

early Ḥanafī line—"the deliberate acts of the Prophet are divided into three aspects—*wājib*, *nadb*, and *mubāḥ*.⁸⁸ But the *fard* is what is of a higher rank of obligation; *wājib* is below *fard*. Don't you see that we say *al-witr* is *wājib* but not *fard*?"⁸⁹

The Ḥanafī concept of the *fard* arises from the theological environment of the 2nd Islamic century. In that period figures identified as Murji'ites formulated the notion that there were two sets of required acts. One was tied to faith as an index of one's inner affirmation of God and His Messenger; the other was a "detail" of one's faith—important but not definitive. Abū Ḥanīfah was among those who held this position, and the Ḥanafī stance, which grows out of these early formulations, is truly "Ḥanafī". It is worth repeating that many Murji'īs, probably including Abū Ḥanīfah, did not believe that mere internal assent was enough to avoid *kufr*; one must affirm, preferably through performance, the minimal acts of the cultus and other distinctive behaviors of Muslims, such as the avoidance of wine and pork.

Later Ḥanafīs, perhaps unaware of whence their dogmas had come, carried on these dogmas as distinctive features of their school. They continued to insist on two classes of required acts. They still saw the cultus as a bridge between the psychological assent of faith and the practices of Islam. They still believed that the set of requisite acts could not increase nor decrease, and that to deny those acts was to leave the community. Without an understanding of the earliest days of Islamic theology, it is impossible to grasp the origins, significance, and implications of this Ḥanafī jurisprudential-theoretical position.

Perhaps more striking still, through this dispute we can perhaps get a glimpse of a moment in Islamic history when the place of *sunnah*, and then later of the technically weaker *sunnah*, was more limited. It seems that the Ḥanafīs even in the 5th century wanted to relegate all univocal traditions to an epistemological second-class status. Yet even this was a reflex of a more radical, and earlier position, that made all practices derived from *sunnah* of a quality inferior to those derived from Qur'ān. In this time before *sunnah* was fully scriptural, the Ḥanafīs distinguished between the core practices of membership in the Islamic community, and ancillary obligations that came subsequent to one's faith-commitment.

⁸⁸ *Fuṣūl*, 3:205.

⁸⁹ *Fuṣūl*, 3:236.

V. *Excursus on School History:*
Figures Associated with Positions on This Issue

The question remains: How distinctively Ḥanafī was this position in the early period of Islamic legal and theological theory? Were the Ḥanafīs alone holding that there was a distinction to be made between levels of obligation, and that the criterion for determining the level was Qur'ānic certainty as opposed to *sunnic* probability?

A. *Shāfi'ī*

The sources all insist that it was al-Shāfi'ī who established that *farḍ* and *wājib* were one,⁹⁰ but I was unable to find this in any work of al-Shāfi'ī. Indeed, in the famous treatise on 'ilm, in the *Risālah*,⁹¹ he justifies the hierarchy of scholars by reference to *farḍ al-kifāyah* (*jihād* is something *farada allāhu* . . .). To do so he argues that religious responsibilities are of two sorts; one, such as *ḥajj*, *zakāh*, the forbidding of *zinā*, *qatl*, *sariqah* and *khamr* and these are things the 'ibād are charged to know and do (§963). For these, the data ('ilm) are present explicitly (*naṣṣ^{am}*) in the Book of God and generally among Muslims, and no Muslim disputes its narration from the Messenger nor its oblation (*wujūbuh*) upon them (§964). The second type is what one may be relieved of, and it is among the derivatives of the duties (*furū' al-farā'id*). For these there is no explicit Qur'ānic text (*naṣṣ^{im} kitāb^{im}*), nor is it in most of the texts of the *sunnah*; they are from what he calls *al-akhbār al-khāṣṣah*, not *al-akbār al-'āmmah*. These may allow of interpretation (*ta'wīl*) (§967). His interlocutor asks if there are exceptions from being obligatory (*wājib*) like the obligation of the previous sort of 'ilm (*wujūb al-'ilm qablahu*). . . so that one who defaults on knowing it is not a sinner.

In other words, Shāfi'ī seems to have a category of *farā'id* that everyone must do, and another category, with no name, for which only those learned in obscure *sunnah* sources are responsible. Like Ṣadr al-Sharī'ah, he links the weaker material and the lesser obligation to that which allows of interpretation (*ta'wīl*).⁹²

⁹⁰ E.g., Bazdawī, *Kanz al-uṣūl*, 2:303.

⁹¹ Muḥammad b. Idrīs al-Shāfi'ī, *Risālah*, 357.

⁹² A work attributed to al-Shāfi'ī, "Bayān farā'id allāh ta'ālā," in *Kitāb al-Umm*, seems to confirm that for him or his circle, the *farā'id* consisted of the "four pillars,"

So, on the evidence I can find, al-Shāfi'ī sees a class of acts called *fard* whose epistemological justification is firmer than other obligations. Defaulting on the latter does not make one a sinner, while defaulting on the former presumably does.⁹³

B. *Mālikī*

Early Mālikī positions are difficult to tease out.⁹⁴ Nonetheless we can find clues to a Mālikī position rather similar to that of the Ḥanafīs. For example in the *Kitāb al-Hudūd* of the Mālikī al-Bājī (d. 471)⁹⁵ in the article “*wājib*” he says, “Some of our [Mālikī] colleagues say that with regard to *wājib*, though in defaulting on it there is punishment, its rank is below the rank of *fard*. . . . *Qādī* Abū Muḥammad held in some of his statements that the *wājib* is what is a sin to default upon and but one needn't make it up (*qaḍā'*). And that *fard* is what is incumbent (*yalzam*) and with defaulting on it being a sin, one must make it up”.

Another source, this one from Mālikī Spain is not himself a Mālikī. The Zāhirī Ibn Ḥazm reports⁹⁶ that some Mālikīs distinguished between *fard* and *wājib* and said e.g., that *al-witr* or *al-idhān* and other items are *wājib* and not *fard*. He says, “as for *ṣalāh* on Friday and

plus a few distinctive Islamic practices—cutting the hand of the thief, etc. *Farā'id* are of two sorts: requirements that appear in the Book in sufficient detail as to be adequate in themselves; and those that require further detail through interpretation (*ta'wīl*), or information from the “tongue of the Prophet”. I am doubtful that the style of this essay is authentically al-Shāfi'ī's, but it may record the moment when *hadīth* were beginning to be a full-fledged component of Islamic scripture. It seems from Schact's appendix to *Origins*, that he regards it as authentic (it is Tr. V).

⁹³ This idea does not die with al-Shāfi'ī. I am unable to trace the concept further in the Shāfi'ī school, no doubt due to its suppression in school texts. But Abū Ishāq al-Isfarā'īnī is quoted as saying that “*fard* is that whose obligatory quality is agreed upon, and *wājib* is that about whose obligatory quality there is disagreement”. *Baḥr* 1:183. This suggests that it was only in the 400s that this idea was purged from Shāfi'ism.

⁹⁴ Mālikī *uṣūl*, not only in its early days but in general, is nearly as understudied as the Ḥanafī. (Muḥammad Faḍl, whose work is included in this volume, is exceptional). One of two sources regularly cited, Qarāfī's *Tanqīh*, seems as much Shāfi'ī as it does Mālikī, as we might expect from a writer whose career was lived in Cairo, and whose book is a précis of a Shāfi'ī work. The other, Ibn Rushd's *Bidāyat al-Mujtahid*, is certainly grounded in the sober work of his grandfather (the *Muqaddimāt*). Yet it is a work primarily of *furū'*, and it remains to be seen how much his *falsafah* shaped his presentation. A fuller comparison with other Mālikī works, many of them still in manuscript, seems essential for *uṣūl* studies.

⁹⁵ Bājī, “*Kitāb al-Hudūd*,” Madrid ed., 19f.

⁹⁶ Abū Muḥammad 'Alī b. Aḥmad Ibn Ḥazm, *Ihkām*, 3:79.

the call to prayer . . . these are incumbent *farā'id*, (*farā'id wājibah*) and one who defaults on them is in rebellion against God because of the command of the Prophet to do them. But as for the worship of the two holidays and *al-witr* . . . these are not *farā'id*, but “voluntary acts” (*taṭawwū'*) that are reprehensible to neglect. . . . though one is not thereby in rebellion [against God].⁹⁷ Later Ibn Ḥazm seems to embrace this position as well.⁹⁸ A much more thorough investigation of the Mālikī sources would be necessary before we could locate the early Mālikīs on the question of *farḍ* and *wājib*. What we do find is enough to say that for some at least, the Ḥanafī position was persuasive, so that they too had two categories of obligation.

C. *The Ḥanbalīs*

When we turn to the Ḥanbalīs, which in its early phases was also an exclusively Irāqī school, we see the progenitor taking what looks very similar to the Ḥanafī position. That he did so might help us understand the impulse that shaped the Ḥanafī formulation of this problem. In the following passage, Ibn Taymīyah reports the early Ḥanbalī position, then “corrects” to the school orthodoxy of his time. Ibn Taymīyah says that “Ibn ‘Aqīl reports:

The *farḍ* is what is incumbent (*mā lazim*⁹⁹) on the basis of the Qur'ān, and the *wājib* is what is from the *sunnah*. This is the most obvious sense (*zāhir*) of what Aḥmad said in most of his texts. Ibn Shāqllā⁹⁹ says this. . . . In an account from al-Athram [Aḥmad said]: “I don't say '*farḍ*' save for what is in the Book of God”. . . . [Aḥmad] said in the account of Ibn Dāwud and Ibn Ibrāhīm “*al-maḍmaḍah* (rinsing) and *al-istīnshāq* (snuffing of water)¹⁰⁰ are not called *farḍ*; nothing is called *farḍ* except what is in the Book of God”. It was transmitted similarly from him by al-Marūdhī: He was asked about the *ṣadaqah* of the fast-breaking—was it *farḍ* or not? He said “I wouldn't dare to say that it

⁹⁷ The term *taṭawwū'* as a technical term is difficult to track down. It seems not ordinarily to be part of Ibn Ḥazm's vocabulary, but al-Juwaynī knows the term in this sense, and defines it as that by virtue of which a responsible-person is obedient after a duty (*mā ta' bihi al-mukallaḥ ba'd al-farḍ*), in *al-Kifāyah fī al-jadal* 41/20 (cited in 'Ajam, *Muṣṭalahāt uṣūl al-fiqh*, 1:450a). For most it is just a synonym of *mandūb*.

⁹⁸ Ibn Ḥazm, *Ihkām*, 4:81. There is some evidence that the Zāhirīs, or at least Ibn Ḥazm preferred the term for all incumbent acts. *Ihkām*, 3:77f.

⁹⁹ Identified by editor as Abū Ishāq Ibrāhīm b. Aḥmad al-Baghdadī al-Ḥanbalī, died in Rajab 369/980.

¹⁰⁰ Both parts of the *wudū'* ritual.

is a *fard*," he said, "one is prevented from [using] the name [*fard*] by his declaring its obligatoriness. . . ."¹⁰¹

The *qādī* [Abū Ya'lá] said: "The obvious sense of this distinction between *fard* and *wājib* is that *fard* is an expression of the *wājib* that is of a higher level; it is knowledge of God most high (*hiy' ma'rifat' llāhī ta'ālā*). The *fard*s are those things which are established by superabundance (*istafāḍah*) and plural-transmission. The *wājib* is that which is not a *fard*, and is an expression of what is of a lower level. It is that which is established by means of *ijtihād*—and it is permitted by a [counter-] *ijtihād* to not do such things as *al-maḍmaḍah* and *al-istin-shāq*, and the *ṣadaqah* of the fast-breaking—or, what is established for the one-made-responsible upon himself without God's making it obligatory, such as oaths". . . . It is related from [Abū Ya'lá] by 'Abdallāh and Abū Ḥārith that he said, "everything connected with *ṣalāh* is a *fard*". But [says Ibn Taymīyah], it is obvious that the *tasbīh* in bending and prostrating, and the *takbīr* other than the *takbīr al-ihrām* and saying '*sami'a llāh li-man hamidah*' and the first *tashahhud*¹⁰² and such things which are *wājib*, since [they are] established by means of a method which permits of *ijtihād*, are called *fard*. Thus, the *fard* and *wājib* are equivalent.¹⁰³

That the application of the term *fard* for Qur'ānic obligations and *wājib* for *sunnī* obligations was an authentic position of the *ahl al-ḥadīth* can be confirmed from the fact that Ibn Qutaybah (d. 276/889), a student of Ibn Rahwayh (d. 237/851), in his *Kitāb al-Ashriba* says

[There is] the forbidding (*tahrīm*) of *khamr* by the Book, and the forbidding of *al-muskīr* by the *sunnah* and the cultural (*ta'dīb^m*) condemnation (*kirāhah*) of drinks that make one languid and stupefy. But the forbidden (*al-muḥarram*) is of two sorts:

One is what God the most high has forbidden textually (*naṣṣ^m*) in the noble Qur'ān—such as carrion and blood and the flesh of swine, and *khamr*. It is a duty (*fard*) upon Muslims to avoid them and not consume them. . . . Similar to these forbidden things are the duties (*farā'id*) such as the five *ṣalāh*, *zakāt al-māl*, fasting the month of Ramaḍān—no one may default on these things.

¹⁰¹ Other Ḥanbalīs such as al-Kalwadhānī accept this ranking. Al-Kalwadhānī, *al-Tamhīd fī uṣūl al-fiqh*, 1:63–4. The editor (same page) also asserts that Ibn 'Aqīl says the *fard* "is what is established by a text (*naṣṣ*) or a definitive indicant (*dalīl qāṭi'*)," citing *al-Wāḍiḥ*, 1:fol 7b.

¹⁰² All are parts of the *ṣalāh* ritual.

¹⁰³ Āl Taymīyah, *al-Musawwadah*, 50–1.

The other [kind of] forbidden thing, is a thing that the Messenger of God forbade, such as birds of prey, wild animals, domesticated donkeys, or like his forbidding of silk and gold and brocade. This is *wājib*, and it is incumbent on Muslims to forbid it, but it is not like the first obligation, it has not the seriousness (*taghlīz*) for the one who errs, like the seriousness of the first.¹⁰⁴

He goes on to argue that in the case of brocade, silk and gold, there is in fact *ḥadīth* to the effect that a little of them is permissible. He even finds a *ḥadīth* where the Prophet permitted a man to drink the *nabīdh* he had with him, provided he didn't return to drinking thereafter.¹⁰⁵

Thus it is clear that formative figures in the Ḥanbalī movement shared with the early Ḥanafīs the idea that obligation had two degrees, depending on the nature of the source. If Ibn Taymīyah is correct, the transition to what became the later school-position occurred in the 400s or so. In sum, we find that the Ḥanafī position is unique to them only in that they retained the distinction between degrees of obligation according the type of source throughout their history. Other schools abandoned this perspective in favor of one that simply categorized acts without regard to the source of their categorization.

VI. Conclusion

I have tried to establish three things in this paper. The first is that in classical discussions the Shāfi'ī and Ḥanafī schools were talking past each other. The Shāfi'ī were cataloging acts, the Ḥanafīs were drawing the lines of citizenship within and without the community.

Second, the Ḥanafī position arose precisely when the issue of who was within, and who was without, the orbit of Islamic citizenship was most contested. It is in the discussion of faith that we find the origins of the distinction between *farḍ* and *wājib*. The *farā'id* were those acts that were the praxic *sine qua non* of membership in the community, the outward indices of an inward disposition to faith. As Islamic epistemology developed, the Ḥanafīs (or at least some Ḥanafīs), and members of other schools as well, at first correlated the indispensable with the Qur'ān, and the less incumbent with

¹⁰⁴ Ibn Qutaybah, *Kitāb al-ashribah*, 95.

¹⁰⁵ Ibn Qutaybah, *Kitāb al-ashribah*, 96.

sunnah. As *sunnah* became a scriptural source equal to the Qur'ān, the Ḥanafīs shifted to distinguishing between Qur'ān and plurally-transmitted *sunnah* on the one hand—as the source of *fard* obligations—and univocal *sunnah* on the other hand as the source of *wājib*-obligations. The forgoing arguments make it difficult to maintain that Ḥanafī *uṣūl* is the *uṣūl* of *fiqh*, whereas Shāfi'ī *uṣūl* is the *uṣūl* of theology. It is clear that for all schools the roots of the *uṣūl* enterprise lie in both domains, and that an attempt to understand one discipline without understanding the other is doomed to fail.

Finally, I hope I have demonstrated the importance of studying the Ḥanafī sources as well as the more often-studied Shāfi'ī and Ḥanbalī ones when we consider the topic of *uṣūl al-fiqh*. Even such a fundamental feature of *uṣūl* as “the five categories of acts” is profoundly altered when we consider the development and articulation of it within all of the Sunnī schools.

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MU‘TAZILISM AND MĀTURĪDISM IN ḤANAFĪ LEGAL THEORY

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I. Introduction

This paper addresses the theological associations of several issues of *uṣūl al-fiqh*. It is appropriate to speak of associations because the relation between theology and legal theory is not in most cases one of implication in the strict sense; that is to say, theology generally underdetermines legal theory, and legal theory is far from an infallible guide to theology. Nonetheless there are associations, patterns that can be discerned. In fact we can distinguish between two levels of analysis here: the associations that modern scholars may detect and those associations perceived by the theologians and legal theorists. The focus here will be on associations of the latter sort. These associations are themselves a part of the history of both Islamic theology and legal theory.

My specific interest here will be with a number of such associations made by Central Asian Ḥanafīs with respect to doctrines of legal theory expounded by Ḥanafīs in Iraq.¹ As is well known for a time Iraqi Ḥanafism was strongly influenced by Mu‘tazilism.² This influence as well as the gradual spread among Ḥanafīs in all regions of the theology generally referred to as Māturīdism has been traced

¹ Entirely excluded here are a number of theological movements such as Najjārism and Karrāmism with obvious Ḥanafī connections. The legal theory of these movements is rarely attested in the sources. Thus the labels “Iraqī Ḥanafī” and “Central Asian Ḥanafī” in this paper are to be understood as reflecting their use in the literature of Ḥanafī *uṣūl al-fiqh*. The issues of theology and legal theory raised are treated only within the framework of the paper.

² The popularity of Mu‘tazilism among Ḥanafīs was, of course, noted by medieval writers. Thus, for example, the Twelver Shī‘ite Ibn Ṭāwūs (d. 664/1266) speaks of “the earlier and later followers of Abū Ḥanīfah from among the Mu‘tazilīs”. *Al-Ṭarā‘if fi ma‘rifat madhāhib al-tawā‘if*, ed. al-Sayyid Mahdī al-Rajā‘ī (Beirut: Mu‘assasat al-Balāgh, 1419/1999), 357. The Hanafī heresiographer Abu ‘l-Ma‘ālī Muḥammad b. ‘Ubayd Allāh al-Ḥusaynī al-‘Alawī (5th/11th century), on the other hand, goes no further than to acknowledge that some of the Iraqi Ḥanafīs were Mu‘tazilī in theology. *Bayān al-adyān*, ed. ‘Abbās Iqbāl Ashtiyānī and Muḥammad Taqī Dānesh-pazhuh (Tehran: Intishārāt-i Rawzaneh, 1997), 47.

by Madelung in a richly documented article published in 1971.³ Very recently (1997) a comprehensive examination of the roots and teachings of Māturīdism was provided by Ulrich Rudolph.⁴ Much of relevance can also be found in Josef van Ess' *Theologie und Gesellschaft*.⁵ While many questions remain unanswered, the theology has been well served by these publications, the legal theory, on the other hand, almost entirely neglected.

Although some of the most prominent Iraqi Mu'tazilī theologians were affiliated with the Ḥanafī *madhhab*, the Iraqi Ḥanafī Mu'tazilīs whose opinions are most discussed in Central Asian works are not drawn from this top flight of theologians. Thus, for example, the Central Asian works are not, generally speaking, valuable sources for the legal theory of the Ḥanafīs Abu 'l-Qāsim 'Abd Allāh b. Aḥmad al-Ka'ḫbī (d. 319/931) or Abū 'Abd Allāh al-Ḥusayn b. 'Alī al-Baṣrī (d. 369/980). The Iraqi theorists of greatest interest to the Central Asians were the Baṣran 'Īsā b. Abān (d. 221/836), a student of al-Shaybānī (d. 189/804), Abu 'l-Ḥasan 'Ubayd Allāh b. al-Ḥusayn al-Karkhī (d. 340/951) and al-Karkhī's student Abū Bakr Aḥmad b. 'Alī al-Rāzī al-Jaṣṣāṣ (d. 370/981), all Mu'tazilīs, but not renowned theologians whose opinions on theology were preserved in the Mu'tazilī tradition.⁶ Our understanding of their theology must thus be largely derived from a general understanding of contemporary Mu'tazilism.

The Central Asian Ḥanafī tradition is better documented for our purposes than the 'Iraqī. We have extant works of both theology and legal theory. The most famous theologian of the Central Asian

³ Wilfred Madelung, "The Spread of Māturīdism and the Turks", in *Actas do IV Congresso de Estudos Arabes e Islâmicos*, Coimbra-Lisboa 1968 (Leiden, 1971), 109–168. Reprinted in his *Religious Schools and Sects in Medieval Islam* (London: Variorum Reprints, 1985). See also his *Religious Trends in Early Islamic Iran* (Albany: Bibliotheca Persica, 1988), 18–20.

⁴ Ulrich Rudolph, *Al-Māturīdī und die sunnitische Theologie in Samarqand* (Leiden: E.J. Brill, 1997).

⁵ Josef van Ess, *Theologie und Gesellschaft im 2. und 3. Jahrhundert Hidschra*, 6 vols. (Berlin: Walter de Gruyter, 1991–1997). The theological works attributed to Abū Ḥanīfah are, for example, treated in 1:192–211.

⁶ The *uṣūl al-fiqh* positions of al-Karkhī have been collected by Ḥusayn Khalaf al-Jubūrī, *al-Aqwāl al-uṣūliyyah li 'l-Imām Abi 'l-Ḥasan al-Karkhī* (n.p., 1409/1989). I owe this reference to Dr. Joseph Lowry. The complete *uṣūl al-fiqh* text of al-Jaṣṣāṣ has been edited under the title *al-Fuṣūl fi 'l-uṣūl* by 'Ujayl Jāsim al-Nashamī (Kuwait: Wizārat al-Awqāf, 2nd printing 1414/1994). 4 vols. reprinted by Maktabat al-Irshād, Istanbul, and 2 vols. by Muḥammad Muḥammad Tāmīr, Dār al-Kutub al-'Ilmīyah, Beirut, 1420/2000. Earlier partial editions are *al-Fuṣūl fi 'l-uṣūl: abwāb al-ijtihād wa 'l-qiyās*, ed. Seedullal (sic) Qazī, (Lahore, al-Maktabah al-'Ilmīyah, 1981) and *al-Ijmā'*, ed. Zuhayr Shaftiq Kabbī (Beirut: Dār al-Muntakhab al-'Arabī, 1413/1993).

Ḥanafī tradition is Abū Maṣṣūr Muḥammad b. Muḥammad al-Māturīdī (d. 333/944), and theology of the Central Asian tradition has commonly been labeled Māturīdism. It is clear, however, that such a label does not accurately reflect the self-understanding of the Central Asian Ḥanafīs in their classical period that is of particular interest to us here. Its use in this paper is no more than a convenient anachronism. In his theological treatise *Tabṣirat al-adīllah*, Abū ‘l-Mu‘īn Maymūn b. Muḥammad al-Nasafī (d. 508/1114), almost certainly the most important Central Asian Ḥanafī theologian after al-Māturīdī, provides a fairly detailed account of al-Māturīdī’s Central Asian predecessors. This account was provoked by the claim of an Ash‘arī opponent that one of the distinctive theological doctrines Central Asian Ḥanafism was of recent vintage. This is the doctrine that distinguishes between God’s eternal attribute of “bringing into being” (*takwīn*) and “what is brought into being” (*mukawwan*).⁷ Al-Nasafī cites Central Asian theologians active prior to and around the time of al-Māturīdī who were already defenders of this teaching against various opponents.⁸ Here and in other of his writings he is concerned to make the point that the theological tradition to which he belongs long antedates al-Māturīdī and that it is an integral part of a single system of theology and law that follows Abū Ḥanīfah, a system characterized above all by its staunch anti-Mu‘tazilism.⁹

It is also clear from al-Nasafī and other sources that al-Māturīdī’s writings came to fall into neglect and that interest in the study of theology among the Central Asian Ḥanafīs declined. The revival of interest in theology comes with Abū ‘l-Mu‘īn al-Nasafī and his contemporaries, the two Bazdawī brothers: Abū ‘l-Yusr Muḥammad b.

⁷ For an introduction to this question see Fathalla Kholeif, *A Study on Fakhr al-Dīn al-Rāzī and his Controversies in Transoxania* (Beirut: Dār el-Machreq, 1966), 17–22 (Arabic), 39–45 (trans.) and 89–104 (commentary); and Rudolph, *al-Māturīdī*, 317–8.

⁸ *Tabṣirat al-adīllah*, ed. Claude Salamé (Damascus: Institut français de Damas, Damascus, 1990–1993), 1:355–358. The incomplete one volume edition by Hüseyin Atay (Ankara: Risālat al-Shu‘ūn al-Dīniyah, 1993) is not now accessible to me. This important passage, the starting point for situating al-Māturīdī’s theology in its Central Asian background (as noted by Rudolph, *al-Māturīdī*, 135–6), was first edited in an article by Muḥammed b. Tavīt at-Tancī, “Abū Maṣṣūr al-Māturīdī”, *Ankara İlahiyat Fakültesi Dergisi* (1955), 4:1–12.

⁹ On this point, see now Rudolf, *al-Māturīdī*, 4–7. Thus al-Nasafī wrote of *a’immat aṣḥāb Abī Ḥanīfah al-sālikīn tariqatahu fi ‘l-uṣūl wa ‘l-furū‘ al-nākiḥīn ‘an al-‘itizāl*. *Tabṣirat al-adīllah*, 1:356. Elsewhere he described al-Māturīdī as *min ashadd al-nās ittibā‘an li Abī Ḥanīfah radiya Allāh ‘anhu fi ‘l-uṣūl wa ‘l-furū‘ jemi’an*. *Al-Tamhīd fi Uṣūl al-Dīn*, ed. ‘Abd al-Hayy Qābil (Cairo: Dār al-Thaqāfah, 1407/1987), 16–17. The corresponding section of *Tabṣirat al-adīllah* (1:162) describes him as *a’raf al-nās bi-madhāhib Abī Ḥanīfah*.

Muḥammad (d. 493/1100) and his older brother, Abu 'l-'Uṣr 'Alī b. Muḥammad (d. 482/1089).¹⁰ The latter was the author of the most influential Central Asian Ḥanafī treatise of *uṣūl al-fiqh*, from which stem the extremely popular *Manār al-anwār* of Abu 'l-Barakāt 'Abd Allāh b. Aḥmad al-Nasafī (d. 710/1310) and *al-Tawdīḥ* of Ṣaḍr al-Sharī'ah 'Ubayd Allāh b. Mas'ūd al-Maḥbūbī (d. 747/1346).¹¹ Significantly Abu 'l-'Uṣr al-Bazdawī saw fit to preface his work of legal theory with a brief account of Abū Ḥanīfah as a theologian.¹² A student of both Abu 'l-Mu'īn and Abu 'l-Yusr al-Bazdawī was 'Alā' al-Dīn Muḥammad b. Aḥmad al-Samarqandī. (d. 539/1144), author of an outstanding legal treatise *Tuhfat al-fuqahā'*, which provided the inspiration for the famed *Badā'ī' al-ṣanā'ī'* of his son-in-law 'Alā' al-Dīn Abū Bakr b. Mas'ūd al-Kāsānī (d. 587/1191).¹³ Al-Samarqandī's *Mīzān al-uṣūl fī natā'ij al-uqūl* is the most theologically engaged treatise of legal theory from the Central Asian tradition we have and consciously harks back to the concern of al-Māturīdī himself in his writings on legal theory, *Kūtāb ma'ākhidh al-sharā'ī'* and *al-Ḥadal*, to keep theology and *uṣūl al-fiqh* in harmony.¹⁴ Characteristically *Mīzān*

¹⁰ On the Bazdawī brothers, see G. Flugel, "Die Classen der hanefitischen Rechtsgelehrten", *Abhand. d. K. S. Ges. d. Wiss.*, 8:275, 307–308.

¹¹ It was also the chief Ḥanafī source for Aḥmad b. 'Alī Ibn al-Sa'ātī's (d. 694/1295) *Badā'ī' al-nizām*, recently published under the title *Nihāyat al-wuṣūl ilā 'ilm al-uṣūl*, 2 vols., ed. Sa'd ibn Gharīr al-Salmī (Mecca: Jāmi'at Umm al-Qurā, 1418). Ibn Khaldūn regards al-Bazdawī's book as the leading Ḥanafī work of *uṣūl al-fiqh* after the time of al-Dabūsī and also mentions the popularity of Ibn al-Sa'ātī's text. See *al-Muqaddimah* (Cairo: al-Maktabah al-Tijārīyah), 456; trans. F. Rosenthal (New York: Pantheon Books), 3:30. On Ṣaḍr al-Sharī'ah see now Aḥmad S. Dallal, ed. and trans., *An Islamic Response to Greek Astronomy* (Leiden: E. J. Brill, 1995). Muḥammad Mazhar Baqā observes, I think correctly, that al-Nasafī's *al-Manār* was the most frequently commented upon *uṣūl al-fiqh* work after Ibn al-Ḥājib's *al-Mukhtaṣar*. See his *Muḥjam al-uṣūliyyīn*, (Mecca: Jāmi'at Umm al-Qurā, 1414–), 3:11.

¹² Al-Bazdawī, *Uṣūl al-fiqh*, on the margin of 'Abd al-'Azīz b. Aḥmad al-Bukhārī, *Kashf al-asrār* (reprint, Beirut: Dār al-Kutub al-'Arabī, 1394/1974), 1:7–11. Neither *al-Manār* nor *al-Tawdīḥ* have such a section, but al-Nasafī did incorporate one in his own commentary on *al-Manār*, *Kashf al-asrār* (Būlāq: al-Maṭba'ah al-Amīriyah, 1316), 1:4–6. Al-Bazdawī's preface was later quoted in theological works, for example, Aḥmad b. Muḥammad al-Maghnisāwī (d. 1000/1592), *Kūtāb sharḥ al-Fiqh al-akbar* (Hyderabad, Deccan: Majlis Dā'irat al-Ma'ārif al-Nizāmīyah, 1321), 2–3. It is also an early witness to the theological writings ascribed to Abū Ḥanīfah. Kamāl al-Dīn Aḥmad b. Ḥasan al-Bayādī (d. 1098/1687), *Ishārāt al-marām min 'ibārāt al-imām*, ed. Yūsuf 'Abd al-Razzāq (Cairo: Maktkabat Muṣṭafā al-Bāb al-Ḥalabī, 1368/1949), 22.

¹³ Rudolph, *al-Māturīdī*, 203, erroneously gives Abu 'l-'Uṣr as al-Samarqandī's teacher. See Muḥammad 'Abd al-Ḥayy al-Laknawī, *al-Fawā'id al-bahīyah fī tarājīm al-hanafīyah*, ed. Aḥmad al-Zu'bī (Beirut: Dār al-Arqam, 1418/1998), 308.

¹⁴ Against the more commonly found *Ma'khadh al-sharā'ī'*, I read the first word as a plural so that the title corresponds to *Uṣūl al-fiqh*, as do Muḥammad Zāhid

al-uṣūl opens with a searching examination of the proper definition of *ḥukm* in light of the *takwīn/mukawwan* distinction.¹⁵

There are important Central Asian Ḥanafī legal theorists who appear to stand outside the kind of theology represented by al-Māturīdī, al-Nasafī and al-Samarqandī. One is Abū Zayd ‘Abd Allāh b. ‘Umar al-Dabūsī (d. 430/1039), another Abū Bakr Muḥammad b. Aḥmad al-Sarakhsī (d. 483/1090). The former, a jurist of great historical influence, seems to have been more non-Mu’tazilī than anti-Mu’tazilī.¹⁶ Later anti-Mu’tazilī Central Asians thus came to see him as uncritical in his acceptance of certain doctrines of Iraqi legal theory. Al-Sarakhsī shared the anti-Mu’tazilism of his contemporaries the Bazdawī brothers but was otherwise inclined against deeper theological inquiry.¹⁷

II. Infallibilism

The issue of legal theory that clearly stands out in the Central Asian Ḥanafī literature as the most theologically sensitive is that of the evaluation of *ijtihād*, the *ḥukm* of *ijtihād* as it is termed.¹⁸ As is well

al-Kawtharī in his preface to al-Bayāḍī, *Ishārāt al-marām min ‘ibārāt al-imām*, 7; and Muḥammad Zakī ‘Abd al-Barr in his edition of Muḥammad b. ‘Abd al-Ḥamīd, al-Usmānī, *Badhl al-naẓar fi’l-uṣūl*, (Cairo: Dār al-Turāth, 1412/1992), 663, n. 2.

¹⁵ *Mīzān al-uṣūl*, ed. ‘Abd al-Malik ‘Abd al-Raḥmān al-Sa’dī (Baghdad: Wizārat al-Awqāf, 1407/1987), 1:111–123. The earlier edition by Muḥammad Zakī ‘Abd al-Barr (al-Dawḥah, Qatar: Maṭābi‘ al-Dawḥah al-Ḥadīthah, al-Dawḥah, 1404/1984) is unavailable to me. Cf. Maḥmūd b. Zayd al-Lāmishī, *Kitāb fi uṣūl al-fiqh*, ed. ‘Abd al-Majīd Turkī (Beirut: Dār al-Gharb al-Islāmī, 1995), 54–5. In the preface to his edition of another work of al-Lāmishī, *al-Tamhīd li-qawā‘id al-tawḥīd* (Beirut: Dār al-Gharb al-Islāmī, 1995), p. 18, Turkī suggests that the evidence of al-Lāmishī’s writings on theology and legal theory makes it likely that he was a student of Abu ‘l-Mu‘īn al-Nasafī. In fact, al-Lāmishī’s small book on *uṣūl al-fiqh* is virtually a digest of al-Samarqandī’s *Mīzān al-uṣūl*, a work that Turkī nowhere cites.

¹⁶ Al-Dabūsī has been largely neglected by modern scholarship, but see Robert Brunschwig, “La théorie du *qiyās* juridique chez le ḥanafite al-Dabūsī (v^e/xi^e siècle)”, in *Orientalia hispanica sive studia F. M. Pareja octogenario dicata*, ed. J. M. Barral (Leiden: E. J. Brill, 1974), 1/1: 150–154; reprinted in his *Études sur l’Islam classique et l’Afrique du Nord*, ed. Abdel-Magid Turki, (London: Variorum Reprints, 1986).

¹⁷ Al-Sarakhsī, *al-Mabsūt* (Cairo: Maṭba‘at al-Sa‘ādah, 1324; reprint, Beirut: Dār al-Ma‘ārif, 1414/1993), 1:4. There is a recent study of the linguistic aspects of al-Sarakhsī’s *uṣūl al-fiqh*, Tahsin Görgün, *Sprache, Handlung und Norm: eine Untersuchung zu “Uṣūl al-fiqh” und “Kitāb al-Siyar” des Šams al-‘Imma Muḥammad b. Abī Saḥl al-Sarakhsī (1009–1090 n.C.)* (Istanbul: ISAM, 1998). My thanks to Professor Ahmet Karamustafa for this reference.

¹⁸ A better rubric for the dispute as a question of law is *ḥukm al-mujtahidīn* as in al-Jaṣṣāṣ, *Uṣūl al-fiqh*, Kuwait ed., 4:295; Beirut ed., 2:377 (This section is not included in the partial edition of Qazī). The theological dispute is, however, precisely

known, various answers to this problem were worked out, and often couched in what were obviously intended to be “catchy” formulas. The field of legal theory is in fact strewn with dead slogans. Jurists in the various legal traditions concerned themselves with identifying the positions on the question held by the early jurists, especially of course the imāms of the *madhāhib*. Not surprisingly, these generally turned out to be the very positions that these jurists held.

Among the Iraqi Ḥanafis the favored theory of *ijtihād* was what, borrowing from the philosophy of science, we can call verisimilitude, most commonly referred to in the literature of *uṣūl al-fiqh* as the theory of *al-ashbah*.¹⁹ This theory was a version of infallibilism (*taṣwīb*), the theory that all *mujtahids* are correct on issues of law that admit of no more than probable opinion. All the answers at which the *mujtahids* arrive, however different, are correct, or perhaps more helpfully to moderns, there is no right answer to such questions. What is important is the process itself as leading to an answer, rather than the answer itself.

The *ashbah* version of infallibilism posited that among the discordant answers of the different *mujtahids* one answer might be privileged. Precisely how it might be privileged and what the consequences were for the *mujtahid* who had come upon this privileged answer were themselves subjects for debate. It is clear, however, that the function of positing such a privileged answer was to provide the *mujtahid* with a target for his *ijtihād*. The proponents of the theory of verisimilitude argued that without such a target the process of *ijtihād* was unintelligible. Still, as good infallibilists, they insisted that the answers of those *mujtahids* who missed the target were still correct. The supporters of the pure version of infallibilism challenged the proponents of verisimilitude to provide a coherent account of the privileged answer that they posited and one that still preserved the virtues of infallibilism in its pure form. The debate over verisimilitude was thus most heatedly conducted within the infallibilist camp.²⁰

over the epistemic value of *ijtihād*. For the literature on *ijtihād*, see the bibliography in Éric Chaumont's translation of Abū Ishāq al-Shīrāzī, *Kitāb al-lumā' fi uṣūl al-fiqh* (Berkeley: Robbins Collection Publications, 1999), 396–398.

¹⁹ See Marie Bernand, “Le problème de l'*ashbah* ou les implications ontologiques de la règle juridico-religieuse”, *Arabica* 37, fasc. 2 (July, 1990): 151–172.

²⁰ See, for example, Abū 'l-Ḥusayn al-Baṣrī, *Sharḥ al-'umad*, ed. 'Abd al-Ḥamīd Abū Zunayd (Medina: Maktabat al-'Ulūm wa 'l-Ḥikam, 1410), 2:277–292. The identity of this work (Vatican 1100) with the second volume of *al-Mujzī* of the Caspian

For the Iraqī Ḥanafīs, as for others, identifying the theory of *ijtihād* held by their early jurists was a delicate matter, involving the correct interpretation of obscure formulations (*alfāz multabisah*), as al-Jaṣṣāṣ admits. Upon minutely examining formulae transmitted in the name of al-Shaybānī, who reportedly attributed his position to Abū Ḥanīfah and Abū Yūsuf, al-Jaṣṣāṣ concludes that the inherited Ḥanafī position is verisimilitude. This was also the conclusion of his teacher Abu al-Ḥasan al-Karkhī and before al-Karkhī, ʿĪsā b. Abān had already used the distinguishing language of verisimilitude in his exposition of *ijtihād*.²¹ Although al-Jaṣṣāṣ's discussion of the attribution question can be shown to be incomplete and the formulae in the name of al-Shaybānī that he does chose to discuss are far from unambiguous, it is enough for us to note that a number of leading Iraqī Ḥanafīs, including al-Karkhī, al-Jaṣṣāṣ, Abū ʿAbd Allāh Muḥammad b. Yaḥyā al-Jurjānī (d. 397/1007), and Abū ʿAbd Allāh al-Ḥusayn b. ʿAlī al-Ṣaymarī (d. 436/1045) held the theory of verisimilitude and attributed it to their early masters.²²

When we turn to the Central Asian Ḥanafīs, matters are quite different. To my knowledge no Central Asian Ḥanafī text of *uṣūl al-fiqh* supports anything other than the theory of fallibilism (*takhtīʿah*), that is, the theory that on questions of law where certainty is not attainable, there is only one right answer, and this is the doctrine they attribute to the early jurists.²³ But in some of these texts, an additional

Zaydī Imām Abū Ṭalīq Yaḥyā b. al-Ḥusayn al-Nāṭiq bi'l-Ḥaqq (d. 424/1033) has been suggested by W. Madelung, *Der Imam al-Qāsim ibn Ibrāhīm* (Berlin: Walter de Gruyter, 1965), 179–180 and “Zu einigen Werken des Imam Abū Ṭalīb al-Nāṭiq bi'l-Ḥaqq, *Der Islam*, 63:1 (1986): 5–6. This identification is corroborated by citations from *al-Mujzī* in Yemeni writings, e.g., Ibn al-Wazīr, *al-Awaṣim wa 'l-qawāsim*, ed. Shuʿayb al-ʿArnaʿūṭ (Beirut: Muʿassasat al-Risālah, 1412/1992), 1:296–7 (corresponding to *Sharḥ al-ʿumad*, 2:303).

²¹ Al-Jaṣṣāṣ, *Uṣūl al-fiqh*, Kuwait ed., 4:297–8, Beirut ed., 2:378–9.

²² For al-Jurjānī, see Abu 'l-Wafā' Ibn 'Aqīl, *al-Wādiḥ fī uṣūl al-fiqh*, ed. ʿAbd Allāh b. ʿAbd al-Muḥsin al-Turkī (Beirut: Muʿassasat al-Risālah, 1420/1999), 5:358. For al-Ṣaymarī, see his *Masāʾil al-khilāf fī uṣūl al-fiqh*, Chester Beatty MS 3757, ff. 88a–b. Al-Ṣaymarī's work has been edited at least twice in dissertations: the masters' thesis of Rāshid b. ʿAlī b. Rāshid b. al-Ḥāy, Jāmiʿat al-Malik Muḥammad b. Saʿūd al-Islāmiyah, 1404 (Baqa, *Muʿjam al-uṣūliyyin*, 2:75), and the doctoral dissertation of ʿAbd al-Wāhid al-Jahdānī, Sorbonne Nouvelle, 1991 (al-Shīrāzī, *Kutāb al-lumaʿ*, 378; al-Lāmiṣhī, *Uṣūl al-fiqh*, 257–58). The attribution of verisimilitude to Hanafism is in fact quite common in the literature of *uṣūl al-fiqh*, for example, ʿĀl Taymiyah, *al-Musawwadah*, ed. Muḥammad Muḥyi al-Dīn ʿAbd al-Ḥamīd (Cairo: Maṭbaʿat al-Madani, 1384/1964), p. 501.

²³ The Sufi work *al-Taʿarruf li-madhhab ahl al-taṣawwuf* of Abū Bakr Muḥammad b. Ibrāhīm al-Kalābādhi (d. 380/990) would appear to endorse infallibilism. See the edition of A. J. Arberry (Cairo: Maktabat al-Khānjī, 1352/1934), 55–56; trans.

element is evident, an evaluation of this question of legal theory from a theological standpoint. Thus in his *Mizān al-uṣūl* 'Alā' al-Dīn al-Samarqandī identifies fallibilism as the doctrine of *ahl al-ḥaqq* or *ahl al-sunnah*.²⁴ His choice of theological labels here is not incidental. For the classical Central Asian literature the dispute over the evaluation of *ijtihād* involves the theologically sound theory of fallibilism and the Mu'tazilī theory of infallibilism in its different guises.²⁵

The identification of infallibilism as the teaching of the Mu'tazilīs is already found in Abu 'l-Layth Naṣr b. Muḥammad al-Samarqandī (d. 373/983).²⁶ But concern among the Central Asian Ḥanafīs with the question of the evaluation of *ijtihād* goes back further. Abū Muṭṭī' Makhūl b. al-Faḍl al-Nasafī (d. 318/930) was a supporter of fallibilism.²⁷ Abū Maṣṣūr al-Māturīdī (d. 333/944) held the position, that far from all *mujtahids* being correct, all *mujtahids* who did not arrive at the one correct answer had gone wrong "both beginning and end" and were thus entitled to no reward for their effort. In such unfortunate cases the only element that was of value and that might be rewarded was the *mujtahid's* good intention (*qasd*).²⁸ This is an unusually hard position, and may have been formulated in response

A. J. Arberry, *The Doctrine of the Sufis* (London: Cambridge University Press, 1935; reprint, 1977), 71–72. However, al-Kalābādhī, while using the formula of infallibilism (*kull mujtahid muṣīb*), at the same time urges *ihtiyāt* ("the more cautious and conservative course") and adherence to the consensus of "the two groups" (*farīqayn*), i.e., the Ḥanafīs and Shāfi'īs (mistranslated by Arberry, see Madelung, "The Spread of Māturīdism", 115, n. 24; 128, n. 45; and especially 137, n. 70), positions not easily reconciled with true infallibilism.

²⁴ Al-Samarqandī, *Mizān al-uṣūl*, 2:1050, 1052, 1055.

²⁵ Al-Samarqandī attributes the theory of verisimilitude to the more astute Mu'tazilīs (*hudhdhāq al-Mu'tazilāh*). *Mizān al-uṣūl*, 2:1052.

²⁶ Abu 'l-Layth al-Samarqandī, *Bustān al-'arīfīn* on the margin of his *Tanbīh al-ghāfilīn* (Cairo: n.p., n.d.; reprint, Delhi: Maktabat Ishā'at al-Islām, n.d.), 10–11. Abu 'l-Layth, who favors fallibilism as the correct position, records the dispute as one among the scholars. He does not explicitly label his position as that of the orthodox. On Abu 'l-Layth's theological position, see *Encyclopaedia Iranica*, 1:332–3 (J. van Ess).

²⁷ *Kitāb al-radd 'ala al-bida'*, ed. M. Bernand, *Annales islamologiques*, 16 (1980):122 (reading *ma'jūr* in place of *ma'khūdh* in line 19).

²⁸ Al-Samarqandī *Mizān al-uṣūl*, 2:1051. It is not entirely clear whether the formula ascribed to al-Māturīdī was actually used by him. It may, in any case, have been worded as a response to verisimilitude specifically, for verisimilitude was sometimes formulated in terms of the *mujtahid's* "being correct in the beginning, but not in the end" (*yuṣību ibtidā'an lā intihā'an*). See Tāj al-Dīn al-Subkī, *Jam' al-jawāmi'* with glosses of al-Bannānī on the commentary of al-Maḥallī (Cairo: Dār Iḥyā' al-Kutub al-'Arabīyah, n.d.), 2:390. It was also sometimes formulated in terms of the *mujtahid's* "going wrong in the end, but not the beginning". See al-Ḥusayn b. al-Qāsim, *Hidāyat al-uqūl* (Ṣan'ā': al-Maktabah al-Islāmiyah, 1401), 2:652; cf. al-Bukhārī, *Kashf al-asrār*, 4:31 (on the Mu'tazilīs who profess *al-ahaqq*). In al-Bazdawī, 4:18 and

to the infallibilism of the Iraqī Ḥanafīs.²⁹ The version of fallibilism that came to be most widely held by Central Asian Ḥanafīs did not go so far. It regarded the *mujtahid* who did not arrive at the correct answer as going wrong “in the end”, that is the outcome (*ḥukm*); his *ijtihād* was a proper action and would merit reward.³⁰ This was the position of Abu ‘l-Ḥasan ‘Alī b. Sa‘īd al-Rustughfānī (d. 350/961), a student of al-Māturīdī, and like him a leading figure in Samarqand³¹

The discussion of *ijtihād* among the Central Asian Ḥanafīs was largely directed against Mu‘tazilī infallibilism and more particularly the infallibilism of the Iraqī Ḥanafīs. At issue was the standing of law as a discipline and correspondingly of those who devoted their lives to its study. The inner-Ḥanafī dispute was undoubtedly quite heated, to the point that the correct position on the question came to be invested with theological significance. It was raised to the level of a doctrine of *aḥl al-sunnah wa ‘l-jamā‘ah*. Thus we find a reference to fallibilism in the short creed of Najm al-Dīn Abū Ḥafṣ ‘Umar b. Muḥammad al-Nasafī (d. 537/1142), a contemporary of al-Samarqandī and like him a student of Abu ‘l-Yusr al-Bazdawī.³² By this time infallibilism had spread well beyond the ranks of the Baṣran Mu‘tazilīs

al-Nasafī, *Kashf al-asrār*, 2:170–1, al-Māturīdī’s formula is set in opposition to the less severe fallibilism that they defend. On possible interpretations of al-Māturīdī’s formula see Muḥammad ‘Abd al-Ḥalīm al-Laknawī al-Anṣārī (d. 1285/1868), gloss on the margin of al-Nasafī, *Kashf al-asrār*, 2:171. I follow the interpretation in *Mīzān al-uṣūl* 2:1051–1052.

²⁹ Al-Bukhārī, *Kashf al-asrār*, 4:19, and his student Muḥammad b. Muḥammad al-Kākī (d. 749/1348), *Jāmi‘ al-asrār fi sharḥ al-Manār*, ed. Faḍl al-Raḥmān ‘Abd al-Ghafūr al-Afghānī (Riyāḍ: Maktabat Niẓār Muṣṭafā al-Bāz, 1418/1997), 4:1078–9, speak of al-Māturīdī’s inclination to the extreme infallibilist view of Abū Bakr ‘Abd al-Raḥmān b. Kaysān al-Aṣamm (d. 200 or 201/816 or 817). But other sources attribute to al-Aṣamm that view that it is a sin for the *mujtahid* not to arrive at the one correct answer. See Abū Ishāq al-Shirāzī, *Sharḥ al-Luma‘*, ed. ‘Abd al-Majīd Turkī (Beirut: Dār al-Gharb al-Islāmī, 1408/1988), 2:1051; al-Nāṭiq bi‘l-Ḥaqq, *al-Mujzī*, 2:235.

³⁰ Al-Bazdawī, 4:18; al-Nasafī, *Kashf al-Asrār*, 2:169, 171.

³¹ *Mīzān al-uṣūl*, 2:1051; al-Lāmishī, *Uṣūl al-fiqh*, 202. On al-Rustughfānī, see now Rudolph, *al-Māturīdī*, 153–157. On the dispute between al-Māturīdī and al-Rustughfānī on *ijtihād*, see Ibn Qutlūbughā, *Tāj al-tarājīm fi ṭabaqāt al-ḥanafīyah*, ed. G. Flugel, *Abh f. d. Kunde der Morgen* (1862) II (3): 116, n. 390; ‘Abd al-Qādir ibn Abī al-Wafā’ al-Qurashī, *al-Jawāhir al-muḍīyah fi ṭabaqāt al-ḥanafīyah* (Hayderabad, Deccan: Majlis Dā‘irat al-Ma‘ārif al-Nizāmīyah, 1332), 1:362–63; M. Götz, “Māturīdī and sein Kitāb Ta’wīlāt al-Qur’ān”, *Der Islam* 41 (1965):28–29. Al-Rustughfānī’s position is identified as that of the masters of Samarqand by al-Laknawī on the margin of al-Nasafī, *Kashf al-asrār*, 2:171.

³² *Al-‘Aqā’id al-Nasafīyah* with the commentary of al-Taftazānī (Istanbul: al-Sharikah al-Ṣaḥāfiyah al-‘Uthmāniyah, 1326; reprint, Baghdad: Maktabat al-Muthannā, n.d.), 194 (*wa ‘l-mujtahid qad yukhtī ‘wa-qad yuṣīb*) trans. E. E. Elder, *A Commentary on the Creed of Islam* (New York: Columbia University Press, 1950), 165.

among whom it had begun and numbered among its staunchest adherents anti-Mu'tazilī jurists affiliated with both the Shāfi'ī and Mālikī schools.³³ For infallibilism was the theory embraced by leading Ash'arīs, including al-Ash'arī (d. 324/935) himself.³⁴ Abu 'l-Yusr al-Bazdawī was thus able to number infallibilism as one of the points of disagreement between al-Ash'arī and *ahl al-sunnah wa 'l-jamā'ah*.³⁵ Nonetheless, as we shall see, infallibilism among the Central Asian Ḥanafīs continued to be associated above all with Mu'tazilism.

The discussion of fallibilism and infallibilism in Central Asian Ḥanafī *uṣūl al-fiqh* should be set against the background of Ḥanafī theology, and close attention to this debate in legal theory yields insight into the theological developments. While fallibilism is common to the Central Asian Ḥanafīs, the extent to which it is treated as of theological concern is not, and this in turn is closely tied to both the significance accorded theological orthodoxy and the standard for identifying those who constitute the community of the orthodox. We thus find Central Asian Ḥanafīs for whom the question of fallibilism versus infallibilism does not apparently rise to the level of theological doctrine at all. For others it is a theological issue, with the Mu'tazilīs almost always the opponents. Finally, other Central Asian Ḥanafīs find it necessary to reevaluate the theological status of the debate over *ijtihād* to accommodate a shift in the boundaries of orthodoxy.

In this connection the account of infallibilism in the *uṣūl al-fiqh* work of Abu 'l-'Uṣr al-Bazdawī is quite revealing, especially when contrasted with that of Abū Zayd al-Dabūsī, to whom al-Bazdawī is in general very much indebted. Al-Bazdawī begins by noting that infallibilism is "the doctrine of certain people, namely the Mu'tazilah".

³³ On Baṣran Mu'tazilism as the source of infallibilism, see al-Shīrāzī, *Sharḥ al-Lum'a*, 2:1048 (citing Abu 'l-Ṭayyib Ṭāhir b. 'Abd Allāh al-Ṭabarī, d. 450/1058). That *rava avis*, a Ḥanafī Ash'arī, Abū Ja'far Muḥammad b. Aḥmad al-Simnānī (d. 444/1052) was also an infallibilist. See Abu 'l-Walīd al-Bājī, *Iḥkām al-fuṣūl fi aḥkām al-uṣūl*, ed. 'Abd al-Majīd Turki (Beirut: Dār al-Gharb al-Islāmī, 1407/1986), 708; the reference to al-Simnānī, al-Bājī's teacher, is omitted in the somewhat shorter version of the work edited by 'Abd Allāh Muḥammad al-Jubūrī (Beirut: Mu'assasat al-Risālah, 1409/1989), 623.

³⁴ On al-Ash'arī's infallibilism see Ibn Fūrak, *Mujarrad maqālat al-Shaykh Abi 'l-Ḥasan al-Ash'arī*, ed. Daniel Gimaret (Beirut: Dār el-Machreq, 1987), 201. It was sometimes explained as a remnant of his earlier Mu'tazilism (*baqīyāt i'tizāl*). See al-Shīrāzī, *Sharḥ al-Lum'a*, 2:1048. Fallibilism was also attributed to him (*ibid.*).

³⁵ *Kūtāb uṣūl al-dīn*, ed. Hans Peter Linss (Cairo: Dār Iḥyā' al-Kutub al-'Arabīyah, Cairo, 1383/1963, p. 246. Here as elsewhere in the text, al-Bazdawī uses *'ammah* in the sense of totality.

He then reviews in some detail the various arguments put forth for the opposing positions on the evaluation of *ijtihād*. He closes his discussion by reverting to the association of infallibilism with Mu‘tazilism: “I have attributed the position that there are multiple correct answers (*ta‘addud al-ḥuqūq*) to the Mu‘tazilīs only because of their position that “what is best” (*al-aṣlah*) is obligatory, and this is realized in infallibilism”. His own verbal formulation of fallibilism is, he tells us, aimed at avoiding Mu‘tazilism in appearance and actuality (*zāhīran wa-bā‘īnan*). “This is the teaching that we have found our masters to hold and that held by the early Ḥanafīs (*aṣḥābunā al-mutaqaḍdimūn*)”.³⁶

The extent to which al-Bazdawī is concerned to convince his reader of the association between infallibilism and Mu‘tazilism emerges when his account is contrasted with that of Abū Zayd al-Dabūsī. The detailed discussion of the arguments on *ijtihād* is so similar in both writers that we can assume that al-Bazdawī used al-Dabūsī as his model.³⁷ What is different is the matter of attribution. Al-Dabūsī attributes infallibilism to “a group of theologians” (*farīq min al-mutakallimūn*). Fallibilism is the position of “the jurists and some theologians”.³⁸ Nowhere is there an reference to Mu‘tazilism, let alone the Mu‘tazilī theory of *al-aṣlah*. Entirely missing from al-Dabūsī is the framework of theological controversy that stands out in al-Bazdawī’s account. Obviously al-Bazdawī was not ignorant of Ash‘arī infallibilism.³⁹ He insisted on attributing infallibilism to the Mu‘tazilīs and argued for its origin in heretical Mu‘tazilī teaching for the very good reason that Mu‘tazilism, not Ash‘arism, had been and remained a force

³⁶ Al-Bazdawī, 4:31. The connection between Mu‘tazilī optimism and infallibilism is naively explained: it is in the best interest of the *mujtahid* that he always be right (al-Nasafi, *Kashf al-asrār*, 2:176, al-Bukhārī, *Kashf al-asrār*, 4:31). al-Bazdawī also notes that infallibilism puts the saint (*walī*) on a par with the prophet, once again in accordance with Mu‘tazilī doctrine. On this latter point, see al-Bukhārī, *Kashf al-asrār*, 4:31; al-Nasafi, *Kashf al-asrār*, 2:174, and more helpfully, Muḥammad b. Ḥamzah al-Fanārī (d. 834/1430), in his *Fuṣūl al-badā‘ī fi usūl al-fiqh* (Istanbul), p. 421, incorporated in the glosses of his grandson Ḥasan Chelebi b. Muḥammad Shāh (d. 886/1481) on Sa‘d al-Dīn al-Taftāzānī, *al-Taḥwīḥ* (Cairo: al-Maṭba‘ah al-Khayriyah, 1322), 3:64; (Kazan: al-Maṭba‘ah al-Impirāṭuriyah, 1902), 596. See also al-Lāmishī, *Qawā‘id al-tawḥīd*, 118.

³⁷ This is not surprising. Al-Bazdawī commented on al-Dabūsī’s *Taqwīm al-adillah* and also wrote an abridgement of it. Baqā, *Mu‘jam al-uṣūliyyīn*, 3:144.

³⁸ *Taqwīm al-adillah*, ed. Khalīl al-Mays (Beirut: Dār al-Kutub al-‘Ilmiyah, 1421/2001), 407. The identical attributions appear in Manṣūr b. Ishāq al-Sijistānī, *al-Ghunyah fi ‘l-uṣūl*, ed. Muḥammad Ṣidqī b. Aḥmad al-Burnū (n.p.: 1401/1989), 201. The author’s identify is obscure, but he clearly wrote under the influence of al-Dabūsī. My thanks to Professor John Renard for furnishing me with a copy of this work.

³⁹ Cf. his discussion of the Ash‘arī position on the status of one who, not having access to a prophetic message, fails to come to belief in God. Bazdawī, 4:231.