

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.

among the Ḥanafīs.⁴⁰ What al-Bazdawī's insistence on portraying infallibilism as a Mu'tazilī heresy, while ignoring its hold on the Ash'arīs, lost in historical accuracy, it gained in contemporary relevance.

The discussion of *ijtihād* among the Central Asian Ḥanafīs continued to pit the orthodox against the Mu'tazilīs in the generations following al-Bazdawī. It is true that 'Alā' al-Dīn al-Samarqandī's account of infallibilism is more nuanced than al-Bazdawī's. He attributes it to the majority of the Ash'arīs as well as to most of the Mu'tazilīs, and accordingly refers to his opponents as the infallibilists (*muṣawwibah*), not the Mu'tazilīs.⁴¹ The issue, however, for him remains a test of theological orthodoxy: neither the infallibilist Mu'tazilīs nor the infallibilist Ash'arīs are members of *ahl al-sunnah*. But al-Samarqandī's careful account was not able to erase the already deeply ingrained association between infallibilism and Mu'tazilism among the Central Asians. Muḥammad b. Zayd al-Lāmishī (d. early 6th/12th cent.) follows al-Samarqandī in attributing infallibilism to both the Mu'tazilīs and Ash'arīs, but then immediately goes on to pose the dispute as between the orthodox and the Mu'tazilīs.⁴² So too, al-Samarqandī's student and son-in-law 'Alā' al-Dīn al-Kāsānī is reported to have been transferred from Anatolia to Aleppo when he was ready to resort to violence against a fellow Ḥanafī, who insisted that Abū Ḥanīfah had been an infallibilist. "No", al-Kāsānī retorted, "that is the doctrine of the Mu'tazilīs".⁴³

The identification of infallibilism as a characteristically Mu'tazilī and hence theologically unacceptable doctrine persists for at least two more centuries. Abu 'l-Barakāt al-Nasafī (d. 710/1310) labels infallibilism a Mu'tazilī teaching in the body of his *al-Manār*.⁴⁴ In his commentary to *al-Manār* he does note that infallibilism was held by

⁴⁰ Cf. the Shāfi'ī Abū Ishāq al-Shīrāzī, *al-Tabṣīrah fī uṣūl al-fiqh*, ed. Muḥammad Ḥasan Hītū (Damascus: Dār al-Fikr, 1403/1983), 498, who begins his attribution of infallibilism with the Ash'arīs. On the debated question of whether al-Shīrāzī was himself an Ash'arī, see Éric Chaumont, "Encore au sujet de l'aš'arisme d'Abū Ishāq al-Shīrāzī", *Studia islamica*, 74 (1991).

⁴¹ *Mīzān al-uṣūl*, 2:1053.

⁴² *Uṣūl al-fiqh*, 202.

⁴³ Ibn Abi 'l-Wafā', *al-Ḥawāhir al-muḍīyah*, 2:244–245. The attribution by al-Kāsānī's interlocutor of infallibilism to Abū Ḥanīfah may, in fact, have amounted to claiming Abū Ḥanīfah as a Mu'tazilī. See al-Bukhārī, *Kashf al-asrār*, 1: 8. On al-Kāsānī's assumption of the professorship of the Ḥalawīyah madrasah in Aleppo, see Madelung, "The Spread of Māturīdism", 154.

⁴⁴ *Kashf al-asrār*, 2:169.

al-Ash‘arī, al-Bāqillānī and al-Ghazzālī.⁴⁵ Yet in that same work he continues to follow al-Bazdawī in explaining infallibilism as a consequence of Mu‘tazilī optimism.⁴⁶ It is, however, significant that there is no mention of fallibilism in his creed, *‘Umdat ‘aqīdat ahl al-sunnah wa ‘l-jamā‘ah*, a exception to its otherwise great dependence on the earlier creed of Najm al-Dīn al-Nasafī.⁴⁷ The highpoint of *ijtihād* as a theological issue was already long past, and it was only a matter of time before this was given explicit recognition.

Writing almost two hundred years after al-Samarqandī and Najm al-Dīn al-Nasafī, ‘Abd al-‘Azīz b. Aḥmad al-Bukhārī, (d. 730/1329), commenting on Abū ‘l-‘Ushr al-Bazdawī’s *uṣūl*, questioned the inevitability of the link between infallibilism and the objectionable Mu‘tazilī doctrine of optimism. “Many of those versed in learning among *ahl al-sunnah*”, he wrote, “have held the theory of infallibilism coupled with a vehement rejection of optimism. They have based their position on the ‘impossibility of an obligation beyond one’s capacity’ (*istihālat taklīf mā laysa fi ‘l-wuṣ‘*)”.⁴⁸ What has changed from the time of Samarqandī to that of al-Bukhārī is the constitution of the membership of *ahl al-sunnah*. The Ash‘arīs, their infallibilism notwithstanding, are now full-fledged members. Mu‘tazilī optimism remains a heretical doctrine, but not infallibilism itself.⁴⁹

⁴⁵ *Kashf al-asrār*, 2:170.

⁴⁶ *Kashf al-asrār*, 2:174, 176.

⁴⁷ Ed. William Cureton (London: Society for the Publication of Oriental Texts, 1843). Cureton already remarked (p. viii) on the great dependence of this work on *al-‘Aqā‘id al-Nasafīyah*, which he edited at the same time.

⁴⁸ Al-Bukhārī, *Kashf al-asrār*, 4:31. See also Muḥammad al-Fanārī, *Fuṣūl al-badā‘ī‘*, 421, and the glosses of Hasan al-Fanārī on al-Taftāzānī, *al-Talwīḥ* (Cairo ed., 3:64; Kazan ed. p. 596). Al-Bukhārī’s student al-Kākī continues to attribute infallibilism to the Mu‘tazilīs, following al-Nasafī’s *al-Manār*, the text that he is commenting upon. Like al-Nasafī, he mentions Ash‘arī infallibilists (*Jāmi‘ al-asrār*, 4:1072, 1074). But al-Kākī no longer draws the connection between infallibilism and Mu‘tazilī optimism.

⁴⁹ Infallibilism does not appear in the list of points of difference between the followers of al-Māturīdī and those of al-Ash‘arī compiled by Tāj al-Dīn al-Subkī (d. 771/1370), *al-Nūniyah*, in his *Ṭabaqāt al-shāfi‘īyah al-kubrā*, ed. M. M. Tanāhī and ‘Abd al-Fattāḥ al-Hulwī (Cairo: Maṭba‘at ‘Isā al-Ḥalabī, 1384/1965), 3:379–389 or those by ‘Abd al-Raḥīm b. ‘Alī Shaykhzādah (d. 944/1537), *Kūtāb naẓm al-farā‘id wa-jam‘ al-fawā‘id* (Cairo: al-Maṭba‘ah al-Adabīyah, 1317) and Hasan b. ‘Abd al-Muḥsin Abū ‘Udhbah (d. after 1172/1758), *al-Rawdah al-bahīyah* (Hyderabad, Deccan: Dā‘irat al-Ma‘ārif al-Nizāmīyah, 1322). It is mentioned in the list of Kamāl al-Dīn al-Bayāḍī (d. 1098/1687), *Ishārāt al-marām*, 56, quoted by Murtaḍā al-Zabīdī (d. 1205/1790), *Ithāf al-sādah al-muttaqīn bi-sharḥ asrār Ihyā‘ ‘ulūm al-dīn* (Beirut: Dār al-Turāth al-‘Arabī, n.d.), 2:13. According to al-Bayāḍī these differences, not rising to the level of *bid‘ah*, are not such as to destroy the essential unity of *ahl al-sunnah*. *Ishārāt al-marām*, 23.

III. *Specialization of the Cause*

Another rather more technical issue of legal theory was for some Central Asian Ḥanafīs closely associated with infallibilism. This is the problem of the "specialization of the cause" (*takhṣīs al-‘illah*). The positions may be briefly outlined. The question belongs to the theory of analogy (*qiyās*). Can the "cause" (*‘illah*) which the *mujtahid* has identified in the original case (*asl*) and which he proposes to extended to new cases (*far‘*) withstand counterexamples in which this putative cause is found but without the legal consequence (*hukm*) that he is claiming. It was agreed that rational causes (*‘ilal ‘aqliyah*) were not subject to such exceptions.⁵⁰ The law of causation in science, to use our terms, operates uniformly. Thus where the accident (*‘arad*) of motion (*ḥarakah*) is found the object in which it inheres must move (*mutaḥarrik*). Motion could not be the cause of any object moving without it causing all objects in which it inheres to move. Were the causes of the jurists subject to this same test?

The leading Iraqi Ḥanafīs answered no. An example will illustrate the issue in dispute. The question of law is what is the effect on the validity of a fast when one eats out of forgetfulness. If eating is a cause of invalidity when it comes to fasting, then to treat as valid a fast in which eating has occurred would be to countenance the specialization of the cause by acknowledging eating, the cause, to be present without the expected consequence of invalidity. One of the arguments for admitting specialization among the Iraqīs Ḥanafīs was that *istiḥsān*, or departure from analogy, a recognized part of Ḥanafī teaching, inevitably involved specialization of the cause. In the example of fasting, the strict application of analogy would invalidate the fast, but on the basis of a *ḥadīth*, this analogy yields to *istiḥsān*, and the fast is valid.⁵¹

Since *istiḥsān* was a common inheritance of the Iraqi and Central Asian Ḥanafīs one might assume that the Central Asians in recognizing *istiḥsān* would have to admit specialization of the cause. In fact this was not the case. I will not enter into the technical details

⁵⁰ Muḥammad b. ‘Abd al-Ḥamīd al-Usmandī (d. 552/1157), *Badhl al-nazar*, 635.

⁵¹ The example is taken from Abu ‘l-Yusr al-Bazdawī, *Kūṭab fihī ma‘rifat al-ḥujaj al-shar‘iyah*, Dār al-Kutub, *uṣūl al-fiqh*, ms. 232 (= Arab League, *uṣūl al-fiqh*, Film 109), ff. 44b–45a. An edition of this work by M. Bernard and E. Chaumont is due to appear (Abū Ishāq al-Shīrāzī, *Kūṭab al-Luma‘*, 378).

here, but briefly put the solution was to deny that eating as such is the cause of the invalidity of a fast, it is eating when there is no forgetfulness that is the cause. The apparent exceptions are thus built into the rule.⁵² This device is so simple that some came to regard the dispute over specialization as purely verbal.⁵³ But clearly it was not so regarded in the period of interest to us here. Al-Jaṣṣāṣ insisted on attributing the doctrine of specialization to the early Ḥanafī jurists as a matter of historical accuracy. He recognized that it would be easily possible to so formulate all cases of *istiḥsān* as to not to involve specialization.⁵⁴

Specialization of the cause was the common teaching of the Iraqi Ḥanafīs as I have noted. Many, but not all, Central Asians opposed it. Among its opponents was al-Māturīdī, who wrote that:

One who upholds specialization of the cause attributes incoherence (*tanāquḍ*) to God’s actions and rulings, since the cause only becomes such by God’s making it so. [On specialization] God makes something the cause of a ruling and yet the ruling does not follow, although the cause is the basis for the ruling. This is a contradiction in God’s rulings and actions . . .⁵⁵

Despite such criticism, some Central Asian Ḥanafīs, including Abū Zayd al-Dabūsī (d. 430/1039), remained unconvinced that the doctrine of specialization was theologically problematic. Al-Sarakhsī (d. 483/1090), one of the opponents of specialization, specifically addressed such Ḥanafīs:

There are some of our fellows who hold that specialization of the cause is possible and that it is not in conflict with the way of the early masters nor with the doctrine of *ahl al-sunnah*. But this is a grave error on their part. For the doctrine of those of our early masters who are approved of (*man huwa marḍīyun min salafinā*) is that specialization of

⁵² E.g. al-Samarqandī, *Mīzān al-uṣūl*, 2:903.

⁵³ Muḥammad b. ‘Alī al-Shawkānī, *Irshad al-fihūl* (Mecca: Maktabat Nizār Muṣṭafā al-Bāz, 1417/1997), 3:759. Al-Taftāzānī regarded the dispute over specialization of the cause as of little significance (*nizā‘ qalīl al-jadwah*). *al-Talwīḥ*, Cairo ed., 3:13; Kasan ed., 542; Beirut: Dār al-Kutub al-‘Ilmiyah n.d., 2:87; cited in Ibn Nujaym, *Fatḥ al-ghaffār bi-sharḥ al-Manār* (Cairo: Maktabat Muṣṭafā al-Bābī al-Ḥalabī, 1355/1936), 3:38.

⁵⁴ Jaṣṣāṣ, Kuwait ed., 4:255–256; Beirut ed., 2:356–357.

⁵⁵ Quoted in al-Bazdawī, *Mā‘rifat al-hujaj al-shar‘īyah*, f. 45b. Cf. al-Zarkashī, *al-Baḥr al-Muḥīṭ*, ed. ‘Abd al-Sattār Abū Ghuddah (Kuwait: Wizārat al-Awqāf, 1413/1992), 5:136, which cites al-Māturīdī as arguing that the position in favor of *takhṣīs al-‘illah* is tantamount to attributing folly and purposelessness (*safah wa-‘abath*) to God.

legal causes is not possible. One who holds it to be impossible opposes *ahl al-sunnah* and inclines to the teaching of the Mu'tazilah in theology (*mā'il ilā aqāwīl al-mu'tazilah fī uṣūlīhim*).⁵⁶

Al-Sarakhsī also explained how specialization is related to Mu'tazilī teaching. Because a *mujtahid* whose putative cause is on the doctrine of specialization immune to attack by counterexample (*naqd*), specialization accords with infallibilism, which is in turn, as we have seen, based on Mu'tazilī optimism. "In another respect", al-Sarakhsī also noted, "one can find in it the doctrine of the intermediate status (*al-manzilāh bayn al-manzilātayn*) [of one who commits a grave sin] and the doctrine of the everlasting punishment of one who commits a grave sin and dies without repenting".⁵⁷ Although al-Sarakhsī does not expand upon these theological issues, his argument is clear. In both of the cases he mentions, faith (*īmān*) which is the cause of one's standing as a Muslim in this world and also the cause of eternal reward in the world to come is present in the believer but fails to produce its expected effects.

In other Central Asian Ḥanafī texts further unacceptable theological consequences are said to follow from upholding specialization of the cause. It amounts to defending the doctrine of "capacity prior to the act" (*al-istiṭā'ah qabl al-fi'l*).⁵⁸ It undermines the complete effectiveness of God's will (*mashī'ah*).⁵⁹ The very accumulation of Mu'tazilī heresies said to follow from specialization already suggests some uneasiness as to what there actually was theologically about the *uṣūl al-fiqh* doctrine that made it theologically objectionable.

Here as in the evaluation of *ijtihād*, an issue of legal theory was raised to theological status. Opposition to specialization is the doctrine of *ahl al-sunnah*. Here too, however, the link established between legal theory and theology did not hold. 'Abd al-'Azīz al-Bukhārī, in keeping with his view on infallibilism mentioned earlier, fails to find any great theological danger in specialization, even on the assumption that it does support infallibilism. Furthermore, the connection between specialization of the cause and infallibilism is hardly inevitable. One *mujtahid* may be able to defend his claim of specialization when

⁵⁶ *Uṣūl al-Sarakhsī*, ed. Abu 'l-Wafā' al-Afghānī (Cairo: Lajnat al-Ma'ārif al-Nu'māniyah, 1372/1953), 2:208.

⁵⁷ *Uṣūl al-Sarakhsī*, 211-2.

⁵⁸ Al-Bazdawī, *Mārifat al-ḥujaj al-shar'iyah*, f. 45b; al-Bukhārī, *Kashf al-asyār*, 4:39.

⁵⁹ Al-Bukhārī, *Kashf al-asyār*, 4:39, where Abu 'l-Yusr al-Bazdawī's reservations as to this alleged consequence of specialization are noted.

faced with an embarrassing counterexample while another may not be able to so.⁶⁰

Even before al-Bukhārī, Abu ‘l-Yusr al-Bazdawī, admitting that there were no clear statements for or against specialization from the early masters, felt compelled to admit that the asserted connection between specialization and the theological doctrine of capacity prior to the act was obscure enough to make it inappropriate to charge its supporters with Mu‘tazilism. “Nonetheless”, he wrote, “since the doctrine [of specialization] has become a mark (*shī‘ār*) of the Mu‘tazilāh in these regions, one must avoid it just as one avoids wearing a signet ring on one’s right hand as do the Rāfiḍites and dressing like the unbelievers (*kuffār*), since this is their mark”.⁶¹ According to him specialization of the cause is perhaps not a theological error in itself but has come to be associated with real heresies.

While fallibilism came to represent standard Ḥanafī doctrine after the Iraqī period down to our day, the theory of specialization of the cause underwent a revival among later Ḥanafīs. In large measure the theory of specialization, once theological objections to it had been removed from discussion, was reinstated by the Khwārizmian Maṣṣūr b. Aḥmad al-Qa‘ānī (d. 775/1373).⁶² It eventually experienced its full restoration in two standard later texts of legal theory, *al-Taḥrīr* of the Ottoman Ibn al-Humām (d. 861/1457) and *Musallam al-thubūt* of the Indian Muḥibb Allāh Ibn ‘Abd al-Shakūr al-Bihārī (d. 1119/1708).⁶³ Both the natural appeal of specialization is expounding the theory of *istiḥsān* and work done by non-Ḥanafīs in *uṣūl al-fiqh* appear to be responsible for this development.⁶⁴

⁶⁰ Al-Bukhārī, *Kaṣhḥ al-asrār*, 4:38.

⁶¹ Quoted al-Bukhārī, *Kaṣhḥ al-asrār*, 4:39.

⁶² Quoted in the gloss of Muḥammad b. Ibrāhīm al-Halabī (d. 971/1563) on the commentary of ‘Abd al-Laṭīf b. ‘Abd al-Azīz ibn Malak (d. 801/1398 or 1399) on al-Nasaḥī, *al-Manār* (Istanbul, 1315), 828–30. The text underlying al-Qa‘ānī’s commentary, ‘Umar b. Muḥammad al-Khabbāzī (d. 691/1292) *al-Mughnī fi uṣūl al-fiqh*, ed. Muḥammad Maḥzar Baqā (Mecca: Jāmi‘at Umm al-Qurā, 1403), makes the connection from specialization to infallibilism to optimism (p. 312).

⁶³ Ibn Humām, *al-Taḥrīr*, with the commentary of Ibn Amīr al-Ḥājj (d. 879/1474 or 1475), *al-Taqrīr wa ‘l-taḥbīr* (Būlāq, 1316; reprint, Beirut: Dār al-Kutub al-‘Ilmiyah, 1403/1983), 3:175–6; al-Bihārī, *Musallam al-thubūt*, with the commentary of ‘Abd al-‘Alī Muḥammad b. Nizām al-Dīn (d. 1225/1810), *Fawātiḥ al-raḥamūt* (Būlāq: al-Maṭba‘ah al-Amīriyah, 1324; reprint, Beirut: Dār al-Fikr), 2:278.

⁶⁴ Ibn Amīr al-Ḥājj, *al-Taqrīr*, 3:172, cites Ibn al-Ḥājjib (d. 646/1248), for whose position on *takḥṣīs al-‘illah* see his *Muntahā al-uṣūl* (Beirut: Dār al-Kutub al-‘Ilmiyah, 1405/1985), 171–172. Specialization is attributed to the “majority” (*aktharūn*) by Mullā Khosrau (d. 885/1480), *Miṣ‘at al-uṣūl* on the margin of *Ḥāshiyat al-Izmiṣ* (Istanbul: al-Sharikah al-Ṣaḥāfiyah al-‘Uthmāniyah, 1891), 2:346.

IV. *The General Term*

The issue of legal theory that probably more than any other sheds light on the complex interplay of theology and legal theory in the different phases of the Ḥanafī tradition of concern here is the dispute on the force of the general term (*al-‘āmm*). The theological background is as follows. In connection with the question of the fate after death of a Muslim who has committed a grave sin (*kabīrah*) without repenting before his death, one can distinguish between those who gave precedence to God’s threat of punishment (*wa‘īd*) for such sins and those who gave precedence to God promise of reward (*wa‘d*) or belief. The former included many Mu‘tazilīs. The latter view may, for our purposes, be labeled an element of Murji‘ism. Qur’ānic texts were cited on both sides of this dispute. Some of the verses adduced by each camp were couched in general language.⁶⁵ Thus on the Mu‘tazilī side, Qur’ān 4:14 states that “*whosoever* rebels against God and His messenger and transgresses his bounds, him will He commit unto fire, therein to abide, and shameful suffering awaits him”. (*wa-man ya‘ṣi Allāha wa-rasūlahu wa-yata‘adda ḥudūdahu yudkhihū nāran khālidan fihā wa-lahu ‘adhābun muhīn*). Qur’ān 4:116, on the other hand, states that “God does not forgive the ascribing of divinity to aught beside Him, although He forgives *any* lesser sin unto *whomsoever* He wills (*inna Allāh lā yaghfiru an yushraka bhi wa-yaghfiru mā dūna dhālika li-man yashā’u*).⁶⁶ While the availability of general verses on both sides might have been expected to lead to a standstill, in fact the Mu‘tazilī position was able to command the high ground as far as general language was concerned, prompting Murji‘ites generally to have recourse to other strategies than appealing to the general language in the verses favoring their position.

One Murji‘ite response was to argue that general language could not be taken at face value, as evidenced by everyday speech. Often restrictions on the scope on apparently general statements have to be understood. According to one Murji‘ite position, apparently general wording is to be given a minimalist reading unless there is further evidence supporting intended generality, and the partisans of pun-

⁶⁵ Cf. al-Nasafī, *Tabṣirat al-adillah*, 2:774.

⁶⁶ The translations here and elsewhere in this paper are, with slight changes including added italics, those of Muḥammad Asad, *The Message of the Qur’ān* (Gibraltar: Dār al-Andalus, 1980).

ishment will need more than verses couched in apparently general language to make their case.⁶⁷ In its theological setting the linguistic argument is concerned with indicative wording, the wording of promises and threats as to what God will or will not do. What about legal verses of the Qur‘ān where the wording is imperative? Is the same skepticism (*waqf*) toward generalization to be maintained? Clearly here the elaboration of a legal system would seem to favor taking the general language of legal verses at face value, rather than requiring further evidence in each instance as to as their general applicability. Thus a distinction might be drawn between indicative language where generalization is not presumed and legal imperative language where it is. In fact, this very distinction was attributed to Abu ‘l-Ḥasan al-Karkhī and is discussed by al-Karkhī’s student al-Jaṣṣāṣ, who, however, in his studies had himself never heard al-Karkhī take this position. What is of interest here is that al-Jaṣṣāṣ immediately concludes that if al-Karkhī did in fact adopt such a distinction, it must have been connected with an unwillingness on his part to take a definite stand on the question of the punishment of grave sinners.⁶⁸

In the same passage al-Jaṣṣāṣ observes that some people incorrectly suppose that because Abū Ḥanīfah’s well-known view was one of hesitation of the issue of the grave sinner he must have hesitated on the scope of general language, whereas in fact Abū Ḥanīfah’s theological view was not based on any interpretative strategy of this sort but on specific textual arguments.⁶⁹ In fact, according to al-Jaṣṣāṣ, skepticism towards general language was an extreme device resorted to in desperation by an upstart group of Murji‘ites, who vigorously propogated their doctrine.⁷⁰

We may gather from al-Jaṣṣāṣ’s discussion the following important points. The possible connection between the old theological issue of the grave sinner and the interpretative questions of concern to jurists was still very much in view. Secondly, he is not unduly surprised that al-Karkhī’s theological views would include an element

⁶⁷ For an overview of the theological positions see al-Ash‘arī, *Maqālāt al-islāmīyīn*, ed. Hellmut Ritter (Wiesbaden: Franz Steiner, 1980), 144–148, 276.

⁶⁸ Jaṣṣāṣ, Kuwait ed., 1:101; Beirut ed., 1:41.

⁶⁹ Jaṣṣāṣ, Kuwait ed., 1:102–3; Beirut ed., 1:41. He also cites ‘Īsā b. Abān as in agreement with Abū Ḥanīfah on this point (Kuwait, 1:103, Beirut, 1:42). Al-Jaṣṣāṣ thus accepts an inference from al-Karkhī’s reported position on legal theory to this theology, but not from Abū Ḥanīfah’s theology to his legal theory.

⁷⁰ Jaṣṣāṣ, Kuwait ed., 1:110; Beirut ed., 1:45–46.

of Murji'ism. Finally, and most importantly, he readily notes that Abu Ḥanīfa's theological view was Murji'ite in this respect.

This relative flexibility on matters of theology coupled with al-Jaṣṣāṣ's insistence that the authentic Ḥanafī position in legal theory was that general language was to be taken at face value may be contrasted with the long discussion of these issues in Abu 'l-Mu'īn al-Nasafī's *Tabṣirat al-adillah*. Abu 'l-Mu'īn attacks the Iraqi doctrine on general terms espoused by al-Jaṣṣāṣ.⁷¹ He recounts how al-Māturīdī had tried to counter the spread of this teaching, regarded as Mu'tazilī, among the Central Asian Ḥanafīs, but sadly it had gained a foothold there, introduced by one who perhaps did not realize the seriousness of the theological issue involved.⁷² The upshot was the al-Māturīdī's position, held by only a minority of Central Asian Ḥanafīs, was identified by the Ḥanafī majority as the teaching of al-Shāfi'ī and al-Māturīdī was labeled a skeptic (*wāqifi*).⁷³

What was al-Māturīdī's position? It was to insist that one must continue to act as bound by legislative language couched in general terms but at the same time abstain from committing oneself to the belief that such general language necessarily evidenced that generality was intended. Thus in a more sophisticated fashion al-Māturīdī was able to preserve the advantages of the older distinction that some had made between general language in the indicative wording relevant to theology and in the imperative wording of the law.⁷⁴

⁷¹ Al-Nasafī in fact cites al-Jaṣṣāṣ as evidence of the once commonly recognized connection between the positions on the general term and the theological question of the threat of punishment. *Tabṣirat al-adillah*, 2:779–80: *wa-kāna al-farīqān jamī'an yaq'alān hādihā al-aṣl min natā'ij mas'alat al-wa'īd*.

⁷² Undoubtedly a reference to Abū Zayd al-Dabūsī. Cf. *Tabṣirat al-adillah*, 2:580, where the *uṣūl al-fiqh* doctrine of "one of the later scholars of our region" that al-Nasafī attacks is, in fact, that of al-Dabūsī. *Taqwīm al-adillah*, 96. In both cases, al-Nasafī insinuates that heterodox belief may be involved. Interestingly al-Dabūsī is identified as a Mu'tazilī by the Zaydī al-Imām al-Manṣūr 'Abd Allāh b. Ḥamzah, *Kutāb al-Shāfi'ī* (Ṣan'ā': Maktabat al-Yaman al-Kubrā, 1406/1986), 1:150.

⁷³ *Tabṣirat al-adillah*, 2:780–1. There is no other information available on the attack on al-Māturīdī. It is thus impossible to determine what, if any role, such attacks may have had in the neglect of his writings. Cf. Madelung's statement that inasmuch as al-Māturīdī represented the common teaching of Samarqand, he encountered no significant opposition there "except on minor individual questions," such as the evaluation of *ijtihād* ("The Spread of Māturīdism," 123). Al-Māturīdī, who held al-Shāfi'ī in low esteem (see, for example, *Tawīlāt ahl al-sunnah*, ed. Muḥammad Mustafid al-Rahmān [Baghdad, Wizārāt al-Awqāf, 1983] 1:493–94), would not have been flattered by the identification of his teaching with that of al-Shāfi'ī.

⁷⁴ Al-Māturīdī's solution, according to Abu 'l-Mu'īn, is in keeping with the traditional Ḥanafī distinction between obligations that are *farḍ*, where there is certainty

There is thus a measure of skepticism in al-Māturīdī's doctrine but not of the degree that al-Jaṣṣāṣ was concerned to attack. There is in fact no evidence in al-Jaṣṣāṣ's discussion of the interpretative views of al-Shāfi'ī that parallel those of al-Māturīdī that he saw these as involving the theological issues he addresses earlier in his discussion of the general term.⁷⁵ It is thus likely that al-Māturīdī was the theological "aggressor" in attacking the common Iraqī Ḥanafī teaching on the general term, which is not to say that he was mistaken in seeing it as a trace of Mu'tazilism.⁷⁶

The attempt on the part of Abu 'l-Mu'īn al-Nasafī to awaken his fellow Central Asian Ḥanafīs to the theological background of the interpretative issue of the general term was unsuccessful. In fact a number of the most important Central Asian Ḥanafī works on *uṣūl al-fiqh* make no mention at all of a distinct Māturīdī position on the matter. The controversy in these works is between the common Ḥanafī doctrine already defended by al-Jaṣṣāṣ and the position of al-Shāfi'ī.⁷⁷ And in those works of *uṣūl al-fiqh* in which the teaching of al-Māturīdī and the Samarqandīs is mentioned, its connection with the theological controversy on the promises and threats of God is ignored.⁷⁸

It appears that the revival of interest in al-Māturīdī's teaching on the general term was quickly and quietly nipped in the bud. Thus al-Nasafī's contemporary Abu 'l-Yusr al-Bazdawī, like al-Nasafī an engaged theologian, came to abandon al-Māturīdī's teaching after initially supporting it.⁷⁹ He found the claim that the common Ḥanafī

of belief, and those that are *wājib*, where there is no such certainty (*Tabṣirat al-adīlah*, 2:781), on which see the contribution of A. Kevin Reinhart to this volume.

⁷⁵ Jaṣṣāṣ, Kuwait ed., 1:381–420; Beirut ed., 1:209–235.

⁷⁶ Cf. al-Ash'arī, *Maqālāt*, 276 (consensus of the Mu'tazilīs).

⁷⁷ Al-Bazdawī, 1:291; al-Sarakhsī, 1:132; al-Uṣmānī, *Badhl al-naẓar*, 235; al-Nasafī, *al-Manār* (al-Māturīdī's view is, however, mentioned in the commentary); Ṣaḍr al-Sharī'ah, *al-Taẓdīb*, with *al-Tahwīḥ*, Cairo ed., 1:198–201; Kazan ed., 59–60; Beirut ed., 1:39–40; al-Akhsikathī, *al-Muntakhab*, with the modern commentary of Walī al-Dīn Muḥammad Ṣāliḥ al-Farfūr, *al-Mudhhab fi uṣūl al-madhhab* (Damascus: Maktabat Dār al-Farfūr, 1419/1999), 1:60; al-Khabbāzī, *al-Mughnī*, 99. Al-Kāsānī's student Ahmad b. Muḥammad al-Ghaznawī (d. 593/1197) mentions only the Iraqī position. *Uṣūl al-fiqh al-Ghaznawī*, ed. Muḥammad Ṭu'mah al-Qudāḥ ('Ammān, 1421/2001), 96.

⁷⁸ Al-Samarqandī, *Mīzān al-uṣūl*, 1:411; al-Lāmishī, *Uṣūl al-fiqh*, 124–135; al-Bukhārī, *Kashf al-asrār*, 1:304; al-Kākī, *Jāmi' al-asrār*, 1:265. An exception is Abu 'l-Yusr al-Bazdawī, as noted below.

⁷⁹ The citation from al-Bazdawī's *Uṣūl al-fiqh* in al-Bukhārī, *Kashf al-asrār*, 1:305, argues for the Māturīdī position (unless the passage was originally set in a purely expository context).

position was that of the Mu'tazilīs both irrelevant and unconvincing. The majority of Mu'tazilīs in fact, he noted, held the position of al-Māturīdī and al-Shāfi'ī.⁸⁰ 'Alā' al-Dīn al-Samarqandī does defend the Samarqandī position, but his version of the doctrine shrinks from drawing the potentially far-reaching interpretative consequences elsewhere ascribed to it.⁸¹

Al-Māturīdī reportedly treated the question of the general term at great length in his *Ma'ākhid al-sharā'ī*.⁸² His treatment, however, would appear to have been largely of a polemical character, leaving unresolved basic questions of legal theory that the position he

⁸⁰ Al-Bazdawī, *Ma'rifat al-hujaj al-shar'iyah*, f. 19a. This is the third *uṣūl al-fiqh* work of Abu 'l-Yusr, who admits to changes in his teachings from work to work. Ibid, f. 4b. The direction in Mu'tazilī *uṣūl al-fiqh* was in fact as al-Bazdawī states, toward the Shāfi'ī position: see Abu al-Ḥusayn al-Baṣrī, *al-Mu'tamad fī uṣūl al-fiqh*, ed. M. Hamidullah et al. (Damascus: Institut Francais de Damas, 1384/1964), 1:276. Already Abū Ḥāshim al-Jubbā'ī eventually come to recognize specialization by *qiyās*. Ibn al-Murtaḍā, *Minhāj al-wuṣūl ilā mi'yār al-'uqūl*, ed. Aḥmad 'Alī Muṭahhar al-Mākhadhī (San'ā': Dār al-Hikmah al-Yamanīyah, 1412/1992), 337, and al-Ḥusayn b. al-Qāsim, *Hidāyat al-uqūl*, 2:322. Nonetheless later Hanafī texts continue to attribute the Iraqi teaching to the Mu'tazilīs. al-Nasafī, *Kāshf al-asrār*, 1:114, gloss of Yahyā b. Qarāja al-Ruhāwī (fl. 942/1535) on Ibn Malak on *al-Manār*, 287.

⁸¹ It is commonly asserted that on the Māturīdī/Shāfi'ī view a general provision from the Qur'ān is subject to specialization (*takhṣīs*) by sources that do not provide certainty such as *khābar al-wāḥid* and *qiyās*. See al-Bukhārī, *Kāshf al-asrār*, 1:304; al-Kāfī, *Jāmi' al-asrār*, 1:265; Yūsuf b. Ḥusayn al-Kirmāstī (d. 906/1500), *al-Wajīz fī uṣūl al-fiqh*, ed. al-Sayyid 'Abd al-Laṭīf Kassāb (Cairo: Dār al-Ḥudā, 1404/1984, 19–20). Al-Samarqandī surprisingly denies that there is any explicit Samarqandī statement (*naṣṣ*) on this point, and while he admits that this consequence could be drawn, he prefers the view against specialization. *Mizān al-uṣūl*, 1:471; so also al-Lāmishī, *Uṣūl al-fiqh*, 133. On the question of whether a subsequent general provision abrogates a prior special provision (the Iraqi position) or is specialized by the prior provision (al-Shāfi'ī's position), al-Samarqandī presents the Samarqandī position as in agreement with that of the Iraqi Hanafīs, but only as to action, not belief. *Mizān al-uṣūl*, 1:474–478. Abu 'l-Mu'īn al-Nasafī's account, on the other hand, indicates that al-Māturīdī held the Shāfi'ī position. *Tabṣirat al-adillah*, 2:780. The parallel account in al-Lāmishī, *Uṣūl al-fiqh*, 138, is problematic (and inconsistent with what he reports on p. 124): lines 4 and 5 attribute the Shāfi'ī position to al-Dabūsī and his followers. Al-Lāmishī then goes on to defend the Iraqi doctrine (reading *dhakartum* in line 13). The Shāfi'ī position is also attributed to al-Dabūsī by Ibn al-Sa'ātī, *Nihāyat al-wuṣūl*, 2:485–486, cited without comment by Ibn Amīr al-Ḥajj, *al-Taqrīr*, 1:242, and al-Amīr Badeshāh, *Taysīr al-tahrīr* (Cairo: Maktabat Muṣṭafā al-Bābī al-Ḥalabī, 1350), 1:272. In fact, al-Dabūsī held the doctrine of the Iraqi Hanafīs (*Taqwīm al-adillah*, 103), as stated in *Mizān al-uṣūl*, 1:475 and editor's note 45, and correctly reported in the modern commentary of al-Farfūr, *al-Mudhhab*, 1:60. Assuming that al-Lāmishī drew on al-Samarqandī's account but the manuscript of his work suffered corruption, could this corruption have then been the source for Ibn al-Sa'ātī's error?

⁸² Al-Nasafī, *Tabṣirat al-adillah*, 2:784. Among al-Māturīdī's works one also finds *Radd Kitāb al-Kūbī fī wa'id al-fussūq*. Ibn Qutlubughā, *Tāj al-tarājim*, 44.

defended would have been expected to answer.⁸³ And there is no evidence that he set about revising inherited Ḥanafī legal doctrine in light of this legal theory.⁸⁴ Thus al-Samarqandī’s attenuated version of al-Māturīdī’s position, which reduces it to the thinnest layer of theory, was only a realistic accommodation to the Central Asian legal tradition. Despite the attacks of al-Māturīdī and Abu ‘l-Mu‘īn al-Nasafī, the Iraqī Ḥanafī teaching on the general term passed through Central Asia fully intact. Later Ḥanafī *uṣūl al-fiqh*, like later *uṣūl al-fiqh* in general, lost touch with the theological controversy that had once surrounded the issue.⁸⁵

V. *The Theory of Occasions*

The final doctrine that concerns us is that of the *asbāb* or occasions, which can be introduced with a quotation from al-Ghazzālī’s (d. 505/1111) *al-Mustasfā*:

Know that since it is difficult for mankind to know God’s communication (*khitāb*) with respect to each situation, particularly after the cessation of revelation, God has disclosed (*azhara*) his communication to his creation by means of perceptible things (*bi-umūrīn ḥissīyah*) which He has set up as occasions (*asbāb*) for his decrees (*aḥkām*) and which He has made to cause and determine these decrees in the same fashion that a perceptible cause (*‘illah ḥissīyah*) determines its effect.

Al-Ghazzālī goes on to give examples. In Qur’ān 17:78 it is enjoined to conduct prayer at the time when the sun has passed its zenith (*aqīm al-ṣalāt li-dulūk al-shams*). In Qur’ān 2:185 one finds in reference to the month of Ramaḍān that “whoever witnesses this month, shall

⁸³ See note 81 above on the question of specialization.

⁸⁴ On the appeal to *furū‘* in this debate, see al-Nasafī, *Tabṣīrat al-adillah*, 2:788–789. Cf. al-Bazdawī, 1:291–293; *Uṣūl al-Sarakhsī*, 1:132–133.

⁸⁵ A notable exception is the Tatar scholar Shihāb al-Dīn al-Marjānī (d. 1306/1889), who cites the key passages from both al-Jaṣṣāṣ and Abu ‘l-Mu‘īn al-Nasafī, in his gloss on al-Taftāzānī, *al-Talwīḥ*, Cairo ed. 1:188–190. He lists Abū ‘Abd Allāh al-Jurjānī and his student Abu ‘l-Ḥusayn Aḥmad b. Muḥammad al-Qudūrī (d. 428/1037) as among the “innumerable” proponents of the Iraqī teaching on the general term. On al-Qudūrī’s Mu‘tazilism, see Madelung, “The Spread of Māturīdism”, 168, *addenda* and ‘Abd Allāh b. Ḥamzah, *Kitāb al-Shāfi*, 1:150. Al-Marjānī’s gloss, *Ḥizāmat al-hawāshī li-izāhat al-ghawāshī*, aims at countering the tendentious commentary on Ṣaḥr al-Shar‘ah’s text of the Shāfi‘ī Ash‘arī al-Taftāzānī (1:3). On Marjānī, see Michael Kemper, *Sufis und Gelehrte in Tatarien und Baschkirien, 1789–1889* (Berlin: Klaus Schwarz Verlag, 1998), esp. 429–465.

fast throughout it (*fa-man shahida minkum al-shahra fa 'l-yasumhu*). In both cases the occasions set by the Qur'ān are temporal, and al-Ghazzālī argues that because these times recur, so do the corresponding obligations of prayer and fasting. On the other hand, since the occasion of the pilgrimage is spatial, namely the Ka'bah, and there is only one Ka'bah, the obligation of pilgrimage applies only once in a lifetime. Al-Ghazzālī further notes that God's setting down of such occasions is itself a decree (*hukm*).⁸⁶ In fact, in subsequent *uṣūl al-fiqh* literature, the occasion is one of the *aḥkām waḍ'īyah*, "nonnormative categorizations" to borrow Bernard Weiss's terminology, as opposed to those that are normative (*taklīfīyah*), that create obligations, for example.⁸⁷

This intriguing discussion of occasions in *al-Mustafā* is in fact not original with al-Ghazzālī, but undoubtedly derives from the far more extensive treatment of the topic in the Central Asian Ḥanafī literature. The Central Asian theory of occasions, like the version found in al-Ghazzālī, not only encompasses the law, it also touches upon theology, since the obligation of belief in God itself (*īmān*) has its occasion, the created world around us. The theory is internally complex. On the one hand it is invoked, as in al-Ghazzālī, to justify the recurrence of certain obligations, a useful service inasmuch as for the majority of legal theorists a command in itself does not call for repeated performance. On the other hand, the Ḥanafī theory of occasions is designed to explain the effect of certain legal incapacities.⁸⁸ In this latter function the theory calls for a distinction between an underlying obligation (*nafs al-wujūb*) and an associated obligation to

⁸⁶ *Al-Mustafā*, ed. Muḥammad Sulaymān al-Ashqar (Beirut: Mu'assasat al-Risālah, 1417/1997), 1:175–176.

⁸⁷ Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 1990), 109.

⁸⁸ In this role it is directly related to the introduction of a concluding section on capacity (*ahlīyah*) in some Ḥanafī works of *uṣūl al-fiqh*: al-Dabūsī, *Taqwīm al-adillah*, 417ff.; Bazdawī, 4:237–401; al-Sarakhsī, *Uṣūl al-fiqh*, 2:332–352; al-Nasafī, *Kashf al-asrār*, 2:249–315. Abu 'l-Muzaffar al-Sam'ānī, *Qawāṭi' al-adillah*, ed. 'Abd Allāh b. Ḥāfiẓ al-Ḥakamī (Riyāḍ: Maktabat al-Tawbah, 1419/1998), 5:178; ed. Muḥammad Ḥasan Ismā'īl al-Shāfi'ī (Beirut: Dār al-Kutub al-'Ilmiyah, 1418/1997), 2:369, credits al-Dabūsī with this innovation, which al-Sam'ānī finds useful. Al-Ḥakamī's edition of *Qawāṭi' al-adillah* supersedes the incomplete edition of Muḥammad Ḥasan Hītū (Beirut: Mu'assasat al-Risālah, 1417/1996) and the less reliable edition of al-Shāfi'ī, which I cite only to facilitate reference. Chafik Chehata has examined Ḥanafī legal texts for their terminology for capacity. He finds the first use of *ahlīyah* in al-Sarakhsī's *al-Mabsūt*. See his *Études de droit musulman* (Paris: Press universitaires de France, 1971), 105. Chehata's discussion suffers, however, from his obvious lack of acquaintance with the Ḥanafī theory of occasions (he held *uṣūl al-fiqh* in disdain), and he makes no reference to al-Sarakhsī's *Uṣūl al-fiqh*, which contains the term *ahlīyat al-wujūb* that Chehata was unable to find in al-Sarakhsī's *fiqh*.

perform the underlying obligation (*wajūb al-adā’*). Thus a person who sleeps through the time for prayer has no obligation to perform prayer while asleep, but is subject to the underlying obligation of prayer. The underlying obligation is created by the coming to pass of the time instituted by God as the occasion for prayer, while the obligation of performance depends on God’s command to pray. The command is a communication from God and as such to be effective must be understood by its addressee, who, in the case of the sleeper, lacks the requisite consciousness. The underlying obligation to pray, incurred during sleep, is made effective by the command of God that it be discharged which attaches when the sleeper awakens.

For the Ḥanafīs only the obligation of performance is based on God’s communications (*khūṭāb*). The underlying obligation, by contrast, does not issue from a communication from God, as for al-Ghazzālī. Rather it is built into the natural order of time and place, so to speak, although in fact our knowledge of what times and places have been instituted by God as occasions will have to be gleaned from textual sources. This is the gist of the Central Asian theory of occasions shorn of details and without reference to internal controversies.⁸⁹

A very instructive and penetrating critique of the entire edifice of the theory of occasions can be found in the writings of the Shāfi‘ī jurist Abu ‘l-Muẓaffar al-Sam‘ānī (d. 489/1095), a former Ḥanafī.⁹⁰ In his *uṣūl al-fiqh* work *Qawāṭi’ al-adillah* al-Sam‘ānī devotes two sections to expounding and attacking the theory as he found it in *Taqwīm al-adillah* of the Central Asian Ḥanafī Abū Zayd al-Dabūsī.⁹¹ Al-Sam‘ānī also takes up the theory of occasions in his *al-Iṣṭilām*, a work of *khilāf* directed against al-Dabūsī’s *al-Asrār*.⁹²

⁸⁹ See the sections on *bayān asbāb al-sharā’i’* in al-Dabūsī, *Taqwīm al-adillah*, 61–66; *Uṣūl al-Sarakhsī*, 1:100–111, and al-Bazdawī, 2:339–358, with al-Bukhārī’s commentary. On *asbāb* in Islamic law, see the comprehensive study by ‘Abd al-‘Azīz b. ‘Abd al-Raḥmān b. ‘Alī al-Rabī‘ah, *al-Sabab ‘inda al-uṣūliyyin*, 3 vols. (Riyāḍ: Jāmi‘at al-Imām Muḥammad b. Sa‘ūd al-Islāmiyah, 1399/1980).

⁹⁰ Al-Sam‘ānī explained his conversion to Shāfi‘ism as a rejection of the Mu‘tazilism that had come to dominate Marw. *Al-Ansab* of his grandson ‘Abd al-Karīm b. Muḥammad, 3:298, quoted in the editor’s introduction to Abu ‘l-Muẓaffar al-Sam‘ānī, *al-Iṣṭilām*, ed. Nayīf b. Nāfi‘ al-‘Amrī (Cairo: Dār al-Manār, 1412/1992), 1:13. Contrast this with the report of Abū Shakūr al-Sālīmī (d. 2nd half 5th/11th cent.) that Marw was a center of Māturīdism. Madelung, “The Spread of Māturīdism”, 117. On the consternation occasioned by al-Sam‘ānī’s conversion, see Madelung, “The Spread of Māturīdism”, 138, n. 72, and his *Religious Trends*, 35–36.

⁹¹ *Qawāṭi’ al-adillah*, Riyad ed., 4:532–555, 568–588; Beirut ed., 2:292–301, 369–409.

⁹² *Al-Iṣṭilām*, 2:186–196. See also Maḥmūd b. Aḥmad al-Zanjānī d. 656/1258, *Takhrīj al-furū‘ alā al-uṣūl*, ed. Muḥammad Adīb Ṣāliḥ (Damascus: Maṭba‘at Jāmi‘at Dimashq, 1382/1962), 53–55.

Among other criticisms, al-Sam‘ānī sees in the theory an unwelcome innovation. For in attributing obligations to the constituents of the natural order, al-Dabūsī was departing from the view of *ahl al-sunna* that all obligations arise from God’s communications and also from the heretical [i.e. Mu‘tazilī] opposing view that they can arise from human reason (*‘aql*). While admitting al-Dabūsī’s distinction between an underlying obligation and an obligation of performance, al-Sam‘ānī traces both back to a single communicative act of commanding. Thus al-Dabūsī’s theory, he wrote, “is an error and invention (*khata’ wa-ikhṭirā’*), which, I think, no one before him has espoused”.⁹³

The Central Asian Ḥanafī sources do not ascribe the origination of the theory of occasions to any particular individual, as al-Sam‘ānī does, albeit guardedly. The doctrine in these Ḥanafī sources is regarded as a well-established part of later Ḥanafī doctrine, of which al-Dabūsī gave an authoritative statement.⁹⁴ The extent to which the Ḥanafīs took pride in this ingenious theory may be gathered from Ṣaḍr al-Shari‘ah al-Maḥbūbī’s *al-Tawḍīḥ*. Referring to those critics who are unable to grasp the subtle distinction between an underlying obligation and an obligation of performance and wish to conflate the two, he enthusiastically proclaims: “How great is the achievement of the one who originated the distinction between the two, how subtle his insight, how sound his judgment” (*lillāh darru man abda‘a al-farqa baynahumā wa-mā adaqqa nazarah wa-mā amitana ḥikmatahu*).⁹⁵

Now it happens that among those unable to grasp the distinction was Abu ‘l-Mu‘īn al-Nasafī, who subjected the entire theory of occasions to a very detailed and harsh criticism.⁹⁶ Setting aside the other issues raised by Abu ‘l-Mu‘īn’s critique of the theory, I wish to focus

⁹³ *Qawāṭi‘ al-adillah*, Riyāḍ ed., 4:579; Beirut ed., 2:298.

⁹⁴ Thus al-Kākī refers to the classical theory of *asbāb* as the “way (*ṭarīqah*) of Qāḍī Abū Zayd and those who follow him” (*Jāmi‘ al-asrār*, 2:613), but nowhere explicitly attributes its invention to al-Dabūsī. Earlier al-Sarakhsī in disputing a point of detail in the theory make reference to “one of the later scholars (*muta‘akkhkhūn*) who have written on this subject (*bāb*)”. *Uṣūl al-Sarakhsī*, 1:104. A manuscript gloss (n. 2) identifies the scholar intended as al-Dabūsī.

⁹⁵ *Al-Tawḍīḥ* with *al-Talwīḥ*, Cairo ed., 2:198; Kazan ed., 356; Beirut ed., 1:205.

⁹⁶ The critique survives in citations from his *Ṭarīqat al-khilāf*. See al-Bukhārī, *Kashf al-asrār*, 2:348, for the title, elsewhere given simply as his *Ṭarīqah*, quoted most fully in al-Bukhārī’s *Kashf al-asrār*, 1:218, 221–224, 2:343–344, 348, which also contains shorter scattered citations from al-Nasafī’s work. The length of al-Nasafī’s critique of the theory of *asbāb* is noted by al-Bukhārī, *Kashf al-asrār*, 2:344 and *Fawatīḥ al-raḥamūt*, 1:80. It is discussed in al-Rabī‘ah, *al-Sabab*, 1:222–225.

on his treatment of this pivotal distinction. In the case of a monetary obligation, Abu ‘l-Mu‘īn is prepared to recognize a distinction between the underlying obligation, say a certain sum of money, and the obligation to discharge the underlying obligation, which will not arise until the creditor demands payment. But in the case of such bodily obligations as prayer he insists that the underlying obligation, the act of prayer, is indistinguishable from the obligation of performance. The very same physical movements constitute both. The opposing view, that of the theory of occasions, is, he wrote, “based on the doctrine of Abu ‘l-Hudhayl al-‘Allāf (d. 226/840–236/850), one of the satans of the Qadariyah, that prayer and pilgrimage are not motion and rest (*ḥarakah wa-sukūn*) but entities that accompany motion and rest. Abu ‘l-Qāsim al-Ka‘bī reported this doctrine in his name, and it is a doctrine which Abu ‘l-Hudhayl could not elucidate, let alone demonstrate”.⁹⁷

Other Central Asian Ḥanafīs were also uncomfortable with the theory of *asbāb* to one degree or another. Both Abu ‘l-Yusr al-Bazdawī, initially it seems, and ‘Alā’ al-Dīn al-Samarqandī, insisted that the elements of the natural order, time and place, that are said to serve as *asbāb* are mere stand-ins for the actual occasions that trigger the various obligations: the many bounties of God that occur within the natural order at specific times and in connection with a specific place such as the Ka‘bah.⁹⁸ In so doing, they hark back to an earlier Ḥanafī tradition of explaining the incidence of religious obligations as founded on the gratitude owed God for these bounties. Abu ‘l-Yusr, it appears, eventually came to reject the theory of *asbāb* outright as simply unnecessary. It offends the principle of Ockham’s razor in positing an element, the occasion, the explanatory function of which is dubious. God’s communication in the form of a command together

⁹⁷ Al-Bukhārī, *Kashf al-asrār*, 2:222; al-Taftāzānī, *al-Talwīḥ*, Cairo ed., 2:194–95; Kazan ed., 354; Beirut ed., 1:204. I have not found further details on Abu ‘l-Hudhayl’s views on prayer and fasting. But a related teaching of Abu ‘l-Hudhayl that Abu ‘l-Mu‘īn also mentions in this connection, that the spatial accidents (*akwān*) are distinct from motion and rest themselves, is reported in al-Ash‘arī’s *Maqālāt al-islāmīyīn*, 350, 355, translated by J. van Ess, *Theologie und Gesellschaft*, 5: 378–379 and commented upon by him in 3:234–5. Cf. ‘Abd al-Qāhir b. Tāhir al-Baghdādī, *Uṣūl al-dīn* (Istanbul: Maṭba‘at al-Dawlah, 1346/1928), 40–41.

⁹⁸ Al-Samarqandī, *Miẓān al-uṣūl*, 2:1043–45; al-Bukhārī, *Kashf al-asrār*, 2:358–359; al-Kākī, *Jāmi‘ al-asrār*, 1:224 (on Abu ‘l-Yusr). See also al-Bukhārī, *Kashf al-asrār*, 2:345 (Abu ‘l-Yusr on the *sabab* of the obligation of *imān*). This is the version of the theory found in al-Kāsānī’s *Badā‘ī al-ṣawā‘īf* (reprint, Dār al-Kitāb al-‘Arabī, 1402/1982), 2:4 (on *zakāt*); cf. al-Sarakhsī, *al-Mabsūṭ*, 2:149.

with the relevant contextual information is enough to explain the recurrence of certain obligations, and the problems of incapacity can be treated without recourse to any alleged occasions.⁹⁹ The vehemence and acerbity of Abu 'l-Mu'īn's attack on the theory of *asbāb* were, however, without parallel and are all the more striking in light of the reported endorsement of the theory by Abū Maṣṣūr al-Māturīdī.¹⁰⁰ It won no discernible following either in Abu 'l-Mu'īn's own day or thereafter.¹⁰¹

Later Central Asian Ḥanafī *uṣūl al-fiqh* contrasts the fully developed Ḥanafī theory of occasions with the limited recognition accorded *asbāb* by Shāfi'īs and Ash'arīs. The latter, like Abu 'l-Mu'īn al-Nasafī, would not recognize a role for *asbāb* in the *'ibādāt*, which are directly instituted by God without the intervention of the elements of the natural order posited by the Ḥanafī theory. Al-Nasafī is seen as representative of a Ḥanafī minority and his arguments as having been offered in support of the Shāfi'ī position. Ironically, a modest effort was made to portray the Shāfi'ī/Ash'arī position as itself verging on heresy. 'Abd al-'Azīz al-Bukhārī (d. 730/1329), who defused the theological debate over infallibilism and specialization of the cause, in this instance took a different stance. He urged that "those who reject all occasions and attribute determination to God go against the texts (*naṣṣ*) and consensus and render themselves determinists (*jabrī*) outside of *ahl al-sunnah*. One who rejects some occasions while acknowledging others also has no ground for this. For if it is proper to attribute some determinations to occasions where there is evidence for this, it is equally proper so to attribute the other cases where

⁹⁹ *Ma'rīfat al-ḥujaj al-shar'īyah*, 21aff.

¹⁰⁰ Al-Bukhārī, *Kashf al-asrār*, 2:339; al-Kākī, *Jāmi' al-asrār*, 2:609; al-Kirmāstī, *al-Wāqiz*, 142. These texts speak of al-Māturīdī's *ikhtiyār*, and al-Bukhārī supplies the detail that in his *Ma'ākhid al-sharā'if*, al-Māturīdī stated that the times for prayer are the occasions for the obligation (reading *wujūb* in place of *wujūd*) of the acts of worship. Al-Samarqandī more guardedly states that al-Māturīdī alluded (*ashhāra*) to the doctrine of *asbāb* (*Mizān al-uṣūl*, 2:1039). In any case, al-Māturīdī characteristically held that in the absence of other evidence, the commanded act is subject, as a matter of action not belief, to immediate (*fawr*) and repeated (*takrār*) performance. *Mizān al-uṣūl*, 1:231,331. This obviates the need for recourse to *asbāb* to deal with these questions.

¹⁰¹ His contemporary Al-Sarakhsī already seems to be responding to Abu 'l-Mu'īn's attack in his discussion of the critique of *asbāb* by an unnamed Ḥanafī. *Uṣūl al-Sarakhsī*, 2:334–335. According to al-Sarakhsī this critique falls short (*taqsīr*) in not acknowledging the particular times and places that God has seen fit to exalt. On the other hand, he thought that Dabūsī's version went to too far in detaching obligation from the capacity to understand (*fahm*) its incidence.

there is evidence”.¹⁰² Even this relatively restrained effort to give the issue of *asbāb* theological significance won no support. Sirāj al-Dīn Abū Ḥafṣ ‘Umar b. Aḥmad al-Hindī al-Ghaznawī (d. 773/1372) argued that the issue, far from being of theological importance, was merely verbal. “All”, he wrote, “are in agreement that the real determiner (*mūjīb*) is God and no other . . . nor is there any disagreement that these occasions make known (*mu‘arrifāt*) God’s decree without doing any determining in their own right”.¹⁰³

The elaborate edifice of the Ḥanafī theory of occasions, having proved impregnable to theological attack, needed no theological defence.¹⁰⁴ It has survived to our day as a paradigm case of legal ingenuity in the devising of a broad theory capable of addressing a wide range of technical legal problems.¹⁰⁵

VI. Conclusions

At the core of the anti-Mu‘tazilī movement of theological revival among Central Asian Ḥanafīs some two centuries after al-Māturīdī was the insistence that Ḥanafism was both a theological and a legal tradition.

¹⁰² Al-Bukhārī, *Kashf al-asrār*, 2:340–1, repeated without attribution in al-Kākī, *Jāmi‘ al-asrār*, 2:611.

¹⁰³ His commentary on al-Khabbāzī’s *al-Mughnī*, quoted in Ibn Nujaym, *Faṭḥ al-ghaffār*, 2:71–2.

¹⁰⁴ Once again Shihāb al-Dīn al-Marjānī is an exception. He was concerned to revive the older Ḥanafī doctrine that God’s bounties were the *asbāb* (Gloss on Al-Taftāzānī, *al-Talwīḥ*, Cairo ed., 2:389–90). He made good use of Abu-l-Mu‘īn al-Nasafī’s critique (e.g. 2:396). He refers in this connection (2:410) to his *Nāzūrat al-haqq fi farāḍiyāt al-‘isha’ in lam yaghīb al-shafaq*, Qazan, 1287/1870. See Yūsuf Ilyān Sarkis, *Mu‘jam al-maṭbū‘āt al-‘arabīyah* (Cairo: Maktabat Sarkīs, 1346/1928), 2:1728. This work, unavailable to me, is described as al-Marjānī’s finest by the historian M. M. al-Ramzī, *Talḥīq al-akhbār wa-talqīh al-āthār fi waqā’i‘ Qazān wa-Bulghār wa-mulūk al-Tatār* (Orenburg: al-Maṭba‘ah al-Karīmīyah wa ‘l-Ḥusaynīyah, 1908, 2:401. It is discussed by Kemper, *Sufis*, 441–445, who does not, however, mention the issue of concern here.

¹⁰⁵ The terms *ahliyyat al-wujūb* and *ahliyyat al-adā’* have been enlisted to do service for the civil law *Rechtsfähigkeit* (capacité de jouissance) and *Handlungsfähigkeit* (capacité d’exercice). See, for example, Khālīd al-Zu‘bī and Mundhir al-Faḍl, *al-Madkhal ilā ‘ilm al-qānūn* (Amman: al-Markaz al-‘Arabī li’l-Khidmat al-Ṭullābiyah, 1995). Although the Arabic terms were originally concerned with religious obligations, they are already used in the classical Ḥanafī texts to include civil rights and obligations (al-Bazdawī, 4:239; *Uṣūl al-Sarakhsī*, 2:333). In this connection, note the interpolation of “*lahu wa-‘alayhi*” after the mention of the *dhimmah* of the newborn capable of obligation (*sālihah li ‘l-wujūb*) in some texts of al-Nasafī’s *al-Manār* (al-Nasafī, *Kashf al-asrār*, 2:252; Ibn Malak, gloss on *al-Manār*, 938).

In this respect, the Central Asian Ḥanafīs differed from their Iraqi Mu'tazilī brethren, who apparently felt themselves free to profess theological opinions that Abū Ḥanīfah would not necessarily have shared.¹⁰⁶ The efforts at the end of the 5th/11th and beginning of the 6th/12th centuries on the part of Central Asian Ḥanafī theologians and legal theorists to identify and remove Mu'tazilī elements in the *uṣūl al-fiqh* they received from their 'Iraqī predecessors must be regarded as having had only limited success. To this extent, the notion of a triumph of Māturīdism among the Central Asian Ḥanafīs must be called into question. In legal theory Māturīdism was of very limited influence.

Of the questions examined here, only 'Iraqī infallibilism was permanently removed from Ḥanafī *uṣūl al-fiqh*, although even here it eventually lost its association with heresy, one the scope of *ahl al-sunnah wa 'l-jamā'ah* was broadened to include the Ash'arīs. Specialization of the cause for a time suffered the fate of infallibilism with which it was linked, but its rejection in Central Asia did not prevent its later rehabilitation. The Iraqi position on the general term survived the attacks of both al-Māturīdī and Abu 'l-Mu'īn al-Nasafī, the greatest of the Central Asian theologians, and passed through Central Asian fully intact. The theory of *asbāb*, apparently Central Asian in origin, also failed succumb to Abu 'l-Mu'īn al-Nasafī's effort to expose its odious theological roots, an effort that appears to have been quite isolated, evidence more of al-Nasafī's theological erudition and fertile imagination than of any actual Mu'tazilī taint.¹⁰⁷ In their pursuit of a legal theory cleansed of any taint of Mu'tazilism, the Central

¹⁰⁶ The reported Mu'tazilī Ḥanafī repudiation of the authenticity of the theological writings ascribed to Abū Ḥanīfah and the associated claim that Abū Ḥanīfah was a Mu'tazilī (al-Kardarī, *Manāqib Abī Ḥanīfah*, Beirut: Dār al-Kitāb al-'Arabī, 2:122; see Madelung, "The Spread of Māturīdism," 124, n. 37) may mean no more than that the Mu'tazilī Ḥanafīs understood Abū Ḥanīfah to have held some essential Mu'tazilī doctrines rather than that he was head of a theological tradition to which they subscribed. At least the case of al-Jaṣṣāṣ so indicates. In any event, van Ess has already suggested that "it would be interesting to investigate to what extent the Ḥanafī *madhhab* was meant to be more than just the Iraqi school of law." See "Early Development of Kalām," in G. H. A. Juynboll, *Studies on the First Century of Islamic Society* (Carbondale: Southern Illinois University Press, 1982), 118.

¹⁰⁷ Al-Nasafī in particular had a keen, not to say overdeveloped, sense for detecting the slightest whiff of Mu'tazilism. See, for example, his finding Mu'tazilism in back of the formula popular among the jurists of his day, *fā'idat al-wujūb al-adā'*, a connection that the jurists, in their ignorance, failed to see (*Tabṣirat al-adillah*, 12:708).

Asians were not always able to keep themselves from crossing the line between sober analysis and theological fantasy.

One can also question the prospects for the success of such a drastic program of ideological purification. On the questionable assumption that Mu‘tazilī influences on legal theory could always be readily recognized, how far could these revisionists carry out their program without incurring the risk of drastically upsetting the inherited body of legal concepts, principles, and rules? Since no such revolutionary aim is discernable in their writings, one must recognize the constraints under which they acted.

It is worth noting, too, that the ‘Iraqī Ḥanafīs, whose doctrines the Central Asians so vigorously attacked remained for them respected Ḥanafīs. The *ahl al-sunnah wa ‘l-jamā‘ah* were understood to be the backbone of the Ḥanafī legal tradition, those Ḥanafīs truest to the teachings of Abū Ḥanīfah and by virtue of that those whose beliefs were beyond hint of heresy. Still the contributions made by Iraqi Mu‘tazilīs to the transmission and development of Ḥanafī law did not go unrecognized. ‘Īsā b. Abān, al-Karkhī, and al-Jaṣṣāṣ are not spoken of with any sign of contempt in these Central Asian texts even when their opinions in legal theory are being condemned.¹⁰⁸

The full vigor of this effort at the theologizing of legal theory was of remarkably short duration, a brief flowering under al-Māturīdī then the revival of two generations in the time Abu ‘l-Mu‘īn al-Nasafī and ‘Alā’ al-Dīn al-Samarqandī. The subsequent reconfiguration of *ahl al-sunnah wa ‘l-jamā‘ah* to include the Ash‘arīs came after this effort had lost its momentum. But once orthodox belief could incorporate such previously despised doctrines as the infallibility of the *mujtahids*, all prospects of a further revival of this campaign of “de-Mu‘tazilization” were doomed.

¹⁰⁸ As we have noted, the same cannot be said of their attitude toward one of their own, Abū Zayd al-Dabūsī.