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**THE ROLE OF THE ARABIC LANGUAGE IN  
*ISTINBĀṬ AL-ḤUKM* WITHIN THE CONTEXT  
OF CRIMINAL LAW**

A GENERAL FRAMEWORK FOR INQUIRY INTO THE LINGUISTIC CATEGORIES OF *UṢŪL AL-FIQH*  
OF THE ḤANAFĪ SCHOOL OF LAW

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The candidate confirms that the work submitted is his own and that appropriate credit has been given where reference has been made to the work of others.

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## Abstract

Scholars of *uṣūl al-fiqh* (Islamic Jurisprudence) have classified words (and utterances) into linguistic categories to properly interpret the sources of Islamic Law. These linguistic categories are of such broad relevance to the study of Islamic legal studies and so intricate in their ramifications that we find these categories in one form or another to be almost perennially present in each process of law-making. They not only function to reduce the subjectivity of interpreting the texts of the sources of Islamic Law but also provide the legal system with its inner consistency within each school of law. Although much effort has been devoted in Islamic Legal Studies to the analysis of the origins of Islamic Law and its effects on social and political spheres, there is a need for a thorough analysis of the linguistic categories, which constitute an important part of *uṣūl al-fiqh*. Existing studies dealing with the linguistic categories do not go beyond perpetuating, with various degrees of success, the linguistic categories already found in Classical Arabic texts, without providing any clear theory that would make such a linguistic analysis meaningful. Other studies, by contrast, seem to apply some frameworks to *uṣūl al-fiqh*, that are not intrinsic to the science – an approach that brings with it several problems in understanding the linguistic categories and their function in the process of law-making. The present work points out, for the first time, the lack of an explicit general framework for the linguistic categories in classical *uṣūl al-fiqh* manuals, and it argues that the linguistic categories can reveal the general framework behind these categories. It further argues that the linguistic categories are nothing but the outcome of the *uṣūlīs'* intellectual process of explaining the way human beings deal with what is termed in the present work 'the inherent nature of language'. This work consists of one introductory and four main chapters followed by a conclusion. The introductory chapter (Chapter 1) sets out an overview of the linguistic categories and their importance in the process of law-making. Chapter 2 discusses, among other things, the inherent nature of language, which is dealt with what I call 'the practical way of name-giving'. Drawing mainly on the celebrated scholar Abū al-Barakāt al-Nasafī's influential work, *Manār al-Anwār*, with its two well-known commentaries and one gloss along with other primary sources in *uṣūl al-fiqh* within the Ḥanafī school of law, Chapter 3 provides a thorough analysis of the linguistic categories, on the basis of which I construct a general framework which, I argue, makes the outcome of *uṣūlīs'* analysis of language (namely, the linguistic categories) meaningful. Chapter 4 applies these linguistic categories, in the light of the general framework, to a legal matter in Islamic Criminal Law, namely *sirqa* (theft). Chapter 5 provides a linguistic analysis of the application of the linguistic categories to *sirqa*. Chapter 6 is a conclusion.

## 1. INTRODUCTION

### 1.1. The aim and the scope of the present work

Is language a perfect communication tool to convey one's thoughts to another member of the same linguistic community? How precisely can one know the intended meaning of a statement in the form of speech or otherwise? What is the significance of this to the field of law, which ascribes judgements over acts of human beings in the form of statements? Who has the authority to understand the intended meanings of statements in a legal document if the one who made such statements is not available to clarify them when needed? What happens if God, who is perfect, decides to communicate with human beings in the form of language? Would this language have any ambiguity or indeterminacy? Would human beings be able to understand the intended meanings of the statements God has made in our language without any aid from God?

These are some of the questions that seem to have led scholars of Islamic Jurisprudence (*uṣūl al-fiqh*) to analyse the language of the two primary sources of Islamic law, namely, the Qur'ān and the Sunna, both written in what is often referred to as 'Classical Arabic' or '*al-ʿArabiyya*'.<sup>1</sup>

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<sup>1</sup> For more information on Classical Arabic, see *Encyclopedia of Arabic Language and Linguistics*, (2006), s.v. "Classical Arabic."

These scholars' analysis of Classical Arabic typically constitutes about a third of the material presented in manuals of Islamic jurisprudence. Coverage often includes discussions on such questions as the contents and scope of words, clarity and ambiguity of words, the signification of words to the sense(s) they are assigned to (literal usage) or to senses they are not (tropical usage), the levels of clarity of words and the levels of ambiguity thereof, direct and indirect speech, inference as well as the relevance of these to the field of Islamic law (e.g. whether one can rely on an inference for making law on a legal matter).

*Uṣūlī* scholars' (i.e. scholars of *uṣūl al-fiqh*, hereafter '*uṣūlīs*') analysis of language reveals that human language involves some ambiguity or indeterminacy as far as its function as a communication tool between God and ordinary human beings – though not between Him and His ideal addressee, namely, the Prophet – is concerned.

Once ambiguity or indeterminacy in the language God uses is accepted, what are the implications of this for areas in Islamic Criminal law such as the *ḥudūd* (literally, 'boundaries', these are the crimes whose punishments are described in the Qur'ān), where there are rules that demand punishments for various crimes, such as amputation of the hand for the crime of theft, which are sometimes irreversible? In respect of this, it seems urgent to ask what the role of language—which *uṣūlīs*

consider to be bound with ambiguity or indeterminacy—is in making determinations as to whom a particular punishment should apply in Islamic Criminal Law.

By way of example, one might consider the verse in the Qurʾān that relates to theft: “As for the male and female *sāriq* (thief), cut off the hands of both. It is the reward of their own deeds, an exemplary punishment from Allah. Allah is Almighty, All-Wise.”<sup>2</sup> This verse formed the basis for, amputation, the punishment ascribed to theft (*sirqa*) in Islamic law. In Classical Arabic the word ‘*sāriq*’ refers to a person who secretly steals a good belonging to someone else from a protected place.<sup>3</sup> This is the meaning already assigned to it in the language before the revelation. Despite the fact that the word used in the Qurʾān is *sāriq*, which is, as noted, assigned to this particular type of thief, *uṣūlīs* knew that there were other names assigned to other types of thieves in Classical Arabic, such as *ṭarrār* and *nabbāš*, i.e. ‘pickpocket’ and ‘he/she who steals a burial robe/shroud’, respectively.<sup>4</sup> People who were called *ṭarrār* and *nabbāš* were not referred to as *sāriq* in Classical Arabic. In other words, under the

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<sup>2</sup> وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ Qurʾān, 5:38. For the translations of Qurʾānic verses throughout the present work, I relied on several translations the primary ones of which are Ali, A. Yusuf, trans. *The Meaning of the Holy Qurʾān* (Brentwood, Maryland: Amana Corporation, 1991), Pickthall, Marmaduke William, *The Meaning of the Glorious Qurʾān Revised New modern English edition* (Birmingham: Islamic Dawah Centre International, 2011), and Yazır, Elmalı’lı Muhammed Hamdi, *Hak Dîni Kurʾân Dili* (N.p.: Eser, 1979).

<sup>3</sup> See *Lisān al-ʿArab*, 1998. Lane translates ‘*sāriq*’ as “[Stealing; a thief; or] one who comes clandestinely to a place of custody, and takes what does not belong to him.” Likewise, Lane translates the entry ‘*saraqa min-hu mālan*’ as “He stole from him property [or the thing,] i.e. he took it [from him] secretly, and by artifice; or he came clandestinely to a place of custody, and took what belonged to him, namely, another person.” (see Edward William, Lane, *An Arabic-English Lexicon Derived from the Best and Most Copious Eastern Sources* (Beirut: Librairie du Liban, 1968), 1362. This is also mentioned in classical legal literature (see, for instance, ʿAbd al-Ġanī al-Ġanīmī al-Maydānī, *al-Lubāb fī Ṣarḥ al-Kitāb* (Istanbul: Āsitāna, n.d.), 503).

<sup>4</sup> Molla Jīwan, *Kitāb Nūr al-Anwār ʿalā al-Manār* (Istanbul: al-Maktaba al-Ḥanīfiyya, n.d.), I, 147.

class of thieves,<sup>5</sup> for which no name may be assigned in Classical Arabic, there were the sub-classes of ‘*ṭarrār*’ and ‘*nabbāš*’ along with the sub-class of *sāriq*. Although *uṣūlīs* knew the definition of each, they had not thought about<sup>6</sup> the relationship each of the three types of thieves has with the others until they considered Qur’ān 5:38, which triggered their pondering upon these relationships between the three sub-classes of thieves.

This was considered very important because the application of the punishment ascribed to *sāriq* in the verse to *ṭarrār* and *nabbāš* would be determined based on their inter-relationship.<sup>7</sup> If *ṭarrār* and *nabbāš* showed the characteristics of *sāriq*, then one could consider each one of them as a type of *sāriq*. This would mean that they would receive the same punishment as ascribed to *sāriq* in the verse. When *uṣūlīs* actually analysed the characteristics of each, they realized that while *ṭarrār* was a type of *sāriq*, *nabbāš* was not so, as the latter referred to someone who steals from a

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<sup>5</sup> I am using the word ‘thief’ (singular of ‘thieves’) here in the sense of someone who is involved in the act of taking the possession of something belonging to someone else without permission. In this sense it differs from *sāriq*, which is defined by *uṣūlīs* as someone who secretly steals from a protected place, as well as from *ṭarrār* and *nabbāš*, and thus is more general than these three. Therefore, I consider it to be a hypothetical class which the three words fall under in order to better assess the relationship between them. One may well choose to analyze the relationships between the three words under another class that would include in it all the three, such as the class of *mujrimūn* (criminals). However, it seems that choosing a general class such as the class of criminals to analyze the relationships between *sāriq*, *ṭarrār*, and *nabbāš* –although they would correctly be classified under it— may lead to confusion. In fact, in such a case, the three words would share space with other criminals, such as murderers, distracting the attention of the reader from the focus of the discussion, which is only about the connections between *sāriq*, *ṭarrār*, and *nabbāš*. Therefore, I found it appropriate, instead, to analyze the three words’ relationships with each other under the class of thieves in this specific sense even though no name for ‘thieves’ may exist in this sense in the Classical Arabic language.

<sup>6</sup> For a thorough analysis of the relationships between *sāriq*, *ṭarrār*, and *nabbāš*, see section 3.3.2.1 below.

<sup>7</sup> Molla Jīwan, *Nūr al-Anwār*, I, 147.

grave, which is normally not protected, thus excluding it from the class of *sāriq*. Accordingly, scholars of *uṣūl al-fiqh* concluded that while *ṭarrār* needed to receive the *ḥadd* punishment ascribed to *sāriq*, *nabbāš* did not.<sup>8</sup>

In *uṣūl al-fiqh* manuals, the lack of clarify around a given word's relationship to other words under the same class is referred to as *xafā'* (ambiguity) and the word whose relationship to other words under the same class is yet to be discovered is referred to as *xafī* (obscure).

In an effort to deal with problems associated with human language such as this which are relevant to the process of law-making, scholars of *uṣūl al-fiqh* came up with 20 primary linguistic categories, of which *xafī* is only one.

Analyzing these categories with an eye to finding a theory that would explain them all in a unified way, I ended up realizing that these categories represented either some problems inherent in language or solutions to these problems, which, I came to realize, all had to do with how we perceive and then name entities.

As illustrated to some extent in the example of *sāriq* above, the linguistic categories, therefore, are the outcome of the analysis of language by *uṣūlīs* to overcome some of the difficulties that appear to be intrinsic to language. In fact, such

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<sup>8</sup> See Figure VIII and IX in section 3.3.2.1 below.

categories allow scholars to arrive at legal rulings based on a sound linguistic analysis. In other words, language is the mediator through which the intention of the addresser is communicated to (a) given addressee(s). Thus, acknowledging the problems associated with this tool of communication, which we call language, as well as working on where this tool falls short and where it succeeds enables one to carefully check the integrity of one's interpretation of any instance of the usage of this tool, i.e. any given statement made in the form of speech or otherwise.

It seems to me that legal scholars were quite eager to explore the perfections and imperfections of language because legal matters involve a gain or a loss of interest pertaining to this and even to the next life, about which the believer seems to care the most. It is thus essential that the process of interpretation carried out with the purpose of establishing a whole legal system or congruity of particular cases to it is undertaken with utmost care. This, among other things, involves realizing the perfections and imperfections of language and establishing a name for each one of these concepts to allow further development of the legal system. This seems to explain the motivation behind the production of the linguistic analysis whose outcome is the body of linguistic categories found in manuals of Islamic Jurisprudence.

As such, linguistic categories such as *xafī* in Islamic Jurisprudence play a pivotal role in the process whereby scholars came up with their best understandings of the

intended meanings of the statements found in the sources of Islamic law, such as the Qur'ānic verse 5:38 mentioned above.

The term used in *uṣūl al-fiqh* to refer to this process of interpretation is '*istinbāṭ al-ḥukm*', which literally means 'extracting legal rulings', but may be translated in consideration of its ultimate goal, which is to derive legal rulings from the sources of Islamic law, as 'the process of law-making in Islamic law.'<sup>9</sup> The process of law-making in Islamic law refers to an endeavour whereby jurists (*mujtahids*) derive legal rulings from the sources of Islamic law, the primary ones of which are the Qur'ān and the Sunna. As a matter of fact, classical jurists and contemporary scholars agree that while the Qur'ān, the main source of Islamic law, contains some 500 verses with legal content, it by no means provides an explicit all-encompassing established system of law.<sup>10</sup> The same is true for the body of Sunna, which consists of traditions (*aḥādīth*,

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<sup>9</sup> There are other ways of deriving legal rulings from the sources of Islamic law, such as deriving law from the sources within the paradigm of one legal school such as the Ḥanafī school, often on a legal matter that is not previously considered by the founder of the school, in this case by Abū Ḥanīfa (d. 150/767). For instance, the question of whether or not smoking, which was not dealt with by Abū Ḥanāfī or others in the early times as it came to Islamic world subsequently in the 18<sup>th</sup> century (see my article on cigarette in *Temel İslam Ansiklopedisi* [Concise Encyclopedia of Islam], (Ankara: Türkiye Diyanet Vakfı Yayınları, 2019), s.v. "sigara") is permissible can be given an answer following the *uṣūl al-fiqh* (Islamic Jurisprudence or, to put it differently, methodology of law-making in Islamic law) adopted by a particular legal school. There are different levels of doing this, and each is referred to with different names in *ṭabaqāt al-fuqahā'* works, as will be noted in the literature review below. *Istinbāṭ al-ḥukm* differs from other types of law-making processes in that it involves a process of deriving legal rulings from the sources without any reference to the *uṣūl al-fiqh* of any previously established legal school (or a previous scholar for that matter). Abū Ḥanīfa's legal rulings, for instance, are directly derived from the sources of Islamic law without being limited by the *uṣūl al-fiqh* of any previously established school of law, and therefore constitute the type of law-making that is referred to as *istinbāṭ al-ḥukm*. The linguistic categories play an essential role in *istinbāṭ al-ḥukm* as well as all the other the processes of law-making in Islamic law.

<sup>10</sup> Wael B. Hallaq, *Law and Legal Theory in Classical and Medieval Islam* (Aldershot: Variorum, 1995), 4.

pl. of *ḥadīth*) that contain information about the Prophet's life and his sayings, from which Islamic law derives most of its rules. Each unit of information found in these sources, whether a Qur'ānic verse or a tradition, is seen almost like a part of a puzzle that leads to a systematic legal system once combined with one another properly and is thus aptly named *dalīl* (pl. *adilla*), that is, indicator of God's law, as each of these units indicates the law rather than constituting the law itself.

To properly extract legal rulings from the indicators of law found in the Qur'ān and the Sunna, which is an effort that requires one to understand the intended meanings of the indicators of law in them, scholars of *uṣūl al-fiqh* classified *lafḍ* (pl. *alfāḍ*)<sup>11</sup> into categories, which I refer to as “the linguistic categories” in this work.

They then based their arguments on these linguistic categories whenever they derived law from the sources, as seen in the example of the *xafī* word *sāriq* which I touched upon above.

The linguistic categories which Islamic legal schools adopt when deriving law from the sources display variations from school to school, which is one of the phenomena that leads to variations in legal rulings between different schools of law on the same legal matters. A comparative study that would focus on the impact of

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<sup>11</sup> *Uṣūlīs* use the term *lafḍ/naḍm* to refer not only to words but also to phrases and sentences/utterances (see, for instance, *uṣūlīs'* reference to words as well as sentences as *dāhir* in section 3.3.1.1).

differences of linguistic categories upon the differences of opinions across these schools on particular legal matters deserves space of its own. For the purpose of this study, I will narrow my focus to an analysis of the linguistic categories found in the Ḥanafī school.

There is a tendency among contemporary scholars, who study Islamic legal system in one way or the other, to focus on the Šāfiʿī school of law. This can also be seen in the literature on the linguistic categories of *uṣūl al-fiqh*. In fact, many contemporary works in English take the Šāfiʿī school of law as their departure point in their analyses of the linguistic aspects of *uṣūl al-fiqh*.<sup>12</sup>

As such, there is a gap in the scholarship with respect to an understanding of the linguistic categories found in the Ḥanafī school of law, which, since its birth in Kūfa in the early 2<sup>nd</sup> century of the Hijra, spread gradually and shaped the intellectual landscape of a great number of scholars.<sup>13</sup> Given the impact it apparently had on intellectuals who produced work in Islamic legal studies within the Ḥanafī school and on contemporary Muslims who adopt these scholars' approach to Islamic law, the

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<sup>12</sup> See the literature review in section 2.5 below. To illustrate, Hallaq focuses on some of the linguistic categories of the Šāfiʿī school of law in his treatment of the legal language used in *uṣūl al-fiqh* (see Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī uṣūl al-fiqh* (Cambridge: Cambridge University Press, 1997), 42-58). In fact, while doing so, he primarily relies on *al-Ġazzālī's al-Manxūl*, al-Šīrāzī's *Šarḥ al-Lumʿa*, and Ibn Barhān's *al-Wuṣūl ilā al-uṣūl*, and al-Juwaynī's *al-Burhān fi Uṣūl al-Fiqh*, all of which are Šāfiʿī texts (ibid, 42-58).

<sup>13</sup> See Fuat Sezgin, *Geschichte des arabischen Schrifttums*, (Leiden: E. J. Brill, 1967), I, 409-455.

Ḥanafī school deserves much more attention than it is currently getting in Islamic legal studies in general.

The present work aims to fill this gap by bringing to light the nature and function of the linguistic categories of the Ḥanafī school.

## **1.2. An overview of the linguistic categories in the Ḥanafī school**

The linguistic categories within the Ḥanafī school are often divided into four primary classifications as in *al-Manār* by Abū al-Barakāt al-Nasafī.<sup>14</sup> Figure L below represents these four linguistic categorizations found in *al-Manār* and in many of the major *uṣūl al-fiqh* manuals within the Ḥanafī school.<sup>15</sup>

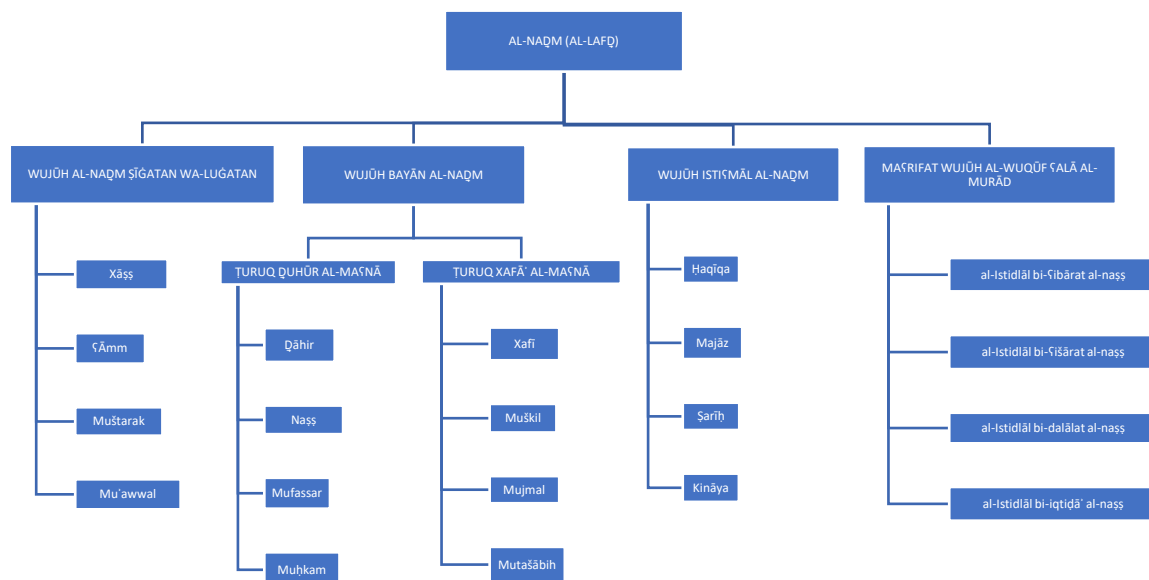
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<sup>14</sup> al-Nasafī, Abū al-Barakāt ṢAbd Allāh b. Aḥmad Ḥāfiḍ al-Dīn, *al-Manār* (Istanbul: Âsitâne, 1326). For more information on al-Nasafī, see Murteza Bedir, "Nesefî, Ebü'l-Berekât", in *TDV İslâm Ansiklopedisi*, <https://Islamansiklopedisi.Org.Tr/Nesefi-Ebul-Berekat> (11.12.2019); *Encyclopaedia of Islam*, 2<sup>nd</sup> Ed., (1993), s.v. "al-Nasafī".

<sup>15</sup> See the literature review in section 2.5 below.

Figure L

**Linguistic Categories of *uṣūl al-fiqh* in the Ḥanafī school—based on *al-Manār***



As seen in Figure L,<sup>16</sup> *uṣūlīs* divide words into four main categories, each of which is further divided into four sub-categories (with the exception of the second categorization, which is divided into eight sub-categories in total), making the primary linguistic categories discussed in *al-Manār* 20 in number.<sup>17</sup>

<sup>16</sup> For the definition of the terms in this chart, see the glossary at the end of this thesis. There I provide my understanding of each linguistic categorization and the linguistic categories that fall under it. The definitions provided there are based on an analysis carried out in Chapter 3 below.

<sup>17</sup> As I move on, I will explain the categorizations and the linguistic categories that fall under them.

The presentation of these linguistic categories in *uṣūl al-fiqh* manuals, however, lacks an explicit general framework that would give overall coherence to them. This is a gap that has never been identified in the literature before, yet is essential for a proper understanding of each linguistic category in particular and *uṣūl al-fiqh* in general. In fact, as will be touched upon in the literature review on linguistic categories, the lack of a general framework that is intrinsic to the science of *uṣūl al-fiqh* leads to misunderstandings of some of the linguistic categories and of *uṣūl al-fiqh* as a whole, making the need to fill this gap more urgent.

Constructing such a general framework to fill this gap requires a thorough analysis of the linguistic categories found in *uṣūl al-fiqh* manuals. The present work hypothesises such a general framework, for the first time, based on an analysis of the linguistic categories themselves in an effort to better understand each linguistic category as well as the role that these linguistic categories (and thus languages, and in this case, particularly the Arabic language) play in the process of law-making in Islamic law.

The process of law-making in Islamic law is regulated in various ways, one of which has to do with the role of language used in the primary sources of the legal system, which is Classical Arabic. The Islamic legal system has its own specialities; the linguistic categories— in as far as they constitute a body of rules for interpreting a particular language of a legal system— go beyond an analysis of the Arabic language

and thus may well be made use of in interpreting any legal text written in any language. Therefore, it is true that the complexity and the subtlety of the linguistic analysis found in *uṣūl al-fiqh* manuals will be explored in this work with particular emphasis on the Arabic language and its role in the process of law-making in Islamic law. However, scholars of legal philosophy and jurisprudence in general will likely to find *uṣūlīs'* analysis of language in terms of its function as the communication tool between the lawgiver and the subject relevant to their studies, too. As such, it is my hope that the present work will open up new avenues for those seeking to conduct a comparative study of the role of language in the process of law-making in any given legal system.

Similarly, and even more obviously, linguists are also likely to find the present work relevant to their studies. In fact, there are many parallels between the topics discussed here and linguistics. In this regard, the present work sets out to uncover a linguistic theory, in this case, the one that was behind the production of the linguistic categories found in *uṣūl al-fiqh* manuals. In extrapolating a theory of language, which steered the *uṣūlīs*, based on the linguistic categories they produced, this work offers insights into phenomena discussed in linguistics today such as inference, direct and indirect speech, definiteness and indefiniteness, and deixis. How we know when two entities are the same and what constitutes a thing are two of the questions, amongst others, the present work shall be able to provide an answer to. In fact, exploring what

constitutes an entity is a central theme discussed in the present work, as can be seen even from the aforementioned example of *sirqa* and whether or not *ṭarrār* and *nabbāš* needed to be considered to be the same as it.<sup>18</sup> I further believe that the central theme of the theory of language I propose in this work, namely, the ‘practical way of name-giving’, and its role in forming the way language works will be seen as a contribution to linguistics in general.

As an aim that is more specific to the field of Arabic and Islamic studies, I hope that the present work will demonstrate that *istinbāṭ al-ḥukm* is not a simple task which anyone well-versed in Classical Arabic can properly deal with. Rather it is a sophisticated process that requires expertise not only in Arabic but also in *uṣūl al-fiqh* in general, and particularly a comprehensive understanding of the Arabic linguistic categories found in classical *uṣūl al-fiqh* manuals.

The attempts that have been so far made to explore the linguistic categories provide some insights into the linguistic material in *uṣūl al-fiqh* manuals (namely, the linguistic categories). However, no single account proposed thus far can account for these linguistic categories in a unified way, thus falling short especially in explaining the role which these categories (and the Arabic language in general) play in *istinbāṭ al-ḥukm*.

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<sup>18</sup> For instance, see Chapter 5.

Before I further discuss the importance of the linguistic categories for the process of law-making in Islamic law in section 1.3 below, it is worth reflecting upon a particular difference of opinion among some of the Ḥanafī scholars regarding the number of main categorizations that the linguistic categories fall under. This is important because the number of the linguistic categorizations is a central theme of the present work.

Although al-Nasafī and many others consider the number of the main linguistic categorizations to be four, as shown in Figure L above, others claim that there is a further linguistic categorization in addition to these four categorizations, making the number of the main classifications five in total.

For scholars like al-Nasafī and Molla Jīwan,<sup>19</sup> this fifth categorization is not a categorization *per se*. It merely consists of four types of information about the linguistic categories that fall under the other four main categorizations. Molla Jīwan notes that these four kinds of information pertain to مواضعها (i.e. the origin of the names of the linguistic categories), معانيها (i.e. their meanings), ترتيبها (i.e. their hierarchy), and احكامها (i.e. the legal rulings about them).

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<sup>19</sup> Molla Jīwan, *Nūr al-Anwār*, I, 18.

Molla Jīwan also explains each of these kinds of information in some detail as follows:

مواضعها اي ماخذ اشتقاق هذه الاقسام وهو ان لفظ الخاص مشتق من الخصوص وهو الانفراد وان العام مشتق من العموم وهو الشمول وقس عليه ومعانيها اي المفهومات الاصطلاحية وهي ان الخاص في الاصطلاح لفظ وضع لمعنى معلوم على الانفراد والعام ما انتظم جمعا من المسميات وترتيبها اي معرفة ان ايها يقدم عند التعارض مثلا اذا تعارض النص والظاهر يقدم النص على الظاهر واحكامها اي ان ايها قطعي وايها ظني وايها واجب التوقف فالخاص قطعي والعام المخصوص ظني والمتشابه واجب التوق

“*Mawāḍiʿuhā*, (i.e. the origin of the names of the linguistic categories), that is to say, their etymologies. This means the category of *xāṣṣ* comes from *xuṣūṣ*, which means *infirād* (having only a single referent), and the category of *ʿāmm*, which refers to plurality of words [with at least three referents], comes from *ʿumūm*, which means *šumūl* (enclosure or proper inclusion), and it goes on and on. *Maʿānīhā* (i.e. their meanings), that is to say, the terminological concepts meant by these terms, as in *xāṣṣ*, which is a word that is assigned to a single known meaning by way of *infirād* (having only a single referent); or as in *ʿāmm*, which is arranged as a plurality of individuals. *Tartībuhā* (i.e. their hierarchy), knowing which one of these categories is favoured over the other(s) in case of a contradiction. For instance, when *naṣṣ* and *ḍāhir* words contradict each other, *naṣṣ* is preferred over *ḍāhir*. *Aḥkāmuḥā* (i.e. the legal rulings about these categories), that is, to know which one is *qaṭʿī* (one that entails definitive knowledge), which one is *ḍannī* (one that entails dubious knowledge), and which one

is *wājib al-tawaqquf* (one that requires a *mujtahid* to suspend judgement over it). For example, *xāṣṣ* is *qaṭʿī*, an *fāmm* word whose scope is limited by another indicator is *dannī*, and *mutašābih* is *wājib al-tawaqquf*.”

Molla Jīwan mentions that this fifth classification is an invention of Faxr al-Islām and was not mentioned by the majority (*jumhūr*) in their treatment of the subject, as they abstained from making judgement over it. The reason for this, Molla Jīwan notes, is “*li-taḥqīqihā*” (for their soundness). Laknawī explains this expression of Molla Jīwan with “*li-taḥqīqi aqsāmi l-qurʿāni*”,<sup>20</sup> which might be translated as “for the soundness of the [linguistic] categories of the Qurʿān.”<sup>21</sup> With this term, he is referring to the importance of the linguistic categories having consistency in categorization. In fact, the contents of this fifth categorization consist of types of information scholars mention pertaining to the other four categorizations and not to this fifth categorization. Because, it has no information about itself but only about the other four categorizations, it would lead to inconsistency in scholars’ linguistic categorizations to treat it as a separate categorization.

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<sup>20</sup> Laknawī, *Qamar al-Aqmār*, (Istanbul: al-Maktaba al-Ḥanīfiyya, n.d.), I, 18.

<sup>21</sup> See Molla Jīwan, *Nūr al-Anwār*, I, 18.

Laknawī, on the other hand, indicates that he disagrees with Molla Jīwan on having this fifth classification and notes that this fifth categorization is necessary to understand the linguistic categories that fall under the other four categorizations.<sup>22</sup>

However, it seems that those scholars who do not have this fifth categorization in their linguistic analysis do not regard what other scholars discuss under this fifth categorization to be insignificant. They merely think that the contents of the fifth classification do not qualify it to be a separate linguistic categorization simply because it is not a categorization *per se* but a body of information about the other four linguistic categorizations.

An analysis of the contents of the fifth classification provides some insights into the nature of this matter. In this regard, Molla Jīwan notes that al-Nasafī's treatment of these four types of information regarding the linguistic categories is different from that of Faxr al-Islām. While the latter includes in his treatment of each linguistic category all the four types of information, the former never mentions the *mawāḍiʿ* (the origin of the names) of the linguistic categories and only occasionally mentions the *tartīb* (hierarchy) of the linguistic categories, while always including the other

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<sup>22</sup> Laknawī, *Qamar al-Aqmār*, I, 18.

two types of information pertaining to the linguistic categories, namely their *maḥānī* (definitions) and their *aḥkām* (the legal rulings about them).<sup>23</sup>

Whether one considers these four types of information (namely, *mawāḍiʿ*, *maḥānī*, *tartīb*, and *aḥkām*) about the linguistic categories as a separate categorization or not, it seems to me that al-Nasafi's emphasis on the *maḥānī* and the *aḥkām* of these linguistic categories in his *al-Manār*, in which he lays down the principles of *uṣūl al-fiqh*, indicates that these two are especially significant for the process of law making, a phenomenon which I will now discuss briefly.

The *ḥukm* of a given word (or words making up a given verse) of the Qurʾān<sup>24</sup> depends on which linguistic category the word (or the words making up the verse) fall(s) under.<sup>25</sup> Obviously, determining which category a word should fall under requires one to know the *maḥānī* of the linguistic categories. Once the linguistic category the particular word falls under is determined, we know which *ḥukm* (e.g. *qaṭʿī*, i.e. definitive) applies to that particular word. Once this is discovered, the *mujtahid* knows the authority of the legal ruling he/she can derive from such a word (or words making up a verse).<sup>26</sup> This is, in turn, possible by knowing which *ḥukm*, that

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<sup>23</sup> Molla Jīwan, *Nūr al-Anwār*, I, 18.

<sup>24</sup> The *ḥukm* of a word here is used in the sense that, say, it is *qaṭʿī*, as noted above.

<sup>25</sup> This is not peculiar to the Qurʾānic verses; rather, it is true for traditions as well.

<sup>26</sup> The *ḥukm* for words that fall under the category of *mufassar*, for instance, is that such words are required to be acted upon, while the possibility of abrogation (*nasx*) remains valid theoretically (for details on *mufassar*, see section 3.3.1.3. below).

is, *qaṭʿī* (definitive), *ḍannī* (dubious), or *wājib al-tawaqquf* (one that requires jurist to suspend judgment over it), applies to the particular linguistic category that the relevant word(s) fall(s) under. Therefore, knowing the *aḥkām* of linguistic categories is also indispensable for deriving law from the sources of Islamic law.

The information on the *tartīb* of the linguistic categories is also relevant for the outcome of the process of law-making because often on a given particular legal matter, there are multiple statements in the Qurʾān and the Sunna that one finds to be in conflict at least in terms of their scope. For instance, the scope of the verse on *sirqa* (theft) is different in terms of several aspects from the scope of individual traditions on this matter.<sup>27</sup> While the scope of the verse indicates that the punishment is to be applied to all those who commit *sirqa*, one tradition, for example, indicates that the punishment is cancelled if the stolen item is a kind of food.

Another tradition indicates that if there are any doubts surrounding the case of such crimes as *sirqa*, the punishment is cancelled. To illustrate, if the thief claims that he/she owns the stolen item, the punishment ascribed to *sirqa* in the verse, namely, amputation of the hand, is cancelled even if he/she cannot back up his/her

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<sup>27</sup> See sections 5.1 and 5.2 below.

claim with any evidence. In fact, his/her claim constitutes a doubt, thus requiring the punishment of amputation to be cancelled.<sup>28</sup>

In this regard, to make a judgement over a legal matter, scholars needed either to make a choice between statements that are in conflict with each other at least in terms of scope or, when applicable, find a way to reconcile them. In order to undertake either of these tasks, it is essential to determine the *tartīb* (hierarchy) of linguistic categories, that is, the priority one linguistic category has over the other. Therefore, the *tartīb* of the linguistic categories is also important in undertaking the task of deriving law from its sources, which is why al-Nasafī also discusses it for some of the linguistic categories, as noted.

Hence, with their *maḥānī*,<sup>29</sup> *aḥkām*, and *tartīb*, the linguistic categories are important for the process of law-making. Therefore, both the scholars who held that the number of categorizations is four and those who considered it to be five paid close attention to these three aspects of linguistic categories.

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<sup>28</sup> For details, see section 4.3.

<sup>29</sup> *Mawāḍiʿ* (the origin of the names) of the linguistic categories may be important for understanding *maḥānī* (meanings/definitions) of these linguistic categories. We can think of *mawāḍiʿ* as non-technical lexical senses of a word and *maḥānī* as the technical senses of the word in *uṣūl al-fiqh*. Once one has a good understanding of the *maḥānī* of the linguistic categories, one does not necessarily need to know the *mawāḍiʿ* of the linguistic categories. That is why, I think, al-Nasafī does not include any information regarding the *mawāḍiʿ* of the linguistic categories.

The present work will be conducted based on the acceptance that the number of the primary linguistic categorizations are four in number. In this regard, I follow al-Nasafi and Molla Jīwan. However, the fact that all the Ḥanafī scholars who wrote on this matter, regardless of their views regarding the number of linguistic categorizations, discussed the same three aspects of linguistic categories—namely, their *mafānī*, *aḥkām*, and *tartīb*, which are, as noted, essential for the process of law-making—suggests that the difference between the two views regarding the number of linguistic categorizations is more apparent than real.

Having thus discussed the two different views regarding the number of linguistic categorizations found in the Ḥanafī *uṣūl al-fiqh* manuals and having noted my position on this, I can now talk more about the relevance of the linguistic categories to the process of law-making in Islamic law for further analysis.

### **1.3. The importance of the linguistic categories for the process of law-making (*istinbāṭ al-ḥukm*)**

As illustrated above, the linguistic categories of *uṣūl al-fiqh* are at work throughout the process of extracting legal rulings from the indicators of law in legal schools like the Ḥanafī school. A thorough understanding of these categories is thus indispensable for appreciating the fine details of *istinbāṭ al-ḥukm*.

The relevance of these linguistic categories to the process of *istinbāṭ al-ḥukm* is closely linked to the fact that one cannot understand the sources of the Islamic legal system without mastering Classical Arabic.

The study of the language of the law was considered very important in the Islamic legal system. In fact, good command of Classical Arabic, which was the language of the two main sources of Islamic law, namely the Qur'ān and the Sunna, from which Islamic law derives both its authority and its application,<sup>30</sup> was seen as a prerequisite to any profession within the Islamic legal system.<sup>31</sup>

The importance given to the Arabic language within the Islamic legal system is, in fact, manifested in the fact that Islamic legal inquiry played a major role in initiating the formation of the grammar of Arabic as we know it today. There was no known grammar of the Arabic language before the Qur'ān was revealed. It was vital for Muslims to study the text of the Qur'ān because it was understood to be their legal document containing indicators of God's Will. This scripture was written in Arabic, and just like in any other text written in any given language, one first needs to know the rules of the language of the text in order to profoundly understand it.

Scholars of *uṣūl al-fiqh* were thus interested in the study of Arabic. Knowledge of Arabic grammar was recorded in Arabic grammar books, which Arabic grammarians penned hand in hand with scholars of *uṣūl al-fiqh*, or *uṣūlīs*. Although knowledge of Arabic was a prerequisite for the law in all of the four main Sunni legal

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<sup>30</sup> Michael G. Carter, "Language and Law in the "Ṣāḥibī" of Ibn Fāris." *Zeitschrift Für Arabische Linguistik*, no. 25 (1993): 139.

<sup>31</sup> *Ibid*, 142.

schools of thought,<sup>32</sup> scholars of *uṣūl al-fiqh* went beyond the study of Arabic grammar and investigated the connections between the structures of the language and the meanings that these structures were to indicate. The aim of this effort was to determine what the intended meaning of a given speaker, and in particular, the intended meaning of God or His Prophet, may be.<sup>33</sup>

Although the subject matter of these manuals is sometimes the same as that of Arabic grammar books,<sup>34</sup> the focus of such legal studies is not the study of Arabic grammar itself with its parts of speech and sentence structure. Rather it is the relationship of the above-mentioned constituent parts of Arabic grammar with the meanings that they indicate. For instance, with reference to their relevance to the process of law-making, al-Nasafī discusses some of the topics that fall under various subcategories in *naḥw* works such as *kull* (all), *jamīʿ* (every), *man* (who), and *mā* (which/that). These are all treated under the linguistic category of *ʿāmm* in *uṣūl* works such as *al-Manār*.<sup>35</sup> Therefore, despite the fact that *naḥw* and *uṣūl al-fiqh*

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<sup>32</sup> Ibid, 144.

<sup>33</sup> This is essentially to do with the meaning of expressions within particular contexts. Besides their effort to ascertain the intended meaning, which already involves contextual meaning, scholars were also interested, naturally, in the non-contextual meaning of expressions. The dichotomy between non-contextual meaning and contextual meaning mentioned here is very similar to the one drawn in linguistics today. Although there are no hard and fast boundaries that linguists agree on as to where to draw the line between semantics and pragmatics, non-contextual meaning seems to be the area of the former and the contextual meaning of the latter (for some of the major views on the distinction between semantics and pragmatics, see Ken Turner, “Semantics vs. pragmatics” in Frank Brisard, Jan-Ola Östman, Jef Verschueren, ed., *Grammar, Meaning and Pragmatics* (Amsterdam/Philadelphia: John Benjamins Publishing Company, 2009), 250-267).

<sup>34</sup> For instance, though from different aspects, both sciences analyze *amr* and *nahy*.

<sup>35</sup> al-Nasafī, *Kaṣf al-Asrār*, (Istanbul: al-Maktaba al-Ḥanīfiyya, n.d.), I, 127-128.

overlap to some extent in terms of the subject matter they both cover, the way these two fields of study approach the same phenomena is distinct from each other, as will be illustrated with words like *kull*, *jamīʿ*, *man*, and, *mā* below.<sup>36</sup>

The study of the role of language in understanding a text written in it may not be new. Yet, there is something unique about the study of the Arabic language to understand the text of the Qurʾān. In fact, Islamic scholars were convinced that the Qurʾān was the verbatim word of God. As a result, they considered the way God expressed Himself not arbitrary but consistent.<sup>37</sup> Thus, it must have made sense for them to come up with a set of rules to decipher the meaning of the whole text.

Moreover, since the Qurʾān and the Sunna needed an interpreter in most cases to find answers to questions not explicitly answered in these sources, it was left to the scholars of *uṣūl al-fiqh* to interpret them and come up with a legal opinion on each of these matters. This meant two things. Firstly, because of the nature of the text, they had to study it seriously in that they paid close attention to each and every detail of its language, as they considered all to be chosen by God-the All Knowing for a purpose; and secondly, there was room for subjective interpretation of the text, as its

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<sup>36</sup> See section 3.1.2 below.

<sup>37</sup> See, for instance, Qurʾān 4:82, أَفَلَا يَتَذَكَّرُونَ الْفُرْقَانَ ۚ وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلَافًا كَثِيرًا, which may be translated as, “Will not they still try to understand the Qurʾān in the best way? If it was sent down from other than Allāh, they would have certainly found many contradictions in it.” See also Qurʾān 2:2, ذَلِكَ الْكِتَابُ لَا رَيْبَ فِيهِ هُدًى لِّلْمُتَّقِينَ, “This is the Book in which there is no doubt, containing guidance for those who are mindful of Allāh.” Consistency may not be present, say, for some traditions on the same matter, and this was partly due to the notion of *nasx* (abrogation) or other reasons (see, for instance, section 5.2 below).

language was a human language which is in principle not free from ambiguity or indeterminacy.

This subjectivity needed to be limited by a set of rules so that the part of the legal system left for scholars of *uṣūl al-fiqh* to discover and establish would also have objectivity as much as possible. Apparently, this was important for the scholars themselves because having a set of rules must have given the scholars peace of mind in assuring them that they were doing their best in understanding the text they considered to be holy.

Moreover, as the way in which they extracted legal rulings from the sources of Islamic law was transparent and open to criticism, the legal scholars helped pave the way for others to criticize the *aḥkām* they came up with based on the linguistic categories and any rule associated with these categories. This way they sincerely shared the responsibility for decoding the texts of the sources of Islamic law.<sup>38</sup>

The importance of having a set of linguistic categories lies also in the fact that these categories gave Islamic legal schools inner consistency, a characteristic that every legal system needs, at least, to seek to have.<sup>39</sup> This was because scholars of *uṣūl*

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<sup>38</sup> As a result of having a set of linguistic categories and rules associated with them that were followed whenever they derived law from its sources, scholars like al-Šaybānī, Abū Yūsuf, and Zufar, while following the principles of Abū Ḥanīfa, did not agree with their teacher on many legal matters, and in fact came up with different *aḥkām* on various issues, as indicated in section 2.5 below.

<sup>39</sup> Theoretically, I think not only legal systems but also any kind of theoretical framework needs to have inner consistency in order to solve individual problems/issues which theoretical framework is produced to solve or

*al-fiqh* would consult these linguistic categories (and the rules associated with these categories such as those rules that had something to do with the *ḥukm* of a linguistic category or its *tartīb*, as noted above) each time when extracting *aḥkām* (legal rulings) from the indicators of law. This meant that these linguistic categories, functioning like mathematical formulations, had a clear influence on the outcome of

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to explain. Theoretical frameworks predict individual problems and their solutions in various spheres of life. They are produced, in other words, in order to yield similar solutions to similar problems that may occur. And instead of finding solutions to problems each time one occurs, what is more practical is to determine the solution for a common problem (Büyük Haydar Efendi, *Usul-i Fıkıh Dersleri*, 2<sup>nd</sup> ed. (Istanbul: Üçdal, 1966), 10). This means that the legal system predicts problems. Therefore, predictability lies at the centre of producing a general framework or a system such as a legal system. As legal systems prescribe rulings to certain actions before they occur, for these systems to serve their existential purpose of providing solutions to problems in advance, they have to be, in most if not all cases, formed of principles in the form of generic notions as in “whoever steals something whose value is more than \$100 will be sentenced to serve a year in prison.” If a legal system has, however, another legal ruling along with the previous one such as: “whoever steals something whose value is more than \$100 will be sentenced to serve two years in prison”, this constitutes a contradiction as to the punishment such a person will receive. If there are such conflicting generic rulings as part of a given legal system, the question of which one of the legal rulings in conflict with one another would need to be applied to individual cases where someone actually steals the prescribed amount is a problem with regard to predictability, which I have just described as central to the formation of any legal system. If there happens to be such conflicting reports regarding the prescribed punishment, then one needs to either cancel one of the conflicting rules or reconcile them. Therefore, any system, including a legal system, has to be based on prescribed principles that are predictable. And, predictability, as I have just noted, comes when particular legal rulings in the case of legal systems are in coherence with each other or, to put it differently, inner consistency is achieved when there is no conflicting legal ruling within the system. As such, every legal system ought to have inner consistency, and following the same linguistic categories (and any rules associated with them) of the law-making process for each of the individual legal reasonings is indispensable for legal systems to have that inner consistency especially when applying the law to particular cases. To illustrate, if the law has only one of the two conflicting rules about theft mentioned above, linguistic rules one adopts when understanding it has to be steady and not changing. For instance, let us suppose that the law had only the rule that states, “whoever steals something whose value is more than \$100 will be sentenced to serve two years in prison”, and a judge who is about to make a decision on a relevant legal case interprets the phrase ‘two years’ in such a way that he/she sentences the thief to be imprisoned every weekend until he/she does his/her jail time. In another relevant case, however, the same judge interprets the phrase ‘two years’ as ‘two consecutive years’ and imprisons another thief, who is similar to the previous one in all relevant aspects, for two consecutive years in jail. The judge’s decision relies on how he/she interprets the law, which in and of itself involves a linguistic analysis, regardless of how consistent that analysis may be. Therefore, if he/she is not consistent in his/her way of interpretation of the law, one can say that he/she will interpret the law in an inconsistent way, thus leading to inner contradiction within the legal system. Therefore, adopting the same linguistic principles for the process of law-making is indispensable for a legal system to have inner consistency.

the process of law-making in Islamic law, formulations to which indicators of law found in the primary sources of Islam were applied to so as to reach *aḥkām*. In other words, each individual *ḥukm* was formed through the same set of linguistic categories. The outcome of the process of law-making, i.e. Islamic law, consisting of these individual *ḥukms*, thus involved consistent constituent parts. Therefore, these linguistic categories were seen indispensable to provide the Ḥanafī legal system with its inner consistency.

The idea of having a consistent legal system seems to be rooted in the idea that in an effort to at least arrive at the approximation of the perfect legal system meant to be delivered to human beings through the Prophet, which is referred to as the *Šarīʿa*, one needs to have a methodology/a body of principles for producing the legal system in question. Having a set of rules and regulations pertaining to how a *mujtahid* uses language to interpret the texts of the sources of Islamic law thus seems to be necessary for producing a legal system that is as close as possible to the ideal legal system which Islamic legal scholars considered to be free from inconsistencies, namely the *Šarīʿa*.

## 2. A GENERAL FRAMEWORK FOR ENQUIRY INTO THE LINGUISTIC CATEGORIES

Having thus introduced the linguistic categories in the Ḥanafī school and discussed the significance thereof for the process of law-making in Islamic law, I will now discuss the need for a general framework for these categories. I will then briefly introduce the inherent problem in language that seems to be at the centre of *uṣūlīs'* analysis of language, which will thus be at the centre of the general framework I will be building in the following chapter.

The primary work I focus on for this task is *al-Manār* by al-Nasafī along with two commentaries on it, one by the author himself and the other by Molla Jīwan, as well as one gloss by al-Laknawī on the latter. Thus, I will largely base my analysis on these important sources along with some other reputable works on *uṣūl al-fiqh* within the Ḥanafī school.<sup>40</sup>

### 2.1. The logic behind the linguistic categorization

Abū al-Barakāt al-Nasafī (d. 710/1310), following a brief section praising God and his Prophet, starts off his pioneering work *Manār al-Anwār* (or simply, *al-Manār*) on the science of *uṣūl al-fiqh* (Islamic Jurisprudence) with his detailed analysis of *al-Kitāb*, i.e. the Qur'ān. He situates it as the most important among the three primary sources of Islamic Law, namely, *al-Kitāb* (the Book), the Sunna, and the *Ijmāʿ* — a

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<sup>40</sup> For a complete list of primary and secondary sources the present study relies on, see the bibliography.

broad term that could be translated in various ways with different connotations, but which we can translate here as the Consensus of scholars of the Islamic Nation for the sake of economy, as I shall have occasion to return to the notion of *Ijmāʿ* later. These three sources are followed by a fourth source that has to rely on at least one of the aforementioned three sources in order for it to qualify as a source of law, namely, *al-Qiyās*—often translated as syllogism or analogical deduction<sup>41</sup> in the literature on *uṣūl al-fiqh*.

Al-Nasafī then goes on to provide a detailed yet concise description of what *al-Kitāb* means in his *al-Manār* and elsewhere in the literature on *uṣūl al-fiqh*. He states that *al-Kitāb* is the Qurʾān sent down to the Prophet, written on *maṣāḥif* (pl. of *muṣḥaf*, which now means the physical book the text is written in, but then meant whatever

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<sup>41</sup> See Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 2010), 543; Muhammed M. Yunis Ali, *Medieval Islamic Pragmatics: Sunni Legal Theorists' Models of Textual Communication* (London and New York: Routledge, 2009), 168-170; and Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 1991), 197.

was available to write the text on), and narrated from Him to us with the status of *al-mutawātir*,<sup>42</sup> thus leaving no doubt about its authenticity.<sup>43</sup>

Al-Nasafī says that the word *al-Kitāb* is the name of both *naḍm*<sup>44</sup> (word) and *maʿnā* (meaning),<sup>45</sup> and the legal rulings of the *Šarīʿa*<sup>46</sup> could be known according to classifications of both,<sup>47</sup> which, he says, are four types. Then he goes on to mention

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<sup>42</sup> *Mutawātir* is the name given to the type of *ḥadīṭ* (tradition) narrated from the Prophet as *tawāturan*, translated in literature on *uṣūl al-fiqh* as “through continuous testimony” as in Kamali, *Principles of Islamic Jurisprudence*, 58, as “through cumulative chains of transmission” as in El Fadl, *Speaking in God’s Name*, 101), and as “multilineal transmission” by Weiss (as parallel to his translation of *āḥād* as “unilineal transmission”) as in Weiss, “Language in Orthodox Muslim Thought”, 63. In fact, individual reports narrated from the Prophet (and from his Companions) were referred to as *ḥadīṭ* and the amorphous corpus of these reports as the Sunna, which had proof-value in Islam, though secondary to the Qur’ān. Traditions consist of two constituent parts: (i) *isnād* (the chain of transmission providing information regarding the identity of narrators who narrate the report, often by mentioning their names and in some cases the relationship the narrator has to the person who comes before or after such as “my father” or “my son” and information as to the means of transmission such as “I/We heard such and such saying that...” or “He dictated me/us to write that...”); and (ii) *matn* (the actual report, which could be the sayings, actions, or tacit approvals of the Prophet or his Companions). Scholars divided traditions into several categories from several aspects, which have to do with the two constituent parts mentioned. *Mutawātir* is a type that falls under the classification of tradition according to *isnād*. If a tradition is narrated through singular chains of transmission, it is called *āḥād*, and if it is transmitted through cumulative chains of transmission, it is called *mutawātir*. Scholars often defined *mutawātir* as tradition transmitted from the Prophet during each of the first three generations of Muslims by such a number of narrators that it is impossible to think that they would all agree to lie and fabricate the tradition. The term is also used to refer to Qur’ānic verses, and the entire text of the Qur’ān has been considered to be transmitted *tawāturan* (as *mutawātir*). For *mutawātir*, see H. Yunus Apaydin, “mütevâtir”, TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/mutevatir> (26.01.2019); for *āḥād*, see H. Yunus Apaydin, “Haber-i Vâhid”, TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/haber-i-vahid#3-fikih> (26.01.2019); and for more information on Sunna as it is treated in *uṣūl al-fiqh* within the Ḥanafī school, see Molla Jiwan, *Nūr al-Anwār*, II).

<sup>43</sup> al-Nasafī, *al-Manār*, I, 12.

<sup>44</sup> Molla Jiwan notes that the word *naḍm* is used instead of *lafẓ* out of respect (Molla Jiwan, *Nūr al-Anwār*, I, 14).

<sup>45</sup> Büyük Haydar Efendi prefers to define *al-Kitāb* as *al-naḍm al-dāll bi-l-maʿnā* (the text referring to the meaning) (Büyük Haydar Efendi, *Usul-i Fikih Dersleri*, 26) rather than what may be described as ‘the rough’ definition we have here in *al-Manār*. When we consider the fact that, he adds, the meaning of the text of the Qur’ān was not transmitted as *mutawātir*, it is appropriate to define the Qur’ān this way.

<sup>46</sup> *Šarīʿa* is the name given to the Law God has sent to his Prophet and *Fiqh* is the effort of acquiring, or arriving at, *Šarīʿa*. See El Fadl, *Speaking in God’s Name*, 13-14, 34 for more on the difference between the *Šarīʿa* and *Fiqh*.

<sup>47</sup> *Wa-innamā tuṣrafu aḥkāmū š-šarʿi bi-maʿrifati aqsāmihimā* (al-Nasafī, *al-Manār*, I, 14).

these four types of classification. Büyük Haydar Efendi (d. 1903)<sup>48</sup> mentions that these linguistic classifications are rooted in *ilm al-waḍʿ*, the Science of Name-Giving,<sup>49</sup> whose practitioners apparently borrowed it from *ilm al-manṭiq* (the Science of Logic).<sup>50</sup> One of the primary aims of the linguistic categorization is to determine the meaning and scope of any given word. However, does it really matter where one draws the line of a given word in Islamic Law?

To illustrate the importance of the linguistic classification in law, consider the following sentence from the Qurʾān: ‘As for the male and female thief, cut off the hands of both.’<sup>51</sup> When pondering on the verse, such questions come to mind as ‘*what does “cut off,” “thief,” or “hands” mean?*’, ‘*what needs to be included in the term “thief” and “hand”?*’, and ‘*what happens if the person repeats the theft?*’. Each of these comes down

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<sup>48</sup> Büyük Haydar Efendi (d. 27 October 1903), also known as Nasūhîzâde (due to his lineage to Şeyh Nasūhî Efendi (d. 1130/1718), was a scholar, poet, and more importantly, a jurist. Among other positions he held, Haydar Efendi also taught as a *muḥallim* (lecturer) at Hukuk Mektebi (Law School). The lectures he gave at the school led to the publication of his *Usul-i Fıkıh Dersleri*. For more information on Büyük Haydar Efendi, see Mehmet Âkif Aydın, "Ali Haydar Efendi, Büyük", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/ali-haydar-efendi-buyuk> (02.01.2019).

<sup>49</sup> Weiss states that L. Gardet and M. M. Anawati translate the term as *semantique*. See Bernard G. Weiss, "Ilm Al-waḍʿ: An Introductory Account of a Later Muslim Philological Science." *Arabica* 34, no. 3 (1987): 339-56. [www.jstor.org/stable/4056913](http://www.jstor.org/stable/4056913), p. 1. For more on this, see Bernard G. Weiss, "Language in Orthodox Muslim Thought: A Study of Waḍʿ al-Lughā and its Development" (PhD diss., Princeton University, 1966), <https://search.proquest.com/docview/302228204?accountid=15172>. Other relevant studies include Shah, Mustafa, "Classical Islamic Discourse on the Origins of Language: Cultural Memory and the Defense of Orthodoxy", *Numen: International Review for the History of Religions*, (58) 2/3 (2011): 314-43; "The Philological Endeavours of the Early Arabic Linguists: Theological Implications of the *Tawqif-iṣṭilāḥ* Antithesis and the *Majāz* Controversy (Part II)", *Journal of Qurʾanic Studies* 2, no. 1 (2000): 43-66; and Versteegh, Kees, "Linguistic Attitudes and the Origin of Speech in the Arab World", ed. El-Gibali, Alaa, *Understanding Arabic: Essays in Contemporary Arabic Linguistics in Honor of El-Said Badawi* (Cairo: The American University in Cairo Press, 1996): 15-31.

<sup>50</sup> Büyük Haydar Efendi, *Usul-i Fıkıh Dersleri*, 27.

<sup>51</sup> وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ (Qurʾān, 5:38).

to the question of where to draw the line of the meaning of a given word in a given sentence. When considering a verse such as this with the aim of discovering the intended meaning of God for it – an interpretation process whose outcome will play a crucial role in determining, among other things, the punishment itself and the people it will apply to – it thus seems essential for *uṣūlīs* to be precise in their interpretation of the sources of Islamic law and start their investigation from the smallest independent unit<sup>52</sup> and its classification into conceptual categories. This will allow for the determination of the scope of each word and which individual entities—that would be named using the word— each word is able to refer to.

## **2.2. Towards developing a general framework: making sense of the linguistic categories**

In the previous section, it was noted that the logic behind making *lafḍ*, i.e., the word, the subject matter of a study whose aim it is to understand the meaning of the Qurʾān and the Sunna, and more specifically, indicators of God’s law in them, with an eye to extracting legal rulings from them, was that a firm grasp of each of the smallest meaningful units, i.e., the word, of the text of the Qurʾān and the Sunna, and its precise implication is needed in order to take a serious step towards deciphering the whole text. This in turn means fulfilling the aim of the science of *uṣūl al-fiqh*, namely, to

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<sup>52</sup> Here I assume that starting an investigation of an object, be it a physical one or a concept, with the smallest independent unit it is made of constitutes a key aspect of the analysis such that an analysis that does not appreciate the fine details of the object under investigation is haphazard and imprecise.

establish rules that will help pave the way to deriving legal rulings from the sources of law.<sup>53</sup> Therefore, the logic behind classifying words into linguistic categories with the aim of understanding the whole text, which is made up of words, is that once each part is understood, the whole will become clear, at least to some extent.

The investigation into the smallest independent unit of language, the word, is semantic in nature, as is indicated by al-Nasafī who talked about classification of both words and their meanings, as mentioned in the previous section. In fact, at least within the context of the first categorization this inquiry is one that looks at words in terms of the way human beings use various methods and tools, such as what I refer to in this context as ‘linguistic devices’,<sup>54</sup> to determine meaning and scope. This assumes that there is a flexibility in determining the boundaries of a given word, which further assumes that the meaning and scope of a given word is not clear. This brings me to the discussion of one of the aspects of the nature of language that is problematic.<sup>55</sup>

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<sup>53</sup> Vishanoff notes that the role of *uṣūl al-fiqh* in the formation of *furūḥ al-fiqh* has been debated over by contemporary Euro-American scholars. He says that one side in the debate (e.g. Wael B. Hallaq in his “Was the Gate of Ijtihād Closed?” p. 4-5 and “Was al-Šāfi‘ī the Master Architect” p. 588, 592) favors *uṣūl al-fiqh* as a methodology for deriving law from the sources thereof, while Sherman Jackson (“Fiction and Formalism”) claims that it has only served as a tool to rhetorically validate legal rulings jurists made in response to their own concerns (see David R. Vishanoff, “Early Islamic Hermeneutics: Language, Speech, and Meaning in Preclassical Legal Theory” (PhD diss., Emory University, 2004), 153, <http://david.vishanoff.com/wp-content/uploads/Dissertation.pdf>).

<sup>54</sup> I will dwell on this in the following pages.

<sup>55</sup> This, as I mention in other places in this topic, could be called from one angle ‘problematic’, but from another ‘beautiful’. However, labelling this as ‘problematic’ serves the purpose of explaining the matter better. In fact, I will use the term in the sense that it is a problem that leads to the development of a solution.

### **2.3. The centre of the general framework: The inherent nature of language— Limited number of words for an almost infinite number of entities**

Apparently, the primary function of language, as the analysis of the *uṣūlīs*' linguistic categorization carried out in Chapter 3 below indicates, is to allow communication between members of the same linguistic community. As will be discussed later in this work in detail, members of the same linguistic community are in a state of agreement with each other on word-meaning correlates that make up the language of the community.<sup>56</sup> Having agreed on which word refers to which meaning, what a given member has in their mind in terms of thought, which is otherwise unknown to others, can be transferred to others through the medium of language thanks to the agreement on word-meaning correlates.

To allow for perfect communication through word-meaning correlates, ideally there would need to be a distinct name (word) for each single item in our world.<sup>57</sup> However, it would be hard, if not impossible, for us to give each and every item in our world a distinct name because there are an almost infinite number of items to be named, which is a phenomenon that I call “the inherent nature of language”. This is a problem that is at the centre of the *uṣūlīs*' analysis of *lafḍ* (word/phrase/utterance),

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<sup>56</sup> Weiss, *The Search for God's Law*, 121.

<sup>57</sup> This is what I call ‘the ideal way of name-giving’, which I dwell on later in this work on various occasions. See for instance, section 3.7.

a problem that will thus be at the centre of the general framework I am about to develop to make sense of *uṣūlīs'* analysis of language.

#### **2.4.Overcoming the problem inherent in language: Limiting the number of things to be named**

*Uṣūl al-Fiqh*, as far as its linguistic categories are considered, tries to overcome one difficulty inherent in language: there are an almost infinite number of things to be named. To overcome this problem, we can either have an almost infinite number of names so that we can have a distinct name for each entity, or we can reduce the things to be named. I refer to the former as “the ideal way of name-giving”. However, human beings go with the second option, which I will now briefly introduce.

We do not name every physical or abstract item in our world using a specific name/word,<sup>58</sup> since, apparently this we would not find practical and/or our brains work the other way around. Instead of giving each and every item a distinct name, we classify large numbers of items/physical things<sup>59</sup> under groups based on certain similarities all the individual items that go under a certain group have in common and then refer to each using what we may describe as, a ‘broad word.’ This way of naming entities is referred to as the ‘practical way of name-giving’ in this work.

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<sup>58</sup> Human beings are excluded from this in this sense, as we oftentimes name each individual using a particular name. However, still we do not need to use a particular person’s particular name to refer to that person. Instead, we may use broader terms such as “human being” or “person” to refer to, among other things, those who would go under the label of “person.”

<sup>59</sup> This may even include concepts of course.

However, referring to many and sometimes an almost infinite number of individual items using the same word brings about the possibility of more than one item under that word being referred to on a particular speech occasion. Which one of the items under a given word is the speaker/writer referring to on that particular occasion? Does he/she mean all of them? Or does he/she have in mind one particular individual item or a particular group of all the possible items under that label/word? These questions all come down to determining the boundaries of the scope of a given word, which is a primary subject matter analyzed under the first linguistic categorization that we find in *uṣūl* works.<sup>60</sup>

The practical way of name-giving is not, however, related only to the first categorization. As will be seen later in this work, the inherent nature of language (that there are almost an infinite number of entities to be named) and the way human beings resolve it (which is through the practical way of name-giving), I argue, lie at the bottom of the linguistic classification and thus have much to do with all the four categorizations. I will show this relationship within a general framework I will build based on the linguistic categories as complete as possible in section 3.9 below.

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<sup>60</sup> Human beings use what will be called in this work ‘linguistic devices’ to resolve ambiguity as to the scope of words, an ambiguity that results from the ramifications of ‘the practical way of name-giving’. I will discuss the linguistic devices in my analysis of the first categorization and show where they fit into the general framework later in this work.

Within that general framework, which I will build based on *uṣūlīs'* classification of *lafḍ* into categories and my close readings of texts of logic, I will try to show, using an example, how scholars of *uṣūl al-fiqh* dealt with this issue which is inherent in language.

### **2.5. Need for a general framework: The state of literature on linguistic categories**

The motivation for a general framework stems from a problem in the presentation of the linguistic classification in both the classical and modern literature on *uṣūl al-fiqh*.

Although many scholars, such as Kamali and Weiss<sup>61</sup> reiterate, in English, what classical scholars of *uṣūl al-fiqh* have already said regarding the linguistic categorizations, they do not provide any general conceptual framework that would answer such basic questions as “Why do scholars of *uṣūl al-fiqh* feel that they should classify *lafḍ* into categories in the first place?”, and “Why does this classification need to be in terms of four aspects?”, and “Why did they come up with the categories that they have come up with and not with others?”, all of which come down to making the linguistic classification meaningful.<sup>62</sup> Due to the absence of a general framework

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<sup>61</sup> Kamali, Mohammad Hashim, *Principles of Islamic Jurisprudence*; Weiss, *The Search for God's Law*.

<sup>62</sup> Although he has done significant work on the subject by making available for English readers and scholars of Arabic and Islamic Studies the *uṣūlīs'* treatment of the theory of law in Islamic Law, Weiss does not explain the formation of the linguistic categories using a meaningful general framework, which is essential in honing our understanding of the categories themselves. In this regard, he states the following in his discussion of the categories: “In the discussion that follows the presentation of this classification, it is not the schemes as such

for the linguistic categories in the *uṣūl al-fiqh* manuals, other scholars such as Vishanoff<sup>63</sup> and Sadeghi<sup>64</sup> have sought to fill this gap with external frameworks which are not intrinsic to, or found in, *uṣūl al-fiqh*, and which lead to a distorted image of the linguistic categories or *uṣūl al-fiqh*.<sup>65</sup>

The works written in this manner do not present all the linguistic categories mentioned in *uṣūl al-fiqh* manuals within a general framework that would account for each category and/or the relationship between them. When one reads their works, one sometimes puzzles to find the relevance of one linguistic category to the other, or one categorization to the other.

The origin of the four linguistic categorizations goes back to Abū Zayd ʿAbd Allāh (ʿUbayd Allāh) b. Muḥammad b. ʿUmar b. ʿĪsā al-Dabūsī (d. 430/1039). In fact, the first work to include a quadri-categorization of words (and of utterances for that matter) within *uṣūl al-fiqh* appears to be his *Taqwīm al-adilla*.<sup>66</sup> Yet, he himself does

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that are at issue but only certain categories that emerge out of them. We need, therefore, to take only a brief look at the schemes themselves.” (see Weiss, *The Search for God’s Law*, 129). This indicates that he does not deal with the linguistic classifications in detail, let alone provide a general framework that would make such a categorization meaningful.

<sup>63</sup> David R. Vishanoff, “Early Islamic Hermeneutics”.

<sup>64</sup> Behnam Sadeghi, *The Logic of Law Making in Islam* (New York: Cambridge University Press, 2013). Another scholar who have approached to the linguistic material found in *uṣūl al-fiqh* manuals in the same manner as Vishanoff and Sadeghi is Ali (see Ali, *Medieval Islamic Pragmatics*).

<sup>65</sup> See the literature review in this section below.

<sup>66</sup> Asim Cüneyd Köksal, İbrahim Kâfi Dönmez, “Usûl-i Fikih”, *TDV İslâm Ansiklopedisi (DİA)*, İstanbul: Türkiye Diyanet Vakfı Yayınları, 2012, XLII, 203. For detailed information about *Taqwīm al-Adilla*, see Murteza Bedir, “Takvīmü’l-Edille”, *TDV İslâm Ansiklopedisi*, <https://islamansiklopedisi.org.tr/takvimul-edille> (27.01.2019).

not provide any framework that would explain why he categorized the words (and phrases/utterances for that matter) into four categories.<sup>67</sup>

His work played a major role in shaping what would later be called by Ibn Xaldūn the *Fuqahā'* method, the type of *uṣūl al-fiqh* writing that abstained from including topics that fall under the field of *Kalām* (which is the main characteristic of the rival method, namely the *Mutakallimūn* method, often associated with the Šāfiī School of law).<sup>68</sup> By contrast, works written using the the *Fuqahā'* method, which is often associated with the Ḥanafī School of law, present *uṣūl* topics in relation to *furūf al-fiqh* and adopt an inductive approach that produces *uṣūl* based on *furūf*.<sup>69</sup> The *Taqwīm al-adilla* of al-Dabūsī significantly influenced in terms of content and structure many *uṣūl al-fiqh* works written afterwards within the *Fuqahā'* method, including Šams al-A'imma al-Saraxsī's *Uṣūl* and Faxr al-Islām Abū al-ʿUṣr al-Pazdawī's *Kanz al-Wuṣūl*.<sup>70</sup>

These two works had a great impact on the content and structure of subsequent works on *uṣūl al-fiqh* as well.<sup>71</sup> *Al-Manār* is among the works that these

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<sup>67</sup> al-Dabūsī, Imām Abū Zayd, *Taqwīm al-Adilla* (Beirut: Dār al-Kutub al-ʿilmiyya, 2001).

<sup>68</sup> The deductive method is another characteristic of the *Mutakallimūn* type of *uṣūl al-fiqh* writing (Cüneyd Köksal, İbrahim Kâfi Dönmez, "Usûl-ı Fikih", *TDV İslâm Ansiklopedisi (DİA)*, İstanbul: Türkiye Diyanet Vakfı Yayınları, 2012, XLII, 204).

<sup>69</sup> *Ibid*, 203.

<sup>70</sup> *Ibid*.

<sup>71</sup> Asim Cüneyd Köksal, İbrahim Kâfi Dönmez, "Usûl-ı Fikih", *TDV İslâm Ansiklopedisi (DİA)*, İstanbul: Türkiye Diyanet Vakfı Yayınları, 2012, XLII, 203.

two works had a clear influence on. In turn, *al-Manār* has long been used as a textbook in *madrāsas* across the Islamic world thanks to the fact that it briefly introduces the Ḥanafī (*Fuqahā'*) *uṣūl* to students of *uṣūl al-fiqh*.<sup>72</sup> However, *al-Manār* and the commentaries on it that I have used in the present work do not provide any general framework for the linguistic categories either.

Molla Xusraw (d. 885/1480),<sup>73</sup> arguably one of the most influential Ottoman scholars of *uṣūl al-fiqh*,<sup>74</sup> does not provide any explanation in his *al-Mir'āt* of the reasons behind the particular linguistic categorizations found in *uṣūl al-fiqh* manuals. Similarly, another important figure in the late Ottoman *uṣūl al-fiqh* tradition, Büyük Haydar Efendi, contents himself with mentioning that this goes back to the science of *wadī'* (name-giving), which probably took this method from the science of Logic.<sup>75</sup>

Thus, no classical work on *uṣūl al-fiqh*, to the best of my knowledge, attempts to establish a general framework to explain the linguistic categories found in these classical works in a holistic way that would provide a satisfying answer to the questions posed above.

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<sup>72</sup> For major works written using the *Fuqahā'* method, which include *al-Manār*, see Asim Cüneyd Köksal, İbrahim Kâfi Dönmez, "Usûl-ı Fikih", *TDV İslâm Ansiklopedisi (DİA)*, İstanbul: Türkiye Diyanet Vakfı Yayınları, 2012, XLII, 203.

<sup>73</sup> Ferhat Koca, "Molla Hüsrev", *TDV İslâm Ansiklopedisi*, <https://Islamansiklopedisi.Org.Tr/Molla-Husrev> (16.08.2019).

<sup>74</sup> See Taşköprüzâde, *al-Shaqā'iq al-Nu'māniyya*, ed. Ahmed Suphi Furat (İstanbul 1985); Mecdi Efendi, *Ḥadā'iq al-Shaqā'iq (Terceme-yi Şekâ'ik)*, ed. Abdülkadir Özcan, (İstanbul, 1989).

<sup>75</sup> Büyük Haydar Efendi, *Usul-i Fikih Dersleri*, 27.

Modern treatments of the linguistic categories found in those classical *uṣūl al-fiqh* manuals are similarly characterised by a lack of an explicit general framework that is designed to explain all the linguistic categories in a holistic way and one that is intrinsic to the science of *uṣūl al-fiqh*.

This attitude of modern scholars who dealt with this issue without first establishing such a general framework may be due to the assumption that one can properly analyse the linguistic categories found in *uṣūl al-fiqh* manuals without first having a good understanding of the general framework behind the production of the outcome, which is the linguistic categories themselves. I consider this to be problematic because it seems wrong to assume by any stretch of the imagination that the linguistic categories, say those found in *al-Manār*, have been laid down in it without any order and that others who came afterwards just copied this arrangement without ascertaining their validity, when one considers how sophisticated and subtle classical writers were in their treatment of many subjects within Arabic and Islamic studies.

Moreover, it makes sense to assume instead that they must have had in the back of their mind a framework, whether or not an ideal one that is free from inconsistencies, through which they produced the linguistic categories.

To understand this better, consider any piece of literature produced today, such as a PowerPoint presentation. The presenter puts only what he/she considers

to be important on the slides for the sake of economy. This does not mean that the presenter's opinions as they are put on the slides or even the talk that accompanies the slides lack a general framework in case he/she chooses not to mention that general framework either in the slides or in the talk. Similarly, an author of an article or a book in fact has a framework in his/her mind when producing the piece of literature, regardless of how consistent a framework this may be. Yet, they do not need to spell this out every time, unless they see a benefit in this.

Nonetheless, when reading such pieces of literature, one can still make an effort, based on one's analysis of the material the presenter/author produced, to come up with what one considers to be the framework that explains all the material presented/written by the speaker/author of the piece of literature in a comprehensive way.

In order to understand a piece of literature, one does not have to make explicit that general framework which the authors/presenters may themselves have chosen not to make explicit. Nevertheless, without a good understanding of that framework, whether one chooses to make it explicit or not, one would end up considering the bits of information that one found in the piece of literature produced by someone else to have no connection to each other. As a result, one may end up either (i) repeating the bits of information without showing any clear understanding of the general framework behind them or (ii) projecting one's own general frameworks which one

considers to be similar to the one under investigation without any justification.<sup>76</sup> I think Kamali and Weiss fall under (i), and Vishanoff, Sadeghi, and Ali under (ii). I will now dwell on these two approaches adopted by some of the modern scholars who wrote on the linguistic categories of *uṣūl al-fiqh* and the problems associated with their approaches, providing examples from the works of these authors.

The first approach appears to be adopted by many modern writers who wrote on this matter. In fact, a quick glance at the various works written on linguistic aspects of *uṣūl al-fiqh* reveals that some of these works perpetuate with various degrees of success various linguistic categories already found in *uṣūl* manuals.<sup>77</sup> Even though the benefit of making the linguistic categories originally found in Classical Arabic available to readers of English, Turkish or other languages is undeniable, as one can benefit from these sources when seeking to understand the classical works, they nonetheless do not provide a general framework to explain the origin of the linguistic categories or the relationships between the four categorizations and the linguistic categories that fall under them, which lead them to arrive at incorrect understandings of the linguistic categories or *uṣūl al-fiqh*.

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<sup>76</sup> A third option would be to ask the author/presenter for clarification of what appears to be discrepancies in the literary product. In the case of classical authors, such as al-Nasafi, we do not have this option.

<sup>77</sup> See for instance, *Principles of Islamic Jurisprudence* by Kamali, *Fikih Usūlū* by Fahrettin Atar and *İslâm Hukuk İlminin Esasları* by Zekiyüddin Şâban (tr. İbrahim Kafi Dönmez), and Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory*, Resources (Atlanta, Georgia : Lockwood Press, 2013).

Kamali, for instance, never touches upon the relationship between *ṣibārat al-naṣṣ* and *naṣṣ* or the relationship between *iṣārat al-naṣṣ* and *ḍāhir*, implying that there is no connection between them whatsoever.<sup>78</sup>

However, I would argue that there is indeed a connection between these categories. Consider the following sentence: “I talked to him when he came to Leeds for the conference in 2020.”<sup>79</sup> This sentence contains two sets of information, or to use the term used by *uṣūlīs*, two *maʿānī* (meanings/propositions): ‘I talked to him’ and ‘He came to Leeds for the conference in 2020’. When we consider the way in which the sentence is put together, we can conclude that the former constitutes the core/the focus of the larger sentence and the latter functions to limit the potential referents of the former.<sup>80</sup> The whole sentence as far as its signification of the meaning carried in its main part is said to be *naṣṣ* while it is referred to as *ḍāhir* as far as its signification of the meaning carried in its secondary part. The main part of the sentence is what *uṣūlīs* refer to as *ṣibārat al-naṣṣ*, and the secondary part of the

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<sup>78</sup> For a through analysis of each of these linguistic categories, see the respective sections on each. Also see section 3.8 for the relationship each of these has with the others. Finally, for an overview of the place where these linguistic categories fit together with other linguistic categories found in Ḥanafī *uṣūl* works such as *al-Manār* within the general framework, see section 3.9 below.

<sup>79</sup> In his discussion of the difference between *ḍāhir* and *naṣṣ*, Molla Jīwan mentions the following example: “*raʿaytu fulānan ḥīna jāʿanī l-qawmu*” (I saw such and such when the people came to me). According to Molla Jīwan, the meaning of this sentence is *naṣṣ* in the sense of “my seeing” but *ḍāhir* in the sense of “the coming of the people.” I discuss this example in section 3.3.1.2 below.

<sup>80</sup> For details on the focus of sentence and the difference between *ḍāhir* and *naṣṣ*, see section 3.3.1.1 and 3.3.1.2. To see their relationship within the general framework, see the general framework in section 3.9.

sentence constitutes *iṣārat al-naṣṣ*.<sup>81</sup> Kamali, who falls under the first approach, on the other hand, does not seem to be aware that *naṣṣ* is related to *ṣibārat al-naṣṣ*, and that *dāhir* is related to *iṣārat al-naṣṣ*.<sup>82</sup> In this regard, he can add nothing more to what is already said in *uṣūl al-fiqh* manuals on this matter. Not seeing the connection between the linguistic categories, he treats each of these categories in isolation from each other, which more or less characterizes the works that fall under the first approach, as mentioned above.

Failing to see the general framework behind the linguistic categories not only leads Kamali to repeat in English what is already available in Classical Arabic on linguistic categories in *uṣūl al-fiqh* manuals, but also causes him to arrive at mistaken conclusions about them. Further problems with his understanding of the categories arise when he attempts to compare, for instance, *dāhir* and *naṣṣ* in one section of his work.<sup>83</sup>

He describes *dāhir* as “a word which has a clear meaning and yet is open to *taʿwīl*, primarily because the meaning that it conveys is not in harmony with the context in which it occurs.”<sup>84</sup> This raises some questions, such as if not being in harmony with its context is the primary reason why *dāhir* is open to *taʿwīl* (which for

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<sup>81</sup> For details, see respective sections on *dāhir*, *naṣṣ*, *ṣibārat al-naṣṣ*, and *iṣārat al-naṣṣ* below.

<sup>82</sup> See Kamali, *Principles of Islamic Jurisprudence*, 125-126.

<sup>83</sup> *Ibid*, 91-94.

<sup>84</sup> *Ibid*, 91.

now I may translate roughly as ‘interpretation’), then why *naṣṣ*, which he aptly describes as a word that is “...in harmony with the context in which it appears”<sup>85</sup> is, as he puts it, “...still open to *ta’wīl*”<sup>86</sup>? This is a question he never answers, and, in fact, it cannot be given a proper answer if one adopts the position which Kamali and others who fall under the first approach have adopted.<sup>87</sup>

Such discrepancies apparently result from the confusion that occurs when attempting to make sense of each linguistic category in isolation from other categories. To put it differently, the coherent procedure would be to assume that the linguistic categories which *uṣūlīs* treated in their *uṣūl al-fiqh* manuals may be related to each other – especially when one considers that these scholars treated them together in their works – and then to assess whether or not this assumption is, in fact, the case based on an analysis that would seek to establish the existence of relationships between any of the linguistic categories or the lack thereof. Instead, Kamali and others who fall under the first approach seem to assume that linguistic categories are not related to each other.

When taken for granted, this assumption blocks any effort to analyse all the linguistic categories as parts of a general framework that would be built based on an

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> See next page for an answer to this question given in the light of the general framework which I build based on the linguistic categories.

analysis of the linguistic categories. This results in misunderstandings and confusions about the linguistic categories, some of which I have just noted above.

Thanks to the general framework I build in Chapter 3 based on the linguistic categories themselves, this thesis reveals, by contrast to previous scholarship, that the reason why some words that may happen to fall under the categories of *dāhir* and *naṣṣ* are open (or closed) to *taʿwīl* has nothing to do with such words' lack of harmony within the context where they occur, as Kamali seems to claim. Rather, it has much to do with the dichotomy between *kināya* and *ṣarīḥ*, which I discuss in detail later in this work.<sup>88</sup> However, to better explain how the treatment of the linguistic categories according to the first approach falls short, I need to briefly talk about *kināya* and *ṣarīḥ* here in relation to the concept of *taʿwīl*.

The intended meanings of some of the words are not fixed to a certain sense; these are what *uṣūlīs* refer to as *kināya*. Because a given word (and phrase/sentence for that matter) that falls under the category of *kināya* is not fixed to a certain sense, it will always be open to *taʿwīl* (i.e. interpretation).

However, a *kināya* word may get fixed to a certain sense on the speech occasion on which it occurs. In that case, it turns into either *mufassar* or *muḥkam*.<sup>89</sup> This

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<sup>88</sup> See sections 3.5.3, 3.5.4, and 3.6 below.

<sup>89</sup> *Mufassar* and *muḥkam* have in common that they both constitute a category where the intended meaning of the word (or phrases/sentence for that matter) under consideration is explained by the addresser. For a comparison between *mufassar* and *muḥkam*, see section 3.4 below.

happens when the addresser provides an explanation for any relevant aspect<sup>90</sup> of that word in an effort to clarify what he/she means by it on a speech occasion on which he/she uses it.<sup>91</sup> Because the intended meaning of the *kināya* word is explained by the addresser, it is no longer possible to interpret the word in a sense different from that which is indicated by the addresser. In other words, the addresser's explanation renders the intended meaning of that *kināya* word fixed to a certain sense on that speech occasion.<sup>92</sup> In such a case, the intended meaning of the word becomes clear to all addressees within the scope of the speech occasion. As a result, the word is considered to be closed to *ta'wīl* on that speech occasion.

On the other hand, *uṣūlīs* hold that there are words that have a fixed sense in language. Such words are referred to as *ṣarīḥ*. Because these words have a fixed meaning regardless of the context in which they occur, they are closed to *ta'wīl*,<sup>93</sup> so the intention of anyone who utters a *ṣarīḥ* word is considered to be known by all.<sup>94</sup> For instance, the meaning of the utterance “*anti ṭāliq*” is fixed to the meaning of “You

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<sup>90</sup> For further information, see section 4.3 below.

<sup>91</sup> As will be noted later, this explanation can be on a speech occasion other than the one in question (see section 3.3.1.3 below).

<sup>92</sup> See sections 3.5.4 and 3.6 below for further information.

<sup>93</sup> See the relevant sections on *kināya* and *ṣarīḥ* below. See also section 3.6 for a comparison between *kināya* and *ṣarīḥ*. As always, for a better understanding of these two categories, see where they fit into the general framework in section 3.9 below.

<sup>94</sup> See section 3.4 for more information on *mufassar* and *muḥkam* and section 3.6 for more information on *ṣarīḥ*. Also, for further information on each of these linguistic categories, see the relevant designated sections below.

are divorced/I divorce you.”, and given that it is addressed by a husband to his wife, it constitutes the act of divorce even if the husband meant something else with it.<sup>95</sup>

In each of these cases (i.e. the word being either *mufassar/muḥkam* or *ṣarīḥ*), the intention of the addresser is known due to it being clarified on the speech occasion, as is the case with *mufassar* and *muḥkam*, or due to it being already clear in the language, as is the case when it is *ṣarīḥ*. As a result, there is no room for speculation as to what the intention of the addresser may be with such words. Therefore, a word's being closed to *ta'wīl* has to do with its intended meaning being fixed to a certain sense, either on the speech occasion in which it occurs or due to its general fixedness to a certain sense in the language.

Thus, unlike what Kamali claims, *dāhir*'s being open to *ta'wīl* has nothing to do with its lack of harmony with the context in which it occurs. As noted already, otherwise, the harmony of *naṣṣ* with the context it appears in would close it to any

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<sup>95</sup> In Islamic family law, a husband can divorce his wife in two ways depending on the words he uses. He can either use (i) *ṣarīḥ* words (or sentences for that matter), such as “*anti ṭaliq*” or “*anti muṭallaqa*” (You are divorced); or he can use (ii) *kināya* words (or sentences for that matter) such as “*anti wāḥidatun*” (You are single). In the former, words/expressions used for the act of divorce are only used for this act, or to put it differently, their meanings are considered to be fixed to the act of divorce. Therefore, the divorce occurs without any consideration of the intention of the speaker. In the latter, however, words/expressions used to perform divorce are not designated to the act of divorce. In fact, a husband, who says, for instance, “You are single”, may have meant that “You are the only one [who is beloved to me]”. Due to such possible interpretations, in the case of (ii) the divorce occurs only if there is evidence indicating that the intention of the speaker is the act of divorce. This evidence can either be a clarification of the speaker of his intention that he uttered the utterance to perform the act of divorce; or it can be an extratextual clue/evidence indicating that the intention of the speaker was to perform the act of divorce. For instance, if he says, “You are single” on a particular occasion where they are discussing divorce, then it is taken to mean something as “You are single, that is, I divorced you.” (for details, see al-Maydānī, *al-Lubāb*, 379-380).

effort to *ta'wīl*, which is not the case, as Kamali himself admits. Yet, he makes no effort whatsoever to explain why *naṣṣ* is still open to *ta'wīl* regardless of its harmony with the context where it occurs despite the fact that his self-contradiction on this point should lead him to do so. This is an indicative example from Kamali's text—many more could have been cited.

For the sake of economy, here I cannot provide separate analyses of each discrepancy found in Kamali's work and of others who follow the first approach. Nor is it necessary to do so. It is my hope, however, that those who read the present work along with others will come to the conclusion that an explanation that involves a comparison between linguistic categories such as the one I have just provided above as to the reason why words that fall under the categories of *naṣṣ* and *dāhir* are both open to *ta'wīl* can be provided only when one first realizes the relationships between the linguistic categories and then takes these relations into consideration when describing individual categories. This requires one to describe each linguistic category within a general framework.

Trying to explain the linguistic categories without having any general framework as done by those who adopt the first approach is thus misleading, resulting in misunderstandings of individual categories, as noted above. Moreover, it may also open up the false notion that the linguistic categories have no governing framework within which one needs to understand them, raising questions as to the

function of the linguistic categories altogether in particular and that of *uṣūl al-fiqh*, for which the linguistic categories constitute an important part, in general. This brings me to the discussion of the second approach.

In an attempt to understand these categories, those scholars who might be grouped as constituting the second approach seem to have used general frameworks that are produced on the basis of other fields. Some of these, like Ali, choose to explicitly note the particular methodology they follow in their work, which seems to be more honest and leads to less confusion as to the structure of the book under consideration. Others do not explicitly do so.

In either case, adopting a framework outside of *uṣūl al-fiqh*, apparently appeals to some scholars, who seem to feel they are at home in both the field they borrow the framework from and that which they apply it to, in this case *uṣūl al-fiqh*. This may be due to their familiarity with the two fields, which allows them to see the parallels between them. This is why the frameworks outside of the field of *uṣūl al-fiqh* that have been applied to the linguistic material found in *uṣūl al-fiqh* manuals may well confirm some of the linguistic material found in *uṣūl al-fiqh*, as demonstrated extensively by Ali.

However, a close examination of the linguistic categories with an eye to seeing whether or not a given general framework produced outside of the field of *uṣūl al-fiqh* actually explains all the linguistic aspects and phenomena concerning language that

we find in *uṣūl al-fiqh* manuals reveals that in some cases the general frameworks that have been applied to the linguistic material found in *uṣūl* manuals are inadequate.

It is sometimes hard, however, to appreciate this because some of these authors seem to focus on those linguistic categories, or certain aspects thereof, that fit into the general framework which they brought into the field of *uṣūl al-fiqh*. Accordingly, they seem to portray a picture of these linguistic categories that does not take into account every linguistic category mentioned in classical *uṣūl al-fiqh* manuals or some of the fundamental aspects of these categories. Instead, they are content to deal with what fits into their general framework. This leads to a misreading of these linguistic categories, which would have otherwise been obvious to the careful reader.

This seems to be the case with Vishanoff's treatment of the subject.<sup>96</sup> He says, "Theorists developed several ways of classifying expressions on a continuum from self-evidently clear to utterly obscure, and required different types of evidence for the resolution of each type of ambiguity."<sup>97</sup> Although it is true that those categories which fall under the second categorization in *al-Manār* are placed on a hierarchy ranging from the most clear to the most obscure, presenting them only according to the scale of clarity or ambiguity ignores fundamental aspects of these categories in

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<sup>96</sup> Similarly, Hallaq's analysis of the linguistic categories focuses on only certain categories of the Ṣāfi'ī school of law (see Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī uṣūl al-fiqh*, 42-58).

<sup>97</sup> Vishanoff, "Early Islamic Hermeneutics", 4.

which they differ from each other. I think this type of presentation which Vishanoff adopts indicates that he does not appreciate the details of each category he broadly mentions. This is a tendency in many, if not all, other modern writers who wrote on this matter, a tendency that simplifies the categories and chops features of each to the point of merely putting them on a scale of certainty/ambiguity, placing *muḥkam* on the top and *mutašābih* to the bottom.

This tendency reveals itself, as it does in Vishanoff's work, by how a given author who wrote on this matter defines the linguistic categories and equates them with proposed English translation equivalents (e.g. translating *muḥkam* as 'self-evidently clear' and *mutašābih* 'utterly obscure'), which actually do not convey at all the meanings the Arabic terms indicate (e.g. *muḥkam* has much to do with *ḥukm* rather than the clarity of the word, which the translation 'self-evidently clear' misrepresents), as the present work makes clear.<sup>98</sup>

Considering the linguistic categories without any given general framework based on an analysis of all the individual linguistic categories found in *uṣūl* works, Vishanoff is then able to go on to say that *uṣūl al-fiqh* is merely a way of covering up inconsistencies between the status quo and the revelation (the Qur'ān and the Sunna). He further claims that this cover up was achieved thanks to the ambiguity which is a

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<sup>98</sup> See the far more sophisticated treatment of *muḥkam* and *mutašābih* below in sections 3.3.1.4 and 3.3.2.4 respectively.

feature of Arabic language that allowed the scholars to reconcile the inconsistencies within the Qurʾān and the Sunna, thereby forming a body of rules with the character of inner consistency.<sup>99</sup>

I think Vishanoff fails to consider that the feature of ambiguity found in Arabic, which he claims to be peculiar to Arabic and thus to be exploited by al-Šāfiʿī<sup>100</sup> and others who came after him in order to base the law on revelation, is inherent in human language. This feature originates from what is termed in the present work ‘the practical way of name-giving’, which is the way human beings deal with the problem of what I call ‘the inherent nature of language’.

The inherent nature of language is that there are an almost infinite number of entities in the world to be named. We do not (and in practice cannot) name each and every item in the world, be it physical or conceptual, using a distinct name. Rather, we form groups based on some essential features that some of the entities have in common and then give a name to the group. We then use the group name to refer to any individual item under the group. This way of name-giving is ‘the practical way of name-giving’.

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<sup>99</sup> Vishanoff, “Early Islamic Hermeneutics”, 3.

<sup>100</sup> Ibid, 127-128.

The practical way of name-giving leads to a number of ramifications such as ambiguity as to the referent that is being referred to with the group name. To illustrate, instead of naming each computer with a distinct name, we call each one of them as ‘computer’. Since the name ‘computer’ stands for an almost infinite number of entities, referring to a particular entity within the class of computers using the name ‘computer’ alone may well lead to confusion as to the referent of the name ‘computer’.

To resolve this, we use what I have termed in this work ‘linguistic devices’<sup>101</sup> such as adjectivals, and time and space adverbs, to limit the number of potential referents of the broad group name. Other ambiguities also arise from the ramifications of the practical way of name-giving, which I talk about later in this work.

By demonstrating the connection of the practical way of name-giving (as opposed to what I term in the present work ‘the ideal way of name-giving’) to almost all the linguistic categories found in *al-Manār* by al-Nasafī, which is arguably one of the most important works on *uṣūl* within Ḥanafī literature,<sup>102</sup> I came to the conclusion that the linguistic categories of *uṣūl* works are the result of *uṣūlīs*’ endeavours to cope with the ramifications of the practical way of name-giving, which is not a case peculiar

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<sup>101</sup> I provide a list of these in section 2.7.

<sup>102</sup> See below.

to Arabic, as Vishanoff claims,<sup>103</sup> but an inevitable characteristic of all natural languages.

Among other things, the fact that the connection between each individual linguistic category and the other linguistic categories found in *uṣūl* works is not well established in modern treatments of the subject gives me the impression that the general framework behind the production of the linguistic categories has not been well understood in these works.

Again, this general framework must exist. Yet, I do not say that it has to be one without any discrepancies. In fact, producing a work with a general framework without any inconsistencies depends very much on one's abilities to do so. My contention is that modern writers' treatment of the matter reveals they are not aware of the general framework that was behind the production of the linguistic categories, regardless of the question of whether this framework was a successful one that was free from inconsistencies or not.

In this regard, *Medieval Islamic Pragmatics* by Mohamed M. Yunis Ali is no different. In fact, similar to the approach of Vishanoff and others who fall under the second approach, Ali, too, assumes that the linguistic categories have no governing

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<sup>103</sup> Interestingly, Vishanoff claims that the ambiguous aspects of Arabic are specific to it and that *uṣūlīs* produced the linguistic categories to exploit these ambiguities and fix the ways in which one can use them in order for them to base the existing law on revelation (see Vishanoff, "Early Islamic Hermeneutics", 5-6).

general framework within which *uṣūlīs* produced them and so proceeds to interpret them within a general framework that belongs to another field, in this case, a framework produced in linguistics, namely the Gricean theory of language. His work aims at formulating and exploring *uṣūl al-fiqh*'s pragmatic theories, principles, and views, theorizing them as models and set them within a general uniform framework.<sup>104</sup>

For Ali, the Gricean framework contributes considerably to his formation of communication principles. At the same time, surprisingly, he mentions that he did his best to preserve the use of *uṣūlīs*' own theoretical conceptualizations of the key notions which he dealt with in his work lest he impose the rudiments of contemporary pragmatic theories on their construction of the subject.<sup>105</sup> Yet, he does not make an effort, as far as I can see, to justify the use of the Gricean framework to explain in his work some of the phenomena discussed by *uṣūlīs*.

This may well be misleading in relation to what one holds regarding the linguistic theory underlying the *uṣūl* of a given school of law. A sounder method to show the similarities between Gricean theory and the linguistic theory of the legal theorists would be to lay out the characteristics of the two, and then show what they have in common and where they differ. Infact, Ali does not lay out the characteristics

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<sup>104</sup> Ali, *Medieval Islamic Pragmatics*, 10.

of the pragmatic principles of the Gricean theory and those principles, which may be described as ‘pragmatic’, he found in *uṣūl al-fiqh* manuals and then point out the similarities between the two, thereby, if possible, justifying the use of the Gricean framework, perhaps to some degree, to describe those principles of *uṣūl al-fiqh*.

Thus, he appears to have boldly applied the Gricean theory to the linguistic material found in *uṣūl* works that he analyses. This, however, brings up a morass of issues concerning the way he structures his work, the sources he relies on, and the results his work yields.

To start with the structure of his book, as Ali himself states, his work deals with two models of communication: “the mainstream”, a term by which he refers to Ḥanafī, Ṣāfiī, and Muṣṭazilī schools of law, and the Salafite. With the exception of one chapter, his work aims at exploring and formulating the former, i.e. the mainstream, which, he says, is based on four pillars: establishment (*waḍf*), use (*istiṣmāl*), interpretation (*ḥaml*), and signification (*dalāla*).<sup>106</sup> However, he does not make much effort, as far as I can see, to justify his inclusion of all these schools’ “pragmatic” theories under what he calls “the mainstream” model of communication.

In an attempt to construct a theory to conform to the Gricean theory of communication, it is likely that he seems to have sought bits of information that would

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<sup>106</sup> Ibid, 12.

do the job. Since one school must have not yielded enough to conform to Grice's theory, apparently he considered all the three schools (Ḥanafī, Šāfi'ī, and Muftazilī) as the same in terms of the linguistic theory each of these legal schools relied on, be it consciously or not, when interpreting the legal data (the primary ones of which are the Qur'ān and the Sunna) to come up with their legal opinions on things. For this purpose, he even seems to have gone beyond *uṣūl al-fiqh* to rely on sources in *Kalām* and *ʿilm al-Balāġā*, even though he mentions that his work is confined to pragmatic thinking in *uṣūl al-fiqh*.<sup>107</sup>

In this regard, he seems to rely on such sources on *Kalām* as *Ḥāšiya ʿalā Šarḥ al-ʿAḍūd* by Sayyid Šarīf al-Jurjānī extensively.<sup>108</sup> He also falls back upon texts from *ʿilm al-balāġa*, which may also be problematic at some points, as this differs from the underlying linguistic theory found in *uṣūl* works in some respects. For instance, what constitutes the *ḥaqīqī* sense of a word within *uṣūl al-fiqh* works is the *waḍʿ šarʿī* sense, while this is the *waḍʿ luġawī* sense in *ʿilm al-balāġa*, as pointed out by al-Laknawī.<sup>109</sup>

He also states that he does not approach the issues discussed in his work diachronically.<sup>110</sup> However, he relies on sources that come from authors separated by

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<sup>107</sup> Ibid, 9.

<sup>108</sup> See, for instance, ibid, 75.

<sup>109</sup> Al-Laknawī, *Qamar al-Aqmār*, I, 155. For further details on different types of *waḍʿī* senses, see my discussion of *waḍʿī* in section 3.5 below.

<sup>110</sup> Ibid, 11.

over a thousand years, as pointed by Anver M. Emon.<sup>111</sup> He does not seem to provide any justification as to why he chooses which author to construct the linguistic theory of the legal scholars. This seems to be the result of his reliance on, as Emon puts it,<sup>112</sup> a pre-existing paradigm that affects to a great deal the way he reviews the sources he relies on.

Thus, what appears to be the primary theoretical problem of his work, which is his reliance on the Gricean theory of language to explain the linguistic material found in *uṣūl al-fiqh*, apparently, have led further theoretical problems with regard to the structure and the sources of Ali's work. This further led him to arrive at wrong conclusions about the nature of some of the linguistic categories of *uṣūl al-fiqh*, some of which I will now discuss briefly.

The final chapter in his work provides two signification classifications: "a semiotic classification and a text-based classification." Ali then goes on to say that the first is divided into three: natural, rational, and *wadʿi*-based signification. The last one, he adds, is also divided into three: equivalence-signification, incorporational signification, and implicational signification. The second (i.e. text-based classification) has two versions: The first is the Ḥanafī version, which comprises

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<sup>111</sup> Emon, Anver M., Review of "Medieval Islamic Pragmatics: Sunni Legal Theorists' Models of Textual Communication by Mohamed M. Yunis Ali", *Middle East Studies Association Bulletin*, Vol. 37, No. 1 (Summer 2003), 142.

<sup>112</sup> *Ibid*, 142.

*ṣibārat al-naṣṣ*, *iṣārat al-naṣṣ*, *iqtidā' al-naṣṣ*, and *dalālat al-naṣṣ*. The second is the Šāfi'ī version, which comprises *dalālat al-iqtidā'*, *dalālat al-iṣāra*, *dalālat al-tanbīh wa-l-īmā'*, and *dalālat al-mafhūm*, this last being divided into further two subdivisions; *mafhūm al-muwāfaqa* and *mafhūm al-muxālaḥa*.<sup>113</sup> He makes it appear that the four categories of signification of the Ḥanafī school have no connection with the three types of *waḍḥ*-based signification, namely *dalālat al-muṭābaqa*, *dalālat al-taḍammun*, and *dalālat al-iltizām* (equivalence-signification, incorporational signification, and implicational signification). However, these three can be understood as subcategories of the four signification categories of the Ḥanafī school. For instance, *ṣibārat al-naṣṣ* can involve either *dalālat al-muṭābaqa* or *dalālat al-taḍammun*.<sup>114</sup>

Ali mentions Qur'ān 17:23,<sup>115</sup> which translates as "...Say not *uff* to them (parents)...", whose stated meaning (*ṣibārat al-naṣṣ*), he says, is the prohibition of saying *uff* to parents. He then adds, "this clearly stated meaning amounts to something else, that is, the prohibition of striking them, insulting them, and so forth. The prohibition of each one of such despicable acts is considered by the legal theorists as an unstated meaning of the utterance." I think, as far as the authors of the primary

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<sup>113</sup> Ali, *Medieval Islamic Pragmatics*, 13-14.

<sup>114</sup> See Büyük Haydar Efendi, *Usûl-ı Fıkıh Dersleri*, 228-230.

<sup>115</sup> وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا ۗ إِمَّا يَبُلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلَاهُمَا فَلَا تَقُلْ لَهُمَا قَوْلًا كَرِيمًا

sources my work relies on are considered, no *uṣūlī* scholar makes such a statement about such meanings. When making such an assertion, Ali quotes no source either. The qualification of ‘unstated meaning’ is something else, and in fact, the meanings one can derive from the verse above such as “do not beat your parents” do not amount to “unstated meaning” but to “*lāzim muta’axxir*”.<sup>116</sup>

The term *siyāq al-kalām* is translated as, and understood to be equivalent to, ‘context’, by Ali.<sup>117</sup> This seems to be a mistake because according to *uṣūlīs*, what we know in English as ‘context’, for which no name may exist in Arabic, is divided into two: *siyāq* and *ḥāl*. And the clues of these two are referred to as *qarīna* (or *qarā’in* as plural), as *qarīna siyāqiyya* (textual evidence/clue) or *qarīna ḥāliyya* (extratextual evidence/clue). However, Ali treats *siyāq* as ‘context’. But as I explained in section 3.6 below, *siyāq* is only one of two types of context.<sup>118</sup>

Using the Gricean framework has also caused him to fall short in explaining some of the linguistic data in a unified way, which was one of his aims in his work, as noted above.<sup>119</sup> In this regard, he does not provide any clear theory that would explain the dichotomy between “*waḍ’*” and “*isti’māl*”. In fact, he says “if the utterance is unambiguous, the knowledge of *waḍ’* will be sufficient for communication. If

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<sup>116</sup> For more information on this, see sections 3.8 below.

<sup>117</sup> Ali, *Medieval Islamic Pragmatics*, 166.

<sup>118</sup> To compare this with another meaning of the term *siyāq*, see 3.3.1.2.

<sup>119</sup> *Ibid*, 10.

ambiguous, the intention of the speaker will not be correctly understood except with the presense of contextual evidence relevant,"<sup>120</sup> while giving no explanation why this may be the case.

To summarize, Ali's attempt to explain the linguistic categories of *uṣūl al-fiqh* through the use of the Gricean framework without him providing any justification for it has apparently led him to structure his work in such a way as to conform to Gricean theory, raising questions as to the validity of his inclusion of various schools of law under the broad term "the mainstream", integrity and consistency of his reliance on sources other than *uṣūl al-fiqh*, such as *ʿilm al-balāġa* and *Kalām* as well as on sources that are separated from each other as much as a thousand years.<sup>121</sup> In some cases, all of these have led him either to arrive at erroneous conclusions about linguistic categories, or to uncover some of the linguistic material in a unified way, some of which I have pointed out above.

Besides these issues that seem to be peculiar to Ali's work, I should also mention that some of the problems I have identified with those who adopt the first approach are to be found in the works of those who adopt the second approach as well. Therefore, Ali and others who fall under the second approach show some of the

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<sup>120</sup> Ibid, 18.

<sup>121</sup> Different schools adapt different linguistic categories, as I discussed in this section above. Treating various schools as same ignores some of the fundamental differences between them on this matter.

same problems I noted when reviewing Kamali. Ali never mentions, for instance, the connection between *ṣibārat al-naṣṣ* and *naṣṣ* or the relationship between *iṣārat al-naṣṣ* and *dāhir*, thereby causing misunderstandings regarding the linguistic categories of *uṣūl al-fiqh*.<sup>122</sup>

Despite the fact that some of the issues are thus common to both the first and the second approaches, the two differ from each other substantially in terms of their approach to the linguistic categories of *uṣūl al-fiqh*. The primary difference between the two is, again, that those who fall under the first approach almost never attempt to explain the linguistic categories within a framework while those who fall under the second one use frameworks that are not intrinsic to *uṣūl al-fiqh*, leading to further issues some of which I have just noted above when reviewing Vishanoff and Ali.

A more recent study, *The Logic of Law Making in Islam* by Behnam Sadeghi, falls under the second approach and is closer to Vishanoff's work. In fact, his work may aptly be described as a supplement to Vishanoff's work, as Sadeghi apparently elaborates his arguments on the basis of Vishanoff and attempts to demonstrate these with three case studies.

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<sup>122</sup> For the relations between these linguistic categories, see my discussion on these in this section where I review Kamali's work above. Also see the relevant sections on *naṣṣ*, *dāhir*, *ṣibārat al-naṣṣ*, and *iṣārat al-naṣṣ* in Chapter 3 below. For an overall view of each of these linguistic categories and how they are related to each other, also see the general framework in section 3.9.

As noted above, Vishanoff argues that *uṣūl al-fiqh* primarily functioned to cover up the inconsistencies between the status quo and what are considered by Muslim scholars to be the primary sources of Islamic law, namely the Qur’ān and the Sunna, through the exploitation of ambiguities of Arabic by scholars like Imam al-Šāfi‘ī. Irrespective of the success of this argument,<sup>123</sup> Vishanoff’s study leaves an important question unanswered: If *uṣūl al-fiqh* did not shape Islamic law, then what did? This is the gap Sadeghi’s work attempts to fill.

Sadeghi, like Vishanoff and Sherman Jackson,<sup>124</sup> does not find *uṣūl al-fiqh*<sup>125</sup> to provide a sufficient account of the development of Islamic law. He states, “My own view is that in mainstream postformative Sunni legal interpretation the hermeneutic principles played a negligible role in determining the laws.”<sup>126</sup> Similarly, referring to the contents of *uṣūl al-fiqh*, Sadeghi says, “one cannot assume that these normative and philosophical discussions describe the historical reality of how the law developed in practice.”<sup>127</sup>

Thus, without any justification, Sadeghi discards *uṣūl al-fiqh* as a factor in the formation of Ḥanafī law. In an attempt to extrapolate the factors at work in the

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<sup>123</sup> See my review of Vishanoff above.

<sup>124</sup> Jackson, “Fiction and Formalism”.

<sup>125</sup> See, for instance, Sadeghi, *The Logic of Law Making*, 34.

<sup>126</sup> *Ibid*, 36.

<sup>127</sup> *Ibid*, 34-35.

formation of Islamic law, he focuses on “juristic discussions of concrete points of law as found in legal handbooks in the *furūʿ* genre.”<sup>128</sup> He looks at the account of various scholars on three *furūʿ* topics within the Ḥanafī school. He concludes that it was the previous scholars’ opinions and not *uṣūl al-fiqh* that shaped the Islamic law.

This raises the question of why is it then the legal scholars who invented *uṣūl al-fiqh* to validate the laws— which is an assumption held by scholars like Sherman Jackson and Vishanoff, as I already noted— did not modify their *uṣūl* to be in line with the laws so that the legal scholars’ theory of law would meet their practice in law-making. This is a question which Sadeghi never considers. Furthermore, a study such as his, which relies on the premises that *uṣūl al-fiqh* functioned primarily to justify the law by basing it on the sources of Islamic law, would have to involve a close reading of *uṣūl al-fiqh* works with an eye to demonstrating which of the specific rules and principles used by classical scholars in order for them to allegedly derive law from the sources actually do not fit with the law these scholars ended up producing. Sadeghi does not do this, as he focuses solely upon the *furūʿ* genre.

One of the *furūʿ* topics Sadeghi considers is the Ḥanafī rule about congregational prayer that a man’s prayer gets invalidated by a female prayer if she prays next to, or in front of him, during the same prayer. This is referred in legal

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<sup>128</sup> Ibid, 35.

literature as “*muḥāḍāt al-nisā*” (alignment with women) or simply as “*muḥāḍāt*” (alignment). He talks about the reason behind the invalidation of the prayer in case of *muḥāḍāt*. Citing al-Saraxsī, Sadeghi states, “...his [al-Saraxsī’s] argument resorted to a mechanical reading of the tradition, “keep women behind.” A man’s prayer is not valid, he [i.e. al-Saraxsī] argued, if he does not keep the women behind relative to his own position.”<sup>129</sup>

Sadeghi indicates that this reason which is behind the invalidation of the man’s prayer was good enough for al-Saraxsī in the context of regular daily prayers. However, it was not the case for funeral prayers, as Ḥanafī law indicates that man’s prayer is not invalidated in case a woman prays next to, or in front of, him in a funeral prayer. In fact, Sadeghi notes, “The funeral prayer violates the pattern expected from the “keep them behind” principle. To explain the discrepancy, al-Saraxsī appeals to the rationale behind the principle: the prevention of sexual thoughts during communication with God. Since funeral prayers do not, in the first instance, constitute communication with God, the principle does not apply. In effect, al-Saraxsī has introduced two ad hoc stipulations – the “purity of thought” rationale and the noncommunicative status of funeral prayers – in order to achieve the needed legal

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<sup>129</sup> Ibid, 62.

effect: the suspension of the normal consequences of adjacency [i.e. *muḥāḍāt*] in the case of funeral prayers.”<sup>130</sup>

If one looks at the matter in al-Saraxsī, however, one realizes that Sadeghi misquotes him, only mentioning those aspects of al-Saraxsī’s treatment of the subject which serve to support his claim. In fact, al-Saraxsī clearly mentions that the reason why the principle of the “keep them behind” does not apply to the funeral prayer is that women are not allowed to go to funeral prayers, so there is no dedicated space for women in them. Therefore, the command in the “keep them behind” tradition has no legal effect for funeral prayers. In other words, men are not responsible to keep women behind in their dedicated space in funeral prayers simply because there is no such space for women in funeral prayers. Therefore, a woman’s praying next to a man in a funeral prayer does not constitute the man’s going against the command in the “keep them behind” tradition. As a result, if a woman prays next to, or in front of, a man in funeral prayer, his prayer is not invalidated.<sup>131</sup>

Thus, unlike what Sadeghi claims, the funeral prayer does not violate the pattern in the Ḥanafī school, which he says, “expected”, from “the keep them behind tradition”. Rather, it only violates what *he* expects according to his own interpretation

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<sup>130</sup> Ibid, 60.

<sup>131</sup> See al-Saraxsī, Abū Bakr Šams al-A’imma Muḥammad b. Abū Sahl Aḥmad, *al-Mabsūṭ*, (Beirut: Dār al-Maʿrifah, n.d.), I, 184.

of Ḥanafī school's logic of law making. Why would al-Saraxsī have made up another rationale to solve such a contradiction, which does not exist in the first place? Sadeghi never answers this question.

Thus, instead of trying to explore the views of al-Saraxsī and others as they are found in the sources with an eye to assessing whether or not these classical scholars' *uṣūl* matches with their practice, Sadeghi focuses on what fits into his own understanding of the sources, even if this means misrepresenting the sources, as noted above.

Similarly, Sadeghi discusses the question of whether or not a man's prayer is invalidated by a woman who is praying behind a barrier. He says that if the law on this question relied on the *ḥadīth*, which stated that while praying behind an *imām* women should be kept behind men, a barrier should not make a difference for a woman standing in the same row as a man. This would be the case if the wall analogy that relies on what he calls an 'Umar tradition' was not taken into account, he indicates.<sup>132</sup> In fact, he goes on to quote Ibn al-Humām that when alignment (*muḥadāt*) of a woman invalidates a male's prayer, this man turns into a barrier, thus preventing a domino-effect of invalidity for other males.<sup>133</sup> Instead of finding out why this legal opinion is given precedence in Ḥanafī law, he contents himself with saying

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<sup>132</sup> Sadeghi, *The Logic of Law Making*, 63.

<sup>133</sup> *Ibid.*

that “they do not explain why a barrier must make a difference if the “keep them behind” tradition is the operative principle”.<sup>134</sup>

This statement of Sadeghi relies on a principle that he apparently falls back upon without disclosing it and without justifying its usage: ‘the “keep them behind” principle is the principle that prevails over all other principles in the Ḥanafī school which may be relevant in this matter’. This is why he refers to the “keep them behind” tradition as the “operative” principle. To illustrate his line of thought to judge the success of the Ḥanafī scholars’ derivation of law from the “keep them behind” tradition, I will consider this matter in some detail.

To start with, there is no concept of ‘operative principle’ in the Ḥanafī *uṣūl*. What comes closest to this is the concept of *muḥkam*. A *muḥkam* utterance is a statement in the Qur’ān or the Sunna whose intended meaning is clarified once and for all. By saying that a barrier should not make a difference if the operative principle is the “keep them behind” tradition, Sadeghi implies that the tradition constitutes, to use the Ḥanafī term, a *muḥkam* statement, whose intended meaning is clarified once and for all.<sup>135</sup> This is because a *muḥkam* statement cannot be limited (or to put it differently, go through *taxṣīṣ*) due to another piece of evidence that would otherwise

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<sup>134</sup> Ibid.

<sup>135</sup> A *muḥkam* word is a *mufassar* word the clarity of whose meaning transcends the time when it was clarified, and thus its legal effect is permanent/unchanging. For details about *muḥkam*, see section 3.3.1.4 below.

limit the scope of its legal effect. Ḥanafīs, however, do not consider the “keep them behind” tradition as *muḥkam*. Yet, Sadeghi accuses Ḥanafīs as limiting the scope of the “keep them behind” tradition when they hold that a barrier between a man and woman who are following the same *imām* on the same row saves the man’s prayer. It is Sadeghi who, maybe without realizing, considers the tradition as *muḥkam* and not the Ḥanafīs. Yet, he blames them for not treating the tradition as *muḥkam* simply because the tradition is, in his opinion, *muḥkam*. In short, Sadeghi faults the Ḥanafīs for not following his own understanding of the tradition in terms of its legal effect.

This shows that Sadeghi’s analysis of *furūf* works uses his own principles to judge the success of *uṣūlīs*’ application of their principles when deriving law from the sources.<sup>136</sup>

Thus, a sounder study with the aim that is adopted in his study would be to lay out the principles on a given topic that are used by classical scholars to derive the law and then show the inconsistencies between the ideal law to be derived based on these same principles as used by classical scholars and the law which they ended up producing. This is missing in Sadeghi’s study and constitutes a major theoretical

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<sup>136</sup> He even goes on to invalidate as unauthentic the sources Ḥanafī jurists rely on when producing law within their *uṣūl*. In fact, he says that he did not find the Prophetic tradition that one who is separated from the *imām* by a river ... is not actually praying with the *imām* as a *ḥadīf*. I wonder which *ḥadīf* compilations he used to look up the *ḥadīf* in question and which methodologies for determining the authenticity of *aḥādīf* he considers when he judges whether or not Ḥanafī scholars actually applied their own principles when they produced the Ḥanafī *fiqh* which is explored in works such as al-Saraxsī’s *al-Mabsūf*.

failing in it. Instead, Sadeghi uses his own principles to talk about Ḥanafī scholars' consistency in law-making, and not these scholars' own principles.

How he goes about following his argument constitutes another and, perhaps, a rather callow mistake. To support his primary argument that *uṣūl al-fiqh* played no major role in the formation of Islamic law, and that instead previous scholars' opinions within the Ḥanafī school played the key role in forming Islamic law, Sadeghi looks at some of the *furūf al-fiqh* manuals in order to show the extent to which previous scholars' opinions shaped Islamic law in the Ḥanafī school.

In one section Sadeghi lists the Ḥanafī scholars he relies on<sup>137</sup> when analysing the three particular *furūf* topics to support a specific claim, which he repeats throughout his work. This is that in the post-formative period Ḥanafīs relied on received law when producing Islamic law and attempted to justify it with what Sadeghi called the “canon”, referring to “absolutely binding foundational texts”.<sup>138</sup> Here, Sadeghi repeats, though in a different way, what Vishonoff says on this, as I noted above. However, this is a quite strange argument in that no one within the Ḥanafī school indicates that scholars had to make *ijtihād* directly from the Qur'ān and the Sunna in every generation on each legal matter. In fact, there are different ranks

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<sup>137</sup> Sadeghi, *The Logic of Law Making*, 43-36.

<sup>138</sup> Ibid, 13. The underlying argument, as Sadeghi puts it, is that the binding texts (the Qur'ān and the Sunna) and the standards of textual interpretation (i.e. *uṣūl al-fiqh*) did not determine the laws, at least in the Ḥanafī school of law (see *ibid*, xxi).

(*ṭabaqāt* pl. of *ṭabaqa*)<sup>139</sup> within the Ḥanafī school and only one of them, namely *al-mujtahid fī al-šarʿ* (the jurist in the religion), derived law directly from the sources. If anyone within the Ḥanafī school later wanted to derive law directly from the sources (i.e. the Qurʾān and the Sunna), then they did not follow the Ḥanafī school.

None of the jurists whom Sadeghi apparently falls back upon to support his claim that Ḥanafī law relies on precedent rather than the Qurʾān and the Sunna are considered within the first *ṭabaqa* of the Ḥanafī scholars of *fiqh*.<sup>140</sup>

Indeed, only Abū Ḥanīfa falls under the first *ṭabaqa* of *mujtahids*, namely *al-mujtahid fī al-šarʿ*. Among the scholars he mentions two are teachers of Abū Ḥanīfa, so they are automatically excluded.

To support his argument that Ḥanafī jurists did not follow the Qurʾān and the Sunna independently of the opinions of the previous jurists, Sadeghi even mentions

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<sup>139</sup> Lane translates *ṭabaqāt* as “degrees, ranks, orders, or classes” (see Lane, *An Arabic-English Lexicon*, 1827).

<sup>140</sup> See below, for places where some of the scholars whom Sadeghi mentions fit into the *ṭabaqās* of the Ḥanafīs. It is well known that scholars within specific branches of knowledge were classified into ranks (classes/communities) according to their abilities and qualifications within a given science (for more information on *ṭabaqas*, see Ismail Durmuş, “Tabakat”, TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/tabakat#1> (25.12.2019)); Atar, *Fıkıh Usûlü*, 376. Works containing biographical information about scholars at various ranks were accordingly referred to as *ṭabaqāt* works, these constituting a vast genre within various fields of classical Islamic scholarly tradition (for analyses of the genre of *ṭabaqāt* within fields such as Tafsīr, Ḥadīth, Islamic law, and Islamic History, see Ismail Durmuş...[et al.], “Tabakat”, TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/tabakat> (25.12.2019)). Those *ṭabaqāt* works that provide biographical information on scholars of Islamic law are referred to as *ṭabaqāt al-fuqahāʾ*. Atar mentions seven *ṭabaqās* of Islamic legal scholars: 1. *Al-mujtahid fī al-šarʿ*, 2. *Al-mujtahid fī al-maḍhab*, 3. *Al-mujtahid fī al-masʿala*, 4. *Aṣḥāb al-taxrīj*, 5. *Aṣḥāb al-tarjīh*, 6. *Aṣḥāb al-tamyīz*, 7. *Al-muqallid al-maḥḍā*. I provide brief explanations for some of these when I discuss Sadeghi’s list of scholars below. For a detailed account on *ṭabaqās* in the Ḥanafī school, see Atar, *Fıkıh Usûlü*, 376-403. Also see Eyyüp Said Kaya, “Tabakat”, TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/tabakat#4-fikih> (25.12.2019).

al-Ḥaṣkafī (d. 1088/1677)<sup>141</sup> and Ibn ʿĀbidīn (d. 1252/1836),<sup>142</sup> who in fact fall under the last *ṭabaqa*, namely *al-muqallid maḥḍ*.<sup>143</sup> Others whom Sadeghi mentions such as Qudūrī (d. 428/1037),<sup>144</sup> Ibn al-Humām (d. 861/1457),<sup>145</sup> and al-Margīnānī (d. 593/1197)<sup>146</sup> all fall under the fifth *ṭabaqa*,<sup>147</sup> namely *aṣḥāb al-tarjīḥ* (scholars who had the qualifications and knowledge to make choices from among the narrated opinions within the school on a given topic).<sup>148</sup> Sadeghi also mentions al-Saraxsī (d. 483/1090-91),<sup>149</sup> al-Ṭaḥāwī<sup>150</sup> (d. 321/933), al-Karxī (d. 340/952),<sup>151</sup> and Qāḍī Xān (d. 592/1196),<sup>152</sup> all of whom fall under the third *ṭabaqa*, namely *al-mujtahid fī al-masʿala* (the *mujtahid* within a legal issue such as prayer).<sup>153</sup> Al-Mawṣilī (d. 683/1284)<sup>154</sup> and al-Nasafī (d. 710/1310),<sup>155</sup> whom he also lists among his

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<sup>141</sup> Sadeghi, *The Logic of Law Making*, 46.

<sup>142</sup> Ahmet Özel, "Ibn ʿĀbidīn, Muhammed Emīn", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/ibn-abidin-muhammed-emin> (25.12.2019).

<sup>143</sup> Atar, *Fıkıh Usûlü*, 377.

<sup>144</sup> Cengiz Kallek, "Kudûrî", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/kuduri> (25.12.2019).

<sup>145</sup> Ferhat Koca, "İbnü'l-Hümâm", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/ibnul-humam> (25.12.2019).

<sup>146</sup> Ferhat Koca, "Mergīnânî, Burhâneddin", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/merginani-burhaneddin> (25.12.2019).

<sup>147</sup> For confirmation that three scholars all fall under the fifth *ṭabaqa*, see Atar, *Fıkıh Usûlü*, 377.

<sup>148</sup> Ibid.

<sup>149</sup> Muhammed Hamîdullah, "Serahsî, Şemsüleimme", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/serahsi-semsuleimme> (25.12.2019).

<sup>150</sup> Davut Iltaş, "Tahâvî", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/tahavi#1> (25.12.2019).

<sup>151</sup> H. Yunus Apaydin, "Kerhî", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/kerhi> (25.12.2019).

<sup>152</sup> Ahmet Özel, "Kādīhan", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/kadihan> (25.12.2019).

<sup>153</sup> Atar, *Fıkıh Usûlü*, 377.

<sup>154</sup> Davut Yaylali, "Mevsilî, Abdullah b. Mahmûd", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/mevsili-abdullah-b-mahmud> (25.12.2019).

<sup>155</sup> Murteza Bedir, "Nesefî, Ebü'l-Berekât", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/nesefi-ebul-berekat> (25.12.2019).

sources,<sup>156</sup> both fall under the sixth *ṭabaqa*, namely *aṣḥāb al-tamyīz* (those who had the ability to differentiate *dāhir al-riwāya* from *nawādir al-riwāya*<sup>157</sup> and more authoritative opinions from weak ones).<sup>158</sup> Therefore, none of the scholars whom Sadeghi claims to have followed previous opinions of earlier scholars within the school actually claim to have derived law from the primary sources of Islamic law independently from the earlier scholars of the Ḥanafī school.

All these discrepancies are indicative of the fact that using a general framework from another field to interpret the linguistic material found in *uṣūl al-fiqh* manuals without any justification does not work well, as the works by Vishanoff and Ali show. Treating the linguistic material found in *uṣūl* manuals as if it had no general framework does not allow for a comprehensive understanding of this linguistic material either, as seen in the works by Kamali and Weiss on this matter.

Assuming that the *uṣūl al-fiqh* cannot be the basis for an analysis of the logic (or to put it better, the real *uṣūl al-fiqh*) that was surreptitiously used during the process of law-making relies on another assumption, that the *uṣūl al-fiqh* that Ḥanafīs claimed they followed when deriving law in fact played no major role in the outcome of the process of law-making, an assumption that, as I noted, Sadeghi takes for granted

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<sup>156</sup> Sadeghi, *The Logic of Law Making*, 44.

<sup>157</sup> For definitions of *dāhir al-riwāya* and *nadir al-riwāya*, see section 4.3.1 below.

<sup>158</sup> Atar, *Fikih Usūlū*, 377.

without evidence. Furthermore, the material he looks at to find out the real *uṣūl al-fiqh* that was allegedly behind the process of law-making comes from scholars who did not claim that they made *istinbāṭ al-ḥukm* from the Qur’ān and the Sunna independently of previous scholars within the Ḥanafī school, and this is widely known in *ṭabaqāt* works, as I noted above.

The scholars Sadeghi relies on in his work were from among those who made either *istixrāj*, *tarjīḥ*, *tamyīz*, or even *taqlid*, but certainly not *istinbāṭ* independently of the principles of Abū Ḥanīfa.<sup>159</sup> This means that these scholars relied on the rulings of earlier jurists within the Ḥanafī school, a fact that Sadeghi quite surprisingly misreads to say that the Ḥanafīs did not follow the Qur’ān and the Sunna to derive law from the sources and followed previous jurists’ opinions, and *uṣūl al-fiqh* does not represent the logic behind the process of law-making in the Ḥanafī school.

Thus, reading the linguistic categories of *uṣūl al-fiqh* without a general framework based on the *uṣūl al-fiqh* itself can be misleading, as seen in the modern works reviewed above.

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<sup>159</sup> Disciples of Abū Ḥanīfa such as Muḥammad al-Šaybānī (d. 189/805) and Abū Yūsuf (d. 182/798) fall under the second *ṭabaqa*, namely *al-mujtahid fī al-madḥab* (the jurist within the school of law). The characteristics of those that fall under the second *ṭabaqa* is that they do not disagree with Abū Ḥanīfa on his principles. However, they may have opinions different from his on particular legal matters (see Atar, *Fikih Usūlū*, 377), which can be seen on various occasions in *furūf* works such as *al-Muxtaṣar* by al-Qudūrī (see, for instance, section 4.5 below). Therefore, even the *mujtahids* within the second *ṭabaqa* such as al-Šaybānī followed the *uṣūl* of Abū Ḥanīfa.

I think not only in *uṣūl al-fiqh* but also in any piece of scholarly work, instead of using a framework from one given field to interpret the material of another without any justification, a close analysis of a piece of writing has the potential to reveal the general framework that is behind the scholarly product, if the producer of it has not already revealed it in the first place.

I further argue that this is the case with the linguistic categories found in *uṣūl al-fiqh* manuals. No such general framework produced on the basis of the linguistic categories of *uṣūl al-fiqh* manuals has been made explicit in any of the classical or contemporary treatments. Accordingly, there is a need to construct this general framework in order to better understand these linguistic categories. In fact, writing about the linguistic aspects relevant to a study of deriving law from the sources, *uṣūlīs*, such as al-Nasafī, have apparently chosen not to make explicit the framework that they had in their mind for various reasons, some of which I dwell on in the following section.

Based on a close reading of al-Nasafī's *al-Manār*, one of the most influential work in *uṣūl al-fiqh* within Ḥanafī literature, along with two important commentaries (one by al-Nasafī himself) and a gloss on one of them, among other *uṣūl al-fiqh* works, I came to the conclusion that the sophistication of the commentaries reveals that the commentators were well aware of the general framework within which the author of

*al-Manār*, namely al-Nasafī, produced the work. Yet the commentators did not make explicit that general framework either.

The present work not only explains the linguistic categories within a general framework that is intrinsic to *uṣūl al-fiqh* for the first time (Chapter 3), but also shows, in the light of that general framework, how these linguistic categories were actually used when deriving law from the sources of Islamic law by showing the application of these categories to a *furūʿ* topic within Islamic Criminal Law, namely *sirqa* (Chapter 4).

The application of the linguistic categories to *sirqa* also reveals several important aspects of the linguistic theory that underpinned the thinking of the *uṣūlīs*, especially their understanding of utterances and what may fall under the field of semantics/pragmatics today. I deal with this in my analysis of the application of the linguistic categories to *sirqa* in chapter 5. Throughout the present study, I refer back to the general framework produced in chapter 3, thus explaining the linguistic categories found in *uṣūl* works within a consistent general framework.

## **2.6. Making sense of the absence of a general framework for the linguistic categories from the classical literature**

The reason why classical authors such as Abū al-Barakāt al-Nasafī did not include any such general framework in their treatment of the subject is, I think, that they probably did not feel the need to spell out such a framework as they found it obvious. Otherwise (that is to say, if they did not have such a general framework in

mind within which they produced this classification) they would not have been able to come up with such a classification in the first place. It may also be that they considered it disrespectful to the intellect of the reader to spell out something they considered quite obvious and therefore, avoided spelling out the logical framework that governed the classification of *lafđ* into categories. Also, when considering the fact that these works were meant to be studied with a teacher, students were probably able to acquire the general framework that governed the classification of *lafđ* into categories from the lectures of their teachers who most likely learned it from their teachers and thus knew the subject matter by heart.

Furthermore, exclusion of a general framework for a given analysis from the work the analysis is presented in is not peculiar to the categorization of *lafđ* into categories in *uṣūl al-fiqh*. In fact, the whole science of *uṣūl al-fiqh* as the foundation of an analysis on the sources of Islamic Law was initially excluded from the works that presented the outcome of the analysis, i.e. Islamic law. As a matter of fact, the earliest legal scholars such as Abū Ḥanīfa Nuṣmān b. Ṭābit (d. 150/767), the founding father of the Ḥanafī School, the first Islamic legal school which was named after him, did not leave any work on the general framework as to his law-making process. In other words, he did not write his *uṣūl al-fiqh* himself.<sup>160</sup> Thus, we do not have any

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<sup>160</sup> Mustafa Uzunpostalci, "Ebû Hanîfe", TDV Islâm Ansiklopedisi, <https://Islamansiklopedisi.Org.Tr/Ebu-Hanife#1> (29.12.2019).

monograph by Abū Ḥanīfa on Islamic law, but what we know of his school is transmitted to us through his prominent disciple Muḥammad b. al-Ḥasan al-Šaybānī (d. 189/905), who gathered the class notes he took from Abū Ḥanīfa's seminars under six books.<sup>161</sup> Yet, to the best of my knowledge, none of these works provide a general framework for Abū Ḥanīfa's law-making process, which would otherwise shed light on the principles that governed his analysis of the sources of Islamic Law, i.e. his *uṣūl al-fiqh* in general, and within that *uṣūl* the linguistic categories in particular.

Later Ḥanafī scholars seem to have focused on bringing to light the principles themselves that governed Abū Ḥanīfa's law-making process rather than paying attention to spelling out the general framework for these principles.<sup>162</sup> Thus, Ḥanafī scholars such as al-Dabūsī (d. 430/1039) presented in their works what they considered the *uṣūl* of Abū Ḥanīfa, thus forming the genre of *uṣūl al-fiqh* of the Ḥanafī

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<sup>161</sup> These works are called "*dāhir al-riwāya*" (*al-uṣūl*) (for further information on Ḥanafī literature, see Özel, Ahmet, "Hanefi Mezhebi", *TDV İslâm Ansiklopedisi*, <https://islamansiklopedisi.org.tr/hanefi-mezhebi#2-literatur> (29.06.2019).

<sup>162</sup> This makes even more sense when we consider the fact that works such as *al-Manār* were textbooks that were meant to be studied with a teacher in *madrassa*. To illustrate, Taşköprüzâde Ahmed Efendi (d. 968/1561), a renowned scholar and judge of the 16<sup>th</sup> century, studied only one textbook by himself and studied all the rest with a teacher during his education (see an annotated translation of his autobiography in Ahmet Topal, "The Life of Taşköprüzâde" (MA thesis, Yale University, 2014). This indicates that the texts probably functioned as a guide for the teacher and the student alike, helping them keep on the right track during the teaching sessions, covering all the necessary aspects of the subject. As a result, I think it is natural that scholars probably did not go beyond mentioning the essential points in *uṣūl* works. An indication of this is the fact that classical manuals of *uṣūl al-fiqh* and other fields of Islamic studies attracted numerous commentaries and supercommentaries/glosses, explaining the original texts. (see reference works such as *GAL* and *GAS*, which provide plenty of information about this). Therefore, *uṣūlīs* must have contented themselves with presenting the list of the linguistic categories and a brief definition for each, leaving the discussion of the general framework for the linguistic categories to be explained separately in teaching sessions whenever needed.

school. Yet, they have not provided, to the best of my knowledge, any general framework for the *uṣūl al-fiqh* itself. Having not included any information on the general framework for the *uṣūl al-fiqh* of Abū Ḥanīfa, these *uṣūl al-fiqh* manuals naturally lack a general framework for the linguistic categories, too, which constitutes a significant portion of the whole *uṣūl al-fiqh*.

Whatever the case may be, I do not think that anyone has identified such a general framework explicitly which would make *uṣūlīs'* linguistic classification meaningful. Therefore, there seems to be a need to clarify this point, as it is essential in understanding the linguistic categories and their function (thus the function of language) in the process of law-making in Islamic law. Otherwise, this may, at the least, lead to confusion, or at worst to misunderstanding, of the matter in hand, as discussed in the literature review in the previous section.

### **2.7.Framing the general framework: Conceptualization and naming concepts**

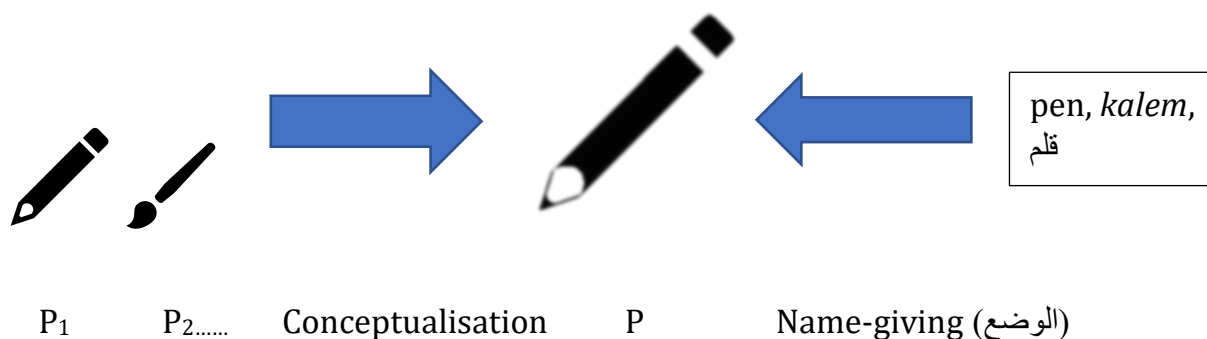
To solve the problem, which I identified in section 2.3 above as inherent in language, one needs to identify also the origin of this problem, i.e. the process whereby language became problematic. The investigation into overcoming this difficulty needs to start from the moment when language inherited the problem. In fact, I think that language inherited this problem at the very beginning of its formation, when the labelling/name-giving started to take place.

Before I start analysing the process of name-giving, I need to touch upon the process that comes prior to name-giving, namely, that of conceptualisation and how we form concepts. This will be followed by a discussion of the process of name-giving or *wadʿ* in Arabic.

I will illustrate this with the example of the concept of “pen”. This stands for several types of pen and many individual pens in our mind.

### Figure I

#### Making concepts and naming them



Types of pen:  $P_1, P_2, P_3, P_4....$

Individual pens:  $P_{1a}, P_{1b}, P_{1c}.... P_{2a}, P_{2b}, P_{2c}...$  (not illustrated above)

The concept of pen:  $P$

Based on what we observe of individual pens, say,  $P_{1a}$ ,  $P_{1d}$ ,  $P_{2a}$ ,  $P_{3c}$ ,  $P_{7q}$ <sup>163</sup>.... in the real world, we form the concept of a P, which is then given a name,<sup>164</sup> which would probably<sup>165</sup> be dissimilar in different languages as: “pen” in English, “*kalem*” in Turkish, and “قلم” in Arabic.

Then the name that stands for the concept, which in turn is a synthesis of all individual pens the observer observed, is used in a sentence as in “Writing with a pen is more enjoyable than typing on a computer.” The crucial question one naturally asks is “Which individual pen, group of pens, or types of pen is the writer/speaker of this sentence referring to?” Because the name ultimately stands for an indefinitely large number of individual entities, or to put it differently,  $P_{1a}$ ,  $P_{1d}$ ,  $P_{2a}$ .... are all called “pen”, there is indeterminacy as to the range/scope of referents referred to by the term “pen” in this instance; this indeterminacy may be undesirable, as it may lead to confusion as to the referent of the word ‘pen’, unless this is what the speaker/writer

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<sup>163</sup> These are individual pens. The way they are symbolized here indicate that each individual pen belongs to a larger type, which in turn belong to the species “pen”. But prior to the formation of a concept of “pen”, these individual pens may appear to the observer something like this: The first pen the observer comes across: X, the second pen the observer come across: Y (and if he/she is quick to see the similarity it would appear as X1) and sooner or later the observer, if this is a good one, would acquire the concept of a pen and would then categorize under it various types of pens, which in turn include individual pens.

<sup>164</sup> This is referred to as *waḍf al-luḡha* in Arabic and lexicographical semantics in English linguistics. The aim of these is to determine the lexicographical meaning of any given word that they assign to it (see Weiss, “Language in Orthodox Muslim Thought”, 61ff.).

<sup>165</sup> Although Turkish borrowed the word “*kalem*” from Arabic “قلم”, we still may consider the two to be different. But in some cases, the two might look more or less the same in other languages in the case of other borrowed or un-borrowed words. For the two to be the same, should one consider how they sound or how they look or both? This is another aspect of the subject matter in hand. However, I don’t feel compelled to talk about it for the sake of economy and due the fact that I don’t see it as essential for the development of the general framework I am trying to make for the *uṣūl al-fiqh*’s linguistic categories to delve into this aspect further here.

exactly aims at. If the speaker/writer wants to clarify further what he/she means by “pen,” he/she does so by first classifying, or at least making use of such an already existing classification of,<sup>166</sup> the individual pens further into species/types: P<sub>1</sub>, P<sub>2</sub>... So, the speaker can now clarify better what he/she meant by ‘pen’ in the sentence above by using, say, ‘P<sub>1</sub>’ instead of the more general term ‘pen.’

However, there is still more than one pen under P<sub>1</sub>. Therefore, there may still be need for further clarification as to which individual pen(s) the speaker/writer referred to. For this reason, either of two methods can be applied: further classification into sub-categories or using other linguistic devices instead of further classification. As to the first one, further classification into types of pens under P<sub>1</sub> would prove valuable in further narrowing down the possible individual pens the speaker/writer of the sentence “Writing with a P<sub>1a</sub> is more enjoyable...” might mean. Yet, this example also makes clear that how much further division into types one could come up with for any given item, the fact that there will be more than one

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<sup>166</sup> In case the writer/speaker is the initiator of the language, we might justly attribute the initial classification to the writer/speaker. However, if this is not the case—and it is not in most cases today as far as I am aware—then the speaker/writer whose speech is the subject matter of enquiry is the one who makes use of that classification that was done in the past, as Weiss likes to call it, by the primordial society (see Weiss, *The Search for God’s Law*, 120). The important point in both cases is the potentiality of human beings to either classify or to appreciate the classification of words into species, a faculty which seems to me either allows us to do classification at first or to make use of it, i.e., have a good command of the language that is filled with these classifications.

individual item that would go under each type, at least in many cases, will still lead to ambiguity as to the referent that the speaker/writer has in mind.

Thus, referring to items with words that stand for further – or perhaps better “narrower” – types proves impractical in some cases. What method then is used to further narrow down the possible pens meant by P, or P<sub>1</sub> or whatever? The other method available to further narrow down possible referents meant by a given word is, instead of forming narrower concepts, to use linguistic devices that would do the job. What is set forth in the following paragraphs represents but some of the linguistic devices and therefore ought to be taken less a comprehensive survey than an inventory of linguistic devices which I consider significant to be discussed here due to their relative importance:

#### 1. Definiteness:

This is done principally in Arabic using “*lām al-taṣrīf*” and in English using “the.” Use of this, say, as in “the pen,” narrows down possible pens to the one or the ones mentioned before in the text or speech, or known from the non-verbal context. But in Arabic, there is also *ṣahd xārijī malḥūḍa*. *Lām al-taṣrīf* is also used to refer to all individuals of a species, or to use our example, to refer to pens generally.

a. *ʿĀmm* words:

*Kull, jamīʿ*, and *baʿḍ* in Arabic, for example, as in *kull al-nās* (all the people), and *her, bütün*, and *bazı* in Turkish, say, as in *bütün insanlar* (all the people).

2. Demonstrative pronouns:

“This, that, these, those” in English, or *هؤلاء, هذه*, and *هذان* in Arabic, or “*bu, şu, bunlar, onlar*” as in Turkish.

3. Time and space markers:

The logic behind this must be that all individual items are in relation with time and space, and referring to them with a time or space marker narrows down possible individual items as in “the pen we saw yesterday on his desk.”

4. Genitive Construction:

This limits possible individual referents of a given word, again, through their relation to something else. This relationship could be possession as in “Ahmet’s pen.” Since the number of pens Ahmet has is limited, the number of individual pens the speaker/writer could mean by the word ‘pen’ in the phrase, say, “Ahmet’s pen” also becomes limited.

## 5. Adjectives:

Another way to limit the potential referents of a word could be to add adjectives to it, e.g. “the weird-looking pen”.

## 6. Indefiniteness:

If the speaker/writer wants to include in a word every possible individual interchangeably that could fall under that particular word, then he/she could use the indefinite marker along with the word, as in “a pen” with the indefinite marker “a” or, to use an example from Turkish, as in “*bir kalem*” with the indefinite marker “*bir*.”<sup>167</sup>

Thus the logic behind using such devices as definite or indefinite marker, time and space adverbs, genitive constructions, and adjectives is to limit the number of possible individual entities that could go under the noun/word.<sup>168</sup> To put it differently, if we were to give each and every single physical item around us a distinct name,<sup>169</sup> we would have not needed to use any of these devices, as each word we

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<sup>167</sup> This is not a final list, and upon pondering on this matter, one might come up with more devices to overcome the difficulty of ambiguity I mentioned above as inherent in language of human beings. Another thing that is crucial but missing in my list of such linguistic devices to overcome the difficulty is that it relies on my experience of how language is used, and it lacks a general framework that would make such a list meaningful and would also allow one not to miss any other linguistic device that might be missing here.

<sup>168</sup> This could, I feel, apply to verbs as well, though, in Arabic, even verbs are considered to be derived from verbal nouns (*maşdar*.)

<sup>169</sup> Here what I really mean is to give every single item a distinct name at every distinct point in time. Otherwise, we would still need to refer to time and space. This is, of course, nothing more than a hypothetical situation I am using to explain a very complex situation, as explaining such complex matters at extreme levels proves valuable in making it easy for our intellects to grasp more complex levels, as in mathematics. This hypothetical situation (which results from what will be called in this work as ‘the ideal way of name-giving’) will help us understand the present situation (which results from ‘the practical way of name-giving’), which we live in and

utter would only refer to one single item, and the meaning speaker/writer has in mind would be successfully conveyed to the reader/listener. Since this is not the case, we need to use these methods to clarify what we refer to by each word we use.<sup>170</sup>

One could combine all these methods to further narrow down possible individual referents, as in “The blue pen we saw in Ahmet’s desk which he owned in his first year here the university was nice.”

Having established some of the core elements of the general framework to present the linguistic analysis by *uṣūlīs*, I can now turn back to our example from Qur’ān 5:38,<sup>171</sup> which translates, “As for the male and female thief, cut off their hands.” Before limiting possible items that could go under the word “thief,” one first needs to determine the literal meaning of the word “thief.” This was done by lexicographers, which is an effort that became the subject matter for a whole different science in Islamic studies called *ilm al-waḍf*.<sup>172</sup> Once the meaning assigned to the word is determined, which we may call its *waḍfī* (assigned) meaning,<sup>173</sup> then one may start determining the scope of the word.

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therefore may be hard to appreciate in all its relevant aspects unless its opposite, i.e. the ideal way of name-giving, is brought into the discussion.

<sup>170</sup> See chapter 5 below for the role context plays in limiting the possible items to be included under a word.

<sup>171</sup> وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا تَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

<sup>172</sup> See Weiss, “Language in Orthodox Muslim Thought” <https://search.proquest.com/docview/302228204?accountid=15172>.

<sup>173</sup> I will dwell on this later in this work.

The determination of the scope of the word “thief” will not consider the way the word is used, that is to say, whether the word is used in its literal/primordial sense or in another one. In other words, this analysis will not consider the context and the sentence the word was used in. Rather, it will look at what linguistic methods the speaker who used the word “thief” made use of, methods some of which I laid down above in this section (e.g. use of adjectivals and time and space adverbs), in an effort to limit possible individual items, i.e. individual thieves in our example, that could go under the word, in this case, “thief.” Therefore, the analysis will not consider the meaning of the whole sentence the word ‘thief’ was used in to determine or influence the meaning of the word itself, by asserting whether the word ‘thief’ is used in its primordial/literal sense or in a figurative sense.

### 3. BUILDING THE GENERAL FRAMEWORK BASED ON UŞŪLĪS' LINGUISTIC CATEGORIZATIONS

#### 3.1. FIRST LINGUISTIC CATEGORIZATION: ACCORDING TO WUJŪH AL-NADM (ITS WAḌĪĪ MEANING)

This classification is in terms of *ṣiġā* and *luġa*, two terms which al-Nasafi explains in his *Kaṣf al-Asrār*<sup>174</sup> as 'māddatan' and 'hay'atan'. In his commentary on *al-Manār*, titled *Šarḥ Nūr al-Anwār*, Molla Jīwan explains this phrase, which is composed of these two terms, as *waḌĪĪ* ('primordial' or 'linguistically encoded'<sup>175</sup>) sense.<sup>176</sup>

Studying *lafḍ* according to its *waḌĪĪ* sense seems relevant to semantics in contemporary linguistics, which studies the meanings of words, phrases, and sentences in a given culture. This has been pointed out by various scholars. Weiss and Kamali, for instance, describe the *uṣūlīs'* linguistic classification according to words' primordial meaning as a semantic investigation in nature. Versteegh, going beyond that, analyses the origin of semantics in the Arabic linguistic tradition, which he rightly identifies when he asserts that it was within *uṣūl al-fiqh*.<sup>177</sup> But his investigation is more of one that studies the matter from a historical point of view.

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<sup>174</sup> Al-Nasafi, *Kaṣf al-Asrār*, I, 13.

<sup>175</sup> I am borrowing this term from Pragmatics. See Robyn Carston, "Linguistic Communication and the Semantics/Pragmatics Distinction" *Synthese* 165, no. 3 (2008): 321-45. <http://www.jstor.org/stable/40271119>.

<sup>176</sup> Molla Jīwan, *Nūr al-Anwār*, I, 13.

<sup>177</sup> Weiss, for instance, talking about the linguistic classification found in Āmidī's *Kitāb al-Iḥkām*, mentions: "...it reflects for the most part a semantic or semiotic interest" (see Weiss, *The Search for God's Law*, 126). See similar remarks also in "Wout Van Bekkum... [et al.], *The Emergence of Semantics in Four Linguistic Traditions: Hebrew, Sanskrit, Greek, and Arabic*, 227ff.

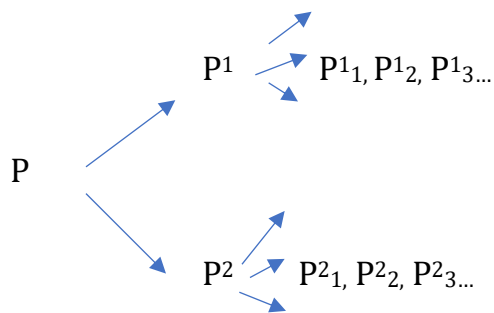
As I mentioned above, as far as I am aware of their writings, these authors have not mentioned any theory or general framework within which the linguistic analysis by *uṣūlīs*, i.e. the four linguistic categorizations and the linguistic categories under them, would make sense and would answer questions I posed at the beginning such as “Why do scholars of *uṣūl al-fiqh* feel that they should classify *lafḍ* into categories in the first place?” and “Why does this classification need to be in terms of four aspects?”

Reading Abū al-Barakāt al-Nasafī’s four classifications of *lafḍ* into categories with particular attention given to the characteristics of each linguistic category under these classifications and to the relationships between categories reveals the general framework that is behind the production of the linguistic categories. The first classification, in this regard, provides certain insights into this general framework. I will thus present how al-Nasafī describes the first categorization and their four types: namely, *xāṣṣ*, *ḡāmm*, *muṣṭarak*, and *mu’awwal*, and then discuss the insights into the general framework that are relevant to the first categorization.

Before proceeding to individual descriptions of the four linguistic categories described by al-Nasafī under the first categorization, it is useful to provide information as to the logic behind this division, which Molla Jīwan describes as the following: “primordially (*waḍḡan*) a word can either refer to a single meaning or multiple ones. If the former is the case, then it can either refer [to the meaning] by way of [the referent] being unaccompanied [by no other individual entity] from

[among] individual [entities],<sup>178</sup> in which case it is *xāṣṣ*, or by way of [the referent] being common [*muštarak*] among individuals,<sup>179</sup> in which case it is *ʿāmm*. If the latter is the case, [that is, if the word is primordially assigned to more than one meaning], if one of its meanings is favoured over other(s) with *taʿwīl*, it is *muʿawwal*; otherwise [that is, if none of its meanings can be favoured over other(s)],<sup>180</sup> it is *muštarak*.<sup>181</sup>

**Figure II**



In Figure II above, P stands for a *muštarak* (polysemous) word, which has been assigned to multiple senses, represented here with P<sup>1</sup> and P<sup>2</sup>, each of which could refer to any of its class members, represented with P<sup>1</sup><sub>1</sub> P<sup>1</sup><sub>2</sub> P<sup>1</sup><sub>3</sub> etc. and P<sup>2</sup><sub>1</sub> P<sup>2</sup><sub>2</sub> P<sup>2</sup><sub>3</sub> etc. The number of senses does not have to be limited to two, but it has to be at least two for the word to be considered *muštarak*. If one of the *waḍʿī* senses is preferred over

<sup>178</sup> The original reads “*ʿalā l-ʿinfirādi ʿani l-afrādi*” (see Molla Jīwan, *Nūr al-Anwār*, I, 15).

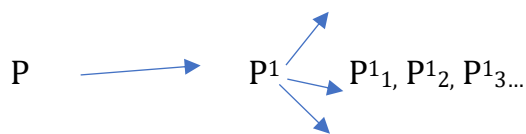
<sup>179</sup> The original reads “*maʿā l-ištirāki bayna l-afrādi*” (ibid, 15-16).

<sup>180</sup> This implies that context will play a role in determining the intended meaning of *muštarak* over other(s).

<sup>181</sup> Molla Jīwan, *Nūr al-Anwār*, I, 15, 16.

the other(s) on a particular occasion, then P, which is previously *muštarak*, turns into *mu'awwal*.

**Figure III**



In Figure III to the left, P stands for a word that has only one *wadʿī* (assigned sense), which is P<sup>1</sup>, which in turn could refer to its members represented with P<sup>1</sup><sub>1</sub>, P<sup>1</sup><sub>2</sub>, P<sup>1</sup><sub>3</sub>...etc.

In Figure III, if all the referents of P<sup>1</sup> are referred to at the same time, P is called an *ʿāmm* word.<sup>182</sup> If P<sup>1</sup> refers to only a specific single entity within its class members on a single occasion, then P is called a *xāṣṣ* word.

To consider these materials in the light of the discussion in section 2.7 above, I will go back to the process through which language was actually born, i.e. the name-giving process, which is the process where words (and sometimes even morphemes as in the “-s, -es, -ies” suffix in English, which is assigned to the meaning of plurality) were assigned to meanings.

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<sup>182</sup> There is disagreement among scholars whether an *ʿāmm* word has to refer to all its class members, which I will deal with later in section 3.1.2 below.

Words are assigned to either single or multiple senses. If the former is the case, that is, if a word is assigned only to a single sense, and on a given speech occasion it refers to only a single item/entity at a time in the real world, then such a word is called *xāṣṣ*. If that word refers to multiple (or all the)<sup>183</sup> items/entities at the same time, this is called *ṣāmm*. If the latter is the case, i.e. the word was assigned to multiple senses during the process of name-giving, then there are two possibilities worth considering. If the intended meaning of the word that is assigned to multiple senses could be favoured over the other(s) within a context, I think, by the listener/reader,<sup>184</sup> then this word is called *mu'awwal*, and if this cannot be achieved, again by the listener/reader, then this word is called *muštarak*.<sup>185</sup>

Before I proceed to provide definitions of individual linguistic categories defined by scholars such as al-Nasafī, it is worth mentioning that in order for us to appreciate the definition of anything defined within the intellectual culture that al-Nasafī was part of, we should bear in mind that for a definition of a given word being defined to be perfect, it had to be both inclusive of all of its class members and exclusive of all those entities which are not among its class members.<sup>186</sup> In other

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<sup>183</sup> By “multiple” what is meant is the plural in Arabic, which must include at least three entities. Other scholars, however, claim that for a word to be *ṣāmm*, it must include all of its class members (see the previous footnote).

<sup>184</sup> Otherwise, for the speaker/writer, the intended meaning of a *muštarak* word is already clear in his/her mind. Therefore, there is no question of whether *muštarak* turns into *mu'awwal* or not on the part of the speaker/writer.

<sup>185</sup> Molla Jīwan, *Nūr al-Anwār*, I, 17-18.

<sup>186</sup> Ahmet Cevdet Paşa, *Miṣyār-ı Sadād*, 32. This assumes that definition defines a word that is a class. This word, which is a class, I further assume, stands for a concept.

words, the definition functioned to distinguish the definiendum, i.e., the defined object, from all other things.<sup>187</sup> And the way one makes sure that one's definition of a given word is correct is to check if there is any individual entity that is among the class members of the word but excluded by the definition of the word itself or vice versa.

At this point, I would like to focus on the fact that unlike words such as 'Zayd', 'Ahmet', and 'Ali', words such as 'pen', 'book', and 'table' are class names, i.e. they stand for an unnamed indefinite number of individual entities. As I pointed out in section 2.7 above, we do not refer to, say, 'P<sub>1a</sub>' or 'P<sub>2c</sub>', using a distinct name; but rather, we refer to them using a class name such as P (pen). In fact, *mufrad* ('simple', i.e. not compound) words such as 'pen', 'book', and 'table' can be divided into two categories according to logicians: *kullī* (universal) and *juz'ī* (particular.)<sup>188</sup>

Words in the absence of their grammatical case (or infinitives), as in 'book', 'pen', 'computer', etc. are universal and not particular because they stand for concepts, which are universal. Because concepts are formed based on individual entities we observe in our world, such as the formation of the concept of 'pen' out of individual pens we observe, concepts have a set of potential referents which we can gather under a scheme, as in the scheme of pen. Therefore, when we define a word,

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<sup>187</sup> Weiss, *The Search for God's Law*, 384.

<sup>188</sup> al-Abharī, *Īsāǧūjī*, 3-4.

we are dealing with a class that consists of individual entities. As a result, when universal words need to be defined, they have to be defined in a way that includes all of their members and excludes those things which are not among their members. This is a topic I now turn to in order to further clarify what I mean by the sentences above.

As part of his/her task in defining an object or a concept, a scholar of this intellectual culture would provide, in addition to the definition itself, details about the inclusive or exclusive functions of the constituent parts of the definition.

This implies that these scholars were selective not only in word choices but also in paying close attention to using words in a way that would perfectly match the meaning to be defined without leaving out anything of the meaning or adding more to it. However, often they also added words or phrases to the definitions merely in order to clarify the core elements making up the definition. This led to the formation of two distinct types of elements in a definition, in terms of whether or not they are essential to the completeness of the definition. I shall discuss these two types here briefly.

To allow the reader to appreciate the details of the definition, commentators often pointed out what constitutes the core definition and what does not. The most important type is that without which the definition would be incomplete, and this type functioned either to include in it what should be included and/or to exclude what should be excluded. Elements of this type are called *iḥtirāzī* (exclusionary) or *qayd*

*iḥtirāzī* (exclusionary note). The other type is almost the opposite of the first type, i.e. that without which the definition would be complete but is added to the core definition in order to further clarify it. This second type of elements of the definition are called *ittifāqī* (concordant) or *qayd ittifāqī* (concordant note). In other words, *iḥtirāzī qayds* were the elements of the core definition, functioning to include or exclude what should be included in, or excluded from, the meaning that the definition is intended to signify. On the other hand, *ittifāqī* notes were added in order to clarify what is left in terms of meaning within the boundaries of the word that is defined. Therefore, as will be seen throughout the present work, al-Nasafī, just like other classical authors who belong to a similar intellectual environment, provide information regarding the role each element, be it that of *iḥtirāzī* or *ittifāqī*, plays in the formation of definitions of individual linguistic categories along with the definitions themselves.

### 3.1.1. Xāṣṣ

Al-Nasafī defines *xāṣṣ* (specific)<sup>189</sup> as “each word assigned to a single known meaning by way of *infirād*<sup>190</sup> (having only a single referent being referred to using the word).<sup>191</sup>

In his commentary on *al-Manār* called *Nūr al-Anwār*, Molla Jīwan provides a concise analysis of al-Nasafī’s definition of *xāṣṣ*,<sup>192</sup> and says that with the phrase *kullu*

<sup>189</sup> See a more general meaning of *xāṣṣ* in section 3.2 below.

<sup>190</sup> Lane translates *infarada* as “He was, or became, alone, by himself, apart from others, or solitary.” (see Edward William, Lane, *An Arabic-English Lexicon*, 2363).

<sup>191</sup> The Arabic reads as “*kullu lafḍin wuḍiʿa li-maʿnan [wāḥidin] maʿlūmin ʿalā l-infirādi*. (al-Nasafī, *al-Manār*, I, 18.) The adjective *wāḥidin* (one) mentioned in the definition of *xāṣṣ* above, which emphasizes the number of the meaning *xāṣṣ* word is assigned to, is not mentioned in the edition I am primarily using; rather, in an edition that has only *al-Manār* in it without the commentaries. (For this particular note, see al-Nasafī, Abū al-Barakāt ʿAbd Allāh b. Aḥmad Ḥafīḍ al-Dīn al-Nasafī, *al-Manār* (Istanbul: ʿĀsitāne, 1326), 2).

<sup>192</sup> In classical texts in Islamic studies definitions were carefully formulated and put into words in such a way that each definition would not include anything, and more precisely, any entities/items that are considered not to be among the entities to be included under the given concept; and also that it would at the same time include whatever entities in the real world that are regarded as among its items/entities under it. This type of definition was regarded as the perfect definition and was referred to with the following phrase in Turkish: *efrādını câmi’, aḡyârını mâni’*, which could be translated into English as a definition that is both inclusive and exclusive. In fact, Ahmet Cevdet Paşa refers to this as a necessary condition for a definition to be complete. He further says that such definitions are defined as *ḥadd tamm* (perfect/complete definition). He says the following: “تعرفلرده اطراد” وانعكاس شرط وردر” ((Ahmet Cevdet Paşa, *Miṣyâr-ı Sadâd*, 32.) To explain this, Ahmet Cevdet Paşa further explains *iṭṭirād* and *inṣikās*: “اطراد تعريفك اغيارني مانع اولمسي يعني معرفك افرادندن اولميان برشينك تعريفده داخل اولمامسي ديمكتر” (*iṭṭirād* is for the definition to exclude what is other than it. In other words, it (*iṭṭirād*) is not to include in the definition what is not among the members of the defined.) In addition, He says: “انعكاس تعريفك افرادنى جامع اولمسي يعني افراد” (*Inṣikās* is for the definition to include its members. In other words, it (*inṣikās*) is for none of the members of what is defined to be excluded from the definition.) Lane mentions this condition with the following sentence: “الحد يطرده وينعكس”. However, although he understands what *iṭṭirād* is, I think he misses the intended meaning of *yanʿakisu*. In fact, Lane translates the whole sentence as “The definition is of uniform, or general, application, and may become inverted, or converted: for instance, you may say, “a man is a rational animal,” and “a rational animal is a man.” (Lane, *An Arabic-English Lexicon*, 2121.) I think Lane is right in his understanding of what *iṭṭirād* is within the context of *ḥadd*, i.e. definition. As a matter of fact, he touches upon the same term elsewhere in his lexicon when he translates the following sentence “اطرد الحد” as “The definition was of uniform, undeviating, or general, application...” (Lane, *An Arabic-English Lexicon*, 1839). However, I think he does not understand *inṣikās* within the context of *ḥudūd* and incorrectly translates *yanʿakisu* in the above sentence as “the definition may become inverted, or converted”. I think *inṣikās* is for a definition to mirror itself, i.e. represent all of its members and not to exclude any of them from the definition, as Ahmet Cevdet Paşa implies. As a result, a perfect definition needs to involve two types of elements with two distinct functions: one type that functions to include each possible individual entity that goes under a given

*lafḍin, muḥmal* is excluded from the definition, which is an utterance not assigned to any meaning.

The word *maʿlūm* (known) used as an adjective of “*maʿnan*” (sense), forming the phrase “*maʿnan maʿlūmin*” (known sense), Molla Jīwan goes on to say, excludes either *muštarak*, which occurs if what is meant by ‘*maʿlūm*’ is “*maʿlūmi l-murādi*” (whose intended meaning), as the intended meaning of *muštarak* is not known. Alternatively, the word *maʿlūm* does not exclude *muštarak* if what is meant by *maʿlūm* is “*maʿlūmi l-bayāni*”, in which case *muštarak* would be excluded by the following phrase “*ʿalā l-infirādi*”. On the other hand, in his own commentary on *al-Manār*, al-Nasafī clarifies what he meant by the word *maʿlūm* here, saying that it functions to exclude *muštarak*.<sup>193</sup> Based on this, it seems Molla Jīwan had not seen al-Nasafī’s own commentary on *al-Manār* when writing his. And finally, al-Nasafī notes, again commenting on his own work, that the function of the phrase *ʿalā l-infirād* is to exclude the category of *ʿāmm*.<sup>194</sup>

We will see that *uṣūlīs*, such as al-Nasafī, classify words into categories by virtue of their signifiatory function for meaning. In other words, *uṣūlīs* classify words

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concept and the other one that functions to exclude everything else that does not fall under the concept that is being defined. Consequently, when Molla Jīwan feels the need to provide a definition of a concept, his analysis, as of many commentators of other works written in Classical Arabic, focuses on these elements in definitions, and he points out the purpose of each of these elements in definitions so that they become clear to his readers.

<sup>193</sup> Al-Nasafī, *Kašf al-Asrār*, I, 18.

<sup>194</sup> Ibid, 19.

as bearers of meanings.<sup>195</sup> In this regard, *xuṣūṣ* (specificity) is the meaning that *xāṣṣ* (specific) stands for, and *xāṣṣ* is here divided into categories by virtue of its signifiatory function for *xuṣūṣ*. In other words, *xuṣūṣ* is the subject of *uṣūlīs*' categorization. Therefore, al-Nasafī divides *xāṣṣ*—or to be more precise, *al-xuṣūṣ*, that is, among the implications/contents of *xāṣṣ*,<sup>196</sup> as Molla Jīwan points out<sup>197</sup>—into three types: *xuṣūṣ al-jins*, *xuṣūṣ al-nawf*, and *xuṣūṣ al-ṣayn*.

Molla Jīwan defines the first type as the *xuṣūṣ al-jins* with its *jins* being *xāṣṣ* in terms of the meaning even if the number of items that could go under it can be infinite.<sup>198</sup> When explaining what is meant by *xuṣūṣ al-nawf*, Molla Jīwan states that this is in line with the previous one, so *xuṣūṣ al-nawf* is *xāṣṣ* by way of its *nawf* being *xāṣṣ* in terms of the meaning even if the number of items that could go under it cannot be counted. As for the last one, Molla Jīwan says, it is a specific person (*al-ṣaxṣ al-maflūm*), and he adds that this is *axaṣṣ al-xāṣṣ* (the most specific of the specific).

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<sup>195</sup> It is true that human beings can utter words that have no meaning. However, *uṣūlīs* were concerned with those words (and phrases or sentences for that matter) that signify meanings, as words that have no meaning do not form basis for communication, thus are not part of the language of the texts of the legal system (see Weiss, *The Search for God's Law*, 126).

<sup>196</sup> The original for *the implications/contents* reads “*fī ḍimni*”. Lane translates the phrase as “among the contents or implications of” (see Lane, *An Arabic-English Lexicon*, 1805).

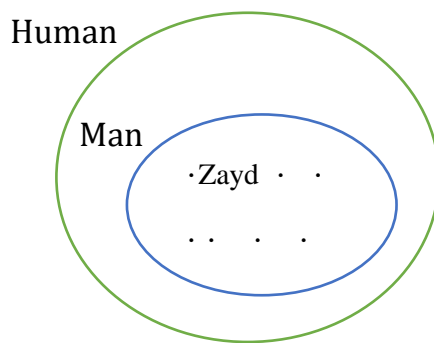
<sup>197</sup> Molla Jīwan, *Nūr al-Anwār*, I, 19.

<sup>198</sup> He uses the phrase “*wa-in lam yakun mā ṣaduqa ṣalayhi mutaṣaddidan*”, i.e. even if what could be true to be called as such cannot be counted. In other words, even if the entities that fall under the (sub-)class name is countless, which is something that is almost always the case, such a word is still called *xāṣṣ*, as the crux of the matter is the meaning/concept, which is one in a *xāṣṣ* word (see Molla Jīwan, *Nūr al-Anwār*, I, 19).

Al-Nasafī then goes on to give examples of these three types of *xāṣṣ* word, which are “*insān* (human being), *rajul* (man), and *Zayd*,” respectively. This can be represented as in the scheme below.<sup>199</sup>

#### Figure IV

#### Illustration of three types of *xāṣṣ*



Represented above in Figure IV are two schemes, green and blue, representing the *faṣls* of the class of “human” and of the sub-class of “man” respectively. “Zayd”, a male name in Arabic, is a member of the sub-class of “man” along with many other male names, which are represented here with only by a few dots for the sake of economy. For the same reason, other sub-classes one could come up with, such as “Woman,” as well as sub-class members within them are not represented here. It

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<sup>199</sup> I should also note here, again, that this division of *xāṣṣ* into three categories is for nouns alone. For verbs and participles, there is no corresponding division of *xāṣṣ* into *jins*, *nawf* and *ṣayn*. This has more to do with the idea that the noun plays a central role in the formation of the language, which is an idea that is rooted in Qur’ān, 2:31, where it reads “*wa-ṣallama l-ādama l-asmā’a...*” (God taught Adam the names...). According to this theory of the origin of the language, even verbs are derived from nouns, which are called verbal nouns (*maṣdar*).

should also be noted that there are no hard and fast boundaries that separate particular members from each other, and one can have a sub-class of, say, “doctor” under the class of “human,” in which case, both male and female members of the class would be categorized under the same sub-class of “doctor,” as opposed to the case with the sub-classes of “man” and “woman.”

The three types of *xāṣṣ* word represented above, namely “human”, “man”, and “Zayd”, correspond to the word “pen” (P), one type of pen, say, P<sub>1</sub>, and one individual pen of that type, say, P<sub>1a</sub>, respectively, which are mentioned as an example in section 2.7 above.

If one would like to refer to a single male of the class of “human,” one could refer to it either by the name of the class (human), by the sub-class (man) or directly by the name of the particular person being referred to, such as “Zayd.” Since the referent is a single entity, all the three words, namely “human”, “man”, and “Zayd”, are *xāṣṣ* words.

In the all three instances of reference to that particular person, although the referent is a single person, the number of possible referents being referred to using each of the three words is different. In fact, the number of potential referents would be higher when the class name, i.e., “human,” is used as a reference than the sub-class name, i.e., “man.” And finally, there would be only a single referent with the particular name of that particular person being referred to, i.e. “Zayd” in this case.

Unlike the third type, which can only be used as a reference to the particular person/individual entity that the word “Zayd” is specifically assigned to, the first and the second types of *xāṣṣ* word mentioned above, as in the class name “human” and the sub-class name “man,” could be used as a reference to anyone within the class or the sub-class respectively, which leads to ambiguity as to the identity of the particular individual being referred to.

We have seen in section 2.7 above, though with a different example, namely, that of “pen,” that one of the ways to narrow down the possible referents that a name or concept may refer to is to use a narrower concept within the larger concept, i.e. to use a sub-class name rather than the class name that the sub-class belongs to. Furthermore, in some cases it would prove valueless or impractical to form further sub-categories within sub-categories,<sup>200</sup> as I have mentioned. At this point, human

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<sup>200</sup> It is noteworthy to mention here that *uṣūlīs* as well as logicians consider the divisions of class and sub-class to be generally static and not changing (see Molla Jīwan, *Nūr al-Anwār*, I, 19) (for an exception, see my discussion of *xafī* in section 3.3.2.1). However, Ahmet Cevdet Paşa in his commentary on *İsāgūjī* on this particular matter states something that seems to contradict this. In fact, Cevdet Paşa says the following: “هر شي هم نوع وهم جنس وهم فصل وهم خاصه وهم عرض عام اوله بلور. (Cevdet Paşa, Ahmet, *Miṣyār Sadād* (Istanbul: Matbaa-yı Amire, 1293 [1876]), 16), which indicates that a word can be called a class or sub-class in consideration of its various relationships with other things. To state that the classes and sub-classes are fixed is almost equal to saying that these scholars categorized all individual entities under class and sub-class names, which is, due to the almost indefinite number of individual entities around us, unlikely to be achieved. If I try to reconcile then the two apparently conflicting statements, I can say that individual entities that constitute the backbone of the discussions in *uṣūl* works are well defined and thus the class or the sub-class they belong to is clear and fixed within *uṣūl al-fiqh*. The same applies to other disciplines such as logic. Therefore, although *insān*, as Ahmet Cevdet Paşa states, could be a name for both class and sub-class, it is often the case that *uṣūlīs* almost univocally agree that *insān* is the name of the class that has sub-classes such as *rajul* because human beings are the main subject of this science. At the same time, logicians consider *insān* to be a sub-class within the class of *ḥayawān*, living being for the same principle. For further information on this, see al-Nasafī, *Kaṣf al-Asrār*, I, 19 and Molla Jīwan, *Nūr al-Anwār*, I, 19. The crux of the matter is that a word’s classification as either a class or a sub-class is

beings then make use of several other devices to narrow down the scope of the referents.

One of the ways in which one limits the scope of the referent is, as mentioned in section 2.7 above, to use an adjective of a given name of a concept, as in “blue pen”. *Uşūlīs* call this type of limited *xāṣṣ* word a “*muqayyad*” (qualified) word while that which is stripped of any adjectives or maybe of other types of limiting device is a “*muṭlaq*” (unqualified) word.

These are the two of the four sub-categories of *xāṣṣ* words in *uṣūlī* classification of *lafḍ*. In fact, *uṣūlīs* divide *xāṣṣ* into four sub-categories: *amr*, *nahy*, *muṭlaq*, and *muqayyad*. I will start with the last two, whose place within the larger picture of *xāṣṣ* with the information just provided hopefully has already become clear.

### 3.1.1.1. Muṭlaq

Al-Nasafī does not seem to treat *muṭlaq* (unqualified) as a category in its own right. There is, in fact, disagreement among scholars even on its<sup>201</sup> inclusion under *xāṣṣ* words, as Molla Xusraw, who treats it as a separate category under *xāṣṣ*, notes.<sup>202</sup>

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merely a convention of the scientific vocabulary of a given field of study, and its fixedness as a class or a sub-class seems to depend on its relative significance within the field.

<sup>201</sup> The same applies to its correlate, *muqayyad*.

<sup>202</sup> Regarding the prevailing opinion among the scholars on this matter, Molla Xusraw says: “The preferred opinion among scholars, as the author of *al-Tanqīḥ* and others made clear, is that both *muṭlaq* and *muqayyad* are included under *xāṣṣ*.” See Molla Xusraw, *al-Mirʿāt*, 152.

Molla Xusraw defines *muṭlaq* as a word which signifies<sup>203</sup> spreading<sup>204</sup> (*šā'iŷ*) within its class (*jins*) without any indication of enclosure (*šumūl*) and containment (*iḥāṭa*) as well as without any designation (*taŷyīn*) and specification (*taxšīš*) with regard to its class members.<sup>205</sup>

At this point, it is worth reminding ourselves that there are three types of *xāšš* words, namely, *xuṣūš al-jins*, *xuṣūš al-nawŷ*, and *al-šaxš al-maŷlūm*. As will be seen in more detail below, *muṭlaq* can be the first two types of *xāšš* word, which are generic notions, but not the last type of *xāšš* word, which refers to a particular (*juz'ī*) member of a given class.

Having provided its definition, as always, scholars such as al-Nasafī and Molla Xusraw, go on to provide the inclusive or exclusive function of each constituent part of the definition of the *muṭlaq* word. In this regard, Molla Xusraw mentions that with the phrase “*šā'iŷun fī jinsihī*” (that which signifies spreading within its class), parts of definite nouns (*aqsām al-maŷārif*) are excluded. In fact, definite nouns refer to a particular designated member within the class, given the fact that these definite

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<sup>203</sup> This is to emphasize the fact that *muṭlaq* is the word that stands for the concept that is being defined. There is a note on the margin of the text as a supercommentary written under the term spreading (*šā'iŷ*) which reads that *muṭlaq* is the significatum (*madlūl*) of the (*šā'iŷ*) (see, Molla Xusraw, *Al-Mir'āt*, 152). This seems to be in line with the fact that what is defined is not the word itself but rather the meaning it signifies. However, since the medium of this definition is language, words are used as means to accomplish the definition of the concepts represented by the words.

<sup>204</sup> Lane, *An Arabic-English Lexicon*, 1633.

<sup>205</sup> Molla Xusraw, *Al-Mir'āt*, 152.

nouns are used in the singular mode—which is already a requirement for them to be a sub-category of *xāṣṣ* word as I have discussed in section 3.1.1 above.

To illustrate this, we can consider the example of the definite noun “the bottle” in “Ahmet drank the water in the bottle.” We cannot say of the word “the bottle” referring to each bottle individually within the sub-class of bottle or all the bottles therein. Rather this word refers to an identified entity. Therefore, in order for a *xāṣṣ* word to be *muṭlaq*, it has to be able to refer, not simultaneously but interchangeably, to each member of the (sub-)class, as is the case with the word “a pen” in “Ahmet bought a pen.” However, the range of this characteristic of ‘spreading among its class members’ (mentioned in the text of *al-Manār* as “*šā’iṣun fī jinsihī*”) is left ambiguous as it could even cover all the members, which is an ambiguity clarified with the following phrase by limiting the possible range of referents.

The phrase “*bi-lā-šumūlin*” functions to exclude *ḡāmm*. In fact, thanks to its *šumūl*, an *ḡāmm* word, unlike a *muṭlaq* one, encloses all its class members simultaneously as will be seen in section 3.1.2. However, I will point out the difference between the two here briefly so that the subject matter in hand, namely, the category of *muṭlaq*, which looks very similar to that of *ḡāmm*, may be better understood.

To clarify the category of *muṭlaq*, let us now consider the category of *ḡāmm* in relation to the category of *muṭlaq*. In fact, if one refers to all human beings under the class of “human” represented in the scheme above, one makes use of such *ḡāmm*

words as *kull* (all) and *jamīf* (every). One then forms such genitive constructions as *kull insān* or *jamīf al-nās*, *nās* as the pl. of *insān* being appropriately used here with the word *jamīf* as opposed to *kull*, which is a grammatical rule that will be dealt with later in this work in the category of *fāmm* word. On the other hand, a *muṭlaq* word is an indefinite word without any qualifier such as an adjective, as in *rajul* (a man), which does not refer to all the sub-class members of “man” but rather to one single unidentified entity within the sub-class, a person that each of the members of the sub-class is eligible to be. However, this person, in a *muṭlaq* word, is not defined in any way or made exclusive to any group within the sub-class. This last assertion can be understood from the inclusion of the phrase *bi-lā taḡyīn wa-lā taxṣīṣ*, whose function I now turn to.

With the phrase *bi-lā taḡyīn wa-lā taxṣīṣ*, Molla Xusraw mentions, *muqayyad* is excluded.<sup>206</sup> The two terms *taḡyīn* and *taxṣīṣ* mentioned in the phrase are closely related. However, it appears to me that the latter is not a synonym of the former that functions to explain the former. Rather, the two function to exclude different linguistic categories from the definition of *muṭlaq*. It seems that while, as Molla Xusraw points out, *muqayyad* is excluded from the definition, what excludes it is the

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<sup>206</sup> Molla Xusraw, *al-Mir'āt*, 152.

phrase *bi-lā taxšīš*<sup>207</sup> (without any limitation). In fact, a *muqayyad* word, as in *raqaba mu'mina* (a Muslim slave), limits the possible referents to a group within the (sub-)class, in this case, to Muslim ones. Because of this limitation (*taxšīš*), those slaves who are not Muslim are excluded from the scope of the word “slaves”. Since *muṭlaq* is a category of *xāṣṣ* that is not limited in such ways, al-Nasafī used the phrase *bi-lā taxšīš*, thereby excluding *muqayyad*.

The phrase *bi-lā taḥyīn* excludes the third type of *xāṣṣ* word, *xāṣṣ al-ḥayn*, such as “Zayd”, from the definition. This is because proper names such as “Zayd” designate only a single person within the class, and therefore are *muḥayyan* (fully identified) words.<sup>208</sup>

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<sup>207</sup> I should note here that I think the word *taxšīš* is used in its literal sense here rather than as a derivative of the terminology of *xāṣṣ* (specific word,) as otherwise, it would not make sense to have *muṭlaq* featured as “not having any kind of *xuṣūṣ*” with the phrase “*bi-lā taxšīš*” under the category of *xāṣṣ*.

<sup>208</sup> One can argue that the name “Zayd” may stand for more than one person within the class of Human or sub-class of Man, and therefore, it does not seem right to claim that the name “Zayd” refers only to a single person. This is in a way may look true. However, when we ponder on this, we realize that all individuals called “Zayd” under the class of Human or sub-class of Man are not called as such by virtue of some features they have in common that necessitate/lead to assignment of the name “Zayd” to each one of these individuals. On the other hand, such nouns as “man” and “human” are assigned to only to certain individuals with specific features that make this assignment meaningful. “Human”, for instance, is given to only living beings with intellect. This is not the case with the assignment of proper names such as ‘Zayd’ to individuals who happen to be called “Zayd”. It is true that one could think of ‘Zaydness’, for which we would seek (though in vain) to establish features, which make each individual called “Zayd”, ‘Zayd’. This comment may look to ignore one opinion about the relation between *ism* and *musammā*, which has roots in Islamic tradition. In this regard, the Prophet would change names of those Companions with meanings Islam now does not approve such as ‘Abd Šams’ (The Slave of the Sun) with good ones. Besides the fact that such names as ‘Abd Šams’ carry meanings not approved by the religion of Islam, Muslims also saw a correlative relation between *ism* and *musammā*. The idea behind such acts of the Prophet was considered by many Muslims to be that names play significant role in shaping characteristics of individuals, so good names were given to children. However, even one can prove that such correlation between *ism* and *musammā* exists, and say, all the people called ‘Zayd’ have some features peculiar to people carrying that name, this does not contradict the idea that proper names are assigned arbitrarily initially because no parent chooses the name ‘Zayd’ to give to their children based on some features they see in their newborns.

To sum up, *muṭlaq* is a type of *xāṣṣ* word that is not qualified with a qualifier<sup>209</sup> like an adjective and is interchangeable among its class members in terms of each being eligible to be the referent on its own. As we have seen above, among the three types of *xāṣṣ* words, while *xuṣūṣ al-jins* and *xuṣūṣ al-nawʿ* are eligible to form *muṭlaq*, *al-šaxṣ al-maʿlūm* cannot refer to multiple entities interchangeably and thus cannot form a *muṭlaq* word.

I will discuss the legal ruling of *muṭlaq* in the following section in relation to its correlate, namely *muqayyad*, as they go hand in hand in the process of law-making in Islamic law.

### 3.1.1.2. Muqayyad

As highlighted in section 2.7, sometimes as it is not practical to have further sub-classes, one makes use of certain linguistic devices to narrow down the possible referent(s) of a given word that a given speaker/writer uses. One of these methods, as pointed out, was to use adjectives. This is done with an adjective added to a noun that is one of the two types of generic *xāṣṣ* words, namely, *jins* or *nawʿ*. The other type of *xāṣṣ*, which is *axaṣṣ al-xāṣṣ*, is not mentioned here because it is already *al-šaxṣ al-maʿlūm*, i.e. a specific person, so there is only one possible referent for such proper

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<sup>209</sup> There could be other qualifiers, and I make no claim that adjectives are the sole ways of forming *muqayyad* words.

nouns as Zayd or ʿAmr. For instance, if one would like to further narrow down possible referents the word ‘man’ could refer to, one could add to it, say, ‘tall man’, which could refer to any individual male within the group<sup>210</sup> of ‘Tall Man’.

Molla Xusraw defines *muqayyad* (qualified) as that which departs [from the state of] *šuyūf* through several ways. As I have pointed out, one of these ways is to use an adjective as a qualifier for a noun as in *raqaba mu’mina* (a Muslim slave), where the adjective *mu’mina* causes the *muṭlaq* word *raqaba* to depart from its status of spreading in terms of its ability to interchangeably refer to all the members of the sub-class of slaves, which *uṣūlīs* consider to fall under the class of human beings, and confine it only to members of the groups of Muslim slaves.<sup>211</sup>

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<sup>210</sup> I do not call this a “sub-class” but instead refer to it with the somewhat vaguer term “group.” This is because it seems to me that for an expression to be considered as a class or sub-class, it has to stand for a concept by itself without having constituent parts made up of other concepts, as in *raqaba* (a slave) and *raqaba mu’mina* (a Muslim slave), the former being called a class and the latter being a group as it is made up of the concept of *raqaba* (a slave) and the adjective *mu’mina* (Muslim). In other words, if we had a distinct concept for *raqaba mu’mina*, and thus assigned a name to that concept, we would have called it as a class or sub-class in the instance when it is referred to using its concept name and not using what we may call “definition-like” phrase, namely, *raqaba mu’mina*. This can be seen in the example of *insān*, which itself is a name for a concept that stands for the meaning of *ḥayawān nāṭiq* (intellectual animal). To refer to the concept of human being, if we use the word *insān*, then the signifier (in this case, the word *insān*) could justifiably be called a class. On the other hand, if we use the phrase *ḥayawān nāṭiq* to refer to the same concept, then we cannot refer to that signifier (in this case, the phrase *ḥayawān nāṭiq*) as a class or sub-class. Sometimes we do not have a concept or a name for that concept that would express the meaning of the concept by itself without needing any other concept making it up. This is the case here with *raqaba mu’mina* as we do not have any particular name—which can be called a *mufrad* name in the sense that it cannot be divided into meaningful parts—to express the meaning of the phrase. In such cases, it is even more far-fetched to call such a phrase a class or sub-class than in the case of a phrase like *ḥayawān nāṭiq*, which has a name, namely, *insān*, which expresses the meaning of the concept by itself. Therefore, my contention is that it is more appropriate to refer to a phrase such as *raqaba mu’mina* as a group rather than as a class or sub-class.

<sup>211</sup> Molla Xusraw, *al-Mir’āt*, 152.

The *ḥukm* of both *muṭlaq* and *muqayyad* is that both need to be taken as they are. *Muṭlaq* needs to be taken as a *xāṣṣ* word that denotes a sense without any qualifier and thus could refer to any one of the members of the (sub-)class interchangeably. *Muqayyad*, on the other hand, needs to be considered as a *xāṣṣ* word qualified with a qualifier and thus could refer only to those members of the sub-class that qualify to be a referent by virtue of the qualification described by the qualifier. Now one of the questions that come to mind is “What does happen when they coexist in a legal matter?”

There are different possibilities: First, the legal rulings of *muṭlaq* and *muqayyad* words could be different. If this difference does not require that one limit the other, as in “*Aṭṣim rijālan*” (Feed men.) and “*Wa-ksu rijālan ṣāriyan*” (Buy clothes for unclothed men.), then, as Molla Xusraw notes, “*ujriya al-muṭlaqu ṣalā iṭlāqihī wa-l-muqayyadu ṣalā taqyīdihī*”, that is, the legal ruling based on the *muṭlaq* word remains as it is, and the legal ruling based on the *muqayyad* word remains as it is. If the difference requires one to limit the other as in, say, “*Aṣṭaqid raqabatan*” (Free a slave.) along with another one on the same matter with the key word used as *muqayyad*, as in “*Wa-lā taṣṭaqid raqabatan mukātaban*” (Do not free a *mukātab*<sup>212</sup> slave.), *muṭlaq* is

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<sup>212</sup> *Mukātab*, i.e. holder of a contract, which is a noun derived from the verb *kātaba*, to enter into agreement with someone, is a type of slaves whom the owner has agreed to free once the slave pays the agreed amount of ransom to the owner. This type of slaves, unlike a regular slave, is eligible to own property due to the agreement (*kitāba*) he has with his owner. Whatever a regular slave earns, on the other hand, is considered to be the property of the owner.

interpreted as the sense *muqayyad* denotes, that is to say, *muqayyad* limits the *muṭlaq*, so the slave to be freed needs not to be a *mukātab* one in this particular case.<sup>213</sup>

Second, the legal rulings of *muṭlaq* and *muqayyad* could be the same, in which case, the former cannot be interpreted within the limits of the latter, except for the occasion where the subject matter is the same and both *iṭlāq* and *taqyīd* are in *al-ḥukm al-tābit* and not in *sabab*.<sup>214</sup>

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<sup>213</sup> Molla Xusraw, *al-Mir'āt*, 152-153.

<sup>214</sup> Molla Xusraw, *al-Mir'āt*, 153-154. A *sabab*, cause, is what God made its existence or non-existence an indicator for the existence or non-existence of a *ḥukm* (legal ruling), be the relation between *sabab* and *ḥukm* is conceivable or not. This relation could be conceivable, as in the relation between the *sabab* of *iskār* (intoxication) and the *ḥukm* of prohibition of drinking wine, or it could be non-conceivable as in the relation between the *sabab* of sunset and the *ḥukm* of the obligation of praying the *mağrib* prayer for those who are required to pray. If the former is the case, then *sabab* is also referred to as *ʿilla*. If the latter is the case, *sabab* is not referred to as *ʿilla* (see Erdoğan, Mehmet, *Fıkıh ve Hukuk Terimleri Sözlüğü* (Istanbul: Ensar, 2016, 497). The reason why Molla Xusraw emphasized both *muṭlaq* and *muqayyad* should be in *ḥukm* and not *sabab* is explained in one of the notes on the margin of the text of *al-Mir'āt*, which explains the matter using two examples. For instance, it states, consider the following two sayings of the Prophet: *addū ʿan kulli ḥurrin wa-ʿabdīn* (Give alms-charity of *fiṭr* for each free and slave man and woman) and *addū ʿan kulli ḥurrin wa-ʿabdīn muslimīn* (Give alms-charity of *fiṭr* for each free and slave Muslim man and Muslim woman). The *sabab* of the *ḥukm* of obligatoriness is *al-ra's al-muṭlaq* (an alive individual) in the former and *al-ra's al-muqayyad* (an alive Muslim individual) in the latter. These two sayings of the Prophet do not contradict each other on the level of *asbāb* (plural of *sabab*), as it is well possible that *muṭlaq* could be a *sabab* and *muqayyad* could be another *sabab*. Consider, for instance, the following two sayings of the Prophet on the witness of a marriage: *lā nikāḥa illā bi ṣuhūdīn* (Marriage is not valid without witnesses) and *lā nikāḥa illā bi waliyyin wa-ṣāḥiday ʿadlīn* (Marriage is not valid without [the approval of] *walī*, i.e. parent or custodian whichever applies, and without two righteous witnesses). The felicity condition of marriage is indefinite (*muṭlaq*) in the first saying while it is limited to righteous two witnesses in the latter (see the *hāmiš* (note on the margin) numbered 7 in Molla Xusraw, *al-Mir'āt*, 153).

### 3.1.1.3. Amr

*Amr* (command) is a *xāṣṣ* word assigned to the meaning of “coercive request.”<sup>215</sup> Al-Nasafī defines *amr* as “Saying of a person to someone by way of being higher in rank, ‘Do it!’”<sup>216</sup>

Molla Jīwan explains, as always, each element making up the definition. In fact, he notes that the phrase “by way of being higher in rank” excludes *iltimās* and *dufāʿ* from the definition while leaving *nahy* inside the semantic boundaries of the definition, which is then excluded with the phrase “*ifʿal*” (do it!), which is mentioned in the definition of *amr*, above because the form ‘*ifʿal*’ designates a positive imperative and not a negative one.

As seen above, *amr* does not play any role in determining the scope of the word, which was the case with the previous two types, namely, *muṭlaq* and *muqayyad*. In fact, there are other linguistic categories such as *nidāʿ* and *dufāʿ* that are also *xāṣṣ*. Why do al-Nasafī and other *uṣūlīs* then consider *amr*, along with its correlate, namely, *nahy*, to be the ones that deserve special attention?

As a matter of fact, *amr*, just like *nahy*, is only one kind of a larger group of linguistic categories called *inṣāʿī* often studied under the section of the ‘science of

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<sup>215</sup> Compare with the meaning, Weiss states, the imperative form “*ifʿal*” denotes, which is “imposition of obligation.” See Weiss, *The Search for God’s Law*, 131.

<sup>216</sup> Al-Nasafī, *al-Manār*, I, 33.

meanings' (*ʿilm al-maʿānī*), which constitutes an important sub-field of the science of *balāḡa*.<sup>217</sup> According to *ʿilm al-maʿānī*, there are two kinds of sentences: *xabarī* and *inšāʿī*, the latter being defined as a sentence for which one cannot assert that it is true or false and the first being defined as the converse of this. *Inšāʿī* is further divided into two sub-categories: *ṭalabī* and *ḡayr ṭalabī*. *Amr* is a member of the former along with other members such as its correlate *nahy*, along with *istifhām*, *tamannī*, and *nidāʿ*.<sup>218</sup>

The fact that Al-Nasafī does not mention any other members besides *amr* and *nahy* should not be taken as to mean *amr* and *nahy* are the only two that are *xāṣṣ*. Rather, like *amr* and *nahy*, forms of other types such as *nidāʿ* are also assigned to single meanings.<sup>219</sup> I think the reason behind *uṣūlīs*' special treatment of *amr* and *nahy* under *xāṣṣ* words is simply thanks to the significant role they play in making up the bulk of the law. In fact, just like any other legal system, Islamic law consists of commands and prohibitions, and *amr* and *nahy* are the two categories designated to the meanings of making obligatory and making prohibited. Therefore, al-Nasafī in his *al-Manār* singled out *amr* and *nahy* from other *xāṣṣ* forms, as these deserve special attention. Each of these types of *xāṣṣ* words are produced with certain forms peculiar to each; *amr* is produced with the imperative form (*ṣiḡāt al-amr*,) which is *ifʿāl* and

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<sup>217</sup> The science of *balāḡa* consists of three divisions, namely, the science of *bayān*, the science of *maʿānī*, and the science of *badīʿ*.

<sup>218</sup> Nusrettin Bolelli, *Belâḡat: Beyân, Me'ânî, Bedî' İlimleri, Arap Edebiyatı* (İstanbul: İFAV, 2003,) 236.

<sup>219</sup> It seems to me that *uṣūlīs* not only call a word that signifies a single referent but a word that is assigned to a single meaning *xāṣṣ* as well. For further information see section 3.2.

its derivatives. The *ḥukm* of *amr* is of two types: *adā'* and *qaḍā'*. I will now discuss *amr*'s correlate *nahy*.

#### 3.1.1.4. Nahy

*Nahy* (prohibition), as al-Nasafī defines it, is “The saying of a person to someone else by way of being higher in rank ‘Do not do it!’”<sup>220</sup> *Nahy*, just like *amr*, is a *xāṣṣ* word. It is assigned to a particular meaning, which is prohibition.<sup>221</sup>

It necessitates what is prohibited to be considered evil. It is then divided into two further categories: *qabīḥ li-ṣaynihī* (evil by virtue of itself) and *qabīḥ li-ġayrihī* (evil by virtue of something else). The former is further divided into two: *qabīḥ li-ṣaynihī waḍṣan* (evil by virtue of itself, the evilness of which can be known through reasoning<sup>222</sup>) and *qabīḥ li-ṣaynihī ṣarṣan* (evil by virtue of itself, the evilness of which can be known through the religion).<sup>223</sup> The latter is also divided further into two: *qabīḥ li-ġayrihī waṣṣan* (evil by virtue of an intrinsic attribution of it) and *qabīḥ li-ġayrihī mujāwiran* (evil by virtue of an accidental attribution).<sup>224</sup>

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<sup>220</sup> Al-Nasafī, *al-Manār*, I, 97.

<sup>221</sup> Molla Jīwan, *Nūr al-Anwār*, I, 97.

<sup>222</sup> This is true even if the religion explains the evilness of such things (al-Laknawī, *Qamar al-Aqmār*, I, 98). In other words, such an explanation does not move such evil things from the category of *qabīḥ li-ṣaynihī waḍṣan* to the category of *qabīḥ li-ġayrihī ṣarṣan*.

<sup>223</sup> For details, see Molla Jīwan, *Nūr al-Anwār*, I, 100.

<sup>224</sup> For more information, see *ibid*, 98 and al-Laknawī, *Qamar al-Aqmār*, I, 98.

### 3.1.2. *ʿĀmm*

Al-Nasafī defines *ʿāmm* (conservative extension) as that which include individuals whose definitions (*ḥudūd*) are the same by way of *šumūl* (enclosure or proper inclusion).<sup>225</sup>

Molla Jīwan notes that with the phrase *yatanāwalu afrādan* (that which includes individuals) the category of *xāṣṣ* is excluded. He then goes on to explain how this phrase excludes *xāṣṣ*, especially with reference to each of the three types of *xāṣṣ* words. As to the exclusion of *xāṣṣ al-ʿayn*, he says, it is clear [why it is excluded by the phrase ‘*afrādan*’]. In fact, this type of *xāṣṣ* word can only refer to a particular member within the class, and therefore, there is no possibility of using it to refer to multiple entities within a class. For instance, the proper noun ‘Zayd’ refers only to that particular person. This implies that the other two types of *xāṣṣ* words are the ones that may be confused with *ʿāmm*, and therefore, Molla Jīwan discusses them further.

As to the exclusion of *xāṣṣ al-jins* and *xāṣṣ al-nawʿ*, Molla Jīwan continues, this includes a universal concept (*mafḥūm kullī*) or a single entity that is liable to be true for many individuals.<sup>226</sup> He treats both types as one in the sense that both are generic notions as opposed to being particular. Thus, he refers to both as a single entity, and

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<sup>225</sup> The Arabic reads, “*wa-ammā l-ʿāmmu fa-mā yatanāwalu afrādan muttafiqata l-ḥudūdi ʿalā sabīli š-šumūli*” (see al-Nasafī, *al-Manār*, I, 110).

<sup>226</sup> Molla Jīwan, *Nūr al-Anwār*, I, 110.

uses the singular form of the pronoun *huwa* “it” instead of the dual form *humā* ‘they [two]’.<sup>227</sup>

Through the same phrase, namely, “*yatanāwalu afrādan*” (includes individuals), *muštarak* is also excluded from the definition. This is because, he states, *muštarak* includes meanings (*yatanāwalu maḥānin*) not individuals. I should note here that the *ḥāmm* word is also assigned to one single meaning just like the *xāṣṣ* word. Therefore, it includes individual entities that are same in terms of *jins* or *nawḥ*, just as, for example, any of the members of the (sub-)class of penguins would be same in terms of being a penguin. As for a *muštarak* word, its members are meanings or to put it differently, individuals whose definitions are different, as in the word ‘glass’, “which could mean a drinking vessel, typically (though perhaps not always) made of glass” or a particular material shaped under high temperature to form various items used in our daily lives, the particular glass material used in a drinking vessel being only one of them.

As for the phrase “*muttafiqa al-ḥudūd*,” Molla Jīwan states, this is not an *iḥtirāzī* phrase but rather an *ittifāqī* one that is added to clarify the definition. Regarding the same phrase, he narrates another view, though not one that he agrees with, and says

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<sup>227</sup> Ibid.

that it is added so as to exclude *muštarak* because it is that which includes individuals whose definitions are different.

The phrase “*ʿalā sabīl al-šumūl*” (by way of enclosure) is used to exclude an indefinite noun in negation as it includes individuals “*ʿalā sabīl al-badaliyya*” (by way of interchange).<sup>228</sup>

Al-Nasafī does not consider it necessary for an *ʿāmm* word to include all the members under the class, and therefore used *tanāwul* instead of *istiḡrāq*. Al-Nasafī’s position is in line with that of Faxr al-Islām, who therefore, considers *al-jamīʿ al-muṣarraf* and *al-munakkar* to be *ʿāmm*. On the other hand, Molla Jīwan goes on to say, *istiḡrāq* is a necessary condition for a word to be considered *ʿāmm* according to the author of *Tawḍīḥ* [i.e. Šadr al-Šarīʿa (d. 747/1346).] According this opinion, *al-jamīʿ al-munakkar* becomes a *wāṣita* (transition) between *xāṣṣ* and *ʿāmm*.<sup>229</sup> According to the first opinion, therefore the word “book”, say, as it is used in “*al-kutubu jamīlatun.*” (Books are good.) would be *ʿāmm* while those scholars who adhered to the second opinion would not consider it as such.

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<sup>228</sup> Al-Laknawī, *Qamar al-Aqmār*, I, 110. Since an indefinite noun in negation (*nakra manfiyya*) refers to an unknown individual in negation, it includes all individuals under the class it belongs to interchangeably (or to put it differently, in turn), as in *mā raʾaytu rajulan* (I have seen no man). Here the word “*rajul*” may refer to Ahmet, Ali, James, and any other member within the sub-class of man). However, this way of reference is not by way of *šumūl*, i.e. the word “*rajul*” does not refer to each and every member of the sub-class of man together. In fact, this is what an *ʿāmm* word does: it refers to all the members of the (sub-)class together as in *raʾaytu kulla r-rijāli* (I have seen all the man).

<sup>229</sup> Molla Jīwan, *Nūr al-Anwār*, I, 111.

According to the latter opinion, the word “book” here should be used in a way that would indicate *ʕumūm* (general reference) such as the usage with the *kull* or *jamīʕ* words that indicate *ʕumūm* as in “All the books are good,” or “Every book is good” respectively. Could a word that is not *ʕāmm* then turn into an *ʕāmm* word through application of certain procedures? I will now turn to al-Nasafī’s discussion of words that indicate *ʕumūm* and the ways in which one can form *ʕāmm* words.

There are two kinds of words that indicate *ʕumūm* (general reference): those that indicate *ʕumūm* through both their form (*sīğa*) and their meaning (*maʕnā*) and those that indicate it only through their meaning as in *rijāl* (men) and *qawm* (tribe).<sup>230</sup>

Definite plurals that are made definite through the definite marker, *lām al-taʕrīf*, or through possessive construction, belong to the first type. This type of plural indicates *ʕumūm* when it is not *ʕahd al-xārijī*.

The word “man” (who/whoever), which is used for entities endowed with intellect, is a word that indicates *ʕumūm* only when it is used as part of a conditional clause or as an interrogative. Therefore, the word “man” used as *mawṣūla* or *mawṣūfa* is considered to be *xāṣṣ*.

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<sup>230</sup> Ibid, I, 122.

The word “*mā*” (what/whatever), as used for adjectives of those entities with intellect and for those entities without intellect themselves, also indicates *ʕumūm*.

The word “*alladī*” (also *allatī*, etc.) (who/whoever, which/whichever) also indicates *ʕumūm* and is used both for entities with intellect and others.

The word “*ayna*” (where/wherever) and “*haytu*” (where/wherever) indicate *ʕumūm* for places.

The word “*matā*” (when/whenever) indicates *ʕumūm* for time.

The word *kull* (all/whole) confers *ʕumūm* on the noun with which it forms a genitive construction. When it forms a genitive construction with an indefinite noun as in “*kullu insānin*” (every human being), it includes all its members. When it forms a genitive construction with a singular definite noun, as in “*kull al-kitab*” (the whole book), it includes all parts making up the book.<sup>231</sup>

It seems then some *ʕāmm* words are naturally *ʕāmm*, that is to say, they are assigned to *ʕāmm* meanings as in *alladī*, and *huwa*. Others, however, end up indicating *ʕumūm* by virtue of being used together with *ʕumūm*-indicating words in a genitive construction such as *kull* and *jamīʕ*, as in, say, “*kullu insānin*” (every human being). In fact, this is a topic that is rooted in logic. Logic itself being the rules of thinking, it has

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<sup>231</sup> For more information on this, see Molla Jīwan, *Nūr al-Anwār*, I, 124-137.

a great influence on the rules of language, which can be considered to be an expressed form of thinking.<sup>232</sup>

As a matter of fact, this topic is analysed under the section on *qaḍiyya* (proposition) in logic texts such as the *Īsāgūjī*. The author Abharī divides propositions first into *qaḍiyya mūjiba* (positive proposition) and *qaḍiyya sāliba* (negative proposition.) Then he further divides each into *maxṣūṣa* (particular), as in “Zaydun *kātibun*.” (Zayd is a writer) and *maḥṣūra*. He divides the latter into three further categories: *kullī musawwara* and *juz’ī musawwara*, as in, *kullu insānin kātibun* (All human beings are writers.) and *baʿḍu l-insāni kātibun* (Some human beings are writers.) respectively, or *muhmala*, as in *al-insānu kātibun* (The human beings are writers).<sup>233</sup>

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<sup>232</sup> al-Abharī, *Īsāgūjī*, 6.

<sup>233</sup> Ibid, 6.

### 3.1.3. Muštarak

*Muštarak* (polyseme) is a word that is assigned to multiple meanings through multiple occasions of assignment. Al-Nasafī defines it as: “*mā yatanāwalu afrādan muxtalifata l-ḥudūdi ʿalā sabīli l-badali*” (that which includes individuals whose definitions are different by way of *badal*).<sup>234</sup>

Molla Jīwan states that with the word “*afrād*” (individuals), what is meant is two or more so that *muštarak* could be true for a word with only two meanings. The phrase “*yatanāwalu afrādan*” (that which includes individuals) excludes *xāṣṣ*, as it only refers to a single entity among its class members as I discussed above. Molla Jīwan goes on to explain the definition further and notes that the phrase “*muxtalifata l-ḥudūd*” (whose definitions are different) excludes *ʿāmm*, as members of *ʿāmm* are the same in terms of their definition, just as all the members that the word “*nās*” in the phrase “*kull al-nās*” (all human beings) refer to are same. The phrase “*ʿalā sabīli l-badal*” (interchangeably) is an *ittifāqī* note, Molla Jīwan states. However, it could also be interpreted as an answer to Imām al-Šāfiʿī, who instead uses “*ʿalā sabīli š-šumūl*” in his definition of the term.<sup>235</sup>

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<sup>234</sup> Molla Jīwan, *Nūr al-Anwār*, I, 137. Also see Crystal, *A Dictionary of Linguistics and Phonetics*, 373-374.

<sup>235</sup> Ibid.

### 3.1.4. Mu'awwal

Al-Nasafī defines *mu'awwal* as a word that signifies a meaning which is favoured over the other meanings of a *muštarak* on the basis of *ġālib al-ra'y* (the preponderant opinion). In other words, if a *mujtahid*, through intellectual efforts, overcomes the difficulty of selecting one of the meanings of a *muštarak* word over others on a speech occasion, this word turns into *mu'awwal*.<sup>236</sup>

In its legal aspect, *mu'awwal* requires one to act on it, while admitting the possibility of making a mistake.<sup>237</sup> Explaining this further, Molla Jīwan mentions that it is obligatory to act on the outcome of the interpretation of the *mujtahid* while bearing in mind that this *mujtahid* might be wrong and the other side right, i.e. those who considered, through their own interpretation process, the other sense of the *muštarak* word. As a result, it is a *ḍannī* (dubious) indicator which one needs to act on, but whoever denies it, does not get denounced as an unbeliever.

The category of *mu'awwal* here is not the type of *mu'awwal* that is transformed from linguistic categories other than *muštarak*. In fact, as Molla Jīwan states,<sup>238</sup> if the ambiguity of the meaning of a given word that belong to linguistic categories such as

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<sup>236</sup> Ibid, 141.

<sup>237</sup> Ibid.

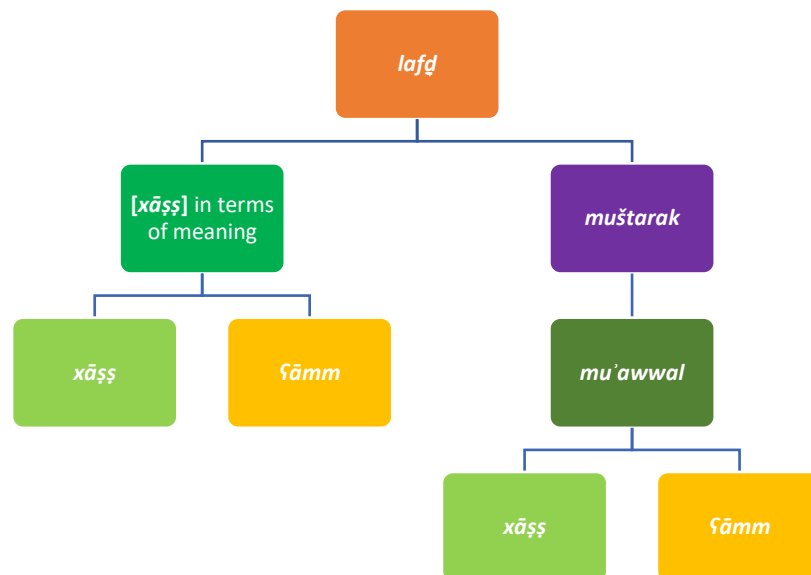
<sup>238</sup> Ibid, 140-141.

*xafī*, *muškil*, and *mujmal*,<sup>239</sup> gets resolved through a *ḍannī* (dubious) indicator, it is also called *mu'awwal*, simply because it involves interpretation (*ta'wīl*).

### 3.2.ANALYSIS OF THE FIRST CATEGORIZATION: BUILDING THE FIRST PART OF THE GENERAL FRAMEWORK

**Figure V**

**Illustration of the 1<sup>st</sup> categorization**



In Figure V,<sup>240</sup> *lafḍ* is classified into two main categories in accordance with the number of senses it is assigned to: what I shall call *[xāṣṣ]* or *muštarak*. What is meant

<sup>239</sup> These are categories each of which involve a degree of ambiguity. I will deal with them in section 3.3.2 below.

<sup>240</sup> This figure does not directly constitute a part of the general framework; rather, it enables one to better understand the first categorization found in *uṣūl al-fiqh* manuals as it is. The next two figures, namely Figure VI and Figure VII, explains the formation of the first categorization and thus each constitutes a segment of the general framework.

by [xāṣṣ] is a word which is assigned to only a single sense.<sup>241</sup> *Muṣṭarak* is one that is assigned to multiple senses. *Xāṣṣ* is a type of [xāṣṣ] that has only a single individual referent at a time (*ʿalā l-infirād*). *ʿĀmm* is a type of [xāṣṣ] that has multiple individual referents (according to al-Nasafī and Faxr al-Islām) at one time or which refers to all the class members that are included under the word at one time (according to Ṣadr al-Šarīf).

Normally, there is no category of ‘*xāṣṣ in terms of meaning*’ in *uṣūl* works, which I have expressed here as [xāṣṣ] – something which is reflected in my use of the square parentheses when referring to it. In fact, *xāṣṣ* is a word that is assigned to one sense. But in addition to this feature, it also features to be a category of word that has one referent at a time, which is a necessary condition for *xāṣṣ*. In fact, this is why *uṣūlīs* like al-Nasafī consider *xāṣṣ* to be “*ʿalā l-infirād*”, as I discussed above. Despite the requirement of ‘*infirād*’, *uṣūlīs* sometimes do use the term *xāṣṣ* for *ʿāmm* words, when these refer to multiple referents if not all the potential referents of a class/group.<sup>242</sup> And the reason they say that they use the term *xāṣṣ* for *ʿāmm* is that *ʿāmm* has a single meaning. From this I think I can draw the conclusion that *xāṣṣ* is used in two slightly different senses: [xāṣṣ] in terms of meaning and *xāṣṣ* in terms of scope.

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<sup>241</sup> As I noted before, in addition to being used to refer to a word with a single referent, the term *xāṣṣ* is also used to refer to a word with a single assigned sense (see footnote 219 above).

<sup>242</sup> See al-Nasafī’s discussion on this al-Nasafī, *Kaṣf al-Asrār*, I, 111.

As for *muštarak*, it is a category of word that is assigned to multiple senses through different occasions of *waḍf*, and if one of these senses is preferred over others on an actual speech occasion through extratextual evidences/clues (*qarīnat al-ḥāl*), it turns into *mu'awwal*, which, again, can either have a single or multiple referents at one time, and therefore, it seems to me, can be either *xāṣṣ* or *ṣāmm*. This is represented in Figure V as well.

**Figure VI**

**The formation of the 1<sup>st</sup> categorization: *xāṣṣ* and *ṣāmm* only**

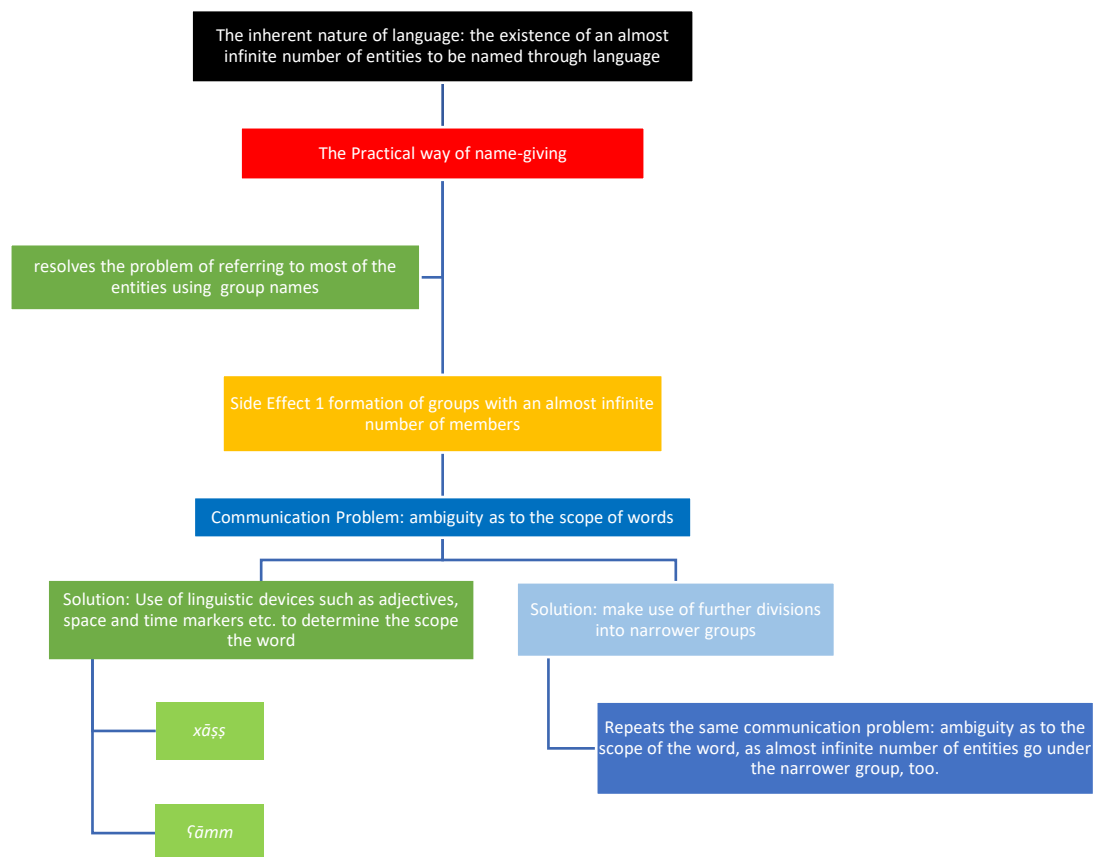


Figure VI represents the formation of the categories of *xāṣṣ* and *ḡāmm*, which are the two linguistic categories that have to do with scope. I proposed that the practical way of name-giving (represented in Figure VI with a red box), which involves forming entities into groups based on some essential similarities they have in common, and then naming each group using a name by which one refers to individual entities that fall under the group, is one way of dealing with the inherent nature of language, which itself is represented in a black box in Figure VI. This way of name-giving has some ramifications. One of these ramifications is the fact that group names stand for an almost infinite number of individual entities, which I call in this work as the *side-effect 1*. This is represented in a yellow box in Figure VI. Using the group names in sentences to refer to individual entities leads to ambiguity as to the referent(s) of the group names, a communication problem represented in the blue box.

As can be seen in Figure VI, the communication problem can be resolved through two methods: (i) using linguistic devices, or (ii) formation of further narrower classes. The second method, as I mentioned above, does not solve the problem completely, leaving the ambiguity as to the referent of a word within the confines of the sub-class. As for the first one, it allows human beings to communicate their thoughts through a body of word-meaning correlates that is manageable. On the other hand, use of linguistic devices to circumvent the communication problem leads

to the formation of the categories of *xāṣṣ* and *īāmm*, each of which is represented using a light green colour in Figure VI.

My analysis of the first categorization did not yield the following figure (Figure VII). Rather, I arrived at this figure later in my research through my analysis of *uṣūlīs'* second categorization in section 3.4 below. In fact, it so happened that the part of the first categorization that is missing in Figure VI (namely *muštarak* and *mu'awwal*) had much to do with the *side-effect 3*, which I identified and described through my analysis of the second categorization.

Nevertheless, I decided to place Figure VII here and not in the analysis of the second categorization because it completes *uṣūlīs'* presentation of the first categorization. To better understand Figure VII, therefore, readers should first read my analysis of the second linguistic categorization below.

Figure VII

Completion of the illustration of the 1<sup>st</sup> categorization: *muštarak* and *mu'awwal*



As represented in Figure VII above, another ramification of naming groups instead of entities is that some of the entities are not subject to grouping, as human

beings tend to focus on grouping those entities that they need. This ramification is what is referred to as the *side-effect 3* in this work. This *side-effect*, which I explore in section 3.4 below, leads to a communication problem, represented in the diagram in blue, where a given addresser has the issue of referring to those entities that are not subject to grouping and thus do not have a name assigned to them in the language. One solution (namely, solution 2; other solutions will be explored in section 3.4) to this communication problem, as represented in the green box above, is to make use of a word already assigned to a sense in language to indicate the new concept which the addresser has discovered exists.<sup>243</sup> This constitutes another *waḍf* for the word which has already been assigned to another sense. Having thus been assigned to multiple senses, such words are referred to as *muštarak*, which through the intellectual effort of a *mujtahid* turns into *mu'awwal*, both of which are represented in light green colour in the diagram.

### **3.3. SECOND LINGUISTIC CATEGORIZATION: ACCORDING TO *WUJŪH AL-BAYĀN BI-DHĀLIKA AL-NADM***

Molla Jīwan notes that this categorization along with the fourth categorization concerns the sentence rather than the word, unlike the first and third categorizations, where the categorization is about the word itself.<sup>244</sup> But as will be seen later, *uṣūlīs*

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<sup>243</sup> I dwell on the *side-effect 3* further in my analysis of the second categorization 3.4 below. I should note here, however, that since God is considered All-knowing, in His case, this is not a discovery; rather, it is His desire to communicate through human language of a concept for which linguistic community knows no name.

<sup>244</sup> Molla Jīwan, *Nūr al-Anwār*, I, 141.

refer to words as well as sentences with the categories such as *dāhir*. I will now discuss in detail the categories that fall under the second categorization *uṣūlīs* discuss in *uṣūl* works such as *al-Manār* by al-Nasafī.

### 3.3.1. ACCORDING TO ITS CLARITY

#### 3.3.1.1. *Dāhir*

Al-Nasafī defines *dāhir* as a name for a *kalām* (utterance) whose intended meaning is clear to the listener with its form.<sup>245</sup>

Molla Jīwan goes on to explain the definition, saying that because the meaning of *dāhir* is obvious, the hearer does not need *ṭalab* or *ta'ammul*<sup>246</sup> (deliberation) to understand the intended meaning of the speaker with it.

The *ḥukm* of *dāhir* is that it is obligatory to act upon a *dāhir* indicator because it indicates certain knowledge, though with the possibility of *ta'wīl*, *taxṣīṣ*, and *nasx*. If a given *dāhir* happens to be *xāṣṣ*, there is the possibility of it being abrogated by another indicator. Or if it is an *ṯāmm*, it may go through the process of *taxṣīṣ*, by which an *ṯāmm*, normally considered by Ḥanafīs to be *qaṭṣī* (definitive), loses its authority and turns into a *danni* (dubious) indicator. In addition, there is always the possibility for figurative interpretation through *ta'wīl*. However, these are extratextual clues and

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<sup>245</sup> The original reads “*ismun li kalāmin dāhara l-murādu bihī li s-sāmiʿi bi ṣīgatihī.*” (Molla Jīwan, *Nūr al-Anwār*, I, 141).

<sup>246</sup> Molla Jīwan defines the term *ta'ammul* as an investigation to find out which sense, among all the senses that a word may denote, that word is used in on a particular occasion (see, Molla Jīwan, *Nūr al-Anwār*, I, 149).

thus do not affect the authority of *dāhir*, and therefore, despite the possibilities of *ta'wīl*, *taxṣīṣ*, and *nasx*, *dāhir* indicates *qaṭʿī* knowledge unless either of the three possibilities actually occurs. Therefore, it is valid to base *ḥudūd* and *kaffāra* upon *dāhir*, as Molla Jīwan states.<sup>247</sup>

### 3.3.1.2. Naṣṣ

This is, as al-Nasafī defines it, what is clearer than *dāhir* thanks to a meaning provided by the speaker not due to its form alone.<sup>248</sup> Molla Jīwan explains the definition by saying that *naṣṣ* is “a *naḍm* from which a sense that is not understood from *dāhir* is understood due to the fact that the speaker uttered it in this sense and not due to its form alone”.<sup>249</sup>

Molla Jīwan goes on to explain the difference between *dāhir* and *naṣṣ* by saying that the popular position among people regarding the difference between the two is that while *sawq* (being the focus of a conversation<sup>250</sup>) is considered to be a

<sup>247</sup> Ibid, 141.

<sup>248</sup> The Arabic reads as “*fa-mā zāda wuḍūḥan ʿalā d-dāhiri li-maʿnan mina l-mutakallimi lā fī nafsi ṣ-ṣīgati*” (see ibid, 142).

<sup>249</sup> Ibid, 142.

<sup>250</sup> *Sawq* is defined as the drift and thread of a conversation (see Wehr and Cowan, *A Dictionary of Modern Written Arabic*, 517; Lane, *An Arabic-English Lexicon*, 1472). In this sense, it is related to *siyāq* (syntax of a sentence). In fact, based on *uṣūlīs'* discussion of the terms *sawq* and *siyāq*, which will be explored below with examples, I can say that the two, though related to each other, refer to different concepts within the *uṣūlī* terminology. In fact, *sawq* seems to refer to the core part of the sentence while *siyāq* is the way a sentence is put together. In different ways of putting the sentence together (i.e. in different *siyāqs*), the *sawq* of the sentence will change. The term that seems to be parallel to *sawq* in this sense is ‘focus’ (see Crystal, *A Dictionary of Linguistics and Phonetics*, 192-193). The technical sense of *siyāq* (i.e. the way a sentence is put together or syntax of a sentence) may be specific to *uṣūl al-fīqh*. In addition to this specific meaning, the term *siyāq* is often used to refer to following parts of the discourse as in *sibāqu l-kalāmi wa-siyāqu-hū* (The proceeding and the following parts of the discourse) (see Lane, *An Arabic-English Lexicon*, 1472). *Sawq* also seems to be quite

requirement of *naṣṣ*, *ʿadam al-sawq* (the lack of being the focus of a conversation) is the requirement of *dāhir*. To explain this, he then goes on to provide examples that help differentiate *naṣṣ* from *dāhir*, starting with the following sentence: “*jā’anī l-qawmu*” (The people came to me.) This is, he says, *naṣṣ* in the sense of “the coming of the people.” However, in, “*ra’aytu fulānan ḥīna jā’anī l-qawmu*” (I saw such and such when the people came to me.) the meaning of this sentence is *naṣṣ* in the sense of “my seeing” but *dāhir* in the sense of “the coming of the people.”<sup>251</sup> In other words, when hearing the sentence, “I saw such and such when the people came to me,” I can draw the following conclusions (propositions) from it: “I saw such and such” and “the people came to me.” Because the speaker uttered the sentence in such a way as to indicate the former part, i.e. “I saw such and such,” the whole sentence is *naṣṣ* in indicating the sense that the speaker saw such and such. This is simply because the focus of the sentence is this former part. The second part, in fact, is used only to limit the first part with a time reference, namely, “when the people came to me.” Since this part of the whole sentence is not the focus of the sentence, the whole sentence is *dāhir* and not *naṣṣ* in indicating that the people came to the speaker.

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relevant to “foregrounding” and “backgrounding” in linguistics (see James Dickins, “Junction in English and Arabic: Syntactic, discursal and denotative features”, *Journal of Pragmatics* 42, no. 4, (April 2010): 1115-1117, <https://doi.org/10.1016/j.pragma.2009.09.003>)

<sup>251</sup> Ibid, 142.

To clarify what is meant by *siyāq* (the way of putting together or the syntax)<sup>252</sup> of a sentence, consider instead the following arrangement of the above-mentioned sentence, “People came to me when I saw such and such”. Here, the focus of the whole sentence is the “People came to me” part in which case the whole sentence, we would say, is *naṣṣ* in indicating the sense carried in the first part while it is *ḍāhir* in indicating the sense conveyed in the second part. To put it differently, the superordinate clause, i.e. “People came to me when I saw such and such”, is referred to as *naṣṣ* in respect of the information/proposition (*maʿnā*) contained in its main clause and as *ḍāhir* in respect of the information/proposition (*maʿnā*) contained in its subordinate clause.

The primary meaning a sentence carries does not have to be explicitly mentioned in the sentence. An example al-Nasafī talks about in this regard is Qurʾān 2:275,<sup>253</sup> which translates as “Those who devour usury will not resurrect except as being one whom the Satan by his touch had driven to madness. That is because they say: “Trade is like usury,” but Allah made trade *ḥalāl* (permissible) and usury *ḥarām* (forbidden). Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (the offence) are companions of the Fire: They will abide therein (forever).” Al-Nasafī

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<sup>252</sup> See footnote 405 below.

<sup>253</sup> الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يُفْجَرُونَ إِلَّا كَمَا يُفْجَرُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

notes that the verse's indication of the meaning that trade and usury differ from each other is *naṣṣ* while its indication of the meaning that Allāh made trade *ḥalāl* and usury *ḥarām* is *dāhir*.<sup>254</sup>

The *ḥukm* of *naṣṣ* is like *dāhir*, i.e., there is the possibility of *ta'wīl* interpreting in a figurative sense as well as of *taxṣīṣ* and *nasx*.

### 3.3.1.3. Mufassar

*Mufassar* is what is clearer than *naṣṣ* in a way that leaves no room for *ta'wīl* or *taxṣīṣ*. Molla Jīwan says that the closing of the possibility of *ta'wīl* and *taxṣīṣ* could be achieved through an unequivocal clarification (*bayān qāṭiʿ*) provided by the Prophet to clarify a *mujmal* (ambiguous) word using an extra word or phrase added to the sentence with revelation from God, closing the door for *taxṣīṣ* or *ta'wīl*.<sup>255</sup>

Its *ḥukm* is that it is obligatory to be acted upon, while the possibility of abrogation (*nasx*) remains valid theoretically. However, Molla Jīwan says, the

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<sup>254</sup> Al-Nasafī, *Kaṣf al-Asrār*, I, 142. The function of the verse within the discourse in which it is mentioned seems to have led al-Nasafī arrive at the conclusion that the verse in its indication that trade and usury are different is *naṣṣ* despite the fact that such an information is not even mentioned in the verse. In fact, the function of the verse that Allah made trade *ḥalāl* and usury *ḥarām* seems to be to respond to the claim that trade is like usury in the previous sentence. It is as if the verse is saying, "Because Allah made trade *ḥalāl* and usury *ḥarām*, [trade and usury are two different things]." Therefore, because of the way the sentence is put together—which is the fact that it comes after a claim that it negates, the primary function of the sentence seems to negate the claim that the two are same/similar—the verse is *naṣṣ* in indicating that the two are different. Similarly, the verse is *dāhir* in indicating the meaning that Allāh made trade *ḥalāl* and usury *ḥarām*.

<sup>255</sup> See Molla Jīwan, *Nūr al-Anwār*, I, 143.

possibility of being abrogated does not apply after the passing away of the Prophet Muḥammad.<sup>256</sup>

As an example, as Büyük Haydar Efendi points out, consider the following verse from the Qurʾān “*fa-sajada l-malāʾikatu kulluhum ajmaʿūna illā iblīs*” (Then all the angels prostrated together except for *iblis*). This verse is *mufassar*. The context of the verse is that God created Adam, and he was given spirit (*nufīxa min rūḥin*), and then God commanded all the angels to prostrate to Adam, probably for them to pay respect to him.

If the verse only went up to “*malāʾikatu*” (inclusive) and did not include anything else thereafter, it would be *dāhir*. The meaning of the verb *sajada* is clear, i.e. *dāhir*. However, if we had the core of the verse only, i.e. “*fa-sajada l-malāʾikatu*”, there would have remained the possibility that some of the angels may have not prostrated because the word “*al-malāʾika*” (the angels) does not cover all its class members as referents. In other words, it is not *ʿāmm*.<sup>257</sup> Therefore, there is the possibility that this verse might become limited (go through *taxṣīṣ*) due to another indicator from the Qurʾān or the Sunna that might indicate that, say, “some angels did

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<sup>256</sup> Ibid.

<sup>257</sup> Büyük Haydar Efendi, following Faxr al-Islām, does not require *ʿāmm* to include all its class members. Therefore, he considers *al-malāʾika* (the angels) as *ʿāmm*, as he notes (see Büyük Haydar Efendi, *Usūl-i Fıkıh Dersleri*, 173). Faxr al-Islām considers both *al-jamʿ al-muṣarraf* and *al-jamʿ al-munakkar* as *ʿāmm* word, while Şadr al-Şarīʿa (d. 747/1346) requires *istiğrāq* to be a necessary condition for a word to be *ʿāmm* (see Molla Jīwan, *Nūr al-Anwār*, I, 111).

not prostrate”. Based on this, we would have asserted that there still remains the possibility of *taxṣīṣ* when considering only the core of the verse as “The Angels prostrated”, and as a result, we would have concluded that the sentence was *ḍāhir*. Hence, if we had only the “*fa-sajada l-malā’ikatu*” part, the verse would have been liable to *taxṣīṣ* in the sense that the prostration might have been performed only by some of the angels and not by all of them.

Moreover, the verse, we would have asserted, was *naṣṣ* in terms of the angels’ honouring of Adam, however. Yet, it would have remained liable to *ta’wīl* in the sense that it would not be known to the listener whether the prostration took place separately or as a group. God, however, added two phrases that resulted in the fact that *ta’wīl* and *taxṣīṣ* do not hold anymore here. The two phrases are “*kulluhum*” (all of them) and “*ajma’ūna*” (together). With the two phrases added to the core of the sentence, the whole sentence, which is now “*fa-sajada l-malā’ikatu kulluhum ajma’ūna,*” thus turns into *mufassar*.<sup>258</sup>

Molla Jīwan explains this rather briefly by saying that the word *fa-sajada* is *ḍāhir* in the sense of the angels’ prostration and *naṣṣ* in the sense of honouring Adam.<sup>259</sup> However, it is liable to *taxṣīṣ*, that is to say, the prostration of some of the angels on the grounds that, according to Molla Jīwan, the word ‘*al-malā’ika*’ (the

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<sup>258</sup> Büyük Haydar Efendi, *Usul-i Fıkıh Ders Notlari*, 173.

<sup>259</sup> Molla Jīwan, *Nūr al-Anwār*, I, 144.

angels) is an *fāmm* word which went through *taxṣīṣ* for, i.e. limitation to, some of them. It is also liable to *ta'wīl* on the grounds that the angels may have prostrated either separately or altogether. Molla Jīwan goes on to say that the possibility of *taxṣīṣ* no longer holds thanks to the phrase *kulluhum* (all of them). Similarly, the possibility of *ta'wīl* does not hold due to the phrase *ajma'ūna* (altogether.)<sup>260</sup>

#### 3.3.1.4. Muḥkam

*Muḥkam* as that which is clearer than *naṣṣ* without any room for even abrogation or change.<sup>261</sup> It is obligatory to be acted upon, and as in a *mufassar* word, there is no room for *ta'wīl*, *taxṣīṣ*, and *nasx*.<sup>262</sup>

*Muḥkam* is of two kinds: *muḥkam li-ṣaynihī* and *muḥkam li-ḡayrihī*. The former is an utterance that cannot be subject to *nasx* (abrogation) due to (i) a *qayd* in it that indicates continuation or eternity, (ii) the place the word is used, such as the word “*abadan*” (never) as in “*wa-lā tankihū azwājahā min baḥdihī abadan*”<sup>263</sup> (Never marry his (the Prophet’s) wives after him). *Muḥkam li-ḡayrihī* is an utterance that is no longer subject to *nasx* (abrogation) due to the end of the revelation with the passing

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<sup>260</sup> Ibid.

<sup>261</sup> Al-Nasafi, *al-Manār*, I, 143. There is no difference between *mufassar* and *muḥkam* in terms of clarity. In fact, the difference between the two is that *muḥkam* is stronger than *mufassar* in that the latter is open to *nasx* while the former is closed to it, as noted by Molla Jīwan, *Nūr al-Anwār*, I, 143.

<sup>262</sup> As I have mentioned earlier, theoretically *mufassar* is open to abrogation. However, with the passing away of the Prophet, the room for abrogation is closed because He is considered to be the final prophet and thus no more revelation that would abrogate *mufassar* may be revealed.

<sup>263</sup> Qurʾān, 33:53.

away of the Prophet. All the verses of the Qur'ān acquired the status of *muḥkam li-ğayrihī* with his passing away.<sup>264</sup>

### 3.3.2. ACCORDING TO ITS AMBIGUITY

#### 3.3.2.1. *Xafī*

Al-Nasafī defines *xafī* as that which whose intended meaning, obscured by an *ṣāriḍ* (obstacle)<sup>265</sup> other than the form, cannot be known only through *ṭalab*<sup>266</sup> (pondering).<sup>267</sup> In fact, a *xafī* word is definite, and its meaning, as far as its form is considered, is *dāhir* as Molla Jīwan notes.<sup>268</sup> However, due to an *ṣāriḍ* (obstacle) other than its form, the intended meaning of the word is obscured, making it the correlate of *dāhir* in the sense that both are the lowest among their own co-subcategories in terms of *xafā'* (ambiguity) or *wuḍūḥ* (clarity) respectively.

Consider the verse I have mentioned earlier in this work, “As for the male and female thief, cut off the hands of both...”<sup>269</sup> The word ‘*sāriq*’ is the name given to a

<sup>264</sup> See Molla Jīwan, *Nūr al-Anwār*, I, 143.

<sup>265</sup> Lane, *An Arabic-English Lexicon*, 2002.

<sup>266</sup> Molla Jīwan defines the term *ṭalab* as an investigation to find out “*li-ayyi maʿnan yustaʿmalu hādā l-lafḍu.*” (in which sense the word is used) (see Molla Jīwan, *Nūr al-Anwār*, I, 149). Compare this with the term *taʿammul*, which Molla Jīwan defines as ‘an investigation to know what sense among the other senses, which a word may denote, the word being used in on a particular occasion’ (see, *ibid*, 149).

<sup>267</sup> The Arabic reads “*wa-ammā l-xafīyyu fa-mā xafā murāduhū bi ṣāriḍin ğayri ṣ-ṣiġati lā yanālu illā bi ṭ-ṭalabi.*” (Al-Nasafī, *al-Manār*, I, 147). Molla Jīwan does not consider it appropriate to speak of the *xafā'* (ambiguity) in *xafī* as “*bi-ṣāriḍin ğayri ṣ-ṣiġati*” (an ambiguity originating from an obstacle that is not the *ṣiġa* (form) of the word), making *al-ṣiġa* an adjective of *ṣāriḍ* (obstacle), and prefers *bi ṣāriḍin min ğayri ṣ-ṣiġati* (an ambiguity originating from an obstacle other than the form itself), as in, Molla Jīwan adds, the text of Šams al-Aʿimma al-Ḥalwānī (Molla Jīwan, *Nūr al-Anwār*, I, 147). I think this should be Abū Muḥammad Šams al-Aʿimma ʿAbd al-ʿAzīz b. Aḥmad al-Ḥalwānī (d. 452/1060 [?]) (see KAMİL ŞAHİN, “HALVÂNÎ”, *TDV İslâm Ansiklopedisi*, <https://islamansiklopedisi.org.tr/halvani> (27.07.2019).

<sup>268</sup> Molla Jīwan, *Nūr al-Anwār*, I, 147.

<sup>269</sup> وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ Qur'ān , 5:38.

person who secretly steals a good from a protected place. This is the meaning assigned to it primordially, and it is *dāhir* in this sense. On the other hand, there are other names assigned to other types of thieves such as *ṭarrār* and *nabbāš*, i.e. ‘pickpocket’ and ‘he/she who steals a burial robe/shroud’, respectively.<sup>270</sup> In other words, under the class of thieves,<sup>271</sup> for which no name may be assigned in Arabic, there are the sub-classes of ‘*ṭarrār*’ and ‘*nabbāš*’ along with the sub-class of *sāriq*. Although scholars knew the definition of each, they had not thought about<sup>272</sup> the relationship each of the three types of thieves has with the others under the class of thieves until the revelation of Qur’ān 5:38, which triggered their pondering upon this relationship between the three sub-classes of thieves. This is important because the application of the punishment ascribed to *sāriq* in the verse to *ṭarrār* and *nabbāš* will be determined based on the relationships between them.<sup>273</sup>

The *ḥukm* of *xafi* is that we have to ponder on it. What is the purpose of this pondering, however? Molla Jīwan answers this question by saying that the purpose is

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<sup>270</sup> Molla Jīwan says that such people who are called *ṭarrār* and *nabbāš* are not referred to as *sāriq* in Arabic (see Molla Jīwan, *Nūr al-Anwār*, I, 147).

<sup>271</sup> I am using the word ‘thief’ (singular of ‘thieves’) here in the sense of someone who steals. In this sense it differs from *sāriq*, which is defined by *uṣūlīs* as someone who secretly steals from a protected place.

<sup>272</sup> Laknawī, commenting on the next category, namely, *muškil*, says something relevant here. He says that *muškil* is what requires *ṭalab* and *ta’ammul* while *xafi* requires only the former. This is, however, he says, for the person who is well-versed in the language. As for the ignorant person, he says, even a *xafi* word becomes *muškil* and therefore the analysis of these categories is according to the person who knows the language well (al-Laknawī, *Qamar al-Aqmār*, I, 149). The fact that these categories are categorized according to the person who knows the language well and yet we have linguistic situations such as the one seen in the example of *sāriq* implies the fact that for someone to know a language very well does not mean that all the classes and sub-classes as well as the relationships between them are known to him/her completely.

<sup>273</sup> Molla Jīwan, *Nūr al-Anwār*, I, 147.

to know the idea behind the *taxṣīṣ* of such types of thieves as *ṭarrār* and *nabbāš*.<sup>274</sup> In fact, it is aimed at finding whether the assignment of the words *ṭarrār* and *nabbāš* to their respective meanings is due to a 'surplus' or 'shortage' of meaning of *sirqa* in the meanings of *ṭarrār* and *nabbāš*. If the meaning of theft is stronger in these two words than *sāriq*, which is a *dāhir* word, then its *ḥukm* applies to them as well. If this is not the case, then it does not apply to them, as Molla Jīwan states.<sup>275</sup>

As a matter of fact, upon pondering on the meaning of *sāriq* in relation to *ṭarrār* and *nabbāš*, we realize that the word *sāriq* includes the meaning of *ṭarrār*. In fact, *ṭarrār* involves a worse form of stealing than *sāriq* in that the former steals the property from the body of the owner, while the latter steals while the owner is often not present. Therefore, the sense of theft is greater in *ṭarrār* than it is in *sāriq*. This means that the relationship between the two is a hierarchical one, in which *sāriq* is more general than *ṭarrār* and thus includes it. Because *ṭarrār* is a sub-class of *sāriq*, it can be inferred *a fortiori* that a *ṭarrār* will be punished using at least the same punishment that a *sāriq* receives based on the verse.<sup>276</sup>

On the other hand, upon pondering on the meaning of *nabbāš*, we realize that it is not included in the meaning of *sāriq*. This is because a *sāriq* is one who steals from

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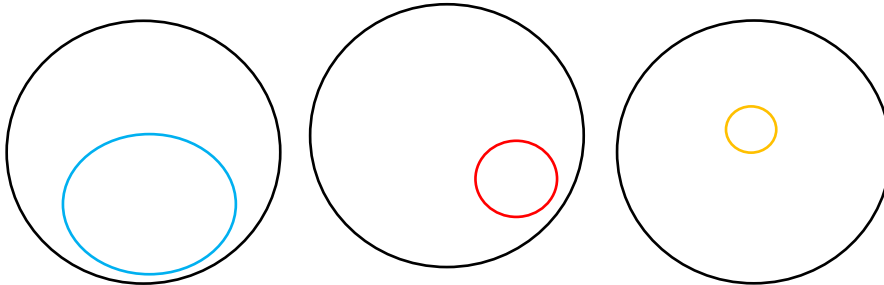
<sup>274</sup> Ibid.

<sup>275</sup> Ibid.

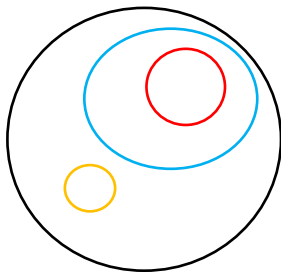
<sup>276</sup> Ibid, 148.

a protected place while the place from which a *nabbāš* steals is a grave, which is normally not protected. Therefore, the punishment that applies to a *sāriq* cannot be applied to a *nabbāš*.<sup>277</sup> Now, I will explain all these using the diagrams below.

**Figure VIII**



**Figure IX**



In Figure VIII, the largest circles (in black) represent the class of thieves. Inside the class, represented in the figure are the sub-classes of ‘*sāriq*’ (in blue), ‘*ṭarrār*’ (in red), and ‘*nabbāš*’ (in orange). For the sake of being more precise, however, the blue, red, and orange circles themselves do not represent the sub-classes of ‘*sāriq*’, ‘*ṭarrār*’, and ‘*nabbāš*’ or to put it differently, the definition of each of these words. Rather, these coloured circles represent *faṣls* (differentia) of each. What represents each of the sub-

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<sup>277</sup> Ibid, 148.

classes/the definition of each word is the black circle together with the relevant coloured circle.<sup>278</sup> Figure VIII represents this phenomenon clearly. Figure VIII, in addition to this, functions to represent another phenomenon that may not be as easily recognizable as its other function and yet is key in understanding the category of *xafī*: the *xafā'* (ambiguity) of *xafī* words, which I now will discuss briefly.

In the case of a *xafī* word like '*sāriq*', the scholars knew individual definitions of the words '*sāriq*', '*nabbāš*', and '*ṭarrār*', so they were already clear about the *faṣl* of each, which are represented with the red, orange, and blue circles here. They were also clear about the *jins* of each of these words with some precision, so they knew that the word '*sāriq*' as well as each of its co-subclass(es)<sup>279</sup> (i.e. '*nabbāš*', and '*ṭarrār*') do

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<sup>278</sup> Similarly, the black circle does not represent the class of 'thieves' or the definition of 'thief' but rather the *faṣl* thereof. In other words, there is yet another class that the class of thieves belong to, which we may call 'the class of criminals'. In fact, the class of 'thieves' like any other class stands in a two-way relationship: one of inclusion and the other of being included. To name 'thieves' a class or sub-class depends on which of these two aspects of 'thieves' one is concerned with. This is similar to the fact that I am a father of my children, while the son of my parents. One can refer to me as a father when considering my relation to my children and as a child when considering my relation to my father and mother. Therefore, the black circle here represents only the *faṣl* of the class of thieves. However, I am not going to draw another circle encompassing the black one as the *jins*/the class of criminals simply because this leads to an almost infinite number of other circles to be drawn representing further classes such as the class of, say, 'bad people' and the class of 'human beings'. Because I am only concerned with the class of thieves in respect of its relation to its sub-classes of *sāriq*, *ṭarrār*, and *nabbāš*, I will not talk about other classes that encompass the class of thieves. Nor will I represent them here with other circles.

<sup>279</sup> They knew that *sāriq*, *ṭarrār*, and *nabbāš* are all sub-classes of the class of thieves, and therefore, each is rightly drawn under the black circles. However, as will be seen shortly, the near class of *ṭarrār* (*al-jins al-qarīb*) will turn out to be *sāriq*. In logic, a word can be defined using its far class (*al-jins al-ba'īd*) and differentia (*faṣl*), but this constitutes a deficient definition (*ḥadd nāqīṣ*) as in defining a human being as *jism nāṭiq* (reasoning object) instead of *ḥayawān nāṭiq* (reasoning living being), which constitutes its *ḥadd tāmm* (perfect definition) (for types of definitions, see al-Abharī, *Īsāğūjī*, 5). Therefore, theoretically my drawing of *ṭarrār* within the class of thieves, although correct, does not represent the perfect definition of *ṭarrār* but a deficient definition of it. In Figure VIII, I drew it this way to represent the fact that scholars did not know that it belonged to the class of *sāriq* until they pondered upon the matter. The perfect definition of *ṭarrār* is represented in Figure IX.

belong to the class of thieves.<sup>280</sup> Therefore, each of these classes is represented with black circles. However, they were not clear about the hierarchical relationship between each of these sub-classes until they pondered upon it. Therefore, I drew the same class of thieves three times, each having only one of these words in it, in Figure VIII.

Once they pondered upon the relationship between '*sāriq*', '*nabbāš*', and '*ṭarrār*', they arrived at the hierarchical relationship between the three sub-classes of the class of thieves, as represented in Figure IX. When they discovered this hierarchical relationship between them—which is something they could have known before, but did not, simply because they did not feel the need to look at this relationship— they then discovered that the word *sāriq* (or *sāriqa*) can denote the type of thief referred to as *ṭarrār* but not as *nabbāš*, as explained above. Therefore, *xafī* is a word whose meaning is *ḍāhir*, i.e. clear, as I mentioned above, yet its relationship to other sub-classes under the nearest class is yet to be determined through *ṭalab* (pondering). Accordingly, the *xafā'* of *xafī* was with respect to its relation to *ṭarrār* and *nabbāš*. Once scholars discovered that *ṭarrār* was a sub-class of *sāriq*, then they came to the conclusion that the *ḥukm* of *sāriq*, which is *qaṭṭī*, also

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<sup>280</sup> One could also say that each of them belong to a larger class than the class of thieves such as the class of criminals, which is something that does not make any difference as to the fact that their grouping before the scholars analysis of them is less precise than thereafter.

applies to *ṭarrār*, which is not the case with *nabbāš*, as it is not a sub-class of *sāriq*, but rather a co-subclass thereof.

### 3.3.2.2. Muškil

Al-Nasafī defines *muškil* as that which falls under its likes.<sup>281</sup> Molla Jīwan explains this definition as “*al-kalāmu l-muštābihu fī amtālihī*” (an utterance that is confused with its likes<sup>282</sup>), which he further explains by a simile, saying, “it is like an unknown man who mingles with the crowd by changing his clothes and his look.”<sup>283</sup> Al-Laknawī defines it, rather broadly, as a word that could denote multiple meanings,<sup>284</sup> probably because it is similar to its counterparts, but there is something else to it, which will become clear in the coming pages below.

Molla Jīwan says, there is more *xafā*’ in *muškil* than there is in *xafī*,<sup>285</sup> which leads me to discuss *muškil* in comparison to *xafī*. In the previous section, we noted that *xafā*’ in *xafī* was not about the *šigā*, i.e. form. It was due to an *ṣāriq* (obstacle). In fact, I explained the *xafā*’ in *xafī* as ‘an ambiguity as to the hierarchical relationship which a word with *xafā*’, in that case a *xafī* word, has with its co-subclasses’.<sup>286</sup> On the

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<sup>281</sup> The Arabic reads “*fa-huwa d-dāxilu fī aškālihī*” (see al-Nasafī, *al-Manār*, I, 148.)

<sup>282</sup> Lane translates the word *muškil* as “Things or affairs, that are confused or dubious [by reason of their resembling one another or from any other cause]” (see Lane, *An Arabic-English Lexicon*, 1500).

<sup>283</sup> Molla Jīwan, *Nūr al-Anwār*, I, 148.

<sup>284</sup> Al-Laknawī says: “*wa-huwa ṣinda l-uṣūliyyīna ṣibāratun ṣan kalāmin yaḥtamilu l-maṣānī l-mutaṣaddidata wa-yakūnu l-murādu wāhidan minhā lākinnahū qad daxala fī aškālihī wa-hiya tilka l-maṣānī l-mutaṣaddidati fa xtafā bi-sababi hāḡa d-duxūli*” (see al-Laknawī, *Qamar al-Aqmār*, I, 148).

<sup>285</sup> Molla Jīwan, *Nūr al-Anwār*, I, 148.

<sup>286</sup> See section 3.3.2.1 above.

other hand, in a *muškil* word, the *xafā'* (ambiguity) is more serious and brings with itself the *xafā'* (ambiguity) we have seen in the category of *xafī* automatically. Here the particular *xafā'* not seen in *xafī* but found in *muškil* is about the definition of a word with *xafā'*, in this case a *muškil* word. As a result, the two ambiguities of a *muškil* word are: [the ambiguity as to the definition of the ambiguous word] + [the ambiguity as to the hierarchical relationship between the ambiguous word and its co-subclasses]. It seems that the first ambiguity is what is referred to as the '*iškāl*' (confusion) of *muškil*.<sup>287</sup>

In accordance with the source of the first type of ambiguity, i.e. the source of *iškāl*, *uṣūlīs* divide *muškil* into two types: *muškil* whose *iškāl* is due to its meaning, which is ambiguous and subtle, and *muškil* whose *iškāl* is due to the fact that the word includes an *istiḥāra badīḥa*.<sup>288</sup> I will explain the two types of *muškil*, using examples given by al-Nasafī. I will start with the second type.

The example al-Nasafī gives for the second type is "*qawārīr min fidḍa*" (decanter made of silver), mentioned in Qur'ān 76:16<sup>289</sup> which translates as "Decanter made of silver: they will determine the measure thereof (according to their wishes)."<sup>290</sup> *Qārūra* (singular of *qawārīr*) can be translated as 'a decanter' which

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<sup>287</sup> Molla Jīwan, *Nūr al-Anwār*, I, 150.

<sup>288</sup> Ibid, 149-150.

<sup>289</sup> قَوَارِيرٌ مِنْ فِضَّةٍ قَدَرُوا مِنْهَا تَقْدِيرًا

<sup>290</sup> Al-Nasafī, *al-Manār*, I, 150.

is ‘a cup made of glass’.<sup>291</sup> However, the verse describes an item, though in the plural, as ‘a decanter made of silver’. This is equal to saying, ‘a cup made of glass that is made of silver’. In other words, it ascribes to what is known in Arabic to be made of glass the feature of being made of silver. However, to say that an item that is made of glass is made of silver constitutes a contradiction. This contradiction leads to *xafā’* (an ambiguity) as to the definition of the word being defined. I will first discuss how this contradiction leads to the first ambiguity, i.e. *iškāl*, in detail. Once this is done, how the *iškāl* leads to the ambiguity as to the hierarchical relationship between the word and its co-subclasses will also become clear.

I think the *muškil* word ‘*qārūra*’ is defined using the *jins+faṣl* (genus + differentia) method as a cup made of glass, just like any other word defined in the intellectual culture al-Nasafī was part of. For *qārūra*, ‘cup’ is the *jins* and being made of glass is *faṣl*. To put it differently, ‘cups’ is the name of the class of cups that a particular type of sub-class of cups made of glass (i.e. *qawārīr*) belongs to. The function of *faṣl* is to differentiate this sub-class from other sub-classes that may exist within the same class of cups. In fact, there are other sub-classes that we know within the class of cups such as ‘the sub-class of cups made of silver’, ‘the sub-class of cups

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<sup>291</sup> Al-Laknawī, in defining the word *qawārīr*, says: “قارورة انچه در ان می دمانند ان باشد عموماً باشیشه” (see al-Laknawī, *Qamar al-Aqmār*, I, 150).

made of gold', and 'the sub-class of cups made of wood.'<sup>292</sup> The phrase '*qawārīr min fiḍḍa*' mixes the *faṣl* of cups made of glass, namely, being made of glass, with the *faṣl* of cups made of silver, namely being made of silver, and thus causes confusion, which I will elaborate on in the next paragraph.

Due to the fact that the verse ascribes the feature of being made of silver to *qārūra*, which is normally made of glass, the integrity of what differentiates *qārūra* from its co-subclasses (i.e. the integrity of its *faṣl*) seems to be compromised. As a result, the sub-class of *qārūra* is confused with the sub-class of cups made of silver.<sup>293</sup> In effect, we now have two features that are normally *faṣls* of other types of cups, namely, *being made of glass* (first *faṣl*) and *being made of silver* (second *faṣl*), for an item described in the verse with the phrase *qawārīr min fiḍḍa*. Therefore, there is confusion as to the phrase *qawārīr min fiḍḍa*.

In an effort to further explain what seems to be a contradiction, the fact that God uses the word '*qawārīr*' to describe the items used to serve drinks to the people in paradise implies that these are 'cups + made of glass'. However, when the verse adds that it is made of silver, a note on its *faṣl*, this apparently contradicts with the

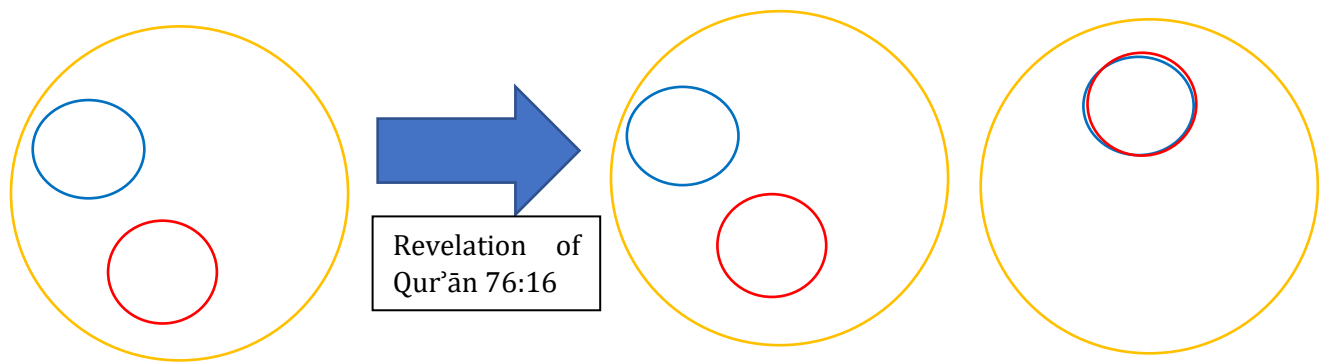
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<sup>292</sup> The class of cups is not limited to those sub-classes mentioned here, and one can add to the list others that may exist.

<sup>293</sup> If there is a particular name for cups made of silver in Arabic, it will rightly be described as 'the sub-class of'. However, if there is no such name assigned to cups made of silver in Arabic, then normally I call such a category a 'group'. But in either case, there is a definition that distinguishes the concept described with the name of the sub-class or the phrase of the group, and therefore, each of these is eligible to be an element that a *muṣkil* word within the same class may get confused with.

*faṣl* of being made of glass. In other words, this apparent contradiction is limited to the *faṣl* of *qārūra* and not its *jins*, as it only negates the *faṣl* and not the *jins* of *qārūra*. As a result, the verse's reference to the item using the phrase '*qārūra min fiḍḍa*' leads us to two conclusions: first, the item is a cup, and second, it is made of glass that is made of silver. There is no confusion as to the first conclusion. However, there seems to be a confusion as to the second conclusion.

**Figure X**



In Figure X, the orange circles represent the class of cups. The blue arrow represents the revelation of the verse, which assigns a phrase to a meaning. Before this assignment, the meaning of the *muṣkil* phrase, *qawārīr min fiḍḍa*, was unknown to the community. Therefore, the states of people's knowledge of the class of cups before and after the revelation of Qur'an 76:16 are different in that before the revelation the linguistic community knew cups made of glass and those made of silver, but did not know what is being described in the verse as cups made of glass that are made of silver. Because there is no confusion as to ordinary cups made of

glass and those made of silver, the *fašls* of being made of glass and silver are represented in Figure X with the standalone blue and red circles respectively in orange circles before and after the revelation.<sup>294</sup>

As for the *muškil* word in Figure X, probably because the linguistic community has never come across a phrase like *qawārīr min fiḍḍa* before, it is not represented in the orange circle on the left but is represented after the revelation. Thanks to the revelation's implication that the item being described in the verse is a kind of cup, as explained above, the *muškil* phrase, which represents this unknown item, is represented in an orange circle, i.e. as being a kind of cup. Furthermore, we do not know the *fašl* of this unknown item and only have *fašls* of other words making up the *muškil* phrase, which are combined together in order for the phrase to indicate the *fašl* of the unknown word along with its *jins*. Therefore, the unknown word's *fašl* is not represented with a separate coloured circle but with the overlapping blue and red circles, which represent being made of glass and being made of silver, in a separate orange circle.<sup>295</sup> Finally, as explained above, we are not clear about the definition of

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<sup>294</sup> We know other types such as cups made of wood and gold, but they do not concern us here and thus not represented here.

<sup>295</sup> I think this is in line with how *uṣūlīs* define it. As mentioned at the beginning of this section, *uṣūlīs* define *muškil* as “*wa-huwa d-dāxilu ḡalā aškālihi*” (It is that which enters into/falls under its likes). Based on the discussions above, what lies at the centre of the issue here is a word the linguistic community does not know. Yet the meaning of this word, which is still unknown, reveals itself not through the word itself—because the linguistic community does not know it on one hand, and Allāh does not mention it in the verse—but rather through a phrase. In other words, what is defined in the definition of *muškil* as “that which enters into/falls under its likes” is not the *muškil*, which is the phrase *qawārīr min fiḍḍa* in our example, but the meaning of the word, which we do not know. This meaning is denoted through a combination of words that the linguistic

the *muškil* phrase, as it contains apparently contradictory *fašls* in it. This ambiguity as to the definition of the *muškil*, which is referred as the *iškāl*, leads to ambiguity as to its hierarchical relationship to other sub-classes within the class of cups because we are not clear about what differentiates the *muškil* from the *fašls* of its co-subclasses, namely its *fašl*. Not being sure what this *fašl* is, we are not clear about how it is related to its co-subclasses. Due to this second ambiguity, I drew the *muškil* phrase inside a separate orange circle, indicating that we are not clear about the hierarchical relation it has with other sub-classes under the class of cups.

Having thus explained the representation of the *muškil* phrase in Figure X, I will now talk further about the idea behind using the *fašls* of items with known names and meanings to describe items with no name and meaning in the language, which is the case with the usage of *qawārīr min fiḍḍa*. The benefit of using the *fašls* of items with known names and meanings to describe an item with no name and meaning in a given language is, in fact, to overcome the difficulty of describing, through the medium of

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community already knows, in this case through *qawārīr min fiḍḍa*, which is a combination that is not assigned to denote that meaning in the language. In other words, there could be a word for this meaning that the linguistic community is not aware of, but this word is known to God. Instead of inserting this new word, again, initially only known to God, into the linguistic community and then explaining it with words already known to the community, it seems to me that God expresses the meaning of this unknown word (i.e. unknown to the linguistic community) through an appropriate combination of known words (i.e. known to the community). As will be seen, there is at least one occasion I found noted in *uṣūl* works for the other way of expressing an unknown (i.e. initially unknown) meaning to the community. I dwell on this phenomenon in the following pages.

language, something which the linguistic community does not know exists and which thus has no name in the language.

In an effort to situate this way of referring to an unknown item in the larger picture of potential ways to refer to such an item, I will step back and mention a straightforward way to refer to such an unknown item. In fact, another way to refer to such an item is to bring it to the members of the linguistic community and point to it in their presence and say, for instance, “this is the item that will be used to serve the people of the Paradise”<sup>296</sup> and perhaps provide people with the details as to the nature of it. This way it would have been clear to the members of the linguistic community what the item is. According to His *Sunnah*, however, Allah does not reveal secrets of the other world to members of the linguistic communities of this world in principle, so in principle He would not show the actual cup used in the Paradise to people in this life. As a result, because of this Sunnah of Allah, in principle, this particular way does not seem to overcome the difficulty of referring to an item whose name and the meaning the name stands for are unknown to the linguistic community.<sup>297</sup>

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<sup>296</sup> It seems that this is called ‘ostensive definition’ by linguists such as Lyons who mentions that “...one way of defining things is to point out instances of it in the world (e.g. if we want to define the notion ‘lorry’, we point out to our interlocutor some actual lorries in the street)” (see Lyons, John. 1977. *Semantics* (vol. 1). Cambridge: Cambridge University Press. xiii + 371 pp, 208).

<sup>297</sup> Even simpler than this would be to refer to the item by its name, which would constitute a *waqf* on the part of the linguistic community, and then explain what the name stands for, which would probably involve, in order for the linguistic community to appreciate the details of the item, explaining its *jins* and its *faṣl*.

Since this short way of bringing the unknown item and referring to it while addressees are present does not work in the case of revelation for theological reasons, using the *faşls* of items with known names and meanings to describe an item with no name and meaning in the language seems to be at least a practical way to overcome the difficulty.

As a matter of fact, we have names for many entities in this world. However, it is believed by Muslims that this world is not the only place Allah created. And it is possible that there are items in other worlds He created that do not exist in this world. That does not mean that such items do not have a name, but it means that we most likely would not have names for them. The question that comes to mind is “What would happen if one who knows these names and what they stand for decides to tell about one of these items through the medium of a language which lacks both the name of the item and the meaning it stands for?” One could go with using the unknown word but then explaining what it means. Or one could instead use a compound form the meaning of whose individual words the hearer knows in such a way that this compound conveys the intended sense, probably on the strength of a relationship between the meaning the known words denote and the unknown meaning. Since the hearer knows the words that are combined together, he/she could understand the

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meaning of this combination to some extent. Thus, the meaning the speaker has in mind can be communicated to the hearer without further explanation as to the unknown meaning. This is the case with *muškil* and with the particular example al-Nasafī mentions for the category of *muškil*, namely, *qawārīr min fiḍḍa*.

The revelation talks about something people could have not naturally assigned a name for, as we tend to categorize items and then give names to them only if we perceive them either with our senses or with our intellect. If there already existed a name in the Arabic language for the item being described in the verse, the verse might have referred to that item by that name. However, this is not the case, and the verse uses the already existing name, “*qawārīr*”, to refer to the unknown item (or to be more precise, to signify to its meaning) along with something about its *faṣl* that contradicts the *faṣl* inherently mentioned in *qārūra*. This apparent contradiction leads to an ambiguity in the definition of the item being described. This ambiguity, as explained above, further leads to the ambiguity as to the hierarchical relationship of the item described as *qārūra min fiḍḍa* with the other sub-classes of the class of cups. As a result, *muškil* has two *xafā*'s (ambiguities).

*Muškil*, thus, contains more *xafā*' (ambiguity) than *xafī* as seen in Figure X. Yet these two ambiguities can be cleared away through *ṭalab* and *ta'ammul*. In fact, al-Nasafī states that the legal ruling of a *muškil* phrase is that one—referring to a Muslim

individual— (only by hearing the verse<sup>298</sup>) must believe the veracity (*ḥaqqiyya*) of intended meaning [of God<sup>299</sup>] with such a phrase.<sup>300</sup> Then what needs to follow is to turn to *ṭalab* (pondering) on the word to see what sense(s) the word can denote. Then *ta'ammul* (deliberation)<sup>301</sup> on the word needs to follow in order to see what the intended meaning is until the intended meaning becomes clear. In other words, *ṭalab* involves listing the potential senses the *muškil* word/the phrase can denote and *ta'ammul* deciding which one of these senses is meant.

To continue the discussion using our example, the process of *ṭalab* leads us, as Molla Jīwan notes, to the conclusion (i) that *glass* has two features: one is praised, which is *šaffāfa* (transparency), and the other is not desired, which is opaqueness, and (ii) that *silver* has two features: one is praised, which is brightness, and the other is not desired, which is *ʿadam šafāʿ* (the lack of purity).<sup>302</sup> The process of *ta'ammul*, on the other hand, leads us to the conclusion that there is a particular cup used in paradise and it has the feature of the brightness of silver as well as that of the purity of glass. In other words, this is a particular cup with no name yet, but we know that

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<sup>298</sup> Molla Jīwan, *Nūr al-Anwār*, I, 149.

<sup>299</sup> Ibid.

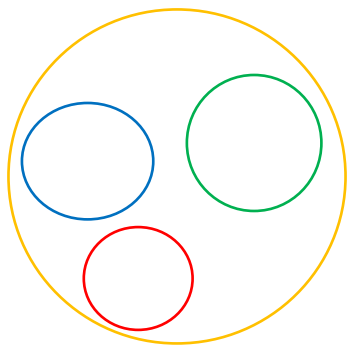
<sup>300</sup> The original reads “*ḥukmu l-muškili awwalan huwa istiḡādu l-ḥaqqiyyati fī-mā kāna murādu llāhi taṣālā bi-mujarradi simāʿi l-kalāmi*” (ibid, 148-149).

<sup>301</sup> The meanings of the terms *ṭalab* and *ta'ammul* are mentioned above.

<sup>302</sup> Molla Jīwan, *Nūr al-Anwār*, I, 150.

although it shares good features of silver and glass, it is distinct from a cup made of silver and a cup made of glass.

**Figure XI**



In Figure XI, the way the sub-classes are displayed within the class of cup indicates that there is no longer any ambiguity, either as to the hierarchical relationship the sub-class of *'qārūra min fiḍḍa'* has with the sub-classes of *qawārīr* (i.e. cups made of glass) and cups made of silver, or as to the definition of the sub-class of *qārūra min fiḍḍa*. In fact, through the processes of *ṭalab* and *ta'ammul*, the unknown item described with the *muškil* phrase *'qārūra min fiḍḍa'* became clear. Although we may not know the name of its *faṣl*, we know the definition of its *faṣl*, which is 'being [a material that is] bright as silver and pure as glass'. Therefore, I am able to represent the *faṣl* of this *muškil* word/phrase with a circle of its own, which is the green circle. Furthermore, because we know its definition as well as the definitions of the sub-classes of cups made of glass and those made of silver, we know its hierarchical relationship to other sub-classes in the class of cups. Accordingly, I

drew the green circle inside the same orange circle that the blue and red circles fall under.

Having thus explained what *muškil* is using the example of the second type of *muškil*, which often, if not always, consists of more than one word, I can now turn back to the first type of *muškil*, which consists of one word.

The first type of *muškil*, as mentioned at the beginning of this section is defined as that whose *iškāl* is due to its meaning, which is ambiguous and subtle. It is like the second type in that it mingles with its co-subclasses. However, it differs from the second type of *muškil* in that the first type has a name, while the second does not. I think that to say that it has a name means that it is made up of one word.

The fact that the second type has no name makes our recognition of the existence of it only occur after the processes of *ṭalab* and *ta'ammul*, as seen in the example of *qawārīr min fiḍḍa*. This phrase, as I showed above, manifests itself to be referring to a type of cup without a known name in the language only after these two processes. Despite this, the phrase denotes more than one sense. We discover the list of senses it can denote after the process of *ṭalab*. We decide which one of the senses on a particular occasion the phrase denotes through *ta'ammul*. To sum up, the second type of *muškil* is a phrase standing for a concept that has no name in the language. And the speaker does not coin a word that would denote the sense the phrase (e.g. *qawārīr min fiḍḍa*) denotes either. On the other hand, as will be seen, unlike the

second type of *muškil*, we already know the existence of the concepts whose meanings the first type of *muškil* denotes. In other words, in the first type of *muškil*, the senses the *muškil* word can denote is clear and these senses are given names in the language already. Therefore, the first type is probably easier to recognize.

The issue in this first type, it seems to me, is that we have not thought about the different senses such a word can denote. In fact, it can denote several senses each of which is assigned a separate name. Through the process of *ṭalab*, we list the possible senses it can denote. Then we move on to the next process of inquiry, namely, *ta'ammul*. At this stage, we are able to decide which one of the senses the *muškil* word is used to refer to.

To illustrate the first type of *muškil*, consider the word *annā* in the Qur'ān 2:223.<sup>303</sup> After the process of *ṭalab*, we realize that there are two senses *annā* can denote. In fact, the word *annā* can denote the sense found in the phrase “*min ayy makān*” as in “*annā laki hādā*”<sup>304</sup> (O Mary! Whence (comes) this to you?). At other times the word *annā* can denote the “*ayy kayfiyya*”<sup>305</sup> sense, as in “*annā yakūnu lī ġulāmun*”<sup>306</sup> (How shall I have a son). Then the process of *ta'ammul* (deliberation)

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<sup>303</sup> نَسَاؤُكُمْ حَزْتُ لَكُمْ فَأَنْوَا حَزْتُكُمْ أَلَيْ شَيْئُكُمْ وَقَدِمُوا لِأَنْفُسِكُمْ ۚ وَانْفُوا اللَّهَ وَاعْلَمُوا أَنَّكُمْ مُلَافُوهُ ۗ وَبَشِّرِ الْمُؤْمِنِينَ

<sup>304</sup> Qur'ān 3:37.

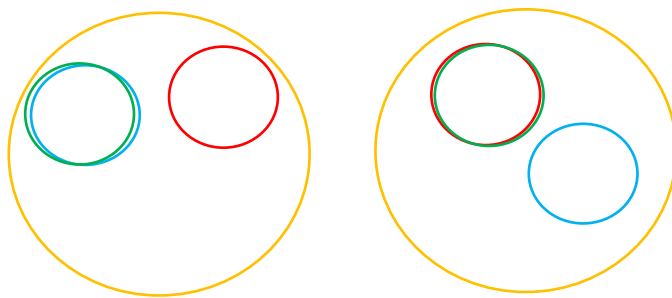
<sup>305</sup> In fact, the word “*kayfa*” is assigned to the meaning of *ayy kayfiyya*. However, I use the longer version in order to allow comparison between the senses which *annā* can denote.

<sup>306</sup> Qur'ān 19:08.

comes into play. Through it, we realize that the second sense of *annā* is meant in this example, namely, *ayy kayfiyya*. Thus, *annā* here does not refer to the generality of *makān* (place); but rather, it refers to the generality of *aḥwāl* (states).

We have come to this sense through deliberation. As a matter of fact, Al-Laknawī notes that *ta’ammul* is done through considering *siyāq* and *sibāq* (the context a word is used in). When we look at the sentence before, which is “Your wives are a place of sowing of seed for you”, we realize that there is an *istiḥāra* between intercourse, whose outcome is a child, and the sowing of seed. Since the vulva is the only place that could lead to the production of a child, we realized that the second sense of *annā* is meant by the word and not the first sense of it. Thus, we cleared away the ambiguity surrounding the word *annā*.<sup>307</sup>

**Figure XII**



In Figure XII, the orange circles stand for the class of “*ayy*” (which). The blue and red circles stand for the *faṣls* of the sub-class or groups of ‘*min ayy makān*’ and

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<sup>307</sup> For more details, see Molla Jīwan, *Nūr al-Anwār*, I, 149.

that of ‘*ayy kayfiyya*’ respectively.<sup>308</sup> The reason I drew two separate orange circles with their respective circles in them is only to show that *annā* can take the meaning of one of its co-subclasses on a particular occasion. Unlike the second type of *muškil*, this one has a name and is therefore represented here with green circles inside both of the orange circles. However, because *muškil* is what enters/mingles with *amṭālihī* (I think I can translate *amṭālihī* as ‘its co-subclasses’), which is the peculiar ambiguity seen in a *muškil* word, I drew it as mingled, i.e. having taken the form of its co-subclasses in Figure XII.

Figure XII represents two situations: in each the word *annā* denotes one of the senses denoted by one of its co-subclasses. On the left it denotes the sense denoted by “*min ayy makān*” and on the right the sense denoted by “*ayy kayfiyya*”. Again, through the process of *ṭalab*, we found which *maḡānī* (senses) the *muškil* word can denote. Then through the process of *ta’ammul*, we found which of these potential senses the *muškil* word (*annā*) denotes on a particular speech occasion.

### 3.3.2.3. Mujmal

Al-Nasafī defines *mujmal* as that which various senses merge into, and whose intended meaning is obscured [for hearers/readers] in such a way that one cannot know it through the utterance itself [in which it is used] without asking [the

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<sup>308</sup> We have a name for the class of ‘*ayy kayfiyya*’, which is ‘*kayfa*’. However, as far as I know, no name is assigned to the group of ‘*min ayy makān*’.

speaker\writer] for clarification (*istifsār*), and then pondering (*ṭalab*) upon it and finally deliberating (*ta'ammul*) over it.<sup>309</sup>

Al-Laknawī states that the word *mujmal* comes from the verb *ajmala*, which he further explains with the verb *abhama* (He obscured).<sup>310</sup> In other words, what makes a word *mujmal* is that its intended meaning is obscured to the hearer/reader in a way that it cannot be discovered through *ṭalab* (pondering) or *ta'ammul* (deliberation), and that it requires *istifsār* (asking for clarification) on the part of the hearer/reader from the speaker/writer. This type of ambiguity which can only be solved by an explanation on the part of the speaker/writer is referred to as *ijmāl* by *uṣūlīs*. Once the speaker/writer, upon a request for clarification/explanation, explains what the intended meaning of such a word is, then the word turns into *mufassar*.

In an attempt to show the relationship between *mujmal* and the other types of ambiguous words mentioned in *uṣūl* works, Molla Jīwan further says that *izdiḥām al-maḥānī* (merging of senses) is a *jins* for *muštarak*, *xafī*, *muškil* and, *mujmal* and the phrase used in the definition of *mujmal* that starts “whose intended meaning is obscured in a way...” functions to exclude *muštarak*, *xafī*, and *muškil*.<sup>311</sup> In other

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<sup>309</sup> Al-Nasafī, *al-Manār*, I, 150.

<sup>310</sup> Al-Laknawī, *Qamar al-Aqmār*, I, 150.

<sup>311</sup> He does not use the phrase *izdiḥām al-maḥānī* explicitly but instead uses the pronoun *huwa* (it), where, I think, the pronoun *huwa* is referring to the previous sentence's subject, which is *izdiḥām al-maḥānī* (see Molla Jīwan, *Nūr al-Anwār*, I, 150).

words, *muštarak*, *xafī*, *muškil*, and *mujmal* are all sub-classes of the class of *izdiḥām al-maḥānī*. He then mentions the differentia (*faṣl*) of each that differentiates it from the others within the class of *izdiḥām al-maḥānī*. In this regard, he says that the [intended] meaning of *xafī* can be understood only through *ṭalab* (pondering). He then goes on to say that the [intended] meanings of *muštarak* and *muškil* can be known through *ta'ammul* following the process of *ṭalab*, though not really differentiating between *muštarak* and *muškil*.<sup>312</sup>

Having described other kinds under the *jins* of *izdiḥām al-maḥānī*, Molla Jīwan then says that *mujmal* differs from the above-mentioned three kinds due to the fact that, unlike the others, it needs three forms of inquiry (*ṭalabāt*).<sup>313</sup> These are, Molla Jīwan goes on to say, *istifsār* (asking for clarification) from the *mujmil* (the obscurer), *ṭalab li-l-awṣāf* (pondering upon on the attributes), and then *ta'ammul li-t-taḥyīn* (deliberation for specification).<sup>314</sup> In other words, the *faṣl* of *mujmal*, which is the feature that differentiates it from its co-subclasses within the class of *izdiḥām al-maḥānī*, is the fact that it needs *istifsār* for its intended meaning to be clear to the listener/reader. He finally notes that because of the fact that *mujmal* can be known

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<sup>312</sup> Ibid.

<sup>313</sup> Ibid. What really differentiates *mujmal* from its co-subclasses is the fact that it requires *istifsār*. This is because *muštarak* and *muškil* also require *ṭalab* and *ta'ammul*. Moreover, the explanation (*tafsīr*) given after the request for clarification (*istifsār*) may well be sufficient for the addressee to understand the intended meaning of the *mujmal*. In that case, *mujmal* does not require *ṭalab* and *ta'ammul*, as al-Laknawī notes (see al-Laknawī, *Qamar al-Aqmār*, I, 150), and thus turns into *mufassar* right after the *istifsār*.

<sup>314</sup> Molla Jīwan, *Nūr al-Anwār*, I, 150.

after these three forms of inquiry are completed successfully, it differs from *mutašābih*.<sup>315</sup>

*Uṣūlīs* divide *mujmal* into three types in accordance with the notion of *izdiḥām al-maḥānī*. The idea behind this division is that a given word may denote multiple senses due to three possible reasons: First, it may have actually been assigned to multiple senses through multiple *waḍḥ luḡawī* processes. Second, the word may have been assigned to no sense at all in the language, in which case, it may denote an almost infinite number of senses because for the members of the linguistic community the word is unknown, and it could mean anything. Finally, the word may have already been assigned to a single sense through *waḍḥ luḡawī*; however, the religion of Islam may have assigned a new sense to it. This new assignment, which is referred to ‘*waḍḥ šarḥī*’, cannot be known by the members of the linguistic community. All these three cases of *izdiḥām al-maḥānī* require explanation from the one who obscured (*abhama*) the utterance. As a result, all the three types constitute a *mujmal* word. I will now discuss these three types briefly and provide examples for each.

Molla Jīwan explains *izdiḥām al-maḥānī* as several senses coming together (*ijtamāfa*) in a given word without one of them being favoured over the others as is the case sometimes with *muštarak* when it is impossible for a given addressee to give

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<sup>315</sup> This is the next category I will talk about, so more information on *mutašābih* can be found in the relevant section.

preponderance to one of its senses over the other(s) on a given occasion.<sup>316</sup> This is in fact the case where a word that is assigned primordially to more than one sense is used by a speaker/writer in a way that does not allow the hearer/reader to take the word to mean any one of its primordial senses on a particular speech occasion. An example of this type of *mujmal* word is ‘*ḥayn*’, which could denote the senses of ‘eye’, ‘spy’, or ‘spring (water)’. In a sentence like “*ra’aytu ḥaynan kabīratan.*” (I have seen a large *ḥayn*), the utterance/sentence the word *ḥayn* is used in does not help the addressee to choose one of these senses which the word can denote over the others. Therefore, we need to proceed first with the process of *istifsār*.

*Izdihām al-maḥānī* could also be, Molla Jīwan says, in terms of the *ḡarāba* (oddness) of the word. In other words, the religion of Islam assigns a sense to a word, both the word and the sense being unknown to the members of the linguistic community, either because most of them do not know the word and its sense or they have forgotten the word and its sense. Or it could be because the word and its sense are completely new to the linguistic community. In either of these cases, the linguistic community in general does not know the word or its sense. But the religion of Islam

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<sup>316</sup> The Arabic reads, “*izdihāmu l-maḥānī ḡibāratun ḥan ijtimāʿihā ḡalā l-lafḍi min ḡayri rujḡānin li-aḡadhimā kamā iqā insadda bābu t-tarjīḡi fī l-muḡtaraki*” (Molla Jīwan, *Nūr al-Anwār*, I, 150). al-Šāšī (d. 344/9555), a gifted pupil of al-Karḡī (d. 340/952), says something relevant when he notes, “*wa-law turajjaḡa baḡḡu wujūhi l-muḡtaraki bi-bayānin min qibali l-mutakallimi kāna mufassarān*” (see al-Šāšī, *Niḡām al-Dīn Abū ʿAlī Aḡmad b. Muḡammad b. Ishāq, Uḡūl al-Šāšī*, ed. ʿAbd Allāh b. Muḡammad al-Xalīlī (Beirut: Dar al-Kotob al-Ilmiyah, 2003), 31.) (If one of the senses of a *muḡtarak* is favoured over the other(s) through an explanation [that is provided] by the speaker, this renders it *mufassar*).

assigns a sense to such word. An example is the word *halūfa*<sup>317</sup> mentioned in the Qurʾān 70:19,<sup>318</sup> which translates as “Truly, man was created *halūfa*.” Molla Jīwan goes on to say that the word *halūfa* was *mujmal* before the explanation given in the following verses Qurʾān 70:20-21,<sup>319</sup> which translates as “Fretful (impatient) when evil touches him; And niggardly (withholding) when good reaches him.” Accordingly, the meaning of the word *halūfa* is often given in lexicons as ‘greedy’, ‘anxious’, and ‘very impatient’.<sup>320</sup>

*Izdiḥām al-maʿānī* could also mean that the *mujmal* word may denote multiple senses due to the fact that the religion of Islam assigns a new sense to the word different from the one assigned to it through *waḍʿ luḡawī*.<sup>321</sup> As a result, the existence of multiple senses a word can denote leads to an ambiguity as to which of these senses

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<sup>317</sup> As I mentioned above, Molla Jīwan talks about three types of *waḍʿ*: *luḡawī*, *ʿurfī*, and *ʿarḑī*. In addition to these three, I came up with a fourth type of *waḍʿ*, for which I coined the term *waḍʿ ʿaxṣī*. Using a word in this sense, by which I really mean addressing it to someone in the linguistic community, would make it appropriate to classify such a word as *mujmal*. In fact, Al-Laknawī, who wrote his gloss on Molla Jīwan’s *Nūr al-Anwār*, says that if someone during a speech coins a word and uses it in a sentence extemporaneously, this would be a *mujmal* word, for which he gives the example *halūfa* (see *Laknawī, Qamar al-Aqmār*, I, 150). However, he does not give a name to the type of *waḍʿ* which I termed *waḍʿ ʿaxṣī*. A concept similar to it exists in linguistics, which is called ‘nonce formation’ (and the word coined is accordingly referred to as ‘nonce word’) (see David Crystal, *A Dictionary of Linguistics and Phonetics*, 6<sup>th</sup> ed. (Oxford: Blackwell Publishing, 2008), 329).

<sup>318</sup> إِنَّ الْإِنْسَانَ خُلِقَ هَلُوعًا

<sup>319</sup> إِذَا مَسَّهُ الشَّرُّ جَزُوعًا . وَإِذَا مَسَّهُ الْخَيْرُ مَنُوعًا

<sup>320</sup> See, for instance, *Lisān al-ʿArab*, 4685.

<sup>321</sup> It could also be the case that, in addition to the sense assigned to the *mujmal* word through *waḍʿ luḡawī* and *waḍʿ ʿarḑī*, the word may have been assigned yet another sense through *waḍʿ ʿurfī*.

it denotes on a particular speech occasion, an ambiguity that cannot be cleared away except by the speaker/writer.<sup>322</sup>

There are two examples that al-Nasafī mentions that seem to fall under this type of *mujmal*: *ṣalāh* and *zakāh*. These are mentioned on different occasions in the Qurʾān often together as in Qurʾān 2:43,<sup>323</sup> which translates as “And be steadfast in prayer; practice regular charity; and bow down your heads with those who bow down (in worship).” Molla Jīwan then goes on to talk about how each of these two *mujmal* words were explained with a *bayān šāfi*<sup>324</sup> for each.

Al-Nasafī, having defined *mujmal*, goes on to say that its legal ruling is that one has to first believe in the veracity of whatever God intended to mean with the word. Then one needs to refrain from making any effort to understand its meaning until the intended meaning is made clear by the one who obscured it, i.e. in this case, God.

When explaining the word *ṣalāh*, Molla Jīwan says that its literal meaning, for which he uses the term *maʿnā fi al-luġa*, referring to the word’s sense assigned to it through *waḍʿ luġawī*, is *duʿāʾ*, that is, prayer. It was not clear which prayer was meant by the word until the Prophet was asked for clarification (*istifsār*) of it. He then

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<sup>322</sup> If the ambiguity is on a level where the hearer/reader can still understand from the utterance/sentence itself what the intended sense from among other senses denoted by the word, this word does not qualify to be called *mujmal*.

<sup>323</sup> وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَارْكَعُوا مَعَ الرَّاكِعِينَ

<sup>324</sup> Molla Jīwan talks about two kinds of clarification/explanation (*bayān*): *bayān šāfi* (satisfactory explanation), or *bayān lam yašfi* (unsatisfactory explanation) (see Molla Jīwan, *Nūr al-Anwār*, I, 150-151).

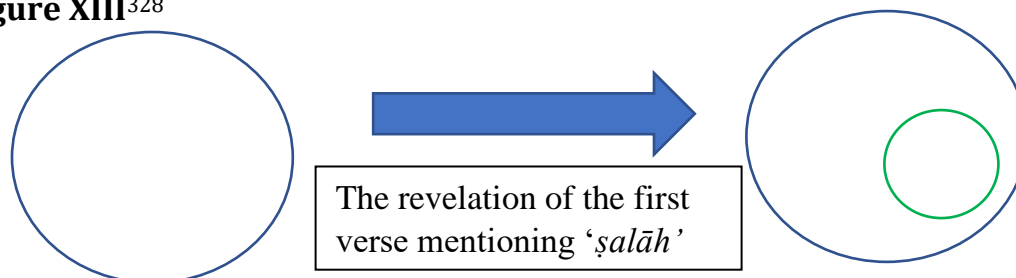
explained it with his actions,<sup>325</sup> illustrating to his companions what this particular prayer was with all the actions making it up from its beginning to its end. Then, Molla Jīwan proceeds to the next level of inquiry, namely pondering (*ṭalab*). In fact, Molla Jīwan says, we pondered upon it to find which senses (*maʿānī*) *ṣalāh* can include, and we discovered that it includes *qiyām*, *qirāʿa*, *sajda*, *rukūʿ*, and the like. Then through the process of *taʿammul*, scholars realized that some of these meanings (concepts, such as *sajda*, *rukūʿ*, *qirāʿa*, and *tasbīḥāt*) are obligatory and others not and divided them into such categories as *farḍ*, *wājib*, *sunna*, and *mustaḥabb*.<sup>326</sup> Following these three processes, namely, *istifsār*, *ṭalab*, and *taʿammul*, the term *ṣalāh*, which was initially *mujmal*, turned into *mufassar*, as Molla Jīwan notes.<sup>327</sup>

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<sup>325</sup> He is referring to the saying of the Prophet in which he tells his companions to watch him and learn what was meant by this particular ‘prayer’. The *ḥadīṭ* is recorded as follows in *ḥadīṭ* compilations: “صلوا كما رأيتموني أصلي”, which translates as “Pray as you see me praying” (see, Imām Aḥmad b. Ḥanbal, *Musnad*, V, Beirut, 5, 53; al-Dārimī, *al-Sunan*, I, 5,286; al-Buxārī, *al-Ṣaḥīḥ*, I, 155).

<sup>326</sup> Disagreeing with Molla Jīwan’s remarks on this, al-Laknawī notes that he does not consider it appropriate to say that the process of *ṭalab* and *taʿammul* can take place after a *bayān ṣāfi* (satisfactory explanation) that is given as a response to the request for clarification (*istifsār*) simply because a *bayān ṣāfi*, in his opinion, is an explanation that explains the *mujmal* word without leaving any ambiguity (see al-Laknawī, *Qamar al-Aqmār*, I, 151). However, al-Nasafī in his *Kaṣf al-Asrār* and Molla Jīwan in his *Nūr al-Anwār* do talk about the processes of *ṭalab* and *taʿammul* after *bayān ṣāfi* and say that these two processes occur after it (al-Nasafī, *Kaṣf al-Asrār*, I, 150-151; Molla Jīwan, *Nūr al-Anwār*, I, 151). The difference of opinion regarding the meaning of the term *bayān ṣāfi* seems stem from the fact that unlike al-Laknawī, Molla Jīwan and al-Nasafī consider a *bayān ṣāfi* a satisfactory explanation that is just clear enough to enable the addressee(s) who asked for clarification (*istifsār*) to move to the next two types of inquiries in understanding the intended meaning of *mujmal* word, namely *ṭalab* and *taʿammul*. According to this view, *bayān lam yaṣfi* then would be an explanation that is unsatisfactory in that it does not allow the one(s) who asked for clarification (*istifsār*) even to move to *ṭalab* and *taʿammul*. According to al-Laknawī, however, an explanation that calls for *ṭalab* and/or *taʿammul* in order for the intended meaning to be clear would still be classified as *bayān lam yaṣfi* (unsatisfactory explanation) and not *bayān ṣāfi* (satisfactory explanation) despite the fact that such an explanation would have resolved the particular ambiguity of *mujmal*, namely *ijmāl*, which differentiates it from the less ambiguous *xafi* and *muṣkil*, which in my opinion seems to make the position of al-Nasafī and Molla Jīwan on this point more plausible.

<sup>327</sup> Molla Jīwan, *Nūr al-Anwār*, I, 151. Because the example of *ṣalāh* is sufficient, there is no need, as far as I am concerned, to mention Molla Jīwan’s treatment of the second example of a *mujmal* word, i.e. *zakāh*, as this is

Figure XIII<sup>328</sup>

In Figure XIII, the blue circles represent the class of prayers (*ṣalāh*). The knowledge of the linguistic community of Arabs before and after the first revelation in relation to the word *ṣalāh* in its special sense is different. Before the revelation, the community knew nothing about the special sense the word *ṣalāh* gets assigned to with the first revelation on this matter. Accordingly, the sub-class of special prayer is represented with the green circle on the right (after the revelation) but not represented in any way on the left (before the revelation). The green circle, to be more precise, represents the *faṣl* of ‘the sub-class of special prayer (*ṣalāh*) described by the Prophet’ and the green circle (*faṣl* of the special prayer) within the blue circle (*jins* of

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similar to the first one in terms of following the processes of *istifsār*, *ṭalab*, and *ta’ammul*. (For details, see *ibid*, 151). What is more interesting is the example of a *mujmal* word which was not explained completely, namely, *ribā* (usury). Molla Jīwan says that it literally (*waḍf luḡawī*) means *namā’*, which could, again, come to mean many things. However, he says, the literal meaning is not the intended meaning. The Prophet’s explanation of it made the meaning clearer. But it did not clear up all the ambiguities surrounding it, which is a fact stated by the second righteous caliph, ʿUmar b. al-Xaṭṭāb, who said that the Prophet left them without explaining the *abwāb al-ribā* (types of usury). (For details on this, see *ibid*, 151-152).

<sup>328</sup> For the sake of economy, I will not represent all the three types of *mujmal* word in diagrams in the present work. Nor, I think, is it necessary to do so. Therefore, I will only represent the type where although a word is already assigned to a sense through *waḍf luḡawī*, the religion of Islam assigns a new sense to the word, causing the existence of multiple senses for a single word, which leads to ambiguity as to the intended meaning of it on speech occasions, because of which the word is called *mujmal*.

the special prayer) represents ‘the class of special prayer (*ṣalāh*) described by the Prophet’.

#### 3.3.2.4. *Mutašābih*

Al-Nasafī defines *mutašābih* as the intended meaning of a name the inquiry into which has ceased (*inqaṭaʿa*).<sup>329</sup> Intrinsically, clarification of this type of ambiguous word, which is at the highest level of ambiguity according to scholars such as Molla Jīwan,<sup>330</sup> is not even desired. As he did in his explanation of *xafī* and others, Molla Jīwan uses a simile to explain the category of *mutašābih*; he says that *mutašābih* is like a man missing from his town all trace of whom is lost and whose peers as well as neighbours have died out. I think this implies that one cannot seek to find this lost man because there is no one who knows him left. Similarly, we are left with no trace of him and the clothes he had on him when leaving which would have otherwise helped us identify him in one way or the other.

Al-Nasafī, as always, mentions the legal ruling of this linguistic category. He says that one has to believe in the veracity of whatever the intended meaning of the *mutašābih* word is until *al-iṣāba*,<sup>331</sup> which is a word Molla Jīwan explains with *yawm al-qiyāma*, that is, the Day of Judgment. Therefore, Molla Jīwan goes on to say, it is

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<sup>329</sup> Al-Nasafī, *al-Manār*, I, 152.

<sup>330</sup> Molla Jīwan, *Nūr al-Anwār*, I, 152.

<sup>331</sup> Al-Nasafī, *al-Manār*, I, 152.

*mutašābih* before the Day of Judgement, but it becomes *makšūf*, uncovered, afterwards for the *umma*.<sup>332</sup> This implies that the meanings of *mutašābih* words were already known to the Prophet. Otherwise, Molla Jīwan says, it would be absurd for God to use this type of word in the Qurʾān. This is the position of the Ḥanafīs.<sup>333</sup> Šāfiʿīs and some Muʿtazilīs hold that the intended meanings of *mutašābih* words were known not only to the Prophet but are also known to those who have acquired in-depth knowledge (*al-rāsixūn fī al-ʿilm*),<sup>334</sup> which is a variant opinion based on Qurʾān 3:7.<sup>335</sup>

This translates as:

He it is Who has sent down to you the Book: In it are verses basic or fundamental (of established meaning); they are the foundation of the Book: others are allegorical. But those in whose hearts is perversity follow the part thereof that is allegorical, seeking discord, and searching for its hidden meanings, but no one knows its hidden meanings except Allah. And those who are firmly grounded in knowledge

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<sup>332</sup> Molla Jīwan, *Nūr al-Anwār*, I, 152.

<sup>333</sup> The Arabic reads “*wa-ammā fī ḥaqqi n-nabiyyi ʿalayhi s-salāmu fa-kāna maʿlūman wa-illā tabṭulu fāʿidatu t-taxāṭubu wa-yaṣīru t-taxāṭubu bi-l-muḥmali ka-t-takallumi bi-z-zanjīyi maʿa l-ʿarabiyyi wa-hādā ʿindanā*” (ibid).

<sup>334</sup> Ibid.

<sup>335</sup> هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ الْفِتْنَةِ وَابْتِغَاءَ تَأْوِيلِهِ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ وَالرَّاسِخُونَ فِي الْعِلْمِ يَقُولُونَ آمَنَّا بِهِ كُلٌّ مِنْ عِنْدِ رَبِّنَا وَمَا يَذَّكَّرُ إِلَّا أُولُو الْأَلْبَابِ

say: "We believe in the Book; the whole of it is from our Lord:" and none will grasp the Message except men of understanding.

Ḥanafīs consider that there is pause between "...but no one knows its hidden meaning except Allah" and the sentence that follows. However, Imām Šāfi'ī considers that there is no such pause between them. Molla Jīwan then goes on to argue that there is no serious implication in this difference of opinion.<sup>336</sup>

Al-Nasafī then provides examples of such words and says that *al-muqattaʿat* mentioned at the beginning of some chapters of the Qurʾān are also of this kind, such as "*alif-lām-mīm*" and "*ḥā-mīm*". These so termed because, Molla Jīwan says, we read each constituent letter separately.<sup>337</sup> He also adds that we do not know the meanings of such words because they are not assigned to any meanings in the Arabic language.<sup>338</sup>

He then talks about two kinds of *mutašābih* words: those that are primordially assigned to a meaning, yet the meaning intended by God is not known because the *waḍʿī*<sup>339</sup> meaning of such words is in contradiction to that of a *muḥkam* word<sup>340</sup> as 'yad' in "*yadu llāh,*" 'wajh' in "*wajhu llāh,*" and 'stawā' in "*ar-raḥmānu ʿalā l-ʿarṣi*

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<sup>336</sup> Molla Jīwan, *Nūr al-Anwār*, I, 153.

<sup>337</sup> The Arabic reads "*naqṭaʿu kulla kalimatīn minhā ʿani l-uxrā fī t-takallumī*" (ibid, 154).

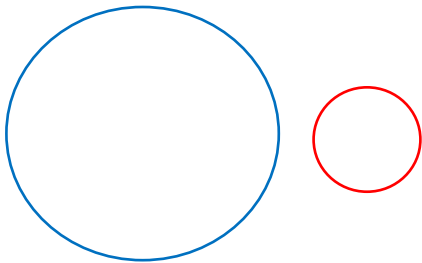
<sup>338</sup> Ibid, 154.

<sup>339</sup> Again, by *waḍʿī*, what is really meant is *waḍʿī luḡawī*.

<sup>340</sup> Later in this work, I will talk about how to reconcile matters when a word which has a lower degree of clarity contradicts one that has a higher degree.

*stawā*,” each of which contradicts such verses as Qur’ān 42:11,<sup>341</sup> which translates as “...there is nothing whatever like unto Him...”, as all assign features that normally belong to human beings to God. The second type of *mutašābih* words are those that are not assigned to any meaning in the Arabic language, like *al-ḥurūf al-muqattaʿa* found at the beginning of some of the chapters in the Qur’ān like “*alif-lām-mīm*” and “*ḥā-mīm*”.

**Figure XIV**



In Figure XIV, the blue circle represents ‘the class of everything’. *Mutašābih* words such as ‘*alif-lām-mīm*’, represented here with red circle, cannot be drawn even within the blue circle because we know nothing as to the definition (including *faṣl* and *jins*) of *mutašābih* words.

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<sup>341</sup> فَاطِرُ السَّمَاوَاتِ وَالْأَرْضِ ۚ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَمِنَ الْأَنْعَامِ أَزْوَاجًا يَذُرُّكُمْ فِيهِ ۚ أَلَيْسَ كَمِثْلِهِ شَيْءٌ ۚ وَهُوَ السَّمِيعُ الْبَصِيرُ

### 3.4.ANALYSIS OF THE SECOND CATEGORIZATION: BUILDING THE SECOND PART OF THE GENERAL FRAMEWORK

In an effort to reconstruct a general framework, I will now analyse the material I presented in the second categorization. As we have seen in the example of *sāriq*, when explaining the category of *xafī*, one may not know each and every word's relationship with the other related words perfectly; however, the meanings of these words themselves may be clear within themselves. As I explained above, according to *uṣūlīs*, although the meanings of the words *sāriq*, *nabbāš*, and *ṭarrār* were known even before the revelation on this matter, it was not known whether the meanings of *ṭarrār* and *nabbāš*, were included in *sāriq*. This is a phenomenon that is referred to as *xafā'* (ambiguity) due to an *ḥāriḍ* (obstacle). This *xafā'* is referred to as an ambiguity as to the hierarchical relationship each one of them (namely, *sāriq*, *ṭarrār*, and *nabbāš*) has with the others in the present work.

Following *ṭalab* (pondering) upon the characteristics/features of each, Molla Jīwan noted, one realizes that *sāriq* is a word used to signify a person who steals secretly from a protected place. When comparing this against the meanings of the other two words, one comes to realize that *ṭarrār* is in fact a type of *sāriq* who steals from a protected place secretly, the only difference being that in the case of *ṭarrār*, the place is the body of the owner of the item being stolen. As for *nabbāš*, it is a word used to signify a person who steals shroud from graves. Since a grave is not protected, scholars concluded that a *nabbāš* is not a type of *sāriq*. In other words, we realize that

we cannot consider *nabbāš* to fall within the class of *sāriq* but that of, maybe, *thief* (i.e. the concept of thief, expressed here by the English word ‘thief’). To sum up, we did not know if the meanings carried by the words *nabbāš* and *ṭarrār* were included in the meaning carried by the word *sāriq* before our pondering upon the semantic features of each word in question until the verse triggered our attention to look into this.

This ignorance as to the hierarchical relationship between these three words before the revelation indicates something significant as to the nature of language, which is the fact that we do not make the grouping of individual entities in our world perfect, and this grouping gets better as we feel the need to make it more precise. This is something I will now turn to in an effort to complete an important part of the general framework I am trying to reconstruct based on the linguistic categories found in *uṣūl* works such as *al-Manār*.

Laknawī, commenting on the next category *muškil*, says something relevant here, namely that *muškil* is what requires *ṭalab* and *ta’ammul* while *xafī* requires only the former. This holds, however, he says, for the person who is well-versed in the language. For the ignorant person, he says, even a *xafī* word becomes *muškil* and therefore the analysis of these categories is appropriate to the person who knows the

language well.<sup>342</sup> The fact that these categories are established in relation to the person who knows the language well implies that knowing a language very well does not mean that all the classes and sub-classes and the relationships between them are known completely, as seen in the example of *sāriq*. Accordingly, what does it actually mean to say that the words *sāriq*, *ṭarrār*, and *nabbāš* were *dāhir* (clear) even before *ṭalab* (pondering)? What do scholars really mean when they assert that we knew the meanings of *sāriq*, *ṭarrār*, and *nabbāš* before our pondering upon them?

I think that what we know well of each of these is their *faṣls* (differentiae) and not necessarily their *ajnās* (pl. of *jins*, which means a genus/class).<sup>343</sup> In fact, my understanding is that scholars knew well the *faṣl* (differentia) of each of these, namely the *faṣl* of ‘stealing from a protected place secretly’ for *sāriq*, the *faṣl* of ‘stealing from the body of a person secretly’ for *ṭarrār*, and the *faṣl* of ‘stealing from a grave’. Although they had a good understanding of these *faṣls*, they did not have a good understanding, as it turns out, of the classes each belonged to. Even before the Qur’ān triggered their attention to reconsider the relationship between *sāriq*, *ṭarrār*, and *nabbāš*, they knew that each is a type of thief, so they knew that each belonged to the class of thieves. However, *ṭarrār*, it turned out, was not only a member of the class of thief but also a member of the (sub-)class of *sāriq*. In other words, what they did not

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<sup>342</sup> al-Laknawī, *Qamar al-Aqmār*, I, 149.

<sup>343</sup> See Lane, *An Arabic-English Lexicon*, 470.

know was the nearest class which each of these belonged to. From this we can conclude for the purpose of building a general framework for *uṣūlīs'* linguistic classification that for some items we do not have the most precise classification in our minds. And I think this is a natural ramification of the way in which we human beings deal with the inherent nature of language.

As I mentioned initially in this work, human beings get around the inherent nature of language, which I described as problematic, by naming groups instead of individual entities, i.e. through the practical way of name-giving. When doing this, the purpose was, as explained, to reduce the number of things to be named. Instead of naming all the entities using a distinct name for each, which would be an ideal, though impractical, way of communication, human beings name groups and then refer to each entity under the designated group using the name of the group. This solution, although it allows them to refer to an almost infinite number of things using a limited number of names, leads to ambiguity as to the scope of the group name, as it stands for an almost infinite number of entities that fall under that group. To clear away this ambiguity, which I call in this work the *side-effect 1* of using the practical way of name-giving, human beings use linguistic devices such as adjectives, time and space adverbs, etc., which function to limit the number of potential referents of the group name in a given speech occasion, thus resolving the ambiguity as to the referent of any given word.

Although naming groups instead of each entity thus proves to some extent practical in getting around the difficulty inherent in language, it does not completely solve all the problems surrounding it. In fact, the number of entities in our world is almost infinite, and classifying all of them under groups also proves almost impossible for the purpose of communication.<sup>344</sup> Therefore, naming groups and not entities (i.e. the practical way of name-giving) to get around the difficulty inherent in language leads to other two *side-effects*—which I will refer to as the *side-effect 2* and the *side-effect 3* in this work—in the sense that these *side-effects* lead to impediments to perfect communication between the members of the same linguistic community. These *side-effects* are the fact that we either make the classification imperfect for some entities or we do not make some entities subject to classification at all – two *side effects* which we try to remedy when we realize them.

As for the *side-effect 2*, it involves making an imperfect grouping, such that human beings assign a name to each group they may have as a concept in the back of their minds but they placed such groups (maybe it is better to use the term ‘sub-classes’ in this case for clarification) under classes as large as, say, “the class of existence”. In fact, the category of *xafī* is what refers to words with imprecise

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<sup>344</sup> Today almost every manufactured good may have a designated name, so the pen I have on my table and the pens my readers may own probably have their own designated manufactured numbers. Yet, we do not use these numbers for communication purposes in everyday life.

grouping. As seen in the example of the word *sāriq*, *ṭarrār* and *nabbāš*, before the revelation on this matter triggered our attention, scholars were not clear about the perfect grouping of these three words.<sup>345</sup>

In order to remedy the *side-effect 2*, we would need to ponder upon the class of the word subject to imperfect grouping to figure out the relationship it has with other concepts related to it. This involves taking a serious look at the features of the group (represented by the name of the group, i.e. word) with an eye to understanding its relationship with other related groups, as seen in the example of *uṣūlīs'* analysis of the relationship the word *sāriq* has to other related words, namely *ṭarrār* and *nabbāš*. Once we have a better understanding of their relationship, we can then have a better picture of grouping/classification, which is more precise and refined. Upon pondering on its relation to *sāriq*, *uṣūlīs* realized that *ṭarrār* was in fact a type of *sāriq*, which shows the fact that human beings may not have the most precise classification of entities in the world. When considering this against the background that this linguistic classification we see in *uṣūl* works is not for the ignorant but for those who are well-versed in the language, as I mentioned that al-Laknawī notes, therefore, I concluded that there are items in the world that human beings have not classified precisely. This was, as I argued above, due to the use of the practical way of name-

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<sup>345</sup> See section 3.3.2.1.

giving, as opposed to the ideal way of name-giving, as a solution to the problem which I refer to as the ‘inherent nature of language’.

The *side-effect 3* involves human beings not making some entities, be they physical or abstract, subject to classification/grouping at all. This results in the fact that there are some concepts in the world that fall outside the current comprehension of human beings, and when they do realize the existence of these and would like to refer to them via the medium of language, they face the difficulty of doing so as there is no previously assigned names for such concepts, as in the example of the *mujmal* word *halūfa* or the *muškil* phrase *qārūra min fiḍḍa*, as explained above.<sup>346</sup>

In an effort to remedy the *side-effect 3* of the existence of concepts for which no name is assigned in the language due to their recent discovery (or recent desire to refer to it through the medium of language), when we come across such a concept, we seek to find a way to refer to it through language:

1. Either by assigning a new name to it. In other words, we can coin a word that was previously not assigned to any meaning in the language. This would constitute a *waḍʿ*. As a result, what we have is an unknown meaning denoted by an unknown word. This constitutes *mujmal*, as the intended meaning of the word is unknown by the addressee, who would then need to go through the process of *istifsār*

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<sup>346</sup> See section 3.3.2.2

(asking for clarification as to the intended meaning of the word) and once the addresser provides a *tafsīr* (explanation), the *mujmal* word turns into *mufassar*.

2. Or by using an already existing name of an entity (or entities) probably on the strength of a relationship between an existing sense and the proposed new sense.

2.1. This could be done by using a single word as in the use of the word *ṣalāh* to denote the special prayer described by the Prophet. This would constitute a new *waḍʿ*, and in the case of Islam, this *waḍʿ* is called *waḍʿ ṣarḥī*. Such a word would, therefore, fall under the category of *mujmal*. This requires the listener/reader to make *istifsār* (asking for clarification as to the intended meaning of the word) so that he/she understands its intended meaning once the speaker/writer provides the *tafsīr* (explanation) requested. Then, the *mujmal* word turns into *mufassar*.

2.2. Or it could be done by using a combination of multiple names of entities that already exist in an effort to denote the meaning of the unknown concept as in the case of *qawārīr min fiḍḍa*. Such a word would fall under the category of *muškil*. This requires only *ṭalab* and *taʿammul* and would not require *istifsār*, as explained in section 3.3.2.2 above.

It is also worth noting that the possibility of using a given word already assigned to a meaning in the language to denote another meaning not assigned to it *waḍʿan* constitutes, as I pointed out before, *majāz* (figurative usage) according to

scholars of Arabic. Yet, sometimes the religion of Islam assigns a new sense to a given word different from the sense the word denotes through its *waḍʿi luḡawī*. Any sense besides the one assigned by the religion of Islam also constitutes *majāz* according to *uṣūlīs*, as I will discuss below.<sup>347</sup>

Thus, there is almost always the possibility of *majāzī* usage. This leads to ambiguity as to the meaning of any given word. This ambiguity is cleared away through textual or extratextual clues indicating that the word is used in its *ḥaqīqī* sense. Consider, for instance, “*wa-lā ṭāʾirin yaṭīru bi-janāḥayhi*”.<sup>348</sup> *Ṭāʾir* (bird, but also used for postman, probably by extension) can be interpreted figuratively, but the textual clue that follows, namely, ‘that which flies with its two wings’, closes the door to figurative interpretation. Such words from which the possibility of *majāzī* (figurative) interpretation is removed by clarifying the intended meaning of the speaker/writer through textual clues is called *mufassar*.

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<sup>347</sup> See 3.5.2.

<sup>348</sup> Qurʾān 6:38. The full verse is as follows: وَمَا مِنْ دَابَّةٍ فِي الْأَرْضِ وَلَا طَائِرٍ يَطِيرُ بِجَنَاحَيْهِ إِلَّا أُمَّمٌ أُمَّتُكُمْ ۚ مَا قَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ تَمَّ إِلَىٰ رَبِّهِمْ يُحْسِنُونَ

Figure XV

Making the 2<sup>nd</sup> categorization



References to a given concept through extralinguistic ways are excluded from Figure XV above. All the linguistic categories which *uṣūlīs* analyse under the second categorization are presented in Figure XV with reference to the unifying theme of practical way of name-giving. There are two categories that I did not include in the figure, though.

In this regard, *muḥkam* is missing in Figure XV. This is because it is about the *ḥukm* not the word/utterance. It involves a *ḥukm* which differs from *mufassar* in that it cannot be abrogated. The feature of not-to-be abrogated can be added to *ḥukms* (judgements/statements) through textual clues indicating the continuity/continuation or the eternity of the validity of the *ḥukm* such as ‘*abadan*’ or ‘*xālidīna fī-hā*’, due to which *uṣūlīs* refer to such case as *muḥkam li-ḡaynihī*, to distinguish them from *muḥkam* words that acquired the status of *muḥkam* in a different way, which I now discuss briefly.

This feature, as I mentioned above, can also be added to the *ḥukm* by the fact that the person who gives the judgement (*ḥukm*)/statement ceases to give any new judgments (or, perhaps better to say, closes the door to new judgments in such a way that it cannot open again). This is something which happened when the Prophet passed away. God, who was sending the judgements through the Prophet, closed the door of revelation after stating that “*al-yawma akmaltu la-kum dīnakum wa-atmamtu ḡalaykum niḡmatī wa-raḡītu la-kumu l-islāma dīnā.*” (This day I have perfected for you

your religion and completed My favor upon you and have approved for you Islam as religion). Therefore, there will be no new judgments to be included in the Qur'ān, and thus no abrogation will take place within it.

Thus, each verse in the Qur'ān acquired the status of *muḥkam* ultimately, as I explained in section 3.3.1.4 above. The body of judgements included in the Qur'ān cannot be abrogated altogether either, as the last individual through which God sent His judgements has passed away. Therefore, according to *uṣūlīs*, none of the *aḥkām* (legal rulings) in the Qur'ān altogether, except for those abrogated by others within the Qur'ān, can be abrogated. In other words, they have acquired the status of *muḥkam*, which *uṣūlīs* refer to as *muḥkam li-ġayrihī* because such *aḥkām* (legal rulings) themselves do not include such textual indicators indicating the continuity or eternity of their validity in themselves.

I will finally briefly discuss my understanding of *mutaṣābih*, which is also a linguistic category discussed by *uṣūlīs* within the second categorization but one that I have not included in Figure XV above due to practical reasons, which I will mention briefly below.

I think to make sense of the category of *mutaṣābih* within the general framework for linguistic analysis I am building in this work, what one needs to do, as always, is to consider the key characteristics of it mentioned in *uṣūl* works. I think the most significant feature of the category of *mutaṣābih* is the fact that Muslims should

not even desire to know such a word's meaning. As I mentioned, there is no way Muslims can know the intended meaning of God with such words, and as a result, Muslims do not ask for clarification of such words. In addition to the notion that Muslims cannot even desire to know the intended meaning of such words, there is another notion worth considering: there is one person (or according to another opinion, some people) who actually understand(s) the intended meaning of such words. According to Ḥanafīs, the only individual who knows the intended meaning of Allāh with *mutašābih* words is the Prophet. The meanings of such words, as I explained above, will be understood by all the Muslims in the hereafter.

When considering these two notions, namely the fact that the message is closed to all and that the Prophet is the only person (maybe along with a limited number of other Muslims) who understand(s) it before the day of Judgement, I think it makes sense to conclude that this category constitutes an encrypted message, a message which is physically there and open to everyone to observe, yet its meaning is closed to all except the one whom the message is intended to be conveyed to. In other words, all the other linguistic categories are ones whose intended meanings are intended to be conveyed to all who know the language and have the other necessary tools to understand the intention of Allāh with a given expression such as the explanations given by Allāh and His Prophet that function to clarify intended meanings of words with ambiguities, but the intended meaning of the category of *mutašābih* is, at least

for now, i.e. until the day of Judgement, intended to be understood only by the Prophet.<sup>349</sup>

One obvious potential reason for such an encrypted message being made available to all to observe yet intended to be understood only by the Prophet could be to elevate the status of the Prophet above other human beings, as he is the only one being really addressed out of all other human beings, and this privilege of his is being made clear to all the others who are aware of the verse. It is as if the head of the state sends text messages to his prime minister and asks him to forward all the messages to the other ministers as he receives them. Among these messages there are some that are encrypted and can only be viewed by the prime minister, while the only element of these messages that appears to the other ministers is a blurred screen. They also receive another open text message informing them that such blurred text messages are encrypted and only the prime minister knows their meanings, and that others are urged to believe the message whatever it may be. It would be inappropriate for the other ministers to ask the prime minister what the head of the state meant by the encrypted messages as it is obvious to them that these messages are deliberately not shared with them.

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<sup>349</sup> These two may be considered to be an indication that the Prophet was considered to be the ideal *addressee* of the revelation.

Similarly, the *mutašābih* words such as *alif-lām-mīm*<sup>350</sup> do not allow members of the linguistic community of the Arabs to understand the intended meaning of them, as they do not accord with the regular way of forming words. In fact, *al-ḥurūf al-muqaṭṭaʿa* are read as separate letters, so the intended meaning is completely hidden from regular members of the linguistic community on purpose. Therefore, it would be inappropriate for Muslims to ask for clarification of the *mutašābih* words, as such verses are encrypted, and their intended meanings are hidden from them on purpose, whatever this purpose may be. This issue is addressed in the Qurʾān, 3:7<sup>351</sup> which discourages Muslims from seeking to find out the intended meanings of such words in the Qurʾān. The verse translates as follows:

He it is Who has sent down to you the Book: In it are *muḥkam* (absolutely clear) verses, they are the foundation of the Book: others are *mutašābih*. But those in whose hearts is perversity follow the part thereof that is *mutašābih*, seeking discord, and searching for its hidden meanings, but no one knows its hidden meanings except Allah. And those who are firmly grounded in knowledge say: "We believe in the Book; the whole of it is from our Lord:" and none will grasp the Message except men of understanding.

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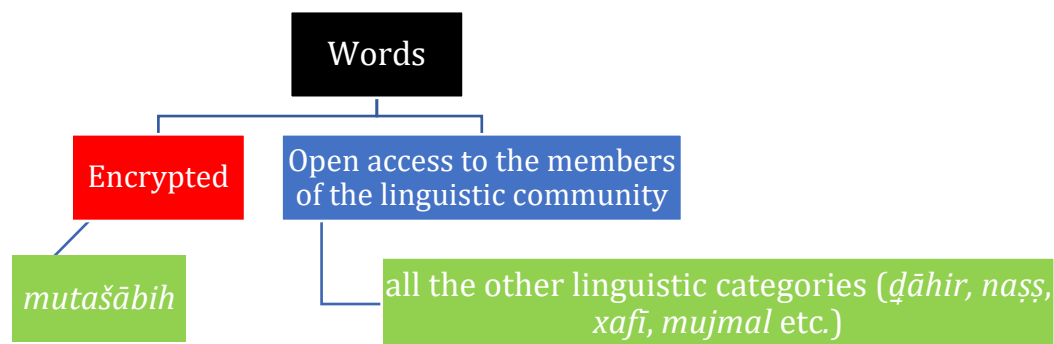
<sup>350</sup> Qurʾān 2:1.

<sup>351</sup> هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ الْفِتْنَةِ وَابْتِغَاءَ تَأْوِيلِهِ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ وَالرَّاسِخُونَ فِي الْعِلْمِ يَقُولُونَ آمَنَّا بِهِ كُلٌّ مِنْ عِنْدِ رَبِّنَا وَمَا يَذَّكَّرُ إِلَّا أُولُو الْأَلْبَابِ - 3:7

Therefore, the category of *mutašābih* differs from all the other categories in that according to Ḥanafīs it is intended to be understood only by the Prophet in this life and to be observed and believed in it by everyone else. Since *mutašābih* words thus do not convey the message in a regular way, I have represented this category as distinct from all others in Figure XVI below.

**Figure XVI**

**Place of *mutašābih* in relation to all other categories**



**3.5. THIRD LINGUISTIC CATEGORIZATION: ACCORDING TO *WUJŪH ISTIṢMĀL AL-NADM***

In the first linguistic categorization, we have seen the categorization of words into linguistic categories by virtue of their significatory function as bearers of meaning. According to the first categorization, as we have seen, *uṣūlīs* divided words into four sub-categories, namely, *xāṣṣ*, *ʿāmm*, *muštarak*, and *muʿawwal*. With the exception of *muʿawwal*, which involves *tarjīḥ* (preponderance) on the part of the addressee(s) to determine the intended meaning of *mutašābih* on actual speech

occasion, the categories under the first categorization are based on differences in the assignment of words to senses and the scope/range of words and do not take into consideration actual usage.<sup>352</sup> In the second categorization, however, we have seen linguistic categories divided into categories based on clarity or ambiguity of the intended meaning of words in speech occasions.

As I have touched upon earlier, the intended meaning of a word does not have to be the sense it was assigned through *waḍḥ luġawī*. In fact, there are other *waḍḥ* processes a given word may have gone through: namely *waḍḥ ʕurfī* and *waḍḥ ʕarʕī*. Beyond the senses a word may denote *waḍḥan*, words may well be used to denote senses other than the ones they are assigned to it through one of these three *waḍḥ* processes. I shall call this type of usages non-*waḍḥī* usages.

Non-*waḍḥī* usages constitute a type of *majāzī* usage, but they are not the only ones that constitute *majāzī* usage. As a matter of fact, according to *uṣūlīs*, if the intended meaning of a given word used in a speech occasion is its *ʕarʕī* sense,<sup>353</sup> this usage is considered to be the word's *ḥaqīqī* sense. If not, it is considered to be its *majāzī* sense. The question that one asks at this point is "What is this *waḍḥī* sense of a word?" I will now analyse *waḍḥ* briefly.

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<sup>352</sup> For more information, see *mu'awwal* in section 3.1.4 above.

<sup>353</sup> If there is no separate assignment of a given word to a sense by the religion of Islam, then its *waḍḥ luġawī* is the *ḥaqīqī* sense.

Human beings in a language community share, and agree upon, word-meaning correlates that they inherit often from their parents, correlates that consist of words along with senses that they signify. I am using the word ‘senses’ in the plural on purpose because some words may signify more than one sense, all of which are known to the linguistic community and thus part of the language. In fact, *uṣūlīs* held that there could be several occasions of name-giving processes that a given word may have gone through, and therefore, it may have been assigned to different senses in each of these name-giving processes.

Discussions among Muslim scholars of the origin of language was essentially concerned with the establishment of word-meaning relationship for each word.<sup>354</sup> How did human beings end up communicating with each other through sounds (later also through written marks representing the sounds) denoting meanings? How did people agree upon this enormously large body of word-meaning correlates in a given linguistic community?

There were different theories even among Muslim scholars as to the origin of language.<sup>355</sup> However, according to the prevailing opinion, the language was taught

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<sup>354</sup> Weiss, “Language in Orthodox Muslim Thought”, 8.

<sup>355</sup> See, Weiss, *The Search for God’s Law*, 118, Shah, Mustafa, “The Philological Endeavours of the Early Arabic Linguists: Theological Implications of the *tawqīf-iṣṭilāḥ* Antithesis and the *majāz* Controversy (Part I)”, *Journal of Qur’anic Studies*, 1, no.1 (199): 27-46 and “The Philological Endeavours of the Early Arabic Linguists: Theological Implications of the *Tawqīf-iṣṭilāḥ* Antithesis and the *Majāz* Controversy (Part II)”, *Journal of Qur’anic Studies* 2, no. 1 (2000): 43-66.

to Adam by God in its entirety. This view is based on verse 2:31, which translates, “And He taught Adam all the names. Then He showed them to the angels and said, “Inform Me of the names of these, if you are truthful in your claim.”<sup>356</sup>

Thus, scholars hold that the initial process of name-giving in human history plays a central role in the establishment of the language. Regardless of the fact that Adam was taught by God of all the names of all things initially, Muslim scholars also hold that during the course of their development, particular words may have gone through multiple processes of name-giving. During each of these a word may be assigned to a different sense, a notion which I will now turn to.

*Uṣūlīs* such as al-Nasafī note that there are three types of name-giving processes (*waḍḥ al-luġha*), through each of which a word may get assigned to a different sense.<sup>357</sup>

Each of these senses is established as part of the language and shared by the linguistic community. The first sense is the *waḍḥī* sense, or to be more precise, *waḍḥ*

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<sup>356</sup> وَعَلَّمَ آدَمَ الْأَسْمَاءَ كُلَّهَا ثُمَّ عَرَضَهُمْ عَلَى الْمَلَائِكَةِ فَقَالَ أَنْبِئُونِي بِأَسْمَاءِ هَؤُلَاءِ إِنْ كُنْتُمْ صَادِقِينَ. Weiss, “Language in Orthodox Muslim Thought”, 19-20. For various reports on this, see Ṭabarī, Abū Jaʿfar Muḥammad b. Jarīr, *Tafsīr Ṭabarī: Jāmiʿ al-Bayān ʿan Taʾwīl Āy al-Qurʾān*, ed. ʿAbd Allāh b. ʿAbd al-Muḥsin al-Turkī (Dār Hijr, n.d.), 514-519.

<sup>357</sup> A process of name-giving that takes place after the word was initially assigned to a particular sense may not assign a new sense to the word. In this case, it is unnecessary to speak of “a new *waḍḥ* (name-giving) process.” Therefore, anytime, for instance, the religion of Islam adopts the word-meaning correlates assigned previously, one cannot speak of a *ṣarḥī waḍḥ* in relation to a given word. In other words, if *uṣūlīs* speak of a word’s *ṣarḥī* sense, then it means that the sense that the religion of Islam (*Ṣarḥa*) assigned to that word is different from the one assigned to it primordially. Similarly, if one talks about the *ʿurfī* sense of a given word, then it is likely that it will be different from the sense assigned to it primordially or the one assigned by the religion.

*luġawī*, which is the one determined in the primordial moment in time. The second type of sense, which a word denotes *waḍḥan* (by virtue of being assigned to a particular sense) is its *ḥurfī* sense,<sup>358</sup> the one determined by local conventions. Finally, there is the sense determined by the *Šarīʿa*, which is referred to as the *šarʿī* sense, the sense of a given word to which the word is assigned by the religion of Islam. All the three senses of a given word, given all three types exist for a particular word, constitute part of the language that is shared by the linguistic community, though at different levels.

Let us assume (i) that one of the members of the linguistic community would like to convey a meaning which he/she has in mind to another member of the same linguistic community, (ii) that this meaning happens to be given a name through one of the three name-giving processes so that the linguistic community in general is already aware of this assignment, and (iii) that he/she decides to make use of this already established word-meaning correlate to express his/her feelings. In this case, this usage constitutes a *waḍḥī* usage (assigned usage) and the sense the word is used in is referred to as *al-maʿnā al-waḍḥī* (assigned sense).

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<sup>358</sup> Weiss offers 'postmordial' as a translation for *ḥurfī* sense, which is formed in correlation to its correlate, namely, 'primordial [sense]' (Weiss, *The Search for God's Law*, 122). Designation of the term postmordial sense to *ḥurfī* sense seems to overlook, however, *šarʿī* sense.

Similarly, if the speaker decides to coin a word, by which I really mean to make *waḍʿ*, i.e. to assign a word to a meaning, this would constitute, I think, personal name-giving, what I may term as *al-waḍʿ al- šaxṣī*,<sup>359</sup> a name-giving that is at the personal level. If this happens to be adopted by other members of the linguistic community on a local level, then I think this would constitute a *waḍʿ ʿurfī*.<sup>360</sup> However, only one of these would constitute the *ḥaqīqī* sense in the eyes of *uṣūlīs*, namely the *šarʿī* sense. Therefore, if a word is assigned a sense by the religion of Islam different from its *waḍʿī luġawī* and *ʿurfī* senses, any senses besides the *šarʿī* sense constitute *majāzī* senses.

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<sup>359</sup> This is itself an example of coining a word that we may refer to, I propose, as *waḍʿ šaxṣī*. However, I say this with caution, as there may already exist a name given to such phenomena somewhere that I am not aware of. However, for the purpose of making it easier for myself and for my readers, it is better to have a term, rather than not having one in order to be able to deploy it to build more complex ideas. And if it is true that no other name was assigned to that concept before, this will be a contribution to the field. In addition, as a practical benefit, we will be able to assert more confidently that this is an example of *waḍʿ šaxṣī*. In addition, as I noted in section 3.3.2.3, the term *waḍʿ šaxṣī* seems to be very similar to the term ‘nonce word’ in linguistics (see Crystal, *A Dictionary of Linguistics*, 329).

<sup>360</sup> In fact, it seems that the term *waḍʿ (waḍʿ luġawī)* that *uṣūlīs* use is peculiar to the assignment done at the primordial moment in time, and that it cannot be used for an assignment of a given word to a given meaning at a later time. However, there may be yet another type of *waḍʿī* sense. It appears to me that *waḍʿī* usage could be divided into four types: *waḍʿ luġawī*, an assignment assigned at the primordial moment in time and shared on the linguistic community level, *waḍʿ ʿurfī*, an assignment shared on a local community level, *waḍʿ šarʿī*, an assignment that the *Šarīʿa* established and made part of the language, and finally what I call *waḍʿ šaxṣī*, an assignment that is still on the personal level. All the four types constitute *waḍʿī* usage, which could be defined as using a word in a sense that the word was assigned to. *Uṣūlīs* may refer to a word used in one of its *waḍʿī* meaning as *maʿnā ḥaqīqī* (often referred to as literal sense). (I am saying “may refer to” because if there is a *šarʿī* sense assigned to a given word, then *uṣūlīs* considers it the only *ḥaqīqī* sense and consider even the sense assigned to the word through *waḍʿ luġawī* as *majāz*). However, the fourth type differs from the other three *waḍʿī* usages in that it involves using a word in a sense that is not previously assigned to any other word and therefore is not known to anyone else besides the coiner of the word. Therefore, I have called it *waḍʿ šaxṣī*. Besides these *waḍʿī* usages, there is also *non-waḍʿī* usage, which is using a word in a sense primordially (*waḍʿan*, more precisely only the first three types of *waḍʿī*) assigned to another word. *Non-waḍʿī* usage thus constitutes *majāzī* usage of words.

Thus, the sense of a word to which it is assigned by the religion of Islam, that is, its *waḍḥī šarḥī* sense, constitutes its *ḥaqīqī* meaning while the other assigned senses *majāzī* meaning. Besides these *waḍḥī* senses, a given word may also be used in such a way so as to denote senses which the word is not assigned to in the language. This type of sense constitutes a *non-waḍḥī* sense and is also referred to as a *majāzī* (figurative) sense. Context plays a crucial role<sup>361</sup> in determining whether the word is used in the *ḥaqīqī* or in a *majāzī* sense.

The categorization presented in section 3.3 above focused on the phenomenon of word-meaning correlation and offered sub-categories according to clarity or ambiguity of word in denoting meaning. It was not a division that took into account whether a given word's intended meaning is its *ḥaqīqī* or a *majāzī* sense thereof. The present categorization is based on actual language usage and takes context into consideration.

In actual speech conditions, be they written or spoken, we may go beyond the assigned meanings and use words in such a way as to denote senses conventionally denoted by other words. Compare, for instance, the use of the word 'pen' in "Writing with a pen is more enjoyable than typing on a computer," (a sentence I dealt with in section 2.7 above), with its use in the following sentence: "The pen is mightier than

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<sup>361</sup> Weiss discusses this role on several occasions in his book. See, for instance, Weiss, *The Search for God's Law*, 114.

the sword”. Let us analyze the word “pen” here. Due to our knowledge of the concepts of “pen” and “sword”, we are convinced that normally a pen cannot be mightier than a sword. This leads us think that the word “pen” is not used here in its primordial meaning, the meaning assigned to it initially, but rather, to denote another meaning, which is the meaning conventionally denoted by another word. This could be the word *ʕilm* ‘knowledge’, which the pen is a tool of.

If a word is assigned a *waḍʕ ʕarʕī* sense and on a particular occasion used in its *waḍʕī ʕarʕī* sense, then it is called *ḥaqīqa*, and this usage is referred to adverbially as *ḥaqīqatan*. When it is used, however, in a meaning other than its *waḍʕī ʕarʕī* sense, then it is called *majāz*, and this usage is referred to adverbially as *majāzan*. On the other hand, if the word has no *waḍʕ ʕarʕī* sense assigned to it, then its *waḍʕ luḡawī* is its *ḥaqīqī* sense and all the other senses its *majāzī* senses. This constitutes the focus of this section.

As seen in the first classification, at least according to the Ḥanafīs, the boundaries of a given word used *majāzan*, as is the case with “pen” here in the above sentence, can also be limited by the linguistic devices mentioned above.<sup>362</sup> In other words, the categories that constitute the first division of words are applicable to words used in both the *ḥaqīqa* and *majāz* senses. Therefore, one can speak of a word

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<sup>362</sup> See section 2.7 above.

used in a *majāzī* sense as being *xāṣṣ* or *ʿāmm* or *muṭlaq* or *muqayyad* just as one can speak of a word used *ḥaqīqatan* as such.

The division between *ḥaqīqa* and *majāz* plays a crucial role in determining the outcome of the process of interpreting the texts of Islamic law. Consider the verse from the Qurʾān that I mentioned as an example at the beginning of this work, “As for the male and female thief, cut off the hands of both...”<sup>363</sup> Should we take the verb “to cut” literally and punish the thief with amputation of his/her hand? Or should we take the word “to cut” to mean “to prevent,” rather in a figurative sense, and punish the thief using any appropriate means that would prevent him/her from stealing again, such as imprisonment? (Here taking the part, i.e. his/her hand, to represent the whole, i.e. the person is a figure of speech in the science of *balāġa* in Arabic called *al-majāz al-mursal* (synecdoche)). Or from another angle, should we take the imperative form to be referring to an obligation or to a recommendation?<sup>364</sup>

People go beyond already established correlates of word-meaning (*waḍʿī* usage) and assign words to meanings of other words, which constitutes *majāzī* usage. And given that the text of the Qurʾān is revealed in Arabic and is full of *majāzī* usages, scholars such as al-Nasafī thus needed a linguistic theory that would allow them to

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<sup>363</sup> Qurʾān 5:38.

<sup>364</sup> To use Searle’s terminology on this for comparison, what is the illocutionary force of the verse, and what would be the perlocutionary act resulting from this verse? For a discussion of locutionary act, illocutionary act, and perlocutionary act, see Parker, *Linguistics for Non-Linguists*, 14-15.

establish a consistent legal system that is bound by it, as this would allow them to answer questions posed in the previous paragraph. What are the rules, if any, for using a word in a sense that is *waḍʿī* assigned to another word? Such questions needed to be given an answer within a linguistic theory that *uṣūlīs* strove to establish, a theory that is ideally internally consistent and in line with the principles of the sources of Islamic law. To this end, al-Nasafī included in his discussion of linguistic categories for interpreting the sources of law such categories as *ḥaqīqa*, *majāz*, *ṣarīḥ*, and *kināya*, which I will now turn to.

### 3.5.1. Ḥaqīqa

According to al-Nasafī, *ḥaqīqa* (literal meaning) is the name of a word whose intended meaning on a particular speech occasion in which it is used is its *waḍʿī* (assigned) meaning.<sup>365</sup> As I have pointed out in the previous section, the *ḥaqīqī* sense of a word could be *luḡawī*, *ʿurfī*, or *ṣarīfī*. Yet, if there is a *ṣarīfī* sense assigned to a word, then its sole *ḥaqīqī* sense is its *ṣarīfī* sense. A *ḥaqīqa* word’s legal ruling (*ḥukm*) is that it denotes its *waḍʿī* sense.<sup>366</sup> Again, what is meant by *waḍʿī* sense is a given word’s *waḍʿī ṣarīfī* sense if there is one, which renders its *waḍʿī luḡawī* and *waḍʿī ʿurfī* (given that it has one) senses *majāzī*, as discussed in the previous section.

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<sup>365</sup> The original text reads “*ammā l-ḥaqīqatu fa-ismun li-kulli lafḍin urīda bi-hī mā wuḍʿīfa la-hū*” (see al-Nasafī, *al-Manār*, I, 154).

<sup>366</sup> Molla Jīwan, *Nūr al-Anwār*, I, 155.

There are, in fact, no hard and fast boundaries that separate such topics as *ḥaqīqa*, *majāz*, etc., and I shall have to cross the lines in discussing *majāz*. Therefore, most of my attention, at least for now, will be given to *majāz*. As a result, I will keep this discussion of *ḥaqīqa* somewhat brief and move on to the next section, namely *majāz*.

### 3.5.2. Majāz

Al-Nasafī defines *majāz* (figurative meaning) as the name of a word whose intended meaning on a particular speech occasion is other than its assigned (*waḍīfī*) meaning, that is to say, a non-*waḍīfī* meaning, on the strength of a relationship between the assigned meaning and the non-assigned meaning.<sup>367</sup>

There are rules for going beyond the conventional usage of word-meaning correlates. Otherwise, i.e. if one could use a given word in a sense assigned to any arbitrarily chosen word, this would cause a breakdown in communication between people. Therefore, *uṣūlīs* state that there has to be a relation between the two meanings (i.e., the assigned meaning and the non-assigned meaning).<sup>368</sup>

The relationship between the two meanings is not *ruqn* (a constituent part) of *majāz* but rather a condition (*ṣarṭ*) of it, however. The necessary element for *majāz*

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<sup>367</sup> The original text reads “*wa-ammā l-majāzu fa-ismun li-mā urīda bi-hī ḡayru mā wuḍīfa la-hū li-munāsabatīn bayna-humā*” (see al-Nasafī, *al-Manār*, I, 155).

<sup>368</sup> Molla Jīwan, *Nūr al-Anwār*, I, 155.

is, in fact, to find a *qarīna*—which could be translated as a ‘contextual clue’ helping to draw the lines of the meaning of a given word— that would indicate that the literal sense of the word cannot possibly be meant on a particular occasion. For instance, the word *yatāmā* in the verse *wa-ātū l-yatāmā amwālahum* (Give to the orphans their wealth.) cannot be used in its *ḥaqīqī* sense, as orphans are given their wealth only after they reach puberty, which is something based on another indicator.<sup>369</sup> Those who have reach that age are no longer called *yatīm*. Thus, the word *yatāmā* (sing. *yatīm*) should be considered on this particular occasion as a *majāz*. There are different kinds of *majāzī* usages, which are often dealt with under *ʿilm al-bayān* in *balāġa* works.<sup>370</sup> In fact, one of the ways *majāzī* usage is done is by referring to something with either its past status (*iftibār mā kāna*) or its future status (*iftibār mā yakūn*). The former is used here in this particular usage of the word *yatāmā*.

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<sup>369</sup> This has to do with reconciliation of conflicting indicators on legal matters. In fact, it is not uncommon in Islamic Jurisprudence to have several indicators from the sources of Islamic law that offer conflicting solutions to a given legal question. There are several ways a *mujtahid* may use to overcome these conflicting reports through different processes such as abrogation and textual selection. Another frequently used method is figurative interpretation. A *mujtahid* faced with conflicting reports may interpret one of them as figurative (*majāzī*) and thus will be able to base his legal ruling on the report used in either the literal or figurative sense, as they are no longer in conflict on the same level of reality. In other words, a *mujtahid* considers the conflict to be superficial by asserting that one of the reports that appear in conflict with the other(s) is used in a figurative sense, and therefore poses no question as to the integrity of the legal ruling he may base on the report(s) used in literal senses. I assume that the opposite could also be the case: it may also be that a *mujtahid* considers the report with the figurative language to serve as the basis for his *ḥukm* simply because the law maker, the author of the main sources of Islamic Law, i.e. God, may have expressed His intended meaning in a figurative way in that particular instance, such as is the case with the verb *lāmasa* in *lāmastum* ([when] you touched) which unlike Šāfiʿī scholars, Ḥanafīs interpret figuratively as meaning “you had intercourse.” There are rules and conditions that govern the intellectual process of the figurative usage of words and interpretation of such usages.

<sup>370</sup> See, Bolelli, *Belāġat*, 33.

Therefore, the verse means: “Give their wealth to those who have reached puberty who were previously called orphans.”

### 3.5.3. Şarīḥ

Al-Nasafī defines *şarīḥ* as a word whose intended meaning, be it *ḥaqīqa* or *majāz*, has become completely clear.<sup>371</sup>

Molla Jīwan mentions that the clarity of the intended meaning is not thanks to a *qayd* but rather due to its common usage.<sup>372</sup> Because it does not need any *qayd*, Molla Jīwan mentions, *naşş* and *mufassar*<sup>373</sup> are excluded from the definition of *şarīḥ*. To illustrate, we can consider the sentences “*anta ḥurr*” and “*anti ṭāliq*”, the meanings of both of which are clear due to common usage. In other words, we do not need to ponder on the literal meaning of the sentence “*anti ṭāliq*” and then see the relation it has to the intended meaning here, which is a speech act to divorce a woman, and finally make the conclusion that this is a *majāzī* usage, because it is crystal clear to members of the linguistic community what each of these sentences means without them needing any clue indicating the intended meaning of such words.

The *ḥukm* of *şarīḥ* is to base the ruling on the sentence itself and to put it into the position of its meaning even if this [substitution] would cause any

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<sup>371</sup> Al-Nasafī, *al-Manār*, I, 242.

<sup>372</sup> Molla Jīwan, *Nūr al-Anwār*, I, 242.

<sup>373</sup> These are subject matters of the second categorization of *lafẓ*. I will deal with these in section 3.3.

inconvenience.<sup>374</sup> In other words, Molla Jīwan explains, the speaker does not need to intend the meaning of a *ṣarīḥ* word. For instance, if he intended to say “*Subḥāna llāh*” but “*anti ṭāliq*” (I divorce you!) rolled off his tongue, the divorce goes through even if he has no intention whatsoever to divorce his wife.<sup>375</sup> Similarly, Molla Jīwan adds, such sentences as “*biṣtu*” or “*iṣṭaraytu*” are also *ṣarīḥ* words, and therefore the mere usage of these words causes the acts of selling or buying.<sup>376</sup>

#### 3.5.4. Kināya

Al-Nasafī defines *kināya* as a *kalām*, be it a *ḥaqīqa* or *majāz*, whose intended meaning is obscured, and thus its meaning is only understood with the presence of a *qarīna* (contextual clue). For instance, what is meant by a given personal pronoun cannot be known by itself; rather, it requires textual or extratextual clue(s), to make the referent of the pronoun known to the listener/reader.<sup>377</sup>

Its legal ruling is that there is no legal obligation to act on it except [when it is accompanied] by the intention of the speaker.<sup>378</sup> Therefore, for instance, Molla Jīwan states, that with the sentence “*anta bā’in*”, divorce does not take place unless the

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<sup>374</sup> Molla Jīwan, *Nūr al-Anwār*, I, 242.

<sup>375</sup> These topics have much to do with the speech acts in pragmatics proposed by Searle, e.g. locutionary, illocutionary, and perlocutionary acts. See, for instance, Parker, Frank, *Linguistics for Non-Linguists* (London: Taylor and Francis Ltd., 1946, 10-21).

<sup>376</sup> Molla Jīwan, *Nūr al-Anwār*, I, 242.

<sup>377</sup> Ibid, 243.

<sup>378</sup> Searle proposes that in order to perform a speech act, one of the felicity conditions is that the speaker must have appropriate intentions to perform the act (see, Parker, *Linguistics for Non-Linguists*, 14), which is similar to the case here with *kināya* words.

speaker intends it.<sup>379</sup> This is because the word “*bā’in*” means leaving, and the sentence “*anta bā’in*” has come to mean that “we left each other,” that is, “we are no longer together.” Through this, one can speak of ending the relationship of marriage and friendship, etc. Therefore, Molla Jīwan notes, the meaning of the word “*bā’in*” is obscured/ambiguous and needs clarification through intention of the speaker or an clue of *ḥāl* or other clues.<sup>380</sup>

It is worth highlighting the relationship which *ṣarīḥ* and *kināya* have with *ḥaqīqa* and *majāz*. *Ṣarīḥ* and *kināya* can denote a *majāzī* or a *ḥaqīqī* sense. In fact, *ṣarīḥ* is a word whose meaning is clear due to the common usage of the word in a particular sense, to which the *ṣarīḥ* word signifies clearly without any doubt. This sense could be a *ḥaqīqī* sense or a *majāzī* sense.

The same applies to a *kināya* word, whose intended meaning is not clear to the addressee(s) until further clarification revealing the intention of the speaker is present. The intended meaning of a *kināya* word, which the word itself cannot signify clearly, could be its *ḥaqīqī* sense, i.e. the sense to which the word was assigned through *waḍʿ*, or a *majāzī* sense which the word happens to be used *majāzan*.

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<sup>379</sup> Molla Jīwan, *Nūr al-Anwār*, I, 243.

<sup>380</sup> *Ibid*, 243.

### 3.6.ANALYSIS OF THE THIRD CATEGORIZATION: BUILDING THE THIRD PART OF THE GENERAL FRAMEWORK

Figure XVII

#### Making the 3<sup>rd</sup> categorization

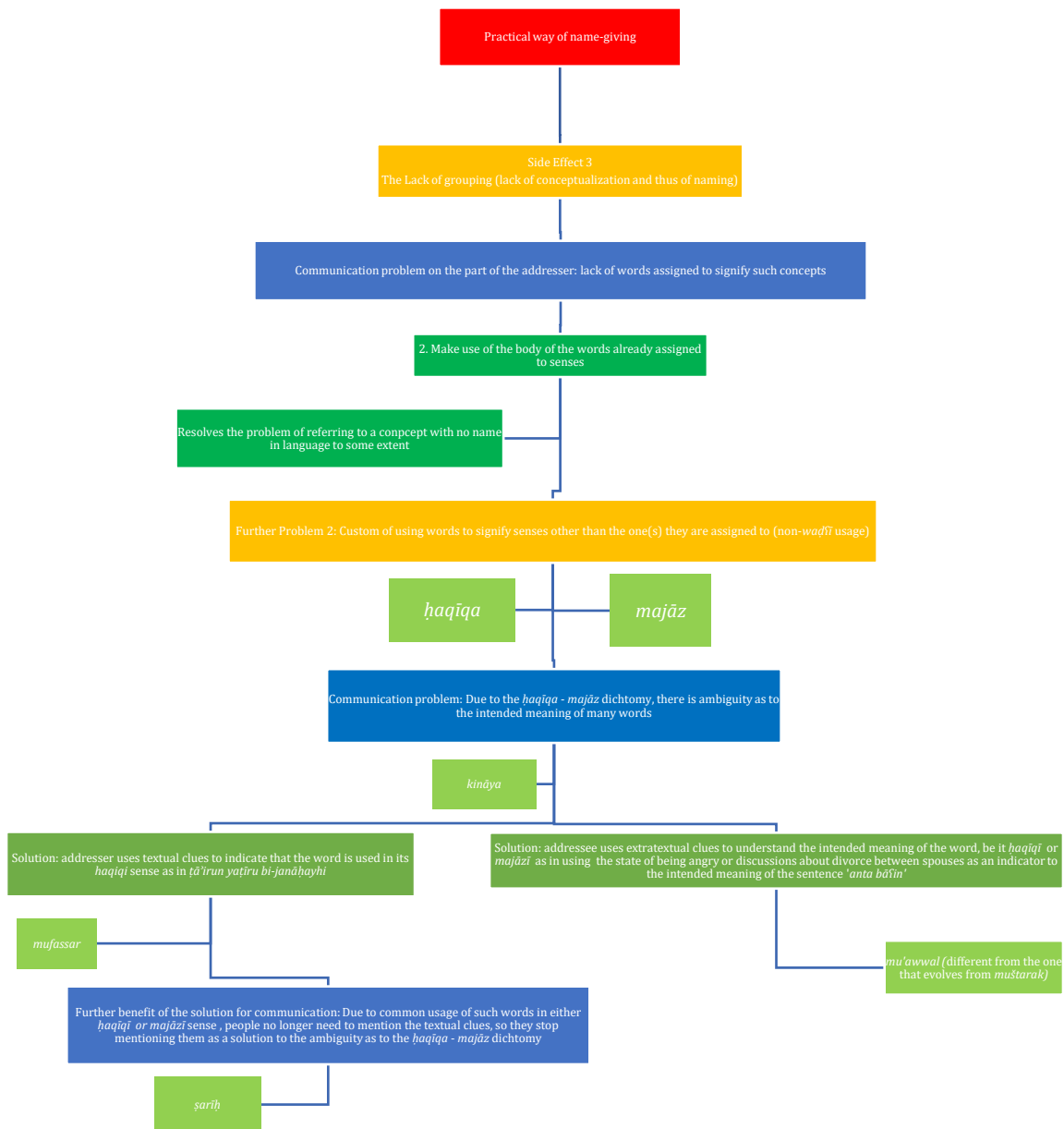


Figure XVII represents the formation of the linguistic categories which *uṣūlīs* place under the third categorization. Making use of words already assigned to (a) given sense(s) to signify another concept previously unknown to the community and thus had no name in the language is, as explained in my analysis of the second categorization, useful in solving the *side-effect 3*, which is represented in Figure XVII with a yellow box. However, it leads to another ramification: the custom of using words to signify senses other than the assigned ones, which is represented with another yellow box in the figure above.

This ramification itself gives rise to ambiguity as to the meaning of many words. In fact, due to the fact that it is possible that on an actual speech/writing occasion, people go beyond the established word-meaning correlates, a given addressee may well take any given word that he/she may be hearing/reading as not signifying its *mawḍūf lah* sense (*waḍḍī* sense, i.e. the sense it was assigned to) but rather a *majāzī* sense. Such words having the possibility of being used in a *majāzī* sense in addition to being used in their *ḥaqīqī* sense are called *kināya*. This is represented with a light green box in the diagram above.

To resolve this ambiguity, i.e. whether a given word is used in its *ḥaqīqī* sense or in a *majāzī* sense, one makes use of textual clues provided by the addresser clarifying the intended meaning of a given word by indicating whether it is used in a

*majāzī* or *ḥaqīqī* sense. Then the word turns into *mufassar*, as explained above.<sup>381</sup> Due to the fact that in such a way of resolving ambiguity, the contextual clue (*qarīna*) that is being used is *siyāqiyya*/textual, the word turns into *mufassar* because it involves a *tafsīr* (explanation) on the part of the addresser. On the other hand, if a *qarīna* that is being used to resolve this ambiguity is *ḥāliyya*, it involves no *tafsīr* (i.e., explanation of the intended meaning on the part of the addresser). It rather involves *taʿwīl* (interpretation) on the part of the addressee to interpret the intended meaning of the addresser. As a result, interpretation based on *taʿwīl*, which is in turn based on *qarīna ḥāliyya*, leads to the linguistic category of *muʿawwal*,<sup>382</sup> not *mufassar*. *Qarīna ḥāliyya* (which seems to be what is referred to as ‘extratextual clue/evidence’<sup>383</sup> in modern linguistics in the sense that it is what provides information about a sentence/utterance while being outside of the sentence/utterance), such as the discussion of divorce or the state of one being angry, are used to interpret words with *kināya*, i.e. words that can be used in *ḥaqīqī* and *majāzī* senses. As a result, there are two ways to resolve the ambiguity of a given word with *kināya*: to use a textual clue (*qarīna siyāqiyya/qayd*) which involves a *tafsīr* (explanation) on the part of the

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<sup>381</sup> See section 3.5.4.

<sup>382</sup> Note that this *muʿawwal* is not the one that evolves from *muštarak*.

<sup>383</sup> In linguistics, ‘context’ is used in different ways. For instance, writers distinguish ‘verbal context’ and ‘situational context’, while others use terms like ‘co-text’ (for the language type) and ‘context’ for the situational one. For more information, see Crystal, *A Dictionary of Linguistics*, 108-110.

addresser or to use an extratextual clue (*qarīna ḥāliyya*) that involves *ta'wīl* (interpretation) on the part of the addressee.

There is a further benefit of the use of textual clues. In fact, presumably thanks to the common usage of some *kināya* words along with textual clues to indicate certain senses, people stop mentioning the textual clues explicitly to reduce the time spent expressing the thought. As a result, such a word (or phrase or sentence for that matter) that clearly signifies its intended meaning, be it *ḥaqīqī* or *majāzī*, not thanks to any *qarīna* but thanks to common usage<sup>384</sup> is then called *ṣarīḥ*, as I explained above. Because the clarity of *ṣarīḥ* is due to its common usage in a certain sense and not to an *qarīna* that indicates the intention of the speaker/writer, in Figure XVII I drew *ṣarīḥ* as a category of word-sense that comes into existence due to common usage and not through a *qarīna*.

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<sup>384</sup> Molla Jīwan notes that the clarity of *ṣarīḥ* is accomplished through its usage (*istiḥmāl*) among members of the linguistic community, so there is no need for a *qarīna*. Therefore, he adds, *ṣarīḥ* differs from *mufassar* and *naṣṣ*, as their clarity is due to the intention of the speaker or another clue (*qaṣd al-mutakallimi wa-l-qarā'ini*) (see Molla Jīwan, *Nūr al-Anwār*, I, 242). Apparently, what he means by “the intention of the speaker” should be an intention that is expressed in language, of course, as otherwise, i.e. if the intention is not put into words, then the hearer/reader would not have access to it, and as a result, such an untold intention would not make the ambiguous word/sentence the speaker/writer has previously said clearer.

### **3.7.FOURTH LINGUISTIC CATEGORIZATION: ACCORDING TO MAṢRIFAT WUJŪH AL-WUQŪF ʿALĀ AL-MURĀD**

As we have seen, in the first and the third categorization, *uṣūlīs* focused their analysis on the smallest independent unit of language, that is the word. However, in the second categorization, their analysis was centred on *kalām* (utterance). The same applies to their analysis in the fourth categorization, as Molla Jīwan notes.<sup>385</sup>

The idea behind this categorization is that an utterance can denote several propositions, which I can call “information” that consists of a complete thought, as in “*ra’aytu fulānan ḥīna jā’anī l-qawmu*” (I saw such and such when the people came to me). This sentence by itself denotes the following information: “The people came to me” and “I saw such and such.”

Furthermore, from the sentence “I saw the man when the people came to me”, we can also infer that the speaker/writer who saw the man kept his/her eyes open at the moment when he/she actually saw the man. Such questions as “Can a *mujtahid* derive a legal ruling based on each of these propositions?” and “Would each of these propositions that one can derive from the sentence carry the same authority?” come to mind immediately. Al-Nasafī and other *uṣūlīs* sought to find answer to questions

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<sup>385</sup> He says at the beginning of his discussion of the third category when commenting on the word *kalām* which al-Nasafī uses when defining the category of *dāhir*, “*wa-fī izdiyādi lafḍi l-kalāmi iṣāratun ilā anna ḥāḍḍā t-taqṣīma mimmā yataʿallaqu bi l-kalāmi ka r-rābiʿi kamā anna l-awwala wa-t-tāliḡa yataʿallaqu bi l-kalimati*” (Molla Jīwan, *Nūr al-Anwār*, I, 141).

such as these and present their answers within a consistent meaningful theory for deriving meaning from an utterance. This theory resulted in four ways of deriving meaning from an utterance.<sup>386</sup>

According to the majority of Ḥanafī *uṣūlīs*,<sup>387</sup> there are only four valid ways of deriving meaning from an utterance.<sup>388</sup> These are *istidlāl bi-ṣibārat al-naṣṣ*, *istidlāl bi-iṣārat al-naṣṣ*, *istidlāl bi-dalālat al-naṣṣ*, and *istidlāl bi-iqtidā' al-naṣṣ*. Accordingly, *lafḍ* that denotes the meaning in one of these four ways can be referred to as *(al-lafḍ) al-dāll bi-ṣibārat al-naṣṣ*, *(al-lafḍ) al-dāll bi-iṣārat al-naṣṣ*, *(al-lafḍ) al-dāll bi-dalālat al-naṣṣ*, and *(al-lafḍ) al-dāll bi-iqtidā' al-naṣṣ* respectively.

At this point, I shall briefly talk about al-Nasafi's methodology for covering this categorization of *kalām*.<sup>389</sup> In fact, he arranges the four ways of deriving meaning from an utterance in accordance with the *qaṭʿiyya* (definitiveness) of the meaning

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<sup>386</sup> By this, what is really meant, it seems to me, is a sentence that denotes at least a complete thought.

<sup>387</sup> Büyük Haydar Efendi, *Usul-i Fıkıh Dersleri*, 260.

<sup>388</sup> Besides these four, there are other ways of deriving meaning from a text/speech that are considered valid by İmām Şāfi'ī and others. For instance, İmām Şāfi'ī considers *mafhūm muxālaḥa* to be a valid way of deriving meaning from a text. The majority of Ḥanafīs, however, consider only the four ways of deriving meaning from a text/speech to be valid. Accordingly, the majority of Ḥanafīs consider *mafhūm muxālaḥa*, which they call "*taṣṣīṣ al-ṣay' bi al-dıkr*", to be an invalid way of deriving meaning from a text/speech. To illustrate, according to *mafhūm muxālaḥa*, the sentence "*Zaydun kātibun*" (Zayd is a writer) necessitates that people besides Zayd cannot not be writers as the speaker/writer only mentioned Zayd as being a writer. The Ḥanafīs consider this to be unacceptable. For more details on why they refute the validity of *mafhūm muxālaḥa*, see Büyük Haydar Efendi, 259-261.

<sup>389</sup> As I mentioned, *uṣūlīs'* discussion centres on *kalām* in the second and the fourth categorization while their focus is on the word in the first and the third categorization.

derived from each, and he starts with the strongest one in terms of *qaṭṭiyya* and then proceeds to the discussions of less strong ones in turn, thus covering all the four.

When discussing individual ways of deriving meaning, al-Nasafī first provides his definition of the category followed by an illustration of the definition with an example from the Qurʾān. Then he talks about how the way of deriving the meaning in question is related to the previous one.<sup>390</sup> In other words, instead of comparing the first with the rest and repeating the same with all four, al-Nasafī—who, as I mentioned, arranges them in descending order in terms of *qaṭṭiyya*—only compares the current one with the most recently mentioned one. This is a rather clever way of comparing four variables with each other in terms of economy. Covering all the four ways of deriving meaning from an utterance and comparing each with the previous one, al-Nasafī is thus able to compare all the four ways with each other in a very organized manner.

As we will see, the meaning derived through the first three ways of deriving meaning from an utterance are *qaṭṭī* because all the three meanings, be they “*mawḍūf lah* of the *lafḍ*” or “the meaning of the *mawḍūf lah*,” are attributed to the *naṣṣ*. Since the *naṣṣ* is *qaṭṭī*, its meaning or the meaning of its meaning is also considered *qaṭṭī*.<sup>391</sup>

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<sup>390</sup> As will be seen shortly, as always, Molla Jīwan steps in to explain almost every remark al-Nasafī makes.

<sup>391</sup> Büyüç Haydar Efendi, *Usûl-i Fıkıh Dersleri*, 252.

Before I deal with individual ways of deriving meaning from an utterance, I would like to first show the place of these ways of deriving meaning within the general framework I am building in this work. In fact, my contention is that the practical way of name-giving, which human beings use to deal with the inherent nature of language as a medium of communication that I talked about earlier naturally leads to the existence of these ways of deriving meaning from an utterance.

As noted in section 2.4, to communicate, human beings use words/names to refer to entities, but there are an almost infinite number of entities in the world to be named, which is called ‘the inherent nature of language’ in this work.

To overcome this difficulty, theoretically there are two solutions. The first is the more straightforward, though hypothetical<sup>392</sup> one: to name each and every one of the entities using a distinct name. This would lead to no confusion as to the scope or contents of any given word and thus aptly called ‘the ideal way name-giving’ in this work. Since this is not practical and probably impossible for us to accomplish, we need a way around to accomplish, at least to some degree, the desired clarity of expressions. The solution to this is first to group individual entities under classes and sub-classes in accordance with their *māhiyya* (quiddity) using the *jins* and *faʿl*

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<sup>392</sup> I am using the word ‘hypothetical’ to refer to something that exists only as an idea or concept (for details on the various meanings of word ‘hypothetical’, see <https://www.collinsdictionary.com/dictionary/english/hypothetical>).

method. Then we give a name for each (sub-)class. Following, we use the name of each (sub-)class to refer to individual objects that are grouped under each (sub-)class. Since the name stands for an almost infinite number of individual entities, however, we use linguistic devices such as adjectives to limit the potential individual entities within the (sub-)class name being referred to.

Referring to individual entities using (sub-)class names, which is the case with the second option for communication, instead of referring to each individual using an individual name as in the first option, is realistic and practical. However, since we are already using this second option, there are some ramifications to the second option that we may not appreciate without a close investigation into these. Such an investigation has, in fact, been done by *uṣūlīs*, and I argue that the outcome of this research is the linguistic categories that we see in *uṣūl al-fiqh* works.

Without realizing the fact that this investigation is, in fact, an attempt – and rather a successful one — to understand and work on the ramifications of the second option of attaining, to some degree, the desired clarity in communication, we shall not be able to appreciate the linguistic categories *uṣūlīs* advanced in their *uṣūl* works. To appreciate the ramifications of the second option, it is useful, for the sake of argument, to suppose that the extreme case, which is the first option in which we name each individual entity using a single individual name, was adopted.

In this hypothetical situation, since each name stands for a distinct *maʿnā*, meaning, members of a linguistic community that agreed on the body of such name-meaning correlates would not have any issue of ambiguity or indeterminacy when communicating.

The fact that we would have given to each potential *maʿnā* a distinct name also means that we would have given a name to a given item on each and every occasion of reference. For instance, we would have to refer distinctively to a pen which we saw yesterday on Ahmet’s desk compared to the same pen we saw on his desk today. We might therefore have called “the pen I saw yesterday on Ahmet’s desk”, say ‘x’, and “the same pen I saw today in his desk”, say, ‘y’. Further, we would have even called the meaning that I can express with a whole sentence in English as “The pen I saw on Ahmet’s desk yesterday was quite nice.” using a specific “name”<sup>393</sup> like ‘A’. If this was the case, I would have just uttered the sound ‘A’, and what would be understood by another member of the linguistic community would have been the meaning “The pen I saw on Ahmet’s desk yesterday was quite nice.” One can take this to an even greater extreme and talk about naming each event with a distinct name such as a particular allophone of the sound of ‘A’ represented with the symbol of ‘A<sub>133</sub>’.<sup>394</sup>

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<sup>393</sup> Conventionally we do not refer to a letter like ‘A’ with the word “name”. What I mean by name in this particular context is that which stands for a particular meaning even though this may be as short as a letter.

<sup>394</sup> Since there is an almost infinite number of potential ways of producing the sound ‘A’, there would have been no problem finding names for such a large body of meanings we would have given a name.

To further illustrate, let us assume that in such a hypothetical situation, the linguistic community we live in named all the body of the sentences that constitute the present work as it is with a distinct name of a particular sound 'A' that could be represented as, say, 'A<sub>131399ukdk</sub>'. Then I, as a member of this hypothetical linguistic community, instead of producing this piece of literature that consists of thousands of words, would have just uttered the sound 'A<sub>131399ukdk</sub>', and the whole piece of information would have been understood by another member of the same linguistic community. Having thus illustrated the hypothetical situation of giving each and every entity around us a distinct name, I can now turn to ramifications of not having such a hypothetical, yet ideal, way of naming and instead using the second option, namely the practical way of name-giving.

The practical way of name-giving was, as mentioned above, to make use of class and sub-class names to refer to each individual entity and limit the potential referents with certain linguistic devices such as time and place references and adjectives as in example I mentioned above "The pen I saw on Ahmet's desk yesterday was quite nice". This also limits the almost infinite number of potential referents of 'pen' to probably the one that the speaker saw at such and such a place and time.

To further clarify the ramifications of the practical way of name-giving, let us now compare it with the first hypothetical option, namely the ideal way of name-giving. In the practical way of name-giving, we have to use linguistic devices such as

adjectives, which is not the case in the first option. The function of such devices, as I mentioned, is to serve to limit the possible referents by a class or sub-class name. In other words, they are not mentioned in an utterance for their own sake, but rather, to allow communication based on a limited number of names for an almost infinite number of individual entities. Consider for instance, the sentence above “The pen I saw on Ahmet’s desk yesterday was quite nice.” The core of this sentence is “The pen was nice”, which *uṣūlīs* refer to as *ḥibārat al-naṣṣ*. The secondary sentence (clause) embedded into the whole sentence is “I saw [the pen] in Ahmet’s desk.” This altogether functions as an adjective (adjectival) to limit the potential referents of the class name ‘pen’. *Uṣūlīs* refer to this secondary sentence as *iṣārat al-naṣṣ*.<sup>395</sup>

Thus, both *ḥibārat al-naṣṣ* and *iṣārat al-naṣṣ* contain meanings. There are also other *maḥānī* (pieces of information) one can draw from the whole sentence, however. These are not mentioned explicitly in the utterance. Rather, the *maḥānī* mentioned in a given utterance require other *maḥānī* not mentioned explicitly in the text, which *uṣūlīs* refer to as “*lawāzim*” of the *maḥānī* mentioned explicitly in the text.

These pieces of information, although not mentioned in a given utterance, occur either before or after the mentioned ones. *Uṣūlīs* call the *lāzim* (singular of

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<sup>395</sup> There is a disagreement over whether *ḥibārat al-naṣṣ* or *iṣārat al-naṣṣ* refers to the utterance (*lafẓ*) itself or the signification (*dalāla*), as al-Laknawī notes. Like Molla Jīwan, I prefer the convention to use them to refer to the utterance itself. For more information over the disagreement, see al-Laknawī, *Qamar al-Aqmār*, I, 247.

*lawāzim*) that occurs before the mentioned ones as “*lāzim mutaqaaddim*” and the *lāzim* that occurs after the pieces of information which are mentioned in a given utterance occur as “*lāzim muta’axxir*”. Before I say more on the two types of *lāzim*, let me talk, rather briefly, about how these two types of *lāzim* relate to the general framework I am building in this present work for my analysis of the categorizations of *lafḍ*.

Another ramification of the practical way of name-giving is that it takes more time to express meanings as in the above-mentioned example “The pen I saw on Ahmet’s desk yesterday was quite nice.” In the hypothetical option (i.e. ideal way of name-giving), we would name the meaning that this sentence denotes as ‘A’, which would have been a very fast mode of communication. And since all we need is a single sound of, say, “A<sub>sdfs dwe11133</sub>” to communicate, we would have included such other pieces of information as “I entered Ahmet’s room at the university yesterday and then...” as in the following: “I entered Ahmet’s room at the university yesterday, and then I was going to get the book he left for me on his desk. Then I saw a pen on his table. I think it was nice.” Why not? After all, we want to be clear, and we are not limited as to the number of name-meaning correlates we can memorize and agree upon as the linguistic community nor do we have any limitation with regard to the size of the information contained by words. In the second option, however, since we are limited as to the number of name-meaning correlates that we can memorize and agree upon, we need to use linguistic devices to limit broad class or sub-class names

that include an almost infinite number of entities. This is a very time-consuming way of communicating compared to the communication where the ideal way of name-giving is used.

To reduce the time spent in this way of communication, we use another device, which is to omit pieces of information in a way that ideally<sup>396</sup> does not hinder communication.<sup>397</sup> Such pieces of information are called *ḥadf* (omission) in *balāġa* and *lāzim* in *uṣūl al-fiqh*. For instance, from the sentence “The pen I saw on Ahmet’s desk yesterday was quite nice.” we can infer pieces of information that either occur before or after the speaker saw the pen. For instance, we can infer that the speaker actually had to look at Ahmet’s desk in order for him/her to express the fact that he/she thinks the pen was nice. The speaker omitted the *maʿnā* of “I looked at Ahmet’s desk” in his/her speech. In other words, he/she did not put this meaning into words. However, what is meant in this omitted sentence, we can say, is necessary in order for what is mentioned in the speaker’s speech to take place. In effect, the speaker cannot possibly say what he/she actually said, which is his/her saying that the pen was nice before looking at Ahmet’s desk, which is not mentioned in the speech

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<sup>396</sup> There may be cases where a speaker may omit pieces of information needed to allow communication with hearers. This could be done either on purpose or unintentionally. This is one reason why sometimes people ask for clarification.

<sup>397</sup> This is not peculiar to linguistic communication. Consider, for instance, scenes that are not shot or included in a movie. Why would they in a movie, for instance, show the hours the characters spend in sleep unless the subject matter requires this?

at all. Because what is mentioned in the speech cannot possibly occur before what is omitted occurs first, it is referred to as “*lāzim mutaqaḍdim*” by *uṣūlīs*.<sup>398</sup>

We can also infer that the speaker had a feeling of appreciation when he/she actually saw the pen and made his/her statement. Therefore, we can say that the speaker omitted an utterance that would denote the meaning in “I liked it.” I believe that such an omitted part is what *uṣūlīs* refer to as “*lāzim muta’axxir*”.<sup>399</sup>

Besides these two types of *lāzim* meanings, one can also infer other meanings from a given utterance. For example, one can infer from the sentence “The pen I saw on Ahmet’s desk yesterday was quite nice.” that since the speaker considers that particular pen to be nice, there can be no other pen that she/he may like better. However, meanings of this type derived from a given utterance would not necessarily be true. Therefore, Ḥanafīs consider deriving such meanings that are not necessarily inferred from mentioned parts of a given thought (i.e. from a sentence/utterance) to be invalid for basing legal rulings on.

To sum up, *uṣūlīs* want to base their legal rulings on sound evidence. However, there are different meanings I can derive from an utterance. As we have seen, there are two meanings a given utterance can denote through itself. These are *ṣibārat al-*

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<sup>398</sup> See for instance, Büyük Haydar Efendi, *Usul-i Fıkıh Dersleri*, 254-255. *Lāzim mutaqaḍdim* is also referred to as *muḩtaḩā’* (see for instance, Molla Jīwan, *Nūr al-Anwār*, I, 260), but I prefer *lāzim mutaqaḍdim* over *muḩtaḩā’* as it allows comparison with its correlate *lāzim muta’axxir* better.

<sup>399</sup> Büyük Haydar Efendi, *Usul-i Fıkıh Dersleri*, 254.

*naṣṣ* and *iṣārat al-naṣṣ*. Due to the inherent nature of language, I proposed, speakers skip putting every detail of the meaning they have in mind into words where the practical way of name-giving is in use, as this allows them to communicate faster. Ideally this still allows communication because hearers can infer the omitted parts if they ponder upon the mentioned ones.

At this point, one naturally asks “Is it valid to base legal ruling on such inferred meanings?” *Uṣūlīs* propose that for such an inferred meaning to serve as a basis for legal rulings, it has to occur necessarily, either before or after the utterance. If such a necessary meaning occurs before the utterance, this omitted part is called “*lāzim mutaqqaddim*” and deriving such a meaning is referred to as “*al-istidlāl bi-iqtidā’ al-naṣṣ*”. If such a necessary meaning, on the other hand, occurs after the utterance, it is referred to as “*lāzim muta’axxir*”, this type of inference being referred to as “*al-istidlāl bi-dalālat al-naṣṣ*.” Besides these two *lāzim* meanings one can infer other meanings, but these do not necessarily occur and are thus not considered to be sound to base a legal ruling on. This must be the reason why *uṣūlīs* term the meanings derived through the valid ways of inference *lāzim* (necessary).

Thus, the practical way of name-giving, which human beings use to overcome the difficulty of what I refer to as the inherent nature language naturally leads to the formation of four ways of deriving meaning from an utterance. Now, I turn to *uṣūlīs’* discussion of these.

### 3.7.1. al-Istidlāl bi-ṡibārat al-naṣṣ

Al-Nasafī defines *al-istidlāl bi-ṡibārat al-naṣṣ*<sup>400</sup> as the act [of the *mujtahid*] in determining what the utterance (*kalām*) is said/put together (*sīqa*) for.<sup>401</sup> In other words, the process of deriving the primary intended meaning from an utterance is called “*istidlāl bi-ṡibārat al-naṣṣ*”. To put it different, *istidlāl bi-l-ṡibārat al-naṣṣ* is the act of a *mustadill*<sup>402</sup> upon the sense of a given utterance which the utterance is primarily uttered to convey. Accordingly, an utterance when it denotes such a meaning is referred to “*al-lafḍ al-dāll bi-ṡibārat al-naṣṣ*”.<sup>403</sup>

The key term here is *siyāq*, which distinguishes *ṡibāra*<sup>404</sup> from the other three ways of deriving meaning from an utterance. *Siyāq* refers to the way an utterance is constructed<sup>405</sup> to signify a particular meaning. To illustrate, consider the sentence,

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<sup>400</sup> As we have seen, the word *naṣṣ* is the name of a category of word under the third categorization where the analysis was centered on the clarity or ambiguity of a word in indicating its meaning. Here, however, the word *naṣṣ* refers especially to the text (*naḍm*) of the Qur’ān, which could be of any category including, but not limited to, *naṣṣ*, *ḍāhir*, *mutaṡābih*, *mufassar*, etc., as Molla Jīwan and al-Laknawī note (see Molla Jīwan, *Nūr al-Anwār*, I, 247 and al-Laknawī, *Qamar al-Aqmār*, I, 247).

<sup>401</sup> Al-Nasafī, *al-Manār*, I, 247.

<sup>402</sup> Al-Laknawī, *Qamar al-Aqmār*, I, 247. *Mustadill* refers to person who uses a text in the Qur’ān or the Sunna to derive legal rulings. It seems to be a synonym of *mujtahid*.

<sup>403</sup> Molla Jīwan notes that al-Nasafī’s treatment of the category of *istidlāl bi-ṡibārat al-naṣṣ* suggests that al-Nasafī considers it among the categories of *naḍm*, i.e. the word. Therefore, because *istidlāl* is not among the categories of words, Molla Jīwan finds it inappropriate to centre the discussion on the process of deriving meaning from the sources, i.e. on *istidlāl*. He seems to suggest that it is more appropriate to focus the discussion on the word and to speak of *al-lafḍ al-dāll bi-ṡibārat al-naṣṣ* rather than *istidlāl bi-ṡibārat al-naṣṣ* (see Molla Jīwan, *Nūr al-Anwār*, I, 247).

<sup>404</sup> *Uṡūlīs* sometimes refer to *ṡibārat al-naṣṣ* simply as *ṡibāra*. The same is true for all the four types of *istidlāl*. (See, for instance, Molla Jīwan, *Nūr al-Anwār*, I, 248). Sometimes, I will also make use of such abbreviated forms for the sake of economy.

<sup>405</sup> Wehr and Cowan, *A Dictionary of Modern Written Arabic*, 517. This meaning seems to match with the meaning of ‘syntax’ as it is sometimes used in linguistics today, which is “...the ways that words can be put together, or are put together, in order to make sentences.” (see the entry for the word “syntax” in Collins dictionary <https://www.collinsdictionary.com/dictionary/english/syntax>).

“When the people came to me, I saw such and such.” The core/focus of the sentence is “I saw such and such.” In other words, the speaker produces this utterance to convey to the hearer the information that he/she saw such and such. The other part of the utterance, namely, “when the people came to me,” only serves, in the way the speaker puts the two parts of the utterance together (i.e. in this *siyāq*), to limit the core/focus of the sentence with reference to a particular time by referring to a specific event that took place in the past. In fact, the speaker could have just mentioned the exact time of the act of seeing as in, say, “I saw such and such at 10:30 am yesterday.” given that he/she, in fact, saw such and such at that particular time. Therefore, the other part only serves to fix the core of the utterance to a specified time. This secondary part of the sentence, in this case, is what is referred to as the subordinate clause in linguistics.

Thus, this whole utterance (which is referred to as superordinate clause in linguistics) was put together, *sīqa lah*, to denote the meaning that the speaker saw such and such, and thus this main part of the sentence constitutes *ībārat al-naṣṣ*. However, the same utterance provides us with another piece of information: “the people came to the speaker/writer”, which constitutes a complete thought as well. However, as mentioned, this is not the focus of the utterance as it is put together. This part of the sentence is what *uṣūlīs* refer to as *iṣārat al-naṣṣ*.

How legitimate is it for a *mujtahid* to base his legal ruling on *išārat al-naṣṣ*, which is not the focus of the sentence? I will seek to find an answer to this question in the following section, which I now turn to.

### 3.7.2. al-Istidlāl bi-išārat al-naṣṣ

Al-Nasafī defines this as the act (of a *mujtahid*) on what is *tābit* (established) with *naḍmihi* (its expression) *luġatan* (through the medium of language), but which is not the [primarily] intended meaning nor is it the meaning which the utterance was put together to convey (*sīqa lah*), and which is not *dāhir* in all aspects.<sup>406</sup> The term that denotes such a meaning is *al-laḥd al-dāll bi-išārat al-naṣṣ*.

Molla Jīwan goes on to explain the definition, referring to its *iḥtirāzī* (exclusionary) and *ittifāqī* (concordant) *qayds* (notes). He considers the whole definition as *iḥtirāzī* except for the last part, namely, “which is not *dāhir* in all aspects.”

As for the *iḥtirāzī* parts, with the phrase *naḍmihi*, the definition includes *ṣibārat al-naṣṣ* as well as *išārat al-naṣṣ*. Molla Jīwan notes,<sup>407</sup> on the other hand, that the same phrase functions also to exclude *dalālat al-naṣṣ*,<sup>408</sup> as it is not *tābit* (established), with *naḍm* (the expression) of *naṣṣ* but rather with *maʿnā* (the meaning) of *naṣṣ*. He then

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<sup>406</sup> The Arabic reads “*wa-ammā l-istidlālu bi-išārati n-nāṣṣi fa-huwa l-ḥamalu bi-mā ṭabata bi-naḍmihi luġatan lākinnahū ġayru maqṣūdīn wa-lā sīqa lahū n-naṣṣu wa-laysa bi-dāhirin min kulli wajhin*” (Al-Nasafī, *al-Manār*, I, 248).

<sup>407</sup> Molla Jīwan, *Nūr al-Anwār*, I, 248. Although the phrase includes both *ṣibārat al-naṣṣ* and *išārat al-naṣṣ*, the former is excluded from the definition by another phrase added to the definition, namely “*lākinnahū ġayru maqṣūdīn wa-lā sīqa lahū n-naṣṣu*”, which I will mention below shortly.

<sup>408</sup> This is the category that I will deal with next.

goes on to say that the word *luġatan* excludes *al-muqtaḍā'* (required meaning), i.e. what is arrived at *iqtidā' al-naṣṣ*,<sup>409</sup> as it is not *ṭābit* through the medium of language but *ṣarḥan* or *ḥaqḥan* (through *Ṣarīḥa* or reason).

The phrase “which is not the intended meaning and not the meaning which the utterance was put together to convey” excludes *ḥibārat al-naṣṣ* from the definition. This is because *ḥibārat al-naṣṣ* carries the primarily intended meaning of the utterance, and its meaning is understood by the hearer from the *siyāq*, the syntax of the sentence, or to put it differently, the way the sentence is put together to convey the meaning.

Molla Jīwan mentions the function of the *ittifāqī qayd*, namely “*wa-laysa bi-ḍāhirin min kulli wajhin*”, which, he says, is included in the definition in order to emphasize the exclusion of *ḥibārat al-naṣṣ*<sup>410</sup> and thus further clarifies the overall meaning of the definition.<sup>411</sup> Molla Jīwan then explains the phrase “*wa-laysa bi-ḍāhirin min kulli wajhin*” by paraphrasing it as “*ḍāhirun min wajhin dūna wajhin*”<sup>412</sup> (is clear in some respects and not so in others). In other words, while *ḥibārat al-naṣṣ* is *ḍāhir* (clear) in all aspects, *iṣārat al-naṣṣ* is not and therefore, one who hears such

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<sup>409</sup> This is the fourth category. It will be dealt with in section 3.7.4 below.

<sup>410</sup> See Molla Jīwan, *Nūr al-Anwār*, I, 248.

<sup>411</sup> Ibid, 248.

<sup>412</sup> Ibid, 248.

an utterance needs *ta'ammul* (deliberation) to appreciate the meaning derived through *išārat al-naṣṣ*, as al-Nasafī notes.<sup>413</sup>

As seen from the definitions above, *ṣibārat al-naṣṣ* and *išārat al-naṣṣ* are very close to each other, and students of *uṣūl al-fiqh* may get confused in appreciating the definition of each and how they differ from each other. Sometimes concepts are hard to understand, and I found this to be so with these two. In such cases, it is useful to draw an analogy between what is purely conceptual and reality, and this is what *uṣūlīs* seem to do in this case as well. In fact, in an effort to clarify any ambiguity students of *uṣūl al-fiqh* may still have as to the nature of the two, Molla Jīwan in his *Nūr al-Anwār*<sup>414</sup> and al-Nasafī in his own commentary on *al-Manār*<sup>415</sup> make use of a simile.<sup>416</sup>

They draw an analogy between (i) the way in which *ṣibārat al-naṣṣ* and *išārat al-naṣṣ* differ from each other and (ii) the difference between the way in which one looks at something in front of oneself to see it and the way in which one happens to see those things which are next to that thing in the process. In fact, the way one sees that thing is different from the way one sees what happens to be next to it because the

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<sup>413</sup> Al-Nasafī, *Kaṣf al-Asrār*, I, 248.

<sup>414</sup> Molla Jīwan, *Nūr al-Anwār*, I, 248.

<sup>415</sup> Al-Nasafī, *Kaṣf al-Asrār*, I, 248.

<sup>416</sup> This type of simile involves *wajh al-šabah* (the mode/aspect of similarity) not being a single aspect, but rather one that consists of multiple aspects (as put in *balāġa* works as “*iḍā kāna wajhu š-šabahi fihi ṣūratan muntaziʿatan min mutaʿaddidin*”), and it draws an analogy between two occurrences rather than two objects. In Arabic *balāġa* works, this type of simile is referred to “*tašbīh tamṭīlī*.” The other type of simile, which draws an analogy between two objects, is referred to “*tašbīh ġayr tamṭīlī*.” (see Bolelli, *Belāġat*, 55-56).

former is an object that one is intending to see and is the focus of one's view. On the other hand, those things that happen to be next to that object are seen by the person without him/her intending to see them or him/her focusing their eyes on them.

I believe that the use of the difference between the two kinds of seeing – one with intention “*qaṣḍan*” (on purpose) and directedness toward a specific object and the other which happens to occur “*tabaṣan*” (following) the former – serves the purpose of helping the reader understand the difference between the concepts of *ṣibārat al-naṣṣ* and *iṣārat al-naṣṣ*.

In an effort to clarify the difference between the two, al-Nasafī then goes on to cite Qur’ān 2:233, which translates as “...he shall bear the cost of their food and clothing on equitable terms...”. The subject of the sentence translated here as “he,” whose Arabic reads “*al-mawlūdi la-hū*”, literally means “the born for” (i.e. the one to whom the (new)born belongs). This is a long way from saying “father” and involves a rhetorical feature referred to as “*iṭnāb*”<sup>417</sup> in *balāġa*. This triggers a careful scholar to ponder upon the reason behind it. This is because normally the Qur’ān uses the *ijāz*

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<sup>417</sup> In fact, there are three ways of expressing a thought in terms of the number of words used in the expression. *Iṭnāb* is used to refer to an object, be it a physical one or a concept, with more than enough words. The second way is to refer to an object with words that just match the meaning, which is *musāwāt*. The third is *ijāz*, where the meaning is expressed with fewer words than are normally required to express the thought (see Bolelli, *Belāġat*, 356-389).

method,<sup>418</sup> as this is considered to be the best way of expressing a thought unless there is some benefit in adopting another way.<sup>419</sup>

Following *ta'ammul* (deliberation) *uṣūlīs* came to realise that—along with the obvious meaning of the sentence one naturally derives from it, which is that the father is the one who is responsible to feed and clothe the baby and the mother—that there is another meaning (or to put it differently, another piece of information) one can draw from the verse, and to be precise, from the phrase “*mawlūdi la-hū*” (the one to whom the (new)born belongs to) in the verse. This is that the lineage of a child is affiliated to the father rather than to the mother. This is because, as *uṣūlīs* note, the pronoun *-hū* (third person masculine singular) instead of *-hā* (third person feminine singular) is used in *mawlūdi la-hū*.<sup>420</sup> Thus, they discover the reason behind the *iṭnāb* in the verse, and this reason is to make an *iṣāra* to another meaning which one can draw from the verse, namely, that the lineage belongs to the father. Therefore, al-Nasafī says, “*sammaynā-hu iṣāratān*”, meaning that they called this type of denoting meaning “*iṣāra*”.<sup>421</sup> *Uṣūlīs* also refer to an utterance that denotes a meaning in such a

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<sup>418</sup> As will be seen shortly, *iṭnāb* ultimately leads to the *ijāz* of the overall verse by allowing the verse to denote two meanings in a rather brief way.

<sup>419</sup> Bolelli mentions the following conditions and reasons that require *iṭnāb*: to support the meaning, to clarify intention and support it, and to clarify ambiguity (see Bolelli, *Belāğat*, 384).

<sup>420</sup> As for the preposition *li* (here with the allomorph *la-*) (لِ), which roughly corresponds to “for” in English, is assigned to two meanings: *tamlīk* (assignment of ownership) and *ixtiṣāṣ* (designation). Since it is not possible to own a free human being, the latter meaning of the preposition in the phrase *mawlūdi la-hū* is the correct one (Büyük Haydar Efendi, *Usûl-i Fıkıh Dersleri*, 237).

<sup>421</sup> Al-Nasafī, *Kaṣf al-Asrār*, I, 248.

way as *al-lafḍ al-dāll bi-iṣārat al-naṣṣ* and the way a *mujtahid* draws such a meaning from such an utterance as *al-istidlāl bi-iṣārat al-naṣṣ*.<sup>422</sup>

### 3.7.3. al-Istidlāl bi-dalālat al-naṣṣ

Rather than using the term *istidlāl bi-dalālat al-naṣṣ* to follow the pattern in the previous two categories in which he focused on *istidlāl* types, al-Nasafī now defines the legal ruling derived through the process of deriving meaning. In fact, he says, “As to the one (i.e. the *ḥukm*) established through *dalālat al-naṣṣ*, it is what is established (*tabata*<sup>423</sup>) with the meaning of *naṣṣ* through the medium of language not through *ijtihād*.”<sup>424</sup> A word that denotes such a meaning is referred to as *al-lafḍ al-dāll bi-dalālat al-naṣṣ*.

In an effort to explain the definition further, al-Nasafī notes in his own commentary<sup>425</sup> on *al-Manār* that what is established by virtue of *dalālat al-naṣṣ* is

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<sup>422</sup> Molla Jīwan, *Nūr al-Anwār*, I, 248.

<sup>423</sup> For possible translations of the verb *tabata*, see Lane, *An Arabic-English Lexicon*, 328. Molla Jīwan notes that shifting the centre of discussion from the process, namely, *istidlāl*, to the outcome of the process, namely, *ḥukm*, or even—to be more precise—to the *ṣifa* (adjective) thereof, which is *tābit*, is something that he considers to be *tasāmuḥ*, a mistake, originating from the writings of Faxr al-Islām, who shifted his discussion of the matter between the process, the outcome thereof, and the adjective relating to the outcome, and repeated by other scholars who came after him such as al-Nasafī (see Molla Jīwan, *Nūr al-Anwār*, I, 253). I think, however, that by centering his discussion of the subject on *ḥukm* or to be more precise, on its adjective, rather than on the process, i.e. *istidlāl*, al-Nasafī highlights the fact that he does not consider this process *ijtihād*, as it denotes a mental process involved in the process of *qiyās*.

<sup>424</sup> The emphasis on the fact that the process involves no *ijtihād* leads me to hold that al-Nasafī does not consider this particular process through which the *ḥukm* is derived as *istidlāl*, as he seems to require for such a process to be called *istidlāl* that the meaning is denoted through *ṣarīḥa* or reason. As the meaning derived through *dalālat al-naṣṣ* is not necessarily arrived at by the act of a *mujtahid*, and anyone within the linguistic community can derive it, he abstains from calling it *istidlāl bi-dalālat al-naṣṣ* (al-Nasafī, *al-Manār*, I, 252).

<sup>425</sup> Al-Nasafī, *Kaṣf al-Asrār*, I, 252, 253.

what is established through the meaning of *naṣṣ* in terms of *luġa* (i.e. via the medium of language)—something which he explains with the phrase “*maṣnan ḍāhiran*”. He then explains this by saying that it is a clear meaning which one arrives at merely by hearing the word without *ta’ammul* (deliberation). To further clarify, he adds that in arriving at this type of meaning for a given word, those who are *faqīhs*, i.e. experts on Islamic law, and normal members of the linguistic community (*ahl al-luġa*<sup>426</sup>) are alike.

Al-Nasafī then notes that since the *ḥukm* resulting from this type of process is not established by virtue of the word itself, he does not call it *ṣibārat al-naṣṣ* or *iṣārat al-naṣṣ*, thereby showing the difference between it and the previous two sub-categories of deriving meaning from a given utterance.

To differentiate it from *qiyās*, al-Nasafī calls *al-lafḍ al-dāll bi-dalālat al-naṣṣ* the outcome of *dalāla* (signification) and not *qiyās* (analogical deduction) because it is established by virtue of the meaning of a given word not by virtue of *ra’y* (opinion) or *ijtihād*.<sup>427</sup>

He also notes that what he means by “*al-maṣnā*” (the meaning) here is not *al-maṣnā al-mawḍūf lah* (the assigned meaning) but *al-maṣnā al-iltizāmī*,<sup>428</sup> which he

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<sup>426</sup> I think he means anyone who speaks the language in question rather than linguists.

<sup>427</sup> Al-Nasafī, *Kaṣf al-Asrār*, I, 253.

<sup>428</sup> Ibid, 253.

explains in relation to Qurʾān 17:23<sup>429</sup>: “And your Lord has decreed that you not worship except Him, and to parents, good treatment. Whether one or both of them reach old age [while] with you, say not to them [so much as], “ugh<sup>430</sup>” and do not repel them but speak to them a noble word”. In explaining the example, he mentions that *ḍarb* (beating) parents also becomes prohibited based on the prohibition ascribed to saying “ugh” to them, and this process involves no *ijtihād*.<sup>431</sup>

To explain the difference between *al-maʿnā al-mawḍūʿ lah* and *al-maʿnā al-iltizāmī* in relation to the verse al-Nasafī cites, Molla Jīwan mentions that *al-maʿnā al-mawḍūʿ lah*<sup>432</sup> of the part of the verse that translates “Do not say to them ugh!” is “*an-nahyu ʿani t-takallumi bi-uffin faqat*”<sup>433</sup> (prohibition of saying to the parents the word

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429 وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا ۖ إِمَّا يَنْتَغَمَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلَاهُمَا فَلَا تَقُلْ لَهُمَا قَوْلًا كَرِيمًا

430 The Arabic reads “*uffin*” which is literally a ‘puff’ or a ‘blast of breath’. In the Arabic language, this is an interjection often used to denote disgust, vexation, or distress of mind (Lane, *An Arabic-English Lexicon*, 67).

431 Al-Nasafī, *al-Manār*, I, 253. *Ijtihād* involves *qiyās* (anology), and I think it is worth noting here the difference between *qiyās* and *dalālat al-naṣṣ*. In fact, Büyük Haydar Efendi explains the subtle difference between *dalālat al-naṣṣ* and *qiyās* in terms of four aspects, each of which shows that it is a mistake to regard *dalālat al-naṣṣ* same as *qiyās*: 1) In *dalālat al-naṣṣ*, *manṣūṣ* could be a part of the *farʿ* as in the following example, which Büyük Haydar Efendi mentions, where a Lord says to his servant, “Do not give a grain of salt to him!” which prohibits giving of a kilogram of salt to that person as well. Prohibition of giving a grain of salt is based on the *ṣibārat al-naṣṣ*. Prohibition of giving of, say, a kilogram of salt to that person is based on the *dalālat al-naṣṣ*. According to consensus, Büyük Haydar Efendi says, *ṣaṣl* cannot be a part of *farʿ* in *qiyās*. However, if we were to say that prohibition of giving of a kilogram of salt is based on the prohibition of giving of a grain of salt, the former (prohibition of giving a kilogram) would have been *farʿ* and the latter (prohibition of giving of a grain) would have been *ṣaṣl*, in which case *ṣaṣl* would have been part of *farʿ*, which contradicts the general rule in *qiyās*, as noted. 2) *Dalālat al-naṣṣ* is established even before *qiyās*. 3) The *manāt* of *dalāla* is understood through language while the *manāt* of *qiyās* relies on *muqaddamāt ṣarʿī* (legal postulates). 4) In *qiyās*, *farʿ* is lower than *ṣaṣl* while in *dalālat al-naṣṣ* the former is either equal to the latter or higher than it (for further information, see Büyük Haydar Efendi, *Usul-i Fıkıh Dersleri*, 247-251.

432 Apparently, *uṣūlīs* used the term *waḍʿ* or *mawḍūʿ lah* not only for the word, the smallest independent unit, but also for a whole sentence.

433 Molla Jīwan, *Nūr al-Anwār*, I, 253.

“ugh” only). This is, he adds, “*tābitun bi-fibārata n-naṣṣi*”<sup>434</sup> (i.e. established by virtue of the *fibārat al-naṣṣ*). However, its entailed meaning (“*maḥnāhū al-lāzim*”<sup>435</sup>) is “*ilām*” (to cause harm), which is *dalālat al-naṣṣ*<sup>436</sup> (signification<sup>437</sup> of the text). Molla Jīwan goes on to say that what is *tābit* (established) from its *dalālat al-naṣṣ* is prohibition of beating, abusing, and the like of parents.<sup>438</sup> Therefore, the verse’s signification of the meaning that the prohibition of beating, abusing and doing any other kind of such action against one’s parents is through “*dalālat al-naṣṣ*”,<sup>439</sup> and the verse when it denotes that meaning is referred to as “*al-dāll bi-dalālat al-naṣṣ*.”

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<sup>434</sup> Ibid, 253.

<sup>435</sup> See the following footnote on three kinds of *dalāla*, where I point out that a word can signify a meaning that is necessarily attached to the meaning which the word is primordially assigned to. *Al-maḥnā al-lāzim*, ‘the entailed meaning’, or what Lane translates as, “the necessary meaning”, is the meaning that is necessarily attached to the primordial/literal meaning (*al-maḥnā al-mawḍūʿ lah*) of a given word, or even sentence.

<sup>436</sup> The Arabic reads “*wa-maḥnāhu l-lāzimu llaḍī huwa l-īlāmu dalālatu n-naṣṣi*” (see Molla Jīwan, *Nūr al-Anwār*, I, 253).

<sup>437</sup> Lane translates *dalāla* as “a word’s signification, or indication of meaning” (see Lane, *An Arabic-English Lexicon*, 901). Then he talks about three kinds of *dalāla* of a given word, which is something that comes from such texts on logic as *Īsāgūjī* (see al-Abharī, *Īsāgūjī*, 1). Lane says that *dalāla* “...is of three kinds: thus انسان signifies, or indicates, “an animal endowed with reason” بالمطابقة, i.e. by complete correspondence; and “an animal” or “a being endowed with reason” بالتضمن, i.e. [by partial inclusion or] partially; and “a being capable of knowledge” بالالتزام, i.e. [necessarily or] by a necessary idea attached to it in the mind” (see Lane, *An Arabic-English Lexicon*, 901).

<sup>438</sup> Molla Jīwan, *Nūr al-Anwār*, I, 253-254.

<sup>439</sup> The meaning that is referred to as *dalālat al-naṣṣ* can also be referred to as *maḥnā iltizāmī* (entailed meaning), as noted above. This *iltizāmī* (entailed) meaning is similar to the *iltizāmī* meaning that is seen in *al-istidlāl bi-dalālat al-iqtidāʿ*, which I will cover in the next section. Both of these *iltizāmī* meanings are entailed meanings which a given speaker has in mind and prefers not to include in his/her speech given that he/she assumes that the addressee can recover them based on the mentioned parts of the thought. I believe that both of these omitted parts are what *uṣūlīs* refer to as *lāzim*. In *al-istidlāl bi-dalālat al-naṣṣ* the *lāzim* occurs after the mentioned part of a given thought which the addresser wants to express while in *al-istidlāl bi-iqtidāʿ al-naṣṣ* the *lāzim* occurs before the mentioned part of thought and thus are aptly referred to as *lāzim mutaʿaxxir* and *lāzim mutaqqaddim* respectively (see Büyük Haydar Efendi, *Uṣul-i Fıkıh Dersleri*, 254). In other words, *maḥnā iltizāmī* seen in *al-istidlāl bi-dalālat al-naṣṣ* is the meaning of a *lāzim mutaʿaxxir*—an omitted part of thought that necessarily occurs after the mentioned part of the thought, as *ilām* (causing harm) occurs after one’s saying of “ugh” to one’s parents as mentioned in the example from Qurʾān 17:23 above. As for the *maḥnā iltizāmī* seen

Having defined *dalālat al-naṣṣ* and provided an example of it, Al-Nasafī then goes on to talk about how *dalālat al-naṣṣ* (or to be more precise, *al-istidlāl bi-dalālat al-naṣṣ*) is related to the previous way of deriving meaning from a text, namely *iṣārat al-naṣṣ*. He says that that which is established through *dalālat al-naṣṣ* is like that which is established through *iṣārat al-naṣṣ* in terms of being *qaṭʿī* (entailing definitive knowledge) except that when they contradict each other, the latter is favoured over the former.<sup>440</sup>

Al-Nasafī says that because a legal ruling established through *dalālat al-naṣṣ* is like that which is established through *iṣārat al-naṣṣ* – that is, *dalālat al-naṣṣ* is *qaṭʿī* just like *iṣārat al-naṣṣ* – it is valid to base the punishments of *ḥudūd* and *kaffāra* upon *dalālat al-naṣṣ*. This is something that cannot be done through *qiyās*, as it entails *ḍannī* (dubious) knowledge.<sup>441</sup>

What is meant by the *qiyās* here is *ḥukm*, legal ruling, that is based on *ʿilla mustanbaṭata*.<sup>442</sup> In fact, Molla Jīwan mentions that there are two different types of *qiyās* in terms of the *ʿilla*, i.e. *ratio legis* involved. If the *qiyās* is based on an *ʿilla* that is *mustanbaṭata* (extracted<sup>443</sup> through legal reasoning), he says, the *qiyās* is *ḍannī*, in

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in *al-istidlāl bi-iqtiḍāʾ al-naṣṣ*, it is the meaning of a *lāzim mutaqaḍdim*—an omitted part of thought that necessarily occurs before the mentioned part of the thought (for further information on this, see next section).

<sup>440</sup> Al-Nasafī, *al-Manār*, I, 254.

<sup>441</sup> Ibid, 255.

<sup>442</sup> Molla Jīwan, *Nūr al-Anwār*, I, 255.

<sup>443</sup> Its 10<sup>th</sup> form, i.e. *istanbaṭa*, is translated as “He drew out, educed, extracted, produced, elicited; fetched out by labour or art” (see Lane, *An Arabic-English Lexicon*, 2759 and Hans Wehr and J. Milton Cowan, *A Dictionary*

which case no punishment of *ḥadd* or *kaffāra* could be based on such a *qiyās*, as mentioned above. However, he adds, if the *qiyās* is one whose *ṣilla* is *manṣūṣa*, that is, spelled out in a *naṣṣ*,<sup>444</sup> i.e. text, either of the Qur’ān or the Sunna, then it is equal to *dalālat al-naṣṣ* in terms of being *qaṭṣī*, i.e. entailing definitive<sup>445</sup> knowledge.<sup>446</sup>

Before we end the discussion of *dalālat al-naṣṣ*, I should also note that a legal ruling established through *dalālat al-naṣṣ* cannot possibility go through *taxṣīṣ*, i.e. specification<sup>447</sup> simply because there is no generality for *dalālat al-naṣṣ*, as al-Nasafī notes.<sup>448</sup>

#### 3.7.4. al-Istidlāl bi-iqtidā’ al-naṣṣ

Centring his discussion on the legal ruling rather than the process of extracting the legal ruling from the sources of Islamic Law, also seen in the previous section, al-Nasafī begins his discussion in this section by saying that as that which is *tābit* (established) through *iqtidā’ al-naṣṣ*, it (i.e. the *ḥukm*) is that whose *naṣṣ* makes sense/operates only with a condition that proceeds it (i.e. the *naṣṣ*).<sup>449</sup> An utterance

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of *Modern Written Arabic (Arabic-English)*, (Wiesbaden: Harrassowitz, 1979), 1103). Since *mustanbiṭ* is the active participle of the verb *istanbaṭa*, the passive participle, *mustanbaṭata*, in the phrase *ṣilla mustanbaṭata* can be translated as *deduced*.

<sup>444</sup> See Wehr and Cowan, *A Dictionary of Modern Written Arabic*, 1136.

<sup>445</sup> Ibid, 908.

<sup>446</sup> Molla Jīwan, *Nūr al-Anwār*, I, 255.

<sup>447</sup> Wehr and Cowan, *A Dictionary of Modern Written Arabic*, 280.

<sup>448</sup> Al-Nasafī, *al-Manār*, I, 258. In explaining the reason behind this, Molla Jīwan notes “...*wa-hāḍā maʿnan lāzimu li-mawḍūʿin la-hū lā lafḍun.*” (...This is a meaning associated with the assigned meaning of the word not the word itself). *ṣumūm* and *xuṣūṣ*, on the other hand, are features of words not meanings or concepts, as they refer to the scope of a word. For further information on this, see Molla Jīwan, *Nūr al-Anwār*, I, 258.

<sup>449</sup> Al-Nasafī, *al-Manār*, I, 259.

that denotes meaning in such a way is referred to as “*al-dāll bi-iqtiḍā’ al-naṣṣ*” or “*muqtaḍī*”, as Molla Jīwan notes.<sup>450</sup>

Molla Jīwan explains the definition by saying that a legal ruling established through *muqtaḍī al-naṣṣ* is one in which the *naṣṣ* only makes sense/operates with a condition that proceeds this *naṣṣ*. In fact, this condition is a meaning one necessarily derives from the utterance in order for the utterance to make sense. This meaning is referred to as “*muqtaḍā’*” by *uṣūlīs*.<sup>451</sup>

To illustrate, consider Qur’ān 4:92,<sup>452</sup> which translates as “Never should a believer kill a believer; but (if it so happens) by mistake, it is ordained that you should free a believing slave, and pay compensation to the deceased's family, unless they remit it freely.” The part of the verse “it is ordained that you should free a believing slave” (*fā-taḥrīru raqabatīn mu’minatīn*) is *muqtaḍī* (i.e. the one that requires a condition or another meaning). The *muqtaḍā’* here, Molla Jīwan notes,<sup>453</sup> is that the person who needs to free a slave as *kaffāra* (expiation) should own a slave. As Molla Jīwan notes, this relates to the general principles that have to do with transactions in Islamic law.

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<sup>450</sup> Molla Jīwan, *Nūr al-Anwār*, I, 259.

<sup>451</sup> Ibid, 259.

<sup>452</sup> وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَأً ۚ وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا ...

<sup>453</sup> Molla Jīwan, *Nūr al-Anwār*, I, 261.

In Islamic transactions, it is not valid to free a free man simply because, unlike slaves, free human beings are not subject to transactions as they are not goods. Furthermore, nobody has the right of disposition on a property of someone else. Therefore, a slave who belongs to someone else cannot be freed except by the owner. Thus, the sentence “it is ordained that you should free a believing slave” requires another meaning, which is “you should own a slave” so that you can then free him or her. Therefore, the intended meaning of the verse is, as Molla Jīwan notes, that if you kill a Muslim by accident, “you should free a believing slave that belongs to you” (*fa-tahrīru raqabatin mu’minatin mamlūkatin lakum*).<sup>454</sup>

In the example above, “*fa-tahrīru raqabatin*” is “*muqtaḍī*”, and “*mamlūkatin lakum*” is “*muqtaḍā*”. And the *ḥukm* that is *tābit* (established) through *iqtidā’ al-naṣṣ* or *muqtaḍā’* is “*al-milk*”, i.e. the ownership.<sup>455</sup> Therefore, the phrase “*tahrīru raqaba*” as far as it denotes the *muqtaḍā’*, i.e. “*mamlūkatin lakum*”, is referred to as “*al-dāll bi-al-iqtidā’*”.

Al-Nasafī then goes on to compare this with the previous *ḥukm* and says that it is like what is *tābit* through *dalālat al-naṣṣ* [in terms of *qaṭ’iyya* (definitiveness)] except when they contradict.<sup>456</sup> To clarify al-Nasafī’s remarks, Molla Jīwan says

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<sup>454</sup> Ibid.

<sup>455</sup> Ibid.

<sup>456</sup> Al-Nasafī, *al-Manār*, I, 262.

*dalālat al-naṣṣ* and *iqtidā' al-naṣṣ* are similar to each other in that each denotes *qaṭ'iyya* (certainty). In case of contradiction, however, Molla Jīwan adds, *dalālat al-naṣṣ* is preferred over *iqtidā' al-naṣṣ*.<sup>457</sup>

Al-Nasafī also notes that there is no *ʿumūm* (generality) in *muqtaḍā'* according to Ḥanafīs. This is because, Molla Jīwan explains, *ʿumūm* (generality) and *xuṣūṣ* (specificity) are attributes of words. On the other hand, *muqtaḍā'* is not a word but rather it is a meaning of a word. He also notes that Šāfi'īs hold that *muqtaḍā'* can be *ʿāmm* (general) or *xāṣṣ* (specific) and that this difference between Ḥanafīs and Šāfi'īs has led to many differences of legal opinions between the two schools.<sup>458</sup>

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<sup>457</sup> Molla Jīwan, *Nūr al-Anwār*, I, 262. Molla Jīwan also provides an example of such a case where the meaning derived through *dalālat al-naṣṣ* is preferred over the one derived through *iqtidā' al-naṣṣ*. The example involves a tradition about cleaning *najāsa* (things considered dirty in Islamic law such as blood, urine, semen etc.). In the tradition, the Prophet is narrated to have said to his wife “*ḥattīhi tumma qriṣīhi tumma ʿsilīhi bi-l-mā'i*” (Rub it off, and then tweak it, and then wash it with water). Apparently, he is teaching her how to clean *najāsa* from a cloth. For details see Molla Jīwan, *Nūr al-Anwār*, I, 262.

<sup>458</sup> Molla Jīwan, *Nūr al-Anwār*, I, 263.

### 3.8.ANALYSIS OF THE FOURTH CATEGORIZATION: BUILDING THE FOURTH PART OF THE GENERAL FRAMEWORK

Figure XVIII

#### Making the 4<sup>th</sup> categorization

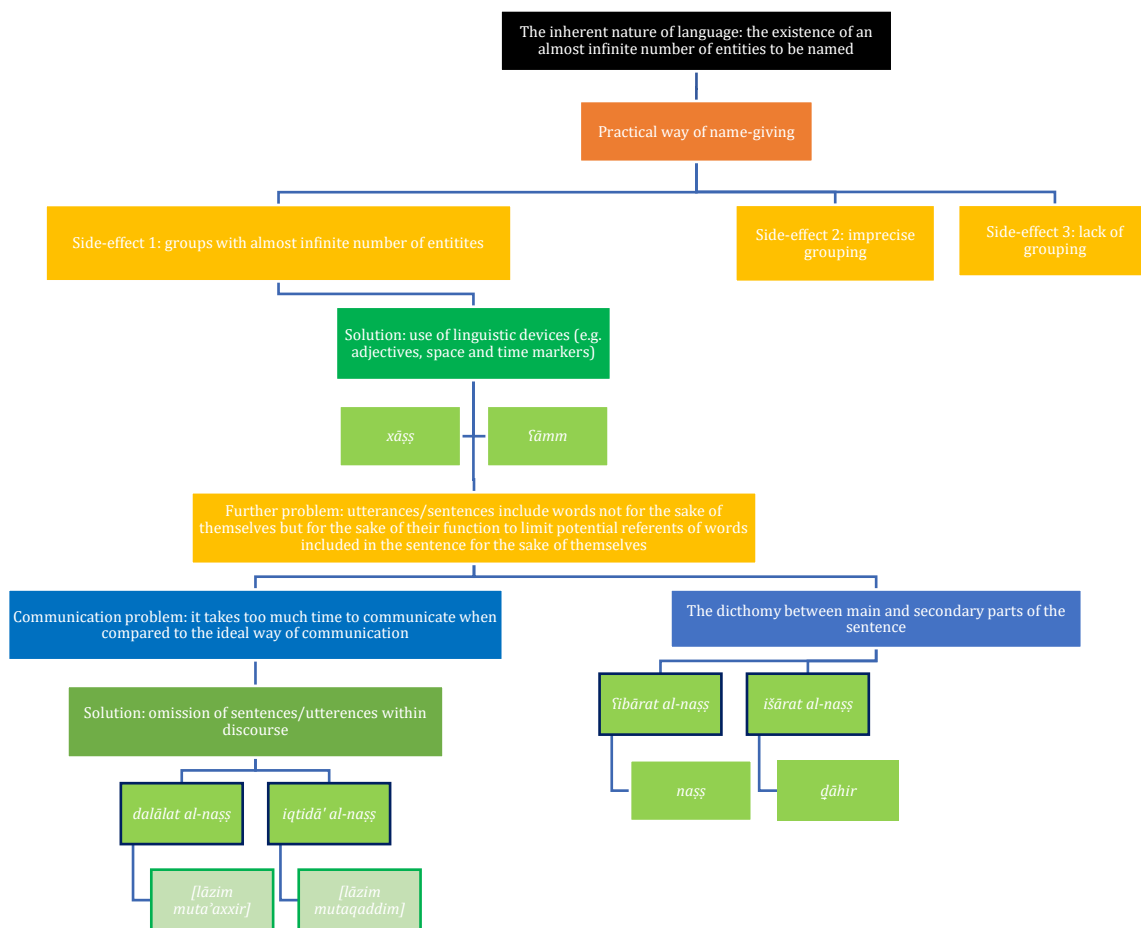


Figure XVIII mainly represents the formation of the linguistic categories that *uṣūlīs* placed under the fourth categorization. Again, due to the fact that my aim in drawing the figures at the end of each categorization is to show the origin of the categories, sometimes some linguistic categories which *uṣūlīs* mention under

different categorizations are represented together in a diagram in the present work. In this regard, the two categories that *uṣūlīs* placed under the first categorization, namely *xāṣṣ* and *ʿāmm*, are represented in the formation of the fourth categorization in Figure XVIII above, simply because they ultimately originate from the same problem, which is called *side-effect 1* in this work.

Use of linguistic devices such as adjectives and adverbs of time and space limits the potential referents of class names and thus resolves the issue with *side-effect 1*. However, it gives rise to a further problem: utterances/sentences include words/phrases whose primary function is to limit the potential referents of the primary words of the utterance/sentence. The part of the utterance/sentence that carries the meaning/information that the addresser primarily intended the utterance/sentence to carry constitutes *ʿibārat al-naṣṣ* while the other parts are *iṣārat al-naṣṣ*. *ʿibārat al-naṣṣ* leads to the category of *naṣṣ* while *iṣārat al-naṣṣ* leads to the formation of *dāhir*, as I explained in their respective sections above. Both of these categories are represented with light green boxes in Figure XVIII.

The phenomenon that sentences/utterances include parts that are not the core of the sentence/utterance but are included so as to limit potential referents of the core of it further gives rise to a communication problem: it takes more time to communicate this way when compared to the way in which the ideal way of name-giving is used, where members of the same linguistic community, who agree on word-

meaning correlates without any limitation as to the number of the correlates as well as the size of content of the meaning, communicate very fast.

In an effort to reconcile this problem of communication using the practical way of name-giving, some of the information about the event/phenomenon/item that is at the centre of the discussion is omitted, leaving it to the hearer/reader to read between the lines and infer those omitted parts from the ones mentioned in the utterance/sentence, as I have explained in the examples above.

*Uşūlīs* call the omitted parts *lāzim*, on the basis that the mentioned parts call for the existence of these omitted parts in the mind of the speaker/writer when he/she speaks/utters the sentence/utterance and thus are thought to be included in the intended meaning of the sentence/utterance. If the *lāzim* that is omitted occurs before the mentioned elements occur, it is called *lāzim mutaqqaddim*, and the way in which one derives such information (meaning) from the utterance/sentence is called *al-istidlāl bi-iqtidā' al-naṣṣ*. If the omitted *lāzim* occurs after the mentioned elements, then it is referred to as *lāzim muta'axxir*, and the way in which one arrives at such information (meaning) is called *al-istidlāl bi-dalālat al-naṣṣ*, as I explained above.<sup>459</sup>

*Lāzim mutaqqaddim* and *lāzim muta'axxir* are represented with boxes of a lighter green colour than the other categories' green in order to reflect the fact that

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<sup>459</sup> See section 3.7. See also Büyük Haydar Efendi, *Usul-i Fıkıh Dersleri*, 254.

*uṣūlīs* do not treat them as linguistic categories. This is in line with the fact that they are not part of the language, as they are not mentioned. Accordingly, they are part of the meaning/thought not put into words. Yet, they are included in an analysis of language simply because these omitted parts (*ġayr maṭṭūq*) hold the same status of being part of the intended meaning of an utterance, just as do the ones mentioned (*maṭṭūq*) in it.

### 3.9.THE GENERAL FRAMEWORK

#### Figure XIX (The General Framework)

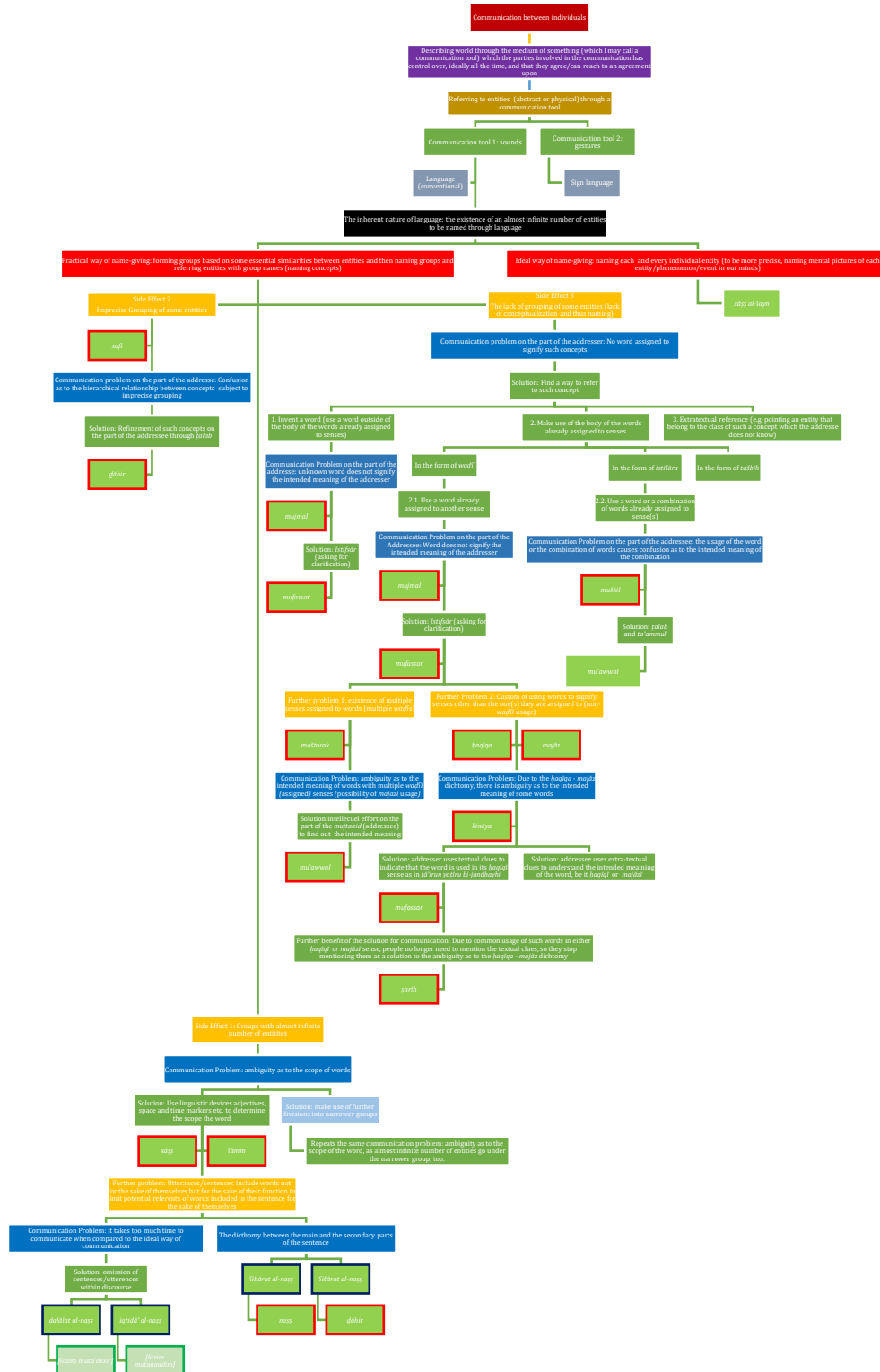


Figure XIX represents the overall general framework which I think is behind the linguistic classification.<sup>460</sup> At the centre of this diagram lies the concern to explain the origin of each linguistic category *uṣūlīs* present in their works. The presentation here, as a result, differs from theirs, as the material represented here in Figure XIX focuses on the origin of the categories more than is the case in theirs. Therefore, as can be seen in Figure XIX, some of the linguistic categories which are normally presented together under one categorization are here close to categories of other categorizations and separate from their co-subcategories. This is the case, for instance, with *xāṣṣ* and *ʕāmm*. They are drawn separately from *muštarak* and *muʿawwal* in the general framework, despite the fact that *xāṣṣ*, *ʕāmm*, *muštarak*, and *muʿawwal* together constitute the four linguistic categories that *uṣūlīs* analyse under the first categorization.

I argue that the linguistic categories that we find in *uṣūl* works have much to do with our perception of the world. The key notion in our perception of the world that, I argue, was at the centre of *uṣūlīs*' analysis of language is the fact that there are an almost infinite number of items in the world to be named, which is a problem that I referred to as "the inherent nature of language". Referring to each item using a distinct name for each and every one of them would prove almost impossible. Yet,

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<sup>460</sup> *Mutašābih* and *muḥkam* are missing in the general framework, as noted above. I could have placed them in the general framework, but this would lead to unnecessary complication of the general framework.

naming every item using a discrete name would have not given rise to any ambiguity as to the meaning or the scope of word. This hypothetical method of naming entities in the world is therefore referred to as “the ideal way of name-giving” in this work. Since the ideal way of name-giving is almost impossible to practice, human beings, instead, categorise entities under groups<sup>461</sup> and then name the group, by which they

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<sup>461</sup> This involves us focusing on some essential similarities, and ignoring differences, of individual entities under a given group. The essential features of a class are that which allows us to group its members which are in fact distinct from each other in the sense that they are not the same (e.g. despite their differences of colour, shape, design etc., individual pens are all referred to as ‘pen’), under a certain group, constituting what *uṣūlīs* refer to as the *ḥadd* (definition) of the individual. For the sake of argument, let us assume that a pen has a hundred features. Some of these features would pertain to its very nature/make up. For instance, we can talk about what this particular pen is made of, its shape, its colour etc. Its other features would pertain to its function while others could be related to the product of its functioning, such as writing, painting, articles, books, etc. All these features and others not mentioned here would constitute this individual pen. I think when we conceptualize individual pens, we delimit these features to some degree in an effort to arrive at the concept of ‘pen’ in our mind which is true to speak of for all individual pens which led to the formation of the concept of ‘pen’. For instance, if all the individual pens that led to the formation of the concept of ‘pen’ in one’s mind happened to be blue in colour (that is, if all pens this particular person has seen were of a blue colour), the concept of ‘pen’ he has in mind probably features the colour ‘blue’ as well, though maybe in a broader sense to include all the tones of blue that led to the formation of the feature of ‘blue’ for the concept of ‘pen’, given that the individual pens’ blue tones were different. But if all the individual pens that particular person observed had different colours, the concept of ‘pen’ in his mind will probably lack any colour so as to include every individual colour of the individual pens he has observed. Therefore, some of the features making up individual entities such as the features of the pens in our example do not figure as the features of the concept that these individual entities give rise to. The features which are included in what makes up the body of the features of a given concept are rather limited when compared to the features of individual entities that led to the formation of the concept. As a result, to follow the example above, an individual pen, say, has one hundred features while the concept of ‘pen’ has, say, only a handful of features. These handful of features are what *uṣūlīs* define as the *ḥadd* (definition) of a concept. These features are categorized under categories such as *ḍātī* (essential), *ṣāriḍī* (accidental), etc. in works of logic. There are different ways to define a concept in accordance with which type of features of the concept forms the basis for the definition. If the definition is formed in accordance with the *ḍātī* features, it is referred to as *ḥadd*. If one takes into consideration instead *ṣāriḍī* features such as the feature of “smiling” for a human being when forming a definition for ‘human being’, then this definition is referred to as *rasm* (see, for instance, al-Abharī, *Īsāgūjī*, 5). Besides the nature of the feature that constitutes the definition, there is also another aspect that leads to sub-kinds of these two types of definition. If the definition includes *jins baṣīd* (far genus/class) along with a *faṣl* (differentia) that is *ḍātī*, it is called *ḥadd nāqiṣ* (imperfect definition). If instead it includes *jins qarīb* (closest genus) along with a *faṣl* that is *ḍātī*, it is called *ḥadd tāmm* (perfect definition). Similarly, if the definition is formed with *jins baṣīd* along with a *faṣl* that is *ṣāriḍī*, this definition is called *rasm nāqiṣ*. However, if the definition is formed with *jins qarīb* along with a *faṣl* that is *ṣāriḍī*, this definition is called *rasm tāmm*. According to *uṣūlīs* the proper way to define a concept is to define it using a *ḥadd tāmm*. For instance, the proper definition of a human being (*insān*) is a reasoning living being (*ḥayawān nāṭiq*) (see al-Abharī, *Īsāgūjī*, 5). Besides those features that constitute the essential features of the concept of

then refer to each individual that falls under each group. Despite the fact that it leads to certain issues, it nevertheless enables human beings to communicate with each other in such a way that is practically achievable. This way of name-giving is accordingly referred to as “the practical way of name-giving”.

The practical way of name-giving leads to three primary *side-effects*, all of which are represented with yellow boxes in Figure XIX. The *side-effect 1* is the fact that the name stands for an almost infinite number of individual entities, i.e. class members. This further leads to a communication problem: the scope of the referents of words are not clear. In order to resolve this, one uses linguistic devices to

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*insān*, there are other features that are of significance. The *faṣl* of human being, *nāṭiq*, is what differentiates it from all the others within the *jins qarīb* which the concept belongs to. In other words, no other concepts within *ḥayawān*, feature *nāṭiq*. For instance, a horse is defined as *ḥayawān ṣāniq* (a living being that neighs) does not have the feature of *nāṭiq*. However, a horse and a human being have some features in common, too. For instance, both have legs, both can move, both can produce sound, etc. When one therefore asserts that y is an X, all one is doing is to say that y is a member of the concept (class) called X. If the *ḥadd tāmm* of the concept referred to as X is same as the *ḥadd tāmm* of the concept that y belongs to, then this constitutes *ḥaqīqī* usage. If the *ḥadd tāmm* of the concept called X is not the same as the one y belongs to, then this is called *majāzī* usage. The features that are not included in *ḥadd tāmm* allow one to draw a comparison between different concepts. For instance, we can say that Ali is a nightingale. The *ḥadd tāmm*s of the two are different, but there are features outside of both *ḥadd tāmm*s that are common to the two concepts. For instance, Ali, as a human being, has the feature of being able to produce beautiful sounds. The nightingale, a specific type of bird, is known for the beautiful sound it produces. When we say Ali is a human being, all we are doing is to assert that he belongs to the class of human beings because he shares the same *ḥadd tāmm*; and when we say that Ali is a nightingale, all we are doing is to assert that he belongs to the class of nightingales because he shares features, though not among the *ḥadd tāmm* of either of the two, that they have in common. In other words, the features that do not belong to the *ḥadd tāmm* of a concept allow one to draw similarities between it and other concepts. If I go back to my first sentence here, it is these features which are ignored when grouping individual entities under a particular group despite their differences that enable us to make *istiṣāra* between concepts with distinct *ḥadds* (definitions).

determine the scope of the word, such as adjectives, and space and time markers, as I discussed in section 2.7 above.<sup>462</sup>

The *side-effect 2* is the fact that we do not group entities perfectly. In fact, we form words within such large classes as “the class of thieves” as in *nabbāš* and *ṭarrār* until something triggers our attention to look closely on their precise grouping/classification. Once we ponder on the relationship between such related concepts as *nabbāš*, *ṭarrār*, and *sāriq*, we realize the perfect grouping for such concepts. This was the case with *ṭarrār*, which only after the revelation was placed under the class of *sāriq*, thus resolving the *xafā’* (the ambiguity) of the *xafī* word *sāriq* in relation to *ṭarrār* and *nabbāš*, as I explained in section 3.3.2.1 above.

The *side-effect 3* is the fact that some of the entities have never been subject to grouping. This first leads to communication problem on the part of the addresser, as the language through which the addresser—who is assumed to have the knowledge of such a given concept—decides to express his/her feelings, has no word assigned to that concept. To solve this problem, one either invents/coins a new word (not assigned to any meaning previously) or uses a word that has already been assigned

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<sup>462</sup> See also Figure VI in section 3.2 for an analysis of the function of linguistic categories in the formation of the categories of *xāšš* and *lāmm* of the first categorization.

to another sense(s) to express the concept that was not known in the linguistic community before and thus lacked a name in the language.

The solutions mentioned to remedy the *side-effects* in many cases lead to *further problems/side-effects*, which are in turn provided with solutions to remedy them as well. I have already explained these<sup>463</sup> and thus will not go into the details of these processes here again. I will content myself, instead, to say that very often the *side-effects* lead to the formation of the categories of ambiguous words, such as *xafi* and *mujmal*; while the resolutions to these problems give rise to the formation of the categories of clear words, such as *mufassar* and *muḥkam*. All the light green boxes in Figure XIX above represent the linguistic categories *uṣūlīs* came up with.

Having thus provided a careful analysis of these linguistic categories within a general framework, I will now turn to the application of these to the case of *sirqa* in Islamic Criminal law in an effort to show the role of the Arabic language (through the linguistic categories of *uṣūl al-fiqh*) in the process of law-making in Islamic law.

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<sup>463</sup> See, for instance, sections 3.2, 3.4, and 3.6.

## 4. APPLICATION OF THE LINGUISTIC CATEGORIES OF *UŞŪL AL-FIQH* TO ISLAMIC CRIMINAL LAW: THE CASE OF *SIRQA*

### 4.1. Introduction

The previous chapters were devoted to a thorough analysis of the linguistic categories of *uṣūl al-fiqh* within a general framework. In this chapter, I will demonstrate the role these categories play in the law-making process in Islamic law.

Islamic law is an area too vast to cover fully even within the scope of the application of linguistic categories to it. This is because linguistic categories are at work throughout the process of law-making regardless of the subject matter found in the Islamic legal literature. Accordingly, to show the role these linguistic categories play in the process of law-making, it is not necessary to cover all the matters discussed in Islamic law. Therefore, I will confine myself to analysing the application of the linguistic categories to one legal matter in Islamic law, namely *sirqa*, which is the topic I have made my readers familiar with as I have been talking about it from the beginning of this work. *Sirqa* can be translated as ‘theft’, but the sense the religion of Islam ascribed to it is a special one that needs a thorough analysis. This analysis is provided in *furūf al-fiqh* manuals in *ḥudūd* sections, and roughly falls under what we may call Islamic Criminal law.<sup>464</sup>

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<sup>464</sup> al-Maydānī, *al-Lubāb*, 683.

Islamic Criminal law covers various crimes and the punishments ascribed to these crimes. Some of these punishments are determined in the Qur'ān and therefore referred to as *ḥudūd* (pl. of *ḥadd*), i.e. boundaries, that is to say, crimes the boundaries of which are determined in the Qur'ān.<sup>465</sup>

I will also continue to provide more insights into the linguistic theory whose general framework I have provided in the previous chapters. As will be seen in the following pages, studying the application of the linguistic categories to *sirqa* (theft) reveals important aspects of the linguistic theory that was behind the *uṣūlīs'* law-making process.

#### **4.2. Application of the linguistic categories to *sirqa* (theft) in the light of the general framework**

Before a detailed discussion of the application of the linguistic categories to *sirqa*, it is worthwhile familiarizing readers with the place where the word *sirqa*, or for that matter *sāriq* and *sāriqa*, fits into within the general framework I have built up based on *uṣūlīs'* analysis of language in the previous chapter.

In the previous chapters, I argued that *uṣūlīs'* analysis of language primarily aims at dealing with what I called “the inherent nature of language”, that is, there are an almost infinite number of entities to be named. I further argued that many, if not

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<sup>465</sup> See al-Maydānī, *al-Lubāb*, 488ff.

all,<sup>466</sup> of the linguistic categories originate from the way human beings deal with the inherent nature of language, namely through “the practical way of name-giving”, which human beings use instead of the hypothetical method, for which I coined the term “the ideal way of name-giving”.

My analysis of the linguistic categories revealed a picture where one is able to see what causes each linguistic category to come into existence. Therefore, the general framework I was able to arrive at included almost all the linguistic categories found in *uṣūl* works in a manner that allows one to see the origin of each. Having a general framework that shows the process through which *uṣūlīs* arrived at these linguistic categories such as the one produced in the present work, I argue, allows one to appreciate the details of the process of law-making and the role language (linguistic categories) play(s) in it.

As I showed in the general framework, the practical way of name-giving leads to three main problems which I called *side-effects* in this work. One of these *side-effects*, which I called *side-effect 3*, is the fact that there are concepts that have been subject to no name-giving processes in our world. As can be seen in the general framework, in order to deal with *side-effect 3*, there are three ways one can go. One of these (which is referred to as 2.1. in the general framework) is to use a word already

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<sup>466</sup> For instance, see *Muḥkam* in section 3.3.1.4.

assigned to a sense in the language in the form of *waḍʿ*, that is to say, to assign a new sense to a word that already has a sense in the language. Because the new sense of the word would be unknown to the linguistic community, such a word is referred to as *mujmal*.

The examples I used when building the general framework were *ṣalāh* and *zakāh*. The religion of Islam assigned new senses to these words that were already in the language in specific senses. When the religion assigned the new senses to these words, the new senses of these words were thus unknown to the linguistic community. These words were therefore *mujmal* to the community in terms of signifying the new senses they were assigned to by the religion of Islam. This led the Companions to ask for clarification (*istifsār*) from the Prophet, who then explained the special senses of these two words, which turned these *mujmal* words into *mufassar*.

*Sirqa* was one such *mujmal* word that acquired a new sense distinct from the one that it had been previously assigned. Therefore, *sāriq* (like, also, *sirqa*) falls under the category of *mujmal* within the general framework in this sense. Although this is not the only linguistic category which the word *sāriq* can fall under, this seems to be the most important one in the sense that al-Maydānī's treatment of it focuses generally on clarifying the *mujmal* aspects of *sāriq* (or *sirqa* for that matter) more than anything else.

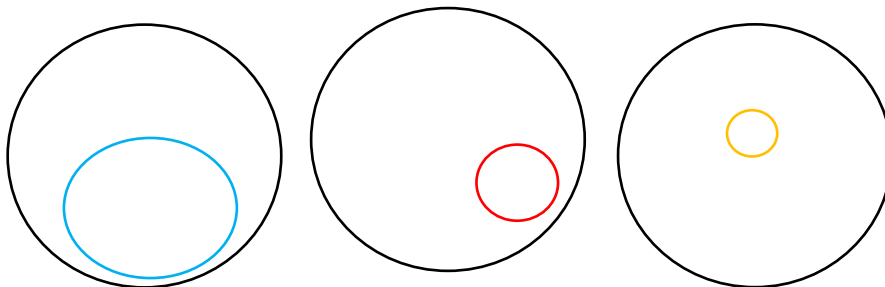
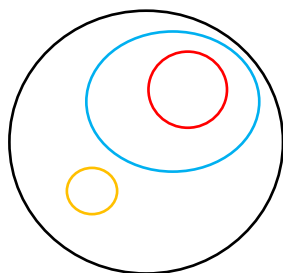
On the other hand, as I discussed earlier, *sāriq* (also *sirqa*) also falls under *xafī* in terms of its relation to other types of thief, namely *ṭarrār* and *nabbāš*. I will briefly discuss the word *sirqa* as being both a *mujmal* and *xafī* word.

*Sāriq*'s (also *sirqa*'s) being *xafī* was explained in section 3.3.2.1 above. In fact, al-Nasafī, as mentioned, used the word *sāriq* along with *ṭarrār* and *nabbāš* as an example of the category of *xafī*. There, Figure VIII and Figure IX were helpful in explaining the *xafā'* with the category of *xafī* using the example of *sirqa*. Al-Maydānī, however, states that the word *sāriq* as mentioned in Qur'ān 5:38 was *mujmal* on *qīma* (economic value).<sup>467</sup> How can a word fall under *xafī* and *mujmal* at the same time?

*Uṣūlīs* such as al-Nasafī mention that the *xafā'* of the *xafī* word *sāriq* is in terms of its relation to *ṭarrār* and *nabbāš*. It was clear that the particular *xafā'* of the *xafī* word *sāriq*, just like any other *xafī* word, was the ambiguity as to the hierarchical relationship between the (sub-)class of the *xafī* word *sāriq* and its other co(sub-)classes, namely *ṭarrār* and *nabbāš*. Figure VIII represented this ambiguity above. This ambiguity was resolved after the process of *ṭalab*. As a result, we were clear about the hierarchical relationship between *sāriq*, *nabbāš*, and *ṭarrār*, which was represented in Figure IX above (reproduced, for convenience, immediately below).

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<sup>467</sup> Al-Maydānī, *al-Lubāb*, 504.

**Figure VIII****Figure IX**

As for *sāriq* being a *mujmal* word, this means that some of the aspects of the new sense that the word *sāriq* was assigned to were left *mujmal*. In other words, *sāriq* was ambiguous (*mujmal*) in terms of some of its new sense's aspects. These *mujmal* aspects of *sāriq* were independent of the word's being *xafī* in its original sense in terms of its relationship with *ṭarrār* and *nabbāš*.

## Figure XX

Illustration of Figure VIII along with the sense Islam assigned to *sāriq*

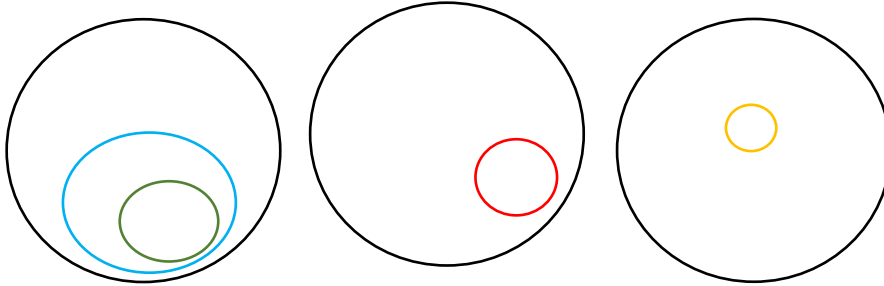
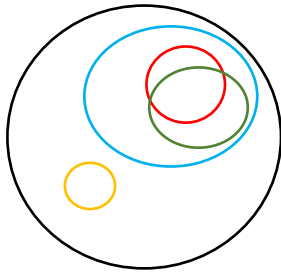


Illustration of Figure IX along with the sense Islam assigned to *sāriq*



As explained in section 3.3.2.1, the blue circle represents the class of *sāriq* while the red and the orange represent the class of *ṭarrār* and *nabbāš* respectively. The green circle above represents the new sense of the word. The Qur'ān uses the word *sāriq* to express a certain sense that is narrower in some respects than the sense that

the word *sāriq* signified at the time when the verse was revealed.<sup>468</sup> These aspects of the word *sāriq* are left *mujmal* in the verse.

As noted earlier in this work, a *mujmal* word needs to be explained by the one who made the word *mujmal*.<sup>469</sup> This is the mission God gave to the Prophet when it comes to explaining the verses in many cases. Once the *mujmal* aspects pertaining to *sāriq*, say 13 of them, were explained by the Prophet or through other verses and other sources of Islamic law such as an *ijmāʿ*, which also rely on either a verse, or tradition or both, we realize that in fact the sense that was assigned to the word *sirqa* by the religion of Islam is different from, and narrower than, its older 'lexical'<sup>470</sup> meaning.

In the diagram above, we still put *ṭarrār* under the class of *sāriq* because *ṭarrār* meets the *ḥadd* (definition) of *sāriq*'s 'lexical' sense. The reason that instead of making up a new word to signify the special sense, God uses the word *sāriq* is apparently to indicate that the special sense assigned to the word *sāriq* by the religion of Islam covers the basic sense of the word, which was already in use at the time when the verse was revealed. For instance, the word *sāriq* indicates that the gender of the

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<sup>468</sup> As explained above in the general framework, this is an example of one of the ways of dealing with *side-effect 3* (See the general framework in section 3.9).

<sup>469</sup> See section 3.3.2.3.

<sup>470</sup> The inverted commas I have put the word 'lexical' in is to reflect the fact that even the sense of the word assigned by the religion of Islam makes its way into lexicons eventually and thus also becomes a lexical meaning of the word. In other words, lexicographers will also give the meaning of the word assigned by the religion, alongside the older, pre-Islamic, meaning.

person who commits *sirqa* needs to be a male person. Accordingly, if the verse did not have *sāriqa* (female thief) added to the word *sāriq* with “*و*” (and), the punishment of *sirqa* would have probably applied only to male thieves. Another example would be the fact that *sāriq* in its older ‘lexical’ sense also indicates that the stealing takes place secretly. Therefore, the new sense assigned by Islam to the word *sāriq* will naturally include the semantic feature that the act of *sirqa* occurs secretly. Thus, there are certain aspects that are already embedded in the ‘lexical’ sense of the word *sāriq*.

Yet, the fact that certain aspects of the word *sāriq* (or *sāriqa* or *sirqa* for that matter) as it is mentioned in the verse were then explained by God through his Prophet narrows down the word’s original sense. In fact, as noted, the sense which the religion of Islam assigned to *sāriq*, say, *sāriq*<sup>1</sup>, is different from its original sense. Note that the religion of Islam did not give a new name to this special sense (i.e. did not go with *solution 1* to the *side-effect 3* in the general framework); rather it assigned a new sense to the word *sāriq* (also *sirqa*) that was already assigned to a sense in the language, a sense that constituted the essence of the new sense as well (i.e. it went with *solution 2.1.* to the *side-effect 3*).

However, the religion added new semantic features to this basic sense through traditions and other sources of Islamic law. Traditions and other sources such as *ijmāʿ* explain the aspects where the original sense of *sirqa* and the special sense of *sirqa*

differ from each other. Thus, as noted by al-Laknawī,<sup>471</sup> words can fall under multiple categories.

I will next turn to the discussion of these aspects as presented by al-Qudūrī and al-Maydānī. If there are, say, 13 semantic features of the new sense of the word *sāriq* that are different from the ‘lexical’ sense of the word, then I can say that *sāriq*<sup>1</sup> = *sāriq* + 13 features. As will be seen, explaining what semantic features were added to the word *sirqa* (or *sāriq*) governs the outline of the treatment of *sirqa* by al-Qudūrī and al-Maydānī.

As I noted earlier, one can come up with perhaps an infinite number of aspects pertaining to *sāriq*; the ones that we learn to be relevant for the application of the punishment are those that were given explanations in the sources of Islamic law. For instance, one can talk about the aspect of the conditions in which a *sāriq* performs the act of *sirqa*, the type of clothes a *sāriq* wears when doing it, the financial situation of the *sāriq* or *masrūq minh* (the one from whom item is stolen), etc. al-Maydānī and al-Qudūrī explain each aspect that they deemed to be relevant, based on the information they gathered from the sources of Islamic law. Many of these aspects that made *sāriq* (or *sirqa*) a *mujmal* were in fact explained by the Prophet, which then made the word *sāriq* (or *sirqa*) turn into *mufassar* for each of these aspects.

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<sup>471</sup> Al-Laknawī, *Qamar al-Aqmār*, I, 15.

### 4.3. Some *mujmal* aspects of the word *sirqa* explained: The semantic features added to the 'lexical' sense of the word *sirqa* (also *sāriq/sāriqa*)

Al-Maydānī, as usual, before starting to comment on al-Qudūrī, provides a definition of the matter in hand, in this case *sirqa*. He starts with the 'lexical' sense of the word and says, "In the lexicon, it [i.e. *sirqa*] means to take something from someone else *ʿalā l-xafiyati* (secretly) *wa-l-istisrārī* (hiddenly) <sup>472</sup>. And other qualifications/features are added to it [i.e. to the already established sense of *sirqa* in the language] in the *Šarīʿa* whose explanations will come to you."<sup>473</sup>

Some of the semantic features of the special sense of *sirqa* in Islamic law are:

1. The economic value of a *sariqa* (stolen item) needs to be at least 10 dirhams.
2. A *sariqa* needs to be taken from a *ḥirz* (a protected place).
3. There should not be even the slightest possibility whatsoever that the thief may be the owner, or a shareowner, of the item being stolen such as by claiming that he is the owner of the stolen item even if he/she cannot back his/her claim with evidence.
4. A *sariqa* should not be perishable items.
5. A *sariqa* should not be musical instruments.

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<sup>472</sup> Lane, *An Arabic-English Lexicon*, 1337-1338.

<sup>473</sup> Al-Maydānī, *al-Lubāb*, 503.

6. A *sariqa* should not be spirits or wine.
7. A *sāriq* should be an adult who has reached puberty, with sound intellect.
8. A *sāriq* should not be a dumb or blind person.
9. There should be no doubt whatsoever surrounding *sirqa*, as in the case an apparent *sāriq* who has taken a copy of the Qur'ān claims to have borrowed it to read.

The list of what we may call the semantic features which the religion of Islam added to the 'lexical' meaning of the word *sāriq* goes on and on. Having provided an idea of the special sense assigned to *sirqa* by the religion of Islam, I will now turn to a detailed analysis of the semantic features of the special sense assigned to *sirqa* by Islam.

Al-Maydānī starts off his treatment of *sirqa* by providing the text of al-Qudūrī along with his explanations and comments on it. The function of the passage from al-Qudūrī below is to explain the special sense ascribed to the word *sirqa* by the religion of Islam in a nutshell.

Al-Qudūrī's definition of *sirqa* (also *sāriq/sāriqa*)<sup>474</sup> :

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<sup>474</sup> Al-Qudūrī, *al-Muxṭaṣar*, 503.

When a person with sound intellect who has reached puberty steals<sup>475</sup> ten dirhams or that whose value reaches ten dirhams, be these dirhams *maḍrūba* or *ḡayr maḍrūba*, from a *ḥirz* (protected place), and that there is no doubt surrounding this act of stealing, *al-qaṭʿ* (the amputation) is obligatory upon such a person.

The special sense to which the word *sirqa* was assigned by the religion of Islam appears first in Qurʾān 5:38,<sup>476</sup> which translates as “[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent from Allah. And Allah is Exalted in Might and Wise.”

As al-Maydānī notes,<sup>477</sup> *sirqa* in terms of signifying this special sense was *mujmal*. As explained in the previous chapter, any word that falls under the linguistic category *mujmal* calls for an explanation from the *mujmil* (the one who made the word *mujmal*). In the case of *sirqa*, or of *sāriq* for that matter,<sup>478</sup> the new sense to which the word was assigned by the religion of Islam was explained by the Prophet to the Companions on various occasions. In fact, the traditions going back to the Prophet explain the aspects that are relevant in the legal ruling ascribed to *sāriq*.<sup>479</sup>

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<sup>475</sup> In this work, I translate into English the word “*sirqa*” as “theft” and in some cases as “act of stealing” and the corresponding verb “*saraqa*” as “to steal”. Similarly, I translate “*sāriq*” as “thief”.

<sup>476</sup> وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا تَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

<sup>477</sup> Al-Maydānī, *al-Lubāb*, 504.

<sup>478</sup> The new sense the word *sāriq* was assigned to by the religion of Islam cannot be thought of as independent from the sense that is as a result assigned to *sirqa*, the verbal noun of the verb.

<sup>479</sup> All these explanations then made their way into the treatment of the matter by al-Qudūrī, who expressed them in a single sentence, probably to make it easier for judges to use in legal cases.

But which aspects of the new sense to which the word *sāriq* was assigned are relevant, and what is the yardstick to determine this?

I think the yardstick that was used by scholars of Islamic law to determine which aspects were relevant was that any aspect explained by the religion of Islam in its sources (the primary ones of which are the Qur'ān and the Sunna) was considered to be relevant and that those aspects for which no explanation were given in the sources of Islamic law were considered to be irrelevant in the establishment of the legal ruling. Accordingly, in his treatment of the subject, al-Maydānī explains each of these aspects always with reference to the particular evidence(s) from the Sunna or Ijmā' or other valid sources of Islamic law in the Ḥanafī school. I will now turn to al-Maydānī's discussion of the aspects of *sirqa* that are relevant.

#### 4.3.1. Aspects pertaining to *sariqa* (the stolen item)

Al-Maydānī explains the above-mentioned statement of al-Qudūrī in detail, providing insights into the semantic features that the religion of Islam added to the already known sense of the word *sirqa*. First, he talks about a particular semantic feature the religion of Islam added to the action itself, which is known as *sirqa* in the lexicon.

The word *sirqa* mentioned in the verse which determines the punishment for *sirqa*, al-Maydānī says, is *mujmal* in terms of *qīma* (the economic value) of the item

being stolen.<sup>480</sup> al-Maydānī goes on to talk about how this *mujmal* word was explained by the Prophet, who explained that the value of a given stolen item needs to be equal to the price of a shield (*mijann*).<sup>481</sup> Al-Maydānī then further explains this by saying, “Our colleagues<sup>482</sup> said that the shield for which the hand was cut off during the time of the Prophet, peace and blessings be upon Him, was equal to ten dirhams.”<sup>483</sup> In other words, if the value of a given item does not reach ten dirhams, it is not considered to be *sirqa* in the special sense the word was assigned to by the religion of Islam.

Again, talking about the value of the stolen item that can cause the thief to be punished with the punishment of *sirqa*, al-Maydānī also narrates a debate among Ḥanafī scholars on whether or not the dirhams mentioned here need to be *maḍrūba* (i.e. issued/coined). The text of al-Qudūrī, which I have provided above, has both *maḍrūba* and *ḡayr maḍrūba dirhams* (bullion). Al-Maydānī says the phrase “*maḍrūba* and *ḡayr maḍrūba*” in al-Qudūrī’s text is narrated from Abū Ḥanīfa as a *ḥasan*<sup>484</sup>

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<sup>480</sup> Al-Maydānī, *al-Lubāb*, 504.

<sup>481</sup> Ibid, 504.

<sup>482</sup> The phrase he uses is *aṣḥābunā* (see ibid, 504).

<sup>483</sup> Ibid, 504.

<sup>484</sup> *Al-ḥadīṭ al-ḥasan* or *ḥasan* is a term used in *uṣūl al-ḥadīṭ* as well as *uṣūl al-fiqh* for a narration (*riwāya*) whose chain of transmission includes no person accused of lying and which is not considered to be *ṣāḡḡ* thanks to the existence of other versions of it that are transmitted via other chains of transmission. It is considered between *ṣaḥīḥ* and *ḡarīb* narrations in terms of strength (see Erdoğan, Mehmet, *Fıkıh ve Hukuk Terimleri Sözlüğü* (İstanbul: Ensar, 2016, 182).

narration. He then goes on to quote *al-Hidāya*<sup>485</sup> where al-Maḡinānī mentions that this opinion on the condition of the dirhams narrated from Abū Ḥanīfa as *ḥasan* is not preferred because when used as *muṭlaq*,<sup>486</sup> the word *dirham* refers specifically to *dirham maḍrūba* in accordance with *waḍf ṣurfī*<sup>487</sup> sense of the word. According to this view, which, al-Maydānī says, is among *ḍāhir al-riwāya*,<sup>488</sup> stealing *dirhams* that are *ḡayr maḍrūba* (not coined/issued) does not lead to the punishment ascribed to *sirqa* unless their financial value reaches ten *dirhams* that are *maḍrūba*.

Al-Maydānī also notes that this opinion is also in line with the principle that for any given *ḥadd* punishment to be applied, the designated crime needs to come into existence fully.<sup>489</sup> In fact, the slightest doubt about the existence of the crime in its full form leads to the punishment ascribed to that particular crime being cancelled due to

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<sup>485</sup> *Al-Hidāya* by Burhān al-Dīn al-Maḡinānī (d. 593/1197) is one of the most prominent texts in the Ḥanafī *furūf* (practical law) literature. It is a commentary by al-Maḡinānī on his own work titled *Bidāyat al-Mubtadī*, which he prepared relying upon al-Qudūrī's influential work in Ḥanafī literature, namely *al-Muxtaṣar*, as well as al-Šaybānī's *al-Jāmi' al-Šaḡīr* (see Cengiz Kallek, "El-Hidāye", *TDV İslām Ansiklopedisi*, <https://islamansiklopedisi.org.tr/el-hidaye> (06.09.2019)).

<sup>486</sup> See *muṭlaq* in section 3.1.1.1. above.

<sup>487</sup> See *waḍf ṣurfī* and other types of *waḍf* in section 3.5. above.

<sup>488</sup> *ḍāhir al-riwāya* is the name given to the contents of the books by Imām Muḡammad al-Šaybānī which are narrated as *tawātur* from him. These books are: *al-Aṣl*, *al-Jāmi' al-Kabīr*, *al-Jāmi' al-Šaḡīr*, *al-Siyar al-Kabīr*, *al-Ziyādāt*, and *al-Ziyādāt al-Ziyādāt*. The contents of these books include especially the opinions of Abū Ḥanīfa and Abū Yūsuf and they are therefore considered very important in representing the opinions of the Ḥanafī school and its founding father, Abū Ḥanīfa, who himself left no monograph on Islamic law. These six books were summarized by al-Ḥākim al-Šahīd Muḡammad b. Muḡammad al-Marwazī (d. 334/945), which was later commented on by al-Saraxsī (d. 482/1090) in his influential thirty-volume work *al-Mabsūṭ* (see Erdoğan, *Fıkıh ve Hukuk Terimleri Sözlüğü*, 615). *Nadir al-riwāya* is the contents of the works that were not transmitted as authentic as the contents of Muḡammad al-Šaybānī's *ḍāhir al-riwāya* books. The *nadir al-riwāya* works are: *al-Āṭār*, *al-Hujaj*, *al-Raqqiyyāt*, *al-Kaysāniyyāt*, *al-Jurjāniyyāt*, *al-Hāruniyyāt*, and *al-Ḥiyal wa al-Maxārij*. There are two others that are considered within *Nawādir al-Riwāya*, namely *Muḡarrar* by Ḥasan b. Ziyād and *Amālī* by Abū Yūsuf (see *ibid*, 443).

<sup>489</sup> *Ibid*, 504.

the *ḥadīṭ* from the Prophet on this matter, which reads “*idra’ū l-ḥudūda ṣani’l-muslimīna bi-š-šubuhāti mastataftum*”<sup>490</sup> (Cancel applying *ḥudūd* punishments to Muslims on the excuse of [the existence of] doubts).

To illustrate, al-Maydānī says, if a person steals ten *tibr*<sup>491</sup> whose economic value is below ten dirhams that are *maḍrūba*, the punishment ascribed to *sirqa*, namely *qaṭf* (amputation), is not applied. Al-Maydānī mentions that the tradition from the Prophet “*lā qaṭfa illā fī dīnārin aw ṣaṣarati darāhima*”<sup>492</sup> (Amputation is only applied for a *dīnār* or ten *dirhams*) also supports this opinion,<sup>493</sup> probably on the grounds that one *dīnār* was considered equal to ten *dirhams* that are *maḍrūba*.

#### 4.3.2. Aspects pertaining to the place of *sirqa*

Al-Maydānī also discusses the conditions required of the place where a given act of theft takes place for the act to be considered *sirqa*. First, the place from which the item is stolen needs to be *ḥirz*<sup>494</sup> (a protected place) in order for the act to be considered *sirqa*. This is because *istisrār*, as mentioned earlier, is among the characteristics mentioned in the ‘lexical’ definition of *sirqa*, and therefore, any action

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<sup>490</sup> See, for instance, Ibn Māja, *Ḥudūd*, 5 and Tirmidī, *Ḥudūd*, 2.

<sup>491</sup> *tibr* is the name of gold or silver that is bullion (Erdoğan, *Fıkıh ve Hukuk Terimleri Sözlüğü*, 580).

<sup>492</sup> al-Ṭaḥawī, *Šarḥ al-Āṭār*, II, 93.

<sup>493</sup> Al-Maydānī, *al-Lubāb*, 504.

<sup>494</sup> Al-Maydānī explains *ḥirz* as “*wa-huwa mā yamnaṣu l-wuṣūla yadi l-ġayri sawā’un kāna binā’an aw ḥāfiḍan*” (It is that which prevents hands of others from reaching [something], be it a building or a chest) (al-Maydānī, *al-Lubāb*, 503).

lacking this feature does not constitute *sirqa*. And logic dictates that the only way for someone to steal another's item with *istisrār* (being hidden) is on the condition that the place the item is stolen is one that is protected.<sup>495</sup> Therefore, stealing a given item, even if its value reaches ten dirhams, from a place that is not protected and open to others' access is not considered to be *sirqa*. Accordingly, the punishment of *qaṭf* (amputation) does not apply to those forms of theft that involve only items being stolen from unprotected places.

Al-Maydānī goes on to talk about the conditions related to the place of *sirqa*, saying that the place from which *niṣāb* (the minimum amount of goods required for the stealing to be considered *sirqa*) is stolen needs to be taken from one *ḥirz*. To illustrate, al-Maydānī says, if a person steals *niṣāb* from multiple protected places, no punishment of *qaṭf* is carried out.<sup>496</sup> The reason for this is the fact that the verse is *muṭlaq* in the verb of stealing, namely *saraqa*, which is *māḍī* (past) tense. And when there is no indication that the *māḍī* verb in a given sentence took place multiple times, it is considered to have taken place only once, which is in line with the linguistic category of *muṭlaq*. Therefore, when a given theft involves multiple *ḥirz*, each of the occasions of breaking into these protected places is treated as a separate *sirqa*. To illustrate, consider the following example:

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<sup>495</sup> Al-Maydānī, *al-Lubāb*, 505.

<sup>496</sup> *Ibid*, 505.

John goes to a hotel and is given keys for two safe boxes (A and B) in his room. He has money, say in pounds, that is equal to 11 *dirhams* (1 *dīnār*). He puts his money that is equal to 9 *dirhams* in safe box A and the rest of his money in safe box B. He leaves his room and asks the reception to send someone over to come and clean the room while he spends sometime in the city. The maid who is sent to his room manages to open the two boxes and takes all the money John put in the boxes. The maid's taking the money from each box is treated as a separate case of stealing because each act of stealing involves a different *ḥirz*.<sup>497</sup> Due to the fact that the money stolen in each case is below *niṣāb*, no *qaṭʿ* can be applied to the maid despite the fact that the total amount of money stolen, which is, though in pounds, equal to 11 *dirhams*, is above *niṣāb*.

Similarly, al-Maydānī notes,<sup>498</sup> even if a person steals *niṣāb* from the same *ḥirz* but on multiple occasions, this will not cause the person to face *qaṭʿ*. To use the example above, before leaving his room, instead of putting his money into two safe boxes, if John decided to put all of his money into, say, safe box A, and the maid took the amount of money equal to 5 *dirhams* on her first visit to the room and then took the rest during her next service of John's room, this would have not caused the maid

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<sup>497</sup> Note that if the money was stored not inside safe boxes but elsewhere inside the room, the maid's stealing would have not caused her to face amputation either. This is because she had permission to enter to John's room, and this breaches the intrinsic characteristic of being *ḥirz* (a protected place) for the room. In that case, since the protection would not have been complete, stealing from such a place would have not been considered *sirqa*.

<sup>498</sup> Al-Maydānī, *al-Lubāb*, 505.

to face amputation either. Again, the reason for this is the fact that each act of stealing on each occasion in which the maid engages is considered a separate case of *sirqa*, and the amount stolen in each case is below *niṣāb*.

As I have pointed out earlier in the general framework as the second solution to the *side-effect 3*, the religion of Islam sometimes assigns a new sense to an already existing word with an already assigned sense in the language.<sup>499</sup> The new assignment constitutes a *mujmal* word for the linguistic community. ‘*Sirqa*’ is such a word. In fact, the verse that assigned the new sense to the word *sirqa* left some aspects<sup>500</sup> of it *mujmal*. One of these aspects is, as I mentioned above, the *qīma* (economic value) of the item subject to *sirqa*.<sup>501</sup> However, this *mujmal* aspect of it turned out to be relevant once the Prophet made a statement that it had to be equal to ten *dirhams*, as I mentioned above. Through this clarification by the Prophet, the lowest economic value required of the item being stolen for the stealing to constitute *sirqa* is

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<sup>499</sup> See the general framework in section 3.9.

<sup>500</sup> I believe that while one can come up with hundreds of aspects pertaining to an action or thing, only certain of these aspects are considered relevant to the application of the punishment. For instance, the weather condition in which a person steals an item, the type of clothing one wears when doing this, or the type of tricks one uses to break into a house to steal an object can all be considered aspects pertaining to any given action. However, none of these plays any role in determining whether or not the action falls under the category of ‘*sirqa*’ as defined by the religion of Islam, and therefore has no relevance to our discussion here. The key to knowing which aspects are relevant and which ones are not seems to be embedded in the terms *muṭlaq* and *muqayyad* which *uṣūlīs* came up with. Any aspect the religion of Islam left unspecified as *muṭlaq* is not relevant. However, if the religion of Islam specified an aspect of a given action or thing, then it is likely to become a relevant aspect. This is true unless there is another conflicting piece of evidence mentioned in the sources of Islamic law, in which case one needs to determine the priority of one of these over the others. In such cases, when meeting the requirements, *muṭlaq* is limited with *muqayyad*. I have discussed the rules of this process in sections 3.1.1.1 and 3.1.1.2 on *muṭlaq* and *muqayyad* above.

<sup>501</sup> Al-Maydānī, *al-Lubāb*, 504.

determined. To use *uṣūlīs'* terms, the word *sirqa*, which was *mujmal* in terms of *qīma*, turned into *mufassar* in this regard.

Another aspect of *sirqa* is, as it turns out, also relevant: whether or not the action needs to take place at one time and place. The religion of Islam made no separate statement on this aspect. Instead, I think it uses a purely linguistic category already used by the linguistic community, that of *muṭlaq*. In fact, in Arabic, if a *fiʿl māḍī* (verb in past tense) is used in an utterance without an indication of the verb having taken place on multiple occasions, it is considered to have taken place once, as noted above in this section. In other words, this is part of the meaning assigned to the *māḍī* verb in Arabic that the linguistic community already agreed upon. The ramification of this aspect of *sirqa*, which, as I have just shown, is indicated to be relevant by the Prophet, is that if a person steals goods from a single *ḥirz* on multiple occasions, even if the total amount stolen reaches *niṣāb*, no *qaṭʿ* is applied, given that each act of stealing, which is considered a separate one, does not reach the *niṣāb*, and therefore does not meet the standard of another aspect, namely *qīma*, which is determined through the Prophet.

This is relevant to the core idea of the present study. Islamic law reveals itself through the Qurʾān, the Sunna, *Ijmāʿ*, and *Qiyās*, but it does so, in almost all cases, in the form of statements in the Classical Arabic language. Besides the general meaning such statements indicate, they can also reveal more insights into the Sharīʿa through

the existing structures of the language. If there is no reason for God to reveal another verse, or no reason for the Prophet to say another *ḥadīṭ*, why would they do so to explain something that is already clear through previous statement of theirs unless there is another benefit in doing so? If *sirqa* (or *sāriq* for that matter) and relevant aspects of the new sense the religion of Islam assigned to it are clear already, it seems less likely that another verse will be revealed or another *ḥadīṭ* said. Likewise, when necessary, for instance, the Prophet explained verses in the Qur'ān, as in the example of *sirqa*. As seen above, the aspect of *qīma* was *mujmal*, so it needed further explanation. Therefore, the Prophet, in line with his mission, indicated in the Qur'ān itself to explain the Qur'ān, specified the *qīma* of the item being stolen.<sup>502</sup> On the other hand, he did not specifically say that the stealing needs to take place at one time and place. But this, as seen above, is already clear with the verse revealed on this thanks to the fact that a *māḍī* verb when used as *muṭlaq* indicates that the action needs to take place at one time and place. Since this was already clear, it seems to be that the Prophet did not need to explain this aspect.

The purpose of revealing another verse or saying another *ḥadīṭ* on a matter, therefore, seems to be to explain a relevant aspect that was not already clear through previous verses or sayings on that matter. In other words, language is itself not a

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<sup>502</sup> If the Prophet had not specified this, other verses and *aḥādīṭ* and other relevant sources of Islamic law such as *ṣurf* would have to be considered to determine the *qīma*.



Since it is already clear that the rest of the inheritance will go to the father, only the mother is mentioned in the verse. Therefore, Islamic law consists of laws revealed through different domains, and one of which is the established language of the Arabs. What is already clear through pure logic is likely not to be stated through language, and what is already clear through a previous statement in the language is likely not to be subject to further mentioning. Therefore, the role of language is to be a tool for revealing the Sharīʿa. And *uṣūlīs'* analysis of this tool which we call language is aimed at finding out the qualities and limitations of this tool in revealing the Sharīʿa in an effort to make best use of it. The result of their analysis of this tool is what we call linguistic categories in *uṣūl al-fiqh*, which I explored previously in this work.

## Figure XXI

### Limitation of the scope of Qurʾān 5:38 by some of the relevant traditions

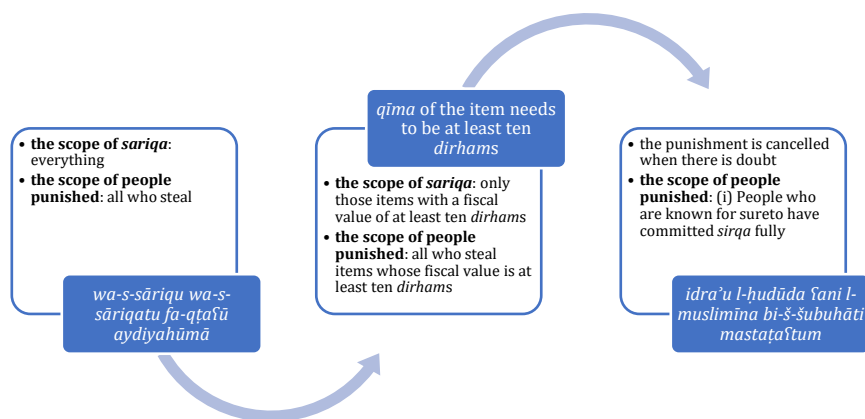
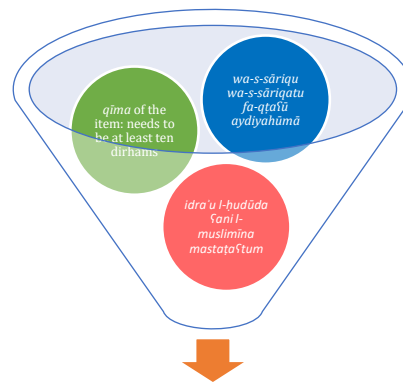


Figure XXII

**Illustration of the refinement of the legal ruling for *sirqa* based on some of the evidences from the sources of Islamic law**



The punishment ascribed to those adults with sound intellect who commit stealing of goods belonging to others whose economic value is above ten *dirhams* (1 *dīnār*) is for their hand to be cut off from wrist.

The verse on this matter sets down the principle, and the *ḥadīṭs* limit the scope of the verse, clarifying what is meant by it, as showed in Figure XXI. The synthesis of Qur'ānic verses and *ḥadīṭs* as well as other sources of Islamic law then leads to a rather refined conclusion on each legal matter in the form of a legal statement. Such a refinement of legal material is attained above on the matter of *sirqa*, as represented in Figure XXII. This statement on *sirqa* as shown in Figure XXII is not in its complete form; rather, it only represents the fact that the process of law-making (attaining legal statements) in Islamic law involves a consideration of all related legal material, be it a verse or a tradition or anything else valid to base law on. A more complete statement

on *sirqa*, as we have seen in the beginning of this chapter, is given by al-Qudūrī right at the beginning of his treatment of the subject in his *al-Muxtaṣar*.<sup>505</sup>

#### 4.3.3. Aspects pertaining to *sāriq/sāriqa*

Al-Qudūrī next goes on to talk about the qualities pertaining to the person who commits *sirqa*, mentioning that one's being a free individual or a slave does not make any difference in this regard in order to protect people's goods.<sup>506</sup>

Al-Qudūrī also talks about the valid ways to accuse someone of *sirqa*. One of these ways is *iqrār* (confession), and al-Qudūrī says one confession is enough to accuse of the person who confesses with *sirqa*.<sup>507</sup> The other way is *išhād* (witnessing) of two witnesses, as this is common in the application of other legal cases.<sup>508</sup> In the chapter on *šahādāt* (testimonies), al-Qudūrī notes that in accusing someone of *sirqa*, the witness should use the verb *axaḍa* (took it) when giving testimony instead of *saraqa* (stole it),<sup>509</sup> which, al-Maydānī explains, to protect the hand of the thief from amputation,<sup>510</sup> which is something that shows that the purpose of the punishment of

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<sup>505</sup> Al-Qudūrī, *al-Muxtaṣar*, 503.

<sup>506</sup> Ibid, 505.

<sup>507</sup> Compare this with the requirement of four separate occasions of confessions, each of which needs to be almost exactly the same, for establishing the crime of *zinā*.

<sup>508</sup> Al-Maydānī, *al-Lubāb*, 505.

<sup>509</sup> Al-Qudūrī, *al-Muxtaṣar*, 572.

<sup>510</sup> Al-Maydānī, *al-Lubāb*, 572.

amputation is to function as a deterrent as indicated in the Qur’ān 5:38 which serves as the basis for amputation.

Al-Maydānī also provides more information about the legal procedure involved in both of these valid ways of proving *sirqa*. Regarding accusation through witnesses, he says, the “*imām* (judge) asks the following questions about the case: “How was it?”, “What was it?”, “When was it?”, “How much/many was it?”, and “From whom did he/she steal it?”<sup>511</sup> Regarding *iqrār*, al-Maydānī says, the *imām* asks him/her all the questions mentioned above except for the time of *sirqa*.<sup>512</sup> He also notes that all these questions are asked for extra cautiousness and in an effort to find a way to cancel the application of the punishment of *sirqa* by finding a doubt surrounding the stealing in question.<sup>513</sup>

Another aspect pertaining to the person committing *sirqa* that al-Qudūrī discusses is the question of the liability of each individual making up a given body of thieves working in cooperation in undertaking a particular *sirqa*. He says that if a group of people work in cooperation in a particular *sirqa*, and the share each individual receives of the *sariqa* (i.e. the item being stolen) is equal to, or exceeds, *niṣāb*, then the punishment of *sirqa*, namely *qaṭʿ*, is applied to each one of them. This

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<sup>511</sup> Al-Maydānī, *al-Lubāb*, 505.

<sup>512</sup> Ibid.

<sup>513</sup> Ibid.

is true, al-Maydānī says, even for any member of the group undertaking *sirqa* who is not *āxiḍ* (i.e. a person who actually takes/steals *sariqa*), that is to say, who is not actively involved in the act of *sirqa* because it is true to ascribe the act of stealing to each one of them in essence due to their cooperation in undertaking the particular *sirqa*. He also notes that it is common among these people to assign to some of them tasks other than the actual taking of *sariqa* such as watching for any threat and guarding the rest of the group in case the owner or someone else comes to hinder the *sirqa*.<sup>514</sup> Therefore, I think he implies that it would be naïve to say that those who are not actively involved in *sirqa* should not be considered *sāriq*.

Accordingly, if the share that each individual within a group of thieves receives from a particular *sirqa* is less than *niṣāb*, the punishment is not applied to any of them, as al-Qudūrī notes.<sup>515</sup> This is because, al-Maydānī explains, for each of them to receive the punishment of *sirqa*, each has to receive *niṣāb* because each one of them is responsible for his/her own crime. Therefore, according to *uṣūlīs*, what is taken into consideration is not the *niṣāb* which the group receives all together but only the *niṣāb* that each receives.<sup>516</sup>

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<sup>514</sup> Ibid.

<sup>515</sup> Al-Qudūrī, *al-Muxtaṣar*, 505.

<sup>516</sup> Al-Maydānī, *al-Lubāb*, 505.

**4.3.4.** Aspects pertaining to *sariqa*: certain items that are not considered *sariqa per se* when stolen, thus lead to no amputation

Al-Qudūrī goes on to talk about cases in which no *qaṭʿ* is applied, thus clarifying some aspects of *sariqa* further. First, no *qaṭʿ* is applied for items that are considered to be insignificant and items whose kinds are *mubāḥ* (permissible) to acquire in *dār al-Islām*<sup>517</sup> such as wood, reedmace, grass, fish, bird, and game animals.<sup>518</sup>

To illustrate, consider the following. There is a lumberyard complex in the city which cuts down old trees in a nearby wood and collects them, which is free for everyone to do, and sells them for a good price in the city centre. One day, B buys a truckful of woodpile for a price which costs him way above ten *dirhams* from the lumberyard and puts them into his locked storage. One night, A sneaks into B's place and using his own truck steals them all at one time. A is about to get away under the cloak of night with the woodpile but is caught right after he leaves B's place due to the noises he makes while trying to uproot B's good-looking mailbox which he also decides to steal before he leaves. In this example, since the woodpile, despite the fact that B paid for it, can be collected from the wood for free, the punishment to be applied to A cannot be *qaṭʿ* because its kind is available for free.

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<sup>517</sup> This is a term that generally refers to a political territory under Muslim leadership where Muslims live safely and securely (Erdoğan, *Fıkıh ve Hukuk Terimleri*, 92).

<sup>518</sup> Al-Maydanī, *al-Lubāb*, 505.

Al-Maydānī explains the logic behind this by saying that this is similar to stealing something below *niṣāb* in which case it is rare that such a little amount would be taken from owner without consent. Similarly, such items as wood that one can find for free would rarely be stolen from an owner. Al-Maydānī notes that the reason for this is the fact that *ḥirz* is incomplete<sup>519</sup> in both of these cases in that, I assume, the *ḥirz*, whatever this may be, is hardly built or made and is being used with the intention of protecting the amount of items whose economic value is under ten *dirhams* or items that are available out there for free. In other words, such items are not considered to be protected.

Al-Qudūrī also notes that no *qaṭʿ* is applied to perishable items such as fresh fruit, meat, milk, and watermelons.<sup>520</sup> The basis for this, al-Maydānī says, is the saying of the Prophet “*lā qaṭʿa fī ṭ-ṭaʿāmi*” (No amputation for food).<sup>521</sup> In other words, from this saying of the Prophet we understand that not all stealing of items whose economic value is at or above ten *dirhams* causes the thief to face amputation, as this saying of the Prophet limited the scope of the items meant by the verse on this matter (As for the male and female thief, cut off the hands of both...) and by the saying of the

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<sup>519</sup> Ibid, 505-506.

<sup>520</sup> Al-Qudūrī, *al-Muxṭaṣar*, 506.

<sup>521</sup> Al-Maydanī, *al-Lubāb*, 505.

Prophet on the *qīma* of *sariqa*, which indicates that it needs to be at least ten *dirhams* in economic value.

The verse itself is so *muṭlaq* that it would have included any item with any economic value that belongs to someone else. But the saying of the Prophet on *qīma* limited (made *taqyīd* on) the scope of items meant by the verse and excluded those items whose economic value is below ten *dirhams*. The *ḥadīṭ* on the quality of the item further limited the scope of *ḥukm* to those items that are not perishable. In fact, the *ḥadīth* excludes all types of food from the scope of the *ḥukm al-qaṭṭ* pertaining to *sariqa*, but *ijmāʿ* on this enters into the equation and limits the scope of the *ḥadīṭ* to those food items that are perishable.<sup>522</sup>

In addition to perishable items, al-Qudūrī mentions other types of viand that are also excluded from the scope of *ḥukm al-qaṭṭ*. Al-Maydānī provides the names of these and the reason behind their exclusion from *ḥukm al-qaṭṭ*. He says that for stealing produce that is not yet harvested and fruits on trees no *qaṭṭ* is applied.<sup>523</sup> The reason for this, as al-Maydānī explains, is the fact that *ḥirz* of these items is not complete.<sup>524</sup>

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<sup>522</sup> The original text reads “ لا يقطع في ما يسرع اليه الفساد...لقوله ﷺ لا قطع في الطعام. قالوا معناه ما يتسارع اليه الفساد لانه يقطع في الحبوب (No amputation is applied for perishable items due to a saying of the Prophet “No amputation for food.” They said that what is meant by this [i.e. the *ḥadīṭ*] is what is perishable because there is *ijmāʿ* on the [validity of] the amputation for grain and sugar) (see al-Maydānī, *al-Lubāb*, 506).

<sup>523</sup> Ibid, 506.

<sup>524</sup> Ibid.

There is yet another type of viand that al-Qudūrī says is excluded from *ḥukm al-qaṭʿi*, namely ‘entertainment drinks’.<sup>525</sup> These kinds of drink do not cause the stealer of such drinks to suffer amputation, as al-Maydānī notes, due to the possibility that the person may take such a drink in order to throw it away.<sup>526</sup> In an effort to further explain the logic behind this, al-Maydānī says that some such entertainment drinks are not considered precious goods, and some of them are controversial.<sup>527</sup> The existence of such kinds of drinks which have no fiscal value and the controversial status of some of them for that matter casts doubt on the fiscal value of all entertainment drinks<sup>528</sup> for the person who steals such a drink.<sup>529</sup>

To illustrate, say a person steals a cup of “X”, which is a type of entertainment drink but one that has no intoxicating ingredients in it, and that there is no question as to the fact that it has fiscal value in itself. Therefore, it is *ḥalāl* (permissible) to sell and drink such an item. However, there are other kinds of drinks within the same category of entertainment drinks that are intoxicating and therefore not permitted to be drunk or sold. In other words, it belongs to a sub-class of entertainment drinks, say, referred to as “A”, which is *ḥalāl*, while some of its co-subclasses, say, “B” and “C”, are not *ḥalāl*. Although it is clear which sub-classes are *ḥalāl* and which are not for

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<sup>525</sup> The Arabic reads *al-ašriba al-muṭriba* (al-Qudūrī, *al-Muxtaṣar*, 506).

<sup>526</sup> Al-Maydānī, *al-Lubāb*, 506.

<sup>527</sup> This is probably because they have ingredients that are intoxicating.

<sup>528</sup> Al-Maydānī, *al-Lubāb*, 506.

<sup>529</sup> Ibid.

those people who are familiar with them, the particular person who actually steals, say, a cup of drink “A”, might have thought of it as having no fiscal value just like its co-subclass “B” and might have intended to throw it away. This doubt as to the fiscal value of entertainment drinks is considered a valid reason for preventing the application of *ḥukm al-qaṭf*.

Al-Qudūrī goes on to mention goods which lead to no *qaṭf* when stolen. He says that the *ṭunbūr* (“a long-necked stringed instrument resembling the mandolin”)<sup>530</sup> is not among the items that lead to *qaṭf*.<sup>531</sup> To this Al-Maydānī adds all the other instruments of *lahw*.<sup>532</sup> Al-Maydānī also says that the reason behind this is the possibility that the person who takes such items may intend to break them in an effort to forbid from evil,<sup>533</sup> as the use of such instruments is considered to be such when it leads to prohibited things.

Another item for which no *qaṭf* is applied when stolen is a *muṣḥaf* (copy of the Qurʾān) even if it has embellishments whose financial value exceeds *niṣāb*, as al-Qudūrī mentions.<sup>534</sup> Al-Maydānī explains the reason behind this, saying that the

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<sup>530</sup> Wehr and Cowan, *A Dictionary of Modern Written Arabic*, 667.

<sup>531</sup> Al-Qudūrī, *al-Muxṭaṣar*, 506.

<sup>532</sup> I think he is referring to musical instruments.

<sup>533</sup> Al-Maydānī, *al-Lubāb*, 506.

<sup>534</sup> Al-Qudūrī, *al-Muxṭaṣar*, 506. I think it is fair to ask why stealing an embellishment whose value exceeds *niṣāb* does not lead the thief to receive the punishment of *sirqa* despite the fact that if the same embellishment had been stolen when it was standing alone apart from the manuscript, this would have caused the thief of it to be punished with *qaṭf*. Therefore, al-Maydānī explains the logic behind this by saying that the embellishment is *tabaʿ* (follower/dependent), and therefore it is not taken into consideration. This is similar, al-Maydānī goes on to say, to a case in which a person steals a cup with wine in it, and the fiscal value of the cup exceeds *niṣāb*

intention of the person who takes a copy of the Qur'ān may be to read or to look at it.<sup>535</sup>

This type of legal thinking is interesting for its various connotations. In fact, *uṣūlīs* consider the act of *sirqa* to be similar, on the surface level, to the act of taking with the intention of reading. For instance, consider the case of a person who enters into someone's house in the middle of the night and takes a 600 hundred year-old manuscript with gold embellishments, whose value exceeds *niṣāb*, and he does this secretly and meeting all the requirements needed for an action to be defined as *sirqa*, but the item he has stolen happens to be a copy of the Qur'ān. In this case, the merest possibility that the person who has taken the copy of the Qur'ān may have intended to read it or to look at it is enough to cancel the application of the punishment of *sirqa*. The list goes on and on. Here I will confine myself to the items exempt from *qaṭf* that are mentioned up to now.<sup>536</sup>

No *qaṭf* is applied in cases of kidnapping a free child even if there is jewellery— and even if this reaches *niṣāb*<sup>537</sup>— on the child.<sup>538</sup> This is because a free person is not

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(al-Maydānī, *al-Lubāb*, 506). Apparently in such a case, no *qaṭf* is applied. The reason for this could be the fact that what is stolen is considered to be *xamr* (wine) as the cup's primary function is to hold the wine. Therefore, the cup is *tabaʿ* (follower/dependent) with respect to wine.

<sup>535</sup> Molla Jīwan, *Nūr al-Anwār*, 506. Reading the Qur'ān or merely looking at it are considered good deeds in Islam.

<sup>536</sup> For details of other items that do not lead *qaṭf* when stolen, see al-Maydānī, *al-Lubāb*, 506-507.

<sup>537</sup> Al-Maydānī, *al-Lubāb*, 506.

<sup>538</sup> Al-Qudūrī, *al-Muxtaṣar*, 506.

a property<sup>539</sup> while *sariqa*, as mentioned earlier in the definition provided by al-Maydānī, needs to be a property. As for jewellery, even if it reaches *niṣāb*, it is *tabaʿ* with respect to the child, and as I explained above, *tabaʿ* is not taken into consideration.<sup>540</sup>

Al-Qudūrī also notes that no *qaṭʿ* is applied in cases where the person being kidnapped is an adult slave.<sup>541</sup> This is because such cases are not *sirqa* but either *ḡaṣb* (illegal seizure)<sup>542</sup> or *xidāʿ* (deceit),<sup>543</sup> as the person has control over himself,<sup>544</sup> which is not the case with a property by definition. As noted, *sariqa* needs to be a property for the action to constitute *sirqa*. On the other hand, al-Qudūrī notes, when a child slave is kidnapped, *qaṭʿ* is applied,<sup>545</sup> as he is not able to express himself<sup>546</sup> or does not have control over himself.<sup>547</sup> Al-Maydānī also notes that if the child is able to express himself clearly, he is considered to be like an adult.<sup>548</sup> As a result, kidnapping such a child would not constitute *sirqa*.

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<sup>539</sup> Al-Maydānī, *al-Lubāb*, 506.

<sup>540</sup> Al-Maydānī, *al-Lubāb*, 506. See also footnote 534.

<sup>541</sup> Al-Qudūrī, *al-Muxtaṣar*, 506.

<sup>542</sup> Wehr and Cowan, *A Dictionary of Modern Written Arabic*, 790.

<sup>543</sup> Lane, *An Arabic-English Lexicon*, 709.

<sup>544</sup> The Arabic reads “*li-annahū fī yadi nafsihī*” (see Al-Maydānī, *al-Lubāb*, 506).

<sup>545</sup> Al-Qudūrī, *al-Muxtaṣar*, 506.

<sup>546</sup> The Arabic reads “*lā yuṣabbaru ṣan nafsihī*”. Lane translates a similar phrase “*ṣabbara ṣammā fī nafsihī*” as “He declared, spoke out clearly or plainly, or explained, what was in his mind” (Lane, *An Arabic-English Lexicon*, 1989).

<sup>547</sup> Al-Maydānī, *al-Lubāb*, 506.

<sup>548</sup> The Arabic word used here is ‘*bāliḡ*’ (see al-Maydānī, *al-Lubāb*, 506).

**4.3.5.** Aspects pertaining to the *masrūq minh* (the person(s) from whom the item is stolen)

Al-Qudūrī also discusses aspects pertaining to the person or the entity a *sariqa* is stolen from. The idea that lies behind this is that in order for a given thief to receive the punishment of *qaṭf*, there should not be even the slightest possibility that the thief may be the owner, or a shareowner, of the item being stolen.

In this regard, al-Qudūrī says that if the item being stolen is a public property, then no amputation is applied<sup>549</sup> because, as Al-Maydānī explains, such an item belongs to the public, and to the thief, being a member of the public.<sup>550</sup> In such a case, he/she would be a shareowner of the item that he/she has stolen. However, as we have seen in the definition of *sirqa* as it has been established in the language of the Arabs, the item subject to *sirqa* should belong to someone else, as noted by al-Maydānī before he starts explaining the special sense the religion of Islam ascribed to *sirqa*.<sup>551</sup> At the same time, we have also seen in the special sense the religion of Islam ascribed to *sirqa* that there should be no doubt surrounding the *sirqa*.<sup>552</sup> Because the item does

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<sup>549</sup> The Arabic reads “*wa-lā yuqtafu s-sāriqu min bayti l-māli...*” (Al-Qudūrī, *al-Muxṭaṣar*, 507).

<sup>550</sup> Al-Maydānī, *al-Lubāb*, 507.

<sup>551</sup> The definition of *sirqa* established in the Arabic language even before Islam is “*axḍu š-šay’i mina l-ġayri Ḥalā l-xafīyyati wa-l-istisrāri.*”, which indicates that the item needs to belong to someone else other than the thief (see *ibid*, 503).

<sup>552</sup> *Ibid*, 503.

not belong to other(s) completely in the case that the thief is an owner or a shareholder, then no *qaṭf* is applicable to the thief in such a case.

Similarly, stealing from one's own parents, children, and close relatives does not lead to *qaṭf*.<sup>553</sup> Al-Maydānī explains each one of these. First, he says, child is within *ḥirz*. The converse is also true, so parents needs no further explanation. As for the last one, if the person steals it from a third person in the relative's house, no *qaṭf* is applied due to the fact that the thief, thanks to his/her close relation with the owner of the house, is considered to have access to the house and therefore the house is not considered to be a place protected from that particular thief.<sup>554</sup>

Likewise, al-Qudūrī mentions that if one of the spouses steals from the other, no *qaṭf* is applied. Similarly, if a slave steals from his/her master or the spouse of his/her master, no *qaṭf* is applied. This is because of the existence of permission *ḥādātan* (for such people to enter houses of these people).<sup>555</sup>

If the master steals from his/her *mukātab* slave,<sup>556</sup> al-Qudūrī notes, no *qaṭf* is applied because the master has a share in what the slave earns.<sup>557</sup> If the person steals

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<sup>553</sup> al-Qudūrī, *al-Muxṭaṣar*, 507.

<sup>554</sup> Al-Maydānī points this out rather briefly by stating that “*iftibāran li-l-ḥirzi wa-ḥadamihī*” (see Al-Maydānī, *al-Lubāb*, 507).

<sup>555</sup> Al-Maydānī, *al-Lubāb*, 507.

<sup>556</sup> For a definition of *mukātab*, see section 3.1.1.2.

<sup>557</sup> Al-Maydānī, *al-Lubāb*, 508.

from *maġnam* (booty),<sup>558</sup> no *qaṭf* is applied given that he is one of the shareholders of it.<sup>559</sup>

#### 4.3.6. Aspects pertaining to the place of *sirqa*

Al-Qudūrī then goes on to talk about the *ḥirz* (protected place), the *ḥirz* being of two kinds: *ḥirz li-maʿnā fīh* (an intrinsically protected place) such as house, store, or chest, which is *ḥirz* in the real sense (*ḥaqīqī*); and *ḥirz bi-l-ḥāfiḍ* (a place referred to as “protected” by virtue of it having a protector) such as one where a man sits next to his goods in a public space.<sup>560</sup> The first type is what *uṣūlīs* refer to as *ḥirz* when they use it as *muṭlaq*, and the second type is achieved through a protector.

Al-Qudūrī then talks about stealing from a public space. In fact, he says that no *qaṭf* is applied to someone who steals from a bathhouse during a normal business hour, as it is normally permissible for anyone to enter there.<sup>561</sup> The logic behind this is that when it is permissible for anyone to enter, the intrinsic characteristic of being *ḥirz* (i.e. being a protected place) for the building is breached, so the protection is not perfect. And as mentioned above, *sariqa* needs to be stolen from *ḥirz* in its complete form in order for the action to lead *qaṭf*. Here, however, a person steals from a bathhouse where everyone, including he himself, is allowed to enter. Due to the

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<sup>558</sup> Erdoğan, *Fıkıh ve Hukuk Terimleri Sözlüğü*, 153.

<sup>559</sup> Al-Maydānī, *al-Lubāb*, 508.

<sup>560</sup> Ibid.

<sup>561</sup> Ibid.

existence of permission for the person *ḥādatan* to enter, no punishment of *qaṭṭ* is applied in such cases.

Similarly, if a visitor steals something from the host in the host's house, no *qaṭṭ* is applied,<sup>562</sup> as the house, which is normally considered to be intrinsically a protected place, is not a protected place against the visiting thief<sup>563</sup> because he is given permission (*ḥaqīqatan*) to enter the house.

For the same reason, if someone steals from a house which people are allowed to enter, no *qaṭṭ* is applied due to the existence of permission for the thief to enter it *ḥādatan*.

Al-Maydānī adds that if the person steals from a store outside of normal business hours, then *qaṭṭ* is applied. The logic behind this is the fact that the building is intrinsically a place of protection, and outside of business hours, there is no doubt as to this feature of being a place of protection.<sup>564</sup>

This feature of being a place of *ḥirz* is not one that is common to all types of buildings, however. In fact, al-Maydānī says that *masjids* are not built to be a place of *ḥirz*. Therefore, if someone steals from another in a *masjid*, due to the fact that the goods is not *maḥraz* (protected) by virtue of it being inside the building, no *qaṭṭ* is

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<sup>562</sup> Al-Qudūrī, *al-Muxṭaṣar*, 508.

<sup>563</sup> Al-Maydānī, *al-Lubāb*, 508.

<sup>564</sup> Ibid.

applied if the owner of the goods is not present during *sirqa*. If the owner is present, however, the item is considered *maḥraz* thanks to the presence of the owner. Therefore, in such a case, *qaṭʿ* is applied, as al-Maydānī notes.<sup>565</sup>

If a thief breaks into a house and takes an item and hands it over from inside to another thief waiting outside of the house, no *qaṭʿ* is applied to either of them, as al-Qudūrī notes. The logic behind this is the fact that *sirqa* is not complete for either of them,<sup>566</sup> which has to involve *hatk al-ḥirz* (trespassing in a protected place), which is not complete for either of the two thieves. This is apparently because for *hatk al-ḥirz* to be complete, one needs to break into a protected place and take *sariqa* out of that place. Because neither of the two thieves here completes the process of *hatk al-ḥirz*, which needs to involve entering and coming out *ḥirz*, neither of them receives the punishment of *qaṭʿ*.

If a thief breaks into a house, and takes a *sariqa* throwing it from inside to outside the house to the street and then taking it from there after getting out, *qaṭʿ* is applied.<sup>567</sup> This is a trick, al-Maydānī notes, among thieves to overcome the difficulty of carrying the item with them while getting out of the building that they break into or the difficulty of fighting, if needed, against the owner while holding the item in their

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<sup>565</sup> Ibid.

<sup>566</sup> Ibid.

<sup>567</sup> Al-Qudūrī, *al-Muxṭaṣar*, 508.

hands.<sup>568</sup> Therefore, someone's throwing the item from inside to outside the protected building does not help him/her escape the punishment of *qaṭf*. He further explains this by saying that throwing the item outside of the building and then taking it from there is considered to be one single action.<sup>569</sup> He also notes that if the thief throws a *sariqa* to outside from inside and does not take it from the outside, this does not constitute *sirqa* and nor does it make him *sāriq*; rather this makes him *muḍīf*.<sup>570</sup>

If a thief breaks into (*naqaba*) a house and reaches out to something inside the house without his/her body entering it, no *qaṭf* is applied, as al-Qudūrī notes.<sup>571</sup> This is because trespassing in a protected place is achieved by entering in it.<sup>572</sup> However, if he/she reaches out to the chest of a goldsmith or the sleeve<sup>573</sup> of others and takes the goods, then *qaṭf* is applied because of the fact that trespassing of that protected place occurs<sup>574</sup> only by accessing the inside of it (e.g. the chest) with the hand.

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<sup>568</sup> Al-Maydānī, *al-Lubāb*, 508.

<sup>569</sup> Ibid.

<sup>570</sup> Ibid.

<sup>571</sup> al-Qudūrī, *al-Muxṭaṣar*, 509.

<sup>572</sup> The Arabic reads "*li-anna hatka l-ḥirzi bi-d-duxūli fihi*" (al-Maydānī, *al-Lubāb*, 509.)

<sup>573</sup> The Arabic word is "ك" (al-Maydānī, *al-Lubāb*, 509), which can be translated as "sleeve" (see Wehr and Cowan, *A Dictionary of Modern Written Arabic*, 983).

<sup>574</sup> Al-Maydānī further says that there is no way to trespass on this type of *ḥirz* other than this way (see Al-Maydānī, *al-Lubāb*, 509).

#### 4.3.7. Aspects pertaining to the punishment

Al-Qudūrī then moves on to the discussion of the exact place and manner in which the punishment of *qaṭf* is applied. He says that the right hand<sup>575</sup> of the *sāriq* (or *sāriqa* for that matter) is cut off from the *zand* (wrist).<sup>576</sup>

After the cutting off, he says, it is obligatory to cauterize<sup>577</sup> the hand in order to prevent the flow of blood. Al-Maydānī says that this is because the aim of the punishment is not to exterminate but to rehabilitate.<sup>578</sup>

Then al-Qudūrī goes on to talk about the application of the punishment in the case that a person repeats *sirqa*. We learned that the punishment of *sirqa* is to cut off the right hand of the *sāriq*. However, al-Qudūrī says, if the person repeats *sirqa*, his left foot is cut off.<sup>579</sup> In order to clarify the exact place where the foot is cut off, al-Maydānī says that the foot is cut off from the ankle (*kaʿb*).<sup>580</sup> If the person repeats *sirqa* again, then no *qaṭf* is applied but he is put into jail until he repents, as al-Qudūrī notes.<sup>581</sup> Al-Maydānī also notes that the basis of this *ḥukm* is a tradition going back to

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<sup>575</sup> 'yad' is defined as "the arm from the shoulder joint to the extremities of the fingers" (see Farid, M.G., *Dictionary of the Qurʾān*, 843).

<sup>576</sup> al-Maydānī, *al-Lubāb*, 509.

<sup>577</sup> The Arabic word used is "تحسم" (see Lane, *An Arabic-English Lexicon*, 569). Al-Maydānī describes the whole process briefly. He says that boiling oil is used to cauterize the hand after the cutting. The cost of the oil and the service of cauterization is upon the *sāriq* because these result from his action, which is *sirqa* (al-Maydānī, *al-Lubāb*, 509).

<sup>578</sup> Al-Maydānī, *al-Lubāb*, 509.

<sup>579</sup> Al-Qudūrī, *al-Muxtaṣar*, 509.

<sup>580</sup> Al-Maydānī, *al-Lubāb*, 509.

<sup>581</sup> Al-Qudūrī, *al-Muxtaṣar*, 509.

Alī b. Abī Ṭālib (d. 40/661), who said: “I feel shy from Allāh in relation to leave no hand for him by which he can eat and no foot on which he can walk”.<sup>582</sup> Al-Maydānī also adds that the rest of the Companions took this as evidence on this matter, and therefore, this constituted an *ijmāʿ*.<sup>583</sup>

Al-Qudūrī then talks about whether or not pre-existing problems pertaining to the place where the punishment is applied lead to any change in the application of *qaṭʿ*. In fact, if the person’s right hand or left foot is disabled or already cut off, then no *qaṭʿ* is applied lest this leads to a person’s extermination, as al-Qudūrī notes.<sup>584</sup>

He then talks about another requirement of the application of *qaṭʿ* pertaining to the actual application of the punishment. He says that the punishment cannot be applied unless the person from whom *sariqa* is stolen is present in the place where the punishment is to be applied and that he/she confirms his/her will while being present that he/she wants the thief be punished with the punishment of *qaṭʿ*.<sup>585</sup>

Al-Qudūrī then talks about other occasions on which the punishment of *qaṭʿ* is cancelled. He says that if the owner of the stolen item gives away the item to a *sāriq*

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<sup>582</sup> Al-Maydānī, *al-Lubāb*, 509.

<sup>583</sup> Ibid, 509-510.

<sup>584</sup> Al-Qudūrī, *al-Muxṭaṣar*, 510.

<sup>585</sup> Ibid, 510.

for free, or a *sāriq* buys it, or its financial value goes down below the *niṣāb* (even if after the *ḥukm* is finalized),<sup>586</sup> no *qaṭf* is applied.<sup>587</sup>

Al-Qudūrī notes that whoever steals a particular item, his hand is cut off because of it. In addition, he returns it to the owner. Then, if he steals the item again, its having gone through no change, no *qaṭf* is applied<sup>588</sup> for the same item the second time. The logic behind this, al-Maydānī explains, is that he has received the punishment of *qaṭf* for violating the item's inviolability. Repeating the stealing of the same item, which has not gone through any change, does not require the *ḥadd* to be applied again.<sup>589</sup>

If a thief claims that he/she owns the item he/she has stolen, no *qaṭf* is applied even if he/she cannot back up his/her claim with evidence, as al-Qudūrī notes.<sup>590</sup> The reason behind this, al-Maydānī notes, is the fact that the thief may be telling the truth even if he/she does not have evidence for his/her claim.<sup>591</sup> This constitutes a doubt. Whenever there is doubt surrounding *sirqa*, then no *qaṭf* is applied, as I mentioned before.

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<sup>586</sup> The original text reads "...*wa-law baʿda l-qaḍāʾi bi-hā...*" (see al-Maydānī, *al-Lubāb*, 510).

<sup>587</sup> Al-Qudūrī, *al-Muxṭaṣar*, 510.

<sup>588</sup> Ibid, 510-511.

<sup>589</sup> Al-Maydānī, *al-Lubāb*, 511.

<sup>590</sup> Al-Qudūrī, *al-Muxṭaṣar*, 511.

<sup>591</sup> Al-Maydānī, *al-Lubāb*, 511.

#### 4.4. Some *xafī* aspects of the word *sāriq* (*sirqa*)

As noted at the beginning of this chapter, words can fall under several linguistic categories. This is the case with *sāriq*. Besides the category of *mujmal*, *sāriq* falls under the category of *xafī* in some respects as well. As I explained in section 3.3.2.1, the particular *xafā'* (ambiguity) of any given *xafī* word is in relation to the hierarchical relationship between it and its co-subclasses. In the case of *sāriq*, its relation to *nabbāš* and *ṭarrār* were not well established.

As noted earlier, for any *xafī* word to turn to its default state of *dāhir*, what needs to be done is to think about the characteristics of each word in question, which is a process referred to as *ṭalab* (pondering) by *uṣūlīs*, as noted earlier.<sup>592</sup> In the example of *sāriq*, when pondering upon the characteristics of *sāriq*, *nabbāš*, and *ṭarrār* (that is to say, the definition of each), one reaches the correct classification of these words, which means that the *xafā'* as to the hierarchical relationship between these words is resolved. Accordingly, al-Qudūrī notes that no *qaṭf* is applied for a *nabbāš*<sup>593</sup> because a *nabbāš* is a person who steals from a grave, which is normally not protected – a matter I discussed earlier.<sup>594</sup> In fact, *sirqa* constitutes an act of stealing that is done from a protected place (*hirz*). As noted earlier, this is the result of the fact that *sirqa* by definition takes place “*ʿalā l-xafiyya wa-l-istisrār*” (secretly and hiddenly). This is

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<sup>592</sup> See, for instance, section 3.4.

<sup>593</sup> Al-Qudūrī, *al-Muxṭaṣar*, 507.

<sup>594</sup> See section 3.3.2.1.

a semantic feature embedded in the word *sāriq* (and also *sirqa*). Not having this type of semantic feature, *nabbāš* is not considered to be a type (sub-class) of *sāriq*. Therefore, the punishment ascribed to *sāriq*, namely amputation, does not apply to *nabbāš*.

*Nabbāš* is not the only type of thief that is excluded from the scope of the word *sāriq* due to the mere fact that it does not contain the semantic feature that makes up the 'lexical' sense of the word *sāriq*, the sense that the word signified during the time when the Qur'ān 5:38 was revealed to the Prophet. In fact, there are other types of thieves (and thus also forms of thefts) that al-Qudūrī and al-Maydānī discuss, though rather briefly. I will now briefly discuss them as well.

As I discussed in the general framework in section 3.9, one of the *side-effects* of the practical way of name-giving is *side-effect 2*, which refers to the fact that there are some entities in the world that lack a proper classification. It seems to me that such words are what *uṣūlīs* referred to as *xafī* words.

As scholars noted, *xafī* words are in fact *dāhir*, which, together with several other information provided on this matter by *uṣūlīs*, led me to conclude that scholars knew about their *faṣls* but did not know the closest genus (*jins qarīb*) of each one of these words very well. The way to deal with this, as explained,<sup>595</sup> is to ponder upon

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<sup>595</sup> See section 3.3.2.1.

the characteristics of each concept in an effort to arrive at a precise classification of such words. Scholars who were eager to understand the scope of Qur'ān 5:38,<sup>596</sup> and in particular, whether the sense of the word *sāriq* would include other types of thieves such as *ṭarrār* and *nabbāš* which look similar to *sāriq*, pondered upon the semantic features of these words.

*Muxtalis* is such a *xafī* word. It refers to a thief who takes from the hand of someone swiftly and unawares,<sup>597</sup> as al-Maydānī notes.<sup>598</sup> Another such a *xafī* word is *muntahib*, which refers to a thief who takes by force.<sup>599</sup> Since both *muxtalis* and *muntahib* act openly, al-Maydānī notes,<sup>600</sup> they do not meet the criteria of *sāriq*. In other words, the semantic feature of *sāriq*, that of acting secretly and hiddenly is not embedded in the 'lexical' senses of the words *muxtalis* and *muntahib*. Scholars were clear about the *faṣl* of each of these two words as well as that of *sāriq*. However, they were not clear about their closest *jins* (*jins qarīb*),<sup>601</sup> which leads to the particular *xafā'* (ambiguity) with *xafī* words (i.e. the ambiguity as to the hierarchical relationship between these words), as discussed earlier.<sup>602</sup> Upon *ṭalab*, we realized the correct

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<sup>596</sup> وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

<sup>597</sup> The translation is adapted from Lane, *An Arabic-English Lexicon*, 785.

<sup>598</sup> Al-Maydānī, *al-Lubāb*, 507.

<sup>599</sup> Ibid, 507.

<sup>600</sup> Ibid, 507. He says: “*li-anna kullan min-humā yujāhiru bi-fiṣlihi fa-lam yataḥaqqaq maḥna s-sirqati*” ([the punishment is not applied to *muntahib* and *muxtalis*] because each one of them acts openly. Therefore, the sense of *sirqa* is not realised).

<sup>601</sup> I have dwelt on the phenomena of *ḥadd*, *faṣl*, and *jins* (*jins qarīb* and *jins baṣīd*) earlier in this work (see footnote 461 above).

<sup>602</sup> See section 3.3.2.1.

hierarchical classification of these words. Because *muxtalis* and *muntahib* act openly, they are, together with *sāriq*, sub-classes of the class of thieves. Their representation in a diagram would be similar to that of *nabbāš*, so I will not put them in a new diagram here.<sup>603</sup>

It seems that *muxtalis* and *muntahib* also constitute *xafī* words, so *ṭalab* (pondering) upon the characteristics (the semantic features) of these two in relation to *sāriq* resolves the *xafā'* (ambiguity) as to the hierarchy between these words.<sup>604</sup>

#### 4.5. Another form of theft: *qaṭf al-ṭarīq*

Al-Qudūrī discusses another type of thief, namely *qāṭif al-ṭarīq* (robber/highway robber)<sup>605</sup>, which engages in what al-Maydānī refers to as *sirqa kubrā* (grand theft/larceny),<sup>606</sup> after having discussed what he calls *sirqa ṣuġrā* (petty theft/larceny).<sup>607</sup>

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<sup>603</sup> The *xafī* word *nabbāš*, following the process of *ṭalab*, turns into its default state *dāhir*, a phenomenon represented in Figure VIII and IX in section 3.3.2.1 above. Note that it was still possible to refer to a *xafī* word even before the process of *ṭalab* as *dāhir*, as its *faṣl* was already known even before this process.

<sup>604</sup> The question that comes to mind at this point is: "Is it possible to speak of *muntahib* and *muxtalis* as *xafī* words? Or is the *xafī* word here *sāriq*?" It seems both I think, because the ambiguity (*xafā'*) is no less related to *muntahib* and *muxtalis* than to *sāriq*. In fact, it relates to the relationships between all these words. However, unlike *nabbāš*, *ṭarrār*, *muxtalis*, or *muntahib*, the word *sāriq* is the one specified in the Qur'ān and thus ascribed a legal ruling, and therefore, it makes sense to focus one's attention on resolving the ambiguity of its relationships with others and not others' relationships with it. Hence, it seems to me, *uṣūlis* discuss the *xafā'* of *sāriq* and not the others.

<sup>605</sup> Al-Qudūrī, *al-Muxtaṣar*, 511.

<sup>606</sup> Note that the 'lexical' sense of the word *sirqa* requires the action to occur in secrecy. However, *qaṭf al-ṭarīq*, as will be seen shortly, lacks this semantic feature. Al-Maydānī's reference to *qaṭf al-ṭarīq* as *sirqa kubrā* seems only to highlight the similarities between the two. However, if this reference is commonly accepted in *fiqh*, then we could probably say that the word *sirqa kubrā* then constitutes another *waḍf*.

<sup>607</sup> Al-Maydānī, *al-Lubāb*, 511.

There is disagreement among scholars about the definition of *qāṭiʿ ʿ-ṭarīq* and its conditions, and al-Maydānī touches upon these.<sup>608</sup> However, it is generally used of a group of people or a single person who go against authority, and involves what may be referred to as highway robbery relying on their (or his) power to overpower others, as al-Qudūrī notes.<sup>609</sup> In his commentary on Ṭaḥāwī, al-Isbījābī notes that there are several conditions in order to categorize someone as *qāṭiʿ al-ṭarīq* (and also an action as *qaṭʿ al-ṭarīq*), as al-Maydānī mentions: (1) The person(s) need(s) to have power and force by which they can engage in *qaṭʿ ʿ-ṭarīq* (highway robbery), (2) they need to engage in this between two villages, two towns, or two cities,<sup>610</sup> and (3) there needs to be at least *masīrat safar*<sup>611</sup> (i.e. 90 kilometres distance) between them and the nearest town.<sup>612</sup> He adds that if these conditions are met, the person(s) can be

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<sup>608</sup> Ibid.

<sup>609</sup> Al-Qudūrī, *al-Muxṭaṣar*, 511.

<sup>610</sup> Al-Maydānī says that according to Abū Yūsuf, one of the two prominent disciples of Abū Ḥanīfa, if they engage in such crimes in the city at night, this also constitutes *qaṭʿ ʿ-ṭarīq*. This, I assume, is because there is no authority or security during night even in the city as exists during the day. Abū Yūsuf's view is preferred over the other ones when giving *fatwā*, as al-Maydānī notes (al-Maydānī, *al-Lubāb*, 511). In this sense, robbing people in the middle of the night is similar to robbing them between cities, towns, or villages. This leads me to conclude that the characteristic of *qaṭʿ ʿ-ṭarīq* pertaining to its place is that it needs to take place in a place where no authority of the state and thus no security exists.

<sup>611</sup> A specific distance determined by the Prophet to be used in Islamic law in various matters. *Safar* refers to *journey* and *masīra* to distance. *Masīrat safar*, a genitive construction involving the two words, refers to a journey on foot that takes three days and three nights. The distance of the particular journey to which the Prophet referred as *masīrat safar* and thus set its distance was later calculated to be 90 kilometers (see Erdoğan, 499).

<sup>612</sup> Al-Maydānī, *al-Lubāb*, 511.

referred to as *qāṭif ṭ-ṭarīq*. However, if these conditions are not met, then the act does not constitute *qaṭf ṭ-ṭarīq*<sup>613</sup> and the person(s) cannot be referred to as *qāṭif ṭ-ṭarīq*.

If a group of people (or a person) goes out of the city/town/village with the intention to engage in *qaṭf ṭ-ṭarīq* but get caught before they rob or kill anyone, the *imām* (the judge) puts them in prison until they repent.<sup>614</sup>

If they rob someone, Muslim citizen or *ḍimmī* (non-Muslim citizen), of their goods, and the amount of share each person involved in the robbery receives is at or above *niṣāb* (10 *dirhams*) when the stolen goods are distributed among them equally, then the judge cuts off the right hand and left foot of each one of them, as al-Maydānī notes.<sup>615</sup>

If they kill someone without robbing anyone, then the judge kills them in accordance with fulfilling the *ḥadd* punishment for this.<sup>616</sup> Therefore, even if the custodian(s) of the murdered person(s) forgive(s) them, the judge does not accept this, as this is not *qiṣāṣ* where the custodians have a say on the punishment, but a *ḥadd* punishment.<sup>617</sup>

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<sup>613</sup> Ibid, 511.

<sup>614</sup> Ibid, 512.

<sup>615</sup> Ibid.

<sup>616</sup> Ibid.

<sup>617</sup> Ibid.

If they engaged in both murder and robbery, then the judge has three options: (1) he can cut off the right hand and left foot of each person involved and then kill them and crucify them, or (2) he can only kill them, or (3) he can only crucify them, as al-Qudūrī notes.<sup>618</sup>

Al-Qudūrī notes that if a child, or a mentally disabled person, or a person who is a relative of someone from among those who are intercepted by the robbers, is among the robbers, the *ḥadd* punishment of *qaṭʿ ʿ-ṭ-ṭarīq* is cancelled for the rest as well.<sup>619</sup> In other words, if the robbers commit murder, for instance, this is not considered a *ḥadd* crime given that such a person as described above happens to be among the robbers.

Explaining the reason behind this, al-Maydānī notes that this is because the crime is a single one that is committed as a group. When the criminal action done by one of these criminals is not punishable due to him/her being a child, a mad person, or happening to be a relative of the victim(s), the criminal actions of the rest of these murderers constitute the crime only partially. In other words, it is as if the crime has not taken place fully. Therefore, the punishment of *qaṭʿ al-ṭarīq* can be applied to none of these murderers. In such a case, if there is a murder they have committed, then the

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<sup>618</sup> Al-Qudūrī, *al-Muxṭaṣar*, 512. Al-Maydānī talks about the details of how this is done (al-Maydānī, *al-Lubāb*, 512).

<sup>619</sup> Al-Qudūrī, *al-Muxṭaṣar*, 512-513 and al-Maydānī, *al-Lubāb*, 512-513.

case turns into pure *qiṣāṣ* (retaliation), and the custodians of the murdered person(s) can either kill these murderers in retaliation for the murder if they want to (or request blood money for that matter) or forgive them.<sup>620</sup>

Al-Qudūrī then goes on to discuss the question of whether or not an active role for each member of the group that is involved in *qaṭl ṭ-ṭarīq* is required in order for each member to face the punishment of *qaṭl ṭ-ṭarīq*. In fact, he says that even if only a single person among the group of bandits commits the crime, the punishment of *qaṭl ṭ-ṭarīq* is applied to the whole group.<sup>621</sup> This is because, al-Maydānī explains, those members of the group who are actively involved in murdering a person are capable of committing the crime only through the strength of the whole group.<sup>622</sup> Therefore, all of the members face the punishment regardless of their active or passive involvement in a given murder or robbery.

Al-Qudūrī also talks about whether or not such a given group of bandits receives punishment if they repent before they get caught. He says that no punishment of *qaṭl al-ṭarīq* is applied to them in such a case. Again, the case turns into murder, and the custodians have two options: they can either kill them if they killed

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<sup>620</sup> Al-Maydānī, *al-Lubāb*, 513. Note that if the crime of *qaṭl al-ṭarīq* takes place fully, even the relatives of the victims cannot forgive the murderers or ask for blood money for their loss, as the case is not consider a *qiṣāṣ* but a *ḥadd* punishment on which they have no say.

<sup>621</sup> Al-Qudūrī, *al-Muxṭaṣar*, 513.

<sup>622</sup> Al-Maydānī, *al-Lubāb*, 513.

their relatives or forgive them; if they robbed only, then they return the goods to their owners if they still have them or compensate them for the cost of these goods if they do not have the goods. This is because the repentance of the criminal does not cancel out others' rights.<sup>623</sup>

### Figure XXIII

Illustration of Figure IX along with the sense Islam assigned to the word *sāriq* (green) as well as *qāṭif al-ṭarīq* (purple)

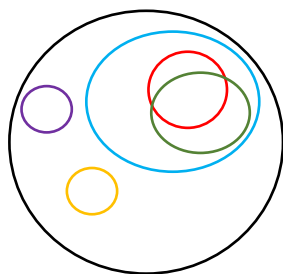


Figure XXIII represents the types of thieves explained in al-Maydānī's treatment of *sirqa*. The purple circle stands for the *faṣl* of *qāṭif al-ṭarīq* and when considered together with the class of thieves, which is represented with the black circle, the purple circle represents the class of *qāṭif al-ṭarīq*.

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<sup>623</sup> Ibid, 513.

To conclude the discussion of the aspects of *sirqa* that the religion of Islam clarified through its sources (the primary of which are the Qur'ān and the Sunna), for an action to constitute *sirqa* in the sense of the word that it was assigned through *waḍʿ šarʿī*, it has to meet all the relevant aspects explained above. Otherwise, as noted, the *ḥadd* punishment ascribed to *sirqa* is cancelled. For instance, in a case where all the constituent parts that make up the crime of *sirqa* as defined by the religion is there, but, say, the thief claims that he/she owns a *sariqa* without providing evidence to support his/her claim, he/she escapes from the application of the punishment, as noted earlier.<sup>624</sup> In other words, the law regarding this crime is almost inapplicable in many cases. This leads one to conclude then that the *ḥadd* punishments, which have very serious consequences for criminals, can rarely be applied. This shows that the *ḥadd* punishments in Islamic Criminal Law such as the punishment for *sirqa* or *qaṭʿ al-ṭarīq* primarily function to be deterrent and not to take revenge or merely to punish the criminals because they deserve to be punished. That is why the punishment of *qaṭʿ al-ṭarīq* is not applied to those types of criminals who repent before they are caught despite the fact that they deserve it by committing the crime.

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<sup>624</sup> See also al-Qudūrī, *al-Muxtaṣar*, 511.

However, does this mean that a thief who manages to escape from the *ḥadd* punishment thanks to the strict conditions for the application of the punishment get away with it without receiving any kind of punishment?

When not all the constituent parts making up the crime of *sirqa*, for instance, are present, the punishment ascribed to the crime is cancelled notwithstanding the criminal still receives a punishment. This type of punishment is referred to as a *taʿzīr* punishment as opposed to a *ḥadd* punishment.<sup>625</sup> The range of *taʿzīr* punishments is wide, and the particular one to be applied to criminals in each case may well differ from criminal to criminal and from case to case, ranging from a mere summoning to the court room of someone for whom this would be a huge matter to sentencing to jail for a period of time to be determined.<sup>626</sup> Whatever the case may be, the *taʿzīr* punishment needs to be chosen with the purpose of protecting the rights of God or/and the people. Given that the actual *ḥadd* crime is very narrow when it comes to its application (e.g. a mere claim without any evidence on the part of the thief that

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<sup>625</sup> *Taʿzīr* is a punishment determined and applied by the head of the state or a judge to criminals involved in crimes for which no *ḥadd* punishment is determined or one to which no *qiṣāṣ* is applicable (see Tuncay Başoğlu, "Ta'zīr", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/tazir> (29.12.2019); Erdoğan, *Fıkıh ve Hukuk Terimleri Sözlüğü*, 551). *al-siyāsa al-šarʿiyya* (or simply *siyāsa*) is a term related to *taʿzīr*, and it is often understood to refer to the public authority's legislative power to make laws and regulations, especially on legal matters concerning the public, that are not in contradiction to principles of the religion of Islam. Within Ḥanafī literature, *siyāsa* is also understood to be referring to 'aggravation of punishment', and in this sense, it falls under *taʿzīr* punishment (see Tuncay Başoğlu, "Ta'zīr", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/tazir> (29.12.2019); for various senses of the term *siyāsa*, see h. Yunus Apaydin, "Siyâset-i Şer'iyeye", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/siyaset-i-seriyye> (29.12.2019)).

<sup>626</sup> For various types of *taʿzīr*, see Erdoğan, *Fıkıh ve Hukuk Terimleri Sözlüğü*, 551.

he/she owns the item he/she is accused of stealing cancels the application of the amputation, as noted above), the majority of cases of what may be defined as “theft” must have fallen under the category of *taʿzīr* as opposed to *ḥadd*.

## 5. A LINGUISTIC ANALYSIS OF THE APPLICATION OF THE LINGUISTIC CATEGORIES OF *UŞŪL AL-FIQH TO SIRQA*

### 5.1. Some preliminary remarks

One obvious observation one can make about the application of the linguistic categories to *sirqa* in the Ḥanafī school is that the scope of the word *sāriq* as it is mentioned in the Qur’ān 5:38 was limited by statements either (i) from the Prophet, such as “No amputation for food”, “No amputation for items whose economic value is below the value of a *mijann* (shield)”, or “Cancel the application of *ḥadd* punishments with the existence of doubts surrounding the case” ; or (ii) from the companions, such as “Amputation is applied for grains, on which there is consensus (*ijmāʿ*) among the companions”; or (iii) from *tābiʿūn*,<sup>627</sup> such as “The economic value of *mijann* at the time of the Prophet was equal to 10 *dirhams*”. Some of these statements were merely about clarifying an aspect of *sirqa* while others such as “*idraʿū l-ḥudūda...*” were not peculiar to *sirqa* but were general principles on *ḥudūd* that limited, in fact to a great degree, the scope of *sirqa* just like any other *ḥadd* punishment.<sup>628</sup>

These statements about *sirqa* are in conflict with each other at least in terms of their scope. This leads me to discuss one of the characteristics of Islamic law, namely, that Islamic law is not ready to be used from its primary sources (i.e. the Qur’ān and

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<sup>627</sup> The word al-Maydānī uses is *aṣḥābunā*, which I take to refer to the first generation of Ḥanafīs that were among *tābiʿūn*. See Al-Maydānī, *al-Lubāb*, 504.

<sup>628</sup> Ibid, 505.

the Sunna); rather it requires a thorough analysis of the sources of Islamic law for it to become apparent and ready to be used.

The primary sources of Islamic law are considered to be the Qur'ān, the verbatim word of God sent to the Prophet over 20-odd years through the archangel Gabriel (Jibrīl), a body of verses which He was commissioned to deliver and explain to his people and to all humanity, and the Sunna, which is the body of the Prophet's explanations of the verses of the Qur'ān either directly or indirectly, either through his sayings, actions, or tacit approvals. In addition to these two, there are another two sources, which rely on the previous two, namely Ijmāf<sup>629</sup> and Qiyās.<sup>630</sup> There are yet other sources that play a role in the process of law-making in Islamic law. These are considered to be *farfī*, that is, secondary to the *aṣlī* (primary) sources of law (namely, Qur'ān, Sunna, Ijmāf, and Qiyās). The secondary sources within Ḥanafī school are

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<sup>629</sup> *Ijmāf* is the concensus of the *mujtahidūn* of one generation on the *ḥukm* (legal ruling) of a legal matter (see Molla Xusraw, *al-Mir'āt*, 240). For a through discussion of *ijmāf* also see Kamali, *Principles of Islamic Jurisprudence*, 168-196.

<sup>630</sup> For an analysis on *qiyās*, see Kamali, *Principles of Islamic Jurisprudence*, 197-228; Fahrettin Atar, *Fıkıh Usûlü* (Istanbul: IFAV, 2018), 89-108.

*istiḥsān, istiḥāb*,<sup>631</sup> *istiḥlāḥ, ṣurf, fatwā al-ṣaḥābī* (sometimes referred to as *qawl al-ṣaḥābī*), *ṣarḥu man qablanā*, and *al-darāʿi*.<sup>632</sup>

When making law, scholars refer to the Qurʾān, then to the Sunna and also use the other sources of Islamic law mentioned. These sources of Islamic law, however, do not present a cohesive body of legal rulings ready to be used, as seen in my analysis of the traditions on *sirqa*. Instead, there are what appear to be contradictory statements on different levels, for instance, in the Sunna.

*Uṣūlīs* such as al-Nasafī held that although some of these contradictions are real on the human level, and that they involve what we know as *nasx*,<sup>633</sup> in most cases a close look at the body of statements that made their way into what we know as the Qurʾān and the Sunna actually reveals that there is no contradiction among the authentic indicators of the ideal legal system that is called *Ṣarīʿa*, which the Prophet was commissioned to teach human beings.

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<sup>631</sup> *Istiḥāb* is defined as *ibqāʿu mā kāna ʿalā mā kāna*. In other words, accepting something's previously known status to be the case now in the absence of any evidence proving the opposite (*Erdoğan, Fıkıh ve Hukuk Terimleri Sözlüğü*, 260). A closely related legal maxim (*qāʿida fiqhiyya*) is *al-yaqīnu lā yazūlu bi-ṣ-ṣakki* (see Ibn Nuḡaym, Zayn al-Dīn b. Ibrāhīm b. Muḥammad al-Miṣrī, *al-Aṣbāḥ wa al-Naḍāʿir ʿalā Maḍhab Abī Ḥanīfa al-Nuṣmān*, (Beirut: Dar al-Kotob al-Ilmiyah, 1999), 47-50.), which made its way into *Majalla* as *Majalla* article 4, which reads “شك الہ یقین زائل اولماز” (مجلهء احکام عدلیہ, Istanbul: Matbaʿa ʿUṭmānī, 1300, 23), which can be translated as “Doubt[ful information] cannot remove [the authority of] certainty [i.e. certain knowledge].

<sup>632</sup> For a detailed account of each of these secondary sources of law, see *Atar, Fıkıh Usūlü*, 109-142.

<sup>633</sup> *Nasx* is often defined as abrogation of a given *ḥukm ṣarīʿī* (legal ruling) based on an indicator of law (*dalīl*) that comes after the indicatory of law which the legal ruling which had formed the basis for the legal ruling (see Erdoğan, *Fıkıh ve Hukuk Terimleri Sözlüğü*, 453; Ferhat Koca, “Nesih”, TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/nesih--seriat#3-fikih> (29.12.2019)). For a through analysis on *nasx*, see *Atar, Fıkıh Usūlü*, 318-328. For a detailed account of the literature on *nasx*, see Abdulhamit Birişik, “Nesih”, TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/nesih--seriat#4-literatur> (29.12.2019).

*Šarīʿa* is the ideal legal system which Muslims consider to be internally consistent, as it is established by God, who is believed to be omniscient. On the other hand, *Fiqh* is the accumulation of scholarly reflection on this ideal system called *Šarīʿa* that was taught to the first generation of Muslims by the Prophet. Because it involves human effort bound up with making mistakes, scholars never claimed that the legal system which they produced was identical with the *Šarīʿa*, and always avoided making claims that it was entirely free from inconsistencies as is the *Šarīʿa*, as is indicated by the statement used commonly by them at the end of their discussion of legal matters “والله اعلم” (God knows the best). Nevertheless, they developed methods that would help the legal system they were building (i.e. *Fiqh*) have inner consistency.

Along with the information about the sources Islamic law, the body of methods and rules used when making law is referred to as *uṣūl al-fiqh*, and the study of *uṣūl al-fiqh* is referred to as *ʿilm uṣūl al-fiqh* or simply also as *uṣūl al-fiqh*.<sup>634</sup> In fact, this science lays down *uṣūl* (foundations), that is, the sources, which the Islamic legal system is to rely on, the linguistic categories (and the linguistic rules associated with these categories) to be used when producing the legal system out of the indicators of

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<sup>634</sup> See Büyük Haydar Efendi, *Uṣul-i Fıkıh Dersleri*, 6-10.

law (Qur'ānic verses, traditions, and other individual statements within the sources of Islamic law), and some other topics relevant to the process of law-making.<sup>635</sup>

Thus, scholars reached their best understanding of *Šarīʿa*, namely *Fiqh* through a painstaking process, which involved them producing methods and rules of law-making (i.e. *uṣūl al-fiqh*). They then read the information found in the sources of Islamic law, which included verses and traditions, about each legal matter in the light of their *uṣūl al-fiqh*, and ultimately arrived at legal rulings on each legal matter. An example of such a legal ruling is that by the Ḥanafī scholars, who, upon analysing the verses and traditions as well as other relevant sources of Islamic law relevant to the law-making process for *sirqa* (a good number of which is in conflict with each other at least in terms of their scopes) concluded, as expressed by al-Qudūrī: “When a person with sound intellect who has reached puberty steals<sup>636</sup> ten *dirhams* or that whose value reaches ten *dirhams*, be these *dirhams maḍrūba* or *ġayr maḍrūba*, from

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<sup>635</sup> Kamali, *Principles of Islamic Jurisprudence*, 1-7. The body of rules and methods may differ from school to school as may thus also the outcome of each scholar's engagement with the sources that Islamic law rely on, which we call *Fiqh*. As a result, we have differences of opinions on various issues in Islamic law between the four major schools of law. Scholars sometimes arrive at differing opinions on legal matters even when they follow the same *uṣūl al-fiqh*, which is why many scholars within a given school arrive at legal rulings that are different from those of the founding father of the legal school. Those scholars who follow the *uṣūl al-fiqh* of another scholar are referred to as *al-mujtahid fī al-maḍhab* (for various levels of law-making, see the Introduction to this thesis; section 2.5).

<sup>636</sup> In this work, I translate into English the word “*sirqa*” as “theft” and in some cases as “act of stealing” and the corresponding verb “*saraqa*” as “to steal”. Similarly, I translate “*sāriq*” as “thief”. There is a sense of “secrecy” in the words ‘*sirqa*’ and ‘*sāriq*’ as noted in section 4.3 above. This secrecy does not necessary seem to be embedded in the words ‘stealing’ or ‘thief’ in English. There is one occasion where the verb ‘to steal’ seems to have the sense of secrecy in it, though in a different meaning (see <https://dictionary.cambridge.org/dictionary/english/steal>).

a *ḥirz* (a protected place), and given that there is no doubt surrounding this act of stealing, *al-qaṭʿ* (the amputation) is obligatory upon such a person.”<sup>637</sup>

One may naturally ask the following questions: “Scholars who came later made great efforts to figure out what they thought to be *Šarīʿa*; why did not the Prophet say, for example, what al-Qudūrī said on *sirqa*, given that al-Qudūrī is right, at the beginning?” and “why is it that what the Prophet said about *sirqa* on different occasions differ in scope?”, or “why did not he clarify every aspect of *sirqa* that I discussed above in a lecture?” I think this has much to do with the practical way of name-giving and its ramifications, which is something that I will now explore further in relation to the matter in hand.

## 5.2. The conditions of the addressee(s)

I believe that any statement anyone with sound intellect makes is aimed at delivering the message one has in his/her mind to the addressee(s). To achieve this aim, one needs to produce an utterance that his/her addressee(s) can understand and understand, ideally without difficulty.

An addressee understands a given utterance through some of his/her faculties including intellect and accumulated knowledge about things as well as knowledge that he/she can acquire through his visual, aural faculties, etc. I will refer to the body

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<sup>637</sup> Al-Qudūrī, *al-Muxtaṣar*, 503.

of things that enables one to understand utterances as “*the conditions of the addressee*” in this work.

Because human beings may well differ in each of these *conditions* that enable them to understand utterances, one needs to produce an utterance with consideration of the particular addressee in terms of these faculties he/she possesses. In fact, an utterance that is clear to one addressee may not be so to another. Therefore, each utterance is in fact produced to be understood by (a) particular addressee(s), however large a group this may be.

Without possessing or acquiring at least the approximation of the *conditions of the addressee* of an utterance for whom the utterance was produced, one therefore cannot understand that utterance simply because he/she does not have the tools to decipher it. This is a result of the fact that we, as human beings, use the practical way of name-giving, instead of the ideal way. However, it is worthwhile to discuss, first, the ideal way of name-giving here in order for us to better understand the ramifications of the practical way.

As already suggested, I think there are two ways of delivering a message one has in mind to an addressee, the ideal way and the practical way. These are closely related to the ideal way of name-giving and the practical way of name-giving, which I discussed in the general framework in this work (in section 3.9 above).

In the ideal way of communication, one uses the ideal way of name-giving, so he/she names everything and every phenomenon using a distinct name. In such an ideal way of communication, if anyone living in a linguistic community knew each of these names, members of that linguistic community would have no problem whatsoever as to the referent of each utterance regardless of addressee(s) each one of these utterances was produced for. In other words, in the ideal way of communication, thought (meaning) which one has in mind is embedded in language completely, and everyone knows it. This leads to no confusion during conversation, which is not the case in the practical way.

In the practical way of communication, on the other hand, one uses the practical way of name-giving. In fact, in this type of communication instead of naming each and every entity using a distinct name, we categorise entities, based on essential similarities they have in common, under groups and then give each group a name. We then refer to each entity that falls under that group using that broad group name. This way of name-giving leads to *side-effect 1*, as explained in section 3.2.

Although the use of linguistic devices such as adjectives, and time and space markers, allows one to remedy *side-effect 1* to some degree, it leads to another communication problem: it takes a lot of time to communicate using this way of communication, as discussed earlier in section 3.8 above. To remedy this further communication problem, one omits some of the information that makes up the

message to be delivered to the addressee(s) to save time and effort. In other words, the thought (meaning) one has in mind takes a lot of time to communicate in the practical way of communication, which leads to omission of some of the parts of the thought such that these parts are not uttered.

In this way of communication, although the scope of words is very broad in that each word can refer to an almost infinite number of entities (as is the case with ‘pen’, for example, which can refer to an almost infinite number of individual pens) the contents of words in terms of meaning are very limited in many, if not all, cases when compared to those of words in the ideal way of communication, which can include, as noted earlier, as large a meaning as the contents of this dissertation in a single particular sound, say, ‘A<sub>131399ukdk</sub>’.<sup>638</sup>

This leads me to draw the following conclusion:

1. In the ideal way of communication, meaning is fully embedded in language.
2. In the practical way of communication, meaning is distributed between mentioned language (*manṭūq*) and omitted language (*ḡayr manṭūq*).<sup>639</sup>

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<sup>638</sup> See section 3.7 for details of this.

<sup>639</sup> I think when *uṣūlīs* differentiate *ḡayr manṭūq* from *manṭūq*, they do not really mean that *ḡayr manṭūq* was at once *manṭūq* (mentioned) in language but later was omitted. Rather, they intend, it seems, to highlight the fact that *ḡayr manṭūq* is another part of meaning (*maʿnā*) just like *manṭūq* but one that just did not make its way into language, i.e. it was part of the meaning that was not mentioned. My reference to *ḡayr manṭūq* as ‘omitted language’, is merely intended to reflect the fact that if one were to put into words all the parts of the meaning one has in mind using the practical way of communication, one would have transferred everything

Thus, the dichotomy ideal vs. practical way of communication has much to do with the practical and ideal way of name-giving. I will now briefly explain these two types of communication with the help of diagrams in an effort to further clarify the notions of *manṭūq* and *ğayr manṭūq* and what I termed here “*the conditions of the addressee*” as well as the effect it has on the production of utterances in the practical way of communication.

### 5.2.1. Practical way of communication

**Figure XXIV**

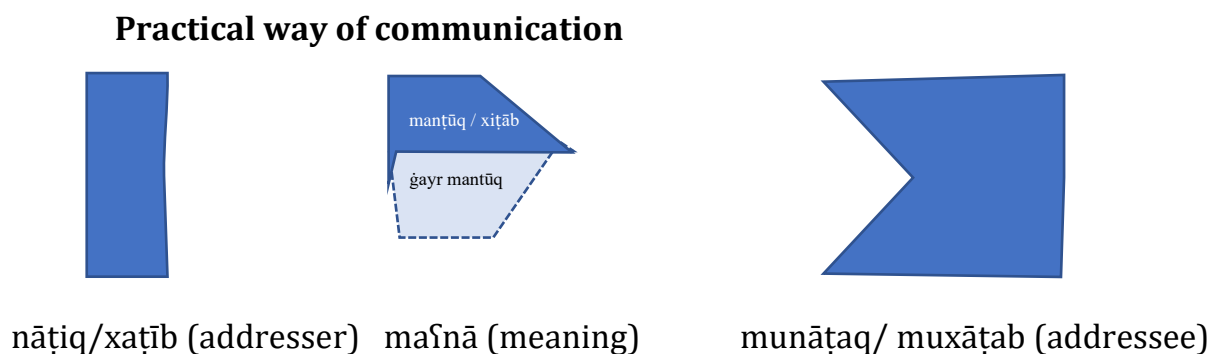


Figure XXIV represents the process of communication in the practical way. Because it would take too much time to communicate (see “*the further communication problem*”<sup>640</sup> to the solution for the *side-effect 1*), some of the information, constituting

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that normally falls under *ğayr manṭūq* into *manṭūq*. Finding this hypothetical situation to be almost impossible to accomplish, we would have then omitted some aspects of what we would have mentioned. Thinking this way also helps one to compare the practical way with the ideal way of communication. Therefore, I retain the use of the word ‘omission’.

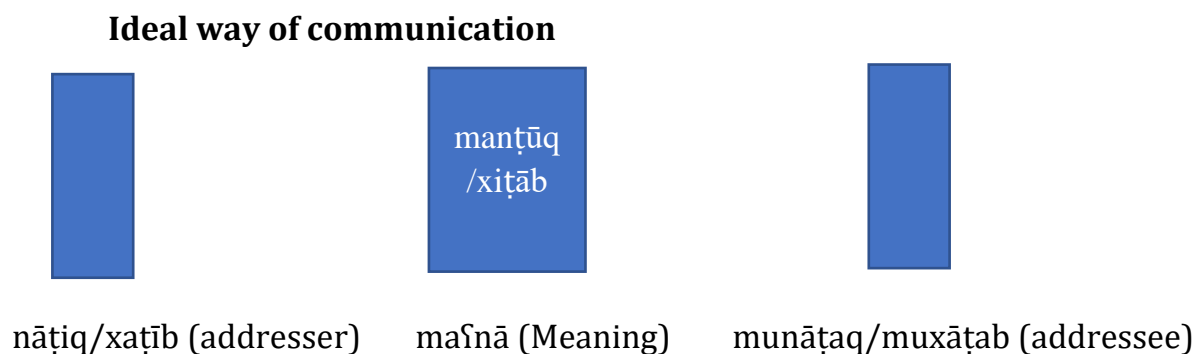
<sup>640</sup> See section 3.8 above.

a certain amount of the meaning, is omitted by the addresser, a phenomenon discussed in section 3.7.<sup>641</sup> The diagram shows an addresser (*nāṭiq/xatīb*) producing an utterance (*manṭūq/xiṭāb*) with consideration of the *conditions of the addressee* (*munāṭaq/muxāṭab*).

Note that if the addresser wants to communicate the same message (meaning) to another addressee who has different *conditions*, then the addresser needs to change his/her *xiṭāb* (address, i.e. the utterance) as well. In fact, the addresser needs to reconsider the parts of his/her thought that he/she omits and may move some of these parts that were previously in *ḡayr manṭūq* to *manṭūq* and vice versa.

## 5.2.2. Ideal way of communication

**Figure XXV**




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<sup>641</sup> The addressee is able to know, though with various degrees of certainty, the omitted parts. The parts that the addressee can know for sure based on the mentioned parts are referred to as *lāzim*. There are some omitted parts, however, that the addressee cannot know for sure. While *lāzim* parts can, in their own right, form the basis for legal rulings, the other parts that are not *lāzim* cannot do so (see section 3.7 for further information).

Figure XXV represents the ideal way of communication, where the ideal way of name-giving is used. In this way of name-giving, meaning (*maʿnā*) is contained in the utterance completely. Therefore, in Figure XXV *maʿnā* is equal to *manṭūq* (i.e. what is mentioned), which is different from the previous diagram, where *maʿnā* was equal to the combination of *manṭūq* (i.e. what is mentioned) and *ḡayr manṭūq* (i.e. what is not mentioned). Because each member of such an ideal linguistic community would be equal in their knowledge of the body of word-meaning correlates that make up such an ideal language, I drew *xaṭīb* and *muxāṭab* as the same, which is to represent that *the conditions* of each member of that community would be identical.

### 5.2.3. Utterances are produced with consideration of the conditions of the addressee(s)

I have thus explained the particular ramification of the practical way of name-giving that leads to the dichotomy of *manṭūq* and *ḡayr manṭūq*. I also noted that when expressing the same meaning to different addressees, what are *manṭūq* and *ḡayr manṭūq* for one addressee will likely to be different for another one with different *conditions* in order to meet the aim of communication, which is to convey the meaning a given addresser has in mind to an addressee. This is because, on one hand, in contrast to the individuals in the ideal way of communication as represented in Figure XXV, individuals making up the linguistic community in the practical way of communication are not identical in terms of their *conditions of addressee(s)*, as

represented in Figure XXIV. On the other hand, the addresser using the practical way of communication cannot possibly state his/her thought completely, as this would take too much time. Thus, he/she has to omit in his/her speech some of the parts of his/her thought that he/she thinks the addressee(s) would recover based on his/her *conditions*. As a result of these two phenomena, the differences in terms of *the conditions of addressee* between individuals making up the linguistic community in the practical way of communication require one to produce his/her utterance with consideration of *the conditions of their addressee(s)*.

I can now go back to my initial questions I posed in the previous section which led me to discuss the practical way of communication with reference to the notion of *the conditions of the addressee(s)*: scholars who came later made great efforts to figure out *Šarīfa*; why did not the Prophet say in the beginning what al-Qudūrī said about *sirqa*, for example, given that al-Qudūrī is right?” and “why is it that the things the Prophet said about *sirqa* differ in scope?”, or “why did not he clarify every relevant aspect of *sirqa* that I discussed above in a lecture?”

Against the background of the previous passages on the practical way of communication, the answer to these questions reveals itself easily: because the Prophet spoke to different people and different audiences on or around the same topic, he had to explain things with different levels of clarity to different audiences even on the same topic. In other words, each time his audience differed, it is likely

that he naturally arranged the *manṭūq* and the *ḡayr manṭūq* of his thoughts (that is, the meanings he wanted to express through language) accordingly to express the same meaning to different audience with different *conditions of addressee*.

Again, what would lead the Prophet or anyone else to arrange their speech with consideration to the *conditions of their addressee(s)* is the fact that human beings use the practical way of communication. This way of communication relies on the practical way of name-giving, which in turn, as explained, leads to *side-effect 1*, which leads to a communication problem, which is the fact that it takes too much time to communicate in the practical way of communication when compared to the ideal way. The solution to this problem is, as explained, to reduce the number of thoughts to be communicated through actual language. As a result, we do not mention some of the parts of our thoughts when we speak, assuming that the addressee(s) will recover these parts to a degree that would enable communication<sup>642</sup> between us and the addressee(s).

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<sup>642</sup> More precisely, “that would enable us to achieve the purpose of communication, which could be a number of different things, including, but not limited to, ordering, requesting, asking for information, making a contract, etc.” I am saying this purposefully because to say that the addressee(s) recover(s) all the relevant aspects of the things that are not mentioned (*ḡayr manṭūq*) based on the mentioned (*manṭūq*) seems to be incorrect. This is because the addresser’s meaning with all its aspects is based on his observations and experiences of all things, which is most likely not to be identical with his/her addressee(s) even if the communication is successful. To illustrate, suppose that I say to a worker in a convenience store “Could you please direct me to the aisle where you sell walnuts?”. The worker replies: “The walnuts are in aisle 7.” Among the semantic features of the concept of ‘walnut’ I have in my mind may be the feature of “with a strong odour” simply because all the individual walnuts I have previously observed had that strong odour, and as a result, this feature made its way among the semantic features of the concept of walnut I have in my mind. This particular feature may not be among the semantic features the worker had in his mind when I asked him that question, however. It

### 5.3. Determining the addressee(s) through the level of abstraction of words

In the previous section, I have explained that utterances are produced in consideration of the *conditions of the addressee(s)* of a given utterance and therefore, it is essential to know these *conditions* in order for someone to decipher the utterance.

At this point, I think the following questions are worthwhile pondering to comprehend the matter as fully as possible: “Who can be included in *the addressee(s)* of an utterance?”, “Can individuals with whom the addresser does not share a given time and space when uttering an utterance be included among *the addressee(s)*?”, or “Can an addresser arrange his *manṭūq* in consideration of *the conditions of addressee(s)* who may not be present at the time of the production of the speech?”

I think that although an addresser has to keep in mind *the conditions of the addressee(s)* who are present when producing the utterance, he/she can also design his/her utterance in a way that would enable others to understand it as well. This is done by what may be called “abstraction”, which involves the addresser leaving out

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may well be the case that either (i) he may have always observed walnuts with no odour, in which case the concept of walnut in his mind would probably have the semantic feature of “with no odour”, or (ii) he may have observed some individual walnuts with strong odour and others with no odour, in which case among the semantic features of the concept of walnut in his mind, there would have been no semantic feature related to odour, so the concept of walnut would be inclusive of all the individual members of walnuts the person has previously observed, or (iii) he may have observed only walnuts with mild odour, in which case, the semantic feature of “with mild odour” would make its way into the semantic features of the concept in his mind. There could be other cases in relation to the worker for that matter. But the point is that in all of these three cases, the concept of walnut which the worker would have had in his mind would have been different from the concept I would have had in mine. Therefore, to be precise, it is more accurate to speak of a communication being successful in achieving its purpose, which as noted could be to explain something, to make a request, etc., instead of achieving transmission of the meaning from the addresser to the addressee(s).

the bits of information that refer to the time and space in which he/she produces the utterance(s).

To illustrate, suppose that a father sees his child taking someone else's bike without permission. He may say to his child, (i) "This is wrong.", or (ii) "Your taking someone else's bike without permission is wrong.", or (iii) "Stealing is wrong."

From 1-3, the sentences get more abstract, losing reference to the bits of information that has to do with the particular time and space in which the relevant utterance is produced. Although (i) can seem to refer to anything for someone reading it from the outside of the context it was uttered, this does not mean that it is abstract. In fact, quite the opposite. It is bound up with the time and space it was addressed in – so much so that one cannot understand the referent without observing/knowing what is happening at the specific time and space it is uttered in. In (ii), the level of abstraction is increased by explaining what "this" in (i) stands for, i.e. "your taking someone else's bike without permission". On the other hand, the scope of (ii) is more limited than that of (i), as "your taking someone else's bike without permission" in (ii) is more limited than "this" in (i) in terms of the potential referents each can refer to. However, it is still not free from information bound with the time and space the utterance was uttered in. In fact, it still has "your", which binds it with the person the utterance is addressed to, and "bike", which binds it with the object. The last utterance would be the most abstract way of expressing the ideas contained in the previous

utterances because it is stripped of almost any information about the context it was uttered in.

In all of these cases, it is possible that the communication will be successful. In (i), the addressee would merely need to go through a simple intellectual process whereby he/she would identify “this” with what he/she was doing. He/she would primarily rely on his/her ability to hear the utterance and see, if applicable, the finger his/her father is pointing at him/her to explain the referent of “this”. In the last case, however, the addressee would use his/her reason more than he would in the others. He would need to go through a more complex intellectual process, such as the following:

- A) Among other actions such as breathing and wearing what I wear today, I am currently taking someone else’s bike without permission.
- B) My father has told me that “Stealing is wrong”.
- C) He must have referred to my taking someone else’s bike without permission.
- D) Then, my taking someone else’s bike without permission constitutes stealing.
- E) Accordingly, it is wrong.

Thus, an utterance achieves a higher level of abstraction by losing information related specifically to everything in the time and space the utterance is uttered in. Abstract utterances such as (iii) then require what I may refer to as the “first addressee(s)” of the utterance to identify the individual action in reality they are experiencing with the abstract notion in the utterance in order for the communication to be successful.

Unlike other utterances, abstract utterances are relatively free from the time and space they were uttered in, which enables them to reach beyond the people they were first uttered to. In fact, as I noted earlier, since an utterance is produced with consideration of *the conditions of the addressee(s)* it is uttered for, the addresser does not mention some part of the thought, assuming that the addressee(s) will recover that part.

For the addressee(s) to recover that part, besides using their faculties including intellect and the accumulated knowledge they have about things, they also use the knowledge that they can acquire through their faculties at the time of the speech. For instance, when the father said to his child, as in the first case, “This is wrong”, pointing his finger at him/her, he assumes that the child, who, say, is busy with getting on the bike, will look towards him when he/she hears his voice and thus be able to see his finger pointing at him/her. This will help the child clarify that the referent of “this” in the utterance is his/her current action and not, say, an older

child's wrong answer to the homework question, which the father also happens to be working on with that child.

When the father, however, says "Stealing is wrong", the addressee(s) do(es) not need to use their faculties, such as their ability to see, in an effort to understand the referents of each word in that abstract utterance. This allows this utterance to reach beyond the first addressee(s), given that they know the meaning of each word in that utterance. Note, however, the utterance can be applied to different actions (i.e. referents) on different occasions. This in turn requires, as noted, the addressee(s) to identify the referent of the utterance with the action taking place.

On the basis of the foregoing, we can draw the following conclusion that utterances can be divided into two groups in terms of their level of abstraction:

1. Utterances with *mutlaq* words (e.g. Books are nice).
2. Utterances with *muqayyad* words (e.g. This orange book is nice).

Naturally, when the Prophet, therefore, produced utterances, he may have done so producing either types of utterance. In the first type, among the addressee(s) of the utterance, not only *the first addressee(s)* but also others who have a similar intellectual level and the relevant accumulated knowledge about things in the world would be included.

I will now briefly discuss the two types of utterances in terms of abstraction with the help of diagrams.

### 5.3.1. Abstract utterances (Utterances with *muṭlaq* words)

**Figure XXVI**

#### **Utterances with *muṭlaq* words**

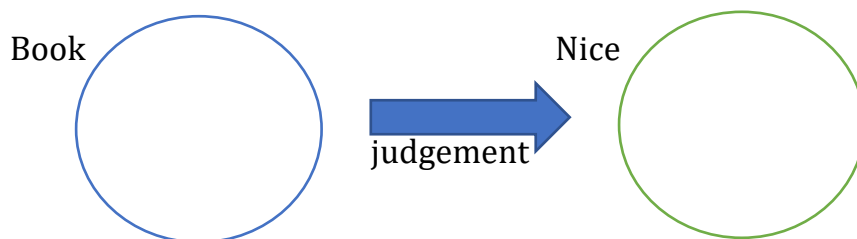


Figure XXVI represents utterances with *muṭlaq* words (abstract utterances). In the diagram, the blue and green circles represent the class of books and the class of nice [things] respectively. The blue arrow represents the judgement, which may be translated into English as the verb 'be' in any tense. In this particular example, I take it to represent the present form of the verb be, namely "is". Therefore, the diagram with its all constituent parts represents the abstract utterance "Books are nice".

### 5.3.2. Non-abstract utterances (Utterances with *muqayyad* words)

**Figure XXVII**

#### Utterances with *muqayyad* words

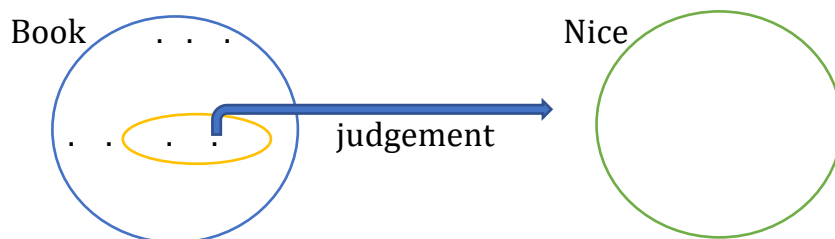


Figure XXVII represents utterances with *muqayyad* words (non-abstract utterances). In the diagram, the blue circle represents the class of books while the green stands for the class of nice [things]. Each of these classes include members, which may be represented with black dots. For the sake of economy, only some of the members of the class of books are represented in the diagram. Some of these black dots are enclosed in a smaller orange circle to indicate that the judgement in Figure XXVII is about an orange member (i.e. an orange book). The fact that the arrow starts from the particular dot, which stands for a particular member of the class of books, indicates that the judgment is about that particular dot rather than the whole class, as was the case, as seen, in Figure XXVI. As a result, Figure XXVII represents the assertion that the particular member of the class of books that is enclosed in the orange circle and shown with the arrow in the diagram belongs to the class of nice [things].

Note that we do not name that particular dot (i.e. that particular member of the class of books) using a distinct name. As a result, it is not possible to understand the referent from the utterance “The particular member of the class of books that is enclosed within the orange circle and shown with the arrow in the diagram belongs to the class of nice [things]”. Or, to put it differently, in “This orange book is nice”, it is not possible to understand that the particular member of the class of books is the subject of the judgement by merely hearing or reading either of these two utterances/sentences.

One does understand that the judgement is about a book whose colour is orange by merely hearing or reading the utterances, though. Therefore, the potential referent of the book mentioned in the either of the two utterances/sentences is limited to a degree. Still, one cannot pinpoint which book is actually meant yet. In fact, the key word in the above sentences/utterances is “this” and its reference. The referent of the word “this” in the sentence above is almost impossible to know without knowing the context in which it was uttered.

This is the result of the practical way of name-giving. As noted earlier, *side-effect 1* is resolved through linguistic devices, which limit the almost infinite number of potential referents of a group name to a relatively small number. Demonstrative pronouns, such as the word “this”, are one type of linguistic device that functions to reduce the potential referents of class names. What is the nature of linguistic devices,

such as “this”, such that while it makes it possible to reduce potential referents of class names, such as ‘book’, it also makes their own referent so vague that it is almost impossible to know the referent of a linguistic device such as “this” without a consideration of the context in which it is uttered? I will dwell on the nature of these linguistic devices in the following section, as this will likely help us gain more insights into the matter in hand.

In the diagram the orange circle represents “this”, and the arrow represents “is”. The arrow’s starting point represents the subject of the judgement. With all of its components, Figure XXVII represents “This orange book is nice”, which is, as noted, an example of utterances with *mutlaq* words.

I have thus explained that utterances are produced in consideration of the *conditions of the addressee(s)* they are uttered to. Among these *conditions* are the accumulated knowledge as well as potential knowledge to be acquired through various faculties of the addressee(s), which enable communication. In order for someone to understand a given utterance, therefore, they need to acquire at least similar conditions to the *conditions of addressee(s)* of that particular utterance.

As for people who can be included in the body of the addressee(s), I noted that this body can include people other than those who are present when the utterance is uttered. In such a case, the addresser would strip off any information peculiar to the time and space in which the particular utterance is uttered. This is done by using

*mutlaq* words. Alternatively, the body of addressee(s) can be limited to those who are within the time and space a given utterance is uttered in. This is done by using *muqayyad* words in the utterance.

The use of *muqayyad* words in a given utterance, as noted, limits the potential referents of class names. *Muqayyad* words can be formed in various ways, which involve the use of various function words, which I have referred to as 'linguistic devices' in this work. I will now briefly discuss the nature of linguistic devices.

#### 5.3.2.1. One class that limits another: the nature of linguistic devices

As noted earlier in this work, there are many linguistic devices (e.g. adjectivals) to choose from in order to limit the potential referents of a given class name, or to put it differently, to determine which member(s) of a given class is/are meant in a given utterance. These linguistic devices thus function to reduce the number of potential members referred to by the class name in a given utterance. But how? What is it that enables linguistic devices to function in this way?

I believe that these linguistic devices are nothing more than classes that are easy to combine with other classes of things in an effort to reduce the number of potential members of the classes meant by given utterances. For instance, in the example above, the class of books needed to be limited in terms of its scope in order to resolve *side-effect 1*. The class of "orange [things]" was combined with the class of "books" to do the job. In fact, as seen in figures XXVI and XXVII, the body of potential

referents of the sub-class of orange books is less in number than that of the class of books alone. Moreover, the touching point of the arrow in Figure XXVII also stands for another class, which is the class of “this”. The class of “this” *per se* includes an almost infinite number of entities as well. Despite its capacity to refer to a large number of things, the class of “this” can nevertheless help another class to reduce its potential referents in a given utterance. The same applies to any other linguistic device, including the class of “orange”. Regardless of how large the class of a particular linguistic device may be, it can reduce the size of other classes when combined correctly. Therefore, when the arrow’s starting point touches that particular member of the class of books (or the sub-class of orange books), the number of potential referents of the combination of the three classes becomes just one. Therefore, linguistic devices, such as colour names, numbers, and pronouns, are just classes that speakers use to overcome *side-effect 1*.

In the previous section, I also noted that the use/omission of linguistic devices in a given utterance allows one to determine the level of abstraction of the utterance, thereby determining the body of addressee(s) of the utterance that the addresser produces. This also means that linguistic devices play a key role in determining the addressee(s) of a given utterance. Having already established that linguistic devices just involve other types of classes, then the determination of the body of addressee(s)

of a given utterance is no less relevant to the nature of classes than it is to the nature of linguistic devices.

Having thus come to the conclusion that the determination of the body of addressee(s) has much to do with the nature of classes, which linguistic devices are just one kind of, I can now reformulate the question which I asked earlier in this section “What is it that enables linguistic devices to function that way [i.e. to function to limit the potential referents of class names such as book]?” as “What is it that enables class names to limit the potential referents of other class names?” This leads me to discuss the nature of classes, rather than just that of linguistic devices, further, in order to answer these questions.

#### **5.3.2.2.** The dichotomy between essential and non-essential semantic features of entities: the nature of classes

In the previous section, I have explained that a linguistic device is nothing but another class of things that can be used, despite its own problem of having a relatively large capacity to refer to things, to help (an) existing class(es) of things to limit the scope of the referents of the(se) class(es). Note, however, a given particular entity (e.g. a given book) can belong to more than one class (besides the class of ‘book’, for instance, the class of ‘orange [things]’). How is this possible? I will now briefly discuss this in the following paragraphs.

One of the ramifications of the practical way of name-giving is that when we form a group out of entities that share some common semantic features, we ignore peculiarities of the individual entities that make up the group in order to focus on what we consider to be the essential features of the group, as noted earlier.<sup>643</sup>

By ignoring the differences between the individuals of the group and focusing solely on their essential features, we can then consider each of these individuals to be almost identical on one level, which justifies our grouping them under one group. In turn, we content ourselves with naming the group, instead of naming each individual entity in the group using a distinct name. For instance, in the case of *insān* (human being), the essential features are *ḥayawān* (living being) and *nāṭiq* (reasoning). Any entity that meets these two characteristics falls under the class of *insān* (human being) and can be referred to as *insān* (human being). In other words, the definition of *insān* is *ḥayawān nāṭiq*.

Members of this class have features not included in the definition of the class, however. In fact, many other features have been overlooked in order to form the class. For instance, the particular human being who may happen to read this sentence in a university library at 3:13 pm on a Sunday (if we accept that this is the case) may have features like “brown hair” and “a dark skin”. These two features did not figure in the

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<sup>643</sup> See footnote 461 above.

definition of *insān*. It is these features a given entity has, which are different from the features that figured in the definition of the group name, in this case *insān*, to which the entity belongs, that enable classes to limit the potential referents of the class names when combined in an utterance.

However, the features one mentions to reduce the potential referents of the class name depend on the context. In fact, the function of the linguistic devices is to differentiate (a) member(s) of a given group from all the other members of the group within a specific context.

To illustrate, consider that (1) the particular person mentioned in the example above was not alone in the library and was only one of the people who were reading there at that time, (2) and all the people who were reading these passages, say 13 of them, had brown hair with dark skin. In such a case the semantic feature “brown-haired, dark-skinned” would not allow one to distinguish any given individual in the library room from any other given individual. In fact, one would need to use a feature that is peculiar to that person as opposed to others in the library in order for that person to be distinguished from all the other people, or to use a combination of features each one of which may exist in other members but which is, as a combination, peculiar to that person. For instance, we may refer to that particular person as “the person sitting on the back” given that this is true, and there is no one else also sitting on the back. Or, we may refer to that person as “the person with a black shirt who is

wearing glasses” given that this is true, and there is no one else with the combination of these features there. Note that there may be other persons in the library at that time who may also be wearing glasses but not black shirts. Similarly, there may be persons wearing glasses and black clothes but not black shirts.

Thus, the features of individual entities that are not represented in a definition of a class name, such as the combination of features of “brown hair and dark skin” in the case where no other individual in the library features that combination, are the ones that make it possible for us to reduce the potential number of referents of the same class name (i.e. human being), which is otherwise almost infinite.

Likewise, features that figure in the definition of a given class would not help differentiate a particular member of that class from other members of the same class. In this regard, to differentiate the particular person in the library in the example above from all the other 13 persons in the library, it would not make any sense to refer to him/her as “the person who is living being/animal (*ḥayawān*)” because this would not serve the purpose, which is to differentiate the particular person referred to from all the rest of the people in that specific context. Therefore, the purpose of using linguistic devices, which are as noted above nothing but other classes, is to differentiate (a) member(s) from the (an)other member(s) in a given context.

At this point, it is worthwhile asking the following questions: “Which classes can be linguistic devices?” and “Is the body of linguistic devices fixed?”. I think that

the primary function of linguistic devices in utterances, which is to help reduce their potential referents of other classes in utterances and thus to differentiate (a) particular member(s) from (an)other(s) in a given context, is so central that it plays the central role in telling which class functions as a linguistic device and *vice versa*. In other words, if it will serve the purpose of differentiating a given member from all the other members of the same class in a given context, what we are not used to seeing as linguistic devices can turn into them. For instance, we are used to using colours as adjectives to differentiate (a) particular member(s) from other members of the same class in a given context. In this regard, we may sometimes say, “I would like the green pen, please.” to differentiate this from all the other pens, say, on the table. Such linguistic devices as colour are nothing but a feature of entities among all the other features, some of which, as noted, may have figured in the definitions (*ḥadd*) of classes.

Being a feature of an entity just like other features that may have figured in the definition of an entity, colour is not in any way in a better (or worse, for that matter) position to function as a linguistic device then. In fact, if in a given context all the entities are the same (i.e. they are the same in terms of their *ḥadd*), this means nothing more than that they share the features that figured in the definition of that particular class of entities. For instance, if all the entities in a room are human beings, these entities share the features of *ḥayawān* and *nāṭiq*. In such a case, it may help to

differentiate a particular one of them from the rest by referring to him/her using a feature like “with the yellow shirt”.

However, there can be contexts where, without being an essential feature, a particular colour can be a feature shared by all entities which belong to different classes in that context. To illustrate, suppose that a painter is painting the ceiling of a large room blue while he stands on a ladder. The huge bucket which holds the paint drops down on the five entities that happen to be in that room, which are a male person, a book, a computer, a table, and a chair. They all get covered with the blue paint. To refer to one of these five entities (or to put it differently, to differentiate it from all the others in that room) one cannot use the feature “blue”. If one person says to another “Could you please clean the blue one?” in that context, the addressee can rightly ask “which one?”. The addresser could then rightly answer “The blue one that is a computer”, or even referring to the male person, “The blue one that can think.” In this case, what we are accustomed to seeing as an essential feature of a particular class (namely, the essential feature of “reasoning/thinking”) functions as a linguistic device used in the utterance not for its own sake but to limit the potential referents of another class, which is “blue” in this case. Therefore, the question of which classes fall under the body of linguistic devices is very much context dependent.

Thus, what enables a class to limit the potential referent(s) of another class is the feature(s), be it/they essential or non-essential, which the limiting class has (e.g.

dark skinned or one who thinks/reasons) and which some of the referents of the class that is being limited lack (e.g. all the other individuals in the library or all the other entities covered in blue in the room) in a specific context.

## 6. CONCLUSION

About a third of the material found in Ḥanafī *uṣūl al-fiqh* manuals constitutes categories of words (and of phrases/utterances for that matter) that I have referred to as “the linguistic categories” in this work. These categories are perennially present almost in each process of law-making, as is evident from their frequent appearances in *furūf al-fiqh* manuals. It is thus indispensable to understand the role of these linguistic categories in the process of law-making in Islamic law by studying them in *uṣūl* manuals as well as *furūf*.

When one reads the linguistic categories in classical literature with the hope of understanding the nature and function of these categories within *uṣūl al-fiqh*, however, one puzzles to find no discussion on such basic questions as “Why the linguistic categorization needs to be in terms of four aspects” and “Why *uṣūlīs* have come up with the linguistic categories that they have come up with and not with others”, which all come down to making the linguistic categorizations as well as the linguistic categories that fall under them meaningful. To answer these questions, I have argued that one needs a theoretical framework that would explain these linguistic categories in a unified way. I have referred to such a conceptual framework as “the general framework” in this thesis.

To build such a general framework, I needed not only to carefully analyse *uṣūlī* discussion of each linguistic category, but also to seek for any clue with regard to the

links between the linguistic categorizations and the categories, which turned out to be a painstaking process which in many cases involved gathering pieces of puzzles with one or two-word explanations in the margins of the commentaries lest I arrive at hasty conclusions about the categories, which would then lead to a distorted image of not only the linguistic categories, as is the case with many modern treatments of the categories, but also of the general framework I was hoping to construct based on these categories.

Contemporary scholars who have written on the linguistic categories across the schools of law seem to be unaware of the lack of an explicit general framework for the linguistic categories or the need for building one based on the linguistic categories themselves. Accordingly, they have adopted, apparently without realizing, two distinct approaches towards the categories.

My study shows that reading these categories in the absence of a general framework that is intrinsic to *uṣūl al-fiqh* leads either (i) to repeat what is already available in *uṣūl* manuals, often with misunderstandings, or (ii) impose one's own theoretical frameworks, which are produced with no consideration of the linguistic categories but rather produced on the basis of the data of other fields of studies such as pragmatics, upon the categories without justifying first that the data that gave rise to the borrowed framework is identical with, or similar enough to, the linguistic categories of *uṣūl al-fiqh*, which would be needed for the borrowing to be justifiable.

Moreover, works that adopted either of the two approaches have so far failed in providing an accurate image of the linguistic categories, an image that is in conformity with the one presented in classical sources. In fact, they show inconsistencies within themselves or omissions of the data represented, some of which I have pointed out in the literature review.

Since no study has so far pointed out the discrepancies in the modern scholarship on the categories, new studies who adopt either of the two approaches continued to be written after first examples of both approaches appeared. This is the result of the fact that no scholar has so far pointed the lack of an explicit general framework for the categories.

My analysis of *al-Manār* of Abū al-Barakāt al-Nasafī along with two commentaries on it, one by the author himself and the other by Molla Jīwan, and a gloss on Molla Jīwan's commentary on *al-Manār* along with other works on *uṣūl al-fiqh* within the Ḥanafī school shows that there is a general framework that was behind the production of the linguistic categories found in *uṣūl* manuals within Ḥanafī literature.

Falling back upon these classical sources, this thesis argues that each one of these linguistic categories gains its proper meaning not independently but in consideration of its relations to others, which in turn reveals the unifying theme behind the linguistic categories as well as the general framework for the categories.

Accepting that language functions to allow communication between members of the same linguistic community, in the Introduction, I thus pondered on such questions as to why the scope or meaning of a given word is not clear and what methods are used to determine or clarify it. I argued that indeterminacy or ambiguity in language has much to do with the nature of human language. In fact, I argued that the linguistic categories constitute the outcome of *uṣūlīs*' analysis of language, at the centre of which lies their concern to deal with what I term 'the inherent nature of language'.

The inherent nature of language, as explored in Chapter 1, is that there are an almost infinite number of entities to be named. However, we cannot name each entity using a distinct name. Instead of naming each entity using a distinct name, what we find practical and doable is to group entities on the basis of some essential features common to them and then give a name to the group. We then use the group name to refer to entities that fall under the group. This way of name-giving, which involves naming groups, is what I term the "practical way of name-giving" as opposed to the "ideal way of name-giving", in which one would instead name each entity as well as each phenomenon using a distinct name for each.

Although it is indispensable to use the practical way of name-giving to refer to objects, it helps one better understand language when one considers the alternative way of name-giving, namely the ideal way of name-giving. In fact, there are several

ramifications to, or “side effects” of, using the practical way of name-giving. For instance, it leads to what is termed here *side-effect 2*, which refers to the formation of imprecise groups, which leads to the linguistic category of *xafī*, words whose relations to its co-subclasses remain to be worked out. There are other *side-effects* and solutions for dealing with them that I discuss in section 3.9 and will not repeat here. Suffice it to say that in Chapter 3, based on a close reading primarily of the linguistic categories found in *al-Manār*, I argued that the linguistic categories either represent issues that come about due to the *side-effects* of the practical way of name-giving or the outcome of the solutions human beings use to resolve them. At the end of Chapter 3, I built the general framework and showed the place of each linguistic category in it.

In the light of the general framework produced in Chapter 3, Chapter 4 shows the application of these linguistic categories to a *furūf* topic, namely *sirqa*, with an eye to seeing how these categories play a role in determining the outcome of the process of *istinbāt al-ḥukm*.

Chapter 5 provides more insights into the nature of language and actual communication on the basis of the material explored in Chapter 4. It points out the distinction between two types of communication, namely the practical way and the ideal way of communication, which are closely related to the practical way and the ideal way of name-giving. It also addresses the question of why the Prophet uttered utterances with different levels of abstraction on a single legal matter, by highlighting

the role what I term *the conditions of addressee(s)* play in determining what needs to be included within *manṭūq* (mentioned part of a thought), thus shaping utterance to a great extent.

As noted in the Introduction, the absence of a general framework for the linguistic categories in *uṣūl al-fiqh* (one that is built based on *uṣūl al-fiqh* itself) gave rise to numerous issues concerning the origin of *uṣūl al-fiqh*, its function, etc. Some scholars have even claimed that the function of linguistic categories, or that of *uṣūl al-fiqh* in general, was to justify the existing law by basing it on the revelation through the exploitation of ambiguities of Arabic language. Contrary to this assumption, the present work shows that ambiguity or indeterminacy is inherent in any human language due to the fact that human beings use the practical way of name-giving instead of the ideal way of name-giving.

Thus, by providing a general framework for the linguistic categories found in Ḥanafī *uṣūl al-fiqh* manuals, this thesis fills an important gap not only within modern but in classical *uṣūl al-fiqh* literature while eliminating some of the misconceptions regarding *uṣūl al-fiqh* due to the reading of the linguistic categories in the absence of a proper general framework or without any reference to any unifying theme, as seen in some of the modern literature. Therefore, I hope that my own work will be seen as complementary to the Ḥanafī *uṣūl al-fiqh* manuals and will function as an important framework for understanding them.

While building the general framework, this work also offers insights into the various fields of Arabic and Islamic studies. This is because medieval Muslim scholars upon whose works we primarily rely on in understanding Islamic civilization were specialists who mastered various fields of studies, and *uṣūl* manuals exhibit great examples of this mastery. Therefore, scholars and students who specialize in various disciplines of Arabic and Islamic studies other than Islamic law or *uṣūl al-fiqh* will also likely to find useful materials and discussions about their fields of studies in the present work.

In this regard, the analyses regarding the nature of language found throughout this work will provide insights for linguists and Arabists alike into the quiddity of language as a communication tool, especially the notions of the practical way of name-giving vs. the ideal way of name-giving as well as the practical way of communication vs. the ideal way of communication. Similarly, I believe that scholars of Quranic studies will find certain aspects of this study beneficial such as my discussions on *muḥkam* vs. *mutaṣābih*, *ḥaqīqa* vs. *majāz*, and *ṣarīḥ* vs. *kināya* analysed in sections 3.4, 3.6, and 3.9.

Likewise, scholars of Ḥadīth will likely to find the present work supportive for furthering our understanding of the role traditions play in the formation of Islamic law and especially in their role in turning *mujmal* into *mufassar* thanks to the analysis on *sirqa* (theft) explored in Chapter 4 in the light of the general framework.

This thesis will be of great interest for scholars who specialize in Logic (*Mantiq*) as well, as it provides substantial evidence for the influence Logic had on the formulation of the discussions within *uṣūl al-fiqh*. In fact, with the help of diagrams the present work provides detailed descriptions of the linguistic categories with reference to the role Logic plays in how each category is defined. In this regard, they will find Chapter 3 and 5 congenial to their thinking.

The Arabic linguistic theory and rhetoric seems to rely on the linguistic analysis found in *uṣūl* manuals and the general framework in section 3.9 will thus be useful in understanding the phenomenon discussed in works on Balāḡa, especially in improving our understanding of the function of *tašbīh* and *istiṣāra* in communication. Moreover, this work provides more philosophical background on the quiddity of these two concepts. In fact, in section 5.3.2.2, it points out how non-essential features of classes allow one to draw analogies between different entities and thus deals with the questions of how and why people make *tašbīh* or *istiṣāra*.

Besides making these immediate contributions, this thesis will hopefully open up new avenues for comparative studies beyond Arabic and Islamic studies, too. In this regard, chapter 3 and 4 should serve as a benchmark for scholars of legal studies, especially those that may aim at exploring the role of language in the process of law-making in any given legal system. Likewise, those who specialize in Criminal law and those in Legal philosophy will find Chapter 4 to be offering insightful discussions on

such matters as the nature of crime and punishment, whether punishment is to take revenge or to maintain public order. It also highlights the importance of the role of doubt and active repentance in cancelling a punishment within Islamic law, where I discuss these notions within the context of *sirqa* (theft).

The general framework in section 3.9 as well as the linguistic analyses in Chapter 5, and in particular, the dichotomy between the practical way of communication and the ideal way of communication in section 5.2, are relevant for scholars of Linguistics, notably semantics, pragmatics, grammar, and the Relevance theory as well as Philosophy of language.

For all this, I believe and hope that the present work will remain as a reference work for the study of language and law within and beyond Islamic studies for many years to come.

## 7. GLOSSARY

There are a number of Arabic linguistic words frequently used in *uṣūl al-fiqh* manuals in certain senses, and one of the aims of the present work was to explore the boundaries of these terms. To provide Arabists and scholars of Islamic law as well as linguists with more insights into the senses which such terms are used in, I decided to append a glossary of Arabic linguistic terms used in *uṣūl al-fiqh* manuals to the end of this work.

This is by no means an exhaustive list; rather, it is designed to meet the immediate need to clarify some of the misconceptions about the linguistic categories and some terms related to them.

The misunderstandings especially of what is referred to in this work as the ‘linguistic categories’ (e.g. *xāṣṣ*, *ʿāmm*, *naṣṣ*, etc.) originate from the contemporary literature on the linguistic categories some of which I reviewed in my literature review in section 2.5 above. I did not cover all what I consider to be problematic in the translation of such Arabic terms into English by the authors reviewed there, as it was not necessary to do so in a literature review.

To mention but a few more examples here which I did not discuss in the literature review, Kamali’s translation of *mufassar* and *muḥkam* with “unequivocal” and “perspicuous” is problematic. In fact, these two English words do not allow one to see the difference between the two linguistic categories and gives one the

impression that one could have translated them the other way around.<sup>644</sup> Again, these two English words do not help English readers to distinguish between *mufassar* and *muḥkam*.<sup>645</sup> They thus lead to confusion rather than clarification, which is the point of translating these two Arabic terms into English in the first place.

Kamali translates *dāhir* as “manifest” and *xafī* as “obscure”. He defines the former as “a word which has a clear meaning...”<sup>646</sup> and the latter as “a word which has a basic meaning...”,<sup>647</sup> implying that the two are inherently different, as one has a “clear” while the other has a “basic” meaning. However, *uṣūl al-fiqh* manuals define a *xafī* word as a *dāhir* word, and the ambiguity of *xafī* is not with regards to its form but with its hierarchical relation to another word. For instance, *sāriq* (thief) is a *dāhir* word, but its hierarchical relationships to *ṭarrār* (pickpocket) and *nabbāš* (the one who steals shroud from grave) were not known initially before the Qur’ān 5:38 was revealed, which led scholars to investigate these relationships in order for them to discover the scope of the application of the punishment ascribed to *sirqa* in the verse. In other words, the verse caused the scholars to realize that they do not know the hierarchical relationship the word *sāriq* has to the words *ṭarrār* and *nabbāš*, which

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<sup>644</sup> Kamali, *Principles of Islamic Jurisprudence*, 94.

<sup>645</sup> See the entries for the words ‘unequivocal’ and ‘perspicuous’ in Collins dictionary <https://www.collinsdictionary.com/dictionary/english/unequivocal> and <https://www.collinsdictionary.com/dictionary/english/perspicuous>.

<sup>646</sup> Kamali, *Principles of Islamic Jurisprudence*, 91.

<sup>647</sup> Ibid, 99.

are closely related to each other. The scholars called their ignorance with regard to the hierarchical relationship of *sāriq* to *ṭarrār* and *nabbāš* as *xafā'* (ambiguity) and the word *sāriq*, which has this type of ambiguity, as *xafī*. Once this ambiguity was resolved through *ṭalab* (pondering) on their part, for them the *xafī* word *sāriq* returned to its default status, which was *ḍāhir* as I illustrated on several occasions (see, for instance, the general framework 3.9 above).

Thus, the ambiguity with regard to a word's hierarchical relationship to another related word is referred to as *xafā'* and such a word as *xafī*. In other words, *xafī* is a *ḍāhir* word that has an ambiguous relationship with a related word.<sup>648</sup> On the other hand, Kamali's definition of the two terms suggests that the two are inherently different from each other. This is a misrepresentation of the two terms because, as I showed, both terms refer to a word with a clear meaning that has a *faṣl* (differentia) that is known to the linguistic community.<sup>649</sup>

It is my hope that the following glossary of Arabic linguistic terms used in *uṣūl al-fiqh* manuals will serve but as a guide for readers in exploring the linguistic aspects of *uṣūl al-fiqh*. To appreciate the fine details of each term mentioned in the glossary below, one therefore is recommended to read the rest of the thesis. As such, it will

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<sup>648</sup> See a more refined version of the definition of *xafī* below. For a detailed analysis of how I have arrived at this definition of the term *xafī*, see section 3.3.2.1.

<sup>649</sup> For more information, see sections 3.3.2.1 and 3.4.

help eliminate the confusion seen in the modern treatments of the linguistic categories in English (or in other languages such as Turkish) some of which I have discussed in my literature review.

### The Primary Arabic Linguistic Terms Used in This Thesis

**ʾāmm:** 1) Conservative extension.<sup>650</sup> In this sense, a given *ʾāmm* word refers to all that it applies to. In other words, it refers to all the class members of word; 2) Plural. It refers to plurality of words in Arabic. In that sense, the least number of individuals/entities it refers to together is three ('two' in Arabic being referred to by the dual, rather than the plural).

**ḍāhir:** 1) Clear. A word whose *faṣl* (differentia) is known; 2) A sentence can be referred to as *ḍāhir* with respect of a piece of information it contains for the sake of limiting the core/focus of the sentence. I believe that such a secondary information may be contained in a clause or a phrase in Arabic. If it is in a clause, then one can speak of a superordinate clause as being referred to as *ḍāhir* in respect of the information/proposition (*maʿnā*) contained in its subordinate clause, which itself is

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<sup>650</sup> Collins Dictionary explains conservative extension as “the [class](#) of [entities](#) to which a given word correctly [applies](#): [thus](#), the [extension](#) of [satellite of Mars](#) is the set containing only [Deimos](#) and [Phobos](#)” (see <https://www.collinsdictionary.com/dictionary/english/conservative-extension>). This corresponds to the definition of *ʾāmm* (see 3.1.2 below for more information).

referred to as *iṣārat al-naṣṣ*. Deriving the *mafnā* contained in the *iṣārat al-naṣṣ* is referred to as *al-istidlāl bi-iṣārat al-naṣṣ*.

**ḥaqīqa:** Literal. A word used in its literal sense. Note, however, that if there is a sense assigned by the religion of Islam, it is this sense that scholars of Islamic law refer to as the *ḥaqīqa* and not its 'lexical' sense. For instance, the literal sense of the word *ṣalāh* is *duʿā'* (supplication) for linguists. On the other hand, the literal sense of the word *ṣalāh* for *uṣūlīs* is the type of worship described by the Prophet, which consists of certain actions such as *qiyām* (standing up), *qirā'a* (recitation of the Qur'ān), *rukūf* (bowing), and *sajda* (prostration).

**al-istidlāl bi-ṣibārat al-naṣṣ:** Deriving meaning based on *ṣibārat al-naṣṣ*.

**al-istidlāl bi-iṣārat al-naṣṣ:** Deriving meaning based on *iṣārat al-naṣṣ*.

**al-istidlāl bi-dalālat al-naṣṣ:** A type of inference which involves deriving the meaning of an unmentioned sentence based on a mentioned sentence that necessarily follows the mentioned one. Such an unmentioned sentence is referred to as *lāzim muta'axxir* because it is thought to occur after the utterance.

**al-istidlāl bi-iqtidā' al-naṣṣ:** A type of inference which involves deriving meaning based on an unmentioned sentence that necessarily precedes the mentioned sentence. Such an unmentioned sentence is referred to as *lāzim mutaqqaddim* as it thought to occur before the utterance.

**istifsār:** Asking for clarification. It refers to inquiry on the part of the addressee into the intended meaning of a given *mujmal* or *muḥkam* word (or phrase or sentence for that matter) from the addresser. Note that *istifsār* is not necessary to resolve the ambiguity seen in *xafī* or *muškil*. Moreover, *istifsār* is forbidden in resolving the ambiguity of *mutašābih*.

**kināya:** Non-standard. A word that can be used in both literal and tropical/figurative senses. It is the opposite of *ṣarīḥ*, which refers to a word that is fixed to a sense, which could be either its *ḥaqīqī* (literal) or *majāzī* (figurative/tropical) sense. Other linguistic categories whose intended meaning is considered to be fixed to a sense include *mufassar* and *muḥkam*. *Ṣarīḥ* differs from these in that it is fixed to a certain sense in the language all the time (though, I hypothesize that it is evolved from *mufassar* or *muḥkam* by the omission of *tafsīr* (*qarīna siyāqiyya/qayd*) at some point in time to save time when communicating). On the other hand, *mufassar* and *muḥkam* are fixed to a certain sense on a particular speech occasion thanks to a *qarīna siyāqiyya/qayd*, that is, textual evidence provided by the addresser, which is also referred to as *tafsīr* (explanation). In other words, while a *ṣarīḥ*'s fixedness to its intended meaning is thanks to its being used in that sense widely and it is not limited to any particular speech occasion, the fixedness of *mufassar* or *muḥkam* to its intended meaning is due to an explanation provided by

the addresser on a particular speech occasion, and this fixedness is limited to the scope of that speech occasion.

**majāz:** Tropical/figurative. A word used in a tropical sense. This could be the sense established in the language such as ‘*duʿā*’ (prayer/invocation) for the word ‘*ṣalāh*’. The word *ṣalāh* refers to its specific sense described by the Prophet, which is the sense of the word that is considered in *uṣūl al-fiqh* to be its **ḥaqīqī** sense.

**muʿawwal:** A *muṣṭarak* word one of whose senses is preferred over the other(s) by the addressee based on **tarjīh** (preponderance), which relies on **taʿwīl** (interpretation), taking into consideration (an) extratextual clue(s) (**qarīna ḥāliyya**).

**mufassar:** Clarified. A word the ambiguity of whose meaning is clarified by **mujmil** (the one who made it ambiguous) through a **tafsīr** (explanation).

**muḥkam:** Clarified once and for all. A **mufassar** word the clarity of whose meaning transcends the time when it was clarified, and thus its legal effect is permanent/unchanging.

**muṣṭarak:** Polyseme. A word that is assigned to multiple senses.

**maʿnā waḍʿī:** Assigned sense. The sense to which a word is assigned in a particular linguistic community.

**muṣkil:** Confusing. This refers to a word with two *xafā*’s (ambiguities): [the ambiguity as to the definition of the ambiguous word] + [the ambiguity as to the

hierarchical relationship between the ambiguous word and its co-subclasses]. The former constitutes what *uṣūlīs* refer to as ***iškāl*** (confusion), which brings with it the latter. The ***iškāl*** is resolved through ***ṭalab*** (pondering), which involves listing the potential senses the *muškil* word/the phrase can denote, and then ***ta'ammul*** (deliberation), which involves deciding which one of these senses is meant on that particular speech occasion. Once the ***iškāl*** is thus resolved, the other ambiguity of the word becomes resolved automatically, thus rendering the *muškil* a *mu'awwal* (different from the particular *mu'awwal* that evolves from *muštarak*).

**mujmal**: Ambiguous. In *uṣūl al-fiqh*, it is divided into three types in accordance with the notion of ***izdiḥām al-maḥānī*** (merging of senses), which is the *jins* (class/superordinate) for ***muštarak***, ***xafī***, ***muškil***, and ***mujmal***. The idea behind this division is that a given word may denote multiple senses for three possible reasons. First, it may have actually been assigned to multiple senses through multiple ***wadʿ luḡawī*** processes. Second, the word may have been assigned to no sense at all in the language, in which case, it may denote an almost infinite number of senses because, for the members of the linguistic community, the word is unknown, and it could mean anything. Finally, the word may have already been assigned to a single sense through ***wadʿ luḡawī***; however, the religion of Islam may have assigned a new sense to it. This new assignment, which is referred to '***wadʿ šarʿī***', cannot be known by the members

of the linguistic community. All these three cases require explanation (*tafsīr*) from the one who obscured (*abhama*) the utterance, i.e. the *mujmil*.

**mutašābih:** Encrypted. This refers to an encrypted word (phrase, or sentence for that matter) with an intended meaning the inquiry into which has ceased (*inqaṭaʿa*) for most addressee(s). According to Ḥanafīs, the intended meanings of *mutašābih* words are believed to be known to the ideal addressee of the Qurʾān, namely the Prophet.

**naṣṣ:** A sentence in respect of the information/proposition contained in its main part, which itself is referred to as *ṣibārat al-naṣṣ*. If this information is contained in a clause, then *naṣṣ* refers to its superordinate in respect of the information/proposition (*maʿnā*) contained in it (i.e. the main clause). It is the opposite of *dāhir*, which sometimes refers to a superordinate clause in respect of the information/proposition (*maʿnā*) contained in its subordinate clause.

**ṣarīḥ:** Standard/norm. A word that signifies only a single sense, be it its literal sense or a tropical sense, due to its common usage in that sense. If it is its literal sense that it signifies, then it cannot be used in a tropical sense and vice versa. It differs from *mufassar* and *muḥkam* in that it needs no clarification as to its intended meaning that would be provided by the addresser while the latter two are linguistic categories with clarification provided by the addresser as to their intended meanings. The clarity of *ṣarīḥ* is due to its common usage in a particular sense.

**ta'wīl:** Interpretation. In *uṣūl al-fiqh*, this refers to an estimation on the part of the addressee— based on *qarīna ḥāliyya* (extratextual evidence/clue) with regard to the addresser such as his/her being angry— of the intended meaning (*murād*) of a given word uttered by an addresser on a speech occasion in the absence of *tafsīr* (explanation). This can either happen if (i) the word is *muštarak* or (ii) *kināya* or (iii) *muškil*.

**tafsīr:** Explanation. In *uṣūl al-fiqh*, this refers to a given addresser's clarification of his/her intended meaning of a *mujmal* word/phrase/utterance, using *qarīna siyāqiyya/qayd* (textual evidence/clue) such as a word, a phrase, or an utterance, which renders the *mujmal* a *mufassar*.

**ṭalab:** Pondering. In *uṣūl al-fiqh*, this refers to an investigation on the part of the addressee to find out in which sense a given word can be used. Compare this with the term *ta'ammul* (deliberation), which refers to 'an investigation on the part of the addressee to know what sense among the other senses, which a word may denote, the word being used in on a particular occasion'. The clarification of the *xafā'* (ambiguity) found in *xafī* words requires *ṭalab* while the clarification of the *xafā'* found in *muškil* words, which is different from the *xafā'* found in *xafī* words, calls for both *ṭalab* and *ta'ammul*. The clarification of the *xafā'* of a *mujmal* word, however, requires three *ṭalabāt* (investigations/inquiries): *istifsār* (asking for clarification) from the addresser, *ṭalab*, and *ta'ammul*.

**taxṣīṣ:** Specification/limitation. A type of *tafsīr* that is provided by the addresser during the speech occasion that limits the scope of the utterance.

**wadʿī:** Assignment (name-giving). Assigning words to particular senses.

**wadʿī usage:** Assigned usage. Using a word in a sense that it has been assigned to in a linguistic community. It is the opposite of *non-wadʿī usage*, that is, non-assigned usage, which refers to the use of a word in a sense to which it has not been previously assigned to.

**wadʿī šaxṣī:** A personal assignment. An assignment (name-giving) that is at the personal level.

**wadʿī furfī:** Local assignment. A *wadʿī šaxṣī* that is adopted by other members of a particular linguistic community on a local level.

**wadʿī šarfī:** A religious assignment. Assignment of a word to a particular sense by the religion of Islam.

**wujūh istiʿmāl al-naḍm:** Types of usage of words. This refers to types of usage of words in terms of whether or not they are used in their assigned sense(s).

**wujūh bayān al-naḍm:** Types of clarity (and also ambiguity) of words. It refers to the types of clarity (or ambiguity) of words in terms of signifying their intended meanings. It is divided into two subcategories: *ṭuruq duhūr al-maʿnā* (ways/types of clarity of meaning) and *ṭuruq xafāʾ al-maʿnā* (ways/types of ambiguity of meaning).

**wujūh al-wuqūf ʿalā al-murād:** The ways to know the intended meaning (murād) of utterances. It is divided into four: al-istidlāl bi-fibārat al-naṣṣ, al-istidlāl bi-iṣārat al-naṣṣ, al-istidlāl bi-dalālat al-naṣṣ, and al-istidlāl bi-iqtidā' al-naṣṣ.

**wujūh al-naḍm ṣīgatan wa-luġatan:** This literally means 'ways/types of words in terms of form and language'. In *uṣūl al-fiqh* the phrase refers to a linguistic classification in terms of the relation of a given word to its assigned meaning in the language.

**xafi:** Hidden/obscure. *Xafī* is a *dāhir* word whose relationship with its co-sub-classes under the nearest class is yet to be determined through **ṭalab** (pondering).

**xāṣṣ:** 1) Monoseme, a word with a single linguistically encoded/assigned sense as opposed to multiple senses, which is the case with **muṣṭarak** (polyseme); 2) *xāṣṣ* often refers to a more specific sense than the previous sense, and it involves a word with a single linguistically assigned sense that is used in such a way that it refers to a specific referent, thus could be translated as "specific" in this sense.

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