CHAPTER ONE:

INTRODUCTION

Since the dawn of history, nations embarked upon setting laws to cater for their variant needs and to establish peace and order in their societies. The structure of the universe and its philosophy require that human being, whatever his scholarship and wisdom might be, would fall short of achieving ultimate truth, urging him to submit to the power handling this universe, the divine power.

Through out the span of history, Allah (S.W.T.) was occasionally sending prophets and messengers with a set of laws that served as anchors for nations yearning for civilizational order. Allah's will decreed that whenever people submit to man-made laws, injustice, corruption and confusion would always prevail. Accordingly, the main aim of a divine massage is to bear people on a system of law that would brush aside any confusion, speculation or manipulation. Further, the stability and public order would be more conceivable and achievable if lawyers, judges, the judiciary and people at large would act and react based on a solid and firm legal platform. The manipulation of the law is the cause of many reasons:

- Lawmakers would refer to sources that are not safe from weaknesses and fallibility such as pure reason and pure social welfare. Hence, this would result in the full negligence of the divine law, which is infallible.

- Lawmakers would only resort to the divine law where the issue in question does not contradict the policy of the state.
• The crucial reason is that lawmakers would manipulate the scope of certainty and speculation respectively so that they will always be able to justify their enactments whenever they see it fit to do so.

It is the last reason that concerns our thesis most as the Islamic law is not free from manipulation as a long as the human factor in present.

The available legacy of Islamic jurisprudence is the reflection of a fresh interaction between \textit{Wahy}, characterized in \textit{Qur'ān} and \textit{Sunnah}, and human reasoning. Since the dawn of Islam, companions, followers of the companions, and jurists attached themselves to a serious interaction with \textit{Wahy}, trying to understand its teachings and unfold its deep meanings and wisdoms featuring its laws. Adopting various methods to achieve those goals, the human interaction appears to have moved from simplicity to complexity. The former is featured by simple understanding and practice of the Islamic laws, urging us to observe that the scope of certainty was larger than that of speculation.

There were limited patterns of reasoning that perfectly suited the first generation. Complexity rose when Muslims spread all over the world and began interacting with other laws, philosophies and even languages and religions. The original faculty to grasp the revealed text was relatively affected, causing the Muslim mind to experience difficulties to grasp the certainties of the \textit{Shari'ah}.

In contrast, the scope of speculation appears to have widened precariously close to the edge of disagreement and disunity. Consequently, there was a need to regulate the operation of grasping the meaning of the divine text, a matter that paved the way for various schools of jurisprudence to emerge. Adopting different methods of inference, the schools of jurisprudence endeavored to target uniformed set of laws that had to deal with
the requirements of law enactment. Yet, the diversity of the methods of inference had to produce diversity in the law itself. This had been widely regarded as a healthy phenomenon as human faculties are variant, and the idea of imposing a unique method of inference was firmly rejected.

As the scope of *Ijtihād* was broadly open, reason seemed to have dominated the juristic inference. Besides, *Mutakallimīn* (Muslim theologians)\(^1\) adopted some of the methods of inference used in *Uṣūl al-Fiqh*, let alone some philosophies that swept both *İlм al-Kalāм* and *Uṣūl al-Fiqh*. Given all these considerations, the line of demarcation between certainty and uncertainty appeared very blurred.

As a corollary, the particular approach in dealing with *Uṣūl al-Fiqh* dominated that of the universal one. The certainty of the legal text was, more or less, confined within its linguistic boundaries, ignoring the general context within which a legal text had to operate. In an attempt to ascertain the certainty of some sources like *İjmā'*, jurists defined it in a way that made it impossible to materialize in the actual life. In a bid to degrade *Qiyās*, jurists declared it speculative, given the way ‘*illah* (effective cause) is drawn, ignoring the possibilities for *Qiyās* to impart definitive knowledge.

The degradation of the so-called *al-Maşādir al-Mukhtalaf Fīhā* (the disagreeable sources of *Sharī 'ah*) to a rank lower than that of *Kitāb*, *Sunnah*, *İjmā'*, and *Qiyās*, suffered some setbacks as some disagreeable sources like *al-Maşlaḥah al-Mursalah* is part and parcel of law enactment.

\(^1\) The thesis is mainly concemed with the doctrinal views of the Ash 'arites.
Furthermore, the need to consider the general meanings of the Shari 'ah, called Maqāṣid al-Shari 'ah, have a pivotal role to play so much so the distinction between certainty and uncertainty would be clearly made.

As far as certainty is concerned, this thesis would venture into a meticulous area of research that has been left without proper theorization in the classical writings of Uṣūl al-Fiqh. This research, hence, would integrate a high level of rationality and make bold challenges to examine areas in Uṣūl al-Fiqh deemed settled and sometimes sacrosanct.

To achieve the foregoing objectives, I have divided my thesis into five chapters; each would have to deal with certainty in relation to a specific area of Uṣūl al-Fiqh.

Chapter one is introductory in nature. It aims at reviewing the writings on certainty, both in early and modern times. It tends to examine the methodologies applied to target certainty in the legal field. However, the books selected for the review were reflecting a new trend sweeping Uṣūl al-Fiqh, especially in the modern world. That is to trend that gives more attention to the solid ground upon which Uṣūl al-Fiqh should stand. We have also identified precisely the statement of the problem around which the thesis would revolve. We have also identified the types of methods applied to achieve the goals of the thesis.

Chapter two aims at discussing the concept of certainty in Islamic thought in general and Islamic jurisprudence in particular. In this chapter, the researcher discusses the literal and technical meanings of certainty and their implications in the legal field. Then the researcher traces the roots of certainty in the legal system and scrutinizes the prominent

2 A broad analysis of Maqāṣid will be provided in the last chapter of this thesis.
views recorded in this respect. And since most of the jurists represent the bulk of *Mutakallimīn* (Muslim theologians), the researcher would trace the roots of certainty in *ʿIlm al-Kalām* (Muslim theology) and compare it with that in *Uṣūl al-Fiqh*. This comparative approach aims to assess the originality of certainty in *Uṣūl al-Fiqh*.

**Chapter Three** deals with certainty as a goal achieved through the consideration of various factors surrounding the legal text. By examining the legal text within its proper context, its certainty or uncertainty would be genuinely realized. This has required the establishment of the theory of context (*Siyāq*) that would weight the certainty of texts in the most accurate way.

To achieve this goal, the researcher has combined two tools of research, *Qarāʾin* (signifiers) and induction, and he called this new method: the inductive signifiers (*al-Qarāʾin al-Istiqrāʾiyyah*). At the end of this chapter, the researcher has applied the theory of context (*Siyāq*) on the legal texts for two purposes: to examine the possibilities of elevating a *Zanni* (speculative) into *Qāṭī* (definitive) and the degradation of the latter into the former; the second is to examine the originality of *Zann* (speculation) and *Qāṭ* (definitiveness) attributed to the legal proof (*al-Dalīl al-Sharīʿ*). This is to know the extent a speculative proof would need to lean on the definitive one and the status of the former when it conflicts with the latter.

**Chapter Four** tries to scrutinize certainty at the level of the agreeable sources of the Sharīʿah (*Qurʿān, Sunnah, Ijmāʿ* and *Qiyās*). As the Nass of the *Qurʿān* is scrutinized in the previous chapter, more emphasis is placed in this chapter on *Sunnah, Ijmāʿ* and *Qiyās*. 
Adopting a new approach to study the agreeable sources of Sharī‘ah, the researcher has focused mainly on the formal certainty featuring their originality.

A discussion of a great depth of reasoning is made to re-examine the speculation attributed to Qiyās. A comparative analysis was applied between logic and the different forms of deduction as found in Uṣūl al-Fiqh. This chapter has also focused on the daring attempt made by al-Imam Ibn Taymiyyah\(^3\) to reformulate Qiyās. His attack on the forms of Qiyās as inherited from the Greek logic, paved the way for him to focus more on the substance (Māddah) of Qiyās, rendering it the criterion of certainty in the analogical deduction.

Chapter Five, the last chapter, presupposes that Uṣūl a-Fiqh, the way it had ended up, contained a great scope of speculation. It also assumes that the classical criterion for certainty in the legal field was not well determined, let alone its inconsistent application that perpetuated only speculation all along the methods of inference. Thus, this chapter takes seriously the call made by some jurists to establish a new definitive science to put an end to the overall deterioration plaguing the Muslim Ummah. In this respect, this chapter would examine the approaches of three prominent scholars: al-Juwaynī\(^4\), al-

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3 Known as Taqiyy al-Dīn Ibn Taymiyyah (661 – 728 A.H). He was moved to Damascus (Syria) when he was two years old as a result of the Tartar invasion. In Damascus, he grew up as an unbeatable student who excelled in all the religious sciences and sat for teaching in his twenties. He was invited to teach in Egypt but ended up in jail when his views did not please the authorities. He returned to Damascus only to die in jail over his views. He wrote Iqtīdā‘ al-Ṣīrāt al-Mustaqīm; Minhāj al-Sunnah al-Nabawīyyah; Faṣūl al-Maqāl and many others. See al-‘Alām of al-Zarkalī (1/55).

4 Abū al-Ma‘āli‘ Abū al-Mālik bin ‘Abd Allāh bin Yusuf al-Juwaynī al-Naysabūrī al-Shafi‘ī al-Ash ‘āri, nicknamed Diyā‘ al-Dīn and well known as Imām al-Harakays. He was a jurist, an interpreter of Qur‘ān (Mufassir) and a Master in literature. He studied Fiqh under his father and Uṣūl al-Fiqh under Abū al-Qāsim al-Iṣkaf. He began lecturing before he was twenty years old and was a tough opponent against the Muftadī ‘āh (people promoting heresy in Religion). He died in Naysabur in 478A.H. He authored many books, namely, al-Burhān Fī Uṣūl al-Fiqh; al-Waraqāt Fī Uṣūl al-Fiqh; al-Shāmil Fī Uṣūl al-Dīn; Al-Ghiyāhi; al-İrshād ilā Qawātī‘ al-Adillah. See al-‘İlam of al-Zarkalī (1/20).
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Shāṭībī and al-Sheykh Bin ‘Āshūr of the modern age. The trio distinctively theorized for the new definitive science, i.e. Maqāṣid al-Sharī‘ah (the objectives of Shari‘ah), insisting that this science must be certain to achieve its goals.

1.2 Literature review

Certainty in the legal field has, by and large, been spontaneously tackled by early and modern writings of Uṣūl al-Fiqh. It had often been addressed under notions like, Qa‘ (definitiveness); Zann (speculation); Ḥujjah (authenticity); ‘Ilm Darūrī (necessary knowledge); ‘Ilm Nazarī (theoretical knowledge) and yaqīn (certainty). The latter has been scarcely used.

Modern writings on Uṣūl al-Fiqh followed the same line of argument when addressing the authoritativeness of the legal proofs. However, an inventory dimension appears to have shaped a new trend of reasoning when dealing with Uṣūl al-Fiqh. Invoking notions like Burhān (demonstration) and ‘Aql (reason), these modern writings have been trying to unfold the logical and hence, the definitive platform upon which Uṣūl al-Fiqh stand. As far as the certainty of Uṣūl is concerned, the researcher can classify these writings into two major categories:

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6 Muḥammad al-Tāhir Bin ‘Āshūr (1879–1973 A.D), born in Tunisia and studied in Jāmi‘ al-Zaytūnah, one of the leading Islamic institutions in the Muslim world. He assumed many academic as well as administrative posts in the same institution. His efforts to improve the academic standard in al-Zaytūnah paved the way for him to preside over its chair. He had also earned the title of Sheykh al-Islam al-Maliki and Sheykh al-jāmī‘ al-A ‘dam. He wrote: Maqāṣid al-Sharī‘ah al-Islāmiyyah; Uṣūl al-Niqām al-Ijtima‘i‘ī Fī al-Īslām and al-Taḥfīr wa l-Tanwīr (a voluminous collection of Tafsīr al-Qur‘ān).

7 All these will be dealt with at subsequent chapters.
1. Writings restricting the sphere of certainty and broadening that of speculation.  
2. Writing broadening the sphere of certainty and restricting that of speculation.  

Although these two categories are concerned with setting a line of demarcation between certainty and uncertainty, their efforts to set relevant criteria have varied widely and remarkably. We shall now attempt to review those works, which can be divided into early and modern writings.

A - Early Writings.

1. "Al-Risālah" of al-Imām al-Shāfi’ī:  

We shall admit that every work in Uṣūl al-Fiqh is largely indebted to al-Shāfi’ī’s Risālah, which marked a new epoch in the legal methods of inference. Making "Bayān" (clarification) the platform for his work, al-Shāfi’ī identified two types of the legal texts: Al-Wāḍīh (the clear) and ghayr al-Wāḍīh (unclear). While the former tends to be unequivocal in meaning (Qat’ī), the latter is subject to a variety of signifiers (Qarā‘in) deemed essential to determine its genuine and intended meaning.

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8 This is represented by the majority of books of Uṣūl al-Fiqh such as al-Risālah of al-Shāfi’ī, al-Bahīr al-Muhīt of al-Zarkashi and al-Minḥāj of al-Baydawī.  
9 This is represented by books like al-Ghiyāthī and al-Burhān of al-Juwaynī, al-Mustaṣfa of al-Ghazālī, al-İḥkām of Ibn Ḥazm and al-Muwafaqa’t of al-Shāṭibī. It is also represented by the Shi‘ism literature in Uṣūl al-Fiqh such as Farā‘id al-Uṣūl of al-Anṣārī.  
10 Muḥammad bin Idrīs bin al-‘Abbās bin ‘Uthmān bin Shāfi’ī al-Hāshimi al-Qurarīshī al-Maṭḥabī (150-204 A.H.). Born in Palestine, al-Shāfi’ī was moved to Makkah where he grew up as a scholar. He studied al-Muwaṭṭa’ under al-Imām Mālik. He moved to Yemen then to Iraq where he got a chance to study the Hanafi views under Muhammad bin al-Hasan al-Shaybānī. He then moved to Egypt where he established his new Madhhab. The Shafi’ī Madhhab is purely credited to him and is believed to be the most prevailing Madhhab in the Muslim world. Al-Shāfi’ī wrote: al-Risālah; al-Ḥujjah; Ibfal al-Iṣṭiḥsān; Kitāb al-Umm and others. See al-A‘lām of al-Zarkālī (1/25).  
Al-Shāfi‘ī’s *Risālah* aimed at setting uniformed platforms of argument so that the enactment of laws would not be biased. Observing the discrepancies underlying the schools of *Ijtihād*, namely *Ahl al-ḥadīth* (school of ḥadīth) in Madīnah and *Ahl al-Ra‘y* (school of opinion) in Iraq, al-Shāfi‘ī aimed at bridging the gap between the two schools so that the scope of disagreement is narrowed down.

His attempt, the way the researcher sees it, aimed at targeting uniformity so that legislation would be based on a more solid ground. This would culminate in the identification of the exact areas of certainty and uncertainty respectively. This platform was to be adopted by the majority of jurists who viewed al-Shāfi‘ī’s *Risālah* as an attempt to regulate legislation in a more accurate way.

The Ḥanafis, who chose not to adopt the methodology of the Shāfi‘īs, targeted certainty through a variety of methods. Being originally the pioneers of *Ra‘y* (opinion), they tended to apply reason excessively. They came up with *Istihsān* (juristic preference) and excelled in applying *Qiyās* to counter-argue with their opponents from the Shafī‘īs. Their adoption of "reason" as a synthesizer in law enactment reflects their objective to attain certainties and discard conjectures.

But al-Shāfi‘ī’s *Risālah*, as an inaugural piece of work in the methods of inference suffered two setbacks:

(a) *Bayān*, the main theme of *al-Risālah*, was, more or less, dictated by the language factor, making the certainty of the legal text considerably

\[12\] Ibid., 56
linguistic in form. Other dimensions of certainty appeared subsiding, prompting other scholars to bypass al-Risālah’s approach.

(b) It fails to unite jurists on a potent methodology. That is why among the Shafi‘is themselves, we notice a vast margin of disagreement. The latter was taken advantage to by some quarters especially politicians who found in the “looseness of certainty” in the legal field a pretext to manipulate the law the way they liked. This paradoxical situation was to inspire a scholar in the fifth century, al-Imām al-Juwaynī, to theorize for a new science that would vanish the perplexity featuring certainty from uncertainty alike. This is to be addressed in the following paragraph.

2. Abū al-Ma‘ālī al-Juwaynī:

Feeling the dilemma that plagued the Muslim Ummah by the end of the fourth century, Al-Juwaynī wrote two seminal works: Al-Burhān fī Uṣūl al-Fiqh and Ghiyāth al-Umam fī Iltiyāth al-Zulam (a more politically oriented book).

a. Al-Burhān fī Uṣūl al-Fiqh:

From the title itself, we understand the objective as well as the motive leading al-Juwayni to venture into Burhān. The latter connotes “demonstration”, a method that goes beyond Bayān (clarification) of al-Shafi‘ī.

In his Burhān, al-Juwaynī attempted to restrict Qawāṭi‘ (certainties) into three, i.e.: Naṣṣ, Mutawātir and Ijmā‘. He even discussed the types of Oiyās that are definitive and apt to engender necessary knowledge. With almost every issue

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14 Ibid., 1/102
pertaining to *Uṣūl*, he was more inclined to prove it certain and discard its speculative aspects. This feature made his book the first attempt to establish *Uṣūl* on more definitive grounds.

**ii. *Ghiyāth al-Ummam Fī Ittiyāth al-Ẓulam*¹⁵**

In this book, al-Juwaynī appeared more like a reformist than a jurist, though it is in this book that the word *Yaqīn* (certainty) appeared plainly to advocate the certainty of the new science purporting to be the new anchor for the Muslim *Ummah*.

After surveying the main reasons leading to the intellectual and socio-political deterioration of the *Ummah*, al-Juwaynī discovered that the main reason was the remarkable absence of certainty in the legal methods of inference. The wide spectrum of speculation featuring those methods contributed badly to the said plight, leaving the door open for any view to be considered valid. Presenting "*Maqāṣid al-Shari‘ah*" (the objectives of *Shari‘ah*) to assume the role of "salvation", al-Juwaynī advocates its certainty, making it a prerequisite before any *Ijtihād* is exercised.¹⁶

Obviously, al-Juwaynī was not sneering at the views that make speculation the main feature of the Islamic legal system. Rather, he was remedying the potential of the juristic mind after it showed some signs of stagnation and ineffectiveness. He was not to abet the confusion that jurists had with regards to certainty and uncertainty respectively. He endeavored to set criteria for certainty so that law

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¹⁶ The researcher will discuss al-Juwaynī’s theory of *Maqāṣid* in chapter five.
enactment would operate on a more solid ground, leaving behind unnecessary disagreement.

In the same vein, he saw in *Uṣūl al-Fiqh* an unrecoverable defect owing to its classical methodology, which is, according to him, featured mainly by speculation and inconsistency. But his attempt did not seem to have succeeded in setting up the pillars of the new science, i.e. *Maqāṣid al-Shari‘ah*. Besides, he did not theorize enough for the view he was advocating nor did he show how *Maqāṣid* could coexist with *Uṣūl al-Fiqh* or by pass it.

3. **“Al-Muwāfaqat fī Uṣūl a-Shari‘ah” of al-Imām al-Shāṭibi (790 A.H)**

Perhaps, this is the most comprehensive study on certainty in *Uṣūl al-Fiqh*. Being inspired by al-Juwaynī and al-Ghazālī’s works, and being anxious about the overall situation of the *Ummah*, al-Shāṭibi felt that the problem had much to do with the legal methods of reasoning. Like al-Juwaynī, al-Shāṭibi had to adopt a reformist approach and announced that a new platform, i.e.: *Maqāṣid al-Shari‘ah*, was the only hope for the *Ummah* to rescue its legacy from perdition.

The most pertinent question that al-Shatibi was preoccupied with was the certainty of *Uṣūl al-Fiqh* and the certainty of the method whereby this science is set up.

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18 Abū Ḥāmid Muḥammad bin Muḥammad bin Aḥmad al-Ṭusī al-Shāfi‘i, well known as Ḥujjat al-Islām (the authority of Islam) and al-Ghazālī. He was one of the leading scholars in Fiqh, Uṣūl al-Fiqh, ‘Ilm al-Kalām (Muslim theology) and Taṣawwuf (Islamic Mysticism). He was a student of Imām al-Juwaynī and Abu Nasr al-Iṣmā‘īlī. He was appointed to teach in the Niẓāmiyyah School, the most outstanding school in Baghdad (Iraq). He died in 505A.H after leaving high standard heritage that would include: Ḥiyā ‘Ulum al-Dīn; Al-Mustasfā Fī ‘Uṣūl al-Fiqh; Al-Mankhūl; Shīfā al-Ghalīl; Taḥāfut al-Falāṣīfah; al-Munqīḏī mina al-Ḍafālī ... ect.

19 Al-Shatibi, *al-Muwāfaqāt*, 1/12
To brace for definitive *Uṣūl*, the method achieving it must be definitive too. Elaborating on this, Al-Shāṭibī devoted an entire volume of his *Muwāfaqāt* to propounding the theory of "*Maqāsid al-Sharī‘ah*". Unlike al-Juwaynī, al-Shāṭibī was trying to set up a definitive *Uṣūl* based on "*Maqāsid al-Sharī‘ah*", which is equally definitive.

To prove the certainty of *Maqāsid*, al-Shāṭibī applied a firm method called the **inductive method**. He endeavored to demonstrate that the steps, from which a conclusion is inductively reached, are logically and rationally justified. He went as far as to justify the "problems of induction" as foreseen by many jurists. Through his doctrine of *Kullī* (universal) and *juz‘ī* (particular), he mended many flaws affecting the certainty of the legal proof *al-Dalīl al-Sharī‘ah*. Al-Shatibi was more inclined towards "demonstration" *Burhān*, though he himself did not consider his *Muwāfaqāt* a book of "argument".

In doing so, he was targeting at certainty and its forms to cope with the wide spread of *bid‘ah* (*heresy*) striking every corner of *Gharnātah* (Granada-Spain). Watching his people veering towards *bid‘ah*, he understood that the problem was intellectual in principle. He was very aware that restricting the scope of certainties would quell any heretical trend in society, for those who propagated *bid‘ah* were somehow relying on texts whose speculation contributed gravely to the plight.

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20 This is going to be elaborated in chapter five.

In this meticulous piece of work, Ibn Taymiyyah revised the prevailing patterns of logic, both formal and informal. Being addressed mainly to criticize jurists who unreservedly adopted the Greek logic, al-Radd aimed at demonstrating that such an adoption was not safe from negative impacts. His criticism attacked mainly Hadd (definition), Burhān (demonstration) and most specifically Qiyās (Analogical deduction). His views were heading more towards reassessing the criteria of certainty and uncertainty as applied in the legal field.

Repealing some premises of Qiyās and adjusting its line of deduction, paved the way for Ibn Taymiyyah to elevate some forms of Qiyās from speculation to definitiveness. Clearly, this amendment at the level of Qiyās was a bid to attain certainty from uncertainties. His method to mend Qiyās in its substance (Māddah)\(^{22}\), and not necessarily in its form, amounts to an extraordinary shift in the methods of enquiry ever applied in the legal field.

B. Modern writings:


This book maintains the same line of argument adopted by both al-Juwaynī and al-Shājībī. Bin ‘Āshūr called for the initiation of a new science, i.e.: "Maqāṣid al-Sharī'ah" that would replace Uṣūl al-Fiqh. The main reason was that Bin ‘Āshūr was shocked to find that disagreement was widening and agreement was scarce. He questioned the role of Uṣūl al-Fiqh if it could not bridge opposing views. He

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\(^{22}\) This will be elaborated in chapter four where references will be fully cited.
realized that some people have taken advantage of the speculative legal proofs and used them in a very opportunistic way. He felt that the *Ummah* would deteriorate further if the methods of inference were left speculative. Accordingly, the establishment of a definitive science that would cut short any "juristic bargain" is needed.

In his outstanding book "al-*Maqāṣid*", bin ‘Ashur tackled issues of great depth. He emphasized a lot on the necessity of having such a science, the way *Maqasid* are realized and their applicability on the entire body of *Fiqh*. He excelled in applying induction (*Istiqrā'*) to unveil the objectives of *Sharī'ah*, though on the whole, he was guided by al-Shā'ībī’s inductive method. In doing so, he was very keen to melt *Uṣūl al-Fiqh* in a more definitive frame of inference. Bin ‘Ashur’s attempt, however, was so concise that more theorization of *Maqāṣid* was needed in his book. A more detailed analysis of Bin ‘Ashur’s views will be given in the last chapter as I classified him under “the school of certainty in *Uṣūl al-Fiqh*”.


*(Methods of enquiry of Muslim thinkers).* *(Cairo: Dār al-Ma‘rif, 1966)*

This book is one of the most deep and comprehensive studies ever made on the Islamic thought. Selecting *Uṣūl al-Fiqh* and *‘Ilm al-Kalām*, al-Naşshār conducted his enquiry focusing mainly on the methods of inference in both disciplines. In an admiring tone, he pointed out the most accurate and definitive thing the Muslim mind has ever explored, i.e.: the inductive method. The latter, according to al-Naşshār, had replaced the Aristotelian logic, which is featured by its syllogistic form. He explained how jurists tried to boost the speculation found
in some methods of deduction like Qiṣāṣ by referring it to a form similar to the experimental method. The latter is well characterized by the law of “universal causation” and the “law of the uniformity of nature”, both are the pillars of the modern methods of enquiry.

He also explained the smart application of Taʾlīl (ratiocination) and how certainty is acquired thereof. He referred to Ibn Taymiyah’s doctrine of certainty and how it can materialize in the entire body of Fiqh. But al-Nashshar’s attempt failed to analyze the trend advocating certainty in the legal field. It failed to trace its roots and how it progressed from al-Juwayni and al-Ghazālī to al-Shāṭibī up to the modern world. His treatment of the methods of enquiry showed little about the justifications that have urged a folk of jurists to advocate certainty in Uṣūl al-Fiqh. On the whole, the book is a daring research showing a considerable deal of certainty in the legal field.

7. ‘Tajdīd al-Manhaj fī Taqwīm al-Turāth” (Reconstructing the methods of assessing the Muslim legacy of Dr. Ṭahā ‘Abd al-Raḥmān).

This is a recent study on the methods applied to evaluate the credibility of Muslim thought. Dr. Ṭahā embarked upon a serious study, applying a highly standard style of writing and reasoning. Responding to some modern studies made to assess the Muslim thought, he picked up the works of Dr. Moḥammad ʿAbid al-Jābīrī, the famous Moroccan thinker whose writings on the "Arab mind" were featured by a high deal of scholarship.

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23 Dr. Moḥammad ʿAbid al-Jābīrī, a Morrocan thinker, interested in evaluating the evolution and the development of the “Arab mind”. He also has meticulous articles on “Islam and Modernity”. His writings would include: Taqwīm al-ʿAql al-ʿArabī; Naqd al-ʿAql al-ʿArabī; al-Islām wa ʾlHadāḥah.
Dr. Al-Jābīrī tried to advocate the idea that Muslim thought moved from *Bayān* (clarification) to *Burḥān* (demonstration) by the end of the fifth century. Among the pioneers of *Burḥān* were Ibn Ḥazm24, Ibn Khaldūn25, Ibn Rushd26 and al-Shāṭībī, all represented a "sophistication" that al-Jābīrī would eventually consider as an advantage related to the hierarchal transcendence of the Muslim mind through out the Islamic history.

In response to this approach, Dr. Ṭāhāʿ Abd al-Rahmān rejected this discriminatory assessment, calling it a narrow - minded approach. He advocated the "integral" approach that would combine different methods so that ideas are viewed in their entirety irrespective of the time-space constraints27.

He expressly referred to some attempts made by Muslim scholars to rationalize the modes of inference within the framework of *Waḥy*. Al-Shāṭībī’s

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24 ʿĀli bin ʿAbī bin Saʿīd bin Ḥazm al-Ẓāhirī (384-456A.H). He was born and grew up in Andalus (Spain) and reached the pinnacle of scholarship at an early age. His methodlogy earned much disappointment among the bulk of Jurists who stongly disagreed with him. He left a huge legacy that reached four hundred pieces of work. Among his writings: *Masāʾil Uṣūl al-Fiqh; Iḥkām Fi Uṣūl al-Āḥkām; al-Muḥallīlī; Kitāb al-Taqrīb fi Ḥudūd al-Manṭiq; al-Fiṣal fi al-Milal wal Niḥal*. See al-Aʿlām of al-Zarkali (5/59).

25 ʿAbd al-Rahmān bin Muḥammad bin Muḥammad bin Khaldūn (732-808A.H). He was born in Tunisia but of spanish origins. He is widely known as a sociologist who had come with unique theory concerning the evolution and development of civilizations. He roamed across the North African regions in quest of knowledge as well as studying societies in their evolutions, development and interactions. His works include: *Al-Muqaddimah; Talkhīs al-Maḥṣūl Fi Uṣūl al-Fiqh of al-Imām al-Rāzī; Sharḥ al-Burdah*. See *Naṣīḥ al-Tayyib* (4/414).

26 Muḥammad bin ʿAbī al-Qāsim Aḥmad bin ʿAbī al-Walīd Muḥammad bin Aḥmad bin Rushd, known as Ibn Rushd al-Ḥāfid (520-595A.H). He was born in Qurtubah (Cordova-Spain) where he mastered and excelled most of the sciences prevailing by then. He was well known as a jurist and a philosopher. His thought in philosophy gave birth to *Averrosism*, a philosophical trend which enlightened the west during the age of renaissance. His works include: *Faṣl al-Maqaṣ; al-Kashf ʿAnn Marādajj al-Adillah; Bidāyat al-Mujtahid*. See *al-Dībāj al-Mudhahab* of Ibn Farḥūn, 284.

Muvāfaqāt received an invaluable coverage in the work of Dr. Ṭāhā, considering it a typical model for "integrity" in Islamic thought. But Dr. Ṭāhā did not justify the reason why "Burhān" cannot be considered a new trend in Islamic thought. It seems that he does not appreciate the peculiarity featuring the works of scholars calling for "reforms" in Uṣūl al-Fiqh, though they insisted that their methodology never transgressed the limits of legal reasoning.\(^\text{28}\)

8. *Al-Manhājiyyah al-Uṣūliyyah wa-al-Manṭiq al-Yūnānī (The methodology of Uṣūl al-Fiqh and the Greek logic)* by Dr. Ḥammū al-Naqayr.

This is also a recent study on the juristic methodology and its certainty. Dr. Hammū engaged in a thoughtful discussion aiming at disclosing the areas of "plausibility" in Uṣūl al-Fiqh. Comparing Uṣūl al-Fiqh with the Greek logic, Dr. Ḥammū unveiled the scopes where both disciplines converge or diverge. He stressed mainly on the views of Abu Ḥāmid al-Ghazālī and those of Ibn Taymiyyah as both interacted directly with the Greek logic. While Abū Ḥāmid introduced logic to Uṣūl al-Fiqh, trying to grant more authenticity and perhaps certainty to it, Ibn Taymiyyah sharply criticized the Greek logic showing remarkable inconsistencies featuring its forms.

The study of Dr. Ḥammū also draws a distinction between Burhān (demonstration) and Muḥājijjah (Argumentation) as discerned in Uṣūl al-Fiqh. While al-Ghazālī was more inclined to preserve the demonstrative aspects of Greek logic, Ibn Taymiyyah viewed "demonstration" a matter related more to the substance (Māddah) of the proof than to its form. In doing so, the plausibility of

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\(^{28}\text{Ibid.}\)
the proof (Dalīl) would be determined by pragmatic factors and not necessarily by priori ones.


This is one of the outstanding studies on the feasibility of Uṣūl al-Fiqh. Dr. ‘Abdul Majīd's hypothetical thesis aimed at presenting Uṣūl al-Fiqh in new clothing after it allegedly stopped producing Fiqh (Islamic jurisprudence). The inconsistency of certainty in Uṣūl al-Fiqh culminated in a standoff between the political authority, represented by the rulers and the legal authority, represented by the jurists. This plight, according to Dr. ‘Abdul Majīd, attracted the attention of two prominent scholars, Al-Imam al-Juwayni (d.478 A.H) and al-Imam al-Shatibi (d.790 A.H.), both endeavored to present "Maqāṣid al-Shari‘ah" as the new definitive platform of Uṣūl al-Fiqh. But Dr. Abdul Majīd's book was more devoted to show the objectives of the two prominent scholars, i.e.: Al-Juwayni and al-Shāṭibi rather than showing the deep methodological steps applied in their works. Besides, Abdul Majīd's book failed to substantiate al-Juwayni's claim (establishing a definitive science, i.e.: Maqāṣid al-Shari‘ah) by referring to his "Burhān". The latter is where al-Juwayni talked about Qawāṭi’ (certainties) and ignored many of the issues pertaining to Uṣūl al-Fiqh. Besides, the books leaves an impression that the science of Maqāṣid al-Shari‘ah was born in response to political dictates, an approach that remains highly hypothetical.
10. The principles of Islamic Jurisprudence of Prof. Dr. Muḥammad Ḥāshim Kamālī.

This book is more oriented to be a textbook for students taking Islamic law courses. He addressed the issue of Qatī and Żannī while discussing the characteristics of the Qur'ānic legislation. Reviewing the main opinions about Qatī and Żannī, Kamālī classified a variety of legal texts under Qatī and Żannī respectively. He also touched on how Żannī can be elevated into Qatī and vice versa, though an elaboration on the processes of elevation and degradation was somewhat lacking. Besides, he did not go beyond the linguistic boundaries of the legal text when discussing Qatī and Żannī.


This is a Ph.D dissertation presented as partial fulfillment of the requirements for the degree of Doctor of philosophy. This is perhaps the first thesis covering the theme of certainty in a more comprehensive way. However, the thesis is highly descriptive of certainty and seldom ventures into analysis or setting criteria for knowing certainty. Besides, the thesis appears to have reflected the views of individual scholars such as al-Samarqandi on whom the author heavily relied.

At the end of this literature review, I would say that I have not come across a study aiming at setting criteria for certainty in the legal methods of inference. The modern materials on Uṣūl al-Fiqh tend to follow the same method of research inherited from the original writings. As such, no comprehensive study has ever been made to look at certainty from a variety of angles, like the
possibility to achieve certainty through a multitude of signifiers that are inductively realized. Similarly, no attempt has been so far made to study the trend calling for certainty in the absolute sense of the word.

For these and others reasons, this thesis would adopt a new approach that aims at shedding light on the trend advocating certainty in Ḫūl al-Ḡīḥ. It also tends to clarify and justify, through rational and demonstrative ways, the genuine criteria for certainty in Ḫūl al-Ḡīḥ.

1.2 Statement of the problem:

This thesis would attempt to deal with the following questions:

1. The absence of clear criteria identifying certainty from uncertainty.
2. The vitality of the issue of certainty is not really felt in most of Ḫūl al-Ḡīḥ materials.
3. The issue of Ḥāṭī and Ḥānī was tackled mostly from the linguistic angle, a matter that prevented other sources to determine the certainty or otherwise of the legal text.
4. The issue of certainty was tackled from a narrow perspective, paving the way for jurists to discuss it as a particular issue not as a universal one.
5. The mechanisms to attain certainties from uncertainties were so rigid in the traditional writings of Ḫūl al-Ḡīḥ. New tools are suggested in this thesis.
6. The relationship between certainty and Maqāṣid al-sharī‘ah is not clear in the classical books of Uṣūl al-Fiqh. They were generally treated as two separate entities.

7. The vast area of speculation embodied in Uṣūl al-Fiqh has been sometimes disastrous, luring people to argue on certainties on the pretext that Uṣūl al-Fiqh is mainly speculative.

1.3 The objectives of the research:

This research aims at achieving the following objectives:

1. To propound a comprehensive theory on certainty and uncertainty to be worth applied in the legal methods of inference.

2. To go beyond the linguistic framework within which the Qat‘ī and Zannī have been treated.

3. To set genuine criteria that would be able to distinguish between certainty and uncertainty.

4. To explore the dynamic role that such a theory would play in mending the flaws of the classical methods of inference.

5. To present a theory more related to kulliyāt (.universals) than to juz‘iyāt (particulars).

6. To shed light on the elevation and degradation processes that sometimes occur between Qat‘ī and Zannī. This is to emphasize that flexibility features certainty and uncertainty alike.
7. To explore the role *Maqāsid al-Sharī‘ah* (the objectives of Sharī‘ah) can play to propound a doctrine of certainty in the legal field.

However, in this thesis, we are not calling for absolute certainty that is not achievable in principle, nor are we calling for limiting the scope of *Ijtiḥād*, the source of juristic vitality in Islam. Rather, we are calling for a genuine exploitation of the norms governing the legal authenticity of the legal proofs.

### 1.4 The methodology of the research:

Two types of methodology will be adopted:

1. **The analytical method:**

   Obviously, this study would attempt a research at a great depth. It tends to shed light on the solid ground upon which the Islamic law stands. It also aims at establishing a new science that enjoys a high deal of plausibility. Hence, a descriptive methodology is needed first to grasp to level of certainty reached throughout the classical writings of *Uṣūl al-Fiqh*. It would be followed by an analytical methodology to weigh the value of the views supporting or opposing certainty in the legal field. The analysis that I will forward would focus on measuring the said views in the light of conventional and pragmatic frames of reference.

   This analytical approach will venture into new areas where certainty is conceivable. The researcher will go beyond the patterns already set for certainty, as the latter is also achievable through the combination of more than one approach.
2. **The comparative method:**

   This study would invite a variety of views reflecting various trends in the Islamic thought in general and *Usūl al-Fiqh* in particular. The researcher will be discussing certainty according to jurists, Muslim theologians, philosophers and logicians. Thus, a comparative methodology is needed to realize where these views converge or diverge. Besides, an attempt will be made to use the convergent and divergent approaches to determine the criteria of certainty in the legal field. This would be followed by a critical assessment of the views that do not conform with the general standards of certainty in the *Sharī'ah*. 