

ÖDE YAYIMLANDIKTAN  
ONRA GELEN DOKÜMAN

Sat: Meşhob

1294 TLILI, Sarra. Animals would follow Shāfi'ism: legitimate and illegitimate violence to animals in medieval Islamic thought. *Violence in Islamic thought from the Qur'ān to the Mongols*. Ed. Robert Gleave and István T. Kristó-Nagy. Edinburgh: Edinburgh University Press, 2015, (Legitimate and Illegitimate Violence in Islamic Thought, 1), pp. 225-244.

Hayvan  
280980  
Safii Nijh  
181535

11 Aralık 2016

254007

Sunnat  
181483  
Safii mezhebi  
181533

THE SUNNA AND ITS STATUS  
IN ISLAMIC LAW

Chapter 7

THE SEARCH FOR A SOUND HADITH

The Concept of *sunna* in the  
Early Shāfiī Madhhab

Gavin N. Picken

EDITED BY  
ADIS DUDERIJA

24 Temmuz 2017

Introduction

Türkiye Diyanet Vakfı İslam Araştırmaları Merkezi Kütüphanesi	
Dem. No:	254007
Tas. No:	

MADDE YATIRILMADIKTAN  
SUNNA CELEN DOKÜMAN

palgrave  
macmillan  
Hampshire  
2015

Muhammad b. Idrīs al-Shāfi‘ī (150/767–204/820) occupies a preeminent position in the field of Islamic Law, and is considered highly influential in the articulation of its formative phase of development, especially with regard to the genesis of the religion’s legal theory (*uṣūl al-fiqh*). A cursory glance at early Islamic history may cause one to assume that al-Shāfi‘ī occupies this elevated status due to the fact that he was the eponym of a distinct legal school within the Sunni context, which has afforded him the position of an “iconoclast jurist” until the current period. Although this is certainly true, al-Shāfi‘ī’s contribution to the development of Islamic law was much more far reaching than even this substantial feat.

Indeed, one may observe that since al-Shāfi‘ī is still considered the eponymous founder of a Sunni legal school that he defined a unique juristic methodology (*uṣūl al-fiqh*) and he articulated this achievement by applying it to the individual cases that make up positive law (*furū‘ al-fiqh*). This was also the case with other juristic luminaries of the formative period but what distinguishes al-Shāfi‘ī is that he authored a seminal text in the realm of legal theory, namely his *Risāla*, and at the same time codified its application in the context of positive law in his voluminous work *Kitāb al-Umm*. Thus, al-Shāfi‘ī left an unparalleled written legacy that would provide future jurists with reference works to draw upon. Moreover, al-Shāfi‘ī was fortunate to

133-162

700 PICKEN, Gavin N. The concept of *sunna* in the early  
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Islamic law: the search for a sound Hadith*. Ed. Adis  
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Sunnat  
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Safinag  
18/10/17

22 Ekim 2017

MADE YAYIMLANDIKTAN  
SONRA CELEN DOKUMAN

1361  
Sunnat  
181483  
Jafar Mugh.  
181535 1200

PICKEN, Gavin N. The concept of *sunna* in the early  
Shāfiʿī madhhab. *The Sunna and its status in  
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26 Kasım 2017

MADDE YAYIMLANDIKTAN  
SONRA ÜZLEN BOKÜMAN

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*Safir Mezhebi*  
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Shāfi'i madhhab. *The Sunna and its status in* 181473  
*Islamic law: the search for a sound Hadith*. Ed. Adis ~~g. P. M. M. M.~~  
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181535

30 Nisan 2018

MADDE YAYIMLANDIKTAN  
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2285 SHUKRI, Abdul Salam M. The current state of  
*Defii' Mezhbebi* al-Shāfi'ī studies / Abdul Salam Muhamad Shukri.  
181533 *Hamdard Islamicus*, 31 i (2008) pp. 41-47.

30 Nisan 2018

MADDE YAYIMLANDIKTAN  
SONRA GELEN DOKÜMAN

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MADDE YAYIMLANDIKTAN  
SONRA GELEN DOKÜMAN

02 Kasım 2018

**K. M. Bahauddeen Hudawi** is presently the Lecturer at English Language Centre, Al Musanna College of Technology, Ministry of Manpower, Sultanate of Oman. Earlier he was the Director of National Institute for Islamic and Contemporary Studies, Darul Huda Islamic University, Kerala, India. He did his PhD in Islamic Studies from Jamia Millia Islamia, New Delhi, and M.Phil from Vinayaka Missions University, on 'A Comparative Study between Arabic and English Grammar with Emphasis on Morphology'. Formerly he has completed a comprehensive twelve year course in Islamic and Contemporary Studies from the prestigious Darul Huda Islamic University.

He has been working as executive editor and columnist of *The Ilticham* monthly, has published many articles in Arabic and Malayalam languages, translated books from Urdu language, edited many books and journals, and participated in several international conferences.

## The Development and Impact of Shāfi'ī School of Jurisprudence in India

263950  
Shafi Mezhabi  
181539

By  
**K. M. Bahauddeen Hudawi**

Türkiye Diyanet Vakfı İslam Araştırmaları Merkezi Kütüphanesi	
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New Delhi

2014



# ISLAMIC LAW

Critical Concepts in Islamic Studies

*Edited by*  
*Gavin N. Picken*

**Volume II**  
**The Genesis of Legal Theory and  
the Schools of Law**



14

02 Kasım 2018

**Routledge**  
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2011

MADE YAYIMLANDIKTAN  
SONRA GELEN DOKÜMAN

## WAS AL-SHAFI'I THE MASTER ARCHITECT OF ISLAMIC JURISPRUDENCE?

Wael B. Hallaq

Safii Meghalib  
181533  
Kaya (Adli)

Source: *International Journal of Middle East Studies*, 25:4 (1993), 587-605. 111680

### I

During the last three or four decades, modern scholarship has increasingly come to recognize Muhammad Ibn Idris al-Shafi'i (d. 820) as having played a most central role in the early development of Islamic jurisprudence. It was Joseph Schacht who, more than anyone else, demonstrated Shafi'i's remarkable success in anchoring the entire edifice of the law not only in the Qur'an, which by his time was taken for granted, but mainly, and more importantly, in the traditions of the Prophet.<sup>1</sup> Shafi'i's prominent status has been further bolstered by the fact that he was the first Muslim jurist ever to articulate his legal theory in writing, in what has commonly become known as *al-Risāla*.<sup>2</sup>

Schacht's portentous findings, coupled with the high esteem in which Shafi'i is held in medieval and modern Islam, have led Islamicists to believe that Shafi'i was the "father of Muslim jurisprudence" and the founder of the science of legal theory, properly called *uṣūl al-fiqh*.<sup>3</sup> His *Risāla* is thought to have become "a model for both jurists and theologians who wrote on the subject."<sup>4</sup> And although it is acknowledged that later theory further elaborated the themes of Shafi'i's treatise and sometimes even modified them, the origination of legal theory nonetheless remains his achievement. The medieval dictum that "Shafi'i is to *uṣūl al-fiqh* what Aristotle was to logic" is still as valid as when it first appeared.<sup>5</sup>

This being the state of our knowledge, there appears to be little reason to question the purported fact that since its inception in the work of Shafi'i, *uṣūl al-fiqh*, as we now know it, became, in an unwavering continuity, the standard legal methodology of Sunni Islam. There is even less reason to

MADDE YAYIMLANDIKTAN  
SUNNARA GELEN DOKÜMAN

02 Temmuz 2018

PICKEN, Gavin N. The concept of *sunna* in the early  
Shāfi'i madhhab. *The Sunna and its status in  
Islamic law: the search for a sound Hadith*. Ed. Adis  
Duderija. Basingstoke & New York: Palgrave  
Macmillan, 2015, pp. 139-162.

Sunnet  
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Safarullah  
181535

MADDE YAYIMLANDIKTAN  
SONRA GELEN DOKÜMAN

25 Temmuz 2018

! YAHIA, Mohyddin. *Sâfi'î et les deux sources de la loi islamique*. Turnhout: Brepols, 2009 (Bibliothèque de l'École des Hautes Études: Section des Sciences Religieuses, 139). 542 pp.

*Jafii Meqbeli*  
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- 849 JAQUES, R. Kevin. The contestation and resolution of inter- and intra- school conflicts through biography. *Diversity and pluralism in Islam: historical and contemporary discourses amongst Muslims*. Ed. Zulfikar Hirji. London: Tauris in association with Institute of Ismaili Studies, 2010, pp.107-133;203-208. (How historians used the biographical traditions that developed around the early Shafi'i scholar Abu Ibrahim Isma'il b. Yahya al-Muzani (d.878) in the formation and maintenance of inter- and intra-school identity between the Shafi'i and Hanafi *madhhabs*.) [With bibliography on pp.235-239.]

microfilm  
- Safi'i Madhabs  
- Hanafi Madhabs

CONSULTA EN SALA EXCLUSIVAMENTE

B-58/65  
11

RAMLĪ, Muḥammad b. Aḥmad al-

Nihāyat al-muhtāḡ ilā šarḥ al-Minhāḡ, fī l-fiqh 'alā madhab al-imām al-Šāfi'i / ta'lif Muḥammad b. Abī l-Abbās Aḥmad b. Ḥamza b. Šihāb al-Dīn al-Ramlī al-Šāfi'i al-Šagīr. -- Bayrūt : Dār al-Kutub al-'Ilmiya, 1993. -- 8 v. ; 29 cm  
Contiene anotaciones de 'Alī b. 'Alī al-Šabramallīsī y de Aḥmad b. 'Abd al-Razzāq al-Rašīdī

R. 31.931

02 OKAK 1995

0477 Al-Zuḥaylī, Muḥammad Muṣṭafā

Al-qawā'id al-fiqhiya wa-taṭbīqātu-hā fī l-maḡāhib al-arba'a / Muḥammad Muṣṭafā al-Zuḥaylī. - T. 1. - Dimāšq : Dār al-Fikr, 2006. - 2 v. (1342, [2] p.) ; 25 cm

Bibliografía: p. [1133]-1140).  
Índices. - "1427 h"--V. port.

ISBN 1-59239-561-9

1. Fiqh - Historia 2. Fiqh ḥanafī 3. Fiqh mālikī 4. Fiqh šāfi'i 5. Fiqh ḥanbalī I. Título.

348.97(091)

ICMA 4-54378 (v. 1) R. 60924

ICMA 4-54379 (v. 2) R. 60924

Handwritten notes: Hanafi Mezh. Maliki Mezh. Shafi Mezh.

13 JUL 2007  
Bilal A. Youkani

14598. o. 55

al-DAKR ('Abd al-Ghānī)

فهرس خطوط  
دار الكتب العلمية  
الفقه الشافعي

Fihris Makhtūṭāt Dār al-Kutub al-Zāhiriyyah: al-fikh al-shāfi'i. [Catalogue of the Arabic manuscripts on Shāfi'i law in the Zāhiriyyah Library at Damascus.]  
pp. 8, 355.  
al-Majma' al-'Ilmī al-'Arabī: Damascus, 1963. 8°.

222. LAOUST, H. «Šāfi'i et le Kalām d'après Rāzi», dans *Recherches d'Islamologie, recueil d'articles offerts à Georges C. Anawati et Louis Gardet par leurs collègues et amis*. Louvain, éd. Peeters et éd. de l'Institut Supérieur de Philosophie de Louvain-la-Neuve, 1977, pp. 389-401.

Étude, à partir du livre de Faxr al-dīn al-Rāzi «Manāqib al-Šāfi'i», sur l'attitude de celui-ci—partisan de la légitimité du Kalām comme science religieuse—à l'égard de la position, apparemment hostile à cette discipline, de l'imām Šāfi'i. D'après Rāzi, Šāfi'i aurait stigmatisé le Kalām par prudence vis-à-vis d'un usage de la raison pouvant mettre en danger les fondements et l'unité de l'Umma, mais n'aurait pas condamné en elle-même une discipline que rejoignait de facto une partie de son œuvre doctrinale. P. L.

-SAFI  
-FAHREDDIN RAZI  
-KELAM

87-961723

Aḥkām al-ibādāt 'alā madhab al-Imām al-Šāfi'i  
أحكام العبادات على مذهب الإمام الشافعي / تأليف محمد صالح المنجد  
الطبعة 1. بيروت: دار الهجرة، 1985.  
118 p. ; 24 cm.  
£23.00  
I&S-Islamic Law.

14528. o. 40.

al-SHĀFI'I (Muḥammad ibn Idrīs)  
al-SHĪRĀZĪ (Abu Ishāq Ibrāhīm ibn 'Alī)  
الإمام الشافعي

al-Muḥaddab fī fikh madhab al-imām al-Šāfi'i. [A compendium of Shāfi'i law. With, at foot of page, a commentary by Muḥammad b. Aḥmad Ibn Battāl al-Rakbī entitled al-Naṣm al-mustadab fī sharḥ gharīb al-muḥaddab.]  
2 pts.

Cairo, o. 1950.

18 OKIM 1994

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185 KASIM 1997

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Hīṭā, Muḥammad Ḥasan. (Ijtihād wa-tabaqāt mujtahidi al-Šāfi'iyyah) / الاجتهاد وطبقات مجتهدي الشافعية / محمد حسن هيتو. -- الطبعة 1. -- بيروت: مؤسسة الرسالة، 1988.  
251 p. ; 24 cm.  
Title page partially vocalized.  
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14 SUBAT 1995

Nusreftin Boelli

B) Tercüme

• Abdullah el-Herevi, Şafii Cep İlmihalî, (Arapçadan tercüme). Şelale Yayınevi, İst. 1981, 77 s.)

Seyhü'l-İslam Ebu İsmail (Abdullah b. Muhammed el-Herevi ö.481/1089) mi? Hayır

09 NISAN 1994

3495. Muḥammad-pūr, 'Abd-al-'Azīz: Fiqh-i šāfi'i / 'Abd-al-'Azīz Muḥammad-pūr (Dāsbandī). - Cāp 2. - [S.l.], [1988] = 1367 h.s. ([S.l.]: Mī'ād). - 110 S. : III.  
Inhalt: Zum schafiiitischen Recht. - In arab. Schrift, pers. 9 E 3594

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-NEVEVI  
-SAFI  
-MEZHEB

1400. Ibn-aṣ-Šalāh, 'Utmān Ibn-'Abd-ar-Raḥmān: Tabaqāt al-fuqahā aṣ-šāfi'iya / li-Taḡī-ad-Dīn Abū-'Umar 'Utmān Ibn-'Abd-ar-Raḥmān aṣ-Šārazūrī al-ma'rūf bi'bn-aṣ-Šalāh. Ḥaḍ-ḍabahū wa-rattabahū wa-ištaraḳa 'alaihī Muḥyi'd-Dīn Abū-Zakariyā Yāhyā Ibn-Šaraf an-Nawawī. Baiyada uşūlahū wa-naqqahū Abū'l-Ḥaḡḡāḡ Yūsuf Ibn-'Abd-ar-Raḥmān al-Miz-zī. Ḥaqqaqahū wa-'allaḡa 'alaihī Muḥyi'd-Dīn 'Alī Naḡīb. - Bairūt : Dār al-Bašā'ir al-Islāmiya  
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1. - Tab'a 1. - 1992 = 1413 h. - 552 S. 32 A 22623-1  
2. - Tab'a 1. - 1992 = 1413 h. - S. 553 - 1098 32 A 22623-2

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es-Safii  
تاريخ الفقه الشافعي

Muhammed Muhammed el-Medeni,  
Meallatul-Esher 2, 85-89; 165-169

Safii mezhebi 10 7 MAYIS 2009

032 'Atr, Muḥammad Māğid  
Al-kāfī fī l-fiqh al-šāfi'ī : al-'ibādāt / ta'lif  
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ایزدیناه، مهرداد (۱۳۳۶ - )  
۱۰۵۴- آشنایی با اسلام و فرقه‌های  
آن، تهران: محور، چاپ اول، ۱۳۸۲ / ۳۰۰۰ نسخه،  
۲۳۹ ص، فارسی، رقمی (شمیز)، بها: ۱۵۰۰۰ ریال،  
منابع: ۲۳۷-۲۳۹، نقشه: در صفحات مختلف.  
شابک: ۹۶۴-۶۷۹۶-۳۸-۹ - Hanafi Mezhebi  
کنگره: BP11/A92A5 - Maliki Mezhebi  
دیوبند: ۲۹۷ - Hanbali Mezhebi  
کد پارسا: B۶۶۷۰۶ - Safii Mezhebi  
تاریخ فرقه‌ها؛ زمینه‌های ظهور اسلام (تاریخ و  
جغرافی)؛ معارف اسلامی (کلام)  
تحقیقی درباره پیدایش اسلام و فرقه‌های  
اسلامی است. این نوشته شامل یک سرآغاز و دو  
بخش است. نویسنده در ابتدا از وضعیت جغرافیایی و  
مردم‌شناسی عربستان سخن به میان آورده و پس از  
آن به بررسی ظهور اسلام و کتاب آسمانی قرآن  
پرداخته است. سپس در چگونگی ایجاد فرقه‌های  
مختلف اسلامی بویژه مذاهب شیعه بحث شده است.  
این کتاب در حقیقت خلاصه تالیف اسلام و معارف  
قرآن و فقه اسلامی است که به صورت تحلیلی و  
مستند ارائه گردیده است.

212 HAMIDULAH, M. Contribution of Ash-Shafi'i  
to the science of law. Jernal Undang-Undang, 2  
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(Bélgica) : Brepols, cop. 2009. - 542 p. ;  
24 cm. - (Bibliothèque de l'École des  
Hautes Études. Section des sciences  
religieuses ; 139)  
Bibliografía: p. 519-539. - Glosario  
ISBN 978-2-503-53181-6  
1. Al-Šāfi'ī, Muḥammad b. Idrīs - Crítica  
e interpretación 2. Islam - Doctrinas 3.  
Fiqh šāfi'ī 4. Teología islámica - Historia  
I. Título. II. Serie.  
1 8 EYLÜL 2010

234.22:297  
348.97  
21:297(031)  
ICMA 4-33599 R. 68794

24) N. 969, Kitāb al-ṭabaqāt al-šāfi'iye, t lif Abi Bakr b.  
Qaḍī Şuḥba al-Asadī, 145 varak. Bu eserden Sayf al-din  
al-Āmidī, Qutb al-din al-Şirazī, Aḥmad al-Çarbardi, Ömer b. Arslan  
al-Bulq'nī, Qamus sahibi Firuzābādī gibi zevata ait kısımları  
nakil ve mukabele edildi.

Kayseri Rasid Efendi Ktp  
Safii  
10 NISAN 1992

181539 SAFII MEZHEBI 89-964165

Zhann, Mustafá.  
(Fiqh al-manhajī 'alá nadhrab  
al-imān al-Šāfi'ī)  
الفتاوى المنهجية على مذهب الإمام  
الشافعي / مطبوع في الخ. مطبوع في الخ. مطبوع في الخ. مطبوع في الخ.  
الترجي. -- الطبعة 2. -- حلب، 1987.  
دار العلم، 1987-1989.  
v. <2-8> : 24 cm.  
Vols. 4- : 1st ed.  
Contents: al-juz' 1. Fī  
al-ṭahārah wa-al-ṣalāh -- al-juz'  
2. Fī al-zakāh wa-al-ṣiyām  
wa-al-ḥajj -- al-juz' 3. al-Imān  
wa-al-mudhūr, al-sayd  
wa-al-dhabā'ih, al-'aqīqah,  
al-at'imah wa-al-ashūbah.  
al-libās wa-al-zīnah, al-kaffārāt --  
al-juz' 4. al-Aḥwāl al-shakhsīyah (ahkām  
al-usrah) -- al-juz' 5. Fī al-waqf  
wa-al-waṣīyah wa-al-farā'id -- al-juz'  
6. Fī al-mu'āwāḍāt -- al-juz' 7. Fī  
al-mu'āmalāt -- al-juz' 8. al-Jināyāt  
wa-al-ḥudūd wa-tawābi'uhā, al-jihād  
wa-tawābi'uh ...  
L&S-Islamic Law.

01 ARALIK 1992

01764 EBIED, R.Y. and YOUNG, M.J.L. An  
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periodica 8 (1977) pp. 251-262.

Safii ve Maliki mezhepleri  
arasındaki farklar üzerine bir çalışmadır.  
Tarih: 1977

MADDE YAYIMLANDIKTAN  
ONRA GELEN DOKÜMAN

## 6 Die Bağdāder Šāfiīten

Es gelang den Ḥanbaliten auf die Dauer nicht, mit ihren Konzessionen an den *kalām* Profil zu gewinnen. Das Experiment blieb auf Bağdād beschränkt; dort aber sahen sie sich Konkurrenten gegenüber, die „salafitischer“ auftraten als sie selber: den Bağdāder Šāfiīten. Diese gewannen einen starken Rückhalt in der neugegründeten Nizāmīya, und sie präsentierten sich ihrem Publikum als *ahl al-ḥaqq*, Vorkämpfer der Orthodoxie. Das Etikett, das sie sich damit selber ansteckten, verlieh noch höheren Glanz als *ahl as-sunna wal-atar*, womit die Ḥanbaliten sich schmückten, oder als das althergebrachte *ahl as-sunna wal-ğamā'a*, das die Nēšāpūrer Aš'ariten den dortigen Ḥanafiten abzunehmen versuchten. Abū Ishāq Ibrāhīm b. 'Alī aš-Šīrāzī (393/1003–476/1083),<sup>1</sup> der bekannte Verfasser der *Luma' fi usūl al-fiqh*, schrieb eine *'Aqīdat as-salaf* und ein kurzes, knapp 40 Folia umfassendes *K. al-Išāra ilā madhhab ahl al-ḥaqq*, deren Echtheit zwar nicht unbedingt bezeugt, aber wohl kaum anzuzweifeln ist.<sup>2</sup> Sein Schüler Abū l-Muzaffar Maṣṣūr b. Muḥammad b. 'Abdalğabbār as-Sam'ānī (426/1035–489/1096), der Großvater des Verfassers der *Ansāb*<sup>3</sup>, der als Ḥanafit aufgewachsen, aber dann Šāfiī geworden war, führte in seinem *Muhtār an-naḥīs min al-Intiṣār li-aṣḥāb al-*

1 Zu ihm EI<sup>2</sup> IX 481 ff. (E. Chaumont) mit weiteren Verweisen.

2 Beide Texte herausgegeben von M. Bernand, *La profession de foi d'Abū Ishāq al-Šīrāzī*, in: Ann. Isl., Suppl. Nr. 11 (Kairo 1987), auf der Basis der Handschriften Alexandria, Baladiya, *tauḥīd* 2014 (für die *Išāra*) und Paris, BN arabe 1393, fol. 23b–27b (für die *'Aqīda*). Das *K. al-Išāra* findet sich auch in Auszügen und reich kommentiert bei 'Abdalmagīd Turkī in seiner Edition von Šīrāzī's *Šarḥ al-Luma'* (Beirut 1988, S. 91 ff.; nach der Handschrift Istanbul, Hacci Mahmud Efendi, *mağmū'* 1607) und noch einmal, jetzt vollständig, in der Edition von Šīrāzī's *K. al-Ma'ūna fī l-ğadal* (ebenfalls Beirut 1988, S. 91 ff.). Vgl. dazu auch Gilliot in: MIDEO 25–26/2004/310 f. – Natürlich soll hier nicht behauptet werden, daß der Terminus *ahl al-ḥaqq* damals erst aufgekommen sei. Isfarā'īni benutzt ihn z.B. in seiner *'aqīda* (ed. Frank in: MIDEO 19/1989/133, 4 und 142, 6; andere Stellen ib. 170, -4 oder 172 nr. 102 und 103), auch Ğuwainī im *Šāmil* (S. 148, 12). Allgemein vgl. meine *Erkenntnislehre des Īcī* 130 f. und u. S. 1304.

3 Erwähnt in EI<sup>2</sup> VIII 1024 s. v. *Sam'ānī*.

321/933), leader in his time of the Basran Mu'tazili school, identified himself as a grammarian when he came to Baghdad in order to avoid persecution by the Ḥanābilah.<sup>104</sup> It may be, too, that shifts in Mu'tazili thought made adherence to a semi-rationalist school of law more attractive than hitherto.

Meanwhile, the Shāfi'i guild school grew from the work of Ibn Surayj (d. 306/918): a school with a fairly regular method of forming jurists, a strong interest in *uṣūl al-fiqh* along Shāfi'i lines, but less strongly identified with any tendency in theology than the wider Shāfi'i school of the ninth century. Between the numbers of Shī'ah and Mu'tazilah pressing into the school and the growing rivalry of Ibn Surayj's purely juridical school, the semi-rationalist Shāfi'i school of law and theology effectively broke up over the tenth and eleventh centuries.

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yah, 1368), 167 = ed. Khayr al-Dīn 'Alī (Beirut: Dār al-Wa'y al-'Arabī, 1970?), 193. For the Inquisition of Ghulām Khalīl, v. Carl Ernst, *Words of Ecstasy* (Albany: State Univ. of New York Press, 1985), 101; Christopher Melchert, "The Transition From Asceticism to Mysticism at the Middle of the Ninth Century C.E.," *Studia Islamica* 83 (1996):65f.

<sup>104</sup> Abū al-Ḥasan Ibn al-Azraq, *apud* 'Abd al-Jabbār, *Faql*, 307.

- Ibn Sūreya, Ebū'l-Abbās

- Safi

## CHAPTER FIVE

### IBN SURAYJ AND THE CLASSICAL SHĀFI'I SCHOOL

It is clear that in neither Iraq nor Egypt did there flourish, in the ninth century, a continuous Shāfi'i school in the later sense. The classical Shāfi'i guild school dates back, in most of its essentials, not all the way to al-Shāfi'i but to Abū al-'Abbās Ibn Surayj (d. Baghdad, 306/918). From his time forward, Shāfi'i jurists have normally had an identifiable teacher and identifiable students. Before his time, the learning of Shāfi'i jurisprudence was less like the learning of Ḥanafī jurisprudence, organized as a regular course of study under one teacher, than like the gathering of hadith reports from a number of teachers, the more the better. From his time forward, there was a normal course of advanced study leading to the production of a *ta'liqah*, virtually a doctoral dissertation, describing the juridical opinions chosen by the Shāfi'i school. No such literary production regularly characterized the study of law before Ibn Surayj. It was a mark of the classical school of law that it had a local chief, and Ibn Surayj seems to be the first jurist described as having the chieftaincy of the Shāfi'iyyah. From his time forward, someone was usually identified as having inherited that title, but no one before him is said to have had it. Finally, from his time forward, Shāfi'i jurists were usually but not necessarily familiar with Sunni *kalām* theology. Before him, al-Karābīsī, Abū Thawr, and Dāwūd al-Zāhirī in Baghdad and al-Muzanī in Old Cairo had pursued *kalām*, but with less success in persuading traditionalists of their orthodoxy. After Ibn Surayj, indeed, the Shāfi'iyyah continued to find difficulty in persuading Ḥanbalī traditionalists in Baghdad; yet for only a short time was there trouble in Egypt and Khurasan. The only marks of the classical school of law that did not appear first in the lifetime of Ibn Surayj were explicit distinction between graduate students (*aṣḥāb*) and undergraduates (*talāmiḍh*) and the biographical dictionary of adherents of the school. The first appeared with a student of his, the second about a century after his death.

19 NISAN 1999



## THE SEMI-RATIONALIST PARTY

## CHAPTER FOUR

THE NINTH-CENTURY SHĀFI'Ī SCHOOL  
OF LAW AND THEOLOGY

Al-Shāfi'ī is the point at which Norman Calder's redatings most radically affect the history of Islamic law. This is because the theory of the guild schools—the classical schools of law as we are familiar with them from the eleventh century onwards—was so largely the theory of al-Shāfi'ī, particularly *al-Risālah*. If *al-Risālah* in its familiar form was first published around 300/912-913, almost a century after al-Shāfi'ī's death, the juridical theory of the guild school must be re-assigned to the ninth-century Shāfi'ī school, not al-Shāfi'ī himself.<sup>1</sup> My own observations tend to confirm Calder's redating. Among other things, Aḥmad and other traditionalists continued to heed the opinions of Companions and Successors, contrary to al-Shāfi'ī's arguments for Prophetic hadith; commentaries on *al-Risālah* (and rebuttals) appeared only after 300/912-913; and traditionalists came to regard al-Shāfi'ī more positively about then.<sup>2</sup> It is still important to show the relation between the putative writings of al-Shāfi'ī and the practice of the later guild schools, likewise to locate these writings as between the rival schools of *ra'y* and *ḥadīth*; however, historians have already made a good start at treating these.<sup>3</sup> What I shall stress here is the peculiar juridical and theological tendency of the ninth-century Shāfi'ī school—a looser formation than the guild school of the tenth century and after, yet in important ways prefiguring the guild school more clearly than any other grouping of its time.

<sup>1</sup> For the redating of *al-Risālah*, v. Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), chap. 9, esp. 242.

<sup>2</sup> For growing Ḥanbali friendliness, v. *infra*, chap. 7.

<sup>3</sup> Outstandingly, of course, Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950) for the theory of the classical schools; v. *infra*, note 8, for al-Shāfi'ī between the schools of *ra'y* and *ḥadīth*.

In Chapter One, I discussed the emergence of the *traditionalist* party in the late eighth century. In Chapters Two and Three, I discussed the evolution of jurisprudence among what I conventionally call, by default, the *rationalist* party. In discussing the Shāfi'ī personal school of the ninth century, I will propose a new category, the *semi-rationalist*, a third party in the middle. Josef van Ess noticed Ibn Kullāb (d. ca. 240/854-855) and some associates who took up the tools of *kalām* in defence of traditionalist doctrines, and has suggested the name *ahl al-ithbāt*.<sup>4</sup> My own attention was drawn to them by a survey of Aḥmad ibn Ḥanbal's polemics against various opponents. He is seldom quoted against contemporary Mu'tazilah, often against semi-rationalists: al-Ḥusayn al-Karābīsī (d. 248/862-863?), Abū Thawr (d. 240/854), and al-Ḥārith al-Muḥāsibī (d. 243/857-858); also against Dāwūd al-Zāhirī (d. 270/884). These are all variously associated with Ibn Kullāb, although there is no record of Aḥmad's saying anything about Ibn Kullāb himself, and only one report, from outside the Ḥanbali tradition, by which Aḥmad severely condemned the Kullābīyah.<sup>5</sup>

It is striking that most of these semi-rationalists whom Aḥmad and his followers opposed were loosely associated with the Shāfi'ī school of law. George Makdisi has identified the Ḥanbali school of law as the only one to comprise both one system of jurisprudence, fairly traditionalist, and one theological tendency, staunchly traditionalist. Each of the other three schools of law comprised one system of juris-

<sup>4</sup> Josef van Ess, "Ibn Kullāb und die Miḥna," *Oriens* 18-19 (1965-1966):92-141, trans. with additional notes by Claude Gilliot, "Ibn Kullāb et la Miḥna," *Arabica* 37 (1990):173-233.

<sup>5</sup> Ibn Khuzaymah (d. 311 or 312/ca. 924) asserted that Aḥmad had severely condemned the Kullābīyah: al-Ḥākim al-Naysābūrī, *Tārīkh Naysābūr*, apud al-Dhahabī, *Siyar a'lām al-nubalā'*, 25 vols. (Beirut: Mu'assasat al-Risālah, 1981-1988), 14 (ed. Akram al-Būshayyī, 1983):379f; likewise Ibn Ḥajar, *Lisān "al-Mizān"*, 7 vols. (Hyderabad: Majlis Dā'irat al-Ma'ārif, 1329-31), 3:291. For Ibn Kullāb and Abū Thawr, v. Ibn 'Abd al-Barr, *al-Intiqā' fi faḍā'il al-thalāthah al-a'imma al-fuqahā'* (Cairo: Maktabat al-Qudsī, 1350), 156. For Ibn Kullāb and Dāwūd al-Zāhirī, v. al-Dhahabī, *Siyar* 11 (ed. Šāliḥ al-Samr, 1982):174; Ibn Ḥajar, *Tahdhīb "al-Tahdhīb"*, 12 vols. (Hyderabad: Majlis Dā'irat al-Ma'ārif al-Nizāmiyah, 1325-27), 2:361f. For Ibn Kullāb and al-Muḥāsibī, v. Ibn Khuzaymah, apud al-Dhahabī, *Siyar* 11:174, 14:380.

Christopher Melchert  
The formation of the Sunni schools of law,  
9th-10th centuries C.E.  
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08 MIZAN 1993

## En quoi le madhhab šāfi'ite est-il šāfi'ite selon le Muğīṭ al-ḥalq de Ğuwaynī?

ĞUWAYNĪ<sup>1</sup>, «l'imam des deux lieux saints» (*imām al-ḥaramayn*), est une personnalité suffisamment connue pour que je puisse me dispenser de le présenter. Pourtant, sa notoriété, dans le cadre des études islamiques, est surtout liée à son œuvre de théologien aš'arite (*mutakallim*)<sup>2</sup> alors que son travail de légiste (*faqīh*) šāfi'ite, aussi important, et sans doute plus important aux yeux de ses contemporains, reste mal connu ou peu étudié (et, à vrai dire, souvent difficile d'accès).

Ğuwaynī (né le 18 muḥarram 419 / 17 février 1028 et décédé le 25 rabī' II 478 / 19 août 1085) fut sans conteste le représentant le plus éminent de la branche khurāsānienne du šāfi'isme de son époque<sup>3</sup>. Fils d'un légiste šāfi'ite de grand renom lui aussi, il passa la plus grande partie de sa vie à enseigner les sciences légales à Naysābūr d'abord, dans le Ḥiğāz ensuite – d'où son surnom – et à nouveau à Naysābūr, dans le collège que le ministre seljoukide Niẓām al-Mulk avait fait bâtir pour lui (et pour la cause du šāfi'isme). Son œuvre écrite de légiste est importante. En matière d'*uṣūl al-fiqh*, on lui connaît *Al-talḥīs*, qui est un résumé d'*Al-taqrīb wa-l-iršād* de Bāqillānī<sup>4</sup>, *Al-burhān fī uṣūl al-fiqh*<sup>5</sup> et les célèbres et minuscules *Waraqāt fī uṣūl al-fiqh* si souvent commentés<sup>6</sup>. Pour le *fiqh* proprement dit, il rédigea et résuma *Al-nihāya* (de son titre complet: *Nihāyat al-maṭlab fī dirāyat al-madhhab*). Enfin, le texte qui nous intéresse ici au premier chef est un bref traité

Sous une forme légèrement remaniée, le texte qui suit reproduit une communication prononcée à la III<sup>e</sup> International Conference on Islamic Legal Studies sur le thème «The Madhhab», Islamic Legal Studies Program, Harvard Law School, 4-6 mai 2000.

<sup>1</sup> Voir à son propos C. Brockelmann-[L. Gardet], *EI*<sup>2</sup> II, p. 620 sq.

<sup>2</sup> En 1938 déjà, à Paris, J. D. Luciani éditait *Al-iršād*.

<sup>3</sup> Pour plus de détails sur le šāfi'isme en général, cf. É. Chaumont, *EI*<sup>2</sup> IX, p. 191-195.

<sup>4</sup> Abū al-Ma'ālī 'Abd al-Malik Imām al-Ḥaramayn al-Ğuwaynī, *Kitāb al-talḥīs fī uṣūl al-fiqh*, I-III, Beyrouth et La Mecque, 1418/1996. Le texte commenté (sa version «courte» selon l'éditeur;

je pense pour ma part qu'il s'agit plutôt de version «moyenne» ou «longue») a été partiellement édité: Al-Qāḍī Abū Bakr Muḥammad b. al-Ṭayyib al-Bāqillānī (m. 403/1012), *Al-taqrīb wa-l-iršād*, I-III, Beyrouth, 1998.

<sup>5</sup> Voir n. 11.

<sup>6</sup> Très nombreuses éditions au Caire, à Beyrouth ou ailleurs, le plus souvent accompagnées du commentaire d'Al-Maḥallī (dont Casablanca, s.d.); traduction française de L. Bercher, *Les fondements du fiqh*, Paris, 1995.

# THE ORIGINS OF MUHAMMADAN JURISPRUDENCE

By  
JOSEPH SCHACHT



DİA İsm  
Tevinde  
Şafiî - 6-20

Türkiye Diyanet Vakfı İslâm Ansiklopedisi Kütüphanesi	
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## CHAPTER 2 THE ANCIENT SCHOOLS OF LAW. SHĀFĪ'Ī'S ATTITUDE TO THEM

SHĀFĪ'Ī is known as the founder of one of the four surviving orthodox schools of law. It was not his intention to found such a school, and Muzanī, the author of the earliest handbook of the Shāfi'ite school, declares at the beginning of his work:<sup>1</sup> 'I made this book an extract from the doctrine of Shāfi'ī and from the implications of his opinions, for the benefit of those who may desire it, although Shāfi'ī forbade anyone to follow him or anyone else.' Shāfi'ī devotes a considerable part of his writings to discussions with and polemics against his opponents, but always with a view to making them acknowledge and follow the *sunna* of the Prophet, and he speaks repeatedly against the unquestioning acceptance of the opinion of men.<sup>2</sup>

The older schools of law to which Shāfi'ī is opposed, know a certain degree of personal allegiance to a master and his doctrine.<sup>3</sup> Amongst the Iraqians, we find Abū Yūsuf refer to Abū Ḥanīfa as 'the prominent lawyer', and Shaibānī to 'the companions of Abū Ḥanīfa'; Shāfi'ī refers to those 'who follow the doctrine of Abū Ḥanīfa', or to his 'companions', and calls him 'their master'; but also Abū Yūsuf has followers of his own. The most outspoken passage is one in which an Iraqi opponent, presumably Shaibānī, acknowledges Shāfi'ī's doctrine as good, but Shāfi'ī retorts that, as far as he knew, neither the opponent had adopted it nor another of his ilk who lorded it over them, presumably Abū Ḥanīfa.<sup>4</sup>

Some of the Medinese rely on Mālik for their knowledge of traditions, and consider Mālik's *Muwatta'* as their authoritative

<sup>1</sup> *Mukhtaṣar*, i. 2.

<sup>2</sup> *Tr. III*, 71, 148 (p. 246); *Tr. IV*, 250; *Tr. VII*, 274; *Ikh.* 148 f. In the time of Shāfi'ī, the word *taqlīd*, though occasionally used of the adherence to the doctrine of a master, was not yet the technical term for it which it became later. Cf. below, p. 18, n. 5, 79 (on *Tr. III*, 65), 122 (on *Tr. IV*, 253), 131, 136, n. 4.

<sup>3</sup> Ash'arī, *Maqālāt*, ii. 479 f. opposes the adherents of the old schools (*ahl al-ijtihād*) who admit *taqlīd*, to some followers of Shāfi'ī (*bā'd ahl al-qiyās*) who do not admit it. Ibn Ḥazm deplored that the followers of Shāfi'ī accepted the principle of *taqlīd*, first introduced by the adherents of the old schools. See his *Iḥkām*, ii. 120, and Goldziher, *Zāhiriten*, 212.

<sup>4</sup> *Ikh.* 122.

## THE ANCIENT SCHOOLS OF LAW

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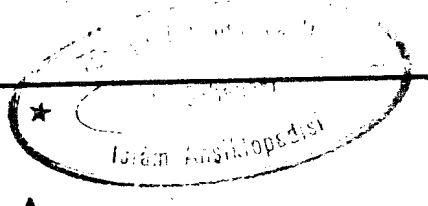
book 'which they prefer to all others and which they are accustomed to follow'; they are the 'followers' of Mālik and he is their 'master'; they regard his opinion as if it were the consensus, and there is no consensus for them besides Mālik in Medina. But they are only a fraction of the Medinese, just as the followers of Abū Ḥanīfa are only part of the Iraqians.

The real distinguishing feature between the ancient schools of law is neither the personal allegiance to a master nor, as we shall see later, any essential difference of doctrine, but simply their geographical distribution. Shāfi'ī is explicit about it: 'Every capital of the Muslims is a seat of learning whose people follow the opinion of one of their countrymen in most of his teachings.'<sup>1</sup> Shāfi'ī goes on to mention the local authorities of the people of Mecca, Basra, Kufa, Syria; elsewhere, he refers to the Iraqians and Medinese, the Basrians and Kufians, the scholars of each place where knowledge of traditions is to be found, the people of the different countries, and he gives detailed lists of these local authorities.

One of these lists shows the variety of doctrines within the great geographical divisions: 'In Mecca there were some who hardly differed from 'Aṭā', and others who preferred a different opinion to his; then came Zanji b. Khālid and gave legal opinions, and some preferred his doctrine, whereas others inclined towards the doctrine of Sa'id b. Sālim, and the adherents of both exaggerated. In Medina people preferred Sa'id b. Musaiyib, then they abandoned some of his opinions, then in our own time Mālik came forward and many preferred him, whereas others attacked his opinions extravagantly. I saw Ibn Abil-Zinād exaggerate his opposition to him, and Mughīra, Ibn Ḥāzim and Darāwardī follow some of his opinions, whereas others attacked them [for it]. In Kufa I saw people incline towards Ibn Abī Lailā and attack the doctrines of Abū Yūsuf, whereas others followed Abū Yūsuf and disagreed with Ibn Abī Lailā and with his divergences from Abū Yūsuf, and others again inclined towards the doctrine of Sufyān Thaurī and that of Ḥasan b. Ṣāliḥ. I have also heard of other instances of this kind, similar to those which I have observed and described. Some Meccans even think of 'Aṭā' more highly than of the Successors, and some of their opponents place Ibrāhīm Nakha'ī

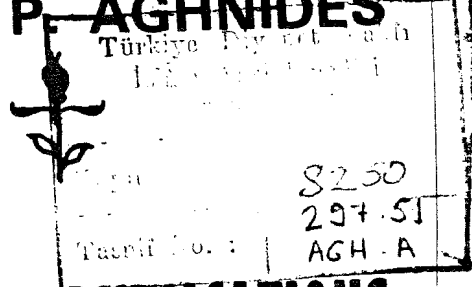
<sup>1</sup> *Tr. III*, 148 (p. 246).

Safir



# An Introduction To Mohammedan Law And A Bibliography

NICOLAS P. AGHNIDES



SANG-E-MEEL PUBLICATIONS  
CHOWK URDU BAZAR LAHORE

Al-Shāfi'i was very brilliant, and, according to Ibn Khalīkān,<sup>1</sup> he

stood unrivalled by his abundant merits and illustrious qualities; to the knowledge of all the sciences connected with the book of God, the *Sunnah*, the sayings of the Companions, their history, the conflicting opinions of the learned, etc., he united a deep acquaintance with the language of the Arabs of the Desert, philology, grammar, and poetry; . . .

Aḥmad Ibn Hanbal, one of al-Shāfi'i's disciples, is quoted as saying, "al-Shāfi'i was to mankind, what the sun is to the world, and health to the body; what can replace them?"

In contrast to Abu Hanīfah who was of a scholastic type of mind and liked hypothetical speculation, al-Shāfi'i was rather averse to, and probably not so skilful in subtle distinctions, and therefore relied on the revealed sources whenever he could find in them the desired provisions. The following verses composed by al-Shāfi'i bear this out: "The more experience instructs me, the more I see the weakness of my reason; and the more I increase my knowledge, the more I learn the extent of my ignorance."<sup>2</sup>

In short, al-Shāfi'i was an eclectic,

who came when the law books were already completed into elaborate systems, and the laws sifted and laid down in a hard and fast way. He studied the schools of the fore-runners and learned from the most prominent doctors; he disputed with the ablest and profoundest and examined their teachings, and later on worked out from them a method which combined the Book, the *sunnah*, the *ijmā'*, and the *qiyās*, and so he did not confine himself to one or the other of these sources, as was the case with others.<sup>3</sup>

<sup>1</sup> Vol. ii, p. 569.

<sup>2</sup> *Ibid.*, vol. ii, p. 572.

<sup>3</sup> *Tah-dhib*, p. 62.

S-144-145

The above quotation from a disciple of al-Shāfi'i, al-Nawawī, although somewhat exaggerated, gives a good idea of the work done by al-Shāfi'i.

The avowed object of al-Shāfi'i was to reconcile *fiqh* and tradition, and to those concerned he seemed to have succeeded in doing this (*jama'ahu bayn al-fiqh wa 'l-sunnah*). This explains the circumstance that when al-Shāfi'i appeared in Bagdad, there followed a rapid conversion to his school. The most prominent disciples and followers of al-Shāfi'i were Aḥmad Ibn Hanbal, Abu 'l-Thawr, al-Za'farāni, al-Tabari, al-Māwardi, Imām-al-haramayn, and others.

According to the *Tah-dhib*<sup>1</sup> al-Shāfi'i wrote 113 works bearing on interpretation (*tafsīr*), *fiqh*, literature, etc. The works relating to *fiqh* are, the *Risālah*, the *Kitāb al-Umm*, the two *Jāmi's* and *Mukhtaṣars* of Muzani, the *Mukhtaṣar* of Rabī', etc. The most renowned commentaries upon al-Shāfi'i's writings are the *Ta'liqs* of Abu Ḥamid al-Isfarā'ini, al-Tabari, and al-Māwardi.

At present, the followers of this school are found in the Strait settlements, the Malayan districts of Siam, the coast of Hindustan, (Malabar and Coromandel), in Southern Arabia, especially in Haḍramut, in Baḥrayn, on the Persian Gulf, in certain Central Asian districts, in Dagistan, and in the German East-African colonies. Finally, some Mohammedans in Syria follow the Shafite doctrines in the field of private life only. This is also true of those found in Arabia and Egypt.

**The Hanbalites.** This is the school founded by Aḥmad Ibn Hanbal (164/780-241/855). Aḥmad was a disciple of al-Shāfi'i and, next to Dāwūd al-Zāhiri, he was the staunchest opponent of the *ra'y*-folk. He makes use of *qiyās* very little, and bases his system mainly on the sacred

<sup>1</sup> P. 67.

ТРУДЫ  
ДВАДЦАТЬ ПЯТОГО  
МЕЖДУНАРОДНОГО КОНГРЕССА  
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des imperialistischen Deutschlands im ersten Weltkrieg gegenüber dem Osmanischen Reich anzudeuten. Ich danke Ihnen für Ihre Aufmerksamkeit.

ANMERKUNGEN

- <sup>1</sup> Vgl. u. a. folgende Kriegsflugschriften: Ewald Banse, *Die Türken und Wir*, Weimar, 1917; C. H. Becker, *Deutsche-türkische Interessengemeinschaft*, Bonn, 1914; Max Blankenhorn, *Syrien und die deutsche Arbeit*, Weimar, 1916; E. A. Fabarius, *Neue Wege der deutschen Kolonialpolitik nach dem Kriege*, Berlin, 1916; Hugo Grothe, *Türkisch-Asien und seine Wirtschaftswerte*, Frankfurt/Main, 1916; Prof. Dr. Jäckh, *Die Beziehungen der deutschen Industrie zum türkischen Reiche*, «Technik und Wirtschaft. Monatsschrift des Vereins Deutscher Ingenieure», 9. Jg., Mai 1916, 5. Heft; Th. Jäger, *Persien und die Persische Frage*, Weimar, 1916; Franz Kohler, *Der Neue Dreieck. Ein politisches Arbeitsprogramm für das gesamtdeutsche Volk und seine Freunde*, München, 1915; Karl Mehrmann-Coblenz, *Der diplomatische Krieg in Vorderasien. Unter besonderer Berücksichtigung der Geschichte der Bagdadbahn*, Dresden, 1916; Karl Mehrmann-Coblenz, *Groß-Deutschland. Unsere Stellung in der Weltstaatengesellschaft*, Dresden, 1915; Eugen Mittwoch, *Deutschland, die Türkei und der Heilige Krieg*, Berlin, 1916; Karl Hermann Müller, *Die wirtschaftliche Bedeutung der Bagdadbahn. Land und Leute der asiatischen Türk i*, Hamburg, 1917; Albert Ritter, *Die Kaiserreiche und der Balkan. Ein Alarmruf und ein Programm*, Stuttgart, 1914; Hans Rohde, *Deutschland in Vorderasien*, Berlin, 1916; Max Roloff, *Arabien und seine Bedeutung für die Erstärkung des Osmanenreiches*, Leipzig, 1915; C. A. Schaefer, *Das neu-deutsche Ziel*, Stuttgart, 1914; Derselbe, *Deutsch-Türkische Freundschaft*, Stuttgart und Berlin, 1914; Derselbe, *Die Entwicklung der Bagdadbahnpolitik*, Weimar, 1916; Otto von Schwarzenegg, *Das levantinische Programm. Das Deutschen Reiches und Volkes Weg in die Welt*, Leipzig, 1916; Theodor Springmann, *Deutschland und der Orient. Das Kolonialreich der Zukunft*, Hagen/Westfalen, 1915; Kurt Wiedenfeld, *Die deutsch-türkischen Wirtschaftsbeziehungen und ihre Entwicklungsmöglichkeiten*, München und Leipzig, 1915; Albrecht Wirth und Emil Zimmermann, *Was muß Deutschland an Kolonien haben*, Frankfurt/Main, 1918; Rudolf Zabel, *Im Kampf um Konstantinopel und die wirtschaftliche Lage der Türkei während des Weltkrieges*, Leipzig, 1916.
- <sup>2</sup> Otto von Schwarzenegg, a. a. O., S. 39.
- <sup>3</sup> G. A. Schaefer, *Das neu-deutsche Ziel*, a. a. O.
- <sup>4</sup> Alois Schmid, *München-Bagdad. Eine bayerische Zukunftsfrage*, München, 1916.
- <sup>5</sup> Karl von Winterstetten, *Nordkap—Bagdad. Das politische Programm des Krieges*, Frankfurt/Main, 1914.
- <sup>6</sup> Otto von Schwarzenegg, a. a. O. S. 39.
- <sup>7</sup> Albrecht Wirth und Emil Zimmermann, a. a. O., S. 28.
- <sup>8</sup> Dankwart Rost, *Die britisch-russischen Beziehungen während des Weltkrieges*, Kiel, 1951, Diss.; Hermann Delfs, *Die Politik der Mächte beim Zerfall des Osmanischen Reiches*, Kiel, 1954, Diss.; Wipert von Blucher, *Zeitenwende in Iran. Erlebnisse und Beobachtungen*, Biberach an der Riss, 1949.
- <sup>9</sup> Sächsisches Landeshauptarchiv Dresden: Ministerium der Auswärtigen Angelegenheiten. Politische Akten. Akten-Nr. 2112.
- <sup>10</sup> Deutsches Zentralarchiv Potsdam: Reichskolonialamt. Akten-Nr. 7216.
- <sup>11</sup> Ebenda, Akten-Nr. 7213.
- <sup>12</sup> Ebenda, Akten-Nr. 7215.
- <sup>13</sup> Ebenda, Akten-Nr. 7216.
- <sup>14</sup> Ebenda.
- <sup>15</sup> Ebenda.
- <sup>16</sup> Vergl. u. a.: Carl Mühlmann, *Das deutsch-türkische Waffenbündnis im Weltkrieg*, Leipzig, 1941. Hans von Kiesling, *Mit Feldmarschall vor der Goltz Pascha in Mesopotamien und Persien*, Leipzig, 1922; Dr. Neubert, *Jelderim. Deutsche Streiter auf heiligem Boden*, Oldenburg i. O. — Berlin, 1925; Friedrich Frhr. Kreß von Kressenstein, *Mit den Türken zum Suezkanal*, Berlin, 1938; Werner Otto von Hentig, *Meine diplomatenfahrt ins verschlossene Land*, Berlin und Wien, 1918; Liman von Sanders, *Fünf Jahre Türkei*, Berlin, 1919.
- <sup>17</sup> Hans von Kiesling, a. a. O., S. 68 u. 80.
- <sup>18</sup> Carl Mühlmann, a. a. O.
- <sup>19</sup> Dankwart Rost, a. a. O., S. 118.
- <sup>20</sup> Hans von Kiesling, a. a. O., S. 79/8) schreibt: Das Auswärtige Amt unterhielt auf den Hauptangriffslinien der deutschen Politik, besonders gegenüber Persien und dem Kaukasus, sogenannte Nachrichtenoffiziere, die aus der Diplomatie hervorgegangen,

weitgehende Vollmachten besaßen und selbständige Politik machten. Sie unterstanden direkt der deutschen Zentralbehörde in der Wilhelmstraße bzw. der Botschaft in Konstantinopel und waren der Beeinflussung der militärischen Führer entzogen\*.

<sup>21</sup> Vergl.: Jäckh, a. a. O., S. 201.

<sup>22</sup> Vergl.: Hans Rohde, a. a. O., S. 120.

<sup>23</sup> W. Blankenburg, *Die Zukunftsarbeit der deutschen Schule in der Türkei*, Leipzig, 1915, 22.

<sup>24</sup> Ebenda. Vergl. auch «Deutsche Tageszeitung» v. 23. 3. 1915.

<sup>25</sup> Dem Vorstand gehörten 1915 an: Arthur von Gwinner (Direktor der Deutschen Bank, Vorsitzender), Dr. Schacht (Direktor der Dresdner Bank, i. stellvertr. Vorsitzender), Prof. Dr. Wiedenfeld, Halle (2. stellvertr. Vorsitzender), Dr. Ernst Jäckh, Berlin (Schriftführer), Dr. Alexander (Direktor der Deutschen Orientbank, Schatzmeister), Albert Ballin (Generaldirektor der Hamburg-Amerika-Linie), Franz Johannes Günther (stellvertr. Generaldirektor der Anatolischen Eisenbahnen, Konstantinopel), Dr. von der Nahmer, Köln, Landrat a. D. Rötger (Vorsitzender des Zentralverbandes deutscher Industrieller), Geh. Oberregierungsrat Dr. Sachau (Direktor des Orientalischen Seminars Berlin), Generalkonsul Dr. Paul von Schwabach, Berlin.

<sup>26</sup> Dem Vorstand gehörten an: Arning (Stabsarzt), Blankenburg (Landtagsabgeordneter), Bork (Prof.), Geipel (Bankbeamter), Grothe (Vorsitzender), Günther (Prof.), Gurlitt (Prof.), Herkner (Regierungsbaumeister), Keller (Verlagsbuchhändler), Lichtenberg (Prof.), Ott (Bürgermeister), Peiser (Prof.), Regel (Prof.), Sivers (Prof.), Wagner (Verlagsbuchhändler), Zimmerer (Prof.). Ehrenmitglieder: Ballin (Direktor der Hamburg-Amerika-Linie), Becker (Prof.), Fischer (Prof.), Günther (Prof.), Jacob (Prof.), Lamprecht (Prof.), Luschan (Prof.), Meyer, Hans (Prof.), Philippson (Prof.), Regel (Prof.), Stresemann (Syndikus), Stumme (Prof.), Werner (Geh. Kommerzienrat).

<sup>27</sup> Vergl.: *Aufruf des Deutschen Vorderasien-Komitees im Jahre 1915*. Als Anlage bei: M. Horten, *Die islamische Geisteskultur*, Leipzig, 1915, in: «Länder und Völker der Türkei. Schriften des Deutschen Vorderasien-Komitees».

<sup>28</sup> Folgende Verbände wurden gegründet bzw. reorganisiert: Deutscher Balkan-Verein, Deutsches-Orient-Handels-Syndikat, Deutsche-Orientalische-Handelsgesellschaft, Deutscher-Levante-Verband, Deutsches Vorderasien-Komitee, Dresdner Orient- und Übersee-Gesellschaft, Mitteleuropäische-Handels-Vereinigung, Industrie-Propagandastelle für den Orient, Deutsch-Persischer-Wirtschaftsverband, Deutsch-Türkische Handelsgesellschaft, Deutsch-Türkische Vereinigung.

<sup>29</sup> Deutsches Zentralarchiv Potsdam: Auswärtiges Amt, Handelspolitische Abteilung, Akten-Nr. 13 691.

<sup>30</sup> Ebenda, Akten-Nr. 13 692.

<sup>31</sup> Ebenda, Akten-Nr. 13 693—95.

<sup>32</sup> Ebenda, Akten-Nr. 13 697.

<sup>33</sup> Ebenda, Reichsamt des Innern, Akten-Nr. 8 013.

<sup>34</sup> Ebenda, Auswärtiges Amt, Handelspolitische Abteilung, Akten-Nr. 13 695.

<sup>35</sup> Ebenda.

<sup>36</sup> Ebenda, Akten-Nr. 3 498.

<sup>37</sup> Ebenda, Reichswirtschaftsamt/ministerium, Akten-Nr. 7 427.

По докладу выступили Г. Л. Бондаревский, А. М. Голдобин.

16 августа, утреннее заседание  
Председатель В. Ю. Захидов (Ташкент).

MAJID KHADDURI (Washington): SHAFI'I'S TREATISE ON ISLAMIC JURISPRUDENCE

Owing to recent legal reform in the Islamic countries aiming at combining non-Islamic with Islamic law, there is an increasing interest in the study of Islamic jurisprudence. This is not only due to the intrinsic value of this law, but also because this law may provide raw material for modern legislation in Islamic lands.

The present writer has always stressed the advantage to Western scho-

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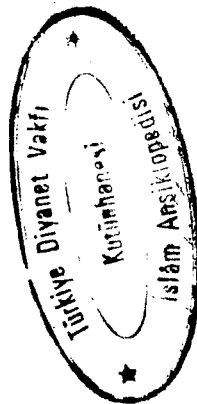
In the Name of Allah, the Most Gracious, the Dispenser of Grace!

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# ISLAMIC JURISPRUDENCE IN THE MODERN WORLD

علم الفقه في العالم العصري  
 [‘Ilm al-Fiqh fi’l-‘Ālam al-‘Aṣrī]

BY  
**ANWAR A. QADRI**  
 B.A., LL.B. ; M.L.I. (Wisconsin) U.S.A. ;  
 C.C.L. (UISC) Luxembourg



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The second version was that of Yaḥyā al-Laythī (d. 234 H.) which was printed in Egypt and commented upon by Zarqānī and Suyūṭī.<sup>79</sup> The method of approach of the book shows that Imām Mālik gives attention to the topics *Ḥadīth*-wise in which he cites from the practices adopted by the Companions and their Successors restricted largely to those of Medina. In his interpretation, he used to rely on the Qur’ān and the Traditions and even believed in a tradition attributed to a single narrator. In the absence of any direct authority in the two fundamental sources, the Imām resorted to analogy and also to the source of law termed by the school as *Maṣlaḥah Mursalah* or public interest.

A number of books, apart from *Muwatta’*, are attributed to the Imām. Different reports point to different titles with regard to their authorship. However, Abū Zahrah comments upon them and cites them. Suyūṭī mentions books quoted by different authors attributing their authorship to Imām Mālik. They are on *Tafsīr*, on *Ḥadīth* and on *Āthār*, etc. Among other works mentioned are *al-Najūm*, *Risālah ‘Aqdiyyah*, *Fatāwā*, *Tafsīr Gharīb-ul-Qur’ān*, *Kitāb-ul-Sarūr* and a *Risālah* said to be written to Hārūn al-Rashīd.<sup>80</sup>

Among other books compiled by jurists of the Mālikī school the foremost is *al-Mudawwanah (al-Masā’il)*. It is a recension of Qāḍī Saḥnūn containing his questions answered by al-Qāsim, a student of Imām Mālik, for twenty years. These answers repeat the literal words of the Imām by occasional personal interpretation of Qāsim himself. The book is said to be a revision by al-Qāsim of the *Asadīyyah* of Asad b. al-Furāṭ. The *Mukhtalifah* is another name given to *Mudawwanah*. The book named *al-Wāḍiḥah* is by Marwān ‘Abd al-Malik b. Ḥabīb al-Sulāmī of Spain, and similarly are the following books: *al-Mustakhrajah min al-Asmiyah al-Masmū’ah min Mālik b. Anas* known as *al-Uṭbiyyah* by al-Uṭbī al-Qarṭabī and its commentary by Ibn Rushd named *al-Bayān wa’l-Taḥṣīl wa’l-Sharḥ wa’l-Tawjīh wa’l-Ta’līl fi Masā’il al-Mustakhrajah*; *Takḥīb* by Sa’īd al-Barada’ī; *Kitāb al-Nawādir* by Zayd al-Qayrawānī (also his *Risālah*); *Mukhtaṣar* by ‘Amr ‘Uthmān b. ‘Umar b. al-Ḥājib; *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid* by al-Walīd Muḥammad b. Aḥmad b. Rushd al-Qarṭabī commonly known as *Rushd al-Ḥāfiṣ* (the grandson); *al-Mukhtaṣar* by Diyā’ al-Dīn Khalīl (a most famous work translated by Perron in French and by others); its commentaries by Tāj al-Dīn Bahrām b. al-Dāmīrī in three sizes; and glosses by al-Kharashī; *Talṣīrat al-Ḥukkām fi Uṣūl al-‘Aqdiyyah wa Manāhiḥ al-Aḥkām* by Farḥūn

79. See Zarqānī, *op. cit.* The book has also been translated and published in the Indo-Pakistan subcontinent.

80. See discussions in Zahrah, *op. cit.*, 223-3; Suyūṭī, *op. cit.*

Andalusī; *Tuḥfat Ḥukkām fi Nuḳāt al-‘Uqūd wa’l-Aḥkām* by Ibn ‘Āṣim.<sup>81</sup>

### Section 3. Sunnī Shāfi’ī

In order to make a choice between reason and authority, Imām Shāfi’ī brought about a balance between the traditionalism of the Mālikī school and the practicality of the Ḥanafī school, and thus a third Sunnī school emerged. He was an eclectic, who studied after the forerunners had come up or when the law books had largely been completed into elaborate systems and the rules sifted and were being laid down. The commentators on whom we depend for our knowledge of the Imām’s teachings note a marked change in his views on many points after his visit to Baghdad and settlement in Egypt. In Egypt the Shāfi’ī school seems to have predominated, except when overborne by the Shī’ī rule in the tenth and eleventh centuries down to its conquest by the Turks in 1517. The school later got hold there and for a period of time the post of *Shaikh al-Azhar* was limited to the learned of the school. The school holds its own in Southern Arabia. From the shores of the Red Sea, the course of trade and colonisation carried the teachings to the East Coast of Africa and the West Coast of the Indo-Pakistan subcontinent, and thence to the Eastern Archipelago, to Malysia and Indonesia. The school’s adherents are still to be found in Syria, Jordan, Lebanon (Beirut), Iraq, Persia, Ceylon, and other Muslim lands.

From the date of death of the Imām till today, his teachings are expounded at Cairo, especially in the great Mosque of al-Azhar. Southern Arabia gave birth to writers of eminence and the school is given a commanding position in the treatise *Minḥāj-ū’l-Ṭālibīn* of Nawawī (d. 676 H.). To the three great commentaries the Egyptians and the South Arabians have been great contributors, as they are quoted in the decisions of East Africa.<sup>82</sup> The eclecticism initiated by the great leader, especially by his book (*al-Risālah*), has been made use of as a method of mixing the teachings of the Sunnī school under a process of reformatory modernism.

*Biographical and Historical.* There is a difference of opinion about the biographical details of the Imām. Some say that he was born at Gaza, while others say it was either at Yemen or at ‘Asqalān (a large town near Gaza)

81. Also the books: *‘Aqrab al-Masālik li Madhhab al-Imām Mālik* by al-Dardīr al-‘Adawī al-Azhārī; *al-Majmū’ fi’l-Fiqh* by al-Suntawī al-‘Āmir. The *fatāwā* collections are *al-Mi’yār al-Maghrib wa’l-Jāmi’ al-Mu’rib an Fatāwā ‘Ālam Ifriqiyyah wa’l-Andalusīyah wa’l-Maghrib* by Yaḥyā al-Wanshārisī; and *Fath al-‘Alī al-Mālik fi’l-Fatāwā ‘atā Madhhab al-Imām Mālik* by Alish. A number of the works have been produced in the French language.

82. See re Abdul Ghafoor 1, Zanzibar L.R. 575; Joha v. Iki, 4, East African L.R. (Kenya) 27.

# THE ORIGINS OF MUHAMMADAN JURISPRUDENCE

By  
JOSEPH SCHACHT



DİA için  
Tercüme  
Şâfiî (Sunnet) 77-81

Türkiye Diyanet Vakfı İslâm Ansiklopedisi Kütüphanesi	
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*Muw. Shaib.* 361, where he calls it 'something we have heard on the authority of the Prophet'; but his whole evidence for this consists in statements of Zuhri and 'Atā' on a change of practice in Umayyad times.

In his long reasoning in *Tr. VIII*, 13, Shaibānī, as it happens, does not use the term *sunna*. But the whole passage, as far as legal arguments are concerned, might have been written by Auzā'ī. Shaibānī refers to the Koran, to traditions from the Prophet (in general terms), to traditions from Companions, and to a later authority (Zuhri), and claims that the practice changed under Mu'āwiya.

To sum up, the 'sunna of the Prophet', as understood by the Iraqians, is not identical with, and not necessarily expressed by, traditions from the Prophet; it is simply the 'living tradition' of the school put under the aegis of the Prophet. This concept is shared by Auzā'ī, but not by the Medinese. It cannot be regarded as originally common to all ancient schools of law, and as between the Syrians and the Iraqians, the evidence points definitely to Iraq as its original home. In any case, it was the Iraqians and not the Medinese to whom the concept of 'sunna of the Prophet' was familiar before the time of Shāfi'ī. The common opinion to the contrary has taken at its face value a later fiction, some other aspects of which we have discussed already.<sup>1</sup>

The Iraqians hardly use the term 'amal, 'practice', even where their doctrine endorses actual administrative procedure.<sup>2</sup> We have seen Abū Yūsuf inveigh against Auzā'ī's concept of practice, although his own idea of *sunna* comes down to the same. Shāfi'ī's Basrian opponent, when charged with making the 'practice' prevail over traditions from the Prophet, replaces this term in his own answer by *sunna*.<sup>3</sup>

However it be formulated, the Iraqi idea of 'living tradition' is essentially the same as that of the Medinese, and Shāfi'ī can say, addressing the Egyptian Medinese: 'Some of the Easterners have provided you with an argument and hold the same view as you' (*Tr. III*, 148, p. 242). This 'living tradition' is meant when an Iraqi opponent of Shāfi'ī says that there

<sup>1</sup> See above, p. 8, on Medina as the true home of the *sunna*, and p. 27 on the interest of the Medinese in traditions, compared with that of the Iraqians.

<sup>2</sup> See above, p. 60, n. 5.

<sup>3</sup> See above, p. 59.

would be nothing to choose between two doctrines, each of which is represented by a tradition, 'if there were nothing to go by but the two traditions' (*Ikh.* 158 f.). It corresponds to the accepted doctrine of the school, and a scholar from Kufa, presumably Shaibānī himself, can comment on the fact that a well-authenticated tradition from the Prophet is not acted upon because 'all people' have abandoned it, saying: 'By "people" I mean the muftis in our own time or [immediately] before us, not the Successors'; he specifies the people of Hijaz and Iraq; for Iraq, he can only mention Abū Ḥanīfa and his companions, and he is aware that Ibn Abī Lailā holds a different opinion which, however, 'we do not share'; he knows nothing about the muftis in Basra (*Ikh.* 336 f.). The Iraqians, therefore, like the Medinese, take their doctrine 'from the lowest source'. The scholars of Kufa in particular find this doctrine expressed in the opinions ascribed to Ibrāhīm Nakha'ī.<sup>1</sup>

## E. SHĀFI'Ī

For Shāfi'ī, the *sunna* is established only by traditions going back to the Prophet, not by practice or consensus (*Tr. III*, 148, p. 249). Apart from a few traces of the old idea of *sunna* in his earlier writings,<sup>2</sup> Shāfi'ī recognizes the 'sunna of the Prophet' only in so far as it is expressed in traditions going back to him. This is the idea of *sunna* which we find in the classical theory of Muhammadan law, and Shāfi'ī must be considered as its originator there.<sup>3</sup>

*Sunna* and traditions are of course not really synonymous.<sup>4</sup> Keeping this in mind, we notice that Shāfi'ī restricts the meaning of *sunna* so much to the contents of traditions from the Prophet, that he is inclined to identify both terms more or less completely.<sup>5</sup>

In the preceding sections we had occasion to refer to Shāfi'ī's attacks against the old ideas of *sunna*, 'practice' and 'living

<sup>1</sup> See above, p. 33.

<sup>2</sup> See below, p. 79 f.

<sup>3</sup> It is also the idea of the traditionists, as explicitly stated in Ibn Qutaiba, 215 f.

<sup>4</sup> See above, p. 3.

<sup>5</sup> The following are some of the most telling passages: *Ris.* 30, 31, 58; *Tr. I*, 9, 138; *Tr. II*, 5 (e), 15, 19 (e); *Tr. III*, 65, 105, 114, 122, 125, 130; *Tr. VI*, 266; *Tr. VIII*, 6, 7, 8, 12; *Tr. IX*, 39; *Umm.* iv. 170; *Ikh.* 27, 51, 57, 357. Shāfi'ī projects this identification of *sunna* with the contents of traditions from the Prophet back into the time of the Successors: *Ikh.* 24.

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علم الفقه في العالم العصري  
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BY  
ANWAR A. QADRI  
B.A., LL.B. ; M.L.I. (Wisconsin) U.S.A. ;  
C.C.L. (UISC) Luxembourg



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was developed and it was not made stagnant.

However, it cannot be denied that the time and the intensity of confidence and sticking hard to a particular school made the followers jealous of other schools. To show up the superiority of one school to others, an intense declamatory competition commenced. These competitive debates were often patronised by the authorities and history is replete with record of learned debates. Books were compiled on debates or *Munāzarāt* and separate methods and rules were framed for the purpose. As a result there developed mutual hatred, unjust methods were used in downcasting the other debater, unity among the Muslims was broken, rivalries and many other demerits as injurious to law and the faithful cropped up. It was also the ultimate result that the competitive zeal of the followers of the schools led to the encroachment of the human egoism leading them far away from what the science of learning required.<sup>41</sup> Nevertheless, the method of debate and discussion not exceeding the permissible limits was one of the highly developed or refined features of the law. It is a proof of the living nature of legal institutions and high capabilities of the jurists of the time. It made the law to gain further vigour and vitality, and its just criticism made the legal system more elegant.<sup>42</sup>

The jurists of the various schools (as stated above) elucidated the views of the earlier jurists. Their aim was to make the law certain, simple, accessible and arranged, harmonious and definite. It made the law a ready-referencer in the adjudication of disputes, in conforming human conduct in different areas of life for unifying the Muslims under the super-structure of the sacred principles. In this process all the areas and aspects of individual, family, social, private, public and international relations were covered. It gave ease and comfort to the lawyers and laymen, the government and the students of law.

In the end, it may be added that during this period, the Fatimids (Ismā'īliyyah Shī'ah) came into prominence in Egypt (or North Africa). With them came the 'Alid jurisprudence of the Separatists, eliminating the law of the usual Muslim schools. Their system lasted about 270 to 280 years. The principles of *Walāyah*, *Ṭahārah*, were forcibly imposed upon the people of the other schools and official patronisation was bestowed on them. The great al-Azhar was founded by them and history records interesting incidents happening at the time. However, they claimed their pedigree from the Prophet's daughter, Fā'imah, and held the Abbasids as usurpers. It is still a debatable point; historians are not unanimous on

41. For a description see al-Subkī, *Ṭabaqāt al-Shāfi'iyyat al-Kubrā*, 6 vols. (Cairo, 1324 H.); Anwārullah (*Ḥaqīqat-i-Fiqh*, 2 vols.) gives a good description with many illustrations.

42. Cf. Zahrah, *al-Milkiyat wa Nazariyat-ul-'Aqd fi'l-Shari'ah*, 38 ff.

their claim, and the sources of the Fatimids are completely silent.<sup>43</sup>

*Great Jurists of the Period.* The following is a short list of the most famous jurists of the fifth period:

(1) *Of the Hanafi School.* Abu'l-Hasan 'Ubaidullah b. Hasan al-Karkhī (d. 340 H.); Abū Laith Naṣār b. Muḥammad Samarqandī (d. 373 H.) who wrote *Nawāzil*, *Khazānat-ul-Fiqh*, etc., and Commentary on *Jāmi'-us-Saghīr*; Abū 'Abdullah Yūsuf b. Muḥammad Jurjānī (d. 398 H.), author of *Khazānat-ul-Akmal*, commentaries on *Jāmi'-ul-Kabīr*, *Mukhtaṣar Karkhī*, *Sharḥ Ṭahāwī*, etc.; Abu'l-Hasan Aḥmad b. Muḥammad Quddūrī (d. 428 H.), author of *al-Mukhtaṣar*, etc.; Abū Bakr Khawāhir-Zādah Muḥammad b. Husain Bukhārī (d. 433 H.) who wrote *Mukhtaṣar*, *Mabsūṭ*, etc.; Shams-ul-'Immah Muḥammad b. Aḥmad Sarakhsī (d. end of fifth century H.), author of *Mabsūṭ*, *Sharḥ Sirr-ul-Kabīr*, *Sharḥ Mukhtaṣar Ṭahāwī*, etc.; Ṭāhir b. Aḥmad b. 'Abdur Rashīd al-Bukhārī (d. 542 H.), author of *Khulāṣat-ul-Fatāwā*, *Khazānat-ul-Wāqī'āt*, etc.; Abū Bakr b. Mas'ūd b. Aḥmad al-Kasānī (d. 587 H.), author of *al-Badāyah* and commentary on *Tuḥfat-ul-Fuqahā'*, etc.; Fakhr-ud-dīn Ḥasan b. Maṣ'ūr Uzjandī al-Farghānī, commonly called Qāḍī Khān (d. 592 H.), author of *Fatāwā Qāḍī Khān*, commentaries on *Jāmi'-us-Saghīr*, *Ādāb al-Quddāt*, etc.; 'Alī b. Abī Bakr b. 'Abdul Jalīl al-Farghānī al-Mirghīnānī (d. 593 H.), author of *al-Hidāyah*, *Kitāb-ul-Muntaqā'*, *Nashr-ul-Madhhīb*, *Mukhtarāt al-Nawāzil*, *Kitāb-ul-Farā'id*, etc. In addition, there were innumerable jurists of great authority. In India, the compilations were made under Maḥmūd of Ghaznah styled as *Majmū'ah-i-Sultānī*; *Ādāb-ul-Mulk* by Fakhr-i-Mudabbir under Iltutmish, etc.

(2) *Of the Maliki School.*<sup>44</sup> Muḥammad b. Yaḥyā b. Lubābāt (d. 336 H.), author of *Kitāb al-Wathā'iq*, etc.; Bakr b. 'Ulā' al-Qushairī (d. 344 H.) who wrote *Kitāb-ul-Aḥkām*, *Kitāb-ul-Uṣūl-ul-Fiqh*, etc.; Abu'l-Ishāq Muḥammad b. al-Qāsim (d. 355 H.) who wrote *al-Zāhī ash-Shu'bānī*, etc.; Abū Bakr Muḥammad b. 'Abdullah 'Amdā'usī (d. 367 H.) who wrote *Kitāb-ul-Isṭi'āb*; Abu'l-Qāsim 'Abdur Raḥmān b. Muḥammad Ḥaḍramī (d. 440 H.) who wrote a book in 200 volumes; Abū Walīd Muḥammad b. Aḥmad b. Muḥammad b. Rushd Qarṭabī (d. 520 H.) who wrote *Kitāb-ul-Muqaddimāt*; etc.; Muḥammad b. Aḥmad b. Muḥammad b. Aḥmad b. Rushd (d. 595 H.) who wrote *Bidāyat-ul-Mujtahid wa Nihāyat-ul-Muqtaṣid*, etc.; Qāḍī Abu'l-Faḍl Ayāz b. Mūsā (d. 541 H.) who wrote *Akmal al-'Ilm fi Sharḥ Ṣaḥīḥ Muslim*, etc.; Ismā'il b. Makkī al-'Awfī (d. 581 H.) who wrote *Sharḥ al-Tahdhīb*, etc. There were many other great jurists.

(3) *Of the Shafi'i School.* Abū Ishāq Ibrāhīm b. Aḥmad al-Marūzī (d.

43. See Ibn Khallikān, op. cit.; Ibn Khaldūn, *Tā'rikh*; Suyūṭī, op. cit., Massignon, *Annuaire du monde musulman*; author's *Justice in Historical Islam*, chap. IV.

44. Further discussion is contained in Part III, chap. III.



André ROMAN, *Les thèmes de l'œuvre de Baššār inspirée par 'Abda*, dans *BEO*, XXIV, 1971, p. 157-226.

Depuis longtemps on s'est intéressé à Baššār comme le prouvent des études de détail parues en Orient et en Occident. La place faite chez ce poète à l'inspiration « courtoise » avait conduit déjà bien des critiques à s'interroger sur cet aspect particulier d'une œuvre à certains égards très traditionnelle. Le mérite de la présente étude est de prendre les problèmes dans toute leur ampleur, de dépouiller les faits de leur allure anecdotique, de les relier à l'ensemble d'une activité mentale et artistique, d'établir des rapports entre les éléments thématiques et les termes ou expressions qui déclenchent les images ou alimentent les développements. Une telle enquête suppose évidemment, chez son auteur, la définition d'une méthode entièrement fondée sur des exigences psycho-linguistiques ; elle exige de sa part une minutie rigoureuse et le souci de ne rien laisser au hasard. Le dépouillement des textes poétiques a été conduit selon un plan assez arbitraire car bien souvent il s'est fondé sur des oppositions un peu artificielles ; dans bien des cas par exemple il a été très difficile de distinguer des attitudes, des comportements de l'Amant et de l'Amante qui se conditionnent mutuellement. Dans une étude comme celle-ci, le risque est également très grand de perdre de vue l'aspect émotionnel de l'inspiration pour se fixer surtout sur les moyens matériels d'expression ; trop souvent aussi on est tenté de retenir dans l'élément thématique ce qui est redite ou cliché, par là se glisse le péril extrême de rechercher dans une œuvre poétique ce qui constitue avant tout des schèmes stylistiques. Plus qu'aucune autre la poésie « courtoise » de Baššār nous apparaît, à travers l'analyse qu'en donne A. Roman, comme un modèle ou, si l'on préfère, comme un genre conventionnel. Il est pourtant hors de doute que cette œuvre, en son jaillissement spontané, est chargée d'une signification qui dépasse l'analyse psycho-linguistique. Le silence même observé par A. Roman sur cet aspect du phénomène littéraire est la preuve qu'un chapitre spécial aurait dû être consacré par lui à ce problème, et destiné à mettre en évidence l'élan interne de cette inspiration. On doit savoir gré à M. André Roman d'avoir su distinguer cet aspect esthétique et l'analyse psycho-linguistique conduite par lui avec une si rigoureuse méthode.

Régis BLACHÈRE.

Heinz HALM, *Die Ausbreitung der šafi'itischen Rechtsschule von den Anfängen bis zum 8/14 Jahrhundert*, 1 vol. in-8°, 340 p., coll., *Beihefte zum Tübinger Atlas des Vorderen Orients*, Reihe B, Nr. 4, Wiesbaden, Dr. Ludwig Reichert, 1974.

Retracer l'histoire des grandes écoles juridiques de l'islam est une tâche à laquelle peu de savants se sont jusqu'ici consacrés. Le hanbalisme qui, comme on le sait, est à la fois une école juridique et une école théologique a certes fait l'objet des études de H. Laoust, à la fois doctrinales et historiques. Mais les autres écoles, qui ont pourtant joué un rôle au moins aussi important, n'ont pas encore retenu, en tant que telles, toute l'attention qu'elles méritent : même si la pensée de tel ou tel docteur chafite, hanafite ou malikite a pu faire en effet l'objet d'enquêtes approfondies, on n'a encore jamais cherché à retracer l'évolution d'une de ces écoles.

Pareille entreprise était à vrai dire difficile à réaliser dans la mesure où les œuvres des principaux docteurs ne sont pas suffisamment connues. Seule la documentation fournie par les *Tabaqāl* et par les chroniques peut permettre au moins d'essayer de

## ŞÂFİÎ İSTİHSÂN YAPMIŞMIYDI ?

İstihân  
= Şafii (181540)

Dr. Ali Pekcan\*

Biz burada istihsân metodunu bütün yönleriyle<sup>1</sup> ele almayacak, sadece Şâfiî'nin kendisine nisbet edilen sansasyonel sözünden hareketle onun istihsân'a bakışını irdelemeye çalışacağız.

## GİRİŞ

## I. İstihsân'ın tanımı:

İstihsân, lügatte, "bir şeyi güzel bulmak, bir şeyi güzel saymak, bir şeyin güzel olduğuna inanmak" gibi anlamlara gelir.<sup>2</sup> İstilahî yönden istihsânın birçok tarifleri yapılmıştır. Meselâ, Ebu'l-Hasen el-Kerhî (v. 340/951), istihsânı; "daha kuvvetli görülen bir husustan dolayı bir meselede benzerlerinin hükmünden başka bir hükme dönmektir."<sup>3</sup> şeklinde tanımlarken, Serahsî (v.490/1097)<sup>4</sup> ise, istihsânı dört şekilde tarif etmiştir.

Bunlar;

- 1) kıyası terkedip insanlar için en uygun olan ciheti almak,
- 2) ferdin ve toplumun karşılaştığı olumsuz durumlar karşısında kolaylığı tercih etmek,
- 3) genişliğe göre hareket etmek ve kolaylık talep etmek,
- 4) müsamaha ve ruhsat esasına göre hareket etmektir.

\* D.İ.B.Selçuk Eğt.Mrkz., pekalisait@mynet.com.

<sup>1</sup> -İstihsân'ı değişik ve geniş bir biçimde ele alan klasik Usûl kitaplarının yanısıra günümüzde ya bu konuda yapılan çalışmalardan bazıları şunlardır. Abdulkâdir Şener, *İslâm Hukukunun Kaynaklarından Kıyas İstihsân İstislah*, Ank. 1974; Ali Bardakoğlu, *Tabii Hukuk Düşüncesi açısından İslâm Hukukçularının İstihsân ve İstislah Görüşü*, Kayseri, 1986; Muharrem Önder, *Haneî Mezhebinde İstihsân Anlayışı ve Uygulaması*, Konya, 2000 (Basılmamış Doktora tezi); Üsâme el-Hamevî, *Nazariyyetu'l-İstihsân*, Beyrut, 1992; M. el-Ferfûr, *Nazariyyetü'l-İstihsân fi'l-Teşri'il-İslâmî*, Dimeşk, 1987; İ.K.Dönmez, *İslâm Hukukunda kaynak Kavramı*, (Basılmamış Doktora Tezi), İst. 1981; Seyyid Sâlih İvad, *el-İstihsân İnde Ulemâi'l-Usûl*, Kahire, 1981

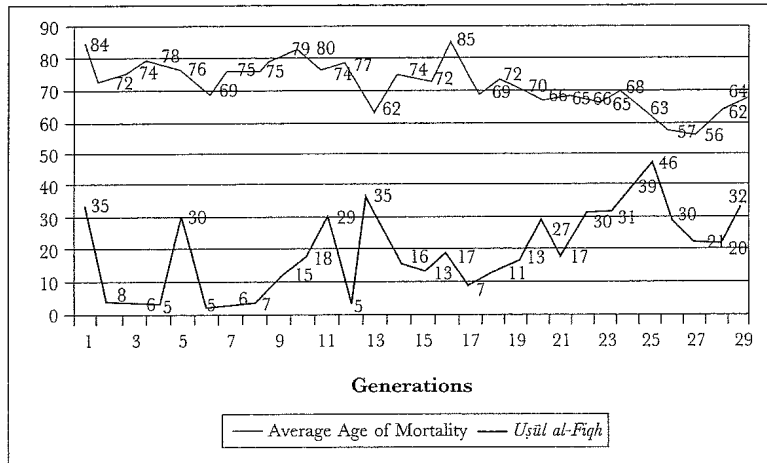
<sup>2</sup> -İbn Manzur, *Lisânü'l-Arab*, c.XIII. s. 117; Fîrûzâbâdî, *el-Qâmûsu'l-Muhît*, IV/215, 216; Ma'lûf, Luis, *el-Müncid*, Beyrut, 1956, s.134; Serahsî, Ahmed b. Ebu Sehl, *el-Usûl*, c.II, s.200; Buhârî, Abdülaziz (v.730), *Keşfü'l-Esrâr*, (neşr.M.M.el-Bağdâdî), Beyrut, 1994, c.III, s.2

<sup>3</sup> -Buhârî, a.g.e., c.III, s.3

<sup>4</sup> -Serahsî, Ahmed b. Ebu Sehl, *el-Mebsût*, Mısır, 1324, c.X, s.145

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Figure 6.1. The average age of death (in years) for scholars listed in the text and percentage of scholars who engage in *uṣūl al-fiqh*



Source: Ibn Qāḍī Shuhbah, *Ṭabaqāt al-fuqahā' al-shāfi'iyah*, ed. al-Ḥāfiẓ 'Abd al-Alī Khān, 4 vols. (Beirut: 'Ālam al-kutub, 1987).

Note: Figures for practitioners of *uṣūl al-fiqh* and allied sciences are derived from the percentage of people in each generation who are described as being involved in one or more activities that would fall under the categories (see below for more details). The age of death is based on the average age at death for all biographies in each generation and is based on information in entries where an age is given, or more commonly, when a year and birth and death are provided.

many Muslim cities, most importantly Nīsāpūr (sacked in 618/1221). Arab chroniclers claimed that over 1,747,000 people were killed, a number that is obviously inflated, but nevertheless speaks to the fear and devastation that the Mongols caused.<sup>3</sup> This was followed by a second sudden drop between the twenty-fourth and twenty-sixth generations (721/1321 to 780/1379) when the average declined from 68 to 57. As will be explained below, the drastic die-off that occurred in the period is a result of the plague which devastated the ranks of the jurists during this period. The mortality rate during the plagues was so high, as is evident in the decline in average age, that educational lineages were severed in the majority of cases.

<sup>3</sup> David Morgan, *The Mongols* (New York: Basil Blackwell, 1986), 74–75.

Ibn Qāḍī Shuhbah links the sudden drop in average age at death with the rise of specializations in *uṣūl al-fiqh* and allied genres of knowledge, and its impact on the development of Islamic law. He, while explicitly arguing for the importance of a basic types of legal methods, nonetheless shows that the kinds of legal methods that developed later in Shāfi'ī legal history were nothing more than tangential specializations that took scholars away from the real object of the legal profession—the rules themselves. This idea is developed throughout his text by the progressive development of *uṣūl al-fiqh* from the basic, non-speculative method of *Imām al-Shāfi'ī*, to the rise of speculative forms of legal methodology. Through the use of rhetorical strategies such as 'terminological association,' Ibn Qāḍī Shuhbah describes a variety of sub-schools of legal methodology whose primary purpose was not the discovery of law, but evolved out of theologically inclined jurists' interests in theoretical problems. Over time, the interest in non-rules-based sciences overshadowed the legal profession, leading jurists away from legal rules just as social, political, environmental, and religious problems began depleting the ranks of the jurists. As a result, there occurred a general decline in the abilities of jurists and a reduction in the production of substantive rules.

*The early development of legal method: al-Shāfi'ī's uṣūl*

As mentioned in the last chapter, the development of *uṣūl al-fiqh* has become one of the primary fields of inquiry for historians of Islamic law. The development of a coherent and well-articulated methodology is understood to indicate the establishment of jurisprudence in the proper sense. Therefore, modern scholars, in seeking to locate the origins of law, have attempted to establish when a coherent and well-articulated methodology of jurisprudence first arose in order to define the historical boundaries of the existence of Islamic jurisprudence. The rationale for this argument originated in Joseph Schacht's *The Origins of Muhammadan Jurisprudence*.<sup>4</sup> Schacht argued that al-Shāfi'ī,

<sup>4</sup> *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950). The issue of al-Shāfi'ī's contribution to the development of a well-articulated and coherent legal method was first raised by Goldziher in 1884. He argued that al-Shāfi'ī was reacting to the method first established by Abū Ḥanīfah, thereby attempting to control the use of analogical reasoning on the part of jurists. See his *The Zahiris: Their Doctrine and Their History*, ed. and trans. Wolfgang Behn (Leiden: E. J. Brill, 1971).

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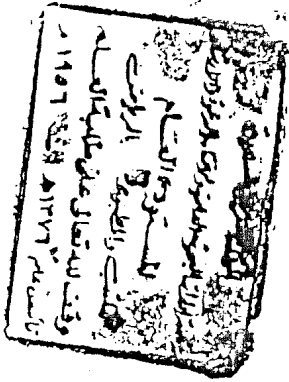
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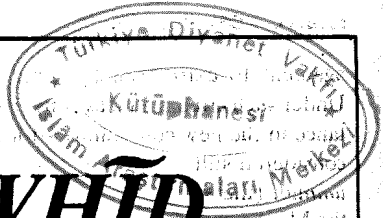
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## THE SIGNIFICANCE OF SHĀFI'Ī'S CRITICISM OF THE MEDINESE SCHOOL OF LAW

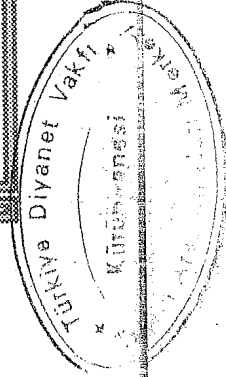
ZAFAR ISHAQ ANSARI

Shāfi'ī's outstanding legal acumen and his role as a great systematizer of Islamic jurisprudence can hardly be over-emphasised.<sup>1</sup> In addition to his redoubtable contribution to the ongoing discussions in his time on specific legal questions (i.e. *furū'*), Shāfi'ī played a pioneering and crucial role in laying the foundations of *Uṣūl al-Fiqh*. As compared to his predecessors and even contemporaries, in whose writings reference to the problems of *uṣūl* is occasional and peripheral, in Shāfi'ī we find a sustained, systematic and thoroughgoing discussion of questions relating to *Uṣūl al-Fiqh*. It is thanks to Shāfi'ī's writings that *Uṣūl al-Fiqh* almost dramatically emerged, towards the end of the second and the beginning of the third Hijrah century, as one of the most significant and challenging fields of intellectual endeavour in the world of Islam. There can also be no two opinions about the fact that Shāfi'ī's writings on *Uṣūl* reflect an extraordinarily great and keen mind, and evince a rare intellectual maturity, logical vigour and sharpness of perception. Fakhr al-Dīn al-Rāzī was hardly exaggerating Shāfi'ī's historical role when he pointed out that the relationship of Shāfi'ī to *Uṣūl al-Fiqh* is comparable to that of Aristotle to Logic, and of Khalīl to Prosody.<sup>2</sup>

Discussion on jurisprudence (i.e. *uṣūl*) as distinguished from discussion on substantive legal questions (i.e. *furū'*), began in the Muslim society towards the end of the first Hijrah century owing to the growing awareness of disagreements on legal questions. This gradually gave rise to the need of adducing arguments on the part of lawyers of different centres for the justification of their doctrines. For during the last quarter of the first century there had already come into existence several active centres of Islamic legal activity in the Islamic world of which two were especially important—Kufah in Iraq, and Madinah in Hijaz. Each centre had a feeling of affiliation to a few distinguished Companions who were regarded as its founding fathers. Gradually, in the generation of Successors, there had appeared a number of authorities in each centre who transmitted and further developed its legal doctrines.

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# سراج التقارب بين المذاهب الفقهية من أجل الوحدة الإسلامية

- Hane fi Meqhebi  
- Maliki  
- Hanbali  
- Safii

الأستاذ الدكتور محمد الرسوقي

كلية الشريعة والدراسات الإسلامية - جامعة قطر

## تمهيد

من الحقائق التي يكاد يجمع عليها المؤمنون بالإسلام وغير المؤمنين به أن هذا الدين الذي جاء للناس كافة دين الوحدة الجامعة، والأخوة الشاملة، والتكافل والتعاون على الخير والبر.

والنصوص القرآنية والحديثية التي تبين أن المؤمنين بالإسلام إخوة وأنهم من ثم أمة واحدة، كثيرة لا تخفى على العامة فضلاً عن الخاصة من أهل الذكر والفقهاء. وبالإضافة إلى هذه النصوص، تؤكد التشريعات والفرائض التي كتبها الله على المسلمين أنهم جسد واحد أو بنيان مرصوص.

وحتى تظل وحدة الأمة حقيقة مادية ملموسة، حرم الإسلام كل ما ينال من هذه الوحدة، أو يحول دون قيامها بمهمتها على أحسن وجه، كالنزاع والاختلاف

the use of the "tetragrammaton" was impossible. Mark starts his Gospel with his own conviction of Jesus as Messiah the Son of God; he closes it with the testimony of the Roman Centurion preceded by that of the Jewish High Priest.

Ἐδλογητός with its cognate words in the Semitic dialects would seem to have had a very wide vogue, used mostly with one or other of the divine names, sometimes as a euphemism for them; and used in circumstances which betray either a relationship to God as Creator, or in a somewhat nationalistic or warlike context, or when deep personal experience was uppermost in the life of the individual concerned. Even if in the Qur'ān its use is confined to Muhammad, the Old Testament notes it on the lips of at least twelve people as diverse as Noah and Nebuchadnezzar, David and Daniel, Jethro and Melchisedech and Naomi. The implication of both Qur'an and Old Testament is that the use was Semitic before it was Hebrew or Islamic; while the few references in the New Testament reveal what Christianity did with words, finally bringing to bear on the very doctrine of the revelation of God in Christ the riches of its inheritance in Ἐδλογητός.

ERIC F. F. BISHOP

Newman School of Missions,  
Jerusalem, Palestine

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- *Hanbeyge x*

## THE CHARACTER OF EARLY ISLAMIC SECTS

In view of the theocratic nature of the original Islamic state and of the occasion, which gave rise to the appearance of the early Islamic sects, it is not surprising perhaps that the rise of those sects should have been sought in political motives and that their doctrines generally should have been considered and appraised in the light of their political ideas and historical roles. Ignaz Goldziher, the mentor of every earnest student of Islam, has himself declared that „Ihre (the Kharijites') Geschichte stellt zugleich in wenig komplizierter Form den Typus der islamischen Sektengestaltung dar, das Einfließen religiöser Gesichtspunkte in den staatlichen Streit,“ and that „Es war vorerst nicht dogmatisches Bedürfnis, was den Anstoss gab zur Diskutierung der Frage, welche Rolle dem 'amal, der Übung, den Werken, in der Qualifikation eines Muslims als solchen zuzueignen sei.“<sup>1)</sup> And Van Vloten, in his *Recherches sur la domination arabe etc.*, assumes apparently that the early sects, Qadarites excepted, were at first political parties, pursuing mostly political ends, until their hopes of attaining to power were finally frustrated in the days of the fifth Umayyad Caliph, 'Abdalmalik (686—705), and that only then did they actually turn to the development of their peculiar doctrines.<sup>2)</sup>

But the Kharijites, for example, did not in fact cease to be a political factor altogether with the consolidation of the Arab Empire under 'Abdalmalik. In the reign of Hisham (724—743) they rebelled in Iraq (738) and also in North Africa (741—742), where, indeed, with the aid of the Berbers, they almost succeeded in setting up an independent state; and, as Wellhausen has pointed out in his *Religiös-politische Oppositionen-parteien im alten*

<sup>1)</sup> *Vorlesungen über den Islam* (Heidelberg 1910), pp. 208 and 88.

<sup>2)</sup> Cf. especially pp. 34 to 38.



## Offences

In the Malacca case of *Azmi and Maimon v Pendakwa Mahkamah Syariah* [1988] 7 JH 80 the accused had pleaded guilty to charges of illegal sexual intercourse and the first accused was sentenced to 2 months imprisonment and the second accused to 6 weeks imprisonment. They appealed against the sentence. The Appeal Court held that the sentences imposed were still light and increased the sentences to 2 1/2 months for the 1st accused and 2 months for the second accused.

In the Pahang case of *Pembantu Hal Ehwal Islam v Mohamed Nor* [1988] 7 JH 86 the accused was charged with making a false written declaration in order to marry the sister of his wife. He pleaded guilty and was sentenced to a fine of \$500 or in default three months imprisonment. The court also ordered the marriage between the accused and the sister of his wife to be annulled.

## Islamisation of the Malay Archipelago and the Impact of Al-Shafi'i's *Madhhab* on Islamic Teachings and Legislation in Malaysia

ROF. TAN SRI DATUK AHMAD MOHAMAD IBRAHIM

PROF. DR. MAHMUD SAEDON AWANG OTHMAN

PROF. DR. MOHD. KAMAL HASSAN

### Part 1

#### 1. The Significance of the Islamisation of Southeast Asia

The advent of Islam and the subsequent spread of Islamic learning in the Malay World have brought about a major cultural transformation in the region is already a well-established fact. Perhaps what has not been properly appreciated is the profound nature of the cultural transformation that occurred as a result of the Islamic penetration. It is to the credit of Professor Syed Muhammad Naquib al-Attas that he has taken the difficult task of explaining in great depth the intellectual and civilisational significance of the Islamic impact.

Islamisation in the Archipelago, he explains, underwent three phases. The First Phase (from approximately 578-805/1200-1400), was the phase of nominal conversion or conversion of the 'body'. The Second Phase (from approximately 803-1112/1400-1700) described as the period of the conversion of the 'spirit' saw the rising influence and spread of philosophical mysticism, *tasawwuf* and *kalam*. The Third Phase (from 1112/1700 onwards) saw the continuation and consummation of the second phase coinciding with the coming of the West. (S.M. al-Naquib al-Attas, 1969: 29-30). It is pointed out that the Islamic theological and metaphysical literature "set in motion the process of revolutionising the Malay-Indonesian world-view, turning it away from a crumbling world of mythology...to the world of intelligence, reason and order" (S.M. al-Naquib al-Attas, 1969:5). Not only did Islamic monotheism bring a new ontology, cosmology and psychology to the Malay-Indonesian Archipelago, but it revolutionised the Malay language to become the literary and religious language of Islam by the 16th Century. The 9th/16th and 10th/17th centuries, a period which "marked the rise of rationalism and intellectualism not manifested any where before in the Archipelago" saw the emergence

\*Paper Presented at the International Symposium on Imam Al-Shafi'i's Organised by the Islamic Educational, Scientific and Culture Organisation (ISESCO) and International Islamic University, Malaysia from 13th - 15th August 1990 at Petaling Jaya Hilton.

provision has more than one meaning, but one meaning is apparent and has precedence, that provision is called *zāhir* (Ghazālī, *al-Mustasfā*, p. 187).

16. Ghazālī, *al-Mustasfā*, p. 196.
17. Ghazālī regards this opinion as correct, because it is applicable to the language and there is no objection in *Shari'ah* (Ghazālī, *al-Mustasfā*, p. 196).
18. Qur'an, XVII:32.
19. Qur'an, VI:151.
20. Ibn Qudāmah, *Rawḍat al-Nāzir*, II:27–28.
21. Qur'an, II:196.
22. Qarrāfi, *Sharḥ Tanqīḥ al-Fuṣūl*, pp. 36–37.
23. Although two is dual, the majority of scholars see it as a plural based on the *ḥadīth*: 'Two and more than that are a core.' (Rāzī, *Maḥṣūl*, I:2:605).
24. Qur'an, IV:11.
25. Ibn al-Ḥājjib, *Sharḥ al-ʿAḍud maʿa Mukhtaṣar al-Muntahā*, II:168.
26. Aṣfāhānī, *Sharḥ al-Minhāj*, I:444.
27. Anṣārī, *Ghāyat al-Wuṣūl*, p. 83.
28. Shawkānī, *Irshād al-Fuḥūl*, p. 156.
29. The difference between Ḥanafī and *kalām fuqahā'* regarding this matter would be interesting to study, because there is no doubt that their jurists use the word *naṣṣ* in a way that carries different connotations. Subkī, *al-Ibhāj*, I:360.
30. Qarrāfi, *Sharḥ Tanqīḥ al-Fuṣūl*, pp. 36; Ibn al-Ḥājjib, *Sharḥ al-ʿAḍud maʿa Mukhtaṣar al-Muntahā*, II:168; Anṣārī, *Ghāyat al-Wuṣūl*, p. 83; Shawkānī, *Irshād al-Fuḥūl*, p. 156.
31. Qur'an, CXII:1
32. Qur'an, XLVIII:29.
33. Bukhārī, *al-Jāmiʿ al-Ṣaḥīḥ*, VIII:24–25 (no. 86:30).

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Herefi Mezhali  
- Safi

CHAPTER 14

## Comparison between *Hanafi* and *Shāfiʿī*

In the *Shāfiʿī madhhab*, *zāhir* is an expression with an indefinite meaning. This meaning may be based on the essential literal meaning of the word,<sup>1</sup> or on customary use of the word.<sup>2</sup> When the word keeps its preferred meaning, it is termed *zāhir*, when it takes on a non-preferred meaning it is *mu'awwal* or interpreted. If no meaning can take preference, it is *mujmal*.<sup>3</sup> One may conclude that *zāhir* in the *Shāfiʿī madhhab* represents only one of the Ḥanafī categories of *naṣṣ*, because the schools accept that different explanations are possible.

According to the majority of *Shāfiʿīs*, *naṣṣ* yields definite meaning – like numbers and nouns. Therefore, it is like *mufassar* in the Ḥanafī *madhhab*. *Mufassar*, in its technical meaning, is not widely known in the *Shāfiʿī madhhab*, who impute a different meaning to *mufassar* from that of the Ḥanafī *madhhab*. *Shāfiʿī* used it as the opposite of *mujmal*,<sup>4</sup> while Rāzī used *mufassar* to refer to two categories of provisions:

(1) The clear (*wāḍiḥ*), which is a provision that needs no further explanation.

(2) An expression which, in order to be understood, needs further explanation than that which has already been provided.<sup>5</sup>

*Muḥkam* in the *Shāfiʿī madhhab* gives a clear meaning either in a definite or an indefinite way. One may observe that *naṣṣ* and *zāhir* in the Ḥanafī *madhhab* are both called *muḥkam* while the *Shāfiʿī madhhab* does not distinguish between the two. It is obvious from the definition given by ʿIjī that *muḥkam* yields a clear meaning in both *naṣṣ* and *zāhir*.<sup>6</sup>

In my opinion the Ḥanafī division of *wāḍiḥ* is more accurate and precise for the following reasons:

(1) It is clearer in both definition and categorisation. A degree of clarity is more easily attainable by reference to the detailed definitions provided by the Ḥanafīs.

## The Reception of al-Shāfi'ī's Concept of *Amr* and *Nahy* In the Thought of his Student al-Muzanī

Joseph Lowry  
(University of Pennsylvania)

Ibn 'Aqīl (d. 513/1119) admirably called Shāfi'ī the father and mother of *uṣūl al-fiqh*, Islamic legal theory.<sup>1</sup> Nearly a millennium later, Noel Coulson echoed that sentiment and dubbed Shāfi'ī the "master architect" of Islamic law.<sup>2</sup> It seems increasingly unlikely, however, that Shāfi'ī had a determinative effect on the formation of *uṣūl al-fiqh* (whether the discipline or the genre).<sup>3</sup> And yet, Shāfi'ī's *Risālah*, "his chief theoretical work,"<sup>4</sup> contains many of the individual hermeneutic techniques and concepts which would later figure so prominently in the mature tradition of writings on *uṣūl al-fiqh*, concepts such as *'āmm* and *khāṣṣ*, *jumlaḥ* and *naṣṣ*, or *amr* and *nahy*.<sup>5</sup> We also know that the authors of later works read Shāfi'ī's *Risālah* because they quote from it.<sup>6</sup> So, although Shāfi'ī can, perhaps, no longer be credited with inventing *uṣūl al-fiqh*, his relationship to that particular branch of Islamic legal thought still requires some clarification. In this article, I consider the reception of one of Shāfi'ī's legal-theoretical doctrines, the legal-hermeneutical pair

<sup>1</sup> Abū al-Wafā' °Alī Ibn °Aqīl, *al-Wāḍiḥ fi uṣūl al-fiqh*, Part I, ed. G. Makdisi (Stuttgart and Beirut: Franz Steiner Verlag, 1996), 103.

<sup>2</sup> *A History of Islamic Law*, Islamic Surveys 2 (Edinburgh: Edinburgh University Press, 1964), 53. The title of chapter 4 is "Master Architect: Muḥammad Ibn Idrīs Ash-Shāfi'ī."

<sup>3</sup> For expressions of doubt on this score, see A. Zysow, "The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory," Ph.D. Dissertation, Harvard University, 1984, 3; A. Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (Albany: State University of New York Press, 1995), 14; and W. Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 30. Two other scholars have argued that Shāfi'ī's *Risālah* must be dated later than his lifetime: N. Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), 241-42, and C. Melchert, *Formation of the Sunni Schools of Law* (Leiden: E.J. Brill, 1997), 68.

<sup>4</sup> John Burton, "Rewriting the Timetable of Early Islam," *JAOS* 115 (1995): 453-62 (review of Calder, *Studies in Early Muslim Jurisprudence*), 460.

<sup>5</sup> On these and other hermeneutic terms from Islamic legal theory, see generally Zysow, "The Economy of Certainty," M. H. Kamali, *Principles of Islamic Jurisprudence*, 2d rev. ed. (Cambridge: Islamic Texts Society, 1991); B. Weiss, *The Search for God's Law* (Salt Lake City: University of Utah Press, 1992); and Hallaq, *History of Islamic Legal Theories*. On Shāfi'ī's use of these and other technical terms in his *Risālah*, see generally my "The Legal-Theoretical Content of the *Risāla* of Muḥammad b. Idrīs al-Shāfi'ī," Ph.D. Dissertation, University of Pennsylvania, 1999.

<sup>6</sup> See the Ḥanbali jurist Ibn °Aqīl, *al-Wāḍiḥ*, Part I, 102-3, and the Ḥanafī jurist Aḥmad b. °Alī al-Jaṣṣāṣ (d. 370/981), *al-Fuṣūl fi al-uṣūl*, 4 vols., ed. °U. J. al-Nashmī (Kuwait, 1994), 2:10-11.

*amr* and *nahy* ("command and prohibition") in the writings of his student Abū Ibrāhīm Ismā'il b. Yaḥyā al-Muzanī (d. 264/877). As we will see, Muzanī's discussion of *amr* and *nahy* is related to Shāfi'ī's, but also exhibits conceptual refinements not found in the theory of his teacher.

### Shāfi'ī's Students

Many jurists are said to have studied with Shāfi'ī,<sup>7</sup> but it appears that we are indebted almost entirely to two of them, Muzanī and al-Rabī° b. Sulaymān al-Murādī (d. 270/884), for our knowledge of Shāfi'ī's legal doctrines.<sup>8</sup> Although the sources unanimously identify Rabī° and Muzanī as prominent students of Shāfi'ī, both died a surprisingly long time after he did, Muzanī outliving him by some fifty-seven years and Rabī° outliving him by sixty-four. Muzanī was born in 175/792, making him about twenty-eight years old at Shāfi'ī's death and eighty-five or so at his own death. Rabī° was born a year or two earlier than Muzanī, making him about thirty at Shāfi'ī's death and nearly ninety-five at his own. Shāfi'ī himself was born in 150/767 (according to legend, on the day Abū Ḥanīfah died) and died in 204/820, in his early fifties. Shāfi'ī probably settled in Egypt after coming there at the behest of the son of an °Abbāsid governor, about 198/813-14,<sup>9</sup> so Rabī° and Muzanī would have been relatively young at the time of his arrival (early to mid-twenties) and would have spent only five years or so studying with him.<sup>10</sup> All of this is hardly improbable, but it does suggest that the link we have to Shāfi'ī's works and doctrines is, at the very least, fortuitous. It is, moreover, very difficult to say much about the relationship Shāfi'ī had with his students. There is no shortage of anecdotes portraying Shāfi'ī in his *majlis*, illustrating various aspects of his activities as scholar, teacher, jurist, or

<sup>7</sup> For a list of these, see Melchert, *Formation of the Sunni Schools*, 71-81.

<sup>8</sup> Another student of Shāfi'ī, Abū Ya°qūb Yūsuf b. Yaḥyā al-Buwayṭī (d. 231/845), may also have played a role in the collection and transmission of Shāfi'ī's doctrines, but the works which we have bear the names of Muzanī and Rabī°. Buwayṭī became the leader of Shāfi'ī's followers after the latter's death, but refused to confess the createdness of the Qur'ān and so was hauled off to Baghdad in chains and died there in prison, a casualty of the *miḥmah*. F. Sezgin, *GAS* 1:491; Melchert, *Formation of the Sunni Schools*, 81-82. Al-Ghazālī (d. 505/1111) considers Buwayṭī the author of the *Umm* and its subsequent ascription to Rabī° as false, though he also acknowledges that Rabī° added to it and changed parts of it. Z. Mubārāk, *Islāḥ ashna° khaṭa° fi tārīkh al-tashrī° al-islāmī: Kitāb al-umm* (Cairo: repr. Dār Miṣr li'l-Tibā°ah, 1991), 9 (quoting from Ghazālī's *Iḥyā° °ulūm al-dīn*). Sezgin, *ibid*.

<sup>9</sup> The implication in this report is that it is Shāfi'ī's first trip to Egypt, but it is very possible that Shāfi'ī had previously traveled to Egypt. Kindī, *Kitāb wulāt Miṣr*, ed. R. Guest (London: Luzac and Co., 1912), 154. On Shāfi'ī's life and the primary sources which contain its details, see J. Schacht, "On Shāfi'ī's Life and Personality," in *Studia Orientalia Ioanni Pedersen* (Copenhagen: Einar Munksgaard, 1953), 318-26; E. Chaumont, art. "al-Shāfi'ī," *EF*, 9:181-85; Sezgin, *GAS* 1:484-85.

<sup>10</sup> Buwayṭī is reported to have suggested that Muzanī was too young (*ṣabīy ṣaghīr*) at the time of Shāfi'ī's death to be considered a meaningful transmitter of Shāfi'ī's doctrines or works. Nevertheless, according to this same source, Muzanī succeeded Buwayṭī after the latter's forced departure from Egypt (see n. 8 above). Fakhr al-Dīn al-Rāzī, *Manāqib al-Imām al-Shāfi'ī*, ed. A.Ḥ. al-Saqqā (Cairo: Maktabat al-Kulliyāt al-Azhariyah, 1986), 68. On the other hand, Muzanī is said to have denounced Buwayṭī for his views on the Qur'ān. Melchert, *Formation of the Sunni Schools*, 82.

## النصوص الشعرية المنسوبة إلى الشافعي وغيره

### تخليج وتوثيق

أ. د. مجاهد مصطفى بهجت \*

#### التعريف بالبحث:

الإمام الشافعي علم كبير من أعلام المسلمين، وكان إلى جانب إمامته في علوم الشريعة شاعراً أثرت عنه مقطوعات جميلة عذبة، ونسب إليه -كأي علم ذائع الصيت- أيضاً قصائد ومقطوعات، بهدف ترويحها أو بسبب خطأ وقلة تثبت، أو تقليد.

وكنت قد أخرجت «ديوان الشافعي» إخراجاً علمياً خرجت فيه النصوص من كتب الطبقات والتراجم والمناقب والأدب والشعر المطبوعة والمخطوطة. وهذا البحث يتناول النصوص الشعرية المنسوبة إلى الإمام الشافعي وإلى غيره، جمعتها وخرجتها ووثقتها مستقصياً -حسب الإمكان- وقسمتها في المقدمة إلى مجموعات مما ترجح -عندي- نسبه إليه، أو ترجح نسبه إلى غيره، وما جازمت بخطأ نسبه إليه، وما توقفت فيه.

وأحسب أن البحث مهم لما يبينني على ذلك من أحكام وآراء ومواقف، وأرجو أن أكون قد وفقت في ذلك، والله المستعان.

\* أستاذ بقسم اللغة العربية وآدابها في كلية معارف الوحي والعلوم الإنسانية في الجامعة الإسلامية العالمية بماليزيا. ولد في كركوك في العراق سنة (1947م)، وحصل على درجة الدكتوراة في الأدب والنقد من جامعة الأزهر سنة (1976م) بمرتبة الشرف الأولى عن رسالته، «التيار الإسلامي في شعر العصر العباسي الأول»، ورفقي إلى الأستاذية سنة (1990م).

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# مكتبة التراث الإسلامي لأساتذتنا الأئمة الشافعية

إعداد

محمد نور الدين مريو بنجر المكي  
خادم طلبة العلم بالقاهرة

Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi Kütüphanesi	
Dem. No:	94875
Tas. No:	

مجلس إحياء كتب التراث الإسلامي

سماح ١١٨٠٤٣  
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16. *Ibid.*, IV:82. p. 70.
17. *Ibid.*, XXI:18. p. 264.
18. *I'jāz* means 'the inimitability or uniqueness of the Qur'ān in content and form.' El2, *op. cit.*, Glossary and Index, p. 124.
19. The Holy Qur'ān, XVII:15. p. 225.
20. The Holy Qur'ān, XXXIX:71, p. 394.

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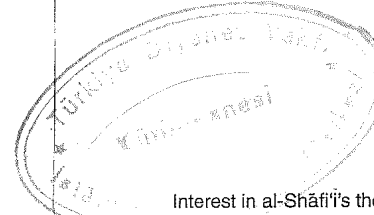
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## The Current State of Al-Shāfi'i Studies

Dr. Abdus Salam Muhamad Shukri

Department of Usul al-Din and Comparative Religion,  
Kulliyah of Islamic Revealed Knowledge and Human Sciences,  
International Islamic University, Malaysia.  
E-Mail: abdsalam@iiu.edu.my

Gafiq Mughelbi



Interest in al-Shāfi'i's thought has increased both in the Islamic world and in the West. For Orientalists and historians of Islam, al-Shāfi'i is known as an important figure in the history of Islamic law, and previous studies have focused on his unique contribution to Islamic legal theory. The following review of secondary sources aims to present the current state of studies on al-Shāfi'i.

In 1884, Ignaz Goldziher in his book, *The Zāhirīs*, was among the first Orientalists to give an analysis of al-Shāfi'i's theory of Islamic law.<sup>1</sup> He believes that it was Shāfi'i who founded the science of *uṣūl al-fiqh*. He states that Shāfi'i's legal theory depended greatly on *ḥadīth* as a point of departure. In his *Muslim Studies*, first published in 1889-1890, he reemphasized Shāfi'i's unique contribution to the creation of a methodology in legal science.<sup>2</sup>

In 1903, D.B. Macdonald devoted a few pages to discussing Shāfi'i's view of legal sources in his *Development of Muslim Theology, Jurisprudence and Constitutional Theory*.<sup>3</sup> For him, Shāfi'i was "without question one of the greatest figures in the history of law". In his view, Shāfi'i's legal methodology represented the middle position between the historical or empirical school of Mālik and the speculative school of Abu Ḥanīfah. (The founders of Mālikī and Ḥanafī schools of *fiqh*). He also briefly mentions Shāfi'i's view of *ḥadīth* and asserts that he paid great reverence to *ḥadīth* in his elaboration of legal theory. Al-Shāfi'i accepted authentic *aḥadīth* or established *Sunnah* as having the same Divine authority as a passage of the Qur'ān. Macdonald also highlights many difficulties faced by Shāfi'i in accepting

*aḥadīth* as a legal source. He was accused of accepting *aḥadīth* that contradicted the Qur'ān or *aḥadīth* that contradicted each other. Besides this work, there are two articles in German written by F. Kern on al-Shāfi'i entitled Kern, F. "Ein dogmatisches Vermächtnis des Imam as Shāfi'i" and "Zwei urkunden von Imam ash Shafi'i".<sup>4</sup>

Another scholar who has contributed much to the study of al-Shāfi'i in the West is D.S. Margoliouth. He mentions that al-Shāfi'i was the first who wrote "actual treatises on jurisprudence as a science".<sup>5</sup> His study on al-Shāfi'i is more comprehensive than previous studies since he was able to use the printed works of al-Shāfi'i. He praises the ingenuity of al-Shāfi'i in presenting his theory of traditional law. It seemed to him that al-Shāfi'i displayed some acquaintance with Aristotelian logic, though at the time not many Greek works had been translated into Arabic. He also notes that al-Shāfi'i's methodology depended greatly on *aḥadīth*. He appreciates al-Shāfi'i's arguments in verifying the *ḥadīth* of a single transmitter as "highly ingenious".

Heffening's article on al-Shāfi'i in the first edition of the *Encyclopaedia of Islam* also contributes to our knowledge of al-Shāfi'i's legal theory.<sup>6</sup> He describes al-Shāfi'i as an "eclectic who acted as an intermediary between the independent legal investigation and the traditionalism of his time". His brief article also covers al-Shāfi'i's life and work as well as his influence on the Muslim world.

Eric E.F. Bishop further highlights al-Shāfi'i's legal thought.<sup>7</sup> To him, al-Shāfi'i's success in developing his

Şafii

A propos du *Kitāb al-radd ‘alā al-Shāfi‘ī* attribué à Abū Bakr Muḥammad Ibn al-Labbād al-Qayrawānī (m. 333/944) et des réfutations de Shāfi‘ī dans le mālikisme ancien\*

Éric Chaumont (CNRS, Aix-en-Provence)

Le livre de la réfutation de Shāfi‘ī (*K. al-radd ‘alā al-Shāfi‘ī*) attribué à Abū Bakr Muḥammad Ibn al-Labbād al-Qayrawānī (m. 333/944) est l'un des derniers maillons d'une longue tradition mālikite de controverse directement dirigée contre la pensée ou la personne de Shāfi‘ī (m. 204/820). C'est aussi le seul témoin de cette tradition qui soit parvenu jusqu'à nous en son intégralité grâce à un *unicum* de la bibliothèque de Kairouan,<sup>1</sup> où sont également conservés quelques fragments plus anciens de *La preuve en matière de réfutation de l'Imām al-Shāfi‘ī (al-ḥujja fī al-radd ‘alā al-Imām al-Shāfi‘ī)* de Yaḥyā b. ‘Umar (m. 289/902).

On s'explique facilement l'existence, chez les mālikites, d'une tradition anti-shāfi‘ienne, visant les enseignements de Shāfi‘ī en personne. Mālik b. Anas (m. 179/795) fut le principal maître de Shāfi‘ī; durant une petite dizaine d'années, à Médine, il fréquenta assidûment son cercle. Après plusieurs années de pérégrinations dans l'Empire musulman,<sup>2</sup> Shāfi‘ī s'installe vers 198/813 à Fustāt en Égypte où il est fort bien accueilli par la grande famille mālikite des Banū ‘Abd al-Ḥakam qui le considérait probablement comme l'un des leurs. Muḥammad b. ‘Abdallāh b. ‘Abd al-Ḥakam (m. 268/882), sur le conseil de son père, devint son disciple. Plus tard, il écrira une réfutation de Shāfi‘ī sur laquelle nous reviendrons parce qu'elle est, je pense, au principe du livre attribué à Ibn al-Labbād le Kairouanais.

Les rapports entre Shāfi‘ī et les mālikites égyptiens se dégradèrent rapidement et gravement. La raison principale en est qu'à Fustāt, Shāfi‘ī rédigea un traité très critique à l'endroit de la pensée légale de Mālik, traité connu sous le titre de *Kitāb ikhlāf Mālik wa'l-Shāfi‘ī (Le livre de la divergence entre Mālik et Shāfi‘ī)*. Ce livre fut justement considéré par les mālikites comme une 'réfutation' de Mālik (Ibn al-Labbād l'appelle le *Kitāb al-radd ‘alā Mālik*,<sup>3</sup> *Le livre de la réfutation de Mālik*). Par ailleurs, bien des

\* Ce texte reprend, sous une forme très remaniée, une communication orale faite lors du colloque *al-Qayrawān markaz ‘ilmī mālikī bayna al-Mashriq wa'l-Maghrib ḥattā al-qarn al-khāmis* li'l-ḥijra, Kairouan en avril 1994. Je remercie mon collègue et ami Mounir Arbach pour sa relecture de mon texte.

<sup>1</sup> Abū Bakr Muḥammad b. al-Labbād al-Qayrawānī, *Kitāb al-radd ‘alā al-Shāfi‘ī* (éd. Dr ‘Abd al-Majid b. Ḥamduh), Tunis 1986 (désormais *Radd* dans les notes).

<sup>2</sup> Abū Bakr Muḥammad b. al-Labbād al-Qayrawānī, *Kitāb al-radd ‘alā al-Shāfi‘ī* (éd. Dr ‘Abd al-Majid b. Ḥamduh), Tunis 1986 (désormais *Radd* dans les notes).

<sup>3</sup> Pour plus de détails sur la biographie de Shāfi‘ī, v. É. Chaumont dans *EI2*, ix, 187-91.

<sup>3</sup> V., par exemple, *Radd*, 72.

Ed. G.R. Hawting v.l.

Studies in Islamic and Middle Eastern Texts and Traditions in Memory of Norman Calder, Oxford University Press 2000.



15 Eylül 2009  
MADE YAYINLANDIKTAN  
SONRA BELLEN DÜZÜMEN

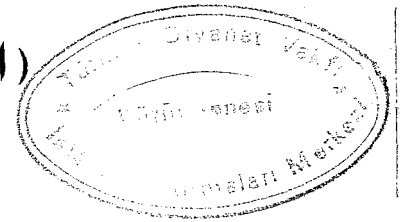
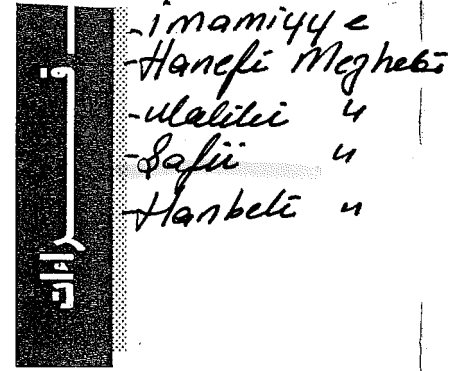
باحث من سوريا

12 KASIM 2008

## المذاهب الإسلامية الخمسة

### تاريخ وتوثيق

(الإمامي. الحنفي. المالكي. الشافعي. الحنبلي)



الإسلامية - هي خيار المسلمين الذي يفرض على الفعال المختلفة في العالم الإسلامي، ان تتوافر على دراسته ووعيه بعمق ومسؤولية لتضع الركائز الثابتة والصلبة التي يمكن ان تصنع منها قاعدة فكرية وروحية وسياسية للوحدة، وان لا تكون مسألة التقريب مسألة خطاب انفعالي او حماسي يعيش في اجواء المجاملات والاستهلاك الشعبي.

ان المشكلة التي لاتزال قائمة بين المسلمين، في ما يتصل بمسألة التقريب والوحدة الإسلامية، هي انهم يتخاطبون ويتحاورون - اذا

تحظى مسألة التقريب بين المذاهب الإسلامية - التي تشكلت عبر عهود طويلة من الممارسة التاريخية الفكرية والاجتماعية والسياسية - باهتمام بالغ بين مختلف الاوساط والنخب الفكرية والثقافية العربية والإسلامية، ولاتزال هذه القضية - و ستبقى - حارة وساخنة بامتداد الايام وتقادم الزمن باعتبارها تمس اصل ومنتهى تطلع وغاية كل مسلم على هذه البسيطة.

ونحن نشعر بأن مسألة التقريب المطلوبة - كمقدمة ضرورية واسباسية تمهد الطريق الشاق والطويل امام مسألة الوحدة



33. Abū Dāwūd, *Sunan*, II:258–259 (no. 2193); Ibn Mājah, *Sunan*, I:660 (2046).
34. Qurʾān, XVI:106.
35. Shawkānī, *Nayl al-Awṭār*, VI:250; Ibn Ḥazm, *al-Muḥallā*, X:202–204; Ibn Qudāmah, *al-Mughnī*, VII:118.
36. Bukhārī, *al-Jāmiʿ al-Ṣaḥīḥ*, I:2 (1:1); Abū Dāwūd, *Sunan*, II:262 (no. 2201); Ibn Mājah, *Sunan*, II:1413 (no. 4227).
37. Qurʾān, IV:58.
38. Qurʾān, XVI:90.
39. Lubnānī, *Sharḥ al-Majallah*, p. 29.
40. Ibn Nujaym, *al-Ashbāh wa al-Nazāʾir*, p. 85; Lubnānī, *Sharḥ al-Majallah*, p. 29.
41. Ibn Nujaym, *al-Ashbāh wa al-Nazāʾir*, p. 38; Lubnānī, *Sharḥ al-Majallah*, p. 17–18.
42. Sarakhsī, *Uṣūl al-Sarakhsī*, I:236.
43. Nasafī, *Kashf al-Asrār*, I:398.
44. Isnawī, *al-Tamḥīd*, p. 242.
45. Some scholars claimed that a proper example of the conflict between the two may not be found. Mayhawī rejected this claim, stating that it showed insufficient research (Nasafī, *Kashf al-Asrār*, I:398).
46. Bukhārī, *al-Jāmiʿ al-Ṣaḥīḥ*, I:62–63; Muslim, *Ṣaḥīḥ Muslim*, I:240 (no. 291).
47. Today we may speak about other methods of cleaning (e.g. dry cleaning). Any kind of cleaning which removes traces of dirt may be taken into consideration.
48. In this case it would include the ruling related to this world and the Hereafter. This example does not comply with the opinion that does not accept *ʿumūm al-muqtaḍā*, because if only the Hereafter is presumed, there is no conflict between these two texts. The first one would be related to the Hereafter and the second one to this world.
49. Qurʾān, IV:92.

25 NISAN 2008

Safī Mezebi

## Introduction to the Shāfiʿī Approach to the Methods of Textual Indication<sup>1</sup>

The Shāfiʿis' approach to textual indication (*dalālat al-naṣṣ*) is different from that of the Ḥanafīs. While this difference seems more technical than real, it would be interesting to discuss this approach in further detail.

In contrast to the Ḥanafīs, who classified textual indication as being of four types, the Shāfiʿis divided it into two: pronounced meaning (*dalālat al-manṭūq*) and implied meaning (*dalālat al-mafhūm*). Both these indications are derived from the text and its words.

Pronounced meaning (*dalālat al-manṭūq*) is derived from the obvious text and it is divided into two types: *ṣarīḥ* and *ghayr al-ṣarīḥ*. *Ṣarīḥ* includes the explicit meaning (*ʿibārat al-naṣṣ*) mentioned by the Ḥanafīs. *Ghayr al-ṣarīḥ* is divided into three types: the required meaning (*dalālat al-iqtidāʾ*) gestured meaning (*dalālat al-īmāʾ*) and the alluded meaning (*dalālat al-ishārah*). From this division it appears that *ghayr al-ṣarīḥ* includes two types regarding the indications mentioned by the Ḥanafīs: the alluded meaning (*ishārat al-naṣṣ*) and the required meaning (*iqtidāʾ al-naṣṣ*).

Implied meaning (*dalālat al-mafhūm*) is derived through the logical and juridical construction of the text and it is divided into two kinds: opposite meaning (*mafhūm al-mukhālafah*) and harmonious meaning (*mafhūm al-muwāfaqah*). The latter corresponds to the inferred meaning (*dalālat al-naṣṣ*) of the Ḥanafīs.<sup>2</sup>

### NOTES

1. Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:63; Ijī, *Mukhtaṣar al-Muntahā*, II:171; Ibn Amīr al-Ḥajjī, *al-Taqrīr wa al-Tahbīr*, I:111; Shawkānī, *Irshād al-Fuḥūl*, p. 156.

2. Abū Zahrah stated that all four Ḥanafī divisions of *dalālah* may be classified under *dalālat al-manṭūq* (Abū Zahrah, *Uṣūl al-Fiqh*, p. 116). However, it would be more accurate to say that some divisions are derived from *mafhūm*, just as the inferred meaning (*dalālat al-naṣṣ*) and *mafhūm* are derived from *manṭūq*.



مَنْ بُرِدَ لِلَّهِ بِهِ خَيْرٌ أَيْفَقَهُ فِي الدِّينِ

انتشارات دانشگاه تهران  
۸۷۰



# راهنمای مذهب شافعی

بیان آراء مجتهدین سایر مذاهب اسلامی (فارسی و عربی)

Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi Kütüphanesi	
Demirbaş No:	19959
Tasnif No	257.512 H.A.C.P.

جلد دوم

تالیف

حاج سید محمد شیخ الاسلام کروزستان

استاد دانشگاه علوم معقول و منقول

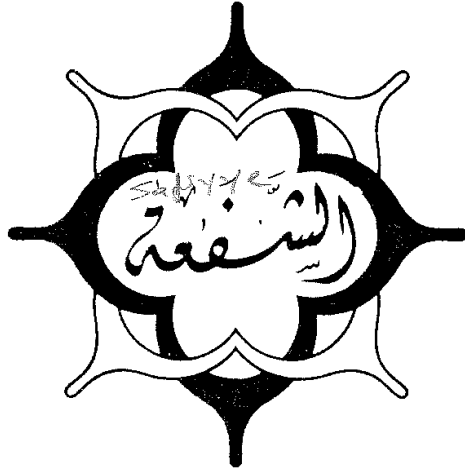
۱۳۴۲

تهران

L Safii Mezhebi

24 KASIM 1993

موضوع العدد :



إعداد اللجنة الدائمة للبحوث العلمية والإفتاء

الحمد لله وحده ، وبعد : فبناء على ما تقرر في الدورة السابعة لهيئة كبار العلماء المنعقدة في النصف الأول من شهر شعبان عام ١٣٩٥ هـ من إدراج موضوع الشفعة بالمرافق الخاصة في جدول أعمال الدورة الثامنة المتقرر انعقادها في أول ربيع الثاني عام ١٣٩٦ هـ وحيث إن دراسة أي موضوع يستلزم إعداد بحث فيه ، فقد أعدت اللجنة الدائمة للبحوث العلمية والإفتاء بحثاً في الموضوع يشتمل على تعريف الشفعة في اللغة وفي الاصطلاح الشرعي وعلى مستند مشروعيتها وحكمة ذلك ، وعلى مجموعة من مسائل الشفعة مما هي موضع خلاف بين أهل العلم وفي مقدمة ذلك الشفعة بالمرافق الخاصة ، وصلى الله على نبينا محمد وعلى آله وصحبه وسلم . ، .

دكتور محيي ملال السمرحان ، دهرس سلبيونات وزارة الاوقاف والشؤون  
الدينية في الجمهورية العراقية، بغداد ١٩٨٦ ، ص. ٢٥٨  
JRCICA KTFID: 19952

ثم ختم هذا التفسير بذكر خلاصة قصة يوسف كما تفهم من

القرآن الكريم.

الكتاب السابع والثلاثون

قبضة الريحان في فقه الامامين الشافعي وأبي حنيفة النعمان

للشيخ عبدالوهاب الشيخ الملقب بابي حمزة الرفاعي تقديم الشيخ

عبدالكريم المدرس (مطبعة وزارة الاوقاف والشؤون الدينية. ١٤٠٢هـ

١٩٨٢م)

الكتاب الثامن والثلاثون

مدرسة الامام أبي حنيفة - تاريخها وتراجم شيوخها ومدرسيها

تأليف الخطاط وليد الاعظمي (دار آفاق عربية بغداد بدون تاريخ) ولكنني

قد تحريت عن تاريخ صدره بالسؤال من المطبعة والمؤلف فظهر انه

مطبوع سنة ١٤٠٥هـ / ١٩٨٥م وقد وقع في ٢٢٨ صفحة من القطع المتوسط.

وبحرف متوسط خال من الضبط بالشكل.

وهو كتاب يؤرخ لمدرسة الامام ابي حنيفة النعمان بن ثابت (المتوفى

١٥٠هـ) منذ تأسيسها سنة ٤٥٩ هـ (١٠٦٧م) حتى نهاية القرن الرابع عشر

الهجري ١٤٠٠هـ (١٩٨٠م) ، متبعاً نشاطها وأخبارها عبر هذه القرون ؛ فسا

لاشك فيه ان كثيراً من مدارس بغداد قد زالت مع شهرتها وذيووعها ، الا

هذه المدرسة فهي كما يقول المؤلف المدرسية الوحيدة في العراق بقيت

محافظة على مكانها ومكائنها العلمية طيلة تسعة قرون ونصف شهدت

Hanafi Ma'halo  
Shafi Ma'halo  
Ebu Hanife  
Shafi

29 JUL 1997

## İLK İSLÂM HUKUK MEZHEPLERİNDE SÜNNET VE CEMA'A

## KAVRAMLARI\*

Yazan: Zohorul Bari

Çev.: Yrd. Doç. Dr. Yavuz KÖKTAŞ

KTÜ Rize İlahiyat Fak.

- Mezhep  
- Sünnet  
- Cemaat  
- Hanefi Mezhebi  
- Hanbeli Mezhebi  
- Maliki Mezhebi  
- Şafii Mezhebi

Bu makalenin amacı ikinci asrın ortalarında beliren çeşitli İslâm hukuk mezheplerinin bizzat tesis ettikleri gibi *sünnet* ve *cema'a* terimlerinin ortak olarak işaret ettikleri referansları, neye tekabül ettikleri ve bu mezheplerin kurucuları ve öğrencileri olarak kabul edilen kimselerin eserlerini araştırmak suretiyle mezkur terimlerin önemi üzerinde yoğunlaşmaktır.<sup>1</sup> Makale aynı zamanda sadece ilk zamanlardan bu yana yüce bir rehber olarak *Peygamber'in sünneti* kavramının var olduğunu değil, ayrıca *Peygamber'in sünneti* ve tüm diğer sünnet formları arasındaki farkın İslâmî öğretinin doğasında bulunduğunu göstermeyi amaçlamaktadır.

Bu makalenin kapsamı, yaygın bir şekilde İslâm hukukunun oluşum safhası olarak tanımlayabileceğimiz bir dönemi; ayrıca o dönemin elde mevcut kaynakları olduğu ve dört farklı bölgedeki düşünciyi temsil ettikleri için dört alimi ihtiva etmektedir. Bu alimler şunlardır: Medine'de Malik b. Enes (ö. 179/795), Kufe'de Ebu

\* Bu yazı Zohorul Bari'ye ait "The Concept of Sunna and Cema'a in The Early Schools of Islamic Law" adlı makalenin çevirisidir. (*Islamic and Comparative Law Quarterly*, 1984, IV: 3, s. 150-163)

<sup>1</sup> Biz, bu iki kavramın doğrudan kullanıldığı Malik'in *Muvatta*, Ebu Yusuf'un *er-Redd ala siyeri'l-Evza'i*'si dahil diğer eserleri, Muhammed b. Hasan eş-Şeybanî'nin kitapları ve Şafii'nin *Kitabu'l-umm* adlı eserinin yedinci cildi gibi kaynakların yanında Leys b. Sa'd'ın Malik'e gönderdiği mektuba da dikkat çekeceğiz. İbnü'l-Kayyim'in *I'lamu'l-muvakkiin* adlı eserinde bulunan bu mektup Leys'in düşüncesini güzel bir şekilde ortaya koyar. Şu anki konumuzla ilgili modern eserler arasında şu ikisi dikkate değerdir:

a- J. Schacht, *The Origins of Muhammedan Jurisprudence*, Oxford, 1959

b- Fazlur Rahman, *Islamic Methodology in History*, Karaci, 1965.

*Islam*, London, 1966, s. 53-58, 68-75.

Schacht, bazı ilk Batılı alimler gibi Hz. Peygamber'in ve sahabenin hadislerine dayalı olan İslam hukuk düşüncesinin gelişimi hakkındaki şüphesini ifade ederek ve böylece ilk İslam tarihinin dayandığı bütün temeli tahrip etmeksizin doğrulanamayacak olan bir tez olarak mezkur iki terimin geleneksel değerini hayli belirsiz kılmak suretiyle bazı iddialar ortaya atmıştır. Her ne kadar delillendirmesinde aşırıya kaçsa ve yine *Hadis* ve *Sünnet* arasında ince bir ayırım ortaya koysa bile, Fazlur Rahman da bu iki kavramda olduğu gibi pek çok kavramı açıklığa kavuşturmaya çalışmıştır. Onun geleneksel olmayan düşüncesi, pek çok alimi kendi fikrini ortaya koymaya teşvik etmiştir. Mesela bkz. Ahmed Hasan, "The Sunna: Its Early Concept and Development", *Islamic Studies*, 1968, VII, s. 47-69; M. Yousuf Guraya, "The Concept of Sunna: A Historical Study", *Islamic Studies*, 1972, XI, s. 13-44. Fazlur Rahman'ın *Hadis* ve *Sünnet* ile ilgili Batılı alimlerin görüşlerini eleştirisi için bkz. *Islam*, s. 44-49; *Islamic Methodology in History*, s. 5-6.

**A propos du *Kitâb al-Radd'alâ al-Shâfi'î*** attribué à Muhammad Abû Bakr b. Muhammad b. al-Labbâd al - Qayrawâni (m. 333/944) et des réfutations de Shâfi'î chez les premiers Mâlikites

Eric CHAUMENT

Lorsque l'on m'a invité à participer au présent colloque-je profite de l'occasion pour en remercier qui de droit-, j'ai, très naïvement, proposé une communication s'intitulant «Le Développement de la Science des *Usûl al-Fiqh* chez les Mâlikites au Maghreb jusqu'à la fin du Vème S. de l'Hégire». Aujourd'hui, *de facto*, ma communication s'intitule plutôt «A propos du *Kitâb al-Radd'alâ al-Shâ fi'â* attribué à Muhammad abû Bakr b. Muhammad b. al-Labbâd al-Qayrawâni (m. 333/944) et des réfutations de Shâfi'î chez les premiers Mâlikites». Deux thèmes qui, de prime abord, sont bien différents l'un de l'autre; en réalité, je ne pense pas qu'ils le soient; plus: il s'agit sans doute du *même* thème.

L'hypothèse que je tâcherai ici d'argumenter est en effet la suivante: la science des *usûl al-fiqh* en tant que doctrine digne de ce nom ne s'est développée chez les Mâlikites qu'à une date relativement tardive-chez des auteurs orientaux comme Muh. abû Bakr al-Abharâ (m.375/985 ou 395/1005), ibn al-Qassâr (m. 398/1007) et, surtout, Bâqillânî (m. 304/1013)- et cette naissance tardive est sans doute conséquente au développement des polémiques ayant opposé les savants-juristes et traditionnistes- proches de Mâlik à ceux qui se reconnaissaient plutôt dans les enseignements de Shâfi'î (il faudrait, je crois, se garder de parler, pour l'époque, de Mâlikites et de Shâfi'ites). En d'autres termes, je pense que la littérature «polémique» Mâlikite dirigée contre Shâfi'î (soit les *K. al-radd'alâ al-Shâfi'î* et, plus généralement, la littérature mâlikite des *ikhtilafât*) -littérature «ancienne» on le verra-est au principe de la naissance des *usûl al-fiqh* chez les Mâlikites. Lidée est

مُحَاضِرَات  
ماتنقى "القيروان مركز علمي مسالكى بين  
المشرق والمغرب حتى نهاية القرن  
الخامس للهجرة

4-5-6 ذوالقعدة 1414 هـ  
15-16-17 فبراير 1994 م

Türkiye Riyaset Vakfı İslâm Araştırmaları Merkezi Kütüphanesi	
Dem. No:	131575
Tas. No:	9611 MUH.M

مركز الدراسات الإسلامية  
بالتقيروان

Tunus 1995

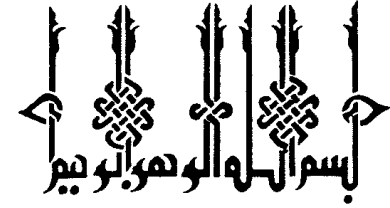
# الإفتاح في الفتاوى الشريفة

تأليف  
أبي الحسن علي بن محمد بن حبيب الماوردي  
المتوفى سنة ٤٥٠ هـ

Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi Kütüphanesi	
Dem. No:	72741
Tas. No:	297.512 MAV.1

حققة وعلق عليه عن نسخة وحيدة في العالم  
خضر محمد خضر  
مجازي الشريعة من جامعة الأزهر

مكتبة دار العروبة للنشر والتوزيع



Kweyfi  
1402/1982

29 EYLÜL 2000

# مختصر المنزني في فروع الشافعية

للإمام أبي إبراهيم إسماعيل بن يحيى بن إسماعيل  
المصري المنزني  
المتوفى سنة ٥٢٦ هـ

وضع حواشيه

محمد عبد القادر شاهين

Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi Kütüphanesi	
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منشورات

مجمع إبي بيضون  
دار الكتب العلمية  
بيروت - لبنان

1419/1998

29 EYLÜL 2000



# بُشْرَى الْكَلِمَاتِ

بشْرَى

مسائل التعليم

تأليف

الشيخ سعيد بن محمد باعشن

على المقدرة الحضريّة

٢-١

07 ARALIK 1996

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للطباعة والنشر والتوزيع

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Sünni Paradigmanın Oluşumunda

## ŞÂFİÎ'NİN ROLÜ

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Ankara 2000

20 Eylül 2000

حول كتاب الردّ على الشافعي المنسوب إلى  
محمد أبي بكر بن محمد بن اللباد القيرواني  
(ت 333 / 944) والردود على الشافعي عند  
المالكية المتقدمين

بحث ايريك شومون  
ترجمة د. صالح خليفة

1 - مسألة نسبة كتاب الردّ على الشافعي إلى ابن اللباد القيرواني أو محمد بن عبد الحكم المصري:

المداخلة التي كنت أنوي القيام بها كانت تتعلق بتطور علم أصول الفقه عند المالكية في المغرب حتى نهاية القرن الخامس للهجرة لكن لما شرعت في إعداد الموضوع تفتنت إلى أن طرق هذه المسألة يعادل طرق المجادلات التي فرقت بين المالكية والشافعية، لذا اخترت أن أحدثكم عن هذه المجادلات.

فعلاً فرضيتي هي كالاتي: علم أصول الفقه كنظرية منظمة لم تتطور عند المالكية إلا في عهد متأخر (عند المؤلفين المشاركة أمثال ابن القصار وخاصة الباقلاني) وهذه النشأة المتأخرة بالنسبة إلى الأصول الشافعية قد تكون نتيجة تطور المجادلات المتضاربة التي غذاها العلماء القريبون من مالك الذين تعارضوا مع الشافعية.

مُحَاضِرَات  
ماتفي القيروان مركز علمي مالكبي بين  
المشرق والمغرب حتى نهاية القرن  
الخامس للهجرة

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مركز الدراسات الإسلامية  
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# کتاب الرد علی الشافعی

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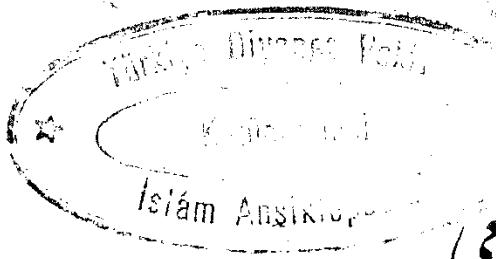
12 TEMMUZ 1995

الدكتور عبد المجيد بن حمد

أستاذ محاضر  
بالكلية الزيتونية للشريعة وأصول الدين

تونس

1986-1406



في مناقب الإمام الشافعي

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للحافظ: ابن حجر العسقلاني

٧٧٣ - ٨٥٢

*Safir*

حققه

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(٣٩٢هـ - ٤٧٦هـ)

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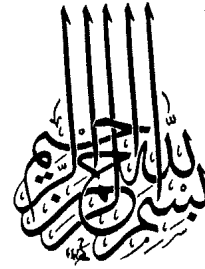
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2.1. TEMMUZ 1997

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1. Sirazi Ebu İshak
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# İSLAM HUKUK METODOLOJİSİNİN OLUŞUMU

## VE ŞAFİİ'NİN YERİ

( Doktora Tezi )

1997  
KAYSERİ  
Lafii Mechebi

Tez Danışmanı  
Doç.Dr.H.Yunus APAYDIN

Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi Kütüphanesi	
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Hazırlayan  
Menderes Gürkan

KAYSERİ 1997

# الشافعي والرسالة

## نظرة في التكوين التاريخي للنظام الفقهي

رضوان السيد

### I

نقل أبو هلال العسكري (ت. بعد ٤٠٠ هـ) في كتابه الأوائل نصاً منسوباً إلى واصل بن عطاء (- ١٣١ هـ) حول «معرفة الحق» جاء فيه<sup>(١)</sup>: «وهو - أي واصل - أول من قال: الحق يُعرف من وجوه أربعة: كتاب ناطق، وخبر مجتمع عليه، وحجة عقل، وإجماع...». ومن جهة ثانية ذكر أبو إسحاق الفزاري (- ١٨٦ هـ) عن الأوزاعي (- ١٥٧ هـ) عن شيخه يحيى بن أبي كثير (- ١١٣ هـ) قوله: «السنة قاضية على القرآن، وليس القرآن بقاضٍ على السنة»<sup>(٢)</sup>.

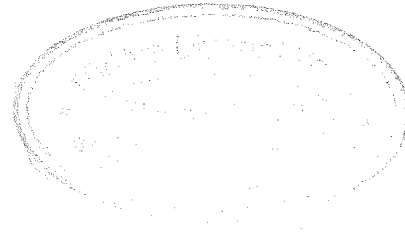
إن تأمل هذين النصين لشخصين متعاصرين مطالع القرن الثاني الهجري يُشعران بما كانت عليه فئات المثقفين الناشئة من توتر واختلاف إزاء ماضي الأمة، وسُننها وأعرافها. فواصل بن عطاء لا يقبل بعد الكتاب الناطق والعقل والإجماع غير «الخبر المجتمع عليه» وهو ما يُداني الإجماع القولي، بينما يقف في الطرف المقابل أمثال يحيى بن أبي كثير وهؤلاء لا يرون غير «السنة» التي تطوي

(١) أبو هلال العسكري: الأوائل ١٢٤/٢. وقارن بالنص نفسه في فضل الاعتزال وطبقات المعتزلة، ص ٢٣٤. وانظر كتابي: الأمة والجماعة والسلطة، ص ١٤٧-١٤٨.  
(٢) سنن الدارمي، رقم ٥٩٤. وقارن بكتاب السير لأبي إسحاق الفزاري، ص ٣١٥.

el-ictihad, sene : II / sayı : 9 , Beyrut

(1410-1411 / 1990) 9. 65 - 74.

0.50





## التعميد والخروج عن القاعدة بين الشافعي والنظام من خلال علم أصول الفقه\*

● لهمايد فطويب  
جامعة صفاقس

تحاول هذه الدراسة مقارنة المنظومة الأصولية، كما قعدها الإمام الشافعي، بالرجوع إلى محيطها التاريخي والمجتمعي ومقارنتها بما كان خارجا عنها مثل آراء إبراهيم النظام المعتزلي. وغرض الباحث هو تجديد النظرة إلى تلك المنظومة من خلال مساءلة مسلماتها وتفكيك بديهياتها وتوضيح آليات تداخل الأصولي والإيديولوجي.

في ضوء هذه النظرة التاريخية نقر أن منظومة الشافعي (ت. 204 هـ) الأصولية كانت غير مكتملة وغير ناضجة، لأنها تمثل انطلاقة التأليف في هذا العلم في أواخر القرن الثاني الهجري، ولأن هذا العصر مازال التدوين فيه يحكمها بآليات الثقافة الشفوية، ولن يحصل النضج في طرح القضايا، وفي مناهج التأليف والمقاربات إلا بعد أن يقع تلقيح الفكر الأصولي بالأبحاث الفلسفية، والكلامية، والمنطقية؛ وهو ما ظهر جليا في القرن الخامس الهجري وذلك بالنصوص من خلال كتاب «المعتمد في أصول الفقه» لأبي الحسين البصري (ت. 436 هـ)، وكتاب «البرهان في أصول الفقه» لإمام الحرمين الجويني (ت. 478 هـ)، وكتاب «المستصفى في علم أصول الفقه» لأبي حامد الغزالي (ت. 505 هـ). وإضافة إلى ذلك فإن منظومة الشافعي لم تتأسس على العدم، ذلك أنه انطلق من بيته التي وفرت له مادة بحثه في

لقد عد تعقيد الشافعي لأصول الفقه حدثا تأسيسيا لعلم لم يكن مؤسسه يدرك بعد أنه سيوسم بعلم أصول الفقه. وعلى غرار أساطير التأسيس الرائجة في مجالات معرفية متعددة، وقعت أسطرة مؤسس هذا العلم من خلال كتب الناقب خاصة، ووقع تشبيه ما قام به في رسالته الأصولية بما قام به أرسطو عندما أسس المنطق من خلال كتابه الأورغانون، أو بما قام به ديكارت حين وضع قواعد المنهج في الفكر الأوروبي الحديث. غير أن الالتزام بمفهوم التاريخية يفضي إلى تنزيل كل عمل بشري مادي أو معنوي في إطاره الزمني، وإلى النظر في الصلات التي تنشأ بين الأثر وعصره، خاصة أن هذا العصر يبقى سلطة مرجعية أساسية لكل أثر في مختلف مستوياته، ولذلك فإن أثرا ما يظل في عتواء ومناهجه مرتهنا بحدود النظام المعرفي الذي يحكم ثقافة الفضاء الذي نشأ فيه.

\* قدم ملخص من هذا البحث في الندوة التي نظمها قسم العربية بكلية الآداب بسوسة أيام 6، 7، 8 أبريل 1995. وهذه الندوة كانت تحت عنوان: «القاعدة والشذوذ في اللغة والآداب والحضارة».

- Mendon (1700)

- M. F. Sezgin tarafından tercüme olunmuştur.

- İslâmî fıkıh (1700)

- Şâfiî (İmam) (1700)

- ~~M. F. Sezgin tarafından tercüme olunmuştur~~ (1700)

- ~~Devlet~~ (1700) **Uşûl al-fıqh'm tarihi \***

- ~~Sezgin~~ (1700) **Muhammed HAMIDULLAH**

Beşeriyetin malûm tarihinde, dünyanın hemen her yerinde çok eski devirdeberi hukukun izlerine raslanır. Babil kralı Hamurabi'nin kanunlarına sahip bulunuyoruz. Hind brahmanlarının *Veda* ve *Smitris*'lerinin metinleri günümüze kadar mahfuz kalmıştır. Çinli Konfiçyus'un *Şu-King* gibi hukukî kitapları vardır. İranlılar *Avesta*'ya sahip idiler. Firavunlar Mısır'ının kadim bir hukuka sahip olduklarına dair bir çok şeyler bilinmektedir. Latinlerin *Oniki levha kanunları* herkesçe malûmdur. Lâtinler, kendi kanunlarına ait bir çok mühim vesikalar, hassaten Ön-Asya menşeli Gaius'un ve İstanbul'da Bizans İmparatoru Justinyen'in hukukî vesikalarını bize terketmişlerdir.

İslâmiyetten evvelki bir devre ait olan bütün bu saydıklarımız cidden kıymetli şeylerdir. Fakat bizzat hukuka dair değil de müslümanların «uşûl al-fıqh» (yahut hukukun kökleri), Anglo-saksonların bugün «jurisprudence» diye adlandırdıkları hukuk ilmine dair bir eser aramağa, daha doğrusu beyhude aramağa koyulunca insan hayretle karşılaşır. Bir çok hukuk musannefatına ve bunların hacimli şerhlerine dünyanın her tarafında raslanabilir, fakat mücerret olarak hukuk ilminden bahseden bir eser, bildiğime göre, lâtinler de müstesna bırakılmamak suretiyle, ne şark ve ne de garplılar tarafından meydana getirilmiş değildir. Biraz ileride göreceğimiz vechiyle bu mevzua dair ilk eser, hicretin 150. yılında (m. 767) doğmuş olan İmâm Şâfiî tarafından telif edilmiştir. Belki bu faaliyet müslümanların hukuk sahasına katılışlarının en büyüğüdür, fakat yegâne iştirakleri değildir.

Devlet, insan cemiyetinde malûm, pek eski bir müessesedir. Yalnız devlete ait bir yazılı teşkilât esası ilk defa olarak, okuyup yazmadan mahrum bir ümmiden ibaret olan Peygamberimiz tarafından ilân edilmiştir. 52 maddeden teşekkül eden bu teşkilâtın met-

\* M. Fuad Sezgin tarafından tercüme olunmuştur.

İslâm Tetkikleri Enstitüsü Dergisi c 2 (s.1), s. 1-18

1956-57 (İSTANBUL)

Makale USULÜ FIKH parçesindedir.

İyiliğin karşılığı iyilikten başka bir şey olur mu? (55/Rahman, 60)

Kim zerre kadar iyi bir iş yapmış ise karşılığını görür, kim de zerre miktarı kötülük işlemiş ise yine karşılığını görür (99/Zilzal, 78).

Ben sevgisi, özgürlüğü doğururken, bencillik, özverinin karşıtı olmasına rağmen Fromm'un ifade ettiği gibi, aslında yıkıcıdır, ben'in bir tür kendine yabancılaşmasıdır.<sup>83</sup> Bir grup müşrik Hz. Muhammed'e inanmama gerekçesi olarak şöyle dediler:

Biz seninle beraber doğru yola uyarsak yurdumuzdan atılırsınız (28/Kasas, 57).

İnsan geçim sıkıntısı çekerken de denenmektedir. Kimi insanlar böyle bir durumda sabredip imtihanı kazanırken, kimileri de: "Rabbim bana ihanet etti" (89/Fecr, 16) diyerek küfre düşmektedir. Hz. Muhammed'in Medine'ye hicretinden sonra Medineliler arasında 'münafıklar' olarak nitelenen bir grubun ortaya çıkması da aslında menfaat saikiyledir. Çünkü onlar kalben inanmadıkları halde inanmış gibi görünerek menfaat elde etmeye çalışıyorlardı. Mekke'deki müşriklerin de inkârlarının temelinde menfaat unsuru bulunmakta idi. Kur'ân onların bu bencil ve cimri durumlarını mekkî surelerde yoğun bir şekilde sertçe eleştirir:

Siz yetime ikram etmiyorsunuz, yoksulu yedirmeye birbirinizi teşvik etmiyorsunuz, haram-helal demeden miras yiyorsunuz, malı bütün gücünüzle seviyorsunuz (89/Fecr, 17-20).

Dinî inkâr ile bencillik/cimrilik bir mekkî surede neden-sonuç ilişkisi açısından oldukça yakın durmaktadır:

Dinî yalanlayanı gördün mü? İşte o yetimi itip kakar, yoksulu doyurmayı teşvik etmez (107/Maun, 1-3).

Ayrıca Kur'ân insan fitratının (*el-enfus*) bahîl, ihtiraslı ve cimri (*eş-şuħh*) olduğunu (4/Nisa, 128) belirterek fitratın bu halinden korunmadıkça kurtuluşun olamayacağını ifade eder:

Kimler nefislerinin cimriliklerinden korunursa, işte onlar kurtuluşa ermişlerdir (59/Haşr, 9).

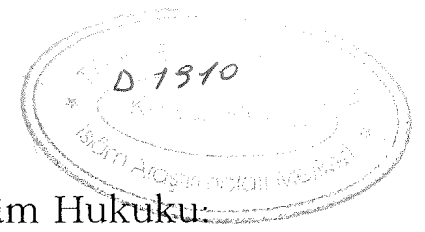
Buradaki "Kurtuluş"u hidayet olarak yorumlayabiliriz.

### e- Sonuç

Netice olarak, dinî söylemin en temel iki kavramı olan 'iman' ve 'inkâr', insanın ahlâkî yüksek değerleri gören/duyan ve göremeyen/duyamayan bir varlık olması hasebiyle önemli bir oranda ahlâka dayanmaktadır. İman'ın muhtevası ise, dindeki resmi ahlâkî alanı oluşturan bedensel salih amelleri doğuran ve Allah'a yönelmiş (dikey) kalbî ahlâktır. Dolayısıyla, iman ve inkâr, indirgenemez, izah edilemez (irrasyonel) veya salt ilahî-şeytanî şeyler değildir. İnsanın anlaşılır, bilinebilir iki ahlâkî ve epistemolojik veya normatif-kognitif fiilidir. Dinî'nin 'salih amel' veya 'şeriat' kısmı yatay (insanî ilişkilerde gerçekleşen) ve siyaset, hukuk, iktisat alanlarında dinamik formlar kazanan ahlâkîken: iman, dikey (Allah'a karşı) bir ahlâklılıktır. Netice itibarıyla, din ahlâktır:

"Şüphesiz sen büyük, yüce bir ahlâk üzerindesin" (68/Kalem, 4).

<sup>83</sup> Fromm, *Kendini Savunan İnsan*, s. 91-92.



## Merkezileşme Sürecinde İslâm Hukuku: Bölgeselliğe Veda veya Şâfi'î Faktörü

OSMAN TAŞTAN

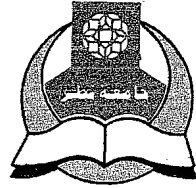
DR., A.Ü. İLAHİYAT FAKÜLTESİ/ANKARA

İslâm hukuku embriyo dönemini hicri 2. yüzyıla girerken geride bırakmış, ikinci yüzyılın ilk yarısında ise çok keskin bir tırmanış kaydetmiştir. Bu tırmanışta iki ağırlık merkezi vardır: Medine başta olmak üzere Hicaz ve Kufe başta olmak üzere Irak. İslam hukukunun temel kaynak olarak kabul ettiği Kur'an ve Sünnet Hz. Peygamber'den beri doğal olarak çekim noktası durumundadır. İlke olarak durum böyle olmakla beraber, bu iki temel referansa ilave olarak, Hz. Peygamber'in vefatından sonra Medine'de özellikle Medine halkının teamülü, Irak'ta ise Kufe'nin teamülü bir hukuk kaynağı olarak kendisini göstermiştir. Kur'an ve Sünnet nassları sözkonusu bölgesel teamüller içerisinde yorumlanırken bu süreç daha sonraki dönemlerde kazandığı teknik anlamda olmasa bile, en azından sistematik bir akıl yürütme ameliyesi olarak Kıyas olmadan da olamazdı. Ayrıca Kufe'de Ebu Hanife'li (ö.150/767) yıllardan itibaren bir de Kıyas yöntemini devre dışı bırakan İstihsan vardı.

İkinci yüzyılın ortalarına doğru ilerlerken giderek yükseliş kaydeden hukuk alanında, aynı zamanda ihtilafların da önü alınmaz bir şekilde tırmanması sözkonusuydu. Bunu farkederek ünlü danışman İbnu'l-Mukaffa'nın (ö.140/757) yargı sisteminin sözkonusu fihri ihtilaflardan dolayı alarm verdiği yönündeki gözlemine binaen, devlet başkanı [Ebu Ca'fer el-Mansur] konuya el atmasının zaruretini hatırlatması bilinen bir hadisedir.<sup>1</sup> İbnu'l-Mukaffa'nın yorumuna göre, kazai ihtilaflar o kadar ileri bir noktaya gelmişti ki, bir şeyin hükmü bir şehirde helal iken aynı şeyin hükmü bir başka şehirde haram sayılıyordu, hatta kazai tatbikattaki çelişkili uygulamalar aynı şehrin içinde bile –mesela Kufe'de– cereyan edecek kadar aşırı bir düzeye varmıştı ve yargı sistemi vahim bir durumdaydı. İbnu'l-Mukaffa'nın önerdiği çözüme göre ise, temelde Emiru'l-Müminin kendi re'yi ile inisiyatifini kullanarak yargıyı zabt u rabt altına almalı, kazai tatbikatta bir birliğin sağlanmasına önayak olmalı ve sağlanan bu birliğin bir yazılı döküman çerçevesinde temin edilmesini ve nihayet sözkonusu nizamî durumun gelenekleşmesini sağlamak için gerekli girişimde bulunmalıydı.<sup>2</sup>

<sup>1</sup> Ayrıntılar için bkz. İbnu'l-Mukaffa', *Risaletü İbni'l-Mukaffa' fi's-Sababe (Resailü'l-Bulağâ'nın içinde)*, thk. Muhammed Kürd Ali, Kahire, 1954, s. 126-127.

<sup>2</sup> İbnu'l-Mukaffa', *Risale*, s. 126-127.



كلية الشريعة والقانون  
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حولية  
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Hanefi Mezih  
- Hanbali Mezih  
- Maliki Mezih  
- Safii Mezih  
تدوين الفقه الحنفي

وأثره في تدوين فقه المذاهب

أ.د. محمد السيد الدسوقي

قسم الفقه والأصول

كلية الشريعة والقانون والدراسات الإسلامية

جامعة قطر

281-314

العدد العشرون

١٤٢٣ هـ - ٢٠٠٢ م

26 FEB 2003

ما  
لعه

# رسائل السائل

(السائل الخلفي بين الحنفية والشافعية)

للعلامة جارا لله أبي القاسم محمود بن عمر الزمخشري  
(٤٦٧ - ٥٣٨ هـ)

دراسة وتحقيق  
عبدالله نذير احمد

Topical	9019
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دار البشائر الإسلامية

Safii Merhebi

حقوق الطبع محفوظة  
الطبعة الأولى  
١٩٨٧ هـ - ١٤٠٧ م

12 TEMMUZ 1995

دار البشائر الإسلامية

للطباعة والنشر والتوزيع بيروت - لبنان - ص.ب: ٥٩٥٥ - ١٤

كِتَابٌ

# بَهْجَةُ النَّاطِقِينَ

إلى تراجم المناخرين  
عبد الشافية الباربعين

تصنيف

الإمام رضي الدين أبي البركات محمد بن أحمد بن عبد الله  
الغزالي العامري الشافعي ت ٨٢٤هـ

Türkiye Diyanet Vakfı  
İslâm Araştırmaları Merkezi  
Kütüphanesi

Den. No: 79971

Fas. No: 922.975  
GAZ.K

ضبط النص وعلق عليه  
أبو يحيى عبد الله الكندري

1421/2000

دار ابن خزيمة

Beirut

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Annuaire du Collège de France, cit: 72, jul: 1972, PARIS.

— Safri Mezhebi

7 EYLÜL 2010

maladie pernicieuse dont un historien, qui n'est jamais qu'un littéraire, se remet mal — nous ont amené à mener cet exposé dans une perspective peu différente de celle de notre introduction : dans le voisinage inhabituel de la machine à calculer, du tableau noir et du laboratoire — toutes choses très éloignées assurément les unes des autres, mais qu'on pardonnera à un homme de la qualité de confondre en un même univers. C'est ainsi qu'il nous a semblé intéressant de comparer les descriptions qu'une analyse purement littéraire et désincarnée nous permet de faire de la mémoire, de l'imitation, de la sensibilité, de l'imagination, aux conclusions de ceux qui voient là des problèmes à résoudre au niveau du corps et par le moyen d'expériences minutieuses, précises, répétées.

De proche en proche, nous nous acheminons ainsi vers ce que doit être la dernière démarche d'une aventure qui n'est qu'apparemment une parenthèse dans nos recherches sur les Parisiens : la description de ce qu'on peut appeler indifféremment intelligence ou esprit, ou pensée — « le cœur ou l'âme, ou de quelque autre nom qu'il faille appeler cela... » nous dit Platon dans « Le Banquet ». Cette étude fera l'objet de notre prochain cours. Chapitre final de cette description des caractères permanents des peuples, c'est-à-dire avant tout du peuple français et des Parisiens qui, des autres, font leur miel — sujet d'un précédent livre — elle est peut-être aussi l'introduction la meilleure pour la nouvelle description du Paris immédiatement contemporain qu'il va nous falloir maintenant entreprendre, la meilleure manière de poser ce problème que nos prochains cours s'attacheront à résoudre : jusqu'à quel point les transformations du milieu matériel, des « pierres de la cité », à peine perceptible aux dernières pages de nos « Parisiens », et désormais écrasantes et souvent sacrilèges, ont-elles entamé, au delà des manières de vivre et de faire et de toutes les étrangetés actuelles, ces caractères psychologiques dont l'histoire parisienne suffirait déjà à souligner la résistance et l'originalité, mais auxquels cette longue entreprise, à bien des égards étrangère à l'histoire, reconnaît peut-être une autre origine, une autre nature, une autre solidité ?

— Rapport sur l'histoire de la qualité urbaine. Conférence sur les problèmes des villes européennes (Los Angeles, juin 1972).

— Traduction de *Classes laborieuses et classes dangereuses* en anglais et en italien.

**Sociologie musulmane**

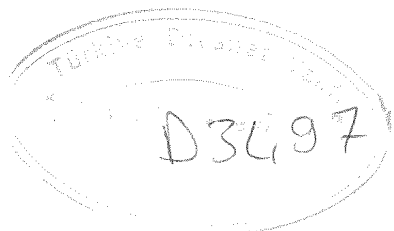
M. Henri LAOUST, professeur

Cours du vendredi et du samedi : *Le chafiisme dans l'histoire religieuse et politique de l'islam.*

Nous avons, l'année dernière, analysé les idées religieuses et politiques de l'imām al-Šāfi'ī (m. 204/820) dans la *Risāla* et le *Kitāb al-Umm*. Nous nous sommes proposé, cette année, de montrer dans quelles conditions l'école (*madhab*) née de l'enseignement de Šāfi'ī s'était constituée et de définir la place qu'elle avait tenue dans l'histoire religieuse et politique de la communauté musulmane. Pour y parvenir, nous avons eu recours à plusieurs monographies antérieures dont nous avons repris les conclusions et mis à contribution les ouvrages d'al-'Abbādī (m. 458/1066), d'al-Dahabī (m. 748/1348), de Tāg al-Dīn al-Subkī (m. 771/1370), d'Ibn Kaḥrīr (m. 774/1373) et d'al-Suyūṭī (m. 911/1505).

I. — *La constitution de l'école.* — Le chafiisme, comme nous l'avons montré dans nos premières leçons, se constitue en école dans le siècle qui suit la mort de son fondateur et dans le temps même où prennent naissance les trois autres grandes écoles sunnites. Il part d'Égypte où il est fortement implanté et où il se heurte au malikisme qui restera toujours bien vivant dans ce pays, gagne la Syrie où il évince la vieille école d'al-Awzā'i, s'infiltré au Yémen, se consolide en Irak où Šāfi'ī avait séjourné de bonne heure, et se développe dans les provinces orientales du califat, en particulier à Nisābūr, Marw et Samarqand, se heurtant souvent à l'école hanafite et aux karrāmīya.

C'est d'abord et avant tout un système juridique (*fiqh*) à l'élaboration duquel participent trois jurisconsultes égyptiens. Al-Buwayṭī (m. 231/845), qui meurt emprisonné à Bagdad pour avoir refusé d'admettre le dogme mu'tazilite de la création du Coran, est l'auteur d'un *Précis de droit* (*Muḥtaṣar*) dont al-Subkī avait encore eu connaissance et d'une *Somme* (*Mabsūṭ*) sur laquelle on ne possède que peu de renseignements — Al-



393-405.

ب- آثاره :

SAFI?

٢٥٧ - أولاً : (١) - اختلاف الحديث

ذكره د . سزكين (١) ، ومنه نسخة أخرى محفوظة في المكتبة السعودية ، رقم ( ٨٦/٦٠٨ ) تتضمن ( ج ١ ) في ( ٧٤ ) ورقة ، كتبت سنة ١٣١٢ هـ عن نسخة كتبت سنة ٦٤٢ هـ .

- وعنهما صورة محفوظة في جامعة الملك سعود ، رقم ( ١٤/٣٥ س ف ) .
- نسخة أخرى محفوظة في المكتبة السعودية تتضمن ( ج ٥ ) في ( ٤٢ ) صفحة كتبت سنة ١٣١٢ هـ .
- وعنهما صورة محفوظة في الجامعة المذكورة ، برقم ( ٣٠٦٣ ) .



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Shafii

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٥٠١٤٤

## Safīy Mughēbi الاجتهاد في المذهب الشافعي

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# Public Duties in Islam

The Institution of the *Hisba*

*paaltinde*

by

al-Shaykh al-Imâm Ibn Taymīya

Translated from the Arabic

by

MUHTAR HOLLAND

Introduction and  
editorial notes by

KHURSHID AHMAD

The Islamic Foundation

Sajid \$: 32, 33, 44, 17, 53, 56, 60, 62-3  
101

- Şafii Mezhebi

SALÂHADDİN DEVRİNDE EYYÜBİLER  
DEVLETİ

(Hicri 569 - 589 / MİLADİ 1174 - 1198)

(Doçentlik Tezi)

Dr. RAMAZAN ŞEŞEN

Türkiye Diyanet Vakfı İslam Ansiklopedisi Yayıncılığı	
Kayıt No:	3889-1747
Tasvir No:	958-052 FEF-S

EDEBİYAT FAKÜLTESİ BASIMEVİ  
İSTANBUL — 1983

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— El-Zahîr el-Nu'mânî, el-Hasan b. el-Haîr (547-598/1152-1202): Kahire'de doğdu. Ülkesinde tahsilini tamamladıktan sonra çeşitli yerleri dolaştı. Oralardaki âlimlerden ders aldı. Nihâyet, Kahire'deki Tarkûn el-Esedî Medresesi müderrisi oldu. Fıkıhtan başka hadîs, dil, mantık, riyâziyye, tıp ve edebiyat sahalarında da yetkili bir âlimdi. Fıkıh sahasında *el-Fatâvâ*, *İhtilâf el-Şahâba va'l-Tâbi'in va fukahâ' el-amşâr* adlı eserlerin müellifidir. Ebû Hanîfe mezhebinde olduğu için el-Nu'mânî nisbesini almıştır<sup>141</sup>.

— Burhâneddîn Mas'ûd b. Şucâ' el-Dimaşkî (510-599/1116-1204): Dimaşk'taki el-Nûriyye ve el-Hatûniyye hanefî medreselerinde müderristi. Fıkıhta *el-Multakaât min masâ'il el-vâkı'ât* adında bir eseri vardır<sup>142</sup>.

— El-İftihâr el-Hâsimî, 'Abdulmuṭṭalib b. el-Fazl el-Belhî: 539 (1144-1145) yılında Belh'te doğdu. Cemâziyelâhir 616 (ağustos-eylül 1219)'da Halep'te öldü. El-Hallâviyye müderrislerindendi. El-Şaybânî'nin *el-Câmi' el-kabîr*'ine şerhi vardır<sup>143</sup>.

— Vâcîhuddîn el-Kûşî, 'Abdurrahmân b. Muhammed (555-643/1160-1246): Kahire'deki el-Zavile semtindeki el-Medreset el-Hanefiyye'de ve el-Medreset el-Süyûfiyye'de müderrislik yapardı. Fıkıh, dil, tefsîr ve inşâya dâir eserler yazmıştır<sup>144</sup>.

## b) Mâlikiyye Fıkhi

Salâhaddîn devrindeki meşhûr mâlikî fakihlerine Mısır'da rastlamaktayız. Bunlar arasında en meşhurları şunlardır:

— İbn Ebî İyâs, Ebû Muhammed 'Abdullâh el-Osmânî el-Dîbâcî (ölm. 572/1176-1177): Hadîs, fıkıh, ve edebiyatta kuvvetli, ilm el-şurûṭ'ta zamanının yegânesiydi<sup>145</sup>.

— İbn 'Avf, Ebû Tâhir İsmâ'il b. Mekki (ölm. 581/1185): Mısır'daki Mâlikîlerin reîsi ve aynı zamanda büyük bir hadîsçiydi. Sünn-

141 *İrşâd*, III, 64; *el-Cevâhir el-muṣṣıyye*, I, 191-192; *Buḡyat el-vu'ât*, s. 219; *el-Vâfi*, XI, 194<sup>b</sup>-195<sup>b</sup>; *Tâc al-tarâcîm*, s. 17; *Kahhâla*, III, 222.

142 *el-A'lâk el-hâfıra*, s. 203; *Târîh el-islâm*, XIV, 262<sup>a</sup>; *el-Cevâhir el-muṣṣıyye*, II, 168; *el-Nu'aymî*, I, 513-514; *H H*, s. 1814; *Kahhâla*, XII, 227.

143 *Târîh el-islâm*, XVIII, 156<sup>a-b</sup>; *Siyar a'lâm*, XIII, 140<sup>a</sup>; *el-Cevâhir el-muṣṣıyye*, I, 329-330; *Kahhâla*, I, 175-176.

144 *el-Tâli' el-sa'id*, s. 154-155; *el-Cevâhir el-muṣṣıyye*, I, 305; *Kahhâla*, I, 180.

145 *el-Ravz*, I, 271.

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nilerin Mısır'da idâreyi ele geçirmelerinde mühim hizmetleri dokunan kişilerdendir. İkinci Mısır Seferi'nde Şâver'e karşı Eseddîdîn ve Salâhaddîn'i desteklemiştir. İskenderiye'deki medresesinde ders verirdi. Onun talebeleri arasında Salâhaddîn ve 'İmâdeddîn de vardır. *El-Tazkîra fî usûl el-dîn* adında bir eser yazmıştır<sup>146</sup>.

— İbn Şâs, 'Abdullâh b. Muhammed el-Sa'dî (ölm. 616/1219): Fustât'taki Câmî-i 'Amr yanındaki mâlikî medresesinde müderristi. El-Gazzâlî'nin *el-Vacî'e*'i tertibindeki *el-Cevâhir el-şamâna fî mazhabî 'Âlim el-Medîne* adındaki eseri Mâlikîler arasında revaç bulunmuştur. Bundan başka *Kerâmet el-evliyâ* adında bir eseri daha vardır. Cemâziyelâhir 616 tarihinde Dimyat'ta Haçlılara karşı çarpışırken şehit düşmüştür<sup>147</sup>.

— İbn 'Atîk el-Rabâ'î, Cemâleddîn Ebû 'Alî el-Huseyn (549-632/1154-1235): Zamanında Mısır'daki Mâlikîlerin seyhlğine kadar yükseldi. Salâhaddîn'in başkadısı 'Abdülmelik b. Dirbâs'ın yanındaki şuhûd'dandı. *Mizân el-amâl* adında bir eser yazmış ve mezhebinde fetvâ vermiştir<sup>148</sup>.

Bunlardan başka, bu devirde mâlikî fıkında Şîş b. İbrâhîm el-Kifî tarafından *el-Masâ'il va'l-talâkât*, *Kitâb fi'l-rakâ'ik*, Şafiiyuddîn b. Şükr tarafından *el-Başû'ir*, İbn Harûf tarafından ise *el-Farâ'iz* ile Ebu'l-Ma'âlî el-Cuvaynî'ye reddiye olarak bir eser te'lif edilmiştir<sup>149</sup>.

## c) Şâfiyye Fıkhi

Nüreddîn ve Salâhaddîn devirlerinde şâfiî fıkhi en parlak devirlerinden birini yaşamıştır. Bu devirde bu mezhebe mensup âlimler ilmiye sınıfının en önemli kişileri olmuşlar, değerli eserler kaleme almışlardır. Nüreddîn'in ve Salâhaddîn'in etrafındaki büyük kalem erbâbı ve başkadılar bu mezhebe mensuptular. Bu devirde ye-

146 *el-Bustân*, yap. 115<sup>a</sup>-116<sup>b</sup>; *Sana'l-B.*, yap. 204<sup>a</sup>; *el-Ravz*, I, 168; *Târîh el-islâm*, XIV, 90<sup>a-b</sup>; *Siyar a'lâm el-nubalâ*, XIII, 28<sup>a-b</sup>; *Şazarât*, IV, 268.

147 *Vajayât*, II, 262-263; *el-Dîbâc el-muzahhab*, s. 141; *Târîh el-islâm*, XVIII, 154<sup>b</sup>; *Siyar a'lâm*, XIII, 140<sup>a</sup>; *el-Vâfi*, XVI, 20<sup>b</sup>, XVII, 173<sup>b</sup>; *GAL*, I, 384, S, I, 664; *Kahhâla*, VI, 158; *Navâdir el-mahjûlât*, I, 411-412.

148 *Târîh el-islâm*, XIX, 119<sup>a-b</sup>; *el-Vâfi*, XI, 90<sup>a</sup>; *Ahbâr Giranaqa*, I, 300-304; *el-Dîbâc el-muzahhab*, s. 105-106; *Kahhâla*, XI, 90.

149 Bu âlimler için bk. bu bölüm, not 224, 266, 218.

Tasnihi  
Maktaba

بدران أبو القاسم بن بدران  
استاذ الشريعة الإسلامية في كلية الحقوق  
بجامعة الإسكندرية وبيروت العربية

Safii (mazhab)  
(137-143)

ناتج الفقهاء الإسلاميين

ونظريته المالكية والفقود

Türkiy - Liganen Mektebi İslam Ansiklopedisi Kütüphaneleri	
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دار النهضة العربية  
للطباعة والنشر  
بيروت - ص. ١١٠٦١

08 MAYIS 1997

كانت غالبية على أهل المغرب والأندلس ، ولم يكونوا يمانون الحضارة التي لأهل العراق ، فكانوا إلى أهل الحجاز أميل لمناسبة البداوة (١) .

وقد دخل المذهب إلى مصر في حياة الإمام مالك ، واستمر العمل به في بعض الجهات في العبادات لأن ، وبلاد تونس لا يزال أهلها يتعبدون على المذهب المالكي (٢) ، كما لا يزال المذهب معمولاً به وغالباً في الجزائر وطرابلس الغرب وموريتانيا ونيجيريا ، والسودان ، والكويت ، والبحرين ، وله أتباع أيضاً في البلاد الإسلامية .

### ٣ - المذهب الشافعي

صاحب هذا المذهب ومؤسسه : أبو عبد الله محمد بن إدريس بن العباس الشافعي القرشي ، ينتهي نسبه إلى هاشم بن عبد المطلب بن مناف بن قصي ، ولد في غزة من بلاد فلسطين عام ١٥٠ هـ ، وهي السنة التي مات فيها أبو حنيفة ، وليست غزة موطن آبائه ، وإنما خرج أبوه إدريس إليها في حاجة ، فبات هناك ، وبعد سنتين من ولادة الشافعي حملته أمه إلى موطن آبائه مكة ، فنشأ بها يتيماً في حجر أمه ، فحفظ القرآن في صباه ، ثم خرج إلى البادية فحفظ الشعر واللغة ، ثم شاء الله أن يوجهه لطلب الحديث والفقه ، فنال من ذلك غاية ، ولما لم يبلغ العشرين من عمره ، فقد حفظ موطأ مالك وهو ابن عشر سنين ، وعرضه عليه وقرأه بين يديه ، وكانت تعجبه قراءته ، ثم أذن له في الفتوى شيخه في الفقه ، مسلم بن خالد الزنجي ، مفتي مكة حينذاك ، وهو ابن عشرين ، أو خمس عشرة سنة (٣) .

(١) مقدمة ابن خلدون ص ٣٩٢ .

(٢) قبل إلغاء أمانة تونس كان الامير هو أمرته من أتباع المذهب الحنفي ، كان القضاء الحنفي مشاركاً للقضاء المالكي في عاصمة تونس .

(٣) مفتاح السعادة لطاش كبرى زاده ص ٢٠ ص ٩٣ .

٢ - سحنون عبد السلام بن سعيد أصله من حمص الشام ، وقدم به أبوه في جند حمص ولد سنة ١٦٠ هـ ، تفقه أولاً بالقيروان عن مشايخها ، ورحل إلى مصر وسمع من ابن القاسم وابن وهب ، ثم رحل إلى المدينة ، ولقي علماءها بعد وفاة مالك ، وانصرف إلى أفريقية ، صنف المدونة ، وعليها كان يعتمد أهل القيروان ، ولى قضاء أفريقية سنة ٢٣٤ هـ ، وسنه أربع وسبعون سنة ، فلم يزل قاضياً إلى أن مات سنة ٢٤٠ هـ .

٣ - يحيى بن يحيى بن كثير : رحل وهو ابن ثمان وعشرين سنة إلى مالك ، كما رحل إلى ابن القاسم ، وتفقه عليه ، ثم قدم الأندلس بعلم كثير ، وبه انتشر مذهب مالك في الأندلس ، وفيها انتهت إليه الرياسة في العلم توفي سنة ٢٣٤ هـ .

هؤلاء هم أصحاب مالك ، وناصري مذهبه ، ونسبتهم إليه نسبة المتعلم من المعلم ، والراوي من المستنبط ، لكنهم لم يكادوا يخالفونه ، إلا في الشيء اليسير ، وإذا وجد بينهم خلاف (١) ، فإنما هو لاختلاف الرواية عن مالك ، أو للاختلاف في فهم النصوص المروية عنه .

وأساس العلم والمذهب عند أتباع مالك كتاب المدونة ، وقد جمعها أسد بن القرات في الأندلس ، ثم أخذها سحنون ورتبها ونشرها باسم المدونة الكبرى .

### انتشار المذهب المالكي :

لقد نشأ المذهب بالمدينة ، وانتشر في الحجاز ، ثم اختص به أهل المغرب ، والأندلس ، وسبب ذلك كما أوضحه ابن خلدون : أن رحلة هؤلاء الفقهاء ، كانت غالباً إلى الحجاز ، وهو منتهى سفرهم ، والمدينة يومئذ دار العلم ، ولم يكن العراق في طريقهم ، فاقترضوا على الأخذ من علماء المدينة ، وأيضاً فالبداوة

(١) أحياناً يخالفه ابن وهب وابن القاسم ، وذلك قليل جداً .

# ضحا الأندلس

102 FKIM 1991

تأليف  
أحمد أمين

Safir, (SHS) 218-242

## الجزء الثاني

يبحث عن نشأة العلوم في العصر العباسي الأول

الطبعة العاشرة

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التأشير  
دار الكتاب العربي  
بيروت - لبنان

- ٢١٩ -

- ٢١٨ -

أبى ولم يكن لها مال ، وكان المعلم يرضى من أبى أن أخلفه إذا قام ، فلما جمعت القرآن دخلت المسجد ، فكنت أجالس العلماء فأحفظ الحديث أو المسألة ، وكانت دارنا في شعب الخيف ، فكنت أكتب في العظم ، فإذا كثر طرحته في جرة عظيمة ، وفي رواية : « لم يكن لي مال فكنت أطلب العلم في الحدائث ، فأذهب إلى الديوان فأستوهب منهم الظهور فأكتب فيها »<sup>(١)</sup> ؛ قال : « وخرجت من مكة فلزمت هذيلاً بالبادية أتلم كلامها وأخذ اللغة ، وكانت أفصح العرب »<sup>(٢)</sup> : وقد أفادته الإقامة في البادية مع قرشيته معرفة واسعة باللغة والشعر ، أعانته على تعهم معاني القرآن والسنة ، فنراه يستشهد على أن السعى معناه العمل في قوله تعالى :

( إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ ) يقول زهير : سَعَى بَعْدَهُمْ قَوْمٌ لَسَكَى بِذِكْرِكُمْ هَوُوا فلم يفعلوا ولم يُبْلِيُوا ولم يَأْلُوا<sup>(٣)</sup> وبأن السرَّ معناه الجماع في قوله تعالى : « وَلَسَكِنْ لَا تُوَاعِدُهُنَّ سِرًّا » بأبيات لاسرى القيس وجريراح<sup>(٤)</sup> . كما أفادته قوة في التعبير وعربية رصينة في الأسلوب وذوقاً دقيقاً ، حتى لقد قرأ عليه رجل فلحن ، فقال له الشافعي « أضرستني » ؛ وقد روى أن الأصمى أخذ عنه شعر الهذليين وشعر الشنفرى ؛ ثم اتجه إلى الحديث والفقهاء ، فأخذ في مكة عن سفيان بن عيينة ومسلم بن خالد الزنجي ، وحفظ الموطأ ثم رحل إلى مالك في المدينة وسمع منه الموطأ ، وأخذ عنه فقهه ، ولازمه إلى أن مات مالك سنة ١٧٩ ثم خرج إلى اليمن ، وقد ذكر في رحلته إليها أسباب كثيرة أقربها أن وإلى اليمن جاء مكة فسكلمه بمض القرشيين أن يأخذ الشافعي ويوليه بعض الأعمال ، ففعل وولاه بعض الأعمال ، ثم اتهم بالتشيع وامتنح ؛ والروايات كذلك مختلفة : هل اتهم هذه التهمة وهو باليمن أو بعد أن عاد إلى الحجاز ؛ فإن ابن عبد البر يروى أنه اتهم بالتشيع والميل إلى مبايعة علوى وهو بالحجاز ؛ وابن حجر

(١) توالى التأسيس لابن حجر ص ٥ (٢) الأم ١٧٤/١ (٣) الأم ١١٨/٥

قدمتها لها المدينة الضخمة ، والتي قدمتها لها بقايا الأمم المدنة في العراق من أشوريين وكلدانيين وفرس وغيرهم ، فإن مدرسة مالك قد أثرت في الفقه بما نقلت من أحاديث كانت وافرة فيها بحكم قيام الرسالة فيها ، وكثرة الصحابة بها ، وبما قدمت من أشكال وأوضاع تداولها سكان المدينة جيلاً عن جيل ، وأهل المدينة في ذلك أوثق ، فقد شهد الأولون منهم النبي يتوضأ على نحو خاص ، ويصلى على نحو خاص ، وعرفوا مقدار المسكايل والموازين التي كانت تستعمل لعهده ، فنقلوا ذلك كله إلى من بعدهم من طريق الأخبار أحياناً ، ومن طريق التورث أحياناً أخرى ، وتسلسل ذلك إلى مالك ومدرسته ؛ ثم كان من أصحاب المذاهب من ينتفع بمزايا كل ، فيرحل محمد بن الحسن الحنفي إلى المدينة يمكث فيها ثلاث سنين ويروي الموطأ ، ويعود إلى العراق مزوداً بالأخبار ، ويذهب أسد ابن الفرات ويمكث في العراق طويلاً ، ويعود إلى مصر والقيروان مزوداً بكثرة الفروع ، وبذلك وأمثاله تأثرت المدرستان ، وتقارب المذهبان .

### (ح) الشافعي ومدرسته

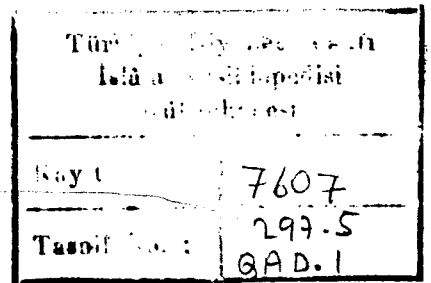
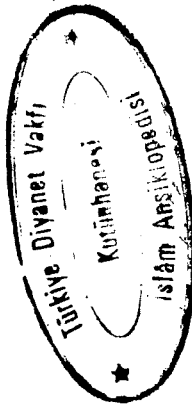
الشافعي هو محمد بن إدريس ، قرشي من جهة الأب ، يلتقي مع النبي (ص) في عبد مناف ؛ وقد روى الجرجاني (وهو من الحنفية) عن أصحاب مالك أن شافعا جد الشافعي والذي ينسب إليه لم يكن قرشي الأصل ، وإنما كان مولى لأبي لهب ، وعلى ذلك يكون الشافعي مولى ، ولكن قوله هذا لم يقره عليه علماء الأنساب ، والظاهر أنه حمله على ذلك المصيبة المذهبية فالصحيح أنه قرشي ، والراجح أن أمه أزدية ، والأزد من اليمن ؛ وكان أبوه خرج في حاجة إلى الشام فولدت له الشافعي بفترة أو عسقلان سنة ١٥٠ ، ثم مات أبوه فحملته أمه إلى مكة وهو ابن سنتين ، وقد نشأ فقيراً كما حدثت هو عن نفسه . روى عنه أنه قال : « كنت يتيماً في حجر

In the Name of Allah, the Most Gracious, the Dispenser of Grace!

# ISLAMIC JURISPRUDENCE IN THE MODERN WORLD

علم الفقه في العالم المعاصر  
[‘Ilm al-Fiqh fi’l-‘Ālam al-‘Asrī]

BY  
ANWAR A. QADRI  
B.A., LL.B.; M.L.I. (Wisconsin) U.S.A.;  
C.C.L. (UISC) Luxembourg



TAJ COMPANY

that he was born. The general consensus of opinion favours his birth at Gaza in the province of ‘Asqalān where his parents had emigrated and settled. Born in 150 H. and died in Egypt in 204 H., Imām Abū ‘Abdullah Muḥammad b. Idrīs b. ‘Abbās b. Shāfi‘a as-Shāfi‘ī al-Maḥlabī was from the tribe of Quraysh. His father belonged to the tribe of the Prophet. Probably, his mother, a highly intelligent lady, belonged to the Yemeni tribe Azd; on the death of his father, she brought Shāfi‘ī to Mecca where, though in poor circumstances, the Imām devoted himself to learning.<sup>83</sup>

In his childhood, Shāfi‘ī learnt the Qur’ān by heart. The narratives give an account of his early devotion to poetry, chivalry, and legal studies. After memorising the Qur’ān at the age of seven, he turned his attention to Mālik’s *Muwatta’* and memorised it at the age of ten. He studied law under Muslim b. Khālid al-Zanjī, *Mustafī* of Mecca, Sufyān b. ‘Uyaynah and others, and it is said that Zanjī declared him to be fit to issue *fatāwā* while he was aged fifteen only. He received further legal training under Imām Mālik, and at the age of twenty years, he left for Medina. Many stories are narrated about the Imām by historians. It is further reported that Imām Shāfi‘ī impressed the governor of Yemen by his learning and entered State service at the age of about thirty years. The employment was shortlived; through jealous machinations, he was deported to Iraq accused of secretly following the Imām of the Zaydiyyah Shī‘ī, Yahyā b. ‘Abdullah, an opponent of the Abbasids. He appeared before the Abbasid Caliph, Hārūn al-Rashīd, at Raqqah. Being a student of the *Shari‘ah* he was defended by Imām Muḥammad Shaibānī and acquitted.<sup>84</sup>

His contact with Imām Muḥammad had great effect on the scholarship of Imām Shāfi‘ī who, until that time, had followed Imām Mālik only. During the course of discussions he defended Imām Mālik’s traditionalism; nevertheless, it made him aware of Mālik’s weaknesses which, according to the biographical details, he began to appreciate after settling down in Egypt under the impact of the ‘Irāqī legal reasoning. Legends are narrated for and against his difficulties in debates with the latter class of jurists. It is shown by the historians that the Imām was often overwhelmed, though at other times he emerged triumphant in the course of argumentation with Imām

83. Reference may be made to Hātim Rāzī, *Kitāb al-Shāfi‘ī wa Manāqib* (Cairo, 1953); Abū Nu‘aym, *Kitāb Hilyat Awliyā’ wa Ṭabaqāt Aṣīfiyah* (Cairo, 1938); Khāṭib Baghdādī, op. cit.; Baihaqī, *Kitāb Manāqib Imām Shāfi‘ī*; Fakhr Rāzī, *Kitāb Manāqib Shāfi‘ī* (Cairo, n.d.); Abū Zahrah, *Imām Shāfi‘ī* (Cairo, 1367 H.) and its trans. by Ja‘fī (Lahore, 1961).

84. See Fakhr Rāzī, op. cit., 7; Nu‘aym, op. cit., 29; Hātim Rāzī, op. cit., 170 ff.; Baghdādī, op. cit., II, 68; ‘Abd al-Barr, op. cit., 94 ff.; Khudrī, *Tā’rikh*, 346; Zahrah, op. cit., 41 ff.

Muḥammad. However, the observations on history lead to the conclusion that Shāfi‘ī as a protege of Shaibānī tried *bona fide*, by avoiding to open a conflict with Imām Muḥammad in the light of influence of the latter. This unavoidable difficulty affected Imām Shāfi‘ī to decide to leave Iraq; he settled at other places intermittently. Moreover, it has been narrated that on account of his frequent meetings with Imām Muḥammad at Baghdad, he came to appreciate the views of the ‘Irāqī jurists. It is recorded that Imām Shāfi‘ī said: “I never saw a person who, when questioned on a point which required reflection, did not betray some uneasiness by his countenance, but I must except Muḥammad b. Ḥasan.” Shāfi‘ī again said: “The information which I learnt by heart from Muḥammad b. Ḥasan would suffice to load a camel.”<sup>85</sup>

These difficulties made Imām Shāfi‘ī leave Baghdad by 188 H. for Mecca via Syria. There he studied under Imām Mālik. He achieved a good grasp of the views of Mālik and of Abū Ḥanīfah to expose both of them. He made a deep impress on many including Imām Aḥmad b. Ḥanbal who was then studying in Mecca. He came to Baghdad in 194 H. and, being mature, collected materials for researches in law. He was offered a post by Abbasid Mā’mūn but he declined the offer to return to Egypt.<sup>86</sup> The Imām was a cultured genius, proficient in linguistics and a greatly advanced personality in the acquisition of human learnings. In spite of his being born in a poor family, he belonged to a refined pedigree and was a dignified jurist. A time came when his fame and thinking reached all corners of the Muslim world. He was often presented with gifts and presents by the ministerial authorities, but he refused to take them. The Caliph of his time usually sent gifts as tokens of friendship which he distributed away on his way home. The Imām is described as a handsome man who paid proper attention to his appearance. By nature generous, he gave to the poor everything that came his way. He often emancipated his slaves and always cared for his relatives and friends. Gifted with sharp memory and high intelligence, he was eloquent in speech and possessed mastery over the Arabic language. His learning covered all branches of knowledge and he was possessed of encyclopedic knowledge. Fakhr Rāzī says that he received learning and education from a number of learned men of his period. He acquired the knowledge of law and jurisprudence from nineteen jurists and traditionists. The most noted of them were Sufyān b. ‘Ainiyah, Muslim b. Khālid, Sa‘īd b. Salīm, Dāwūd b. ‘Abdur

85. For sources, see Kirdarī, op. cit., II, 153; Hātim Rāzī, op. cit., 160; Abū Nu‘aym, op. cit., IX, 71 ff.; Fakhr Rāzī, op. cit., 32; Aghnides, op. cit., 134.

86. It is said that ‘Abdullah b. Mūsā invited him to Egypt where he arrived after a stay of three or four years at Baghdad. For further details, see Hātim Rāzī, op. cit., 165 ff.; Ibn Ḥajar, *al-Tawāif al-Tā’sis* (Cairo, 1301 H.), 84; Zahrah, *Imām Shāfi‘ī* (Arabic), 28.



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BOĞAZIÇI  
ÜNİVERSİTESİ  
KÜTÜPHANESİ



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# الصَّاحِ الْمَذْهَبِي بِإِفْرِيقِيَّةِ

إلى  
قيام الدولة النورية

Safi (Mezhera)  
91-95

تقديم  
عبد الشابي  
أستاذ بكلية الشريعة وأصول الدين بجامعة الزيتونة

7267 الطبعة الثانية  
291.611  
111625

الدار التونسية للنشر

على أنه إن قلنا (الأحناف) أو (العراقيين) فيجب أن يحمل قولنا على أننا نعني عددا قليلا من العراقيين المتعصبين ، وإلا فقائمة فقهاء الأحناف تتضمن عددا ضخما قد اشتهر معظمهم بالعفة والتدين والبعد عن السياسة وعن أصحابها ممن انغمسوا فيما لا يرتضيه مذهبهم السنّي . ورغم إغفال أصحاب الطبقات ذكرهم في كتبهم — عن قصد أو عن غير قصد — فقد ذكروا البعض منهم بما يليق بشخصياتهم من إنصاف وتبويه . وما ذلك إلا لبعدهم عن كل الشبهات وعن البدع وأهلها .

## لا مذهب إلا مذهبهم

قاوم المالكية المذهب الحنفي في أشخاصه المتطرفين ومثليه الذين ابتعدوا به عن السنة بعدا كبيرا ، ولم يكن من أغراض جميعهم تقريبا القضاء على المذهب الحنفي ، فهم يعترفون به كمذهب سنّي له مكانته السامية التي لا تخفى ولا تجحد .

أما غيره من المذاهب فأنكروها وقاوموها مقاومة شديدة لم تبق منها أثرا . فمن هذه المذاهب التي كتب لها الظهور بإفريقية ثم بادت مذهب الأوزاعي (1) ومذهب الشافعي ، ومذهب داود .

## المذهب الشافعي

ولد محمد بن إدريس المظلي الشافعي (150-767/204-819) بغزة ونشأ بمكة، وبها تعلم . توجه لدراسة الأدب واللغة حتى صار مرجعا موثوقا به في ذلك ، ثم تخصص في العلوم الشرعية فدرس كل المذاهب السائدة في وقته . وتلمذ على الإمام مالك ، وعلى محمد بن الحسن الشيباني تلميذ أبي حنيفة ، وأخيرا أمكن له بفضل ذكائه وثقافته الواسعة أن ينشئ مذهبا جديدا انفرد به عن سواه واشتهر باسمه، وضيظ بنفسه أصوله ومنحاه الاجتهادي في التشريع في كتابيه : «الرسالة» و«الأم». يقول ابن خلدون : «ومزج ضريقة أهل الحجاز

(1) سقت الإشارة إلى مذهب الامام الأوزاعي، انظر ص

كاتب (122-124) Safii

# الأوضاع الشريفة

في الدول العربية

ماضيها وحاضرها

تأليف

المؤرخ الدكتور ضبي منباني

نائب بيروت وأستاذ في كليات الحقوق في بيروت سابقاً  
رئيس شرف في محكمة الاستئناف والتجيز  
عضو المجامع العلمية العربية

الطبعة الرابعة

مزيدة ومنقحة

دار العلم للملايين

ص.ب. ١٠٨٥ - بيروت  
تليفون: ٢٣١٦٦٠ - بيروت

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08 MAYIS 1991

مصر سنة ٢٠٤ هـ (٨١٩ م).

وكان إماماً رحالة في طلب العلم . صائر إلى الحجاز ، فأخذ العلم عن الإمام مالك ، وكان من أتباعه . ثم سافر إلى العراق ، واتصل بمحمد بن الحسن ، صاحب أبي حنيفة ، وأخذ عنه وتأثر به . وبعد ذلك ، انتحى لنفسه مذهباً خاصاً ، عُرف بمذهبه العراقي القديم . ثم بعد أن أقام في مصر ، رجع عن بعض أقواله السابقة ، وأسس مذهبه المصري الجديد .

وقد جاء مذهب الشافعي مذهباً معتدلاً ومتوسطاً بين الحنفي والمالكي من حيث الاتجاه الفكري ، ومن حيث عدد الاتباع ، ومن حيث الانتشار الجغرافي . فهو يقبل بالأدلة الأربعة ، ويقول بالاستدلال الذي نعرفه فيما بعد . ولكنه يرفض العمل بما ساءه الحنفيون الاستحسان ، وبما ساءه المالكيون المصالح المرسلة .

وكان الشافعي أول من كتب في علم أصول الفقه في رسالته الشهيرة . فهو قد وضع فيها أساس القواعد المتعلقة بالأدلة الشرعية ، وبشروط اعتبارها ، وطرق استخراج الأحكام منها .

وللشافعي كتاب نفيس في فروع الفقه ، يسمى كتاب الام ، في سبعة أجزاء . رواه عنه تلميذه الربيع بن سليمان المرادي ، بطريقة علمية جدلية واضحة . ويحتوي الجزء السابع منه على أمور شتى . منها كتاب خلاف علي وابن مسعود ، وكتاب خلاف الشافعي ومالك ، وفصول تتعلق بأصول الفقه ، وكتاب محمد بن الحسن في الرد على أهل المدينة ، وكتابا أبي يوسف في سائر الأوزاعي وفي اختلاف أبي حنيفة وابن أبي ليلى . وكلها مفيدة من ناحية الفقه المقارن بين المذاهب المختلفة ، أو ما يسمى باختلاف الفقهاء . وهذا يدل على سعة اطلاع الإمام الشافعي ، ودقته في التمييز والتحري ، وبناء أقواله على الأدلة الثابتة نقلاً وعملاً . وكان من تلاميذ الشافعي العراقيين الإمام ابن حنبل صاحب المذهب

والإمام الشافعي . واشتهر من أتباعه كثيرون . منهم أسد بن الفرات (١) وعبد السلام التنوخي المعروف بسحنون ، وابن رشد الكبير والحفيد . وسيد خليل ، وغيرهم ممن ذكرنا في الفصل السابق .

وقد صنف الإمام مالك الموطأ . وهو مجموعة أحاديث مبررة حسب مواضع الفقه . وأساس العلم عند أتباعه اليوم كتاب المدونة التي جمعها أسد بن الفرات ، ثم أخذها سحنون ورتبها ونشرها باسم المدونة الكبرى . وقد نشأ المذهب المالكي في المدينة ، وانتشر في الحجاز والمغرب والاندلس . ولا يزال اليوم غالباً على أهل المغرب الأقصى ، والجزائر ، وتونس ، وليبيا ، وموريتانيا (شقيط) ، ونيجيريا ، والسنغال . وكذلك للمذهب أتباع في صعيد مصر ، والسودان ، وغربي أفريقيا وأواسطها ، والبحرين ، والكويت ، والامارات العربية المتحدة ، وكثير من البلدان العربية الأخرى . ويبلغ عدد أتباعه في العالم مائتي مليون تقريباً .

وهكذا ، نرى أن المذهب المالكي يختلف عن الحنفي باتجاهه الفكري ، ويعدد أتباعه ، ويمكن انتشاره .

## المذهب الشافعي

مؤسس هذا المذهب الإمام محمد بن ادريس الشافعي . ولد في غزة سنة وفاة أبي حنيفة ، أي سنة ١٥٠ هـ (٧٦٧ م) (٢) ، ومات في

١ ١٤٥ - ٢١٣ هـ . وهو نيسابوري الأصل . كان تلميذاً لمالك ورحل إلى العراق ثم أقام بتونس . وكان أمير الجيش وقاضي في غزة صقلية . وقد جمع كتاب المدونة على مذهب مالك ، ولكنه تأثر بالعراقيين في تفريع المسائل وتوليدها . أنظر ضحى الاسلام (ج ٢ ص ٢١٦) ، والديباج لابن فرحون (القاهرة ، ١٣٥١ هـ ، ص ٩٨) .

٢ قيل ان ولادته كانت بنفس يوم وفاة أبي حنيفة من شهر رجب أو ليلة النصف من شعبان . وقال البيهقي انه لم يجد التقييد باليوم إلا في بعض الروايات . راجع ابن خلكان (ج ١ ص ٤٤٧ و ج ٢ ص ١٦٦) ، والانتقاء لابن عبد البر (ص ٦٦ و ١٢٣) ، وطبقات الشافعية لابي بكر الحسيني (ص ٢) .

الدكتور حسين محمد حسن

أستاذ ورئيس قسم الشريعة  
بكلية الحقوق - جامعة القاهرة



# نظرية المصالح في الفقه الإسلامي

12 SUBAT 1996

١٩٨١

Türkiye Diyanet Vakfı İslam Araştırmaları Merkezi	
Depo No	27419
Tarifi No	297.501 HAS. N

مكتبة المتنبى  
١٤ شارع الجمهورية بعباسية  
ت ٩٥٠٢٩٤ - القاهرة

## الباب الثاني

نظرية المصالح في الفقه الشافعي

Safiri Merhubi (305-423)

- ٣٠٤ -

واجب عليه، وإذا تبين له أنه لا يخشى الوقوع في الرنا، وهو غير قادر على نفقات الزواج، أفناه بالمنع منه، وهكذا أصل الحكم واحد، وهو أن الزواج مطلوب طلب الندب، ولكن يختلف تحقيق مناطه الخاص في الأفراد بحسب الظروف والملابسات التي تحيط بكل مكلف على حدة.

وفي بيان هذه القاعدة يقول الشاطبي رضي الله عنه: «وعلى الجملة فتتحقق المناط الخاص نظر في كل مكلف بالنسبة إلى ما وقع عليه من الدلائل التكليفية... فهو - أي المجتهد - يحمل على كل نفس من أحكام النصوص ما يليق بها، بناء على أن ذلك هو المقصود الشرعي في تلقي التكليف، فكانه يخص عموم المكلفين والتكاليف بهذا التحقيق»<sup>(١)</sup>.

تم بعون الله الجزء الأول

وبليه الجزء الثاني في الفقه الشافعي

Tasawuf  
Maktaba

بدران أبو العيينة بدران  
استاذ الشريعة الإسلامية في كلية الحقوق  
بجامعة الإسكندرية وبيروت العربية

Safii (137-143)

# فناجح الفقهاء الأئمة

ونظريته المالكية والعقود

Türkiye İslam Araştırma Vakfı İstanbul Şubesi	
Kayıt No. :	10747
Tasnif No. :	299.59 B.E.T.

دار النهضة العربية  
للناشر والنشر  
بيروت - ص. ب. ١١٧٩٩

08 MAYIS 1991

كانت غالبية على أهل المغرب والأندلس ، ولم يكونوا يمانون الحضارة التي لأهل العراق ، فكانوا إلى أهل الحجاز أميل لمناسبة البداوة (١) .  
وقد دخل المذهب إلى مصر في حياة الإمام مالك ، واستمر العمل به في بعض الجهات في العبادات للآن ، وبلاد تونس لا يزال أهلها يتبعون على المذهب المالكي (٢) ، كما لا يزال المذهب معمولاً به وغالباً في الجزائر وطرابلس الغرب وموريتانيا ونيجيريا ، والسودان ، والكويت ، والبحرين ، وله أتباع أيضاً في البلاد الإسلامية .

### ٣ - المذهب الشافعي

صاحب هذا المذهب ومؤسسه : أبو عبد الله محمد بن إدريس بن العباس الشافعي القرشي ، ينتهي نسبه إلى هاشم بن عبد المطلب بن مناف بن قصي ، ولد في غزة من بلاد فلسطين عام ١٥٠ هـ ، وهي السنة التي مات فيها أبو حنيفة ، وليست غزة موطن آبائه ، وإنما خرج أبوه إدريس إليها في حاجة ، فمات هناك ، وبعد سنتين من ولادة الشافعي حملته أمه إلى موطن آبائه مكة ، فنشأ بها يتيماً في حجر أمه ، فحفظ القرآن في صباه ، ثم خرج إلى البادية فحفظ الشعر واللغة ، ثم شاء الله أن يوجهه لطلب الحديث والفقه ، فنال من ذلك غاية ، ولما لم يبلغ العشرين من عمره ، فقد حفظ موطأ مالك وهو ابن عشر سنين ، وعرضه عليه وقرأه بين يديه ، وكانت تعجبه قراءته ، ثم أذن له في الفتوى شيخه في الفقه ، مسلم بن خالد الزنجي ، مفتي مكة حينذاك ، وهو ابن عشرين ، أو خمس عشرة سنة (٣) .

(١) مقدمة ابن خلدون ص ٣٩٢ .  
(٢) قبل إلغاء أمانة تونس كان الأمير هو أمرته من أتباع المذهب الحنفي ، كان القضاء الحنفي مشاركاً للقضاء المالكي في عاصمة تونس .  
(٣) مفتاح السعادة لطاش كبرى زاده - ٢ ص ٩٤ .

٢ - سحنون عبد السلام بن سعيد أصله من حمص الشام ، وقدم به أبوه في جند حمص ولد سنة ١٦٠ هـ ، تفقه أولاً بالقيروان عن مشايخها ، ورحل إلى مصر وسمع من ابن القاسم وابن وهب ، ثم رحل إلى المدينة ، ولقي علماءها بعد وفاة مالك ، وانصرف إلى أفريقية ، صنف المدونة ، وعليها كان يعتمد أهل القيروان ، روى قضاء أفريقية سنة ٢٣٤ هـ ، وسنه أربع وسبعون سنة ، فلم يزل قاضياً إلى أن مات سنة ٢٤٠ هـ .

٣ - يحيى بن يحيى بن كثير : رحل وهو ابن ثمان وعشرين سنة إلى مالك ، كما رحل إلى ابن القاسم ، وتفق عليه ، ثم قدم الأندلس بعلم كثير ، وبه انتشر مذهب مالك في الأندلس ، وفيها انتهت إليه الرياسة في العلم توفي سنة ٢٣٤ هـ .

هؤلاء هم أصحاب مالك ، وناشري مذهبه ، ونسبتهم إليه نسبة المتعلم من العلم ، والراوي من المستنبط ، لكنهم لم يكادوا يخالفونه ، إلا في الشيء اليسير ، وإذا وجد بينهم خلاف (١) ، فإنما هو لاختلاف الرواية عن مالك ، أو للاختلاف في فهم النصوص المروية عنه .

وأساس العلم والمذهب عند أتباع مالك كتاب المدونة ، وقد جمعها أسد بن الفرات في الأسيدي ، ثم أخذها سحنون ورتبها ونشرها باسم المدونة الكبرى .

### انتشار المذهب المالكي :

لقد نشأ المذهب بالمدينة ، وانتشر في الحجاز ، ثم اختص به أهل المغرب ، والأندلس ، وسبب ذلك كما أوضحه ابن خلدون : أن رحلة هؤلاء الفقهاء ، كانت غالباً إلى الحجاز ، وهو منتهى سفرهم ، والمدينة يومئذ دار العلم ، ولم يكن العراق في طريقهم ، فاقترضوا على الأخذ من علماء المدينة ، وأيضاً فالبداوة

(١) أحياناً يخالفه ابن وهب وابن القاسم ، وذلك قليل جداً .

الدكتور عبد المجيد أبو الفتوح بدوي

— Esariyye

— Safii

# التاريخ السياسي والفكري

للمذهب السني في المشرق الإسلامي  
من القرن الخامس الهجري حتى سقوط بغداد

7791  
356.057  
BED.T



الأشعرية والشافعية، وقسم لا يشترك معهم في الانتساب لهذه الدائرة ويتمثل في الشيعة بمختلف طوائفهم. بناء على ذلك نستطيع أن نركز حديثنا عن مواقفهم من ثلاثة اتجاهات مخالفة لهم: الأشعرية والشافعية - الخلافة الفاطمية - الباطنية في «الموت».

أ - موقفهم من الأشعرية والشافعية:

ليس من السهل التفريق في هذه الفترة بين الأشعرية والشافعية ذلك أن المذهب الأشعري بعد أن ذاع وانتشر في أواخر القرن الرابع الهجري كان حاملو لوائه معظمهم من الشافعية، وتؤكد هذا الارتباط بين الأشعرية والشافعية في القرن الخامس. وإذا كانت آراء الأشعري قد صادفت قبولا عند الشافعية فإنها لم تحظ بتأييد غيرهم من الأحناف والحنابلة، لأن الحنابلة كانوا متمسكين برأي السلف وإن بالغ بعضهم في هذا الاتجاه حتى عد متطرفا فيه. أما الحنفية فكانوا «يؤثرون رأي الماتريدي الذي عاصر الأشعري<sup>(١)</sup>» ولما كان السلاجقة قد نشأوا فيما وراء النهر في بيئة سنية تتبع في الأصول المذهب الماتريدي<sup>(٢)</sup> وفي الفروع المذهب الحنفي فإنهم - بلا شك - تأثروا بالحركة الفكرية السائدة في هذه المنطقة. لكن هذا التأثير لم يعد أن يكون تأثيراً عن طريق التقليد: فطبيعتهم البدوية - في أيامهم الأولى - لم تسمح لهم بالتوقف لإعمال العقل والفكر في قضايا الدين ومسائله، وإنما كانوا مقلدين متحمسين<sup>(٣)</sup>.

ولما كان السلاجقة الأولون ليسوا أهلاً للنظر والفكر لم يشغلوا أنفسهم بهذه المسائل الفكرية، وإنما تركوها للوزراء، وانصرفوا هم إلى

(١) دائرة المعارف الإسلامية جلد ٣ ص ٤٣٣ مادة الأشعري.

(٢) انظر: جولد تسهر: العقيدة والشريعة في الإسلام ص ١١١.

(٣) وصف براون السلاجقة بقوله: إنهم كانوا يدوا سذجاً لم تصدمهم حياة المدل ولا الخلافات المذهبية فاعتنقوا الإسلام بحماس بالغ ملك منهم قرارة النفوس «تاريخ الأدب في إيران» ص ٢٠٨.



# كتاب

## التبصرة

في تَرْيِيبِ أَبْوَابِ التَّمْيِيزِ بَيْنَ الْأَحْيَانِ وَالْوَسْوَسَةِ  
عَلَى مَذْهَبِ الْإِمَامِ الشَّافِعِيِّ

تأليف

أبي محمد عبد العزيز بن يوسف بن عبد القادر الحوي الشافعي

« ت : ٤٣٨ هـ »

تحقيق ودراسة

محمد بن عبد العزيز بن عبد الله السديس

لنيل الشهادة العالمية العالية « الدكتوراة »

إشراف

د. علي بن عبد الرحمن الحذيفي

الأستاذ المساعد بقسم الفقه  
بكلية الشريعة

Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi Kütüphanesi	
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### المبحث الرابع

#### المذهب عند الشافعية

##### ومدى انتشاره في البلاد الإسلامية

بدأ في القرن الثاني ظهور المذاهب الفقهية ، فكان المذهب الحنفي ، ثم المالكي ، والشافعي ، ثم الحنبلي ، وهكذا . وقد ظهر المذهب الشافعي على يد إمامه محمد بن إدريس الشافعي ، المولود سنة خمسين ومائة ، وهي نفس السنة التي مات فيها أبو حنيفة رحمه الله ، والمذهب الشافعي هو ثالث المذاهب الفقهية ظهوراً . وقد مر بمراحل من التطور ، فبعد وفاة الشافعي ظهر فيه ما يعرف بالقديم والجديد من أقوال الشافعي ومذهبه ، فالقديم هو ما قاله الشافعي بالعراق ، أو قبل انتقاله إلى مصر ، وأشهر رواته الإمام أحمد بن حنبل ، والزعفراني ، والكرائسي ، وغيرهم . أما الجديد فهو ما قاله الشافعي بمصر ، وأشهر رواته ، البويطي ، والمزني ، والربيع المرادي ، وحرملة ، وغيرهم<sup>(١)</sup> .

ولما مات الشافعي رحمه الله سنة ٢٠٤ هـ ، تحلّف تراثاً فقهياً ضخماً متمثلاً في كتبه العديدة المشهورة كالأم ، ومختصر المزني ، ومختصر البويطي ، وكتاب حرملة ، وكتاب الحجة ، والرسالة القديمة والجديدة ، والأمالي ، والإملاء ، وغير ذلك . وقيل إن الشافعي له أكثر من مائة

### المبحث الرابع

#### المذهب عند الشافعية

##### ومدى انتشاره في البلاد الإسلامية

(١) انظر مغني المحتاج (١/ ٣١) ، ونهاية المحتاج (١/ ٥٠) .

# دائرة المعارف بزرگ اسلامی، جلد پنجم، تهران، ۱۳۷۹.

11 AUGUST 2001

اقبالیه

۶۳۲

وی (۵۲۹ق) از بغداد به تکریت رفت و به امیر مجاهدالدین بهروز حکمران آن ناحیه پیوست. اما بار دیگر به روزگار راشد خلیفه عباسی (د ۵۳۰ق) به بغداد بازگشت، ولی به فرمان او زندانی شد. اندکی بعد عمادالدین زنگی (د ۵۴۱ق) او را آزاد کرد و در شمار غلامان خویش درآورد (ابن اثیر، ۶۷۸/۱۰، ۲۵/۱۱، ۲۸، ۳۶). از آن پس اقبال روزگاری دراز تا هنگام مرگ در دستگاه نورالدین زنگی (حک ۵۱۱-۵۶۹ق) و صلاح الدین ایوبی (حک ۵۶۹-۵۸۹ق) و خاتون جلیله ست الشام (د ۶۱۶ق) خواهر صلاح الدین به غلامی به سربرد.

به نظر می‌رسد که این مدارس در آغاز سده ۷ق تأسیس شده است، زیرا بر کتیبه اقبالیه حنفیه تاریخ ۶۰۳ درج شده است. اما تأسیس این مدرسه‌ها را در ۵۷۳ق نیز آورده‌اند که در آن تردید می‌توان کرد (ابن شداد، الاطلاق...، ۲۱۰؛ علی، ۱۰۱). بنابراین نمی‌توان تاریخ تأسیس آنها را به دقت معلوم کرد. اما باید توجه کرد که این مدرسه غیر از مدارس شریبه منسوب به اقبال شرابی در بغداد و واسط و مکه است که گاه اقبالیه نیز نامیده شده است (نک: نعیمی، ۱۶۰-۱۵۹/۱؛ معروف، ۲۴۱، ۷). به هر حال جمال الدین اقبال همراه با تأسیس این مدارس، دو خانه از خانه‌های خود را وقف آنها کرد. خانه بزرگ‌تر را به مدرسه شافعیه، و خانه کوچک‌تر را به مدرسه حنفیه اختصاص داد و دو سوم اموال شخصی را نیز بر مدرسه شافعیه، و بقیه را بر مدرسه حنفیه وقف کرد (ابو شامه، همانجا؛ نعیمی، ۱۵۹/۱).

مدرسه اقبالیه شافعیه در داخل دو محله باب الفرج و باب الفردیس دمشق قرار داشت. بین آن و مدرسه اقبالیه حنفیه، جامع اموی و مدارس جوانیه و جاروخیه واقع بود (همو، ۱۵۸/۱-۱۵۹؛ شمیسانی، ۶۸-۶۹). بجز تعلیم و تعلم فقه مذاهب شافعی و حنفی که این دو مدرسه بدان مخصوص و بر آن موقوف بوده است، از تدریس دیگر رشته‌های علمی و همچنین کتابهای درسی در آن اطلاعی در دست نیست. تنها از شرح احوال و پایگاه علمی فقیهان و قاضیان مشهوری که در اقبالیه گرسی مدرسی داشتند، می‌توان دریافت که علاوه بر دروس فقهی، اصول فقه و حدیث، علوم قرآنی، رجال، لغت، نحو و ادب عربی از جمله رشته‌های آموزشی در اقبالیه بوده است.

فعالیت آموزشی این دو مدرسه از آغاز تأسیس در اوایل سده ۷ تا اواخر سده ۹ق که ظاهراً دوران رونق آموزشی و فعالیت درسی اقبالیه بوده، به درازا کشیده است. در این دوره شماری از بزرگان علمی در اقبالیه شافعیه به تدریس اشتغال داشته‌اند که مشاهیر آنان عبارتند از: شمس الدین ابوالبرکات یحیی دمشقی شافعی، معروف به ابن سنی الدوله (د ۶۳۵ق) قاضی القضاات و مدرس چندین مدرسه در دمشق؛ صدرالدین بن شمس الدین ابن سنی الدوله (د ۶۵۸ق) از شاگردان ابن عساکر دمشقی؛ ابن خلکان (د ۶۸۱ق) مورخ، شاعر و ادیب و مؤلف وفيات الاعیان؛ محیی الدین نووی (د ۶۷۶ق) که مدتی به نیابت از ابن خلکان در اقبالیه شافعیه تدریس کرده است؛ ابوالحسن علاء الدین قونوی تبریزی شافعی (د ۷۲۹ق)؛ شهاب الدین محمد بن مجد اربلی

اهمیت عبارت بود از زراعت، باغداری و دامداری. زمینهای کشاورزی این محل برابر ۱۲۰۷ هکتار بود که حدود ۶۱٪ آن (۷۳۶ هکتار) آبی و مابقی به صورت دیم بود (فرهنگ اقتصادی...، ۹۹). محصولات عمده زراعی عبارت بود از گندم (۳۸۴ هکتار)، جو (۱۹۲ هکتار)، چغندر قند (۲۴ هکتار)، نباتات علوفه‌ای (۴۸ هکتار)، حبوبات (۲۹ هکتار) و سیب زمینی (۲۴ هکتار). سیب و انگور از دیگر محصولات این آبادی بود (همانجا). این آبادی در ۱۳۶۷ش دارای ۴۵۴ خانوار بهره‌بردار کشاورزی بود که از یک رشته قنات و ۷ چاه عمیق به عمق متوسط ۱۰۰ متر استفاده می‌کردند (فرهنگ آبادیها، ۱۲۴).

امروزه بخش قابل توجهی از اهالی اقبالیه در فعالیتهای صنعتی و خدماتی شرکت دارند. اهالی اقبالیه شیعی مذهب و زبان رایج آنان فارسی و ترکی است (فرهنگ جغرافیایی، همانجا؛ تحقیقات میدانی). در این شهر تپه‌ای تاریخی وجود دارد که سفالهای یافت شده در آن را به حدود سده ۸ تا ۱۰ق نسبت داده‌اند (ورجاوند، ۲۷۵). اقبالیه دارای کاروانسرای متروکی است، به شکل ۴ گوش که در هر گوشه آن طاق‌نمایی وجود دارد و نهایتاً طرح بنا به صورت ۸ ضلعی جلوه می‌کند (همو، ۲۷۶). این شهر ضمناً دارای قلعه خرابه‌ای است (گلرین، ۹۱۹/۱؛ فرهنگ جغرافیایی، همانجا) که در کنار کاروانسرای محل واقع است (ورجاوند، ۲۷۹). اقبالیه دارای ۴ پارک عمومی جمعاً به مساحت ۱۲ هزار ۲۰۰ متر است (آمارنامه استان تهران، ۵۳۷).

مأخذ: آمارنامه استان تهران (۱۳۷۵ش)، سازمان برنامه و بودجه استان تهران، ۱۳۷۶ش؛ آمارنامه استان زنجان (۱۳۷۱ش)، سازمان برنامه و بودجه استان زنجان، تهران، ۱۳۷۲ش؛ سازمان تقسیمات کشوری جمهوری اسلامی ایران، وزارت کشور، تهران، ۱۳۷۶ش؛ سرشماری عمومی نفوس و مسکن (۱۳۶۵ش)، نتایج تفصیلی، شهرستان قزوین، مرکز آمار ایران، تهران، ۱۳۶۸ش؛ سرشماری عمومی نفوس و مسکن (۱۳۷۵ش)، نتایج تفصیلی، شهرستان قزوین، مرکز آمار ایران، تهران، ۱۳۷۶ش؛ فرهنگ آبادیهای کشور، سرشماری عمومی کشاورزی (۱۳۶۷ش)، استان زنجان، مرکز آمار ایران، تهران، ۱۳۶۹ش؛ فرهنگ اقتصادی دهات و مزارع، شهرستان قزوین، جهاد سازندگی، تهران، ۱۳۶۳ش؛ فرهنگ جغرافیایی ایران (آبادیها)، استان مرکزی، سازمان جغرافیایی کشور، تهران، ۱۳۲۹ش؛ گلرین، محمدعلی، مینودر یا باب الجنة قزوین، تهران، ۱۳۳۷ش؛ مفخم پایان، لطف‌الله، فرهنگ آبادیهای ایران، تهران، ۱۳۳۹ش؛ ورجاوند، پرویز، سرزمین قزوین، تهران، ۱۳۴۹ش؛ تحقیقات میدانی مؤلف.

اقبالیه، نام دو مدرسه معروف به «اقبالیه شافعیه»، و «اقبالیه حنفیه» در دمشق، مخصوص تعلیم و تعلم پیروان مذاهب شافعی و حنفی در آن دیار که در اوایل سده ۷ق/۱۳م، توسط جمال الدین اقبال (د ۶۰۴ق/۱۲۰۷م در قدس) از خادمان دولت ایوبی تأسیس شده، و به هم منسوب گردیده است (ابو شامه، ۵۹؛ نعیمی، ۱۵۸/۱-۱۵۹).

زندگی و سرگذشت جمال الدین یا جمال الدوله اقبال، بانی و واقف این دو مدرسه به روشنی دانسته نیست. از اندک اشارات تاریخی چنین برمی‌آید که او از امیران سپاه مسترشد خلیفه عباسی بود که پس از قتل

and of al-<sup>ʿ</sup>Askalānī (*Tawālī al-taʿsīs bi-maʿālī Ibn Idrīs*, Cairo 1883); 3. Among biographical dictionaries, that of al-Dhahabī (*Siyar aʿlām al-nubalāʾ*, Beirut 1981-88, x, 5-99) assembles a mass of information, as does the shorter work of al-Nawawī, *Tahdhīb al-asmāʾ wa ʿl-lughāt*, Beirut n.d., i, 44-67; 4. Among modern works, besides that of Muḥ. Abū Zahra (above), ʿAbd al-Rāziq, *al-Imām al-Shāfiʿī*, Cairo 1945; al-Baghdādī, *Manākib al-Imām al-Shāfiʿī*, Mecca 1910; M. Muṣṭafā, *K. al-Djawhar al-nafīs fī taʾrīkh hayāt al-Imām Ibn Idrīs*, Cairo 1908. B. In western languages: E.F. Bishop, *Al-Shāfiʿī...*, in *MW*, xix (1929), 156-75; J. Schacht, *On Shāfiʿī's life...*, in *Stud. or. Pedersen*, Copenhagen 1953, 318-26; F. Wüstenfeld, *Der Imām al-Shāfiʿī...*, Göttingen 1890-1. Supplementary references in Sezgin, *GAS*, i, 485-6.

2. Doctrine. M. Arkoun, *Le concept de raison islamique*, in *Pour une critique de la raison islamique*, Paris 1984, 64-99 (contemporary reading of the *Risāla*); J. Burton, *The sources of Islamic law*, Edinburgh 1990 (study of the Shāfiʿīan theory of abrogation); N. Calder, *Ikhtilāf and idjmāʿ in Shāfiʿī's Risāla*, in *SI*, lviii (1983), 55-81; E. Chaumont, *La problématique classique de l'idjtihād...*, in *SI*, lxxv (1992), 105-39 (theory of *idjtihād* in the *Risāla* and its evolution); idem, *Tout chercheur qualifié dit-il juste?*, in *La controverse et ses formes*, Paris 1995, 11-27 (Shāfiʿīan theory of the divergence of opinion in legal matters and its evolution); K.A. Faruki, *Al-Shāfiʿī's agreements...*, in *SI*, x (1971), 129-36; L.I. Graf, *Al-Shāfiʿī's Verhandeling...*, Leiden 1934; M. Hamidullah, *Contribution of ash-Shafi'i...*, in *Jurnal Undang-Undang*, ii (1975), 48-58; A. Hasan, *Al-Shāfiʿī's role...*, in *SI*, v (1966), 239-73; H. Laouati, *Sāfiʿī et le kalām d'après Rāzī*, in *Recherches d'Islamologie...*, Louvain-la-Neuve 1978, 389-401; D.B. Macdonald, *The development of Muslim theology...*, London 1985; Ph. Rancillac, *Des origines du droit musulman à la Risāla d'al-Shafi'i*, in *MIDEO*, xiii (1977), 147-69; J. Schacht, *Origins* (above), currently out of favour, remains a text of reference; A.M. Turki, *La logique juridique des origines jusqu'à Shāfiʿī*, in *SI*, lvii (1983), 31-45; W. Montgomery Watt, *The formative period of Islamic thought*, Edinburgh 1973, index. (E. CHAUMONT)

AL-SHĀFI'ĪYYA, a legal school (*madhhab*) of Sunnī Islam whose members claim to follow the teachings of the Imām al-Shāfiʿī (d. 204/820 [q.v.]). *Origins* (first half of the 3rd/9th century).

The issue of the institution of the Shāfiʿī *madhhab* remains poorly understood, and it poses a series of problems, fundamental as well as chronological, which are not confined to this school alone, applying in an identical manner to the emergence of other legal schools within the Islamic legal system.

In reference to the Shāfiʿī school, the fundamental problem is essentially the following: the Imām al-Shāfiʿī is the author of a radical criticism of judicial conformism (*taklīd* [q.v.]), developed in his celebrated *Risāla* (ed. Shākir, Cairo 1940; numerous re-editions in Cairo and in Beirut), which sought, on the one hand, to discredit the living local traditions as a source of religious Law, and on the other, to insist that the doctrines of the Imāms could no longer be invoked in legal issues without additional proof of the authority attributed to these great masters. Furthermore, the biographers credit al-Shāfiʿī with a series of solemn declarations strictly forbidding others to claim him as a teacher or to make his doctrine, after his death, the object of a new conformism. If reference is to be made to Shāfiʿī thought, the very existence of a school thus

appears contradictory from the outset. There can be no doubt that this fundamental anomaly at the very heart of the institution of judicial schools was very soon perceived by Muslim jurists, who sought to resolve it in various manners (ranging from the refusal, rare and soon inadmissible, to belong to any school whatsoever, to the most blind acceptance of the undisputed superiority of the Imāms, with various intermediate solutions seeking to legitimise the existence of the schools while avoiding the danger of *taklīd*). Unfortunately, this issue has yet to be examined in depth.

As a general rule, the question of adherence to one *madhhab* or to another should be further sub-divided according to the nature of the adherent: whether the case of a scholar-jurist (<sup>ʿ</sup>*alim*), or of one who is secular in religious matters (<sup>ʿ</sup>*ammī*). Every secular person is obliged to refer himself to a recognised scholar (recognition depending on a number of criteria, some of them controversial) of his choice when a question relating to the *Shariʿa* [q.v.] is put to him and it behoves him to act in conformity (*kallada*) with the opinion which he has solicited. For him, the only means of access to the knowledge of legal statutes is *taklīd*. Theoretically, the adherence of a secular Muslim to a specific judicial school is thus consequent upon the choice to act in conformity with one scholar rather than with another: he will be called a "Shāfiʿī" if he appeals to the authority of a jurist claiming the legacy of Shāfiʿism and the only personal effort which is (sometimes) required of him is to decide upon the relative worth of the Imāms and subsequently to choose, in a logical and sincere manner, the school to which he will belong (hence the existence, in each school, of a literature, yet to be studied, directed towards a broad public which is educated, but insufficiently, or not at all, versed in legal matters, which seeks to prove the superiority of such an Imām over such another; thus there is, among the Shāfiʿīs, the unedited *Mughīṭ al-khalk fī bayān al-aḥakk* of al-Djuwaynī). However, the adherence of a secular person to a *madhhab* is not necessarily definitive or strict; he may, on the one hand, change his school, and on the other, according to certain authors, he has the right, in a particular matter, to refer in an exceptional fashion to a scholar belonging to a school other than that whose doctrine he normally follows.

The question of the chronology of the emergence of the *madhhabs*, and in particular of the Shāfiʿī one, is likewise imperfectly resolved. According to J. Schacht (*Introduction to Islamic law*, Oxford 1964, 58), the inception of a school laying claim to al-Shāfiʿī and seeking to propagate his doctrine ("doctrine" is, alongside "way", one of the senses of the word *madhhab*), is to be credited to the very first generation of disciples of al-Shāfiʿī and, more specifically, to al-Muzanī (see below), who, in compiling a "summary" (*mukhtaṣar*) of the doctrines of al-Shāfiʿī (text edited in the margins of the *K. al-Umm* of al-Shāfiʿī, Cairo n.d., i-vi) would allegedly have laid the foundations of the institutionalisation of this doctrine. This hypothesis is confirmed by the history of judicial science (*fiqh* [q.v.]) in the Islamic community presented by a Shāfiʿī author of the very first rank, Abū Ishāk al-Shīrāzī (d. 479/1083 [q.v.]). In his "list of jurists", the latter classifies the first Muslim jurists according to geographical criteria (jurists of Medina, of Mecca, of Yemen, of Syria, of Egypt, etc.). On the other hand, the geographic criterion is not retained for the immediate disciples of the Imāms al-Shāfiʿī, Abū Ḥanīfa (d. 150/767 [q.v.]), Ibn Ḥanbal (d. 241/845 [q.v.]), Mālik (d. 179/795 [q.v.]) and Dāwūd b. ʿAlī b. Kḥalaf



## ثالثاً : اعلام فقهاء المذهب الشافعي :

### الإمام الشافعي

( غزوة ١٥٠ هـ / ٧٦٧ م )

( القاهرة ٢٠٤ هـ / ٨٢٠ م )

محمد بن إدريس بن العباس بن عثمان بن شافع ، أبو عبد الله ، المطليبي القرشي ، أحد الأئمة الأربعة في الفقه عند أهل السنة، وإليه ينسب الفقه الشافعي وعلماء الشافعية كافة. ولد بغزة سنة ١٥٠ هـ ، وحمل إلى مكة ، وهو ابن سنتين ، فحفظ القرآن ، وهو ابن سبع سنين ، وأخذ الفقه واللغة وعلوم القرآن من علمائها ، وحفظ «الموطأ» في الحديث ، وهو ابن عشرين، وأذن له بالإفتاء في مكة ، وهو ابن خمس عشرة سنة ، ورحل إلى المدينة فأخذ الحديث وعلومه عن الإمام مالك وعلماء المدينة ، ثم ذهب إلى البادية ، فلزم قبيلة هذيل عدة سنوات لشهرتها بالفصاحة والبيان ، فحفظ اللغة وأشعار العرب وأخبارهم ، ثم روى شعر الهذليين ، ورحل إلى اليمن ، فتعلم الفراسة والجدل ، واشتغل ببعض الأعمال ، ثم رحل إلى العراق مرتين ، وأخذ فقه الرأي عن الإمام محمد بن الحسن ، والتقى مع الإمام أحمد بن حنبل ، ودرس في بغداد ، ونشر علمه وفقهه ، ثم قصد مصر سنة ١٩٩ هـ ، وبقي فيها حتى الوفاة ، وقبره معروف في القاهرة ، وعاش أربعاً وخمسين سنة .

كان الشافعي شديد الذكاء ، وأجج العقل ، تبدو عليه الشجاعة والفراسة ، وكان من أحذق قريش بالرمي ، ويصيب عشرة من عشرة ، وكان جهوري الصوت ، فصيح اللسان كلامه حجة في اللغة ، وكان شاعراً ، قال المبرد : « كان الشافعي أشعر الناس وأداهم وأعرفهم بالفقه والقراءات » .

وجمع الشافعي بين فقه الحجاز وفقه العراق ، ووفق بين مدرسة الحديث ومدرسة الرأي ، وهو أول من صنف ودون أصول الفقه ، وكتب فيه «رسالته» المشهورة التي أصبحت العمدة والأساس لعلم أصول الفقه ، وصارت المنارة الباسقة التي أنارت للعلماء طريق البحث والتأليف في ذلك .

قال الإمام أحمد بن حنبل : « ما أحد ممن بيده محبرة أو ورق إلا وللشافعي في رقبته منة » .

وكان الشافعي حافظاً للحديث ومحدثاً ، روى عنه الإمام مسلم وأصحاب السنن الأربعة ، وكان يشغل بالتدريس والإفتاء في كل مكان يحل فيه ، وتخرج على يديه خلق

يا امام شافع عليه الرحمه نك

مد هنيه عائد علمه حاك

قلبه اولسونه عربى العباده اولان كتابك صني

صحف نك بوقار وسده وضع ايدلمش وارالنده

برحد ول الله قطع ايدلمشدر

ترجمه كتابك زيرنده

ولا ترغب في جزير ماو الطلب

لو كل على الرحمن في الامر كل

وهري اليك بجزع التجاره ساقط الرطب

الم تر ان الله قال لهم

جنته ولكن كل عما له السبب

ولو شاء ان يحيى من غير حرة

## AL-SHAFI'S AGREEMENTS DISAGREEMENTS WITH THE MALIKI AND THE HANAFI SCHOOLS

KEMĀL A. FARŪKĪ

Abū 'abd Allah Muḥammad b. Idrīs Al-Shāfi'ī was born in the year 150/767 in southern Palestine; one hundred and ten years after the end of the orthodox caliphate or eighteen years after the end of the Umayyad dynasty in the time of the 'Abbasid caliph Manṣūr.

At the time of his birth Islamic law was at the beginning of the fourth phase in its formative period. The first phase was the time of the Prophet himself. The second was that of the orthodox Caliphate based on Medina where the environment was such that theory and practice, legislation and administration, government and governed, were all working in close harmony. The practice of the Prophet was well-known and his influence was close and direct and circumstances had not changed to any appreciable degree from what they had been in his time; the two divergencies that were to manifest themselves later had not appeared, namely the divergency which takes place, even when circumstances remain virtually unchanged, when a custom or practice is handed down from person to person and generation to generation and the other divergency which takes place when circumstances change and the existing practice is found to be inapplicable or inappropriate to the changed circumstances.

The third phase in the formative period starts with the violent change of the Umayyads shifting the capital to Damascus and the absorption of large areas into the expanding Muslim state and the growth of new centres of activity outside the Hijāz, notable in 'Iraq and to a much lesser extent in Syria and later in Egypt. This third phase lasts for about three quarters of a century or to the beginning of the second century. On the basis of the available records it appears that in Hijāz the main centre was Medina with Mekka being secondary, while in 'Iraq it was centred around Kufa with Basra being secondary. Groups of jurists, in the rudimentary sense of term, arose both in Hijāz and 'Iraq who answered questions concerning Islam put to them and dealt with practical disputes on questions of law. Although our knowledge of Medina and Kufa in this activity is more detailed than that of Mekka and Basra, even so the earliest

## AL-SHĀFI'Ī'S ROLE IN THE DEVELOPMENT OF ISLAMIC JURISPRUDENCE

AHMAD HASAN

Al-Shāfi'ī stands at the turning point in the history of Islamic Jurisprudence. With him begins a new phase of the development of legal theory. He did not strictly belong to any particular region which might make him prejudiced in his outlook on the principles of law. The early schools had already systematized the law each in the particular milieu of its own region. They had no doubt differences among them, but their differences were not so basic as could distinguish one from the other in terms of principles. These differences were mostly in the details of legal problems while their basic reasoning and approach to problems, apart from certain sharp distinctions here and there, seem to have been more or less uniform. But al-Shāfi'ī's differences from the early schools are of fundamental nature and, therefore, he cannot be placed on a par with them. The reason for his disagreement with the early schools is that by his extensive study of law and debates with the jurists of different regions he formulated certain new principles of law and strictly followed them. These principles are scattered in his writings specially in *al-Risālah*. The doctrines of his predecessors which conflicted with his self-formulated theories and principles were rejected by him. Thus, in a way he was a pioneer of a system in law which was adopted by the jurists of the later ages.

Here a question arises as to whether there had existed some concrete principles of law before al-Shāfi'ī or he is the first legal thinker to have formulated these principles. It is generally alleged that al-Shāfi'ī laid down for the first time the theory of law in a systematic form. His contribution to jurisprudence is claimed by his biographers to resemble the work of Aristotle in logic and the work of al-Khalīl b. Ahmad in prosody.<sup>1</sup> We suppose that al-Shāfi'ī has been accepted as a pioneer in the field of jurisprudence because no works on the theory of law produced by his predecessors are extant now. But we find reports which show that there did exist some works on *Uṣūl al-Fiqh* before him. The earliest evidence is Abū Yūsuf's criticism of the scholars of Syria for their ignorance of *Uṣūl al-Fiqh*.<sup>2</sup> Here Abū Yūsuf's use of the term *Uṣūl al-Fiqh* clearly

ISLAMIC STUDIES. V. c., (s. 3)  
S. 239-273, 1966 (PAKISTAN)

(Sāhib merkebi)

structure of society.<sup>13</sup> In contrast to orthodox Marxist theorists, he points out, that considerable revenue from primary and secondary producing sectors was transferred to a purely exploiting sector, as a result of the latter's possession of means of power in the 16th and 17th Centuries — and not as a result of possession of means of production. Here we are in the midst of a stimulating theory: one which erases the traditional distinction between political and economic factors, and which might well prove to be valid in other contexts as well.

The few objections that have been raised, hopefully do not displace the impression of a book, whose author, despite difficulties in the shape of fragmentary, polyglot and diffuse sources, raises and answers many fundamental questions. As a whole the book turns away from the traditional, detailed studies performed without outlook, and calls instead for investigations — which are broader in scope both with regard to time and place, which put to use theories and concepts from the other social sciences — which can be placed in a larger context. Thus it is unavoidable that Niels Steensgaard, in the course of the book, breaks with a series of theories accepted up till now. For the reader who is capable of retaining a broad view in the course of his devotion to the matter, this story about the carracks, caravans and companies is consequently surprising as well as thought-provoking — besides being extremely exciting, as a result of its picturesque and dramatic details.

Erik Gøbel.

**Heinz Halm:** Die Ausbreitung der šāfi'itischen Rechtsschule von den Anfängen bis zum 8./14. Jahrhundert (Beihefte zum Tübinger Atlas des Vorderen Orients, Reihe B, Nr. 4, Dr. Ludwig Reichert Verlag, Wiesbaden 1974, 340 p.).

*The spread of the Šāfi'ī school*

As a supplement to certain of the maps in the "Tübinger Atlas des Vorderen Orients", *Heinz Halm* has published a collection of

<sup>13</sup> N. Steensgaard, "Fra feudalisme til kapitalisme", *Studier i historisk metode* vol. VIII (Marxism och historieforskning. Föredrag från Nordiska fackkonferensen för historisk metodlära i Godby, Åland, 8-10 maj 1972), Oslo, 1973.

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RÜDIGER LOHLKER

### Sunni Schools: The Shafi'i School of Law

The Shafi'i School is one of the four principal Sunni schools of law (*madhhab*, pl. *madhāhib*). It is named after its founder, Muhammad ibn Idris al-Shafi'i (A.H. 150–204/767–820 C.E.).

The first group of students formed around al-Shafi'i in the beginning of the ninth century C.E. in Baghdad; another group coalesced in Egypt, where he moved in 814 or 815. Although al-Shafi'i's works and followers from the Egyptian period played a more significant role in the construction of the later school, his Iraqi teachings were also incorporated into the Shafi'i school corpus, albeit with an inferior status.

Al-Shafi'i clearly sought to perpetuate his teaching by appointing a successor, Abu Ya'qub al-Buwayti. However, he forbade "blind following" (*taqlid*) by his students. In particular, should his opinion be contradicted by prophetic tradition, he instructed his students to defer to the latter. This tension between adherence to al-Shafi'i's jurisprudence on the one hand and critical evaluation of it on the other created a space within which al-Shafi'i's students worked out their own interpretations of their master's teaching.

Of works composed by al-Shafi'i's immediate students, the *Mukhtasar* (Abridgment) of Abu Ibrahim al-Muzani achieved the greatest popularity, becoming the subject of numerous commentaries, particularly in the tenth and eleventh centuries. Nevertheless, the Shafi'i school maintained an internal school-historical consciousness. Subsequent generations of scholars preserved a wide range of opinions attributed to al-Shafi'i by his numerous students, and much of the intellectual dynamic of the school was derived from debates concerning the authority and merit of these divergent opinions.

**Influence on Islamic Law.** While al-Shafi'i's jurisprudence (*fiqh*) formed the core canon around which the school itself grew, his legal theory (*uṣūl al-fiqh*) had an impact on the development of Islamic law beyond the Shafi'i school. By providing a coherent hermeneutic system for interpreting and extending the sources of the law, al-Shafi'i made possible the later emergence of a common methodological ground shared by all four of the emergent legal schools.

The Egyptian variant of Shafi'ism spread from Egypt to Syria and Baghdad, where it intermingled with the teachings of al-Shafi'i's Iraqi students. Further eastward expansion, often carried by peripatetic scholars traveling the Silk Road, brought it to Transoxiana. The main intellectual

centers of the Shafi'i school in the tenth and eleventh centuries were Iraq (especially Baghdad, but also Basra), and Khorasan (particularly the city of Nishapur). The school also had a strong presence in Egypt, Syria, the Hejaz region of the Arabian Peninsula, Gujarat on the Indian subcontinent, and southern and eastern Yemen. Of the two principal branches, Khorasan scholars such as al-Juwayni and al-Ghazali on the whole adhered less closely to al-Shafi'i's opinions than their Iraqi counterparts, who included al-Shirazi and al-Mawardi. The former also shared a tendency to incorporate Ash'ari theology into their legal theory, while the Iraqi scholars maintained a more rigid disciplinary division.

The influence of Shafi'ism within the judiciary lagged behind its popularity among scholars. Although al-Shafi'i's son Abu 'Uthman had already served as a judge in Syria and/or northern Iraq, it was only in the early tenth century—with the emergence of rivals to the Hanafi-favoring Abbasid dynasty—that significant numbers of Shafi'i jurists began to receive appointments as judges. By the mid-tenth century, Shafi'is had held important judgeships in key jurisdictions such as Egypt and greater Syria, Shiraz, and even the Abbasid capital Baghdad.

**Relations with Other Legal Traditions.** The Shafi'is' principal intellectual adversaries were the members of the Hanafi school. Countless written refutations and counter-refutations bear witness to this rivalry, which extended from the legal into the theological realm: most Shafi'is were staunch adherents of Ash'ari theology, while early Hanafis typically followed rival Mu'tazili doctrine. In eleventh-century Khorasan this tension combined with political jostling to escalate into physical hostility. A brief but vicious campaign of persecution against Shafi'i scholars was followed by privileged status during the term of Nizam al-Mulk, chief minister of the Seljuq empire and the founder of the Nizamiyya madrasa network.

After the Mongol invasion in the thirteenth century, official support in the region east of the Tigris vacillated between the Hanafi school and variants of Shi'i Islam, causing the focus of Shafi'i intellectual activity to shift to Egypt and Syria, where Shafi'ism had long dominated both the judiciary and the educational realm. This dominance was diminished under the rule of the Mamluks (1250–1517) by the establishment of formal equality among the four main Sunni schools and the appointment of four chief justices, one from each school. The ensuing competition among the schools resulted in a revitalization and flourishing of Shafi'i scholarship in Mamluk Egypt and Syria that lasted until the Ottoman conquest of the Mamluk realm in 1517 and the subsequent state promotion of Hanafism. Of major Shafi'i works written in this period, al-Nawawi's books on jurisprudence became standard works used both as teaching texts and even as quasi-codifications for Shafi'i judges. In the field of legal theory,

## المذهب عند الشافعية (١)

للدكتور محمد إبراهيم أحمد علي

تحتم الامانة العلمية على الباحث أن يتحرى الصحة التامة في عزو الاقوال الى قائلها وخاصة الاقوال الفقهية ، لما يترتب على الخطأ في عزوها من نسبة التحليل أو التحريم الى من لم يقل به . . . ومن ثم كان لزاما على كل من يتعرض للبحث الفقهي - وخاصة المقارن منه - أن يعرف الاصطلاح المتفق عليه بين علماء المذهب - أي مذهب - والكتب التي اعتمدت ممثلة لرأي المذهب ودرجات اعتمادها .

والمذهب الشافعي - وهو ثالث المذاهب السنية المعتمدة ظهورا مر بمراحل من التطور لم تطرأ على غيره من المذاهب . . . ففي مرحلة تأسيسه ظهر فيه ما يعرف بالقديم والجديد من أقوال الشافعي ومذهبه . وكان لهاتين المرحلتين أثرهما الظاهر للموس في تحديد المذهب عند المتأخرين على ما سيأتي بيانه .  
ومن المسلم به علميا انه على قدر ما يبرز العلماء في مذهب ما يتغير ويتطور الاصطلاح في تحديد المذهب وتعريفه .

والمذهب الشافعي اشتهر فيه الكثير من فطاحل العلماء وتعددت اجتهاداتهم . ومن ثم كان من المفيد أن نلقي بعض الضوء على ما يعتمده الشافعية في تحديد « المذهب الشافعي » وخاصة ما استقر عليه رأي المتأخرين من علمائهم فانه « لا يجوز أن يقال في حكم : هذا مذهب الشافعي الا ان علم كونه نص على ذلك بخصوصه أو كونه مخرجا من نصوصه » (٢) وذلك لا يمكن الوصول اليه الا بمعرفة العلماء والكتب الموثوق بنقلها وترجيحها وتخريجها . خاصة و « أن أصحابنا المصنفين رضي الله عنهم جميعا وعن سائر علماء المسلمين أكثروا التصانيف كما قدمنا وتنوعوا فيها كما ذكرنا » (٣) . و « أن كتب المذهب فيها اختلاف شديد بين الاصحاب بحيث لا يحصل للمطالع وثوق بكون ما قاله المصنف منهم هو المذهب حتى يطالع معظم كتب المذهب المشهورة » (٤) لانه « لا يجوز

- (١) المذهب : لغة سكان الزهاب وهو الطريق اليه . واصطلاحا : الاحكام التي اشتملت عليها المسائل : أنظر : بجيرمي على خطيب ج ١ ص ٤٥ .  
(٢) ابن حجر : فتاوى ابن حجر ج ٤ ص ٣٠٠ .  
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MADDE YAYIMLANDIKTAN  
SONRA GELEN DOKÜMAN

28 Aralık 2014

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Al-Shāfiʿī thus criticized Ibn ʿUlayya's excessive reliance on consensus and rejection of single-transmitter Hadith as a misguided imposition on a legal discourse that is necessarily divided on both the specifics of the law and the authority of those who interpret it. Furthermore, al-Shāfiʿī saw the theory not only as unrealistic, but also as a dangerous attempt to import the sectarian nature of theological discussions into law. While many aspects of the debate remain implicit in the text, it is clear that Ibn ʿUlayya sought to exclude many theologians with whom he disagreed from the community of scholars whose consensus he claimed to be normative. This agenda led al-Shāfiʿī to fear that Ibn ʿUlayya's approach would reproduce the factionalism of theology in the realm of law. Elsewhere in the *Umm*, al-Shāfiʿī sketches a legal system that contains a multiplicity of jurists who may disagree with each other but do not declare each other religiously deviant or heretical for these differences.<sup>82</sup> Given that, for al-Shāfiʿī, most parts of the law fall within the realm of probability, a jurist can accommodate the possibility that he is wrong and his opponent is right.<sup>83</sup> By contrast, given its insistence on black-and-white categories of certainty, Ibn ʿUlayya's model contains the seeds for the emergence of a separate legal consensus within each theological faction; each would justify its particular legal system as based on certainty and therefore objectively true, thus creating mutually exclusive and incommensurable doctrines of law. It was this danger that prompted al-Shāfiʿī to accuse his opponent of sowing division in the name of establishing consensus and certainty.<sup>84</sup> His fear of communal divisions born of mutual anathematization led him to be deeply wary of theology. When a student asked him about a point of theology, al-Shāfiʿī replied, "Ask me about something regarding which if I were to err, you would tell me 'You have erred,' rather than about something on which if I were to err, you would say 'You have fallen into disbelief!'"<sup>85</sup>

<sup>82</sup> See, for example, *Umm*, 8:130.

<sup>83</sup> This principle was expressed in a famous statement on interschool relations: "Our way is right but could conceivably be wrong; the way of our opponents is wrong but could conceivably be right" ("Madhhabunā ṣawāb yaḥtamīlu al-khaṭaʾ, wa-madhhab mukhālīfīnā khaṭaʾ yaḥtamīlu al-ṣawāb"). While the statement is often attributed to al-Shāfiʿī himself, the earliest source that I have found attributes it to the Ḥanafī jurist Abū al-Barakāt al-Nasafī (d. 710/1310); see Zayn al-Dīn b. Nuḡaym (d. 970/1563), *al-Ashbāh wa-l-naẓāʾir*, ed. Muḥammad Muṭīʿ al-Ḥāfiẓ (Damascus: Dār al-Fikr, 2005), 452.

<sup>84</sup> *Umm*, 9:28; Musa, *Ḥadīth as Scripture*, 134.

<sup>85</sup> Shams al-Dīn Abū ʿAbd Allāh al-Dhahabī, *Siyar aʿlām al-mubalāʾ*, ed. Shuʿayb al-Arnāʾūt and Muḥammad Nuʿaym al-Arḡasūsī, 25 vols. (Beirut: Muʿassasat al-Risāla, 1401-0/1081-881 10:28.

Al-Shāfiʿī's struggle with the theologians' approach to religion sheds light on the long-term process by which law rather than theology came to constitute the central arena of Sunni Muslim thought. Divine revelation had ceased, but the eschaton had yet to dawn. In the interim, revelation remained accessible as an artifact of oral texts that had to be interpreted by fallible human beings – a situation that inevitably created a religious landscape of irreconcilable diversity. Theological discourse had at first proven the most intellectually innovative approach, but its twin pillars of extrarevelatory reason and a demand for certainty had entrenched religious divisions instead of providing a way to accommodate diversity under a common umbrella. The Byzantine approach of enforcing a singular orthodoxy by means of ruthless state power was attempted by the Abbasid caliphs not long after al-Shāfiʿī's death, but the failure of the infamous Qurānic Inquisition (discussed in detail in Chapter 5) signaled the ascendancy of law over theology among the Sunnis. By justifying itself as an interpretive effort based on the textual remains of revelation, Islamic law gained the status of an authoritative discourse. In contrast to theology, where differences of opinion represented an insurmountable theoretical conundrum, law was able to accommodate and legitimize difference as the natural outcome of the process of interpretation. This was made possible by al-Shāfiʿī's novel conceptualization of revelation as language, a step that is analyzed in Chapter 3.

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Safii Mezhobi  
(18139)

#### AL-SHĀFIʿĪ'S CRITIQUE OF MĀLIK

Maliki Mezhobi  
(130272)

On his journeys to Medina and Baghdad, al-Shāfiʿī thus encountered circles of scholars who tried to formulate Islamic law in ways that would anchor it in the face of several interlocking threats. Local practice was by its nature fluid, but it relied on a sense of continuity that was threatened by the conceptually aggressive nature of legal reasoning (*raʾy*), especially as developed in and exported from Iraq. At the same time, the systematization of Hadith collection and transmission provided a powerful measure by which to criticize local legal teachings. In his debates with the Ḥanafīs and the theologians, al-Shāfiʿī argued strongly for a systematic and consistent use of single-transmitter Hadith in law. In the Ḥanafī debates, he still paid lip service to the Medinan legal tradition,<sup>86</sup> but in the debate with Ibn ʿUlayya he already declared local traditions to be unstable and equivocal.<sup>87</sup> It was in his third debate, directed against the

<sup>86</sup> See, for example, *Umm*, 8:66, 84, and 90.

<sup>87</sup> *Umm*, 9:25-26.