

Jalal al Muhalli, which remains even today the basis for studies in **al Usul**, especially for the **Shafi'iyah** scholars.

Badr al Din al Zarkashi (d 794) also wrote a commentary, entitled **Tashnif al Masami** "To Please the Ears", part of which was printed in Cairo with footnotes by **al Shaykh al Muti'i** (d 1354). One of the students at **Imam Muhammad ibn Sa'ud University** has researched and edited part of this book recently for his doctoral thesis.

Al Zarkashi also wrote **al Bahr al Muhit** "The Vast Ocean", in which he collected the submissions of scholars of **al Usul** from over one hundred books. A student has started to research and edit this book, under our supervision, for his doctoral thesis, and has already completed one volume and made it ready for publication.

Among the **Hanabilah**, **Ibn Qudamah** (d 620) wrote **Rawdat al Nazir wa Jannat al Manazir**, in which he summarized **al Ghazzali's al Mustasfa**, and added to it other useful material on matters in which the **Hanabilah** disagreed with others. This book has been printed several times, and the **Hanabilah** took great interest in it, to the extent that they ignored nearly all other books.

Sulayman al Tufi (d 716) summarized this work, and then commented upon his summary in two volumes.

Among the **Malikiyah**, **al Qarrafi** (d 684) wrote **Tanqih al Fusul fi Ikhtisar al Mahsul** "Refining Chapters in Summary of the Mahsul".

Al Qarrafi also wrote a commentary on **al Mahsul** in a large volume entitled **Nafa'is al Usul** "Treasures of the Usul", part of which has been researched and edited under our supervision in Riyadh. (Contd.....)

Foot Notes:

64 See **al Makki**, *Manaqib al Imam Abu Hanifah*, II, 245; the introduction to *Usul al Sarkhasi*, I, 3; **Qutubzadeh**, *Miftah al Sa'adah*, II, 37; and **Ibn al Nadim**, *Al Fihrist*. Everyone who made this claim based his information on **Ibn al Nadim's** comment in his biography of **Muhammad ibn al Hasan**: "He has a book of *Usul* which includes chapters on **Salah, Zakah and Hajj**." This, however, would appear to refer to work on *Usul al Din*. (In fact, what is more likely, is that the reference is to **al Imam Muhammad ibn al Hasan's** work on *Fiqh*, *Kitab al Asl*, which was recently published in Pakistan. furthermore, the suggestion that **Abu Yusuf** first wrote about *Usul* comes from a narration included by the **Khatib of Baghdad** in his *Tarikh Baghdad*. Ed.)

65 See Vol. I, p. 110-111. 66 **Al Jassas's** main work, *Ahkam al Qur'an*, was the subject of this editor's thesis, and is presently being translated, along with detailed annotation, into English. (Ed.)

67 *Taqwim al Adillah* has been edited in ten volumes and is soon to be published, Allan willing. (Ed.) 68 Each of these groups of scholars added something of their own to their books, though they used the same format for writing and the same method of presenting evidence and arguments.

69 See **al Dahlawi**, op. cit., I, 336-341; also **al Dahlawi**, *Al Insaf fi Bayan Asbab al Ikhtilaf* (Salafiyah, Cairo), p.3840.

Al Qadi al Baydawi (d 685) summarized al Hasil in his book *Minhaj al Wusul Ila 'Ilm al Usul* "The Way of Mastering the Science of Source Methodology"; but his summary was so abbreviated that the result is like a riddle, very difficult to understand. Thus, many scholars undertook to produce commentaries on the book. Among such commentaries, the best is that of al Isnawi (d 772), which is entitled *Nihayat al Su'l* "An End to Questioning" This book occupied the attention of the scholars in the field for a long time, and the Shafi'iyah scholars al Al Azhar are still devoted to it.

Al Amidi's book, al *Ihkam* "Precision" was summarized by Ibn al Hajib (d 646) of the Maliki legal school in his book *Muntaha al Su'l wa al Aml Fi 'Ilmay al Usul wa al Jadal* "The Ultimate in the Sciences of Jurisprudence and Argumentation", which is well-known among the followers of al Imam Malik.

The best available commentary on this work is that of 'Udad al Din (d 756), for which several glosses and commentaries have been written.

All of these books were written following the method of the *Mutakallimun*, defining the principles, basing evidence upon them, and seeking to refute by means of these those who held opposing views, until one of the two groups admitted defeat.

The Hanafiyah scholars of al Usul were likewise occupied in studying the books of al Bazdawi and al Sarkhasi. This situation remained the same until the end of the sixth century and the beginning of the seventh century AH, when the scholars of at Usul began using a new method. This method involved combining the methods of the *Mutakallimun* and the Hanafiyah scholars so as to produce books which combined the Usul of the two groups.

Following this method, Muzaffar al Din al Sa'ati (d 694) wrote *Bad'i al Nizam al Jam'i Bayna Kitabay al Bazdawi wa al Ihkam*. This book is one which is readily available in print.

Sadr al Shari'ah (d 747) wrote *Tanqih al Usul* "Refining al Usul", in which he summarized al Mahsul, Usul al Bazdawi and Mukhtasar Ibn al Hajib. He then wrote a commentary on his own book entitled al *Tawdih* "Clarification", to which al Taftazani (d 792) added a marginal commentary entitled al *Talwih*. All three books, al *Tanqih*, al *Tawdih* and al *Talwih* are available in print.

Among the Shafi'iyah scholars, Taj al Din al Subki wrote his famous book, *Jam' al Jawami'* "The Compilation of the Comprehensive". In the introduction, he mentioned that he had compiled his work from one hundred different books on al Usul. Many scholars wrote commentaries and added footnotes to al Subki's book. Of these, perhaps the most important and most widely-available commentary is *Sharh al*

specific "al Khass" is obvious "Mubayyan", and does not need to be followed by a declaration "Bayan"; that the addition of details to a text constitutes abrogation "Naskh"; that the comprehensive "al 'Amm" is definitive "Qat'i" like the specific "al Khass"; that mere numbers of narrations may not be taken as a factor in according preference Tarjih to one opinion or another; that the Hadith of one who is not a Faqih need not necessarily be adopted in cases where there can be no resort to reason; that there is no legitimacy to the notion of progressing from a precondition "Shart" or description "Wasf" to a legal deduction; that the imperative "al Amr" in a text always indicates legal obligation "Wujub"; and so on, all of these are examples of principles inferred from the judgements of the Imams. Indeed, there are no sound narrations to suggest that Abu Hanifah or his two companions, Muhammad and Abu Yusuf, adhered to any of these principles of source methodology. As such, then, these principles deserve no more to be preserved and defended, as al Bazdawi and the others did, than the opposing principles do."69

THE SCIENCE OF USUL AL FIQH DURING THE SIXTH CENTURY AH AND THE FOLLOWING PERIOD

Following the consolidation of the subject matter of this discipline, according to the method of the Mutakallimun, in four major works: al 'Ahd, al Mu'tamad, al Burhan and al Mustasfa, two great scholars from among the Mutakallimun summarized these four books in works of their own.

The first was al Imam Fakhr al Din al Razi (d 606 AH), who summarized them in his book al Mahsul "The Sum and Substance", which I had the honour of researching and editing. This work has been printed in six volumes by Imam Muhammad ibn Sa'ud University, and is now being reprinted.

The second was al Imam Sayf al Din al Amidi (d 631 AH), who summarized these four books in his al Ihkam Fi Usul al Ahkam "Precision in the Source Methodology of Law", which has been published in Riyadh, Cairo and elsewhere.

These two books are lengthier and certainly easier to read and understand than others. Of the two, al Mahsul is written in clearer language, and is more detailed in its explanations. Many glosses and commentaries have been written on these two books. Taj al Din al Armawi (d 656) summarized al Mahsul in his book al Hasil "The Outcome", which was researched and edited for a doctoral thesis at al Azhar University, but has not yet been published.

Al Imam al Razi himself also summarized it in a book entitled al Muntakhab "Selections", which one scholar has researched and edited.

AH. Indeed, by that century, the scholars of every school of legal thought had recorded their own interpretations and understanding of *Usul al Fiqh*.

THE METHODS OF THE FOLLOWERS OF AL IMAM AL SHAFI' OR, THE "MUTAKALLIMUN", AND THOSE OF THE HANAFIYAH

Writings on the subject of *al Usul* generally followed one of two methods. The first was al Shafi'i's method, or the method of the *Mutakallimun*. This was the method followed by the *Shafi'iyah*, the *Malikiyah*, *Hanabilah* and the *Mu'tazilah*⁶⁸, and it was known as the "method of the *Mutakallimun*" because the authors of books written according to this method used to introduce them with discussions of theological and philosophical issues, such as *al Hasan* and *al Qabih* "The Good and the Reprehensible", *Hukm al Ashya' Qabl al Shar'* "The Legal Status of Matters Prior to the Revelation of *Shari'ah*", *Shukr al Mun'im* "The Necessity of Gratitude to the Bestower", and *al Hakim* "The Possessor of Sovereignty". A further reason for its being labeled "the method of the *Mutakallimun*" was the use of the deductive method in defining the principles of source methodology, in ascertaining the validity of those principles, and in refuting those whose opinions differed without paying much attention to the issues and details which stem from the application of these principles.

THE METHOD OF THE HANAFI SCHOLARS OF AL USUL

The Hanafi method of writing on *al Usul* involved defining the principles of *Usul* from the details of legal issues with which their earliest predecessors had already dealt. Thus, the basis for their studies of *al Usul* was derived from the details of previously settled legal issues, and not the other way round. Therefore, one who studies *Usul al Fiqh* according to this method will gather the details of issues concerning which the Hanafi Imams have already given *Fatawa*, and then analyze them. Through his analysis he will decide the basis on which these *Fatawa* were given.

Shah Wali Allah of Delhi commented: "I found that some of them claimed the differences between Abu Hanifah and al Shafi'i were founded on the *Usul* mentioned in al Bazdawi's book and elsewhere. But the truth is that most of these *Usul* were themselves derived from the differing legal pronouncement of the Imams. My opinion of the matter is that such principles of *al Usul* as the rules which say that the

There is much that could be said about how accurately this statement depicts the development of Hanafi studies of al Usul, even if it was made by a Hanafi. The statement does, nonetheless, come close to reality in explaining the role of the Hanafi yah in the development of Usul al Fiqh. In the first period, these scholars concentrated, even before al Imam al Maturidi, on discussing the issues brought up by al Imam al Shafi'i in his *Risalah*, as 'Isa ibn Abban and others did.

During the following period, one of the most prominent writers of al Usul was Abu al Hasan al Karkhi (d 340 AH). His book on al Usul consists of a limited number of pages that were printed with Abu Zayd al Dabusi's book, *Ta'sis al Nazar* "Establishing Opinion", which has been published in several editions in Cairo.

Then, Abu Bakr al Jassas (d 370 AH) wrote his work, *Al Fusul Fi al Usul* as an introduction to his *Ahkam al Qur'an* "Legal Interpretations of the Qur'an"⁶⁶. *Al Fusul* has been researched and edited for a doctoral thesis, and was published recently in Kuwait.

True development of the Hanafiyah writing on the subject of al Usul may be considered to have begun with al Imam Abu Zayd al Dabusi (d 340) who wrote two important books on the subject: *Taqwim al Adillah* "Appraising Evidence", all or some of which has been researched and edited, but which has not yet been printed, and *Ta'sis al Nazar*⁶⁷. Abu Zayd made use of the work on al Usul done by his predecessors, especially that of Al Karkhi and Al Jassas, but with the difference that he expanded the field and explained it in greater detail; he also made brief reference to the points on which the Hanafiyah agreed and disagreed with others on matters of Usul.

Abu Zayd was followed by Fakhr al Islam al Bazdawi (d 482), who wrote the well-known *Kanz al Wusul Ila Ma'rifat al Usul* "A Treasury On Attaining Knowledge of the Usul", in which he dealt with Usul in general. Later Hanafiyah scholars took great interest in the book and wrote many commentaries on it; the best and most important of which was *Kashf al Asrar* "Secrets Uncovered" by 'Abd al Aziz al Bukhari (d 830). This commentary has been published in several editions in both Istanbul and Egypt.

Likewise, Shams al A'immah al Sarkhasi (d 423 AH) wrote *Usul al Sarkhasi*, which has been printed in two volumes in Egypt. This book is considered to be in many ways an alternate reading of al Dabusi's *Taqwim al Adillah*. The Hanafiyah scholars of al Usul took great interest in the books of al Bazdawi and al Sarkhasi, and concerned themselves with teaching and commenting upon them for a long time.

From the above it should be clear that the development of Usul al Fiqh, as a specialized discipline, had been completed, and that its issues and academic parameters had been defined by the fifth century

USUL AL FIQH: METHODOLOGY FOR RESEARCH AND KNOWLEDGE IN ISLAMIC JURISPRUDENCE

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(Contd.....from Vol.1. Number. 6)

THE ROLE OF THE FOLLOWERS OF ABU HANIFAH IN THE WRITING OF AL USUL

Some historians of Usul al Fiqh have suggested that al Qadi Abu Yusuf and Muhammad ibn al Hasan wrote about jurisprudence,⁶⁴ but this claim has not been proven.

The author of *Kashf al Zunun*⁶⁵ quoted 'Ala' al Din's saying from *Mizan al Usul* "Usul in the Balance":

"Know that Usul al Fiqh is a branch of Usul al Din; and that the composition of any book must of necessity be influenced by the author's beliefs. Therefore, as most of the writers on Usul al Fiqh belong to the Mu'tazilah who differ from us in basic principles, or to Ahl al Hadith who differ from us in questions of detail, we cannot rely on their books.

Our (Hanafi) scholars' books, however, are of two types. The first type is of books that were written in a very precise fashion, because their authors knew both the principles and their application. Examples of this type are: *Ma'khadh al Shar'* "The Approach of the Shari'ah" and *al Jadal* "Argument" by Abu Mansur al Maturidi (d 333 AH).

"The second type of book dealt very carefully with the meanings of words and were well-arranged, owing to the concern of their authors with deriving detailed solutions from the explicit meanings of narrations. They were not, however, skillful in dealing with the finer points of al Usul or questions of pure reason. The result was that the writers of the second type produced opinions in some cases agreeing with those with whom we differed. Yet, books of the first type lost currency either because they were difficult to understand or because scholars lacked the resolution to undertake such works."