Abū Bakr al-Khaffāf and His Thought of Uṣūl al-Fiqh

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Abstract

Abū Bakr al-Khaffāf is one of the Shāfiʿī scholars who lived in the Iraqi region in the fourth/tenth century. The region of Iraq became one of the important centers of attraction for the Shāfiʿī madhhab in those times, and leading jurists of the madhhab, particularly ʿAbūʾl-ʿAbbās Ibn Surayj and his students, began to appear in this region. Being one of the centers of many theological and philosophical movements, the Iraqi region left an impact on the thoughts of the early Iraqi Shāfiʿīs. An important indication of this is Abū Bakr al-Khaffāf, about whom there is little information in both classical and modern sources. In the introduction of his concise work titled al-Aqsām wa-l-khiṣāl in the field of fiqh, he briefly addresses the main issues of fiqh. Al-Khaffāf's inclusion of fiqh methodology in this particular work is noteworthy in that it reflects the theological perspective that was popular among Shāfiʿī scholars of his time, as well as providing important data on the development of Shāfiʿī fiqh method after Shāfiʿī. This study aims not only to show this impact and but also to introduce this Shāfiʿī jurist and his methodical thought, neglected in both classical and modern sources.

Keywords

Shāfiʿī School, Iraqi Region, Uṣūl al-Fiqh, Abū Bakr al-Khaffāf, al-Aqsām wa-l-khiṣāl

Ebû Bekir el-Ḫaffâf ve Fıkıh Usûlü Düşüncesi

Öz

Ebû Bekir el-Ḫaffâf, 4./10. Yüzyılda Irak bölgesinde yaşayan Şâfiî fakihlerinden biridir. Irak bölgesi, özellikle bu yüzyıllarda Şâfiî mezhebi için önemli çekim merkezlerinden biri olmuş, Ebü'l-Abbâs İbn Süreyc ve öğrencileri başta olmak üzere o dönemde mezhebin otorite fakihleri bu bölgede yetişmeye başlamıştır. Birçok kelâmî ve felsefî ekolün merkezlerinden biri olan Irak bölgesi, ilk dönem Iraklı Şâfiîlerin düşüncelerinde etkiler bırakmıştır. Bunu gösteren önemli bulgulardan bir tanesi gerek klasik gerekse de modern kaynaklarda hakkında yeterince bilgi bulunmayan Ebû Bekir el-Ḫaffâf'tır. O, el-Aḳsâm ve'l-ḫiṣâl adını taşıyan furûʿ fıkıh alanında yazdığı muhtasar eserinin girişinde özet halinde belli başlı fıkıh usûlü konularını ele almaktadır. Ḫaffâf'ın el-Aḳsâm ve'l-ḫiṣâl'de fıkıh usûlü konularına yer vermesi, Şâfiî'den sonra Şâfiî fıkıh usûlünün gelişimi konusunda önemli veriler sunmasının yanında, kendi dönemindeki Şâfiî usûlcüler üzerinde etkili olan kelâmî perspektifi yansıtması bakımından da kayda değerdir. İşte bu çalışma hem bu etkiyi göstermek hem de gerek klasik gerekse de modern kaynaklarda ihmal edilmiş bir Şâfiî fakihini ve onun usûl düşüncesini tanıtma amacını taşımaktadır.

Anahtar Kelimeler

Şâfiî Mezhebi, Irak Bölgesi, Fıkıh Usûlü, Ebû Bekir el-Ḫaffâf, *el-Aḳsâm ve'l-ḫiṣâl*

Introduction

Egypt played a key role in spreading Shāfiʿīsm to various regions. Scholars who came to Egypt from different parts of the Islamic world encountered the students and works that Shāfiʿī left behind. Among the foremost of these are Abū Ismāʿīl al-Tirmidhī (d. 280/893) and Abū al-Qāsim al-Anmatī (d. 288/901). Major representatives of Shāfiʿīsm in the Iraqi region, which flourished through the contributions of various scholars, included Ibn Surayj (d. 306/918) and his followers. Thanks to their work, the Iraqi region emerged as a new school of Shāfiʿīsm, independent of Egypt.[1] The establishment of Shāfiʿīsm in the Iraqi region caused the scholars who represented Shāfiʿīsm to be influenced by the intellectual activity in the region. Especially early Iraqi Shāfiʿīs are often associated with theological movements in the region, particularly with the Muʿtazila theology.[2] This relationship is also mentioned by Ashʿarī and Shāfiʿī scholars who lived after them. In fact, as Badr ad-Dīn al-Zarkashī (d. 794/1392) reports, Abū Bakr al-Baqillānī (d. 403/1010), Abū Isḥāq al-Isfarāyīnī (d. 418/1027) and Abū Muhammad al-Juwaynī (d. 438/1407) stated that Ibn Surayj and his contemporaries were influenced by the Muʿtazila's views because they studied their works.[3] Likewise, Taj al-Din Ibn al-Subkī (d. 771/1370) cites al-Isfarāyīnī's work titled *Uṣūl al-Fiqh* on this issue. Al-Isfarāyīnī noted that Ibn Surayj and the Shāfiʿīs who lived in his period examined the works of the Muʿtazila as they were interested in the issues of kalām.[4] Al-Isfarāyīnī highlights that the early Iraqi Shāfiʿīs read the works of the Muʿtazila madhhab and that they saw such expressions in these works as "the rational necessity of being grateful to the One, who gave the blessing before al-sharīʿah," and that they considered these phrases beautiful because they did not understand the "bad and ugly mentality," which constituted the mindset that formed the basis of the Muʿtazila thought.[5] In a way, al-Isfarāyīnī concludes that Ibn Surayj and his contemporaries were influenced by their views because they did not sufficiently understand the mindset, on which the Muʿtazila thought was based.[6] Al-Isfarāyīnī also addresses the views adopted by the Shāfiʿīs in this period, under the influence of the Muʿtazila madhhab. He highlights the invalidity of this view, adopted by the mutakallim and faqih Shāfiʿīs, who support the opinion that it is morally obligatory to offer thanks to the One, who gave the blessing. He adds that a group of Shāfiʿī jurists examined the questions asked by the Muʿtazila and the answers given to these questions.[7] Isfarāyīnī reports that, for the Muʿtazila jurists, it was essential from a rational perspective before al-sharīʿah to be thankful to the provider of blessings and to know that the world

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[1] For the historical development of Iraqi Shāfiʿīsm, see Davut Eşit, *Şâfiî Fıkıh Usûlünün Gelişimi* (Ankara: Ankara Okulu Yayınları, 2019), 89-103; Bilal Aybakan, *İmam Şâfiî ve Fıkıh Düşüncesinin Mezhepleşmesi* (İstanbul: İz Yayıncılık, 2007), 188-189-198.

[2] For the influence of Muʿtazila on the early Iraqi Shāfiʿīs, see Eşit, *Şâfiî Fıkıh Usûlünün Gelişimi,* 108-116.

[3] Abū ʿAbdillāh Badr ad-Dīn Muhammad b. ʿAbdillāh b. Bahādir al-Zarkashī, *al-Baḥr al-muhīt fī uṣūl al-Fiqh,* (No Place of Publication: Dār al-Kutubī, 1994/1414), 1/184.

[4] Al-Subkī, Abū al-Hasan Taqī al-Dīn Ali ibn ʿAbd al-Kāfī al-Subkī - Abū Naṣr Taj al-Din ibn Al-Subkī ʿAbd al-Wahhāb b. ʿAlī Ibn ʿAbd al-Kāfī al-Subkī, *al-Ibhāj fī sharh al-Minhāj* (Beirut: Dār al-Kutub al-`Ilmiyah, 1995/1416), 1/137-138.

[5] Al-Subkī, *al-Ibhāj*, 1/137-138.

[6] Al-Subkī, *al-Ibhāj*, 1/137-138.

[7] Al-Zarkashī, *al-Baḥr,* 1/196.

was created, so there is a creator who gave blessings to the whole world.[8] Al-Isfarāyīnī mentions Abū Bakr al-Ṣayrafī (d. 330/942), Ibn Abī Hurayra (d. 345/956), Abū Bakr al-Khaffāl al-Shāshī (d. 365/976), who were all among the students of Ibn Surayj.[9] These citations indicate that the Shāfiʿī jurists living in the Iraqi region were influenced by their views as they examined the works of Muʿtazila in the same region. Al-Subkī, on the other hand, cites the commentary he wrote for Abū Muḥammad al-Juwaynī's work *al-Risāla* to address this issue. The early Iraqi Shāfiʿīs adopted some of their views by examining the works of Muʿtazila although they were not knowledgeable enough in the science of kalām. Not knowing that some of the phrases in Muʿtazila's works are based on the basic principles of Qadariyya (Muʿtazila), such as the rational obligation to give thanks to the One, who gives the blessing, the Shāfiʿīs of this period adopted these views because the phrases sounded nice to them.[10] The literature of fiqh includes many views that the early Iraqi Shāfiʿīs adopted, due to the influence of the Muʿtazila.[11] Since al-Khaffāf's work *al-Aqsām wa-l-khiṣāl,* which is the focus of our study, is a work written in this period, it is possible to see that the Muʿtazila and kalām-oriented perspectives are reflected in it. By touching upon this, the present study addresses al-Khaffāf's methodical thought and some methodological issues in that period.

1. The Life of Abū Bakr Al-Khaffāf

The works of ṭabaqāt include limited information about the life of al-Khaffāf, one of the 4th/10th-century Iraqi Shāfiʿī scholars. The first piece of information we can find about al-Khaffāf's life comes from Abū Ishāq al-Shīrāzī (d. 476/1083), in his biographical work *Ṭabaqāt al-fuqahā'.* Al-Shīrāzī mentions the name of al-Khaffāf as Abū Bakr Aḥmad b. ʿUmar al-Khaffāf. He also notes that al-Khaffāf is the author of the work *al-Aqsām wa-l-khiṣāl.*[12] The information that al-Shīrāzī provided about him is limited to this; he does not mention anything about al-Khaffāf's year of birth/death, his teachers or students. Al-Shīrāzī states that Shāfiʿī fiqh was passed down to another generation after Ibn Surayj, one of the first Iraqi Shāfiʿīs and that most of this generation consisted of distinguished students of Ibn Surayj. He also provides limited information about al-Khaffāf when he mentions Ibn Surayj's distinguished students. Although not yet certain, it raises the possibility that al-Khaffāf was a student of Ibn Surayj.[13] Al-Shīrāzī mentions al-Khaffāf as a member of a group of scholars, which he says consists mostly of Ibn Surayj's students; he determines that the Shāfiʿī fiqh was

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8   Al-Zarkashī, *al-Baḥr,* 1/196.

9   Al-Zarkashī, *al-Baḥr,* 1/196-197

10 Abū Naṣr Tāj al-Dīn ibn al-Subkī ʿAbd al-Wahhāb b. ʿAlī ibn ʿAbd al-Kāfī al-Subkī, *Rafʿu al-ḥajib al-Mukhtasar Ibn al-Hajib*, Ed. ʿAli Muhammad Muʾawwad - Adil Aḥmad ʿAbd al-Mawjud (Beirut: ʿĀlam al-Kutub, 1999/1419), 1/471-473.

11 For these perspectives, see Eşit, *Şâfiʿî Fıkıh Usûlünün Gelişimi,* 108-116.

12 Ibn Qāḍī Shuhba and Ibn al-Mulaqqin cite him as ʿUmar b. Yūsuf Abū Bakr al-Khaffāf. See Abū Isḥāq Ibrāhīm ibn ʿAlī al-Shīrāzī, *Ṭabaqāt al-fuqahā'* (Beirut: Dār al-Raidi al-ʿArabī, 1970), 114; Abū Bakr b. Aḥmad b. Muḥammad b. ʿUmar, Taqī al-Dīn Ibn Qāḍī Shuhba, *Ṭabaqāt al-Shāfiya* (Beirut: ʿĀlam al-Kutub, 1987), 1/124; Sirāj al-Dīn Abū Ḥafṣ ʿUmar b. ʿAlī b. Aḥmad al-Shāfiʿī al-Miṣrī Ibn al-Mulaqqin, *al-Aqd al-mudahhab fi ṭabaqāt ḥamalat al-madhhab*, Ed. Ayman Naṣr al-Azharī Sayyid Mahana (Beirut: Dār al-Kutub al-`Ilmiyah, 1997/1417), 31.

13 Al-Shīrāzī, *Ṭabaqāt,* 109-114; for perspectives on al-Khaffāf's being a student of Ibn Surayj, see Ahmed El Shamsy, "Bridging the Gap: Two Early Texts of Islamic Legal Theory", *Journal of the American Oriental Society* 137. 3 (2017), 512.

passed down to another generation. He also provides some biographical information about them, beginning with the biography of Abū Isḥāq al-Marwazi's (d. 340/951) student al-Qāḍi Abū Ḥamid al-Marwarruzī (d. 362/973). [14] Based on this, al-Khaffāf might have died between 340/951-360/971 because al-Shīrāzī says that Ibn al-Ḥaddād al-Miṣrī, one of the Egyptian Shāfi'īs, whose biography he included before al-Khaffāf, died in 345/955. [15] Al-Shīrāzī states that it was Ibn al-Qattān al-Baghdādī who was the last student of Ibn Surayj, and he died in 359/970. [16] Based on all this information, it is possible to conclude that al-Khaffāf probably died between the years 340/951-360/971. This is because Ibn Qāḍī Shuhba (d. 851/1447) mentions al-Khaffāf among the Shāfi'īs, included in the fifth generation in the classification he made.

Based on al-Shīrāzī, Ibn Qāḍī Shuhba mentions al-Khaffāf among the Shāfi'ī jurists who died between 340/951-360/971. [17] Ibn Qāḍī Shuhba states that he hardly knows anything other than the information mentioned below about *al-Aqsām wa-l-khiṣāl*, which he attributes to al-Khaffāf. [18] Similarly, Abū Ḥafṣ Ibn al-Mulaqqin (d. 804/1401) notes that al-Khaffāf is the owner of the work called *al-Aqsām wa-l-khiṣāl* but does not provide further information. [19] While providing al-Khaffāf's biography, he reports that he saw his work *al-Khiṣāl* and obtained useful information from it. [20] What is mentioned about al-Khaffāf in the sources of history that have been identified and examined so far is limited to this.

2. The Work of Abū Bakr al-Khaffāf Titled *al-Aqsām wa-l-khiṣāl*

As noted earlier, the most important information about al-Khaffāf mentioned in the works of ṭabaqāt is that he is the author of the work *al-Aqsām wa-l-khiṣāl*. Despite this information, there are different narrations regarding whom *al-Aqsām wa-l-khiṣāl* or *al-Khiṣāl* for short (as mentioned in the sources) belongs to. *Al-Aqsām wa-l-khiṣāl* is often attributed to three different people who are related to each other. The first is Ibn Surayj; the second is al-Shaykh Abū Ḥafṣ ʿUmar[21] (d. 4th/10th century), who was the son of Ibn Surayj, and the third is probably al-Khaffāf, one of the students of Ibn Surayj. Based on this, one could conclude that *al-Aqsām wa-l-khiṣāl* was written by Shāfi'ī jurists in the Iraqi region in the 4th/10th century. The only handwritten copy of *al-Aqsām wa-l-khiṣāl*, which is now in the Chester Beatty Library in Dublin, is registered under

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14 Al-Shīrāzī, *Ṭabaqāt,* 114.

15 Al-Shīrāzī, *Ṭabaqāt,* 114.

16 Al-Shīrāzī, *Ṭabaqāt,* 113

17 Ibn Qāḍī Shuhba, *Ṭabaqāt,* 1/124.

18 Ibn Qāḍī Shuhba, *Ṭabaqāt,* 1/124.

19 Ibn al-Mulaqqin, *al-Aqd al-madhhab,* 31.

له كتاب "الخصال" عارض به ابن مجانين القاضي من أصحابه أبى حنيفة، وهذا الكتاب رأيته وانتقيت منه فوائد

20 Ibn al-Mulaqqin, *al-Aqd al-madhhab,* 31.

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21 Al-Shaykh Abū Ḥafṣ ʿUmar b. Aḥmad. b. Surayj (d. 4th/10th century), for more about his life, see Abū Naṣr Tāj al-Dīn ibn al-Subkī, ʿAbd al-Wahhāb b. ʿAlī b. ʿAbd al-Kāfī al-Subkī, *Ṭabaqāt al-Shāfiya al-kubrā*, Ed. Maḥmud Muḥammad Tanāhī – ʿAbd-al-Fattāḥ Muḥammad al-Ḥulw, al-Ḳāhira: Matbaat al-Isa al-Bābī al-Ḥalabī, 1964/1383), 3/469.

the name of Ibn Surayj.[22] The work was recorded in the library in the name of Ibn Surayj, one of these three names. This was is probably because Ibn Surayj was a more famous jurist. However, as it could be seen in detail below, our investigations revealed that the copy in the Chester Beatty Library does not belong to Ibn Surayj or his son but to al-Khaffāf.[23]

As we mentioned in the section, in which we discussed the life of al-Khaffāf, some basic information about him is provided by al-Shīrāzī, the first scholar to attribute *al-Aqsām wa-l-khiṣāl* to al-Khaffāf. However, this is the only information he provides. He does not give any other information about the structure or content of the work. Among the biographers, Ibn Qāḍī Shuhba is one of the few who provide some information about *al-Khiṣāl*. Noting that *al-Khiṣāl* is a work that belongs to al-Khaffāf, he informs that this work is medium-size in volume and that it includes a brief section on fiqh methodology in its introduction. Ibn Qāḍī Shuhba states that al-Khaffāf named his work *al-Aqsām wa-l-khiṣāl* and gives the information that the "chapter" titles of his work are included with the expression *al-Bayān*. Based on this, Ibn Qāḍī Shuhba notes that it could have been more appropriate for al-Khaffāf to name his work as *al-Bayān* instead of *al-Aqsām wa-l-khiṣāl*.[24] An examination of the only copy of *al-Khiṣāl* that has survived to the present day reveals that the information given by Ibn Qāḍī Shuhba is accurate. In the introduction of *al-Khiṣāl*, the author states that he named his work *al-Aqsām wa-l-khiṣāl*. The introduction of his work, which consists of seven or eight leaves, addresses the issues related to the concise fiqh method and the science of jadal (dialectics). The author begins the chapter heading using the phrase "al-bayān al-kaza".[25] The fact that the copy that has survived to the present day includes some information about *al-Aqsām wa-l-khiṣāl*, which Ibn Qāḍī Shuhba attributed to al-Khaffāf, proves that it belongs to al-Khaffāf.

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[22]   This work possessed by Chester Beatty Library in Dublin, Ireland is registered in the name of Ibn Surayj. See Abū al-ʿAbbas Aḥmad b. ʿUmar b. Surayj al-Baghdādī, *al-Aqsām wa-l-khiṣāl*, (Dublin: Chester Beatty Library, 5115). The work is registered in the name of Ibn Surayj in the library of the Islamic Studies Center of the Turkish Religious Foundation, where a photocopy of this manuscript is found. See Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi (İSAM) Kütüphanesi, "Kütüphane Katalog Tarama", (Accessed on March 16, 2021). We used the electronic copy of the work in Chester Beatty Library. However, in the electronic copy, it was rather difficult to identify the folio numbers accurately as the leaves were mixed with each other, particularly in the first section. It is possible that we made mistakes in the folio numbers we provided, sometimes based on guesswork. For this reason, we struggled to provide the accurate folio number as much as possible by using the folio numbers from *al-Aqsām wa-l-khiṣāl*, published by Ahmed El Shamsy, who published the part of the work on the fiqh method. See El Shamsy, "Bridging the Gap: Two Early Texts of Islamic Legal Theory", 521-536.

[23]   Ahmet Temel benefited from the work *al-Aqsām wa-l-khiṣāl*, which he attributed to al-Khaffāf in his doctoral dissertation, he completed in 2014. Similarly, Davut Eşit benefited from the same work in his doctoral dissertation, he completed in 2017, by attributing it to al-Khaffāf. See Ahmet Temel, *The Missing Link in the History of Islamic Legal Theory: The Development of Uṣūl al-Fiqh between al-Shāfiʿī and al-Jaṣṣāṣ during the 3rd/9th and Early 4th/10th Centuries* (California Santa Barbara: University of California, Doctoral Dissertation, 2014), 117, 126; 134-135; 202, 298; Davut Eşit, *Hicrî IV.-V. Asırlarda Irak-Horasan'da Şâfiʿî Fıkıh Usûlünün Gelişimi* (Ankara: Ankara University, Social Sciences Institute, Doctoral Dissertation, 2017), 141-157.

[24]   Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1/124.

[25]   Abū Bakr Aḥmad b. ʿUmar al-Khaffāf, *al-Aqsām wa-l-khiṣāl* (Dublin: Chester Beatty Library, 5115), 1b-10b.

Apart from the information from Ibn Qāḍī Shuhba, there is a lot of information showing that the present copy of *al-Khiṣāl* belongs to al-Khaffāf.

These data include the references made by Shāfiʿī scholars to *al-Khiṣāl*, attributing it to al-Khaffāf. One of these scholars is al-Zarkashī. He refers to the book by attributing it to al-Khaffāf in many parts of his fiqh work called *al-Baḥr al-Muhīt*.[26] One of them is related to the ruling of the actions of the Prophet. A similar version of a quoted sentence that al-Zarkashī attributes to al-Khaffāf, regarding the ruling of the Prophet's actions,[27] exists in the current copy of *al-Khisṣl*.[28] Likewise, al-Zarkashī's quotation from *al-Khiṣāl,* which he attributed to al-Khaffāf[29], regarding the judgments that Shāfiʿī made based on istiḥsān,[30] is present in the current copy of the work. Again citing al-Khaffāf's work *al-Khiṣāl*, al-Zarkashī states that according to Shāfiʿī, there is a definite idea that the Sunnah cannot abrogate the Qurʾān.[31] Al-Zarkashī's perspective of Shāfiʿī's idea of abrogation, which he attributes to al-Khaffāf, is also found in the copy of *al-Khiṣāl*.[32] Given these quotations and references made by al-Zarkashī, it is understood that *al-Khiṣāl* belongs to al-Khaffāf.

Apart from al-Zarkashī, Jalāl al-Dīn al-Suyūṭī (d. 911/1505) also gives reference to *al-Khiṣāl* and attributes it to al-Khaffāf. Al-Suyūṭī cites al-Khaffāf's explanations about the four bases of hadiths that al-Khaffāf provided in his work *al-Khisāl*. This information, provided by al-Suyūṭī, is also found in the present copy of *al-Khiṣāl*. In addition, al-Suyūṭī attributes *al-Khiṣāl* to al-Khaffāf in various parts of his work.[33] The quotations and references made by al-Suyūṭī also indicate that *al-Khiṣāl* belongs to al-Khaffāf.

Abū al-Baqāʾ al-Damīrī (d. 808/1405), one of the Egyptian Shāfiʿī jurists, cited *al-Khisāl*, which he attributed to al-Khaffāf, in his work *al-Najm al-wahhāj* to support his idea that Shāfiʿī did not make judgments through istiḥsān, except for six issues. This information is present in the available copy of *al-Khiṣāl*.[34] This information given by Abū al-Baqāʾ al-Damīrī shows that *al-Khiṣāl* belongs to al-Khaffāf.

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[26] Al-Zarkashī, *al-Baḥr*, 4/275; 5/108.

[27] Al-Zarkashī, *al-Baḥr*, 6/38.

وَقَالَ الْخَفَّافُ في الخصال: فِعْلُ النَّبِيّ – صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ – غَيْرُ وَاجِبٍ عَلَيْنَا إلا في خَصْلَتَيْنِ، أنْ يَكُونَ فِعْلُهُ بَيَانًا أوْ يُقَارِبُهُ دلَالَة

[28] Al-Khaffāf *al-Aqsām* (Chester Beatty Library, 5115), 3a. افعال الرسول صلي الله عليه وسلم غير واجب علينا الا عند وجود خصلتين...ان يكون فعله بيانا او يقاربه دلالة

[29] Al-Zarkashī, *al-Baḥr,* 8/106.

[30] Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 4b.

[31] Al-Zarkashī, *al-Baḥr*, 5/262.

[32] Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 4a-4b.

[33] For a comparative overview, see Al-Khaffāf *al-Aqsām* (Chester Beatty Library, 5115), 7a. Abū al-Faḍl Jalāl al-Dīn ʿAbd al-Raḥmān b. Abī Bakral-Suyūtî, *al-Ashbāh wa-l-naẓāʾir fī qawaʿid wa furūʿ fiqh al-shāfiʿiyah* (Beirut: Dar al-Kutub al-ʿIlmiyah, 2005), 1/37; /305.

وَحَكَى الْخَفَّافُ مِنْ أَصْحَابِنَا في كِتَابِ الخصال عَنْ ابْنِ مَهْدِيٍّ وَابْنِ المَدِينِيِّ أنَّ مَدَارَ الأَحَادِيثِ عَلَى أَرْبَعَة «الأَعْمَالُ بِالنِّيَّاتِ» ، وَ «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلا بِإِحْدَى ثَلَاثٍ» ، وَ «بُنِيَ الإِسْلَامُ عَلَى خَمْسٍ» ، وَ «البَيِّنَةُ عَلَى المُدَّعِي وَاليَمِينُ عَلَى مَنْ أنْكَرَ»وَحَكَى الْخَفَّافُ مِنْ أَصْحَابِنَا في كِتَابِ الخصال عَنْ ابْنِ مَهْدِيٍّ وَابْنِ المَدِينِيِّ: أنَّ مَدَارَ الأَحَادِيثِ عَلَى أَرْبَعَة «الأَعْمَالُ بِالنِّيَّاتِ» ، وَ «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلا بِإِحْدَى ثَلَاثٍ» ، وَ «بُنِيَ الإِسْلَامُ عَلَى خَمْسٍ» ، وَ «البَيِّنَةُ عَلَى المُدَّعِي وَاليَمِينُ عَلَى مَنْ أنْكَرَ» ، وَقَالَ ابْنُ مَهْدِيٍّ أيْضًا: حَدِيث النِّيَّة يَدْخُل في ثَلَاثِينَ بَابًا مِن العِلْم

[34] Abū al-Baqāʾ Muḥammad b. Mūsā b. ʿĪsā Kamāl al-Dīn al-Damīrī al-Shāfiʿī, *Najm al-wahhāj fī sharh al-Minhāj* (Jeddah: Dār al-Minhāj, 2007/1428), 7/361.

Apart from Abū al-Baqā' al-Damīrī, many Shāfi'ī jurists have quoted *al-Khiṣal* in their works of furū' al-fiqh and have cited al-Khaffāf's views about it.[35] One of the issues showing that *al-Khiṣal* does not belong to Ibn Surayj is its content related to uṣūl. As it is known, at the end of Ibn Surayj's book *al-Wadā᾿i'*, there are some of his views related to usūl. A comparison of Ibn Surayj's work *al-Wadā᾿i'* and the fiqh methodology in *al-Khiṣāl's* introduction reveals that the two works were written by different authors, and the writing styles do not resemble each other.[36] Given all these data, we can conclude that *al-Khiṣāl*, which has survived to the present day and is recorded in the name of Ibn Surayj in library systems, does not belong to Ibn Surayj or anyone else but definitely belongs to al-Khaffāf.

When we look at the works of ṭabaqāt, uṣūl al-fiqh and furū' al-fiqh, *al-Khiṣāl*, which undoubtedly belongs to al-Khaffāf, is attributed to the son of Ibn Surayj by al-Subkī. Al-Subkī describes *al-Khisāl* as a "barely useful work," attributed to Ibn Surayj in his *Ṭabaqāt*, which includes a section on the biography of Ibn Surayj and adds that *al-Khiṣāl* does not belong to Ibn Surayj but to his son al-Shaykh Abū Ḥafṣ ʿUmar.[37] It should be noted that al-Subkī's characterization of *al-Khiṣāl* as a less useful work stems from the content of *al-Khiṣāl*. As it is discussed in detail below, al-Khaffāf's thought of uṣūl differs from that of Shāfi'ī's. Likewise, the content of *al-Khiṣāl* includes a theological outlook regarding the usūl perspective, which negatively affected al-Subkī's approach to this work. It seems that al-Subkī wants to attribute this work, which does not comply with Shāfi'ī's perspective of usūl, to his son, not to Ibn Surayj, who is probably accepted as the second authority in the madhhab after Shāfi'ī. In this way, he wants to prove that *al-Khiṣāl*, which he describes as "a barely useful work", does not belong to Ibn Surayj. However, other evidential data show that al-Subkī did not have a definite view on this issue. This is because while al-Subkī attributes *al-Khiṣāl* to the son of Ibn Surayj's in his *Ṭabaqāt*, he attributes the same work to al-Khaffāf in his *al-Ashbāh wa-l-naẓāir*.[38] Such confusing information about *al-Khiṣāl* raises the possibility that the work which is attributed to the family of Ibn Surayj and the work which is attributed to al-Khaffāf are different from each other.[39] Apart from this, it is also possible that the work of al-Khaffāf, who is highly likely to be a student of Ibn Surayj, is the commentary or summary of the work attributed to the family of Ibn Surayj. However, the author of *al-Khiṣāl*, which survived to the present day, clearly states that he wanted to write a work, in line with the structure of al-Muzani's (d. 264/878) work *Mukhtaṣar* and called this work *al-Aqsām wa-l-khiṣāl*.[40] This information eliminates

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وقال أبو بكر الخفاف في (الخصال) لم يقل الشافعي بالاستحسان إلا في ست مواضع: تقرير الصداق بالخلوة، وكتاب القاضي إلى القاضي، وأن الشفعة ثلاثة أيام، والتحليف بالمصحف، وأن المتعة ثلاثون درهمًا، استحسان مراسيل سعيد بن المسيب.

[35] Shams al-Dīn Muḥammad b. Aḥmad b. Ḥamza al-Manūfī al-Miṣrī al-Anṣārī al-Ramlī, *Nihāyat al-muḥtāj ilā sharḥ al-Minhāj* (Beirut: Dār al-Fikr, 1984/1404,) 5/246; 6/314.

[36] For a comparison, see Abū al-'Abbas Aḥmad b. ʿUmar b. Surayj al-Baghdādī, *Kitāb al-Wadā᾿i' lī manṣūṣ al-shārāi'* (Istanbul: Süleymaniye Library, Hagia Sophia, 1502), 121a-125a; al-Khaffāf *al-Aqsām* (Chester Beatty Library, 5115), 1b-7b.

[37] وأما كتاب الخِصَال المَنْسُوب إلَيْه فقليل الجدوى وعدى أنه لابْنِه أبي حَفْص عمر بن أبى العَبَّاس ;al-Subkī, *Ṭabaqāt*, 2/23

[38] Abū Naṣr Taqī al-Dīn ibn al-Subkī ʿAbd al-Wahāb b. ʿAlī ibn ʿAbd al-Kāfī al-Subkī, *al-Ashbāh wa-l-naẓā᾿ir* (No Place of Publication: Dār al-Kutub al-`Ilmiyah, 1991/1411), 2/304.

[39] For the discussions on the attribution of *al-Khiṣāl* to Ibn Surayj and his son, see: Nail Okuyucu, *Şâfiî Mezhebinin Teşekkül Süreci* (İstanbul: M.Ü. İlahiyat Fakültesi Yayınları, 2015), 414.

[40] Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 1b.

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the possibility that the work in question is a commentary or a summary of another work. Likewise, the volume *al-Khiṣāl* was written so concisely that it is far from bearing the features of a commentary. In addition, it looks like an independent work, rather than the summary of another one. Since there is only one copy of *al-Khiṣāl* available today, it seems rather difficult to test out all these possibilities. However, it is certain that the copy of *al-Khiṣāl*, which is registered in the library records in the name of Ibn Surayj, actually does not belong to him but belongs to al-Khaffāf. This is because Ahmed El Shamsy, who published the Arabic version of the foreword of the work, which includes the fiqh method, states that the name al-Khaffāf can be read, albeit indistinctly, on the title page of the copy currently found in Chester Beatty Library.[41]

3. Abū Bakr al-Khaffāf's Thought of Uṣūl

Researchers face some difficulties in reading the current copy of *al-Khiṣāl*. First of all, the introductory part of the work which includes the idea of uṣūl is deformed; the page numbers are mixed, and the ink is scattered in a way that makes the book difficult to read. Likewise, the writing of the copyist is not legible enough. For this reason, it is difficult to properly pinpoint the uṣūl-related sections that are the most critical in this work. Ahmed El Shamsy, who published the preface of the work covering the fiqh method, also mentions these difficulties. He states that there are deficiencies in the text he published, due to the deformation of the original manuscript.[42] This paper provides an outline of Khaffāf's thought of uṣūl based on the work itself as much as possible and other works that cited *al-Khiṣāl*.

In the introduction, al-Khaffāf states that he spares some space to uṣūl in the work. In the remaining sections, following the concise nature of the work, he outlines major issues in uṣūl. Two key issues stand out in the introduction, which al-Khaffāf wrote as a brief summary. First, this section includes the views about the theory of knowledge, which is one of the introductory topics of the science of kalām. As far as our research on the history of uṣūl indicated, the first work on the theory of knowledge in the field of kalām to survive to the present day is *al-Khiṣāl* by al-Khaffāf. Al-Khaffāf defines the concepts of ʿilm, ignorance, batil (falsehood), haqq (truth), fiqh, mutafaqqih in the section that addresses ijmāʿ and qiyās.[43] His definitions are more extensively discussed in later works of fiqh, with sections that cover theological issues and are considered to be the introduction to the fiqh method.[44] Al-Khaffāf briefly discusses the issues of uṣūl in his work, and this helps us understand his views on the theory of knowledge at a basic level. His concisely explained views of the theory of knowledge assume an important role in the settlement of the issues related to the science of uṣūl al-fiqh. Following Shāfiʿī's (d. 204/820) *al-Risāla*, which appears to be the first work of uṣūl al-fiqh that has survived to the present day, the interest of kalām scholars in uṣūl al-fiqh helped lay the foundations of the kalāmist school. It is possible to see the first examples of this in the uṣūl studies of the early

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41 El Shamsy, Bridging the Gap: Two Early Texts of Islamic Legal Theory", 510.

42 El Shamsy, Bridging the Gap: Two Early Texts of Islamic Legal Theory", 510.

43 Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 7b; for the definitions by al-Khaffāf see also Nail Okuyucu, *Fıkıh İlmine Giriş Metinler Seçkisi* (İstanbul: Ketebe Yayınları, 2019), 110

44 To view examples, see Al-Shīrāzī, *Sharḥ al-Lumaʿ*, Ed. 'Abd al-Majid al-Turkī (Tunis: Dār al-Gharb al-Islāmī, 2012/1433), 1/145-152; Imām al-Ḥaramayn Abū aʾl-Maʿālī ʿAbd al-Mālik ibn ʿAbdallāh ibn Yūsuf al-Juwaynī, *al-Burhān fī uṣūl al-fiqh*, Ed. Abd al-ʿAẓīm Maḥmūd al-Dīb (Egypt: Dār al-Wafāʾ, 2012/1433), 1/91-104.

Iraqi Shāfiʿīs. In a sense, it is possible to consider al-Khaffāf's introduction as a text which unearths the connections of early Iraqi Shāfiʿīs with the science of kalām, particularly with the Muʿtazila theology. Another important property of his introduction to the method is that it deals with the issues of jadal and munāẓarah.[45] It should be noted that al-Khaffāf accepted the issues of jadal and munāẓarah within uṣūl al-fiqh or independently. However, al-Khaffāf's including a preface at the beginning of the work and his addressing the issues of jadal and munāẓarah in it indicates that he considered the issues of jadal and munāẓarah as a part of uṣūl.[46] From this perspective, it should be emphasized that one of the first examples of the practice of al-jadal al-fiqh (legal debate) is observed in al-Khaffāf's work *al-Khiṣāl.* Therefore, this work bears the traces of the theological and dialectic influence, which was effective in the methodical thoughts of the early Iraqi Shāfiʿīs.

Al-Khaffāf opens his introduction by elaborating on the ways of understanding ḥalāl and ḥarām. He says that ḥalāl and ḥarām can be known in two ways, the first being reason and the other being samʿ (audition).[47] Al-Khaffāf does not explain how to appreciate the nature of halāl and harām. For this reason, it is difficult to determine what kind of mindset al-Khaffāf has regarding the role of reason in the divine decrees. However, al-Khaffāf divides reason itself into three categories: wājib, mumtanaʿ and mujawwaz.[48] Al-Khaffāf's classification of reason with three components expresses the judgments made by reason about the realm of existence in the kalām literature.[49] As it is known, reason can offer three kinds of judgments regarding the existence of something: wajib, permissible (mujawwaz), mumtanaʿ/muhāl/mustahil.[50] According to this, the entity whose existence is obligatory and whose absence is mumtanaʿ is considered as wājib; the entity whose existence and absence are equivalent to each other is considered as mumkin (permissible/mujawwaz), and the one whose existence is not possible is referred to as mumtanaʿ.[51] Al-Khaffāf states that one of the ways of perceiving ḥalāl and ḥarām is reason and then offers three types of rational provisions. This indicates that, to him, ḥalāl and ḥarām cannot be considered independently of rational provisions. However, based on these views alone, it seems difficult to determine the limit that al-Khaffāf gives to reason in religious issues. Despite this, it is possible to draw some conclusions about the history of fiqh by taking al-Khaffāf's views into account. A major conclusion to be drawn here is that theologians tried to construct uṣūl al-fiqh based on their own theological principles and attempted to make room for theological debates (tanāzur) in uṣūl al-fiqh by transferring the issues of theology to this area.[52] Al-Khaffāf's view that ḥalāl and ḥarām can be known through reason is one of the obvious examples of the theologians' style of writing usūl al-fiqh. Al-Khaffāf's theological point of view is not limited to this. While addressing the issue of naskh (abrogation) in his work, al-Khaffāf emphasizes reason. He claims that it is not permissible to ab-

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45   Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 4a-4b.

46   Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 4a.

47   Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 1b.

48   Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 1b.

49   İlyas Üzüm, "Hüküm", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi,* (İstanbul: TDV Yayınları, 1998, 18/465.

50   Üzüm, "Hüküm", 18/465-466.

51   Üzüm, "Hüküm", 18/465-466.

52   Eşit, *Hicrî IV.-V. Asırlarda Irak-Horasan'da Şâfi'î Fıkıh Usûlünün Gelişimi*, 99-106.

rogate things that are wājib (obligatory) and mumtanaʿ (forbidden-impossible), while he thinks that abrogation is mujawwaz (permissible) for the rationally permissible issues. Likewise, al-Khaffāf associates the issue of the ruling of things with reason before al-sharīʿah. According to him, before al-sharīʿah, the ruling of things is divided into three categories: wājib, mujawwaz, and mumtanaʾ.[53] Al-Khaffāf's reference to the indicants of reason, regarding the ruling of things before al-sharīʿah, reveals that he considers what is necessary by reason as wājib, what is impossible by reason as mumtanaʿ, and what is possible as mujawwaz (ibāḥā). Al-Khaffāf's adopting a theological perspective towards the issues of usūl is noteworthy in that it shows the difference between the approach of theologians and that of jurists to the issues of uṣūl al-fiqh.

Besides his aforementioned views on knowing ḥalāl and ḥarām, al-Khaffāf states that the second way of understanding what is ḥalāl and what is ḥarām is al-samʿ al-mumkin (samʿ). Al-Khaffāf addresses samʿ by dividing it into four categories; namely, al-Kitāb, sunnah, ijmāʿ of the ummah, and the evidence derived from these three.[54]

3.1. Al-Kitāb (The Qur'ān) and Sunnah

It is hard to determine al-Khaffāf's thoughts in *al-Khiṣāl* on the evidence of the book because of the wear and ink scatter that decrease the legibility of the copy found today. According to the text published by Ahmed El Shamsy, al-Khaffāf states that al-Kitāb can only be known through Iiʿjāz (inimitability) and tawātur (concurrency).[55] When we look at the work of al-Khaffāf, it is seen that he first divided khabar (report) into several categories and mentioned mutawātir and khabar al-āḥād (single-transmitter report) among these as the basis for the proof of sunnah. To explain the provision of khabar al-āḥād, al-Khaffāf states that the information which is narrated by a right-minded person who also refers to someone like him and which can be traced back to the Prophet has to be considered right, provided that it satisfies some conditions (i.e., there is no other khabar that contradicts or invalidates it, etc.), but this does not mean definite knowledge.[56] As far as understood, the *khabar* which reaches the level of *tawātur* but is not *āḥād*, requires both knowledge and practice. Al-Khaffāf's stating that the *khabar* must be traced back to the Prophet indicates that it must come from reliable sources. Accordingly, he does not accept *khabar al-mursal* (disconnected report) unconditionally. He thinks that it could be accepted only if it satisfies some conditions. According to him, when any one of these conditions is not met, it is not permissible for them to accept khabar al-mursal. According to al-Khaffāf, the first feature that khabar al-mursal should have so as to be acceptable is that the Companions should narrate again from the Companions without specifying their names. Al-Khaffāf emphasizes that this type of *irsāl* equals to *musnad* (connected report). Al-Khaffāf, just like Saʿīd b. al-Musayyib (d. 94/713), states that the *irsāl* by a successor who is known to have narrated from a single Companion equals to *musnad.*[57]

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53 Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 3b.

54 Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 1b.

55 El Shamsy, Bridging the Gap: Two Early Texts of Islamic Legal Theory*”,* 523.

56 Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 7a.

57 Al-Khaffāf does not mention the third type of *irsāl*. Apparently, the copyist inadvertently wrote "three" instead of "two". While reporting the thoughts of al-Khaffāf on this issue, al-Zarkashī cites his opinion that irsal is accepted

Al-Khaffāf divides al-bayān originating from the Prophet into three categories. The first is qawl; the second is action, and the third is abandoning. According to him, it is not permissible to disregard the clarification by the Prophet, except for delaying the clarification of ambiguous and unclear expressions until needed.[58] Al-Khaffāf discusses the ruling on the actions of the Prophet. He notes that the actions of the Prophet are *clarifications* and that it becomes wājib for his ummah to do what he did only when other evidence exists. He states that the actions of the Prophet are not wājib for his ummah, except for these two cases.[59]

Al-Khaffāf refers to the wording of religious rules, which is one of the common subjects of al-Kitāb and sunnah, and he firstly reveals his thoughts on the wording of decrees. According to him, for a decree to be true and necessary, it must have several properties:

1. The imperative *(al-amr)* must be issued by the ruler whom it is necessary to worship.

2. The imperative must be issued using specific wording.

3. The imperative should not contain choices.

4. The imperative must not come after prohibition *(al-nahy).*

5. The imperative should not be something that runs counter to reason. Likewise, he stresses that there should not be a rational barrier that prevents the obeying of the decree.

6. The imperative itself should be good *(ḥusun)*, not bad *(qubuḥ).*

7. The imperative should not be subject to *abrogation (naskh)* and *takhṣīṣ (being reserved for a particular group).*

8. The imperative should not be something that scholars unanimously disagree on.[60]

The conditions and characteristics that al-Khaffāf put forward for a decree to be a genuine and mandatory one indicate that he approaches the issues of kalām from a theological perspective. This is because the decree should be good in itself, should not be irrational, and that there should be no rational obstacles against its realization. This approach of al-Khaffāf is also apparent in the issue of the ruling of things before al-sharīʿah. According to him, it is permissible to use someone else's property before al-sharīʿah in two cases:

1. When the owner's permission is available

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provided that it has these two features. See al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 7a; al-Zarkashī, *al-Baḥr*, 6/361-362.

وَقَالَ الْخَفَّافَ فِي كِتَابِ الْخِصَالِ لا يَجُوزُ قَبُولُ الْمُرْسَلِ عِنْدَنَا إلا فِي صُورَتَيْنِ إِحْدَاهُمَا أَنْ يَرْوِيَ الصَّحَابِيُّ عَنْ صَحَابِيٍّ، وَلا يُسَمِّيهِ، فَذَلِكَ وَالْمُسْنَدُ سَوَاءٌ وَالثَّانِي التَّابِعِيُّ إذَا أَرْسَلَ وَسَمَّى، فَإِنْ كَانَ مَعْرُوفًا أَنْ لا يَرْوِيَ إلا عَنْ صَحَابِيٍّ مِثْلِ سَعِيدِ بْنِ الْمُسَيِّبِ، فَإِرْسَالُهُ وَإِسْنَادُهُ فِي ذَلِكَ سَوَاءٌ انْتَهَى

58 Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 3a.

59 Using the same wording, al-Zarkashī reports the thoughts of al-Khaffāf on this subject. See al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 3a; al-Zarkashī, *al-Baḥr,* 6/38.

وَقَالَ الْخَفَّافُ فِي الْخِصَالِ: فِعْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرُ وَاجِبٍ عَلَيْنَا إلا فِي خَصْلَتَيْنِ، أَنْ يَكُونَ بَيَانًا أَوْ يُقَارِنَهُ دَلالَةٌ

60 Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 7b.

2. In case of necessity

Al-Khaffāf states that it is rationally good (ḥusun) to use someone else's property in case of necessity. In a sense, he means that a rational judgment can be made about the ruling on things even before al-sharīʿah.[61]

Besides the wording of decrees, al-Khaffāf also defines the word 'umūm (general). According to him, 'umūm refers to what is named with the word itself.[62] He discusses the takhṣīṣ (particularization) of al-Kitāb, sunnah, ijmaʿ and qiyās among themselves, without defining the term taḥṣīs itself.[63]

In the section where al-Khaffāf addresses abrogation (naskh), he firstly deals with it in terms of its ruling and then its tilawat. He makes a classification as the abolition of the tilawat versus the lasting of the decree, the abolition of the decree versus the perpetuation of the tilawat, and the abolition of both the decree and the tilawat.[64]

In the subject of abrogation (naskh), al-Khaffāf also refers to the relationship between al-Kitāb and sunnah. He clearly states that the abrogation of Sunnah through Qurʾān is not permissible in any way, and vice versa.[65] Shāfiʿī's thought on the relationship of abrogation between al-Kitāb and sunnah has been the subject of considerable debate after him.[66] Shāfiʿī's thought in al-Risāla, who was supposedly open to different views on the abrogation of the Sunnah by the Qurʾān, was the source of the inference that Shāfiʿī considered the abrogation of the Sunnah by the Qurʾān as permissible because Ibn Surayj considered his thoughts as an indication of its permissibility.[67] Al-Khaffāf rejects the relationship of abrogation between the Qurʾān and sunnah by expressing his opinion clearly against the debates that took place in this period.[68] His perspective is cited in later works on uṣūl to support Shāfiʿī's view that there is no relationship of abrogation between al-Kitāb and the sunnah. As reported by al-Zarkashī, Ibn al-Samʿānī (d. 489/1096) states that it is under no circumstances permissible for the sunnah, whether [69] mutawatir or not, to abrogate the Qurʾān. In support of this view, Ibn al-Samʿānī cite Abū Bakr al-Ṣayrafī's book and al-Khaffāf's al-Khiṣāl, both of which clearly state that the Sunnah cannot abrogate the Qurʾān.[70] Abū ʿAbdillāh al-Shawkānī (d. 1250/1834) states that when all of Shāfiʿī's works are examined, his opinion that the Sunnah cannot abrogate the Qurʾān in any way becomes clear. He also mentions al-Khaffāf to support this, emphasizing that he also firmly adopted

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[61] Al-Khaffāf, al-Aqsām (Chester Beatty Library, 5115), 3b.

[62] Al-Khaffāf, al-Aqsām (Chester Beatty Library, 5115), 7b.

[63] Al-Khaffāf, al-Aqsām (Chester Beatty Library, 5115), 3a-3b.

[64] Al-Khaffāf, al-Aqsām (Chester Beatty Library, 5115), 4a; for more information about the types of abrogation, see John Burton, The Sources of Islamic Law Islamic Theories of Abrogation (Edinburgh: Edinburgh University Press, 1990), 43-127.

[65] Al-Khaffāf, al-Aqsām (Chester Beatty Library, 5115), 4a.

[66] Eşit, Hicrî IV.-V. Asırlarda Irak-Horasan'da Şâfiʿî Fıkıh Usûlünün Gelişimi, 43-44.

[67] Eşit, Hicrî IV.-V. Asırlarda Irak-Horasan'da Şâfiʿî Fıkıh Usûlünün Gelişimi, 43-44.

[68] Al-Khaffāf, al-Aqsām (Chester Beatty Library, 5115), 4a.

[69] al-Zarkashī extensively cited al-Samʿānī's work al-Baḥr al-muḥīt fī uṣūl al-fiqh. In fact, the views conveyed by him by referring to Ibn al-Samʿānī belongs to Abū al-Muẓaffar al-Samʿānī, the author of the work named Qawāṭiʿ al-adillah fī uṣṣūl al-fiqh. See Al-Zarkashī, al-Baḥr, 1/26; 36; 71; 101; 116; 164.

[70] Al-Zarkashī, al-Baḥr, 5/262.

this view.[71] It is noteworthy that al-Khaffāf's views on abrogation are cited in later works and that it is following Shāfiʿī's view on it as it indicates that al-Khaffāf assumed an active role in understanding and conveying Shāfiʿī's thought of usūl. Therefore, being a part of these scholarly debates, al-Khaffāf concluded that, as Ibn Surayj claims, there is no relationship of abrogation between the Qurʾān and the Sunnah in Shāfiʿī's method.[72]

3.2. Ijmāʿ

In his work, al-Khaffāf divides ijmāʿ (consensus) into six categories without reference to its definition:

1. The ijmāʿ in which the scholars and the general public are equal. The number of daily prayers, the number of rak'ahs in each prayer and Ramadan fasting's being fard are examples of this.

2. The ijmāʿ that the scholars of the Ummah reach and that no one else is involved except for them. An example would be the iddat of a concubine (surriyya), which is half that of a free woman.

3. The ijmāʿ that was apparent in the words or acts of the companions

4. The ijmāʿ of the companions that appeared the result of ray

5. The ijmāʿ that has appeared across centuries

6. The ijmāʿ that emerges when the fatwa of a companion on a subject became widely known but was not opposed by his contemporaries[73]

These types of ijmāʿ identified by al-Khaffāf indicate that the discussions on ijmāʿ towards the 4th/10th century focused on categorizing it.[74]

3.3. Qiyās

Al-Khaffāf divides qiyās (analogy) into three categories without describing it in detail.

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[71] However, the person examining the work probably confused the al-Khaffāf mentioned by Shawkānī, as he refers to another scholar known as al-Khaffāf. The person whom Muhaqqiq (critical ed.) mentions is actually "Muhaqqiq al-Mubārak b. Kāmil b. Muḥammad al-Ḥusayn al-Baghdādī al-Zafirī Abū Bakr al-Khaffāf (d. 543/1148). See Abū ʿAbdillāh Muḥammad b. ʿAlī b. Muḥammad al-Yamanī al- Shawkānī, *Irshād al-fuhūl ilā taḥqīq al-ḥaqq min 'ilm al-uṣūl*, Ed. Shaban Muḥammad Ismāʿīl (No Place of Publication: Dār al-Salām, 1998/1418), 2/556.

[72] For detailed information on the debates about abrogation, which differed in the Shāfiʿī madhhab over time, see Nail Okuyucu, "Şâfiî'nin Kaynak İçi Nesih Teorisi ve Şâfiî Fıkıh Geleneğinde Yorumlanış Biçimleri", *İslam Araştırmaları Dergisi* 43 (2020), 1-44; Sahip Beroje, "İmam Şâfiî'nin Nesh Anlayışı ve İlk Şâfiî Usülcülerin Buna Yönelik Eleştirileri", *Dicle Üniversitesi İlahiyat Fakültesi Dergisi* 9/1 (2007), 55-82.

[73] Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 7b.

[74] For these reviews, see Ahmet Temel, "Fıkıh Usulünün Bağımsız Te'lif Asrında İcmāʿ Tartışmaları: Hicri Üçüncü Asırda İcmāʿ Delilinin Gelişimi", *Pamukkale Üniversitesi İlahiyat Fakültesi Dergisi* 7/1 (Bahar 2020), 821-822

1. He calls this type of qiyās as *faḥw al-qawl*. This type of qiyās, which was later called *faḥwa'l-khitāb*, is one of the issues discussed among the uṣūl scholars whether it is a type of deduction based on the indicant of the language or a type of qiyās. The concept of *faḥwa'l-khitāb*, which is attributed to Shāfiʿī, is a type of qiyās.[75] Al-Khaffāf mentions it in the first section among the types of qiyās, so this means he considers it as a type of qiyās. According to al-Khaffāf, "ahl al-Ẓāhir (Ẓāhirīs)" call this type of qiyās an indicantthat makes it impossible to deduce another meaning (*maʿnā*) other than an existing one.[76] This indicates that al-Khaffāf criticizes Ẓāhirīs, who also resort to qiyās, albeit using a different name for it.

2. Al-Khaffāf defines the second type of qiyās as exchanging one thing for another [in terms of their provision] as they share a common *ʿilla* (cause). Al-Khaffāf explains this type of qiyās as the coexistence of two things [in terms of their provisions], due to a shared *ʿilla*.

3. The third type of qiyās mentioned by al-Khaffāf is *ghalabat al-ashbāh*. Al-Khaffāf does not provide any information about this. By this concept, he probably meant the type of qiyās that was called *qiyās al-shabah* (analogy by similarity) in later uṣūl literature.[77]

Al-Khaffāf also touches upon the issue of *ʿilla*, which is one of the most important elements of qiyās. He states that where *ʿilla* occurs, everything has an *ʿilla* and that we can know some of these *ʿilla*s, while the knowledge of others belongs to Allah. In al-Khaffāf's classification, *ʿilla* is divided into several categories:

1. ʿIlla of reason *(ʿal-illa al-aqlīyya)*

2. ʿIlla made clear by the Qurʾān (*al-ʿilla al-manṣūṣa*)

3. *Deduced (mustakhraja) ʿilla*

5. ʿIlla of perpetuity

6. *Ghalabat al-ashbah ʿilla*

7. *Particularly (makhṣūṣ) ʿilla*

8. *Negation (nafy) ʿilla*[78]

Al-Khaffāf stresses that an *ʿilla* must possess eight characteristics in order to be valid and lists some of them.

1. It must be deduced from an *aṣl al-manṣūṣ* (explicitly mentioned in the Qurʾān and sunnah)

2. The *ʿilla* must be in force. In other words, the existence of *ʿilla* leads to the provision; this means that the *ʿilla* requires the provision.

3. The *ʿilla* should not be rejected by an *aṣl al-manṣūṣ*.

4. The *ʿilla* must not go through *takhṣīṣ*.

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75   Al-Māwardī, *al-Ḥawī*, 16/1146.

76   Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 7b.

77   Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 7b.

78   Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 3b.

5. There should not be any other ʿilla that is more similar to the aṣl.[79]

Al-Khaffāf also makes a distinction between sharʿī ʿilla and ʿaqlī ʿilla. According to him, these types of ʿilla differ from each other in several aspects. It is not permissible for rational ʿilla to undergo abrogation and alterations. Based on this view of his, it is possible to say that he thinks that the sharʿī ʿilla can vary. According to him, sharʿī ʿilla and ʿaqlī ʿilla are different from each other in terms of their sources.[80]

Al-Khaffāf also touches upon the relationship between qiyās and ijtihād. His thoughts help make sense of the relationship between these terms in the Shāfiʿī's usūl al-fiqh. As it is known, in his work al-Risāla, Shāfiʿī says that "qiyās and ijtihād are two terms that mean the same thing".[81] Shāfiʿī scholars discuss whether Shāfiʿī limits ijtihād to qiyās or considers qiyās and ijtihād in the same category in terms of arriving at a judgment. Abū al-Ḥasan al-Māwardī (d. 450/1058) states that Shāfiʿī did not reduce ijtihād to qiyās and that Shāfiʿī saw the equality between them, which he mentioned in al-Risāla, as they had the same function in terms of arriving at a judgment., According to al-Māwardī Shāfiʿī jurist Ibn Abī Hurayra, who was a contemporary of al-Khaffāf, confuses Shāfiʿī's statements in al-Risāla and attributes to Shāfiʿī the view that ijtihād equals to qiyās; in other words, ijtihād is limited to qiyās. Al-Māwardī notes that qiyās and ijtihād refer to the act of arriving at a judgment on an issue which is not mentioned in the naṣṣ and argues that the relationship that Shāfiʿī established between qiyās and ijtihād is an equal relationship in this sense.[82] The conclusion that comes out of al-Māwardī's evaluations is that the view that ijtihād is reduced to qiyās is not actually Shāfiʿī's view; it is a perspective that Ibn Abī Hurayra attributed to Shāfiʿī. As understood from al-Māwardī's evaluations based on the perspective of Ibn Abī Hurayra, a contemporary of al-Khaffāf, the relationship between qiyās and ijtihād, which Shāfiʿī established, became a matter of debate during al-Khaffāf's time. Al-Khaffāf notes that qiyās and ijtihād are used in the same sense without referring to such discussions. For both qiyās and ijtihād, it is essential that the meaning existent in the nass should be investigated. [83] As qiyās mean understood from what al-Khaffāf's says, ijtihād and the same thing; that is, they have the same function in reaching the provision. This is because al-Khaffāf also defines ijtihād independently of qiyās and refers to the types of ijtihād, again independently of qiyās. Al-Khaffāf divides ijtihād into the following categories:

1. The ijtihād of the Prophets, in which error is out of question

2. As in the first ijtihād, a common ijtihād by all the imāms (with no mistakes).

3. The ijtihād of scholars who have the possibility of doing an error.[84]

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79   Al-Khaffāf, al-Aqsām (Chester Beatty Library, 5115), 3b.

80   Al-Khaffāf, al-Aqsām (Chester Beatty Library, 5115), 3b.

81   Muḥammad b. Idris al-Shāfiʿī, Er-Risâle (İslâm Hukukunun Kaynakları), Trans. Abdulkadir Şener - İbrahim Çalışkan (Ankara: TDV Yayınları, 1997), 257.

82   Abū al-Ḥasan ʿAlī ibn Muḥammad Ḥabib al-Māwardī, al-Ḥawī al-kabīr fi fiqh madhhab al-imām al- Shāfiʿīs wa ḥuwa sharḥ Mukhtasar al-Muzanī, Ed. ʿAlī Muhammad Muʿawwaḍ - ʿAdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-Kutub al-`Ilmiyah, 1999/1419), 16/118.

83   Al-Khaffāf, al-Aqsām (Chester Beatty Library, 5115), 3a.

84   Al-Khaffāf, al-Aqsām (Chester Beatty Library, 5115), 3a.

As it is understood, al-Khaffāf divides ijtihād into three types: the ijtihād of the Prophets, the common ijtihād of the scholars (ijmāʿ), and the personal ijtihād (raʾy) of the scholars.

3.4. Istiḥsān

Al-Khaffāf elaborates on the evidential value of istiḥsān and says that there are six judgments made by Shāfiʿī based on istiḥsān:

1. If the state of seclusion with the woman is the case, the man should give the woman her mahr.

2. The judge's (al-qāḍī) corresponding with another judge

3. The duration of the pre-emption right (şufʿa) is three days.

4. Taking an oath on the Holy Kitāb (Mus'ḥaf)

5. The mut'a's (the amount that should be given to the woman) being thirty dirhams (ṭalāq mut'a)

6. Khabar al-mursal by Saʿīd b. al-Musayyib.[85]

Al-Zarkashī[86] and Abū al-Baqā al-Damīrī[87] also report the same information by attributing it to al-Khaffāf. Al-Zarkashī draws attention to the similarity between the approach adopted by al-Khaffāf and Ibn al-Qāṣṣ al-Ṭabarī (d. 335/946), his contemporary. Al-Zarkashī conveys the idea of Ibn al-Qāṣṣ al-Ṭabarī that "Shāfiʿī stated opinions based on istiḥsān except for three issues". According to al-Khaffāf, this number is six, not three. Al-Khaffāf addresses the subject briefly, but it is possible to learn the details from Ibn al-Qāṣṣ al-Ṭabarī. While touching upon the subject of mursal hadith, Ibn Qāṣṣ al-Ṭabarī notes that Shāfiʿī accepts only Saʿīd b. al-Musayyib's mursal.[88] Ibn Qāṣṣ al-Ṭabarī, quotes the sentence "Ibnu'l-Musayyib's istirsal is good for us", which he attributed to Shāfiʿī. Establishing a relationship with the word "good," he mentions that Shāfiʿī put forward ideas based on istiḥsān on three issues only. According to what Ibn al-Qāṣṣ al-Ṭabarī reports, the three issues that Shāfiʿī ruled through istiḥsān are as follows:[89]

1. If the man divorces the woman whom he married without setting down the amount of the mahr and with whom he had no sexual intercourse, Shāfiʿī thinks that the woman should be given *mut'a* based

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[85] Al-Khaffāf, *al-Aqsām* (Chester Beatty Library, 5115), 4b.

[86] Al-Zarkashī, *al-Baḥr,* 8/106

قَالَ ابْنُ الْقَاصِ: لَمْ يَقُلِ الشَّافِعِيُّ بِالِاسْتِحْسَانِ إِلَّا فِي ثَلَاثَةِ مَوَاضِعَ: قَالَ: وَأَسْتَحْسِنُ فِي الْمُتْعَةِ أَنْ تُقَدَّرَ ثَلَاثِينَ دِرْهَمًا وَقَالَ رَأَيْتُ بَعْضَ الْحُكَّامِ يَحْلِفُ عَلَى الْمُصْحَفِ وَذَلِكَ حَسَنٌ وَقَالَ فِي مُدَّةِ الشُّفْعَةِ: وَأَسْتَحْسِنُ ثَلَاثَةَ أَيَّامٍ وَقَالَ الْخَفَّافُ فِي الخِصَالِ ": قَالَ الشَّافِعِيُّ بِالِاسْتِحْسَانِ فِي سِتِّةِ مَوَاضِعَ، فَذَكَرَ هَذِهِ الثَّلَاثَةَ وَزَادَ قَوْلَهُ فِي بَابِ الصَّدَاقِ: مَنْ أَعْطَاهَا بِالْخَلْوَةِ فَذَاكَ ضَرْبٌ مِنْ الِاسْتِحْسَانِ يَعْنِي قَوْلُهُ الْقَدِيمَ وَكَذَلِكَ فِي الشَّهَادَاتِ كَتَبَ قَاضٍ إِلَى قَاضٍ ذَلِكَ اسْتِحْسَانٌ وَمَرَاسِيلُ سَعِيدٍ حَسَنٌ:

[87] Abū al-Baqā al-Damīrī, *al-Najm al-wahhāj*, 7/361

وقال أبو بكر الخفاف في (الخصال): لم يقل الشافعي بالاستحسان إلا في ست مواضع: تقرير الصداق بالخلوة، وكتاب القاضي إلى القاضي، وأن الشفعة ثلاثة أيام، والتحليف بالمصحف، وأن المتعة ثلاثون درهمًا، استحسان مراسيل سعيد بن المسيب.

[88] Abū al-ʿAbbās Aḥmad b. Abi Aḥmad Muḥammad b. Yakub Ibn al-Qāṣṣ al-Ṭabarī, *al-Talkhīs*, Ed. ʿAdil Aḥmad ʿAbd al-Mawjūd-ʿAlī al-Muʿawwaḍ (al-Mamlaka al-ʿArabiyya as-Suʿūdiyya: Maktabat Nizar Muṣṭafā' al-Bāz, 2010/1431), 75.

[89] Ibn al-Qāṣṣ al-Ṭabarī*, al-Talkhīs*, 74-75.

on the verse[90] *"You will incur no sin if you divorce women while you have not yet touched them nor settled a dower upon them, but [even in such a case] make a provision for them, the affluent according to his means, and the straitened according to his means, a provision in an equitable manner: this is a duty upon all who would do good."* According to what Ibn al-Qāṣṣ al-Ṭabarī reports, Shāfiʿī takes into account the financial situation of the husband while determining the amount of *mut'a* to be given to the woman in such a case. Ibn al-Qāṣṣ al-Ṭabarī reports Shāfiʿī's words regarding how much a husband at a financially moderate level should pay: "If he (husband) is [financially] at a moderate level, I find the amount of thirty dirhams as good."[91]

2. The second issue on which Shāfiʿī makes judgements based on istiḥsān concerns the duration of the pre-emption right (shuf'a). According to Ibn al-Qāṣṣ al-Ṭabarī, Shāfiʿī states in his book *Kitāb al-Sunan* that the person who holds the right of pre-emption can use this right within a maximum of three days, and after three days he loses it. He cites the following statement of Shāfiʿī regarding this perspective: "This is a view that I (Shāfiʿī) find beautiful (*istiḥsānun minnī*)."[92] Al-Ṭabarī emphasizes that, in addition to *Kitāb al-Sunan*, Shāfiʿī's view can be seen in al-Muzanī's work *al-Jami' al-kabīr*.[93] The work that he refers to as *Kitāb al-Sunan* is probably the Ḥanafī jurist Abū Jaʿfar Aḥmad al-Ṭahawī's (d. 321/933) work called *al-Sunan al-ma'sura*, which contains the hadiths narrated by Shāfiʿī through his uncle al-Muzanī.[94] This is because, in the work called *al-Sunan al-ma'sura*, which has reached the present day via this narration, based on al-Muzanī, al-Ṭahawī reports Shāfiʿī's following view on the issue.

"Al-Shāfiʿī said: The person who holds the right of pre-emption can use this right within a maximum of three days from the moment he becomes aware of the sale. If it exceeds three days, it is not permissible for him to claim this right. This is not the ruling of [any] essential hukm, it is my istiḥsān." [95]

In general, in Shāfiʿī's theory, the views that are put forward without any essential *ḥukm* or without a qiyās based on it are not accepted as legitimate. Therefore, Shāfiʿī refuses to act with istiḥsān.[96] However, the explanations above indicate that Shāfiʿī himself made judgments based on his own istiḥsān, without relying on any essential *ḥukm*. At first glance, Shāfiʿī's theory and practice are likely to be considered as contradictory. From this point of view, though Shāfiʿī is perhaps the most influential theoretician of uşūl al-fiqh, he reached a conclusion that contradicts his whole thought in practice. This indicates that what he intends to say with his statements should be investigated in detail. Al-Zarkashī is one of those who think

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[90] *Kur'ân-ı Kerîm Meâli*, Trans.. Halil Altuntaş – Muzaffer Şahin (Ankara: Diyanet İşleri Başkanlığı Yayınları, 2012), el-Baqarā' 2/236.

[91] Ibn al-Qāṣṣ al-Ṭabarī, *al-Talkhīs*, 75.

[92] Ibn al-Qāṣṣ al-Ṭabarī, *al-Talkhīs*, 75

[93] Ibn al-Qāṣṣ al-Ṭabarī, *al-Talkhīs*, 75

[94] Al-Ṭahawī's work *al-Sunan al-ma'sura* includes narrations from Shāfiʿī through his uncle al-Muzanī. See Davut İltaş, "Tahâvî", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV Yayınları, 2010), 39/385-388.

[95] Al-Shāfiʿī, *al-Sunan al-ma'sura li al-Imām Muḥammad b. Idris Shāfiʿī riwayat al-Abī Jaʿfar al-Ṭahawi's al-Ḥanafī ḥalihi Ismāʿīl b. Abi Yahya tilmiẕi al-Shāfiʿī*, Ed. ʿAbd al-Muʿti Amin Kalaaji (Beirut: Dār al-Maʿarifah, 1986/1406), 348.

[96] Davut Eşit, *Hicrî IV.-V. Asırlarda Irak-Horasan'da Şâfiʿî Fıkıh Usûlünün Gelişimi*, 32-33.

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that these apparently contradictory views of Shāfiʿī's in the classical literature should be explained. He states that Shāfiʿī's words "without the *aṣl*" are vague and complex, and therefore they should be interpreted. According to his interpretation, what Shāfiʿī means by the expression 'without an *aṣl*" is not the absence of any evidence supporting the view he adopted, but the absence of a specific asl that supports his perspective.[97] According to al-Zarkashī, who offers this interpretation, Shāfiʿī certainly has some evidence to support his view. It should be noted that Shāfiʿī jurists sought evidence that could form the basis for Shāfiʿī's views. For instance, claiming that these views of Shāfiʿī were based on ijmāʿ, Māwardī and al-Zarkashī tried to respond to the criticism that there was a contradiction between Shāfiʿī's theory and practice.[98]

3. The third issue on which Shāfiʿī makes a judgement based on istiḥsān is taking an oath on al-Kitāb (Musʿḥaf). Al-Ṭabarī quotes this view of Shāfiʿī from the work he calls *Kitāb al-Rabi'*. Accordingly, Shāfiʿī considers it good that some rulers (administrators, arbitrators, or judges) take an oath on the Musʿḥaf.[99]

Considering the views expressed by al-Khaffāf and those by his contemporary Al-Ṭabarī, who attributes them to Shāfiʿī, it is possible to say that the alleged views of Shāfiʿī based on istiḥsān in this period became an issue of serious debate. In particular, the fact that both Shāfiʿī and Ḥanafī jurists lived in the Iraqi region shows that there was mutual criticism and interaction between the Shāfiʿīs and Ḥanafīs in this region, where the Ḥanafīs were dominant.[100] There are criticisms against Shāfiʿī from the opposing madhhabs, particularly from the Ḥanafīs because Shāfiʿī, who did not accept to act based on istiḥsān in theory, made judgments in practice based on it and therefore conflicted with his own theory. It is possible that the Shāfiʿīs living in this period, who faced these criticisms, attempted to prove that Shāfiʿī, the founding imam of the madhhab, did not make judgments through istiḥsān, except for a few cases, that his judgments were based on evidence, and that these rulings, which were allegedly based on istiḥsān (and enjoyed by the nafs), were rejected by him.[101] It should be noted that the Shāfiʿīs hardly question if these views belong to al-Shāfiʿī. They do accept that these views belong to Shāfiʿī himself. However, they try to explain what Shāfiʿī means by the concept of istiḥsān, with which he associates his views. We witness the most obvious example of this in al-Māwardī, another Shāfiʿī jurist from Iraq. He brings up and takes into account the criticisms, probably from other madhhabs, that Shāfiʿī practiced istiḥsān in some issues, despite his rejection of it.[102] Except for one of these issues (the muazzin's closing his ears while reciting the adhan), which al-Māwardī put on his agenda and criticized, all the issues were mentioned by al-Khaffāf and al-Ṭabarī. Al-Māwardī has the following to say about the issue:

"It is claimed that although Shāfiʿī denies istiḥsān, he expresses his opinion on (some) issues based on it. Some of these views are as follows: He (Shāfiʿī) said: "I consider thirty dirhams as good for *mut'a* (the amount that should be given to the woman)." The right of pre-emption should be delayed for three days. He

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97   Al-Zarkashī, *al-Baḥr,* 8/107.
98   Al-Māwardī, *al-Ḥawi,* 16/166; al-Zarkashī, *al-Baḥr,* 8/107.
99   Ibn al-Qāṣṣ al-Ṭabarī*, al-Talkhīs,* 75.
100 See Yusuf EŞİT, *Kavleyn Literatürü Bağlamında Şâfiî Savunusu* (Ankara: Fecr yayınları, 2019), 48-50.
101 Al-Zarkashī, *al-Baḥr,* 8/106-109.
102 Al-Māwardī, *al-Ḥawi,* 16/165-166.

said, "This is my istiḥsān; it is not based on an *aṣl*." "I have seen some rulers take an oath on the Mus'ḥaf. To me, this is a good practice," he commented. As for the adhan, he said, "It is good for the muazzin to close his ears [while reciting the adhan]." In this case, it is said that Shāfiʿī did not put forward these views based only on istiḥsān; he adopted these views based on other evidence that accompany it."[103]

Al-Māwardī tries to defend Shāfiʿī by arguing that there is evidence for each of the cases mentioned, and that there is evidence on which Shāfiʿī based his views. He did not make judgments through istiḥsān, which is not based on any evidence. According to him, Shāfiʿī's istiḥsān about *mutʿa* is based on the opinion of Ibn ʿUmar (d. 73/692); that is, the opinion of the Companions.[104] Likewise, according to him, Shāfiʿī's istiḥsān on sufa is based on ijmāʿ on this issue; the judge's taking an oath on the Mus'ḥaf is based on qiyās, and the istiḥsān on the adhan is based on the practice of the Companions in the presence of the Prophet.[105] Al-Māwardī notes that one can act with istiḥsān, which is based on evidence according to them (Shāfiʿīs), but one cannot act with istiḥsān if it is not supported by any evidence. It is this type of istiḥsān that the Shāfiʿīs deny.[106]

Supporting al-Māwardī, Abū al-Maḥāsin Rūyānī (d. 502/1108) states that there is evidence for the judgments that Shāfiʿī made based on istiḥsān. Al-Rūyānī reports that Shāfiʿī considers the mursal narrations by Saʿīd b. al-Musayyib, which al-Mawardī did not mention, beautiful. According to him, Shāfiʿī considered the views he put forward based on absolute evidence as good.[107] Al-Rūyānī reports that Shāfiʿī considers the irsal from Saʿīd b. al-Musayyib as good because it is based on the Companions and accepts this as evidence.[108] Al Zarkashī is one of those who think that these views of Shāfiʿī were based on istiḥsān. He states that the views which Shāfiʿī allegedly acted with istiḥsān were absolutely good (istaḥsana) based on evidence. Therefore, he says that everything that is based on evidence is beautiful and emphasizes that seeing something beautiful based on evidence is considered as proof.[109] Just like al-Mawardī and al-Rūyānī, al-Zarkashī reports the bases of these views of Shāfiʿī.[110]

As mentioned earlier, the views conveyed by al-Khaffāf and al-Ṭabarī and attributed to Shāfiʿī have been the focus of discussions both in their own periods and later. Al-Khaffāf and al-Ṭabarī quote Shāfiʿī's views, just as al-Mawardī and al-Rūyānī do, without grounding them. This gives the impression that the objections raised against Shāfiʿī on this issue remain unanswered. Presumably, they left the objections to Shāfiʿī unanswered, due to reasons of space in their works that concisely addressed these issues. We learn from al-Zarkashī that the Shāfiʿīs who lived during and after this period responded to the objections to Shāfiʿī's views on this issue. According to al-Zarkashī, [Abū Saʿīd] al-Istakhrī (d. 328/940), [Abū Bakr] al-

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[103] Al-Māwardī, *al-Ḥawi,* 16/165-166.

[104] Al-Māwardī, *al-Ḥawi,* 17/166.

[105] Al-Māwardī, *al-Ḥawi,* 16/166.

[106] Al-Māwardī, *al-Ḥawi,* 16/166.

[107] Abū al-Maḥāsin 'Abd al-Waḥīd b. Ismā'īl al-Rūyānī, *Baḥr al-madhhab fī furūʿ al-madhhab al-Shāfiʿī,* (Beirut: Dār Ihya al-Turath al-ʿArabī, 2002/1423), 11/259-260.

[108] Al-Rūyānī, *Baḥr al-madhhab,* 11/259-260.

[109] Al-Zarkashī, *al-Baḥr,* 8/106.

[110] Al-Zarkashī, *al-Baḥr,* 8/106-109.

Khaffāl al-Shāshī, Ibn al-Qāṣṣ, [Abū ʿAlī] al-Sinjī (d. 417/1026), al-Mawardī, al-Rūyānī and other Shāfiʿī schol-ars claim that Shāfiʿī sees these views as acceptable only if they are based on evidence.[111] Considering these data, one could say that Shāfiʿī jurists defend Shāfiʿī against the criticism that Shāfiʿī's theory and practice regarding the validity of istiḥsān conflict with each other. However, besides the above-mentioned issues, the most striking criticisms against Shāfiʿī, regarding the practice of istiḥsān, is those voiced within the madhhab. Imām al-Ḥaramayn al-Juwaynī (d. 478/1085) and his student Abū Ḥāmid al-Ghazālī (d. 505/1111) are among those who criticize Shāfiʿī about acting through istiḥsān. In his book *Nihāyat al-maṭlab*, al-Juwaynī cites his teacher's opinion that it is a good idea for a person with *iḥrām* not to shave his hair completely and not to remove lice from his hair. According to him, this is an idea that no one but his teacher put forward. Al-Juwaynī bases his teacher's view on this issue on Shāfiʿī's clear statement in the text. Al-Juwaynī criticizes Shāfiʿī by reporting his clear words on this issue:

"He (Shāfiʿī) said, 'If he removes it (louse) (from his hair), he has to offer something as sadaqah." He (Shāfiʿī) then said, "I don't know where I got this view from." I think that Shāfiʿī' resembles Abū Ḥanīfa about istiḥsān in this specific case."[112]

One could conclude that al-Juwaynī criticizes both Shāfiʿī and Abū Ḥanīfa as they put forward opinions through istiḥsān without evidence. Al-Zarkashī reports al-Ghazālī's criticism on this issue. According to him, al-Ghazālī uses the following expressions in his work *al-Basīṭ*, referring to al-Juwaynī, his teacher, on the same issue:

"This is same with Abū Ḥanīfa's [d. 150/767] istiḥsān and is problem (*mushkil*). What is true in this case is that this (opinion) is Shāfiʿī's istiḥsān as he (Shāfiʿī) clearly states that the opinion he expresses is not based on anything."[113]

Al-Zarkashī opposes al-Ghazālī and argues that this view of Shāfiʿī is not istiḥsān unlike it is commonly thought. According to him, he wants to point out that Shāfiʿī cannot remember the evidence of the view he adopted. Shāfiʿī did not mean that he adopted any perspective by following his ego without any evidence.[114] As a result, al-Zarkashī states that the concept of istiḥsān in the statements of Shāfiʿī and his distinguished students (companions) hardly means expressing an opinion without evidence. According to him, the views put forward by Shāfiʿī and his distinguished students through istiḥsān are absolutely based on evidence

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[111] Al-Zarkashī, *al-Baḥr,* 8/106.

[112] Imām al-Ḥaramayn al-Juwaynī, *Nihāyat al-maṭlab fī dirāyat al-madhhab,* Ed. ʿAbd al-ʿAzīm Maḥmūd al-Dīb (Beiurt: Dār al-Minhāj, 2007/1428), 4/274.

كان شيخي يقول: الأولى للمحرم ألا يفلي رأسه، ولا ينحّي هوامّها استدامةً للشعث. وهذا لم يذكره غيرُه، ولكنه اعتضد بنصّ الشافعي، وذلك أنه قال: " لو نحاها، تصدّق بشيء "، ثم قال: " ولا أدري من أين قلتُ ما قلتُ " وهذا محسوب على الشافعي في مضاهاة استحسان أبي حنيفة.

[113] Al-Zarkashī, *al-Baḥr,* 8/107.

وقَالَ الغَزَالِيُّ فِي البَسِيطِ " قَالَ الشَّافِعِيّ: لَوْ كَانَ بِرَأسِ المُحْرِم هَوَامّ فَنَحّاهَا تَصَدّقَ بِشَيْءٍ؟ ، ثُمَّ قَالَ: لا أَدْرِي مِنْ أَيْنَ قُلْت مَا قُلْت قَالَ الإِمَامُ فِي النِّهَايَةِ " وَالغَزَالِيُّ فِي البَسِيطِ ": هَذَا مِنْ قَبِيلِ اسْتِحْسَانِ أَبِي حَنِيفَةَ وَهُوَ مُشْكِلٌ فَالصَّحِيحُ أنّ ذَلِكَ مِنْ الشَّافِعِيّ اسْتِحْسَانٌ، فَإِنّهُ بَيّنَ أنّهُ لا أَصْلَ لَهُ

[114] Al-Zarkashī, *al-Baḥr,* 8/107.

although they do not state it explicitly.[115] As can be seen, whether Shāfi'ī practiced istiḥsān, which he opposed in theory, has been the focus of considerable debate among both the Shāfi'īs themselves and other madhhabs.

Conclusion

Abū Bakr al-Khaffāf's work *al-Aqsām wa-l-khiṣāl* is significant in several respects. First of all, although this work was written in the field of furū' al-fiqh, the section about uṣūl al-fiqh within the introduction helps follow the development of the uṣūl al-fiqh in Shāfi'īsm after Shāfi'ī. *Al-Aqsām wa-l-khiṣāl* is one of the texts showing that modern approaches to characterizing the one or two-century history of uṣūl al-fiqh after Shāfi'ī as "missing link" or "dark age" should be questioned. Among other texts that illuminate the development of the fiqh method to a certain extent after Shāfi'ī are Ibn Surayj's *al-Wadā'i'* and al-Ṭabarī's *al-Talkhīs*, which were written in the same period as *al-Khiṣāl* as works of furū' al-fiqh. Another point that makes *al-Khiṣāl* important in terms of the history of fiqh is that it contains data lending support for the claim that the early Iraqi Shāfi'īs were influenced by Mu'tazila theology on some issues. As it is commonly known, Shāfi'ī was distant and even opposed to the science of kalām, which was associated with the Mu'tazila in his own time. Shāfi'ī did not include discussions reflecting the theological perspective in his other works of fiqh, particularly in *al-Risāla*. However, the first period Iraqi Shāfi'īs were influenced by the Iraqi region, which was the center of Mu'tazila theology. They discussed some issues of theology-based uṣūl al-fiqh and adopted views close to those of the Mu'tazila madhhab in such issues. Later Ash'arī and Shāfi'ī scholars attempted to explain this by stating that they studied the works of Mu'tazila but did not understand the theological ground on which their views which had been influenced by Mu'tazila were based because they did not have sufficient knowledge of theology. Abū al-Ḥasan al-Ash'arī (d. 324/935-36), who lived at the same time and in the same region with the early Shāfi'īs, emerged as an anti-Mu'tazila scholar, yet with the articulation of Ash'arīsm and Shāfi'īsm over time, the Mu'tazila influence in the early periods left its place to that of Ash'arīsm.

When the content of *al-Aqsām wa-l-khiṣāl* is examined, it is seen that the evidential data are categorized and are systematically presented. The fact that the sunnah is divided into two as *mutawātir* and *āḥād*, ijmā' into six, qiyās into three, ijtihād into three and *'illa* into eight categories shows this. Likewise, there are discussions about evidence, such as acting with khabar al-mursal, the abrogation relationship between al-Kitāb (al-Qur'ān) and the sunnah, the relationship between qiyās and ijtihād, acting with istiḥsān and Shāfi'ī's approach to istiḥsān. These issues appear to be the main subjects of usūl discussed in this period.

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