

THE ORIGINS OF
Muhammadan
Jurisprudence

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THE MU'TAZILA

THE extreme opponents of the traditionists are the Mu'tazila who are called 'rationalists' in Shāfi'i's writings and in other ancient sources.¹ The Mu'tazila were not a school of law proper but a political and dogmatic movement;² their speculative method and their insistence on the Koran as the only basis for their system of religious doctrine, however, led them to the rejection of most traditions and, by implication, of legal doctrines based on traditions, and to the consideration of questions of law in the light of their theological tenets.³ Although they did not elaborate a system of legal doctrine of their own, their interest in problems of legal theory and of positive law found expression in numerous works on these subjects written from their particular point of view.⁴

We have had occasion to discuss their opinions on several points of legal theory.⁵ References to their opinions on particular points of positive law occur occasionally.⁶ As far as can be ascertained, the Mu'tazila are throughout dependent upon the development of legal doctrine in the schools of law proper and only revise the results of these last according to their own standards. In particular, their doctrine shows resemblances to that of the Iraqians in several respects;⁷ the Mu'tazila did in fact originate and develop in Iraq.

Shāfi'i takes the objections of the Mu'tazila to the traditionists seriously,⁸ and devotes the first part of *Treatise IV* to the

¹ *Ahl al-kalām* in Shāfi'i; *ahl al-nazar* (or combined with other terms) in Ibn Qutaiba, *passim*; *ahl al-baḥṭh wal-nazar* in Mas'ūdī; *mutakallimūn*, as a synonym of Mu'tazila, in Ash'arī; *mutakallimūn* and *ahl al-baḥṭh wal-nazar* in Ghazālī.

² See Nyberg, in *E.I.*, s.v. Mu'tazila.

³ See, e.g., Ibn Qutaiba, 15 ff., 111 f.; Khaiyāt, 59 f.

⁴ See *Fihrist*, 172 ff.; Khaiyāt, 81, 88 f.; Yāqūt, *Irshād*, vi. 446; Ibn Khaldūn, *Muqaddima*, 378 f. Ibn Qutaiba, 220 ff., 241 ff., 324, 367, and elsewhere clearly copies from a book written by one of them.—Since this book was written, part xvii, concerned with religious law, of the *Mughni fī Abwāb al-Tauḥīd wal-'Adl* by 'Abd-al-jabbār (d. 415) has been printed (Cairo, 1963).

⁵ Above, p. 40 f. on their rejection of traditions, p. 51 f. on 'widely spread' traditions, p. 88 on consensus, p. 95 on disagreement, p. 128 on systematic reasoning.

⁶ *Tr. I*, 122; *Tr. IV*, 256; Ibn Qutaiba, 22 f., 56, 73, 104 f.; Khaiyāt, 51, 92 f.

⁷ See *Ikh.* 37 and above, pp. 47, n. 5, 88. ⁸ *Ikh.* 33 f., 218, and elsewhere.

refutation of their criticism of traditions.¹ According to Shāfi'i, the Mu'tazila exist in all countries and have their own authorities in the same way as the schools of law; but his interlocutor excludes them from the orbit of those whose opinions count for establishing a consensus, because they form only a small minority (*Tr. IV*, 256 f.).

In the time of Khaiyāt, who wrote towards the end of the third century A.H., the essential thesis of the traditionists and of Shāfi'i had been generally accepted in orthodox Islam, and the Mu'tazila of that time had to take this changed attitude into account. We therefore find Khaiyāt re-interpret or reject the opinions of the old Mu'tazila on consensus and on *ra'y*,² and mitigate their criticism of traditions which changes its emphasis and becomes no more negative than that of the ancient schools of law.³ He even defends the traditionists, and when he comes to formulate in his own words the guiding principle of Ja'far b. Mubashshir (d. 234), a specialist on law among the Mu'tazila, he gives it as 'to follow the outward and obvious meaning (*ẓāhir*) of Koran, *sunna* and consensus, and not to base one's opinions on *ra'y* and *qiyās*'.⁴ This formula would be unexceptionable to the traditionists, but certainly does not represent the doctrine of the ancient Mu'tazila. Ja'far's own attitude was more complex; among his writings are mentioned works directed not only against the *aṣḥāb al-ra'y wal-qiyās*, by which the Iraqians seem to be meant, but also against the *aṣḥāb al-ḥadīth*, the Traditionists.⁵ Khaiyāt's younger contemporary, Bal-khī, also called Ka'bī (d. 319), is on the defensive against the Traditionists to such a degree that he is prepared to admit even the *khabar al-wāḥid* (see above, p. 50) under certain conditions, whilst trying to show the unreliability of most Traditionists.⁶

¹ The anecdotes on the relationship between Shāfi'i and Bishr Marisi (Ibn Hajar, *Tawālī*, 73) and on Bishr's comments on Shāfi'i's doctrine (Abū Nu'aim, *Hilya*, ix. 95) are, however, spurious.

² Khaiyāt, 51, 99, 160; see also above, p. 128.

³ Khaiyāt, 135, 137, 158.

⁴ Khaiyāt, 89, 143.

⁵ *E.I.*², s.v. *Dja'far b. Mubashshir*.

⁶ This is the subject of his *K. Qabūl al-Akhbār wa-Ma'rifat al-Rijāl*, a photostat copy of which exists in the Bodleian Library (MS. Facs. Or. c. 5); Brockelmann, i. 343 = 619 (needs correction).