Was there a Zaydī *uṣūl al-fiqh?* Searching for the Essence of Zaydī Legal Theory in the School's First Complete *Uṣūl* Work: al-Natiq bi-l-Haqq's (340-424/951-1033) *"al-Mujzī fī uṣūl al-fiqh"*

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Abstract: This paper examines a recently discovered and published text, *al-Mujzī fī uṣūl al-fiqh,* which the Zaydīs have commonly labeled as their school's first written work on *uṣūl al-fiqh*. Written by al-Nāṭiq bi-l-Haqq, who reportedly had close relationships with Mu'tazilī scholars, this book is important for tracing the essence of Zaydī legal theory and interrelation between the Zaydiyya and Mu'tazila in the field of *uṣūl al-fiqh*. I argue that this work represents and draws upon Mu'tazilī, as opposed to Zaydī, legal theory.

A certain part of this text was published earlier with attribution to Abū al-Husayn al-Baṣrī as a section of his work *Sharh al-'umad*. This attribution is also discussed within the paper. The paper consists of three main sections: a brief biography of al-Natiq bi-l-Haqq and a list of his works, the attribution of the text and an outline of the structure and method in *al-Mujzī*, and an attempt to determine the text's identity by examining the authoritative voices in it and its influence later Zaydī literature and by comparing certain cases to those existing in a Mu'tazilī *uṣūl* text *(al-Mu'tamad*) and a Zaydī *uṣūl* text (*Safwat al-ikhtiyār*).

Keywords: Zaydiyya, Usul, Fiqh, el-Mujzi, al-Natiq bi-al-haqq.

Öz: Bu çalışma yakın bir zamanda yazması keşfedilerek basılan Zeydī çevreler tarafından ilk uṣūl eseri olarak kabul edilen el-Muczī fi uṣüli'l-fıkh adlı eseri incelemektedir. Mutezile alimleriyle yakın bir mesai içinde olduğu bilinen en-Nātık bi'l-hakk tarafından yazılan, Zeydīyye'nin bu ilk uṣūl eseri, fıkıh uṣūlünde Zeydiyye ve Mutezile etkileşimini tespit etmek için oldukça önemlidir. Bu çalışmada Zeydiyyenin iddiasının aksine bu eserin Mutezilenin fıkıh usulü içerisinde sayılması gerektiğini iddia ediyorum.
Bu eserin bir bölümü Şerhu'l-umed olduğu iddiasıyla Mutezile alimlerinden Ebū Hüseyin el-Basri'ye atfedilerek daha önce basılmıştı. Bu makalede bu isabetsiz atıf da değerlendirilmektedir. Makale üç bölümden oluşmaktadır. Girişin ardından ilk bölümde en-Nātık bi'l-hakk'ın özlü bir biyografisi verilecek, ikinci bölümde ise eserin müellife nisbeti, içeriği ve takip ettiği metod özetlenecektir. Son bölümde ise eserin Zeydiyye ve Mutezile arasında kimliği konusu eserde yapılan atıflar dikkate alınarak ve daha sonraki dönemden Mutezile alimi Ebū Hüseyin el-Basrī'nin el-Mu'temed adlı eseri ve Zeydī alim Abdullah b. Hamza'nın Safvetu'l-ihtiyār adlı eseriyle mukayese edilerek ele alınacak, eserin ve müellifin sonraki dönemde Zeydī fıkıh uṣūlü eserlerine etkisi ile çalışma hitama erecektir.

Anahtar kelimeler: Zeydiyye, Usul, Fıkıh, el-Muczi, en-Natık bi'l-hakk.

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Introduction

The Zaydiyya school has unique characteristics that set it off from many other *madhhabs*' intellectual history in terms of its formational development, the identity of its leading scholars, and the interrelation between various scholarly interests and politics. Despite the failed anti-Umayyad revolt attempt of Zayd b. 'Alī (695-740), from whom the *madhhab* derives its name, the Zaydiyya *madhhab* still exists. But it is not clear what makes it a *madhhab* (Zysow, 2012), for that term refers to an established doctrine in *kalām* or *fiqh* in Islamic intellectual history. For instance, when one refers to a Ḥanafī work it is clear that a *fiqh madhhab* is meant, and when one mentions a Mu'tazīlī scholar it is clear that one means a scholar belonging to a *kalām madhhab*. However, things become blurry when one talks about the Zaydiyya, because its ambiguous characteristic encompasses *kalām*, *fiqh*, and politics. The only extant work of Zayd b. 'Alī is about *fiqh*, but his authority in the *madhhab* is based on his opinions on *imāma*. Zaydī Imām Yaḥyā b. Ḥamza (749/1349), for instance, argues that one needs to accept the opinions of Zayd b. 'Alī on *kalām* and *imāma* to be called a Zaydī (Hamza, 2010). The school's political dimension is underlined by some writers based on what Ibn al-Murtadā stated that Zaydiyya differs in meaning with its title from school titles such as Ḥanafiyya or Shāfi'iyya (Yücel, 2011).

When it comes to *uṣūl al-fiqh*, the identity between *kalām* and *fiqh* becomes even more problematic. One reason for this vagueness is the characteristic of *uṣūl al-fiqh* itself, for its literature was produced by both theologians (*mutakallimūn*) and jurists (*fuqahā'*), after which the two ways of writing in the genre of uṣūl *al-fiqh* are named. This makes it more difficult to identify an *uṣūl* scholar's association to a certain school who is considered belonging to a *kalām* and a *fiqh* school at the same time. For example, it needs further research to associate an *uṣūl* scholar who is known as both Mu'tazīlī and Ḥanafī to the *uṣūl* tradition of one of these schools. Another reason is the question of how to associate Zaydī *uṣūl* scholars to a certain school, for its scholars were in such close relationship with the Mu'tazila that some scholars associated Zaydīs with the Mu'tazila in *kalām*. Al-Shahristānī (548/1153), for instance, argues that Zaydīs were Mu'tazilī in *kalām* and Ḥanafī in *fiqh*. It seems that the Zaydiyya, in the mind of al-Shahristānī, does not have independent *fiqh* and *kalām* schools and what constitutes Zaydiyya is their doctrine on imāma (al-Shahristānī, 1968). Mu'tazilī scholars, on the other hand, contributed extensively to the *uṣūl al-fiqh* literature, especially in the early developmental phases of this particular genre. Hence, it raises the important question of whether Zaydīs developed an independent *uṣūl* tradition or just followed the Mu'tazīlī *uṣūl* scholars in their *uṣūl* works. This article seeks to address this question and investigates whether Zaydī scholars established an independent *uṣūl* tradition by analyzing al-Nātiq bi-al-Ḥaqq's (424/1033) *al-Mujzī fī uṣūl al-fiqh,* which is arguably the first extant complete *uṣūl* work by a Zaydī scholar.[1] The paper is broken into two parts: (1) tracing al-Nātiq bi-al-Ḥaqq's scholarly contribution through his biography and works and (2) providing in-depth analyses of the people and legal-theoretical topics existing in *al-Mujzī fī uṣūl al-fiqh* through comparisons to the Mu'tazila and Zaydiyya *uṣūl* traditions.

1 It can be fairly argued that both al-Qāsim b. Ibrāhīm al-Rassī (246/860) and Yaḥya b. al-Husayn al-Hādī ilā-al-Ḥaqq (298/911) made considerable contributions to the varios *uṣūl al-fiqh* topics; however, the earliest complete work devoted solely legal theoretical topics must have been al-Nāṭiq's *al-Mujzī*. Another work that some contemporary scholars have cited as the Zaydiyya school's earliest *u~ūl* work is that of al-Hādī's son Murtaḍā li-dīn-Allāh's (310/922) *Kitāb al-uṣūl*. However, the topics of this work falls in the realm of *kalām* rather than *uṣūl al-fiqh*.

I. The Life and Works of al-Nātiq bi-*al-Ḥaqq*

Abū Tālib Yahyā b. al-Husayn al-Hārūnī al-Nātiq bi-al-Ḥaqq was born in the city Āmul, near the Caspian Sea and within the borders of the present-day Iran. He is descendant of 'Alī through his father al-Husayn b. al-Hārūn, who reportedly followed the Imāmī rather than the Zaydī school. The bibliographical sources relate a few scholars as his teachers, among them al-Sayyid Abū al-'Abbāṣ al-Hasanī and Abū 'Abd Allāh al-Baṣrī. Al-Nātiq bi-al-Ḥaqq did not want to be a political leader and thus let his younger brother al-Muayyid (411/1020) be the imam of Daylam. Although he assumed this post after his brother's death, he tried to remain peaceful with surrounding rulers and continued his scholarly affairs until his death in 424.

Al-Nātiq contributed to *kalām*, *fiqh*, *uṣūl al-fiqh*, and other religious sciences and biography with his extensive writings. Among his *kalām* writings was his commentary on the famous Mu'tazīlī theologian Ibn Khallād's *Kitāb ziyādāt sharḥ al-uṣūl,* which has been recently published. (al-Nātiq , 2011) Another *kalām* work attributed to him is *al-Mabādi'*. He also wrote *al-Di'āma fī al-imāma* on the *imām*'s attributes. This book has been published.

He authored for *fiqh* books: *Kitāb al-taḥrīr,* which was published in 1998 and again in 2011 (al-Nāṭiq bi-al-Ḥaqq, 2011); its commentary *Sharḥ kitāb al-taḥrīr,* which has not been discovered; and *Kitāb al-tadhkira fī-al-fiqh* and *al-Nāẓir fī-al-fiqh*, both of which have been lost. In his only extant book on *fiqh*, *al-Tahrīr*, al-Nātiq bi-al-Haqq mostly draws upon the ideas of al-Hādī ilā-al-Haqq and sometimes on al-Qāsim b. Ibrāhīm.

In the field of biography and hadīth, he wrote *al-Ifāda fī tārīkh al-a'immat al-sāda* and *Kitāb al-amālī* (al-Nātiq, *Taysīr al-maṭālib fī amālī al-sayyid Abī Tālib*, 2002), both of which have been published.

Bibliographical sources attribute another *uṣūl al-fiqh* work to him besides *al-Mujzī*. Some sources mention its title as either *Jawāmi' al-adilla* or as *Jawāmi'u al-nuṣūṣ*. The editor of *al-Mujzī* says that he finally acquired the manuscript and has completed its *tahqīq*. However, this work is not yet in circulation.

II. The Characteristics of al-Mujzī as a Work in the Literature of *Uṣūl al-fiqh*

This section examines the work's content in the literature of *uṣūl al-fiqh*. First, I will discuss the problem of the attribution of the text to al-Nātiq bi-al-Ḥaqq. Then, I will try to uncover its association with the Mu'tazilī school in the following two sections by looking at the authoritative figures in the text and comparing the content of the text to the later Mu'tazīlī and Zaydī *uṣūl* works.

1. Attribution of the text: *Sharḥ al-'umad* or *al-Mujzī fī uṣūl al-fiqh*

'Abd al-Hamīd 'Alī Abū Zunayd edited and published *Sharḥ al-'umad* in 1989 (al-Baṣrī, 1989). He argued that the text is Abū al-Husayn al-Baṣrī's commentary on al-Qāḍī 'Abd al-Jabbār's well-known lost work *al-'Umad*. 'Alī Abū Zunayd reconstructed *Sharḥ al-'umad* by relying on a short section in the chapter of *al-Shar'iyyāt* within *al-Mughnī* by al-Qādī 'Abd al-Jabbār and an incomplete and untitled manuscript existing in the collection of Vatican's library with

the number 1100 covering three topics on *ijmā'*, *qiyās*, and *ijtihād*. Fuat Sezgin recorded this text in his GAS with three different titles: *al-Khilāf bayn al-Shayhkayn*, *al-Ikhtilāf fī uṣūl al-fiqh*, and *al-'Umad*. Zunayd takes this last title into account in his attribution of the text to Abū al-Husayn al-Baṣrī and Qāḍī 'Abd al-Jabbār as the first argument. Then, he notes that the text's author refers to al-Abū 'Alī al-Jubbā'ī' as *Shaykhunā* (our master) just like the author of the *al-Shar'iyyāt*, i.e. Qādī 'Abd al-Jabbār. And finally he notes that the author narrates, both favorably and frequently, the opinions of Abū Hāshim, Abū 'Abd Allāh al-Baṣrī and Abū al-Hasan al-Karkhī, just like Qādī 'Abd al-Jabbār does in the chapter of *Shar'iyyāt* in *al-Mughnī*. Zunayd also makes comparison among four distinct topics, two each from *al-Shar'iyyat* and *al-Mughnī,* to the topics mentioned in this text and concludes that these topics are in parallel with what al-Qād 'Abd al-Jabbār says in those two texts. Based on this above-mentioned evidence, he concludes that this text is a commentary on *al-'Umad* and the author is Abū al-Husayn al-Baṣrī, the famous disciple of al-Qādī 'Abd al-Jabbār (al-Baṣrī, 1989).

Yet these comparisons do not prove his point due, for the text's author might have argued for the same opinions, which is not uncommon among scholars who follow the same school or the same scholars. If Zunayd looked for any contradictions between these texts, he might have discovered that the author clearly contradicts al-Qāḍī 'Abd al-Jabbār in some topics. For instance, the latter scholar devotes a section in *al-Shar'īyyāt* to his argument that the commandment does not necessarily mean obligation, but can be just a recommendation (*nadb*) and needs further indication to understand this request for obligation (*wujūb*) (al-Qāḍī 'Abd al-Jabbār, 1965, pp. 108-115). In this opinion, he follows Abū 'Alī al-Jubbāī and his son Abū Ḥāshim. The author of our manuscript, however, distinguishes between the meaning of *amr* in linguistic and religious realms. He argues that in language *amr* does not necessarily mean obligatory request, but that in religion, if this *amr* comes from Allāh or his messenger, then it means obligation due to the consensus of the Companions, who took them as such. (al-Nāṭiq bi-al-Ḥaqq, 2013, pp. 95-112). Al-Qāḍī 'Abd al-Jabbār does not mention this in his account. Also, in the introduction of *al-Mu'tamad*, al-Baṣrī mentions certain topics existing in *al-'Umad*, such as the chapters of science (*aqsām al-'ulūm*) as well as the definition of necessary and acquisitive knowledge (ḥadd al-ẓarūrī wa-l-muktasab), which are not found in our text (Abū al-Ḥusayn al-Baṣrī, 1983, p. 3).

The editor of *al-Mujzī* relies on two manuscripts for his edition. One of them, the main manuscript, was recorded by a scribe during the lifetime of the author al-Nātiq bi-al-Ḥaqq in 417/1026. This manuscript has been found in Maktabat al-Ahqaf. The second manuscript, found in the Maktabat Imām Zayd b. 'Alī, was used as subordinate manuscript; its scribe, scribal date, and owner are unknown.

To sum up, the fact that the editor of *al-Mujzī* found a full text scribed during the author's lifetime and a proper comparison between the two texts reveal that the incomplete manuscript comprises certain chapters of *al-Mujzī* and that the author refers to Abū 'Alī al-Jubbā'ī as 'our master' simply because he was someone whom al-Nāṭiq bi-al-Ḥaqq used to call as one of the masters. However, we can regard this confusion as a concrete example with respect to the close relationship between Mu'tazīlī *uṣūl al-fiqh* and Zaydī uṣūl *al-fiqh*.

2. The importance of *al-Mujzī* and its Structure

Al-Mujzī is the first known complete Zaydī uṣūl work. Before al-Nātiq, Qāsim b. Ibrāhīm al-Rassī and al-Hādī ilā al-Ḥaqq wrote on certain *uṣūl* topics in their extant treatises,[2] and some of their lost works imply having uṣūl content with their titles. After al-Nātiq, various Zaydī scholars contributed to the field of *uṣūl al-fiqh*. Following list includes the major examples of this literature.

Aḥmad b. Sulaymān (566/1170) with ***Kitāb al-zāhir***,

'Abd Allāh b. Ḥamza (614/1217) with his ***Safwat al-ikhtiyār*** (Abd Allāh ibn Ḥamzah, 2002),

Yaḥyā b. al-Muḥsin (636/1238) with ***al-Muqni' fī uṣūl al-fiqh***,

Aḥmad b. Muḥammad al-Raṣāṣ (656/1258) with ***Jawharat al-uṣūl wa-tadhkirat al-fuḥūl*** (Raṣṣāṣ, 2009),

Yaḥyā b. Ḥamza (749/1348) with ***al-Ḥāwī al-Ḥaqā'iq al-adilla al-fiqhiyya***,

Ibn al-Murtaḍā (840/1436) with his ***Minhāj al-wuṣūl*** (Ibn al-Murtaḍā, n.d.),

Sārim al-dīn Ibrāhīm b. Muḥammad al-Wazīr (914/1508) with his ***al-Fuṣūl al-Lu'lu'iyya*** (Sārim al-Dīn al-Wazīr, 2001),

Muḥammad b. Yaḥyā Ibn Bahrān (957/1550) with his short work ***Kitāb al-Kāfil bi-nayl al-su'ūl fī 'ilm al-uṣūl*** (Ibn-Bahrān, 2015), and

Aḥmad b. Muḥammad Luqmān (1039/1629) with his ***al-Kāshif li-zawī al-'uqūl*** (Luqmān, 2004) contributed to the literature of uṣūl *al-fiqh* in Zaydī school.

After indicating the significance of *al-Mujzī* in the history of Zaydī *uṣūl al-fiqh*, we can turn our attention to its structure. The book begins with the topic of commands and, after discussing some linguistic debates, continues with the abrogating and abrogated texts. It analysis of the validity and classification of reports is followed by a study on the value of prophetic actions. The last three chapters examine *ijmā'*, *qiyās*, and *ijtihād*. The text includes following topics:

> *The disagreement on commands* (*al-Khilāf fī al-awāmīr*) vol. 1, pp. 95-169.
>
> *The disagreement on general and specific text and what is attached to them* (*al-Khilāf fī al-'umūm wa-al-khuṣūs*) vol. 1, pp. 170-308.
>
> *The disagreement on the vague and lucid texts and on explicit declaration* (*al-Khilāf fī al-mujmal wa-al-mubayyan wa-al-bayān*) vol. 1, pp. 309-376.
>
> *The disagreement on abrogating and abrogated texts* (*al-Khilāf fī al-nāsikh wa-al-mansūkh*) vol. 1, pp. 377- 432 - vol. 2 pp. 5-81.
>
> *The disagreement on reports* (*al-Khilāf fī al-akhbār*) vol. 2, pp. 82-350.
>
> *The disagreement on actions* (*al-Khilāf fī al-af'āl*) vol. 2, pp. 351-404.
>
> *The disagreement on* consensus (*al-Khilāf fī al-ijmā')* vol. 2, pp. 405-440 - vol. 3, pp. 5-205.
>
> *The disagreement on analogy and juristic reasoning* (*al-Khilāf fī al-qiyās wa-al-ijtihād*) vol. 3, pp. 5-206-431 - vol. 4, pp. 5-363.

2 See the treatises *Kitāb al-qiyās* and *Kitāb al-sunna* in Hādī ilā al-Ḥaqq (2001) and al-Rassī (2001).

Al-Nātiq bi-al-Ḥaqq's method differs from that of the main *uṣūl al-fiqh* works. His writing style can be described better with the *khilāf* or *ikhtilāf* literature in the field of *furū' fiqh* (substantive law). As the chapter titles indicate, he reflects upon varoius *uṣūl* topics by drawing upon the disagreements among different schools. He picks a topic and mentions the differing opinions mainly between the jurists (to Ḥanafīs and Shāfi'īs) and theologians (Mu'tazila). Al-Nātiq bi-al-Ḥaqq also mentions different opinions of scholars between these two groups. After presenting various arguments of each opinion, he champions that of the theologians, or a particular opinion of a scholar belonging to Mu'tazila. He then proceeds to support the arguments of the opinion he follows by responding to the critiques of those who adhere to the opposite opinion.

III. Al-Mujzī: A Mu'tazīlī or a Zaydī Text

1. The Authoritative Scholars from whom al-Nāṭiq bi-al-Ḥaqq Favorably Transmits Legal-Theoretical Opinions

It is very difficult to identify an *uṣūl* text with its affiliated school. I mentioned above some of the difficulties in such scholarly endeavor in relation to an *uṣūl* author's multiple school affiliations and the two genres of *uṣūl* writing. Another difficulty is the fact that in *uṣūl al-fiqh* literature, the titles, content, and writing style imply a claim for an extra-*madhhab* character in *uṣūl al-fiqh*. Authors seem to claim that the ideas articulated in their works are not just for one school, but rather for all schools. However, it was only after the formation of schools that number of the works in this literature significantly increased. Thus there must be a relationship between school formation and *uṣūl al-fiqh* production, which is something yet to be studied in the present scholarship.

Two arguments, in fact, support the claim on extra-*madhhab* character in *uṣūl al-fiqh* production; (1) the titles of *uṣūl* works do not imply a school affiliation, which is a common thing that can be seen in the literature of *furū' fiqh* and (2) certain topics are commonly discussed in this literature and scholars belonging to different schools supported certain same positions in their writings. For instance, certain Baghdādī Mu'tazilīs, Shi'īs, and ¯āhirīs reject the authority of *qiyās*; and the authority of *ijmā'* is accepted by many scholars belonging to different schools with same or similar arguments. The fact that this literature evolved around certain issues results naturally in certain few camps of scholars that include many different school affiliations. It is not uncommon for a ¯āhirī scholar to defend an *uṣūlī* position with a Mu'tazilī argument, or a Shi'ī scholar argue for the same position held by a Hanafī scholar. Therefore, it is quite hard to accurately attribute a school affiliation only by looking at certain topics and arguments. It does not mean though that a school does not have certain characteristic thoughts in uṣūl topics. For instance, if *'amalu ahl al-Madīna* is favored in a text, there is a higher possibility for its author to be a Mālikī. Correspondingly, if the concept of *'umūm al-balwā* is mentioned in an *uṣūl* text, it is very likely to belong to the Hanafī school. For most other schools, certain agreements on some *uṣūl* topics can be deductively identified and be used these characteristic agreements in a comparative analysis in determining the school affiliation of a certain text.

However, a more conclusive way to decide a school affiliation of an *uṣūl* text, I argue, is to trace the favorably transmitted authoritative figures in the text. Since the science of *uṣūl al-fiqh* developed over the theoretical debates that had already existed for a fairly long time, even the earliest works in this literature include references and quotations from earlier authorities and comments on their thoughts in either supporting or refuting manner.

I argue that the safest way to determine an *uṣūl* text's school affiliation is to look at those supported earlier authorities whose thoughts are favorably and frequently transmitted in the text. This scholarly network also provides the author's identity and the school he follows in his *uṣūl al-fiqh* writing. For example, al-Jaṣṣāṣ (370/981) and Abū al-Husayn al-Baṣrī (436/1044), who are both reportedly Mu'tazilīs and Hanafīs, authored works on *uṣūl al-fiqh* entitled as *al-Fuṣūl fī-al-uṣūl* and *al-Mu'tamad,* respectively. I argue that the most important factor to identify these texts with correct school affiliations is to look at the authoritative scholars from whom the authors favorably and frequently transmit ideas. In his work, al-Jaṣṣāṣ *favorably* quotes frequently from Abū Hanīfa (150/767), Abū Yūsuf (182/798), Muḥammad b. al-Hasan (189/805), 'Isā b. Abān (221/836), Abū Sa'īd al-Barda'ī (317/930), and Abū al-Hasan al-Karkhī (340/952), all of whom were known with their scholarly works in Hanafism. He calls them members of the established school that he follows as (madhhab *aṣḥābi ā*) or "our masters" (*shuyūkhunā*). In his *al-Mu'tamad*, Abū al-Husayn al-Baṣrī, however, frequently narrates the opinions of Abū 'Alī al-Jubbā'ī (303/916), his son Abū Hāshim al-Jubbā'ī (321/933), Abū 'Abd Allāh al-Baṣrī, and Qādī 'Abd al-Jabbār by calling them "our masters" or "our master theologians" (*shuyūkhunā* al-*mutakallimūn*). He also clearly differentiates the opinions of Hanafīs from those of his masters. All of these demonstrate that al-Jaṣṣāṣ was writing according to the established Hanafī *uṣūl* school, whereas Abū al-Husayn al-Baṣri was writing according to Mu'tazilī *uṣūl* school.

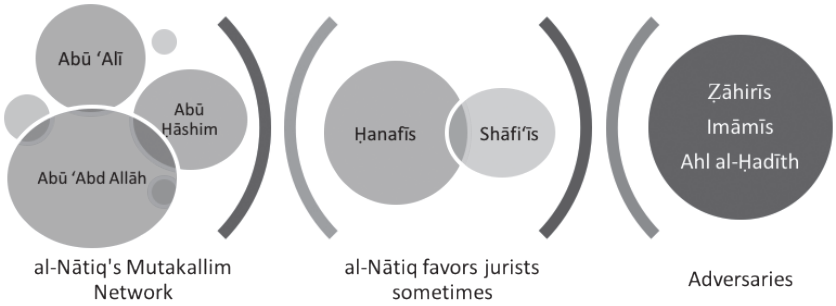
Therefore, in order to correctly investigate the essence of *al-Mujzī* for its Zaydī or Mu'tazilī character, the more accurate way is to trace the authoritative voices mentioned in it. First, let's look at whether al-Nātiq bi-al-Ḥaqq favorably transmits the opinions of earlier Zaydī authorities. Contemporary Zaydī scholars trace their school's *uṣūl al-fiqh* literature back to such early figures as al-Qāsim b. Ibrāhim al-Rassī (246/861) and al-Hādī ilā-l-Ḥaqq (298/910). In his *al-Ifāda*, al-Nāṭiq bi-al-Ḥaqq both relates these scholars' biographies and points out those of their writings related to *uṣūl al-fiqh* topics. For instance, he attributes *Kitāb al-nāsikh wa-l-mansūkh* to al-Qāsim al-Rassī and *Kitāb al-qiyās* to al-Hādī ilā-l-Ḥaqq (al-Nāṭiq bi-al-Ḥaqq, 2001). Some of the published treatises of these two scholars contain relevant discussions in this regard. In particular, al-Hādī's *Kitāb al-sunna* and *Kitāb al-qiyās* overlap some of the topics studied in *al-Mujzī*. However, these texts contain no transmission information.

Although al-Nātiq bi-al-Ḥaqq relates the opinions of al-Qāsim and even more frequently from al-Hādī on substantive legal topics in his *al-Taḥrīr* (al-Nāṭiq bi-al-Ḥaqq, *al-Taḥrīr*, pp. 19, 249, 328, 381), we see no single quotation from one of these scholars in *al-Mujzī*. Instead, we see an overwhelming Mu'tazīlī influence, for he mostly relates and follows the opinions of Abū 'Abd Allāh al-Baṣrī al- Husayn b. 'Alī (369/979), Abū Hāshim al-Jubbā'ī (321/933), Abū 'Alī al-Jubbā'ī (303/916), and Abū al-Hasan al-Karkhī (340/952).

Al-Nātiq bi-al-Ḥaqq frequently transmits the opinions of his teacher Abū 'Abd Allāh al-Baṣrī, whom he calls "our master" (*shaykhunā*). This scholar was born toward the end of the third

hijrī century and studied *kalām* under Abū Hāshim al-Jubbā'ī and his student Ibn Khallād, and *fiqh* under Abū Hasan al-Karkhī. Bibliographical sources attribute two books on *uṣūl al-fiqh* to Abū 'Abd Allāh al-Baṣrī, *al-Uṣūl* and *Naqḍ al-futyā,* which were written at Sayf al-Dawla's request; however, they have not been discovered yet. He reportedly argued in these works that each *mujtahid*'s *ijtihād* is correct (al-Qāḍī 'Abd al-Jabbār, 1974, p. 326). According to his biography, Abū 'Abd Allāh al-Baṣrī was well-versed in *fiqh* and *kalām*, but made more contributions to the latter. Some sources describe him as a Mu'tazilī theologian in terms of *kalām* and a Hanafī jurist in terms of *fiqh* (al-Saymarī, 1985, p. 170; al-Khaṭīb al-Baghdādī, 2002, p. 626). However, Zaydī sources claim that he was such a great proponent of *tafdīl,* namely, 'Alī's superiority of over other caliphs, to the extent that he wrote *al-Tafḍīl* (Abd Allāh ibn Ḥamzah, 2002). The transmissions from Abū 'Abd Allāh al-Baṣrī appear in almost all general topics analyzed in *al-Mujzī*.

Al-Nātiq bi-al-Ḥaqq also transmits legal theoretical opinions from Abū Hāshim al-Jubbā'ī (321/933) and his father Abū 'Alī al-Jubbā'ī (303/916). These two influential scholars belong to the Baṣran Mu'tazilī school, and their opinions are quoted extensively in later Mu'tazilī literature. The other important authority in *al-Mujzī* is the well-known jurist Abū al-Hasan al-Karkhī, author of the famous *al-Uṣūl*, a text of legal maxims, and the master of Abū 'Abd Allāh al-Baṣrī. Al-Nātiq bi-al-Ḥaqq relates his opinions through the transmission of Abū 'Abd Allāh al-Baṣrī.



Shape 1: Illustration of al-Nātiq bi-al-Ḥaqq's scholarly network in a*l-Mujzī*

As this shape illustrates, in his *al-Mujzi* al-Nātiq bi-al-Ḥaqq mostly draws upon the *uṣūl al-fiqh* of earlier Mu'tazilī authorities. He frequently and favorably quoted the thoughts of his direct master Abū 'Abd Allāh, and then those of Abū Hāshim al-Jubbā'ī, Abū 'Alī al-Jubbā'ī, and Abū al-Hasan al-Karkhī. One might ask why, if Abū 'Abd Allāh and Abū al-Hasan al-Karkhī are also known as Hanafīs, we should consider them as Mu'tazilī *uṣūl* scholars instead of Hanafī *uṣūl* scholars? The answer is because al-Nātiq bi-al-Ḥaqq lists them under *mutakallimūn* and his *shuyūkh* (masters) and clearly describes Hanafīs as distinct group with their own *uṣūl* opinions that differ from those held by the *mutakallimūn*. The second group of people in the shape is the jurists (*al-fuqahā'*), as al-Nātiq bi-al-Ḥaqq calls them. Even though he mostly prefers the *mutakallimūn*'s opinions, sometimes, especially when they have multiple opinions, he prefers those of the *fuqahā'*. In such cases, he mostly opts for those of the Hanafīs over those of the Shāfi'īs. It should be also noted that *al-Mujzī*

represents one of early *uṣūl al-fiqh* works that quotes al-Shāfıʿī and his *al-Risāla* (al-Nāṭiq bi-al-Ḥaqq, 2013, pp. II, 140, 155, 224) among the very few titles mentioned in the text. Even though al-Nātiq bi-al-Ḥaqq points out some of the opinions held by Imāmī, ¯āhirī and Ahl al-Ḥadīth scholars, he considers himself their adversary.

As for the earlier works from which he quotes, I have identified five titles from four scholars:

ʿĪsā b. Abān's *Kitāb al-Hujja* on the topic of the Successors' consensus on the validity of a solitary report for *ʿamal*.

MuHammad b. Idrīs al-Shāfiʿī's *al-Risāla.* When he quotes al-Shafiʿī's opinions, he mentions his treatise a few times, for instance, when writing on the authority of a solitary report and the validity of transmitting a narration based on written text.

Abū Hāshim al-Jubbāʾī's *al-Baghdādiyyāt,* when he analyzes the value of *qiyās* vis-à-vis *al-naṣ* according to that particular scholar.

Abū ʿAlī al-Jubbāʾī's *al-Ijtihād* and *Jawāb mas'alat Muḥammad b. Zayd al-Wāsiṭī,* when he discusses whether the prophets can forbid or command anything on their own authority and whether every *ijtihād* is correct according to this particular scholar and every once in a while for some other topics.

2. The Comparison of Topics in *al-Mujzī* to the Other *Uṣūl* Works

As indicated earlier, the safer way to determine *al-Mujzī*'s affiliation with a particular *uṣūl al-fiqh* genre is to trace the authoritatively transmitted voices presented in the text. The preceding section proved that al-Nātiq bi-al-Ḥaqq based his work on the Muʿtazīlī *uṣūl* tradition that existed at his time. However, it might be better to show why this way is safer than mere comparisons of the topics written in the two schools. Therefore, this section compares a few examples taken from a cross-reading of two exemplary Muʿtazila and Zaydiyya *uṣūl* writings: Abū al-Husayn al-Baṣrī's *al-Muʿtamad* and ʿAbd Allāh b. Hamza's *Safwat al-ikhtiyār*.

The authority of solitary reports in specifying a general text

Al-Nātiq bi-al-Ḥaqq lists different opinions on the topic and claims that the majority of jurists and theologians, including those whom he refers to as *our master theologians* (*mashāʾikhunā al-mutakallimūn*), accepted the authority of solitary reports in specifying a general text. Agreeing with his masters, he argues that the overall arguments for the authority of solitary reports also establish their authority in specifying general texts. Therefore, if one accepts its authority, one also has to accept its authority of specifying general text (al-Nātiq bi-al-Ḥaqq, 2013).

According to Abū al-Husayn al-Baṣrī, a solitary report has enough authority to specify the general text, because its fundamental aspect leads to probability and reason accepts that probability holds enough weight in matters of favors and harms (Abū al-Ḥusayn al-Baṣrī, 1983).

ʿAbdullah b. Ḥamza (614/1217) lists various opinions about the topic and clearly distinguishes *their* stance from those of the Ḥanafīs and Shāfiʿīs, Abū al-Husayn al-Baṣrī, and al-Shaykh Abū ʿAbd Allāh al-Baṣrī. By following the opinion of his master al-Raṣṣāṣ (584/1188),

he argues that it depends on whether the general text is certain, i.e. leading to *'ilm*, or not. If it is certain, a solitary report cannot specify the generality of the Qur'anic text because certain knowledge cannot be left out vis-à-vis probable knowledge. If the general text is also probable, then a solitary report can specify it (Abd Allāh ibn Ḥamzah, 2002).

On this topic, al-Nātiq bi-al-Ḥaqq's opinion clearly stands along that of Abū al-Husayn al-Baṣrī and his master theologians. However, the following example will show that when looking at the agreed-upon matters it is, in fact, misleading to make an argument for the scientific tradition that he follows.

The Silent *Ijmā'*

Some scholars define "silent *ijmā'*" as the absence of any narrated disagreement over someone's opinion, usually that of a Companion. Al-Nātiq bi-al-Ḥaqq discusses its validity and relates three opinions; (1) silent *ijmā'* is the same *ijmā'*, (2) it is not *ijmā'* but is regarded as an authoritative source (*ḥujja*) – he attributes these two opinions to the jurists – and (3) that it is neither *ijmā'* nor *ḥujja.* Both he and the theologians accept this final opinion. This is one of the exceptional cases in which he does not attribute the legal theoretical opinions to specific scholars (al-Nāṭiq bi-al-Ḥaqq, 2013). In fact, he relates no opinions from earlier authorities on this discussion at all.

'Abd Allāh b. Hamza clarifies the defenders of these opinions: Abū 'Alī al-Jubbā'ī and most jurists adhere to the first opinion if the Age of Consensus (*inqirād al-'aṣr*) has passed. Abū Hāshim and Abū al-Hasan al-Karkhī argue for the second one, and Abū 'Abdullah al-Baṣrī and ¯āhirīs defend the third opinion, which rejects silent *ijmā'* at all levels. 'Abd Allāh b. Hamza also states that he and his master prefer the last opinion (Abd Allāh ibn Ḥamzah, 2002).

Abū al-Husayn al-Baṣrī provides more details about these various opinions on the topic and argues that silent *ijmā'* establishes *ijmā'* because remaining silent indicates approval (Abū al-Ḥusayn al-Baṣrī, 1983). He then goes into the deep discussions on how to decide their silence for approval.

In this topic, 'Abd Allāh b. Hamza follows the line of al-Raṣṣāṣ al-Nātiq bi-al-Ḥaqq Abū'Abd Allāh al-Baṣrī, whereas Abū al-Husayn al-Baṣrī gives his own opposing arguments. Here, it appears that al-Nātiq bi-al-Ḥaqq stands in the authoritative network of 'Abd Allāh b. Hamza; however, taking into account the preceding example and other topics in the book, it is misleading to argue that this is the case for all or for even most of the book's topics. This demonstrates that picking up certain topics and random comparisons is misleading when one is trying to determine a certain scholar's adherence to one of the uṣūl traditions. Instead, tracing the network of authority that he lays out in his work, if it is available, would be a relatively safer approach, at least in terms of exploring the author's own account. It seems that 'Abd Allāh b. Hamza actually preserved al-Nātiq bi-al-Ḥaqq's approach in assuming the existence of two main *uṣūl al-fiqh* camps, namely, the theologians and jurists, and in situating himself alongside his "master theologians" (*shuyūkhunā al-mutakallimūn*), i.e. the Mu'tazila vis-à-vis the jurists, such as the Aṣḥābu Abī Hanīfa, Mālik, or al-Shāfi'ī (Abd Allāh ibn Ḥamzah, 2002).

3. The Influence of al-Nātiq bi-al-Ḥaqq on Later Zaydiyya *Uṣūl al-Fiqh* Literature

The Zaydīs' various *uṣūl al-fiqh* writings share certain elements. Probably one of the most obvious and glaring of these is their writing style, which transmits earlier disagreements among scholars. The authors do not deal with the topic theoretically, as one sees in most *uṣūl al-fiqh* works; rather, they list the different thoughts that have evolved around the topics they deal with under specific titles. They then proceed to defend one of them, which is the *mutakallimūn*'s usual approach, by laying out the arguments of both sides. If nothing else, it seems that al-Nātiq bi-al-Ḥaqq's *al-Mujzī* constituted an example of this style in his school's *uṣūl al-fiqh* literature. This style is also apparent in the school's essential works, such as *Ṣafwat al-ikhtiyār, al-Fuṣūl al-lu'lu'iyya,* and *Minhāj al-wuṣūl*.

The present scholarship on *uṣūl al-fiqh* tends to ignore any exploration of the agreed upon elements of a particular *uṣūl* tradition that are also unique to that tradition. Even though certain general statements do point out certain elements available for some *uṣūl* traditions, such as those of the Hanafīs, Shāfi'īs, and Mu'tazila, a comprehensive study focusing on this important problem does not yet exist. What we have is only some claims about certain *uṣūl* traditions that have not been crosschecked with sufficient evidence. One of these claims has been made by Muhammad Yahya, the editor of *al-Fuṣūl al-lu'lu'iyya*, about the distinct agreed-upon elements of Zaydī *uṣūl al-fiqh*. He argues, in the book's introduction, that those scholars who can be called "Zaydī" have to agree with the following *uṣūl al-fiqh* principles:

• Taking into account the role of reason in rulings, especially in matters related to good and evil (*tahsīn-taqbīh*)

• Accepting what is authentically narrated from 'Ali b. Abī Tālib and relying mostly upon his opinions.

• Accepting the Ahl al-Bayt's consensus when it exists.

• Comparing the Hadīth narrations to the content of the Quran to evaluate its authenticity.

• Prioritizing the Ahl al-Bayt's narrations over any others.

I think that it is clear to the reader that these principles cannot be regarded as distinct and agreed upon by all Zaydī scholars. Rather, it just reiterates the fact that more research should be done on the distinct and agreed-upon principles of the various *uṣūl* traditions (Sārim al-Dīn al-Wazīr, 2001).

After pointing out this need, we can turn our attention once again to the influence of *al-Mujzī* and its author al-Nātiq bi-al-Ḥaqq on later Zaydī *uṣūl* literature. Even though contemporary Zaydīs frequently mention *al-Mujzī fī uṣūl al-fiqh* when they talk about their school's *uṣūl al-fiqh* literature, it seems that this title appears only rarely in the school's classical *uṣūl al-fiqh* literature. For instance, Ibn al-Murtadā quotes from *al-Mujzī* a few times (Ibn al-Murtaḍā, n.d., p. 72). However, contrary to how many times the book's title is mentioned, the opinions of al-Nātiq bi-al-Ḥaqq as al-Sayyid Abū Tālib are frequently quoted in this same body of classical literature.

Here I would like to mention just to mention a few of them. In his *Ṣafwat al-ikhtiyār*, 'Abdullah b. Ḥamza quotes al-Nātiq bi-al-Ḥaqq together with Abū 'Abd Allāh al-Baṣrī on

whether a commandment requires obligation in religious texts. He relates from al-Nātiq bi-al-Ḥaqq, without mentioning Abū 'Abd Allāh al-Baṣrī, on whether a general commandment that does not have a specific time restriction requires immediate action, and when exactly one should take action if there is a time restriction. In one instance, he quotes al-Nātiq bi-al-Ḥaqq and his masters (*shuyūkhunā*) but favors the jurists' opinion (Abd Allāh ibn Ḥamzah, 2002).

In his *Minhāj al-wuṣūl,* Ibn al-Murtadā refers to al-Nātiq bi-al-Ḥaqq as one of the *madhhab*'s scholars, together with Abū al-Husayn al-Baṣrī and al-Qādī 'Abd al-Jabbār as regards the commandment's meaning after it has been abrogated. He also quotes him on such topics as specifying a general text (*takhṣīṣ*) with the Prophet's action as well as specifying a report's (*hadīth*) generality with its transmitter' (*rāwī*) opinion. Al-Nātiq bi-al-Ḥaqq is quoted in more than twenty topics (Ibn al-Murtaḍā, n.d.). In his *al-Fuṣūl al-uṣūliyya*, §ārim al-Dīn quotes his opinions several times when discussing linguistics, reports, analogy (*qiyās*) and *istihsān* (Sārim al-Dīn al-Wazīr, 2001).

Based on these quotations, we can conclude that Zaydī scholars cited al-Nātiq bi-al-Ḥaqq's opinions in their *uṣūl al-fiqh* literature. Even though they rarely mentioned the book title, *al-Mujzī*, these opinions were quoted mostly from that book and perhaps from his *Jawāmi' al-adilla* as well.

Conclusion

In conclusion, this article argued that the following steps should be pursued in order to explore the identity of a certain scholar with respect to *uṣūl* traditions in the *uṣūl al-fiqh* literature. First and foremost, the network of scholarly authority followed by the author in the text should be explored. Second, if available, the author's direct attribution of authority to some of these scholars, such as his teachers (e.g., *shuyūkhunā*, *mashā'ikhunā*, *shaykhunā*, *a'immatunā*, *imāmunā*, *aṣhābunā*, and *ṣāhibunā*), and distinct or adversary authorities should be analyzed. Third, the author's supportive opinions should be compared to the distinctly agreed-upon opinions of the particular tradition, the name of which is stated clearly after the two previous steps.

Based on this method, this article argued that *al-Mujzī fī uṣūl al-fiqh* is a scholarly Zaydī work based upon Mu'tazilī legal theory. The fact that al-Nātiq bi-al-Ḥaqq draws upon the ideas of earlier Zaydī authorities in *furū' al-fiqh*, but not in uṣūl *al-fiqh*, shows that one can safely argue that he was not, at least within the limits of *al-Mujzī*, claiming to present an independent Zaydī legal theory. According to him, the period that preceded his own time had two main camps, both of which contributed to the *uṣūl al-fiqh* debates: the theologians (*mutakallimūn*), by which he meant the Mu'tazila, and the jurists (*fuqahā'*), by which he meant the Hanafī and Shāfi'ī scholars. Even though there were other groups, such as the ¯āhirīs, Imāmīs, and Ahl al-Hadīth, he tend to disregard their opinions. When he does mention them, he does so only to explain why their opinions should be ignored. In addition, al-Nātiq bi-al-Ḥaqq carefully distinguished between independent *uṣūl* traditions and/or independent scholars within the two camps.

The extensive influence of Mu'tazili approaches on the Zaydiyya's *uṣūl al-fiqh* topics is also apparent in the school's late *uṣūl* works. However, this does not necessarily mean that an

independent Zaydī legal theory never existed and that it was all based on Mu'tazilī legal theory. The limits of Mu'tazilī legal theory's influence on Zaydī *uṣūl* can be identified by studying the distinct features in the two schools' *uṣūl al-fiqh* books in fututeurther future research. Also, the content of al-Nātiq bi-al-Ḥaqq's other *uṣūl al-fiqh* work, *Jawami'u al-adilla*, should be compared with that of *al-Mujzī* in order to prove the thesis of this paper.

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