



Islamic Knowledge

SPREADING THE LIGHT OF 'ILM

Lesson 2

A Brief History of Uṣūl al-Fiqh



تأليف

العَلَّامة المحدث، المحقق الأضرلي

الشيخ سعيد أحمد البازري

(١٣٦٠)

Disclaimer

- A more detailed version of this PowerPoint has been covered in the beginning of our course on Ḥanafī Uṣūl al-Ḥadīth
- However, some extra details are covered in this one too

مبادئ أصول الفقه الحنفي

تأليف

العقيدة الحديث، المقدم المؤرخ

الشيخ سعيد أحمد البالكوري

(١٣٦٠ - ١٤٤١ هـ)

رحمة الله تعالى

تقدمه

عبد الهادي الترسكي

دار الفقه

البيروت

Fiqh During the Time of the Ṣaḥābah

- ‘Umar RA during his lifetime preferred to keep the ṣaḥābah in Madīnah in order to consult with them on issues of jurisprudence
- However, he did allow some travel as the number of cities conquered during his time was a lot more, for example, upon creating the city of Kūfah in 17 AH, he sent ‘Abdullah ibn Mas‘ūd to teach them, informing the people [Faḍā’il al-Ṣaḥābah li Aḥmad ibn Ḥanbal, pg.841]:

وقد آثرتكم بعبد الله بن مسعود على نفسي

- After the demise of ‘Umar RA in 23 AH, the ṣaḥābah began to spread to the various Islāmic lands spreading their knowledge, leading to an increase in differences of opinion amongst the ṣaḥābah. Dr. Muṣṭafa Bashīr al-Ṭarāblusī writes [Manhaj al-Baḥth wa’l-Fatwā, pg.24]:

وجد اختلاف في الأحكام الاجتهادية بين الصحابة رضي الله عنهم بيد أنه كان ضيقا في الفترة الأولى من عهدهم ثم اتسع فيما بعد ويعود السبب في ذلك إلى وجودهم في مكان واحد وهو المدينة أول الأمر مما جعل اجتماع كلمتهم ميسورا زد على هذا بساطة الحياة وبعدها عن التعقيد في تلك الفترة بيد أنه بوفاة عمر اختلف الأمر فبدأ بعض الصحابة بالرحيل عن المدينة بعد أن كان عمر قد منعهم من ذلك واتخذوا بعض البلدان الأخرى موطناً لهم

كان من نتيجة ذلك أن يفتي كل صحابي حسب اجتهاده في المسائل المعروضة عليه واستتبع ذلك وجود اختلاف بينهم في الفتوى فالخليفة لم يعد يستطيع جمعهم بسهولة لاستشارتهم فيما يجد من المسائل والخروج برأي موحد في المسألة المطروحة كما أنهم لم يكونوا على مستوى واحد في حفظهم واطلاعهم على السنة فكل يفتي بما يعلم وبما يفهم مما تنهى إليه علمه من النصوص التي بين يديه فإذا أضفنا إلى ذلك كله اختلاف البيئات التي هاجروا إليها كانت هذه الأخيرة عاملاً آخر يضاف إلى العوامل السابقة أدت إلى اختلافهم في الاجتهاد

- Ṣalāḥ Abu’l Ḥāj writes [Al-Madkhal al-Mufaṣṣal, pg.80]:

وكان عمر بن الخطاب رضي الله عنه حريصاً على إبقائهم في المدينة المنورة لاستشارتهم

- During the time of ‘Umar RA, a lot of lands were conquered which also led to an increase in Masā’il and thus greater application of ‘fiqh’ and thus a greater difference in opinion

Ibn Abī Ḥātim records [Al-Jarḥ wa’l-Ta’dīl, 1:29]:

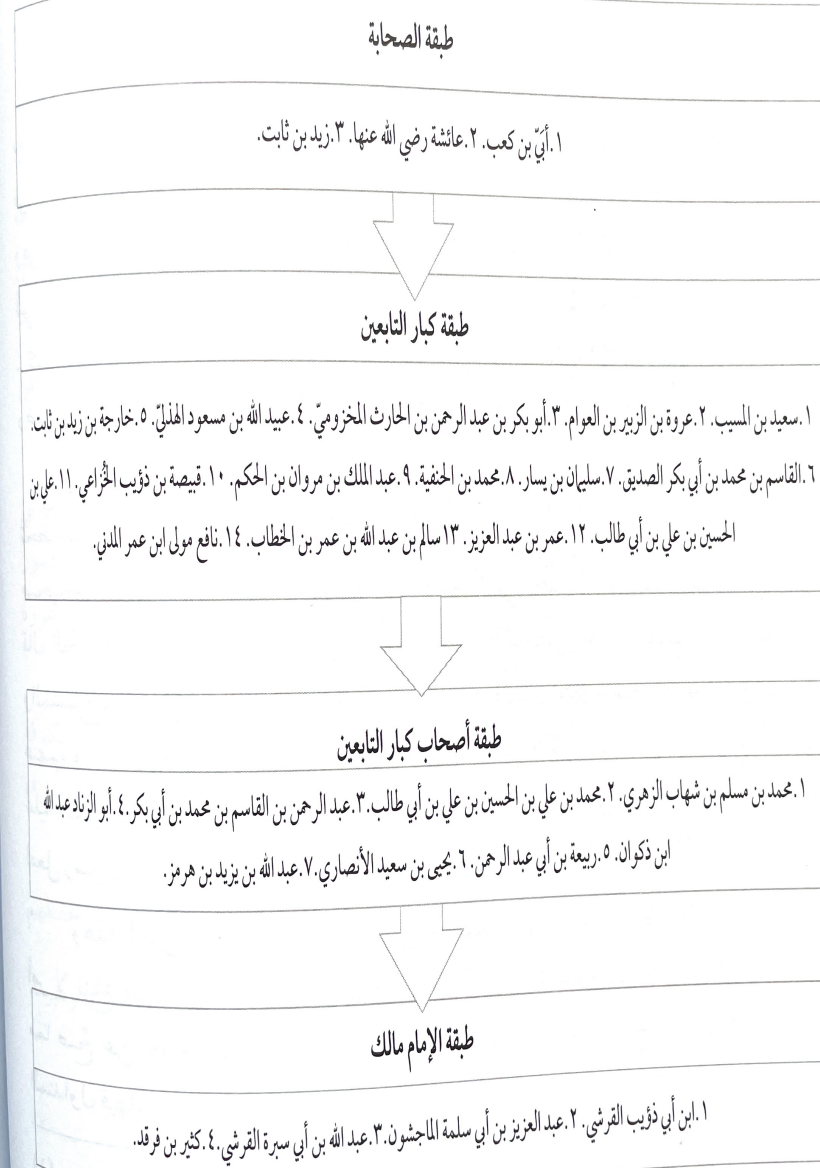
عن مالك بن انس قال قال لي ابو جعفر - يعني عبد الله بن محمد بن علي
ابن عبد الله بن عباس - يوما [أ- ١] علي ظهرها احد اعلم منك ؟
قلت : بلى . قال فسمهم لي . قلت : لا احفظ اسماء هم ، قال : قد طلبت
هذا الشأن في زمن بني امية فقد عرفته ، أما اهل العراق فاهل كذب
وباطل وزور ، وأما اهل الشام فاهل جهاد [و- ١] ليس عندهم
كبير علم ، وأما اهل الحجاز ففيهم بقية علم (٢) وانت عالم الحجاز ،
فلا تردن علي امير المؤمنين قوله . قال مالك : ثم قال لي : قد اردت
ان اجعل هذا العلم علما واحدا فأكتب به الي امراء الاجناد و الي
القضاة فيعلمون به فمن خالف ضربت عنقه . فقلت له يا امير المؤمنين
أو غير ذلك ، قلت ان النبي صلى الله عليه وسلم ﴿٩ ك﴾ كان في هذه
الامة و كان يبعث السرايا و كان يخرج فلم يفتح من البلاد كثيرا
حتى قبضه الله عزوجل ثم قام ابوبكر رضي الله عنه بعده فلم يفتح من
البلاد كثيرا ثم قام عمر رضي الله عنه بعدهما ففتحت البلاد علي يديه
فلم يجد بدا من ان يبعث اصحاب محمد صلى الله عليه وسلم معلمين فلم
يزل يؤخذ عنهم كبرا عن كابر (٣) الي يومهم هذا فان ذهبت تحولهم
بما يعرفون الي ما لا يعرفون راوا ذلك كفرا ولكن اقر اهل كل بلدة
علي ما فيها من العلم وخذ هذا العلم لنفسك فقال [لي- ١] ما ابعدت
القول ، اكتب هذا العلم لمحمد (٤) .

- The ṣaḥābah would differ over the reasoning/cause (علة) behind a specific ruling given by the Prophet ṣallallahu ‘alayhi wasallam, e.g., did the Prophet ṣallallahu ‘alayhi wasallam prohibit the action because of this reason or was it because of another reason? This would then lead to differences in the rulings extrapolated from this specific ruling given by the Prophet ṣallallahu ‘alayhi wasallam. Al-Sarakhsī writes in Uṣūl al-Sarakhsī [3:64]:

وأما الشافعي فإنه يقول (٤): قد علمنا بالدليل أن علة النص أحد أوصافه لا كل وصف منه، فإن الصحابة رضي الله عنهم اختلفوا في الفروع باختلافهم في الوصف الذي هو علة في النص، فكل واحد منهم ادعى أن العلة ما قاله، وذلك اتفاق منهم أن أحد الأوصاف هو العلة

Fiqh During the Time of the Tābi‘ūn

الثانية: المدينة المنورة:



الأولى: الكوفة:



Key Differences Between Ahl al-Ma‘ānī/Ahl al-Ra’y and Ahl al-Ḥadīth/Ahl al-Lafz

- Although there are evidences of these two approaches during the time of the ṣaḥābah, they became more prevalent during the time-period of Ibrāhīm al-Nakha‘ī and Sa‘īd ibn al-Musayyab

The Ahl al-Ḥadīth/Ahl al-Lafz had the following approach:

- 1) They considered jurisprudential authority to lie only in the aḥādīth, this meant that if one was not a scholar of ḥadīth, then he had no authority to issue fatawā
- 2) They assessed these aḥādīth using their own methodology and principles, placing significant attention to the chain of narration

Some Ahl al-Ḥadīth would assess aḥādīth in a similar fashion but placed great significance on the practice of the community, such as Imām Mālik (d.179 AH) who assessed the aḥādīth he had acquired by considering the communal practice of the people of Madīnah. This means that if a ḥadīth contradicted the practice of the people of Madīnah, it would be considered a defect in the authenticity of the ḥadīth.

In fact, this may be the reason as to why the *الموطأ* is titled as this; ‘the trodden path’. Ahmed el Shamsy writes [pg.34]:

MĀLIK’S MUWAṬṬA’ AND ITS SIGNIFICANCE

Mālik called his book *al-Muwatṭa’*, “the well-trodden path,” reflecting the goal of his project: to set down in written form Islamic normativity as enshrined in the traditional practice (*‘amal*) of Medina as a whole.

Dr. Anas Sarmīnī states [Al-Qaṭ‘ī wa’l-Zannī, pg.40]:

وهذا من مرجحات أن مراده بتسمية كتابه الموطأ جمعه في الأحاديث التي تواطأ العمل عليها في المدينة

This is whilst the loyal Ahl al-Ḥadīth considered authority to lie only in the aḥādīth of the Prophet ṣallallahu ‘alayhi wasallam and that communal practice should play no role in one’s assessment of aḥādīth.

3) If the ḥadīth did not provide a ruling, the Ahl al-Ḥadīth would prefer to remain silent on the issue

When Asab ibn Furāt asked Imām Mālik (d.179 AH) too many questions, he responded [Tartīb al-Madārik, 3:292]:

سلسلة بنت سلسلة إذا كان كذا كان كذا إن أردت هذا فعليك بالعراق

Al-Sha‘bī said [Al-Muwāfaqāt, 5:476]:

والله لقد بغض هؤلاء القوم إلي المسجد حتى هو أبغض إلي من كناسة داري قلت من هم يا أبا عمرو؟ قال "الأرايتيون ما كلمة أبغض إلي من رأيت"

The Ahl al-Ra'y, on the other hand, had the following qualities:

- 1) They extrapolated jurisprudential authority to analogical deduction (qiyas) as they extracted rulings for new masā'il that had not yet occurred. This was whilst the Ahl al-Ḥadīth would prefer to remain silent on these issues.

This supposed 'eagerness' from the Ahl al-Ra'y to extrapolate rulings to new masā'il and the process of polemical juristic debates (munāẓarah) that would be used to extrapolate rulings from evidential texts to new masā'il is what perturbed the Ahl al-Ḥadīth. Whilst the Ahl al-Ḥadīth would engage in the sombre practice of memorising and practising aḥādīth in what was known as mudhākarah, the Ahl al-Ra'y would be engaged in the loud and confrontational practice of munāẓarah (polemical juristic debates)

For example, Ibn Abi'l 'Awām records [pg.108] that once Sufyān ibn 'Uyaynah visited Imām Abū Ḥanīfah whilst he was surrounded by his students, the former asked Imām Abū Ḥanīfah:

ألا تنهاهم عن رفع الصوت في المسجد؟

Imām Abū Ḥanīfah replied:

دعهم فإنهم لا يتفقهون إلا بهذا

At times, the Ahl al-Ra'y would deduce legal strategems (ḥiyal) to create ease in a matter. The Ahl al-Ḥadīth, of course, found this to be repugnant.

In the previous slide, we saw Imām Mālik and Al-Shā'bi's disdain at too many questions, compare this with what Ibrāhīm al-Nakha'ī said about Ḥammād ibn Sulaymān, the teacher of Abū Ḥanīfah. Al-Dhahabī records [Siyar, 5:243]:

قال مغيرة بن مقسم: قلت لإبراهيم: إن حماداً قد جلس يُفتي، قال:

وما يمنعه وقد سألتني عما لم تسألني عن عشره؟.

Similarly, consider the following story from Aḥmad al-Naqīb's [Al-Madhhab al-Ḥanafī]:

قال الإمام أبو حنيفة (رحمه الله): «لقد لزمت حماداً لزوماً ما أعلم أن أحداً لزم أحداً مثل ما لزمته، وكنت أكثر السؤال، فربما تبرّم مني ويقول: يا أبا حنيفة، قد انتفخ جنبي، وضاق صدري»^(٢).

وقال: «لازمته، فوجدت عنده كل ما احتجت إليه، حتى قال لي يوماً: أنزفتني^(٣) يا أبا حنيفة»^(٤).

توفي كهلاً سنة عشرين ومائة^(٥) (رحمه الله رحمة واسعة).

(١) انظر: تاريخ الثقات للعجلي ١/١٣٢، مناقب أبي حنيفة للمكي ص ٤٨، ٥٢، الجواهر المضية للقشري ١/٥٩، ٢/١٥١، مناقب أبي حنيفة للكردي ص ٩٧، الطبقات السنّية للتميمي ٣/١٨٧.

(٢) مناقب أبي حنيفة للمكي ص ٥٣.

(٣) أي: حصلت عليّ كل ما عندي من العلم، من قولهم: نزفت ماء البشّر: إذا نزعته، واستخرجه كلّه، يستعمل لازماً ومتعدّياً.

انظر: المصباح المنير للفيومي (نزف)، القاموس المحيط للفيروز آبادي (نزف).

(٤) مناقب أبي حنيفة للمكي ص ٥٨.

(٥) انظر: تاريخ الثقات للعجلي ١/١٣٢، تهذيب الكمال للمزي ٧/٢٧٨، سير أعلام النبلاء للذهبي ٥/٢٣٦، ٢٣٧، كتاب أعلام الأخيار للكفوي (مخطوط) ٨٠/ب.

- Another concept that the Ahl al-Ḥadīth found quite repulsive about these constant extrapolations is how constantly it would lead to the Ahl al-Ra'y changing their position on masā'il. Melchert writes [pg.12]:

The traditionalists were bothered, too, by Abū Ḥanīfah's willingness to change his position.

- However, Ibn Abi'l 'Awām (d.335 AH) narrates from Muḥammad ibn Shujā':

قلت لعبد الله بن داود الخريبي "تري أن أنظر في قول أبي حنيفة؟" قال "شديد ولكن جالس أهل الورع منهم" فقلت له "إن بعض الناس أخبرني أنه كتب عن أبي حنيفة مسائل كثيرة ثم لقيه بعد فرجع عن كثير منها" قال "لا يهولنك هذا فإن أبا حنيفة كان مطلعاً على الفقه وإنما يرجع عن القول من اتسع علمه"

- This is not to mention that, at times, Abū Ḥanīfah may have done this to develop the minds of his students. A story clearly demonstrates this and shows how Abū Ḥanīfah wanted his students to develop a deeper understanding of the different ways of interpreting the Qur'an and Sunnah. Ibn Abi'l 'Awām (d.335 AH) narrates from Imām Muḥammad (d.189 AH) that he said [Faḍā'il Abī Ḥanīfah, pg.112]:

كان أبو حنيفة قد حمل إلى بغداد فاجتمع أصحابه جميعاً وفيهم أبو يوسف وزفر وأسد بن عمرو وعامة الفقهاء المتقدمين من أصحابه فعملوا مسألة أيدها بالحجاج وتنوقوا في تقويمها وقالوا نسأل أبا حنيفة أول ما يقدم فلما قدم أبو حنيفة كان أول مسألة سئل عنها تلك المسألة فأجابهم بغير ما عندهم فصاحوا به من نواحي الحلقة يا أبا حنيفة! بلدتك الغربية فقال لهم رفقا رفقا! ماذا تقولون؟ قالوا ليس هكذا القول قال بحجة أم بغير حجة؟ قال بل بحجة قال هاتوا! فناظرهم فغلبهم بالحجاج حتى ردهم إلى قوله وأذعنوا أن الخطأ منهم فقال لهم أعرفتم الآن؟ قالوا نعم قال فما تقولون فيمن يزعم أن قولكم هو الصواب وأن هذا القول خطأ؟ قالوا لا يكون ذلك قد صح هذا القول فناظرهم حتى ردهم عن القول فقالوا يا أبا حنيفة! ظلمتنا والصواب كان معنا قال فما تقولون فيمن يزعم أن هذا القول خطأ والأول خطأ والصواب في قول ثالث فقال هذا ما لا يكون قال فاستمعوا واخترع قولاً ثالثاً وناظرهم عليه حتى ردهم إليه فأذعنوا وقالوا يا أبا حنيفة! علمنا قال الصواب هو القول الأول الذي أحببتم به لعله كذا وكذا وهذه المسألة لا تخرج من هذه الثلاثة الأنحاء ولكل منها وجه في الفقه ومذهب وهذا الصواب فخذوه وارفضوا ما سواه

2) They assessed the aḥādīth with a different set of principles to that of the Ahl al-Ḥadīth, these principles were – according to the Ahl al-Ḥadīth – more rationalistic in its nature. The Ahl al-Ra’y paid a greater focus in their criticism on the text of the aḥādīth as their criteria for an authentic ḥadīth was different from the Ahl al-Ḥadīth and included concepts such as only authenticating aḥādīth that fit with the prevalent logic and coherence of law. This was whilst the Ahl al-Ḥadīth would not question the authenticity of any ḥadīth that had an authentic chain of narration as they were not interested in forming a prevalent logic of law. Sh. Sohail Ḥanīf writes [pg.60]:

The law, according to this insight, is assumed to be internally consistent and coherent.

A prime example showing the difference between the two camps is the following narration in Al-Muwatta’ [pg.338 Maknaz]:

أَبِي عَبْدِ الرَّحْمَنِ أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ أَقَادَ مِنَ الْمُنْقَلَةِ بِأَبٍ مَا جَاءَ فِي عَقْلِ
الْأَصَابِعِ وَحَدَّثَنِي يَحْيَى عَنْ مَالِكٍ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ أَنَّهُ قَالَ سَأَلْتُ
سَعِيدَ بْنَ الْمُسَيَّبِ كَمْ فِي إِصْبَعِ الْمَرْأَةِ فَقَالَ عَشْرٌ مِنَ الْإِبِلِ فَقُلْتُ كَمْ فِي إِصْبَعَيْنِ قَالَ
عِشْرُونَ مِنَ الْإِبِلِ فَقُلْتُ كَمْ فِي ثَلَاثِ فَقَالَ ثَلَاثُونَ مِنَ الْإِبِلِ فَقُلْتُ كَمْ فِي أَرْبَعِ قَالَ
عِشْرُونَ مِنَ الْإِبِلِ فَقُلْتُ حِينَ عَظَمَ جُرْحُهَا وَاشْتَدَّتْ مُصِيبَتُهَا نَقَصَ عَقْلُهَا فَقَالَ
سَعِيدٌ أَعْرَاقِي أَنْتَ فَقُلْتُ بَلْ عَالِمٌ مُتَنَبِّتٌ أَوْ جَاهِلٌ مُتَعَلِّمٌ فَقَالَ سَعِيدٌ هِيَ السُّنَّةُ يَا ابْنَ
أَخِي قَالَ مَالِكٌ الْأَمْرُ عِنْدَنَا فِي أَصَابِعِ الْكَفِّ إِذَا قُطِعَتْ فَقَدْ تَمَّ عَقْلُهَا وَذَلِكَ أَنَّ

- In the letter Al-Layth ibn Sa‘d (d.175 AH), he expressed his concern over the ra’y of Al-Rabī‘ah () as recorded in the Tārīkh Ibn Ma‘īn [2:317]:

ثم اختلف الذين كانوا بعدهم ، حضرناهم بالمدينة ، وغيرها ، ورأيتهم يومئذ في
الفتيا؛ ابن شهاب ، ورَبِيعَةَ بن أبي عبد الرَّحْمَان ، رحمة الله عليهما .
فكان من خلاف رَّبِيعَةَ ، تجاوز الله عنه ، لبعض ما مضى ، وحضرت وسمعت
قولك فيه ، وقول ذوي السن من أهل المدينة؛ يَحْيَى بن سَعِيد ، وَعُبَيْد الله بن عُمَرَ ،
وكَثِير بن فَرَّقَد ، وغير كثير ممن هو أسن منه ، حتَّى اضطررت ما كرهت من ذلك إلى
فراق مجلسه ، وذاكرتك أنت وعبد العزيز بن عبد الله ، بعض ما نعيب على رَّبِيعَةَ
من ذلك ، فكتتما موافقين فيما أنكرت ، تکرهان منه ما أكره ، ومع ذلك ، بحمد الله ،
عند رَّبِيعَةَ خير كثير ، وعقل أصيل ، ولسان بليغ ، وفضل مستبين ، وطريقة حسنة في
الإسلام ، ومودة صادقة لإخوانه عامة ، ولنا خاصة ، رحمه الله ، وغفر له ، وجزاه
بأحسن عمله . [١٦٤ / أ]

- You’ll notice this approach of Ahl al-Ma‘ānī and Ahl al-Lafz within your own teachers, and honestly, in all walks of life

- The reasoning behind this difference in approach is that the Ahl al-Ra'y viewed legal rulings as part of an interconnected system of law bound together by corresponding legal meanings. If a narration were to seemingly break this system of law (these legal meanings and general principles), the system of law would be given preference and the narration would be treated as an anomaly despite its narrators being deemed as reliable. It is also why the Ḥanafīs are the most meticulous and careful when deciding the 'illah behind a case as the resultant qiyās must fit with the prevalent 'logic of the law'. Sh. Sohail Hanīf writes [pg.65]:

The emphasis placed on the effective 'illah reveals a great deal of the underpinning philosophy of the Ḥanafī legal project, specifically, the weight given to the prevalent logic of the legal system.'

- Dr. Hassaan Shahawy writes [pg.15]:

More recently, Ahmed El Shamsy has characterised early Iraqi law as a system defined by analogical structuralism. As El Shamsy puts it, “Hanafi structuralism...operated on a strong presumption of consistency in the law, which generally did not admit the existence of individual exceptions.”³⁶ Sohail Hanif argues the same in a recent article defending the existence of an identifiable Kufan school of law. Hanif writes:

The lines of legal reasoning attributed to Abū Ḥanīfa point to the essential premise of *raʿy*-based jurisprudence, at least in Kufa, namely, that the law is inherently sensible. In other words, the law is not a haphazard collection of statements that are arrived at through the primary, revelatory sources; rather, the primary sources point to the larger legal system that the juristic community is devising, and this larger legal system makes sense to the human mind; its parts fit together to form a harmonious whole. Each individual jurist, therefore, strives to develop a system of rules that complement other established rules.³⁷

This structuralism is obvious in Kufan dialectical exchange with the use of rhetorical challenges such as “You have abandoned your own opinion (*qad tarakta qawlak!*)”,³⁸ or “Why should this case not be like the first case (*lima lā yakūn hādha ka-l-bāb al-awwal?*)”,³⁹ or “Why, when elsewhere you claim that (*lima wa qad zaʿamta anna...*)?”.⁴⁰

- These legal meanings/general principles of Sharī‘ah/الأقيسة العامة are arrived at after performing استقراء of the ruling on a particular set of Masā’il. استقراء provides definitive knowledge (قطعي). Dr. Anas Sarmīnī writes [pg.60]:

واتفق الجميع (الفلاسفة والأصوليون) على أن دلالة الاستقراء التام قطعية

Due to this difference in approach, the Ahl al-Ḥadīth felt that the Ahl al-Ra’y were callously rejecting authentic aḥādīth. Al-Awzā‘ī (d.157 AH) said [*Ta’wīl Mukhtalaf al-Ḥadīth*, pg.62]:

لا ننقم على أبي حنيفة أنه رأى كلنا يرى ولكن ننقم عليه أنه يجيئه الحديث عن النبي فيخالفه إلى غيره

When Imām al-Shāfi‘ī came, he restricted قياس to الخاص. This created the impression in the minds of later scholars that Abū Ḥanīfah was rejecting ḥadīth due to قياس, whereas this is in fact a back-projection. Abū Ḥanīfah did not reject the ḥadīth due to قياس الخاص, but rather, قياس العام also known as legal meanings/general principles of Sharī‘ah which are established through multiple aḥādīth and Qur’ānic verses.

Accordingly, the ḥanafīs in particular, paid attention to the text (matan) of the narration a lot more than the muḥaddithūn. Shaykh Zāhid al-Kawtharī writes [*Maqālāt*, pg.55]:

والواقع أن المحدثين اقتصروا في الغالب على نقد الحديث من جهة السنة فلا يعنون بالاضطراب في متن الحديث قدر عنايتهم باضطراب السند والنقد الذي يسمّيه أصحاب غولدزيهير نقدا داخليا يقوم به أهل الفقه والاستنباط والفريقان تقاسما وجوه نقد الحديث

• Dr. Hamzah Bakrī writes [*Naqd al-Matan fī Ghayr Aḥādīth al-Aḥkām*, pg.250]:

الحنفية يتوسعون في نقد المتون في أحاديث الأحكام أكثر من غيرهم

- The ḥanafī approach has a great focus on the text of the narration, this makes sense considering their consideration of the logic of the law
- Of course, this does mean that the ḥanafī approach can become a door to modernist abuse. We have touched upon this in other courses and in our deep dive into ḥanafī uṣūl al-ḥadīth

- The issue with the modernists is that they will use the ḥanafī approach in looking at the text (matan) of a narration for narrations outside of the parameters of fiqh. Also, when the ḥanafīs look at the text (matan) of a narration, it is in order to determine whether عمل will be made upon it or not, not whether it is صحيح or not. The modernists conflate between the two, they look at the text (matan) of a narration and determine that it is not صحيح
- For example, Shaykh Muḥammad al-Ghazālī, the Egyptian, looks at the text of the ḥadīth wherein Mūsā ‘alayh al-salām took out the eye of the angel of death, he felt it contradicts the principles of Sharī‘ah and used this to deny it being صحيح. The fuqahā’ did not do this as stated by Dr. Moataz al-Khaṭīb (though critiqued by Dr. Bakrī), they would assess the text of a ḥadīth related to LEGAL RULINGS and then would conclude that it is not worthy of being acted upon (عمل). This is not to mention that the basis of the critique of the modernists is affected by modernity and secularism, which was not the case with the fuqahā’

3) Much like Imām Mālik (d.179 AH), the Ahl al-Ra'y also assessed aḥādīth based upon communal practice of the ṣaḥābah and tābi'ūn in Kūfah. This was whilst the Ahl al-Ḥadīth considered authority to lie only in the aḥādīth of the Prophet ṣallallahu 'alayhi wasallam and that communal practice should play no role in one's assessment of aḥādīth. Ahmed el Shamsy writes [The Canonization, pg.47]:

Ḥanafī thought already early on took a speculative turn into the hypothetical abstractions of *ra'y*, it, too, retained a regional specificity, rooted in the Kufan legal tradition, that precisely mirrored the Medina-centrism of Mālik. Specifically, the Ḥanafīs continued to anchor their normative positions by linking them to the authoritative precedent of prominent Kufa-based Companions of the Prophet, particularly 'Alī b. Abī Ṭālib and Ibn Mas'ūd.¹⁵ This localized focus is evident, for example, in the two “books of traditions” (*kitāb al-āthār*) authored by Abū Yūsuf and al-Shaybānī, respectively: beyond a handful of prophetic Hadith, these list exclusively reports from Kufan Companions as well as later Iraqi jurists, such as al-Nakha'ī (d. 96/715), Ḥammād (d. 120/737), and Abū Ḥanīfa.¹⁶

Again, this idea of communal practice is connected to what Dr. Anas Sarmīnī has discussed about the methodology of the Ahl al-Ra'y preferring to base their methodology upon the highest epistemological foundation. A communal practice indicated to them that the ruling was indisputably established (قطعي الثبوت) and, therefore, a singular narration could not refute it.

Ibrāhīm al-Nakha‘ī (d.96 AH) states [*Al-Jāmi‘ li Masā’il al-Mudawwanah*, 3:117]:

لو رأيت الصحابة رضي الله عنهم يتوضؤون إلى الكوعين لتوضأت كذلك وأنا أقرؤها إلى المرفقين وذلك لأنهم لا يهتمون في ترك السنن وهم أرباب العلم وأحرص خلق الله على اتباع رسوله ولا يظن ذلك بهم أحد إلا ذو ريبة في دينه

Similarly, on the issue of performing 2 rak‘ah ṣalāh before Maghrib, Ibrāhīm al-Nakha‘ī said [*Ṭabqāt Ibn Sa‘d*, 6:9]

هبط الكوفة ثلاث مائة من أصحاب الشجرة وسبعون من أهل بدر لا نعلم أحدا منهم قصر ولا صلى الركعتين اللتين قبل المغرب

One can clearly see how Al-Nakha‘ī gives preference to communal practice and how it gives him epistemological confidence of the ruling being indisputably established (قطعي الثبوت)

- Significant factors point to Ibrāhīm al-Nakha‘ī as being one of the first scholars to apply some or all of the methodologies of the Ahl al-Ra’y described above. His student Ḥammād ibn Sulaymān (d.120 AH) and his student Abū Ḥanīfah (d.150 AH) firmly applied all of the methodologies of the Ahl al-Ra’y described above. Accordingly, Kūfah became synonymous with the term Ahl al-Ra’y. Al-Dhahabī narrates [4:522] from Ismā‘īl ibn Abī Khālid:

كان الشعبي وإبراهيم وأبو الضحى يجتمعون في المسجد يتذاكرون الحديث فإذا جاءهم شيء ليس فيه عندهم رواية رموا إبراهيم بأبصارهم

- Al-Dhahabī records from Al-A‘mash [4:528]:

ما رأيت أحدا أورد لحديث لم يسمعه من إبراهيم

- Ibn ‘Abd al-Barr (d.463 AH) has written a book titled Jāmi‘ Bayān Akdh al-‘Ilm:



- Ibn ‘Abd al-Barr (d.463 AH) records from Ḥammād ibn Abī Sulaymān [Jāmi‘, 2:96]:

ما رأيت أحضر قياساً من إبراهيم

- Ibn ‘Abd al-Barr (d.463 AH) records from Ibrāhīm al-Nakha‘ī [Jāmi‘, 2:112]:

ما كل شيء نسأل عنه نحفظه ولكننا نعرف الشيء بالشيء ونقيس الشيء بالشيء...إني لأسمع الحديث وأقيس عليه مائة شيء

- It should be noted that the differences in approach between the Ahl al-Ra’y and Ahl al-Ḥadīth were nothing to do with the Ahl al-Ra’y not having many aḥādīth and the Ahl al-Ḥadīth having many, rather, it was all to do with a difference in approach. Dr. Haytham ibn Fahad al-Rūmī writes [Fiqh Tārīkh al-Fiqh, pg.151]:

أن التفسير الأقرب للواقع والأبعد عن التكلف هو أن اختلاف منهج مدرستي أهل الحديث وأهل الرأي، هو مظهر لمنهجين أساسيين في التعامل مع النصوص التشريعية عمومًا، فلما تخلو منهما بيئة إنسانية متحضرة: منهج شديد التمسك بظاهر النص، ومنهج يعطي وزنًا أكبر للمقاصد العامة التي بني عليها النص، والحكمة المتوخاة منه^(١). ومما يضعف هذا التفسير كذلك أن أصحابه يكتفون بإطلاقه دون أن يستقرئوا من مسائل الخلاف ما يشهد له، وربما اقتنصوا مسألة أو مسائل يمكن الاستشهاد بأضعافها في نقض هذا التفسير ودحضه، فأئني لهذا التفسير أن يشرح -على سبيل المثال- اختلاف أهل الرأي وأهل الحديث في دفع القيمة في زكاة الفطر، أو اختلافهم في ردّ قيمة اللبن في مسألة المُصرّاة، أو غير ذلك من رؤوس مسائل الخلاف بين الفريقين؟^(٢).

ب- ومما يقرب من المثال السابق ذلك التفسير الذي يرد الخلاف بين مدرسة الكوفة ومدرسة المدينة إلى اختلاف بيئة العراق التي هي أرض حضارات قديمة، عن بيئة المدينة التي لم تكن تختلف كثيرًا عما كان عليه الحال في عهد الرسول ﷺ، بالإضافة إلى قلة الحديث في العراق وانتشار الوضع مما ألجأ فقهاء العراق إلى استعمال الرأي، بخلاف ما كان عليه الحال في الحجاز التي هي معدن حديث النبي ﷺ. وهذا التفسير مشتهر جدًا في المداخل الفقهية المعاصرة، وهو تفسير ضعيف ترد عليه إشكالات كبيرة، منها أن الكوفة كانت من أسعد أمصار المسلمين حظًا بأصحاب رسول الله ﷺ، قال إبراهيم (ت ٩٦هـ): (هبط الكوفة ثلاثمائة من أصحاب الشجرة وسبعون من أهل بدر)^(١)، ومنها أن من فقهاء المدينة من كان يُعدُّ من أهل الرأي، ومن أهل العراق من يُعدُّون في أهل الحديث، ومنها أن بلاد الشام ومصر كانت بلاد حضارات قديمة كذلك، فلم يختص بذلك فقهاء العراق؟، ولهذا رأينا الشيخ مصطفى الزرقا (ت ١٤٢٠هـ) يقول بعد ذكره لذلك التفسير: (هذا ما كنت قررته فعلاً في كتابي «المدخل الفقهي العام» جارت فيه من سبقني. لكن يبدو للمتأمل أن هذا التفسير لنشوء المدرستين وتوطنهما الجغرافي بادئ الأمر لا يتفق مع عدة حقائق تاريخية وفقهية مشهورة)، ثم ذكر بعض ما تقدم وغيره، ثم قال: (ويبدو لنا

Imām al-Shāfi‘ī as the Most Important Ahl al-Hadīth Scholar

- Imām al-Shāfi‘ī was born in 150 AH and in Gazzah
- He became an orphan at a young age and his mother took him to Makkah
- In Makkah, he studied under Muslim ibn Khālid al-Zanjī. When he reached approximately 14 years of age, he travelled to Madīnah and studied under Imām Mālik (d.179 AH)
- Imām al-Bayhaqī (d.458 AH) records [Manāqib, pg.102]:

فانصرف . فقال لما: قولى له : إن معى كتاب والى مكة فى مهمم . فدخلت ، ثم خرجت وفى يدها كرسى ، فوضعتة ، فإذا بمالك رجل شيخ طوال ، قد خرج وعليه الهابة وهو متطيلس . فدفع إليه الوالى الكتاب ، فبلغ إلى قوله : إن هذا رجل شريف من أمره وحاله ، فجدته وتفعله وتصنع . فرمى بالكتاب من يده ، وقال : يا سبحان الله ، قد صار علم رسول الله ، صلى الله عليه وسلم ، يؤخذ بالوسائل ! قال : فرأيت الوالى — وهو يهابه أن يكلمه — فتقدمت إليه ، فقلت : أصلحك الله ، إني رجل مطلبي ، من حالى وقصتى . فلما أن سمع كلامى نظر إلى ساعة ، وكانت لمالك فراسة ، فقال لى : ما اسمك ؟ فقلت : محمد . قال : يا محمد ، اتقى الله ، واجتنب المعاصى ؛ فإنه سيكون لك شأن من الشأن . فقلت : نعم وكرامة . فقال : إذا كان غداً تجي ، ويحيى من يقرأ لك الموطأ . فقلت : إني أقرأ ظاهراً . قال : فندوت إليه وابتدأت ، فكلاماً تهيب مالكا وأردت أن أقطع ، أعجبه حسن قراءتى وإعرابى ، يقول : يا فتى زد . حتى قرأته عليه فى أيام يسيرة . ثم أقمت بالمدينة إلى أن توفى مالكا بن أنس ، رضى الله عنه^(١) . ثم ذكر خروجه إلى اليمن .

سمعت الشافعى ، يقول : خرجت من مكة ، فلزمت هذيلاً فى البادية ، أتلم كلامها وأخذ بلغمها^(٢) ، وكانت أفصح العرب ، فأقت معهم مدة أرجل برحيلهم ، وأنزل بزولهم ، فلما أن رجعت إلى مكة جعلت أنشد الأشعار ، وأذكر أيام الناس ، فمر بى رجل من الزهريين^(٣) ، فقال لى : يا أبا عبد الله ، عز على أن لا تكون^(٤) فى العلم والفقہ ، هذه النصاحة والبلاغة . قلت : من بقى ممن يقصد ؟ فقال : مالك بن أنس ، سيد المسلمين . قال : فوقع ذلك فى قلبى ، وعدت إلى الموطأ فاستعرتة من رجل بمكة وحفظته ، ثم دخلت على والى مكة ، فأخذت كتابه إلى والى المدينة ، وإلى مالك بن أنس . فقدمت المدينة ، فباعت الكتاب ، فلما قرأ والى المدينة الكتاب ، قال : يا بنى^(٥) ، إن مشيى من جوف المدينة إلى جوف مكة حافياً راجلاً أهون على من المشى إلى باب مالك ، فإني لست أرى النل حتى أقف على بابه . فقلت : إن رأى الأمير أن يوجه إليه ليحضر ، فقال : هييات ، ليت أفى إن ركبت أنا ومن معى وأصابنا تراب العقيق يقضى حاجتنا . فوعدته العصر ، وقصدنا ، فقدم رجل وقَرَخ الباب ، فخرجت إلينا جارية سوداء ، فقال لها الأمير : قولى لمولائك إننى بالباب . فدخلت فأبطأت ثم خرجت ، فقالت : إن مولاي يقول : إن كانت مسألة فارفعها إلى فى رقعة حتى يخرج إليك الجواب ، وإن كان للحديث فقد عرفت يوم المجلس^(٥)

- He then returned to Makkah and studied under Sufyān ibn ‘Uyaynah. After spending some time with Sufyān ibn ‘Uyaynah, he travelled to Yemen. However, whilst in Yemen, he was falsely accused of joining a rebellion against the Abbasids. Thus, he was arrested and brought to Iraq in 184 AH. When brought into the court, Imām Muḥammad (d.189 AH), the judge of Raqqah at the time, spoke to Hārūn al-Rashīd to allow a concession for Imām al-Shāfi‘ī as he was a man of knowledge and had not joined the rebellion.

Ibn al-‘Ammād al-Ḥanbalī quips after mentioning this story [[Shadharāt al-Dhahab, 2:412](#)]:

فيجب على كل شافعي إلى يوم القيامة أن يعرف هذا لمحمد بن الحسن ويدعوا له بالمغفرة

- Imām al-Shāfi‘ī then began to study under Imām Muḥammad. However, he was not merely a student who would accept everything that his teacher had to offer, rather, he would debate and challenge Imām Muḥammad on various issues.
- Of course, having recently studied under the late Imām Mālik, Imām al-Shāfi‘ī was essentially a Mālikī debating on behalf of the developing Mālikī Madhhab. Having already studied under Imām Mālik many years prior to Imām al-Shāfi‘ī, Imām Muḥammad (d.189 AH) was aware of the positions of his former teacher Imā. Mālik and hence was able to respond to the challenges of Imām al-Shāfi‘ī. Ahmed el-Shamsy writes [[pg.46](#)]:

Both al-Shāfi‘ī and al-Shaybānī had studied with Mālik in Medina. While al-Shaybānī nonetheless saw himself squarely within the Iraqi tradition of his primary teacher Abū Ḥanīfa, al-Shāfi‘ī arrived in Iraq as a disciple of Mālik.

- Imām Muḥammad had written a book in refutation of the positions of his teacher, Imām Mālik, titled Al-Ḥujjaj ‘Alā Ahl al-Madīnah (الحجة على أهل المدينة). Accordingly, when Imām al-Shāfi‘ī (d.204 AH) came to study under Imām Muḥammad, Imām Muḥammad knew that Imām al-Shāfi‘ī was a disciple of Mālik

- Imām Muḥammad had written a book in refutation of the positions of his teacher, Imām Mālik, titled *Al-Ḥujjah ‘Alā Ahl al-Madīnah* (الحجة على أهل المدينة). Accordingly, when Imām al-Shāfi‘ī (d.204 AH) came to study under Imām Muḥammad, Imām Muḥammad knew that Imām al-Shāfi‘ī follows the positions of Imām Mālik, hence he asked him [Ibn Abī Ḥātim, *Manāqib al-Shāfi‘ī*, pg.161]:

وضعت كتابا على أهل المدينة تنظر فيه؟

- Imām al-Shāfi‘ī would say [Tārīkh Baghdād, 2:567]:

أمنّ الناس علي في الفقه محمّد بن الحسن

- These interesting series of debates and discussions on fiqh between Imām Muḥammad and his student Imām al-Shāfi‘ī led to Imām al-Shāfi‘ī developing his ideas further and questioning some of the principles he had understood from Imām Mālik
- While he did not fully agree with Imām Muḥammad on many of his positions either, the ‘Irāqī debates’ had certainly led the 34-year old Imām al-Shāfi‘ī to abandon some of his Mālikī learning and develop his own system of idea which he would later express in his book *Al-Risālah* (الرسالة)

- Having learnt from the Ahl al-Ḥadīth, represented through Imām Mālik, and the Ahl al-Ra’y, represented through Imām Muḥammad, Imām al-Shāfi‘ī penned down in *Al-Risālah* (الرسالة) what he felt to be a more accurate approach and methodology towards understanding and extracting rulings of Sharī‘ah. In this book, he essentially promoted the Qur’ān and mainly the aḥādīth as primary sources, making the status of qiyās and communal practice as subsidiary to these primary sources and giving normativity to the singular aḥādīth (khabar wāḥid). This, Ahmed el-Shamsy refers to as the canonization of Islāmic law. He writes [pg.49]:

Nonetheless, al-Shāfi‘ī’s debates with the Iraqi Ḥanafīs, as documented in the *Umm*, reveal that the claim of the universal normativity of Hadith, wielded by al-Shāfi‘ī as the primary weapon in his debates with the Ḥanafīs, represented a serious challenge to Ḥanafī doctrine.

An illustrative example of this challenge can be found in an important section of the *Umm* where al-Shāfi‘ī spends a full sixty-eight pages recounting a debate on the seemingly minor question of whether a solitary witness statement accompanied by an oath suffices as evidence in certain types of court cases.²³ The Ḥanafīs claim that a Quranic verse that prescribes two male witnesses or two females and one male for recording a debt (2:282) contradicts a prophetic Hadith according to which one witness statement supported by an oath constitutes decisive evidence in court. The Ḥanafīs therefore reject the Hadith and the practice that it permits. Al-Shāfi‘ī’s response consists of listing similar cases in which

the Ḥanafīs do permit Hadith reports to modify apparently unequivocal Quranic injunctions. One such case is that of the Quranic verses 4:22–24, which prohibit certain types of marriage but declare everything beyond those to be permissible. However, both al-Shāfi‘ī and his Ḥanafī opponent in the debate consider it prohibited for a man to marry a woman as well as her aunt, even though such a scenario is not explicitly mentioned in the Quranic verses, and both justify their positions by reference to a prophetic Hadith.²⁴ Al-Shāfi‘ī thus accuses the Ḥanafīs of inconsistency. The Ḥanafī scholar replies that the two cases are marked by a significant difference: in the latter case, the Hadith report is supported by the fact that people agree upon it, which renders it normative. Al-Shāfi‘ī retorts that this consensus simply represents the consensus on following a Hadith with a sound chain of transmission, since God has obliged humankind to follow His Prophet – an obligation, al-Shāfi‘ī pointedly remarks, that the Ḥanafīs seem to have the confidence to ignore.

This debate shows that for al-Shāfi‘ī the authenticity of a Hadith report, as vouchsafed by a sound chain of transmission, was sufficient to establish its normative force.²⁵

- Whilst communal practice had been promoted by the Ahl al-Ra'y and scholars of Madīnah as epistemologically stronger than singular ḥadīth, Al-Shāfi'ī noticed, having travelled to both Madīnah and 'Irāq that the two groups still disagreed on masā'il despite both relying on communal practice. This proved to Al-Shāfi'ī that communal practice is not epistemologically strong, rather, he felt it was speculative
- Similarly, Al-Shāfi'ī also ruled out the existence of الأقيسة العامة (general principles/habit of law such as legal meanings) and restricted القياس الخاص to قياس
- Imām al-Shāfi'ī was firmly from the Ahl al-Ḥadīth. Al-Shāfi'ī disagreed and attempted to disprove the 3 cornerstones of the Ahl al-Ra'y that they considered from an epistemological perspective to be indisputable - قطعي: (1) communal practice (2) general principles/legal meanings (3) Language; following the apparent meaning of the Qur'ān and giving preference to it
- A classical example of Imām al-Shāfi'ī limiting the role of reason and general principles/legal meanings is his rejection of the subjectivity found within Istihṣān

- In *Al-Risālah*, Al-Shāfi'ī gave the Ahl al-Ḥadīth an option that involved compromising on allowing some form of rationalism into their methodology but such that it would not deviate from the sanad-based system. This legal approach in interpretation (hermeneutic) would allow the Ahl al-Ḥadīth to take on the Ahl al-Ra'y and challenge their system whilst maintaining the sand-based system as the focus of their approach. Aḥmed el-Shamsy writes [pg.195-7]:

THE TRADITIONALISTS

A crucial step in the eventual creation of a common methodological basis shared by all Sunni scholars was the gradual convergence of the respective positions of the traditionalists (*ahl al-ḥadīth*) and the rationalists (*ahl al-ra'y*) over the course of the third/ninth century. This development led to the acceptance of juristic reasoning by the former and the integration of the Hadith sciences into jurisprudence by the latter.⁴ In this rapprochement, al-Shāfi'ī's legal hermeneutic, mediated by his students, played a central role. This section sketches the influence of al-Shāfi'ī's ideas on traditionalist scholarship in the third/ninth century; the next investigates their reception among the *ra'y*-minded Hanafis.

The primary reason for the appeal of al-Shāfi'ī's theory among the *ahl al-ḥadīth* was most probably its potential for resolving an acute dilemma that confronted traditionalist scholars at this time. This was the seemingly unavoidable choice between, on the one hand, being hopelessly outgunned in debates with the *ahl al-ra'y*, who – as seen in Chapter 1 – could draw on a sophisticated arsenal of argumentative strategies; or, on the other hand, adopting the latter's legal reasoning but thereby transgressing against their own principles by, as the traditionalists saw it, ascribing fallible human opinions to God and His Prophet.

Abū Ja'far did in fact experience such a dream, the report shows that third-/ninth-century Shāfi'ī scholars claimed that they could offer a kind of legal reasoning that was fully compatible with the Sunna and thus free of the intellectual speculation that was causing the mushrooming phenomenon of conflicting personal juristic opinions.

Did traditionalist scholars accept this claim? To a significant extent, it seems that they did. As mentioned in the preceding chapter, the ultimate Hadith scholar Aḥmad b. Ḥanbal is known to have studied legal theory with al-Shāfi'ī; the latter, in turn, relied on Aḥmad's expertise in the evaluation of Hadith. Statements attributed to Aḥmad indicate both his deep suspicions about *ra'y* and his approval, even if reluctant, of al-Shāfi'ī as a jurist. When one of Aḥmad's students⁶ sought his advice regarding with whom to study *ra'y*, Aḥmad's reply was "With no one." When the student insisted on an answer, he conceded: "If you must study *ra'y*, then study the *ra'y* of al-Shāfi'ī."⁷ According to another report, Aḥmad explicitly acknowledged the indebtedness of the traditionalists to al-Shāfi'ī: "Our napes, as *aṣḥāb al-ḥadīth*, were in the hands of Abū Ḥanīfa and not to be wrested away until we saw al-Shāfi'ī."⁸ Numerous other reports attest to Aḥmad's endorsement of al-Shāfi'ī: he recruited the prominent traditionalist al-Ḥumaydī to al-Shāfi'ī's circle,⁹ he sent a copy of al-Shāfi'ī's *Risāla* to Ishāq b. Rāhawayh (d. 238/853),¹⁰ and he is said to have called al-Shāfi'ī a mercy for the entire Muslim community.¹¹

These phenomena demonstrate that a significant group of prominent late third-/ninth-century traditionalists adopted important positions championed by al-Shāfi'ī regarding Hadith, namely, the affirmation of the symbiosis of Hadith and jurisprudence in terms of a separation of labor and of a common terminology, as well as the actual use of legal

reasoning, in particular, the application of hermeneutic techniques to reconcile contradictory sources. As a result, the fields of Hadith and law were no longer perceived by the traditionalists as advancing rival claims to knowledge, but rather as two distinct and complementary disciplines, of which an individual scholar could engage in either or both. It is, of course, impossible to prove that al-Shāfi'ī represented the sole source of these propositions, but the fact that many of the first traditionalists to accept them are known to have studied with al-Shāfi'ī and his students strongly suggests such a route of influence.

- It was in *Al-Risālah* that Al-Shāfi'ī gave arguably the first ever definition of an 'authentic' (ṣaḥīḥ) chain of narration and produced an organised approach towards the prophetic reports and how to extract rulings from the prophetic reports, he minimalised the role given to legal meanings, communal practice and legal precedent. He felt priority belonged solely to the Prophetic report as attained through a chain of narration.

- Ibn Abī Ḥātim records that Al-Ḥumaydī (d.488 AH), the teacher of Al-Bukhārī (d.256 AH) and author of Musnad al-Ḥumaydī said [Ādāb al-Shāfi'ī, pg.107]:

كنا نريد أن نردّ على أصحاب الرأي فلم نحسن كيف نرد عليهم حتى جاء الشافعي ففتح لنا

- Ibn Abī Ḥātim records from Imām Aḥmad [Ādāb al-Shāfi'ī, pg.118]:

كانت أفقيتنا - أصحاب الحديث - في أيدي أصحاب أبي حنيفة ما تنزع

- Al-Nawawī records [Muqaddimah of Al-Majmū', pg.92]:

قال مُحَمَّدُ بْنُ الْحَسَنِ رَحِمَهُ اللهُ: «إِنْ تَكَلَّمَ أَصْحَابُ الْحَدِيثِ يَوْمًا مَا^(١) فَبِلِسَانِ الشَّافِعِيِّ». يَعْنِي لِمَا وَضَعَ مِنْ كُتُبِهِ^(٢).

وقال الْحَسَنُ بْنُ مُحَمَّدٍ الزَّعْفَرَانِيُّ: «كَانَ أَصْحَابُ الْحَدِيثِ رُقُودًا، فَأَيْقَظُهُمُ الشَّافِعِيُّ فَيَتَّقِظُوا»^(٣).

وقال أَحْمَدُ بْنُ حَنْبَلٍ رَحِمَهُ اللهُ: «مَا أَحَدٌ مَسَّ بِيَدِهِ مِخْبَرَةً وَلَا قَلَمًا؛ إِلَّا وَلِلشَّافِعِيِّ فِي رَقَبَتِهِ مِنَّةٌ»^(٤).

(١) قوله: «ما». من (ذ).

(٢) يُنظر: «تاريخ دمشق» (٣٢٨:٥١). وقوله: «يعني لما وضعه من كتبه» هو من كلام ابن عساكر.

(٣) يُنظر: «مناقب الشافعي» للبيهقي (١: ٢٢٥).

(٤) يُنظر: المصدر السابق.

Dr. Haytham ibn Fahad writes [Fiqh Tārīkh al-Fiqh, pg.141]:

٧- ومن فوائد دراسة تاريخ الفقه معرفة أقدار الفقهاء ومراتبهم وآثارهم. وأمر أئمة الفقهاء في الجملة أشهر من أن يخفى، والقصد هنا التنبيه إلى ملاحظة علاقاتهم وطبقاتهم، وأثر بعضهم في بعض، ونقل بعضهم عن بعض، وتأثير ذلك في معرفة معادن الفقه منهم، والمبرز المخترع ممن هو دونه. فإذا رأينا -على سبيل التمثيل- ثناء الإمام أحمد وأقرانه البغداديين الكبير على الإمام الشافعي، كقول أحمد: (كان الفقه قفلاً على أهله حتى فتحه الله بالشافعي)، وقوله: (هذا الذي ترون، كلُّه أو عامته من الشافعي. ما بتُّ منذ أربعين سنة -أو قال ثلاثين سنة- إلا وأنا أدعو الله للشافعي وأستغفر له)، وقوله ليحيى بن معين (ت ٢٣٣هـ) لما أنكر عليه مشيه إلى جانب بغلة الشافعي: (من أراد الفقه فليشم ذنب هذه البغلة)، وقوله لإسحاق (ت ٢٣٨هـ) فيه: (تعال حتى أريك رجلاً لم تر عينك مثله)، وقوله: (إن فاتك عقل هذا الفتى أخاف ألا تجده إلى يوم القيامة، ما رأيت أحداً أفقه في كتاب الله تعالى من هذا القرشي)، وقول الزعفراني (ت ٢٦٠هـ): (ما حمل أحد محبرة إلا وللشافعي عليه منّة)، وقول الكرايسي (ت ٢٤٨هـ): (ما رأيت مثل الشافعي)^(١)، وغير ذلك وأضعافه، إذا رأينا كلَّ هذا علمنا الأثر الكبير الذي أحدثه قدوم الشافعي بغداد. وأولئك القوم كانوا مشغولين بالحديث، وكان أصحاب أبي حنيفة (ت ١٥٠هـ) يظهرون عليهم بالفقه والقياس. فلما قدم الشافعي جاءهم بأمر لم

يعهدوه، من حسن التفقه في القرآن والسنة، ونقاش أصحاب أبي حنيفة والرد على بعض أصولهم، حتى قال أحمد: (كانت أوقيتنا أصحاب الحديث في أيدي أصحاب أبي حنيفة ما تنزع، حتى رأينا الشافعي، وكان أفقه الناس في كتاب الله وسنة رسول الله ﷺ)، وقال الكرايسي: (قدم علينا الشافعي رضي الله عنه ونحن ثيران، فما مرت علينا سنة إلا وكلُّ واحد منا يحتاج إلى زاوية يجالس فيها)، وقال الزعفراني: (كان أصحاب الحديث رقوداً حتى أيقظهم الشافعي)، وقال إبراهيم الحربي (ت ٢٨٥هـ): (قدم الشافعي بغداد وفي المسجد الجامع الغربي عشرون حلقة لأصحاب الرأي، فلما كان في الجمعة الثانية لم يثبت منها إلا ثلاث حلقات أو أربع حلقات)^(١).

The Coming Together of Ahl al-Ra'y and Ahl al-Ḥadīth

- After 300 AH, the differences between the Ahl al-Ra'y and Ahl al-Ḥadīth decreased as both developed into madhhāhib (schools of thought) through the efforts of their followers. Accordingly, all the madhhāhib were more involved in their usage of ḥadīth (Ahl al-Ḥadīth approach) as well as extraction of mas'āl (Ahl al-Ra'y approach)
- At the forefront of this synthesis for the ḥanafīs was Imām al-Ṭaḥḥāwī (d.321 AH). Ahmed el Shamsy argues that Al-Ṭaḥḥāwī himself was influenced by Imām al-Shāfi'ī (d.204 AH), his uncle being the famous Al-Muzanī (d.264 AH). He writes

[pg.205-7]:

^{lego} Ṭaḥḥāwī's theory created and justified a space for Hadith in Ḥanafī legal methodology. However, it did not yet engage with the vast body of Hadith that was being assembled by Hadith scholars. The earliest extant evidence of a Ḥanafī scholar embarking on this task is found in the writings of Abū Ja'far al-Ṭaḥḥāwī (d. 321/933).⁶⁰ Al-Ṭaḥḥāwī's work displays a strikingly close intellectual relationship with Shāfi'ism and features extensive reliance on Hadith, in contrast to the hitherto typical style of Ḥanafī jurisprudence.

Al-Ṭaḥḥāwī was a product of the intermingling of both Shāfi'ī and Ḥanafī elements. He was the nephew of al-Muzanī and received his initial legal training from al-Shāfi'ī's students, in particular his uncle as well as al-Rabī' and Muḥammad b. 'Abd al-Ḥakam.⁶¹ Later, however, he claimed to have observed how frequently his uncle consulted the works of Abū Ḥanīfa's student al-Shaybānī and consequently developed an interest in Ḥanafism that eventually led him to join that school.⁶² Al-Ṭaḥḥāwī's extant work nonetheless demonstrates that in spite of his overall adherence to Ḥanafī legal positions, he adopted al-Shāfi'ī's justification for the systematic incorporation of Hadith into jurisprudence, employed al-Shāfi'ī's hermeneutic terminology, and concurred with many of al-Shāfi'ī's positions on legal theory.

Al-Ṭaḥḥāwī's indebtedness to al-Shāfi'ī can be seen clearly in the introduction to his work on the legal implications of Quranic verses, *Aḥkām al-Qur'ān* – a title that, possibly coincidentally, was shared by a now-lost treatise by al-Shāfi'ī.⁶³ In the introduction, al-Ṭaḥḥāwī provides a rationale for the integral role of Hadith in jurisprudence via an analysis of the Quranic distinction between clear (*muḥkamāt*) and ambiguous (*mutashābihāt*) verses. This section (like Ibn Abī Ḥatīm's work, discussed previously) mirrors closely al-Shāfi'ī's discussion of the issue of *bayān* in the *Risāla* – though al-Ṭaḥḥāwī at no point acknowledges al-Shāfi'ī by name. Clear verses, argues al-Ṭaḥḥāwī, are epistemologically self-sufficient

and can thus be understood by anyone; al-Shāfi'ī had called this feature *ghāyat al-bayān*, "total clarity."⁶⁴ The meanings of ambiguous verses, in contrast, are not evident and require further elucidation. The role of the prophetic Sunna, then, is to explain the import of such verses (*tibyānan li-mā anzala fī kitābihi mutashābihan*).⁶⁵ This function of the Sunna as clarification (*bayān*) of the Quran was, as seen in Chapter 3, a central feature of al-Shāfi'ī's legal theory. Indeed, the way in which al-Ṭaḥḥāwī conceptualizes revelation as a whole closely parallels al-Shāfi'ī's understanding of revelation as a communicative act taking place through the medium of human language, "clarification for those addressed by it" (*bayān li-man khūṭiba bih*).⁶⁶ Using very similar wording, al-Ṭaḥḥāwī says of revelation that "we are addressed in order to receive clarification" (*khūṭibnā li-yubayyan lanā*).⁶⁷

Al-Ṭaḥḥāwī goes on to insist that the prophetic Sunna is legally binding and that this obligation is rooted in the Quran itself.⁶⁸ Both this argument and the specific evidence offered in its support are found in the work of al-Shāfi'ī, who had made the same claim supported by the Quranic verse "What the Messenger brings you, accept it."⁶⁹ It is noteworthy that on both of the two occasions when al-Shāfi'ī makes this point, he does so in the context of a debate with an unnamed Ḥanafī interlocutor.⁷⁰ Al-Ṭaḥḥāwī thus adopts and endorses an argument originally deployed against the Ḥanafīs, without referring to its Shāfi'ī and anti-Ḥanafī origins. Further, al-Ṭaḥḥāwī appears to have accepted not only al-Shāfi'ī's specific argument but also one of the broader positions in whose defense al-Shāfi'ī originally used it, namely, the rejection of juridical preference (*istiḥsān*). According to Ibn Ḥazm (d. 456/1064), al-Ṭaḥḥāwī explicitly denied the validity of *istiḥsān* despite its centrality in Ḥanafī legal thought, thereby siding with al-Shāfi'ī against his fellow Ḥanafīs.⁷¹

Al-Ṭaḥḥāwī was confident in using al-Shāfi'ī's legal-theoretical terminology even when clearly disagreeing with him on the question of whether the Quran could be abrogated by the Sunna, which al-Shāfi'ī considered impossible.⁷² As part of the evidence for his position, al-Shāfi'ī considered a Quranic verse ("Say, 'It is not for me to alter it of my own accord'")⁷³ and argued that a change in the law regarding bequests and inheritance during the Prophet's lifetime was due to the abrogation of one Quranic verse by another verse, rather than by a prophetic tradition.⁷⁴ Al-Ṭaḥḥāwī refuted each of these positions, introducing al-Shāfi'ī's arguments by means of a hypothetical objection (*fa-in qāla qā'il*, "if someone were to say ...")⁷⁵ without mentioning al-Shāfi'ī, instead only admitting that "some people (*min al-nās*) differed with us on this."⁷⁶ In turn, Muḥammad b. Naṣr al-Marwazī, a student of al-Rabī', reproduced the debate on the question of whether the Quran can be abrogated only by the Quran, depicting two camps, one of al-Shāfi'ī and his followers and another, anonymous one.⁷⁷ The specific cases and arguments he discussed are the same as in the *Risāla* and in al-Ṭaḥḥāwī's introduction.

Al-Ṭaḥḥāwī's adoption of al-Shāfi'ī's legal-theoretical arguments regarding the role and importance of Hadith is reflected in his works on positive law, which employ Hadith and the associated traditionist protocols extensively in the service of Ḥanafī doctrine. In contrast to his legal-theoretical discussions, in this context al-Ṭaḥḥāwī openly names al-Shāfi'ī wherever he mentions the latter's positions.⁷⁸ As the earliest extant full-scale integration of Hadith within Ḥanafī law, al-Ṭaḥḥāwī's work signals the beginning of this methodological shift in Ḥanafī thought. It had a direct and long-lasting impact on Ḥanafism as a whole: al-Ṭaḥḥāwī's works on jurisprudence were copied and commented upon by subsequent generations of Ḥanafīs, and many of these commentaries survive, indicating that they became part of the mainstream Ḥanafī canon. Al-Ṭaḥḥāwī's incorporation of Hadith into Ḥanafī jurisprudence thus represents a significant milestone in the eventual convergence of the traditionalist and rationalist movements.

The Approach of the Fuqahā (طريقة الفقهاء) & the Approach of the Mutakallimīn (طريقة المتكلمين)

The Approach of the Fuqahā

• It is also known as طريقة الحنفية and was based upon the idea of تفريغ الأصول من الفروع

• Ibn Khaldūn writes [Muqaddimah, 2:201]:
وكان أوَّلُ من كتبَ فيه الشَّافعي رضي الله عنه، أملى فيه رسالته^(١) المشهورة تكلم فيها في الأوامر والنَّواهي والبيان والخبر والنَّسخ وحكم العلة المنصوصة من القياس. ثم كتب فقهاء الحنفية فيه، وحققوا تلك القواعد، وأوسعوا القولَ فيها. وكتب المتكلمون أيضاً كذلك. إلا أن كتابة الفقهاء فيها أمس بالفقه وأليق بالفروع لكثرة الأمثلة منها والشواهد وبناء المسائل فيها على النكت الفقهية. والمتكلمون يجردون صور تلك المسائل عن الفقه، ويميلون إلى الاستدلال العقلي ما أمكن لأنه غالب فنوهم ومقتضى طريقتهم. فكان لفقهاء الحنفية فيها اليد الطولى من الغوص على النكت الفقهية والتقاط هذه القوانين من مسائل الفقه ما أمكن. وجاء أبو زيد الدبؤسي من أئمتهم فكتب في القياس بأوسع من جميعهم، وتمم الأبحاث والشروط التي يحتاج إليها فيه، وكملت صناعة أصول الفقه بكماله وتهذيب مسائله وتمهدت قواعده. وعني النَّاسُ بطريقة المتكلمين فيه.

The Approach of the Mutakallimūn

• It is also known as طريقة الشافعية and طريقة الجمهور; either because Al-Shāfi'ī was supposedly the first to write in this approach or because most of the writers in Uṣūl al-Fiqh who had this approach were Shāfi'īs

• The Tarīqah al-Mutakallimīn was known for its reliance on علم المنطق and علم الكلام may be referred to as, in the words of Dr. Ḥasanāt [pg.39]:

العلم الذي يقندر معه على اثبات العقائد الدينية مثل وجود الله بإيراد الحجج عليها ورد الشبه عنها باستعمال البراهين العقلية

• Dr. Ḥasanāt explains why Uṣūl al-Fiqh uses علم الكلام by stating [pg.42]:

إن علم الكلام قد أثبت براءة في الاستدلال والحجاج وطريقة الاستدلال والحجاج تعتمد على مقدمات خاصة تؤخذ من علم الكلام إذ علم الأصول علم استدلاي على الأحكام فلا ضرر ولا عيب في اعتماده على القواعد الكلامية في الاستدلال

• As for علم المنطق, it is: علم يعرف به الفكر الصحيح من الفاسد, thus explaining why the scholars of Uṣūl from Tarīqah al-Mutakallimīn used in this field

The Three Pillars of Ḥanafī Legal Theory

- Shaykh Sohail Hanif has written a book titled [\[A Theory of Early Classical Hanafism\]](#):

A Theory of Early Classical Ḥanafism:
Authority, Rationality and Tradition in the
Hidāyah of Burhān al-Dīn ‘Alī ibn Abī
Bakr al-Marghīnānī (d. 593/1197)



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A thesis submitted for the degree of
DPhil in Oriental Studies
Michaelmas 2017

- Dr. Anas Sarmīnī has written a book titled [Al-Qaṭʿī wa'l-Zannī Bayna Ahl al-Ra'y wa Ahl al-Ḥadīth]:



• Both have stated that Ḥanafī Uṣūl al-Fiqh is grounded in three pillars, i.e., the Ḥanafī's 'do fiqh' by approaching the Qur'ān, Sunnah and Ijmā' with three pillars in mind:

- The early juristic community's actions (السنن العملية/العمل المتوارث) and views
- The habit of the law (الأقيسة العامة/القواعد الكلية)
- Language (ظواهر القرآن)

The early juristic community's actions (السنن العملية/العمل المتوارث) and views

The *mashhūr* is a report transmitted by a limited number of narrators in the first generation but then becomes widespread in the second and subsequent generations. The mark of its being widespread is that scholars accepted and practised it. The *mashhūr* report is treated as a reliable report, and, for all purposes, it carries a similar weight to the *mutawātir*, in that both are able to modify Qur'anic injunctions. We saw above that only texts on the same epistemological level can modify each other; otherwise, the stronger negates the weaker. Thus, for the purpose of modifying the Qur'anic text, the *mashhūr* is similar in epistemological weighting to the Qur'an. However, its weight comes from scholarly acceptance and practice.¹⁴⁵

Disconnectedness in form is the *mursal* report. In non-Ḥanafī *uṣūl* works, we are told that the *mursal* is where the chain is intact except at the end, where the name of the Companion is omitted; such a report is considered weak.¹⁵⁵ Ḥanafī *uṣūl* authors, on the other hand, widen this definition and give more weight to such reports. They state that the *mursal* report is accepted from the first three generations, meaning that if they omit the chain that connects them to the Prophet, their reports may still be accepted. After the first three generations, we are told that there is a disagreement amongst Ḥanafī jurists. The best opinion on this, according to al-Sarakhsī, is that of al-Jaṣṣāṣ, that the *mursal* of those after the third generation is accepted only if they are known to relate from reliable narrators. We see here that the connectedness of the chain is not a priority for our jurists, who make up for the uncertainty this creates from the aforementioned emphasis on the practice and acceptance of early jurists.

The topic of the *mashhūr* is our first indicator of the almost-sacred stature awarded to early jurists: Where a report corresponds to what they put into practice, it is given highest epistemic stature, regardless of its chain and the quality of its narrators.

The habit of the law (الأقيسة العامة/القواعد الكلية)

When assessing the quality of *ḥadīth* narrators, the theory is equally unique.¹⁴⁸ Al-Sarakhsī tells us that narrators fit into two broad categories: known (*ma'rūf*) and unknown (*majhūl*). Known narrators are themselves of two types. The first are those “who were known for *fiqh* and sound opinion in *ijtihād*”. Their reports are decisive in that they cause preponderant knowledge of their truth (*mūjibah lil-‘ilm alladhī huwa ghālib al-ra’y*). Therefore, they must be followed, regardless of whether their reports agree with *qiyās* or oppose it. If they agree with *qiyās* (i.e. their content is rationally inferrable from a knowledge of the law), they strengthen this *qiyās*; and if they oppose it, the *qiyās* is left and the report followed. This group of narrators includes the Rightly-Guided Caliphs, the ‘Abd Allāhs – Ibn Mas‘ūd (d. 32/652-3), Ibn ‘Umar (d. 73/692-3), Ibn ‘Abbās (d. 68/687-8)¹⁴⁹ – Zayd ibn Thābit (d. 45/665-6), Mu‘adh ibn Jabal (d. 17/638-9 or 18/639-40), Abū Mūsā al-Ash‘arī (d. 44/665) and ‘Ā’ishah (d. 58/678). The second type of known narrators are those “who were known for uprightness (*‘adālah*), precision (*ḥusn al-ḍabt*) and memory, but were little by way of *fiqh* (*lākinnaḥu qalīl al-ḥiqh*)”. These include Abū Hurayrah (d. 58/774-775 or 59/775-776) (the most prolific *ḥadīth* narrator) and Anas ibn Mālik (d. 93/711-2). Al-Sarakhsī supports this lower classification of Abū Hurayrah with reports from ‘Umar ibn al-Khaṭṭāb (d. 23/644) and Ibrāhīm al-Nakha‘ī (d. 96/714) (the leading Kufan

jurist) that show their caution in accepting his reports. Al-Sarakhsī tells us that – out of closely following the approach of the *salaf* (the learned of the early Muslim community) to such reports – the Ḥanafīs say: If the reports of these narrators agree with *qiyās*, they are practised; and if they contradict *qiyās*, they are followed if the *ummah* accepted them; otherwise, the sacredly sanctioned *qiyās* (*al-qiyās al-ṣaḥīḥ shar‘an*) is given preference if there is no possible analogy that supports them (*fī mā yansaddu bāb al-ra’y fīhi*).¹⁵⁰ He explains that this is not in any way to demean these Companions, but, rather, because reports are often transmitted by meaning and not the exact wording of the Prophet. Only someone known for *fiqh* can be trusted to transmit the complete intended meaning with all its legal implications. Someone not known for *fiqh* might fall short in this, and this possibility justifies caution.

Language (ظواهر القرآن)

In the absence of juristic practice, the Qur'an plays a key role in assessing the correctness of a report.

مِثْلَ مَا لَا يَجِبُ الْأَحْمَدُ

تأليف

مؤسسة البحث العلمي

الشيخ سعيد أحمد الباقلي توري

١٣٦١-١٤٤١ هـ

مكتبة آية الله العظمى

مكتبة آية الله العظمى

عند مؤسسة الأبحاث العلمية

مكتبة آية الله العظمى

مكتبة آية الله العظمى

The Stages of the Development of Ḥanafī Uṣūl al-Fiqh

- 1) Birth Stage (مرحلة النشوء): from 17 AH when ʿUmar RA sent ʿAbdullah ibn Masʿūd to Kūfah until 300 AH, the key features of this stage were:
 - The impact of ʿAbdullah ibn Masʿūd
 - The impact of Ibrāhīm al-Nakhaʿī
 - The impact of Imām Abū Ḥanīfah and his two students, Abū Yūsuf and Muḥammad
 - The impact of the students of Imām Abū Yūsuf and Imām Muḥammad
- 2) Codification Stage (مرحلة التدوين): from 300 AH until 500 AH, this was the golden age of the development of Ḥanafī Uṣūl al-Fiqh as it led to the development of:
 - The Madrasah of ʿIrāq in Uṣūl – founded by Abuʿl Ḥasan al-Karkhī (d.340 AH)
 - The Madrasah of Samarqand – founded by Abū Manṣūr al-Māturidī (d.333 AH)
 - The role of Abū Zayd al-Dabūsī (d.430 AH) in combining the two Madrasah
 - The roles of Shams al-Aʿimmah al-Sarakhsī (d.483 AH) and Fakhr al-Islām al-Bazdawī (d.482 AH)
- 3) Standardization Stage (مرحلة الاستقرار): from 500 AH onwards, the key features of this stage were:
 - The acceptance of the approach of Shams al-Aʿimmah al-Sarakhsī (d.483 AH) and Fakhr al-Islām al-Bazdawī (d.482 AH)
 - The appearance of the Ṭarīqah of combination (طريقة الجمع) through the work of Ibn al-Sāʿātī (d.694 AH)

Birth Stage – The role of Imām Abū Ḥanīfah and his students Imām Abū Yūsuf and Imām Muḥammad

- Some basic Uṣūl have been recorded from Abū Ḥanīfah
- With that being said, no book in Uṣūl was written by any of these A’immah, unlike Imām al-Shāfi‘ī who explained his Uṣūl in many places such as Al-Risālah
- All of them however gave many rulings on a number of furū‘
- Although there are not a lot of statements on Uṣūl al-Fiqh from the students of Imām Muḥammad and Imām Abū Yūsuf, there is one student of Imām Muḥammad who played an integral role in detemining the Uṣūl al-Fiqh that the Ḥanafīs later came to rely upon; the ‘Irāqī scholar ‘Īsā ibn Abān (d.221 AH)
- Al-Ṣaymarī relates □ an interesting story of how he became a student of Imām Muḥammad which perhaps sheds light on why he played an integral role in Ḥanafī Uṣūl al-Fiqh:

اخبرنا عبد الله بن محمد الشاهد قال ثنا القاضي مكرم قال ثنا احمد بن محمد بن مغلث قال سمعت محمد بن سباعة قال: كان عيسى بن أبان حسن الوجه وكان يصلي معنا وكنت ادعوه إلى أن يأتي محمد بن الحسن فيقول: هؤلاء قوم يخالفون الحديث! وكان عيسى حسن الحفظ للحديث، فصلى معنا يوماً الصبح فكان يوم مجلس محمد. فلم أفارقه حتى جلس في المجلس. فلما فرغ محمد أدنيتة إليه وقلت له: هذا ابن أخيك أبان بن صدقة الكاتب ومعه ذكاء ومعرفة بالحديث وأنا أدعوه إليك فيأبى ويقول إنا نخالف الحديث! فأقبل عليه وقال له: يا بني! ما الذي رأيتنا نخالفه من الحديث؟ لا تشهد علينا حتى نسمع منا! فسأله يومئذ عن خمسة وعشرين باباً من الحديث، فجعل محمد بن الحسن يبيحها ويحرمها بما فيها من المنسوخ ويأتي بالشواهد والدلائل، فالتفت إليّ بعدما خرجنا فقال: كان بيني وبين النور ستر فارتفع عني، ما ظننت ان في ملك الله مثل هذا الرجل يظهره للناس! ولزم محمد ابن الحسن لزوماً شديداً حتى تفقه.

- After this incident, he went on to narrate *الحجة على أهل المدينة* from Imām Muḥammad, his narration is the sole narration that exists of the book today
- He also wrote arguably the first books ever in ḥanafī uṣūl al-fiqh titled *الحجج الصغير* and *الحجج الكبير*. The story behind why he wrote them has been recorded by Al-Ṣaymarī [Manāqib, pg.141] and Al-Dhahabī [Tārīkh al-Islām, 16:312]:

كان دفعه إليه، فكان أول من دخل إليه بعد ذلك يحيى بن أكثم فأخبره المأمون الخبر، فقال له: ادفعه إليّ وأنا أكفيك يا أمير المؤمنين! فدفعه إليه، فأقام فيه دهرًا طويلًا، كلما سأله المأمون قال: لم أفرغ، فقال له المأمون: إن هذا الأمر طويل فما توجب لك الحكمة هذا عندي لو أقمت الحجة، لأن مخالفتك إنما بين خلافك والحجة عليك في كتاب واحد، ولعلك انت لا تحتج عليه في مائة كتاب! فبلغ ذلك عيسى بن أبان ولم يكن يدخل على المأمون قبل ذلك. فوضع كتاب *الحجة الصغير* فابتدأ فيه بوجوه الأخبار، وكيف نقل، وما يجب قبوله منها، وما يجب رده، وما يجب علينا، وما إذا سمعنا المتضاد منها، وكشف الأحوال في ذلك، ثم وضع لتلك الأحاديث أبوابًا وذكر في كل باب حجة أبي حنيفة ومذهبه وما له فيه من الأخبار وما له فيه من القياس، حتى استقصى ذلك استقصاء حسنًا، وعمل في كتابه حتى صار إلى يد المأمون، فلما قرأه قال: هذا جواب القوم اللازم لهم! ثم أنشأ يقول:

حسدوا الفتى إذ لم ينالوا سعيه فالقوم اعداء له وخصومه
كضرائر الحسناء قلن لوجهها حسداً وبغياً إنه لدميم
ثم سأل عن واضع ذلك الكتاب وعن أحواله، فأخبر به، فأمر به منذ يومئذ، فصار يحضر مع الفقهاء.

وإن كان الرشيد على صواب فينبغي لك ان تنفي عنك أصحاب الخطأ! فأخذ المأمون الكتاب وقال لعيسى: لعل للقوم حجة وأنا سائلهم عن ذلك! فكان أول من دخل عليه إسماعيل بن حماد فأخبر المأمون الخبر، فقال إسماعيل: انا أكفيك هذا الكتاب يا أمير المؤمنين وأوضح لك الحجة، فقال له المأمون، فشأنك بها! ودفع إليه الكتاب، فأقام عنده مدة ثم جاءه به، وقرأه المأمون فإذا هو ضرب من السب، فلم يحفل به، وقال: ليس هذا من جواب القوم في شيء، ثم أخذ منه الكتاب، فدخل إليه بشر بن غياث، فأخبره الخبر، فقال بشر: أنا أكفيك يا أمير المؤمنين! فأخذه ثم جاء بعد ذلك بكتاب فقال: هذا جوابه، فقرأه المأمون فإذا فيه دفع قبول خبر الواحد، فقال له المأمون: ليس هذا من جواب القوم في شيء، إن أصحابك يحتاجون به في بعض مسألهم ويصدرون كتبهم بخبر الواحد، فإن كان خبر الواحد مما يجوز العمل به في شيء جاز العمل به في أمثال ذلك الشيء، وإن كان لا يجوز العمل به في شيء فلم وضعوه في كتبهم؟! ثم أخذ منه الكتاب الذي

أخبرنا عبد الله بن محمد قال أنبأ ابو بكر الدامغاني الفقيه قال أنبأ الطحاوي قال ثنا أبو خازم قال ثنا عبد الرحمن بن نائل قال: كان عيسى بن هارون الهاشمي ترب المأمون، وكان سمع الحديث معه ومع الأمين لما كان هارون أشخص الناس إليهما من البلدان حتى يسمعا^(٢) منهم، قال: فجمع عيسى بن هارون هذا أحاديث مقدار كتاب فوضعه بين يدي المأمون فقال له: أصلح الله أمير المؤمنين! هذه أحاديث سمعتها معك من المشايخ الذين كان الرشيد يختارهم لك، فقد صارت غاشية مجلسك الذين يخالفون هذه الأحاديث، منهم إسماعيل بن حماد وبشر بن الوليد وبشر بن غياث ومحمد بن سبابة ويحيى بن أكثم - وذكر معهم جماعة من أمثالهم - فان كان ما هؤلاء عليه هو الحق فقد كان الرشيد فيما [كان] يختار لك على خطأ!

(١) ص ١٣٢.

(٢) في الأصل «حتى يسمعا» خطأ.

١٤٧

- In *الحجج الصغير* and *الحجج الكبير*, Imām al-Kawtharī states that he quotes uṣūl from Imām Muḥammad directly. He writes [Husn al-Taḳādī,]

Dr. Khaznah writes [Taḳawwur, pg.125]:

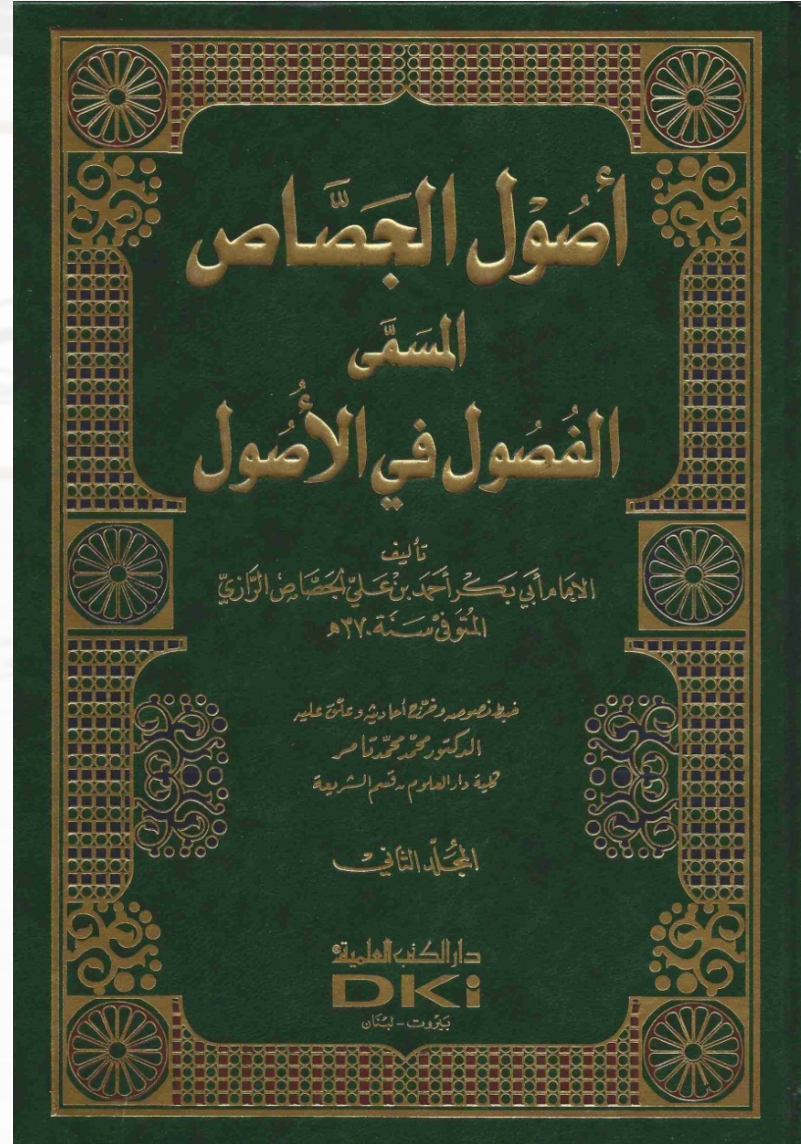
إن ما ينقله ابن أبان عن شيخه محمد بن الحسن لا يخرج عن ثلاثة أمور: (١) إما عبارات ينقلها عنه أو (٢) معاني كلامه استوعبها وأثبتها بألفاظ من عنده أو (٣) ما يضيفه ويستنبطه من كلام شيخه أو غيره من أئمة المذهب

- He also wrote another book titled كتاب في الرد على بشر المريسي والشافعي في شروط قبول الأخبار
- He is also the sole 'surviving' narrator of Imām Muḥammad's polemical book الحجة على أهل المدينة
- These 3 books of 'Isā ibn Abān have not reached us, but they have been preserved by Abū Bakar al-Jaṣṣāṣ in his book الفصول في الأصول, the earliest book in uṣūl al-fiqh in any school of thought after Al-Risālah
- Isā ibn Abān himself was influenced by the Mu'tazilī *creed* (not entirely the uṣūl of the Mu'tazilah in 'Ilm al-Kalām as that had not yet fully developed into the realm of uṣūl) and was said to hold the view of the createdness of the Qur'ān, and therefore, it is noted that near the end of the Birth stage (around 200 - 300 AH), ḥanafī uṣūl al-fiqh began to be slightly influenced by the Mu'tazilah in creed
- Two other scholars after 'Isā ibn Abān (d.221 AH) that continued to derive further uṣūl from the statements of the A'immah were Abū Khāzim (d.292 AH) and Abū Sa'īd al-Bardha'ī (d.317 AH), both of whom were the most important ḥanafī scholars of their time, the latter being the most prominent teacher of the scholar who became the Shaykh of the Madrasah of 'Irāq; Abu'l Ḥasan al-Karkhī

Codification Stage - The Role of Al-Karkhī (d.3 AH) → Al-Jaṣṣāṣ (d.370 AH) → Al-Dabūsī (d.430 AH)

- The original founder of the Madrasah of ʿIrāq was ʿĪsā ibn Abān (d.221 AH), but it was Al-Karkhī who further codified these uṣūl.
- He is famously considered the Shaykh of the Madrasah of ʿIrāq in Uṣūl and the most important ḥanafī scholar in that period as the madhhab officially became a school of thought through his efforts
- The key feature of the Madrasah of ʿIrāq was to extract uṣūl using the furūʿ (masāʾil) of the Aʾimmah
- Al-Karkhī was known as a leading muʿtazilī scholar in Baghdad, but it is important to stress that he was loyal to the ḥanafī tradition and maintained the concept of focusing on the furūʿ to extract the uṣūl. This would mean that his creedal views related to iʿtizāl would not play a great role in his extraction of uṣūl for the ḥanafī madhhab

- His protégé Abū Bakr al-Jaṣṣāṣ (d.370 AH) studied fiqh under him and wrote the first ever book in uṣūl al-fiqh after *Al-Risālah* titled **الفصول في الأصول**



- In this book, he gathered many of the uṣūlī views of his teacher Al-Karkhī and ‘Īsā ibn Abān
- Despite him having some creedal views that were mu‘tazilī, this had little impact on the uṣūl as the focus was on the furū‘ of the a‘immah of the madhhab

Murteza Bedir writes [\[The Early Development, pg.13\]](#):

It is the contention of this study that the prevalent Ḥanafī *uṣūl* tradition, up to the six Century of the *Hijra*, preserved a distinctive character, which can be characterised, on the one hand, by its insistence on keeping the science of *uṣūl al-fiqh* as an independent endeavour as regards to *kalām*, and on the other hand, by its excessive obsession with the substantive law (*furū‘ al-fiqh*), in that virtually every principle of *uṣūl* has been put to the test of Ḥanafī *corpus juris*, with a view to reaching a legal system comprised of consistent and coherent *uṣūl* (legal theory) and *furū‘* (practical jurisprudence). This tradition, as far as we know, began to emerge as a literary genre with Jaṣṣāṣ in Baghdad and was later brought to Transoxania, the stronghold of the Ḥanafī school. There it was remoulded by the likes of Abū Zayd al-Dabūsī into a new shape, which was then popularised by Sarakhsī and Pazdawī, the latter of whom finally left his indubitable print on it. From now on I will refer to this *uṣūl* movement as the dominant Ḥanafī *uṣūl* tradition, or simply the juristic approach.

- Al-Dabūsī, who was from Samarqand travelled to ‘Irāq, having already studied the approach of the Madrasah of Samarqand. He now took from the scholars of ‘Irāq including some of the students of Abū Bakr al-Jaṣṣāṣ (d.370 AH)

- Accordingly, when he now wrote his book **تقويم الأدلة**, he combined between the Madrasah of 'Irāq of Al-Karkhī and the Madrasah of Samarqand of Al-Māturidī

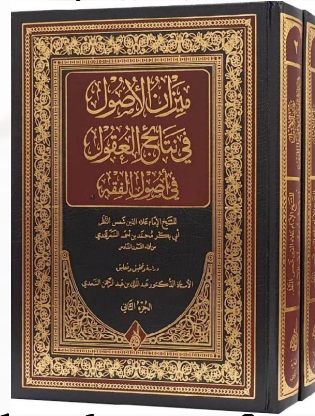


The Madrasah of Samarqand

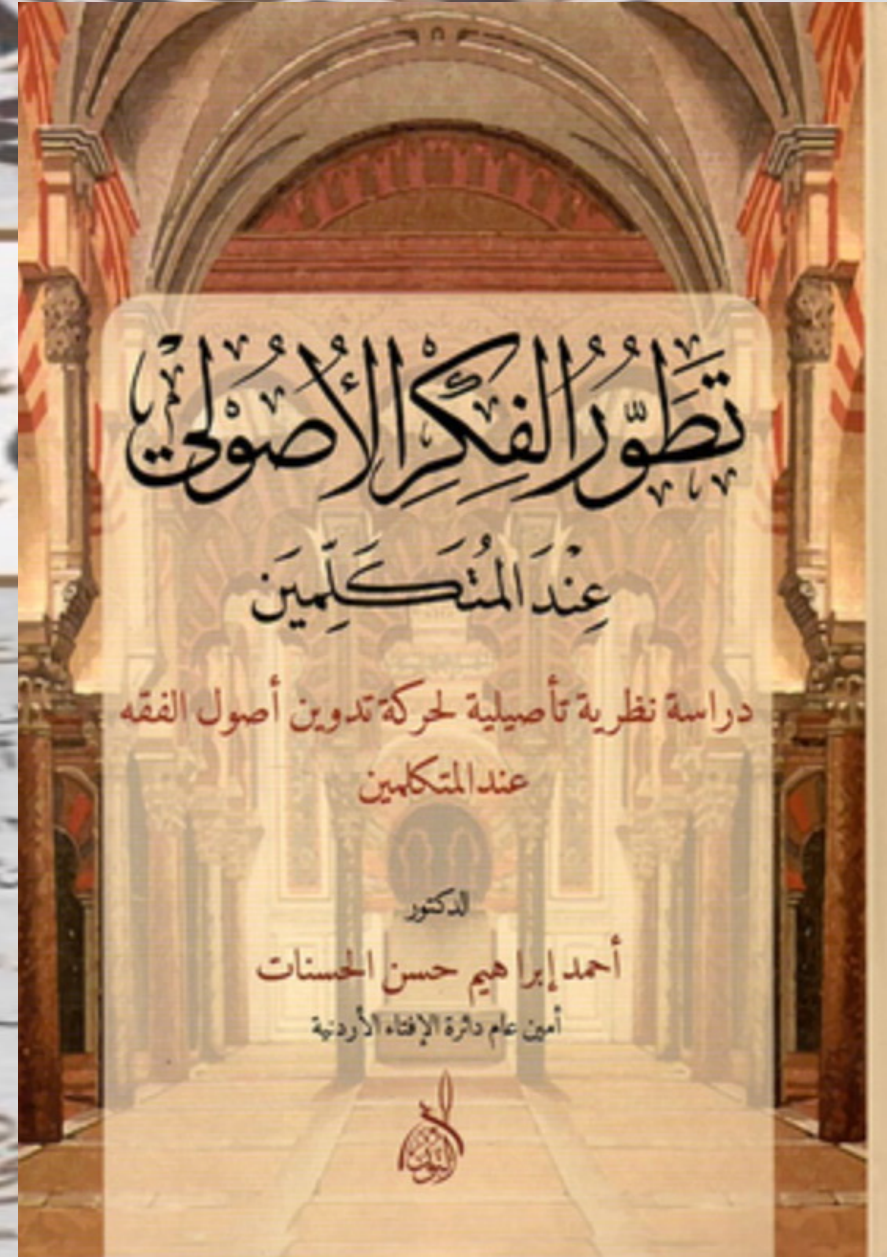
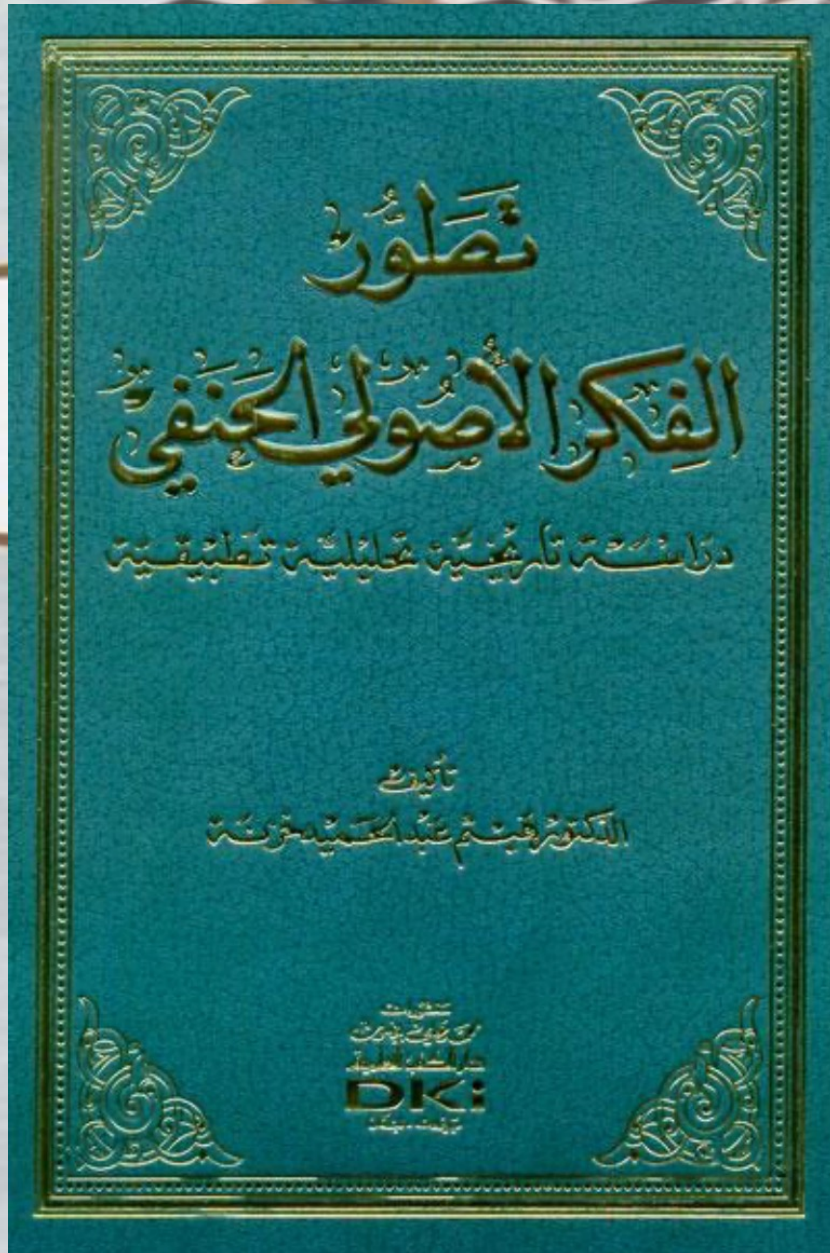
- The founder of this school was Abū Mansūr al-Māturidī (d.333 AH) and his students (مشايخ سمرقند)
- Al-Māturidī himself wrote كتاب مأخذ الشرائع and كتاب الجدل
- However, although we see in the works of Al-Dabūsī (), Al-Sarakhsī () and Al-Bazdawī () indications to there being another Madrasah other than the Madrasah of ‘Irāq, the school did not become popular except much later through the works of ‘Alā al-Dīn al-Samarqandī (d.539 AH) and Al-Lāmishī (d. ca early 6th century)
- After these two scholars, quoting the approach of the Madrasah Samarqand became a common feature in Uṣūl books such as كشف الأسرار

The Key Features of Madrasah Samarqand

- They would not present as much furū‘ as they did not consider the furū‘ to be the basis for extracting uṣūl, this is similar to the Ṭarīqah al-Mutakallimīn
- Usage of Māturidī Kalām in making uṣūl
- Usage of ‘Ilm al-Mantīq to properly define terminological words (اصطلاحات)



Dr. Khaznah vs. Dr Hasanat



- Dr. Khaznah states that the Madrasah Samarqand preceded the Ṭarīqah al-Mutakallimīn. He also states that the Mu‘tazilah from the Ṭarīqah al-Mutakallimīn had learnt from the scholars of the Madrasah al-‘Irāq of the Ḥanafīs. He then concludes [pg.163]:

وبعد ذكر هذين الأمرين أخلص إلى نتيجة مفادها أن الحنفية – العراقيين والسمرقنديين – كانوا سادة على الأصول بلا منازع في القرن الثالث حتى منتصف الخامس أي إلى حين ظهور إمام الحرمين الجويني والغزالي

- Dr. Hasanat responds to this by stating that Imām al-Shāfi‘ī preceded the Madrasah Samarqand, or it could be claimed that the Madrasah Samarqand are a form of Ṭarīqah al-Mutakallimīn [pg.53]:

الإمام الشافعي هو واضع طريقة المتكلمين... وبذلك يرد على هيثم خزنة حيث ادعى أن طريقة المتكلمين إنما ظهرت في القرن الرابع وأنها تنسب نشأتها إلى القاضي عبد الجبار مع أن خزنة قد ناقض نفسه عندما ألمح أن طريقة المتكلمين إنما قامت متأثرة بمدرسة السمرقنديين الحنفية وسلم بوجود مصنفات للإمام الماتريدي وشيوخه على هذه الطريقة ومعلوم أن الإمام الماتريدي قد سبق القاضي ومن ذكرهم خزنة بقرن من الزمان على الأقل

The Role of Al-Sarakhsī (d.483 AH)

- Muḥammad ibn Aḥmad ibn Abī Sahal al-Sarakhsī was considered a leading scholar, originally born in Khurāsān, but later moved to Bukhārā to study under Shams al-A'imma al-Ḥalwānī, serving to maintain Al-Ḥalwānī's legacy in Bukhārā
- He was jailed at the bottom of a pit for approximately 15 years due to some advice that he gave to the king at the time. Ml 'Abd al-Ḥayy al-Lacknawī writes []:
وقد شاع أنه أُملي "المبسوط" من غير مراجعة شيء من الكتب وله "كتاب في أصول الفقه" و "شرح السير الكبير" أملاهما وهو في الحب محبوس بسبب كلمة نصح بها الأمراء وكان تلامذته يجتمعون على أعلا الحب يكتبون فلما وصل إلى باب الشروط أطلق من الحب فخرج إلى فرغانة فأكرمه الأمير حسن فوصل إليه الطلبة فأكلمه
- He dictated three books from the pit; Sharḥ al-Jāmi' al-Ṣaghīr, Al-Mabsūṭ, Uṣūl al-Sarakhsī and also a portion of Sharḥ al-Siyar al-Kabīr
- He passed away in 483 AH, but many have preferred 488 AH

- His scholarly lineage is as follows:

Imām Muḥammad ibn
al-Ḥasan

Abū Ḥafs al-Kabīr

Abū Ḥafs al-Ṣaghīr

‘Abdullah ibn Muḥammad al-
Ḥārithī

Abū ‘Alī al-Nasafī

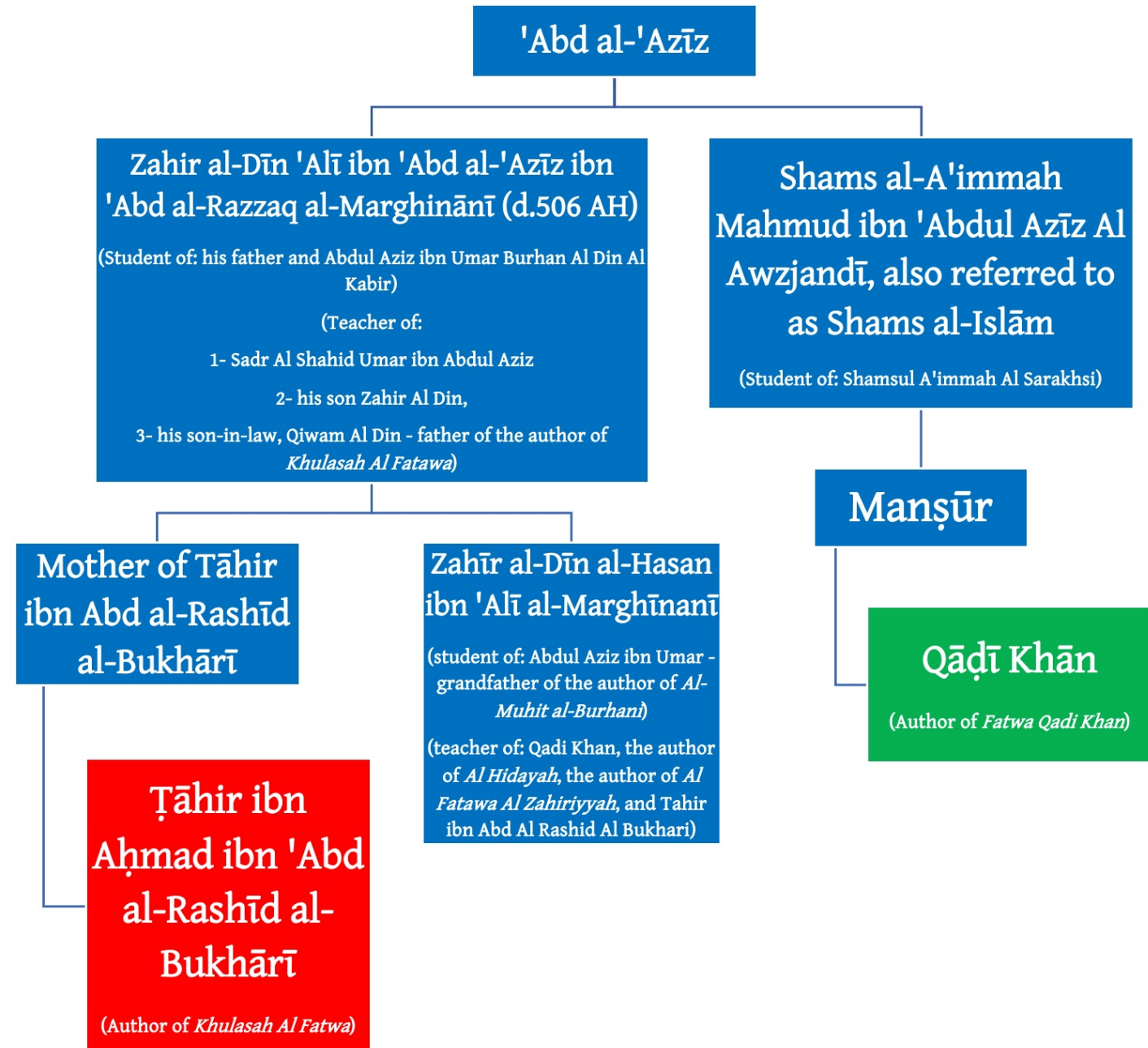
Shams al-A‘immah al-
Ḥalwānī

Shams al-A‘immah
al-Sarakhsī

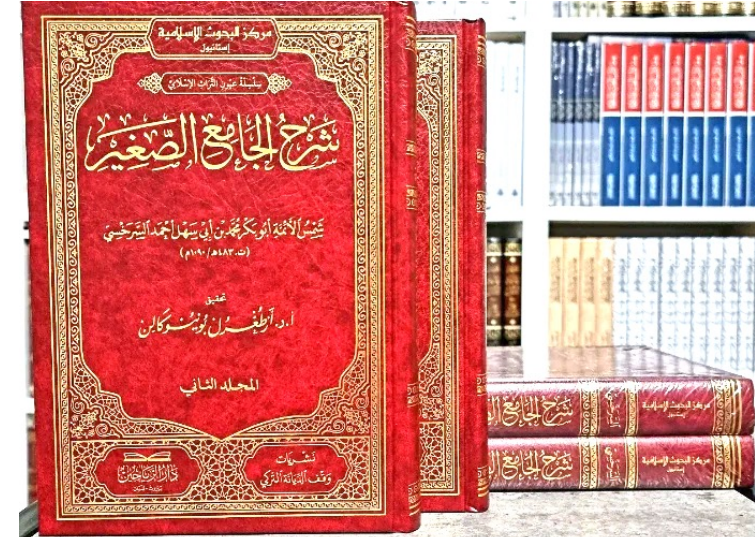
- The Impact of Al-Sarakhsī – Al-Ḥalwānī:
- Note: this is a family lineage



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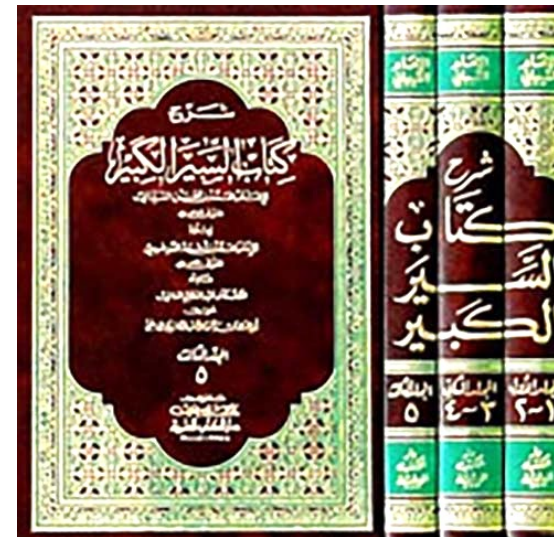
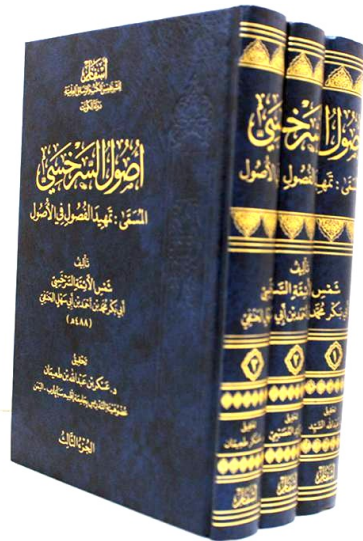


In
prison



In
prison

In
prison



Partially in
prison prison

- Murteza Bedir digs deeper as to the causation of the imprisonment, he has a book titled [The Early Development of Ḥanafī Uṣūl al-Fiqh]

THE EARLY DEVELOPMENT OF
ḤANAFĪ UṢŪL AL-FIQH

by

MURTEZA BEDIR

A Thesis Submitted to the University of Manchester for the Degree of PhD in
the Faculty of Arts

1999

Department of Middle Eastern Studies

- he first presents the view of Hamidullah who stated that Al-Sarakhsī was critical of unjust taxes as apparent from his *المبسوط*. However, Bedir concludes [pg.33]:

Whether the cause was Sarakhsī's criticism of unjust taxes or any other governmental policy, one thing was certain that there was an increasing tension between political authority and religious class in Qarakhanid state culminating in *'ulamā'*'s seeking help from an outside power at the end of the fifth/eleventh century. This tension at times even led to execution of the scholars⁹⁸.

All these examples indicate that there was a tradition of independent minded scholars who tried to remind the political authority that they were not above the Law. Barthold has pointed out that there was also a kind of tension between official and independent *'ulamā'*, but this should not be overstated, for the Ḥanafī community in the Transoxania seemed to have been under pressure from external factors that forced them to join together. Although generally the rulers respected the right of the *'ulamā'* to remind them of the Law, and sought to secure their approval, this sometimes must have created problems leading to open clashes. Sarakhsī belonged to a well-known institution headed by *'Abdul'aziz al-Halwānī*¹⁰⁴, under whom were trained (along with Sarakhsī), the famous Pazdawī brothers, whose influence on subsequent scholarship, together with Sarakhsī, was enormous. It is possible that the influence of this religious community forced the ruler, who had a problem with Sarakhsī, to throw him in jail, far from the capital, to diminish effects of his criticism, instead of drawing the opposition of *'ulamā'* by executing him. This suggestion seems to be supported by the fact that Sarakhsī was allowed to teach and dictate to his students while he was in prison and also by the fact that, towards end of his jail period, he was given a better place to meet his students.

- During his imprisonment, he dictated his book Al-Mabsūṭ, after which he decided to dictate a book in Uṣūl al-Fiqh as he states in the introduction to his Uṣūl [pg.10]:

فذلك الذي دعاني إلى

إملاء شرح في الكتب التي صنفها محمد بن الحسن رحمه الله ، بآكد إشارة وأسهل عبارة . ولما انتهى المقصود من ذلك رأيت من الصواب أن أبين للمقتبسين أصول ما بنيت عليها شرح الكتب ، ليكون الوقوف على الأصول معيناً لهم على فهم ما هو الحقيقة في الفروع ، ومرشداً لهم إلى ما وقع الإخلال به في بيان الفروع . فالأصول معدودة ، والحوادث ممدودة ، والمجموعات في هذا الباب كثيرة للمتقدمين والمتأخرين ، وأنا فيما قصدته بهم من المقتدين ، رجاء أن أكون من الأسباب^(٢) نفيح الأمور الاتباع ، وشرها^(٣) الابتداع^(٤) .

- This prolific memory should not be a surprise based upon an incident recorded by Ibn Quṭlūbugāh (d.879 AH) in *Tāj al-Tarājim* [pg.234]:

قال في المسالك حكى عنه أنه كان جالسا في حلقة الاشتغال فقبل له حكى عن الشافعي أنه كان يحفظ ثلاثمائة كراس فقال حفظ الشافعي زكاة ما أحفظ

- The book draws heavily upon تقويم الأدلة of Al-Dabūsī

The Impact of Uṣūl al-Sarakhsī

- The researcher of the book, ‘Abdullah ibn Sulaymān states that he could not definitively determine the name of the book
- Maulānā Abu’l Wafā al-Afghānī labels it as *Tamhīd al-Fuṣūl fi’l-Uṣūl*, his evidence is that Al-Sarakhsī states in his commentary upon *Al-Siyar al-Kabīr*.

وقد استقصينا هذا فيما أمليناه في تمهيد الفصول في الأصول

- It is much better in terms of organisation than Al-Bazdawī’s book in Uṣūl, Al-Sarakhsī’s book is more in line with ‘fiqh’
- He wrote the book after dictating *المبسوط* and wrote it so that it may help in understanding *المبسوط*, he writes in the introduction [pg.134]:

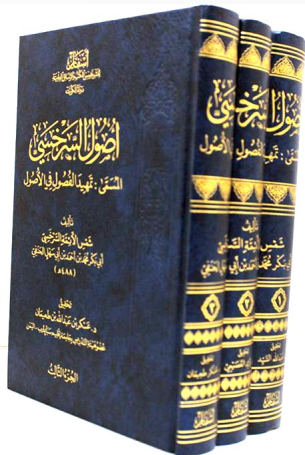
فذلك الذي دعاني إلى إملاء شرح في الكتب التي صنّفها محمّد بن الحسن رحمته الله، بأكد إشارة، وأسهل عبارة^(٢).

ولمّا انتهى المقصود من ذلك رأيت من الصّواب أن أبيّن للمقتبسين أصول ما بنيت عليها شرح الكتب؛ ليكون الوقوف على الأصول معيناً لهم على فهم ما هو الحقيقة في الفروع، ومرشداً لهم إلى ما وقع الإخلال به في بيان الفروع.

فالأصول معدودة^(٣)، والحوادث ممدودة^(٤)، والمجموعات في هذا الباب كثيرةٌ للمتقدّمين والمتأخّرين، وأنا فيما قصدته بهم من المقتدين؛ رجاء أن أكون من الأشباه، فخير الأمور الاتّباع، وشرّها الابتداع، وما توفّيقني إلا بالله، عليه أتكلّ وإليه أبتهل، وبه أعتصم، وله أستسلم، وبحوله أعتضد، وإيّاه أعتمد، فمن

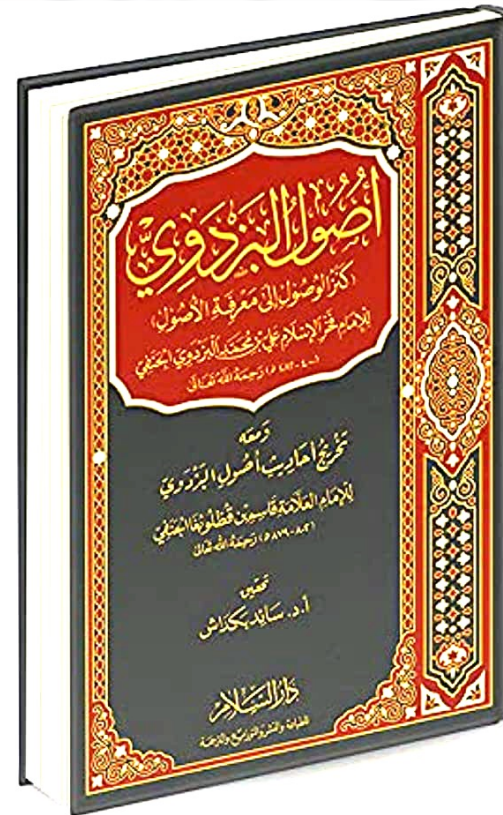
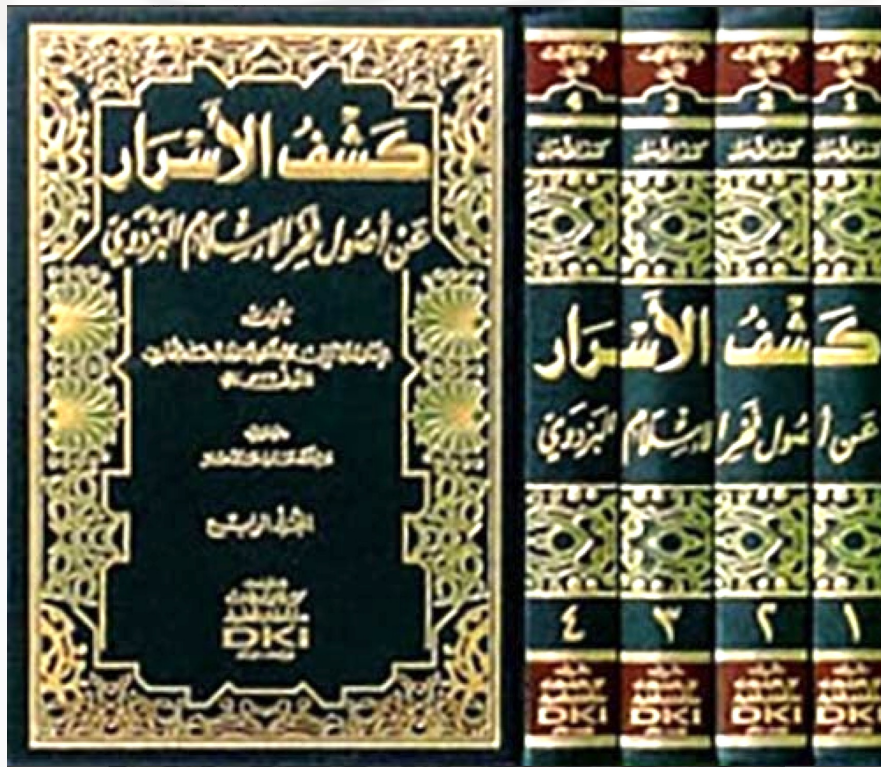
اعتصم به فاز بالخيرات سهمه، ولاح في الصّعود نجمه.

فأحقّ ما يُبدأ به في البيان: الأمر والنهي؛ لأنّ معظم الابتلاء بهما، وبمعرفةهما تتمّ معرفة الأحكام، ويتميّز الحلال من الحرام.



The Role of Al-Bazdawī (d.482 AH)

- He was also a student of Al-Ḥalwānī and maintained Ḥalwānī's legacy in Samarqand along with his brother Ṣadr al-Islām al-Bazdawī (d.493 AH), he is buried in Samarqand
- His nickname was Abu'l 'Uṣr due to the difficult elements in his writing
- He wrote a book in Uṣūl titled *كنز الوصول إلى معرفة الأصول*, its most well-known commentary is *كشف الأسرار لعلاء الدين البخاري (٧٣٠هـ)*



- Al-Bazdawī's book is based upon the efforts of Al-Dabūsī (d.430 AH) and Al-Jaṣṣāṣ (d.370 AH) meaning that the book builds Uṣūl from Furū' thus cementing an 'Irāqī-Bukhāran tradition
- This book also upholds Al-Bazdawī's nickname as Abu'l 'Uṣr, as it's a lot harder to understand than Al-Sarakhsī's book
- He also wrote a commentary upon **تقويم الأدلة** which 'Alā al-Dīn al-Bukhārī (d.730 AH) quotes extensively
- Whilst Al-Dabūsī (d.430 AH) was not particularly concerned that some Uṣūl was supported and derived by Mu'tazilah creed, Al-Sarakhsī (d.483 AH) and Al-Bazdawī (d.482 AH) were very much anti-Mu'tazilah, and though they may agree with Al-Dabūsī's conclusion in Uṣūl, they were adamant in showing that it does not necessitate beliefs of the Mu'tazilah. E.g. **عام** being **قطعي** can be used to show that **مرتكب الكبيرة** will be in hell for eternity, but Al-Bazdawī and Al-Sarakhsī are adamant to show that it does not necessitate that.
- For example, one will regularly see quotations such as the following in Uṣūl al-Sarakhsī:

وبهذا يتبين خطأ المعتزلة - عليهم غضب رب العزة - أن كل مجتهدٍ مصيبٌ
 لما هو الحق حقيقَةً^(١)؛ فالاجتهاد عبارة عن غالب الرأي؛ فمن يقول: إنه يُستدرك
 به الحق قطعاً بلا شبهة؛ فإنه داخلٌ في جملة من تناولهم هذا الحديث.

The Impact of *Kanz al-Wuṣūl*

- The researcher of the book, Sa'id Bakdash states that this was not the name of the book given by the author, rather, the author of Hadiyyah al-ʿĀrifīn has preferred this name and it is found on some manuscripts

أما صاحب إيضاح المكنون البغدادي (ت ١٣٣٩هـ) ٣٨٨/٢، وكذلك عنده في هدية العارفين ٦٩٣/١، فسماه: «كنز الوصول إلى معرفة الأصول»، وبهذا الاسم أيضاً كتب بخط المفهرسين المعاصرين على غلاف النسخ الخطية.

وهكذا فعل أصحاب الفهرس الشامل ٤٥٠/٨، فقد ذكروا نسخته تحت عنوان: «كنز الوصول إلى معرفة علم الأصول». وبناء على هذا كله، فالنفس تشرح لما سمّاه به الباباني البغدادي: «كنز الوصول إلى معرفة الأصول»، وذلك في ذيليه على كشف الظنون،

لم يُسمَّ الإمام البزدوي كتابه هذا فيما كتبه في مقدمته، وكذلك لم يُسمَّ في كتب مترجميه، إنما قالوا: له كتابٌ في أصول الفقه، وأيضاً لم يُكتب في أول نُسخه الخطية التي وقفتُ عليها عنوانٌ للكتاب، وكتبوا فقط: أصول البزدوي.

وعلى هذا أيضاً مشى صاحب كشف الظنون (١١٢/١) ١٠٦٧هـ، وكذلك لم يذكر شراحه في عناوين شروحهم له اسماً، وكذلك في مقدمات شروحهم.

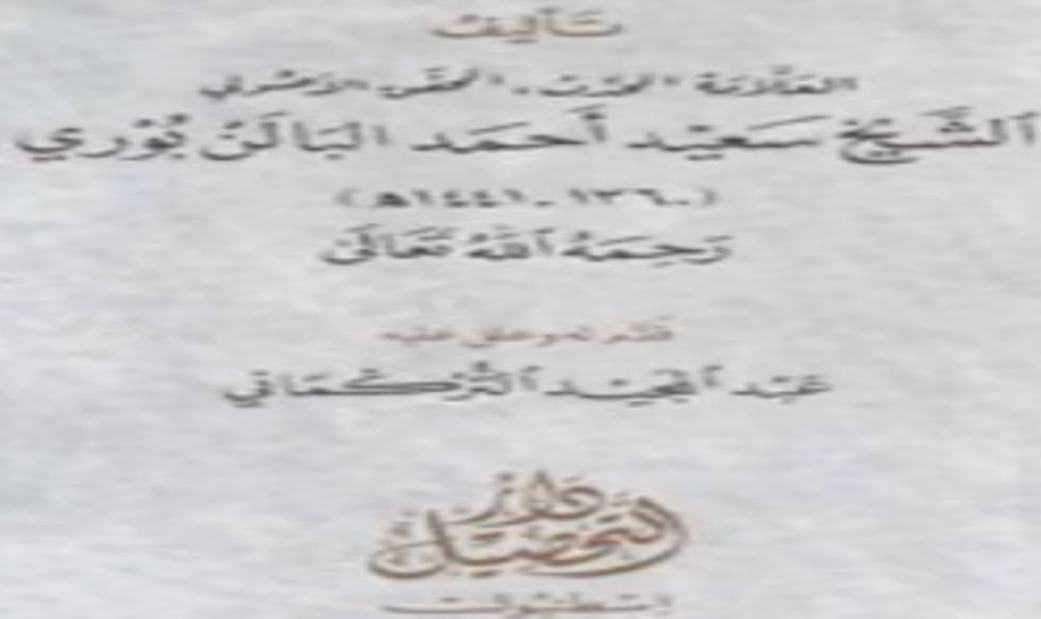
- The book is far more commentated upon than the Uṣūl of Al-Sarakhsī, in fact, Sa'id Bakdash states that there is no known commentary of Uṣūl al-Sarakhsī

* وأنبه هنا أيضاً في المقارنة إلى نقطة أخرى، وهي أن أصول السرخسي لم يذكر المترجمون أي شرح له، أو تعليق، أو حاشية ونحو هذا، ويظهر هذا من مراجعة كشف الظنون ١١٢/١، حيث ذكره ولم يذكر له أي شرح أو تعليق، وكذلك لم يذكر شيئاً من ذلك محققه الشيخ أبو الوفا الأفغاني رحمه الله في مقدمة تحقيقه له، وكذلك لم أقف في الفهارس على شيء من ذلك، والله أعلم.

- He then says something interesting which is that considering Al-Sarakhsī wrote his Uṣūl in Shawwāl 479 AH, three years before Al-Bazdawī's demise, he seems to be well aware of Al-Bazdawī's book, not only that, Al-Sarakhsī's book seems to be an actual commentary upon Al-Bazdawī's book

ويظهر أيضاً أن الإمام السرخسي في أصوله استفاد جداً من أصول
البزدوي، بل يمكن القول بأن أصول السرخسي هو بمثابة شرح لمباحث
كثيرة من أصول البزدوي، مع زيادات في المسائل والفروع والأمثلة على
القواعد الأصولية.

- He quotes Abū Zuhrah who says the same in his book on Uṣūl al-Fiqh



- This is corroborated by the researcher of Uṣūl al-Sarakhsī, ‘Abdullah ibn Sulaymān who writes [pg.78]:

١٦ - أصول البزدوي:

من الواضح استفادة الإمامين البزدوي والسرخسي من الدبوسي ، ومن قارن بين كتابيهما يجزم بأن أحدهما قد استمدَّ من الآخر ، والذي ترجَّح لنا أنَّ السرخسي هو الذي استفاد من البزدوي^(١) لما يلي:

١ - تعقُّب السرخسي للبزدوي في بعض المسائل ، مما يدلُّ على أنه متأخِّرُ عنه في التصنيف . مثال ذلك: قولُ السرخسي: «وظنَّ بعضُ المتأخرين من أصحابنا أنَّ العمل بالاستحسان أولى ، مع جواز العمل بالقياس في موضع الاستحسان ، وشبَّه ذلك بالطرد مع المؤثر ، قال: العمل بالمؤثر أولى ، وإن كان العملُ بالطرد جائزاً . قال ﷺ: وهذا وهمٌ عندي»^(٢) .

ولم نجد هذا القول إلا عند البزدوي ، وهذا نصُّه: «وإنما الاستحسانُ عندنا أحد القياسين ، لكنه يُسمَّى به ، إشارةً إلى أنه الوجه الأوَّل في العمل به ، وأنَّ العمل بالآخر جائزٌ كما جاز العمل بالطرد ، وإن كان الأثر أولى منه»^(٣) .

٢ - أنَّ السرخسي أشار إلى البزدوي وكتابه في بعض المواضع دون أن يصرِّح بذلك ، وهذا يؤكد أنه اطَّلَع على كتابه واستفاد منه .

The Curious Case of *Uṣūl al-Shāshī*

- The book is famously attributed to 1 of 7 people:

1) Abū Ya‘qūb Ishāq ibn Ibrahīm al-Shāshī (d.325 AH)

This is wrong because the book quotes Al-Dabūsī (d.430 AH) and Al-Ṣabbāgh (d.477 AH)

2) Abū ‘Alī Aḥmad ibn Muḥammad ibn Ishāq al-Shāshī (d.344 AH)

3) Abū Bakr al-Qaffāl al-Shāshī al-Shāfi‘ī (d.365 AH)

4) Abū Bakr Muḥammad ibn Aḥmad al-Shāshī (d.507 AH)

This seemed like a strong possibility, but the author passed away a Shāfi‘ī

5) Badr al-Dīn al-Shirwānī (alive during 752 AH)

6) Nizām al-Dīn ibn Muḥammad al-Shāshī - Dr. Akram Nadwī prefers this but Khālīd ibn ‘Abd al-Hādī has refuted this

7) Nizām al-Dīn al-Shāshī (alive during 7th century Hijrī)

This is the view preferred by Al-Lucknawī, Ḥājī Khalīfah and Khālīd ibn ‘Abd al-Hādī, the researcher of the book. He prefers this opinion as he states that the manner of presentation in the book is akin to the presentation of the later scholars.

- Shāsh today is Tashkent



- We know NOTHING about the author
- In fact, one of the first commentaries written upon the book is by Muḥammad ibn al-Ḥasan al-Khwārizmī (who was alive in 781 AH), he too did not mention the name of the author of the book
- However, Al-Khwārizmī does state that the name of the book itself is *Al-Khamsīn fī Uṣūl al-Dīn*
- The second known commentary by Ṣafī ibn Nuṣayr (d.819 AH) wrote a commentary titled *المعدن شرح أصول الشاشي*, he too does not mention the name of the author of the book
- The researcher of the book states that every manuscript he managed to get hold of for the book did not mention the name of the author, except the manuscript of Murād Mullā, which mentioned the name of Abū Bakr al-Qaffāl al-Shāshī al-Shāfiʿī (d.365 AH) which as we have discussed is incorrect
- Although the author is unknown, the book is well-accepted, this indicates towards the sincerity of the author
- Author was a contemporary of author of *المنتخب الحسامي*, Al-Khabbāzī author of *المغني في أصول الفقه* and Ibn al-Saʿatī
- Ḥājī Khalīfah states that the author wrote this book in his fifties

- The book relies extensively upon **تقويم الأدلة** of Al-Dabūsī and follows the order of **أصول البزدوي**
- This is clear in how he presents language UNDER **كتاب الله**, whereas Al-Sarakhsī presents language first and then, after discussing all the concepts of language, he introduces **كتاب الله**
- It remains to this day a gem of a book and it is definitely beneficial, however, it is most definitely not for beginners and doesn't represent the correct way of understanding the early ḥanafī uṣūl books, a better option would be to follow the **المنار** tradition of Al-Nasafī
- Our book, **مبادئ الأصول** by Muftī Sa'īd Palanpūrī was written as a book to be read before reading **أصول الشاشي**

- Dr. Haytham Khaznah states regarding Uṣūl al-Shāshī [Taṭawwur al-Fikr al-Uṣūlī, pg.42]:

أما منهج المصنف في كتابه فقد تكلم في مجمل أبواب الأصول، وكان يذكر المسألة الأصولية ثم يشرحها بإيجاز، ويمتاز الكتاب بسهولة العبارة وسلاستها وقد ملأ كتابه بالفروع الفقهية التي بنيت عليها الأصول فلا تكاد توجد مسألة حتى يذكر شواهدا من الفروع.

ويغلب النقل عليه من كتب ظاهر الرواية ويذكر أسماءها أحيانا ويكثر النقل عن الإمام محمد بذكر الفروع المروية عنه ويذكر فروع الإمام أبو حنيفة بينما يقل النقل عن أبي يوسف وزفر كما أنه يذكر أقوال الإمام الشافعي في الفروع والأصول مقارنة بالمذهب، وهو كثير النقل لآرائه، إلا أنه لا يعبؤ بالاختلافات الأصولية ونقاشها، ويلاحظ أن مسائل الدلالات كان البحث فيها أكثر وأشمل بخلاف غيرها حيث أجمل في باب السنة والإجماع، أما مبحث التعارض والترجيح فتكلم فيه من باب الإشارة لا أكثر، وفي مبحث القياس اعتمد فيه على القاضي أبي زيد من كتابه تقويم الأدلة، وأخيراً فإن هذا الكتاب ينقصه الشمول والدقة وحسن التحقيق، لذلك لم يكن التعويل عليه عند محققي المذهب ولم ينتشر إلا متأخراً وفي بلاد الهند.

The طريقة الحنفية/طريقة الفقهاء

