

A SCHEMA OF
ISLAMIC LEGAL METHODOLOGY (*UṢŪL AL-FIQH*)
IN EARLY ISLAM

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This article focuses on the structure of major treatises on Islamic legal methodology (*uṣūl al-fiqh*) from two view points: i) the development of concepts which constitutes *uṣūl al-fiqh*, and how new components are integrated into the legal methodology of Muslims; ii) methods of arranging the contents of *uṣūl al-fiqh* by Muslim scholars during the first three centuries of its appearance.

Islamic legal methodology developed out of consideration for the authority of the sources of the law, especially the Qur'an and the traditions of the Prophet over customary sources and practices. It is clear from the account originated from al-Shāfi'ī (d. 204/819), the best known exponent of Islamic proto-*uṣūl* teachings, that the main juridical concern of the time was to set rules for the legal authority of the Qur'an and particularly that of the Sunnah of the Prophet against the current practices of free reasoning and living traditions. The purpose of setting interpretative semantic rules was to harmonize the conflicting understandings of the texts and reports of these sources, and to bring about a formal consistency in application of the new law. Over time, Muslim jurists expanded the scope of *uṣūl al-fiqh* by incorporating numerous principles from other disciplines such as theology, logic, philosophy and Arabic grammar. This persuaded the authors to adopt various formats for setting the contents of legal methodology, and the inter-connection of its topics. This paper surveys methods of arranging the contents of *uṣūl al-fiqh* by Muslim scholars of the early period, and tries to determine the basis on which the various topics were structured.

Muslim scholars developed and modified the contents of *uṣūl al-fiqh* either by adopting new elements from other disciplines or by shifting the emphasis from one aspect of legal

methodology to another. The hierarchical considerations for the sources of the law can be held as the point of departure for a genre of proto-*uṣūl* writings at the turn of the third/ninth century if Shāfi'ī's detailed defense of the Sunnah is to be considered a legal theory of the authority of the sources of the Shari'ah. The emphasis on the hierarchy of sources, however, drastically shifts to semantics and practical interpretations by some Ḥanafī jurists of Baghdad during the fourth/tenth century beginning with Abū 'l-Ḥasan al-Karkhī (d. 340/951, see below). Before the above shift, the relationship of reason to revelation was included in *uṣūl al-fiqh* by some Mu'tazilite theologians such as Amr b. Baḥr al-Jāhiz (d. 255/869; see below). The next phase of major changes begins with incorporating epistemological parts of logic into legal methodology. This process started with Ibn Ḥazm (456/1064) of the Zāhirite school and expanded and bloomed with Ghazālī (d. 505/1111) who also gave a new format to his methodological approach. In the following pages, an attempt is made to set forth the presentation of legal methodology of early Islam according to the above phases of changes.

Parallel to the adoption of new notions, the arrangement of contents of *uṣūl al-fiqh* gradually changed. Muslim authors generally employed four basic formats to subsume the materials deemed essential in the methodology of acquiring legal knowledge. The first format centers on the categorization of the sources of law, i.e., the scripture, the traditions and then semi-independent legal reasoning based on the aforesaid sources. This kind of formatting originates from the way Shāfi'ī sketched a methodology for presenting a new theory of interpretation of the Sunnah versus the living traditions of time, although he had probably not planned the methodology later known as *uṣūl al-fiqh*.

The second format gives a horizontal scope to legal methodology and divides it into four parts of Islamic law: i) the legal norm, ii) the sources of law, iii) the method of perceiving the law, and iv) the practitioners of the law i.e., *mujtahids*. This format is based on al-Ghazālī's innovative proposal for the methodology which breaks away from all his previous formats.