

THE ZĀHIRĪS

THEIR DOCTRINE AND THEIR HISTORY

A CONTRIBUTION
TO THE HISTORY OF ISLAMIC THEOLOGY

BY

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FOREWORD

Gone is the time when Islamic studies were the domain of "unhurried eccentrics with a wide and deep background in the conventional humanities". Despite our improved communications, the ability to read German profitably is rapidly becoming a phenomenon of a past era. While the fruits of the coryphaeus of the discipline were always a living legacy for our teachers, a younger generation has often only a second-hand acquaintance with the writings of Ignaz Goldziher. The fiftieth anniversary of his death seems a fitting occasion to present the English translation of a widely quoted, fundamental work on Islamic jurisprudence.

Since Goldziher himself was aware of some of the shortcomings of the work, it would not have been fair to his scholarship merely to translate it. Yet, although I have corrected all the errors that I could detect, I cannot claim to have done more than he would have done if he had worked under more favourable conditions. What I have done, then, is to indicate the foot-notes, in cases in which they were omitted (e.g. p. 69), and to correct incorrectly quoted passages (e.g. p. 21) and those which were outright wrong (e.g. 139 n. 5). Incorporated in the translation are also Goldziher's corrections from his preface and those from his other works. May it be mentioned here that, in at least one instance, this edition is more complete than the 1967 reprint in which the foot-note on p. 131 is omitted. The marginal pagination refers to the original 1884 edition.

In order to facilitate the work of the printer, as much of the Arabic which appeared in the German edition in the Arabic script has been transliterated. In passages in which both the Arabic original and its transliterated form occurred, the former has been omitted. The spelling of the Arabic names and terms conforms to current English practice and is not always identical with that of Goldziher, e.g. Baṭalyawṣī. These inconsequential corrections are not indicated; all other changes or additions have been marked by triangular brackets.

Goldziher's choice of name has been retained in the text, while in the index an attempt has been made to list persons under that part of their name under which they are now generally known. However, since many of them were identified only at the time of compiling the index, these fuller names could not always be incorporated in

the text. Usually, more complete forms such as these appear in the index only. But in these instances, cross-references have been provided. The bibliography lists only those editions used by Goldziher; in many cases, better ones are now available. Index and bibliography suffer from some minor inconsistencies since both were prepared after the type was set. I trust it will cause no serious inconvenience if, for example, the foot-notes refer to Abū al-Maḥāsīn when he is actually listed as Ibn Taghrī Birdī in the bibliography. The point did not seem to warrant major changes from the printer.

When now, at the end, I come to thank my many friends, particularly Mrs. Anne Bembenek and Miss Jane Fletcher, for their help, it is more than a routine courtesy. I had to wait a long time to acknowledge publicly their assistance and encouragement. As a matter of fact, if it had not been for Mrs. A. Bembenek, who during one summer helped me with indefatigable regularity, I would not have brought the task to a finish. However, if there are faults, they are entirely my own, since I often stubbornly insisted on my version contrary to their better judgement.

Toronto

W.B.

PREFACE

When I was compiling a coherent series on the evolution of the Muslim religion, I had to exclude some areas concerning the theology of Islam. Some of these problems just did not seem suitable for the general public but are quite important for a thorough knowledge of Islam. With the present work I present to my fellow scholars a detailed treatise, an abstract of which has been submitted to the Islamic section of the Sixth Congress of Orientalists in Leiden. I have been led by the conviction that investigation of the so-called *fiqh*, particularly if one desires to understand its historical development, has to constitute an indispensable part of our studies on Islam.

This importance is to be attributed not only to Islam's canonical law and its positivism, i.e. to be so-called *furū'*, but also, to a far greater extent, to the *methodology of this discipline*, the rules of deduction of the *furū'* from the canonical sources of the law. We would have only an imperfect knowledge of the institutions of Islam if we were to investigate these merely to see how the Prophet's followers judged individual incidents of religious and social life. In order to appreciate the *spirit of Islam*, we must evaluate the relation of its development to its sources so as to recognize to what extent this development is governed by freedom or the slavish mind, a tendency toward progress or adherence to the obsolete, an active, intellectual preoccupation or indolent thoughtless behaviour. In the series of investigations on VI which such an evaluation must be based, the investigation of *uṣūl al-fiqh* in its historical development occupies an important position next to the internal history of Koranic interpretation and *ḥadīth*. Based on such convictions, I hope my colleagues will show some interest in my monograph since the greater part of it deals with *uṣūl al-fiqh*.

First of all in this preface, may I mention details concerning the external aspects of the work to follow.

Together with the manuscripts and editions quoted, a more specific designation has been given wherever possible. In regard to more frequently cited works, with which this has not been done, particulars are listed below:

"*Mafātīḥ*" = Fakhr al-Dīn al-Rāzī's *Mafātīḥ al-ghayb*, Būlāq 1289 in eight volumes. — "al-Nawawī" = this scholar's commentary on Muslim's *Ṣaḥīḥ*; text and commentary are quoted according to the

Cairo edition of 1289 in five volumes. The work of the same author, published by Wüstenfeld, I shall quote according to that edition as: "Tahdhīb". — "al-Qaṣṭallānī" = this author's work *Irshād al-sārī li-sharḥ ṣaḥīḥ al-Bukhārī*, Būlāq 1293 in ten volumes. — "al-Ḥuṣrī" = the author's *Zahr al-ādāb* (a work which has not yet been sufficiently utilized for the history of literature), marginal edition to the *Kitāb al-'iqd*, Būlāq 1293 in three volumes. — "al-Sha'rānī" = this author's *Kitāb al-mizān*, ed. Cairo, Castelli 1279 in two volumes. — Al-Damirī's *Ḥayāt al-ḥayawān* is listed according to the second Būlāq edition of 1284 in two volumes. — "Ibn al-Mulaqqin" = this scholar's *ṭabaqāt* of the Shāfi'ite school with the title *al-'Iqd al-mudhahhab fī ṭabaqāt ḥamalāt al-madhhab* (MS. Leiden University Library Leg. Warner no. 532). — "al-Jāhiz" = *Kitāb al-ḥayawān* of this Mu'tazilite (MS. Imperial Hofbibliothek Vienna, N.F. no. 151). — "Waraqāt" = Imām al-Ḥaramayn's work on *uṣūl* with Ibn al-Firkāh's commentary of the same title (MS. Herzogliche Bibliothek Gotha no. 922).

The designation "Ibn Ḥazm" refers to this author's *Kitāb al-milāl wa-al-niḥāl* (Leiden MS. Leg. Warner no. 480). "Ibtāl" designates Ibn Ḥazm's *Ibtāl al-qiyās wa-al-ra'y wa-al-istiḥsān wa-al-ta'tīl* (MS. Herzogliche Bibliothek Gotha no. 640). Since I thought it expedient VII to offer here a description of the theological and literary peculiarities of Ibn Ḥazm, the most startling representative of the school with which this work is concerned, the reader will find on the following pages ample excerpts from these two works. Often I had considerable difficulties in quoting these works from a single manuscript. If the manuscript of the *Milāl* lacks diacritical marks, often to dangerous proportions, then this is even more evident in the *Ibtāl*. Pertsch has described the graphic style of this manuscript as "interlaced Naskhī which is devoid of diacritical marks except for some rare exceptions". Under such conditions it was in many cases a truly difficult task to arrive at an acceptable text. Sometimes it could not be avoided, particularly in the *Ibtāl*, that passages have remained either unclear or had to be explained by plausible conjectures¹. At other times, additions to the apparently deficient text became necessary (in square

¹ I like to indicate here that there is only an apparent contradiction between my conjectures on p. 191, n. 11 and p. 197, l. 12. In the former passage, not Shu'bah himself is called *qa'if* but only the fact that this saying is quoted on the authority of his name. It can be noted that this particular statement is transmitted by Shu'bah on the authority of 'Āṣim (cf. *Ṭab. ḥuff.*, IV, 46) and of Ḥajjāj. It would be impossible to read *al-hijāj*.

brackets). However, curved brackets indicate that a word should be omitted from the text. Despite these shortcomings of the material at my disposal, I thought it suitable to provide lengthy excerpts from the *Ibtāl* since they offer a thorough insight into the dispute between the traditionalist school and their opponents. For these reasons, I preferred to let the original speak for itself so that in the relevant passages of my treatise, I generally refer only briefly to the contents of these texts, or paraphrase them freely. In view of my potential readers, I could disregard a literal translation, especially as it does not suit the elaborate scholastic style of the author. I discovered that Ibn VIII Ḥazm employs less formal syntax particularly in passages in which he indulges in a lengthy art of presentation. I have made no corrections where I might suspect a freer expression of Ibn Ḥazm and not obvious mistakes by the copyist. Some necessary corrections have been made tacitly; I wish to mention the faulty readings in several passages in the footnote,¹ but in instances where I am, perhaps unnecessarily, reserved with regard to the actual text of the MS, I have outlined my emendations of certain phrases below.

The characteristic features of Ibn Ḥazm's jurisprudence could be sketched more fully at the present time than was possible when the work went to press. Among the Arabic treasures brought to Leiden from Medina by the Muslim scholar Shaykh Amīn (who will long be affectionately remembered by the participants of the Sixth Congress of Orientalists) is a volume of Ibn Ḥazm's monumental work *al-Muḥallā*, which is unique — at least in Europe². (These treasures, through the munificence of the Dutch Government, now adorn the Islamic collection of the Leiden University Library). Thanks to the kindness of my friend Dr. Landberg, who, at the time, happened to be occupied in cataloguing these manuscripts, I was able to consult that particular MS during my stay in Leiden and to excerpt whatever seemed to me of importance. This work is a legal analogue to the *Kitāb al-milāl*; its style and method of presentation, even the author's abrupt, inconsiderate way of dealing with Ḥanafites and Malikites, reveal at first sight the valiant Zāhirī polemic who heaped on his antagonists the same keen epithets and abuses familiar to readers

¹ (The corrections which appear in the German edition as a footnote are incorporated in the text).

² C. Landberg, *Catalogue de manuscrits arabes provenant d'une bibliothèque privée à el-Medīna*, p. 177, no. 646.

IX of the *Milal*. Again and again he repeats the same theological principles and arguments which we encounter constantly in his dogmatic polemics. I do not intend to overburden this preface with excerpts from this book — no matter how interesting these might be to complete our presentation — I only wish to accentuate that the individual remarks produced in my work on Ibn Ḥazm's position on jurisprudence are endorsed by the *Muḥallā* and that, generally, the characteristics of Ibn Ḥazm's method of *fiqh* which I have established here, find their substantiation in particulars which can be drawn from the *Muḥallā*. Some of what has been described here as Ibn Ḥazm's principal attitude according to the *Milal* (e.g. p. 117), I have found repeatedly stated in the *Muḥallā*.

The conditions under which I have been working must excuse some of the shortcomings of this treatise and also a certain amount of carelessness in correcting it. In this regard, I trust I can count on the indulgence of readers and reviewers¹.

X Since theological selections are normally not to be found in our Arabic chrestomathies, I thought it useful to offer suitable texts in the original, especially from Būlāq publications to which reference is made in this work, and which are not always readily available. This is intended to give students a chance to acquaint themselves with the peculiar parlance, and the scholastic nature of the Islamic sciences, and to acquire further a knowledge which is important in dealing with secular Islamic literature where often reference is made to theological concepts.

Finally, I have to express my deep gratitude to Professor Pertsch, Gotha, to Professor de Goeje, Leiden, and to Professor v. Rosen, St. Petersburg (he communicated to me the excerpts from al-Sam'āni), for enabling me to use freely manuscripts material used in this work. Professor J. Derenbourg, Paris, has been kind enough to have copied for me the passages of Ibn Shuhbah which I used, and Dr. Neubauer, Oxford, has troubled himself with copying and collating for me Dāwūd al-Zāhiri's biography from the Oxford manuscripts of Subkī. Professor Fleischer has endeavoured to correct the first five and a half pages, and it does not need to be emphasized how much this part of the work has profited through the care of my esteemed teacher.

Budapest, November, 1883.

IGN. GOLDZIEHER.

¹ <The corrections which follow here in the German edition have been incorporated in the text>.

INTRODUCTION

1 The legal school which is the subject of the following study is known in the theological literature of Islam as *madhhab al-zāhir* or *madhhab Dāwūd*. The individual who adheres to its principles is called *Zāhiri* or *Dāwūdi*; the school, as a whole, is called *ahl al-zāhir al-zāhiriyyah*.

At the beginning of our century², European orientalists still knew very little about the nature and tendency of the *madhhab al-zāhir*. In this regard, it is sufficient to point out that Silvestre de Sacy, the scholar who, at that time, represented the embodiment and sum of all knowledge about the Muslim East in Europe, quite frankly confesses in his Arabic chrestomathy on the occasion of his editing Maqrizī's biography: "Je ne saurais dire précisément ce que c'est que cette secte nommée *madhhab al-zāhir*". However, in his translation of the passage in which Maqrizī is accused of Zāhirite tendencies, he is attempting the following interpretation: "On lui attribua les dogmes de la secte, qui fait consister toute la vertu dans les pratiques extérieures." He contrasts this "doctrine extérieure" to the *madhhab al-bāṭin*, i.e. "doctrine intérieure"³, an antithesis which, as it has been found since, belongs to a fundamentally different concept of theological teaching. In 1835, Freytag seems to have borrowed his

2 "*madhhab al-zāhir*, cogitandi ratio eorum, quibus externus religionis cultus praecipua res esse videtur" from this reference by de Sacy without giving the source. Even in 1877, the faulty interpretation of the old Freytag is still reproduced in Adolf Wahrmund's *Handwörterbuch der arabischen und deutschen Sprache* as "*madhhab zāhir*, äusserlicher Wandel", externalism.

¹ *Not al-zāhirūna* like Houtsma, *De strijd over het dogma in den Islam tot op el-Ash'ari*, p. 85.

² To avoid going back to an earlier period. We mention only one date of previous times in order to show the confusion which prevailed concerning the fundamentals of our question. Mouradgea d'Ohsson (*Tableau général de l'Empire ottoman*, I, Paris 1788, p. 17) names Davoud Tayi Eba Suleyman "mort en 165/781" besides Sufyān al-Thawrī as founder of a sixth orthodox school. About the former, he can relate only this much: "Comme ils n'ont eu l'un et l'autre qu'un certain nombre d'adhérens, leurs opinions particulières évanouirent presque à leur naissance". Here, Dāwūd al-Ṭā'ī (Ibn Qutaybah, *Ma'ārif*, p. 257) is confused with Dāwūd al-Zāhiri.

³ *Chrestomathie arabe*, 1st ed., II, p. 411, 422 ff.; 2nd ed., p. 113, 122 ff.

If we disregard Reiske's translation of a passage from Abū al-Fidā', then Quatremère (1840) was the first among the European orientalists who tried to shed some light on the *ahl al-zāhir* with one of those numerous comments and discussions which advanced considerably our knowledge of the Muslim world, and which make his treatment of Maqrīzī an invaluable source for the knowledge of Oriental languages and affairs¹. Quatremère states that "ce qui concerne cette secte" is "encore fort obscure". He presents in his widely known method a formidable number of passages from manuscripts in the Bibliothèque Nationale, Paris², in which mention is made of the Zāhirite school and of some of its adherents. This remark by Quatremère should have given the first incentive to investigate more extensively the nature, system, and history of the Zāhirite school. (To call it a *sect* would be just as wrong as if we were to use the expression "sect" when referring to adherents of any of the four orthodox schools in their relation to each other). Quatremère's stimulus did not cause any one of the students of Islam to conduct special investigations. In more recent times, expert writers in the field, who have produced either comprehensive or specific works on the development of Islam, have mentioned the Zāhirite school in a few words. We cite v. Kremer³, Houtsma⁴, and Spitta⁵. However, they offer only limited comments on the theological school under discussion. An exhaustive presentation of the school, of its doctrine, and the position of its representatives within orthodox Islam has not appeared until now. The following pages attempt to fill the gap in our knowledge of the history of Islamic theology.

¹ *Histoire des Sultans Mamlouks de l'Égypte*, vol. 1, pt. 2, p. 269-270.

² After re-examination we have utilized in chapter VIII the passage of the Arabic manuscript no. 687 of this library for the history of the Zāhirite movement in the eighth century.

³ *Culturgeschichte des Orients unter den Chalifen*, I, p. 500, n. 3.

⁴ *Op. cit.*, We shall come back to Houtsma's version below.

⁵ *Zur Geschichte Abu-l-Hasan Al-Aṣ'arī's*, p. 80.

CHAPTER ONE

3 The following saying has been transmitted by Abū Bakr b. 'Ayāsh, a Muslim traditionist of the second century (d. 193): "The adherents of tradition in every age are (in relation to the rest of the scholars) like the adherents of Islam in relation to the followers of other religions"¹. This saying is aimed at a method of dealing with Islamic jurisprudence according to which not only the written and orally transmitted sources are authoritative — namely, the Koran and the traditions of Muḥammad and his companions — but also, in recognition of what is valid according to the principles of Islam, what the individual insight of a legist or judge, in real or apparent dependance on those indisputable sources, recognizes as truth emanating from their spirit. The representatives of the latter view are known by the name *ahl* or *aṣḥāb al-ra'y*. The origins of this dissension in the earliest history of Islamic jurisprudence have been dealt with so comprehensively by v. Kremer² and Sachau³ that it would be idle to attempt to find new aspects for this chapter of Islam's history of evolution. According to the researches of the latter scholar, it cannot be doubted that the two designations *ahl al-ḥadīth* and *ahl al-ra'y* originally referred to branches of legists occupied with the investigation of Islamic law: the former were concerned with the study of transmitted sources, and the latter with the practical aspects of the law. It is only later that the two terms indicate the contrast between the methods of legal deduction, a contrast which, as we have been able to observe, was quite common already in the second century.

The so-called orthodox schools (*madhāhib al-fiqh*) differ from each other in the earliest stages of their evolution in the extent to which they permit *ra'y* to be a determining factor in establishing Islamic law in a given case. The two extremes in this respect are Abū Ḥanīfah⁴ and Dāwūd al-Zāhirī. The former made considerable concessions to

¹ al-Sha'rānī, I, p. 63: اهل الحديث في كل زمان كاهل الاسلام مع اهل الاديان، والمراد باهل الحديث في كلامه ما يشمل اهل السنة من الفقهاء وان لم يكونوا حقاظا

² *Culturgeschichte des Orients unter den Chalifen*, I, p. 470-500.

³ *Zur ältesten Geschichte des muhammedanischen Rechts*, Wien 1870. (Akademie der Wissenschaften. Philosophisch-historische Klasse. Sitzungsberichte. Vol. 65).

ra'y while the latter, at least in his early teachings, refutes any justification for this. Mālik b. Anas, al-Shāfi'ī, and Aḥmad b. Ḥanbal have taken the position between these two, not just chronologically, but also with respect to their recognition of *ra'y*. In the course of the development of these schools, this difference diminished through gradual concessions so that wide-spread confusion whether to consider a school as belonging either to *ahl al-ḥadīth* or to *ahl al-ra'y* dominates the historical literature. Ibn Qutaybah takes into account among the *aṣḥāb al-ra'y* all the founders of the legal schools with the exception of Aḥmad b. Ḥanbal, whom he does not mention, and Dāwūd, whom he could not have known yet; among the *aṣḥāb al-ḥadīth* he lists famous traditionists only¹. Al-Maqdisī considers Aḥmad b. Ḥanbal's followers, together with those of Ishāq b. Rāhwayhi, a famous Shāfi'ite, as *aṣḥāb al-ḥadīth* and not at all as belonging to the *madhāhib al-fiqh* to which Hanafites, Mālikites, Shāfi'ites, and Zāhirīs² belong³.

In a different passage, the same author mentions the Shāfi'ites in contrast to the followers of Abū Ḥanīfah as *aṣḥāb al-ḥadīth*⁴, and to complete the confusion, in a third passage⁵, al-Shāfi'ī and Abū Ḥanīfah are considered as belonging to *ra'y* in opposition to Aḥmad b. Ḥanbal. By excluding Aḥmad b. Ḥanbal from among the founders of *madhāhib al-fiqh*, al-Maqdisī seems to conform to older opinions. We know, for example, that the famous Abū Ja'far al-Ṭabarī had to endure considerable animosity since, in his *Kitāb ikhtilāf al-fuqahā'*, he did not consider the teachings of the Imām Aḥmad. The reason for this attitude was that this imām was considered a traditionist but not a

5 *faqīh*⁶. In Ibn 'Asākir, we find: "Aḥmad b. Ḥanbal *wa-ghayruhu min ahl al-ḥadīth*"; the other schools are classified not according to the type of the legal methods but according to their regional affiliation⁷. In al-Shahrastānī we find Mālik, al-Shāfi'ī, Aḥmad, and Dāwūd

¹ *Kitāb al-ma'ārif*, p. 248-251, cf. Sachau, *op. cit.*, p. 16.

² Unjustly, I think, de Goeje concluded from this in *Glossarium zur Bibl. geogr. arabicorum*, p. 243, that the Dāwūdīs were *aṣḥāb al-ra'y*. Nothing more opposing could be imagined than *madhāb al-zāhir* and *ra'y*. Al-Maqdisī is no longer familiar with the identity of *fiqh* and *ra'y*.

³ *Descriptio imperii moslemici*, ed. de Goeje, p. 37, l. 5-7.

⁴ About Abū Muḥammad al-Sirāfi, *ibid.*, p. 127, l. 3.

⁵ *Ibid.*, p. 142, l. 11.

⁶ Abū al-Fidā', *Annales*, ed. Reiske, II, p. 344. Among the older authorities of the science of traditions, Ibn Ḥanbal is considered the one who best utilized traditions for jurisprudence: *afqahukum fi-hi* Abū al-Maḥāsīn, *Annales*, ed. Juynboll, I, p. 710.

⁷ *Exposé de la réforme de l'Islamisme*, p. 91, l. 15.

classified as *aṣḥāb al-ḥadīth* while from among the legal schools which survived their founder, only Abū Ḥanīfah is listed among the *aṣḥāb al-ra'y*¹. Ibn Khaldūn accepted this division, but with the difference that he places Dāwūd b. 'Alī at the top of a separate third class².

First of all, it is necessary to make note of the position *ra'y* occupies in Islamic jurisprudence. This will enable us to define the position taken by Dāwūd and the school founded by him, and named after him, in the controversy between the rigid traditionalism and the sect whose adherents v. Kremer appropriately calls the speculative legists (*aṣḥāb al-ra'y*)³, a branch which was constantly gaining greater influence.

¹ *Kitāb al-milal*, ed. Cureton, p. 160-161; cf. Sachau, *op. cit.*, p. 15.

² *Muqaddimah*, ed. Būlāq, p. 372 ff. All three classes together are *madhāhib al-jumhūr*.

³ Some curious translations of this expression from various periods might be mentioned here. Joh. Fr. Gmelin, in his translation of Alexander and Patrick Russell's *Nachrichten von dem Zustand der Gelehrsamkeit zu Aleppo* (Göttingen 1798), gives "Vernunftgläubige", men of reason, as equivalent of this term which, however, was not properly recognized at the time. We find this as "consiliari" in Flügel's Ḥājjī Khalīfah, IV, p. 47: ما وقع في كتب اهل الرأي : *quae in libris consiliariorum occurrunt*. Yet, the strangest interpretation of all is offered by Ad. Wahrmund, the German Arabic lexicographer, with his oracle: *aṣḥāb al-ra'y*, metaphysists, idealists. (Consistent with this would be: *aṣḥāb al-ḥadīth*, natural scientists, materialists!). And this after the correct definition of the term had already penetrated the European Arabic lexicography, at least since Lane's article of 1867!

CHAPTER TWO

The application of *ra'y* developed in Islamic jurisprudence as an inevitable postulate of the realities of practical legal affairs in the practice of judgeship¹. The theoretical canonist could quite easily dismiss the validity of *ra'y* as a justifiable source for legal affairs, for he studied the written and orally transmitted word and was not concerned with the turbulent affairs of daily life. But for a practising 6
legist in Iraq or any other province under the dominion of Islam, it was not sufficient for the discharging of the obligations of his office to rely on sources from the Hijāz alone since these could not possibly give satisfactory answers to all sorts of problems arising daily in the different countries. Al-Shahrastānī's observation "that written texts are limited, but the incidents of daily life unlimited, and that it is impossible for something infinite to be enclosed by something finite"² gave the initiative toward the introduction of speculative elements in the deduction of law. One example may suffice. In the newly conquered Islamic territories, there prevailed civil laws which differed considerably from those in the Hijāz; they were either rooted in the agrarian traditions of the country or created through the reality of the conquest. How could a codex, derived from entirely different conditions, have given answers to legal problems which arose under these new circumstances? This and similar aspects — predominantly the problem that the existing sources of law were not complete and offered only occasional solutions which, however, were insufficient for all legal problems even for the country in which they originated — imposed the obligation on practising legists to consider themselves competent to exercise their subjective good sense, their insight, in the spirit of the existing sacred materials and in agreement with them, as legitimate instance for concrete cases for which the transmitted law provided no solution. How deeply the need for extending the legal bases was felt can be seen from the fact that even stern traditionists, unwillingly, but conforming under the pressure of realities, had to admit to *ra'y*.

¹ <For a modern interpretation see Joseph Schacht, *The origins of Muhammadan jurisprudence*, Oxford, 1950, p. 98 ff.>.

² al-Shahrastānī, p. 154: والنصوص اذا كانت متناهية والوقائع غير متناهية وما لا يتناهى لا يضبطه ما يتناهى.

However, they went to the utmost extremes of their system so that, in order to have ready for every concrete case a judgement from the traditions which was to be followed in practice, they often did not require the attestation of the tradition if it was a question of supplying an authority from the traditions for a legal decision. With this self-delusion, satisfaction was intended to be given, at least as a matter of form. Abū Dāwūd, so we learn, adopted the "weakest" tradition in his collection if for a certain legal paragraph there existed no better-attested tradition. Many a fabrication of traditions might have its origin in this fundamental endeavour to shun *ra'y*, at least ostensibly, for as long as possible. Yet those fabricated quotations from the traditions were nothing but *ra'y* clothed in traditions. The following saying is attributed to Sha'bī: "*Ra'y* is like a carcass; it is used as food in an extreme emergency only"¹. Indeed, we notice, now and then, that even practising legists are obstinately opposed to applying *ra'y*. In any case, the number of people cannot have been large who, like Ḥafṣ b. 'Abd Allāh al-Nishābūrī (d. 209), could claim to have held office as judge for twenty years without passing a single judgement on the basis of *ra'y*².

The exponents of *ra'y* derived the legal basis for the introduction of subjective motives in the deduction of law from the spirit of the transmitted divine law. For example, they base their claim — and it cannot be ascertained whether or not this was done also in an earlier period — on the fact that divine law recognizes the testimony of two witnesses and the oath as legal evidence. Now, it is conceivable that the witnesses may make a false statement, *bona fide* or *mala fide*, or that an oath is given to support a false claim. Nevertheless, the legal case in question is determined on such bases to the best apprehension of the judge³. Then, instances are quoted from the earliest

¹ الرأي بمنزلة الميتة اذا اضطرت اليها اكلتها. Cf. the text of Jurjānī from which the preceding remarks have been extracted. *JAOS*, vol. 7, p. 116. <"Opinion is carrion — when need requires, eat it">.

² *Tabaqāt al-ḥuffāz*, ed. Wüstenfeld, VI, no. 46.

³ *Ibāḥ*, fol. 6a. Ibn Ḥazm refutes this interpretation as follows: "God did not make it our duty to pass judgement on witnesses' evidence and on oath. A judge is not obliged to investigate whether they are true or false. If he were to do this, indeed, the door would be wide opened to his individual interpretation in legal decisions. May God protect us from this! Let us assume that there are two quarrelling parties before us, the one a pious, God-fearing, trustworthy Muslim, the other, however, a Christian who recognizes three persons in the deity and who is known to fabricate lies about God and people and

8 history of Islamic legal practice — although traditions of often doubtful reliability — that, in the absence of transmitted decisions, *ra'y* was accepted as an unchallenged expedient. All the companions confronted with legal practice are supposed to have reacted in this fashion, and yet, no one will question their piety or suspect them of the introduction of innovations prohibited by God. Thus, it is related that even at that time, Abū Bakr would first consult the divine book if two quarrelling parties sought his legal advice; if he found an answer to the case in question in it, he would pass sentence as revealed by God; if he did not, then he would seek this in the *sunnah* of the Prophet; if he failed to discover a pertinent decision there too, he would ask the companions whether they were familiar with a decision of the Prophet which could be applied to the case in question. If even this attempt failed, he would consult the leaders of the community and make a decision according to their general agreement. 'Umar, too, is supposed to have acted in this manner. Likewise, it is reported about Ibn Mas'ūd¹ that in cases in which judgements cannot be derived from either the Book, or from the *sunnah*, or from the sayings or actions of the pious, a judge reasons independently "without saying: 'this is my attitude, but I am afraid to assert it'; because what is permitted is clear, and also what is prohibited, but in between these two there exist dubious cases; so let the things you doubt be determined by those things which you do not doubt"². Yet, most important and wide-spread are those instructions which already the Prophet, and later, 'Umar are supposed to have given to judges sent to conquered territories. These instructions are the most weighty arguments of the defenders of *ra'y*, who endeavoured to fabricate for its validity an

who, in private life, is a volatile, frivolous individual. Now, the Muslim demands from the Christian payment of a debt, no matter how large or small, the title to which the Christian denies; or, conversely, the Christian were the plaintiff and the Muslim the defendant protesting the claim of the Christian plaintiff. If things were to be decided according to the judge's personal view which does not agree with the facts, then the Muslim is to be awarded right over the Christian. But there is no argument that we must not be guided by our view of the situation, rather that we must make a decision on the basis of evidences as decreed by God according to which the plaintiff must assert his claim by producing credible witnesses, and the defendant his denial on oath. 'Conjectures', however, we must dismiss altogether". *Ibṭāl*, fol. 18b.

¹ Contrary to his custom, Ibn Ḥazm approves the validity of this tradition, but interprets the words *fa-l-yajtahid ra'yah* that one must search diligently for authentic traditions if they are not easily available at first sight.

² *Ibṭāl*, fol. 5b.

old tradition, and an authority going back to the earliest time of Islam. Mu'adh b. Jabal, whom the Prophet sent to Yemen, replied to him, when asked on what principles he would administer law in his province, that he would rely on his own *ra'y* in all cases for which he could not find an answer either in the Book or in the traditions.

9 The Prophet consented to this with the following words: "Praise be to God that He helped the messenger of the Prophet of God to an insight that pleases the Prophet of God"¹. 'Umar is supposed to have given the following instructions when Shurayḥ was sent out as a judge: "If you find something in Allāh's Book, consult no one else; if you are not clear about something in Allāh's Book, then follow the *sunnah*; however, should you not find this in the *sunnah* either, then follow your own judgement independently"². One could mention other instructions to judges, in all appearances apocryphal ones, which are associated with the name of 'Umar, but in particular, one in which Abū Mūsā al-Ash'arī is encouraged to exercise *qiyās*, although in a way formulated by the schools which reconciled the rigid traditionalism and the speculative branch. There it says: "Your thoughts, your thoughts (collect them) if you are indecisive in your mind and when you do not find anything about them either in God's Book or in the traditions of His messenger. Consider the analogies and similarities, and compare things in your mind; then follow what seems to be the most probable, and what God and His Prophet like best"³. In these words, cited in a lengthy instruction for a judge, we discover the terminology of *qiyās* as it became current only in a later period. If the accounts in which judges were encouraged to apply *ra'y* were authentic, the opposition of conservative traditionists to *ra'y*, and to the authority of the Prophet and 'Umar, would be

¹ Cf. the passages in Sachau, *ibid.*, p. 6. In al-Māwardī, *Constitutiones politicae*, ed. Enger, p. 111, l. 1, *rasūl Allāh* ought to be corrected to *rasūl rasūl Allāh*. *Ibṭāl*, fol. 6a seems to have been endowed with the oldest version of this story. There, Mu'adh says: *ajtahidu ra'yī wa-lā āhw*; the last two words are missing in the other versions of the account.

² *Kitāb al-aghānī*, XVI, p. 32: *وبعث به قاضيا ثم قال ما وجدته في كتاب الله فلا تسئل عنه احدا وما لم تستبن في كتاب الله فالزم السنة وان لم يكن في السنة فاجتهد رأيك.*

³ *al-'Iqd*, I, p. 33: *الفهم الفهم عند ما يتلجلج في صدرك ما لم يبلغك به كتاب الله ولا سنة نبيه صلعم اعرف الامثال والاشباه وقس الامور عندك ثم اعمد الى احبها عند الله ورسوله واشبهها بالحق.*

incomprehensible. But the very fact that their authenticity is disputed, and the verification that the *isnād* of the particular reports do not conform to the laws of the science of tradition are the main weapons with which its opponents fight the conclusiveness of these accounts. Indeed, a critical examination of these instructions must also lead to the conclusion that they are spurious. They contain concepts and terms in which, in this precise definition, belong only to a later period. In Balādhurī (p. 69-75), in which the instructions accompanying Mu'ādh b. Jabal are quoted at length, the instruction mentioned above is *not* cited. Because of the insufficient documentation of these arguments of the exponents of *ra'y*, their opponents were able to foster awareness of the unfavourable meaning of the word *ra'y* as a theological term. In ordinary Arabic usage, *al-ra'y* is a word of favourable meaning¹ unless qualified by an adjective abrogating this meaning. In the sense of a *good, prudent, correct, and reasonable* view, it is juxtaposed² to *hawān*, a rash decision, prompting misguided passion. For the conservative traditionist, however, *al-ra'y* is a word of decidedly derogatory connotation,³ and in the theological sense, it is almost equal in meaning to this *hawān*⁴. This much was admitted also by the representatives of the traditional branch: *al-ra'y* had already been applied by the companions in the first generation of Islamic history, during the patriarchal period, although with the stipulation that "whoever applied *ra'y* was firmly opposed to admitting

¹ E.g. *Aghānī*, X, p. 109, l. 18, in one of Abū 'Alī al-'Abī's panegyric poems about the Umayyad caliphs: *يقطعون النهار بالرأى والحزم ويحيون ليلهم بالسجود*.

² E.g. a proverb *إذا نصرَ الرأى بطلَ الهوى* al-Maydānī (ed. Būlāq), I, p. 51.

³ *الرأى* = heretical view, al-Bukhārī, *Kitāb al-adab*, no. 79 *وفينا رجل له رأى*; arbitrary view. *Tafsīr*, no. 15 to II v. 192 *نزلت آية التعة في كتاب الله ففعلناها ولم ينزل قرآن يحرمه ولم ينه عنه حتى مات قال رجل برأيه ما شاء*.

⁴ Cf. al-Ghazālī, *Ihyā'*, I, p. 276; in elucidating the well-known tradition *من فسّر القرآن برأيه فليتبوأ مقعده من النار*, he voices the opinion that the word *الرأى*, considered lexically, can be understood either in a favourable or unfavourable sense, but that theological linguistic usage gives preference to the phrase *in malam partem*: *ويكون المراد بالرأى الرأى الفاسد الموافق للهوى دون الاجتهاد الصحيح والرأى يتناول الصحيح والفاسد الموافق للهوى قد يُخصّص باسم الرأى*. Cf. also n. 1.

its conclusiveness and rejected this allegation on his part"¹. In this first phase of Muslim history, judgement was still totally undefined, without positive administration, without any proper direction or method, and was passed on the basis of individual insight. It was only in the following period that *ra'y* took a certain shape and began to move in a prescribed direction. *Ra'y* assumes now the logical form of an analogy, *qiyās*. Formerly, it was said that a judge, when dealing with an unprecedented case, might use his own judgement in cases for which no transmitted or written positive law existed. Now it is said that **personal judgement must be applied within the analogical framework** prescribing the direction of the subjective discernment within which this judgement may be exercised.

With regard to the definition and application of *qiyās*, two methods developed side by side, according to Ibn Ḥazm's account. Both methods agree that cases which cannot be judged on the basis either of written or of transmitted law must be **decided by way of a comparison** with a judgement as it appears in one of the two recognized sources. The two methods diverge only with regard to the reaching of the **tertium comparationis through the speculative method**. The one method tries to prescribe the searching for a material similarity of the written, and lately emerged laws to the cases which are being considered. The other method requires investigation of the motive, the ratio (*'illah*) of the transmitted law resorted to for the purpose of comparison, and inquiry into *the spirit of the law*, as well as an examination of whether or not the independently discovered relationship of cause and effect which exists between the law and the unwritten principle encompasses the newly arisen case too. In another chapter, concrete examples demonstrating this method in its practical application will be seen. One point should be noted here: **later theology was very actively concerned with the question of whether or not it was permissible to search for the motives of divine law**, and even those legal schools which inclined toward analogy did not always answer this in the affirmative².

¹ *Ibṭāl*, fol. 2b, 3a.

² *al-Talwīḥ ilā kashf ḥaqā'iq al-tanqīḥ* by Sa'd al-Dīn al-Taftazānī (MS of the Kais. Hofbibliothek Vienna, A.F. 167[251] fol. 181a); *الأصل في النصوص عدم التعليل، واختلّفوا في ذلك على أربعة مذاهب فقيل الأصل عدم التعليل حتى يقوم دليل التعليل، وقيل الأصل التعليل بكلّ وصف صالح لإضافة الحكم إليه حتى يوجد مانع عن البعض، وقيل إن الأصل التعليل*

Even though the introduction of *qiyās* put a formal limit to the indiscriminate application of *ra'y*, *istihsān* cancelled this effect in favour of uncontrolled *ra'y*. The word *istihsān* itself defines the subject matter: to consider something preferable. Abū Bakr al-Sarakhsī defines it as follows: It is "abandoning *qiyās* in consideration of what is easier for man"¹.

In view of the dearth of non-partisan sources for the history of the earliest development of Islamic jurisprudence on which such a history could be built, in view of the partial colouring of the facts which were, to a large extent, *ad hoc* fabrications, it is difficult to determine precisely the date when the above-mentioned Islamic legal sources were introduced. Furthermore, it can hardly be determined to what extent usage of those sources for decision had developed in Abū Ḥanīfah's time, and what were the new facts which he added to Islamic jurisprudence in order to define the spheres of *ra'y* and *qiyās*. There even prevails uncertainty concerning how Abū Ḥanīfah utilized the speculative components of legal deduction, and what degree of justification he permitted them beside the traditional legal sources. Opponents of his legal system are inclined to maintain that he did not attach much importance to tradition, rather that he emphasized predominantly the application of free speculation in legal deduction. They cite minutely the small number of traditions which he used for establishing his legal system. In his time, four companions were still alive, but he made no efforts to hear traditions from these authorities². His advocates refute this accusation and claim to know definitely that he resorted to *ra'y* only in cases in which written and orally transmitted sources failed. Even sayings are cited from Abū Ḥanīfah in which he mentions the branch attributed to himself reprehensibly: "Urinating in the mosque is less reprehensible than some of their *qiyāsāt*". Once the Imām is supposed to have said to his son: "He who does not abstain from applying *qiyās* in legal proceedings is no legist"³.

بوصف لكن لا بدّ من دليل تميّزه من بين الاوصاف ونسب ذلك الى الشافعي رحمه الله، وقد اشتهر فيما بين اصحابه ان الاصل في الاحكام هو التّعبد دون التعليل والمختار ان الاصل في النصوص التعليل.

¹ In Pertsch, *Die arabischen Handschriften der herzoglichen Bibliothek zu Gotha*, II, p. 253 to no. 997.

² *Tahdhīb*, p. 698.

³ *Iḥṭā*, fol. 15b. (Some of these anecdotes might be apocryphal. J. Schaecht, *Origins of Muhammadan jurisprudence*, p. 129-130).

It would require a deeper insight into Abū Ḥanīfah's classrooms than is possible in view of the state of the sources, to decide for either one of these parties. However, we have two facts in our possession.

First, speculative jurisprudence, which acknowledged no dominant importance to the traditional source material, reached its apex even before Abū Ḥanīfah's time. Abū Ḥanīfah's immediate predecessor in Iraq seems to have been Ḥammād ibn Abī Sulaymān (d. 119 or 120). He was considered the greatest legist in Iraq, and it is said about him that he was the first "to gather around him a circle for the pursuit of knowledge". Among his pupils, Abū Ḥanīfah is also mentioned¹. Ḥammād's knowledge of traditions was very weak, but he was said to be *afqah*, i.e. the most important of his contemporaries in jurisprudence².

Secondly, after these preparatory works, Abū Ḥanīfah made the first attempt to codify Islamic jurisprudence on the basis of *qiyās*. Up to his time, this had not been done. Just as a systematic presentation of Islamic jurisprudence, built on the fundament of analogy, was now feasible, it was also only from this time on that a systematic opposition to the principle of *qiyās* and its application in legal positivism became possible. Ibn 'Uyaynah is supposed to have said, "There are two things which I did not expect to spread beyond the bridge in Kufa: Ḥamzah's way of reciting the Koran, and Abū Ḥanīfah's jurisprudence; indeed, both spread all over the world"³.

Indeed, Abū Ḥanīfah's scholarly achievement received a very poor reception from his conservative contemporaries. The following account is typical of his contemporaries' views of how the teachings of the *imām* of the analogists disseminated. When Abū Ḥanīfah sent out Zufar, one of his two disciples, from Kufa to the neighbouring Baṣra in order to propagate the new branch of jurisprudence, Zufar encountered indifference everywhere. As soon as he presented the new teachings in the name of Abū Ḥanīfah, people even turned away from him. When he reported this to his teacher, Abū Ḥanīfah is supposed to have made the following remark: "You are little versed in the method

¹ Abū al-Maḥāsīn, *Annales* ed. Juynboll, I, p. 316.

² *Tabaqāt al-ḥuffāz*, IV, no. 12. It is said also about another of Abū Ḥanīfah's teachers, about 'Aṭā' b. Abī Muṣlim (d. 135) who represented jurisprudence in Khurāsān, in Abū al-Maḥāsīn, *ibid.*, 366 (فقيه اهل خراسان): *Tabaqāt al-ḥuff.*, *ibid.*, no. 37.

³ Abū al-Maḥāsīn, I, p. 405.

of propaganda. Just go back to Baṣra, present to the people the teachings of their own *imāms* and, at the same time, expose the weaknesses of the same. Tell them afterwards that there exists yet another teaching which consists of this and that, and which is based on such and such arguments. Now, if the new matter has rooted in their souls, tell them only then that this is Abū Ḥanīfah's teaching. After this they will be embarrassed to reject it" ¹. Even a poet like Musāwir ², a contemporary of Abū Ḥanīfah and like the *imām*, a citizen of Kufa, used the system for the purpose of epigrammatic ridicule. This is a symptom of public opinion, for the poetical Muses did not concern themselves so soon with the casuistry of the law ³. In later periods, apocryphal stories were fabricated in order to represent the opposition of the learned and pious contemporaries to Abū Ḥanīfah. The following is probably the most remarkable of these fabrications, which is preserved in al-Damīrī ⁴. It is based on an older source ⁵ and reported at great length and in detail. Ibn Shubrumah who was inclined towards *fiqh*, but with little concern for the traditions ⁶, relates:

"I and Abū Ḥanīfah once visited Ja'far b. Muḥammad al-Šādiq; I introduced my companion as a jurist from Iraq. Then Ja'far said: 'Would it be he who in religious matters produces analogies based on his own *ra'y*? (*yaqīsu al-dīn bi-ra'yh*). Would it be al-Nu'mān b. Thābit?' — 'I myself', adds the informant, 'learned his name only from this question'. — 'Yes', replied Abū Ḥanīfah, 'that is I, may God grant me success!' Then Ja'far said: 'Fear God and apply no analogy in religious matters based on your arbitrary opinion, for it was Iblīs who established analogical reasoning first'". Now, remarks follow that purport to show the inadequacy of speculation in juridico-religious matters.

¹ *Mafātīḥ*, VIII, p. 617.

² *Kitāb al-aghānī*, XVI, p. 169. Cf. also my *Beiträge zur Literaturgeschichte der Št'a*, p. 65.

³ We encounter also poetical eulogies for Abū Ḥanīfah, *Fihrist*, p. 202; also for Mālik ibn Anas in al-Ḥuḡrī, I, p. 69; for the poet 'Abd Allāh b. Sālim, called Ibn al-Khayyūṭ, in al-Jāhīz, fol. 181a; and for seven *fughāḥ*' of Medina in a love poem in *Aghānī*, VIII, p. 93.

⁴ *Ḥayāt al-ḥayawān*, II, p. 124 s.v. ظبي.

⁵ Ibn Ḥazm, too, knows this account, *Ibtāl*, fol. 15b.

⁶ *Abū al-Maḥāsīn*, I, p. 390.

"Just tell me which, in the eyes of God, is the more serious crime, homicide or adultery?"

"No doubt, homicide is a greater crime", replied Abū Ḥanīfah.

"Yet homicide is judged on the basis of two witnesses' evidence while adultery is proven only by statements from four witnesses. How does your analogy apply in this case? And what is more meritorious before God: fasting or praying?"

"Prayer is definitely more meritorious", replied Abū Ḥanīfah.

"Nevertheless, a woman must interrupt fasting during menstruation although she is not forbidden to pray in this state ¹. Fear God, o servant of God, and do not produce arbitrarily analogies in religious matters, for we and our opponents may be summoned before God's tribunal to-morrow. Then *we* on our part shall say: 'Allāh has said; the Prophet of Allāh has said'. *You* and your companions, however, shall say: 'We have heard such; we have guessed such'. But Allāh shall treat us and you as He wills".

At times idle casuistry, too, has been falsely attributed to the founder of the "speculative" school. Thus it is related that at the time when the traditionist Qatādah — who was particularly versed in Biblical legends — came to Kufa, a large crowd gathered around him in order to meet the famous Baṣran. Upon his offer to explain any question *ex abrupto*, Abū Ḥanīfah, who at that time was still a youth, came forward with this question: "What might have been the sex of Solomon's ant?" (*Sūrah XXVII*). This embarrassed the learned Qatādah and he confessed to be unable to answer this question. Then the youthful questioner himself gave the reply: "It was a female ant because it says in verse 18 '*qālat* (she said) an ant'. If it had been a male, then, the masculine form (*qāla*) ought to have been used because *namlah* is gen. epic" ². Also typical of attitudes towards Abū Ḥanīfah's school shortly after its establishment is the following anecdote which Ḥammād b. Salāmah relates: "In the time of ignorance, there was a highway robber who used to take the possessions of pilgrims with the aid of a cane. When accused of robbery, he would use the excuse that not he but the cane had acquired foreign property". Ḥammād comments: "If this man were still alive to-day, he would certainly be one of the followers of Abū Ḥanīfah" ³. The following verdict is cited on the

¹ This objection to analogy is also encountered in al-Bukhārī's *Kitāb al-ḡawm*, no. 41.

² al-Damīrī, II, p. 432.

³ al-Jāhīz, fol. 121a.

authority of Ḥaḥḥ b. Ghiyāth (d. 177): "Abū Ḥanīfah is the best-informed person about things that never existed; he is most ignorant about things which have really occurred" i.e. he is a shrewd casuist but no learned jurist¹. As we can see, all these accounts² and opinions ridicule to a greater or lesser extent the casuistic spirit of Abū Ḥanīfah's legal method and his legal school. While the schools of tradition directed their attention to existing and concrete facts, which they judged on the basis of concrete, existing, and historical legal data, the exponents of *ra'y* dwelt on casuistries that were void of any current interest. Also those theologians who subscribed more to the ethical side of religion turned reluctantly away from legal casuistry. From among the many accounts that could be cited to point out this contrast, I mention only the statement of a pious theologian from Kufa, 'Amr b. Qays al-Malā'ī (d. 146): "I prefer one tradition which edifies my heart, and which brings me closer to God, to fifty of Shu-rayḥ's legal decisions"³.

The standard approach to questions of legal casuistry seems to have been: "*a-ra'ayta*" (from *ra'ā* as verbum cordis: *Videtur tibi? Quid tibi videtur?* But in this application it means: What do you think with regard to such and such a given case?). The traditionists, therefore, frown upon this standard formula common among the casuists. For example, the traditionists cite the following account on the authority of Ibn Mas'ūd: "Beware of '*a-ra'ayta, a-ra'ayta*', for those who came before you perished because of '*a-ra'ayta, a-ra'ayta*'. Do not compare one thing with another (by analogy) so that your foot may not stumble after standing firm. If one of you is asked about something about which he does not know anything, then let him say: 'I do not know', for 'this is one third of knowledge'"⁴. A curse is transmitted against this *a-ra'ayta* by al-Sha'bī⁵ beside other most derogatory remarks about *ra'y*, although it could be proved that this

¹ al-Jāhiz, fol. 62a: وسئل حفص بن غياث عن فقده أبي حنيفة فقال
اعلم الناس بما لم يكن واجهلهم بما كان.

² Also *A thousand and one night*, night 296-7, must be considered as part of this. There, the excesses of the Ḥanafite casuistry and subtleties in the person of Abū Yūsuf are made the subject of humorous comic. (Būlāq, 1279, II, p. 159-160).

³ Abū al-Maḥāsīn, I, p. 396.

⁴ *Iḥḥ*, fol. 13b.

⁵ *Ibid.*, fol. 10b: قال الشعبي لعن الله أرايت وقال صالح بن مسلم
سألت الشعبي عن مسألة من النكاح فقال أن أخبرك برأى قبل عليه.

formula also came from the lips of the Prophet himself¹ and his pious companions². From the following remark attributed to Masrūq, it becomes evident how much aversion the strictest traditionists entertained towards pure casuistry which threatened to prove that many a legal problem, although logically feasible, was not treated in the traditional sources and could be decided only by speculative means. Whenever a question was put before Masrūq, he would ask the questioner: "Has this case really already occurred?" When he received a negative reply, Masrūq would say to the questioner: "Pardon me if I do not answer until such a case does in fact occur"³. Abū Thawr al-Baghdādī, who must be mentioned in the next chapter as being favourably disposed towards *ra'y*, and consequently not a fully recognized Shāfi'ite, put the following question before another jurist: "Some one takes an egg from each of two persons and puts both eggs into his sleeve. Now, one of the eggs is crushed completely and becomes totally valueless. Which of the two owners has to be compensated?" The jurist was very annoyed with Abū Thawr and said: "You have to wait until compensation is demanded". — "So you admit", countered Abū Thawr, "that you have no answer to this". — "I say", replied the other, "go away, for we have to pass legal judgements; we do not have to satisfy the curious"⁴.

Besides such objections against the speculative branch which were made mockingly rather than with the intent of criticising the principles, we meet the serious accusation in **the period following the establishment of Abū Ḥanīfah's system that the speculative branch destroys the bases of the law through arbitrary negligence of the positive legal sources in favour of speculative innovations (*bid'ah*)**, and that it

¹ *Jazā' al-ḥayd* (Bukh.), no. 22: قاضيته أرايت لو كان على أمك دين اكنتي قاضيته
but this is no question requiring explanation. In Maghāzī, no. 12, Miqdād b. 'Amr al-Kindī puts a casuistic question to the Prophet starting it with أرايت ان لقيت رجلا الخ. In the corresponding passage Diyāt, no. 1, this أرايت is missing. Its occurrence in the other passage, so argues al-Qastallānī (X, p. 48) against opponents, shows that it concerned a casuistic question, not a real one.

² *Kitāb al-wuḥū'*, no. 34 (35): أنه (زيد بن خالد) سأل عثمان بن عفان
أرايت اذا جامع الرجل فلم يُمن النخ.

³ al-Sha'rānī, I, p. 63: وكان مسروق اذا سئل عن مسألة يقول للسائل
هل وقعت فان قال لا قال أعفني حتى تكون.

⁴ Ibn al-Mulaqqin, fol. 2a.

CHAPTER THREE

Islamic jurisprudence acknowledges al-Shāfi'i as the *imām* whose most remarkable work consists of creating a corrective which — on account of the spreading subjective trend of *fiqh* vis-à-vis the traditional point of view which accompanied Abū Ḥanīfah's system — proved to be of urgent necessity. In this respect, quite apart from the services of Mālik b. Anas¹, Muslims rightfully consider Imām al-Shāfi'i as the vindicator of traditionalism. It is from this school, too, that the last vigorous reaction of traditionalism against *al-ra'y* and against its consequences has arisen. "I best compare Abū Ḥanīfah's *ra'y* to a sorceress' thread which, according to the direction in which it is pulled, appears either yellow or reddish". With these words, al-Shāfi'i is supposed to have ridiculed the arbitrary application of *al-ra'y* as it was practised by the *fiqh*-school prior to his time². However, on account of Abū Ḥanīfah's endeavours on the one hand, but more so because of the force of circumstances, *qiyās* became a factor in jurisprudence which could no longer be eliminated from the legal sources. Al-Shāfi'i had not intended to do this, but even if he had wanted to do so, he would not have been able to achieve anything as futile attempts of later followers of his school indicate. What he could do, and actually did, was to discipline the application of the newly introduced legal source

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¹ The followers of tradition persistently reckon Mālik among the followers of *ra'y*. Aḥmad b. Ḥanbal says about 'Abd Allāh b. Nāfi' (d. 206): "He was not *ṣāhib ḥadīth* but a follower of Mālik's *ra'y*" (*Tahdhīb*, p. 374). Very instructive for the relation of the early Shāfi'ite school to Mālik is the following account. Muḥammad b. Naṣr (d. 294 in Samarqand) originally did not think much of al-Shāfi'i. In Medina he had a vision in which he asked the Prophet: "Shall I study Abū Ḥanīfah's *ra'y*?" — The Prophet negated this. — "Mālik's *ra'y*?" — The Prophet replied: "You may retain of it what is in agreement with my tradition". — When asked whether he should study al-Shāfi'i's *ra'y* the Prophet angrily shook his head and said: "What are you saying, al-Shāfi'i's *ra'y*? This is not *ra'y* but the refutation of all who contradict my *sunnah*" (*Tahdhīb*, p. 122). Strangely enough, the same account is related with reference to Abū Ja'far al-Tirmidhī too. (*Ibid.*, p. 683).

² This, at least, is the quotation from his pupil Aḥmad b. Sinān al-Qaṭṭān (d. 260):
 روى ابن حبان في ثقافته في ترجمته بأسناده الى الشافعي قال ما أشبهه
 رأى ابي حنيفة الا بخيط سحارة تمدّه كذا فتراه اصفر وتمده كذا فتراه
 احمر Ibn al-Mulaqqin, fol. 105b.

without curtailing the prerogatives of the scripture and tradition, and to restrict its free arbitrary application by means of methodical laws with respect to its usage. This is both the purpose and the result of the science of *uṣūl al-fiqh* which al-Shāfi'i founded³ and which is associated with his name. If the tract had survived in which al-Shāfi'i justified this new discipline which is revolutionary for Islamic jurisprudence, and which, in particular, introduces it to the branches of sciences, researchers of the history of Muslim thought would be enabled to determine in every detail al-Shāfi'i's position in the controversy of traditionalism versus the partiality of *qiyās*. For lack of this, we are dependent on excerpts from al-Shāfi'i's fundamental writings, and on the Muslims' own judgement of the activity of the great *imām*. Characteristic of the fundamental concept of his system is a statement⁴ attributed to him and relating to the *uṣūl* founded by him: "No matter what statement I made, no matter what principle (*asl*) I might have established, if there exists anything transmitted by the Prophet that contradicts this, then whatever the Prophet has said remains the deciding matter. I am of the same opinion". And, so our source adds, he repeated this saying several times⁵. It may be noted in passing that this statement seems to have been misunderstood by the American orientalist Prof. Salisbury⁴. He translates this as follows: "Whatever I declare as a saying of the Prophet ..., or lay down as a principle, by the expression: 'on the authority of the Messenger of God ...', at variance with something otherwise said by me, the true saying is that of the Prophet ..., which I hereby make my declaration, to the refutation of anything so said by me [to the contrary]"⁵.

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¹ It must be noted, however, what is transmitted from al-Thawri: "Ibn Lahī'ah (d. 174 in Egypt, thirty years before al-Shāfi'i) is competent in *uṣūl*, and we in *furū'*" (*Tahdhīb*, p. 364, l. 19).

² Cf. also al-Shahrastānī, p. 160.

³ In al-Jurjānī: *وعن الشافعي رضه مها قلت من قول او اصلت من اصل فيه عن رسول الله صلعم خلاف ما قلت فالقول ما قاله صلعم وهو قولي وجعل يردّه.*

⁴ Edward Salisbury, "Contributions from original sources to our knowledge of the science of Muslim tradition", *Journal of the American Oriental Society*, vol. 7 (1862), p. <116>.

⁵ It is to be regretted that such mistakes are not uncommon in this useful and inspiring study of the science of Muslim tradition. I shall use this opportunity to make yet

It is just as indicative of al-Shāfi'i's thinking that he does not recognize *al-istihsān*, a concession made by the Ḥanafite school which questions the methodological element in applying *qiyās* altogether, and that, according to some people, he also rejects *ta'til* ¹. Against the application of *al-istihsān*, the most arbitrary point of the Ḥanafite method, al-Shāfi'i wrote a pamphlet of which only the title has survived ². But in his school — and it cannot be ascertained whether it was on his own initiative — arose a sound, new legal principle which was given the significant name *al-istiḥāb* (approximately: associating). For many legal problems and questions of ritual, it supplied a positive principle for solving many a complexity.

Al-Nawawī, himself a follower of al-Shāfi'i's school, is the most prominent of all Muslim theologians to whom we are indebted for an exposition of al-Shāfi'i's legal system and for the best characterization of his ideas. "He appeared when the systematically arranged legal books had already been completed, and the laws already determined and scrutinized. He studied the legal attitudes of his predecessors and learned from the outstanding *imāms*; he disputed with the most able and most profound men; he smoothed *<naḥata>* their teachings, examined them, and from all material thus gathered together he afterwards produced a system which incorporated the Book, the *sunnah*, consensus, and analogy; yet he did not restrict himself to the one or the other among these sources as others have done" ³. Another Shāfi'ite, Abū Bakr al-Ājurri (d. 360), characterizes al-Shāfi'i's relation

another correction. The following passage from al-Jurjāni is cited: *ومن غلط في حديثه فيين له الغلط فاصراً ولم يرجع قيل يسقط عدالته قال ابن الصلاح هذا اذا كان على وجه العناد واما اذا كان على وجه التنقيح فلا تذييل اعرض الناس في هذه الاعصار الخ.* The sentence closes with *fa-lā*, and *tadhyl* (= appendix) is undoubtedly a heading. The translator, however, considers *fa-lā tadhyl* as belonging together and arrives at the following meaning: "Ibn al-Ṣalāḥ says he does so in the way of opposition or of captiousness in discussion. But, to cut the matter short, men in these times treat with slight ...", instead of: "Ibn al-Ṣalāḥ says: 'This is valid only [i.e. a person who knowingly adheres to a faulty tradition jeopardizes his credibility only in the case] if he insists on the mistake because of stubbornness; but if he does so because his investigation has led him to this version then (he does) not (lose his credibility) — Appendix. In more recent times people have ...' <Edward Salisbury, "Contributions from original sources", *JAOS*, vol. 7 (1862), p. 70-71>.

¹ Cf. above p. 11, n. 2.

² *Fihrist*, p. 210, 29 *Kitāb ibtāl al-istihsān*.

³ *Tahdhīb al-asmā'*, p. 62, 12.

to the rest of the *imāms* as follows — although on the authority of an unknown person: "In Abū Ḥanīfah's school, neither (substantiated) *ra'y* nor *ḥadīth* is to be found; in Mālik's school, there is weak *ra'y* and sound *ḥadīth*; Ishāq b. Rāhwayhi has weak *ḥadīth* and weak *ra'y*; in al-Shāfi'i's, there is sound *ra'y* and sound *ḥadīth*" ¹. According to this, al-Shāfi'i would have been an eclectic who united rivalling partialities to a higher synthesis by equal consideration for their principles. The basic tenor of this reconciling endeavour was traditionalism, and to the extent that in Iraq, the center of *qiyās*, al-Shāfi'i could be called the protector of tradition (*nāsir al-ḥadīth*), while in Khurāsān, his followers were called *κατ' ἐξοχήν, aṣḥāb al-ḥadīth* ². The most ardent advocates of the traditional view praise his faithfulness towards tradition and celebrate the influence which he exerted in subduing anti-traditionalism. Al-Ḥasan al-Za'farānī says about him: "The exponents of tradition were asleep; al-Shāfi'i woke them; so they awoke". Aḥmad b. Ḥanbal, the *imām* most faithful to tradition, said: "We intended to refute the exponents of *ra'y*, but we did not succeed; then al-Shāfi'i came and led us to victory" ³. Aḥmad b. Ḥanbal is so completely convinced of al-Shāfi'i's faithfulness towards tradition that he refers questions which are not decided in the traditions without hesitation to al-Shāfi'i's judgement. Aḥmad b. Ḥanbal's attitude was that "at no time was there anyone of importance in learning who erred less, and who followed more closely the *sunnah* of the Prophet than al-Shāfi'i", and Ishāq b. Rāhwayhi concurred with this praise ⁴. This can also be seen from the fact that the appearance of al-Shāfi'i in Iraq diminished the popularity of the Ḥanafite school considerably. Learned men like Abū Thawr (d. 240), who formerly followed *ra'y*, abandoned this branch when they came to realize that al-Shāfi'i *knew how to combine fiqh and sunnah (jama'ahu bayna al-fiqh wa-al-sunnah)* ⁵. When al-Shāfi'i appeared in Baghdad, the twelve seminars expressing the views of the *ahl al-ra'y*, which were being given in the western mosques of Baghdad, were reduced to three or four ⁶. Most characteristic of the dominant spirit of the Shāfi'ite school

¹ al-Sha'rānī, I, p. 70 top.

² *Tahdhīb*, p. 64 penult. f. *مذهبه* *متبعي* should read *متبعي*.

³ *Ibid.*, p. 63 penult., 79, 6.

⁴ *Ibid.*, p. 76 penult. ff., 78, 8.

⁵ *Ibid.*, p. 680.

⁶ *Ibid.*, p. 82.

is the fact that this school produced the man who appeared as the reviver of the old traditionalism, the man who, beginning with Imām al-Shāfi'i's reaction against the partiality of the Iraqi school, took the consequences of this reaction and, surpassing all the master's intentions, completely rejected the justification of *ra'y* and *qiyās* and all that this implied. This man was Dāwūd b. 'Alī al-Zāhiri, the founder of the branch of jurisprudence with which this treatise is concerned. One must not forget that among al-Shāfi'i's works there is one entitled: *al-Kitāb al-ḥukm bi-al-zāhir*, "On judging based on the apparent meaning of the word"¹. This is a work in which the Imām clearly stated his relation towards the speculative legal sources and it might have served Abū Dāwūd as a starting point for his own theory. It is noteworthy, however, that we first meet *zāhir* in this book title in its terminological meaning. But this is not yet the *zāhir* of the Dāwūdi school, for Shāfi'ites understood by this term an interpretation of a given legal passage which, for internal and external reasons, is the most probable of all by reason of the weight of the arguments supporting it. It is consequently something which would ordinarily be called *rājiḥ*², but not *zāhir* according to Dāwūd's interpretation of the word. In this respect, the term *zāhir* is used in contradistinction to that kind of exegesis which does not tolerate any different interpretation of a textual passage when there is clear evidence prohibiting any other interpretation, for instance, when obvious numbers are concerned.

25 Dāwūd did not feel that with his denial of analogy, which he forced to the utmost limits, he was challenging the conciliatory inclinations of the school whose off-spring he considered himself, and whose founder he glorified in two of his works³. For him, al-Shāfi'i was "a torch for the carrier of traditions and for those who transmit

¹ *Fihrist*, p. 210, 28.

² *Waraqāt*, fol. 24a: ومثال النصّ قوله تعالى فصيام ثلاثة أيام في الحجّ وسبعة إذا رجعتكم تلك عشرة كاملة فهذا لا يحتمل ما عدا العشرة وكذلك أسماء الأعداد مثل الثلاثة والخمسة ونحوها نصّ فيها دلّت عليه لا يحتمل غيره والظاهر ما احتمل امرين أحدهما أظهر من الآخر يعني إذا حمل على طرفه الراجح فالظاهر في الحقيقة هو الاحتمال الراجح من احتماي النصّ واحتالاته.

³ Ibn Ḥazm condemns the exponents of the Shāfi'ite school and of the Ḥanbalite school from his point of view too. *Ibtāl*, fol. 19a.

traditions", and his merit resulted from the fact "that he uncovered and ruined fabrications and impostures of rivals, and that he disproved and shattered their trifles"¹.

As we can see from all these opinions, al-Shāfi'i's teachings consist of two aspects. On the one hand, he is making concessions to Abū Ḥanifah's starting-point — naturally, he does not go so far as he does. It is this limitation which represents the other aspect of his system; namely, above everything else, consideration for tradition. He concedes to Abū Ḥanifah justification for *qiyās* as a legal source only insofar as it is based on written and orally transmitted sources. As it is well-known, Abū Ḥanifah, whose strongest side was not exactly the science of tradition, was not so scrupulous in this. Muḥammad b. al-Ḥasan — so says Abū al-Fidā' — once said to al-Shāfi'i: "Who was the more learned of the two: our teacher (Abū Ḥanifah) or yours (Mālik)?" — "Am I supposed to answer this question to the best of my knowledge?" asked al-Shāfi'i. — "Yes, indeed!" replied the other. — Now, al-Shāfi'i began asking questions: "By God, I am asking you, who was more versed in the Koran, our teacher or yours?" — The other replied: "By God, yours was better versed in it". — "And in the *sunnah*?" — "By God, in this also, it was your teacher!" — "And who was better versed in the sayings of the Prophet's companions?" — "In this, too, it was your teacher". — "Now", said al-Shāfi'i, "only analogy remains, but it can be based only on those three"². This antagonism against Abū Ḥanifah, in spite of following *qiyās*, remained alive in al-Shāfi'i's school for a long time³. The true representatives of the Shāfi'ite principles also opposed any attempt to practise idle casuistry, or to concern themselves with questions of no real interest (*lā yata'allaqu bi-hi ḥukm nājiz tamassu al-ḥājah ilayh*). They carried this to such an extent that they even rejected as idle talk the inquiry into the special laws (*masā'il al-khaṣā'is*) relating to the Prophet⁴. On the other hand, the followers of the

¹ *Tahdhīb*, p. 81.

² Abū al-Fidā', *Annales Muslemici*, ed. Reiske, II, p. 66. Reiske does not relate quite correctly p. 69.

³ Still in the sixth century, the famous Shāfi'ite Fakhr al-Dīn al-Rāzi is, on the one hand, an outspoken polemic against Abū Ḥanifah (al-Sha'rānī, I, p. 70), but, on the other hand as we shall see in the following chapter, he is the one who advances the strongest dialectic arguments in support of *qiyās*. In his great *tafsīr* work he continually polemizes against the *nufāt al-qiyās*.

⁴ *Tahdhīb*, p. 55.

system developed by al-Shāfi'i were unable to define theoretically the subtle amalgamation of the two elements of positive legal practice which the *imām* of the school achieved and which, one would assume, exclude one another. There were very few who, like Aḥmad b. Sahl (d. 282), an eye witness of the controversies of the extremists, were really aware of the conciliatory role at which al-Shāfi'i's school was aiming. Aḥmad b. Sahl said: "If I were *qāḍī* I would have imprisoned both the one who searches for *ḥadīth* without concern for *fiqh* and also the one who practises the opposite partiality". From the *aurora media* on which al-Shāfi'i's followers stood they soon plunged into extremes. Soon we find among them true *aṣḥāb al-ra'y*. Among them we mention, for example, one of the first persons to spread al-Shāfi'i's earlier teachings, the so-called *qadīm*, Abū Thawr al-Kalbī al-Baghdādī (d. 240) who, despite his assertion to have abandoned *ra'y* (see above, p. 17), is expressly called a follower of *ra'y*¹. Still another was al-Ḥusayn b. 'Alī al-Karābisī al-Baghdādī (d. 245), a contemporary and compatriot of Abū Thawr al-Kalbī al-Baghdādī. His legal decisions reflect the arbitrariness of the *ra'y* school to which he is supposed to have belonged in his earlier life². Also Sirḥāb b. Yūsuf Abū Ṭāhir al-Tibrizī, a pupil of Abū 'Abd Allāh al-Maḥāmili, is called *min ahl al-ra'y*³. However, several of the Shāfi'ite exponents carried this specific traditional aspect to extremes. We can easily gather their names from the *ṭabaqāt* of this *madhhab*. I just mention here one Shāfi'ite who displayed perhaps the largest degree of independence vis-à-vis the *madhhab*. This is Abū al-Ḥāsim al-Dārīkī (d. 375). Al-Nawawī relates the following about him: When he was asked for an opinion, he would ponder at length, and would often make a decision not only contrary to Abū Ḥanīfah's teachings but also to that of al-Shāfi'i. When called to account for this, he would reply: "Here is the tradition of A on the authority of B on the authority of C ... down to the Prophet; it is better to follow this tradition than to act according to what Abū Ḥanīfah and al-Shāfi'i have taught"⁴. The most remarkable of the Shāfi'ites of the third century of the Hijrah who, within

¹ In Ibn al-Mulaqqin, fol. 2a, it is said about this Shāfi'ite: *أحد رواة القديم*
 إمام بالاجماع وتعتت ابو حاتم فيه فقال ليس محله محلّ السمعين في
 الحديث كان يتكلم بالرأى فيخطيء ويصيب.

² *Ibid.*, fol. 3a.

³ *Ibid.*, fol. 197a.

⁴ *Tahdhīb*, p. 752.

this *madhhab*, pushed this traditional point to the furthest extreme was *imām* Abū Sulaymān Dāwūd b. 'Alī b. Khalaf, the founder of the school which became known by the name Dāwūdī or Zāhiri.

His family originated from Qāshān in the vicinity of Isfahān where his father had been secretary to the *qāḍī* 'Abd Allāh b. Khālid al-Kūfī¹. Dāwūd was born in Kufa²; accounts about the year of his birth vary between 200 and 202. He spent his years of learning mostly in Baghdad. Among the teachers whose lectures he attended, the following famous theologians and experts of tradition are mentioned: Abū Thawr, Sulaymān b. Ḥarb, 'Amr b. Marzūq, al-Qa'nabī, Muḥammad b. Kathīr, and Musaddad b. Musarhad. At that time, the famous Ishāq b. Rāh-wayhi (d. 233) was teaching in Nishāpūr. Dāwūd left Baghdad to complete his years of learning by hearing Ishāq's lectures. There he seems to have been very much stimulated by that branch of thought to which he adhered later in his theological method. We have seen above (p. 4) that this Ishāq was reckoned to be of the traditionist school. He practised that aspect of al-Shāfi'i's teachings which contrasted to *ra'y*. It was he who transmitted the view that those traditional statements which the exponents of *ra'y* used to quote as arguments for their position, and in which "the scholarly search for the opinion" (*ijtihād al-ra'y*) is recommended, are not to be interpreted in such a way that in doubtful cases, in which neither the Book nor the tradition supplies a decision, the advice of the learned is to be sought. According to this interpretation, it is not the opinion of the individual person that can claim a decisive vote in legal decisions; rather it is the opinion of all of them³. Dāwūd displayed much independence of, and courage against Ishāq, whom his contemporaries held in high esteem; Dāwūd alone dared to refute his views and teachings⁴. Speaking about Dāwūd's teachers, we want to mention just one more thing, namely, that some biographers want to make him a direct pupil of al-Shāfi'i. This, however, is a chronological impossibility which is rightfully refuted. Dāwūd was four years old

¹ Ibn al-Mulaqqin, fol. 5b.

² *Tāj al-Dīn al-Sukī, Ṭabaqāt al-Shāfi'iyyah* (MS of the Bodleian in Oxford, Marsh, no. 135) fol. 175.

³ *Ibtāl*, fol. 11a: *اجتهاد الرأى هو مشاوره اهل العلم لا ان يقول برأيه*

⁴ *Tahdhīb*, p. 238.

at the most when al-Shāfi'i died ¹. The reason for this conjecture was probably the circumstance that Dāwūd was the first ² writer to concern himself in literature with the Imām's virtues (*manāqib*). He wrote two pamphlets on this matter, and his opinion about al-Shāfi'i (already mentioned p. 24 above) is probably derived from these eulogies. Dāwūd, who occupies a glorious position in the biographical categories (*ṭabaqāt*), is generally described by his biographers as a fanatical follower (*muta'aṣṣib*) ³ of al-Shāfi'i. For this he must be given special credit since from his youth on, he was brought up a Hanafite, the legal school to which his father belonged ⁴. After he returned from Nishāpūr, he settled in Baghdad to teach. His biographers illustrate the remarkable number of his pupils by the assertion that at his place of residence 400 *ṭaylasāns* (according to some, green *ṭaylasāns*) could be seen ⁵. One of the most outstanding scholars of tradition of his time, whom al-Bukhārī, too, recognized as an authority, the great Shāfi'ite scholar Muḥammad b. Ibrāhīm b. Sa'id al-'Abdī (d. 291), is mentioned among those who attended his lectures. Dāwūd said about him to his followers: "There is one person present from whom one can profit, but who cannot profit (from us)" ⁶. Soon Dāwūd's reputation spread beyond the borders of Baghdad, ⁷ and from the most distant centres of Muslim scholarship people were approaching him with theological queries ⁸ about doubtful cases. All biographers unanimously praise his pious, honest character, and everywhere we

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ووم الأستاذ ابو منصور حيث قال فيها تقضه على
ابى عبد الله الجرجاني الحنفي ان داود هذا من تلامذة الشافعي لانه
كان عمره عند موت الشافعي اربعاً او دونها ولعله اراد بالتلمذة كونه
من اتباعه وانكاره القياس لا يخرجهم عنهم.

¹ Ibn al-Mulaqqin, *l.c.*: Hājji Khalīfah, VI, p. 149.

² Ibn Khallikān, no. 222 (ed. Wüstenfeld, III, p. 21).

³ Ibn al-Mulaqqin, *l.c.*: وكان ابوه حنفياً.

⁴ *Ṭabaqāt al-huffāz*, IX, 44; cf. Reiske to Abū al-Fidā', II, p. 720. A similar manner of indicating a large number of listeners is found in the account about Sahl al-Su'lūkī (d. 387) where it is stated that there were more than 500 ink pots in his lecture room. *Tahdhīb*, p. 307.

⁵ Ibn al-Mulaqqin, fol. 9a: حضركم من يفيد ولا يستفيد.

⁶ al-Subkī says about him (*Ṭabaqāt*, *l.c.*): احد ائمة المسلمين وهداة الدين الطائر ذكرهم في الآفاق على سمر السنين السائر خبرهم في اقطار الارضين.

⁸ *Fihrist*, p. 217, 18 ff.

encounter praise of his ascetic way of life. The humble sentiments which Dāwūd could display in his prayers were supposed to be insurmountable in his days ¹. Only with regard to his dogmatic belief do we encounter some doubts — he is supposed to have believed in the creation of the Koran. This will be treated in a later chapter (VIII, 2a). The following account is characteristic of Dāwūd: Ibrāhīm al-Muzanī ² once said during a conversation with Dāwūd b. Khalaf (sic) al-Isbahānī: "If some one speaks in this manner, then he has abandoned the religion, praise be to God!" (*fa-in qāla kadhā fa-qad kharaja 'an al-millāh wa-al-ḥamd lillāh*). Then Dāwūd questioned him about this and refuted him by saying: "Shall we praise God by excluding a person from the religion? Rather, this is an occasion for an *istirjā'* (i.e. the formula: *annā lillāh wa-annā ilayhi rāji'un* which is used in cases of mishap, while praise is fitting for joyous occasions)" ³.

The founder of the Zāhirite school was not particularly highly regarded as a scholar of tradition, perhaps precisely because of his special position. Although his works contain many traditions, it is rare that a tradition is quoted on his authority. Al-Subkī relates a single sentence which was spread in particular by Dāwūd. This is the statement that whoever dies of a broken heart is to be considered a martyr ⁴. Some scholars have tried to belittle Dāwūd in other fields too. Abū al-'Abbās Tha'lab thought that Dāwūd possessed more brain than solid scholarship. This verdict is surpassed by the Muta-kallim Muḥammad b. Zayd al-Wāsiṭī. This satirical dogmatic said: "Whoever aims at the *non plus ultra* of ignorance, let him follow *kalām* according to Nāshī, *fiqh* according to Dāwūd, and grammar according to Nifṭawayhi" ⁵. Incidentally, the latter himself was a follower of Dāwūd's teachings. — Dāwūd died 270 A.H. in Baghdad.

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¹ Abū al-Fidā', *Annales*, II, p. 260; al-Sam'ānī (see Supplements); al-Subkī, *l.c.*; and others.

² This is probably Abū Ibrāhīm Ismā'il b. Ibrāhīm al-Muzanī (d. 264); see *Fihrist*, I, p. 212; cf. II, p. 86.

³ *al-'Iqd al-farīd*, II, p. 215.

⁴ *Ṭabaqāt al-Shāfi'iyyah*, *l.c.*: ومن احاديث داود ما رواه ابو بكر محمد ابنه عنه قال حدثني سويد بن سعيد ثنا علي بن مسهر عن ابي يحيى الفتات عن مجاهد عن ابن عباس قال قال رسول الله صلعم من عشق ونحف فكتم فأت فهو شهيد قال الحاكم ابو عبد الله اتعجب من هذا الحديث فانه لم يحدث به عن سويد بن سعيد ثقة وداود وابنه ثقتان.

⁵ *Fihrist*, p. 72, 18.

The imposing number of Dāwūd's works, which are listed minutely in the *Fihrist*, but which disappeared very early from Muslim circulation, served entirely that theological view which he, among all theologians, could express most clearly, although he was not the first¹ to support it. (This struggle against the rivalling view goes back to the earliest time of Islamic theological confrontation). Dāwūd was trying to transform his system into a comprehensive one, supplementing al-Shāfi'i's system, and juxtaposing it to Abū Ḥanīfah's. Dāwūd's aim, although molded by al-Shāfi'i's initiative, was to go beyond al-Shāfi'i by banning *qiyās* as one of the legitimate sources of canonical legal deduction.

The titles of his works, which are all that have survived in their authentic version, show us the bias of his teachings which Ibn Khaldūn characterizes with the following words:

"They (Dāwūd's followers) reduced the sources of discernment of the law exclusively to explicitly defined points in the Koran and the traditions, and to the consensus as representing all that which the laws were supposed to contain. They also traced back to the Book the apparent *qiyās* (not the *qiyās* to be determined through speculation), and the causality of the law, even in cases in which the causality as such is explicitly stated in the scripture. This means that Dāwūd's followers did not allow the application of analogy and causality beyond the incident mentioned in the scripture, for, so they said, the written, stated causality, wherever it occurs, is nothing but the determination of a concrete law (but not the determination of a legal principle)"².

Besides *qiyās* and *ta'tīl*, Dāwūd rejected also *taqlīd*, i.e. the unconditional following of the teachings of a certain *imām*, or of a certain school, in questions that were not clearly explained in the valid legal sources.

31 "The indiscriminate imitation of the teachings of a fallible person (*ma'ṣūm*) is objectionable and evidence of narrowmindedness". This saying, directed against *taqlīd*, is attributed to him. "Shame on anyone", he is also supposed to have said, "who is given a torch with which to illuminate his paths, but who blows it out to walk around supported by someone else", i.e. — as our source adds by way of an explanation — there is no need to follow a human authority blindly if one can use the legal sources oneself. Someone asked Dāwūd which legal school he should follow; Dāwūd replied: "Take the laws from where they

¹ Against Spitta, *Zur Geschichte Abū-'l-Ḥasan al-Aṣ'arīs*, p. 80, n. 1.

² *Muqaddimah*, ed. Būlūq, p. 372. (For a different translation of this passage see Ibn Khaldūn, *Muqaddimah*. Ed. Franz Rosenthal, London 1958, vol. 3, p. 5).

themselves derive them; follow neither myself nor Mālik, Awzā'i, al-Nakha'i, nor anyone else slavishly"¹. At this point, our source cites statements that are consonant at least with the spirit of Dāwūd, who himself composed a book against *taqlīd*².

With these tenets of a partial elaboration and development of al-Shāfi'i's teachings, the fanatical Shāfi'ite went over to a camp in which neither al-Shāfi'i himself would have wanted to stand, nor al-Shāfi'i's school, which had written on its flag the *taqlīd* of this *imām* and which adhered to the following principle based on the science of *uṣūl* as introduced by al-Shāfi'i: "A *faqīh* is not he who collects the statements of people, and favours one of them, but he who establishes a principle (*aṣl*) based on the scripture and on the traditions, which was not established before him, and who derives a hundred branches from this root"³. This freedom of thought met with open disapproval from the Zāhirite school. We are, therefore, not surprised to find among Dāwūd's opponents Abū al-'Abbās ibn Surayj (d. 305), truly the first great representative of the Shāfi'ite school. He composed polemic writings against the *ahl al-ra'y* and the *ahl al-zāhir*⁴ in order to clarify the point of view of the Shāfi'ite school. During oral disputations with Dāwūd and his son, Abū al-'Abbās ibn Surayj hurled many a poignant dart at their system⁵. The theological literature of Islam was generally enlivened soon after Dāwūd's appearance by a number of writings which refuted "the condemnation of *qiyās*"⁶. Yet the opposition of the Dāwūdi method to that of the prevailing legal schools was restricted not merely to the condemnation of the speculative sources. In the application of the sources, which were recognized by Dāwūd and the rivalling schools alike, Dāwūd's legal branch often differs fundamentally from the schools which preceded. Farther on, in *specific* instances, there will be several occasions to draw attention to the mutual differences in the application of the written legal sources. Basically, as regards the written sources, the most

¹ al-Sha'rānī, I, p. 61.

² كتاب الذب عن كتاب إبطال التقليد.

³ *Tahdhīb*, p. 80.

⁴ *Ibid.*, p. 739: وصنّف كتاباً في الردّ على المخالفين من اهل الرأي واهل الظاهر.

⁵ *Fihrist*, p. 213, 6; *Tahdhīb*, p. 740; Ibn Khallikān, no. 20 (I, p. 31).

⁶ Muḥammad al-Qāshānī (himself previously a follower of Dāwūd), and Mu'āfā al-Nahrawānī, a pupil of al-Ṭabarī, composed such refutations. *Fihrist*, p. 236, 8.

far-reaching difference is probably their respective attitude towards *khuṣūṣ* and *'umūm* in the canonical texts. Below, in the chapter on Ibn Ḥazm, we shall go into details. As we could see from Ibn Khaldūn's afore-mentioned passage, *ijmā'*, too, is a common legal source both for the Zāhirite school and for the rival schools. But only the concept of *ijmā'* is common to them, i.e. the concept of the consensus of the competent scholars of the church with regard to legal questions that are not commented upon in the written sources. However, the opinion of the Zāhirite school¹ differs considerably from the one prevailing in the rival schools as to who these authorities are and who ought to be considered for establishing *ijmā'*. This difference was to deepen with the passing of time so that the clear formulation of the difference could evolve only in later generations. We may assume, however, that the views of later Zāhiris on the extent, and on the competence, of *ijmā'* found their first substantiation in a book in which the founder of the Zāhirite school treated this legal source². Generally, we must consider the fact that with regard to the importance of *ijmā'* in Islam — and we do not confine ourselves here just to the beginnings of the history of the evolution of Muslim theology — the most contradictory opinions evolved. Yet, there are also theologians who deny its validity altogether. They say that with regard to no matter what generation, it is impossible to determine the agreement of all competent authorities. Who could possibly know of the existence of each and every one of these authorities? Quite often a simple woman in her room might rise to the level of *mujtahid* without the contemporaries' knowing of her existence. But even if we assume it to be possible to obtain a *suffrage universel* of all learned contemporaries, who can guarantee that what they expressed as their opinion was really their true inner conviction? And finally, so say those who reject *ijmā'*, would not the Prophet have mentioned consensus as a legal source when he instructed Mu'ādh (v. above, p. 8), had he been at all inclined to recognize it as such? The Prophet's silence is evidence that *ijmā'* has no validity

¹ And within the school it was again Ibn Ḥazm who, as we shall anticipate at this point, challenges the common interpretation of *ijmā'* with the following argument: Since there were also jinns among the Prophet's pious companions, and since it is impossible to investigate their opinion, the pretention of a "consensus of the companions" is a pack of lies. (Ibn Ḥajar, *Iṣṭabāh*, I, p. 7, ed. Calcutta). We shall see, however, that Ibn Ḥazm is drawing heavily on *ijmā'*. Consequently, he must have had his own opinion about it which can no longer be determined from our sources.

² *Fihrist*, p. 217, 12 *Kitāb al-ijmā'*.

as a basis for law¹. But not even those legists are always in agreement on the definition of this legal source who recognize *ijmā'* as a legal basis, and who quote in its support various traditions — although not always unchallengeable and authentic ones². Mālik b. Anas, as is well known, considers only the conformable teachings of the scholars of Medina, and in this sense, he should really be classified among those who reject what is ordinarily understood by *ijmā'*³. Even those legal proponents who dismiss territorial limitations when determining *ijmā'*, as required by Mālik, are at variance among each other when it comes to laying down chronological restrictions. By *ijmā'*, they understand: "Agreement of the learned of the church of Muḥammad in a specific age with regard to a legal problem", *ittifāq al-mujtahidīn min ummat Muḥammad ṣallā Allāh 'alayhi wa-sallam fī 'asr 'alā ḥukm shar'ī* (Imām al-Ḥaramayn: *ittifāq 'ulamā' ahl al-'aṣr 'alā ḥukm al-ḥādīthah*). Now what is meant, the agreement of the preceding generation of *mujtahidīn*, or that of the present generation?⁴ Let us express this in their terminology: is *inqirāḍ al-'aṣr sharṭ al-ijmā'*,

¹ *Waraqāt*, fol. 33b: واحتجّ منكرو الاجاع بامرّين احدهما منع تقريره فانّ علماء العصر غير محصورين وفيهم الحامل والمشهور وربّ امرأة في خدرها بلغت درجة الاجتهاد ولا يُعَلَّم بها ولو فرض جميع اهل الاجتهاد لا يُعَلَّم اتّفاقهم بجواز اظهار احدهم خلاف ما في نفسه وثانيهما ان حديث معاذ المشهور لم يُذكر فيه الاجاع ولو كان حجّة لذكر،

² The most frequent traditional proof is the sentence: لا تجتمع أمتي على ضلالة or in the full version in which Dāwūd is represented to have transmitted it from Mālik al-Ash'arī: قال رسول الله صلعم ان الله أجاركم من ثلث خصال ان لا يدعو عليكم نبيكم فتهلكوا وان لا يظهر اهل الباطل على اهل الحق وان لا تجتمعوا على ضلالة. Other, less relevant, statements, too, are usually quoted in *uṣūl* works. It was extremely difficult to find support in the Koran. Nevertheless *sūrah* IV: 115 was quoted as authority (وَيَتَّبِعْ غَيْرِ سَبِيلِ الْمُؤْمِنِينَ). Other theologians consider the validity of *ijmā'* as the postulate of common sense and make no attempt to search for written proofs for consensus.

³ Kremer, *Culturgeschichte des Orients*, I, p. 488.

⁴ The main controversies with regard to *ijmā'* are summarized in the *Dictionary of the technical terms used in the sciences of the Musalmans*, s.v., I, p. 238-240. However, difference between (a) *ijmā' al-qawm*, (b) *ijmā' al-fī'l*, and (c) *ijmā' al-sukūt* is not discussed. Cf. on *ijmā'* now also C. Snouck Hurgronje's treatise *Nieuwe bijdragen tot de kennis van den Islām* (Bijdr. tot de Taal-, Land en Volkenkunde v. Ned. Indie, 4e Volgr., VIde deel, 1883), p. 43 ff. of the off-print. This excellent work had not yet appeared at the time of the writing of the present study.

or is it not? For the Zāhirite school, this question does not arise. The school says, and it probably imitates its founder Dāwūd who endeavoured to produce a tradition referring to this (v. above, p. 33, note 2), that *ijmā'* cannot mean anything but agreement among the Prophet's companions (*ijmā' al-sahābah*), and that legitimate is only that which is taught with due regard to the authentically documented consensus of the Prophet's companions. Furthermore, the school held that the consensus of following generations, indeed, even the consensus of the *tābi'in*, is completely irrelevant and that no doctrine can, or may, be derived from it¹, for, so they argue, the determination of the agreement of all competent authorities was possible only in the time of the companions who formed in one place a circle whose members and numbers were familiar to every one of them. But after the generation of the companions, the learned became dispersed throughout all countries and regions, and became so numerous that they could not be enumerated, nor could any single settlement encompass them. Therefore, it would be impossible to determine what they taught in complete agreement.

We see from this that in the schools of Abū Ḥanīfah and of al-Shāfi'i, a teaching based on *ijmā'*, which the Zāhirite school could dismiss as lacking all basis, could arise very easily. But Dāwūd and his school, too, recognized the principle of *ijmā'*; their polemics are directed for the most part only against the application of these legal sources — against the application of the speculative sources which they dismiss as inadmissible on principle.

Dāwūd's opposition to *qiyās* and *ra'y*, and the very existence of his writings dealing with this opposition, can be grasped in their historical and literary context only when we relate them to the literary endeavour — manifested in Abū Yūsuf's school — which aimed at an ever more extensive, theoretical justification of the speculative sources, although, for all practical purposes, they had already attained their justification in Abū Ḥanīfah's system. The *Kitāb ibtāl al-qiyās*, and others, are to be considered as pamphlets against Ḥanafite works

¹ *Waraqāt*, fol. 34a: خلافا لاهل الظاهر فأنهم قالوا الاجماع المحتج به اجماع الصحابة واعتمدوا به على ان الاحاطة باقوال المجتمعين في أيام الصحابة كانت ممكنة لاشتهار العلماء وانحصار (والحضرار) عددهم فاما بعد الصحابة فان [العلماء] تفرقوا في الامصار واختلفوا في الاقطار وكثروا بحيث لا يحصرهم عدد ولا يجمعهم بلد ولا يمكن الوقوف على قولهم.

such as *Ithbāt al-qiyās*, and the *Kitāb ijtihād al-ra'y* which Abū Yūsuf's pupil, Abū Mūsā 'Isā b. Abān b. Ṣadaqaḥ (d. 220), put into circulation in order to dismiss the theological scruples of the reaction inclined towards traditions¹.

36 But Dāwūd, too, was to experience something from which the *aṣḥāb al-ḥadīth* of the pre-Ḥanafite epoch were not spared. Practice also proved to him that his theory was actually insufficient. It was one thing to insist on the exclusive right of scripture and tradition, but quite another to reject analogy and *ra'y*. Legal practice always had to take recourse to other sources when written and orally transmitted sources failed. The exclusive traditionalists were always forced to fall back on the *ultima ratio* of Sha'bi (above p. 7). The same was to happen to Dāwūd. Praxis denied him the possibility of a complete application of his own theories. He himself was obliged to apply *qiyās* in the practice of jurisprudence and to recognize it as "evidence"². This, however, is nothing but a return to al-Shāfi'i's point of view. Yielding to this practical pressure, Dāwūd's school had to abandon the outright rejection of independent judgement unrestrained by tradition; but, at the same time, there always remained a small band of ideologists who adhered to the rigid negativism. Al-Māwardī mentions these two types of people who deny *qiyās* (*nufāt al-qiyās*) in his discussion of whether legal positions may be entrusted to such theologians:

"There are two kinds of people who reject analogy. Some reject it, follow the text literally and are guided by the sayings of their ancestors if there is no contradiction to the text in question. They reject completely the independent *ijtihād* and turn away from individual contemplation and free investigation. No judgeships may be entrusted to such persons since they apply the methods of jurisprudence insufficiently. The other category of people does reject analogy, but still uses independent judgement in legal deduction through reliance on the meaning (spirit) of the words and the sense of the address. The *ahl al-zāhir* belong to the latter. Al-Shāfi'i's followers are divided as to whether or not such theologians may be entrusted with a judgeship"³.

¹ Flügel, *Ueber die Classen der hanefitischen Rechtsgelehrten*, p. 288.

² Abū al-Fidā', *Annales*, II, p. 262: وكان داود لا يرى القياس في الشريعة ثم اضطر اليه فسماه دليلاً *adallat al-shar'* like *kitāb, sunnah*, and *ijmā'*. Reiske reads *dhalilan* and arrives at the following meaning: "et quamvis (!) ab ipso rerum usu et indole cogeretur deinceps similitudinis rationem habere, nihilominus (!) tamen appellabat eum ferendae sententiae modum ignobilem". Cf. on this also al-Sam'ānī (Supplement V).

³ *Constitutiones politicae*, ed. Enger, p. 111.

37 It goes without saying that **Dāwūd yields to *qiyās* only as a last resort; fanatical pupils like the later Ibn Ḥazm retracted the concession of calling it *dalīl*.**

It was inevitable that Dāwūd's system differed in many points from that of the common schools because in his system he accorded a very limited scope to the speculative aids of which all his predecessors had availed themselves freely. It would be invaluable for a comparison of the earliest Islamic jurisprudence if we possessed the complete list of differences between Dāwūd and the Zāhirīs. However, as we shall see in the last chapter, the tenets of the *ahl al-zāhir* were soon entirely excluded from consideration in determining the consensus. It is because of this that in comparative studies of the differences (*khilāfīyāt*) of the orthodox schools¹, the tenets of the *ahl al-zāhir* either remain completely without consideration, or are not mentioned and thus, are inconsequential for the consensus. I know of only two authors

¹ This literature, which must not be confused with the science of the *ikhtilāf al-ṣaḥābah* (v. Annotation 2), deserves to be treated bibliographically in detail. It has its origin, so I believe, in al-Shāfi'i's *Ikhtilāf al-'Irāqīyīn* (Ed. F. Kern, Cairo 1902), in which he gathers together the points of difference of Abū Ḥanīfah and Muḥammad ibn Abī Laylā (*Tahdhīb*, p. 770). According to Flügel, *Über die Klassen der hanefitischen Rechtsgelehrten*, p. 301, this 'ilm al-khilāf was established by Abū Zayd 'Abd Allāh al-Dabūsī (middle of the fifth century) with his *Ta'sīs al-naẓar fī ikhtilāf al-a'immaḥ*. But the beginnings and treatments of this problem can be documented certainly in the third and fourth centuries. Abū Bakr ibn al-Mundhir (d. 309/310) is called a famous writer in this field (*Tahdhīb*, p. 675); his contemporary al-Ṭabarī (d. 310) wrote *Kitāb ikhtilāf al-fuqahā'* (*Fihrist*, p. 235, 5) (*Das konstantinopler Fragment des Kitāb ikhtilāf al-fuqahā' des Abū 'Āṣaf Muḥammad ibn 'Āṣar al-Ṭabarī*. Ed. J. Schacht, Leiden 1933); cf. above p. 4; Later Abū Bakr al-Rāzī al-Jaṣṣāṣ (d. 370) produced excerpts from al-Ṭahāwī's work on *ikhtilāf al-'ulamā'* (or *ikhtilāf al-fuqahā'*, Ibn Quṭlūbughā, p. 6, 17). In this context mention must be made of the Shāfi'ite Zakariyā b. Yaḥyā al-Sāghī (d. 307) with his *Kitāb ikhtilāf al-fuqahā'*. It is said about al-Ḥusayn b. al-Qāsim Abū 'Alī al-Ṭabarī (d. 350) in Ibn al-Mulaqqin (fol. 12b) *وهو أول من جرد الخلاف وصنّفه*. Cf. the same statement in Abū al-Maḥāsīn, II, p. 357. Furthermore, it must be mentioned that 'ilm al-khilāf was applied in later times exclusively to the knowledge of the science of differences of the schools of Abū Ḥanīfah and of al-Shāfi'i. Consequently we find in Ibn al-Firkāh, *Waraqāt*, fol. 52b, to the words of Imām al-Ḥaramayn *ومن شروط* and the following remark of the commentator: *وقوله خلافا يعني ان يكون عالما باختلاف العلماء* and *وقوله خلافا ومدّها* *في احكام الوقائع الفروعية من اقوال الصحابة والتابعين ومن بعدهم ولا يكفي ما يُقهم من مطلق اسم الخلاف الآن وهو علم الخلاف بين الامامين الشافعي وابي حنيفة فقط.*

who concern themselves with this and who have acted differently: first, the Ḥanafite Muḥammad ibn 'Abd al-Raḥmān al-Samarqandī al-Sinjārī (d. 721) who composed a work which belongs to this literary genre, '*Umadat al-tālib li-ma'rifat al-madhāhib*. In it the tenets of the Shī'ah and the Dāwūdīs are presented point by point along with those of the four orthodox schools¹, but this work has not survived. Then, secondly, mention must be made of the famous theologian <*Theosoph*>² 'Abd al-Wahhāb al-Sha'rānī (d. 973) who, because of the peculiar tendency of his *Scale of the truth* (*Mizān lil-ḥaqq*), treats the differing tenets of both the *ahl al-zāhir* and the orthodox schools equally³. In this work, 'Abd al-Wahhāb al-Sha'rānī is attempting to demonstrate theoretically that the notion of the equality of all divergent teachings of the legal schools represents an insignificant formality for the spirit of Islam. Al-Sha'rānī composed the *Mizān* after he had already adopted Islamic theosophy. But even before he subscribed to this school of thought, he wrote a book on a similar topic entitled *Kitāb al-minhāj* (or *al-minhaj*) *al-mubīn fī bayān adillat al-mujtahidīn*⁴. This book -- if I may deduce⁵ this from the statement that it is concerned with "existing and extinct" *madhāhib* -- considers besides the orthodox schools the Zāhirite school too. This work, which is cited frequently both in the *Mizān* and also in other works⁶, must probably be considered identical with a certain *Kitāb adillat al-madhāhib* which al-Sha'rānī, too, claims as his work⁷. Apart from this, reference is made to the Zāhirite school in some more detailed works on *tafsīr*, and in commentaries on traditions. The peculiar interpretation of these passages indicates a special dogma

¹ Ibn Quṭlūbughā, p. 42, no. 165.

² <This term has a much wider meaning in German. It is used here in its 19th century meaning>.

³ Besides the passages which will be cited below in this work there are also the following: I, p. 132, 134, 137, 138, 141, 144, 151, 152, 156, 228; II, p. 34, 45, 47, 53, 58, 60, 62, 74, 92, 119, 223, 232.

⁴ A fragment can be found in a Gotha omnibus MS. Cf. Pertsch, *Arabische Handschriften*, I, p. 21, no. 123.

⁵ *Mizān*, I, p. 74: *وكتابتى المسمى بالمنهج المبين فى بيان ادلة المجتهدين* *كافل بذلك فاتى جمعت فيه أدلة جميع المذاهب المستعملة والمندرسه قبل دخولى فى محبة طريق القوم ووقوعى على عين الشريعة التى يتفرع منها اقوال جميع المجتهدين ومقلديهم.*

⁶ *Laṭā'if al-minan* (MS of the Hungarian National Museum, no. XV), fol. 178a.

⁷ *Mizān*, I, p. 70.

CHAPTER FOUR

- 41 No tenet of the Zāhirite school can serve as a more plastic illustration for illuminating its relationship to the other orthodox schools than its tenet concerning usury. In the traditions which elaborate upon the laws concerning usury, six commodities are mentioned with which it is prohibited to practise usury — in the manner prohibited by Islamic law. They are: *al-dhahab*, *al-fiḍḍah*, *al-burr*, *al-sha'īr*, *al-tamr*, and *al-zabīb*, gold, silver, wheat, barley, dates, and raisins respectively. The analogical schools now teach that these six commodities are listed in the traditions as examples only, and that they do not comprise exclusively the whole field of commodities subject to usury. In order to decide for what the afore-said commodities serve as an example, the analogical schools search first for the cause ('illah)¹ of the prohibition for each group according to the method of *ta'tīl*, and secondly, for the aspect under which these commodities fall with regard to this specific law — they search for the next higher classes of which these commodities are a subdivision. From this, their reasoning, follows that not only the subdivisions, but also the classes to which they belong are subject to the prohibition of usury. Certainly in very early times, Rabī'ah, a Medinese jurist and teacher of Mālik b. Anas, to whom the name Rabī'ah of *ra'y* (*Rabī'at al-ra'y*) was given, made the assertion that the prohibition of usury is applicable to everything which is subject to the alms-tax (*zakāt*). It would follow from this that domestic animals and riding animals also are included in this prohibition². The legal schools made still more specific distinctions. Thus, for example, the school of Abū Ḥanīfah says that the first two commodities are nothing but examples for the entire genre which can be defined (*ma'zūn*) by weight, and whose sub-classes they are. Al-Shāfi'i's school regards these commodities as representing everything of value (*jins al-athmān*), and the fruit mentioned merely as examples of food (*ma'ūmāt*), etc. Therefore, even according to these
- 42 schools, the prohibition of usury is applicable not only to those com-

¹ *علة الخمر* which al-Ash'arī discusses with a Mālikite theologian is the "ratio of the prohibition of wine" and not "the purpose of the wine" as Spitta states in *Zur Geschichte Abu-l-Ḥasan al-Aṣ'arī's*, p. 81, no. 98.

² كل ما تجب فيه الزكاة فهو ربوي فلا يجوز بيع البعير بالبعير

modities enumerated in the traditions, but to everything that belongs to such a category. These schools, as can be seen, tolerate analogy, and extend the written sources by applying analogy to material not explicitly recorded. The Zāhirite school is unable to consent to this extension of the written law since this is based on speculative arbitrariness; if the Prophet had meant those classes, he would have most certainly used the more concise expression, and used the name of the class rather than enumerating individual kinds¹. As far as the Zāhirite school is concerned, the law of usury can refer only to those six commodities which are specifically mentioned in the traditions. A person does not transgress this law if he trades with objects that are not included in these six kinds in a way regarded as usurious by Islamic jurisprudence².

- In this example, we recognize the dominant attitude of the jurisprudence of the Zāhirite school in contradistinction to other orthodox *fiqh*. Now orthodox *fiqh* always keeps in mind the question: *what is the reason that something is legislated for a certain individual or a certain thing?* The more important the constitutional validity accorded to *ra'y*, but particularly to analogy, the more systematically this principle is applied. The orthodox schools, then, apply such a law beyond the case explicitly stated in the scripture and tradition to everything that, according to such legal causality, is analogous (cf. p. 30 above). The Zāhirite school, on the other hand, views such syllogism as an arbitrary notion which is falsely and arbitrarily attributed to the purpose of the legislator. It delimits the law (*ḥukm*) exclusively to the personal or non-personal cases (*al-manṣūṣ*) enumerated in the law. According to the view of the Zāhirite school, one must not search for the cause
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¹ *Maḥāṭib*, II, p. 530: انّ الشارع خصّ من المكيلات والمطعومات والاقوات اربعاً فلو كان الحكم ثابتاً في كلّ المكيلات او في كلّ المطعومات لقال لا تبيعوا المكيل بالمكيل متفاضلاً او قال لا تبيعوا المطعوم بالمطعوم متفاضلاً فان هذا الكلام يكون اشدّ اختصاراً واكثر فائدة فلما لم يقل ذلك بل عدّ الاربعة علمنا ان حكم الحرمة مقصور عليها فقط.

² al-Nawawī, IV, p. 51: ونصّ النبيّ في هذه الاحاديث على تحريم الربا في ستمائة اشياء الذهب والفضة الخ فقال اهل الظاهر لا ربا في غير هذه الستة بناء على اصلهم في نفي القياس قال جميع العلماء سواهم لا يختصّ بالستة بل يتعدى في معناها وهو ما يشاركها في العلة الخ. Cf. in still greater detail al-Sha'rānī, II, p. 77-78.

of any of God's laws, just as the cause for the creation of any of God's works must not be investigated. The only cause for their creation is God's sovereign will¹; exactly the same applies to law.

In the tradition which prohibits the believer any kind of luxury, the text mentions only "drinking from golden or silver vessels": قال رسول الله صلعم من شرب في إناء من ذهب أو فضة فأنما يجرجر في بطنه ناراً من جهنم "he who drinks from a golden or silver vessel, sips (with this draught) hellfire into his stomach"². However, it is true that in some parallel versions of this tradition eating from such vessels is mentioned besides drinking (الذي يأكل أو يشرب في الخ). But the above-cited version is the more authentic, and Dāwūd and the Zāhirite school adhere to that one, since they teach that the prohibition refers merely to what the literal meaning of the words implies. Drinking from gold and silver vessels is exclusively forbidden; any other usage, even eating from them, is allowed³. This teaching of Dāwūd is quoted by the historian Abū al-Fidā' as an example of the method of the Zāhirite school⁴. In this case, too, the qiyās schools search for the spirit of the law according to their method of investigation which is based on the purpose of the laws and on the deduction from analogies. Since the usage of gold and silver, as explicitly stated in the tradition, could have been prohibited solely because the legislator condemned luxurious usage in order to dampen arrogance and pride (*khuyalā'*), any detail which is stated by way of an example consequently must encompass every kind of use. For example, they also prohibit the usage of such vessels for the ritual ablution (*wuḍū'*):⁵ some codices even mention that the small

¹ Ibn Ḥazm, I, fol. 27b: *إنه تعالى لا يفعل شيئاً لعلة وأنه تعالى يفعل ما يشاء*; cf. *Ibāḥ*, fol. 3a, 14a.

² Muslim, *Kitāb al-libās*, no. 2.

³ al-Nawawī, IV, p. 416: *وأجمع المسلمون على تحريم الأكل والشرب في إناء الذهب وإناء الفضة على الرجل وعلى المرأة ولا يخالف ذلك أحد من العلماء إلا ما حكاه أصحابنا العراقيون إن للشافعي قولاً قديماً أنه يكره ولا يحرم وحكوا عن داود الظاهري تحريم الشرب وجواز الأكل وسائر وجوه الاستعمال.*

⁴ Abū al-Fidā', *Annales Muslemici*, ed. Reiske, II, p. 262.

⁵ al-Sha'rānī, I, p. 122: *قول الأئمة الأربعة إن استعمال أواني الذهب*

probe used for applying *kuḥl* must not be made of gold or silver¹. It will be clear from these examples what is meant when we say that the main distinction between the law, according to the view of the Zāhirite school and applied *fiqh* (*furū'*), as developed by the *qiyās* schools, lies in the fact that in the former, the literal wording of legal texts recognized as authoritative is the exclusively determining factor, while the latter goes beyond the strict wording in elaboration of the law. The basic difference in the elaboration of the law of the two schools, as just pointed out, refers both to the written authoritative source of Islamic law, i.e. to the *kitāb*, and to the *sunnah*. Let us examine some concrete examples of this distinction from both fields.

1. In *sūrah* II:283, Muḥammad issues the following decree from God: After he orders that in ordinary commercial dealings, security of the creditor's property is required by means of a written receipt from the debtor for the sum borrowed, he says: *وان كُتِبَ عَلَى سَفَرٍ فَلَمْ تَجِدُوا كَاتِباً فَرِهَانٌ مَقْبُوضَةٌ* "But if you are on a journey and cannot find a scribe, then a pledge is obtained"². Certainly in the early period of Islam, some jurists — particularly Mujāhid (d. 100/4) from Mecca during the first century A.H., and al-Ḍaḥḥāk (d. 212) from Baṣra during the second century — interpreted the verse according to the letter of the word so that they restricted the right of pledge to travelling. But if the two parties are either at home or at regular permanent places of residence of human society (*fī al-ḥaḍar*), then, according to these interpreters, the pledge is not applicable for business transactions. Under such conditions, the creditor must secure his claim by drawing up a bond³. The legal schools rejected this literal

والفضة حتى في غير الأكل والشرب حرام على الرجال والنساء إلا في قول الشافعي مع قول داود أنما يحرم الأكل والشرب [sic!] خاصة والأول مشدد والثاني مخفف واقف على حد ما ورد.

¹ Burhān al-Dīn al-Birmāwī's supercommentary to Abū al-Qāsim al-Ghazzī's *Sharḥ al-ghāyah*, Būlāq 1287, p. 17.

² Mafātīḥ, II, p. 558: *اتفقت الفقهاء اليوم على أن الرهن في السفر والحضر سواء وفي حال وجود الكاتب وعدمه وكان مجاهد يذهب إلى أن الرهن لا يجوز إلا في السفر أخذاً بظاهر الآية ولا يعمل بقوله اليوم وإنما تقيدت الآية بذكر السفر على سبيل الغالب كقوله فليس عليكم جناح أن تقصروا من الصلاة إن خفتهم وليس الخوف من شرط جواز القصر.*

interpretation and practical application of the Koranic letters of the law for obvious reasons. The rejection of the literal interpretation went so far that al-Bukhārī could feel justified in acknowledging the validity of the pledge in circumstances which seem to be excluded by the Koran in the very heading of the relevant chapter of his work on tradition. Thus he gave the following sub-heading to the chapter on the pledge: كتاب في الرهن في الحضر وقوله تعالى وإن كنتم الآية: 46
 The traditional communications of the contemporaries and companions of the Prophet collected in that chapter show, indeed, that the Prophet made pledges to his creditors in Medina, i.e. in the *ḥaḍar*. Only Dāwūd al-Zāhirī and his school espouse this forgotten teaching of Mujāhid and al-Ḍaḥḥāk¹ and do not conform to the general view according to which the circumstances of the journey are mentioned in the Koran only *a potiori*, without intending to express a restriction. We find in the note that Fakhr al-Dīn al-Rāzī finds in *sūrah* IV:102 evidence for the fact that for certain Koranic laws certain cases are given *a potiori* only (*‘ala sabīl al-ghālib*), without this indicating that the law in question refers exclusively to this specific case. But also with regard to the law contained in this evidential passage do Dāwūd and his Zāhirite school cling to the letter of the word. The fact is that, in this case alone, the rival schools are the ones who, among the proponents of the literal meaning, deduct a *restriction* from the spirit of the law. The Zāhirite school, on the other hand, again opposes the inclination of the *qiyās* schools to generalize. Concessions to the so-called *ṣalāt al-khawf* and *ṣalāt al-musāfir* are based on this verse. In it Muḥammad says: وإذا ضربتم في الأرض فليس عليكم جناح أن تقصروا من الصلاة إن خفتكم الذين كفروا *ṣūrah* IV:101 “And when you are travelling in the country you will not be blamed for shortening your prayer if you fear you might be afflicted by the unbelievers”. In this case, the common legal schools² lay down certain geographic limits for the application of this concession which is made for the purpose of shortening the prescribed prayer of travellers. For example, both Mālik and al-Shāfi‘ī stipulate that this “travelling in the country” must extend to no less than the distance of four courier stations

¹ *al-Qaṣṣallānī*, IV, p. 233: داود قال داود (يعنى بقول مجاهد والضحاك) وبه (يعنى بقول مجاهد والضحاك) قال داود: *cf. al-Sha‘rānī*, II, p. 85.

² Shī‘ite law, too, prescribes precisely the type and conditions of the journey under which the shortened *ṣalāt al-musāfir* becomes applicable. Querry, *Droit musulman*, I, p. 126-132.

counted from the place of residence — the courier station of four *farsakh* each, three *mīl* to the parasang, i.e. 12000 feet or 3000 *khaṭwahs* to the *mīl* (for <four> feet, *aqlām*, constitute one *khaṭwah*). Some give different rules with regard to the distance, but all of them take as authority traditions which the Zāhirite literalists reject as insufficiently documented (*āḥād*). Short distances from the place of residence cannot be considered adequate travelling to permit a Muslim to avail himself of the concession for the short *ṣalāt al-khawf*. The *ahl al-zāhir* want to have no part of this exegetic restriction. They adhere to the literal words of the Koranic law and say: This Koranic verse contains a conditional sentence; whenever the case stated in the protasis occurs, namely, every time that there is “travelling in the country”, 47 i.e. when there is absence from the ordinary place of residence, the short prayer is permitted. The stipulation about the required distance from the usual place of residence is an arbitrary innovation of those traditionists whom the rival schools quote and of no importance vis-à-vis the explicit *naṣṣ* of the Koran¹. But it is always assumed that the other conditions which are mentioned in the Koranic verse are also fulfilled — namely, threat from hostile unbelievers — a secondary condition to which the other schools attach no importance so that they recognize the short prayer also in different circumstances. In a Shāfi‘ite codex, I find, for example, mention of the following cases in which the short prayer of fear is permitted: in any authorized fight, or when fleeing from such a fight, for instance, when the just person is fighting the oppressor, or the rich man is fighting against a person intending to deprive him of his possessions; when some one is fleeing from either flood or fire, or from a wild beast from which one cannot escape in an other way; or when some one is leaving a country where tyranny reigns; even when a debtor unable to pay is fleeing his creditor². Thus, sentences introduced by the conditional particles *in* and

¹ *Mafātīḥ*, III, p. 444: زعم داود واهل الظاهر ان قليل السفر وكثيره سواء في جواز الرخصة.... احتجوا اهل الظاهر بالآية فقالوا ان قوله تعالى واذا ضربتم في الارض.. جملة مركبة من شرط وجزاء الشرط هو الضرب في الارض والجزاء هو جواز القصر واذا حصل الشرط وجب ان يترتب عليه الجزاء سواء كان الشرط الذى هو السفر طويلا او قصيرا اقصى ما فى الباب ان يقال فهذا يقتضى حصول الرخصة عند انتقال الانسان من محلة الى محلة ومن دار الى دار.

² *Burhān al-Dīn al-Birmāwī*, p. 121.

idhā are meant to mean that whenever the conditions stated in such sentences exist, the statement contained in the subordinate clause becomes applicable; yet these sentences do not indicate that the latter condition is exclusively bound to the condition in the main clause; rather, this condition is valid in all similar or related cases. It goes without saying that the Zāhirite school opposes this generalization ¹.

48 Also the following difference between the rival legal schools is based on the scope of the Koranic statement introduced by a conditional particle. *Sūrah* V:8 يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ "O you who believe, when you stand up to pray wash your faces and your hands etc." One frequently meets the totally erroneous view that it is one of the ritual obligations of the Islamic way of life to perform the ritual ablution (*al-wuḍū*) before every of the five canonical prayers. Indeed, this follows from the afore-mentioned Koranic verse, and also from the actual custom of pious Muslims. Yet on the other hand, no difference of opinion prevails among the four recognized legal schools about the fact that this pious custom is indeed commendable (*mustahabb*) ², but that it is by no means obligatory (*fard wājib*). A single ablution alone is obligatory for all five prescribed daily prayers. The validity of this single ritual act extends to the period of these five prayers so long as the *status puritatis* is not invalidated by an action which, according to Islamic religious law, requires ablution. It has been transmitted that on the day of the conquest of Mecca, the Prophet himself performed all five prayers with one ablution. He specifically mentioned to 'Umar that he was acting in this way deliberately, and that he considered this to be proper. On the basis of this tradition, the four recognized legal schools, who display complete *consensus* in this respect, interpret this Koranic verse — the contents of which are in complete contradiction to their teachings — as presupposing the existence of the above-mentioned circumstances before yet another ablution, prior to a prayer, becomes *necessary* ³. People did not hesitate to introduce

¹ *Mafātih*, p. 446: إِنَّ كَلِمَةَ إِذَا وَكَلِمَةَ إِذَا تَقِيدُ إِذَا عِنْدَ حَصُولِ الشَّرْطِ يَحْصُلُ الشَّرْطُ وَلَا تَقِيدُ إِذَا عِنْدَ عَدَمِ الشَّرْطِ يَلْزَمُ عَدَمَ الشَّرْطِ.

² Abū Su'ūd cites the following tradition in support of this interpretation of the *fuqahā'* in his *Tafsīr*, marginal ed. Būlāq, III, p. 528: مَنْ تَوَضَّأَ عَلَى طَهْرٍ كَتَبَ اللَّهُ لَهُ عَشْرَ حَسَنَاتٍ. This statement shows that the repeated *wuḍū'* is an *opus supererogationis* in *status puritatis*.

³ al-Bayḍāwī, I, p. 248, 14, to the passage, this is awkwardly discussed.

this interpretation into the text of this verse by inserting *wa-antum muḥaddithūn* between the words *al-ṣalāt* and *fa-ighsilū*. A story related also in the biography of the impious poet al-Uqayshir al-Asadī makes it quite clear that *wuḍū'* used to be much neglected before the individual prayer, certainly in early times, so that very soon the most unrestrained custom prevailed. The pious aunt of this poet intended to have her nephew observe the prayers at all cost. "Your importunities have started to bother me!" said the poet finally. "Now, choose between two possibilities. Either I perform the ablutions without praying, or I pray, but without performing the preceding ablutions". — "Well, if there is no other choice", the aunt replied, "then pray without *wuḍū'*" ¹. It is reported explicitly that several pious Muslims of the first centuries used to perform the evening prayer and the following morning prayer with *one* ablution ². This shows — it can be observed quite frequently also on other occasions in this field — that the jurists made concessions to less stringent practice; by means of tricks of interpretation they adapted the law to the freely developing life which they wanted to harmonize at all costs with the requirements of the law. This process of assimilation is a phenomenon which runs like a red thread through exegesis and literature of tradition. However, we encounter this also in non-Islamic religious literature. It is easy to understand that Dāwūd's school rejected such an attitude and, in agreement with the teachings of the Shī'ah advocating the letter of the Koran and nothing else, required that, before every canonical prayer, *wuḍū'* be performed in all circumstances. The school considered this act strictly *obligatory*. The traditional accounts that differ from this view ³ are considered not entirely authentic and too weak to modify the sense of the scripture. Indeed, even if supposing they were authentic ⁴, they would not be able to weaken the Koranic decree because of the axiom to which the Zāhirite school adhered: إِنَّ الدَّلَالََةَ الْقَوْلِيَّةَ أَقْوَى مِنَ الدَّلَالََةِ الْفِعْلِيَّةِ

¹ *Kitāb al-aghānī*, X, p. 91.

² Abū al-Maḥāsīn, *Annales*, I, p. 388, 507, 523, and others.

³ The decisive passage is *Kitāb al-wuḍū'*, no. 55 (56) in which Anas relates that the Prophet performed the *wuḍū'* before every prayer, but as for the companions: يُجِزِي أَحَدُنَا الْوُضُوءَ مَا لَمْ يَحْدِثْ.

⁴ al-Sha'rānī does not mention this controversy among the *masā'il al-ikhtilāf*, but in his introduction to *Mizān*, I, p. 89, he gathers together traditions which — contradicting each other — can serve to support either of the two teachings.

Ibn Ḥazm's great religio-polemic work in which the author discusses the question of the extent to which the Koran is to be considered the word of God, our Koranic verse is used as evidence in such a way as if this passage referred to the written Koran.

Among all exegetic differences encountered in the Zāhirite camp, none is more radical in relation to the generally accepted exegesis than the one of *sūrah* LVIII:4 *وَالَّذِينَ يَظْهَرُونَ مِنْ نِسَاءِهِمْ ثُمَّ يَعُودُونَ* *لِمَا قَالُوا* فتحرير رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَا. The correct interpretation of the words: *وَالَّذِينَ يَظْهَرُونَ مِنْ نِسَاءِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا* caused the canonists a great deal of difficulties. "Those who renounce their wives with the formula *zihār* (i.e. the formula of renouncement of the Jāhiliyah, *anti 'alaya ka-zahr ummī*), and then later return to what they said, must free a slave before these couples are permitted to touch each other". Now, what is the meaning of "and then later return to what they said"? In this case, the *interpretatio vulgata* points to the exact opposite of the meaning of the words. In the sense of this general interpretation, the passage states that the husband, after the completed, formal renouncement, regrets it and intends to take back his wife. This interpretation has also been adopted by our European translators of the Koran. For example:

53 Maraccius: "Qui autem vocant dorsum matris suae aliquam ex uxoribus suis; *deinde poenitet eos ejus quod dixerunt*: poena eorum erit liberatio cerviis, etc."

Savary and Kasimirski: "Ceux qui jurent, de ne plus vivre avec leurs femmes, *et qui se repentent de leur serment*, ne pourront avoir commerce avec elles avant d'avoir donné la liberté à un captif".

Ullmann (p. 475): "Diejenigen, welche sich von ihren Frauen trennen mit der Erklärung, dass sie diesselben wie den Rücken ihrer Mütter betrachten wollen, *später aber das, was sie ausgesprochen, gern wieder zurücknehmen möchten* u.s.w.". (Those who separate from their wives with the statement that they are going to regard them like their mothers' backs later, however, intend to recant what they have said, etc.).

Palmer: "But those who back out of their wives and then *would recall their speech*, — then the manumission of a captive before etc."

The Muslim canonists among the proponents of the *interpretatio vulgata* holding different views on this word *ya'ūdūna* all agree on the general meaning of the Koranic quotation; namely, that this concerns both a regret of the divorcee, and the wish of the husband to annul

the pronounced formula of renunciation and return to his wife. This is the interpretation of this verse as it is recognized by the Shi'ite deduction of Islamic law too. The Shi'ites, as the Sunnite schools, base an entire chapter of ordinances concerning *zihār* on this interpretation¹. We find the different conceptions of *ya'ūdūna* compiled in the original commentaries. Most remarkable is the view of Sufyān al-Thawrī: "Those who (as heathens before Islam) used to dismiss their wives with the customary *zihār* formula at that time², and who later, as professors of Islam, have recourse to this formula, must submit to the prescribed atonement". It cannot be denied that this interpretation comes much closer to the wording of the Koran than all attempts of elaboration within the circle of the *interpretatio vulgata*. Still closer to this is the explanation of the Zāhirite school. It interprets the law as contained in the Koranic verse as follows: When the husband has used the *zihār* formula once and repeats the same later on, then he must submit to the prescribed atonement. Al-Bayḍāwī, to the passage, hints at this interpretation with the short words: *bi-takrārihi lafẓan wa-huwa qawḍ al-zāhirīyah*; the same can be found, as usual clearer and more elaborate, in Fakhr al-Dīn al-Rāzī³. In this instance, too, it becomes evident what we could observe in the case of the law on the pledge, namely, that the Zāhirite exegetic endeavours which leave the trodden path of ordinary interpretation occasionally rejuvenate older opinions which have disappeared from practice. Finally, it cannot be overlooked that inherent in the interpretation of this Koranic verse there is a theoretical, exegetic moment. Yet, this interpretation has considerable influence on the shaping of the legal practice because, in the sense of the Zāhirite interpretation,

¹ In Querry, *Droit musulman*, II, p. 62-65.

² In al-Bayḍāwī, to the passage, II, p. 317, 21: *او بالظهار في الاسلام على ان قوله يظهرون بمعنى يعتادون الظهار اذ كانوا يظهرون في الجاهلية وهو قول الثوري.*

³ *Kitāb al-aghānī*, VIII, p. 50, 13, states the following about the origin of this formula as formula of divorce among the pagan Arabs: It was used first by Hishām ibn al-Mughīrah against his wife Asmā'. It was then taken over by the Quraysh as formula of divorce. — The first use of the *zihār* from the time of Islam is reported from Aws ibn Aws (d. 32), *Tahdhīb*, p. 168.

⁴ *Mafātīh*, VIII, p. 156: *اذا كرر لفظ الظهار فقد عاد وان لم يكرر لم يكن عودا وهذا قول اهل الظاهر واحتجوا عليه بان ظاهر قوله ثم يعودون لما قالوا يدل على اعادة ما فعلوه وهذا لا يكون إلا بالتكريم.*

he who regrets the repudiation of his wife and intends to revoke it does in no way conduce the execution of his intention by performing the prescribed atonement.

2. The *Zāhiris* are just as meticulous in deducing a law from the *ḥadīth* as when they are using the wording of the Koran as a basis for their jurisprudential deduction. It is in that field too, that they follow unswervingly their basic doctrine of the relationship of the jurispudent to the words of the law-giver. They consider it unjustifiable to try and to guess the *intention* of the law-giver on the basis of subjective judgement and to draw an analogy from this intention and give to legal practice a direction which, under the pretense of *following the spirit of the law*, departs from the objective meaning of the *text*.

Musāqāt indicates in Islamic agricultural affairs a contract falling under the jurisdiction of social contracts. It states "that a landowner guarantees the cultivator a certain share of the yield in exchange for the care and management of fruit trees, vineyards, and vegetables"¹. There is a great deal of difference of opinion among the Islamic theological schools as regards the admissibility of such contracts². In the whole field of commercial, rental, and contract law, Islamic law follows the principle that for every contract and purchase there must prevail complete clearness eliminating any doubt and deception concerning price or rent respectively. Business deals and contracts which later turn out to deceive one of the contracting parties can be invalidated, and indeed, very often become null and void, since the later-evolving fact that it involved a *premeditated* deception makes the contract illegal to begin with. The uncertainty about the yield, and the possibility of deception of the sharecropper in the case of *musāqāt* and similar contracts, raised serious doubts about the validity and legality of such contracts among the legists. As for the sharecropping contract in particular, the opinions diverge as follows:

¹ See Kremer, *Culturgeschichte des Orients*, I, p. 514. Van den Berg, *De contractu "do ut des" jure mohammedano*, p. 67. *De Beginselen van het Mohammedaansche Regt*, p. 89.

² One gets a good impression of the singular indecisiveness which prevails among the legislative Muslim circles concerning the entire category of social contracts when one reads the traditions on *mukhābarah*, *muzāra'ah*, etc. Because of lack of space, I can merely refer to them; al-Bukhārī, *Kitāb al-ḥarṭh wa-al-muzāra'ah*, no. 8-10, but particularly no. 18-19 (cf. with this al-Qasṭallānī, IV, p. 199-202) and Muslim, *Kitāb al-buyū'*, no. 15.

Abū Ḥanīfah considers it completely inadmissible¹ — a proof of what little regard he had for the explicit words of the traditions when his notions of social ethics inspired him with something different. The exact opposite to this are Mālik's teachings. He considers the *musāqāt* applicable to the whole field of gardening. Al-Shāfi'ī, on the other hand, restricts applicability of the contract to date-trees and vineyards. But it is important to know the tradition from which the *musāqāt* derives its legal basis. When Khaybar was conquered, the Jews asked the Prophet to let them continue living there on the condition that they cultivate the land for the price of half the yield of all date-trees and produce. Then the Prophet said: "On this condition I permit you to stay as long as you want"². This shows that Mālik and al-Shāfi'ī considered the contract about the date-trees which was concluded with the Jews as example and basis for further analogies. Since vine and date-trees are subject to the same regulations in many other aspects, al-Shāfi'ī puts them on the same level even as regards the *musāqāt* — the permissibility of which is documented by this tradition. Mālik searches for the general reason of the admissibility and concludes that the economic requirement inevitably led the legislator to the conclusion of the contract with the former owner of the land. Starting from this point of view, naturally no distinction can be made between the two kinds of fruit. We observe in this instance two kinds of *qiyās* as bases for legal deduction. It goes without saying that Dāwūd³, frowning upon any kind of *extension of the law* arrived at by a speculative method, adheres strictly to what the *letter of the law* permits or prohibits. Dāwūd does not examine the reasons for prohibition or permission, does not concern himself with investigating the points of view of the law-giver, for him, nothing but the written

¹ His school, however, abandoned his original teachings at a later time; see v. Kremer, *l.c.*, I, p. 514.

² Muslim, *Kitāb al-musāqāt*, no. 1.

³ al-Nawawī, IV, p. 30: واختلفوا فيما يجوز عليه المساقاة من الأشجار فقال داود تجوز على النخل خاصة وقال الشافعي على النخل والعنب خاصة وقال مالك تجوز على جميع الأشجار وهو قول للشافعي فأما داود فأمرها رخصة فلم يتعد فيه الخصوص عليها وأما الشافعي فوافق داود في كونها رخصة لكن قال حكم العنب حكم النخل في معظم الأبواب وأما مالك فقال سبب المجاوز الحاجة والمصلحة وهذا يشمل الجميع فيقاس عليه.

material alone is the determining factor. In the written text, he saw nothing but a document supporting the admissibility of the *musāqāt* contract as applicable to dates. Therefore, he decided to pronounce this one kind of fruit as the exclusive, permissible subject of this contract.

Indeed, in no part of the material in question can **the purely external orientation of the Zāhirite school's interpretation** of the law in its contrasting relationship to the deeper motives of the analogy schools be better observed than in the interpretation of legal texts, where, with reference to a single aspect of religious life, ritual practice, or social intercourse, specific details are mentioned. Everywhere in such passages, the Zāhirite school will exert its coercive view. Besides the previous example, let us select yet another, one which seems to be rather unimportant fundamentally, but which is formally a splendid example from the ritual part of Islamic tradition of the point of view taken by the school, namely, its teaching about *ṣadaqāt* (or *zakāt*) *al-fitr*¹. After completing the fast of Ramaḍān, and before indulging in the joys of the "minor festival", Muslims must make this offering which, in the opinion of theologians, is, as it were, a general atonement for transgressions possibly committed against the law of the fast. According to the opinion of some theologians, this tax, introduced prior to the alms-tax (*al-zakāt*) which took its place, is supposed to have lost its obligatory character after the institution of the latter one, but Muslims as far as Central Africa still give it readily. The Awlād Sulaymān, deep in the Sudan, give the Ḥājj 'Abd al-'Āṭī at the end of Ramaḍān a *mudd dukhn* as *ṣadaqah*². The following tradition is the main legal source as to what this offering must consist of, and as to which persons are obliged to give it: "The messenger of God ordered as compulsory *zakāt al-fitr* one *ṣā'* dates or one *ṣā'* barley; (this obligation is applicable) to slaves and free men, to men and women, to young and old Muslims. He ordered that this offering be made before people leave for the prayer (of the following holiday)"³. In this case, Ibn Ḥazm arrives at the most extreme consequence of the

¹ Cf. Krehl, *Über den Sahih des Buchāri*, p. 10. On the origin of this alms law see Sprenger, *Das Leben und die Lehre des Moḥammad*, III, p. 57.

² Nachtigal, *Sahāra und Sūdān*, II, p. 275.

³ al-Bukhārī, *Kitāb al-zakāt*, no. 70: فرض رسول الله صلعم زكاة الفطر صاعاً من تمر أو صاعاً من شعير على العبد والحر والذكر والأنثى والصغير والكبير من المسلمين وأمر بها أن تؤدى قبل خروج الناس إلى الصلاة.

Zāhirite system by teaching that the *zakāt al-fitr* must be paid in this commodity exclusively and that it has no validity if a different kind of produce of equivalent quantity is given¹. In this he is in complete disagreement with the rest of the schools who see in the *ṣā'* dates or barley nothing but a specification of the obligatory minimum offering which could also consist of a different kind of produce not particularly mentioned in the tradition². With this example, the peculiar Zāhirite interpretation of the tradition in question is by no means exhausted. The tradition stipulates that *zakāt al-fitr* is incumbent upon slaves. From this the four schools conclude that the owner has the duty to make the offering on behalf of his slaves since they have no personal property. Dāwūd, however, adheres obstinately to the wording '*alā al-'abd*: the slave himself is obliged and responsible to make this fast offering; in this respect, his master has no other obligation than to supply the slave with extra means of earnings from which he can defray the expenses of the offering which are his *personal* obligation³. Indeed, Ibn Ḥazm goes further than this. Although the tradition mentions *young ones*, but without conclusively stating that born children are concerned, he makes it the duty of the father to pay the prescribed *ṣadaqah* even for an embryo once it has passed 120 days of its embryonic stage⁴. It must not be overlooked that the Ḥanbalite

¹ al-Qaṣṭallānī, III, p. 97: ظاهره أنه يخرج من أيها شاء صاعاً ولا يُجزئ غيرهما وبذلك قال ابن حزم لكن ورد في روايات أخرى ذكر اجناس أخر.

² al-Birmāwī, p. 142, enumerates the following types according to their value: wheat (*burr*), spelt (*sult*), barley (*sha'ir*), durra (*dhurah*), rice (*aruzz*), chickpea (*ḥimmiṣ*), Indian pea (*māsh*), lentil (*'adas*), beans (*fāl*), dates (*tamr*), raisins (*zabīb*), cheese from curdled milk (*aqit*), milk (*laban*), cheese (*jubn*). A rhyme of their order attempts to facilitate memorization. The first letters of the first line are the first letters of the types enumerated: بالله سلّ شيخ ذى رمز حكى مثلاً عن فور ترك زكاة الفطر

لوجها حروف اولها جاءت مرتبة اساء قوت زكاة الفطر ان عقلا

³ al-Nawawī, III, p. 8: فان داود اخذ بظاهره فوجبها على العبد بنفسه واوجب على السيد تمكينه من كسبها كما يمكنه من صلاة الفرض ومذهب الجمهور وجوبها على سيده عنه.

⁴ al-Qaṣṭallānī, *ibid.*, p. 103: لا فطرة على الجنين خلافا لابن حزم حيث قال يوجبها مستدلاً بقوله او صاعاً من التمر على الصغير قال لان الجنين فى بطن امه يقع عليه اسم الصغير فاذا اكمل مائة وعشرين يوماً فى بطن امه قبل انصداع الفجر من ليلة العيد وجب ان تؤدى عنه صدقة الفطر.

59 codex stipulates that making the fast offering for an embryo is a pious, desirable action, *sunnah*, although not obligatory ¹.

From what has preceded, we realize the role the famous dogmatist Abū Muḥammad ibn Ḥazm played in the development of the school of Dāwūd al-Zāhiri. He drew consequences from the scriptural word that did not occur to the few representatives of the school. In concert with Ibn Ḥazm's other views, with which we shall acquaint ourselves in chapter eight, it can easily be understood that he was inclined to urge the strict letter of the word in instances in which the rigid relationship towards believers of other faiths was concerned. It is a remarkable achievement of the traditionalists and the founders of the Islamic legal systems — possibly with the exception of Ahmad b. Ḥanbal and his school — that they often, and without justification, introduced traditions expressing liberal views; they, then, interpreted opposing traditions that were recognized as authentic for practice in such a way that, because of this interpretation, the obstinacy and severeness of the text in its literal interpretation was broken. The science of tradition and the art of interpretation have achieved successes for humanity in this field which put the proceedings governing *pia fraus*, on the one hand, and the philologic-exegetic enormities, on the other, in a favourable light. By the way, these are achievements which, because of wide influence, are still not properly appreciated. The Zāhirite school which rejected these interpretation tricks was deprived of these humanistic blessings. No one would have been less inclined to apply them in this direction than Ibn Ḥazm who distinguished himself by his fanatical enmity against everything non-Islamic.

The question of whether a Muslim is permitted to eat meals prepared by followers of other faiths has occupied Muslim theologians on numerous occasions. The spectrum of the attitudes and teachings which have evolved concerning this problem represents almost all shades of opinion towards the adherents of other faiths — from the most barbaric to the most liberal. To the scope of this question belongs yet another one: whether or not a Muslim is permitted to use utensils belonging to Christians and Jews for the preparation of his own meal. The traditions offer the following information: "The Prophet was asked by a Muslim who had frequent opportunity to come in contact with non-Muslims in Syria: 'O Messenger of God, we live in a country

¹ Shaykh Mar'ī, *Dalil al-ṭālib li-naḥl al-ma'ārib*, I, Būlāq, 1288, p. 75: وتسنّ عليّ الجنين.

of people who belong to the *ahl al-kitāb*, and we use their dishes. Furthermore, we live in a land where there is game. I hunt both with my bow and also with the assistance of trained and untrained dogs. Now, inform me which of these things are permitted'. Upon this, the Prophet replied: 'As for the first question, you are not supposed to eat from their dishes if you can find dishes other than those of the *ahl al-kitāb*; however, should you find none but theirs, wash them; then you can eat from them' ¹. All Muslim theologians deduce from this that the use of utensils of non-Muslims is basically not prohibited, for were this the case, then such vessels would not be permitted to be used even in cases when others could not be obtained, for something prohibited does not become permissible simply by the absence of the latter one. Rather, the form of the prohibition in the above-mentioned tradition (we shall give more examples in the fifth chapter) is interpreted as the wish of the Prophet. This is in some measure what Christian theology calls *consilium evangelicum*, compliance to which is well received, negligence of which, however, does not constitute a transgression ². Indeed, the *fuqahā'* restrict the command expressed in the tradition to the case where such vessels have been used by non-Muslims for purpose which, according to Islamic law, are considered *najas*. In other cases their use, without prior cleansing, does not even belong into the *makrūh* category. As a matter of fact, we learn from the tradition — although Ibn 'Asākir has excluded it from his edition of Bukhārī — that 'Umar performed his ritual ablution in a vessel fetched from a Christian house ³. Quite

¹ al-Bukhārī, *Kitāb al-dhabā'ih*, no. 10: سمعت ابا ثعلبة الجُشنِيّ رَضَهُ يقول اتيت رسول الله صلعم فقلت يا رسول الله انا بأرض قوم اهل الكتاب نأكل في آنتيهم وارض صيد أصيد بقوسى واصيد بكلبى المعلم والذى ليس معلماً فأخبرنى ما الذى يحلّ لنا من ذلك فقال أما ما ذكرت انك بارض قوم اهل الكتاب تاكل في آنتيهم فان وجدتم غير آنتيهم فلا تأكلوا فيها وان لم تجدوا فاغسلوها ثم كلوا فيها...

² al-Qasṭallānī, VIII, p. 289: حتى وأجاب من قال بان الحكم للاصل تتحقّق النجاسة بان الامر بالغسل محمول على الاستحباب احتياطاً واما الفقهاء فانهم يقولون ان لا كراهة فى استعمال اوانى الكفار التى ليست مستعملة فى النجاسة ولو لم تغسل عندهم وان كان الاولى الغسل للاحتياط لا لثبوت الكراهة فى ذلك.

³ *Kitāb al-wuḥū'*, no. 44 (ed. Krehl), no. 45 (Būlāq).

differently Ibn Ḥazm: he quite willingly takes the opportunity to give an example of his intolerance, and to substantiate a law which, in addition, serves to impede free intercourse with non-Muslims. Quite consistently, he deduces from the *letter* of the tradition the validity of the following law: "Usage of vessels of the *ahl al-kitāb* is generally not permitted except in circumstances in which lawful vessels cannot possibly be obtained, and even in this case, only after they have been washed" ¹.

This, Ibn Ḥazm's opinion, is a logical conclusion of his teachings of the ritual uncleanness of believers of other faiths, and is identical with the Shī'ite view. The Shī'ites, as it is well known, have taken the extreme consequences of the Koranic teachings (*sūrah IX:28*) ². They reach the utmost rigorism and intolerance with their legislation on *ṭahārah* and *najāsah* ³. They have included in their *dah najāsah* the body of the unbeliever and the heretic, and they extended this judgement to everything the unbelievers touch. Chardin ⁴ has related many a curious thing about his travel experiences concerning this aspect of the ritual life of the Persians; its codification can be read in Querry's exhaustive book ⁵. Sunnite Islam ⁶, on the other hand, has displayed in this point a splendid example of its perfectibility, its possibility of evolution, and also the ability to adapt its rigid formalism to the requirements of social intercourse by modifying the Koranic tenets of the impurity of unbelievers through its own interpretation, until it reached the point when it abandoned this

أخذ بظاهره ابن حزم فقال لا يجوز استعمال آنية: ¹ al-Qaṣṭallānī, p. 296: أهلكه الله تعالى لا يجوز استعمال آنية: أهل الكتاب إلا بشرطين أن لا يجد غيرها وأن يغسلها وأجيب بأن الأمر بغسلها عند فقد غيرها دال على طهارتها بالغسل والأمر باجتنابها عند وجود غيرها للمبالغة في التنفير عنها.

² إنا المشركون نجس.

³ Cf. above p. 49.

⁴ Chardin, *Voyages en Perse*, VI, p. 321 ff.

⁵ Querry, *Droit musulman*, I, p. 47, art. 267 ff.

⁶ For a historical study of this question it is not to be overlooked that 'Āḡim b. Thābit's pledge is mentioned as a rare exception in Ibn Ishāq's traditional sources: *Ibn Hishām*, p. 567 and 639; cf. however *ibid.*, p. 807: وانت رجل مشرك نجس فلم أحب أن تجلس على فراش رسول الله صلعم.

doctrine ¹. Al-Nawawī says this quite frankly in his commentary on this tradition in which the purity of the Muslims is stated ²: "This is the law for the Muslim, but as for the unbeliever, as far as purity and impurity are concerned, he is to be judged from the same point of view as the Muslim" ³. Fakhr al-Dīn al-Rāzī decisively rejects the right of the intolerant tenet to consensus for the interpretation which is contained in the Koran and which is adduced by the Zaydis (Shī'ites) — in agreement with the older interpretation to be found in al-Bayḍawī too — by referring to the traditional account which presents the Prophet as having drunk also from vessels of non-Muslims. "How could it be possible", so he concludes, "that the mere embracing of Islam should cause the state of impurity to change into a pure one on the body of a single person?" ⁴. Concerning this point, and contrary to the more liberal opinions spreading already during his time — we find Ibn Ḥazm in the camp of those who are not satisfied with considering the ritual *najāsah* of the unbelievers as an accessory

¹ The three more liberal of the legal schools represent in their interpretations of this Koranic verse one stage each of this gradual progress. Al-Shāfi'i's school is of the opinion that nothing can be deduced from this verse but the prohibition for unbelievers to enter the holy territory in Mecca; the Mālikite school extends this prohibition to all the mosques of Mecca; according to the view of the Ḥanafites, believers of other faiths are not even barred from entering the holy *ḥarām* territory of Mecca for a *provisional* stay (al-Māwardī, p. 290). The latter interpretation just about abrogates the validity of the Koranic prohibition!

² Muslim, *Kitāb al-ṭahārah*, no. 56: عن حذيفة ان رسول الله صلعم لقيه وهو جنب فحاده فاعتسل ثم جاء فقال كنت جنباً قال ان المسلم لم ينجس.

³ al-Nawawī, I, p. 412: الطهارة واما الكافر فحكمه في الطهارة والنجاسة حكم المسلم هذا مذهبنا ومذهب الجاهير من السلف واختلف وهذا كله باجاء المسلمين.

⁴ *Mafātih*, IV, p. 614: واختلّفوا في تفسير كون المشرك نجساً نقل صاحب الكشاف عن ابن عباس ان اعيانهم نجسة كالكلاب والخنزير وعن الحسن من صافح مشركاً توطأ وهذا هو قول الهادي من ائمة الزيدية واما الفقهاء فقد اتفقوا على طهارة ابدانهم واعلم ان ظاهر القرآن يدل على كونهم نجساً فلا يرجع عنه الا بدليل منفصل ولا يمكن ادعاء الاجماع فيه لما بيننا ان الاختلاف فيه حاصل واحتج القاضي على طهارتهم بما روى ان النبي صلعم شرب من اوانيهم وايضا لو كان جسمه نجساً لم يبدل ذلك بسبب الاسلام.

which they observe less scrupulously than Muslims who follow in this respect precisely prescribed laws, but who label the substance of the unbeliever impure. Ibn Ḥazm adheres faithfully to the exclusive point inherent in the science of tradition *inna al-mu'min lā yanjus*,¹ while all the rest of the Muslim teachers extend this attitude to unbelievers too. I believe that what was responsible for this attitude was not only Ibn Ḥazm's method of deduction, but also his personal fanaticism against followers of other religions. I have shown on other occasions how malicious his language is when he speaks about non-Muslims; also in the excerpts from his main work which I quote in this treatise, we shall have an opportunity to observe this. Let it be also mentioned that Ibn Ḥazm extends this appellation to all non-Muslims, contrary to Abū Ḥanīfah who does not include the Jews in the expression *mushrik*. This point of view has the most serious consequences in applied jurisprudence².

Finally, one more example may be cited which, on the one hand, shall prepare us for the development of the legal interpretation treated in the following chapter, and on the other hand, can demonstrate how the common legal schools, in contrast to the Zāhirite school, rise to the utmost level of distortion when faced with reconciling the text of the law to the practice of daily life, if daily usage has departed from the requirements of the rigid law. In such instances, the representatives of the Zāhirite school appear as rescuers of the true meaning of the scripture; the objective claim to represent the correct exegesis is in such cases undoubtedly on their side. Such a case is the following:

64 Muslim tradition prescribes the true believer to perform a complete ablution (*ghusl*) before the Friday prayer; it is well known that it is entirely different from the *wuḍū'*. The text of the tradition expresses this in the following words: "The ablution on Friday is necessary (i.e. obligatory) for all who have reached the age of puberty"³. To indicate the degree of this ritual obligation, the word *wājib* is used here, a word which indicates in the terminology of Islamic law the highest degree of unconditional obligation. Nevertheless, although all the variations of the tradition emphasize unanimously and undoubtedly

¹ al-Bukhārī, *Kitāb al-ghusl*, no. 23; also al-Qaṣṭallānī, I, p. 389.

² For a detailed treatment of this important question of Islamic inter-denominational legislation cf. Ibn Ḥazm, *Kitāb al-milal*, II, fol. 17-18.

³ al-Bukhārī, *Kitāb al-jum'ah*, no. 2; *Kitāb al-shahādāt*, no. 18: غسل يوم الجمعة واجب على كل محتلم

the "*wājib*" of this law, the orthodox schools now say — and even the rigid Ḥanbalite school makes no exception of this¹ — that the duty prescribed in this law is not in the nature of an obligation, but merely a suggested, pious custom (*sunnah*), the negligence of which is by no means equal to the transgression of obligatory duty². Shī'ite jurisprudence, too, considers this custom among the *aghṣāl masnūnah*³. To justify this view and to reconcile this with the explicit word *wājib*, all kinds of tricks had to be applied. Some representatives of the anti-traditional view think that the above-mentioned law in this form has been abrogated (*mansūkh*). This, however, is not recognized by all, since no authentic tradition could be found to prove the alleged abrogation (*nāsikh*). Others tried to read the prevailing custom into the text of the law by means of a grammatical *taqdīr*. They claim that the word *wājib* stands for *ka-al-wājib* "if necessary" and seems to indicate the high esteem in which the Prophet held this pious custom, but without considering it obligatory⁴. Another interpretation, whose author is the famous Ḥanafite canonist al-Qudūrī, shows us the highest efflorescence of violent sophistry of the epigones of Muslim jurisprudence; he claims that *wājib* in this case has the meaning of falling off (from *wajaba* to fall) and that '*alā* stands for '*an* so that into "indispensable (incumbent upon) for everybody", the following is read: "dispensable for everybody" i.e. omissible, unnecessary for people in general; in other words, the exact opposite of the literal meaning⁵. In this question, too, the Zāhiris are the only ones who

¹ Shaykh Mar'ī, *l.c.*, I, p. 17: وهي (يعني الاغسال المستحبة) ستة عشر أكدها لصلاة الجمعة

² E.g. Shāfi'ite law according to Abū al-Qāsim al-Ghazzī, *Būlāq*, 1287, p. 36 with the addition: ولا تجب الا بالنذر.

³ Querry, *Droit musulman*, I, p. 36.

⁴ al-Qaṣṭallānī, II, p. 179; cf. IV, p. 402: واجب اي كالواجب في تأكيد النديبة او واجب في الاختيار وكرم الاخلاق والنظافة او في الكيفية قوله واجب بمعنى ساقط وعلى بمعنى عن al-Qudūrī: لا في الحكم

⁵ In the related Talmudic literature, I find an interesting analogy to the terminological change in jurisprudence supported philologically in al-Qudūrī's treatment of the term *wājib*. Among the deductions made from Biblical law, Leviticus xx:32, we find in the Babylonian Qiddūshīn, fol. 33a: אין בעלי אומנות רשאים לעמוד מפני תלמידי אין בעלי אומנות רשאים לעמוד מפני תלמידי i.e. that craftsmen are not permitted to interrupt their work as a visible sign of respect (getting up) to which scholars are otherwise entitled. This law is related to the great moral importance which the Talmud attributes to craftsmanship and to honest enterprise in general. The expression used

hold this view, espousing also on this occasion the opinion of some authorities of the earliest period which has been since rejected ¹.

in this case רשאי is a term for *permitted*, the meaning of which is certain. Some later interpreters of this teaching (cf. Tosafot, on the passage, *incip.* אין), find, however, that it would be a restriction of voluntary piety to *prohibit* craftsmen outright the *voluntary* interruption of their work as an expression out of respect for scholars. They have changed the established interpretation of the term רשאי and identified it in this case with another term of this science, namely, with הייב = *compulsory* (identical with واجب) in order to arrive at the following meaning: workers are not compelled to interrupt their work, but a voluntary interruption is permitted. Thus Maimonides, Talmūd Tōrāh v:2, paraphrases the Talmudic law with these words: אין בעלי אומנות חייבין; later codifiers follow him in this interpretation. Rabbi Moses from Coucy (Exodus xxii:24, Isaiah xxiv:2, and still others, the Aramaic רשאי for Hebrew בִּשְׂחָת *debtor*; the רשאי of the Talmudic passage, therefore, ought to belong to this group = *guilty*.

¹ al-Qaṣṣallānī, *ibid.*, وقد تمسك به من قل بالوجوب وهو مذهب الظاهرية،
وحكى عن جماعة من السلف منهم أبو هريرة وعمار بن يسار.

CHAPTER FIVE

66 In the opinion of Muslim theologians, not everything that appears in the form of prescriptions and prohibitions in the transmitted sources of Islamic law is commanded or forbidden, nor does it carry the same imperative or prohibitive force. Many statements are represented in the external — linguistic — form of a prescription or prohibition without their transgression entailing the divine or secular punishment decreed for transgressions of the law.

From this point of view, Islamic jurisprudence recognizes generally five categories:

1. *Al-wājib* or *al-farḍ* ¹, obligatory actions, the absolute duty, commission of which is rewarded and omission, punished. *mā yuthābu 'alā fi'lihi wa-yu'āqabu 'alā tarkih.*

2. *Al-mandūb*, commendable actions, i.e. what is decreed not as obligation, but as pious action, the performance of which God reciprocates, but the omission of which does not entail punishment. *mā yuthābu 'alā fi'lihi wa-lā yu'āqabu 'alā tarkih* ². In the sense of the latter definition, *mandūb* is identical with that category of religious practices which, in contrast to the first category, is designated as *sunnah* ³.

67 The exact theological terminology does not always recognize this complete identity; rather, it attempts to find differential aspects. In this context, the definition of the concept of *sunnah* which is most widely recognized is the one which states that this concerns such pres-

¹ The Ḥanafite school distinguishes between *al-farḍ* and *al-wājib* with regard to the degree of evidence of a certain law as the term *al-farḍ* is applied to such actions the compulsory nature of which can be proven by a compelling argument (*dalīl qat'ī* or *burhān*). The compulsory nature of *al-wājib*, on the other hand, is supported merely by probability arguments (*dalīl ḡannī* or *amārah*). — Both classes are further subdivided.

² At this point, I call attention to al-Ḥarīrī, *Maqāmah* 32, p. 402, 2 (de Sacy's 2nd ed.). قال أيسح المتوضي أنثيه، قال نذب اليه ولم يجب عليه. In the analogous field of Talmudic jurisprudence the two degrees חייב and מנדב are to be noted (Babyl. Yebhāmōth, fol. 65b).

³ It may be mentioned as characteristic for the tradition of pagan Arabian poetry that these two terms are transmitted in a pre-Islamic panegyric poem to the 'Adwān tribe by al-Aṣba' al-'Adwānī (*Aghānī*, III, p. 2, 15; Ibn Hishām, p. 77, penult.): ومنهم من يميز لنا س بالسنة والفرض. However, even Arab critics doubt the authenticity of a large part of this poem (*Agh.*, *ibid.*, p. 5, 20).

cripts or prohibitions, the obligation of which is based on one of two things: either on a scriptural passage, the interpretation of which does not necessarily, or exclusively, indicate this obligation, but also can be seen differently, or else on traditions with defective or insufficiently attested *isnād* ¹.

3. *Al-mubāḥ* or *al-ḥalāl*, permissible actions, i.e. acts, the performance or omission of which the law views with total indifference. Certain it is that the performance of such actions is neither prohibited nor frowned upon, and the omission, neither decreed nor suggested; the former stipulation entails no reward and the latter, no punishment. *mā lā yuthābu 'alā fi'lihi wa-lā yu'āqabu 'alā tarkih.*

4. *Al-makrūh*, reprehensible actions. As for ritual considerations, there are more weighty arguments for their omission than for their admissibility. *mā kāna tarkuhu rājih 'alā fi'lihi fi naẓar al-shar'.* This category is divided into two sub-divisions according to the degree of forcefulness of their arguments: (a) *al-makrūh karāhat tanzīh*, i.e. an action which is reprehensible only in so far as its omission is recommended to everyone who aims at a pious way of life, but without such practice being punishable, and (b) *al-makrūh karāhat taḥrīm* which is reprehensible to such a degree that it is almost identical with

5. *al-ḥarām* or *al-maḥzūr*, the plainly forbidden actions, the performance of which is punished and omission of which is rewarded. *mā lā yuthābu 'alā fi'lihi bal yu'āqabu wa-lā yu'āqabu 'alā tarkih bal yuthāb.*

For different reasons, two classes are appended to these five categories; they are designated by the correlative terms *'azimah* and *rukḥṣah*. Literally, *'azimah* is a "summoning", i.e. the law *per se* without considerations for possible impediments to its compliance.

¹ Cf. Snouck-Hurgronje's opinion of Van den Berg's edition of *Minhāj al-tālibīn*. (Ind. Gids of April 1883, p. 11 of the off-print). — For a definition of the concept of the *sunnah* laws I consider the following old passage to be of importance: وذكر ابن قتيبة في كتاب الاشرية ان الله تعآ حرم علينا الخمر بالكتاب والمسكر بالسنّة فكان فيه فسحة فإ كان محرّمًا بالكتاب فلا يحلّ منه لا قليل ولا كثير وما كان محرّمًا بالسنّة فان فيه فسحة او بعضه كالتفريط من الديباج والحريير يكون في الثوب والحريير محرّم بها بالسنّة كالتفريط في صلوة الوتر وركعتي الفجر وهما سنّة فلا تقول ان تاركها كتارك الفرائض *(al-'Iqd III, p. 409, where many excerpts from this book by Ibn Qutaybah can be found.*

(Therefore not *leges necessario observandae in Corano latae* as Freytag states in al-Jurjānī because of a misinterpretation of this particular article). For instance, the law to fast during the month of Ramaḍān, or to perform the daily prayers are a *'azimah* from God to man. On the other hand, *rukḥṣah* is a concession by God which, in certain cases of impediment, dispenses from compliance with a given law without its becoming generally abrogated. For example, God prohibited consumption of various foods, but in the case of an emergency (*fi makh-maṣah*, for instance, if in certain circumstances nothing but prohibited food can prevent starvation), God ordered a *rukḥṣah* with regard to this law (*sūrah V:4-5*). But the concession is valid only in cases of such an emergency ¹. Ibn 'Abbās says: "*Rukḥṣah* is alms which God offers to you; do not refuse it" (i.e. utilize it as often as you are in such a situation and do not believe that in such cases it would be better to obey the original decree) ².

The more detailed discussion of all these concepts ³ on which the different schools are generally in complete agreement — aside from the individually determined sub-stages and intermediate stages ⁴ — forms the main content of the first part of the instructions on Islamic jurisprudence known as *'ilm uṣūl al-fiqh*. The definitions of those main concepts just discussed, as recognized by the Islamic theological schools and in Muslim works, are graphically described in the articles of the excellent *Dictionary of the technical terms used in the sciences of the Musalmans* of the "Bibliotheca indica" ⁵.

Although the orthodox schools do not diverge greatly in distinguishing these categories, there prevails in their definition ⁶ a much larger

¹ Cf. al-Bayḍāwī, I, p. 247, 11, who paraphrases the words of the above-mentioned Koranic passage مجاوزا حدّ الرخصة مجاوزا حدّ متجانف لائم as follows: الرخصة من الله صدقة فلا تردوا صدقته.

² al-Huṣrī, I, p. 51: الرخصة من الله صدقة فلا تردوا صدقته.

³ The concept of *rukḥṣah* might be understood easier if it is compared to I Corinthians vii: 6 κατὰ συνγγνώμην οὐ κατ' ἐπιταγήν.

⁴ For instance, a controversial class besides *mandūb* is *mustaḥabb*; the western Mālikites make this a separate class while the eastern followers of this school classify it in category 2. ان العراقيين لا يفرقون بين السنّة والمستحب وغيرهما من الرغبية والندوب والغاربة يفرقون بينها Shaykh al-'Idwī's glossary to the Mālikite codex of 'Abd al-Bāqī al-Zurqānī, II, Būlāq 1289, p. 167.

⁵ Cf. also Mouradgea d'Ohsson, *Tableau général de l'Empire othoman*, I, p. 31-35. The above definitions are mostly derived from the *Waraqāt*.

⁶ Apart from the generally recognized classification, individual theologians, departing from their personal (moral, theosophic, etc.) principles, devised other classes of *ḥalāl* and *ḥarām*; I mention only al-Ghazālī, *Iḥyā'*, II, p. 80-88.

70 difference of opinion as to the possible classification of a given action or its neglect in the above-mentioned categories. This depends either on the traditions that each school produces, or on the particularly favoured interpretation of the quoted texts, or lastly, on the different analogical deductions to which they have recourse if the texts are silent on a certain question. To give just one example: Consumption of horse meat is considered *mubāh* according to al-Shāfi'i and to Aḥmad b. Ḥanbal, *makrūh karāhat taḥrīm* according to Abū Ḥanīfah, *makrūh karāhat tanzīh* according to Mālik, etc.¹ The most important section of the *ikhtilāfāt al-madhāhib* is concerned with these questions of legal qualification which the different schools, setting out from the same premise, answer in different ways.

The disagreement of Dāwūd al-Zāhirī, whose school frequently opposes the unanimous view of all orthodox legal schools, is based on a matter of principle. In this chapter, let us approach one of these principles since this will demonstrate the conflict between the Zāhirite school and the prevailing orthodoxy in one important question of the science of *uṣūl* upon which there is unanimous agreement among the latter. For instance, we can observe that the Zāhirite school concedes a far greater scope to the absolute *wājib* and *maḥẓūr* than the rest of the legal schools. At first glance, it might be thought that the Zāhirite school is led to this kind of interpretation of the legal commissions by its endeavour for sweeping rigorism. Indeed, it cannot be denied that wherever possible, this school raises the "*consilia evangelica*", and the daily habits of the Prophet, attested as authentic, to religious duties. By the same token and in agreement with Ibn Rāhwayhi, but in opposition to the consensus of all important teachers², the school also intended to institute as *wājib* the habit of *siwāk*, the cleaning of the teeth before prayer as recommended by the Prophet. Others, however, doubt the authenticity of the tradition.

The striving for rigorism is nothing but an automatic consequence of strictly following certain Zāhirite principles in the practical application of legal texts. In these questions, too, we generally have the impression that their practical application is determined by the *literal interpretation*. In such passages in which the Koran or the text of a tradition states a decree of God or Muḥammad in a philological version

¹ This particular question together with the complete line of argument of the individual opinions in al-Damīri, II, p. 256 ff.

² al-Nawawī, I, p. 325, detailed.

71 which includes the imperative or prohibitive nature of the statement in itself, the followers of the Zāhirite school are always inclined to see in it a law belonging to category (1) or (5) or, respectively, to category (4b). The four orthodox schools, on the other hand, adopt a less literal view towards the law and classify the command or prohibition in question as one of the intermediate categories. According to this prevailing orthodox legal interpretation, the texts may say explicitly *amara rasūl Allāh* i.e. "the Messenger of God gave the order", without this formula's requiring the indispensable obligation (*wujūb*) of the particular command, as ought to be deduced from its wording. A command uttered in this definite form, according to their interpretation, can mean something that the law-giver merely recommended. Not infrequently, we find such commands accompanied by the words of the commentator *amr lil-naḍb*¹. With regard to the strictest of the imperative and prohibitive forms respectively, it is the canonical science of the orthodox schools that has characterized this point of view most clearly. The grammatical form of the imperative, *uqtul* — so they say — indicates in jurisprudence an obligatory law solely when the circumstances under which such a law appears do not indicate that this is to be understood only as a recommendation of the legislator, or his consent to perform an action. The imperative form can be considered a binding command only if detached from such accompanying circumstances. There are two kinds of accompanying circumstances: either such as are inherent in the command itself, be this the wording of the text or the inherent circumstances under which it was decreed or performed, or such as are independent of the text itself. To the latter kind belong commands such as contained in Koran, *sūrah* II:282 "take witnesses when you conclude purchase contracts". Here, the imperative *ashhadū* is used; nevertheless, the majority of the *imāms* teach² that this represents a wish only, not an obligating command, and this, because the tradition testifies to the Prophet's custom of concluding purchases and sales without witnesses. This custom, then, represents the most reliable commentary to the intention of the law. This is a circumstance which, although independent of the text of the law, is nevertheless an external circumstance 72 which influences the meaning of the same, and which abrogates the

¹ al-Bukhārī, *Kitāb al-talāq*, no. 43.

² Cf. also al-Bayḍāwī, I, p. 142, 8: *والاوامر التي في هذه الآية للاستحباب عند اكثر الائمة الخ.*

obligatory character of the command. To the first category belongs for instance, *sūrah* V:3 "When (after completing the *ḥājj*) you (once again) enter the secular state, then go hunting". In spite of the usage of the imperative (*fa-iṣṭādū*) in this sentence, this can never be interpreted as a command that "you must go"; rather, in this instance, hunting, which was prohibited for the believers in their state of *iḥrām*, is simply *permitted* once again¹. Circumstances inherent in the text proper point to this interpretation — that is either according to the rule that a command following antithetically upon a prohibition cannot be considered a command but a permission, or, if we do not recognize this principle, then according to the analogy of *sūrah* II:232. Also in *sūrah* LXII:10 (And when the prayer is over you may disperse in the land and seek (benefit from) God's grace) the imperative *fa-intasharū* and *wa-ibtaghū* must be considered permissive because of the preceding prohibition of doing business during prayer.

73 According to the explanation of Ibn Qutaybah who dealt with our question in one of his responses², the context of the speech cannot determine whether an imperative expresses command or recommendation; rather, this is a matter of instruction and investigation in each individual case.

The representatives of the science of the principle of jurisprudence are certainly those most interested in enumerating the different functions fulfilled by the imperative in order to decide from case

¹ Cf. al-Bayḍāwī, I, p. 246, 3; *ibid.*, II, p. 333, 14: واحتج به من جعل الأمر بعد الحظر للإباحة.

² *Kitāb al-masā'il* (arabische Handschrift der herzoglichen Bibliothek in Gotha, no. 636) fol. 5b: وسألت هل تختلف العرب في الاسم الذي يتحمل معنيين فيظن واحد احد المعنيين ويظن آخر المعنى الآخر وقد يقع هذا في جميع هذه الحروف ذوات الوجوه وإنما يستدل على معانيها بما يتقدم قبلها من الكلام ويتأخر وربما لم يستدل بذلك فيحتاج حينئذ الى التوقيف والندب والفرض لا يعلم الا توقيفا لان المخرجين مخرج واحد ما لم يبين ذلك الرسول صلعم وفي القرآن اشياء من الامر والنهي تخرج مخرجا واحدا وهي لا تستوى في المعاني فمنها امر هو فرض كقوله عز وجل وأقيموا الصلوة وآتوا الزكوة ومنها امر هو تأديب كقوله عز وجل وأشهدوا ذوى عدل منكم وآهجرؤهن في المضاجع ومنها امر هو تهديد كقوله عز وجل اعلموا ما شئتم وهذا شيء لا يعلم الا بالتوقيف.

to case whether a saying in the form of a command or prohibition has to be declared as such, or whether such a saying has to be classified in a different category. The famous Shāfi'ite theologian Imām al-Ḥaramayn treats this question very conclusively. "At times", so he says, "there appears in the text the form of command; meant, however, (a) either as a permission (see the examples above); (b) as a threat ("therefore do whatever you want" *sūrah* XII:40¹, al-Bayḍāwī, on the passage, *tahdīd shadīd*); or (c) as an expression of indifference to the action of the person addressed (e.g. "May you burn — in hell-fire — regardless of whether or not you can bear it", literally, bear it or do not bear it, *sūrah* LII:16; or as a secular example: "Thunder and make lightning, o Zayd"; this cannot be a command, but = no matter whether you thunder or make lightning). Even in cases in which the creation of a thing or a state is announced, the decision to create it is expressed in the form of a command, although, because of the inability of the creature to comply with it, a command is in this case ill-timed (e.g. "Become monkeys" *sūrah* II:61; "O fire! turn to coolness and become salvation for Abraham" *sūrah* XXI:69²). Naturally, these latter points are treated in more detail in grammar; theology is concerned with them because the form of command serves to express other categories. By the same token, the use of the command as an expression of permission strictly speaking belongs to the scope of jurisprudence³.

It is the orthodox schools who make the most extensive use of the concession to declare the form of command *lil-istihbāb*, *lil-nabd*, *lil-ibāḥah*. Whoever reads carefully any commentary, either of the Koran or the traditions, will not have overlooked how these terms so often 74 follow the imperative in the text by way of explanation. Naturally, the followers of the Zāhirite school could not always avoid the acceptance of such an interpretation. But as a rule, they oppose it in cases of strictly legislative texts. We have seen one example of this above (p. 47); for a closer illustration of this idiosyncrasy in the present chapter which deals particularly with this point of *fiqh* of the Zāhirite school, we might add to the examples of the Zāhirite legal interpretation

¹ <It most certainly is not *sūrah* XII:40; it is probably not even from the Koran.

² al-Bayḍāwī, to the passage, I, p. 64, 25: وقوله كونوا ليس بأمر اذ لا قدرة لهم عليه وإنما المراد به سرعة التكوين. <This footnote is not indicated in the text of the German edition.

³ *Warāqāt*, fol. 12a, 17a (in our Supplements).

already presented in this respect some others from the field of the Koran and the tradition. Even with respect to this point of their interpretation of the law, the Zāhirite school applies its methods of interpretation equally to both sources of Islamic law ¹.

1.

There is the example of Koran *sūrah* IV:3: *fa-inkihū mā tāba lakum min al-nisā'*. Although the common interpretation is that every Muslim is free to marry, or, at the most, that God recommends married life to Muslims, the Zāhiris deduced from the imperative *fa-inkihū* that He makes it obligatory for them ², and that this contains a binding obligation, *wujūb*, for those who meet the condition to fulfil this command ³. To what extent the Zāhiris are concerned with merely asserting the text can be seen from the fact that, according to their point of view, the requirements of the law are met with a single marriage, for it is not the *continuous state of marriage* that is recommended in the above-mentioned verse, rather, the single act of concluding a marriage ⁴.

¹ Some *ṣūfis* represent the extreme opposite to this view with their interpretation of the categories of the individual Islamic laws. They say that even in cases in which it is explicitly stated in the traditions that a prohibition belongs to the *makrūh* category, very often *ḥarām* is actually meant. Such a prohibition ought to be interpreted in this manner since the early Islamic theologians, because of modesty and good manners, hesitated to use the Koranic term of prohibition for a prohibition which they deduced. Al-Sha'rānī, I, p. 136 cites this attitude in the name of his teacher 'Alī al-Khawwāq and gives a detailed explanation.

² There are also legists who cited traditions supporting *celebaey*; cf. on this difference of opinion Querry, *Droit musulman*, vol. I, p. 639.

³ This restriction follows from the words of the tradition, *Nikāh* 2: من استطاع منكم الباءة فليتزوّج الخ.

⁴ al-Sha'rānī, II, p. 122: قول داود بوجوده مطلقاً على الرجل والمرأة لكن مرة في العمر... ان امتثال امر الشارع يحصل بالمرّة الواحدة ما لم يدل دليل على التكرير

⁵ Characteristic is in this connection the following motivation: قال أهل الظاهر إنّما يلزمه التزوّج فقط فلا يلزمه الوطء وتعلّقوا بطاهر الأمر الظاهر أنّما يلزمه التزوّج فقط فلا يلزمه الوطء وتعلّقوا بطاهر الأمر في هذا الحديث

Surāh VI:121. *Wa-lā ta'kulū mim mā lam yudhkar ism Allāh 'alayhi wa-innahu la-fisq*: "Do not eat from that over which God's name has not been pronounced, for this is sin". It cannot be denied that an objective examination of this verse will discover in this law a matter which Muslim theologians classify in the first and fifth of the foregoing categories respectively. Nevertheless, the orthodox schools found that this was not exactly a prohibition — with the exception of Aḥmad, but only according to one version of the law transmitted by him — and encouraged a less stringent custom, namely, that it was no absolute condition for the ritual legality of food to pronounce the name of God before its preparation. This principle is of practical importance particularly with regard to slaughtered animals because, according to this interpretation, Muslims can consume meat of animals that were killed without mentioning God's name beforehand ¹. However, excluded from this leniency is the case that the name of other gods might have been mentioned. The so-called *tasmiyah*, then, is according to these schools a pious custom, just as Muslim tradition generally insists that it should not be omitted before any major action ². It is well known how carefully this principle is observed in every day life. Ibn 'Abbās is represented as having heard the Prophet make the statement that the devil is riding with anyone who mounts an animal without mention of the formula *bismillāh* ³. However, all this is simply pious custom and not at all obligatory. The four orthodox schools, in the interest of harmonizing the law with the lax daily practice (cf. p. 47), are attempting to reduce the law as con-

¹ al-Qaṣṭallānī, VIII, p. 276: وفيه مشروعية التسمية وهي محلّ وفاق لكنهم اختلفوا هل هي شرط في حلّ الاكل فذهب الشافعي في جماعة وهي رواية عن مالك واحمد الى الستة فلا يقدر ترك التسمية وذهب احمد في الراجح عنده الى الوجوب لجعلها شرطاً في حديث عدى وذهب ابو حنيفة ومالك والجمهور الى الجواز عند السهو.

² A quite frequently encountered saying of Muḥammad: لا يتبدأ بذكر الله فهو أبتى.

³ al-Damīrī, I, p. 399: عن كتاب الدعوات ورؤي ابو القاسم الطبراني في كتاب الدعوات عن عطاء عن ابن عباس وضها عن النبي صلعم أنّه قال اذا ركب العبد الدابة ولم يذكر اسم الله ردفه الشيطان فقال تغنّ فان كان لا يحسن الغناء قال له تمنّ فلا يزال في امنّيته حتى ينزل preceded by تسمية, al-Bukhārī, *Kitāb al-wuḍū'*, no. 8.

tained in the afore-mentioned Koranic verse to the same level, although not to the same degree. They cite traditions that purport to show the superfluousness of the outward mention of Allāh¹. Strictest of all is Abū Ḥanīfah who elevates the *dhikr Allāh* to an obligation, adding, however, that when this custom has *inadvertently* been omitted, this neglect has no bearing on the legality of the food². Also the Shī'ite interpretation of Islamic law distinguishes between deliberate and involuntary omission³. Dāwūd al-Zāhirī protests against all of these concessions; he advocates the *prohibitive text* of the Koranic law and declares any food absolutely prohibited (*ḥarām*) over which Allāh's name has not been mentioned, regardless of whether or not this was done purposely or simply inadvertently⁴. Aḥmad ibn Ḥanbal, whose tenets, as we shall see, correspond most closely to that of the Zāhirite school, is represented as having taken the same point of view, although according to a version that has received little consideration.

2.

Let us proceed to examples that are connected with statements from the traditions. For the purpose of transition, we choose a statement from the tradition, the interpretation of which is closely related to a Koranic verse from which it is actually derived. It shows us in full light the Zāhirite method of adhering to the literal text. There is a well-known tradition which usually serves as an example in grammar to demonstrate the dialectic usage of *am* as an article (in place of *al*): *laysa min al-barr al-ṣayām fī al-safar* "Fasting on a journey is not part of piety"⁵. This statement from the tradition must be viewed with relation to *sūrah* II:180 *fa-man kāna minkum marīḍ aw 'alā safar fa-'iddah min ayyām ukhar* "But he of you who is sick or on a journey (for him is prescribed) a (equal) number of other days". The

¹ *Mafātīh*, IV, p. 202 cites the following tradition: ذكر الله مع المسلم سواء ذبيحة المسلم حلال وان لم يذكر قال او لم يقل اسم الله عليه.

² Cf. al-Sha'rānī, II, p. 60.

³ Query, *Droit musulman*, II, 215, art. 57.

⁴ al-Bayḍāwī, *l.c.*: ظاهر في تحريم متروك التسمية عمدًا او نسيانًا واليه ذهب داود وعن احمد مثله.

⁵ al-Bukhārī, *Kitāb al-ṣawm*, no. 36.

generally accepted view of the orthodox legal schools about these passages from the Koran and the tradition is that it is *left to the discretion* of the sick and the traveller to break the fast of Ramaḍān, and to make up for the omitted days of fasting when more settled circumstances prevail. Their opinions on this vary only concerning the point of whether it be more meritorious for such people to make use of the divine suspension as revealed by the Prophet, or, if it be better for them, to forego this exemption despite the difficult circumstances under which they are living, and to perform the fast of Ramaḍān. All agree that the statements of the Koran and the tradition ought to be considered as only optional¹, under no circumstances imperative or prohibitive, respectively. However, it is transmitted from some teachers who flourished before the legal schools had crystallized that they subscribed to the latter opinion². This difference of opinion also entails certain practical consequences. If breaking the fast is obligatory under certain circumstances, then he who does not comply with this command and continues to observe the general fast will have to fast again for the respective days once he reaches his place of residence, or once he is healthy again, since his previous fast cannot be considered in calculating the number of obligatory days of fasting. Dāwūd's legal school, contrary to the consensus as it evolved later, associates itself with these old authorities to which Abū Hurayrah also belongs³. "It is not piety" is an expression which means literally "a pious person does not do something like this"; and thus, the Koranic verse, according to its simple wording, must be considered imperative.

Quite frequently we find Abū Hurayrah among the authorities of

¹ The tradition *ibid.*, no. 37, seems to have been fabricated in support of this interpretation: عن أنس بن مالك قال كنا نسافر مع النبي صلعم فلم يعب الصائم على المفطر ولا المفطر على الصائم.

² *Mafātīh*, II, p. 174: ذهب قوم من علماء الصحابة الى أنه يجب على المريض والمسافر ان يفطرا ويصوما عدة من ايام أخر وهو قول ابن عباس وابن عمر ونقل الخطابي في أعلام التنزيل عن ابن عمر أنه قال لو صام في السفر قضى في الحضر وهذا اختيار داود بن علي الاصفهاني وذهب أكثر الفقهاء الى ان الانطار رخصة. Cf. al-Sha'rānī, II, p. 20; al-Nawawī, III, p. 93.

³ al-Bayḍāwī, I, p. 101, 24 to the above-mentioned Koranic verse وهذا على سبيل الرخصة وقيل على الوجوب واليه ذهب الظاهرية وبه قال ابو هريرة.

the Zāhirite school. The legal tradition which he represents is often in disagreement with the tenets of the exponents of *ra'y*, and it is cited as an objection against them. This is probably one reason that traditions from Abū Hurayrah, even such as are incorporated in the canonical collections, are often rejected as authorities for legal decisions by jurists. Al-Damīri's article on the "snake" supplies us with interesting information about this from older works. There is unfortunately no space here to elaborate on this¹. A typical remark of Abū Ḥanīfah is taken from an alleged dialogue between Abū Muṭī' al-Balkhī and Abū Ḥanīfah. "What would happen", asked Abū Muṭī',
79 "if your view were contrary to that of Abū Bakr?" — "I would", replied the *imām*, "abandon my opinion in favour of his and that of 'Umar, 'Uthmān, 'Alī, and even, indeed, in favour of the rest of the Prophet's companions with the exception of Abū Hurayrah, Anas b. Mālik, and Samurah b. Jundab"². It is reported that 'Umar b. Ḥabīb (d. 207) almost forfeited his life because he defended Abū Hurayrah against attacks from Hārūn al-Rashīd's court scholars³. A passage in al-Azraqī⁴ cannot be overlooked which proves that Abū Hurayrah was considered capable of false information.

One tradition says literally the following: "A male Muslim who wants to bequeath one of his possessions has no right to spend two nights without having his written will on him"⁵. The legal schools see in this an encouragement for the institution of making a will and recognize this as a command of the Prophet, but only as a command belonging to the second category of the commandments. Only Dāwūd and his school see in the categorical form of the statement a clue that the Prophet has made a binding command which is not to be transgressed and is to be complied with by everybody. Consequently, every Muslim has the duty to make out an early will⁶ if he possesses property.

¹ al-Damīri, I, p. 350-351.

² In al-Sha'rānī, I, p. 71.

³ *Tahdhīb*, p. 446.

⁴ *Chroniken der Stadt Mekka*, I, p. 135, 12.

⁵ Muslim, *Kitāb al-waṣīyah*, no. 1: ما حق امرئ مسلم له شيء يريد أن يوصي فيه أن يكتب ليلتين آلا ووصيته مكتوبة عنده.

⁶ al-Nawawī, IV, p. 84: فيه الحث على الوصية وقد اجمع المسلمون على الامر بها لكن مذهبنا ومذهب الجاهير انما مندوبة لا واجبة وقال داود وغيره من اهل الظاهر هي واجبة لهذا الحديث ولا دلالة لهم فيه فليس فيه تصريح بايجابها.

It is known that points connected with this question play an important role in the disputes between Sunnites and Shi'ites.

In the chapter on assignments,¹ we read the following statement of the Prophet: "Delaying (payment of debts) on the part of a rich person is injustice; given the case that a person (instead of payment in cash) receives a draft drawn on a rich man, he ought to accept
80 it (in order to compel the rich person to discharge his liability to pay)"². The Zāhirīs, in agreement with some followers of the Ḥanbalite school, find in this a command of the first category because of the linguistic form in which Muḥammad made this statement, i.e. the assignor is in no circumstance permitted to refuse the assignment and to demand payment in cash. The rest of the schools are content to see in the foregoing tradition an optional recommendation of the Prophet which does not purport a binding, compulsory law³.

For the Zāhirīs, the employment of the imperative suffices to determine a command of the first category, and this, even when the tradition expresses no general law, but represents merely a casual decision because of the inquiry of an individual. "Sa'd b. 'Ubādah questioned the Prophet concerning a vow his mother made but did not discharge because she had died beforehand. The Prophet said: "So you discharge it on her behalf"⁴. Only the Zāhirite school sees here an opportunity to deduce from this the *compulsory law* that the heir must discharge the vow of the deviser on his behalf. The rest of the schools do not consider this a legal obligation but only a pious act, unless, of course, the vow has bearing on the bequest of part of the property and can be discharged from the estate. In no other case

¹ Cf. Kremer, *Culturgeschichte des Orients*, I, p. 509-510.

² al-Bukhārī, *Kitāb al-ḥawālah*, no. 2: مَطْلُ الْغَنَى طَلْمٌ وَمَنْ أُتْبِعَ عَلَى مَلِيٍّ [another version: فَلَئِنْ خَلَّ عَلَى أَحِيلٍ أَحَدَكُمْ عَلَى مَلِيٍّ فَلْيَخْتَلْ] فَلْيَتَّبِعْ.

³ al-Qaṣṭallānī, IV, p. 163: وجمهور العلماء على ان هذا الامر للنذب وقال: اهل الظاهر وجاعة من الحنابلة بالوجوب فاجبوا قبولها على الملىء.

⁴ Muslim, *Kitāb al-nadhīr*, no. 1; al-Bukhārī, *Kitāb al-waṣāyā*, no. 19: ابن عبادة ربه اسئفتي رسول الله صلعم فقال ان امي ماتت وعليها نذر فقال آقضه عنها. In Ibn Sa'd, where quite a number of different versions of Sa'd's request to the Prophet are related in Sa'd b. 'Ubādah's biography, it is entirely different. Only one MS contains the request as reported in the collections of traditions. See Loth, *Das Classenbuch des Ibn Sa'd*, p. 74.

can the heir be made responsible for discharging a vow which he has not made himself¹.

3.

81 From what has just been discussed follows yet another basic point of view that causes the Zāhirite school to increase the number of *wājibāt* and *maḥzūrāt* contrary to the identical teachings of all other orthodox schools. No disagreement exists among the different theological schools of Islam as to whether every *sunnah* of the Prophet constitutes a binding law. The Prophet testified himself that his conduct was only of individual importance and that no generally applicable law for the Muslim community ought to be deduced from it. Khālid b. al-Walīd, commonly called "the Sword of God", tells Ibn 'Abbās that he, together with the Prophet, visited the Prophet's wife Maymūnah, his aunt. Maymūnah treated her guests with roasted lizard (*ḍabb mahnūdh*) that her sister Ḥafīdah bint al-Ḥārith had brought from Najd. This dish was put before the Prophet who never touched food without first mentioning the name of God over it. When the Prophet was going to help himself to the food offered, one of the women present said to the lady of the house: "Why do you not tell the Prophet that what you have put in front of him is meat of a lizard?" When the Prophet heard this, he abstained. Khālid, however, asked: "Why, is this food prohibited, O Messenger of God?" — "No!" replied the Prophet, "but where I come from this food is unknown and I refrain from it". — "As for myself", so Khālid continues, "I cut up the roasted lizard and ate from it while the Messenger of God was watching me² [and did not stop me, Muslim]". In Muslim, traditions are given according to which the Prophet gave the following decision from the pulpit when questioned about the meat of lizards:

واعلم ان مذهبنا ومذهب الجمهور ان الوارث ان يلمز به ولا اذا كان مليئا ولم يخلف تركته لكن يستحب له ذلك وقال اهل الظاهر يلزمه ذلك لحديث سعد هذا ودليلنا ان الوارث لم يلتزمه فلا يلزم وحديث سعد يحتمل انه قضاه من تركتها او تبرع به وليس في الحديث تصريح بالزامه ذلك.

¹ al-Nawawī, IV, p. 96: الوارث ان يلمز به ولا اذا كان مليئا ولم يخلف تركته لكن يستحب له ذلك وقال اهل الظاهر يلزمه ذلك لحديث سعد هذا ودليلنا ان الوارث لم يلتزمه فلا يلزم وحديث سعد يحتمل انه قضاه من تركتها او تبرع به وليس في الحديث تصريح بالزامه ذلك.

² *Kitāb al-aḥ'imah*, no. 10. Cf. other versions in al-Damirī, II, p. 95.

"I myself do not eat it, but I do not prohibit it for you"¹. From these traditions it follows that the Prophet did not consider his own habits relating to the field of religious law to be of binding importance either for general practice or for abstention. The same is valid for the Prophet's statements transmitted in the traditions. No matter how highly regarded were the meritorious and pious endeavours to imitate everything that the Prophet had said or done, even to the point of asking first in minute matters of ordinary life how the Prophet and the companions had reacted under similar circumstances² — a tendency that, as is well-known, many Muslim authorities have stretched to the utmost limit of scrupulosity³ — it was also noted that not everything that was transmitted as an authoritative statement from the Prophet entailed an obligatory command. The Prophet made binding laws, i.e. he interpreted God's will, only as regards questions of *dīn*; he gave advice in secular matters, but compliance with it, although meritorious, was by no means intended to be the indispensable duty of every Muslim. In a tradition in Muslim⁴, the Prophet himself differentiates between the two classes of statements. In Medina, he once watched people fecundate palm trees. So he asked them: "What are you doing?" — "We have always done this", they replied. Upon this the Prophet said: "It might be better if you would not do this". On account of this, they discontinued their old method, but the trees obviously deteriorated. Someone mentioned this fact to the Prophet, who then said the following: "I am just human; if I order something related to your religion, then obey, but if I order you to do something on my behalf⁵, then I am no more than just a human being (i.e. in

¹ *Kitāb al-ṣayd*, no. 5 (commentary edition V, p. 335).

² Cf. for instance an example in Abū al-Maḥāsīn, I, p. 316.

³ It is reported about Ibn 'Umar that he always had his siesta (*ḡil*) under one particular tree between Mecca and Medina because the Prophet used to do this. — Ahmad b. Ḥanbal, throughout his life, abstained from watermelons because there was no tradition instructing him how the Prophet used to eat them. (al-Sha'rānī, I, p. 67). In al-Maqqarī, I, p. 810, a very interesting piece of information is found that shows how, under changed circumstances, people made it a point to resort to standards applied by the Prophet.

⁴ *Kitāb al-faḍā'il*, no. 31: *أنا بشر إذا أمرتكم بشيء من دينكم فخذوا به وإذا أمرتكم بشيء من رأيي فاتموا به*.

⁵ This passage as well as the following are very informative for the meaning of the word *ra'y*. Al-Nawawī interprets this word in our passage: *أي في أمر الدنيا ومعاشها لا على التشريع فأما ما قاله باجتهاده صلعم ورآه شرعاً*

such cases I am not the messenger of the divine will but I am simply giving you my own opinion)". Later Muslim theologians consistently followed this principle of the Prophet. "During his gatherings", says al-Baṭalyawṣī, "the Prophet used to make statements in a narrative form intending neither command nor interdiction, nor least of all, to elevate the contents of these statements to Islamic principles"¹. Ibn Khaldūn makes the same remark on the occasion of the Prophet's statement on medicine (*al-ṭibb al-nabawī*) in order to show that such advice by Muḥammad cannot have obligatory character, for "the Prophet was sent to us to teach us the laws of religion, but not to inform us on medicine or on other matters belonging to daily affairs"². A Muslim theologian from the ninth century A.H., Rajab b. Aḥmad³, says with reference to the following tradition:

84 "We were once travelling with 'Umar b. al-Khaṭṭāb when we noticed that at a certain point on the way he suddenly turned off the road. When questioned whether or not he was doing this deliberately he said: 'I have seen the Prophet doing the same thing, so I just imitate him'".

that "such *sunnahs* are called *al-sunnah al-'adriyah* 'concerning everyday practice' or also *al-sunnah al-zā'idah* 'superfluous' (supererogatory)

بِهِ. يجب العمل به. Cf. also the following passage: The Prophet consulted Sa'd b. Mu'ādh and Sa'd b. 'Ubādah about the reward to be accorded to the Fazārite 'Uyaynah in return for his assistance against the tribes. The Prophet had offered the chief of the Fazārites one third of the yield of the dates, but he wanted to supply the troops only on the condition that he was guaranteed half the yield of the dates. There upon the Prophet asked the two Sa'd who replied: "If you received an order for this (from God) then act accordingly and move, but if you did not receive a divine order then, by God, we shall have no other recompense for the Fazārah than the sword!" Then the Prophet said: "I have received no order; if this were the case, I would not have sought your counsel. I am merely submitting an opinion to you". *لم أومر بشيء ولو أمرت* (Sa'd b. 'Ubādah's biography in M. J. Müller, *Beiträge zur Geschichte der westlichen Araber*, p. 104).

¹ In al-Damīri, II, p. 252: *أنه عم كان يذكر في مجالسه الاخبار حكاية ويتكلم بما لا يريد به أمرا ولا نهيا ولا ان يجعله أصلا في دينه وذلك معلوم من فعله مشهور من قوله.*

² *Muqaddimah*, ed. Bülāq, p. 412.

³ Cf. on his work Ḥājjī Khalifah, VI, p. 161. This book laden with information was printed in Istanbul 1261/1845 in two quarto volumes. This edition, however, is not at my disposal.

— cf. *sunnat al-hudā*¹. Their omission is not sinful but their performance, a pious act; their omission is reproachable, but without entailing divine punishment. Inherent in this is merely an encouragement to follow the *sunnah* in general, regardless of whether it purports to provide divine guidance or whether it belongs to the so-called 'superfluous ones'².

This is the generally accepted view of Islamic theology which prevails also in the best documented interpretations of the collections of traditions. There have always been extremists, either individuals or groups, who, in their evaluation of the religious, practical aspects of individual traditions, went beyond the limit determined by the majority, but their views have never achieved canonical validity. The Zāhirite school is one of these. From the examples of their interpretation of a number of the so-called "traditions of custom" which we have examined, we can conclude that the Zāhirīs adhere to this literal point of the linguistic expression. They see obligatory commands or interdictions (1. and 5. category) in passages in the traditions which contain the Prophet's advice on actions towards which religious law is totally indifferent. I shall give an example from each of the two mentioned categories. In a statement from the tradition, Anas b. 85 Mālik reports: "Domestic sheep (*shā' dājin*) in Anas b. Mālik's house were milked for the Messenger of God, and the milk mixed with water from the well on Anas' property. The cup was offered to the Prophet who emptied it with one draught. Sitting on his left was Abū Bakr and to his right a bedouin. Then 'Umar who was afraid that the Prophet would offer the cup to the bedouin said: "Give it to Abū Bakr next to you!" But the Prophet offered it to the bedouin and then said: "Always to the right, always to the right"³. Legists infer

¹ Mouradgēa d'Ohsson, *Tableau général*, vol. 1, p. 34.

² *al-Waṣīlah al-Aḥmadīyah wa-al-dhar'ah al-sarmadīyah fī sharḥ tarīkat al-Muḥammadīyah* (MS of the Hungarian National Museum, Orientt. no. XVI) fol. 19a: *ويقال لثل هذه السنّة السنّة العاديّة والسنّة الزائدة ولا حرج في تركها بل فعلها حسن وتركها مكروه كراهة التنزيه وفيه حثّ على اتباع السنّة مطلقا سواء كانت من سنن الهدى او من سنن الزوائد قال الله تعالى لقد كان لكم في رسول الله أسوة حسنة واخرج البزار عن ابن عمر انه كان ياتي شجرة بين مكّة والمدينة فيقبل تحتها ويخبر ان النبي عم كان يفعل ذلك.*

³ al-Bukhārī, *Kitāb al-hibah*, no. 4; *Ashribah*, no. 18; *Musāqāt*, no. 2.

from this tradition that it is a recommendable custom for proper living and superior etiquette to pass food or drinks etc., always in a circle from left to right, and generally, to give preference to the right side¹ and to practise this in all actions². No one but the Zāhirī Ibn Ḥazm sees a *religious law* in this, and he takes the consequences from this view³.

By the same token, the Zāhirīs make use of the mere linguistic form of an interdiction — even where it is intended to give only advice on proper custom — to establish a religious interdiction (*tahrīm*), while the other schools see in this nothing but a disapproval (*karāhat tanzīh*). “The Prophet prohibited (*nahā*) the *iqrān* or the *qirān* unless it were done with special permission of the companion”⁴. The foregoing expressions refer to the custom of holding two dates side by side and then of eating from both at the same time. The commentators agree that this statement intends to teach only that one should not exhibit voracity and gluttony in front of one’s guests and table companions, since this creates an offensive impression and gives the eating companions the impression of wanting to be first. Only the followers of the Zāhirite school see in this a religious *law* equal to other interdictions, on account of the word *nahā*. This is their interpretation of all passages in which they find the word: “he prohibited” or synonyms of it⁵.

¹ Cf. *Kitāb al-libās*, no. 38, 77. A mosque is to be entered from the right: *Kitāb al-ṣalāt*, no. 47, and others more.

² *Kitāb al-wuḍūʿ*, no. 31: كان النبي صلعم يعجبه التيمين في تنعله وترجله وطهوره وفي شأنه كله; cf. *Kitāb al-aʿimāh*, no. 5. Cf. for the Greeks *Iliad*, I, 598, *Odyssey*, XVII, 418; for the Jews כל מינות שאמה פונה לא ירו אלא דרך ימין (Talmud Babyl. Sötā, fol. 15b).

³ al-Qaṣṣallānī, IV, p. 217: خالف ابن حزم فقال لا يجوز مناولة غير الأيمن إلا باذن الأيمن.

⁴ al-Bukhārī, *Kitāb al-maḥālim*, no. 14; *Aʿimāh*, no. 44; *Shariqah*, no. 4. Muslim, *Kitāb al-ashribah*, no. 23.

⁵ al-Qaṣṣallānī, IV, p. 295; al-Nawawī, IV, p. 402: وهل النهي للتحريم أو للتنزيه فنقل عياض عن اهل الظاهر أنه للتحريم وعن غيرهم أنه للتنزيه.

CHAPTER SIX

It has already been emphasized that in the rigorous interpretation of the judicial sources, Ahmad b. Hanbal's school approaches most closely the method of the Zāhirite school. It was shown in the last chapter that in disputable legal questions, the founder of the Ḥanbalite school decides according to the same principles which guide the Zāhirite school. There would have been more numerous examples if, in the selection of examples for decisions of the Zāhirite school, we had not been led by the principle to consider only points in which the Zāhiriyah demonstrates a special position vis-à-vis all other canonical schools¹. The Ḥanbalite school permits the literal application of statements contained in the tradition also in instances for which we have, in any case, no certain proof that the Zāhirite school would have taken the same position on the practical application of ritual law and canonical law in the particular questions.

It is reported that Anas, the companion of the Prophet, reported the following: “We got up early for the Friday service and had our siesta after it was finished”². All legal schools interpret this to mean that the Prophet’s companions hurried to hold the Friday prayer *in time* to finish with it before the siesta. The Ḥanbalites conclude that the Friday prayer can be legally performed also in the morning³; this, as it is well-known, is contrary to all Islamic practice.

In the book on legal decisions (Krehl’s edition had not yet been published), we read: “Abū Bakrah wrote to his son (who was a judge) in Sijistān: Do not pass judgement on two (parties seeking legal advice) if you are in anger, for I have heard the Prophet say: ‘A judge ought not pass judgement when he is in anger’”⁴. This statement is

¹ Such dissenting votes from the general consensus are called *mufradāt*.

² al-Bukhārī, *Kitāb al-jumʿah*, no. 15: اخبرنا حميد عن انس كنا نبكر بالجمعة وتقيل بعد الجمعة.

³ al-Qaṣṣallānī, II, p. 196: أى نبادر بصلاتها قبل القبولة وقد تمسك بظاهره المختالبة فى صحته وقوعها باكر النهار.

⁴ *Kitāb al-aḥkām*, no. 13: كتب ابو بكره الى ابنه وكان بسجستان بان لا تقضى بين اثنين وانت غضبان فأتى سمعت النبي صلعم يقول لا يقضين حكم بين اثنين وهو غضبان.

generally regarded as wise instruction, as well-meant advice for judges¹. Some jurists go quite far in their application of this instruction. For instance, the Shāfi'ite Abū al-Fayyāḍ al-Baṣrī disapproves of a judge who concerns himself with his private, practical affairs — e.g. the expenses of his household — since this would influence his judgement more than anger would². In spite of this scrupulous caution, no one except a few Ḥanbalites see in the Prophet's declaration a *prohibitive* statement. They conclude from this that "a judge who is in anger is not permitted to pass judgement" and consequently, that a judgement passed in this state has no legal validity at all, since the judge was prohibited to pass it in the first place. How far the hair-splitting casuistry of the *fuqahā'* went is apparent: even those who hold this view differentiate between whether the judge was completely clear about this legal decision before he became angry, or whether the occurrence of this psychological effect preceded the sound judgement in the pending legal case³.

88 An example from the legislation on slaves provides an apt conclusion to the above argument. "*Mudabbar*"⁴ designates in Islamic law a slave who, during his master's life time, is promised freedom *ipso eventu*⁵ after the latter's death. For example, it is said of the favourite Fawz "that one of the Barmakite youths bought her as a slave (*fa-dabbarahā*) and promised her freedom in the case of his death"⁶. Now, the question arises whether such a slave, sold before gaining his freedom, i.e. before his master's death, may really be sold by him, or whether the master forfeited his right over the person of the slave on account of his formal pronouncement of the formula of *tadbīr*. The tradition⁷ cites the concrete case that someone promised his slave freedom in

¹ Qerry, *Droit musulman*, II, p. 392, art. 49.

² Ibn al-Mulaqqin, fol. 95a: يكره للقاضي النظر في نفقة اهله وضيعته لان هذا اشغل لفهمه من كثير من الغضب.

³ al-Qasṭallānī, X, p. 260: وعن بعض الخنابلة لا ينفذ الحكم في حال الغضب لثبوت النهي عنه والنهي يقتضي الفساد وفصل بعضهم بين ان يكون الغضب طراً عليه بعد ان استبان له الحكم فلا يؤثر والا فهو محل انخلاف.

⁴ From *dubr, pars posterior*, for death in relation to life is *dubr al-ḥayāh*. Others derive this word from *dabbara*, to make arrangements.

⁵ Van den Berg, *De contractu* etc., p. 38, note 2; Qerry, *Droit musulman*, II, p. 119 ff.

⁶ *Kitāb al-aghānī*, XV, p. 141, 9 from below.

⁷ al-Bukhārī, *Kitāb al-'atq*, no. 9.

the form of *tadbīr* and that the Prophet himself bought this slave during the master's life time from him. Many of the early legists decide that a *mudabbar* slave may legally be sold by referring to the authority of the tradition and the Prophet's practice as attested in it. Abū Ḥanīfah alone, although according to some reports, Mālik, too, applies the tradition to one specific case¹; however, they generally teach that a *mudabbar* may not be sold. The Prophet himself did not purchase the personal freedom, but bought only the services of the purchased *mudabbar* slave². The practice of the Islamic society adopted the latter view. The female slave Badhl, famous by a host of poetical transmissions which she made, belonged to Ja'far b. Mūsā al-Hādī. Muḥammad b. Zubaydah, who was told about her merits, intended to buy Badhl from Ja'far. He, however, refused to comply with Muḥammad's wish. "People like myself do not sell the girl", he said. — "Well, then give her to me", Muḥammad asked in turn. Upon this Ja'far replied: "This, too, is not possible, for she is a *mudabbarah*". In order to obtain temporary possession of the learned girl, Muḥammad rented her from Ja'far. This way of acquisition was not explicitly prohibited for *mudabbar* slaves³.

We can observe the Ḥanbalite school's rigid adherence to the literal text also in this question of *mudabbar*. According to a version recognized by Ibn Ḥazm, the Imām Aḥmad b. Ḥanbal is represented as having limited the permission to sell a *mudabbar* slave to male slaves only, since the tradition mentions only slaves of this sex. We do not hear of the Prophet's consent to the sale of a *mudabbarah* by setting an example himself. Ibn Ḥazm who, on his part, reports this version calls

وفي هذا الحديث دلالة لذهب الشافعي¹ وموافقيه أنه يجوز بيع المدبر قبل موت سيده لهذا الحديث قياساً على الموصى بعته فإنه يجوز بيعه بالاجاع ومن جوزه عائشة وطاوس وعطاء والحسن ومجاهد واحمد واسحاق وابو ثور وداود رضى الله عنهم وقال ابو حنيفة ومالك وجمهور العلماء والسلف من الحجازيين والشاميين والكوفيين رحمهم الله تعالى لا يجوز بيع المدبر قالوا وانما باعه النبي صلعم في دين كان على سيده.

¹ al-Nawawī, IV, p. 117: وفي هذا الحديث دلالة لذهب الشافعي وموافقيه أنه يجوز بيع المدبر قبل موت سيده لهذا الحديث قياساً على الموصى بعته فإنه يجوز بيعه بالاجاع ومن جوزه عائشة وطاوس وعطاء والحسن ومجاهد واحمد واسحاق وابو ثور وداود رضى الله عنهم وقال ابو حنيفة ومالك وجمهور العلماء والسلف من الحجازيين والشاميين والكوفيين رحمهم الله تعالى لا يجوز بيع المدبر قالوا وانما باعه النبي صلعم في دين كان على سيده.

² al-Qasṭallānī, IV, p. 353: وتأولوا الحديث بأنه لم يبع رقبته وانما باع خدمته.

³ *Kitāb al-aghānī*, XV, p. 145 top.

it "a differentiation for the reliability of which there is no proof" ¹. In this question, then, Ibn Ḥanbal's school surpasses the followers of the Zāhirite school in extreme sophistry ².

¹ al-Qaṣṭallānī, *ibid.*: الرابع تخصيصه بالمدبر فلا يجوز في المدبرة وهو رواية عن احمد وجزم به ابن حزم عنه وقال هذا تفريق لا برهان على صحته.

² On this chapter of the Ḥanbalite legal code see Shaykh Mar'i, *ibid.*, II, p. 37.

CHAPTER SEVEN

(1)

In the struggle of the legal sources for recognition, the exponents of "analogy" and "opinion", as well as their rivals, were extremely anxious to produce for their point of view of the methods of Islamic jurisprudence weighty arguments from the Sacred Book, from the traditions of the Prophet, and from the words and actions of the companions. However, the sober, impartial exegesis resisted all attempts to read into the Koran statements on methods of investigation 90 which developed later, and which still lay entirely outside the scope of Islamic revelation ¹. But scholastic exegesis was strongly inclined to meddle with the problematic meaning of the most naive Koranic passages. Attempts were also made to derive a special legal basis for *ijmā'* from the Koran. This, however, could not be achieved easily. It is reported about the Imām al-Shāfi'ī that when he was questioned about the Koranic sanction of this legal source, he read the Holy Book no less than three hundred times until he found in *sūrah* IV:115 a support — although a very weak one — for the derivation of the authority of the *consensus ecclesiae*: "Whoever breaks with the Prophet, after guidance has become clear, and then follows a way other than the believers' (i.e. the way of the entirety of the believers) we shall turn away from him and feed hell-fire with him" ².

People were most ardently searching for Koranic verses that could serve to support the very disputed *ra'y* and *qiyās*. Koran IV:85, which is concerned with independent investigation (*yastanbiḥūna*) of the

¹ In al-Zamakhsharī to *sūrah* LXVII:10 لو كُتِبَ نَسْمَعُ او نَعْقِلُ we read the following remark: ومن بدع التفاسير ان المراد لو كُتِبَ على مذهب اهل الحديث [نسمع] او على مذهب اهل الرأي [نعقل] كأن هذه الآية نزلت بعد ظهور هذين المذهبين وكان سائر أصحاب المذاهب والمجتهدين قد أنزل الله وعيدهم. According to al-Shahrastānī, p. 153 penult., *qiyās* derives its title from the consensus which in turn is defined as authority by the Scripture.

² *Mafāṭih*, III, p. 462: روى ان الشافعي رضي سئل عن آية في كتاب الله تدل على ان الاجماع حجة فقرأ القرآن ثلاثاً مرة حتى وجد هذه الآية.

laws¹, was readily quoted — yet also *sūrah* LIX:2, *fa-i'tabirū yā ūlī, al-absār* "Take heed, o you who possess reason". Al-Bayḍāwī makes the following remark about this passage: "This verse is cited in support of the argument that *qiyās* is valid as legal evidence, for it contains the order to judge one state of affairs by departing from another, and, in view of the prevailing mutual points, to apply the one in judging the other, just as we have stipulated in the works on *uṣūl*". People pretended to have found all four legal sources conveniently united in a single Koranic verse, namely, in *sūrah* IV:62, "O you who believe! Obey Allāh [Koran as Allāh's revealed word] and obey the Prophet [*sunnah*] and those who command authority among you [consensus of the *imāms*]; if you are of different opinion about a thing, refer it to Allāh and the Prophet [analogy on the basis of decisions that follow from those sources], if you believe in Allāh and the Last Day. This is good for you and beneficial for your soul"². Of course, arguments like this are of no use against the followers of the rival schools. Ibn Ḥazm keeps asking: "If all these methods are specified by the Koranic revelation how, then, can it be explained that none of them is called by its proper name, and that all terms for them are innovations?"³ Furthermore, it would, indeed, be absurd to assume that it was God's will that a law be deduced according to methods defined by these expressions, although the sources of His religion neither know these expressions nor specify how they are to be interpreted, nor how these methods are supposed to be applied. In this case, God would have asked us to do something that we could not possibly do. It is true — he continues — that examples could be cited from the Koran to the effect that in certain cases, God's actions are based on certain causes. But God and the Prophet, alone, are entitled to determine such causes; the jurist has no further authority to go beyond this and to contrive causes; if he does so, he surpasses the limits set forth by God. Therefore, when someone teaches that, because God has commanded or prohibited something, the command or interdiction of another thing follows from this on the basis of common causes, as contrived by that person without God's explicit command or inter-

¹ *Iḥṭāṭ*, fol. 18a.

² *Mafātīḥ*, III, p. 356-361 in great detail. Al-Bayḍāwī, too, to the passage, briefly indicates this application of the Koranic verse; also Abū Su'ūd, marginal edition of *Būlāq*, p. 363.

³ *Iḥṭāṭ*, fol. 4b.

diction of the same, he professes to teach arbitrarily and contrary to God's own will¹.

- 92 It goes without saying that the opponents of the speculative school, more so than its followers, were eagerly attempting to justify their respective views on the basis of the Koran. If the latter were searching for passages which permitted the supplementing of the legislation laid down in the Koran and in the *sunnah* in case of need, the former were bent on proving the inadmissibility of such a complement from the Holy Book itself. Ibn Ḥazm, besides quoting his own polemical refutation of the evidence of the exponents of *qiyās*, naturally continually quotes passages conducive to the consolidation of his tenets too. On the side of those loyal to *qiyās*, the great dogmatist, Fakhr al-Dīn al-Rāzī, busies himself with refuting the argumentation by the so-called "*nufāt al-qiyās*" of each individual Koranic passage which they produce for the justification of their view. We are indebted to the scholarly scope of this writer for a great deal of the knowledge about the application of the Koranic passages in question². Let us examine briefly
- 93 what has been gathered together in support of the anti-analogy theses from Koranic passages.

¹ *Iḥṭāṭ*, fol. 19a: وقول آخر جامع ايضا وهو ان من المحال الباطل الممنوع الذي لا يجوز البتة ان يكون الله يامرنا بالقياس او بالتعليل او بالرأى او بالتقليد ثم لا يبين لنا ما القياس وما التعليل وما الاستحسان وما الرأى وكيف يكون كل ذلك وعلى اى شيء نقيس وبأى شيء نعلل وباستحسان من نأخذ ورأى من تقبل ومن يقلد لان هذا تكليف ما ليس فى الوسع وما لا سبيل الى معرفته ولا الى تأديته فاذا لا شكك فى ذلك فقد بطل جميع هذه الوجوه بيقين لا شك والله تعالى الحمد كثيرا، وايضا فكل ما ذكروه من انه فى القرآن ان الله تعالى فعل امر كذا لاجل امر كذا وكل خبر ذكروه فى تسبب شيء بشئ آخر (فه سسه سى سى احر cod) فانه يقال لهم كل ما قاله تعالى من ذلك ورسوله صلعم فهو حق وبه نقول وكل ما علمتم انتم ما لم يأت به نص وكل ما حكمتكم انتم به تسببا بحكم آخر بغير نص فهو الباطل لانه تعدد لحدود الله تعالى واقرار منكم بانه لما حرم الله تعالى امرا كذا ووجب امرا كذا اوجبنا نحن امرا آخر وحرمنا نحن امرا آخر غير ما امر الله تعالى به وهذا هو غير امر الله تعالى وهذا لا يحل اصلا وباللله تعالى التوفيق. تعدى. 1. 13, in MS:

² *Mafātīḥ*, III, p. 25; IV, p. 198, 550, 746; VII, p. 391.

Most strongly emphasized is the principle that in the direct manifestations of God's will, i.e. in the written law transmitted by the Prophet, *all Islamic law is contained*, and that beyond this, no religious law is possible, and consequently, no source from which to deduce such laws can be recognized. The *nufāt al-qiyās* mainly quote as authority for this *sūrah* VI:38 *mā farratnā fī al-kitāb min shay'*¹. Apart from this, they have a decided liking for *sūrah* XVI:46, *fa-su' alū ahl al-dhikr in kuntum lā ta'lamūn* in which, so they say, it is shown to the believers on what to rely in doubtful cases. Now the *nufāt al-qiyās* follow that, if analogy was a legitimate basis of deduction, it would have been decreed that in doubtful cases the particular problem ought to be checked for analogical cases, and that uncertainties be solved in a speculative manner by means of *qiyās*. The greatest importance, however, is attached to *sūrah* VI:116 in which it is said about the disbelievers that they follow conjecture, *in yattabi 'ūna illā al-zann*, and it is shown in an elaborate exposition that even judgement based on analogical reasoning belongs to this category. They also cite *sūrah* XLII:8 in which it is decreed that, as far as contested questions are concerned, their judgement belongs to God (*wa-mā ikhtalaftum fi-hi <min shay'> fa-hukumuhu ilā Allāh*). This cannot refer to analogy, but to the explicit meaning of the divine texts (*al-nuṣūṣ*) because they offer equal legal bases for all Muslims. Application of analogy, however, encourages a difference of opinion, rather than discourages it because analogical reasoning, practised by different individuals, leads to different results, and because deductions from *qiyās* concerning one and the same question do not necessarily result in the same laws. It is from this point of view that *sūrahs* III:98 and VII:48 are cited. It is emphatically stated that the application of *qiyās* endangers the unanimity of the Muslim community: "Recognition of *qiyās* leads to a difference of opinion. This, however, is frowned upon in the Koran. Therefore, it follows that it is prohibited to base one's daily life on laws deduced by *qiyās*. It is obvious that this is a necessary conclusion since we see that the world is full of differences of opinion as a consequence of the application of *qiyās* in jurisprudence"². This is a reference to the *madhāhib*.

¹ *Iḥṭāl*, fol. 8b.

² *Mafātīḥ*, IV, p. 550: القول بالقياس يقضى المنازعة والمنازعة محرمة فهذه الآية توجب ان يكون العمل بالقياس حراما بيان الملازمة المشاهدة فانا نرى ان الدنيا صارت مملوءة من الاختلافات بسبب القياس.

(2)

We shall arrive at an important conclusion concerning the Islamic religious attitude if we stop for a moment or two at this theological principle and scrutinize its position within Islamic theology. The foregoing view of the *nufāt al-qiyās* is contrasted to a long established Islamic principle: *ikhtilāf ummatī rahmah*, i.e. *difference of opinion in my community is (a result of divine) favour*". This statement is presented as being from the Prophet, and on different occasions, we encounter it as if it were a well-known, authentic statement. The way it is applied demonstrates best how the theological authorities want it to be understood. Let us examine some examples. On the occasion of the caliph Hārūn al-Rashīd's pilgrimage, the following is reported: The caliph gave Mālik b. Anas 3000 dinars which he accepted but did not spend. When al-Rashīd (after the completion of the pilgrimage) prepared to return to Iraq, he said to Mālik: "You must come with us, for I am firmly committed to lead people to your *al-Muwatta'* just as 'Uthmān led them to the Koran". The Imām replied to this: "With regard to the latter statement, this is hardly possible, for the companions of the Prophet dispersed into all directions after his death and spread the traditions so that, now, the inhabitants of each region have their (own method in the) science. Moreover, the Prophet has said: '*Difference in my community is a favour*'. My going along with you is hardly possible, for the Prophet has said: '*Al-Madīnah is best for them if only they knew it*'. Here, then, are your 95 dinars, just as they were; if you want, take them, but you can also leave them here"¹. In other words: in different countries, varying versions of the Prophet's traditional statements became established; this is no work of the devil, but a blessing from God. Therefore, in the future, the law should not be confined to precise words; rather, free development of tradition ought to continue. Rightfully, I think, Dugat says: "On pourrait en Orient si le progrès avait chance de s'y acclimater, s'appuyer sur ce hadith de Mahomet pour amener les

¹ I have given this account according to al-Damīri, II, p. 383 where it is quoted from al-Ghazālī, *Iḥyā'*, Kitāb al-'ilm, sixth chapter. However, I looked for it to no avail. We find the same account from another source and in a different context in Dugat, *Histoire des philosophes et des théologiens musulmans*, p. 266. (According to Goldziher, *Muhammedanische Studien*, II, p. 74, n. 4, the following sources are to be added: Qutb al-Din, *Die Chroniken der Stadt Mekka*, vol. 3, p. 210 3 ff. The same principle is extended to dogmatic differences too, al-Tabari, II, p. 19 ult. (attributed to Mu'āwiyah).)

Musulmans à adopter des idées plus larges, plus tolérantes que celles qu'ils ont". — Another example of the application of the alleged tradition: In al-Bukhārī, as well as in Muslim¹, we find the following traditional account of Ibn 'Abbās in different versions and with different *sanad*: "When the Prophet was close to death, there were people in the house among whom was also 'Umar b. al-Khaṭṭāb. Then the Prophet said: 'Come here, I want to give you something written so that you need not err afterwards'. 'Umar said to this: 'Indeed, pain has gained control over the Prophet! You have left the Koran; this suffices us as The Book from God'. But those who were around him were of a different opinion; some of them said: 'Fetch something so that the Prophet can write down something for you that you need not err afterwards'. Now, when indecisiveness spread among them in the Prophet's presence, he said: 'Get up!' 'Ubayd Allāh said (that Ibn 'Abbās spoke): 'O what misfortune! O what a great misfortune it is that their talking and arguing is preventing the Prophet from writing'".

I have already mentioned that this account exists in different versions, but the meaning of all of them corresponds to the foregoing version, which has been selected *ad libitum*. Muslim theologians have understandably consumed much ink to interpret and justify 'Umar's incomprehensible behaviour. The Prophet wants to give testamentary instruction, and to provide his trusty followers with something written as guidance so that they know what to do after his death, and the one who, on other occasions, has been his zealous and trusted follower, opposes the will of his revered master. He wants nothing written from him but the Koran! Among the numerous explanations given for this fact, several commentators list the following: 'Umar deemed the Prophet's condition so uncertain that he feared that the Prophet, subject to weakness of the flesh as any other mortal, was now going to make a mistake. In this case, we are interested in what al-Khiṭābī adduces for answering the above questions. He cites the Prophet's statement on *ikhtilāf al-ummah* and thinks that 'Umar considered the opinion inherent in it so weighty that he did not want to see orders decreed which would prevent the rise of differences of opinion, for, in the sense of this statement, differences of opinion in religious matters were a blessing for the Islamic community².

¹ al-Bukhārī, *Kitāb al-'ilm*, no. 40; *Marqā*, no. 17. Muslim, *Waṣīyah*, no. 5.

² al-Nawawī, VI, p. 91: قال الخياطى وقد روى عن النبي صلعم انه قال: اختلاف امتي رحمة فاستصوب عمر ما قاله.

Consequently, this view invaded large segments of orthodox Islam, and Muslim literature, up to most recent times¹, is infused with it². This is the basis for the kind of toleration and mutual recognition which the *madhāhib* display towards each other and which seems to puzzle the superficial observer. This has dominated Muslim life since time immemorial. Everyone knows how this mutual recognition is always manifested externally in the great Islamic houses of worship. The one-sided sectarian fanaticism (*ta'aṣṣub*) is viewed by orthodox theologians as being contrary to Islamic teachings. None of the four rites is permitted to claim to be the only soul-saving one; every one of them must recognize the title of the others, even in cases of diametrically opposing views. When al-Maḥāmīlī published his famous book *al-Muqni'* in the fourth century, his teacher Abū Ḥāmid al-Isfarāyīnī censured him for presenting in it the teachings of only one *madhhab*, and for isolating it from the contradictory teachings of the other rites. He even prohibited him from continuing to attend his lectures so that al-Maḥāmīlī had to resort to tricks to hear the *shaykh's* lectures without attending them personally³. Nevertheless, isolated cases of *madhhab* fanaticism have occurred and are still occurring. But in particular, the reaction of orthodoxy vis-à-vis such excesses shows us that Sunnite teachings cannot be identified with them. We read, for instance, that the Ḥanafite *qāḍī* Abū 'Abd Allāh al-Dāmaghānī (d. 506) is supposed to have said: "If I were given a governorship in my province, I would impose on the followers of al-Shāfi'ī the *jizyah* imposed on Jews and Christians". But immediately next to this account, we read that he was reprimanded because of this statement⁴. When the

¹ Aḥmad al-Dayrābī al-Ghanīmī writes in his *كتاب غاية المقصود لمن يتعاطى وعملته على مذهب هؤلاء الأئمة الذين* Būlāq, 1297, p. 3: *من الله علينا بهم غاية المنة وجعل اختلافهم رحمة للأمة*. This work was written in 1123 and contains the Islamic marriage law according to the four schools.

² Cf. al-Maqdisī, ed. de Goeje, p. 38, 16 ff.: *الأتري ان اصحاب النبي صلعم قد اختلفوا وجعل اختلافهم رحمة وقال بأيهم اقتديتم اهتديتم*; cf. *ibid.*, p. 366 where it ought to read in line 22 *الامة* instead of *الآية* (اختلاف)

³ *Tahdhīb*, p. 691.

⁴ Yāqūt, I, p. 708. The Shāfi'ite Muḥammad al-Tūsī (d. 576) made the same remark with reference to the Ḥanbalites. On account of this he was poisoned by a fanatical Ḥanbalite: *وكان فيه تحامل على الحنابلة بحيث كان يقول لو ان لي أمرا* (اختلاف) لو وضعت عليهم الجزية فسمه بعض جهلهم

qādī 'Abd al-Wahhāb b. Naṣr al-Baghdādī had finished his great work, in which he has the Maliki rite triumph over the other orthodox rites (*al-Nuṣrah lil-madhhab amāma dār al-hijrah*), a fanatical Shāfi'ite *qādī* from Cairo threw it into the Nile. As punishment for this act of intolerance — so our source reports — this fanatic, whom Tīmūr had taken prisoner on his Egyptian campaign, was drowned in the Euphrates. "Punishment is always in relation to the transgression" ¹. In the same historical work from which this information has been taken, a didactic poem of Abū 'Abd Allāh al-Rā'ī from Granada (VIIIth century) can be read in which the equality of the *madhāhib* is explained, and *ta'aṣṣub*, ² condemned ³. Again, when the Egyptian theologian Taqī al-Dīn Muḥammad came to the West, he reported that in Egypt, men of sound scholarship and knowledge would never give preference to one *madhhab* over another ⁴. These manifestations, which could be considerably extended, represent the dominant view of Islam: they all must be viewed in relation to the tradition, *ikhtilāf ummatī* etc., from which they emanate.

98 The authenticity of this particular tradition is indeed weak. A well-documented proof that it is a statement from Muḥammad cannot be produced. There is no trace of the statement in the two canonical "corpora". In place of this — apart from Koranic passages, e.g. *sūrah* XI:120 from which can be seen that those are free from a difference of opinion who are blessed by God *wa-lā yazābūna mukhtalifīna illā man raḥima rabbuka* — we encounter another statement, better documented, that teaches exactly the opposite. This one is attributed to 'Alī and runs as follows: It is reported about 'Alī that he said the following: "Make your legal decisions as you have done previously, in order that there be agreement among people, for I dislike differences of opinion" ⁵. He is represented to have said this on the occasion of a concrete legal problem — namely, whether it is permitted to sell a female slave who has borne children — which he had formerly judged differently from 'Umar; however, in order to avoid a difference

¹ al-Maqqarī, I, p. 814.

² Noteworthy is here the form تعصّب for تعصب.

³ al-Maqqarī, *ibid.*, p. 937.

⁴ *Ibid.*, II, p. 101.

⁵ al-Bukhārī, *Fadā'il al-aṣḥāb*, no. 10: عن عليّ رضه أنّه قال اقتصوا كما كنتم تفعلون فإني أكره الاختلاف حتى يكون للناس جماعة.

of opinion, he then turned towards the generally accepted view ¹.

When we consider that we have here two exactly contradictory views, we cannot overlook that these traditions represent different movements which have come to prominence in the earliest time of Islam. Each of them tried to legitimize itself and, at the same time, preserve its canonical sanctity by producing hallowed statements. The one — and this movement seems to have legitimacy on its side — wanted to see the expression of individual difference of opinion banned as being harmful to Islam — ("*Disputandi pruritus ecclesiae scabies*"). The other movement saw in mental freedom and independence no threat to Islam, and even saw in it a blessing. Traditional sayings 99 of the kind of *ikhtilāf ummatī raḥmah* have probably originated, if not from circles to which later Islamic religious history applied the name of *aṣḥāb al-qiyās*, then at least, from circles which abandoned the rigid traditional view. To this movement also belongs the interpretation of the *shu'ab* tradition according to which the diversity of the religious sects within a religious system is evidence for its excellence. Years ago, I had a chance to treat this at great length in a different place and to prove that this interpretation is faulty and does not correspond to the original intentions of the text ².

We have seen that the *nufāt al-qiyās* rejected this method of deduction (*qiyās*) because it led to differences of opinion. Naturally we find the most important representative of the Zāhirite school, Ibn Ḥazm, leading those who frown upon differences of opinion. He states this idea forcefully in the very introduction to his pamphlet against *qiyās*. God, through Muḥammad, — this briefly, is his train of thought — sent to humanity everything necessary for the perfection of religion and for proper guidance. God in His omniscience has foreseen and determined all the differences of opinion that occurred later, but not without singling them out as deviations from the proper path. Ibn Ḥazm quotes Koranic passages ³ attesting to this view. It will

¹ The commentator al-Qaṣṣālānī, VI, p. 122, does not fail to notice the contradiction of 'Alī's opinion to the other apparent tradition as revealed here. He is attempting to reconcile the two in the manner common among Oriental commentators: فإني أكره

الاختلاف على الشيخين أو الاختلاف الذي يؤدي إلى التنازع والفتن وإلا فاختلاف الأمة رحمة.

² *Beiträge zur Literaturgeschichte der Šī'a*, p. 9.

³ *Ibāl*, Introduction: فان الله عز وجل بعث محمدا عبده ورسوله عم بالهدى ودين الحق والنور فهدي به الى الطريق المؤدية للجنة المنجحة من النار

100 be interesting to see how a truly famous Arab historian, whose Zāhirite tendencies shall occupy us in the course of this treatise later, reacts towards this question. It is al-Maqrizī¹ who, after presenting the views of the different theological schools concerning the anthropomorphic passages of the Koran, concludes his presentation with the following observation: "Each of these parties advances its arguments ... and they will not cease having different opinions, with the exception of those on whom your God has mercy, and for this He has created them². On the day of resurrection, God shall judge among them according to that about which they contradicted each other". As we can see, al-Maqrizī, as a trusted follower of the old Koranic view, considers not the differences of opinion as an emanation of divine favour, but the agreement and the uniformity of views.

But opposition to the authenticity of the liberal statement of *ikhtilāf* etc. came not just from the orthodox-traditionist side. The same al-Khiṭābī, who cites this principle as an explanation for 'Umar's strange behaviour in the case of the Prophet's death-bed incident, does not let this occasion pass without protecting its credibility from the extreme left of the Muslim liberals.

وعرفنا بما اوحى اليه مراده منا وابطل بمثته التي ابتمته بها كل ملّة دان بها احد من الانس والجنّ واخبرنا تعالى انه اكمل به الدين واوضح به البيان فقال تعالى ما فرطنا في الكتاب من شيء وقال تعالى لَتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ اليهم فوقق الله تعالى لاتباعه من اراد به الخير فكانوا خيرة الله من خلقه واوليائه من عباده فلم يرالوا على ذلك الى ان قبضه الله تعالى الى جنّته ورضوانه صلعم وقد اتمّ به الدين واستوفى به التبيين وكان من قضاء الله عزّ وجلّ السابق في علمه الذي اخبرنا به تعالى ان قال ولا يزالون مختلفين الا من رحم ربك ولذلك خلقهم فايقتا بصحّة خبر الله عزّ وجلّ ان الاختلاف سيحدث فينا ونهانا الله تعالى عنه فقال عزّ من قائل واعتصموا بحبل الله جميعا ولا تفرّقوا وقال تعالى ولا تكونوا كالذين تفرّقوا واختلفوا من بعد ما جاءهم البينات واولئك لهم عذاب عظيم وقال تعالى ولو كان من عند غير الله لوجدوا فيه اختلافا كثيرا ... ابو هريرة عن النبي صلعم ذروني ما تركتم واتا هلك الذين من قبلكم كثرة مسائلهم واختلافهم على انبياءهم.

¹ *Khiṭāf*, II, p. 320.

² Quotation from Koran, *sūrah* XI:120.

101 "Two men have raised objections to the tradition 'Difference of opinion in my community is a favour'. One of them is ill-reputed in relation to religious matters, namely, 'Amr b. Baḥr al-Jāḥiẓ, and the other, Ishāq b. Ibrāhīm al-Mawṣilī, is known for his jesting and frivolity. After the latter edited his book on songs and distinguished himself with these trifles, he insulted the traditionists in his book and expressed the opinion that they were transmitting things about which they knew nothing. He and al-Jāḥiẓ say: if difference of opinion were a blessing, it would follow that agreement ought to be considered a curse. Besides this, he thinks that a difference of opinion could have been regarded as a blessing only during the Prophet's life time, since, at that time, people could question the Prophet and have things explained. In face of these poor objections, the following must be said: from the fact that a certain thing is regarded as a blessing, it does not follow that the converse is regarded as a curse. Such reasoning can come only from an ignoramus or some one who purports to be ignorant. We find, for example, in the Koran: Through His mercy, He makes for you day and night so that you may rest, etc. Here, night is considered a result of the divine compassion without justifying us to conclude that day is a divine curse. This is obvious and cannot be doubted. As regards religion, a three-fold difference of opinion is possible: *First*, as regards the existence of a creator and his uniqueness: to deny this would be disbelief; *secondly*, as regards His attributes and His will: denying this would be heresy; *thirdly*, as regards the laws deduced from the principles of the Faith which endure different opinions. As regards the latter category, God conceded to scholars a difference of opinion, as a token of His compassion and favour. This is how the words of the tradition in question must be interpreted"¹.

Others have gone still further in tolerating the difference of religious opinion. We meet their point of view in an anecdotal, rather than dogmatic form in a story in Ibn 'Abd Rabbih. The caliph Ma'mūn once questioned a Khurāsānī renegade about the reason for his relapse into heathendom after he had previously taken a liking for Islam. "I was alienated from Islam", replied the renegade, "by the fact that you have so much variety in your religion". The caliph remarked to this: "The differences that you observe among us are of two types. There are differences in the rite, as for example in the formula of the

¹ al-Nawawī, IV, p. 91. <This footnote is not indicated in the text of the German ed.>

102 *adhān*, in the prayer during burial, in the prayer of the two high holidays, in the profession of faith, in the salutation of the Prophet at the end of the obligatory prayer, in the readings of the Koran, in the decisions on ritual inquiries, etc. These are not actual differences; they apply only to what has been left to individual discretion. This is the utilization of a wide scope and of the facilitation that the traditions offer, i.e. it makes no difference whether a person practises one form or the other since they are all equally recognized. Another type of difference has a bearing on the interpretation of the holy texts of the Koran and the *sunnah*; this prevails although we are all in agreement on the dogma of the revelation and the essence of the traditions. If these are the differences of opinion that have alienated you from our religion, then you ought to know that they are also found in other religions. If there were not differences in the interpretation of the Bible, there would be no difference between Jews and Christians who are otherwise in agreement in recognizing the dogma of revelation. If it had been God's will, He would have revealed His books in a well-commented way, and no argument would have arisen concerning the interpretation of the words of His prophets. Nothing, however, will come to us, neither in the religious nor in the secular sphere, except after long study and continual zeal and reflection. If this were not the case, there would be neither pains nor temptation, nor any difference of opinion, nor discord; there would be no difference between capable and incapable persons, between the learned and the ignorant". After the renegade had listened to this exposition, he once again professed the Islamic creed¹.

The Mu'tazilite al-Jāhīz is not the only one among his fellow sectarians to condemn the tradition of *ikhtilāf*. We must not depict this attitude as the view of the Mu'tazilites; we lack sufficient literary authorities to do this. But it is a fact that there is yet another Mu'tazilite who has questioned the validity of this alleged statement from the traditions. It is reported about Abū al-Hudhayl Muḥammad al-'Allāf (d. 227), one of the most important members of the early Mu'tazilah, that he replied to the question of what was more advantageous for the Islamic community, agreement or difference of opinion: "Agreement". When people confronted him with events from the Prophet's life that were in contrast with this principle, he was shrouded in deep silence².

¹ *al-'Iqd al-farīd*, I, p. 255.

² al-Damīrī, I, p. 150, cites this information from Ibn Khallikān, but it cannot be found at this passage (no. 617, ed. Wüstenfeld, VI, p. 144).

(3)

- 103 Islamic tradition, rather than the Koran, must supply the proofs for each of the two parties. Here, it is appropriate to comment on the extent of the objectivity of the collections of traditions. A comparison of the two collections of traditions that are considered canonical (al-Bukhārī's and Muslim's) leaves one with the impression that the latter compiler, as regards the form of the information of the traditional data and statements collected and incorporated in his "corpus", does not easily abandon the impartial objectivity of an editor and a collector of material. He leaves it to his reader as to how to utilize the material presented, and what conclusions to draw from it. His rival, al-Bukhārī, quite frequently incorporates his subjective judgement and exhibits a personal interest in the direction of the result to be arrived at. Al-Bukhārī, at times, takes up a personal position in disputed questions, the solution of which is necessarily related to the interpretation and application of the particular tradition. Just as we find in his collection linguistic remarks and annotations to the transmitted statements, we also find subjective expressions of opinion and concrete remarks unrelated to the text of the tradition. His chapter headings, in which, at one point, he records in detail the opposing legal views of the Hijāzī and 'Irāqī schools¹, afford him ample opportunity to mold the opinion of the reader towards his view on the practical application of the particular tradition. With the heading: *باب من قال ان الايمان هو العمل لقول الله تعالى وتلك الجنة التي الخ* which he places at the head of the statement, *Kitāb al-īmān* no. 16, he gives the reader an unmistakable hint to which thesis of orthodox dogmatics the tradition following this heading is supposed to apply as proof of evidence in the dispute over the definition of the expression, *īmān*. Even Muslim commentators have discovered this tendency behind the timid mask of the words, *man qāla an*². Just how determined al-Bukhārī is to supply particular evidence by means of traditions, or to supply proof of evidence for specific theses, can be seen from the fact that he occasionally introduces a paragraph with the words: "As evidence

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¹ *Kitāb al-talāq*, no. 24.

² al-Qasṣallānī, I, p. 127: *وغرض البخاري من هذا الباب وغيره اثبات ان العمل من اجزاء الايمان رداً على من يقول ان العمل لا مدخل له في ماهية الايمان*.

for ..., the following may serve" ¹. We have noted above (p. 44) how, by inserting a single word in the chapter heading on the law of pledge, al-Bukhārī takes a particular position on a disputed question in this chapter. This procedure reminds one of phenomena that occurred in analogous canonical materials of other religions ². Muslim did not make use of such headings in his collection "in order not to increase the size of his work or because of other reasons"; (al-Nawawī, p. 13) only later commentators and glossators have attempted to add headings (*tarājim*) to the paragraphs of Muslim's collection.

It was to be expected that the greatest traditionist of the Muslim world sympathized with the school of the *aṣḥāb al-ḥadīth*, and even if he does not exactly reject *ra'y* and analogy as legal bases, he reduces their importance to narrow limits. His attitude becomes evident from the way in which he relates some of the traditions which he conceives to be directed against the speculative method. We can see from this, at the same time, how much subjective judgement al-Bukhārī could put into his dry chapter and paragraph headings. Now we want to look at these statements from the traditions that are hostile to analogy:

باب ما يذكر من ذم الرأي وتكلف القياس ³: *Kitāb al-i'tiṣām* no. 7
ولا تقف لا تقف ⁴ ما ليس لك به علم، حدثنا سعيد بن تليد حدثني
ابن وهب حدثني عبد الرحمن بن شريح وغيره عن أبي الأسود عن
عروة قال حج علينا عبد الله بن عمرو فسمعته يقول سمعت النبي
صلى الله عليه وسلم يقول ان الله لا ينزع بعد ان اعطاهموه انتزاعا ولكن
ينزعه منهم مع قبض العلماء بعلمهم فيبقى ناس جهال يستفتون
105 فيفتون برأيهم فيضلون ويضلون، In this instance, a judgement
arrived at on the basis of *ra'y* is discouraged; however, we see
what far-reaching modes of thinking al-Bukhārī conjures with
the title heading. He goes still further in the same book, no. 9:
باب تعليم النبي صلى الله عليه وسلم أمته من الرجال والنساء مما علمه الله تعالى

¹ ومن الدليل على ان الخمس الخ: *Farq al-khums*, no. 4; 14; 16.

² Cf. generally Schulte, *Die Geschichte der Quellen und Literatur des Canonischen Rechts*, I, p. 74 and K. Hase, *Handbuch der protestantischen Polemik*, 1st ed., p. 494.

³ This passage has not yet been published in the edition by Krehl, (i.e. in 1884). Our text comes from the 10 vol. *Būlāq* commentary, 1285.

⁴ The words *ولا تقف* would appear to be a variant of the preceding *لا تقف*. They are lacking, therefore, from Abū Dharr's text of Bukhārī.

ليس برأى ولا تمثيل، حدثنا مسدد حدثنا ابو عوانة عن عبد الرحمن
ابن الاصبهاني عن ابن صالح ذكوان عن ابي سعيد جاءت امرأة
الى رسول الله صلى الله عليه وسلم فقالت يا رسول الله ذهب الرجال بحديثك
فاجعل لنا من نفسك يوما ناتيک فيه تعلمنا مما علمک الله فقال
اجتمعن في يوم كذا وكذا في مكان كذا وكذا فاجتمعن فاتاهن رسول
الله صلى الله عليه وسلم مما علمه الله تعالى ثم قال ما منكن امرأة تقدم
بين يديها من ولدها ثلاثة الا كان لها ججبا من النار فقالت امرأة
منهن يا رسول الله آتئين ¹ قال فأعادتها مرتين ثم قال واثنين واثنين
Without bias towards the school of *ra'y*, al-Bukhārī could
not have drawn from this tradition the conclusion implied in the title
(undoubtedly based on the words: he taught them what God had
taught him) ². Al-Bukhārī's bias can also be seen from the fact that
he cites the following statement in *Kitāb al-ṣawm*, no. 41. It is not
at all from the Prophet, but a general, tendentious deduction from the
traditions: قال ابو الزناد ان السنن ووخوه الحق لتأتي كثيرا على
خلاف الرأي فما يجد المسلمون بدًا من اتباعها من ذلك ان الحائض
106 تقضى الصلاة i.e. clear evidence that analogy is
misleading as far as deciding religious questions is concerned.

Following is one of the important proofs — usually mustered
against *ra'y* — drawn from the literature of tradition which best
demonstrates the nature of the arguments for dealing with later
theological questions.

باب تعليم الفرائض وقال عقبه: *Kitāb al-farā'id*, no. 2:
ابن عامر تعلموا قبل الظانين يعني الذين يتكلمون بالظن، حدثنا
موسى بن اسمعيل حدثنا وهيب حدثنا ابن طاوس عن ابيه عن ابي
هريرة قال قال رسول الله صلى الله عليه وسلم اياكم والظن فان الظن اكذب الحديث
ولا تحسسوا ولا تجسسوا ولا تباضوا ولا تدابروا وكونوا عباد الله اخوانا
Here we see that purely moral teachings ³, warning people of insinu-

¹ A variant: أو آتئين.

² al-Qaṣṣallānī, X, p. 366: ومطابقة الحديث للترجمة في قوله الا كان لها حجبا من النار لان هذا الامر توفيقى لا يعلم الا من قبل الله
تعا ليس قولاً برأى ولا تمثيل.

³ As becomes evident also from corresponding passages; cf. al-Bukhārī, *Nikāh*, no. 45; Muslim, *Kitāb al-birr*, no. 8 (V, p. 234).

ations against their fellow humans, are re-coined to warn them of a juridical method (*ẓann* = opinion in the sense of *ra'y*). Because of this, one of Muḥammad's statements on ethics was incorporated into the law of inheritance. This is typical of the editing of al-Bukhārī's collection. Apart from these traditions, many more directed against the school of *ra'y* are found, but a great many of them cannot be identified in the canonical collections¹.

Even worse is the situation concerning those passages from the literature of tradition from which the *ra'y* school attempted to derive the arguments for its title. There are no direct statements in the authentic collections in which the believers are commanded to apply analogy as a method of deduction for their judgement. However, in the case of some traditions from which it can be concluded that the Prophet applied analogical reasoning in his judgements, the theologians of the analogical school pointed out that the legitimacy of this method of deduction for jurisprudence may follow from this. Al-Bukhārī himself is careful not to express these conclusions, but his
107 commentators, favourably inclined towards *qiyās*, reach for these supports of their theories so much more eagerly. This becomes evident from the following:

Kitāb al-i'tisām, no. 12: باب من شبه اصلا معلوما باصل ميبين
قد بين الله حكمها ليفهم السائل، حدثنا مسدد
حدثنا ابو عوانة عن ابى بشر عن سعيد بن جبير عن ابن عباس ان
امرأة جاءت الى النبي صلعم فقالت ان امي نذرت ان تحج فانت قبل
ان تحج فأحج عنها قال نعم حجتي عنها رأيت لو كان على أمك دين
أكنت قاضيته قالت نعم قال فاقضوا الذي له فان الله احق بالوفاء،
In this case, the Prophet decides the question of whether the daughter
must fulfil the pledge of the deceased mother to make the pilgrimage
by referring to a law applicable to an analogous case, namely, that the
heir must indeed redeem the liability of the testator. Hence it follows
that the Prophet considered legal decisions, passed on the basis of
analogical reasoning, as justified².

Another passage is in *Kitāb al-buyū'* no. 103. There, it is the question
of whether or not a Muslim may engage in the sale of wine. بلغ عمر ان
فلانا باع خمرا فقال قاتل الله فلانا الم يعلم ان رسول الله صلعم

¹ Many passages are collected in al-Sha'rānī, I, p. 64-91.

² al-Qasṭallānī, X, p. 370.

'Umar de- قال قاتل الله اليهود حرمت عليهم الشحوم فاجملوها فباعوها
cides this question by referring to an analogous decision of the Prophet.
From the fact that the Prophet reproved the Jews for trading in food
prohibited to them, 'Umar follows that no trade in illegal produce
(in this case wine) is permitted.

Also, other legal decisions of the *aṣḥāb* are cited by the analogists
as evidence that the highest Islamic authorities applied analogy in
their legal decisions¹. 'Umar, 'Alī, and Zayd b. Thābit — so the
analogists relate — decided the following, and other legal ordinances
on the basis of *qiyās*: the inheritance claims of a testator's grand-
father over the other heirs; the liability of compensation of a person
who has violated the interdiction of shedding blood in the sacred
108 territory by killing a rabbit during the pilgrimage; the interdiction
of bartering different qualities of fruit belonging to the same class;
the amount of compensation which a person must pay who has knocked
out a tooth of his fellow-man. The opponents of analogy, however,
do not recognize the data which support these facts as genuine or
sufficiently documented traditions, so that Ibn Ḥazm devotes much
zeal to their refutation.

"A companion is represented to have said that the grandfather and
the brothers of the testator are like two channels branching off from
one and the same river; another person is supposed to have compared
the degree of relationship to two branches of one and the same tree.
Therefore, God supposedly favours the companions' disposition
towards such a deduction. How conclusive is the branching off of
channels, or are the branches of a tree, with regard to a grandfather's
claim to inheritance over the inheritance claim of the testator's
brother whether the former inherits one sixth or one third, or whether
he is the sole heir? Everyone must understand this, but how much
more the person who, as far as reason and intelligence are
concerned, was the most perfect man among the people next to
the Prophet! These accounts are nothing but false news, fabricated
by the exponents of analogy for their parrots among whom the accounts
were widely circulated afterwards"².

In the same spirited vein, Ibn Ḥazm rejects all arguments of the

¹ Fakhr al-Dīn al-Rūzī, one of the zealous proponents of *qiyās*, quotes in the many
passages of the *Mafātīḥ* concerned with the apology of *qiyās* still other traditions which
are not part of the *Ṣaḥīḥs*; cf. also al-Qasṭallānī, III, p. 421.

² *Ibtāl*, fol. 3b.

analogists which they derived from alleged traditions, but, because of insufficient documentation and the impossibility of the statements in question, he rejects in particular the proof of spuriousness that is based on the rules of the science of tradition. For the comprehensiveness of our material, I have included the pertinent passages from Ibn Ḥazm's *Ibtāl al-qiyās*, from which al-Sha'rānī, on his part, seems to have drawn, in Supplements I-III, too.

Even scholars of the schools of *qiyās* have often challenged the authenticity of those traditions and accounts from which their fellow-partisans used to derive justification for *qiyās* as a legal basis. Indeed, even concerning the famous Mu'ādh tradition (see above p. 9), but still more, as regards the alleged circular from 'Umar to al-Ash'arī — the main pillars of the exponents of *qiyās* — many scholars of the school of *qiyās* do not express any more favourable opinions than Ibn Ḥazm, the enemy of *qiyās*, and his Zāhirite followers¹. For them, the canonical support of the validity of *qiyās* is the tacit consensus of the companions of the Prophet with regard to the legality of this legal source. Since in that patriarchal epoch of Islamic law, too, every companion passed judgement on obscure questions on the basis of individual analogy without the other companions' raising objections to this procedure, the position of *qiyās* in the oldest consensus of the Islamic religious authorities was decided in their favour².

¹ *Waraqāt*, fol. 46b.

² *Ibid.*, fol. 46a: واجود الطُّرُقُ في اثبات القياس التمسك باجاء الصحابة عليه فانهم لما اختلفوا اخذ كل واحد بما رآه عنده قياسا صحيحا ولا ينكر بعضهم على بعض وذلك دليل على اجاعهم على القياس في الشرعيات.

CHAPTER EIGHT

(1)

The material at the disposal of the researcher for a clear exposition of the history and the influence of the Zāhirite school is scarce indeed. Since we do not possess *ṭabaqāt* of the scholars of this legal school, we lack some of the best resources for studies on the history of the Zāhiriyah.

It seems that Muslim historians did not attach much importance to Dāwūd's reaction against the prevailing method of the canonical law. Abū al-Fidā' is the only one among them who treats Dāwūd's teachings in some detail. In Abū al-Fidā's works we find at least a short analysis of the Zāhirite system illuminated by a concrete example¹. Al-Mas'ūdī², a writer who, in other instances, exhibits an open mind and a profound interest for everything important for cultural history, and later Ibn al-Athīr³ — the latter merely under the heading "miscellaneous events" — simply list the death of the founder of the Zāhirite school under the year 270 without even mentioning a single word of the significance of his teachings and writings. His writings seem to have been completely lost. We do not even find direct quotations from them in later writings. Although Dāwūd's teachings are, at first, still considered an independent system within orthodox Islam (*madhhab mustaqill*) which need be considered for obtaining consensus on a certain question, later, they lose all authority and recognition even in this respect. Scholars who took a lenient attitude toward the Zāhirite school do consider their separate vote in⁴ cases in which the school does not reject the explicit *qiyās* (*al-qiyās al-jalī*), but there are others who do this only in the field of *uṣūl*, excluding the school's deviation in deduced, special legal questions. The famous al-Juwaynī, known by the honorific title Imām al-Ḥaramayn, says, for example, that those who deny *qiyās* cannot even be reckoned among the "learned of the Islamic community" (*'ulamā' al-ummah*) or "the bearer of the law" (*ḥamlat al-sharī'ah*), but must

¹ *Annales Muslemici*, II, ed. Reiske, p. 260.

² *Murūj*, VIII, p. 64.

³ *al-Kāmil*, VII, ed. Būlāq, p. 148 under عِدَّةُ حَوَادِثِ.

simply be equated with the ignorant rabble¹. Already al-Nawawī can state that those who strive for truth and grasp it, are of the opinion that in a case in which Dāwūd raises a tenet which departs from that of the four orthodox schools, this contradiction does not invalidate an existing consensus².

We have at our disposal a number of historical and literary-historical data on the spread and decline of the Zāhirite school which provide us with solid information on the course which the school followed within the fold of the Islamic world. The first spread of the Zāhirite school occurred naturally in Iraq among the circles from which it originated. The learned representatives of the Zāhirīyah whom the compiler of the *Fihrist* (in the year 377) mentions³, and who, still under the influence of the founder and his son, had turned toward the Zāhirīyah, are mostly from Iraq. To the names which Ibn al-Nadīm lists as the representatives of this school in the first century of its existence, some others can be supplemented: 'Abd al-Mu'min b. Ṭufayl al-Tamīmī al-Nasafī⁴ (d. 346), famous for his piety, is mentioned as Dāwūd's pupil — and explicitly as Zāhirī; Abū al-Maḥāsin calls the Baṣran 'Abd Allāh b. 'Alī al-Wardīrī, who held office as qāḍī (d. 375), the "shaykh of the *ahl al-zāhir*"⁵. Other representatives are listed by name in al-Sam'ānī in the account included as Supplement no. 5 (to which I refer for this purpose). After Dāwūd's death the *madhhab* of the Zāhirīs was led by his son Muḥammad who was not only a theologian — he issued *fatwāhs* — but made himself a name also as poet and *littérateur*⁶. From the fact that the author of the *Fihrist* uses the following words: "On him fell the position of leader of the Dāwūdīs in his time" in a note about the Zāhirī Ibn al-Mughallis, we can conclude that after the death of Muḥammad the position of leader of the young Zāhirī community was always renewed.

¹ Cf. on this question in detail *Tahdhīb*, p. 239 ff.; p. 237: *بِخِلَافِ (داود) سَائِرِ (بِخِلَافِ) نَفَاتِ الْفِيَّاسِ* of the edition is to be corrected to *وسائر*.

² Commentary on Muslim, IV, p. 416: *فَالْحَقِّقُونَ يَقُولُونَ لَا يُعْتَدُّ بِهِ (يعنى) بقول داود) لاختلاله بالقياس وهو احد شروط المجتهد الذي يُعْتَدُّ بِهِ*.

Cf. to the expression *يعتد في الاجماع*: *Tahdhīb*, p. 791, 6 ff.

³ *Fihrist*, I, p. 216-219. Cf. G. Flügel, *Über Muhammad ibn Ishāk's Fihrist al-'ulūm*, p. 615.

⁴ *Ṭabaqāt al-huffāz*, XI, no. 63.

⁵ Quatremère, *Histoire des Sultans Mamlouks*, l.c., p. 270.

⁶ al-Sam'ānī, no. 2.

From Iraq the Zāhirite school spread by means of students from all countries to other parts of the Islamic world. Certainly Dāwūd himself had to reply to theological enquiries from the most remote countries. Collections of replies to enquiries from Iṣfahān and Khwārizm are enumerated among his works¹. The inducement for these expert opinions seems to indicate that Dāwūd's authority stood in high esteem in Central Asia already during his lifetime. From Iraq the Zāhirite school seems to have spread to Iran where Shīrāz, especially, was a centre of the Zāhirīs². A remark in Yāqūt, which is not entirely clear to me, seems to indicate that around Shahrzūr about 341 the fanatical observance of "the literal meaning of the texts" gave reason for killings and looting³.

Already in the early phase of the Zāhirite school, some followers of Islamic theosophy⁴ joined in *fiqh* the school of Dāwūd which categorically dismissed servile imitation of one particular ritual sect. In the course of our exposition we shall become more acquainted with this phenomenon. The first mystic among the Zāhirīs seems to have been the Baghdādī Ruwaym b. Aḥmad Abū Muḥammad (d. 303)⁵. Among his pupils we find the Shīrāzī Muḥammad b. Khafīf b. Isfikhshād al-Dabbī (d. 371 at the age of more than a hundred years) whose teacher in *fiqh* was the Shāfi'ite Ibn Surayj. I suspect that this "Shaykh of the Sūfis in the cities of Fāris"⁶ was not without Zāhirite velleity. I by no means conclude this from the descriptions of this scholar as the sources at my disposal suggest, namely, that he was one of the most learned *shaykhs bi-'ulūm al-zāhirīyah* (Yāqūt; *al-zāhir*, Ibn

¹ *Fihrist*, p. 217, 18. Cf. above, p. 28.

² Abū Ishāq al-Shīrāzī (d. 476) *Ṭabaqāt*, in Rifā'ah Beg al-Taḥṭāwī (a learned Cairene civil servant who died in 1873) in his work *القول السديد في الاجتهاد والتجديد* (Cairo, Wādī al-Nīl Press, 1287, p. 16. This work, written from the classic Islamic point of view, has appeared as scholarly supplement to the pedagogical review *Rawḍat al-madāris*, year 1, no. 6.

³ Yāqūt, III, p. 340: *وقد كان اهل نيم ازراى وقعوا باهل هذه المدينة وقتلوه وسلبوه واحرقوه بالنار للعصبية في الدين ظاهر الشريعة*. These words are not quite clear. Does it say in this passage that the inhabitants of Nim Azrāy, because they followed the literal meaning of the law, murdered and robbed the infamous neighbours, or did the inhabitants of شيز follow the "external sense of the law"? By the way, they are designated as Shī'ites.

⁴ *Theosophie*, see p. 37, n. 2).

⁵ Abū al-Maḥāsin, *Annales*, II, p. 198.

⁶ Yāqūt, III, p. 350.

al-Mulaqqin). This is not the normal way to indicate a scholar's affiliation with the Zāhirite school¹. Rather, this must be interpreted that the mystic, who had specialized, above all, in the science of the interior (*ilm al-bāṭin*), was at home also in "the science of the exterior", i.e. in *fiqh* and its branches. That Muḥammad b. Khafif was inclined towards the system of the Zāhirīs which, in his case, as companion of Ruwaym, cannot be suspected from the outset, I conclude from a piece of information about his attitude in ritual matters. One of his biographers happens to relate that in his old days he could no longer stand and was forced to perform his prayers in a sitting position. This induced him to perform twice the number of the prescribed obligatory bowings (*raka'āt*) at each prayer, for it says in the tradition that the prayer of a person sitting has only half the value of a person standing up. Muḥammad b. Khafif interprets this tradition literally, contrary to ordinary practice²; this is typically Zāhirī.

Al-Maḥdisī, the geographical writer with profound theological interest, supplies us with some very valuable pieces of information on the spread and influence of the Zāhirite school in the fourth century. We gather from his description that not only did learned men espouse the Zāhirīyah, but that this legal school had followers among the ordinary people, too, and that the sect formed a closed society and made propaganda to spread its teachings³. At that time, the Zāhirīyah was not what it became later, a weak fad of individual theologians who opposed the legal recognition of *qiyās* theoretically, rather it was a wide-spread religious party which had in its midst scholars who possessed an endeavour for influence and spread, who were bent on enlarging the influence and scope of the sect. It was especially wide-spread and influential in Iran. There, its adherents were called to administrative positions and judgeships; its theologians taught and provided scientific substantiation for the *madhhab*⁴. Its most out-

¹ Although we also find علم الظاهر with this meaning, Abū al-Maḥāsīn, II, p. 279, 6.

² Ibn al-Mulaqqin, fol. 108b: وضعف في آخر عمره عن القيام فجعل بدل كل ركعة من اوراده ركعتين قاعدا للخبر صلاة القاعد على النصف من صلاة القائم، قلت الخبر محمول على غير المعذور.

³ al-Maḥdisī, p. 37.

⁴ *Ibid.*, p. 439, 11; cf. p. 441, note (a). In this passage *ahl al-ḥadīth* seems to indicate followers of Aḥmad b. Ḥanbal.

standing representative in Khurāsān at that time is the Dāwūdī *qāḍī* Abū al-Qāsim 'Ubayd Allāh b. 'Alī al-Nakha'ī (d. 376)¹. He was a pupil of Maḥāmīlī who is mentioned among the few people who, although not agreeing with Dāwūd's tenets, recognized them, nevertheless, as valid expressions of the Islamic spirit². From Iran the sect seems to have spread to Sind³ — where, as it were, there prevailed juridical principles in harmony with those of the Zāhirīyah — and to 'Umān⁴. In Sind the *qāḍī* Abū Muḥammad al-Manṣūrī is mentioned as excellent representative of the Zāhirīyah; he spread this legal school through verbal teaching and through a number of writings. There was no trace of the Zāhirīyah in Syria⁵; and also in al-Maghrib, where the two analogical schools of Abū Ḥanīfah and Mālik prevailed, and where there were considerable antipathies towards al-Shāfi'ī's legal branch, the influence of the traditional branch which rose to prominence later, does not seem to have been anticipated⁶. Of great interest are the terse but fitting character descriptions made by the excellent observer of the Zāhirite customs. They possess — so he says — four characteristics: pride, sensitive irritability, talkativeness, and ease⁷.

We have just seen that al-Maḥdisī, who notes the existence of the Zāhirīyah in the different countries, does not find a trace of it in Andalusia and especially not in al-Maghrib. Its spread to these Islamic provinces belongs indeed to a later period. But already in the fourth century we find in Andalusia one important representative of the Zāhirite school, chronologically the first to be verified in al-Maghrib. He is Mundhir b. Ziyād al-Ballūṭī (d. 355) the chief *qāḍī* of Córdoba, famous for his energy and love for justice. In public practice he applied Mālik's system — after all, the judge had to dispense justice according to the prevailing legal code — but in his private attitude and in his family affairs he was guided by the system of Dāwūd ibn 'Alī whose tenets he also upheld in scholarly endeavours. It is reported that Mundhir collected the works of the founder

¹ al-Sam'ānī (Supplement, V).

² *Tahdhīb*, p. 237.

³ al-Maḥdisī, p. 481, 8.

⁴ *Ibid.*, p. 96, 10.

⁵ *Ibid.*, p. 179, 20.

⁶ *Ibid.*, p. 236 f.

⁷ *Ibid.*, p. 41, 5.

of the Zāhirite school¹ and that he also defended the tenets contained in them against rival attacks². It follows from this that indeed at that time the teachings of the Zāhirīyah were considered among the theological investigations in Andalusia, for, how else, could Mundhir have indulged in apologetic activities in the interests of the sect? It follows also that statements of the historian of the Almohad dynasty, 'Abd al-Wāḥid al-Marrākushī, that there had been no famous representatives of the Zāhirīyah before Ibn Ḥazm³, are not reliable.

One may say that the countries of western Islam were the most fertile ground for the spread of these teachings. It is true that the inhabitants of these countries professed to belong to the analogical schools of Islamic theology, but the victory of Mālikite jurisprudence brought to them those men who had strayed only very little from the ground of strict traditionalism. Al-Maqqdisī characterizes the theological branch of the Andalusians with these words: "There, Mālik's legal school prevails, and Nāfi's way of Koran recitation; they say: 'We recognize only the Book of God and the *Muwatta'* of Mālik'. If they meet a person who follows Abū Ḥanīfah or al-Shāfi'i, they banish him"⁴. Thus they kept exclusively to the traditional Islamic sources, as did the Zāhirīyah, which movement they resemble in their intolerance towards other *madhāhib*. Consequently, western Islam exhibited more interest and inclination for the study of the traditions than the East which was inclined towards juridical and philosophical speculation⁵. Pious veneration for the collections of traditions exhibited stronger external forms in al-Maghrib than in the eastern Islamic provinces. Still in the eighth century A.H. a Maghribi noble copied in his own handwriting the six famous collections of the canonical traditions which were carried in a great parade on the *Mawlid* festival behind the alleged Koran of 'Uthmān⁶. Connected with this

¹ al-Maqqarī, I, p. 474.

² *Ibid.*, II, p. 116. Ibn Ḥazm, *Kitāb al-milal*, I, fol. 130a, cites Mundhir's opinion that the *aflāk* (spheres) are not identical with the heavens. Ibn Ḥazm argues and refutes this opinion in his accustomed manner.

³ *The history of the Almohads*, ed. Dozy, p. 35, 3.

⁴ al-Maqqdisī, p. 236.

⁵ al-Maqqarī, I, p. 465.

⁶ See Bargès, *Tlemcen*, p. 382; 433. The same reverence for the works on tradition has been perpetuated in the Maghrib until most recent times. Höst, *Nachrichten von Marokkos und Fes*, p. 238, relates the following: "Whenever Mawlāy Ism'īl really wanted to achieve something with his army, he had this book (al-Bukhārī) accompany them to the field in procession and with great pomp, just as the Arc of the Covenant

is the fact that in North Africa an oath sworn on al-Bukhārī's collection of traditions is considered most sacred¹.

Much credit for establishing a sense of fidelity towards the traditions must be attributed to the famous Koranic commentator Baqī b. Makhlad² al-Qurṭubī. This great commentator did not join any one of the current *fiqh* branches of his time (he died 276), but based his legal deductions exclusively on the traditions. In other words, he followed the principle brought to prominence by his 'Irāqī contemporary Dāwūd. The *ahl al-ra'y* were quite enraged about this, but the favour of his sovereign, Muḥammad b. 'Abd al-Raḥmān, compensated him for the hatred of the guild³. It is easy to understand that Ibn Ḥazm⁴ has high regard for Qurṭubī, that he hails his commentary as an unsurpassed masterpiece, and that he prefers his commentary to the great exegetical work of al-Ṭabarī. Ibn Ḥazm praised Qurṭubī especially because he proceeds according to the intentions of the traditions; incidentally, Ibn Ḥazm considers Qurṭubī's legal interpretation as the one that approaches most closely that of Aḥmad b. Ḥanbal.

(2)

We can consequently claim that, although the exclusive manner with which Ibn Ḥazm wanted to help the rigid traditionalism of the Zāhirite school to victory met determined opposition in Andalusia, it was, on the other hand, precisely the specific manner of Andalusian Islam which was the actual prerequisite for developing a theological personality like 'Alī b. Aḥmad Abū Muḥammad Ibn Ḥazm. Among the champions of the Dāwūdī school this remarkable man is known as the most famous by far. Those of his works that have reached us represent for us the theological literature of the Zāhirite school.

in the Old Testament. This is still practised. The book is always kept in a beautiful container and has its own little tent in which it is placed near the king".

¹ Walsin Esterhazy, *De la domination turque dans l'ancienne regence d'Alger*, p. 213, 222.

² Cf. *Muhammedanische Studien*, II, p. 190, n. 4). Bāqī b. Makhlad al-Qurṭubī's *Tafsīr* is only known from citations.

³ al-Maqqarī, I, p. 811-812.

⁴ Cf. *Ṭabaqāt al-ḥuffāz*, X, no. 2; *Ṭabaqāt al-mufasssīrīn*, ed. Meursinge, no. 25; al-Maqqarī, *l.c.*

Except for a few passages from the *Muḥallā*, none of Ibn Ḥazm's works on *fiqh* has come down to us, not even the one in which he developed his position in relation to the prevailing methods of legal deduction. This is a work to which he refers often in his surviving main work ¹. We are to some extent compensated for this by his tract *Ibṭāl al-qiyās wa-al-ra'y wa-al-istiḥsān wa-al-taqlīd wa-al-ta'līl* in which he discloses in a sharp manner his polemic position against the *qiyās* schools and their methodology. Ibn Ḥazm took a free, independent stand in the practical conclusions of the *Zāhirite* school ², and in some questions he disregarded even Dāwūd's arguments ³. Ibn Ḥazm's followers, who were found predominantly in al-Maghrib, formed consequently a separate division among the *Zāhirite* legal branch, differentiated from the main line of the *Zāhiris* by the special name of al-Ḥazmīyah ⁴. This is how it must be interpreted if it is said of some followers of the *Zāhirite* school that they follow it according to the manner of Ibn Ḥazm (*'alā tarīqat Ibn Ḥazm*). He demanded consistent application of those principles which Dāwūd had established before being compelled to come to a compromise with *qiyās* ⁵. We have previously seen (p. 32, n. 1) the kind of sophism employed by Ibn Ḥazm to incite scepticism even with regard to *ijmā'* — a legal source to which he appeals on innumerable occasions. Then too, and this was his own idea, he was *the first to apply the principles of the Zāhirite school to dogmatics*. The latter point is the dominant concept of the *Kitāb al-mīlāl wa-al-niḥāl*. In this work, we also find points of direction for an understanding of Ibn Ḥazm's concepts of the basic questions of canonical law. In this important work, he concludes his exposition of Muḥammad's prophetic mission with thanksgiving to God

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¹ *al-Iḥkām fī uṣūl al-aḥkām*, Ḥijjī Khalīfah, I, p. 176, no. 165. With regard to the question الغائب على الشاهد على الاستدلال Ibn Ḥazm refers to it vol. I, fol. 201b; vol. II, fol. 69a on من لم يبلغه الدعوة هل هو مكلف.

² Muslim scholars generally refer to Ibn Ḥazm as the authority for the admissibility of the use of musical instruments and toys (آلات اللهو واللعب).

³ Ibn Khaldūn, *Muqaddimah*, p. 373: وصار الى مذهب الظاهر ومهر فيه باجتهاد زعمه فى اقوالهم وخالف امامهم داود.

⁴ Ibn al-Athīr, XII, p. 61: وكان بالمغرب منهم خلق كثير يقال لهم الحزمية: وفسدوا الى ابن حزم.

⁵ See above p. 35.

"firstly for what we have achieved through His help with regard to the Islamic religion; secondly, for His assistance through the orthodox (literally: catholic, corresponding to total agreement) faith based on the *sunnah*; then, thirdly, for His teaching us to determine our religious confessions and our daily lives according to the *literal meaning* of the Koran, and the *sunnah* of His Prophet which undoubtedly originates from its extolled Sender. <Furthermore, he expresses thanks to God> that He did not have us belong to those who blindly follow their ancestors, and their learned authorities without important evidence and without conclusive agreement, neither to those who follow their erroneous whims which are in opposition to the words of God and His Prophet, nor to those who judge according to their *ra'y* and their personal opinion without guidance from either God or His Prophet. O God, just as we have started with this glorious blessing, continue it (until the end of our time), let it accompany us, and do not deprive us of it until You call us to You so that we adhere to it in order to appear before You not as forger and twister of Your law" ¹.

120 In a different passage, when dealing with the question whether God Himself creates the actions of men (*khalq al-af'āl*), Ibn Ḥazm demonstrates how the school of the Mu'tazilites tinkers with those Koranic verses that are generally cited in support of the old orthodox teachings. Then also *sūrah* LIV:49 is discussed (*innā kull shay' khalaqnāhu bi-qadar*), a phrase which the Mu'tazilites will not recognize as a general, comprehensive statement (*'umūm*); rather, they consider it as relating to a certain specific fact (*takhṣiṣ*) according to the familiar treatment of such Koranic passages in which, as in the foregoing one, a statement is introduced by a generality (e.g. in this case, *kull shay'*). Al-Ash'arī, too, permitted this kind of scriptural interpretation, and he defended it, so it seems to me, in the special writings *Fī inna al-*

¹ *Kitāb al-mīlāl*, I, fol. 127a: والحمد لله رب العالمين عدد خلقه ورضى نفسه وزنة (وربة) عرشه ومداد كلماته على ما وقفنا له من الملة الاسلامية ثم على ما يسرنا عليه من النحلة الجماعية السنية ثم على ما هدانا له من التدين والعمل بظاهر القرآن وبظاهر السنة الثابتة عنه صلعم عن باعته عز وجل ولم يجعلنا ممن تقلد اسلافته واحباره دون برهان قاطع وحجة قاهرة ولا ممن يتبع الاهواء المضلة المخالفة لقوله ولقول نبيه صلعم ولا ممن يحكم برأيه وظنه دون هدى من الله ورسوله، اللهم كما ابتدأنا بهذه النعمة الجليلة فأتّمها علينا وأصحبنا أيها ولا تخالف بها عنا حتى تقبضنا اليك ونحن مستمسكون بها فنلقاك بها غير مبدلين ولا مغيرين اللهم آمين رب العالمين.

qiyās yukhaṣṣiṣu ṣāhir al-Qur'ān and *Kitāb fī al-akhbār wa-takḥṣīṣihā*. I, for my part, translate the latter title not as Spitta did “*Über die traditionen und ihre speciele eigenthümlichkeit*”¹ (On traditions and their particular characteristics), but “*Über die Traditionen und ihre Spezialisierung*” (On traditions and their specialization). The question of ‘*umūm* and *khuṣūṣ* is known to be important both for the interpretation of the Koran and the traditions, and for jurisprudential and dogmatic chapters of Islamic theology. Can a generality in the Koran be deprived of its universal applicability and its interpretation be restricted to a specific case? What is the basis for the permissiveness or the outright necessity of such specification? Can a saying from the traditions, can analogical reasoning justify the specific application of a generality derived from the text? Does the form of the expression in itself necessarily offer a criterion for a general interpretation of a verse, or not? — These and related questions and their relation to this chapter of exegetic methodology are dealt with in considerable detail in the *uṣūl* works. Some theologians have put the axe to the root of the whole investigation by saying that the linguistic expression simply does not offer ‘*umūm* at all; language does not have any form which in itself should always be interpreted as being universally applicable. If a statement is intended to have universal applicability, then evidence independent from the linguistic expression must be supplied to show that the statement in question does not refer to a specific case. Al-Ash‘ari is cited as the leading exponent of this opinion, the adherents of which are called *al-muwāqifīyah*².

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Ibn Ḥazm joins those who find in this exegetic principle an unjustifiable arbitrariness and he refutes this with his customary strong language. He is probably enlarging on ideas laid down by Dāwūd

¹ Spitta, *Zur Geschichte Abu-l-Ḥasan*, p. 63, no. 4; p. 64, no. 12.

وحكى عن الشيخ ابى الحسن الأشعري أنه قال *Waraqāt*, fol. 18a: ليس للعموم صيغة في لغة العرب وحكى عنه ان هذه الصيغة (الصيغة) بالالف واللام والاسماء المبهمة كمن يعقل وما فيها لا يعقل واى في الجميع واين في المكان ومتى في الزمان وما في الاستفهام ولا في النكرات] مشتركة بين العموم والخصوص فيجب التوقف عند ورودها حتى يُعلم المراد بدليل منفصل وتبعه جماعة من اهل الاصول في هذا المذهب فسّموا الواقعية لتوقفهم في المراد بهذه الصيغة عند الاطلاق.

al-Zāhiri in a work known to us by its title only¹. Ibn Ḥazm emphasizes the exegetic law that runs exactly counter to the canon of the Ash‘arites; namely, that every Koranic statement must be interpreted as having general applicability unless, of course, another passage abrogating the general validity, justifies its particular application to a specific case. The schools of *qiyās* — without paying homage, to al-Ash‘ari’s destructive exegetic principle — are precisely the ones who, in their interpretation of the laws, be it from Koranic or traditional texts, (laws which are interpreted by the followers of the Zāhirite school as commands of general applicability) interpret them as being occasioned by a special, individual, or accidental case, and to be applied to this case only. At times they are led to such interpretations by mere analogical reasoning, according to the principle: *al-qiyās yukhaṣṣiṣu al-naṣṣ*. Ibn Ḥazm recognizes in this a threat to the reliability of legal deductions: “If it were possible”, he says, to “delimit a generality to something specific, or even to abrogate a traditional law, then the definite truth of none of the transmitted divine statements and laws could be determined, for the possibility could never be excluded that someone would cancel the general validity, contrary to the clear wording, and in opposition to the general version of the law. This, however, is pure sophistry, it is disbelief and foolishness. May God protect us from misguidance!”². This is connected with Ibn Ḥazm’s exegetic canon, repeated emphatically in many parts of his major work, namely, that “it is the duty to interpret God’s word literally. This may be abandoned only when another written word of God, or the consensus (of the companions of the Prophet) or a compelling fact based on logical conclusion³ supplies conclusive evidence that a particular word of God should not be understood literally. The word of God and communications and laws issued in

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¹ *Fihrist*, p. 217, 14: كتاب الخصوص والعموم.

بل كلّ عموم فعلى ظاهره حتى يقوم برهان *Ibn Ḥazm, ibid.*, fol. 193b: بأنه مخصوص او أنه منسوخ ولو كان غير هذا لما صحّت حقيقة في شيء من اخبار الله تعالى ولا صحّت شريعة احدا لانه لا يعجز احد في كلّ امر من أوامر الله تعالى وفي كلّ خبر من اخباره عزّ وجلّ ان يحمله على غير ظاهره وعلى نقض (بعض) ما يقتضيه عمومه وهذا عين السفطة والكفر والحاقة ونعوذ بالله من الخذلان.

³ ضرورة حسّ In another passage (fol. 195a) in which this canon is repeated, it says instead of these words: ضرورة عقل “logical necessity”.

123 His name are not subject to change; the consensus does not claim anything but the truth, and God says nothing but the truth, but whatever is refuted on the basis of conclusive evidence challenges the truth". By "conclusive evidence", it must be admitted, Ibn Ḥazm does not understand speculative arguments. As we shall see, in both disciplines of theology, in jurisprudence as well as in dogmatics, he is leading a continuous battle against the introduction of speculative points for settling theological questions. Let us add that Ibn Ḥazm enunciates the afore-mentioned canon on the occasion of his exposition on the nature of divine *knowledge*. This is directed particularly against those dogmatists who separate knowledge as an attribute of God from the essence of God and who, in support of their argument, quote *sūrah* II:256: "They comprehend nothing of *His knowledge* except what He wills". They conclude from this that God's knowledge is divisible, therefore a created accident. As against this, Ibn Ḥazm puts the explanation of the literal meaning of the words *min 'ilmih*: "knowledge about him" (*genitivus objectivus*), in other words, "man can know about and comprehend God's nature only as much as God Himself permits for their comprehension ¹. We can see from this that

فان اعترض معترض بقول الله عز وجل ولا يحيطون بشيء من علمه الا بما شاء فقال ان من للتبعيض ولا يتبعض الا مخلوق ولا يحاط الا بمخلوق محدث وقد نص الله تعالى على انه يحاط بها شاء من علمه فوجب ان علمه مخلوق لانه محاط ببعضه وهو متبعض فالجواب وبالله تعالى التوفيق ان كلام الله تعالى واجب ان يحتمل على ظاهره ولا يحال عن ظاهره البتة الا ان ياتي نص او اجماع او ضرورة حس على ان شيئا منه ليس على ظاهره وانه قد نقل عن ظاهره الى معنى اخر فالانقياد واجب علينا لما اوجبه من ذلك النص او الاجماع او الضرورة لان كلام الله تعا واخباره واوامره لا تختلف والاجماع لا ياتي الا بحق والله تعالى لا يقول الا الحق وكل ما ابطله برهان ضروري فليس بحق فاذا هذا كما قلنا ضرورة وقد ثبت ان علم الله تعالى ليس عرضا ولا جسما ولا هو شيء غير الباري عز وجل فبالضرورة نعلم ان معنى قوله عز وجل ولا يحيطون بشيء من علمه انما المراد العلم المخلوق الذي هو عرض في العالمين من عباده وهذا لا شك فيه لانه لا علم لنا الا ما علمنا قال الله عز وجل وما اوتيتهم من العلم الا قليلا يريد تعالى ما خلق من العلوم وبثها في عباده.

¹ Vol. I, fol. 143b: فان اعترض معترض بقول الله عز وجل ولا

124 what Ibn Ḥazm calls the literal meaning of the scriptural text is often no more literal than what he dismisses as departure from the literal textual meaning, and that, in these matters, it is often a question of exegetic taste only.

Very closely connected with this, his canon, is what we actually must consider its pre-requisite; namely, Ibn Ḥazm's principle that the words used in the legal texts must be interpreted strictly according to their *lexically defined meaning*. "Whoever makes any changes in the established sense of the words used in the language without a scriptural text or without the agreement of all legal authorities justifying this, has renounced the rules of sensible and humble men and has entered the company of those with whom one cannot speak. If this were possible, indeed, it could easily be said: What is ordinarily meant (in religion) by the word *prayer* is not what you usually understand by it, rather, it is something entirely different, and that the word *water* means *wine*. This, however, would entail abolition of all truth". Also, in this instance, he emphasizes that it is prohibited to change the meaning of the word on the basis of one's own *ra'y* ¹. It goes without saying that this lexicographical argument is applied especially in dogmatic polemics in which it is often a question of minute squabbles. Ibn Ḥazm advances, for instance, the lexicographical argument with almost the same above-mentioned words against those Mu'tazilites who want to give to the expression *adalla* an interpretation differing

Cf. fol. 169a for his refutation of those theologians who do not want to recognize *sūrah* LXXV:22 ناظرة ... الى ربها ناظرة ... وجوه as proof that the righteous people shall see God in the hereafter because they interpret the word *nāzīrah* metaphorically: وحمل الكلام على ظاهره الذي وضع له في اللغة فرض لا يجوز تعديته الا بنص او اجماع لان من فعل غير ذلك افسد الحقائق كلها، والشرائع كلها والمعقول كله.

ومن احال شيئا من الالفاظ اللغوية عن موضوعها ¹ Fol. 179b: ومن احال شيئا من الالفاظ اللغوية عن موضوعها في اللغة بغير نص محيل لها ولا باجماع من اهل الشريعة فقد فارق حكم اهل العقول والحياة وصار في نصاب من لا يتكلم معه ولا يعجز احدا ان يقول الصلاة ليست ما تعنون بها واتما هي امر كذا والماء هي الخمر وفي هذا بطلان الحقائق كلها فليس لاحد ان يصرف هذه اللفظة (الاستطاعة) عن موضوعها في اللغة برأيه من غير نص ولا اجماع ولو جاز هذا لبطلت الحقائق ولم يصح تفاهم ابداء.

Cf. fol. 180a.

from the generally accepted one in order to evade the idea that God leads mankind astray. (This expression is repeated again and again in the Koran concerning God's relation to man). وقال بعضهم معنى ذلك ان الله تعالى سماهم ضالين وحكم انهم ضالون وقال بعضهم معنى اضلهم اتلفهم كما تقول اضلت بعيرى "This is the correct *ḍalāl*, namely, that their obstinacy, their blind adherence to a principle the falsehood of which is clear, and their servile following of bad authorities among their ancestors leads them to pretend to be unable to understand what it is: misguidance, seizure (of the disbelievers's hearts). God has explained all this in sufficient detail — and then these are, after all, Arabic words of known meaning, in the language of the Koran. No one is permitted to apply linguistic meaning to something else, etc." ¹.

120 It would lead too far if we were to produce an extensive anthology of passages in order to better illuminate this lexico-theological principle of Ibn Ḥazm. The principle ought to have become evident from what has been quoted above. However, before we start to present the Zāhirite basis of Ibn Ḥazm's dogmatics, we want to allow for an observation that belongs in this context. His judging the literal sense of words that enter theological questions does not start from the same point of view as does the lexical assessment of a given word among linguists. In determining the scope of any expression the consideration is not how the meaning can be documented from the old poets, the classical authorities of Arabic, rather what meaning follows from the linguistic usage of the Koran. The former cannot be cited in support of defining dogmatic terms. Among the passages in which Ibn Ḥazm expresses this idea the most remarkable is the one in which he treats the definition of the concept of *īmān*, *faith*. The representatives of the different dogmatic schools differ in their opinions with regard to the scope of this the most important principle of all dogmatics. Some

¹ Fol. 189b: كلٌ ميسرٌ فيبين عليه الصلاة والسلام (that is, in the sentence: لما خلق له) ان الهدى والتوفيق هو تيسير الله تعالى المؤمن للخير الذى له خلقه وتيسيره الفاسق للشر الذى [له] خلقه وهو موافق للغة والقرآن والبراهين الضرورية العقلية ولما عليه الفقهاء والائمة المحدثون من الصحابة والتابعين ومن بعدهم وعامة المسلمين حاشى من اضله الله على علم من اتباع العيارين الخلقاء كالنظام والعلاف وثامة والجاحظ.

people see in *faith* an inner recognition of God (*ma'rifat Allāh ta'ālā bi-qalb*) without consideration for its manifestation in word and action (Jahm b. Safwān al-Samarqandī and al-Ash'arī); according to another opinion, *īmān* consists of professing God with the tongue (*al-iqrār bi-al-lisān*) without consideration for inner belief and external manifestation (Muḥammad b. Kirām al-Sijistānī); still others combine both, inner belief and profession with the concept of *īmān*, but disregard external compliance with the divine laws (Abū Ḥanifah and other jurists). Ibn Ḥazm takes the position that the concept of *īmān* comprises all three points, faith, profession, and actions and that no one deserves the name of believer (*mu'min*) who does not fulfill the three factors of *īmān* which consequently exist in a person to a larger or lesser degree depending on the extent to which these factors are manifested in the individual ¹. Ibn Ḥazm's line of thought in refuting the rival view is briefly the following: the opponents quote as authority 127 the *lughah* in which the word *āmāna* has the meaning: *taṣdīq*. Now however, the meaning of the latter is recognition as truth of no matter what. The Arabs who coined this word had no idea what Islam understood by "faith". Indeed, when Islam first appeared in their history, they rejected Allāh and the Prophet. It is futile to take the *lughah* as an authority in matters of dogmatics. Not the lexicon, but solely God has the authority to determine what is the meaning of the IVth form of the verb *āmāna* in religious affairs; and in textual passages, the divine origin of which everyone must acknowledge, good actions are included in the scope of *īmān*. God is the creator of language and of those who use it; He has the power to change it and to give its expressions whatever turn He wants. How surprising is it that a person should find the usage of a word in prosaic or poetical speech in Imru' al-Qays, or Zuhayr, or Jarīr, or al-Ṭirimmāḥ, or al-Ḥuṭay'ah, or al-Shammākh, or another Arab from the tribe of Asad, or Sulaym, or Tamīm, or other Arab tribes, and then let this usage be the binding, irrefutable rule for the usage of these words; but if God, the Creator of languages and of those who use them, creates an expression, such

¹ *Kitāb al-milal*, II, fol. 1b: الايمان هو المعرفة بالقلب وبالدين والاقرار باللسان والعمل بالجوارح وان كل طاعة وعمل خير فرضاً كان او نافلة فهو ايمان وكل ما ازداد الانسان عمل خير ازداد ايمانا وكل ما عصى نقص ايمانه. Cf. for this fundamental question of Islamic dogmatics the lucid exposition of the source material in al-Ghazālī, *Iḥyā'*, vol. 1, p. 115 ff.

a person would not want to abide by it nor recognize it as evidence, but rather would twist and turn it. He would proceed in exactly the same manner if he found an expression of the Prophet. By God, Muḥammad b. 'Abd Allāh b. 'Abd al-Muṭṭalib b. Hāshim, even in the time before God distinguished him with his mission, and before he became his people's Prophet in Mecca, was in the eyes of anyone who possessed a spark of intelligence more familiar with his people's language and more gifted with eloquence, and more competent in his usage of the language which was to be valid as argument, than the foremost Khindafī or Qaysī, or Raba'ī, or Iyadī, or 'Akkī, or Ḥimyarī, or Thahalānī, or Quḍā'ī. How much more so was this the case after God appointed him warner, and selected him as mediator between Him and all of His creatures, and let emanate from his tongue His word, and entrusted him with preserving it. Is there a graver error than to recognize as evidence for the meaning of rare Arabic words the *hapax legomena* of Labīd b. Rabī'ah, Abū Zayd al-Kalbī, and Ibn Aḥmar¹? Is it wrong for determining the scope of the word *īmān* to adhere to the usage made by God Himself, and by His Messenger from the tribe of the Quraysh who was nursed among the Banū Sa'd b. Bakr b. Hawāzin²? This, then, is how Ibn Ḥazm argued his principle of the differences of lexical and dogmatic linguistic usage. In the field of philology, this view is espoused by the lexicographer and philological teacher Ibn Fāris in one section of his *Fiqh al-lughah*³. Al-Suyūṭī, in an instructive chapter of his philological encyclopaedia which is excellent for the study of Arabic philology, has elaborated upon this view and supplied it with considerable evidence from literature⁴ after, much earlier, the famous al-Jāḥiẓ had given the first incentive for similar investigations in a remarkable excursus in which he, as the first person, explained how new meanings of words developed in this literature through the influence of Islam⁵. The exhaustive treatment of this important chapter of Arabic philology offers so many instructive points also for the religious history of the Arab people, in particular for a comparison of the moral and religious

¹ Here, the relevant verses are cited in detail.

² *Ibid.*, fol. 3b. The concluding sentence seems to be an allusion to the alleged words of the Prophet: *أنا أعرّبكم أنا قرشي واسترضعت في بني سعد بن بكر*. Ibn Hishām, *Leben Muhammad's*, p. 106.

³ Cf. my *Beiträge zur Geschichte der Sprachgelehrsamkeit*, no. 3, p. 17.

⁴ *al-Muḥbir fi 'ulūm al-lughah*, I, p. 151 ff.

⁵ *Kitāb al-ḥayawān*, fol. 58b ff.

concepts of the pre-Islamic Arabs with those of the Muslim Arabs, that it deserves to be treated in detail from the point of view of our philological knowledge. This, however, is not the place for expositions on this field which require independent treatment. Since at this point of our work, we are particularly interested in Islamic *fiqh*, it may be stated that the reality of a difference between the lexicographically determined usage and that recognized by the science of religion, has become generally acknowledged in the latter one. In view of this fact, the following important principle of the '*ilm usūl al-fiqh*' is generally accepted: *حَمَلَ اللفظ على الحقيقة الشرعية مقدم على حمله على الحقيقة اللغوية* i.e. "whenever there is a conflict between the religious linguistic usage and the usage determined lexicographically, then (in jurisprudence) preference is to be given to the former". If in judging controversies the definition of a word's meaning has bearing on the judgement, only the religious, but never the lexicographical linguistic usage is to be considered. The following related example will show that this rule was practised most subtly in the field of applied jurisprudence. With regards to the Islamic law on divorce (*al-ṭalāq*), it may be assumed as known that a marriage is considered finally dissolved (*al-ṭalāq al-bā'in*) only after pronouncement of the divorce formula *three times* in legally defined intervals. After the divorce formula has been pronounced three times, only *taḥṭil* makes a new union of the spouses possible. It is also known that the husband is legally prohibited to carry out the divorce when the woman is menstruating (*al-ḥayḍ*). Now the following question arises: "When one of the three legally required divorce declarations was made while the woman was in the state of *ḥayḍ*, is this declaration counted as valid, or is the view advanced that, since this state stands in the way of the final divorce, the preceding declarations also shall be regarded as null and void"? The four orthodox schools endorse the first decision and say with al-Bukhārī: *idhā ṭuliqat al-ḥā'id yu'taddu bi-dhālika al-ṭalāq*; the Zāhirīyah, on the other hand, and this in agreement with Shī'ite law, decides for the opposite. The tradition, the interpretation of which is important in this controversy runs as follows: 'Abd Allāh, 'Umar's son, declared his wife Āminah divorced when she was in state of *ḥayḍ*. 'Umar, then, questioned the Prophet about the validity of this action. The Prophet decided: "Order him (your son) (*fa-l-yurājji hā*) that he return to her". The lexical usage indicates that the completed act of divorce was declared invalid; *raja'a* means: *to return to that*

place or state in which the person was previously, in this case to the state of not being divorced (*al-raj'ah al-lughawīyah hiya al-radd ilā ḥālīhā*). The jurists, however, say that a return (*rujū'*) is possible only if it is preceded by a divorce, i.e. if the divorce act is considered valid.

130 And indeed, the first and second divorce that precede the *ṭalāq bā'in* are called *ṭalāq raj'ī*. In jurisprudential matters this legal linguistic usage must be preferred over the lexical definition¹.

We must come back once more to Ibn Ḥazm. His fanatical zeal rises to the utmost limits when he refutes the philological line of argument of the school which teaches that *īmān* means no more than pronouncing the formula of the profession of faith. In order to prove this, some one referred to a verse of the Christian Arab poet al-Akḥṭal as *locus probans*. "We, however, reply to this line of argument: cursed, cursed is the author of this line, and cursed, cursed is he who advances this Christian as argument in matters of Allāh's religion. This does not belong to the field of philology in which you may base your opinion on a Beduin even if he be a unbeliever; rather, this is a question of common sense. Reasoning as well as sentient experience proves that that unbeliever has lied. Furthermore, this is a religious question: but in these matters, God, the exalted, is more reliable than that Christian, for God says: 'They say with their lips what they do not believe in their hearts' (*sūrah* III:161). This is in complete opposition to what al-Akḥṭal claims in his verse. But we consider God's saying as truth and say al-Akḥṭal is lying. May God curse him who cites al-Akḥṭal as evidence in order to refute the word of God"². Incident-

¹ *Kitāb al-ṭalāq*, no. 2; cf. no. 44 and with it al-Qaṣṭallānī, VIII, p. 143.

² *Kitāb al-mīlāl*, II, fol. 15b: واحتج بعضهم في هذا بقول الأخطل النصراني لعنه الله .

إن الكلام من الفؤاد وإنما جعل اللسان على الفؤاد دليلاً قال أبو محمد فجوابنا على هذا الاحتجاج أن نقول ملعون ملعون قائل هذا البيت وملعون ملعون من جعل قول النصراني حجة في دين الله تعالى عز وجل وليس هذا من باب اللغة التي تحتج بالاعرابي فإن كان كافراً فإثماً هي قضية عقلية فالعقل والحس يشهدان بكذبه في هذا البيت وقضية شرعية فإثماً عز وجل صادق من النصراني اللعين إذ يقول الله تعالى يقولون بأفواههم ما ليس في قلوبهم فآخبر عز وجل أن من الناس من يقول بلسانه ما ليس في قلبه بخلاف قول الأخطل في بيته المذكور فنحن نصدق الله تعالى ونكذب الأخطل ولعن الله من جعل الأخطل حجة يرد بها قول الله عز وجل وحسبنا الله ونعم الوكيل.

ally, for the history of the controversy of whether *īmān* represents the simple *taṣḍīq*, as it is claimed on the basis of lexicography, or whether this expression of dogmatics implies the actual practice, it is interesting to see how fabrication of traditions penetrates this controversy also, and draws it into its sphere. We find in al-Mas'ūdī¹ a tradition introduced with considerable emphasis according to which the Prophet is represented to have dictated to 'Alī the following: In the name of God, etc. "Faith (*īmān*) is what the heart honors and what is made meaningful by man's religious actions; Islam is what comes from the lips (the literal confession) and by which marriage becomes valid (in so far as it is indispensable for the spouse to be Muslim)": الإيمان ما قرته القلوب وصدقته الأفعال والاسلام ما جرى به اللسان وحلت به المناكحة. The connecting of *taṣḍīq* with *a'māl*, I suspect, is intended to express the combining of the lexical definition with the tenet of the indispensability of the *bona opera*, and this apocryphal, tendencious tradition probably owes its origin to the tendency towards this combination.

b.

In the preceding paragraphs, it was not very well possible to isolate Ibn Ḥazm's point of view in jurisprudence from his dogmatics so that we were consequently obliged to touch the field of dogmatics. But are there really separate *Zāhirite dogmatics* in the same sense as we could speak of a *Zāhirite fiqh*? **The Zāhirite rite is never called anything but madhhab fiqh, that is, a branch of Islamic orthodoxy which differs from the rest of the orthodox schools only in practical jurisprudence.** We do not find the Zāhirite school among the *madhāhib kalāmīyah*. Indeed, when we make a comparative study of the Zāhirite school's known coryphaei of the different periods for their dogmatic point of view, we shall soon find out that the most divergent, diametrically opposed dogmatic branches could be combined as belonging to the Zāhirite *fiqh* school. We find there, for example, next to Ibn Ḥazm, who condemns as heresy the tenet of the existence of divine attributes, al-Maqrīzī who admits the attributes, but only in the sense of the pre-Ash'arite orthodoxy of the *imāms* of the school faithful to the traditions. But al-Maqrīzī, **together with Ibn Ḥazm, reject ta'wīl, i.e. allegorical interpretation of the scripture.** Then, besides

¹ *Murūj*, VII, Paris ed., p. 383. (This footnote is omitted in the 1967 reprint of *Die Zāhiriten*).

the Almohades who, for reasons of the state, had raised the Zāhirīyah to the ruling religious rite — and, at the same time, protected al-Ash'ari's dogmatics — we find once more Ibn Ḥazm who directs his intense enmity more against the system of the Ash'arites than against that of the Mu'tazilites. Therefore we find among the Zāhirīs important representatives of theosophy next to Ibn Ḥazm who rejects Sūfis and the worshippers of 'Alī alike, because of *ta'wīl* which is characteristic for both of them². Can one imagine a more enormous contrast in dogmatics than the literal exegesis aimed at by Ibn Ḥazm and the exegesis which confronts us in the two *tafsīr* volumes by the writer of the *Fuṣūṣ* and the *Futūḥāt* printed in Būlāq³? Common to both of them is only the rejection of the anthropomorphism of God, that is, precisely an aspect which, strictly speaking, separates them from the *zāhir* proper. This phenomenon can serve as a demonstration of the historical endorsement as we find it in Muslim accounts with regard to the school founded by Dāwūd. According to them, his school was simply a *madhhab fiqhī* and not a *madhhab kalāmī*⁴, i.e. a school which adopts a definite attitude only towards the juridical branches within Islam, but is totally indifferent towards *kalām*. Houtsma is therefore entirely wrong when he finds the emphasis of the Zāhirite school in the literal interpretation of the anthropomorphical passages

¹ Dozy, *Essai sur l'histoire de l'islamisme*, transl. V. Chauvin, p. 377 ff.

² *Kitāb al-mīlāl*, II, fol. 140b: واعلموا ان كل من ينتمى الى دين الاسلام وبعده الكفرات الفاحشة التي ذكرنا من دعوى الربوبية فانما عنصرهم التشيع (الشيع) ومذهب الصوفية لان كتي الطائفتين اصحاب تاويلات وخروج عن ظاهر القرآن بدعاويهم الفاسدة ومن قول بعض الصوفية ان من عرف الله عز وجل سقطت عنه الاعمال الشرعية زاد بعضهم واتصل بالله عز وجل. Line 2, cod. *hādhihi*. The emendation incorporated in the text was suggested by Prof. Fleischer.

³ Muslim freethinkers have the custom of citing the following poem by this mystic. It strongly reminds of Abū al-'Alā' al-Ma'arrī and 'Umar Khayyām. I cannot guarantee the authenticity and include it merely as a curiosity from my travel notes:

لَقَدْ كُنْتُ قَبْلَ الْيَوْمِ أَنْكَرَ صَاحِبِي إِذَا لَمْ يَكُنْ دِينِي إِلَى دِينِهِ دَانِي
 وَقَدْ صَارَ قَلْبِي قَابِلًا كُلَّ صُورَةٍ فَمَرَعَى لَغْزَلَانٍ وَذَيْرَ لَرْهَبَانٍ
 وَبَيْتَ لَأَوْثَانَ وَكَعْبَةَ طَائِفٍ وَالْوَاحِ تَوْرَاةٍ وَمَصْحَفِ قُرْآنٍ
 أَدِينُ بِدِينِ الْحَبِّ أَنْتَى تَوَجَّهْتُ رَكَائِبَهُ فَالِدِينِ دِينِي وَإِيمَانِي

⁴ al-Maḥḍisī, p. 37. Ibn Khaldūn, *Muqaddimah*, p. 372.

of the sacred writings¹. Apart from the fact that the Zāhirīs protested energetically against such an exegetic-dogmatic branch, it is precisely not the dogmatic exegesis but their view and treatment of the canonical law that represents their characteristic difference from ordinary Islam. The anthropomorphists belong to quite a different group and must not be confused with the Zāhirīs. This, however, does not exclude our treating of the following question: What was the point of view adopted by the founder of the Zāhirite school in questions of dogmatics which moved the theological consciousness of his time, without this point of view prevailing as one of the characteristics of that school which differed from the other schools only with regard to their *fiqh*? If we were to believe unconditionally al-Shahrastānī's historical presentation in this case, we must claim that, with respect to dogmatics, Dāwūd b. 'Alī adopts a purely passive or, if we want, negative position in agreement with other *imāms* like Mālik b. Anas, and Ahmad b. Ḥanbal. This position is characterized by rejecting both the metaphorical interpretation of the anthropomorphical passages of Koran and *sunnah*, and also by dismissing just as vehemently their literal interpretation in accordance with *tajāsīm* or *tashbīh*, namely, the physical aspects of the divine nature and attributes. No attempt is made to penetrate the meaning of the anthropomorphical expressions, with one word, it represents the position which Mālik b. Anas defines with the familiar words: "God's sitting on his throne is known, but how this is to be understood is unknown; believing this is a duty, questioning it heresy". The *imām* al-Shāfi'ī, too, with his anathema against *kalām*² seems to have belonged to this school³. This method of being altogether cautious in dogmatic questions is called: *ṭarīq al-salāmah*, i.e. the method of *noli me tangere*. This attitude does not take a positive formulated position among the dogmatic controversies

¹ *De strijd over het dogma*, p. 85. Houtsma probably thought to be following Abū al-Fidā', II, p. 260.

² Quite relevant for this fact treated by Spitta (*Zur Geschichte Abu-l-Ḥasan*, p. 52-53, and particularly in the excerpt from the text, p. 124) is al-Ghazālī, *Ihyā'*, I, p. 93 ff. Interesting contributions are also to be found in al-Damīrī, I, p. 14-17, s.v. *أسد*. In these passages valuable material can be found for an evaluation of the position of the old *imāms* with respect to speculative theology.

³ al-Shahrastānī, p. 65; 75. Among these *imāms* it was Ibn Ḥanbal who most forcefully advocated refuting philosophical speculation. Al-Ḥārith al-Muḥāsibī (d. 243), known for his asceticism, was forced to hide from the fanaticism of the Imām and his followers because he was also occupied with questions of *kalām*. Only four persons attended al-Ḥārith al-Muḥāsibī's funeral. Abū al-Fidā', II, p. 200.

of the Islamic schools, a position which in itself might provide the nucleus for a sect. Yet for a school whose emphasis lies not in dogmatic speculation, but in canonical law this point of view might be just about sufficient.

Nevertheless, there are indications that with regard to two specific questions of dogmatics Dāwūd ibn 'Alī ibn Khalaf al-Iṣfahānī has formulated his own view, however, without representing it as an integral part of his so-called Zāhirite system. I do not know how much importance is to be attached to al-Sam'ānī's (d. 562) account¹ according to which the *imām* Aḥmad b. Ḥanbal² refused to receive Dāwūd b. 'Alī — probably immediately after his return from Nishāpūr when he settled in Baghdad — because he had heard about his holding heretical views on the creation of the Koran. Aḥmad had received this information from Nishāpūr by way of Muḥammad b. Yaḥyā. Even the assurance of Aḥmad b. Ḥanbal's son that Dāwūd was free of heresy did not ensure him access to the Imām. Certain it is, that this, Dāwūd's confession — provided he adhered to it even beyond his youth — was not binding on his school which, with respect to dogmatics, displayed considerable indifference. We learn from Ibn Ḥazm that Dāwūd took a positive position on the question how far the attributes of hearing and seeing can be applied to God, and how it is to be understood when it is said about God in the Koran that He is the Hearer and the Seer. On this point, al-Ash'arī, in agreement with many orthodox, and several Mu'tazilite theologians, says that God is seeing with the agency of sight which emanates from Him, and is hearing with the agency of hearing emanating from Him. Dāwūd joins those who see in the above conception an anthropomorphism of the God-idea and who say instead: God is a Seer and a Hearer because of His immanent powers of seeing and hearing that cannot be separated from His nature as separate actions. It could not be said of Him: *He sees* or *He hears*, for He is not seeing with the agency of

¹ *Kitāb al-ansāb*, fol. 280a (Supplement, V).

² This *imām* who, in the time of Ma'mūn's terror of rationalism, unyieldingly adhered to the old orthodox teachings, displayed considerable severity against those theologians who, under the pressure of terrorism, were willing to make concessions. One of them was the pious traditionalist 'Abd al-Malik b. 'Abd al-'Azīz al-Tammār (d. 228). For this reason Aḥmad b. Ḥanbal prohibited his pupils to accept traditions of al-Tammār. *Abū al-Maḥāsīn*, I, p. 677.

sight or hearing¹. In this verbal controversy Ibn Ḥazm follows his teacher in jurisprudence.

Simply the last fact indicates sufficiently that Dāwūd has developed a conscious position with respect to dogmatics beyond the simple *fiqh*, and it would be extremely improbable to assume that, in the wide field of dogmatics, he was occupied especially with this controversy which is closely related to many other questions of *kalām*. Fortunately, one general quotation has survived from which we may conclude that Dāwūd's preoccupation with dogmatics extended further than al-Shahrastānī's characterization of Dāwūd's position seems to indicate. The fact that al-Ash'arī — probably during his Mu'tazilite period — directed a pamphlet against the founder of the Zāhirite school in matters of dogmatics *al-i'tiqād*, (by the way, a tract which the author refuted after his conversion to orthodox Islam)² is sufficient evidence that Dāwūd's teaching activities were not restricted merely to *fiqh*, and that he was not at all content to hide behind the easy *salāmah* of the old *imāms*, but that he cast his vote on religious questions that moved his time. Yet in the list of his writings in Ibn al-Nadīm we find only works from the field of jurisprudence.

But even if Dāwūd arrived at his dogmatics on the basis of the afore-going data, this did not penetrate the Zāhirite school; Dāwūd's dogmatics had nothing in common with the *fiqh* that was the essence of this school. Ibn Ḥazm was the first who attempted the next step within the Zāhirite school, namely, to incorporate dogmatics in it. This attempt, which Ibn Ḥazm performed ingeniously in his work on dogmatics, failed. Furthermore, after Ibn Ḥazm, dogmatists of various colourings were accommodated within the Zāhirite school.

¹ Ibn Ḥazm, I, fol. 146b: قال ابو محمد واجمع المسلمون على القول بما جاء به نص القرآن من ان الله تعالى سميع بصير ثم اختلفوا فقالت طائفة من اهل السنة والاشعرية وجعفر بن حرب من المعتزلة وهشام ابن الحكم وجميع المجسمة تقطع ان الله سميع بصير يبصر وذهبت طائفة من اهل السنة منهم الشافعي وداود بن علي وعبد العزيز بن مسلم الكنانى رضهم وغيرهم الى ان الله تعالى سميع بصير ولا يقال يسمع ولا يبصر ولكن سميع بذاته بصير بذاته قال ابو محمد وبهذا نقول ولا يجوز اطلاق سمع ولا بصر حيث لم يات به نص كما ذكرنا آنفا من انه تعالى لا يجوز ان يخبر عنه بما لم يخبر عن نفسه.

² See Spitta, *op. cit.*, p. 79, no. 84.

We may suspect that it was Dāwūd's dogmatic leanings and principles which Ibn Ḥazm preserved and developed in his polemical work. Indeed, in all religions it was polemics that contributed to a conscious development, to a strict definition, of the religious belief; even more so, it was polemics by which this became possible. We are perhaps not uttering a hollow hypothesis when we declare that the accusation that Dāwūd professes the creation of the Koran¹ should be taken to mean that Dāwūd taught that the external elements of the *written* Koran and the physiological points of the *recited* Koran are not eternal. This thesis is developed extensively by Ibn Ḥazm.

No matter how tempting this occasion might be, it cannot be our task to make a systematic presentation of Ibn Ḥazm's dogmatic system at this point. This is an obligation which is expected of those whose special field of study is the presentation of the dogmatic-philosophical movement in Islam. Our task can encompass only one part of this chapter, namely, the question on which point of dogmatics and philosophy of religion does Ibn Ḥazm's *Zāhirite attitude* prevail, and how does it manifest itself. We shall attempt to answer this question in the exposition following. We hope the reader will appreciate that we cite passages from Ibn Ḥazm's main works in a disproportionate 137 prolixity, and that we seize the opportunity to bring to light characteristic excerpts from the writer that characterize his line of thought and his method of presentation — the work is too extensive for a complete edition. Right here, let us anticipate this much in order to determine Ibn Ḥazm's general position towards the religio-philosophical schools in Islam: This dogmatist is as hostile towards the Ash'arites, who are generally considered orthodox, as he is towards the anthropomorphists, on the one hand, and the Mu'tazilites, on the other². When we compare the Mu'tazilite confession of faith with al-Ash'ari's — now available in two good editions based on Ibn 'Asākir's information — they would lead us to believe that al-Ash'ari's position presented no reason for opposition from the Zāhirite dogmatist. But when we learn that al-Ash'ari appended to his confession an interpretation that tended towards the speculative school, an interpretation in which he made his teachings of the attributes to a con-

¹ It is known that the same accusation is made against al-Bukhārī too (cf. Krehl, *Über den Saḥīḥ des Buchārī*, p. 6).

² Spitta, *op. cit.*, p. 128-137; Mehren, *Exposé de la réforme*, p. 115-124. (This footnote is not indicated in the text of the German edition).

ciliatory element in the controversy of the spiritual concept of God against adherence to the literal wording of the Koran, then we shall realize that Ibn Ḥazm who, in this matter of conciliation, condemned any influence of speculation, had to be hostile towards Ash'arism — he consistently challenged its place in Islam¹. His polemics, in view of the severity and the lack of consideration for polemical procedure, is much more severe towards the Ash'arites than towards the followers of the Mu'tazilah. About the latter he states explicitly that they must be considered Muslims in spite of their errors (that they attribute to God *jawād* and *sakhā'*), a fact which might be excused on the basis of their ignorance. This, however, is an excuse that saves them from being considered unbelievers without sparing them reprimand (on the part of the believers); but they can still learn"². In this and other questions, Ibn Ḥazm's treatment of the Ash'arites is completely different. We intend to cite one example only, the dogmatic tenet on the differences of opinion with regard to the Koran

¹ Later on we shall see the position which he assigns to speculation in the deduction of dogmatics. Also his teachings on the position of reasoning in faith are generally quite interesting, but particularly if compared to those of other theologians. In order to indicate this I quote the following passage, vol. II, fol. 54a: هل يكون مؤمنا من اعتقد الاسلام دون استدلال ام لا يكون مؤمنا مسلما الا من استدلل ، قال ابو محمد ذهب محمد بن جرير الطبري والاشعرية كلها حاشي ابا جعفر السمناني الى انه لا يكون مسلما وقال الطبري من بلغ الاحتلام والاشعار من الرجال والنساء وبلغ الحيض من النساء ولم يعرف الله عز وجل بجميع اسماءه وصفاته من طريق الاستدلال فهو كافر حلال الدم والمال وقال انه اذا بلغ الغلام او الجارية سبع سنين وجب تعليمها وتدريبها على الاستدلال على ذلك لحديث احمد بن محمد بن الحسور (?) قال لي ابو بكر احمد بن الفضل ابن بهرام الدينوري قال لنا الطبري فذكر ما قلناه وقالت الاشعرية لا يلزمها الاستدلال على ذلك الا بعد البلوغ ، قال ابو محمد قال سائر اهل الاسلام كل من اعتقد بقلبه اعتقادا لا شك فيه وقال بلسانه لا اله الا الله وان محمدا رسول الله وان ما جاء به حق وبرئ من كل دين سوى دين محمد فانه مسلم مؤمن ليس عليه غير ذلك الا الاعمال.

² Vol. I, fol. 102a: ولكن المعتزلة معذورون بالجهل عذرا يبعدهم عن الكفر ولا يخرجهم عن الايمان لا عذرا يسقط عنهم الملامة لان التعلّم لهم معرض ممكن ولكن لا هادي لمن اضل الله تعالى.

as the "word of God". It is known that the conception of the Islamic term *kalām Allāh* led to extreme difference of views. The Mu'tazilites assert that "God's word" is an attribute of an agency of God come into being in time (*ṣifat fi'l makhlūq*), i.e. not eternal; whenever God spoke He always produced His words in a creative manner. Aḥmad b. Ḥanbal and other *imāms* consider God's word uncreated and eternal, and consequently, identical with His eternal knowledge (*kalām Allāh 'azza wa-jalla huwa 'ilmuhu lam yazaḥ*). The Ash'arites state their position most clearly by saying that God's word is eternal and uncreated, although different from God as being an attribute of His nature, but nevertheless, unique and indivisible; i.e. God's word is one, and no matter how often He spoke, it was always the same word of God that was manifested. كلام الله عز وجل صفة ذات لم تزل غير مخلوق وهو غير الله تعالى وخلاف الله تعالى وهو غير 139 تزل غير مخلوق وهو غير الله تعالى وأنه ليس الله تعالى إلا كلام واحد says the following:

"The tenet of the Ash'arites is in decisive opposition to God Himself and to all who profess Islam, for God says in the Koran: 'Say! if the sea were all ink for the words of my God, verily, the sea would be spent before the words of my God are spent' (*sūrah XVIII:109*), and in *sūrah XXXI:26* it says: 'Though all the trees on earth were all pens, and should the sea after that swell to seven seas, the words of God would not be exhausted'. There is no greater misguidance, no greater lack of consideration, no greater stubbornness, and no greater denial of God than what is manifested by those who hear words which every Muslim doubtlessly recognizes as the words of God which show that there are innumerable words inherent in God, and who, nevertheless, say on the basis of their own, contemptible opinion that there is only *one* word inherent in God. But if they were to say that they made this claim only so as to associate God with any kind of multiplicity, then they are cursed with lies by their own teachings because, according to them, there are fifteen things, (the attributes), different from God and existing apart from Him, all of which are eternal with God. Furthermore, this sect, following al-Ash'arī, claims that it was not God's word that Gabriel revealed to Muḥammad's heart, rather, that what he revealed is called God's word only metaphorically; therefore, nothing that is recited from copies of the Koran, or written in it, can be regarded as God's word. It is always attached to God Himself and never separated from God to be attached to something else. God's word cannot appear at places which it has left in order to appear later at other places, and also, that it does not consist of connected letters. Not one of God's words can be better, more superior, or more important than another one. The Ash'arites also say: God does not cease to say to hell: 'Are you already filled?' (*sūrah L:29*) and to the unbelievers: 'Be silent in it and do not speak!' (*sūrah XXIII:110*) and that God always says to that which He decided to create: 'Be!'.

This is pure disbelief which cannot be denied. We, however, would like to ask them: 'Is the Koran God's word, or not?'. Now, if they say *no*, then according to the unanimous opinion of all Muslims, they are unbelievers, but if they say *yes*, we start asking: 'Is the Koran that which is recited in mosques, written in *maṣḥafs*, and known by heart, or is it something else?'. If they say *no*, then according to the unanimous opinion of all Muslims, they are accused of disbelief, however, if they say *yes*, then they are contradicting their own bad teachings and profess the tenet of the Islamic community"¹.

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وَأَمَّا قَوْلُهُمْ أَنَّهُ لَيْسَ لِلَّهِ تَعَالَى الْإِلَهَ إِلَّا كَلَامٌ وَاحِدٌ فَخِلَافٌ
مَجْرَدٌ لِلَّهِ تَعَالَى وَلِجَمِيعِ أَهْلِ الْإِسْلَامِ لِأَنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ قُلْ لَوْ
كَانَ الْبَحْرُ مَدَادًا لَكَلِمَاتِ رَبِّي لَنَفَذَ الْبَحْرُ قَبْلَ أَنْ تَنفَذَ كَلِمَاتِ رَبِّي وَيَقُولُ
تَعَالَى وَلَوْ أَنَّ مَا فِي الْأَرْضِ مِنْ شَجَرَةٍ أَقْلَامٌ وَالْبَحْرُ يَمُدُّهُ مِنْ بَعْدِهِ
سَبْعَةً أُنْجُرًا مَا نَفَذَتْ كَلِمَاتُ اللَّهِ، قَالَ أَبُو مُحَمَّدٍ وَلَا ضَلَالٌ أَضَلَّ
وَلَا حِيَاءٌ أَعْدَمَ وَلَا مَجَاهِرَةٌ أَطَمَّ وَلَا تَكْذِيبٌ لَمْ يَسْمَعْ مِنْ هَذَا
الْكَلَامِ الَّذِي لَا يَشْكُكَ مُسْلِمٌ أَنَّهُ خَبَرَ اللَّهَ تَعَالَى الَّذِي لَا يَأْتِيهِ الْبَاطِلُ
مِنْ بَيْنِ يَدَيْهِ وَلَا مِنْ خَلْفِهِ بَأَنَّ اللَّهَ تَعَالَى كَلِمَاتٌ لَا يَنْفَعُنَّ (سعدن. cod.)
ثُمَّ يَقُولُ هُوَ مِنْ رَأْيِهِ الْحَسْبِيسِ أَنَّهُ لَيْسَ لِلَّهِ تَعَالَى الْإِلَهَ إِلَّا كَلَامٌ وَاحِدٌ فَان
ادْعُوا أَنَّهُمْ فَرَوْا مِنْ أَنْ يَكْتُمُوا مَعَ اللَّهِ أَكْذَبَهُمْ قَوْلُهُمْ أَنَّ هَاهُنَا
خَمْسَةٌ عَشْرَ شَيْئًا كَلِمَاتُهَا مُتَغَايِرَةٌ وَكَلِمَاتُهَا غَيْرُ اللَّهِ وَخِلَافُ اللَّهِ وَكَلِمَاتُهَا لَمْ تَنْزَلْ
مَعَ اللَّهِ تَعَالَى اللَّهُ عَمَّا يَقُولُ الظَّالِمُونَ عُلُقًا كَبِيرًا، قَالَ أَبُو مُحَمَّدٍ وَقَالَتْ
أَيْضًا هَذِهِ الطَّائِفَةُ الْمُنْتَمِيَّةُ إِلَى الْأَشْعَرِيِّ أَنَّ كَلَامَ اللَّهِ تَعَالَى وَجَلَّ لَمْ يَنْزَلْ
بِهِ جَبْرِيْلٌ عَلَى قَلْبِ مُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَمَّا نَزْلُ اللَّهِ عَلَيْهِ بِشَيْءٍ آخَرَ هُوَ عِبَارَةٌ
عَنْ كَلَامِ اللَّهِ تَعَالَى وَإِنَّ الَّذِي يُقْرَأُ فِي الْمَصَاحِفِ وَيَكْتَبُ فِيهَا لَيْسَ
شَيْءٌ مِنْهُ كَلَامُ اللَّهِ تَعَالَى وَإِنَّ كَلَامَ اللَّهِ تَعَالَى لَا يَزِيلُ الْبَارِي وَلَا
يَقُومُ بِغَيْرِهِ وَلَا يَحِلُّ فِي الْأَمَاكِنِ وَلَا يَنْتَقِلُ وَلَا هُوَ حُرُوفٌ مُوَصَّلَةٌ وَلَا
بَعْضُهُ خَيْرٌ مِنْ بَعْضٍ وَلَا أَفْضَلُ وَلَا أَعْظَمُ مِنْ بَعْضٍ وَقَالُوا لَمْ يَزَلْ
تَعَالَى قَائِلًا لِحَبَّتِهِمْ هَلْ أُمْتَلَاتِ وَقَائِلًا لِلْكَفَّارِ اخْسَمُوا فِيهَا وَلَا تُكَلِّمُونِ
وَلَمْ يَزَلْ تَعَالَى قَائِلًا لِكُلِّ مَا أَرَادَ تَكْوِينَهُ كُنْ، قَالَ أَبُو مُحَمَّدٍ وَهَذَا
كُفْرٌ مَجْرَدٌ بِلَا تَأْوِيلٍ وَذَلِكَ أَنَّا نَسْتَلْهِمُ عَنِ الْقُرْآنِ أَهْوَى كَلَامِ اللَّهِ أَمْ
لَا فَانْ قَالُوا لَيْسَ هُوَ كَلَامُ اللَّهِ كَفَرُوا بِاجْتِمَاعِ الْأُمَّةِ وَإِنْ قَالُوا بَلْ هُوَ
كَلَامُ اللَّهِ سَأَلْنَا عَنْ الْقُرْآنِ أَهْوَى الَّذِي يُتْلَى فِي الْمَسَاجِدِ وَيُكْتَبُ فِي
الْمَصَاحِفِ وَيُحْفَظُ فِي الصُّدُورِ أَمْ لَا فَانْ قَالُوا لَا كَفَرُوا بِاجْتِمَاعِ الْأُمَّةِ وَإِنْ
قَالُوا نَعَمْ تَرَكَوا قَوْلَهُمُ الْفَاسِدِ وَقَرُّوا أَنَّ كَلَامَ اللَّهِ تَعَالَى فِي الْمَصَاحِفِ
وَمُسْمُوعٍ مِنَ الْقُرْآنِ وَمَحْفُوظٍ فِي الصُّدُورِ كَمَا يَقُولُ جَمِيعُ أَهْلِ الْإِسْلَامِ،
قَالَ أَبُو مُحَمَّدٍ وَقَالَ قَوْمٌ فِي اللَّفْظِ بِالْقُرْآنِ وَنَسَبُوا إِلَى أَهْلِ السُّنَّةِ أَنَّهُمْ

141 Since we are on this subject, let us add Ibn Ḥazm's own tenet. According to the guidance of the relevant Koranic passages he teaches:

First, that the Koran and the word of God are two synonymous expressions of the same idea.

Secondly, that the Koran itself was transmitted to Muḥammad by Gabriel.

Thirdly, that "Koran" and "God's word" is said about five different things: (a) about the revelation issued to Muḥammad, (b) about the audible, spoken sound of the recited Koran, (c) about the contents of these spoken words, e.g. about individual passages and commandments, (d) about the written copy of the Koran, (e) about the text committed to memory. All this follows from Koranic quotations and from the traditions cited by Ibn Ḥazm at great length.

Finally, fourthly, that not all parts of the Koran are of equal value. God Himself has told us that the Fātiḥah, the *ikhhlāṣ* formula, and other passages of the Koran are more exalted than other parts of the Sacred Book. Now, to the question: is the Koran, as defined by Ibn Ḥazm, created or uncreated, the author gives the following reply: Of course, the sounds are explosions of the organs of speech, just as Arabic and all the other languages in which they are manifested are created things. Also that which is written is created, because the written *maṣḥaf* in front of us consists of skins of animals and ink which, in turn, consist of different materials; *created*, too, are the movement of the hand of the writer, the movement of the tongue of the reciter, and the fixing of everything, be it written or read, in the soul. But the infinite knowledge of God, indivisible from God, called by us "Koran" and "God's word", is uncreated. We have five designations for the Koran, four of which are created and one of which is uncreated. Now, since the attribute on one part does not apply to the totality, it must, consequently, not be used to define the totality. Therefore, one may not say the Koran is created. Rather, in relation to the whole, this partial attribute must be negated. The Koran is consequently neither creator nor created¹. This definition clashes

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يقولون ان الصوت غير مخلوق والخط غير مخلوق ، قال ابو محمد وهذا باطل وما قال قط مسلم ان الصوت الذي هو الهوآء غير مخلوق وان الخبر غير مخلوق.

ووجب ضرورة أن يقال ان القرآن لا خالق ولا مخلوق¹ Fol. 172a: وان كلام الله تعالى لا خالق ولا مخلوق لان الاربعة المسميات منه

with Abū Ḥanīfah's assertion of the creation or non-creation of the divine Book as stated in his *Fiqh akbar*¹. Now, if a person, who is just reciting the Koran, were to say: what I have just recited is *not* the word of God, he would be guilty of denying God; by the same token it would be a lie if a person, because of modesty and good manners, were to say about a just performed action recommended by the *sunnah*: "This is not the action of the Prophet".

As we have seen, the reason for the strange phenomenon that Ibn Ḥazm treats the followers of the Mu'tazilah much gentler than the Ash'arite orthodoxy is to be found, according to my view, in the fact that he could approach the Mu'tazilah in a main point of dogmatics and, in concert with them, oppose the Ash'arites; namely, in the tenet of the existence or non-existence of divine attributes (*ṣifāt*). Naturally, it was a different kind of reasoning by which the representatives of extreme rationalism arrived at tenets in Islamic dogmatics vis-à-vis which the representatives of the extreme orthodoxy, who considered al-Ash'ari a heretic, could display tolerance. For Ibn Ḥazm it is not reasoning at all that determines his dogmatic convictions. For him there is always only *one* question, reply to which determines his reaction to individual dogmatic tenets: *whether the texts of the scripture and the tradition (i.e. not their spirit but their wording) permit this or that formulation of a principle of faith*. His reply to this question determines the fate of individual, dogmatic controversies. Ibn Ḥazm says: "If we were asked: 'You do state that God is living, but not in the sense in which it is said about living creatures; that He is knowing, but not in the sense in which it is said about knowing creatures; powerful, but not in the sense in which it is understood about the mighty ones', why, then, do you prohibit saying the following: 'God is body, but not in the sense as created bodies are'? To this, we would reply as follows: 'If the text of the Koran had not attributed to God the names the Living, the Knowing, and the Powerful, we would not use a single one of them when referring to Him. It is also a

ليست خالقا فلا يجوز ان يُطلق على القرآن ولا على كلام الله تعالى اسم خالق ولان المعنى الخامس غير مخلوق ولا يجوز ان يوقع صفة البعض على الكل الذي لا تعمه تلك الصفة بل واجب ان يطلق نفى تلك الصفة التي للبعض على الكل¹. It is probably required to add a noun — perhaps [الاشياء] — between the words تلك and الاربعة. The same sentence would make more sense if *minhu* were replaced by *bi-hi*.

¹ Kremer, *Geschichte der herrschenden Ideen des Islam*, p. 41.

religious duty to adhere to whatever is explicitly stated in the text. But nowhere in the holy texts do we find that God is called "body", and no argument exists to give Him this name; rather, the only valid argument forbids us to apply this name to Him. If a textual passage could be found in which it is said of God that *He is body, then it would be our irremissable duty to follow the text and say: God is body, but not like other bodies*"¹. Decisive for **Ibn Ḥazm's refutation of such names** is therefore chiefly the point of the deviation from the *textually determined appellation of God* besides the point of anthropomorphism².

144 **These qualifying names given to God in the Koran are not attributes, the existence of which could be recognized in the essence of God through speculative investigation of this essence, rather, they are proper names which God has given Himself. To say God has attributes is an absurdity. Expressions like "attribute" or "attributes" are used neither by God Himself in His revealed words with reference to His essence, nor do we find that the Prophet did so in relation to God; besides, none of the companions or their followers, or the followers of the latter have ever used these expressions in relation to God. Therefore, neither are we permitted this usage nor may we profess the belief inherent in it.** We can rightfully say about it that the consensus of the rightly-guided companions has rejected it, and that, consequently, this usage is a reprehensible innovation. God says "These are nothing but names invented by you and your fathers, but God has not authorized this; they follow merely their opinion

¹ Vol. I, fol. 138a: فان قالوا لنا انكم تقولون ان الله عز وجل حي لا كالاحياء وعليم لا كالعلماء وقادر لا كالقادرين وشيء لا كالايشياء فلم منعتهم القول بانّه جسم لا كالااجسام قيل لهم وبالله تعالى التوفيق لولا النصّ الوارد بتسميته تعالى بانّه حيّ وقدير وعليم ما سمّيناه بشيء من ذلك لكن الوقوف عند النصّ فرض ولم يأت نصّ بتسميته تعالى جسماً ولا قام البرهان بتسميته جسماً بل البرهان مانع من تسميته تعالى بذلك ولو اتانا نصّ بتسميته تعالى جسماً لوجب علينا القول بذلك وكنا حينئذ نقول انه [جسم] لا كالااجسام كما قلنا في عليم وقدير وحيّ ولا فرق.

² Fol. 139a: ومن قال ان الله تعالى جسم لا كالااجسام فليس مشبهها لكتّه الخدّ في اساءه الله عز وجلّ اذ سمّاه عز وجلّ بها لم يسمّ به نفسه واما من قال انه تعالى كالااجسام فهو ملحد في اساءه الله تعالى ومشبّه مع ذلك.

and that which their souls desire". (*Sūrah LIII:23*)¹. **The word *ṣifāt* was devised by the Mu'tazilites. They were followed by a party of *mutakallimūn* who thereby entered a path which deviates from the path of the pious ancestors.** It cannot serve as an example and model. But he who oversteps the bounds set by God commits injustice against himself. It cannot be excluded that this expression was brought into circulation by jurists of the following generation, that is, by those who did not consider the proper meaning of it. Thus it would be a case of error and straying by a learned **person. In religious matters true is only what is explicitly stated either by God Himself, or by the Prophet in statement attributed to Him, or what the consensus of the rightly-guided community recognizes as true. Everything that goes beyond this is error.** We might be confronted with a tradition from Sa'īd b. Abī Hilāl according to which someone was reciting the following verses with each bowing (during the canonical prayer): Say He is Allāh, the Only One, etc., in combination with another *sūrah*. The person explained to the Prophet that these verses contain a description (*ṣifah*) of the Compassionate which he likes. The Prophet is represented to have replied to this that he, too, liked these verses². To this we would reply that the unique tradition from Sa'īd is not sufficiently documented, indeed, that several authorities consider it untrustworthy and that, consequently, it does not supply sufficient evidence for the legitimacy of the expression *ṣifat Allāh*³. But such argumentation of the opponents would not even correspond with their own tenets, for they, too, do not recognize traditional communications based on the authority of a single person as irrefutable source of sound knowledge"⁴.

¹ <Not LIII:63 as in the German edition>.

² <This is the correct passage for the first correction on p. x of the German edition>.

³ We notice, however, that al-Bukhārī prefaces one chapter of his work on tradition as follows: *باب ما يُذكر في الذات والنوع وأسماء الله* (*Kitāb al-tawḥīd*, no. 14). As al-Qaṣṣālānī, X, p. 429, to the passage, observes, al-Bayhaqī even uses in the corresponding chapter heading the expression *صفات*.

⁴ Ibn Ḥazm, *ibid.*, fol. 139a: واما اطلاق لفظ الصفات لله عز وجلّ فمحال لا يجوز لانّ الله عز وجلّ لم ينصّ قطّ في كلامه المنزّل على لفظة الصفات ولا لفظة الصفة ولا جاء قطّ عن النبيّ صلّعم بانّ لله تعالى صفة او صفات نعم ولا جاء قطّ ذلك عن احد من الصحابة رضى الله عنهم ولا عن احد من خيار التابعين ولا عن احد من خيار

146 Therefore, no one is entitled to attribute to God anything on his own account, not even in the case that through logical deduction the existence of this attribute to God could be proven. Ibn Ḥazm asserted this principle against the Mu'tazilite Abū al-Hudhayl al-'Allāf who claimed to have proved philosophically the identity of the divine knowledge with the divine essence.

"You cannot attribute to God a quality or a name on the basis of your reasoning, for God is the antithesis of His creatures. Therefore, none of the qualities, or names, of His creatures must be attributed to Him on the basis of reasoning, for this would be a comparison between the Creator and the creature, on the one hand, and deviation from what He Himself has stipulated with regard to His name, on the other hand; in other words, it would be fabrication. We may give or attribute to God only such names as He applied to Himself in His Book or which came through the lips of the Prophet, or upon which the consensus of the rightly-guided community has agreed in a reliable manner. Other names may not be applied, not even when the meaning of such appella-

تابعى التابعين وما كان هكذا فلا يحلّ لاحد ان ينطق به ولو قلنا ان الاجماع قد تيقن على ترك هذه اللفظة لصدقنا فلا يجوز القول بلفظ الصفات ولا اعتقاده بل هي بدعة منكورة قال الله عز وجل ان هي الا اسماء سميتوها انتم وآباءكم ما انزل الله بها من سلطان ان يتبعون الا الظن وما تهوى الانفس ولقد جاءهم من ربهم الهدى، قال ابو محمد وانا اخترع لفظ الصفات المعتزلة وسلك سبيلهم قوم من اصحاب الكلام سلكوا غير مسلك السلف الصالح ليس فيهم اسوة ولا قدوة وحسبنا الله ونعم الوكيل ومن يتعدّد حدود الله فقد ظلم نفسه وربما اطلق هذه اللفظة من متأخري الائمة من الفقهاء من لم يحقق النظر فيها فهي وهلة وزلّة عالم وانا الحقّ في الدين ما جاء عن الله تعالى نصّاً او عن رسول الله صلعم كذلك او صحّ اجماع الامة كلها عليه وما عدا هذا فضلال، فان اعترضوا بالحديث الذي روينا من طريق ابن وهب عن عمرو بن الحرث عن سعيد بن ابي هلال عن ابي الرجال محمد بن عبد الرحمن عن اُمّه عمرة عن عائشة في الرجل الذي كان يقرأ قل هو الله احد في كلّ ركعة مع سورة اخرى وان رسول الله صلعم امر ان يسأل عن ذلك فقال هي صفة الرحمن فانا احبها فاخبره عم ان الله يحبّه فالجواب وبالله تعالى التوفيق ان هذه اللفظة انفرد بها سعيد بن ابي هلال وليس بالقوى قد ذكره بالتخليط يحيى واحمد ايضا فان احتجاج خصوصنا بهذا لا يسوغ على اصولهم لانه خبر واحد لا يوجب عندهم العلم

tion is more appropriate. For example, we know for certain that God is the creator of heavens; nevertheless, it is not allowed to call Him "builder" or "dyer" in spite of our knowledge that He produces the colours of plants and animals"¹.

This, by the way, is a point of view which is adopted, particularly with relation to the names by which God may be addressed, by non-Zāhirite theologians too. They completely exclude the justification for analogy in this field. "Analogies are applied only in the field of the technical ritual", says Imām al-Ḥaramayn Abū al-Ma'ālī, "but one must not apply them when naming or describing God". ان الاقيسة الشرعية من مقتضيات العمل ولا يجوز التمسك بها في تسمية الله تعالى وصفته، Setting out from the foregoing attitude, Ibn Ḥazm also frowns upon applying to God the name of *al-Qadīm* — a name which particularly the *mutakallimūn* like to apply to Him — for, firstly, no Koranic verse can supply evidence that this name refers to God, and secondly, we find that this by-name is applied also to the moon (*sūrah* XXXVI:39), i.e. to a created thing with which God would be associated if we were to give Him the same name. In linguistics the word *qadīm* is used of the concept of temporal priority when, in relation to the time of beginning, one thing precedes

واما قول ابي الهذيل ان علم الله هو الله فانه تسمية منه للبارى تعالى باستدلاله ولا يجوز ان يوصف الله تعالى ولا ان يسمى باستدلال البتة لانه بخلاف كل ما خلق فلا دليل يوجب تسميته بشيء من الاسماء التي يسمى بها شيء من خلقه ولا ان يوصف بصفة يوصف بها شيء من خلقه فمن وصفه تعالى بصفة يوصف بها شيء من خلقه او سماه باسم يسمى به شيء من خلقه استدلالا على ذلك بما وجد في خلقه فقد شبهه تعالى بخلقه وألحد في اسماءه وافترى الكذب ولا يجوز ان يسمى الله تعالى ولا ان يخبر عنه الا بما سمى به نفسه او أخبر به عن نفسه في كتابه او على لسان رسوله صلعم او صحّ به اجماع جميع اهل الاسلام المتيقن ولا مزيد وحتى وان كان المعنى صحيحا فلا يجوز ان يطلق عليه تعالى باللفظ وقد علمنا يقينا انه تعالى بناء السماء ولا يجوز ان يسمى بناءه وانه تعالى خلق اصباغ النبات والحيوان ولا يجوز ان يسمى صبغا وهكذا كل شيء لم يسم به نفسه.

¹ Fol. 145b: تسمية الله هو الله فانه تسمية منه للبارى تعالى باستدلاله ولا يجوز ان يوصف الله تعالى ولا ان يسمى باستدلال البتة لانه بخلاف كل ما خلق فلا دليل يوجب تسميته بشيء من الاسماء التي يسمى بها شيء من خلقه ولا ان يوصف بصفة يوصف بها شيء من خلقه فمن وصفه تعالى بصفة يوصف بها شيء من خلقه او سماه باسم يسمى به شيء من خلقه استدلالا على ذلك بما وجد في خلقه فقد شبهه تعالى بخلقه وألحد في اسماءه وافترى الكذب ولا يجوز ان يسمى الله تعالى ولا ان يخبر عنه الا بما سمى به نفسه او أخبر به عن نفسه في كتابه او على لسان رسوله صلعم او صحّ به اجماع جميع اهل الاسلام المتيقن ولا مزيد وحتى وان كان المعنى صحيحا فلا يجوز ان يطلق عليه تعالى باللفظ وقد علمنا يقينا انه تعالى بناء السماء ولا يجوز ان يسمى بناءه وانه تعالى خلق اصباغ النبات والحيوان ولا يجوز ان يسمى صبغا وهكذا كل شيء لم يسم به نفسه.

² In al-Damiri, I, p. 445, s.v. الذرّ in an extremely interesting and relevant excursus, the most important opinions of the Sunnite theologians are clearly gathered together.

- 148 the other by a definite time. **But such a name cannot be applied to God, rather, God established for His relation to time the name *al-awwal*, a concept which no creature shares with Him, and which makes any designation deduced by mere reasoning, like *qadīm*, superfluous.** It does not matter whether a person calls God *qadīm* in order to express His eternity and to exclude His beginning, or whether he would call Him *bodī* to thereby indicate positively His existence and to exclude His non-existence, for neither of the two expressions can be documented by a textual passage¹. Written evidence and, at the most, justification through consensus is consequently the sole criterion that justifies names and expressions used with reference to God. It is self-evident that even the synonyms of all the names that qualify in this manner are excluded. It is permitted to say that God is *al-karīm*, but not *al-sakhī* or *al-jawād*; He calls Himself *al-zāhir*, but we may not call Him *al-bādī* or *al-mu'lin*². Even the fact that a certain quality is praiseworthy, deserving of God, is of no consequence, because **as long as it cannot be documented by the scripture, its use is forbidden,**
- 149 while, on the other hand, what to our senses appears to be inglorious (e.g. to associate God with stratagems) may be said about God, if the authority of the scripture warrants this. I quote here the text of those passages of Ibn Ḥazm's book in which he draws, so to speak, the consequences from his dogmatic view of the names of God. I hope I may be permitted to refrain from further explanation of this passage:

قال أبو محمد ومما أحدثه أهل الكلام من ¹ Ibn Ḥazm, l.c., fol. 151a: من الأحداث في أسماء الله تعالى أن سموه تعالى القديم قال أبو محمد وهذا لا يجوز البتة لأنه لم يصح به نص البتة ولا يجوز أن نسمي الله تعالى بما لم يسم به نفسه وقد قال تعالى والقمر قدرناه منازل حتى عاد كالعرجون القديم فصح أن القديم من صفات المخلوقين فلا يحل أن نسمي الله عز وجل بذلك وإنما يعرف القديم في اللغة من القدمة الزمانية أي أن هذا الشيء أقدم من هذا بمدة محصورة وهذا منفي عن الله تعالى وقد اغنى الله عز وجل عن هذه التسمية بلفظة أول فهذا هو الاسم الذي لا يشاركه تعالى فيه غيره وهو معنى أنه لم يزل وقد قلنا بالبرهان أن الله تعالى لا يجوز أن يسمي بالاستدلال ولا فرق بين من قال أنه يسمي ربه تعالى جسماً اثباتاً للوجود ونفيًا للعدم وبين من سماه قديماً اثباتاً لأنه لم يزل ونفيًا للحدوث لأن كافي اللفظين لم يأت به نص.

² Fol. 155b; cf. the same, fol. 161a.

Fol. 156a فاذ قد صح هذا بيننا فلا يحل أن تسمى الله عز وجل القديم ولا الحنان ولا الثمان ولا القرد ولا الدائم ولا الباقي ولا الخالد ولا العالم ولا الرأي ولا السامع ولا المعتلى ولا المتبارك ولا الطالب ولا الغالب ولا الضار ولا النافع ولا المدرك ولا المبدى ولا المعيد ولا الناطق ولا المتكلم ولا القادر ولا الوارث ولا الباعث ولا القاهر ولا لجليل ولا المعطى ولا النعم ولا المحسن ولا الحكم ولا الحاكم ولا الوهاب ولا الغافر ولا المضل ولا الهادي ولا العدل ولا الرضى ولا الصادق ولا المتطول ولا التفضل ولا الثمان ولا الخير ولا الجيد ولا الحافظ ولا البديع ولا الاله ولا المجلل ولا المحيي ولا الميت ولا المنصف ولا بشيء لم يسم به نفسه أصلاً وإن كان غاية المدح عندنا أو كان متصرفاً من أفعاله تعالى إلا أن يُجبر عنه بكل هذا الذى ذكرنا على الأضافة الى ما يذكر مع الوصف (حينئذ) والاختبار عن فعله فهذا جائز حينئذ فيجوز أن نقول عالم الخفيات عالم بكل شيء عالم الغيب والشهادة غالب على امره غالب كل من طغى أو نحو هذا القادر على ما يشاء القاهر للملوك وارث الارض ومن عليها المعطى لكل ما بأيدينا الواهب لنا كل ما عندنا المنعم على خلقه المحسن الى اوليائه الحاكم بالحق المبدى لخلق المعيد له المضل لاعداءه الهادي لاوليائه العدل فى حكمه الصادق فى قوله بديع السموات والارض الاله الخلق محيي الاحياء والموتى مميت الاحياء المنصف ممن ظلم باني الدنيا وداحيها ¹⁵⁰ ومُسَوِّبها ونحو هذا لأن كل هذا اخبار عن فعله تعالى وهذا مباح لنا باجاء وليس لنا أن نسميه إلا بنص، وكذلك نقول ان الله تعالى كيدا ومكراً وكبرياء وليس هذا من المدح فيما بيننا بل هذا فيما بيننا ذم ولا يحل أن نقول ان الله تعالى عقلاً وشجاعةً وعفةً ودهاءً وفهياً وذكاءً وهذا غاية المدح فيما بيننا فبطل أن يُراعى فيما يُجبر به عن الله تعالى ما هو مدح عندنا أو ما هو ذم عندنا بل النص فقط وبالله تعالى التوفيق، ومن البرهان على هذا ان رسول الله صلعم قال ان الله تعالى تسعة وتسعين اسماً مائة غير واحد من أحصاها دخل الجنة⁵

¹ (1) Probably repeated inadvertently.

² Cod. الحبر.

³ Cod. يقول.

⁴ Cod. يقول.

⁵ al-Bukhārī, *Kitāb al-da'awāt*, no. 73; *Shurūṭ*, no. 18; *Tawhīd*, no. 12. Muslim, *Kitāb al-'ilm*, no. 6, and, in this connection, al-Nawawī, V, p. 289. The literature on the

or Islam, adopted pagan Arabian teachings literally, and has simply given them an Islamic cloak ¹.

Ibn Ḥazm carries his demand that only such qualities of God be mentioned that are explicitly stated as such in the written authorities, and that nothing ought to be added to the essence of God by speculative means, to the extent that he insists on these terms even for non-Muslims by referring to their own sacred scriptures. Ibn Ḥazm counters the view of those Christian dogmatists who identify the son with God's knowledge, and the Holy Ghost with His life, by arguing that they could not produce evidence for this from the Gospels and their other religious books ². Incidentally, he also advanced philological reasons for this view. In dogmatical matters, in cases in which attested traditions do not provide textual clues, he generally recognizes besides the scriptural evidence only *ijmā'* (consensus) as authority. It could not be said about God that He is the "resurrector of the dead" and "the killer of the living" unless the admissibility of these linguistic expressions, and some others, are supported by *consensus* ³. (These

¹ The following attempt of explanation by the Baṣran theologian 'Abd al-Raḥmān b. Maḥdī (d. 198) shows that the *dahr* tradition was considered objectionable from a dogmatic point of view certainly in the earliest time. Attempts were made to reconcile this with the spirit of Islam by means of interpretation: **وَأَمَّا قَوْلُهُ لَا تَسْبُوا الدَّهْرَ فَإِنَّ الدَّهْرَ هُوَ اللَّهُ فَمَا أَحْسَنَ مَا فَسَّرَ ذَلِكَ عَبْدُ الرَّحْمَنِ بْنِ مَهْدِيٍّ قَالَ وَجْهٌ هَذَا عِنْدَنَا أَنَّ الْقَوْمَ قَالُوا وَمَا يَهْلِكُنَا إِلَّا الدَّهْرُ فَلَمَّا قَالَ الْقَوْمُ ذَلِكَ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِنَّ الَّذِي أَهْلَكَ الْقُرُونُ هُوَ اللَّهُ عَزَّ وَجَلَّ فَتَوَعَّبَ مِنْهُ الْمُتَوَعَّبُ أَنَّهُ إِذَا وَقَعَ الْكَلَامُ عَلَى الدَّهْرِ** al-Jāhiz, fol. 60b.

² Ibn Ḥazm, I, fol. 20a: **وَذَلِكَ أَنَّ بَعْضَهُمْ قَالَ لَمَّا وَجِبَ أَنْ يَكُونَ الْبَارِي تَعَالَى حَيًّا عَالِمًا وَجِبَ أَنْ يَكُونَ لَهُ حَيَاةٌ وَعِلْمٌ فَحَيَاتُهُ هِيَ الَّتِي تَسْمَى رُوحَ الْقُدُسِ وَعِلْمُهُ هُوَ الَّذِي يَسْمَى ابْنًا، قَالَ أَبُو مُحَمَّدٍ وَهَذَا مِنْ أَعْتَابِ مَا يَكُونُ مِنَ الْاِحْتِجَاجِ لِأَنَّ قَدَمْنَا أَنَّ الْبَارِي تَعَالَى لَا يُوصَفُ بِشَيْءٍ مِنْ هَذَا مِنْ طَرِيقِ الِاسْتِدْلَالِ لَكِنْ مِنْ طَرِيقِ السَّمْعِ خَاصَّةً وَليْسَ يَصِحُّ لَهُمْ دَلِيلٌ لَا مِنْ ائْتِجِلِهِمْ وَلَا مِنْ غَيْرِهِ مِنَ الْكُتُبِ أَنَّ الْعِلْمَ يَسْمَى ابْنًا وَلَا فِي كُتُبِهِمْ أَنَّ عِلْمَ اللَّهِ هُوَ ابْنُهُ وَقَدْ ادَّعَى بَعْضُهُمْ أَنَّ هَذَا تَقْتَضِيهِ اللُّغَةُ اللَّطِينِيَّةُ مِنْ أَنَّ عِلْمَ الْعَالَمِ يُقَالُ فِيهِ أَنَّهُ ابْنُهُ الخ.**

³ Fol. 155b: **وَأَمَّا اثْبَاتُ الْوَصْفِ أَوْ التَّسْمِيَةِ لَهُ تَعَالَى فَلَا يَجُوزُ** (read: قول) **أَنَّهُ تَعَالَى مُجِيبِي الْمَوْتِ وَتُسَمِّي الْأَحْيَاءَ إِلَّا لِأَنَّهُ يَثْبُتُ (الْإِلَهِيَّةُ) عِنْدَ بَعْضِهِمْ** cod. obscure:

expressions occur neither in the Koran nor in the traditions in these participial forms; there they are found only as *verbum finitum*).

Indeed, we have really seen enough examples of how Ibn Ḥazm applied the jurisprudential tenets of the Zāhirite school to dogmatics, and how he recognizes for its authority only the written religious sources and consensus. Since the Zāhirite school rejects analogical evidence (*qiyās*) in *fiqh*, Ibn Ḥazm would like to see it banned also from dogmatics. He produces extensive evidence that no qualities must be attributed to God that are deduced from the negation of another quality which He does not possess (e.g. that He be called a hero because He lacks cowardice, etc.), unless, of course, such appellation of God can be documented by explicit passages from the Koran or the traditions. We may call God the Living, the Knowing, and the Powerful, not because He is not dead, ignorant, or powerless, but because He is given these names in passages of the scripture. If this were not the case, no one would be permitted to call God by these names, for this would mean that one would compare God with such a creature. This applies especially to the name *ḥayy* which indicates in one Koranic passage both he who comprehends the truth and he who recognizes God's essence as true. "One more thing must be remarked", Ibn Ḥazm continues: "namely, that the Ash'arites claim to frown upon any comparison of God with creatures, although they themselves succumb completely to this sin. Indeed, they say: since only a living, knowledgeable, and powerful person can be an efficacious person among men, it follows that the Creator also, who brought forth everything, must possess these qualities. This is the line of their analogical reasoning; but God is far beyond created things and beyond similarity with them! Even those who recognize analogy, yield to

إِجْمَاعٌ فِي إِبَاحَةِ شَيْءٍ مِنْ ذَلِكَ وَلَوْلَا (لَوْلَا يَثْبُتُ) could possibly be read
الْإِجْمَاعُ عَلَى إِبَاحَةِ إِطْلَاقِ بَعْضِ ذَلِكَ هَاهُنَا مَا أُجْرِنَاهُ.

وَأَيْضًا فَإِنَّهُمْ يَدَّعُونَ أَنَّهُمْ يَنْكُرُونَ التَّشْبِيهَ ثُمَّ يَرْكَبُونَهُ أَيْضًا: Fol. 153b: **رُكُوبٌ فَيَقُولُونَ لَمَّا لَمْ يَكُنِ الْفِعَالُ عِنْدَنَا إِلَّا حَيًّا عَالِمًا قَادِرًا وَجِبَ أَنْ يَكُونَ الْبَارِي الْفَاعِلُ لِلْأَشْيَاءِ حَيًّا عَالِمًا قَادِرًا وَهَذَا نَصٌّ قِيَاسُهُمْ تَعَالَى اللَّهُ (لَهُ) عَلَى الْخُلُوقَاتِ وَتَشْبِيهُهُ تَعَالَى بِهَا وَلَا يَجُوزُ عِنْدَ الْقَائِلِينَ بِالْقِيَاسِ أَنْ يَقَاسَ الشَّيْءَ إِلَّا عَلَى نَظِيرِهِ وَأَمَّا أَنْ يَقَاسَ الشَّيْءَ عَلَى خِلَافِهِ مِنْ كُلِّ جِهَةٍ وَعَلَى مَا لَا يَشْبَهُهُ فِي شَيْءٍ الْبَيِّنَةُ فَهَذَا مَا لَا يَجُوزُ إِصْلَاحًا عِنْدَ أَحَدٍ فَكَيْفَ وَالْقِيَاسُ كَمَا بَاطِلٌ لَا يَجُوزُ.**

it only in such cases in which a deduction is to be drawn from the analogy of two similar things. But no one permits the comparison of two diametrically opposed things which are similar in no point. Besides, the *qiyās* method is altogether invalid". While Ibn Ḥazm is continually declaiming *qiyās* and *istidlāl*, and any arbitrary introduction of speculative elements into theological investigations, it is by logical arguments, as we could see, that he attempts to dismiss as *ad absurdum* even the procedure of the opposing schools. Indeed, he himself recommends Aristotelian works as "sound, useful books guiding towards monotheism" which advise jurists, as well as dogmatists, to establish correct premisses, to arrive at correct deductions, to formulate the right definitions, and to execute other logical operations. The Aristotelian books are indispensable for the *faqīh mujtahid* both for his own interest and for that of his co-religionists¹.

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The same points of view which provide the Zāhirite dogmatist with the main thought for his religious belief in the question of the divine attributes, tell him also in other aspects of dogmatics the direction to follow, both for the establishment of his own positive system, and also for his polemics against rival schools. An example is the answer to the question whether it is permitted to speak of God as possessing a *will* and as one who wills. In conflict with the view of dogmatists who, affirming this question, call the will an eternal attribute of the divine essence, Ibn Ḥazm advances the philosophical argument that, in this case, the thing that God willed ought to be eternal too, since, according the Koranic statement, God's acts of volition are always accompanying the existence of what is willed (*sūrah* II:111, III:42,

¹ Fol. 128b: قال ابو محمد وهذه الكتب كلها (يعنى الكتب التى جمعها) ارسطاطليس في حدود الكلام) كُتِبَ سألته مفيدة داتة على توحيد الله عز وجل وقدرته عظيمة المنفعة فى انتقاد جميع العلوم وعظم منفعة الكتب التى ذكرنا فى الحدود ففى مسائل الاحكام الشرعية فيها يعرف كيف التوصل الى الاستنباط وكيف تؤخذ الالفاظ على مقتضاها وكيف يعرف الخاص من العام والمجمل من المفسر وبناء الالفاظ بعضها على بعض وكيف تقديم المقدمات وانتاج النتائج وما يصح من ذلك صحة ضرورية أبداً وما يصح مرةً ويبتل أخرى وما لا يصح البتة وضرب الحدود التى ما شد عنها كان خارجاً عن اصله ودليل الخطاب ودليل الاستقراء وغير ذلك مما لا غنىً للفقهاء المجتهدين لنفسه ولاهمل ملته عنه.

and others). But the main issue in his argumentation remains his insistence on the explicit expression of the scriptural texts (*naṣṣ*) as authority. There we never find anything but the forms of the *verbi finiti* in the perfect and imperfect which express the divine act of volition. But never, either in the Koran or in the *sunnah*, do we find that the (*maṣḍar*) nomen verbi, *irādah* "the act of willing" or the participial form *murīd* "the one who wills" is used in relation to God. Therefore, we must not say more about God than He states about Himself: He wills, He does not will, He has willed, He has not willed, but not: God's volition or will, He is who wills,

"for the latter expression occurs neither in the text of the Koran, nor in any statement of the Prophet or any of the pious ancestors. This objectionable usage was introduced only by some *mutakallimūn* for whose salvation there is more fear than hope. They have — so Ibn Ḥazm satyirizes against the Ash'arites¹ — progressed neither in Islam nor in piety, nor in striving for

¹ Fol. 160b: واما الارادة فقد اثبتها قوم من صفات الذات وقالوا لم تزل الارادة ولم يزل الله تعالى مريدا بها، قال ابو محمد وهذا خطأ لبرهانين ضروريين احدهما ان الله تعالى لم ينص على انه يريد ولا على ان له ارادة وايضا فان الارادة من الله تعالى لو كانت لم تزل لكان المراد لم يزل بنص القرآن لان الله عز وجل اتا امره اذا اراد شيئا ان يقول له كُن فيكون فآخبر تعالى انه اذا اراد الشيء كان وأجمع المسلمون على تصويب قول من قال ما شاء الله كان والمشيئة هي الارادة فصحح بها ذكرنا صحة لا شك فيها ان الواجب ان يقال اراد الله كما قال تعالى اذا اراد شيئا ويقول انه تعالى يريد ما اراد ولا يريد ما لم يُرِدْ كما قال تعالى يُريد الله بكم اليسر ولا يريد بكم العسر قال تعالى أولئك الذين لم يُرد الله أن يطهر قلوبهم وإذا اراد الله بقوم سوءاً وقال تعالى فَمَنْ يُرد الله أن يهديه يشرح صدره للإسلام وَمَنْ يُرد أن يضلّه يُعجل صدره ضيقاً حرجاً فنحن نقول كما قال الله تعالى اراد ويريد ولم يرد ولا يريد ولا نقول ان له ارادة ولا انه يريد لانه لم يأت نص من الله تعالى بذلك ولا من رسوله صلعم ولا جاء ذلك قط عن احد من السلف الصالح رضى الله عنهم واما اطلق هذا الاطلاق الفاحش قوم من المتكلمين الخوف عليهم اقوى من رجاء السلامة لهم لا قدم صدق لهم فى الاسلام ولا فى الورع ولا فى الاجتهاد فى الخير ولا فى العلم بالقرآن ولا بسنن رسول الله صلعم ولا بما اجمع عليه المسلمون ولا بما اختلفوا فيه ولا بحدود الكلام وحقائق

160 right, nor in the sciences of the Koran and the Prophet's traditions, nor in that upon which the believers agree, nor in that upon which they disagree, nor in the definitions of *kalām*, nor in the investigation of nature and the quality of created things; rather, they follow what is deceptive and plunge headlong into doom without guidance from God. We beseech God for protection from this threat. God has said in the Koran: 'If they were to refer it to the Prophet and to those in command among them, those of them would know who inform themselves thereof from them' (*sūrah* IV:85). In this statement God made it clear that whoever does not refer problems either to the Book of God, or to the sayings of the Messenger of God, or to the consensus of the learned among the companions and the followers and those who followed their path, does not even know what he deduced on the basis of his own conjecture and opinion¹. We ourselves do not condemn the endeavour that

161 truth be established and that it be clear; rather, we say that this is an excellent, beautiful action. We only reject the following: the drawing of conclusions in religious matters under the exclusion of arguments from the Koran, the *sunnah*, and the consensus, particularly since this type of argument is cogently required because of the perceptive faculty of the senses, because of the mind's intuition, and because of the deductions that follow from their sound premisses — such as the validity of monotheism and prophethood. Now, when we consider what we have mentioned, it necessarily follows that we adhere to what we were told by the Prophet whom God has sent, that we comply with what he commissioned, and prevent fallacious conjectures, false opinions, ridiculous analogies, and ruinous servile imitation (of the opinion of the schools) to obstruct this".

ماهيات المخلوقات وكيفياتها فهم يتبعون ما تراءى لهم ويقتحمون المهالك بلاهدى من الله عز وجل نعوذ بالله من ذلك وقد قال تعالى ولو ردوه الى الرسول والى اولى الامر منهم لعلمه الذين يستنبطونه منهم فنصّ تعالى على ان من لم يرد ما اختلف فيه الى كتابه والى كلام رسوله صلعم والى اجماع العلماء من الصحابة والتابعين رضى الله عنهم اجمعين ولا من سلك سبيلهم بعدهم فلم يعلم ما استنبطه بظنه ورأيه ولسنا ننكر الحاجة على القصد الى تبين الحق وتبينه بل هذا هو العمل الفاضل الحسن واما ننكر الاقدام فى الدين بغير برهان من قرآن او سنة او اجماع بعد ان اوجبه برهان الحس واول بديهة العقل والنتائج الثابتة من مقدماته الصحيحة من صحة التوحيد والنبوة واذا ثبتنا با ذكرنا ضرورة العقل توجب الوقوف عند جميع ما قاله لنا الرسول الذى بعثه الله تعالى علينا وامرنا بطاعته وان لا يُعترض بالظنون الكاذبة والآراء الفاسدة والقياسات السخيفة والتقليد المهلك.

¹ It would make more sense if we could amend the text as follows: ألا يعلم إلا "he knows only what he elicits from his own etc."

Ibn Ḥazm argues in precisely the same literal manner with the Mu'tazilites: for instance, in the question of whether God created the sinful actions of men. The Mu'tazilites, as it is known, reject this belief of the orthodoxy.

"They raise the following objections against the speculative school: If God created disbelief and sinful actions, it would follow that He would be angry with whatever He Himself did, that He would not be pleased with what He created, and that He disapproved what He Himself practised. His anger and disapproval would consequently be directed against what He commanded and decided Himself. Such objections — so Ibn Ḥazm says — are invalid jugglery. We do not dispute — for God Himself has told us so — that He is angry with disbelief, injustice, and lies, and that He derives no pleasure from this, and that on the contrary, He disapproves of all this, and that He punishes it with His wrath. In this respect, we must simply conform to the divine word. But let us put the same question to the Mu'tazilites and say: 'Was it not God Himself who created Iblis, Pharaoh, wine, and the unbelievers?'. They cannot but answer in the affirmative. Then, we go on asking: 'Is God pleased with them or does He direct His wrath against them?'. — Everyone must probably answer this in the affirmative. But then we say: 'This is precisely what you refuted just then, namely, that God is angry with His own command, disapproves His own action, and repudiates and curses His own creation!'. If they do not agree with this and say that God did not repudiate the unbelievers, *per se*, and that He was not angry with the person of Iblis himself and did not disapprove of wine itself, then we cannot make this concession to them, for God states explicitly in the Koran that He cursed Iblis and the unbelievers, and that they are repudiated and cursed, and that His wrath is upon them. The same applies to wine and idols"¹.

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واما اعتراضهم من طريق النظر بان قالوا انه تعالى
¹ Fol. 197b: ان كان خلق الكفر والمعاصي فهو اذن يغضب مما فعل ويغضب مما خلق ولا يرضى ما صنع ويسخط ما فعل ويكره ما يفعل وانه يغضب ويسخط من تدييره وتقديره فهذا تمويه ضعيف ونحن لا ننكر ذلك اذ اخبرنا الله عز وجل بذلك [واذ هو] تعالى قد اخبرنا انه يسخط الكفر والظلم والكذب ولا يرضاه وانه يكره كل ذلك ويغضب منه فليس الا التسليم لقول الله عز وجل ثم نعكس عليهم هذا السؤال نفسه فنقول لهم انيس الله خلق ابليس وفرعون والخمر والكفار فلا بد من نعم فنقول لهم ايرضى جل وعز عن هولاء كلهم ام هو ساخط لهم فلا بد من انه ساخط لهم كاره لهم غضبان عليهم غير راض عنهم فنقول لهم هذا نفس ما انكرتم من انه تعالى سخط تدييره وغضب من فعله وكره ما خلق ولعنه فان قالوا لم يكره عين الكفر (الكفار 1) ولا سخط شخص ابليس ولا كره عين الخمر لم نسلم لهم ذلك لانه تعالى

Ibn Ḥazm's Zāhirite method in the religious sciences must have been, inevitably, of important influence for the definition of his ethical concepts. In this case, too, he recognized nothing but the *written* evidence as basis. In this field, Ibn Ḥazm dismisses deduction completely, be it derived either on the basis of *a priori* sentences, or from empirical facts. An action is good or bad not according to its nature and its ethical or religious value, but solely because it has been designated as such by the divine will as revealed in the Koran and the traditions. According to this, the identical action can have been good for a certain time, but then, suddenly, can have been changed to a reprehensible action by God's sovereign will. In this case, however, Ibn Ḥazm can choose his examples only from among Islamic ritualism.

163 The turning of the face in prayer towards Jerusalem had formerly been a "beautiful gesture and proper faith". But later, God described the same gesture as a reprehensible action, as a sign of disbelief. Hence Ibn Ḥazm follows "that there is nothing in the world that in itself is either good or bad. Good is only what God designates as such, and the same applies to bad things. God's creation alone is absolutely good, God himself says this. Man's actions, created in him by God, are modified exclusively by God's independent will" ¹.

"Therefore there is no action in the world that could be called *vice per se*, for it becomes this only through its relation to God's will. Killing Zayd is vice if God forbid it, but virtue if God commanded it.

قد نصّ على انه لعن ابليس والكفار وانهم مسخوطون ملعونون مكروهون من الله تعالى مغضوب عليهم وكذلك الحمر والاثوان.

¹ Ibn Ḥazm, fol. 196a: حسنة حركة الصلاة الى بيت المقدس حركة حسنة كما كانت الصلاة الى بيت المقدس حركة حسنة وايماناً ثم سماها تعالى قبيحة كفرًا وهذه تلك الحركة نفسها فصيح انه ليس في العالم شيء حسن لعينه ولا شيء قبيح لعينه لكن ما سماه الله تعالى حسناً فهو حسن وفاعله محسن قال تعالى ان احسنتم احسنتم لانفسكم وقال تعالى هل جزاء الاحسان الا الاحسان وما سماه الله تعالى قبيحاً فهو حركة قبيحة وقد سمى عز وجل خلقه لكل شيء في العالم حسناً فهو كله من الله تعالى حسن وسمى ما وقع من ذلك من عباده كما شاء فبعض ذلك قبيح فهو قبيح وبعض ذلك حسنه فهو حسن وبعض ذلك قبيحاً فكان قبيحاً ثم حسناً وبعض ذلك حسناً ثم قبيحاً فكان حسناً ثم قبيحاً كما صارت الصلاة الى الكعبة حسنة بعد ان كانت قبيحة وكذلك جميع افعال الناس التي خلقها الله تعالى فيهم.

Cf. to this al-Ijī, *al-Mawāqif*, p. 137 ff.

However, it can be said that something is a lie in itself, namely, when a person makes a statement contrary to facts. But this point alone does not make him either a liar, or subject him to slander; he becomes this only insofar as God has designated in an explicit manner this act to be sin and a reprehensible action" ¹.

164 In one much disputed question in Islamic theology Ibn Ḥazm was forced to repudiate the exegetic rules which he had established. The anthropomorphic expressions of God which we find in the Koran and in the traditions presented the Zāhirite religious philosopher with a problem that was destined to deal his Zāhirite confession a staggering blow. In this instance, only the anthropomorphists (*al-mujassimah*) are faithful to the scripture since they adhere to the wording of the holy scripture, and confess without fear that God has a face, hands, fingers, and feet, etc. This is how it is explicitly stated in the books and no interpretation will change this. Ibn Ḥazm repudiates this view with sharp, abusive words, but he repudiates just as sharply the explanations of the Ash'arites and the Mu'tazilites who see metaphors in these expressions. In order to exert his Zāhirite views in both directions, he must resort to one of two things, either to lexica and find meanings which are compatible with the spiritual view of God for those words which apparently denote bodily limbs, or, he must argue away completely the anthropomorphic expressions, and, taking linguistic usage as authority, view them as superfluous additions. For example, for him *wajh Allāh* and *yad Allāh*, etc., are nothing but superfluous expressions for Allāh. For yet other expressions, lexical interpretation is attempted, e.g. for *rijl* (God's foot) the meaning: assembly *jamā'ah*; for finger (*iṣba'*) the meaning: hands; grace (*ni'mah*), etc. In other cases, grammatical justification is given. We have already seen an example on page 116 where Ibn Ḥazm rescues complicated textual passages for his own theory by exercising *idāfat al-mulk*. He supplies evidence for this in this chapter too. "God creates Adam *in his form*" does not mean that man has been created in *God's form*, so that it follows that God might have shape, rather, it means that

¹ Fol. 200a: انه ليس في العالم ظلم لعينه ولا بذاته البتة وانما الظلم بالاضافة فيكون قتل زيد اذا نهى الله عنه ظلماً وقتله اذا امر الله بقتله عدلاً وانما الكذب فهو كذب لعينه وبذاته فكل من اخبر بخبر بخلاف ما هو فهو كاذب الا انه لا يكون بذلك آثماً ولا مذموماً الا حيث اوجب الله تعالى فيه الاثم والنم فقط.

165 God created him in a form that He chose for him. All forms belong to God (as the possessor). From among the many forms in His possession He chose one and set His stamp upon Adam. What follows is the main passage in Ibn Ḥazm's religio-philosophical work which refers to this, and which also clearly demonstrates his relationship to the dogmatic schools:

قال ابو محمد قال الله عز وجل ويبقى وجه ربك ذو الجلال والإكرام فذهبت المحيضة الى الاحتجاج بهذا في مذهبهم وقال آخرون وجه الله تعالى إنما يراد به الله عز وجل قال ابو محمد وهذا هو الحق الذي قام البرهان بصحته لما قدسنا من ابطال القول بالتجسيم وقال ابو الهذيل وجه الله هو الله، قال ابو محمد وهذا لا ينبغي أن يطلق لأنه تسمية وتسمية الله تعالى لا يجوز إلا بنص ولكننا نقول وجه الله ليس هو غير الله تعالى ولا نرجع منه الى شيء سوى الله تعالى برهان ذلك قول الله تعالى حاكيا عن رضى قوله إنما نطعمكم لوجه الله فصحح يقينا أنهم لم يقصدوا غير الله تعالى وبه عز وجل نتأيد وقال تعالى يد الله فوق أيديهم وقال تعالى لما خلقت بيدي وقال تعالى مما عممت أيدينا أنعاما وقال تعالى بل يدها مبسوطتان وقال رسول الله صلعم عن يمين الرحمن وكلنا يديه يمين فذهبت المحيضة الى ما ذكرنا مما قد سلف بطلان قولهم فيه وذهبت المعتزلة الى ان اليد النعمة وهو ايضا لا معنى له لأنه دعوى بلا برهان وقال الاشعري ان المراد بقول الله تعالى أيدينا انما معناه اليدان وان ذكر الاعين انما معناه عينان وهذا باطل مدخل في قول المحيضة بل نقول ان هذا اخبار عن الله تعالى لا يرجع من ذكر اليد الى شيء سواه تعالى والله تعالى كما قال يد ويدان وايد وعين واعين كما قال عز وجل ولتضع على عيني وقال تعالى فانك بأعيننا ولا يجوز لأحد أن يصف الله عز وجل بأن له عينين لأن النص لم يأت بذلك ونقول ان المراد بكل ما ذكرنا الله عز وجل لا شيء غيره وقال تعالى حاكيا عن قول قائل قال يا حسرتي على ما فرطت في جنب الله وهذا معناه فيها يقصد به الى الله عز وجل وفي جانب عبادته وصحح عن رسول الله صلعم ان جهنم لا تمتلى حتى يضع الله فيها قدمه وصحح في هذا الحديث حتى يضع فيها رجله ومعنى هذا ما قد بينه رسول الله صلعم في حديث آخر صحيح اخبر فيه ان الله تعالى بعد يوم القيمة يخلق خلقا يدخلهم الجنة وأنه تعالى يقول للجنة وللنار ولكل واحدة منكم ملؤها فمعنى القدم

في الحديث المذكور انما هو كما قال تعالى قدّم صدق عند ربهم يريد سالف صدق فمعناه الأتمة التي تقدّم في علمه تعالى انه يملأ بها جهنم ومعنى رجله نحو ذلك لأن الرجل الجماعة في اللغة اى يضع فيها الجماعة التي قد سبق في علمه تعالى انه يملأ جهنم بها وكذلك الحديث الصحيح ان رسول الله صلعم قال ان قلب المؤمن بين اصبعين من اصابع الله عز وجل اى بين تديرين ونعمتين من تدير الله عز وجل ونعمه انما كفاية يسره وانما بلايا جرّها (حره. eod.) عليه والاصبع في اللغة النعمة واخبر عم ان الله تعالى يبدو للمؤمن يوم القيمة في غير الصورة التي عرفوها وهذا ظاهر بين وهو أنهم يرون صورة الخال من الهول والمخافة غير التي يظنون في الدنيا وبرهان صحة هذا القول قوله عم في الحديث المذكور غير التي عرفتموه بها وبالضرورة نعلم اننا لم نعلم لله عز وجل تعالى في الدنيا صورة اصلا فصحح ما ذكرناه يقينا وكذلك القول في الحديث الثابت خلق الله آدم على صورته فهذا اضافة ملك يريد الصورة التي يخيّر الله عز وجل ليكون آدم عم مصورا عليها وكل فاضل في طبقتة فانه ينسب الى الله تعالى ويضاف اليه عز وجل كما نقول بيت الله عن الكعبة والبيوت كلها بيوت الله تعالى وكما نقول في جبرئيل وعيسى عليها السلام روح الله والارواح لها الله تعالى ملك له (لها. eod.) وكالقول في ناقة صالح عم ناقة الله والنوق كلها لله عز وجل فعلى هذا المعنى قيل على صورة الرحمن والصور كلها لله تعالى هي ملك له وخلق له، وقد رأيت لابن فورك 167 وغيره من الاشعريّة في الكلام في هذا الحديث انهم قالوا معنى قوله عم ان الله خلق آدم على صورته انما هو على صفة الرحمن من الحياة والعلم والاقترار واجتماع صفات الكمال فيه واسجد له ملائكته كما اسجدهم لنفسه وجعل له الامر والنهي على ذريته كما كان لله كل ذلك، قال ابو محمد هذا نص كلام ابي جعفر السمناني عن شيوخه حرفا حرفا وهذا كفر مجرّد لا ريب فيه لأنه سوى بين الله تعالى وآدم في الحياة والعلم والاقترار وفي ان سجودهم لله تعالى سجود عبادة فان كانوا سجودوا لآدم عبادة له فهذا شرك مجرّد ثم زاد في ان الامر والنهي لادم على ذريته كما هو لله تعالى وهذا شرك لا خفاء به، وكذلك ما صحح عن النبي صلعم عن يوم القيمة ان الله عز وجل يكشف عن ساق فيخرون سجدا فهذا كما قال الله عز وجل في القران يوم يكشف عن ساق ويدعون الى السجود وانما هذا اخبار عن شدة

الامر وهول الموقف كما تقول قد شممت الحرب عن ساقها والعجب ممن ينكر هذه الأخبار الصحاح وأتت جاءت بها جاء به القرآن نصًا ولكن من ضاق علمه انكر ما لا علم له به وقد عاب الله هذا فقال بَلْ كَذَّبُوا بِمَا لَمْ يُحِيطُوا بِعَلْمِهِ وَلَا تَأْتَهُم تَأْوِيلَهُ¹

Ibn Ḥazm is not even frightened by *taqdīr*, the literal meaning of which would indicate God's corporeity. He declares — supported by the authority of passages from Aḥmad b. Ḥanbal, like *wa-ja'a rabbuka* "your God came" — with the following restitution: it came God's command *wa-jā'a amr rabbika*². We have seen that in the explanation of the anthropomorphic passages of the Koran and the traditions,

168 **Ibn Ḥazm becomes unfaithful to his own system, and in his interpretation of the scripture he is guilty of the very same arbitrariness of which he ordinarily accuses the Mu'tazilites** with merciless reproaches.

In view of the numerous anthropomorphic passages in the Koran, Ibn Ḥazm could not dismiss the passages of the traditions in this case as false or as insufficiently documented simply because they were inconvenient for dogmatic reasons, and because their interpretation would be harmful to his Zāhirite literalism. As we have repeatedly seen, he loved to apply this method of refutation ordinarily as *ultima ratio* to deflate his opponents' arguments.

On the other hand however, attempts were not lacking from the part of the spiritual dogmatists to remove anthropomorphical expressions from the text of the collections of traditions. This fact which emerges from the adduced *apparatus criticus* in the commentaries, is of such importance for the history for the Islamic canonical texts that we shall illustrate it with some examples:

In *Kitāb al-tafsīr*, no. 253 (to *sūrah XLVII:27*) it says: خلق الله الخلق فلما فرغ منه قامت الرحم فأخذت بحقر الرحمن فقال له مه الخ الخ (var. بحقوى) "After God completed creation, kinship rose and seized God's loin. Then God said: 'Back!' But it said: 'This is the refuge of him who seeks protection from perfidy of faith, etc.'" For spiritualists the loin of God might have sounded objectionable so that attempts were made to remove the offensive words from the texts. In al-Qaṣṭallānī, VII, p. 382, in which the *apparatus criticus* is reported in admirable detail, we find textual criticism in which

¹ Fol. 157a, l. 14, cod. *li-annahā*; l. 54, cod. *fī*.

² Fol. 159a.

the objectionable words are marked with the sign "deleatur" (*kashf*). In Abū Dharr's text these words are missing altogether. Ibn Ḥajar notes in his commentary (*Fath al-bārī*) that in many editions the object of the verb *akhadhat* is missing (حُدِفَ لِلأَكْثَرِ مَفْعُولٌ اخذت) although the sentence does not make much sense without this object. Abū Zayd did not read the words *بحقوى الرحمن* although they existed in his text. — A similar passage is *Tafsīr* no. 264 (to *sūrah L:29*). There it says that hell shall not be filled until God puts *His* foot on it; then hell says: "Enough, enough!" فَمَا النَّارُ فَلَا تَمْتَلِيْ حَتَّى يَضَعَ رَجْلَهُ. In Muslim we find in the corresponding passage the words: حَتَّى يَضَعَ اللهُ رَجْلَهُ and in another version of this tradition in which al-Bukhārī transmits the words حَتَّى يَضَعَ قَدَمَهُ

169 Muslim reads حَتَّى يَضَعَ رَبُّ الْعِزَّةِ قَدَمَهُ. Al-Qaṣṭallānī (*ibid.*, p. 395) makes the following remark وانكر ابن فورك لفظ رَجْلَهُ وقال ابن الجوزى هي يحريف من بعض الرواة ورُدَّ عليها برواية الصحيحين بها وأوتت بالجماعة I suspect that already the omission of the subject *Allāh* and *rabb al-'izzah* in al-Bukhārī must be attributed to the effort to soften the anthropomorphical expression — even if only externally. Ibn Fūrak and Ibn al-Jawzī considered the word *rijlahu* as an interpolation or as distortion on the part of a transmitter.

Also in the field of *tafsīr* — excluding allegorical interpretation — attempts were made to mitigate objectionable anthropomorphisms through exegesis on the basis of grammar. Al-Bukhārī's *Kitāb al-zakāt*, no. 8, represents an example of this: "He who donates from rightful acquisition the value of a date ... verily, God shall accept it from him with His right hand and increase it for the donor, just as if one of you were to raise a foal, until it reaches the size of a mountain!" من تصدق

بعدل تمر من كسب طيب ولا يقبل الله الا الطيب وان الله يتقبلها بيمينه ثم يريها لصاحبه كما يربى احدكم فلوة حتى تكون مثل الجبل فتربو في كف الرحمن حتى تكون اعظم

من الحبل. Traditionists and theologians have made many futile attempts to explain the significant expressions in this tradition. In al-Damīrī, II, p. 265, s.v. *filw*, one finds an interesting compilation of the views in question. Here we are particularly interested in the one according to which *bi-yamīnihi* is not to be understood as the right hand of God, but as the hand of the one to whom it was donated: God receives the alms, as it were, through the hand of the needy person

to whom it was donated; at the time when he receives the alms, God too receives it. Considerable textual critical, and exegetic arbitrariness was employed to purge the tradition of the accusation of *tajsīm* with which Muslims customarily charge the Jews and their holy scriptures¹.

(3)

170 Let us repeat: Ibn Ḥazm carried on the idea of the Zāhirite school in so far as he aimed at asserting a new methodology in the field of Islamic dogmatics, namely the Zāhirite methodology. He treated and judged questions of religious belief from exactly the same point of view as the school to which he belonged in matters of *fiqh* viewed and treated questions of jurisprudence. The system of Ibn Ḥazm's dogmatics is entirely consistent with his *fiqh*. Until his time no attempt had been made to establish Zāhirite dogmatics.

But also Ibn Ḥazm did not succeed in asserting his dogmatics within the Zāhirite school. Even later, the attitude toward dogmatic controversies remained completely inconsequential as a qualification for a theologian to be recognized as an adherent of the Zāhirite school. The only criterion which determines membership to the school of Dāwūd al-Zāhirī continues to be the position in jurisprudence, and the attitude towards the legitimate and illegitimate sources of legal deduction.

The fate of Ibn Ḥazm and his writings is sufficiently known from the Moor's story in Andalusia. Fanaticism, irreconcilability, offensive recklessness, a mania that attempted to stamp as heresy all rival opinions, these traits, which represent the dominant features of the literary image of our Ibn Ḥazm, were not conducive to his endeavours in attracting friends or followers from the opposing camps. Posterity characterized his unsparing, literary manner, and his inconsiderate slander of the greatest authorities of the past and the present by the proverb: "The sword of Ḥajjāj and the tongue of Ibn Ḥazm"². His

¹ Grätz, *Monatsschrift*, 1880, p. 309, footnote. For the above-mentioned passages cf. al-Ijī, *al-Mawāqif*, p. 77 ff.

² Ibn al-Mulaqqin, fol. 22a, s.v. Abū Bakr ibn Fūrak relates on the authority of Ibn Ḥazm that Sultan Maḥmūd ibn Subuktigīn had this dogmatist executed because he taught that Muḥammad was the Prophet of God but no longer is so at the present.

One reader who noticed the anachronism made the following marginal note: لا يصح هذا النقل من حيث التاريخ فان ابن فورك مات قبل ان يتملك هذا

171 harsh manners in daily affairs and in science must have had a still more revolting effect on his contemporaries. When Abū al-Walīd al-Bāji returned from the East, during whose absence from the country Ibn Ḥazm's most important writings had appeared in, and stirred up Andalusia, Abū al-Walīd al-Bāji discovered

"much elegance in Ibn Ḥazm's speeches except for the fact that in them he departs from the prevailing *madhhab*. Thus no one in Andalusia was concerned with his erudition. Theologians abandoned even polemic exchanges with him; only some ignorant persons followed his views. He settled on the island of Mallorca where he lived as the head of a group of followers, and the inhabitants of the island followed his teachings".

Al-Bāji, who himself had some leanings towards a literal interpretation of the traditions¹, then went to Ibn Ḥazm and refuted his theses in the course of personal confrontation². Abū Bakr Muḥammad b. Ḥaydarah, a pupil of al-Bāji who died in 500, also composed a pamphlet refuting the famous Zāhirī³.

Thus, if we are to believe the representation of al-Bāji, Ibn Ḥazm's mighty tenet was forced to flee the Andalusian mainland — where it was considered even unworthy of refutation — and falsely to scrape an existence far from the theological currents on the island of Mallorca. But the gloomy description which al-Bāji paints of the complete inefficacy of Ibn Ḥazm's theological endeavours seems to be exaggerated. We find some famous names among the representatives of the Zāhirite

السلطان محمود فتنبه له فان ابن حزم طويل اللسان في حق العلماء بلا مستند حتى في الائمة الاربعة ولذلك ضرب المثل بجرآته فقيل سيف الحجاج ولسان ابن حزم، فبالله المستعان.

¹ He deduced from the famous Ḥudaybiyah tradition (Nöldeke, *Geschichte des Korans*, p. 8) that the Prophet knew how to write. The fanatical *faqīh* Abū Bakr al-Sā'igh called him for this reason a *kāfir*. Even the ignorant masses roused excitement against this strong orthodox theologian who weakened the miraculous powers of the Prophet by attempting to erase the Prophet's name from the list of the illiterate persons by means of concession to the literal exegesis. (The Prophet's miraculous power radiates the brighter, the less knowledge he brought to his prophethood). It is well known that orthodox theology is making strong endeavours to keep the Prophet an *ummī* by means of violent interpretation of the words *fa-kataba* in that tradition. The Prophet's inspiration was bound to be the more astounding, the more ignorant he himself was. Cf. on Bāji's disputation, besides al-Maqqarī, also Sprenger, *Muḥammad*, II, p. 398.

² al-Maqqarī, I, p. 505.

³ *Ṭabaqāt al-ḥuffāz*, XV, no. 28: ردّ على ابن حزم.

school in Ibn Ḥazm's time, and we may assume that it was his influence that led them into the Zāhirite camp. There, in the forefront, we find the great traditionist Ibn 'Abd al-Barr Abū 'Umar Yūsuf al-Nimrī from Córdoba (d. 463), the *qāḍī* of Lisbon. He shared the sympathies of the founder of the Zāhirite school for the Imām al-Shāfi'ī¹. Ibn Ḥazm speaks highly of the *qāḍī*'s work *al-Tamhīd* and says that it cannot be equalled, let alone be surpassed, in the field of *fiqh* as established on the ground of the tradition². By *traditional fiqh* (*fiqh al-ḥadīth*) Ibn Ḥazm means precisely his Zāhirite system of jurisprudence. One of his own juridical works is entitled *al-Ittiṣāl fī fiqh al-ḥadīth*³. The term itself, however, we certainly find in some fabricated traditions⁴. Ibn 'Abd al-Barr later left the Zāhirīyah and became a Mālikite; as a *qāḍī* he was probably obliged to belong to the prevailing school.

Abū 'Abd Allāh b. Muḥammad al-Ḥumaydī (d. 488), whose name is quite familiar to readers of al-Maqqarī's historical work, also belongs to this group. He is indebted to Ibn 'Abd al-Barr and Ibn Ḥazm for his theological training. He continually associated with the latter⁵

¹ *Tab. al-ḥuffāz*, XIV, no. 12.

² al-Maqqarī, II, p. 116: وهو كتاب لا اعلم في فقه الحديث مثله اصلا فكيف احسن منه ،

³ *Tabaqāt al-ḥuffāz*, XIV, no. 15.

⁴ This is a term which defines the legal difference between the ordinary tradition favourably disposed to *qiyās* and the tradition based on pure tradition which is hostile to *qiyās*. I find in this a similarity to a tradition which, like much of the apocryphal material, is borrowed from Muḥammad's farewell pilgrimage (حجّة الوداع). At that time, the Prophet is represented to have made the following statement not included in the *ṣaḥīḥs*: May God make radiant a man who hears a statement from me and who heeds it, for many a carrier of *fiqh* is no representative of *fiqh* of tradition. نَصَرَ اللهُ امرأ سمع مقالتي فوعاها فربّ حامل فقه ليس بفتيه الحديث (Tahdhīb, p. 22; al-Qasṭallānī, Introduction, p. 4). Other versions of this statement, too, were transmitted and, on the basis of them, we should become suspicious of the age of the expression فقيه الحديث. Among them is the following: نَصَرَ اللهُ امرأ سمع مقالتي فحفظها ووعاها وأدّاها فربّ حامل فقه الى من هو افقه منه or: فربّ مبلّغ أوعى من سامع. These last words, alone, are to be found in the traditions recognized as authentic. They are taken from al-Bukhārī, *Kitāb al-'ilm*, no. 9; cf. also *Kitāb* فعل بعض من يبتغى أن يكون أوعى من بعض من سمعه *al-maghāzī*, no. 77; *Tawḥīd*, no. 24; shorter, *Fitan*, no. 8.

⁵ al-Maqqarī, I, p. 534.

among whose most important pupils he is counted¹. He studied Ibn Ḥazm's works under the author's personal guidance and also recognized his *madhhab* as correct, but would not openly display this, for it would probably have been a handicap to his career.

So long as the Zāhirite school depended upon the goodwill and animosity of theologians, its propagation did not reach beyond the studies of a few individual theologians. At that time it was most likely only a negligible community that still upheld Dāwūd al-Zāhirī's banner, and even among those few there were some who, besides their personal Zāhirite conviction, proclaimed another, official one, that of the ruling majority. We shall see immediately that at this time the Zāhirite school had forfeited its existence as a society, as a school, independent of the other orthodox *madhāhib*, and that it was merged in the prevailing Mālikite school. It can easily be understood that the theologians did not allow efforts to materialize which aimed at making superfluous the marvels of their casuistic refinements. Quite to the contrary, they repelled them, ignored their representatives, and took care to screen their activities. In opposition to the interest of the profession, the powerful Ibn Ḥazm, too, was condemned to impotence when he ventured among the theologians. However in the century after Ibn Ḥazm, the Zāhirite school was to get satisfaction for all past defeats. We are talking about a theological reform, guided not by the theologians, but by the princes, a reform that led the Zāhirite system to triumph, and saw its principles raised to a kind of state religion. Although we do not think that past activities of Ibn Ḥazm and his pupils were of direct influence on this strange reaction, because the historian of the movement makes no mention of either Ibn Ḥazm or of his writings within the course of events that contributed towards victory of his school, it is, on the other hand, unthinkable that a radical movement, such as the one about which we are about to speak, be without connection to its historical premisses and to predecessors who aimed at the same goal. Again it was Ibn Ḥazm's dogmatics that were to separate the Almohad movement, which in dogmatic matters stood on Ash'arite ground, from its Zāhirite predecessor.

Under the third ruler of the Almohad dynasty in Spain and North Africa, Abū Yūsuf Ya'qūb (at the end of the VIth century A.H.), who nurtured a particular liking for traditions and traditionists, the

¹ *Tabaqāt al-ḥuffāz*, XV, no. 9.

Zāhirite branch became independent, indeed, the officially preferred school in Islamic practice. Ibn al-Athīr relates that:

“he publicly professed to belong to the Zāhirīyah and turned away from the Mālikite branch¹. Consequently, the cause of the Zāhirīs received a great impetus during his time. In the Maghrib they were represented by many exponents who, with reference to Ibn Ḥazm, are called by the name Ḥazmīyah², however, they were merged in the Mālikite school (*maghmūrūna bi-al-Mālikīyah*). But in his time, they became independent once again and widespread. Yet, towards the end of his days, the Shāfi’ite school attained qādīships in some countries and the prince, too, was inclined towards them”³.

We can clearly see from this account how the Zāhirite school lost its independent importance after the time of Ibn Ḥazm and was merged in the prevailing school, and how close, at that time, the exponents of the Zāhirite school still felt towards the Shāfi’ite school. The most detailed account of the nature of Abū Yūsuf Ya’qūb’s reforms is given by the contemporary historian of the Almohad dynasty:

“During his time the science of *furū*’ collapsed; the jurists were afraid of the ruler; he had the books of the prevailing school of the Mālikites burnt after he had extracted the Koranic and traditional passages contained in them and quoted in them ... I myself was a witness when whole loads of these books were gathered in Fez and given over to the flames. Under threat of heavy punishment, this ruler charged the people to refrain from preoccupation with the science of *ra’y*. On the other hand, he commissioned some of his court scholars to edit a collection of laws on prayer and related matters, similar to Ibn Tumart’s collection of traditions on ritual cleanliness, from the ten works of the tradition that are classed according to chapters; namely, from the *Ṣaḥīḥ* of al-Bukhārī, and of Muslim, from the work of al-Tirmidhī, from the *Muwatta’* of Mālik, as well as from the collections of traditions of Abū Dāwūd, al-Nasā’ī, al-Bazzār, Ibn Abī Shaybah, al-Dāraqūṭnī, and al-Bayhaqī. So they obeyed and compiled the collection requested. The ruler, then, dictated this work personally to his subjects and obliged them to study it. This compilation spread throughout the Maghrib; high and lowly people memorized it. Those who knew it by heart could expect a valuable reward in terms of clothing and other valuables from the ruler. The ruler attempted to expel Mālik’s school altogether from the Maghrib and to lead people towards the *zāhir* in Koran and tradition. Already his father and his ancestors had aimed at this, but had not openly come out with it⁴. When Ḥāfiẓ Abū Bakr b. al-Ghadd had his first audience with Ya’qūb’s father, he found in front of him Yūnus’ work

¹ The identical words, Abū al-Fidā’, IV, p. 174.

² Cf. above, p. 112.

³ Ibn al-Athīr, *Kāmil*, XII, p. 61.

⁴ ‘Abd al-Mu’min patronized the Mālikite school; al-Damīrī, I, p. 246.

on the canonical law. ‘Just look, Abū Bakr!’ so he addressed the scholar, ‘I am looking here at these divergent opinions which developed later in Allāh’s religion. You find four, five, and more different interpretations for one and the same question. Where, now, is the truth, and which of the divergent opinions must the worshippers follow?’. Now, Abū Bakr began to solve the ruler’s problems. But he interrupted the scholar with the following words: ‘O Abū Bakr, there is only this here — he, then, pointed to a copy of the Koran — or this there — pointing to Abū Dāwūd’s work on tradition on his right — or the sword’¹. However, in Ya’qūb’s time all emerged that had remained hidden during his father’s and grandfather’s time”².

Al-Damīrī, who also briefly mentions this very important event for the history of the Zāhirite school³, adds that the branch inaugurated by the Almohad ruler found eager followers in the two brothers Ibn Diḥyah, Abū al-Khaṭṭāb and Abū ‘Amr, and in Muḥyī al-Dīn Ibn ‘Arabī.

The elder Ibn Diḥyah became known in the theological world of Islam through his opposition towards a pet idea of the orthodox who, in spite of Muḥammad’s own protests⁴, would not see the Prophet second to Jesus with regard to miracles. Theologians were much inclined to support the belief of naive Islamic orthodoxy that Muḥammad raised his deceased parents from the dead so that they, who had been pagans during their whole life, might acknowledge their son’s prophethood, so as to enable them to share in the Muslim 176 paradise which they would forfeit without this profession of faith. Al-Suyūṭī composed no less than six works supporting this belief and refuted opposing arguments which, based mainly on the literal meaning (*zāhir*) of the traditions⁵, are represented by our Ibn Diḥyah⁶. This Andalusian theologian is especially famous as a great compiler

¹ A similar statement is transmitted by Abū al-Ḥasan al-Judhāmī about Sulṭān Abū al-Walīd in M. J. Müller, *Beiträge zur Geschichte der westlichen Araber*, p. 128.

² ‘Abd al-Wāhid al-Marrākushī, *Kitāb al-mu’ghib*, ed. Dozy, p. 201-203.

³ *Ḥayāt al-ḥayawān*, I, p. 157.

⁴ Cf. my *Culte des saints chez les musulmans*, p. 3 ff.

⁵ In *Kitāb al-aghānī*, XVI, p. 106, a saying of Muḥammad is related according to which the following persons are in hell: the virtuous Ḥātīm, as well as his father, and the father of Abraham.

⁶ These data are now compiled in the *Burdah* commentary of the contemporary Shaykh of the Azhar Mosque Ḥasan al-‘Idwī (also known as Ḥasan, al-‘Adawī al-Hamzāwī), *al-Nafaḥāt al-Shadhīlīyah*, I, p. 56 ff. (This work consists of three volumes, the first two were published as lithograph, the third volume printed. To this effect the information in *Wissenschaftlicher Jahresbericht der DMG*, 1879, p. 160, n. 177 is to be corrected).

of traditions, but at the same time, he is also accused of having put into circulation much that was not documented, perhaps in order to avoid admittance of *qiyās* (see above p. 7). He seems to have been very liberal in his criticism of the reliability of the traditions. Ibn 'Arabī objected, for example, to the soundness of a tradition upon which Ibn Diḥyah remarked: "How strange it is, that Ibn 'Arabī rejects this sentence in his book *Kitāb al-ghawāmiḡ wa-al-'awāṣim* although it is better known than dawn?"¹ Ibn Diḥyah travelled in many countries to complement his knowledge of the science of tradition; he was recognized as a great authority in philology too². After much travelling he took residence in Egypt where he became the tutor of the prince who became later known as al-Malik al-Kāmil who bestowed great honours on him. After being enthroned, this prince founded for his tutor in the newly established school of traditions a special chair for the science of tradition. With this school, the Ayyūbid prince, a patron of the sciences, attempted to rival Nūr al-Dīn Maḥmūd al-Zangī's model of a professional school for the science of *ḥadīth* in Damascus³. The thankful scholar dedicated his work *Tanbīh al-baṣā'ir fī asmā' umm al-kabā'ir* to his patron who never, not even as a mighty prince, ceased to bestow the highest honours on his former teacher⁴. The work is a synonymy of the appellations of wine in which the author lists no less than 190 names of the odious drink, outdoing all predecessors. The following dedication to his patron shows how thankfully he acknowledged the benefits of his princely pupil:

وشرّفته باسم مولانا سلطان الاسلام غياث الانام عماد [دين] الله كهف
 الأمة ناصر الشريعة محيي السنة السيد الاجل العالم العامل السلطان
 الملك الكامل ناصر الدنيا والدين عز الملوك والسلاطين ظهير امير المؤمنين
 and so on, in the most lavish expressions of glory and flattery that we find so frequently in scholarly dedications of Muslim writers to their patrons and princes. His indebtedness becomes particularly evident from the panegyric poem that follows these boastful words⁵ and which

¹ al-Damīrī, I, p. 248.

² His biography in Ibn Khallikān, IV, p. 111, no. 508, ed. Wüstenfeld; *Tabaqāt al-ḥuffāz*, XVIII, no. 16. Both writers do not mention what al-Maqqarī, I, p. 525 emphasizes, viz. that Ibn Diḥyah is *al-ḡāhirī al-madhḡhab al-Andalusī*.

³ al-Maqqarī, *Khīṭat*, II, p. 375.

⁴ al-Maqqarī, II, p. 94.

⁵ MS of University Library Leiden, Cod. Warner, no. 581, fol. 3b.

abounds in gratitude. As a fanatical orthodox Muslim — the theological method of the *Zāhirīs* offers more reason for this assumption than any other branch of orthodox Islam — he did not miss a chance, not even in this lexical work, to prove himself to be an orthodox Muslim. We are strangely affected by his polemical attacks against etymologies of names for wine which depart from a favourable, sympathetic view of this "mother of all mortal sins"¹. He often goes so far as to flatly deny justification of traditional names for wine when these names state a good trait of this abominable drink. To save space I simply refer to the articles in which he displays this tendency; namely, *الراحة*, *الذكية*, *الزيبية*, *الشبروتية الطاردة*, *العروس*, *العنف*, *الناجود*, *الغانية*, *الكلفاء*, *المحبة*, *المسرية*, *المطيبة*, *النافس*. As a taste of the spirit emanating from this book, and in order to acquaint the reader with the general aim of the author, let me relate what he says about the appellation *al-lataf*. Ibn Diḥyah asserts that this name, meaning *homage*, has been attributed to this abominable object (wine) by malignant people who ignore God's commands. Because of pure fanaticism he even goes so far as to derive *al-khusrawānī*, one of the secondary names for wine, from the verb *khasara* for no other purpose than to deprive the odious drink of an honorific name². Closely connected with his dogmatic confession is a certain slanderous remark about the Mu'tazilite al-Nazzām in an anecdote about the encounter of the dogmatist with a porter. Because of lack of space, we can only refer to it³.

This Ibn Diḥyah eventually succumbed to his enemies' jealousy who envied his fame and his prominent position in Egypt, and who did their very best to unmask him as a forger. The efforts of the enemies had at first no influence on the friendly disposition of the prince. One scholar, Abū Ishāq Ibrāhīm al-Sanhūrī, who travelled to Andalusia for the purpose of gathering data to prove that Ibn Diḥyah had never

¹ Ibn Diḥyah also wrote a book *Wahaj al-jamr fī tahrim al-khamr* which he quotes a few times in the synonymy.

² *Tanbīh al-baṣā'ir*, l.c., s.v. *خسرواني* and *لطف*.

³ *Ibid.*, s.v.: *سَمَوْهَا بِذَلِكَ قَدِيمًا وَلَهُمْ فِي ذَلِكَ — رُوحُ الزَّقِّ*: اشعار ومن آخر من قال فيه واهل البطالة يستحسنون قوله والله والمسلمون يكرهون اعتقاده وفعله وهو ابو اسحاق ابراهيم بن سيار المعروف بالنظام المتكلم المعتزلي البصري مولى بنى ضبيعة. Cf. the verse cited on the basis of this, and its reason, in Houtama, l.c., p. 82, on the authority of Ibn Qutaybah.

heard the lectures of the *shaykhs* whose pupil he pretended to be, succeeded in demonstrating the mendacity of the princely favourite on the basis of a document drawn up by all those *shaykhs*. This informer was, nevertheless, imprisoned by order of the prince, and led through the streets on a donkey, while town-criers publicized the reason for this punishment¹. He was then expelled from the country. Al-Malik al-Kāmil ignored also the accusation by al-Sanhūrī that Ibn Dihyah falsely traced back his genealogy to al-Ḥusayn and to the Kalbite Dihyah who died without offspring². One poet, Abū al-Mahāsīn b. 'Unayn, remarks on this occasion with devastating satire against the fraudulent pedigree of the problematic court scholar that, as regards his Kalbite genealogy, it may safely be assumed that he is not a descendant of Kalb, but most probably of *kalb* (dog). — On this occasion it may be recalled that in a similar manner the appellation Ibn al-Kalbī is used of the non-Arab postmaster (or police chief) of the caliph al-Mutawakkil³ because his father carried the nickname "watch dog of the caravan station"⁴. — Later, however, the sultan had a chance to satisfy himself of the fraudulence of his learned favourite. He deposed him and appointed as successor to the chair in the school of traditions his brother Abū 'Amr 'Uthmān (d. 634)⁵. This scholar, too, is mentioned among the followers of the Zāhirite school, but I could not ascertain any particulars on his scholarly activities.

Again, we must come back to what we have already pointed out on page 123 above that the dogmatic position was of no consequence for

¹ أشهر على حار cf. Abū al-Mahāsīn, II, p. 183 ult.; cf. *ibid.*, p. 190, 15; al-Mubarrad, *Kāmil*, p. 321; Dozy, *Supplément*, I, p. 186a, 795a; II, 69a; Ibn Baṭūṭah, I, p. 220. From the secular literature, 'Antar, IX, p. 144 (Cairo); cf. *ibid.*, XVIII, p. 61, and others. Cf. also Quatremère, *Mémoires géographiques et historiques de l'Égypte*, II, p. 260.

² On the title page of Cod. Warner, no. 581, he is called السيد الامام العالم الاوحد ملك الحفاظ سلطان المحدثين عالم الخافقين مفتي الفرق اقصى القضاة ذو النسيب الطاهرين ما بين دحية والحسين. The title مفتي الفرق indicates that Ibn Dihyah did not take a definite stand with regard to a specific orthodox legal school.

³ This particular passage is an interesting support for Kremer, *Culturgeschichte*, I, p. 193, bottom.

⁴ *Kitāb al-aghānī*, IX, p. 28: ولم يكن ابن الكلبى هذا من العرب ابا كان. <The play on words Kalb - kalb (dog) is not infrequent. Cf. Goldziher, *Muslim studies*, I, London, 1967, p. 162>.

⁵ al-Maqqarī, I, p. 523, 525 ff.; II, p. 94.

membership in the Zāhirite school. This fact inevitably suggests itself when we consider that exponents of Ṣūfism were so easily accommodated within the frame of the Zāhirite school. One of the oldest of Dāwūd's followers was the Ṣūfī Ruwaym b. Aḥmad¹ who died in 303. I suspect that this is no accidental phenomenon, rather, it finds its explanation in the particular view of the Ṣūfis with regard to the Islamic religious laws. The mystic-theosophical school of Islamic theology rejected the juridical casuistry of the canonists which they considered the science of hypocrisy. The peculiar attitude towards the merit and the importance of the law was incompatible with an interpretation of the law manifested by a meticulous membership to one of the four orthodox *fiqh* schools in particular, as opposed to the fellow-*madhāhib*. Since the ritual manifestations are for them nothing but insignificant means for achieving profound religious goals, even the different ways of achieving these forms within Islam, as specified by the *madhāhib*, must be completely inconsequential for them. This, then, is the reason for their rejection of *taqlīd*; it is a negative principle, with regard to which — although in varying significance — the Zāhirīs agree with the mystics. It is known what the mystic school thinks of the differences of the four orthodox schools, and how completely worthless the dry, purely formal view of the science of *fiqh*² seems to them. The mystic school considers the orthodox *madhāhib's* different interpretation of the formal religion as the theological aspect which is the most contradictory to their own. In the third century we hear the following address to the "scholars of the world" from Yaḥyā b. Mu'adh al-Rāzī (d. 258): "Your castles are *qaysarī*, your houses Khusraw-like, your clothing *ṭālūtī*, your footwear Goliath-like, your containers pharaonic, your riding animals Qārūnī, your tables *jāhilī*, your theological *madhāhib* Satanic: where, then, is the Muḥammadan portion?"³ So the *madhāhib al-fiqh* are called downright Satanic! This condemnation of the *madhāhib*

¹ Abū al-Mahāsīn, II, p. 198.

² In more recent times, we find the following statement in a Mālikite theologian of particular Ṣūfī colourings: من تفقه ولم يتصوّف فقد تفسق ومن تصوّف ولم يتفقه فقد تحقق. يتفقه فقد تزندق ومن تفقه وتصوّف فقد تحقق. 'Abd al-Bāqī al-Zurqānī, II, p. 195 (text). The statement is made by someone who is a lawyer himself.

³ al-Damirī, I, p. 451: يا اصحاب العلم قصوركم قيصريّة وبيوتكم كسروية واثوابكم طالوتية واخفافكم جلوتية واوانيكم فرعونية ومراكبكم قارونية وموائدكم جاهلية ومذاهبكم شيطانية فاين الحمدية.

differences is the general attitude of the mystic school which is clearly revealed in all their writings. May it suffice to refer to al-Qushayrī, one of the most outstanding authorities of this school¹. Al-Sha'rānī built his complete theological system on this basic idea of the *madhāhib*² and expressed this view in many passages of his extremely interesting autobiography. By the way, the latter theologian belongs to that group of Sūfī theologians who consider complete investigation of canonical jurisprudence as an indispensable prerequisite for Sūfism so that, on occasions of polemics, they might successfully resort to the weapons of the enemy's arsenal. He notes, however, that already in his time Sūfis trained in such a way were as rare as "red sulphur"³. Al-Sha'rānī requires thorough knowledge of jurisprudence merely for purposes of successful party politics and not for reasons of the pious nature of the science. Furthermore, we can see from this how little esteemed is the value of the science as taught in the legal schools

¹ *Risālah* (MS of University Library Budapest, no. II), fol. 277a: ويقبح بالمريد أن يتسبب إلى مذهب من مذاهب من ليس من هذه الطريقة وليس انتساب الصوفي إلى مذهب من مذاهب المختلفين سوى طريقة الصوفية إلا نتيجة جهلهم بمذاهب أهل هذه الطريقة فان هؤلاء حججهم في مسائلهم اظهر من حجج كل احد وقواعد مذاهبهم اقوى من قواعد كل مذهب والناس اما اصحاب النقل والاثار واما ارباب العقل والفكر وشيوخ هذه الطائفة ارتقوا عن هذه الجملة فالذي للناس غيب فلهم ظهور والذي للخلق من المعارف مقصود فلهم من الحق سبحانه وتعالى موجود فهم أهل الوصال والناس أهل الاستدلال وهم كما قال القائل ليلى بوجهك مشرق وظلامه في الناس سار فنانس في سدف الظلام ونحن في ضوء النهار.

² Cf. above, p. 37.

³ *Latā'if al-minan*, MS of the Hungarian National Museum, no. XV, fol. 13b: وسمعت سيدي علي الخواص يقول قد اجمع اشياخ الطريق على انه لا يجوز لاحد التصدر لتربية المريدين الا بعد تبخره في الشريعة وآلاتها كما عليه السادة الشاذلية فكان الشيخ ابو الحسن الشاذلي وسيدي ابو العباس المرسي وسيدي ياقوت العرشي والشيخ تاج الدين بن عطاء الله رضى الله تعالى عنهم لا يدخلون أحداً في الطريق الا بعد تبخره في علوم الشريعة بحيث يقطع العلماء في مجالس المظاهرة بالحجج الواضحة فاذا لم يتبخر كذلك لا ياخذون العهد عليه ابداً وهذا الامر قد صار اهله في هذا الزمان اعز من الكبريت الاحمر.

in the eyes of the true Sūfī, who, as we see in al-Qushayrī, diametrically juxtaposes the "science of drawing near to God" with the science of the "dialectic reasoning" of the canonical theologians, the traditionists, and also the speculative school.

182 A similar view as regards *fiqh*, we also find expressed in the Muslim theologian who produced the best combination of formal jurisprudence and spiritual insight in Islam: in al-Ghazālī. Just as Yaḥyā al-Rāzī called the scholars of *fiqh* and their *madhāhib* in the third century "secular scholars" (*'ulamā' al-dunyā*), al-Ghazālī, too, considers their science as the secular sciences (*'ulūm al-dunyā*). It is profitable to read the words with which al-Ghazālī expresses his opinion on the evaluation of the science of *fiqh* in the most daring passage of his remarkable book¹. He crowns his detailed exposition with the following epilogue: "What makes you think that the science of the laws on divorce, marriage procedure, transactions with anticipated purchase price, rental agreements, payment of cash, etc., is a science that prepares for the hereafter? He who studies these things to get closer to Allāh is downright mad". He considers the theological components in *fiqh* — like the possible mathematical, medical, grammatical, etc., components of these studies — as something accidental that cannot possibly define this concept. This qualification of *fiqh*² is in sharp contrast, possibly intended so, to the view that is represented as defining *fiqh* predominately as *'ilm al-ākhirah*³. Al-Ghazālī commented also on the method of legal deduction:

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"Jurisprudence has four roots: the Divine Book, the *sunnah* of the Prophet, the consensus of the community, and the words and actions transmitted about the companions (*āthār al-ṣaḥābah*). The consensus constitutes such root, provided it leads to the *sunnah*; it is consequently a root of the third degree. In the same sense, the traditions of the companions also must be viewed as a root of jurisprudence, for the companions witnessed the revelation, and understood much of the circumstances accompanying the revealed things that others could not perceive with their own eyes. The linguistic expression often does not include everything that can be understood through knowledge of the circumstances that accompany an event. It is for this reason that scholars were ordered to follow the companions and to be guided by what has been transmitted by them".

¹ *Iḥyā'*, I, p. 17-18. To this must be compared an opinion on the preoccupation with *fiqh* in the same author's admonition *O Son*.

² *Ibid.*, III, p. 18, where in a different context he comes back to the classification of the sciences and does not explicitly mention *fiqh*.

³ Cf. Sachau, *Zur ältesten Geschichte des muhammedanischen Rechts*, p. 16.

The "branches" of jurisprudence are the things that can be derived from those roots, not according to their literal expression, but through the fact that reason considers the deeper meaning, and, as a consequence of this, enlarges upon the understanding in such a way that from the recorded word a thing might be deduced that has not been explicitly stated. It follows from the word of the tradition — for example: "the judge must not pass sentence when he is in a state of anger" — that he must not pass sentence even when afflicted by indigestion, or when subject to hunger or pain" ¹. The latter is what is properly called *qiyās*. It is very strange that al-Ghazālī, who treats the sources of Islamic legal deduction only in this one passage of his *Ihyā'*, avoids naming analogy on the one hand, and, on the other hand, treats the "āthār of the companions" as a separate category in the list of the primary sources (roots) which are otherwise usually included among *sunnah* or *ijmā'*. This has the superficial appearance that he did it to enable him to preserve the quaternary number of the *uṣūl al-fiqh* or the *arkān (al-ijtihād)* among which *qiyās* is ordinarily recognized to belong. It cannot be overlooked that al-Ghazālī departs in this passage from the ordinary way of the analogical theologians. Even if he concedes justification of analogy to the *Zāhirīs* he does not concede to them equal right and status with the traditional sources. Either he himself never really realized this contradiction or he did not have the courage to profess it consistently. It is probably one of those concessions (see the introduction to the *Ihyā'*) to the system of the *fuqahā'* purporting to be conducive to the success of his work, that he recognizes analogy as an equal element of practical theology in a different passage. This he does in the special pamphlet on the permissibility of instrumental music (*mas'alat al-samā'*) contained in his *Ihyā'* where he explains in the introduction:

"Knowledge about the things falling within the framework of jurisprudence (*al-shar'iyyāt*) is provided by the explicit word of the text and by analogies deduced from the words of the text. I understand by the former that which the Prophet demonstrated in words or actions; I understand by *qiyās* the deeper meaning to be deduced from his words and actions" ².

In any case, al-Ghazālī underwent a change with respect to *qiyās* during his eventful theological career. It is reported, for example,

¹ *Ihyā'*, I, p. 15.

² *Ibid.*, II, p. 348.

that in agreement with the Khurāsānian Shāfi'ites ¹, he did not, initially, want to recognize a certain form of analogy, called *qiyās al-tard* ² (usually the material discussed on p. 40 ff. is cited as an example of this) but that in a later work he demonstrated the necessity of recognizing this kind of *qiyās* ³. — From the above-mentioned passages from the *Ihyā'* we can at least follow one fact; namely, in the period of his theological activity during which he was trying to reconcile his own theosophical inclinations with the science of the *fuqahā'*, al-Ghazālī found it quite difficult to equate the *qiyās* of the *fuqahā'* with the traditional sources of the law.

The preceding exposition must have made it clear that the basic tenets of the *Zāhirite* school offered more than ordinary attraction for the followers of theosophy. Among the Muslim theologians who joined the *fiqh* of the *Zāhirite* school, which during the rule of the Almohades had achieved official recognition, the famous mystic Muḥyi al-Dīn Ibn 'Arabī (d. 638) is also mentioned. Ibn 'Arabī was "a *Zāhirī* with respect to the ritual part of religion, but a *Bāṭinī* with respect to the articles of faith" ⁴. The following observation is interesting for the

¹ The Shāfi'ite school is split into two divisions: the Khurasanians who recognize Abū Ḥāmid al-Isfarāyīnī as their *imām*, and the Irāqīs who recognize Qaffā lal-Marwazī. Scholars are mentioned who are recognized authorities for both branches of the Shāfi'ite school, for example, al-Nawawī (see preface to *Tahdhīb*), Jamāl al-Dīn al-Bulqīnī, and others; cf. Ibn al-Mulaqqīn, fol. 103b.

² It would be too much for the scope of this work to explain also the different forms and types of *qiyās*. The reader will find the most important data, and the definition of *qiyās al-tard* in contradistinction to *qiyās al-'illah*, *qiyās al-dalālah*, and *qiyās al-shubhah* in the *Dictionary of technical terms*, p. 1196.

³ *Waraqāt*, fol. 48a: ولم يذكر قياس الطرد فكأنه يرى أنه غير مقبول وهذا هو ظاهر قول الخراسانيين من اصحابنا وقد شدد الغزالي الانكار (الفكر cod.) في كتابه المشتمل على قياس الطرد وقال انه تصرف في الشرع بغير دليل ورجع عن هذا القول في كتابه الذي سماه شفاء العليل وقال القول بقياس الطرد لا بد منه وقد عمل به الصحابة رضهم ومن بعدهم من اهل العلم فان الاجناس الستة المنصوص عليها في باب الربا اختلفت الصحابة في علة الربا فيها وألحق كل بها ما يراه مشتركاً في العلة وليس ثم إلا اوصاف طردية مثل الطعام والكيل والجنس والتقدير.

⁴ *al-Maqqarī*, I, p. 567; *ibid.*, p. 569: وكان ظاهري المذهب في العبادات باطني النظر في الاعتقادات.

Zāhirite view of this mystic. In his work *Futūḥāt* he speaks, among other things, about the arrival of the *mahdī*, about his signs and about events that accompany this. It is known that the *mahdī* is represented as bringing justice to a world filled with injustice, and sitting in judgement over all of mankind. The Zāhirite mystic, now, imagines this in the following manner. "He shall judge on the basis of religion unobscured by *ra'y*, and shall be in disagreement with the teachings of the scholars in most of his judgements"¹. In another passage of this work he says again about the *mahdī*: "The words of the tradition: 'the *mahdī* follows my path in order not to err', prove that he is following Islamic tradition and that he does not practise untraditional things ... and that the application of analogy is forbidden for him when explicit divine statements exist which he receives through the angel of inspiration — just as in the view of some scholars, application of analogy is generally prohibited for all believers"². Thus, also the *mahdī* himself is a Zāhirī. Moreover, according to al-Maqqarī's report, Ibn 'Arabī studied Ibn Ḥazm's works which he enumerates in his *Ijāzah*. It was he, too, who edited extracts from Ibn Ḥazm's thirty volumes *Kitāb al-maḥallā* under the title *Kitāb al-mu'allā*³. The codex which the Herzogliche Gothaer Bibliothek possesses of Ibn Ḥazm's treatise on the invalidity of *qiyās* and *ra'y* etc., is attributed to Ibn 'Arabī's transmission. Thus we are indebted to him for the preservation of this comprehensive basic work on the principles of the Zāhirite school. In the introduction to this little work he relates the following dream: "I saw myself in the village of Sharaf near Seville; there I saw a plain on which rose an elevation. On this elevation the Prophet stood, and a man, whom I did not know, approached him; they embraced each other so violently that they seemed to interpenetrate and become one person. Great brightness concealed them from the eyes of the people. 'I would like to know', I thought, 'who is this strange man'. Then I heard some one say: 'This is the traditionalist 'Alī ibn Ḥazm'. — 'So great', I thought after I woke up, 'is the value of traditions'. I had never heard Ibn Ḥazm's name before. One of my *shaykhs*, whom I questioned, informed me that this man is an authority in the field

¹ Cited in al-'Idwī, Commentary to *Burdah*, I, p. 184: *يحكم بالدين الخالص عن الرأي ويخالف في غالب احكامه مذاهب العلماء*.

² *Ibid.*, p. 185.

³ In al-Sha'rānī, I, p. 84, both works are enumerated among those studied by al-Sha'rānī.

of the science of tradition'. Thus the ardent champion of the Zāhirite school, branded and frowned upon by his contemporaries, was clothed with the halo of legend by the greatest mystic of a later era who himself was a Zāhirī¹. All these incidents sufficiently illuminate the fact that the great theologian followed the Zāhirīs in matters of jurisprudence. In this connection it is not surprising to learn that Ibn 'Arabī transmits with direct *isnād* statements which support this doctrine and in which *ra'y*, even from Abū Ḥanīfah, is condemned².

In the same year as Ibn 'Arabī died, another also quite remarkable exponent of the Zāhirite school died in Andalusia. This was Abū al-'Abbās Aḥmad b. Muḥammad al-Umawī Ibn al-Rūmīyah from Seville. He is called al-Nabātī³ at one time, and al-'Ashshāb⁴ at others; both names because of his excellent knowledge of botany of which al-Maqqarī gives some examples. This botanist was equally well versed in the traditions; in theology he followed Ibn Ḥazm whose fanatical adherent he was. Because of this he carries also the name of al-Ḥazmī.

(4)

187 The period between the sixth and the seventh century seems also to have been the prime of the Zāhirite school in Andalusia. We lack any kind of information on their position in other countries at this period⁵. In Andalusia, too, the power and influence of the Zāhirite system disappears with the Almohades. Later, we hear only of individual scholars who followed the Zāhirite school. So we find, for example, the renowned scholar Abū Bakr ibn Sayyid al-Nās from Seville, preacher in Tunis, who is described as Zāhirī, and who died in <734>⁶. We have from him a biography of the Prophet in which Ibn Ḥazm is frequently cited. This work is likely to contain material on the Zāhirīyah by which our exposition could be supplemented. Then there is also

¹ Arabic MS of the Herzoglichen Bibliothek Gotha, no. 640, fol. 1a.

² *Dictionary of technical terms*, I, p. 390, 5th from the bottom, s.v. *استحسان*.

³ *Ṭabaqāt al-ḥuffāz*, XVIII, no. 18.

⁴ al-Maqqarī, I, p. 871.

⁵ The Andalusian Abū 'Āmir Muḥammad b. Sa'dūn al-'Abdarī (d. 154) was *من اعيان الحقاظ وفقهاء الظاهرية*. He did not live in his homeland but in Baghdad (*Ṭabaqāt al-ḥuffāz*, XV, no. 40). By the same token, the traditionalist Abū 'Abd Allāh al-Bayyāsī, who was from Granada and whose Zāhirite leanings are emphasized, was living in Cairo where he died in 703. al-Maqqarī, I, p. 500.

⁶ *Ṭabaqāt al-ḥuffāz*, XIX, no. 4.

mention of Athīr al-Dīn Abū Ḥayyān (d. 745), who, for his part, mentions other Zāhirite contemporaries whom he encountered: Abū al-'Abbās Aḥmad al-Anṣārī, the ascetic from Seville, and Abū al-Faḍl Muḥammad al-Fihri from Santa Maria¹. As for Abū Ḥayyān's faithfulness to the traditions and his profession for the Zāhirīyah which, by the way, he later changed in favour of the Shāfi'ite school, it is illuminated in an interesting way in his biography which al-Maqqarī transmits, and which contains details which are related to this. For example, Abū Ḥayyān says in a short poem:²

"If it were not for the love of three things, I would not want to be counted among the living"

and among these things:

"My adherence to *ḥadīth* while people forget the *sunnaḥ* of the chosen one and follow *ra'y*:"

"Will you, then, leave the explicit text (*naṣṣ*) that originates from the Prophet, and will you follow the guidance of ordinary people? Verily, (when you do this) you exchange misguidance for true guidance".

Who does not recognize in this the eternal *ceterum censeo* of the Zāhirīs? Abū Ḥayyān expresses his preference for traditions also in a eulogistic poem for al-Bukhārī:

188 "Is religion really anything but what the great men have transmitted to us who handed down the traditional statements of him (the Prophet) who was full of grace?" Etc.³

In his will he warns of speculating about the nature of God, about His attributes, and about other matters that constitute the field of investigation for Ash'arites and Mu'tazilites⁴.

Ibn Ḥajar al-'Asqalānī, who devotes a separate article to this outstanding representative of the Islamic sciences of that period in his biographical work on famous Muslims of the seventh century, says about him: *Even in grammar he was a Zāhirī*⁵. This remark could easily be interpreted to mean that Abū Ḥayyān remained aloof from the

¹ al-Maqqarī, *ibid.*, p. 837.

² *Ibid.*, p. 849, 13-17.

³ *Ibid.*, p. 853, v. 4.

⁴ *Ibid.*, p. 848.

⁵ MS of the Kaiserlichen Hofbibliothek Vienna, Mixt., no. 245, vol. I, fol. 101b:

فكان أبو حيان ظاهريا حتى في النحو

linguistic philosophical treatment of grammar¹ which was already in vogue in his time, and which was practised among others by his contemporary Ḥusayn b. Muḥammad al-Qurṭubī². However, the following version of the opinion cited seems to me to be more likely: Just as the Zāhirīs were basing their *fiqh* on the transmitted collections of traditions, Abū Ḥayyān was striving for the restoration of the exclusive authority of the transmitted basic works on grammar, particularly the book of Sibawayh and Ibn Mālik. We are actually informed that Abū Ḥayyān propagated the works of the latter, and that he commented upon the obscure passages in them. On the other hand, however, he repudiated Ibn Ḥājjib's grammatical work: "This is the grammar of the jurists (*naḥw al-fuqahā'*)". He never presented anything to his students but Sibawayh's basic work or Ibn Mālik's *Tashīl*³. Abū Ḥayyān's respect for the former becomes apparent from the following episode from his biography: Abū Ḥayyān had much respect for Taqī al-Dīn Ibn Taymiyah, the most remarkable character
189 of seventh century Islam⁴. The entire theological movement in Syria and Egypt revolves around the person and teachings of this Ḥanbalite whose name was, so to speak, the battle-cry of the theological parties. Adhering to no dogma in particular, he was, so to say, Muslim of his own. His contemporary, the traveller Ibn Baṭūṭah, who provides us with a short biography of this scholar, characterizes him tersely with the words: "He was an important man and could speak about the most varied fields, but he had a bee in his bonnet"⁵. His teaching, although odd at times, commands respect because of its ethical view on marriage. He had the courage to condemn, in a separate writing, the revolting institution of *tahḫīl* after the third divorce⁶. From among the teachings proclaimed, which were strange from the point of view of the Islamic orthodoxy, I point out the following:

¹ See my evidence in *ZDMG*, vol. 31 (1877), p. 545-549.

² Ibn Ḥajar al-'Asqalānī, I, fol. 341b: وكان حسن التعلّم جدًّا شديد العناية بتنزيل قواعد النحو على قواعد المنطق مغرّياً بالناقشة في التعاريف والمؤاخاة والردّ والجواب.

³ al-Maqqarī, I, p. 828.

⁴ Cf. Steinschneider, *Polemische und apologetische Literatur*, p. 33-34.

⁵ Ibn Baṭūṭah, *Voyages*, I, p. 215.

⁶ MS of the University Library Leiden, Warner, no. 511. Catalogus, vol. IV, p. 134.

ألا أخبركم بالتيس المستعار هو المحلل ثم قال لعن الله المحلل والمحلل له الخ. Cf. the tradition in al-Damīrī, I, p. 207:

he disapproved of appealing for help from the Prophet¹, and prohibited visiting the Prophet's grave². He is represented as having made harsh, disrespectful remarks about the first caliphs, and in his lectures he generally assaulted important and unimportant, old and modern scholars³. He accused 'Umar of errors, and remarked of 'Ali that he made wrong decisions in seventeen questions. He was just as unrestrained and merciless with the rest of the caliphs. He abused al-Ghazālī and the other Ash'arites (this liberty almost cost him his life) and he reviled Ibn 'Arabī and mystics alike⁴. **In his dogmatics he taught *tajsīm*, the literal interpretation of the anthropomorphic passages of Koran and tradition.** He did not cease to profess these views even after, having been put before an inquisition, he had signed a documentary refutation of his teachings⁵. In one of his sermons, he quoted a passage from the tradition in which the words occur that "God descended from his throne". While he was reading these words he descended a few steps from the pulpit and said: *just as I am descending here (ka-nuzūlī hādihā)*⁶. **In *fiqh* he followed none of the orthodox schools in whose doctrines he was better versed than the most learned representative of each individual *madhhab*.** He **claimed for himself complete liberty to apply *ijtihād* and he deduced his judgments mostly from the traditions and the *āthār***⁷, but he was no

¹ Ibn Ḥajar al-'Asqalānī, fol. 79a: **أَنَّهُ قَالَ لَا يُسْتَغَاثُ بِالنَّبِيِّ صَلَّى**

² **مَنْعَ مَنْ زِيَارَةِ قَبْرِ النَّبِيِّ صَلَّى وَهُوَ مِنْ** al-Qasṭallānī, II, p. 390: **أَبْشَحَ الْمَسَائِلَ الْمُنْقُولَةَ عَنْهُ .**

³ If I may change the words **قَوِيهِمْ** of the poor codex at my disposal **وَحَدِيثِهِمْ** to **قَدِيمِهِمْ** وحديثهم وحديثهم.

⁴ Ibn Ḥajar al-'Asqalānī, fol. 83a f.

⁵ **إِذَا قَالَ اللَّهُ تَعَالَى وَأَنَّهُ مَسْتَوٍ عَلَى الْعَرْشِ بِذَاتِهِ فَقِيلَ لَهُ يَلْزَمُ مِنْ ذَلِكَ التَّجَبُّرُ وَالْإِتْقَانُ فَقَالَ أَنَا لَا أَسْلَمُ أَنْ التَّجَبُّرَ وَالْإِتْقَانُ مِنْ خَوَاصِّ الْأَجْسَامِ** — The refutation, fol. 79a. **فَالْزَمُ بِأَنَّهُ يَقُولُ بِخُبْرِ التَّجَبُّرِ فِي ذَاتِ اللَّهِ**

⁶ Ibn Baṭūṭah, I, p. 217.

⁷ This fact is repeatedly stated in the apology for Ibn Taymiyah: **الرَّدُّ الْوَافِرُ** MS of the Königlich Bibliothek Berlin, Wetzstein, I, no. 157, containing remarks about Ibn Taymiyah by famous contemporaries; for example, al-Dhahabī, fol. 17b: **لَا يَفْتِي بِمَذْهَبٍ مَعَيَّنٍ بَلْ بِمَا قَامَ الدَّلِيلُ عَلَيْهِ عِنْدَهُ وَلَقَدْ نَصَّرَ السُّنَّةَ الْمُحَضَّةَ**

Zāhiri, for it is expressly stated that **he recognized *qiyās***¹. He was an irreconcilable **enemy of Aristotelian philosophy**. In a pamphlet directed against the latter (*Naṣīhat ahl al-īmān fī al-radd 'ala manṭiq al-Yūnān*) from which al-Suyūṭī prepared an extract, he says (among other things): "These philosophers, as far as their teachings and living is concerned, are among the lowest people. The disbelieving Jews and Christians are to be preferred to them; the entire philosophy of these philosophers is not even on the level with Jews and Christians after 191 accomplished falsification of their religious writings, much less does it attain the level before this forgery"². Because of this and other teachings, Ibn Taymiyah was frequently imprisoned and had to suffer much persecution from the officially recognized theologians. Yet, he had a considerable number of admirers among the Ḥanbalites and other Muslims both during his life and after his death. On account of **his opposition to al-Ash'ari's philosophy of religion**, and his independence of the orthodox legal schools, the one party condemned him as a heretic who left the consensus (*khārij 'an ijma' al-ummah*), while others considered him worthy of the highest honours and called him the greatest Muslim of his time³. Among his admirers we find our Abū Ḥayyān who met Ibn Taymiyah in Egypt. How highly he thought of the much persecuted man becomes evident from a laudatory poem which the once improvized before a scholarly meeting assembled around Ibn Taymiyah:⁴

والطريقة السلفية واحتج لها براهين ومقدمات وامور لم يسبق اليها
واطلق عبارات احجم عنها الاولون والآخرين وهابوا وجسر هو عليها
حتى قام عليه خلق من علماء مصر والشام قياما لا مزيد عليه ويدعوه
وناظروه.

يحتج بالقران والحديث والقياس ويبرهن
ويناظر الخ.

¹ Ibn Ḥajar al-'Asqalānī, fol. 81b: **يَحْتَجُّ بِالْقُرْآنِ وَالْحَدِيثِ وَالْقِيَاسِ وَيُبْرَهُنُ**

قَطَعْنَا الْأَخُوَّةَ مِنْ مَعَشَرَ بهم مرض من كتاب الشفا
وَكَمْ قَلَّتْ يَا قَوْمِ أَنْتُمْ عَلَى شفا جرؤ من كتاب الشفا
فَلَمَّا اسْتَهَانُوا بِتَنْبِيهِنَا رجعنا الى الله حتى كفا
فَمَاتُوا عَلَى دِينِ رَسْطَالِيسَا وعشنا على ملة المصطفى

² al-Maqrizi, *Khīṭat*, II, p. 359.

³ al-Maqqarī, I, p. 857.

“When we came to Taqī al-Dīn a man approached us who was calling people to Allāh’s way, a solitary person without blemish; His face revealed the character of a person who was the companion of the best of creatures, a light eclipsing the moon; A scholar on account of whom his contemporaries may clothe themselves in happiness; an ocean whose waves spout out pearls; In the protection of our religion Ibn Taymiyah takes the position of the lord from the tribe of Taym when the Muḍar fought against him; He brought truth to light when its trace began to be effaced; he extinguished the fire of evil when its sparks began to fly; Formerly we talked about a scholar who was to arise; and see! You are the *imām* for whom they were all waiting”.

Ibn Rajab says in his *Kitāb al-ṭabaqāt* that this was the most masterly poetical achievement of Abū Ḥayyān¹. But soon this high admiration was reversed. Abū Ḥayyān, an opponent of *tajwīd*, had to turn away from Ibn Taymiyah who advocated views in his book on the “throne of God” (*Kitāb al-‘arsh*) which in Abū Ḥayyān’s eyes could not pass as orthodox². Abū Ḥayyān made this break before the year 737, for we learn that when he arrived in Mecca for the pilgrimage in that year, and a certain Muḥammad b. al-Muḥibb wanted to hear Abū Ḥayyān’s poems from the poet personally, he kept postponing the recitation of the laudatory poem on Ibn Taymiyah. Finally, he produced it at the end of his other poetical works and made excuses for reciting this poem in such a sacred place³. In al-‘Asqalānī we even find that Abū Ḥayyān rejected this laudatory poem with the words: *qad kashaṭtuhā min dīwānī wa-lā adhkāruhu bi-khayr* “I have removed this poem from my *dīwān* and do not like to consider the *dīwān* among the good ones”. There is yet another reason why Abū Ḥayyān withdrew his admiration for the master whom he had formerly admired so much; and it is this reason which I like to quote as being characteristic of his relationship to Sibawayh’s *Book*. Abū Ḥayyān — so we are told in Ibn Taymiyah’s apology — was discussing a grammatical question with Ibn Taymiyah. Shaykh Ibn Taymiyah disagreed with Abū Ḥayyān and demanded proof for his assertion. Abū Ḥayyān quoted as authority Sibawayh. “There, Sibawayh is talking above his head; is Sibawayh the prophet of grammar, sent by God so that we ought to consider him infallible? With respect to the Koran,

¹ *al-Radd al-wāfir*, fol. 33b: ان ابا حيان لم يقل ابياتا خيرا منها ولا افضل

² *al-Maqqarī*, I, fol. 869, 11.

³ *al-Radd al-wāfir*, fol. 33b.

Sibawayh was wrong in eighty instances which neither you nor he understand”¹. Ibn Taymiyah is represented as having used such or similar expressions. “He was a fearless man, merciless when it concerned truth”². It was this statement that caused the break between 193 Abū Ḥayyān and Ibn Taymiyah. Abū Ḥayyān looked upon it as “a sin that can never be pardoned” *ittakhadhahu dhanban lā yughfar*. Al-‘Asqalānī could not have characterized Abū Ḥayyān’s attitude towards the grammatical literature more acutely and precisely than by stating that Abū Ḥayyān was a Zāhirī in grammar also, i.e. that he recognized the old authorities of grammar, particularly Sibawayh, as inviolable bases, corresponding to the *ḥadīth* collection in the science of religion.

(5)

With Abū Ḥayyān we reached the eight century of the Islamic era. At that time, a theological spirit that was decisively unfavorable for the Zāhirīs had aspired to power in Andalusia. How the ruling class regarded the literal observance of tradition, which was contrary to general practice, is best illustrated by the following information. A Zāhirī scholar, Aḥmad b. Šābir Ja‘far al-Qaysī, in Zāhirite fashion, followed some of the traditions that he recognized as authentic. Contrary to orthodox practice, which undoubtedly prohibited this because of deeper theological reasons³, he used to raise his hands during the obligatory prayer. The sultan who learned about this threatened the Zāhirī scholar with cutting off his hands if he were to continue raising them during prayer. Then Aḥmed said: ‘An atmosphere that kills the *sunnah* of the Prophet to such an extent that he who observes it is threatened with cutting off of the hands, deserves to be shunned”. He consequently left Andalusia for Egypt shortly after the year 700⁴.

يفسر سيبويه أسبويه نبيّ النحو ارسله الله به حتى يكون معصوما
سيبويه اخطأ في القرآن في ثمانين موضعا لا تفهمها انت ولا هو
خطأ في الكتاب في ثمانين الخ
In the corresponding passage in Ibn Ḥajar al-‘Asqalānī it says
خطأ في الكتاب في ثمانين الخ. The copyist seems to have interpreted *al-kitāb* as referring to the Koran, but it probably refers to *al-Kitāb* by Sibawayh.

² *al-Radd al-wāfir*, fol. 34a; cf. *al-Maqqarī*, p. 857, a.v., bottom, briefly; Ibn Ḥajar al-‘Asqalānī, fol. 82b.

³ Cf. on this question my evidence in Grätz’ *Monatschrift*, 1880, p. 313.

⁴ *al-Maqqarī*, I, p. 909. In connection with رفع اليدين cf. also the teachings of Aḥmad b. Sayyār (d. 268), *Tahdhīb*, p. 147.

Shortly afterwards, still in the eight century¹, the great historian Ibn Khaldūn can state that, with the disappearance of the Zāhirite *imāms*, and as a consequence of the disapproval of the Islamic public opinion (*al-jumhūr*) which opposed this theological branch, the school of the *ahl al-zāhir* has ceased to exist, and that it exists now in books
194 only, to be studied like monuments of ancient times. But if some one, stimulated by these dead studies, were to adopt the doctrines of the Zāhirite school, he would be regarded as a heretic, as understood by current theology, who opposed the prevailing agreement².

I suspect that Ibn Khaldūn meant by these harsh words a contemporary, religious movement which, instigated by a Zāhirite agitator, aimed at a revival of the defunct Zāhirite school³. For information about this strange movement we are indebted to Abū al-Maḥāsīn Taghrībirdī. I shall let my informant speak for himself:⁴

"Aḥmad b. Muḥammad b. Ismā'īl b. 'Abd al-Raḥīm b. Yūsuf, the learned Zāhirī *shaykh* and *imām*, also called Shihāb al-Dīn Abū Hāshim, known by the title al-Burhān, was born in Rabī' al-Awwal of the year 704 between Cairo and Fustāṭ (Miṣr). He belonged to those who rebelled against al-Malik al-Zāhir Barqūq. His father was a juror. Aḥmad grew up in Cairo and was a companion of Sa'īd al-Maṣhūlī who infused in him a sympathy for the Zāhirite school of the system of Ibn Ḥazm and of others. He distinguished himself also in this school and disputed against people who challenged his confession. Later, he travelled, traversed the most distant countries, and summoned people to recognize as a model in religious practice the Book of God and the tradition of the Prophet exclusively. Many people from Syria to Khurāsān accepted his call. He and many of his supporters were finally arrested in Ḥimṣ; chained, they were all led to Egypt. Barqūq summoned Aḥmad and reproved him in a harsh manner; his companions, however, he had chastised. Afterwards he was imprisoned for some time until he was released in the year 791. From this time until his death on Thursday, the 26th of Jumādā I, he lived in oblivion. Shaykh Taqī al-Dīn al-Maqrīzī praises him excessively, for he was a Zāhirī himself. Nevertheless, in al-Maqrīzī's biographical article some details of his oblivion appear; namely, that he was so poor that he lacked his daily bread. Verily, God is not unjust toward mankind, but it is typical of

¹ There is a remark from the eighth century that a certain Ibn Hishām Aḥmad b. Ismā'īl al-Zāhirī issued a *fatwā* against the sultan. Abū al-Faḍl Sulaymān al-Muqaddisī al-Yūsūfī al-Dimashqī, who also belonged to the circle of Ibn Taymīyah (d. 723), is mentioned among his followers. *al-Radd al-wāfir*, fol. 52a.

² *Muqaddimah*, p. 373.

³ Franz Rosenthal thinks that this seems rather improbable. Ibn Khaldūn, *The Muqaddimah*, 2d ed., Princeton, 1967, vol. 3, p. 6, n. 174.

⁴ *al-Manhal al-ṣāfi*, MS of the Kaiserlichen Hofbibliothek Vienna, Mixt., no. 329, vol. 1, fol. 65b.

195 these Zāhirīs to have a loose tongue about the learned *imāms*, the leaders of the orthodox schools. — This is the way they are rewarded in this world; in the hereafter, God deals with them".

The historian Jamāl al-Dīn Ibn Qāḍī Shuhbah refers to this Zāhirite movement in Syria, and, as a contemporary, mentions among the events of the year 788 a "revolt of the Zāhirīs" (*fitnat al-zāhirīyah*). It was instigated by Khālid, a certain Ḥanbalite from Ḥimṣ who was living in Aleppo and who went to Damascus where he joined his companion, the leader of the Zāhirīs, Aḥmad al-Zāhirī¹. This movement, whose originator was an Egyptian, and which spread to Syria, seems to have had strong followings also in Egypt. Mūsā b. al-Amīr Sharaf al-Dīn al-Zangī (d. 788), Ayitmiş's steward of the palace is mentioned as one of them. He belonged to the leaders of the *ahl al-zāhir* and was a fanatical opponent of the orthodox Sunnites². To the same school belonged at the end of the eighth century the philologist Muḥammad b. 'Alī b. 'Abd al-Razzāq, a student of the Mālikite school. It is related about him that he had Zāhirite leanings but that he did not profess them publicly³. Another Egyptian Zāhirī of the same period is the grammarian Aḥmad b. Muḥammad b. Maṣṣūr b. 'Abd Allāh called Shihāb al-Dīn al-Ashmūnī, the Ḥanafite. "He was", so says Abū al-Maḥāsīn, "an excellent jurist and outstanding in grammar on which he composed several works; but he was at home in other disciplines also. Al-Maqrīzī says: 'He was inclined towards the *ahl al-zāhir*, but later broke with them and frequently attacked them; I myself was for many years his follower'. So much for al-Maqrīzī; yet I say: He found a peaceful end for he entrusted himself to the guidance of a man who was better acquainted with the Book of God and the *sunnah* of the Prophet than the rabble of the Zāhirīs (*al-awbāsh al-zāhirīyah*) who attach great importance to the *ḥadīth* without understanding its meaning"⁴. This scholar died 809.

To the same period belongs M. Nāṣir al-Dīn al-Jindī (d. 797), a Zāhirī of vacillating character. We describe him as such because of the
196 remark in our source that, in spite of his Zāhirite disposition he was a strong admirer of the Ḥanafite *shaykhs* because of the power of their

¹ MS of the Bibliothèque Nationale de Paris, no. 687, fol. 15a.

² *Ibid.*, fol. 21b: *يقال أنه من رؤس اهل الظاهر ويتعصب على اهل السنة*

³ *Ibid.*, fol. 168b: *وكان يميل الى مذهب الظاهرية ولا يصرح به*

⁴ *al-Manhal al-ṣāfi*, l.c., fol. 69a.

reasoning¹. From what we have seen so far, it became clear that no more opposing poles can be imagined than the Zāhiriyah and the Ḥanafite school. This theologian is considered among the Zāhirīs probably only because of some habits and peculiarities connected with his zealous adherence to the traditions. He shaved his mustache² (probably because of a literal interpretation of the law from which Muslims derive the custom of trimming the end of the mustache *qaṣṣ al-shārib*)³, and he raised his hands in prayer⁴.

(6)

In the foregoing excerpts we find the famous historian al-Maqrīzī labelled as follower of the Zāhirite school. He seems to have been the last representative of this system worth mentioning. Let us close this historical panorama by substantiating the Zāhirite resemblances of his theological mode of thinking. "Taqī al-Dīn al-Maqrīzī (d. 845) was — so relates Abū al-Maḥāsin Taghrībīrdī — an excellent, versatile, thorough, and conscientious scholar, religious, beneficent, caring for the people of the *sunnah*; he was greatly inclined towards tradition which he observed in his daily life so that he was associated with the Zāhirite branch. He possessed some unjustified prejudices against scholars of the Ḥanafite branch which become evident from his writings"⁵. I must state the strange phenomenon that al-Maqrīzī, in the passage in which he deals with the ritual and dogmatic branches and sects, does not mention a single word about the *madhhab* of Dāwūd, possibly intentionally so, in order not to have to define openly his point of view towards this religious branch. That Abū al-Maḥāsin's verdict on al-Maqrīzī's position towards the different ramifications

¹ *Ibid.*, II, fol. 334b: قلت ومع ميله لمذهبه الظاهري كان كثير التعصب للسادة (للسادة) الحنفية لقوة أدلتهم.

² *يخفى شاربه*. This is also related about the Prophet so that the Zāhirī might have concurred with this tradition, in Ibn Ḥajar al-'Asqalānī, *Iṣābah*, IV, p. 932: رسول الله صلى الله عليه وسلم لا يخفى شاربه ويراه مئثلة. Abū al-Maḥāsin, I, p. 496, fifth line from the bottom says it says about the Imām Mūlik b. Anas: وكان لا يخفى شاربه ويراه مئثلة; cf. Landberg, *Proverbes et dictons du peuple arabe*, p. 256.

³ Abraham is supposedly the originator of this custom, *Tahdhīb*, p. 129.

⁴ *يرفع يديه في كل حفظ ورفع في الصلوه*. I find no explanation for *في كل حفظ*. Possibly: when reciting the Koran by heart. Cf. also above, p. 177.

⁵ Silvestre de Sacy, *Chrestomathie arabe*, II, 1st. ed., p. 411-413; p. 415.

of orthodox Islam is not unwarranted, can be shown. This is true for both aspects, the ritualistic, as well as the dogmatic. When we read al-Maqrīzī's short description of the spread of the four orthodox branches of *fiqh* in the different Islamic countries¹, it cannot elude our observation that the author was led by a certain distaste for them, and favour for, the puritanic traditionalism. Al-Maqrīzī's characteristic cold objectivity in his historical presentation does not let his sympathies come into view, but for the informed reader of the relations of the Islamic legal schools, his position among these will be explicit nevertheless. "The true believer — so al-Maqrīzī says — must believe everything that the law revealed and this *in the manner intended by God Himself*, without profound interpretation according to his (man's) own thinking, and without interpreting it on the basis of his own opinion (*min ghayr ta'wīl bi-fikrihi wa-la tahakkum fi-hi bi-ra'yhi*), for God revealed the laws only because the human intellect is not sufficiently independent to grasp the truth of things as they are in God's recognition"². In this passage, the antithesis between "law" i.e. transmitted law (*ma jā'a bi-hi al-sharī'ah*) and *ra'y* is unmistakable. Also when speaking about the schools of Mālik b. Anas and of Awzā'i, he employs the expression: *ra'y* of Mālik and Awzā'i³. Al-Maqrīzī describes in the same passage how, because of the domineering personal influence of Abū Yūsuf on the one hand, and of Yaḥyā b. Yaḥyā on the other — both of whom occupied the department of judgeships in their respective countries — everybody was following the *madhhab* of these scholars. Al-Maqrīzī closes with the following words: "The office of judge has remained now for some time the domain of the companions of Saḥnūn. They fell upon the secular advantages (contending with each other for them) just as stallions fall upon female camels⁴ until the office of judge became hereditary in the family of the Banū Ḥāshim. They inherited the judgeship from one another just as property is bequeathed in a family"⁵.

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This is as if we were hearing the echo of Ibn Ḥazm's words who,

¹ *Khīṭat*, II, p. 331 ff.

² *Ibid.*, p. 361, 4-5.

³ *Ibid.*, p. 333, 20.

⁴ Cf. Ibn Hishām, p. 714, 8 for *صال* VIth form.

⁵ al-Maqrīzī, *Khīṭat*, II, p. 333, 25: وصار القضاء في اصحاب سحنون دولا يتصاولون على الدنيا تصاول الفحول على الشول الى ان تولى القضاء بها بنو هاشم وكانوا مالكية فتوارثوا القضاء كما تتوارث الضياع.

says in his analysis of the theological state of affairs in Andalusia: "There are two *madhāhib* that spread through power and domination. First, Abū Ḥanīfah's *madhhab*, because, when Abū Yūsuf was appointed *qāḍī*, the appointment of judges from the extreme East to the most remote borders of the African provinces depended on his counsel; he, however, had only such men appointed as professed his *madhhab*. Then, secondly, Mālik's *madhhab* here in Andalusia, for Yaḥyā b. Yaḥyā was influential with the sultan and only his opinion was heeded when appointing judges. No judge was appointed in the provinces of Andalusia except on his recommendation¹ and by his choice, but he recommended only his companions and men of his *madhhab*. People, however, are attracted by material advantages and consequently many surrender to such a person from whom they could hope for realization of their aspirations"². Al-Maqrīzī was more disinclined to the Ḥanafite school which he had followed in his youth³ than to the Malikite school. In this respect, Abū al-Maḥāsīn has interpreted al-Maqrīzī's inclination quite correctly. His main work (*Khiṭaṭ*) reveals that the reason for his embitterment against Abū Ḥanīfah's contemporary followers was that this branch in particular consented to the government's confiscation and secularization of all those old buildings in Cairo about which two witnesses testified that they were a danger to the safety of either neighbours or of passers-by (*al-jār wa-al-mārr*). The consequences of this action took such proportions that even large mosques were sold when the surrounding buildings became dilapidated. Many remains of the Islamic antiquity in Cairo were probably destroyed through the irreverent action of a generation void of all historical feelings. "Thus perished — laments al-Maqrīzī — the sepulchral chapels of the two *qarāfahs* in Cairo, magnificent buildings, and grand houses as there are ..." (here, the historian lists some prominent examples). This must have distressed the antiquary al-Maqrīzī considerably and he expresses this quite freely in this peculiar treatise⁴. This act of vandalism was sanctioned by the legal decision of the Ḥanafite chief *qāḍī* Kamāl al-Dīn 'Umar ibn al-'Adīm⁵ who was appointed in the year 435. Such personal feelings explain Maqrīzī's following casual words: "Mālik's *madhhab* spread more generally in

¹ Cf. Dozy, *Geschichte der Mauren in Spanien*, I, p. 302.

² al-Maqqarī, I, p. 466.

³ Flügel, Anmerkungen zu Ibn Quṭlūbughā, p. 76.

⁴ al-Maqrīzī, *Khiṭaṭ*, II, p. 296.

⁵ Ibn Quṭlūbughā, ed. Flügel, p. 97, no. 140.

Egypt than Abū Ḥanīfah's because of the respect that Mālik's followers enjoyed in Egypt; Abū Ḥanīfah's *madhhab* was previously not known in Egypt ... Ismā'il b. al-Yasa' from Kufa was appointed *qāḍī* after Ibn Lahī'ah; he was one of our better *qāḍīs* except that he subscribed to Abū Ḥanīfah's teachings, whose *madhhab* the Egyptians had not known. His teachings contained the destruction of the chapter-houses. This annoyed the Egyptians and for this reason they rejected his *madhhab*. Therefore, up to al-Shāfi'i's arrival, the Mālikite branch was the most widespread in Egypt"¹.

What we know about al-Maqrīzī's view of Islamic dogmatics endorses our assumption that he was closest to the profession of the Zāhirite school also in this aspect of Islamic theology. Readers of Ibn Ḥazm will sense al-Maqrīzī's affinity to the argumentative Zāhiris from the brief exposition of his view in dogmatics. His dogmatic position is also completely independent of the philosophical controversies of the schools; he has as little contact with the school of al-Ash'arī as he has with that of the Mu'tazilah. The only thing that separates him from Ibn Ḥazm's strict orthodoxy is the usage of the term "attributes of God". From his treatise on al-Ash'arī and from his teachings one gets the impression that he is describing the life and teachings of a man to whose school he does not subscribe. It was probably not done unintentionally, for many passages of this treatise emphasize that al-Ash'arī's dogmatics became the prevailing doctrine in Islam through actions of violence and bloodshed.

What interests al-Maqrīzī in these questions most of all is, because of his traditional training and because of his Zāhirite inclinations, the absolute acceptance of what the traditions contain about the nature of God. Now, it is certain "that all Muslims agree that it is permitted to transmit those *aḥādīth* which are concerned with the attributes of God, and that it is permitted to spread them and to communicate them to others". In this question there exists no difference of opinion. But those among them who profess the truth, agree also that these traditions do not bear the interpretation that God is similar to creatures for it says in the Koran: "Nothing is similar to Him and He is the Hearer and the Seer" (*sūrah* XLII:9), and "Say: He is God, the only One, God the Eternal, He does not beget and is not begotten and no one is equal to Him" (*sūrah* CXII). Those traditions are not in conflict with these Koranic verses, for "their trans-

¹ al-Maqrīzī, *Khiṭaṭ*, II, p. 334, 6.

mission serves no other purpose than to negate *ta'wīl*. In being called nature by one and cause ('illah) etc., by another, the enemies of the Prophet gave God names by which they denied His sublime attributes". It is solely for this polemical purpose that God assumed attributes in the Koran, and that attributes are mentioned about Him in the traditions. The reconciliation of the incomparableness of God with the anthropomorphic passages of the sacred documents must not be attempted by popular means of interpretation (*al-ta'wīl*). "It is unknown to us whether any of the companions, or the followers, or the followers of the followers, ever interpreted these traditions by means of *ta'wīl*. They refrained from this type of interpretation because they glorified God Whom they considered to be above being an object of proverbial (symbolic) expressions. Whenever a physical attribute is given to God, as for instance that 'His hand is on their hands', or 'that His hands are stretched out', anyone will understand the proper meaning upon mere recitation of those passages". Metaphorical interpretation of such passages includes a comparison of God with creatures. "Those who permitted attributes, removed God's glory by comparing Him with substances, no matter whether in actual sense or metaphorically. In doing this they were aware that this parlance contained words which are applied to the creator and the creature alike, but they hesitated to call these words "homonyms" (*mushtaraka*), for God has no companion (*sharik*). This is the reason why the forefathers did not interpret any of these anthropomorphic traditions, although we know for certain that, in their opinion, these traditions were far from the meaning hastily attributed to them by the ignorant" ¹.

201 At the end, al-Maqrizī summarizes his dogmatic confession as follows:

"The truth that cannot be doubted is that the religion of God is a conspicuous matter containing nothing hidden, is a public matter (according to the *Bulāq* edition, a substance) that hides no secret ²; its totality is obligatory for everyone without exception. The Prophet has not hidden a single word of the law;

¹ *Khīṭaṭ*, II, p. 361-362.

² In Goldziher, *Alī b. Mejmūn al-Maqrībī*, p. 303, n. 2, it has been pointed out that the differentiation between *'ilm al-ẓāhir* and *'ilm al-bā'in* is certainly to be found in the tradition. In support of this view also *sūrah*, XVIII:59 was quoted (*majma' al-baḥrayn*). The comment in al-Bayḍawī, I, p. 567, 16, to the passage: *فإن موسى كان بجر علم الظاهر وخضر بجر علم الباطن* is attributed in another passage to Ibn 'Abbās.

everything which he told to his most intimate circle, be it wife or relations ¹, he would have also told to any white or black man, or any ordinary herdsman. He had no secret, no mystic allusion (*ramz*), nothing esoteric (*bā'in*); he summoned all of mankind to his teachings. If he had kept anything secret, he would not have completed the mission with which he was charged. Whoever makes such claims in spite of it, is a *kāfir* according to the concurrent teaching of the whole community. *The origin of every heresy (al-bid'ah fī al-dīn) is the departure from the words of the forefathers and deviation from the conviction of the first Muslim generation*" ².

These last words are the testimony of a theologian who, to say the least, was deeply influenced by the sentiments prevailing in the Zāhirite school. Tied in with this is yet another observation that throws a peculiar light on al-Maqrizī's literary character. Hence it follows not only that al-Maqrizī had occupied himself with Ibn

202 Ḥazm's works, mention of which I certainly do not recall in al-Maqrizī, but also that he did not hesitate to adopt literally, or more precisely, plagiarize, the words of the famous Zāhirī. He could confidently do this in view of the minimal circulation of Ibn Ḥazm's works, especially in Egypt. The forcible resumé with which al-Maqrizī closes his presentation cited above, I found almost literally in Ibn Ḥazm. This can be seen from the juxtaposition following:

al-Maqrizī, *Khīṭaṭ*, vol. II, p. 362:

والحقّ الذي لا ريب فيه أنّ لئن الله تعالى ظاهر لا باطن فيه وجوه لا سرّ تحته وهو كونه لازم كلّ أحد لا مسامحة فيه ولم يكتف رسول الله صلعم من الشريعة ولا كلمة ولا اطّلع اخصّ الناس به من زوجة او ولد عمّ على شيء من الشريعة كتمه عن الأحمر والأسود ورعاة الغنم ولا كان عنده صلعم سرّ ولا رمز ولا باطن غير ما دعا الناس كهم اليه ولو كنتم شيئاً لما بلغ كما أمر ومن قال هذا فهو كافر باجتماع الامّة واصل كل بدعة في الدين البعد عن كلام السلف والانحراف عن اعتقاد الصدر الأوّل

¹ Cf. Muslim, *Kitāb al-aḥādīṭ*, no. 8: قلنا لعلي أخبرنا بشيء أسره اليك رسول الله صلعم فقال ما أسرّ لي شيئاً كتمه الناس ولكنّه سمعته يقول الخ سئل على أخصّكم رسول الله صلعم بشيء فقال ما خصّنا رسول الله بشيء لم يعمّ به الناس كآفة الآ ما كان في قراب سيفي هذا فاخرج صحيفة مكتوب فيها الخ Cf. *Kitāb al-ḥajj*, no. 82. The same bias is reflected in the corresponding traditions in al-Bukhārī, *Kitāb al-'ilm*, no. 40; *Jihād*, no. 169; *Jizyah*, no. 10; *Diyyāt*, no. 24.

² al-Maqrizī, *Khīṭaṭ*, II, p. 362.

Ibn Ḥazm, *Kitāb al-mīlāl*, vol. I, fol. 137a, following a short description of the characteristics of the Khārijite and Shī'ite sects:

واعلموا أنّ دين الله تعالى ظاهر لا باطن فيه وجهه لا سرّ تحته كلّه برهان لا مسامحة فيه واتّهموا كلّ من يدعو أن يتّبع بلا برهان وكلّ من ادّعى أن للديانة سرّاً وباطناً فهي دعاوى ومخارف واعلموا أنّ رسول الله صلعم لم يكتّم من الشريعة كلمة فإ فوقها ولا اطلع اخصّ الناس به من زوجة أو ابنة أو عمّ أو ابن عمّ أو صاحب على شيء من الشريعة كتّمه عن الأحمر والأسود ورعاة الغنم ولا كان عنده عم سرّ ولا رمز ولا باطن غير ما دعا الناس كلّهم اليه ولو كتّمهم شيئاً لما بلغ كما أمر ومن قال هذا فهو كافر فإياكم وكلّ قول لم يبنّ سبيله ولا وضع دليله ولا تعوَّجوا عمّا مضى عليه نبيكم صلعم وأصحابه رضی الله عنهم ،

(7)

203 With al-Maqrizī we have completed our panorama of the more important representatives of the principles of the Zāhirite school of the third to ninth centuries. We have included in our list only such theologians who, on the basis of reliable reports about their life and teachings, can be identified as Zāhiris. The appellation al-Zāhirī² did not always lead us to hastily consider a particular scholar among the school of Dāwūd b. 'Alī³. The reason for this is that this *nisbah* does not indicate a theological affiliation behind every name, but is very often a *nisbah* referring to Egyptian princes who received the title *al-malik al-zāhir*. This, for example, is the case with a theologian from the period of these princes, called Jamāl al-Dīn Aḥmad b. Muḥammad al-Zāhirī, and with another, Shihāb al-Dīn Aḥmad al-Zāhirī; the one was a Shāfi'ite, and the other a Ḥanafite⁴. For the same reason, the father of a certain Ibn al-Zāhirī⁵ must probably be excluded, and the same applies to a great number of people who bore

¹ Cod. ادعوا.

² In Wüstenfeld's edition of Yāqūt the printing error al-Ṭāhirī is to be corrected to al-Zāhirī, I, p. 631, 3; 663, 14; II, p. 582, 20; and VI, p. 315, 1.

³ *Fihrist*, p. 153, 3 ff. lists among the humorous writers of the third century Abū al-Qāsim ibn al-Shāh al-Zāhirī. The titles of his works are mentioned too. I am not clear about the meaning of al-Zāhirī in this instance.

⁴ Cf. Weijers in Meursinge, *Sojutiī liber de interpretibus Korāni*, p. 66.

⁵ *Ṭabaqāt al-ḥuffāz*, XX, no. 8.

this name which was particularly frequent in the period covered by Abū al-Maḥāsīn's biographical work *al-Manhal al-ṣāfi*. Abū al-Maḥāsīn's father, too, carried the additional name al-Zāhirī for this reason, although he was far from being an exponent of the Zāhirite school. His name al-Zāhirī originated from the fact that the father of the famous historian was purchased as a slave by al-Malik al-Zāhir Barqūq¹.

From the tenth century on, the *madhhab ahl al-zāhir* seems to have died out. We can meet the characteristic elements of its theological view in later times also, and even among modern Muslim theologians, particularly among those for whom theological science is of no practical concern, but merely a theological study. We still find people who seem to echo the old principles of the *ahl al-ḥadīth* hostile to *ra'y*², but none of them calls himself a Zāhirī. They belong mostly to the tiny group of Ḥanbalites or, if they belong to another of the four rites, they are traditionists with little concern for the so-called *furū'*. But while the majority of contemporary Muslim theologians pursue the practical studies of the *furū'*, specialists in the science of *ḥadīth* are diminishing from day to day, yet, it was the *ḥadīth* which was the soul of the Zāhirite school.

Thus the four sources of legal deduction: *kitāb*, *sunnah*, *ijmā'*, and *qiyās* are indisputably recognized in Islamic theology. Indeed, we may say that attempts were really made from time to time to add other equally valid sources to them. We find, for example, a note that Qāḍī Ḥusayn (d. 462) put consideration for '*urf* — called now common usage³ and at other times what could best be called *common sense* — as an important factor in legal decision besides those four canonical

¹ For the same reason one must not hastily assume the name al-Dāwūdī to mean that its holder is a follower of Dāwūd's school.

² It remains unsolved whether those scholars of the early period must indeed be reckoned among the Zāhirite school because their biographers relate that they belong to no particular *madhhab*, but that they relied solely on the traditions and the *salaf*.

³ In this meaning it is also called '*ādah* and distinguished from *sharī'ah*, the canonical law which it could not supplant, as being the common law as practised in some countries prior to their acceptance of Islam. In this connection one should read up the interesting passage in Chardin, *Voyages en Perse*, VI, ed. L. Langlès, p. 70-75. Information on the spread of '*ādah* among the Muslims in Dāghistān can be found in G. Kennan, *The mountains and mountaineers of the Eastern Caucasus*, p. 184. Among the Malayan Muslims, too, '*ādah* is recognized in many instances of jurisprudence until the present day. Cf. van den Berg, *Beginnelsen van het Mohammedaansche Recht*, p. 126. To the same category belong also the secular laws (*qānūn*) of the Kabyle Muslims in the Mezāb which are recognized beside the religious law handled by the *azzāb* (*fuqahā'*). E. Masqueray has recently reported on this in "Le Mezab, II", *Journal des Débats*, 12 January, 1883.

legal sources ¹. ('*Urf* had really survived in many important chapters of Islamic law as an individual peculiarity of many countries, and it occupied a position comparable to that of the *qānūns* in present day Islamic states). The Qāḍī expressed with this view probably nothing but older attempts of Muslim jurists who, on the one hand, attempted to reconcile in this way the secular with the religious law, and, on the other hand, wanted to safeguard justification for the individual peculiarities of individual parts of the Islamic state within the universal nature of the Islamic law. We hear already in the third century that '*urf* was preferred to *qiyās* ². Among the legislation on oath, pledges, measures, etc., we often meet the opinion that, in these instances, semantics and customs are decisive, and that they ought to be preferred to deductions that would have to be drawn from what has been traditionally fixed ³. '*Urf* is supposed to represent in the system of the Islamic institutions the changeable element, subject to change and to alternation, corresponding to the spirit of the time and the requirements of the locality ⁴. We have a Jewish report from the tenth century A.H. which reveals that in Egypt of that period '*urf* was applied by those courts that were independent of the organs handling canonical law, and that those courts were even free to pass the death sentence ⁵. In his article *Über die Klassen der hanefitischen Rechtsgelehrten*, Flügel wrongfully identified '*urf* with *qiyās* ⁶. However, attempts were made

¹ al-Qaṣṭallānī, IV, p. 103: وقد قال القاضي حسين الرجوع الى العرف احد القواعد الخمس التي يتبنى عليها الفقه.

² al-Maḳḍisī, p. 272, 9: لَمَّا كَانَ التَّعَارُفُ عِنْدَنَا مَقْدَمَا عَلَى الْقِيَاسِ.

³ Cf. al-Damīrī, I, p. 404; II, p. 391; evidence of how this point of view gave rise to casuistry in al-Qaṣṭallānī, I, p. 469 (to *Ṣalāt*, no. 20). See the main passages in al-Maḳḍisī, p. 310 *التعارف ... مبنى على مسائل الأيمان الخ*, *ibid.*, p. 115 f.: *بانا اجرينا علمنا على التعارف الخ*. Also the Ḥanbalite codex *Dalīl al-tālib*, II, p. 136 teaches: *فالأيمان مبناه العرف*.

⁴ Cf. *Mawāqif* commentary, p. 239 where the author is attempting to prove that prostration (*al-sujūd*) in the '*urf* of the angels has the same meaning as salutation (*al-salām*) in the '*urf* of humans: *لان هذه قضية عرفية يجوز اختلافها باختلاف الأزمنة*.

⁵ R. Dāwīd b. Abī Zimrā, *RGA*, no. 296 (ed. Venice, I, fol. 53a): *שיש להם שני מיני משפט אחד שרעי (שרעי) ואחד ערפי (ערפי) והמשפט השרעי הוא מסור לשופט הגדול והוא מוסק הדין והשר מצות לעשוה המשפט והמשפט העורפי שהוא כמו הוראת שעה הוא מסור לשר המדינה ויכול להרוג כפי העורפי אמילו שלא מן הדין ובלא ידיעת השופט הגדול וכו*

⁶ Flügel, *Über die Klassen der hanefitischen Rechtsgelehrten*, p. 279.

to add to the four legal sources besides '*urf istiḥsān*, or, as it was called in the Mālikite school, *istiḥlāh* (above p. 12). In this context it is noteworthy that the Shāfi'ite al-Suyūṭī, who applied the method of the theological disciplines to the philological sciences ¹, lists among the sources of philological knowledge ² besides the four theological sources of knowledge also the *istiḥāb* of his own school. As far as theological investigation is concerned, Fakhr al-Dīn al-Rāzī is protesting against any attempt to add anything to the four generally recognized legal sources. He bases this on *sūrah* IV:62 (in which as we have seen on p. 86, reference to the four legal sources was thought to be found):

"Those who are obliged to obey the divine commands must keep to these four legal sources exclusively. If one were to refer to either Abū Ḥanīfah's *istiḥsān* or to Mālik's *istiḥlāh* it would merely be a case of a misinterpreted terminological expression which is of no consequence. However, if these two terms are different from those four sources, their teaching would serve no meaningful purpose" ³.

Thus any attempt to go beyond these four sources was rejected, and the attempt of the Zāhirite school to shake the validity of a single one of them was also destined to fail.

¹ See my article *Zur Charakteristik al-Suyūṭī's*, p. 14 ff.

² Sprenger, *Die Schulfächer und die Scholastik der Muslime*, p. 7. In this passage (no. 3) *al-manqūl* is not transcribed but transmitted.

³ *Mafātīḥ*, III, p. 361.

هو ان يفتى بها يراه حسنا فقط وهذا باطل لانه اتباع الهوى وقول بلا برهان والاهواء⁸ تختلف في الاستحسان،

ثم حدث التقليد والتعليل في القرن الرابع والتقليد هو ان يفتى في الدين بفتيا⁹ لان فلانا العالم او فلانا صاحب افتى بها بلا نص في ذلك وهذا باطل لانه قول في الدين [بلا برهان]¹⁰ وقد يختلف الصحابة والتابعون والعلما في ذلك فما الذي جعل بعضهم اولى بالاتباع من بعض، واما التعليل وهو ان يستخرج المفتى علة الحكم الذي جاء به النص وهذا باطل يبين لانه اخبار عن الله تعالى انه انما حكم من اجل تلك العلة وهذا كذب على الله تعالى واخبار عن الله بما لم يُخبر به فمن عرف حقيقة هذه الوجوه اكتفى في ابطالها بذكرها دون تكلف برهان فكيف والبراهين قائمة على بطلانها من القرآن [والحديث]¹¹ ومن المعقول¹² وبالله التوفيق، برهان ما ذكرنا من حدوث [القياس]¹³ انه قد صحح عن كثير من الصحابة رضى الله عنهم الفتيا في بعض المسائل الواردة بالرأى ولم يأت قط عن احد منهم القول بالقياس الا في الرسالة النسوية الى عمر رضى الله عنه وخبر موضوع عن علي عم عن عاصم عن علي رضى الله عنه قال القياس لمن عرف الحلال [والحرام]¹⁴ شفاء للعالم يرويه شعبة¹⁵ [وهو] ضعيف والحجاج ساقط والا [سناد]¹⁶ مجهول واما الرسالة عن عمر فان فيها وقس الامور واعرف الاشباه والامثال ثم اعمد الى اولها بالحق واحبها الى الله عز وجل فاقض به او كلاما هذا معناه يبين وهذه رسالة لا تصح عن عمر رضى الله عنه لانه انا جاءت من طريق عبد الملك عن ابيه الوليد وكلاهما متروك الحديث ومن طريق عبد¹⁷ الله بن ابي سعيد وهو مجهول واحب الاشياء الى الله تعالى لا يُعرف الا باخبار الله عز وجل وهذا مقرون بالشرك قال الله تعالى وأن تُشركوا بالله ما لم ينزل به سلطانا وأن تقولوا على الله ما لا تعلمون، فان قالوا قد رويت القايسة عن عمر بن الخطاب وعلي بن ابي طالب وزيد بن ثابت رضى

⁸ Cod. والاهوى cf. Goldziher, *Spitta's Grammatik des arabischen Vulgärdialectes von Ägypten*, p. 521.

⁹ Cod. نصا.

¹⁰ Cod. العمول.

¹¹ Cod. برويه بضمه. I base my conjecture شعبة on the frequent occurrence of شعبة عن الحجاج cf. *Tabaqāt al-ḥuffāz*, V, no. 24.

¹² Fol. 3b.

I.-III. From Ibn Ḥazm, *Ibtāl al-qiyās* etc. (Cf. p. 4-19; p. 85ff.).

I. 1

وتلك الاشياء التي حدثت هي الرأى والقياس والاستحسان والتعليل والتقليد، فكان حدوث الرأى في القرن الاوّل قرن الصحابة رضى الله عنهم مع ان كل من روى عنه في ذلك شيء من الصحابة رضى الله عنهم فكلهم متبرئ منه غير قاطع به وهكذا فضلاء كل قرن بعدهم الى زماننا هذا، وحقيقة معنى لفظ الرأى الذي اختلفنا فيه هو الحكم في الدين بغير نص ولكن بما يراه المفتى احوط وأعدل في التحريم او التحليل او الايجاب ومن وقف على هذا الحد وعرف ما معنى الرأى اكتفى في ايجاب المنع منه بغير برهان اذ هو قول بلا برهان،

ثم حدث القياس في القرن الثاني وقال به بعضهم وانكره سائرهم ونفروا منه ومعنى لفظ القياس الذي اختلفنا فيه هو انهم قالوا يجب ان يُحكم فيها لا نص فيه من الدين بمثل الحكم فيها فيه نص او فيما أجمع عليه من احكام الدين ثم اختلفوا فقال حدّاقهم¹ لاتفاقها في علة الحكم وقال بعضهم لاتفاقها في وجه من الشبه وقلنا نحن هذه قضية باطللة² في ثلثة مواضع احدها قرلهم فيها لانص فيه وهذا معدوم جملة³ اذ ما لا نص فيه فليس من دين الله والدين كله منصوص عليه وثانيها حيث انه لو وجد لما جاز ان يحكم بها فيه نص [إذ] هذا [هذه. هذه. هذه] دعوى بلا برهان وثالثها قولهم⁴ لاتفاقها في علة الحكم ولا علة لشيء من احكام الله اذ دعوى العلة في ذلك قول بلا برهان، ثم حدث الاستحسان في القرن⁵ الثالث كذلك ومعنى لفظ الاستحسان

¹ Fol. 2b.

² Fol. 3a.

³ Cod. حدّاقهم.

⁴ Cod. باطل.

⁵ Cod. حملة.

⁶ Mutilated word.

⁷ Cod. القول.

الله عنهم في شأن الجذِّ وميراثه وروى عن ابن عباس ان الله تعالى امرنا لنحكم في ارنب قيمتها رُبع درهم وروى عنه ايضا في تساوى ديات الاسنان لو لم يعتبر ذلك الا بالاصابع عقلها سواء سواء وعن سعد بن ابى وقاص في منع¹³ بيع البيضاء بالسُّلْت¹⁴ قياسا على بيع الرُّطْب بالتمر قيل لهم اما ما روى في ميراث الجذِّ فلا يصح البتة لانه رواه عيسى الخياط عن الشعبي منقطعاً وعبد الرحمن بن زيد بن اسلم وهو ساقط ثم ان ما في تلك الرواية ان احدهم شبهه الجذِّ مع الاخوة بجدولين من خليج من نهر وشبهه الآخر بغصنين من غصن من شجرة وحاش لله ان يرضى الصحابة رضى الله عنهم بمثل هذا لانه ليس في تشعب الجداول والاعصان دليل أصلاً على مقاسمة الجذِّ للاخوة الى الثلث او الى السُّدس او على انفراد الجذِّ بالميراث هذا لا ينفى على احد فكيف على أتم الناس عقلاً وفيها بعد الانبياء عليهم السلام وانما هي أخبار مكذوبة ادعاها اصحاب القياس عند 210 مقتديهم فذاعت عندهم وهي في اصلها باطل فاما¹⁴ قياس الحكم على التحكيم في جزاء الصيد فلا يصح البتة عن ابن عباس قال أرسلني على الى الحرورية لا كآمهم فلما قالوا لا حكم الا الله قلت اجل صدقتم لا حكم الا لله وان الله قد حكم في رجل وامرأته وحكم في قتل الصيد والحكم في رجل وامرأته والصيد افضل ام الحكم في الأمة يرجع بها ويحقن دماءها ويلم شعثها وهذا عن مجهول لم يسم ولم يدر من هو في خلق الله وايضا فانه لا خلاف بين احد من الأمة كلها في انه لا يجوز في شيء من الاحكام كلها ان يقضى فيها الا حتى يحكم فيها ذوا عدل كما يفعل في جزاء الصيد وحكم الزوجين فلو احتج محتج في ابطال القياس بهذا لكان خجته قاطعة وانما الرواية في لو لم يعتبر ذلك الا بالاصابع ديتها سواء فلا حجة لهم في ذلك لان القياس عند القائلين به انما هو ان يحكم للمسلوب عنه¹⁵ بمثل الحكم في المنصوص عليه او ان يحكم للمختلف فيه بمثل الحكم في المجتمع عليه لاتفاقها في العلة وليس في الاصابع اجاع ولا في الاسنان اجاع فيقياس احدهما على الآخر والنص وارد في الاسنان كما ورد في الاصابع قال ابن المسيب قضى عمر بن الخطاب فيما اقبل من الفم اعلى الفم

¹³ Cod. السصبا نالسلب.

¹⁴ Fol. 4a.

¹⁵ I.e.: النص.

واسفله خمس قلائص وفي الاضراس بعير بعير¹⁶ حتى اذا كان معاوية واصيبت اضراسه قال انا اعلم بالاضراس من عمر فقضى فيها بخمس خمس قال سعيد فلو اصيب الفم كنه في قضاء عمر لنقصت الدية¹⁷ ولو اصيب في قضاء معاوية زادت الدية ولو كنت انا جعلت في الاضراس بعيرين بعيرين فتلك الدية كاملة، وعن سعيد بن المسيب ان عمر جعل في الابهام خمس عشرة وفي السبابة عشرةا وفي الوسطى عشرةا وفي البنصر تسعا وفي الخنصر ستا حتى وجد كتابا عند آل حزم ان 211 الاصابع كلها سواء فأخذ به، قال ابو محمد في كتاب آل حزم ايضا ان الاسنان سواء وقد روى الشعبي عن شريح عن عمر بن الخطاب ان دية الاسنان كلها سواء فبطل ان يكون في الاصابع اجاع يقاس عليه الاسنان وانما النص عن ابن عباس ان رسول الله صلعم قال الاصابع سواء الاسنان سواء الثنية¹⁸ والضرس سواء هذه وهذه سواء فبطل ان يكون النص في حكم الاصابع دون الاسنان فقد صح ان ابن عباس رضه اذ كان عنده النص على الاصابع والاسنان بالسوية فانه لم يرد قط بقوله ذلك ان يقاس الاسنان على الاصابع لكنه خاطب بذلك القول مروان وكان يسوى بين الاصابع ويريد التفضيل في الاسنان لتفاضل منافعها فانكر عليه التفريق بين الامرن والتعليل وهذا ابطال القياس نصاً ولا خلاف في انه لا يحتاج الى قياس فيما فيه نص، والاعتبار في لغة العرب لا يقع البتة الا على التعجب والتفكر وما عرفت العرب قط هذا القياس فمن¹⁹ الحال ان يحدث ابن عباس لغة في الشريعة لا تعرفها العرب وانما حديث سعد فلا يصح لانه انما روى من طريق زيد ابى عياش وهو مجهول ثم لو صح فان جميعهم مبطل لذلك القياس وكيف يحتجون بقول سعد رضى الله عنه وهم مخالفون له وكلهم يميز البيضاء بالسُّلْت وانما يحفظ القياس عن قوم من اهل العصر الثاني، ثم حدث الاستحسان في القرن الثالث وما علمنا احدا قال به

¹⁶ Probably بعيرا بعيرا unless, of course, *oratio recta* is implied.

¹⁷ Fol. 4b.

¹⁸ Cod. السسه.

¹⁹ Fol. 5a.

قبل ابي حنيفة واصحابه وقد وقع مالک في النادر²⁰ فانهم يقولون القياس في هذه المسئلة كذا لكننا نستحسن خلاف ذلك ،
 212 ثم حدث التقليد في حشوة اصحاب هذين الرجلين فانه اخذت كل طائفة ما روى عن صاحبها لا تتعداه الى غيره وان اختلفت فتاويه ولا يُعرف هذا عن احد قبل هاتين الطائفتين ، ثم حدث التقليد في اصحاب الشافعي وان اختلفت اقواله وتضادت فتاويه على ان هاولاء الفقهاء رحمهم الله قد نهوهم عن تقليدهم فخالفواهم وصيتهم فكل طائفة تنصر المتعارض من اقوال صاحبها ،
 واما التعليل فهو ان تخرجوا لشرائع الله تعالى الواردة في القرآن والسنة عيلاً كانت تلك الشرائع بزعمهم واجبة من اجلها ثم حكموا ان تلك العلل حيثما²¹ وجدت وجب الحكم في ذلك يا حكم النص في الذي استخرجوا له تلك العلة ، قال ابو محمد ولم يخل عصر من الاعصار من طائفة منكرة لما ظهر من هذه الامور متبرئة منها على ما نذكره²² في آخر الرسالة ،

II. 1

بطلان الرأي قال ابو محمد اما اهل الرأي فان محمدتهم عن عبد الله بن رافع قال سمعت أم سلمة من رسول الله صلعم انه قال اتا اقصى بينكم برأى³ فيما لم ينزل على فيه شيء وقالوا ان الصحابة رضهم غير متهمين على الاسلام لا تظنون بهم احداث دين وشرع لم يأذن به الله تعالى وقد صح انهم قالوا بالرأي فلولا ان القول به جائز ما قالوه وذكروا حديث ميمون بن مهران قال كان ابو بكر الصديق رضه اذا ورد عليه خصم نظر في كتاب الله فان وجد فيه ما يقضى به قضى وان لم يجد في كتاب الله نظر في سنة رسول الله صلعم فان وجد فيها ما يقضى به قضى فاذا اعياه ذلك سأل الناس هل علمتم

²⁰ According to the *Dictionary of the technical terms*, p. 390, *istihsān* is a *dalil* also according to the interpretation of the Hanbalite school. But this particular article also demonstrates that the different scholars of *uṣūl* give quite different interpretations of this term which, at times, downright exclude one another.

²¹ حيث ما .

²² نذكر به .

¹ Fol. 5b.

² Cod. برای .

ان رسول الله صلعم قضى فيه بقضاء فو . . . اليه القوم فيقولون 213
 قضى فيه بكذى وكذى فان لم يجد سنة النبي صلعم جمع رؤساء الناس فاستشارهم فاذا اجتمع رأيهم على شيء قضى به قال وكان عمر يفعل ذلك فاذا اعياه ان يجد ذلك في الكتاب والسنة قال هل كان ابو بكر قضى فيه بقضاء فان كان لابي بكر قضاء قضى به ، وعن ابن مسعود قال اكثروا عليه ذات يوم فقال انه قد يأتي علينا زمان لسنا نقضى ولسنا هنالك (؟) ⁴ . . . ثم ان الله تعالى بلغنا ما ترون فمن عرض له قضاء بعد اليوم فليقض بما في كتاب الله فان جاء امر ليس في كتاب الله ولا قضى به نبيه عم فليقض بما قضى به الصالحون فان جاء امر ليس في كتاب الله ولا قضى به نبيه عم ولا قضى به الصالحون فليجتهد رأيه ولا يقل اتى ارى واتى اخاف فان الحلال بين والحرام بين وبين ذلك متشابهات ودع ما يريبك الى ما لا يريبك ، وقالوا قد امر الله عز وجل بانفاذ الحكم بالشاهدين او اليمين واتا هذا غلبة الظن اذ قد يكون الشهود كذبة او مغفلين ويكون اليمين كاذبة ، وذكروا حديث معاذ ان رسول الله صلعم اذ بعثه الى اليمن سألته بماذا تقضى فقال اقضى بما في كتاب الله قال فان لم تجد في كتاب الله قال فبسنة رسول الله صلعم قال فان لم تجد في سنة رسول الله صلعم قال اجتهد رأيي ولا آلو فقال الحمد لله الذي وفق رسول رسول الله لما يرضى رسول الله وذكروا قوله تعالى وشاورهم في الامر وقوله تعالى وأمرهم شورى بينهم ، قال ابو محمد هذه عمدتهم . اما حديث أم سلمة فساقط لوجوه اولها انه لا يصح لان راويه أسامة بن زيد وهو ضعيف ابى الاسامتين كان أسامة بن زيد الليثي او أسامة بن زيد بن أسلم ، والثاني ان رأى رسول الله ⁵ حق مقطوع عليه وليس رأى عنده كذلك قال الله تعالى لتجكم بين الناس يا اراك الله وقال تعالى وما ينطق عن الهوى ان هو الا وحى يوحى وامره تعالى ان يقول ان يقول ان أتبع الا ما يوحى الى فصيح انه عم لا يقول شيئاً الا عن وحى واته لا يحكم الا بها اراه الله واما قوله تعالى وشاورهم في الامر فانا نسأل من احتج به أيرى ان الله تعالى امر رسوله صلعم ان يشاورهم في كيف يتوضأ للصلاة وفي كم صلاة تفرض على المسلمين

³ Cod. اكروا .

⁴ Fol. 6a.

⁵ Fol. 6b.

وكم ركعة وائى شهر يُصام ومن كم يؤدى الزكاة وفى اى الاصناف تكون والى اين يكون الحج وما ذا يحرم من المطاعم والمشارب وكم من الزوجات تباح وبكم من الطلاق تحرم المرأة وهكذا سائر الشرائع فمن جوز ذلك فهو كافر مشرك وايضا فان فيها فاذا عَزَمْتَ قَتَوُكُلَّ عَلَى اللَّهِ فَرَدَّ الْأَمْرَ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ [لا] الى المشاورين وايضا قوله تعالى وَاعْلَمُوا أَنَّ فِيكُمْ رَسُولَ اللَّهِ لَوْ يُطِيعُكُمْ فِي كَثِيرٍ مِنَ الْأَمْرِ لَعَنِتُّمْ فَمَنْعَ اللَّهِ تَعَالَى مِنْ طَاعَتِهِ عَصِمَ لِرَأْيِ أَصْحَابِهِ رَضَهُمْ فِي كَثِيرٍ مِنَ الْأَمْرِ وايضا فإِ فِي الْعَالَمِ مُسْلِمٌ يَسْتَجِيزُ أَنْ يَقُولَ إِنَّ اللَّهَ تَعَالَى أَوْجِبَ عَلَى رَسُولِهِ عَمَّ طَاعَةَ رَأْيِ أَصْحَابِهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهَذَا الْقَوْلُ كُفْرٌ وَإِنَّمَا قَوْلُ أَهْلِ الْإِسْلَامِ أَنَّ طَاعَةَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَرَضٌ وَاجِبٌ عَلَى الصَّحَابَةِ وَعَلَى جَمِيعِ الْإِنْسِ وَالْحَيَّةِ ثُمَّ عَرَفْنَا أَيْضًا شَيْءًا مِنَ الشَّرْعِ إِلَّا حَتَّى يَشَاوِرَ جَمِيعَهُمْ وَيَتَأْتَى قَدُومَ غَائِبِهِمْ أَمْ يَصْحَحُ الشَّرْعُ بِمَشَاوَرَةِ الْبَعْضِ دُونَ الْبَعْضِ فَإِنْ قَالُوا لَا يَصْحَحُ إِلَّا بِمَشَاوَرَةِ جَمِيعِهِمْ أَتَوْا مَعَ الضَّلَالِ بِالْحَالِ لِأَنَّهُمْ عَشْرَاتُ الْوَفِّ فَمَشَاوَرَتُهُمْ تَكْلِيفُ الْحَرْجِ وَإِنْ قَالُوا يَصْحَحُ بِمَشَاوَرَةِ الْبَعْضِ فَلَنَا مَا حَدَّثَ ذَلِكَ الْبَعْضُ أَخَذُونَهُ بَعْدَ أَنْ تَجَزَّأَ مَشَاوَرَةُ وَاحِدٍ فَصَحَّ أَنْ قَوْلُهُمْ بَلَا بَرَهَانَ وَلَوْ كَانَ فَرَضًا لَمَا صَحَّ شَيْءٌ مِنْ دِينِ الْإِسْلَامِ بِالْوَحْيِ فَقَطَّ إِلَّا حَتَّى يَشَاوِرَ الصَّحَابَةَ رَضَهُمْ كَلَّهُمْ أَوْ بَعْضَهُمْ وَهَذَا كُفْرٌ بَلَا خِلَافٍ وَإَيْضًا فَإِنَّهُ خَبْرٌ عَلَيْهِمْ لِأَنَّ هَؤُلَاءَ إِنَّمَا أَخَذُوا بِرَأْيِ أَبِي حَنِيفَةَ وَمَالِكٍ وَنَحْوِهِمْ مِنَ الْآيَةِ إِجْبَابِ مَشَاوَرَةِ هَذَيْنِ الرَّجُلَيْنِ ثُمَّ لَوْ جَازَ [أَنْ] يَمْدُدْ إِلَى الْمَشَاوَرَةِ إِلَى غَيْرِ الصَّحَابَةِ لَمَا كَانَ فِيهَا حُجَّةٌ لِأَنَّهُ لَيْسَ فِيهَا تَرْجِيحٌ لِرَأْيِ أَبِي حَنِيفَةَ وَمَالِكٍ رَحِمَهُمَا اللَّهُ عَلَى رَأْيِ غَيْرِهِمَا فَهِيَ حُجَّةٌ عَلَيْهِمْ وَالْمَشَاوَرَةُ فِي الْإِيْمَانِ هِيَ فِيهَا هِيَ فِيهِ فِي تَرْتِيبِ مِنَ الْغَزْوِ وَإِلَى أَيْ جِهَةٍ وَإِنْ نَزَلَ الْجَيْشُ وَفِي سَائِرِ الْأَشْيَاءِ الْمُبَاحَةِ وَقَدْ خَرَجَ النِّسَاءُ حَدِيثًا يَذْكُرُ فِيهِ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لِأَصْحَابِهِ زَمَنَ الْحَدِيثِ أَشِيرُوا عَلَيَّ وَخَرَجَ مُسْلِمٌ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمَّا بَلَغَهُ إِقْبَالَ أَبِي سَفْيَانَ قَالَ لِأَصْحَابِهِ أَشِيرُوا عَلَيَّ وَحَدِيثُ الْمَشَاوَرَةِ فِي أُسَارَى بَدْرٍ¹⁰ وَإِنَّمَا حَدِيثُ مَعَاذٍ فَغَيْرِ¹¹ صَحِيحٌ لِأَنَّهُ عَنِ الْحَارِثِ بْنِ

⁶ Fol. 7a.

⁷ Cod. بحرى.

⁸ Cod. حدّ حدى ; possibly بحدّ ?

⁹ Cod. الى.

¹⁰ Perhaps [مشهور] should be added.

¹¹ Fol. 7b.

عمرو الهذلي ابن اخي المغيرة بن شعبة الثقفي ولا يدري احد من هؤؤلاء ولا يُعرف له غير هذا الحديث ذكر ذلك البخاري في تاريخه الاوسط في الطبقات ثم هو ايضا عن رجال من اهل حمص من اصحاب معاذ والدين اما يؤخذ عن الثقات المعروفين وقد اتفق الجميع على انه لا يؤخذ ممن لا يدري حاله ونقل الحديث شهادة من اكبر الشهادات لانها شهادة على الله عز وجل وعلى رسوله صلعم فلا يحل ان يتساهل في ذلك وقال قوم انه منقول نقل التواتر وهذا كذب لان نقل التواتر ان يكون نقله في كل عصر متواترا من مبدئه الى مبلغه وهذا حديث لم يُعرف قديما ولا ذكره احد من الصحابة ولا من التابعين غير ابي عون حتى تعلق به المتأخرون فافشوه الى اتباعهم ومقلديهم¹² وما احتج به احد من المتقدمين لان مخرجه ضعيف ورواه مع ذلك عن ابي عون شعبة وابو اسحاق سليمان بن فيروز الشيباني قط لم يروه غيرهما وكلاهما ثقة حافظ واختلفا فيه ورويناه من طريق شعبة عن ابي عون عن ناس من اصحاب معاذ من اهل حمص وذكر الحديث قال واما رواية ابي اسحاق الشيباني فحدثنا بها احمد بن محمد الظلمنكي قال حدثنا¹³ هو ابو عون قال لما بعث رسول الله صلعم معاذ الى اليمن قال له يا معاذ بم تقضى قال اقضى بما قضى به نبيه الله قال فان جاءك امر ليس في كتاب الله قال اقضى بما قضى به نبيه الله عم قال فان جاءك امر ليس في كتاب الله ولم يقض به نبيه ولم يقض به الصالحون قال اوفى بحق جهدى فقال عم الحمد لله الذي جعل رسول الله يقضى بما رضى به رسول الله فلم يذكر هاهنا اجتهد رأيتي ومن الحال ان يقول رسول الله لمعان ان لم تجد في كتاب الله ولا في سنة نبيه وهو عم قد سئل عن الحُمُر فقال ما أنزل علي فيها شيء الا هذه الآية العامة¹⁴ فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ فلم يحكم فيها رسول الله صلعم بحكم البتة بغير الوحي فكيف يميز ذلك لغيره فقد اتانا من ربه بقوله الصادق ما قرطنا في الكتاب من شيء وبقوله لُسْبِينِ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ فَلَا سَبِيلَ إِلَى وَجُودِ شَرِيعَةِ اللَّهِ تَعَالَى قَرَطَهَا فِي الْكِتَابِ وَلَمْ يَبَيِّنْهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَهَذَا لَا يَجُوزُ أَنْ يَقُولَهُ عَمَّ ثُمَّ لَوْ صَحَّ فَلَا يَخْلُو أَنْ

¹² Defective, the remains suggest the word above.

¹³ Fol. 8a. Here follows an *isnād* which I have omitted in order to save space.

¹⁴ Cod. العادة.

يكون سبيحا لمعاذ وحده¹⁵ او له ولغيره فان كان له وحده فجميع [اصحاب]¹⁶ الرأى على خطأ لانهم لا يتبعون رأى معاذ ولا فى مسألة واحدة وانما يتبع الحنفيون رأى ابي حنيفة ويتبع المالكيون رأى مالك فقط خالف ذلك رأى معاذ او وافقه وان كان له ولغيره فليس [ابو] حنيفة ولا مالك أولى بالرأى من غيرهما، وانما الذى روى عن ابي بكر وعمر رضها فانه لا [حجة]¹⁷ لهم فيه لوجهين احدهما انه لا يصح لانه راويه ميمون بن مهران [وهو ما صحب]¹⁸ ابا بكر ولا عمر لان مولده سنة اربعين بعد موت ابي بكر¹⁷ بسبع وعشرين سنة وبعد موت عمر بسبع عشرة سنة او نحوها والثانى انه لا يحل ان يُظن ان²¹⁷ ابا بكر وعمر رضها يجمعان القوم من الصحابة رضهم ليشرعوا شريعة لم يشرعها الله عز وجل وذلك لا يخلو من احد اربعة اوجه كلها كفر ممن أجازوه وهو انما شىء مات رسول الله صلعم وقد نص على تحريمه فجمعاهم^{17a} ليحلوه او نص على ايجابه فجمعاهم^{17a} ليسقطوه او شىء نص على تحليله او سكت عن تحريمه فجمعاهم^{17a} ليحرموه او شىء نص على سقوط وجوبه او سكت عن ايجابه فجمعاهم^{17a} ليوجبوه وفى هذه الوجوه يدخل كل تحريم فى دم او اباحته¹⁸ وكل تحريم فى نسوة او [اباحتهن]¹⁸ وكل تحريم فرج او اباحته وكل تحريم مال¹⁹ او اباحته وكل ايجاب²⁰ لحد او اسقاطه وكل ايجاب عبادة او اسقاطها وقال تعالى شرعوا لهم من الدين ما لم يأذن به الله وقال صلعم ان دماءكم واموالكم واعراضكم وأبشاركم عليكم حرام فان لم يكن جمع ابي بكر وعمر رضها الصحابة رضهم على شىء من هذه الوجوه فقد بطل ان يجمعاهم لرأى يكون به فى الدين فبطل بلا شك، وايضا فانه لا يؤبه²¹ عليهم فى ترك ما قد صح من حكم ابي بكر وعمر اذا خالف رأى ابي حنيفة ومالك

¹⁵ Fol. 8b.

¹⁶ Or, according to some traces of the mutilated text, لم يصاحب.

¹⁷ Mutilated عنه رضى الله عنه?

^{17a} Cod. فجمعهم.

¹⁸ Cod. اباحة.

¹⁹ Cod. حال.

²⁰ The word ايجاب follows on fol. 18a of the MS. The connection seems to be clear from the context as well as from the identity of penmanship and paper. Fol. 8b and 18a are distinguishable by newer ink and paper and by a younger handwriting.

²¹ Cod. يؤبه.

قصاص ابي بكر وعمر رضها من ضربة السوط ومن اللطمة وكمساقاتها اهل خير الى غير اجل مسمى وكسجودها فى اذا السماء انشقت ولم يره المالكيون هذا فى كثير جدا وهذا الخبر حجة عليهم لو صح فكيف وهو لا يصح، وانما حديث ابن مسعود فصحيح ثابت وقوله فليجتهدوا به انما هو بلا شك فى طلب السنة المأثورة برهان ذلك قوله متصللا ولا تقل انى ارى واتى اخاف وقوله فى آخر الحديث دع ما يريبك الى ما لا يريبك وان لا تقضى الا فى²² الحلال البين او فى الحرام البين، وانما ما ذكره من الامر بالحكم بالشهود واليمين²¹⁸ ولعل الشهود كاذبون او مغفلون واليمين كاذبة وان هذا انما هو على غلبة الظن بل ما يحكم من ذلك الا بيقين الحق الذى²³ امرنا الله به لا يمتري فى ذلك مسلم ولم يكلفنا الله تعالى مراعاة الشهود فى الكذب والصدق ولا معرفة كذب اليمين او صدقها فلو كان هذا فغالب الظن واعوذ بالله من ذلك لكننا اذا اختصم الينا مسلم فاضل بر تقى عدل ونصرانى مثلث مشهور بالكذب على الله وعلى الناس خليع ماجن فادعى المسلم عليه دينا قل او كثر فانكر النصرانى او ادعى النصرانى وانكر المسلم توجب ان يعطى المسلم البر بدعواه لانه فى اغلب الظن الذى يناطح اليقين هو الصادق والنصرانى هو الكاذب لكن لا خلاف فى اننا لا نفعل ذلك بل نحكم بيقين امر الله تعال بالبيينة العادلة عندنا او بيمين المدعى عليه ونطرح الظن جملة وباللذ التوفيق،

قال ابو محمد وذكروا قوله عز وجل تعلمه²⁴ الذين يستنبطونه منهم وهذه حجة عليهم لان اولها ولو ردوه الى الرسول والى اولى الامر منهم وتو فى لغة العرب التى نزل بها القرآن حرف يدل على امتناع الشىء لامتناع غيره فصح ان الآية حجة فى ابطال الاستنباط بالرأى فصح انهم لو ردوه الى الرسول والى اولى الامر منهم وهو السنة والاجماع [لعلموه] فصح انهم لم يعلموه فبطل الاستنباط بلا شك ولم يبق الا الرد الى القرآن والسنة.

²² Cod. بالحلال.

²³ Fol. 18b.

²⁴ Cod. لعلمها.

III.

الآثار في القياس، حدثنا احمد بن قاسم¹ عن عوف بن مالك الاشجعي قال قال رسول الله صلعم تفترق أمتي على بضغ 219 وسبعين فرقة اعظمها فتنة على أمتي قوم يقيسون الامور برأيهم فيحلون الحرام ويحرمون الحلال،

وأما الصحابة رضهم عن مجاهد قال نهى عمر بن الخطاب عن المكابلة قال مجاهد هي المقايسة، وقال ابن مسعود ليس عام إلا والذي بعده اشتر منه لا اقول عام أمطر من عام ولا عام أجذب من عام ولا أمير خير من أمير ولكن ذهاب خياركم وعلماءكم ثم يحدث قوم يقيسون الامور برأيهم فيهدم الاسلام وينتلم، وقال ابن مسعود آياكم وأرأيت أرأيت فأنما هلك من كان قبلكم بأرأيت أرأيت ولا تقيسوا شيئاً بشيء فتزل قدم بعد ثبوتها وإذا سئل احدكم عما لا يعلم فليقل لا اعلم فإنه ثلث العلم، عن الاصمعي انه ذكر له ان الخليل كان يقول القياس باطل قال الاصمعي هذا اخذه عن اياس بن معاوية هو القاضي فان قيل كان الخليل يقيس في النحو قلنا قد صح عنه أنه لم يقطع به وإنما جعله ظناً، فان قيل كان اياس يقيس في قضائه قلنا باطل انما كان يستدل بدلائل ظاهرة لا تحمل إلا ما يقضى به من تأملها وهذا اسناد صحيح عن الخليل، فان قيل ان ثعلبا روى عنه أنه قال العبرة بالقياس قلنا هذا لا يصح عن ثعلب 220

¹ Here a long *isnād*.

² al-Sha'rānī, I, p. 62 فينهدم.

³ The "alienation theory" cited here is manifested in better attested traditional statements too. The main passage seems to be al-Bukhārī, *Kitāb al-fitan*, no. 6.

اتينا انس بن مالك فشك فشكونا اليه ما نقلني من الحجاج فقال اصبروا فإنه لا يأتي عليكم زمان الا الذي بعده شر منه حتى تلقوا ربكم، This was probably also the philosophy of the pre-Islamic Arabs. Durayd b. al-Šimmaḥ says in an address: خير سلف خير وكل حي سلف خير، *Aghānī* XVI, p. 142, 2.

⁴ Fol. 14a.

⁵ Cod. العبره القياس without ب. If the reading of the codex were to be upheld, then this would represent a reference to *sūrah* LIX:2 فاعتبروا well-known evidence for the exponents of analogy; see above p. 86.

ولو صحح كان رأيا منه لان القياس الذي اختلفنا فيه في الدين لم تعرفه العرب قط انما هو لفظ حدث في اهل الشرع على معنى شرعي⁷ عن محمد بن اسمعيل البخاري مؤلف الصحيح قال قال لي صدقة عن اسمعيل بن موسى عن ابن عقبة عن الضحاک عن جابر بن زيد قال لقيني ابن عمر فقال يا جابر انك من فقهاء البصرة فتفتي فلا تقس إلا بكتاب ناطق او سنة ماضية، وعن ابن عمر انه قال العلم ثلاث كتاب الله الناطق وسنة ماضية ولا أدري⁸،

قال ابو محمد رحمه الله التعليل الذي لا يبنى اصحاب القياس قياسهم الا عليه لا يمكن ان يوجد شيء منه في القرآن ولا في سنة رسول الله صلعم وهذا الخبر يكذب رواية لحارث بن عمرو المجهول عن معاذ اجتهد رأيي ولا آلو⁹ فان يقول معاذ ويتدع كلاما ليس من كتاب الله عز وجل ولا من سنة رسول الله صلعم فآياكم وآياه فإنه بدعة وضلالة لان ما لا يوجد في القرآن ولا في السنة بدعة وضلالة، قال علي رحمه الله فهاؤلاء من الصحابة رضهم مبطلون للقياس ولا مخالف لهم من الصحابة ولا يوجد اثم صحيح عن احد منهم والحمد لله، وعن كلود (9) بن ابي هند قال سمعت محمد بن سيرين يقول القياس شؤم واوّل من قاس ابلّس وانما عبدت الشمس والقمر بالقياس، وعن مسلمة بن علي ان شريحا القاضي قال السنة سبقت قياسكم، وعن الشعبي عن مسروق قال لا اقيس شيئا بشيء قلت له له قال اخاف ان تزل رجلي، وعن الشعبي قال قال مسروق اتى اخاف ان اقيس فتزل قدمي بعد ثبوتها، وعن عيسى بن ابي عيسى انه سمع الشعبي يقول آياكم والمقايسة فوالذي نفسي بيده ان اخذتم بالمقايسة لتحلن الحرام وتحرمن الحلال ولكن ما بلغكم عن اصحاب رسول الله صلعم فأحفظوه، وعن الجيرة بن مقسم عن الشعبي قال السنة لم توضع بالمقاييس، قال ابو محمد على لم¹¹ يرو ما ذكر من مقايسة عمر بن

⁶ Cod. اختلفنا.

⁷ Cod. شرع.

⁸ Cf. the interesting remarks by legists and philologists about this in al-Suyūṭī, *Muḥarrir*, II, p. 163. (According to *Muhammedanische Studien*, II, p. 17, n. 4, *qāḍīyah* in lines 6 and 7 was changed to *māḍīyah*)

⁹ Fol. 14b.

¹⁰ Cod. الوا.

¹¹ Fol. 15a.

الخطاب وعمر وزيد في الحدّ الآ من طريق عيسى بن ابي عيسى عن الشعبي وأخرى مثلها وهذا قول الشعبي في ابطال القياس فينبغي على اصلهم ان يقولوا انه لم يترك¹² ما روى عن هاؤلاء الصحابة الا بما هو اقوى منه فكثير ما يقولون مثل هذا اذا وافق تقليدكم ، وعن محمد بن مسلم قال قال لي الشعبي انما هلكتم حين تركتم الآثار واخذتم بالمقاييس لقد بغض لي هذا الحشر¹³ فلهو ابغض الى من كناسة اهل هاؤلاء الصعافقة قال ابو محمد سألت حمام بن احمد عن معنى الصعافقة فقال لي كلاما معناه انهم الذين يتخذون تجارة غير محمودة يتقحمون في المضايق بلا رؤية ، وعن عطاء بن السائب قال قال لي الربيع بن خثيم اياكم ان يقول الرجل لشيء ان الله حرّمه¹⁴ او نهى عنه فيقول الله عزّ وجلّ كذبت لم احرمه ولم انه عنه او يقول ان الله احلّ هذا او امر به فيقول الله كذبت لم احله ولم امر به ، قال ابو محمد هذه صفة ما حرّم او احلّ بالقياس بغير نصّ من قرآن او سنة ، وعن عطاء بن ابي رباح في قول الله عزّ وجلّ فان تنازعتهم في شيء فردوه الى الله والرسول ان كنتم تؤمنون بالله واليوم الآخر قال الى كتاب الله تعالى والى سنة رسوله صلّتم ، وعن ميمون بن مهران في¹⁵ قوله تعالى فردوه الى الله ورسوله قال الى كتاب الله والى الرسول ما دام حيا فاذا قبض فالى سنته ، وعن ابن شبرمة ان جعفر بن محمد بن علي بن الحسين قال لأبي حنيفة اتق الله ولا تقيس فانما²²² تقف غدا نحن ومن خالفنا بين يدي الله تعالى فنقول قال الله تعالى وقال رسول الله صلّتم وتقول انت واصحابك سمعنا ورأينا فيفعل الله بنا وبكم ما يشاء ، وعن سفيان الثوري عن هارون بن ابراهيم البدرى قال سمعت عبد الله بن عبد الله بن عمر¹⁶ قال قال الى لم يدع الله شيئا أن يبيته [الا] ان يكون بينه فما قال الله عز وجل فهو كما قال وما قال رسول عم فهو كما قال وما لم يقل الله تعالى ورسوله عم فبعفو الله ورحمته فلا تبشوا عنه¹⁷ ، وعن وكيع بن الجراح انه

¹² Cod. addit: الا.

¹³ Doubtful; ood. المحسد.

¹⁴ Cod. حرم.

¹⁵ Fol. 15b.

¹⁶ Cod. عبد الله بن عبد بن عمر.

¹⁷ Cod. عنها.

قال ليحيى بن صالح الوحاظي احذر الرأى فأتى سمعت ابا حنيفة يقول البول في المسجد احسن من بعض قياسهم ، وعن حماد بن ابي حنيفة قال الى من لم يدع القياس في مجلس القضاء لم يفقه ،

IV.

From Imām al-Ḥaramayn, *Waraqāt fī uṣūl al-fiqh* with the commentary of Ibn al-Firkāh. (Cf. p. 67-69).

وصيغة افعل عند الاطلاق والتجرد عن القرينة عن Fol. 12a: a) تَحْمَلُ عَلَيْهِ ¹ الا ما دلّ الدليل على ان المراد منه النذب او الاباحة فيحمل عليه ، يعنى صيغة الامر بلغة العرب افعل واذا كانت مجردة عن القرائن حملت على الامر وقوله الا ما دلّ الدليل على ان المراد منه النذب او الاباحة فيحمل عليه الاستثناء من غير الجنس فان ما دلّ الدليل على صرفه من الامر ليس مجردا ويمكن ان يكون استثناء متصلا ويكون المعنى ان الصيغة المجردة للامر الا ان يعلم بدليل متصل² خروجها عنه وقد تكون الصيغة مجردة عن القرائن الحالية والمقالية²²³ الصارفة الصيغة عن الامر ويعلم بدليل منفصل ومثال الصيغة المجردة التي خرجت عن الامر بدليل متصل³ قوله تعالى وأشهدوا اذا تبايعتم هذه صيغة امر بالشهادة مجردة⁴ عن معارض حملها الفقهاء على النذب بما رآوه صارفا له عن الامر وهو قولهم ان النبي صلّتم باع ولم يشهد واشترى ولم يشهد فحملوا الصيغة على النذب ، وقوله تعالى واذا حللتم فاصطادوا عند من يرى الامر الوارد بعد الحظر للاباحة⁵ مما صرف عن الوجوب بقرينة فليس صيغة الامر فيه مجردة واما من لا يرى الامر الوارد بعد الحظر للاباحة فانه عنده من باب قوله تعالى وأشهدوا اذا تبايعتم صيغة مجردة عرفت⁶ بدليل منفصل خروجها عن الامر الى الاباحة والدليل المنفصل هو اتفاق اهل العلم على عدم وجوب الاصطياد ، وكذلك قوله تعالى فاذا قضيت⁶ الصلاة فانتشروا في الارض

¹ على الأمر.

² Cod. منفصل.

³ Cod. متصل.

⁴ Cod. مجرد.

⁵ Cod. لاباحة.

⁶ Cod. قضيتم.

فان الانتشار كان حراماً قبل انقضاء الصلاة فالامر بالانتشار بعد انقضائها امر بعد الحظر ففيه ما تقدم بعد قوله تعالى واذا حلتهم فاصطادوا،

ويُرد صيغة الامر والمراد بها الاباحة والتهديد او b) Fol. 17a: التسوية او التكوين والقصد، بيان ورود صيغة الامر بمعنى غير الايجاب وفائدة الفقه في معرفة ذلك تنزيل ما لم يحمل من الأوامر على الايجاب على وجه [من] الوجوه المغايرة للايجاب ويذكر الضمير في تذكيره الى الامر ويجوز تأنيثه ردّاً الى الصيغة وكان ينبغي ان يذكر ورود الامر للندب فانه من المحال المشهورة ولكنه اكتفى بما تقدم من الاشارة اليه من بيان الواجب والمندوب، ومن ورود صيغة الامر للاباحة قوله تعالى كلوا مما في الارض حلالاً طيباً وقوله تعالى واذا حلتهم فاصطادوا وقوله تعالى فاذا قضيت الصلاة فانتشروا في الارض، ومن ورود صيغة الامر للتهديد قوله تعالى اعملوا ما شئتم والتسوية قوله ارعدوا وارتقوا يا زيد وقوله تعالى فاصبوا او لا تصبروا واما ورود صيغة الامر بمعنى التكوين ففي قوله تعالى كونوا قردة وقوله تعالى قلنا يا نار كونى برداً وسلاماً،

V.

From Abū Sa'd 'Abd al-Karīm al-Sam'ānī, *Kitāb al-ansāb*. MS of the Asiatic Museum, St. Petersburg¹. (Cf. p. 26-30; 104-7).

First article: الداودي².

هذه النسبة الى مذهب داود والى اسم داود فاما المذهب جماعة انتحلوا مذهب ابي سليمان داود بن علي الاصبهاني امام اهل الظاهر وفتيهم وفيهم كثرة منهم ابو القسم عبيد الله بن علي بن الحسن بن محمد بن عمرو بن حزم بن مالك بن كاهل بن زياد بن نهيك بن هشيم بن سعد بن مالك بن النخع الكوفي النخعي القاضي الداودي كان فقيه الداودية في عصره بخراسان وسمع الحديث الكثير بالعراق وبصرى سمع ببغداد ابا عبد الله الحسين بن اسمعيل الحاملي وبالكوفة ابا العباس

¹ Should probably be changed to ويرجع.

² Cf. Ibn Hishām, p. 674, l. 14: *يرعد ويرق ليس فيه شيء*.

¹ See *Notices sommaires des manuscrits arabes*, p. 146.

² Fol. 162b.

احمد بن محمد بن عقدة الحافظ وبمصر ابا جعفر احمد بن محمد بن سلام الطحاوي وبدمشق ابا بكر احمد بن سليمان بن زياد الدمشقي انتخب عليه الحاكم ابو عبد الله الحافظ الفوائد وكتبها الناس روى عنه ابو عبد الله الغنjar وابو العباس المستغفرى الحافظان وتوفي ببخارا وكان قد سكنها الى ان توفي في جمادى الأولى سنة ٣٧٦²²⁵ ومن الداودية الذين هم على مذهب داود بن علي ابو بكر محمد بن موسى بن المثني الفقيه الداودي النهرواني من اهل النهروان سكن بغداد كان فقيها نبيلاً على مذهب داود بن علي سمع ابا القسم عبد الله محمد البغوي و ابا سعيد الحسن بن علي العدوي و ابا بكر عبد الله ابن ابي داود روى عنه ابو بكر احمد بن محمد البرقاني، ابن بنته ابو الحسن بن عمر بن روح النهرواني قال ابو بكر الخطيب سألت ابا بكر البرقاني عنه اكان ثقة فقال ما كان حاله تدلّ الا على ثقته او كما قال ثم قال علقت عنه شيئاً يسيراً وكانت ولادته في شوال سنة ثلثمائة ومات في سنة ٣٨٤،

Second article: الظاهري¹.

. . . هذه النسبة الى اصحاب الظاهر وهم جماعة ينتحلون مذهب داود بن علي الاصبهاني صاحب الظاهر فاتهم يبرون بالنصوص على ظاهرها وفيهم كثرة منهم ابو الحسين محمد بن الحسين البصري الظاهري كان على مذهب داود حدث عن محمد بن الحسن بن الصباح الداودي روى عنه ابو نصر بن ابي عبد الله الشيرازي، واما داود فهو ابو سليمان داود بن علي بن خلف الفقيه الظاهري اصبهاني الاصل سكن بغداد وكان من اهل قاشان بلدة عند اصبهان سمع [من] سليمان بن حرب وعمرو بن مرزوق والقنبي ومحمد بن كثير العبدي ومسدد بن مسرهد رحل الى نيسابور وسمع من اسحق بن راهويه المسند والتفسير ثم قدم بغداد وصنف كتبه بها وهو امام اصحاب الظاهر وكان ورعاً ناسكاً زاهداً وفي كتبه احاديث كثيرة الا ان الرواية عنه عزيزة جدا²²⁶ روى عنه محمد بن داود وزكريا بن يحيى الساجي ويوسف بن يعقوب

¹ Here follow different داودي whose *nisbah* does not indicate the Dāwūdī *fiqh* interpretation, but refers to some ancestors by the name of Dāwūd.

¹ Fol. 280a.

ابى عمر يوسف مُثَبِّتة مسطورة لحسنها ومن جملة اشعاره "
 مات ابو بكر بن داود الاصبهاني الظاهري والقاضي يوسف بن يعقوب
 فى يوم واحد وهو يوم الاثنين لسبع خلون من شهر رمضان سنة ٢٩٧
 وقيل مات محمد بن داود لسبع خلون من شهر شوال من السنة ، وابو
 الحسن عبد الله بن احمد بن محمد بن محمد بن المغلس الفقيه الظاهري له
 مصنفات على مذهب داود بن علي حدث عن جدّه محمد بن
 المغلس وعلى بن داود القنطري وابى قلابة الرقاشى وجعفر بن محمد بن
 شاکر الصائغ واسماعيل بن اسحق القاضي وعبد الله بن احمد بن
 حنبل والحسن بن علي العمري وغيرهم روى عنه ابو الفضل محمد بن
 عبد الله الشيباني وكان ثقة فاضلا فقيها¹¹ اخذ العلوم عن ابى بكر
 محمد بن داود وعن¹² ابن المغلس انتشر علم داود فى الاسلام وتوفى
 سنة ٣٢٤ اصابته سكتة ،

¹⁰ Missing in the codex; cf. *Fihrist*, p. 218, l. 4.

¹¹ فيها.

¹² Cod. عن.

ابن مهران الداودى والعباس بن احمد المذكر² وذكره ابو العباس ثعلب
 فقال كان عقله اكثر من علمه وقال ابو عبد الله المحاملى رأيت داود
 ابن علي يصلى فما رأيت مصليا يشبهه فى حسن تواضعه وقد حكي
 لاحمد بن حنبل عنه قول فى القرآن بدّعه³ فيه وامتنع من الاجتماع
 معه بسببه واستأذن له ابنه⁴ صالح بن احمد ان يدخل عليه فامتنع
 وقال كتب الى محمد بن يحيى الذهلى من نيسابور انه زعم ان القرآن
 محدث فلا يقربنى قال أبت⁵ انه⁶ ينتقى من هذا وينكره فقال احمد
 ابن حنبل محمد بن يحيى أصدق منه لا تاذن له فى المصير الى ، قال
 ابو بكر احمد بن كامل بن خلف فى شهر رمضان يعنى سنة سبعين
 ومائتين مات داود بن علي بن خلف الاصبهاني وهو اول من اظهر
 انتحال الظاهر ونفى القياس فى الأحكام قولاً واضطر اليه فعلاً فسماه
 دليلاً وحكى ابنه محمد بن داود قال رأيت ابى فى المنام فقلت له ما
 فعل الله بك قال غفر لى وسامحنى قلت غفر لك فمهم سامحك قال
 يا بئى الامر عظيم والويل كل الويل لمن لم يسامح ولد سنة احدى
 ومائتين ومات ببغداد سنة سبعين ومائتين وكان ابوه علي بن خلف يتولى
 كتابة عبد الله بن خالد الكوفى قاضى اصبهان أيام المأمون ، وابنه
 ابو بكر محمد بن داود بن علي بن خلف الاصبهاني القاشانى صاحب
 كتاب الزهرة كان عالماً اديباً وشاعراً ظريفاً وله فى الزهرة احاديث
 عن عباس بن محمد الدورى وطبقته ولما جلس فى حلقة⁷ ايده بعد
 وفاته يُفتى استصغروه عن ذلك فلدسوا اليه رجلاً وقالوا له سئله عن
 حد السكر ما هو فأتاه الرجل فسأله متى يكون الانسان سكران فقال
 محمد بن داود اذا غرب عنه الهموم وباح بسره⁸ المكتوم فاستحسن ذلك
 منه وعلم موضعه من العلم⁹ ، ومن مליح شعره "

² Cod. المذكر; could not be المذكور since in this passage this 'Abbās has not yet been mentioned.

³ Cod. ابن.

⁴ Cod. آية, perhaps.

⁵ Fol. 280b.

⁶ Cod. خلفه.

⁷ Cod. بسرة.

⁸ Cf. Abū al-Mahāsīn, II, p. 179.

⁹ Here a poem, each is quoted.

To pages 10, and 14, note 3

Ra'y and *qiyās* in poetry

Nothing can better demonstrate the lively character of theological disputation about *ra'y* and traditional theology than the fact that during the second century, when these disputations were current among theologians, even the poetess 'Ulayyah bint al-Mahdī (d. 210), the sister of the caliph Hārūn al-Rashīd, refers to these theological topics of the day in a love poem:

The matter of love is no easy matter,
No expert can inform you about it;
Love is not regulated by *ra'y*, analogy, and speculation ¹.

In different words, this poetess expresses the same idea in a short poem, the main idea of which is "that love is based on injustice" (بنى الحب على الجور):

Not appreciated in matters of love is a lover who is versed in presenting arguments ².

The various applications of the expression *ra'y* in ordinary linguistic usage, on the one hand, and in theological usage, on the other, will become clear from an examination of the two short poems following. I do think that they are quite interdependent, although I cannot decide on a relative age because of the uncertainty of their authenticity.

229 In al-Sha'rānī, vol. 1, p. 62 we read: al-Sha'bī and 'Abd al-Raḥmān b. Mahdī reprimanded anyone who espoused *ra'y*. They would then

¹ *Aghānī*, IX, p. 95, contains these two lines only. I found a more complete version in al-Ḥuṣrī, III, p. 19:

ليس يخطب الهوى بخطب يسير
ليس أمر الهوى يدبر بالراء
ي ولا بالقياس والتفكير
محدثات الأمور بعد الأمور

² *Aghānī*, IX, p. 89:

ليس يُستحسن في حكم الهوى
عاشق يُحسِن تأليف الحجج

A similar allusion to *qiyās* and *istidlāl* in matters of love is made by the poet 'Ali b. Hishām, *Aghānī*, XV, p. 146, 6:

وفي دون ذا ما يستدل به الفتى
على الغدر من احبابه ويقيس

recite the following poem:

دين النبي محمد مختار
لا ترغبن عن الحديث واهله
نعم المطية للفتى الآثار
فالرأى ليل والحديث نهار

The religion of the Prophet Muḥammad has been chosen; what an excellent mount the traditions are for a man!

Do not turn away from tradition and its representatives, for *ra'y* is the night, and tradition is day.

In *Ibtāl* (fol. 13b) the same verses are quoted in the name of Aḥmad b. Ḥanbal (however, in the first line it reads *akhtāru*, I choose, instead of *mukhtār*) but added is a third line:

ولربما جهل الفتى اثر الهدى
والشمس بارعة لها انوار

Quite often man fails to recognize the way of the right guidance, although the sun is brilliant and shedding light.

Now Ibn 'Abd Rabbih in *Kitāb al-'iqd al-farīd*, I, p. 25 quotes verses of an anonymous poet who expresses the same idea, namely, that *ra'y* is comparable to the night, but with quite a different meaning:

قال الشاعر
الرأى كالليل مسودّ جوانبه
فأضمم مصاييح آراء الرجال الى
والليل لا ينجلى الا باصباح
مصباح رأيك تردد ضوء مصباح

Opinion (or advice) is like the night, its edges are sombre, but night shall not be illumined except by dawn;

So add, then, the light of other people's opinion to your own: then brightness of the lights will be increased for you.

I.e. your opinion alone is darkness, if you desire illumination, then, do not rely on it alone, rather, obtain the opinion of other people. In this case it is unmistakable that the two verses are related to each other, and that either the theological رأى ليل was applied by the secular poet to the ordinary, and older usage of the word رأى, or vice versa.

ANNOTATION 2

To page 36.

ʿIlm al-ikhtilāfāt.

A particular distinction must be made between the science of difference of opinions in the legal schools and their *imāms*, on the one hand, and knowledge of the “differences of opinion of the Prophet’s companions”, on the other hand — in so far as such distinction finds expression in the literature of tradition. It can be observed on first glance in no matter which chapter of the literature of tradition that, with respect to one and the same question of canonical law, different traditions offer contradictory solutions in the name of different companions. Since from the Zāhirite school’s point of view the main emphasis in legal questions is put on the teachings of the traditions, it must of necessity concern itself seriously with the criticism of such contradictory traditional data in order to avoid the arbitrary tendency towards the one or the other of the conflicting traditional data. If this criticism is to be successful and to be applied in practice, it must be based on the pragmatic acquaintance with the divergent data of the tradition (*ikhtilāfāt*). Ibn Ḥazm praises Muḥ. b. Naṣr from Marw (d. 294) as the most perfect master of this science¹. Ibn Ḥazm, too, places much emphasis on this science and he cites several statements from old authorities in support of its recommendation. One says: “He who does not know *ikhtilāf* shall not succeed” and the other: “... we shall not consider a scholar”. According to Mālik, a person who is not familiar with the science of *ikhtilāf* ought not be permitted to pass judgement. This statement by the famous Medinese scholar is represented to refer neither to the science of the differences of opinion nor to the points of difference of the prevalent legal schools, but to the acquaintance with the divergent data of the traditional authorities and of the abrogated and abrogating passages of the Koran and the traditions in cases in which one of the contradicting data is explicitly invalidated in favour of another one. Concern for this science of difference of opinion and for the points of difference of the legal

schools — as we have seen — is displayed in a rich literature. Since in this instance — so Ibn Ḥazm maintains — the *imāms* Abū Ḥanīfah and al-Shāfi‘ī agreed with the opinion expressed by Mālik, it follows that the judges and *muftis* of these schools were at variance with the founders of the schools to which they unconditionally adhered.

Ibtāl, fol. 19a: وقال سعيد بن ابى عروبة من لم يسمع الاختلاف فلا نعهده عالمًا، وعن عباس بن محمد الدورى قال سمعت قبيضة ابن عقبة يقول لا يُفلح من لا يعرف الاختلاف، وعن ابى القسم سئل مالك لمن يجوز الفتيا قال لا يجوز الفتيا الا لمن علم ما اختلف الناس فيه، قيل له اختلف اهل الرأى قال اختلف اصحاب رسول الله صلعم وعلم الناسخ والمنسوخ من القرآن وحديث النبى صلعم وكذلك يفتى، قال ابو محمد وهذا قول ابى حنيفة والشافعى بلا خلاف فلينظر حكاهم ومفتوهم اليوم اهذه صفتهم أم لا فان كانوا ليسوا كذلك فقد خالفوا ما ادعوا تقليده وحصلوا على لا شيء فنعوذ بالله من الخذلان.

¹ *Tahdhīb*, p. 120, *ʿAbaqāt al-ḥuffāz*, X, no. 19, cf. Abū al-Maḥāsīn, II, p. 170.

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