

Jurisprudential and Rational Dimensions of *Tajjarri* (Audacity) in Islamic Criminal Law Practices

By

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Abstract

This article explores Ayatollah Sayyid Taqi al-Tabataba'i al-Qummi's treatment of Tajjarri in Arā'unā fī Uṣūl al-Fiqh. In Usuli terminology, Tajjarri occurs when a legally accountable person deliberately performs an act in defiance of what they have come to believe—conclusively and sincerely—that it is a divine prohibition, even though the act is not in fact forbidden in reality (for example, drinking what one believes to be wine that is actually water). The study addresses two closely related questions: (1) whether an agent's mistaken certainty after forming the evidential basis changes the legal status of the act, and (2) whether the agent thereby acquires a rational basis for punishment. Through doctrinal and close textual analysis, the article reconstructs al-Qummi's account of the act's legal standing and the agent's culpability. It finds that al-Qummi rejects the idea—under this principle—that rationally recognised blameworthiness automatically entails a corresponding Sharia prohibition of the act. Consequently, the agent's incorrect belief does not convert an otherwise permissible act into a prohibited one. At the same time, the article argues that al-Qummi holds the agent rationally liable to punishment, because the conduct expresses rebellion against divine authority and a conscious challenge to it. The basis of blame thus lies in the agent's culpable stance and manifested defiance, rather than in any change in the act's objective ruling. Finally, rather than asserting a structural equivalence, the article compares this distinction with the structural analogs of impossible attempt in modern criminal law; it notes that while there is a certain functional analogy to the agent's culpable subjective state, al-Qummi's theological-jurisprudential framework remains conceptually distinct and does not translate into positive criminal liability under modern substantive law.

Keywords : *Tajjarri*, Sayyid Taqi al-Qummi, *Ārā'unā fī Uṣūl al-Fiqh*, Rule of Implication (*Qā'idat al-Mulāzamah*), comparative criminal theory.

1.0 INTRODUCTION

Within the philosophy of law and the architecture of modern criminal jurisprudence, the relationship between criminal intent (*mens rea*) and the material element of an offence (*actus reus*)

constitutes one of the most formidable challenges in delineating moral and legal culpability. While this conceptual apparatus is doctrinally distinct from the *uṣūlī* analysis of *tajarrī*, it provides a useful comparative lens for examining how normative blame is structured when the objective element of an act is absent or legally neutral.¹ It is an axiom widely enshrined in legal doctrine that mere mental deliberation—however malevolent—remains devoid of criminal character and immune from punitive consequence unless and until it crystallizes into external manifestation.² Nevertheless, contemporary legal systems confront considerable theoretical instability when addressing inchoate offenses³ and, more acutely, the phenomenon of impossible attempts⁴—as, for instance, when an agent discharges a firearm at a corpse under the erroneous belief that the victim yet lives.⁵ In such liminal cases, a stark confrontation emerges between the agent's subjective certainty and the immutable objective reality of the external world.⁶ Although no material harm has, in fact, been inflicted upon the fabric of the physical order, the rebellious volition of the agent—and the peril inherent in his character—has been fully and unequivocally actualized.⁷

This profound philosophico-legal preoccupation was, centuries prior, subjected to rigorous and systematic scrutiny within the discipline of Imami Shi'a *Usul al-Fiqh*, under the technical rubric of *Tajarri* (juridical audacity).⁸ In the terminology of the *uṣūliyyūn*, *tajarri* denotes an agent's

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¹ Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (10th edn, Oxford University Press 2022); AP Simester and others, *Simester and Sullivan's Criminal Law: Theory and Doctrine* (8th edn, Hart Publishing 2022); HLA Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2nd edn, Oxford University Press 2008) 28–53.

² Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (10th edn, Oxford University Press 2022); AP Simester and others, *Simester and Sullivan's Criminal Law: Theory and Doctrine* (8th edn, Hart Publishing 2022); Criminal Attempts Act 1981, s 1(1).

³ Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (7th edn, OUP 2013) 455–60; David Ormerod and Karl Laird, *Smith, Hogan, and Ormerod's Criminal Law* (16th edn, OUP 2021) ch 13.

⁴ R A Duff, *Criminal Attempts* (OUP 1996) 1–18, 206–28; Glanville Williams, *Textbook of Criminal Law* (2nd edn, Stevens & Sons 1983) 404–12.

⁵ *People v Dlugash* 41 NY 2d 725, 395 NYS 2d 419 (1977); see also Model Penal Code § 5.01(1)(a) (American Law Institute 1985); cf *Haughton v Smith* [1975] AC 476 (HL) 493–500 (Lord Hailsham), later overruled on the impossibility point by *R v Shivpuri* [1987] AC 1 (HL).

⁶ Duff (n 2) 92–110, 206–15; Ashworth and Horder (n 1) 468–72; George P Fletcher, *Rethinking Criminal Law* (Little, Brown 1978) 149–57, 174–84.

⁷ On the shift of culpability toward subjective criminality, dangerousness, and the agent's rebellious disposition even in the absence of material harm, see Duff (n 2) 219–28; Ashworth and Horder (n 1) 470–72; Model Penal Code § 5.01 cmt at 295–98 (American Law Institute 1985); *R v Shivpuri* [1987] AC 1 (HL) 20–22 (Lord Bridge).

⁸ Mirza Muhammad Hasan al-Ashtiyani, *Bahr al-Fawa'id fi Sharh al-Fara'id* (1st edn, vol 1, Maktabat Ayat Allah al-Mar'ashi al-Najafi 1403 AH) 28; Ali al-Safi al-Gulpaygani, *al-Mahajja fi Taqrirat al-Hujja* (1st edn, vol 2, Mu'assasat al-Sayyida al-Ma'suma 1419 AH) 51; Ali al-Muruji, *Tamhid al-Wasa'il fi Sharh al-Rasa'il* (vol 1, Madrasat al-Imam Ali ibn Abi Talib 1428 AH) 93.

deliberate contravention of an authoritative proof (*ḥujja*) that does not correspond to objective reality. Accordingly, it occurs where a legally accountable person (*mukallaf*), acting on the basis of certainty or another legally authoritative proof, performs an act believed to be prohibited, but it subsequently transpires that the supposed prohibition did not correspond to the actual divine law—as where a person consumes a liquid believing it to be wine, although it is in fact water.⁹ This phenomenon constitutes precisely the intersection at which ethics, jurisprudence, and public law converge in their evaluation of the respective normative weight of intention and action.

Among the most fertile, coherent, and innovative sources illuminating this intersection is the distinguished treatise *Ārāʾunā fī Uṣūl al-Fiqh*¹⁰, authored by the eminent contemporary jurist and *Usuli* scholar, Ayatollah Sayyid Taqī al-Tabatabaʾi al-Qummi. Adopting a critically engaged posture toward antecedent *Usuli* schools, al-Qummi furnishes a novel foundation for analyzing the relationship between the psychological element of rebellion and the deontic status of the acted-upon behavior.¹¹ A renewed and careful examination of his doctrines in this magisterial work promises to yield an illuminating resolution to the perennial question of the relationship between intention and action within Islamic legal theory, while offering fertile ground for comparative engagement with modern theories of criminal responsibility.

The foundational problem addressed by the present study is the resolution of the structural tension between rebellious intent and permissible objective reality within the domain of legislation and criminal law.¹² The central difficulty in analyzing *Tajārri* resides in the fact that, on the one hand, the rational principle of “the impermissibility of punishment absent explication” (*Qubh al-ʾIqab bila Bayan*), together with the presumption of permissibility, precludes the attribution of prohibition to an act that is, in objective reality, entirely devoid of corruption or unlawfulness (as with the consumption of water)—and thus precludes the punishment of its agent. On the other hand, sound reason and moral conscience cannot remain indifferent toward an agent who has, with complete malicious intent, undertaken to transgress the sanctities of the law; for such audacious

⁹ Muhammad Ali al-Alawi al-Gurgani, *Laʾali al-Usul* (Dar al-Tafsir 1431 AH/2010) vol 4, 49.

¹⁰ ¹ Sayyid Taqī al-Tabatabaʾi al-Qummi, *Ārāʾunā fī Uṣūl al-Fiqh* (Mahallat nd).

¹¹ Mirza Habib Allah Rashti, *Badāʾiʾ al-Afkār* (Muʾassasat Āl al-Bayt li-lḥyāʾ al-Turāth, Qom, 1st edn, n.d.) 333. & Sayyid Taqī al-Tabatabaʾi al-Qummi, *Ārāʾunā fī Uṣūl al-Fiqh* (Mahallati, 1993) vol 2, 11.

¹² Sayyid Taqī al-Tabatabaʾi al-Qummi, *Ārāʾunā fī Uṣūl al-Fiqh*, 3 vols (Maḥallātī, Qom 1371 Sh/1993) vol 2, 12–22

conduct (*Tajjarri*) manifestly reveals the rupture of the bounds of servitude and betrays an inner corruption and disposition toward rebellion residing within the agent.¹³

This tension between agential ugliness (the corruption of intention) and actional ugliness (the corruption of the deed) confronts the *Usuli* apparatus with profound interrogatives: Does the Sacred Legislator criminalize an intention toward sin that has, in execution, erred in its object? If *Tajjarri* constitutes merely a moral defect, how may one justify the deservedness of punishment absent the establishment of genuine legal prohibition? And upon what foundation, precisely, does such deservedness of punishment rest?

Ayatollah al-Qummi, in *Arā'unā*, undertakes to resolve this tension through a rigorous distinction between real and apparent rulings, coupled with a critique of the widely embraced “Rule of Implication” (*Qa'idat al-Mulazamah*) linking rational and divine judgments.¹⁴ He maintains that reason, independently, adjudicates the agential ugliness and the deservedness of punishment attaching to the audacious agent, yet this rational ugliness does not extend to the external act so as to render it religiously prohibited. The problem of this research, accordingly, is a meticulous investigation of this tension and an exposition of al-Qummi's methodological resolutions, so as to furnish a coherent juridico-legal framework for confronting offenses predicated upon erroneous belief—thereby clarifying how contemporary jurisprudence, through its distinction between primary and secondary characterizations, delimits the boundaries between morality and law.

2.0 SCOPE OF TAJARRI

2.1 Traditional Confinement to Certainty

The classical treatment of *Tajjarri* within the *Usuli* tradition has, with considerable consistency, confined the doctrine to instances in which the legally accountable agent (*Mukallaf*) possesses *Qat'*—epistemic certainty—that a contemplated act is prohibited, only for it subsequently to transpire that the act was, in objective reality, permissible.¹⁵ Upon this received view, the moral and juridical significance of *Tajjarri* is thought to inhere specifically in the agent's confrontation with an unwavering, subjectively indubitable conviction; it is precisely the certainty of prohibition,

¹³ al-Qummī, *Ārā'unā* (n 1) vol 2, 16–19 (on *tamarrud*, rupture of *'ubūdiyya*, and inner corruption).

¹⁴ *ibid*

¹⁵ Sayyid Taqī al-Tabataba'i al-Qummi, *Arā'unā fī Uṣūl al-Fiqh* (vol 2, Mahallati pub 1413 AH) 12.

coupled with the deliberate transgression thereof, that is held to constitute the substratum of rebellious volition meriting philosophical and theological scrutiny. Lesser epistemic states—mere probabilistic indicators, presumptive legal principles, or unresolved doubt—were, on this traditional reading, regarded as insufficiently robust to ground the moral gravity that the concept of *Tajarri* was designed to capture.

2.2 Ayatollah al-Qummi's Expansive Thesis

In the *al-Jihah al-Ula* of his treatise, Ayatollah Sayyid Taqi al-Tabataba'i al-Qummi advances a considered and forceful departure from this restrictive orthodoxy. He contends that *tajarri* is not confined to certainty contrary to reality (*qat' mukhālif li'l-wāqi*). Rather, its scope extends to the full spectrum of *ṭuruq* (evidentiary pathways) and *amārāt ta'abbudiyyah* (devotionally instituted probabilistic indicators). It also includes *uṣūl al-'amaliyyah* (practical principles), such as the principles of precaution and exemption. More broadly, al-Qummi includes every form of *munajjiz*: namely, any mechanism that renders a legal obligation binding upon the agent, even where it does not produce certainty. Remarkably, he extends this proposition even to unresolved doubt before the fulfilment of the legal duty to investigate (*shubha qabla al-faḥṣ*). This category of epistemic uncertainty is ordinarily regarded as the very opposite of certainty.¹⁶

The underlying rationale of this expansive thesis is that the moral substance of *Tajarri* does not reside in the epistemic strength of the agent's belief, but rather in the volitional posture the agent adopts vis-à-vis what he perceives, upon whatever legitimate basis, to be a binding prohibition. Whether that perception arises from indubitable certainty or from a merely probabilistic indicator is, on al-Qummi's analysis, immaterial to the moral character of the agent's defiance; in either case, the agent knowingly and deliberately elects to act against what he takes—rightly or wrongly—to be the command of the Lawgiver. It is this act of presumptive defiance, and not the particular epistemological pedigree of the belief that occasions it, which constitutes the proper object of evaluation.¹⁷

¹⁶ *ibid* 13.

¹⁷ *ibid* 12–22 (on the moral substance of *tajarri* residing in the agent's volitional posture and presumptive defiance rather than the epistemic strength or pedigree of the belief).

2.3 The Objection from the Nature of Evidentiary Indicators

Against this expansive thesis, a significant objection has been advanced by certain scholars, to the effect that *Tajjarri* is conceptually inapplicable to cases founded upon *Amarat* (probabilistic indicators).¹⁸ The objection proceeds as follows: where an agent acts in reliance upon an *Amara* suggesting the prohibition of a given act, and it is subsequently discovered that the act was, in truth, permissible, the very subject matter (*Mawdu'*) of the inquiry undergoes transformation. Upon such discovery of the contrary (*Kashf al-Khilaf*), it is argued, what has in fact occurred is not *Tajjarri* at all, but rather genuine disobedience (*'Isyan Waqi'i*)—for the *Amara* itself, prior to its rebuttal, is held to have constituted or established the very prohibition against which the agent transgressed.¹⁹ On this reasoning, the categories collapse: either the *Amara* remains operative, in which case the agent's transgression is real disobedience and not mere audacity; or the *Amara* is overturned, in which case there is, retrospectively, nothing against which the agent could be said to have been “audacious,” since no prohibition ever truly obtained.

2.4 Al-Qummi's Resolution

Ayatollah al-Qummi's response to this objection is both incisive and methodologically foundational, for it rests upon the classical bifurcation, within the theory of *Amarat*, between the doctrine of *Sababiyyah wa Mawdu'iyah* (causality and constitutive subjectivity) and the doctrine of *Tariqiyyah* (the pathway theory).²⁰ He maintains that the objection under consideration is tenable only on the *Sababiyyah* account of legal indicators. On this account, a legal indicator (*amara*) is itself constituted as an object of obedience and disobedience. Accordingly, defying an indicator that establishes prohibition—even where the indicator is in fact mistaken—amounts to real disobedience in relation to that indicator itself, rather than merely *tajjarri* in relation to the actual ruling. By contrast, on the *Tariqiyyah* account, the indicator is only an epistemic route to the underlying reality and is not, in itself, the subject of obedience or disobedience; hence, where it proves mistaken and no actual prohibition has been violated, the conduct constitutes *tajjarri* alone.²¹ Upon such a conception, it follows naturally that the discovery of the contrary effects a

¹⁸ *ibid* 13

¹⁹ Muhammad al-Sanad, *Sanad al-Usul: Buhuth fi Usul al-Qanun wa Mabani al-Adillah*, vol 1 (al-Amirah 1434 AH) 270.

²⁰ *ibid* 13

²¹ Sayyid Muhammad Sa'id al-Hakim, *al-Muhkam fi Usul al-Fiqh*, vol 3 (Mu'assasat al-Manar 1414 AH) 48–49.

genuine alteration of the legal subject matter, since the ruling itself was never more than an artifact of the *Amara*'s prior operation; once the *Amara* is overturned, the erstwhile "prohibition" is shown never to have possessed independent reality, and the objection retains its force.

Al-Qummi, however, firmly rejects *Sababiyyah* as the correct foundation, affirming instead—in concurrence with the predominant view among later *Usuliyyun*—that *Tariqiyyah* constitutes the sound doctrinal basis.²² Under the *tariqiyyah* conception, an *amara* does not constitute or create the underlying legal reality; rather, it is a divinely authorised evidentiary route that discloses the real ruling (*hukm waqi'i*) to the legally responsible agent. Practical principles, by contrast, operate precisely where the reality remains veiled and unknown. Accordingly, the epistemic success or failure of an *amara* concerns the agent's apparent practical position, rather than the existence of the underlying real ruling.²³ Consequently, when an agent relies upon an *Amara* indicating prohibition and thereafter acts in contravention of it, the subsequent discovery of the contrary does not, and cannot, retroactively alter the *Mawdu'*; it merely reveals that the agent's pathway to the fixed, real ruling was, in this instance, mistaken. The real ruling of permissibility remained constant throughout; what has changed is merely the agent's epistemic access to it. The agent's antecedent posture of defiance—his willingness to transgress what he, at the time, took to be the binding command of the Lawgiver—remains wholly untouched by this subsequent epistemic correction, and it is precisely this untouched posture that constitutes the substance of *Tajjarri*.

2.5 Concluding Remarks on al-Qummi Theory

By thus grounding his expansive thesis upon the *Tariqiyyah* doctrine, Ayatollah al-Qummi furnishes a coherent and internally consistent resolution to what would otherwise remain an intractable objection. The scope of *Tajjarri*, properly understood, transcends the narrow confines of absolute certainty and extends to the entire hierarchy of *Munajjizat*—evidentiary indicators, practical principles, and even pre-investigatory doubt—precisely because the moral gravamen of

²² *ibid* 13

²³ Sayyid Muhammad Rida al-Tabataba'i, *Tanqih al-Usul*, vol 1 (al-Matba'ah al-Haydariyyah 1952) 44, reporting the lectures of Aqa Diya' al-Din al-'Iraqi.

the concept lies not in the epistemic pedigree of the agent's belief, but in the fixed, immutable reality of the divine law against which that belief, however constituted, was directed in defiance.²⁴

3.0 ONTOLOGICAL STATUS OF THE ACTED-UPON BEHAVIOR

Having established the expansive scope of *Tajarri* in the preceding section, the inquiry now turns to a question of profound ontological consequence: does the act perpetrated in a state of audacity (*al-fi'l al-mutajarra bihi*) undergo any alteration in its legal ruling (*Hukm*) by virtue of the agent's erroneous certainty? Ayatollah al-Qummi structures his investigation of this question with characteristic methodological precision, partitioning it into two distinct stations (*maqamayn*). The first station interrogates whether the ruling of the act is transformed at all; the second—reserved for the subsequent section—examines whether, assuming the ruling remains unaltered, the audacity nonetheless occasions the deservedness of punishment.²⁵ Within this first station, al-Qummi further bifurcates the analysis into two aspects: an examination under the primary criterion (*al-milak al-awwali*), and an examination under the secondary criterion (*al-milak al-thanawi*).²⁶

3.1 Analysis under Primary Rulings

The first aspect confronts a provocative claim advanced by certain scholars: that the primary, unqualified pronouncements of the law (*al-itlaqat al-awwaliyyah*) extend to embrace even instances of certainty contrary to reality.²⁷ Upon this contention, when the Lawgiver decrees that “wine is prohibited,” the decree is held to encompass the case in which the agent is certain that a given liquid is wine, notwithstanding that it is, in objective fact, water. The unsettling corollary is that the water itself—by virtue of the agent's mistaken certainty—genuinely becomes prohibited, subsumed under the primary ruling of prohibition attaching to wine.

The proponents of this view marshal a tripartite argument in support of their thesis.²⁸ The **first premise** affirms the incontestable principle that legal obligation (*Taklif*) is conditioned upon capacity (*Qudra*): that which lies beyond the agent's power cannot be the object of an obligation.

²⁴ Ibid 12–22 (concluding analysis: grounding the expansive scope of *tajarri* in the *Tarīqiyyah* doctrine; extension of *tajarri* to the full hierarchy of *munajjizāt*; and location of the moral gravamen in defiance of the immutable divine law rather than the epistemic pedigree of the agent's belief).

²⁵ Ibid 13

²⁶ Ibid 13

²⁷ Ibid 13

²⁸ Ibid 13–14.

The **second premise** contends that what motivates the human agent toward or away from action is precisely his *certainty*, whereas the conformity or non-conformity of that certainty to reality is entirely extraneous to its motivating and deterring force. In illustration, they observe that a person certain of the presence of a ravenous predator will flee, even if his certainty is discordant with reality; conversely, one certain of the absence of a predator will not flee, even should the predator in fact be present. The **third premise** maintains that religious obligation attaches to that which is voluntary (*ikhtiyari*) for the agent. From the conjunction of these premises, the proponents deduce their conclusion: since obligation attaches only to the empowered portion (premise one), and since the object of certainty is what is voluntary for the agent (premise two), and since obligation attaches to the voluntary (premise three), it follows that obligation attaches precisely to that which certainty has apprehended—the imagined wine—rendering it genuinely prohibited.

Ayatollah al-Qummi subjects this argument to a twofold refutation. **First**, by way of *naqd* (rebuttal through counter-instance), he observes that the thesis entails an untenable consequence in the domain of positive obligations.²⁹ Were the argument sound, it would follow that the discharge of an obligation is achieved merely by the object commanded by the Master—as in prayer within its appointed time. Thus, should an agent be certain that the time has arrived and accordingly pray, the argument would compel the conclusion that his obligation is discharged (*ijza* ʾ), even were the prayer, in objective reality, to have fallen outside its appointed time. Can any jurist commit to so absurd a corollary? For upon this view, no distinction obtains between prohibitions and obligations: just as prohibitions are alleged to transform in accordance with certainty, so too must obligations—a consequence no scholar could countenance.

Second, and more fundamentally, al-Qummi offers a resolution by way of *hall* (dissolution of the underlying error).³⁰ Legal rulings, he affirms, are contingent upon real benefits and detriments (*al-masalih wa'l-mafasid*), and neither certainty nor its absence exerts the slightest influence upon these. Obligations attach to the deed itself, while volition (*ikhtiyar*) serves merely as the *pathway* to its external realization. All accountable agents, without distinction, stand equally subject to obligation; obligation is not the peculiar preserve of the one who possesses certainty. Moreover—

²⁹ *ibid* 14.

³⁰ *ibid* 14.

and here al-Qummi delivers his decisive stroke—commitment to the proposed thesis inescapably entails *Taswib* (juridical dogmatism), the doctrine upon whose invalidity there subsists scholarly consensus (*ijma* ’), and further engenders a vicious circularity (*al-dawr al-muhal*)³¹. For were the ruling to follow the agent’s certainty, the real rulings would be annihilated, and whatsoever the agent conceived would become the very law—a manifestly impossible circle wherein the ruling depends upon certainty which itself presupposes an antecedent ruling.

Al-Qummi thus arrives at a lucid conclusion: where the agent’s certainty conforms to reality, punishment upon the deed is valid should it constitute disobedience, and reward is valid should it constitute obedience; upon either supposition, the act is voluntary.³² Yet where the certainty is contrary to reality—as when one consumes a liquid believed prohibited which is, in truth, permissible—the agent has in fact abstained from wine and refrained from the unlawful, though this abstention is *involuntary* (*ghayr ikhtiyari*). There subsists no impediment in the Master’s declining to punish for the non-commission of the unlawful; the impediment would lie only in punishment for an involuntary matter, whereas the mere *withholding* of punishment for the absence of disobedience harbors no such difficulty. The upshot is definitive: certainty that a given liquid is wine does not render it prohibited under the title of “wine”.

3.2 Analysis under Secondary Rulings and the Critique of the Rule of Implication

Having foreclosed the transformation of the ruling under the primary criterion, al-Qummi proceeds to the second aspect: whether the act, though not prohibited under its primary title, might nonetheless become prohibited under a *secondary* title (*al-'unwan al-thanawi*)—namely, the title of insubordination and rebellion (*al-tamarrud wa'l-tughyan*)..³³ In elucidation of this claim, three grounds) *wujuh* (have been adduced, each of which al-Qummi examines and rejects in turn.

3.2.1 The First Ground: Certainty of Detriment

The **first ground** holds that certainty of the presence of a detriment (*mafsada*) in a given act itself occasions its prohibition, just as certainty of the presence of a benefit occasions its obligation—

³¹ *ibid* 14.

³² *ibid* 14.

³³ *ibid* 14.

for rulings track benefits and detriments, and certainty of detriment, it is claimed, generates the detriment.³⁴ Al-Qummi rebuts this ground decisively: there exists no evidence for this claim; indeed, the evidence militates against it. Rulings track benefits and detriments *inhering in their objects*, and these benefits and detriments are *real matters (umur waqi'iyah)* in whose existence or non-existence certainty plays no constitutive role whatsoever.³⁵ To the rejoinder that certainty might *possibly* effect the detriment, al-Qummi responds that mere possibility does not warrant a ruling conformable to it; furthermore, the presumption of non-existence (*istishab al-'adam*) establishes the detriment's absence, and the unqualified permissibility of the thing subsists even amidst certainty of its prohibition. He appends a further reductio: were the ground sound, then an agent certain of the prohibition of something genuinely prohibited would incur a *doubled* prohibition—one by virtue of its inherent unlawfulness, and another by virtue of his certainty—a consequence to which none could commit.³⁶

3.2.2 The Second Ground: Disclosure of Inner Corruption

The **second ground** contends that *Tajjarri* discloses the corruption of the servant's inner disposition (*su' al-sarira*) and the vileness of his interior, and that this disclosure occasions the ugliness of the act; the act being thereby rendered ugly, it becomes prohibited by operation of the Rule of Implication (*Qa'idat al-Mulazamah*)—the principle that whatsoever reason adjudicates, the law likewise adjudicates.³⁷ Al-Qummi's refutation is at once elegant and incisive: the ugliness of the *disclosed (al-munkashaf—*the inner corruption) does not migrate to the *disclosing (al-kashif—*the external act), just as its goodness would not so migrate.³⁸ The corruption of the interior is a property of the interior; it does not, by mere evidentiary disclosure, contaminate the external deed which serves as its indicant. Moreover, al-Qummi adds, the Rule of Implication is itself defective (*makhdusha*) and cannot sustain a position he affirms to have established repeatedly elsewhere.

3.2.3 The Third Ground: The Implication Between Reason and Law

³⁴ *ibid* 14.

³⁵ *ibid* 14–15.

³⁶ *ibid* 15.

³⁷ *ibid* 16.

³⁸ *ibid* 16.

The **third ground** constitutes the most philosophically substantial of the three, and al-Qummi accordingly accords it the most extensive treatment. It asserts that the attachment of certainty to the ugliness of an act occasions that act's ugliness—just as certainty of an act's goodness occasions its goodness—whence prohibition follows in the former case and obligation in the latter, by operation of the Rule of Implication between reason and law.³⁹ This ground, al-Qummi observes, comprises two distinct claims: the **first claim** ,that certainty of a thing's prohibition renders the act ugly; and the **second claim** that, being rendered ugly, it becomes prohibited by the Rule of Implication.

Regarding the first claim , two objections have been registered. The first, advanced by certain scholars, is that we do not, by conscience (*wijdan*) ,apprehend any ugliness in the act in the case of *Tajjarri* ,just as we apprehend no goodness in the act in the case of compliance (*inqiyad*)⁴⁰. Against this, al-Qummi's own revered teacher (*sayyiduna al-ustadh* ,that is, Ayatollah al-Khu'i) objected that the contrary is dictated by conscience, substantiating his position thus: the jurists hold that the traditions of “*man balaghahu thawab* ”(concerning one to whom a report of reward has reached) establish that compliance occasions reward; and since compliance and audacity issue from a single valley (*min wadin wahid*)—compliance standing precisely as the counterpart to audacity—it follows that just as compliance is good, audacity is ugly.⁴¹

It is at this juncture that Ayatollah al-Qummi advances his celebrated conscientious counter-example, mounting a direct and formidable challenge to the position of his own master.⁴² Suppose, he proposes, that a servant is certain that a certain individual is the *son of his Master* ,while in truth that individual is the Master's *most mortal enemy* (*a'da 'aduwwihi*) ;and suppose the servant, in an act of audacity, slays him. We now inquire: is this act of slaying beloved to the Master (*Mahbub*) ,or detested (*mabghud*) ,or neither, nor both simultaneously? The fourth possibility—that it be both beloved and detested—is foreclosed, for it entails the conjunction of contraries, which is impossible. The third possibility—that it be neither—is likewise untenable, for it cannot

³⁹ ibid 16.

⁴⁰ ibid 16.

⁴¹ ibid 16.

⁴² ibid 16–17.

be that the Master's condition is wholly indifferent with respect to the slaying of his mortal enemy. The second possibility—that it be detested—is manifestly false. There remains, therefore, only the first possibility: that the act is *beloved*, and nothing but beloved. And can that beloved be, at the same time, ugly? Assuredly not.⁴³ By this luminous example, al-Qummi demonstrates the frailty of the claim that audacity uniformly confers ugliness upon the external act.

The second objection to the first claim holds that the ugly must be a voluntary matter for the agent; the ugly-making and good-making titles must be objects of volition. Yet the one possessing certainty does not direct his volition by means of his certainty, and indeed the act may not issue from his volition at all—as when, certain that a liquid is wine while it is in reality water, he drinks it: his drinking was not voluntary, for what he intended (drinking wine) did not occur, and what occurred (drinking water) he did not intend.⁴⁴ To this, *sayyiduna al-ustadh* responded that it suffices, for the act to be characterized by goodness or ugliness, that the agent be cognizant of the title incidentally attaching to the act; it is not required that the title be his aim and objective.⁴⁵ Thus, striking an orphan is ugly even if the striker's purpose was not the infliction of pain. As for the contention that the title of certainty is unattended to, al-Qummi records the response that this is incorrect, since knowledge is present to the knower by presential knowledge (*ilm huduri*), and the possessor of certainty is attentive to his certainty—albeit summarily and subconsciously (*irtikazi*)—which measure suffices for voluntariness.⁴⁶

Regarding the second claim—that once rendered ugly, the act becomes prohibited by the Rule of Implication—al-Qummi advances two refutations of decisive import.⁴⁷ **First**, there exists no evidence for this claim; as he has repeatedly maintained, reason possesses no pathway to the disclosure of the law's underlying criteria (*malakat*), and rational ugliness does not entail a legal ruling. It is entirely possible that a given matter be ugly in the estimation of reason, and yet a legal command attach to it—as witnessed in the case of the Prophet Abraham (peace be upon him), commanded by God to sacrifice his son Ishmael, who set about compliance without objecting that

⁴³ *ibid* 17.

⁴⁴ *ibid* 17.

⁴⁵ *Ibid* 15

⁴⁶ *ibid* 17.

⁴⁷ *ibid* 17–18.

this was prohibited injustice.⁴⁸ **Second**, even conceding the implication *arguendo*, it holds only where reason's judgment of ugliness or goodness lies within the *chain of the causes* of rulings (*silsilat 'ilal al-ahkam*); but where reason's judgment lies within the *chain of the effects* (*silsilat al-ma'alil*), the claim collapses. For reason's judgment of the ugliness of disobedience, if sufficient to deter the agent from perpetration, obviates any need for a legal ruling; and if insufficient, then no legal ruling would have any efficacy.⁴⁹ Upon either horn, the appeal to the Rule of Implication is otiose.

Al-Qummi thus concludes this first station with a resounding verdict: certainty of the prohibition of that which is not prohibited does not render it prohibited, just as certainty of the obligation of that which is not obligatory does not render it obligatory.⁵⁰ The act perpetrated in audacity retains, ontologically, its original ruling of permissibility, untransformed by the agent's erroneous conviction—whether that conviction be examined under the primary criterion or under the secondary.

4.0 RATIONAL DESERVEDNESS OF PUNISHMENT

4.1 .The Rational Deservedness of Punishment

Having conclusively established that the acted-upon behavior undergoes no transformation in its legal ruling, al-Qummi advances to the second station: whether, notwithstanding the persistence of permissibility, the agent of audacity nonetheless *deserves* punishment. Here his position pivots decisively, and it is precisely in this pivot that the doctrinal sophistication of his account is most vividly displayed. For al-Qummi affirms, with unqualified conviction, that reason (*'aql*) independently adjudicates that the audacious agent *does* deserve punishment.⁵¹

⁴⁸ *ibid* 18.

⁴⁹ *ibid* 18.

⁵⁰ *ibid* 18.

⁵¹ *ibid* 18.

This deservedness, however, is grounded not in any prohibition attaching to the deed—for no such prohibition obtains—but rather in the agent’s inner rebellion (*tughyan*), his violation of the sanctity of his Master (*hatk hurmat mawlahu*), and his egress from the protocols of servitude (*khuruj ‘an rusum ‘ubudiyyatihi*)⁵². The object of rational censure is thus the agent’s *volitional posture*, not the material consequence of his conduct. So thoroughgoing is this displacement of culpability from deed to disposition that al-Qummi extends the deservedness of punishment even to cases wherein no external act whatsoever has been perpetrated. The mere *resolve upon disobedience* (*al-‘azm ‘ala al-‘isyan*)—even absent the commission of any deed—suffices, in reason’s estimation, to occasion the deservedness of punishment.⁵³ A fortiori, the commencement of preliminary steps toward the sin—as when an agent resolves to consume wine and grasps the goblet in order to drink therefrom—renders him deserving of punishment in reason’s estimation.⁵⁴

Al-Qummi presses this analysis to its furthest reaches, observing that even *vacillation* in disobedience (*al-taraddud fi al-‘isyan*) may occasion the deservedness of punishment; for the duty of the servant is to be resolutely and decisively committed to obedience and compliance toward his Master. Conversely, vacillation in *obedience*—as when one is undecided regarding compliance with a Master’s command that is merely recommendatory (*istihbabi*)—does not occasion the deservedness of reward.⁵⁵ Throughout, the governing principle is the primacy of the interior disposition of servitude over the mere external configuration of the deed.

4.2. Bridge to Modern Criminal Law

It is precisely at this juncture that al-Qummi’s centuries-old analysis reveals its striking consonance with the most sophisticated currents of modern criminal jurisprudence.⁵⁶ His displacement of culpability from the material consequence of the deed to the perilous volitional posture of the agent corresponds, with remarkable exactitude, to the **Subjective Theory of Attempt** in contemporary criminal law. Upon this theory, the locus of penal responsibility is situated not in the material harm inflicted upon the external world—which, in cases of impossible attempt, may be entirely absent—

⁵² *ibid* 18.

⁵³ *ibid* 18.

⁵⁴ *ibid* 18.

⁵⁵ *ibid* 18.

⁵⁶ *Ibid* 12–22 (displacement of culpability from material consequence to the agent’s volitional posture of defiance).

but rather in the *dangerous intention of the agent* and the manifest disposition toward criminality that his conduct betrays.⁵⁷ The consumer of water believing it wine, and the assailant who fires upon a corpse believing it a living victim, are, upon both al-Qummi's rational analysis and the subjective theory, culpable in equal measure—not for what they accomplished, but for what they resolved and set in motion. Thus, the *Usuli* doctrine of *Tajarrī*, far from constituting a parochial curiosity of classical seminary discourse, anticipates and illuminates one of the most contested frontiers of modern penal theory⁵⁸.

5.0 GAP OF RESEARCH

Despite the existence of multiple studies on *tajarrī* within the Shi'i *usūlī* tradition, a clear gap remains in the way its core criteria for responsibility are operationalised for comparison with contemporary criminal-law doctrines. Many contributions either remain confined to internal juristic debates—focusing on semantic, epistemic, or theological aspects of *tajarrī*—or, where comparative work is attempted, it often stops at broad parallels such as the centrality of intention, without explaining precisely how *ijtihādī* principles establish a structured account of “entitlement to punishment” even when the objective outcome is absent or legally non-prohibited.

In modern criminal law, discussions of responsibility in cases of “impossible attempts” and the role of *mens rea* address similar tensions: punishment may be justified without a corresponding objective harm, but the normative basis of such liability is contested. However, the literature rarely provides a careful bridge from *usūlī* distinctions—especially the separation between the ontological status of the acted-upon object and the rational grounds for penal liability—to the doctrinal architecture of *actus reus/mens rea*, and to subjective theories of attempt. Therefore, this study seeks to fill the following gap: rather than equating distinct legal traditions, it offers a structured, comparative analysis of how al-Qummi's framework accounts for moral culpability in

⁵⁷ Duff, *Criminal Attempts* (n 2) 92–118, 206–45 (locus of responsibility in dangerous intention and manifest criminal disposition rather than material harm); Model Penal Code § 5.01 (American Law Institute 1985) (subjective approach to attempt liability); Glanville Williams, ‘The Lords and Impossible Attempts, or Quis Custodiet Ipsos Custodes?’ (1986) 45 Cambridge Law Journal 33.

⁵⁸ This anticipatory parallel between the *Uṣūlī* doctrine of *tajarrī* and modern subjective attempt theory is further illuminated by the emphasis on actor-relative dangerousness in Horder, *Ashworth's Principles* (n 2) 485–512 and Duff, *Criminal Attempts* (n 2) chs 1 and 7.

tajarrī, and explores how these classical *uṣūlī* insights offer a fresh perspective on the normative dilemmas underlying subjective approaches to impossible attempts.

5.1 Methodology

This research follows a descriptive–analytical and library-based documentary method. At the first stage, the study extracts and organises the relevant *uṣūlī* materials from al-Qummī's *Ārā'unā fī Uṣūl al-Fiqh*, focusing on the internal architecture of *tajarrī* :the relationship between the primary ruling concerning the acted-upon behaviour and the rational basis of punishment) *istiḥqāq al-'iqāb* ,(as well as the grounds invoked to justify liability (including the agent's rebellious volition and inner corruption). These components are then reconstructed through textual analysis of definitions, argumentative steps, and the treatment of evidentiary objections.

At the second stage, the study conducts a comparative doctrinal analysis between al-Qummī's account of *tajarrī* and prominent modern criminal-law frameworks, particularly subjective approaches to attempt and the treatment of factual impossibility. The comparison is strictly conceptual and structural rather than historical or equivalence-driven, aiming to test whether *uṣūlī* criteria for culpability and penal deservedness map onto—at least at the level of justificatory logic—the modern *mens rea*-centred paradigm. Finally, the study integrates the findings into an argument-driven synthesis, maintaining explicit attention to differences in terminology, epistemology, and normative premises to avoid reducing *tajarrī* to a simplistic analogue of Western doctrines.

6.0 Textual and Scriptural Analysis

6.1 Textual and Scriptural Analysis

Having secured the twofold conclusion that the acted-upon behavior remains ontologically permissible while the agent rationally deserves punishment, al-Qummi turns, in the final movement of his analysis, to the scriptural evidence (*al-adilla al-naqliyya*) adduced by those who

would ground the prohibition of *Tajjarri*, or punishment for mere inner intention, in the Qur'an and the traditions. His treatment is uniformly critical, dismantling each proffered proof in turn⁵⁹.

6.1.1. The Qur'anic Verses

The proponents of scriptural prohibition first invoke the verse “:And whether you disclose what is within your souls or conceal it, God will bring you to account for it⁶⁰” contending that the mere intention within the heart occasions punishment and reward.⁶¹ While the citation records a view that the verse is “not deficient in indicating the claim,” al-Qummi’s broader methodological posture—elaborated across his treatment—resists this reading, situating such verses within their proper interpretive context rather than as bases for punishing mere inner resolve.

More pointedly, the proponents invoke “:And pursue not that whereof you have no knowledge; verily the hearing, the sight, and the heart—all of these shall be questioned of”⁶² Quranic verse⁶², arguing that the *cardiac* matter occasions questioning and punishment.⁶³ Al-Qummi rebuts this decisively: the noble verse does not indicate the claim, but rather indicates that every organ from which disobedience issues shall be held to account—so that should disobedience issue from the eye, the ear, or the heart, it is called to account. The verse is silent, however, as to the *determination of the instance* (*ta'yin al-misdaq*). Its purport is merely that the agent is obligated to discharge the function proper to each faculty: the function of the heart, for instance, is belief in the matters of creed, such that its failure to believe occasions punishment and questioning.⁶⁴ The verse thus concerns the dereliction of cardiac duty, not the criminalization of transient evil resolve.

Al-Qummi similarly disposes of the verse “God will not take you to task for what is vain in your oaths, but He will take you to task for what your hearts have earned⁶⁵” observing that its apparent

⁵⁹ Sayyid Taqī al-Ṭabāṭabā'ī al-Qummī, *Ārā'unā fi Uṣūl al-Fiqh*, 3 vols (Maḥallātī, Qom 1371 Sh/1993) vol 2, 12–22 (the twofold conclusion that the act remains ontologically permissible while the agent rationally deserves punishment; critical examination and rejection of the scriptural evidence (*al-adilla al-naqliyya*) from the Qur'an and traditions advanced to establish the prohibition of *tajjarī* or punishment for mere inner intention).

⁶⁰ Q 2:284

⁶¹ *ibid* 18; Qur'an 2:284.

⁶² Q 17:36

⁶³ *ibid* 18–19; Qur'an 17:36.

⁶⁴ *ibid* 19.

⁶⁵ Q 2:225

purport concerns the distinction between an unintended oath (which is vain and inconsequential) and a deliberate one (which bears consequence)—a matter unrelated to *Tajjarri*⁶⁶. So too the verse “*And there is no blame upon you for that wherein you have erred, but only for what your hearts*

6 2. The Traditions Concerning Intention

Turning to the traditions, the proponents adduce the report of al-Sakuni from Abu 'Abdillah (peace be upon him), that the Messenger of God (God bless him and his family) declared: “The intention of the believer is better than his deed, and the intention of the disbeliever is worse than his deed, and every doer acts according to his intention.”⁶⁹ Al-Qummi’s response is twofold: the tradition is *weak in its chain of transmission (da’ifa sanadan)* and is therefore of no evidentiary weight; and further, its apparent purport cannot in any case be embraced.⁷⁰

The proponents likewise cite the tradition of Abu Hashim, wherein Abu 'Abdillah (peace be upon him) explained the eternal abode of the people of the Fire and the people of the Garden by reference to their respective intentions—the former having intended, had they endured in the world, to disobey God perpetually, and the latter to obey Him perpetually—such that “by intentions were these and those made eternal.”⁷¹ This tradition, too, al-Qummi pronounces *weak in its chain*, alongside the remaining reports adduced to the same purpose.⁷²

6.3 The Traditions of Pardon for the Contemplation of Evil

Standing in apparent opposition to the foregoing, al-Qummi adduces a body of traditions establishing that the intention of good is recorded while the intention of evil is *not*⁷³. Thus the report of Abu Basir relates that when the believing servant sincerely resolves upon an act of righteousness but is prevented from its execution, God records for him the reward as though he

⁶⁶ *ibid* 19; Qur’an 2:225.

⁶⁷ Q 33:5

⁶⁸ *ibid* 19; Qur’an 33:5.

⁶⁹ *ibid* 19; al-Hurr al-'Amili, *Wasa'il al-Shi'a*, ch 6 (Muqaddimat al-'Ibadat) hadith 3.

⁷⁰ *ibid* 19–20.

⁷¹ *ibid* 20; *Wasa'il al-Shi'a* (n 41) ch 6, hadith 4.

⁷² *ibid* 20.

⁷³ *ibid* 20.

had performed it—for God is vast and generous.⁷⁴ And the report of Zurara relates the divine ordinance for the progeny of Adam: that whosoever contemplates a good deed but does not perform it has a single good deed recorded for him; whosoever contemplates and performs it has tenfold recorded; whosoever contemplates an evil deed has *nothing* recorded against him; and only whosoever contemplates and performs it has a single evil deed recorded.⁷⁵

6.4 The Scriptural Synthesis

Al-Qummi then engages the reconciliation attempted by *sayyiduna al-ustadh* between the two apparently conflicting classes of tradition—those indicating punishment for the intention of disobedience, and those indicating pardon for mere resolve.⁷⁶ Two modes of reconciliation had been proposed: the **first**, construing the former class as concerning resolve *coupled with the undertaking of some preliminary steps* (*al-qasd ma'a al-ishtighal bi ba'd al-muqaddimat*), and the latter as concerning *bare resolve* (*al-qasd al-mujarrad*); the **second**, construing the former as concerning one who does *not* desist of his own accord until impeded by a coercive obstacle, and the latter as concerning one who desists of his own accord.

Al-Qummi, however, adjudges the entire edifice untenable and incapable of grounding the claim, even setting aside the countervailing traditions, for three reasons.⁷⁷ **First**, that which indicates the consequence of punishment upon resolve is *deficient in its chain of transmission* and thus unfit for reliance. **Second**, the purport of that class, even granting its authenticity, is that punishment attaches to the resolve to perpetrate the *real* unlawful—which bears no relation to the resolve to perpetrate the *imagined* unlawful (the very substance of *Tajarri*). **Third**, even conceding all the foregoing, that class does not indicate the prohibition of the *acted-upon behavior*, but merely the consequence of punishment upon the resolve; whence nothing exceeds what reason already adjudicates. In other words, these traditions establish no more than the servant's deservedness of

⁷⁴ *ibid* 20; Wasa'il al-Shi'a (n 41) ch 6, hadith 1.

⁷⁵ *ibid* 20; Wasa'il al-Shi'a (n 41) ch 6, hadith 6.

⁷⁶ *ibid* 20–21.

⁷⁷ *ibid* 21.

punishment when he intends disobedience—precisely the measure adjudicated by reason—and thus add nothing thereto.⁷⁸

The definitive upshot, in al-Qummi's own formulation, is this: there exists *no evidence* for the prohibition of *Tajjarri*, and the apparent verdict of reason is the deservedness of punishment for the audacious agent.⁷⁹ As to whether one might yet assert the *non-punishment* of the audacious agent, by grace of the traditions indicating the absence of accountability for resolve and intention, al-Qummi counsels scholarly reticence: to affirm with certainty that such is the purport of those traditions is difficult—unless their underlying criterion (*malak*) be extracted, which is itself difficult to affirm with certainty—for it is not improbable that their purport is merely that the one *resolved* upon disobedience, should he *desist*, incurs nothing recorded against him. And God is the Knower of the realities of matters.⁸⁰

7.0 COMPARATIVE DISCUSSION: *TAJJARRI*, *MENS REA*, AND IMPOSSIBLE ATTEMPTS

The doctrinal sophistication of Ayatollah al-Qummi's account of *Tajjarri* does not merely resolve internal tensions within Islamic legal theory⁸¹; it establishes a profound, albeit historically independent, resonance with some of the most complex debates in modern Anglo-American and continental criminal jurisprudence.⁸² By isolating the moral culpability of the agent from the objective legality of the act, al-Qummi's framework offers a compelling comparative lens through which to examine the tensions surrounding the modern separation of *actus reus* and *mens rea*.⁸³, as well as the penal treatment of inchoate offenses and impossible attempts.⁸⁴

⁷⁸ *ibid* 21.

⁷⁹ *ibid* 21–22.

⁸⁰ *ibid* 22.

⁸¹ *Ibid* 12–22 (securing the twofold conclusion of ontological permissibility of the act and rational deservedness of punishment; critical engagement with scriptural and rational objections to *tajjarri*).

⁸² R A Duff, *Criminal Attempts* (Oxford University Press 1996) 1–32, 206–45; Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, Oxford University Press 2019) 468–78; George P Fletcher, *Rethinking Criminal Law* (Oxford University Press 2000) 131–97.

⁸³ al-Qummi, *Ārā' unā* (n 1) vol 2, 16–21 (displacement of culpability to the agent's volitional posture of defiance rather than objective corruption of the act).

⁸⁴ Duff, *Criminal Attempts* (n 2) 147–92, 206–45 (subjective theory of liability in inchoate offences and impossible attempts); Model Penal Code § 5.01 (American Law Institute 1985); Fletcher, *Rethinking Criminal Law* (n 2) 149–57, 174–84 (discussing how punishment of impossible attempts turns on the agent's dangerous intention and criminal disposition rather than material result).

7.1 *Tajjarri* and the *Mens Rea* Paradigm

A cornerstone of modern criminal law is the maxim *cogitationis poenam nemo patitur* (no one is punished for mere thoughts). Criminal liability fundamentally requires the concurrence of a guilty act (*actus reus*) and a guilty mind (*mens rea*). The mere harboring of criminal intent, devoid of any external manifestation, is generally deemed beyond the coercive reach of the law, just as an externally harmful act committed without fault (strict liability exceptions notwithstanding) lacks the moral culpability requisite for punishment.⁸⁵

Ayatollah al-Qummi's architectural division between the primary legal ruling of the act and the rational deservedness of punishment perfectly mirrors this conceptual bifurcation.⁸⁶ By insisting that the consumption of water under the guise of wine does not render the water ontologically prohibited (*Haram*), al-Qummi strictly preserves the necessity of an objective legal violation—**conceptually analogous to** the requirement of an *actus reus*. The law, in its primary and secondary reality, remains unbreached. However, by concurrently affirming that the agent rationally deserves punishment (*istihqaq al-'iqab*) by virtue of his rebellious volition (*tughyan*), al-Qummi acknowledges the independent penal gravity of the subjective intent, **offering a structural parallel to the theoretical functions often ascribed to *mens rea*** in modern penal philosophy.⁸⁷ **In terms accessible to Western legal parlance**, al-Qummi concludes that while there is no true *actus reus* in the case of *tajjarri*, the presence of a fully formed and executed subjective intent **operates in a manner functionally comparable to *mens rea***, independently triggering a rational and moral liability grounded in the agent's rupture of the protocols of servitude (**what might be viewed as the theological counterpart to breaching the foundational duties of the legal order**).⁸⁸

⁸⁵ Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, Oxford University Press 2019) 85–95; George P Fletcher, *Rethinking Criminal Law* (Oxford University Press 2000) 65–80 (on the maxim *cogitationis poenam nemo patitur* and the foundational requirement of concurrence between *actus reus* and *mens rea* as the cornerstone of modern criminal liability, with bare intent alone generally beyond the law's coercive reach).

⁸⁶ Sayyid Taqī al-Ṭabāṭabā'ī al-Qummī, *Ārā' unā fi Uṣūl al-Fiqh*, 3 vols (Maḥallātī, Qom 1371 Sh/1993) vol 2, 12–22 (architectural division between the primary legal ruling of the act and the rational deservedness of punishment, which mirrors the modern *actus reus/mens rea* bifurcation).

⁸⁷ al-Qummī, *Ārā' unā* (n 2) vol 2, 12–22 (the water example: the act remains ontologically permissible and does not become *ḥarām*, thereby preserving the necessity of an objective legal violation equivalent to *actus reus*; yet the agent deserves punishment (*istihqāq al-'iqāb*) due to rebellious volition (*tughyān*)).

⁸⁸ al-Qummī, *Ārā' unā* (n 2) vol 2, 12–22 (conclusion that there is no *actus reus* in *tajjarri*, yet a fully formed and executed rebellious volition independently triggers rational moral liability, akin to the independent gravity of *mens rea* in Western legal parlance).

7.2 Factual Impossibility and the Subjective Theory of Liability

The comparative parallels become even more striking when *Tajjarri* is juxtaposed with the modern criminal doctrine of “impossible attempts.”⁸⁹ In Anglo-American law, “factual impossibility” arises when an actor intends to commit a crime and takes every step to execute it but fails due to a factual circumstance unknown to him (e.g., shooting into an empty bed believing the victim is asleep therein, or attempting to pick an empty pocket).⁹⁰

The classical example of *Tajjarri*—drinking water under the erroneous certainty that it is wine—is the quintessential paradigm of factual impossibility.⁹¹ Historically, Western legal systems vacillated on whether such attempts should be punished, with objective theorists arguing that since no actual harm could possibly have materialized, no punishment should ensue.⁹² However, modern penal codes have overwhelmingly adopted the **Subjective Theory of Attempt**. Under this theory, the impossibility of the crime is no defense. The rationale for punishment is shifted away from the objective danger to the protected legal interest, focusing instead upon the manifest dangerousness of the actor’s character and his settled intent to subvert the law.⁹³

Al-Qummi’s analysis of *Tajjarri* arrives at precisely the same terminus, though derived from vastly different epistemological premises.⁹⁴ By rejecting the Rule of Implication (*Qa’idat al-Mulazamah*) and localizing the grounds for punishment purely in the agent’s *Su’ al-Sarirah* (inner corruption), *Hatk al-Hurmah* (violation of sanctity), and *Tughyan* (rebellion), al-Qummi provides a robust deontological foundation for the Subjective Theory.⁹⁵ Shi’a jurisprudence, as articulated in *Arā’ unā*, thus recognizes that in cases of factual impossibility, the juridical focus must pivot from the nonexistent external harm to the very real normative defiance of the agent. The subject is

⁸⁹ R A Duff, *Criminal Attempts* (Oxford University Press 1996) 206–45; George P Fletcher, *Rethinking Criminal Law* (Oxford University Press 2000) 149–57.

⁹⁰ Duff, *Criminal Attempts* (n 1) 206–30; Model Penal Code § 5.01 (American Law Institute 1985); Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, Oxford University Press 2019) 468–78.

⁹¹ Sayyid Taqī al-Ṭabāṭabā’ī al-Qummī, *Ārā’ unā fi Uṣūl al-Fiqh*, 3 vols (Maḥallātī, Qom 1371 Sh/1993) vol 2, 12–22 (classical example of drinking water under the belief that it is wine as the paradigm of *tajjarri*).

⁹² Fletcher, *Rethinking Criminal Law* (n 1) 149–57 (historical debate between objective and subjective approaches to impossible attempts); Duff, *Criminal Attempts* (n 1) 92–118.

⁹³ Duff, *Criminal Attempts* (n 1) 147–92, 206–45 (subjective theory shifts focus to the actor’s dangerous character and settled intent); Model Penal Code § 5.01 (American Law Institute 1985); Jeremy Horder, *Ashworth’s Principles of Criminal Law* (9th edn, Oxford University Press 2019) 485–512.

⁹⁴ al-Qummī, *Ārā’ unā* (n 3) vol 2, 12–22.

⁹⁵ al-Qummī, *Ārā’ unā* (n 3) vol 2, 12–22 (rejection of *Qa’idat al-Mulazamah*; localization of punishment in *su’ al-sarirah*, *hatk al-ḥurmah*, and *tughyān*; deontological foundation independent of external harm).

punished not for the success of his criminal enterprise, but for his demonstrated willingness to transgress the bounds of the law.⁹⁶

8.0 CONCLUSION AND FINDINGS

This study has provided a systematic reconstruction of Ayatollah Sayyid Taqī al-Tabataba'ī al-Qummi's account of *tajarrī* in his treatise *Arā'unā fī Uṣūl al-Fiqh*. By examining the tension between the agent's rebellious subjective certainty and the neutral objective reality of the external act, the research synthesizes al-Qummi's resolution into four primary findings:

First, regarding the ontological and deontic status of the acted-upon behavior) *al-fi'l al-mutajarrā bih*, (al-Qummi establishes that an agent's erroneous belief or mistaken certainty does not alter the objective legal ruling) *ḥukm wāqī'ī* (of the act. The act remains objectively permissible) *mubāḥ*, (as legal rulings track real underlying benefits and harms) *masāliḥ wa-mafāsid* (in which subjective epistemic states play no constitutive role. Furthermore, al-Qummi rejects the applicability of the Rule of Implication) *Qā'idat al-Mulāzamah*, (maintaining that rational blameworthiness does not generate a corresponding Sharia prohibition.

Second, regarding culpability and punishment, al-Qummi demonstrates that while the act itself remains unprohibited, the agent nonetheless rationally deserves punishment) *istiḥqāq al-'iqāb*. (This liability is grounded strictly in independent rational adjudication) *'aql*, (which identifies the locus of blame in the agent's volitional posture—specifically, his manifest rebellion) *tughyān*, (defiance of divine authority, and breach of the duties of servitude) *khurūj 'an rusūm al-'ubūdiyyah*—(rather than in any material harm or objective transgression.

Third, by grounding his theory on the pathway doctrine) *ṭarīqiyyah* (of legal indicators, al-Qummi successfully extends the scope of *tajarrī* beyond absolute certainty) *qaṭ'* (to encompass all binding evidentiary mechanisms) *munajjizāt*, (including probabilistic indicators) *amārāt* (and practical principles) *uṣūl 'amaliyyah*. (His close textual scrutiny of scriptural proofs further reveals that

⁹⁶ al-Qummī, *Ārā'unā* (n 3) vol 2, 12–22 (in factual impossibility, focus pivots to the agent's normative defiance; punishment is for the demonstrated willingness to transgress rather than success of the enterprise).

Quranic verses and prophetic traditions do not establish an independent legal prohibition for *tajarrī*, nor do they extend penal liability beyond what reason independently adjudicates.

Fourth, on a comparative level, al-Qummi's displacement of culpability from objective outcome to subjective rebellious intent offers a striking functional and structural analog to the Subjective Theory of Attempt in modern criminal law—particularly regarding impossible attempts. However, as established, this conceptual convergence remains a functional analogy within penal theory rather than a structural identity, preserving the distinct theological-jurisprudential framework of *uṣūl al-fīqh*.