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Şeybânî'den Kerhî'ye Fıkıh Kaidelerinin Tarihçesi

The Historiography of Legal Maxims from al-Shaybānī to al-Karkhī

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Öz

Bu araştırma, fıkıh kaidelerinin (ḳavāʿid fiḳhiyye) erken dönemde, özellikle Şeybânî ile Kerhî arasındaki süreçte ortaya çıkışını ele almakta ve dördüncü hicri yüzyıldan önceki dönemde fıkıh kaidelerinin erken oluşumuna odaklanmaktadır. Araştırma, fıkıh kaidelerinin ikinci yüzyılda, özellikle Şeybânî'nin (ö. 189/805) el-*Câmiʿu'l-Kebîr* adlı eseri üzerinden erken şekillerde ifade edildiğini ve bunun aynı eserin şârihlerinin yöntemiyle uyumlu olduğunu ortaya koymaktadır. Bu durum, Kerhî'nin (ö. 340/952) *Usûlü*'nden çok daha erken bir döneme işaret etmektedir. Ayrıca, bu çalışma erken dönemde Hanefî mezhebinin ileri gelenlerinin mevcut kaynaklarındaki ifadelerin değişimi doğrultusunda fıkıh kaidelerinin ifade biçimlerini de açıklamaktadır. Bu bağlamda araştırma, bağımsız fıkıh kaideleri telifinin erken dönemdeki başlangıç noktasının Şeybânî'nin eseri olduğunu, kaidelerin ifade biçimlerinin Kerhî öncesinde çeşitlendiğini ve fıkıh kaidelerinin ilk çekirdeğinin Şeybânî'nin çalışmasına dayandığını, nihai tamamlanmasının ise Kerhî'nin kuşağıyla gerçekleştiğini vurgulamaktadır. Bu bakış açısı, fıkıh kaidelerinin Hanefî mezhebi içerisindeki işlevsel doğasıyla ve fıkhın kendine has yapısıyla uyum göstermektedir. Araştırma, daha önce genel bir şekilde ele alınmış olan ikinci ve üçüncü hicri yüzyıllardaki fıkıh kaidelerine daha fazla ışık tutmayı amaçlamaktadır.

Anahtar Kelimeler: Fıkh, Usûl, el-Kavaid Fikhiyye, eş-Şeybânî, *el-Câmiu'l-Kebîr*, Hanafi mezhebi.

Abstract

This article examines the origins of legal maxims (*qawāʿid fiqhiyya, and uṣūl* in early jusrists' expression) in the early period between al-Shaybānī (d. 189/805) and al-Karkhī (d. 340/952), focusing specifically on the early development of these maxims before the fourth century AH. The article demonstrates that legal maxims were articulated in early forms as early as the second century, particularly in *al-Jāmiʿ al-Kabīr* by Muḥammad ibn al-Ḥasan al-Shaybānī. The finding is consistent with the methodology of subsequent commentators on the same work, indicating a considerably earlier phase than the *Uṣūl of al-Karkhī*. The study further explores the varied expressions of legal maxims during this early period, as reflected in the available early Ḥanafī tradition sources. The

article identifies *al-Jāmiʿ al-Kabīr* as the foundational work for the independent development of legal maxims in this formative period, highlighting the evolution of their articulation prior to al-Karkhī's contributions. It argues that the roots of these principles can be traced back to al-Shaybānī's work, culminating in the formulations of al-Karkhī's generation. This perspective is consistent with the functional role of legal maxims within the Ḥanafī school and reflects the specific nature of Islamic jurisprudence (*fiqh*). By shedding light on the second and third centuries AH, this article contributes to a deeper understanding of these periods, which have previously been addressed only in a general sense.

Keywords: *Fiqh* (jurisprudence), *Uṣūl* (principles), legal maxims (*Qawāʿid fiqhiyya*), al-Shaybānī, *al-Jāmiʿ al-Kabīr*, The Ḥanafī school.

Etik Beyan	Bu çalışma, Marmara Üniversitesi Sosyal Bilimleri Enstitüsü'nde devam etmekte olan "*Hicrî V. Yüzyila Kadar Hanefîlerde Usûl İle Ta'lil*" başlıklı doktora tezime dayanmaktadır. Bu makale, 07-09/06/2023 tarihinde İstanbul'da Austin Teksas Üniversitesi ve İslam Araştırmaları Merkezi İSAM tarafından düzenlenen Üçüncü Hanefîlik Sempozyumu'nda sözlü olarak sunulan ancak tam metni yayımlanmayan "*The Rise of al-Qawā'id al-Fiqhīyah in Early Hanafism*" adlı tebliğin içeriği geliştirilerek ve kısmen değiştirilerek üretilmiş hâlidir./ This article is the revised and developed version of the unpublished conference presentation entitled "*The Rise of al-Qawā'id al-Fiqhīyah in Early Hanafism*", orally delivered at the Third Hanafi Workshop held in Istanbul, 07-09/06/2023, organized by University of Texas at Austin and the Islamic Research Center ISAM.

1. Introduction

In his book *al-Qawāʿid wa-al-Ḍawābiṭ al-Mustakhlaṣa min Kitāb al-Taḥrīr*, ʿAlī Aḥmad al-Nadwī addressed the emergence of legal maxims (*qawāʿid*) in an

early era. He contended that legal maxims (*qawāʿid fiqhiyya*) were present in some form in the works of Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/805), citing examples from *al-Aṣl* such as "reward and guarantee cannot coexist,"[1] among others. Additionally, he discussed the presence of some legal maxims in the works of Abū Jaʿfar al-Ṭaḥāwī (d. 321/933).[2] In the context of his discussion of *al-Jāmiʿ al-Kabīr*, Nadwī states that commentators prioritized mentioning the fundamental principles before explaining the text, recognizing them as the key to understanding the book. He noted:

> *"The general characteristic of all the commentaries I have examined is that they are concerned with presenting the fundamental principles, the rules, and regulations, first, and then branching out from them. This approach signifies a discernment on the part of the jurists that comprehending the book's intricacies necessitates the establishment of principles that function as keys to unlocking its complex problems. The temporal origins and the individuals responsible for this practice remain unknown. It is noteworthy that al-Ṭaḥāwī, or al-Karkhī prior to al-Jaṣṣāṣ, may have also adopted this approach."*[3]

Nadwī designated this method as "*maslak al-taʾṣīl*" (rooting path),[4] commencing with the enumeration of various legal maxims, particularly in the commentary of *al-Jāmiʿ al-Kabīr*. He further noted that Abū al-Ḥasan al-Karkhī (d. 340/952), in his *Risāla*, and Abū Bakr al-Jaṣṣāṣ (d. 370/981), in his commentary on *al-Jāmiʿ al-Kabīr*, were among the pioneers of rooting (*taʾṣīl*). This point was subsequently reinforced by Necmettin Kızılkaya,[5] who observed that the method of structuring *al-Jāmiʿ al-Kabīr* according to legal maxims in a precise

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1 See ʿAlī Nadwī, *al-Qawāʿid wa-al-Ḍawābiṭ al-Mustakhlaṣa min al-Taḥrīr li-al-Ḥaṣīrī Sharḥ al-Jāmiʿ al-Kabīr* (Cairo: Maṭbaʿat al-Madanī, 1991), 139.

2 See Nadwī, *al-Qawāʿid wa-al-Ḍawābiṭ al-Mustakhlaṣa min al-Taḥrīr li-al-Ḥaṣīrī Sharḥ al-Jāmiʿ al-Kabīr*, 143–144.

3 Nadwī, *al-Qawāʿid wa-al-Ḍawābiṭ al-Mustakhlaṣa min al-Taḥrīr li-al-Ḥaṣīrī Sharḥ al-Jāmiʿ al-Kabīr*, 151–152.

4 See Nadwī, *al-Qawāʿid wa-al-Ḍawābiṭ al-Mustakhlaṣa min al-Taḥrīr li-al-Ḥaṣīrī Sharḥ al-Jāmiʿ al-Kabīr*, 150–151.

5 See Necmettin Kızılkaya, *Hanefî Mezhebinde Kavâ'id İlmî Ve Gelişimi* (Konya: Selçuk Üniv., Doktora, 2011), 106–107.

manner became evident through its commentaries, which relied on tracing each issue back to its underlying rule.[6]

Despite the indication by both authors that the commentators of *al-Jāmiʿ al-Kabīr* were prompted directly to mention legal maxims before elaborating on the legal cases (*masāʾil*), an explicit statement of this motivation remains elusive. The article posits that the motivation is that *al-Jāmiʿ al-Kabīr* itself is a book specifically on the early Ḥanafī legal maxims and that it represents an early form of writing on legal maxims, predating al-Karkhī's work. Therefore, the commentators' primary function in *al-Jāmiʿ al-Kabīr* was to clarify what Imam Muḥammad indicated through his legal questions (*masāʾil*). The argument posits that awareness of the function of *al-Jāmiʿ al-Kabīr* is pivotal in comprehending the pre-Karkhī era, by observing the diversity in the methods of expressing legal maxims and the historical context in which they emerge. Consequently, the temporal scope of the article encompasses the period from al-Shaybānī to al-Karkhī, with a particular emphasis on a period preceding the focus of both Nadwī and Kızılkaya, who concentrated on al-Karkhī and subsequent eras. However, their works do contain some indications that the reasons for the emergence of legal maxims can be found in al-Shaybānī's work in a general sense. It is necessary to observe the diversity and evolution in the forms of expression of these maxims in the historical context, in order to better understand the tides of emergence and formation.

The article employs a source selection methodology that prioritizes foundational Ḥanafī texts, particularly al-Shaybānī's al-Jāmiʿ al-Kabīr and later commentaries, while also referring to secondary works to trace the development of legal maxims. Its textual analysis approach examines how legal maxims were expressed in different historical periods, highlighting variations in terminology and formulation among early jurists and commentators. Moreover, the study acknowledges historiographical biases; particularly, the influence of Transoxiana and Iraqi jurists on the perceived development of *uṣūl*, thus challenging conventional narratives that attribute the formalization of legal maxims solely to the fourth century CE.

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6 See Kızılkaya, *Hanefî Mezhebinde Kavâ'id İlmî Ve Gelişimi*, 133.

2. Forms of Expressing Legal Maxims (*uṣūl*)

In his work, ʿAlī Nadwī offers a concise overview of the development of legal maxims, noting that these maxims were often articulated in succinct, pithy statements.[7] This article proposes that the forms of expressing *uṣūl* underwent a gradual evolutionary process, ultimately reaching a fully developed and widely utilized form in the fourth century AH/tenth century CE. During this period, and from the earliest phase, the expression of *uṣūl* was not characterized by a single style. The maxims took on various manifestations, at times assuming the guise of a jurisprudential issue, at others expressed through specific phrases such as "the authoritative opinion" (*al-madhhab*)—which alluded to the school's prevailing viewpoint—or "the principle" (*al-aṣl*), signifying a consistent rule. Subsequently, the expression of legal maxims advanced to a concluding stage, without these intermediary phrases directly using abstract reasoning, where its mention became sufficient to explain the reason for the legal case ruling. By tracing the forms of expression of *uṣūl* up to the fourth century AH, one can understand the establishment of the use of *uṣūl* in the early development of the legal schools. The ensuing sections will address these three stages in the following chronological sequence.

2.1. First Stage: Expression Through Legal Questions

The beginning of the first stage can be observed in al-Shaybānī's *al-Jāmiʿ al-Kabīr*. This stage continued until the time of al-Karkhī, at which point it should be noted that al-Karkhī and after him al-Jaṣṣāṣ, according to the available texts, sometimes expressed *uṣūl* through legal questions and sometimes in its final form. Therefore, it is difficult to determine precisely when the transition to the final form of expression occurred, but the evolutionary process in the expression of *uṣūl* is evident in the texts. In *al-Jāmiʿ al-Kabīr*, al-Shaybānī expressed the intended *uṣūl* through the legal questions he compiled in each chapter. The reader understands that the chapter revolves around a common meaning shared by these questions, even though the author used generic terms in the chapter headings, rendering the purpose of each chapter ambiguous. In examining the commentaries on *al-Jāmiʿ al-Kabīr*, one consistently finds that the

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7 See Nadwī, *al-Qawāʿid wa-al-Ḍawābiṭ al-Mustakhlaṣa min al-Taḥrīr li-al-Ḥaṣīrī Sharḥ al-Jāmiʿ al-Kabīr*, 117.

commentators understood this point: the questions revolve around a common meaning and, thus, stating the *aṣl* intended by al-Shaybānī from the questions before beginning their explanation. Several commentators can illustrate this, including al-Jaṣṣāṣ, Abū Naṣr al-ʿAtābī (d. 586/1190), and Jamāl al-Dīn al-Ḥaṣīrī (d. 636/1238). Concerning the umbrella terms that al-Shaybānī employs in chapter headings, which may mislead the reader into thinking that he intended general meanings, it should be noted that these are all meant to have specific meanings. For example, he uses the title "*The Book of Fasting*," albeit the chapter only contains questions about the conditionality of retreat in the mosque *(iʿtikāf)* for fasting, and so on. Al-Jaṣṣāṣ, hence, asserts that al-Shaybānī adopts a lenient approach in his expression, content with the understanding of the specific readership for whom the book was written, who is cognizant of his purpose and principles. He did not draft the book for beginners or those lacking training in legal issues.[8] This leniency in expression is exemplified by his mention of the broad expression while—in most cases—intending the specific meaning.

When examining al-Jaṣṣāṣ's work, we find traces of expressing legal maxims through legal questions, some of which he transmits from his teacher, al-Karkhī. For instance, al-Jaṣṣāṣ recounts al-Karkhī's critique of a particular legal opinion concerning a property dispute with multiple claimants. Al-Karkhī's position is that following the accepted rule (aṣl), the most appropriate course of action is to divide the property equally between the claimant who proves usurpation and the claimant against whom no usurpation is proven. This position is rejected because it contradicts their method of calculating shares based on provided evidence.[9] Similarly, al-Jaṣṣāṣ employs the concept of *uṣūl* to address prayer-related matters, including the appropriate procedure for prostration (*Sujūd*) in prayer. He elucidates that if, according to their established principles, returning to prostration (*Sujūd*) signifies continued participation in the prayer and is connected to the initial consecration (*taḥrīma*. Or *takbirat al-ihrām*), then the followers must align their actions with the Imam in this regard, as they are obligated to follow him in all acts of prayer.[10] Also, al-Jaṣṣāṣ illustrates how established principles (*usūl*) inform legal rulings by referencing a case involving

8 Abū Bakr al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr* (Egypt: Dār al-Kutub wa-al-Wathāʾiq, 745), 27a.
9 See al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 159a.
10 See al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 66b.

marriage, divorce, and financial settlements, explaining the principle that in a divorce before consummation, half of both the paid dowry and any gifted portion is revoked. Applying this principle to a scenario where a portion of the dowry was gifted back to the husband, al-Jaṣṣāṣ explains, half of the received dowry is returned upon divorce, emphasizing that the answer to this legal question should be specifically based on the established principle relevant to such situations.[11]

These examples and others scattered throughout al-Jaṣṣas's arguments—which are narrations from his teacher al-Karkhī—indicate the existence of a residual pattern of expression from those before him who expressed *uṣūl* through legal questions. Whereas al-Jaṣṣāṣ also expresses *uṣūl* through specific phrases such as "the conclusion of the school's authoritative opinion" (*taḥṣīl al-madhhab*),[12] and "the principle" (*al-aṣl*), and similar expressions, he also expresses *uṣūl* directly without using any of the previous forms. In his commentary on al-Karkhī's *al-Mukhtaṣar* and *al-Taqrīb*, as well as in al-Aqtaʿ's (d. 474/1081-1082) commentary on al-Qudūrī (d. 428/1037), it is evident that al-Qudūrī employs a unique approach to legal reasoning. In the aforementioned works, no evidence was found to support the hypothesis that *uṣūl* was expressed through legal questions, as far as we could ascertain. Therefore, it can be concluded that from al-Qudūrī and al-Dabūsī (d. 430/1039) onwards, *uṣūl* reached a later stage in its expression and usage in legal reasoning.

2.2. Second Stage: Expression Through Specific Phrases

The second stage in expressing maxims is to articulate them in advance of a word that indicates that this *aṣl* is the pivotal point of the chapter. For the Ḥanafīs, or for one of the parties involved in the disagreement on the issue, whether Abū Ḥanīfa (d. 150/767) or his companions, when presenting the *aṣl* specific to one of the parties, this *aṣl* is directly attributed to him. Among the phrases used before stating the *aṣl* are: "the conclusion of the authoritative opinion" (*taḥṣīl al-madhhab*), as in al-Jaṣṣāṣ's statement: "The conclusion of the authoritative opinion (*taḥṣīl al-madhhab*) on this concludes that everything we

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11 See al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 22b.

12 See Abū Bakr al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, ed. Sāʿid Bektash (Beirut: Dār al-Bashāʾir al-Islāmīyya, 2010), 1/239.

are certain that a part of which contains impurity, or where impurity predominates in our view, is thus impure and its use becomes impermissible."[13] Another phrase is "the authoritative opinion" (*al-madhhab*), as in al-Jaṣṣāṣ's statement: "the authoritative opinion on this is that whenever one sleeps during any state of prayer, one's ritual purity is not invalidated."[14] He also uses *"al-madhhab"* to refer to the preferred and authoritative opinion. Another phrase employed is "the principle" (*al-aṣl*), which jurists attribute to one of the Imams if if there is no consensus, or to the founder of the school if there is an opposing view. Sometimes they attribute it to all of them, saying "among their *uṣūl*," while others they use "their *aṣl*" in contrast to Abū Ḥanīfa. For example, al-Jaṣṣāṣ says: "Among the *uṣūl* of Abū Ḥanīfa, may Allah have mercy on him, regarding two conflicting reports, is that whenever people agree on applying one of them and disagree on applying the other, the one they agree upon overrides the one they disagree upon, whether it is general or specific."[15] al-Jaṣṣāṣ also says: "Among their *uṣūl* is that a specific case is not used for analogy unless its reason is mentioned in the report," and "This consideration is not consistently applied to the issues, neither according to his *aṣl* (*Abū Ḥanīfa*) nor according to their *aṣl (Abū Ḥanīfa's students)*,"[16] and, "Abū Jaʿfar said: We do not know of anything explicitly stated from Abū Ḥanīfa and his companions regarding this, except that their *aṣl* is that if someone does something to defend himself in what is permissible for him to do, he is not liable for what is damaged by it."[17]

This second pattern of expression existed alongside the direct pattern, although it became less frequent as we approached al-Jaṣṣāṣ. However, the presence of all three patterns is primarily observed in al-Jaṣṣāṣ. The first pattern, utilises legal questions, is rare in his work, followed by this pattern of expression, and then the most prevalent, is the direct pattern. Thereafter, the direct pattern becomes predominant over time, although some expressions through specific phrases remain.

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13 See al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1/239.
14 See al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1/375.
15 See al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1/542.
16 See al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1/196.
17 See Abū Bakr al-Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-ʿUlamāʾ*, ed. ʿAbd Allāh Nadhīr (Beirut: Dār al-Bashāʾir al-Islāmiyya, 1417), 5/195.

2.3. Third Stage: Direct Expression

Legal maxims were expressed directly in this instance, thus obviating the need for introductory phrases or keywords. On occasion, the jurist who articulated the maxim is attributed to it. Causative terms, such as "since" (*idh*), "because" (*li-anna*), are also employed. The reference to the jurist is expressed using the phrase "the reasoning of the statement" (*wajh al-qawl*), saying "the reasoning of Abū Ḥanīfa's statement" or "the reasoning of their statement." Jurists also attribute it in another way, which is more concise, to say "for Abū Ḥanīfa," "for Abū Yūsuf." However, this attribution is used when presenting textual and rational evidence. In contrast, while the expression "the reasoning of the statement" is only used for rational evidence, it is also noted here that expressing the evidence by attributing it to a party is usually done when the two parties are equal. Jurists say "for Abū Yūsuf" and, conversely, "for Muḥammad." But when the author prefers one opinion, he usually says, "for us" and, conversely, "for Abū Yūsuf," which is one of Jurists' ways of indicating the preferred opinion on the issue. An example is al-Qudūrī's statement in *al-Taqrīb*: "For us: The right of acknowledgment is a right established for a person in good state of health... For Abū Yūsuf: Acknowledgment of a receipt is an acknowledgment of a debt, so it is not valid against creditors in a state of health, like a newly incurred debt."[18]

The expression can also be within the context of the sentence, where the *aṣl* appears within the flow of the sentence without any indication or preface. Al-Qudūrī's statement in *al-Taqrīb* illustrates this: "For Abū Ḥanīfa: …the presence of many witnesses does not engender prioritization..."[19]

This pattern of expression, which is abundant and widespread in the books of jurists, can be observed in subsequent generations. In these generations, legal maxims became something that the jurist relied upon directly within the flow of speech without the need for a preface or indication. This is due to the appropriateness of the context on the one hand, and the widespread use of the pattern on the other. This phenomenon can be observed through the indexes of "legal

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[18] See Abū al-Ḥusayn al-Qudūrī, *al-Taqrīb*, ed. Muḥammad Shāhīn (Beirut: Dār al-Rayāḥīn, 2021), Case No. 516.

[19] Al-Qudūrī, *al-Taqrīb*, Case No. 611. and see also Case No. 223.

maxims," for example, in al-Qudūrī's *al-Taqrīb*[20] and al-Sarakhsī's (d. 483/1090) commentary on *al-Jāmiʿ al-Ṣaghīr*.[21] Perhaps this widespread use, observable in both books, facilitated this usage without a preface, as well as stability in both reasoning and interconnecting specific cases.

3. Historiography of the Emergence Legal Maxims' in Ḥanafī Works

It is essential to understand the nature of legal maxims in jurisprudential practice in order to return to the primary purpose of the article, which is to craft a historiography of the emergence of legal maxims between al-Shaybānī and al-Karkhī. The article begins with discussing the established literary chronology in the legal maxims and then presents the perspective favored by the article.

The accounts dating to the emergence, development, and stabilization of legal maxims are consistent and, one would expect, concur on maxims passing through three stages: emergence, development, and stabilization. The prevailing chronology indicates that the existence of legal maxims emerged in the texts of the Qur'an and the Sunnah, as well as the practices of the Companions and their successors (*tābiʿīn*).[22] The second stage is the stage of growth and codification, marked by the presence of legal maxims in works as a science and a distinct field of study during the fourth century AH and beyond. They particularly point to the work of al-Karkhī and the commentaries on *al-Jāmiʿ al-Kabīr*, in addition to their usage in the foundational texts.[23] Following al-Karkhī, the stage of systematization and standardization sets in. The aforementioned chronology of legal maxims indicates that legal maxims were circulating among jurists and the *tābiʿūn*, then developed and refined, and whence transitioned to the stage of codification. The chronology formulated by ʿAlī Nadwī in *Maʿlamat Zāyid* is considered more accurate than other chronologies that suggest the appearance of legal maxims in the work of al-Karkhī and its subsequent

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20 See al-Qudūrī, *al-Taqrīb*, 2/41, 464.

21 See Shams al-Aʾimma al-Sarakhsī, *Sharḥ al-Jāmiʿ al-Ṣaghīr*, ed. Ertuğrul Boynukalın (Istanbul: TDV ISAM, 2021), 2/533, 610.

22 See *Maʿlamat Zāyid li-al-Qawāʿid al-Fiqhiyya wa-al-Uṣūliyya* (Charitable and Humanitarian Foundation - Organisation of Islamic Cooperation - International Islamic Fiqh Academy, 2013), 2/283-307.

23 See *Maʿlamat Zāyid li-al-Qawāʿid al-Fiqhiyya wa-al-Uṣūliyya*, 2/308-354.

emergence in later centuries with al-Shāṭibī, all the way to Ibn Nujaym. This is due to the impracticability of dating *uṣūl* with such gaps.

Therefore, while the study stands with Nadwī's chronology, which states that *uṣūl* existed with the emergence of legal schools and developed historically, this article also concurs with his view. This chronology aligns with this research regarding emergence in that maxims predated the leading jurists (*mujtahidūn*). However, the claim of this article differs from previous claims, including *Maʿlamat Zāyid*, regarding the issue of widespread growth in the fourth century AH. It can be observed that the maxims used by the Ḥanafīs, as documented by al-Jaṣṣāṣ, are sometimes explicitly transmitted from earlier generations of jurists. Thus, there was a movement of expansion before al-Jaṣṣāṣ, and even before al-Karkhī. Before al-Jaṣṣāṣ, the discussion of the authority of maxims in application and their use in giving priority to certain opinions over others had entered legal theory. Then, the use of *uṣūl* for reasoning is observed in the Ḥanafī books, in particular, from al-Jaṣṣāṣ to al-Qudūrī. With al-Qudūrī and al-Dabūsī, the direct application of *uṣūl* becomes commonplace in books on legal disagreements, and the focus gravitates toward something beyond *uṣūl*, which is relying on them to build further concepts, what is now called legal theory.

The present study hypothesizes that the apparent reluctance to expand the historical scope of *uṣūl* in modern works may be attributed to the integration of the books of Iraqi scholars and those of Transoxiana during the evaluation of sources. The nature of these works differs due to the influence of legal pluralism, the jurisprudential purpose, and the concept of *fiqh* in the discourse of the two regions. When combining the works of both schools and noting that a significant portion of the Iraqi books were lost or have not been printed, especially at the time of *Maʿlamat Zāyid*'s compilation, the dominant trend appears to be that of Transoxiana and their works, which did not focus on *uṣūl*. Therefore, *Maʿlamat Zāyid*'s use of the works of al-Sarakhsī, al-Kāsānī (d. 587/1191), and subsequent Transoxianian jurists do not indicate the advanced development of *uṣūl*, at least among the Ḥanafīs, and other schools can be assessed similarly.

The fundamental premise upon which the presented chronology is based is that maxims grow directly and inversely with the growth of legal reasoning (*taʿil*) and disagreement (*khilāf*). Conversely, as the scope of disagreement (*khilāf*) decreases, the capacity for reasoning also declines, given that the purpose of reasoning is to defend and clarify the aspects of rulings. In a state of stability, there is no need for evidence for every case. This idea is indicated by discussion among several prominent Transoxianian jurists in the fifth century AH. ʿAlī al-Ṣaghdī (d. 461/1068), ʿAṭāʾ al-Ṣaghdī (d. in the late fifth/eleventh century AH), Abū Shujāʿ al-ʿAlawī (d. in the last quarter of the fifth/eleventh century AH), and others gathered to discuss the issue of *bayʿ al-wafāʾ* (sale with the right of redemption) and decided that it is invalid as a sale, contrary to the opinion of other scholars. ʿAlī al-Ṣaghdī said: "The authoritative opinion today is ours, and it has become apparent among the people. Whoever disagrees with us, let him come forward and present his evidence."[24] The preoccupation with clarifying issues, arguments, and evidence during disputes does not come from a party in a position of strength and authority over others, but rather, when the dispute is between equals. As for Iraq, as will be explained, the competition among schools and the disagreements led to jurisprudential disagreement being the primary purpose of writing among Iraqi jurists, both Ḥanafī and others. Therefore, it is impossible to date *uṣūl* linearly across all geographical regions and schools, nor is it possible to date them without considering the historical and doctrinal trajectories and the nature of the geographical region. Dating will also be inaccurate if the direct relationship between reasoning and disagreement is not considered. Consequently, the predominant assertions in literature concerning the dating of maxims are not in alignment with the early texts available. Firstly, literature disregards geographical variations in its development. Secondly, it overlooks content differences. Thirdly, it commences from the subsequent period and employs it in earlier periods that have quite distinctive characteristics.

Before embarking on the histography, a methodological point of crucial importance must be addressed. The present study will be based on the available sources from al-Shaybānī to al-Karakhī. Although numerous works were

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[24] Najm al-Dīn al-Nasafī, *Fatāwā Shaykh al-Islām ʿAṭāʾ ibn Ḥamza al-Ṣaghdī*, ed. Muḥammad Shāhīn (Beirut: Dār al-Rayāḥīn, 2020), 140.

produced during this period, only a few have survived. The scarcity of sources poses a fundamental challenge to this research since later sources cannot be relied upon to understand the early period of the Ḥanafī school. Attempting to explore al-Shaybānī's contributions without considering his extant writings would likely result in inaccurate or fragmented findings. To address this challenge, this study will rely primarily on al-Shaybānī's books, with a particular focus on those written for the purposes of this research. The period before and after al-Karakhī will be explored through sources that explicitly cite him. The most prominent sources that directly cite al-Karakhī are al-Jaṣṣāṣ, his direct disciple, and al-Qudūrī in his commentary on al-Karakhī's *Mukhtaṣar*. Despite the direct quotations by al-Karakhī found in these books, they represent a limited focus on him and do not include other contemporary and earlier Ḥanafī jurists. Several texts are also used as examples of the consistency of meaning claimed by the research, particularly the texts of al-Ḥaṣīrī and al-ʿAttābī as evidence to support the claim regarding *al-Jāmiʿ al-Kabīr*. Further exploration of details regarding the period prior to al-Karakhī within the Ḥanafī texts remains contingent upon the availability of additional texts.

3.1. Legal Maxims in al-Shaybānī's *al-Jāmiʿ al-Kabīr*

When discussing the early emergence of *uṣūl*, it is necessary to distinguish between the existence of *uṣūl* in the minds of jurists and their applications. The forms of their expression, and their final formation into concise expressions encompassing umbrella meanings, continued to evolve until reaching stable, final expressions. Another distinction is between the existence and use of maxims in *fiqh* books. Legal maxims as a subject of independent works, explanations and arguments came later. However, it is mentioned in several books on "legal maxims" dealing with the early history of the subject, which usually state that the earliest text that has been passed down to us is al-Karkhī's work, *Uṣūl al-Karkhī*.[25] However, if one distinguishes between existence and use on the one hand and independent authorship on the other, we find that the dating of maxims goes back to an earlier period and other forms of expression are used besides the final form (concise expression). Several texts point to the early

[25] Najm al-Dīn al-Nasafī, *Risālat al-Karkhī fī al-Uṣūl maʿ Shawāhidihā wa-Nazāʾirihā* (Cairo: Maktabat al-Khānjī, 1994).

formation of expressing maxims. Upon examining al-Jaṣṣāṣ's commentary on *al-Jāmiʿ al-Kabīr*, it becomes evident that there are numerous texts transmitted by al-Jaṣṣāṣ from al-Karkhī, with the reasoning for this issue being narrated from him. Then, with further investigation, there are instances narrated by al-Karkhī from his teachers, from Abū Saʿīd al-Bardāʿī (d. 317/930). For example, in one of them, he says:

> *"We now return to explaining the branches of the chapter based on their uṣūl. Abū al-Ḥasan al-Karkhī, may God have mercy on him, limited the chapter to related meanings upon which its issues are based. He and other teachers of ours narrated from Abū Saʿīd al-Bardāʿī, may God have mercy on him, uṣūl, for these issues that serve as an introduction and simplification for the student. I will mention them, God willing, after finishing the last of the issues, according to the meaning that Abū al-Ḥasan derived."*[26]

This statement indicates an early formation of the meanings around which jurists structure the chapters, as al-Jaṣṣāṣ expressed it, which he called the *uṣūl* of those issues upon which they are based and by which they are constrained. Then comes an important statement by al-Jaṣṣāṣ regarding al-Shaybānī's *al-Jāmiʿ al-Kabīr* in the context of an objection to a statement on the issue of invalidating the ablution of those with excuses, stating that what was mentioned contradicts what Muḥammad explicitly stated in the book. He responded: "Muḥammad is lenient in his expression, content with the understanding of those for whom the book was written, who knew his *uṣūl*, and he did not write the book for beginners nor those not trained in his legal questions."[27] This statement raises questions about several issues: Why did al-Jaṣṣāṣ describe al-Shaybānī's methodology in the book in this way, which suggests that al-Shaybānī deviated from the jurists' approach of carefully controlling and refining their expressions? It also, in a way, perhaps subtly criticizes al-Shaybānī. Furthermore, with further investigation, and according to al-Jaṣṣāṣ's explanation, it explains a purpose in the book. It is presumably something al-Shaybānī intended based on his jurisprudential goal, which leads to an earlier

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26 See al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 23b.

27 See al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 27a.

historiography of maxims. Al-Shaybānī's purpose in this was to gather issues revolving around a common theme in one chapter to illustrate the various aspects the intended topic. The topics he presents are mostly the most prominent topics specific to the Ḥanafīs, which aligns with the implications of Fakhr al-Islām al-Bazdawī's (d. 482/1089) commentary on *al-Jāmiʿ al-Kabīr*.[28] Shaybānī clearly intended to explain the various aspects of these topics through the issues he presents. He mentions the issues relating to the intended maxims, their conditions of absence, and the different rulings in this topic. Sometimes, Shaybānī presents an issue seemingly unrelated to all the preceding issues, but it is not irrelevant; instead, he presents it as evidence for the intended meaning, that the meaning applies to all branches with the same ruling, or to strengthen the intended meaning with a branch where the meaning is more apparent. *Al-Jāmiʿ al-Kabīr* refers through its questions to the maxims around which these chapters revolve. Commentators like al-Jaṣṣāṣ, al-ʿAtābī, and al-Ḥaṣīrī (d. 636/1238) understood this. They explicitly mention the maxims (*usūl*) on which Muḥammad based the chapter while explaining it. This approach of explaining the chapter through this introduction of explaining the *uṣūl* is not consistent in al-Jaṣṣāṣ's commentary. Sometimes he mentions it at the beginning of the chapter, others at its end, and others yet during the explanation, either explicitly from himself

[28] An examination of the commentaries on *al-Jāmiʿ al-Kabīr* reveals that all jurists understood the text as revolving around foundational principles (*uṣūl*) that could be inferred from the legal issues (*masāʾil*) mentioned therein. Consequently, they would often begin—or in some cases conclude—each chapter by discussing the overarching principles upon which the chapter's content was based. However, al-Bazdawī added an additional layer to this approach by framing these issues within the context of the disagreement between the Ḥanafīs and the Shāfiʿīs. Thus, alongside Muḥammad ibn al-Ḥasan al-Shaybānī's intention to articulate foundational principles through these legal issues, these principles also highlighted certain distinct features of the Ḥanafī school. A notable example is the ruling that blood invalidates ablution, a hallmark of Ḥanafī jurisprudence. Al-Bazdawī alludes to this in the introduction to his work, stating :"Muḥammad, may God have mercy on him, began with a legal issue in which there was disagreement, as an expression of leniency toward the opponent when their argument was weak, an assertion of the school when the proof was clear, and an avoidance of unnecessary elaboration when the intention was sincere." See Fakhr al-Islām al-Bazdawī, *Sharḥ al-Jāmiʿ al-Kabīr* (Kastamonu, 3530), 2b.

or transmitted from al-Karkhī or others, as exemplified earlier. As for al-ʿAtābī and al-Ḥaṣīrī, they present this introduction at the beginning of the chapter.[29]

For instance, in *Kitāb al-ʿIbādāt*, al-Shaybānī introduces the text with the title *Bāb al-Ṣalāt* ("*Chapter on Prayer*"). However, the content does not primarily address the practice of prayer itself; instead, it focuses exclusively on the various circumstances concerning the Imam and the follower.[30] He presents issues related to the woman aligning herself with the man in both cases of following prayer and praying individually, the traveler joining the resident's prayer, and the resident joining the traveler's prayer. As you can see, he uses a generic title but intends a specific meaning, and you will find this throughout the book. Then he entitles a chapter "*Chapter on the Menstruating Woman*" (*Bāb al-Mustaḥāḍa*). Although he begins by discussing the menstruating woman, the chapter focuses on a central issue for the Ḥanafīs regarding ritual purity, which is the invalidation of ablution by blood. Under this title, Shaybānī presents ablution from flowing blood and its various states, such as its cessation and continuation within the prayer time and after the prayer time, as well as during the performance of the prayer. Then, he presents an issue used as evidence, which is the prayer of a naked person who then finds clothing, whether he should repeat the prayer, which is an example of what was mentioned earlier regarding his method of presenting supporting evidence while discussing the topic.[31] Similarly, when looking at the "Book of Fasting," we find that he entitles it "*Chapter on Fasting and Iʿtikāf*," but it contains nothing about the rulings of fasting. Instead, it discusses an important issue regarding the connection between fasting and *iʿtikāf* among the Ḥanafīs, which is the conditionality of fasting for the validity of *iʿtikāf* made as a vow, specifically.[32] In the "*Book of Marriage*," for example, it revolves around the marriage of slaves and slave girls, and the marriage contracted by guardians. He begins by designating a chapter "*Chapter on the Master's Commanding His Slave to Marry*," and the chapter revolves around

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29 See Abū Naṣr al-ʿAtābī, *Sharḥ al-Jāmiʿ al-Kabīr* (Riyadh, Medina: al-Nāshir al-Mutamayyiz, Dār al-Naṣīḥa, 2022), 1/231; Abū al-Maḥāmid al-Ḥaṣīrī, *al-Taḥrīr Sharḥ al-Jāmiʿ al-Kabīr* (Istanbul: al-Sulaymāniyya, Rāghib Bāshā, 514), 2a–2b.

30 Muḥammad al-Shaybānī, *al-Jāmiʿ al-Kabīr*, ed. Abū al-Wafāʾ al-Afghānī. (Hyderabad: Iḥyāʾ al-Maʿārif al-Nuʿmāniyya, 1356), 9.

31 Al-Shaybānī, *al-Jāmiʿ al-Kabīr*, 9–10.

32 Al-Shaybānī, *al-Jāmiʿ al-Kabīr*, 14–16.

the master's permission for the slave's marriage; whether the marriage occurred with the master's consent, or the permission was granted after the marriage, and its various states and its consequences on the slave's status.[33]

In the commentaries on *al-Jāmiʿ al-Kabīr*, al-Jaṣṣāṣ, in the "*Book of Prayer*," introduces three key points regarding the traveler's prayer. He discusses firstly the obligation to shorten the prayer while traveling, secondly the impermissibility of performing the full prayer if the designated time has passed, and lastly the principle that the validity of the follower's prayer depends on the Imam's prayer.[34] Then, beginning the discussion of the issue, he says: "Since these *uṣūl* upon which the issue of the book is based have been established, we return to explaining its construction upon them, so we say..."[35] Al-Jaṣṣāṣ employs this approach consistently throughout the book, although its placement is not uniform, as previously noted. He concludes the "*Chapter on the Menstruating Woman*" by discussing the maxims upon which the chapter is based and their evidence, stating: "We now return to explaining the branches of the chapter based on their *uṣūl*. Abū al-Ḥasan al-Karkhī, may God have mercy on him, limited the chapter to related meanings upon which its issues are based..."[36]

It is evident that commentators after al-Jaṣṣāṣ adopted his methodology. However, observing the following commentaries after al-Jaṣṣāṣ reveals that they present the *uṣūl* surrounding the issues at the beginning of their discourse. This was mentioned at the beginning of the article regarding the work of Nadwī and Kızılkaya. Al-ʿAtābī employs a consistent methodology at the commencement of each chapter, articulating the fundamental principle upon which the ensuing chapter is structured. For instance, in the opening remarks of the "*Chapter on Prayer*," al-ʿAtābī asserts that the woman's alignment with the man only renders his prayer invalid if it is absolute, and both individuals are praying behind the Imam, either physically or virtually. He subsequently enumerates additional rules. Similarly, upon examination of al-Ḥaṣīrī, it is found that he states the following before to the initiation of the issues: "The *aṣl* of the chapter is that whenever a connection is established between the Imam and the

33 Al-Shaybānī, *al-Jāmiʿ al-Kabīr*, 85–87.
34 Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 1a–8b.
35 Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 8b.
36 Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 23b–24a.

follower... it continues as long as any of the acts of prayer continues..."[37] Likewise, he begins the "*Chapter of the Menstruation*" (*Kitabul-Hayḍ*).[38]

It appears that the commentators consistently understood *al-Jāmiʿ al-Kabīr* to be a book written for a specific purpose, as indicated by the issues it addressed. Therefore, these issues are not intended for their own sake but are considered within the context of the book's purpose. It has been observed that there are differences in the *uṣūl* presented by the commentators for the chapters of *al-Jāmiʿ al-Kabīr*, as mentioned in the examples. Some of these differences are due to the different perspectives. Those who concentrated on the individual issues, presented *uṣūl* appropriate to for each issue, as if al-Shaybānī presented each issue to indicate a specific *aṣl*. Those who focused on the overall meaning around which the issues revolve, presented one or more *uṣūl* upon which the chapter revolves, as seen in al-Jaṣṣāṣ's approach and also seen in al-Ḥaṣīrī's approach.[39]

The specific purpose of writing *al-Jāmiʿ al-Kabīr* was to state the *uṣūl*, particularly the *uṣūl* specific to the Ḥanafīs in *al-Jāmiʿ al-Kabīr*'s chapters; consequently, great care was exercised to ensure that the book was not transmitted verbatim. Instead, what is observed in the book is wide variation in the wording used by the commentators, even though the meanings are the same. This is because transmission is subservient to the purpose, and the jurists' purpose was not to preserve the wording of the transmitted issue, but rather to maintain its essence. This is especially true when the issues were presented for a purpose beyond the form and wording, to the general meaning behind them, which is more deserving of attention than the verbatim transmission of the book. This contributed to the lack of preservation of a fixed text for the book except in a limited scope. This brings us back to al-Jaṣṣāṣ's earlier statement: "Muḥammad is lenient in his expression, content with the understanding of those for whom the book was written, who knew his *uṣūl*."[40] From this, Muḥammad's lack of concern for the wording originally, be understood, and consequently, the commentators' lack of concern, starting with al-Jaṣṣāṣ, for preserving this

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37 Al-ʿAtābī, *Sharḥ al-Jāmiʿ al-Kabīr*, 2a.
38 Al-ʿAtābī, *Sharḥ al-Jāmiʿ al-Kabīr*, 3b.
39 Al-Ḥaṣīrī, *al-Taḥrīr Sharḥ al-Jāmiʿ al-Kabīr*, 2a.
40 Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 27a.

wording.[41] Consequently, it can be posited that *al-Jāmiʿ al-Kabīr* is among the earliest extant works that can be considered one of the early books on legal maxims. This also aligns with some indications found in the books, some of which will be mentioned, that the expression of *uṣūl* was not direct, but changed over time.

A thorough examination of other legal schools (*madhāhib*) reveals that legal maxims (*qawāʿid fiqhiyya*) emerged during the same period in the works of the Mālikī and Shāfiʿī schools of jurisprudence. Among Mālikī jurists, it is evident that Saḥnūn b. Saʿīd al-Tanūkhī (d. 240/854) transmitted numerous legal maxims from Mālik b. Anas (d. 179/795). Furthermore, Mālik himself also mentions several legal maxims in his *al-Muwaṭṭaʾ*. A significant portion of these maxims have been meticulously compiled by Iḥsān Zaqqūr, shedding light on the evolution of legal thought within the Mālikī school. The examples collected by Zaqqūr reveal that the conceptualization, formulation, and utilization of legal maxims were present from the early stages of the Mālikī school, both from Mālik himself and from his prominent companions.[42] Among the Shāfiʿīs, a significant number of legal maxims can also be observed in *al-Umm* by al-Shāfiʿī (d. 204/820). In al-Shāfiʿī's work, the presence of general maxims, such as "Certainty is not removed except by certainty," and similar ones, is notable.[43]We also observe the presence of legal maxims throughout various chapters on legal topics. This suggests the presence of legal maxims at an earlier stage than those

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41 The concept of narrating by meaning (*riwāya bi-al-maʿnā*) held a distinct position among jurists compared to its treatment by *muḥaddithūn* (hadith scholars). While hadith scholars emphasized the necessity of precise wording due to the critical nature of transmitted language, urging strict adherence to the original expressions and discouraging the practice of narrating by meaning, jurists took an opposing approach. Although jurists did not explicitly address this issue in their writings, their practical application demonstrated a broader acceptance of *riwāya bi-al-maʿnā*. Among the Ḥanafīs, a distinction is drawn between narrating by meaning, scribal errors, variant versions of texts, and textual additions.

42 Zaqqūr, Iḥsān. *Al-Qawāʿid al-Fiqhiyya al-Mustanbaṭa min al-Mudawwana al-Kubrā*. (Beirut: Dār Ibn Ḥazm, 2005), 1/237–239. For further works on legal maxims among early Mālikī scholars, see Mudawwar, Rashīd. *Maʿlamat al-Qawāʿid al-Fiqhiyya ʿinda al-Mālikiyyah*. (Dār al-Fatḥ, 2011), 120–23.

43 For numerous examples of legal maxims in al-Shāfiʿī's works, see Ibn Aḥmad, ʿAbd al-Wahhāb. *Al-Qawāʿid wa-al-Ḍawābiṭ al-Fiqhiyya fī Kitāb al-Umm li-l-Imām al-Shāfiʿī Jamʿan wa-Tartīban*. (Dār al-Tadmiriyya, 2008).

documented by both Mālik and al-Shāfiʿī. From another perspective, when considering this aspect, al-Shaybānī's work does not appear unusual compared to his juristic contemporaries. Consequently, while al-Shaybānī's work is unique in terms of its authorial purpose, it is not outside the context of his era.

3.2. The Emergence of Legal Maxims from al-Shaybānī to al-Karkhī

The accounts found in numerous Ḥanafī books indicate widespread authorial activity between al-Shaybānī and al-Karkhī. Al-Nāṭifī (d. 446/1054), in particular, mentions several books that likely contained forms of expressing *uṣūl*, especially those that focused on legal disagreements. These include: *Ikhtilāf Abī Ḥanīfa wa-Abī Yūsuf* by al-Ḥasan ibn Ziyād (d. 266/880), narrated by Bishr ibn Ghiyāth (d. 218/833);[44] *Ikhtilāf al-Fuqahāʾ* by Abū Bakr al-Ṭabarī (d. ??);[45] *Sharḥ Ikhtilāf Zufar wa-Yaʿqūb* by Muḥammad ibn Shujāʿ al-Thaljī (d. 266/880);[46] and other books on legal questions, such as *Masāʾil Namir ibn Jidār* (d. around 200/815-816),[47] *Masāʾil Abī ʿAlī al-Hasan b. Hammād Sajjāda* (d. 194/809-810),[48] *Masāʾil Aḥmad al-Qārī* (d. around 200/815-816),[49] *Masāʾil al-Faḍl ibn Ghānim* (n.d.),[50] *Masāʾil ʿAlī al-Rāzī* (n.d.),[51] *Masāʾil ʿAlī ibn Ṣāliḥ al-Jurjānī* (d. around 200/815-816),[52] and *Masāʾil Muḥammad ibn Abī Rajāʾ* (d. 207/8223-823).[53] There were also summaries, such as *Mukhtaṣar Abī Mūsā al-Rāzī al-Ḍarīr* (d. ??),[54] and comprehensive works, such as *Jāmiʿ ʿAlī ibn Yazīd al-Ṭabarī* (d. around

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44 See Abū al-ʿAbbās al-Nāṭifī, *al-Ajnās*, ed. ʿAbd Allāh al-Ṭaḥīs - Karīm al-Lamʿī (Dār al-Māʾthūr, No Date), 1/161.

45 See al-Nāṭifī, *al-Ajnās*, 1/433. A copy of it has been displayed at Christie's auctions. A sample from this copy can be accessed through the following link (access date: September 23, 2024): https://www.christies.com/lot/lot-1546459?ldp_breadcrumb=back&intObjectID=1546459&from=salessummary&lid=1

46 See al-Nāṭifī, *al-Ajnās*, 1/133.

47 See al-Nāṭifī, *al-Ajnās*, 1/461.

48 See al-Nāṭifī, *al-Ajnās*, 1/269.

49 See al-Nāṭifī, *al-Ajnās*, 1/301.

50 See al-Nāṭifī, *al-Ajnās*, 2/23.

51 See al-Nāṭifī, *al-Ajnās*, 1/55.

52 See al-Nāṭifī, *al-Ajnās*, 2/195.

53 See al-Nāṭifī, *al-Ajnās*, 1/342.

54 See al-Nāṭifī, *al-Ajnās*, 1/164.

200/815-816),[55] *Jāmiʿ Yaḥyā al-Aṣfahānī* (d. around 200/815-816),[56] and *Jāmiʿ Khalaf ibn Ayyūb* (d. 215/830),[57] among others. These books and many others listed among al-Nāṭifī's sources demonstrate that this period, spanning over a century, was filled with writings and books. Considering the early appearance of *uṣūl*, it cannot be said that the period between al-Shaybānī and al-Karkhī was devoid of the mention and use of *uṣūl*, reaching a more mature state with al-Karkhī and his students. However, the available quotations from the limited sources that were transmitted from the books of that period focus on the use of those books in narration, particularly narrations outside the usual framework of the school's texts. Therefore, it is not possible to evaluate this period in detail. However, al-Shaybānī's independent authorship on *uṣūl*, and al-Karkhī's dedicating a treatise to mentioning *uṣūl*, indicates an early type of interest, which is observed in other books of jurisprudence mentioned earlier and to be discussed later. On the basis of the evidence presented, it is not possible to assert that this century was entirely devoid of consideration and interest in *uṣūl*. The extant data suggests the presence of attention to *uṣūl*, but it cannot be definitively confirmed through the available quotations. The veracity of this claim is contingent on the availability of further texts.

Although the texts do not indicate the existence of independent works specifically on *uṣūl*, compiling and explaining them in any of the forms of expression mentioned later, al-Jaṣṣāṣ's quotations from several early jurists, such as ʿĪsā ibn Abān (d. 221/836),[58] Muḥammad ibn Samāʿa (d. 233/848),[59] Abū Khāzim (d. 292/905),[60] and others, all indicate the widespread use of *uṣūl* as an important part of the jurisprudential structure, both in reasoning and authorship.

4. Conclusion

The early composition of works on legal maxims can be traced back to an early period coinciding with the emergence of legal schools. In the Ḥanafī

55 See al-Nāṭifī, *al-Ajnās*, 1/544.
56 See al-Nāṭifī, *al-Ajnās*, 1/452.
57 See al-Nāṭifī, *al-Ajnās*, 1/358.
58 See al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 24b, 50a.
59 See al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 122b, 167b.
60 See al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-Kabīr*, 2a.

school, al-Shaybānī's *al-Jāmiʿ al-Kabīr* can be identified as the first example of a work on the *uṣūl* of the Ḥanafī school specifically, if not across all legal schools.

Considering the works of the early Mālikīs and Shāfiʿīs—specifically Mālik and al-Shāfiʿī—we can understand that al-Shaybānī's work is historically consistent with the presence of legal maxims (*qawāʿid fiqhiyya*) in their works. A comparative study of the formulation and application of legal maxims among the four Sunnī legal schools (*madhāhib*) in the early period requires independent research.

The historical account reveals a change in the expression of legal maxims, beginning with legal questions intended to convey the underlying *aṣl*, then the using of keywords and signals when employing them, and finally, direct expression. This change has posed an obstacle to establishing the existence of independent works on legal maxims before al-Karkhī. Considering both the practical aspects of *fiqh* and the principles of jurisprudence (*uṣūl al-fiqh*), reveals that the Ḥanafīs, up to al-Jaṣṣāṣ, expanded the use of *uṣūl* in various domains. This development in their usage demonstrates the strong presence of *uṣūl* in the jurisprudential context, both in terms of application and authorship.

It is evident that by considering both the historical account and the functional nature of *uṣūl*, an understanding is achieved that *furūʿ fiqhiyya* cannot be separated from the general meanings to which they refer. This, in turn, leads to the consistency and harmony of the jurisprudential and doctrinal structure. Therefore, it is impossible to directly establish a legal school without *uṣūl* for chapters and issues, whether explicitly expressed by the jurist or understood through his *ijtihād* and his approach to various issues.

While emphasizing that the writing on *uṣūl* accompanied the emergence of the Ḥanafī school through al-Shaybānī's *al-Jāmiʿ al-Kabīr*, independent authorship between al-Shaybānī and al-Karkhī remains a subject of the article. The existence of such extensive historical gaps is not consistent with the nature of things. Instead, it is natural for a gradual development to occur between al-Shaybānī and al-Karkhī. Therefore, the search for texts that fill the gap requires the availability of more texts and data, which is not facilitated by the currently available information about that period between them—as far as I am aware. However, this gap is filled by the quotations transmitted by al-Jaṣṣāṣ from early

Ḥanafī scholars like ʿĪsā ibn Abān, Muḥammad ibn Samāʿa, and Abū Khāzim, indicating that the period between al-Shaybānī and al-Karkhī was not devoid of the use, attention to, and formation of *uṣūl*. Therefore, al-Karkhī can be considered the culmination of a phase of work in developing *uṣūl* within the timeframe between al-Shaybānī and al-Karkhī.

This article demonstrates that works on legal maxims in the Ḥanafī school did not originate in the fourth century AH, as is commonly held in traditional jurisprudential historiography. Instead, their emergence can be traced back to earlier periods, dating back to al-Shaybānī and his early students. Through analysis of the available jurisprudential texts and a study of the methods of expressing legal maxims during that period, it becomes clear that the term "*uṣūl*" was used to express the legal maxims upon which legal rulings are based, even if these maxims were not the subject of independent works in their later, conventional form during that period, but were treated independently in a different manner. The article also showed a gradual development in the methods of expressing legal maxims, starting with their use within legal questions and culminating in their more systematic codification in independent books like *Uṣūl al-Karkhī*. The article also points to the geographical differences between Iraqi and Transoxianian scholars, which contributed to variations in the approaches to legal maxims. While Iraqi scholars have been observed to focus on the employment of legal maxims for the purposes of prioritization and reasoning, Transoxianian Ḥanafīs have developed these maxims to serve legal theorization broadly.

The findings of this article call for a re-examination of the presumed chronological gaps in the development and history of legal maxims and a search for what might fill these gaps. The article also emphasizes the necessity of understanding the development of legal maxims as an integral part of the development of legal schools, as the rules cannot be separated from the legal branches built upon them. This article seeks to reassess the timeline of when legal maxims emerged among the Ḥanafīs, proposing that they originated earlier. Additionally, it aims to pave the way for future studies on the evolution of Islamic jurisprudence.

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