

“LIKE THE DIFFERENCE BETWEEN HEAVEN AND
EARTH.” ḤANAFĪ AND SHĀFI‘Ī DISCUSSIONS
OF *FARD* AND *WĀJIB* IN THEOLOGY AND UṢŪL¹

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Our own approaches to the study of Islam are defined too much by the rubrics of the Islamic sciences. Students of *kalām* are more likely to know Christian theology than students of *fiqh*, who are more likely, as this gathering at Alta demonstrated, to know Western law. This implicitly comparative approach is valuable; it gives traction sometimes in the slippery texts of these very foreign sciences. The implicit comparison—*kalām* is theology, *fiqh* is law—also deceives, however. For while the Islamic sciences do each have their own history, Meron among others has shown² that as the Islamic sciences develop more and more each is harmonized with the other so that gradually Islamic scholarship becomes a holistic enterprise with *kalām*, *fiqh*, *naḥw*, *tafsīr*, and all the other disciplines tightly integrated. The importance of this holism for the study of a particular science, I hope to show in this paper.

I wish to make one other small point. Due to a series of political, linguistic, and geographic accidents, the study of Islamic law, and *uṣūl al-fiqh* in particular, has been dominated by attention to Shāfi‘ī and Ḥanbalī perspectives, with some attention also to the Mālikī. Yet it is the Ḥanafī school that was geographically the most wide-spread and arguably was, for much of Islamic history, the most

¹ “According to the *Baṣā’ir* the *fard* is like the *ijāb* but the *ijāb* expresses [that something should] occur and the *fard* expresses [that something has] a definitive assessment. The *Lisān* says they are equivalent for al-Shāfi‘ī. I say that for Abū Ḥanīfah the difference between *wājib* and *fard* is like the difference between heaven and earth”. Muḥammad ibn Muḥammad Murtaḍā al-Zabīdī, *Tāj*, 5:66. Aron Zysow located the following in Kasānī, Abū Bakr b. Mas‘ūd (587/1191), *Badā’i‘ al-Ṣanā’i‘ fī tartīb al-sharā’i‘* (Beirut: Dār al-Kitāb al-‘Arabī, 1402/1982), 1:271 Yūsuf b. Khālīd al-Simṭī told Abū Ḥanīfah that he was a *kāfir* for saying *witr* (a supererogatory night prayer) was *wājib*, thinking he meant it was the same as *fard*. Abū Ḥanīfah said, “You can’t scare me with your *ifkār*, since I know that the difference between *fard* and *wājib* is like the difference between heaven and earth (*al-farq bayn al-wājib wa-l-fard ka-farq mā bayn al-samā’ wa-l-ard*). I’m grateful to him for finding this earlier citation.

² Ya‘akov Meron, “The Development of Legal thought in Hanafi Texts”.

politically puissant. Much of what is taken for granted in *uṣūl* studies is modified or altered when we take the Ḥanafīs into account.

One instance of difference is in the question of the “five categories” of human action—obligatory (*wājib*), recommended (*nadb*), permitted (*mubāh*), reprehensible (*makrūh*) and proscribed (*mahzūr*)—that are the staples of *uṣūl al-fiqh* discussions, including my own.³ Though there are certainly Ḥanafīs who use this terminology, it is by no means dogma for them. Al-Anṣārī uses seven categories to classify human action, or, he says, there may be only four categories.⁴ Another says there may be six or twelve-fold division.⁵ Any attempt to describe Islamic *uṣūl al-fiqh* must take the Ḥanafī perspective into account. When one does do justice to it, our understanding of *uṣūl* is, as I shall hope to show, considerably changed.

It is one of these categories of act-assessments, acts which *must* be done, that is the focus of this paper. The differences between the Ḥanafī school and the other Sunnī schools are shown to be located ultimately in a domain other than the legal. This section may call into question the alleged distinction between the “theological” approach of the Shāfi‘īs and Mu‘tazilīs, on the one hand, and the “legal” approach of the Ḥanafīs.⁶ The next section locates the Ḥanafī discussion in its domain of origin. A final section demonstrates that the Ḥanafī position is very likely the archaic Islamic legal position, a point of view once held by important members of all four Sunnī schools.

I. Introduction

It is fairly well known that, among the shibboleths that distinguish the Ḥanafī from the Shāfi‘ī school, is the Ḥanafī distinction between

³ A. Kevin Reinhart, “Islamic Law as Islamic Ethics,” 195–6; Mohammad Hashim Kamali, *Islamic Jurisprudence*, 324–35; Bernard G. Weiss, *The Search for God’s Law; Islamic Jurisprudence in the writings of Sayf al-Dīn al-Āmidī*, 92–111, especially 99–100; Hasan Hanafi, *Les Méthodes d’Exégèse*, 756–73; Joseph Schacht, *An Introduction to Islamic law*, 121; Wael B. Hallaq, *History of Islamic Legal Theories*, 40; O[ctave] Pesle, *Fondements du droit*, 21–3; Abdur Rahim, *Principles of Muhammadan Jurisprudence*, 196–8.

⁴ Nizām al-Dīn Muḥammad al-Anṣārī, *Sharḥ Musallam al-thubūt*, 1:58.

⁵ Sa‘d al-Dīn Mas‘ūd b. ‘Umar al-Taftāzānī, *al-Talwīḥ*, p.18; al-Anṣārī, the commentator on the *Musallam al-thubūt* (al-Anṣārī, *Sharḥ Musallam al-thubūt*, 7:158) says the categories of assessment (*ahkām*) are seven. See also the 25 categories in Abū Bakr b. Muḥammad b. al-Ṭayyib al-Bāqillānī, *Taqrīb*, 1:271.

⁶ For a clear exposition of the well-known and often invoked distinction, see Abū Ishāq Ibrāhīm al-Širāzī, *Lumā‘*, 12–15 (translation).

acts characterized as *fard*, and acts characterized as *wājib*—a distinction that the Shāfi'īs in particular are loath to accept. Simply put, the Ḥanafīs suggest that acts that must be done, under pain of the severest opprobrium for failure, are to be sorted into two categories: *fard*, for acts whose status as “required” is absolutely certain, and *wājib* for those acts whose status is tainted, even if ever so slightly, by uncertainty.⁷ The Shāfi'īs are greatly exercised by the very idea, and on balance spend more time attacking the idea than the Ḥanafīs do propounding it.

II. Definitions

A. The Ḥanafī Distinction between the Two

Ḥanafīs define *fard* and *wājib* variously, and the distinctions to be drawn between the two concepts differ significantly, but a classical statement would be this:

The obligations (*farā'id*)⁸ in *shar'*, are stipulated (*muqaddarah*) and do not admit of increase or decrease, that is, they are definitive (*maqtū'ah*), established by an indicant about which there is no lack-of-clarity (*shub-hah*), e.g. faith, the worship ritual, the welfare tax, the *ḥajj* . . .⁹ [The *wājib*] in *shar'* is a name for what is incumbent (*lazīma*) upon us by an indicant about which there is some lack-of-clarity, such as . . . *ṭahārah* when circumambulating the Ka'bah, and voluntary alms-giving.¹⁰

This text clearly establishes the distinction between the two terms used to assess human acts. They do not differ in their imperative status—you *must* do it!—but according to their epistemological status—you must do it, and it is utterly certain; you must do it and it is quite certain. What purpose could such a distinction serve?

⁷ I should note that not all Ḥanafīs observe the distinction between *fard* and *wājib*—Ibn Humām, and his commentator (Ibn Bādshāh) seem not to have used it. (Muḥammad Amīn al-Husaynī al-Khurasānī al-Bukhārī al-Ḥanafī Amīr Bādshāh, *Tayāsīr al-Taḥrīr*, 2:184ff.). This is perhaps explained by the fact that Ibn Humām lived in Shāfi'ī Alexandria.

⁸ There is the possibility of confusion here. Though the ordinary plural of *fard* is *furūd*, generally the Ḥanafī texts use *farā'id*, which would be the plural of *farīdah*, one meaning of which is “a statutory religious duty”. This elision is significant, I believe. Abū l-Baqā', *Kullīyāt*, 3:338–344. See also Edward William Lane, *Lexicon*, 6:2373–2375, especially 2375a, s.v. *farīdah*. Finally, consult Muḥammad 'Alī b. 'Alī al-Taḥānawī, *Kāshshāf*, 2:1125–1127.

⁹ Abū l-Husayn 'Alī b. Muḥammad Fakhr al-Islām al-Bazdawī, *Kanz al-uṣūl*, 2:300.

¹⁰ Bazdawī, *Kanz al-uṣūl*, 2:301. Though elsewhere it is specifically the alms-giving at the end of Ramaḍān that is intended.

Consider another, lengthier definition from an equally classical source:

Fard is a word for a thing stipulated by Revelation (*li-muqaddar sharʿ^{an}*) which does not admit of increase or decrease (*lā yaḥtamil^m al-ziyādah, wa ʿl-nuqṣān*). It is definitive (*maqṭūʿ*) because it is established by an indicant that compels definitive knowledge—from the Book or plurally-transmitted *sunnah*, or Consensus. . . . It is called “written” (*maktūbah*) also because it is written [as an obligation] for us in the Preserved Tablet.

A clarification of this category [is found in consideration of] faith in God the most high, worship (*al-ṣalāh*), the welfare tax, fasting and pilgrimage. Mental affirmation (*al-taṣḍīq bi ʿl-qalb*) and declaration with the tongue (*al-iqrār bi ʿl-lisān*), subsequent to knowledge [of God], is a definitively established duty (*fard^{um} maqṭūʿ^{um} bihi*). . . .

Yet the acts of bondsmanship that are the stipulated pillars of religion (*arkān al-dīn*) are definitive in their stipulation and delimitation. . . .

Wājib is [what] must be fulfilled (*al-adāʾ*) according to the *sharʿ* (*sharʿ^{an}*) or not done. . . . That which devolves upon a person to do by its being linked to him [though its] indicant, does not compel knowledge in an absolute manner—this is called *wājib*. . . . *Fard* and *wājib* both are required but the *fardī* effect is greater. . . .¹¹

This rather more elaborate definition gives more data to work with. *Fard* items are more strongly required, though both sorts of acts are in fact requisite. The *fard* is connected with the Book, *tawātur* and Consensus and the examples of what he calls “the irreducibles of religion”. It appears that for al-Sarakhsī (though not for all Ḥanafīs), the negative duty, that one must not do something, as well as that one must do something, can be expressed as *wājib* (but not *fard*). Finally, al-Sarkashī gives us the notion of “not being increased and decreased,” and that it is *kufī* to dispute it. This last point is emphasized by al-Nasafī, who, in his *Manār*, adds that *fard* is that for which one calls the defaulter a *kāfir*, and *wājib* is that for which the defaulter is [merely] punished.¹²

Kuffār, are, of course, punished too, but in their case the offense—defaulting on the worship ritual, for example—is much more seri-

¹¹ Abū Bakr Muḥammad b. Aḥmad al-Sarakhsī, *Uṣūl*, 1:110–11.

¹² Apud the commentary by Ibn Mālik and Ibn al-ʿAynī, ʿAbd al-Laṭīf b. ʿAbd al-ʿAzīz b. Firishteh ʿIzz al-Dīn Ibn Malīk, *Sharḥ ʿAbd al-Laṭīf ʿalā l-Manār*, 195.

ous. It is *kufr*. In contrast, one who, for example, defaults on charity-giving as compensation for fast-breaking is punished only for that act of neglect.¹³ Failing to perform a *fard* makes one *kāfir*, and one is thereby punished for *kufr*. Failing to perform a *wājib* leads to punishment only for that act of neglect. The first failure changes one's status, the other is just a transgression.

B. *The Shāfi'ī Approach to the Two Terms*

The *wājib*, and incumbency in general, is extensively discussed in the Shāfi'ī sources.¹⁴ In contrast to the Ḥanafī definition, al-Zarkashī, in the late scholastic jargon of his time, says: "The *wājib* is the very act of the one-made-responsible, and obligation (*ṭjāb*) is the demand that arises in the self (*al-ṭalab al-qā'im bi 'l-nafs*)".¹⁵ He adds that, "Ancients said: [*Wājib* is] what one is punished for not doing," and quotes Ibn Daqīq al-Īd as saying, "It is the linking of punishment to the neglect of an act." The problem with the definitions is, however, that God might pardon one for neglecting an act—in other words, forgo punishment—but it is still *wājib*. Abū Ishāq is quoted as saying, "the legists defined [*wājib*] as that for which one deserves blame for not doing it,"¹⁶ thus placing the emphasis on desert rather than punishment. Qāḍī Ḥusayn is said to have defined "the *wājib* as that for the neglect of which he fears punishment". "The moderns," he adds, define it as 'that for which the defaulter is blamed by the *shar'* (*shar'^{an}*) in some respect (*bi-wajhⁱⁿ mā*)'.¹⁷

This controversy over the definition of *wājib* is not germane and is not a point of disagreement with the Ḥanafīs.¹⁸ Whichever of these definitions one accepts, it is clear that *wājib* is applied to an act in light of the actors' knowledge that for neglecting it there are severe and certain consequences. Degrees of uncertainty on an epistemological scale figure nowhere in the definition.

¹³ *Sharh 'Abd al-Latif*. 195.

¹⁴ The most extensive seems to be Fakhr al-Dīn al-Razī, *Maḥṣūl*, 1/1:119ff.; 1/2:265–352.

¹⁵ Badr al-Dīn Muḥammad b. Bahādur b. 'Abdallāh al-Zarkashī, *al-Baḥr*, 1:76. Al-Zarkashī asserts that defaulting on a *wājib*, in *shari'ah* and indeed in the intellect, is worse (*a'zam*) than doing the *ḥarām*. *Baḥr* 1:273:17.

¹⁶ *Baḥr*, 1:77.

¹⁷ *Baḥr*, 1:77.

¹⁸ It is partially discussed in A. Kevin Reinhart, *Before Revelation*, 72, and in the two translations found in the same source of al-Jaṣṣāṣ para. 2 and of al-Ghazālī, para. 3.

The term “*farḍ*” appears in this context only when faulting the Ḥanafīs for their use of the term; Shāfi‘īs never dispute the obligation to perform the acts so characterized. For the Shāfi‘ī, *farḍ* and *wājib* are mere synonyms—no more technically significant than the other synonyms such as enjoined (*maḥtūm*) or stipulated (*maktūb*).¹⁹

A scholar trying to make sense of this dispute must note that this dispute seems at first to be trivial, a mere quibbling over terms: for most legists—Ḥanafī or Shāfi‘ī—the terms *farḍ* and *wājib* are nearly synonymous—a fact that the *usūlīs* noted. If anything, *farḍ* is a sort of generic term for religious obligations while *wājib* is the technical term that characterizes acts in the normative five-fold scheme for assessing acts—*wājib*, *mandūb*, *mubāḥ*, *makrūh*, and *maḥzūr*. Yet on this canonical list of act-assessment terminology, it may be suggestive that *wājib* is the only non-*maf‘ūl* term on this list; this anomaly might possibly suggest a heterogeneous origin for even this set of technical terms, that in later usage seems so standard as to be set in stone.

To an extent, both sides seem to see the point of the other’s position. The staunch Ash‘arī-Shāfi‘ī, al-Ghazālī says:

Then perhaps a group may restrict the name “*wājib*” to what they believe, suppositionally (*zann^{am}*), will lead to punishment. What they believe definitively [will lead to punishment for defaulting on it] they delimit by the use of the term *farḍ*. So there is no dispute about the words after acknowledgement of the underlying concepts (*ma‘ānī*).²⁰

Al-Ghazālī acknowledges that the Ḥanafīs do not deny that a *farḍ* act must be done. He dismisses the difference as simply a superfluous distinction without any difference in substance.²¹

The Ḥanafīs have their irenic moments as well, and agree that both the *farḍ* act and the *wājib* act are incumbent upon the actor, as we saw in al-Sarakhsī’s definition above. “It is no more than a problem of nomenclature,” says al-Anṣārī.²² Moreover, some also agree that the term *farḍ* can be applied loosely to matters that do not arise from an absolute indicant, thereby making it a mere synonym of *wājib*. Mullā Khusrū says,

¹⁹ e.g., *Bahr*, 1:181.

²⁰ Ghazālī, *Mustasfā*, 27–8.

²¹ Fakhr al-Dīn al-Rāzī calls it “a flimsy difference (*farq da‘īf*). Less irenically, he calls it “sheer arbitrariness” (*tahakkuman maḥḍan*). Rāzī, *Maḥṣūl*, 1/1:121. This phrase shows up elsewhere, e.g., Abū l-Thana’ Maḥmūd ibn ‘Abd al-Raḥmān b. Aḥmad Shams al-Dīn al-Asfahānī, *Bayān al-mukhtaṣar*, 338.

²² Anṣārī, *Sharḥ Musallam al-thubūt*, 1:58; see also above 2.

Fard can be applied to what has not been established by a definitive indicant, rather, to what, by its absence, negates the permissible (*alā mā yafūt al-jawāz²³ bi-fūtili*); it is called a *fard* in practice (*‘amaliy²⁴*). [Such things would include] the *witr* worship for Abū Ḥanīfah [since its justification is only “probable” and Ḥanafīs adjudge it to be *wājib* and not *fard*.] Thus, [failure to perform the *witr*] prevents the validity of dawn worship, just as recollecting [failure to perform] the evening worship [which is a *fard*, would negate the dawn worship].²³ [Similarly, one may, in practice, describe as *fard*] rubbing one quarter of the head in ablutions. Since these [so-called *fards*] are not established by definitive indicants, one who denies them is not a *kāfir*, rather, [he is adjudged to be] sinner (*yafsiq*) and deviant, since he belittles [only evidence derived from] unitary *ḥadīths*. [Yet] to reject unitary *ḥadīths* or *qiyās* is a blameworthy innovation . . .²⁴

This cryptic reference is to Abū Ḥanīfah’s assertion that you must precede appropriate worship with the one you recall you have neglected. Though *witr* is grounded in unitary *ḥadīths* (*khobar al-wāḥid*), Abū Ḥanīfah said that when performing dawn worship, recollection that you have neglected the *witr* prayer requires making it up first, else one’s dawn worship is invalidated. Thus, *witr* worship may be called, loosely, a *fard*, even though it is a *wājib*.²⁵ Likewise one must rub one quarter of the head in ablutions, though this obligation is established by a *khobar wāḥid* as well. Yet it is a *rukṅ*, an indispensable element of a *fard* duty.²⁶ It might appear that for the more generous-minded of the Ḥanafīs, the distinction between *fard* and *wājib* is ellipsed, in the name of harmony. Yet though this distinction may be papered over, there remains a fundamental difference here between the Ḥanafīs and the Shāfi’īs and one that gave rise to substantial dispute. The Ḥanafīs and the Shāfi’īs are at cross purposes: the

²³ *ḥattā yamna‘ tadhakkurahu ṣiḥhati al-fajr ka-tadhakkuri al-‘ashā’i wa-ka ‘l-miqdār al-rub‘i fi l-mashī*. See Ibn Ibn Humām, *Sharḥ Faṭḥ al-Qadīr*. Sa’dī Chelebī’s remarks on 1:426: One must make up the *witr* prayer, (*wajab al-qaḍā‘ bi ‘l-ijmā‘*), though the sources for it are *sunnah*, which is a characteristic of a *fard*—which is the position taken by Zufar. See Dāmād Efendi, *Majma‘ al-anhur*, 1:128. For the marginal status of the *witr* prayer, in a source that preserves assertions both that Abū Ḥanīfah regarded it as *fard* and as *wājib* see Shams al-Dīn al-Sarakhṣī, *Kitāb al-Mabsūt*, 1:155; see same passage on the need to separate the *witr* from the *fajr* worship. See also Abu l-Faḍl ‘Abdallāh b. Maḥmūd al-Mawṣilī, *al-Ikhtiyār*, 1:82–4, especially 84. Aron Zysow helped me tease the meaning from this obscure passage.

²⁴ Sulaymān b. ‘Abd Allāh al-Izmīrī, *Mir‘āt*, 2:391.

²⁵ One source calls it “*fard* in practice, *wājib* in belief, and *sunnah* in the mode of its establishment. Dāmād Efendi, *Majma‘ al-anhur*, 1:128.

²⁶ Anṣārī, *Sharḥ Musallam al-thubūt*, 1:58.

Shāfi'īs want a taxonomy of human acts, the Ḥanafīs want categories of membership in the Islamic community.

III. Polemics

A. The Shāfi'iyah Attack

It is a curious fact that one is more likely to encounter a discussion of the *fard*/*wājib* distinction in a Shāfi'ī text than in a Ḥanafī *uṣūl* text. It is clear that something bothers the Shāfi'iyah—that they sense here a fundamentally subversive, or at least alien, quality to the Ḥanafī *uṣūl*. The Shāfi'īs attack on two fronts. The first is purely linguistic: that *fard* and *wājib* mean pretty much the same thing, in *shar'ī* usage.

As al-Āmidī points out, *wājib* can be applied to something that falls or goes down (*al-suqūt*)—thus *wajabat al-shams*, *wajaba al-ḥā'it*, and the like. By extension it means establishing the existence of (*al-thubūt*) and settling upon (*al-istiqrār*).²⁷ He goes on to offer the various definitions in *'urf al-shar'*—the customary usage of legislation—that were presented above: what one is punished for, or deserves punishment for neglecting, what one is threatened with punishment for neglecting, etc.²⁸

By contrast, *fard*, he says, is stipulation (*al-taqdīr*) and is used figuratively to mean the division of something, as in “the arbitrator allotted the support money (*naṣafaḡah*)”. It can also be applied to “sending down,” and for “ordaining,” and is used in both senses in the Qur'ān. But he says, there is no differentiation between what is established by a suppositional or an absolute indicant.²⁹ If anything, he asserts, *wājib* ought to be used, since it is the more exclusive term. As al-Ghazālī points out, *fard*, inasmuch as it is any act of stipulating, can be applied to the *mandūb* or recommended acts as well.³⁰ And al-Kiyā³¹ says that this distinction between definitive and probable support for mandatory acts is a distinction that doesn't matter to

²⁷ Bājī, “*Kitāb al-ḥudūd*,” Madrid ed., 20: “This *'ibādah* has fallen upon the one made responsible; he is required to do it and there is no escape from it nor is there release from it except by performing it”. In this case *'saqaṭūl 'an* is not privative.

²⁸ Āmidī, *Iḥkām*, 1:137–8; Shīrāzī, *Sharḡ al-Luma'*, 1:285.

²⁹ Āmidī, *Iḥkām*, 1:139–40.

³⁰ Cited in Zarkashī, *Baḡr*, 1:182.

³¹ Kiyā al-Harrāsī (d. 504/1110). See Khayr al-Dīn al-Ziriklī, *A'lām*, 4:329.

God.³² Al-Zarkashī says that the “legists can apply [the term] *fard* to what one must do, without it being attached to sin by defaulting on it, such as when they say: ‘the *wudū*’ of a boy is a *fard*.’” A boy may do the worship-ritual, and if he does, he must perform *wudū*: it is in that sense a requisite act, but it is not *wājib*, since no sin is attached to its neglect, since he is a minor, and therefore not obliged to worship.³³ Here what might be an archaic sense of *fard* as a must-do act is preserved, without muddying the waters of the Shāfi’ī system of evaluation.³⁴ There is then, at one level, a dislike of what appears to be terminological imprecision—creating a distinction where there is none.

But the problem is more fundamental, and this leads to the second front in the Shāfi’ī attack. As Abū Ishāq says, “[the Ḥanafī distinction] is an error, because the technique of nominalization (*tarīq al-asmā*) [is to look to] the *shar*’, to language, and to usage; and there is nothing of this distinction between what is established by an unqualified indicant or an *ḥtihādī* indicant in them”.³⁵ This mixing of epistemological apples and categorical oranges strikes at the heart of the later Shāfi’ī enterprise of categorizing acts, which is to link the status of acts with imperatival speech from a God made immanent through the *fiqh* process.³⁶ For the Shāfi’īs there are no distinctions possible between the speech of God requiring, and what is only probably the speech of God requiring. The jurists also, I suspect, especially the Shāfi’īs, wanted to paper over the thinness of rules’ justifications, when a given judgment was, as so many of them were, based on a univocal tradition. To call attention to the dubious sources of an imperative was, whatever one said, to weaken somewhat the imperative force. It is no wonder that they were so stricken by the Ḥanafī approach to the categorization of human acts.

³² Zarkashī, *Bahr*, 1:183.

³³ This argument is critiqued by Anṣārī, in *Sharḥ Musallam al-thubūt*, 1:55. Dr. Ṭāhā Jābir al-‘Alwānī, editor of the *Maḥṣūl*, makes much of this, but he seems to miss the point that a small set of practices are unquestionable. Razī, *Maḥṣūl*, 1/1:124.

³⁴ Zarkashī, *Bahr*, 1:178.

³⁵ Shirāzī, *Luma’* (Chaumont ed.), 67/§55; al-Širāzī, *Luma’*, tr., 83–4/§55; the elaboration of this in the *Sharḥ al-Luma’* is helpful; see 1:285f. He points out that one might as well call supererogatory acts “*fard*” since they too sometimes are established by definitive indicants.

³⁶ It is suggestive that the Shāfi’ī heresiographer al-Baghdādī answers that Sunnīs assert that “all that is incumbent on a responsible person, whether knowledge or speech or deed, is made incumbent on him only by the command of God about it to him”. ‘Abd al-Qādir ibn Ṭāhir al-Baghdādī, *Farg*, 347.

B. *The Ḥanafī Defense*

The Ḥanafīs, surprisingly, do not spend a lot of time defending what is to them obvious point: How can you dispute “that the indicants are of two sorts? . . . If the *dalīl* differs, it cannot be denied that the *ḥukm* differs,” says al-Bazdawī.³⁷ Moreover, it is crucial to recognize the difference between our time and the time of the Prophet, says al-Anṣārī. “All texts (*nuṣūṣ*) were definitive in the time of the Messenger and supposition only came to be afterwards.³⁸ In addition, “it is obvious that in the speech of the Legislator, use of ‘obligation’ (*iftirāḍ*) is only for incumbency (*ilzām*), and nothing else”.³⁹

Instead of attacking the Shāfi‘ī perspective they mostly propound their own, in ways we have seen. There is some reportage of the controversy,⁴⁰ but generally, little notice is taken of Shāfi‘ī objections.

IV. *The Roots of the Ḥanafī Position*

It is not in the scant Ḥanafī defense of their position that we will find an explanation of their stance but in a consideration of the context in which those positions arose. To grasp the full range of issues involved in the Ḥanafī position, it is worthwhile to quote extensively al-Sarakhsī’s quite technical discussion, already cited above, (page 4).

*Chapter clarifying revelationally-stipulated acts that are acts of ‘bondsmanship’ (or ‘rituals’), and their categories.*⁴¹

These stipulated acts are divided into four categories. *Farḍ*, *wājib*, *sunnah*, and *nafl*. *Farḍ* is a word for a thing stipulated by Revelation (*li-muqaddar shar‘am*) which does not admit of increase or decrease (*lā yaḥtamīl^u al-ziyādah, wa ‘l-nuqsān*). It is definitive (*maqtū‘*) because it is established by an indicant that compels definitive knowledge—from the Book or plurally-transmitted *sunnah*, or consensus. The name [itself] indicates this, for *farḍ*, linguistically, is “stipulation”. God most high said, “. . . half of what you stipulated” (2:237), that is, what you stipulated by naming [it].⁴² And the Most High said “a *sūrah* we sent down and stipu-

³⁷ Bazdawī, *Kanz al-uṣūl*, 2:303.

³⁸ Anṣārī, *Sharḥ Musallam al-thubūt*, 1:58.

³⁹ Anṣārī, 1:58.

⁴⁰ Ṣadr al-Sharī‘ah al-Thānī, *Matn al-Tanqīh*, 17–18.

⁴¹ *Faṣl fī bayān al-mashrū‘āt min al-‘ibādāt wa-aḥkāmihā*. This paragraph is quoted from Sarakhsī, *Uṣūl*, 1:110–11.

⁴² *ay qadaratum bi ‘l-tasmīyah*.

lated" (24:1). That is, we definitively determined the statutes.⁴³ In this word there is that which calls attention to the strictness of focus on upholding [what is stipulated] because it is definitive; it also points to mitigation (*al-takhfīf*) since it is a stipulation that precludes an amount [of ritual activity] that would be difficult for us to undertake. It is called "written" (*maktūbah*) also because it is written [as an obligation] for us in the Preserved Tablet.

A clarification of this category [is found in consideration of] faith in God the most high, worship (*al-ṣalāh*), the welfare tax, fasting and pilgrimage. Mental affirmation (*al-taṣdīq bi 'l-qalb*) and declaration with the tongue (*al-iqrār bi 'l-lisān*), subsequent to knowledge [of God], is a definitively established duty (*fard^{um} maqtū^{um} bihi*). Although the affirmation (*taṣdīq*) continues all one's life and may not in any circumstances be displaced, the declaration (*iqrār*) is not requisite in all circumstances, though it may not be displaced with anything else, unless there are mitigating factors.⁴⁴

Yet the acts of bondsmanship that are the stipulated pillars of religion (*arkān al-dīn*), are definitive in their stipulation and delimitation. The revelational assessment of this category is that it compels belief and knowledge when one takes into account that it is established by a definitive indicant. Therefore, to deny it is *kufṛ*. It also compels action by the body, on account of the incumbency to act [which is what] its indicant [indicates]. Thus the one who undertakes [a *fard*] is obedient to his Lord; the one who fails to act is in rebellion [against his Lord], since by failing to act he is altering [a stipulated] action, though not [a stipulated] belief. The opposite of obedience is rebellion; thus he does not commit *kufṛ* by failing to act in what is [categorized as] among the pillars of religion, [in contrast to] a principle of religion (*min arkān al-dīn lā min aṣl al-dīn*),⁴⁵ unless⁴⁶ he is defaulting [in the spirit of] denigration (*istikhṣāf*) [of the obligation to act]; for denigration of the command of the Legislator is *kufṛ*. But without denigration, he is in rebellion by his default without a mitigating circumstance; he is a sinner (*fāsiq*) for deviating from obedience to his Lord. . . . Thus the sinner [remains] a member of the Faithful because he has not deviated from a principle of religion and its pillars in his belief, but he has deviated from obedience in his action. . . .

⁴³ *qaṭa'na al-ahkām qaṭ^{um}*.

⁴⁴ *wa-in kāna lā yajūz tabdīluh bi-ghayrih min ghayr 'udhr bi-hāl*.

⁴⁵ This same language is used by al-Bukhārī, who perhaps is repeating al-Sarakhsī, or repeating phrases that have become standard in the school. Bukhārī, *Kaṣṣaf al-asrar*, 303: "he is a *kāfir* not from defaulting on one of the requisites of the *sharā'ī*, rather [from defaulting on] a basis for religion (*aṣl al-dīn*)".

⁴⁶ "in" rather than "an" as the editor has it.

This difficult passage has been imposed on the reader because in it we can see the complex amalgam of issues that “*farḍ*” summons up for a Ḥanafī *faqīh*. For our purposes, four elements of this amalgamation are prominent.

First, the term *farḍ* applies to ritual requirements and to faith. They belong to a single domain because they are believed to be justified by unambiguous, or “definitive” (*maqṭūʿ*) epistemological sources.

Second, these items do not admit of increase or decrease.

Third, mental state and outward activity have different qualities; the former is indispensable and unalterable; the latter is required but is not essential to membership in the community. Failure at the former excludes one from the community (it is *kufr*, he is *kāfir*). Failure at the latter makes one a rebellious sinner who nonetheless remains part of the community of the faithful.

Fourth, the mental state seems to be distinguished from bodily action terminologically—in this case by the terms principle of religion (*aṣl al-dīn*), for the former, and pillar of religion (*min arkān al-dīn*) for the latter.

For al-Sarakhsī, it is, in the end, mental disposition that puts one outside the Islamic community, though neglect of the *farḍ* acts may serve as an index that reflects this mental repudiation of God and His commands.⁴⁷ In sum, the Ḥanafīs view the *farḍ* as arising from unimpeachable sources as opposed to the *wājib*, the *farḍ* as requiring mental affirmation while the *wājib* does not, and the commitment to the *farḍ* as requisite for membership in the Muslim community while such a commitment to the *wājib* is not required of Muslims. It should be obvious how much more weight the act-classification carries in the Ḥanafī system than in the Shāfiʿī system.

⁴⁷ “It is mentioned in some of the *uṣūl* texts of our colleagues that an act produced by one-made-responsible must either incline (*yatarajjah*) towards the side of performance, or avoidance, or neither this nor that. As for the first, this is [such that] one has become a non-Muslim (*yakfir*) if one denies it and has gone astray (*yudall*)—this is a *farḍ*; or he has not become a non-Muslim, and this [may be] connected with punishment for defaulting on it, and this is *wājib*”. Bukhārī, *Kashf al-asrar*, 2:300. Note that the description of the *farḍ*, namely that one who disputes it is a *kāfir*, is actually a description of the actor’s attitude toward the evidence underlying the *ḥukm*, for in Ḥanafī formulae, the one who disputes *mutawātir* traditions is a *kāfir*. See al-Lāmishī, 146 § 290 and following.

A. Faith and Farā'id

To understand how this came to be, we must turn to issues outside the domain of jurisprudence and jurisprudential theory proper, and consider the formative period of Islamic thought. At that time perhaps the most vital questions were, "who belongs to the Muslim community and who does not," as well as "what acts and beliefs qualify or disqualify one for membership in this community".⁴⁸

I believe the way into this problem is to recognize with al-Sarakhsī that faith (*īmān*) and the *farḍ* acts are connected. As with faith, the *farḍ* cannot increase or decrease, and it requires *taṣḍīq*, mental affirmation.⁴⁹ To deny the *farḍ* is to be a *kāfir* but to deny other acts is not. Thus, affirmation that *farḍ*-acts are indispensable, and being a *mu'min* are co-extensive.⁵⁰ As al-Bazdawī says

[The status of the *farḍ*] is "incumbency" in knowledge and affirmation in the mind. It is *al-islām* and acting with the body. It is one of the pillars (or requisites, *arkān*) of the *sharā'ī*. Who disputes it becomes a *kāfir* and who defaults on it is wicked with no exculpation.⁵¹

One key to understanding the deeper issues here is the often-repeated phrase that the *farḍ* requires *taṣḍīq*, and cannot increase, nor can it decrease.⁵² One either has it, and so is a member of the community (*mu'min*), or does not, and so is a *kāfir*.

When we inquire of the texts who it was particularly who believed that faith does not increase, we find that it is the early Murji'ah—

⁴⁸ Wilfred Madelung, "The Early Murji'a in Khurāsān and Transoxania and the Spread of Ḥanafism," in *Religious Schools and Sects in Medieval Islam* (London: Variorum Reprints, [1982] 1985).

⁴⁹ Likewise, for al-Bukhārī, the commentator on al-Bazdawī, the distinction between acts whose neglect puts one outside the community and those whose neglect does not, is precisely the difference between *farḍ* and *wājib*. Bukhārī on Bazdawī, 2:301. Baghdādī, *Farq*, 203. Abū Layth al-Samarqandī in *al-Fiḥ al-akbar* says works can increase/decrease. *Al-Rasā'il al-sab'i'ah fī l-'aḳā'id*, 58; A. J. Wensinck, *Muslim Creed*, 194. See also Yāhyā b. Abī Bakr al-Ḥanafī, "Mukhtaṣar," 11, 2nd faṣl. Al-Ash'arī, *Maqālāt: lā yazīd wa-lā yanqas* (p. 132); *al-īmān la-yazīd wa la yanqas* (p. 136).

⁵⁰ Other schools of course disagreed. Ibn Rushd (major), for example, asserted that "faith increases with the increase in works (*al-īmān yazīd bi-ziyādat al-a'māl*) and decreases by a decrease in works". He also asserts that works increase and decrease according to the degree of certainty. *Muqaddimāt*, 34, 36. See also Wensinck, *Muslim Creed*, 124, 194.

⁵¹ Bazdawī, *Kanz al-uṣūl*, 2:303. For the unity of the body and the mind for *farḍ* acts, see also Aḥmad b. Muḥammad b. 'Arif al-Zaylī al-Sivāsī, *Ḍubdat al-asrār*, 136.

⁵² E.g., Bukhārī, *Kaṣh al-asrar*, 2:301.

a school associated with the Ḥanafīs, including Abū Ḥanīfah himself.⁵³ For that reason it is important to take a small detour into early theology, and along the way to offer a small correction to the historiography of this important theological tendency.

A. *The Murji'ah*

We are fortunate to have a number of recent studies on the Murji'ah.⁵⁴ In the dispute between the partisans of 'Uthmān and those of 'Alī, the Murji'ah asserted that refraining from judgment was appropriate, particularly on the question of whether either side sinned and/or ceased to be Muslims by their actions.

This position—leaving to God the determination of one's ultimate status despite dubious acts—led logically to the position that membership in the community rests on interior disposition. This interior disposition was known only to the individual and God; consequently one would expect indices of one's intent to be a Muslim, whatever the actual deficiencies in origin or praxis. Hence the Murji'ah are linked also to movements that include newly converted Muslims into full-membership in the community, no matter how lax or imperfect their Islamic knowledge and practice. It is frequently asserted that the Murji'ah affirmed that membership in the community was solely a matter of faith, not works.⁵⁵ This is logically consistent with the zero-sum quality of Murji'ī assertions about faith—that one has it or does not, and it cannot increase, it cannot decrease. Yet the actual

⁵³ That this is a shibboleth of Abū Ḥanīfah, see Ash'arī, *Maqālāt*, 139: "Faith cannot be separated into parts; cannot increase and cannot decrease nor can some people excel others at it". See Josef van Ess, *Theologie und Gesellschaft*, 1:195. In general on Abū Ḥanīfah as a theologian, see van Ess, 1:186–212.

⁵⁴ On the Murji'ah in general, see EI-2, 7:605 s.v. "murjī'a" (W. Madelung). See also W. Madelung's other writings on this subject: "The Spread of Māturīdism and the Turks," in *Actas IV congressio de estudo arabes e Islamicos: Coimbra Lisboa 1 a 8 Setembro 1968* (Leiden: E. J. Brill, 1971); his "Early Murji'a," and his more summary treatment in *Religious Trends*. See also Michael Cook, "Activism and Quietism in Islam: The Case of the Early Murji'a"; Cook, *Early Muslim Dogma*; Ulrich Rudolph, *al-Maturidi*, 25–77. Lately, we have van Ess's magnum opus, *Theologie und Gesellschaft*. On the Murji'ah see 1:152–221; 2:164–86; 2:534–44; 2:659–63; 668; 4:124–46). See also see Ash'arī, *Maqālāt*, 132–54; Baghdādī, *Farq*, 202–207 (the two following *fasls* are also of interest).

⁵⁵ "[T]he status of faith depended on the mere confession of belief in Islam to the exclusion of all works, i.e., the actual performance of the ritual and legal obligations of Islam". Madelung, "Early Murji'a," 33; Cook, *Early Muslim Dogma*, 30: "The notorious distinction between faith and works which is well attested in the Ḥanafī texts".

story of Murji'ī doctrine is more complex, and weaves itself in interesting ways into the controversy with which we are concerned.

While there were some Murji'ites who made only faith obligatory for the true *mu'min*, a substantial group—perhaps the most important of them—joined cultic observance to faith as an essential part of membership in the community of the faithful.⁵⁶ It appears then that the description of the Murji'ah as extreme solifideists will require some modification. More importantly, by examining the links of faith to the act that proclaimed their faith, we will understand better the origin and roots of the Ḥanafī position in the *fard/wājib* controversy.

The long discussion in al-Ash'arī's *Maqālāt*⁵⁷ makes it difficult to understand how they could be described as unconcerned with works. While that is a position that might be understood from the description of some of them,⁵⁸ it hardly fits most of them. For example, Abū Mu'adh al-Tūmanī⁵⁹ believed that faith was constituted of discrete elements (*khaṣlah/pl. khiṣāl*). Those elements which, when neglected caused one to be called *kāfir*, were what was denoted by the term "faith". Acts of obedience were of two sorts—those whose neglect Muslims did not agree constituted *kufr* (which he calls *sharā'if al-īmān*)—and those like worship and fasting whose neglect coupled with denial, rejection and denigration constituted *kufr*. The *kufr* was caused not by failure to perform the acts, but by the attitudes of denigration. He calls both categories of acts *fard/farā'id*.⁶⁰

Likewise, Abū Shamir⁶¹ links faith and a set of indisputably requisite acts—*ṣalāh*, *zakāh*, *ḥajj* etc.—as did Muḥammad b. Shabīb.⁶² He

⁵⁶ Madelung in *El-2* says that some of these are better understood to be Mu'tazilīs. My position is that schools of thought have boundaries softer than those of, for example, church denominations. What matters is that these positions were espoused by thinkers whose general stance allowed the heresiographical tradition to identify them as Murji'ī.

⁵⁷ Ash'arī, *Maqālāt*, 132–154.

⁵⁸ E.g. Jahm, on whom see Ash'arī, *Maqālāt*, 132. Also on Jahm see van Ess, *Theologie und Gesellschaft*, 493–508; Rudolph, *al-Maturidī*, 28–9.

⁵⁹ van Ess, *Theologie und Gesellschaft*, 2:736–42.

⁶⁰ Ash'arī, *Maqālāt*, 139–40. In another account, he is reported to have said that the *farā'id* upon which all agree constitute parts of faith. Other duties are *min shar' al-īmān*. He alleged that one who defaults on a *farīdah* which is not constituent of Islam has sinned (*yuqāl lahu fāsaqā*) but he is not a sinner (*wa-lā yuqāl lahu fāsiq . . .*) because he did not default in denial (*lam yatrak jāhid*). Baghdādī, *Farq*, 204. Other Murji'īs held this position also. See e.g., *Maqālāt*, 142.

⁶¹ *Maqālāt*, 206. Abū Qāsim al-Balkhī et al., *Faḍl al-ʿitizāl*, 268; van Ess, *Theologie und Gesellschaft*, 174–180, where he is called a "neoghaylānī".

⁶² Baghdādī, *Farq*, 207. Al-Tūmanī is best described by van Ess as "Theologen

also asserted that the *īmān* is *iqrār* of *all* that came by the Messenger from God; so long as it is textually established by Muslims and transmitted by them from the Messenger. This consists of *al-ṣalāh*, and *al-ṣiyām* and similar things about which there is no disagreement.⁶³ Knowledge of God and His Prophets and His *farā'id* is the meaning of *īmān*, according to al-Ḥasan b. al-Najjār.⁶⁴ The irreducible quality of the cultus is reflected in attested Murji'ī phrases such as *ahl al-ṣalāh* for Muslims and the assumption that the *Dār al-Islām* was also the *Dār al-īmān*.⁶⁵

It is clear that the implications for cultic practice of extreme solifidianism were unacceptable to Ḥanafīs. The solution ultimately was to make faith itself the affirmation not only of God and His revelation but also of the incumbency of worship stipulated clearly in Revelation. Affirming its obligatory nature was separated from actually performing the action, a distinction with which the Murji'īah were perfectly in accord.

C. Mental States

Faith, then, has a praxic dimension for some early Murji'ī/Ḥanafīs. In fact, the *farḍ* lies between the mental world of faith and the purely praxic world of the *wājib*. One must know that the *farḍ* is required and be convinced; not so with the *wājib*. Similarly, even for later Ḥanafīs, there is a mental dimension to *farḍ*-acts. “[The *farḍ*] is incumbency in belief and action (*ḥukm [al-farḍ] luzūm al-ʿtiqād wa ʿl-ʿamal*),” says al-Khabbāzī, and he distinguishes the *farḍ* from *wājib* precisely “because knowledge about [the *wājib*] is not incumbent upon us (*li-suqūṭ ʿannā ʿilm^{em}*).” The *wājib* is incumbent upon us as a matter of practice, rather than as a matter of knowledge.⁶⁶ Ṣadr al-

unsicherer Zuordnung”. *Theologie und Gesellschaft*, 2:735. It is clear also that Abū Shamir and Ibn Shabīb are not so easily pinned down. The latter may have been a student of Abū Shamir. See al-Ashʿarī, *Maqālāt*, 134:14; van Ess, *Theologie und Gesellschaft*, 124–131; Abū Qāsim al-Balkhī et al., *Faḍl al-ʿitizāl*, 279.

⁶³ Ashʿarī, *Maqālāt*, 137.

⁶⁴ *Maqālāt*, 137.

⁶⁵ *Maqālāt*, 144, 147.

⁶⁶ Abū Muḥammad ʿUmar b. Muḥammad Jalāl al-Dīn al-Khabbāzī, *al-Mughnī*, 85; this formula is standard. See Aḥmad ibn ʿAlī b. Thaghlab Ibn al-Saʿātī, *al-Nihāyah*, 144 and Ṣadr al-Sharīʿah al-Thānī, *Matn al-Tanqīh*, 16 where he says, “the *farḍ* is incumbent in knowledge and in practice. . . . the *wājib* is incumbent in practice, not in knowledge”. The Shāfiʿī response to this is to be found in Manṣūr b. Muḥammad al-Shāfiʿī al-Samʿānī, *al-Qawāṭiʿ*, 236 (based, he says on the *Muʿtamid*),

Sharī'ah says, "The *fard* is incumbent in knowledge and in practice (*ilm^{an} wa-ʿamal^{im}*) so that one commits *kufṛ* who denies it. But the *wājib* is incumbent in practice, not in knowledge, so that one does not commit *kufṛ* who denies it; rather one sins when taking lightly unit traditions which require no exegetic analysis; [for those that do require it] one does not [sin by taking them lightly (*istakhaffa bi-akhbār āḥād al-ghayr al-mu'awwalah wa-ama mu'awwalan fa-lā*)]".⁶⁷

The assumption that praxis reflects faith is found not only in *uṣūl al-fiqh* works, but also in a Ḥanafī theology work, the *Mukhtaṣar*, where the author asserts with "some of the major shaykhs" that by willfully failing to worship, one has committed *kufṛ* because that failure is proof that one rejects the command of God. The same is true of other shibboleths of the faith, such as drinking *khamr*.⁶⁸

Bearing in mind this Murji'ī-Ḥanafī view of the interior disposition called "faith" inextricably bound to a determinate (*muqaddarah*) set of acts, we can look back at the eponym of the Ḥanafī school with a more nuanced view. The Ḥanafī orthodox remembered the Murji'ah not as their forebears, but as extremists whom al-Nasafī, for instance, called the defaulters (*tārikīyah*). When his Murji'ah say: "Isn't the *fard* after *īmān*? If you do it, good; if not, it's nothing to you (*laysa 'alayk shay'*),"⁶⁹ he is presenting not the authentic range of Murji'ī opinion, but a sort of straw man who allows him to reply indignantly that, "the Jamā'ah say: God said {*salāh* is incumbent on the faithful, by decree, at the appropriate time}, and consequently [*al-salāh*] is among the *sharā'ī'* of *al-īmān*" and so must be done.⁷⁰ It appears that the term "*sharā'ī' al-īmān*" has been redefined not to refer to matters peripheral to faith, but to define practices essential to it. The distinguishing of *īmān* from *islām* led the *tārikīs* to argue that *īmān* was sufficient, but the Ḥanafīs argued that faith has consequences or concomitants. When the *tārikīyah* say "God laid nothing on his creation after *īmān*," the reply is that God has imposed duties and forbidden the forbidden after *īmān* and made obligatory

where he asserts that the subject is action; and punishment for neglecting that action. The results of neglecting a *fard* and a *wājib* are the same. Ibn al-Sa'atī (p. 145) replies that regardless of the outcome, there remains a difference between the natures (*māhīyah*) of the two assessments.

⁶⁷ Ṣadr al-Sharī'ah al-Thānī, *Matn al-Tanqīh*, 16.

⁶⁸ Ḥanafī, "Mukhtaṣar," 11, 4th *faṣl* on the page.

⁶⁹ Abū Muṭī' Makhūl Nasafī, "Radd 'alā l-bida'," 67.

⁷⁰ "Radd," 68.

the stipulations (*sharāʿi*) upon the faithful.⁷¹ Later Ḥanafīs, such as al-Mātūrīdī, opposed the distinction between *muʿmin*, and *muslim* that seems to be behind the early Murjiʿī position.⁷²

Abū Ḥanīfah held positions on the nature of faith that others called “Murjiʿite”.⁷³ In essence, he asserted that once one mentally assented (*taṣḍīq bi ʿl-qalb*) to the claims of God and the fact of Muḥammad’s messengerhood, one should be called “*muʿmin*,” regardless of failings of cultic practice or virtue.⁷⁴ Yet even Abū Ḥanīfah, or the Abū Ḥanīfah presented by his student Abū Muṭīʿ al-Balkhī, sees outward performance of the Islamic duties as sufficient to establish one’s status as a member of the faithful (*muʿmin*). For these early or proto-Ḥanafīs, the very identity of a person as Muslim or *kāfir* was determined from his speech, appearance and worship. Indeed, “if we come to a people unknown to us, save that we saw them in mosques, turning toward the *qiblah* to worship, we should call them ‘*muʿminūn*’.”⁷⁵

It appears that for some of the Murjiʿah tendency there was faith

⁷¹ “Radd,” 114.

⁷² Abū Maṣṣūr Muḥammad b. Muḥammad al-Mātūrīdī, *Tawḥīd*, pp. 393–401. See especially 394: *Islam and imān* are “one, as a matter of religion in terms of verifying intention (*wāḥid fī amr al-dīn fī al-taḥqīq bi ʿl-murād*) even if they may differ in linguistic meaning (*al-maʿnā bi ʿl-lisān*)”. See also Ḥanafī, “Mukhtaṣar,” 11, third *faṣl* on the page. The continued distinction in some circles between *imān* and *islām* merits further study.

⁷³ In the letter to ʿUthman al-Baṭṭī, he prefers the term “People of Justice and People of *Sunnah*”. Abū Ḥanīfah, *Risālah ilā ʿUthmān al-Baṭṭī*, 38.

⁷⁴ See Ashʿarī, *Maqālāt*, 139 where he is asked about someone who virtually denies all of the rules of Islam, saying, e.g., that he doesn’t know if the “pig” forbidden by God is the same as what we understand by the word, nor if the Kaʿbah to which pilgrimage is required is the same Kaʿbah as the one in Mecca. When asked about this person, Abū Ḥanīfah says he remains a *muʿmin* because he does not deny that God forbade pig, required pilgrimage to the Kaʿbah etc. But the meaning of this is clearer from another passage in which Abū Ḥanīfah says “Likewise if one said, ‘I don’t know that God has imposed (*farāḍa ʿalā*) worship fasting and *zakah*, he has thereby become a *kāfir*. [Cites proof texts.] But, if he says ‘I have faith in these [proof texts] but I don’t know their ultimate meaning (*tāʿwīlahā*) or their interpretation (*tafsīrahā*), he has not committed *kuf*; he is of the faithful regarding what is sent down and wrong about its interpretation”. [Pseudo-] Abū Ḥanīfah, *al-Fiqh al-absaṭ*, 41–2. Perhaps the key to Abū Ḥanīfah’s position is to recognize that for him the *farāʿid* follow *taṣḍīq* in sequence, but at the same time “the people of *taṣḍīq* must earn (*yastahqqu*) the *taṣḍīq* by action when they become charged with it”. Abū Ḥanīfah, *Risālah ilā ʿUthmān al-Baṭṭī*, 36.

⁷⁵ [Pseudo-] Abū Ḥanīfah, *al-ʿĀlim wa-muʿallim*, 22, see also 27; new edition 27. (There is another edition under the same title. These editions are cited as “old” and “new” respectively.)

and also the “stipulated acts of the faith,” (*sharāʿiʿ al-īmān*).⁷⁶ These are defined in the *Kitāb al-Ālim wa ʿl-mutaʿallam* as

the duties (*farāʿid*) so that if one does all that God has commanded him, and refrains from all that God forbade him, he has his religion. But anyone who defaults on anything of what God command him or engages in anything of what God had forbidden him thereby leaves his religion and he is a *kāfir*. . . . [Nonetheless] God commanded the faithful to the duties only after they were confirmed in the religion, so He the most high said, Say to my bondsmen who are faithful, ‘undertake the *ṣalāh*.’ (14:31)⁷⁷

This category of essential acts tied to faith is kept by later Ḥanafīs, as for example in the *Radd* of al-Nasafī, where *ṣalāh* is deemed one of the *sharāʿiʿ* of *īmān*, and so as indispensable.⁷⁸ Such a formulation leaves space for ignorance of the *farāʿid*, but not denial.

D. Early Ḥanafī Act-Classification

Finally, then, we return to the categorization of acts. In the works of Abū Ḥanīfah and other early Ḥanafīs, the categories of positive acts are only two: His *farāʿid* and His *sunnah* (*sunnatih*).⁷⁹ The full range of early Ḥanafī act-assessment appears in Article 7 of the *Wasiyat Abī Ḥanīfah*, “We [proclaim] that works are of three kinds, obligatory, supererogatory, and [sinful].”⁸⁰ The text reads *farāḍah, wa-faḍīlah wa-muʿaṣiyah*; of these, the *fard* is “in accordance with God’s command, will desire, good pleasure, decision, decree, creation, judgment, knowledge, guidance and writing on the preserved table”. The supererogatory is the same save that “it is not in accordance with

⁷⁶ Baghdādī, *Farq*, 203; Wensinck, *Muslim Creed*, 194; *al-Rasāʿil al-sabʿah fi l-ʿaqāʿid*, 60; Abū Ḥanīfah, *al-Fiqh al-absaṭ*, p. 42.

⁷⁷ *Kitāb al-ʿālim wa-mutaʿallim* (old 12, new 48); and Abū Ḥanīfah, *al-Fiqh al-absaṭ*, 40, where there is a distinction between knowledge about how to worship the Lord, and some items that are just *ahkām*. That cultic observance is more important than moral conduct for membership in Islam is clear from a list of gross sins which without default on the cultus still allow one to remain a *muʿmin*. See also p. 47.

⁷⁸ Nasafī, “*Radd ʿalā l-bidaʿ*,” 68. Compare to the various discussions of the Murjiʿah above, and for instance Ashʿarī, *Maqālāt*, 140: “the defaulter on *farāʿid* like *ṣalāh* and fasting and *ḥajj* defiantly (*ʿalā l-juḥūd bihā*) or rejecting them or making light of them (*al-istikfāf bihā*) is a *kāfir bi-llāh* but he has committed *kufir* only by defiance, rejecting, and making light”.

⁷⁹ E.g., [Pseudo-] Abū Ḥanīfah, *al-Ālim wa-mutaʿallim*, 87.

⁸⁰ Wensinck, *Muslim Creed*, 126 (translation slightly altered); *al-Rasāʿil al-Sabʿah*, 79.

[God's] commandment". Here we find the argument that the *amr* makes for *farḍ*, but not *faḍīlh*, or *nāfil* and so forth. So command distinguishes the two positive categories—the former indispensable for true Muslims, the latter merely required.

In this early source we can see that from nearly the beginning of Islamic thought as we know it, the Irāqīs differentiated between *farḍ* and secondary acts according to their differing relation to the divine command.⁸¹ It is only a logical extension of this cluster of dogmas that leads the Ḥanafīs to regard controversial sources of knowledge as incapable of imposing an obligatory cultic act—a set of acts which are “stipulated” from Islam’s beginning.⁸² This categorization remains the foundation of Ḥanafī act-classification thereafter. In the *Mukhtaṣar*, for instance, the author segregates God’s statutes into three categories, of which the first that God wills, loves, is pleased by, and commands, is “the *farā’id* such as the ordained worship (*al-ṣalāh al-farḍah*), the fasting ordinance, and others than these two”.⁸³

We can perhaps peer further back into the origins of the epistemology that governed the categories of acts in the assertion of Ibn Rushd *major* that, “the People of Iraq [that is, the Ḥanafīs] hold that the *farḍ* is more certain (*ākīd*) than the *wājīb* and that the *farḍ* is what is made obligatory by the Qur’ān while the *wājīb* is what is made obligatory by the *sunnah* and Consensus”.⁸⁴ There is evidence that important members of other schools in Iraq also held this view.⁸⁵ This position is more precisely attributed to Abū Zayd al-Dabūsī, who is said to have held that a *wājīb* was “what was established by *khobar al-wāḥid*; it is like the *farḍ* in incumbency of action and like a *nāfilah* in the need for belief (*i’tiqād*) so that one is not a *kāfir* by disputing about it”.⁸⁶ Even the rationalist al-Jaṣṣāṣ lists three categories—*wājīb*, *mumtana’/maḥzūr* and *ibāḥah*, but these are judgments of the intellect.⁸⁷ When it comes to Islamic judgments he follows the

⁸¹ Discussion of what category of act is produced by the divine command are standard parts of Hanafī and non-Hanafī *uṣūl* throughout its history. See, e.g., Shīrāzī, *Luma’* (Chaumont ed.), 55 §25; Taftāzānī, *Talwīḥ*, 291ff.

⁸² I have seen imposing an act of worship with unitary tradition presented as a problematic (*jawāz wurūd al-ta’abbud bi-khobar al-wāḥid*), most recently in al-Ṣaymarī (d. 436/1045), *Masā’il al-khilāf*, f. 141R.

⁸³ Hanafī, “Mukhtaṣar,” 11, fifth *faṣl* on page.

⁸⁴ Ibn Rushd (major), *Muqaddimāt*, 41.

⁸⁵ See below p. 56 on Aḥmad b. Ḥanbal.

⁸⁶ Zarkashī, *Baḥr*, 1:182.

⁸⁷ Abū Bakr Aḥmad ibn ‘Alī al-Rāzī al-Jaṣṣāṣ, *Fuṣūl*, 2:203 (and see 3:247).

early Ḥanafī line—"the deliberate acts of the Prophet are divided into three aspects—*wājib*, *nadb*, and *mubāḥ*.⁸⁸ But the *fard* is what is of a higher rank of obligation; *wājib* is below *fard*. Don't you see that we say *al-witr* is *wājib* but not *fard*?"⁸⁹

The Ḥanafī concept of the *fard* arises from the theological environment of the 2nd Islamic century. In that period figures identified as Murji'ites formulated the notion that there were two sets of required acts. One was tied to faith as an index of one's inner affirmation of God and His Messenger; the other was a "detail" of one's faith—important but not definitive. Abū Ḥanīfah was among those who held this position, and the Ḥanafī stance, which grows out of these early formulations, is truly "Ḥanafī". It is worth repeating that many Murji'īs, probably including Abū Ḥanīfah, did not believe that mere internal assent was enough to avoid *kufr*; one must affirm, preferably through performance, the minimal acts of the cultus and other distinctive behaviors of Muslims, such as the avoidance of wine and pork.

Later Ḥanafīs, perhaps unaware of whence their dogmas had come, carried on these dogmas as distinctive features of their school. They continued to insist on two classes of required acts. They still saw the cultus as a bridge between the psychological assent of faith and the practices of Islam. They still believed that the set of requisite acts could not increase nor decrease, and that to deny those acts was to leave the community. Without an understanding of the earliest days of Islamic theology, it is impossible to grasp the origins, significance, and implications of this Ḥanafī jurisprudential-theoretical position.

Perhaps more striking still, through this dispute we can perhaps get a glimpse of a moment in Islamic history when the place of *sunnah*, and then later of the technically weaker *sunnah*, was more limited. It seems that the Ḥanafīs even in the 5th century wanted to relegate all univocal traditions to an epistemological second-class status. Yet even this was a reflex of a more radical, and earlier position, that made all practices derived from *sunnah* of a quality inferior to those derived from Qur'ān. In this time before *sunnah* was fully scriptural, the Ḥanafīs distinguished between the core practices of membership in the Islamic community, and ancillary obligations that came subsequent to one's faith-commitment.

⁸⁸ *Fuṣūl*, 3:205.

⁸⁹ *Fuṣūl*, 3:236.