Article by **Wael B. Hallaq**

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ĠAZĀLĪ, ABŪ ḤĀMED MOḤAMMAD, V

ĠAZĀLĪ

v. AS A FAQĪH

Ġazālī's legal education is said to have began at a young age. As a youth, he had already begun to study Shafiʿite law under Shaikh Aḥmad b. Moḥammad Rādkānī, a prominent jurist of his home city, Ṭūs. He later traveled to Jorjān, where he continued his studies under Imam Abū Naṣr Esmāʿīlī, which resulted in writing his first *taʿlīqa*, in effect a graduate thesis. It must have dealt with the Shafiʿite positive law, for we know that the *taʿlīqa* that he later wrote under Emām-al-Ḥaramayn Abu'l-Maʿālī Jovaynī, is in the field of legal theory (*oṣūl al-feqh*), a work that came to be known under the title *al-Manḵūl men taʿlīqāt al-oṣūl*.

Ġazālī completed his studies in Jorjān and returned to his home town, but he again left Ṭūs for Nīšāpūr to study with Abu'l-Maʿālī Jovaynī, who was then considered the most distinguished Shafiʿite jurist and Ashʿarite theologian. He received from Jovaynī license (see EJĀZA) in a variety of disciplines at a relatively young age. They included positive law (*forūʿ*), legal disagreement (*ḵelāf*), juridical disputation (*jadal*), legal theory, theology, and logic, all of which were essential for a thorough and comprehensive legal education (Sobkī, IV, p. 103).

In 484/1091, when Ġazālī was thirty-four years of age, he was appointed by Neẓām-al-Molk as professor of the Neẓāmīya college in Baghdad, where, besides teaching, he issued *fatwā*s and wrote a number of legal treatises. This prestigious appointment represented due acknowledgement of his stature as one of the leading scholars of his day.

Four years later, Ġazālī left Baghdad for Jerusalem via Damascus, stayed there for a while, and then went back to Damascus, where he resumed his activities as a professor and *moftī* for about ten years. Little is reported about his legal activities during the period between his departure from Damascus and his final return to Ṭūs. We know, however, that he stayed in several places, including Egypt, Baghdad, and Nīšāpūr, and in each place he made contact with a number of local legal scholars. In Ṭūs, he lived in relative seclusion and taught law and mysticism in a college adjacent to his house (Sobkī, IV, p. 105).

Ġazālī authored four works on positive law: *al-BasītÂ*, *al-Wasīṭ*, *al-Wajīz*, and *al-Ḵolāṣa*, the first of which is the most comprehensive and based on Jovaynī's *Nehāyat al-maṭlab.Al-Wasīṭ al-moḥīt be-aqṭār al-basīṭ* was, as the title indicates, a condensation of *al-Basīṭ*, later abridged as *al-Wajīz*. In the 13th century, Muḥyi-al-Dīn Nawawī (d. 676/1277), could still consider *al-Wasīṭ* and *al-Wajīz* two of the five most recognized works in the Shafiʿite school. ʿAbd-al-Karīm Rāfeʿī (d. 623/1226), another Shafiʿite author, wrote a commentary on *al-Wājīz*, entitled *Fatḥ al-ʿazīz*, which was abridged by Nawawī in a work called *al-Rawża*. The heavy indebtedness of the Shafiʿite positive law to Ġazālī is mainly due to these two works of Nawawī and Rāfeʿī .

Shafiʿite law in the 12th and 13th centuries depended heavily upon the contributions made during the immediately preceding period. The two most influential jurists who shaped legal developments during the 11th century were Abū Esḥāq Šīrāzī (d. 476/1083) and Ġazālī. Both Rāfeʿī and Nawawī largely drew on the positive legal works of these two authors. With the final formation of the legal schools after the middle of the 10th century, positive law was multifarious, each legal case having two, three, or as many as six or even seven different solutions. One of the major goals of the legal school was to reduce this variety into one authoritative opinion, this being the ultimate juristic *desideratum*. A jurist's achievement in the field of positive law was measured by his ability to determine which opinion was authoritative and which one was not. It is here that Ġazālī excelled and ensured that his juristic legacy would persist. In *al-Basīṭ*, as in his two other works that were based on it, Ġazālī was able to determine the strength of each and any of the opinions

that had been formulated with respect to a particular case. His ability to make such determinations certainly established him as an accomplished jurist, for engaging successfully in such an activity meant that the jurist possessed first-rate competence in legal reasoning, the tool of the *mojtahed*. In this sense, Ḡazālī is one of the chief jurists involved in constructing the authoritative positive doctrine (*maḏhab*) of the Shafiʿite school.

As part of his activity as a jurist, Ḡazālī was also heavily involved in the study of legal disagreement, a discipline essential to the task of determining the school's authoritative opinions. In the field of disagreement, he wrote *Bedāyat al-hedāya wa'l-maʾāḵeḏ fi'l-ḵelāfīyāt*, and also *Mofaṣṣal al-ḵelāf fī oṣūl al-qīās*. In addition, he wrote a number of other works dealing with a variety of legal issues, including *Bayān al-qawlayn le'l-Šāfeʿī* (highly relevant to the determination of the school's authoritative doctrine), *Ḡāyat al-ḡawr fī derāyat al-dawr*, and a retraction of the latter, *Ḡawr al-dawr f'l-masʾala al-sorayjīya*, a work of law that depended to a large extent on the logical analysis of infinite regress and *petito principii*.

Aside from his *Fatāwā*, Ḡazālī wrote at least three other works, *al-Mostaṣfā*, *al-Manḵūl* and *Šefāʾ al-ḡalīl fī bayān al-šabah wa'l-moḵīl wa-masālek al-taʿlīl*, all works of legal theory. Here, as in positive law, Ḡazālī made a lasting contribution, albeit more in form than in substance. He was the first jurist in Sunni Islam to integrate logic into legal theory. At the outset of his *al-Mostaṣfā* he provides a manual on logic, it being the shortest in a trilogy of expositions of this topic that includes *Meḥakk al-naẓar* and *Meʿyār al-ʿelm*. Although he makes the study of this introductory treatise entirely voluntary, he asserts most unequivocally that ignorance of logic in effect amounts to ignorance of all sciences. However, when he moves on to the strictly legal portion of *al-Mostaṣfā*, there is, surprisingly, little sign of any formal logical analysis, such that his treatment stands perfectly within the conventions of classical *oṣūl al-feqh*. What Ḡazālī obviously intended in this treatise was not to revolutionize legal analysis but rather to insist on the necessity of logic as the only meaningful tool by which all inferences can be tightly moulded according to a rational design.

Apart from a number of brief notes on legal theory, Ḡazālī's *Meʿyār* consists largely of illustrations of the three figures of the categorical syllogism, together with their moods, and featuring examples drawn not only from philosophy and theology but also from law. This is also done in the case of conjunctive and disjunctive syllogisms, *reductio ad absurdum* and induction. It is quite obvious

that with these examples Ġazālī was merely trying to bring closer to the minds of jurists an understanding of the logical structure of these inferences. There is no attempt at analyzing legal cases through the medium of these arguments. Nor is there any effort at identifying, in terms of standard logic, the distinctive structure of legal logic. The sole exception to this rule, however, is that of analogy, which Ġazālī, following the Aristotelian tradition, insists must be converted to a first figure syllogism in order for it to be logically valid (*Meʿyār al-ʿelm*, p. 165).

Ġazālī regarded legal logic as that part of the field in which legal arguments are subjected to formalization, rather than as a systematic explication of a particular series of arguments (Hallaq, pp. 336 ff.). While discarding most Greek philosophical formulations, he tenaciously clung to formal Aristotelian logic and made it the methodological foundation of all enquiries. His conception of formal logic as an indispensable instrument for all areas of knowledge is evidenced in the fact that the examples that he provides in his logical works extend over a wide range of religious sciences. In these same works, specific legal cases given as examples are often no more than illustrations of how a demonstrative argument must be constructed and validated. For after all, Ġazālī tells us, "reasoning about legal matters does not differ from reasoning about rational sciences except in that which concerns the premises" (1961, p. 60). Although for Ġazālī the forms of legal and rational arguments are identical, one looks in vain in his works for an analysis of specifically legal arguments from the standpoint of logic. A noteworthy exception, however, is found in his otherwise traditional legal work *Sefāʾ al-ġalīl*, where in one chapter (pp. 435-55) he analyzes, mostly in terms of syllogistics, three major legal arguments commonly subsumed under juridical *qīās*, namely, causal demonstration (*qīās al-ʿella*), indicative, non-causal demonstration (*qīās al-dalāla*), and *reductio ad absurdum* (*qīās al-ʿaks*).

Ġazālī's conception of the relationship between logic and law as expressed in *al–Mostaṣfā* seems to have put the final stamp on the attitudes of a number of his successors toward the role of logic in law. These successors, however, exercised a great deal of caution in introducing into their *oṣūl* works the principles of logical theory as expounded by Ġazālī. While following his example closely, they have, with remarkable discretion, chosen the most relevant parts of the theory and imported them into their jurisprudence. But the fact remains that Ġazālī's pioneering endeavor left an indelible mark on the jurisprudential thought of many of his successors. Just as he conceived

logic as the organon of any inferential procedure, prefaced his *al-Mostaṣfā* with a manual on formal logic, and insisted upon the conversion of analogy into a first figure syllogism, we find many of these successors to have employed logic to ground their theories in what is fundamentally an Aristotelian conception of knowledge (Hallaq, pp. 318 ff.).

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