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The Juridical Theology of Shâfi'î: Origins and Significance of Uṣūl al-Fiqh

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# THE JURIDICAL THEOLOGY OF SHÂFI'Î ORIGINS AND SIGNIFICANCE OF *UŞÛL AL-FIQH*

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There are some problems connected with the history of Islamic jurisprudence, a science which has come down to us under the designation of *uşûl al-fiqh*, literally, "the roots of law". (\*) These problems have to do with its origins, its designation, its constituent elements, and its purpose. The names of several doctors of the law are involved with its origins. No exact date can be assigned to its foundation on the basis of the available data. The designation given to this science belongs to a period which, though it cannot as yet be exactly determined, is nevertheless much later than the first work treating of it, perhaps as much as two centuries. The works on this subject vary considerably in method and content; its authors in the Middle Ages are divided on the matter of its constituent elements; and modern scholars are not in agreement as to its purpose.

In the following pages an attempt is made to provide some answers to these problems, answers which, for the time being should be considered, at least in part, as provisional, pending a more elaborate study now in progress.

(\*) This paper is dedicated to George Hourani, in remembrance of early days at a great institution, the University of Michigan (Ann Arbor); it unfortunately missed the deadline for the Festschrift because of absence in France.

### *Founder and Date of Foundation*

The birth of *uṣūl al-fiqh* as the science of jurisprudence in Islam appears to have occurred sometime prior to the death of 'Abd ar-Raḥmān ibn Maḥdī in 198 of the hijra (A.D. 813-814). Ibn Maḥdī is said to have written to Shāfi'ī (d. 204/820) asking him to compose a work dealing with the legal statements of the Koran, the accepted historical reports relating to them, the probative value of the consensus, and to clarify the repealing and repealed doctrines of the Koran and the Prophet's Sunna. <sup>(1)</sup> Shāfi'ī's *Risāla* <sup>(2)</sup> is said to have been written in answer to this request.

A jurisconsult is cited as having delivered Shāfi'ī's *Risāla* to 'Abd ar-Raḥmān. Al-Ḥārith b. Suraij an-Naqqāl, so-called because of his role as "deliverer" (*naqqāl*) of the work to the one for whom it was intended, is reported as having said, "when I carried the *Risāla* to 'Abd ar-Raḥmān b. Maḥdī, he was amazed, and kept saying repeatedly, 'if only it were shorter, so it could be easily understood!' (*lau kāna aqalla li-yufham*)"—apparently finding the "letter" to be too long. <sup>(3)</sup>

Tradition, especially that of the Shāfi'ī, Hanbali and Maliki schools of law, has it that Shāfi'ī is the founder of the science of *uṣūl al-fiqh*. Other jurisconsults are cited either as having founded this science or as having written on it: Ibn Lahī'a (d. 174/790), Abū Yūsuf (d. 182/798), and Shaibānī (d. 189/805). Al-Khaṭīb al-Baghdādī (d. 463/1071) cites Abū Yūsuf, disciple of Abū Ḥanīfa, eponym of the Hanafi school of law, as "the

(1) Ibn al-'Imād, *Shadharāt adh-dhahab ft akhbār man dhahab*, 8 vols. (Cairo: al-Qudṣī Press, 1350/1931), II, 10.—On Ibn Maḥdī see al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, 14 vols., (Cairo: as-Sa'āda Press, 1349/1931), X, 240-248; Ibn al-'Imād, *op. cit.*, I, 355.

(2) On Shāfi'ī's *Risāla*, see F. Sezgin, *Geschichte des arabischen Schrifttums*, 8 vols. (Leiden: E. J. Brill, 1967-1982), I, 488.

(3) The rest of al-Ḥārith's name is Abū 'Amr, al-Khawārizmī al-Baghdādī (d. 236/850); biographical notices in Abū Ishāq ash-Shīrāzī, *Ṭabaqāt al-fuqahā'*, 83; *Ṭabaqāt ash-Shāfi'iya*, 10 vols. (Cairo: 'Isā al-Bābī al-Ḥalabī Press, 1964-1976), II, 112-113; Ibn Ḥajar, *Lisān al-Mizān*, 7 vols. (Ḥaidarābād: Dā'irat al-ma'ārif Press, 1330/1912), II, 149-151, esp. p. 151 (line 1). Another person, Abū 'l-Ḥasan 'Alī b. 'Abd Allāh b. Ja'far b. Najīh as-Sa'dī (161-234/778-848) is reported as having copied the *Risāla* and taken his copy to 'Abd ar-Raḥmān b. Maḥdī; see Shīrāzī, *op. cit.*, 84-85; Subkī, *op. cit.* II, 145-150, but Subkī does not mention this second copy.

first to have composed books on *uṣûl al-fiqh* according to the school of Abû Ḥanîfa" (auwalu man waḍa'a 'l-kutuba fi uṣûl al-fiqh 'alâ madhabî Abî Ḥanîfa).<sup>(1)</sup> Ibn an-Nadîm (fl. 377/987) cites Shaibânî, disciple of Abû Ḥanîfa and Abû Yûsuf, as having written *Kitâb Uṣûl al-fiqh* (*The Book of Uṣûl al-fiqh*).<sup>(2)</sup>

Subkî cites Abû Yaḥyâ as-Sâjî (d. 307/919) as the author of "a book on *fiqh* and (its) disputed questions which he entitled '*uṣûl al-fiqh*', in which he took in all the chapters on *fiqh*, stating that he epitomized it from his great work on the disputed questions (of *fiqh*), and this epitomy I have in a huge volume".<sup>(3)</sup>

When Ignaz Goldziher cited Shâfi'î as the founder of *uṣûl al-fiqh*, he cautioned in a footnote that ath-Thaurî had said that "Ibn Lahî'a ... is competent in *uṣûl*, and we in *furû*".<sup>(4)</sup> The text of Sufyân ath-Thaurî's statement is: "*inda Ibn Lahî'a al-uṣûl, wa-'indaná 'l-furû*"; literally: "Ibn Lahî'a is in possession of the *uṣûl*, and we are in possession of the *furû*".<sup>(5)</sup>

### *The Designation "uṣûl al-fiqh"*

Thus the question regarding the founder of the new science cannot be determined on the sole basis of the use of the term "*uṣûl al-fiqh*". The science was founded long before the term for it was coined. In the period of Shâfi'î, and thereafter for a period of a century and a half or two, the term "*uṣûl*" ("roots")

(1) al-Khaṭīb al-Baghdâdî, *op. cit.*, XIV, 245-246; Ibn al-'Imâd, *op. cit.*, I, 301. —In reference to Abû Yûsuf, Joseph Schacht has said, "the statement of Khaṭīb Baghdâdî...that Abû Yûsuf was the first to compose books on the theory of law on the basis of the doctrine of Abû Ḥanîfa, is not confirmed by the old sources and must therefore be regarded with suspicion"; see J. Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), p. 133.

(2) Ibn an-Nadîm, *al-Fihrist* (Cairo: ar-Rahmânîya Press, n.d.), 288 (l. 8-9); N. P. Aghnides, *Mohammedan Theories of Finance* (New York: Columbia University Press, 1916), p. 173.

(3) Subkî, *Ṭabaqât ash-Shâfi'îya*, III, 300: *wa-lahû muṣannafun ft 'l-fiqh wa 'l-khilâfât sammâhû "uṣûl al-fiqh", istau'aba fihl abwâba 'l-fiqh wa-dhakara annahû 'khtaṣarahû min kitâbiht 'l-kabri ft 'l-khilâfât, wa-huwa 'indt ft mujalladin dakhm.*

(4) I. Goldziher, *Die Zâhiriten, ihr Lehrsystem und ihre Geschichte: Beitrag zur Geschichte der Muhammedanischen Theologie* (Leipzig: O. Schulze, 1884), 21, n. 1; English translation by W. Behn, *The Zâhirs, Their Doctrine and their History: A Contribution to the History of Islamic Theology* (Leiden: E. J. Brill, 1971), 21, n. 1.—On Ibn Lahî'a, see F. Sezgin, *op. cit.*, I, 94.

(5) Ibn al-'Imâd, *op. cit.*, I, 283-284.

was used in the same sense given later to the term “*furû*” (“branches”), the above-mentioned statement of Thaurî notwithstanding. For example, even as late as the last quarter of the fourth/tenth century, the bibliographer Ibn an-Nadîm cited the works of Abû Yûsuf in the following terms:

Abû Yûsuf has the following works on *uṣûl* and *amâlî* (dictations): the book on ritual prayer, the Book on alms-tax, ... (li-Abî Yûsuf mina 'l-kutubu fi 'l-uṣûli wa 'l-amâlî: *Kitâb aṣ-ṣalât, Kitâb az-zakât...*).<sup>(1)</sup>

It is clear, in this instance, that the term *uṣûl* is used in the sense of what came to be called the *principles* of positive law, *furû' al-fiqh*, literally: the “branches” of *fiqh*. Ibn an-Nadîm continues as follows:

and among those who reported on the authority of Abû Yûsuf is Mu'allâ...; he transmitted his legal thought, his legal principles and his books. (*wa-mimman rawâ 'an Abî Yûsuf, Mu'allâ...; rawâ 'anhû fiqhahû wa-uṣûlahû wa-kutubah.*)<sup>(2)</sup>

Here again the term *uṣûl* is used in the sense of principles, elements, rudiments, maxims, or rules of law.<sup>(3)</sup>

When the term “*uṣûl*”, or “*uṣûl al-fiqh*”, is found in a title cited by a late biographer for a book by an early author, say of the third or fourth century of the hijra, one cannot be certain that the title is free of anachronism. But even if not anachronistic, it may simply mean that the work dealt exclusively with positive law, or with the Koran, the Sunna, consensus (*ijmâ'*), or analogical reasoning (*qiyâs*), that is, with one or another of the sources or “roots” of jurisprudence, not with jurisprudence as a constituted science.

As one may determine from the available works on the subject, it is not until the late fourth and early fifth centuries (Xth-XIth A.D.) that the title *uṣûl al-fiqh* begins to designate

(1) Ibn an-Nadîm, *op. cit.*, p. 286 (l. 10 ff.).

(2) *Ibid.* (l. 17 ff.).

(3) Cf. E. W. Lane, *An Arabic-English Lexicon*, 8 vols. (London: Williams and Norgate, 1863-1893), *s.v. aṣl*.

this science unequivocally. Works of this period (and even later, up to modern times) often include an explanation of this two-word term, each word separately, then the two together. It is significant that this insistence on explaining the two-word term should appear two centuries after Shâfi'î had written his *Risâla* which introduced the new science. The explanation was needed in order to distinguish between the science of *fiqh* and that of *uṣûl al-fiqh*, and thus put an end to the equivocal use of the latter term in the sense of elements or rudiments of *fiqh*, reserving the two-word term to designate the methodology of the revealed Law.

It is also significant that the term itself is neither in the title of Shâfi'î's work, nor anywhere in the body of the text. The title *Risâla*, meaning *Epistle, Letter*, may well be due to its being a letter in answer to the request of Ibn Mahdî asking Shâfi'î to write on certain sources of the religion. Ibn Mahdî's amazement at the size of the "letter" would seem to confirm this supposition. There is nothing to show that Shâfi'î himself chose this title for his work; rather he referred to it as "The Book", "My Book", or "Our Book".<sup>(1)</sup> The title *Risâla* also appears in a statement attributed to Ibn Mahdî: "When I saw the *Risâla* (=Letter) of Shâfi'î, it amazed me; for I beheld the words of a wise and eloquent man of good counsel; I shall indeed remember him often in my prayers!"<sup>(2)</sup> Thus the title *Risâla* may have been given to Shâfi'î's work at an early date, and may simply refer to its being written in answer to the request of Ibn Mahdî.

In any case, the science of *uṣûl al-fiqh*, as we know it since the book of Shâfi'î, existed long before the two-word term for it was established. Also, works had been written before Shâfi'î dealing with one or another of the fundamental sources which, brought together, came to be recognized as the science of *uṣûl al-fiqh*, and as founded by Shâfi'î.

(1) As indicated by A. M. Shâkir, editor of Shâfi'î's *ar-Risâla*, edited with Introduction and Annotations (Cairo: al-Ḥalabî Press, 1358/1940), p. 12 of Introduction.

(2) *Ibid.*, p. 4 after the Introduction, and on the title page. A. M. Shâkir does not give his source for Ibn Mahdî's statement.

### *Contents and Purpose*

Fakhr ad-Dīn ar-Rāzī (d. 606/1209) says that the doctors of law before Shâfi'ī had already dealt with questions of *uṣūl al-fiqh*, but did not have universal principles to follow regarding those questions; this was what Shâfi'ī did for them, so that he is to the "science of the revealed law" what Aristotle is to the "science of reason". (1)

Two eminent scholars have concerned themselves with Shâfi'ī's contribution: Ignaz Goldziher and Joseph Schacht. Goldziher's studies led him to the following conclusion in his book on the Zâhiri school of law:

on account of Abû Ḥanīfa's endeavors on the one hand, but more so because of the force of circumstances, *qiyās* became a factor in jurisprudence which could no longer be eliminated from the legal sources. Al-Shâfi'ī had not intended to do this, but even if he had wanted to do so, he would not have been able to achieve anything, as futile attempts of later followers of his school indicate. What he could do, and actually did, was to *discipline* the application of the newly introduced legal source [i.e. *qiyās*] without curtailing the prerogatives of the scripture and tradition, and to restrict its free arbitrary application by means of methodical laws with respect to its usage. This is both *the purpose and the result* of the science of *uṣūl al-fiqh* which al-Shâfi'ī founded and which is associated with his name. (2)

Shâfi'ī's *Risāla* had not yet been printed when Goldziher published his book in 1884. (3) He continues his statement saying that if the tract

had survived in which al-Shâfi'ī justified the new discipline which is revolutionary for Islamic jurisprudence, and which, in particular, introduces it to the branches of the sciences,

(1) *Ibid.*, p. 13 of Introduction, *apud* Ibn Ḥajar al-'Asqalāni, *Manāqib ash-Shâfi'ī* (Cairo: Bûlāq, 1301/1884), p. 57.

(2) *Zâhiriten*, p. 21; translation, pp. 20-21; emphasis in last sentence added.

(3) The *Risāla* was first published in Cairo (Bûlāq) in 1321/1903.

researchers of the history of Muslim thought would be enabled to determine in every detail al-Shâfi'î's position in the controversy of traditionalism versus the partiality of *qiyâs*.<sup>(1)</sup>

Goldziher was interested in drawing attention to Shâfi'î's legal doctrine which vindicated the use of hadiths in law. He also brought out Shâfi'î's equal concern for the other sources of the law including *qiyas*, reasoning by analogy.<sup>(2)</sup> He then showed how the founder of the Zahiri school Dâwûd b. 'Alî, a student of Shâfi'î, who, "surpassing all the master's intentions, completely rejected the justification of *ra'y* and *qiyâs* and all that this implied".<sup>(3)</sup>

Thus Goldziher's interest in Shâfi'î's achievement stemmed from a more immediate interest, central to his study of the Zahiri school of law. In his book, which to this day remains a fundamental work for the study of Islamic jurisprudence, Goldziher's purpose was to point out the Zahiri position as representative of the extremist side of traditionalism, issuing from the Shâfi'î school. Though Shâfi'î is described as the "champion of traditionalism" ("Vindex des Traditionalismus"), his position in relation to his extremist disciple Dâwûd (founder of the Zahiri school), was, in contrast, described as conciliatory.<sup>(4)</sup> Goldziher, subsequently, came to know of the existence of two manuscript copies of Shâfi'î's *Risâla*, preserved in the National Library in Cairo, Dâr al-Kutub.<sup>(5)</sup> That Goldziher did not pursue the matter of Shâfi'î's "new discipline ...revolutionary for Islamic jurisprudence" is an indication of the secondary nature of his interest in Shâfi'î and his doctrine, as a point of departure for the Zahiri school which developed into extremist traditionalism.

Coming after the appearance of two editions of Shâfi'î's *Risâla*, Joseph Schacht's book, *The Origins of Muhammadan*

(1) *Zâhiriten*, p. 21.

(2) *Ibid.*, pp. 22-23, where he cites Nawawî.

(3) *Ibid.*, p. 24.

(4) Cf. *ibid.*, pp. 25-26, "Vermittelende Stellung des Systems des Šâfi'î".

(5) See I. Goldziher, *Muhammedanische Studien*, 2 vols. (Halle 1889-1890), II, 83 n. 2.

*Jurisprudence* <sup>(1)</sup> concentrates on the latter's achievements in detail. Schacht's *Origins* is a work no less fundamental than that of Goldziher, confirming it and going beyond it to do what Goldziher had hoped would be done once Shâfi'i's work was found and published. Referring to his own book, Schacht says that it will be found to confirm Goldziher's results and to go beyond them in some respects. Schacht then enumerates these respects, which deal with hadiths and their history and significance in the development of jurisprudence <sup>(2)</sup>.

Schacht gives Shâfi'i's personal achievements in legal theory as consisting (1) in the development of a new theory of interpretation applied to the two principal sources of the revealed law: the Koran and the Prophetic traditions; <sup>(3)</sup> (2) in the almost complete identification of Sunna and traditions (hadiths) which later became part of the classical theory of Islamic law; <sup>(4)</sup> and (3) in the hierarchy of the four sources of law, including consensus and qiyas. <sup>(5)</sup>

In the present study, I propose to deal with what I consider as Shâfi'i's chief motivation in writing his *Risâla*. I hope to show that, by raising the Prophet's Sunna to the level of the Koran, <sup>(6)</sup> and by restricting the use of analogical reasoning within definite limits, *Shâfi'i's purpose was to create for traditionalism a science which could be used as an antidote to kalam*, another already well-established science associated with the rationalist Mu'tazila, whom he called Ahl al-kalâm, <sup>(7)</sup> "the partisans of philosophical theology", and whom he regarded as his adversaries.

Râzi chose the correct term to designate the science founded by Shâfi'i, '*ilm ash-shar'*, the science that treats of the revelation, the revealed law; and he contrasts it to '*ilm al-'aql*', "the science

(1) Oxford: Clarendon Press, 1950.

(2) *Origins*, pp. 4-5.

(3) *Ibid.*, p. 56.

(4) *Ibid.*, p. 77.

(5) *Ibid.*, p. 134.

(6) In fact, the Koran is considered in his doctrine as subordinate to the Sunna, and the Sunna interprets the Koran; *ibid.*, general index, *s.v.* Koran.

(7) On Shâfi'i's designation of the Mu'tazila as *ahl al-kalâm*, see *ibid.*, pp. 41, 128, 258.

of reason", which, though associated with Aristotle, was also the appanage of the Mu'tazila, ahl al-kalâm, those who treat of kalam and stand for the primacy of reason. (1) The task of the Mu'tazila, who later infiltrated the science of *uṣûl al-fiqh*, was to show that reason and revelation are not in contradiction. In the fifth/eleventh century this is what we find clearly stated on more than one occasion in the *Kitâb al-Funûn* of Ibn 'Aqîl, who was a product of rationalism and traditionalism combined; and later still, in the thirteenth century, we find the same proposition clearly stated in St. Thomas Aquinas's *Summa Contra Gentiles*. (2)

The student of the history of *uṣûl al-fiqh* is faced with some striking phenomena, of which one will be treated in the present study; namely, the lapse of time between the *Risâla*'s appearance and that of the first independent and comprehensive works, which have come down to us, on the subject of the *Risâla*, *uṣûl al-fiqh*. We have little or no definite knowledge of the development of this science for two or more centuries after Shâfi'î; and what little we can know, or surmise, must be gleaned from available works where the authors have made reference to earlier works.

Two late writers (3) give lengthy lists of works on *uṣûl al-fiqh* by their predecessors. The lists begin with Shâfi'î's *Risâla*, followed by its commentaries. Five such commentaries were known to posterity, none of which is extant. The first commentator comes well over a century after Shâfi'î; and the last, well over two centuries. (4) The first independent and comprehensive works on *uṣûl al-fiqh* in these lists are by authors

(1) *Supra*, p. 10.

(2) See G. Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh University Press, 1981), p. 256 and n. 153; and Ibn 'Aqîl, *Kitâb al-Funûn*, ed. G. Makdisi, vols. 44 and 45, Série I: Pensée Arabe et Musulmane (Beyrouth; Institut de Lettres Orientales, 1970-1971), p. 401 (lines 4-5), and p. 509 (lines 7-8).

(3) Subkî and Zarkashî; see below, pp. 30 ff.

(4) Abû Bakr aṣ-Ṣairafî (d. 330/942), Abû 'l-Walîd an-Nisâbûrî (d. 349/960), al-Qaffâl ash-Shâshî al-Kabîr (d. 365/976), Abû Bakr al-Jauzaqî (d. 388/998), and Abû Muḥammad al-Juwainî (d. 438/1047).

who died at the dawn of the fifth/eleventh century, two centuries after Shâfi'î's death. <sup>(1)</sup>

We do know, however, that many authors treated of *uṣûl al-fiqh* in the third and fourth centuries (=A.D. ninth and tenth). Many of them are quoted in subsequent works, such as the *Musauwada* of *uṣûl al-fiqh*, by Ibn Taimiyya, his father and his grandfather, a "draft" (*musauwada*) the fair copy of which was made by a student of Ibn Taimiyya, all three authors having each in turn made his notes on the subject but died leaving his contribution in draft form. They cite many authors from among the contemporaries of Shâfi'î down to the dawning of the fifth/eleventh century, and beyond. <sup>(2)</sup> There were many writers on *uṣûl al-fiqh*, among them jurisconsults who were Mu'tazili and Ash'ari theologians, i.e. mutakallimun, and whose works or ideas were available to the three authors of the *Musauwada* either directly or through quotation by later authors.

A perusal of the great majority of works available to us from the fifth/eleventh century onward on *uṣûl al-fiqh* shows that they have definitely deviated from the path taken by Shâfi'î in his *Risâla*; and the *Musauwada* references to the earlier writers show that the deviation was incipient as of the time of Shâfi'î. What was the nature of this deviation?

Shâfi'î's work does not treat of a single question or problem of kalam, or even of legal philosophy. Throughout his *Risâla*, he keeps within the strictly circumscribed field of law, positive law, or legal methodology rooted in the scriptural texts. On the other hand, the first two comprehensive works purporting to be on the science of *uṣûl al-fiqh* at the turn of the fourth-fifth/tenth-eleventh century were written by two authors who were philosophical theologians, mutakallimun. Though neither of these two works is extant, one of them has been so well described by its commentator as to leave no doubt that it

(1) See below, pp. 30 ff.

(2) Ibn Taimiyya, *et al.* (=Majd ad-Dîn b. Taimiyya, d. 652/1254; Shihâb ad-Dîn b. Taimiyya, d. 682/1284; and Taqî ad-Dîn b. Taimiyya, d. 728/1328), *al-Musauwada ft uṣûl al-fiqh* (Cairo: al-Madani Press, 1384/1964).

treated of the minutiae of the science of kalam. Its author is the celebrated Mu'tazilî of the turn of the century, Qadi 'Abd al-Jabbâr (d. 415/1025). Abû 'l-Ḥusain al-Baṣrî (d. 436/1044), himself a Mu'tazilî also and author of a work on the subject, *al-Mu'tamad fi uṣûl al-fiqh*, wrote a commentary on Qâdî 'Abd al-Jabbâr's *Kitâb al-'Umad*. This commentary, like its original, is not extant; but in the introduction to his other independent work on *uṣûl al-fiqh* entitled *al-Mu'tamad*, al-Baṣrî gives the following information regarding the character of 'Abd al-Jabbâr's '*Umad* :

What prompted me to compose this book on *uṣûl al-fiqh* [i.e. his *Mu'tamad*], after my commentary on *Kitâb al-'Umad* and making a thorough study of it, is that I followed the course set out in the book as regards the arrangement of its chapters, repeating many of its questions, and commenting chapters of kalam minutiae *inappropriate* for *uṣûl al-fiqh*, as for instance the treatment of the divisions of knowledge, the definitions of necessary and acquired knowledge, that philosophical speculation produces knowledge and that knowledge does not produce philosophical speculation, and other such matters. The book becomes lengthy with such questions and with the verbatim quotations of the '*Umad* and the interpretations of a great part of them. I therefore wanted to compose a book with chapters well-arranged and free from repetition, and in which I would avoid treating the minutiae of kalam, *improper* in a work on *uṣûl al-fiqh*; for such matters belong to another science, the mixing of which with this science is *unwarranted*, even if it should have a remote connection with it. For if the treatment of divine unicity and justice is *unwarranted* in books on positive law (*fiqh*),—though the latter is based on them and is closely connected with them—it is all the more *unwarranted* to deal with these chapters in *uṣûl al-fiqh* because they are remotely connected with them, and understanding the purpose of the book does not depend on them. Also, if the reader of these chapters in *uṣûl al-fiqh* knows kalam, he has a thorough knowledge of the subject and will derive no

benefit from these chapters. On the other hand, if he does not know kalam, understanding the subject will be difficult for him, even if I laid it out clearly for him. His annoyance and irritation will be great, for he will have given his attention and spent his time on something hard for him to understand, and which does not help him to reach his goal. It would therefore be preferable to omit these chapters from *uṣūl al-fiqh*.<sup>(1)</sup>

But most books on *uṣūl al-fiqh* do, in fact, treat also of problems which are not properly those of *uṣūl al-fiqh* but rather of kalam and legal philosophy. The following problems belong to these two fields: (1) the problem of the determination of good and evil (*al-taḥsîn wa't-taqbîḥ*); (2) the relation between reason and revelation (*al-'aql wa'sh-shar'*); (3) the qualifications of acts before the advent of revelation (*ḥukm al-af'âl qabl wurûd ash-shar'*); (4) prohibition and permission (*al-ḥaẓr wa'l-ibâḥa*); (5) the imposition of responsibility or obligation beyond one's capacity (*taklîf mâ lâ yuṭâq*); and (6) the imposition of legal obligation on the non-existent (*mas'alat al-ma'dûm*).

None of these problems is found in Shâfi'i's *Risâla*. Schacht pointed out that Shâfi'i does not consider the question with which legal philosophy is concerned, namely, "Whether every act is to be regarded as allowed on principle, unless it is specifically forbidden, or as forbidden on principle unless it is specifically allowed."<sup>(2)</sup> Where Shâfi'i discusses in his *Risâla* the relationship between the categories allowed and forbidden, Schacht points out that "he keeps his feet firmly planted on positive law."<sup>(3)</sup> I shall have occasion to return to this question of legal philosophy,<sup>(4)</sup> for I believe it to have provided

(1) Abû 'l-Ḥusain al-Baṣrî, *al-Mu'tamad fi uṣūl al-fiqh*, ed. M. Hamidullah, with the collaboration of M. Bekir and H. Hanafi, 2 vols. (Damascus: Institut Français de Damas, 1964-1965), I, 7.—Baṣrî is in effect saying: "You jurists who are not mutakallimun are not intelligent enough to understand kalam." Cf. my study "Ash'arî and the Ash'arites in Islamic Religious History", in *Studia Islamica*, XVII (1962), pp. 37-80, *passim*, where Subki makes use of similar allusions against traditionalist jurists.

(2) Cf. the just-mentioned *al-ḥaẓr wa'l-ibâḥa*, above.

(3) *Origins*, p. 134.

(4) See below, pp. 35, 44.

the Mu'tazila with one of its inroads into the field of *uṣūl al-fiqh*,<sup>(1)</sup> and this, justifiably.

The celebrated al-Ghazzâlî, a Shafi'î jurisconsult, deals at length with the inroads made by other sciences into the field of *uṣūl al-fiqh*. What he has to say on this matter in the Introduction to his work, *al-Mustaṣfâ min 'ilm al-uṣūl*, is illuminating and deserves to be quoted here. Ghazzâlî points out that works on *uṣūl al-fiqh* are often loaded with too much *fiqh*, or kalam, or grammar, depending on the special interest of the author. Then he says, addressing the reader,

and after having told you of their excesses in this kind of mixing [of the sciences], it is nevertheless not our opinion that we should keep this work free from mixture; because weaning from what is familiar is hard to take, and minds turn away from the unusual.<sup>(2)</sup>

He then proceeds to give a complete work on logic, saying that this science does not particularly belong to the science of *uṣūl al-fiqh*; and he advises the students of *uṣūl al-fiqh* that those among them

who do not wish to write down<sup>(3)</sup> this prolegomena may begin the book from the first *quṭb*,<sup>(4)</sup> for that is the beginning of *uṣūl al-fiqh* proper.<sup>(5)</sup>

Why this change in the character of *uṣūl al-fiqh* as founded by Shâfi'î? This legal science which, at the outset, was purely traditionalist, devoid not only of philosophical kalam, but even of all questions of legal philosophy, is found, by the beginning of the fifth/eleventh century, to be mixed with topics properly belonging to kalam, and authored by mutakallimun, members of that movement held in abhorrence by Shâfi'î: "There is

(1) See *infra*, p. 35, 42-44.

(2) al-Ghazzâlî, *al-Mustaṣfâ min 'ilm al-uṣūl*, 2 vols. (Cairo: Bûlâq, 1322-1324/1904-1906), I, 10.

(3) Regarding the practice of law-students noting down the works or lectures of their master-jurisconsult, see my book, *The Rise of Colleges*, index, *s.v. ta'ltqa*.

(4) Ghazzâlî's *Mustaṣfâ* is divided into four *quṭbs*, or parts, exclusive of the introductory work on logic.

(5) *Op. cit.*, I, 10 (lines 17-18).

nothing more hateful to me than kalam and its practitioners" (*mâ shai'un abghaḍa ilaiya mina 'l-kalâmi wa-ahlih*).<sup>(1)</sup>

An answer to the above question must be sought in the history of the intervening centuries—three century beginnings, each of which brought its own important event: an inquisition, a defection, and a declaration of faith—three significant landmarks in Islamic religious history.

### *Three Landmarks of the Intervening Centuries*

#### 1. The Inquisition

It will be remembered that the Great Inquisition (*Mihna*) was begun under the Caliphate of al-Ma'mûn and continued under the following three caliphs, al-Mu'tasim, al-Wâthiq and al-Mutawakkil. It lasted some fifteen years, from 218 to 233 (833 to 848 of our era). When it ended in the second year of Mutawakkil's Caliphate, its termination was to the detriment of the Mu'tazila. At the end of the first third of this century, corresponding to the middle of the ninth century A.D., the Traditionalist movement emerged triumphant over Mu'tazili rationalism, under the banner of the Inquisition's surviving hero Aḥmad b. Ḥanbal.

If we consider Shâfi'i's career as one of triumph over the rationalism of his day, in that he was the successful champion of traditionalism, then Ahmad b. Hanbal's triumph did not signal the first, but rather the second defeat of rationalism. Between these two defeats, Mu'tazilism had harnessed all its strength with a view to crushing the stubborn resistance of the Traditionalists. Mu'tazilism, in this period, had the support of the secular arm through three caliphates and the initial part of the fourth, when Mutawakkil, deserting this Rationalist movement as a lost cause, opted opportunistically for its adversaries. The Mu'tazila were finished in the political

(1) Ibn al-'Imâd, *Shadharât*, II, 9, *apud al-'Ibar* of Dhahabî. For other like statements, see Ibn Qudâma, *Tahrîm an-nazar ft kutub ahl al-kalâm*, in G. Makdisi, *Ibn Qudâma's Censure of Speculative Theology* (London: Luzac, 1962), esp. p. 12 (English translation), p. 17 (Arabic text), paragraph 26.

arena; they were far from finished intellectually; they still had their rationalist weapons.

## 2. The Defection

Ash'arī defected from Mu'tazilism and joined the Traditionalist camp. In his *Ibāna*, said to be his last book, he placed himself under the banner of Aḥmad b. Ḥanbal:

The belief we hold and the religion we follow are holding fast to the Book of our Lord, to the *sunnah* of our Prophet, and to the traditions related on the authority of the Companions and the Successors and the *imāms* of the *ḥadīth*;—to that we hold firmly, professing what Abū 'Abdallāh Aḥmad ibn Muḥammad ibn Ḥanbal professed, and avoiding him who dissents from his belief, because he is the excellent *imām* and the perfect leader, through whom God declared the truth, removed error, manifested the modes of action, and overcame the innovations of the innovators, the deviation of the deviators, and the skepticism of the skeptics. (1)

Ash'arī was later to be used by his followers to defend him, as proof of his Traditionalist creed, against those who accused him of being a Rationalist.

Ash'arī's sensational defection was another triumph for Traditionalism at the expense of the Mu'tazila. Other triumphs were in store for Traditionalism during this century. Such, for instance, was the trial of Ibn Shannabūdh whose teaching of the aberrant variants of the Koran almost cost him his life. To save it, he signed a retraction abjuring his aberrant readings. It will be remembered that the Mu'tazilis, in the previous century, had sought to force upon the Traditionalists the doctrine of the "createdness" of the Koran. They lost their cause. Had they won it, Ibn Shannabūdh would not have had to retract his readings. That he was forced to

(1) Al-Ash'arī, *Kitāb al-Ibāna 'an uṣūl ad-diyāna* (Cairo, 1348/1929-30), pp. 8-9; English translation by W. C. Klein (New Haven, Connecticut: American Oriental Society, 1940), p. 49.

do so is an illustration of the sacrosanct character of the Koran, preserved intact through the failure of the Inquisition. <sup>(1)</sup>

This fourth/tenth century is recorded as the century that saw the spread of Shâfi'i law throughout the world of Islam. It is also the century of the development of *uṣūl al-fiqh* on the basis of the fully-developed art of disputation (*munāẓara*). <sup>(2)</sup> As for hadith, Schacht has already shown the importance given to it by Shâfi'i in his doctrine where it becomes synonymous with the Sunna. With Shâfi'i, it is from the hadith that *fiqh* develops along lines differentiating it from that previously developed in the doctrine of Abû Ḥanifa and his successors. The development of *fiqh* is subsequently enhanced by the introduction of dialectic to deal with the disputed questions (*khiḷāf*), raising legal disputation to an art. In the circles of jurisprudence, 'ilm, knowledge, learning, becomes synonymous with *fiqh* and legal studies generally. When in the fifth/eleventh century, the Shâfi'i jurisconsult, Abû Ishâq ash-Shîrâzî writes his *Who's Who* among jurisprudents, <sup>(3)</sup> his declared purpose is to show the lines of authority in the field of law. He does this by tracing the transmission of authoritative knowledge from the Prophet himself, as the first mufti-jurisconsult, down to the author's day, showing the chains of authority, *isnâd*, across the generations, to drive home the idea that hadith and law, not kalam or *falsafa* (philosophy), have their origins with the Prophet. And to show that Shâfi'i, and not Abû Ḥanifa, is the true champion of the Prophet's Sunna, Shîrâzî relates two anecdotes involving dreams wherein the Prophet was seen and asked whether the personal opinion (*ra'y*) of Abû Ḥanifa, or that of Shâfi'i, should be followed. The Prophet's answer on both occasions was this, in substance: "Follow whatever there is in the personal

(1) On Ibn Shannabûdh (d. 328/940), see al-Khaṭîb al-Baghdâdî, *op. cit.*, I, 280-281; Ibn al-Jauzî, *al-Muntaẓam ft târîkh al-mulûk wa 'l-umam*, 6 vols. (V-X), (Ḥaidarâbâd: Dâ'irat al-Ma'arif Press, 1357-1359/1938-1940), VI, 275 and 307-308; Ibn Taimîya, *Fatâwa*, 5 vols. (Cairo: al-Kurdistân Press, 1326-1329/1908-1911), I, 314-315.

(2) Cf. G. Makdisi, *The Rise of Colleges*, pp. 108 ff., and index, *s.v.*, *munāẓara*.

(3) See n. 3, p. 6.

opinion (*ra'y*) of Abû Ḥanîfa that is in conformity with the Sunna; but Shâfi'î's doctrine is not *ra'y*; Shâfi'î simply adhered to my Sunna, and refuted those who went against it." (1)

The fourth/tenth century witnessed also the development of the masjid-colleges as colleges of law with khans built for them as dormitories for the students of law, supported financially by charitable trusts (waqfs). The waqf was used as a weapon by the traditionalist juriconsults to exclude from the curriculum the "foreign sciences in general, and kalam in particular." (2) These endowed colleges were founded on a private financial base, free of government interference; for any Muslim who had the means could create a foundation beyond the reach of the governing power. Indeed the governing power carried the favor of the ulama by founding colleges for them, in order to influence the masses who were partisans of the ulama. The examples of Badr b. Ḥasanawaih in the fourth/tenth century and Niẓâm al-Mulk in the fifth/eleventh, building networks of colleges, are ample proof of the influence of the juriconsults in a society where the *shar'*, the revealed law, reigned supreme; a revealed law whose primacy was fought for and won by Shâfi'î, then by Ibn Ḥanbal.

But this fourth/tenth century was also witness to the emergence of a new rationalist movement, called Ash'arism, bearing only a nominal relationship to the professed traditionalist position of its eponym, Ash'arî. It was a movement meant to be moderate, in contradistinction to Mu'tazilism's extreme rationalism. There is no way to tell at present when exactly this movement emerged; but after the turn of the century we find the new movement at grips, not only with the traditionalist movement to whose camp Ash'arî had defected, but also with Mu'tazilism. The chronicles of later historians presented these struggles not under their designation as theological movements, and therefore as Mu'tazilis versus Ash'aris, or Traditionalists (Ahl al-Ḥadîth) versus Ash'aris, but rather under the designation of their affiliation in the schools of law, and therefore

(1) Shîrâzi, *Ṭabaqât al-fuqahâ'*, pp. 86 and 87.

(2) See G. Makdisi, *Rise of Colleges*, pp. 77 ff.

as Hanafi against Shâfi'i, or Hanbali against Shâfi'i; designations which, for a long time, threw historians far off the track, and left the new version of Ash'arism under cover of the Shâfi'i affiliation. (1)

For it was at this time that the new theological movement was making its bid for legitimacy in the only way it could hope to obtain it: by gaining admission into one of the schools of law. Mu'tazilism had already infiltrated the Hanafi school; and by a system of elimination it becomes clear that the only home left for the new Ash'arism was the Shâfi'i school. (2) There are some signs that Mu'tazilism hoped also to gain a foothold in the Shâfi'i school, and Ash'arism in the Hanafi school, but either combination was of rare occurrence as illustrated by the case of Qâdi 'Abd al-Jabbâr (d. 415/1024) as a Shâfi'i-Mu'tazili, and the rarer case of Abû Ja'far as-Simanânî (d. 444/1052) as a Hanafi-Ash'arî.

### 3. The Declaration of Faith

It was at the beginning of the fifth/eleventh century that things came to a head, culminating in the promulgation of the traditionalist creed by the Caliph al-Qâdir, whence its designation as the Qâdirî Creed, a manifesto of resurgent traditionalism condemning all deviations from traditionalist teachings. (3) Looking back on this century, the traditionalist Shâfi'i historian Shams ad-Dîn adh-Dhahabî (d. 748/1347) drew up a list of the top men who died in the first years of the century, a list that calls for close scrutiny. It is found in the biographical notice of the Caliph al-Qâdir who died in 422/1031. We owe

(1) For an example of such mixing, see C. Snouck Hurgronje, "Le droit musulman", in *Selected Works of C. Snouck Hurgronje*, ed. (in English and French) by G.-H. Bousquet and J. Schacht (Leiden: E. J. Brill, 1957), p. 214 ff., esp. p. 235 and n. 1 (based on the *Kâmil ft 't-târikh* of Ibn al-Athîr).

(2) Cf. my "Ash'arî and the Ash'arites in Islamic Religious History", pp. 37-80, esp. p. 44.

(3) For an English translation of the Creed, see A. Mez, *The Renaissance of Islam*, transl. S. Khuda Bukhsh (London: Luzac, 1937), pp. 206-209; for the significance of the Creed's contents and a French translation, see my *Ibn 'Aqil et la résurgence de l'Islam traditionaliste au XI<sup>e</sup> siècle* (Damascus: Institut Français de Damas, 1963), pp. 304-310.

its preservation to Suyūṭī's *Tārīkh al-khulafā'*, *History of the Caliphs*. In it Dhahabī is quoted as follows:

In this period the head of the Ash'ariya was Abū Ishāq al-Isfarā'inī [d. 418/1027]; the head of the Mu'tazila, Qādi 'Abd al-Jabbār [d. 415/1024]; the head of the Rāfiḍa, ash-Shaikh al-Mufid [d. 413/1022]; the head of the Karrāmīya, Muḥammad b. Haiḍam. <sup>(1)</sup>

The head of the Koranic Readers was Abū 'l-Ḥasan al-Ḥammāmī [d. 417/1026]; the head of the *muḥaddithūn*, the hadith-expert 'Abd al-Ghanī b. Sa'īd [d. 409/1018]; the head of the Sufis, Abū 'Abd ar-Raḥmān as-Sulamī [d. 412/1021]; the head of the poets, Abū 'Amr b. Darrāj; the head of the calligraphers, Ibn al-Bauwāb [d. 413/1022]; the head of kings, the Sultan Maḥmūd b. Sabuktakīn [d. 421/1030]. <sup>(2)</sup>

Dhahabī's list consists of leaders who died in the first part of the fifth/eleventh century. I have divided it into two parts because I believe that these leaders represent for Dhahabī two distinct groups, the first of which he holds in contempt, distinct from the second, which he respects. It will be noticed that the leaders named in the first group are cited according to their affiliation to rationalist movements. Dhahabī was a Shāfi'ī traditionalist. The leaders named in the second group are cited as leaders in the Islamic sciences and their ancillaries that Dhahabī held in respect, as he did the last-named person, the Sultan Maḥmūd b. Sabuktakīn, who had vigorously implemented, in the lands under his sway, the traditionalist policies of the Caliph al-Qādir. <sup>(3)</sup>

But most significant in this list is the conspicuous absence of the legal sciences, *fiqh* and *uṣūl al-fiqh*. Nor are these two fields cited in the supplementary list of Suyūṭī. <sup>(4)</sup> Legal

(1) Suyūṭī (*apud* Dhahabī), *Tārīkh al-khulafā'* (Cairo: al-Muniriya Press, 1351/1932), p. 276; cf. *Shadharāt*, III, 222.

(2) *Shadharāt*, *loc. cit.* Suyūṭī adds other names to the list, some of which, however, belong to the previous century; Suyūṭī, *op. cit.*, pp. 222-223.

(3) See *Ibn 'Aqīl*, p. 300.

(4) The following list is added by Suyūṭī: the head of the zindīqs (heretics), the Fatimid Caliph al-Ḥākim bi'Amr Allāh (d. 411/1021); the head of the philologists,

studies had developed and spread throughout the realm of the eastern Caliphate; Dhahabî could not have been unaware of this dramatic development. As previously mentioned, the fourth/tenth century was the century of the colleges of law, the century in which dialectic, and the *ta'liqa* were developed in legal studies, leading to the writing of the great summae. (1) The second half of the century was thus taken up with the rise of legal studies and the institutions in which they were taught. How then could Dhahabî, author of the monumental *History of Islam*, (2) fail to mention the leading scholars of the legal sciences, *fiqh* and *uṣûl al-fiqh*?

The answer, I believe, is that Dhahabî did in fact mention these scholars, but did not mention the legal scholarship for which they were only too well-known. He preferred to bring out their rationalist affiliations which could otherwise be overlooked, but which he wanted to dramatize. The first two scholars listed were leading scholars in *fiqh* and *uṣûl al-fiqh*; but Dhahabî preferred to cast light on their affiliations with the Ash'arî and Mu'tazili rationalist movements respectively, as scholars of rationalist kalam. Both belonged to the Shâfi'i school of law, as Dhahabî did. But Dhahabî belonged to the opposing camp of Shâfi'i traditionalism.

Dhahabî knew that Abû Ishâq Isfarâ'inî, the first-named in the list, was a leading scholar in *fiqh* and *uṣûl al-fiqh*, one of the greatest jurisconsults of the Shâfi'i school in his day. There were others that Dhahabî could have listed instead of Abû Ishâq al-Isfarâ'inî; he could have listed a traditionalist Shâfi'i, Abû Ḥâmid al-Isfarâ'inî, who had died in 406/1016, and he could have cited him as top man in *fiqh* and *uṣûl al-fiqh*, closer than Abû Ishâq to the beginning of the century; but he did not mention him at all. Why this omission? It certainly

al-Jauharî (d. 398/1003); the head of the grammarians, Ibn Jinnî (d. 392/1002); the head of the rhetoricians, Badî' az-Zamân al-Hamadhânî (d. 398/1008); the head of the orators, Ibn Nubâta (d. 405/1016); the head of the Koranic exegetes, al-Ḥasan b. Ḥabîb an-Nisâbûrî (d. 406/1016); and the head of the Caliphs, al-Qâdir (d. 422/1031), considered by Ibn aṣ-Ṣalâḥ as a Shâfi'i doctor of the law.

(1) See *Rise of Colleges*, pp. 111 ff., 245 ff.

(2) This work is still in manuscript.

could not have been because Dhahabî did not know Abû Hâmid or appreciate his title to fame; for he devoted a biographical notice to him in his *'Ibar* in which he said of him: "...the jurisconsult, Master-Professor of 'Iraq (=Baghdad), Leader of the Shâfi'îs, the man in whom the leadership of the Shâfi'î school of law wound up" (*al-faqîh, Shaikh al-'Irâq, wa-Imâm ash-Shâfi'îya, wa-man ilaihi 'ntahal riyâsatu 'l-madhhab*).<sup>(1)</sup> In this notice, Dhahabî then went on to speak in very appreciative terms of Abû Hâmid as the most successful master-jurisconsult of his day who had covered the earth with his disciples (*ṭabbaqa 'l-arḍa bi'l-aṣḥâb*), and who had composed a *ta'liqa*<sup>(2)</sup> of approximately fifty bound volumes, and his course on law was attended by seven hundred students of law (*wa-ta'liqatuhû fi nahwi khamsîna mujalladan, wa-kâna yaḥḍuru darsahû sab'u mi'ati faqîh*).<sup>(3)</sup> Thus Dhahabî not only knew of Abû Hâmid, he in fact had the highest regard for him as the leading jurisconsult of his day. It might be thought that Dhahabi was interested in citing a leading Ash'arî, and Abû Hâmid was not an Ash'arî. But here again Dhahabî chose Abû Ishâq as an Ash'arî, rather than al-Bâqillânî, who had died in 403/1013, whom he held in very high regard, pointing out that he had a great study circle (*ḥalqa*) in the Great Mosque of al-Manṣûr in Baghdad.<sup>(4)</sup> Dhahabî was also no doubt aware of the high regard that his own professor, the famous Hanbali Ibn Taimiya, had for Bâqillânî, saying that he was "the most excellent of Ash'arî kalam-theologians among whom there is no one like him either among his predecessors or successors" (*huwa afdalu 'l-mutakallimîna 'l-muntasibîna ilâ 'l-Ash'arî, laisa fihim mithlühû lâ qablahû wa-lâ ba'dah*).<sup>(5)</sup> Ibn Taimiya went on to cite passages from Bâqillânî's *Kitâb al-İbâna* showing approval of the way he treated anthropomorphic passages in the Koran according to the doctrine of "*bilâ kaif*".<sup>(6)</sup>

(1) See *Shadharât*, III, 178 (l. 7-8), *apud* Dhahabî, *al-'Ibar*.

(2) On the *ta'liqa* and its significance, see G. Makdîsi, *Rise of Colleges*, pp. 111 ff. and index, *s.v.*

(3) *Ibid.* (l. 9-11).

(4) *Shadharât*, III, 169 (l. 3), *apud* Dhahabî, *'Ibar*.

(5) *Ibid.* (l. 15).

(6) *Ibid.* (l. 17 ff.).

It is quite evident that Dhahabî did not overlook either Bâqillânî or Abû Hâmid al-Isfarâ'inî, both of whom he treated with respect and admiration in his *Kitâb al-'Ibar*. But he does not seem to have devoted a biographical notice to Abû Ishâq al-Isfarâ'inî, if we are to judge by the fact that Ibn al-'Imâd did not quote the '*Ibar* when treating of Abû Ishâq, whereas he did so in the two other cases, and it was his habit to rely on the '*Ibar*. Nor did Ibn al-'Imâd quote from the '*Ibar* regarding the Mu'tazili 'Abd al-Jabbâr. If these two kalam-theologians were treated in the '*Ibar*, their notices could not have been such as to warrant their being quoted by Ibn al-'Imâd; and they were probably very brief.

It should also be noted that Dhahabî cited them along with the head of the Râfiða and the head of the Karrâmîya, both movements, like Mu'tazilism and Ash'arism, hostile to Sunni Traditionalism; moreover both Abû Ishâq and 'Abd al-Jabbâr were, like Dhahabî, members of the Shâfi'î school of law. I would venture to say that Dhahabî listed the first four names in the order in which he held them in contempt, the first scholar all the more so for contaminating the Shâfi'î school with the new brand of Ash'arism, more dangerous in its dissimulation than Mu'tazilism, the well-known old enemy, represented by the second scholar in the list.

Thus indications are that Dhahabî wished to point out that the legal sciences at the head of the fifth/eleventh century were contaminated not only with the kalam-theology of Mu'tazilism, but also with that of the new brand of Ash'arism. Traditionalist jurisconsults among the Shâfi'îs, the Hanbalis and even the Hanafis, were well aware of this development which they dreaded. Kalam-theology, banned from the curriculum, had infiltrated into the science of jurisprudence, *uṣûl al-fiqh*, a rationalist accomplishment of far-reaching effect. This religious science founded by Shâfi'î as a vindication of traditionalism was now shot through with rationalist kalam. *Uṣûl al-fiqh* came to be written (and later categorized) according to two methods: "the method of the jurisconsults" (*ṭarīqat al-fuqahâ'*), and "the method of the kalam-theologians" (*ṭarīqat al-mulakallimîn*). The intrusion of rationalist, philosophical

theology into jurisprudence had already taken place by the end of the fourth and beginning of the fifth centuries, and the traditionalist master-jurisconsult Abû Hâmid al-Isfarâ'inî was up in arms against it. Regarding the reactions of this and other traditionalist Shâfi'îs, we have the statement of Ibn Taimiyya (d. 728/1328), Dhahabî's professor of hadith:

The severity of Abû Hâmid (al-Isfarâ'inî) against the rationalistic theologians is well-known. He went so far as to make a distinction between ash-Shâfi'î's *uṣūl al-fiqh* and that of al-Ash'arî. This distinction was noted by the leading scholar Abû Bakr ar-Râdhakânî whose *ta'liqa* I have. It was the example of ar-Râdhakânî that Professor Abû Ishâq ash-Shîrâzî followed in his two books, *al-Luma'* (1) and *at-Tabṣira* (2). Even when the the doctrine of al-Ash'arî agreed with that of the Shâfi'îs, he maintained the distinction between them, saying, "this is the opinion of our (Shâfi'î) colleagues, and it was also professed by the Ash'aris", thus avoiding to count them among the followers of ash-Shâfi'î. The Shâfi'îs washed their hands of the Ash'aris and of their doctrines in their methodology of the law (*uṣūl al-fiqh*), let alone the fundamental principles of religion (*uṣūl ad-dîn*)! (3)

In the light of the foregoing facts and statements, the stipulations of the waqf deed of the Nizamiya College of Shâfi'î law in Baghdad take on new significance. Abû Ishâq ash-Shîrâzî (d. 476/1083), mentioned above in Ibn Taimiyya's statement, was the first incumbent of the professorship of law in Baghdad's Nizâmiyya College, and Nizâm al-Mulk had said that he founded his college for Shîrâzî. (4) The waqf deed for Nizâm's Shâfi'î College stipulated that certain posts were to be held by men who were Shâfi'îs not only in the field of *fiqh*, but also in that

(1) Cairo: Subaîḥ Press, 1347/1928.

(2) This is the title the author himself gives to this work written after *al-Luma'* (rather than *at-Tabṣira fî uṣūl al-fiqh* as in the ms. copy of the Azhar Library in Cairo, call no. *uṣūl al-fiqh* 1785; see his *al-Luma'*, p. 2 (l. 5).

(3) See Ibn Taimiyya, *Kitâb at-Tis'atniyya*, in his *Fatâwâ*, 5 vols. (Cairo: Kurdistan Press, 1326-29/1908-11), V, 239.

(4) See note 1, p. 29.

of *uṣūl al-fiqh*. This was the case for the professor of law, the preacher of the academic sermon, and the librarian.<sup>(1)</sup>

That Nizām al-Mulk wished his college to be Shāfi'i is no cause for surprise; it was his privilege as founder (*wāqif*) of the college. What does call for surprise, however, is the stipulation's specific mention of not only *fiqh*, but also of *uṣūl al-fiqh*, as the two elements necessary for consideration of appointment to certain positions in the college. To say that the professor of law, for instance, must be Shāfi'i in *fiqh*, is merely to be redundant; for to say "Shāfi'i" is to say "Shāfi'i *fiqh*". But to

(1) See Ibn al-Jauzi, *Muntaẓam*, IX, 66; G. Makdisi, "Muslim Institutions of Learning in Eleventh-Century Baghdad" in *BSOAS*, 24 (1961), pp. 1-56, esp. p. 37. The biographical notice devoted to the grammarian al-Mubārak al-Wāsiṭī, known as al-Wajth b. ad-Dahhān (d. 612/1215) in al-Qiftī's *Inbāh ar-ruwāh* states that this grammarian, first a Hanbali, changed over to the Hanafi school of law, then changed to the Shāfi'i school when he was appointed grammarian to the Nizāmiya "because of the stipulation of its founder that the grammarian of the Nizāmiya be a Shāfi'i". (See al-Qiftī, *Inbāh ar-ruwāh 'alā anbāh an-nuḥāh*, 3 vols. (Cairo: Dār al-Kutub Press, 1369-74/1950-55 III, 155; and *Shadhardī*, V, 53). Such was not the case with al-Jawālfīqī, nor is there a stipulation to this effect in the waqf deed of the Nizāmiya. If the information is correct, both as to the stipulation and as to the appointment of al-Wāsiṭī being contingent upon his becoming a Shāfi'i, then it would seem that this part of the waqf deed at least had become unknown, for some reason (e.g., loss of the waqf instrument), and the appointment of the grammarian was assumed to be restricted by the same stipulation as for the professor of law, the preacher of the academic sermon and the librarian. Nothing in the sources indicates that al-Jawālfīqī changed over to Shāfi'i membership; moreover, the biographer of the Hanbali school Ibn Rajab devotes a biographical notice to him as a Hanbali, whereas he omits al-Wāsiṭī who had changed over from the Hanbali school of law. The stipulations read as follows: (1) The Nizamiya constitutes an endowment for the benefit of members of the Shāfi'i school of law who are Shāfi'i in both *fiqh* and *uṣūl al-fiqh*. (2) The possessions with which the Nizamiya is endowed are also for the benefit of those who are Shāfi'i in both *fiqh* and *uṣūl al-fiqh*. (3) The following members of the teaching staff must be Shāfi'i in both *fiqh* and *uṣūl al-fiqh*: (a) the professor of law (*mudarris*, incumbent of the chair of law); (b) the preacher (*wā'iz*; preacher of the academic sermon); (c) the librarian (*mutawallī 'l-kutub*). (4) The Nizāmiya must also have a teacher of Koranic science to teach the Koran (*muqri'*). (5) It must also have a grammarian to teach the Arabic language (*nahwī*).—It is clear that the third item insists on membership in the Shāfi'i school of law for the professor occupying the chair of law as well as for the preacher and librarian. On the other hand, the Koranic Reader and the grammarian are not restricted by this stipulation. The grammarian and philologist al-Jawālfīqī (d. 540/1145) was a member of the Hanbali school of law who held the post of grammarian in the Nizāmiya, succeeding his teacher at-Tabrīfī (d. 502/1109).

add *uṣūl al-fiqh* to the stipulation is to indicate that this science could be other than what Shâfi'î himself had intended it to be; that it could be a Rationalist *uṣūl al-fiqh*, and particularly, an Ash'ari *uṣūl al-fiqh* to which Professor Shîrâzî, the one for whom Nizâm founded his College, (1) was clearly and definitely opposed. Abû Ishâq ash-Shîrâzî was known to be anti-Ash'ari in *uṣūl al-fiqh*, a fact to which we have his own quoted statement, and his books: "These are my books on *uṣūl al-fiqh* wherein I profess doctrines opposed to those of the Ash'aris". (2) Of Shîrâzî's works on *uṣūl al-fiqh*, *al-Luma' fî uṣūl al-fiqh* has been published; it contains a number of statements of doctrine opposed to the Ash'aris and confirming Ibn Rajab's quotation. (3)

The stipulation of Shâfi'î *uṣūl al-fiqh* is clearly in consonance with the doctrine of Shîrâzî in that field. But the designation of *uṣūl al-fiqh* as "Shâfi'î" should not be taken to mean that each of the schools of law had its own variety of *uṣūl al-fiqh*, so that one could expect four varieties of this religious science, one for each of the four Sunni schools of law. This field does not lend itself to this kind of categorization. "Shâfi'î *uṣūl al-fiqh*" designates the *uṣūl al-fiqh* of Shâfi'î himself, followed by the *Traditionalists of all the schools of law*.

The Qâdiri creed (*al-I'tiqâd al-Qâdiri*), which comes to our notice for the first time only in the year 431 or 432H., had long been in the making. It was the result of a series of Epistles promulgated by the Caliph al-Qâdir, beginning with the years 408/1017, and 409/1018. The Creed itself and its significance have been treated elsewhere. (4) A study of this Creed shows that its contents were directed against the anthro-

(1) "For whom did I found this College if not for Abû Ishâq ([ash-Shîrâzî])?" On the controversy regarding the appointment of the first professor of law to the Nizâmiya of Baghdad, see my "Muslim Institutions of Learning in Eleventh-Century Baghdad", esp. p. 33 (1, 3-4); this phase of the Nizâmiya's history is based on Sibṭ Ibn al-Jauzî, *Mir'ât az-zamân*, MS arabe Paris, 1506, fol. 110b-111a and Ibn al-Jauzî, *op. cit.*, VIII, 246-7.

(2) See Ibn Rajab, *Dhail 'alâ Ṭabaqât al-ḥanâbila*, vol. I, ed. H. Laoust-S. Dahan (Beirut: Imprimerie Catholique, 1951), I, 26; or ed. M. Ḥâmid al-Fiqî, 2 vols. (Cairo: as-Sunna al-Muḥammadîya Press, 1372/1952), I, 20.

(3) See Abû Ishâq ash-Shîrâzî, *al-Luma' fî uṣūl al-fiqh* (Cairo: Ṣubaiḥ Press, 1347/1928-9), pp. 7 (l. 13), 8 (l. 17); 15 (l. 24 and 26), 18 (l. 1), 46 (l. 4).

(4) See *Ibn 'Aqtl*, pp. 299 ff., esp. pp. 303 ff. and 308 ff.

pomorphists, the Karrâmiya, the Shi'a (especially the extremist Râfiḍa and Isma'iliya), the Ash'ariya, the Mu'tazila. Such is its negative aspect. Its positive aspect is its definition of *uṣūl ad-dīn* as the fundamental articles of belief, distinguishing it from those of the philosophical theologians. This Creed goes hand in hand with the banning of kalam-theology as a subject of study in the curriculum of the colleges of law, indeed in all institutions of learning based on waqf. Moreover, there is a significant correlation between the Qâdiri Creed and Dhahabi's list of leading scholars at the head of the fifth/eleventh century, a list preserved in the biographical notice of the Caliph who promulgated that Creed. Both the list and the Creed convey the same message.

### Bibliographical Lists of Subkī and Zarkashī

Subkī and Zarkashī, both of the Shâfi'i school of law, give bibliographies of works on *uṣūl al-fiqh* which had served them in writing works of their own on the subject. Subkī's (d. 771/1370) list is in his *Raf' al-ḥâjib 'an mukhtaṣar Ibn al-Ḥâjib*, a commentary in two volumes of the Epitome of the Mâliki Ibn Ḥâjib (d. 646/1249).<sup>(1)</sup> These lists are both modified here to present the authors and their works in chronological order from Shâfi'i onward. The dates of death are added; there is some question regarding the third commentator's date of death (336 or 365).

#### *The List of Subkī (d. 771/1370) (2)*

AUTHOR	WORK	YEAR OF DEATH
ash-Shâfi'i	<i>ar-Risâla</i>	204
as-Ṣairaffī	<i>Commentary</i>	330
Abū'l-Walīd an-Nisâbūrī	<i>Commentary</i>	349
al-Qaffâl ash-Shâshī	<i>Commentary</i>	336 or 365
Abū Muḥammad al-Juwainī	<i>Commentary</i>	438

(1) This list is taken from the manuscript in the Princeton collection which has only the first of the two volumes, Yahuda MS. 148, fol. 2a.

(2) Subkī, *Raf' al-ḥâjib 'an Mukhtaṣar Ibn al-Ḥâjib*, MS Yahuda 148, Garrett Collection (Princeton University), fols. 2a-2b.

AUTHOR	WORK	YEAR OF DEATH
al-Bâqillânî	<i>at-Taqrîb wa'l-Irshâd</i>	403
Abû Hâmid al-Isfarâ'inî	<i>at-Ta'liqa</i>	406
Abû Bakr b. Fûrak	<i>Kitâb</i>	406
Qadi 'Abd al-Jabbâr	<i>al-'Umda</i>	415
Abû Ishâq al-Isfarâ'inî	<i>at-Ta'liqa</i>	418
Abû Zaid ad-Dabûsî	<i>Kitâb al-asrâr</i>	430
Abû 'l-Ḥusain al-Başrî	<i>al-Mu'tamad</i>	436
Sulaim ar-Râzî	<i>at-Taqrîb</i>	447
Abû 'ṭ-Ṭaiyib aṭ-Ṭabarî	<i>Sharḥ al-Kifâya</i>	450
Abû 'ṭ-Ṭaiyib aṭ-Ṭabarî	<i>al-Minhâj</i>	450
Abû 'l-Qâsim al-Qushairî	<i>Uṣûl al-fiqh</i>	465
Abû Ishâq ash-Shîrâzî	<i>al-Luma'</i>	476
Abû Ishâq ash-Shîrâzî	<i>al-Mulakkkhaṣ fi'l-jadal</i>	476
Abû Ishâq ash-Shîrâzî	<i>al-Ma'ûna fi'l-jadal</i>	476
Abû Ishâq ash-Shîrâzî	<i>an-Nukat</i>	476
Abû Naṣr b. aṣ-Ṣabbâgh	<i>'Uddat al-'âlim</i>	477
Imâm al-Ḥaramain al-Juwainî	<i>al-Burhân</i>	478
Imâm al-Ḥaramain al-Juwainî	<i>al-Asdîb</i>	478
Abû 'l-Muzaffar as-Sam'ânî	<i>Qawâli' al-adilla</i>	489
al-Kiyâ al-Harrâsî	<i>al-Ta'liqa</i>	504
al-Kiyâ al-Harrâsî	<i>Shifâ' al-mustarshidin</i>	504
al-Ghazzâlî	<i>al-Mustafâ</i>	505
al-Ghazzâlî	<i>al-Mankhûl</i>	505
al-Ghazzâlî	<i>Shifâ' al-ghalîl</i>	505
al-Ghazzâlî	<i>at-Taḥsin</i>	505
Abû Naṣr al-Qushairî	<i>Uṣûl al-fiqh</i>	514
Abû 'l-Faṭḥ b. Barhân	<i>al-Wajîz</i>	518
As'ad al-Mihânî	<i>at-Ta'liqa</i>	523

*The List of Zarkashi (d. 794/1392) (1)*

AUTHOR	WORK	YEAR OF DEATH
Shâfi'î	<i>Risâla</i>	204
Ṣairaff	<i>Commentary</i>	330
Abû 'l-Walîd an-Nisâbûrî	<i>Commentary</i>	349
al-Qaffâl ash-Shâshî	<i>Commentary</i>	365
Abû Muḥammad al-Juwainî	<i>Commentary</i>	438
al-Muzanî	<i>Kitâb al-Qiyâs</i>	264

(1) Zarkashî, *al-Baḥr al-muḥtî*, MS. arabe Paris 811, fols. 1b-2a.

AUTHOR	WORK	YEAR OF DEATH
Ibn Suraij	<i>Kitáb ar-Radd 'alá Dáwúd fi inkárihi 'l-qiyás</i>	306
Ibn Suraij	<i>Kitáb al-I'dhár wa'l-indhár</i>	306
aş-Şairafí	<i>ad-Dalá'il wa'l-a'lám</i>	330
Ibn al-Qâss	<i>Riyâd al-muta'allimín</i>	335
Abú Ishâq al-Marwazí		340
Abú 'Abd Allâh b. Abi Huraira		345
Abú 'l-Ĥusain b. al-Qaţţân		359
al-Qaffâl ash-Shâshí	<i>Kitáb</i>	365
Abú 'l-Ĥasan as-Suhailí	<i>Kitáb</i>	ca. 400
al-Bâqillâni	<i>at-Taqríb wa'l-irshád</i>	403
Abú 'l-Qâsim b. al-Kajj		405
Abú Bakr b. Fûrak		406
Abú Hâmid al-Isfarâ'ini		406
Abú 'l-Ĥusain Muĥammad b. Yaĥyâ b. Surâqa al-'Âmirí		ca. 410
Abú Ishâq al-Isfarâ'ini		418
Abú Manşûr al-Baghdâdî	<i>at-Taĥşil</i>	429
Abú 't-Ṭaiyib aţ-Ṭabarí	<i>Sharĥ al-Kifâya</i>	450
Abú 't-Ṭaiyib aţ-Ṭabarí	<i>al-Jadal</i>	450
Abú 'l-Qâsim al-Qushairí	<i>Kitáb</i>	465
Abú Ishâq ash-Shirâzî	<i>al-Luma'</i>	476
Abú Ishâq ash-Shirâzî	<i>Commentary of al-Luma'</i>	476
Abú Ishâq ash-Shirâzî	<i>at-Tabşira</i>	476
Abú Ishâq ash-Shirâzî	<i>al-Mulakkhaş</i>	476
Abú Ishâq ash-Shirâzî	<i>al-Ma'ûna</i>	476
Abú Ishâq ash-Shirâzî	<i>al-Ĥudûd</i> and other works	476
Imâm al-Ĥaramain (al-Juwainí)	<i>at-Talkhis = Commentary of Bâqillâni's Taqríb</i>	478
Imâm al-Ĥaramain (al-Juwainí)	<i>al-Burĥân</i> (commentaries and remarks on <i>al-Burĥân</i> cited)	478
Abú 'l-Muẓaffar as-Sam'âní Ghazzâlî	<i>al-Qawâfi'</i> <i>al-Mustaşfa</i> (commentaries, remarks and abridgements cited)	489 505
Abú Naşr al-Qushairí	<i>Kitáb</i>	514
Ibn Barĥân	<i>al-Auşat</i>	518
Fakhr ad-Dîn ar-Râzî	<i>al-Maĥşûl</i> (a commentary and an abridgement cited)	606
al-Âmidí	<i>al-Iĥkâm</i>	631

*Kalam in Uşûl al-Fiqh**Justification versus Censure*

A cursory perusal of available works from the above two lists would show that by the fifth/eleventh century, this science which Shâfi'î founded for the vindication of Traditionalism, had by this time become riddled with Rationalism. The first independent and comprehensive work on *uşûl al-fiqh*, after that of Shâfi'î, that has come down to us and is now in print, is the *Mu'tamad* of Abû 'l-Ḥusain al-Başrî, a Mu'tazili, whose introduction, as already mentioned, tells us about the character of 'Abd al-Jabbâr's work entitled *al-'Umad*, not extant. Henceforth works on this subject deal also with problems properly belonging to philosophical theology and/or legal philosophy. This phenomenon was so widespread in the fifth/eleventh century and thereafter that voices were raised in condemnation of the practice.

Ghazzâlî, in his *Mustaşfâ*, gives a brief classification of the sciences in order to show where *uşûl al-fiqh* belongs:

The sciences are divided into the rational sciences, such as medicine, arithmetic, geometry,—but that does not concern us,—and into the religious sciences, such as kalam, *fiqh* and its *uşûl*, the science of hadith, the science of exegesis, and the esoteric science, I mean the science of the heart and its purification from reprehensible dispositions (sufi mysticism). Each of the two divisions of knowledge is further divided into universal and particular sciences. The universal science of the religious sciences is kalam. The rest of these sciences, namely *fiqh*, its *uşûl*, hadith, and exegesis, are sciences of the particular; for the exegete studies only the meaning of the Book in particular; the *muhaddith* studies only the method of establishing the authenticity of the hadith in particular; the *faqîh* studies only the qualifications of the acts of persons with legal capacity in particular; the *uşûlî* studies only the sources of the legal qualifications in particular; but the *mutakallim* is the person who studies the most general of

things, namely, the existent. He first divides the existent into eternal and adventitious, then the adventitious into substance and accident, then the accident into that for which life is made a condition, namely knowledge, will, power, hearing, sight... Such is the content of the science of kalam. From this you know that it begins with the most general of things, the existent, then it descends gradually to the details we have mentioned establishing the first principles of the rest of the religious sciences; namely the Book, the Sunna, and the veracity of the Prophet. Then, from the totality of subjects studied by the mutakallim, the exegete takes one in particular, the Book, and studies its meaning; the *muḥaddith* takes one in particular, the Sunna, and studies the methods of establishing its authenticity; the *faqīh* takes one in particular, the act of the person with legal capacity, and studies its relation to the statement of the revealed law as regards the qualifications of the obligatory, the prohibited and the indifferent; and the *uṣūlī* takes one in particular, the statement of the Prophet whose veracity was proved by the mutakallim, and he studies the manner in which it furnishes evidence for the legal qualifications, either through the letter of the text, or its implicit meaning, or systematic reasoning and deduction. The *uṣūlī's* investigation does not go beyond the word and deed of the Prophet: for he receives the Book from the Prophet's utterance; and consensus is established through the Prophet's utterance; and the sources are the Book, the Sunna and consensus only; and the veracity of the Prophet's speech and its validity as proof is established only through the science of kalam. Therefore kalam is the guarantor of the authenticity of the first principles of the religious sciences, and they are subordinate in relation to kalam. (1)

These pains taken to delimit the subject matter of *uṣūl al-fiqh* point to differences of opinion as to content, and are evidence of attempts to keep extraneous matter from being

(1) *Mustaşfâ*, I, 5 and 6.

mixed in with the science. But these attempts did not prove successful; for even the traditionalist authors found themselves forced to deal with certain questions not treated by Shâfi'î in the *Risâla*,—questions of legal philosophy, the most frequently treated being “*al-a'yân wa'l-af'âl qabl wurûd ash-shar'*” (the qualifications given to things and acts before the advent of revelation). This points to the source of obligation before God revealed the Law, and calls for a discussion of the function of reason.

After delimiting the science of *uṣûl al-fiqh*, Ghazzâlî, as already pointed out, does not follow his own classification, but decides instead to do as his predecessors did, “because weaning from what is familiar is hard to take, and minds turn away from the unusual.”<sup>(1)</sup>

Before Ghazzâlî, Sam'ânî had already criticized the mixing of kalam with *uṣûl al-fiqh*, in his *Qawâṭi' al-adilla*. This work was described by Subkî as “the most beneficial book on *uṣûl* for the Shâfi'îs and the most significant” (*huwa anfa'u kitâbin li 'sh-shâfi'îya fi 'l-uṣûl wa-ajalluh*);<sup>(2)</sup> and after Subkî, Zarkashî described it as “the most significant work for the Shâfi'îs in *uṣûl al-fiqh* in its reference to sources and its argumentation” (*huwa ajallu kitâbin li 'sh-shâfi'îya fi uṣûl al-fiqh naqlan wa-hijâjan*).<sup>(3)</sup> It will be remembered that Abû 'l-Muzaffar as-Sam'ânî was a jurisconsult in the Hanafi school of law for thirty years before transferring to the Shâfi'î school, amid much criticism from former colleagues and to the general delight of the Shâfi'îs.

Sam'ânî begins by pointing out that the science of *fiqh* is the most important and most noble of the sciences, because it treats of the ever-changing events to which there is no limit, and consequently no limit or way of encompassing the knowledge of the laws to be applied to these events. On the other hand, theology, which Sam'ânî does not call kalam, but rather “the science of the fundamental principles regarding acts of

(1) *Mustaşfâ*, I, 10.

(2) Subkî, *op. cit.*, fol. 2a (l. 19).

(3) Zarkashî, *op. cit.*, fol. 1b (l. 28-29).

obedience to God" (*'ilm al-uşûl fi 'd-diyânât*), although it is a noble science in itself, the basis of all principles of religion, and the foundation of all the religious sciences, yet it is a science whose structure is limited because its data of knowledge are limited, which God instructed us to obey, and to which nothing can be added or taken away. On the other hand, *fiqh* is an on-going science continuing with the passage of centuries and changing with the change of circumstances and conditions of men, without end or interruption. Indeed God made the *ijtihâd* of the jurisconsult regarding these events to take the place of inspiration in the time of the Prophets. When this time passed God made *ijtihâd* to take the place of the Prophet's inspiration so that a clarification of God's laws would issue from it. <sup>(1)</sup>

Sam'ânî then comes to deal with the works on *uşûl al-fiqh*:

I have not ceased throughout my life to study the works of colleagues and others on this subject. I noticed that most of them have contented themselves with a superficial study of the subject rather than delve deeply into its themes. And I noticed that one of them dug deep, analyzed and blended, but he deviated from the method of the jurisconsults in many of the questions, and followed the method of *the mutakallimun who are but strangers to jurisprudence and its themes; nay, they are completely ignorant of this science.* <sup>(2)</sup>

For Abû Bakr as-Samarqandî (d. 540/1145), a hanafî jurisconsult, author of *Mizân al-uşûl*, the science of *uşûl al-fiqh* branches off from that of *kalam*;

and the branch is what branches off from a root, and what does not branch off from the root is not of its progeny. It was therefore inevitable that writing books on this subject should follow the creed of the author of the book. Now most of the works on *uşûl al-fiqh* belong to the Mu'tazilis who oppose us in the fundamentals of religion, and to the Traditionalists who oppose us in the applied derivatives.

(1) *Qawâfi' al-adilla*, MS. 627 Faizullah (Istanbul), fol. 1b.

(2) *Ibid.*, fol. 2a.

Thus reliance upon their works either leads to error in the fundamental principles, or to mistakes in their applications. To guard against both pitfalls is a matter of obligation according to both reason and revelation. (1)

A return to *uṣûl al-fiqh* as founded by Shâfi'î is advocated in the work of the Shâfi'î jurisconsult and historian, Abû Shâma (2) (d. 665/1267). It is interesting to see the difference between this Shâfi'î jurisconsult and his predecessor Ghazzâlî, also a Shâfi'î jurisconsult, on the subject of the classification of the sciences and the place of *uṣûl al-fiqh* in this classification. For Abû Shâma, like Shâfi'î himself, does not have any place in his classification for the science of kalam, as such, let alone classifying it as the fountainhead of all the Islamic sciences, including *uṣûl al-fiqh*.

Abû Shâma divides the Islamic religious sciences into two categories: (1) the science of the Koran, '*ilm al-kitâb*', and (2) the science of the Sunna, '*ilm as-sunna*'. From these two major categories and through the Arabic literary arts, '*ilm al-'arabiya*', two other major categories of sciences are derived: (1) the science of the fundamental principles of religion and law, '*ilm al-uṣûl*', i.e. *uṣûl ad-dîn and uṣûl al-fiqh*; and (2) the science derivative of the fundamental principles, '*ilm al-furû'*', consisting of (a) the science of the practical applications of religion and law that are to be followed, '*ilm al-madhhab*', and (b) the science of right behavior, truth, and etiquette of the followers of the Right Way ('*ilm al-mu'âmala wa'l-ḥaqîqa wa-adab ahl aṭ-ṭarîqa*'), i.e. Sufism.

After discussing what is most important in the study of the Koran and Sunna, and what fields of knowledge constitute the literary arts, Abû Shâma deals with '*ilm al-uṣûl*':

(1) Samarqandî, *Mizân al-uṣûl*, MS. 1626, Garrett Collection (Princeton University); cited also in Hâjji Khalîfa, *Kashf az-zunûn 'an asmi' l-kutub wa'l-funûn*, 2 vols. (Istanbul: Government Press, 1360-1362/1941-1943), I, 110, who gives the author's name and date of death: al-Imâm 'Alâ' ad-Dîn al-Ḥanaff (d. 553/1158).

(2) Abû Shâma is the well-known historian of the reigns of Nurraddin and Saladin, *The Book of the Two Gardens (Kitâb ar-Rauḍatain)*, French translation by Barbier de Meynard, 2 vols. (Paris, 1898-1906).

The science of *uṣūl* [i.e. the fundamentals of religion] is divided into what is called *uṣūl ad-dīn* [i.e. the fundamental principles of obedience to God (=of religion)] and to what is called *uṣūl al-fiqh* [i.e. the fundamentals of law, jurisprudence]. Many things have been added to each of the two sciences, as well as distressing studies belonging to the science of kalam and the pseudo-arguments of the practitioners of quarrelsome argument and controversy [i.e. the *mutakallimun*]. It is more fitting for one whose faith is sound and whose proof is manifest not to lose his time on these things. There are those who have been put up to it, or in whose hearts there is hypocrisy, <sup>(1)</sup> who have smuggled into these sciences harmful and reprehensible things from the abominable sciences of the Ancients [i.e. the Greeks], so that he who devotes himself to the study of these sciences hides behind these fundamental principles of religion; but he is to be censured. <sup>(2)</sup>

Thus Abū Shāma, parting company with his fellow-Shāfi'i, Ghazzālī, condemns kalam and its practitioners outright, excluding it, along with the "sciences of the Ancients" from the classification of the Islamic sciences. <sup>(3)</sup>

The Shāfi'i jurisconsult and theologian, Fakhr ad-Dīn ar-Rāzī, in his *Maḥṣūl*, declared that "the most important science for the mujtahid is *uṣūl al-fiqh*, the rest of the sciences being of no importance for his purposes. As for kalam, it is of no account in the matter". <sup>(4)</sup> The Shāfi'i jurisconsult and historian of

(1) Koran II, 9: *man ft qalbiht maraḍ*; cf. Lane, *Lexicon*, s.v. *marāḍ*.

(2) Abū Shāma, *al-Kitāb al-marqūm ft jumlat min al-'ulūm*, MS. Chester Beatty Library (Dublin), 3307, fol. 64b.

(3) When Abū Shāma deals with positive law, he exhorts his reader to practice *ijtihad*, not to follow any particular imam, founder of a school of law, but rather to study the opinions of all imams and adopt the solution that appears as the closest to the Koran and Sunna of the Prophet; to avoid also the modern methods of disputation (*ṭarā'iq al-khilāf al-muta'akhhira*) which are a loss of time and disturb the serenity of the mind (*fa-innahā muḍaiyi'atun li'l-waqt, wa-li-ṣ-ṣafwati mukaddira*). Abū Shāma, *op. cit.*, fol. 65a-b.

(4) Fakhr ad-Dīn ar-Rāzī, *al-Maḥṣūl ft uṣūl al-fiqh*, Chester Beatty Library (Dublin), MS. 3784, vol. II, fol. 141b (lines 11 ff.): *inna ahamma 'l-'ulūmi li'l-mujtahidi 'ilmu uṣūl al-fiqh; wa-ammā sá'iru 'l-'ulūmi fa-ghairu muhimmatin ft dhālik. Ammā 'l-kalām, fa-ghairu mu'tabar.*

the Shāfi'ī school of law, al-Isnawī, paraphrases Rāzī's *Maḥṣūl* in his own *Tamhīd* when he declares that "the science of kalam is not stipulated for *ijtihād*, because it has no connection with it; nor even the science of positive law, because it is its resulting product. (1) Rāzī's position is all the more significant since he was an Ash'ari theologian of kalam, and influenced by Mu'tazili kalam to boot. (2) And Isnawī follows his example, excluding both *fiqh* and kalam from *uṣūl al-fiqh*.

On the other hand, Zarkashī deals with the question of the subject-matter of *uṣūl* by avoiding to give a full answer to the question posed:

If someone should say: "Is the science of *uṣūl al-fiqh* anything but parts assembled from a miscellany of sciences, partly from the science of kalam..., partly from philology..., and partly from the science of hadith...? A scholar knowing these sciences needs none of this from *uṣūl al-fiqh*. On the other hand, he who has no knowledge of these sciences will not be dispensed by *uṣūl al-fiqh* from the need of acquiring them. Thus, of *uṣūl al-fiqh* proper all that remains is the treatment of consensus (*ijmā'*), reasoning by analogy (*qiyās*), disputation (*ta'arūḍ*) and *ijtihād*; but even here, some of the discussion regarding consensus belongs also to the science of the fundamentals of religion (*uṣūl ad-dīn*), and some discussion regarding reasoning by analogy and disputation belongs solely to the adept of positive law (*al-faqīh*). Under the circumstances, the value of *uṣūl al-fiqh* is rather limited." The answer to this thesis is to deny it. The scholars of *uṣūl al-fiqh* have made a close study of certain matters in the language of the Arabs not achieved either by the grammarians or the philologists... (3)

(1) Isnawī, *at-Tamhīd ft tanzīl al-furū' 'alā 'l-uṣūl*, National Library in Rabat (al-Khizāna al-'Āmma), MS. 339 *qāf* (paginated), p. 1 (lines 8-9): *ammā 'ilm al-kalām, fa-laysa sharḥan ft 'l-ijtihādī li-'adami 'rtibāfiht bih; wa-kadhālika 'ilm al-fiqh, li-annahu naitjatuh*. Cf. Rāzī, *Maḥṣūl*, *loc. cit.*

(2) See I. Goldziher, "Aus der Theologie des Fachr al-Dīn al-Rāzī", in *Der Islam*, III (1912), 213-247.

(3) Zarkashī, *op. cit.*, fol. 2a-b.

Zarkashi confines himself to what the *usul*s have done in grammar and philology for *uṣūl al-fiqh*, advances which cannot be found in the books in these two fields. He offers no explanation for the two other fields: hadith, and especially kalam, which latter is precisely the source of the controversy.

With Zarkashi (d. 794/1392) we come to the end of the eighth/fourteenth century, some six centuries after Shâfi'i's *Risâla* was delivered to Ibn Mahdi (d. 198/813-814), and the discussion as to the nature, contents and purpose of what came to be called *uṣūl al-fiqh*, the fundamentals of law, has not abated.

#### CONCLUSION

Shâfi'i's science of jurisprudence has two dimensions: one legal, the other theological. So far, scholars have concentrated on the legal dimension. Ignaz Goldziher was the first to draw attention to it, seeing Shâfi'i's purpose as consisting in the disciplined application of qiyas as a legal source. Goldziher was not interested primarily in Shâfi'i's contribution; for him, Shâfi'i was simply a point of reference for the Zahiri school of law, an aberrant offshoot of the Shâfi'i school denying the use of qiyas altogether. He nonetheless pointed out the value of studying Shâfi'i's work if and when it is found. On the other hand, Joseph Schacht, chiefly interested in Shâfi'i, and taking his lead from Goldziher's suggestion, made a detailed study of Shâfi'i's contribution to legal science, characterizing it as "a magnificently consistent system and superior by far to the doctrines of the ancient schools" of law.<sup>(1)</sup>

While the *legal* dimension of Shâfi'i's contribution has been placed in full view, thanks to Goldziher and, particularly, Schacht, the *anti-Rationalist, Traditionalist theological dimension*, unsuspected, has remained out of focus. This is, in part, due to the fact that Shâfi'i does not directly show his hostility to the Mu'tazila, or Ahl al-Kalam, in his *Risâla*. But he does make two significant statements which characterize his work as

(1) *Origins*, p. 137.

fundamentally traditionalist. It is such statements as these, drawn together with various historical facts, which point directly to the *theological* dimension of Shâfi'î's contribution.

Both significant statements appear in the *khuṭba*, introduction, to Shâfi'î's *Risâla*. The first statement, at the beginning of his introduction reads as follows: "Praise be to God... Who is as He has described Himself, and who is exalted above all the attributes given to Him by those among His creatures who have described Him" (*al-ḥamdu li'llâhi ... 'l-ladhî huwa kamâ waṣafa nafsah, wa-fauqa mâ yaṣifuhû bihî khalquh*).<sup>(1)</sup> The allusion is unmistakable. The traditionalists accept God's own description of Himself, His own attributes as He Himself has revealed them in His book and through His Messenger. The rationalists, especially the Mu'tazilis, whom Shâfi'î called Ahl al-Kalam, attribute to God additional attributes resulting from their own speculations, held by the traditionalists as abominable, heretical innovations.

The second statement, coming at the end of this introduction, reads as follows: "no event shall befall an adherent of God's religion but that there is a guide in the Book of God showing the right way to be followed" (*fa-laisat tanzilu bi-aḥadin min ahli dîni 'llâhi nâzilatan illâ wa-fi kitâbi 'llâhi 'd-dalîlu 'alâ sabîli 'l-hudâ fi-hâ*).<sup>(2)</sup> There is therefore no need to look beyond the Sacred Scriptures. The implication is clear: primacy goes to faith; reason takes second place.

The Hanbali Ibn Qaiyim al-Jauziya, in one of his works in which he treats of *uṣûl al-fiqh*, cites these two statements of Shâfi'î, as well as other statements attributed to Shâfi'î, as evidence of the latter's hostility towards the Mutakallimun.<sup>(3)</sup> When the above statements of Shâfi'î are considered with the following facts already discussed in these pages, the traditionalist, anti-rationalist, theological dimension of Shâfi'î's *Risâla* comes into focus: (1) Shâfi'î's attitude of hostility against the partisans of kalam; (2) the total lack of philosophical theology

(1) *Risâla*, p. 8 (l. 3-4).

(2) *Op. cit.*, p. 20 (l. 3-4).

(3) *Op. cit.*, pp. 8 and 20; Ibn Qaiyim al-Jauziya, *I'lam al-Muwaqqi'tn 'an rabb al-'alamtn*, 3 vols. (Cairo: al-Kurdf Press, 1325/1907), III, 466-467.

(kalam) and even of questions of legal philosophy in the *Risâla*; (3) the dramatic change which *uṣûl al-fiqh* underwent, by the dawn of the fifth/eleventh century, from the thoroughly traditionalist content of the *Risâla*, two centuries previously, to one in which kalam and legal philosophy played a prominent part; (4) the perennial preoccupation of authors of opposing camps with the justification of what they considered as the contents of *uṣûl al-fiqh*; (5) the reaction of traditionalist authors, exemplified in the statements of Sam'ânî and Abû Shâma, against the encroachments of kalam in *uṣûl al-fiqh*; (6) the on-going centuries-old struggle between the two camps, a struggle the landmarks of which are clearly seen across the centuries, marking triumph after triumph, inaugurated with Shâfi'î's championship of traditionalism, and culminating in the Traditionalist Qâdirî Creed.

That the *theological* dimension of Shâfi'î's contribution has remained out of focus may be seen in the erroneous classification of works on *uṣûl al-fiqh* by some modern writers. One error consists in characterizing such works as belonging to one of two categories: (1) the "*uṣûl*" of the Shâfi'î's or the *mutakallimun*", and (2) "the *uṣûl* of the Hanafis".<sup>(1)</sup> Another error consists in listing Shâfi'î and his *Risâla* at the head of a category entitled "the method of the *mutakallimun*", which is then contrasted with another category entitled "the method of the *jurisconsults*".<sup>(2)</sup>

Shâfi'î, the first champion of traditionalist Islam, and Aḥmad b. Ḥanbal, the second, were both imbued with a deep sense of submission to the Koran, the word of God, and the hadith,

(1) See, for example, Muḥammad Abû Zahra, *Uṣûl al-fiqh* (Cairo: Dâr ath-Thaqâfa al-'Arabîya, 1377/1957), p. 18 ("uṣûl ash-Shâfi'îya au al-*mutakallimîn*"), and p. 20 ("uṣûl al-ḥanaffîya").

(2) See, for example, M. H. Hitû, in his edition of al-Ghazzâlî's *al-Mankhûl min 'ilm al-uṣûl*, pp. 6 ff. Cf. also C. Chehata, "Logique juridique et droit musulman", in *Studia Islamica*, XXIII (1965), 5-25, esp. p. 15 where the author cites "la méthode hanéfite" and "la méthode théologique", a classification he adopts from the fourteenth-century historian Ibn Khaldûn (d. 784/1382), including the names of authors of each of the two categories; see Ibn Khaldûn, *al-Muqaddima*, ed. Naṣr Al-Hürînî (Cairo: Bûlâq (1274/1858), esp. p. 221, English translation by F. Rosenthal, 3 vols., Bollingen Series XLIII (New York: Pantheon Books, 1958), III, p. 28.

the record of the words and deeds of the Prophet. For Shâfi'î, as for Ibn Ḥanbal, Mu'tazilism was the great enemy of true Islam; true Islam being unconditional submission to the message of God, and emulation of His Messenger, the first *muslim*.

*Uṣûl al-fiqh*, before it came to be known by this term, was the weapon Shâfi'î put in the service of Traditionalism against the rationalist movement. But two centuries later we find advocates of Rationalism authoring works on *uṣûl al-fiqh*. As all rationalist sciences were excluded from the curriculum of the colleges, Rationalism, defeated politically, sought ways of infiltrating the curriculum. It therefore infiltrated, not only the schools of law (*madhhab*), but also the traditionalist sciences themselves, foremost among these being *uṣûl al-fiqh*. For this subject is eminently receptive to two rationalist instruments of methodology: logic and, more particularly, dialectic. Such receptivity is illustrated by the work on logic in Ghazzâlî's *al-Mustaṣfâ min 'ilm al-uṣûl*, and the work on dialectic in Ibn 'Aqîl's *al-Wâḍiḥ fî uṣûl al-fiqh*.

In his *Risâla*, Shâfi'î had asked no philosophical questions regarding legal obligation (*taklîf*). The sources of obligation for him were the Koran and the Sunna, the word of God and the exemplary life of His Messenger. Man owes submission, *islâm*, to God. The legal system of Islam is one of divine voluntarism. Law is command and prohibition, God's commands and prohibitions (*al-awâmir wa'n-nawâhi*). In such a system there is no room for the concept of natural law. In Islamic law, obligation does not inhere in the nature of things, <sup>(1)</sup> and ultimately in God who determines that nature. <sup>(2)</sup> Obligation is based directly on His revealed law. The job of jurisprudence consists in supplying the methodology to bring out clearly all that man needs to know of his obligation toward God (*'ibâdât*) and those toward his fellow man (*mu'âmalât*). *Uṣûl al-fiqh*, as originally conceived by Shâfi'î, is a juridical theology, a study of God's law, as distinguished from *kalam*, the study of God Himself; it is a study of God's commands and

(1) Cf. St. Thomas Aquinas, *Summa Theologiae*, Q. 95, A.2.

(2) Cf. *ibid.*, Q. 93, A.4.

prohibitions, not of whether God is, or what He is. And as far as theology is concerned, the Traditionalist prefers "*uṣūl ad-dīn*", the fundamentals of obedience to God, of religion, the study of what one should believe,—over kalam, "words" speculating about God Himself.

The Rationalists found their way into the science of *uṣūl al-fiqh* through the problem of legal obligation. It was here that they came closest to the concept of natural law, but did not go all the distance to reach it. At any rate, this is how, in substance, they raised the problem of obligation: if the source of obligation is to be found in divine revelation, what about human acts *before* God gave us His revealed Law? What qualifications should be given to these acts and on what basis? Such were the questions raised; they could not be easily set aside. The dialogue was started between the opposing camps, giving *uṣūl al-fiqh* one of its most important problems of legal philosophy. But it was clear where the Mu'tazilis meant to find the source of obligation before the revelation. God, before making us a gift of His revelation, had already made us a gift of reason; both gifts came from God. There could therefore be nothing in right reason that would contradict revelation, since they both came from the same divine source. The discussion did not get as far as a reconciliation of reason and revelation. The Traditionalists held on to their reasons for the primacy of faith; and the Rationalists clung to their faith in the primacy of reason.

The rationalist element in *uṣūl al-fiqh* was there to stay. And because this science was essentially a theology, albeit juridical, it cut across the lines of the schools of law. Writers, regarded as perfectly traditionalist, could now fathom all sorts of problems of legal philosophy without being condemned outright for their "rationalism". For while the writing of works on kalam was always either condemned out-of-hand, or at the least, regarded with suspicion, writing on *uṣūl al-fiqh* was held in high regard, for it was never considered as tainted with the sciences of the Ancients. Thus it is in works on *uṣūl al-fiqh* that one can judge the extent of Rationalism in the doctrine of a doctor of law through his elaboration of questions

of legal philosophy beyond those of juridical methodology.

The schools of thought in Islamic jurisprudence (*uṣûl al-fiqh*) cut across the schools of positive law (*fiqh*), and may be found in certain cases to align themselves with schools of thought in theology (*uṣûl ad-dîn*, kalâm). The two works on *uṣûl al-fiqh* entitled *Tanqîh*, and *Talwîh*, chosen at random, are good illustrations of this point. Maḥbûbî (d. 747/1346), who belonged to the Hanafi school of positive law, wrote the *Tanqîh* on *uṣûl al-fiqh* which is a reworking of the *Uṣûl* of Bazdawî, a Hanafi, of the *Maḥṣûl* of Fakhr ad-Dîn ar-Râzî, a Shâfi'î, and the *Mabâḥith* of Ibn al-Ḥâjib, a Maliki. Later, Taftâzânî (d. 792/1390), a Shâfi'î, wrote the *Talwîh* as a commentary on the *Tanqîh* of Muḥbûbî, the Hanafi. Another illustration is the *Burhân* of al-Juwainî (d. 478/1085), a Shâfi'î, on which two commentaries were written by al-Mâzarî and al-Abharî, both Maliki; who then censured Juwainî, an Ash'ari in theology, for criticizing Ash'arî, eponym of the Ash'arî theological movement, a movement whose members were, for the most part, Shâfi'is in law.

Zarkashî's interlocutor was, in effect, saying that there was no need to call this science by a new name, *uṣûl al-fiqh* being merely a motley conglomeration of curtailed sciences better treated each in its own place. The answer Zarkashî gave falls short of clearly designating the object of the new science, a designation which Fakhr ad-Dîn ar-Râzî gives succinctly. Râzî, as already mentioned, saw *uṣûl al-fiqh* as the science of *ijtihâd*, which, he declared, is neither the science of kalam, nor that of *fiqh*; kalam not being a component of *ijtihâd*, and *fiqh* being nothing but *ijtihâd's* resulting product.

Shâfi'î's *Risâla* is basically a work on methodology. In it Shâfi'î is, in effect, saying: kalam is not the business of Islam; *ijtihâd*, based on the Sacred Scriptures, is the essence of Islamic religious science, and this *Risâla* gives you the method to follow, shows you how to go about it.

If Shâfi'î had been asked to give a name to the subject of his book, he would perhaps have replied that it was nothing new, that it simply had to do with *uṣûl ad-dîn*, the roots of

religion; and if the term "*uṣūl al-fiqh*" could have been suggested to him, he would perhaps have accepted it in the sense of "the roots of God's revealed law", which, after all, are the roots of the religion of Islam.

Shâfi'i's purpose in writing the *Risâla* was to counter any system of religious knowledge that pretends to go beyond the Koran and the Prophet's Sunna. In contrast to kalam, which went beyond the Scriptures to speculate about their author, God Himself, Shâfi'i's doctrine declared the Scriptures to be all that was needed for salvation. For Shâfi'i believed that the divine revelation, as expressed in the Koran and the Prophet's Sunna, *provides for every possible eventuality*.<sup>(1)</sup> This is a traditionalist theme that runs through Islamic religious history. The Hanbali Ibn Taimiyya (d. 728/1328), towards the end of his life, devoted one of his most significant treatises to it, entitled: *Ma'ârij al-wuṣūl ilâ ma'rifat anna uṣūl ad-dîn wa-furû'ahû qad bayyanahâ 'r-rasûl* (The Steps leading to the Knowledge that the Messenger of God has already made a Clear Exposition of the Roots and Branches of Religion), a work the significance of which was justly appreciated well-nigh half a century ago by the eminent Islamist Henri Laoust.<sup>(2)</sup>

From the late tenth or the beginning of the eleventh century, the works that have come down to us on *uṣūl al-fiqh*, with questions properly belonging to kalam and legal philosophy, were authored not only by those who would be expected to include such questions in their works, namely members of the rationalist theological movements of Mu'tazilism and Ash'arism, but also by authors otherwise of strictly traditionalist affiliation. In illustration of this fact, the *Musawwada* of the Traditionalist *Taimiyya* family may be given as an illustration, one among many others. This phenomenon strongly suggests that the future of Islamic theology may well be in the hands of the *Uṣûlîs*, rather than in those of the *Mutakallimun*.

(1) See n. 2, p. 41.

(2) Ibn Taimiyya, *Ma'ârij al-wuṣūl*, in *Mujmû'at ar-rasâ'il al-kubrâ*, 2 vols. (Cairo: Sharafliya Press, 1323/1905), I, 180-217; French translation, with introduction and notes, by H. Laoust, *Contribution à une étude de la méthodologie canonique de Taqi ad-Din Ahmad b. Taimiyya* (Le Caire: Institut Français d'Archéologie Orientale, 1939).

## ADDENDUM

The foregoing study was already completed when that entitled "Šāfi'ī et le *kalām* d'après Rāzī", by Henri Laoust, came to my attention. We had both contributed articles to the publication in which Professor Laoust's article appeared; namely, *Recherche d'Islamologie: Recueil d'articles offert à Georges C. Anawati et Louis Gardet par leurs collègues et amis* (Louvain et Louvain-La-Neuve, 1978). But since contributors to the Festschrift had received only reprints of their articles and not the entire work, it was not until much later that I came upon the article in question, while paying a visit to our friend and colleague, M. Louis Gardet, in Toulouse.

At first blush the article of M. Laoust would seem to be at variance with what has been said in the present study; but this first impression is quickly dissipated when the reader realizes that the apparent difference of opinion hinges on the terms used for theology: *kalam* and *uṣūl ad-dīn*. There is a distinction to be made, as the reader may gather from what has been said in the foregoing study. The reader is further referred to a previous study, "Ash'arī and the Ash'arites in Islamic Religious History", in *Studia Islamica*, XVII (1962), pp. 37-80, and XVIII (1963), pp. 19-39, where the two terms are studied historically. On page 399 of his article, Professor Laoust distinguishes between "two great forms of *kalam*": (1) a theology essentially speculative in nature, treating of the great problems of (philosophical) theology; and (2) a juridico-moral theology treating of man's obligations toward God and His creatures. Then he says: "it is this last form of *kalam* that interested Shāfi'ī above all in the *Risāla*, the *Kitāb al-Umm* and the *Kitāb Ikhlāf al-ḥadīth*". With this statement, the foregoing study is in complete agreement. In keeping with the historical attitude of the Traditionalists, I prefer to reserve for this type of theology the term *uṣūl ad-dīn*, "the fundamentals of faith", in contradistinction to *kalam*, which would be reserved for philosophical theology, that theology developed by the Mu'tazilis and the Ash'aris.

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