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Ahmad Qabil, a Reason to Believe and the New Religious Thinking in Iran

Abstract

Ahmad Qabil (d. 2012) was a mid-ranking cleric who achieved considerable fame in Iran due to his foregrounding of reason in his jurisprudential writings, his opposition to the strict “literalist” version of shari‘a law propounded by the authorities in the Islamic Republic, and for his 2004 fatwa which permitted women the choice about head covering (hijab). His commitment to reason and justice meant that his political and jurisprudential compositions and activities cannot be divorced from each other, rather, they developed in symbiotic fashion. Largely ignored by Western scholars, this article examines Qabil’s contribution to the so-called “New Religious Thinking” movement in Iran. His writings and activities are significant because the reason-driven approach reflects an attempt to navigate a path based on sources within the Islamic jurisprudential tradition towards “universal” standards that are common in the West, and thereby avoid the accusations of “cultural erosion” through intellectual borrowing from the West.¹

Key Words: Ahmad Qabil, New Religious Thinkers, Reason, Jurisprudence, Islamic Reform

Introduction

The “New Religious Thinkers” of Iran are a group of seminarians and lay-religious intellectuals who have developed a way of interpreting Islam to meet the challenges of modernity, and which in general permit understandings of Islamic scripture that accord with gender equality, religious pluralism, and non-discrimination. The roots of the New Religious Thinking may be traced to the ideas of the lay-intellectual Abdolkarim Soroush, but jurists themselves by the mid-1980s had also started to reflect on the trajectory of the Islamic Revolution which overthrew the monarchy of Muhammad Reza Pahlavi in 1978-9. Of particular interest in this respect was the role of Ayatollah

¹ A few names are not transliterated according to the house style because they have appeared with regularity in the press, and do not require transliteration. These include Ayatollahs Khomeini, Khamenei, Montazeri, and Muhammad Reza Pahlavi.

Montazeri, who inserted into the Constitution the theory of *wilayat-i faqih* (guardianship of the jurist), the system of government that provided the Leader of the Republic with considerable power. Montazeri was dismissed from his role as Khomeini's successor in 1989, following his criticism of certain policies pursued by the authorities, such as the mass executions in jails that were being carried out by the Islamic Republic.² It is noteworthy that Muhsin Kadivar and Ahmad Qabil, two of the most significant New Religious Thinkers among the *'ulama*, (the seminarians, or clerics) emerged from the circle that congregated around Montazeri.

Qabil is the subject of this article.³ He is virtually unknown to Western academics, even among those who study contemporary Iran and Islam. However, he is a familiar figure among Iranians for three reasons. First, he represents an extreme among the reformist *'ulama* because of his firm attachment to reason that results in some very interesting conclusions on religious and political issues (which will be unpacked in due course). Second, he is famous from a purely jurisprudential perspective because of a fatwa that he issued in 2004 in which he stated his belief that the *hijab* was desirable, or recommended (*mustahabb*).⁴ This stands in contrast to the compulsory status of head-covering for women which is strictly enforced by the state. Third, Qabil achieved prominence in Iran following his political stand against 'Ali Khamenei (the Supreme Leader of Iran since 1989) whom he publicly accused of corruption and tyranny from 2001 onwards. This political stance was the inevitable consequence of Qabil's jurisprudential commitment to reason which dovetailed with his firm attachment to justice. The timing of these criticisms is important, for only several years after Qabil's initial criticisms of Khamenei, the Green Movement (*junbish-i sabz*) emerged in Iran, which grew out of mass-protests at the perception that the Presidential elections of 2009 were rigged. Qabil was propelled to the forefront of the opposition movement, and the regime sought to quell such criticism by arresting him and putting him in jail. He refused to be silenced, and it was only a brain tumour and associated health problems that finally brought an early end to his life in 2012.

² Ulrich von Schwerin, *The Dissident Mullah: Ayatollah Montazeri and the Struggle for Reform in Revolutionary Iran* (London: I.B. Tauris, 2015), pp. 90-131. Sussan Siavoshi, *Montazeri: The Life and Thought of Iran's Revolutionary Ayatollah* (Cambridge: University Press, 2017), pp. 103-149.

³ All the e.books by Qabil cited in this article may be found on his website:

<http://www.ghabel.net/shariat/> (accessed 11.08.2018)

⁴ Qabil, *Ahkam-i banuvan dar shari'at Muhammadi*, p. 56.

This article assesses Qabil's contribution to the New Religious Thinking that has spread among Iranian reformist Shi'ī *ʿulama*. While it is true that New Religious Thinking is not specific to the *ʿulamā*, this article addresses only one such thinker whose background has been within the seminary tradition of Iran. The reformist *ʿulama* among the New Religious Thinkers in Iran have provided a wide and diverse range of proposals to reform Islam, so much so that a single article would be insufficient to examine all of these ideas in adequate detail. The choice of examining the thought of Aḥmad Qabil, as opposed to one of the other thinkers is because his thought has been ignored by Western observers of Iran. Aside from passing references to him in a number of works dealing with Iran's reformist thinkers, there has yet to appear any scholarly article in English or any other European language that deals with his way of thinking. This absence of analytical research in the West about Qabil may be attributable to at least two factors. The first is the relative brevity of time since his emergence on the religious-political stage, and the second is the difficulty of understanding the language of his juristic-theological texts; although written in Persian, many of Qabil's works are heavily loaded with specific terminology, so jurisprudential and theological familiarity is necessary for any scholar who is serious about deciphering the meaning of such works. Likewise, there is very little secondary literature in Persian that analyses Qabil's life and thought, most probably because he was such a controversial figure that any Iranian scholar who desired to publish on Qabil would have had to be extremely careful. (One exception is an online discussion of Qabil's contribution by Mohsen Kadivar who has been based in the USA since 2008).⁵ As the first work to investigate Aḥmad Qabil, this article firstly outlines his life and political involvement in Iran until his untimely death in 2012. Subsequently, it provides a breakdown of his works. And finally and most importantly, this article analyses the most significant aspects of his jurisprudential-theological teachings, using the framework of Qabil's ideas about the sources of jurisprudence (the Qurʿān, sayings of the Prophet and Imāms, consensus of opinions, and reason), all the while locating them within the general parameters of Islamic tradition and the New Religious Thinking in Iran.

⁵ See Kadivar's detailed biography on his website which details the events leading up to his stay in the USA <https://en.kadivar.com/sample-page-2/> (accessed 07.08.2018). For Kadivar on Qabil see See "Mujāhidat-hā-yi ʿilmī-yi marhūm Aḥmad Qabil" (مجاهدتهای علمی مرحوم احمد قابل) <http://kadivar.com/?p=9795>. (Accessed 09.08.2018)

Qabil's Life and Political Involvement

Aḥmad Qabil was born in 1954, and with a clerical father, it came as no surprise that he too pursued a religious education in the Holy city of Mashhad under the guidance of Ayatollah Milani. In 1978 he moved to Qom to continue his religious education, and once there he was caught up in the opposition to the regime of Muhammad Reza Pahlavi. He began reading the works of pre-revolutionary religious thinkers,⁶ including non-seminary trained scholars such as 'Ali Shari'ati⁷ and Mihdi Bazargan (the leader of the Freedom Movement),⁸ as well as seminarian thinkers among the 'ulama, such as Ayatollah Taliqani.⁹ Following the revolution, Qabil spent a short spell with the Revolutionary Guards (*Sipah-i Pasdaran*) in Mashhad, which had been set up specifically to guard the Islamic nature of the Revolution, and he also spent some time at the war-front, where he fought against the Iraqi forces. During the 1980's Qabil returned to his studies in Qom, and whilst there he also served as an interrogator (*baz-porsi*) in the Special Clerical Court.¹⁰ He also assisted his father in the running of and teaching in a seminary in Fariman close to the border with Afghanistan.¹¹

Whilst in Qum Qabil commenced an association with Ayatollah Montazeri who was considered one of the greatest teachers at the level of advanced jurisprudential studies (*dars-i kharij-i fiqh*). In fact, the relationship was not merely a teacher-student relationship, rather it resembled a father-son bond which lasted for more than twenty years.¹² It was Montazeri who declared publicly in 1998 that Qabil was sufficiently qualified to issue his own opinions (*ijtihad*) not only on matters of jurisprudence but also in *hadith* and theology. The association with Montazeri coincided with the period

⁶ *Yad-nama-yi Ahmad Qabil*, p. 71.

⁷ For an overview of 'Ali Shari'ati's life and thought see 'Ali Rahnema, *An Islamic Utopian: A Political Biography of 'Ali Shari'ati* (second edition, London: I.B. Tauris: 2014).

⁸ For an overview of Bazargan see Forough Jahanbakhsh, *Islam, Democracy and Religious Modernism in Iran, 1953-2000* (Leiden: Brill, 2001), pp. 80-98.

⁹ The life and thought of Ayatollah Taliqani have not been adequately researched in English. The most extensive treatment is in Hamid Dabashi, *Theology of Discontent: The Ideological Foundation of the Islamic Revolution in Iran* (New Jersey: Transaction, 2006), pp. 216-72.

¹⁰ For the Special Clerical Courts see Mirjam Künkler, "The Special Court of the Clergy (*dādgāh-e vīzhe-ye rūḥānīyat*) and the Repression of Dissident Clergy in Iran," in *The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran*, edited by Said Arjomand and Nathan Brown, (Albany: SUNY Press, 2012), pp. 57-100. Qabil was to be tried in these courts in 2010.

¹¹ These events are described in *Yad-nama-yi Ahmad Qabil*, pp. 71-85, although the timeline is far from clear.

¹² *Yad-nama-yi Ahmad Qabil*, p. 66.

in which he had commenced a critique of certain policies being pursued by the Islamic Republic of Iran. In particular, Montazeri had been concerned at the numbers of prisoners held in jail and summarily executed in the summer of 1988, and so he had sent a letter of concern to Khomeini in July 1988.¹³ This may well have contributed to his “fall from grace” (having been appointed in 1985 as the deputy leader of the regime, second only to Khomeini), for in 1989 he was dismissed from office and placed under house-arrest. It is in this light that Qabil’s continued support and connection to Montazeri should be considered. It might have been all too easy for Qabil to extricate himself from his spiritual guide, had he desired to further his education and career within the ranks of the *‘ulama*. However, Qabil’s commitment to truth and the same kind of values espoused by Montazeri ensured that he remained faithful to the cause that he saw was opposed to tyranny and corruption, and which was combined with the Green movement several years later.¹⁴

Qabil’s independent mind surfaced soon after Montazeri’s house arrest, and he distanced himself from aspects of the traditional seminarian establishment. This is typified by his refusal to wear the robes and turban so often associated with Iran’s Shi‘i clerics. Qabil claimed that he cast off the seminarian gown and turban in the summer of 1991,¹⁵ having worn them since 1975 when he first went to Qum. He offered several reasons which explain his actions. First, he pointed to the practical consideration that these clothes are cumbersome, especially in the heat of the Iranian summer when many

¹³ See Ulrich von Schwerin, *The Dissident Mullah*, p. 109, which comes in a chapter devoted to Montazeri’s “fall” within the clerical establishment of the Islamic Republic (pp. 90-131).

¹⁴ For the Green Movement see Hamid Dabashi, *The Green Movement in Iran* (New Jersey: Transaction, 2011). Qabil summarised the views and demands of the Green Movement with which he clearly sympathised. (See “*Mushārakāt-i junbish-i sabz*” (Common-points of the Green Movement) in *Vasiyat bi millat-i Iran* (pp. 115-120),

1. The common demand of the people in the current uprising is nothing other than the rejection of tyranny and the verification of the authority of the nation based upon democracy.
2. The basis of all the laws of the country must be established upon human rights.
3. The right to freedom of expression.
4. All the socio-political efforts of the Green Movement of the nation of Iran [must] be in the framework of “national unity, and the oneness of the land of Iran”.
5. The rejection of violence.

That he was identified with the Green Movement is typified in the following remark by Ishkevari made on October 22nd, 2012:

“In recent years Qabil has also been among the well-known opposition leaders of the Green Movement. On this topic too, he was successful and dignified. In following Ayatollah Montazeri (his master and leader in jurisprudence, politics, piety and morality) with his particular [form of] bravery, he clearly and firmly criticised and battled the political power and tyranny of the ruler in relation to religion and the shari‘a from basically a jurisprudential and religious perspective.” (Cited in *Yād-nāmeḥ*, p. 324)

¹⁵ “*Chira libas-i ruhaniyat-ra kinar guzashtam*” (Why I put aside the clerical clothes), in *Khud-kamagi*, p. 95.

individuals mill around, travel, drive, and engage in all kinds of energetic activities. Second, Qabil claimed that the false pride among most people dressed in clerical garments had led to the non-observance of human and Islamic morals in many social interactions. Third, Qabil argued that Muhammad and the Imams had not adorned themselves in any particular garment, but had worn the same clothes as ordinary people. Fourth, Qabil reflected upon a reliable narration from Imam Sadiq that “the best clothes in any time are the ordinary clothes of the people of that time,” which he considered a proof that wearing non-clerical garments was a legal duty.¹⁶

Despite Qabil’s refusal to wear clerical garment, his attachment to the seminary and its learning should not be overlooked. Perhaps Qabil was inspired by the example set by Montazeri, who under house arrest, remained steadfast in his duties of guiding and teaching in as much as he was allowed to do so. Nevertheless, Qabil’s concern with the seminaries in Iran, and their connections with the state must have caused him concern. It is to be wondered, for example, if the conflict between Montazeri and Khomeini produced an inner turmoil within him. Montazeri was critical of those who claimed Khomeini’s legacy, such as ‘Ali Khamenei, and the dispute between two of the most senior figures associated with the Islamic revolution provoked the kinds of questions about how it was possible to support and endorse the reformist ideas of Montazeri on the one hand whilst remaining loyal not only to the legacy of Khomeini (the Islamic Revolution), but even to the figure of Khomeini.¹⁷ Ahmad Qabil’s brother Hadi provides a solution to this conundrum that may have a lot of resonance among Iranians. He claimed that Ahmad Qabil accepted Khomeini as the leader of the country and regarded him with great respect. However, he insisted that Khomeini was not infallible (*ma’sum*) and could fall into error,¹⁸ that is to say, both Qabil s completely rejected the cult of Khomeini.

Qabil’s first encounter with prison and the state authorities came in 1997. The timing of this is significant because it occurred very soon after Montazeri warned Khamenei in early 1995 about mixing politics and religion, which was clearly a

¹⁶ Ibid, pp. 95-6.

¹⁷ Qabil’s understanding of *vilayat* needs greater consideration, which cannot be undertaken in the parameters of this article. However, his views are set out methodically in “Vilayat-i faqih,” in *Fiqh, Kar-kard-ha va Qabiliyat-ha*, pp. 75-96.

¹⁸ *Yad-nama-yi Ahmad Qabil*, p. 73. The sentiment is a little strange, seeing as the “orthodox” position is that Khomeini was a normal human and can not in any way be considered comparable with the immaculate Imāms.

rejection of the latter's attempt to assume the position of *marja'iyat*,¹⁹ and soon after the election of the reformist President, Muhammad Khatami in August 1996. In other words, Qabil's arrest was probably an attempt by the more "conservative" elements of the Islamic Republic to fight back against what was being perceived as a challenge to their authority. Qabil had been distributing some advice that Montazeri had written for the new President when he was arrested by the security forces and taken to Mashhad, and he was detained for several days. And then in 2001 he was arrested once more in Tehran and taken to the Special Clerical Courts. He spent 125 days in solitary confinement before being released on bail,²⁰ having been accused of acting against national security, insulting the Supreme Leader (Khamenei), and spreading propaganda against the political system.²¹

On release, Qabil moved to Tajikistan, and still undaunted he composed a long letter containing virulent criticism of Khamenei, dated 31 May 2005, in which he listed seven main points that castigated the Supreme Leader for the misrule of the country. The candour and the direct nature of the criticisms are astonishing, and it is to be speculated that it was these harsh words more than Qabil's reformed shari'ah that tainted him in the eyes of the regime. It is worth summarising these seven criticisms and provide examples of the language used, if only to give an indication of the nature of the letter.²²

The first criticism refers to the "great mistake of our clerics" of claiming the right to government without having the requisite knowledge for it, believing that jurisprudence is a sufficient qualification to appoint themselves to leadership and positions of power and demanding the authority of absolute guardianship (*wilayat-i mutlaqa*).

The second criticism concerns the internal politics of the Islamic Republic, which Qabil claims, had fallen into the trap of the cruel (*khushunat-talaban*), who

¹⁹ Ulrich von Schwerin, *The Dissident Mullah*, p. 161. The position of *Marja' taqlid* (source of emulation) has traditionally been the highest spiritual rank among Shi'as. A *Marja'* controls a seminary, its administration, its curriculum and its finances. As such a *Marja'* is independent from the state. Khamenei, according to many sources, did not hold the requisite educational background to become a *Marja'*. His attempts to secure this position reflected, perhaps, his desire to assume greater spiritual standing in Iran and among Shi'i communities outside of Iran.

²⁰ Muhammad Sahimi, "Progressive Muslim Scholar and Political Dissident Ahmad Ghabel: 1954-2012", <http://www.payvand.com/news/12/oct/1157.html> (accessed 29.08.16)

²¹ *Yad-nama-yi Ahmad Qabil*, p. 77.

²² This letter simply entitled نامه به رهبر جمهوری اسلامی ایران ("Letter to the Leader of the Islamic Republic") is available in full on the following site: http://www.bbc.com/persian/iran/story/2005/06/050601_ahmad-Qabil-letter.shtml (accessed 2.11.17).

eliminated and dishonoured political opposition (including the National Front, the Freedom Movement, the Mujahadin-i Khalq and Marxists). Moreover they “drove the country down a deep and terrifying gorge of revenge, murder, war-mongering and utter insecurity.” He continued, “Didn’t this unlawful bloodshed, and the blood of hundreds of other sinless people ... [spilt by] the revolutionary courts in the years between [13]60-68/1981-1988 point to today’s serious situation?”

Similarly, the third criticism continued in a similar vein: “During your (twelve year) leadership [i.e. Khamenei] the tyranny of the courts of justice and the apparatus of justice, information and security has increased more than ever ... the opponents of your politics have been crushed severely and have faced various infringements of [their] individual and public rights.” Qabil offers a number of examples, including the “Harsh, illegal and ill-mannered treatment meted out to Ayatollah Montazeri ... perpetrated by officials from the official judiciary and security services, and those who are connected to you [Khamenei].” Qabil continued by pointing out that the use of terror against political opponents had led to the habitual practice of terror by governors to solve their problems. He also reminded Khamenei that he had accused the reformist press of being “the enemy’s base” in 2000-1, which was instrumental in their closure. Qabil mentions well known seminarians, journalists and politicians who had been jailed, including ‘Abdollah Nuri, Akbar Ganji, and ‘Abbas ‘Abdi, which all reflected the lack of confidence in the structures associated with the Leadership. His list of accusations against Khamenei on this point implicated him in almost all of the controversial issues that occurred in Iran during the first decade of the 21st century.

The fourth, fifth and sixth criticisms are much shorter, and they all concern foreign relations. The fourth asks about the “incorrect assumptions made by the great leaders of the Islamic Republic” concerning its ability in foreign affairs which led to insecurity in the region and internationally, such as the eight-year war with Iraq, and the breaking of relations with other nations (including the USA). He also mentions both the assistance that had been given to silence various opposition groups located outside of Iran, which amounted to aiding and abetting terrorist operations, and the interference in Afghanistan, Lebanon, and Saudi Arabia. This short criticism is worthy of further consideration because it calls into question not just Khamenei, but also the revolutionaries during the early years of the revolution, including Khomeini. Perhaps it was for this reason that Qabil did not offer more than three brief paragraphs to expand on his initial criticism. The fifth criticism continues the theme of foreign relations.

Qabil stated that the consequences of the past twenty-five years of foreign policy were beginning to show, and he accused Khamenei of not revealing the reality of Iran's weakness vis-à-vis European powers by promoting propaganda and attempting to belittle international powers. In the sixth criticism, Qabil asked Khamenei what role he played in provoking the American policy of advocating regime change in Iran which had kept Iran in a weak position. Connected with regime change, he pointed out that there was a movement within Iran calling for a referendum on the political order, or for changing the structure of power within the fundamental laws. The final point contained Qabil's recommendations to reform the system. This included a general pardon for all political prisoners, the freedom for all kinds of publications, and a guarantee for the security of those who wished to return to Iran from abroad. Subsequently, he requested a written statement to guarantee that the programme of the President would be carried out, a clear nod to the problems encountered by President Khatami during his two terms in office, and whose attempts at creating a civil society were blocked by the more conservative individuals within the regime. Finally, he called for invitations to international organisations to supervise elections.

Despite these stinging criticisms, Qabil's other writings reveal that he chose his words with care. Indeed, there is some evidence that at times he was extremely cautious in what he said or wrote in public. Aside from Khamenei, Qabil very rarely identified any particular individual for criticism. He attempted to preserve common decency and respect for free expression of opinion.²³

Despite his respect for the views of others, Qabil was aware that his own opinions were highly controversial and dangerous. And it is perhaps because of this that he composed his letter in criticism of Khamenei from the safe haven of Tajikistan, and it would not be surprising if he had intended to use his sojourn there as a stepping stone to a more permanent move to Europe or North America. According to Hadi Qabil, his brother's aim in going to Tajikistan was to pursue his study and research in Europe and North America, and to live there. Ahmad Qabil appeared to be speaking about such aims, and in establishing some sort of research institute outside of Iran when he composed *shari'at-i 'aqlani* (Rational shari'a).²⁴

²³ See his comments about maintaining all comments and views on his weblog. *Shari'at-i 'aqlani*, p. 248.

²⁴ *Shari'at-i 'aqlani*, p. 66.

On returning to Iran for medical reasons in 2006,²⁵ Qabil had his passport confiscated which prevented him from leaving his country of birth.²⁶ Despite his previous experiences, he persisted in his criticism of Khamenei, typified in another public letter following the arrest of his brother who was a supporter of the reform movement. Qabil's letter of April 2008 accused Khamenei of absolute dictatorship, saying, "That Mr. Khamenei insists that nobody's view is important but his, and that, for example, that no one should express any opinion about Iran's nuclear program is an indication of nothing but absolute dictatorship," and, "I am waiting for the day when he [Khamenei] is put on trial."²⁷ Hadi Qabil was eventually sentenced to 40 months of incarceration, defrocking, and a fine of 5,000,000 rials.

In June 2009, Qabil issued his "political will" (*wasiyat bi millat-i Iran*) a thirty page essay in which he continued to castigate Khamenei for his damaging leadership of Iran.²⁸ He persisted in irritating the "conservatives" in the regime when he published an article in November 2009 entitled "A brief critique of the occupation of the American Embassy in Iran,"²⁹ in which he claimed Montazeri had also pointed out that it was an improper act.³⁰ In December 2009 Montazeri died, and on his way to the funeral Qabil was arrested again. He was brought to the Special Clerical Court in May 2010, this time in chains.³¹ Having spent 170 days in prison, Qabil was released on July 1, 2010, after posting bail.³² He continued to antagonise the regime, and in September 2010 he claimed that groups of prisoners had been executed in Mashhad's Vakilabad prison.³³ Unsurprisingly, he was re-arrested a short time later and on December 10, 2010, Qabil was sentenced to 20 months.³⁴ Whilst in prison, he complained of severe headaches and he said that his eyesight was becoming impaired. His health began to fail, and the left side of his body became paralysed, and he was unable to dress himself properly.³⁵ Eventually the authorities let him receive medical treatment in

²⁵ *Yad-nama-yi Ahmad Qabil*, p. 80.

²⁶ Muhammad Sahimi, "Progressive Muslim Scholar and Political Dissident Ahmad Ghabel: 1954-2012". See also Ahmad Qabil, *Naqd-i Khud-kāmagī*, pp. 139-150.

²⁷ http://zamaaneh.com/news/2008/04/post_4531.html

²⁸ The whole document is produced in *Waṣīyat bi millat-i Irān*, pp. 33-63.

²⁹ A reference to the capture and taking hostage of 52 American citizens and diplomats in the American embassy in Tehran, and who were held for 444 days, from November 4th 1979 – January 20th 1981).

³⁰ "Naqd-i ijmālī-yi ashghāl-i siḡarat-i Āmrīkā dar Irān," 10 Aban 1388, in *Fiqh, kar-kard-hā va Qabiliyat-hā*, pp.129-142.

³¹ *Yad-nama-yi Ahmad Qabil*, p. 46.

³² Sahimi, "Progressive Muslim Scholar";

³³ *Yad-nama-yi Ahmad Qabil*, p. 46.

³⁴ Sahimi, "Progressive Muslim Scholar"; *Yād-nāma-yi Aḥmad Qabil*, p. 79.

³⁵ *Yad-nama-yi Ahmad Qabil*, p. 48-9.

hospitals outside of Tehran where scans revealed he had a brain tumour. Several operations failed to improve his condition, and he passed away on 22nd October, 2012.³⁶

I. Qabil's Writings

Qabil's academic writings and speeches have been gathered together and placed on a website simply named "ghabel.net", the contents of which has been prepared and edited with the help of fellow New Religious Thinker, Muhsin Kadivar. The main section of this website is named *Shari'at-i 'aqlani*, or rational shari'a. It is in this section that it is possible to download Qabil's books. These consist of the following:

1. *A Critique of the Culture of Violence (Political notes, 1375-79 [1996-2000])*.³⁷
2. *Islam and Social Security*.³⁸
3. *Foundations of the shari'a (Discussion on the Basis and Principles of Jurisprudence)*.³⁹
4. *Testament to the Iranian Nation (Political notes and interviews 1388-91 [2009-2012])*.⁴⁰
5. *Criticism of Stubbornness (Political notes, Reflections and Poetry 1380-88 [2001-2009])*.⁴¹
6. *Worldly Fear and Hopes (Speeches 1383-88 [2004-2009])*.⁴²
7. *Rational shari'a (Articles on the Relation between Reason and the Law)*.⁴³
8. *Jurisprudence, Products and Potentialities (Jurisprudential articles and answers to religious questions, 1382-89 [2003-2010])*.⁴⁴
9. *Commands Pertaining to Women in the Mohammadan Law (the non-superiority of men, inheritance, the veil, temporary marriage, divorce ...)*.⁴⁵

³⁶ *Yad-nama-yi Ahmad Qabil*, pp. 49-50, 78-9.

³⁷ *Naqd-i farhang-i khushūnat*, نقد فرهنگ خشونت (1381/2002-3, pp. 376).

³⁸ *Islām va ta'mīn-i ijtimā'i*, اسلام و تأمین اجتماعی (1383/2004-5, pp. 486).

³⁹ *Mabānī-yi shari'at*, مبانی شریعت (1391/2012-13, pp. 356).

⁴⁰ *Wasīyat bi millat-i Irān*, وصیت به ملت ایران (1391/2012-13, pp. 420).

⁴¹ *Naqd-i khudkāmāgī*, نقد خودکامگی (1391/2012/13, pp. 456).

⁴² *Bīm va omīdhā-yi dīndārī*, بیم و امیدهای دینداری (1391/2012-13, pp. 283).

⁴³ *Shari'at-i 'aqlānī*, شریعت عقلانی (1391/2012-13, pp. 328).

⁴⁴ *Fiqh, Kār kard-hā va Qabiliyat*, فقه، کارکردها و قابلیت‌ها (1392/2013-14, pp. 290).

⁴⁵ *Aḥkām-i bānūvān dar shari'at-i Muḥammadī*, احکام بانوان در شریعت محمدی (1392/2013-14, pp. 228).

10. *The Commands of Punishment in the Mohammadan shari'ah* (Apostasy, stoning, death penalty, temporary detention, capital punishment, unlawful taking of confession and judgement).⁴⁶

In addition to the above books composed by Qabil, the web-site also includes a commemorative volume (*Yad-nama-yi Ahmad Qabil*) which includes useful and informative essays and tributes by Iranian reformists about Ahmad Qabil.

III. Qabil as a Neo-Mu'tazili-Shi'i Thinker

The reason for introducing Qabil as a Neo-Mu'tazili thinker is because of his foregrounding of reason in his writings, whether these are primarily of a political or jurisprudential nature. In this respect he resembles the Mu'tazili thinkers of early Islam who favoured reason in their theological discourses, and were to influence the history of Shi'i scholarship, arguably more than the Sunni tradition.⁴⁷ Reason is one of the four sources of Islamic law among then Shi'i *'ulamā*, however, in practice it has been marginalised, even among Usuli scholars who have favoured reason in jurisprudential studies. This is succinctly stated by Ishkavari, one of the most prominent and well-known of reformers:

Human reason too was not accorded much credit in the *ejtehād* of the Shi'i *mujtahid*. When this noble principle was accepted that "*ijtihad* of the sacred text is forbidden (*nass*)," in practice, rationality and argumentation based upon reason and independent human wisdom lost currency and authority.⁴⁸

Although reason is paramount within the perspectives of all the so-called "New Religious Thinkers" of modern Iran, it is Qabil who has advanced reason beyond all traditional parameters. And the few academic observers who have made reference to

⁴⁶ *Aḥkām-i jazā'ī dar sharī'at-i Muḥammadī*, احکام جزایی در شریعت محمدی (1390/2011-12, pp. 342).

⁴⁷ Qabil makes the association between the Mū'tazilīs and the Shī'ī on many occasions in his *Sharī'at-i 'aqlānī*, see for example, p. 61. For a very basic introduction to Mū'tazilī thinking, see W.M. Watt, *Islamic Philosophy and Theology* (Edinburgh: Edinburgh University Press, 1962), pp. 58-71; idem, *The Formative Period of Islamic Thought* (Oxford: Oneworld, 1998), pp. 209-50. Commitment to reason also entails a concomitant adherence to justice. And because the Shī'īs believe that the Imāms were persecuted and denied "legitimate" right to rule, believers share with the Mū'tazilīs a strong conviction for justice.

⁴⁸ *Yad-nama-yi Ahmad Qabil*, p. 466.

Qabil have also alluded to him as a scholar whose fame rests on this unprecedented application of reason. For example, Sussan Siavoshi has remarked that Qabil “made a clean break with traditional jurisprudence.”⁴⁹

So many research questions emerge when considering Qabil’s thought, such as whether his intellectual contribution was really unique or innovative? What role does reason play vis-a-vis revelation? And what has been his influence upon Shī‘ī thinking within the seminary that makes an investigation of his thought worthwhile? In the following however, the focus is upon three aspects of Qabil’s use of reason which distinguishes him from other New Religious Thinkers among Iranian *‘ulama*. Then his vision of the role of jurisprudence in modern life is assessed, before reaching final conclusions.

A. Qabil and Reason

1). Reason and the Qur’ān

The fundamental starting point of Qabil’s reformulation of Islam is the correlation between the Qur’ān and reason. In this agreement he is concerned to bracket out all Qur’anic commands related to worship, as the specific forms that worship takes cannot be rationally explained. It is therefore, all non-devotional *ayas* that Qabil understands as inherently reasonable. He cites the narration from Imam Kazim that God has two proofs: an internal proof which is reason, and an external proof who are the prophets.⁵⁰ His commitment to reason also requires the concomitant belief in justice, which necessitates that God rewards people for their good deeds and punishes them for their reprehensible ones. This dovetails into the larger Shi‘i and Mu‘tazili traditions according to Qabil, which should be understood as his attempt to legitimise his reforms. He paraphrases the celebrated Shi‘i scholar Shaykh Tusi (Abu Ja‘far Muhammad Ibn Hasan al-Tusi – d. 1067), and says, “If a verse of the Qur’ān opposes the guidance of the sciences, it is necessary to read (*ta’wil*) [the verse] in the interest of the guidance

⁴⁹ Sussan Siavoshi composed an abstract for a conference paper, entitled, “Human reason in contemporary reformist Shii jurisprudence: From Montazeri to Kadivar, to Qabel.” The abstract may be read in the website for the Association of Iranian Studies:

<https://associationforiranianstudies.org/content/human-reason-contemporary-reformist-shii-jurisprudence-montazeri-kadivar-qabel> (accessed, 23.04.18).

⁵⁰ The narration in question is reported in Kulaynī, *Al-Kāfi*, Vol. 1. “Usūl, The Book of Reason and Ignorance,” no. 12, (Tehran: World Organisation for Islamic Sciences, 1379/2000-1), p. 71. Cited by Qabil in *Shari‘at-i ‘aqlani*, p. 47.

[offered by] the sciences, and interpret [the Qur'ān] in harmony with it.”⁵¹ The reason that the Shi'ī tradition had not followed the advice of al-Tusi was because of the distortion of “the exaggerators, [and by] the refutation of invalidators and the plagiarism by the ignorant which resulted in practice in the cultural domination of closed-hearted ignoramuses and the influence of those who plan to make the law null and void or who have cast aside the law from its natural place with excessive force through hyperbole and exaggeration...”⁵² While Qabil's tirade might be taken by some scholars to have been directed at the Akbari school of Twelver Shi'ī thought (which emphasised adherence and “literal” acceptance of narrations),⁵³ it is not hard to read the above as being directed at current scholarship within the Islamic Republic which prefers an approach that does not engage fully with societal changes and developments.

Qabil's commitment to reason must be considered within the larger clerical trend of the New Religious Thinkers of recent years, and indeed even longer, to historicise the Qur'an. According to Muhsin Kadivar, the trend towards understanding the Qur'anic revelation through history has been increasing over the past one-hundred years.⁵⁴ However, the New Religious Thinkers have used this interpretive strategy to regard many of the Qur'anic commands (*ahkam*) that are enforced within the Islamic Republic as having transcended their applicability. (One of the most controversial cases concerned the hijab).⁵⁵ But the significance of Qabil among the New Religious Thinkers among the *ʿulama* has been pointed out by Ishkavari who observed that Qabil's “rationalism *which appears extreme at times*, is a big step, and if it is considered positively by the jurists and those who study the shariʿa, it can really open the jurisprudential and interpretive path of change, and make the road and the winding path clearer and gentler.”⁵⁶ Qabil was one of the very few, like Kadivar, who were sufficiently brave to express a rational and reformed historicised version of Islam that

⁵¹ *Shariʿat-i ʿaqlani*, p. 108. (The citation Qabil gives is *al-Rasā'il al-ʿashara*, 325).

⁵² *Shariʿat-i ʿaqlani*, p. 62.

⁵³ For the Akbarī school see E. Kohlberg, “Akḡbārīyā,” *Encyclopædia Iranica*, I/7, pp. 716-718; an updated version is available online at <http://www.iranicaonline.org/articles/akbariya> (accessed on 07.02.2019).

⁵⁴ Mohsen Kadivar, “From traditional Islam to Islam as an End in Itself,” *Die Welt des Islams* 51 (2001), p. 459.

⁵⁵ One of the most controversial cases concerns the mandatory nature of the hejab, which was questioned publicly in the Berlin Conference of 2000 by Ishkavarī. See Ziba Mir-Hosseini, *Islam and Democracy in Iran*, (London: I. B. Tauris, 2006), pp. 136-172.

⁵⁶ From a text written by Ishkavarī, 1 Aban 1391/ 22nd October 2012. In *Yad-nama-yi Ahmad Qabil*, p. 322. My emphasis.

questioned and challenged the policies and way of ruling as set out by authorities of the Islamic Republic.

A historicised version of Islam and the Qur'an is one of the major themes discussed by the New Religious Thinkers, but the approaches of the jurists and theologians among them are often different. An example is the thought of Muhammad Murtaza Shabistari whose most well-known work is called *Qira'at-i nabawi az jahan* ("The Prophetic Reading of the World"). In this short but controversial work, Shabistari argued that the Qur'ān was indeed a revelation from God, but its wording reflected the experiences and choices of the Prophet Muhammad. Shabistari's work is littered with references to German theologians and philosophers (with whom he presumably read whilst in Germany before the revolution), and it is to be wondered if he was influenced by "the linguistic turn" during his long sojourn in Germany. In contrast, Qabil's works do not refer to European philosophers or the linguistic turn, which may reflect the fact that he did not venture outside of Iran aside from trips in Central Asia and Saudi Arabia.

⁵⁷ But as an informed scholar Qabil would have been aware of Shabistari's work, given that *Qira'at-i nabawi az jahan* was published at a time when he was active in publishing his ideas. However, Shabistari's historicizing of the Qur'anic revelation is typical of the New Religious Thinkers, and this he shared in common with Qabil. He advanced this historicising perspective, arguing that many of the Qur'anic *ahkam* must be considered as *ahkam-i imza'i* or "validating commands". That is to say, many of the commands were based on existing tradition, whether among Jewish or Christian communities, or among the wise of Mecca or Medina. Qabil remarked, "Islamic validating commands are [the same as] customary commands (*ahkam-i 'urfi*) since they follow the rational ability of humans of that time." And then he made the significant observation that "there is no reason that we should consider obeying the rational ability of humans in the present time outside of the commands of the Mohammadan Shari'at, and only be content with the rigidity of literal meanings (*jumud-i zawahir*)."⁵⁸ In other words, the rational consideration of reasonable people should not be considered outside of the shari'a, as the former corresponds with the divine purpose, the criteria of which is justice and reason.

⁵⁷ As noted by Eshkevari "The most important point is this, that Qabil was a follower of the traditionalists, a follower of Aristotelian reason, and paid virtually no attention to modern logic, cognition, or new fields of study ... and most probably he was unaware of them." *Yad-nama-yi Ahmad Qabil*, p. 467.

⁵⁸ Qabil, *Shari'at-i 'aqlani*, p. 78.

Having stressed the need for laws to conform to rational interpretations, Qabil argued that this was not a new practice and reflected the compatibility of reason and shari'a, which existed in the very formative period in the construction of shari'a. He made a passing reference to two kinds of shari'a commands, the fixed (*thabit*) and the changed (*mutaghayyir*). The first are those commands which have not been changed since they were revealed, whereas the second are those that have either been abrogated by subsequent Qur'anic verses or have been set aside in the course of history.⁵⁹ It is the second kind of verses that are of interest to Qabil, because he claimed that the commands of the shari'a that have been changed reflect scientific discoveries in human reason. "Replacing contradictory commands with the collective reason of humans in the present age ... is nothing other than asserting the changeability of these commands."⁶⁰

2). Reason and the Narrations

Qabil had a deep reverence for the Qur'ān, the hadith and the sayings of the Imams, all of which he regarded as ultimately compatible with reason. So deep was his attachment to the hadith that he used to boast about his knowledge. According to Ishkavari, "Mr Qabil was familiar with the current knowledge of the seminaries but more than anything in the seminary he specialised in the science of *hadith*. One may say that he was an expert in this field of knowledge." He added, "Once, in a speech, he [Qabil] said, 'If there are ten specialists on *hadith* in Iran who have carefully studied all the *hadith*, then I am one of them.'"⁶¹

In his re-assessment of sayings and narratives Qabil advocated a scrutiny of hadith literature and the sayings of the Imāms. He argued that on some matters the realities of scripture remained hidden, and that there were some things that ancient people were just not ready to accept since their reason, or their scientific understanding had not developed sufficiently for them to comprehend the real meaning of the divine message. Qabil cited the Qur'an, "No soul is charged beyond its capacity [to

⁵⁹ On abrogation in the Qur'an Louay Fatoohi, *Abrogation in the Qur'an and Islamic Law: A Critical Study of the Concept of "Naskh" and its Impact* (London: Routledge, 2013).

⁶⁰ *Shari'at-i 'aqlani*, p. 70. Qabil does not expand on this point, perhaps because he assumes his audience is aware of the history underlying the issue. More extensive treatment of these kinds of verses is found in *Mabānī-yi shari'at*, pp. 218-30.

⁶¹ *Shari'at-i 'aqlani*, p. 276.

comprehend]" [2.33] and "Do not ask about things which, were they disclosed to you, would displease you," [5.101) which justified the tradition of dissimulation (*taqqiya*), a practice that is well-known within Shī'ī history.⁶² Qabil even cited a tradition from Imam Reza that "The prophet of God died while performing dissimulation."⁶³ The belief that the prophet and the Imams observed dissimulation allowed Qabil to advance the idea that human reason and scientific knowledge develops through the ages:

Raising scientific levels, knowledge and general human experience in the present age (in comparison [with the levels of comprehension] in the first two or three centuries of the Muhammadan shari'a is an example of the readiness of the people of this age for comprehending more truths and accepting more advanced subjects. In other words, if the peoples' lack of readiness in the age of God's prophet and the guiding Imāms has been the reason for an absence in explaining some commands or has been the cause for the lack of opposition to some current and unpopular methods or for the confirmation of other methods, then today the necessary readiness exists to explain [both] those hidden commands and the opposition of the sharī'a with unpopular methods.⁶⁴

Qabil's argumentation on this point builds upon the ideas of other New Religious Thinkers. Of particular interest is the well-known advice of Imam 'Ali (collected and assembled by Sharīf Rāzī (d. 1015)) found in the text of *Nahj al-Balagha* concerning women. The controversial part of 'Ali's sermon reads: "Do not consult women because their view is weak and their determination is unstable." Soroush has recognised the problematic nature of the text, and he responded to criticisms by saying that subsequent portions of the text attempt to argue why women should not be consulted. He subsequently explained, "If Imām 'Ali reasons with us, he invites us to reason back, to use our critical faculties."⁶⁵ He also pointed to a sharī'a principle that holds that maxims "speak of their time and thus we need a reason for extending them to other societies or times."⁶⁶ The same text has been the subject of investigation among the New Religious Thinkers among the cleric. Muhsin Kadivar cites this saying of Imam 'Ali in an article

⁶² Dissimulation, or *taqiya* is one of the distinctive practices among Shi'i communities in history. See Louis Medoff, "Taqiya. In Shi'ism", *Encyclopedia Iranica*, online edition, 2015, available at <http://www.iranicaonline.org/articles/taqiya-i-shiism> (accessed on 01 July 2017)

⁶³ *Shari'at-i 'aqlani*, p. 76.

⁶⁴ *Shari'at-i 'aqlani*, p. 77.

⁶⁵ Ziba Mir-Hosseini, *Islam and Gender*, p. 239.

⁶⁶ Ziba Mir-Hosseini, *Islam and Gender*, p. 225.

about women rights and he resolves the discriminatory nature of what he calls “deserts-based” justice with a method that he calls the “preparatory abrogation”. On the basis of the inherent qualities of justice and rationality that he witnesses in the Qur’an, Kadivar concludes that the “Lawgiver adopted a policy of gradualism to reach the desired conditions ... deserts-based justice was the first half-step and egalitarian justice the second.”⁶⁷ In effect Kadivar believes ‘Ali’s narration is an impermanent ruling and may be abrogated by Qur’anic verses which describe the genderless nature of the single soul which is the “origin of male and female humans”. He adds that human souls have duties and rights, the foundation of which is equality.⁶⁸ And the kinds of arguments offered by Qabil play on a similar, though not completely identical themes as those presented by Soroush and Kadivar, both of whom recognised the positive role played by the former in his reformulated version of Islam.

3). Reason and Consensus (*Ijma‘*)

The third source of law within Islamic jurisprudence is consensus (*ijma‘*). Traditionally this refers to a source of Shi‘i jurisprudence which reflects the agreement of all scholars on a specific ruling. Ahmad Qabil considered the *ijma‘* of traditional Shi‘i Islam as a proof agreed upon by scholars for deducing law only after exhausting interpretations and readings offered in the Qur’an, Sunna and sayings and example of the Imāms.⁶⁹ However, his own conception of the concept raised it from its comparatively low status to one that is on a par with sacred scripture.

ijma‘ was not an issue of concern as long as an Imam was alive to offer guidance to the community, but the situation changed with the occultation of the Twelfth Imam in 941 C.E.. Henceforth it fell to the learned scholars to offer their views on unclear topics, which could only represent the probable will of the Hidden Imam. Fearful of reaching decisions that might not reflect the general will of all faqihs, the jurists became very conservative, and sought to reach a consensus of opinions that was not controversial. Qabil cited the pre-revolutionary ideologue Ayatollah Mutahhari (d.1979):

⁶⁷ Mohsen Kadivar, “Revisiting Women’s Rights in Islam” in Ziba Mir-Hosseini, Kari Vogt, Lena Larsen & Christian Moe (eds), *Gender and Equality in Muslim Family Law*, p. 227.

⁶⁸ Ibid, p. 226.

⁶⁹ Ahmad Qabil, *Ma‘bānī-ye sharī‘at*, p. 248.

The tendency in humans to conform is very strong. Among the jurists this problem is [also] strong. One jurist produces an inference on a case, but he does not have the bravery to express it. He goes and looks to find whether there are like-minded jurists of [his] time with the same opinion. There are few jurists who after going and looking and [finding] that no-one has said the same thing, have the bravery to declare their fatwas. In other words, the jurist is scared when he sees he is alone on the path.⁷⁰

Qabil also criticised the practice of jurists to reach decisions that did not conform with scientific and empirical human knowledge. He said, “Contemporary human rationality does not see the benefit of some of [their] approaches, and the waste of time and resources on a path the product of which does not attain its aim is a futile endeavour.”⁷¹

The well-known approach mentioned above refers to the clerics’ penchant for caution (*iẖtiyat*),⁷² which has been mentioned by a number of New Religious Thinkers such as Muhsin Kadivar, who criticises those jurists who lean towards traditional interpretations, as he comments “Traditional *fiqh* is very cautious,” typified by jurists who have reservations about reaching definitive conclusions that would accord with the decisions of the Hidden Imam.⁷³ But the importance of Qabil’s observations lie in the recognition that *ijmaʿ* has the potential to be a dynamic tool that can respond to modern challenges. His own understanding of *ijmaʿ* in fact departed from the traditional view that limited its role behind the Qurʾān and Sunna, and the sayings and examples of the Imams. In the concluding paragraph to his chapter on *ijmaʿ* in *Mabani-yi shariʿat* Qabil wrote about the connection between *ijmaʿ* with the way of the wise (*sirat al-ʿuqala*), and he equated the proof of the way of the wise with the proof for *ejmāʿ*. This is a very important point, for as argued above, Qabil regarded *ahkam-i imzaʿi* as validating the way of the wise in the prophet’s time, and that the way of the wise of the present generation should not fall outside of new interpretations of shariʿa.⁷⁴ In other words, he was arguing that the way of the wise was binding upon the believers even to the extent

⁷⁰ Aḥmad Qabil, *Maʿbānī-yi shariʿat*, p. 248, citing Ayatollah Muṭahharī, *Taʿlīm va tarbiyat dar Islām*, p. 285. He cites the same passage in *Shariʿat-i ʿaqlani*, pp. 87-88.

⁷¹ Aḥmad Qabil, *Maʿbānī-yi shariʿat*, p. 249.

⁷² See Vikør Knut, *Between God and the Sultan: A History of Islamic Law* (London: Hurst, 2005), p. 133; Oliver Leman claims that Shaykh Ansārī (d 1864) was instrumental in consolidating the practice of caution within contemporary Shīʿī jurisprudence. See his article “Ansari, Murtada bin Muhammad Amin,” in Oliver Leaman (ed), *The Biographical Encyclopaedia of Islamic Philosophy* (London: Bloomsbury, 2015).

⁷³ Mohsen Kadivar, “Human Rights and Intellectual Islam”, p. 59.

⁷⁴ Aḥmad Qabil, *Maʿbānī-yi shariʿat*, p. 251.

that it may overturn traditions that have existed among the believers for centuries. For example, Qabil said,

If the wise thinkers (*‘uqala*), in agreement with each other at a certain time consider [that] the individual penalties are irrational, or not eating pork and not drinking alcohol is irrational!! then even according to the law it is necessary to follow their opinion, and no kind of practical opposition to the consensus of the wise thinkers is permitted...⁷⁵

The contrast with other clerics on this point is worth considering. For example, Ayatollah Motahharī in the generation prior to Qabil, demonstrated the kind of conservatism within jurisprudential circles which is apparent in a discussion about the command for abstaining from consuming pork. He outlined that some commands have no cause or reason given in the Qur’an, and so the faqīh is obliged to deduce a cause. But he seemed reluctant to accept the argument that the definite rational cause is the existence of the tapeworm, and he asked rhetorically if this was the only reason for observing the prohibition on consuming pork, or if perhaps there was another reason. He assumed that there would be doubt and hesitancy in the answer, and so he said:

We cannot find fault with today’s faqihs when you say [to him], “‘Reason is a proof based on argumentation based on deduction”, so [as a result of] today’s discoveries why do you not give a fatwa permitting [the consumption] of pork?’ He replies, ‘We ask reason, “Oh reason! Oh learning! Do you have definite proof (*dalil*) that other than this there is nothing else, and nothing will be discovered in the future?’” Or he says, ‘We have discovered this now, perhaps there may also be something else.’⁷⁶

B. Role of Jurisprudence

Qabil’s fame rests mostly on a fatwa on the hejab that he issued in 2004 in which he questioned one of the pillars of unquestionable doctrine that upheld the standards of morality and authority sought by the Islamic Republic. Namely, he publicly challenged

⁷⁵ Qabil uses exclamation marks in his text, p. 189-90.

⁷⁶ Murtaḍā Muṭahharī, *Muqtaḍiyat-i zamān*, [Islam and the Necessities of Time] (Tehran: Intishārāt-i Sadrā, 1370/1991-2), p. 57.

the legitimacy of the state to impose the hejab upon women by declaring his belief in the desirability of women wearing a hejab, rather than the mandatory head covering enshrined by law. This was the first occasion that a cleric had made such a public declaration about the permissibility of non-covering within the Islamic Republic. His fatwa is also significant because he issued it based upon traditional jurisprudential principles. That is to say, he studied the rulings of past masters, scholars and clerics, and concluded that there was absolutely no consensus among them that the hejab should be mandatory. This is significant because it reveals that Qabil maintained that despite his commitment to reason, there was still a space for traditional jurisprudence in determining the various social issues that were of a controversial nature in Iranian society. Indeed, in his writings Qabil talks of establishing what amounts to a think-tank which would include jurists like Qabil himself, but also scholars from across the humanities to investigate and analyse problems and issues that emerge in society. In fact, like all New Religious Thinkers, he was convinced of the positive role that jurists could play in Shi'i circles, but he refrained from the kind of conclusion drawn by Kadivar, that the space, domain or areas covered by the *sharī'a* would decrease over time, as the role played by reason serves to deepen faith.

One of his main jurisprudential arguments was to contrast the principle of rational permission (*isalat-i ibahat-i 'aqlani*), which in effect allows believers to employ their own reason to decide on particular issues. (The classic example being his fatwa on the *hijab*, which in effect returned agency on the issue to women themselves). This is contrasted with what Qabil considered to be the situation in the Islamic Republic, where the state encouraged the principle of prohibition (*isalat-i hazr*), which rejected the possibility that individuals could determine acts for themselves. And associated with how the state promoted certain juristic approaches was the way that the Islamic Republic supported a religious culture that was based on sorrow and sadness, typified by the mourning linked with the martyrdom of Imam Husayn, that was utilised to generate popular sentiment for the war against Iraq during the 1980's. Qabil, however, rejected such a religious culture, and critiqued the promotion of sadness and sorrow.⁷⁷

Conclusion

⁷⁷ Qabil discusses this issue in greater depth in *Nigāh-i ijmālī bi shādī va ghamm dar mutūn-i sharī'at* ("A quick look at happiness and sorrow in legal texts,") in *Fiqh, karkard-hā va Qabiliyat-hā*, pp. 63-74.

Qabil died in 2012 at the age of 58, which by Iranian clerical standards is premature; it is an age when most scholars have yet to pen their major, mature contributions. Nevertheless, his influence was certainly profound among the New Religious Thinkers. The collection of remembrances of him, published after his death, reads like a who's who of major reformers, and includes contributions from Muhammad Khatami, Soroush, the family of Ayatollah Montazeri, Kadivar and Ishkavari. In addition, his standing is also reflected in the fact that the regime regarded him as a serious threat to security and public order, which was why he was arrested and tried by the Special Clerical Courts in 2010. It is for his intellectual contribution to Islamic studies in general and jurisprudence in particular which future generations of scholars will remember him. Qabil's writings raise a number of interesting issues which require full investigation, although some of these are considered briefly below.

The first major research question that emerges from a study of Qabil's thought concerns his perspective on the compatibility of reason and revelation, and in particular, his conviction that much of the Qur'an needs to be comprehended in a historical light, as many of the commands are validating (*ahkam-i imza'i*) and specific to the community founded by the Prophet. And as such, Qabil considered that the human discovery of the shari'a is unending; he said, "What I have understood ... is this: that on all principles and secondary aspects of the law, the basis and proof of reason is ongoing (*jari*)."⁷⁸ His aim in such a system of law was to ensure that the shari'a remained up to date with contemporary standards and thinkers, based upon the criteria of justice and reason. Of course, this was a challenge to those in Iran who considered the shari'a a fixed and permanent body of law, enshrined as such within the constitution, such as the laws concerning the hejab. Qabil's challenge, like that of the other New Religious Thinkers, concerned the thorny issue of who possessed the power to issue opinions, set "norms" of behaviour and recommendations related to the shari'a. Qabil believed there was a crucial role for the jurists in Iran, but he did not see this task as one that would be isolated from specialists in related academic fields of study. He was of the opinion that the jurists would offer ethical guidance within the framework of a study group, or think-tank.⁷⁹ It is of interest that Qabil resembles the other New

⁷⁸ *Shari'at-i 'aqlani*, p. 49.

⁷⁹ Qabil remarked, "I attempted to establish an organisation that assembled various disciplines within the humanities and position it alongside theologians, interpreters [of sacred scripts] and jurists in order to

Religious Thinkers in that he placed greater stress on an ethical worldview, or on the aims of the sharī‘a (*maqasid al- shari‘a*). But he did not go as far as some of the thinkers such as Muhsin Kadivar who envisages a deepening of faith within a more restricted and limited range of jurisprudence.⁸⁰ Likewise his reform accepted the traditional view of revelation, and he did not even discuss the kinds of ideas of Muhammad’s involvement in the revelatory process that is advanced by Shabistari.

Qabil’s radical contribution lay in the extent to which he saw reason as compatible with revelation, and it may even be argued with some justification that Qabil’s reason forces revelation, or at least, received interpretations of revelation, into new territory. His ideas about consuming pork and imbibing alcohol are examples of this. Interesting as these arguments are, there is an element of contradiction in Qabil’s ideas on this point, as Mohsen Kadivar has indicated, such actions are considered in jurisprudence as semi-devotional rituals (*shibh-i manasik*),⁸¹ and Qabil himself admitted that often reason cannot fathom the wisdom behind acts of devotion.

The second question that springs to mind is related to the practicability of applying Qabil’s philosophy to the Islamic Republic. Ishkavari’s assessment of Qabil that “his rationalism ... appears extreme at times”⁸² suggests the difficulty of applying the kind of philosophy that he espoused to contemporary Iran. Whilst many of Qabil’s positions dovetail neatly into the kinds of rights enshrined within universal human rights as they are understood in the West (gender equality, religious pluralism, abolition of slavery, and an end to all forms of discrimination) it would be problematic to apply such a philosophy wholesale into those parts of Iranian society which are more traditional and patriarchal, let alone the seminary culture of places such as Mashhad and Qum.

A second research question, and related to the above discussion, is how the Islamic Republic might look if Qabil’s ideas were to serve as a foundation for a new interpretations of sharī‘a law. His distinction between Qur’anic verses on devotion which reason cannot fathom, and the rest of the verses which are fully compatible with

produce [new] thinking in the name of sharī‘a and religion so that it can take steps to publish [their findings] after professional consultation and research among all the groups interested in the topic.” *Shari‘at-i ‘aqlani*, p. 65.

⁸⁰ Mohsen Kadivar. “From traditional Islam to Islam as an end in itself,” p. 483.

⁸¹ See Muhsin Kadivar, “Intizār az dīn va naw andīshī-yi dīn”. Available at <https://kadivar.com/?p=16093>. Accessed 11.08.2018.

⁸² From a text written by Ishkavari, 1 Aban 1391/ 22nd October 2012. In *Yād-nāma-yi Aḥmad Qabil*, p. 322

reason, suggest a religious secularity which might resemble the ways in which religion is considered in Western Europe and the USA. It is unclear how such a religious secularity would play out in modern Iran where state sponsored religiosity has been the norm for several generations. Certainly, much would change under Qabil's ideal form of society with, for example, a deregulated sartorial culture, rules pertaining to reform the age of marriage that come more in line with Western norms, and greater gender equality on a host of other issues, including inheritance and child custody. In addition to this, Qabil was keen to promote a religious culture of happiness rather than one of sorrow, which might impact specific devotional activities and rituals in Iran, such as *rawda khani* (or lamenting the deaths of those of the holy family at Karbala). Nevertheless, he was not completely iconoclastic, and it is possible to see how other Iranian religious and secular festivals could continue under his reformulation of Islam. A more rigorous analysis of the works of the "dissident" clerics in Iran would reveal the deep fissures that exist within the seminaries. Qabil's untimely death leaves such intriguing questions unanswered.

Third, it is interesting to speculate on the legacy that Qabil left, and in particular whether it has had an impact on the seminaries in Iran or among the New Religious Thinkers. Although Qabil may have been ahead of his time, his commitment to reason and justice continues to inspire the New Religious Thinkers, as it offers an illustration of how the *sharī'a* may provide an open and democratic system that responds adequately to the challenges of modern life. Certainly, Qabil's example of living his theoretical perspectives, whether it is the refusal to wear the seminarian gown and turban, or whether it is composing stinging critiques of the regime, is perpetuated by the likes of Kadivar. Moreover, it is to be wondered whether Qabil's famous fatwa regarding the desirability of the hejab has in any way contributed to the recent movement, the White Wednesday campaign initiated by Masih Alinejad, to give women the choice about head covering.⁸³ At the very least his fatwa has ensured that the issue of the hejab has remained a topic of debate within Iranian communities. Qabil is certainly a pivotal figure among the New Religious Thinkers in modern Iran, worthy of study independent of other thinkers with whom there are marked differences.

⁸³ Masih Alinejad's campaign is described in her autobiography, *The Wind in My Hair* (London: Virago, 2018). See also her Facebook page: آزادی یواشکی زنان در ایران