

Moustafa, Moustafa (2024)

The theology of the Mustaṣfā: An analysis of the relationship between legal theory and theology.

PhD thesis. SOAS University of London.

DOI: <https://doi.org/10.25501/SOAS.00042863>

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The theology of the *Mustaṣfā*
An analysis of the relationship between legal
theory and theology

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Thesis submitted for the degree of PhD/MPhil

July 2023

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Introduction

The impetus behind this study

This thesis investigates how Abū Ḥāmid al-Ghazālī's (d. 505/1111) theological postulations impacted his legal theory and how many of his conclusions in the law-making process were to have a deep theological undercurrent. This study elucidates the inherent relationship between theology and legal theory. My choice of this specific individual and the *Mustaṣfā*, in particular, is motivated by several reasons. The first is founded upon the personality of al-Ghazālī, and his relevance in both traditional Muslim scholarship and western scholarship today, with many studies having been conducted upon his works, and hence many controversies having surrounded him especially in his regard to his theological loyalties; was he an ardent Ash'arite as has been historically depicted, or did he deviate from some of the tenets of the school, especially on issues like causality, which has been greatly debated within current academic discourses.¹ These topics, in my opinion, warrant further research, only with the inclusion of a new unrecognised source that could add extra light to previous discussions. It is here that I introduce the importance of the *Mustaṣfā*. Not only was this work considered one of the most important works within the field of legal theory that was to have great influence on the works

¹ Richard M Frank, *Al-Ghazālī and the Ash'arite School* (USA: Duke University Press, 1994); Edward Omar Moad, 'Al-Ghazali on Power, Causation, and acquisition', *Philosophy East and West*, 2007, 1–13; Frank Griffel, *Al-Ghazali's Philosophical Theology* (New York: Oxford University Press, 2009); Frank Griffel, 'The Western Reception of Al-Ghazālī's Cosmology from the Middle Ages to the 21st Century', *Al-Ghazali, Cosmology, Causality, Occasionalism, Ernest Renan.*, no. 30 (2011); Enchiridion Epictetus Great Books Marcus Aurelius and Meditations Stoicism, 'Al-Ghazali and Descartes: Correlation or Causation?', n.d.; Michael E Marmura, 'Ghazalian Causes and Intermediaries', *Journal of the American Oriental Society*, Vol. 115, No. 1, pp. 89-100, 1995; Michael E Marmura, 'Ghazali's Chapter on Divine Power in the Iqtiṣād', *Arabic Sciences and Philosophy* 4, no. 2 (1994); Richard M Frank and Josef van Ess, *Creation and the Cosmic System: Al-Ghazālī & Avicenna* (Winter, 1992); Jon McGinnis, 'Occasionalism, Natural Causation and Science in al-Ghazali', *Arabic Philosophy, Arabic Theology: From the Many to the One. Essays in Celebration of Richard M. Frank*. Leuven: Peeters, 2006, 441–63. Ahmed El Shamsy, 'Al-Ghazālī's Teleology and the Galenic Tradition: Reading The Wisdom in God's Creations (al-Ḥikma fi Makhluqāt Allah)', in *Islam and Rationality* (Leiden: Brill, 2016), 90–112; Binyamin Abrahamov, 'A Re-Examination of al-Ash'arī's Theory of Kasb According to Kitab al-Luma'', *Journal of the Royal Asiatic Society* 121, no. 2 (1989): 210–21; Richard M Frank, 'Moral Obligation in Classical Muslim Theology', *The Journal of Religious Ethics*, 1983, 204–23; A Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (USA: SUNY Press, 1995); Sabine Schmidtke, *The Oxford Handbook of Islamic Theology* (Great Britain: Oxford University Press, 2016); Sophia Vasalou, *Ibn Taymiyya's Theological Ethics* (USA: Oxford University Press, 2016); Richard M Frank, 'The Ash'arite Ontology. I: Primary Entities: Arabic Sciences and Philosophy 9. Cambridge, 1999', *Classical Islamic Theology*, 2008, 163–231; Christopher P Garber, 'Al-Ghazali on Causation, Omnipotence, and Human Freedom', *Quaerens Deum: The Liberty Undergraduate Journal for Philosophy of Religion* 2, no. 1 (2016): 4; Shoaib Ahmed Malik, 'Al-Ghazālī's Divine Command Theory', *Journal of Religious Ethics* 49, no. 3 (2021).

that were to follow, as will become clear, but it was also one of his final works. And this is a key point, since most western academics who have discussed the comprehensive doctrines of al-Ghazālī have failed to consult his *Mustaṣfā* for additional clues and affirmations as to his beliefs.² This is most probably due to their unawareness as to the inherent connection between *kalām* and *uṣūl*. It is my argument that one could almost compose a complete theological conspectus from the *Mustaṣfā* alone, due to the aforementioned point. Issues ranging from the speech of God, to the infallibility of the Prophets are all found within the *Mustaṣfā*. As for the reason behind their mention, their context and relevance, this is what I intend to reveal throughout this study, whilst also detailing the impact doctrine was to have in how the likes of definitions of terms were to be coined and their connotations, as shall become evident in the discussion of the term *wājib* and the *‘illah*. Other reasons include the fact that the *Mustaṣfā* was one of the four relied upon *uṣūlī* books that contributed in moulding the trajectory of the *ṭarīqat al-mutakallimīn*,³ and the period when *uṣūl* had reached its full maturity.⁴ It was also a work that was written at a stage when al-Ghazālī had reached such a level of intellectual maturity that he was more confident in his personal assertions, more experienced, and an independent thinker, where he would add and subtract whatever he deemed relevant or irrelevant, regardless of the scholarly norm, as seen in his disregard of the particle of meanings (*ḥurūf al-ma‘ānī*).⁵ Thus, with such freedom, if it has been established that there was a necessary synopsis of theology with legal theory, and that al-Ghazālī had departed in many aspects from Ash‘arism, such a departure would have been manifest in his *Mustaṣfā*. His freedom of expression was also illustrated in the method by which he would write. Closer to a belletrist, al-Ghazālī’s expression and elegance of writing was like no other in the field, whilst also choosing to justify many of his unconventional choices within the work, including why he was to begin with an introduction in logic. Lastly, and in complete contrast with the custom of authorship, was the extolment of al-Ghazālī of the science of *kalām* at the beginning of a non-theological work, despite the norm being to praise the discipline which the author was

² For examples of those who did refer to it for theological use, see Omar Moad, ‘Behind the Good, the Bad, and the Obligatory in al-Ghazālī’s al-*Mustaṣfā Min al-Uṣūl*’, *Journal of Islamic Philosophy* 8 (2012): 79–93; Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought*, 1995.

³ This approach, as explained by Hashim Kamali, is primarily concerned with the exposition of theoretical doctrines. See Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge, UK: Islamic Texts Society Cambridge, 1991), 9.

⁴ It could possibly be argued that the *Mustaṣfā* was the first fully matured *uṣūlī* work inclusive of all themes and chapters save for what he chose to omit through his own omission, if we mean by mature the incorporation of Aristotelian logic, inclusive of definitions of every topic alongside critiques of the definitions of others.

⁵ The notion of his personal development freedom of thought in legal theory is manifest in regards to the *ḥurūf al-ma‘ānī*, for he was to include them in his earliest work *al-Mankhūl*, and removed them in his *Mustaṣfā*. See al-Ghazālī, *al-Mankhūl fī ta’līqāt al-uṣūl*, Third edition. (Beirut, Lebanon: Dār al-Fikr, 1998), 152–162.

objectively discussing and to regard it as the noblest of disciplines. This point not only suggests to the reader the immense regard he had for *kalām* but also that theology was to play a pivotal role in the *Mustaşfā*, and commonly discussed throughout the work. All of these points combined, as well as others that shall later become manifest throughout this study make this work the ideal area to conduct such a study of the relationship between *kalām* and *uṣūl al-fiqh* and the interplay between the two, whilst also determining the extent of al-Ghazālī's allegiance to Ash'arism.

My final reason for selecting this topic is to analyse the assertions of some of the sceptics, in particular Aḥmad Ibn Taymiyyah (d. 728/1328), Abū Ishāq al-Shāṭibī (d. 790/1388), and other modern scholars like Muṣṭafā al-Shalabī and George Makdisi, who not only questioned the significance of any theological mention within *uṣūl*, and understood it to be an intrusive element and of no relation, but also of some of the theological positions al-Ghazālī had himself imbedded within the *uṣūlī* work. For it seemed foreign to me as to why this celebrated individual would compose such a work towards the end of his life and include within it superfluous additions that were of no relevance, especially after previously seeking the gnostic path and going through so many internal changes, during which he would question all his previous motivations. The *Mustaşfā*, unlike other works by al-Ghazālī, was not subject to major criticism. In fact, it was celebrated as a masterpiece in legal theory, influencing many works after it. Similarly, this work will serve to shed light upon the harmony that al-Ghazālī would seek to maintain between his definitives founded within his theology and that of his legal theory, making every effort to avoid contradictions or compromises which were to be found in the doctrines of others.

A number of western academics have explored the subject of *uṣūl* and theology. George Makdisi argued that the first work of legal theory, al-Shāfi'ī's (d. 204/820) *al-Risālah*, was devoid of any elements of *kalām*. He substantiated his claim by highlighting the evident lack of theology in the eponym's *Risālah*.⁶ According to Makdisi, traditionalists were later compelled to include *kalām* within their *uṣūl* treaties due to the success the theologians received by doing so.⁷ Despite this, Makdisi was convinced that the integration of theological postulates and discussions within legal theory was entirely inorganic, and that *uṣūl* was sabotaged by the theologians. Similarly, Aron Zysow argued for a Mu'tazilite and Māturīdite influence upon

⁶ George Makdisi, 'The Juridical Theology of Shāfi'ī: Origins and Significance of Uṣūl al-Fiqh', *Studia Islamica*, 1984, 5–47.

⁷ Makdisi, 'The Juridical Theology of Shāfi'ī: Origins and Significance of Uṣūl al-Fiqh', 42.

Ḥanafite legal theory,⁸ highlighting the impact of the two doctrines on selected areas in legal theory, in an attempt to identify where doctrinal discrepancies would manifest themselves, if at all. Zysow's other work, *The Economy of Certainty*, is critical of the Ash'arites in their approach to *qiyās*, stating that they had to compromise their attitude towards ethical value in order to integrate it within their legal theory.⁹ Another important work is *Divine Purposiveness and its Implications in Legal Theory: The interplay of Kalām and Uṣūl al-Fiqh*, by Rami Koujah. This article was of great significance due to it touching upon a key chapter within my thesis, and a common theme within my work, namely the notion of God acting on behalf of the fulfilment of objectives and goals. The work also looks at the relation of purposiveness with ethical value yet all within the rubric of Sayf al-Dīn al-Āmidī's (d. 630/1233) works, who was greatly impacted by the generation that preceded him, namely al-Ghazālī, and attempts to answer what seems to be inconsistencies in his works on the same topic.¹⁰ Another work which relates to one of the chapters found within this study is *Before Revelation: The Boundaries of Muslim Moral Thought* by A. Kevin Reinhart. Not only is this topic of particular relevance to my study due to its presence within the *Mustaṣfā*, but it is also Reinhart's conclusion that the subject itself was no more than a tool to address other legal concerns to which I took issue, since al-Ghazālī recognised it as pivotal to belief and a divine mercy, as shall be revealed below. Finally, and most significantly is the work *The Jurist and the Theologian, Speculative Theology in Shāfi'ī Legal theory* by Mohammed Eissa. In this work Eissa investigates the extent to which theological doctrines impacted *uṣūlī* rulings. He does so by identifying four key personalities of the same era who had conflicting doctrines but the same adherence to a particular legal school. He uses this as a platform to analyse how these personalities formulated arguments and conclusions for particular topics which were highly influenced by theological discussions.¹¹ Throughout this work I will make reference to some of the aforementioned sources, especially if I feel my findings have conflicted with their own inferences, whether it be their premises or conclusions.

The structure of this thesis is as follows: Chapter one discusses the synthesis of disciplines within the Islamic tradition given how central this is to our argument about the

⁸ See Aron Zysow, 'Mu'tazilism and Māturīdism in Ḥanafī Legal Theory', in *Studies in Islamic Legal Theory* (Leiden: Brill, 2002), 235–65.

⁹ Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory*, vol. 2 (Atlanta, Georgia: Lockwood Press, 2014), 199.

¹⁰ See Rami Koujah, 'Divine Purposiveness and Its Implications in Legal Theory: The Interplay of Kalām and Uṣūl al-Fiqh', *Islamic Law and Society* 24, no. 3 (2017): 171–210.

¹¹ See Mohamed Abdelrahman Eissa, *The Jurist and the Theologian: Speculative Theology in Shāfi'ī Legal Theory* (USA: Gorgias Press, 2017).

nexus between legal theory and theology. This is followed by a brief biography of al-Ghazālī, examining his key works in jurisprudence, *kalām*, and legal theory. In chapter two I will discuss *uṣūl al-fiqh*, its objectives, the importance of the 5/11th century and of the *Mustaṣfā* as an *uṣūl* work. I will identify how to determine its significance and the relevance of works during that period, by emphasising and illustrating the signification of content arrangement and definitions, and the impact this was to have on following generations. Chapter three will examine the phenomenon of how Ash‘arite *kalām* was observed by the Shāfi‘īte school of law and its close association with the creed of its eponym, namely al-Shāfi‘ī. Chapter four will include a detailed analysis of the key theological areas mentioned in the *Mustaṣfā* and how they made their way in the *uṣūlī* discourse. The fifth chapter reveals how ethical value impacted the conception of abrogation. Chapter six examines al-Ghazālī’s stance towards causality within the law and how he was very much in agreement with the doctrine of his master al-Juwaynī on this topic. In chapter seven I discuss *ta‘līl* (rationalisation) and the *maṣlaḥa* (welfare), their incorporation within *kalām* and *uṣūl*, and the central debates surrounding it, whilst highlighting the role al-Ghazālī was to play in their theorisation. In chapter eight I reveal al-Ghazālī’s attitude towards *qiyās* (analogy), his definition of the *‘illah* (*ratio legis*) alongside the Ghazālīan and Ash‘arite conception of *ḥikmah*. Chapter nine elucidates how al-Ghazālī theorised the greater objectives of the law and harmonised his theorisation with his own creedal beliefs. This will be done alongside a comparison with that of Abū Ishāq al-Shāṭibī’s (d. 790/1388) *maqāṣid* theory. Finally, in chapter ten, I will study the critiques against this synthesis and connection between *kalām* and *uṣūl* by those who deem it inorganic, examining their arguments and comparing them with my own conclusions found within the *Mustaṣfā*. This will be achieved by way of an evaluation of particular dogmatic assertions of al-Ghazālī alongside the assertions of Ibn Taymiyyah, and the latter’s critiques of al-Ghazālī’s affirmations despite being the bedrock of the *Mustaṣfā* and vital for the harmonisation of the law with doctrine in the eyes of al-Ghazālī. I will end with a conclusion which will emphasise why particular theological topics are central to Islamic legal theory and the *Mustaṣfā*, as well as addressing the doctrinal commitments of al-Ghazālī towards the end of his life.

Chapter One

The synthesis of disciplines in the Islamic tradition and the academic life of al-Ghazālī

From the eleventh century onwards, there was a strong presence of theology and logic in manuals of legal theory. In earlier works, like *al-Risālah* of al-Shāfi‘ī, one seldom finds an explicit mention of anything theological. Scholars have offered different hypotheses to explain this divergence, not only questioning the relevance but maintaining that it was no more than a reaction to the Mu‘tazilites who themselves were very active in *uṣūl* and also placed many theological discussions within their works. A prime example could be the discussion about the rational permissibility of the religiously responsible individual (*mukallaf*) being obliged to perform what is beyond his capacity (*al-taklīf bi mā lā yuṭāq*). Why is such a discussion relatively unmentioned within a theological work despite it being of theological origin and yet included with the *uṣūlī* discourse? Why was it mentioned at all? Likewise, were anyone wishing to discover the more comprehensive position of al-Ghazālī concerning ethical value why must he look in his *Mustaṣfā*, alongside his *Iqtiṣād fī al-i‘tiqād* in theology? This brings us to the current discussion as to the nature of the Islamic sciences and their amalgamation. As mentioned, part of the objective of this thesis is to highlight the necessary connection between legal theory and theology. However, before this particular connection is addressed, I shall attempt to shed some light on the early practices and recognition of assimilation within the disciplines of Islamic scholarship: how each generation was building upon the efforts of those that preceded, and that any overlapping that was to occur was not confined to the two aforementioned topics. Rather, this characterised the majority, if not all, of the Islamic disciplines.

If we solely focus upon legal theory, we will find that after the *Risālah*, the earliest extant work is the *Fuṣūl* of the Ḥanafīte jurist Abū Bakr al-Jaṣṣāṣ (d. 370/981) which is replete with theological connotations to the extent that one can make a confident assertion from his legal theory alone that he was highly influenced by the Mutazilites, if not one himself. Examples would include the distinction between the divine will and command,¹² and his description of the effective cause (*‘illah*) in analogy as a sign.¹³ Similarly, and shortly after we find Abu Bakr

¹² Al-Jaṣṣāṣ, *Al-Fuṣūl fī al-uṣūl*, 2/234–35.

¹³ Abū Bakr al-Jaṣṣāṣ, *al-Fuṣūl fī al-uṣūl* (Qatar: Wazārat al-Awqāf wa al-Shu‘ūn al-Islamiyyah, 1994), vol. 4, 156.

al-Bāqilānī (d. 403/1013) in his work *al-Taqrīb wa al-Irshād* discussing ethical value,¹⁴ divine speech,¹⁵ and whether a command necessarily constitutes will, as examples.¹⁶

Equally, we find the Ḥanbalite Qāḍī Abu Ya‘lā al-Farrā’ (d. 458/1066) embellish his *uṣūlī* work *al-‘Uddah fī Uṣūl al-Fiqh* with many points of a theological nature. For example we find him introducing the discussion about whether the divine command is the same as the divine will,¹⁷ and that the nature of the God’s speech is with sound.¹⁸ Similarly, when discussing the *maṣlaḥa* dichotomy he mentions the Mutazilite principle of the necessary performance of the optimum for God, and rejects it.¹⁹ These are just a few examples from varying doctrinal schools yet they all seemed to include particular theological discussions according to their own beliefs within their works. The fusion of legal theory with theology therefore can be found in the earliest legal theory tracts post-*Risālah* and was to continue throughout the generations. Such discussions are unlikely to have emerged from a vacuum, rather they were a continuation of what preceded them, and grew not only due to the development and emergence of interest in speculative theology, but also its inherent close association with the law, as will become evident throughout the course of this study. The crossover and synthesis of disciplines was not to be found only between legal theory and theology, and was not a foreign concept to other fields at all. It was famously narrated that the distinguished Basran grammarian, Abū ‘Umar Ṣāliḥ al-Jarmī (d. 225/840) said, ‘For thirty years I have been issuing edicts in jurisprudence from the *Kitāb* of Sībawayh.’²⁰ Abū al-‘Abbās Muḥammad al-Mubarrad (d. 210/898) commented on this statement declaring, “I heard al-Jarmī say this, which was predicated upon the fact that he had knowledge of hadith, so when he dedicated himself to the study of the *Kitāb* of Sībawayh he become astute in both religion and hadith.”²¹

One may immediately ask themselves; how can one possibly issue jurisprudential edicts from a manual in grammar (*Kitāb* of Sībawayh)? Surely, they are two completely separate disciplines? What these statements underscore is that the majority of works within the Islamic tradition were interrelated and at times sharing the same theoretical underpinnings. And it is due to this very reason that the *mujtahid* was considered to be someone who could have an

¹⁴ Al-Bāqilānī, Abū Bakr, *Al-Taqrīb wa al-Irshād*, Muassasat al-Risālah, Beirut, Lebanon, vol. 1, p. 278.

¹⁵ Ibid, p. 316.

¹⁶ Ibid, vol. 2, p. 10.

¹⁷ Al-Farrā’, Abū Ya‘lā. *Al-‘Uddah Fī Uṣūl al-Fiqh*. Vol. 1. Beirut, Lebanon: Dār al-Kotob al-Ilmiyah, 2002, p. 215.

¹⁸ Ibid, p. 216.

¹⁹ Ibid, p. 421.

²⁰ Abū Qāsim Al-Zajjājī, *Majālis Al-‘ulamā’* (Cairo, Egypt: Maktabah al-Khānjī, N/A), 191.

²¹ Al-Zajjājī, *Majālis Al-‘ulamā’*, 191.

independent opinion within every discipline. Yahyā ibn Ḥamza (d. 749/1348) corroborated this point by stating, “The complete *mujtahid* (*al-mujtahid al-kāmil*) is he who can issue an edit in every Islamic discipline, to the extent that no query arises in any of them except that he has a position and point of view.”²² As for the above-mentioned example of al-Jarmī, it is my estimation that he attained mastery of *qiyās* from *al-Kitāb*, as it was applied by Sībawayh (d. 180/796) in various locations, which assisted him in understanding how to extrapolate rulings, since the same integral components required in juristic *qiyās* and law making also exist within grammar.²³

If we take the *Khaṣāʾis* of Abū al-Faṭḥ ibn Jinnī (d. 392/1002) as an example, we cannot help but notice that he discusses the *ratio legis* found in language, questioning whether they are to be understood according to the understanding of the theologians or the jurists?²⁴ He then proceeds to explain that they are no more than signs and indications as to the occurrence of the ruling, and that the wisdom behind them are concealed from us, whilst citing examples from jurisprudence. Other chapters include reconciling between oral transmission (*al-samāʿ*) and analogy,²⁵ *istiḥsān*,²⁶ and specifying the *ratios legis*,²⁷ all discussions found within *uṣūl al-fiqh* yet have a role to play in other disciplines.

Additionally, in the work *Lumaʿ al-adillah* by the sixth century grammarian Abū Barakāt ʿAbd al-Raḥmān al-Anbārī (d. 577/1181) we see many interesting advancements. This text elucidates the development of grammar in this particular era. It clearly illustrates how one discipline shares very similar grounds with another, and how these commonalities, which are not just theoretical but even terminological, unite within this work to serve the discipline itself. This treatise, written after the Islamic disciplines had reached a high level of maturity, gives the feeling that one is reading a work in legal theory. On the chapter of *qiyās* he explains its four integrals, the *aṣl*, the *farʿ*, the *ʿillah*, the *ḥukm*, including terms like *munāsabah* and the departure of *ḥikmah*.²⁸ He also includes a chapter entitled “a response to those who reject *qiyās*,” just like in the *uṣūl* manuals.²⁹ When discussing the *ʿillah* he explains that two things

²² Yahyā ibn Ḥamza ibn ʿAlī ibn Ibrāhīm, *Majmūʿ al-Imām al-Muʿayyad bi Rabb al-ʿIzzah Yahyā Ibn Ḥamza Ibn ʿAlī Ibn Ibrāhīm* (Sanaa, Yemen: Dār al-Imām Zayd ibn ʿAlī, 2010), 149.

²³ Examples of *qiyās* in the *Kitāb* of Sibawayh are numerous. See for example how he renders *kāna* and its sisters analogous to *zanantu*, as well as all transitive verbs on the basis that the latter does not suffice with the first object (*al-mafʿūl al-awwal*) so too must the former not suffice with the agent of the verb (*fāʿil*); Abū Bishr ʿAmr ibn Qanbar, *Kitāb Sibawayh* (Cairo, Egypt: Maktabah al-Khānjī, 1988), 1:45.

²⁴ Uthman Abu al-Faṭḥ Ibn Jinnī, *Al-Khaṣāʾis* (Dar al-Kotob al-Misriyyah, 1900), 48.

²⁵ Ibn Jinnī, *Al-Khaṣāʾis*, 117.

²⁶ Ibn Jinnī, *Al-Khaṣāʾis*, 133.

²⁷ Ibn Jinnī, *Al-Khaṣāʾis*, 144.

²⁸ Abū Barakāt ʿAbd al-Raḥmān Al-Anbārī, *Lumaʿ al-adillah* (Beirut, Lebanon: Dar al-Fikr, 1971), 93–94.

²⁹ Al-Anbārī, *Lumaʿ al-adillah*, 95.

indicate the soundness of the *'illah*: (i) effectiveness (*ta'thīr*) and (ii) that it has a basis to testify as to why it is to be considered an *'illah* (*shahādat al-uṣūl*).³⁰ If we compare this with the *Luma'* of Abū Ishāq al-Shīrāzī (d. 476/1083) in legal theory and its discussion on identifying the *'illah* we find it to be practically identical.³¹ Included terms are *qiyās al-shabah*, *qiyās al-ṭard*, *al-istiḥāb*, and *al-istiḥsān* to name a few.³² These are all highly technical terms that were central to legal theory. Moreover, the fact that there was potential for such terms to be applied to grammatical discussions also explains how the likes of al-Jarmī would have been able to extrapolate rulings in jurisprudence since, as mentioned previously, the mechanisms are very similar.

In his *Rawḍ Ṭayy al-Iqtirāh*, Jalāl al-Dīn al-Suyūṭī (d. 911/1505), not only arranges his work in accordance with *uṣūl al-fiqh* but quotes al-Kamāl ibn al-Anbārī justifying his choice and the common denominator, “Because between them both is a concordance which is clearly visible, since grammar is rational taken from what has been related to us just as jurisprudence is rational taken from what has been related to us.”³³

Another example of where **one discipline impacts another** is that of theology and its influence upon the prophetic biography in order to explain events. If we take the work *al-Shifā* of the esteemed judge Abū Fudayl 'Iyād (d. 544/1149) we find several areas where theology is incorporated to facilitate in understanding narrations and occurrences. A fine example of this is the night ascension (*al-Isrā'*), and the Prophet Muhammad's vision of God: how could this vision have taken place, and how are we to understand the Prophet's close proximity from God?³⁴ Such points are theological in nature and have to be explained in accordance with one's doctrine. Throughout the work, the opinions of the eponym of the Ash'arite school, Abū Hasan al-Ash'arī,³⁵ are mentioned, emphasising my point.

Theology even impacted writings upon Sufism. One of the earliest and most famous sufi tracts, the *Risālah al-Qushayriyyah* authored by Abū al-Qāsim al-Qushayrī (d. 465/1073), opened with a creedal declaration and the beliefs of the saints.³⁶ Similarly, found in the very first aphorism of Aḥmad Ibn 'Aṭā'illāh al-Sakandarī (d. 709/1310) is a highly intricate

³⁰ Al-Anbārī, *Luma' al-adillah*, 106.

³¹ Abū Ishāq Al-Shīrāzī, *al-Luma'* (Tangiers, Morocco: Dār al-Kittaniyyah, 2013), 273.

³² Al-Anbārī, *Luma' al-adillah*, 93–142.

³³ Jalāl al-Dīn Al-Suyūṭī, *Fayḍ nashr al-inshirāh min rawḍ ṭayy al-iqtirāh*, vol. 1 (United Arab Emirates: Dār al-Buḥūth lil-Dirāsāt al-Islāmiyyah, 2002), 202.

³⁴ Abū Fudayl 'Iyād, *al-Shifā bi ta'rīf huqūq al-Muṣṭafā* (Beirut, Lebanon: Dār al-Fayḥā', 2000), 249, 256.

³⁵ See for example 'Iyād, *al-Shifā bi ta'rīf huqūq al-Muṣṭafā*, 249, 327.

³⁶ Abū Qāsim Al-Qushayri, *Al-Risālah al-Qushayriyyah* (Cairo, Egypt: Darussalam, 2008), 4–9.

understanding of how the disciple is to understand his own sins and mistakes, all fundamentally based upon the Ash‘arite attitude towards causality and divine justice. The aphorism reads, “From the signs of one’s independence on one’s own deeds is his loss of hope when he commits an error.”³⁷ Within this statement there is a suggestion that one should not rely on their deeds, since the deeds are just a means and God can function without them despite commanding His creation to abide by them. Likewise, it includes the idea that even if an individual were to do all the good deeds possible, God can still place the individual into hell, with the opposite being true; that the one who fails to perform any deed may be placed into heaven, and it would not be considered unjust, contrary to the Mu‘tazilite belief.³⁸ Similarly, the very fact that the individual can perform good deeds is by virtue of God’s grace that he has bestowed upon such an individual, hence in reality he does not deserve save what God decrees for him.

In sum, no discipline was independent from other disciplines. Each discipline was deeply connected to and impacted by neighbouring disciplines. This was especially the case with theology, which Abū al-Muzaffar al-Sam‘ānī (d. 489/1096) called “the basis of all disciplines.”³⁹ Hence, if someone was an Ash‘arite it would undoubtedly appear even if he was writing in Sufism or grammar, and the same is true in regard to anyone else from a different doctrine. Likewise, if there are correlations between grammar and legal theory or any other sciences, then both terminology and similar logic will be applied to resolve potential theoretical problems as is evident from the preceding examples. Based upon this assertion, it is my

³⁷ Sa‘īd Ramaḍān Al-Buṭī, *Al-Ḥikam al-‘Aṭā’iyyah sharḥ wa taḥlīl*, 4th ed. (Damascus, Syria: Dar al-Fikr, 2009), 21.

³⁸ Abū Ḥasan ‘Abd al-Jabbār, *al-Muḡnī fī abwāb al-tawḥīd wa al-‘adl*, vol. 6 (Cairo, Egypt: Al-Dār al-Misriyyah, 1962), 3.

³⁹ Abū al-Muzaffar al-Sam‘ānī, *Qawāṭi‘ al-adillah* (Lebanon: Dār al-Kutub al-Ilmiyah, 1997), 1:87. This quote, along with many other remarks I have come across within al-Sam‘ānī’s *Qawāṭi‘ al-adillah* I find challenge Muhammad Eissa’s opening premise in his book *The Jurist and the Theologian: Speculative Theology in Shāfi‘ī Legal Theory*, that he was a traditionalist who was opposed to theology within *uṣūl* (p. 15-16). For how could this be the case if al-Sam‘ānī himself was to recognise theology as the foundation for all other disciplines and evidently reveal this in his work by including theological discussions? For example, he mentions within the segment concerning ‘commands’ that it is permissible for God to command to something that He does not want (v.1, p. 136). This argument itself is not only highly theological but also of the tenets of Ash‘arism. Likewise, where were the traditionalists discussing these types of issues in their *uṣūl* if they had any works in *uṣūl* at that time in the first place, as this, in my opinion, is still yet to be established. As for the Eissa’s assertion that al-Sam‘ānī was a traditionalist, this was based upon one or two lines found within the introduction of his *Qawāṭi‘* in which he mentions in very general terms that he found some to tread the path of the theologians whilst knowing nothing of *uṣūl* and that he is going to pursue the path of the *fuqahā’* (v1. P31-32). Now considering that he himself was once a Ḥanafite jurist it is more likely that what he meant by ‘*fuqahā’*’ was the Ḥanafites as such an appellation was what their *method* was referred to within *uṣūl* due them including positive law within their legal theory. If this is not the case then he means it in a general sense of what would mean ‘*real jurists*’ and have nothing to do with the Ḥanafites and their method, but genuine understanding of the subject. Similarly, his opposition to the theologians could also have meant he did not appreciate their method, in that they did not include enough positive law, or was in reference to the Mu‘tazilites, as to state that it meant the removal of theological postulates and avoidance of *kalām* is refuted by the content of the book itself.

postulation that the creed of al-Ghazālī will inevitably manifest itself in any work that he composes, but most explicitly in his legal theory due to the strong connection between the two as will become evident, and also because of the fact that al-Ghazālī’s emergence was at a time where clear synthesis had already begun to manifest.

A biographical synopsis of the life of al-Ghazālī and his major works in jurisprudence, theology and *uṣūl*

A glimpse into al-Ghazālī’s life and career

Muḥammad b. Muḥammad b. Muḥammad b. Aḥmad al-Ṭūsī al-Ghazālī was born in Ṭūs in the year 450/1058.⁴⁰ Described by Shams al-Dīn al-Dhahabī (d. 748/1348) as “the wonder of the age”,⁴¹ he was not from a family of knowledge. As for the occupation of his father, Tāj al-Dīn al-Subkī (d. 771/1370) mentioned in his *Ṭabaqāt* that he was a spinner (*ghazzāl*), although Frank Griffel believes this assumption was a leap of faith on his behalf, based upon the etymology of the family name.⁴² After the passing of his father he was either put through the madrasa system where he would learn the Islamic disciplines, as stated by al-Subkī,⁴³ although Ibn ‘Asākir narrates from ‘Abd al-Ghāfir b. Ismā‘īl al-Fārisī (d. 529/1134), who after mentioning that the eye had not seen his like in eloquence, elucidation and intelligence, that in his youth he began his studies in jurisprudence at the hands of an Imam called Aḥmad al-Rāthakānī, and after that went to Nishapur to frequent the lessons of al-Juwaynī (d. 478/1058).⁴⁴ He continued that he was to work so hard and diligently within that a short period he became one of the unique scholars of his age, even whilst al-Juwaynī was still alive. I must briefly mention here that in tandem with the narration of al-Subkī, Ebrahim Moosa asserted that al-Ghazālī, after studying with Aḥmad al-Rāthakānī, continued his studies in Jurjān, where he learnt Shāfi‘ī hermeneutics which was most evident in his early writings.⁴⁵ Frank Griffel,

⁴⁰ Tāj al-Dīn Al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā* (Cairo, Egypt: Maṭba‘at al-Ḥalabī, n.d.), 6:193. Griffel has reservations about this exact date with some interesting analysis. See Al-Ghazālī’s *Philosophical Theology*, p. 23-25.

⁴¹ Abū ‘Abd Allah Shams al-Dīn Al-Dhahabī, *Siyar a‘lām al-nubalā’* (Lebanon: Bayt al-Afkār al-Dawliyyah, 2004), 3676.

⁴² Al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā*, 6:193; Frank Griffel, *Al-Ghazali’s Philosophical Theology* (Oxford: Oxford University Press, 2009), 26.

⁴³ Al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā*, 6:194.

⁴⁴ Abū Qāsim Ibn ‘Asākir, *Tabyīn kadhīb al-muftarī fī mā nusiba ilā al-Imām Abī Ḥasan al-‘Ash‘arī* (Damascus: Dār al-Taḥqwa, 2018), 542. For more analysis on al-Rāthakānī, his conflict with al-Subkī’s report, and his elucidation as to how al-Ghazālī was to end in Nishapur, see Griffel’s *Al-Ghazālī’s Philosophical Theology*, p. 27-28.

⁴⁵ Al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā*, 195; David Powers, Susan Spector, and Oussama Arabi, *Islamic Legal Thought: A Compendium of Muslim Jurists* (Leiden: Brill, 2013), 264.

on the other hand, casts doubt on his journey to Jurjān. His reasoning for this was that this story was neither mentioned by al-Ghazālī himself in his *Deliverance from Error (al-Munqidh min al-dalāl)*, and nor was it mentioned by ‘Abd al-Ghāfir b. Ismā‘īl al-Fārisī making its likelihood dubious.⁴⁶

In any case, upon the death of al-Juwaynī he became part of the travelling court (*mu‘askar*), remaining in the close proximity of the powerful vizier, Niẓām al-Mulk.⁴⁷ This was followed by his arrival in Baghdad approximately in the year 484AH where he began to teach and rise in prominence. It was also considered a period of composition for al-Ghazālī, when he would author many works.⁴⁸ After pursuing a career in scholarship, and under the auspices of the authorities it seems that he fell in to a period of doubt, questioning what he really believed and deciding to dedicate all his efforts to understanding the realities of things. His spiritual crisis led him down a road of scepticism and abstinence. Ultimately, he resigned from his position at the *Niẓāmiyyah madrasah*, left Baghdad, turned to reading the writings of the Sufi masters, leading him to the company of Abū ‘Alī al-Fāramadhī (d. 477/1084), the famous Sufi master who was also a companion of al-Qushayrī.⁴⁹ After this period he returned to composing works upon various disciplines but not before writing his encyclopaedic spiritual masterpiece on the ethics of the religious and devout, *Ihyā’ ‘ulūm al-dīn*, after 490AH, as mentioned by Hourani.⁵⁰ Al-Subkī mentions that it was during this period, by virtue of his internal struggles, that he arrived at certainty and complete clarity, constantly summoning others towards the hereafter and shunning the delights of the world.⁵¹ Al-Ghazālī would later return to Baghdad on his return to Khurasan, holding gatherings in which he would narrate the *Ihyā’*. From there he returned to Ṭūs and took to teaching at the *Niẓāmiyyah* of Nishapur.⁵² ‘Abd al-Ghāfir al-Fārisī mentions, “He then left his teaching position (in Nishapur), and returned to his house, taking the property next to him as a *madrasah* for students of knowledge, and a lodge for sufis. He divided his time between seeing to the activities of those present, from

⁴⁶ Griffel, *Al-Ghazali’s Philosophical Theology*, 28. His trip to Jurjān was also unmentioned by Ibn ‘Asākir in his *Tabyīn al-kadhib al-muftarī*, or Ibn Khallikān in *Wafayāt al-a’yān*, raising further uncertainty. See *Tabyīn al-kadhib al-muftarī*, 542; Ibn Khallikān, *Wafayāt Al-a’yān*, 3:353.

⁴⁷ Ibn ‘Asākir, *Tabyīn Kadhib al-muftarī fī mā nusiba ilā al-Imām Abī Ḥasan al-‘Ash‘arī*, 543.

⁴⁸ Al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā*, 6:205.

⁴⁹ Griffel, *Al-Ghazali’s Philosophical Theology*, 52, Ibn ‘Asākir, *Tabyīn Kadhib al-muftarī fī mā nusiba ilā al-Imām Abī Ḥasan al-‘Ash‘arī*, 546.

⁵⁰ George F Hourani, ‘A Revised Chronology of Ghazālī’s Writings’, *Journal of the American Oriental Society*, 1984, 296.

⁵¹ Al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā*, 6:206.

⁵² Shams al-Dīn Aḥmad Ibn Khallikān, *Wafayāt Al-A’yān*, vol. 3 (Cairo, Egypt: Maktabah al-Nahḍah al-Miṣriyyah, 1948), 354.

completions of the Qur'ān, gatherings of the Sufis, and teaching, to the extent that he was to leave no time void of benefit.”⁵³

One of the often-mentioned criticisms of al-Ghazālī was his lack of expertise in the science of hadith, although he did begin to give it more attention in his later years, to the extent that it was commented, “Were he to live longer he would have surpassed everyone in the field [of hadith] in a very short space of time.”⁵⁴ Al-Ghazālī died in 505/1111, in Ṭabarān, approximately a few days after completing his last work *Iljām al-awāmm ‘an ‘ilm al-kalām*.⁵⁵

The standing of al-Ghazālī in Shāfi‘īte jurisprudence.

The impact of al-Ghazālī upon the Shāfi‘īte school of law was immense. Al-Subkī mentions that he renovated the school (*jaddada al-madhab*), after mastering its legal theory.⁵⁶ Not only was he one of the transmitters of the Khurasan school, his main works were either abridged or commented on by the leading jurists that were to succeed him. The chronology of the works of the school is as follows: we begin with the *‘Umm* of Muḥammad ibn Idrīs al-Shāfi‘ī (d. 204/820) which was abbreviated by his student Ismā‘īl ibn Yaḥyā al-Muzanī (d. 264/878). Al-Juwaynī then gathered all the works of al-Shāfi‘ī, including the abbreviation of al-Muzanī, and called it *Nihāyat al-maṭlab*. Shams al-Dīn Aḥmad ibn Khallikān (d. 681/1282) was in such awe of this work that he remarked, “No work in Islam had been authored of its like!”⁵⁷ Some considered this work just to be a commentary of al-Muzanī’s abbreviation, nevertheless it was considered the most relevant work on Shāfi‘īte jurisprudence at its time. Consequently, al-Ghazālī abbreviated the *Nihāyat* calling it *al-Basīṭ*, which he followed by abbreviating into *al-Wasīṭ*, then again in to *al-Wajīz*. He was also to compose another abbreviated work, *Khulāṣah*, which the likes of al-Sayyid al-‘Alawī believed to be an abbreviation of the *Wajīz* although this is questionable as shall be mentioned shortly.⁵⁸ Abū Qāsim al-Rāfi‘ī (d. 623/1226) then composed his *Muḥarrar* by abbreviating the *Wajīz*,⁵⁹ whilst also producing a commentary

⁵³ Al-Subkī, *Ṭabaqāt al-Shāfi‘īyyah al-kubrā*, 6:210.

⁵⁴ Al-Dhahabī, *Siyar a‘lām al-nubalā’*, 2004, 3677.

⁵⁵ Griffel, *Al-Ghazali’s Philosophical Theology*, 58.

⁵⁶ Al-Subkī, *Ṭabaqāt al-Shāfi‘īyyah al-kubrā*, 6:205.

⁵⁷ Ibn Khallikān, *Wafayāt al-a‘yān*, 2:342.

⁵⁸ ‘Alawī Ibn Aḥmad al-Saqqāf, *Al-Fawā‘id al-Makkiyyah fīmā yaḥtājūhu ṭalabat al-Shāfi‘īyyah* (Cairo, Egypt: Maṭba‘ah Muṣṭafā al-Bābī al-Ḥalabī, 1940), 35. It has been said that the inspiration behind these titles was taken from the exegete al-Wāḥidī, who named his three exegesis the same titles.

⁵⁹ Ebrahim Moosa stated that al-Rāfi‘ī relied upon al-Ghazālī’s *Khulāṣa* for his *Muḥarrar*, contrary to what has been documented among the majority within the Islamic tradition. Al-Bujayrimī stated in his super gloss on the *Minhāj*, “And indeed the *Muḥarrar* is an abbreviation of the *Wajīz*,” Sulaymān Al-Bujayrimī, *Ḥāshiyat al-Bujayrimī ‘alā manhaj al-tullāb* (Cairo, Egypt: Maṭba‘ah Muṣṭafā al-Bābī al-Ḥalabī, 1926), 16. See also Powers, Spectorsky, and Arabi, *Islamic Legal Thought: A Compendium of Muslim Jurists*, 275; Fachrizal A Halim, *Legal*

of the *Wajīz* which he called *al-‘Azīz*.⁶⁰ Yaḥyā ibn Sharaf al-Nawawī (d. 676/1277) then critically abbreviated the *Muḥarrar*, calling it *al-Minhāj*, and also abbreviated the *‘Azīz* which he called *al-Rawḍah*.⁶¹ Hence we see that not only was al-Ghazālī invaluable in communicating the Shāfi‘īte school of law, but he also provided the largest quantity of abridgements by a single jurist. The fact that al-Rāfi‘ī chose al-Ghazālī’s works to either abridge or commentate on shows the immense standing that al-Ghazālī was to assume, indicating that he had to have been considered the Shāfi‘īte jurist of the day for this to occur.⁶² For al-Rāfi‘ī himself was the succeeding master jurist of his school after him, and was instrumental in the final verification of the positions of the school that eventually took place at the hands of al-Nawawī, and he would not have relied upon anyone except who he considered the most reliable from the Shāfi‘īte jurists that preceded him. Likewise, the *Minhāj* became the most widely circulated, commentated on, and studied works in Shāfi‘īte jurisprudence, which is taught till this day, and is basically an abbreviation of an abbreviation of one of al-Ghazālī’s works. Fachrizal A. Halim went as far as to say, “Compared with the juristic achievements of previous scholars, such as al-Ghazālī, al-Nawawī’s personal qualities never replaced those of his predecessors.”⁶³ As for his *Khulāṣah*, this seems to be a direct abbreviation of the *Mukhtaṣar al-Muzanī*, for he begins his work by explaining his motives behind the work. The first being that it was the procedure of Abū Muḥammad al-Juwaynī, the father of his teacher and master Imam al-Ḥaramayn, and for this reason one feels he wanted to follow in his footsteps. The second is that the abbreviation produced by Abū Muḥammad lacked any systematic arrangement and order, making it hard to memorise, and as declared by al-Ghazālī, “And how worthy is the *Mukhtaṣar of al-Muzanī* to be memorised!”⁶⁴ The work itself is also mentioned in his *Ihyā’*, “As for jurisprudence, then it is the abbreviation of that which is comprised within the *Mukhtaṣar al-Muzanī*, may God bestow His mercy upon him, and that is what we arranged in *Khulāṣah al-Mukhtaṣar...*”⁶⁵

Al-Ghazālī and his attitude towards *kalām*

Authority in Premodern Islam: Yahya B Sharaf Al-Nawawi in the Shafi'i School of Law (New York: Routledge, 2014), 67.

⁶⁰ Halim, *Legal Authority in Premodern Islam: Yahya B Sharaf Al-Nawawi in the Shafi'i School of Law*, 67.

⁶¹ Al-Nawawī, *Rawḍat al-ṭālibīn wa ‘umdat al-muttaqīn*, 1:47; al-Nawawī, *Minhāj al-ṭālibīn*, 64; ‘Alī Juma‘ Muḥammad, *al-Madkhal ilā dirāsāt al-madhāhib al-fiqhiyyah* (Cairo, Egypt: Darussalam, 2009), 50–51; Halim, *Legal Authority in Premodern Islam: Yahya B Sharaf Al-Nawawi in the Shafi'i School of Law*, 66.

⁶² Ibn Khallikān, *Wafayāt al-a‘yān*, 3:353.

⁶³ Halim, *Legal Authority in Premodern Islam: Yahya B Sharaf Al-Nawawi in the Shafi'i School of Law*, 37.

⁶⁴ Al-Ghazālī, *Al-Khulāṣah* (Jeddah, Saudi Arabia: Dār al-Minhāj, 2007), 55.

⁶⁵ Al-Ghazālī, *Ihyā’ ‘ulūm al-dīn* (Jeddah, Saudi Arabia: Dār al-Minhāj, 2013), 1:149.

Al-Ghazālī authored several works specific to theology. His first major work seems to be the *Iqtisād fī al-i'tiqād*, moderation in belief, which he composed after his *Tahāfut al-falāsifah* and two works on logic. Hourani mentions that al-Ghazālī stated that “after finishing his *Tahāfut* he hopes to write a constructive work on doctrine, as the present one is critical.”⁶⁶ The work to follow was *al-Risālah al-Qudsiyyah*, a small tract written for the people of Jerusalem, and completed during his period of retirement.⁶⁷ This work was also to be known as *Qawā'id al-aqā'id*, which is one of the segments within one of his chapters of the *Ihyā'*. He elaborated upon the difference between the two and the relevance of the former when he said, after explaining that there are two stations in understanding doctrine, “As for the first of the two stations, which is being cognisant of the evidence for the outward doctrine of this creed, this we have placed within the Jerusalem treatise at a length of about twenty pages, and is one of the sections of *Qawā'id al-aqā'id*, from the book of *Ihyā'*. As for its evidences with additional verification and meticulousness in raising questions and resolving queries, this has been addressed in the book *al-Iqtisād fī al-i'tiqād* at a length of one hundred pages. It is a unique work, encompassing the core of the knowledge of the theologians. However, it has surpassed them in verification, and closer to knocking the doors of gnosis than the customary theological works found in their writings.”⁶⁸ Hence, not only do we find here the method to al-Ghazālī's thinking behind these two works, we also find his acknowledgement and praise for their content at a very later stage in his life.

His final specific work to theology was his *Iljām al-awāmm 'an 'ilm al-kalām*, a seeming warning to the laymen from engaging with the discipline. Regarding his attitude towards *kalām* and scrutinising whether his opinion was consistent throughout, I will begin with looking at what he mentioned about the field in his *Iqtisād*, and then compare it with his later works.

His first major doctrinal treaty, *al-Iqtisād*, although an independent work on theology, was very much an indication of al-Ghazālī's creativity and independent expression found in his use of language and structure. He employed the same arrangement in his *Mustasfā*, leading to Ebrahim Moosa to comment, “The book is structured around the geometrical image of four axes (*quṭb* pl. *aqṭāb*). Although these axes are literally the pivots around which he framed his

⁶⁶ Hourani, ‘A Revised Chronology of Ghazālī's Writings’, 293.

⁶⁷ Hourani, Hourani, ‘A Revised Chronology of Ghazālī's Writings’, 295.

⁶⁸ Al-Ghazālī, *Kitāb Al-Arba'īn fī uṣūl al-dīn* (Jeddah, Saudi Arabia: Dār al-Minhāj, 2020), 88. Hourani states that the work *Kitāb Al-Arba'īn fī uṣūl al-dīn* was composed after the *Jawāhir al-Qur'ān*, which would have been post 499. See Hourani, Hourani, ‘A Revised Chronology of Ghazālī's Writings’, 299.

arguments, the term also suggests that we are in the presence of a transformed Ghazālī.”⁶⁹ Based upon this assertion, I would argue that the intellectual transformation that Moosa is talking about appeared within Ghazali at a relatively early age, since the observations in the *Mustasfā* and the *Ihyā’* which led Moosa to make such a postulation are all found in the *Iqtisād*. Likewise, it cannot be justified that the claim regarding its structure was to provide a glimpse into how his thinking was shaped by aesthetic and moral considerations, due to the fact that his *Iqtisād* was authored prior to his spiritual crisis. The work itself maintained not only the primacy of the science of theology, but also regarded it as a communal obligation. He asserted, “Therefore the most important matter is to investigate the prophet’s testimony, which the mind determined by initial opinion and first reflection to be possible.”⁷⁰ He continued, “It is incumbent upon us, without doubt, to know whether we indeed have a Lord. And if we do, is it possible that He is a sayer in order to command and forbid, assign obligations, and send messengers...The objective of this science is to erect a demonstration for the existence of the Lord (Exalted is He), His attributes, and His acts, and for the truthfulness of the messengers, as we specified in the table of contents. All of this is important and is indispensable for an intelligent person.”⁷¹ Al-Ghazālī then explains that what is obligatory upon mankind is to be resolute in their belief with unwavering conviction, and that anything that achieves this is hence obligatory, which in this case is *kalām*.⁷² Despite this, he acknowledged that the discipline is not for everyone, and that some are even harmed by it, namely the laymen who are firm in their belief without the need for demonstration. He explains, “Their beliefs should not be disturbed. For if these demonstrations are mentioned to them, together with the problems that surround them and their solutions, it cannot be guaranteed that one of these problems would not persist in their minds and control them, or that it would be erased from their minds by what might be presented in the way of a solution.”⁷³

In sum, he is highlighting that if they have attained what they need without *kalām*, then why disturb them with it, since its very role is to enable them to reach their current state. Also, the science of *kalām* itself could raise potential problems that such a lay believer had never thought of previously and perturb him, requiring *kalām* and its solutions to reassure him, which isn’t guaranteed, possibly setting him/her backwards in their path to God. This is the

⁶⁹ Powers, Spectorsky, and Arabi, *Islamic Legal Thought: A Compendium of Muslim Jurists*, 262.

⁷⁰ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 8.

⁷¹ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 9.

⁷² Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 13.

⁷³ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 10.

fundamental message of the role of theology in the thought of al-Ghazālī early in his career. Likewise, some of the assertions towards *kalām* in his *Iqtiṣād* are strictly anthropological. The example of this is his discussion about the jurist and the theologian, to whom is there greater need? He writes, “If one perceives in himself an aptitude for learning jurisprudence or theology, and the region lacks specialists in them, and he does not have sufficient time for mastering both of them, and he requests a decree specifying the one in which he should be occupied, then we would oblige him to be preoccupied with jurisprudence. For the need for it is more common and its applications are more numerous. No one can dispense, in his nights and days, with the aid of jurisprudence. On the other hand, the occurrence of doubts that present a need for the science of theology is rare in relation to jurisprudence.”⁷⁴ Within these few lines it becomes clear that al-Ghazālī is talking in reference to his actual reality. Statements like “the need is more common” and the occurrence of doubts being rare, are not fixed, but can fluctuate, to the extent that one could almost postulate that if al-Ghazālī were alive today he would have mostly certainly revised this statement with the huge rise of atheism and scrutiny towards organised religion, granting preponderance to *kalām* and the theologian. His work *Qawā'id al-'aqā'id* was a basic doctrinal tract, as mentioned, inserted within his *Ihyā'*, very much in conformity with the Ash'arite doctrine, lacking any mention of the positions of other sects, but more of a declaration of what to believe. The work was however an inspiration for the celebrated Ottoman scholar, Kamāl al-Dīn ibn Humām (d. 861/1437), who based his *al-Musāyarah* upon it, although with a few additions.⁷⁵

In his post-*Ihyā'* work, *The Jewels of the Qur'an*, regardless of not being an independent work on theology, he continues in the same vein, extolling the rank of *kalām*. He says, “The highest and noblest is the knowledge of God (may He be exalted), because all other forms of knowledge are sought for the sake of it and it is not sought for anything else. The manner of progression in regard to it is to advance from divine works to divine attributes, and then from divine attributes to divine essence...”⁷⁶ He also elaborates, much like in his *Iqtiṣād*, the need as well as the distinction between the jurist and the theologian. He writes, “The ranks of jurists and theologians are close [to one another]; the need for jurists, however, is more universal, while that for the theologians is much stronger, and both are needed for the well-being of this world. Jurists are needed for the preservation of judgements with regard to the

⁷⁴ Al-Ghazālī, 13–14.

⁷⁵ Kamāl al-Dīn Ibn Humām, *al-Musāyarah fī al-'aqā'id al-munjiyah fī al-ākhirah* (Cairo, Egypt: Maṭba'at al-Sa'ādah, 1928), 2.

⁷⁶ Abūl Quasem, *The Jewels of The Qur'an Al-Ghazali's Theory*, 43.

specialisation of food and women. Theologians are needed for repelling, by argument and dispute, the harm done by heretics in order that their evil may not spread and their harm may not become common.”⁷⁷ Again, we see the prominence al-Ghazālī attaches to the role of the theologian, going as far to say that the need for existence of the theologian in society is greater than that of the jurist. In this instance he actually conflicts with his previous position in the *Iqtiṣād*, confirming what I previously stated, that his postulation in the *Iqtiṣād* was an anthropological assessment and open to change, which seems to have possibly happened by the later stages of his life.

His final work in theology was to also be his final written word before his demise, called *’Iljām al-awāmm ‘an ‘ilm al-kalām*. Despite the title, the work was far more than a warning for laymen in engaging with *kalām*, but rather a notice to everyone other than the erudite theologian, which would include the exegete, grammarian, traditionist, and others as to why they fall into error, and showcasing all the nuances that they are unaware of and yet most fall in to.⁷⁸ It is a treatise on how to approach the ambiguous verses and avoid anthropomorphism. The evidence for this is the content of the work itself, for it would include discussions like whether solitary reports are allowed for communicating doctrine, and whether derivatives of scripturally mentioned words are allowed to be applied to God, all of which he argues are foundational causes for misinterpretation. It is fair to say that this work is not for the laymen at all. Rather, it illustrates where non-specialists in the field have gone astray. He declares, “Indeed he is distant from success he who authors a book in gathering these reports specifically, and prepares for every limb a chapter, effectively declaring: ‘the chapter for the establishment of the head,’ ‘the chapter for the establishment of the hand’ and so on. These are all isolated words, which were professed by the Prophet throughout different occasions, coupled with various contextual clues (*qarā’in*) which enable those listening to understand their meanings correctly. Therefore, when they are mentioned in such a format, altogether, in a manner indicating similarity to the creation of man, the collection of all these isolated reports all at once upon the listener becomes a pivotal contextual clue in emphasising the apparent meaning of the text and implying similarity and anthropomorphism.”⁷⁹ He later continued: “Rather, one word is susceptible to various meanings, however if a second, third or fourth are added from the same genus it becomes weaker and the circle of possibility becomes smaller and reduced

⁷⁷ Abūl Quasem, *The Jewels of The Qur’an Al-Ghazali’s Theory*, 41.

⁷⁸ Al-Ghazālī actually qualifies what he means by “laymen” (*awāmm*), and it is as I have stated. See Al-Ghazālī, *’Iljām al-awāmm ‘an ‘ilm al-kalām*, 71.

⁷⁹ Al-Ghazālī, *’Iljām al-awāmm ‘an ‘ilm al-kalām*, 85.

with each new addition when applied within the group all at once. For this reason, the collection of individual isolated reports is impermissible.”⁸⁰ Al-Ghazālī went on to summarise in this particular work that the sound approach towards understanding these reported annexations within the noble text returns back to several maxims and key principles. From amongst them is the avoidance of uniting the solitary reports and dividing the united, to preserve every expression and detail of these annexations with their original accompanied contextual clues which assist in their understanding, whilst applying the correct hermeneutical tools and principles for understanding. Likewise, the issue of applying derivatives (*mushtaqqāt*) to annexations, al-Ghazālī explains, is unacceptable, since by changing the syntax of a word one can change its significations and possibilities and hence must be avoided.⁸¹ Now this point in particular is very relevant since this could be al-Ghazālī addressing one of his own errors here, for in his *Iḥyā’* he employs the exact example he cites as not to do. So we find him asserting in his *Iljām*, “If God’s statement is revealed as: *istawā*, then it should not be said: *mustawin* and *yastawī*, since the meaning can change.”⁸² As for in his *Iḥyā’*, he says, “And He (God) is *mustawin* upon the throne in the manner in which He revealed,”⁸³ and said, “The eighth is the knowledge that He is *mustawin* upon the throne according to the meaning which He intends...”⁸⁴

In sum, the *Iljām* is not a work for the simpleton in any way, rather it is an explanation to the learned in other disciplines, who al-Ghazālī considers as laymen in theology, of all the procedures that are to be taken when engaging with scripture, whether it be in regard to content or epistemological value.

As for his outlook towards *kalām* in the *Iljām*, he does not deny the relevance and importance of *kalām*, suggesting two methods and giving preponderance to one for good reason. He writes, “If we are fair we do not deny that the need for treatment increases with the increase of illness, and that the passing of time and its distance from the time of prophethood has an effect upon raising [theological] enquiries, and that the treatment is one of two: the first is by delving into elucidation (*bayān*) and demonstration (*burhān*), although what benefits one may ruin two! For the soundness of this method is for the intelligent and astute, and its

⁸⁰ Al-Ghazālī, *’Iljām al-awāmm ‘an ‘ilm al-kalām*, 85.

⁸¹ Al-Ghazālī, *’Iljām al-awāmm ‘an ‘ilm al-kalām*, 83.

⁸² Al-Ghazālī, *’Iljām al-awāmm ‘an ‘ilm al-kalām*, 83.

⁸³ Al-Ghazālī, *Qawā’id al-aqā’id* (Beirut, Lebanon: ‘Ālam al-Kutub, 1985), 52.

⁸⁴ Al-Ghazālī, *Qawā’id al-aqā’id*, 165. Whether this was a mistake of the scribe or a personal correction of al-Ghazālī is unknown, but what seems more likely in my opinion is the latter since Muḥammad ibn Muḥammad Zabīdī (d. 1205/1790), the commentator of the *Iḥyā’*, transmitted the same word without comment. See Ibn Muḥammad al-Zabīdī, *Iḥfā’ al-sādah al-muttaqīn bi sharḥ Iḥyā’ ‘ulūm al-dīn*, (Beirut, Lebanon, Dār al-Fikr, NA.) 2:24–25.

corruption is for the halfwit, and how few are the astute and many are the halfwits! And to give attention to the majority is preferential. The second is the path of the righteous predecessors (*salaf*) in abstaining and remaining quiet, and recourse through physical means, for this is what has convinced the majority even if it did not convince the minority.”⁸⁵ He then ends by asserting, “And if it is the case that one of the methods suits a people but doesn’t for another, then it is obligatory that preponderance is granted to that which benefits the majority.”⁸⁶ Hence leaving it to the judgement of the scholar, after observing the nature of the society in which he is living, that which is best for them, all of which is basically the same observation he made earlier in his career when he wrote the *Iqtisād*. Thus forth, one can postulate with all certainty that al-Ghazālī died with firm belief that *kalām* was a legitimate and acceptable method for formulating doctrine. As for the theological doctrine which he was to die upon, whether Ash‘arite or another, it is very much part of the interest of this thesis, through the medium of the *Mustasfā*.

The chronology of al-Ghazālī’s *uṣūlī* works and his impact upon the future trajectory of legal theory

From reading al-Ghazālī’s writings in *uṣūl* one can build a picture as to the chronological order of his works. His first work, *al-Mankhūl*, was an abbreviation of the legal theory of his master al-Juwaynī, which Tāj al-Dīn al-Subkī stated that he wrote during the life of his teacher.⁸⁷ Al-Ghazālī said at the end of the work, “This is the final statement of the book, and the end of the *Mankhūl min ta’līq al-uṣūl*, after removing unnecessary topics, and verifying every point through rational means, avoiding verbosity, and abiding by that which provides restoration for the thirsty, and limiting one’s self to that which was mentioned by Imām al-Ḥaramayn...”⁸⁸ It seems that this work was composed by a Ghazālī who was still very much in a phase of emulation, whereby we do not see al-Ghazālī’s free thinking and creativity, whether with ideas, terminology or articulation, which was to become so characteristic of him in his later years. Frank Griffel mentioned it as his first work, following the chronology of George Hourani, for the latter mentions that he placed this work first “because this early time of composition is not specified for any other work. But it cannot be proved that no other work belongs to this

⁸⁵ Al-Ghazālī, *Iljām al-awāmm ‘an ‘ilm al-kalām*, 96–97.

⁸⁶ Al-Ghazālī, *Iljām al-awāmm ‘an ‘ilm al-kalām*, 97. This statement is almost a reiteration of what al-Ghazālī mentioned on the same issue just in a more concise fashion in his *Iqtisād*. See *Al-Ghazali’s Moderation in Belief* (Chicago: University of Chicago Press, 2013), 10.

⁸⁷ Tāj al-Dīn Al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā* (Cairo, Egypt: Maṭba‘at al-Ḥalabī, n.d.), 6:225.

⁸⁸ Al-Ghazālī, *Al-Mankhūl fī ta’līqāt al-uṣūl*, 618. It is worth noting here that al-Ghazālī was not to directly mention al-Juwaynī again in any of his *uṣūl* works.

period.”⁸⁹ Despite this, the work was mentioned in his *Mustaṣfā* as an example of his abbreviated works on the topic.⁹⁰ Following the *Mankhūl* was *Shifā’ al-ghalīl fī bayān masālik al-ta’līl*, authored after he had completed *Mi’yār al-‘ilm* in logic.⁹¹ This was an unprecedented work on *qiyās* and how to identify the *ratio legis* of rulings, and all of his later writings on *qiyās* and *ta’līl* were to refer back to it. Bouyges stated that it was composed early in al-Ghazālī’s career presumably between 478 - 488AH⁹² due to its detailed discussions and practical jurisprudential examples found within it, with a higher level of concentration on *qiyās* than the *Mustaṣfā*. It was referenced on several occasions within the latter, recommending the reader to consult it for further clarity and additional detail.⁹³ This was also the case with his *Asās al-qiyās* in reference of the *Shifā’*,⁹⁴ confirming two things: not only was *Asās al-qiyās* one of his later writings, but also the *Shifā’* was considered a point of reference even in his later years. As for *Asās al-qiyās* itself, despite not being mentioned at all by Hourani, it is my estimation that it was one of his later works. It was definitely composed after his *Shifā’ al-ghalīl* due to the reason above, but preceded the *Mustaṣfā* due to the latter mentioning it several times.⁹⁵ However, it mentions his two works in logic, *Maḥak al-naẓar*⁹⁶ and *Mi’yār al-‘ilm*,⁹⁷ his work in *kalām*, *al-Iqtisād fī al-i’tiqād*,⁹⁸ and more importantly *al-Qistās al-mustaqīm*,⁹⁹ which Hourani determined as being of al-Ghazālī’s later works, post *Ihyā’* and *Mishkāt*.¹⁰⁰

Al-Ghazālī also authored his *magnus opus* in *uṣūl*, *al-Tahdhīb*, that was not to reach us, which he also mentions in his *Mustaṣfā*.¹⁰¹ Hourani remarks that it is very hard to set an approximate date for this work but states that it is most likely a product of his early works when he placed much emphasis on legal manuals.¹⁰²

As for the *Mustaṣfā*, it was most definitely one of al-Ghazālī’s final works and subsequent to his *Ihyā’ ulūm al-dīn*, mentioned by Hourani as possibly being completed by as

⁸⁹ Hourani, ‘A Revised Chronology of Ghazālī’s Writings’, 291.

⁹⁰ al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, vol. 1 (Beirut, Lebanon: Dār al-Fikr, na), 4.

⁹¹ Hourani, ‘A Revised Chronology of Ghazālī’s Writings’, 291.

⁹² Maurice Bouyges, *Essai de Chronologie Des Oeuvres de Al-Ghazali (Algazel)* (Impr. catholique, 1959), 18–19.

⁹³ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:290, 299, 342.

⁹⁴ Abu Hamid Al-Ghazālī, *Asās al-qiyās* (Riyadh, Saudi Arabia: Maktabah al-‘Ubaykān, 1993), 60.

⁹⁵ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:37, 2:234, 325.

⁹⁶ Al-Ghazālī, *Asās al-qiyās*, 26, 27, 29.

⁹⁷ Al-Ghazālī, *Asās al-qiyās*, 26–27.

⁹⁸ Al-Ghazālī, *Asās al-qiyās*, 26.

⁹⁹ Al-Ghazālī, *Asās al-qiyās*, 26.

¹⁰⁰ Hourani, ‘A Revised Chronology of Ghazālī’s Writings’, 300.

¹⁰¹ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:4.

¹⁰² Hourani, ‘A Revised Chronology of Ghazālī’s Writings’, 292.

late as 1109, in agreement with Bouyges.¹⁰³ Although al-Ghazālī wrote this work with a lot of freedom and an unprecedented manner, both in arrangement and language, it is a minefield of opinions and ideas of those that were to precede him. It seems that in this work specifically al-Ghazālī avoided attaching names to opinions, especially al-Juwaynī, whom we do not find mentioned once in the *Mustaṣfā*. However, he refers to al-Bāqillānī as ‘*al-qāḍī*’ and at times conflicts with his opinions as with the case of the definition of ‘*ilm*’.¹⁰⁴

The work was to receive much interest, especially from the Mālikite school of law,¹⁰⁵ presumably from the influence of Abū Bakr ibn al-‘Arabī (d. 543/1148) or Muḥammad ibn Rusḥd (d. 595/1198), for the latter in his early years composed an abridgement of the work.¹⁰⁶ However, all the evidence suggests ibn al-‘Arabī as being the key influencer in regards to the interest in his works within the Mālikite school, for he was a student of al-Ghazālī for a period of time, and known to have mentioned many of the works he read with him. Ibn Khayr al-Ishbīlī (d. 575/1179) revealed in his *Fahrasa* that his narration of any works of al-Ghazālī are via the judge Abū Bakr ibn al-‘Arabī.¹⁰⁷ Likewise, when Abū al-‘Abbās al-Ghabrīnī (d. 714/1314), a north African Mālikite scholar, mentioned the *Mustaṣfā*, he narrated it through Ibn Khayr al-Ishbīlī from Ibn al-‘Arabī. Hence its entry and acceptance within the Mālikite school seems to have mainly come through Ibn al-‘Arabī. However, this is not without its problems, since it has been reported that the *Mustaṣfā* was completed by Muḥarram 6, 503AH,¹⁰⁸ and Ibn al-‘Arabī’s last encounter with al-Ghazālī was 495AH.¹⁰⁹ Such a query leaves one of two possibilities: that al-Ghazālī wrote the work twice, with the latter edition maybe even comprising of amendments, or that he was granted a general *ijazah* of the work prior to its completion. Nonetheless, it cannot be said to have been written prior to what has been recorded, since within the *Mustaṣfā* is mention of the work *Kīmyā’ al-sa’ādah*,¹¹⁰ which

¹⁰³ Hourani, ‘A Revised Chronology of Ghazālī’s Writing’s’, 301, Maurice Bouyges, *Essai de Chronologie Des Oeuvres de Al-Ghazali (Algazel)* (Impr. catholique, 1959), 73.

¹⁰⁴ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:24. Al-Ghazālī doesn’t mention al-Bāqillānī specifically in this discussion, however there is no doubt as it is his definition which he is highlighting its frailties, since the very critiqued definition is mentioned in al-Bāqillānī’s *al-Taqrīb wa al-Irshād*.

¹⁰⁵ See Badr al-Dīn Al-Zarkashī, *al-Baḥr al-muḥīṭ*, 3rd ed. (Kuwait: Wazārat al-Awqāf lil Shu’ūn al-Islāmiyyah, 1992), 1:8. Al-Zarkashī also mentions that the *Burhān* of al-Juwaynī also received great interest from the Mālikites, presumably due to his mentorship of al-Ghazālī, and the close proximity of their thought. For there are many instances within *kalām* and *uṣūl* that to understand al-Ghazālī one has to understand al-Juwaynī, as I have postulated within this thesis.

¹⁰⁶ Frank Griffel, ‘The Relationship between Averroes and Al-Ghazali’, *Medieval Philosophy and the Classical Tradition: In Islam, Judaism and Christianity*, 2002, 51–63.

¹⁰⁷ Ibn Khayr al-Ishbīlī, *Fahrāsāt Ibn Khayr Al-Ishbīlī*, 547.

¹⁰⁸ Hourani, ‘A Revised Chronology of Ghazālī’s Writings’, 301.

¹⁰⁹ Abū Bakr Ibn al-‘Arabī, *Sirāj al-murīdīn fī sabīl al-dīn* (Morocco: Dār al-Ḥadīth al-Kittāniyyah, 2017), 4:405.

¹¹⁰ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:4.

as Hourani has stated, “can confidently be assigned to the first period of retirement at Ṭūs,” which would be after 499.¹¹¹

The *Mustaṣfā* was a major inspiration for the *Mahṣūl* of Fakhr al-Dīn al-Rāzī (d. 606/1210), alongside the *Mu‘tamad* of Abū al-Husayn al-Baṣrī (d. 436/1044).¹¹² Similarly, its influence upon al-Āmidī was immense. Moreover, it had a great impact upon the Ḥanbalī school, with one of its celebrated scholars, Muwaffaq al-Dīn ‘Abd Allāh ibn Qudāmah (d. 620/1223), authoring the work *Rawḍat al-nāzir wa jannat al-munāzir*, which barely departed neither from the arrangement nor the content of the *Mustaṣfā*. It was also the first composition to include an introduction of logic subsequent to the introduction, emphasising the role logic was to play in understanding the sciences.

Another work from the *uṣūl* genre was *Ḥaqīqat al-qawlayn*. This work was mentioned and attributed by various authorities to al-Ghazālī but with different titles, yet all suggesting the same content. Both al-Subkī and al-Murtaḍā al-Zabīdī (d. 1205/1790) had the work entitled *Bayān al-qawlayn lil-Shāfi‘ī*, the latter seemingly just following the prior in his choice of title.¹¹³ In *al-Durr al-thamīn*, ‘Alī Ibn al-Sā‘ī (d. 674/1275) calls it *Tawjīh al-qawlayn*.¹¹⁴ However, in the version of the *Mustaṣfā* edited by Ḥamza Ḥāfiẓ, he actually includes a line where al-Ghazālī explicitly mentions the work as *Ḥaqīqat al-qawlayn*, affirming in the footnote that it was mentioned in one of the manuscripts available to him.¹¹⁵ Likewise, Ibn Khallikān in his *Wafayāt al-a‘yān*¹¹⁶ and Jalāl al-Dīn al-Suyūṭī in his work *al-Radd ‘alā man akhlada ilā al-arḍ*, attributes the same title, with the latter citing a statement found in the text.¹¹⁷ This work was most likely written early in his career when he placed a lot of emphasis on jurisprudence and its concomitants, although as far as my knowledge serves me there is no evidence to clarify an exact period. Regarding the work itself, it is not only an effort to explain why al-Shāfi‘ī had two opinions on certain issues, it was also a defence of al-Shāfi‘ī himself, and an explanation of the nature of *ijtihād* and hence falling within the legal theory genre.

¹¹¹ Hourani, ‘A Revised Chronology of Ghazālī’s Writings’, 300. From among the works that were mentioned directly by Ibn al-‘Arabī were the likes of *al-Mankhūl* and *Shifā’ al-Ghalīl*, but he made no mention of the *Mustaṣfā* as being one of the works which he brought back with him. The other possibility is that through correspondence al-Ghazālī later sent him either a copy or an *Ijāzah* as mentioned. See Abū Bakr Ibn al-‘Arabī, *Sirāj al-murīdīn fī sabīl al-dīn*, 4:407.

¹¹² Jamāl al-Dīn Al-Isnawī, *Nihāyat al-sūl fī sharḥ minhāj al-uṣūl*, vol. 1 (Cairo, Egypt: Maktabat Baḥr al-‘Ulūm, N/A), 4.

¹¹³ Al-Subkī, *Ṭabaqāt al-Shāfi‘īyyah al-kubrā*, 225; al-Zabīdī, *Ithāf al-sādah al-muttaqīn bi sharḥ Ihyā’ ‘ulūm al-dīn*, 1:41.

¹¹⁴ ‘Alī Ibn al-Sā‘ī, *al-Durr al-thamīn* (Tunisia: Dār al-Gharb al-Islāmī, 2009), 84–85.

¹¹⁵ Al-Ghazālī, *al-Mustaṣfā* (Medina, Saudi Arabia: N/A, n.d.), 2:22.

¹¹⁶ Ibn Khallikān, *Wafayāt al-a‘yān*, 3:354.

¹¹⁷ Jalāl al-Dīn Al-Suyūṭī, *al-Radd ‘alā man akhlada ilā al-arḍ* (Beirut, Lebanon: Ibn Hazm, 2020), 275.

Chapter Two

***Uṣūl al-fiqh*, its two methods and the relevance of the 5th century**

Uṣūl al-fiqh, as its name suggests, is the foundation upon which *fiqh* is based. Hence, in its absence there would be no *fiqh*, no extrapolation, and no *ijtihād*. Al-Ghazālī writes, “The objective is knowing how to deduce rulings from evidences.”¹¹⁸ He then clarifies that this is the role of the *mujtahid*, which ultimately insinuates that *uṣūl al-fiqh* is the methodology of the *mujtahid*, and the theory by which he reaches his verdicts.

Historically speaking, two paths were to emerge and gain traction concerning the methodology and approach towards *uṣūl*: that of the jurists (*al-fuqahā`*) and the other of what was called the method of the theologians (*al-mutakallimīn*).¹¹⁹ Now, despite what the appellations may insinuate, they were in fact an indication of method and not of who was applying the method. So, the former wasn’t specific to a “jurist” and the latter to a “theologian”, but rather in reference to whoever would apply a particular methodology in achieving his *uṣūl*. Likewise, the method of the theologian wasn’t that the jurist would apply theological discussions within his work, rather it was that he would apply the same approach used in theology within *uṣūl al-fiqh*.¹²⁰ What was this approach? Such an approach is demonstrated in the process of inference. *Uṣūlī* maxims, as in theology, are determined according to what the evidences signify, whether they be linguistic, rational, or scriptural. And this is done without giving much attention to any prior positions. And it is according to this method that the process

¹¹⁸ Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:7.

¹¹⁹ Al-Ghazālī himself employs the term “*Fuqahā`*” several times throughout his *Mustasfā* intending by it the Ḥanafites. See ‘Abd al-Raḥmān Ibn Khaldūn, *al-Muqaddimah*, vol. 3 (Morocco: Khazānat Ibn Khaldūn Bayt al-funūn wa al-Ulūm wa al-Adab, 2005), 18; Zakī al-Dīn Sha‘bān, *Uṣūl al-fiqh al-Islāmī* (Cairo, Egypt: Maṭba‘a Dār al-Ta’līf, 1958), 14–15; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society Cambridge, 1991), 9; Bernard G Weiss, *The Search for God’s Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi* (Michigan: International Institute of Islamic Thought (IIIT), 2010), 20; Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory*, (Atlanta: ISD LLC, 2014), 3.

¹²⁰ The classical distinction between the two methods was contended by George Makdisi, in which he stated that the distinction was based upon the grounds of affiliation to *kalām*. If one was a theologian and was to include theological discussions within his legal theory then he would be classified as of the method of the theologians. If his focus is solely on juristic matters then he is considered to have pursued the method of the jurists. For this reason, he was to classify Abū Ishāq al-Shirāzī (d. 476/1083) as being of the camp of the jurists and not the theologians. However, this argument is flawed by the fact that al-Shirāzī did include theological, even if minute, discussions within his *uṣūlī* works as revealed in this thesis, and clearly continued the arrangement and methodology of the theologians before him like that of al-Bāqillānī. See George Makdisi, *Ibn ‘Aqil: Religion and Culture in Classical Islam* (Edinburgh: Edinburgh University Press, 2019), 76–81.

of deduction occurs, where the *uṣūl* dictates the subsidiary, and is not subservient to it, and this was all inherited from the eponym, al-Shāfi‘ī. Hashim Kamali writes, “Al-Shāfi‘ī was mainly concerned with articulating the theoretical principles of *uṣūl al-fiqh* without necessarily attempting to relate these to *fiqh* itself as a methodologist *par excellence*, he established a set of criteria which he expected to be followed in the detailed formulation of the rules of *fiqh*. His theoretical exposition of *uṣūl al-fiqh*, in other words, did not take into consideration their practical application in the area of the *furū‘*.”¹²¹ Al-Bāqillānī (d. 403/1013) stated,

“And know, may God grant you success, that it is only obligatory to maintain the position of a school because the evidence agrees with it, and not for the sake of its eponym maintaining it. Due to this it is obligatory that the positions of schools should be founded upon evidence and not the opposite.”¹²²

This was also voiced by al-Juwaynī (d. 478/1085) after him,

“It is the right of the *uṣūlist* that he does not depend upon a school or adhere to defending one method, rather he pursues the path of certainty, without paying any attention to the positions of the jurists in positive law.”¹²³

Now, because of the generic nature of this approach and the character of its foundations, it was not specific to one single school of law. This explains why an *uṣūl* work may be authored by an adherent of one school and commented upon by the adherent of another. Hence, we find the *Maḥṣūl* of Fakhr al-Dīn al-Rāzī (d. 606/1209), who was a Shāfi‘īte, commented upon by the Mālikite jurist Shihāb al-Dīn al-Qarāfī (d. 684/1285), the Ḥanafite jurist Muḥammad ibn Ḥasan al-Badakhshī (d. 922/1517) commenting upon the *Minhāj al-wuṣūl ilā ‘ilm al-uṣūl* of al-Bayḍāwī (d. 685/1319), and the Shite jurist Ibn al-Muṭahhar al-Ḥillī (d. 726/1326) commenting upon the *Mukhtṣar* of ‘Uthmān b ‘Umar Ibn al-Ḥājib (d. 646/1249) called *Ghāyat al-wuṣūl wa ṭdāḥ al-subul*. If it wasn’t for the universal nature of this approach there would never have been such an interest and engagement from adherents of other schools.

As for the method of the jurists (*tarīqat al-fuqahā’*), this was specific to the Ḥanafites. What is meant by this is that they would extrapolate the foundations of their law from what they believe to have been the motives and methods behind the rulings of their leading figures when performing their *ijtihād*. Hence their source material for such an endeavour is the positive law that had been transmitted to them and received from these figures.¹²⁴ The justification for

¹²¹ Kamali, *Principles of Islamic Jurisprudence*, 1991, 9.

¹²² Abū Bakr Al-Bāqillānī, *al-Taqrīb wa al-irshād* (Beirut, Lebanon: Muassasat al-Risālah, 1998), 305.

¹²³ ‘Abd al-Mālik b. ‘Abd Allāh al-Juwaynī, *al-Burhān fī uṣūl al-fiqh* (Beirut, Lebanon: Dār al Kutub al-Ilmiyyah, 1997), vol.2, 213.

¹²⁴ Zysow, *The Economy of Certainty*, 2014, 3; Sha‘bān, *Uṣūl al-fiqh al-Islāmī*, 14–15.

their actions is due to them never receiving from their eponym or any of his early colleagues any written work on the field of *uṣūl* and his theory of law.

Major works prior to the *Mustaṣfā*

The focus of this study, the *Mustaṣfā*, is an *uṣūlī* work according to the method of the theologians, and continuing the tradition of works on the topic. However, before analysing its importance and influence, we will first look at the key works that were to precede it, since such works were undoubtedly of great inspiration for al-Ghazālī, providing him with many of his central ideas and discussions, even if by way of critique.

One of the most apparent and earliest extant works that influenced so many after it was the *Taqrīb wa al-irshād* by al-Bāqillānī. Yet, despite Badr al-Dīn al-Zarkashī (d. 794/1392) highlighting the importance of al-Bāqillānī and his influence,¹²⁵ there was another major figure prior to al-Bāqillānī whose work is with us today and is extremely important for one to gain an understanding of the stages of the *uṣūlī* development. This work, *al-Fuṣūl fī al-uṣūl* by Abū Bakr al-Jaṣṣāṣ (d. 370/942), despite being of the method of the jurists, had particular importance, for not only did it give great insight to the nature of the discussions at such an early period, but we also find the insertion of theological discussions within an *uṣūl* text. Issues like the legal responsibility of the disbelievers, and a critique of ‘Abd Allah al-‘Anbarī (d. 168/785) concerning some of his views regarding justice, coercion, monotheism and anthropomorphism are all found in this text.¹²⁶ The importance of the *Fuṣūl* also lies in the fact that it is the first extant work to comprise all the chapters of *uṣūl*, contrary to the opinion of the editor *al-Taqrīb wa al-irshād* who believed this accolade belonged to al-Bāqillānī.¹²⁷ In spite of the lack of immense detail, it was becoming noticeable that by the time of al-Jaṣṣāṣ, the *uṣūlī* manual was a platform for theological discussion.¹²⁸ The question that is pertinent to this study, however, is why was this the case and what type of theological topics were being discussed? Were they just random topics, or did they have a recognisable relation to the *uṣūlī* discourse? This will be expounded in the coming chapters, where the central theological discussions within the *Mustaṣfā* will be identified and examined.

¹²⁵ Al-Zarkashī, *al-Baḥr al-muḥīṭ*, 1992, 6.

¹²⁶ Abū Bakr al-Jaṣṣāṣ, *al-Fuṣūl fī al-uṣūl* (Qatar: Wazārat al-Awqāf wa al-Shu‘ūn al-Islāmiyyah, 1994), 4:375.

¹²⁷ Al-Bāqillānī, *al-Taqrīb wa al-irshād*, 102; Bedir, Murteza. "8. al-Jaṣṣāṣ (d. 370/981)." In *Islamic Legal Thought*, pp. 147-166, Leiden: Brill, 2013.

¹²⁸ Hence this fusion cannot be awarded to al-Bāqillānī as suggested by Aḥmad al-Raysūnī. See Aḥmad Al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (Herndon, USA: The Other Press, 2006), 10.

Al-Bāqillānī had a great influence upon the future generations. Not only were his works to serve as a minefield of opinions of previous illustrious names like Abū al-Ḥasan al-Ash‘arī himself, but they were warmly received by the next generation with full belief that he was correctly communicating the doctrine of the eponym and the previous generations. For this reason, al-Juwaynī, who was considered the most influential *uṣūlī* of the succeeding generation, abbreviated the *Taqrīb* of al-Bāqillānī in his celebrated work *al-Talkhīṣ*.¹²⁹ As for the *Fuṣūl*, there is little doubt that it performed an important role in the development of *uṣūl al-fiqh*, yet it was still very raw in its treatment of its material, with the impact of logic and *kalām* yet to leave its mark. It was, rather, a stepping stone towards the eventual maturity of the discipline. It was a product of its age, reflected in the arrangement of its chapters which would not be repeated or followed in the succeeding century and thereafter. Not only was the arrangement of *uṣūl* texts modified, but also an epistemological introduction was added, with everything discussed clearly defined. This was all the consequence of growing significance of logic. No such introduction can be found in the *Fuṣūl*, nor any discussion about the clear function of *uṣūl*, its linguistic and legal meaning, or the definition of knowledge, its reality and nature.¹³⁰ The introduction (*muqaddimah*) that was to become a common theme within *uṣūlī* texts, in which the opening chapters discuss the general principles of knowledge, what it is, and how it is achieved, was seemingly first initiated by al-Bāqillānī. He mentioned in his *Taqrīb*, “One will not reach the details of the realities of information except after knowing what are sciences, their divisions, ranks and the difference between them and that which is not of them, so that the one speaking about such sciences may truly know that he is indeed knowledgeable about what he

¹²⁹ The legacy of Abū Bakr al-Bāqillānī was to leave an immediate impact not just upon his fellow Ash‘arites, but also upon *uṣūlists* of contending denominations, specifically the Ḥanbalites. This is most apparent in the work *al-Uddah fī uṣūl al-fiqh* by the celebrated Hanbalite Abū Ya‘lā al-Farrā’ (d. 458/1066). Bearing in mind that this was an individual regarded by ‘Abd al-Raḥmān Ibn Jawzī (d. 597/1201) as someone who brought shame upon the Ḥanbalite school due to his anthropomorphic interpretations, his work was replete with quotations of al-Bāqillānī and theological discussions. He begins the *Uddah* with a chapter on definitions much like al-Bāqillānī, defining the likes of *‘ilm*, *dalīl*, *naẓar* and the like, just as al-Bāqillānī, and he wastes no time in quoting al-Bāqillānī very early on in his manual (Abū Ya‘lā al-Farrā’, *al-Uddah fī uṣūl al-fiqh*, vol. 1 (Beirut, Lebanon: Dār al-Kotob al-Ilmiyah, 2002), 21). In fact, in his definition of *‘ilm* he uses precisely the selected definition of al-Bāqillānī, regarding it as the soundest (al-Farrā’, 1:22). In the same section he alludes to a very intricate debate about how *al-shay’* can only be existent, whereas the *ma‘lūm* is more general in that it includes the existent and non-existent (al-Farrā’, 1:22). This discussion is of a very theological nature, countering the postulations of the Mu‘tazilites that *al-shay’* includes the existent and non-existent. Likewise, he also addresses within the work whether disbelievers are included within a command, (al-Farrā’, 1:238) and whether it is connected to the non-existent (al-Farrā’, 1:257).

¹³⁰ The limited incorporation of theological discussions and logical postulates were not confined to the *Fuṣūl*, but seems to have been a characteristic of the method of the jurists. This was only to change at a much later date, where there seemed to have been an acceptance by the Ḥanafites as to the method of the theologians and eventually depart from their customary approach.

speaks and that the affair is known to him.”¹³¹ Hence, al-Bāqillānī in this instant is not only justifying why he has written the succeeding chapters but is also engraining within the reader a methodology: that in order for one to clearly know about something he must first identify the universal methods by which one establishes what he knows.¹³² This is applicable to any science. For this reason, the notion that “*uṣūl al-fiqh* was born as a common source methodology for deriving accurate and normative religious knowledge and filtering those that are not” is indeed an accurate assessment.¹³³ In short, it is the methodology of the Muslim scholar applied throughout the disciplines. The reception of the *Taqrīb*, its arrangement and content, was so emphatic that within less than a century it was to become the model for all future works written on the topic. This was clearly noticeable in the works of Abū Ishāq al-Shirāzī (d. 476/1083) and of ‘Abd al-Malik al-Juwaynī (d. 478/1085) after him, for not only do we find very similar chapter arrangements but also definitions coined by al-Bāqillānī and adopted by them both. A standout example of this is the definition of knowledge, the means to reach it, and the process of evaluation. Al-Shirāzī in his *Luma* ‘ and al-Juwaynī in his *Waraqāt*, which is considered a primer and void of any theological discussions, both recognised the importance of this introduction and approach to the extent that they felt the need to introduce these concepts to beginners, in order that they become accustomed to thinking in a methodological manner. Subsequently, it became a custom amongst the *uṣūlīs* which continued all the way to *Jam‘ al-Jawāmi‘* of Tāj al-Dīn al-Subkī (d. 771/1370).¹³⁴ Al-Juwaynī, much inspired by al-Bāqillānī, and after completing his abbreviation of the *Taqrīb*, *al-Talkhīs*, authored his very own masterpiece in legal theory, *al-Burhān*, named by Tāj al-Dīn al-Subkī as ‘the riddle of the Muslim community’ due to its intricacies and topics of discussion.¹³⁵ This was not the only significance to the work. ‘Abd al-‘Azīm al-Dīb explained, “Additionally, the *Burhān* has preserved for us the theoretical legal opinions of a group of scholars whose past works have been lost amongst whatever else has vanished from our tradition. An example of this is that he illustrates the opinions of the judge Abū Bakr al-Bāqillānī in every issue

¹³¹ Al-Bāqillānī, *al-Taqrīb wa al-irshād*, 173.

¹³² This was to be later known in traditional circles of learning as *al-Mabādi‘ al-‘ashra*. See MAS Abdel-Haleem, ‘Early Islamic Theological and Juristic Terminology: Kitāb al-Ḥudūd fi’l-Uṣūl, by Ibn Fūrak’, *Bulletin of the School of Oriental and African Studies* 54, no. 1 (1991): 5–41, and Harun Verstaen, *Principles of Islamic Studies* (UK: Bayt ul-Hikmah, 2022).

¹³³ Ahmet Temel, ‘The Missing Link in the History of Islamic Legal Theory: The Development of Uṣūl al-Fiqh between al-Shāfi‘ī and al-Jaṣṣāṣ during the 3rd/9th and Early 4th/10th Centuries’ (Santa Barbara, USA, University of California, PhD thesis, 2014), 46.

¹³⁴ The importance of the *Jam‘ al-Jawāmi‘* is that it was the summation of the major works that preceded, as mentioned by its author, and is still studied until this day at the majority of Sunni institutions.

¹³⁵ Tāj al-Dīn al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā* (Cairo, Egypt: Maṭba‘a al-Ḥalabī, n.d.), 5/192.

approximately, although nothing has reached us concerning his books in legal theory.”¹³⁶ He continues, “What we know is that nothing from the books of *Ahl al-Sunnah* has reached us in *uṣūl al-fiqh*, which were compiled as to the methodology of the theologians prior to the *Burhān* save for the foundation for them all, namely the *Risālah* of al-Shāfi‘ī. As for he who examines the *Burhān* he notices the names of the prestigious scholars; al-Shāfi‘ī, al-Ash‘arī, al-Bāqillānī, Ibn Fūrak, al-Isfarāyīnī, al-Daqqāq, al-Ṣayrafī, Dāwūd, his son, al-Ḥalīmī, al-Ḥārith b. Asad, Mālik, Abū Ḥanīfah, and many others. When we come across these names glistening in the rays of the *Burhān*, Imām al-Ḥaramayn narrates their opinions, citing them as evidence, or debating and rebutting them.”¹³⁷ This was then transferred to his student al-Ghazālī.¹³⁸

It is really in the fifth century where manuals of *uṣūl* became comprehensive and acquired a fixed mould that would be replicated thereafter. It was the period where we find the aftermath of the *Taqrīb*, a time when many influential works appeared, particularly at the hands of Ash‘arite *uṣūlīs*, but not exclusively. One of the standout works of this period was the *Mu‘tamad* of Abū al-Ḥusayn al-Baṣrī (d. 436/1044), the Mu‘tazilite theologian. This work had an immense impact upon the method of the theologians, regardless of their theological disposition, within the discipline of *uṣūl al-fiqh*. Jamāl al-Dīn al-Isnawī (d. 772/1370) in his commentary on the *Minhāj* of al-Bayḍāwī said when highlighting the chronological order of the works that preceded it, “And know that the author (al-Bayḍāwī), May God bestow His mercy upon him, based this work on the *Ḥāṣil* of Tāj al-Dīn al-Armawī, which was based upon the *Maḥṣūl* of al-Rāzī. And the *Maḥṣūl* is based upon two works which he hardly departed from in most cases; the *Mustaṣfā* of al-Ghazālī, and the *Mu‘tamad* of Abū al-Ḥusayn al-Baṣrī, to the extent that I have noticed that he has transmitted from them a page or close to it verbatim, and the reason being – as has been said - that he had committed both works to memory.”¹³⁹

¹³⁶ ‘Abd al-‘Azīm Al-Dīb, *Fiqh Imām al-Ḥaramayn* (Lebanon: Dār al-Minhāj, 2013), 544–45.

¹³⁷ Al-Dīb, *Fiqh Imām al-Ḥaramayn*, 544–45.

¹³⁸ During this era one can begin to see a custom forming among the scholars, namely that early in their careers they would write commentaries or abbreviations of their teachers or eponyms prior to engaging in independent authorship where they would express their own ideas and even oppose positions with their teachers. Examples of this can be found in the *Maqālāt* of Ibn Fūrak, where he details the positions of the eponym, al-Ash‘arī, Abū al-Ḥusayn al-Baṣrī in his *Sharḥ al-‘Umad* where he commentates upon the work of his teacher ‘Abd al-Jabbār only to follow it with his *Mu‘tamad*, al-Juwaynī with his *Talkhīs* followed by his *Burhān*, and al-Ghazālī with his *Mankhūl* only to be followed by his *Mustaṣfā* later in his career.

¹³⁹ Al-Isnawī, *Nihāyat al-sūl fī sharḥ minhāj al-uṣūl*, 1:4. Adopting arrangements of fellow scholars from different orientations is not foreign within the Islamic scholarly tradition. An example can be found with the *Tamhīd fī uṣūl al-Fiqh* by the Ḥanbalite jurist al-Kalūthānī (d. 510/1159) who seemingly based it upon the order of Abū al-Ḥusayn al-Baṣrī’s *Mu‘tamad*. Prior to his chapter on commands, he opens with a discussion about the order of *uṣūl al-fiqh*, justifying his choices much like al-Baṣrī. See Maḥfūz b. Aḥmad Al-Kalūthānī, *al-Tamhīd fī uṣūl al-fiqh*, vol. 1 (Jeddah, Saudi Arabia: Dār al-Madanī, 1985), 121.

Within the statement of al-Isnawī we find no mention of the *Taqrīb*. The possible reason for this is that the *Taqrīb* preceded these works to the extent that it was considered of the generation prior to al-Ghazālī and Abū al-Ḥusayn despite both their works having been greatly impacted by the *Taqrīb*. It may also have been due to the fact that the likes of al-Ghazālī had not only sufficiently developed the discipline, but also critiqued some of the positions of the *Taqrīb* which the later generations may have seen as justified, hence placing more emphasis on the *Mustaṣfā* and its like. Similarly, these two works contained detailed discussions and justifications for their practical content arrangement which would have opened up debates as to the soundness of their choices. Both the *Mu'tamad* and *Mustaṣfā* had their own voice. As for the author of the *Mu'tamad*, at the opening of his work he revealed his justifications, highlighting in detail the motivations for its composition. For he said,

“That which has driven me to compose this work in *uṣūl al-fiqh*, - after my commentary on the book *al-‘Ahd*,¹⁴⁰ plummeting in to great depths of inquiry in the process, in which I pursued in my commentary the arrangement of the book, observing the order of its chapters, repeating any of its issues, and commentating on chapters that had no relation to *uṣūl* from the intricate matters of *kalām*. This can be found in the division of sciences, the definition of the inherent (*ḍurūrī*) and attained from amongst them, and how investigation produces knowledge - I wished to write a work whose contents are arranged in a way that there is no repetition, and avoid mentioning within it anything that has no relation to *uṣūl* like the complex points of *kalām*, since this belongs to another discipline, and it is impermissible to contaminate *uṣūl* with it, even if it is concomitantly connected but in a distant way.”¹⁴¹

Al-Ghazālī began his *Mustaṣfā* in similar vein, justifying his choices, placing particular emphasis on his inclusion of *kalām*. He first explains why some legal theorists mentioned in great detail theological matters in legal theory,

“The sole reason why the *mutakallimīn* amongst the *uṣūlists* were excessive in their mention of theological postulates is due to the dominance that *kalām* was to have upon their nature, whereby the love of the discipline drove them to include it within another. This is just like love of language and grammar drove other legal theorists to synthesising sections of grammar with *uṣūl*.”¹⁴²

¹⁴⁰ The majority of later works indicate that this was an error, possibly by the scribe, and is in fact *al-‘Umad*, as is mentioned throughout the book itself.

¹⁴¹ Abū al-Ḥusayn al-Baṣrī, *Kitāb Al-Mu'tamad*, vol. 1 (Damascus: al-Ma'had al-‘Ilmī al-Faransī lil-Dirāsāt al-‘Arabiyyah, 1964), 7.

¹⁴² Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:10.

Let it be clear that al-Ghazālī is in no way negating the relevance of *kalām* within legal theory just like he is not negating the significance of mentioning grammar either. He is highlighting the phenomenon of why some works have a greater influx of these discussions than others. The reason I say this is firstly because prior to this statement al-Ghazālī stresses the universal importance of *kalām* and its need by all practitioners of other disciplines. Secondly, al-Ghazālī includes linguistic discussions, despite excluding the particles of meaning, because its inclusion was relevant. If it was not, and he really did have a passion for language, then according to his own statement he would have included the ‘particles of meaning’ also. This understanding is substantiated further by the author himself a few lines later when he states, “As for mentioning the proof and evidence of knowledge and circumspection to those that deny it, this is inserting *kalām* into *uṣūl*, just as mentioning the evidence of consensus, analogy, and the solitary report in the books of positive law is dragging *uṣūlī* discussions into subsidiary law.”¹⁴³ Al-Ghazālī is clearly illustrating here the parameters of relevance and irrelevance, for in the preceding line he explained why the *mutakallimīn* would be excused for defining knowledge, circumspection, and evidence in *uṣūl*, but not its proofs, “Because the definition cements within one’s self the apprehension of these things,” unlike mentioning its proofs which are discussions of other disciplines. Another interesting similarity between these two works is their elucidation as to their choice of arrangement and order of contents. They both seemed to have felt compelled to justify why they arranged their contents in the manner in which they did, signifying a particular relevance that in my opinion was to impact the trajectory of the path of the theologians and act as one of the indicants as to the standing of works within the succeeding centuries of Islamic scholarly society.¹⁴⁴ Thus it should come as no surprise that ‘Abd al-Raḥmān Ibn Khaldūn (d. 808/1406) mentioned these two works in particular as being the foundation for all works to come of this particular method.¹⁴⁵

The relevance of arrangement and definition

The importance of content arrangement and definition of key concepts cannot be underplayed, due to their relevance in indicating the influence early works had upon the successors and interactions between differing camps. An example can be found in the work of one of the

¹⁴³ *Ibid.*

¹⁴⁴ Other indicants would include terminology, commentaries, abridgements and their like.

¹⁴⁵ ‘Abd al-Raḥmān Ibn Khaldūn, *al-Muqaddimah*, vol. 3 (Morocco: Khazānat Ibn Khaldūn Bayt al-funūn wa al-‘Ulūm wa al-Adab, 2005), 18.

influential Ḥanafite scholars and of the “method of the Jurists” camp, where we find Fakhr al-Islām ‘Alī al-Bazdawī (d. 482/1089) in his *Uṣūl*, departing from the arrangements of the Ḥanafite *uṣūlists* before him like Nizām al-Dīn al-Shāshī (d. 344/955) and al-Jaṣṣāṣ, and beginning his work with the key theological positions of the eponym, Abū Ḥanīfah.¹⁴⁶ He then followed this up with a general discussion about *uṣūl* related terms and specific expressions before introducing an independent chapter about knowledge of rulings pertaining to the specific (*ma‘rifat aḥkām al-khusūṣ*) which he followed with the chapter of commands (*amr*). His discussion about the general and specific (*al-‘āmm wa al-khāṣṣ*) would appear again in a later exclusive chapter, however it is his decision to place the discussion about commands and prohibitions prior to that of the general and specific, language and particles of meaning (*ḥurūf al-ma‘ānī*), and the division of prophetic reports (*aqsām al-sunnah*) and abrogation (*naskh*), which suggests a possible external influence due to its similarity in layout to that of the methodology of the theologians. Al-Jaṣṣāṣ, on the other hand, mentioned commands and prohibition after general and specific expressions and followed it with abrogation and then reports. Al-Bazdawī, like both al-Bāqillānī and al-Shīrāzī, placed abrogation after reports, based on the understanding that it was inclusive of the two. Consequently, it would not be farfetched to assert that al-Bazdawī was inspired to a certain degree by the methodology of the theologians in his arrangement of content and had at least been exposed to some of their works.

The *Taqrīb* of al-Bāqillānī was very exact in its arrangement and composition, differing greatly from the *Mu‘tamad* of Abū al-Ḥusayn al-Baṣrī (d. 436/1045), with the former appearing to be a lot more systematic, especially in his definition of concepts. From the extant works in our possession, it is safe to say that the *Taqrīb* was the first work to place a high degree of emphasis upon definition. However, by virtue of the fact that he also criticises definitions of others it must have become widespread during his age - a time when logic began to play a pivotal role in all disciplines, and the focus upon definition elevated. Similarly, in the *Luma‘*, al-Shīrāzī remained very close to the arrangement and methodology of the *Taqrīb*, beginning with the definition of knowledge and *uṣūl al-fiqh* and then discussing the nature of speech. Notwithstanding, there were a few variances to appear thereafter like the placement of ‘the signification of the actions of the Prophet’ which al-Bāqillānī placed prior to ‘reports’ and ‘abrogation’ whereas al-Shīrāzī placed it between the two. Abū al-Muzaffar al-Sam‘ānī (d. 489/1096), on the other hand, did not differ with al-Bāqillānī’s arrangement in any way.

¹⁴⁶ Al-Bazdawī Fakhr al-Islām ‘Alī, *Uṣūl Al-Bazdawī* (Cairo, Egypt: Dārussalam, 2021), 89–90.

It is only when we reach the *Mustaşfā*, and the discipline of *uṣūl* falls in the hands of this incredibly innovative systematic thinker, that we see developments in its arrangement. Unlike in his *Mankhūl*, we find in the *Mustaşfā* the independent Ghazālī. The Ghazālī that was not only more tolerant of opposing positions but had also reached such a standing in the field that he was now in a position to critique and a pioneer. This was not the first time that al-Ghazālī had strayed from the norms of content arrangement, for in his theological work *al-Iqtīṣād fī al-i'tiqād* we see a departure in arrangement that is manifest throughout some of his other key works. The idea of the four axes (*aqtāb*), which is also found in his *Ihyā' 'Ulūm al-Dīn*, consist of the four major proponents about which the discipline in discussion revolves. In the *Iqtīṣād* it was the Essence of God, the Divine Attributes, the Acts of God, and Prophethood, and in his *Ihyā' 'ulūm al-Dīn*, it was the quarter of worship, the second the quarter of customs, the third the quarter of destroyers, and the fourth the quarter of saviours.¹⁴⁷ As for the *Mustaşfā*, he also introduced the same concept of arrangement and division, and this was to leave a noticeable impression upon the later generations. Regarding the layout, it mirrored the *Iqtīṣād* where he had labelled the four main axis “*aqtāb*” and were preceded with introductions. The same was to occur in the *Mustaşfā*, with the *aqtāb* revolving around four significant areas, which al-Ghazālī analogously compares to a tree. The first axis is the fruit (*thamarah*) which is synonymous to the ruling (*hukm*), the second the evidences which he calls the ‘*muthmir*’, indicative of it being the cause for the ruling. The third is the ‘*istithmar*’, which is related to everything affiliated with the signification of words, and the fourth was the ‘*mustathmir*’, which covered everything related to the *mujtahid*. The concept of these four axes was to impact and alter the placement of key discussions which previously, among the majority, had fixed locations. This is specifically noticeable in the discussion of abrogation (*naskh*) and analogy (*qiyās*). In his *Mankhūl*, both of these topics were located in their customary place: *naskh* after reports and *qiyās* after consensus. However, with his innovative new arrangement this was all

¹⁴⁷ Ebrahim Moosa argues that the term “*quṭb*” suggests that we are in the presence of a transformed Ghazālī, and that past experiences alongside his aesthetic and moral lifestyle were to shape his thinking (Powers, Sectorsky, and Arabi, *Islamic Legal Thought: A Compendium of Muslim Jurists*, 261–62.). If this were to be the case, then how can we explain the same term and arrangement in the *Iqtīṣād*, and where would we situate it in his chronology of works? If what Moosa has postulated is indeed true then the *Iqtīṣād* was composed after 488. Bouges believed the work to have been composed in Baghdad (*Essai de Chronologie Des Oeuvres de Al-Ghazali (Algazel)* (Impr. catholique, 1959), 34), and Hourani, although unsure, states, “It is hard to believe that this prosaic piece of *kalām* was one of the first products of his new life as a sufi,” (“A Revised Chronology of Ghazālī’s Writings”, *Journal of the American Oriental Society*, 1984, 294). To counter this, and in defence of Moosa and his assertion, I would firstly argue that there is no contradiction between being a sufi, pursuing an ascetic life, and writing a work on theology, since he wrote a theological tract in his *Ihyā'*, and also praised *kalām* in his many of his later works including his *Munqith min al-Dalāl* and *Mustaşfā*. Secondly, I think it is highly doubtful that Hourani was aware of the signification that the term “*quṭb*” was to have as a chronological clue, its presence in the *Iqtīṣād* and its possible ramifications. If Hourani was aware of this perhaps it would have led him to an alternative conclusion.

to change; the placement of abrogation was now located directly within the discussion of the Divine Book, and prior to reports. Al-Ghazālī's justification was found in the fourth discussion regarding the rulings of the Qur'ān, for he stated,

“As for abrogation, the custom was that it is mentioned after the chapter of reports, since abrogation is applicable to them both. However, we have mentioned them here for two reasons: the first being its conundrum and ambiguity in terms of its occurrence in the Divine speech with the impossibility of the concept that God realised that a ruling was better than a previous one and changed His mind (*al-badā' 'alayh*). The second is that the discussion about reports is lengthy due to its connection with knowledge of the types of transmission, the mass-transmitted and the solitary, thus we deemed that its mention directly after the rulings of the Divine Book to be preferred.”¹⁴⁸

Hence, from the aforementioned statement we understand that al-Ghazālī recognised a theological justification as to why *naskh* needed to be mentioned within the discussion of the Divine Book alongside a practical one, signifying the importance he was to attach to *kalām* in that it was to have a bearing even on his decisions pertaining to arrangement. As for the placement of *qiyās*, he included it within the signification of words. For he said, “A word either signifies a ruling with its external form and order, its explicit and implicit meaning or its rational meaning which is extrapolated and called *qiyās*. Thus, such is of three kinds of disciplines: the external meaning, the implied, and the rational meaning.”¹⁴⁹ Consequently, al-Ghazālī placed *qiyās* within the rational meanings behind words, and it was due to this novel outlook that al-Ghazālī altered the presence of *qiyās* and included it within the significations of words. The section which he described as being ‘the pillar of *uṣūl*’.¹⁵⁰

Al-Ghazali also differed greatly with the *Taqrīb* and the *Luma'* in his placement of “linguistic discussions”, “commands and prohibitions”, “general and specific” and “actions of the Prophet”. Prior to him there was almost a silent agreement that these discussions were to be found at the beginning of the *uṣūl* manual, with the exception in the *Luma'* being “actions”, which he delayed. It seems to me that al-Ghazālī's reasoning behind the delay is the same reasoning why others believed abrogation should be mentioned after reports, namely because the subtleties of language were very much related to them both. Now although al-Ghazālī disagreed with the *Taqrīb* in his exact placement of “linguistic discussions”, “commands and

¹⁴⁸ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:107.

¹⁴⁹ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:316–17.

¹⁵⁰ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:315.

prohibitions” and the “general and specific”, he did agree with al-Bāqillānī that they should all be mentioned in the same sequence when mentioned. Despite this, some of the arrangements of al-Ghazālī bewildered later commentators like Jamāl al-Dīn Ibn Rashīq (d. 632/1235), for he said at the beginning of the discussion of legal causes, “Abū Ḥāmid (al-Ghazālī) placed this discussion in this section despite it being necessary to be brought in the second section as it is from among that which produces rulings.”¹⁵¹ Similarly, Najm al-Dīn al-Tūfī when critiquing the arrangement of Muwaffaq al-Dīn Ibn Quḍamah’s (d. 620/1223) *Rawḍat al-nāẓir*, explained that he should have mentioned the linguistic discussion at a more advanced stage since the understanding of the divine address is dependent upon it. Yet he excuses him due to the author emulating al-Ghazālī, so the critique is really directed at al-Ghazālī and his *Mustaṣfā*.¹⁵² Due to opposing considerations, many of the succeeding generations did not agree with or observe his placements, with possibly his most notable divergence from the norm being his placement of *qiyās* in linguistic discussions. It is actually this placement that strongly indicates the impact it had upon the *Rawḍat al-nāẓir*, and is the strongest evidence that its author, Ibn Quḍamah, was heavily influenced by the *Mustaṣfā* during his writing process.

In the time between the *Taqrīb* and the *Mustaṣfā*, some works of an abbreviated format began to circulate. The *Luma* ‘by al-Shīrāzī is an intermediate size work which in many respects is similar to the *Waraqāt* of al-Juwaynī, although with more expansive discussions in that it functions as a bridge or the next reading after a primer (like the *waraqāt*). Its relevance is that it is almost an abbreviation of the *Taqrīb* of al-Bāqillānī in its arrangements, and vital for the transmission of the methodology of the theologians, although al-Shīrāzī clearly displays that he was not one to simply emulate, possessing personal opinions and even retracting old ones he previously held in his *Tabṣirah*.¹⁵³ His personal opinions were also to manifest in his arrangement of his work with ‘abrogation’ being mentioned within the discussion of ‘the signification of words’ which then was followed by ‘particles of meaning’ and then the ‘actions of the Prophet’. In the *Taqrīb* however, abrogation was mentioned after ‘actions of the Prophet’ and ‘reports’, and this exact placement of ‘abrogation’ was also employed by al-Ghazālī in his *Mustaṣfā*. The impact of the *Taqrīb* was resounding. Al-Bāqillānī’s introductory discussion in which he defines knowledge, evidence, and terms became a mainstay within *uṣūl* works and even crossed over into the method of the jurists.

¹⁵¹ Jamāl al-Dīn Ibn Rashīq, *Lubāb al-maḥṣūl fī ‘ilm al-uṣūl* (Damascus, Syria: Dār al-Nawādir, 2012), 1:331.

¹⁵² Najm al-Dīn Sulaymān al-Tūfī, *Sharḥ mukhtaṣār al-rawḍah* (Damascus, Syria: Mu’assasat al-Risālah, 2014), 98.

¹⁵³ See Abū Ishāq Al-Shīrāzī, *al-Tabṣirah fī uṣūl al-fiqh* (Beirut, Lebanon: Dār al-Fikr, 1980), 282, 285, 450.

The impact of the *Mustaṣfā* upon the *Maḥṣūl*, the *Minhāj*, and the *Iḥkām* and future trajectories¹⁵⁴

After the *Mustaṣfā*, it was the considerations of content arrangement that were to cause the most division within the manuals of *uṣūl*, influencing the manifestation of two trajectories, found within two key works: the *Maḥṣūl* and the *Iḥkām* of Sayf al-Dīn al-Āmidī (d. 551/1233). For none of these works differed greatly with each other in terms of content. Following these two works, the main focus was upon their commentaries and abbreviations, **ostensibly** because the science of legal theory had reached such a high level of maturity, with the majority of topics being academically exhausted.¹⁵⁵ In regards to arrangement, the *Iḥkām*, despite following the conventional way of placing abrogation (*naskh*) after the discussion of reports (*khābar*), did emulate the *Mustaṣfā* in the majority of its arrangements. The most glaring example being its placement of *qiyās* within the discussion of linguistic significations, and the other more general commonality was the choice of topics found in the two major segments which the author divided the work into. The first began with definitions of *uṣūl al-fiqh* and linguistic discussions which were followed by the discussion about rulings. The second was about what constitutes evidence, hence beginning with the divine book, then the sunnah followed by consensus. Save for the *Iḥkām*'s early linguistic discussion, everything was in conformity with the independent organisation and uniqueness of the *Mustaṣfā*.¹⁵⁶ Unlike al-Ghazālī, al-Āmidī did not suffice with dividing the work into four, whereby al-Ghazālī had his third “*qutb*” about the signification of words in which he included the discussion of commands in addition with analogy (*qiyas*). He seemingly agreed with his placement but did not render it necessary to make it a core chapter. Concerning linguistic discussions and their placement, the *Iḥkām* and

¹⁵⁴ It should be noted that Aḥmad ibn Taymiyyah (d. 728/1328) recognised the central role the *Mustaṣfā* was to have upon the trajectory of *uṣūl* by simply recognising the impact the opening chapter on logic was to have upon future legal theorists and their writings. See: Aḥmad ibn Taymiyyah, *Kitāb al-radd ‘ala al-manṭiqiyīn* (Lebanon: Mu’assasat al-Rayyān, 2005), 56.

¹⁵⁵ The *Minhāj*, authored by Nāṣir al-Dīn ‘Abd Allāh al-Bayḍāwī (d. 685/1319) and another product of the seventh century, is also particularly unique, based upon its subtle amendments and choices in arrangement. Both the *Maḥṣūl* and the *Iḥkām*, when defining *uṣūl al-fiqh*, adopted the Ghazālian approach found in his *Mustaṣfā*, whereby it was considered a *murakkab iqāfī*, and that to understand what *uṣūl al-fiqh* meant one had to understand the lexical meaning of each word. However, it was not until the *Minhāj* that it was considered like a proper noun (*laqab*) whereby it was not to be treated linguistically but a name given to a particular discipline. The *Minhāj* also did not begin like the *Maḥṣūl*, which followed the *Mu’tamad* with linguistic discussions after a rational introduction and a mention of rulings, rather it began its first core chapter with the discussion about rulings, much like the *Mustaṣfā* whilst ignoring any epistemological introduction. Similarly, the *Maḥṣūl* placed the discussion of reports after the discussion of consensus and prior to analogy, whereas the *Minhāj* had the discussion of reports following the discussion of the Book and before both consensus and analogy.

¹⁵⁶ Al-Āmidī justified his reason for placing his linguistic discussion at such an early stage of the work because *uṣūl* is extrapolated from language, and for that reason he deemed it logically suitable to introduce the part (linguistic postulates) prior to the whole (rule). Sayf al-Dīn Abū al-Āmidī, *al-Iḥkam fī uṣūl al-aḥkām* (Cairo, Egypt: Maṭba‘ah Muḥammad ‘Alī Ṣubayh, 1928), p.7.

the *Maḥṣūl* were united in opening directly after theological postulates, with their material also being very similar.¹⁵⁷

As previously mentioned, al-Rāzī was said to have been inspired by two major works, the *Mustaṣfā* and the *Mu'tamad*. As for the *Mustaṣfā*, it can be understood that he received inspiration from its content, due to it being in agreement in terms of creed and foundations of belief. This becomes clear on topics like *ta'līl*, where al-Rāzī can almost be considered a commentator of the *Mustaṣfā*, with his *Maḥṣūl* serving as a more in-depth explanation of its theory. However, little is mentioned as to what inspiration he received from the *Mu'tamad*, since he conflicts with many of the conclusions of Abū al-Ḥusayn. It is my assertion that one of the key areas is his agreement with not only how he presented his arguments but also the rationale by which he chose to arrange his work, since not only did Abū al-Ḥusayn explain why he arranged the things the way he did at the beginning of his work, but also al-Rāzī's placement of chapters was almost in complete agreement with his reasoning. Hence, he must have deemed the rationale behind the arrangement of chapters more coherent than the justification of al-Ghazālī.

As for the succeeding centuries, the *Mustaṣfā* undoubtedly had a great impact upon the landscape of *uṣūl*, with many deliberating and contemplating their placement of subjects, some in agreement with certain areas and others in almost complete imitation. This impression of the *Mustaṣfā*'s arrangement can be found even in the method of the jurists. In a work like *Mizān al-uṣūl fī natā'ij al-'uqūl* by 'Alā' al-Dīn al-Samarqandī (d. 539/1145), we see an astonishing departure from the custom of the Ḥanafites, especially if we were to compare this with as profound and relied upon Ḥanafite work as *Uṣūl al-Sarakhsī* by Abū Bakr al-Sarakhsī (d. 490/1097).¹⁵⁸ Al-Sarakhsī begins his work by discussing commands and prohibitions, then

¹⁵⁷ The *Minhāj*, contrary to the *Mustaṣfā* and everyone else, was to delay the linguistic discussions until the subject of the Divine Book. Likewise, the in-depth study of linguistic particles of meaning (*ḥurūf al-ma'ānī*) are not found in the *Mustaṣfā* or in the *Maḥṣūl*, signifying that this was an area in the *Minhāj* where Nāṣir al-Dīn 'Abd Allāh al-Bayḍāwī (d. 685/1319) was most likely benefitting directly from the *Burhān* of al-Juwaynī and the *Luma'* of al-Shīrāzī.

¹⁵⁸ It could be argued that it wasn't al-Samarqandī who was influenced by al-Ghazālī, rather the opposite. For just as I will mention later, there does seem to have been some sort of Ḥanafite impression upon al-Ghazālī, and hence it could well be possible here. Since, in this instance, it could be maintained that all the books I have mentioned prior to *al-Mizān* were by Mu'tazilite Ḥanafites, and it is conceivable that the Māturīdites had a different approach. For Abū Ḥasan al-Karkhī (d. 340/951) was considered deeply engrained within Mu'tazilism (Abū 'Abd Allah Shams al-Dīn al-Dhahabī, *Siyar al-ā'im al-nubalā'*, 2:2614), and Abū 'Alī al-Shāshī and al-Jaṣṣāṣ were both his students continuing his method, whereas 'Alā' al-Dīn al-Samarqandī (d. 529/1135) was a Māturīdite, located in Samarqand, contrary to the others who were in Iraq, hence the discrepancy in arrangement. This can be further corroborated by the fact that Abū Zayd al-Dabbūsī (d. 430/1039) represented Samarqand, and there is a somewhat apparent difference in the way he begins his *uṣūlī* manual. He presents an introduction providing definitions of terms conflicting in the manner of which he begins his work with that of the Iraqi based Ḥanafites, placing a far greater degree of importance upon definitions. This is also found in another *uṣūlī* work by Maḥmūd ibn Zayd al-Lāmishī (d. late fifth and early sixth century) where he not only begins providing brief definitions of *uṣūl al-fiqh*,

linguistic significations which would include discussions regarding the general and specific, then particles of meaning. He then discusses what constitutes evidence within the sacred law, stating that they are four, including analogy. Within this section, he goes into considerable detail explaining reports and their conditions, which is followed by abrogation, discussions about *mujtahids*, consensus, and then analogy. However, when we examine *Mizān al-uṣūl* we find a completely fresh arrangement. Most notably, the work had been divided into four core sections, preceded by the definition of knowledge and its kinds.¹⁵⁹ Interestingly, the first section focuses on rulings, the second on how evidences are known, the third regarding reconciliation in which he includes abrogation, and the fourth the requirements of *ijtihād*. This general arrangement is almost in absolute conformity with al-Ghazālī and in stark contrast with previous proponents of his school who would either begin with the discussion on the “general and specific”, as in the case of *Uṣūl al-Shāshī* and *al-Fuṣūl fī al-uṣūl* or the “command” as in *Uṣūl al-Sarakhsī* and *Masā’il al-khilāf fī uṣūl al-fiqh* by Abū ‘Abd Allāh al-Ṣaymarī (d. 436/1045).¹⁶⁰ His opening with the definition of knowledge and its types itself is a huge addition to the methodology of the jurists, but it is his decision to begin with “rulings” as his main chapter that is truly significant, since this has never been performed save in the *Mustaṣfā*. Likewise, in the second core chapter about how rulings are to be known, he begins with “the Book”, which again is in correct agreement in regard to his choice of chapter title. It differs with al-Ghazālī in the details, including within it discussions about the command and prohibition which al-Ghazālī placed in his chapter of linguistic discussions. Also we find the inclusion within this core chapter the section of analogy as a subtitle which again is found in the *Mustaṣfā* in linguistic discussions as previously mentioned, albeit contrary to convention among all, including the Ḥanafites, and was never to change after this. Another work, but of Shāfi‘īte orientation, is *al-Maḥṣūl fī ‘ilm al-uṣūl* by Abū al-Muẓaffar al-Khuwārī, a sixth century jurist whose exact time of death is unknown. One might be mistaken from the title to

but also many other technical terms and discussions which have no mention in the works of the Iraqis. Discussions like the definition of the *ḥadd* (definition), and the difference between *ma’rifah* and *‘ilm*. No such topics were breached by the aforementioned (See Maḥmūd ibn Zayd al-Lāmishī, *Kitāb fī uṣūl al-fiqh* (Beirut, Lebanon: Dār al-Gharb al-Islāmī, 1995). Despite this, I would stress that there still is no such division of *uṣūl* as has been found in the *Mustaṣfā* and *Mizān*. Also, al-Dabbūsī began with a discussion about the divine Book and the consensus, whereas al-Samarqandī followed his introduction with *al-ḥukm* (rules) in agreement with the *Mustaṣfā*. As for al-Lāmishī, he began with speech and figurative language, emphasising my point that it is most likely Samarqandī that was impacted by al-Ghazālī due to his complete unprecedented departure from the norm of both camps, the Iraqi and Samarqandī, and arrangement of his work. Zysow did not understand why there was such an evident theological current in his work as opposed to his teacher Abū al-‘Usr ‘Alī b. Muḥammad al-Bazdawī (d 482/1089), (Zysow, ‘Mu’tazilism and Māturīdism in Ḥanafī Legal Theory’, 238.). It is my belief that the preponderant reason is that he took the inspiration from an external source: the *Mustaṣfā*.

¹⁵⁹ ‘Alā’ al-Dīn al-Samarqandī, *Mizān al-‘uṣūl fī natā’ij al-‘uqūl* (Cairo, Egypt: N/A, 1984), 8.

¹⁶⁰ See Abū ‘Abd Allāh al-Ṣaymarī, *Masā’il al-khilāf fī uṣūl al-fiqh* (Kuwait: Asfār, 2019).

believe that this work has some sort of relation to al-Rāzī's *Maḥṣūl*. However, upon examination it is in such emulation of the *Mustaṣfā* that it can be considered an abbreviation. This work did not seem to receive any attention by *uṣūlists*, hence the meagre reference to it and its author in the doxographies. A possible reason for this was the objective of the book. The author sought to strip the work from any theological discussions, for he said, "For within this book we have adhered to granting victory to *fiqh* over *kalām*."¹⁶¹ Likewise, he displayed a very limited understanding of intricate theological details, which is perhaps the reason he was not as illustrious as others, which is clear in his statement about ethical value when he says, "They then differed as to whether 'good' and 'bad' can be recognised exclusively by the law or with the intellect? And with this dispute there does not lie any deep-rooted benefit, since it is not connected to any theological or practical affair."¹⁶² Despite this he could not divest his work of theological discussions, raising the issue of "thanking The Benefactor" (*shukr al-mun'im*),¹⁶³ and when talking about the Legislator (*al-ḥākim*) he resorts to a clear Ash'arite principle upon which they base many of their judgements, namely that God is the possessor of His creation, and no one else has permission to act within the dominion of another and make something binding upon him.¹⁶⁴ In sum, the work lacks the academic coherence that was a key feature in all the great *uṣūlī* manuals, and hence why very few were to grant the work any type of credence.

The *Mustaṣfā* also had a considerable influence upon the Mālikite school of law, as confirmed by al-Zarkashī.¹⁶⁵ Early in his career, Ibn Rushd (d. 595/1198) wrote an abbreviation of the work.¹⁶⁶ Other early works would include *Mukhtaṣar Ibn Shās* by Abū Muḥammad Jalāl al-Dīn ibn Shās al-Sa'dī al-Mālikī (d. 610/1213),¹⁶⁷ *Taqyīd al-Mustaṣfā* by Abū al-Ḥasan Sahl ibn Muḥammad al-Azdī al-Granāṭī al-Mālikī (d. 639/1241),¹⁶⁸ and *Sharḥ al-Mustaṣfā* by Abū Ja'far Aḥmad al-Āmirī al-Mālikī (d. 699/1300), as well as many others.¹⁶⁹ Even the Ḥanbalites had a highly important manual, the *Rawdat al-nāzir*, written early in the succeeding century, emulate the *Mustaṣfā* in almost absolute totality, especially in arrangement, despite its author

¹⁶¹ Abū al-Muzaffar al-Khuwārī, *Al-Maḥṣūl fī 'ilm al-uṣūl* (Kuwait: Asfār, 2019), 205.

¹⁶² Al-Khuwārī, *Al-Maḥṣūl fī 'ilm al-uṣūl*, 73.

¹⁶³ Al-Khuwārī, *Al-Maḥṣūl fī 'ilm al-uṣūl*, 74.

¹⁶⁴ Al-Khuwārī, *Al-Maḥṣūl fī 'ilm al-uṣūl*, 111.

¹⁶⁵ Badr al-Dīn Al-Zarkashī, *al-Baḥr al-muḥīṭ*, 3rd ed. (Kuwait: Wizārat al-Awqāf lil Shu'ūn al-Islāmiyyah, 1992), 1:8.

¹⁶⁶ Al-Zarkashī, *al-Baḥr al-muḥīṭ*, 1:8; Frank Griffel, 'The Relationship between Averroes and Al-Ghazali', *Medieval Philosophy and the Classical Tradition: In Islam, Judaism and Christianity*, 2002, 51–63.

¹⁶⁷ Al-Zarkashī, *al-Baḥr al-muḥīṭ*, 1:8.

¹⁶⁸ 'Abd Allāh Mustafā al-Marāghī, *al-Faṭḥ al-mubīn fī ṭabaqāt al-usūliyyīn*, vol. 1 (Cairo, Egypt: Al-Maktaba al-Azhariyyah lil-Turāth, 1999), 2:64.

¹⁶⁹ Mustafā al-Marāghī, *al-Faṭḥ al-mubīn fī ṭabaqāt al-usūliyyīn*, 2:101.

not mentioning al-Ghazālī once. This was confirmed by Najm al-Dīn Sulaymān al-Ṭūfī (d. 716/1316) in his commentary of his own abbreviation of the work. He states, “And an excuse is given to Abū Muḥammad (ibn Qudāmah) for this, since he emulated in his book the Sheikh Abū Ḥāmid al-Ghazālī in his *Mustaṣfā*, even in including his introduction of logic at the beginning.”¹⁷⁰ To conclude, and as revealed, I maintain that through the arrangement of the *Mustaṣfā* alone one can identify the bearing such a work was to have on all four schools of law in the field of legal theory.

¹⁷⁰ al-Ṭūfī, *Sharḥ Mukhtaṣār al-Rawḍah*, 98.

Chapter Three

Why and how did Ash‘arism coalesce within legal theory? The standing of *kalām* within Sunni scholarship

The significance of *kalām* was reiterated among the theologians throughout the early periods of Islam. In his *al-Inṣāf fī mā yajib i‘tiqāduhu wa lā yajūz al-jahlu bihi*, Abū Bakr al-Bāqillānī explains that the work is predicated upon the premise that there is a doctrine which every believer must know, and that to learn this was to be in emulation of the righteous predecessors.¹⁷¹ Not long after him, al-Bayhaqī (d. 458/1066) mentioned in his opening chapter of *al-I‘tiqād wa al-hidāyah ilā sabīl al-rashād ‘alā madhhab al-salaf wa aṣḥāb al-ḥadīth*, “God most praised said to His Prophet Muhammad, ‘Know that there is no deity save God,’¹⁷² and said to his community, ‘And know that God is your Lord’¹⁷³ ...”¹⁷⁴ After presenting a similar verse, he provided a final verse which read, “Say we believe in God and what He has revealed to us,”¹⁷⁵ and commented, “It is then obligatory due to the verses before this [one] to *know* God, and it is obligatory due to this [latter] verse to acknowledge Him and testify to His existence in accordance with what one knows. And the prophetic narrations have instructed the same as the Book.”¹⁷⁶

Al-Bayhaqī then provides evidence in the following chapters “the proof for the contingency of the world” and the like. However, his key point is the obligation to have knowledge of God before all else. Abū Qāsim Sulaymān al-Anṣārī al-Naysābūrī (d. 512/1118) confirmed, “The righteous predecessors reached a consensus - before the arrival of those that follow their whims (*ahl al-ahwā’*) - the obligation of knowing God. Such knowledge does not manifest except by circumspection (*nazar*), and whatever obligation does not arise save with the performance of something else, then that too becomes an obligation. Just like the obligation of ablution and the act of requesting water.”¹⁷⁷

¹⁷¹ Abū Bakr Al-Bāqillānī, *al-Inṣāf fī mā yajib i‘tiqāduhu wa al yajūz al-jahlu bihi* (Cairo, Egypt: Al-Maktaba al-Azhariyyah li al-Turāth, 2000), 13.

¹⁷² Qur’ān, 19:47.

¹⁷³ Qur’ān, 40:75.

¹⁷⁴ Abū Bakr Aḥmad ibn Ḥusayn al-Bayhaqī, *al-I‘tiqād wa al-hidāyah ilā sabīl al-rashād* (Lebanon: Dār al-Kitāb al-‘Arabī, 1988), 19.

¹⁷⁵ Qur’ān, 136:2.

¹⁷⁶ Al-Bayhaqī, *al-I‘tiqād wa al-hidāyah ilā sabīl al-rashād*, 19.

¹⁷⁷ Abū Qāsim Sulaymān al-Anṣārī al-Naysābūrī Al-Anṣārī, *al-Ghunyah fī al-kalām* (Cairo, Egypt: Dārussalam, 2010), 243. What is interesting here is that not only is al-Anṣārī maintaining that the earliest generations were in agreement as to the obligation of learning about God, but he uses an *uṣūlī* maxim to corroborate it, namely *mā lā yatimmu al-wājib illā bihi fa huwa wājib*. See al-Ghazālī, *Mustaṣfā*, 1:71.

Based upon this, and with the notion that the first obligation upon the human being is to know his Lord and possess correct doctrine, theology and belief preceded all disciplines, as without it no other religious discipline would exist. Hence, we have al-Juwaynī and al-Sam‘anī both acknowledging that *kalām* is the foundation for all Islamic disciplines, with the former declaring, “*Uṣūl al-Fiqh* is derived from *kalām*, the Arabic language, and *fiqh*.”¹⁷⁸ This was continued and further elucidated by al-Ghazālī when he said,

“Know that knowledge divides into that which is rational like medicine, mathematics, and geometry, and this is not our purpose of discussion. And into religious knowledge like *kalām*, jurisprudence, legal theory, the science of hadith, exegesis, and the knowledge of the interior (meaning by this the science of the heart and its purification of ignoble traits). The universal knowledge from the religious disciplines is *kalām*, whereas the rest of the sciences like jurisprudence, its legal theory, hadith and exegesis are all particular. For the exegete does not study save for the meaning of the divine book specifically. The hadith expert performs no other than analysing the pathways for the affirmation of hadith. The jurist studies the rulings of the actions of the religiously obligated, and the legal theorist is only concerned with legal rulings. The theologian on the other hand, his scope of study is more expansive, namely existence. He firstly divides existence into pre-eternal and corporal, and then the corporal into a body and an accident...”¹⁷⁹

He continues,

“Hence, this is all that is covered by *kalām*, and you may now recognise from such that its focus begins with the broadest of things, namely existence, and then gradually proceeds in stages and immersing into details the like of which we have mentioned. Thus, the preliminaries of all the other religious sciences are affirmed within it, whether the divine book, the sunnah or the veracity of the Messenger. The exegete will take from the summation of a particular aspect of what the theologian studied, which is the divine book, and then engage in his exegesis...”

His discussion concludes by saying,

¹⁷⁸ ‘Abd al-Mālik b. ‘Abd Allāh al-Juwaynī, *al-Burhān*, vol. 1 (Qatar: NA, 1979), 84. See also Abū al-Muzaffar al-Sam‘anī, *al-Qawāṭi‘ fī uṣūl al-fiqh*, vol. 1 (Lebanon: Ibn Hazm, 2011), 1:87.

¹⁷⁹ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:5.

“*Kalām* is responsible for affirming the postulates of all the religious disciplines. They are particular in regard to *kalām*. So *kalām* is the discipline of the highest status, since from it one descends to these particulars.”¹⁸⁰

Al-Ghazālī clearly makes a case here that not only is *kalām* the origin but it is also responsible for establishing all religious postulates, which in turn demands that all the Islamic sciences are dependent upon it. What makes this point additionally pertinent is that it was very rare that an Islamic scholar writing in a particular field would openly extol another field instead of the one before him, signifying the great relevance that al-Ghazālī attached to *kalām*, also suggesting that it had a great connection with the current work in particular. This theme was to be concurrent throughout the centuries among theologians, specifically the Ash‘arites. Al-Bayḍāwī described *kalām* as the “solid platform for the pillars of the religious law; and it is [the Law’s] foundation.”¹⁸¹ Sa‘d al-Dīn al-Taftazānī (d. 792/1390) emphasises the same point in his commentary of *al-Aqā’id al-Nasafiyyah* remarking, “The basis of the science of laws and judgements and the foundation of the rules concerning the articles of Islamic belief is the science of the unity of the deity and His attributes, entitled *al-kalām*.”¹⁸² Henceforth, orthodox Islamic scholarship viewed *kalām* as the root from which all else stems. For how could one imagine the presence of a theory for the divine law without first confirming the presence of the divine and then the revelation to mankind of a divine law? And how could there be tensions between the law and that which has been explicitly determined within the theology of the law?

Accordingly, a natural consequence therefore must be that any disagreement in the foundation ultimately affects the subsidiaries. This point is emphasised by al-Samarqandī early in the sixth century,¹⁸³ and conceded by Rami Koujah when he said, “If jurists did in fact develop legal opinions by strictly following the methodology outlined in the field of *uṣūl al-fiqh*, then their theological positions would affect their arguments for certain rulings, or at least their explanation for them.”¹⁸⁴ A primary example, as discussed by Koujah, is the issue of *ta’līl*

¹⁸⁰ Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:6.

¹⁸¹ Edwin Elliott Calverley, James W Pollock, and Edwin Elliott Calverley, *Nature, Man and God in Medieval Islam: Abd Allah Baydawi’s Text, Tawali Al-Anwar Min Matali Al-Anzar, Along with Mahmud Isfahani’s Commentary, Matali Al-Anzar, Sharḥ Tawali Al-Anwar* (Leiden: Brill, 2002), 17.

¹⁸² Earl Edgar Elder, *A Commentary on the Creed of Islam: Sa‘d Al-Dīn Al-Taftāzānī on the Creed of Najm Al-Dīn Al-Nasafī*, vol. 43 (New York: Columbia University Press, 1950), 3.

¹⁸³ Al-Samarqandī, *Mizān al-‘uṣūl fī natā’ij al-‘uqūl*, 1–2.

¹⁸⁴ Rami Koujah, ‘Divine Purposiveness and Its Implications in Legal Theory: The Interplay of Kalām and Uṣūl al-Fiqh’, *Islamic Law and Society* 24, no. 3 (2017): 172. Similarly, the notion of the impact of independent sciences upon legal outcomes or their explanation is not confined to theology alone, but any other independent discipline which the uṣūlist includes within his *uṣūl*. An example being grammar, whereby the outcomes discussed within legal theory, like that of the ‘*bā*’ and its signification becomes apparent in positive law. On this point alone Jamāl al-Dīn al-Isnawī authored a whole book on how linguistic disagreements directly impacted outcomes in

al-ahkām. Whoever negates the notion that God does not observe human interests, then such a person would deny the possibility of *qiyās*. This charge was actually claimed against the Ash‘arites, that they negated within their theology that which they affirmed in their legal theory. Aron Zysow remarks upon this outward disparity, “There exists an apparent incompatibility between Ash‘arite ethics and that method of analogy that embodies legal rationality. It is our contention that not only were the Ash‘ari *uṣūlīs* conscious of this problem, but that significant developments in their theory of appropriateness were meant to resolve it.”¹⁸⁵ This postulation and its accuracy will be investigated later in this study through the lens of al-Ghazālī’s *Mustaṣfā*.

One of the commonly raised queries surrounding *uṣūl al-fiqh* and *kalām* is that if the relationship between the two is so integral then why do we find statements by legal theorists to suggest the opposite? This was certainly a question raised by George Makdisi when he said, “This legal science which, at the outset, was purely traditionalist, devoid not only of philosophical *kalām*, but even of all questions of legal philosophy, is found by the beginning of the fifth/eleventh century, to be mixed with topics properly belonging to *kalām*, and authored by Mutakallimīn, members of that movement held in abhorrence by Shāfi‘ī...”¹⁸⁶ To answer this question, one really needs to grasp the actual function of Ash‘arism, and that it was not in conflict with those that preceded it in any way save for method of elucidation and presenting evidences. Secondly, and this is another key query, is how are we to understand the general statements found in texts that seem to conflict with what we have revealed as being an integral relationship between the two disciplines, in that one is solely dependent upon the other? Statements like that of al-Khuwārī when he mentioned that he was granting victory to *fiqh* over *kalām*, and the motivation of the author of the *Mu‘tamad* that he was removing what was unsuitable from ‘the intricacies of *kalām*’.¹⁸⁷ Despite his declaration, he still included many of the theological topics like ‘*Shukr al-Mun‘im*’, ‘*Al-Taklīf bi al-Muḥāl*’ and ‘*Khiṭāb al-Kuffār bi al-Shar‘*’, as did the *Mu‘tamad* mention ‘good and evil’ (*taḥsīn wa taqḥīb*) over three thousand times, insinuating that they both most likely meant by ‘removing *kalām*’ those highly detailed points and discussions that were superfluously included in books of *uṣūl*, as clarified by al-Ghazālī, “The excuse of the *mutakallimīn* in mentioning the definition of knowledge,

positive law. (See: Jamāl al-Dīn Al-Isnawī, *al-Kawākib al-durriyyah fī takhrīj al-furū‘ al-fiqhiyyah ‘alā al-masā‘il al-naḥwiyyah* (Syria: Dār al-Anbār, 2011).

¹⁸⁵ Zysow, *The Economy of Certainty*, 199.

¹⁸⁶ George Makdisi, ‘The Juridical Theology of Shāfi‘ī: Origins and Significance of Uṣūl al-Fiqh’, *Studia Islamica*, 1984, 17.

¹⁸⁷ Abu al-Husayn Al-Basrī, *Kitāb al-Mu‘tamad*, vol. 1 (Damascus: Al-Ma‘had al-Ilmī al-Faransī lil-Dirāsāt al-‘Arabiyyah, 1964), 7; Abū al-Muzaffar al-Khuwārī, *al-Maḥṣūl fī ‘ilm al-uṣūl* (Kuwait: Asfār, 2019), 205.

circumspection, and evidence in *uṣūl al-fiqh* is far more apparent than their excuse in establishing the syllogistic proof for their affirmation, since the definition enables the self to apprehend these matters.”¹⁸⁸ So, what we have here is a classic example of what the legal theorists call ‘*‘āmm urīda bihī khāṣṣ*’, general statement intended by it specific. This is similar to when al-Shāfi‘ī was to criticise the *mutakallimīn*; was he to include the Ash‘arites in this despite him being before them? This was, rather, a general statement that was intended by it the Mu‘tazilites specifically, as shall be clarified by supporting evidence. The mechanisms and methods of how the *uṣūlists* would apply this principle is not the topic of the research. However, it’s mention here is vital in order to remove the contradictions that come to mind and to comprehend that not just anyone can navigate scripture without the proper tools, hence why within the Islamic tradition *uṣūl* is the principal science for scriptural analysis. In the *Ghunya*, a theological work of Abū Qāsim al-Anṣārī (d. 512/1118), the author employs an array of *uṣūlī* maxims throughout signifying the relevance it had to the field.¹⁸⁹

The correlation between the creed of the early legal theorists and the shibboleths of Ash‘arism

Historically speaking, the traditional schools of law were considered as bearers and vehicles by which different positions and principles adopted by the prophetic companions were transmitted. Likewise, it was understood that the Ash‘arite creed was the vehicle by which the sound creed of the earlier generations was conveyed. Tāj al-Dīn al-Subkī explains, “Know that Abū al-Ḥasan (al-Ash‘arī) did not invent an opinion or create a school of thought, rather he defined the positions of the predecessors (*Salaf*) and defended that which the Companions of the Messenger of God were upon. So, the affiliation with him is out of consideration that it was he who formed boundaries according to the system of the *Salaf* and adhered to it, establishing for it proofs and evidences. Hence, he who emulates him in this and pursues his course of evidence is called an *Ash‘arī*.”¹⁹⁰ He later continued: “Al-Māyarqī, the Mālikite scholar, said, “Abū al-Ḥasan was not the first theologian from *ahl al-sunnah*, rather he worked according to the methods of others and towards the triumph of a known creed, increasing the school with proofs and evidences. He did not innovate a creed that he founded nor an autonomous dogma. Do you not see that the jurisprudential school of the inhabitants of al-Madīnah was attributed to Imam Mālik and anyone who adhered to it was called a Mālikite? Imam Mālik merely adhered to the methodology of those that preceded him and was rigorous in observance to their

¹⁸⁸ Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:10.

¹⁸⁹ See al-Anṣārī, *al-Ghunyah fī al-kalām*, 260, 522, 548, 608, 704, 706.

¹⁹⁰ Al-Subkī, *Ṭabaqāt al-Shāfi‘īyah al-kubrā*, 365.

way, except that when he increased the methodology in elucidation it was related back to him. The same is said of Abū al-Ḥasan al-Ash‘arī, who added nothing to the methods of the *salaf*, save for elucidation, commentary and what he authored for its triumph.”¹⁹¹ He also says in *Mu‘īd al-ni‘am wa mubīd al-niqam*, “In summary, verily the creed of Abū al-Ḥasan al-Ash‘arī corresponds with what was compiled in the theological creed of Abū Ja‘far al-Ṭahāwī which the scholars of the jurisprudential schools received with acceptance and were pleased with as a theological doctrine of creed.”¹⁹²

It can undoubtedly be argued that these are the words of an Ash‘arite proponent, attempting to defend the validity of his own creed due to al-Subkī being a known guardian of the Ash‘arite doctrine. In light of this, I will present in the following lines a brief comparison between the doctrine of the eponyms of law with the Ash‘arites and al-Ghazālī. The aim of this comparison is to examine the veracity of the statement of al-Subkī’s claim, and if it is indeed in conjunction with reality, and whether al-Ghazālī was truly representing his legal eponym when elaborating on matters theologically in his *Mustasfā*. And for this reason, when possible, the primary focus will be upon al-Shāfi‘ī.

Unlike Abū Ḥanīfah, no theological tract has been attributed to al-Shāfi‘ī.¹⁹³ Hence it is only by way of narrations and reports that one can gauge and piece together the doctrine of this esteemed jurisprudential mastermind. Owing to the lack of any decisive independent work, there is a general understanding among some scholars and western thinkers that al-Shāfi‘ī was in staunch opposition to *kalām*.¹⁹⁴ This is corroborated by many authentic narrations that have been attributed to him in which he says, “That someone be tested and trialled with all that God has rendered impermissible, save for polytheism, is better for him than *kalām*. I have acquaintance with works of the people of *kalām*, and I would never think that a Muslim would say such things.”¹⁹⁵ And, “For someone to meet God with every sin possible save for polytheism is better for him than to meet God with anything of one’s own conjectures and whims.”¹⁹⁶ One of his closest disciples, al-Muzanī (d. 264/878), was reported to have said,

¹⁹¹ Al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā*, 367.

¹⁹² Tāj al-Dīn Al-Subkī, *Mu‘īd al-ni‘am wa mubīd al-niqam* (Cairo, Egypt: Dār al-Kitāb al-‘Arabī, 1948), 75.

¹⁹³ Regarding the eponyms and the traditionalists, Ibn al-Nadīm in his *Fihrist* mentions that Abū Ḥanīfah, from among his works was *al-Fiqh al-Akbar*, and *al-Radd ‘alā al-Qadariyyah* (a rebuttal of the Qadarites), both works in theology. See Muḥammad Ibn al-Nadīm, *al-Fihrist* (Beirut, Lebanon: Dār al-Ma‘ārif, n/a), 285.

¹⁹⁴ Ahmad Ibn Taymiyyah, *Istiqāmah* (Lebanon: al-Maktabah al-‘Asriyyah, 2014), 15; George Makdisi, ‘Ash‘arī and the Ash‘arites in Islamic Religious History I’, *Studia Islamica*, 1962, 49–51.

¹⁹⁵ Muḥammad ‘Abd al-Raḥmān b. Abī Ḥātim al-Rāzī, *Ādāb al-Shāfi‘ī wa manāqibuh* (Beirut, Lebanon: Dār al-Kutub al-‘Ilmiyah, 2003), 137.

¹⁹⁶ ‘Abd al-Raḥmān b. Abī Ḥātim al-Rāzī, *Ādāb al-Shāfi‘ī wa manāqibuh*, 143.

“The position of al-Shāfi‘ī was that he resented immersion in *kalām*.”¹⁹⁷ By the same token, however, there are other conflicting reports which reveal a Shāfi‘ī who was very much skilled in the discipline of *kalām*, and who even implemented it in various settings. For it has been mentioned that a gathering was organised in which the pre-eternal nature of the Qur’ān was discussed. When asked, the majority of those present refused to give a judgement. However, they pointed to al-Shāfi‘ī to answer, and he was asked to give his opinion. He then “demonstrated his evidences, and the debate became lengthy, and al-Shāfi‘ī came out victorious with the strength of his proofs that the Qur’ān was uncreated, and as a result he rendered Ḥafṣ al-Fard (his Mu‘tazilite interlocutor, died mid-ninth century) a disbeliever.”¹⁹⁸ It has also been narrated that al-Shāfi‘ī spoke with some jurists, and went into great detail with them, verifying positions, and highlighting intricacies. It was then said to him, “O Abū ‘Abd Allāh, such discourse belongs to the people of *kalām*, and not to the people of the permissible and the forbidden!” To which he replied, “I mastered this before I mastered that.”¹⁹⁹ Similarly, al-Muzanī said, “A debate occurred between myself and another, and he asked me about an issue in *kalām* that almost made me doubtful in regard to my religion. As a consequence, I went to al-Shāfi‘ī and said to him, ‘the situation was such and such.’ Upon this he asked, “where are you?” “In the mosque” I replied. “You are on the island of Tārān, being struck by its waves!” he replied. “This issue about which you have spoken is one of the [arguments of] the atheists, and the response is such and such...”²⁰⁰

The seemingly contradictory nature of such statements can be confusing for many, unless they are reconciled properly. For what we must assume from the aforementioned is that al-Shāfi‘ī did not consider *kalām* completely impermissible as a method, especially if used to defend the correct doctrine, since according to the reports he was to have applied it himself. However, to answer his concerns and strong proclamations against it as a science, we must recognise that during his time *kalām* was predominantly connected with Mu‘tazilism, since Ash‘arism was yet to officially exist. For how can one condemn that which he was ignorant of or yet to become established? In addition, noticeable correlations can be observed between the transmitted theological positions of al-Shāfi‘ī and that of al-Ash‘arī, and the later explanations of al-Ghazālī. In the following paragraphs, I shall identify some areas of agreement and the

¹⁹⁷ ‘Abd al-Rahmān b. Abī Ḥātim al-Rāzī, *Ādāb al-Shāfi‘ī wa manāqibuh*, 144.

¹⁹⁸ Abū Bakr Aḥmad ibn Ḥusayn Al-Bayhaqī, *Manāqib al-Shāfi‘ī*, vol. 1 (Cairo, Egypt: Dār al-Turāth, 1970), 455.

¹⁹⁹ Al-Bayhaqī, *Manāqib al-Shāfi‘ī*, 1:457.

²⁰⁰ Al-Bayhaqī, *Manāqib al-Shāfi‘ī*, 1:458.

correlation of their thought and doctrine, revealing a continuation of doctrine rather than innovation.

The nature of faith and whether it is subject to increase and decrease

According to al-Shāfi‘ī, action is one of the integrals of faith, for it has been reported that he said, “Faith is both word and action.”²⁰¹ Also attributed to him is that he said, “If this faith alone was all one unit, insusceptible to increase or decrease, then no one would be more virtuous than the other, and the people would all be the same, without superiority. However, with complete faith the believers enter paradise, and with additional faith superior stations are given to them by God. And by diminishment and decrease in faith, the procrastinators enter the fire.”²⁰² Correspondingly, al-Ash‘arī has said in his *Ibānah*, “We believe that faith consists of words and deeds.” He was also in agreement with him that faith “is subject to increase and decrease.”²⁰³ This position was the mainstay within the Ash‘arite school as clarified by Ibrāhīm al-Bayjūrī (d.1276/1860), from among the much later Ash‘arite theologians, in his commentary on *Jawharat al-Tawhīd*, “The majority of the Ash‘arites affirmed the belief that faith increases and decreases.”²⁰⁴ Both the Ash‘arites and Māturīdites conflicted with one another on this point which interestingly goes back to the two eponyms, al-Shāfi‘ī and Abū Ḥanīfah (d. 150/767), with the latter explaining that to conceptualise the increase and reduction of one is impossible, since one cannot envision the increase in one without the reduction of the other, and belief and disbelief cannot remain in the same substrate at the same time.²⁰⁵

The sixth century Māturīdite, Nūr al-Dīn al-Ṣābūnī (d. 580/1184), explained, “Once it is established that faith is belief [alone], while verbal affirmation is [not faith itself but] a condition for carrying out legal rulings, then if belief exists, faith obtains; thus, it is not possible for it to increase and decrease. This is contrary to the view of al-Shāfi‘ī, who deemed works to be part of faith and hence stated that faith increases with

²⁰¹ Abū Bakr Aḥmad ibn Ḥusayn Al-Bayhaqī, *al-I‘tiqād wa al-hidāyah ilā sabīl al-rashād* (Beirut, Lebanon: Dār al-Afāq al-Jadīdah, 1981), 81.

²⁰² Al-Bayhaqī, *Manāqib al-Shāfi‘ī*, 1:393.

²⁰³ Abū al-Hasan Al-Ash‘arī and Ali ibn Isma‘il, ‘Al-Ibanah ‘an Usul al-Diyanah (The Elucidation of Islam’s Foundation)’, *Translated with Introduction and Notes by Walter C Klein. New Haven, Conn.: American Oriental Society, 1940, 73.*

²⁰⁴ Ibrāhīm Al-Bājūrī, *Tuḥfat al-murīd ‘alā Jawharat al-Tawhīd*, third edn. (Cairo, Egypt: Dārussalam, 2006), 100.

²⁰⁵ Akmal al-Dīn Muḥammad al-Bābartī, *Sharḥ Wasiyyat al-Imām Abī Ḥanīfah* (Jordan: Dār al-Fath, 2015), 72–73.

an increase in spiritual works and decreases with their decrease; yet we have already shown the falsehood of this position.”²⁰⁶

Contrary to al-Šābūnī, al-Ghazālī attempts to bridge the gap between the differing positions, revealing a much more tolerant tone, for he states,

“As for the second issue, which is semantical, there is, for instance, the disagreement among people regarding faith: does it increase and decrease or is it always at the same level? The source of this disagreement is not knowing that the term is ambiguous – I mean the term ‘faith’. Once the denotations of this term are distinguished, disagreement is removed. The term has three meanings. It might be used to express certain and demonstrative belief. It might also be used to express conformist belief when it is unquestionable. It might, further, be used to express belief that is accompanied by deeds in accordance with it.”²⁰⁷

Al-Ghazālī skilfully demonstrates how both sides are correct in their judgement, as they were both looking at the concept of faith through contrary considerations.²⁰⁸

The pre-eternal nature of the Qur’ān

The question of whether the Qur’ān was created or uncreated was highly contested during the time of al-Shāfi‘ī. Al-Shāfi‘ī was very clear on his position that it was the uncreated word of God. He said, “He who swears by one of the names of God then violates it, then he must pay a dispensation, because the name of God is uncreated. As for he who swears by the *ka‘bah* or *Safā* and *Marwā* then he doesn’t have to pay a dispensation, since they are both created.”²⁰⁹ Also, al-Shāfi‘ī went to the extent of excommunicating Abū Yaḥyā Ḥafṣ al-Fard due to his affirmation that the Qur’ān was created. Fakhr al-Dīn al-Rāzī justified this saying, “It seems that his excommunication is because the concept of God demands the pre-eternity of the essence and the attributes together. For the one who denies that the attributes are pre-eternal cannot possibly maintain the pre-eternality of the divine deity (God), which is disbelief.”²¹⁰ Additionally, al-Rāzī postulates that al-Shāfi‘ī applied an argument that was commonly applied

²⁰⁶ Nūr al-Dīn Al-Šābūnī, *An Introduction to Islamic Theology: Imam Nūr al-Dīn al-Šābūnī’s Al-Bidāyah fi Usūl al-Dīn* (United States of America: Zaytuna College, 2020), 346.

²⁰⁷ Abū Hamid Al-Ghazālī, *Al-Ghazali’s Moderation in Belief* (Chicago: University of Chicago Press, 2013), 221.

²⁰⁸ This reconciliation of al-Ghazālī again suggests that he was becoming more open to other positions and accommodating, adding additional preponderance to the possibility that the *Iqtisād* was written after his departure from Baghdad, since prior to that he was known to have been a great opponent of Abū Ḥanīfah and stern in his critique.

²⁰⁹ ‘Abd al-Raḥmān b. Abī Ḥātim al-Rāzī, *Ādāb al-Shāfi‘ī wa manāqibuh*, 148.

²¹⁰ Fakhr al-Dīn Muḥammad b. ‘Umar al-Rāzī, *Manāqib al-Imām al-Shāfi‘ī* (Cairo, Egypt: Maktabah al-Kulliyāt al-Azhariyyah, 1986), 116.

by theologians when he said, “And this is an indication of what the theologians maintain; that the one who doesn’t speak then has a defect, and hence if God did not have speech from pre-ternity, then he is defective, which is impossible.”²¹¹ It seems that al-Rāzī could actually have been insinuating by his statement “the theologians” the eponym of his school, al-Ash‘arī himself here, or al-Ghazālī. For the eponym said in his *Ibānah*, “It is impossible for Him to be eternally qualified with the opposite of speech, because the opposite of speech, with which there is no speech, is silence, or a defect, just as the opposite of knowledge, with which there is no knowledge, is ignorance, or doubt, or a defect. It is impossible for our Lord to be qualified with the opposite of knowledge, and, for the same reason, it is impossible for Him to be qualified with non-speech, that is, silence and defects; and so, for the same reason, He must be eternally a discourser, just as He must be eternally a knower.”²¹² Likewise, al-Ghazālī when discussing the best approach for affirming speech to the creator, said, “Perhaps the best approach is the third approach, which is the one we followed in proving hearing and sight for God. We assert that speech for any living being is a perfection, a deficiency, or neither a deficiency nor a perfection. It is false to say that it is a deficiency or that it is neither a deficiency or perfection; hence it is established by necessity that it is a perfection. Every perfection that exists for a created being must necessarily exist for the Creator, since this is more proper, as we previously explained.”²¹³ Hence we see the conformity of al-Ghazālī’s position with that of both eponyms.

The vision of God in the hereafter

As for the vision of God in the hereafter, al-Shāfi‘ī commented on the verse, *No indeed! On that Day they will be screened from their Lord*,²¹⁴ “When the disbelievers were veiled due to the divine anger, this indicates that the friends of God see Him out of His pleasure [with them].”²¹⁵ In this instance, al-Shāfi‘ī infers the vision of God through the *uṣūlī* principle of *mafhūm al-mukhālafah*, in that the screening of the disbelievers from their Lord as a punishment must necessarily mean that the reward of the righteous is the contrary, namely the vision of the divine. Similarly, al-Shāfi‘ī, after being asked if this is what he believed, replied, “By God! If Muḥammad b. Idrīs (al-Shāfi‘ī) was not certain that he would see his Lord at the

²¹¹ Al-Rāzī, *Manāqib al-Imām al-Shāfi‘ī*, 116.

²¹² Al-Ash‘ari and ibn Isma‘il, ‘Al-Ibanah ‘an Usul al-Diyanah (The Elucidation of Islam’s Foundation)’, 67–68.

²¹³ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 115.

²¹⁴ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 83:15.

²¹⁵ Al-Bayhaqī, *Manāqib al-Shāfi‘ī*, 1:419.

appointed time, he would not have worshipped Him in this life!”²¹⁶ Additionally, when asked about the hadith which affirms the vision of God, he replied that every hadith, if authentic, is his position even if it did not reach him, hence upholding its meaning.²¹⁷ This is the same belief we find al-Ghazālī discussing in his *Mustasfā* under the rubric of the circumspection of the *mujtahid* and his error, which he divided it into definitive and conjectural.²¹⁸ For the latter, he explains, there is no sin for error, but for the former there is. He then divides the definitives into three; *kalāmiyyah*, *uṣūliyyah*, and *fiqhiyyah*. With regards to the *kalāmiyyah* (the theological definitives²¹⁹); the correct position is one, the one who fails to reach this position is in sin, including among these definitives the permissibility to see God.²²⁰ He then provides an outstanding criterion, indicating how one can determine the extent of the sin, whether it insinuates disbelief or not. He states,

“The parameters for purely theological matters are that which the intellect may comprehend its reality prior to revelation. In regard to these issues the truth is one, and whoever errs then he is in sin. If he is to make a mistake concerning that which is in relation to the belief in God and His messenger then he is a disbeliever. And if he errs in regard to that which does not impede knowing God and His messenger, like the beatific vision and the creation of acts, and the will of created beings and the like, then such a person is in sin due to him diverging from truth, and is misguided and wrong in that he blundered in regard to something that was certain. And he is an innovator due to him maintaining a position which is contrary to the well-known position (*mashhūr*) of the *salaf*. And this does not necessitate disbelief.”²²¹

Kasb and divine decree

Upon commenting on the statement of Abū Ḥanīfah in his *al-Fiqh al-Akbar*, “All human acts, both motion and stillness, are in reality of **their acquisition (*kasb*)**,” ‘Alī al-Qārī (d. 1014/1605) remarked, “i.e., its attribution is not metaphorical, or by way of coercion or force, rather through their own choice of acts according to their different whims and inclinations. Hence ‘for the self is what it has attained and against it is what it has acquired,’ not as claimed by the Mu‘tazilites, that the individual is the author and creator of his chosen acts like striking and

²¹⁶ Al-Bayhaqī, *Manāqib al-Shāfi ʿī*, 1:419.

²¹⁷ Al-Bayhaqī, *Manāqib al-Shāfi ʿī*, 1:421.

²¹⁸ Al-Ghazālī, *Al-Mustasfā min ʿilm al-uṣūl*, vol. 2 (Beirut, Lebanon: Dār al-Fikr, na), 357.

²¹⁹ What I mean by “definitives” here and throughout the rest of the thesis are the incontestable rational and scriptural truths that are not subject to interpretation.

²²⁰ Al-Ghazālī, *Al-Mustasfā min ʿilm al-uṣūl*, 2:357.

²²¹ Al-Ghazālī, *Al-Mustasfā min ʿilm al-uṣūl*, 2:357–58.

cursing etc., and not as claimed by the Jahmites who assert the absence of *kasb* and choice altogether. For in the statement of God, *Only You do we worship, and from only You do we seek assistance*, is a rebuttal of both parties on the issue.”²²² It is suggested in this statement that Abū Ḥanīfah might have been the earliest notable figure to mention the *kasb* theory before al-Ash‘arī. What is also interesting is the observation of al-Rāzī, when he deduced from the introduction of al-Shāfi‘ī’s *Risālah*, that God is the sole creator of human acts, and everything succumbs to the divine will. Al-Shāfi‘ī said, “Praise be to God to whom gratitude for one of His favours cannot be paid save through another favour from Him, which necessitates for the giver of thanks for His past favours to repay it by a new favour which [in turn] makes obligatory upon him gratitude for it.”²²³ Al-Rāzī commented, “It is not possible to be grateful of the favours of God except through God granting you success to do so, and that very success is an additional blessing from God, which then demands an additional thanks and gratitude.”²²⁴ He later continues, “The meaning of what he is saying is that any act of a person is dependent upon the will and intention of that act occurring in the heart. And the occurrence of that will is not due to another will within the servant, otherwise it would demand a perpetual chain of events (*tasalsul*). Therefore, it must be that that very ‘will’ leads to a ‘will’ which occurs by the will of God, which then means that everything occurs by the decree of God.”²²⁵ Hence, what al-Rāzī is ultimately postulating is that al-Shāfi‘ī himself believed in *kasb* although without outright professing it. Al-Ash‘arī said, “And that not a single person has the capacity to do anything until God causes him to act, and we are not independent of God, nor can we pass beyond the range of God’s knowledge; and that there is no creator save God, and the works of human beings are things created and decreed by God.”²²⁶ In continuation to this al-Ghazālī stated when rebutting the position of the Mujbirites and the Mu‘tazilites, “Two extremely repugnant consequences follow [from their position]. One of them is the denial of the consensus of the early Muslims (may God be pleased with them) that there is no creator or originator except God.”²²⁷ He then proceeds to rationally elucidate the doctrine of the abovementioned, arguing that anyone who claims to create anything must know every detail of what he creates, and the human being has no knowledge of such.²²⁸

²²² ‘Alī Muḥammad al-Qārī, *al-Rawḍ al-azhar Sharḥ al-Fiqh al-Akbar* (Beirut, Lebanon: Dār al-Bashā‘ir al-Islāmiyyah, 1998), 153–54.

²²³ Imam al-Shāfi‘ī, ‘Shafi’is Risalah: Treatise on the Foundations of Islamic Jurisprudence (Translated with an Introduction, Notes, and Apendices by Majid Khadduri)’, 1997, 57.

²²⁴ Al-Rāzī, *Manāqib al-Imām al-Shāfi‘ī*, 118.

²²⁵ Al-Rāzī, *Manāqib al-Imām al-Shāfi‘ī*, 119.

²²⁶ Al-Ash‘ari and ibn Isma‘il, ‘Al-Ibanah ‘an Usul al-Diyanah (The Elucidation of Islam’s Foundation)’, 50–51.

²²⁷ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 89–90.

²²⁸ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 91.

The early doctrine of *tafwīd* (consignment of the meaning to God) and the acceptance of *ta`wīl* (figurative interpretation)

In regards to *tafwīd*, there is sufficient evidence to suggest that this was the default position of many of the earlier generations and the ahl al-ḥadīth. A famous example being Imam Mālik b. Anas (d. 179/795) when asked how God performs *istiwā`* upon the throne. It is mentioned that sweat began to pour down from his brow and said: “The most merciful *istawā* just as He described Himself, without asking how, for “how” is not even applicable to Him. **And I do not see you save as an innovator in religion!**”²²⁹ ‘Abd al-Raḥmān Ibn Jawzī (d. 597/1201) said, “Nothing has been attributed to Aḥmad in the sources that even remotely smacks of anthropomorphism, for his position was that the tradition of the Prophet should be allowed to stand as they are without comment. This was also the viewpoint of such leading authorities as Mālik b. Anas, Sufyān, Awzā`ī, Ibn al-Mubārak and Shāfi`ī...”²³⁰ Sufyān b. ‘Uyaynah (d. 198/814) was reported to have said, “Everything that God has described Himself in His book, its interpretation is its recitation without explanation.”²³¹ The celebrated traditionalist, Muḥammad b. ‘Īsā al-Tirmidhī (d. 279/892) stated after narrating a hadith which could be understood in an anthropomorphic fashion, “This hadith has been narrated by the Imams. We believe in it as it came to us, without interpretation or depiction. Many of the imams of the past have said this, like al-Thawrī, Mālik b. Anas, Ibn ‘Uyaynah, and Ibn al-Mubārak, that these things are narrated and are believed in without expressing a modality.”²³² The jurist, Ibn Surayj (d. 306/918) interestingly said, “And we do not translate the attributes to a non-Arabic language,”²³³ clearly revealing that the meaning is unknown hence the prevention of translation.

The aforementioned are some examples of the early generations position towards *tafwīd* and the ambiguous verses in relation to God, and was not to change with the emergence of al-Ghazālī, for he said, “It is here that it should be made clear to you that there are two clear vantage-points. The first is that of the masses (*‘awāmm al-khalq*). The proper thing for them to do is to follow and to desist forthwith from altering the apparent meanings of the texts. They should beware of innovating proclamations of figurative interpretations that were not so

²²⁹ Aḥmad Ibn Ḥajar al-‘Asqalānī, *Fath al-Bārī* (Cairo, Egypt: Al-Maktabah al-Salafiyyah, N/A), 13/407.

²³⁰ Merlin L Swartz, *A Medieval Critique of Anthropomorphism: Ibn-Al-Jawzī’s Kitāb Akhbār Aṣ-Ṣifāt; a Critical Edition of the Arabic Text with Translation, Introduction and Notes* (Brill, 2002), 104.

²³¹ Al-Bayhaqī, *al-I’tiqād wa al-hidāyah ilā sabīl al-rashād*, 1988, 93.

²³² ‘Īsā Al-Tirmidhī, *Jāmi‘ Al-Tirmidhī*, vol. 5 (Lebanon: Dār Iḥyā’ al-Turāth al-‘Arabī, N/A), 225.

²³³ Al-Dhahabī, Muhammad, *al-‘Uluww l-‘Aliy al-Ghaffār* (Riyadh, Saudi Arabia: Maktabah Aḍwā’ al-Salaf, 1995), 208.

proclaimed by the Companions, and they should close the door at once to raising questions about such things.”²³⁴

Despite this, *ta'wīl* was not to be dismissed in its totality, but was considered by al-Ghazālī to be the role of the astute theologians and masters of the field. He writes, “The second vantage point is that of the speculative theologians who come to harbour misgivings about inherited theological doctrines handed down from the past. Their investigations should not go beyond what is absolutely necessary. And they should not abandon the apparent meaning of a text upon being compelled by some definitive logical proof.”²³⁵ Moreover, there are many examples to be found where *ta'wīl* was to be applied by the supposed staunchest of traditionalists. For example, and as confirmed by the Ḥanbalite ‘Abd al-Raḥmān Ibn Jawzī, the eponym Aḥmad b. Ḥanbal was known to have performed it on at least three occasions.²³⁶ In reference to the verse, *Your Lord comes*,²³⁷ Aḥmad was reported to have said that this means ‘command’, citing as evidence “The proofs of reason lead to this conclusion, for movement cannot be attributed to Him,”²³⁸ Al-Ghazālī in his *Iḥyā’ ‘ulūm al-dīn* also states that Aḥmad b. Ḥanbal closed the door of interpretation save for three reports, the reason being that he wished to preserve the welfare of the masses.²³⁹ Likewise, Ibn Jarīr al-Ṭabarī (d. 310/923) in his famous exegesis comments on the verse that seems to outwardly attribute “eyes” to God, “...[Meant by] the ark in which we carried Noah in was *under our gaze* and *in view*. Similarly, it was mentioned that Sufyān said about this, ‘Informed us Ḥumayd, from Mahrān, on the authority of Sufyān regarding the verse “*Under Our eyes it floated on*”, [it meant] under our command.”²⁴⁰ In his *Mustaṣfā* al-Ghazālī explains that Abū Ḥanīfah would employ *ta'wīl* for law making and interpreting prophetic reports.²⁴¹ Also, when explaining the ambiguous verses (*al-mutashābihāt*), he explained that they are in regard to “that which has been mentioned in

²³⁴ Sherman A Jackson, *On the Boundaries of Theological Tolerance in Islam: Abū Ḥāmid al-Ghazālī’s Fayṣal al-Tafrīqa Bayna al-Islam Wa al-Zandaqa* (Oxford: Oxford University Press, 2002), 105.

²³⁵ Jackson, *On the Boundaries of Theological Tolerance in Islam*, 106.

²³⁶ The contemporary Ḥanbalite Abū al-Ḥasan Al-Zāghūnī (d. 527/1133) was to constantly resort to allegorical interpretation in order to avoid contradiction within the dicta. See Abū al-Ḥasan Al-Zāghūnī, *al-’idāḥ fi uṣūl al-dīn* (Markaz al-Malik Abū al-Ḥasan Al-Zāghūnī, al-’idāḥ fi Uṣūl al-Dīn (Markaz al-Malik Fayṣal li al-Buhūth wa al-Dirāsāt al-Islāmiyyah, 2019).

²³⁷ Qur’ān, 89:22

²³⁸ Swartz, *A Medieval Critique of Anthropomorphism: Ibn-Al-Jawzī’s Kitāb Akhbār Aṣ-Ṣifāt; a Critical Edition of the Arabic Text with Translation, Introduction and Notes*, 133. Ibn Kathīr (d. 774/1373), the student of Ibn Taymiyyah also reported another *ta'wīl* of Ibn Ḥanbal from al-Bayhaqī, in which the latter stated its chain as being “impeccable”. What gives this further substantiation is that Ibn Kathīr did not critique this statement. See Abū al-Fiḍā Ismā’īl ibn ‘Umar ibn Kathīr, *Al-Bidāyah wa al-nihāyah*, vol. 10 (Beirut, Lebanon: Maktabah al-Ma’arif, 1990), 327.

²³⁹ Al-Ghazālī, *Iḥyā’ ‘ulūm al-dīn* (Jeddah, Saudi Arabia: Dār al-Mīnahaj, 2013), 322–23.

²⁴⁰ Ibn Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī*, vol. 27 (Lebanon: Dār Iḥyā’ al-Turāth al-‘Arabī, 2001), 111.

²⁴¹ Al-Ghazālī, *Iḥyā’ ‘ulūm al-dīn*, 1:394–95.

regard to the divine attributes of which their apparent meaning indicates direction or similarity, and requires *ta`wīl*.”²⁴² He later says, “If it is said: ‘the Arabs would understand from verses like: ‘He alone holds sway above (*fawq*) His creatures,’²⁴³ and ‘the Most Merciful established Himself upon His throne,’²⁴⁴ direction and settlement, and it is possible that intended by them is something else, and is hence of the ambiguous verses; we say what an abomination! These are metonymies and metaphors that the believing Arabs would understand; those in belief that there is absolutely nothing like unto God, and they are interpreted figuratively in accordance to the common understanding of the Arabs.”²⁴⁵

In short, all of what preceded is just a brief clarification of the fact that there was no conflict between the theologians, especially al-Ghazālī, and those that preceded them in their final doctrinal conclusions, save in approach, which was a result of the changing of the times and the introduction of auxiliary sciences like logic which assisted them in supporting their assertions and method of establishment, hence supporting the statement of al-Subkī.²⁴⁶ Based

²⁴² Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:106.

²⁴³ Qur’ān, 6:18

²⁴⁴ Qur’ān, 6:61

²⁴⁵ Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:107.

²⁴⁶ The Ḥanbalite Ibn al-Jazwī (d. 597) stated in *Daf’ shubuhāt al-tashbīh* that anthropomorphism was integrated into the Ḥanbalite school in particular by three individuals, ‘Abd Allah b. Ḥāmid, al-Qādī Abū Ya‘lā and Ibn al-Zāghūnī, through their affirmation of ascriptions in accordance with their literal meaning and human senses. Ibn Jawzī not only accused them of being innovators but of falsely spreading a doctrine within the school that its eponym was in complete opposition to. See Abd al-Rahman Ibn al-Jazwī, *Daf’ shubuhāt al-tashbīh* (Cairo, Egypt: Al-Maktaba al-Azhariyyah lil-Turāth, N/A), 6. Before him, the Shāfi‘īte traditionist Aḥmad al-Bayhaqī (d. 458) composed several works in which he attempted to clear up the confusion that occurred at the hands of many traditionists after the formation of the theological schools who were not experts in the field of *kalām*, and yet wrote tracts regarding the attributes of God. What seems to have happened is that such individuals, due to their specialisation as traditionists, were associated with the “Ahl al-Hadīth”, based merely upon their occupation despite there being a clear disparity between their determinations and those with the appellation Ahl al-Hadīth prior to Ash‘arism. Al-Ghazālī, prior to al-Bayhaqī and also observant of this phenomenon, would provide an extremely meticulous and methodological critique upon hadīth compilations of assumed attributes, clarifying the problems that such works would entail. He reveals within it the procedural error present within such compilations, asserting, “Indeed he is distant from success he who authors a book in gathering these reports specifically, and prepares for every limb a chapter, effectively declaring: ‘the chapter for the establishment of the head,’ ‘the chapter for the establishment of the hand’ and so on, and then entitles it ‘the book of attributes.’ These are all isolated words, which were professed by the Prophet throughout different occasions, coupled with various contextual clues (*qarā’in*) which enable those listening to understand their meanings correctly. Therefore, when they are mentioned altogether, in a manner indicating similarity to the creation of man, the collection of all these isolated reports all at once upon the listener becomes a pivotal contextual clue in emphasising the apparent meaning of the text and implying similarity and anthropomorphism.” He later continued: “rather, one word is susceptible to various meanings, however if a second, third or fourth are added from the same genus it becomes weaker and the circle of possibility becomes smaller and reduced with each new addition when applied within the group all at once.” He then concluded: “For this reason the collection of individual isolated reports is impermissible.” See *‘Iljām al-awāmm ‘an ‘ilm al-kalām*, P. 17. Al-Ghazālī went on to summarise in this particular work that the sound approach in understanding these reported annexations within the text returns back to several maxims and key principles. From amongst them is the avoidance of unifying solitary reports and dividing the united, to preserve every expression and detail of these annexations with their original accompanied contextual clues which assist in their understanding, whilst adhering to the principles of understanding and their trajectories found in the books of legal theory. Moreover, many of the traditionalists themselves were known to respect the *mutakallimīn* as found in the statement of the great traditionalist al-Dāraqutnī (d. 385/995) in reference to al-Baqillānī (d. 402/1013) narrated

upon this, it would be wrong to assume that the slow assimilation and synthesis of theological postulates within the *uṣūlī* discourse as a betrayal of the eponym, which in the case of al-Ghazālī would be al-Shāfi‘ī.

As for the nature of theological discussion in legal theory texts, upon examination, one will notice that most theological discussions found in *uṣūl al-fiqh* concern very particular topics and are by no means absolute. For example, they do not mention the methods for affirming the existence of God, the question of the pre-eternity of the world or whether faith is susceptible to increase or decrease. Rather their focus is upon that which, in their eyes, is inseparable from the discussion at hand, and in conformity with their beliefs. Likewise, central to the methodology of Islamic scholarship by the sixth/12th century was this continuous process of “extended questioning”, with every answer producing another question. This series of questions and answers is evident from the beginning of the *Mustaṣfā* where an example of this phenomenon appears when defining legal theory and the logic behind its detailed categorisation. It reads,

“Know that when the definition of *uṣūl al-fiqh* refers back to ‘knowing the evidences of rulings’ (*ma ‘rifah adillah al-aḥkām*), the definition comprises of three words, ‘knowing’ (*ma ‘rifah*), ‘evidence’ (*al-dalīl*) and ‘ruling’ (*al-ḥukm*). They have said, ‘If it is necessary to know the *ḥukm* due to its knowledge being one of the four axes, then it is also necessary to know the *dalīl*, and then *ma ‘rifah*, meaning *‘ilm*. And when the required *‘ilm* is not achieved except with circumspection (*naẓar*), then the requirement to know *naẓar* emerges. Thus, they embarked upon elucidating the definition of *‘ilm*, *dalīl* and *naẓar* ...”²⁴⁷

Extended questioning was by no means specific to *uṣūl*, but in all the disciplines, although its origin was probably from those that engaged in *kalām*, and were continuously answering hypothetical questions. In *uṣūl* we see how this approach would undoubtedly breach boundaries of a theological nature. If we take the discussion concerning the ruling (*ḥukm*) as an example, we will find that the *uṣūlī* begins with its definition, which is most often defined as, ‘the divine

by Abū Dharr al-Harawī (d. 434/1043), “My first acquaintance with the judge Abū Bakr and my receiving knowledge from him occurred when I was walking with the sheikh Abū al-Ḥasan al-Dāraqṭnī in one of the alleys of Baghdad. We came across a young man to which he gave greetings to, and rejoiced at his presence. I saw great reverence from the sheikh Abū al-Ḥasan towards him, invoking for him and the like which surprised me. So, I asked him, ‘Who is that?’ To which he replied, ‘That is Abū Bakr b. al-Ṭayyib with who God made *Ahl al-Sunnah* victorious, and with who He suppressed the innovators!’” See Abū Faḍl Iyāḍ, *Tartīb al-madārik wa taqrīb al-masālik*, vol. 2 (Lebanon: Dār al-Kutub al-Ilmiyah, 1998), 209. Hence emphasizing the point that there was an acknowledgement of the role they were playing and the importance of their method.

²⁴⁷ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:9.

address which is connected to the actions of the legally responsible.²⁴⁸ From this precise definition alone, the question will be asked about the nature of the ‘divine address’, what is it, and how does it occur? And from this discussion a series of inquiries and debates will arise concerning the nature of God’s speech, followed by questions as to how it is connected to the actions of the responsible, if it is pre-eternal, with others maintaining that it must be necessarily created due to the impossibility of the speech being an ‘address’ with the absence of the addressee. This is just the ‘tip of the iceberg’. We have not even mentioned yet the issuer of the *ḥukm*, namely the divine legislator; is it God or is it the intellect, or is it both? If it is the intellect and it has the ability to reveal God’s law without revelation, then what does that say about the state of people prior to revelation: were they religiously responsible before God to perform good and to praise Him? It is the nature of such questions that ultimately lead to the discussion of ethical value, for they are all extended questions that will inevitably occur in any debate, where each *uṣūlī* is, at times, answering the question of his imaginary interlocutor and covering his own tracks, and sometimes directly responding to the actual claims of others. This series of questions is answered in the *Mustaṣfā*. However, the issue of the ‘extended questions’ was not unique to it, but can also be found in al-Shīrāzī’s commentary on his *Luma*. After stating the reasons for discussing *‘ilm* (certainty), *ẓann* (conjecture), and *naẓar* (circumspection), he states, “And we advanced the definitions before all of these, since we need them to know the realities of things. Thus, we must know its reality before we can use it to understand something else.”²⁴⁹ In this instance he goes as far to even define the ‘definition’, displaying the continual stages that would take place in order to achieve maximum clarity. His logic being that we are going to discuss *uṣūl al-fiqh* which then stipulates the relevance of knowledge, probability, and all that is linked with them, since the rulings of the law are either definitive or probable. Similarly, since knowledge and probability are achieved with *naẓar* (circumspection) and *istidlāl* (inference), their discussion must follow. After this, *fiqh* and *uṣūl al-fiqh*, the types of legal evidences and sources of rulings, and all that is connected to it are to be mentioned. Al-Shīrāzī highlights his clear rational map that is founded in the method of the theologians when approaching topics, and became the mainstay in all disciplines. In the process, he accurately displays his Ash‘arite leanings despite some of his statements suggesting otherwise. In some areas of the *Luma* he mentions, “And the Ash‘arites postulate...” and then

²⁴⁸ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:55; Jalāl al-Dīn al-Maḥallī, *al-Badr al-ṭālī fī ḥall Jam‘ al-Jawāmi‘*, vol. 1 (Lebanon: Mu’assasat al-Risālah, 2012), 85; Badr al-Dīn al-Zarkashī, *al-Baḥr al-muḥīṭ*, 3rd ed. (Kuwait: Wizārat al-Awqāf lil Shu‘ūn al-Islāmiyyah, 1992), 117.

²⁴⁹ Abū Ishāq al-Shīrāzī, *Sharḥ al-Luma* (Tunisia: Dār al-Gharb al-Islāmī, 2012), 145.

proceeds to support a contrary opinion. However, what was meant by “The Ash‘arites” is Abū Ḥasan and some of his followers, as confirmed in the *Talkhīṣ* of al-Juwaynī.²⁵⁰ All the issues to which he attaches this statement are subsidiary issues and open to debate since they are areas of *ijtihād* and by no means definitive. It should not be understood, however, that al-Shīrāzī was in conflict with the Ash‘arites in their fundamental principles. An example of this is the discussion about the linguistic form of generality (*‘umūm*), where Abū Ḥasan al-Ash‘arī adopted the position that it has no particular form, refraining from a judgement if it does occur until there is additional supporting evidence which grants preponderance to generality over specificity, or the opposite.²⁵¹ Similarly, al-Subkī and the majority of Ash‘arite *uṣūlists* were in agreement with al-Shīrāzī, and did not in any way deem this a departure from Ash‘arism.²⁵² As for the fundamental teachings of Ash‘arism in the *Luma‘*, these are never in doubt. A simple example can be found in his subtle choice of words when discussing *naẓar*. He says, “This is because *‘ilm* occurs with the ruling *at the time* of its presence...”²⁵³. The significance of this statement cannot be underestimated, namely “*‘inda wujūdihi*,” since it is in reference to a fundamental Ash‘arite principle concerning their interpretation of causality, and central to an ongoing debate with the Mu‘tazilites about knowledge and judgements: does knowledge necessarily occur as a result of study and circumspection or is it created by God at the time of circumspection? For the Mu‘tazilites, it is a necessary result that after study knowledge is produced; whereas for the Ash‘arites, this is no more than an empirical ruling, one that we have just grown accustomed to witnessing. However, there is no concomitance between the two, just like fire and combustion.²⁵⁴ The human being is aware that fire burns from experience, though would not rationally link the two, with the proof being that a child normally gets burnt during his first encounter with fire unless warned about its dangers. Debates of this nature were key to much grander disputes like the issue of miracles and their possibility. In sum, this concise subtle expression captures al-Shīrāzī’s strict adherence to the Ash‘arite doctrine on causality. Another example is the description of the *‘illah* as being an *amārah* (sign),²⁵⁵ and that God’s acts are not purposive,²⁵⁶ both of which are additional indications of where al-Shīrāzī’s allegiances lie, and will be further elaborated in the chapter on *ta‘līl*. Likewise, in al-Sam‘ānī’s *al-Qawāṭī‘ fī uṣūl al-fiqh*, we see from the offset the very same process of extended questions,

²⁵⁰ Al-Juwaynī, *Kitāb al-Talkhīṣ fī uṣūl al-fiqh*, vol. 2 (Beirut, Lebanon: Dār al-Bashā‘ir al-Islāmiyyah, 2007), 19.

²⁵¹ Al-Shīrāzī, *al-Luma‘*, 115.

²⁵² Al-Mahallī, *al-Badr al-ṭāli‘ fī ḥall Jam‘ al-Jawāmi‘*, 2012, 1:341.

²⁵³ Al-Shīrāzī, *al-Luma‘*, 80.

²⁵⁴ Al-Juwaynī, *Kitāb al-Talkhīṣ fī uṣūl al-fiqh*, 1:124–27.

²⁵⁵ Al-Shīrāzī, *al-Luma‘*, 262.

²⁵⁶ Al-Shīrāzī, *Sharḥ al-Luma‘*, 983.

which when discussing knowledge and its definition eventually lead him to confirming the position of what he called the stance of ‘Ahl al-Sunnah’; that the non-existent is not considered a thing (*shay*’).²⁵⁷ Again, this was the position of the Ash‘arites on this topic, and contrary to the belief of the Mutazilites, originally discussed in theological works only to find their way into *uṣūlī* discussions when necessary. Al-Shīrāzī stated when critiquing the Mu‘tazilite definition of knowledge as being ‘the belief of something’, “I heard Abū Ṭayyib al-Ṭabarī say, I heard the judge Abū Bakr al-Bāqillānī say, ‘I do not excommunicate the Mu‘tazilites for anything except for their statement that the non-existent (*ma‘dūm*) is a thing (*shay*’).”²⁵⁸

Most apparent from all the aforementioned is that, with the development of the field of legal theory, the absence of *kalām* within *uṣūl* was inescapable, and the only differences between the *uṣūlists* was the extent in which they the extended their questions and openly discussed the relation theology had to the point they were discussing. This normally depended upon the depth the author had in the field and expertise in *kalām*, or the intention behind the work itself, whether it was meant to be a primer or comprehensive. Likewise, found in the detailed discussions of al-Ghazālī on the same points that were at times alluded to by al-Shāfi‘ī, and others explicitly mentioned by him, we find the statement of al-Māyarqī to be true; that the later generations “added nothing to the methods of the *Salaf*, save for elucidation.”²⁵⁹

²⁵⁷ Al-Sam‘ānī, *Al-Qawātī‘ fī uṣūl al-fiqh*, 1:94.

²⁵⁸ Abū Ishāq Al-Shīrāzī, *Sharḥ al-Luma‘*, 1:147.

²⁵⁹ This was interestingly the same observation made by al-Zarkashī but in regard to the role played by the two judges, ‘Abd al-Jabbār and al-Bāqillānī in the field of *uṣūl*. See al-Zarkashī, *al-Baḥr al-muḥīṭ*, 1:6.

Chapter Four

Theology in *Uṣūl*

Is it possible to write a corpus in *uṣūl al-fiqh* without giving any consideration to *kalām*? After the *Risālah* of Muḥammad b. Idrīs al-Shāfi‘ī, all the *uṣūl* works that have reached us have clear theological underpinnings and foundations. The acceptance of *kalām* within theology has been a feature of the discipline from the time of Abū Bakr al-Jaṣṣāṣ until the present day, although with the odd exception, seemingly revealing an unspoken consensus as to its relevance within legal theory. Even those that were not completely convinced of *kalām* and its methods struggled to divest their works of theology despite their position towards the discipline. In the opening of his *Burhān*, when discussing the origins of legal theory, al-Juwaynī famously said, “*Uṣūl al-fiqh* is derived from *kalām*, Arabic, and jurisprudence.”²⁶⁰ For him, al-Ghazālī, and all the legal theorists who were to follow, the overriding presence of theology within the *uṣūlī* discourse was a given.²⁶¹

As for identifying where the connection between *uṣūl* and *kalām* lies, this is debated amongst legal theorists. Al-Ghazālī wrote, “The *uṣūlist* concentrates on only one of the broad areas that the theologian looks at, which is the statement of the Prophet which the theologian has revealed to its truthfulness. He (the *uṣūlist*) then looks at the manner in which it indicates a ruling, whether explicitly, implicitly, with its rational meaning or through deduction. The examination of the *uṣūlist* does not go beyond the statement of the Messenger, may peace be upon him, and his actions. For the Book is only heard from his saying, and consensus is only verified by his declaration, and evidence is only from the Book, the Sunnah, and consensus. And the saying of the Messenger, its veracity and establishment as a source of evidence, is only affirmed within the discipline of *kalām*.”²⁶² Al-Zarkashī understood from this that al-Ghazālī was suggesting that *uṣūl al-fiqh* in general is limited to the statements and declarations of the Prophet, in that they are only verified as true by the discipline of *kalām*.²⁶³ He comments, “This is unsatisfactory, since part of that which is taken from *kalām* is the knowledge of *‘ilm* (certainty), *ẓann* (conjecture), *dalīl* (evidence), *naẓar* (investigation) and other things

²⁶⁰ ‘Alī b. Ismā‘īl al-Abyārī, *al-Taḥqīq wa al-batayān fī sharḥ al-Burhān*, vol. 1 (Kuwait: Dār al-Ḍiyā’, 2011), 255.

²⁶¹ See Wan Azhar Wan Ahmad, *Imam Al-Haramayn Al-Juwayni on the Symbiosis Between Theology and Legal Theory* (Putrajaya: Islamic And Strategic Studies Institute, 2017). Sohaira Zahid Siddiqui, *Law and Politics Under the Abbasids: An Intellectual Portrait of Al-Juwayni*. Cambridge: Cambridge University Press, 2019.

²⁶² Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:6.

²⁶³ Al-Zarkashī, *al-Baḥr al-muḥīṭ*, 1992, 29.

previously mentioned.²⁶⁴ Thus, his assertion that the circumspection of the *uṣūlist* does not go beyond the prophet's sayings and acts is rejected. For he also looks at *al-istiṣhāb* (presumed continuance), *al-af'āl qabl al-shar'* (actions prior to revelation), *qawl al-ṣahābī* (the statement of a prophetic companion) and other things which are neither the statements of the prophet or his acts."²⁶⁵ However, it is my contention that al-Ghazālī did not mean by his statement the manner in which Al-Zarkashī understood it, since his work contradicts this. Rather, he meant it as a point of departure; that *uṣūl al-fiqh* would not exist were it not for the existence of the Prophet. He just summarised it in much broader terms. Al-Āmidī reiterates the same point in his *Ihkām* but with clearer elucidation. He states when discussing the dependence of *uṣūl* upon theology, "The knowledge that the indicators of the divine categorizations of human acts [that is to say, adopting a jurisprudential point of view, the rules of law] are indeed indicators of those categorisations, that they constitute a revelation from God, presupposes a knowledge of God's existence and attributes and a knowledge that the Apostle of God is truthful with respect to his claim to be a bearer of divine revelation and other matters that are known only through theology."²⁶⁶ Bernard G. Weiss comments,

"The substantive-theological part of Muslim theology is what gives that science its logical priority over theological jurisprudence. Quite obviously, there cannot be an enterprise of articulating a divine law unless there is a divine being. And it is not sufficient merely to know that a divine being exists; one must know something about this divine being – that he is knowing, willing, powerful, speaking, and so on – for only a being possessed of such attributes can be the author of a law. Furthermore, one must know where one must go in order to discover the law; that is, one must be able to put one's finger on something that one may regard as a revelation from God. These matters, along with others that belong within the domain of substantive theology, must be dealt with before the business of articulating the law can even begin."²⁶⁷

The elucidation of Weiss reveals how the *uṣūlists*, like al-Ghazālī and al-Āmidī, understood the role of theology as a basis and point of departure for *uṣūl al-fiqh*, although it was 'Alā' al-Dīn al-Samarqandī (d. 539/1144) who overtly unveiled how this was to impact the discipline.

²⁶⁴ For further reading on theological terms and al-Ghazālī's attitude as to how knowledge of the divine is achieved see Binyamin Abrahamov, 'Necessary Knowledge in Islamic Theology', *British Journal of Middle Eastern Studies* 20, no. 1 (1993): 20–32; Binyamin Abrahamov, 'Al-Ghazālī's Supreme Way to Know God', *Studia Islamica*, 1993, 141–68.

²⁶⁵ Al-Zarkashī, *al-Baḥr al-muḥīt*, 1992, 29. See Mairaj Syed, *Coercion and Responsibility in Islam: A Study in Ethics and Law* (Oxford: Oxford Islamic Legal Studies) 2016

²⁶⁶ Weiss, *The Search for God's Law*, 33.

²⁶⁷ Weiss, *The Search for God's Law*, 34.

He stated in his *Mizān al-uṣūl fī natā'ij al-'uqūl*, “Know that *uṣūl al-fiqh* and rulings are a subsidiary of the foundations of *kalām*, with the subsidiary being that which branches from its origin. Whatever does not branch from it is therefore not from its source. Hence, it is completely necessary that the composition of any work on this subject be in conformity with the creed of the author.”²⁶⁸ Similarly, from a practical standpoint, the late al-Shawkānī (d. 1255/1839), when justifying why he began with the discussion of rulings prior to linguistic postulates, stated, “*Uṣūl al-fiqh* is extracted from three disciplines; the first being *kalām* due to the evidences of the scripture pending upon knowledge of the Creator, Most Exalted, and the veracity of the transmitter (the prophet), and they are both verified within theology...”²⁶⁹ He follows up shortly, at the beginning of the second chapter which pertains to rulings (*aḥkām*), by saying, “We advanced the discussion about rulings prior to linguistic postulates, as connected to rulings are matters that are important in theology which we shall mention, God willing.”²⁷⁰

Building upon al-Samarqandī's observation that legal theory cannot be detached from the doctrine of the author and will be prevalent throughout his writing, I maintain that this point is illustrated in the *Mustaṣfā*, and throughout the course of this thesis I will venture to pinpoint some of the key areas where theology is discussed by al-Ghazālī within his legal theory. Before doing so, however, I would like to make the point that in some cases, especially with al-Ghazālī, there are instances where theological points were elaborated in more detail in his legal theory than elsewhere in his theological work like *al-Iqtisād*. What was the reason for this? The answer to this question lies in the statement of Taqī al-Dīn al-Subkī in his commentary of the *Minhāj al-wuṣūl ilā 'ilm al-uṣūl* of al-Bayḍāwī, in response to the objection of an interlocutor, claiming that *uṣūl al-fiqh* is no more than the synthesis of various disciplines. He responds,

“The reality is not like this at all. For the *uṣūlist* scrutinised and examined the discourse of the Arabs in ways that the grammarians and linguists did not. The discourse of the Arabs is immensely vast and its circumspection diverse. The books of language regulate words and their apparent meanings, but not their intricate meanings which require the examination of the *uṣūlist* and additional deduction that surpasses that of the linguist. An example is the signification of the imperative form ‘*if‘al*’ to mean obligation, ‘*lā taf‘al*’ to mean prohibition, ‘*kull*’ and its sisters to mean generality, and the likes of this which

²⁶⁸ Al-Samarqandī, *Mizān al-uṣūl fī natā'ij al-'uqūl*, 1–2.

²⁶⁹ Muḥammad al-Shawkānī, *Irshād al-Fuḥūl ilā taḥqīq al-ḥaqq min 'ilm al-uṣūl* (Cairo, Egypt: Maṭba‘at al-Ḥalabī, 1937), 5.

²⁷⁰ Al-Shawkānī, *Irshād al-Fuḥūl ilā taḥqīq al-ḥaqq min 'ilm al-uṣūl*, 6.

the questioner mentioned were of the affairs of language. If you were to search through the manuals of language you would find none of the aforementioned, and nothing of what the *uṣūlists* have discussed. Likewise, [the same can be said in regards to] the books of grammar. If you were to request the meaning of exception (*istithnā*) and whether removal (*īkhrāj*) proceeds or succeeds the ruling, and the likes of these intricacies which the *uṣūlists* took upon themselves to examine and understand by way of exclusive deduction from the discourses of the Arabs and specific evidences all of which does not fall within the demands of grammar. This and their like are of the undertakings of *uṣūl al-fiqh*. It should not be rebuked that it has its origins in these disciplines since whatever mention it does have of them are not essential rather by accident. As for that which is essentially mentioned of what we have illustrated has no existence save with *uṣūl al-fiqh*, and is not understood except by the *uṣūlist* (lit. by the one who is moulded by the discipline).²⁷¹

In his statement, al-Subkī highlights the exclusive role of the *uṣūlist*, namely that he may receive postulates and maxims found within a particular discipline only for him to extend them to an area of specific interest and relevant to the theorisation of the law. Although the examples given were in reference to language, it is applicable to all disciplines and hence answers the question as to why al-Ghazālī was to discuss issues in more detail within *uṣūl* than one may expect to find in works of *kalām*. All of this is deeply connected to the process of ‘extended questioning’ which we previously mentioned, since in each discipline new questions are raised that may be of a theological nature that would not have been raised in another discipline. So in *uṣūl* the issue of ethical value may have been discussed differently, or more extensively, as found in manuals of *kalām*. For the extended questions would have varied but the ultimate principles and doctrine would have remained.

Central areas of theological intersection

Although, as previously mentioned, the assimilation of *kalām* within the manuals of legal theory was unavoidable, the legal theorists contested among themselves as to where theology was to be mentioned and concerning what topics. Al-Juwaynī did not place any limitation to

²⁷¹ ‘Alī b. ‘Abd al-Kāfī al-Subkī, *al-Ibhāj fī sharḥ al-Minhāj*, vol. 7 (Dubai: Dār al-Buhūth li al-Dirāsāt al-Islāmiyyah wa Iḥyā’ al-Turāth, 2004), 15–16.

the relevance of theology to legal theory,²⁷² and this is also the case with al-Ghazālī, since with the understanding that doctrine is the basis for everything else, theology was always potentially relevant within every issue. It seemed to be among the later generations where arguments for the confinement of the theological underpinnings to particular areas were to emerge, with the late Ḥanafite *uṣūlist*, Kamāl b. al-Humām (d. 861/1457), maintaining its limitation to the issue of the legislator (*al-ḥākim*) and whatever was connected with it in terms of ethical value.²⁷³ That said, within the *Mustaṣfā*, there were central areas where *kalām* was mentioned and seemingly unescapable; such areas included determining the legislator, ethical value, thanking the benefactor, the ruling of things prior to revelation, discussions about the imperative, abrogation, *ta' līl*, and *ijtihād*. A point to make here is that a distinction must be made between the areas within *uṣūl al-fiqh* that have theological discussions and between the actual theological principles that govern the areas. The main overriding theological principles that were to dominate the theorisation of the Law were in accordance to their respective theological school. Thus, for an Ash'arite, their legal theory would reflect the Ash'arite stance towards ethical value, their concept of dominion (*mulk*) and understanding of *ḥikmah* or divine wisdom, and their firmly established principle of rejecting the attribution of all motives and objectives to God. As for the areas of these principles, they are numerous, and spread across the *uṣūlī* discourse. However, where these discussions were to make the most apparent impact would be on the topic of rulings (*aḥkām*), abrogation (*naskh*), commands and prohibitions (*awāmir wa nawāhī*), and *qiyās* which was to give rise to huge theological discussions in order to theologially facilitate the acceptance of *ta' līl* and *maṣlaḥa*. Nonetheless, these were not the only discussions to arise from the discipline of *kalām*, rather they were the most frequent and influential. Other less frequently mentioned were the likes of the divine speech, the extent of divine forgiveness, the infallibility of the Prophets and the permissibility for the Prophet to perform *ijtihād*, to name a few. What follows is a detailed examination of some of the central areas within the *Mustaṣfā* and how deeply engrained they are to his legal theory.

Determining the legislator

The first of the four integral chapters of the *Mustaṣfā* relates to rulings which al-Ghazālī calls *thamarah*. It is significant to highlight here that the precedence of the *ḥukm* before all other

²⁷² Al-Abyārī, *al-Taḥqīq wa al-batyān fī sharḥ al-Burhān*, 1:258. Wan Azhar Wan Ahmad, *Imam Al-Haramayn Al-Juwayni on the Symbiosis Between Theology and Legal Theory* (Putrajaya: Islamic and Strategic Studies Institute, 2017), p. 12.

²⁷³ Kamāl Ibn al-Humām, *Taysīr al-tahrīr*, vol. 1 (Cairo, Egypt: Dārussalam, 2014), 39.

topics and the discussion of the ruling prior to the legislator was not haphazard, rather based upon what al-Ghazālī considered rationally sound. For him, the ruling was the ultimate objective of all *uṣūlists* and hence must be mentioned first in order that the *uṣūlist* have a clear comprehension of what it is he/she is seeking. Al-Āmidī, on the other hand, began with the *ḥākim* (the Legislator), presumably out of etiquette towards the Creator and His standing before all else.²⁷⁴

As for al-Ghazālī's definition of the *ḥukm*, he says, "The *ḥukm* among us means 'the address of the law if connected to the actions of the legally responsible.'²⁷⁵ He continues, "If this address was not to exist from the legislator, then there is no *ḥukm*, for this reason we say, the intellect does not judge something as good or bad, does not obligate the thanking of the benefactor and there is no *ḥukm* for actions that precede the coming of the law."²⁷⁶ In his first key chapter after his introduction of epistemological preliminaries, al-Ghazālī wastes no time in correlating theological matters with *uṣūl*, and revealing their close association with one another. He explains that the definition of a ruling (*ḥukm*) as being "a divine address which is related to the actions of the legally responsible." He then breaks down this definition in accordance with all its concomitants; that a ruling requires revelation (divine speech) hence there is no rule without it, which ultimately means that the intellect plays no role in determining ethical value in regards to the establishment of rules. If this is acknowledged, then we must also accept concomitantly that there is no duty to thank the benefactor prior to the existence of revelation, since that in itself is a rational ruling (*ḥukm 'aqlī*), and we have already affirmed that the intellect cannot determine this alone. Similarly, it would also dictate that there is no ruling prior to the coming of the law, in which case acts like polytheism are not forbidden, in the sense that their performers are not legally accountable. All of these determinations are intrinsically attached to the definition, and for al-Ghazālī to mention them from the offset reveals his acknowledgment as to their degree of relevance. He says, "The Mu'tazilites assert that acts are divided into good and bad. From amongst them are those acts which may be recognised self-evidently by the intellect like saving a drowning person or the person in danger of dying, thanking the benefactor and the decency of telling the truth. And also like the hideousness of disbelief, inflicting pain upon the innocent and lying for no reason. Similarly, from amongst them are those actions which are comprehended inferentially, like the goodness

²⁷⁴ See Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi*, 82.

²⁷⁵ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, vol. 1 (Beirut, Lebanon: Dār al-Fikr, na), 1:55.

²⁷⁶ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:55.

of truthfulness which entails harm and the evil of lying which entails benefit. From amongst them also are those acts that are understood by way of revelation like the goodness of prayer, pilgrimage and the rest of religious rituals.”²⁷⁷ In the following line al-Ghazālī declares, “Yet the intellect does not recognise this independently!”, proceeding to elucidate the meaning of ethical value.²⁷⁸ What is the relevance of this pronouncement regarding the role of the intellect and ethical value, and why was it so important that al-Ghazālī opened his chapter with a discussion about it? Was it just to counter what the Mu‘tazilites have said in their works? It seems unlikely, since by the age of al-Ghazālī the Mu‘tazilite movement had largely lost its traction. Despite this, the later *uṣūlists* were in no agreement as to the reason of its inclusion, dividing into two camps. The first was to include the likes of al-Zarkashī (d. 794/1392) who considered it to be a theological point belonging to the works of *kalām* despite being required for jurisprudential matters.²⁷⁹ Al-Isnāwī (d. 772/1370) went a step further and believed it to be a discussion for the foundations of belief, and not legal theory.²⁸⁰ The other camp however, although recognising its theological value, also understood its inherent position within legal theory, and as a result the late Muḥammad Bakhīt al-Muṭī‘ī (d. 1354/1935) commented upon al-Isnāwī’s statement,

“What is relevant to the foundations of belief (*uṣūl al-dīn*) is the topic of ethical value that is connected to the actions of the servants and whose result is [the analysis of concepts like] the obligation upon God to observe human and absolute welfare – far transcendent is He of this! As for ethical value that is connected to the *ḥukm shar‘ī*, this topic is researched in *uṣūl al-fiqh*, since its subsidiaries branch in the discussion of whether there is a *ḥukm* prior to revelation or not.”²⁸¹

This response of al-Muṭī‘ī goes some way into explaining why we find such a detailed discussion of ethical value in the books of *uṣūl*, especially the *Mustaṣfā*.

²⁷⁷ Al-Ghazālī, 1:56. See Ayman Shihadeh, ‘Theories of Ethical Value in *kalām* : A New Interpretation’, 2016; Majid Fakhry, *Ethical Theories in Islam*, vol. 8 (Brill, 1994); Sherman A Jackson, ‘The Alchemy of Domination? Some Ash‘arite Responses to Mu‘tazilite Ethics’, *International Journal of Middle East Studies* 31, no. 2 (1999): 185–201; Richard M Frank, ‘Moral Obligation in Classical Muslim Theology’, *The Journal of Religious Ethics*, 1983, 204–23; Shoaib Ahmed Malik, ‘Al-Ghazālī’s Divine Command Theory’, *Journal of Religious Ethics* 49, no. 3 (2021).

²⁷⁸ On the role of the intellect in determining ethical value within the thought of al-Ghazālī Frank Griffel mentions that neither the intellect or the initial human disposition (*al-fīṭrā al-ūlā*) are the source but rather constant repetition. See Frank Griffel, ‘Al-Ghazālī’s Use of “Original Human Disposition”(*Fiṭra*) and Its Background in the Teachings of Al-Fārābī and Avicenna’, *The Muslim World* 102, no. 1 (2012): 29. See also Shoaib Ahmed Malik, ‘Al-Ghazālī’s Divine Command Theory’, *Journal of Religious Ethics* 49, no. 3 (2021).

²⁷⁹ Al-Zarkashī, *Al-Baḥr al-Muḥīṭ*, 1992, 139.

²⁸⁰ Jamāl al-Dīn Al-Isnawī, *Nihāyat al-sūl fī sharḥ minhāj al-uṣūl*, vol. 1 (Cairo, Egypt: Maktabat Bahr al-‘Ulūm, N/A), 1:260.

²⁸¹ Al-Isnawī, *Nihāyat al-sūl fī sharḥ minhāj al-uṣūl*, 1:260.

Ethical value has long been a debated topic among Muslim theologians and legal theorists.²⁸² Throughout Islamic history three predominant positions were to emerge, belonging to the three major theological schools; the Mu‘tazilites, the Ash‘arites and the Māturīdites.²⁸³ Nonetheless, prior to elaborating as to how ethical value was to impact legal theory generally and the *Mustaṣfā* specifically, it is important that I present a brief synopsis of all three positions so that one can appreciate how the disagreements on this topic were to influence the conclusions of the legal theorist, especially on the issue of legislation and determining the legislator.

The description of acts as good or bad has never been an area of disagreement among the Muslims. The point of divergence, however, has been in determining the source that renders something to be good or bad. Is it inherent and thus can be recognised by the intellect regardless of the presence of scripture, or is it subjective, and hence open to change and variation?²⁸⁴ Although such a discussion may seem theoretical with no impact upon the outside world, we will see how it not only dictated how they approached legal theory but also greatly impacted the Muslim view towards the salvation of others and the Muslims themselves.²⁸⁵ For the Mu‘tazilites and the Māturīdites, they postulated that the intellect alone can acknowledge ethical value in most cases and that the sacred law would be revealed in correspondence with what the intellect can inherently determine as good and bad.²⁸⁶ Al-Jaṣṣāṣ clarifies this in his *Fuṣūl*, “Acts of worship may be revealed by God in three ways; that which is obligatory in the mind: hence the law is revealed according to its obligation, emphasising that which was already

²⁸² Abū Bakr Ibn Fūrak, *Mujarrad maqālāt Abū Ḥasan Al-Ash‘arī* (Beirut, Lebanon: Dār al-Mashriq, 1987), 141–42. Najm al-Dīn al-Ṭūfī famously stated that the first of creation to understand ethical value rationally were the angels then the devil himself. See Najm al-Dīn Al-Ṭūfī, *Dār’ al-qawl al-qabih bi-l-tahsin wa-l-taqbih*, ed. Ayman Shihadeh (Riyadh, Saudi Arabia: Markaz al-Malik Fayṣal li al-Buhūth wa al-Dirasat al-Islamiyyah, 2005), 67; Shihadeh, ‘Theories of Ethical Value in *kalām* : A New Interpretation’.

²⁸³ Much later Ibn Taymiyyah was also to have a position on this topic which seemed due to the nature of his writings to be highly ambiguous, and hard to pinpoint his exact affiliations. For further reading see Sophia Vasalou, *Ibn Taymiyya’s Theological Ethics* (Oxford: Oxford University Press, USA, 2016); A Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (New York: SUNY Press, 1995); Fakhry, *Ethical Theories in Islam*.

²⁸⁴ Najm al-Dīn Al-Ṭūfī, *Dār’ al-qawl*, p. 83; Abū Ḥassan ‘Abd al-Jabbār, *Sharḥ al-usūl al-khamsa* (Cairo, Egypt: Al-Hay‘ah al-Misriyyah al-‘Āmmah lil-Kitāb, 2009), 381.

²⁸⁵ Mohamed Ahmed Abdelrahman Eissa extrapolates from this discussion that it would serve as a window into the doctrine of its legal theorist towards the eternity of divine speech. See Mohamed Ahmed Abdelrahman Eissa, ‘Before the Eternal: Muslim Law and the Eternity of Divine Speech’, *Islamic Law and Society* 24, no. 4 (2017): 336–54.

²⁸⁶ The generalisation of the Mu‘tazilite position on ethical value is taken from the *Mustaṣfā*, however there were two differing camps as to the subtleties of this topic. See Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought*, 161; Sophia Vasalou, *Moral Agents and Their Deserts: The Character of Mu‘tazilite Ethics* (New Jersey: Princeton University Press, 2008), 7; Shihadeh, ‘Theories of Ethical Value in *kalām* : A New Interpretation’, 388–96; Richard M Frank, ‘Moral Obligation in Classical Muslim Theology’, *The Journal of Religious Ethics*, 1983, 204–23.

affirmed by the mind. The likes of this include monotheism, the truth of the Messenger, thanking the benefactor, fairness and the like. The second is forbidden in the mind, and hence the sacred law is revealed according to its prohibition in emphasis to the dictates of the intellect regarding its ruling prior to the law, like disbelief, oppression, lying, and the rest of the acts rendered hideous by the intellect. As for these two sections, it is not permissible that the law may be revealed in contrast with what is in the mind, and they may not be abrogated or altered.”²⁸⁷ ‘Abd al-Jabbār affirms this understanding when he declares, “Goodness does not detach from obligation within the legal obligatory acts.”²⁸⁸ He continues, “There is no difference between saying *good* and saying *obligatory*,” proceeding to mention that obligation is actually a subsidiary of goodness “hence an obligatory act cannot be so unless it is *ḥasan*.” Correspondingly, Abū Maṣṣūr al-Maturīdī declared, “Indeed God, when He created creation for this test with that which granted them discernment and knowledge of the praiseworthy of affairs and the blame worthy, He made that which is condemned as bad within their minds and that which is praised as good.”²⁸⁹

From the aforementioned we can understand that both the Mu‘tazilites and the Māturīdites maintained that the intellect can recognise ethical value, independent of any revelation. This was their area of agreement, however they disagreed to a large degree upon its ramifications. For the Mu‘tazilite, this meant that every individual was legally responsible, regardless of whether the Message of revelation had reached him or not, hence condemning the disbelieving masses to hell. Sophia Vasalou writes, “Since the moral values of acts are independent of God’s will and command, so is the desert one acquires through such acts.”²⁹⁰ For the Māturīdites, they asserted that although the intellect can recognise, this does not demand that he will be punished on its behalf, rather punishment is ascertained by way of scripture.²⁹¹ As for the Ash‘arites, they denied that the intellect plays any role in determining good or bad, and that the two are

²⁸⁷ Abū Bakr Al-Jaṣṣās, *al-Fuṣūl fī al-uṣūl* (Qatar: Wazārat al-Awqāf wa al-Shu‘ūn al-Islamiyyah, 1994), 4/69–70. See also Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought*, 1995, 79–86.

²⁸⁸ ‘Abd al-Jabbār, *Sharḥ al-uṣūl al-khamsa*, 76.

²⁸⁹ Abū Maṣṣūr al-Maturīdī, *al-Tawḥīd* (Lebanon: Al-Maṭba‘ al-Kāthulikiyyah, 1982), 221. See Ulrich Rudolph, *al-Māturīdī und die sunnitische Theologie in Samarkand*. Leiden: Brill, 1997: *Al-Māturīdī and the Development of Sunnī Theology in Samarqand*. Translated by Rodrigo Adem (Leiden, The Netherlands: Brill, 2015), p. 141 (f/n 95) and Ulrich Rudolph. ‘Ḥanafī Theological Tradition and Māturīdism.’ In *The Oxford Handbook of Islamic Theology*. (ed.) S. Schmidtke, pp. 280–296. Mustafa Ceric. *Roots of Synthetic Theology in Islam: a Study of the Theology of Abū Maṣṣūr al-Māturīdī* (d. 333/944) (Kuala Lumpur: International Institute of Islamic Thought and Civilization, 1995). See also the Māturīdī school in van Ess, *Der Eine und das Andere*, vol. 2, pp. 794–6.

²⁹⁰ Vasalou, *Moral Agents and Their Deserts: The Character of Mu‘tazilite Ethics*, 6.

²⁹¹ Aḥmad b. Maḥmūd Al-Ṣābūnī, *al-Kifāyah fī al-hidāyah* (Cairo, Egypt: Silsilat al-Buḥūth al-Islāmiyyah, 2020), 725.

subjective values.²⁹² If anything were to be intrinsically good then there could never be a moment when it can be considered bad, however this isn't the case. Likewise, there are verses within the scripture which explicitly mention that God does not punish anyone prior to emergence of his revelation.²⁹³ Ibn Fūrak states that the eponym, Al-Ash'arī, would say, "Knowledge of what is obligatory and recommended, the *ḥasan* and *qabīh* of the acts of the accountable are achieved through acquisition and inference, and that none of such is known necessarily or is self-evident."²⁹⁴ The attitude towards ethical value had a great impact upon the foundations of legal theory since it was directly addressing one of the fundamentals of any legal system which was the actual source of law itself. There is no doubt that all these groups believed that the one legislator is God. However, for the Mu'tazilite, the majority of God's law were revealed in accordance with what had already been programmed within the mind, or to employ Vasalou's words, "God and human beings are bound alike by a single code of moral values."²⁹⁵ For al-Ghazālī, and the Ash'arites, this ideology had many problems, and was refuted in great detail within the *Mustaṣfā* and by al-Juwaynī before him, too.²⁹⁶ Al-Ghazālī's mention of ethical value and its disputes about its status at such an early stage in his work, implies, in my opinion, its immense significance, namely that most issues within legal theory refer back to it, and to cement within the mind of the legal theorist that at no time can a ruling be divest of scriptural evidence. For him, the permissible (*ḥalāl*) and the forbidden (*ḥarām*) were both accidents, and not intrinsic, unlike rational truths.²⁹⁷ Likewise, when discussing *maṣlaḥa*, the Ash'arite doctrine of ethical value is going to be key in that rulings will not be arbitrary and subject to whims, for as we shall highlight later, al-Ghazālī went to great efforts in ensuring that any discussion about *maṣlaḥa* was always connected to the divine dicta.²⁹⁸

As previously mentioned, it is important also to recognise that the enquiry about ethical value refers back to the ultimate question of who the ruler (*ḥākim*) is, i.e., the definitive issuer of rulings, and it is in this context that ethical value came about and why it was discussed among rulings from the offset. Since just like the theologian, the *uṣūlist* is conditioned to compartmentalise every topic and discussion which he engages with. Consequently, when he

²⁹² Abū Bakr Al-Bāqillānī, *al-Taqrīb wa al-irshād* (Beirut, Lebanon: Mu'assasat al-Risālah, 1998), 1:281.

²⁹³ See for example Qur'ān [17:15].

²⁹⁴ Ibn Fūrak, *Mujarrad maqālāt Abū Ḥasan Al-Ash'arī*, 1987, 15.

²⁹⁵ Vasalou, *Moral Agents and Their Deserts: The Character of Mu'tazilite Ethics*, 5.

²⁹⁶ Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought*, 1995, 114.

²⁹⁷ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 2:360.

²⁹⁸ Al-Ghazālī, *Shifā' al-ghalīl fī bayān al-shabah wa al-mukhīl wa masālik al-ta'līl* (Baghdad: Maṭba'a al-Irshād, 1971), 204. Felicitas Opwis, *Maṣlaḥa and the Purpose of the Law* (Leiden: Brill, 2010), 68–69. Vasalou, *Ibn Taymiyya's Theological Ethics*, 2016, 148–49.

examines the *ḥukm* he will begin with clarifying who the *ḥākim* is and from where rulings are derived and what is their source. He would include within this discussion the most circulated or contested opinions that are in conflict with the position of the author which in al-Ghazālī's time was the doctrine of the Mu'tazilites, and critique them. This would then branch out into what is the role of the intellect and its use, and can it independently recognise rulings or does it need assistance, namely revelation. Similarly, the *ḥukm* is related to everything associated with the actions of the *mukallaf*. This, in turn, opens up the examination of who is the *mukallaf*, and how is he religiously accountable and what are the conditions for his accountability. For this reason, the discourse about rulings prior to revelation became a topic within legal theory. For if a person recognises ethical value with his intellect, and this value is also the order by which God reveals His laws, then the *mukallaf* is ever present, prior to revelation and post, as maintained by the Mu'tazilites.

When comparing the discussion of the *Iqtiṣād* on ethical value with the discussion in the *Mustaṣfā*, it may be understood that al-Ghazālī was in contradiction with his own methodology which he mentioned in his introduction; that any discussions specific to a particular discipline are not to be demonstrated in a separate discipline. Since he goes into great detail about ethical value in his *Mustaṣfā* with not only a large degree of overlap but also additional arguments. However, what this in fact demonstrates is that al-Ghazālī deemed this discussion just as relevant to legal theory as to theology. For al-Ghazālī was always very vocal and outspoken if he deemed any discussion as irrelevant and exceeding the limits of legal theory. An example being when discussing in his *Mustaṣfā* whether a created act at the first instant of being brought into existence is commanded to just as it was prior to its existence, he answers that this is an issue that is “not fitting as of the objectives of *uṣūl al-fiqh*.”²⁹⁹ As for the *Iqtiṣād*'s discussion on the topic of ethical value; located within the chapter pertaining to the acts of God, he begins with affirming his doctrinal claims; that it is permissible for God not to religiously obligate His servants at all, that He can obligate them to perform things that are beyond their capacity, that he may inflict harm upon them without recompense, that it is not obligatory upon him to observe the optimum, that he is not obligated to reward obedience and punish disobedience, that the servant is not obligated by the intellect rather through revelation, and that it is not obligatory upon Him to dispatch Messengers, and were He to do so is neither *ḥasan* or *qabīḥ*.³⁰⁰ Owing to the continuous mention of certain words he commences with

²⁹⁹ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:86.

³⁰⁰ Al-Ghazālī, *al-Iqtiṣād fī al-i'tiqād* (Jeddah, Saudi Arabia: Dār al-Minhāj, 2008), 221.

clarifying the various meanings of *wājib* (obligation), explaining that it may apply to the act which were one to refrain from it there would be a clear harm, whether in the life of this world or the hereafter. The other meaning being that act which were it to be absent it would ultimately lead to the impossible. It was from this discussion which ultimately gave way to the debate of ethical value, since an act, if in compliance with the objective of the agent, is called *ḥasan* (good), and if it opposes and does not agree with his objective then it is called *qabīḥ* (bad). If the act or its relinquishment is void of any objective then this is called *ʿabath* (frivolous). Hence al-Ghazālī opens with explaining the motivations of acts, and how they do not depart from one of these three. It is after this that he explains ethical value, and how its perception differs from person to person; declaring that ethical value is not inherent in things but are subjective, unlike colours for example, which are inherent attributes.

In the opening chapter of rulings (*aḥkām*) within the *Mustaṣfā*, al-Ghazālī discusses the same topic, however he limits his claims surrounding ethical value to the areas that relate to legal rulings, namely that the intellect does not obligate the thanking of the benefactor, and there are no rulings prior to revelation. He follows this by outright pronouncing the doctrine of the Muʿtazilites, unlike in the *Iqtiṣād* where he does not mention them explicitly from the offset. The reason for this distinction is unclear since the majority of the claims he makes against the Muʿtazilites regarding ethical value he mentions almost verbatim in the *Iqtiṣād*, with the latter being exhibited in a more general sense. The detail and logic of the arguments found in the *Mustaṣfā* do vary from his postulations found in the *Iqtiṣād* to some degree. For example, al-Ghazālī, in his *Iqtiṣād*, limits the discussion about ethical value to one definition, whereas within the *Mustaṣfā* he produces three; the first being what he calls the understanding of the laymen (*al-ʿāmmī*), the second is in regard to what the law has determined as good (*ḥasan*) by praising its doer, in which case that all of God’s acts are described as being *ḥasan*, since they are all praiseworthy, regardless whether they were to meet the objectives of the servant or not. He does point out here that with this definition the *mubāḥ* would not be considered *ḥasan* as the performer of its act is not praised. The third definition includes everything that one can go about doing, hence including the *mubāḥ* alongside the acts of God. The prohibited would not be included in this definition since for the Muʿtazilites it has an intrinsic value which is rationally known to be bad.³⁰¹ In sum, al-Ghazālī argues that none of these definitions is

³⁰¹ Al-Ghazālī, *Al-Mustaṣfā min ʿilm al-uṣūl*, 1:56; Jackson, ‘The Alchemy of Domination? Some Ashʿarite Responses to Muʿtazilite Ethics’, 188.

founded upon ethical value being inherent attributes of acts, rather they are all subjective. With the first and second definition specifically, this is clear. For the first dictates that for people to be in disagreement over what is considered “good” and “bad” due to their conflicting aims and objectives is evidently known (*darūrī*). With the second, this point is also made clear, as God abrogates His law, and the concept of abrogation is in complete conflict with the notion that an act has intrinsic value, since it means that it does not succumb to change, whereas abrogation is the alteration and change of the law. The crux of the argument between al-Ghazālī and the Mu‘tazilites, or the Ash‘arites and the Mu‘tazilites, is the issue of where does ethical value lie and how can it be known? For the Mu‘tazilite it is inherent within things meaning that it may be recognised by the intellect and resultantly God is obligated to command to all that is intrinsically good and prohibit all that is intrinsically bad.³⁰² For the Ash‘arites and al-Ghazālī, just the idea that God is obligated to anything conflicts with His transcendence and therefore must ultimately be wrong. This is founded upon the concept of the Godhead, that he is free of all restrictions and acts as He pleases.³⁰³ Furthermore, as highlighted by al-Ghazālī, the presence of an intrinsic ethical value within acts and things is no more than a fragment of our imagination. His reasoning for this misunderstanding is threefold: the first is that an individual renders anything which conflates with his/her goals and objectives as *qabīḥ*, even if agreeing with the goals and objectives of someone else. The outlook is always subjective in this case. The second is that there may be a rare exception of which one is negligent from among the cases that conflict with one’s goals and objectives, and due to his obliviousness of this case calls every case as being *qabīḥ*. Never did it come to his/her mind the presence of scenarios in which that which supposedly opposes his/her objective could actually be *ḥasan* and beneficial. An example is the case of lying in order to preserve the life of a prophet who is being sought after by a tyrant. Al-Ghazālī explains that due to the continual mention of its *qubḥ*, its absoluteness becomes engrained within the individual to the point that if the rare exception were to occur, he would find an aversion to it. Hence, resulting from how he/she was raised

³⁰² It seems that al-Ghazali was primarily debating with many of the earlier Mu‘tazilites, as al-Jabbār was to allude, within his *al-Muḥīṭ bi al-Taklīf*, the opinion that the two Sheikhs, Abū ‘Alī al-Jubbā’ī and Abū Hāshim al-Jubbā’ī, that they both rejected that attributes of good and bad were intrinsically rooted within things. Rather, the ruling of good and bad was dependent upon considerations and situations (*wujūh wa i‘tibārāt*). See *al-Muḥīṭ bi al-Taklīf*, p. 239. Despite this, the fact did not change that it was the intellect that recognises ethical value in all cases, and that revelation does no more than corroborate what the intellect already knows. See ‘Abd al-Jabbār, *al-Muḡnī fī abwāb al-tawḥīd wa al-‘adl*, 1962, 6:64.

³⁰³ Al-Bāqilānī, *al-Inṣāf fī mā yajib i‘tiqāduhu wa lā yajūz al-jahlu bihi*, 151–52. Muḥammad b. ‘Abd al-Karīm al-Shahrastānī, *Kitāb al-Milal wa al-niḥal*, vol. 1 (Beirut, Lebanon: Dār al-Ṣādir, N/A), 52; Vasalou, *Moral Agents and Their Deserts: The Character of Mu‘tazilite Ethics*, 7; Rudolph, *Al-Māturīdī and the Development of Sunnī Theology in Samarqand* (Leiden: Brill, 2014), 297.

upon believing that lying is bad, and the rare occurrence of any beneficial cases, judgement is made that all cases are bad without exception and therefore the act itself is intrinsically bad. The third and last cause for making ethical judgements upon things is by way of association, due to which rulings are granted to things that share some of the characteristics of something detested. An example being honey, it may be resented because it reminds someone of vomit, or a statement, if attributed to a Mu‘tazilite and heard by an Ash‘arite, may be rejected purely upon those grounds despite being sound. Al-Ghazālī explains that these are all fallacies of the mind to which one’s self can fall victim, and regularly obeys.³⁰⁴

One of his additions to his original argument which is not found in the *Iqtiṣād*, viz. that from among the reasons that someone may inherently believe lying is wrong is because it may have been communicated from the Prophets beforehand and they mass-transmitted until it became customary.³⁰⁵ If this were to be the case then it would ultimately mean that its source is the law itself, and there is no reason to deny such a possibility. This was an additional argument that was not found in any other of his writings. It is an important argument that would have been relevant in his *Iqtiṣād*, since it could be considered a worthy proof; however, its inclusion here could be due to either it coming to mind after his composition of the *Iqtiṣād*, or he saved it for the likes of the *Mustaṣfā* where he was to expand on the topic with additional points and details, due to its relevance to the law.

Rulings prior to revelation and the thanking of the Benefactor

Following from the assertion that rulings are based upon the intrinsic ethical value they contain and that the intellect may recognise these values, the discussion then surrounds the concomitance of such a postulation – the existence of legal obligation prior to revelation which would include the thanking of the benefactor. Al-Ghazālī maintains that, by definition, there are no rulings prior to the law since it is only through the divine address that laws are known. This argument between the Ash‘arites and Mu‘tazilites has immense ramifications as it suggests that according to the Mu‘tazilite doctrine disbelief is never excusable, even the person in the most remote of locations who has never received the message of Islam.³⁰⁶ As for the

³⁰⁴ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:58–59; Abū Hamid Al-Ghazālī, *Al-Ghazali’s Moderation in Belief* (Chicago: University of Chicago Press, 2013), 163–64. See Malik, ‘Al-Ghazālī’s Divine Command Theory’, 2021.

³⁰⁵ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:57.

³⁰⁶ For Mu‘tazilite attitudes on this topic see Hussein Ali Abdulsater, ‘Reason, Grace and the Freedom of Conscience’, *Studia Islamica* 110, no. 2 (2015): 233–62.

Ash‘arites, they assert that such an understanding conflates with scripture and can be rationally debated.³⁰⁷ In the *Mustaşfā*, al-Ghazālī focuses solely on employing logical arguments to refute his Mu‘tazilite interlocutors, with his first contention being that the only obligator is God through His divine commands and prohibitions. So, if there is no revelation, then what possible source for obligation can remain?³⁰⁸ He then explains that if one were to maintain that the intellect is a source for obligation then it has been determined that the intellect would only perform this to derive some benefit or no benefit at all. The potential for the latter he describes as being impossible (*muḥāl*) since it would be considered frivolity and stupidity. And as for the former, this benefit can either return back to God which is also impossible, since He transcends beyond objectives (*aghrād*) and benefits, or can return back to the servant (*‘abd*).³⁰⁹ Again, this possibility could mean that the benefit could return back to the servant during this worldly life, which is contrary to reality, since empirically speaking the servant, in examining, contemplating, acquiring knowledge, being grateful and prohibiting himself from his desires is nothing but toil which he must forebear, hence having no realised benefit in relation to the strife endured. Likewise, with regard to benefit in the next life, he argues that this would require revelation to know that one is to be rewarded, which he described as a *tafaḍḍul* (act of benevolence) from God, and since the discussion is in reference to rulings prior to revelation, he thus confirms that the intellect has no way of confirming whether there is a benefit in the hereafter or not.³¹⁰ He further explains that if one were to argue that: if one were to come to the assumption that there existed a God, and if he extols Him he will be rewarded and if he rejects Him he will be punished; it would not come to his mind at all the possibility of being punished for being thankful since human nature avoids possible harm just as it avoids actual harm, then the response would be that this is in regard to the reactions of humans, however with regard to God both thankfulness and ingratitude are the same, and therefore requires a prepondering

³⁰⁷ See Anver M Emon, *Islamic Natural Law Theories* (Oxford: Oxford University Press, 2010), 29; Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought*, 1995, 62. Mohamed Ahmed Abdelrahman Eissa was to look at this debate from the perspective of eternal speech and not from desert, which in my opinion is why different Ash‘arites held different positions, namely due to differing considerations. Those that were to consider the issue from the perspective of eternal speech would ultimately favour the ‘ignorance’ version of the suspension position. For those that considered *taḳlīf* and desert would adopt the ‘non-existence’ position. However, no Ash‘arite was to take the stance that there was any binding rulings prior to the law, due to their agreement not only on their stance towards ethical value but also regarding the fact that no one is accountable for their acts regardless of their acts. See Mohamed Ahmed Abdelrahman Eissa, ‘Before the Eternal: Muslim Law and the Eternity of Divine Speech’, *Islamic Law and Society* 24, no. 4 (2017): 336–54; Jalāl al-Dīn Al-Maḥallī, *al-Badr al-ḳāli ‘fī ḥall Jam‘ al-Jawāmi‘*, vol. 1 (Lebanon: Mu‘assasat al-Risālah, 2012), 89–91; Muhammad, Badr al-Dīn, al-Zarkashī *Tashnīf al-masāmi‘ bi Jam‘ al-Jawāmi‘* (Mecca: Dār Ṭībat al-Khaḍrā’, 2018), 568.

³⁰⁸ Al-Ghazālī, *Al-Mustaşfā min ‘ilm al-uṣūl*, 1:61.

³⁰⁹ The point of God being free of objectives is central to the Ash‘arite doctrine and a key principle in regards to their approach to *ta‘līl* as we shall see in the coming chapter.

³¹⁰ Al-Ghazālī, *Al-Mustaşfā min ‘ilm al-uṣūl*, 1:61.

factor to one of the two possibilities, namely revelation.³¹¹ The Mu‘tazilite’s reaction, as mentioned by al-Ghazālī, is that were this to be the case, and the source of obligation is confined to revelation, then it would inevitably lead to the denial of the prophets. The reason being, if they were to perform a miracle the summoned people would argue that it is not incumbent upon them to look into the miracle except by the revelation, and the revelation is not affirmed save by circumspection (*naẓar*), consequently rational circumspection is obligatory in order to examine, which isn’t possible as long as the first circumspection isn’t obligatory, hence being a circular argument (*dawr*).³¹²

In response, al-Ghazālī asserts that such a conclusion could only be based upon ignorance of the reality of obligation which he has previously explained as being “preponderance in favour of performing a given act over refraining from it in light of the prevention of harm that is estimated or known to occur.”³¹³ Using this definition as his foundation, he then explains that in order for there to be preponderance there has to be something exterior, a determining factor, that grants one thing preponderance over the other, which is the Prophet, his miracle is his evidence of his truthfulness and reflection the means by which one recognises the truthfulness through the tool of the intellect. The example he provides is that of the father who says to his son to look behind him as a lion is approaching which will attack him if he is negligent. In response, the son says that he will not look back as long as he does not know of the obligation to look back, and looking back is not an obligation as long as he does not know of the lion, and is unaware of it as long as he does not look back. Upon this the father explains that he will perish by not looking back and he is not excused as he is able to do so. This, al-Ghazālī explains, is like the prophet who says that death is approaching, and beyond it is a painful chastisement if one were to abandon faith and obedience, and this is known by the most meagre of *naẓar* into the prophet’s miracle. After mentioning this example, al-Ghazālī states, “And this is something very comprehensible, void of any contradiction,” opposing the Mu‘tazilite claim that it leads to a circular argument.³¹⁴

³¹¹ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:62; al-Ghazālī, *al-Iqtīṣād fī al-i‘tiqād*, 2008, 250. Al-Ghazālī adds that it is just as possible that God created mankind to enjoy and immerse themselves in pleasure, and not to give thanks, and even provides an example where thanks could be considered disdainful. See Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:62-63.

³¹² Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:62.

³¹³ Al-Ghazālī, *Al-Ghazālī’s Moderation in Belief*, 186.

³¹⁴ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:62-63.

As can be seen in this discussion, there are plenty of theological aspects revealed that will repeat themselves throughout works in legal theory and have deep relevance within the philosophy of *uṣūl*, especially *qiyās*. Discussions about both *aghrāḍ* and *tafaḍḍul* have an inherent significance in the *maṣlaḥa* dichotomy.³¹⁵ Likewise, the discussion about thanking the benefactor, and the depths to which al-Ghazālī defended the Ash‘arite position on ethical value, despite seeming distant to any legal import, not only signifies the philosophy of the law, but its pertinence to many discussions today, namely the fate of mankind prior to revelation, which is then extended to the fate of those individuals whom revelation had yet to reach, or appeared in a distorted fashion. Additionally, all of these aforementioned discussions fall within rulings and is integrally related to the question of *taklīf* (religious responsibility), which is of the affairs of the law.³¹⁶

The definition of the categories of rulings and their theological connotations

Ethical value was not the only theological topic to arise within the discussion of rulings. Found embedded within this category is another subtle illustration of the far-reaching impact and inseparable connection theology was to have with legal theory in general and with rulings specifically. Rulings were classified by the majority of legal theorists, including al-Ghazālī, into five: the obligatory (*wājib*), the recommended (*mandūb*), the permissible (*mubāḥ*), the disliked (*makrūḥ*) and the prohibited (*ḥarām*). Upon defining each division, it became manifest that the likes of obligatory (*wājib*) and prohibited (*ḥarām*) could not be defined removed of any theological context.

Regarding arrangement, within the *Taqrīb* of al-Bāqillānī the term *wājib* was defined very early, however in the *Mu‘tamad*, due to his delayed discussion about actions and their rulings he mentions it quite late on. The placement of the later was not repeated by those that were to

³¹⁵ Emon, *Islamic Natural Law Theories*, 32.

³¹⁶ Reinhart argued that the ‘before revelation’ question was not important in itself; but rather a tool to address other legal and philosophical concerns, see A Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (SUNY Press, 1995), 3-5. Likewise Mohamed Eissa stated, “Jurists are not essentially interested in finding the deontic qualification of actions before the advent of revelation. In fact, Muslims believe that humans never existed prior to revelation,” see Eissa, *The Jurist and the Theologian: Speculative Theology in Shāfi‘ī Legal Theory*, 172. Both of these statements I would argue are inaccurate. For the question about the state of things prior to revelation is not to be understood in the literal sense of a time period when no revelation had ever been sent by God. This has never been the case. Rather what is meant is the situation that revelation, despite being present was not to reach an individual or appeared in a distorted fashion, and it is this point that al-Ghazālī has a deep interest in his *Fayṣal al-Tafriqa*, in which he issues a legal verdict regarding the one was to live in the West and did not hear about Islam, or heard about it in a distorted fashion. Hence revealing its immense significance. See *Fayṣal al-tafriqa bayna al-Islām wa al-zandaqa*, (Jeddah, 2017, Dār al-Minhāj), p. 103.

follow with the likes of al-Juwaynī, al-Shīrāzī, and al-Ghazālī all defining it very early on in their works. This was not, however, to be the only area where we find the influence of the *Taqrīb* on these works in the discussion of *wājib*, it was also the content. For the definition granted by al-Bāqillānī and its theological foundations, seems to have even impacted the *Mu'tamad*. Al-Bāqillānī stated, “As for the *wājib*, it is that which necessitates blame and censure with its relinquishment in that it has not been performed or that it has not been performed in a particular way.”³¹⁷ In the *Luma'*, al-Shīrāzī defines the *wājib* as “That which chastisement is associated with its relinquishment.”³¹⁸ Al-Sam'ānī described it as “That which its relinquishment demands punishment.”³¹⁹ This is very similar to the definition found in the *Tamhīd* of Abū al-Khaṭṭāb al-Kalwādhānī (d. 510/1116), where he defines it as “The act in which lies reward and in its relinquishment chastisement.”³²⁰ Now although all of these definitions seem markedly different, they also have areas of agreement in regard to their connotation. They all agree to a measure of divine censure; however, it is the word “chastisement” (*iqāb*) and the indifference among some towards its usage that highlights a deeper theological implication, and also their proficiency in the field of *kalām*. This is manifest in the statement of al-Juwaynī, “Regarding the *wājib*, some have said, ‘it is that which warrants the legally responsible one chastisement for his failure to perform it,’ and this is far from the position of the upholders of truth concerning reward and punishment.”³²¹ This definition, as clarified by Sophia Vasalou, was originally initiated by the Mu'tazilites, “The Mu'tazilites had averred not just that God will punish wrongdoers for their evil but that wrongdoers deserve punishment.”³²² However, it seems they differed with the wording as the only recorded reports from them is the concept of *istiḥqāq*, and the warrant (*istiḥqāq*) of blame. As is seen in both the *Mu'tamad* of Abū al-Ḥusayn al-Baṣrī and in 'Abd al-Jabbār's writings. The latter stated in his *Sharḥ al-Uṣūl al-Khamsah*, “The *wājib* is that act that were the able to refrain from its performance he would warrant blame in some scenarios.”³²³ His student echoed this in his *Mu'tamad*, “It is an act according to an effectual attribute upon the warranting of censure when

³¹⁷ Al-Bāqillānī, *al-Taqrīb wa al-irshād*, 293.

³¹⁸ Abū Ishāq Al-Shīrāzī, *Al-Luma'* (Tangiers, Morocco: Dār al-Kattaniyyah, 2013), 71.

³¹⁹ Abū al-Muzaffar al-Sam'ānī, *al-Qawāṭī' fī uṣūl al-fiqh*, vol. 1 (Lebanon: Ibn Hazm, 2011), 221.

³²⁰ Maḥfūdh b. Aḥmad Al-Kalūthānī, *al-Tamhīd fī uṣūl al-fiqh*, vol. 1 (Jeddah, Saudi Arabia: Dār al-Madani, 1985), 64.

³²¹ 'Abd al-Mālik b. 'Abd Allah al-Juwaynī, *al-Burhān fī uṣūl al-fiqh* (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1997), 106.

³²² Vasalou, *Moral Agents and Their Deserts: The Character of Mu'tazilite Ethics*, 70.

³²³ 'Abd al-Jabbār, Ahmad, *Sharḥ al-uṣūl al-khamsah* (Cairo, Egypt: Al-Hay'ah al-Misriyyah al-'Āmmah lil-Kitāb, n.d.), 39. See also Abū Ḥasan 'Abd al-Jabbār, *Al-Muḥīṭ bi al-taklīf* (Cairo, Egypt: Al-Dār al-Misriyyah li al-Ta'līf wa al-Tarjamah, na), 13.

omitted.”³²⁴ Although in neither of these accounts is there any mention of punishment, the Ash‘arites took issue with the warranting. For the concept itself was based upon one of the five principal Mu‘tazilite concepts; the promise and the threat. God had promised that the dutiful servant be rewarded for his good deeds and the disobedient be punished, hence the “warrant” of the recompense. ‘Abd al-Jabbār states, “As for understanding of the promise and threat, it is to know that God has promised the obedient with reward and threatened the wrong doers with punishment, and that He does what He promised and threatened without doubt, and to act contrary to this or to lie is impermissible in His regard.”³²⁵ Likewise, because the sacred law is in line with what is inherently good and bad, based upon the Mu‘tazilite doctrine of *tahsīn* and *taqbiḥ*, it is also the criteria by which God judges, and God cannot forfeit this duty.

Addressing this issue, and in a similar tone to al-Juwaynī, al-Ghazālī states in his *Mustasfā*, “Some have said ‘it is that act which its relinquishment demands punishment,’ but this was opposed on the basis that the relinquishment of the *wājib* can be forgiven and pardoned, and despite that, it still remains a *wājib*. For the *wājib* is current and the punishment is expected. It has also been defined as ‘that act which one has been threatened with punishment if refraining from it,’ and this is also opposed by the fact if there is the divine threat then its fulfilment itself is a *wājib*, for the discourse of God is true, and nevertheless one can perceive God forgiving and not punishing.”³²⁶

Al-Ghazālī, in agreement with the Ash‘arite doctrine, believed that to insinuate that someone warrants something, or that punishment is an absolute certainty, opposes the notion of God’s forgiveness and omnipotence. It puts into question the absolute free-will of God and the divine acts, for as al-Ghazālī states, “It makes no difference were God to forgive all of the disbelievers and punish all the believers. This is not essentially impossible, and does not conflict with any of the divine attributes.”³²⁷ This idea within the Ash‘arite cosmology is founded upon the perception of oppression and injustice (*ẓulm*), since the very concept of the Godhead for them demands that He does as He wills with His creation, as by definition *ẓulm* is to interfere and wrongfully appropriate the possessions of another, which is unimaginable in regards to God,

³²⁴ Abū al-Husayn Al-Basri, *Kitāb al-Mu‘tamad*, vol. 1 (Damascus: Al-Ma‘had al-Ilmi al-Faransi lil-Dirāsāt al-‘Arabiyyah, 1964), 369.

³²⁵ ‘Abd al-Jabbār, Ahmad, *Sharḥ al-uṣūl al-khamsah* (Cairo, Egypt: Al-Hay‘ah al-Misriyyah al-‘Āmmah lil-Kitāb, n.d.), 135-136.

³²⁶ Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:65–66.

³²⁷ Al-Ghazālī, *al-Iqtisād fī al-i‘tiqād*, 246.

as all creation belongs to Him.³²⁸ This subtlety was overlooked by other legal theorists who perhaps were not as insightful in regard to the nuances that the definition entailed. Examples can be found in both the *Luma* ' of al-Shirāzī and *al-Qawāti* ' of Abū al-Muẓaffar,³²⁹ although whether this was done for educational purposes and abbreviation or lack of observance of its theological ramifications remains to be seen, since al-Juwaynī used the same definition in his primer *al-Waraqāt*, and then completely critiqued the definition in his *Burhān*.³³⁰

Taklīf (religious responsibility): The possibility of the performance of the stipulated act

Another area within the opening chapter of rulings where al-Ghazālī could not refrain from entering into theological discourse is in regard to the divinely stipulated act itself (*al-Maḥkūm fīh*). This discussion fell within the confines of *taklīf* and what was possible in regards to the acts of God. For the Mu'tazilites, they based their discussion on this topic upon their perception of divine justice and the obligation of God to observe the optimum (*al-aṣḥāḥ*), their ethical value, and the idea that God has motives that compel Him to act according to comprehensible wisdom.³³¹ Hence, the idea that God could demand of His servants to perform anything beyond their capacity was considered impossible. For not only does it conflict with what they would consider wisdom, but also opposed their ethics as it would also be deemed wrong and something hideous (*qabīḥ*), which according to themselves and Māturīdites was impossible to emanate from God. Al-Jaṣṣāṣ suggested this in implicit terms when he said, "...And this is not like being commanded to ascend the heavens and uproot the mountains...such a command would be frivolous without benefit."³³² Al-Samarqandī clarified the disparity when he said, "If that which one has been commanded to, its existence cannot be comprehended, then such a command is not permissible, for it is to command to that which is beyond one's capacity, and this is rationally impermissible according to the majority of theologians (*mutakallimūn*), except that among the Mu'tazilites it is rationally abhorrent and among the ahl al-hadith rationally impossible and not abhorrent. Among us, however, it is impermissible for the two

³²⁸ Al-Ghazālī, *al-Iqtisād fī al-i'tiqād*, 242. Mohamad Nasrin Nasir wrote, "...The Mu'tazilites maintain that God must be just and this would mean, in this case, God's desire of the power to believe. For al-Ash'arī, it is the principle of absolute divine liberty that God is not subject to any law let alone humans' principles or human understanding of what is right and wrong." See Mohamad Nasrin Nasir, 'The Concept of "Taklīf" According to Early Ash'arite Theologians', *Islamic Studies*, 2016, 298. For the Ash'arite perspective on the concept of *ẓulm* and *ʿadl* see Al-Shahrastānī, *Kitāb al-Milal wa al-niḥal*, 1:52.

³²⁹ Al-Shirāzī, *al-Luma* ', 82; al-Sam'ānī, *al-Qawāti* ' fī usūl al-fiqh, 1:96.

³³⁰ See: al-Juwaynī, *al-Burhān fī usūl al-fiqh*, 106–7; Muḥammad Ibn al-Imām al-Kāmilīyah, *Sharḥ Al-Waraqāt* (Amman, Jordan: Dār 'Imār, 2001), 93.

³³¹ Nasir, 'The Concept of "Taklīf" According to Early Ash'arite Theologians', 296.

³³² Al-Jaṣṣāṣ, *al-Fuṣūl fī al-uṣūl*, 2/155.

aforementioned reasons, and this is based upon the fact that the intellect recognises good and bad, among us and among the Mu‘tazilites...”³³³

As for the Ash‘arites, and due to their disagreement with the Mu‘tazilites on these particular tenets, they agreed that rationally God could demand His servants to perform what is beyond their capacity, although whether it did actually occur is what they disagreed over. Al-Juwaynī stated in his *Irshād*,

“Some may say: It is public knowledge that the doctrine of your leader allows the obligation of what one does not have the ability to do; explain what you accept of this doctrine and, after presenting the question at issue, support it with proof. We respond: The obligation to do what one does not have the ability to do takes many forms. Among its forms, one is to make obligatory the union of two contraries and the production of something that exceeds the limit of the powers available. The correct doctrine, in our view, is that this is feasible, within reason, and not impossible.”³³⁴

In the *Mankhūl*, al-Ghazālī mentions this position, citing the evidence of al-Juwaynī. However, this was one of the areas where he was to follow his citation with the opposition of his teacher, for al-Ghazālī was to say, “And the chosen position amongst us is that to obligate someone beyond their capacity is impossible.”³³⁵ Before examining the exact stance of al-Ghazālī on this issue, we must first understand the various divisions of *al-taklīf bi al-muḥāl*, in order to see if he fits in any of these divisions or in fact agrees with the Mu‘tazilites on this issue. Impossibility in this context, and as mentioned by al-Subkī, divides into three: impossible in itself (*bi dhātihi*), customarily impossible due to an exterior factor (*li ghayrihī*), and rationally impossible due to an exterior factor.³³⁶ The example of the first would be found in the unison of two contraries like a body being described as black and white at the same instant. The second would be like the act of walking for someone in a crippled or disabled state, or a human being flying. Both of these examples can be mentally rationalised however they are not witnessed in the outside world. The third is that which is rationally impossible due to an exterior factor but not recognised as such customarily. The example given by al-Juwaynī and al-Ghazālī is the

³³³ Al-Samarqandī, *Mizān al-uṣūl fī natā‘ij al-‘uqūl*, 167.

³³⁴ Paul E Walker, *A Guide to Conclusive Proofs for the Principles of Belief* (Doha, Qatar: Garnet, 2000), 123–24.

³³⁵ Al-Ghazālī, *al-Mankhūl fī ta‘līqāt al-uṣūl*, 81.

³³⁶ Al-Maḥallī, *al-Badr al-ṭālī ‘fī ḥall Jam‘ al-Jawāmi‘*, 1:156–57; Weiss, *The Search for God’s Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi*, 110. This division is also alluded to by al-Ghazālī in his *Mustaṣfā* when critiquing the validations of al-Ash‘arī for its permissibility and realisation see al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:87.

belief of Abū Jahl. Customarily, for him to believe is not considered impossible, but because of the pre-eternal knowledge of God that he would not believe it has become scripturally impossible for him to believe.³³⁷ For otherwise it would render God's knowledge as ignorance. Now the question which one asks himself is did al-Ghazālī reject all of these categories, or was his rejection partial? Within his *Mustaṣfā*, which is regarded as his final word, he was clearly of the opinion of its impermissibility, despite his justification being markedly different to the Mu'tazilites, as made clear when he says, *lā li-qubḥihi* (not due to it being ethically bad), distancing himself from what could have been an acceptance of their rationale.³³⁸ Correspondingly, and adding more ambiguity is that found in his *Iḥyā' Ulūm al-Dīn*, and confirmed by al-Zarkashī, al-Ghazālī also held the position that the *taklīf bi mā la yuṭāq* was absolutely possible, as maintained by the eponym al-Ash'arī.³³⁹ This is significant because we know that both these works, the *Mustaṣfā* and the *Iḥyā'*, were written in the later stages of his life and in close proximity to one another. So how does one reconcile between the two positions? The answer to this seeming contradiction goes back to what exactly was being considered; the *mukallif* (God) or the *mukallaf* (the legally responsible individual). Regarding the *mukallaf*, al-Ghazālī rejected the idea that he could be obligated to perform that which is not possible based upon it holding no benefit as the very nature of receiving a command is that one be able to actually visualise what is being requested, and this is not the case, especially if one were asked to convert a tree into a horse for example.³⁴⁰ He explains, "For the meaning of *taklīf* is demanding (*ṭalab*) the performance of an act which requires effort,³⁴¹ and any demand stipulates something to be demanded (*maṭlūb*), and it is agreed that the demanded act must be fathomable to the *mukallaf*. For this reason, it is permissible to say: 'Move', since moving is understood. But were it to be said: '*tamarrak*', then it is not *taklīf*, since its meaning is irrational and unfathomable, as it is a word that linguistically holds no meaning (*muhmal*)."³⁴² He continues, "*Taklīf* is the divine address which requires effort, and whatever the addressee does not understand is not an address in his regard. The pre-condition of its comprehension is so that

³³⁷ Walker, *A Guide to Conclusive Proofs for the Principles of Belief*, 125; Al-Ghazālī, *al-Mankhūl fī ta'līqāt al-uṣūl*, 80.

³³⁸ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:87.

³³⁹ Al-Zarkashī, *al-Baḥr al-muḥīṭ*, 388; Abū Hamid Al-Ghazālī, *Qawā'id al-aqā'id* (Beirut, Lebanon: 'Ālam al-Kutub, 1985), 146.

³⁴⁰ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:88.

³⁴¹ For an elucidation of the word "*ṭalab*" and the reservations and debates about its usage and translation see: Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi*, 332.

³⁴² Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:87–88.

obedience can be conceived.”³⁴³ In any case, from this segment we can see that the focus of al-Ghazālī here is upon the *mukallif* and how in order for him to be able to recognise a command he must first understand it. His analysis in the *Mustasfā* appears focused on highlighting the rational meaning of *taklīf* rather than discussing whether it is fundamentally possible for God. In this instance he is looking at the point at hand more with the eye of the jurist than the theologian, since his argument is established upon what is rational in regard to the human being and is in agreement with the definition of what the law has defined as *taklīf*. He then founded his consideration upon the stipulations of the law and its nature, and not the absolute abstract sense, which was the case among the theologians. On the other hand, in his *Ihyā’*, his statement is made when discussing the actions of God, His involvement in creation and that all acts ultimately belong to Him. Hence in this context his focus is upon the *mukallif*, the Godhead, maintaining that rationally God can act in any way He wills, without restriction, emphasising his omnipotence, and in agreement with al-Ash‘arī, and hence stating that *taklīf bi mā la yuṭāq* was indeed possible.

The application of *Ta‘alluq* in legal theory

Associated with the *ḥukm* is the concept of *ta‘alluq*, namely the explanation of how the pre-eternal connects to the occurrent. This interpretation was very much embedded within Ash‘arite doctrine and their vision as of how to explain the divine actions anteriorly without violating God’s omnipotence. The point of *ta‘alluq* was pertinent within *uṣūl* for two particular issues; in relation to the command and in relation to the divine discourse itself. As for the latter, *speech* as we know it is made up of sounds, letters, all of which have a beginning and an end, which, according to al-Ghazālī and the Ash‘arites, indicates their contingency. He says in his *Iqtisād*, “If by speech what is intended is the sounds and letters, these are occurrents. There are occurrents that are perfection for us, but it is inconceivable that they would subsist in God’s essence.”³⁴⁴ He later states, “We concede that it is impossible for sounds to subsist in the essence of God and for Him to be a sayer in this sense.”³⁴⁵ The notion that God’s speech is pre-eternal then raises the issue of commands and prohibitions issued throughout time, how do they occur if they are not subject to time? This is an area like many others where the Ash‘arites

³⁴³ Al-Ghazālī, 1:88. This observation has its similarities with ‘Abd al-Jabbār’s theory of divine assistance, likewise it is the exact argument applied by al-Āmidī in his *Ihkām*. See Binyamin Abrahamov, “‘Abd al-Jabbār’s Theory of Divine Assistance (Luṭf)”, *Jerusalem Studies in Arabic and Islam* 16 (1993): 7–38; Weiss, *The Search for God’s Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi*, 110.

³⁴⁴ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 115.

³⁴⁵ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 116.

found themselves between two certainties: the first that the divine speech is pre-eternal; the second that it is uncreated void of any beginning or end, without sounds and letters. So how does the revelation and the command attach and become binding upon the human being? It is here we find the manifestation of the concept of *ta'alluq*. For the Ash'arite, the divine pre-eternal speech and command attaches to the human being from the beginning of time, an attachment that was called by the later Ash'arites, *ta'alluq ṣalūhī*, just in the manner that divine knowledge decrees the appearance of a particular person at a particular time. However, the *ta'alluq* only becomes binding at the decreed time; namely, when the particular person has become religiously responsible and the Messenger has received revelation, and at this point it is called *ta'alluq tanjīzī*.³⁴⁶ Al-Ghazālī alludes to this point in his *Mustasfā* when discussing the religious obligation of the non-existent (*taklīf al-ma'dūm*).³⁴⁷ He writes, "If it is said, 'it is not a condition of the command (*amr*) amongst you that the person commanded exist, for you have adjudged that God most exalted pre-eternally commands His servants before they are created. How then is it possible that you stipulated the condition that the *mukallaḥ* be able to hear and rationalise, whilst the intoxicated, forgetful, young lad, and insane are closer to legal responsibility (*taklīf*) than the non-existing person?' We say, it is important that one understands the import of our saying 'God commands' and 'the non-existing person is commanded', for we mean by this that he is commanded in the expectation of his existence, and not that he is commanded at the time of his non-existence. For such is impossible. Rather those who affirm the existence of internal speech (*kalām nafsī*) do not deem it far-fetched that there be established within the essence of the father the command of his child, who is yet to come [into existence], to learn and study, and that were it to be estimated the continuance of this command until the eventual arrival of the child, then the child is commanded by that previous directive, and so is the case with the meaning (*ma'nā*) established in the divine essence. For it is the pre-eternal command to an obedient act from God's servants which has connected (*ta'alluq*) with them on the basis of their eventual existence. For when they do

³⁴⁶ Ibrāhīm Al-Bājūrī, *Tuḥfat al-murīd 'alā Jawharat al-Tawḥīd*, third (Cairo, Egypt: Dārussalam, 2006), 148. Al-Bājūrī explains in his work *Tuḥfat al-Murīd 'alā Jawharat al-Tawḥīd* that the *ta'alluqāt* are divided into four depending upon that with which they are connected. The first is that which is connected with every possibility, and that is power (*qudrah*) and divine will (*irādah*). The second is that which is connected with the obligatory, the possible and the impossible, and that is the divine knowledge and speech. The first by way of manifestation (*inkishāf*) and the other by indication (*dalālah*). The third is that which is connected with all of existence and that is the attribute of hearing and seeing. And the fourth that which has no *ta'alluq* with anything, and that is the attribute of life. *Ibid.*, p. 142.

³⁴⁷ For further reading on *al-ma'dūm* within the Islamic theological discourse, see Tarif Khalidi, 'Mutazilite Historiography-Maqdisi Kitāb Al-Bad Wal-Tarikh', *Journal of Near Eastern Studies* 35, no. 1 (1976): 3; 'Abd al-Jabbār, *Sharḥ al-usūl al-khamsa*, 175–81; Muḥammad b. 'Abd al-Karīm al-Shahrastānī, *Nihāyat al-'iqdām fī 'ilm al-kalām* (Baghdad: NA, NA), 151.

eventually exist, they become commanded by that original directive.”³⁴⁸ If we compare this argument with the famous later Asharite Ibrāhīm al-Laqqānī (d. 1041/1632) on this topic, in his theological work *Hidāyat al-murīd li Jawharat al-tawhīd*, we see an almost identical argument. He says on this exact point and after mentioning one potential answer to the question, “Another answer, and the most famous, is that the existence of the addressee is only necessary to negate frivolity in physically uttered speech. As for the internal speech, then sufficient for the removal of frivolity is his presence in the mind and knowledge of him.”³⁴⁹ He continues, “Another response is that idiocy and frivolity are only necessary if the non-existent person is addressed, commanded and prohibited at the time of his non-existence, however if he were addressed, commanded and prohibited on the basis that he will exist and that he will become able to perform what he has been asked, in that it would have been directed for the performance of an act from someone who will exist, then they are not concomitant.”³⁵⁰

Hence, in this instance, we find the query regarding the nature of the command; firstly, from the aspect of it being speech and secondly as to how it is issued to the addressee, considering that it is pre-eternal. As for the first concern, there is differentiation between human physical speech and internal speech. Al-Ghazālī states, “We assert, however, that man is called “a sayer” in two senses. One of them is by virtue of sounds and letters, and the other is by virtue of inner speech, which is neither sound nor letter; and this is a perfection. Inner speech is not impossible for God and does not imply occurrence. The form of speech we affirm for God is inner speech.”³⁵¹ He reiterates in his *Mustaşfā*, “People in its regard (viz., speech) are of two camps. The first are those that affirm the internal speech...”³⁵² without directly affirming what camp he belongs to during the discussion, which is a common theme within the *Mustaşfā*, but clarifies his personal doctrine on the matter in the chapter examining “the method in understanding the meaning from the address”. He says, “Know that speech is either heard by a prophet or angel from God exalted, or heard by a prophet or a saint from an angel, or the Muslim community hears it from the Prophet. If it is the case that an angel or prophet hear it from God exalted, then this occurs without letters, sounds or posited language in that it is understood due to a

³⁴⁸ Al-Ghazālī, *Al-Mustaşfā min ‘ilm al-uşūl*, 1:85.

³⁴⁹ Ibrāhīm al-Laqqānī, *Hidāyat al-murīd li Jawharat al-Tawhīd* (Beirut, Lebanon: Dār Maktabat al-Ma‘ārif, 2011), 138.

³⁵⁰ Al-Laqqānī, *Hidāyat al-murīd li Jawharat al-Tawhīd*, 138.

³⁵¹ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 116.

³⁵² Al-Ghazālī, *Al-Mustaşfā min ‘ilm al-uşūl*, 1:412.

preceding collective agreement, rather the meaning is known by God creating within the listener an intuitive knowledge...”³⁵³

The relevance of *ta'alluq* as displayed has an immense bearing upon how the Ash'arites approach *uṣūl al-fiqh*, due to its association with the pre-eternal nature of God's speech and how can it then be issued to the non-existent. This also applies to the commands of the Prophet himself, for it explains according to their doctrine of the pre-eternal will and the transcendence of the Godhead from time, how his directives are relevant and obligate to other than those who were directly around him and the generations to come. Likewise, all of his commands are also all divinely pre-ordained. This answer provided by the Ash'arites was not only an attempt to reveal how the divine directives are relevant to everyone, regardless of time or place, but also avoiding the trappings of a God with created speech made of sounds and letters, or negating speech altogether. Moreover, as seen from the above, al-Ghazālī's adherence to the concept of *ta'alluq* was very much an indication of his Ash'arism on this issue, as this became a shibboleth of the Ash'arite doctrine.

The theory of abrogation (*naskh*): ramifications of ethical value

As previously mentioned, the significance of arguments apropos ethical value was far-reaching, extending into several areas within legal theory, many of which may not seem evident from the offset save after deliberation as to its ramifications. One such area is abrogation. Based upon the Ash'arite doctrine of ethical value, the Ash'arites' rejection of the role of the intellect in determining good and bad, and that the source of such value is the law itself, it would be completely rational for an act or command to be permitted in one instant and prohibited in the next. For the Ash'arites, *ḥusn* and *qubḥ* is not intrinsic, and the Legislator is free to act as He wills, unrestricted by the bounds of his creation's intellects. As for the Mu'tazilites, the concept of abrogation (*naskh*) could prove highly problematic, for if they were to recognise ethical value as being constant, inherently residing within acts and objects, then how could the law change from permissible to forbidden, like the consumption of wine since, as stated previously,

³⁵³ Al-Ghazālī, *Al-Mustasfā min 'ilm al-uṣūl*, 1:337. This point of “God creating within the listener an intuitive knowledge” is also a worthy addition that al-Ghazālī mentions within his *Mustasfā* and nowhere else, signifying what has been previously stated that the *uṣūl* manuals are additional sources of theological discourse, elucidating in greater detail topics that are found in their own specific theological works.

legal rulings follow the ethical verdicts of the mind.³⁵⁴ Al-Ghazālī addresses this when he states,

“There is no legal ruling except that it may be abrogated, contrary to the Mu‘tazilite position. For they have stated that from among acts are those that have intrinsic qualities which stipulate their *husn* or *qubh*, and hence they cannot be abrogated. Examples include knowing God Exalted, justice, thanking the Benefactor (due to their *husn*), and disbelief, oppression, and lying; their prohibition cannot be abrogated. They predicated their position upon their ethical value, and that it is incumbent for God to observe the optimum (*al-aṣlah*)...”³⁵⁵

Regarding *naskh*, al-Ghazālī mentions five contentions to not only his definition, but to the concept itself, all of which were based upon theological grounds.³⁵⁶ He states in his *Mustaṣfā* as being “The divine subsequent address that indicates the removal (*raf‘*) of a rule established with a previous divine address in a manner that were it not for this new address the old established ruling would remain,”³⁵⁷ The first critique surrounded the usage of the word ‘*raf‘*’, namely the removal of a ruling. Al-Ghazālī explains that the interlocutor took issue with the removal of an established ruling, since he deemed that any ruling described as being ‘established’ cannot be removed since it contradicts the notion of being established and concrete, hence *naskh* is to be defined as the removal of “the like” of the concrete ruling and not the exact ruling.³⁵⁸ Or it is indicative of the duration of the prescribed time of worship. ‘Abd al-Jabbār states, “Regarding the sacred law (*shar‘*), it is the removal of “the like” of the established ruling through a legal signification with another legal proof, in a manner that were it not to be the case then the original ruling would remain.”³⁵⁹ He explains, “We considered it

³⁵⁴ Al-Juwaynī, *Kitāb al-Talkhīṣ fī uṣūl al-fīqh*, 2:450.

³⁵⁵ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:122.

³⁵⁶ It seems that this definition was taken directly from al-Bāqillānī without alteration. See al-Juwaynī, *Kitāb al-Talkhīṣ fī uṣūl al-fīqh*, 2:452. The Ash‘arites were to differ among themselves on the word “*raf‘*”, with some employing the word “*bayān*” like al-Bayḍāwī and al-Rāzī, arguing that the previous ruling which has become abrogated is the opposite of the new abrogating ruling, and for that reason it is not possible to act upon either since they are equal in terms of their opposition. So just as the new rule can possibly remove the previous one, so too can the previous repel the new, thus requiring a preponderant factor to shift the balance. See Al-Isnawī, *Nihāyat al-sūl fī sharḥ minhāj al-uṣūl*, 2:548–49; Al-Maḥallī, *al-Badr al-ṭālī ‘fī ḥall Jam‘ al-Jawāmi‘*, 1:449. Al-Zarkashī asserted that the actual reason for the divergence was surrounding the nature of the divine speech. By the very virtue of it being pre-eternal it could not be subject to “*raf‘*”. See Badr al-Dīn, *Tashnīf al-masāmi‘ bi Jam‘ al-Jawāmi‘*, 2:728.

³⁵⁷ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:108. This definition was to be adopted by al-Āmidī also. For al-Āmidī’s in-depth analysis and explanation see Weiss, *The Search for God’s Law*, 494-495.

³⁵⁸ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:108.

³⁵⁹ ‘Abd al-Jabbār, *Sharḥ al-uṣūl al-khamsa*, 584; Abū al-Ḥusayn Al-Baṣrī, *Kitāb al-Mu‘tamad*, vol. 1 (Damascus: Al-Ma‘had al-Ilmi al-Faransi lil-Dirāsāt al-‘Arabiyyah, 1964), 397.

the removal of the “like” of the established ruling because if the actual ruling was to disappear then it could not have been established in the first place, and hence it would not be *naskh* rather *naqđ* (invalidation).³⁶⁰ The Mutazilite reluctance to define it as the removal of the actual ruling was due to it insinuating, according to their understanding, *al-badā’*,³⁶¹ meaning in the words of al-Āmidī: “When a rule of law is replaced by a contrary rule because a benefit that was previously hidden from view has become evident.”³⁶² For both the Mu‘tazilite and Ash‘arite alike, such a possibility was impossible, as this would then declare that God was in a prior state of ignorance, in complete conflict with the consensus that God’s knowledge is inclusive of all things. ‘Abd al-Jabbār postulates, “As for *al-badā’*, it does not become manifest except with the following considerations: that the *mukallaf* is one, the act is one, the time is one and the objective is one, then the command is issued after the prohibition or the prohibition after the command.”³⁶³ Al-Ghazālī employed an analogous response to the Mu‘tazilite argument. He postulated that this resembles a broken item, if it were not for its breakage then it would remain in its original pristine form. Such a breakage, however, was a result of an exterior factor, God; and hence does not render the item itself to be deficient in any way, since everything is of His dominion. The ruling is the same. The fact that God changes and removes a rule does not jeopardise the perfection of the ruling itself, as everything from God is deemed perfection, and He does as He wills. In sum, for God to have a ruling of a particular act and then to change it later is no more than a manifestation of the Ash‘arite stance towards ethical value, namely that rulings of things are no more than accidents.³⁶⁴ Al-Ghazālī responds to the charge of *al-badā’* when discussing the fifth critique. The second contention was that God’s speech is pre-eternal, and anything pre-eternal cannot be removed and altered as is insinuated by the usage of the word “*raf‘*” employed by al-Ghazālī. Al-Ghazālī responds to this claim by highlighting that *raf‘* does not denote the removal of the divine speech but rather the severing of its connection to the *mukallaf*, just as it connects with the rationally competent and physically able. However, were one to lose his/her rational faculties or become unable, the connection to the individual is severed, and if the prevention was removed in which his/her faculties or ability return, then the

³⁶⁰ ‘Abd al-Jabbār, *Sharḥ al-usūl al-khamsa*, 584.

³⁶¹ Al-Baṣrī, *Kitāb al-Mu‘tamad*, 1:397; al-Juwaynī, *Kitāb al-Talkhīṣ fī usūl al-fiqh*, 2:454. Referred to by Bernard Weiss as “progressive realisation”. See Weiss, *The Search for God’s Law*, 495.

³⁶² Weiss, *The Search for God’s Law*, 496. For further reading on the concept of *badā’* see Aliullah Badashti and Marzieh Dastmard, ‘Investigating the Relationship between Bada and Change in the Fate and Destiny of God’, *Shia Pajoohi*, 2022; Reza Berenjkār, ‘In Defence of Bada’, *Journal of Shi‘a Islamic Studies* 6, no. 3 (2013): 323–36; Cemil Hakyemez, ‘Bada and Its Role in the Debates over Shii Doctrine’, *American Journal of Islam and Society* 25, no. 1 (2008): 20–39.

³⁶³ ‘Abd al-Jabbār, *Sharḥ al-usūl al-khamsa*, 584.

³⁶⁴ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, vol. 1 (Beirut, Lebanon: Dār al-Fikr, na), 2:360.

connection to the individual also returns, all despite the divine speech remaining intact.³⁶⁵ As for the third contention, which is directly connected to the Mu‘tazilite position towards ethical value, it states, “What God has affirmed, He has done so due to its *ḥusn*, so were He to prohibit it this would lead to *ḥusn* (good) becoming *qabīḥ*, and this is impossible.”³⁶⁶ Basing his response upon his previous in-depth discussion on ethical value, al-Ghazālī brushes aside this argument, explaining that such an argument does not relate to their doctrine, meaning by this the Ash‘arites. For objects hold no intrinsic value and it is very possible for God to command to the performance of something and prohibit it prior to its time of application, thus ultimately prohibiting what He has commanded. The discussion about such a possibility will be addressed shortly as it is relevant to this thesis and is almost entirely theological. The fourth contention is that what God commands He wills its manifestation and existence, hence whatever is intended and willed by God how can it be prohibited to the extent that what God commanded was not what He wanted and ultimately *qabīḥ*. This argument is predicated upon the Mu‘tazilite doctrine that the divine will is a concomitant of the divine command.³⁶⁷ Again, on this point al-Ghazālī’s response is noticeably brief due to him discussing this point in the later chapter of commands. As for what he did say, it reads, “For us, the command is distinct from the will since it is our belief that disobedience is willed by God but not commanded to.”³⁶⁸ He stated later within that chapter of commands, that the divine will cannot be merely confined to commands, since by extension this would mean that events can occur contrary to God’s will “and this is abhorrent as it means that the majority of what is happening in God’s dominion is contrary to what He wills, namely obedience!”³⁶⁹ Al-Ghazālī then explains, “It was this predicament which lead our companions (Ash‘arites) to distinguish the command from will.”³⁷⁰

³⁶⁵ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:108; Badr al-Dīn, *Tashnīf al-masāmi‘ bi Jam‘ al-Jawāmi‘*, 2:729; Badr al-Dīn, 1:449.

³⁶⁶ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:108. This very argument is the point made by al-Bāqillānī, in that it leads to alternating genera (*qalb al-ajnās*) which is impossible, since good and bad are both descriptions of genera. See Al-Juwaynī, *Kitāb al-Talkhīṣ fī uṣūl al-fiqh*, 2:450.

³⁶⁷ ‘Abd al-Jabbār, *Sharḥ Al-Uṣūl al-Khamsa*, 467; Richard C. Martin, Mark R. Woodward, and Dwi S. Atmaja., *Defenders of Reason in Islam: Mu‘tazilism from Medieval School to Modern Symbol* (Oxford: One World, 2003), 98–99.; Emon, *Islamic Natural Law Theories*, 77.

³⁶⁸ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:109; Al-Juwaynī, *Kitāb al-Talkhīṣ fī uṣūl al-fiqh*, 2:495.

³⁶⁹ Al-Ghazālī, 1:416; Badr al-Dīn, *Tashnīf al-masāmi‘ bi Jam‘ al-Jawāmi‘*, 2:387; Al-Maḥallī, *Al-Badr al-ṭāli‘ fī ḥall Jam‘ al-Jawāmi‘*, 1:306; Al-Isnawī, *Nihāyat al-sūl fī sharḥ minhāj al-uṣūl*, 2:240–42.

³⁷⁰ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:416. Al-Shīrāzī writes in his commentary on his *Luma‘*, “If it is said that the command and will are the same, it would be said such a postulation is incorrect. The evidence being: if a man was to say to someone, ‘my boy does not obey me in what I command him to do and does not take my advice.’ He then says to his boy, ‘perform such and such’, he will have commanded the boy to do something where in reality he that he does not perform it so that he can reveal to who he was talking with the truth of what he was saying. Thus, indicating that the command is other than the will. Iblīs was commanded to prostrate and it wasn’t wanted from him, and if it was wanted then he would have prostrated regardless... For them (Mu‘tazilites) God wanted Iblīs to prostrate and Iblīs didn’t want to, ultimately meaning that Iblīs reached what he intended, and

In response to the fifth contention, that *naskh* would then include *al-badā'*, because “he prohibited it after commanding to it, thus it suggests that a more suitable ruling appeared to God whilst regretting the first.”³⁷¹ Al-Ghazālī, after labelling such a conclusion *fāsid*, explains that if the issue is that God prohibits what he permits, and forbids what He commands, then this is completely permissible, since God can remove what He wills and establish what He wills and there is no contradiction in this.³⁷² He also looks at another possibility, that if meant by *naskh* is that something was to become clear to God that He previously had no knowledge of, then this is impossible, and *naskh* does not necessitate this even according to his own definition. Rather all it suggests is that God has knowledge that He will command His creation to perform a particular act at a particular time which will then be succeeded by another ruling once the duration of the proceeding rulings expires. All of this is within the knowledge of God and does not incorporate any realisation of a mistake out of ignorance.

Abrogation prior to the ability to act

Branching further from the debates surrounding the definition of *naskh* was the query as to whether abrogation could occur prior to one’s ability to act, meaning that God commands to the performance of an action, and prior to the individual’s ability to perform, God abrogates it.³⁷³ For the Mu‘tazilites, this was completely impermissible as, in their view and according to their doctrine of ethical value, for God to command to something it meant that it was because it was essentially good, incorporating *maṣlaḥa* for whoever performs it,³⁷⁴ and to suddenly prohibit it meant that God had now prohibited the good. It would also mean that God’s will (*irādah*) has now become what He does not will which is contradictory. Al-Jaṣṣāṣ stated,

the Lord did not!” See Abū Ishāq Al-Shīrāzī, *Sharḥ al-Luma'*, vol. 1 (Tunisia: Dār al-Gharb al-Islami, 2012), 98. Muḥammad Bakhīt al-Muṭī‘ī was of the opinion that this debate between the Mu‘tazilites and the Ash‘arites was semantical, and they were in fact in agreement in most areas on this point. See al-Isnawī, *Nihāyat al-sūl fī sharḥ minhāj al-uṣūl*, 2:241–42.

³⁷¹ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:108.

³⁷² Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:110.

³⁷³ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:112; Al-Maḥallī, *Al-Badr al-ṭālī fī ḥall Jam‘ al-Jawāmi‘*, 1:452; Al-Isnawī, *Nihāyat al-sūl fī sharḥ minhāj al-uṣūl*, 3:562; Badr al-Dīn, *Tashnīf al-masāmi‘ bi Jam‘ al-Jawāmi‘*, 2:737. Bernard Weiss states, “The methodological importance of this issue may be seen by imagining that a mujtahid is claiming that a particular rule was abrogated by a particular saying of the Prophet. If abrogation of the sort under consideration is impossible, then another mujtahid might, upon discovering that the saying of the Prophet occurred before anyone had a chance to implement the rule, contest this claim and insist that the rule remains in effect. He would, perhaps, raise doubt about the first mujtahid’s interpretation of the Prophet’s saying or about the authenticity of the particular version of the saying used by him,” Weiss, *The Search for God’s Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi*, 512.

³⁷⁴ Opwis, *Maṣlaḥa and the Purpose of the Law*, 20.

“It is known that what God has commanded He has indeed willed its implementation, and that which He prohibited us from He resented that we perform it. For if it were permissible that God does not will that which He commanded then opposite is possible and He can will contrary. Were this to be the case it would then be permissible that the commanded individual not be obedient by performing what he has been commanded to do since he would only be obedient by performing what God wills from him, and similarly it would mean that he would not be disobedient by performing what he has been prohibited from, as it was willed from him. This would ultimately denote that the one who performs the prohibited is obedient to God Exalted, as he performed what He willed, which would then result in the bankruptcy of the meaning of the command and prohibition, rendering their mention frivolous.”³⁷⁵

He continues,

“If this is correct and a command is revealed coupled with the will of the performance of the act, it is not permissible that God dislike it after this in the same manner which He willed it from him. For in the prohibition after the command there is dislike to the very act that He willed, and this is *al-badā'* which is unattributable to God. The reason being that He does not dislike the act after willing it except due to additional knowledge which has occurred which was previously not possessed by God at the time of willing, or that the command is frivolous from the offset, and both positions are inapplicable to God.”³⁷⁶

In sum, the Mu'tazilite argument was such that to assert that *naskh* was the removal of previous rulings and their replacement for another was either to render something that was essentially a *maṣlaḥa* a *mafsada*, or *ḥasan* to *qabīḥ*. Conflictingly, such a belief was in violation their other doctrine that God can only to command to good and their belief that what has a *maṣlaḥa* for creation must be regarded as both *ḥusn* and *maṣlaḥa* with intrinsic properties that are recognised by God.³⁷⁷ Abū al-Ḥusayn al-Baṣrī confirmed this when he said,

“As for the abrogation of something prior to the ability to act upon it, this is impermissible among our theologians. Our evidence for this is that were God to say to us in the morning: ‘pray at sunset two cycles of prayer with ablution,’ and then said when the sun reaches its zenith: ‘do not pray two cycles of prayer at sunset with ablution,’ then the command and the prohibition would both be referring to a single act, in a single manner, at a single time, from a single source, and to a single *mukallaf*. And for the prohibition to refer to

³⁷⁵ Al-Jaṣṣāṣ, *Al-Fuṣūl fī al-uṣūl*, 2/234–35.

³⁷⁶ Al-Jaṣṣāṣ, 2/235.

³⁷⁷ Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi*, 513.

exactly what the command refers to without any distinction is proof of either *al-badā'* or intending to command to *qabīḥ* or prohibiting *ḥasan*.”³⁷⁸

Ibn Qudāmah (d. 620/1223) mentioned in his *Rawdat al-nāzir*, “And the Mu‘tazilites negated this because it leads to a solitary act in a solitary manner being prohibited and commanded, *ḥasan* and *qabīḥ*, and a *maslaha* and *mafsada* at the same time.”³⁷⁹ In response to the Mu‘tazilite critique al-Ghazālī mentions two replies to their conclusions. The first he states, “We do not recognise that it is prohibited in the same manner that it is commanded, rather there is a difference, just as prayer without ablution is prohibited whilst commanded with ablution, so too is the prostration to an idol prohibited whilst commanded if to God.”³⁸⁰ The point he is making here is that although the prayer, to use the first example, is commanded to and prohibited at the same time, it is for different reasons and hence not contradictory. As for the issue of abrogation, and commanding and prohibiting, in order for it to be contradictory it would have to be at the same time and in reference to the exact same act. Thus, al-Ghazālī, after mentioning various explanations, states, “The closest expression is to say that commanding the performance of an act prior to its time is permissible with its ruling remaining connected to the commanded until its time, just as it is permissible that its ruling is removed prior to its time [of application], in which case it would be permissible to make the continuance of the ruling a condition of the command, so it is said: ‘Do what I have commanded you to do as long as the ruling of my command has not been removed and overridden with its prohibition.’ If it were then to be prohibited, the ruling of the command has been removed and not prohibited in the same way in which it was commanded.”³⁸¹

This was al-Ghazālī’s logical response to the argument. His other response was very much theological and ingrained in his Ash‘arite commitment, for he said,

“We do not adhere to the significance of displaying the differences between the two, rather we say: it is permissible to declare: we have commanded you to perform it in a certain way and we have prohibited you from performing it in exactly the same way, and there is no impossibility in this. The reason being is that the commanded act is not intrinsically *ḥasan* or because of a concomitant attribute prior to the command in order that it may contradict it, and neither is the command willed in the sense that it would be

³⁷⁸ Al-Basri, *Kitāb Al-Mu‘tamad*, 1:376.

³⁷⁹ ‘Abd al-Karīm al-Namlah, *Ittiḥāf dhawī al-baṣā’ir bi Sharḥ Rawdat al-nāzir*, Riyadh, Saudi Arabia: Maktaba al-Rushd, 2012, 2/716.

³⁸⁰ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:113.

³⁸¹ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:113.

contradictory to be willed and disliked, rather all of this is of the Mu‘tazilite foundations that we have already revealed their falsity.”³⁸²

Al-Ghazālī then scripturally validates his position, narrating the story of Abraham and the sacrifice of his son.³⁸³ The Qur’ān reads, “And We ransomed him with a tremendous sacrifice”,³⁸⁴ whereby God commanded him to a single act (the sacrifice of his son) and Abraham did not hesitate in initiating the performance of what he had been commanded only for it to be abrogated before he could perform it. In response, al-Ghazālī explains that the Mu‘tazilites were forced to interpret the verse in tandem with their doctrine regardless how farfetched. In their quest to achieve this, they were divided into five camps. The first stated that it was a dream and not a divine command. The second was that the verse incorporated a command although intended by it was to test his internal determination to perform it, and hence the sacrifice itself was never intended. The third interpretation is that the command itself was not abrogated; however, God caused Ishmael’s neck to become steel or bronze, making it impossible to cut, rendering the obligation redundant due to its impossibility.³⁸⁵ The fourth put into question what exactly the command was in regard to, with the Mu‘tazilites arguing that it wasn’t actually the sacrifice but rather *running through the motions* without the performance of the act. The fifth and final one was a rejection of *naskh* and that the act occurred only for the wound to immediately heal. Al-Ghazālī states that those who advocate this position agreed that Ishmael was not slaughtered as a consequence of the healing, although they differed over whether Abraham was a slaughterer. Some said that he was, due to him actually cutting, and Ishmael was not slaughtered, due to the healing, whereas others stated that for there to be a slaughterer without a slaughtered is impossible, causing al-Ghazālī to comment, “And all of this is deviation and extremities to defend their point.”³⁸⁶ According to al-Ghazālī, all of these interpretations were wayward, which they were compelled to interpret figuratively due to the conflict the literal meaning had with their Mu‘tazilite doctrine, and their staunch view on ethical value, compelling them to find any means to interpret the verse at hand differently, even if far-fetched, due to all that was at stake. As for the Ash‘arites, the literal reading posed no threat to their creedal beliefs or conflicted with their principles. Notwithstanding, al-Ghazālī proceeded to rebut each Mu‘tazilite interpretation, highlighting that although each

³⁸² Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:114.

³⁸³ In doing so he was emulating the argument of al-Bāqillānī. See al-Juwaynī, *Kitāb al-Talkhīṣ fī uṣūl al-fiqh*, 2:496.

³⁸⁴ Qur’ān, 37/107.

³⁸⁵ Abū al-Qāsim Maḥmūd b. ‘Umar Al-Zamakhsharī, *Tafsīr al-Kashshāf ‘an ḥaqā’iq al-tanzīl wa ‘uyūn al-aqāwīl fī wujūh al-ta’wīl* (Beirut, Lebanon: Dār al-Ma’rifah, 2009), 911.

³⁸⁶ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:115.

interpretation may have seemingly evaded the prospect of conflicting with their principles on this precise point, it actually conflated with other areas and points that they had agreed upon previously, displaying the incoherence of their doctrine. In regard to the first interpretation, al-Ghazālī mentions, “The dreams of the Prophets are a portion of prophethood by which they know the commands of God, and the prophethood of some of them were only via revelatory dreams.” In addition, he discloses that the statement of Ishmael to his father Abraham, “Do as you have been commanded” indicates that they both understood that Abraham’s dream was the subject of a divine command. He further clarifies that it is impermissible to embark upon the preliminaries of sacrifice due to a dream that has no basis, and yet describe it as “a manifest tribulation.” How could it be a great trial and tribulation if it was only a dream, al-Ghazālī inquires. And besides that, why is there a redemption (*fidā*)? In response to the second interpretation, we see al-Ghazālī questioning how self-determination (*‘azm*) could be an obligation unless that act itself which one is determined to perform is also obligatory? Al-Ghazālī then sarcastically comments, “If the act which Abraham was determined to perform was not an obligation, then he (Abraham) would have more right to knowing this than the Qadarites (another appellation for the Mu‘tazilites),” since Abraham, from his conversation with his son and preparation for the ritual sacrifice, understood it literally, although according to this interpretation that would be wrong, as the sacrifice itself was never meant to be intended. The third interpretation is in conflict with the linguistic customs and usage since *al-‘idtijā*‘ (namely lying down in preparation to be slaughtered) is not called *dhabḥ*, and is neither a tribulation and does not require a redemption. As for the fourth, it was the postulation that abrogation never occurred, and that although the sacrifice did transpire, Ishmael’s neck was turned into steel and hence the ability to perform it became absent and legal responsibility severed. Al-Ghazālī contends, “This is not sound according to their very own principles.”³⁸⁷ What al-Ghazālī is alluding to here is the Mu‘tazilite doctrine that if a person is commanded to perform an act, then God must remove all obstacles so that he is able to perform it. Al-Baṣrī said, “They did not differ over the fact that it is impermissible for God to assign a command to a single *mukallaf* whilst knowing that he will be prevented from achieving it. They also did not differ over the impermissibility of commanding someone whom God knows will die or is incapable.”³⁸⁸ The key principle which the Mu‘tazilites are contradicting with this interpretation and which did not go undetected is that such an extrapolation leads to *al-taklīf bi*

³⁸⁷ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:116.

³⁸⁸ Al-Baṣrī, *Kitāb Al-Mu‘tamad*, 1:139.

mā lā yuṭāq, which the Mu‘tazilites had already stated as impossible, and hence falling into contradiction. Al-Ghazālī concludes, “If God were to know that He was to convert Ishmael’s neck into steel then He would be commanding to what He knows to be impossible, which would then not require any redemption and would not be a great tribulation for Abraham.”³⁸⁹ The fifth and final interpretation was described by al-Ghazālī as impossible, “For how can there be a need for redemption after the wound has instantly healed? Were this to have been the case its news would have spread far and wide, and it would have been included amongst his manifest signs, but this was not the case, and hence was no more than the invention of the Qadarites.”³⁹⁰

Within this chapter we have seen examples of the inseparable relation between theology and legal theory, revealing the efforts made to make doctrine and legal theory coherent. Whether it be discussing rulings, or even defining their classifications, none of this can be done without revealing the theological allegiances and persuasion of the author. In every instance throughout this chapter, we have found al-Ghazālī’s commitment to the Ash‘arite doctrine, his staunch defence of their position towards ethical value, the salvation of those who have yet to receive the message, and the nature of the divine speech. Regarding the latter, in particular, we see al-Ghazālī demonstrate how it could be that God can command pre-eternally and yet issue rulings at different stages in time. Such a discussion could only prove its relevance within legal theory, although could not be practically applied except with the concept of *ta‘alluq*, which was elaborated in Ash‘arite *kalām* works and applied in *uṣūl*. These findings are in stark contrast to the conclusions of Richard M. Frank that not only was al-Ghazālī to deplore the theoretical worthlessness of ordinary *kalām*, but that there was no evidence that he held the traditional doctrine of the school as his own personal *madhhab*.³⁹¹

Likewise, within the discussions about *naskh*, we can see not only how the implications of ethical value were to impact the Mu‘tazilite perception towards it, but also the other theological arguments that pertain to it. Such discussions and debates were unavoidable when philosophising about the nature of abrogation since it was a discussion in essence about divine speech, God’s judgements, their timing, and His knowledge, detailing the inseparable connection between the two disciplines, highlighted by the fact that the majority of debates and arguments surrounding it were based upon theological premises. We also see that on this topic

³⁸⁹ Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:116.

³⁹⁰ Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:116.

³⁹¹ See Richard M Frank, *Al-Ghazālī and the Ash‘arite School* (USA: Duke University Press, 1994), 98 and 101.

all of al-Ghazālī's critiques and defence mechanisms were Ash'arite in origin, following a strict adherence to their principles, and even adopting al-Bāqillānī's examples to buttress his point.³⁹² For al-Ghazālī, in order that any doctrine be true it must be in tandem with all the disciplines, void of opposition to any definitives, whilst remaining logically sound. Throughout this debate al-Ghazālī demonstrates that whatever interpretation the Mu'tazilites attempted to employ in defence of their doctrines they would either be in contradiction with another agreed upon principle in the same discipline or a principle from another discipline like rhetoric or language, for example. Thus, what al-Ghazālī has in fact done within this discussion and elsewhere within his *Mustaṣfā* is illustrate the incoherence of the Mu'tazilite doctrine which cannot consistently harmonise with all other disciplines whilst making rational sense.

³⁹² For al-Bāqillānī's discussion on this same topic see Aa-Juwaynī, *Kitāb al-Talkhīṣ fī uṣūl al-fiqh*, 2:496. This particular example was also adopted by Abū Ya'lā and displays the impact the Ash'arites were to have even upon the Ḥanbalites. See Abū Ya'lā Al-Farrā', *al-'Uddah fī uṣūl al-fiqh*, vol. 2 (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyyah, 2002), 33.

Chapter Five

Al-Ghazālī and causality within the law

Building upon al-Ghazālī and the *uṣūlist*'s definition of *taklīf*, two other major talking points with highly theological underpinnings were to be raised. The first is the timing of *taklīf* and the second in regard to the creation of the act since *taklīf* cannot exist save with a performance of some kind by the human agent (*mukallaf*), leading to the question: to whom does the act actually belong; the *mukallaf* or the *mukallif*? If it is the former, when does he receive the power to act? And is it prior to the act itself or at the exact time? This issue was described by al-Zarkashī as 'one of the most ambiguous areas in *uṣūl* both in its illustration and transmission'.³⁹³

All the *uṣūlists* agreed that the divine scripture comprises of commands and prohibitions that are directed towards the legally responsible. The area of disagreement however surrounded the time when those commands and prohibitions would be directed towards the *mukallaf*. Any position on this query stemmed from far deeper theological grounds, namely the creation of actions. For al-Ghazālī and much like his master al-Juwaynī, the idea that one was commanded to perform something and was unable to perform it was problematic due to the simple idea that one cannot be commanded to perform something unless he has the ability to do it, and for that reason they both asserted that *ability* precedes the act, agreeing with their Mu'tazilite counterparts on this.³⁹⁴ For al-Ash'arī, by virtue of his position on causality, he asserted that ability does not precede the power to act, so despite acknowledging that the divine address is directed to the *mukallaf* before the act, he does not possess any power, and hence does not precede it.³⁹⁵ It is based upon this postulation that al-Ghazālī stated that a necessary concomitant (*lāzimun 'alā mathhabihī*) of the eponym's position is that he permits *taklīf bi ma lā yutāq*.³⁹⁶ The reason being that for al-Ash'arī, to declare that *taklīf* precedes the engagement of the act, and that the ability to engage with it is only at the time of its actualisation, means that the command to perform it was prior to one's actual ability to perform it, meaning that

³⁹³ Al-Zarkashī, *al-Baḥr al-Muḥīṭ*, 418.

³⁹⁴ See al-Maḥallī, *Al-Badr al-ṭāli' fī ḥall Jam' al-Jawāmi'*, 2012, 1:162–63.

³⁹⁵ Al-Juwaynī, *Al-Burhān*, 1:103.

³⁹⁶ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:86.

there was a period of time when one is unable to execute what he has been commanded to do, which constitutes the notion of *taklīf bi ma lā yutāq*.

As for the second issue concerning human acts and unto whom do they belong, we must consider al-Ghazālī's stance towards secondary causes and whether he maintained any allegiance to the Ash'arite theory of *kasb*, which has come under scrutiny in many western discourses.³⁹⁷ The likes of Richard Frank were convinced that al-Ghazālī had two opposing positions on causality: one of outright rejection of secondary causes and the other of acceptance.³⁹⁸ Michael Marmura critiqued his findings, stressing that Frank's misunderstanding was based upon the author's usage of language, and although suggesting secondary causes, were used metaphorically, and must be understood in the light of the occasionalist creed of al-Ghazālī.³⁹⁹ An apparent reconciliation of both sides was attempted by Jon McGinnis, who argued that al-Ghazālī held an intermediate position between occasionalism and determinism.⁴⁰⁰

What is manifest from the discussions amongst these western thinkers is their lack of reference to the legal theory works of al-Ghazālī in order to further clarify his theological position on causation. The obvious reason for their negligence is their obliviousness as to the underpinnings of *uṣūl* and its necessary connection with theology. I argue that the answer to this query may be found not only in his *uṣūl* works but also in the words of his master, al-Juwaynī. If one is to understand al-Juwaynī, then one will understand the position of al-Ghazālī. It makes complete sense that al-Ghazālī would follow his master on the issue of causality and most other issues considering he was his teacher and most likely to be impacted by him. Despite this, remarkably few comparisons have been made on this issue between the two.⁴⁰¹ There can

³⁹⁷ See for example: Jon McGinnis, 'Occasionalism, Natural Causation and Science in al-Ghazālī', *Arabic Philosophy, Arabic Theology: From the Many to the One. Essays in Celebration of Richard M. Frank*. Leuven: Peeters, 2006, 441–63; Enchiridion Epictetus Great Books Marcus Aurelius and Meditations Stoicism, 'Al-Ghazali and Descartes: Correlation or Causation?', n.d.; Christopher P Garber, 'Al-Ghazali on Causation, Omnipotence, and Human Freedom', *Quaerens Deum: The Liberty Undergraduate Journal for Philosophy of Religion* 2, no. 1 (2016): 4; Edward Omar Moad, 'Al-Ghazali on Power, Causation, and Acquisition', *Philosophy East and West*, 2007, 1–13; Michael E Marmura, 'Ghazālian Causes and Intermediaries', 1995; Richard M Frank, *Creation and the Cosmic System: Al-Ghazālī & Avicenna* (Winter, 1992); Richard M Frank, *Al-Ghazālī and the Ash'arite School* (Duke University Press, 1994).

³⁹⁸ See: Frank, *Creation and the Cosmic System: Al-Ghazālī & Avicenna*.

³⁹⁹ See: Marmura, 'Ghazālian Causes and Intermediaries'.

⁴⁰⁰ See: Jon McGinnis, 'Occasionalism, Natural Causation and Science in al-Ghazālī', *Arabic Philosophy, Arabic Theology: From the Many to the One. Essays in Celebration of Richard M. Frank*. Leuven: Peeters, 2006, 441–63.

⁴⁰¹ It is my assertion that this close relation was identified by Griffel in his work *Al-Ghazali's Philosophical Theology* and hence the reason that when discussing secondary causes chose to explain what he understood as the attitude of al-Juwaynī towards the topic. See Frank Griffel, *Al-Ghazali's Philosophical Theology* (Oxford: Oxford University Press, 2009), 128-133.

also be found among a number of Islamic scholars who have charged al-Juwaynī with the like of which Frank and McGinnis claimed against al-Ghazālī, on the efficacy and power of acts. In his work *al-Irshād*, he was very forthcoming as to his attitude, for he stated,

“Before the appearance of heretical innovations and partisan tendencies and prior to the agitation caused by subjective opinions, the forefathers of the community agreed together that the Creator and Innovator is the Lord of the Worlds and that there is no other Creator nor any other Maker except Him. This is the doctrine of the orthodox. Moreover, all temporarily contingent things were brought into being by the power of God the Exalted, without a distinction between those that result from the power of humans and those that fall exclusively within the power of the Lord. This principle carries with it the implication that all empowerment belongs to the one who has power and that God, the Exalted, is the One who holds the power; He is the One who brings it into being and the One who gives it existence.”⁴⁰²

In this work he proceeds to base his arguments against those who believe that the human being has an independent power and is the author of his own acts. His two primary proofs and debates with the Mu‘tazilites were practically mirrored by al-Ghazālī in his *Iqtīṣād*. However, it is al-Juwaynī’s *Niḏāmiyyah* which seems to have raised the most concerns and a possible shift on his stance towards secondary causes, as suggested by Frank Griffel.⁴⁰³ In addition, the work is also one of his latter compositions and described by the disciple of al-Ghazālī, Abū Bakr b. ‘Arabī (543/ 1148), as being the creedal tract that al-Ghazālī narrated to him personally, all of which adds further relevance to the work.⁴⁰⁴

In the chapter entitled ‘the affirmation of legally responsible demands’ in which he discusses the rational possibility of *taklīf*, he mentions that it has four integrals and proceeds to elaborate them in detail. The first, and of interest to this discussion, is the power of the human and its effect upon the object.⁴⁰⁵ After clarifying that scripture itself is replete with commands and prohibitions, encouragements and precautions, he summarises with the declaration,

“Whoever has comprehended all of this and then has doubts that human acts occur on account of their preference, choice and ability, then he has been mentally afflicted! Or is

⁴⁰² Walker, *A Guide to Conclusive Proofs for the Principles of Belief*, 103.

⁴⁰³ Griffel, *Al-Ghazali’s Philosophical Theology*, 128–33.

⁴⁰⁴ ‘Abd al-Mālīk b. ‘Abd Allah al-Juwaynī, *al-‘Aqīdah al-Niḏāmiyyah fī al-arkān al-Islāmiyyah* (Cairo, Egypt: al-Maktaba al-Azhariyyah li’l-Turāth, 1992), 3. Frank Griffel mentions that al-Juwaynī “emphasized different motifs of Ash‘arite thinking in different works,” although he suggests that he would contradict himself in the process. See Griffel, *Al-Ghazali’s Philosophical Theology*, 128.

⁴⁰⁵ Al-Juwaynī, *al-‘Aqīdah al-Niḏāmiyyah fī al-arkān al-Islāmiyyah*, 42.

firm in his imitation and persistent in his ignorance! For to postulate that there is no human power in his act is to annul the commands of the law, and to render as false all that the Messengers came with!”⁴⁰⁶

He would continue to explain that such an understanding is considered a violation (*khulf*) of all that which scripture had stipulated. From the opening passage, we can see how, from an Ash‘arite perspective, this can either be understood as a rebuttal of the Jabarites, which they all agree is a false doctrine, or a possible conflict with their own ontology. He then explains the aforementioned with greater vigour, explicitly stating,

“Anyone who claims that there is no impact within the created occurrent power upon the object, just as the impact of knowledge upon what is known, then for such a person the demanding of a human his acts is like demanding from him to establish within himself colours and comprehensions, and this is beyond the pale of equity to the extent that it is an ascription to falsehood, impossibility and the annulment of the sacred law.”

He continues,

“Due to this, one must ascribe to the fact that created power impacts the object, despite the impossibility of declaring that the human creates his acts, for this entails the departure from the consensus of the pious predecessors, and plunges into the entanglements of misguidance. However, it is not possible to declare the occurrence of the human act with his created power and the pre-eternal divine power, since it is impossible for the single act to occur at the hands of two powers, as neither one divides. If it was to occur by the power of God, Exalted, it would be independent of any other power, meaning that the created power has been annulled. It is also impossible that a portion occurs by some of the divine power, since a single act cannot be divided. No one is safe from the abyss of this pitfall except for the one who has been granted divine success, as one finds himself in a situation where he must either declare independence in creating acts or remove himself from being legally responsible.”⁴⁰⁷

⁴⁰⁶ Al-Juwaynī, *al-‘Aqīdah al-Niẓāmiyyah fī al-arkān al-Islāmiyyah*, 43–44.

⁴⁰⁷ Al-Juwaynī, *al-‘Aqīdah al-Niẓāmiyyah fī al-arkān al-Islāmiyyah*, 45. When maintaining that al-Juwaynī was of the belief of secondary causes Griffel curiously did not include this citation. For it is here where we find an acknowledgment from al-Juwaynī that indeed the human being has a degree of efficacy, but like everything else, is not created by him, which can almost be understood as an affirmation and denial, since to say that something impacted something else is tantamount to saying that it is the cause, and any cause is the sole property of God and His creation, as stated by Marmura, “a unitary direct cause of each and every created existent” (Michael E Marmura, ‘Ghazali’s Chapter on Divine Power in the Iqtisād, p. 279.) And it is after this acknowledgment that al-Juwaynī calls the whole subject an abyss save “for the one who has been granted divine success.” Shihāb al-Dīn al-Ālūsī states, “Every act that emanates from a person by way of the efficacy of his power when connected with his will, it does not emanate from this alone, rather due to God willing such from him.” Al-Ālūsī, *al-Ajwibah al-‘Irāqiyyah ‘alā al-as‘ilah al-‘Irāniyyah*, Aḍwā’ al-Salaf, N/A, p. 97.

Al-Juwaynī recognised, after declaring all the aforementioned, that he had yet to present a definitive answer although stressing throughout that the sole creator of everything is God, which results in his interlocutor, whether real or imaginary, to declare that he has yet to reveal where the truth lies.⁴⁰⁸ It is at this point that he states: “By consensus, the power of the servant is created, and the act undoubtedly takes place by created power, however it is attributed to God Exalted in both decree and creation.” “The power is not an act of the human” he explains, “but rather an attribute, and it is the possession of God and created by Him.” In the following passages of the work he then explicates that the human is granted by God the choice to exercise the divine power, and that it is God who prepares all the means and removes the need to be aware of all the details of the act itself, since only the creator can know all the specifics and intricate details of the created.⁴⁰⁹

As is manifest from this explanation, there seems to be almost a contradictory language that even al-Juwaynī recognised and hence addressed by answering a hypothetical question. This is very much similar to what can be found in the writings of al-Ghazālī. Both have declared consensus that acts are solely created by God, and after such a pronouncement it seems unlikely that they would either recognise the invalidity of the consensus or violate it.⁴¹⁰ They did, also, recognise an undeniable fact, which is that the human being does have an impact due to the very difference between voluntary and compelled acts.⁴¹¹

Prior to the authorship of his *Mustasfā*, and early in his career, al-Ghazālī composed his *Mankhūl*, which was an abbreviation of many of the *uṣūlī* ideas of his master, al-Juwaynī, differing with him only in a few areas where he was not convinced with his master’s conclusions. Within it, when discussing *Taklīf bi mā lā yuṭāq*, he gives his own personal verdict, stating, “The created power has a connection (*ta‘alluq*) to the act (*maqdūr*).”⁴¹² It was this word ‘*ta‘alluq*’ which lead Hassan Hito to comment, “This means that the created power effects the *maqdūr*,” explicitly attributing efficacy to the power of the individual. Hito then adds that this is also the position of al-Juwaynī.⁴¹³ I argue, however, that in the *Mustasfā* there are two distinct areas that shine light upon al-Ghazālī’s position towards efficacy, secondary causes and causality in general. The first is found in his continuation of his rejection of *taklīf bi mā lā yuṭāq*, much in the same vein as found in his *Mankhūl*. During a hypothetical debate

⁴⁰⁸ Al-Juwaynī, *al-‘Aqīdah al-Nizāmiyyah fī al-arkān al-Islāmiyyah*, 46.

⁴⁰⁹ Marmura, ‘Ghazali’s Chapter on Divine Power in the Iqtiṣād: Michael E. Marmura’.

⁴¹⁰ Abū Hamid al-Ghazālī, *Al-Ghazali’s Moderation in Belief* (University of Chicago Press, 2013), 90.

⁴¹¹ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 92.

⁴¹² Al-Ghazālī, *al-Mankhūl fī ta‘līqāt al-uṣūl*, 83.

⁴¹³ Al-Ghazālī, *al-Mankhūl fī ta‘līqāt al-uṣūl*, 83. Hasan Hito was to extrapolate from this expression alone that both al-Juwaynī and al-Ghazālī had acquired unorthodox positions regarding this particular point.

with an opponent he says, “If it were said: If the created power has no effect in creating, and is commensurate to the act, then would not every *taklīf* be *taklīf bi mā lā yuṭāq*? We respond: we necessarily realise the difference between saying to the seated one who is not decapitated: ‘enter the house’ and saying: ‘rise to the heavens.’ Or to say to him: ‘stand’ whilst still sitting, or ‘convert blackness into movements and a tree into a horse.’ Where does the difference return? Understood is that it returns back to *possibility* and *power* concerning one of these commands and not the rest, and then to the examination as to the details of the efficacy of power at the time of the manifestation of the power...”⁴¹⁴ From the aforementioned passage, the concept that the created power has no effect was almost mentioned as a given and hence not debated by the interlocutor, as if to say: even if we acknowledge your stance that created power has no efficacy then wouldn’t this then demand that every *taklīf* be *taklīf bi mā lā yuṭāq*. If this wasn’t part of al-Ghazālī’s doctrine, then it would not have been conceded to and used as a means to prove a point.

The other suggestive statement located in his discussion about the object of *taklīf*, “And that is the act, for nothing is susceptible to *taklīf* save for voluntary acts (*af‘āl ikhtiyāriyyah*),”⁴¹⁵ again suggests that the human being has a degree of choice, which he calls *ikhtiyār*.⁴¹⁶ Also found is another relevant statement of al-Ghazālī, although not in his *Mustaṣfā*, but in his *Shifā’ al-Ghalīl*, regarding his definition of the *ratio legis* (‘*illah*). His stance concerning this definition seemingly did not change, so it is safe for us to base conclusions upon it. The reason for this is that there are several locations found within the *Mustaṣfā* regarding the *Shifā’* that refer the reader back to it for further discussion.⁴¹⁷ The dominant definition among the Ash‘arites, and what was to become the mainstay, was that the ‘*illah* was the *mu‘arrif ‘alā al-ḥukm*, meaning that it reveals and uncovers the ruling but has no impact upon it, which is congruent with their position on causality. If God so wished, He could make the *ratio legis* appear in a subsidiary and not grant it the same ruling, just as He can make fire come into contact with paper without combustion.⁴¹⁸ Hence with their definition they were careful not to insinuate the presence of

⁴¹⁴ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:88.

⁴¹⁵ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:86.

⁴¹⁶ The word *ikhtiyār* (choice) is very much Maturīdite, and almost a synonym for the Ash‘arite *kasb* and very rarely used by them. Al-Subkī, when discussing *kasb* in his *Ṭabaqāt*, explicates, “However, its explanation is immensely difficult, and they would present the example of the difference between shaking of the convulsing person and the movement of the person of choice. The most astute investigators were then compelled in resolving this intermediary, and the Ḥanafites called it *ikhtiyār*.” (Tāj al-Dīn al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā* (Cairo, Egypt: Maṭba‘ al-Ḥalabī, n.d.), 3:385.)

⁴¹⁷ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:290, 299, 342.

⁴¹⁸ Omar Edward Moad, ‘Al-Ghazālī’s Occasionalism and the Natures of Creatures’, *International Journal for Philosophy of Religion* 58, no. 2 (2005): 95.

an obligatory connection between the *'illah* and the ruling, and that the relationship was purely occasional. As for al-Ghazālī's definition, its wording seemed to cause a degree of confusion due to its similarities with the Mu'tazilite counterparts. He said,

“The *'illah* obligates. As for the rational *'illah* it does so intrinsically, whereas for the legal *'illah* it is by the positing of the law that renders it an obligating cause, meaning associating obligation to it, like associating the obligation of the severing of a hand as a result of stealing, in spite of knowing that its obligation is due to the positing of God Exalted. However, it is important that we understand obligation as stipulated within the law; that stealing obligates the severing of a hand and that adultery obligates stoning to death. And it is within this that the difference between signification (*dilālah*) and *'illah* become clear.”⁴¹⁹

In sum, the *'illah* obligates through God's positing, which sounds noticeably similar to the Mu'tazilites interpretation of *tawallud*, that an object intrinsically causes an effect with its own power originally granted to it by God.⁴²⁰ It was the qualification “due to the positing of God” which separates it from the Mu'tazilite determinations, however it was still evidently different from other definitions among the *mutakallimīn*, which begs the question why would he have derived such a definition or did he receive it from elsewhere? If he were to have inherited it from another school of thought, it seems that it would most likely have been from the Ḥanafites, especially due to our knowledge that he was familiar with many of their writings and positions, and would often quote al-Dabbūsī in his *Mustaṣfā* alone. However, this assumption is not without its problems. One of the earliest Ḥanafites that comes to mind, al-Jaṣṣāṣ, who despite appearing with no confirmed definition for the *'illah* would describe it as being an *indication* and *sign* of the ruling.⁴²¹ Similarly, al-Dabbūsī (d. 430/1039) in his *Taqwīm al-adillah fī uṣūl al-fiqh* defined it as that which has been made as an indicator (*'alam*) of the ruling.⁴²² Al-Dabbūsī's definition was to remain the preponderant definition applied by the majority of the Ḥanafites until the appearance of 'Alā' al-Dīn Muḥammad ibn Aḥmad al-Samarqandī who defined it as “The fitting attribute (*waṣf*) which caused the affirmation of the original ruling. When the like of it is found in the subsidiary, then the same ruling is affirmed by way of

⁴¹⁹ Abū-Ḥāmid Muḥammad Ibn-Muḥammad Al-Ghazālī, *Shifā' al-ghalīl fī bayān al-shabah wa al-mukhīl wa masālik al-ta'līl* (Baghdad: Maṭba' al-Irshād, 1971), 21.

⁴²⁰ For al-Ghazālī's definition and discussion on *tawallud* see Al-Ghazālī, *Al-Ghazali's Moderation in Belief*, 99–101.

⁴²¹ Abū Bakr al-Jaṣṣāṣ, *al-Fuṣūl fī al-uṣūl* (Qatar: Wazārat al-Awqāf wa al-Shu'ūn al-Islamiyyah, 1994), vol. 4, 156.

⁴²² Abū Zayd al-Dabbūsī, *Taqwīm al-adillah fī uṣūl al-fiqh* (Lebanon: Dār al-Kutub al-'Ilmiyyah, 2001), 292.

analogy.”⁴²³ Found in this work of al-Samarqandī are valuable clues in explaining previous events. Similar to al-Ghazālī, he mentions that the ‘*illah* obligates the original ruling⁴²⁴ and relates the doctrine of the effectiveness of the ‘*illah* to the *uṣūlists* of Samarqand contrary to the legal theorists of Iraq.⁴²⁵ What this reveals is that not only was there disagreement on this issue among the Ḥanafites but also the disagreement seems to have preceded al-Ghazālī’s time. This is further corroborated by al-Sam‘ānī in his *Qawāṭi‘*, where he explains that from among the jurists (*fuqahā’*) - meaning the Ḥanafites in this context - were those that considered the ‘*illah* to obligate (*mūjibuhā*).⁴²⁶

Likewise, al-Samarqandī, when mentioning the various definitions of the ‘*illah*, includes amongst them that of Abū Manṣūr al-Maturīdī, which he regarded as the correct position, namely that the ‘*illah* is that by which the ruling is obligatory. He then includes a very important qualification, “The obligation of the ruling and its affirmation is by virtue of God making it obligatory, however He made it obligatory due to this meaning.”⁴²⁷ This statement and the choice of words is of utmost importance, since among the *mutakallimīn* it seems that it was only al-Ghazālī who would use the term *mūjib*, and here we find its usage among the Ḥanafites. Correspondingly, their understanding of what obligation meant is very much congruent with what we find in al-Ghazālī’s definition, namely by the positing of God. Al-Sam‘ānī explains, “...For the *fuqahā’* would say this, although the meaning was that they (the ‘*illahs*) do not obligate anything intrinsically by themselves, but by the *positing* of the Legislator and rendering it obligatory, despite in and of itself only being the case by way of the law.”⁴²⁸ One could go as far to say that his statement is almost an exact commentary of the meaning of al-Ghazālī’s definition, despite al-Sam‘ānī preceding him. Even the selected words, *ja‘l al-shāri‘*, *la tūjib bi dhātihā*, are the exact vocabulary we find in the definition of al-Ghazālī alone. This can be of no coincidence, especially that it has to do with a theological topic where al-Ghazālī seems to be employing foreign terms that were not customary to the Ash‘arite literature. Likewise, his position on ethical value which was later to be the mainstay among Ash‘arites

⁴²³ Al-Samarqandī, *Mizān al-‘uṣūl fī natā’ij al-‘uqūl*, 583.

⁴²⁴ Al-Samarqandī, 614.

⁴²⁵ Al-Samarqandī, 584.

⁴²⁶ al-Sam‘ānī, *Al-Qawāṭi‘ fī Uṣūl al-Fiqh*, 3:957.

⁴²⁷ Al-Samarqandī, *Mizān Al-‘Uṣūl fī Natā’ij al-‘Uqūl*, 581.

⁴²⁸ Al-Sam‘ānī, *Al-Qawāṭi‘ fī Uṣūl al-Fiqh*, 3:957. Another point worthy of consideration is that through this definition we can understand the meaning of *ta’tihīr* in the thought of both al-Ghazālī and al-Juwaynī and hence explain what they meant by human efficacy. Since in the *Jam‘ al-Jawāmi‘* al-Subkī attributes to him the definition “*al-mu’aththir bi’ithn Allah*”, with al-Maḥallī explaining that even this *ta’tihīr* is by God and not inherent. See Jalāl al-Dīn Al-Maḥallī, *Al-Badr al-ṭāli‘ fī ḥall Jam‘ al-Jawāmi‘*, vol. 1 (Lebanon: Mu’assasat al-Risālah, 2012), 2:194.

also has certain similarities with the Ḥanafites. However, the clearest similarity, as revealed, is on the issue of causality. And this could all go unnoticed unless one observes his writings in legal theory. All of these points suggest that al-Ghazālī (and possibly al-Juwaynī) was influenced by the Ḥanafites of Samarqand regarding their interpretation of causality to some degree. How this was to ensue remains a mystery, although possible suggestions include either through the works of al-Samʿānī, which seem unlikely, or through the very sources that al-Samʿānī quotes, namely by way of interactions and readings of Ḥanafite works.

In sum, it is my argument that the reason for the ambiguity surrounding al-Ghazālī's stance on causality and secondary causes is due to the ambiguity of the topic itself. Described by Ibn Rushd as “one of the most difficult religious questions”⁴²⁹ he extrapolates the reason behind its complication. He states, “in the Book, we find many verses that indicate that everything is predestined and that man is determined to act, and at the same time we find many verses which indicate that man earns credit for his actions and that his actions are not determined.”⁴³⁰ It is because of this seeming contradiction and need for a reconciliation between the verses that were anyone to attempt to explain and elucidate, such an attempt can lead to misunderstood extrapolations from the side of the reader. The Ashʿarites, with their theory of *kasb*, acknowledged that there was a role played by the human, otherwise there would have been no difference between themselves and the Jabarites, whilst avoiding the other extreme that the human being is the sole author of his acts.⁴³¹ The works of al-Ghazālī and al-Juwaynī, in my opinion, and their discussion on human acts, are not in conflict with the doctrine of al-Ashʿarī but rather differ in the degree to which they attempt to explain the process of his *kasb* theory, which, due to the inherent difficulty in understanding a power without effect and the ambiguity of language, causes possible problems in interpreting their words.⁴³² The default for them both

⁴²⁹ Ibrahim Najjar, *Faith and Reason in Islam: Averroes' Exposition of Religious Arguments* (Simon and Schuster, 2014), 105.

⁴³⁰ Najjar, *Faith and Reason in Islam: Averroes' Exposition of Religious Arguments*, 105.

⁴³¹ See Michael E Marmura, ‘Ghazālian Causes and Intermediaries’, 1995; Edward Omar Moad, ‘Al-Ghazali on Power, Causation, and Acquisition’, *Philosophy East and West*, 2007, 1–13; Binyamin Abrahamov, ‘A Re-Examination of al-Ashʿarī's Theory of Kasb According to Kitāb al-Lumaʿ’, *Journal of the Royal Asiatic Society* 121, no. 2 (1989): 210–21; Binyamin Abrahamov, ‘Al-Ghazālī's Theory of Causality’, *Studia Islamica*, 1988, 75–98; Lenn Evan Goodman, ‘Did Al-Ghazali Deny Causality?’, *Studia Islamica*, 1978, 83–120; Richard M Frank, ‘The Structure of Created Causality According to Al-Ashʿarī: An Analysis of the Kitāb al-Lumaʿ’, 82–164: *Studia Islamica* 25. Paris, 1966’, *Early Islamic Theology*, 2007, 13–75; Marmura, Michael. ‘Ghazālī's Chapter on Divine Power in the *Iqtisād*’, *Arabic Sciences and Philosophy* (1994:4:2), pp. 279–315.

⁴³² This is evident in al-Ghazālī's summation, “In sum, the Powerful, whose power is vast, is capable of originating both the power and its object. Since the terms ‘creator’ and ‘originator’ are used to describe the one who, through his power, brings a thing into existence, and since both the power and its object are [brought into existence] through God's power, He is called “Creator” and “Originator.” The object of power is not due to the servant's power, although they are concurrent; hence he is not called “creator” or “originator.” A different term must be

is that God is the sole creator of all things, including acts, and despite this the human being has a choice. How this choice is connected to the divine power and the exact process involved is one of the secrets of God and unexplainable except, as stated by al-Juwaynī, “for the one who has been granted divine success.”⁴³³ It is similar in this respect to the vision of God in the hereafter. The Ash‘arites acknowledged the concerns of the Mu‘tazilites, that to see God could lead to the understanding that God is a corporeal being with a shape, size, and direction, all of which has been proven rationally impossible. However, the Ash‘arites also acknowledged scripture, and its definitive affirmation of Gods vision, hence they affirmed that the vision will occur whilst maintaining that it does not necessitate that God must be a body in order for such a vision to manifest. Despite this, they cannot proceed any further in explaining exactly how it will occur as it is beyond man’s faculties of comprehension.

From this chapter we can see how important a source the *Mustaşfā* is for understanding the long-debated attitude of al-Ghazālī towards secondary causes and how it intrinsically correlates to the discussion of the *‘illah* reflected among the legal theorists as to how it was to be defined. Within his discussion we find al-Ghazālī state, like the Ash‘arites before him, that the effect of anything occurs “at the time” and not “due to” the cause,⁴³⁴ and that penultimately nothing but God causes anything to occur. The fact that this was mentioned in one of al-Ghazālī’s last works leaves little doubt that not only was he to deny secondary causes, but that he was a staunch Ash‘arite on this issue.

sought for this type of relationship. The term sought is ‘acquisition’ (*kasb*)...” (Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 94.)

⁴³³ Al-Juwaynī, *al-‘Aqīdah al-Nizāmiyyah fī al-arkān al-Islāmiyyah*, 45.

⁴³⁴ Al-Ghazālī, *Al-Mustaşfā min ‘ilm al-uşūl*, 1:94.

Chapter Six

The development and theorisation of *Ta'īl*

Much has been written about *maqāṣid al-Sharī'ah* and its importance,⁴³⁵ yet very little has been discussed about its point of theoretical origin, how it was discussed, if at all, within a legal framework; its earliest circles of learning among the jurists and whether it may in fact be traced back to them. Additionally, **limited writings and research** are available on the topic of *ta'īl* and its strong inherent connection to the *maqāṣid* dichotomy, with the likes of Aḥmad al-Raysūnī labelling it ‘the foundation for the entire objectives theory’.⁴³⁶

Ta'īl in its most rudimentary form is the process of identifying the *ratio legis* within rulings in order that a similar act or entity which has no explicit ruling within scripture yet shares the same *ratio legis* may also receive the same ruling. It is basically the mechanism of analogy and extending the law. Despite this, *ta'īl* has many other functions and benefits which include revealing the wisdoms behind rulings and understanding the grand objectives of the law (*maqāṣid*). In short, to acknowledge *ta'īl* is indeed to acknowledge the possibility of rationalising God’s law. It is the aim of this chapter to identify how does this theory harmonize with al-Ghazālī’s theory on ethical value, divine wisdom, and causality since they are very much inter-related, and reveal the extent of the role of theology in its theorisation. How does he integrate it within his works whilst being loyal to the eponym of his jurisprudential school, namely al-Shāfi‘ī? That said, and before delving into the theological aspects and connotations of *ta'īl*, I will present a detailed chronology of its development up until the age of al-Ghazālī.

Due to the inherent link between *ta'īl* and the *maqāṣid* discussion, to identify the theorizer of the prior can indeed be recognised as the forerunner and pioneer of the latter. Hence, the identification of the origins of *ta'īl* has manifold importance. Interestingly, many of those who addressed the early development of *ta'īl* or the *maqāṣid* dichotomy failed to correlate any of the discussions back to the early eponyms of the schools of law. Rather, the majority of the focus is directed and centralised upon the early Mu‘tazilites like al-Jaṣṣāṣ (d.

⁴³⁵ Jamal al-Din Atiyah, *Towards Realization of the Higher Intents of Islamic Law: Maqasid Al-Shari'ah: A Functional Approach* (IIIT, 2007); Ahamd Al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (The Other Press, 2006); Abū Ishāq Al-Shāṭibī, *Al-Muwāfaqāt* (Cairo, Egypt: Dār al-Faḍīlah, 2010); M. Khalid Mas'ud, ‘Recent Studies Of Shāṭibī’s Al-Muwāfaqāt’, *Islamic Studies* 14, no. 1 (1975): 65–75; I. Nassery et al., *The Objectives of Islamic Law: The Promises and Challenges of the Maqasid Al-Shari'a* (Lexington Books, 2018).

⁴³⁶ Al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*, 170. For further reading on *ta'īl* see Ahmad Mustafa Shalabi, *Ta'īl al-aḥkām* (Cairo: Maṭba‘ al-Azhar, 1947); Fahd Al-Baṭī, *Al-Talīl Bayna Abī Zayd al-Dabūsī Wa Abī Ḥāmid al-Ghazālī* (Lebanon: Dār al-Ṣamī‘ī, 2016); Koujah, ‘Divine Purposiveness and Its Implications in Legal Theory: The Interplay of Kalām and Uṣūl al-Fiqh’, 2017.

370/981), and early Ash‘arites like al-Juwaynī (d. 478/1085) and al-Ghazālī (d. 505/1111),⁴³⁷ or directly back to the prophet’s companions, and then a leap is made to later scholarly discussions, without any attempt to bridge the gaps.⁴³⁸ The source, however, of any such discussions has always been the discipline of *uṣūl al-fiqh*, and since the earliest extant work in legal theory and jurisprudence belongs to al-Shāfi‘ī, and many of the figureheads that were to follow in the *maqāsid* discussion were primarily Shafi‘ītes, the historical focus will be upon this particular school starting with the works of the eponym.

Al-Shāfi‘ī’s role in the emergence of *ta‘līl* and the *maqāsid*

Within al-Shāfi‘ī’s *uṣūlī* epistle *al-Risālah*,⁴³⁹ clues were to be found in the discussion on *qiyās* regarding its treatment of *ta‘līl*, which he also called *ijtihād* due to his consideration that it is the prime means for independent reasoning, and to accentuate its importance.⁴⁴⁰ For *qiyās* is established upon the principle of *ta‘līl*, whereby there can no discussion upon it save with the mention of the *‘illah* and its like. Despite this, and due to the prematurity of the work, it is not the word *‘illah* that regularly appears, rather the interesting term *‘ma‘nā* with which al-Shāfi‘ī explains *qiyās*. He says when depicting analogy, “The first is that God or His Prophet have either prohibited a certain act by an explicit text in the Qur’ān and the sunnah or permitted it by a *ma‘nā*. If such a *ma‘nā* is found in the absence of a specific text in the Book or the sunnah, the act should be prohibited or permitted since it retains the *ma‘nā* of the permissible and the prohibited.”⁴⁴¹ He also says, “Every order laid down by God or by the Prophet for which there is evidence, either in itself or in some other of the orders of God or His Prophet,

⁴³⁷ See Opwis, *Maṣlaḥa and the Purpose of the Law*.

⁴³⁸ See Opwis; Emon, *Islamic Natural Law Theories*; Al-Raysuni, *Imam Al-Shatibi’s Theory of the Higher Objectives and Intents of Islamic Law*.

⁴³⁹ For further reading on the discussions about al-Shāfi‘ī and the standing of his *Risālah*, see Ahmed El Shamsy, ‘Al-Shāfi‘ī’s Written Corpus: A Source-Critical Study’, *Journal of American Oriental Society* 132, no. 2 (2012): 199–220; Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge University Press, 2013); Ahmed El Shamsy, ‘Bridging the Gap: Two Early Texts of Islamic Legal Theory’, *Journal of American Oriental Society* 137, no. 3 (2017): 505–36; Joseph Lowry, ‘The Legal Hermeneutics of Al-Shāfi‘ī and Ibn Qutayba: A Reconsideration’, *Islamic Law and Society* 11, no. 1 (2004): 1–41; Joseph E Lowry, ‘Does Shāfi‘ī Have a Theory of Four Sources of Law?’, in *Studies in Islamic Legal Theory* (Brill, 2002), 23–50; Christopher Melchert, *The Formation of the Sunni Schools of Law: 9th-10th Centuries CE*, vol. 4 (Brill, 1997); Wael B Hallaq, *The Origins and Evolution of Islamic Law*, vol. 1 (Cambridge University Press, 2005); Wael B Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge University Press, 1999); Wael B Hallaq, ‘Was Al-Shafi‘i the Master Architect of Islamic Jurisprudence?’, *International Journal of Middle East Studies* 25, no. 4 (1993): 587–605; Murteza Bedir, ‘An Early Response To Shāfi‘ī: Īsā B. Abān On The Prophetic Report (Khabar)’, *Islamic Law and Society* 9, no. 3 (2002): 285–311.

⁴⁴⁰ This is a rhetorical device used in Arabic to stress the importance of a particular within a universal, like the prophet’s saying ‘the pilgrimage is ‘Arafat’ in order to emphasise the relevance of the day of ‘Arafat for the pilgrims and that without its attendance their pilgrimage is insufficient.

⁴⁴¹ Muḥammad b. Idris Al-Shāfi‘ī, *al-Risālah* (Cairo Egypt: Maṭba‘ah Muṣṭafā al-Bābī al-Ḥalabī, 1940), 40.

was laid down due to a *ma'nā*. If a case should arise for which there is no textual order, it should be decided on the strength of the case identical to it in regards to its *ma'nā* for which a specific order was laid down.”⁴⁴² Interestingly, al-Juwaynī states in his *Burhān*, “He who follows the discourse of al-Shāfi'ī finds that he is not confined to the precedents rather he connects rulings to their *ma'ānī* (pl. *ma'nā*).”⁴⁴³ He also stated, “If the *ma'ānī* have reference back to their precedents then to adhere to them is fine, yet the precedents and their rulings are not proofs, rather their proofs are the *ma'ānī*.”⁴⁴⁴

As we can see from the aforementioned, in the *Burhān*, great significance can be found in that al-Juwaynī consistently mentions untraceable quotes of al-Shāfi'ī, concerning which we would have no idea today of their existence were it not for his ascriptions, making the work of utmost importance. Most evident and pertinent to our discussion is his attributing to al-Shāfi'ī the term *maqāsid al-Sharī'ah* during a discussion surrounding the specification of the mention of the opening *takbīr* when performing prayer and how it is not of the acts whose purpose may be rationalised although not negating the existence of one. In fact, he fiercely rebukes those who negate such. For he says in response to the interlocutor who claims that there is no purpose for the legislator in specifying the *takbīr*, its continuance and performance generation after generation in word and deed, “He has announced upon himself ignorance of the *maqāsid al-sharī'ah* and the issue of the objectives (*maqāsid*) of the addressed in regard to which they are commanded and from which they are forbidden.”⁴⁴⁵ However, despite the nature of the context, is this enough to determine that al-Shāfi'ī was referring to what was to become the nomenclature of the generations to come, or is there the possibility that he meant by it something else? The answer to this may be found in another work attributed to al-Juwaynī, entitled *Mughīth al-khalq*, a work which seems to have been overlooked by many of those

⁴⁴² Al-Shāfi'ī, *al-Risālah*, 512.

⁴⁴³ 'Abd al-Mālik b. 'Abd Allāh al-Juwaynī, *al-Burhān fī usūl al-fiqh* (Beirut, Lebanon: Dār al Kutub al-'Ilmiyyah, 1997), 165.

⁴⁴⁴ Al-Juwaynī, 'Abd al-Mālik b. 'Abd Allāh al-Juwaynī, *al-Burhān fī usūl al-fiqh*, 165. It must be noted that in order to really appreciate the value of these statements of al-Juwaynī and the relevance of focusing upon his writings there must firstly be an appreciation of the important role that al-Juwaynī played in transmitting various segments of significant lost texts authored by al-Shāfi'ī throughout his works. 'Abd al-'Adhīm al-Dīb said, “Additionally, the *Burhān* has preserved for us the theoretical legal opinions of a group of scholars whose past works have been lost amongst whatever else has vanished from our tradition.” He continues: “what we know is that nothing from the books of *Ahl al-Sunnah* has reached us in *Usūl al-Fiqh*, which were compiled as to the methodology of the theologians prior to the *Burhān* save for the foundation for them all, namely the *Risālah* of al-Shāfi'ī. As for he who examines the *Burhān* he notices the names of the prestigious scholars; al-Shāfi'ī, al-Ash'arī (d. 324/936), al-Bāqillānī (d. 402/1013), Ibn Fūrak (d. 406/1015), al-Isfarāyīnī (d. 418/1027), al-Daqqāq (d. 405/1014), al-Ṣayrafī (d. 330/942), Dawūd (d. 270/883), his son (d. 297/909), al-Ḥalīmī (d. 403/1012), al-Ḥārith b. Asad (d. 243/857), Mālik (d. 179/795), Abū Ḥanīfah (d. 150/767), and many others. When we come across these names glistening in the rays of the *Burhān*, Imām al-Ḥaramayn narrates their opinions, citing them as evidence, or debating and rebutting them.”⁴⁴⁴ Al-Dīb, *Fiqh Imām Al-Ḥaramayn*, 544–45.

⁴⁴⁵ Al-Juwaynī, *al-Burhān fī usūl al-fiqh*, 94.

researching the *maqāsid* theory, yet containing many interesting and highly relevant quotations ascribed to the eponym.⁴⁴⁶ The work itself is a comparative composition where contrasts are made between the positions of al-Shāfi‘ī and that of Abū Ḥanīfah. Of utmost importance in regard to this work and what differentiates it from other comparative studies is that the author sets out to illustrate that al-Shāfi‘ī’s jurisprudence is closer to the objectives of the law than Abū Ḥanīfah’s. So, for example, after mentioning that al-Shāfi‘ī divides rulings into that which *ta’līl* is applicable and others where it is not,⁴⁴⁷ and that the reason for his harmonious jurisprudential rulings are based on his key principles of granting preponderance to universal rulings over particular analogies and avoiding *qiyās* in cases that could not be rationalised,⁴⁴⁸ he proceeds in giving examples. So he says in regard to purification, that its purpose is “cleanliness, purity from filth and repelling repugnant things and reviving the etiquettes of

⁴⁴⁶ The question regarding its legitimate attribution to al-Juwaynī has been contested, so before its acceptance as a source of evidence, an examination of the main objectives must precede. ‘Abd al-‘Adhīm al-Dīb objected vehemently to the ascription of this work to al-Juwaynī due to the apparent bigotry and animosity against Abū Ḥanīfah, saying: “...just as they (counterfeiters) spread falsities about Imam al-Haramayn in that repulsive book called *Mughīth al-khalq fī ittibā’ al-madhhab al-ḥaqq*, with all it contains of idle talk, and mockery against the great Imam Abū Ḥanīfah al-Nu‘mān” (*Nihāyat Al-Maṭlab*, 317). To my knowledge there has been no other objection by anyone as to the ascription of this work to al-Juwaynī save by Nūḥ al-Qūnawī (d. 1070/1660). In fact, there is much evidence to suggest the opposite. Al-Ghazali in *al-Mankhūl* follows very much the trend of his master in this work, with much focus upon criticising Abū Ḥanīfah’s hermeneutics, and then stating at the end of the work that it is no more than an abridgement of what al-Juwaynī has previously said (*Al-Mankhūl*: 618). Similarly, ‘Alī b. ‘Abd al-Kāfi al-Subkī (d. 756/1355) also makes reference to this work in his *uṣūl* work *al-Ibhāj* (see: *al-Ibhāj fī Sharḥ al-Minhāj*, vol.7., 2714). The likes of the famous historian al-Dhahabī (d. 748/1347) and immense Shāfi‘īte scholar and doxographer Tāj al-Dīn al-Subkī (d. 771/1370) both attributed the work to al-Juwaynī. Similarly, the celebrated Ottoman legal and hadith master and historian, Muḥammad Zāhid al-Kawtharī (d. 1371/1952), not only attributed the work to him but also composed a refutation of the work, highlighting from the outset why the author may have composed the work in the first place. Even going as far as to suggest that the reason behind al-Juwaynī leaving Khurasan for the two sanctuaries was due to the immense disruption that the book caused in his homeland (*Iḥqāq al-ḥaqq*, 618). Likewise, because of the similar attitude of his student, al-Ghazālī, apparent in *al-Mankhūl* and *al-Mustasfā*, Sirāj al-Dīn ibn Ishāq al-Ghaznawī’s (d. 773/1372) rebutted the *Mankhūl* including within it some of the controversies found within *Mughīth al-khalq* (*ibid.*, 15). Generally speaking, it seemed that the attribution of such a work to al-Juwaynī was highly likely, with al-Kawtharī politely scrutinizing al-Ghaznawī’s questioning its authenticity on the basis that the work had been recognized and ascribed to the author throughout the centuries (*ibid.*, 14). Similarly, the contentions raised about the work is due to the author’s scathing attacks upon Abū Ḥanīfah not because of the nature of its discussions upon *ta’līl* and the like. Important for this thesis however is the recognition of such work at an early date and the ascriptions of its quotes to al-Shāfi‘ī which have never been questioned. As for questioning al-Juwaynī’s attacks upon Abū Ḥanīfah, one just has to open his *Nihāyat al-maṭlab* where he is very frank in criticising the imam’s methodology. In volume sixteen, when critically assessing his opinion of what constitutes premeditated murder, he remarks: ‘this is a departure from all that is rational and has led to the path of the sophists!’ (*Nihāyat al-maṭlab*, 39). A few lines later he concludes: ‘and in summary, his *mathhab* is beyond the trajectories of any rationale’ (*ibid.*, 40). Al-Juwaynī was certainly not alone in his condemnation of Abū Ḥanīfah’s approach. Al-Khaṭīb al-Baghdādī (d. 463/1071) was also known for authoring a work critiquing Abū Ḥanīfah as was Ibn Abī Shaybah (d. 235/850). Al-Kawtharī actually excuses the likes of al-Juwaynī, al-Ghazālī and al-Rāzī (d. 606/1210) for their over reliance upon the reports of Abū Na‘īm (d. 430/1038) and al-Bayhaqī (d. 458/1066), since none of them were masters in the field transmission criticism, leading them being highly critical of the Hanafites, as they did not have the skills to verify the reports that reached them concerning them (*Ta’rib al-Khaṭīb*, 21).

⁴⁴⁷ ‘Abd al-Mālik b. ‘Abd Allāh al-Juwaynī, *Mughīth al-khalq fī tarjīḥ al-qawl al-ḥaqq* (Cairo Egypt: Al-Maṭba‘ah al-Miṣriyyah, 1934), 41.

⁴⁴⁸ Al-Juwaynī, *Mughīth al-khalq fī tarjīḥ al-qawl al-ḥaqq*, 51.

worship. He then deems that purification for the purpose of cleanliness does not manifest save with the consideration of the other meaning, which is worship (*al-ta'abbud*). And the legal regulators are considered so that the law's objective of cleanliness is not unhinged. He then considered that the reconciliation of the two cannot manifest except with a specific means, which is water as we have highlighted in positive law. For he who performs ablution with *nabīdh* of dates has made himself hideous...".⁴⁴⁹ This position about the rationale behind the usage of water is further consolidated with the statement of al-Ghazali, "The exclusivity of water is either unfathomable or rational, with the latter being due to it comprising of a fineness and unparalleled structure, unfounded in any other liquid. And this seems the closest opinion."⁴⁵⁰ In another example about the prayer al-Juwaynī says, "Also, Abū Ḥanīfah permits prayer with filth which may be removed. For he said in a narration, 'Prayer is permitted with filth if the size of a *baghlī* dirham which is like the size of one's palm,' and in another narration – and this is the choice of Abū Yūsuf – 'If the filth occupies less than a quarter of the garment, then prayer suffices in it,' and this is in contradiction with the *objectives of the law* in regard to prayer."⁴⁵¹ He also mentions the objectives of the prayer as understood by al-Shāfi'ī and then compares them with an illustration of prayer in its most base form yet considered acceptable by Abū Ḥanīfah, which he describes as being 'contrary to the foundation,'⁴⁵² meaning by this, in contrast with the objectives of the prayer. He continues, "al-Shāfi'ī said, 'The objective of giving alms (*zakat*) is to remove need and hunger, being benevolent towards the poor, assisting the troubled and reviving life.' Thus, he said, 'What is suitable for such a purpose is that *zakat* is paid immediately, and that it does not become annulled with death, for were we to say it may be paid in time and not immediately, and that it becomes annulled with ones passing then that would lead to the annulment of this required wisdom.'" He later continues, "...and to negate the objective of the law is definitively incorrect."⁴⁵³ Similarly, concerning fasting he says, "And al-Shāfi'ī said, 'The objective of fasting is two things; to sense the meaning of tribulation and hardship, and unequivocal worship due to God's saying: *in order that We may test which of you are of more perfect deed*. And the second: to be hungry and overcome the capricious urges. Hence, he made both these objectives pillars of fasting."⁴⁵⁴ There is within the text a consistent adherence of al-Shāfi'ī to the objectives of the law which he himself recognised, as ascribed

⁴⁴⁹ Al-Juwaynī, *Mughīth al-khalq fī tarjīh al-qawl al-ḥaqq*, 53.

⁴⁵⁰ Abū-Ḥāmid Muḥammad Ibn-Muḥammad al-Ghazālī, *al-Waṣīṭ fī al-madhhab* (Lebanon: Dār al-Bashā'ir al-Islamiyyah, 2015), 368.

⁴⁵¹ Al-Juwaynī, *Mughīth al-khalq fī tarjīh al-qawl al-ḥaqq*, 55.

⁴⁵² Al-Juwaynī, *Mughīth al-khalq fī tarjīh al-qawl al-ḥaqq*, 57.

⁴⁵³ Al-Juwaynī, *Mughīth al-khalq fī tarjīh al-qawl al-ḥaqq*, 60.

⁴⁵⁴ Al-Juwaynī, *Mughīth al-khalq fī tarjīh al-qawl al-ḥaqq*, 61.

by al-Juwaynī when saying, “al-Shāfi‘ī said, ... (*qāla al-Shāfi‘ī*)”. There is much to be said and benefitted from this work; firstly, within it there is a complete ascription of the higher objectives to al-Shāfi‘ī, meaning by default that *ta‘līl* has been employed from which *maṣāliḥ* have been deduced and recognised. Secondly, the insinuation that al-Juwaynī had in his possession or was acquainted with works of al-Shāfi‘ī that were no longer extant. Since the tone in which he declares “al-Shāfi‘ī said” is very affirmative, implying there is no room for doubt, nor was it ever doubted by contemporaries or those that were to follow. A point corroborated by a passage in the *Burhān* in which al-Juwaynī emphatically asserts,

“Al-Shāfi‘ī mentioned in his *Risālah* a worthy sequence, for he said: were a situation to arise which demanded from the *mujtahid* to find its ruling, he looks firstly within the texts of the Book, if he finds a significant path to the ruling, then this is what is the objective, if he is unsuccessful and unable then he turns his attention to the mass transmitted texts. If he finds the ruling [then this is sufficient] otherwise he resorts to solitary reports. If he is successful then it suffices otherwise he resorts to the apparent meanings of the Book which he does not apply until he searches for any potential qualifiers. Were he to come across any qualifiers that render the text specific he absolves from its apparent purport. If there is no qualifier that specifies the text and removes it from its generality he absolves from its application. Were he not to find within the text any apparent meaning he resorts to the apparent meanings found within the mass transmitted reports which are void of any qualifiers, and then to the apparent meanings of the solitary reports. If, however, the ruling is not achieved through this sequence of elimination, he does not yet resort to analogy, rather he refers to the generalities of the law and its general welfares...”.⁴⁵⁵

This passage raises many questions about al-Shāfi‘ī, his *Risālah*, and system of law, where the emphatic declarations of al-Juwaynī remove the notion that these could be just his own extrapolations from al-Shāfi‘ī’s works. First the assertion that it is a direct quote from the *Risālah*. Nevertheless, the current *Risālah* which is in our possession today has no such statement, suggesting the existence of another possible *Risālah*. This is also validated by al-Shāfi‘ī’s insinuation that his current *Risālah* is an abbreviated version. For he writes, “Some of my books are now absent from me, but I have certified that which I have memorised with the knowledge of the scholars. And I have summarised out of fear that the book may become too lengthy, thus presenting enough which suffices, without investigating every aspect of the

⁴⁵⁵ Al-Juwaynī, *al-Burhān*, 1:1338.

science.”⁴⁵⁶ Likewise, all the quotes of al-Juwaynī in reference of al-Shāfi‘ī that are in his extant books have been found to be correct, leading us to believe that whatever else he may refer back to him concerning that which has not reached us today but may have been at his disposal in his age or transmitted orally to be the same. For his father was one of the well-known commentators of the *Risālah* and would have undoubtedly passed on his knowledge in various disciplines to his son, as was the custom of the day.⁴⁵⁷ Secondly, al-Shāfi‘ī’s clear recognition of the higher principles and objectives of the law, that they precede even analogy and were within the hierarchy of law-making, substantiate what we have previously mentioned that the objectives were indeed in the forefront of al-Shāfi‘ī’s mind, and that he was the first to coin the expression *maqāsid al-sharī‘ah*. Through close observation of these texts, it becomes clear that al-Shāfi‘ī used various terms for the same meaning. For example, we find al-Juwaynī attributing to him the term, “contrary to the basis”, “*kulliyāt al-Sharī‘ah*” alongside “*maqāsid al-sharī‘ah*” all referring to the same meaning.

As previously explained, the *‘illah* itself and its mention, were not to be found in the *Risālah* explicitly, it was the word *ma‘nā* that was of particular interest and was undoubtedly in reference to the ratio legis. Nabil Shehaby stated, “If we go further back in time to what is generally regarded as the first book on legal theory in Islam, namely the *Risālah* of al-Shāfi‘ī, we find the word *ma‘nā* being used to mean the reason for enacting a judicial judgement.”⁴⁵⁸ Al-Shīrāzī (d. 476/1355), when defining the meaning of *‘illah* (*ratio legis*) described it as, “The *ma‘nā* which demands the ruling.”⁴⁵⁹ Al-Juwaynī himself clearly defines *ma‘nā*, asserting, “Indeed *ma‘nā* is *al-munāsib*,”⁴⁶⁰ meaning by this the suitability of the attribute to be intended by the legislator for the legislation of the ruling. The Ḥanafite *usulist* ‘Abd al-Azīz al-Bukhārī (d. 841/1438), within his commentary upon the *uṣūl* of Fakhr al-Islām al-Bazdawī (d. 482/1089), said when commenting upon the latter’s statement ‘understanding the texts through their meanings (*ma‘ānīha*)’, “The meaning of *ma‘ānī* here is both linguistic and legal which are both called *‘illah*. For the pious predecessors (*salaf*) would not use the word *‘illah*, rather they would apply the word *ma‘nā*, taken from the statement of the Prophet, ‘The blood of a Muslim is impermissible save for one of three *ma‘ānī*, i.e. *‘illal*.”⁴⁶¹ If one were to refer back to al-Shāfi‘ī’s usage of *ma‘nā* and replace it with *‘illah* there would be no disparity.

⁴⁵⁶ Al-Shāfi‘ī, *al-Risālah*, 431.

⁴⁵⁷ Tāj al-Dīn Al-Subkī, *Ṭabaqāt al-Shāfi‘īyyah al-kubrā* (Cairo, Egypt: Maṭba‘ al-Ḥalabī, n.d.), 5:75.

⁴⁵⁸ Nabil Shehaby, ‘‘Illah and Qiyās in Early Islamic Legal Theory’, *Journal of the American Oriental Society* 102 (1982): 33.

⁴⁵⁹ Abū Ishāq al-Shīrāzī, *al-Tabṣīrah fī uṣūl al-fiqh* (Beirut, Lebanon: Dār al-Fikr, 1980), 465.

⁴⁶⁰ Al-Juwaynī, *al-Burhān*, 1:870.

⁴⁶¹ ‘Abd al-Azīz al-Bukhārī, *Kaṣḥf al-asrār* (Beirut, Lebanon: Dār al-Kutub al-‘Ilmiyyah, 1997), 23.

Notwithstanding, within the *Umm* there is clear usage of the term *illah* as according to the later day *uṣūlī* nomenclature. For he says when discussing combining the prayers for the non-traveller, and attempting to reconcile between conflicting reports that stipulate the obligation of being a traveller to unite the prayers, “So we come to understand that within the Prophet’s combining the prayer whilst being a non-traveller there is a distinguishing *illah* which in this case is rain.”⁴⁶² He also highlights the wisdoms due to which the permission was legislated when he states, “...and we have found in rain the *illah* of hardship just as there is found [within the reason for] uniting the prayers the general *illah* of hardship.”⁴⁶³ Within this statement there is not only explicit usage of the term *illah* by al-Shāfi‘ī, but also the wisdoms of the ruling, manifest in his statement, ‘the *illah* of hardship’, which has the potential to open up a discussion about *ta’līl bil hikmah* and a highly intricate and contentious area which will be examined when discussing the *illah* and its types within the *Mustasfā*.⁴⁶⁴ Despite its appearance within the *Umm* and its mention sixty-two times, its predominant application is in accordance with its linguistic meaning, namely ‘ailment’ and ‘viable excuse’. The word *ma’nā* appears in the *Umm* 512 times. The majority holding their original linguistic denotation void of legal parlance; however, many other references clearly denote the rationalised *ratio legis*, almost explicitly determining what I have attempted to affirm from just the *Risālah* alone. Examples include: al-Shāfi‘ī’s statement, “So we performed analogy of what we rationally understood from what we depicted, and the difference between the dog and the pig and everything else of whose meat is not eaten is that there is nothing of them which is prohibited to use save due to a *ma’nā*. And the dog is prohibited for no *ma’nā*.”⁴⁶⁵ In this passage al-Shāfi‘ī is alluding to the concept of *ta’abbud*, that which cannot be rationalised and that which can. In this context he clearly uses *ma’nā* here to mean *illah* and verifies what has been said about him that he divides rulings into that which may be rationalised and that which may not. He also stated, “It is known that God’s injunctions and those of His Messenger have two facets yet are united by the fact that their performance are an act of worship. However, this act of worship also has two dimensions. One act of worship being something which God or His Messenger has revealed its reason within it or elsewhere; whether in His Book or Sunnah of His Messenger. This is achieved as we have explained and through analogy (*qiyās*) of that

⁴⁶² Abū Abd Allah Muḥammad b. Idris al-Shāfi‘ī, *al-Umm* (Cairo Egypt: Kitāb al-Sha’b, 1968), vol. 1, 65.

⁴⁶³ Al-Shāfi‘ī, *al-Umm*, vol. 1: 65.

⁴⁶⁴ Moghul explains, “The *hikmah* of a particular ruling is often latent, obscure, and thus extremely difficult to ascertain with precision and clarity.” See Umar F Moghul, ‘Approximating Certainty in Ratiocination: How to Ascertain the Illah (Effective Cause) in the Islamic Legal System and How to Determine the Ratio Decidendi in the Anglo-American Common Law’, *J. Islamic L.* 4 (1999): 160.

⁴⁶⁵ Abū Abd Allah Muḥammad b. Idris al-Shāfi‘ī, *al-Umm* (Cairo Egypt: Kitāb al-Sha’b, 1968), vol. 1, 6.

which has similar *ma'nā*. The other devotional act is that which God decreed to inform him and us its ruling without the prior knowledge which was present in the previous case of what was revealed to us in His Book or upon the tongue of His prophet, may peace and blessings be upon him, thus we perform the obligation as stipulated, and we have no knowledge of anything which has a *ma'nā* so that we can perform *qiyās* upon it.”⁴⁶⁶ Similarly, there is another important excerpt where al-Shāfi'ī mentions that the *ma'nā* is in contradistinction to *ta'abbud*, that which cannot be rationalised. He says, “We say, major and minor ritual purification is not because the Muslim is impure rather the Muslim is divinely ordained to perform them. The application of earth as a substitute for purification which is incomprehensible (*ta'abbud*) and was not made a substitute for the removal of filth which is cleansed due to a *ma'nā* and not *ta'abbud*...”⁴⁶⁷ Hence, we see here in no uncertain terms that al-Shāfi'ī uses the word *ma'nā* as the antonym of *ta'abbud* which in later manuals is the *'illah*. We can therefore determine that al-Shāfi'ī was the first to document and prepare the groundwork for the theory of *ta'līl* in his works which necessarily caused him to engage and identify the higher objectives, confirming what I have mentioned that this aspect of *ta'līl* is concomitant to the *maqāsid* and *maṣlaḥa* dichotomy, possibly disclosing the reason that the Shāfi'īte scholars were those that gave so much attention to its elucidation, and that, as shall become clear, it was the likes of al-Juwaynī and al-Ghazālī that were to further develop it in line with their doctrine.

Post Shāfi'ī efforts in the elaboration of *ta'līl*

Following the passing of al-Shāfi'ī there was much in the way of scholastic discussion in legal theory and an expansion of ideas. However, the majority of the works of the century to follow have either yet to be discovered or destroyed.⁴⁶⁸ That is in regards to *uṣūl* works in particular. Some of the works on positive law are still extant, like that of the closest disciple of al-Shāfi'ī in Egypt, before he died, al-Buwayṭī (d. 231). Importantly within his work called *al-Mukhtaṣar*, there are distinct elucidations of al-Shāfi'ī's legal theory as mentioned by Abdullah Mustafa al-Marāghī in his book *al-Faḥ al-Mubīn fī Ṭabaqāt al-Uṣūliyyīn*.⁴⁶⁹ Other Shāfi'ī jurists that were to follow and were to have important contributions within *uṣūl* were the likes

⁴⁶⁶ Al-Shāfi'ī, *al-Umm*, vol. 2, 158.

⁴⁶⁷ Al-Shāfi'ī, *al-Umm*, vol. 1, 49.

⁴⁶⁸ For an example of works recently found and the difficulties involved see Ahmed El Shamsy, ‘Bridging the Gap: Two Early Texts of Islamic Legal Theory’, *Journal of American Oriental Society* 137, no. 3 (2017): 505–36.

⁴⁶⁹ Muṣṭafā al-Marāghī, *al-Faḥ al-mubīn fī ṭabaqāt al-uṣūliyyīn*, 1:155.

of al-Muzanī (d. 264/878),⁴⁷⁰ Ibn Surayj (d. 306/919), a student of al-Muzanī and master Shāfi‘ī jurist of his day. From among his works was a rebuttal of Dawūd’s (d. 270/884) rejection of *qiyās* and also a response to ‘Isā Ibn Abbān (d. 220/835).⁴⁷¹ Likewise, one of the most notable in the fourth century was the eponym of the Ash‘arite theological school Abū Ḥasan al-Ash‘arī (d. 324/936), where he was said to have authored several works on legal theory including one regarding the authority of *qiyas*, the general and the specific (*al-‘āmm wa al-khāṣṣ*) and *ijtihād*.⁴⁷² Abū Bakr al-Ṣayrafī (d. 330/942), known for his proclamation that he was the most learned of God’s creation after al-Shāfi‘ī in *uṣūl*,⁴⁷³ was also an important personality due to his commentary on the *Risālah* of al-Shāfi‘ī despite not reaching us, and on consensus (*ijmā‘*).⁴⁷⁴ To succeed him, and an important link to this chronological discussion, is Abū Bakr al-Qaffāl al-Shāshī (d. 365/976). What makes him most relevant is not only did he write a commentary upon the *Risālah*,⁴⁷⁵ and produce an extant work upon what could almost be understood today as the objectives and reasonings behind the law, *maḥāsīn al-Sharī‘ah*, he was also considered a disciple of the great founder of the Ash‘arite school by the great historian Ibn ‘Asākir (d. 571/1176), and thus could well be reflecting many ideas of his master and the harmony between disciplines; the theological and jurisprudential.⁴⁷⁶ Surprisingly, almost every contemporary author on the objectives of the law and *maṣlaḥa* has for some reason or another overlooked this very significant and primitive work. It begins with the premise that “all the divine laws and legislations are rational, and that were this not to be the case then they would be divest of wisdom and *maṣlaḥa*.”⁴⁷⁷ Throughout the introduction he cements the notion that the Legislator constantly has man’s welfare and *maṣlaḥa* in consideration, as is the case with anyone politically astute. Significantly, he maintains much of the justifications which al-Shīrāzī and al-Juwaynī later attributed to al-Shāfi‘ī, like the reason for criminal punishments; that they serve as deterrents and prevent people from oppression.⁴⁷⁸ Al-Shīrāzī demonstrated

⁴⁷⁰ Muṣṭafā al-Marāghī, *al-Fatḥ al-mubīn fī ṭabaqāt al-usūliyyīn*, 1:165; al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā*, 3:102–3.

⁴⁷¹ Al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā*, 3:23; Mustafa al-Marāghī, *Al-Fatḥ al-Mubīn fī Ṭabaqāt al-Uṣūliyyīn*, 1:176.

⁴⁷² Ibn ‘Asākir, *Tabyīn kadhib al-muftarī fī mā nusiba ilā al-Imām Abī Ḥasan al-‘Ash‘arī*, 281–88.

⁴⁷³ Al-Subkī, *Ṭabaqāt al-Shāfi‘iyyah al-kubrā*, 3:186.

⁴⁷⁴ Al-Subkī, 3:186. Al-Subkī narrates that Abū Muḥammad al-Juwaynī mentioned in his commentary of the *Risālah* that al-Ṣayrafī gathered with Abū Ḥasan al-Ash‘arī to debate the issue of thanking the Benefactor (*shukr al-mun‘im*), revealing the levels of interaction between the scholars, and how both of these individuals were not confined to single disciplines. (*ibid*).

⁴⁷⁵ Al-Subkī, 3:200, Ibn ‘Asākir, *Tabyīn kadhib al-muftarī fī mā nusiba ilā al-Imām Abī Ḥasan al-‘Ash‘arī*, 356.

⁴⁷⁶ Ibn ‘Asākir, *Tabyīn kadhib al-muftarī fī mā nusiba ilā al-Imām Abī Ḥasan al-‘Ash‘arī*, 355.

⁴⁷⁷ Abū Bakr al-Qaffāl al-Shāshī al-Qaffāl al-Shāshī, *Maḥāsīn al-Sharī‘ah* (Cairo, Egypt: Al-Fārūq al-Hadīthah lil-Ṭibā‘ah, 2008), 21.

⁴⁷⁸ Al-Qaffāl al-Shāshī, *Maḥāsīn al-Sharī‘ah*, 22.

this same inference during his treatment on how an *'illah* may be determined by consensus, he stated, "...and this is like what has been reported from 'Alī, may God be well pleased with him, that he said about the consumer of wine: 'if he drinks it he becomes intoxicated, if he becomes intoxicated he begins to talk irrationally, if he talks irrationally he becomes slanderous and if he becomes slanderous then I decree that upon him the punishment of the slanderer.' No one disagreed with his *ta'wīl* which therefore indicates that this was the *'illah* for the punishment. And from this there is consensus among the Muslims that divine ordinances (*ḥudūd*) were legislated as deterrents and preventatives and that the *qiṣāṣ* were ordained for purposes of deterrent."⁴⁷⁹ We similarly find in this important statement a detailed discussion of *ta'wīl* and its functionality at a relatively early stage in order to justify the legal punishment, with the identical reasoning for the application of capital punishment attributed to al-Shāfi'ī by al-Juwaynī.⁴⁸⁰ The work of al-Shāshī is almost a rationalisation of Shāfi'īte positions and the wisdoms behind them. Thus, a trend is beginning to emerge within the school whereby the reasoning of rulings is becoming more detailed and revealing of the concomitants of what such rationalisations may entail. This later point becomes more relevant with the emergence of the elites of the next generation, namely al-Juwaynī and al-Ghazālī. Quite noticeable from what has been discussed thus far is a distinct disconnect of early works, between the third and fifth century, that would have been of great significance on this topic. For there is unanimous agreement among the Shāfi'ītes of the fifth century as to the rationalisation of rulings and the welfare of mankind in spite of their unyielding loyalty to the methodology of their eponym, all of which strongly suggests the likely occurrence of lost works between these periods, that were developing these discussions and building upon al-Shāfi'ī's groundwork.⁴⁸¹ For what we know for certain is that al-Shāfi'ī accepted *qiyās* as a source of law which then necessarily meant he accepted *ta'wīl*, and as revealed, that he affirmed wisdoms and even stipulated the *maqāṣid*.

⁴⁷⁹ Al-Shīrāzī, *Sharḥ al-Luma'*, 856–57.

⁴⁸⁰ Al-Juwaynī, *Mughīth al-khalq*, 73.

⁴⁸¹ A corroborating point is that Abū Bakr al-Jassās (d. 370/981), someone known for his Mu'tazilite leanings, throughout his discussion of *maṣlaḥa* in his *Fuṣūl*, seems to have been debating a Shāfi'ī interlocutor about the permissibility of identifying the *ratio legis* as *maṣlaḥa*. (Opwis, *Maṣlaḥa and the Purpose of the Law*, 20) The Shāfi'īte contending that 'purposes are equivalent to the *rationes legis* contained in revealed texts, implying thereby that God's purposes are identifiable as *maṣlaḥas*. (*Ibid.*, 20). This point agrees with the narrative of this study as to the acknowledgment of the Shāfi'ī jurists, from an early stage, that identifying the *ratio legis* is very much equal to identifying *maṣlaḥa*, and that *maṣlaḥa* can be recognised by the jurist through *munāsabah* and hence a part of the law-making process once anchored within the authoritative texts. Contrary to al-Jassās who asserted that *maṣlaḥas* cannot be rationally deduced (*Al-Fuṣūl fī al-uṣūl*, vol.4, p. 141), and contrary to the understanding that the Mu'tazilites were the main proponents of employing reason and *maṣlaḥa* within the law-making process.

Now, although any information we may have during the century directly after al-Shāfi'ī is somewhat obscure, what does seem clear is that there reached a point where the introduction of theology became most evident and from then on, a concomitant of *Uṣūl al-Fiqh*. This was most likely a time where Mu'tazilite literature in the field of legal theory was most prominent and *kalām* was on the ascendency and recognised as a necessary tool for scholarship.⁴⁸² A time when the prolific Mu'tazilite Shāfi'ītes were very active. The most important being 'Abd al-Jabbār (d. 415/ 1025) and his disciple Abū al-Ḥusayn al-Baṣrī (d. 436/1044).⁴⁸³ George Makdisi made the claim that the latter's work, *al-Mu'tamad fī usūl al-fiqh*, which was a commentary on the *'Umad* of his mentor is regarded as the first independent and comprehensive work on the topic after al-Shāfi'ī's *Risālah*.⁴⁸⁴ Despite the slow disappearance of Mu'tazilite presence after the emergence of Abū Ḥasan al-Ash'arī and his school, in my opinion there seems no doubt as to the influence that they had upon their counterparts in either presenting ideas that the Ash'arites would develop, or providing concepts that they would refute and as a result produce an alternative theory which would become the mainstay, which in all cases benefitted the development of Islamic scholasticism.

Due to the copious early *usūlī* writings of the Mu'tazilites, there can be no doubt as to their importance in regard to early contributions to *ta'līl* and *maqāsid*. Based upon their theodicy; the virtue of justice (*'adl*) and *ṣalāh wa al-aṣlah*, and their efforts to explain God through rational axioms,⁴⁸⁵ and with the expression of their creed fused within their legal theory, their acceptance of *ta'līl* and *maṣlahah* was almost a necessary extension from such tenets. Since the belief that God performs on behalf of objectives and what is always right and best for mankind as according to what can be rationally understood in many aspects simplifies for them the process of *ta'līl*. As simple as: every ruling has a reason, every ruling has a benefit. 'Abd al-Jabbār stated, “*Ṣalāh* is to bring benefit and remove harm, and it is not incumbent upon God to perform it because it is *Ṣalāh or Aṣlah* since He does not do anything with His servants save for what benefits them as all His acts are good.”⁴⁸⁶ Their position on *ta'līl* due to such an

⁴⁸² This is contrary to the age where *kalām* was still somewhat taboo and avoided by some due to it being considered as a tool of deviancy. This position was to change out of necessity in order to combat Mu'tazilism and other doctrines that were proving to be impossible to resolve by resorting to scripture alone.

⁴⁸³ The position that both 'Abd al-Jabbār and Abū al-Ḥusayn al-Baṣrī were Shāfi'ītes is by no means definitive, however this current point is based upon the assumption that they are, since the claim makes no huge impact upon the eventual result as will become clear.

⁴⁸⁴ George Makdisi, 'The Juridical Theology of Shāfi'ī: Origins and Significance of Uṣūl al-Fiqh', *Studia Islamica*, 1984, 33. With the emergence of the *Fuṣūl fī 'ilm al-uṣūl* by al-Jaṣṣās, the assertion of Makdisi can no longer be considered credible.

⁴⁸⁵ Sabine Schmidtke, *The Oxford Handbook of Islamic Theology* (Oxford University Press, 2016), 130.

⁴⁸⁶ Abū Ḥasan 'Abd al-Jabbār, *al-Muḡnī fī abwāb al-tawḥīd wa al-'adl*, vol. 14 (Cairo, Egypt: Al-Dār al-Misriyyah, 1965), 54. Despite all the Mu'tazilites unanimously agreeing to the divine wisdom, there is a split

epistemology would therefore seem understandable, and perhaps even more so when reading assertions such as, “It has been confirmed that God, most sublime, sets injunctions due to the benefits they entail for the legally responsible, and that the nature of the act being a *maṣlaḥa* must return back to a specific feature. Hence God must elucidate to the worshipper the act which He obligates upon him and its description both in general and in detail, just as He must highlight the manner of its obligation both in general and in detail so that the legally responsible may be able to properly execute the required act.”⁴⁸⁷ Also, mentioned in the *Sharḥ al-usūl al-khamsa*: “...as for the commands and prohibitions, they are similar, if we understand His justice, we understand that He does not command us save to what is beneficial (*maslahah*), and He does not prohibit us save from what is detrimental (*mafsadah*). Thus, it is incumbent for us to comply to His commands and prohibitions.”⁴⁸⁸ This passage is very clear in summarising that the only reason the human being should be following the divine conjunctions is due to the benefits they entail. It is such an epistemology that motivated the likes of David Johnston to conclude that the Mu‘tazilites would employ reason to uncover the *ratio legis* behind divine injunctions.⁴⁸⁹ However, Johnston’s conclusion is jeopardised by Abū al-Ḥusayn al-Baṣrī’s open proclamation, “If the interlocutor wishes that we affirm *maṣāliḥ* by way of inference based upon the intellect alone, then we have clarified the contrary. And if he means that we highlight them through inference based upon textual evidence then this is true from the manner which we have clarified.”⁴⁹⁰ Interestingly, this statement alone resembles very much that which al-Juwaynī and al-Ghazālī would later confirm, with the latter highlighting how the *maṣāliḥ* remain governed by the spirit of the law, specifically the five ultimate objectives.⁴⁹¹ Similarly, ‘Abd al-Jabbār held: “The obligation of repelling harm in religion and worldly affairs is of the rational obligations,”⁴⁹² another statement very close to the Ash‘arite position, especially al-

amongst them as to what is meant by *Ṣalāḥ wa al-aṣḥāḥ*. Sa‘īd ‘Abd al-Jabbār, “We do not say the obligation of these actions, save if the reasons for such are rational, just as we did not preach the obligation of returning of a deposit, and the repayment of a debt save due to rational reasons, and among our teachers, may God bestow mercy upon them, it is not obligatory upon God any action because it is good or the best act to perform. And not because it is right or most right, and not because it is an act of benevolence upon the one in need...” (‘Abd al-Jabbār, 14:54.). The relevance of this point will become more evident when comparing their differences with their Ash‘arite counterparts, and whether this point is indeed an area of conflict or agreement.

⁴⁸⁷ Abū al-Ḥusayn al-Baṣrī, *Sharḥ Al-‘Umad*, vol. 2 (Cairo, Egypt: Dār al-Maṭba‘ah al-Salifiyyah, 1990), 25. This statement itself serves as evidence of the misunderstanding that the Mu‘tazilites postulated that the intellect was a source of law in the face of scripture.

⁴⁸⁸ ‘Abd al-Jabbār, *Sharḥ al-usūl al-khamsa*, 597.

⁴⁸⁹ See: David Johnston, ‘A Turn in the Epistemology and Hermeneutics of Twentieth Century Uṣūl Al-Fiqh’, *Islamic Law and Society* 11, no. 2 (2004): 233–82.

⁴⁹⁰ Abū al-Ḥusayn al-Baṣrī, *Sharḥ al-‘umad*, vol. 1 (Dār al-Maṭba‘ah al-Salifiyyah, 1990), 302.

⁴⁹¹ Abū-Ḥamid Muḥammad Ibn-Muḥammad Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, vol. 1 (Beirut, Lebanon: Dār al-Fikr, na), 287.

⁴⁹² Abū Ḥasan ‘Abd al-Jabbār, *al-Muḡnī fī abwāb al-tawḥīd wa al-‘adl*, vol. 4 (Cairo, Egypt: Al-Dār al-Miṣriyyah, 1965), 168.

Āmidī (d. 631/1233) when discussing suitability (*munāsabah*).⁴⁹³ Despite all this, the Mu‘tazilite impact of these assertions in the case of law remain intriguingly vague. It would appear that although much usage of the term *maṣlaḥa* is found as a technical term, the Mu‘tazilite position towards *maṣlaḥa* was in regard to the performance of the command being a *maṣlaḥa* in both worldly and post-death connotations, although it remains to be found where they expressly identify how it can be used within the law-making process. Opwis seems to insinuate that despite the contrasting views regarding ethical values between the Mu‘tazilites and Ash‘arites, their theologies are not reflected in their legal theories.⁴⁹⁴ Since the Mu‘tazilites, despite declaring the ability of the intellect to determine from nature what is good and bad without the assistance of scripture, would not determine rulings from such a method. Contrastingly, the Ash‘arites, being the antithesis of such a position, recognised the intellect to have the ability to contribute in determining laws. This is a discussion which I will be treating in more detail when discussing the theological implications of *ta‘līl*.

Al-Juwaynī, al-Ghazālī and the advanced theorisation of *ta‘līl* and *maṣlaḥa*.

Few can argue that despite the role al-Shāfi‘ī and those that followed played in the initiation of making *ta‘līl* and its concomitants conceptual, the grand elucidation was to take place at the hands of al-Juwaynī and his student al-Ghazālī for reasons that will soon be known. To the extent that some have even attributed to the former as being the pioneer of its theorisation as a reaction to mu‘tazilism in order to reveal the all-encompassing nature of the law.⁴⁹⁵ Although, after all that has been highlighted, it is clear that al-Juwaynī’s argument was not reactionary, rather a continuation of the path of his school’s eponym. For not only did al-Shāfi‘ī himself declare the sacred law to be comprehensive of all rulings; that they may all be found within scripture,⁴⁹⁶ he also, as mentioned previously, stressed that this may be achieved through the vehicle of *qiyās* and the search of the *ratio legis*. The heavy reliance of al-Juwaynī upon al-Shāfi‘ī is clear from his continual citation of him whenever possible in his *Burhān*. The idea that notions and concepts were adhered to by the great legendary scholars of the past was always a point worth proving and on the mind of any latter-day scholar in order to give his argument more credibility. Since it would in turn mean that to reject his opinion is

⁴⁹³ Weiss, *The Search for God’s Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi*, 601.

⁴⁹⁴ Opwis, *Maṣlaḥa and the Purpose of the Law*, 31.

⁴⁹⁵ Opwis, *Maṣlaḥa and the Purpose of the Law*, 41–42.

⁴⁹⁶ Al-Shāfi‘ī, *al-Risālah*, 477.

commensurate to the rejection of the opinion of one of the great eponyms, something few would wish to challenge.

There can be no doubt as to the primacy of al-Juwaynī in regards to expounding upon *ta' līl* and the objectives of the law, although the extent of his primacy is hard to determine. Primarily because the majority of *uṣūl* works of the preceding master theologians and *uṣūlists* like al-Ash'arī and al-Bāqillānī are either no longer extant or incomplete, despite there being proof of their immense engagement in the field of legal theory. Al-Bāqillānī is particularly significant due to his close proximity to al-Ash'arī, and because of his constant mention and citation by al-Juwaynī in the *Burhān*, displaying his high regard for him. Al-Raysūnī said in his regard, "To al-Bāqillānī may be attributed the second turning point in the history of the discipline known as *uṣūl-al-fiqh*, the first turning point having been brought about by Imam al-Shāfi'ī. For while al-Shāfi'ī ushered *uṣūl al-fiqh* into the phase of written compilation, al-Bāqillānī took the discipline a step further into the phase of comprehensive expansion and of intermingling and interaction with the discipline of theology..."⁴⁹⁷. Thus al-Bāqillānī, as according to al-Raysūnī, was the first to incorporate within the manuals of legal theory theological discussions, and set the trend which al-Juwaynī was to follow. Regardless of whether it was in fact al-Bāqillānī who was responsible for this or whether it was a reaction to the Mu'tazilite polemics that were prevalent within the books of *uṣūl*, the point here is that al-Bāqillānī was indeed a source of inspiration and pioneer for the likes of al-Juwaynī and Sunni scholarship in general.⁴⁹⁸ I would further add that the theologians were not creating a new method to that of al-Shāfi'ī, rather they were corroborating it with the theology of the orthodox, since with the passing of time more hypothetical questions were being asked, most related to the Legislator and the nature of the rule (*ḥukm*), was it pre-eternal or created and the like, and this would be addressed and discussed by all camps within their legal theory.

The other reason for hesitancy concerning the degree of al-Juwaynī's influence is the role of his student, al-Ghazālī, and his undeniable impact, raising questions as to who should hold the mantle as the key forerunner of the *maqāsid* dichotomy for the generations to come. This debate

⁴⁹⁷ Aḥmad al-Raysūnī, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (The Other Press, 2006), 10.

⁴⁹⁸ I would disagree with al-Raysūnī in regard to his presumption that al-Bāqillānī was the first to introduce theology into the *uṣūlī* discourse, and that his works have been entirely lost on the genre. As for the first point, I have referenced within this work several areas within the *Fuṣūl* of al-Jaṣṣāṣ where he includes theological discussions to the point that we can clearly identify his Mu'tazilite leanings. As for the second claim, there is a partial edition of al-Bāqillānī's work *al-Taqrīb wa al-irshād* that has been printed, and also there is *al-Talkhīṣ* by al-Juwaynī which is a highly significant work in that it is actually a complete abbreviation of al-Bāqillānī's *Taqrīb*.

shall now be examined when analysing al-Ghazālī's discussion and contribution to the topic within his *Mustasfā*.

Chapter Seven

Al-Ghazālī, Qiyās and its theological considerations

As highlighted, historically, the legitimacy of *qiyās* among the Shāfi‘īte and Ash‘arite jurists was undeniable. However, so too was their belief that God was free from motivations and aims which seemingly contradicted the legal import of *qiyās* due to it implying that rulings had rational reasons due to which they were legislated and by which the overall objectives of the law could be recognised.⁴⁹⁹ This apparent problem was not left unnoticed by al-Ghazālī and his counterparts, although before we embark upon demonstrating how he theorised and treated this problem we will first mention his key arguments for the validity of *qiyās* within the law.

In his introduction to *qiyās*, al-Ghazālī allocates a sufficient section of the chapter to comprehensively mention the debates and evidences of all parties regarding its standing and legitimacy. Since this is not the primary focus of this study, I have sufficed in providing the crux of the debates and the primary principles upon which al-Ghazālī basis his unwavering belief as to its legitimacy.

On this topic al-Ghazālī’s dispute is with various camps. The first are what he describes as a contingent of Mu‘tazilites and Shiites who understood it to be rationally impossible to be religiously obligated to apply *qiyās*.⁵⁰⁰ Al-Ghazālī explains that they took issue with any form of evidence which is non-definitive since probability in their view is equivalent to ignorance, and there is no welfare (*maṣlaḥa*) for creation to plunge in to the dilemmas of ignorance, wandering blindly in its abyss, and as a result issue verdicts which could possibly be contrary to the verdict of God on the issue.⁵⁰¹ Al-Ghazālī’s response was to first highlight that their argument was predicated upon two particular issues: *ṣalāḥ* (welfare) is obligatory upon God, and the other that there is no *ṣalāḥ* in making *qiyās* of the mechanisms of the law-making process. As for the first point, he explains that he had resolved it elsewhere, namely his treatment of the doctrine of the optimum and its shortcomings. Concerning the second, he states that even if he were in agreement about God being obligated to observe the welfare of His

⁴⁹⁹ After reading through the *Mankhūl*, the *Iqtisād* and the *Mustaṣfā*, one can certainly conclude that throughout al-Ghazālī’s career until his passing he was in complete rejection of the notion of a purposive God who would function for end goals and objectives. This point could be overlooked if one was to ignore the theological discussions found with his *uṣūl* works and assume that he had various doctrines during the stages of his life. See Al-Ghazālī, *al-Mankhūl fī ta’līqāt al-iṣūl*, Third (Beirut, Lebanon: Dār al-Fikr, 1998), 72; al-Ghazālī., *al-Iqtisād fī al-i’tiqād*, 2008, 246; Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:58.

⁵⁰⁰ Abū-Hāmid Muḥammad Ibn-Muḥammad al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, vol. 2 (Beirut, Lebanon: Dār al-Fikr, na), 224.

⁵⁰¹ Ahmad Ahmad, *The Fatigue of the Shari‘a* (New York, USA: Springer, 2012), 59.

servants, there are those who adhere to this doctrine who have also permitted *qiyās*. Their logic being that perhaps out of the divine grace God knew that by referring His servants to *qiyās* He was allowing them somewhat to forebear the burden of *ijtihād* and the labour and strains upon the heart and mind in deducing rulings so that they could receive its immense rewards. For as al-Ghazālī comments, “The hardship of the heart and mind in thought is no less burdensome than the hardship of worship upon the body.”⁵⁰² He further adds that were God to stipulate and detail every ruling it could have a detrimental effect and cause people to completely rebel. As for the issue of *ẓann* (conjecture), which the interlocutors deemed synonymous to ignorance, al-Ghazālī shrewdly accentuated that they have many examples within their own rulings that have been established upon *ẓann*, like the acceptance of two witnesses and locating the correct direction of the *qiblah*. There is no disagreement as to the validity of method pertaining to these two examples when their final result is no more than conjecture. One can only suppose that both witnesses are upright, but is not certain, and the same applies to knowing the exact direction of the *qiblah* when not in view. So why, he asks, would you accept it here and not elsewhere? The debate here taking an epistemological turn, whereby the standing of *ẓann* within the law-making process was being defended. The final dispute with this group is in response to a hypothetical question. “If it were said what is the *maṣlaḥa* in prohibiting usury in wheat due to it being either foodstuff, food or measurable” it would be responded that those who ascribe to the doctrine of *al-aṣḥaḥ* (the optimum) did not make it a condition that it was revealed to mankind, for “what is the *maṣlaḥa* of praying three cycles of prayer for sunset,” al-Ghazālī asks, “and only two for sunrise?” “Rather,” al-Ghazālī states, “God alone knows of His grace which as a result draws His servants close, and distances them from disobedience.”⁵⁰³ “How is it” he asks, “that we believe this to be the case, and believe in God’s grace which we do not perceive, and yet we do not envision it in regards to features and attributes (*awṣāf*) of things?”⁵⁰⁴

The second dispute is over the nature of the *‘illah*, with the argument reading: *qiyās* is not possible without an *‘illah*, and the *‘illah* is that which intrinsically obligates the ruling, but this is not the case in regards to the legal *‘illah*, so how is it then possible when that *‘illah* has been erected for prohibition, for it could just have easily been erected as an *‘illah* for permissibility (due to its ineffectual nature)? In response to this contention al-Ghazālī not only explains why the *‘illah* is an “erected sign” for the ruling, but also demonstrates his adherence to the Ash‘arite

⁵⁰² Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:235.

⁵⁰³ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:237.

⁵⁰⁴ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:237.

doctrine regarding ethical value. For he says, “There is no meaning to the *‘illah* of a ruling except that it is an erected sign of the ruling. It is permissible that the Law erects intoxicants as a sign for the prohibition of wine and declares: ‘follow this sign and avoid every intoxicant.’ It is also permissible that the Law erects it as a sign of permissibility also. Similarly, it is permissible that one who presumes it to be a sign of permissibility that it is permissible for him, and the one who deems it impermissible that it is forbidden for him.”⁵⁰⁵ Within this statement al-Ghazālī has cemented an array of conclusions. The first is that the legal *‘illah* is no more than a sign which has no impact upon the ruling and has no effectiveness. The second is his stance upon ethical value and its application, that if God so wishes he could have made intoxicants permissible and vice versa, and there is no particular feature in intoxicants that obligates that God forbid it. The third is that every *mujtahid* is correct as long as he follows the dictates of his *ijtihad*.

The third contention was that God’s ruling is His report of the ruling, and that it is only by way of revelation and through God informing such (and not by one’s extrapolations) that one may know of God’s rule. The Ghazālīan response stated that the basis for *qiyās* is revelation and that although there is no explicit text to indicate such, it is substantiated by the agreement of the scholars, since logic dictates that they did not permit it save due to their unanimous understanding of such from the Law and its contextual clues.⁵⁰⁶

The fourth and final contention argues the possibility of an error as the reason for the impermissibility of *qiyās*, citing as evidence the agreed ruling in positive law that were it to be known that a sister via wet-nursing was mixed within a group of ten foreign suitable women for marriage, then all of them are prohibited due to the possibility of error. Al-Ghazālī, acknowledging the prohibition, disagrees with the justification and explains why. “It is not because of the mere possibility of error,” al-Ghazālī explains, “for if he was to doubt whether a woman had been wet-nursed, it is permissible for him to marry her, despite error being possible. However, the Law has permitted the marriage of a foreign woman with certainty, and also adjudged that certainty is not removed by unexpected doubt. But if two certainties were to collide and oppose one another, which in this case is prohibition and permissibility, then this does not fall under absolute certainty free from doubt or certainty that is shrouded with an element of doubt...”⁵⁰⁷ Hence al-Ghazālī revealed to his interlocutor the flaws of his understanding as to why his example was prohibited, that it was not due to the reason which

⁵⁰⁵ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:238.

⁵⁰⁶ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:238.

⁵⁰⁷ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:239.

he declared, but due to the absolute certainty in his example, namely a sister through wet nursing, being mixed within a group of marriageable foreign women, although it is doubtful which one is exactly the sister and hence they all become prohibited based upon the maxim that reads *certainty is not removed with doubt*.⁵⁰⁸ Thus, the example has no relation to the possibility of error,⁵⁰⁹ and al-Ghazālī, acknowledging the prohibition of the cited example, accurately reveals the epistemic foundation for the prohibition.⁵¹⁰ Hence he explained to his interlocutor as to why the example was prohibited, not due to the rationale which he believed would have ultimately rendered *qiyās* forbidden, namely the possibility of error, but because absolute certainty, which in this example is a sister, through wet-nursing, being mixed with a group of suitable marriageable women, although he is in doubt as to which one is his sister, therefore they are all prohibited based upon the aforementioned maxim. As for the epistemic value of rulings achieved through *qiyās*, al-Ghazālī does not deny that they are conjectural, citing many examples where *ẓannī* rulings are accepted elsewhere, making the claim that it would be contradictory to accept it in some areas and then reject it on the basis that it was achieved through *qiyās*.⁵¹¹ “There is no jurist consultant except that he has issued a verdict according to his opinion” he writes. “As for those who did not, this is because others fulfilled the role for them and hence, they sufficed with their *ijtihād*. They were not opposed for doing this, and as a result a definitive consensus was reached regarding the permissibility of maintaining a position based upon personal opinion (*ra’y*) and conjecture (*ẓann*).”⁵¹²

Discussions about the *‘illah*

Qiyās is composed of four integral components: the *aṣl* (the original case), *ḥukm al-aṣl* (the ruling of the original case), the *far’* (the novel case upon which the ruling of the *aṣl* may be applied), and lastly the *‘illah* (the *ratio legis*). The *aṣl* and the *far’* are often illustrated in the example of the prohibition of wine (*khamr*) and its applicability to other alcoholic beverages like beer, which would be the novel case, on the basis that they both share intoxicating

⁵⁰⁸ Jalāl al-Dīn al-Suyūṭī, *al-Ashbāh wa al-nadhā’ir* (Cairo: Dār al-Salām, 2009), 151.

⁵⁰⁹ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:239.

⁵¹⁰ The translation being, “It is not because of the mere possibility of error, for if he was to doubt whether a woman had been wet-nursed, it is permissible for him to marry her, despite error being possible in this instance. However, the Law has permitted the marriage of a woman of whose marriageability is certain, and also adjudged that certainty is not removed by unexpected doubt. But if two certainties were to collide and oppose one another, which in this case is prohibition and permissibility, then this does not fall under absolute certainty free from doubt or certainty that is only opposed with an element of doubt...”

⁵¹¹ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:241–42. Al-Ghazālī’s key argument was the endless narrations stating the Prophet’s companion’s application of *qiyās* and their acceptance thereof without dispute.

⁵¹² Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:245.

properties, which would be the *'illah*.⁵¹³ As previously mentioned, the *'illah* and how it was to be defined was to emit theological clues as to the doctrine of its definer. And it was based upon these definitions that many assumptions were made. The eighth-century jurist and theologian who was to compose one of the most relied upon and circulated manuals in *uṣūl* until this day, after summarising his readings from over ninety texts on the subject, Tāj al-Dīn al-Subkī (d. 771/1370), confined the positions of those that preceded him into four: the position of the Mu'tazilites, the majority of *uṣūlists*, the position of al-Āmidī and the fourth being that which was attributed to al-Ghazālī.⁵¹⁴ The first definition attributed to the Mu'tazilites, which is also mentioned in a host of other works attributing it to them, including the commentary of al-Bayḍāwī's *Minhāj* by Jamāl al-Dīn al-Isnawī (d. 772/1370) was that the *'illah* is that which intrinsically causes effect (*al-mu'aththir bi dhātihī*). However, this attribution requires some circumspection. In the early *uṣūl* texts prior to the seventh century no mention is made that the Mu'tazilites defined the *'illah* as such. Al-Ghazālī certainly doesn't ascribe this definition to them, despite mentioning their positions wherever possible throughout his *Mustaṣfā*. Likewise, after looking at the earliest Mu'tazilite *uṣūl* works, I was unable to find any source where the *'illah* was defined in the manner reported by al-Subkī. In fact, all the primary sources which I examined reported the opposite. Al-Jaṣṣāṣ, for example, would often describe the *'illah* as a sign (*'alāmah*) or indication of the rule.⁵¹⁵ Similarly, Abū al-Ḥusayn al-Baṣrī states that “a legal ruling is only legitimate if it is deduced from the law.”⁵¹⁶ He also utilised the term “*amārah*” (sign) as synonymous to the *'illah*.⁵¹⁷ The same can be said of al-Qāḍī 'Abd al-Jabbār where he negates the obligating nature of the *'illah*.⁵¹⁸ Based upon these findings, it is my assumption that this definition was attributed to them by the Ash'arites and others, predicated upon their doctrine towards ethical value and causality, as insinuated by al-Isnawī, “and this is based upon their position towards ethical value,”⁵¹⁹ although not actually applied by them, despite the doctrine insinuating such. The second definition attributed to al-Āmidī

⁵¹³ Abū Hamid Al-Ghazālī, *Asās al-qiyās* (Riyadh, Saudi Arabia: Maktabah al-'Ubaykān, 1993), 17. For an in-depth discussion on this topic see: Najam Haider, 'Contesting Intoxication: Early Juristic Debates over the Lawfulness of Alcoholic Beverages', *Islamic L. & Soc'y* 20 (2013): 48.

⁵¹⁴ Jalāl al-Dīn Al-Maḥallī, *Al-Badr al-tāli 'fī ḥall Jam' al-Jawāmi'*, vol. 2 (Lebanon: Muassasat al-Risālah, 2012), 194–95.

⁵¹⁵ Abū Bakr Al-Jaṣṣāṣ, *al-Fuṣūl fī al-uṣūl* (Qatar: Wazārat al-Awqāf wa al-Shu'ūn al-Islamiyyah, 1994), 4/156.

⁵¹⁶ Abū al-Ḥusayn al-Baṣrī, *Kitāb al-Mu'tamad*, vol. 1 (Damascus: Al-Ma'had al-'Ilmī al-Faransi lil-Dīrāsāt al-'Arabiyyah, 1964), 2:249.

⁵¹⁷ Al-Baṣrī, *Kitāb al-Mu'tamad*, 2:207, 2:249–50.

⁵¹⁸ 'Abd al-Jabbār ibn Aḥmad Asadābādī, *al-Mughnī fī abwāb al-tawḥīd wa-al-'adl*, vol. 2 (Cairo, Egypt: al-Dār al-Misrīyah lil-Ta'līf wa-al-Tarjamah, 1962), 207–8.

⁵¹⁹ Jamāl al-Dīn Al-Isnawī, *Nihāyat al-sūl fī sharḥ minhāj al-uṣūl*, vol. 4 (Cairo, Egypt: Maktabat Baḥr al-'Ulūm, N/A), 55.

was that it was the impetus (*bā'ith*) for the ruling. This definition was to receive strong criticism from the likes of al-Subkī, since it implied that God was prompted by something other than Himself to act, and that the divine acts constituted aims and objectives.⁵²⁰ This was a notion completely rejected by the Ash'arites. Dr. Sa'īd Ramaḍān al-Būṭī contested that al-Āmidī could not possibly have had such a meaning in mind when describing the 'illah as a *bā'ith*, arguing that what he actually meant was to identify the pre-condition of suitability (*munāsabah*) within the 'illah which is not apparent within the *alāmah*, and that the sole reliance upon the attribute of uniformity (*ṭard*) was impossible.⁵²¹ Rami Koujah, however, attributed what seemed to be a flagrant contradiction in the thought of al-Āmidī on this matter, writing that his position towards *ta'līl* in his *Iḥkām* was opposed by his final theological work *al-Ghāyah*.⁵²² The final definition was that which was attributed to al-Ghazālī, namely that the 'illah is the effectual cause (*al-mu'aththir*) by the will of God.⁵²³ Again, Dr. Ramaḍān al-Būṭī vehemently stressed that despite this being mentioned in the widespread commentaries and glosses, it is nowhere to be found in the works of al-Ghazālī himself. The reason for this was to avoid the theological implications that such a term was to suggest, since it comprised of similarities to the Mu'tazilite position.⁵²⁴ His issue here was in regard to how can the case of "effectiveness" be attributed to the 'illah itself even if by the will of God, whilst confirming that the acts of God are not purposive?⁵²⁵ For al-Būṭī there was a clear contradiction. Indeed, in his *Shifā' al-Ghalīl* the 'illah is defined as being a "*mujīb*" and not a "*mu'aththir*", and likewise, within the *Mustaṣfā* there is no explicit definition of the 'illah as such. However, that does not negate its mention in the *Mustaṣfā*, rather there are copious areas where it has been employed. In one subheading it states, "the confirmation of the 'illah by way of consensus that it effects (*mu'ththirah*) the ruling."⁵²⁶ In another instance he states, "The meaning of *mu'aththir* is that its effectiveness appears within the ruling either by way of consensus or textually. If its effectiveness is apparent then there is no need for suitability, rather the statement: 'whoever touches his genitals then he must perform ablution,' due to it indicating the effectiveness of "touch" we extended this rule to the touching of the genitals of another."⁵²⁷ In another area we see al-Ghazālī mention that

⁵²⁰ Tāj al-Dīn Al-Subkī, *Raf' al-ḥājib 'an Mukhtaṣar Ibn al-Ḥājib*, vol. 4 (Beirut, Lebanon: 'Ālam al-Kitāb, 1999), 176–77.

⁵²¹ Sa'īd Ramaḍān Al-Būṭī, *Ḍawābiḥ al-maṣlaḥa fī al-Sharī'ah al-Islāmiyyah* (Damascus: Dār al-Fikr, 2018), 107.

⁵²² See: Koujah, 'Divine Purposiveness and Its Implications in Legal Theory: The Interplay of Kalām and Uṣūl al-Fiqh', 2017.

⁵²³ Al-Maḥallī, *Al-Badr al-ṭāli' fī ḥall Jam' al-Jawāmi'*, 2:194.

⁵²⁴ Al-Būṭī, *Ḍawābiḥ al-Maṣlaḥa fī al-Sharī'ah al-Islāmiyyah*, 102.

⁵²⁵ Al-Būṭī, *Ḍawābiḥ al-Maṣlaḥa fī al-Sharī'ah al-Islāmiyyah*, 102.

⁵²⁶ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 2:293.

⁵²⁷ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 2:297.

Abū Zayd al-Dabbūsī confined *qiyās* to effectiveness without critique.⁵²⁸ Elsewhere he states, “*Qiyās* is of four types, *al-mu`aththir*, then *al-munāsib*, then *al-shabah*, then *al-ṭard*, and the effectiveness of the *mu`aththir* is only known by way of text, consensus or exclusion (*sabr*).⁵²⁹ As for the meaning of “effectiveness” in the legal thought of al-Ghazālī, there can be no doubt that he meant it figuratively, negating a causal connection between the *‘illah* and the ruling, rather denoting that the efficacy is caused by God and hence why he considers its basis to be scriptural. There are various reasons for this, the first being that in most cases he would describe the *‘illah* as being an *‘alāmah*, which was the term adopted by the Ash‘arites to negate the notion of any necessary connection between the *ratio legis* and the ruling. The other reason is due to his repetition of the idea that had God so willed he could have reversed His rulings and established their opposite. He writes in one location, “Suitable *ratios legis* do not intrinsically obligate rulings, rather it is possible that a ruling can be absent from them. Henceforth, it is permissible that He does not prohibit the intoxicant and that He does not obligate the divinely prescribed punishment for adultery and theft. And this is the case with the rest of the *ratios legis* and causes.”⁵³⁰ Elsewhere he states, “As for the basis for the *ta`līl* of a ruling, and establishing the exact *‘illah* and its attribute, this is not possible except with scriptural evidence. The reason being is that the legal *‘illah* (*al-‘illah al-shar‘iyyah*) is a sign and signal, it does not obligate a ruling by itself. On the contrary, the meaning of it being an *‘illah* is that the Legislator erected it as an *‘alāmah* which is a divine placement. There is no difference between placing the ruling and placing a sign (*‘alāmah*) and erecting it as an indicator (*amārah*) upon the ruling. Hence, in regards to the intensification (*shiddah*) of a beverage which has been made a sign for prohibition, it is acceptable that the Law render it a sign for permissibility, since its obligation is not intrinsic.”⁵³¹ Within these citations there are numerous theological clues to unpack. The first being the insistence that God is not obliged to render anything prohibited, rather His absolute omnipotence makes Him free to choose and legislate as He wills. Al-Ghazālī writes, “Even though we maintain that God most exalted acts as He wills with His creation, and that adhering to their welfare is not obligatory upon Him,

⁵²⁸ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:299.

⁵²⁹ Frank Griffel quotes al-Ṣafadī who accredits Fakhr al-Dīn al-Rāzī with the invention of *sabr wa taqṣīm* although this is clearly rebutted by the above. Also, al-Ghazālī employs it within his *Iqtisād* and his works in logic. Al-Jaṣṣāṣ also employs its logic in his *Fuṣūl* 4/168-170. For Griffels quote see: Ibn Taymiyyah and His Ash‘arite Opponents on Reason and Revelation: Similarities, Differences, and a Vicious Circle, p. 16.

⁵³⁰ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:238.

⁵³¹ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:280.

we do not deny the indicates of reason as to what is beneficial and detrimental.”⁵³² Similarly, for al-Ghazālī, acts and features are not to be described as intrinsically good or bad, both of which are founded upon Ash‘arite theology. The prior is due to dominion (*mulk*) and the second based upon their position towards rational ethical value.⁵³³ As for the appellation chosen by al-Ghazālī and the *uṣūlists* namely an “*‘alāmah*” and “*amārah*”, this was primarily due to their theological concerns regarding effectiveness and making every attempt not to ascribe any measure of causality to other than God. This “symbol model”, or describing the *‘illah* as a sign or indicant again refers back to the theological eponym al-Ash‘arī. Ibn Fūrak mentions in his *Mujarrad al-maqālāt*, “And he (al-Ash‘arī) would say that the rational *‘illah* (*al-‘illah al-‘aqliyyah*) obligates the ruling (*mūjibah li al-ḥukm*) with no possibility of alteration. And that the legal *‘illahs* (*al-‘illal al-shar‘iyyah*) are signs and indications (*amārāt wa ‘alāmāt*). They are not *‘illahs* in the literal sense but serve as indicants.”⁵³⁴ Al-Ghazālī, however, did not confine himself to one description of the *‘illah*, as identified by al-Shalabī,⁵³⁵ but even went as far as calling it a motivating factor (*bā‘ith*), which was later endorsed by al-Āmidī after him,⁵³⁶ and for which he was to receive harsh criticism. Nevertheless, the usage of such by al-Ghazālī whilst explicitly stating that the *‘illah* is an *‘alāmah*, shows that the word can be used but with consideration. Since it is not possible that he was to use it in the manner that would have compromised what he had so carefully protected throughout his work, namely God’s omnipotence, and His transcendence from motivating factors (*bawā‘ith*). It is here that we see al-Ghazālī demonstrate his usage of metaphorical language as expressed by Marmura, but in this case when talking about the *‘illah*, and how within the *Mustaṣfā* there are key insights as to what al-Ghazālī’s stance was upon secondary causes.⁵³⁷ If al-Ghazālī did in fact believe in such it would have revealed itself within his discourse on *ta‘līl*, and he most certainly would not have explicitly defined the *‘illah* as a sign for the ruling. As for al-Āmidī, he seemingly

⁵³² Al-Ghazālī, *Shifā’ al-ghalīl fī bayān al-shabah wa al-mukhīl wa masālik al-ta‘līl*, 1971, 162. A detailed elucidation of what is meant by the “indicates of reason” shall be discussed shortly when analysing al-Ghazālī’s theorisation of the *maqāṣid*.

⁵³³ Al-Baqillānī stated, “The Creator, Mighty and Exalted is He, is the Overwhelming King (*al-Mālik al-Qāhir*); everything belongs to Him and is in His grasp. No one commands, permits, or forbids Him. Therefore, it is not necessary for all [the acts] that we mentioned as being bad if issued from us to be analogously bad if issued from Him.” See K GhaneaBassiri, ‘The Epistemological Foundation of Conceptions of Justice in Classical *kalām* : A Study of Abd al-Jabbar’s al-Mughni and Ibn al-Baqillani’s al-Tamhid’, *Journal of Islamic Studies* 19, no. 1 (2007), p 89. See also Sayf al-Dīn Abū al-Āmidī, *al-Iḥkām fī uṣūl al-aḥkām* (Cairo, Egypt: Maṭba‘ah Muḥammad ‘Alī Ṣubayh, 1928), 3:56.

⁵³⁴ Ibn Fūrak, *Mujarrad maqālāt Abū Ḥasan al-Ash‘arī*, 1987, 305.

⁵³⁵ Shalabī, *Ta‘līl Al-Aḥkām*, 116.

⁵³⁶ Sayf al-Dīn Abū al-Āmidī, *al-Iḥkām fī uṣūl al-aḥkām* (Cairo, Egypt: Maṭba‘ah Muḥammad ‘Alī Ṣubayh, 1928), 3:12.

⁵³⁷ See Marmura, ‘Ghazālīan Causes and Intermediaries’.

refused the *‘alāmah* model due to his perception that it suffered from the absence of *ḥikmah*, which was a precondition of any *‘illah*. This was to pose several problems due to its close if not identical proximity to Mu‘tazilite thought, for the concept of *ḥikmah* was an area of disagreement between the Ash‘arites and their Mu‘tazilite counterparts.

The conception of *ḥikmah* among the Ash‘arites and al-Ghazālī

God, within the Ash‘arite camp, was and is not confined to any law, rather He is the sole Legislator and whatever act He performs is essentially wise by virtue of its origin. Simply put, God can do no wrong and hence does not follow *ḥikmah* but rather *ḥikmah* follows God’s acts. This is an agreed upon principle among the Ash‘arites, since to say otherwise would be to question God’s autonomy, and as previously mentioned, is founded upon the principle of dominion that the likes of this point and the issue of *ẓulm* are understood. Ibn Fūrak quotes Abū al-Ḥasan al-Ash‘arī as saying, “All of God’s act are just and wise, true, correct and good (*ḥasan*). Nothing of them are hideous, futile or oppressive.”⁵³⁸ He also narrated from him that he would deem impossible the statement of the one who asserts that the acts of God are wise due to objectives that succeed them, and benefits connected to them. Rather they are wise because they are from Him and for no other reason.⁵³⁹ Al-Ghazālī states in his *Iqtisād*, “No benefit is requested from the actions of God for *He is not asked about what He does but they are asked*, and we have already revealed the evidence for this.”⁵⁴⁰ The recurrence of this understanding is found throughout Ash‘arite writings, including al-Āmidī. However, in his *Iḥkām* a problem arises where he states, “They have differed over the permissibility of the *‘illah* being an *‘amārah*. The optimum opinion is that the *‘illah* should be considered according to the meaning of the motivating factor (*al-bā‘ith*), namely that it is made up of *ḥikmah* which can rightfully be the objective of the Legislator for the legislation of the Law. If this wasn’t the case and the *‘illah* is only an uninterrupted feature (*waṣf*) without any *ḥikmah*, and merely a sign, then to use it for *ta‘līl* is not possible.”⁵⁴¹ For any Ash‘arite, the two words *ḥikmah* and *bā‘ith* in this context would be a cause for concern and require elaboration. Yet, as is the case of any researcher of the Islamic tradition, many are the occasion when one has to look in the author’s other writings, as well as the works of prior or subsequent authors, to locate other

⁵³⁸ Abū al-Hasan Al-Ash‘arī, *Maqālāt al-Islamiyīn wa ikhtilāf al-muṣallīn*, vol. 1 (Cairo, Egypt: Maktabah al-Nahḍah al-Miṣriyyah, 1950), 140.

⁵³⁹ Ibn Fūrak, *Mujarrad Maqālāt Abū Ḥasan al-Ash‘arī*, 1987, 140.

⁵⁴⁰ Al-Ghazālī, *al-Iqtisād fī al-i‘tiqād*, 2008, 278.

⁵⁴¹ Ṣayf al-Dīn Abū al-Āmidī, *al-Iḥkām*, 3:12.

discussions relevant to the topic as well as the actual author's word usage, alongside his incontestable creed, in order to give his ambiguous statements the more likely explanation. Now, as mentioned, the word "*bā'ith*" had already been used by al-Ghazālī to describe the *'illah*, seemingly seeing, like al-Āmidī after him, no conflict with its usage whilst ascribing to the Ash'arite doctrine. Similarly, both al-Ghazālī and al-Āmidī were to outright reject the attribution of aims and objectives to God. Likewise, al-Āmidī was to say that the *'illah* "*has the meaning of a bā'ith...*", and did not explicitly call it such. All of these issues, that the authors of the past were to experience in articulation, were based upon the difficulty of enunciating such intricate topics.⁵⁴² Postulations have been made in the *Mustasfā*, as have been made in other works, whereby one could possibly conclude or attribute a doctrine contrary to what al-Ghazālī adhered to. This point of divine purposiveness and *ta'īl* is one of those areas specifically with al-Āmidī, and yet the answers could lie in the *Mustasfā* itself. For the same contradictions that Koujah mentioned between two books, namely the *Ihkām* and the *Ghāyah*, can be found in one book, namely the *Mustasfā*. And it would be far more unlikely that al-Ghazālī had a change of heart or was to contradict himself mid-composition. For as stated, al-Ghazālī also used the term *al-bā'ith*, and he also clearly indicated that the *ratios legis* of rulings can change according to the will of the Legislator, hence meaning that the word *bā'ith* here cannot be taken to mean the impetus for the rule, otherwise it would not be susceptible to change. Rather it is similar to the word *mūjib* and *mu'aththir* that has been used by others which required an elucidation of their meaning. Similarly, the word *ḥikmah* also appears in both works, the *Mustasfā* and the *Ihkām*. Equally, they have both, in separate works, detailed its meaning. In the *Iqtisād* al-Ghazālī writes, "As for the term 'wisdom' (*ḥikmah*), it is used in two senses. One of them is the absolute, comprehensive knowledge of the orders of things in their minute as well as grand aspects, and the determination of how they should be in order to fulfil the functions required of them. The second sense adds to this knowledge the power to originate these orders and arrangements and make them excellent and exact. Thus, it is said that 'wise' derives from 'wisdom', which is a kind of knowledge, and it is said that 'wise' derives from 'perfecting', which is a kind of act."⁵⁴³ Likewise, in his *Abkār*, al-Āmidī states, "We do not deny that God is wise (*ḥakīm*) in His acts, however this is manifested in His precision in

⁵⁴² For Rami Koujah, either a flagrant contradiction was committed by al-Āmidī, or a change of heart. Since he understood that within his work *Abkār al-Afkār*, al-Āmidī did not reject purposiveness in God's actions. After this work he would write his work in legal theory *al-Ahkām* which was to determine that not only was it possible but it occurred. Only then to compose his final work *Ghāyat al-marām* in which he has a complete change of heart and render it impossible. See: Koujah, 'Divine Purposiveness and Its Implications in Legal Theory: The Interplay of Kalām and Uṣūl al-Fiqh', 2017.

⁵⁴³ Al-Ghazālī, *Al-Ghazali's Moderation in Belief*, 163.

creating, and its materialisation in accordance with His knowledge and will. And this is not dependent upon his act comprising of an objective or aim.”⁵⁴⁴ Here we can see how we should interpret al-Āmidī’s previous statement. Equally, his insistence that the law includes objectives is just the jurist’s way of depicting that the Law included benefits that could be rationalised and built upon. For al-Ghazālī uses the same term ‘objectives of the law’, and yet we know that he did not intend by this the same meanings as the Mu‘tazilites, but rather that which was customary. For he stated, “The custom of the Law (‘*ādat al-shar*’) is that which reveals the objectives of the Law.”⁵⁴⁵ The *Mustaṣfā* does include the word *ḥikmah* according to the later usage of al-Āmidī in various locations, however in no place does he mention that it is necessary or obligatory. The word itself is used a limited amount of times, despite sharing the same meaning as intended by al-Āmidī, namely that it includes beneficial rationales intended by the Law giver, although al-Ghazālī prefers to refrain from its usage and instead makes it synonymous with the word *munāsib* (suitable).⁵⁴⁶

As mentioned, al-Ghazālī offers two meanings for *ḥikmah* in his *Iqtīṣād*, however, in his *Mustaṣfā*, whenever he mentions the term, he does not mean merely “precision in the act” but “identifiable rationales behind judgements,” and hence why it was synonymous with *munāsib* within his writings. Despite this observation, the position of al-Ghazālī towards *ḥikmah* could be somewhat bewildering, mainly due to his suggestions in other works which seemingly contradict the Ash‘arite conception of the word. One such work was *al-Ḥikmah fī Makhlūqāt Allah*. In an article surrounding this treatise, its ascription and the origin of its ideas, Ahmed el-Shamsy asserts that al-Ghazālī clearly displays the belief in a Godhead with end goals and purposes.⁵⁴⁷ He also stated, “Al-Ghazālī’s Ash‘arite affiliation cannot sufficiently explain his teleological approach,”⁵⁴⁸ understating it to be a glaring contradiction that any type of wisdom or *ḥikmah* may be attributed to God within the Ash‘arite procedure. Another interesting side

⁵⁴⁴ Ṣayf al-Dīn Al-Āmidī, *Abkār al-afkār fī uṣūl al-dīn*, vol. 2 (Cairo, Egypt: Matba‘ Dār al-Kutub wa al-Wathā’iq al-Qamiyyah, 2009), 157. Ḥasan al-Shāfi‘ī considered this to be a figurative use of the word by al-Āmidī, and mentioned that al-Ghazālī attempted to remove himself of the dilemma in some of his works, however this was most certainly not the case, since the Ash‘arites in fact apply the linguistic meaning of the word and not the customary meaning, and to apply such cannot be considered figurative. Likewise, Ḥasan al-Shāfi‘ī recognised end-goals to be concomitant with his understanding of *ḥikmah*, and al-Ghazālī has categorically never accepted or articulated such a stance in any of his works. See Ḥasan Al-Shafi‘i, *Al-Āmidī Wa Arā’uhu al-Kalāmiyyah* (Cairo, Egypt: Dārussalam, 2013), 429.

⁵⁴⁵ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:320. The relevance of the term ‘*ādat* will be explained later, for it is key to understanding how the Ash‘arites were to avoid contradiction between their legal assertions and doctrinal opinions.

⁵⁴⁶ Al-Ghazālī, *Shifā’ al-ghalīl*, 613.

⁵⁴⁷ Ahmed el-Shamsy, ‘Al-Ghazālī’s Teleology and the Galenic Tradition: Reading The Wisdom in God’s Creations (al-Ḥikmah fī Makhlūqāt Allah)’, in *Islam and Rationality* (Leiden: Brill, 2016), 90.

⁵⁴⁸ El Shamsy, ‘Al-Ghazālī’s Teleology and the Galenic Tradition: Reading The Wisdom in God’s Creations’, 98.

point was that **El-Shamsy** then suggested that due to this departure from Ash‘arism, one of the possible sources could have been Avicenna due to “his strong influence on al-Ghazālī”, despite Avicenna completely negating the attribution of goals and aims to God.⁵⁴⁹ To buttress his argument of al-Ghazālī’s teleological approach he cites passages from his **magnus opus** *Ihyā’ ‘ulūm al-Dīn* and his *al-Maqāṣid al-asnā*. From the *Ihyā’* he takes the statement, “Then consider how He raised the nose in the middle of the face, and made it beautiful, and opened up its nostrils; and how He placed the sense of smell in it, so as to indicate through the inhaling of smell its food and its nourishing qualities. And [the nose also allows one] to inhale through the opening of the nostrils the refreshment of the air to nourish the heart and to cool the internal heat.”⁵⁵⁰ And quoted from the *Maqāṣid*, “Observe God’s attributes in the constitution of the human body. Its parts cooperate to establish an order for its purpose and aim. The cosmos is the macrocosm of the human being.” From these passages and the work *al-Ḥikmah fī Makhlūqāt Allah*, El Shamsy concluded that there was a departure from the Ash‘arite position, and a teleological belief that God had end goals and objectives. We will get back to his conclusion shortly, but before we do, we must take a closer look at what al-Ghazālī has to say about *ḥikmah* and its application. As El Shamsy has correctly mentioned, there are areas in the *Ihyā’* where the author alludes to the perfection of his creation and the miraculous detail and benefit everything entails. My question would be, does the notion of mastery and precision in creation necessarily determine that God had objectives? Rather, al-Āmidī defined *ḥikmah* as “the manifestation of what He masterfully created, and brought to existence in accordance with His knowledge and will, and not that He was to have an objective and aim in what He does.”⁵⁵¹

⁵⁴⁹ Rahim Acar, *Talking about God and Talking about Creation* (Leiden: Brill, 2005), 138. Acar states, “Avicenna argues that no cause external to the agent can be assigned to God’s volition concerning the universe. He emphasizes that God’s will is different from human will because the divine will does not depend on anything external to the agent. While for human volition there is an end distinct from the willing agent, for God’s will there cannot be anything causing God to will something...As I have already stated, there is nothing outside God that might compel God to will something.” *Ibid*, 141.

⁵⁵⁰ El Shamsy, ‘4 Al-Ghazālī’s Teleology and the Galenic Tradition: Reading The Wisdom in God’s Creations (al-Ḥikma fī Makhlūqāt Allah)’, 2016, 95.

⁵⁵¹ Ṣayf al-Dīn Al-Āmidī, *Ghāyat al-marām fī ‘ilm al-kalām* (Cairo, Egypt: Al-Majlis al-‘alā li Shu’ūn al-Islāmiyyah, Lajnat Ihyā’ al-Turāth al-Islāmī, 1971), 233. This was the preponderant position of the Ash‘arites. ‘Abd al-Qāhir al-Baghdādī (d. 429) stated, “Indeed God is just in all of His acts, and un-refrained in what He does. What He wills He does and what He wills he leaves; unto He belongs creation and command. He is not asked about what He does.” (*Uṣūl al-dīn*, ‘Abd al-Qāhir al-Baghdādī, Maṭba‘ al-Dawlah, Istanbul, p. 82.) And said, “Our colleagues have said, ‘God is wise (*ḥakīm*) in creating all creation, and were he not to create he would not be removed from being wise. Were He to create double what He has created this would be permissible, and were He to create disbelievers instead of believers or the opposite this is also permissible. Were He to inanimate things instead of the animate or the contrary, this would all be permissible. And all these possibilities would be considered correct, just and wise.” (*ibid*, p. 150). These sentiments were echoed by ‘Abd al-Karīm al-Shahrastānī (d. 548), “It is agreed that the *ḥakīm* is he who’s actions are precise and accurate. They are precise if they occur according to His knowledge, and if this is the case then it would not be considered frivolous or by chance.” *Nihāyat al-‘iqdām*, ‘Abd al-Karīm al-Shahrastānī, Maktabat al-Muthannā, Baghdad, NA, p.401-402.

Hence the idea of precision and exactness in creation does not necessitate aims and goals for the likes of al-Āmidī, since he was, like all Ash‘arites, of the conviction that God does not operate with an end goal in mind. Al-Ghazālī was no exception to this. We know with all certainty that al-Ghazālī rejected the attribution of aims to God. This is a point of which there is no debate. He states in his *Iqtisād*, “If it were said: to assign obligations with the ability to reward and yet refrain from doing so is bad (*qabḥ*), we would respond: if you mean by ‘bad’ that it opposes the objective of the one who obligates (*mukallif*), then He is far exalted from having objectives and motives (*aghrād*).”⁵⁵² Al-Ghazālī’s stance was to remain until the very end of his life, for he states in the *Mustasfā*, “...however we reject this in regard to God, most exalted, due to the inapplicability of motives (*aghrād*) to Him.”⁵⁵³ Despite this, al-Ghazālī was to incorporate *ḥikmah* according to the meaning of recognized wisdoms and rationales under the guise of *munāsib*.⁵⁵⁴ For it seems that the Ash‘arites were to describe God as being *ḥakīm* with the intended meaning being masterful in His creation and everything functioning according to His knowledge, and mentioned in relation to the law to mean recognizable rationales. Shihāb al-Dīn al-Qarāfī (d. 684/1285) later explained, “For us, God is *ḥakīm* meaning that He, most exalted, is described with the attributes of perfection: comprehensive knowledge and the other seven abstract attributes. For the Mu‘tazilites He is *ḥakīm* with the meaning that He observes the benefit and welfare of humanity, as according to the customary usage of the word.”⁵⁵⁵ This statement is very interesting, since as previously mentioned al-Ghazālī fluctuates between the customary meaning and the theological, also ostensibly applying the former within his *uṣūl* works. This is very evident when he writes in his *Mustasfā*, “We do not mean by *ḥikmah* except the discreet suitable *maṣlaḥa*, as in our saying regarding the Prophet’s statement, ‘The judge does not issue a verdict whilst he is infuriated’, where he

⁵⁵² Al-Ghazālī, *al-Iqtisād fī al-i‘tiqād*, 2008, 246. Aladdin M. Yaqub in his useful translation translated ‘*aghrād*’ as ‘needs’ which is inaccurate, and not the intended meaning in this context at all. See: *Al-Ghazālī’s Moderation in Belief*, p. 181.

⁵⁵³ Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:58.

⁵⁵⁴ I have previously mentioned that there are instances when the statements and works of some classical authors can be understood by the works and explanations of other authors on the same topic whether contemporary to them or in close succession, and we see this most clearly with the statement of al-Rāzī in his *Maḥsūl*, confirming that the Ash‘arites, al-Ghazālī included, affirm *ta‘līl* and *maṣlaḥa* but without divine motives, when he says, “And it has been established that *munāsabah* is proof of ratiocination, although with firm belief that the rulings of God exalted are not inclusive of objectives (*aghrād*); *al-Maḥsūl fī ‘ilm al-uṣūl*, 3:1260.

⁵⁵⁵ Shihāb al-Dīn al-Qarāfī, *Nafā‘is al-uṣūl* (Lebanon: Al-Maktabah al-‘Asriyyah, 2005), 3450. Al-Ghazālī himself very clearly considers *ḥikmah* to be a branch of divine knowledge. He says in his *al-Maqṣad al-asnā*, “Wisdom (*ḥikmah*) is equivalent to knowledge of superior things through the highest modes of knowing.... He is the truly wise because He knows the most sublime things by the most sublime modes of knowing. For the most sublime mode of knowledge is the eternal everlasting knowledge whose extinction is inconceivable, and which corresponds to other modes of knowing in a way that admits no doubt or concealment.” See: *The Ninety-Nine Beautiful Names of God*, Al-Ghazālī, Translated by David B. Burrell and Nazih Daher, p. 116-117.

made vexation the reason for the prohibition, because it confuses the mind and prevents the fulfillment of one's thought."⁵⁵⁶ He says also, "And it is like our saying 'the child is under custodianship due to a *ḥikmah*,' namely his inability to see to his own affairs."⁵⁵⁷ Thus we find here that al-Ghazālī is using the word *ḥikmah* here to denote the observance of *maṣlaḥa*, as understood by the Mu'tazilites. The difference being that for al-Ghazālī this was only the custom of the law but did not necessitate that the Creator himself was obligated to observe the welfare of His creation. **Based on these findings it becomes apparent that Ahmed el-Shamsy did not recognize or comprehend the importance in buttressing or comparing his conclusions with al-Ghazālī's *uṣūlī* works, especially his *Mustaṣfā*, which is most likely due to the absence of knowledge as to the necessary connection between *uṣūl* and *kalām*. Form if he were aware of this inherent connection and the fact that the *Mustaṣfā* was such a late work in the author's career, he would have most likely found it farfetched that al-Ghazālī would fluctuate between doctrines throughout his life, especially with the knowledge that the only explicit statements found in all his works was the absolute impossibility of a purposive God.**

The introduction of the term *ḥikmah* in the *Mustaṣfā* begins within al-Ghazālī's discussion about establishing causes of injunctions through the rubric of *qiyās*. He explains that a legal ruling is of two kinds.⁵⁵⁸ The first is the actual ruling and the second erecting the causes of the rule (*asbāb al-ḥukm*). One of the examples he offers is that of the adulterer. The first ruling of the adulterer is that he is stoned, and the second is to erect adultery as the cause for the obligation of stoning. So, it would then be said that the '*illah* for the obligation of stoning is such and such, and this '*illah* is found in homosexuality, and hence it is rendered a cause even though such an act is not called adultery. After clarifying this point, he includes the objection of the celebrated Ḥanafite jurist Abū Zayd al-Dabbūsī and his rejection of this type of *ta'līl*. He writes, "He states: 'the ruling follows the cause and not the *ḥikmah* of the cause. For the *ḥikmah* is no more than a produce and is not the '*illah*. It is not permissible to say: murder has been made a cause for capital punishment for deterrent purposes, meaning that it is also obligatory to be carried out upon those that witnessed the murder (and did not prevent it) due to the urgent need of deterrent even if the murder was not committed by them directly, and such a notion is corrupt!'"⁵⁵⁹ Hence here that we find the first introduction by al-Ghazālī of what was to be known as *al-ta'līl bi'l-ḥikmah*, and his awareness of the opposition towards

⁵⁵⁶ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 2:333.

⁵⁵⁷ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 2:334.

⁵⁵⁸ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 2:332.

⁵⁵⁹ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 2:332.

it.⁵⁶⁰ Although al-Ghazālī did, at least once, use the term *ta' līl bi al-ḥikmah*, it was really within the discussion of *al-munāsabah* where he makes it applicable. For in his *Shifā' al-Ghalīl*, which we have already mentioned as being a work which al-Ghazālī refers his readers to in his *Mustaṣfā*, that he openly writes, “We do not intend by *ḥikmah* except the discreet ‘illah (*al-‘illah al-mukhīlah*) and the suitable meaning (*al-ma'nā al-munāsib*).”⁵⁶¹ *Munāsabah* and *ikhālah* were two synonymous terms in the opinion of al-Ghazālī which he would use interchangeably or at the same time as found in the citation above. In his *Mankhūl* and *Asās al-qiyās*, he employs the term *ikhālah*.⁵⁶² In his *Shifā'* he defines the *munāsabah* as “Inferring that the feature (*waṣf*) is the ‘illah by way of its suitability with the ruling.”⁵⁶³ In his *Mustaṣfā* he would define it as, “Establishing the ‘illah by revealing a suitability with the ruling.”⁵⁶⁴ The *munāsabah* according to al-Ghazālī is something that can be rationally recognized due to the *maṣlaḥa* embedded within the original stipulated rule of law. He states in his *Mankhūl*, “The Legislator has stipulated the rule as a sign (*amārah*) so that the *maṣlaḥa* may be known. For indeed we understand the *maṣlaḥa* by the Legislators provision of the rule.”⁵⁶⁵ The question we must now consider is how does al-Ghazālī amalgamate *ḥikmah* within his legal theory, and how does he integrate it within the discussion of *munāsabah*? We mentioned previously the example used by al-Ghazālī in his *Mustaṣfā* about the judge (*qāḍī*) and how he is not to issue a judgement whilst vexed or in a state of anger. Yet it is in his *Shifā'* where he mentions the same example but clarifies how *ḥikmah* is extracted. He states, “Anger was made a reason (*sabab*) for the prohibition of judicial decision due to which its *ḥikmah* was recognized, which is that it confuses the intellect and hinders the avenues of correct judgement and equity in the search of justice. This exact *ḥikmah* renders excessive hunger and intense pain as preventives. Hence this *ḥikmah* is understandable in recognizing the cause of the *sabab* and extending it to other areas.”⁵⁶⁶ In the given example al-Ghazālī explains that before us we have a *munāsib*

⁵⁶⁰ *Al-Ta' līl bi al-ḥikmah* is a very controversial topic among legal theorists due to its possible ramifications within legal rulings. The majority of *uṣūlists* deemed it impermissible due to its subtlety and failing to meet the criteria of *inḍibāṭ* (consistency), since it could not be accurately measured and applied. See *Mabāḥith al-‘illah fī al-qiyās*, ‘Abd al-Ḥakīm al-Sa’dī, Dār al-Bashā’ir al-Islamiyyah, p. 107-110.

⁵⁶¹ Al-Ghazālī, *Shifā' al-ghalīl*, 613.

⁵⁶² Abū-Ḥāmid Muḥammad Ibn-Muḥammad Al-Ghazālī, *al-Mankhūl fī ta' līqāt al-uṣūl*, Third (Beirut, Lebanon: Dār al-Fikr, 1998), 448; Al-Ghazālī, *Asās Al-Qiyās*, 90.

⁵⁶³ Al-Ghazālī, *Shifā' al-ghalīl*, 142.

⁵⁶⁴ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 2:306.

⁵⁶⁵ Al-Ghazālī, *al-Mankhūl*, 455. It is worth mentioning here the strong correlation between the concept of *maṣlaḥa* and rational ethical value. Al-Ghazālī and his development of the Ash‘arite theory clearly plays a role in removing any ambiguity in understanding *maṣlaḥa*. For if as perceived that the intellect cannot determine anything, then how could it possibly recognise the *munāsabah* of a ruling? To be clear, al-Ghazālī did not create or adjust the Ash‘arite understanding, rather he articulated in a more palatable manner that was to be accepted by the Ash‘arites that were to succeed him.

⁵⁶⁶ Al-Ghazālī, *Shifā' al-ghalīl*, 613.

feature which is “anger”, confirmed by the text, which leads to the prohibition of issuing judiciary rulings. Its prohibition is based upon a *maṣlaḥa* which is the prevention of injustice. From this, he extrapolates a deduced *munāsabah* (*mustanbaḥah*), which is the reason behind the stipulated *munāsib*, namely that which *confuses the intellect and removes the avenues of correct judgement*. This phrase, the deduced *munāsib*, is a synonym for *ḥikmah*,⁵⁶⁷ returning us back to his original statement, “We do not intend by *ḥikmah* except the discreet ‘illah and the suitable meaning (*al-ma‘nā al-munāsib*).” What we can gauge from al-Ghazālī’s discussion in his legal theory about *ta‘līl bi al-ḥikmah* is that his intended meaning of *ḥikmah* is contrary to what he intends when applying it to the Godhead and in theology,⁵⁶⁷ meaning by it in this instance rationales and human benefits, and that for al-Ghazālī it is an important tool for the expansion of the law, and that he was of the proponents who would permit it.⁵⁶⁸ What this discourse demonstrates is al-Ghazālī’s effort in theorizing one of the processes in identifying the *ratios legis*, namely suitability, whilst remaining observant of his theological doctrine, particularly ethical value and his stance on divine goals and motives. He does this by acknowledging the role of the intellect within the confines of the law, noticing beneficial rationales that were a basis for rulings, and then opening up the field of play for this to be applied unrestrictedly. At no time did he perform this on account of relinquishing his stone belief that God was performing on behalf of motives and end goals, but on what he was to call ‘*ādat al-shar‘*’, which will be elucidated in the final chapter when looking at the critiques of his doctrine. For contrary to the Māturīdites,⁵⁶⁹ al-Ghazālī did not even consider the attribution of frivolity possible in relation to God, and hence their understanding that its opposite, namely wisdom must be applied to Him, which then entailed that He had objectives and goals that benefit creation and not himself, to be incorrect. Al-Ghazālī did not see such a determination as a necessary concomitant due to the certainty he maintained that God was not purposive, claiming that God is not even in the conversation of frivolity, with such an understanding being a logical flaw, just as we may say that a wall cannot be labelled “smart” or “stupid”, since a wall is not of the genus that has the ability to think.⁵⁷⁰

⁵⁶⁷ The same can be said here for the term *mu‘aththir* which al-Ghazālī commonly uses. Its usage in his *uṣūlī* works are in stark contrast to his theological beliefs regarding efficacy, with its apparent reason being simply the adoption of the terminology of the Māturīdite Ḥanafites as previously mentioned in chapter 5.

⁵⁶⁸ Whether the adherence of al-Ghazālī to *ta‘līl bi al-ḥikmah* was to have any bearing upon the likes of the Mālikite school of law could itself be an independent area of research since they are of its major proponents and also from among those that paid a lot of interest in the *Mustaṣfā* by way of commentaries and abridgements.

⁵⁶⁹ Abū Maṣṣūr Al-Maturīdī, *Al-Tawḥīd* (Beirut, Lebanon: Dār al-Ṣādir, 2007), 167; Fakhr al-Dīn Muḥammad b. ‘Umar Al-Rāzī, *Kitāb Al-Muḥaṣṣal* (Cairo, Egypt: Maktaba dār al-Turāth, 1991), 483.

⁵⁷⁰ Al-Ghazālī, *al-Iqtisād fī al-i‘tiqād*, 2008, 239, 242; Ṣayf al-Dīn al-Āmidī, *Ghāyat al-marām*, 270.

Chapter Eight

The *Mustaşfā* and the theorization of the *maqāsid*

An additional and seemingly significant observation within the field of legal theory is that al-Ghazālī's usage of *ḥikmah* does not stop at the aforementioned in the previous chapter, namely that it is the rationalization of the causes of the law, rather he mentions in both his *Shifā'* and *Mustaşfa* that the *ḥikmah* can qualify the text.⁵⁷¹ He stipulates, however, that this can only be the case when the wording is conjectural and speculative, not definitive. This is very similar to what Najm al-Dīn al-Ṭūfī (d. 716/1316) was to be highly criticized for,⁵⁷² that *maşlahā* was the bedrock for the law, and any scriptural text that was to oppose it must succumb to specification (*takhṣīs*), with the caveat that the text is not specific or related to the rights of God upon His servant.⁵⁷³ This is a stance that al-Ghazālī reached through his theology and in-depth understanding of legal theory, which gradually led him to reaching a highly advanced theorization of the *Maqāsid al-Sharī'ah*. The summarization and order of the theory in the thought of al-Ghazālī can be summarized as follows:

It begins with the acknowledgement that the human being, by nature, may recognize a degree of what is good and bad.⁵⁷⁴ Al-Ghazālī states, “We declare: we do not deny that it is customary among common folk to detest *ẓulm* and oppression from one another. Rather, what we are in real discussion about is the *qubḥ* and *ḥusn* in regards to God most exalted. Whoever judges according to such then his reference is applying to the absent the ruling of the present. How can the master, if he leaves his male and female slaves to intermingle and commit vile acts whilst he is watching them and able to prevent them, not be considered hideous of him. Yet God has done the same with His servants, and it is not considered hideous. And their saying that He has left them to reprimand themselves and hence deserve a reward is utter foolishness! For God knows they will not refrain, so let Him forcefully refrain them! For how many a person is refrained from vile acts due to impotence and inability, and this is better than facilitating them with knowledge because they will not refrain.”⁵⁷⁵ What al-Ghazālī is ultimately stating

⁵⁷¹ Al-Ghazālī, 642; Al-Ghazālī, *Al-Mustaşfā min 'ilm al-uşūl*, 2:338.

⁵⁷² Al-Būṭī, *Dawābiṭ al-maşlahā fī al-Sharī'ah al-Islāmiyyah*, 219–28.

⁵⁷³ Opwis, *Maşlahā and the Purpose of the Law*, 217–18.

⁵⁷⁴ As stated throughout this thesis, al-Ghazālī's acknowledgment of the intellect's role does not necessitate the existence of the intrinsic attributes of entities, rather how the intellect comprehends is very much an open discussion.

⁵⁷⁵ Al-Ghazālī, *Al-Mustaşfā min 'ilm al-uşūl*, 1:39. GhaneaBassiri writes, “God's actions, as the Lord of everything, are different from human actions because no one rules over God in the same way that God rules over humans. It follows from this that as the only Overwhelming King of all things only God can determine what is

here is that any good and bad which the human being understands in his/her day-to-day life is considered and recognized in our worldly affairs but can never be applied to God. If this were to be the case we would have to then say that many of the judgements God makes seem to be ethically wrong. Hence, we find here an affirmation and acknowledgment that the intellect may recognize good and bad, just not in reference to God. The origins of this position are no more than a qualification of the attitude of the eponym himself, for Ibn Fūrak writes, “He (al-Ash‘arī) would say, ‘It may be that a particular act from us is bad but Good from God, and it could be frivolous from us and *ḥikmah* from Him,’”⁵⁷⁶ Hence, what we can say with all certitude was this wasn’t of the departures and innovations of al-Ghazālī, but rather emulation and application of the Ash‘arite creed.⁵⁷⁷ It is therefore no surprise that we find al-Ghazālī’s mentor, al-Juwaynī asserting the same conclusion in his *Burhān*. He writes, “We do not deny that the intellect summons to the avoidance of perils and dangers, and the seeking of benefits albeit with their details. The rejection of such is tantamount to the departure of what is rational. Notwithstanding, this is in regard to the human being, and the discussion at hand surrounds what is considered hideous and good within the rulings of God. And this is of the unseen. And the Lord is not affected by our suffering or welfare.”⁵⁷⁸ Similarly, he states in his *Nizāmiyyah*, “If the one who is remiss of this clear matter were to say: ‘God most exalted does not perform the *qabīḥ* due to His knowledge of its *qubḥ*, and His transcendence beyond needing to do such,’ then we would reply: ‘the *qabīḥ* is inapplicable in regard to God most exalted, for He is not harmed by it and does not benefit from its contrary.’”⁵⁷⁹ He shortly continues, “There is no good and evil in the acts of God. In regard to the divine rule, all acts are equal.”⁵⁸⁰ This equity of divine actions is one of the trademarks of the Ash‘arite school. Al-Shahrastānī (d. 549/1158) continued the same argument in his *Nihāyat al-iqdām*, placing much emphasis upon the waywardness of attributing that which is present to the unseen. For God, the unseen in this

good and bad, just and unjust.” See GhaneaBassiri, ‘The Epistemological Foundation of Conceptions of Justice in Classical *kalām*: A Study of Abd al-Jabbar’s *al-Mughni* and Ibn al-Baqillani’s *al-Tamhid*’ p. 89.

⁵⁷⁶ Ibn Fūrak, *Mujarrad maqālāt Abū Ḥasan al-Ash‘arī*, 1987, 130.

⁵⁷⁷ The idea that it was an independent position of al-Ghazālī was implied by Abū al-Nūr Zahayr in his work entitled: *Uṣūl al-Fiqh*, in which he claims that al-Ghazālī was not in agreement with the Ash‘arites in their stance towards rational ethical value. (See *Uṣūl al-Fiqh*, 4/72).

⁵⁷⁸ Al-Juwaynī, *Al-Burhān*, 1:91–92. It is important that we reiterate the point here that this valuable quote that can be considered a qualification of many of his discussions found with his theological works, and lay buried within his legal theory, consolidating my point made in the introduction that discussions of a theological nature found within legal theory can qualify and add extra light to what has been mentioned in works on the topic themselves. Likewise, al-Ghazālī almost has a verbatim segment of the opening lines of this citation in his *Shifā’ al-ghalīl*. See *Shifā’ al-ghalīl*, p. 162.

⁵⁷⁹ Al-Juwaynī, *al-‘Aqīdah al-Nizāmiyyah fī al-arkān al-Islāmiyyah*, 35.

⁵⁸⁰ Al-Juwaynī, *al-‘Aqīdah al-Nizāmiyyah fī al-arkān al-Islāmiyyah*, 36.

context, cannot be understood to function and behave in the same manner in which His creation does, and this itself is understood both scripturally and empirically. He asserts,

“As for those of sound mind deeming it good to rescue the drowning, and their resentment towards animosity, this is due to their search for praise which is expected as a consequence of the first act, and the condemnation of the other. This we agree to. However, were we now to suggest the same statement in regard to legal responsibility (*taklīf*), would God warrant reward or punishment after knowing that neither suffering or benefit befall Him after any of His acts? As for that which is contested over something which is rational prior to the arrival of the Law and the rejection of each group by the other, this is also agreed, however the discussion was in regard to the right of God; is it obligatory that he praises and censures, rewards and punishes due to the act, and this is something unseen to us? For how can it be known that He is pleased with one of them and rewards him due to his act, and angered at the other, and hence punishes, whilst not informing of such by a reliable informant? It is not possible to compare His acts to the acts of His servants, for we see continuously acts that are hideous from us but are not hideous from Him...”⁵⁸¹

This acknowledgment that the intellect does have a role and is active is highly relative to the *Maqāsid* discussion. Since although what the human perceives as good and bad does not apply to God, when one notices that there is a continuous trend within the law that, in most cases, whenever there is a ruling there is a particular recognizable benefit that the human can understand, the *mujtahid* recognizes that he may build and base rulings upon this. Despite this, it is hard to determine exactly upon what al-Ghazālī basis his judgement, since for him induction (*istqrāʾ*), does not yield certainty,⁵⁸² but he was adamant that the *maqāsid* are definitively known.⁵⁸³ He does, nevertheless, state in his *Mustaṣfā* that the sources of the *maqāsid* are the Qurʾān, Sunnah, and consensus.⁵⁸⁴ He also clarifies that it is impossible for any religion or belief system to negate the necessity of these five objectives,⁵⁸⁵ almost then suggesting that reliance upon the aforementioned scriptural sources is not necessary, and is more of an emphasis, ultimately meaning that the five *maqāsid* are understood rationally. The

⁵⁸¹ Muḥammad b. ʿAbd al-Karīm Al-Shahrastānī, *Nihāyat al-ʿiqdām*, 379.

⁵⁸² Abū-Hāmid Muḥammad Ibn-Muḥammad Al-Ghazālī, *al-Qiṣṣat al-mustaḥṣin* (Beirut, Lebanon: Dār al-Mashriq, 1986), 96.

⁵⁸³ Al-Ghazālī, *Shifāʾ al-ghalīl*, 160.

⁵⁸⁴ Al-Ghazālī, *Al-Mustaṣfā min ʿilm al-uṣūl*, 1:311.

⁵⁸⁵ Al-Ghazālī, *Al-Mustaṣfā min ʿilm al-uṣūl*, 1:288.

question we must now ask is: was there a role in the thought of al-Ghazālī for *istiqrāʾ*? For it undoubtedly had a function in leading to his conclusion. It is my opinion that he did affirm it. Even if we were to say that all religions acknowledged the *maqāṣid*, there had to be a process of induction to come to this conclusion. Likewise, regarding scripture, al-Ghazālī reveals that through his surveying of the texts and the outcomes of their injunctions, the *maqāṣid* become manifest. From among the examples he cites is the persecution of the innovator who summons to blameworthy innovation, arguing that his persecution is due to the preservation of the religion.⁵⁸⁶ As for the texts of al-Ghazālī where he professes the probability of its results, this in my opinion was in regard to what was called *al-istiqrāʾ al-nāqīṣ* (deficient induction), since the example he employs falls within it.⁵⁸⁷ Regarding the *al-istiqrāʾ al-tāmm* (thorough induction), I not only don't believe that he would fail to accept it, but in fact employed it. That said, from the *istiqrāʾ*, the welfare of creation is seen to exist, although the question remains as to how are we to theologially understand this welfare? Is it obligatory upon God as claimed by the Mu'tazilites? This is resolved by the Ash'arite principle of *faḍl* and absolute divine choice.⁵⁸⁸ God wished that there be noticeable benefits behind His laws. He was not compelled to do so and hence if He willed could alter them to their contrary. In this manner the Ash'arite theologian has not only preserved his foundation which is built upon certainties, namely his theology, but reconciled it with what he has recognized to be a constant theme within the Law. Additionally, and after conceding that welfare (*maṣlaḥa*) is found within rulings by way of God's virtue, the jurist then embarks upon looking at each case in order to find what is called the *munāsabah*, with the *munāsabah* that is deduced being the *ḥikmah* of the rule. From this, the circle further reduces as the jurist becomes aware of a more generic trend among every *maṣlaḥa* that can be confined to five,⁵⁸⁹ found to be unremitting even within the *ḥikmahs*, and they are what are known as the *Maqāṣid*. And this is the process we find prevalent within the *Mustaṣfā* but not so systematically due to all of its components being mentioned in divergent areas.

⁵⁸⁶ Al-Ghazālī, *Al-Mustaṣfā min ʿilm al-uṣūl*, 1:287.

⁵⁸⁷ The example given is that of every agent having a body through induction, and hence the creator necessarily has a body, yet al-Ghazālī makes the point that such an induction, if only carried out on a few does not necessarily apply to the rest, and if claimed that it was carried out upon all since not all agents are known, basically confirming that he is making reference of the deficient induction.

⁵⁸⁸ Al-Ghazālī, *Shifāʾ al-ghalīl*, 162. See also: Anver M Emon, *Islamic Natural Law Theories* (Oxford: Oxford University Press, 2010), p. 32, 132.

⁵⁸⁹ Al-Ghazālī, *Al-Mustaṣfā min ʿilm al-uṣūl*, 1:287.

The rational and theological incoherence of al-Shāṭibī's theory

After understanding how the Ash'arites were able to both incorporate the *Maqāṣid* discussion and negate the attribution of objectives to God, it is important for us to compare the approach and stance of al-Ghazālī towards *ta'līl* and the *Maqāṣid* dichotomy with that of al-Shāṭibī in order to identify the key differences between the two and perhaps pass judgement as to who can really be rendered "the imam of the *Maqāṣid*." Al-Shāṭibī has become a celebrated figure in recent times and among contemporary *maqāṣidī* scholars, however his key work on the subject, *al-Muwāfaqāt*, never seemed to receive such veneration or attention prior to the nineteenth century.⁵⁹⁰ Upon detailed analysis of both authors, we would find that not only was al-Ghazālī far more loyal to his doctrine, but also far more methodological in approach. As mentioned several times throughout this study, al-Ghazālī had certainties that could not be compromised, namely the impossibility of attributing motives to God, yet despite this, attempted to explain how the Law can still seem purposive to mankind, similar to the discussion about man's actions and accountability *viz.* the theory of *kasb*,⁵⁹¹ how there is one creator of acts yet man still has a role in some capacity, but not in authorship. As for al-Shāṭibī, he had no issue in compromising his theological beliefs on the basis that the outward meaning of the Qur'ān and hadith indicate that *ta'līl* is prevalent, and that God has purposive motives.⁵⁹² This is seemingly not the scholastic approach of an inept scholar, especially one as of the standing of al-Ghazālī, who was known for his statement: *whoever has no conception of logic is not to be trusted in his knowledge*,⁵⁹³ and here is a fine example. For the role of the scholar would be to reconcile between the certainties, and to arrange an order between them and the speculative, granting preponderance to the former when required. This is the logical sequence. As for the case of al-Shāṭibī he gives preponderance to the speculative and rejects the definitive. Contrary to any sound logic. Epistemologically, al-Shāṭibī's foundations were frail and void of the depth of his predecessors, which I shall now illustrate with a few examples as an illustration of the coherence of al-Ghazālī's creed with his legal theory and articulation of the *maqāṣid* dichotomy.

In his tenth preliminary introduction in which he discusses the possible conflict between scripture and the intellect he states that scripture is forever granted preponderance and that

⁵⁹⁰ Mas'ud, 'Recent Studies of Shāṭibī's *Al-Muwāfaqāt*', 65.

⁵⁹¹ Abū-Hāmid Muḥammad Ibn-Muḥammad Al-Ghazālī., *Al-Iqtisād fī al-I'tiqād* (Jeddah, Saudi Arabia: Dār al-Minhaj, 2008), 158–59.

⁵⁹² Al-Shāṭibī, *al-Muwāfaqāt*, 7–8.

⁵⁹³ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:10.

intellect does not render anything good or bad.⁵⁹⁴ He then proceeds to highlight the fact that this does not mean that intellect is completely redundant and discusses *al-munāsabah*, providing the example that al-Ghazālī used in regard to the judge not issuing verdicts when vexed. He extrapolated from this exactly what al-Ghazālī had mentioned in his works, namely that it is not to be understood in the complete sense, rather the *ḥikmah* (although he doesn't use this term) must be understood and if occurs then the rule becomes applicable.⁵⁹⁵ So far, he seems to be in conformity with his Ash'arite predecessors and their approach, conceding their position on ethical value. However, in the third section of the *Muwāfaqāt* where he divides the *maqāsid* into two, he states that before indulging further on the topic he will present a theological point of departure that is conceded by all (*musllamah*).⁵⁹⁶ His intended meaning being here, which he candidly mentions, is the placement of the revealed Law for the welfare of creation both in this world and the hereafter. After this statement the frailties of al-Shātibī's expertise begin to reveal themselves. The first being that after stating that the point at hand was conceded by all, he called it a claim that needs to be proven (*wa hadhihi da'wā lā budd min iqamat al-burhān 'alayhā*). Logically speaking this is a gross error since the very nature of the *musallamāt* is that they are undebatable and self-evident, and makes matters worse by stating that the issue is an area of disagreement within the field of theology. That said, it was the next passage in particular that was to really identify the weaknesses in his theological understanding on the topic. He says, "And al-Fakhr al-Rāzī claimed that the rulings of God are not founded upon *'illahs* at all, just like his acts."⁵⁹⁷ He continued, "When he was forced to accept within legal theory the presence of *'illahs* within legal rulings he affirmed this by determining that their meaning was informative signs of the rulings specifically."⁵⁹⁸ In my opinion, with this statement, al-Shātibī has clearly disclosed his lack of understanding as to the depth of the issue and contentions the theologians were attempting to avoid. He also was oblivious of the distinction made by the theologians between *ta'līl* in *uṣūl al-fiqh* and *ta'līl* within *kalām*. Likewise, it also seems evident that he was unaware to the fact that it wasn't only al-Rāzī who was of this persuasion but the majority of Ash'arite legal theorists including al-Ghazālī. As for his inability to comprehend the contentions of the theologians, it refers back to the *musallam* principle among them that God is not compelled to act by any motive or aim, and it is in this context that al-Rāzī was rejecting *ta'līl*. Ayman Shihadeh writes, "According to al-Rāzī and

⁵⁹⁴ Al-Shātibī, *Al-Muwāfaqāt*, 141.

⁵⁹⁵ Al-Shātibī, *Al-Muwāfaqāt*, 1:142–44.

⁵⁹⁶ Al-Shātibī, *Al-Muwāfaqāt*, 2:6.

⁵⁹⁷ Al-Shātibī, *Al-Muwāfaqāt*, 2:7.

⁵⁹⁸ Al-Shātibī, *Al-Muwāfaqāt*, 2:7.

classical Ash‘aris, since God does not experience pleasure or pain, it will be inconceivable for Him to be subject to prudential or pleasure-seeking considerations. His acts and commands, therefore, cannot follow from motives.”⁵⁹⁹ For *ta‘lil* meant in their theology to act for the purpose of something which was considered a deficiency in regard to God since He is free from any need. Shihadeh writes, “Moreover, whoever acts for an objective (*gharaḍ*), i.e. with a motive, will be seeking to be perfected (*mustakmal*) by it, and will be imperfect in himself; however, God is absolutely perfect.”⁶⁰⁰ As for legal theory, the likes of al-Rāzī and al-Ghazālī did not deny that the Law had recognisable *ratios legis* that could be built upon and hence the manifestation of the branch of legal theory called *qiyās* which they both affirmed, but they did not believe that purposiveness of the Law was through obligation or any external factor like the presence of an aim or objective which stimulated God to act. For them both, it was rationally possible the existence of injunctions inclusive of human welfare without the need to attribute to the Godhead motives. Hence, if God willed, he could change His laws to whatever He pleases and render the permissible impermissible. This distinction between the two meanings of *ta‘lil* and its subtleties, dependent on the discipline, was not present in the mind of al-Shāṭibī and many other contemporary thinkers. As a result of this, al-Shāṭibī writes, “And the authoritative position (*al-mu‘tamad*) is that we have examined and explored (*istaqraynā*) the Law and found it to have been posited for the welfare of creation, an examination that neither al-Rāzī nor anyone else would disagree with.”⁶⁰¹ Yet the issue here is not *istiqrā’* (induction), but how to reconcile this within one’s theology which al-Shāṭibī was evidently inept to accomplish. Firstly, due to his above-mentioned comments, then in his final justification where he mentions several verses found in the Qur’ān which for him support his argument.⁶⁰² But again, this is extremely flimsy, since if it were agreed that *istiqrā’* produces certainty, it is still yet to be agreed as to whether the meanings of the verses themselves lead to certainty. So for example, al-Shāṭibī mentions several verses where he indicates that the *lām al-ta‘lil* and *kay* were used, hence undeniably indicating *ta‘lil* in his opinion. Through *istiqrā’* everyone would agree that this *lām* has been used in several places, but there would be divergence over the exact meaning of the *lām* which al-Shāṭibī was completely oblivious of. Ibn Fūrak for example, mentions a particular verse which would literally be read as *And We did not create the Jinn and Mankind except that they worship Me* (a verse that al-Shāṭibī himself used to buttress his

⁵⁹⁹ Ayman Shihadeh, *The Teleological Ethics of Fakhr Al-Dīn al-Rāzī* (Leiden, Brill, 2021), 97. see his latest work

⁶⁰⁰ Shihadeh, *The Teleological Ethics of Fakhr Al-Dīn al-Rāzī*, 97.

⁶⁰¹ Al-Shāṭibī, *al-Muwāfaqāt*, 2:7.

⁶⁰² Ḥasan al-Shafī‘ī was also of this position. See al-Shafī‘ī, *al-Āmidī wa arā‘uhu al-kalāmiyyah*, 429.

point), and explained that al-Ash‘arī interpreted it as “*except that I want their worship*”, due to the impossibility that God has an end purpose.⁶⁰³ In addition, al-Shahrastānī, when interpreting the *lām* in the verse: “For God has created the heavens and the earth in accordance with truth, and that every human being shall be recompensed for what he has earned (*wa li tujzā*),”⁶⁰⁴ he said that the *lām* in this instance was *lām al-ma‘āl* and not *lām al-ta‘līl*.⁶⁰⁵ Al-Āmidī also makes the same point with examples in his *Ghāyat al-Marām*, and concludes by saying, “According to this we understand *all the verses* that were mentioned and scriptural significations in this regard, although we do not deny that such occurs, rather we reject that they are objectives by commands and legal responsibility, in so far as it would be said: ‘God created for such and such, or for that reason. God is far transcendent from such!’”⁶⁰⁶ In his *Maḥṣūl*, al-Rāzī mentions one of the very same verses that al-Shāṭibī mentioned and placed it under the speculative evidences that indicate that the preservation of human welfare is of the objectives of the law.⁶⁰⁷ All of this indicates that although these legal theorists acknowledged *istiqrā’*, there is still a further procedure that needs to take place in order to identify if it is definitive and expose its possibilities and meanings against their definitive doctrine, for all al-Shāṭibī achieved was the first phase, namely the induction of all these verses that seemingly indicate *ta‘līl* linguistically, without carefully analysing and clarifying what they meant. Another final point that makes one further question the theological expertise of al-Shāṭibī was his suggestion as to whether *ta‘līl* was obligatory or left to the judgement of God,⁶⁰⁸ which remains unclear as to what exactly he intended by this statement. Did he mean here that *ta‘līl* could possibly be obligatory upon God? Or did he intend by this sentence that the *maqāṣid* themselves could be obligatory since he divides them accordingly in the following chapter? What seems most apparent to me is that he meant here what would unquestionably be considered a Mu‘tazilite trait; that he was questioning whether God could possibly have been obligated to rationalise the law and protect their welfare, due to him suggesting that knowledge of such is consigned to the knowledge of God.

I postulate that al-Shāṭibī is a prime example of someone who we can identify as being an unaccomplished theologian solely due to his pronouncements in legal theory. Simultaneously, he produced an incoherent approach to explaining the *maqāṣid* dichotomy that highlighted his

⁶⁰³ Ibn Fūrak, *Mujarrad Maqālāt Abū Ḥasan Al-Ash‘arī*, 1987, 79.

⁶⁰⁴ Qur‘ān, 45:22

⁶⁰⁵ Al-Shahrastānī, *Nihāyat al-‘aqdām*, 404.

⁶⁰⁶ Al-Āmidī, *Ghāyat al-marām fī ‘ilm al-kalām*, 241–42.

⁶⁰⁷ Fakhr al-Dīn Muḥammad b. ‘Umar Al-Rāzī, *Al-Maḥṣūl fī ‘ilm uṣūl al-fiqh* (Cairo, Egypt: Dār al-Salām, 2011), 1257.

⁶⁰⁸ Al-Shāṭibī, *Al-Muwāfaqāt*, 2:8.

lack of awareness regarding the concerns of the theologians, despite not differing from the final outcomes which the Ash‘arites produced, manifested in the likes of the permissibility to apply *ta‘līl* within legal theory. As for al-Ghazālī and al-Rāzī, these were masters in both fields, and despite the difficulty of the topic, still managed to reconcile between the text and the intellect in a manner that preserved both, and is customary within the Ash‘arite school. It is sufficient to say that al-Shāṭibī was one of the individuals who could not fathom the relevance and inherent connection between *uṣūl al-fiqh* and *kalām*. For him many of the theological discussions found in legal theory had absolutely no relevance to the discipline, believing them to have no effect on subsidiary matters, although, as we have revealed throughout this study: it has every relation as to how the *uṣūlist* was to articulate his legal theory.

The above comparative study serves as a manifestation of the relevance theology was to have in the conceptualisation of the *maqāṣid* dichotomy, and how discussions in its regard could not be removed from *kalām*. Likewise, it correspondingly serves to highlight the coherent approach that al-Ghazālī adopted, making every attempt to fulfill the requirements of both the intellect and divine dicta, without compromising any of the definitives determined in either, elucidating the theological inconsistencies of those who attempt to tread an alternative path.

Chapter Nine

Selected critiques of the doctrine of the *Mustaṣfā*

My awareness about the concomitant nature between *uṣūl* and *kalām* and the interest in this topic stemmed from the subtle comments and criticism of “modern” legal theorists and their questioning of the need for such discussions within *uṣūlī* works.⁶⁰⁹ Statements like that of Mustafa Shalabi in his brilliant work *Ta’līl al-aḥkām* where he argues that the issue of *ta’līl* was so evident within the primary sources that the disputes and arguments, conditions, and stipulations that were to emerge at the hands of the legal theorists were over-exaggerations springing from the bigotry that existed between adherents of the various schools. In his mind the efforts of the *uṣūlists* were almost intellectual acrobatics that over complicated a very simple theory.⁶¹⁰ It is my view, however, that Shalabi did not make this observation alone. Rather, the key influencer in all this rested with two individuals from the eighth century. The first was the Ḥanbalite Aḥmad Ibn Taymiyyah (d. 728/1328), and the other, the Andalusian scholar Abū Ishāq al-Shāṭibī (d. 790/1388), who insinuated in his *Muwāfaqāt* that many theological discussions had no place in *uṣūl*.⁶¹¹ For he said in his fourth preliminary chapter, “Every discussion mentioned in *uṣūl al-fiqh* which does not produce positive law or welfare, or does not assist in this, then its placement in *uṣūl al-fiqh* is baseless.”⁶¹² He elaborates shortly after,

“Every issue determined in *uṣūl al-fiqh* upon which *fiqh* is founded, except those that does not result from their disagreement any disagreement in the subsidiaries of positive law, then mentioning the evidences of the soundness of a school or its unsoundness is

⁶⁰⁹ Western academics were also to criticise either what they saw as an inorganic relationship between *uṣūl* and *kalām*, or contradictions and compromises on behalf of the likes of al-Ghazālī in order to accommodate their doctrine within their legal theory. See for example Sophia Vasalou where she states, “Ash’arites confronted serious challenges in trying to harmonize different regions of their theory with one another, and that seems symptomatic of a type of entropy inherent in Ash’arite theory that made a stable viewpoint hard to achieve,” (Ibn Taymiyyah’s Theological ethics, p. 150). She also stated that certain seemingly explicit texts found within the divine dicta were to “place the Ash’arites at loggerheads with their own theological views as conveyed in works of *kalām*,” (ibid. p. 144). Zysow was to make a very similar remark in their failure to harmonise between both disciplines. See Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory*, vol. 2 (ISD LLC, 2014), p. 203-204. I, however, could not help but sense that there was a deeper reason that caused the likes of al-Ghazālī to include some theological postulates within their legal theory which had been remiss to the likes of al-Shalabi, Vasalou, and Zysow, and that if there was a conflict between legal theory and Ash’arite theology it is most likely due to the latter’s misunderstanding of the matter than that of al-Ghazālī, as I have and shall continue to attempt to make clear within this final chapter.

⁶¹⁰ Shalabi, *Ta’līl Al-aḥkām*, 5.

⁶¹¹ Zysow quotes Ibn Taymiyyah and Ibn al-Qayyim several times in his discussion of *Ta’līl*, as does Vasalou. See Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory*, vol. 2 (ISD LLC, 2014), p.203/204.

⁶¹² Abū Ishāq Al-Shāṭibī, *al-Muwāfaqāt* (Cairo, Egypt: Dār al-Faḍīlah, 2010), 1:87.

also void of benefit. An example being the divergence between the Mu‘tazilites regarding the issue of the optional duty (*wājib mukhayyar*) and the optional prohibition (*muḥarram mukhayyar*). Since every group agrees with the other when it comes to application, they just differed in their belief based upon a foundation which was detailed in the science of *kalām*. Other areas mentioned in *uṣūl al-fiqh* manuals include: does obligation and prohibition as well as other categories relate to the attributes of things or to the communication of the Legislator? And whether the disbelievers are legally responsible in regards to the subsidiaries of the law as in the thought of Fakhr al-Dīn al-Rāzī, which is evident. These issues have no impact upon application, along with other such issues which they have imposed yet have no bearing upon *fiqh* whatsoever.”⁶¹³

The relevance of Ibn Taymiyyah and his critiques

As for Ibn Taymiyyah, he was a known adversary of *kalām* and the acceptance of anything which he understood to be of no relevance to the religion. His general attitude was utter abhorrence for *kalām* and anything that departed from scripture, namely the Qur’ān and the sunnah. He said in his *Istiqāmah*,

“The innovated issue in *uṣūl* is the innovated *kalām*, and in positive law, it is the innovated *ra’y*, and the innovated worship is the innovated Sufism...”⁶¹⁴

He follows this up with,

“Just as groups have clarified how the religion suffices without innovated *kalām*, and that God has elucidated in His Book examples with significations which have far greater benefit than what they (the theologians) innovate, and all that they mention of evidence already falls within what God has mentioned. Even al-Ash‘arī himself and his ilk have clarified the path of the *salaf* in the foundations of religion, and their lack of need for the theological methods...”⁶¹⁵

Ibn Taymiyyah visibly demonstrates that *kalām* has no place not only in *uṣūl* but in Sunni Islam itself and was far sterner and more candid than al-Shāḥibī about this, since the latter was to incorporate Ash‘arite doctrine in various places but not with great depth as can be understood

⁶¹³ Al-Shāḥibī, *al-Muwāfaqāt*, 1:90.

⁶¹⁴ Ibn Taymiyyah, *Istiqāmah*, 9. For an idea of the nature of the conflict between Ibn Taymiyyah and the Ash‘arites, see Holtzman, ‘Does God Really Laugh? Appropriate and Inappropriate Descriptions of God in Islamic Traditionalist Theology’; El-Tobgui, ‘On the Incoherence of the Universal Rule and the Theoretical Impossibility of a Contradiction between Reason and Revelation’; Holtzman, ‘Accused of Anthropomorphism: Ibn Taymiyya’s Miḥan as Reflected in Ibn Qayyim Al-Jawziyya’s Al-Kāfiya Al-Shāfiya’.

⁶¹⁵ Ibn Taymiyyah, *Istiqāmah*, 10.

from his comments.⁶¹⁶ Ibn Taymiyyah did not stop there. In fact, he had a personal assessment of al-Ghazālī's later attitude towards *kalām*. For he was of the belief that al-Ghazālī, during the later period of his life, and whilst pursuing the Sufi path, recognised the irrelevance of *kalām* and its waywardness. He would continue that when al-Ghazālī became cognisant that he did not have the true understanding of the prophetic method which would enable him to

⁶¹⁶ Sait Özervarli, 'The Qur'anic Rational Theology of Ibn Taymiyya', *Ibn Taymiyya and His Times*, 2010, 78–100. It is my estimation that Ibn Taymiyyah was largely reactionary. Most of his works were rebuttals and reactions to established doctrines, which at times lead him to what many were to consider controversial and even dangerous pronouncements, or lead to seeming logical impossibilities. Examples of which shall be revealed here. He was to uphold a very staunch position towards *kalām* and Ash'arism in particular. A position most widely accepted by his proponents, namely that was he was greatly averse to their arrival and ascendancy, and insisted on making a distinction between the creed of the early jurists and the Ash'arite theologians that were to follow. He states,

“Al-Shāfi'ī was of those that were most critical of *kalām*, its adherents, and the people of change. He prohibited it all and considered it an innovation that removes it from the prophetic way. Despite this, many of his followers were to reverse the matter, and made the *kalām* which al-Shāfi'ī condemned to be the prophetic way, and the principles of religion that the masses must follow. They made the evidence of the Qur'ān and the Sunnah which was lauded by al-Shāfi'ī to be the innovation for which its adherers are punished” (Aḥmad Ibn Taymiyyah, *Istiḳāmah* (Lebanon: Al-Maktabah al-'Asriyyah, 2014), 15).

This profession is in great conflict with historical realities and the Ash'arite determinations when compared with the creedal declarations of the early eponyms, as revealed previously. In the same vein, and based upon these proclamations, George Makdisi assumed that ‘the new theological movement was making its bid for legitimacy in the only way it could hope to obtain it: by gaining admission into one of the schools of law’ (George Makdisi, ‘The Juridical Theology of Shāfi'ī: Origins and Significance of Uṣūl al-Fiqh’, *Studia Islamica*, 1984, 22). Clearly postulating that the manifestation of the Ash'arites dissemination in general, let alone within the works of legal theory was far from organic. He also made the observation that the likes of Abū Ishāq al-Shirāzī was “clearly and definitely opposed” to any Ash'arite influence upon *uṣūl al-fiqh*, (Makdisi, 27). Makdisi, assumedly inspired by Ibn Taymiyyah, argues that prior to Ash'arism, the only orthodox stance was that of Ahl al-Hadith, which was in complete contrast and in total opposition to the latter. He made this clear with comprehensive statements such as, “To a traditionalist, a legitimate theologian is one who belongs to *Ahl al-Hadith*,” (George Makdisi, ‘Ash'arī and the Ash'arites in Islamic Religious History I’, *Studia Islamica*, 1962, 49). He continued, “The distinction between a traditionalist and a rationalist may best be illustrated in their respective attitudes with regard to the divine attributes...The Pious Ancestors, *Salaf*, who upheld the divine attributes were called *ṣifātiya*, because they affirmed the attributes. They opposed and censured *kalām* and metaphorical interpretation” (Makdisi, 50–51). The loose term ‘ahl al-hadith’ or ‘traditionalist’ was used to seemingly describe a methodology in which its adherents avoided any speculative polemics, which was later, the hallmark of *kalām*. Goldzier himself seems to have also reached the conclusion that the old-traditionalist school which included all the eponyms, whenever they censured *kalām*, they were directly rebuking Ash'arism also. For he said, “Consequently, for the adherents of the old-traditionalist school, there was nothing to choose between Mu'tazilite and Ash'arite” (Ijnās Jūldtsīhar, Ignác Goldziher, and Andras Hamori, *Introduction to Islamic Theology and Law* (New Jersey, USA: Princeton University Press, 1981), 110). Later studies in western academia attempted to bridge the gap between the well-known narrative of Ibn Taymiyya's disdain for *kalām* and his usage of its hermeneutics in his attempt to reconcile between reason and revelation. However, very few were to reveal the inconsistencies that his attempts were to lead to. One such attempt can be found in Jon Hoover's ‘Ibn Taymiyya as an Avicennan Theologian: A Muslim Approach to God's Self-Sufficiency’, where he does identify what he calls, “A major theological problem reconciling God's absolute self-sufficiency and God's interaction with the created world.” See Hoover, ‘Ibn Taymiyya as an Avicennan Theologian: A Muslim Approach to God's Self-Sufficiency’, 2006. For examples of works more focused upon his reconciliation between reason and revelation and his theological creed see Hoover, ‘God Acts by His Will and Power: Ibn Taymiyya's Theology of a Personal God in His Treatise on the Voluntary Attributes’; Jon Hoover. ‘Perpetual Creativity in the Perfection of God: Ibn Taymiyya's *Hadith* commentary on God's Creation of this World’. *Journal of Islamic Studies* 15/3 (2004:), 287–329; ‘Theology as Translation: Ibn Taymiyya's Fatwa Permitting Theology and Its Reception into His *Averting the Conflict between Reason and Revealed Tradition* (*Dār' ta' āruḍ al-'aql wa'l-naql*).’ *The Muslim World* 108/1 (2018), 40-86.

fully inline himself with revelation, he sought the Sufi path as a compromise.⁶¹⁷ However, such an extrapolation was in stark contrast with the al-Ghazālī we have found in the *Mustasfā* and his opening statement about the significance of *kalām*,⁶¹⁸ and contradicts all the theological postulations we have demonstrated embedded within his work.

In sum, the argument of al-Shāṭibī stresses that if there is no practical outcome which may be practiced, then any theological discussion within the manuals of *uṣūl al-fiqh* is superfluous. Ibn Taymiyyah, on the other hand, did not only take issue with the insertion of theology within *uṣūl*, but also with the postulations made by the speculative theologians themselves. And it is under this umbrella that we shall analyse two of the central doctrinal areas expressed by al-Ghazālī in his *Mustasfā* that Ibn Taymiyyah was to take issue with based on his premise that it was to contradict “the creed of the Salaf,” namely al-Ghazālī’s theory of *ta’līl* and the nature of the divine speech.

As mentioned previously, from among the doctrines of the *Mustasfā* is the affirmation of internal speech, without letters or sounds, alongside the negation of motives and objectives ascribed to God. Based upon these two creedal issues al-Ghazālī was to discuss the nature of the Qur’ān, the divine command and one of the four integrals of *qiyās* namely the *‘illah*. Historically speaking, there has been a divide between the creed of the Ash‘arites and the Ḥanbalites, particularly on the issue of divine speech. However, this divide was not as great as may have been depicted with some Ash‘arites showing a degree of acceptance as to the traditional Ḥanbalite understanding of the concept and vice versa.⁶¹⁹ It is here that we see the introduction and relevance of Ibn Taymiyyah and the reason for his prioritisation in this study. For this debate between the two personalities was not necessarily a debate between two schools, nor was it personal. As shall become clear, Ibn Taymiyyah was not representative of the Ḥanbalite doctrine on these matters, and neither did he mention al-Ghazālī by name when in disagreement over them, rather it was with the Ash‘arites and their theological concepts that he took issue. Al-Ghazālī is merely included in his opposition on these points due to him sharing the very Ash‘arite doctrine within his legal theory that Ibn Taymiyyah so vehemently

⁶¹⁷ Aḥmad Ibn Taymiyyah, *Majmū‘ fatāwā Shaykh Al-Islam Ibn Taymiyyah* (Medina, Saudi Arabia: Majma‘ al-Malik Fahd li Ṭabā‘at al-Muṣḥaf al-Sharīf, 2003), 64–65.

⁶¹⁸ Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:6.

⁶¹⁹ For al-Āmidī’s approach see al-Āmidī, *Ghāyat al-marām fī ‘ilm al-kalām*, 150–51. Likewise, for al-Ṭūfī on the same point see al-Fatūḥī, *Sharḥ al-kawkab al-munīr al-musammā Mukhtaṣar al-Tahrīr*, 16–17. For a later Ḥanbalite study of internal speech, and its application within the school see al-Kūrānī, *Ifāḍat al-‘allām bi taḥqīq mas’alat al-kalām*.

opposed. Likewise, there was no one to appear after al-Ghazālī who not only had so much hostility towards the doctrine he aligned with, opposed the practices of the theological schools, and was celebrated and popularised by both the Salafī movement and western academia long after him like Ibn Taymiyyah.⁶²⁰ This, along with the fact that many of his positions were very much independent and unique to him. For although some views may have been borrowed from other theological schools, when all put together, they were to form a unique stance that was to prove highly influential in the modern world.⁶²¹ Due to all these points, and the issues he was to have regarding the doctrine of the *Mustasfā*, I thought it would be a fitting finale for my thesis to examine this thinker’s critiques, and analyse them in light of the *Mustasfā* and provide an assumed Ghazālīan response to the criticism. For with such a comparison I will shed light upon the relevance of a rationally consistent doctrine in order for it to be harmonious with one’s legal theory, which all becomes manifest in its conclusions and potential ramifications.

It is my assertion that the only relation between Ibn Taymiyyah and the Ḥanbalites before him on the topic of divine speech was that they agreed upon the rejection of internal speech (*al-kalām al-naḥsī*). The area of conflict between them was in regards to its eternity, stating that “not one of the *salaf* or the scholars was to describe God’s speech as being *qadīm*.”⁶²² Additionally, it was his extrapolations and interpretations that were completely unique,⁶²³ unless he was, like al-Ghazālī, further elucidating what was commonly believed amongst those before them. Yet this is hard to prove, since much of the evidence indicates the opposite, with Ibn Taymiyyah seeming to choose the narrations reported of Aḥmad b. Ḥanbal that would fit with the depiction he wanted to give of the ‘historic *salaf*’. However this was not without its problems and at times appeared to lead him into what can only be described as a glaring contradiction.⁶²⁴ A prime example and key quotation, upon which he heavily replies in

⁶²⁰ Jon Hoover, ‘Ḥanbalī Theology’, In Sabine Schmidtke (ed.), *The Oxford Handbook of Islamic Theology*, pp. 626, 638; Hoover, ‘Ibn Taymiyya as an Avicennan Theologian: A Muslim Approach to God’s Self-Sufficiency’, p. 38. See also in regard to Ibn Taymiyya’s limited influence Caterina Bori, ‘Ibn Taymiyya Wa-Jamā’atuhū: Authority, Conflict and Consensus in Ibn Taymiyya’s Circle’, *Ibn Taymiyya and His Times*, n.d., 23–52; Khaled El-Rouayheb, ‘From Ibn Ḥajar Al-Haytamī (d. 1566) to Khayr al-Dīn al-Ālūsī (d. 1899): Changing Views of Ibn Taymiyya among Non-Ḥanbalī Sunni Scholars’, *Ibn Taymiyya and His Times*, 2010, 269–318.

⁶²¹ Jon Hoover. ‘Ḥanbalī Theology’, In Sabine Schmidtke (ed.), *The Oxford Handbook of Islamic Theology*, p. 636.

⁶²² Aḥmad Ibn Taymiyyah, *al-Tis’īniyyah* (Riyadh, Saudi Arabia: Maktabah al-Ma’ārif, 1999), 612.

⁶²³ This becomes very much apparent when comparing how al-Ṭūfī was to explain how God could speak with letters and sounds and how Ibn Taymiyyah was to explain it. See al-Fatūhī, *Sharḥ al-kawkab al-munīr al-musammā Mukhtaṣar al-Taḥrīr*, 16–17, and Ibn Taymiyyah, *Majmū’ fatāwā Shaykh Al-Islam Ibn Taymiyyah*, 221.

⁶²⁴ As for God speaking with letters and sounds, this was an area where there is a noticeable disturbance in the thought of Ibn Taymiyyah. One of the problematic areas is found in his Magnus opus, the *Majmū’ Fatāwā*, where in volume six he mentions that “There is not within the Muslim community or the *salaf* he who says ‘God does

order to justify his stance is the report that Aḥmad b. Ḥanbal said, “God continues to be all-knowledgeable, speaking *when he wants*.”⁶²⁵ Although the well-known report reads, “God continues to be all-knowledgeable, speaking.”⁶²⁶ Ibn Taymiyyah, however, was to place all his attention upon the former report that included the addition of “when He wants”. No such narration is recorded of Aḥmad with a sound transmission.⁶²⁷ Likewise, none of his students transmitted it from him. Despite this, Ibn Taymiyyah repeats this phrase continuously in many locations as if it is an established doctrine of the Ḥanbalite School, although the sources state otherwise,⁶²⁸ which would in turn render discussions regarding *ta’lluq* and the divine command found within *uṣūl* as pointless. One cannot help but assume that he was insisting upon this narration in order to remain consistent with the negation of the eternity of God’s speech, and, as shall be made clear, to explain certain verses found within the scripture. Whether this was the case or not, it clearly was not the approach of his Ḥanbalite predecessors. For Abū Ya’lā (d. 458/1066) stated, “And God was and always is a speaker, and there is never a time when this may become detached from the essence.”⁶²⁹ He also said, “And God speaks with an eternal speech (*kalām qadīm*), uncreated.”⁶³⁰ Similarly, Ibn Qudāmah (d. 620/1223) mentioned in his *Lum‘at al-i’tiqād*, “And God speaks with an eternal (*qadīm*) speech.”⁶³¹ The late Ḥanbalite,

speak with sound’.” And then continues to mention that it has been mentioned by more than one individual from the *salaf* who affirmed that God speaks with sound. He then mentions in volume twelve that the topic of sound and letters and its ascription to God, was never spoken about in the first three generations, and was one of the “generated innovations”, only to say shortly after that the consensus of the *salaf* was that they were upon the belief that God spoke with sounds. See Aḥmad Ibn Taymiyyah, *Majmū‘ fatāwā Shaykh Al-Islam Ibn Taymiyyah* (Medina, Saudi Arabia: Majma‘ al-Malik Fahd li Ṭabā‘at al-Muṣṣhaf al-Sharīf, 2003), 12/242–43.

⁶²⁵ Aḥmad Ibn Ḥanbal, *al-Radd ‘alā al-Jahmiyyah wa al-Zanādiqah* (Riyadh, Saudi Arabia: Dār al-Thabāt, 2003), 139.

⁶²⁶ ‘Ubayd Allāh Ibn Baṭṭa, *al-Ibānah ‘an sharī‘at al-firqat al-nājiyah wa mujānabat al-firaq al-mathmūmah*, vol. 6 (Riyadh, Saudi Arabia: Dār al-Rāyah, 1997), 6:33.

⁶²⁷ Al-Dhahabī was of the opinion that the work in which the narration was mentioned, *al-Radd ‘alā al-Jahmiyyah wa al-Zanādiqah*, was a forgery. See Abū ‘Abd Allāh Shams al-Dīn Al-Dhahabī, *Siyar a’lām al-nubalā’* (Lebanon: Bayt al-Afkār al-Dawliyyah, 2004), 951. This was also the assumption of later western thinkers, see Michael Cooperson, *Classical Arabic Biography: The Heirs of the Prophets in the Age of al-Ma’mun* (Cambridge: Cambridge University Press, 2000), 151–52; Christopher Melchert, *Ahmad Ibn Hanbal (Makers of the Muslim World)* (Oxford: One World, 2006), 101.

⁶²⁸ Wilfred Madelung seemed to be unaware of the controversy surrounding the book *al-Radd ‘Alā al-Jahmiyyah*, ascribed to Ibn Hanbal. For not only does he rely on it throughout his article, he quotes the exact quotation of Ibn Taymiyyah found within it. See Wilfred Madelung, ‘The Origins of the Controversy Concerning the Creation of the Koran’, *Islamic Theology in Context-Gestation and Synthesis*, 2020, 84.

⁶²⁹ Abū al-Ḥusayn Muḥammad Abū Ya’lā, *Kitāb al-‘Itiqād* (Riyadh, Saudi Arabia: Dār al-Aṭlas al-Khadrā’, 2002), 25.

⁶³⁰ Abū Ya’lā Ibn al-Farrā’, *Kitāb al-mu‘tamad fī uṣūl al-dīn* (Beirut, Lebanon: Dār al-Mashriq, 1974), 86. It is very worth noting the wording Abū Ya’lā uses in this sentence. For he understands the saying “*kalām qadīm*” to be synonymous to “uncreated”, as did everyone else during his age and onwards, except for Ibn Taymiyyah. Since, for Ibn Taymiyyah to manage to differentiate between the two, it meant that he would not appear to conflict doctrinally with the eponym. See Madelung, ‘The Origins of the Controversy Concerning the Creation of the Koran’.

⁶³¹ Muwaffaq al-Dīn ibn Qudāmah, *Lum‘at al-i’tiqād* (Beirut, Lebanon: Al-Maktab al-Islāmī, 1970), 15.

Muḥammad ibn Aḥmad al-Safārīnī (d. 1188/1774), confirmed also, “And the final word in regard to the position of the *salaf* is that the divine speech is that God is a speaker as has been stated, and his speech is *qadīm*.”⁶³² On this basis, and if this is understood, it is safe to say that the doctrine of Ibn Taymiyyah on these matters is not the Ḥanbalite doctrine, and is undeniably not axiomatic among the arch-traditionalists.

Taymiyyan resistance against al-Ghazālī’s concept of Divine speech

As revealed, al-Ghazālī was of the belief that speech (*kalām*) was a homonym in the Arabic language; it could be used in reference to the actual words that indicate the meaning within one self, and it could also apply directly to the meaning that is within the self. He also affirmed it as being pre-eternal (*qadīm*).⁶³³ When applied to the divine it could only mean the latter internal speech, due to the former necessitating contingent entities like letters and sounds. Likewise, he was of the belief that like the rest of the attributes, if the divine speech was not pre-eternal, then the divine essence would be a **locus for contingent acts** (*ḥulūl al-ḥawādith*), which al-Ghazālī describes as being impossible.⁶³⁴ Based upon this understanding he was to centre many of his *uṣūlī* explanations found within his *Mustaṣfā* in cases such as the divine command. Ibn Taymiyyah was extremely critical of such rejection, and advanced a rebuttal of what he understood to be in conformity with the belief of the pious predecessors (*salaf*). He stated in his *Majmū‘ fatāwā*,

“Their basis in regard to the Qur’ān, when they say God does not speak in accordance with His will and power, because that necessitates *ḥulūl al-ḥawādith*. However, when it

⁶³² Muḥammad ibn Aḥmad al-Safārīnī, *Lawāmi‘ al-anwār al-bahjiyyah wa sawāṭi‘ al-asrār al-athariyyah*, vol. 1 (N/A: N/A, N/A), 137.

⁶³³ Abū-Ḥāmid Muḥammad Ibn-Muḥammad al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, vol. 1 (Beirut, Lebanon: Dār al-Fikr, na), 100; Abū Ḥāmid Al-Ghazālī., *Al-Ghazali’s Moderation in Belief* (Chicago: University of Chicago Press, 2013), 115–16.

⁶³⁴ Abū Ḥāmid Muḥammad Ibn-Muḥammad al-Ghazālī, *al-Iqtisād fī al-i‘tiqād* (Jeddah, Saudi Arabia: Dar al-Minhaj, 2008), 205. It is my belief that were al-Ghazālī to have read the works of Ibn Taymiyyah he would have considered him in many regards a pseudo Karrāmīte. The reason being that the ideology of *ḥulūl al-ḥawādith* was very much a shibboleth of the Karrāmīte doctrine, which al-Ghazālī himself recognised as being such. He said, “The Karrāmītes say: “God is a sayer in eternity, in the sense that He has the power to create speech in His essence. Whenever He originates something not in His essence, He originates in His essence His statement ‘Be’” (Al-Ghazālī., 141–42). Similarly, the attachment of divine speech to God’s will which Ibn Taymiyyah propagated (Ibn Taymiyyah, *Minḥāj al-sunnah al-nabawiyyah fī maqāḍ kalām al-Shī‘ah al-Qadariyyah*, 2:53), would have also proven to be a red flag, since al-Ghazālī stated the impossibility of the eternal will to attach to something eternal (Al-Ghazālī., 148), stating that the Karrāmītes affirm its occurrence in God’s essence (Al-Ghazālī., 146).

was known the weakness of this conclusion it was not relied upon in regard to the Qur'ān.”⁶³⁵

He continued,

“Also, al-Āmidī mentioned in his *Abkār al-Afkār* that which negates their statement, and he mentioned that there is no answer for it. And these issues have been revealed in several areas, and is known amongst the majority of scholars. Even al-Hillī ibn al-Muṭahhar mentioned in his books that there is no evidence for the negation of *ḥulūl al-ḥawādith*, hence the one who debates this is both ignorant in the rational and Islamic sciences!”⁶³⁶

He proceeded to cite two other reasons as to why the denial of *ḥulūl al-ḥawādith* was problematic. The first is that it conflicts with the position of the *salaf*. The second, that it necessitates that all of what he calls “the selective attributes” (*al-ṣifāt al-ikhtiyāriyyah*), which are so many in number, are to be denied. He gives the example of God creating mankind and then saying to the angels that they should prostrate to Adam. He states, “And He did not command them pre-eternally!”⁶³⁷

The critique of Ibn Taymiyyah towards the concept of divine speech as understood by al-Ghazālī is multifaceted with layers of other reservations. His idea of a perpetually active and creative God collided with the idea that God was to will and command eternally. Likewise, it also jeopardised his theory of the “selective attributes”. As a result, he must question al-Ghazālī’s understanding of divine will and its eternality. Since acts like ‘mercy’ and ‘love’ which Ibn Taymiyyah talks about and includes among the ‘selective attributes’ cannot be eternal rather come into being and are subjects of time. Equally, he must take issue with the postulation that the divine will is *one* due to their continual occurrence and based upon the

⁶³⁵ Aḥmad Ibn Taymiyyah, *Majmū‘ fatāwā Shaykh al-Islam Ibn Taymiyyah* (Medina, Saudi Arabia: Majma‘ al-Malik Fahd li Ṭabā‘at al-Muṣḥaf al-Sharīf, 2003), 221.

⁶³⁶ Ibn Taymiyyah, 221. Al-Āmidī describes *ḥulūl al-ḥawādith* as impossible in both his *Abkār al-afkār* and *Ghāyat al-marām fī ‘ilm al-kalām* raising questions about the ascriptions of Ibn Taymiyyah which have been questioned by other scholars in the past, particularly his claims of consensus and the doctrine of the *salaf*. See Ṣayf al-Dīn al-Āmidī, *Abkār al-afkār fī usūl al-dīn*, vol. 1 (Cairo, Egypt: Maṭba‘ Dār al-Kutub wa al-Wathā‘iq al-Qawmiyyah, 2009), 380; al-Āmidī, *Ghāyat al-marām fī ‘ilm al-kalām*, 2022, 131.

⁶³⁷ Ibn Taymiyyah, *Majmū‘ fatāwā Shaykh al-Islam Ibn Taymiyyah*, 2003, 222. Najm al-Dīn al-Ṭūfī was also to question the like of al-Ghazālī’s understanding towards the attribute of speech itself, claiming that according to such an understanding no distinction can be made between knowledge and speech. He says,

“We say: you’re affirming it as a “thing” does not benefit you, since the internal speech which you have affirmed does not in reality depart from being either knowledge or conceptualisation according to the determinations of your leaders. If you are to say it is knowledge then you have returned to becoming Mu‘tazilites, and completely negated divine speech, and duped the people into believing that knowledge is speech.” See Muḥammad Ibn Aḥmad al-Fatūhī, *Sharḥ al-kawkab al-munīr al-musammā Mukhtaṣar al-Tahrīr* (Riyadh, Saudi Arabia: Maktaba Al-‘Ubaykān, 1993), 2:93.

Muḥammad b. Aḥmad al-Fatūhī (d. 972/1565) commented, “And this is a very strong argument that no just person can deny.” (Al-Fatūhī, 2:93).

actions of His creation.⁶³⁸ Correspondingly, and as mentioned, for Ibn Taymiyyah, the acceptance of the eternity of speech means that God does not speak when He wills and hence the notion of Him conducting various discourses becomes implausible, which, according to his understanding, jeopardises the conversations mentioned in the Qur’ān between God and His angels and Prophets. For him, to maintain eternal speech was to reject these passages. He states, “And we have made clear numerous times that your statement surrounding this is false, and contradicts the intellectuals, upholders of the law, and the divine dicta. And that which has been affirmed within reports has clarified its falsity.”⁶³⁹ All of which brings him to question the eternity of God’s speech itself. “How can it be what always was and continue to be” Ibn Taymiyyah asks, when deliberating verses like the discussion of God with Noah.⁶⁴⁰ As a result, and in an attempt to avoid falling into the doctrine of created speech, he resolved to base his creed upon the principle of ‘the eternity of the species and the occurrence of its individuals’ (*qidam al-naw‘ wa ḥudūth afrādihi*). Divine speech as a species, was eternal, but all of its

⁶³⁸ Hence this discussion also reveals how Ibn Taymiyyah was to perceive God and the notion of time, as with such an understanding it seems that God falls within its realms. He says, commentating on God’s saying ‘*If We will*’, “If the time for the willed act has arrived”, meaning that the divine ‘will’ did not determine it before the advent of time, rather the specification came about at the time of the act, See Aḥmad Ibn Taymiyyah, *Sharḥ Al-‘Aqīdah al-aṣfahāniyyah* (Riyadh, Saudi Arabia: Maktaba al-Rushd, 1995), 26. Part of the problem in which Ibn Taymiyyah places himself is that he attempts to use the parlance and methodology of the theologians to achieve his own conclusions, which at times leads him into a corner that he cannot escape from. So, for example, in his work *Sharḥ al-‘aqīdah al-aṣfahāniyyah*, he discusses what perfection (*kamāl*) in regards to God is, “If it is known that God is alive, all-knowing, and all-powerful, it is known that He may also be a speaker, since speech is of the attributes conditional upon life. And the conditional attributes for life are impossible for Him like sleep, eating, drinking, due to them comprising of a deficiency which He is transcendent of. And there is no deficiency in ‘speech’, rather we shall reveal by the will of God that it is of the attributes of perfection, and also reveal what is impossible for Him to be characterised by.” See Ibn Taymiyyah, *Sharḥ al-‘aqīdah al-aṣfahāniyyah*, 83. From the aforementioned statement, what would stand out from the point of view of a practitioner of theology, is that he mentions that God “may” also be a speaker, despite describing it as being an attribute of perfection, making it an obligatory attribute and not a possible one. This is clearly a basic logical flaw, and a reason why al-Ghazālī was to stress the importance of logic in all matters, contrary to Ibn Taymiyyah. See Wael B Hallaq, *Ibn Taymiyya against the Greek Logicians* (Clarendon Press Oxford, 1993). That aside, how can it possibly be, one asks, that of the attributes of divine perfection is that the judgement of God remains dependent upon the actions of his creation? If they do good God is joyful, if they do wrong, He is enraged? How could God’s creation have any influence upon Him? This is concomitant of the doctrine of *ḥulūl al-ḥawādith*, and was also to conflict with scripture, (See for example: The Qur’ān, verses 27:40, 14:8, 2:97) which was another reason why the Ash‘arites described human acts as being all equal before God. (For the first reason see Vasalou, *Ibn Taymiyya’s Theological Ethics*, 2016, 140.) Surely such a doctrine violates divine perfection?

⁶³⁹ Aḥmad Ibn Taymiyyah, *Dār’ ta ‘arud al-‘aql wa al-naql* (Cairo, Egypt: Hajar, 1990), 2:87.

⁶⁴⁰ Ibn Taymiyyah, *Minhāj al-sunnah al-nabawiyyah fī naqḍ kalām al-Shī‘ah al-Qadariyyah*, 3:456.

particulars are occurrent.⁶⁴¹ Jon Hoover clarifies the crux of the issue when he states that Ibn Taymiyyah was to grant divine volition preponderance over timeless eternity.⁶⁴²

For al-Ghazālī, the response was quite simple: and was imbedded in the concept of *taʿlluq*, and is found in a very subtle line within the *Mustaşfā*; explaining as to how it is possible to command those that do not exist pre-eternally. He writes,

“If it is said, ‘it is not a condition of the command (*amr*) amongst you that the person commanded exist, for you have adjudged that God most exalted pre-eternally commands His servants before they are created. How then is it possible that you stipulated the condition that the *mukallaf* be able to hear and rationalise whilst the intoxicated, forgetful, young lad and insane are closer to legal responsibility (*taklīf*) than the non-existing person?’ We say, it is important that one understands the import of our saying ‘God commands’ and ‘the non-existing person is commanded’, for we mean by this that he is commanded in *the expectation of his existence*, and not that he is commanded at the time of his non-existence. For such is impossible, rather those who affirm the existence of internal speech (*kalām nafsī*) do not deem it far-fetched that there be established within the essence of the father the command of his child, who is yet to come [into existence], to learn and study, and that were it to be estimated the continuance of this command until the eventual arrival of the child, then the child is commanded by that previous directive, and so is the case with the meaning (*maʿnā*) established in the divine essence. For it is the pre-eternal command to the performance of an obedient act from God’s servants which has connected (*taʿallaq*) with them on the basis of their eventual existence. For when they do eventually exist, they become commanded by that original directive.”⁶⁴³

Al-Ghazālī makes the point here that it is only for the rejection of the internal divine speech and its *taʿlluqāt* that one must hasten to adopt a principle like *qidam al-nawʿ wa ḥudūth*

⁶⁴¹ Ibn Taymiyyah, *Minhāj al-sunnah al-nabawiyyah fī naqḍ kalām al-Shīʿah al-Qadariyyah*, 2:53. The doctrine of Ibn Taymiyyah in regards to the divine speech has led me to notice a striking resemblance with the creed of the Muʿtazilites on the issue. Not in terms of how they conceptualised the Godhead, but in conclusions they reached via their own conceptualisations. For they both ultimately declare divine speech to be created but differ on location. For the Muʿtazilites, in the instance of Moses, it was created in the tree, and for Ibn Taymiyyah it was the divine essence, yet they both agree that it comes into being after non-existence, which is precisely the definition of ‘contingency’. As for his attempt to avoid the charge that his postulation about divine speech ultimately leads to the createdness of God’s speech and hence the Qurʾān by qualifying it with the idea that its individuals are contingent and its species are eternal, this seems to be a last-ditch attempt to avoid the charge. The reason being is that a species has no physical existence in the outside world, just in the mind, unlike the ‘individuals’, which he describes as created. Hence such a solution seems closer to sophistry than a reasonable answer, being extremely hard to corroborate.

⁶⁴² Hoover, ‘God Acts by His Will and Power: Ibn Taymiyya’s Theology of a Personal God in His Treatise on the Voluntary Attributes’, 62.

⁶⁴³ Al-Ghazālī, *Al-Mustaşfā min ʿilm al-uṣūl*, 1:85.

afrādihi, since God is all knowing and unaffected by time, and the discourse with the likes of Moses was connected pre-eternally to the divine speech, just like the divine command to ‘pray’ and ‘give alms’ was connected. Al-Ghazālī, in his *Iqtiṣād*, states - in response to the question: How could God have said in anterior eternity to Moses: *So take off your shoes; you are in the sacred valley*⁶⁴⁴ when He had not yet created Moses?⁶⁴⁵ – “God has known since eternity that the world comes into existence at the time of origination. This knowledge is a single cognition that entails in anterior eternity the knowledge that the world would later be, at the time of its occurrence that it is, and that after that that it was. These states of the world follow each other, while this cognition remains evident to God and unchanging. Rather, what changes is the states of the world.”⁶⁴⁶ Likewise, almost in response to Ibn Taymiyyah’s exact example of Noah and how a discourse was to ensue between God and His prophet pre-eternally, al-Ghazālī writes, “As for speech, it is eternal. What they ruled out because of the Exalted’s statement, *take off your shoes*, and His statement, We sent Noah to his people, is based on their supposing divine speech to be sound, which is impossible to reside in God. It is not impossible if it is understood to be inner speech. We say that there subsists in God’s essence a tiding about the sending of Noah. Before sending him, it is expressed as ‘We will send him’, and after sending him as ‘We sent him’. The expression varies with the variation of the states, but the meaning that subsists in God’s essence does not vary. Its reality is that it is a tiding that attaches to an informer; this tiding is the sending of Noah at the determined time. This does not vary with the variation of states, as previously stated regarding knowledge. Similarly, the Exalted’s statement, *take off your shoes*, is an expression that indicates a command. A command is a demand and a request subsisting in the self of the commander. It is not a necessary condition for its subsistence that the one who is commanded should exist. It is possible for it to subsist in the commander’s self prior to the existence of the one who is commanded. If the one who is commanded exists, he becomes commanded by virtue of that very command, without another demand made anew.”⁶⁴⁷

Another contention was that al-Ghazālī evidently states that the speech of God is one and singular, and despite its singularity comprises of all the meanings of speech, just like God’s knowledge is one and is inclusive of all things.⁶⁴⁸ One of the critiques of this doctrine was to

⁶⁴⁴ Qur’ān, 20:12

⁶⁴⁵ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 146.

⁶⁴⁶ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 146.

⁶⁴⁷ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief* 149–50.

⁶⁴⁸ Al-Ghazālī, *Al-Mustaṣfā min ‘ilm al-uṣūl*, 1:101.

state that if God’s speech is singular, then it must mean one of two possibilities; either that the like of Moses heard part of God’s speech when being addressed, or that he heard all of it. Both possibilities would be false, since to say the first, namely that he heard “part” would mean that it is not one and singular, and to say that he heard it all is impossible due to it being limitless.⁶⁴⁹ The answer to this query is explained in detail both in his *Mustaşfā* and *Iqtişād*, where he reduces the whole concept into what was called the *dāl* and *madlūl* (the indicator and the indicated). He states in his *Mustaşfā*,

“God’s speech differentiates from our own in another way, and that is no one of creation can reveal to another his internal speech except via words, signs or actions, whilst God is able to create for whoever He wills of His servants an inherent knowledge of His speech without the use of letters, sounds and indicants. He can also create for them hearing without the intermediary of sound, and the one who hears it without such has indeed heard the speech of God. And this is the exclusivity of Moses, may salutations be upon him, and upon our Prophet and all other Prophets. As for the one who hears it from another, like an angel or prophet, then to call it “hearing the speech of God” is like us calling the one who heard the poetry of al-Mutanabbī from someone else, that he heard the poetry of al-Mutanabbī. And this is also permissible.”⁶⁵⁰

He further elaborates in his *Iqtişād*, “Eternal speech, which subsists in the essence of God is what is indicated and not the indicator. The letters are indicators...”⁶⁵¹ Based on the definition of the occurrent as being “that of a thing that is initiated after it was non-existent”⁶⁵², letters and sounds must then be accepted as occurrent and indicators of divine speech and not the actual speech itself, and it is these very indicators which may be compartmentalised. Henceforth, God’s speech which is limitless, can be potentially indicated with the likes of letters, and is called the speech of God metaphorically. Al-Ghazālī states,

“As for the term ‘Qur’ān’, it may be used to designate what is recited. If that is what is intended by it, then it is eternal and not created. This is what the early Muslims meant by their saying that the Qur’ān, which is what is recited by the tongues, is God’s speech, and it is not created. On the other hand, if what is intended by it is the recitation, which is the reciter’s act, then the reciter’s act is not prior to the existence of the reciter; and whatever

⁶⁴⁹ ‘Abd al-Raḥmān al-Sarīs, *al-Masā’il al-uşūliyyah al-muta’allichah bi al-adillah al-Shar’iyyah allatī khālafa fihā Ibn Qudāmah fī al-Rawḍah al-Ghazālī fī al-Mustaşfā* (Riyadh, Saudi Arabia: Maktaba al-Rushd, 2005), 183–84.

⁶⁵⁰ Al-Ghazālī, *Al-Mustaşfā min ‘ilm al-uşūl*, 1:101.

⁶⁵¹ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 122.

⁶⁵² Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 123.

is not prior to the existence of an occurrent is itself occurrent. In sum, he who says “The sounds that are divided into letters I originated by my choice after being silent are eternal” should not be engaged in discussion and should not be assigned obligations. Rather, this poor man should be told that he does not comprehend what he says, does not understand the meaning of ‘letter’, and does not know the meaning of ‘occurrent’.⁶⁵³

So, in reference to the issue of Moses hearing some or all of God’s speech; this then never took place, rather some of the *indicator* was heard. As for the lack of distinction mentioned by al-Ṭūfī between speech and knowledge, al-Ghazālī explains that it is very possible to say something and have knowledge of something else, in the same manner that one-way command to something and will something else.⁶⁵⁴

The critique of the Ghazālīan approach to *ta’līl*

Ibn Taymiyyah was to arrive at several conclusions as to why al-Ghazālī’s theological theory of *ta’līl* was unacceptable with his approach being, in my opinion, the impetus behind the majority of the critics that were to succeed him. First of all, due to his conceptualisation as to the notion of *ḥikmah*, he rejected not only al-Ghazālī’s, and the Ash‘arite assertion that God does not function for end-goals, but also the Mu‘tazilite conclusion regarding the term of frivolity (*‘abath*) which caused them to declare that any benefits from God’s law returns to creation and not to the creator. The possibility that benefit could return back to the Creator was rejected by all theologians, Ash‘arite and Mu‘tazilite alike.⁶⁵⁵ We previously mentioned that al-Ghazālī was to state in his *Mustasfā* the complete rejection of attributing motives to God,⁶⁵⁶ and had to theorise how this was to work within his legal theory without contradiction. Ibn Taymiyyah however believed this to be illogical and contradict the exact meaning of frivolity, hence stating, “Indeed frivolity is the act which includes no welfare, benefit or advantage which returns back to its performer. For this reason, neither God, His Messenger, or any of the astute, has commanded someone to be benevolent to another and benefit him and the like except due to what it includes of benefit and welfare.”⁶⁵⁷ Likewise, for Ibn Taymiyyah, the pursuit of objectives and the welfare of creation was how the law had to be in order that creation may

⁶⁵³ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 123.

⁶⁵⁴ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 118–19. Ibrāhīm al-Laqqānī (d. 1041/1631) clarifies the differentiation between speech and knowledge by the mere fact that someone may inform about that which they do not know, rather they might know its opposite. See Burhān al-Dīn Ibrāhīm Al-Laqqānī, *Hidāyat Al-Murīd Li Jawharat al-Tawḥīd* (Cairo, Egypt: Dār al-Bashā’ir, 2009), 395. See al-Bāqillānī and the *Hidāyat*

⁶⁵⁵ Hoover, ‘Ibn Taymiyya as an Avicennan Theologian: A Muslim Approach to God’s Self-Sufficiency’, 34–35.

⁶⁵⁶ Al-Ghazālī, *Al-Mustasfā min ‘ilm al-uṣūl*, 1:58.

⁶⁵⁷ Ibn Taymiyyah, *Majmū‘ fatāwā Shaykh Al-Islam Ibn Taymiyyah*, 2003, 89.

recognise that its welfare was being observed and hence acknowledge that God is worthy of praise.⁶⁵⁸

He thus concludes that God is purposive and is the beneficiary of the acts of His creation, a notion which is in absolute conflict with al-Ghazālī's concept of a self-sufficient God. Al-Ghazālī states, "The rich (*al-Ghanī*) one is he who has no connection with another-neither for his being nor for the attributes of his being, but rather transcends connections with things other

⁶⁵⁸ It could be assumed that the outward discrepancy between al-Ghazālī and Ibn Taymiyyah was based upon the concept of terms like *ḥikmah* and frivolity alone, and whether it may be applied to God, however the issue is deeper and is in fact a discrepancy in methodology. For it is based upon the extent one can analogically apply things to God. Ibn Taymiyyah had no regulation in its application and hence would apply terms like *ḥikmah*, frivolity, injustice, as is commonly known to man and apply them to God, very similar to the Mu'tazilite approach. Vasalou asserted, "Ibn Taymiyyah himself, as we have seen, repudiates the Mu'tazilite claim that the ethical standards that constrain the actions of human beings are the same as those that constrain God's," (*Ibn Taymiyyah's Theological Ethics*, p. 141). I would disagree with this assessment and consider it to be the opposite. Rather Ibn Taymiyyah had his own conceptualisation of God based upon his reason and application of *qiyās al-ghā'ib 'alā al-shāhid* unconditionally, which ultimately lead him into a disharmonious doctrine, much like the Mu'tazilites, which Ibn Taymiyyah was willing to accept. He differed with them in areas that lead to what the Ash'arite and Mu'tazilite theologians would deem an encroachment of God's omnipotence manifested in the case of things like God's anger, pleasure and the like; he would understand them just as he would understand their application to man and was thus compelled to acknowledge that God's essence was a vessel for created entities. As for al-Ghazālī, when defining frivolity he said, "It is that act which has no benefit of those that can be exposed to benefit. As for the one who is not exposed, then to call him frivolous is metaphorical and has no reality." Abū-Ḥāmid Muḥammad Ibn-Muḥammad Al-Ghazālī, *Al-Iqtisād Fī al-I'tiqād* (Jeddah, Saudi Arabia: Dār al-Minhaj, 2008), 239. The reason al-Ghazālī stated this is due to the conflict of such a concept with a definitive basis, namely that God is beyond all need and hence derives benefit from nothing. Thus, we see that although al-Ghazālī was at times to apply *qiyās al-ghā'ib 'alā al-shāhid*, it was qualified, made redundant if leading to anything that opposes previously determined certainties. Ibn Taymiyyah seemed to understand the Ash'arite approach as a rejection of *ḥikmah*, and was confirmed by his closest disciple, Ibn al-Qayyim al-Jawziyyah (d. 1350/751), Ibn Qayyim Al-Jawziyyah, *Ibn Qayyim Al-Jawziyyah on Divine Wisdom and the Problem of Evil*, trans. Talal Zeni (Cambridge: Islamic texts society, 2017), 72.) They couldn't comprehend the notion that God was not purposive and yet His acts were still wise, just like they could not comprehend speech without sounds and letters as shall become evident in the discussion about their disparity over divine speech. Sophia Vasalou writes, "In trying to reconcile God's praiseworthiness and God's power, Ibn Taymiyyah will argue the Ash'arites failed to give the former its due." (Vasalou, *Ibn Taymiyya's Theological Ethics*, 2016, 140.) However, this could not be further from the truth since for al-Ghazālī and the rest of the Ash'arites, any act of God is considered wise regardless whether it may be perceived by humanity or not, just the fact that its source is God makes it perfect and wise (Abū Bakr Ibn Fūrak, *Mujarrad Maqālāt Abū Ḥasan Al-Ash'arī* (Beirut, Lebanon: Dār al-Mashriq, 1987), 140). And it is with this understanding that whatever God performed was ultimately wise, whereas for Ibn Taymiyyah in order for it to be wise it must be rationalised as such, and hence God must be purposive. The ultimate problem with this is that he did not reconcile between the two, and in fact envisioned a God that was subject to something other than Himself known as "wisdom" which He must also abide by, overriding His absolute power and sovereignty. However, it could be argued that the very nature of God as the sovereign ruler of creation demands praise, not that he performs acts that are in the interests of human beings. For if this were the case then the likes of al-Āmidī would argue what benefit to mankind is there in the creation of Satan and letting the Prophets die? (Ṣayf al-Dīn al-Āmidī, *Ghāyat al-marām fī 'ilm al-kalām* (Cairo, Egypt: Dārussalam, 2022, 264.) Just like al-Ghazālī makes the point that the very meaning of *taklīf* in the Arabic language is hardship, and that no person actually wants it. (Al-Ghazālī, *Al-Iqtisād fī al-i'tiqād*, 2008, 234.) It may be the case that someone may wish he were not created in the first place. Another point is that Ibn Taymiyyah himself, as did his disciple, Ibn Qayyim, indirectly acknowledged that their determination could not be harmonized with definitive verses manifest in judgements like the extinguishment of hell, despite the Quran stating the opposite. The reason they made such a determination is that they could not see how it would serve the welfare of its dwellers and ultimately opposed Ibn Taymiyyah's view of the nature of the Godhead. See Marco Demichelis, 'The Fate of Others in Fourteenth-Century Ḥanbalism. Ibn Taymiyya (d. 1328/728)–Ibn Qayyim al-Jawziyyah (d. 1350/750) and the Fanā'an-Nār', *Annali Di Scienze Religiose* 9 (2016): 278.

than himself. For when one's being or the attributes of one's being depend on things outside oneself, then his existence and his perfection depend on them essentially, and he is actually poor; in need of acquiring what is his."⁶⁵⁹ Hence, to avoid anything that conflicted with God's omnipotence like the notion that God would be the beneficiary of His creation, whilst affirming rationales within the law, al-Ghazālī mentions the term '*ādat al-shar*' (the custom of the law). "The custom of the Law (*ādat al-shar*) is that which reveals the objectives of the Law,"⁶⁶⁰ he would famously say, but without further elaboration. However, it was not until Fakhr al-Dīn al-Rāzī that we found a documented explanation of what this very carefully moulded term "*ādat al-shar*" would mean. Since the word "*ādat*" within Ash'arite theology was a term commonly associated to causality. Al-Rāzī said,

"However, the '*ādat*, when it is continuous, as a consequence there inevitably occurs speculative knowledge that is close to certainty, that it will continue. The conclusion being that the repetition of something continuously results in conjecture that whenever it takes place it will not occur except in the same manner. If this has been affirmed then we say, when we ponder the divine laws, we find that rulings and welfares are accompanied together and inseparable. And this is known after the establishment of the law. If this is the case then the knowledge of the occurrence of one obliges the conjecture and speculation that the other will also occur, and the opposite, without one being effective upon the other and its motive. Thus it has been determined that "suitability" is evidence of causality, yet with the caveat that the Laws of God are not purposive."⁶⁶¹

It is in light of the above statement that we are to understand al-Ghazālī's conception of the Law; that the continuous occurrence of acts, fixes unshakably in our minds the belief in their occurrence according to past habit (*ādat*).⁶⁶² According to this understanding, we comprehend the law. There is no obligation upon God to observe creation's welfare, with its reason being explained according to the Ash'arite occasionalist doctrine: they are just customs that have no inherent value, and may be altered like all other customs found in nature.

Secondly, the Ash'arites' rejection that objects had intrinsic values and yet affirm *ta'līl* was not only to bewilder Ibn Taymiyyah, but also Western academics, especially as to how they would recognise the objectives of the Law and human welfare, despite their stance on ethical

⁶⁵⁹ Abū Hāmid al Ghazālī, 'The Ninety-Nine Beautiful Names of God, Trans', *David B. Burrell i Nazih Daher, Cambridge: The Islamic Texts Society, 1992, 143.*

⁶⁶⁰ Al-Ghazālī, *Al-Mustasfā min 'ilm al-uṣūl*, 2:320.

⁶⁶¹ Fakhr al-Dīn Muḥammad b. 'Umar Al-Rāzī, *al-Maḥṣūl fī 'ilm uṣūl al-fiqh* (Cairo, Egypt: Dār al-Salām, 2011), 1260.

⁶⁶² Michael E Marmura, 'The Incoherence of the Philosophers', 1998, 174–75.

value. Since, for Ibn Taymiyyah, the rejection of acts having intrinsic value was tantamount to the rejection of the welfare that the divine law came with.⁶⁶³ Similarly, and with the same line of reasoning, Zysow maintained that there was a necessary connection between ethics and the *maqāṣid*, if there wasn't, and the intellect played no role, how could the *maqāṣid* be identified? A worthy question, no doubt. He postulated that ethical cognition is necessary for this method of analogy, and that for the Ash'arite; it is only revelation that creates objective values.⁶⁶⁴ He also wrote, "The identification of rational reasons depends upon some source of ethical knowledge independent of revelation, and this is precisely what the Ash'aris deny."⁶⁶⁵ He concluded by stating, "There exists an apparent incompatibility between Ash'ari ethics and the method of analogy that extends legal rationality,"⁶⁶⁶ only for him to suggest that an eventual ethical retract occurred on the part of the Ash'arites.⁶⁶⁷ Koujah, on the other hand, countered Zysow's assumption, stating that a stance on ethical value does not impact one's position on divine purposiveness, and that there was no necessary connection.⁶⁶⁸ Regardless of this, the Ghazālīan response to Ibn Taymiyyah and Zysow found within the *Mustaṣfā* is found in his statement, "We declare: we do not deny that it is customary among common folk to detest *ẓulm* and oppression from one another. Rather, what we are in real discussion about is the *qubḥ* and *ḥusn* in regards to God most exalted."⁶⁶⁹ For Zysow has understood that the Ash'arites, al-Ghazālī included, were in complete denial of any recognition of the intellect in any capacity. However, as al-Ghazālī has revealed, this was only in regard to understanding the acts of God, and what He may and may not perform. As for the acts of creatures, we do have a degree of recognition. The source of this recognition is generally unknown but it is explicitly not intrinsic. Rather, he explains, a probable source as being inherited from a previous Prophet and passed down, safeguarding the doctrine that ethics is ultimately from the divine, whilst maintaining that humans are able to determine good and bad, despite it being susceptible to change.⁶⁷⁰ In sum, the Ghazālīan and Ash'arite approach towards the recognition that God's law includes welfare for creation, differed only in their explanation, and not legal extrapolations, with their counterparts. Since it could be argued that the key developers of the theory were all Ash'arites. As for their explanation, they asserted that it was by mere choice

⁶⁶³ Ibn Taymiyyah, *Majmū' fatāwā Shaykh Al-Islam Ibn Taymiyyah*, 11: 354.

⁶⁶⁴ Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory*, 2014, 2:199.

⁶⁶⁵ Zysow, *The Economy of Certainty*, 2:200.

⁶⁶⁶ Zysow, *The Economy of Certainty*, 2:199.

⁶⁶⁷ Zysow, *The Economy of Certainty*, 2:203.

⁶⁶⁸ Rami Koujah, 'Divine Purposiveness and Its Implications in Legal Theory: The Interplay of Kalām and Uṣūl al-Fiqh', *Islamic Law and Society* 24, no. 3 (2017): 177.

⁶⁶⁹ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:61.

⁶⁷⁰ Al-Ghazālī, *Al-Mustaṣfā min 'ilm al-uṣūl*, 1:57.

and divine free will that God decreed that human benefits can be found in His legislation and had He so willed it could have been the opposite. Hence when it is said that such and such a ruling was legislated for a reason, this is understood from the Law itself, where it has been mentioned in various places that God does not wish for his servant's hardship for example, and that He wills for them ease, with all the five objectives that were later understood to take priority in preservation, all being extrapolated due to the attention the law gives to them. Al-Ghazālī makes this perfectly clear when he was to say, "We do not say this because we deem it obligatory upon God to observe the optimum, rather we have come to know this from the evidences of the Law that God *willed* the welfare of creation in both their religious and worldly affairs, and God is far beyond being affected by objectives and goals, and change due to motives. Rather the law was legislated for the benefit of creation, and we fathom this from the law and not the intellect."⁶⁷¹ It is worthy to note here that we only find the answers to this question, despite being of a highly theological nature, embedded within *uṣūlī* discussions in both al-Ghazālī's and Ash'arite legal theorists *uṣūlī* works.

What is of extreme interest here is that the majority, if not all of the key arguments launched by Ibn Taymiyyah against the Ash'arites and those who were to base their opinion upon his reasoning, had already responded to by al-Ghazālī as if he was rebutting a contemporary or someone that preceded him. According to my understanding, it was of the objectives and hermeneutics of the Ash'arite School to conceptualise the divine message in a coherent format, that not only maintained a transcendent omnipotent creator, but could also to be understood rationally, despite with difficulty at times, but never transgressing the realm of possibility. This became most evident in how they even managed to employ their theology within their legal theory without compromising conclusive foundations, and maintain the *maqāṣid* theory. Such consistency and astute scholarship was also to highlight why the likes of Ibn Taymiyyah had to resolve in validating notions like the divine essence being a loci for created entities, the annihilation of hell fire, and the eternity of the species and the occurrence of its individuals' (*qidam al-naw' wa ḥudūth afrādihi*). In addition, his assertion that God adorns His divine Law with human welfare in order that He, in return, can receive praise was to place him in a very similar position as that of the Mu'tazilites in regard to the *fatigue of the Law*.⁶⁷² The reason

⁶⁷¹ Al-Ghazālī, *Shifā' al-ghalīl fī bayān al-shabah wa al-mukhīl wa masālik al-ta'līl*, 1971, 204. Sophia Vasalou has an interesting discussion on this connecting how al-Razi was to be impacted by al-Ghazali in theorising how to resolve this apparent issue. See Sophia Vasalou, *Ibn Taymiyya's Theological Ethics* (Oxford: Oxford University Press, USA, 2016), 163.

⁶⁷² For more on the notion of the Fatigue of the Law and its theological ramifications see Ahmad, *The Fatigue of the Shari'a*.

being is that it would insinuate that with the dwindling of the Law and its disappearance, God is no longer receiving the benefit due to which he revealed it in the first place, placing the Godhead at a loss. A creedal ramification that Ibn Taymiyyah himself would find hard to accept.

Al-Ghazālī does not deny the existence of ambiguous complex issues, however none of them collide with certainties or scripture itself, unlike what we have briefly seen with Ibn Taymiyyah and his approach, in which a compromise had to be made, summed up in Hoover's assessment of God's self-sufficiency in the thought of Ibn Taymiyya, "Ibn Taymiyya faces a major problem reconciling God's absolute self-sufficiency and God's interaction with the created world. Ibn Taymiyya's insistence that God acts rationally in the temporal world in a self-interested sense strongly suggests that God needs creatures to manifest His perfection."⁶⁷³

⁶⁷³ Hoover, 'Ibn Taymiyya as an Avicennan Theologian: A Muslim Approach to God's Self-Sufficiency', 45.

Conclusion

From this study alone I maintain that we can undoubtedly recognise the *Mustasfā* as being the most significant work in determining the final conclusive doctrine of al-Ghazālī before he died. Additionally, I conclude that just from one's mere reading of any medieval *uṣūlī* text, an astute theologian could comprehensively grasp the doctrine and theological allegiance of the author. Whether it be al-Jaṣṣāṣ and his *al-Fuṣūl*, Abū Ya'lā and his *'Udda*, or Ibn Qudāma and his *Rawdat al-Nāzīr*, all were to include invaluable clues as to their dogmatic affiliation. For, as revealed and demonstrated throughout this thesis, the connection between *uṣūl al-fiqh* and *kalām* is inherently unavoidable. However, its strong association may not be overly practical in the sense that one can see how it directly effects positive law and the outcome of rulings, but rather theoretical, impacting how legal theory works were written and how definitions were to be coined. It also serves to demonstrate how one can receive these agreed upon principles and philosophy of law and harmonise it with one's doctrine. It is here that we find that the *Mustasfā* excelled. In addition, within this study, I revealed how the process of "extended questioning" was most essential for this synthesis and remarkably evident within the *Mustasfā*. If we take the *ḥukm* as an example we see the discussion begin with its origin, is it the intellect or is it the law, which brings ethical value into the discussion, then the nature of the *ḥukm* and its quintessence, which then includes the divine address, followed by the time of its address, is it pre-eternal due to the divine speech being such or is it within time, which then introduces the concept of *ta'lluq*. This was a natural sequence and part of the development of any science which would reveal the sophistication and depth that these legal theorists would delve in order to answer either questions of their interlocutors, or queries that would come to their own minds during composition. Likewise, the ever-present underpinning of ethical value and its direct impact upon legal theory is notably evident in the discussion of abrogation in which al-Ghazālī uses it as an opportunity to reveal the soundness of the Ash'arite doctrine on the issue, and highlight the contradictions that the Mutazilites had to face as a consequence of their own postulations in its regard.

Throughout the course of my research, I have demonstrated not only the influence the *Mustasfā* had but more importantly the cohesion we find in al-Ghazālī's approach, maintaining the certainties he had determined in theology and subtly amalgamating the two, whilst revealing the conflicts of those who opposed his approach. From such a study we have seen how his stance on ethical value and rejection of a purposive God dictated the articulation of both his

maqāṣid and legal theory in general. As for his influence, I have revealed that he most likely caused a previously unexplained shift in approach within the Ḥanafite method of composition, or at least that of Abū ‘Alā al-Samarqandī, whilst also leaving such an impression upon Ibn Qudāmah such that he almost copied his *Mustaṣfā* verbatim, albeit with a Ḥanbalite under current. Apropos of his cohesion, it becomes obvious that al-Ghazālī maintained a concrete doctrine that began early in his career and continued to his passing. The chances of having a ‘teleological moment’ in between are far-fetched based upon the perpetual denial of attributing end-goals to God throughout all his major theological works up until his *Mustaṣfā*. There is no doubt from studying this *uṣūlī* work that al-Ghazālī was of an Ash‘arite persuasion who expressed the dogma in an unconventional way, which is not surprising since he was to do the same with many other disciplines in which he authored. This is evidenced by the fact that every shibboleth of the Ash‘arite creed was activated within his *Mustaṣfā*, from the *kalām al-naḥsī*, to the rejection of attributing motives and goals to God, to a staunch defence of Ash‘arite ethical value, and then his stance on causality found within his discussion on the ‘*illah*. Each definitive he had affirmed in his *Iqtiṣād* he applied in his *Mustaṣfā*, confirming that his theological belief was not to succumb to any changes, and corroborating the notion that the *Mustaṣfā*, and *uṣūl* works in general, are a treasury of theological discussions, and valuable resource when in search for theological clues. **Henceforth, it has become manifest from my findings that legal theory, is indeed a treasury of theological discourses that has been over looked by many western academics during their attempts to determine the doctrine of al-Ghazālī, and which, in my opinion, has led some to reach inaccurate conclusions as to his doctrinal persuasions.**

Resultant from this study, we can pragmatically understand the words of al-Samarqandī as to how it is not possible to compose a work of legal theory without involving one’s personal doctrine. Al-Ghazālī shows us that it is not possible to delve into the depths of legal theory except with the inclusion of theological discussion. You cannot consider the rule without discussing the ruler, or begin any discussion about the primary source of the divine law, namely the Qur’ān, without discussing its nature, or the ‘*illah* without revealing that God is the single cause, and that *ratios legis* are no more than signs and indicants that have no impact. This is all the duty of the judicious legal theorist. The challenge for himself, as with those before him, was to conceptualise this belief system within his legal theory. And it is here that I conclude with a Ghazālīan quote, reminding the reader of the precise method and *theoretical doctrine* that he was to stipulate within his *Iqtiṣād* and applied within his *Mustaṣfā*, and has been realised throughout the course of this dissertation, especially in the comparative studies provided,

“I say that the aim of the proponent of a certain doctrine is to show conclusively the superiority of his position over the other’s position, and this has been attained decidedly. For there can only be one correct position among these three, or a fourth position should be invented, which is unintelligible. The superiority of the one we advocate, when compared to the two endpoints that oppose it, is known decisively. If a position must be adopted, and there are only these three, and this one is the closest to the truth, then it must be adopted. There may remain some troubling difficulty that follows from this position, but those that follow from the others are far more troubling. It is possible to give some resolution to the one difficulty, but to eliminate it completely-given that the object of our reflection is the eternal attributes, which transcend the understanding of mankind-is unachievable without long elaboration that is unsuitable for this book. This is the general discussion.”⁶⁷⁴

⁶⁷⁴ Al-Ghazālī, *Al-Ghazali’s Moderation in Belief*, 133–34.

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