limited, but it is necessary to establish an Islamic legal system that is dynamic and applicable in the context of modern societies and modern nation-states as once proposed by Muḥammad Iqbal (d. 1938).[2] Wael B. Hallaq categorizes approaches towards this study into two groups: religious utilitarianism and religious liberalism.[3] The first group relies on the principle of the public interest (*maṣlaḥah*) revived by Abū Isḥāq al-Shāṭibī (d. 790/1388). The second group

[1] In the history of science, the term "paradigm" is a term popularized by Thomas Kuhn. Although Kuhn did not concretely define the term, the reviewers of Kuhn's work can conclude that in Kuhn's view, a paradigm consists of theories, methods, facts, and experiments that have been mutually agreed upon and become a guide for the scientific activities of scientists. George Ritzer, *Sociological Theory*, 4th ed. (New York & Toronto: The McGraw-Hill Companies, inc., 1995), 635-637.

[2] Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Javid Iqbal, 1971), 162.

[3] Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997), 214-231.

reposes on liberal ideas in the discipline of *uṣūl al-fiqh* that include the initiatives of Muḥammad Shaḥrūr (d. 2019). Unfortunately, according to the conclusions drawn by Hallaq, the Muslim world is more interested in the first group and tends to reject the opinions of the second group. The reason for this is none other than the idea that the second group is considered to have no foundation in the traditional *uṣūl al-fiqh* discipline.[4] The term "traditional" here refers to a general terminology in the sociology of science[5] that includes the theories or paradigms based on classical ways of thinking.[6]

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[4] The author assumes that the traditional *uṣūl al-fiqh* discipline is the old *uṣūl al-fiqh* discipline that relies on textualism, or literalism, that includes al-Shāṭibī's utilitarianism. The evidence of literalism and utilitarianism can be seen in the primary sources of the *uṣūl al-fiqh* discipline. Abū l-Ḥusayn al-Baṣrī, *al-Muʿtamad*, ed. Khalīl al-Mays (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2005), I, 9-333; al-Juwaynī, *al-Burhān fī uṣūl al-fiqh*, ed. Ṣalāḥ ibn Muḥammad ibn ʿUwayḍāt (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1997), I, 39-214; Muḥammad Abū Zahrah, *Uṣūl al-fiqh* (Cairo: Dār al-Fikr al-ʿArabī, 1958), 139-184, 364-379; ʿAbd al-Wahhāb Khallāf, *ʿIlm uṣūl al-fiqh* (Kuwait: Dār al-Qalam, 1978), 140-197, 197-216; al-Ghazālī, *al-Mustaṣfá*, ed. Muṣṭafá Abū l-ʿIlā (Cairo: Maktabat al-Jund, 1971), 260-393; al-Shāṭibī, *al-Muwāfaqāt fī uṣūl al-sharīʿah*, ed. al-Shaikh Ibrāhīm Ramaḍān (Beirut: Dār al-Maʿrifah, 1997), III, 5-77; al-Shāfiʿī, *al-Risālah*, ed. Aḥmad Muḥammad Shākir (Beirut: Dār al-Fikr, 1309), 21-73; Wahbah al-Zuḥaylī, *Uṣūl al-fiqh al-Islāmī* (Damascus: Dār al-Fikr, 1986), I, 195-414.

[5] Prior to 1931, the sociology of science was called the sociology of knowledge. However, on the initiative of Boris Hessen and Robert K. Merton, the sociology of knowledge was transformed into the sociology of science on the grounds that science develops faster than knowledge and the rapid progress of science cannot be separated from the social context, assumptions, values, and hidden interests of scientists and the general public. Randall Collins, "Development, Diversity, and Conflict in the Sociology of Science," *The Sociological Quarterly* 24 (1983), 185-200; Mark Erickson, "Homer in the Laboratory: A Feyerabendian Experiment," *Sociology of Science, Social Epistemology* 32, no. 2 (2018), 128-141, https://doi.org/10.1080/02691728.2017.1410865; Ilya Kasavin, "Towards a Social Philosophy of Science: Russian Prospects," *Social Epistemology* 31 (2016), 1-15, http://dx.doi.org/10.1080/02691728.2016.1227389; Elif Kale-Lostuvali, "Two Sociologies of Science in Search of Truth: Bourdieu Versus Latour," *Social Epistemology* 30, no. 3 (2016), 273-296, http://dx.doi.org/10.1080/02691728.2015.1015062; Martin Fleischmann, "Reflections on the Sociology of Science and Social Responsibility in Science in Relationship to Cold Fusion," *Accountability in Research* 8, no. 1-2 (2000), 19-54, http://dx.doi.org/10.1080/08989620008573964; Jeffrey Tang, "How Do We Know? What Intelligence Analysis can Learn from the Sociology of Science," *Intelligence and National Security* 32, no. 5 (2017), 663-674, http://dx.doi.org/10.1080/02684527.2017.1311473.

[6] F. Budi Hardiman, *Kritik-Ideologi: Menyingkap Kepentingan Pengetahuan Bersama Jurgen Habermas* (Yogyakarta: Buku Baik, 2003), 52-60; Franz Magnis-Suseno, *Filsafat sebagai Ilmu Kritis* (Yogyakarta: Kanisius, 1992), 179-180.

Considering that scholars have labeled the traditional *uṣūl al-fiqh* discipline as a standardized closed system, the reasons for rejecting liberal ideas are understandable. The traditional *uṣūl al-fiqh* discipline always refers to the four main books, namely: *al-ʿAmd* (some authors refer to it as *al-ʿAhd*) by al-Qāḍī ʿAbd al-Jabbār (d. 416/1025), *al-Muʿtamad* by Abū l-Ḥusayn al-Baṣrī (d. 436/1044), *al-Burḥān* by Ḍiyāʾ al-Dīn ʿAbd al-Malik ibn Yūsuf al-Juwaynī (d. 478/1085), and *al-Mustaṣfá* by Abū Ḥāmid Muḥammad ibn Muḥammad al-Ṭūsī al-Ghazālī (d. 505/1111). Ideas contradicting these four books are considered subversive activities rather than positive contributions.[7] However, if the traditional *uṣūl al-fiqh* discipline always rejects reform initiations, Islamic law may be marginalized from the society and the structure of the modern state or nation. The gate of *ijtihād*, therefore, is open for them forever.

Establishing or developing a new method is almost necessary from the scientific sociology perspective.[8] If a method or science no longer allows itself to be criticized and developed, it means that it has been incarcerated by an ideology,[9] or it has even turned into an ideology, not a science. This can be considered a "death knell" for a scientific discipline. The survival and dynamic enhancement of a scientific discipline are connected to its avoidance of ideological obstacles. Each science needs to develop under the dynamics of public circumstances and changes. As for *uṣūl fiqh* discipline, this understanding will be beneficial for Islamic law (*fiqh*) that engages in the real problems of modern society by simultaneously transmitting the divine message from God. The article examines the significance of Shaḥrūr's scientific-historical method in developing a contemporary *uṣūl al-fiqh* discipline through the approach of the sociology of science. It, therefore, is engaged in the question of why the scientific-historical method in the contemporary *uṣūl al-fiqh* discipline is significant in establishing modern Islamic law. In

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7 ʿAbd al-Raḥmān Ibn Khaldūn, *Muqaddimah* (Beirut: Dār al-Fikr, n.d.), 455; Muḥammad Muṣṭafá Shalabī, *Uṣūl al-fiqh al-Islāmī* (Beirut: Dār al-Nahḍah al-ʿArabiyyah, 1986), 41-42; Aḥmad Ḥuṣarī, *Naẓariyat al-ḥukm wa-maṣādir al-tashrīʿ fī uṣūl al-fiqh al-Islāmī* (Cairo: Maktabat al-Kulliyyāt al-Azhariyyah, 1981), 16.

8 Van Peursen, *Susunan Ilmu Pengetahuan*, trans. J. Drost (Jakarta: Gramedia, 1980), 6-7.

9 *Ibid*., 74.

suggesting that the scientific-historical method can establish modern Islamic law, the article provides a rational and empirical argument.

The literature review method is applied throughout the research, and the primary information is taken from *uṣūl al-fiqh* sources. Meanwhile, secondary sources are directly or indirectly related to the discipline of *uṣūl al-fiqh* and the sociology of science. The data collection and documentation methods are also used to examine primary and secondary documents. The collected information was analyzed using the sociology of science approach as stipulated by Jürgen Habermas. This approach pays attention to the dominant theory and paradigm of science and observes the social context that underlies it. The approach also asserts that science is nothing but the result of a social contract between scientists. Science seems to encourage changes and developments regarding the demands of social situations and conditions.[10] Habermas explains that this is a single approach through self-reflection to notice the relationship between science and human interest or, in other words, the relationship between objectivity and subjectivity. Finding this relation makes science more critical, dynamic, contextual, and liberating.[11] Shaḥrūr's thought is beneficial to contextualize *uṣūl al-fiqh* in the modern world in producing legal solutions for contemporary issues and challenges that include democracy and citizenship.

The article intends to provide insight into developing a new method in the contemporary *uṣūl al-fiqh* discipline. The discipline of *uṣūl al-fiqh*, along with the enhancements of contemporary Muslim society, is in dire need of developments that are more dynamic and compatible with time.

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[10] Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (London: Penguin Books Ltd., 1991), 7-32; Peter L. Berger and Thomas Luckmann, *Tafsir Sosial atas Kenyataan: Risalah tentang Sosiologi Pengetahuan (The Social Construction of Reality)*, trans. Hasan Basari (Jakarta: LP3ES, 1990), 3-4; Gregory Baum, *Agama, dalam Bayang-bayang Relativisme: Sebuah Analisis Sosiologi Pengetahuan Karl Mannheim tentang Sintesa Kebenaran Historis-Normatif (Truth Beyond Relativism: Karl Mannheim's Sociology of Knowledge)*, trans. Aḥmad Murtajib Chaeri (Yogyakarta: PT. Tiara Wacana, 1999), 39-0, 60-8.

[11] Jürgen Habermas, *Knowledge and Human Interest*, trans. Jeremy J. Shapiro. (Boston: Beacon Press, 1971), 301-315.

## 1. The Urgency of a New Paradigm in the Discipline of *Uṣūl al-fiqh*

Since the mid-19th century, there have been reform initiatives regarding Islamic law. These reform initiatives brought out the establishment of the *Tanẓīmāt* program in the Ottoman Sultanate in 1255/1839. This program led to the announcement of *Majallah-ʾi Aḥkām-i ʿAdliyyah*, which was the first codification attempt of Islamic civil law and which was completed from 1285/1868 to 1306/1889. However, the reform attempts to put more emphasis on the application of existing Islamic law (which had been formulated by the preceding scholars [*fuqahāʾ*]) to the structure of modern society rather than the establishment of modern Islamic law. In other words, the reform was implemented at the branch (*furūʿ*) level (e.g., Islamic family law or inheritance law), not at the main (*uṣūl*) level (e. g., building a new *uṣūl al-fiqh* in the context of modern democratic-state). To put an example, the issues were not paid attention to the implementation of religious freedom and application of the Qurʾānic punishments that include corruption, apostasy, and oligarchy in politics and economy. The reform has never fundamentally completed because the theoretical foundations of Islamic law or the discipline of *uṣūl al-fiqh* (which was established in pre-modern times) generally focused on principles in literally interpreting the Qurʾān and the Sunnah. The result of the reluctant reform policy indispensably produced a modified system of the old law, not a wholly renovated legal system. While responding to the critiques against his first book, *al-Kitāb wa-l-Qurʾān*, Shaḥrūr states that the critics are only constructing old paradigms by disguising those paradigms in "new clothes." The applied knowledge system remains the old system. Therefore, scholars' initiatives cannot be considered beneficial since they rely on those old paradigms.[12]

The codification, which has been seen as the main trend for modern Islamic law, is a modification tool and is not a design tool that produces truly modern Islamic law. The new paradigm of *uṣūl al-fiqh* is an urgent necessity. Muḥammad ʿĀbid Al-Jabirī (d. 2010) states:

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[12] Muḥammad Shaḥrūr, *Dirāsah Islāmiyyah muʿāṣirah fī l-dawlah wa-l-mujtamaʿ* (Damascus: al-Ahālī li-l-Ṭibāʿah wa-l-Nashr wa-l-Tawzīʿ, 1994), 34.

> In fact, the "adjustment" measures on the surface have come to an end… What is required today in the field of shariʿa is to do what the Ashʿarite philosophers [Fakhr al-Dīn al-Rāzī (d. 606/1210), for example] have done in the field of *aqīdah*, namely, reconstructing the method of thinking in shariʿa with reference to new propositions and contemporary goals. In other words, what is demanded now is a reform that refers not to merely initiating *ijtihād* over the branches (*furūʿ*) of Islamic Fiqh but to constructing principles (*taʾṣīl al-uṣūl*) by reconstructing those principles. The starting point of our time is the necessity of honing the reasoning skills of the *mujtahid* and reconstructing that reasoning. Without new reasoning, it is impossible to perform new *ijtihād*.[13]

It is crucial to separate *uṣūl al-fiqh* from the textualist paradigm and to rebuild it with a new paradigm because the existing *uṣūl al-fiqh* is the result of the interpretation of scholars (*ʿulamāʾ*) in the early Abbasid period (132/750) and afterward. The socio-political situation at that time, which tended to be tyrannical and not very democratic, greatly influenced the nuances of contemporary science. Now, the socio-political situation has become democratic in some relevant regions. The textualist method is no longer sufficient to meet the demands of the times. The principles of *uṣūl al-fiqh* should therefore change under the demands of the principle of *maṣlaḥah* in each era. Al-Jābirī wrote:

> The principles of *uṣūl* that underlie *fiqh* now refer to the period of Islamic literature and sciences, the early Abbasid period, and may also refer to literature in the periods after. As for before the period of literature, there were no outlined rules that framed the idea of *ijtihād* as happened after. The *fiqh* experts who made these rules in their practice of *ijtihād* were born from the dominant knowledge system in their time and from the various needs and *maṣlaḥah* that emerged at that time. Because our era is radically different from the era of Islamic literature, either at the level of method or *maṣlaḥah*, it is imperative to

[13] Muḥammad ʿĀbid al-Jābirī, *Democracy, Human Rights and Law in Islamic Thought* (London: I. B. Tauris & Co. Ltd., 2009), 63-103; al-Jābirī, *Agama, Negara, dan Penerapan Syari'ah*, trans. Mujiburrahman (Yogyakarta: Fajar Pustaka Baru, 2001), 148-149.

pay attention to this difference and try to answer the questions posed and imposed (by this era).[14]

In addition, according to Muḥammad Iqbal, the people need comprehensive and definite intellectual works that enable Islamic law to evolve following the needs of the times. This adjustment was made by ʿUmar ibn al-Khaṭṭāb (d. 24/644), the second caliph, and he contextualized the Qurʾānic punishment relating to cutting the thief's hand in the famine time.[15]

The textualist and utilitarian paradigms in the classical *uṣūl al-fiqh* discipline are historical products of the previous scholars constructed under the needs of that time.[16] Since the fall of Baghdad (656/1258), the dark age and the decline of the Muslim civilizations have resulted in scholars transforming the discipline of *uṣūl al-fiqh* into a mere doctrine that cannot guide them in formulating new *fiqh* and new ideas. In fact, it transformed into dogmatism and brought out a set of incremental views that developed as complicated as *fiqh* itself.[17] This discipline has not, therefore, satisfied the needs of people in the modern era, especially in the field of legislation that includes politics, economy, and penal law.[18] The idea of providing guidance turned out to be unsuitable for the needs of modern people, considering that it was created with the influence of the historical situation in which it was developed and was even influenced by the characteristics of the contemporary demands of Islamic jurisprudence.[19] When *uṣūl al-fiqh* is applied in the present, the discipline will face methodological

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[14] *Ibid*., 172-173.

[15] Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam*, ed. M. Saeed Sheikh (California: Stanford University Press, 2012), 129.

[16] Muḥammad Shaḥrūr, *Naḥwa uṣūl jadīdah li-l-fiqh al-Islāmī* (Damascus: al-Ahālī li-l-Ṭibāʿah wa-l-Nashr wa-l-Tawzīʿ, 1994), 172; Ḥasan al-Turābī, *Qaḍāyā l-tajdīd: naḥwa manhaj uṣūlī* (Khartoum: Maʿhad al-Buḥūth wa-l-Dirāsāt al-Ijtihādiyyah, 1990), 195; id., *Pembaharuan Ushul Fiqh (Tajdīd uṣūl al-fiqh al-Islamī),* trans. ʿAfīf Muḥammad (Bandung: Penerbit Pustaka, 1986), V, 10.

[17] Al-Turābī, *Pembaharuan Ushul Fiqh*, trans. ʿAfīf Muḥammad (Bandung: Penerbit Pustaka, 1986), 9.

[18] Some experts evidence that Islamic law has implemented properly in the modern society; however, the implementation process has limitations in some part of public laws. The need for developing of Islamic legal theory therefore is still relevant today. See: Emine Enise Yakar, *Islamic Law and Society; The Practice of Iftāʾ and Religious Institutions* (London and New York: Routledge, 2022), 23, 74, 123.

[19] Al-Turābī, *Qaḍāyā l-tajdīd*, 195; id., *Pembaharuan Ushul Fiqh,* V, 10.

problems due to the time-space factor – this is the current complexity in the discipline of *uṣūl al-fiqh*. Al-Jābirī is one of the scholars who reveals this concern. He observes:

> At present, the needs and concerns about the rules and methods that the *fiqh* and *uṣūl* scholars of the past have defined are very different from what these scholars imagined. The resolution of the concerns and problems in our period demands that we transcend the methodological limitations that bound the religious sciences in the past by interacting with them flexibly and viewing them from the point of view of relativity and historicity.[20]

In line with al-Jābirī, Shaḥrūr also alludes to the urgency of formulating a new paradigm in the discipline of *uṣūl al-fiqh,* and he states:

> We have discussed the problems that exist in the *turāth*s books…, but the problem lies not in the books, but in the *uṣūl* that was constructed since the second century AH… In our opinion, there must be a reconstruction of *uṣūl* based on the roots used as the basis by *salafī* scholars, as shown in their words and writings.[21]

Long before al-Jābirī and Shaḥrūr, Ḥasan al-Turābī (d. 2016) referred to the necessity of an effective solution for the methodological ambiguity (*al-ibhām al-manhajī*) which afflicts the discipline of *uṣūl al-fiqh* today. In his view, the discipline of *uṣūl al-fiqh* needs to be reconstructed by establishing a link between the transmission (*naql*) or revealed scripture (Qur'ān and Sunnah) and rational sciences that continuously develop following scientific research.[22]

In al-Turābī's view, the discipline of *uṣūl al-fiqh*, like other Islamic disciplines, has lost its connection with the actual reality of society.[23] This scientific discipline, therefore, experiences what Thomas Kuhn (d. 1996) calls anomalies that eventually engender ossified crises[24] or –borrowing a term from Jurgen Habermas–experiences a disconnect with practical human interests.[25] It can therefore be asserted that the

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[20] Al-Jābirī, *Negara, Agama, dan Penerapan Syari'ah,* 6.
[21] Shaḥrūr, *Naḥwa uṣūl jadīdah,* 171.
[22] Al-Turābī, *Qaḍāyā l-tajdīd*, 191; Muḥammad al-Ṭāhir al-Mīsāwī, "Qaḍāyā l-tajdīd: naḥwa manhaj uṣūlī," *al-Tajdīd* 1, no. 2 (1997), 200.
[23] Al-Turābī, *Qaḍāyā l-tajdīd*, 133-134.
[24] *Ibid.,* 135.
[25] Habermas, *Knowledge and Human Interest*, 301-317.

paradigms of *uṣūl al-fiqh* need to be renewed in the context of reforming Islamic law (*sharīʿah*). Islamic law will not be renewed from outside (based on other sources), nor will it be superseded by a new one. However, it will be renewed from within the same sources but with a new understanding or a new method of application in accordance with the current time.[26] The renewal of *uṣūl al-fiqh* will be a remedy to invigorate the understanding of Islamic law and its application in modern life.

Over time, regulations regarding social life have disregarded changing realities and circumstances. The methodologist's (*uṣūlī*) understanding has mostly been neglected and not developed properly. A new paradigm in *uṣūl al-fiqh* should therefore be established to construct Islamic law that is more serviceable in regulating daily life and takes individual and social circumstances into account.[27] The influence of the scholars who stay away from the problems of public life is that the existing Islamic legal theory only revolves around the issues that include text interpretation, confirmation, selection (*tarjīḥ*), identification of implicit or explicit arguments in the text (*mafhūm muwāfaqah*, and *mafhūm mukhālafah*).[28] However, Islamic law and the discipline of *uṣūl al-fiqh* need to develop dynamically to offer solutions for practical social challenges.[29] A new paradigm in the discipline of *uṣūl al-fiqh* should therefore be eliminated from ideological and dogmatic restraints and provide a framework to formulate public *fiqh* that engages with the demands of modern times.[30]

The discourse on the closing of the gate of *ijtihād* (independent legal reasoning) was nothing but the inability to perform *ijtihād* because the old paradigm in the discipline of *uṣūl al-fiqh* was obsolete and was ideologically trapped. Al-Jabirī refers to the dysfunction that roots in the understanding of closing the gate of *ijtihād*, and he states:

> The specific problems of the past, although similar, were limited or possible to be limited; the *sharīʿah* texts (the Qurʾān and Sunnah) are

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26 Al-Turābī, *Qaḍāyā l-tajdīd*, 53-55.
27 Al-Turābī, *Pembaharuan Ushul Fiqh (Tajdīd uṣūl al-fiqh al-Islāmī)*, 15.
28 *Ibid*., 12.
29 *Ibid*., 1.
30 *Ibid*., 19-3.

> also limited, and similarly, *ijtihād* understands the words and the limits of instruction from those texts..., eventually and inevitably, it will reach the point where nothing else remains, and then the obvious result is that the opportunity for *ijtihād* will be "closed," but not "closed" [intentionally] as people say. o one in the Islamic world has the power to "close" the gate of *ijtihād*, be it rulers, *fiqh* experts, or others because, in Islam, there is no church or any institution that has the power to "close" or "open" opportunity for *ijtihād*...[31]

It can be asserted that the opportunity to perform *ijtihād* is never demised. However, the period of dynamic reasoning deteriorated during the political turmoil after the collapse of the Ottoman Sultanate, the dominant power in the Muslim world, in 1340/1923. Some scholars tried to conceptualize new methods of *ijtihād* through the available paradigm of Islamic legal theory. For example, Ṭāhā Jābir al-ʿAlwānī schemed the theory of Islamic jurisprudence for Muslim minorities (*fiqh al-aqalliyyāt*).[32] However, his approach cannot provide an effective solution to the problem that originates in the disconnection between Islamic law and the concept of the modern state. Islamic jurisprudence for Muslim minorities is only a temporary solution to permanent problems in implementing Islamic law within the modern state structure. It, therefore, is necessary to formulate a new paradigm or, borrowing a term from Habermas, a criticism of science as an ideology. Therefore, the current status of Islamic law needs to construct a new paradigm. This is what is commonly called *uṣūl* reconstruction (*taʾṣīl al-uṣūl*) or redesigning the principles of Islamic law. Al-Jabirī observes:

> What is required today is to reconstruct the methodology of thinking in the shariʿa concerning new propositions and contemporary "goals". In other words, what is demanded now is a reform that refers not to merely initiating *ijtihād* over the branches (*furūʿ*) [of *fiqh*] but to a measure "to construct principles," that is, to reconstruct the principles.[33]

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[31] Al-Jābirī, *Agama, Negara, dan Penerapan Syari'ah*, 152-153.

[32] Emine Enise Yakar and Sumeyra Yakar, "The Critical Analysis of Taha Jabir al-Alwani's Concept of Fiqh al-Aqalliyyāt," *Hitit İlahiyat Dergisi* 20, no. 1 (2021), 377-404.

[33] Al-Jābirī, *Agama, Negara, dan Penerapan Syari'ah*, 158.

## 2. The Failure of the Literalistic Paradigm and the Utilitarian Paradigm

In the sociology of science, an exemplar is generally accepted as a scientific discovery. Exemplars can be in the form of tangible habits, accepted scientific premises, tangible results of scientific developments, and generally accepted findings.[34] Exemplars, therefore, are discoveries or tangible works in a field of science that contain certain unique paradigms and that are recognized by interested scientists.

Based on the paradigmatic view, three sources meet the criteria in the theological school (*mutakallimūn*) of *uṣūl al-fiqh*. The three sources are *al-Risālah* by al-Shāfiʿī, *al-Muwāfaqāt* by al-Shāṭibī, and two books by Shaḥrūr, namely, *al-Kitāb wa-l-Qurʿān* and *Naḥwa uṣūl jadīdah li-l-fiqh al-Islāmī*. The first source, *al-Risālah*, proposes the textualist or literalist paradigm (*naṣṣ*). [35] The second source, *al-Muwāfaqāt*, proposes the utilitarian paradigm (*al-maṣlaḥah*). On the other hand, the third sources, *al-Kitāb wa-l-Qurʿān,* and *Naḥwa uṣūl jadīdah li-l-fiqh al-Islāmī*, supports the scientific-historical paradigm (*al-tārīkhī al-ʿilmī*).

In the course of the history of Islamic law, *al-Risālah* was considered the first pioneering book on the discipline of *uṣūl al-fiqh*, especially in the *mutakallimūn* school. *Uṣūl* scholars then followed *al-Risālah* that applied the theological-deductive method in writing that was common amongst the Shafiʿī, Mālikī, Ḥanbalī, and Muʿtazilī schools. Meanwhile, Ḥanafī scholars had a way of writing, which was inductive-analytical. Both *al-Risālah* and *uṣūl al-fiqh* books of the *mutakallimūn* school and the Ḥanafī school presented the same textualist paradigm. This paradigm lasted approximately five

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[34] Ritzer, *Sosiologi Ilmu Pengetahuan Berparadigma Ganda*, 5-6.

[35] The author adopts the term "the literalist paradigm" from H. A. R. Gibb. According to Gibb, the orthodox conception of science emphasizes a narrow and literalist conception of science (*ẓāhirī*, textual). Pre-modern Islamic scholars pay great attention to this kind of paradigm of "letteralism." Please view and compare: al-Jābirī, *Binyat al-ʿaql al-ʿArabī* (Beirut: al-Markaz al-Thaqāfī al-ʿArabī, 1992), 20, 38, 113, 117, 252, 383-4, 515, 530-1, 556; id., *Takwīn al-ʿaql al-ʿArabī* (Beirut: al-Markaz al-Thaqāfī al-ʿArabī, 1993), 24, 96-8, 100-339, 338-9; Bernard Weiss, *The Search for God's Law: Islamic jurisprudence in The Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 1992), 72, 45; H. A. R. Gibb, *Aliran-aliran Modern dalam Islam* (Jakarta: Rajawali Press, 1996), 111.

centuries, from the second century AH to the seventh century AH (8th to 13th CE). The textualist paradigm (which is called *al-bayān* or *bayānī* paradigm by al-Jābirī) is a way of thinking based on the texts either directly or indirectly.[36] The textualist paradigm is the typical product of Arab Muslims, just as philosophy is the typical product of the Greeks. Modern science and modern technology are the typical products of modern Europeans.[37] The textualist paradigm, in the end, also engendered a distinctive tradition, namely, the tradition of full comprehension (*al-fiqh*) in Islam.[38]

Historically, the textualist paradigm adhered to the textual meaning (*ẓāhir*) of the texts has its roots in the period that starts with Abū l-Walīd Muḥammad ibn Aḥmad ibn Rushd (d. 594/1198) and culminates in Abū Muḥammad ʿAlī ibn Aḥmad ibn Saʿīd ibn Ḥazm al-Ẓāhirī (d. 456/1064). This textualist tendency was formulated by Abū ʿAbd Allāh Muḥammad ibn Idrīs al-Shāfiʿī (d. 204/820), the founder of the discipline of *uṣūl al-fiqh*. It can also be assumed that al-Shāfiʿī is the real founder of the textualist paradigm.[39] The means used in the textualist paradigm are Arabic grammatical rules, while the target is the text of the Qurʾān and Sunnah.

As for the *maṣlaḥah* paradigm, it is a way of thinking in the discipline of *uṣūl al-fiqh* that adheres to the intention behind a text which is not a clear (*ẓāhir*) text. This tendency has its roots in the tradition that developed after Ibn Rushd, especially on the initiatives of al-Shāṭibī.[40] When a *ẓāhir* text has been unable to relatively solve new problems, the scholars adhere to the intention behind the text. The presence of al-Shāṭibī, who proposed the principle of *maqāṣid al-sharīʿah*, has provided a new way of thinking for the discipline of

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[36] "Directly" means to immediately perceive the text as ready-made knowledge. "Indirectly" means to do reasoning based on the text. In other words, this paradigm assumes that the source of knowledge is *naṣṣ* (text) or reasoning based on *naṣṣ*. Reason will not be able to provide knowledge, unless it is based on text. Al-Jābirī, *Binyat,* 20, 556.

[37] *Ibid*., 96-98; al-Jābirī, *Takwīn*, 338-339.

[38] Because it makes *naṣṣ* as a central source of knowledge, the tradition of comprehending and clarifying the meaning of the text becomes very prominent in this paradigm. This tradition is commonly known as *fiqh* tradition. Seeking knowledge by means of liberal speculative thinking is unknown in this epistemology. *Ibid*., 96-98, 100-339; See al-Jābirī, *Bunyat*, 24, 38, 113.

[39] *Ibid*., 96-98; al-Jābirī, *Takwīn*, 338-339.

[40] Al-Shāṭibī, *al-Muwāfaqāt*; al-Jābirī, *Binyat*, 530-531; See: Weiss, *The Search for God's Law*, 72, 45.

*uṣūl al-fiqh*. He reformed this discipline by offering a new theory that refers to the most basic purpose of God as the Lawgiver (*shāriʿ*). Thus, the discipline of *uṣūl al-fiqh* is no longer only fixated on the literal meaning of the text. The presence of al-Shāthibī can be seen as a paradigm-shift phenomenon as theorized by Thomas Kuhn and, at the same time, marked the failure of the literalist paradigm and the emergence of the utilitarian paradigm.

The paradigm proposed by al-Shāṭibī in the eighth century AH (14th CE) was revitalized after six centuries by reformers of *uṣūl al-fiqh* in the modern world that includes Muḥammad ʿAbduh (d. 1905),[41] Rashīd Riḍā (d. 1935),[42] ʿAbd al-Wahhāb Khallāf (d. 1956),[43] ʿAllāl al-Fāsī (d. 1973),[44] and Ḥasan al-Turābī.[45] Since they did not offer a new paradigm and only revitalized the principle of *maṣlaḥah* (that is proposed by al-Shāṭibī), Hallaq categorizes these figures as reformers who adhere to utilitarianism.[46]

In the process of its development, the utilitarian paradigm also failed due to the demands of modern life. This paradigm, therefore, had the same fate as the literalist paradigm. Although the supportive utilitarian scholars have paid attention to the primary intent of Islamic law and crossed the boundaries of literalism, they have not offered a new theory and have only revitalized the classical principle of *maṣlaḥah*. For this reason, the utilitarian paradigm confronts a problem and crisis. One of the causes of the crisis in this paradigm is that the subjective interests of its users easily take it over. The prolonged crisis of the utilitarian paradigm brought out the paradigm of religious liberalism. The character of this paradigm is liberal, and it

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41 Muḥammad ʿAbduh, *al-Aʿmāl al-kāmilah li-l-Imām Muḥammad ʿAbduh*, ed. Muḥammad ʿImārah (Beirut: al-Muʾassasah al-ʿArabiyyah li-l-Dirāsah wa-l-Nashr, 1972-4).

42 Rashīd Riḍā, *Yusr al-Islām wa-uṣūl al-tashrīʿ al-ʿāmm* (Cairo: Maṭbaʿat Nahḍat Miṣr, 1956).

43 ʿAbd al-Wahhāb Khallāf, *Maṣādir al-tashrīʿ fī mā lā naṣṣ fīh* (Cairo: Dār al-Kitāb al-ʿArabī, 1955).

44 ʿAllal al-Fāsī, *Maqāṣid al-sharīʿah al-Islāmiyyah wa-makārimuhā* (Casablanca: Maktabat al-Waḥdah al-ʿArabiyyah, 1963).

45 Al-Turābī, *Tajdīd uṣūl al-fiqh* (Beirut and Khartoum: Dār al-Fikr, 1980). This book has been translated into Indonesian by ʿAfîf Muḥammad under the title *Pembaharuan Ushul Fiqh*. See: Ḥasan al-Turābī, *Pembaharuan Ushul Fiqh*. Also please read his work titled: *Tajdīd al-fikr al-Islāmī* (Rabat: Dār al-Qarāfī li-l-Nashr wa-l-Tawzīʿ, 1993).

46 Hallaq, *A History of Islamic Legal Theories*, 214-231.

is not based on the old paradigm at all.[47] This paradigm has a strong tendency to discard all the principles that previous *uṣūl* scholars had constructed,[48] but it is more concerned with the interpretation of the spirit of the literal text and places more emphasis on comprehending the relationship between text and context.[49] In referring to a similar point, Hallaq asserts that the liberal paradigm, compared to the utilitarian paradigm, is relatively more capable of contributing to new theories and methodologies in realizing humanistic Islamic law. The new methodology relies on the idea of textual-contextual analysis.[50] Some scholars like Abdullah Saeed and Ali Akbar call them contextualists.[51] The exponents of this paradigm were Muḥammad Saʿīd al-ʿAshmāwī (d. 2013),[52] Fazlur Rahman (d. 1988),[53] and Shaḥrūr.[54] These figures have sought to offer a new legal theory different from the existing one. Other prominent figures like Muḥammad Iqbal,[55] Maḥmūd Muḥammad Ṭāhā (d. 1985),[56] ʿAbd Allāh Aḥmad al-Naʿim (b. 1946),[57] and ʿAbd al-Ḥamīd Abū Sulaymān

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47 *Ibid*., 231-254.

48 *Ibid*., 214.

49 *Ibid.*, 231.

50 *Ibid.*, 254.

51 Abdullah Saeed and Ali Akbar, "Contextualist Approaches and the Interpretation of the Qurʾān," *Religions* 12, no. 7 (2021), 527, https://doi.org/10.3390/rel12070527.

52 Muḥammad Saʿīd Ashmāwī, *Uṣūl al-sharīʿah* (Beirut: Dār Iqraʾ, 1983).

53 Fazlur Rahman, "Towards Reformulating the Methodology of Islamic Law: Sheikh Yamani on Public Interest in Islamic Law," *New York University Journal of International Law and Politics* 12 (1979), 219-24.

54 Shaḥrūr, *Al-Kitāb wa-l-Qurʾān: qirāʾah muʿāṣirah* (Cairo and Damascus: Sīnā li-l-Nashr, 1992).

55 Muhammad Iqbal, *The Recontsruction of Religious Thought in Islam* (Lahore: Ashraf Press, 1971); According to some observers, Iqbal's *The Reconstruction* is the first book to propose the need to reform the discipline of *uṣūl al-fiqh*. See: Busthāmī Muḥammad Saʿīd, *Gerakan Pembaharuan Agama antara Modernisme dan Tajdīd ad-Dīn* (*Mafhūm Tajdīd ad-Dīn*) (Bekasi: Wala Press, 1995), 265-268.

56 Mahmoud Mohamed Taha, *The Second Message of Islam*, trans. Abdullahi Ahmed an-Naʿim (Syracuse: Syracuse University Press, 1987).

57 Abdullahi Ahmed an-Naʿim, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University Press, 1990); A critical study of legal thought of an-Naʿim, please read: Muhyar Fanani, "Abdullāhi Ahmed an-Na'im: Paradigma Baru Hukum Publik Islam," in *Pemikiran Islam Kontemporer,* ed. A. Khudhori Sholeh (Yogyakarta: Jendela, 2002), 1-32.

(d. 2021)[58] can also be included. However, their contributions are not as clear and systematic as the three thinkers mentioned earlier.

In Hallaq's view, both the utilitarian and liberal paradigms, although different in style, engendered the idea of renewal proposed by ʿAbduh as stated in *al-Aʿmāl al-kāmilah*.[59] In 1898 ʿAbduh called for the necessity to revive *ijtihād* for Muslims with a new scientific design of *uṣūl* to tailor Islamic law to the modern world. Abduh asserted that Muslims had fallen into hyper-*taqlīd* (super-conformity) and that only re-opening the gate of *ijtihād* would enable Muslims to reform the law in accordance with the challenges of legal modernity.[60] Although ʿAbduh sought to offer several concepts for the renewal of *uṣūl al-fiqh* (e.g., the reconception of *ijmāʿ* (consensus),[61] maximizing the role of reason in understanding *naṣṣ*,[62] maximizing the principles of *maṣlaḥah*, and utilizing the opinions of classical legal scholars using *talfīq*[63]), he was more of a source of inspiration for the later *uṣūl al-fiqh* reformers.[64] Apart from being inspired by ʿAbduh, the two paradigms also have the same goal. On the one hand, they want to offer a reformulation of Islamic legal theory that reflects Islamic values. On the other hand, they also offer a law that completely fits the changing needs of modern society,[65] especially after the fall of the Ottoman Sultanate and the emergence of nation-state in the Muslim world around the 1950s.

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58 Abdul Hamīd A. Abū Sulaimān, *Toward an Islamic Theory of International Relations: New Direction for Methodology and Thought* (Herndon, Virginia: IIIT, 1994).

59 ʿAbduh, *al-Aʿmāl al-kāmilah li-l-Imām Muḥammad ʿAbduh*.

60 *Ibid*., 203; For further information on the legal reforms called for by ʿAbduh, refer to Malcolm H. Kerr, *Islamic Reform: The Political and Legal Theories of Muḥammad ʿAbduh and Rashīd Riḍa* (Berkeley and Los Angeles: University of California Press, 1966).

61 For ʿAbduh, *ijmāʿ* is a collective rational decision that is in accordance with conscience. In other word, *ijmāʿ* is nothing but the collective reasoning of the scholars in harmony with their conscience, which cannot be renewed at any time; Kerr, *Islamic Reform*, 144; Khoiruddin Nasution, *Riba & Poligami: Sebuah studi atas Pemikiran Muhammad Abduh* (Yogyakarta: Pustaka Pelajar-ACAdeMIA, 1996), 24-30.

62 Nasution, *Riba & Poligami*, 23.

63 *Ibid*., 31.

64 Hallaq, *A History of Islamic Legal Theories*, 212.

65 *Ibid*., 214.

Although both approaches originate in ʿAbduh's view regarding the process of their development in contemporary times, the utilitarian paradigm is more widely embraced by the 20th-century Muslims than the ideas of the liberals.[66] However, the utilitarian paradigm still has some problems that include the emergence of opportunities for legal subjectivity and legal relativity[67] because these issues are not paid much attention to. Muslim society has begun to favor liberal ideas, especially since international terror incidents (e.g., the September 11 attacks on New York)[68] were allegedly masterminded by some Muslims.

One of the most important figures within the liberal block is Muḥammad Shaḥrūr, who made a convincing contribution to the liberal paradigm. The utilitarian-religious paradigm seeks to only renew the values of Islamic law and considers that its methodological framework is still compatible with the old framework (the concept of *maṣlaḥah*). However, Shaḥrūr offers structured textual-contextual analysis tools to make it more likely in producing humanistic laws that are still guided by the purpose of the revelation.[69] Shaḥrūr made an ideological criticism of the discipline of *uṣūl al-fiqh* to realize a humanistic and positivistic legal theory, which at the same time remains within the guidance of the revelation.[70] The scientific-historical method proposed by Shaḥrūr, therefore, seeks to introduce new concepts (e.g., constitution, pluralism, civil society, democracy, and opposition) into the Islamic legal tradition,[71] which cannot be provided by the principle of *maṣlaḥah* in the literalist paradigm. It may be stated that Shaḥrūr refers to the failure of the utilitarian paradigm and the presence of a liberal paradigm in the discipline of *uṣūl al-fiqh*.

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66 *Ibid*., 162.

67 Hallaq, *A History of Islamic Legal Theories*, 231; Fazlur Rahman, "Towards Reformulating the Methodology of Islamic Law," 223.

68 Shaḥrūr's letter to Muhyar Fanani (the author) dated October 21, 2001; Aḥmad Hissou, "Muḥammad Shaḥrūr: 'We Urgently Need Religious Reform'" (An Interview), translated from German by Aingeal Flanagan, http://pages.zdnet.com/plm/id165.html, accessed on January 18, 2005.

69 Hallaq, *A History of Islamic Legal Theories*, 254.

70 *Ibid*., 255.

71 Muḥammad Shaḥrūr, "Reading the Religious Text: A New Approach," http://islam21.net/pages/keyissues/key1-7.htm, accessed on April 21, 2001.

### 3. Liberal Paradigm, Scientific-Historical Method, and Democracy

The question of how religious texts can be understood and then implemented in the context of the modern world, which is no longer the same as the context of the Prophet's time, is still an emergent agenda for Muslims. Some scholars, like Muḥammad Iqbal,[72] Maḥmūd Muḥammad Ṭāhā,[73] ʿAbd Allāh Aḥmad al-Naʿīm,[74] Muḥammad Saʿīd al-ʿAshmāwī,[75] Fazlur Rahman,[76] and Shaḥrūr,[77] it cannot be solved by relying on the principle of *maṣlaḥah*. They think the principle of *maṣlaḥah* is no longer sufficient to enable the survival of Islamic law in the modern world.[78] Muḥammad Shaḥrūr offers a liberal paradigm by using the scientific-historical method.

The scientific-historical method can be defined as a principle to utilize current (recent) scientific achievements, not past knowledge systems, to explore Islamic law in particular, and to develop Islamic sciences in general.[79] The conception of *ijtihād* proposed by Shaḥrūr, therefore, necessitates using all scientific achievements and all modern knowledge systems.[80] Even Shaḥrūr believes that *ijtihād* must be oriented toward accurate statistical material evidence that can reveal public interest and convenience for human society. *Ijtihād* should not be based only on prejudices or feelings.[81] Therefore, the involvement of experts from the humanities and natural and social sciences is crucial. Some official religious institutions consult scientific experts before issuing their collective legal opinions (*fatwá*s).[82] However, the concept of *ijtihād* in the thoughts of the

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72 Iqbal, *The Recontsruction of Religious Thought in Islam,* 162.
73 Taha, *The Second Message of Islam*, 21-40.
74 an-Naʿim, *Toward an Islamic Reformation*, 1-68.
75 Al-ʿAshmāwī, *Uṣūl al-sharīʿah*, 70-179.
76 Fazlur Rahman, "Towards Reformulating the Methodology of Islamic Law," 219-224.
77 Shaḥrūr, *al-Kitāb wa-l-Qurʾān.*
78 Hallaq, *A History of Islamic Legal Theories*, 214; Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago: The University of Chicago Press, 1970), 122; Shaḥrūr, *Dirāsah Islāmiyyah muʿāṣirah,* 35-41.
79 Shaḥrūr, *Dirāsah Islāmiyyah muʿāṣirah,* 35-41.
80 *Ibid*., 55-56.
81 Shaḥrūr, *al-Kitāb wa-l-Qurʾān,* 459.
82 Emine Enise Yakar, "The Diachronic Change of the Practice of *Iftāʾ*: From Individual to Collective," *Islamic Studies* 60, no. 1 (2021), 343.

traditional *uṣūl al-fiqh* scholars has not paid enough attention to those experts, and *ijtihād* thus becomes the monopoly of legal scholars. The requirement of being a *mujtahid* is conditioned as mastering the Qurʿan, Qurʾānic studies, Sunnah, *ijmāʿ* and *ikhtilāf*, *qiyās*, *maqāṣid al-aḥkām*, Arabic language, having comprehensive perception, good intent and *ʿaqīdah* (creed and belief).[83] Similarly, Shaḥrūr asserts that *ijtihād* should no longer be performed by scholars but by academics and experts from all disciplines who become members of a consultative commission (that accompanies representative institutions). In his view, the role of issuing *fatwá*s has been replaced by legislative polls and national parliament that uphold democracy, freedom of expression and the media, and the existence of opposition (*al-muʿāraḍah*).[84]

Although there are several other contemporary scholars like Fazlur Rahman, ʿAbd al-Karīm Surūsh, Muḥammad Mujtahid Shabustarī, Naṣr Ḥāmid Abū Zayd (d. 2010), Mehmet Paçacı, and Ömer Özsoy[85] who call for the importance of incorporate science and technology into the *ijtihād* process likewise Shaḥrūr, their approach does not emphasize the equal involvement of experts from all fields of science with the scholars. This is because they still position religious scholars as decision-makers and other scientific experts as assistants.[86] This is indicated by Qodri A. Azizy (d. 1429/2008), who states:

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[83] Al-Shāṭibī, *al-Muwāfaqāt*, IV, 477-487; Ḥasan Ḥanafī, *Mawsūʿat al-ḥaḍārah al-ʿArabiyyah al-Islāmiyyah*, (Amman: Dār al-Fāris li-l-Nashr wa-l-Tawzīʿ, 1995), II, 52; M. Ḥasan Haytū, *al-Ijtihād wa-ṭabaqāt mujtahidī l-Shāfiʿiyyah* (Beirut: Muʾassasat al-Risālah, 1988), 17-31; al-Ghazālī, *al-Mustaṣfá,* 478; al-Shahrastānī, *al-Milal wa-l-niḥal* (Beirut: Dār al-Fikr, 1990), 200-201; Abū Zahrah, *Uṣūl al-fiqh*, 380-389; al-Ghazālī, *al-Mustaṣfá*, 478-481.

[84] Shaḥrūr, *Naḥwa uṣūl*, 208.

[85] Abdullah Saeed and Ali Akbar give good explanations on the thoughts of these contemporary experts who used contextualist approach. Ali Akbar, "Towards a Humanistic Approach to the Quran: New Direction in Contemporary Islamic Thought," *Culture and Religion* 20, no. 1 (2019), 82-103; Ali Akbar, "Fazlur Rahman's Influence on Contemporary Islamic Thought," *The Muslim World* 110, no. 2 (2020), 129-153; Ali Akbar, *Contemporary Perspectives on Revelation and Quranic Hermeneutics: An Analysis of Four Discourses* (Edinburgh: Edinburgh University Press, 2020), Chapter 3-6.

[86] This can be proven in the conditions that must be met by *mujtahid*, which are widely mentioned in the works of classical *uṣūl al-fiqh*. Experts of *uṣūl al-fiqh* averagely require *mujtahid* to have an extensive knowledge of Islamic disciplines, the Qurʾān (*mujtahid* must know at least 500 verses of legal content in the Qurʾān), and the Sunnah, *ijmāʿ*, and Arabic.

> The willingness of scholars to cooperate with other institutions/agencies [is very much needed]. They are consciously willing to enrich their knowledge apart from knowledge in their field to support the maturity of their scientific specialization.
> Supplementary knowledge from disciplines other than Islamic law, such as social and human sciences, is also needed to incorporate inter-disciplines or multi-disciplines. I think that the results of science and technology studies, including medical or engineering technologies, cannot be discarded from the *ijtihād* process.[87]

It is asserted that scholars seem to be given a more dominant role than other experts. Scientific experts only act as supporters or assistants in the *ijtihād* process.

Unlike Qodri, Shaḥrūr bases his ideas on the scientific-historical method. For Shahrūr, all scholars from all relevant disciplines should be given leadership roles, and no one plays only a supporting role. All scholars have an equal, independent, and fair position.[88] What is formulated by Shaḥrūr is more democratic and reasonable, and more promising to achieve an effective discussion and dialogue. This is because the *ijtihād* process will not be effective if there is no equal historical position in the dialogue.[89] The positions of scholars that are higher than scientific experts will provide them with some privileges (e. g., veto power) which will undermine the dialogue's function. This therefore will only distort the dialogue and weaken its accuracy.

## 4. Scientific-Historical Method and Context of Modern Society

Each of the three paradigms in *uṣūl al-fiqh* relates to their relevant socio-historical contexts. Apart from being related to the debate between the textualist group (*ahl al-ḥadīth*) and the rationalist group (*ahl al-raʾy*) (which the textualist group finally defeated), the textualist paradigm also established its relationship with the phenomenon of tyranny within the social structure of Islamic society in the second century AH (8th CE). Al-Shāfiʿī, the originator of this paradigm, lived between 150-204 AH (767-820 CE), coinciding with

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87 Aḥmad Qodri A. Azizy, *Reformasi Bermazhab: Sebuah Ikhtiar Menuju Ijtihad Sesuai Saintifik-Modern* (Jakarta: Teraju, 2003), 116.
88 Shaḥrūr, *Naḥwa uṣūl*, 208.
89 Gregory Baum, *Agama dalam Bayang-bayang Relativisme*, 41, 64.

the beginning of the Abbasid regime that ruled the Muslim world between the years 750-1258 CE. As stated by Fazlur Rahman (d. 1988), the contemporary political system was one of the sources of absolute obedience and conformity of the people to the rulers to maintain integrity among and protect Muslims from destruction. However, political obedience and conformity eventually developed into dogma,[90] manifested by the ḥadīth supporters' victory. The way of thinking of the adherents of *ahl al-ḥadīth*, which was the forerunner of the textualist paradigm, clearly favored the ruling political system in the era during al-Shāfiʿī's period. This was because the easy justification for the leadership of the contemporary caliphs was provided by using the existing authoritative texts, and the validity of the interpretation of a text turned out to be very arbitrary and easily distorted. Textualism could also be used by the authorities to create social cohesion, which was destroyed by various schools of that time. Social cohesion was an important issue for the rulers. To achieve their goal, the rulers used all kinds of potential resources, including the textualist paradigm.

The relationship of the utilitarian paradigm can be traced to the social context of the era when al-Shāṭibī lived in Granada, Spain, and with the Muslim world in general in the 14th century CE. At that time, the Islamic civilizations, including Spain, faced a severe downfall. The social system of the Muslim world was quite stagnant after the overthrow of the Abbasid Caliphate by the Mongols in 657/1258. However, there were always intellectuals who ruminated on restoring the glory of contemporary Muslims. Al-Shāṭibī, like his Tunisian acquaintance, Abū Zayd ʿAbd al-Raḥmān ibn Muḥammad ibn Khaldūn al-Ḥaḍramī (d. 784/1382), aimed to fulfill his intellectual duties and contribute to the Islamic civilization. He started his specialization in the discipline of *uṣūl al-fiqh*. The utilitarian paradigm (that he initiated) was intended to reconstruct the paradigm of thinking among Muslims in the legal area so that Islamic law would not be alienated from changing social realities. With that paradigm, he wanted to explain to the entire Muslim world a policy that aimed

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[90] Fazlur Rahman, *Islamic Methodology in History* (Islamabad: Islamic Research Institute, 1988), 149-172; Fazlur Rahman, *Membuka Pintu Ijtihad,* trans. Anas Mahyuddin (Bandung: Pustaka, 1995), 148.

to completely change the world In the initial periods, Muslims were victorious, but in the later periods, Muslim civilizations were ruined. The textualist theoretical basis had not been able to produce updated appropriate solutions to drastic social changes. It was necessary to find a new paradigm more responsive to social change so that Islamic civilization could rise again based on new social realities. Al-Shāṭibī chose the utilitarian paradigm which he considered more flexible than the textualist paradigm in meeting the needs of social dynamics. Al-Shaṭibī's paradigm has been revitalized by many modern thinkers like ʿAbduh, Riḍā, and al-Turābī.[91]

It is also possible to trace the relationship between the liberal paradigm and its social system. Shaḥrūr initiated the liberal paradigm in Syria at the end of the 20th century, or to be precise, in 1990. The emergence of this paradigm was related to the contemporary situation of people in the Muslim world, the Middle East, and Syria who experience problems implementing democracy and civil liberties in all aspects of life. Shaḥrūr underlined to establish a new legal paradigm that is more democratic and adaptable to the demands for civil liberties. In his view, this paradigm rescues Islamic law from the shackles of scholars who generally have difficulty understanding social realities because of the limitations of their analytical tools. Shaḥrūr's liberal paradigm approach, therefore, intends to establish means for legal reconstruction.

Although Shaḥrūr did not engage in practical political activities or support certain political powers, he had an agenda of introducing democracy among Muslims. Shaḥrūr was interested in breaking the dominance of the tyrannical system controlled by scholars and rulers who argued that they were carrying out the authority granted by God in the legal field. In a similar manner to other contextualist thinkers, Shaḥrūr also put his whole trust in the collective human capacity to establish their laws.[92] Despite being very anthropocentric, Shaḥrūr in no way rules out the role of God in the authority of law. God is positioned as the giver of limitations that all humans must obey in establishing law. Shaḥrūr, therefore, proposed a new theory, known as the *ḥudūd* theory.

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91 Hallaq, *A History of Islamic Legal Theories*, 214-231.

92 Saeed and Akbar, "Contextualist Approaches and the Interpretation of the Qurʾān," 527.

In Shaḥrūr's view, the literalist and utilitarian paradigms are no longer relevant to the demands and context of modern times. In history, these paradigms emerged regarding the needs of the relevant times. As pointed out by Sami Zubaida, although the legal authority at that time was theoretically held by the scholars and detached from the rulers (*amīr*s and *sultan*s), in practice, the majority of scholars turned out to support the interests of the rulers who mostly exercised their power tyrannically.[93] The paradigms in Islamic disciplines include the traditional *uṣūl al-fiqh* discipline which emerged in the past, especially during the Umayyad caliphate[94] and the Abbasid caliphate.[95] Both caliphates were very tyrannical in their nature and did not accommodate themselves to democratic aspirations, let alone civil liberties.[96] In Shaḥrūr's view, one tyrannical feature in the discipline of *uṣūl al-fiqh* is indicated in the concept of *ijmāʿ* that has been considered a mature source of law since the era of the Umayyad caliphate. He states that *ijmāʿ* overrides the democratic aspect of law because it recognizes the hegemony of particular scholars, who constitute only a tiny part of the whole community.[97] This is the reason why legal institutions were not established at that time. The legislative power, therefore, was individually held by these scholars. Shaḥrūr criticizes this tyrannical paradigm of the Islamic sciences in almost all of his works and proposes the establishment of civil supremacy and democracy.

Shaḥrūr's suspicion of traditional *uṣūl al-fiqh* can be justified based on historical facts. History shows that from the death of the

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93 Sami Zubaida, *Law and Power in the Islamic World* (New York: I. B. Tauris, 2003), 118; Please compare with Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Century of Islam* (Cambridge: Cambridge University Press, 1986); Hallaq, *Authority, Continuity, and Change in Islamic Law* (New York: Cambridge University Press, 2001).

94 Established in 661 CE and overthrown in 750 CE.

95 Established in 750 CE and ended in 1258 CE.

96 Regarding the tyrannical phenomenon in this pre-modern Islamic scientific system, H.A.R. Gibb wrote: "Islam has long been described as a "totalitarian" religion. However, all religious ideas that shape the imaginative view and content of human thought and determine human actions based on human will are potentially or principally totalitarian. These ideas should seek to apply their own standards and rules regarding all social activities and institutions from the level of elementary school to the level of law and government…." Gibb, *Aliran-aliran,* 141-142.

97 Shaḥrūr, *Dirāsah Islāmiyyah*, 18-19.

Prophet Muḥammad on *Rabīʿ al-awwal* 12, 11 AH/June 8, 632 CE to the assassination of ʿAlī ibn Abī Ṭālib in 41/661, the republic form of government was implemented by Muslims to govern their country, marked by the fate of the country that was determined by many people or councils. However, from Muʿāwiyah ascended the throne on *Rabīʿ al-awwal* 24, 41 AH (July 30, 661 CE)[98] to the defeat of al-Muʿtaṣim, the last caliph of the Abbasids (due to the attack of Hulagu Khan, a Mongol ruler, in 656/1258), the form of government changed to monarchy. It can be observed that the period of the implementation of the monarchy form of government that tended to be tyrannical was five hundred ninety-seven years. Meanwhile, the period for implementing the republic form of government was very short, around 29 years. It, therefore, is clear that the traditional *uṣūl al-fiqh* discipline (that was first conceived by al-Shāfiʿī and later improved by key figures in *uṣūl al-fiqh* like al-Qāḍī ʿAbd al-Jabbār, Abū l-Ḥusayn al-Baṣrī, al-Juwaynī, and al-Ghazālī) developed in the socio-political context of the dynasties that tended to be tyrannical and did not accommodate to democratic aspirations.

Shaḥrūr's comments regarding al-Shāfiʿī are an ideological criticism of the dominance of the literalist paradigm in the traditional *uṣūl al-fiqh* discipline that has supported the hegemony of the tyrannical system in the socio-political context of the Muslim world during the period between 41/661 and 656/1258. After performing ideological criticism, Shaḥrūr offers a new scientific-historical method. He considers that the literalist paradigm proposed by al-Shāfiʿī has experienced an anomaly, a protracted crisis, and even a severe failure that made this paradigm an ossified ideology. To overcome this crisis, Shaḥrūr proposes a new paradigm that will become an essential solution in the field of *uṣūl al-fiqh*, namely, the liberal paradigm with the scientific-historical method.

The scientific-historical method is Shaḥrūr's distinctive approach in the discipline of *uṣūl al-fiqh*. This method views the Qurʾān as the universal source. The Qurʾān should be perceived based on a scientific premise (*ʿarḍiyyah ʿilmiyyah*; *ʿarḍiyyah maʿrifiyyah*), and Shaḥrūr prefers to state this with the term "scientific background" that

[98] Hugh Kennedy, *The Prophet and the Age of Caliphates* (New York: Longman Inc., 1991), 88.

exists at the time. The scientific background at the time of the Prophet Muḥammad and the Companions in the Arabian Peninsula in the first century AH (7th CE) is very little compared to the scientific premises, rapid developments, or technological discoveries of the current time. Every scientific achievement and hypothesis will inevitably provide a more accurate understanding of the verses of the Qurʾān.[99] In a modern society where scientific achievements are advancing rapidly, the scientific-historical method is very important in creating modern Islamic law in Shaḥrūr's view.

## 5. Scientific-Historical Method and The Context of the Modern Nation State

In *Dirāsah Islāmiyyah muʿāṣirah*, Shaḥrūr underlines the interest in the dominance of the tyrannical political system entrenched in the traditional Islamic *fiqh* paradigm that includes the traditional *uṣūl al-fiqh* discipline. In his view, all this time, *fiqh* (jurisprudence), as well as *tafsīr* (exegesis), *ḥadīth* (prophetic narration), and *ʿaqīdah* (belief and creed), have been established under the auspices of a tyrannical political institution (*muʾassasat al-istibdād al-siyāsī*), which has been entrenched since the Umayyad caliphate until the present time.[100] One form of the influence of political tyranny on *fiqh* is the recognition of *ijmāʿ* as a source of law. The acceptance of *ijmāʿ* as a canonical source prevented a judge from applying the principle of *shūrá* (democracy) in the legal field. This can be visible in the Muslim world, which includes the contemporary Arab world. The judicial authority supposed to be a democratic institution has not performed its real function.[101] Additionally, the political constellation at that time did not necessitate the construction of a constitution (*dustūr* or *al-qānūn al-asāsī*) as the most essential part of life as a nation and a state.

In the life of a modern nation and state, tyranny, Shaḥrūr states, is taboo because a state is an institution that gains legitimacy from its *dustūr*s. (a set of principles and rules governing the structure of a state).[102] In modern life, *dustūr*s give legitimacy to all state institutions

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[99] Shaḥrūr, *al-Kitāb wa-l-Qurʾān*, 235, 280.
[100] Shaḥrūr, *Dirāsah Islāmiyyah muʿāṣirah*, 18-19.
[101] *Ibid*., 23.
[102] *Ibid*., 200.

and guarantee the principle of general freedom for all citizens.[103] That is why the construction of *dustūr* is a necessity. *Dustūr*s *a*s a legal basis is from *qānūn*s. *Qānūn*s *are* a collection of laws that regulates the daily activities of state institutions, people, and the relationship of one individual to another. While *qānūn*s are just ordinary laws, *dustūr*s are considered a constitution.[104] However, it is important to note that since *qānūn*s derive their legitimacy from *dustūr*s, they cannot violate *dustūr*s. *Dustūr*s, therefore, derive their legitimacy from people. Q*ānūn*s should proceed under *dustūr*s even though they may be detailing *dustūr*s or conducting legal opinions against *dustūr*s.[105]

Although al-Turābī called for the renewal of *uṣūl al-fiqh* and even promised to establish a detailed theory at a later date, he has not formulated the intended theory.[106] Nonetheless, Shaḥrūr's *ḥudūd* theory has responded to al-Turābī's call, so it is an answer to al-Turābī's criticism of the discipline of *uṣūl al-fiqh* that al-Turābī considers having methodological ambiguity (*al-ibhām al-manhajī).* Al-Turābī has recommended the discipline of *uṣūl al-fiqh* to be re-deconstructed by uniting transmitted disciplines (*naql* including the Qurʿān and Sunnah) with the rational sciences that are developing all the time as a result of continuous scientific research.[107] However, he has not concretely realized his recommendation.[108] Shaḥrūr's *ḥudūd* theory can be used as a medium to unify the transmitted disciplines with the rational sciences as proposed by al-Turābī. The *Ḥudūd* theory is a concrete mechanism to provide solutions to the methodological problems in *uṣūl al-fiqh* and an alternative solution to the legal, methodological impasse in the traditional *uṣūl al-fiqh* discipline.

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[103] *Ibid*.

[104] *Ibid*.

[105] *Ibid*.

[106] Hallaq, *A History of Islamic Legal Theories*, 226; This expression by Hallaq is based on his study of two works by al-Turābī, namely, *Tajdīd uṣūl al-fiqh al-Islāmī* (Beirut & Khartoum: Dār al-Fikr, 1980) and *Tajdīd al-fikr al-Islāmī* (Rabat: Dār al-Qarāfī li-l-Nashr wa-l-Tawzīʿ, 1993). However, it is true that al-Turābī has not provided specific recommendations for the renewal of the *uṣūl al-fiqh* discipline that he initiated.

[107] Al-Turābī, *Qaḍāyā l-tajdīd*, 191; Please compare with: al-Mīsāwī, "Qaḍāyā l-tajdīd," 200.

[108] Hallaq, *A History of Islamic Law*, 226, 230.

In the present time, Shaḥrūr's scientific-historical method has a vital position and plays an important role. This paradigm is very helpful in making Islamic law more dynamic and updated in an ever-evolving era of life. The *ḥudūd* theory, however, as a new method, will result in revolutionary changes emerging from the old *uṣūl al-fiqh* conceptions. Among the impacts of using the scientific-historical method is the redefinition of *ijtihād* and *mujtahid*.

Referring to the postulate that Islam is an international and universal religion, Shaḥrūr proposes a new, original definition of *ijtihād*. In his view, *ijtihād* is a collective mechanism to understand the legal content of the verses so that the boundaries or limits fixed by God are revealed by using modern knowledge systems and formulating laws within the scope of the boundaries through national representative institutions.[109] This is the definition of Shaḥrūr's *ijtihād* concept. He has not explicitly explained this definition, but it is understood from the way he perceives the Qurʾān, the Sunnah of the Prophet, *qiyās*, *al-maṣlaḥah al-mursalah*, and *ʿurf* (custom). It may be concluded that Shaḥrūr's *ijtihād* process has two levels: understanding the legal content of the verses in the context of the revealed boundaries by God and creating laws within the scope of the boundaries fixed by God through the national representative institutions. Shaḥrūr states that *ijtihād* within the scope of boundaries is the basis of *tashrīʿ* in Islam, and people should not violate boundaries to perform *ijtihād*.[110] *Ḥudūd*, for Shaḥrūr, is a collective measure to comprehend the legal content of the verses so that the boundaries are revealed by using modern knowledge systems and laws can be established within the scope of the boundaries.[111] It can therefore be concluded that in Shaḥrūr's view: (1) *Ijtihād* cannot be performed individually but should be performed collectively. (2) *Ijtihād* can only be performed by scholars in the religious disciplines, natural, social, and humanities sciences. (3) The product of *ijtihād* should be no longer *fatwá* but legislation. (4) *Ijtihād* cannot be separated from the national representative institutions because only

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[109] *Ibid*., 55-56, 60, 193, 207-208, 214; Shaḥrūr, "The Divine Text and Pluralism in Muslim Societies," http://www.quran.org/shahroor.htm, accessed on April 22, 2002.

[110] Shaḥrūr, *al-Kitāb wa-l-Qurʾān,* 473.

[111] *Ibid.,* 55-6, 60, 193, 207-8, 214; Shaḥrūr, "The Divine Text and Pluralism in Muslim Societies."

these institution has the authority to establish laws. This new conception of *ijtihād* automatically results in a change in answering the question of who has the right to perform *ijtihād* or, in other words, who *mujtahid* is.

Considering that *ijtihād* should be performed by national representative institutions (parliament or Representative Council), all members of the parliament are called *mujtahid* by Shaḥrūr. The status of *mujtahid* is also conferred to scientists in all fields of science including humanities, religious, natural, and social sciences, and experts who become members of the consultative commission (*al-lijān al-istishāriyyah*) and who accompany the representative institutions (*al-majālis al-niyābiyyah wa-l-baladiyyah*) by providing statistical data and scientific evidence. In Shaḥrūr's *ijtihād* concept, *muftī*s (religious scholars) are no longer considered *mujtahid* unless they become members of the consultative commission that accompanies the representative institutions. In his approach, the role of *fatwá* institutions has been replaced by polls and the national parliament, which uphold freedom of opinion, freedom of the press, and the existence of opposition (*al-muʿāraḍah*).[112] Indeed, Shaḥrūr's approach is still problematic for some Muslim countries, such as Saudi Arabia, since the *fatwá* institution works with the political authorities and its *fatwá*s have an opportunity to be used as a law.[113] However, Shāḥrūr's method will benefit other democratic Muslim countries (e.g., Indonesia has strong intentions to implement Islamic law in the context of a modern and democratic state without any tension). Shaḥrūr states:

> I have studied the principles of jurisprudence, and I can say that we do not need *muftī*. Instead, a nation controlled by *ḥudūd* fixed by Allah will be able to perform the legislative process through parliament.[114]

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[112] Shaḥrūr, *Naḥwa uṣūl jadīdah,* 208.

[113] Emine Enise Yakar, "The Influential Role of the Practice of Iftāʾ in Saudi Politico-Legal Arena," *Manchester Journal of Transnational Islamic Law Practice* 16, no. 1 (2020), 35-61; Emine Enise Yakar and Sumeyra Yakar, "The Symbolic Relationship between ʿUlamāʾ and Umarāʾ in Contemporary Saudi Arabia," *Middle Eastern Studies* 13, no. 1 (2021), 23-46.

[114] Shaḥrūr, "Reading the Religious Text: A New Approach," http://www.islam21.net/pages/keyissues/key1-7.htm, accessed on April 21, 2001.

From Shaḥrūr's point of view, the *mujtahid*s can be categorized into two groups: (1) scholars from various disciplines who become members of the consultative commission (*al-lijān al-istishāriyyah*) and (2) members of national representative institutions (*al-majālis al-niyābiyyah wa-l-baladiyyah*). Therefore, if extremely knowledgeable *faqīh*s and *muftī*s are not willing to join the consultative commission, they cannot be called *mujtahid*s. Considering the context of a modern nation-state that tends to practice the principles of deliberative democracy[115] (in which the principle of deliberation must be applied in the structure of a modern state), the scientific-historical paradigm is very relevant to be practiced. If a country has implemented deliberative democracy, then a liberal paradigm with the scientific, historical method is necessary. During periods of the Prophet Muḥammad and the first four caliphs (*al-khulafā' al-rāshidūn*), the application of a scientific, historical method in the discipline of *uṣūl al-fiqh* already existed. The 29-year duration was indeed a period of deliberative democracy, but unfortunately, the discipline of *uṣūl al-fiqh* was not yet established at that time.

## Conclusion

Shaḥrūr's scientific-historical method holds a very significant role in developing a contemporary *uṣūl al-fiqh* discipline by helping to establish Islamic laws that are dynamic and realistic to meet the necessities of modern times. There are at least three reasons underlying this conclusion. In the first instance, this method follows the principles of democracy, considering that it treats all scientists/scholars/experts (regardless of their field of knowledge) equally in establishing modern Islamic law. In the second instance, this method follows the historical context of modern society, which upholds democracy and opposes tyranny. In the last instance, this method follows the historical context of the modern state structure that upholds the constitution and modern state institutions that include representative institutions (e. g., parliament). Taking into the

[115] Daniel Layman, "Robust Deliberative Democracy," *Critical Review* 28, no. 3-4 (2016), 494-516, http://dx.doi.org/10.1080/08913811.2016.1264161; Marit Hammond, "Deliberative Democracy as A Critical Theory," *Critical Review of International Social and Political Philosophy* 22, no. 7 (2018), 787-808, https://doi.org/10.1080/13698230.2018.1438333.

three points consideration, one may assert that Shaḥrūr's scientific-historical method is a very promising approach to developing a contemporary *uṣūl al-fiqh* discipline and providing a modern Islamic law that is relevant to the demands of modern societies. Thus, applying the achievements of modern science and bodies of knowledge in various fields to construct Islamic law will contribute to the significant progress to build a dynamic of *uṣūl al-fiqh*.

However, the research still has limitations and does not provide a concrete definition of Shaḥrūr's *ḥudūd* theory that guides the *mujtahid* in conducting *ijtihād*. In addition, this research has not given examples of the use of the scientific-historical method to create a modern Islamic law that can address specific concrete societal issues. For this reasons, further studies may focus on the definition of Shaḥrūr's *ḥudūd* theory and the implementation of his scientific-historical method in contemporary legal issues that include human rights, political democracy, economic activities, civil society, corruption eradication, and law enforcement.

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