

Islamic Legal Thought

A Compendium of Muslim Jurists

Edited by

Oussama Arabi, David S. Powers and
Susan A. Spector



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CHAPTER TWELVE

ABŪ ḤĀMID AL-GHAZĀLĪ (D. 505/1111)*

Ebrahim Moosa

INTRODUCTION

One of Islamdom's most gifted writers and influential thinkers, Muḥammad b. Muḥammad al-Ghazālī (450–505/1058–1111) has attained extraordinary visibility and is enshrined in scholarly and popular circles in the Muslim world and beyond. Widely known as the “Proof of Islam” (*Ḥujjat al-Islām*), Ghazālī left his imprint on intellectual traditions both inside and outside of Islamdom. His towering role parallels that of, say, Rabbi Akiba or Maimonides in Judaism, that of Origen, Augustine or Aquinas in Christianity, and that of Nagarjuna in Buddhism. In the classical Islamic world, Jewish and Christian thinkers viewed Ghazālī as an intellectual interlocutor in a manner equaled by few other Muslim thinkers.

Nietzsche's claim that all philosophy is autobiography applies to Ghazālī. Biographers note that when Ghazālī retired to his home in Ṭūs, he built a lovely house, next to a Sufi convent and a *madrasa*, where he spent his time training a select group of students and tending to a garden.¹ Ghazālī's life, including his writings on law and moral philosophy, I shall argue, was shaped and shared by the world around him; and his diverse writings give us many clues about his worldliness and connection to his environment.² Ghazālī was one of the few classical Muslim thinkers who acknowledged how his engagement with the world shaped his inner life.

Ghazālī's labors in the garden and meditations in the Sufi convent subtly percolated into his writings. One of his last writings on legal theory provides a glimpse of how his experiences, along with aesthetic and moral

* I would like to thank Mohamed Fadel and Ahmed El Shamsy, who read and commented on earlier drafts of this chapter. Ali Altaf Mian, as always, gave unstinting research support. All remaining errors are mine alone.

¹ al-Jawzī, *al-Muntaẓam*, 10:115.

² Marcia Cavell points out that the 'mind' exists in an interpersonal field in relation to the material world. This also holds for Ghazālī. See Marcia Cavell, *Becoming a Subject: Reflections in Philosophy and Psychoanalysis* (Oxford & New York: Clarendon Press, 2006), 1.

considerations, shaped his thinking. In *al-Mustasfā* (*The Quintessence*) Ghazālī employs several images to make his point. The book is structured around the geometrical image of four axes (*quṭb* pl. *aqṭāb*). Although these axes are literally the pivots around which he framed his arguments, the term also suggests that we are in the presence of a transformed Ghazālī. The *double entendre* points not only to the mundane structure of organizing interlocking chapters of his book but also to the *quṭb*, a central figure in a mystical hierarchy.

A second image is arboreal. In the Qurʾān, a “good word” is described as a “beautiful tree with firm roots and branches reaching out to the heavens” (Q. 14:24). Ghazālī’s use of these images was intentional: these figures of speech were part of his experience. Like other jurists, Ghazālī described the foundations or theory of law as “roots” (*uṣūl*) and their applications or positive law as “branches” (*furūʿ*). He elaborated on the arboreal image, saying that the first axis treats the “harvest” or “fruit” (*thamara*) of the juridical enterprise, the all-important moral assessment, rule or value (*ḥukm*) that a jurist seeks to ascertain. The second axis treats the “bearer of the fruit” (*al-muthmir*), i.e., the sources that the jurist must examine. The third axis treats the “methods of growing fruit” (*ṭuruq al-istithmār*), i.e., methodology, especially language and hermeneutics. Finally, the fourth axis treats the “farmer” or “grower” (*al-mustathmir*), how one becomes a jurist and what the task entailed. These thoughts, clearly those of a person invested in gardening as a hobby, are evidence of the translation of his life experiences into his reflections.

Trained in his early years as a jurist-theologian (*faqīh*), Ghazālī’s significant juristic contributions are often overshadowed by other dimensions of his protean persona. He is frequently remembered as a theologian, an amateur philosopher and an ethicist who developed a strong mystical predisposition. In the eyes of many, if not most of his admirers, Ghazālī was a saint. Although some dispute his sanctity, he certainly was considered one of the most learned of the pious of his time. In addition, Ghazālī was frequently hailed as a ‘renewer’ (*mujaddid*), i.e., someone who renewed aspects of the Muslim tradition in the fifth Islamic century.³

Ghazālī’s intellectual pursuits in law, theology, philosophy and mysticism closely tracked his personal and existential struggles. Thus biography

³ Ṣaʿīdī, *al-Mujaddidūn fī al-Islām* (Cairo, 1962), 181–4. Ṣaʿīdī includes Ghazālī in the list of ‘renewers,’ albeit reluctantly, and he blames him for a good many of the ills of Islamdom.

and writing, knowledge and identity were intimately intertwined in his life. He not only left traces of his personal struggles in his writings, but also bequeathed to posterity a testimonial of his intellectual and spiritual itinerary in the form of *al-Munqidh min al-ḍalāl* (*Rescuer from Error*).

Ghazālī's search for certainty stands out as a marked theme. This was no search for the certainty of facts but rather a quest to understand the meaning of life. This quest, in turn, caused him to question the authority and meaning of tradition. Throughout Ghazālī's career, he was occupied by a concern about conforming to authority (*taqlīd*), by the personal responsibility to investigate (*naẓar*), and by the obligation to undertake intellectual effort (*ijtihād*) in order to arrive at moral and theological truths. From a very early age, he tells us, he was puzzled about how one chooses religion. Is this choice a result of will, socialization, or providential grace?⁴ These questions put Ghazālī on a lifelong quest and produced in him agnostic encounters with different bodies of knowledge and experiences. His scholarly pursuits, in turn, opened another set of questions: What is the role of reason? Can reason lead one to the truth or do humans need a revelatory supplement? And can reason detect the purpose of the moral teachings of revelation? If so, what kind of agency and autonomy do individuals possess to make moral choices, both as laypersons and scholars?

EARLY YEARS: EDUCATION AND SCHOLARLY PATH

Ghazālī was born in 450/1058–9 near Mashhad in modern day Iran, in a region called Ṭūs.⁵ Ṭūs was divided into two towns or suburbs: Ṭabarān, where Ghazālī resided, and Nūqān. Ṭūs was an important stop on the Khurāsān highway, the main arterial road that connected Baghdad with the fertile regions of Transoxiana. Eventually one reached Bukhārā and Samarqand, along what is today known as the Silk Route.⁶ Towns and cities on this route housed some of Islamdom's most impressive scholars, institutions and intellectual treasures.

Ghazālī died in his birthplace at the age of approximately fifty-two solar years or fifty-five lunar years. Reports say he was buried in a cemetery in the village of Sanābād—the original name of Mashhad—near Ṭūs.

⁴ Moosa, *Ghazali and the Poetics of Imagination*, 175–8.

⁵ According to Griffel, Ghazālī was born in 448/1056, not in 450/1058. See Griffel, *al-Ghazālī's Philosophical Theology*, 23–5.

⁶ Le Strange, *The Lands of the Eastern Caliphate* (Lahore ed.).

Most of Ghazālī's elementary and primary education took place in Ṭūs. One of his first teachers was Aḥmad b. Muḥammad al-Rādhakānī. *Circa* 469 AH, when he was perhaps nineteen years old, Ghazālī went to study in Jurjān (Gorgan), approximately 372 miles from Ṭūs. Aside from its inhospitable weather, Jurjān's intellectual and sectarian environment was heterogeneous. The city was dominated by followers of the Ḥanafī school from whose number the preacher (*khaṭīb*) was appointed. Adherents of the Shāfi'ī school, including some patrician figures, were also present in the city, but they were outnumbered by the Ḥanafīs. Non-Sunnī communities affiliated to the Shī'a and Karrāmiya also lived in Jurjān. Despite the social diversity, sectarian rivalry always threatened conflict.

Leadership of the Shāfi'ī community of Jurjān was largely in the hands of one close-knit unit, the influential Ismā'īlīs, who enjoyed extensive wealth through trade and who produced some of the leading scholars of the city, including Abū Naṣr al-Ismā'īlī (d. 405/1014), who died at least forty-five years before Ghazālī was born (although this did not prevent some scholars from claiming that Ghazālī studied with him).⁷ According to Farid Jabre, Abū al-Qāsim Ismā'īl b. Mis'ada al-Ismā'īlī (d. 477/1084), also known as Ibn Sa'da, was one of the leading Shāfi'ī scholars of Jurjān.⁸ These Jurjānī Ismā'īlī jurists specialized in legal disputations and polemics (*khilāf*) between and among the various Sunnī schools of law.⁹ Ghazālī most likely studied with at least one member of this family, from whom he may have learned the Shāfi'ī polemics evident in his early legal writings. Subkī notes that it was characteristic of the Ismā'īlī jurists to dictate lessons, especially prophetic traditions (*ḥadīth*), but perhaps other subjects too.¹⁰

⁷ al-Subkī, *Ṭabaqāt al-Shāfi'īya al-kubrā*, 4:92.

⁸ Jabre, "La biographie et l'oeuvre de Ghazālī reconsiderée à la lumière des *Ṭabaqāt de Sobkī*"; al-Yāfi, "Sīrat al-imām Abi Ḥamid al-Ghazālī wa-makānatuhu," 11; Shams al-Dīn, "Muqaddima," in *Majmū'at rasā'il al-imām al-Ghazālī*, 5. 'Ārif Tāmir identifies this teacher as Ibn Sa'da, not Ibn Mis'ada, as stated by al-Yāfi and Aḥmad Shams al-Dīn. In a bizarre misreading of the historical materials on the status of Ghazālī's relationship with this Ismā'īlī family, Tāmir insists, without foundation, that Ibn Sa'da belonged to the Ismā'īlī sect. Indeed, he accuses Ghazālī's biographers, both ancient and modern, of bad faith and intentional amnesia. According to Tāmir, the purpose of the omission was to suppress embarrassing information that confirmed Ghazālī's links to Ismā'īlī teachers, (whom he mistakenly identifies as Shī'a). Crucial information that confirms Ghazālī as a closet Ismā'īlī, according to Tāmir, is found in the authoritative biographical treatise of the Shāfi'ī bio-biographer Taj al-Dīn al-Subkī. See 'Ārif Tāmir, *al-Ghazālī bayna al-falsafa wa al-dīn*, 41, 81 esp. fn 23.

⁹ Tāmir, *al-Ghazālī bayna al-falsafa wa al-dīn*, 41.

¹⁰ al-Subkī, *Ṭabaqāt*, 4:92.

It is said that Ghazālī lost his prized notebook (*ta'liqa*) to brigands who seized it while he was returning home from Jurjān. This story may not be as implausible as some assume it to be.¹¹ The chief robber reportedly scoffed at Ghazālī for carrying his learning in notebooks of which he could be easily dispossessed. The incident, which features prominently in narratives about Ghazālī's scholarly and pious persona, became a thread in several accounts of his biography. Back in Ṭūs, Ghazālī reflected on the temporary loss of his notes. He treated the encounter with the brigands as an oracle instructing him to spend the next two or three years (470–473/1077–1080) at home, where he memorized the formal knowledge he had acquired to that point, so that no one could dispossess him of it again.¹² Although some modern scholars are inclined to discount the anecdote on the grounds of incredulity or the reliability of the sources, there is no good reason to doubt that Ghazālī studied in Jurjān.¹³

At the age of about twenty, Ghazālī headed for the Nizāmīya College in Nisābūr, one in a network of colleges built by the Saljūq minister, Nizām al-Mulk.¹⁴ The highpoint of his student life occurred in Nisābūr, where he took advanced classes in law (*fiqh*), dialectical theology (*'ilm al-kalām*), legal theory (*uṣūl al-fiqh*), juro-theological polemics (*khilāf*) and mysticism (*taṣawwuf*). In Nisābūr, Abū al-Ma'ālī al-Juwaynī (d. 478/1085), who held the celebrated chair in Shāfi'ī law, inspired Ghazālī and shaped his thinking; and Abū 'Alī al-Fārmadhī (d. 477/1084–5) initiated him into the academic study of mysticism. In Nisābūr, Ghazālī quickly became Juwaynī's energetic and ambitious teaching assistant, although Juwaynī reportedly was wary, if not jealous, of his prodigy's graphomaniacal ambitions. Contrary to convention, Ghazālī wrote a book of his own—while his teacher was still alive—in an attempt to upstage his master. Irritated by the audacity of his understudy, Juwaynī protested: “You have buried me while I am still alive. Could you not wait until I was dead?”¹⁵

¹¹ Ibid., 6295; Makdisi, *The Rise of Colleges*, 120–44.

¹² al-A'sam, *al-Faylasūf al-Ghazzālī*, 33.

¹³ 'Abd al-Ghāfir al-Fārisī does not mention that Ghazālī studied in Jurjān. For this reason Griffel doubts this point and dismisses as a fiction the story of Ghazālī's encounter with the brigands. Griffel gives short shrift to Ghazālī's widely recorded trip to Jurjān. See Griffel, *Ghazālī's Philosophical Theology*, 21–8.

¹⁴ Ghazālī was twenty when he completed his studies in Ṭūs and Jurjān. See Bijū, “al-Ta'rīf bi al-mu'allif wa'l-kitāb,” 7.

¹⁵ al-Jawzī, *Muntaẓam*, 114.

POSTGRADUATE MILIEU

For approximately six years, notably after Juwaynī's death in 478/1085, Ghazālī was an intern or fellow in the mobile secretariat and entourage of Nizām al-Mulk (d. 485/1092), the *wazīr* and kingmaker of the Saljūq sultans. Nizām al-Mulk effectively managed the territories of the Baghdad-based 'Abbāsīd caliphate. In the *wazīr's* retinue, Ghazālī rubbed shoulders with numerous scholars and ideologues, as well as parvenus. The *wazīr* was a fox whose interference in the workings of the caliphate and sultanate are now the stuff of legend. At one point Nizām al-Mulk scrutinized every decision that the caliph took in Baghdad, and he always served the interests of his Saljūq patrons (not to mention his own personal interests).

Even if Ghazālī was not part of the inner circle of the *wazīr's* bureaucracy, he was no doubt close to people in power who had access to the decision-making chambers. Ghazālī was neither politically naive nor lacking in political skills. His proximity to the *wazīr*, the Saljūqs and the 'Abbāsīd caliph must have had a significant influence on his thinking about governance and political matters.

Ghazālī's scholarly accomplishments and credentials impressed Nizām al-Mulk, who appointed him to the prestigious chair of Shāfi'ī jurisprudence at the Baghdad Nizāmīya. In 484/1091, as Ghazālī's contemporaries report, he entered the capital amid great fanfare, pomp and ceremony. His meteoric rise brought him great renown in social and political circles in which he was admired as a brilliant and versatile intellectual. Whereas it took other scholars decades to burnish their reputations, it took the thirty-four year-old scholar from Ṭūs just over one year to acquire a stellar reputation in the capital. Nizām al-Mulk boosted Ghazālī's celebrity, showing off his new protégé, whose reputation had set the intellectual circles of Baghdad abuzz. By the time Nizām al-Mulk was killed in 1092, Ghazālī's induction into the politics of the empire was already complete.

LEGACY

Ghazālī's legacy is not without controversy. While he is generally held in high esteem in the Muslim tradition, he has elicited a fair share of criticism. The Ḥanbalī moralist 'Abd al-Raḥmān Ibn al-Jawzī (d. 597/1200) was scandalized by Ghazālī's preoccupation with aspects of mysticism that

on occasion bordered on antinomianism.¹⁶ Ibn al-Jawzī was outraged by Ghazālī's apparent tolerance of self-humiliation as spiritual therapy. One such practice involved a novice entering a public bath-house and 'stealing' the clothes of clients, with the express purpose of being apprehended and subjected to abuse by the patrons. Such humiliation, according to some Sufis, was salutary in so far as it shattered the novice's pride. Ibn al-Jawzī reasoned that Ghazālī's refusal to condemn such a practice signaled his own "... deviation from the standard of proper understanding because of his association with the Sufis. He viewed their lifestyle as the ideal."¹⁷ Unable to control his outrage, Ibn al-Jawzī exclaimed: "Glory be to the One who expelled Abū Ḥāmid from the circle of law with his compilation of *Resuscitation (Iḥyā)*."¹⁸

It was no doubt in order to counter such charges that the biographical sources showcase Ghazālī's juristic persona as much as they do. Promoting Ghazālī's merits as an outstanding Shāfi'ī jurist not only burnished his scholarly credentials but also legitimized him in the prevailing web of a traditional authority. His reputation as a jurist boosted his credibility. Even though some later Shāfi'ī figures viewed the study of philosophy, logic and theology with a good dose of skepticism, if not outright reproach, Ghazālī's study of these subjects did not undermine his credibility as a scholar.

The Shāfi'īs were deeply invested in monopolizing the office of the centennial renewer (*mujaddid*) of the faith. There was also rivalry among the schools, over which one would produce the centennial renewer of each century.¹⁹ Ghazālī himself fully understood that some of his contemporaries wanted to proclaim him as the spiritual renewer of the fifth century AH. In the *Rescuer*, he noted that numerous pious people had counseled him to end his self-imposed isolation and return to teaching, since they sensed that a renewer of the faith was about to make an appearance and that he was an appropriate candidate for such a role.²⁰

Some modern Muslim critics have traced every conceivable flaw in Muslim civilization to Ghazālī's legacy. His ideas, they claim, introduced

¹⁶ Ibid.

¹⁷ Ibid., 115.

¹⁸ al-Zabīdī, *Ithāf al-sādah al-muttaqīn bi-sharḥ iḥyā' 'ulūm al-dīn*, 1:52; al-Jawzī, *Muntaẓam*, 115 (*subḥāna man akhraja Abā Ḥāmid min dā'irat al-fiqh bi-taṣnīf al-iḥyā'*).

¹⁹ Melchert, *Formation*, 108. Landau-Tasseron, "The 'Cyclical Reform': A Study of the *Mujaddid* Tradition."

²⁰ al-Ghazālī, *al-Munqidh min al-ḍalāl*, 76.

certain viruses into Muslim religious thought and practice that were difficult, if not impossible, to eradicate. Most of these critics traffic, in what I call 'scapegoat historiography'. They erroneously attribute Islamdom's dwindling fortunes as a civilization and polity during the past several centuries to single causes. Some charge that Ghazālī had undermined the use of reason in Islamdom, thanks to his trenchant critiques of certain philosophical propositions held by Muslim philosophers. Others claim that over time Ghazālī's promotion of mystical discourse at the expense of philosophy turned large swaths of the Muslim intellectual tradition into an irrational husk. Moreover, his labors, they claim, justified a retrograde version of mysticism that inclined the laity to superstition and irrationality. Cumulatively, these intellectual pathologies, critics claim, thwarted Islamdom's potential to produce a renaissance and subsequent enlightenment that might have paralleled or eclipsed that of Europe!²¹

At the other extreme Ghazālī's admirers uncritically defend his legacy. Many admire him for his critique of philosophy. In his detailed biographical entry on Ghazālī, Tāj al-Dīn al-Subkī (771/1370), waxed lyrical: "He [Ghazālī] arrived at a time when people were in need of the refutation of the falsehoods of the philosophers just as a pitch-dark night requires the illumination of the heavenly lights . . . and he continued to defend the true faith with the lash of his speech . . ." ²² Indeed, some modern defenders excoriate anyone who comments critically on Ghazālī's ideas.²³ Not only have these self-righteous defenders abandoned Ghazālī's critical stance towards ideas, but they have also undermined his kaleidoscopic legacy. Suffice it to say, that Ghazālī's legacy has provided grist for the scholarly mill to churn out as many learned discourses as it can generate polemics.

We can divide Ghazālī's life and scholarship into three overlapping phases: (1) his student years followed by a protracted postgraduate period during which he wrote several legal treatises; (2) a four-year professorship in Baghdad, during which he was productively preoccupied with philosophy and theology but also experienced a debilitating spiritual crisis; (3) his mystical phase which coincided with a period of extended introspection and insightful writings.²⁴ Ghazālī never abandoned his interest in *fiqh*,

²¹ Ḥanafī, "al-Juzūr al-ta'rikhīya li-'azmat al-ḥurrīya wa'l-dimuqrāṭīya fī wijdāninā al-mu'āšir," 170–88; al-Jābirī, *Naqd al-'aql al-'arabī*.

²² al-Subkī, *Ṭabaqāt*, #694.

²³ This brings to mind the reaction to the criticism of Zakī Mubārak. See Moosa, *Ghazālī*, 19–20.

²⁴ al-Ghazālī, *al-Munqidh*.

moral rules and their legal applications or in *uṣūl al-fiqh*, a unique discipline that combines epistemology, language and moral philosophy. A few years before his death, Ghazālī completed *al-Mustasfā* an impressive treatise on *uṣūl al-fiqh*, which updated his earlier writings on this subject.²⁵

The twists and turns of Ghazālī's intellectual and spiritual itineraries are reflected in his lifelong pursuit of intellectual and spiritual certainty, a pursuit that was closely related to his personal existential struggles. Although Ghazālī played within the mainstream of Islamic thought, he often leaned towards threshold positions, such as his fascination with philosophy, his deep interest in mysticism and his trenchant critiques of the jurists. In order to follow the pathways to which his knowledge and labors guided him, he frequently ventured into the frontiers of thought. The spatial metaphor the *dihlīz*—an intermediate portal that separates the Persian home from its exterior—perhaps best describes his preferred spatial location.²⁶ Just as occupants of a dwelling frequently crisscross the *dihlīz* as they enter and exit the home, Ghazālī repeatedly crossed multiple thresholds of intellectual currents, political conflicts and cultural intersections. During certain robust stages of his youthful years, he was not reluctant to charge his political adversaries with heresy and zealously championed the cause of the Shāfiʿī school against the claims of rivals.

In later life, not only did Ghazālī moderate his adversarial stance towards those with whom he disagreed, but also imagined and theorized all thought and practice to be a continuous dialogical movement between the inner and the outer; between the esoteric and exoteric; and between body and spirit. He imagined the dialogic as a complex force field, within which the religious subject constructively connected with the multiple needs of both matter and spirit.

Despite his vocal criticisms of philosophy, Ghazālī was charmed by it. He also found the harmony and precision of logic irresistible. In later centuries, many of his puritan critics were chagrined by his misplaced admiration for and use of both logic and philosophy. A popular anecdote, circulated by one of his students, Abū Bakr b. al-ʿArabī, encapsulates that view. Ghazālī, Ibn al-ʿArabī claimed, had ingested philosophy but regretably could not find an emetic to expurgate it.

In his thirties, Ghazālī was an insatiable polymath who espoused a cosmopolitan vision. Undeterred by orthodoxy, he explored the alpha and

²⁵ Griffel, "The Relationship between Averroes and al-Ghazali," 51–63.

²⁶ On Ghazālī's location in a *dihlīzian* space, see Moosa, *Ghazālī*, 45–9.

omega of every problem. It was this attitude that precipitated his *annus horribilis* late in the third year of his stay in Baghdad. We do not know the exact reason for the deterioration of his health. From cryptic clues in *Rescuer* one gets the sense that he developed all the major symptoms of depression and intellectual fatigue. Some suspect that his forays into philosophy and his engagement with theology, logic and law may have induced a debilitating skepticism. His illness, according to Ghazālī's own account, impeded his ability to speak and prevented him from teaching.

Others suggest that Ghazālī's anxieties were exacerbated by his Saljūq political partisanship, which put him at risk from the daggers of Ismā'īlī political assassins. In 487/1094, three years after his arrival in Baghdad, the caliph al-Muqtadī died, and was succeeded by his sixteen-year old son, al-Mustaẓhir. Ghazālī and other scholars participated in the inauguration ceremony in order to administer the oath of office. Ghazālī dedicated his *Faḍā'iḥ al-Bāṭinīya* (*Obscenities of the Esoterists*) to Mustaẓhir, and fawned over the virtues of the young caliph. Tottering on his throne, the young caliph's polity was held together by a phalanx of shrewd parvenu *wazīrs*, power-managers, scholars and panegyrists. For many of these people, the accession of the inexperienced prince was an opportunity for self-aggrandizement, self-interest and the accumulation of personal wealth. It was in such company that Ghazālī now found himself. One suspects that at some point the political circus contributed to his psychic dilemmas. Instead of expressing his political dissent and risking sedition, he contemplated leaving the entire system.

On the pretext of making the pilgrimage to Makka in the year 1095, Ghazālī embarked on a journey that marked a radical turn in his life. In search of a hermetic life and life-changing events, he traveled to the holy shrines in Makka and Madīna. Along the way, he spent long stretches of time incognito in the Dome of the Rock in Jerusalem and the 'Umayyad Mosque in Damascus. During this extensive liminal period of travel and seclusion, Ghazālī reinvented himself as a mystic. The mystical path quelled his nagging doubts and skepticism. In Sufi practices, he declared, he found the greatest satisfaction. Through rigorous exercises of self-fashioning and experimentation, he aspired to spirituality, which he regarded as the essence of prophecy. In pursuit of these mystical truths he decided to pursue a life of maximum isolation, contemplation and reflection.

RE-VISIONING THE LAW

In Ghazālī's juristic biography one discerns at least five distinct discursive registers. First, the youthful Ghazālī was a robust pro-Shāfi'ī polemicist. Second, his discourse played a pivotal role in transmitting the Shāfi'ī canon and enabling it during a crucial period in that school's history. Third, Ghazālī was an ethicist whose insights into the law were tinged by his mystical experiences and aspirations. Fourth, Ghazālī attempted to grasp the essence of the revealed law by critiquing the mechanistic reasoning of the law schools, and elucidated the five normative purposes of the revelation (*maqāṣid al-sharī'a*); in the doctrine of public interest (*maṣlaḥa*), he found a means to understand the function and ends of the moral law. Finally, Ghazālī was a moralist whose lifelong struggle with the truth resulted in strong advocacy of moral autonomy, resistance to authority, and opposition to *taqlīd*. In his view, even a layperson who conforms to school authority (*taqlīd*) must have some idea as to why he or she accepts such authority.

1. *The pro-Shāfi'ī Polemicist*

During his apprenticeship with al-Juwaynī and his postgraduate fellowship in the entourage of Niẓām al-Mulk, Ghazālī wrote some of his early compositions on moral law (*fiqh*) and legal theory (*uṣūl al-fiqh*). At that time, mastering the law was the default mode for any scholar seeking upward mobility or a career in the state bureaucracy. In his early writings, he adopted a pro-Shāfi'ī polemical style, flaunting his mastery of legal forensics, but demonstrating little originality. His polemics were directed against the older, rival Sunni legal school, the more established Ḥanafīs. The status and authority of the aristocratic Ḥanafīs was challenged by the more scripture-centered and mystically-tinged interpretations of the Shāfi'īs. Occasionally these polemics led to tensions and conflict.²⁷

Ghazālī's pronouncements certainly added to these tensions. In his earliest treatise on legal theory, *al-Mankhūl* (*The Sifted*), he sniffed at Abū Ḥanīfa, the putative founder of the Ḥanafī school.²⁸ Abū Ḥanīfa, Ghazālī wrote, was not a master-jurist (*mujtahid*). Why? Because he lacked good skills in Arabic. And what was the evidence for such a charge? Abū Ḥanīfa, according to Ghazālī, used grammatically incorrect language, by saying:

²⁷ Bulliet, *The Patricians of Nishapur*, 45–6.

²⁸ al-Ghazālī, *al-Mankhūl min ta'liqāt uṣūl*, 581.

“*wa law ramāhu bi Abū Qubays*” instead of “*bi Abī Qubays*.”²⁹ Ghazālī continued relentlessly: “Nor was he [Abū Ḥanīfa] skilled in prophetic traditions, and therefore he was content to accept weak narrations while rejecting sound ones. Nor was he a ‘discerner of the self’ (*faqīh al-nafs*). In fact he only pretended to be smart and that too inappropriately and incongruously in dealing with the sources [of law]. That becomes evident in the proliferation of his viewpoints...”. Ghazālī goes on to catalogue Abū Ḥanīfa’s errors. His assessment was scathing: Abū Ḥanīfa was bent on “destroying” (*hadm*) as well as “tearing” (*kharm*) the revelation of the Prophet Muḥammad.³⁰ This statement is ironic. Incompetence in grasping prophetic traditions was a charge frequently hurled at Ghazālī himself by his detractors, as were allegations that he had been seduced by Sufi discourses to the detriment of the integrity of the law.

For a man who in his early career professed expertise in logic, philosophy and rational discourse, it was odd for Ghazālī to claim that

Abū Ḥanīfa drained the contents of his mind in order to speculatively design legal questions (*taṣwīr al-masā’il*) and [formulaically] reduced his viewpoints to comply to certain [axiomatic] maxims (*taqlīd al-madhāhib*), thereby producing numerous errors. That is the reason why his two disciples, Abū Yūsuf and Muḥammad, abandoned two-thirds of his [viz., Abū Ḥanīfa’s] teachings when they detected copious errors, confusion and contradictions in his teachings.³¹

It is evident that Ghazālī recycled a good number of the anti-Ḥanafi views held by his teacher al-Juwaynī. Whether his views about Abū Ḥanīfa were the imprudent prattle of an immature student or the earnestly held convictions of a mature scholar remains moot. In later writings he spoke in a respectful and reverential tone about Abū Ḥanīfa. In *Shifā’ al-ghalīl*, he compares Abū Ḥanīfa’s opinions to those of al-Shāfi‘ī, occasionally disagreeing but often using the Kufan scholar’s views as grist for his forensic accounts of theoretical details.

There is something instructive in al-Juwaynī’s and Ghazālī’s bruising attacks on Abū Ḥanīfa. The Shāfi‘ī’s were either reckless in their criticism or perhaps advocates of robust intellectual exchange. Later in life

²⁹ Ibid., note 2, p. 581, where Hitū, the editor, says that the statement attributed to Abū Ḥanīfa specified “Abū Qubays” and not “Abū Qubays,” as Ghazālī reported, and that Abū Ḥanīfa’s formulation is legitimate according to some grammarians. Hitū adduces a line of poetry as a proof text.

³⁰ Ibid., 616–17.

³¹ Ibid., 608.

Ghazālī's impetuous scribbling would come to haunt him, as some Ḥanafīs attempted to have him reprimanded, if not punished, by the Saljūq sultan Sanjar for making offensive comments against a figure who was revered by the Ḥanafī Saljūqs.³²

Lurking in the background was the shadow of the larger sectarian milieu. Many Ḥanafīs followed the rationalist Māturīdī school of theology while others adhered to the controversial Mu'tazilī creed for which Ghazālī had a mild dislike. By contrast, the Shāfi'īs were aligned with the tradition-blended rationalism of the Ash'arī school. Rivalries between Sunnīs and Shī'īs produced sufficient theological tinder to stoke several sectarian fires. While Ghazālī partook in such sectarian temptations during his early career, in later life he regretted his youthful indulgences and manifested a particular loathing for theological polemics and disputation (*munāẓara*).³³

2. Transmitter of the Canon

One puzzling aspect of Ghazālī's biography is that his reputation as a Sufi eclipsed his standing as a jurist.³⁴ One possible explanation is that Ghazālī had such an extraordinary passion for mysticism and theology that his labors in these realms dwarfed his considerable contributions to the discipline of juristic theory, law and ethics. It is well-documented that Ghazālī was a pivotal figure in the transmission of seminal texts that later became an important part of the authoritative canon of the Shāfi'ī school of law. All biographical accounts of Ghazālī manifest admiration for and praise of his juristic skills and contributions to this discipline.

Ghazālī's student, Muḥammad b. Yaḥyā b. Manṣūr (d. 543/1153), described him as the "second Shāfi'ī."³⁵ The chronicler Ibn 'Asākir eulogized him as an imām or "authority" in both the applied rules of the Shāfi'ī school and in legal polemics.³⁶ These quotes suggest that he was sufficiently invested in the school to defend its positions against attacks and

³² al-Ghazālī, *Faḍā'il al-anām min rasā'il ḥujjat al-Islām*.

³³ Makdisi, "The Non-Ash'arite Shāfi'ism of Abū Ḥamid al-Ghazzālī," 250–1.

³⁴ Amīn, *al-Ghazālī faqīh wa-faylasūf wa-mutaṣawwif*.

³⁵ al-Subkī, *Ṭabaqāt*, 6:202. Muḥammad b. Yaḥyā wrote a commentary on Ghazālī's *al-Wasīf fi al-furū'*, called *al-Muḥīṭ*. See Kātip Çelebi, *Kashf al-ẓunūn*, 2:633.

³⁶ Al-Subkī, *Ṭabaqāt*, 6:214 (*kāna imām^{an} fi al-fiqh madhhab^{an} wa khilāf^{an}*). I have translated *khilāf* here as 'polemics' or 'disputed law'. The term *khilāf* is opposed to *madhhab*, i.e. settled doctrines supported by the main scholars of a school. *Khilāf* deals with disputed questions of law, in one or more schools of law. See Makdisi, *The Rise of Colleges*, 109.

criticisms from rivals.³⁷ For example, Ghazālī is credited by Subkī with the renewal of the Shāfi‘ī *madhhab* (*jaddada al-madhhab fi al-fiqh*), although he did not elaborate on how Ghazālī accomplished this task.³⁸

A chronological study of Shāfi‘ī school manuals shows where Ghazālī fits in the picture of the transmission of texts about applied rules (*furū‘*), the most frequently consulted area of Islamic law. Al-Shāfi‘ī (d. 204/820), the “founder” of one of the major Sunnī legal schools, wrote at least part of his famous *Kitāb al-umm* (*The Mother Book*). While speculation is inconclusive about who finally completed the text, it is known that this major text was abridged by al-Shāfi‘ī’s Egyptian disciple, al-Muzanī (d. 264/878), and circulated as *Mukhtaṣar al-Muzanī*. Nearly 150 years later, in the eleventh century, Ghazālī’s teacher al-Juwaynī compiled an important work circulated as *Nihāyat al-maṭlab fi dirāyat al-madhhab* (*The End of the Search in Comprehending the Law School*).³⁹ The Egyptian scholar, Muḥammad Ibrāhīm al-Ḥifnāwī points out that, according to later Shāfi‘ī authorities, the *Nihāya* is an abridgement of several works of al-Shāfi‘ī’s, especially *al-Umm* and *al-Imlā’*; in addition, the *Nihāya* draws from abridgements of al-Buwayṭī (d. 231/846) and al-Muzanī, respectively.⁴⁰ Some early authorities report that the *Nihāya* was only an abridgement of the work of al-Muzanī.⁴¹

As Mohammed Fadel has demonstrated, the genre of abridgements served to formalize the “doctrine of the legal schools, an effort that culminated in the attempt to form unequivocal rules within each *madhhab*.”⁴² Following this line of reasoning, al-Juwaynī would have been one of the prominent fifth/eleventh century Shāfi‘ī figures who attempted to formalize the school’s doctrine after the celebrated eras of al-Buwayṭī and al-Muzanī came to a close.

Ghazālī in turn, relied on the *Nihāya* of al-Juwaynī in order to produce multiple abridgements. It was as if he were taking apart the composite unit produced by al-Juwaynī in order to once again elucidate the doctrines of the Shāfi‘ī school. One such abridgement is his *al-Basīṭ* (*The Plain*). Ghazālī also used the *Nihāya* to generate three other abridgments: *al-Wasīṭ* (*The Median*), *al-Wajīz* (*The Concise*) and *al-Khulāṣa* (*The Synopsis*).

³⁷ Tāshkāprizādah, *Mawsū‘at muṣṭalahāt miftāḥ al-sa‘āda*, 402.

³⁸ al-Subkī, *Ṭabaqāt*, 6:205–14; al-Zuhaylī, “Ghazālī al-faqīh wa kitābuhu *al-Wajīz*.”

³⁹ al-Juwaynī, *Nihāyat al-maṭlab fi dirāyat al-madhhab*.

⁴⁰ al-Ḥifnāwī, *al-Fath al-mubīn fi ta’rīf muṣṭalahāt al-fuqahā’ wa’l-uṣūliyyīn*, 146–7.

⁴¹ *Ibid.*

⁴² Fadel, “The Social Logic of *Taqīd*,” 215.

Whether al-Ghazālī intended to systematize the doctrine of the Shāfi‘ī school is not clear. One may speculate that a younger Ghazālī acquired scholarly texts and dictations from his teachers, and then used them as teaching manuals or notes for his students. Ghazālī’s service to the Shāfi‘ī school of law has long been acknowledged and immortalized in rhyme by ‘Umar al-Trabulūsī:

A learned man refined school opinion, may God offer him salvation
 For penning the *Plain*, the *Median*, the *Concise* and the *Synopsis*⁴³

There is more evidence of Ghazālī’s pivotal role in the lineage of Shāfi‘ī jurisprudence. The use later scholars made of his writings supports the claim of his role in the transmission of Shāfi‘ī texts. For example, ‘Abd al-Karīm b. Muḥammad al-Qazwīnī al-Rāfi‘ī (d. 623/1226), an important figure in the Shāfi‘ī school, wrote a manual called *al-Muḥarrar* (*The Written*), which was used as a reference and a teaching text in the Shāfi‘ī tradition. Clearly, al-Rāfi‘ī relied on Ghazālī’s text, *al-Khulāṣa* in order to compose his *al-Muḥarrar*.⁴⁴ The same al-Rāfi‘ī also produced a commentary on Ghazālī’s *al-Wajīz*, titled *Faṭḥ al-‘azīz: Sharḥ al-wajīz* (*Opening of the Most Powerful: A Commentary on the Concise*).⁴⁵

Another prominent figure in the Shāfi‘ī school was the Syrian jurist and *ḥadīth* scholar, Yaḥyā b. Sharaf b. Murī al-Nawawī (d. 676/1278).⁴⁶ Al-Nawawī relied on Rāfi‘ī’s *al-Muḥarrar*, which, it will be recalled, is based on Ghazālī’s *al-Khulāṣa*. Al-Nawawī produced an abridgement, the *Minhāj al-ṭālibīn* (*Path for Seekers [or Students]*), an authoritative pedagogical text and source for juridical *responsa* (*fatāwā*) in Shāfi‘ī jurisprudence.⁴⁷ Thus, one cannot ignore Ghazālī’s indispensable role in the transmission of the Shāfi‘ī school texts between the eleventh and thirteenth centuries.⁴⁸

⁴³ al-Subkī, *Ṭabaqāt*, 6:223.

⁴⁴ al-Zuḥaylī, “Ghazālī al-faqīh,” 85.

⁴⁵ al-Fāsī, *Fikr al-sāmī fī tārikh al-fiqh al-Islāmī*, 2:338.

⁴⁶ al-Nawawī, *Kitāb al-Majmū‘*, (Riyad, 2006), 1:16.

⁴⁷ al-Zuḥaylī, “Ghazālī al-faqīh,” 85; al-Fāsī, *Fikr al-sāmī*, 2:341. Fāsī says the *Minhāj* is an abridgement of al-Rāfi‘ī’s *al-Rawḍa*.

⁴⁸ Commentaries on al-Nawawī’s *Minhāj al-ṭālibīn* include the following: *Sharḥ minhāj al-ṭālibīn* by Jalāl al-Dīn al-Maḥallī (d. 864/1459); *Hāshiya ‘alā Sharḥ al-Maḥallī ‘alā Minhāj al-Ṭālibīn* by Shihāb al-Dīn al-Qalyūbī; *Mughnī al-muḥtāj* by al-Khaṭīb al-Shirbīnī (d. 994/1586); *Tuḥfat al-muḥtāj* by Ibn Ḥajar al-Haythamī (d. 973/1565); *Hāshiya* by ‘Abd al-Ḥamid al-Shirwānī; *Nihāyat al-muḥtāj li sharḥ al-minhāj* by al-Shihāb al-Ramlī (d. 1004/1596); *Hāshiya ‘alā sharḥ al-minhāj* by Nūr al-Dīn al-Shabramallīsī (d. 1087/1677).

Ghazālī's seminal work *al-Mustaṣfā* ranks as one of the top three texts in juristic-theory in the genre classified as that of the 'dialectical theologians'.⁴⁹ The only antecedents to Ghazālī's text are the *Mu'tamad* (*The Reliable*) of Abū 'l-Ḥusayn al-Baṣrī (d. 413/1022) and the *Burhān* (*Book of Demonstrative Proof*) of his teacher al-Juwaynī.⁵⁰

Later scholars frequently cited Ghazālī's opinions and over time his own texts came to be viewed as reliable resources (*muftā bihi*) that might be cited when issuing juridical *responsa* (*fatwās*). No less an authority than al-Nawawī points out that the discursive tradition affiliated with the ancient jurist, al-Shāfi'ī, relied on five primary texts: (1) the *Mukhtaṣar* of al-Muzanī, (2) *al-Muhadhdhab* and (3) *al-Tanbīh*—both by al-Shīrāzī (4) *al-Wasīṭ* and (5) *al-Wajīz*—both by Ghazālī. "These five book are popular among our fellow schoolmen and they frequently use them," al-Nawawī wrote. "They are also available in all the geographical regions," he continued "and are known to the experts as well as to students in all regions, especially in the absence of a useful [comprehensive] compilation that could replace all of these books."⁵¹

3. *Ethicist*

During his Sufi phase Ghazālī began to re-think many aspects of his acquired learning, most importantly the place of applied moral rules (*fiqh*). All religious teachings, Ghazālī argued, have ethical outcome as their ends. Religious practices have as their goal the inculcation of virtues and the manipulation of the sentiments of the religious subject. To punctiliously and routinely observe religious rituals and practices is meaningless, he said, if these do not transform the self into a virtuous subject. Only individuals endowed with excellent virtues will gain proximity to the Divine and only their souls will receive the divine light and inspiration.

It was in writing that Ghazālī found balm for his soul; this was also the medium of communicating his experiences and insights to others. His best known tome, a classic in religious history is called *Iḥyā' 'ulūm al-dīn*

⁴⁹ According to the traditional distinction, juristic theory texts were written either in the style of the dialectical theologians (*mutakallimūn*) or that of the Ḥanafī scholars. This distinction is not useful. Ghazālī's text on juristic theory has a strong theological bent. See A. Kevin Reinhart, "Like the Difference between Heaven and Earth," 231.

⁵⁰ Abū Zahra, "al-Ghazālī al-Faqīh," 531.

⁵¹ al-Nawawī, *Tahdhīb al-asmā' wa'l-lughāt*, 1:3.

(*Resuscitation of the Sciences of Religion*).⁵² *Resuscitation* is a marvel of elegant style and modulated thought with a characteristically Ghazālīan economy of words. Centered around a quartet of themes, “Devotions,” “Practices,” “Calamities” and “Salvific” acts, it contains a gallery of religious ideas, prescriptions and practices. Insightful Qur’ānic exegeses and prophetic *ḥadīths* are skillfully interwoven with the stories and exploits of saints, mystics and pious jurists, interspersed with aphorisms derived from the cultural lore and humanistic traditions of the Arabs, Persians and other neighboring civilizations. For good reason *Resuscitation* has been hailed as an encyclopedia of religious ethics.

In *Resuscitation*, Ghazālī attempts to recover Islam’s prophetic sensibility. Scholarly integrity was a pre-condition for regaining this prophetic spirit. Ghazālī begins with fierce hectoring of the jurists (*fuqahā’* sg. *faqīh*) for their slavish loyalty to political authority and brazen materialism.⁵³ In his view, intellectuals had abdicated their assigned role as repositories of knowledge and as the living conscience and prophetic voice of society. In ominous jeremiads, Ghazālī placed the blame for the ossification of thought and the decay of life squarely on the learned; their dousing of the prophetic spirit produced nonsense in thought and monstrous behavior in practice. Dead religious teachings were the product of dogmatically adhering to a lifeless moral framework.

Every discipline—law, theology and ethics—must change its character and transform into something new; only then, Ghazālī argued, would learning revive the human soul. Over time, he claimed, unnecessary cultural sedimentation had obscured and distorted the meanings and effects of key terms in the Islamic lexicon of religiosity. He refurbished the meanings of five key concepts, namely, (1) the word “understanding” or “discernment,” used metonymically for law (*fiqh*), (2) “knowledge” (*‘ilm*), (3) “the unity of God” (*tawḥīd*), (4) “remembrance and reminders about God” (*dhikr* and *tadhkīr*), and (5) “wisdom” (*ḥikma*).⁵⁴ It is a grievous mistake, he claimed, to hold the view that “law” (*fiqh*) is only about the minutiae of intricate and hairsplitting arguments. Among the first community of Muslims, he reminded his readers, the meaning of *fiqh* was introspective self-understanding and the pursuit of knowledge that illuminated the path to salvation.

⁵² I gloss *dīn* as ‘salvation’ because the early usage of the term inflects salvation practices.

⁵³ al-Ghazālī, *Iḥyā’ ‘ulūm al-dīn*, 1:37–8.

⁵⁴ *Ibid.*, 1:39–40.

Fiqh, Ghazālī insisted, is about works performed in order to merit salvation. For him, *fiqh* as a legalistic enterprise is secondary to the piety it is supposed to inculcate. If the law does not advance piety then it is bereft of its transcendent and heteronymous element. It then regresses to being a mere secular science that fails to advance the self-transformation of the Muslim subject. Ghazālī's signature theme of "resuscitation" is both a normative endeavor and a work in progress. While *Resuscitation* is comprehensive in both its diagnosis and remedies, a lingering shadow of contingency suggests that an ethical narrative must by necessity be open to renewal.

The distinction maintained by Ghazālī between juridical and ethical discourses is a matter of convention and formality. In practical terms, there is no such distinction. Identifying the heart as the center of ethical and moral practices, Ghazālī was deeply aware that the ideal jurist must meet the criterion of being a *faqīh al-naḥs*, "a discerner of the self." If the diagnostic center of the ethical subject is the heart, he believed, it follows that all remedies must begin by addressing the diseases afflicting the heart.

4. *Essence of the Sharī'a*

Ghazālī was the first classical scholar to talk about the purposes or intentions (*maqāṣid*) of the *sharī'a* in a synoptic manner, amplifying the ideas of al-Juwaynī. Cautious about venting this idea too loudly, he artfully discusses it in a section entitled "suspect sources." There he shows how the purpose of the law is linked to the utilitarian doctrine of *maṣlaḥa*, i.e. public interest or social good.⁵⁵ One may speak of a pedestrian notion of *maṣlaḥa*, Ghazālī states, meaning that one should "optimize benefit and repel harm." Self-interest, in his view, is a general human trait.⁵⁶ However, he also articulates a more radical understanding of *maṣlaḥa*: "preserving the purpose or intent of the revealed law (*shar'*)."⁵⁷

⁵⁵ al-Ghazālī, *al-Mustasfā min 'ilm al-uṣūl*, 2:478. The translated section below, "*al-taqīd wa'l-istiftā' wa-hukm al-'awāmm fihī*" is from *al-Mustasfā* (ed. Ḥamza b. Zuhayr Ḥāfiẓ), 4:139–56; the helpful subheadings in the translation were taken from another edition of *al-Mustasfā* edited by Muḥammad Sulaymān al-Ashqar, 2:462–70. Unless otherwise indicated, all citations of *al-Mustasfā* are from the Ḥāfiẓ edition. Qur'ān translations are from *The Qur'an: A New Translation* by Thomas Cleary, with amendments.

⁵⁶ *Ibid.*, 2:481.

⁵⁷ *Ibid.*, 2:482.

Ghazālī identifies five intentions or values that are embedded in revelation: to preserve religion, life, rationality, posterity, and wealth. “Everything that secures these five values (*uṣūl*),” he explains, “is tantamount to a public good (*maṣlaḥa*); and everything that undermines these values is harmful. Thus, to repel [such harm] is a public good.”⁵⁸ In a hierarchy of moral and public goods, Ghazālī provides this list of five values as “necessary” or “self-evident” to human well-being. He regards these values as unassailable, warning that any violation of the purposes of the revealed law is proscribed (*ḥarām*).⁵⁹ It is egregious, Ghazālī claims, to violate *sharīʿa* objectives that are derived from the principal sources, such as the Qurʾān, the authentic prophetic tradition (*sunna*) and the consensus reached by the learned community (*ijmāʿ*). In countless illustrations, he explains how these values fit into his understanding of the juro-moral philosophy of Islam.

Despite his passionate advocacy of the advantages of purposive (*maqāṣidī*) reasoning, Ghazālī’s insecurity was evident. He performed rhetorical pirouettes in order to soften some of his bold assertions about the connection between *maṣlaḥa* and the *maqāṣid*. For example, he says: “whoever thinks that it [viz., *maṣlaḥa*] is a fifth source is in error;” “whoever turns to idiosyncratic forms of public interest that do not comply with the practices of the revealed law . . . is surely engaged in [unsanctioned] legislation or norm making (*sharaʿa*), just as someone who indulges in considerations of juristic preference (*istaḥsana*) engages in [unsanctioned] norm making.”⁶⁰ Only under strict conditions, he claims, is “the adoption of public interest permissible.” And it is evident,” he continues, “that it [viz., *maṣlaḥa*] is not the fifth source, and whoever legislates on the grounds of public interest has indeed engaged in [illicit] norm making (*man istaṣlaḥa fa qad sharaʿa*)!”⁶¹

Clearly, Ghazālī only affirms a doctrine of *maṣlaḥa* that is bound to the purposes of the *Sharīʿa* and that renders it an incontrovertible evidentiary source.⁶² He writes:

Every public interest (*maṣlaḥa*) that aims to preserve the purpose of the revelation (*maqṣūd sharīʿī*), a purpose derived from the Book (Qurʾān), Sunna and Consensus, surely is not extraneous to any of these sources . . . If we

⁵⁸ Ibid.

⁵⁹ Ibid., 2:504.

⁶⁰ Ibid., 2:502–3.

⁶¹ Ibid., 2:506.

⁶² al-Turkī, “Naẓarīyat al-istiṣlāḥ ‘inda al-Ghazālī,” 275–90.

explain public interest as the preservation of the purpose of the revelation, then there is no reason to dispute one's adherence to public interest. In fact, it is mandatory to be categorical about its being an evidentiary authority (*hujja*).⁶³

5. *Advocate of Intelligible Authority*

In the section of *al-Mustasfā* translated below, as in his other writings, Ghazālī rejects conformism in moral teachings. Even a layperson, Ghazālī demands, should display a modicum of intelligibility as to how and why he or she relies on arguments from tradition and authority. This claim requires explanation.

Muslims are required to live according to norms devised by experts qualified in deducing rules from a complex web of authoritative sources. An expert who discovers rules by following his own interpretative theory is called a master-jurist (*mujtahid*), i.e., someone who exercises his intellectual effort (*ijtihād*) independently. For this reason, *ijtihād* is shorthand for independent reasoning, an expression that hides a complex web of activities. Most people are not experts. If one cannot engage in independent rule-finding, then one is required to follow a qualified authority in matters dealing with moral teachings and law. This 'following' is signified by the term *taqlīd*, literally "to put something around the neck as an adornment or harness." In this sense, the word means to be harnessed to the authority of a master-jurist. Scholars debated the extent and nature of such conformity. One central concern was whether one should conform unquestioningly or act on the basis of some understanding of the activity in which one is engaged.

For Ghazālī, authority is related to the search for truth. Given his life-long pursuit of truth, he found arguments in favor of authority troublesome. *Taqlīd* or conformance with authority, in his view, means to accept a statement without knowing the argument supporting it. Ghazālī protested against blind conformity to moral authority. Thus, he framed *taqlīd* as "blind conformity or ignorant compliance with authority."⁶⁴ His reaction to *taqlīd* was prompted by what he heard as echoes of similar claims made by his adversaries, the literalists and the ultra-esoteric Shī'a Ismā'īlīs. Both parties, he alleged, demanded that their followers comply with their authority without providing any compelling reason for such loyalty.

⁶³ al-Ghazālī, *al-Mustasfā*, 2:503.

⁶⁴ *Ibid.*, 2:503.

According to Ghazālī, *taqlīd* differs substantially from *ittibāʿ* or reenactment. The latter has two senses: (1) assimilative reenactment, and (2) conviction-based compliance (epistemic security). In the Muslim tradition, believers reenact the model behavior of their exemplars through mimesis or imitation. Muslims attempt to model their own conduct on the example provided by the Prophet. In Ghazālī's view, however, serious reenactment cannot take place without intellectual effort on the part of the believer in order to shoulder moral responsibility. That is to say, compliance with any kind of moral authority must be conviction-based, no matter how thin the conviction.

In distinguishing *ittibāʿ* from *taqlīd*, Ghazālī was clearly following a minority opinion in Muslim moral philosophy.⁶⁵ He supported the minority because he had a flexible understanding of the doctrine of *ijtihād*. While most scholars used this term in the technical sense of independent rule finding, Ghazālī used it in an expanded semantic sense. Although he would not disagree with the technical meaning of the term, he often used it to convey the sense that someone had made an informed decision.⁶⁶ In other words, even a layperson, according to Ghazālī, in matters of moral teachings, must exercise a certain kind of low-intensity intellectual effort in order to reach an informed decision about his/her moral practice. At a minimum s/he should know why s/he accepted the authority of a learned person and why s/he chose to follow x instead of y.

This concern for truth and moral responsibility was very close to Ghazālī's personal experiences. It therefore comes as no surprise that he repeatedly returns to this issue in his scholarly work. In a stirring conclusion to his *Mizān al-ʿamal* (*Balance of Deeds*), Ghazālī writes:⁶⁷

Avoid the [subjective] authority of [discredited] discursive traditions or collectivities (*madhāhib*). Seek instead the truth by way of inquiry so that you yourself become one who holds an authoritative viewpoint (*ṣāhib madhhab*). And do not be in a position where you follow a guide like a blind person, who ostensibly directs you on a path, whereas you are surrounded by a thousand guides similar to yours; each warns that your guide will lead you

⁶⁵ al-Zarkashī, *al-Baḥr al-muḥīṭ fī uṣūl al-fiqh*, 557.

⁶⁶ al-Ghazālī, *Ihyāʾ*, 2:61, 285. In *Kitāb al-kasb wa'l-ma'āsh*, Ghazālī says that an "individual is required to make an informed decision" (*bal huwa mawkūl ilā al-ijtihād*), the gist of which is repeated in his discussion on commanding the good and prohibiting evil.

⁶⁷ al-Ghazālī, *Mizān al-ʿamal*, 165. Before this quote Ghazālī debates whether *madhhab* is an unequivocal term signifying conviction or an equivocal term signifying a range of meanings, including conviction, but also signifying a source of teaching, cultural and social prejudice.

to peril and mislead you! Only at the end [when you act on your decision to follow your guide], will you realize the error of your guide. Therefore, there is no salvation except in independence (*istiqlāl*) [of thought].

Forget all you've heard and clutch what you see
At sunrise what use is Saturn to thee?

If writing these words yields no other outcome save to make you doubt your inherited beliefs, compelling you to inquire, then it was worth it. Doubt transports [you] to the truth. Who does not doubt fails to inquire. Who does not inquire fails to gain insight. Without insight, you remain blind and perplexed. We therefore seek God's protection from such a [wretched] result.

CONCLUSION

Despite Ghazālī's ambivalence towards jurists and their practices, he never attempted to free himself entirely from the discourse of the moral law. In fact, he was enthralled by it to the end of his life, albeit in a revisionist mode. Iterations of his personal quest for certainty, his encounters with mysticism, the role of moral autonomy and the social purposes of revelation all manifest themselves in one form or another in his writings on moral law and ethics. Can we seriously entertain the idea that a scholar who not only underwent dramatic changes in his life, but also self-consciously reconstructed himself, was not untouched by his life experiences? Ghazālī profited from the Sufis with whom he came into contact and was transformed by his exposure to their narratives and experiences. His Sufi persona is a well-attested dimension of his biography, albeit with disagreement on minor details.

Ghazālī's biographical profile served as a lens through which the past was mediated. He transformed our view of those early scholars and mystics who preceded him and whom he admired. How? As the historian Daniel Boorstin has taught us in another context, it is the *way* in which Ghazālī engages with the legacies of his predecessors that he transforms them for posterity. Ghazālī may be compared to the Japanese painter Sesshu, who learned from his interaction with Ming Dynasty painters; or to Durer, who learned from the Venetian painters. We no longer view Ming and Venetian painters except through the gaze of Sesshu and Durer. Like the Ming and Venetian painters, Ghazālī "does more than translate," in the words of Boorstin. "He transforms his predecessors."⁶⁸

⁶⁸ Boorstin, *Cleopatra's Nose: Essays on the Unexpected*, 33.

At an early stage in his career, Ghazālī realized that blind adherence to the discursive tradition is morally, spiritually and theologically vacuous. He struggled to carve out a space for moral autonomy by pushing back at the dominant tradition in the debate about conforming to authority. He not only strove to make moral authority intelligible, so that individuals could shoulder responsibility, but also expanded the notion of intelligibility in order to construct a paradigm for grasping the purpose of revelation. Drawing upon threads in the work of his teacher al-Juwaynī, he opened a door for a more reasonable understanding of the moral teachings of revelation. The purpose of revelation is reasonable, in his view, aimed at advancing the public interest. Even if God determines what is good and what is detestable, Ghazālī nevertheless opened a door to understanding the good on reasonable grounds. This is the genius of Ghazālī, a genius that was admired by subsequent generations of scholars, who built upon his work in order to renovate the edifice of Islamic law. Attention to the purpose of revelation is much in vogue in contemporary Muslim moral thinking. In this sense, Ghazālī transformed not only his predecessors but also transformed the intellectual tradition of Islam in ways yet to be fully explained.

TRANSLATION⁶⁹

Part Two of this Axis (*Quṭb*) regarding conforming to authority without evidence (*taqlīd*), seeking a learned opinion (*istiftā'*) and the status of the ('*awāmm*) multitude in all this.⁷⁰ This involves four questions (*masā'il*).

Question: [Can the truth be known by following authority (*taqlīd*)?]

Taqlīd means to accept a statement without seeking any supportive evidentiary authority (*ḥujja*). It [*taqlīd*] is not a means leading to knowledge, either in matters of legal theory (*uṣūl*) or in derivative rules (*furū'*). The Ḥashawīya [anthropomorphists] and Ta'limīs [Ismā'īlīs] both claim that the path to knowing the truth is by means of conforming to authority without evidence (*taqlīd*). They insist that *taqlīd* is obligatory and that inquiry and investigation are unlawful (*ḥarām*). Several arguments (*masālik*)⁷¹ demonstrate the falsity of their claim.⁷²

First [Argument]:

The *bona fides* of a person to whose authority one conforms (*muqallad*) are not self-evident. Proof (*dalīl*) [of his authority] is imperative. A miracle performed is an indicator of integrity. It is by his miracle that the veracity of the Messenger, on whom be peace, was established. The authenticity of the speech of God is derived from the information provided by the Messenger based on his honesty. The truthfulness of the people who make up the college of consensus regarding the Messenger's communications is premised on their [collective] immunity from error (*'iṣma*). Similarly, it is imperative for a judge to give a verdict based on the testimony delivered by persons of integrity (*'udūl*)—not in the sense of accepting their *bona fides*—but rather on the grounds that revelatory authority (*sam'*) compelled judges to accept the dominant probability of evidence, notwithstanding the fact that the witnesses might be testifying truthfully or falsely. A layperson has to comply (*ittibā'*) with the teachings of the jurisconsult (*muftī*). The force of consensus indicates that the multitude ('*awāmm*) is obligated to follow that [*muftī*'s] authority, notwithstanding the fact that the jurisconsult might be deceptive or truthful, mistaken or correct.

⁶⁹ See note 55 for source of translation.

⁷⁰ Ghazālī uses synonyms like '*awāmm* (multitude or laypersons), '*ammī* (layperson), and *khalq* (people or humankind) in order to signify the masses-*vulgus*.

⁷¹ *Maslak*, pl. *masālik*, translated as 'argument,' also means a 'perspective' or 'point of view'. Sometimes scholars also use the term to refer to a particular normative or ideological position within a legal or creedal school.

⁷² In a note al-Ashqar, editor of *al-Mustaṣfā*, offers the following gratuitous counsel to Ghazālī: "The author ought to have refuted the charges of the adversaries with the verses of the glorious Qur'ān that reproach imitators and render their views foolish, as in the statement of the most High: "Instead they replied: 'we found our ancestors following a certain way of life, and we follow their traditions' " [Q. 43:22]. And as in His word: "For they found their fathers astray, and they hasten to follow their footsteps." [Q. 37:69–70]. al-Ghazālī, *al-Mustaṣfā*, ed. al-Ashqar, 2:463, fn 1.

Therefore, we hold (*fa naqūlu*): The statement of a jurisconsult and a witness is binding by the epistemic authority (*hujja*) of consensus, which is to accept a statement based solely on evidentiary authority. In such cases, complying with evidentiary authority will not amount to conforming to authority (*taqlid*). Indeed, by *taqlid* we mean the ability to subscribe to a statement without seeking the appropriate epistemic authority. So whenever epistemic authority is absent and if one cannot by rational necessity or by way of an indicant (*dalil*) verify [a teaching], then compliance (*ittibā'*) in such a situation would amount to relying on ignorance.

Second Argument:

We ask: Do you all absolve from error the person to whose authority you conform or is he liable to commit error? If it is the case that he is liable to commit error, then you are yourselves skeptical about the soundness of your point of view (*madhhab*). If it is the case that he is absolved from error, then how did you come to know of this impossibility? [Did you come to know of this] on the basis of rational necessity (*darūra*), by inquiry (*naẓar*), or by conformity to authority (*taqlid*)? For surely there is no rational necessity or indicant (*dalil*) [to support such a claim]. If you follow him because he claims that 'his point of view is true,' then by what criterion do you measure his truthfulness in his self-authentication? And, if you follow him on the say-so of another authority, then by what standard do you assess the veracity of this other authority (*al-muqallad al-ākhar*)? If it is the case that you followed him based on your personal conviction [of his authority], then by what criteria do you distinguish between what you hold as a personal conviction and the personal conviction held by Christians and Jews? Or what standard do you use in order to distinguish between your own authority by means of which you claim, "I am truthful and right" and a [similar] claim made by your adversary?

With regard to the obligation to conform to authority, they will be asked: Do you have knowledge about the grounds of the obligation to conform to authority or not? If you do not have knowledge [about this issue], then why do you conform to authority? And if you do have knowledge about it, then was your knowledge based on grounds of rationally necessary truth, premised on investigation or based on blind conformity? Their answer to the question will [in all probability] be blind conformity, since they have no recourse to investigation or any indicant in support as evidence. As a consequence, their claim that conformity to authority is an obligation is purely arbitrary.

If someone objects: We know the soundness of the person to whose authority we conform (*muqallad*) because it is the viewpoint held by the majority, and therefore that person is more deserving of being followed.

We reply: Then on what grounds would you counter the claim of those who retort: 'Well, the truth is complex and obscure and only a minority of people can grasp it, while the majority are incapable of knowing it, since [to grasp it] requires many prerequisites, among them experience, time to conduct inquiry, talent, and freedom from distractions?'

What sheds further light on this line of argument is that the Prophet, upon whom be peace, adhered to the truth at the very beginning of his prophecy as

part of a significantly small group of people who were opposed to the claims made by the overwhelming majority of the people. God the Sublime said: *Were you to obey most of those on earth, they would divert you from the way of God* (Q. 6:116). Imagine! And, are the unbelievers in our time not the majority?

If you concede this point, then you will be compelled to suspend your judgment until you travel the whole world over in order to empirically survey all those adversaries who hold a view opposed to yours. If it turns out that the majority in favor is equal in number to the adversaries, then judgment will be suspended; and if the majority outnumbers their adversaries, the former will prevail. But how can this [last scenario] be realized when such a proposition [viz., the majority being favorable to the truth] was ruled out by an explicit verse of the Qur'ān? God the Sublime says: *But few are the thankful among my servants* (Q. 34:13); and He continues: *though most of them do not know* (Q. 7:131); *even if most of them hate the truth* (Q. 28:70).

If people responded to this claim by retorting: Well, the Prophet, upon whom be peace said: "*Stick to the great majority,*" then they should remember that he also said: "*Whoever is pleased to enjoy the prosperity of paradise should stick with the community.*" And he also said: "*Satan accompanies the solitary person, but he stays far away from a group of two.*"

We reply: Well, how do you prove these prophetic reports to be sound when they are not even ranked to be of the standard mode of recurrent transmission (*tawātur*)? If you accept these reports on the basis of blind conformism (*taqlid*), on what grounds will you then be able to adjudicate the claims made by an authority to whom you submit (*muqallad*) who suspects that these reports might be corrupted? But let's assume [for argument's sake] that these reports are sound. Clearly [in such a case] the one who sides with the views propounded by the great majority cannot be deemed to be merely blindly conforming to authority. Rather, [such a person demonstrates knowledge of] the statement of the Prophet and understands the obligation to abide by [his knowledge] of the teaching. In such an instance one is accepting a statement on the grounds of its authoritative proof, and not on the grounds of blind imitation (*taqlid*). In fact, as we had explained in the chapter dealing with consensus, the above-cited prophetic reports served very different purposes. These [reports urging one to follow the majority] were addressed to those who planned to rebel against the political leader or those who refused to comply with the decisions reached by consensus.

[Evidence of Proponents Mandating Blind Conformity]

[Proponents of this viewpoint] pose several specious arguments.

The first specious claim is to say that the one who investigates becomes entangled in many doubts since it is now legend that investigators have a propensity to deviate from the norm. Therefore, they reasoned, it is preferable to avoid risk and opt for caution.

We reply: The deviance of blind conformers is indubitably legend among the Jews and the Christians. By what measure are you going to distinguish between your notion of blind conformity and the blind conformity perpetrated by unbelievers, especially, when it is known that the [latter defended their position] by saying [according to the Qur'ān]: *We found our ancestors following a certain way*

of life (Q. 43:23)? We then ask: If learning is an obligation, then surely blind conformism would amount to nothing but ignorance and deviance. It is as if you ignored this [latter] truth and due to your caution to avoid doubt [you preferred blind conformism]. This move is comparable to a person who preemptively committed suicide at the mere apprehension of thirst and hunger because he morbidly feared he might choke [to death] if he ate a morsel of food or that he would gag if he drank liquids! Or, it is akin to a paranoid patient who abandons treatment altogether because he fears the remedy is wrong. Actually, it is like someone who is paranoid about poverty and as a result abandons his trade and agriculture [since he is terrorized by the prospect of a catastrophic thunderbolt and thus preemptively opts for poverty]⁷³ out of fear of becoming destitute [in the future].

The second specious objection they raise is to offer the statement of God the Sublime: *No one disputes the signs of God but those who are ungrateful* (Q. 40:4), suggesting that disputation (*jidāl*) was prohibited in discussions relating to destiny; and they also allege that investigation opens the door to disputation.

We reply: What is forbidden is disputation that advances falsehood (*bāṭil*). For as God the Sublime said: *And they strove to nullify the truth with falsehood* (Q. 40:5). [This is further supported] by an indicant from His speech: *And dispute with others in the most dignified manner* (Q. 16:125). And [it is reiterated in] His words: *They said: Noah, you have argued with us, and multiplied your argument against us* (Q. 11:32). *And do not contest with the people of scripture unless it is with what is better* (Q. 29:46).

What God forbade was to engage in disputes regarding predestination. [One explanation for the prohibition on disputes about predestination is that] God guided people to the truth by way of an explicit text (*naṣṣ*) and therefore He discouraged them from quarreling over the explicit text. [Another explanation] is that the prohibition was imposed at the beginning of Islam [for Muslims not to publicize their disputes], so that the opponents [of the Prophet] not overhear their disputes, which could invite taunts like: 'These folks are still shaky in their faith.' [Another explanation] is that the early Muslims were encouraged to participate in war (*jihād*), which takes priority over disputation.

Further, we will refute them with the words of the Sublime: *And do not occupy yourself with what you have no knowledge of* (Q. 17:36); *And your saying of God what you do not know* (Q. 7:33); *We only bore witness to what we knew* (Q. 12:81); *Say: Produce your proof' . . .* (Q. 2:111). All of these verses forbid blind conformity and command the acquisition of learning. For this reason God elevated the status of the learned. The Sublime said: *God will raise in ranks the believers among you, and those to whom knowledge has been given* (Q. 58:11). The Prophet, on whom be peace, said: "People of integrity will be the carriers of this learning in every successive generation. They will repudiate the distortion of the extremists, the interpretation of the ignorant and the forgery of purveyors of falsehood."⁷⁴ This goal is not attained by blind following, but by learning. Ibn Mas'ūd said: "Do

⁷³ This parenthesis occurs in the text of *al-Mustasfā* and is not mine.

⁷⁴ al-Hindī, *Kanz al-'ummāl*, 10:176, attributes this report to Ibn 'Asākir.

not be irresolute (*imma'a*). He was asked: What is *imma'a*? It is when a person says: "I am always with the [majority of] people. If they are misguided, then I am misguided too; and if they are guided, then I am guided too. Beware, do not put yourself into such a situation that you turn to unbelief when the [majority of] people turn to unbelief."⁷⁵

Question: Is a layperson obliged to solicit a learned opinion (*istiftā'*) and then follow the teachings of the learned scholars (*ittibā'*)?

A group from among the Qadaris claim: [laypersons] should either be compelled to make inquiries in order to find evidence or they must imitate an infallible leader.

This is void (*bātil*) on the basis of two arguments (*maslakān*):

The first argument draws on the consensus of the Companions. The Companions were accustomed to providing learned opinions to laypersons but they never expected the laity to reach a standard of competence so that they could personally and independently determine norms (*ijtihād*). That is a fact known by rational necessity, which is supported by the recurrent testimony of both the learned and laypersons among the Companions.

If a spokesman from the Imāmīs objects, saying: Well, it was obligatory on them [the laity at the time of the Companions] to follow the authority (*ittibā'*) of 'Alī, may God dignify his face, since he was infallible; [they say] the reason he ['Alī] did not reproach the Companions [for not following him] was because 'Alī concealed his true identity (*taqīyyat^{an}*) [as imām] and out of fear (*khawf^{an}*) that it might spark civil discord.

We reply: These are the words of an ignoramus who has lost all credibility because of his claims about 'Alī and others among the political leaders, regarding his right to govern till the end of his life. For [the ignoramus] continues to remain confused about his ['Alī's] matter. [If it is as you allege, then] why just not claim that everything he ['Alī] said was a violation of the truth out of fear and precautionary dissimulation!

The second argument (*maslak*): Consensus establishes that a layperson is morally responsible (*mukallaf*) to comply with the authority of moral assessments (*aḥkām*). Clearly, it is inconceivable that the level of competence this moral obligation demands of a layperson is to be qualified to independently determine norms (*ijtihād*). For if such a burden [were placed on laypersons,] it would result in the cessation of agriculture and human procreation, and render professions and technology useless—if it would not lead to the ruin of the planet—for everyone would become engrossed in the acquisition of learning [in order to qualify to engage in independent rule-finding]. For [under such dire circumstances] the learned would [in turn be forced] to earn their livelihood, with the result that learning would become obliterated. In fact, the net result would be that the

⁷⁵ *Imma'a* signifies a person who is irresolute in his views and his dealings with others. Variants of this word are recorded in *Lisān al-'Arab* on the authority of Ibn Mas'ūd without any reference to sources.

learned too would perish and the world be ruined. Since this result is so absurd, there is no other option but to direct inquiries to the learned (*ulamā'*).

If someone objects: You [might think] you have invalidated conformity to authority, but what you have just proposed is the essence of blind imitation.

We reply: Blind imitation is to accept an opinion without [knowing] its authoritative evidence (*hujja*). It is obligatory for laypersons to follow the rulings offered by a jurisconsult, which is a position supported by consensus. It is similar to the obligation of a judge to accept the testimony of witnesses [in a trial]. It is also obligatory for us to accept the solitary report (*khabar al-wāḥid*) when it is offered in good faith (*ẓann al-ṣidq*). The [epistemological status] of probability (*ẓann*) is known. [Know that] the mandatory nature of a norm/assessment (*ḥukm*) premised on probability (*ẓann*) is decided by a categorical revelatory indicant (*dalīl sam'ī qāṭi'*). Therefore, this ruling [viz., that laypersons should seek a learned opinion] is categorical; conforming to authority is sheer ignorance.

If someone objects: Well, you have totally eliminated conformity to authority in matters of religion, whereas al-Shāfi'ī, may God have mercy on him, said: "It is not permissible to blindly imitate any person except the Prophet, on whom be peace." Thus, al-Shāfi'ī clearly validated [the permissibility] of conformity to authority.

We reply: He [al-Shāfi'ī] explicitly nullified conformity to authority, with some exceptions. It is evident that he [al-Shāfi'ī] did not count the solicitation of a learned opinion (*istiftā'*), accepting [the authority of] a solitary report and consenting to the testimony of people of integrity (*udūl*) to be acts that amounted to conformism. Yes, of course, in an expanded sense or figurative sense (*tawassu^{em}*) one concedes that accepting the statement of the Messenger amounts to conformism, especially if one exempts the word from its generic sense. This figurative sense of [the term *taqlīd*] means that one accepts [the Prophet's] statement on the grounds of an authoritative proof, which had already indicated his truthfulness as a whole. Thus, no other authoritative proof would be required of him except that which related to the question [of his truthfulness]. This is analogous to an affirmation (*taṣḍīq*) without demanding a special authoritative proof. It is thus permissible to figuratively (*majāz^{em}*) call this blind conformity (*taqlīd*).

Question: [From whom should a layperson solicit opinions?]

A layperson should not solicit a learned opinion from anyone other than one whom he knows to possess learning (*ilm*) and integrity (*adāla*). If he has verified that someone is not learned, then under no circumstances should he solicit an opinion from such a person. But what if he asks someone whose knowledge [or ignorance] he is unable to assess? One group says: It is permissible [to ask such a learned person] and the layperson is no longer obliged to search further [for another learned person]. But this is an invalid position. The reason [for it being invalid is] that anyone who is obligated to accept the view of another person is therefore also obligated to know the status of his authority. For [the same reason] it is also obligatory on the ecumenical community-at-large (*umma*) to know the status of a Messenger by investigating his miracles. Thus, one does not affirm every unknown person who claims to be the Messenger of God. Similarly, a judge must know the [credibility] status of the witness in terms of integrity (*adāla*). A

jurisconsult must know the [credibility] status of an informant (*rāwī*) [in a prophetic report that he will employ in his argument]. And similarly, the multitude must know the [credibility] status of the ruler and the judge. As a general rule, [keep in mind the following:] How can one inquire of a person who is himself more ignorant than the questioner?

If someone objects: If the integrity of the jurisconsult is unknown, is one then compelled to continuously search [for one with the right credentials]? If you reply [in the affirmative] that it is mandatory to continue searching, then you have indeed violated the custom (*ʿāda*). For whoever enters a [new] place will certainly ask the learned person of that place, but surely he will not ask for any evidence to substantiate the integrity [of the learned one]. And if you agree not to query further when a jurisconsult lacks learning, then *a fortiori* you should do the same when he [viz., the one asked] is a person of learning.

We reply: Whoever is known to be a sinner is not asked [to issue a learned opinion]; but one whose integrity is known, such a person will be asked to give a learned opinion. As for the one whose status [in terms of integrity] is unknown, however, there are several possible answers. One could say: Do not rush. First, inquire about his integrity because one is not sure about his inclination to be dishonest and deceitful. It could also be said: The *prima facie* [credibility] status of a learned person is to assume that he is a person of integrity, especially if he is well known for issuing learned opinions.

However, it is not possible to assume and say: "The *prima facie* status of humankind (*al-khalq*) is that they are learned and competent to issue a learned opinion (*fatwā*)." Ignorance is more prevalent among humankind [as laypersons]. People in towns are generally assumed to have acquired the multitude's (*ʿawāmm*) [level of knowledge,] except for a few [learned] individuals. Nor is it reasonable to assume and say: "All master-jurists and learned scholars are sinful, except for a handful of individuals." Rather, it is correct to presume that all learned persons possess integrity, except for a few individuals.

If someone objects: If searching [for a jurisconsult] is mandatory in order to establish the integrity or status of his learning, then what standard is required for the strength of evidence: reports of recurrent testimony, or will the report of a single person of integrity or the testimony of two persons of integrity suffice?

We reply: It is absolutely necessary to have real knowledge by way of recurrent testimony because it is eminently possible to find knowledge of such quality. And it is plausible to say: Reaching the [epistemic] standard of dominant probability (*ghālib al-ẓann*) based on the testimony of one or two persons of integrity would be sufficient. In fact, claiming to rely on a view supported by consensus, one school of thought has gone so far as to permit a practice to be enforced based only on the information provided by a single person of integrity. The latter comes close to the position elaborated above, in some aspects.

Question: [How does the one who solicits an opinion choose when there are multiple jurisconsults?]

If a community has only one jurisconsult, then the layperson is obliged to consult him. If a group of juristic authorities are available, then the layperson is free to pick an authority of his choice. He is not obliged to select the most

learned one, which was also the case during the era of the Companions [of the Prophet Muḥammad], for even at that time the layperson directed [questions to] the most virtuous as well as the less virtuous persons. People (*al-khalq*) [at the time] were not prevented from asking persons other than Abū Bakr, ‘Umar and the rightly-guided caliphs.

One group claims: It is mandatory to consult the most virtuous jurisconsult. If they are all identical in virtue, then one can pick one from among them. This viewpoint, however, flies in the face of the consensus reached by the Companions. In their time the practice was that the presence of a virtuous figure did not hinder one’s ability to obtain a learned opinion from a less virtuous person. In fact, the only obligation was to consult someone who had a reputation for being knowledgeable and a person of integrity. All of the Companions were known to possess these qualifications.

Question: [What does the one who solicits a learned opinion do when the jurisconsults disagree?]

If two jurisconsults disagree about an assessment (*ḥukm*) and if they are of equal status, one should consult each of them for a second time and say to them: “Your rulings are contradictory and you are both equal in my eyes, so what will be binding on me?” If they both offer him a choice, then he is free to exercise his option. If they both agree to err on the side of caution, or if they reach a conclusion on a specific aspect of the question, he again has the option to choose. If, however, they both are intransigent in their disagreement, then the layperson has no option but to choose, since he has no justification for ignoring the assessment, since neither of the two jurisconsults is better than the other. Religious leaders are like stars: Whichever one you follow, you will thus be guided.

If the layperson believes that one of the two jurisconsults is more virtuous and more learned, then, in the view of Qāḍī [Abū Bakr al-Bāqillānī,] he has the option to choose, since even the less virtuous is considered to be among the persons who qualify to make a finding in law independently (*ahl al-ijtihād*), even if his is the only opinion. The same holds if there is more than one jurisconsult, for having an edge over the other in virtue does not have any consequence.

In my view, however, it is preferable that the layperson finds it compelling to follow (*ittibā’*) the more virtuous one. Thus, if someone believes that al-Shāfi‘ī, may God have mercy on him, is the most learned, and that his school of thought is more correct, then such a person has no right to resort to the viewpoint of al-Shāfi‘ī’s adversary on a whim (*al-tashahhī*).

[Followers of authority should pursue the easiest of viewpoints available in the law schools]

A layperson is not permitted to select the answers he likes from the various schools of thought (*madhāhib*) and indulge in such liberties (*yatawassa*). Rather, when a layperson weighs different viewpoints, then his move is analogous to that of a jurisconsult who weighs two conflicting proofs, and then follows his supposition (*ẓann*) at the time of making the evaluation. Something similar happens here—even though we have declared every master-jurist (*mujtahid*) to be infallible—for error is nevertheless still possible, especially when one might be inattentive to a definitive indicant, or might reach a verdict before exerting his

optimal intellectual effort. Error on the part of the one who is more learned, however, is quite improbable.

This certainty derives from our belief that God the Sublime has a secret in making His servants rely on their probable convictions (*ẓunūnihim*), so that they do not become negligent by following their desires and live as free roaming animals without being harnessed by the bridle of moral obligation. Thus, He guides them from one side [to be as free as animals] to the other side [of moral obligation] (*min jānibⁱⁿ ilā jānibⁱⁿ*), so that they can remember servitude (*fa yatadhakkarūn al-ʿubūdiyya*). And thus the effect of the rule of God among them, in every active and quiet moment, actually protects them from the one side [viz., animal-like freedom] and takes them to the other side [viz., moral responsibility]. So long as we are capable of regulating them with a standard, then that is preferable to giving them limitless choices and allowing them to roam around aimlessly like animals and children.

However, if we are incapable of making a decision when two jurisconsults of equal status are locked in conflict, or when two indicants contradict each other, this is so by necessity.

If possible, the proof could be expressed like this: “Every question in which God the Sublime did not decide on a specific assessment or, when the answer of every master-jurist is deemed infallible, under such circumstances it is not obligatory for a master-jurist to investigate [further]; rather, he is allowed to exercise a choice and act as he wishes.⁷⁶ In fact, any one side of the argument is allowed to become the dominant probable position of the master-jurist.” [Furthermore], the authority of an existing consensus makes it incumbent on the master-jurist, firstly, to acquire probable knowledge and then [secondly], to follow [the consequences] of probable knowledge. Similarly, probable knowledge attained by a layperson ought to be a basis for action.

Objection: The master-jurist is not allowed to yield to his supposition prior to acquiring the methodology by which he searches for indicants. And a layperson will at times reach a decision based on fancy and be deceived by superficial meanings, sometimes even preferring the inferior to the superior. If the layperson is allowed to make decisions without any insight, then he is only required to investigate the question at hand and decide in accordance with his supposition. But [we know that] complex standards are involved in order to know the levels of excellence, standards that are not within the ken of laypersons.

This is a factual question.

But we say: If a person medicates his seriously ill child according to his own opinion, and he himself is not a physician, surely he will be regarded as transgressing, and he will be regarded as derelict and liable. If, however, he consulted a physician [prior to medicating the child,] he would not be regarded as negligent. [Let us assume that] there are two physicians in a community but they disagree about the remedy. If [the parent] disagrees with the advice offered by

⁷⁶ According to what is known as the *infallibility position*, every opinion arrived at by a master-jurist is correct, whereas, according to the *fallibility position*, only one opinion is correct.

the superior physician, then the parent is still regarded as derelict. The better of two physicians is known through reports of recurring testimony and evidentiary indicants that rise to the level of preponderance of probability in so far as the less successful physician defers to the superior one. It is similar in the case of scholars [of law]. Reputation and other indicators identify the best scholar without it being necessary to probe the status of his knowledge. The layperson is capable of identifying who is the best [scholar]. Knowledge based on dominant probability cannot be trumped by whim (*al-tashahhī*). In our view this is the most accurate position and in the more universal sense of tying people to the twin bridles of God-consciousness (*taqwā*) and moral obligation (*taklīf*). And God knows best.