

THE PROBLEM OF AL-AMR IN UṢŪL AL-FIQH

BY

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In the Name of God the
Beneficent, the Merciful

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ABSTRACT

This thesis deals with command (amr) in Islamic jurisprudence. In the introduction the significance of amr is explained and the background of the science of uṣūl al-fiqh, in which the discussions of amr took place, is described. This includes a survey of the classical writings on uṣūl al-fiqh. Chapter I deals with the definition of amr. The Muslim scholars have divided amr into three main classes - wujūb, mandūb and iṣṭihbāb. The amr which is absolutely binding is the command of God while the recommended and the preferred commandments are from the Prophet and Muslim scholars. This includes, also, a definition and discussion of the status of the person issuing the command and whether that status alters the effect of the commandment. The discussion then examines the linguistic interpretations of amr, in particular whether amr originally meant command or not. This has great importance for the nature of commandment in Islamic law. The form of amr, i.e. whether the imperative is a real commandment, is next discussed. This involves a discussion of the nature and intention of the person issuing the command. The second chapter deals with the importance of amr in Islamic law and the different levels of amr according to whether the amr is from God, the Prophet or those with authority. In chapter III the main concern is the nature of restricted and

unrestricted amr and whether they require repetition of the action without repetition of the amr. This also involves the amount of time allowed in carrying out the amr. Chapter IV examines the conditions of what is ordered and shows how different theological and theoretical considerations effect the carrying out of an amr in the branches (furū') of Islamic law. The conclusion summarises the various discussions.

LIST OF ABBREVIATIONS

<u>Islām al-Muwqqī'in</u>	Ibn Qayyim al-Jawziyya, <u>Islām al-Muwaqqi'in 'an Rabbi al-'Alamin</u>
<u>al-Burhān</u>	Imām al-Ḥaramayn, <u>al-Burhān fī Uṣūl al-Fiqh</u>
<u>Bidayya</u>	Ibn Rūshid, <u>Bidāyyat al-Mujitahid wa Mihayyat al-Muqitaṣad</u>
<u>Conflict</u>	Coulson, <u>Conflict and Tension in Islamic Jurisprudence</u>
<u>al-Dhari</u>	al-Murtadā, <u>al-Dhari'ah 'ila Uṣūl al-Shari'a</u>
<u>E.I.</u> ¹	<u>The Encyclopaedia of Islām</u> (old edition)
<u>E.I.</u> ²	<u>The Encyclopaedia of Islām</u> (new edition)
<u>E.I.</u> ³	<u>The Encyclopaedia of Islam</u> (shorter edition)
<u>al-Ihkām</u>	al-Āmidī, <u>al-Ihkām fī Uṣūl al-Ahkām</u>
<u>al-Ihkām</u>	Ibn Ḥazm, <u>al-Ihkām fī Uṣūl al-Ahkām</u>
<u>Irshād</u>	al-Shawkānī, <u>Irshād al-Fuhūl ilā Taḥqiq al-Ḥaqq min 'ilm al-Uṣūl</u>
<u>al-Iṣāba</u>	Ibn Ḥajar al-'Asqalānī, <u>al-Iṣāba fī Tamyīz al-Sahāba</u>
<u>Kitāb al-Mu'tamad</u>	Abū al-Ḥusayn al-Baṣrī, <u>Kitāb al-Mu'tamad min 'ilm al-Uṣūl</u>

<u>Kitāb al-Fiqh</u>	al-Jazīrī, <u>Kitāb al-Fiqh 'alā Madhahib al-Arba'a</u>
<u>Kashf al-Asrār</u>	al-Bukhārī, <u>Kashf al-Asrār fī Uṣūl al-Bazdawī</u>
<u>al-Maḥsūl</u>	al-Rāzī, <u>al-Maḥsūl fī Uṣūl al-Fiqh</u>
<u>Majmu'</u>	Ibn Taymiyya, <u>Majmu' al-Fatawā</u>
<u>Minhāj</u>	al-Baydāwī, <u>Kitāb Minhāj al-Uṣūl ilā 'ilm al-Uṣūl</u>
<u>Mudhakkara</u>	Shinqitī, <u>Mudhakkarat Uṣūl al-Fiqh</u>
<u>al-Mudawwana</u>	Mālik b. Anas, <u>al-Mudawwana al-Kuburā</u>
<u>al-Muqadimāt</u>	Ibn Rushid, <u>Kitāb al-Muqadimāt al-Mumahhidat</u>
<u>al-Mustasfā</u>	al-Ghazālī, <u>al-Mustasfā min 'ilm al-Uṣūl</u>
<u>al-Muwaṭṭa</u>	Mālik b. Anas, <u>al-Muwaṭṭa</u>
<u>al-Rawda</u>	Ibn Qudāma, <u>al-Rawdat al-Nazir wa Jannat al-Munāzir</u>
<u>Sharḥ al-Manār</u>	al-Nasafī, <u>al-Manār min 'ilm al-Uṣūl</u>
<u>Sharḥ al-Manār</u>	al-Rahawī, <u>Sharḥ al-Manār wa Hawāshihī min 'ilm al-Uṣūl</u>
<u>Sharḥ al-Manār</u>	Ibn al-Malak, <u>Sharḥ al-Manār wa Hawāshihī min 'ilm al-Uṣūl</u>
<u>Sharḥ Tanqih</u>	al-Qurāfī, <u>Sharḥ al-Tanqih al-fusūl fī Ikhtsār al-Mabsūl fī Uṣūl</u>

al-Taqrīb

Ibn Ḥajar, Taqrīb al-Tahdhīb

al-Tahdhīb

Ibn Ḥajar, Tahdhīb al-Tahdhīb

Transliteration TableConsonants

هـ	'	ح	h (omitted at the end of the word)
ب	b	ي	y
ت	t	ال	al
ث	th		
ج	j		
ح	h		
خ	kh		
د	d		
ذ	dh		
ر	r		
ز	z		
س	s		
ش	sh		
ص	s		
ض	d		
ط	t		
ظ	z		
ع	'		
غ	gh		
ف	f		
ق	q		
ك	k		
ل	l		
م	m		
ن	n		
و	w		

Vowels

Long:

آ
إ
أ

ā

او

ū

اي

ī

Short:

ا

a

و

u

ي

i

} omitted at the
end of the word

Doubled:

آآ

iyy

وو

uww

Diphthongs:

أو

aw

أى

ay

INTRODUCTION

Islam regards it as the duty of man to obey the commandments of God. It is believed that man is in need of divine guidance and also under an obligation to obey God for the blessing that He has bestowed upon man. Man can only show his gratitude for that kindness by following God's commandments. God makes His commandments and prohibitions, as well as His recommendations, known to man through the Prophet (and before him other prophets). Although the Prophet is no longer here and there is no longer anyone with direct contact with God, the revelations received by the Prophet still have validity. However, in order to accept what God has commanded, a man must be able to differentiate between what is a real command. To do this man must understand the meaning of each apparent commandment as it has been revealed. It is in this that the significance of the term amr lies. And because of this importance of amr Muslim scholars always regard amr as the main reason why God created man (i.e. in order to obey His command). Therefore amr apart from its theological significance can also be regarded as the main cornerstone upon which Islamic law is built, since every action of man is regarded as being commanded in one way or the other

and he will be rewarded if his actions are performed according to legal requirements of Islam and he will be punished if these requirements are not properly observed.

This study is principally concerned with investigating the legal aspect of amr. Thus it will examine the definition given to it by the uṣūlīs and the legal implications of their disagreements on what is involved in amr. Considerable attention will be paid to linguistic interpretations of amr. Amr has been divided by the uṣūlīs into restricted (al-amr al-mu'allaq) and unrestricted (al-amr al-muṭlaq). Both of them will be discussed in detail though most of the time will be spent on the latter one because of the controversy which always surrounded unrestricted use of words in any language.

This study will concentrate on the period between the second and seventh centuries of Islam. - The period which is known as aṣr al-tadwīn with regard to Islamic studies in general and the formative period of Islamic law in particular. Since the expansion of uṣūl al-fiqh took place throughout this period, any work of uṣūl al-fiqh written within that period will be regarded as a primary source. But preference will be given to those of the second and third centuries as they belong to the most important formative period.

Amr is chosen for this research because it represents the heart of uṣūl al-fiqh. Any discussion

of it will certainly expose one to every aspect of Islamic law, though it will not go into details of furū' al-fiqh.

Definition of Uṣul al-Fiqh

'Ilm uṣūl al-fiqh or 'ilm al-dirāya as it has often been called was developed as early as the second century of Islam but the scholars of that time did not give any specific definition to it. It remained without any proper definition for some time though its actual subject matter seemed to be well established. Only in the third and fourth century when definition became more necessary did some late scholars try to give a clearer definition in order to distinguish it from other Islamic sciences. Even al-Shāfi'ī who many people have described as the originator of this science did not give it the title "uṣūl al-fiqh". It was sometime after him that the term uṣūl al-fiqh became known as denoting the science of the principles of Islamic Law.

Since then, uṣul al-fiqh has been given many different definitions, some of which are only recognised by orientalists while others seem to be popular among Arab Muslim scholars.

As for the orientalists, they simply defined it as the science of the principles underlying the branches of Islamic law.¹ This definition is purely technical and

1. E.I. (old edition), vol. 4, p. 1054.

does not reflect the literal meaning of the expression, nor take into account that the words uṣūl and al-fiqh are two separate nouns with separate literary and technical meanings. As a result it has not enjoyed much recognition among Muslim scholars. Therefore most of them appear to prefer a definition which will reflect both aspects of the expression.

The word uṣūl is the plural form of aṣl. In the singular it can be used as a technical term meaning "source". For example there is the usage hādhā aṣl when source or text is meant. In fact aṣl has a variety of technical meanings. Thus aṣl is used for evidence (dalīl); for root or origin; for preference (al-rājiḥ); principle (al-qā'ida¹). The latter meaning is the one which later becomes part of the technical expression uṣūl al-fiqh, thus uṣūl al-fiqh or uṣūl al-ḥadīth are synonymous with qawā'id al-fiqh and qawā'id al-ḥadīth.²

Al-fiqh literally means knowledge and understanding (al-'ilm wa-al-faham).³ Technically it has been confined to the knowledge of Islamic law.⁴ Abū Ḥanīfa Nu'mān b. Thābit (d. 150 A.H.) has been reported to have defined

1. 'Alī al-Tahānāwī, Dictionary of Technical Terms, vol. 1, p. 28; E.I. shorter edition, p. 611.

Also see Badrān, Uṣūl al-Fiqh, pp. 21-23.

2. E.I., pp. 611-612.

3. 'Alī al-Tahānāwī, Dictionary of Technical Terms, vol. 1, p. 28; also Badrān, Uṣūl al-Fiqh, pp. 21-23; al-Ghazālī, Mustaṣfā, vol. 1, p. 4.

4. Al-Ghazālī, Mustaṣfā, vol. 1, p. 5.

it as ma'rifat al-nafs mā lahā wa-mā 'alayhā (the knowledge of the rights and duties of soul).¹

However, the uṣūlīs prefer another definition of their own which will reflect both literary and technical meanings. So they first of all defined aṣl on its own as "what another thing is built upon" (ma yubtanī 'alayhi ghayruhu) then they combined this definition directly to al-fiqh and defined it as follows: "What al-fiqh is built upon and depends on" (mā yubtanā al-fiqh alayhi wa-yustanid ilayhi). This definition which seems to have become popular among the uṣūlīs back in the third or fourth century. In fact Abū al-Ḥusayn al-Baṣrī (d. 436 A.H.) mentioned it in his book Kitāb al-Mu'tamad fī Uṣūl al-Fiqh.² Most uṣūlīs regard this definition as the most comprehensive one because according to them it is the only definition that could make it include every aspect of the science, such as amr, qiyās, ijtihād, istiḥsān and other aspects of uṣūl al-fiqh. However, some of them, while not discarding this definition, consider other definitions which are more straightforward, like the one used by the orientalist.

Muḥammad b. 'Alī al-Tahānāwī the author of the Dictionary of Technical Terms defined it as "the science of the principles which leads to the law by way of

1. 'Alī al-Tahānāwī, Dictionary of Technical Terms, vol. 1, p. 30.

2. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, pp. 9-10; also see Abū Zahra, Uṣūl al-Fiqh, pp. 5-6.

investigation" (al-'ilm bi-al-qawā'id allatī yatawaṣṣal bihā ilā al-fiqh 'alā wajh al-taḥqīq). This one seems to be more straightforward and those who put it forward call it "a popular definition" (al-ta'rīf al-laḡab).¹

There are many other definitions but they seem to be more awkward than those already mentioned and involve some prolixity. These are also mentioned by al-Tahānāwī as well as others.²

The different definitions may stem from the different linguistic backgrounds among the uṣūlīs themselves. It also seems that their different understanding of the objectives of uṣūl al-fiqh could also be considered as another reason. There appears to be some differences among them about the objectives of uṣūl al-fiqh.

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1. 'Alī al-Tahānāwī, Dictionary of Technical Terms, vol. 1, p. 28; al-Qurāfī, al-Tanqīh al-fusūl p. IV (This definition was given by Tāhā 'Abd al-Rawf Sa'd, the editor of the book, not by al-Qurāfī.)
 2. For example they defined it as majmū' ṭuruq al-fiqh 'ala sabīl al-ijmāl wa-kayfiyyat al-istidlāl bihā wa-kayfiyyat al-mustanid ilayhā. It is also defined as adillat al-fiqh wujhāt dalālathā 'alā al-aḥkām al-shar'īyya wa kayfiyyat ḥāl al-mustadill min jihat al-ijmāl. See 'Alī al-Tahānāwī, Dictionary of Technical Terms, vol. 1, p. 28.

The Objective of Uṣūl al-Fiqh

The main objective of uṣūl al-fiqh has been described by Noel Coulson as to teach an understanding (al-fiqh) of the shari'a and its primary task therefore was to formulate the principles or sources (uṣūl) from which such an understanding might be achieved.¹ Thus

the objectives of uṣūl al-fiqh might be explained as

- (i) to realise the implementation of the rules of the furu' al-fiqh by a thorough investigation of the views on them and the evidence for them.
- (ii) to examine the foundation upon which the rules of shari'a are based.
- (iii) to develop the ability to derive the law through such processes as ijtihād and qiyās.
- (iv) to be aware of and to understand earlier uses of ijtihād by earlier mujtahidīn and to be able to compare their views and to make a judgement between them through examining their arguments.²

During the time of the Prophet there wasn't much need for personal discretion and reasoning as the Qur'ān was still being revealed sporadically to meet occurrences and Muslims were still in very small Islamic territory. If there was no Qur'ānic injunction

1. Coulson, Conflicts and Tensions, p. 3.

2. Badrān, Uṣūl al-Fiqh al-Islāmī, p. 22.

the Prophet himself decided the situation according to his own judgement, though a revelation sometimes came later to either confirm it or correct it. In addition to that the Prophet was always within easy reach because of the size of the Islamic area. When the Prophet died there were no means of getting direct access to divine revelation. Muslims were left with the Qur'ān and the limited practice or the sunna of the Prophet which did not cover new occurrences in the expanding Islamic world, full of different people of different cultures and traditions. Muslim lawyers found themselves in need of existing Qur'ānic injunctions and Traditions of the Prophet, to meet this challenge of expansion. Thus the first uṣūl al-fiqh began to evolve, at this stage in a rather ad hoc development in order to form a guideline to make it easier for those who had to find appropriate laws to fit the situation.¹

Thus men of law were forced to use their judgement (ra'y) in trying to meet the new situation. Gradually this use of ra'y (ijtihād al-ra'y) became more clearly defined and more systematic. An example of the systematisation of ra'y is qiyās, or analogy. This was done by drawing a parallel between something which the Qur'ān or Tradition had specifically mentioned and something else which had not been mentioned by them, if there was similarity and the same reason ('illa)

1. Badrān, Uṣūl al-Fiqh al-Islamī, p. 5.

between them.¹ For example, an uṣūlī knows that every muskir (alcohol) was forbidden but all the muskir he knew in his area were made of grape juice. When he travelled to another part of the world he found muskir again but made of other substances. He would regard it as forbidden because the prohibition of muskir from grapes was not because it was made of grapes but because of the intoxication element in it. The formulation of the rules involved in this kind of systematic use of reason is one of the activities of uṣūl al-fiqh.

Another example involving Traditions occurred when men of law found an injunction based on a Tradition from the Prophet but they were not sure whether or not this Tradition was authentic. It could be an isolated Tradition (a Tradition reported by one man or very few people) or it may not have been authentic for some other reasons. Then they checked the Qur'ān to find if there was another Qur'ānic verse in support of that issue or they looked to see whether the content of the Tradition had been reported in many different ways which could make it likely to be true. If so, they could take it into account and decide upon it. This process of verification is another aspect of uṣūl al-fiqh.

Another example deals with the linguistic aspect

1. E.I. (old edition) vol. II, pp. 1051-52. For more information about qiyās and how to practise it see Ibn Qudāma, al-Rawda, p. 145.

of uṣūl. Usūlīs knew that the command of God was an obligation (wājib). At the same time they knew that many statements have come in the form of the imperative but that does not necessarily mean obligation. They tried to find out whether there was any context which they might use to establish whether or not obligation was intended. This exercise is another kind of activity of uṣūl al-fiqh and only uṣūlīs can undertake it. All these activities were aimed at realising the objectives of uṣūl al-fiqh.

The Beginning and Early Development of Uṣul al-Fiqh

It has already been mentioned that uṣūl al-fiqh began to evolve among Muslims on an ad hoc basis to meet newly emerging problems of law not specifically mentioned in the Qur'ān.¹ Thus it could be described as developing in a somewhat haphazard manner. Principles of uṣūl al-fiqh were developed at first in a crude form. Then with the expansion of learning and the introduction of systematic thinking, they began to be developed in a more rigorous and intellectually systematic manner.

From the early days of Islam the two principles for legal judgement were the Qur'ān and the sunna (i.e. the legal decision) of the Prophet. The latter

1. See above p. 9.

could come in the form of an order or in the form of judgement to an incident and also in some other ways. When the Prophet was alive he was the only lawyer and judge whomeverybody referred to whenever they needed a legal decision. After the death of the Prophet, the Companions faced the formidable task of establishing an Islamic legal system which could deal with the growing demand of the Islamic state to take new legal decisions which had previously been taken by the Prophet. This institution seems to have been based on the leadership of the head of state at first.

An example of such developments can even be given from the Prophet's own life. It was his personal discretion about what to do with slaves after the battle of Badr. It was mentioned by Ṭabarī in both his Tarīkh and Tafsīr¹ that the Prophet asked his Companions about their opinions. Abū Bakr² (d. 13 A.H.) advised him to take ransom for them while 'Umar (d. 23 A.H.) suggested that they should be killed because they had waged war against him. He accepted the opinion of Abū Bakr. Although he was proved wrong later when the Qur'ānic injunction revealed "It is not fitting for an Apostle that he should have prisoners"

1. Ṭabarī, Tafsīr al-Ṭabarī, vol. 10, pp. 42-44. Also see Ṭabarī, Tārīkh, vol. 1, pp. 474-75.

2. Various names have been given to Abū Bakr. The most reliable of them seems to be 'Abd Allāh b. Uthmān. He was the first caliph after the Prophet. See Ibn Ḥajar, Taqrīb, vol. 1, p. 432.

of war until he hath subdued the land. 'Ye look for the temporal goods of this world, but God looketh to the Hereafter and God is exalted in might, wise."¹

Many uṣūlīs regard this as personal discretion by the Prophet.² He had exercised his personal discretion on many occasions like that.

Another example was the establishment of consensus (ijmā') and the use of reason in the form of qiyās by the Companions immediately after the death of the Prophet. For example Mālik reported from Thawrī b. Zayd (d. 135 A.H.) that 'Umar sought advice about a drunk man and 'Alī b. Abī Ṭālib (d. 40 A.H.) said: "Our view is that he should be given eighty lashes because whenever he became drunk he became intoxicated and whenever he became intoxicated he made false allegations and the penalty for false allegations is eighty lashes."³ In another version mentioned by Ibn Qudāma, 'Umar sought advice of people about the penalty for alcohol (khamr) and 'Abd al-Raḥman b. 'Awf told him to make it the lowest of the penalties. Then 'Umar gave eighty lashes (to the person involved) and wrote to Khālīd b. Walīd (d. 21 or 22 A.H.) and Abū Ubayda (d. 18 A.H.) in Shām (to make it the official penalty for drunkenness). Ibn Qudāma mentioned later that it was reported that 'Alī

1. Qur'ān, 8/67.

2. Badrān, Uṣūl al-Fiqh al-Islami, pp. 5-6.

3. Mālik, Muwatta, p. 606.

b. Abī Ṭālib drew the same analogy we mentioned in Mālik's version of the meeting.¹ This Tradition combines both ijmā' as well as qiyās because it was a clear application of the law for false allegations to the drunkenness by analogy. At the same time there was no report of any opposition among the Companions to it. Since then it has been the penalty for alcohol, except for one unpopular Tradition which maintained that Abū Bakr preferred forty lashes.²

All these examples reveal the primitive processes of uṣūl al-fiqh, which must have started from the early days of Islamic law and grew slowly with the law during the period of the Companions and continued till the time of their successors. Then they also expanded it further by establishing such doctrines ^{as} istiḥsān (preference or approval)³ which was designed to take

1. Ibn Qudāma, al-Mughnī, vol. 8, p. 307.

2. Ibid.

3. Istiḥsān has been variously defined though these definitions appear to give the same meaning. The first one ~~is~~ is attributed to the early Ḥanafite scholar al-Sarakhsī (d. 483 A.H.) who defined it as: "Abandoning analogy (qiyās) and taking what is more appropriate for the people." Tark al-qiyās wa-al-akhdh bi-mā awfaq al-nās.

It is also defined as "searching for easier solution of the law in what the general public and the individual are tested." Ṭalab al-suhūl fī al-ahkām fimā yubtalā fīhi al-'āmma wa-al-khaṣṣa.

Or "Taking what is permissible and searching for what has ease in it." Al-akhdh bi al-samāha wa ibtighā' mā fīhi al-raḥa. See al-Shaybānī, Kitāb al-Aṣl, vol. 3, p. 48.

into account the public interest on the issue in which¹ the Qur'ān, Tradition, consensus and qiyās were not applicable. All these processes were without any systematic basis until the second half of the second century.

By the middle of the second century legal schools seem to have started gaining some independence and taking their own shape. The schools whose origin could be traced back to the generation of the Companions were those who had originally laid down examples in exercising ra'y (judgement). For example the School of Mecca which was originally established by 'Abd Allah b. Abbās (d. 69 A.H.) survived through 'Aṭā' b. Abī Rabāḥ (d. 114 or 117 A.H.), Ṭāwus b. Kaysān (d. 101 or 106 A.H.) and Mujāhid b. Jabr (d. 102 or 103 A.H.). The School of Kūfa which was established by 'Abd Allāh b. Mas'ūd survived through Ibrāhīm ^{al-}Nakha'ī (d. 95 or 96 A.H.), Abū Ḥanīfa and others. Sa'īd b. Musayyib (d. 93 or 94 A.H.), al-Zuhrī (d. 124 A.H.) and Mālik inherited the School of Medina from 'Abd Allah b. 'Amr b. al-'Aṣ (d. 77 A.H.) and 'Abd Allah b. 'Umar (d. 73 A.H.). Al-Ḥasan al-Baṣrī (d. 110/728) took charge of the School of Basra.²

However, as time went on the Schools of Kūfa and Medina took control and exerted their influences on others. Abū Ḥanīfa became one of the leading scholars of the School of Kūfa and later exerted his influence

1. Abū Zahra, Uṣūl al-Fiqh, pp. 8-9.

2. Ibn Qayyim al-Jawziyya, ʿIlām al-Muwaqq'īn, vol. 1, pp. 24-27; also see Coulson, A History of Islamic Law, pp. 38-41.

throughout Iraq. He based his own doctrine on the Qur'ān and the sunna as well as the opinions of the Companions. He accepted whatever they agreed upon and selected from whatever they disagreed on as long as they did not contradict the Qur'ān and the sunna of the Prophet.¹ At the same time he gave himself the ability to interpret them. He also accepted ra'y but preferred a weak or isolated sunna² to ra'y. He was well known to be in favour of istihsān.³

1. Abū Zahra, Uṣūl al-Fiqh, pp. 9-10.

2. Ibn Qayyim al-Jawziyya, Islām, vol. 1, p. 32.

3. One strong evidence which can be cited in support of Abū Ḥanīfa as in favour of istihsān is the fact that some of his pupils who recorded his doctrine and practice actually transmitted well analysed details of Abū Ḥanīfa's practice of istihsān. For example, al-Shaybānī devoted several chapters to istihsān in his book Kitāb al-Aṣl which he wrote on the authorities of Abū Ḥanīfa and Abū Yūsuf. Al-Shaybānī has said in the beginning of the book that whatever he mentioned in the book without mentioning the disagreement of either Abū Ḥanīfa or Abū Yūsuf represents agreement of all of us. That indicates that Abū Ḥanīfa had paved the way for some activities of uṣūl al-fiqh before Shāfi'ī came to expand that effort.

Moreover, all the issues touched in the book were based on mere discretion of Abū Ḥanīfa because there wasn't any direct evidence from the Qur'ān or the sunna in support of them. The chapters of istihsān in the book are eight all together.

See al-Shaybānī, Kitāb al-Aṣl, vol. 3, pp. 48-166.

During that time Mālik b. Anas (d. 179 A.H.) had also established his own doctrine in Medina. Egypt and other schools in the area also gradually fell under his doctrine. In addition to taking the Qur'ān and the sunna as main sources, he also accepted the validity of ijmā' (agreement of the scholars of a particular generation or locality) and ra'y even preferring ra'y to an isolated sunna of the Prophet. He regarded the practice of ahl al-Madina as legal evidence as well as their consensus. Mālik has been reported to have rejected a well authenticated Tradition in favour of the practice of ahl al-Madina.¹ For example, in the case of a bowl which a dog has licked, every other school washes it seven times before they use it for ablution because the Prophet said, "If a dog licks a bowl of any one of you, he should wash it seven times." (In another version one of them with soil.) They all maintained that the Tradition is a well authenticated one.² But Mālik according to al-Mudawwana held the view that one can use it to perform ablution even without washing it. He seemed to regard the dog as the same as any other animal.³

1. Mālik, al-Mudawwana, vol. 1, p. 5.

2. Shāfi'ī, al-Umm, vol. 1, pp. 9-10; also see Ibn Qudāma, al-Mughnī, vol. 1, pp. 52-53.

3. Mālik, al-Mudawwana, vol. 1, p. 5.

All these examples are further indications that some kind of exercise of personal discretion had started in the early days of the Companions and continued to gain strength till the middle of the second century. By the middle of the second century, the expansion of Muslim territory to non-Arab countries had brought many different cultures and sciences into Muslim society. Among such sciences was Greek philosophy and logic which came into Muslim society first through the conversion of Christians and others into Islam during the Umayyad period. However, Greek science did not gain official recognition during the Umayyad period but during the early period of the Abbāsīd, it won government recognition when early Abbāsīd caliphs encouraged the translation of Greek works into Arabic language.¹ That coincided with the establishment of a school of theology at Basra by a group who later became known as Mu'tazila. Their first three leaders were Wāṣil b. 'Aṭā' (d. around 200 A.H.) 'Āmr b. Ubayd (d. around 200 A.H.) and Dirār b. 'Āmr² (d. 196 A.H.). This school was engaged in a method of using a specially adopted philosophy which is termed as 'ilm al-kalām to defend some aspect of Islamic beliefs against attacks of zanādiqa of all types.³

1. E.I. (New edition), vol. III, p. 1143. Also see Walzer, Greek into Arabic, pp. 6-7.

2. Watt, Islamic Philosophy and Theology, pp. 59-60.

3. Ibid.

However the arrival of Greek philosophy among Muslim scholars was a turning point for both the uṣūlīs and the theologians. Some of them found it useful in defending their point of view, not only against their Muslim opponents but also in making their preaching more acceptable to non-Muslims. However, after the adoption of Greek philosophy and logic into Islamic science this combination of Greek science with Islamic thought was named 'ilm al-kalām. The translators, according to Richard Walzer, included some Christians like Nestorian, Abū Bishr Matta (d.198), Jacobite Christian, Yahya b. 'Adī (d.198) and some other ~~who~~ who were converted to Islam.¹ By the second half of the second century 'ilm al-kalām had become influential and many scholars had studied it. Among its distinguished pupils was Muhammad b. Idrīs al-Shāfi'ī (d. 204 A.H.). Apart from his knowledge of 'ilm al-kalām he attended the law school of Medina which followed Mālik b. Anas. He also attended the school of Kūfa which followed Abū Ḥanīfa as well as the school of Mecca which was originally established by 'Abd Allah b. Abbās.² Shāfi'ī took advantage of his knowledge of the main schools of his time. He noticed that those schools had different principles and opinions and used his good knowledge of

1. Walzer, Greek into Arabic, p. 6.

2. Coulson, A History of Islamic Law, p. 53.

'ilm al-kalām, Arabic, the Qur'ān and the sunna of the Prophet to organise and compile these different principles and at last deducted a single science which a scholar of law could go through whenever he wished to learn about the principles of law. He analysed the principles of individual schools. He separated and distinguished between the authority of the Qur'ān and the authority of the sunna of the Prophet.¹ Shāfi'ī wrote many books in that connection. Among the books which still remain prime references until the present day are al-Risāla, Kitāb Jam' al-'Ilm and Kitāb Ibtāl al-Istihsān.² His achievement in this undertaking has gained ^{him} the title of the founder of Islamic jurisprudence (uṣūl al-fiqh).

Shāfi'ī was regarded as the founder of uṣūl al-fiqh because he is the first scholar who successfully accomplished this analysis in a well organised fashion. This is the view of the majority of scholars and

1. Abū Zahra, Uṣūl al-Fiqh, p. 11.

2. All these books have been published. The first one, al-Risāla, is available in both Arabic and English, translated by Mājid al-Kadhūrī. The latter two were printed together with Kitāb al-Umm which was written also by Shāfi'ī. See Kitāb al-Umm, Egyptian edition 1961, vol. 7, pp. 271-286, (Kitāb Jam' al-'Ilm) and pp. 294-304 (Kitāb Ibtāl al-Istihsān).

historians. However, there are other schools of thought which hold the view that uṣūl al-fiqh was organised and recorded earlier than Shāfi'ī's time, though some of them admit that the work of their group has not survived. For example, the Shi'ites maintained that not Shāfi'ī but Muhammad al-Bāqir b. 'Ali Zayn al-'Ābidīn (d. 114 A.H.) and his son Ja'far al-Ṣādiq (d. 140 A.H.) were the first persons to establish uṣūl al-fiqh. It is also maintained that both Muḥammad al-Bāqir and his son dictated their uṣūl al-fiqh to their scholars and those scholars later recorded it and organised it according to the present structure.¹

Also the Hanafite school of law maintained that the first person who first wrote a systematic uṣūl al-fiqh was Abū Yūsuf Ya'qūb b. Ibrāhīm (d. 182 A.H.) a pupil of Abū Ḥanīfa. According to Abū Zahra who quoted Ibn Nadīm, Abū Yūsuf included uṣūl in his more general work on al-fiqh² and this certainly seems to be the case. It would appear that it was not systematically presented and some Hanafite scholars have admitted that none of such works have survived.

Although neither Abū Ḥanīfa nor Abū Yūsuf presented any separate book on uṣūl al-fiqh, their influence on the subject cannot be over-exaggerated

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1. Badrān, Uṣūl al-Fiqh al-Islamī, p. 14. Also see Abū Zahra, Uṣūl al-Fiqh, pp. 11, 12.
 2. Abū Zahra, Uṣūl al-Fiqh, p. 17.

because Abū Ḥanīfa was well known for istihsān¹ (which is one way of deducting law by reasoning and by abandoning the analogy for material consideration or hidden analogy as the Ḥanafites themselves prefer to call it)² and various other forms of ra'y.

As for the Shi'ite's claim about Abū Ja'far and his son, it is difficult to deny it or confirm it in the absence of reliable information. What is possible, to say is the fact that there is no evidence to associate Abū Ja'far or his son with the present structure of uṣūl al-fiqh because there is no book which one can attribute to any of them in that respect. Those who attributed uṣūl al-fiqh to Abū Ḥanīfa or Abū Yūsuf or Shāfi'ī have succeeded in putting forward some evidence at least to support their claims. Even uṣūlīs among the Shi'ites like al-Murtadā and others failed to indicate in their works anything which could have helped to establish that Abū Ja'far had laid down the foundation for uṣūl al-fiqh. Instead they all followed the pattern which is known as that of the mutakallimīn.

Uṣul al-Fiqh after Shāfi'ī

Uṣūl al-fiqh was not affected by the death of Shāfi'ī in 204 A.H. In fact his death marked the

1. E.I. (shorter), pp. 184-185.

2. See above p. 14

beginning of an era of expansion of the subject or what one could describe as the formative period. His efforts were enthusiastically followed by many scholars of his time. His arguments, although they provided the beginnings of a systematic approach, were not entirely accepted by other schools.¹ For example the Ḥanafites favour istiḥsān as we have already mentioned.² They also favour 'urf (customary practice)³ while Mālikites continued to maintain the principle of ijmā', ijmā' ahl al-Medina as well as istiṣlāḥ or al-Maṣlaḥa al-Mursala⁴ (having regard for the public interest) all of which they inherited from the Medina school of law. Shāfi'ī rejected istiḥsān, ijmā' ahl al-Medina as well as istiṣlāḥ. In fact he tried to prove their invalidity in his book Kitāb Ibtāl al-Istiḥsān.⁵

Uṣūlīs after Shāfi'ī seem to be divided into two systems, one of them is usually identified as following the main principles of Shāfi'ī and this group is called in uṣūlī literature the mutakallimīn. They based their

1. E.I. (shorter edition), p. 614.

2. See above, pp.15-17.

3. Abū Zahra, Uṣūl al-Fiqh, p. 13.

4. Abū Zahra, Uṣūl al-Fiqh, p. 10; E.I. (shorter edition, p. 614.

5. See above, p. 20.

method on the principle of logical investigation and put more emphasis on what corresponds with that. It is not necessary that it must conform with the opinion of their predecessors. This system of the mutakallimīn is adopted by all schools which publicly approved the use of reasoning (ra'y) in deducting legal solutions.

Further explanation is required here about the systematic approach introduced by Shāfi'ī and the mutakallimīn who were regarded as speculative thinkers in uṣūl al-fiqh and were associated with the Shāfi'ites. It would appear that the description of these mutakallimīn as Shāfi'ites contradicted the well known view of Shāfi'ī as somebody who, although approving of systematic reasoning, rejected the use of discretion in the legal process. The only speculative process (ijtihād) which Shāfi'ī acknowledged was the use of qiyās, i.e. the drawing of a legal deduction by the method of analogy from the Qur'ān and the sunna of the Prophet.¹ At the same time he stressed the primacy of legal decisions taken from Tradition over any result of systematic reasoning. In his actual reasoning, however, both aspects are interwoven; he shows himself to be influenced by Tradition and systematic reasoning at the same time.² However, the Shāfi'ites after him seem to have extended

1. Schacht, Introduction to Islamic Law, pp. 45-46.

2. Ibid., pp. 45-46.

the systematic approach of Shāfi'ī beyond the limit he had set it. They became involved in disciplines of the logic and philosophy which were based on speculation and applied these in detail to uṣūl al-fiqh.¹

It is noticeable that Mu'tazila thinkers of the calibre of al-Qādī 'Abd al-Jabbār (d. 415 A.H.) and Abū al-Ḥusayn al-Baṣrī (d. 436 A.H.) both regarded themselves as Shāfi'ites. Thus theologians of such quality and calibre, hence the use of the term mutakallimīn, had developed the Shāfi'ite system in a way that Shāfi'ī himself might not have approved. Theologians with Ash'arite tendencies like Imām al-Ḥaramayn (d. 478 A.H.) and al-Ghazālī (d. 505 A.H.) were also Shāfi'ites in terms of fiqh and continued the speculative tendencies in Shāfi'ite uṣūl al-fiqh which have become identified with the mutakallimīn. Such scholars as these in uṣūl al-fiqh show a tendency towards the use of logic to form the rules for the furū', rather than taking the evidence from the furū' to endeavour to create a systematic framework.

Paradoxically the Ḥanafites who, in the earlier times had been in the forefront of speculation with regard to the law, e.g. the use of ra'y, istihsān and 'urf, seem to have become the representatives of Tradition.

1. Badrān, Uṣūl al-Fiqh al-Islamī, p. 15. Also see Abū Zahra, Uṣūl al-Fiqh, pp. 15-16.

They place special emphasis on the details of furū' in order to deduce the uṣūl.

Indeed, the Ḥanafite system which is the second one is based on a method of defining a principle and supporting it with evidence from the Qur'ān or the Tradition of the Prophet - in other words the furū'. It does not rely heavily on logical deduction while it takes the opinions of their predecessors into account. Their objective is only to extend uṣūl al-fiqh in terms of an argument from furū' al-fiqh.¹

Another one which has been referred to as the third system did not come into being until around the sixth to seventh century of Islam. It appears to be nothing more than a compromise between the two systems because it did not produce any new ideas other than how both existing systems could be applied together. It is known as the system of later scholars, tariqat al-muta'akhkhirīn.²

The period from the third century till the seventh century can be regarded as the golden era of uṣūl al-fiqh because of the enormous work done on the subject during that period. It was then that the subject received full attention from Muslim scholars and many books were written. Most of the expansion made on the subject

1. Muhammad al-Khudar Bik, Uṣūl al-Fiqh, p. 8.

2. Ibid., p. 12.

in terms of systematic reasoning came out at that period. It was in the seventh century when many scholars felt that most aspects of the law which needed explanation had been fully explained that some of them advocated closing the door of ijtihād (exercising systematic reasoning to deduct the rules of law). In fact ijtihād continued but the most of the works done after that period seem to be mere explanations of the existing ideas.

It will be useful to mention here some of the leading scholars who worked on uṣūl from the period of Shāfi'ī till the end of the seventh century.

There is no doubt that many separate works were done during the first five decades after the death of Shāfi'ī, particularly by his immediate scholars who received their education from him, but it seems that most of these works have not survived, except from the Ḥanafite system where some works of Shāfi'ī's contemporaries have survived, like Abū al-Ḥasan Ubayd Allah b. Ḥasan al-Karkhī who was a leading Ḥanafite scholar in Iraq until he died in 340 A.H. according to Ibn ^{al-}Nadīm. He wrote al-Uṣūl allatī 'alayhā Madār al-Furū'.

Also following the Ḥanafite system until the end of the seventh century were:

Abū Bakr b. Aḥmad al-Rāzi who is well known as Jassās(d. 370 A.H.) He wrote Kitāb al-Fuṣūl.

Qādī Abū Zayd Ubayd b. 'Umar al-Dābūsī (d. 430 A.H.).

He wrote Taqīn al-Adillah, the best of the works written by the earliest writers on the Ḥanafite system according to N.P. Aghnides.¹ He completed the elaboration of the law of qiyās. He also wrote Ta'sīs al-Nazar fī al-Uṣūl.

Muhammad b. Ahmad al-Sarakhsī (d. 483 A.H.). He wrote on uṣūl al-fiqh a book known as Uṣūl al-Sarakhsī. The book is based on work of Jassās.

Fakhr al-Islām 'Alī b. Muḥammad al-Bazdawī (d. 483 A.H.). He and Sarakhsī were considered as revivers of Ḥanafite jurisprudence in the fifth century. He also wrote a book known as Uṣūl al-Bazdawī. It seems that expansion of the Ḥanafite system of jurisprudence did not go beyond the middle or end of the fifth century as all books written after that period were mere explanations based on the existing works. In fact, most of the Ḥanafite scholars who have written from the sixth century onwards seem to have realised the unavoidable necessity of using systematic reasoning by means of 'ilm al-kalām, therefore they based their works on a compromise between their system and that of Shāfi'ī. Among the first Ḥanafite scholars to write in that way was Muḥfir al-Dīn b. 'Alī al-Sāṣṭī (d. 694 A.H.). He wrote Badī' al-Nizām which was based on Uṣūl al-Bazdawī and al-Ihkām fī ^{al-Ihkām} Uṣūl of Āmidī (d. 631 A.H.).

Abū al-Barakāt 'Abd Allah b. Ahmad al-Nasafī (d. 710 A.H.), the Ḥanafite, wrote Manār al-Anwār fī Uṣūl al-Fiqh, an esteemed compendium, the most used of the author's work. Numerous commentaries were written

1. Aghnides, Muhammadan Theories of Finance, p. 148.

on it by many scholars, among them were Muḥammad b. Ibrāhīm, better known as Ibn al-Ḥalabī (d. 971 A.H.); ‘Abd al-Laṭīf b. ‘Abd al-‘Azīz b. al-Malak (d. around 830 A.H.). Their commentaries have been printed in a single volume together with another work of Yaḥyā al-Rahāwī under the same title: Sharḥ al-Manār wa Ḥawāshihi min ‘Ilm al-Uṣūl.

The mutakallimīn, although principally associated with Shāfi‘ite scholars, extended their influence over most scholars of the Mālikite, Ḥanbalite, Ḥāhirite and Shī‘ite schools of law.

Among their number are:

Abū Bakr Muḥammad b. ‘Abd Allah (d. 375 A.H.). He was a Mālikite in terms of the school of law, but he adopted the mutakallimīn system in terms of jurisprudence. He was a leading Mālikite scholar of his time in Iraq. He wrote an explanatory book on Mālik's doctrine and Kitāb al-Uṣūl.

Muḥammad b. al-Ṭayyib al-Bāqilānī (d. 403 A.H.). He was a theologian and uṣūlī. He wrote many books on uṣūl al-fiqh. Among them were al-Taghrīb and al-Irshād. He was an Ash‘arite theologian and had been a student of Abū Bakr Muḥammad.

Qādī ‘Abd al-Jabbār b. Ahmad b. ‘Abd al-Jabbār (d. 415 A.H.). He was also a leading Mu‘tazilite theologian and uṣūlī. He wrote Kitāb al-‘Umda on uṣūl al-fiqh which was later explained by Abū al-Ḥusayn al-Baṣrī. As already noted he was a Shāfi‘ite.

Qāḍī 'Abd al-Wahhāb b. 'Alī b. Naṣr (d. 422 A.H.). He was a distinguished Mālikite scholar of his time. Many well-known scholars were educated by him. Among them were Qāḍī Abū Bakr al-Bāqilānī (though he died earlier than him) and Abū Ishāq al-Shirāzī who were Shāfi'ites. He wrote Kitāb al-Ifāda fī Uṣūl al-Fiqh.

Al-Murtaḍā 'Alam al-Hudā (d. 432 A.H.). He was a Shi'ite but adopted the mutakallimīn system in uṣūl al-fiqh. He wrote al-Dhari'at ilā Uṣūl al-Shari'a. The book was published in Iran in 1346 A.H. He was a student of Qāḍī 'Abd al-Jabbār the theologian.

Abū al-Husayn al-Baṣrī Muḥammad b. 'Alī b. al-Ṭayyib (d. 436 A.H.). He was a Mu'tazilite theologian and a Shafi'ite. He was also a student of Qāḍī 'Abd al-Jabbār. He wrote Kitāb al-Mu'tamad fī Uṣūl al-Fiqh. The book is based on Kitāb al-'Umda of Qāḍī 'Abd al-Jabbār. It was published in Damascus in 1964. It is a typical example of the mutakallimīn system. It put more emphasis on logical conclusion and drew most of its examples from logical conclusions.

'Alī b. Aḥmad b. Ḥazm (d. 456 A.H.). He was a leading Zāhirite scholar. The school which based its existence on the doctrine of the mere outward meaning of the Qur'ān and the sunna of the Prophet. Although he has consistently rejected the use of systematic reasoning as well as discretionary reasoning (ra'y) which include analogy in accordance with the main principle of his school, his arguments were not entirely

free of them. He used 'ilm al-kalām freely to defend his doctrine. That is why many scholars classified his work with those of the mutakallimīn. He wrote many books on uṣūl al-fiqh, the most well-known of them is al-Iḥkām fī Uṣūl al-Ahkām and al-Muḥallā which is based on defining the rules of uṣūl together with furū'. Both books have been published several times and are regarded as important references of law among all schools.¹

Imām Ibrahim b. 'Alī b. Yūsuf al-Shirāzī.

He was a leading Shāfi'ite scholar and jurist. He wrote al-Tabṣira fī Uṣul al-Fiqh. The book was reprinted recently. He was a close friend of Imam al-Ḥaramayn. He held a long debate with him on the doctrine of compulsion (jabr) in the marriage of a virgin (bikr). He was born in 393 A.H. at Fayrazbād and died in 476 A.H.

Imām al-Ḥaramayn ^{al-}'Abd Malik b. 'Abd Allah b. Yūsuf (d. 478 A.H.). He was a Shafi'ite but closely identified himself with Ash'arite theology. In terms of uṣūl, the Ash'arites adopted the doctrine of holding back (tawaqquf) on everything they could not find clear evidence for. He wrote many books on uṣūl al-fiqh, among them is al-Burhān fī Uṣūl al-Fiqh. It was later commented upon by al-Māzirī and al-Anbarī both of whom are Mālikites and attacked the author particularly for

1. For more details about the Zāhirites see Ibn ^{al-}Nadīm, Kitāb al-Fihrist (Arabic version), pp. 216-217.

his sympathy with the Ash'arites. Another book of Imam al-Ḥaramayn is al-Waraqāt. It is a rather small book which seems useful only for beginners. He also wrote Kitāb al-Tuhfa.

Abū Ḥamīd Muḥammad b. Muḥammad al-Ghazālī (d. 505 A.H.). He is an important theologian who belonged to the Shāfi'ite school of law. He wrote al-Mustaṣfā min 'Ilm al-Uṣūl. His book was ranked third after al-Mu'tamad of Abū al-Ḥusayn al-Baṣrī and al-Burhān of Imam al-Ḥaramayn. It was written from the dogmatic mutakallimīn standpoint, namely, in a purely speculative way without much reference to the application of the principles in the field of fiqh.

Imām Muḥammad b. 'Alī b. 'Umar al-Māzirī. He was a Mālikite scholar (d. 536 A.H.) who followed the mutakallimīn in uṣūl al-fiqh. The most popular book attributed to him was his commentary on al-Burhān of Imam al-Ḥaramayn whom he had long debated with.

Qādī Abd al-Ḥaqq b. Abī Bakr. He is well-known as Ibn 'Aṭṭiyya (d. 546 A.H.) He was a Mālikite scholar who followed the mutakallimīn in uṣūl al-fiqh. He was reported to have written many books, none of which seems to have been published, but some do survive in manuscript.

Fakhr al-Dīn Muḥammad b. 'Umar al-Rāzī (d. 606 A.H.) He was an Ash'arite theologian and a Shāfi'ite. He wrote al-Maḥsūl, a condensation of some early books like al-Mu'tamad, al-Burhān and al-Mustasfā. The book

has just been published recently in Saudi Arabia with commentary by Dr. Ṭāḥā Jābir al-‘Ulwānī who edited it.

‘Abd Allāh b. Aḥmad b. Muḥammad b. Qudāma. He was a Ḥanbalite scholar who adopted the mutakallimīn system in uṣūl al-fiqh. He always reflects the doctrine of Aḥmad b. Ḥanbal (d. 241 A.H.) the founder of the Ḥanbalite school of law on every point of the furū’. He wrote many books on uṣūl al-fiqh. Among them were al-Rawḍat al-Nāẓir and al-Mughnī which are based on defining uṣūlī principle together with the furū’. Both books have been published.

Abū al-Ḥasan ‘Alī b. Abī ‘Alī b. Muḥammad al-Āmidī. He was Ḥanbalite and then changed to Shāfi‘ite. He first settled in Baghdad and moved to Shām and Egypt where he was accused of corrupt ideas (fasād al-‘itiqād) and of being a member of the philosophers. Then he left for Shām again where he died in 631 A.H. He wrote many books on uṣūl among them were al-Iḥkam fī Uṣūl al-Ahkām and Muntahā al-Uṣūl. Both have been published.

Jamāl al-Dīn Uthman b. ‘Umar, better known as Ibn al-Ḥājib (d. 646 A.H.). He was a Mālikite scholar who adopted the mutakallimīn system. He wrote a book called Mukhtasar Muntahā al-Uṣūl. The book is an abridgement of Ahkām of al-Āmidī. It has been published in Cairo in 1973. The book is printed with two other books of al-Taftazānī (d. 791 A.H.) and al-Sharīf al-Jarjānī (d. 816 A.H.).

Shihāb al-Dīn Ahmad b. Idrīs al-Qurāfī (d. 684 A.H.). He was a Mālikite scholar who adopted the mutakallimīn

system. He wrote Tanqīh al-Fuṣūl fī Ikhtisār al-Maḥsūl fī al-Uṣūl. The book was published in Egypt in 1973.

Qādī 'Abd Allāh b. 'Umar al-Baydāwī (d. 685 A.H.), a Shāfi'ite who wrote Minhāj al-Uṣūl illā 'Ilm al-Uṣūl.

Tāj al-Dīn 'Abd al-Wahhāb b. al-Subkī (d. 771 A.H.), a Shāfi'ite who wrote Jam' al-Jawāmi', a compendium of great reputation. The book reflects Minhāj and Mukhtasar of Ibn al-Hājib.

CHAPTER I

THE DEFINITION OF AMR

This chapter will consider various definitions given to amr and examine linguistic interpretations put forward by each group. As a result of different definitions, amr has been divided into obligatory (al-wujūb), less obligatory or recommended (al-mandūb), permissible (al-ibāha) and optional (al-takhayyur). It will also consider arguments surrounding each one of these and when unrestricted amr should be considered as obligatory.

Disputes arose among scholars of uṣūl about the problem of defining amr. The definition, whose earliest exponent seems to be al-Bāqilānī (d. 403), is followed by Imām al-Ḥaramayn (d. 478) with a slight addition and by al-Ghazālī (d. 505). It is that amr is "words which require the obedience of the commanded person (ma'mūr) to perform the commanded action (ma'mur bihi)."¹ This doctrine is also attributed by Fakhr al-Din al-Rāzī (d. 606) in general to the mutakallimīn.² He says that the mutakallimīn hold the view that amr is a form (of

1. Imām al-Ḥaramayn, al-Burhan, vol. 1, p. 203; also see al-Ghazālī, al-Mustasfā, vol. 1, p. 411.

2. Al-Qurafi, Sharḥ Tanqih al-Fusūl, p. 137.

words) made up by their meaning. This also seems to be the view of the Mālikī uṣūlī al-Qurāfī.¹

In opposition to this definition is the view that amr can only be defined as amr when the rank of the person ordering is higher than the person ordered. This view is followed in some form or other by the Mu'tazila - including Abū al-Ḥusayn al-Baṣrī (d. 436 A.H.),² the Shi'ite al-Murtadā (d. 436 A.H.)³ and the Ḥanbalī school represented by Ibn Qudāma (d. 620 A.H.).⁴ It is also the view of Āmidī (d. 631 A.H.).⁵

In putting forward the first definition a great deal of emphasis is laid on the grammatical form of the amr - i.e. the amr is in the imperative. Thus according to al-Ghazālī an amr can be addressed by an inferior person to a superior person even though the degree of obedience may be affected by the position of the person.⁶ In fact al-Ghazālī seems to be laying greater emphasis on the content of the amr and less emphasis on the rank of the person giving the amr. This may be explained by an obscure reference to rank by al-Murtadā where he says that some people maintained that the ordered action

1. Al-Qurāfī, Sharḥ Tanqih al-Fuṣūl, p. 137.

2. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 49.

3. Murtadā, al-Dhari'ah, vol. 1, p. 35.

4. Ibn Qudāma, Rawḍat Nāzir, p. 98.

5. Al-Āmidī, Iḥkam fī Uṣūl al-Ahkam, vol. 2, p. 11.

6. Al-Ghazālī, al-Mustasfā, vol. 1, pp. 411-12.

(ma'mūr-bihi) was of a higher rank than the person ordered (ma'mūr) or the person ordering (amr) by virtue of the doctrine of God's threat for obedience to His commandment. Such a doctrine would imply that the person doing the ordering was ordering according to God's instructions in revelation and therefore the order should be obeyed.¹

Such a statement is not made by al-Ghazālī or Imām al-Ḥaramayn but it is perhaps implicit in their understanding of their definition. However, in actual practice they concentrate on the form of the word. They argue that since the form of the amr is the imperative - it is an amr whoever issues it. The validity of this amr is another matter. Al-Ghazālī suggests that it could be argued that a son might order his father, or a servant his master, even though obedience would not be required of the latter two. Al-Ghazālī maintains that the amr does not require the obedience of the ordered person to perform the ordered action.² There is indeed a great deal of validity in this criticism. However, while it brings out the philological niceties of definition it does not take our understanding of the problem much further.

Ibn Qudāma's definition of amr does bring out his own view of the elements involved in amr. He defined

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1. Murtadā, op. cit., vol. 1, p. 35.
 2. Al-Ghazālī, al-Mustasfā, vol. 1, p. 411.

it as "demand for action by word (qawl) from a position of superiority.¹ Clearly this definition seems to be insisting on the special quality of the āmīr (the commander) and thus he makes a demand from the junior to senior invalid because it will not fall within this condition. Ibn Qudāma then referred to the first definition put forward by al-Bāqilānī and others. He said that amr has been defined as a word which requires a commanded person (ma'mur) to perform the commanded action (ma'mūr bihi). He declared it as invalid (fāsid) on the grounds that it connected ma'mūr with ma'mūr bihi which according to him was not acceptable.²

Within the rank of those uṣūlīs who favour the definition of amr as an action only possible when the person ordering is higher than the person ordered, there is some dispute about the use and meaning of terms. This dispute concerns 'uluw and isti'lā'. Abū al-Ḥusayn al-Baṣrī maintains that the person ordered must be higher in 'uluw than the person ordered.³ The meaning of 'uluw in this context has been defined as rank or nobility. On the other hand

1. Ibn Qudāma, al-Rawḍat al-Nāzir, p. 98.

2. Ibid.

3. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 49.

there are others, in particular the Māturdites,¹ who reject the idea of higher in rank 'uluw and prefer isti'lā' which means having the physical power to enforce your order to be obeyed. This is a view which Ibn Qudāma, al-Āmidī and the Ḥanbalī uṣulīs followed.² However, the two words are by no means clearly defined and there is some confusion among scholars concerning them. Yet despite that there seems to be underlying theological and political problems. The authority of the Abbasid caliph could be regarded as requiring obedience to the caliph's order by virtue of their superior rank and nobility ('uluw). It was not always

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- 1a. Ansarī Abd al-'Alī Muḥammad b. al-Nizām, Fawatih ar-Raḥamūt, vol. 1, p. 371, (printed with al-Mustasfā).
- b. Al-Māturdites are followers of Abū Mansur al-Māturīdī the theologian (d. 332 A.H.) According to Aḥmad Amīn he lived at the same time with Abū al-Ḥasan al-Ash'arī (d. 330 A.H.) and therefore they agreed on many issues of theological concern and disagreed on many others, like al-qadā' and al-qadar. The Māturdites tend to be mainly Ḥanafites while most of the Ash'arites tend to be Shāfi'ites. See Aḥmad Amīn, Zuhr al-Islam, vol. 4, pp. 91-95.
2. Al-Āmidī, al-Ihkam, vol. 2, p. 11; also see Shinqītī, Mudhkkarat, p. 187.

the case though that some of these caliphs possessed the isti'lā' that physical power to demand that their orders be obeyed.

In insisting on superiority or power for an amr to be really an amr, these uṣūlīs are escaping from the mere verbal form of the imperative. They describe an imperative addressed to an equal as request for which they use the Arabic term iltimās. On the other hand, an imperative addressed to one who is superior to the person making it is regarded as a petition for which they use the Arabic term istidā'.

In this discussion of the status of the person issuing the amr the mutakallimīn seem divided between the uṣūlīs, who are close to Ash'arite and Maturidite theology, and those ~~of~~ belonging to the Mu'tazila and later Ḥanbalī scholars. There does not seem to be a Ḥanafite view on this subject. Perhaps this is an indication of their school's reluctance to engage in theological speculation in uṣūl al-fiqh.

Argument about the Nature of Amr Based on its Original Meaning (al-Qawl al-Makhsūs)

Another major problem with regard to amr concerned whether the word amr originally meant "a matter" or "a thing" or it meant an "order". Those uṣūlīs who maintain the former view refer to amr being a thing (shay') or "a noun" (ism) or a special word (qawl makhsūs); while the supporters of the latter view refer to amr

being an activity (fi'1).

This argument about the original nature of amr presents difficult problems of interpretation. If amr occurred originally in the sense of order, that is meaning an activity (fi'1), it would imply that every order was obligatory in normal usage.¹ However, if amr occurred originally in the sense of "thing" (qawl al-makhsūs, ism or shay'), then its use to mean "order" would be metaphorical. In the latter case, there would be considerable doubt about the obligatory nature of the word.

It seems that there was general agreement among uṣūlīs that the word had an original meaning of "thing" that it was originally ism or qawl makhsūs.² However, there was considerable disagreement as to whether amr could also have originally referred to an activity fi'1 and thus have also meant "order" alongside meaning "thing". In the latter argument it was suggested that amr had a common meaning (mushtarak) and thus the meaning was considered to be derived from two independent sources within the same word. This latter view avoided the metaphorical interpretation of amr to mean an order or activity (fi'1) and thus preserved the obligatory nature of amr.

1. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 45.

2. Ibid.

This view seems to have been put forward by some early Shāfi'ite mutakallimīn.¹ They maintained that amr, as well as being a matter (sha'n, qawl makhsūs) also has the real basic meaning of activity (fi'l). According to Abū al-Ḥusayn al-Baṣrī they argued that for this reason all the activities (af'āl) of the Prophet were obligatory for Muslims because they came under the Qur'ānic injunction² ... "Let those who oppose his amr be warned."³ This view also seems to have been adopted by later Ḥanafite scholars of uṣūl al-fiqh. In fact, the Ḥanafite al-Nasafī (d. 710 A.H.) gives more detailed definition of this group's views with regard to amr and fi'l. He says: They hold the view that the activity (fi'l) of the Prophet, which is not careless, nor natural like eating and sleeping, nor specific to him like praying during the night, is obligatory (for Muslims to follow). According to them amr is designated as an activity (fi'l) because of God's words:⁴

Mā amru Fir 'awna bi-rashīdin⁵

The command of Pharoah was not
rightly guided. (Q/11/97)

1. Al-Nasafī, Manār, p. 114.

2. Q/24/63.

3. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 45.

4. Al-Nasafī, Manār, p. 114.

5. Ibid., p. 115.

They argue that the amr which is described by guidance (rushd) must refer to an activity and thus in this passage in the Qur'ān amr is understood as an activity.

This view of the mutakallimīn is also held by the Shi'ite scholar al-Murtadā. He like them, in seeking to demonstrate that amr could be both an object (i.e. qawl makhsus etc.) and an activity (fi'l), forgets that the argument was actually concerned with the meaning of amr as a command and whether that meaning was original to the word or applied to it metaphorically - and that the reason for this discussion was to ascertain the obligatory nature of amr. He forgets all this and resorts to a discussion in which it is not all clear, in some of the examples he gives to support his argument for amr as an activity, whether amr has any meaning of command at all.

Thus he interprets the standard examples given by other writers as examples of amr as qawl makhsus as examples of amr as activity. He says that in:

Amr fulān mustaqīm

The affair of so and so is straightforward

"It is clear that amr refers to tarā'iq (manner of behaviour) and thus is an activity (fi'l)."¹ Other

1. Al-Murtadā,

al-Dhari'at, vol. 1, p. 27.

authorities including Abū al-Ḥusayn al-Baṣrī interpret this example as the basic example of amr meaning "affair" (sha'n) and thus being a noun.¹ Al-Murtadā's next example is equally remote from the meaning of amr as command:

Hādhā amr 'aẓīm

This is a great affair.

However, he again seems to interpret this as being an activity (fi'l) and thus a verbal usage.² As for Abū al-Ḥusayn, he maintains that there is no idea of fi'l in this example.

Al-Murtadā then gives the example:

Raḥaytu min fulān amran ahālānī³

I saw on the part of so and so a matter which terrified me.

He interprets this to mean unquestionably an activity. This example does seem to imply some kind of activity and is one which Abū al-Ḥusayn fails to interpret. In fact, he ignores it. This is also true of later writers of uṣūl. The nearest example given by a later uṣūlī scholar who is in favour of amr being originally qawl makhsūs is that which al-Qurāfī also gives for the

1. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 45.

2. Al-Murtadā, op. cit., vol. 1, p. 27.

3. Ibid.

supporters of the view that amr is common for qawl makhsus and activity (fi'l).

Kunna fī amrin 'azīmin idha kunna fī al-salāti¹

We are in the midst of a great matter when we are in prayer.

Again he does not take the proper example given but interprets it through a different example which he attributes to Abū al-Ḥusayn al-Baṣrī:

I'tinī bi-amrin mā²

He came to me for something.

This example, he says Abū al-Ḥusayn al-Baṣrī has described as being used as qawl makhsūs for a thing. However the two examples are not the same and the argument is not really convincing. It is true to say that Abū al-Ḥusayn does present tarā'iq (manner of behaviour) as being covered by the general definition he gives for amr but he excludes tarā'iq from being understood in the sense of activity (fi'l). This exclusion is perhaps a little unsatisfactory, particularly as in two places he does seem to acknowledge that the plural of activity (af'āl) does seem somehow to come within his definition of amr as qawl makhsūs, while resolutely resisting the verbal aspect of the word af'āl.

1. Al-Qurāfī, Sharḥ Tanqih al-Fusūl, p. 126.

2. Ibid.

Al-Murtadā then tries to support his argument by quoting the verse:

Li-amrin mā yasūdu mān yasūdu.¹

Because of a matter which dominates who it dominates.

Al-Murtadā interprets amr in this verse to be an activity (fi'1). Al-Qurāfī rejects this interpretation by saying that amr is here a sifa that is a characteristic and hence according to him it is al-qawl al-makhsus.²

Al-Murtadā next tries to gain support for his view by citing verses from the Qur'ān 11/46: "At length behold! there came our command (amr), And fountains of the earth gushed forth" and Qur'ān 11/73: "They said: Dost thou wonder at God's decree? The grace of God and His blessings on you." According to al-Murtadā the word amr in the first verse means command and in the second means decree and both refer originally to activity because they refer to the activity of God.³

Those of the early mutakallimīn who supported the view that the word amr refers originally to activity (fi'1) as well as to al-qawl al-makhsus used to support this new argument based on the differentiation of plurals. Those who held this view that amr refers to

1. Al-Murtadā, op. cit., vol. 1, p. 27.

2. Al-Qurāfī, op. cit., pp. 126-7.

3. Al-Murtadā, op. cit., vol. 1, p. 28.

activity maintain that it is pluralised as umūr and that amr which means al-qawl al-makhsus will be pluralised as awāmir. They argue that the differentiation of plural also indicates different meanings in the singular.¹ This has been rejected by Abū al-Ḥusayn al-Baṣrī and Yaḥyā al-Rahāwī. Abū al-Ḥusayn al-Baṣrī maintains that it has been reported from the linguistic scholars (ahl al-lugha) that amr is never pluralised as awāmir neither as al-qawl al-makhsus nor as activity² (fi'l), though he agreed that both umūr and awāmir are separate words and each one of them can be used as an alternative for the other. He gave an example that if someone says amruhu mustaqīm or umuruhu mustaqīma it will give the same meaning.³

As for al-Rahāwī, he rejects the view that amr is originally common to both activity and al-qawl al-makhsus because that according to him contradicts the rule of language, as he maintains that a single word cannot have more than one meaning in the original root. He also rejects the view that amr originally signified activity and al-qawl al-makhsus was a metaphor. In fact this view does not appear to be maintained by any scholar. Then he declares himself in favour of the view that is accepted by the bulk of scholars with the exception

1. Al-Nasafī, Sharḥ, p. 119.

2. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 48.

3. Ibid.

of those Shāfi'ites mentioned earlier and the Shi'ite scholar al-Murtadā. Thus al-Rahāwī's view was that amr originally referred to al-qawl al-makhsus and then referred to activity through metaphor.¹

It seems that Abū al-Ḥusayn al-Baṣrī and other opponents of those Shāfi'ites are mainly worried about the growing tendency of using language as a principal factor for determining religious matters without taking understanding seriously into account, which may lead to confusion. That concern also has been expressed by al-Ghazālī in his comment on the Traditions used as counter opposition to the Qur'ānic and Tradition evidences given by those Shāfi'ites: Q/11/97: Mā amru fir'awn bi-rashid. Also the Tradition that the Prophet combined four prayers together in the day of Khandaq.² They interpret amr in the verse as referring to activity and consequently they based the performances of the Prophet on the day of Khandaq on that rule. Their opponents have no choice but to quote to them another Tradition in which the Prophet himself made it clear to the Companions that they should not follow his activities without genuine reasons or evidence. The Tradition which opponents of these Shāfi'ites regard as specifically referring to the Prophet are:

1. Al-Rahāwī, Sharḥ al-Manār, p. 119.

2. Al-Nasafī, op. cit., p. 115.

1. The Tradition that the Prophet took off his shoes while he was praying with his Companions and the Companions followed him. Later he asked them why they took off their shoes. They replied that they saw him take off his shoes. He told them that he was informed that there was dirt in both his shoes.¹
2. The Tradition that the Prophet fasted for two or three days without breaking his fast and when the Companions wanted to do the same, he forbade them. He said: "None of you is like me. My God feeds me, and gives me drink."²

Opponents of those Shāfi'ites regard these Traditions as clear indications that all activity of the Prophet should not be regarded as obligatory. However, al-Rahāwī quoted al-Ghazālī as saying that "Since they did not follow him (the Prophet) in all his activity, how could they take certain occurrences of his activities as evidence and refuse to take other occurrences as evidence."³

1. Ibid., p. 116.

2. Ibid., p. 116; also see Shāfi'ī, al-Umm, vol. 8, p. 59.

3. Al-Nasafī, Sharḥ, p. 116.

Interpretation of the Requirement to Fulfil the Amr

According to uṣūlīs amr may be generally divided into three different kinds. These kinds are al-wujūb, al-nudba and al-istihbāb. In their definition of these three terms there are some differences and not all uṣūlīs regard them in exactly the same way. However, it is clear that the first category, al-wujūb, involves an obligation on the person ordered to fulfil the order that has been given. The other two, al-nudba and al-istihbāb, are much closer in meaning but the jurists tend to differentiate them by regarding an amr which involves nudba as an order which is urged to be performed, whereas the amr istihbāb is an order whose performance is recommended. Thus the distinction between the last two is a subtle linguistic distinction depending on the difference in meaning between "urging an action" and "recommending an action".

Uṣūlīs have given a definition of amr al-wujūb as having a threat of punishment to those who abandon it.¹ That is the most popular of all definitions. There are, however, another definition which goes further than the threat of punishment for those who abandon an amr al-wujūb and which maintains the necessity of punishment for those who abandon an amr al-wujūb. A

1. Shinqītī, Mudhakkarat Uṣūl al-Fiqh, pp. 9-10.

third view is that the necessity of punishment of those who abandon an amr al-wujub is required by revealed law.¹ The first is the opinion of the majority of uṣūlīs and the second and the third are the opinions of two factions of the Mu'tazila.² The difference between these definitions is that those who hold the first, believe that it is not necessary that everyone who has abandoned an obligation must undergo punishment for that as he may repent and God may forgive him, while those who followed the second and the third definitions believe that such a person must undergo punishment.³

"The urged" al-amr al-mandūb is the kind of order whose performance may involve reward but whose abandonment is not punishable. It is explained by some as "what men have been ordered to do but not in an emphatic way." It is also called al-sunna al-mu'akkada.⁴

Ibn Qudama has reported that a group of uṣūlīs, whom he did not name, had rejected the validity of al-amr al-mandūb as something ordered (ma'mur bihi). They maintained that this was because God had said, "Let those beware who withstand the Apostle's order

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1. Ibn Qudāma, al-Rawḍat, pp. 20-21; also see Shaybat al-Hamd, Imtā' al-'Uqūl, p. 8.
 2. Aḥmad Amin, Zuhr al-Islam, vol. 4, p. 81.
 3. Ibid., vol. 4, p. 81.
 4. Shinqītī, Mudhakkarat Uṣūl al-Fiqh, p. 16.



lest some trial befall them."¹ They argue that al-amr al-mandūb does not involve a person in following the injunction to beware. They also interpret the statement by the Prophet: "If I was not afraid of imposing hardship on my community, I would have ordered them to use the siwāk (a piece of wood for cleaning teeth)² at every time of prayer," to mean that he has recommended them to use the siwāk because he knew that the order (amr) did not include the idea of urging (al-mandūb). According to them order (amr) requires an obligation concerning which there is no choice whereas there is a choice with regard to al-mandūb and those who abandon al-mandūb are not called sinners. In reply to that, Ibn Qudama maintained that men are able to say that amr is requesting istd'ā' and demanding talab and al-mandūb (urging) involves both requesting and demanding. Therefore it includes a real order (amr). In support of that he cited the Qur'ān:

1a. Qur'ān, 24/63.

b. Ibn Qudāma may well mean the Hanafite, Mālikites and some Shāfi'ites because they are the people who have openly maintained that al-mandūb is not part of al-amr al-wujūb in the sense that it did not involve threat of punishment for who abandoned it. But they all agree that al-mandūb is a request for action like al-wujūb. See Amīr Bādishāh, Taisīr al-Tārīr, vol. 2, p. 223.

2. San'ānī, Subul^{al-}Salam, vol. 1, p. 4.

"God commands justice, the doing of good and liberality to kith and kin."¹ He also referred to the Qur'ān: "Enjoining what is right"² which he interpreted to be among the things which are urged (al-mandūb) because it is a common view among jurists that amr is of two kinds: amr iyjābī, an order which must be fulfilled and an amr istihbāb an order which is recommended, and performing the latter is an act of obedience.³ This latter view had been put earlier by Qādī al-Bāqilānī and was also followed by Imām al-Ḥaramayn.⁴

The dispute concentrates on the status of commands whose fulfilment is obligatory and those whose obligation is not absolute. It emphasises the problem of the use of amr in such contexts. This problem is compounded by the imperative form. It can be seen that the task of uṣūlīs is a very real and important function in interpreting the requirements of religion. When the law is contained in the text, the lawyers, i.e. the uṣūlīs, must interpret its meaning within its textual context. The result may appear at first sight to be abstruse and pedantic but its significance for the practice of religion is extremely important. The threefold division of amr is in itself an attempt to alleviate the requirements enjoined on the faithful. However, the emphasis

1. Qur'ān, 16/90.

2. Qur'ān, 3/104.

3. Ibn Qudāma, Rawdat al-Nāzir, pp. 20-21.

4. Imām al-Ḥaramayn, al-Burhan, vol. 1, p. 249.

on al-mandūb as an order whose fulfilment will be rewarded does in fact tend to press home the psychological need to carry it out. The more liberal element is endeavouring to weaken this requirement. It will be noticed that in the conflict concerning al-amr al-mandūb, the amr al-istiḥbāb has been lost sight of. It must be regarded as practically the same as al-amr al-mandūb. In fact, in Ibn Qudāma's division of amr iyjābī and amr istiḥbāb, he himself loses sight of any distinction between the mandūb and istiḥbāb.

The Form of the Order and the Intention of the Order

Sīghat al-amr and irādat al-amr are two separate terms with regard to the definition of al-amr but both are interrelated and any investigation of one of them cannot be concluded without involving the other.

There are divisions among uṣūlīs on whether or not there is a special form (sīgha) for ordering. Some uṣūlīs like Mu'tazila¹ refused to accept that there was any special form (sīgha) for amr. They are of the opinion that any form by which a person could show his listeners that he was commanding him is the form of amr.

Further, the Mu'tazila maintained that God could not speak. He only commanded by His will (irāda).

1. Shaybat al-Hamd, Imtā' al-'Aqūl, p. 122.

Therefore they interpreted kalām Allāh as a meaning which subsisted in the soul not as the product of voice which could consist of letters and sound.¹ For this reason the Mu'tazila divided amr into two kinds: nafsī and lafzī.² This is based on their division of speech (kalām). They defined al-amr al-nafsī as meaning an order which subsisted in the soul and al-amr al-lafzī as a word that gives indication of al-amr al-nafsī, e.g. form of imperative and so on.³ Among evidence they used in support of that view is a verse by the poet al-Akhtal who said:

"Indeed speech is in the mind. The tongue was made only as indication to the mind."⁴

The Mu'tazila also used two verses from the Qur'ān to support their view of kalām as subsisting in the soul: Q/58/8 "And they say to themselves why does not God punish us for our word" and Q/7/205 "And do thou (O reader!) bring thy Lord to remembrance in thy (very) soul with humility and in reverence." A similar view of kalām was also advocated by the theologian Ibn Kullāb and the school which followed him.

1. Ibid.

2. Ibn Qudamā, Rawdat al-Nazir, p. 98.

3. Shinqītī, Mudhākarat al-Uṣūl, p. 188.

4. Al-Qurāfī, Sharḥ Tanqih al-Fusūl, p. 126.

This group held the view that there was no special form for amr and they would only accept the validity of amr with irāda, i.e. the one who commanded really intended that the commanded action (ma'mur bihi) be performed. For according to them, the form of the imperative which their opponents regard as the sole symbol of amr could in fact imply threatening without the context of irāda. Similarly it may not carry authority if it was used by someone who is sleeping or a forgetful person.¹ According to the Mu'tazila, God cannot command something unless He wished it and did not abhor it because commanding something without irāda is senseless and that quality is not suitable for God.²

A Shi'ite scholar, al-Murtadā, also favours irāda as the main condition of amr but it is not clear whether or not his opinion represents the view of the whole Shi'ite al-Imāmiyya to which he belonged. However, al-Murtadā put forward some suggestions about the reason why he thought that a genuine amr must depend on irāda. He maintained that since amr may be derived out of what is not amr and amr itself at some times may not be a genuine one. So if that be the case there is no other way of identifying amr from what is not amr

1. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 50.

2. Al-Murtadā, al-Dhari'at, vol. 1, p. 50.

other than that āmīr wanting the ma'mūr bihi. He said that that is exactly what we meant by irāda.¹

Another reason was ^{that} confusion ~~which~~ would normally arise between two items made of the same thing, like two black items. He said that as one can claim similarity of both items he can claim the same similarity of any other thing of the same quality. He argued that the claim is necessary because if someone heard someone else saying qum (stand up) aiming at commanding him, the person who heard it may not be able to differentiate if the man uses the same form again for another purpose, e.g. to give permission (ibāha) or to threaten (tahdīd), and so on.² He maintained that that was due to the strong similarity between them.

Al-Murtadā further gave some suggestions about reason why he believes that the same form used for amr could be used for something else:

1. The Arabic words according to him are only established by linguists and that establishment was according to their choice. Therefore there was no obligation. So it is possible that they did not establish a special form for commanding (amr). But he said that if that happened then

1. Al-Murtadā, al-Dhariʿa, vol. 1, pp. 41-42.

2. Ibid., vol. 1, p. 42.

it could mean that the form if'al may not be a form of command¹ (amr).

2. If amr depends on al-ma'mur bihi (commanded action) but without the intention of the āmir then there is the possibility of one of us saying to someone else "if'al" and really intending to command him but his statement will not be regarded as command. Or he did not want action from him and what he had said will be regarded as command.
3. If the form of amr is different from what is not amr there would have to be a certain way for any able person to distinguish between what is amr and what is not amr, e.g. threaten (tahdīd), to give permission (ibāha) and so on. But according to him there is no way to that² other than irāda.
4. That could mean that we have to divide people into two groups: those whom we can command in every circumstance and those whom we cannot. Thus the superior will be separated from others because a certain superiority is not confined to certain periods and certain places. And a form of imperative used by someone who says "stand up" for example is the same as every word that bears this form.³

1. Ibid., vol. 1, pp. 42-43.

2. Ibid., vol. 1, p. 43.

3. Ibid., vol. 1, p. 44.

Al-Murtadā further maintained that what indicates the validity of amr depending on irāda is the fact that it is not appropriate for the āmīr (God) to command except for something which he approves of, and that He cannot order someone to do something in the past.¹ He argues that if the irāda had not had any effect on the validity of amr through the latter's dependence on the occurrence of irāda, then that kind of order would not have become binding.² That view was echoed by a Mu'tazilite scholar, Abū al-Ḥusayn al-Baṣrī, who compares amr to al-khabar. He said that a report or statement (khabar) requires irāda to make it become khabar. That kind of khabar is possible to be about past or present. He maintained that that indicates that amr is different from khabar in the sense of irāda. He went on that order (amr) was originally established to prove that the commander (āmīr) wished the ma'mur bihi (commanded action) and for that reason they maintained that the amr, as an amr only indicated the position of the āmīr not the status of the commanded action because he may order bad or good as well as what is obligatory and what is not obligatory. But if the command is from God it will always be for good because it is not appropriate for God to order anything except

1. Ibid., vol. 1, p. 49.

2. Ibid., p. 50.

what has a quality of obligation or recommendation which is additional to its goodness.¹

According to al-Murtada's view there is no difference if someone says: "I want you to do" and if he uses form of the imperative namely ifa'l because everything depends on irāda. He also maintained that the obvious rule is that they regard the form of imperative as a command only if the commander-(āmir) is above the commanded person and request if the commander (āmir) is less than the commanded person. And they made al-rutba (position) as a gap between them. He concluded that there is no disagreement that the request always represents a statement of someone who says that "I want you to do" etc. because they did not separate between request and amr except by al-rutba (position) otherwise there is no difference between both in the sense of meaning.²

Representing the Mu'tazila, Abū al-Ḥusayn al-Baṣrī put forward three conditions in which amr could be accepted. One of them refers to the word amr itself while two others refer to the commander (āmir) of the order. The first was that the order should be in the form of the imperative or request for action, e.g. ifa'l.

1. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 53.

2. Ibid., p. 56.

The two other conditions were that the commander should be in a higher position ('ulw) and then his purpose in using the form of the imperative must be that he wanted the action to be performed.¹ However, his inclusion of the form of the imperative in the conditions of amr seems to diverge from the original principles of the Mu'tazila which put less emphasis on the form of amr. Abū al-Ḥusayn al-Baṣrī laid special emphasis on the third condition. He reported that some Jurists have maintained that amr was regarded as amr because of its form. He said that this seemed to indicate that they were saying that the validity of amr rested on the form. He also quoted another group whom he described as aṣḥabuna al-Baghdādiyyūn as saying that amr was regarded as amr because of amr itself. He suggested that discussion on that point could be in two ways: One of them was to presume that there was a special rule for the form of amr and because of it it would become a valid amr. He maintained that that was through irāda. The second way was to assume there was no special rule for the form of amr at all. Thus we would have to take account of the logical aspect of it, namely that the form of amr in itself is the amr or the form needs a certain condition, namely irāda. Abū al-Ḥusayn al-Baṣrī maintained that a distinction was needed to be made here because many people might mix the two together. He then declared that

1. Ibid., pp. 49-50.

the opinion which says that there is a special rule for the form of amr was invalid. He said that the only understandable special thing about the form of amr (imperative form) was that it was addressed from a high position, otherwise it would only be a demand (al-ṭalab) and nothing more.¹ He further suggested that the form of amr is either sufficient as a symbol of ṭalab (demand) without adding or leaving any other condition or it is not sufficient. He said that if the form is sufficient to be regarded as a symbol of ṭalab whenever it was found, then a threat also could be regarded as al-ṭalab because it uses the same form. The same thing would apply to words spoken by a sleeping or forgetful person if the form of imperative, e.g. ifa'l, was used because their statements are also without irāda. He further stressed that if it was necessary to add any condition to the form then that condition would either refer to the commanded person (ma'mūr) or the commanded things (ma'mūr bihi) or the command itself (amr) or the form (sīgha). If that happened it would not refer to the ma'mūr, nor to the ma'mur bihi, because all of those are possible with regard to threat.²

On the other hand, the majority of scholars are of the opinion that there are special forms for commanding. While these forms vary the most popular of them are:

1. Ibid., p. 50.

2. Ibid., p. 50.

1. Form of imperative, e.g. if'al.
2. Fi'l al-Mudāri' al-Maqrūn bi-lam al-amr
(The use of the jussive after lam to express a command or exhortation) e.g. thumma liyaqdī tafāthūhum. Q/22/29.
3. Ism fi'l al-amr (The use of 'alā to express obligation) e.g. 'alaykum anfusukun. Q/5/105.
4. Al-Masdar al-nā'ib 'an fi'l al-amr
(The use of the verbal noun in the place of the imperative) e.g. fadarb al-riqāb. Q/47/4.

From the point of view of the majority these forms are the acceptable forms of order. In fact these are the ones most frequently used in the Qur'ān and the Tradition.

However, the other uṣūlīs among them always advocate that there is a special form for amr and that God speaks with a voice that produces letters and sounds and that there is a difference between al-kalām al-nafsī, which they say is irāda, and al-kalām al-lafzī.¹ They support their view with verses from the Qur'ān, Traditions from the Prophet and their claim of the consensus of the people of language.

Ibn Qudāma has suggested that what is in one's mind cannot be called kalām unless it has been spoken.² He differentiates between al-kalam al-nafsī and the spoken

1. Shinqītī, Mudhakarāt al-Uṣūl, pp. 188-189.

2. Ibn Qudāma, Rawdat al-Nazir, p. 98.

word. He also cited Q/19/10-11, "(Zakariyā) said: 'O! My Lord give me a sign.' The sign, was the answer, Shall be that thou shalt speak to no man for three nights, although thou art not dumb. So Zakariyā came out to his people from his chamber. He told them by signs to celebrate God's praises in the morning and in the evening." Ibn Qudāma also cited Q/19/26: "I have vowed a fast to (God) most gracious and this day will I enter into no talk with any human being." Ibn Qudāma explained that God did not regard the sign, in other words the meaning subsisting in the soul, as kalām. According to Ibn Qudāma these verses indicate that kalām by voice is different from al-kalām al-nafsī. Therefore¹ there should be no connection between them. He further maintained that amr can occur without the one who is commanding really wanting it to happen.² A similar view was expressed by another Ḥanbali scholar, Ibn Taymiyya (d. 728 A.H./1328 A.D.). Ibn Taymiyya tried to justify the view that kalām is different from irāda by using an argument based on what he held to be ordinary Arab understanding. He maintained that ~~the~~ God only revealed the Qur'ān in the language of the Arabs and those Arabs only distinguish the truth or untruth of a statement in terms of meaning and expression, which, in turn indicates meaning. He concluded that because of this reason God has never caused anyone to believe His Prophet merely through their own knowledge and belief which only exists in their hearts until (those people)

1. Ibid., p. 98.

2. Ibid., p. 100.

will confirm that by their tongue. He also maintained that Arabs do not say for example somebody believed a certain man or denied him as a liar if he only knew in his heart (i.e. intuitively) that he was telling the truth or a lie and would not mention that. Similarly the Arabs do not say a man commanded someone or forbade him if that man only made a demand in his heart without any word or sign or any other context.¹

Ibn Taymiyya cited a Tradition in which the Prophet said: "Indeed any kind of human talk (kalām) is not proper in our prayer" and another Tradition in which he said: "God can innovate whatever He wishes and indeed among what he innovated was that you should not talk during the prayer."² Ibn Taymiyya maintained that all Muslim scholars agreed that if somebody deliberately talked during the prayer his prayer would become invalid. At the same time they all agreed that if one thinks of something during the prayer without speaking about it, that will not invalidate one's prayer. The prayer will only become invalid by talking about it. He concluded that that shows agreement of all Muslims that what occurs in the mind is not³ kalam. Ibn Taymiyya goes further by citing more Traditions in which the Prophet himself differentiated between hadīth al-nafs and spoken kalām when he said: "Indeed God has pardoned my community *foy-*

1. Ibn Taymiyya, Majmu' al-Fatawa, vol. 7, p. 132.

2. Ibid., p. 132.

3. Ibid., pp. 132-133.

what occurs in its mind as long as it did not speak it out or act on it." He said that God has differentiated between hadīth al-nafs and kalām and that kalām is only what is spoken¹ by tongue and that is what they call kalām in the Arabic language in which He had revealed the Qur'ān. He went on that kalām was never a point of dispute among Companions as well as those who followed them. According to Ibn Taymiyya, it has always been held that kalām is the most distinctive quality of a human being. To that end he cited Q/51/23, "Then by the Lord of the heaven and earth this is the very truth as much as the fact that ye can speak."²

In his reaction to Q/58/8 Ibn Taymiyya argued that if God intended that they said with their tongue then there is no point of evidence in the first verse. He maintained that that is the opinion of al-Mufasssirīn because the reason why the verse was revealed was that pagans used to say to the Prophet "Sām 'alayka" instead of saying al-Salām 'alayka and they intended by that to rebuke him. When they departed from his place they said to each other, "If he is a true Prophet he could have understood what we meant and punished us or told God to punish us." Ibn Taymiyya suggested that Anfusahum in the verse could be meaning among themselves like saying to each other. And if we presume that they

1. Ibid., p. 133.

2. Ibid., p. 134.

said it in their minds then the statement is restricted by Anfusahum like saying "What she thought in her mind." But they intended kalam by tongue and that is why they used the word¹ qawl. As to the verse ~~put~~ put forward by Mu'tazila and those who regard kalām as meaning subsisting in the soul, Ibn Taymiyya maintained that some people do not agree that the verse was by Akhtal because they couldn't find it in his work. He reported that statement from Muḥammad b. al-Khashshāb while others maintained that Akhtal used the word al-bayān instead of kalām.

However, Ibn Taymiyya then drew a parallel between this verse from Akhtal and an isolated Tradition reported by one person. He said that if someone gave evidence based on a Tradition transmitted by one man and reported by both al-Bukhāri and Muslim which most Muslims regard as the most authentic, people would still say that this Tradition is an isolated one. They may use it because it will be among the kind which the scholars have agreed to believe and accept. On the other hand, this verse from Akhtal was not confirmed by any authentic transmission from Akhtal and therefore the Arabs did not accept it. He questioned whether it could possibly be used as evidence for any linguistic dispute let alone the definition of kalām and qawl. Then he maintained that the argument about kalām and qawl and their similarity

1. Ibid., pp. 134-135.

could not be settled by a statement from a poet because, according to him, this is a matter whose meaning the past and present generation of ahl al-lugha knew as they knew the meaning of head, hand and leg.¹

In spite of all the disapproval Ibn Taymiyya has shown against Akhtal's verse he believes that Akhtal did not intend by the verse to define the meaning of kalām. He said that it should be known that Akhtal did not mention this verse to define the meaning of kalam nor has any other poet intended that at all. He said that what Akhtal actually meant was that the origin of kalām is in the mind (i.e. meaning),² as if Akhtal was saying ~~if~~ if someone says anything with tongue which is not in his mind, do not trust him.

In another attempt to substantiate the claim that kalām is different from hadīth al-nafs and that command (amr) does depend on the spoken form of amr rather than the meaning or irāda, Muḥammad al-Amīn further tells us that linguists (ahl al-lisān) agreed that kalām consists of noun, verb and letters and the jurists also agreed that if someone vows that he will not speak then his oath will be broken only by speech which is made up of voice and letters not by speech in the soul³ (hadīth al-nafs). He also maintained that whenever the word kalām

1. Ibid., p. 138.

2. Ibid., p. 139.

3. Shinqītī, Mudhakarāt al-Uṣūl, p. 189.

is used to mean what is in the mind it should always be accompanied by what will make it clear,¹ e.g. fi anfushum (in their mind) as it is in the Qur'ān 58/8, "And they say to themselves, 'Why does not God punish us for our words.'" He suggested that if that word (kalām) had not been restricted by the word anfushum it would have meant kalām by tongue. Muḥammad al-Amīn gave more examples to substantiate that view that those mentioned forms are the original forms of command (amr). He said that if for example a man says to his slave "give me water" that will be regarded as an order and the slave will be regarded as obedient by complying with it. He concluded that the fact that the form can be used as a metaphor for another meaning must not cause confusion.²

As to whether God can speak or not, Ibn Taymiyya maintained that there were many authentic Traditions from the Prophet that God does speak with a voice and that He called Adam with His voice and He spoke to Mūsā with His voice. Ibn Taymiyya also maintained that that is the doctrine of ahl al-sunna and that the Qur'ān is the word of God.³

The opponents of the Mu'tazila also divided irāda into two kinds: al-irāda al-shar'iyya al-diniyya and al-irāda al-kawniyya al-qadariyya. They agree that amr

1. Ibid., p. 189.

2. Ibid., p. 189.

3. Ibn Taymiyya, Majmu', vol. 3, pp. 401-402.

al-shar'iyya always had to be accompanied by al-irāda al-shar'iyya al-dīniyya. But they refused to agree with the Mu'tazilites that al-irāda al-kawniyya al-qadariyya also must accompany amr (order or command). They maintained that one can command his servant without really wanting the action, which one had commanded him to do, to take place with the aim of testing whether he would show obedience or not.¹ They also insisted that form (sīgha) of amr is the sole symbol of commanding because it was established for command. They gave an example that if someone vows that he will fulfil a certain promise tomorrow if God wishes and he could not fulfil it, it is not necessary for him because if God had wished it would have happened and become binding and his oath would have been broken by not fulfilling it.² However, they admitted that the form (sīgha) if used by a forgetful or a sleeping person would not carry authority and it will not be considered as amr but they refused to relate it to irāda.³ They argued that if irāda had been of any importance to amr it would have been mentioned by Arabs who established the language.⁴

Al-Qurāfī maintained that irāda is a hidden meaning

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1. Shinqītī, Mudhākarat al-Uṣūl, p. 190; also see Shybat al-Hamd, Imta' al-'Uqūl, p. 124.
 2. Ibn Qudāma, Rawdat al-Nazir, p. 100.
 3. Shybat al-Hamd, Imta' al-'Uqūl, p. 124.
 4. Ibn Qudāma, Rawdat al-Nazir, p. 100.

which one can realise only through a spoken action. Thus if the form depended on irāda it would lead to a contradictory situation.¹ Al-Qurāfī is in favour of amr without irāda. He further went on that those forms of amr, even if it consists of a single letter, will still be the symbol of command.²

Among other arguments made in support of amr not needing irāda was the view that if amr could be regarded as amr only if the āmir had wished the action then it would not have been possible to use amr as evidence of irāda because nobody could have known it to be amr before they knew about the irāda. The example is given that God commanded ahl al-Janna by His word, e.g. kulū washrabū (eat and drink). There is no indication that He wanted actual eating from them. God commanded Ibrahim to sacrifice his son (Ismā'īl) yet He did not actually want the sacrifice to take place.³ However, the form of amr which He used was described as amr even though the āmir did not want the action.⁴

These arguments have been vigorously rejected by Mu'tazila. They rejected the view that amr was a symbol of irāda. Instead they maintained that it was

1. Al-Qurāfī, Sharh Tanqih, p. 138.

2. Ibid., p. 139.

3. Shybat al-Ḥamd, Imta' al-'Uqūl, p. 124.

4. Ibid.

used in the sense that the form of imperative was according to Mu'tazila the form originally established for irāda. As to the reason why irāda was not made a condition by the Arabs, Abū al-Ḥusayn al-Baṣrī suggested that it was possible that they did not make irāda a condition because it was common in the same way as they had not made omission of a context in order to establish a condition of amr.¹ He said that at least opponents also agree that amr is a demand for action and the opinion which suggested later that demand for action cannot exist without irāda was a detail worked out of that point agreed upon and it was an additional explanation to the point because that is the logical understandable meaning of demand, and there is no necessary connection between the science of logic and the common uses of language (other than implicit meanings).² On the question of whether one could command one's servant and at the same time hate the action one commanded him to do, Abū al-Ḥusayn rejected that view. He said that it was only a guess (muwahham) by the servant that he was demanding action from him and commanding him.³ In the case of ahl al-Janna he

1. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 54.

2. Ibid., p. 54.

3. Ibid., p. 55.

replied that our people (Mu'tazila) say that God wished what He commanded them because He has created extra happiness for them.¹ He later suggested another possibility. He said that it was possible that God did not intend command as it is the case in Q/23/108 "He will say 'be ye driven into it (with ignominy) and speak ye not to me.' He said 'be ye driven' here is not² command."

The whole discussion of the form of amr and whether it requires irāda reflects the theological positions of the disputants. The Mu'tazila who maintained that God did not speak could not accept the mere word as an expression of command. Otherwise they would have been forced to withdraw their views on the speech of God. They used the argument of irāda in order to minimise the literalist argument in favour of the form of amr being the criterion by which an amr was decided. Their use of the irāda argument seems to have forced their opponents to allow some scope for it in their definition of amr.

The Requirement to Fulfil the Unrestricted Amr (al-Amr al-Muṭlaq)

The controversy on the significance of amr is extended to the discussion of an amr which is not restricted to any

1. Ibid., pp. 55-56.

2. Ibid., p. 56.

context. This is called al-amr al-mutlaq. It seems that there is no disagreement that amr as a signification form of the imperative could be interpreted to mean many things (e.g. al-wujūb, al-nudba, al-ibāha (permissible) al-takhayyur (optional) and many other things as long as there is a context to prove that). However, the scholars of uṣūl disagree over how to specify amr as an imperative without there being a context (al-amr al-mutlaq). It has been suggested that it indicates al-wujūb only.¹ Another opinion said that it can only be known when one could get clear evidence of the context, while another simply regards al-amr al-mutlaq as meaning al-nudba.² Finally there was the opinion that it is common between al-wujūb, al-nudba, al-ibāha and al-takhayyur.³

Many arguments were put forward to justify the different opinions. Some scholars of uṣūl distinguish between amr and the form of imperative if it came from God or the Prophet and if it was used in general speech other than that of God and His Prophet. Also many of them lay great emphasis on the meaning of the word and its implication rather than its obvious form as it has been briefly mentioned in the definition of amr. Their particular reason for this was that they maintained that

1. Āmidi, al-Īhkām, vol. 2, p. 14.

2. Āmidi, ibid; see also al-Murtadā, al-Dhariʿa, vol. 1, p. 51.

3. Al-Nasafī, Manar, p. 120.

amr could actually be found in many forms and was not limited to the imperative.¹

Another reason also arose out of their disagreement over whether al-mandūb involved obligation or not.²

The first view which maintains that al-amr al-mutlaq should be regarded as al-wujūb is attributed to early scholars of uṣūl as well as jurists including Mālik,³ al-Shāfi'ī,⁴ Aḥmad b. Ḥanbal and it was later followed by Abū al-Ḥusayn al-Baṣrī, Ibn Ḥazm, Ibn Qudāma,⁵ al-Nasāfi, also including some of al-mutakallimin.

Since the argument over whether or not amr should be interpreted as requiring obligation is later than the period of Abū Ḥanīfa and Mālik the inclusion of their names among pro-obligatory (al-wujūb) is based on their general practice. As for Shāfi'ī he devoted a considerable portion of his al-Risāla to the command of God (amr Allāh), command of the Prophet (amr al-Rasūl) and command of the people of authority (amr 'ulū al-amr) all of which he interpreted as binding. His stand on

1. Al-Ghazālī, al-Mustasfa, vol. 1, pp. 411-12.

2. Ibn Qudāma, Rawdat al-Nāzir, p. 21.

3. Al-Qurāfi, Sharḥ Tanqīh al-Fuṣūl, p. 127.

4. Āmidī, op. cit., p. 14.

5. Ibn Qudāma, Rawdat al-Nāzir, p. 100.

those points ^{AS} clear evidence which can be taken as indicating that he interpreted amr in general as meaning obligation (al-wujūb).¹

In putting forward details about this view Ibn Qudāma cited Q/77/48, Q/33/37:

"And when it is said to them 'prostrate yourselves,' they do not so."

"It is not fitting for a believer, man or woman, when a matter has been decided by God and His apostle to have any option about their decision."

Ibn Qudāma suggested that God could not rebuke people unless amr required obligation. According to him, man only deserves rebuke by abandoning obligation. Therefore the direct order must be interpreted as obligation. This view can be seen clearly reflected by his definition of amr al-wujūb.² In another attempt to prove this view as the most authentic, he quoted a Tradition which he himself admitted was not very helpful to his own view but nevertheless he tried to interpret it to conform to his view.

The Tradition that the Prophet ordered his Companions to convert their ḥajj into 'umra and they refused and the Prophet became annoyed. He then went to his wife 'A'isha who said that God will annoy whoever annoys you. He

1. Shāfi'ī, al-Risāla, pp. 112-121.

2. Ibn Qudāma, Rawdat al-Nazir, pp. 100-101.

said "Why should I not be annoyed as I am giving the order and I am not being followed."¹ Ibn Qudāma is quite aware that this Tradition is not suitable as the Tradition clearly shows that the order is obligatory because of other considerations, i.e. it is obligatory in terms of its context. Nevertheless he tries to generalise the usage of the word so that he can rely on the meaning rather than the form. Therefore he said that if someone argues that this Tradition is useful only with regard to an amr which is obligatory by virtue of its context, we reply that we used it because the Prophet explained the reason for his anger as the refusal by the Companions to comply with his order.² Ibn Qudāma suggested that that indicates that if his order is not obligatory, he could not have been annoyed because they refused.³

In another effort to gain support for this opinion Ibn Qudāma cited more Traditions. One of these Traditions is the Tradition of Barīra bint Wāshik, who was freed while still married to a slave husband whom she hated. The Prophet told her that she could go back to him, her husband, but she asked the Prophet whether he was ordering her. The Prophet replied, "I am only a mediator." Then she declared that she was no longer in need of her

1. Ibid., p. 101.

2. Ibid., p. 101.

3. Ibid.

husband.¹ Ibn Qudāma interpreted this Tradition as further evidence for obligation. To him and other scholars who have used this Tradition, Barīra cannot afford to ignore the order of the Prophet because she differentiated between order and what is not order, and she was also aware that an order must be regarded as obligatory.² That is what she was trying to confirm. Ibn Qudāma later quoted the consensus of the Companions as another example. He maintains that the Companions agreed that it is obligatory to follow God and His Commandments without questioning the Prophet about how and what he meant by his orders. As they agreed to take tax from al-Mājus in accordance with the order of the Prophet: "Treat them as you treat the people of the Book" (ahl al-Kitāb).³

Thus Ibn Qudāma's account about the obligatory nature of every amr without it being in any context (al-amr al-mutlaq) is the same as the view put forward by a Zāhirite scholar Muḥammad 'Alī ibn Ḥazm (d. 456 A.H.) in his work al-Iḥkam fī Uṣūl al-Aḥkam. However Ibn Hazm's view is a matter of principle rather than interpretation.

1. Ibid.

2. Ibid.; also see al-Murtadā, al-Dhariyya, vol. 1 p. 38.

3a. Ibn Qudāma, op. cit., p. 101.

b. Ahl al-Kitāb: That is the name given by the Qur'ān to both Jews and Christians.

The Zāhirites are well known for their own doctrine of interpreting every verse of the Qur'ān and the sunna according to outward meaning (zāhir) of it.

The major resistance to the interpretation of al-amr al-mutlaq being wujūb came from ahl al-waqf or the group known as al-wāqifiyya, those who maintained that it is not known whether al-amr al-mutlaq is originally for obligation (al-wujūb) or recommended action (al-nudba) because it is frequently used for both of them as well as for other things. Therefore, according to them one should withhold judgement (tawaqqaf) until one gets clear evidence. This view has been put forward by the early Ash'arite scholar Abū al-Ḥasan al-Ash'arī 'Alī b. Ismā'il (d. 323 A.H.).¹ And it is also the view of Qādī Abū Bakr al-Baqilānī, al-Ghazālī² and al-Āmidī.³ The Shi'ite school of law as represented by al-Murtadā put forward another opinion, which is similar to this opinion of al-wāqifiyya but with some modifications. They say that al-amr al-mutlaq is common (mushtarak) between al-wujūb, al-nudba and threat (tahdīd). They also maintained that it was originally for one of those things but it is not known which one is intended.⁴ However, the Shi'ites according to al-Murtadā limit their tawaqquf to theoretical

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1. Imām al-Ḥaramayn, al-Burhān, vol. 1, p. 102.
 2. Al-Ghazālī, al-Mustasfā, vol. 1, p. 425.
 3. Āmidī, al-Iḥkam fī Uṣul al-Ahkam, vol. 2, p. 14.
 4. Al-Murtadā, al-Dhari'ah, vol. 1, pp. 53-54.

interpretation ~~but~~ maintain the principle that orders of God (awāmir Allāh) and His Prophet must be interpreted as obligatory (wājib) as do the Shāfi'ite School of Law. But this opinion did not represent all Shi'ite schools; it is only the view of the Imāmiyya ithnā 'ashariyya and a few others.¹

Another opinion which is also attributed to Shāfi'i says that al-amr al-mutlaq should be interpreted as al-nudba because that is the minimum requirement of al-amr and by interpreting it as al-nudba one has acted in a moderate way, because it cannot be stated certainly that it is actually obligation or prohibition or any other thing, otherwise one could be accused of neglecting an important affair. This view is held by Abū Hāshim 'Abd al-Salām b. Muḥammad b. 'Abd al-Wahhāb al-Jubbā'ī (d.321 A.H.),² the majority of Mu'tazila and some of the mutakallimin.³

Finally the opinion that al-amr al-mutlaq should be interpreted as al-irāda was also attributed to Abū Hāshim⁴ or al-talab⁵ (request) according to Imām al-Ḥaramayn. Abū Hāshim maintains that if someone says if'al they are only indicating their wish for it (irāda). This

1. Al-Murtadā, al-Dhari'ā, vol. 1, p. 55.

2. Ḥamidī, al-Iḥkam fī Uṣūl al-Ahkam, vol. 2, p. 14.

3. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 57.

4. Ibid., pp. 56-7.

5. Imām al-Ḥaramayn, al-Burhān, vol. 1, p. 222.

view is clearly reflected by the Mu'tazilite doctrine, which makes irāda as one of the conditions in which al-amr could be accepted as al-amr.

Ibn Ḥazm maintains that al-amr al-mutlaq should be interpreted as obligation (al-wājib) unless there is specification. He made no secret of his opposition to any interpretation other than obligation (al-wujūb) for al-amr al-mutlaq. He reported that a group of Ḥanafites and Mālikites along with some Shāfi'ites maintained that every order (amr) in the Qur'ān and the Tradition should be regarded with tawaqquf with regard to its obligatory nature, until one received evidence for that.¹ Other groups of the same Schools and the rest of the Zāhirites say that every amr should be interpreted as obligation (al-wujūb) until there is evidence indicating that it is al-mandūb. Ibn Ḥazm maintains that this latter view is the only view which does not require an alternative.² He rejected the view that al-amr al-mutlaq should be regarded as either obligation (al-wujūb) or al-nudba when the context is not known. He gave an example to support his view that everything has its name which distinguishes it from another meaning and makes it understandable and also makes listeners realise what the speaker meant. He suggested that if that did not

1. Ibn Ḥazm, al-Iḥkam fī Uṣūl al-Aḥkam, vol. 3, p. 259.

2. Ibid., p. 259.

happen, understanding would not have been possible, and God's speech to us would be an invalid thing. He cited Qur'ān 4/4: "He sent not an Apostle except (to teach) in the language of his people, in order to make clear to them." He concluded that if every meaning did not have a specific name then there would not have been anything called explanation (al-bayān).¹ Ibn Ḥazm differentiates between obligatory in terms of belief and obligatory in terms of practice. He maintained that one must regard every order of the Prophet as obligatory even though one was not capable of doing it. He cited Q/2/220: "If God had wished He could have put you into difficulties. He is indeed powerful, wise." He says that God has removed difficulty from us and been merciful to us but has told us through the tongue of His Prophet, that what the Prophet orders is an obligation which one must fulfil to the best of one's ability.²

As to whether al-amr al-mutlaq could mean obligation (al-wājib) together with al-nudba, Ibn Ḥazm rejects this view. He suggested that it is impossible and not sensible for a single word to mean two different things at the same time.³ It appears that Ibn Ḥazm regarded there being little or no difference between those who interpreted

1. Ibid., p. 260.

2. Ibid., pp. 272-3.

3. Ibid., p. 263.

al-amr al-muṭlaq as al-mandūb and between the Ash'arites who said that the meaning of al-amr al-muṭlaq is unknown, because he sees both views as too far from what he regards as the correct opinion. He concentrates most of his argument on ahl al-waqf. He accuses them of ignorance and lack of proper investigation. He suggested that if those who said that one should defer judgement were asked about what they would do if they were confronted with orders of God (awāmir Allāh) without context, and there was no evidence indicating that it was an obligation (al-wujūb), they would have three options:

1. They could wait for ever. Then they would have abandoned the Commandments of God and His Prophet and could be regarded as abandoning the religion.
2. They could interpret it as al-nudba. Then they would have combined two things together:
 - (a) They said something without evidence;
 - (b) Permission for disobedience of God and His Prophet without evidence.
3. They would interpret it as obligation (al-wujūb) which is our opinion, then they would have abandoned their doctrine.¹

In his reference to those who held the view that al-amr al-muṭlaq should be interpreted as al-mandūb,

1. Ibn Ḥazm, op. cit., p. 280.

Ibn Ḥazm maintains that al-mandūb is only a choice (al-takhayyur), e.g. "if you wish, do it" and "if you wish, you may not." He suggested that does not exist in the case of al-amr al-muṭlaq. He added that there are authentic evidences that there is no choice with regard to all orders which belong to God (awāmir Allāh) and His Prophet. He concluded that if it is clear that there is no choice, then the interpretation of it as obligatory became necessary because choice is applicable to al-mandūb only.¹ This view has earlier been supported by the Mu'tazilite Abū al-Ḥusayn al-Baṣrī who also maintained that the evidence that al-amr al-muṭlaq is originally for obligation is that it requires the person ordered to perform the action without choice.² He cited Q/20/93: "From following me didst thou then disobey my order?" He said that one can be regarded as an offender against the commander (al-āmir) only by doing what he forbids and when God imposes something on us or obliges us to do it and we refuse, we become offenders. But if he recommends it to us and says, "The best for you is to do it, but you may not do it," then we would not be regarded as offenders.³ He cited another verse Q/24/54: "Obey God and Obey the Apostle." He said that all Muslims agree that these usages are not metaphor. He argues that if al-amr al-muṭlaq did not indicate

1. Ibn Ḥazm, op. cit., p. 275.

2. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 58.

3. Ibid., p. 60.

obligation, but only al-mandūb (recommendation) or irāda (the wish for it to be done), then the use of it for obligation would be in terms of wishing the action and hating (kariha) abandoning it. This would be to use it in a way which had not been established because the meaning of to use the amr for obligation implies that the abandoning of it is hated.¹ Thus for Abū al-Ḥusayn the use of irāda as a means of limiting the obligatory nature of al-amr al-muṭlaq is not possible because irāda of something implies the opposite, i.e. karh of abandoning it. This second implies the obligatory nature of irāda so that the argument against him is according to him linguistically invalid. He gave an example that if a servant refused to do what his master ordered him, the people among ahl-lugha^{-al-} would identify the reason why he deserved blame for his refusal to do what his master had ordered him to do. This according to him indicates the reason why he deserved blame as being that he has abandoned what was obligatory (al-wājib).²

In these discussions of the views of Ibn Qudāma, Ibn Ḥazm and Abū al-Ḥusayn al-Baṣrī, there has been some evidence for the Shafi'ite efforts to establish the unquestionable interpretation of al-amr al-muṭlaq

1. Ibid., p. 65.

2. Ibid.

as equal to al-amr al-muqayyad (i.e. an amr which is restricted in meaning by the context, but it seems that they did not take into account the early principle of dividing amr into different categories.¹ This attitude has given opponents of their view the opportunity of rejecting it. It can be recalled that uṣūlīs have divided al-amr into al-wājib and al-mandūb and others have even included al-mubāha. Some of them defined al-amr al-wājib as that which had a threat of punishment for those who abandoned the performance of it² while others defined it as what requires the abandoner of it to be punished, or that which requires through the revealed law, the abandoner of it to be punished.³ The Mu'tazila are of the latter opinion and they always hold the view that God will not forgive those who abandoned an obligation⁴ (al-wājib). Therefore to abandon an obligation is more or less like a capital crime to them and they will not accept the requirement to perform it without certain evidence or specification that amr is obligatory (al-wājib) and must not be abandoned. The Ash'arites are particularly insistent that the only way they can be sure that it is an obligation is that it will have an additional quality

1. Al-wājib, al-mandūb and al-mubāhah. See Shaybat al-Hamd Imta', al-Uqūl, pp. 8-12.

2. Shinqītī, Mudhākarrat al-Uṣūl al-Fiqh, p. 9.

3. Ibid.

4. Amin, Zuhr al-Islām, vol. 4, p. 81.

which will make its obligatory nature clear.

The Ash'arites produced no fresh evidence but rather based their argument on logical interpretations. They rejected all evidence put forward by the Shāfi'ite group on the grounds that it was based on mere interpretations without proof. They argue that if one is to prove that al-amr al-mutlaq must be interpreted as obligatory one would either have to prove that by logic or by revelation. They maintained that there is no scope for logic in the affairs of language. On the other hand, revelation had to be either a well transmitted report (mutāwatir)¹ or an isolated one (āḥād).² They rejected validity of isolated reports (āḥād). Once āḥād reports had been rejected they maintained that according to the mutāwatir reports from ahl al-lugha, al-amr al-mutlaq was obligatory.³

Giving more details about this view, al-Ghazālī put forward four points which if fulfilled, could make it legitimate to interpret al-amr al-mutlaq as obligatory.

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1. Mutāwatir means a Tradition or a report transmitted by large numbers of people through many different sources right from the Prophet or the Companion concerned. See Abū Zahra, Uṣūl al-Fiqh, p. 84.
 2. Āḥād means a Tradition or a report transmitted by one or two people and did not enjoy popularity as al-mutāwatir. See Abū Zahra, op. cit., pp. 84-5.
 3. Āmidī, al-Iḥkam, vol. 2, p. 14.

He suggested that it might be reported from the people of language when they were defining meaning that al-amr al-mutlaq was defined in terms of absolute obligation. Or there might be a report on the authority of the Prophet that the people of language had defined al-amr al-mutlaq as obligatory through a consensus (ijmā'). Or that there was no rejection of such an interpretation when it was mentioned before people of authority who would have had to reject it if they knew it to be wrong.¹ He said that since none of these is possible with regard to the form of the imperative (ifa'l) or the clause "I order you to do," or a statement made by a Companion that we were ordered to do so and so, then one would have to wait until there was further evidence before defining it as obligatory.²

Al-Ghazālī also tries to dismiss the view that al-amr al-mutlaq could be mushtarak between al-wājib and al-mandūb or be interpreted as only irāda. After mentioning the opinions of others he said that the only way to remove the obstacle is to take notice of two things. One of them is whether the form (ifa'l) is a requirement or demand or not. The second is that if it contains a requirement, the requirement also exists in the case of al-mandūb as well as al-wājib. As far as Al-Ghazālī was concerned, he believed that al-mandūb was

1. Al-Ghazālī, al-Mustasfā, vol. 1, p. 424.

2. Ibid.

part of al-amr. He maintained that there were two stages with regard to that: the first was an indication of requirement and of obedience and the second is preference of what is supposed to be, but the latter one has nothing to do with the present discussion. He maintained that those who claim that ifa'l is mushtarka between ibāha (permission) and tahdīd (threat of punishment if abandoned) are not correct because one can differentiate between the language terms of imperative and prohibition (e.g. ifa'l and la-tafa'l) and "do if you wish" and "do not do if you wish." He argued that if these expressions were without any context and reported on the authority of a man who was dead or absent, and not a specific activity, e.g. standing, sitting, fasting or prayer, but just about general activity, then the difference of meaning will come to one's mind, that there is a difference in the meaning of this form; in the same way it is possible to understand the difference between "Zayd stood up", "Zayd will stand up" and "Zayd is standing up". For the first refers to the past, the second to the future, while the third refers to the present. Yet the past tense could be used for present and future for the past, if there were contexts to indicate that.¹

It appears that al-Ghazālī is trying to prove an activity described in language as dependent on its

1. Al-Ghazālī, al-Mustasfā, vol. 1, pp. 19-21.

context for any real meaning to be derived from that description. Thus al-amr al-mutlaq without this necessary support could not be regarded as obligatory. At the same time he fails to back his own position with any evidence other than a clever logical argument. However 'urf (custom) should be taken into account. A certain word could have different interpretations: It may have a certain meaning which is held by jurists and another interpretation held by ahl al-lugha or ahl al-kalam.

In another attempt to dismiss the claim that al-amr al-mutlaq should be interpreted as either obligatory or al-nudba, al-Āmidī maintained that all evidences produced by the Shāfi'ites are merely assumptions and therefore could be accepted only if the discussion was based on assumptions.¹ He rejected the interpretation given by Abū al-Ḥusayn al-Baṣrī to Q/24/54: "Obey God and Obey the Apostle." He said that the verse did not indicate obligation but the obligatory nature was established by the context where it is immediately followed by the words: "If you turn away he is only responsible for the duty placed on him and you for that placed on you."² In his response ~~to~~ Q/24/63: "Let those beware who withstand the Apostle's order lest some trial befall them," al-Āmidī suggested that al-amr here is not

1. Al-Āmidī, al-Iḥkam, vol. 2, p. 18.

2. Qur'ān 24/54.

applicable to every order because it is not general. He said that if anyone says that is general because of its association with threat, that would only be true if the criterion about threat for al-amr al-wājib differed from that concerning al-nudba. He gave an example that to disobey the Prophet's order is to disbelieve what that order requires and not to carry out the obligation or nudba within it. He maintained that although this was his doctrine there was nothing in it which indicated that every order should be interpreted as obligatory.¹

The Mu'tazilites, Abū Hāshim and the rest of those who said that al-amr al-mutlaq should be interpreted as al-mandūb like the Ash'arites, have little evidence to back their argument. They only adhere to a Tradition narrated by Abū Hurayra that the Prophet gave a speech to people and said, "God has imposed pilgrimage (ḥajj) upon you." Then one man asked him, "Is that every year?" The Prophet refused to reply to him until he had repeated the question three times; then the Prophet replied, "No, only once. If I had said Yes, it would have become an obligation and you would not have been able to have fulfilled it. Leave me and do not ask about anything I have kept silent about. Those who were before you perished because they questioned too much and they disagreed with their prophets. If I order you to do

1. Al-Āmidī, op. cit., p. 18.

something, do whatever you can, and if I forbid you from doing something, beware of it."¹ They have a similar Tradition to this from Ibn Abbās through Abū Sinān and al-Zuhrī. They maintained that al-amr al-mutlaq should be interpreted as al-mandūb because the Prophet has limited the requirement of amr to our ability. In a rather subtle way they regard al-nudba as the minimum requirement of obligation. They interpreted this Tradition as meaning that the Prophet has assigned al-amr al-mutlaq only to the extent of our capacity and has urged us to do whatever we can do. They maintained that that means al-nudba and therefore there is a sense of limited obligation in their interpretation of al-nudba.

The differences of view cover the whole spectrum of the different groups and make it difficult to trace any clear picture of the influences which brought so much difference even within the same group. However, although we find speculative thinkers on both sides of the argument, it would seem likely that the basic positions are influenced by attitudes to the legal requirements of the sharī'a. Those who wanted to regard al-amr al-mutlaq as obligatory tended to find support from the jurists, no matter how speculative their own background was. In this case, we can note the literalism of the Zāhirites. Yet they were also supported by some Mu'tazilite thinkers

1. Abū al-Naja, Ilm 'Uṣūl al-Fiqh, p. 123.

like Abū al-Ḥusayn al-Baṣrī. On the other hand, there is considerable scope for regarding those who held the view of tawaqquf or of al-amr al-mutlaq being understood as nudba as being the more speculative side of uṣūl al-fiqh.

The whole literalist and speculative tendencies involved ⁱⁿ the argument are exemplified in the different legal implications deduced from a Tradition reported by Mālik b. Anas. To make this clear this Tradition can be used as an example. The Tradition narrates that when 'Abd al-Raḥmān got married the Prophet ordered him to celebrate it even by killing a goat.¹ Shāfi'ī and Zāhirites regard this Tradition as indicating that the marriage feast (walīma) is obligatory and binding for every Muslim getting married.² But Aḥmad b. Ḥanbal, as well as Ash'arites, Mu'tazilites and some of the mutakallimin see the Tradition as sunna, while other scholars simply regard it as mubāh or sunna.³ The main reason for difference appears to have arisen from their interpretation of al-amr al-mutlaq. According to Shāfi'ī, a direct order from the Prophet must be interpreted as obligation⁴ while others either interpret it as al-mandūb

1. Sana'ani, Subul al-Salām, vol. 3, p. 154.

2. Ibn Qudamā, al-Mughnī, vol. 7, pp. 1-2.

3. Sana'ani, op. cit., p. 154.

4. Schacht, The Origins of Muhammadan Jurisprudence, p. 11.

or refuse to count it as anything without its context. To Ash'arites and mutakallimin, the fact that the Prophet ordered Abd al-Rahman to slaughter a goat may not suffice to regard obligation as the interpretation of al-amr al-mutlaq; according to them they still require additional evidence.¹ As long as the problem of interpretation remains, the differences will continue.

1. Amidī, al-Iḥkām, vol. 2, p. 18.

CHAPTER II

THE ROLE AND IMPORTANCE OF AMR

In this chapter an attempt will be made to assess briefly the role and importance of amr. It is not possible to make such an assessment without involving ourselves in one way or another in the theological aspect of it. Therefore this discussion is bound to reflect some elements of theology. First, it is necessary to examine the various kinds of āmir involved in the process of making an amr, who the real āmir is and when his amr becomes binding. Thus it will enable us to categorize the āmir, in terms of uṣūl al-fiqh, into three categories:

1. God (Allāh).
2. His Apostle (al-Rasūl).
3. The people of authority (ulū al-amr).

By dividing āmir in this way we have to bear in mind that not every obligation (amr) is directly from God (though on occasion God's amr may be implied in the amr of others). Also by dividing it in that way we will be able to give each one of them their due rights.

Although there may be disputes and disagreement among uṣūlīs over how to interpret amr, there seems to be no disagreement known among them that amr plays a

dominant role in the Islamic legal system. It is believed that every action taken in the course of religion or in the course of private life involves amr because these were originally commanded by God or by His Apostle. Those actions are legal and rewardable if they were taken in a lawful way and they may be illegal if they were taken unlawfully. Among the Qur'ānic examples which are normally cited in support of that are: Q/16/9, "God commands justice, the doing of God, and liberality to kith and kin and He forbids all shameful deeds and injustice and rebellion. He instructs you that you may receive admonition" and Q/2/168, "O people eat of what is on earth lawful and good, do not follow the footsteps of the evil one, for he is to you an avowed enemy" as well as Q/2/172, "O you who believe eat of good things we have provided for you and be grateful to God." Because of these verses amr is regarded as the foundation stone upon which the belief of every Muslim rests.

Many Muslim scholars even went further in their attempt to emphasise the importance of amr, by maintaining that amr represents the major reason why God created mankind and that the role of man is only to obey God's commandments. In support of this view they put forward a series of Qur'ānic interpretations to justify this view such as Q/4/64, "We sent not an Apostle but to be obeyed."¹

1. Al-Tabarī, Tafsir, vol. 27, pp. 12-13.

Q/9/31, "Yet they were commanded to worship but one God, there is no god but He" as well as Q/51/56, "I have only created jinns and man that they may serve me." In this sense amr becomes 'ibāda (worship) and obedience to it becomes obligation upon every Muslim. In their interpretation of the latter verse, al-Tabarī maintained that "Serve me" in the verse means to bow to my command. He also attributed it to both 'Alī b. Abī Ṭālib and 'Abd Allāh b. Abbās.¹ This interpretation later appeared in al-Qurtubī's Tafsīr together with 'Abd Allāh b. Mas'ud's reading which confined the meaning of the verse to believers only. It reads, "I have only created jinns and men among the believers that they serve me."² Mujāhid and al-Baydawī also give different interpretations "that I may command them."³ Nevertheless all the interpretations indicate the importance of amr in the Islamic legal perspective, since one can believe in God and believe in His Prophet but refuse to observe His commandments which is the amr. For this reason amr itself becomes part of the obligation so that one's Islām cannot be completed without believing in it and observing it properly.

1. Ibid.

2. Al-Qurtubī, Jāmi' al-Aḥkam al-Qur'ān, vol. 17, pp. 55-56. Ibid., p. 55.

3. Al-Baydawī, Anwār al-Tanzīl wā Asrār al-Tāwīl, vol. 5, p. 98.

Thus amr which is originally for God and extends to the Prophet as the Apostle of God and then to the sultan or governor and whoever takes over the affairs of the Muslims because they are the people who are responsible for observing and executing the command of God. Q/4/59 combines the three groups, "O you who believe, obey God and obey the Apostle and those in authority among you."

The second point in this discussion is the various kinds of āmir involved in the amr and according to Q/4/59 these have been divided into three categories, as we have already mentioned.

First of all our discussion here will be on the command of God (amr Allāh) and the command of the Apostle (amr al-rasūl) because both of them are inseparable to the extent that Muslim scholars always maintain that command of the Apostle is the command of God. "Whoever obeys the Apostle has obeyed God" Q/4/82.

According to the Qur'ān, God commanded Muslims on many occasions in the Qur'ān to obey His command (amr) and ~~any~~ any belief in Him which is not associated with obedience to His commandments is invalid. Also it appears that in almost every occasion He commands He also associates it with the obedience to the command of the Apostle and that gives the command of the Apostle the same status in the sense that disobedience to the command of either of them will automatically render

belief in the other one invalid. On some occasions He gave the impression that amr of the Prophet is the amr of God, Q/8/20 "O you who believe! Obey God and His Apostle and turn not away from him when you hear (him speak)" and Q/4/82, "Whoever obeys the Apostle has obeyed God." These verses and many others in the Qur'ān are typical examples normally cited in favour of that and they are of underlying importance for amr and they also make it clear that there is no difference between the command of God and the command of the Apostle. However, what remains unclear is whether or not any discretion made by the Apostle which is based on his personal view, not on his understanding of the Qur'ān, could also be regarded as a command of God. There is not much discussion of this issue by uṣūlīs. Perhaps they think that it is not worth it arguing about it or may be for some other reasons which we are unaware of. However among the few scholars who called attention to such things were al-Shāfi'ī and the later Ḥanbalī scholar, Ibn Taymiyya.

In a clear reference to that al-Shāfi'ī gave the impression that if the Prophet gives a command or a decision which is not based on the text of the Qur'ān or inspiration it will only be regarded as a sunna of the Apostle and implicitly one can abandon such a decision without any offence having been committed. Al-Shāfi'ī's view on this issue came on his comment on the case of al-Zubayr b. A'wwām (d. 36 A.H.) a relation

of the Prophet and another man.¹ The latter rejected a decision made by the Prophet when he first thought that the Prophet had decided in favour of Zubayr. He protested to the Prophet only to anger the Prophet so that he changed his decision to one in favour of Zubayr and in accordance with the Qur'ānic decision. Then Q/4/68 was revealed, "But not by thy Lord they will not become believers until they make thee judge in their disputes and do not afterwards find difficulty in thy decisions but surrender in full submission." According

1. There is consensus that the man who was involved in the dispute with Zubayr was an Ansārī farmer who has been present at the Battle of Badr, but his name remains a matter of dispute. The most popular opinion named him as Ḥāṭib b. Abī Balta'a. He also has been named as Th'alaba b. Ḥāṭib. The Prophet told Zubayr who had property on the upper slopes of land needing irrigation to water his own land and then release the water to the land of his neighbour. The Ansārī man told the Prophet, "I see you are favouring your nephew." Then the face of the Prophet changed in anger and he told Zubayr, "Hold back the water until it will reach the edge of the reservoir (al-jadr)."
See al-Qurṭubī, Tafsīr, vol. 5, pp. 266-267.

to al-Shāfi'ī this is a sunna laid down by the Prophet not commanded in the text of the Qur'ān. He said that "If this decision were a Qur'ānic decision, it should have been prescribed in the text of the Book of God." He went on, "If men fail to accept a decision based on a clear text of the Book of God they ^{are} undoubtedly cease to be believers for they are rejecting a decision based on divine legislation."¹ This appears to be indicating that if the Prophet's decision is not based on the text of the Book it is no different from other decision by any other human being.

As for Ibn Taymiyya he also emphasised the obligation of a Muslim to obey the command of God and the command of the Apostle. He said that it is the principle of Islām to obey them. He cited the Islamic pledge, "Witness that there is no other god other than Allāh and witness that Muḥammad is the messenger of Allāh." He maintained that this is a matter of agreement among those who have knowledge and belief, even though some of them may differ in action and condition. There is no learned Muslim who has any doubt about the obligation of man to obey God and His Apostle and that obedience to anybody other than them will become obligation only when He (God) makes it an obligation.² Ibn Taymiyya goes further

1. Al-Shāfi'ī, al-Risāla, p. 115.

2. Ibn Taymiyya, Majmu', (Kitāb al-Uṣūl al-Fiqh)
vol. 19, pp. 68-69.

the real obligation and obedience is only to God, but there is no way to know what His commands are other than through the prophets. Thus any one of these who informs us only inform us about His commands and His directives and it is obligation to obey him and believe him in whatever he may command or inform.¹

It seems that both al-Shāfi'ī and Ibn Taymiyya are saying that the command of the Prophet only becomes an obligation by virtue of its divine connection, since most of his commands are based either on the existing order in the Qur'ān or another instruction he may have received from God. However, if there is clear evidence that the command of the Prophet is based only on his personal view which is not in accord with the text of the Qur'ān or common regulation, it will be regarded as a sunna and one can defy that kind of order in favour of a Qur'ānic text or a common practice which is based on the Qur'ānic text.

Although there seems to be little study of this issue among ancient scholars, there seems to be enough evidence to justify the view that if the command of the Prophet is based on his own personal view or contradicts the Qur'ān, then it could be defied in

1. Ibid., pp.68-69.

favour of the Qur'ān and a common practice.¹

1. The question of whether or not the amr of the Prophet which is based on his personal judgement or discretion is different from the amr of God as dictated to the Prophet also involves a discussion of the nature of the Prophet's ijtihād (i.e. whether or not he is entitled to use reason to produce a legal decision). Muslim scholars divided among themselves on this issue. Muḥammad Siḍḍique who made full study about the Prophet's ijtihād summarised their views into three as follows:

The first group comprises those who reject the very concept of the Prophet's ijtihād in the above mentioned matter. According to them, being the bearer of divine revelation, the Prophet is in every matter guided by and subjected to revelation. There is no need for him to exercise his own ijtihād. This point of view is generally attributed to Ash'arites. However, among the Mu'tazilites Abū 'Alī al-Jubbā'ī (d. 303 A.H.) and Abū Hāshim al-Jubbā'ī (d. 321 A.H.) can also be included in this group. Shawkānī has also added the name of Abū Mansūr al-Māturīdī in the above mentioned group.

The second group comprises those jurists who accept in theory the logical possibility of the Prophet's entitlement to ijtihād. However they adopt the stance that there is no absolute evidence to prove that the Prophet actually practised ijtihād.

Cont'd....

Footnote continued.

Therefore on account of this some members of this group deny completely the practice of the Prophet's ijtihād while others adopt an uncommitted posture. Al-Ghazālī and al-Bāqilānī have taken this latter position.

The third group comprises the numerous jurists who not only accept the idea and possibility of the Prophet's ijtihād in theory but consider that there is evidence to prove that such an ijtihād had taken place. This point of view was originally attributed to Aḥmad b. Ḥanbal. However, some later writers attributed it to Abū Yusuf as well. Later Ḥanbalites and most Ḥanafite jurists have also taken this position. Qādī 'Abd al-Jabbār, Abū al-Ḥusayn al-Baṣrī and some Shāfi'ite jurists have also adopted this view and if the statement of al-Qurāfī is to be accepted then al-Shāfi'ī himself was in agreement with this view. However, the statements of al-Āmidī indicate that whilst al-Shāfi'ī accepted the idea in theory, he had not reported any evidence in this regard.

Each group put forward evidence in support of their view. For more details see Siddique, A Study of Evolution of Ijtihād, pp. 69-78 (Edinburgh University thesis).

In support of that we have three events here in which the Companions either defied a clear order of the Prophet or disagreed with his personal view in favour of another one which accords with the Qur'ān and common practice. The Prophet himself did not oppose them or rebuke them for doing so.

The first of these examples, as reported by al-Wāqidī¹ (d. 207 A.H.) is that the Prophet sought the opinion of his Companions on certain position ² which they should take up and get ready for their enemies on the day of Badr. Then a Companion, Ḥubāb b. al-Mundhir, asked the Prophet whether the position was where God had asked him to take up so that they could not go beyond it or stop before it or whether it was only an opinion and war strategy. The Prophet replied that it was only an opinion (personal discretion) and war strategy. Then Ḥubāb told the Prophet that the place was not a suitable place and advised the Prophet and the rest of the Companions to move to another place which was more secure than the one proposed by the Prophet.² This was one occasion where the personal

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1. Al-Wāqidī's full name is Muḥammad b. 'Umar al-Wāqidī. He is one of the early historians whose wide knowledge has earned him a good reputation among scholars of every time. He died in 207 A.H. according to Ibn-al-Nadīm. See Ibn^{-al-}Nadīm, Fihrist, p. 98.
 2. Al-Wāqidī, Kitāb al-Maghāzi, vol. 1, p. 53.

view of the Prophet was rejected in favour of a common practice and Ḥubāb's question about whether or not the Prophet's idea was based on an inspiration has further demonstrated that only what is based on an inspiration cannot be rejected.

Another one took place after the Battle of Badr when the Prophet asked Abū Bakr and 'Umar about what to do with the prisoners. Abū Bakr advised him (the Prophet) that they were his relatives and suggested that fidya (ransom) should be taken from them so that the Muslims could have influence and authority over them. This view accorded with the view of the Prophet and he accepted it. 'Umar for his part suggested that they should be killed because they were unbelievers. Later it was revealed in Q/8/67, "It is not fitting for an Apostle that he should have prisoners of war until he hath subdued the land. Ye look for the temporal goods of this world, but God looketh to the Hereafter and God is exalted in might, wise," which supported 'Umar's view and blamed the Prophet for accepting al-fidya (ransom).¹ This is further clear evidence which distinguishes between the personal authority of the Prophet and that of God.

The third one is even more obvious and precise. The event was reported also by al-Wāqidī and al-Bukhārī in the book of prayer in a state of fear. It happened

1. Al-Qurṭubi, Jāmi' al-Aḥkām, vol. 8, pp. 45-47.

after the Campaign of Aḥzāb (parties). In the Tradition Ibn 'Umar reported that when people returned from the Campaign of Aḥzāb, the Prophet forbade them praying salāt al-'asr until they reached the quarters of the Banū Quraiza. However the time for prayer came while they were still on their way. Some of them prayed while others refused to pray until they reached the quarters of the Banū Quraiza because of the command of the Prophet. When they mentioned it to the Prophet he did not blame either side. The wording of al-Bukhārī's version specifically says: "No one is to offer the 'asr prayer but at (the quarters of) the Banū Quraiza."¹

This particular Tradition has been cited in many places as an example that amr could be delayed till after the first time appropriate for it. The last sentence in which the transmitter said that this act was mentioned to the Prophet and he did not blame either side also served as an indication that the Prophet himself took notice that his command was abandoned in favour of the rule which is based on the command of God that every prayer should be carried out at its due time. Yet the Prophet quickly rebuked another man, Abū Sa'īd b. Ma'lī (d. 73 A.H.), when he refused to answer the Prophet's call with the excuse

1. Al-Bukhārī, Saḥīḥ al-Bukhārī, vol. 2, pp. 34-35. (Istanbul Edition of 1977). Also al-Wāqidī, Kitāb al-Magāzī, vol. 2, p. 497.

that he was praying, on the grounds that his decision not to answer contradicted the rule of the Qur'ān and the command of God.¹ Q/8/24, "O you who believe! Answer God and His Apostle when he calls you to that which will give you life and know that God comes in between a man and his heart and that it is He to whom you shall (all) be gathered."

These evidences, if they are genuine, indicate that the amr of the Prophet is different from that of God and becomes binding only when it is connected with the authority of God. This does not in any way contradict countless verses in the Qur'ān where God has commanded Muslims to follow his command because those verses seem to be concerning general authority. In order to make that clear we can divide amr or the authority of the Prophet and the way of obeying it into two categories: One is obedience in general issues such as obeying his command when he commands anything in which there is no room for any discretion, like his command that morning prayer should be two rak'as and that Ramaḍān fast must be one lunar month as well as his command that Muslims should go out to fight certain wars at certain times. All those are basic issues about which Q/24/63 comments: "Let those beware who withstand the Apostle's order lest some trial befall them or a grievous penalty be

1. Al-Qurtubī, Jami' al-Aḥkām, vol. 7, p. 388.

inflicted on them." Many other verses of that kind in the Qur'ān warned against defying such an order.

The second category is like this: Under normal circumstances the Prophet does not command or impose anything without instructions based either on Qur'ānic injunction or inspiration received in some other way. That has been emphasised by Q/53/3-5, "Nor does he say (aught) of (his own) desire. It is no less than inspiration sent down to him." In that sense anything he commands is a command of God which every Muslim is bound to observe as far as possible. But it has happened on many occasions that the Prophet has to depend on his own personal discretion either because the revelation came later or for another reason as happened in the case of the prisoners in the Battle of Badr which we mentioned earlier. These are the occasions where other able people are allowed to compete with the Prophet. Those who are capable of reaching a satisfactory conclusion are not absolutely bound by the Prophet's authority provided that their aim is only to follow what they think is more appropriate and they have presented their case respectfully.

As for the majority of scholars who believe that the command to obey the Prophet should remain in its general application, they seem to believe that the command in the Qur'ān was a general one not specific. Some of them are of the opinion that they are not aware of any evidence to limit it and therefore everything

the Prophet says must be unquestioned. This fact becomes evident in al-Ṭabarī's comment on Q/4/59 when he said that the verse indicated that God has generalised the command to obey the Prophet and has not differentiated between any time. Therefore it must remain like that.¹ A similar view to this has been expressed by many other scholars.

The third command under question here is the command of the people in authority (ulū al-amr). As we might expect, the term ulū al-amr attracted different definitions among the uṣūlīs and the jurists alike and that automatically created different implications. According to al-Shāfi'ī "those in authority" means the commander of the Apostle's army. He says: "That is what more than one commentator has told us. But God knows best."² Al-Shāfi'ī's definition seems to be popular among early scholars like Maymūn b. Mihrān (d. 116 or 117 A.H.)³ and Muqātil b. Sulyman al-'Azdī (d. 150 A.H.)⁴ Another definition according to al-Qurtubī originated from Jābir b. Abd Allāh the famous Companion (d. 73 A.H.) who defined ulū al-amr

1. Al-Ṭabarī, Tafsīr, vol. 5, p. 150.

2. Shāfi'ī, al-Risāla, p. 112.

3. Al-Qurtubī, Jāmi' al-Ahkām, vol. 5, p. 259.

4. Ibid., p. 259.

as ^{-al-}ahl Qur'ān wa-al-'ilm¹ (those who have knowledge of Qur'ān and other religious knowledge such as al-fiqh and so on). This definition was also supported by the

1. 'Ilm is one of the broadest words in the Arabic language, it has been used to mean different subjects. Literally it means knowledge and awareness, but it could be used to mean different definite things such as 'ilm al-fiqh in the field of Islamic law and 'ilm al-kalām, 'ilm al-Tafsīr, 'ilm al-Qur'ān and so on. Therefore it depends on what field it was used. For example, if the term is used in the Islamic they only mean 'ilm al-fiqh unless it was clarified like saying 'ilm al-hadīth or 'ilm al-h-sāb then it will mean that they had particular 'ilm in mind and it could mean general knowledge in a particular area such as 'ālim for somebody who has general knowledge of religion. According to the Encyclopaedia of Islam, 'ilm was later categorized into three: 'ilm nazar, such as knowledge of things when you know them you have done everything opposite to it is 'ilm 'amalī knowledge of religious duties al-ibādāt your knowledge is not yet completed until you have acted upon it. See E.I. (New Edition) vol. III, pp. 1132-1133.

leading Successor Mujāhid b. Jabr or Jubayr and Mālik b. Anas (d. 179 A.H.).¹ The third definition came from Ibn Kaysān (d. 299 A.H.)² who also defined ulū al-amr as people of intellect and reason, those who should govern the affairs of people.³ Although there wasn't any evidence to identify Ibn Kaysān as a member of ahl al-kalām his definition seems to have reflected by ahl al-kalām's idea which normally put emphasis on the reason. However, al-Bayḍāwī (d. 685 A.H.) later put forward another one which reflects the first two definitions put forward by al-Shāfi'ī and al-Qurtubī in support of early scholars like Jābir b. 'Abd Allāh, Maymūn and Muqātil. According to al-Bayḍāwī, ulū al-amr means governors during the lifetime of the Prophet and after him and that includes khulāfā', judges and leaders of the Apostle's army.⁴ These are the most popular definitions given to ulū al-amr which in one way or the other refer to the same meaning and the same objectives of the Qur'ān. They still enjoy support

1. Al-Qurtubī, Jāmi' al-Ahkām, vol. 5, p. 259.

2. Ibn Kaysān, Abū al-Hasan Muhammad b. Ahmad b. Kaysān al-Nahawī (d. 299 A.H.). See Yakut, vol. 6, pp. 280-282.

3. Al-Qurtubī, Jāmi' al-Ahkām, vol. 5, p. 259.

4. Al-Tabarī, Tafsīr, vol. 5, p. 149.

of later scholars.¹

However, there are many other definitions which one can only consider as personal ones because they do not enjoy the popularity which the first group does and they do not seem to represent the objective of the Qur'ān. One of these definitions came from 'Ikrima (d. 105 A.H.) who defined ulū al-amr as referring to Abū Bakr and 'Umar while Shi'ites interpret it as meaning 'Alī and the protected Imāms.²

These definitions are necessary because it will show the extent of authority and the obedience each one of them should receive. As for those who defined ulū al-amr as referring to Abū Bakr and 'Umar or 'Alī and the protected Imāms as the Shi'ites have put it, ^{this} will mean that after the death of every one of them obedience to ulū al-amr will no longer be in operation whereas if it means the leader of the Apostle's army, Governors and the people of intellect as it had elsewhere been defined, obedience to their command will continue after their

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1. Ibn Taymiyya also defined ulū al-amr as the master of authority who ordered the people and forbid them. They include those with power and authority (al-qudra wa al-sultān). He also divides them into two categories: princes and scholars. See Sāliḥ, The Political Thought of Ibn Taymiyya, p. 120.
 2. Al-Qurṭubī, Jami' al-Aḥkām, vol. 5, p. 259.

own particular deaths as other people will succeed them. Except that the Shi'ites hold the view that the protected Imāms will be operating in hiding and that their authority will remain.¹

However, the discussion on the command of ūlū al-amr is unlike that of the Prophet because of the limited number of references to them. Apart from the Qur'ānic evidences such as Q/4/59, "Obey God and obey His Apostle

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1. The Imāmiyya's view on ūlū al-amr which they defined as al-imām al-ma'sūm is in some way different from the other schools. According to them there is no difference between the Prophet and the Imām except that the Imām did not transmit a divine Scripture. To ignore or disobey the divinely invested Imām was infidelity equal to ignoring or disobeying the Prophet. On top of that the Imām is conditioned to be fully immune (ma'sum) from sin and error. Although the Imām was entitled to political leadership as much as to religious authority, his imamate did not depend on his actual rule or any attempt to gain it. They also hold the view that the last of the Imāms is in concealment and he continues to live and operate the functions of the imāmship. See E.I. (New Edition), vol. III, pp. 1166-1167.

and those in authority among you"¹ which came direct to indicate the importance of their power there are few other Traditions attributed to the Prophet which also serve as evidence for the obligation of the obedience to the command of those in authority. There seem^s to be insufficient details worked out about the limit of the obedience which they should receive. That absence of clearly worked out details from the early scholars has been a major factor in the continuation of the nature and the limit of obedience a leader should

1. Another Qur'ānic evidence which many scholars have used to support Q/4/59 as evidence of importance of obedience to the command of ūlū al-amr was Q/4/83, "When there comes to them some matter touching (public safety or fear they spread it abroad - If they had only referred it to the Apostle, or to those charged with authority (ūlū al-amr) among them, the proper investigations would have tested it from them direct. Were it not for the Grace and Mercy of God unto you all but a few of you would have fallen into the clutches of Satan." But many of them hold the view that this verse refers only to ulamā' (learned people). In fact it is because of this verse that many of them interpreted ūlū al-amr as meaning only 'ālim rather than those who hold political power without 'ilm. See al-Qurṭubī, Jāmi' al-Ahkām, vol. 5, p. 291.

receive from the people and when that should become necessary. For this reason Muslim scholars seem to have divided on this issue, some of them see the power of "those in authority" (ūlū al-amr) as a limited one which made them deserve a very limited obedience while others hold the view that with the few Qur'ānic evidences in support of their rights and some Traditions from the Prophet they deserve full obedience.

Their disagreement arose from their different understanding of the Qur'ānic evidence and the limited recognition given by some of them to the additional evidence from the Prophet which most of those who favour absolute obedience do not accept. Those who were opposed to the absolute seem to be regarding the content of the verse as not comprehensive enough to mandate absolute obedience to ūlū al-amr as we have already mentioned. In addition to that most of them did not even refer to the Traditions put forward by their opponents. The Traditions if they recognised them would have made it obligatory for them to accept that the command to obey ūlū al-amr is a comprehensive and absolute one. Al-Shāfi'ī who is one of those who maintained that obedience to ūlū al-amr was a limited one did not mention any of the Traditions. Although he maintained that obedience to the command of those in authority (ūlū al-amr) is not absolute, he did not give full details about the level of the obedience they deserve. But he seems to regard the clause in the verse

"If you should quarrel about anything refer it to God and the Apostle"¹ without giving the final say to ūlū al-amr as well as an indication of those in authority being equal to the people ordered to obey them and a limitation of the power of the ūlū al-amr. Because in the event of a dispute they have no final say, instead both of them are told to refer it to God and the Apostle only. Al-Shāfi'ī says, "So they were commanded to obey 'those in authority' - the ones whom the Apostle appointed, with conditional but not absolute obedience, concerning their rights and duties. However God said: 'If you should quarrel about anything, refer it to God and His Apostle, that is in the event of disagreement. He went on that this (i.e. the meaning implied in the latter command) is if God wills, as He said about 'those in authority' namely, that 'if you should quarrel' (but God knows best) whether they (the people) and the commander whom they were ordered to obey should refer it to God and the Apostle for a settlement on the basis of what God and His Apostle said, if they know it."²

This explanation seems to indicate the wide gap the scholars placed between the command of the Prophet and that of ūlū al-amr. Perhaps this involves the idea that ūlū al-amr are just ordinary men who do not possess extra power other than the privilege of leader-

1. Q/4/59.

2. Shāfi'ī, al-Risāla, p. 113.

ship to which obedience is due only for the sake of law and order. A similar modest interpretation was earlier reported from Abū Ḥanīfa. He said, "If any instruction comes from God we accept it very gladly and with pleasure ('alā al-rā's wa al-'ain) and any instruction from the Prophet we listen (to him) and obey him and any instruction from the Companions we will select from their opinions though we do not rebel against them. Any instruction from the Successor, they are men and we are men."¹

Although Abū Ḥanīfa did not indicate whether or not if the instructor was the leader (āmīr) who is in authority or a learned man as many others defined ūlū al-amr he seems to regard the instruction of anybody after the Prophet as just being from an ordinary man whom he considers himself to be equal to. However, little is known about his attitude towards the Qur'ānic evidence which is the main problem of interpretation.

In another attempt to strengthen the view that obedience to the command of ūlū al-amr is not absolute another early scholar, Sahl b. 'Abd Allah al-Tustarī (d. 283 A.H.) suggested where obedience to the command of ūlū al-amr or the authorities was necessary. He said that one should obey the sultān on seven occasions:

1. Samaraqandī, Tuḥfat al-Fuqā', vol. 1, p. 11.

(Commentary by Muḥammad al-Mintasir al-Kattanī the editor.)

When he commands coining money (darb al-darāhīm wa danānīr), when fixing measurement and weights (makāyil wa al-mawāzīn), law of Ḥājj (ahkām al-hajj), Friday prayer (al-juma'ah), two Muslim festivals (salāt al-'idayn) and the Muslim holy war (al-jihād). He went on that if a leader (sulṭān) forbids an 'ālim from giving a fatwā (legal opinion), the 'ālim has no right to give the fatwā and if he did give it he had disobeyed. But if the commander was only amīr (governor) he may give the fatwā against his wishes (amīr).¹

A similar explanation to this came from Ibn al-Khuwayz Mindād,² a Mālikī scholar. He maintained that obedience to the sulṭān is an obligation only in what is not disobedience to God and it is not an obligation in whatever there is disobedience to God. He continues: "That is why we said that it is not appropriate nowadays to obey or assist them or glorify them and obligation is only to go to war with them and decisions are for them, appointments of Imām (leader of the prayer), al-ḥisba (marketing supervisory committee)

1. Al-Qurṭubī, Jami' al-Ahkām, vol. 5, p. 259.

2. Ibn al-Khuwayz Mindād's full name and date of death is not yet been established, but it appears that he lived between the third and fourth century of Islām.

as long as they do that in accordance with the Islamic law. If they lead the prayer and they are sinful (fāsiq) in terms of disobedience, prayer after them is acceptable. But if they are heretics (mubtadi'a) the prayer is not appropriate with them unless one is afraid and performs the prayer out of fear and then later one should repeat the prayer."¹

These are the examples and arguments put forward by those who opposed absolute obedience. In addition to the early explanation they seem to be indicating the occasion where the obedience to the command of ūlū al-amr is paramount as the occasions which affect the whole community or the security of the community. This is shown in the examples given by both Sahl b. 'Abd Allāh and Ibn Khuwayz.

As for those who believe that the power of ūlū al-amr is an absolute one they put forward two conditions which could make them enjoy absolute obedience: One of them is that he should be a just ruler. Second he must not command something which involves disobedience of God.² Al-Tabarī however adds another one, that he must be appointed by Muslims themselves and nobody else.³

However, they maintained that ūlū al-amr should be

1. Ibid.

2. Al-Qurtubī, Jāmi' al-Ahkam, vol. 5, p. 259. Also see al-Tabarī, Tafsīr, vol. 5, p. 150.

3. Al-Tabarī, Tafsīr, vol. 5, p. 150.

given absolute obedience. Their main evidence is Q/4/59 which has been cited earlier. In addition to that they also put forward two Traditions in which the Prophet emphasised the importance of obedience to the command of the leaders (ūlū al-amr) even though their actions may not be good. The first of these Traditions was reported by Abū Hurayra who maintained that the Prophet said: "Some people will govern you after me, the honest among them will govern you with honesty while the profligate among them will govern you with profligacy. Listen to them and obey them in everything which accords with the truth and pray after them. If they do well that is in your favour and if they do badly that is in your favour but against themselves."¹

The second Tradition came through 'Abd Allāh b. 'Umar from the Prophet that the latter said: "It is the duty of every Muslim to obey his leader in what he likes and what he hates unless he was ordered to disobey (God or His Apostle). Whoever has been ordered to disobey (God) must not obey."²

According to their own view these Traditions clearly indicate that one must obey one's leader in all circumstances as long as he did not involve one in anything against the principles of Islām. They appear to be viewing ūlū al-amr as a divine institution,

1. Ibid.

2. Ibid.

obedience to which is a matter of divine command and therefore they placed the command of ūlū al-amr at the same level as that of God and His Apostle. This feeling is clearly shown in al-Tabarī's comment on the Traditions. He mentioned both Traditions in his Tafsīr. He says, "If it is certain that it is not necessary to obey anybody other than God or His Apostle or a just leader (imām 'ādī) and God has commanded us by the content of Q/4/59 to obey those who govern our affairs, then it has become clear that those whom God has ordered us to obey among those who take care of our affairs are those who govern and those whom Muslims themselves have appointed, not anybody else. Even though it is an obligation to accept an order from anybody who commands that abandoning disobedience of God should be abandoned and who calls for obedience of God. Also no obedience is obligatory to anybody in whatever he orders or forbids as long as there is no evidence indicating that it is obligatory, except for those leaders to whom God has imposed obedience. Al-Tabarī concluded that it is obligatory for whoever they ordered to obey them. He must obey them on anything in which there is no disobedience to God.¹

Furthermore they put forward another story in which, they maintained, was the reason why Q/4/59 was revealed. This story was narrated by 'Abd Allāh b.

1. Ibid.

Abbās who maintained that Q/4/59 was revealed in the case of 'Abd Allāh b. Ḥudhayfa when the Prophet sent him as head of a military unit. 'Abd Allāh ordered them to light a fire then he ordered them to enter into it. He asked them, "Didn't the Prophet tell you to obey me when he said 'Whoever obeys my governor has obeyed me.'" They replied to him, "We believe in God and obey the Prophet only to escape from the fire." When they returned to the Prophet he approved of their action and told them that there is no obedience for any creature in anything in which there is disobedience of God. He (the Prophet) also cited Q/4/29, "Do not kill (or destroy yourselves) for verily God hath been to you most merciful."¹

It is surprising that the scholars of uṣūl al-fiqh have not discussed this problem very thoroughly. It is true that in discussions on ijtihād the status of the Prophet's ijtihād is dealt with. This discussion can be seen to be also relevant to the status of the Prophet's amr. However, the nature and status of ulū al-amr is a problem which had been mainly dealt with in works of tafsīr and does not appear in works of uṣūl al-fiqh. It would seem to be an important aspect of amr and the scholars of uṣūl al-fiqh have failed to deal with it thoroughly. In mitigation, it might be argued that they

1. Al-Qurṭubī, Jāmi' al-Aḥkām, vol. 5, p. 160.

left this discussion to their studies of tafsīr. Yet,
it would seem that such a discussion is necessary for
amr in uṣūl al-fiqh.

CHAPTER III

NATURE OF THE ACTION ENJOINED BY AMR

This chapter concerns the operation of amr as far as jurists were concerned. It deals with the debate about the restricted and unrestricted nature of the action enjoined by an amr in the sense of whether the latter requires the action enjoined by the amr to be repeated. Thus it will also be concerned with the problem of the time of an amr and the various differing views about that, including the implications of their differences.

The Problem of Unrestricted Command (Amr al-Muṭlaq)

There has been a considerable discussion over the obligatory nature of al-amr al-muṭlaq in the first chapter. Al-amr al-muṭlaq is one of the aspects of amr which is subject to much argument and many different interpretations among scholars of al-uṣūl. Here the principal concern is the scope of this obligation, in terms of whether al-amr al-muṭlaq needs to be carried out only once or whether it has a wider application.

When the āmir commands someone to carry out a certain action without specifying whether or not the action should be carried out once or continuously, is it enough for the ma'mūr to carry it out once or does it mean that he has to continue repeating it? If we accept

that he has to continue, then it means that he will continue endlessly. On the other hand, if we accept that once only is required, then that would mean that he needs fresh authority if he is to carry out the action a second time. These problems represent a major area of disagreement among the uṣūlīs.

Some of them are of the opinion that al-amr al-muṭlaq implies repetition and every unrestricted command should be based on that rule as long as there is no sign that it should be carried out once only. That is the view of al-Qurāfī which he projected back to Mālik b. Anas.¹ Al-Nasafī also attributed it to Mālik as well as some Shāfi'ite scholars like Abū Ibrāhīm Ismā'il al-Muzanī (d. 264 A.H.) and Abū Ishāq al-Isfar'ānī Ibrāhīm b. Muḥammad b. Ibrāhīm b. Mihrān (d. 418 A.H.) and others.² This group put forward a crude analogy based on language rules backed up by some arguments based on reason. They suggested that since the prohibition of a certain action was the result of its repulsiveness and that prohibition would continue forever, then commanding someone to a certain action must be as a result of its goodness and thus the amr must continue forever because commanding (amr) is a direct opposite ^{to} prohibition.³ Besides that, all unrestricted commands (al-awāmir al-muṭlaqa) in the

1. Al-Qurāfī, Sharh Tanqih al-Fūsūl, p. 130.

2. Ibn al-Malak, Sharḥ al-Manār, p. 137.

3. Ibn Qudāma, Rawdat Nāzir, p. 103.

Qur'ān and the Sunna such as Q/2/43, "And be steadfast in prayer, practise regular charity and bow down your heads with those who bow down" and Q/2/185, "Fast the month of al-Ramadhān" and so on, indicate repetition and for this reason,¹ Muslims carry out these practices regularly. They also maintain that the possibility of abrogating some part of al-amr al-muṭlaq as well as the possibility of excluding (istithnā') some part of the al-amr al-muṭlaq are another indication that it should be based on continuation as abrogation and exclusion of something commanded once will mean (al-bad') to start afresh and contradiction respectively.²

Apart from the analogy evidence allegedly put forward by Mālik and his followers on repetition, they also produce a Tradition from the Prophet which they interpreted as meaning that al-amr al-muṭlaq requires repetition. The Tradition was narrated by Abd Allah b. Abbās through Abū Hurayra in different wordings. The context of the Tradition is that the Prophet gave a sermon one day and he said: Oh! People, God has imposed ḥajj (holy pilgrimage) upon you so perform ḥajj. Then Aqra' b. Hābis (around 40 AH) asked the Prophet, "Is that every year?" The Prophet did not reply until Aqra' had repeated the question three times. Then the Prophet

1. Murtadā, al-Dhari'ah, vol. 1, p. 102.

2. Al-Rāzī, al-Mahsūl, vol. 1, p. 172; also see Ibn al-Malak, Sharḥ al-Manār, p. 137.

said, "If I said, Yes, it would have become an obligation (upon you) and you would not be able to fulfil it." He went on, "The ḥajj is only once and anything above that is an extra (al-tatawwa').¹ Mālik and his followers based their evidence on understanding this Tradition and argued that Aqra' who was an Arab man and expert on the language had understood repetition in the tone of the command, otherwise he could not have asked such a question. If al-amr al-muṭlaq had meant only once literally, the tone of the command would not have presented any difficulty to him otherwise his question would have been meaningless.² Therefore, according to them, it is clear that it requires repetition.

In the case of a husband saying to his wife, "You are divorced" an operation which may involve three stages, Mālik and those who favour repetition (takrar) gave the wife the choice of divorcing herself once or twice or three times, either at one time or separately. That is if the husband said that he did not intend any specific number but if he said that he intended one or two then she has no power to do anything but whatever the husband had said of his intentions. Thus, although they may regard al-amr al-muṭlaq as involving repetition, they do not ordinarily accept it in the

1. Ibn Malak, Sharḥ al-Manar, p. 137.

2. Al-Bukharī, Kashf al-Asrār, vol. 1, p. 125.

presence of a stated intention and the context in which the āmīr has specified his intention.¹

However, the majority of scholars from all schools and most of the mutakallimīn are of the opinion that performing al-amr al-muṭlaq once will mean that the ma'mur has fulfilled his obligation.² But this group further divides among themselves.

Some of them maintained that although al-amr al-muṭlaq does not indicate repetition directly but contains some probabilities for repetition if they were considered through context could mean

1a. Ibid., vol. 1, p. 123.

b. In Malik, Muwatta' (Shaybānī Recension) Egyptian edition of 1387, pp. 191-2.

A Tradition from Nāfi' on the authority of 'Abd Allāh b. 'Umar reports that he used to say that if a man gives his wife choice in her affairs (i.e. her divorce), she has the right to say or determine how many times the divorce will be, one, two or three. Unless the man denies it and says I did not mean more than once then he will take oath and have the right to determine the number. In the same Tradition al-Shaybānī confirmed that the opinion of Abū Hanīfa is that the choice is with the husband. If he says one or two or three his statement will be final.

2. Al-Khudarī Bik, Uṣūl al-Fiqh, p. 199.

repetition.¹ However, both of them agreed that fulfilling al-amr al-muṭlaq once has satisfied the requirement of the amr except that the latter group made a reservation for this in terms of the context and the declaration of intention.² According to them, if one is commanded to perform certain actions one has fulfilled one's obligation by doing it once, but there is still a feeling of repetition understandable in the amr which could be put into action by the appearance of a sign or intention.³ This is the only view which is directly attributed to al-Shafi'ī himself. Ibn Qudāma from the Ḥanbalī school⁴ and al-Āmidī and others also followed it. Others said that al-amr al-muṭlaq does not require any repetition whatsoever, because a command is merely a demand for action which does not signify anything other than the demand itself.⁵ This view was the view of Ḥanafite scholars⁶ as well as some of the mutakallimīn including Abū al-Ḥusayn al-Baṣrī⁷ and the Zāhirī scholar Ibn Ḥazm.⁸

1. Al-Nasafī, Sharḥ al-Manār, p. 137.

2. Al-Āmidī, al-Ihkām, vol. 2, p. 22.

3. Ibid.

4. Al-Bukhārī, Kashf al-Asrār, vol. 1, p. 122.

5. Al-Khudarī Bik, Uṣūl al-Fiqh, p. 199.

6. Al-Qurāfī, Sharḥ Tanqīh al-Fusūl, p. 130.

7. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 108.

8. Ibn Ḥazm, al-Ihkām, vol. 3, p. 316.

A further suspended (tawaqqaf) judgement on whether al-amr al-muṭlaq should be regarded as requiring repetition or not because neither of the two is more appropriate than the other and therefore it is appropriate to suspend judgement until the exact implications of the amr are known. Those who hold this view are termed ahl al-waqf and represented by Imam al-Ḥaramayn and the Shī'ite al-Murtadā. Thus the different views of those who do not accept repetition can be summarised as follows:

1. The opinion that it does not directly imply repetition but it contains some probabilities which cannot be ignored and those probabilities could imply repetition just by showing a sign of intention.
2. The opinion that it does not require repetition because amr is merely a demand for action and doing it once has fulfilled its obligation.
3. The opinion of ahl al-waqf which suggested that at least once is required but whether or not extra is needed is not known until there is evidence.

Shāfi'ī and those who followed him who are of the opinion that al-amr al-muṭlaq does not require repetition but contains probability are in fact very similar in this to those who reject the idea of repetition outright, in terms of their defence of their view. However their

interpretation of this rejection has made them paradoxically closer to those who favour repetition. They also argued that if someone says for example "pray" or "fast", that involves a command to perform the action of praying and the action of fasting through the imperative form (if'al) of the verb whose root meaning (al-masdar) includes the idea of the action being performed a number of times. Therefore it should be interpreted in that way.¹ To them if someone says to his wife, "You are divorced three times" that divorce will occur in that number because the masdar involves the possibility of a number of times and the command is completed by the specification of the number. Yet if he says, "You are divorced" without specifying any number it will occur only once but nevertheless probability of number still remains understandable and whenever a context is shown which can indicate number it will be based on it.²

Thus Mālik's opinion is closer to that of Shāfi'ī in principle but not in practice because Mālik is saying that it requires repetition without context while Shāfi'ī maintained that it requires repetition only with context.

It appears that Shāfi'ī and those who agree with him are saying that a command made by an āmir, e.g. if'al or idrib and anything in that form, is an

1. Ibn Mālak, Sharḥ al-Manār, p. 137.

2. Al-Amidī, al-Iḥkam fī Usūl al-Ahkam, vol. 2, p. 22.

See also al-Bukhārī, Kashf al-Asrār, vol. 1, p. 123.

inconclusive statement because the number of times the action should be performed has not been stated. Thus there is as much need for "once" to be indicated if the action is only meant to be performed once and the verb itself implies that the action should be performed a number of times. Whenever the āmir shows his intention or there is context which indicates that he wants the action to be performed once or a number of times that statement will be completed. This interpretation has brought their opinion closer to those who favour repetition except that they based their term of repetition on context or declaration of intention while those who favour repetition say it without any condition.

Al-Āmidī provides another example in support of that view. If a man sends his servant to buy one piece of bread or meat and he bought more than one then the servant is liable to be blamed because there is no context to justify his action of buying more than one. Even though the word contained probability for that, yet the addition of the number limited it.¹

Those who supported Shafi'ī ⁱⁿ maintaining that al-amr al-muṭlaq contained probability of repetition also used the Tradition about the pilgrimage to support their view that al-amr al-muṭlaq contains this probability

1. Al-Āmidī, al-Ihkām, vol. 2, p. 22.

of repetition.¹

However, those who reject outright that al-amr al-muṭlaq requires repetition, argue that al-amr does not contain any number of times or specific indications of times when al-amr should be performed.² They gave as an example for that that if a master commands his servant to enter a house or asked him to buy meat nobody would understand repetition in that command. And if the master blames the servant for disobedience or for abandoning repetition, the master himself deserves blame from wise people because there was nothing indicating repetition in al-amr al-muṭlaq.³ On the other hand, if the servant repeated the action, his master would have every right to rebuke him and say that he had not commanded the action to be repeated.⁴ However, they agreed with their opponents that there are some awāmir in the Qur'ān which are based or must be based on repetition. Yet they maintained that that did not mean that they were originally meant to be repeated.⁵

1. Al-Bukhārī, Kāshf al-Asrār, vol. 1, p. 125.

2. Ibn Qudāma, Rawdat al-Nazir, p. 104.

3. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 108.

4. Ibid.

5. Al-Ghazalī, Mustasfā, vol. 2, p. 7.

The most detailed argument about their opinion came from a Zāhirite scholar Ibn Ḥazm and the late Ḥanafite scholar 'Abd al-'Azīz al-Bukhārī (d. 730 A.H.) Ibn Ḥazm maintained that the correct opinion was that one has fulfilled his obligation by carrying out al-amr al-muṭlaq once because it is impossible to be obedient and disobedient in the same action. He said that if one ordered a certain action to be performed without giving details that it should be performed repeatedly and the action was done once by the ma'mur, the latter deserves to be called obedient and he is no longer disobedient.¹ Ibn Ḥazm is aware of Shāfi'ī's opinion that blessing for the Prophet during the last rak'a of every prayer should be based on repetition as a matter of obligation on the basis that al-amr al-muṭlaq at least contains probability. He suggested that if the evidence given by the Shāfi'ītes here on the obligatory nature of repetition is correct, then to fix the blessings during the sitting of the last rak'a of the prayer would not have been better than the time of standing (al-wuqūf) and of bowing (rukū') as well as at every movement of human life because the verse did not say where in ṣalāt it should be said, nor how many times, so that if the Shāfi'ītes were right according to their own argument they should be saying it at every

1. Ibn Ḥazm, al-Ihkām, vol. 3, p. 316.

point in the course of the prayer (ṣalāt).¹ Ibn Ḥazm further maintained that those who made repetition compulsory said it only at the sitting during the last rak'a in the prayer after the second al-tashāhud.² He put forward another Tradition in which refuge was sought against someone to whom the name of the Prophet was mentioned in his presence and he did not say the blessing on him. Ibn Ḥazm concluded that if that Tradition was authentic he would have said that it was obligatory for everyone to say the blessing on the Prophet whenever he was mentioned. But if the Tradition was not correct then the most certain and authentic decision is that whoever says the blessing on him (the Prophet) once, God will say bless him ten times. Also it is certain that whoever refuses to bless the Prophet would be considered as an unbeliever, but if one says the blessing on him once, for example, and then abandoned it one would be regarded as negligent and as having deprived oneself of a significant reward without being a sinner.³

The remark made here by Ibn Ḥazm can leave one with the impression that Ibn Ḥazm separates between obligatory nature of repetition and the obligatory nature of the determination to carry out al-amr al-muṭlaq in future.

1. Ibn Ḥazm, al-Ihkam, vol. 3, p. 316.

2. Ibid., p. 319.

3. Ibid., p. 316.

He rejected the obligatory nature of repetition while he believed that one should have the determination to carry it out in the future, even though one may not do it. That determination is one of the evidences put forward by those who favour repetition of al-amr al-muṭlaq as one indication of repetition but most of the opponents of repetition (al-takrār) have constantly rejected it.¹

However, Ibn Ḥazm maintained that what made the view of repetition so invalid was that if it was correct, it would have made it compulsory for someone greeted to answer the greeting forever in order to conform with the obligation to repeat a sunna from the Prophet: "When you are greeted with a certain greeting, greet (them) with better than that or answer it."² Ibn Ḥazm maintained that there is no disagreement (among scholars) if one answers once that one would be regarded as having answered the greeting. He cited another example, Q/4/92: "Blood money should be paid to his family. And a believing slave should be free." He said that this is an indication that repetition is not necessary unless it was specifically mentioned because compensation is required only once.³ Ibn Ḥazm believes that those who say that al-amr al-muṭlaq requires repetition said it

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1. Al-Āmidī, al-Ihkam fī Usūl al-Ahkam, vol. 2, p. 25.
 2. Ibn Ḥazm, al-Ihkam, vol. 3, p. 317.
 3. Ibid., p. 317.

or practised it on minor issues while adopting the opposite view on most issues.¹

Ibn Ḥazm's view was echoed by al-Bukhārī in his book Kashf al-Asrār which he wrote as a commentary on the Kanz al-Uṣūl of al-Bazdawī (d. 483 A.H.). Al-Bukhārī himself was Ḥanafite. Al-Bukhārī started by defining the terms takrār and 'umūm. He seems to imply that 'umūm is an order (amr) which although singular in form, i.e. requiring once, nevertheless because of its comprehensive nature and general implication requires the order to be carried out more than once. Takrār, on the other hand, he seems to imply an order where repetition is made clear by the nature of the words of the order (amr). But it appears that he regards al-'umūm as a division within the takrār itself.² However, he fails to give a detailed explanation about the singular form of the 'umūm which he is trying to defend. The examples he gave in support of both definitions also indicate that he uses al-'umūm for some kind of al-takrār which is actually less than al-takrār.³ He said that the minimum for al-'umūm will be three times at one occasion and the minimum for al-takrār is that the action should be twice.⁴ He gave examples for that al-'umūm as a man

1. Ibn Ḥazm, al-Ihkam, vol. 3, p. 319.

2. Al-Bukhārī, Kashf al-Asrār, vol. 1, p. 122.

3. Ibid., vol. 1, p. 122.

4. Ibid., vol. 1, p. 122.

who divorced with three statements of divorce at one time and an example for al-takrār as a man who divorced one after another¹ (at different times). He suggested that these two terms could have been used to mean al-dawām (continuation) and that both of them are synonyms here because al-'umūm is not expected in a commanded action except in the way of repetition (al-takrār).² He quoted a statement from Kitāb al-Mīzān that the word al-takrār was not used here in its original meaning which is repetition of certain action itself because that view was not welcomed by ahl al-kalām but it was used here only as renewal of similarity in the sense of synonyms.³ It seems that he regards that as al-'umūm continuation. Al-Bukhārī also quoted another definition for al-takrār from another book (al-Qawāti') as "performing a certain action and returning to that action after it has been finished."⁴

However, al-Bukhārī maintained that al-amr al-muṭlaq does not require repetition nor does it contain any probability of repetition.⁵ He also attributed this view to some people whom he did not name but described as "Mashayikhuna"⁶ (our scholars). He reported another

1. Ibid., vol. 1, p. 123.

2. Ibid., vol. 1, p. 123.

3. Ibid., vol. 1, p. 123.

4. Ibid., vol. 1, p. 123.

5. Ibid., vol. 2, p. 123.

6. Ibid., vol. 2, p. 123.

statement from Abū Yusr¹ who attributed this view to both Mālik, al-Shāfi'ī and many other scholars. But al-Bukhārī himself has already identified al-Shāfi'ī with the view that al-amr al-muṭlaq does not require repetition but contains the probability of repetition.²

As far as this view is concerned, if a man tells his wife "divorce yourself" for example, the wife has power to divorce herself only one of the required threefold divorces needed for the full divorce. This is the case regardless of whether the husband had not intended any particular number of divorces or whether he had intended one or two divorces. But if he said that he intended three then three would occur at once.³

Al-Bukhārī maintained that the tradition about the pilgrimage cannot be taken to imply repetition. He argued that if the tradition had required repetition it would not have presented any problem to Aqra' because he would have understood the repetition implicit in the command. Instead they interpreted Aqra''s question as showing that he was confused about whether or not ḥajj is like other religious performances which are repeated like Zakāt and Ṣalāt. But since ḥajj is a periodical

1. Abū Yusr is Muḥammad al-Bazdawī the author of Kanz al-Uṣūl which al-Bukhārī based his commentary upon
2. Al-Bukhārī, Kashf al-Asrār, vol. 1, p. 123.
3. Ibid.

obligation, he was confused as to whether or not it should be treated like the others.¹ Therefore he asked to ascertain. However, they rejected that he asked because he thought that al-amr al-muṭlaq necessarily involved repetition.

Shāfi'ī solved the problem of repetition of the blessing for the Prophet during the last rak'a of every prayer by arguing for its repetition as a matter of obligation on the basis that al-amr al-muṭlaq at least contains probability. And that view was supported by the Qur'ānic verse: "God and His Angels send blessings on the Prophet. O! Ye that believe! Send ye blessings on him and salute him with all respect."² That verse along with a Tradition in which a Companion asked the Prophet: "God has commanded us to say blessings on you, so teach us how to say blessings." The Prophet cited al-salat al-Ibrāhīmiyya which was normally said at the end of every prayer: Allahuma sallī 'ala Muhammad wa 'ala āl-Muhammad kamā sallayta 'ala Ibrāhīm wa bārik 'alā Muhammad wa 'ala āl-Muhammad kamā bārakta 'ala Ibrahim fī al-'alamīn inaka hamīd Majīd.³

On the other hand, ahl al-waqf represented by Imām al-Ḥaramayn and by the Shī'ite al-Murtadā, put forward a number of suggestions. They pointed out that whether

1. Al-Bukhārī, Kashf al-Asrār, vol. 1, p. 123.
2. Qur'ān 33/56.
3. Sana'anī, Subul al-Salām, vol. 3, p. 192.

or not al-amr al-muṭlaq should be interpreted as requiring repetition or requiring to be performed once is not clear and for that reason it is appropriate to confirm from the āmīr whether or not he meant repetition or once. They argued that if it has been confined to either repetition or there has been a clear statement like idrib wāhida (beat once) it would not be necessary to ask him to confirm it.¹

These people who support waqf also argue that if someone says "do it once" or "do it continuously" this could have been a refutation of both views, in support of repetition or in support of doing it once only, because if you say that al-amr al-muṭlaq requires repetition by its nature, it should be supposed that everyone would naturally know that when you say if'al, everybody will realise that you meant repetition. On the other hand, if al-amr al-muṭlaq only requires the action to be performed once, it should be supposed that when you say if'al everybody will realise that you mean the action to be performed once.² The fact that there are two parties putting forward contradictory understandings of the number of times al-amr al-muṭlaq should be performed indicates that the best position, in their view, was to withhold judgement as to the

1. Al-Murtadā, al-Dhariʿa, vol. 1, p. 101; also see Imām al-Haramayn, al-Burhān, vol. 1, pp. 127-129

2. Al-Murtadā, al-Dhariʿa, vol. 1, p. 101.

number of times it should be performed.

Al-Murtadā also tried to explain the basic differences on this point in al-Dharī'a ilā Uṣūl al-Sharī'a. After citing opinions of several schools with their differences he maintained that the reality with regard to these differences only involved arguments about whether there was an additional number of times involved in al-amr al-muṭlaq because it already contained once without any disagreement among scholars. Those who argued for repetition also admitted that once is needed and more than once also. While those who limited it to once said that no additional number was needed. On the other hand, ahl al-waqf maintained that once was needed without any doubt but declined to say whether or not additional times were required. Al-Murtadā maintained that this latter view is the correct view. He argued, in support of that, that it was not appropriate to understand what the word did not obviously require nor to understand the way of applying it to what it could be applied to which it did not require. He cited the form of imperative (idrib) and maintained that the word did not contain place, time nor the instrument with which the beating could be carried out. He said that for that reason it is necessary not to understand from the word what it did not require. He suggested that one can only say that it requires once because that is the minimum which complied with the command.¹

1. Al-Murtadā, al-Dharī'a, vol. 1, p. 100.

Al-Murtadā gave another reason that the amr occurs in the Qur'ān as well as customary usage implying repetition sometimes and at another time implying only once without addition. He said that the use of one expression in two different senses indicates that it could basically mean both ideas unless evidence was provided to limit it to one of them. Al-Murtadā like other scholars advocating al-waqf used the possibility of asking the āmir whether or not he meant repetition or once as further evidence of waqf as well as restriction like "do it once" and "unrestricted", e.g. "do it for ever".¹

It seems that al-Murtadā followed this view in conformity with his original principle that once a certain word has been successfully used for two different meanings the word should be regarded as originally sharing both meanings. That also was the view he adopted earlier on whether the word "amr" is originally for al-qawl al-makḥṣūṣ or for the action when he maintained that it was for both of them. On the basis of this rule only context can show which one the āmir intended.² However his insistence on this doctrine underlines the importance he placed on the language in defining legal principles.

In another attempt to substantiate the view that

1. Ibid.

2. Ibid., p. 27.

al-amr al-muṭlaq does not require repetition, Fakhr al-Dīn al-Rāzī (d. 606 A.H.) also maintained that the form of imperative was originally established for demand (for action) without any feeling of either many or once. But if that demanded action can be performed once it will be enough.¹ He took notice of differing opinions like those who maintained that it requires once or those who say that it requires repetition and so on, but he insisted that there was no indication of that. Among the evidences he gave in support of his view was the consensus of all Muslim scholars that some of the commandments in the Qur'ān are based on repetition, e.g. command for five daily prayers while some others are based on once, e.g. command for ḥajj² (holy pilgrimage). Fakhr al-Dīn al-Rāzī differentiates between the command of God and the command of human beings. He said that in the case of human beings it may not require repetition at all sometimes and at others it may require repetition. He gave an example for the first case that if a master orders his servant to buy meat, nobody can sense repetition in that order and if the master blames the servant for not carrying out his order on the basis of repetition, the wise people will blame him because there was no proof for that requirement. He also gave an example of the second case which may require repetition

1. Al-Rāzī, al-Maḥsūl, vol. 1, pp. 162-63.

2. Ibid., p. 164.

as if someone says "take care of my sheep" and he took care of them for one hour and then released them, he would be blamed for releasing them. Al-Rāzī concluded that since that be the case reality did not require repetition because it actually indicated commonness (alā al-qadr al-mushtarka) between two different possibilities. At the same time there is no indication as to which one of the possibilities is envisaged, i.e. there is no indication whatsoever as to repetition nor to performing an action once. It is merely a demand except that it is not possible to connect that word to al-wujūb (obligation) with anything less than once. So once became more or less like necessity to be performed as the ma'mur bihi. In this way once was indicated.¹

On the other hand, al-Rāzī examined both the customary use of language and the logical aspects of al-amr al-muṭlaq as meaning repetition. With the customary use of language, he maintained that there was no difference between say yaf'al and if'al except that the first is a report (khabar) and the second is a demand (ṭalab). He argued that everybody agrees that the meaning of yaf'al and its content would be completed in the performance of the action once. Therefore the same meaning must be contained in the imperative form (if'al) otherwise they would have differed in other respects

1. Ibid., pp. 165-166.

than their difference in being khavar and ṭalab. On the logical aspect of it he argued that the opinion that it required repetition would make the requirement of its performance occupy all the time of the man responsible for it (mukallaf) and therefore there would be no time left without it being due to be carried out (al-ma'mur bihi). Since the word did not indicate any specific time, then to confine it to a certain time would not be any better and yet basing it on every time is not possible.¹

The argument as to whether the action enjoined by al-amr al-muṭlaq required repetition or not is really a very important argument about the nature of the injunctions of the Qur'ān and the sunna. Yet there was always implicit understanding among all the disputants as to the obligations of the main injunctions of the sharī'a. It is only in matters like the case of divorce through the declaration of the husband that a serious legal difference arises. The Mālikites, in adopting the general view of repetition, seem to be taking the most all-embracing attitude towards the injunctions of the sharī'a while those who reject repetition seem to be taking a very literalist stance on the actual words. It is not surprising to find the Zāhirīs among them. It is not surprising either that mutakallimīn have taken up an intermediate position between the two views. Their argument appears, naturally, the most logical.

1. Al-Rāzī, al-Maḥsūl, vol. 1, p. 166.

The Problem of Restricted Command (al-Amr al-Mu'allaq)

Thus are the views of scholars concerning unrestricted command (al-amr al-muṭlaq) but restricted command (al-amr al-mu'allaq) also has its own problem. For those who based al-amr al-muṭlaq on repetition and those who maintained that it contained probability of repetition, restricted command (al-amr al-mu'allaq or al-muqyyad^a as some scholars call it) is more likely to be based on repetition as they regard ta'līq or taqyid itself as a sign of designation, therefore they are in agreement on the need for its repetition.

Disagreement on al-amr al-mu'allaq came among those who had rejected the view that al-amr al-muṭlaq required repetition. Here it is not easy to reject it because the context is more obvious, therefore some of them said that al-amr al-mu'allaq requires repetition while others still insist that it did not require repetition (al-takrār). But before going into details about their opinions it is useful to give some examples for al-amr al-mu'allaq.

Al-amr al-mu'allaq is the one whose designation is clear and known either by specifying its time, the place in which it must take place or by making it dependent on certain conditions which must be fulfilled or any other thing of that kind which will make it understandable to everyone.¹ As already mentioned it is also called

1. Ibn Malak, Sharḥ al-Manār, p. 137.

al-amr al-muqayyad.¹ Al-amr al-mu'allaq could come in two different ways: by condition (shart) or reason ('illa). E.g. Q/5/6, "If ye are in a state of ritual impurity bathe your whole body" or "if Khalid comes give him two pounds." Al-amr al-mu'allaq could come in the way of quality, e.g. Q/5/41, "As to the thief, male or female, cut off his or her hands. A punishment by way of example from God for their crime. And God is exalted in power" or Q/24/2, "The woman and man guilty of adultery or fornication flog each of them with a hundred stripes." In the first example taking a bath and giving money are due only when the condition of being impure and the arrival of Khalid have been met respectively or happened. While cutting hands and flogging in the second examples depend on the existence of theft or adultery.

There is a dispute on how to identify the shart (condition) from the 'illa (reason). Some of the uṣūlīs maintained that there is no difference between the shart and the 'illa in the sense of implication and whenever either one of them is available the verdict (al-ḥukm) will be available while others believe that the shart is one thing and the 'illa is another thing. The shart does not necessarily imply any ḥukm unlike the 'illa which always must be accompanied by a ḥukm.² Nevertheless

1. Ibn Mālak, Sharḥ al-Manār, p. 137.

2. Al-Bukhārī, Kashf al-Asrār, vol. 1, p. 124.

it appears that the 'illa is the most important of them. Among those who believe that the shart and the 'illa are not the same was Muḥammad al-Amin Shinqītī. He gave some examples of an 'illa and a shart without being accompanied by ḥukm or amr and an example of the 'illa whose command to perform was not repeated when the 'illa itself was in reality repeated, e.g. One who urinates several times or one who has sexual intercourse with his wife several times.¹ Thus the 'illa (reason) for the command to perform ablution is repeated and therefore by implication one is to renew it once one's ablution (ghūsl) repeatedly while the command itself for it is made only once. Another example is like someone who committed adultery several times which will be punished once.² He gave an example of a case in which the 'illa and the command were repeated together: if someone beats a pregnant woman and she has a miscarriage, he has to pay two ghurra. If someone has twin babies, he has to slaughter two goats (aqīqatan) for the 'aqīqa ceremony.³

It appears that Muḥammad al-Amīn's view enjoys support from other scholars like the Shī'ites and ahl al-wāqf but discussion on the difference between shart and 'illa, though very useful, is not the heart

1. Shinqītī, Mudhakarāt al-Uṣūl al-Fiqh, p. 195.

2. Ibid., p. 195.

3. Ibid., p. 195.

of the investigation here. The main argument is whether or not al-amr al-mu'allaq (or al-muqayyad) also require the commanded action to be repeated by repetition of that al-ta'līq on the shart or 'illa as was the case in al-amr al-muṭlaq, according to those who held that view.

Those scholars like Mālik,¹ al-Muzanī and Abū Ishāq al-Isfarānī,² who have held the view that al-amr al-muṭlaq requires repetition believe that in the case of al-amr al-mu'allaq it is even more appropriate to require repetition because they consider al-ta'līq on the shart or the 'illa as a direct context which al-amr al-muṭlaq lacks. However, those who have earlier rejected the idea of repetition like Abū Ḥanīfa³ and some of his followers and those who maintained that it only contained probability like Shāfi'ī and some of his followers⁴ divided among themselves. Some of them changed their minds and supported Mālik and other scholars who maintained that al-amr al-mu'allaq will be repeated with the repetition of what it depends upon.⁵ Shāfi'ī also favours this view.⁶ Abū Ḥanīfa and most of his followers, many scholars from Aḥmad b. Ḥanbal's

1. Al-Qurāfī, Sharḥ Tanqīḥ al-Fusūl, p. 130.

2. Ibn al-Malak, Sharḥ al-Manār, p. 137.

3. Al-Bukhārī, Kashf al-Asrār, vol. 1, pp. 122-3.

4. Ibn al-Malak, Sharḥ al-Manār, p. 137.

5. Al-Qurāfī, Sharḥ Tanqīḥ al-Fusūl, p. 131.

6. Ibn al-Malak, Sharḥ al-Manār, pp. 137-138.

school and the Shi'ites are of the opinion that there is no difference between al-amr al-muṭlaq and al-mu'allaq. Therefore if al-amr al-muṭlaq did not require repetition the same is the case for al-amr al-mu'allaq.¹ Aḥmad b. Ḥanbal himself was reported by Ibn Qudāma as being in favour of Mālik and Shāfi'ī's opinion.²

The main reason for the disagreement here seems to have arisen out of the difficulty of verifying what the amr actually depends upon. If it is certain that what it depends upon is its 'illa (i.e. adultery is the 'illa for flogging or stoning as a punishment), it appears that there is an agreement among the majority of scholars that that kind of command (amr) will be repeated with repetition of that 'illa or reason. Even most of the Shi'ites and a considerable number of those who oppose repetition support this kind of repetition,³ but not all of them and some of those who support it interpret it in a different way. Thus al-Āmidī who himself is opposed to repetition has maintained that there is agreement also on that basis that it is sufficient to present the repetition of the 'illa as legal evidence whenever it is available.⁴ But if what the amr depends upon has only a limited effect upon it,

1. Al-Bukhārī, Kashf al-Asrār, vol. 1, p. 123.

2. Ibn Qudāma, al-Mughnī, vol. 8, p. 164.

3. Al-Murtada, al-Dhari'ah, vol. 1, pp. 112-114.

4. Al-Āmidī, Ihkam, vol. 2, pp. 28-29.

like the shart, then most of the scholars did not support repetition in that circumstance.¹ An example of that is in the kind of command which says, "If Sa'īd comes, give him two pounds." Opponents of repetition argued that the arrival of Sa'īd was not the reason why he deserved the money and that is why it is not necessary to give him another two pounds if he comes on a second occasion.

The Ḥanafites are the most active opponents of repetition. They do not believe in the repetition of the amr whether it is muṭlaq or mu'allaq.² However, in the case of repetition being as a result of the 'illa like Q/24/2, "The woman and the man guilty of adultery or fornication flog each of them with a hundred stripes." They repeat the flogging as many times³ as the sexual

1. Al-Āmidī, al-Ihkam, vol. 2, p. 28.

2. Al-Bukhārī, Kashf al-Asrār, vol. 1, pp. 122-3.

3. This is only if the person involved has been punished for the first one before he committed another one. But if it has happened several times before the case comes to the Imām or Qādī there is no disagreement that he will be flogged one hundred stripes only. See al-Sana'nī, Subul al-Salām, vol. 4, p. 9 and also Ibn Qudāma, al-Mughnī, vol. 8, p. 213.

intercourse is repeated. Yet in the case of Q/5/41, "As to the thief, male or female, cut off his or her hands, a punishment by way of example from God" which also falls under the same principle, They only cut off the right hand of the thief on the first occasion of stealing and his left leg on the second occasion of stealing and detain him on the third.¹ They maintained that Ibn Mas'ūd's reading of the Qur'ānic verse has specified that only the right hand of the thief should be cut.² And once it has been cut there will be no right hand left to be cut. This is the summary view of Ḥanafites concerning the repetition of cutting as a result of the repetition of stealing.

Although Abū Ḥanīfa himself is known to have opposed any kind of repetition, there is little direct

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1. Muḥammad b. Ḥassan al-Shaybānī (d. 189 A.H.) has attributed it to 'Umar, 'Alī, Abū Ḥanīfa and the generality of the Ḥanafites of his time though he did not mention anything about detention or what will happen to him if he steals a third time. See Mālik, Muwatta (Shaybani version) p. 239. Also see Ibn al-Malak, Sharḥ al-Manār, p. 147.
 - 2a. Ibn al-Malak, Sharḥ al-Manār, p. 148.
 - b. Ibn Mas'ud's reading which is not in the existing Qur'ān, reads: "Male thieves and female thieves cut their rights," instead of hands as it exists in other readings. (See Tafsīr al-Qurtubī, vol. 6, p. 167.)

information from him on the issue of repetition of al-amr al-mu'allaq. Most of the information we have about his opinion came through his scholars. Among them was 'Abd al-'Azīz al-Bukhārī the author of Kashf al-Asrār, (a commentary work on Kanz al-Uṣūl of al-Bazdawī. Al-Bukhārī gave more details about the Ḥanafites' stand on the issue of repetition of al-amr or ḥukm with the repetition of the 'illa. In the book he quoted al-Bazdawī who reported that some of our scholars (he meant Ḥanafites and he called them mashāyikhunā) are of the opinion that al-amr al-muṭlaq did not require repetition nor did it contain any probability of repetition. But if it is based on the sharṭ or 'illa then it will require repetition¹ like Q/24/2, "The woman and the man guilty of adultery or fornication flog each of them" or sifa like Q/5/41, "As to thief, male or female, cut off his or her hand: a punishment by the way of example." Al-Bazdawī added that the majority of Ḥanafite scholars are of the opinion that amr did not require repetition whether it was muṭlaq or mu'allaq and that a command for action would be fulfilled by performing it at the minimum level in which the ma'mūr could be regarded as obedient by doing it.² Commenting on that report, al-Bukharī maintained that the first opinion which suggested that if amr depended on sharṭ or sifa it would be repeated

1. Al-Bukhārī, Kashf al-Asrār, vol. 1, p. 122.

2. Ibid., vol. 1, p. 123.

was the view of the Shāfi'ites (probably indicating the mutakallimīn) among those who have already maintained that al-amr al-muṭlaq did not require repetition but contained probability. He said that that view was proper according to their principle because when al-amr al-muṭlaq contained probability of repetition then its dependence on condition or quality is the context that confirms that probability. But according to those who maintained that it does not require repetition itself nor contained probability of repetition its dependence on a condition made no difference to this.¹

Al-Bukhārī himself is in favour of the Ḥanafites' opinion² and that was the opinion of Abū Yusr al-Bazdawī who attributed it to both Mālik and Shāfi'ī, though investigation has shown that both of them are in fact in favour of the opinion that if the amr is based on a sharṭ or sifa it will be repeated with the repetition of either the sharṭ or sifa. Al-Bukhārī quoted another Ḥanafite scholar who was of the opinion that if amr depends on a sharṭ or sifa it could require repetition. But he insisted that the truth is that an amr did not require repetition nor contain it whether it depends on anything or not.³

1. Al-Bukhārī, Kashf al-Asrār, vol. 1, p. 123.

2. Ibid., vol. 1, p. 123.

3. Ibid., vol. 1, p. 123.

Al-Bukhārī is aware of other evidence withheld by those who support repetition of the ḥukm with the repetition of the condition (shart) like Q/17/78, "Establish regular prayers at the sun's decline" which they said will make prayer be repeated with repetition of the sun's decline. And Q/5/6, "If you are in a state of ritual impurity bathe your whole body"¹ which they said will make ghusl be repeated with the repetition of sexual intercourse, along with a Tradition from the Prophet in which he said in the case of annual taxation of the camel, "From five freely grazing camels a goat (he meant that a goat will be paid as taxation of five freely grazing camels) and that makes taxation payment of a goat as taxation of five camels on condition of them being freely grazing."² He was also aware that they regarded the shart as similar to the 'illa because according to them if the shart exists that which is conditioned (al-mashrūṭ) also will remain. They even believe that the shart is more emphatic than the 'illa because the mashrūṭ will disappear with the disappearance of shart unlike the ma'lūl which may not disappear with the disappearance of the 'illa.³

In his reaction to these arguments, al-Bukhārī maintained that the interpretations of these were invalid because there was no effect of shart on

1. Al-Bukhārī, Kashf al-Asrār, vol. 1, p. 124.

2. Ibid., vol. 1, p. 124.

3. Ibid., vol. 1, p. 124.

repetition, because if someone says idrib it does not require repetition and the same is the case if he says idribhu in k̄an q̄a'īman (beat him if he is standing).

He said that that does not require repetition either.¹

He said that one only appeared to be intending that the expression of darb refers to the particular circumstance of standing on that occasion. He believes that repetition of the commandments of God are not on the basis of linguistic necessity but because of a divine evidence which exists in every condition. He cited Q/3/93, "God requires pilgrimage thereto for men who can afford the journey." He argued that despite the fact that hajj is an obligation, it will not be repeated as an obligation with repetition of the shart which is the ability to go to the hajj.²

Regarding their comparison of the shart with the 'illa, he rejected that view which he described as weak (da'īf) because according to him the 'illa always necessitates a hukm and it will never be separated from the necessitated hukm. He said that as far as he was concerned the shart was not a necessitating point and that is why shart could be available with availability of the mashrūt as well as the mashrūt without shart.³

He went on that the difference between them is that

1. Ibid., vol. 1, p. 128.

2. Ibid., vol. 1, p. 128.

3. Ibid., vol. 1, p. 128.

the confirmation of a ḥukm is limited to the 'illa without any further evidence. But confirmation of the mashrūṭ is not limited to the sharṭ only but needs additional necessitating evidence which will necessitate it and that is an 'illa.¹ He further maintained that all evidences put forward by the Shāfi'ites in which they maintained that the ḥukm was repeated with the repetition of the sharṭ are in fact involved with the sharṭ being either directly or indirectly an 'illa.²

Regarding the cutting off of the four limbs of a thief in accordance with the repetition of the ḥukm with the repetition of the sharṭ, al-Bukhārī maintained that as far as he was concerned the four limbs of a thief would not be cut off, but the thief would be detained until he repented after the right hand and left leg were cut off.³ He is aware of Shāfi'ī's opinion and practice that the four limbs of the thief should be cut off because according to Shāfi'ī God used the word hand (yad) in the plural (aydī) and attributed it to the male thief and the female thief and that has necessitated it to be general.⁴ Al-Bukhārī argued that the idea of plurality is not workable because neither the male thief nor the female thief had two right hands. He argued that since they only have one right

1. Ibid., vol. 1, p. 128.

2. Ibid., vol. 1, p. 128.

3. Ibid., vol. 1, p. 131.

4. Ibid., vol. 1, p. 131.

hand each it would seem more appropriate that the next thing to be cut would be the left, since the left hand also could be used to steal.¹ However, he went on to point out that the limb to be cut on the second time was specified as the left leg by both sunna and the consensus of Muslim scholars. Surprisingly, according to him, this does not contradict the statement established by the Qur'ān. He further maintained that Ibn Mas'ūd's reading of right hand (aymān) did not contradict the general reading of hands (aydī) but rather restricted it because according to him obligation is to cut one hand and Ibn Mas'ūd's reading, which restricted the cutting to the right hand, was an additional explanation which made it to look as if God was saying "cut off the right hand from their hands because the cutting does not apply to the left hand."² Al-Bukhārī further defended the Ḥanafites' rejection of cutting anything off on the third and fourth occasions of theft by maintaining that if the Qur'ānic verse had implied cutting off the left hand it would have to be after the first hand, and the left leg would not have been cut while the left hand still remained uncut because that would involve diverting away from a specified text.³

On the basis that Ibn Mas'ūd's reading was a

1. Ibid., vol. 1, p. 131.

2. Ibid., vol. 1, p. 131.

3. Ibid., vol. 1, p. 131.

restriction to the general reading, Ḥanafites interpret (al-aydī) in the general reading as a metaphorical use for the dual like Q/66/4, "If ye two turn in repentance to Him (God) your hearts are indeed so inclined." Al-Bukhārī argued that it is not possible to operate on the basis of the plural term (aydī) for the following reason: since it is clear that the left hand was not included in the Qur'ānic verse and that it did not contain any meaning other than the right hand then it is baseless for opponents to use the verse as evidence as well as their analogical interpretation because there is no definition for it.¹ Also he argued in grammatical terms and maintained that since the infinitive form (al-masdar) of sāriq (which is sarqa) did not contain numbering then it is not appropriate to mean by the verse anything other than right hands and that is because it does not contain numbering. Therefore he suggested that the word could have been used to mean either the maximum number possible (al-kull) or the minimum number possible (al-aqall) but he rules out the possibility of maximum (al-kull) here because he said that the number of thefts it involved may not be known until the end of the thief's life and that may mean that the thief would not have his hand cut off until the time of his death even if he stole thousands

1. Ibid., vol. 1, p. 131.

of times.¹ He also maintained that the consensus of Muslim scholars was against the maximum being meant here. So, it is clear that only one stealing is meant. Therefore it looks as if God is saying in the verse: "Any male or female who undertakes an act of stealing, cut off their hands."² He also suggests that the obvious meaning of the verse requires both hands to be cut for one stealing although that has been ruled out by consensus of Muslim scholars. Then it is clear that the only obligation which remains to be understandable from the verse is the cutting off of one hand for one theft for every male thief and every female thief.³ Again he added that that one hand may be right or left (according to the obvious meaning) but consensus according to him has confirmed again that the right hand was meant. The sunna both in statement and practice as well as Ibn Mas'ūd's reading of the right hand (aymān) have also confirmed it. So, the left hand is not intended.⁴ Al-Bukhārī argued that if the word sarq contained any numbering ('adad) as opponents have maintained, it would be appropriate to confirm the cutting off of the left hand through the literal meaning of that verse as it was in the case of the right hand.

1. Ibid., vol. 1, p. 132.

2. Ibid., vol. 1, p. 132.

3. Ibid., vol. 1, p. 132.

4. Ibid., vol. 1, p. 132.

and it would look as if the Qur'ānic verse was saying, "If any male undertakes an act of stealing, cut off from him for every stealing one hand."¹ He reported a similar view from a book called Ṭurq Khalāf by Imam al-Bargharī (around 400 A.H) who also maintained that it was not possible to operate according to the general reading of the verse because God did not mention sarqa (as infinitive) but He only mentioned sāriq (thief - the person who took the action of stealing instead of using the infinitive form al-masdar).² That, according to him, requires sarqa, but it did not contain more than one theft according to the consensus of scholars. Therefore, for one theft one hand only would be cut off. If the general reading is workable here, both hands would have been cut for one theft because the punishment was for one crime, like a hundred lashes for a fornication. The consensus was that for one theft only the right hand would be cut off then that shows that the verse contained only the right hand.

Al-Bukhārī said that it could be argued that it has been established that flogging would be repeated with the repetition of fornication by one person despite the fact that the infinitive (al-masdar) which is zina' did not indicate repetition or numbering ('adad) as the Hanafites have claimed in the case of theft. Theft also

1. Ibid., vol. 1, p. 132.

2. Ibid., vol. 1, p. 132.

should be treated in the same way. To this argument, he replied that it had also been established in the principle of Islamic law that the infinitive (al-masdar) in that case of zinā' is considered as a reason ('illa) because the place for carrying out the ḥukm (which is a body which is to be flogged) still existed. He also admitted that sarqa is the reason for cutting off a hand as well, but insisted that there is Qur'ānic evidence that only the right hand should be cut and if it had been cut once, there will be no place for cutting any more and that is why it would not be repeated.¹

Yet, despite all these arguments, he allowed the left leg to be cut off for a second offence on the basis of the sunna and the consensus of the Muslims.

However, other scholars who also have the same view give different evidence. For example, the Ḥanbali scholar Ibn Qudāma who is also an opponent of the fourfold cutting together with repetition of the 'illa or the sharḥ quoted a Tradition in which 'Alī b. Abī Tālib refused to cut the thief more than twice purely on humanitarian grounds and that was based on his personal discretion rather than Qur'ānic evidence or the interpretation of it. In the Tradition 'Alī was quoted as having asked his companions about their opinion and they replied to him that he should cut off a third limb on the third occasion. He argued that it is better to kill

1. Ibid., vol. 1, p. 132.

him then, though he deserves no killing. But if he cuts him again there will be nothing left for him by which he could feed himself nor would he be able to perform the ablution for prayer or walk to his own business, all of which are also obligations. Then he sent the thief to prison and after a few days he brought him out again and asked his companions about their opinions. They told him the same thing and he also repeated the same reason and ordered the thief to be flogged severely and set free.¹ If this Tradition is true, it shows that 'Alī's practice was purely on personal discretion rather than the alleged practice of the Prophet which he was supposed to be aware of.

On the other hand, Mālik, Shāfi'ī and most of their scholars who held the view that al-amr al-mu'allaq requires repetition insisted that al-amr al-mu'allaq either by an 'illa or a sharṭ will be repeated by the repetition of either one of them.² Al-Qurāfi, who, although a Mālikī scholar, was opposed to repetition, maintained that those who maintain takrār for the amr, without their being a sharṭ when there is an 'illa or sabab also maintain takrār when there is sharṭ by the same reason as they used to maintain takrār without sharṭ but with an 'illa because according to them linguistically sharṭs are in fact causes.³ Abū al-Ḥusayn

1. Ibn Qudāma, al-Mughnī, vol. 8, pp. 264-265.

2. Al-Qurāfī, Sharḥ Tanqih al-Fusūl, p. 131.

3. Ibid.

al-Baṣrī also reported a similar view. He said that they always strengthen that view by maintaining that the sharṭ is more effective and more emphatic than the 'illa because the ḥukm will disappear with the disappearance of the sharṭ and ḥukm will not necessarily disappear with the disappearance of the 'illa.¹

However, Mālik and Shāfi'ī also flog for fornication repeatedly as long as sexual intercourse is repeated.² They also cut the thief's left hand on the third offence and his right leg on the fourth offence and then detain him on the fifth time³ or kill him according to one opinion.⁴ All that is in addition to his right hand and left leg which have already been cut on the first two offences of theft. That fourfold cutting is on the basis ~~of~~ the view that al-amr al-mu'allaq requires repetition. This they deduced on the basis of Tradition from Jābir b. 'Abd Allāh al-Anṣārī who reported that the Prophet said: "Whoever steals cut him and if he repeats cut him four times."⁵ In another Tradition which is also attributed to Jābir b. 'Abd Allāh, he

1. Abū al-Ḥusayn al-Baṣrī, Kitab al-Mu'tamad, vol. 1, p. 117.

2. Al-Sana'anī, Subul al-Salam, vol. 4, p. 9.

3. Ibn Rushd, Bidayat al-Mujtahd, vol. 2, p. 453.

4. Ibid., p. 453.

5. Ibn Malak, al-Manār, p. 147.

reported that a thief was brought to the Prophet who told them on seeing him to kill him and they replied that he was only a thief. Then he ordered them to cut off his hand. That very man was brought another three times with the same reaction from the Prophet (i.e. the Prophet ordering them to cut off one of his limbs).¹ These Traditions are in addition to Q/5/41 which is basically an injunction to cut off the hand of a thief. Thus Ibn Mas'ūd's reading, which was used by the opponents of repetition and specified the right hand as the one to be cut off, seems to have enjoyed little or no recognition from both Mālik and Shāfi'ī because they regard the Tradition of Jābir b. 'Abd Allāh as indicating the practice of the Prophet which corresponds for them to the obvious meaning of the Qur'ān.² Therefore they argued that the hand in the verse is a general term which could be the right or left hand. For Shāfi'ī, in particular, it is a matter of principle rather than mere investigation. He cannot abandon the practice of the Prophet in favour of a reading which he considers as an isolated report.³ He always rejected readings or Traditions which were not generally accepted.⁴

1. Ibn Qudāma, al-Mughnī, vol. 8, p. 264.

2. Ibn Malak, al-Manār, p. 149.

3. Ibid., p. 149.

4. Shāfi'ī, Risāla, p. 215 (translated by Mājid Kaddurī).

What could be regarded as direct information from Mālik in support of his view concerning the cutting off of limbs of the thief on the basis of repetition of the ḥukm with repetition of the 'illa was a Tradition in the Muwaṭṭa' in the recension of Yaḥyā b. Yaḥyā al-Laythī. Mālik himself transmitted the Tradition from 'Abd al-Raḥmān b. al-Qāsim from his father who reported that a man whose hand and leg had already been cut off stayed as a guest of Abū Bakr. This man stole a jewel belonging to Abū Bakr's wife. After confessing, or someone giving evidence against him, Abū Bakr ordered his left hand to be cut off. Commenting on this Tradition Mālik said: "The practice as far as we are concerned is that whoever steals several times is then apprehended ~~or~~ one hand only will be cut off for all those thefts if he has not yet undergone any punishment before. But if he has been punished for a stealing before and then steals again, in terms which require cutting, then he will be cut again." This is a clear indication that Mālik interprets the hand as a general reading as well as Jābir's Tradition as a general term.¹

Other evidence that Shāfi'ī also interpreted the hand in the Qur'ānic verse and the Tradition as a general term could be seen in a commentary he made on a Tradition which he transmitted himself through a group of transmitters to Abū Hurayra who actually

1. Mālik, Muwaṭṭa', pp. 600-601.

claimed to have heard the Tradition from the Prophet. However, the Prophet only said that the thief's hand should be cut off and if he steals again his leg should be cut. The Tradition did not specify whether or not the right hand should be cut or the left nor did it mention how many times a thief should have his limbs cut. Later Shāfi'ī said that that evidence had indicated that Abū Bakr cut the left hand of a thief whose hand and leg had already been cut.¹ On the basis of this Tradition Shāfi'ī said, "If a man steals I will cut his right hand from the joint between the palm and wrist and if he steals again I will cut his left leg from the joint at the anklebone and on the third time I will cut his left hand from the joint between the palm and the wrist and on the fourth time I will cut his right leg from the joint at the anklebone and on the fifth time I will punish him and detain him."² This Tradition and statement from Shāfi'ī himself indicates that he too interpreted the hand in the Tradition as a general term which could be right or left hand or leg and that has given him the chance to interpret al-amr al-mu'allaq as requiring repetition.

It seems that the Tradition of Abū Bakr's practice made Shāfi'ī adopt the decision of repetition in this case. Thus he modified his stand with regard to al-amr

1. Shāfi'ī, Kitāb al-Umm, vol. 8, p. 264.

2. Ibid., vol. 8, p. 264.

al-mu'allaq so that the probability of repetition, which he argued for in the case of al-amr al-muṭlaq, became a requirement in the case of al-amr al-mu'allaq.

Apart from the argument in favour and against repetition there seems to be another opinion which tries to reach a compromise between the two arguments. This opinion is largely followed by the most prominent scholars of uṣūl, particularly al-mutakallimūn like Fakhr al-Dīn al-Rāzī, al-Ghazālī and others. However, it seems that their suggestion has made the whole discussion even more complicated rather than making it clearer. While they reject the view that al-sharṭ could have any effect on the action depending on it they also maintained that if it is based on commanding by analogy or if the command was from God it may not come within the common regulation.¹ Such a complication could be clearly seen in al-Fakhr al-Dīn al-Rāzī's attempt to find a compromise between the two views. He believes that a distinction needs to be made between man's action and God's action. He said that the fact that the ḥukm would not necessarily be repeated with the repetition of the 'illa in the case of a human being, does not mean that it would not be so in the case of God. He regards that view as a matter of agreement among uṣūlī.² At the same time he maintained that although

1. Al-Rāzī, al-Maḥsūl, vol. 1, p. 183.

2. Ibid., vol. 1, p. 186.

al-amr al-mu'allaq may not require repetition through the spoken word, it does require it through an analogical process.¹ He gave the example that if a command is combined with analogy it will result in the repetition of an action because it will give a sense of repetition. Therefore there should be no contradiction between the opinion which maintained that al-amr al-mu'allaq did not require repetition and the opinion which maintained that it does require it.²

In a long argument with both those in favour and those who oppose repetition, Fakhr al-Dīn al-Rāzī gave many examples to show that the two opinions could both be correct. But most of his arguments concentrate on logical conclusions. He divided the argument into two stages; the first was against repetition and the second one was in defence of repetition. The latter one is the concern of this discussion. He maintained that the dependence of a command on either al-ṣifa³ or al-shart

1. Ibid., vol. 1, p. 187.

2. Al-Rāzī, al-Maḥsūl, vol. 1, p. 187.

3. Ṣifa is almost the equivalent of 'illa. In the command "the thief and the woman thief cut off their hand" it could be carried that the thief describes the nature of the person and is therefore the ṣifa. Some scholars maintain that 'illa and ṣifa are the same thing while others differentiate between the two terms.

could require repetition through an analogical process. He gave the example that if God says, "If he is an adulterous (man) stone him," that indicates that God made adultery a reason for the obligation of stoning. Thus, whenever the case is like that, it is necessary that the hukm should be repeated.¹ To explain that example he cited another example that if someone says, "If he is a learned and ascetic man, kill him and if he is ignorant and an offender, honour him," that statement is customarily wrong and everybody can recognise that. The wrongness may either be because the commander had made ignorance and offence a reason for deserving honour or because it did not mean that. He maintained that the latter is not correct because it did not convey the reason ('illa). Yet at the same time there is no contradiction between ignorance and deserving honour through another reason, i.e. heroism, generosity and so on. Therefore confirmation of deserving honour with the fact that he was ignorant and an offender is not contrary to common sense. He went on that for that reason it was necessary not to interpret it in that way and whenever it was interpreted in that way we can be sure that it was invalid. He concluded that dislike for it was only due because it gave the impression that the commander (āmir) had made an offence as reason for deserving honour which confirms that the dependence of a certain

1. Al-Rāzī, al-Maḥsūl, vol. 1, p. 181.

ḥukm on a certain quality gives the feeling that the quality was the reason. And if that comes from God it would create belief that God has made that quality the reason and that would undoubtedly necessitate the repetition of the ḥukm with the repetition of that quality. He maintained that this view was the consensus of the uṣūlīs.¹

Some of the opponents of the above view maintained that on the contrary it was invalid to assume repetition of al-ḥukm because of the repetition of al-sharṭ. They argued that if a man told his wife on ^{any} occasion, "If you enter the house you are divorced" this does not necessarily apply to another occasion when his wife enters the house. The sharṭ - "if you enter the house" - could well have been specific to one occasion. Therefore, repetition of the sharṭ would not necessarily require repetition of the ḥukm - "you are divorced". Fakhr al-Dīn al-Rāzī gives a modified version of this view. He agrees with the argument concerning marriage already discussed. If a man says, "I free my slave Ghānim because he is a black" and that man has another black slave, it is not necessary for him to free the other slave because he freed Ghānim. He explained the process of reasoning involved as being merely an indication (tanbīh) of causality ('illiyya) which does not go beyond the statement of that causality. On the other hand, he

1. Al-Rāzī, al-Maḥsūl, vol. 1, p. 183.

said if we have knowledge or think it is probable (dhanannā) that God has made something as reason for a ḥukm then the repetition of that ḥukm will be necessitated by the repetition of that reason according to the consensus of those who argue by analogy. He concluded that that shows that the fact that the ḥukm will not necessarily be repeated with the repetition of what it depends upon in the case of a human being does not mean that it will not be so in the case of God. He said that it could be argued that it is not inferred from the language but it could only be inferred from the command made by God or the Prophet through reasoning by analogy.¹

His explanation has shown clearly the extent of his belief that the repetition of the amr as a result of the repetition of the 'illa is not inherent in itself but can be inferred if it is associated with a command of God or the Prophet.

Al-Ghazālī also is of the opinion that the command of God will be automatically interpreted as meaning repetition though he has reservations on certain kinds of commands. He also rejected the view that al-amr al-mu'allaq requires repetition. However, it seems that he limited his opposition to repetition of al-amr al-mu'allaq to a case which involves a sharṭ or a ṣifa. He regards ṣifa as different from 'illa. He maintained

1. Al-Rāzī, al-Maḥsūl, vol. 1, p. 183.

that the correct view was that the sharṭ had no effect on the amr because if one says: idrib, it does not seem to give the sense of repetition. Also in his view, if one says idribhu in kāna qā'iman (beat him if he is standing) it did not require repetition either because one only appeared to be intending that the expression of darb should refer to the particular circumstance of standing on that occasion.¹ He maintained that there is no difference between that example and the example of someone saying to his agent, "Divorce my wife if she enters." Repetition of entry on another occasion would not require repetition of the hukm. The same is also true if one says directly to one's wife, "If you enter the house you are divorced." Thus repetition of the sharṭ would only require repetition of the amr if one said to one's wife, whenever you enter the house, you are divorced.² However, al-Ghazālī suggests that the Qur'ānic injunction: "Whoever is present (at his home) during that month should spend it in fasting" (Q/2/185) requires it, and when the sun is set, prayer requires the repetition of the amr whenever the sharṭ is repeated. He argued that those examples were no different from the case of a man saying to his wives, "Whoever is present during that month is divorced."³ He went on that the

1. Al-Ghazālī, al-Mustasfā, vol. 2, p. 8.

2. Ibid., vol. 2, p. 8.

3. Ibid., vol. 2, p. 8.

problems for those who support repetition were two: One of them is that they regard the 'illa as similar to the sharṭ and thus maintained that the ḥukm would be repeated with the repetition of the 'illa, which in this case was actually a sharṭ because the 'illa in Islamic law was an indication of the requirement of the law. Al-Ghazālī argued against this that the 'illa was of two kinds: rational and that associated with revealed law. It was natural for the rational 'illa to require the repetition because the essence of the rational cause requires that which is caused.¹ On the other hand, the mere association of requirement with a cause without there being another context with which to compare it would not necessarily require the repetition of the requirement. This is the process of adopting a law through qiyās, which means that God has given us a mandate to follow the requirement of 'illa given the appropriate repetition of the context. He said that it looks as if God is saying that the ḥukm is established by the 'illa and you must follow it.²

The second problem for those who support repetition of sharṭ or 'illa according to al-Ghazālī was that they maintained that the commandment of God can only be repeated with the repetition of reasons, e.g. Q/5/7: "If you are in a state of ritual impurity bathe your

1. Ibid., p. 8.

2. Ibid., p. 8.

whole body" and "When you prepare for prayer, wash your faces." He said that those examples were not obligations merely because of logical association nor because of linguistic necessity but because of a divine reason which exists in every condition (shart).¹ He gave Q/3/97 as an example: "God requires pilgrimage thereto for men who can afford the journey." He argued that the hajj is also an obligation but it will not be repeated with repetition of the shart which is the ability to afford to make the journey.²

It seems that al-Ghazālī is trying to draw a distinction between what is acceptable on a logical basis and what is acceptable on the basis of divine regulation (i.e. shari'a and so on). His argument shows that he believes that conclusion or hukm could be proclaimed on the basis of logical conclusion provided that it has nothing to do with religion and law. At the same time he also accepts that in the case of the law or shari'a it could be a necessity but not because of the conclusion reached on the linguistic calculation but on a special belief that a divine command was meant to be a necessity. His explanation of the first of what he terms as two problems shows that he was not opposed to the repetition of al-amr al-mu'allaq particularly if the ta'līq was 'illa (reason) in the

1. Ibid., p. 8.

2. Ibid., p. 8.

case of al-shari'a but the requirement of repetition here was not because of the regulation drawn out on the basis of linguistic calculation but because it was made to require repetition by God.

The problems of the repetition of the amr in both al-amr al-muṭlaq and al-amr al-mu'allaq reveal some basic problems faced by scholars of law in discussing the application of the law. The four trends - repetition, probability, outright rejection of repetition and suspension of judgement until further evidence - which were indicated in al-amr al-muṭlaq also appear in al-amr al-mu'allaq. However, in the latter case, repetition has won over completely some of the supporters of probability of repetition. The main division seems to be between those who argue for repetition and those who argue for further contextual evidence before repetition is a requirement. The implications in some legal matters were quite large. However, it was probably only theoretical in terms of a thief who was caught four times. It is to be hoped that if he was involved in such thieving, he came before a qadī who did belong to the school of repetition.

The Effect of Time on Amr

The time in which an amr is expected to be carried out is likely to have considerable impact on the nature of the amr. It also caused a heated controversy among uṣūlīs. In order to make what they mean by time clear it is possible to define the time of an amr as follows:

Every amr has three times in which the person with the responsibility to obey it (mukallaf or ma'mūr) is required to carry out his obligation (wājib). The first of those times begins immediately after the amr has been commanded or after the time fixed for it has become due. That period has been termed al-waqt al-awwal.¹ At the other extreme the third time is when, if the mukallaf fails to carry out amr during the appropriate period and therefore has allowed the time to lapse, he will then be regarded as disobedient. They also termed that period al-waqt al-thālith.² They also call it al-waqt al-ḍarūrī.

The second time is that between the first period and the third period (i.e. between the beginning of the requirement to perform the amr and the time in which, if the mukallaf fails to perform the amr, it will lapse). That period is termed al-waqt al-thānī.³

1. Abū Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p.120.

2. Ibid., vol. 1, p. 120.

3. Ibid., vol. 1, p. 120; also see Shinqītī, Mudhakra, p. 13.

The amr or obligation may sometimes be further divided into two different kinds, both involving time. Thus in the five daily prayers (ṣalawāt), there are specific times for the performance of these ṣalawāt. However, within those specific times there is a period which gives a certain leeway for the performance of the amr of salāt. Thus the fajr prayer must be said from the time of fajr to the time of sunrise. This gives a certain degree, although limited, of extension of time. This kind of amr is called al-wājib al-muwassa'¹ (i.e. the extended period for the obligation). It has involved such requirements as zakāt, ḥajj, etc.

Thus the fast of Ramaḍān must begin at dawn of the first day of Ramaḍān and continue until sunset of each day until the final day of the month. No leeway is allowed in the sense that, although a person may fast a little longer than that each day, the actual requirement is absolutely from those specific times. This is known as al-wājib al-mudayyaq.²

The first of these is the particular concern of this investigation as there is no disagreement among jurists that the latter one could only be done within the time limit, unless an exception has been made.

Although the same particular terms to describe

1. Al-Jaziri, Kitab al-Fiqh, vol. 1, pp. 180-181.

Also see Shinqītī, al-Mudhakra, p. 11.

2. Ibid., p. 11.

these may not always be used by all uṣūlīs, they generally agreed with the ideas involved. The ideas themselves are first clearly defined by the uṣūlīs and jurists after Shāfi'ī, though they are implicit in the legal works which these scholars inherited right from the early period of Islām and they are deduced from doctrines of the early schools of law. That is why most of the available early evidences in support of them are based on interpretation rather than clear statements. There is indeed little direct information from most of the early jurists and uṣūlīs such as Abū Ḥanīfa, Mālik, Shāfi'ī and Aḥmad b. Ḥanbal, even though they are sometimes cited as authorities. The only direct information which suggests that the development of the ideas involved in those later terms might have started from the period of Abū Ḥanīfa and Shāfi'ī came from two Ḥanafite scholars, 'Abd al-Laṭīf b. 'Abd al-Azīz b. Malak and Yaḥyā al-Rahāwī, in their commentary on Sharḥ al-Manār of 'Abd Allah b. Ahmad, who is well known as al-Nasafī.¹ In the book, Ibn Malak and al-Rahāwī maintained that most of the Ḥanafites are of the opinion that al-amr al-muṭlaq does not require immediately implementation (al-fawr) but allows a period of delay (tarakhī). Al-Rahāwī also attributed this view to most of Shāfi'ites and ahl al-kalām and Abū Yusūf (d. 182 A.H.), a pupil of Abū Ḥanīfa. As evidence of its early appearance in the Ḥanafī law, he says that it is the doctrine of Abū Ḥanīfa as reported by Abū

1. Al-Nasafī, Sharḥ al-Manār, p. 222.

Sahl al-Zujaj, and that this probably goes back to Abū Ḥanīfa.¹ Al-Nasafī himself is in favour of this view and both Ibn Malak and al-Rahāwī reported that it was opposed by another Ḥanafite, al-Karkhī (d. 340 A.H.), some of the Shāfi'ites, the 'Āmmat ahl al-Ḥadīth, some of the Mu'tazilites, Muḥammad b. Hasan al-Shaybānī (d. 187 A.H.), a pupil of Abū Ḥanīfa and Shāfi'ī himself, according to another report from Abū Sahl al-Zujaj. They hold the view that al-amr al-muṭlaq should be based on immediate implementation (al-fawr).²

If these reports were true, then it may mean that the use of the terms and the classification of them started during the period of Abū Ḥanīfa, Mālik and Shāfi'ī. On the other hand, the view that Abū Ḥanīfa is opposed to the early implementation of al-amr al-muṭlaq and that Shāfi'ī is in favour of early implementation would be both contrary to what is widely reported from them and their popular practice, which most of their followers have strictly adhered to.³ For example, Ḥanafites and Mālikites are known for their insistence that ḥajj should be based on immediate implementation and that any delay of ḥajj after the year in which one has the ability to do it is regarded as disobedience.⁴

1. Ibid., p. 222.

2. Ibid., p. 222.

3. Ibid., p. 222. But for the contrary view see Abū Ishāq al-Shīrāzī, al-Tabṣra, p. 52 and al-Baydāwī, al-Minhāj, vol. 2, p. 44.

4. Ibn Qudāma, al-Mughnī, vol. 3, p. 241.

Though they disagree over how to interpret the level of delay which could bring amr out of being the time when it should be done (al-ādā').¹

Moreover, it appears that Abū Sahl al-Zujaj, whose date of death is still to be established, is later than either Abū Ḥanīfa or Shāfi'ī and also later than Abū Yūsuf and Muḥammad b. Ḥasan al-Shaybānī, he cannot have reported that information from either Abū Yūsuf or anybody of his age. However, it is believed that it was al-Karakhī (d. 340 A.H.), who actually formed that impression from the argument between Abū Yūsuf and Muḥammad b. Ḥasan al-Shaybānī over whether or not the ḥajj should be performed as an obligation as soon as a person is able to perform it.²

As for al-Shāfi'ī, the suggestion that he personally used these terms has been attributed to him in two ways:

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- 1a. Ibn Qudāma, al-Mughnī, vol. 3, p. 242.
 - b. al-ādā' is a term used for carrying out the obligation at the appropriate time; al-qadā' is to carry out obligation after the original time legally fixed for it has lapsed (see Ibn Qudāma, al-Rawda, p. 31).
 2. Al-Badkhasī, Sharḥ al-Badkhasī, vol. 1, p. 44. This book is a commentary work on Minhāj al-Wusūl fī 'ilm al-Uṣūl of Qadī Abd Allāh b. 'Umar al-Baydāwī (d. 685 A.H.).

One is that he favours (al-fawr)¹ early implementation. The second is that he favours (al-tarakhī)² the possibility of delaying al-amr al-muṭlaq. But there was no strong evidence to back the view that he used the terms or that they were used in his period in the way they were attributed. However, there are some convincing evidences that both were deduced from his doctrine and later attributed to him.

The first view that suggests that he favours immediate implementation (al-fawr) may have been deduced out of his early doctrine in Iraq that one should observe al-mutāba'a³ in ablution, the view which he later abandoned when he moved to Egypt. For example, he said in al-'Umm, in the case of al-mutāba'a,

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1. Al-Nasafī, Sharḥ al-Manār, p. 222.
 2. Ibid., p. 222; also see Sharḥ al-Badkhasī, vol. 2, p. 44.
 3. In fact Shāfi'ī used the word al-mutāba'a, which is from al-tatāb'u. Al-mutāba'a or al-muwāllāt or al-fawr are the same with regard to ablution. But al-fawr is more general, ~~in~~ application in different ways, while al-mutāba'a or al-muwāllāt is limited to uninterrupted action in ablution. They are used in the law books. See Shāfi'ī, al-'Umm, vol. 1, pp. 30-31 (al-mutāba'a).
Ibn Rushd, al-Muqaddmāt, vol. 1, p. 53 (al-fawr).
Ibn Rushd, Bidāyāt al-Mujtahid, vol. 1, p. 17 (al-muwāllāt).

that it is an obligation and that it must be observed in the absence of necessary impediment such as moving from one place to another for serious danger, e.g. a wall collapsing, fire, insufficient water and so on. And thus leaving a man who interrupted his ablution without any one of these reasons only with the option of starting a fresh ablution.¹ But according to Rabī' b. Sulayman (d. 270 A.H.), Shāfi'ī has abandoned this view and allowed a break, whether for necessity or not.² In that regard, Shāfi'ī said that he did not see in the case of al-mutāba'a what he saw in the case of bringing one action forward before another (al-taqdīm) of part of one ablution or another, and then he declared that "Our fundamental doctrine is that he (the person performing ablution) should wash as he wishes even if he interrupts the process because God only says, 'Nor in a state of ritual impurity (except when travelling on the road) until after washing your whole body' Q/4/43 and this person is washing even if he interrupts the action for a time." Shāfi'ī concluded that "I would not have said that it is enough for him without this evidence."³ This explanation from Shāfi'ī himself may have put those who maintained that his doctrine was al-tarakhī right,

1. Shāfi'ī, al-'Umm, vol. 1, p. 30.

2. Ibid., vol. 1, p. 30.

3. Ibid., vol. 1, p. 31.

even though they did not get the use of explicit terminology from him, because it is implicit in his interpretation of the above Qur'ānic evidence, but those who were aware only of his first doctrine could have based their attribution on that as well.

Another view which suggested that all attributed opinions to either Abū Ḥanīfa, Mālik, Shāfi'ī and other scholars of their age were only deduced from their doctrine, could be further strengthened by subsequent reports from other scholars in the same way. For example, al-Qurāfī reported that al-amr al-muṭlaq should be based on early implementation and that it was the view of Mālikites and Ḥanafites, except our Maghribites colleagues (Mālikīs) and Shāfi'ites.¹ Then he said that that was maintained by Qādī 'Abd al-Wahāb b. 'Alī b. Naṣr, a Mālikite scholar (d. 422 A.H.) in his book 'al-Mullakhas which our Mālikī colleagues support, that amr should be based on early implementation. Al-Qurāfī added later that the opinion was only understood from Mālik's view that amr should be based on early implementation (al-fawr), such as his view that one should make ḥajj immediately one has the ability to do it, as well as his forbidding of the interruption of ablution (tafriqat al-wuḍū') and many other things of that kind in his doctrine.² This

1. Al-Qurāfī, Sharḥ al-Tanqīh, p. 129.

2. Ibid., p. 129.

report was echoed by a Zaydite scholar, Muḥammad b. 'Alī al-Shawkānī (d. 1255 A.H.), who also reported from Ibn Burhān,¹ who maintained that there was no text reported either from Abū Ḥanīfa or Shāfi'ī concerning the time of amr and the attribution of any opinion to them is based on an interpretation of their doctrine.² This is a widely reported view and it gives the impression that development of these terms started later even than Shāfi'ī's period.

However the question of exactly when the amr should be carried out is the main point of this discussion and the point under investigation here is whether or not there is any other principle upon which scholars based their doctrine, other than literary interpretation. This would help determine whether or not al-fawr is obligatory for an amr. There seem to be four major opinions altogether from which we can examine and see how the individual schools reached their conclusions on the timing of amr.

As already mentioned, Ḥanafites,³ Mālikites⁴ and

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1. Ibn Burhān. His full name is Ahmad b. 'Alī b. Muḥammad al-Khalīl Abū al-Fathī al-Shāfi'ī. He lived in Baghdad (d. 520 A.H.).
 2. Al-Shawkānī, Irshād, p. 88. Also see al-Shīrāzī, al-Tabsra, p. 53.
 3. Al-Shīrāzī, al-Tabsra, pp. 52-53.
 4. Al-Qurāfī, Sharḥ al-Tanqīh, p. 129.

some Ḥanbalites¹ and the generality of ahl al-ḥadīth,² are of the opinion that al-amr al-muṭlaq requires immediate implementation. That is their interpretation of Q/3/133, "Be quick in the race for forgiveness from your Lord And for a garden whose width is that of the earth," and Q/23/61, "It is these who are foremost in them." They maintained that both these verses included God's commandments and thus, according to them, the command "Be quick" involves all activities which could lead to forgiveness. Thus rapid implementation of the commandment of God is the best way to this.³

Although the Ḥanafites, Mālikites and Ḥanbalites are united in their view that amr must be carried out at an early time, it seems that they differ on many occasions on the point which could be regarded as an early time. This led to disagreement on many issues. For example, they all agree that ḥajj must be performed immediately one is able to do that and if a man delays it till the following year, he is guilty of negligence because he has abandoned the obligation of early implementation.⁴ On the question of zakāt, Mālikites and Ḥanbalites are also agreed that early implementation

1. Ibn Qudāma, al-Rawda, p. 105.

2. Al-Nasafī, Sharḥ al-Manār, p. 222.

3. Ibn Qudāma, al-Rawda, p. 105.

4. Ibn Qudāma, al-Mughnī, vol. 3, pp. 241-242;

also see al-Jazīrī, Kitāb al-Fiqh, vol. 1, p. 631.

is a matter of obligation.¹ There are two conflicting reports from Ḥanafites: One puts them with Mālikites and Ḥanbalites and that accords with their doctrine.² Another one, which was reported by the Ḥanbalī scholar, Ibn Qudāma, puts forward the view that Abū Ḥanīfa is with Shāfi'ī, who rejected that zakāt should be based on early implementation. This view has the provision that zakāt must be paid early if there is a demand for it to be paid.³

On the question of the five daily ṣalawāt, the Ḥanafites and Mālikites seem to be more moderate, while Ḥanbalites are adamant that one must say each salāt immediately the time for it becomes due. Therefore any delay till the second period (which is between the first and the third) and the third period is regarded as negligence, though they still regard the salāt as having been properly and appropriately performed salāt, rather than performed as a later compensation for its non-performance at the correct time (qadā') as long as it was started while there was still time within the third period sufficient for at least one rak'a to be completed, even though the rest of the salāt would be

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1. Mālik, al-Mudawwana, vol. 1, p. 245; also see Ibn Qudāma, al-Mughnī, vol. 2, p. 684.
 2. Al-Nasafī, Sharḥ al-Manār, p. 222.
 3. Ibn Qudāma, al-Mughnī, vol. 2, p. 684.

performed after the time.¹

As for the Mālikites, they further divided the time into their own peculiar division of al-waqt al-ikhtiyārī and al-waqt al-ḍarūrī (time of choice and time of necessity). The time of choice seems to include both the first and the second period. If a man delays his salāt till the end of the second period by starting before the end of the time of choice, and has prayed up to one rak'a (like Ḥanbalites) and completed the rest within the time of necessity (al-ḍarūrī), he is not guilty of negligence. They only expect him to have completed at least one rak'a in order to consider his salāt as ādā' rather than qadā'. Otherwise it will be regarded as qadā' and he will be guilty of negligence.²

One important difference between Malikites and Ḥanbalites here is that, in the case of the Mālikites, if the salāt was started at the time of choice and completed at the time of necessity, the obligation has been fulfilled without any negligence, because the Mālikites particularly consider salāt as an obligation which can be performed within the extended time of these periods, whereas Ḥanbalites consider any delay from the

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1. Ibn Qudāma, al-Mughnī, vol. 1, pp. 372-373;
also see al-Jazīrī, al-Fiqh, vol. 1, pp. 180-181.
 2. Mālik, al-Mudawwana, vol. 1, p. 56;
also see al-Jazīrī, al-Fiqh, vol. 1, p. 181.

first period till the second or third time as negligence with regard to the amr.¹

The second opinion, which is largely followed by Shāfi'ites,² Zaydites,³ some of the Mu'tazilites⁴ and the Shī'ites, is that amr is a mere demand for action which does not include in any way an indication of the time the amr should be carried out. This is the view that was widely attributed to Shāfi'ī himself.⁵ Although they do not oppose the amr being carried out at an early time, they do consider it as recommended (mandūb), which is understood through separate evidence outside the scope of amr and, therefore, they allow some delay to the last minute in the third period. That is when, if the obligation of ṣalāt has not been performed, disobedience is considered to have arisen. That delay is based on the condition that the mukallaf is sure that the time will not run out before he could carry it out, and he has not foreseen anything that could prevent him from doing it before the end of the time.⁶

1. Ibn Rushīd, al-Muqadmmat, pp. 108-109.

2. Al-Baydawī, al-Minhaj al-Uṣūl, vol. 2, p. 44.

3. Al-Shawkānī, Irshad, p. 88.

4. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 120.

5. Al-Shīrāzī, al-Tabsra, p. 53; also see al-Ghāzālī, al-Mustasfā, vol. 2, pp. 9-10.

6. Al-Murtadā, al-Dhari'at, vol. 1, p. 135; also see Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 125.

In addition to that, he must substitute (badal)¹ immediate compliance by 'azm (determination) that he will carry it out before the end of the time.² Al-Bāqilānī claims that badal is the determination to obey in the future. He says: "Whoever delays obedience without there occurring in his mind the determination (to obey) has disobeyed his Lord." Then he makes it (badal) applicable to every time which may show some uncertainty about (immediate) obedience and the determination (to delay obedience) until the moment possible.³ Then that time (i.e. from the beginning to the last possible) is specified for carrying out the action.

According to this group, which held the second opinion, if the mukallaf decides not to carry amr out at the beginning of the time and substitutes it by determination 'azm and decides to delay it until the moment possible, he will not be guilty of negligence; and if he dies before the end of the time, he does not have any responsibility for the fact that it had not been performed, because he was allowed either to perform it immediately or to determine to carry it out in future.⁴

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1. Badal: to "substitute", to substitute immediate obedience with the determination to obey before the last time when the action can be validly carried out.
 2. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 125.
 3. Imām al-Haramayn, al-Burhan, vol. 1, p. 237.
 4. Al-Murtadā, al-Dhari'at, vol. 1, p. 136.

Moreover, they do not see any difference between obligation and the time itself. In other words, al-fawr is not obligation. Therefore the basic principle is that nothing should be regarded as obligatory, requiring immediate implementation, unless there was another context outside the mere demand for action. For example, on the issue of ḥajj and zakāt, both of which their opponents have advocated al-fawr as duties which it is proved are subject to the obligation of early implementation, they permitted delay based on the above mentioned conditions.

On the question of al-tatābu' in ablution, they maintained, as would be expected, that it is not obligatory.¹ Although there is not actual evidence in Shāfi'ī's surviving books for his assertion that al-fawr is not obligatory with regard to amr, one of the principal supports for his having held this doctrine is his attitude to al-tatābu' (i.e. the uninterrupted performance of the various actions in the ritual purification), which he maintained was not obligatory.² There is also another statement from him regarding the time of ḥajj. The statement also may have been the sources of evidence for those who attributed the view that amr does not require immediate implementation to him. In the statement which is in al-'Umm, Shāfi'ī

1. Shawkānī, Irshād, p. 88.

2. Shāfi'ī, al-'Umm, vol. 1, pp. 30-31.

says that God made ḥajj obligatory after the Prophet's migration to Madina and the Prophet ordered Abū Bakr to perform ḥajj while he himself stayed at Madina. That was after he had returned from Tābūk. He was neither fighting nor busy with anything. Also staying at Madina with him were many people who were capable of performing ḥajj, such as his wives. On this basis Shāfi'ī argued that if delaying ḥajj is like someone who delays al-ṣalāt (prayer) until its time has gone, then the Prophet would not have delayed it nor those who did so with him. Then Shāfi'ī declared that the time of ḥajj is between when it is due and when one dies.¹

This clear statement has also given an indication not only that al-fawr is not obligatory but also that there is no divine guide-line on the exact time when amr should be carried out. If it had been obligatory to carry out the amr at an early time, the Prophet would have mentioned it. Lack of such evidence, which if it were available, would be binding, may be one of the reasons why Shāfi'ī changed his mind on al-tatābu' as well and followed the obvious meaning of the Qur'ānic injunction on ablution, which did not commit one to a particular time or condition.²

Fakhr al-Dīn al-Rāzī has put forward another opinion,

1. Shāfi'ī, al'Umm, vol. 8, p. 63.

2. Ibid., vol. 1, p. 31.

which is also interesting. His own view seems to represent a small fraction among ahl al-kalām. He maintained that al-amr al-muṭlaq, by its nature, could jointly require both al-fawr and al-tarakhī.¹ On the basis of this view only the context would indicate which one is meant. This view seems to be a doctrine based on linguistic interpretation. In fact, this is the view which this group of ahl al-kalām maintained on several occasions on the question of amr.² In their definition of amr in the sense of time, they do agree with Shāfi'ites that amr is a mere demand for action, but later interpreted that to mean that there is a joint connection (mushtarak) between commanding something in terms of al-fawr (immediate implementation) at one time, and in terms of al-tarakhī at another time. Therefore that demand for action could be on the basis of early implementation or on the basis of al-tarakhī at another time, without any indication in the word itself as to whether or not it was specific for any one of them.³ This view seems to have originated from their principle that amr is common between al-qawl al-makhsus and the action, rather than being special to one of them as we have discussed in detail at the beginning of the first chapter.⁴

1. Al-Rāzī, al-Maḥsūl, vol. 1, pp. 189-190.

2. See above, pp. 145-146.

3. Al-Rāzī, al-Maḥsūl, vol. 1, p. 190.

4. See above, pp. 40-49.

Since the majority of ahl al-kalām traditionally belong to the Shāfi'ite madhhab, the different interpretation of a few of them here can only be taken as verbal opposition and a demonstration of the ability to exercise their own personal discretion whenever it is needed, while in practice they did not put forward any different way of when and how amr should be carried out.

Finally, al-Murtadā and Imām al-Ḥaramayn, with another group of Shāfi'ites and some Ash'arites, in two separate versions declare that they would defer their judgement until they would be able to establish the fact.¹ They are referred to as ahl al-waqf. Their declaration, however, which could be viewed by outsiders as a further complication of an already complicated issue, did little or nothing to give any guidance on exactly when or how amr should be carried out. Furthermore, their argument appears to be nothing more than the argument of the Shāfi'ites on the issue of the time of amr and that of ahl al-hadith because, despite the declaration by both al-Murtadā and Imām al-Ḥaramayn that their doctrine is that of al-tawaqquf, they both produced nothing different in their doctrines to what the Shāfi'ites and ahl al-hadith had already put forward respectively. For example, al-Murtadā is strongly in favour of al-badal bi-al-'azm (substitution of immediate

1. Al-Murtadā, al-Dhari'ah, vol. 1, p. 131;

also see Imām al-Ḥaramayn, al-Burhan, vol. 1, p. 232.

compliance by determination). He also maintained that there must be a time limit for determination.¹ Both conditions which the Shāfi'ites regard as the main reason for believing in the possibility of delaying al-amr al-muṭlaq. Imām al-Ḥaramayn, on the other hand, also insists that his own doctrine was that of tawaqquf, while he agrees with ahl al-hadīth that performing an amr at an early time is a matter of obedience. He was also opposed to the idea of al-badal and made a strong attack on those who support it along with the possibility of delaying amr.²

In his account of tawaqquf, Imām al-Ḥaramayn maintained that if someone performs an amr at the early time, he would be regarded as obedient. He said that there is no doubt about that. He further maintained that if amr was delayed and performed at a later hour, one could not say that the obligation had been fulfilled.³ Clarifying his own understanding of al-fawr and al-tarakhī, Imām al-Ḥaramayn explained that what needed further explanation was the wording of the amr. As to those who interpreted the form as meaning al-fawr, there was no objection to that, but the interpretation that it means the possibility of delay is weak, because that implies that the form of al-amr

1. Al-Murtadā, al-Dhariḥ, vol. 1, p. 135.

2. Imām al-Ḥaramayn, al-Burhān, vol. 1, p. 132.

3. Ibid., vol. 1, p. 233.

al-muṭlaq by its nature requires the possibility of delaying (al-tarakhī), so that if we presume that someone complied with it immediately that action would not be considered correct. No one has ever accepted such doctrine. He concluded that the appropriate thing for the opinion which was attributed to both Shāfi'ī and Qādī Abū Bakr al-Bāqilānī, would be if they could confine themselves to the view that amr requires compliance and then declare that the time of that compliance is not known.¹ From this explanation, his position can be recognised and it has forced some opponents of al-fawr to question his neutrality. Al-Shawkānī, who also quoted him as saying that "demand for action is certain and the only thing doubtful is whether or not delay is possible. Therefore al-fawr is necessary in order to ensure fulfilling the responsibility," commented that this statement is not consistent with what he has put forward as tawaqquf, on whether or not an amr requires al-fawr (immediate implementation), because his emphasis on the obligatory nature of al-fawr contradicts his doctrine of al-tawaqquf, as well as his statement that in whatever manner al-mukallaf carries out the amr he has fulfilled the requirement of the form of the amr.²

As for al-Murtadā, he started by citing the opinions of other schools on the question of the time of the amr.

1. Imām al-Ḥaramayn, al-Burhān, vol. 1, p. 133.

2. Al-Shawkānī, Irshād, p. 90.

He said that another group are of the opinion that what is compulsory for whoever heard al-amr al-muṭlaq which has no context or indication of the time of implementation, is to know that one was commanded to carry it out. Then the judgement about identifying any time or attempting to find what evidence indicated it, could be deferred. He maintained that there was no time understandable from the word "amr", nor the specification of choice of time. And it is not appropriate to try to understand from the word, what it did not contain, as it is not appropriate to try to understand from it any place or numbering and any other things the word did not contain. He further pointed out that an amr could come in the Qur'ān and in the customary usage of ahl al-lugha at times for immediate implementation, at other times for al-tarakhī. He emphasised that it has been explained several times that obvious usage of certain words for two different meanings requires that it is the origin for both and common (mushtarak) between them.¹

This explanation is more appropriate for his doctrine as al-tawaqquf, but complications arose when he declared himself in favour of al-badal bi-al-'azm (substitution of immediate implementation of an amr by determination to carry it out) and his failure to put forward any new idea based on his doctrine in addition to his open defence of the Shāfi'ites' opinion. This support became

1. Al-Murtadā, al-Dhari'ah, vol. 1, pp. 131-132.

apparent when he said in reply to ahl al-ḥadīth, those who have earlier argued that the possibility of delaying amr will turn it into a supererogatory action (al-nāfila). He replied that that is not true because if it is possible to delay it, one must determine to carry it out in the future. Thus an obligatory determination is placed upon such a person if he performs it at the later time. This distinguishes it from nāfila, because it is possible to delay nāfila without badal; unlike obligation which cannot be delayed without badal.¹ To the argument that this would require confirmation of substitution without evidence, he replied that if we know by evidence that the āmir, who obliged the action, did not want fawr but only wanted al-tarakhī and choice (al-takhayyur), then there is no choice other than to confirm this badal. And by so doing, we did not confirm the badal without evidence. He concluded that that argument can only be valid for those who maintained that al-amr al-muṭlaq, by its nature, requires delay without any separate evidence.² Then al-Murtadā tries to define al-‘azm and says: al-‘azm logically is substitution of every obligation which is delayed, such as the act of making up religious performances (qaḍā’ al-dīn) and every other dealing, because if he abandons the obligatory action together with the determination to carry it out.

1. Al-Murtadā, al-Dhari‘a, vol. 1, p. 134.

2. Ibid., vol. 1, p. 134.

in future, he will deserve blame.¹

This is part of the convincing evidence that suggests that al-Murtadā, despite his claim to be adopting the doctrine of al-tawaqquf, is in fact in favour of the Shāfi'ites idea and he has not produced any different idea from that of the Shāfi'ites. Also this evidence from al-Murtadā and the evidence from Imām al-Ḥaramayn, who also seems to advocate the doctrine of ahl al-ḥadīth behind al-tawaqquf, seems to have resulted in four opinions put forward in an attempt to find common ground for exactly what time amr should be carried out. It is noticeable from these opinions that the ahl al-ḥadīth and Shāfi'ites appear to be the most well-rooted and consistent of them. The later arguments of al-Rāzī, Murtadā and Imām al-Ḥaramayn are based on the earlier two arguments.

In an attempt to substantiate their claim, ahl al-ḥadīth cited more verses from the Qur'ān, which they considered to indicate the obligatory nature of immediate implementation. However, all these verses appear to be based on mere interpretation and no one has been able to produce precise evidence, either from the Qur'ān or from the Tradition of the Prophet, which could be acceptable to all parties. For example, they quoted Q/7/12: "What prevented thee from bowing down when I commanded thee." This, according to their own view, requires immediate

1. Al-Murtadā, al-Dhari'ah, vol. 1, p. 135.

implementation because idh (when) is for time. Therefore the meaning of the verse looks as if God is saying "What prevented you from bowing at the period I ordered you to bow." They argued that if the amr had not required immediate implementation, Iblīs, to whom God addressed this verse, would have argued, "Though you commanded me, you did not ask me to carry it out immediately and therefore I can bow whenever I wish."¹ Besides that, they also cited Q/7/185: "Do they see nothing in the Government of heavens and earth and all that is created? (Do they not see) that it may well be that their term is nigh drawing to an end? In what message after this will they then believe." This, they maintained, is a clear warning against the delaying of an amr in order to avoid failure because of a gradual decline as the result of old age.² However, this interpretation obviously further demonstrates the weakness of the argument of ahl al-ḥadīth, rather than strengthening it, as it is far from pointing to the heart of the argument about the time of obeying the amr, either directly or indirectly, except by generalising every word of the amr to imply a specific intention. But that may not be acceptable to many scholars. The first of these two Qur'ānic examples though, seems to be indicating some kind of time of amr by careful

1. Al-Baydawī, al-Minhāj, vol. 2, p. 45.

2. Ibid., vol. 2, p. 45.

interpretation, namely the view that idh of its nature indicates time and, therefore, God wished in the verse that His amr should be obeyed immediately. But since it is not a clear cut evidence, it still gives some doubt and it will be very difficult to accept such an interpretation and base one's daily activities on it. The absence of any direct evidence from the Qur'ān or from the Prophet on the time of al-amr al-muṭlaq, as we have on many issues, has made the whole argument here based on speculation and has presented great difficulties in finding appropriate analogies. For example, in the case of zakāt, the Prophet said "fī^{al} rikāz al-khums" (One fifth should be paid as zakāt of gold ore).¹ This has given precise evidence to the amr concerned, and if there is some aspect which still needs some clarification, there is a basis for rational deduction (ijtihād). But in the case of the time of al-amr al-muṭlaq, the evidence put forward so far has not provided a satisfactory argument, which could give the impression that the time of al-amr al-muṭlaq was meant when these statements were made. For this reason, it is easy to justify the arguments of the Shāfi'ites against the earlier Qur'ānic evidences (Q/3/133 and Q/23/61) put forward by ahl al-ḥadīth, which, the Shāfi'ites maintained, though indicating general encouragement for performing good actions speedily, is nevertheless, a recommendation (mandūb) which could not

1. Mālik, Muwaṭṭa, p. 271.

be particularly applicable to any specific time. Therefore any evidence that amr should be carried out on the basis of al-fawr or al-tarakhi must come separately, not on the basis of mere demand for action.¹

In fact the logical conclusion which ahl al-ḥadīth themselves put forward, would have been more relevant if they had argued only on its basis, i.e. that they wanted to base al-amr al-muṭlaq on customary practice and logical conclusions, because there is not sufficient evidence from the Qur'ān to determine the time of amr in general terms. If they had supported this view with that conclusion, it may have attracted many more people than the method of Qur'ānic interpretations which were very difficult to reconcile. Even then, however, it would not have been binding on anybody to follow it.

For example, on the question of substitution (al-badal), which some of them preferred to ignore, those who recognised it maintained that there was a difference between al-badal and al-'azm and that 'azm is obligation, even before the amr becomes due. That implies that one must determine to carry out the obligation whenever it comes and, when the amr becomes due, that 'azm becomes invalid because that will be the time to carry out amr without delay. At that time, the 'azm is no longer needed.² This seems to mean that

1. Badkhashī, Sharḥ al-Badkhashī, vol. 2, pp. 45-46;

also see al-Shawkānī, Irshād, p. 89.

2. Ibn Qudāma, al-Rawda, p. 106.

'azm, according to them, is a separate obligation in itself and a fundamental principle ~~which~~ which al-mukallaf must bear in his mind every time. However, they seem to agree in general that al-badal is not useful for amr, on the grounds that al-badal seems to be projected as a permanent replacement for obligation and once it has been substituted, it need not be carried out in future; unlike this kind of al-badal, which is only a temporary measure.¹

On the other hand, they analysed the reasons why they objected to the delay of al-amr al-muṭlaq in three separate arguments, as follows:

1. The requirement of al-amr al-muṭlaq, according to ahl al-lisān, is fawr, to the extent that if a master says to his slave: "fetch me water to drink," and the slave delays it, they find it proper to rebuke the slave and blame him because he defied his order. This argument seems to be acceptable.²
2. They argued that there must be a time limit (al-ghāya) and the best is immediately after the amr has been commanded, because by that time the mukallaf will be regarded as obedient and he will be out of danger of failing to carry it out by accident. Also, because the amr is the reason for the action being an obligation and, therefore, its ḥukm must follow

1. Ibn Qudāma, al-Rawda, p. 106.

2. Ibid., p. 106.

it in comparison with buying and selling and any other dealing which always takes effect immediately.¹

3. The possibility of delaying the amr to an unspecified time is contrary to the spirit of obligation, because it can only be delayed, either to a specified or to an unspecified time. The second is invalid, because it is not appropriate to delay the amr to an unknown time, as that will imply the imposition of what is beyond the capacity of the mukallaf (taklīf mā lā yuṭāq). Also, if the mukallaf makes the limit as the time he thinks he can live until, that is invalid as well, because one can die unexpectedly. One will not reach a position where one will be able to be certain about death, except when one feels the approach of death through infirmity, and then it would be very difficult to carry out such religious obligations as the pilgrimage.²

These arguments are more relevant to the issue of the time of amr, though it did not bring the problem much closer to being solved. But it did give a clear picture of the reasons why those who advocated an early time, advocated it.

The Zāhirites among ahl al-ḥadīth seem to have gone further than other schools by their insistence that

1. Ibn Qudāma, al-Rawda, p. 106.

2. Ibid., p. 106.

al-amr al-muṭlaq can only be carried out within the time limit and, once the time is over, there is no qaḍā' unless it was specifically mentioned.¹ Their main point of evidence is that there is no evidence that the future time is equal to the present time in terms of the validity of compliance with the amr, because according to them, all God's commandments are made to suit a certain benefit (maslah) at a certain time. Once that time is over, it is not useful to perform that amr at another time, unless there is a further instruction from the āmir that the future time is equal to the present.² This attitude seems to have originated from their refusal to accept the validity of qiyās, which the other schools had adopted to cope with such situations. For example, the Zāhirites do not allow someone who deliberately delayed his prayer or Ramaḍān fast until the time has passed, to make it up (qaḍā') on the ground that there is no evidence for that.³ At the same time, they agree with other schools that a sleeping person can make up his prayer at a later period, and a sick person or a menstruating woman can all make up their Ramaḍān fast whenever they become fit, because they consider that time as the same as the original time of doing it in these cases. In both cases there

1. Ibn Ḥazm, al-Ikḥām, vol. 3, p. 301.

2. Ibn Ḥazm, al-Iḥkām, vol. 3, pp. 301-302; also see al-Qurāfī, al-Tanqīh, p. 130.

3. Ibn Ḥazm, al-Iḥkām, vol. 3, pp. 301-302.

is a specific Qur'ānic requirement for this to take place but the Zāhiris regard these Qur'ānic injunctions as not equivalent to qaḍā'.¹ Other schools maintained that anybody who failed to pray or fast, deliberately or because of an accident, must make it up no matter how long it may be.² That view is based on an analogy deduced from a Tradition from the Prophet, in which he replied to a question from a man who asked him whether or not he can perform ḥajj on behalf of his father, who has already died. The Prophet replied by saying that "God's debt is the most rightful to be repaid" (Dyn Allāh aḥaq bil qaḍā').³ The Zāhirites did not reject the validity of this Tradition, but applied it only to the incident, because applying it to other similar incidents would mean qiyās, which they rejected.

The Zāhirites not only put more Qur'ānic evidence forward in support of the obligatory nature of al-fawr, they also succeeded in finding some Traditions, which other schools had either ignored, or were not aware of the possibility of interpreting them. A leading Zāhirite scholar, Ibn Ḥazm, gives detailed accounts of the ahl al-ḥadīth point of view as well as the Zāhirites attitude towards al-qaḍā'.

Ibn Ḥazm started by reporting that some people, whom

1. Ibn Ḥazm, al-Iḥkām, vol. 3, p. 302.
2. Ibid., vol. 3, p. 304.
3. Ibid., vol. 3, p. 306.

he did not name (probably Shāfi'ites), are of the opinion that God's commandments should be based on al-tarakhī (possibility of delay), while others maintained that it must be based on immediate implementation (al-fawr) unless al-tarakhī is permitted through another text or the consensus of Muslim scholars.¹ Ibn Ḥazm maintained that the latter view was the correct one which cannot be disputed. He cited Q/3/133, which ahl al-ḥadīth had already put forward. He stressed that God's commandments should be interpreted as obligation (al-wujūb) and when God commands us to be quick in performing action and doing things which will bring forgiveness, he interpreted that as an obligation to be quick to do what God orders us in the moment of ordering, without any delay or hesitation.²

Ibn Ḥazm is aware of the reason why other people, namely the Shāfi'ites, took different views and that it was their belief that Q/3/133 did not specifically imply the obligatory nature ^{of} al-fawr and, therefore, they argued that it was insufficient as evidence because, even in their own argument, they conceded that the order to be quick to do what would lead to forgiveness was only general encouragement and did not refer to any particular action. Ibn Ḥazm argues somewhat tenuously that the opposite interpretation to their view is made

1. Ibn Ḥazm, al-Iḥkām, vol. 3, p. 294.

2. Ibid., vol. 3, p. 295.

clear by the content of Q/27/90: "Do ye receive a reward other than that which ye have earned by your deed," which proves that no one can be given forgiveness except by (his) good conduct. Yet the relevance of this argument is somewhat tenuous. He goes on to maintain that we know what God meant by Q/3/133 was to be quick to good conduct which would lead to forgiveness from God, since there is no other way to be quick other than that. He said that that was what the condition warranted and it was based on two evidences: One is the clear text which has been revealed about that, i.e. that nobody will be rewarded with forgiveness and any other thing except within the limit of his conduct. The second is the clear text which has been revealed, that God will not impose anything upon anyone without providing him the means with which he can do it. Nobody is capable of being quick to obtain forgiveness without using good conduct as the means.¹

Ibn Ḥazm then divided the obligation into three categories of time. However his divisions are not very different from the popular ones already mentioned at the beginning of this discussion about the time of amr, except that it reflected the attitude of the Zāhirites towards the time of al-amr, which did not recognise the possibility of al-qaḍā' based on analogy (al-qiyas)² and,

1. Ibn Ḥazm, al-Iḥkām, vol. 3, p. 295.

2. Ibid., vol. 3, p. 301.

in some way, was more rigid in its interpretation. The divisions are as follows:

1. What has a very limited time which has no leeway on either side (before and after), like the fast of Ramaḍān. Ibn Ḥazm maintained that one cannot perform it until the time will become due, and once the time is over, that means that al-mukallaf has failed to carry it out as was required of him. He cannot make it up unless there is fresh authority that qaḍā' is acceptable.¹ This is only the view of the Zāhirites school of law, because other schools allow qaḍā'. In fact they make qaḍā' compulsory in all circumstances.²
2. What has some leeway like salāt (prayer) and other similar things. Ibn Ḥazm maintained that there was evidence that one is allowed to delay it until the last period (al-waqt al-thālith) and one must not perform it before it is due (al-waqt al-awwal). If the time is over, it is as the previous division.³
3. An amr which is not connected with a specific time. Ibn Ḥazm maintained that this kind must be performed at the beginning of the time (al-waqt al-awwal). This, according to Ibn Ḥazm, will remain the responsibility of the mukallaf until he carries

1. Ibn Ḥazm, al-Iḥkām, vol. 3, p. 302.

2. Ibn Qudāma, al-Rawda, pp. 106-107.

3. Ibn Ḥazm, al-Iḥkām, vol. 3, p. 295.

it out, even if he delays it.¹ This last involves three types:

1. Those like making up the fast of Ramaḡān in the case of a sick person and traveller. Ibn Ḥazm insists that he must perform it immediately he is fit. If he performs it immediately, he has fulfilled his obligation and, if he delays it again without any other reason, he has disobeyed God by delaying it, but he still has to make it up no matter how long it may be.²
2. An amr connected with time, which has a limited beginning but has no limited end, such as the obligation of zakāt. This one is like the previous one and will remain the responsibility of the mukallaf until he has carried it out.³
3. An amr connected with a limited period which is repeated, such as ḡajj which is connected with time during the year, but it is not up to one to perform it in a certain year. However it must be performed immediately on becoming able to perform it, like the two previous cases.⁴

1. Ibn Ḥazm, al-Iḡkām, vol. 3, p. 295.

2. Ibid., vol. 3, p. 295.

3. Ibid., vol. 3, pp. 295-296.

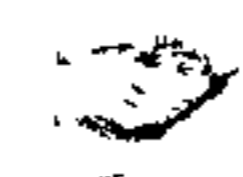
4. Ibid., vol. 3, p. 296.

These are the Zāhirites' divisions of obligation based on time. Because of their belief that future time is not equal to the present time in terms of benefit, al-badal or al-'azm was completely taken out of their discussion. In fact, Ibn Ḥazm did not make any reference to it. Perhaps he saw it as another kind of qiyās, which had no evidence to support it. If he had accepted the validity of al-'azm, qiyās would have been much more acceptable.

Ibn Ḥazm concentrated most of his arguments on defending the belief that al-amr al-muṭlaq required al-fawr. He cited more evidences from the Qur'ān, as well as some Traditions, which in one way or the other were associated with the Prophet. Ibn Ḥazm himself admitted that some of this evidence had nothing to do with the question of the time of amr, but he insisted that they have to be interpreted in this way.¹

Ibn Ḥazm cited Q/9/22: "If a contingent from every expedition remained behind they could devote themselves to studies in religion and admonish the people when they return to them," and Q/49/6: "O you who believe if a wicked person comes to you with any news ascertain the truth lest you harm people unwittingly afterwards, become full of repentance for what you have done." Ibn Ḥazm explains that these verses have made it clear that God's commandments should be interpreted as requiring

1. Ibn Ḥazm, al-Iḥkām, vol. 3, p. 297.

early implementation (fawr), because he obliged us to be cautious in accepting any report from a wicked person, which means that He excluded it from the admonition, so there is no choice other than to wait or comply immediately, no third option except abandoning them altogether. Ibn Ḥazm argued that to suspend judgement (tawaqquf) itself amounts to abandoning it. He went on that when God singled out the reports of a wicked person by urging caution, He had distinguished  from reports of a person who was not wicked and had made it obligatory to be quick to carry out the reports of a just person. Therefore fawr becomes obligatory by this clear evidence and tawaqquf becomes invalid except in the case of a wicked person. Ibn Ḥazm further cited two Traditions. The first Tradition in which the Prophet said to some people who preferred to stay in the back lines during the prayer because of some abhorred things which they had in mind. He said, "People will remain delaying themselves (means keeping themselves behind) until God will delay them."¹ Ibn Ḥazm said though this Tradition came only to oblige people to try to get to the front line in the prayer, it could be interpreted according to its obvious meaning and wording.²

This latest evidence in support of the obligatory nature of fawr further confirms our earlier observation

1. Ibn Ḥazm, al-Iḥkām, vol. 3, p. 297.

2. Ibid., vol. 3, p. 297.

that there is no general guideline or divine evidence to back the claim that al-amr al-muṭlaq required early implementation. These Qur'ānic examples given by Ibn Ḥazm do not in anyway indicate that, and the interpretation of the argument becomes more confusing. The second Tradition, which Ibn Ḥazm dragged into this discussion, when he has already cited one similar to it in the argument about the obligatory nature of al-amr al-muṭlaq, did not contain any possibility of time either. The Tradition was narrated: Dakwān,¹ a slave who belonged to 'Ā'isha the wife of the Prophet, reported from 'Ā'isha that the Prophet arrived in Mecca on the 5th or 6th of Dhu al-Ḥijja and he came in to me. He was very angry. I said to him, "Whoever had annoyed you God will put him in the hell." The Prophet replied, "Don't you understand that I ordered people to do something and they hesitate (yataraddadūn)."² Ibn Ḥazm maintained

1. Ibn Ḥazm mentioned him as Dakwān with dāl and it appears that the correct form is DHAKWĀN with dhāl. The most detailed information about him came from Ibn Hajar al-'Asqalāni. In al-Isābah he described him as slave of the Prophet (Mawlā al-Rasūl), which automatically gave him the status of the Companion. He reported that from Ibn Iṭbān. In al-Tahdhīb al-Tahdhīb, he describes him as slave of 'Ā'isha. It seems that his Companionship is in doubt because none of those who supplied him with information about Dhakwān considered him as Companion. However Ibn Hajar did not mention his full name.

2. Ibn Ḥazm, al-Iḥkām, vol. 3, p. 299.

that this Tradition has removed every doubt that his order should be interpreted as requiring obligation as well as fawr. But if this Tradition points to anything, it only indicates the obligatory nature of al-amr al-muṭlaq.

In this explanation given by Ibn Ḥazm at least we are able to see a clear picture of the way and how ahl al-ḥadīth came to their conclusion on the time of amr. However, their stand raises the question of what might be the reason for their engaging themselves in such a very hectic argument, which they cannot find very satisfactory evidence to substantiate. But since their explanation represents only one side of the argument, it would be better to defer any predication of what might be the reason until the argument of the other side is considered.

As for the Shāfi'ites and their supporters among ahl al-kalām, they do not put forward any evidence either from the Qur'ān or from the Tradition of the Prophet. They only based their opposition on thorough scrutinization of the existing evidence put forward by their opponents. On most issues, they have a tendency to discredit what they consider to be a claim without strong evidence.

As has already been mentioned earlier, the Shāfi'ites insist that al-amr al-muṭlaq does not require fawr and that Q/3/133 did not indicate this either: neither by its form as an imperative, nor by its meaning as command. Therefore they declare that fawr is not obligatory. They

argued that any indication that al-amr al-muṭlaq requires fawr must be separate evidence not merely based on the form of amr as an imperative. However, many Shāfi'ite scholars have attempted to substantiate this view by putting forward a series of analyses in which they aim at rendering the evidence of ahl al-ḥadīth logically invalid. The Mu'tazila scholar, Abū al-Ḥusayn al-Baṣrī, maintained that al-amr al-muṭlaq did not require immediate implementation (fawr) and delay was possible. He said that it was the view of early Mu'tazila scholars: Abū 'Alī al-Jubbā'ī and his son, Abū Hāshim. He also attributed it to Shāfi'ite scholars.¹ Abū al-

1a. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 120.

b. The view that al-amr al-muṭlaq requires al-tarakhī by its nature, to the extent that if one performs it in the early time it will not be acceptable, has been attributed to both al-Jubbā'ī and Abū al-Ḥusayn al-Baṣrī and some Asha'rites, but so far we cannot find very strong evidence to support it. The view which Abū al-Ḥusayn al-Baṣrī declared for himself and for both al-Jubbā'īs was that of the Shāfi'ites and that is the possibility of delaying amr, which means that performing it at an early period is even better for those who can afford to do that. See Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 120.

Ḥusayn al-Baṣrī put forward some evidence which is purely based on logical conclusion. He argued that if amr had required fawr, it would either be through its wording or through its meaning. He insisted that amr did not require fawr by any one of them. He gave an example to substantiate the view that if someone says if'al, there wasn't any mention of any time, either early or late. He suggested that it only indicates that the action should take place.¹ Abū al-Ḥusayn al-Baṣrī completely ignored the Qur'ānic evidence. In fact he did not make any reference to it; perhaps he thought that any argument about the time of amr could only be discussed rationally and not on the basis of divine evidence. According to his own view, if amr takes place either in the first time (al-waqt al-awwal) or in the second time (al-waqt al-thānī) and in the third time (al-waqt al-thālith), it has been fulfilled and that means that the mukallaf has complied with the order. He argued that, on this basis, it was not possible to say that he had performed it in the time the āmir did not want.² According to Abū al-Ḥusayn al-Baṣrī, the case appears as if the āmir is saying: "Do it whenever you wish and ~~and~~ I did not make it compulsory in the early time." He seems to be saying that once the beginning of the time is known as

1. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 121.

2. Ibid., vol. 1, p. 121.

well as the end, and there is no evidence that we should confine amr to either side of it, there is no need to tighten up the time by trying to confine it to a certain period out of a limited period. He does not seem to be taking into account the idea of precaution, which ahl-al-ḥadīth used as one reason for regarding fawr as obligatory, nor did he accept the suggestion that to base al-amr al-muṭlaq on fawr was more logical.

Abū al-Ḥusayn al-Baṣrī gave more examples to emphasise that immediate implementation is not understandable from the word if'al (as form of imperative). He said that if someone says "give a dirham to one man," for example, ~~that~~ according to him it is possible for that man to pay the dirham ^{when} he wishes and to any man he wishes, because the order (amr) did not confine him to a special dirham. He argued that the time of amr also must be like that. It should not be confined to a certain time because no one time is specified. He further pointed out that if someone says if'al, he only meant a demand for action in the future, like if he said, "Khālid will be doing," he was only telling us that action would take place. As this information did not deny that action could take place a short period afterwards, the amr could not do so either. Abū al-Ḥusayn al-Baṣrī goes on to say that al-amr al-muṭlaq did not require it by its meaning, except by saying that amr means obligation (wujūb) and obligation cannot be completed with the possibility of delaying amr. He maintained that that is invalid too, because some action

could be obligatory and yet the mukallaf could be given a choice of carrying it out at the beginning of time, or in the later period, as long as he is sure that the time will not run out if he did not carry it out in the first period. However, he admitted that the mukallaf is not allowed to delay it if he knows that the time will run out. He declared that as the difference between obligation and al-nāfila (supererogatory).¹

Abū al-Ḥusayn al-Baṣrī appears to be putting more emphasis on the customary practice of ahl al-lughā by concentrating all his explanations and examples on the logical point of view, rather than taking other evidence, such as possible interpretation from the Qur'ān or from the Tradition of the Prophet, or what ahl al-ḥadīth term as al-maslah (benefit). In fact none of his examples has come within that scope. That is the attitude of the Shāfi'ites in general; they put more emphasis on the logical point of view and pay less attention to sources other than that. This different approach has been one of the reasons for the sharp differences between ahl al-ḥadīth and ahl al-kalām, not only on the issue of time but in almost every argument.

Abū al-Ḥusayn al-Baṣrī's explanations find an echo in both al-Tabsirat fī Uṣūl al-Fiqh of Abū Ishāq al-Shīrazī² (d. 476 A.H.) and al-Mustaṣfā of al-Ghazālī. Abū Ishāq

1. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, p. 121.

2. Ibid., vol. 1, p. 121.

maintained that al-amr al-muṭlaq did not require fawr. He says that it was the view of our colleagues (he meant Shāfi'ites). He said that since no particular time has been mentioned as being preferable to another, it is appropriate to carry it out at any point of the time.¹ In fact, it appears that Abū Ishāq did not recognize the division of time which both ahl al-ḥadīth and Shāfi'ites had earlier agreed upon. Therefore he did not take account of the term used for the division of time. He seems to be treating al-muwwsa' and al-muddayaq alike by not making any difference between them. In his example he maintained that since amr did not require a particular time, it only needs any time and any place, because the activities of human beings must take place at a certain time and certain place. He concluded that at any place in which the mukallaḥ carried it out, he had fulfilled it; the same thing is the case if he carried it out at any time, it is supposed to be enough. Abū Ishāq then compared the amr to the fulfilment of a promise backed by an oath, like saying "by the name of God I will do so and so." That is an oath of promise even if he delays the action from the time of oath. He maintained that in the same way a man must be compliant in the case of amr even if he delays action from the time of amr.² A very similar explanation later came

1. Abū Ishāq al-Shīrazī, al-Tabṣira, pp. 52-53.

2. Ibid., pp. 53-54.

from al-Ghazālī.

On the question of Q/3/133 and Q/23/61, it seems that Shāfi'ites are united in interpreting the verses as metaphorical in the sense that God mentioned forgiveness, while He actually meant its requirements. According to them, there is nothing in the verses indicating the requirement of forgiveness ^{being} involved in action on the basis of early implementation (fawr). They are arguing that, even if the verses indicated early implementation, that is not necessarily indicating obligatory fawr, because they do not consider it as a general term to the extent that it will include al-amr al-muṭlaq on a special basis.¹ The Shāfi'ites are also united in their insistence that there can be no comparison between obligation and supererogatory action (al-nāfila), because they consider the delay allowed in the case of obligation as a limited one. It is only from the first period till the second or third period. Once the mukallaf has determined to carry it out later, it has been differentiated from the supererogatory action, because al-nāfila could be abandoned forever without substitution. They justify their view again by the fact that there is no evidence that the āmīr wanted it to be carried out in the first time. At the same time they also ignore the fear expressed by their opponents

1. Badkhashī, Sharḥ al-Badkhashī, vol. 2, pp. 45-46; also see al-Shawkānī, Irshād al-Fakhūl, p. 89.

that such substitution also amounts to the establishment of a ḥukm without evidence, as well as their opponents' claim that substitution of time could lead to the amr eventually being abandoned, particularly if the substitution was by delegating it to someone else (wasīya). Ibn Qudāma maintained that wasīya was invalid because if it was possible to entrust someone to carry the obligation out and the very person entrusted could also entrust someone else until the obligation eventually ended without being performed.¹

Perception among later scholars always takes a different tone from those of early scholars, even though they prefer not to go out of the main doctrine of their ancestors. Thus perception has led them to make some modification which they think is logically acceptable to the society in which they live. Therefore the prevailing opinion among them is that amr, by its form, did not indicate either fawr or tarikhī thus delay was possible. They also insisted that if amr indicated fawr, it was because of other evidence which could be a direct or indirect inference. Apart from that they seem to be seeing a certain kind of connection between al-amr al-muṭlaq requiring repetition (al-takrār) by the repetition of certain conditions or reasons, and al-amr al-muṭlaq requiring fawr as if it depends on a certain reason of quality (ṣifa). Muḥammad Abū Zahra suggested that it is possible that an al-amr al-muṭlaq which was required to be carried out within a certain period may be based upon the same argument as that of al-amr al-muṭlaq which

1. Ibn Qudāma, al-Rawda, p. 106.

depended upon a certain quality or reason. Therefore he held the view that the nature of amr also could be used to identify or recognize what kind of amr should be carried out on the basis of immediate implementation. He cited Q/2/185: "Who is present (at his home) during that month should spend it in fasting." He interpreted this verse as a typical example,¹ but the problem remains that the example he gave here is regarded by all Muslim scholars as restricted in the sense of time. Also, if his idea is going to be adopted as the only means to identify the time of amr, there are bound to be many amr which did not obviously depend upon any certain condition or quality, such as expiations and so on. Yet the mukallaf has to know what time he should carry it out. This idea has failed to give any clue to that kind of amr.

In another attempt, Muḥammad al-Khudari (d. 1345 A.H.) holds the same view that the word amr as an imperative did not require the amr to be carried out either in the early period or in the late period, therefore a limited delay is possible. He goes on to say that if amr is required to be carried out on the basis of immediate implementation, it is because of external contexts. According to him Q/3/133 and Q/23/61 both indicate the obligation of fawr, but it appears that he interpreted the contexts here as being a divine command,

1. Abū Zahra, Uṣūl al-Fiqh, p. 141.

not merely because of the form as early scholars had maintained. Thus he automatically excludes what is not a divine command.¹ This kind of modification seems to be an attempt by later scholars to present the case in a new way by maintaining that amr should be interpreted as the command of God, rather than customary usage.² By doing so, they appear to find some kind of compromise ground which at the same time will not harm their position as belonging to the same old schools. They themselves seem to have realised that the question of the time of amr is a particular issue, for which the discretion of finding a solution could only be made on an individual case, and all effort to generalise has not been successful.

This even-handed approach seems to be the most attractive to most of the later scholars. Among other later writers who have expressed a similar view, are 'Alī Ḥasab Allah,³ Muṣṭafā Ṣalabī,⁴ and Murtaḍā al-Ḥusayn al-Fayrabādī.⁵

These are the opinions of the scholars in favour and against the obligatory nature of fawr and both contesting groups appear to have identified the reason

1. Al-Khudarī, Uṣul al-Fiqh, p. 200.

2. Ibid., p. 200.

3. Ḥasab Allah, Uṣūl al-Tashrī' al-Islamī, pp. 255-256.

4. Salabī, Uṣūl al-Fiqh al-Islamī, vol. 1, pp. 387-388.

5. Al-Fayrabādī, 'Ināyat al-Uṣūl.

why they follow what they advocate on the issue. As for the Shāfi'ites, their message is simple and it is that every interpretation of amr has to come within logic to make it acceptable. They seem to feel that there is no need to impose any restriction which is not obviously understandable from the Qur'ān or the Tradition of the Prophet or specifically mentioned, as that would be unnecessary in their view.

As for ahl al-ḥadīth, their message is not immediately clear, however their rigorous attitude to fawr suggests a fundamentalist tendency and a desire to ensure the maintenance of religious practice which has come to be associated with their general rather literalist approach to religion.

CHAPTER IV

A DISCUSSION OF SOME OF THE
PROBLEMS OF AMR WITHIN THE FURŪ'

This chapter deals principally with the third aspect of amr, that is the commanded action which is termed al-ma'mūr bihi. In the discussion particular concern will be given to analysing the role of amr in the furū', the theological implications of different interpretation of amr will also be analysed and discussed. This will inevitably require some contrasting analysis of the operation of amr in the different schools of law. Before that it will, first of all, consider the conditions put forward by some scholars which they required before al-ma'mūr bihi could be accepted.

The Conditions for the Acceptability of al-Ma'mur Bihi

As it is possible that many forms of amr (sīghat al-amr) may not indicate a genuine amr and that not everyone who appears as āmīr is in fact qualified to command, many commanded actions may not necessarily be acceptable. Therefore usūlīs try to put forward some guide-lines by which a genuine commanded action (al-ma'mur bihi) could be recognized. There are three conditions for this. There seems to be a consensus on two of them, while the other remains a matter of disagreement. The conditions are as follows:

1. The action ordered must be known to the person ordered to perform it (ma'mūr).¹ That could mean educating him or providing him with all the necessary things which could help him to perform it. Also the ma'mūr should be made to realise that he was commanded by God to do the action and that he will be rewarded for doing it. The argument for this condition is that if the āmir commands the ma'mūr to do something he did not know how to do or he tells him for example "do what is in my mind otherwise I will punish you" without letting him know what is in his mind that would be unacceptable because they consider it as an impossible action.² (However, some of them accept that in some circumstance a person may be commanded to do something which is impossible as the third condition is going to indicate.)
2. They also agreed that the commanded action should not be available (an yakūn ma'dūm)³ as required at the time of commanding when the ma'mūr is commanded to provide it or make it available. They argued that there was no point in asking someone to provide what has already been provided. For

1. Ibn Qudāma, al-Rawda, p. 28; also see Shinqītī, Mudhākra, p. 34.

2. Amidī, al-Iḥkam, vol. 1, pp. 102-3.

3. Ibn Qudāma, al-Rawda, p. 28.

example, if someone is asked to fetch water, that means that the water has not been made available and he is ordered to make it available. Similarly if someone has prayed a particular statutory prayer and he is commanded to perform that very prayer again, the second performance cannot be the performance of the statutory prayer since that has already been performed and can only be considered as supererogatory¹ (al-nāfila).

3. The third condition is the controversial one which the uṣūlīs differed upon. Those who put it forward maintained that commanded action (ma'mūr bihi) should be a possible one (an-yakūn mumakkan).² That was put forward by the Mu'tazila,³ the Shī'ites⁴ and some mutakallimīn among whom were al-Ghazālī and others.⁵ However, the vast majority of scholars are of the opinion that commanding someone to do impossible things is logically acceptable though they differ on

1. Shinqītī, Mudhākra, p. 35.

2. Ibn Qudāma, al-Rawda, p. 28.

3. Āmidī, al-Iḥkām, vol. 1, p. 103.

4. Al-Murtadā, al-Dhari'at, vol. 1, p. 165.

5. Al-Ghazālī, al-Mustaṣfā, vol. 1, pp. 86-7;
also see Fakhar al-Dīn al-Rāzī, al-Maḥsūl, vol. 1,
p. 363.

whether or not it has ever happened in law.¹

Their argument over whether or not commanding someone to do an impossible thing is a very long one which involves theological views.² Reference to it illustrates the theological implications of their different interpretation on the furū'.

We have already pointed out on many occasions that the implications of amr are the theoretical basis for the performance of the furū', therefore they will necessarily involve some aspects of theology. What we are concerned with here is in fact part of the discussion concerning sīghat al-amr and irādat al-amr in an earlier chapter where ahl al-sunna defined amr as an expression about specific forms. They hold the view that by using any one of these forms together with other conditions associated with it such as 'uluw and ist'illā', the form will have effect regardless of whether or not the āmir wanted the action to happen.³

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1. Al-Rāzī, al-Maḥsūl, vol. 1, p. 363; also see Ibn Qudāma, al-Rawda, pp. 28-9.
 2. More interesting comments on taklīf mā la yutāq could be found in Tafsīr - al-Baydāwī in his comment on Q/2/31 "Inform me about names of these." See al-Baydāwī, Tafsīr, vol. 1, p. 138.
 3. See above, pp. 62-64.

According to their view these forms were originally created for commanding (amr) and using them in any other way would be considered a metaphorical use.¹

However, it seems that arguments of ahl al-sunna are limited to their own consideration of the linguistic aspects of the issue and they are avoiding the question of whether or not these are rational in terms of theology.

On the other hand, the Mu'tazila insist that amr is an expression about will (irāda) and maintained that the mere form of amr (i.e. imperative) without irāda cannot be considered as amr.² They argued their view in two ways: Rationally they believe it is not logical to base a command on a mere form without irāda because according to them these forms are not specially for amr because they could be used for another meaning such as ibāha or tahdīd (permission and threat) and many other things. They also maintained that God cannot command something without actually wanting what He commanded to happen.³ This latter argument of the Mu'tazila is based on a theological view of God which is an essential

1. See above, pp. 62-64.

2. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, pp. 49-54; also see Bazdawī Abū al-Yusr, Kitāb al-Uṣūl al-Dīn, p. 53.

3. Abū al-Ḥusayn al-Baṣrī, Kitāb al-Mu'tamad, vol. 1, pp. 49-54.

part of the Mu'tazila concept of God, i.e. God is a reasonable being who will always act in accord with rationality.

The Mu'tazilite position defines speech (kalām) as words and voice and does not regard it as an attribute of God.¹ Thus the mere verbal form without irāda, i.e. without God's will that that form be amr is unacceptable to them.² This disagreement has wider implications for the furū'. Among such implications is their disagreement over whether or not it is acceptable logically and legally to command someone to do an impossible thing which they termed as taklīf ma lā yuṭāq and also their disagreement over whether or not non-Muslims (kuffār) are requested or commanded to perform the requirement of the law such as payment of zakāt, performances of prayer and Ramaḍān fasting and so on. These two aspects (i.e. commanding what is impossible and requiring non-Muslims to perform the requirements of Islamic law) are interrelated in the sense that both of them depend on the attitude of the two groups towards logical acceptability.

Those who maintained that amr depends on forms also were obliged to maintain that commanding someone to do impossible things is a natural thing and therefore could

1. Bazdawī Abū Yusr, Kitāb Uṣūl al-Dīn, pp. 53-4; also see above, pp. 54-56.

2. Bazdawī Abū Yusr, Kitāb Uṣūl al-Dīn, p. 53.

be accepted. Consequently they maintained that the kāfir is required to perform the requirements of Islamic law such as zakāt and prayer though reward will only come to Muslims for such actions.¹ They supported their view that commanding one to do impossible things is acceptable with two evidences: The first is a rational one. They maintained that the aim of doing so is only to test the commanded person (ma'mūr or mukallaf) whether or not he will show obedience. Then he will be regarded as obedient and compliant (mumaththil).² The second evidence is Q/2/286, "Our Lord! Lay not on us a burden greater than we have strength to bear." They argued that if it is not possible for God to command the impossible there would not have been any need for asking God to prevent it happening. They also supported their view that the kāfir is requested to perform the requirements of the law by many verses from the Qur'ān such as Q/3/97, "God requires pilgrimage thereto for men who can afford the journey." They maintained that the word "men" is a general one which includes Muslims and non-Muslims.³ Also they cited Q/74/42-49, "And (ask) of the sinner what led you into hell-fire. They will say we were not of those who pray. Nor were we of those who fed the

1. Āmidī, al-Iḥkām, vol. 1, pp. 110-112.

2. Shinqītī, Mudhākra, pp. 33-34.

3. Āmidī, al-Iḥkām, vol. 1, p. 111.

indigent but we used to talk vanities with vain talkers. And we used to deny the day of judgement until there came to us (the hour) that is certain." This is the view of the vast majority of ahl al-sunna according to al-Qurāfī who himself supported it and attributed it to Mālikites.¹ The Hanbalī scholar Ibn Qudāma also supported it and attributed it to al-Shāfi'ī.²

For their opponents, namely the Mu'tazila and the Shī'ites, and their supporters among ahl al-sunna, these arguments are illogical and lack sufficient evidence to substantiate them.³ As far as they are concerned they divided taklīf mā lā yuṭāq into two categories: the first of these was what is not possible in itself, such as combining negative and positive things together at the same time or like asking someone to sit down and stand up at the same moment. Āmidī defined it as what is not imaginable in the mind (mā lā tasawwur lahu fī al-nafs).⁴ They regarded commanding non-Muslims to observe the requirements of Islamic law as falling within this category and therefore they considered it as illogical because according to them if he prays or fasts or pays zakāt, it will not earn him any reward.⁵

1. Al-Qurāfī Sharḥ Tanqīh, p. 143.

2. Ibn Qudāma, al-Rawda, pp. 27-8.

3. Al-Murtadā, al-Dhariḡa, vol. 1, pp. 164-168; also see al-Ghazālī, Mustaṣfā, vol. 1, p. 89.

4. Āmidī, al-Iḥkam, vol. 1, p. 103.

5. Shinqītī, Mudhākra, p. 33.

The second category was what they termed as "impossible because of God's former knowledge that it is not possible." They give an example for this category as a kāfir whom God has commanded to believe but he has not, God knew before commanding him that he would not believe.¹ It seems that most of those who were opposed to the general concept of taklīf mā lā yuṭāq supported this particular form of taklīf.

On the question of whether or not non-Muslims were required to carry out the requirements of Islamic law, they argued that such requirements could only be acceptable by being Muslim and therefore it would be impossible for non-Muslims to comply with it because kufr was an obstacle to it. Even if the non-Muslim becomes a Muslim later he would not have had to perform those actions earlier because Islam always abrogates every misconduct committed prior to its acceptance.² Thus for them it was clearly quite unacceptable to require these things from non-Muslims. According to their own view the passage of the Qur'ān 74/42-49 is only information about what is going to be the condition of the kuffār on the day of judgement and therefore is not evidence with regard to whether or not the non-Muslim is required to carry out the requirements of Islamic law.³

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1. Shinqītī, Mudhākra, p. 37.
 2. Āmidī, al-Iḥkam, vol. 1, p. 110.
 3. Ibid., p. 111.

Disagreement Based on Theological Differences

Another example of where disagreement on al-amr in terms of theology led to a disagreement on al-furū' is the Zāhirites' rejection of any inner meaning of either the Qur'ān or the Tradition of the Prophet. They always rejected any interpretation which did not accord with the outward meaning of the Qur'ān and the Tradition. They rejected qiyās in particular.¹ On the other hand, they seemed to agree with the uṣūlīs on many points which were generally regarded as theoretical principles of the law but always seemed to abandon that agreement whenever it conflicted with their own theological doctrine. Ibn Ḥazm, a leading Zāhirite scholar, maintained that al-amr al-muṭlaq does not require repetition and wrote at great length defending it.² He refused to agree with other schools in maintaining that al-tayammum should be repeated for every obligatory prayer (al-salāt al-muktūba) on the grounds that al-amr al-muṭlaq did not require repetition. His primary evidence wasn't on the basis of al-qiyās drawn by most opponents of repetition of the tayammum, namely the Ḥanafites, but on the grounds that the outward meaning of the Qur'ānic injunction on al-tayammum did not imply that.³ This seems to indicate

1. ^{-al-} Ibn Nadīm, Kitāb al-Fihrist, pp. 216-217; also
see Schacht, Introduction to Islamic Law, p. 63.

2. See above, pp. 135-138.

3. Ibn Ḥazm, al-Muḥalla, vol. 2, pp. 129-130.

that he rejected the uṣūlīs principle on amr (after having defended them) in favour of his own theological doctrine.

It seems that theology produces a position with regard to some Islamic laws which will not be compromised. Such theological principles are an important feature of the Islamic legal system. The above mentioned examples are clear evidence of that. Another matter which always generates differences among uṣūlīs is that of differences in interpreting particular injunctions in the Qur'ān or the Tradition of the Prophet. Uṣūlīs have always regarded this matter as fundamental and have therefore described it as uṣūlī in the sense of particularly referring to their science. Differences on this matter are common and one of the results arising out of that may have influenced the establishment of the schools of law. Yet the differences in the schools of law are subject to compromise of a temporary or even permanent nature. For example, it is possible for a Mālikī to pray behind a Ḥanafite Imām who does not believe in al-fawr in ablution. On the other hand, at the level of basic belief the denial of one quality with regard to God according to ahl al-sunna could mean al-kufr and it is not compromisable.

Examples of these kinds of differences are innumerable. However, it is necessary to give some specific examples in order to show how deeply amr is involved. The two examples given here show the operation of amr in the furū'. Both examples come

from unrestricted amr (i.e. al-amr al-muṭlaq) which we have discussed earlier.

One of these examples is the question of the validity of performing two compulsory prayers (al-salāt al-maktūba) with one tayammum (the use of sand for ablution when water is not available). This is based on the difference among the uṣūlīs on whether or not al-amr al-muṭlaq requires repetition which was also inferred from the Qur'ānic injunction "O you who believe! When you prepare for prayer wash your faces and rub your heads (with water) and wash your feet to the ankles, if you are in a state of ritual impurity bathe your whole body but if you are ill or on a journey or one of you cometh from offices of nature or you have been in contact with a woman and you find no water then take for yourselves clean sand or earth and rub there with your faces and hands" Q/5/6. The command to perform al-tayammum instead of normal ablution in this verse is an unrestricted command according to the uṣūlīs¹ because there is no mention of any number of times it should be performed nor does it state how long the effect of tayammum will remain valid.

Those who maintained that al-amr al-muṭlaq requires repetition like the Mālikīs and some Shāfi'ites maintained that two separate compulsory prayers (al-

1. Al-Zanjānī, Takharīj al-Furu' 'alā al-Uṣūl, pp. 22-24.

salāt al-maktūba) should not be carried out with a single tayammum¹ because according to them, this was the implication of al-amr al-muṭlaq. Shāfi'ī who according to the uṣūlīs maintained that al-amr al-muṭlaq may contain some probability of repetition also forbids two compulsory prayers (al-salāt al-maktūba) with one tayammum. He maintained that if one had to make two prayers using tayammum, he would have to repeat the second prayer with a fresh tayammum.² He did not differentiate whether or not this second prayer was prayed at its proper time (adā') or later as a compensatory prayer (qadā'). But neither Mālikīs nor Shāfi'ites opposed the combination of one compulsory prayer with a supererogatory prayer (al-nāfila) or many other kinds of prayers such as funeral prayer and so on with one tayammum.³ Although the explanation of these details can be found in the works of Mālik and Shāfi'ī, neither of them has specified that the reason for repetition of al-tayammum is a result of al-amr al-muṭlaq requiring repetition. They only maintained that the normal thing is that one should attempt to get water after every prayer and if one failed one should perform

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1. Mālik, Muwaṭṭa, p. 47; Shāfi'ī, al-Umm, vol. 1, p. 47; also Ibn Qudāma, al-Mughnī, vol. 1, pp. 262-267.
 2. Shāfi'ī, al-Umm, vol. 1, p. 47.
 3. Mālik, Mudawwana, vol. 1, pp. 42-45; Shāfi'ī, al-Umm, vol. 1, p. 47.

fresh tayammum for the second prayer. This explanation from them was later interpreted to mean their indication of al-amr al-muṭlaq requiring repetition¹ on the grounds that both ablution and tayammum commanded for in the same verse are amr muṭlaq and ablution has been specified by the practice of the Prophet but tayammum remained unrestricted. However, the Ḥanbalites also support the view that one tayammum should not be used for two compulsory prayers (al-salāt al-maktūba) except if the prayers are compensatory ones (al-qadā'). That is the view of Ibn Qudāma which he attributed to Ahmad b. Ḥanbal himself.²

The Ḥanafites and the Zāhirites are agreed in opposing the idea of repetition of tayammum for every obligatory prayer. However they differ on the reasons for their opposition. The Ḥanafites have consistently rejected that al-amr al-muṭlaq requires repetition and therefore they are in favour of using one tayammum for more than one compulsory prayer³ (al-salāt al-maktūba). Although not openly stated their view seems to be based on the qiyās that al-tayammum brings about full ritual purity (al-tahāra al-tāmma) and could clear every ritual

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1. Ibn Taymiyya, Majmu', vol. 21, pp. 379-381; also see al-Zanjāni, Takharīj al-Furu' 'ala al-Uṣūl, pp. 22-24.
 2. Ibn Qudāma, al-Mughnī, vol. 1, pp. 262-263.
 3. Al-Bukhārī, Kāshf al-Asrār, vol. 1, pp. 122-3.

impurity in the same way as water. Therefore tayammum was adequate in their view for more than one compulsory prayer (al-salāt al-maktūba).¹ This could also be connected with their view that al-amr al-muṭlaq did not require repetition. One early evidence in this connection which could be the source in which uṣūlīs might have deduced the Ḥanafites' view is the remark made by Muḥammad b. Ḥasan al-Shaybānī (d. 189 A.H.) in his book Kitāb al-Aṣl. He maintained that if a man had prayed a compulsory prayer (al-salāt al-maktūba) with tayammum and then the time for another (compulsory) prayer came and he wished to pray it but doubted about whether or not he has passed by water, he could perform that new prayer with the same tayammum which he had used for the first prayer until he was certain about the availability of water.² This confirms the view that the Ḥanafites allow more than one compulsory prayer with one tayammum. At least it shows that they do not consider the long period between the two prayers and the attempt to find water as breaking al-tayammum as other schools other than the Zāhirites do. This remark of al-Shaybānī seems to have the authority of Abū Ḥanīfa as well as Abū Yūsuf because al-Shaybānī said in the beginning of the book, "I have explained to you the view of Abū Ḥanīfa, Abū Yūsuf and indeed my own and anything with no mention

1. See al-Jazīrī, Kitāb al-Fiqh, vol. 1, p. 158.

2. Al-Shaybanī, Kitāb al-Aṣl, vol. 1, p. 121.

of disagreement can be regarded as our agreement."¹

On the question of whether or not al-tayammum represents ritual purity which also have influence on the idea of repetition, al-Shaybānī allows an able man who is not on the journey but has committed an act of ritual impurity to pray with tayammum if he fears danger to health by using cold water. He also attributed this view to Abū Ḥanīfa as well, while he reported that Abū Yūsuf had opposed it.² This also could be taken as further evidence that Abū Ḥanīfa regards the tayammum as sufficient ~~to~~ to bring about full ritual purity.

However, the other schools who have maintained that tayammum must be repeated for each prayer are of the opinion that al-tayammum brings about only a temporary state of purity and only for emergency reasons. Therefore it could not remove al-ḥadath al-akbar which brings about a major state of ritual impurity.³ So, according to them

1a. Ibid., p. 1.

b. "I have explained to you" here refers to one of his scholars (Abū Suleman al-Jawzjānī Musa b. Suleman) who recorded Kitāb al-Aṣl. Ibn ^{al-}Nadīm mentioned him without date of his death which is a few years later than that of al-Shaybānī. See Kitāb al-Aṣl, vol. 1, p. 1 and Ibn Nadīm, al-Fihrist, pp. 205-206.

2. Al-Shaybānī, Kitāb al-Aṣl, vol. 1, p. 124.

3. Shāfi'ī, al-Umm, vol. 2, p. 47; also see al-Jazīrī, Kitāb al-Fiqh, vol. 1, pp. 157-159.

although one can perform the prayer, after the tayammum has temporarily purified a state affected by major ritual impurity, when one finds water, one must purify oneself from major ritual impurity¹ whereas the Ḥanafites maintained that this was unnecessary because they considered al-tayammum as sufficient to bring about a state of absolute ritual purity from the effect of every major ritual impurity.²

Furthermore, the Ḥanafites support their stand with analogy. Having made tayammum synonymous with full ablution they made the analogy that only one tayammum was necessary for several prayers on the basis of a Tradition that the Prophet used to carry out many compulsory prayers (al-salāt al-maktūba) with a single ritual³ ablution.

As for the Zāhirites they agreed in principle with the Ḥanafites that al-amr al-muṭlaq did not require repetition and this particular issue of al-tayammum is extremely important for them because to accept that one tayammum is not valid for more than one compulsory prayer will automatically mean repetition of al-amr al-muṭlaq and here it will certainly contradict the main foundation upon which their doctrine is built (following

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1. Mālik, al-Mudawwanā, vol. 1, p. 44; also see Shāfi'ī, al-Umm, vol. 1, p. 47.
 2. Al-Shaybānī, Kitāb al-Aṣl, vol. 1, p. 124.
 3. Ibn Qudāma, al-Mughnī, vol. 1, p. 263.

the outward meaning). Since they did not accept al-qiyās they further disagree with the Ḥanafites on the analogy applied by the Ḥanafites. Instead they keep insisting that outward meaning of the Qur'ān did not indicate what the Mālikites maintained. At the same time they supported the Ḥanafite view that one tayammum is sufficient for more than one compulsory prayer but their own point of evidence is that the Qur'ānic injunction on the tayammum has indicated that by not specifying that one tayammum is not sufficient.¹ They also produced Traditions of their own which give them evidence which they maintained was not based on qiyās though all the Traditions are āthār (Tradition which originated only from the Tābi'ūn).

The first one originated from al-Ḥasan al-Baṣrī (d. 110 A.H.) through 'Unays b. 'Ubayd and Ḥammād b. Abī Salama (110 A.H.) that al-Ḥasan al-Baṣrī said that one can perform every prayer (of the day) with one tayammum like ablution as long as one did not commit any act of impurity.²

The second one came from Muḥammad b. Muḥsin al-Zuhrī (d. 124 A.H.). He said, "One tayammum is in the same position to water; one can pray with it (as many prayers as one wants) as long as one has not committed any act of impurity."³

1. Ibn Ḥazm, al-Muḥalla, vol. 2, pp. 132-3.

2. Ibid., vol. 2, p. 128.

3. Ibid., vol. 2, p. 128.

The third one came from Sa'id b. al-Musayyib through Qatāda b. Di'āma (d. 117 or 118 A.H.). Ibn Musayyib said, "Perform every prayer (of the day) with one tayammum as long as you did not commit any act of impurity. Tayammum is equal to water." This view was also attributed to Yāzid b. Harūn and Abū Ja'far al-Bāqir Muḥammad b. 'Alī b. al-Ḥusayn b. 'Alī (d. 114 A.H.).¹

It is worth mentioning that none of these people mention or give the impression that their statement is based on certain interpretation or on the authority of the Prophet and that that silence, in addition to the actual statement, indicates that their view is only based on their personal reasoning which includes al-qiya's.

Ibn Ḥazm the leading Zāhirite lawyer who gave the most detailed account about the Zāhirites view on the question of using one tayammum for more than one compulsory prayer maintained that the mutayammin can perform compulsory and supererogatory prayers with one tayammum for as long as he wanted and as long as his tayammum has not been broken by any act of impurity or the availability of water. As for a sick person he also maintained that his tayammum will be broken only by the act of impurity not by availability of water.² This is Q

1. Ibid., vol. 2, pp. 128-9.

2. Ibid., vol. 2, p. 128.

distinction between an able and unable man and it is designed to render invalid the argument of those who maintained that al-tayammum is a temporary purity as a result of repetition implied by al-amr al-muṭlaq.

Ibn Ḥazm attributed his view to Abū Ḥanīfa, Sufyān al-Thawrī (d. 161 A.H.) Layth b. Sa'id (d. 175 A.H.) and Dawud b. Khalaf¹ who is better known as Dawud al-Zāhirī (d. 270/884) the founder of the Zāhirī school of law.

Ibn Ḥazm then tried to dismiss the view that tayammum is not ritual purity though it is permitted for prayer. He said that that view is invalid for many reasons:

1. Because there is no evidence to support it and any claim of that kind is invalid.
2. Qur'ān 5/6 which is the injunction on this issue has dismissed it because it has specified that al-tayammum is absolute purity (al-ṭahārah al-tāmma).
3. Because those who maintained otherwise contradict themselves by maintaining that though it is not absolute purity (al-ṭahārah al-tāmma) it was permitted for one prayer. He argued that that is a statement whose conclusion contradicts its opening.

1a. Ibid., vol. 2, p. 128.

b. The attribution was later confirmed by Ibn Qudāma though he did not mention exactly the statements they made. See Ibn Qudāma, al-Mughnī, vol.1, p.263.

4. When they maintained that it was permitted for one compulsory prayer only, where is there evidence that it was not permitted for the second prayer.¹

Ibn Ḥazm seems to be particularly concerned about the Mālikite and the Shāfi'ite insistence that one must attempt to find water after finishing the first prayer and by doing so his tayammum has automatically been broken. He said that the claim is untrue and there is no evidence to support it. He argues that since he has tried to obtain water on the first occasion and was sure that there was no water that is enough for him to proceed with the second prayer. He further argued that if that claim is true, what kind of water is a sick person (who cannot use water) going to find because such a man was permitted to pray without using water even with the availability of water? He concluded that that showed invalidity of the view.²

This is one area of difference between the Ḥanafites and the Zāhirites. The Ḥanafites, though recognizing that a sick person could use tayammum with the availability of water, seem to allow it only in extremely dangerous situations when he could not possibly use water, not just mere sickness,³ whereas the Zāhirites appear to

1. Ibn Ḥazm, al-Muḥalla, vol. 2, p. 130.

2. Ibid., vol. 2, p. 130.

3. Al-Shaybānī, Kitāb al-Aṣl, vol. 1, p. 124;

also see Ibn Ḥazm, al-Muḥalla, vol. 2, p. 130.

have interpreted it as just sickness. One evidence for that is that they do not regard the availability of water as affecting the tayammum of a sick person as other schools do, including the Ḥanafites.

Ibn Ḥazm avoided criticising the main point which those who advocate repetition, namely the Mālikites and the Shāfi'ites, have put forward which he himself mentioned, that ablution and tayammum were both obligatory for everybody going to pray and he must make one at every prayer because both of them were unrestricted commands. But when the Prophet himself used one ablution for more than one prayer the ablution was excluded from being unrestricted while al-tayammum remained because there is no reliable evidence that the Prophet did use it for more than one compulsory prayer.¹ If Ibn Ḥazm had agreed with this point it would have contradicted his own evidence which is based on opposition to the repetition of al-amr al-muṭlaq. Instead he described it as untrue and failed to give his own interpretation of the argument. He then proceeded to argue that the claim that one must make tayammum for every prayer even supererogatory are not true and maintained that the Qur'ānic injunction did not oblige any of the things which they claim. If it had obliged it, it would have obliged ritual bathing

1. Ibn Ḥazm, al-Muḥalla, vol. 2, p. 132.

for everyone who wished to go to pray. But the verse according to him is only an injunction which indicates God's obligation of ablution and tayammum and ritual bathing remain obligatory only upon those who committed an act of major ritual impurity.¹

Although this example is meant only to indicate the operation of amr in the furū' it could also be taken as an opportunity to point out that though the Zāhirites categorically claim to be opposing qiyās, their arguments here are in one way or the other based on qiyās because most of those upon whom they based their practice and statements they use as evidence, undoubtedly based their practice on qiyās² otherwise there is no other evidence

1. Ibn Ḥazm, al-Muḥalla, vol. 2, p. 132.

2. Contrary to the Ḥanafites' and the Zāhirites' view, the advocators of repetition also have their own Tradition which also originated from the prominent Companions like 'Alī, Ibn 'Umar, Ibn 'Abbās and some Tābī'īns like Sha'bī (d. around 100 A.H.), Nakha'ī (d. 95 A.H.), Qatāda b. Di'āma (d. 117 or 118 A.H.) and Yahya b. Sa'id (d. 103 or 104 A.H.). They all maintained that tayammum becomes invalid after one compulsory prayer. Aḥmad b. Ḥanbal who himself practised repetition, transmitted a Tradition in which the Prophet told Abū Dharr (d. 32 A.H.) that "clean soil is Muslim detergent even if he did not get water for ten years." This

for them to regard al-tayammum as equal to the ablution other than by comparing them and that is what they do themselves. So their dependence on those who depend on qiyās is nothing more than dependence on qiyās itself.

Despite their insistence that they work on the basis of the outward meaning of the verse there is no indication whatsoever in the Qur'ānic injunction that could be taken as evidence either in favour of their claim that tayammum is equal to the ablution because tayammum becomes an option only in the absence of water or ability to use it. On top of that nobody has ever come forward to give a proper denial that the command to perform ablution and tayammum, both of which were mentioned in the verse, are not unrestricted commands and that ablution was not only restricted by the practice of the Prophet, since there is not enough and acceptable

Footnote continued.

Tradition is the only one which Abū Ḥanīfa and others who regard tayammum as sufficient can regard as specification of the verse of tayammum. But the Tradition did not enjoy wide recognition among the majority of scholars. Aḥmad b. Ḥanbal who transmitted it described it as qiyās yet he did not follow it according to most of his scholars except in the making up of prayer al-qadā'. See Ibn Qudāma, al-Mughnī, vol. 1, p. 263; also Ibn Taymiyya, Majmu', vol. 21, p. 437.

evidence to prove that the Prophet has used one tayammum for more than one compulsory prayer. Then it seems that the only way out is either to keep al-tayammum on its unrestricted form and practise it on the basis of repetition. That is confirmation of it being al-amr al-muṭlaq or keeping it on that form and apply qiyās to bring it in line with the ablution as the Ḥanafites do. After that, it will be very difficult to claim any other thing here without involving qiyās. Of course that does not mean that Ibn Ḥazm has no logic on his side by criticising validity of tayammum when they say that it is not purity and at the same time allow it for prayer. However, it seems that those who advocate repetition based on al-amr al-muṭlaq do not disagree that tayammum represents some kind of purity in one way or another but see it as a temporary one which cannot sustain al-hadath al-akbar when water eventually becomes available.

Ibn Ḥazm appears to have seen absolutely no validity in the regulation of repetition of al-amr al-muṭlaq and has ignored every interpretation in favour of his own view based on the outward meaning (zāhir) of the Qur'ān.

Suspension of judgement (al-tawaqquf) is a position taken as a result of lack of sufficient information.¹ In fact such a position is only possible in the theory

1. Al-Badkhashī, Sharḥ al-Badkhashī, vol. 2, p. 36.

Also see above, p. 79 - 81

of Islamic law rather than the practice of Islamic law (al-furū'). There is no case of tawaqquf in the furu' and those who maintained that they did not have sufficient evidence to support either side of the argument on whether or not al-amr al-muṭlaq required repetition are bound to take some kind of action. They would either form their practice according to their own understanding of the injunction concerned or follow any existing one they found appropriate enough to their own feeling. For example, the Shi'ites have consistently maintained that their position on al-amr al-muṭlaq is that of al-tawaqquf because both arguments contained probability and therefore they would prefer to wait until they found clear evidence.¹ They have no way of transforming that tawaqquf into a separate doctrine in the case of tayammum, therefore they joined the Ḥanafites to declare that one single tayammum is sufficient for more than one compulsory prayer² (al-salāt al-maktūba) and that means that al-amr al-muṭlaq does not require repetition (at least in this case of tayammum) upon which other schools based their doctrine of one tayammum for every compulsory prayer. They also opposed the Ḥanafites and supported other major schools in maintaining that the one who has

1. Al-Murtadā, al-Dhariqā, vol. 1, p. 100;

also see al-Mughniyya, al-Fiqh, p. 72.

2. Ibid., p. 72.

performed tayammum and started the prayer does not need to break his prayer if water comes after he has started the prayer.¹ This is always the case whenever tawaqquf is adopted toward a theory because it will be necessary to take some action in the furu'.

Disagreement Based on Linguistic Interpretation

Another idea which has turned out as a separate opinion in many occasions in the uṣūl and indeed in the furū' is the use of the term ishtrāk (dual operation of a certain word or term). The idea was inspired by the linguistic influence and it is not restricted to any particular school in the furū' because every school has on many occasions sought in one way or the other to use a linguistic interpretation as a means of understanding or determining a certain word. This practice is dated back to the Companions' era, but nobody has ever taken it as doctrine. However, in theory ahl al-kalām regardless of their school of law seem to have taken it as a particular view on many occasions in the uṣūl. An example of that is the declaration of Abū al-Ḥusayn al-Baṣrī a leading Mu'tazila and a Shi'ite scholar, al-Murtadā that the word "amr" is common (mushtarak) between ṣifa (quality) and shay (affair) and between qawlat-Makhsus and action respectively. They mean that it is commonly

1. Al-Mughniyya, al-Fiqh, p. 72.

used for both meanings.¹

Another example of that kind is the view of Fakhar al-Dīn al-Rāzī that al-amr al-muṭlaq does not indicate repetition nor one performance but it is common (mushtarak) between both repetition and one performance equally as a matter of origin.² These theories also have their own implications in the furu' because according to their view not every amr muṭlaq should be considered as indicating either side, it is the context that can determine what is what. An example of this kind in uṣūl is Q/2/110. Aqīmū al-salāt (plural) (say the prayer) that according to them requires repetition because obviously one is required to perform it every day.³ Another example of what does not require repetition is the ḥajj.⁴ Those who maintained that al-amr al-muṭlaq required repetition outright also agree that ḥajj is obligatory only once but regard it as being excluded from the general rule

1. Abū al-Ḥusayn al-Baṣrī, Kitab al-Mu'tamad, vol. 1, pp. 45-6; also see al-Murtadā, al-Dhariqah, vol. 1, pp. 27-8.

2. Al-Rāzī, al-Maḥsūl, vol. 1, p. 165; also see al-Badkhashī, Sharḥ al-Badkhashī, vol. 2, p. 36, a commentary work on Minhāj al-Uṣūl of al-Baydawī. Both were printed together in the Egyptian edition 1963.

3. Al-Rāzī, al-Maḥsūl, vol. 1, p. 164.

4. Ibid., vol. 1, p. 164.

by specification from the Prophet that ḥajj is obligatory only once.¹

However, the use of ishtirāk is not confined to ahl al-kalām alone in the furū'. In fact it is a major problem among jurists in the early period. There are many examples of that in the furū' where the word ishtirāk was regarded as the main reason of their disagreement. One example of that kind also happened in ablution, though it does not directly involve amr it has some element of amr in the sense that it is the word stipulated by āmir.

Q/5/6, "And wash your hands to the elbows." They disagree on how to define the limit of hand in this verse because the word "ilā" has been used commonly (mushtarak) for limitation like "till" and also for conjunction like "with" ("ma'"). The same thing is involved in the word "yad" (hand). According to Ibn Rushd, the Arabs use it at times for "palm", at times for both "palm and arm" together and at other times they use it for "palm, arm and upper arm".² For those who regard "ilā" here as conjunction meaning "ma'" or "or" ("aw") they consider "yad" as including all three meanings (palm, arm and upper arm) and regard washing them all together as obligation. And for those who

1. Ibid., vol. 1, p. 164.

2. Ibn Rushid, al-Bidāya, vol. 1, p. 11. also see Ibn Qudāma, al-Mughnī, vol. 1, p. 128.

understand "ilā" as meaning limitation and that "yad" does not include elbows because the end of the limit is not included then they did not exceed elbows, because that is the end of the requirement. They give the reason for their differences here as the different meanings equally understandable (mushtarak) from both words "ilā" and "yad".¹ Examples of this kind are innumerable in the books of law.

Disagreement Based on Different Uṣūlī Principles

Another example which involved amr in the furū' which is based on principle of the uṣūlīs is the case of a man who fails to deduct his zakāt immediately after one ḥawl (one year based on the lunar calendar) has been completed and later when he deducted it, the property gets lost or damaged before he can pay it to the Imām. They are divided on that issue according to their view of whether or not al-amr al-muṭlaq required al-fawr into three main groups. Those who advocated al-fawr, those who opposed al-fawr and those who reserved their judgement.

There are conflicting reports about exactly what is the position of the Ḥanafites on whether or not al-amr al-muṭlaq required al-fawr. One report maintained that

1. Ibn Rushd, al-Bidāya, vol. 1, pp. 11-12.

they were in favour of al-fawr¹ while another one considered them as opposing it.² Both reports are very strong to the extent that whichever one of the two you assign them you could be proved correct because of enormous evidence you can find in support of that. Their stand on the issue of when zakāt should be paid has done nothing to give a clue to that because it contradicts another practice.³ According to Ibn Qudāma, Abū Ḥanīfa said that one can delay payment of his zakāt as long as payment was not demanded. Abū Ḥanīfa also explained that because the command to pay it is unrestricted (al-amr al-muṭlaq) there is no difference in paying it at the first time (al-waqt al-awwal), the second time or the third time and that there is no specification to that in the command.⁴ This is confirmed by the Ḥanafite scholar 'Alā al-Dīn Samaraqandī who started by taking the problem of division among the Ḥanafites on whether or not al-amr al-muṭlaq requires al-fawr. He said that our leaders differ on the obligatory nature of the early payment of zakāt and Muḥammad b. Shujā' al-Thaljī (d. 257 A.H.) among our colleagues has maintained that delay (al-tarākhī) is

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1. Ibn al-Malak, Sharḥ al-Manār, p. 22; also see Samaraqandī, Tuḥfat al-Fuqahā', vol. 1, pp. 558-9.
 2. Samaraqandī, Tuḥfat al-Fuqahā', vol. 1, pp. 558-9.
 3. Ibn Qudāma, al-Mughnī, vol. 3, p. 241.
 4. Ibid., vol. 2, p. 684.

possible and his view was supported by Abū Bakr al-Jāssās. He cited the case of the zakāt which the owner failed to deduct after ḥawl until the property was destroyed. In that case he said that the owner was not responsible for further payment. Al-Samaraqandī argued that if al-fawr had been obligatory he would have been responsible just like a person who delays his Ramaḍān fasting till after the month of Ramaḍān. He then went on that al-Karākhī (d. 340 A.H.) (another Ḥanafite scholar) had mentioned that in this case of zakāt that it should be based on al-fawr.¹ However, al-Samaraqandī himself was not sure of exactly which argument should be considered as authentic, which could be attributed to Abū Ḥanīfa.

Mālikites,² Shāfi'ites³ and Ḥanbalites⁴ are united in maintaining that zakāt should be deducted immediately after the ḥawl has been completed and that failure to do that would mean it was a responsibility on the ma'mur to make good the money if money got lost before he paid it

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1. Samaraqandī, Tuḥfat al-Fuqahā', vol. 1, pp. 558-9.
 2. Mālik, Mudawwana, vol. 1, p. 245;
also see Ibn Rushd, al-Bidāya, vol. 1, p. 248.
 3. Al-Shāfi'ī, al-Umm, vol. 2, p. 52;
also see Ibn Qudāma, al-Mughnī, vol. 2, p. 684.
 4. Ibn Qudāma, al-Mughnī, vol. 2, p. 684.

to the Imām or to the poor people. But they disagreed on the methods by which they carried out this decision as well as some of the ways of implementing it. The Mālikites and the Ḥanbalites are the main schools which have originally advocated al-fawr and therefore lead other schools in applying it to zakāt, though they seem to be slightly divided on how to apply it.¹ As for the Shāfi'ites, they do not regard al-amr al-muṭlaq as requiring al-fawr. Therefore whenever they based al-amr on al-fawr it was as a result of additional evidence or the context.²

The Mālikites maintained that if an owner deducted his zakāt many days after the exact date of the completion of the ḥawl and the property was lost or damaged, he was responsible for making good the loss.³ However, if he had deducted it on the first day, they did not consider him as negligent and he would not have to refund the lost money.⁴ This meant that he had escaped payment of the zakāt for that year - though of course he did not gain anything extra for himself.

As for the Shāfi'ites, they have consistently

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1. Al-Qurāfī, Sharḥ al-Tanqīh, p. 128; Ibn Qudāma, al-Rawda, p. 105; al-Mughnī, vol. 2, pp. 558-9.
 2. Al-Shīrāzī, al-Tabṣira, p. 52.
 3. Mālik, Mudawwanā, vol. 1, p. 245; also see Ibn Rushid, al-Bidāya, vol. 2, p. 248.
 4. Ibid., p. 248.

declared their opposition to al-fawr on the basis of al-amr al-muṭlaq. However, they supported the Mālikites on the particular issue of the man who failed to deduct his zakāt at the correct time.¹ Perhaps they thought that prolonging the delay could cause suffering to the poor people as the Ḥanbalites have maintained² and therefore they consider that as context which could warrant al-fawr in this circumstance. Nonetheless, whatever their reasoning for this, they supported the Mālikites. According to al-Shāfi'ī, if the property had been destroyed without negligence on the part of the owner (negligence here means undue delay) he would not have to refund that money as the Mālikites argue but that does not mean that he has escaped zakāt of that year. Instead he would go back to the rest of the money (the main capital) if it is up to another nisāb (the

1a. Al-Shīrāzī, al-Tabṣra, p. 53. Also see al-Ghazālī al-Mustaṣfā, vol. 2, pp. 9-10.

b. As far as practice is concerned we have mentioned on several occasions that the expansion of the theory has not yet reached the stage of amr during the Shāfi'ī's time therefore there was not any direct statement from him in that connection. His principle on al-amr al-muṭlaq was later deduced from his practice in the furū'. See Shāfi'ī, al-Umm, vol. 2, pp. 52-3.

2. Ibn Qudāma, al-Mughnī, vol. 2, p. 285.

minimum amount liable for zakāt) he would pay another zakāt on the basis of the new amount (new nisāb). But if the rest did not amount to nisāb he did not have to pay anything at all. If he was responsible for the loss of the original zakāt then he had to pay the same amount as that which was lost.¹

Both the Ḥanbalites and the Zāhirites hold a similar view to this² but they seem to be more restrictive in their emphasis on al-amr al-muṭlaq. The Ḥanbalites, according to Ibn Qudāma, do not differentiate between

1. Shāfi'ī has given an example of the remaining money which might require another deduction of zakāt as follows: If a man had twenty dīnār at the end of ḥawl and deducted half of a dīnār to pay it to the Imām but it got lost before he could do that, then he would not pay another zakāt out of the remaining nineteen and a half dīnār because the minimum taxable money according to him is twenty dīnār. But if he had twenty one and a half dīnār in the first place and deducted half a dīnār for the first twenty dīnār and from the rest one quarter then if that deduction gets lost he will still have more than twenty dīnār left as the main capital. He will go back to that and deduct another zakāt on the basis of one quarter of ten per cent. See Shāfi'ī, al-Umm, vol. 2, pp. 52-3.
2. Ibn Qudāma, al-Mughnī, vol. 2, pp. 685-6; also see Ibn Ḥazm, al-Mūhallā, vol. 5, p. 263.

whether or not the money was lost as a result of negligence (al-tafrīṭ). They compare it to debt owed to a human being which he can only clear by payment. He quoted Aḥmad b. Ḥanbal as saying that even if a man attempts to pay his zakāt to either the Imām or somebody else and before that Imām accepts it he asked the owner of the zakāt to buy him something out of the money and the money gets lost within that period, the owner is responsible because the Imām has not yet accepted it and therefore he must replace it. But if the Imām had accepted it then the owner of the money has no responsibility.¹ Ibn Qudāma also attributed this view to Zuhri (d. 124/742), Ḥakam (154 A.H.), Hammād b. Abī Salama (165 A.H.), al-Thawri (161 A.H.)² and Shāfi'ī and he acknowledged that Shāfi'ī did not hold him responsible if he was not negligent about deducting it at the correct time and therefore did not have to pay anything if the main capital fell short of the nisāb after he had lost the deducted zakāt.³

Defending the view in general Ibn Qudāma maintained that zakāt is an obligation based on fawr and it is not allowed to be delayed when one has the ability to

1. Ibn Qudāma, al-Mughnī, vol. 2, p. 685.

2. His full name is Sufuyān b. Sa'īd b. Masrūq al-Thawri, one of the early Traditionists. See Ibn ^{-al-}Nadīm, Fihrist, p. 225.

3. Ibn Qudāma, al-Mughnī, vol. 2, p. 685.

pay it unless one fears any danger. He also emphasised that al-amr al-muṭlaq required fawr as he had done earlier. He said that that is why whoever delays it is liable to be punished. In support of that he cites the belief that God expelled Iblīs from Heaven because He was displeased with him and rebuked him for not bowing. Ibn Qudāma cited the familiar example that if a man commands his servant to bring water for him to drink and the servant delays the implementation of that command he deserved punishment and he also argued that delaying al-amr al-muṭlaq contradicted the spirit of the obligation (al-wujūb) because to abandon the implementation of an obligation (al-wājib) was a punishable offence. He went on that if delay had been possible it would have to be for unlimited time. He then stresses that that unlimited delay is tantamount to abandoning the wujūb, which is a punishable offence. He argued that even if we presume that al-amr al-muṭlaq did not require fawr at all it would have required it in the case of zakāt because if delay had been possible the ma'mūr would have delayed it on his natural feeling and confidence that he would not become a sinner by delaying it and if he died or his property was destroyed the obligation of payment of zakāt would be removed.¹ Ibn Qudāma said that as a result of that the poor people who needed the zakāt would suffer. He further

1. Ibn Qudāma, al-Mughnī, vol. 2, p. 684.

suggested that there is a context here which made the amr require fawr and that was that zakāt becomes obligation because of the poor people who need it. He further stressed that since the payment of zakāt was urgently needed, it was necessary that obligation should be performed in that spirit.¹ Ibn Qudāma quoted al-Athram,² a Ḥanbalite scholar, who reported that he had heard Abū 'Abd Allāh (he meant Aḥmad b. Ḥanbal), when he was asked about a man who delayed deducting his zakāt after the completion of a ḥawl. Ibn Ḥanbal asked why he had delayed deducting it. They replied that in fact he had started at due time but he was deducting it gradually. Ibn Ḥanbal replied that he should deduct it once immediately after the ḥawl.³

It appears that Ibn Qudāma is trying to use maslaḥa as further justification for the obligatory nature of fawr and this maslaḥa is a completely different argument outside uṣūlī's principle on al-amr al-muṭlaq because zakāt which is going to the poor people is not different from obligation which has no obvious rational meaning such as ḥajj, salāt and Ramadān fasting which all involve a duty to God which He has imposed upon His creatures.

1. Ibn Qudāma, al-Mughnī, vol. 2, p. 685.

2. Al-Athram's full name is Aḥmad b. Muḥammad b. Hanī. He was one of Aḥmad b. Ḥanbal's scholars. His date of death is not known. See Ibn ^{-al-}Nadīm, Fihrist, p. 229.

3. Ibn Qudāma, al-Mughnī, vol. 2, p. 685.

Thus, whether it is ḥajj, Ramaḍan fasting or the payment of zakāt, the idea of maslaḥa should not be involved. However, he seems to be saying that the obligation of zakāt is different from those others because it has added reason which could be taken as obvious evidence to justify fawr and that is the need of the poor people to it. Yet, his real argument is based on the Ḥanbalite uncompromising attitude to the principle of fawr and a similar attitude comes from the Zāhirites.¹

One other point which also had some influence on their disagreement because of its connection with time was whether or not the obligation of the payment of zakāt rested on the ma'mur's or on a specific taxable amount. The Ḥanafites and Mālikites (despite the latter's support of fawr) seem to have placed obligation for payment of zakāt on the owner possessing taxable wealth ('aīn al-māl).² That means that responsibility of making up the payment would become the ma'mūr's responsibility only by reason of his negligence if he had not deducted it the day it was due. Thus if there is no negligence and the amount deducted got lost he would not be responsible for making it up according to the Mālikites.³ That seems to be the reason why the

1. Ibn Ḥazm, al-Muḥalla, vol. 5, p. 263.

2. Ibn 'Abd al-Barrī, Kitāb, vol. 1, p. 303.

3. Mālik, Mudawwanā, vol. 1, p. 245.

Mālikites did not demand him to pay the money back or deduct another zakāt on the basis of the remaining capital if the money gets lost without it being his fault. The Shī'ites (al-Imāmiyya) are also reported to be in favour of this view.¹

It is worth mentioning here that the Shī'ites are among many other schools which advocated al-tawaqquf (suspension of judgement) on whether or not al-amr al-muṭlaq required fawr. Their support for the Ḥanafites' idea here could be taken as identification of their position in the furū' of law. Yet, it cannot be assumed that they opposed fawr absolutely because they may have different interpretation for other cases on this subject. This confirms the early remark that the doctrine of al-tawaqquf exists only in theory.

On the other hand, the Shāfi'ites,² the Ḥanbalites³ and the Zāhirites⁴ appear to have placed the responsibility solely on the ma'mūr and therefore he would have to pay the lost money back because the moment the money had completed ḥawl it had become his responsibility to pay the appropriate zakāt just like in the case of someone who borrows money, it becomes his responsibility from the moment he receives it whether or not he spent it

1. Al-Maghniyya, Kitāb al-Fiqh, p. 175.

2. Shāfi'ī, al-Umm, vol. 2, p. 52.

3. Ibn Qudāma, al-Mughnī, vol. 2, pp. 682-3.

4. Ibn Ḥazm, al-Muḥalla, vol. 5, p. 263.

immediately and no matter whether or not the money gets lost as a result of his own fault or not.¹ Their agreement with the Mālikites in terms of them conceding some modifications if the zakāt got lost without any negligence appears to mean provided that he had not acted sinfully. Thus in this case they allowed him time to refund the money at his convenience. This is understandable from Shāfi'ī's comment on that point. He said, "If he deducted zakāt immediately after the ḥawl had been completed and it was destroyed before he could pay it to those who needed it, if he had not been negligent (by delaying its payment to the poor or the wālī while being capable of paying it on time) he would not have to make good the amount which got lost. However, that did not exempt him from paying zakāt because once something becomes an obligation upon somebody he can never do anything other than perform the obligation."² Ibn Ḥazm explains it further. He maintained that no one has the right to delay deducting his zakāt when it is due until he could sell some part of the property such as a camel and so on because God has said, "Be quick in the race for forgiveness from your Lord" Q/3/133, and if he deducted it to pay it to the tax official or the poor people and all the money gets lost or some of it before he

1. Al-Shāfi'ī, al-Umm, vol. 2, p. 52.

2. Ibid., vol. 2, p. 52.

could do that, he must refund it all as a matter of obligation because it has become a responsibility upon him until he pays it in full to those whom God had commanded him to give it to.¹

1. Ibn Ḥazm, al-Muḥalla, vol. 5, p. 263.

CONCLUSION

The most important element in a religious law like Islam - or for that matter any other legal system - is the requirements that a man is commanded to perform and the actions which he has been forbidden. This thesis has mainly been concerned with the first of these, that is the role of amr in Islamic law. At first sight this seems a simple matter of obeying what the law has commanded. However, from the very beginning there were different interpretations of the nature and requirement of specific types of amr. The meaning of amr itself required that those who wanted to understand its role in the law had to investigate its linguistic connotations.

In the attempt to define amr in its legal aspect, a considerable number of interpretations were given and a large number of technical terms were used which in the end led to completely different practices. In our investigation of their arguments on amr a number of conclusions emerged. In order to make them clear, we are dividing those conclusions into three parts. The first one will undoubtedly be on the linguistic problem which arose from their different definitions of amr and the second will be on the technical terms while the last one will come from the outcome of their argument (implication of amr in the furū').

It is clear from the investigation that the mutakallimīn, regardless of their school of law, have a profound belief in linguistic interpretation and therefore their arguments always reflect it more than any other school. This could be noticed from arguments of the leading mutakallimīn like al-Bāqilānī, al-Murtaḍā, Abū al-Ḥusayn al-Baṣrī, al-Ghazālī, al-Rāzī and others. This linguistic approach represents one of the major reasons behind their different interpretations of the theory which eventually led to different practice. Some scholars tended to ignore it or put less emphasis on it, while others regarded it as an important factor which could not be ignored and therefore took it seriously into their consideration of every issue. This has created a wide gap which can hardly be bridged. That is why we find some of them arguing mainly on the basis of the Qur'ān and the Tradition of the Prophet while others support their view with speculative thinking. Supporters of Tradition appear to be less concerned with whether or not their argument was logically acceptable as long as they were sure that the evidence which they depended upon was authentic. On the other hand, the mutakallimīn were very sensitive to the logical aspect of their argument as well as the authenticity of the available evidence. Therefore the work was much influenced by linguistic and logical arguments which were particularly encouraged by their speculative thinking which sometimes led them to argue or defend their legal point of view with mere speculative evidences without any reference

to either the Qur'ān or the sunna of the Prophet.

In any examination of the doctrine of al-tawaqquf in Islamic law we find that it is practically impossible though theoretically plausible. In fact, when it comes to the question of practice they always return to their original school of law and accept the practice there. For this reason we are able to conclude that their different opinion in uṣūl al-fiqh has more to do with the theology than the law.

Turning to the technical terms used in the explanation of amr, the development of uṣūl al-fiqh itself was not complete at one period but developed stage by stage as the area of the Islamic world expanded and various sciences developed so that more of the linguistic and speculative elements were introduced. Therefore we observe that most of the terms which are peculiar to amr were even later than the period of Abū Ḥanīfa, Mālik and Shāfi'ī and that any attribution of these terms to them appears to be based only on the understanding of their doctrine and their regular practice. For example, the use of terms like al-muṭlaq, al-takrār, al-tarākhī and so on for amr can hardly be found in any early works of those people. Those who attributed these terms to them seem to have based their arguments on the fact that in the furū' of the law, they always adopted solutions which seemed compatible with that kind of terminology and therefore, if they had known of it, they would have used it. The remark made by both al-Qurāfī and al-Shawkānī on the obligatory

nature of al-fawr could be added to this evidence.

In our examination of amr, we found that al-amr al-wājib is the most important of all because it is the only one which involved the threat of punishment for whoever abandoned it as a result of it being the real amr. Also we found that amr has its special form which identifies it from other kinds of speech even though that form may still need to be supported by irāda.

The arguments about the nature of al-amr al-muqayyad threw up interesting differences in the practicalities of law. The case of the number of limbs to be cut off for theft was a useful illustration of this. In this some appear to have based their interpretations on their understanding of the Qur'ānic injunction and its explanatory Traditions of the Prophet while others based their own practice on mere personal judgement. The case of 'Alī b. Abī Ṭālib which is widely reported provides a satisfactory evidence to that. It also shows that one can exercise one's personal judgement to give mercy in the law to a convicted criminal if one finds it appropriate. Thus, if one is sure that one is on the right path, one could defy public opinion to exercise what one found to be appropriate. That was exactly what 'Alī did in order to give mercy to the thief who already had two of his limbs cut off, despite strong opposition from his companions.

Every obligation as far as Islamic law is concerned has been designated with a certain period for its performance which the mukallaf is allowed to carry out

within that period. And the period given to each of these obligations is made to accommodate various conditions for the mukallaf without necessarily confining it to a specific moment. The attempt by some uṣūlīs to pin down a specific time appears to be based on their personal discretion to encourage people to give priority to religious commandments.

This study has also revealed that as long as the argument involved in any of their disagreements did not affect any fundamental issue which relates to the belief (al-ʿitiqād), it could be compromised or abandoned altogether. The evidence for that is clear on many occasions where many scholars have compromised or abandoned a certain theory which they had previously adopted. Shāfiʿī, for example, is known to have been opposed to the obligatory nature of al-fawr with regard to al-amr al-muṭlaq. This is supported by his own statement on the ḥajj which he maintained should be based on al-tarākhī. But on the question of early payment of zakāt he appears to have abandoned that theory and supported Mālik and others in maintaining that zakāt must be deducted on the basis of al-fawr. This amounts to a compromise of his original theory which he has remained faithful to on many other occasions.

This kind of inconsistency is found in the furūʿ. In their discussions of amr, the uṣūlīs attempted to create a consistent programme, which appears to have been more possible on a theoretical level than

in the actual implementation of the detailed laws of
the furū.

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