

Reason as a Source of Law in Islamic Jurisprudence of the Tenth and Eleventh Centuries C.E.

In the intellectual disciplines of medieval Islamdom, there seems to be a division of labor with regard to the terminology of rational analysis. The philosophers' term of choice was *'aql* "reason," the theologians' term of choice was *naẓar* "speculation, inspection," and the jurists' terms of choice were *ra'y* "sound judgment," early on, *ra'y* "sound judgment," and later *ijtihād* "exhaustive research" and *qiyās* "analogy." The division is not complete; *'aql* made inroads into theology by the third/ninth century, in the Mu'tazilī principles of *al-taḥsīn al-'aqlī* and *al-taqbīḥ al-'aqlī* "the rational determination of what is good and what is evil." It also made inroads into legal hermeneutics, *dalīl al-'aql* "the indicator of reason" or *ḥujjat al-'aql* "the proof of reason" being considered one of the *uṣūl al-fiqh* "sources of law" in several Mu'tazilī and Twelver Shiite manuals of jurisprudence, such as the works of al-Qāḍī 'Abd al-Jabbār and al-Shaykh al-Ṭūsī. This presentation examines the presentation of *'aql* as a source of the law, focusing on the manuals of jurisprudence of Abū Bakr al-Jaṣṣāṣ al-Rāzī (d. 370/980), al-Qāḍī 'Abd al-Jabbār (d. 415/1025), Abū al-Ḥusayn al-Baṣrī (d. 436/1044), al-Sharīf al-Murtaḍā (d. 436/1044), and al-Shaykh al-Ṭūsī (d. 460/1067). Examination of these texts suggests that the presentation of *'aql* as a source of Islamic law was first developed in Mu'tazilī theology, perhaps by the prominent theologians Ibrāhīm al-Nazzām (d. 220-30/835-45), Abū 'Alī al-Jubbā'ī (d. 303/915) and Abū Ḥāshim al-Jubbā'ī (d. 321/933), who were opposed by such figures as Dāwūd b. Khalaf al-Iṣfahānī (d. 270/884), the founder of the Ṣāḥirī legal school, who was famously quoted as saying *bul' alā al-'uqūl* "Piss on reason!" Then, the idea that reason represented one of the sources of the law was imported into the Ḥanafī tradition and the Twelver Shiite tradition. This study will also focus on the close associations between the concept of *'aql*, the theological principle of *wujūb al-naẓar* "the obligation to engage in rational investigation," which was adopted not only by the Mu'tazilīs but also by al-Jaṣṣāṣ, and the concept of the rejection of *taqlīd* "the acceptance of the views of others on authority".



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