ijmāʿ al-ʿiṭrah argument. In his works Shawkānī refutes these claims by saying that the *ijmāʿ* the Hādawīs are claiming has no validity and he proffers *ḥadīth*s to prove that "Allāhu Akbar" must be said four times. Furthermore, he says that "*ḥayya ʿalā khayr al-ʿamal*" has no basis in the Sunnah, since it cannot be found in the canonical *ḥadīth* collections that the Prophet ever mentioned this phrase.[18] The same argument is made by Ibn al-Amīr against the Hādawīs, particularly when he argues against the specifically Hādawī teachings in *ʿibādāt*. Ibn al-Amīr asserts that because members of Ahl al-Bayt can be found in all the Islamic sects and schools of law, one cannot make a claim for an *ijmāʿ* of the Ahl al-Bayt by basing oneself solely on the consensus of the Zaydī Imāms and scholars.[19]

As for *qiyās* (analogical reasoning), Shawkānī says that most forms of it, too, do not constitute a source for the derivation of legal opinions. Most *qiyās* is based on *raʾy*, and it is under this heading that *raʾy* was mostly applied in Islamic law. For Shawkānī, *qiyās* allowed for arguments and opinions deriving from unconstrained rationality which had no basis in either the Qur'ān or the Sunnah.[20] Further on in his discussion on *qiyās* in *Irshād al-fuḥūl*, Shawkānī appears to allow for some limited forms of *qiyās*. Here he says:

> Know that the *qiyās* which is considered valid is that in which the text comes with its cause (*ʿillah manṣūṣah*), and [also] that in which there is no reasonable cause to distinguish the case in the text from another case (*nafy al-fāriq*) and that which falls under *faḥwā al-khiṭāb* and *laḥn al-khiṭāb*. . . .[21]

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[18] Muḥammad al-Shawkānī, *al-Sayl al-jarrār al-mutadaffiq ʿalā ḥadāʾiq al-azhār*, 4 vols., ed. Maḥmūd Zāyid (Beirut: Dār al-Kutub al-ʿIlmīyah, 1985), 1:202–205; idem, *Wabl al-ghamām*, 1:256–260; idem, *Nayl al-awṭār sharḥ muntaqā al-akhbār*, 9 parts in 4 vols. (Beirut: Dār al-Fikr, 1989), vol. 1, pt. 2:16–20.

[19] Cf. Muḥammad b. Ismāʿīl al-Amīr, *Masāʾil ʿilmīyah* (n.p.: n.d.).

[20] Muḥammad al-Shawkānī, *Adab al-ṭalab* (Ṣanʿā': Markaz al-Dirāsāt wa l-Buḥūth al-Yamanīyah, 1979), 163–165.

[21] *Irshād al-fuḥūl*, 178. The *ʿilla manṣūṣa* covers the case where the text comes with its *ʿillah* more or less explicitly. The *nafy al-fāriq* type is where there is no reasonable cause to distinguish the case in the text from another case. The classic example is treating a slave girl like a male slave in some rules. The *faḥwā* and *laḥn* cases are classified by some as *qiyās jalī*, but others, including it seems Shawkānī, would treat them as separate. They are commonly distinguished, *faḥwā* referring to a case that is more appropriately (*a fortiori*) subject to the rule than the textual case. The classic example is the prohibition of striking one's parents on the basis of the Qur'ānic prohibition of saying "Fie" (*uffa*) to them (cf. Qur'ān XVII: 23). *Laḥn* is a case that falls under the textual rule with equal appropriateness; e.g. the Qur'ān prohibits consuming the property of orphans, destroying it by fire is equally appropriate. Here by contrast to the *nafy al-fāriq* some reference to the purpose of the textual rule is involved.

Here Shawkānī is limiting himself to the least controversial (but not unimportant) forms of what some jurists have labeled *qiyās*. In fact, some would class all the types he mentions as *qiyās jalī*.[22] In this Shawkānī appears to adopt the methodology of the Ḥanbalīs, who similarly object to the use of *qiyās* unless one is obliged to do so out of necessity (*ḍarūrah*).[23]

Linking *Uṣūl* and *Furūʿ*: the Case of *Ribā*

Shawkānī's rejection of most forms of *qiyās* has implications for Hādawī law as well as that of the other schools of law. When looking at his commentary on Hādawī law one gets the impression that he wanted to sweep away systematically all opinions which he felt were based on unsound methodology and had no basis in the textual sources. A good example of this, which also shows his strictness on *qiyās*, is his criticism of the Zaydī (and Ḥanafī) position on the cause (*ʿillah*) of usury (*ribā*). Usury is deemed a major offence (*kabīrah*) in Islam and its law entails that whenever an exchange takes place in certain substances, the quantities must be equal and the exchange simultaneous. One of the main Traditions relating to this is the one reported by Abū Saʿīd al-Khudrī in which the Prophet says: "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt. . . ." Basing himself on this Tradition, Shawkānī says that the law of *ribā* applies only when any of these six items is exchanged for another sample of the same substance. Another variation of this Tradition provides that when the good is not exchanged for a sample of the same substance but for something else, the rule of equality does not apply, but the exchange must still be simultaneous. Zaydīs, and Ḥanafīs, applied *qiyās* to this Tradition and saw the *ʿillah* as the measurement of these goods by weight (*wazn*) or volume (*kayl*). Thus, they extended the rule to require simultaneous exchanges whenever the goods involved (assuming they were different) were both measured in the same way (the quantities could be different). By contrast, the Shāfiʿīs and Mālikīs, with some

[22] Cf. ʿAbd al-Qādir b. Badrān, *al-Madkhal ilā madhhab al-imām aḥmad* (Beirut: Dār al-Kutub al-ʿIlmīyah, 1996), 151.

[23] It is to be noted that Shawkānī completely rejects the practice of "preference" (*istiḥsān*), which can be broadly defined "as the adoption of a rule of law recognized as a departure from analogy". This is because it has not textual basis. Cf. *Adab al-ṭalab*, 165–166 and Aron Zysow, "The Economy of Certainty: an Introduction to the Typology of Islamic Legal Theory" (Ph.D. diss., Harvard University, 1984), 399–402.

differences, both see the *ʿillah* (apart from the gold and silver cases) as being a foodstuff (*ṭuʿm*). Shawkānī felt that this use of *qiyās* was objectionable, particularly when the issue involved a definite and major act of disobedience (*maʿṣiyah min al-kabāʾir wa min qaṭʿīyāt al-sharīʿah*).[24] Here is what he says in this regard:

> We refuse [to accept] that legal judgements be established through such ways. Indeed, we refuse to consider what they have called *ʿillah* in this matter to be anything of the kind. How much better it is to limit oneself to the texts of the Sharīʿah and not to burden oneself by exceeding them, enlarging the scope of the believers' duties which is only increasing their burden. We are not among those who deny *qiyās*, but we forbid establishing rules by it, except when the text comes with its cause (*ʿillah manṣūṣa*) or that which established the *ʿillah* under *faḥwā al-khiṭāb*.[25]

Ẓāhirīs, as well as Ibn al-Amīr, shared Shawkānī's rejection of applying *qiyās* to the law of *ribā*; whereas all the other major Sunnī schools appear to have applied it.[26] A important implication of Shawkānī's position here is that if on a given matter there are no revealed texts, no *ijmāʿ* of the Companions or of the *ummah* and no *qiyās* is applicable then the rule is that of permissibility (*ibāḥah*) and not of interdiction (*ḥāẓr*).

Other examples can be found in Shawkānī's legal writings which underscore his unambiguous commitment to bring to bear his ideas on *ūṣūl al-fiqh* to actual legal judgements. For instance, Shawkānī condemns the widely held opinion that specific statements have to be made in the process of the "offer and acceptance" (*al-ījāb wa ʾl-qabūl*) to render a contract valid. He argues that there is no basis for such an opinion in the Qurʾān or the canonical *ḥadīth* collections and therefore it must be rejected. Instead, Shawkānī proposes that any customary practices which are construed to constitute an *ījāb* and *qabūl* render a contract valid.[27] In analyzing Shawkānī's teachings

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[24] *Al-Sayl al-jarrār*, 3:63ff.; Muḥammad Ṣiddīq Ḥasan Khān, *al-Rawḍa al-nadīyah sharḥ al-durar al-bahīyah* (Beirut: Dār al-Nadā, 1993), 2:228–36; cf. Ibn Miftāḥ, *Sharḥ al-azhār*, 4 vols. (Cairo: Maṭbaʿat Sharikat al-Tamaddun, 1332/1914), 3:69ff.; cf. Aḥmad b. Qāsim al-ʿAnsī, *al-Tāj al-mudhhab li-aḥkām al-madhhab*, 4 vols. (Ṣanʿāʾ: Maktabat al-Yaman al-Kubrā, n.d.), 2:376ff.

[25] *Wabl al-ghamām*, 2:427.

[26] Ibn Ḥazm, *al-Muḥallā bi ʾl-āthār*, 12 vols., ed. ʿAbd al-Ghaffār al-Bindarī (Beirut: Dār al-Kutub al-ʿIlmīyah, 1988), 8:467; Ibn al-Amīr, *Subul al-salām*, 4 vols. (Beirut: Dār al-Kitāb al-ʿArabī, 1987), 3:73; Ibn al-Amīr, *al-Qawl al-mujtabā fī taḥqīq mā yaḥrum min al-ribā* (Ṣanʿāʾ: Maktabat Dār al-Quds, 1992).

[27] *Al-Sayl al-jarrār*, 3:6; idem, *al-Darārī al-muḍīyah sharḥ al-durar al-bahīyah*, (Beirut: Dār al-Jīl, 1987), 297.

the linkage between his *ūṣūl* and *furūʿ* is either explicitly stated or assumed in each and every legal judgement. He could not envisage a sweeping reform of the substantive law without first revamping the *uṣūl*. The question of whether *uṣūl al-fiqh* is pertinent to the *furūʿ* would have struck Shawkānī as absurd, not because many of the *furūʿ* by his time were not anchored in the *uṣūl* (a fact he readily admitted and aggressively sought to remedy), but because his plan was to ground firmly the *furūʿ* with his own chastened version of the *uṣūl*.

Shawkānī on *Ijtihād*

The cornerstone of Shawkānī's epistemology and legal methodology comes out in his discussions on *ijtihād*, the means by which a scholar independently derives his judgements in matters obtaining only probable answers. He argued that it provided a solution to the evils of sectarianism and fanaticism as well as a means of reforming misguided social practices. It appears that Shawkānī took most of his ideas on *ijtihād* from his predecessor Ibn al-Amīr and aimed to present a systematic method for producing *mujtahids*.[28] Both he and Ibn al-Amīr argued against those who claimed that *ijtihād* was no longer possible and that it was incumbent on Muslims to practice *taqlīd* of earlier *mujtahids*, namely, the eponyms of the established schools. Shawkānī and Ibn al-Amīr's arguments are framed in universal Islamic terms but it is their opposition to the Hādawī *madhhab* which underpins many of their opinions on this matter. As such, their discourse has a strong social and personal element and is not presented in purely theoretical terms.

Shawkānī's arguments are that *ijtihād* is a continuous and necessary process and that it is easier for *mujtahids* to arise in later times. He begins by stating that no age may be devoid of a *mujtahid*, basing himself on the Prophetic Tradition: "until the day of reckoning a group in my nation will remain manifesting the truth". In His fairness, God could not have been more bounteous to the earlier generations than to the later ones. Moreover, the disappearance of *mujtahids* would entail a severance between the later generations and

[28] Cf. Muḥammad b. Ismāʿīl al-Amīr, *Uṣūl al-fiqh al-musammā ijābat al-sā'il sharḥ bughyat al-āmil* (Beirut: Mu'assasat al-Risāla, 1986), 383ff.; idem, *Irshād al-nuqqād ilā taysīr al-ijtihād*.

the original sources—the Qur'ān and Sunnah—because of the *muqallid's* need for what amounts to an intermediary between himself and the texts. Hence, Shawkānī advocates a return to the sources, which, he argues, are comprehensive and sufficient for all situations.[29]

His argument about the relative facility for later scholars to become *mujtahids* underscores his epistemological approach: authoritative knowledge is textual, and can only be derived textually. Given that generations of scholars from the time of the Prophet down to his had collected, classified and codified this textual legacy (i.e., the *ḥadīth* collections and affiliated works, dictionaries, grammars etc.), and that these references were now literally at his fingertips in books, his ability to arrive at authoritative legal decisions was greater than that of the earliest of generations.[30] His assertion that the later generations were better able to access the sources of revelation was a means of empowering himself, and by the same token refuting the notion of irrevocable decline which underpinned the claim that the last *mujtahids* were the eponyms of the established schools.

Later Hādawīs admitted in theory the practice of *ijtihād* in their *uṣūl* works but in practice they expected adherence to al-Hādī's teachings as set forth in Ibn al-Murtaḍā's *Kitāb al-Azhār*.[31] As was stated earlier, Hādawīs consider the opinions of the early Imāms (primarily those of al-Hādī) and their consensus to be the main sources of authority in matters of law. Any opinion which contradicts their Imāms is invalid because they hold that the Ahl al-Bayt are the only group of Muslims who follow the righteous path and who will be saved in the hereafter.[32] In the sources they refer to themselves as "the group which manifests the truth" (*al-firqah al-ẓāhirah ʿalā al-ḥaqq*) and "the group that will attain salvation" (*al-firqah al-nājīyah*). In short, for the Hādawīs *taqlīd* was permissible, indeed mandated. Al-Qāsim al-Manṣūr, for example, states that *mujtahids* had to take account of the opinions of the Imāms of Ahl al-Bayt, and it is only when differences between the latter exist that they should look to the

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[29] Cf. *Irshād al-fuḥūl*, 228.

[30] The same argument is made by Ibn al-Amīr in his *Irshād al-nuqqād*, 36–37.

[31] Cf. al-Ḥusayn b. al-Qāsim, *Ghāyat al-sūl fī ʿilm al-uṣūl*, in *Majmūʿ al-mutūn al-hāmmah* (Ṣanʿā': Maktabat al-Yaman al-Kubrā, 1990), 296; idem, *Kitāb Hidāyat al-ʿuqūl ilā ghāyat al-sūl* (n.p.: al-Maktaba al-Islāmīyah, 1401/1981), 2:685–687; Muḥammad b. Yaḥyā b. Bahrān, *Matn al-kāfil*, in *Majmūʿ al-mutūn al-hāmmah*, 326–328.

[32] Al-Qāsim b. Muḥammad, *al-Irshād ilā sabīl al-rashād* (Ṣanʿā': Dār al-Ḥikmah al-Yamānīyah, 1996), 108.

Qur'ān and Sunnah for answers. Moreover, he states that if ʿAlī b. Abī Ṭālib held an opinion in a matter upon which there was a conflict of views then his opinion was to be followed, because he is "the interpreter of the Book of God and the Sunnah of His messenger".[33] Implicit in al-Qāsim al-Manṣūr's recommendations is that *ijtihād* is not easily attainable, a matter which is further corroborated by the fact that he did not describe a systematic method by which *mujtahids* could be readily formed. *Ijtihād* was after all one of the conditions of the Imāmate and often in Zaydī history candidates were not found because there were no *mujtahids*.

A Clash over Doctrine: *Kull Mujtahid Muṣīb* versus *al-Haqq Wāḥid*

Another element in the Hādawī doctrine of *ijtihād* is their belief in the infallibility of *mujtahids*, as expressed in the statement "every *mujtahid* is correct" (*kull mujtahid muṣīb*) in normative legal matters which obtain probable answers (*masā'il ẓannīyah ʿamalīyah*). One of its effects was to insert a degree of tolerance for a multiplicity of opinions among *mujtahids*, and this may explain, in part, the relative tolerance shown by Zaydī scholars to the Yemeni Traditionists.[34] The latter's legal opinions, even if considered valid, did not undermine Hādawī ones as these were correct too. It was only when Shawkānī, with the backing of the state, insisted on imposing his views that Hādawīs seriously reacted, accusing him of wanting to establish his own *madhhab*.[35]

In opposition to Hādawī views, Shawkānī rejected the doctrine of the infallibility of *mujtahids*, arguing that there was only one correct answer to a given issue. He bases this on the *ḥadīth* in which the Prophet says: "If the judge judges by *ijtihād* and is correct, he receives two recompenses; if he judges by *ijtihād* and commits an error, he receives one recompense". The test of a correct opinion according

[33] *Al-Irshād ilā sabīl al-rashād*, 73–81.

[34] Another broader effect which was pointed out by Aron Zysow was to diminish the importance of law while giving other sciences such as theology greater importance. See "Economy of Certainty", 459–483. It must be pointed out that al-Qāsim al-Manṣūr rejected the doctrine of the infallibility of *mujtahids*, ascribing it to the Basran Muʿtazila and insisting that only one answer is correct. His attempt to resolve the differences that arose between Zaydī Imāms can be found in his *al-Irshād ilā sabīl al-rashād*. Briefly, al-Qāsim al-Manṣūr calls for privileging the opinion of ʿAlī b. Abī Ṭālib and for placing greater emphasis on the consensus of the Ahl al-Bayt in disputed matters.

[35] Cf. *Ghaṭamṭam*, 1:18–20.

to Shawkānī lies in whether the *mujtahid* bases his opinion on textual proof and authority from the Qur'ān and Sunnah. Shawkānī, however, offers no means for the ordinary Muslim of judging the soundness of one *mujtahid's* opinion over that of another. It is assumed that an absolute *mujtahid*, such as himself, would in some manner supervise the workings of the legal system and remain the ultimate arbiter of the correctness of a given opinion. Unfortunately, Shawkānī does not delve into the detailed workings of this system. An clear assumption, however, about the *mujtahids* who would maintain this system was that they would share Shawkānī's educational training, mainly in the *ḥadīth* sciences, and his teachings. In other words, Zaydīs who chose to ignore the standard Sunnī collections of *ḥadīth* were not considered *mujtahids*.

As one might expect, Hādawīs objected to this scheme in part because they upheld the doctrine of the infallibility of *mujtahids*. Moreover, they suspected Shawkānī of claiming infallibility for his own opinions partly because he upheld the doctrine of fallibility. Muḥammad al-Samāwī (d. 1241/1825), otherwise known as Ibn Ḥarīwah, observes in this regard:

> The sum total of your claim is [your own] infallibility (*'iṣmah*), and because of this you have to assert that you have either joined the rank of the prophets, ... or admit that your *ijtihād* may contain error as in the case of other *mujtahids* given that the area here is one of probability. Then, there remains no argument favoring the acceptance of your opinions to the exclusion of others: your opinions are like those of other *mujtahids*, and the one practicing *taqlīd* is free to choose from whichever he prefers. If this is so, what proof do you have that the one who accepts the opinion of someone other than yourself has gone astray while the one who accepts your opinion has become rightly guided?[36]

Ibn Ḥarīwah's question raises the important question of the role *taqlīd* plays, and consequently the position the lay person (*'āmmī*) is to adopt in the legal system envisaged by Shawkānī's *uṣūl*.

Shawkānī on *Taqlīd*

Shawkānī is emphatic that the practice of *taqlīd*, which he defines as following someone else's opinion (*ra'y*) without knowing the textual proof (*ḥujjah*) underpinning it, is absolutely prohibited.[37] He claims

[36] *Ghaṭamṭam*, 1:65.
[37] *Irshād al-fuḥūl*, 237ff.

that the founders of the schools of law had prohibited *taqlīd* as well, and that it was only their followers who made it mandatory through an unprecedented and reprehensible innovation (*biḍ'ah muḥdathah*).[38] Shawkānī explains that the Companions and the two following generations had not practiced *taqlīd* and did not even know of it. If one of the Companions was unable to formulate an opinion for himself he would ask someone who could provide the legal proof (*al-ḥujjah al-shar'īyah*) on the given issue. In underpinning this assertion Shawkānī cites Qur'ān IV: 59 "If you should quarrel on anything, refer it to God and the Messenger", as well as the famous Tradition of Mu'ādh to prove that Muslims were exhorted to refer to the Book and the Sunnah. In other words, use of textual proof is obligatory as is the requirement to refer to a living scholar who is able to present the supplicant with such proof (*dalīl*) which does not consist of a mere opinion, but is based on a textual transmission (*riwāyah*). Hence, in the event of an issue arising the lay person or the one who falls short (*muqaṣṣir*) must ask the jurists of his time who are knowledgeable in the Book and the Sunnah. Shawkānī says:

> It is incumbent on him to ask about that which is determined by the Sharī'a and the one who is asked must be from among those who are not ignorant of this. Then [the *muftī*] issues a *fatwā* which is Qur'ānic or Prophetic and discards the question about the schools of the people and contents himself with the school of their first Imām who is the Prophet of God.[39]

According to Shawkānī these *mujtahids* of the Book and the Sunnah can be found in every town of the Islamic world so that the commoner need not search far for them. His is a purist position that will not accommodate the widely accepted notion of decline in juristic and learning ability and upon which is built the argument for the paucity and extinction of the *mujtahids* in later times. This matter, however, raises an important and practical question which Shawkānī leaves unanswered: How is a commoner to make sense of the textual proof the *mujtahid* gives him? By definition a commoner is ignorant of the Sharī'a, and he therefore would not understand the import of the texts or be able to make comparative judgements with other plausible proofs. Because of this lack of comprehension

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[38] *Al-Qawl al-mufīd*, 209ff.
[39] *Irshād al-fuḥūl*, 239.

the commoner effectively would still be practicing *taqlīd*, albeit under a new guise. Hādawīs were quick to point this out to Shawkānī and again accused him of wanting to make himself the ultimate authority so that every one would practice *taqlīd* of *his* decisions. Ibn Ḥarīwah argues against Shawkānī's assertion that *taqlīd* is prohibited by saying:

> Your [i.e. Shawkānī's] obstinate claim that providing the commoner with a text from the Book or *ḥadīth*, which he must then follow, does not constitute *taqlīd* is foolish. If the text which is provided to him is one over which there is no conflict, then the matter is not relevant here. [However], if [conflicting positions] (*ikhtilāf*) exist [with regards to the cited text] then the *muqallid* must choose between the various positions, and it is assumed that he cannot do this, so he must adhere to one of them which is pure *taqlīd*. . . . In sum, you expect them [commoners] to adhere to your opinions and *ijtihād* in issues where differences of opinion exist (*masā'il al-khilāf*) and you obligate them to practice *taqlīd* of yourself.[40]

The vision that Shawkānī posits where all Muslims would have access to the process and fruits of *ijtihād*, either by being *mujtahids* themselves or consulting one and making sure that the opinion obtained is one based on textual evidence, raises further interesting issues about the pervasiveness of *mujtahids*, how they are to be formed, and the difficulty or facility of the pedagogical process.

Reproducing *Mujtahids* in Serial Fashion: Shawkānī's Pedagogy

Following on from his claim that *mujtahids* continued to exist in later times, Shawkānī provided a curriculum which, if followed systematically, would produce such scholars. He outlines this process in great detail in an unusual pedagogical work entitled *Adab al-ṭalab wa muntahā al-arab* (The Discipline of the Quest and the Ultimate Goal). Here he enumerates the curriculum which a *mujtahid muṭlaq* (an absolute *mujtahid*) must follow to attain that rank, as well as the curricula for lesser scholars. The subjects that each category of scholar must study are listed and the degree of their mastery is mentioned, as are the books which ought to be studied in each of the sciences. Shawkānī lists four categories of students or seekers of knowledge:[41]

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[40] *Ghaṭamṭam*, 1:42–43.
[41] *Adab al-ṭalab*, 97–98.

1. The one desiring to become "an Imām who is referred to" (*marjaʿ*) and who teaches, produces *fatwās* and writes books.

2. The one who desires to know independently what God has demanded of him (i.e., duties and obligations). A scholar of this category is considered to have attained the rank of *mujtahid* in as much as he can independently form opinions for himself. However, he is not an authority to which others can refer.

3. The one seeking to improve his Arabic in order to better understand whatever he seeks in the Sharīʿa. Shawkānī makes clear that this category of student cannot act independently, but must rely on the questioning of ulama in cases where contradictions arise or in those which necessitate the giving of greater weight to one argument over another, a practice called *tarjīḥ*.

4. The one who seeks to learn a science or discipline for worldly ends, e.g. a poet or an accountant.

The *mujtahid* of the first category, that is, someone whose intention was to become like Shawkānī himself, had to study the following subjects or disciplines:[42]

1. Grammar (*naḥw*).
2. Logic (*manṭiq*).
3. Morphology (*ʿilm al-ṣarf*).
4. Rhetoric (*ʿilm al-maʿānī wa 'l-bayān*).
5. Semiology and argumentation (*fann al-waḍʿ wa 'l-munāẓarah*).
6. The science of figures of speech (*ʿilm al-badīʿ*).
7. Dictionaries (*mu'allafāt al-lughah*).
8. The principles of jurisprudence (*uṣūl al-fiqh*).
9. Dogmatic theology (*ʿilm al-kalām*).
10. Exegesis of the Qur'ān (*tafsīr*).
11. The science of the Sunnah (*ʿilm al-sunnah*).
12. The science of *isnād* criticism (*ʿilm al-jarḥ wa 'l-taʿdīl*) and the technical terminology of the scholars of *ḥadīth*.
13. Historical works.
14. Law (*ʿilm al-fiqh*).
15. Poetry.
16. The study of math, physics, geometry, natural science and medicine.

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[42] *Adab al-ṭalab*, 113–124. Shawkānī provides here a detailed list of book titles in each subject and explains the extent to which these must be memorized or read in order to gain a sufficient degree of proficiency.

The list is impressive and is intended as a guide which if followed will lead to the formation of a *mujtahid* like Shawkānī himself; references to Shawkānī's own education pepper the work and are intended to make the process tangible. More than a manual of how one becomes a *mujtahid*, *Adab al-ṭalab* is a personal manifesto which presents the illnesses afflicting the Muslim community—viz. *madhhabīyah* which is a result of *taqlīd*—and the remedy which would provide the cure: *ijtihād* in the guise of a return to the principal sources, the Qur'ān and Sunnah, and the formation of *mujtahids*. The aim of becoming a *mujtahid* for Shawkānī, therefore, is to be able to deduce (*istikhrāj*) judgements whenever one wishes and not have to look at who gave a certain judgement, but rather to look at the content of what was said and be able to judge it critically in the light of one's knowledge of the Book and Sunnah. A *mujtahid* according to Shawkānī

> is one who extracts the legal proofs from their sources and imagines himself present at the time of the Prophecy (*fī zaman al-nubuwwah*) and the coming of revelation, even though he is in fact living at the end of time. [He must imagine that] no scholar has preceded him or any *mujtahid* taken precedence over him. The legal provisions (*al-khiṭābāt al-shar'īyah*) relate to him as they did to the Companions, without any difference.[43]

That Shawkānī considered himself to be a *mujtahid* is beyond doubt. In most of his works he presents himself as an ultimate arbiter who illuminates the truth, provides the proofs and sweeps away all that is textually unfounded.[44] But more than a *mujtahid*, Shawkānī probably wanted to be considered a *mujaddid* (a "renewer" of Islam), or at the very least a scholar of the highest caliber with a pan-Islamic reputation. He does not claim for himself the title of "centennial renewer" (*mujaddid al-qarn*), but alludes to it in discussion of the Prophetic tradition which states that "God sends to this community at the head of every century one who will renew its religion".[45] This title has since been conferred upon Shawkānī by his students and

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[43] *Adab al-ṭalab*, 122.

[44] Cf. *Wabl al-ghamām*, 1:20–21; *Irshād al-fuḥūl*, 2–3.

[45] In Arabic: "... *inna Allāh subḥānahu yab'ath li-hadhihi al-umma 'alā ra's kull mi'at sana man yujaddid lahā amr dīnihā*". Abū Dā'ūd, *Sunan, Kitāb al-Malāḥim* 1. Cf. Shawkānī, *Qaṭru al-walī 'alā ḥadīth al-walī*, ed. Ibrāhīm Hilāl (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, n.d.), 353.

high ranking officials in the present Yemeni government often refer to him as the "renewer of the thirteenth (ḥijrī) century".[46]

The break here with Zaydī intellectual tradition deserves noting. "Renewers", in the Sunnī sense, are not a feature of Zaydī thought.[47] The imāms are the focus both of intellectual truth and of the effort to have the world conform with this; and though there may be periods when no imām is evident, Zaydīsm had usually been content to extend the search for the righteous leader rather than accept *faute de mieux* a temporal lord. Imāms who lacked the full range of conditions, restricted imāms (*al-a'immah al-muḥtasibūn*), were recognized in later Zaydī thought, but the character of the imāmate was not compromised intellectually.[48] Shawkānī's interest in the role of the *mujaddid* or "renewer", by contrast, fits with the theoretical acceptance of a *de facto*

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[46] Cf. Muḥammad al-Shijnī, *Ḥayāt al-imām al-shawkānī al-musamma Kitāb al-tiqṣār*, ed. Muḥammad b. 'Alī al-Akwa' (Ṣan'ā': Maktabat al-Jīl al-Jadīd, 1990), 33–35, where Muḥammad al-Akwa' asserts that Shawkānī is the renewer of the thirteenth century; also see al-Ḥusayn b. Badr al-Dīn, *Kitāb Shifā' al-uwām fī aḥādīth al-aḥkām*, 3 vols. (n.p.: Jam'īyat 'Ulamā' al-Yaman, 1996), 1:16, where Muḥammad al-Ḥajjī, the vice-president of Yemen's supreme court (*majlis al-qaḍā' al-a'lā*), a post comparable to that of chief judge, makes the same assertion.

[47] It is noteworthy that Ella Landau-Tasseron has tried to detail the use of the *mujaddid* tradition in Zaydīsm and discovered that the Sunnī model does not apply, cf. Ella Landau-Tasseron, "Zaydī Imāms as Restorers of Religion: *Iḥyā'* and *Tajdīd* in Zaydī Literature", *Journal of Near Eastern Studies* 49 (1989): 247–263. In this regard, it must be pointed that the work *Itḥāf al-muhtadīn*, which led Landau-Tasseron to the topic of *tajdīd* among the Zaydīs, was written by Muḥammad b. Muḥammad Zabāra, a man who was highly influenced by Shawkānī's ideas on *ijtihād* and *tajdīd*. As such, he does not reflect earlier Zaydī-Hādawī opinion on the matter.

[48] In the commentary on the margins of *Sharḥ al-azhār* it is stated that some later Shī'īs allowed for a *muqallid* to become imām—although he had to be a *mujtahid* in politics (*mujtahid fī abwāb al-siyāsa*)—because *ijtihād* according to them had become impossible in later times. Imām al-Muṭahhar was apparently one who claimed the imāmate despite not having attained the rank of *ijtihād*. This Imām al-Muṭahhar was probably al-Wāthiq bi-Allah al-Muṭahhar b. Muḥammad, who died in 802 AH. See Shawkānī's *al-Badr al-ṭālī'*, 2 vols., ed. Muḥammad Zabārah (Beirut: Dār al-Ma'rifa, 1348/1929), 2:311. This commentary goes on to say that if a valid candidate for the imāmate is not to be found then a *muḥtasib* (a restricted imām) can rule until a valid imām can assume the post. The *muḥtasib* need not be a *mujtahid* or a descendant of al-Ḥasan or al-Ḥusayn, or a member of Quraysh. His requirements are that he has enough reasoning ability, courage and perspicacity. The *muḥtasib* performs all the duties of the valid imām except the following: the four legal punishments (*al-ḥudūd al-arba'a*), the Friday prayers (*jumu'āt*), conquest (*ghazw*) and collection of alms (*ṣadaqāt*), cf. Ibn Miftāḥ, *Sharḥ al-azhār*, 4:520–521; also al-Manṣūr al-Qāsim, *Kitāb al-Asās* (Ṣa'da: Maktabat al-Turāth al-Islāmī, 1994), 173–174; al-Sharafī, *Kitāb 'Uddat al-akyās*, 2 vols. (Ṣan'ā': Dār al-Ḥikmah al-Yamānīyah, 1995), 2:223–226; R. Strothmann, *Das Staatsrecht der Zaiditen* (Strassburg: Verlag Von Karl J. Trübner, 1912), 94ff.; Madelung, "Imāmah", in EI2.

separation between truth and power. The imāmate under Shawkānī's influence becomes not simply the province of the *muḥtasibūn* but a source of temporal order identical with *mulk* or kingship;[49] righteousness, meanwhile, is the concern of a separate or distinct group of ulama, whose opinions must defer to the most learned among them. As a *mujtahid* and *mujaddid*, independent intellect and renewer of collective truth, Shawkānī would be the source to which scholars and rulers alike properly should resort. Shawkānī's insistence on *ijtihād* over blind imitation (*taqlīd*) implies in fact, if paradoxically, that Muslims should follow his rulings and opinions, an important claim for a man who for most of his life was the "judge of judges" (*qāḍī al-quḍāh*).

For all his insistence on transcending the differences among the schools, Shawkānī's position on political and constitutional matters at least fits into a tradition that is purely Sunnī. This is most evident in his criticism of the Zaydī-Hādawī doctrine of the imāmate. He disputes the Hādawī claim that the path to becoming an imām is through "making a call" (*daʿwah*). Rather, he says that whenever a group of Muslims, which he specifies as the people "who loose and bind" (*ahl al-ḥall wa 'l-ʿaqd*, i.e. the notables), agree to give their allegiance (*bayʿah*) to a pious man of the community (*min ṣāliḥī hadhihi al-ummah*), then it becomes obligatory for them to obey him in "the good he ordains and the evil he forbids". Another way to become imām is by means of an incumbent delegating the imāmate to a successor, as Abū Bakr did with ʿUmar.

As for the strict Hādawī conditions, such as the imām being male, of mature age (*bāligh*), rational (*ʿāqil*), free (*ḥurr*) etc., Shawkānī agrees with some and disputes others. For example, he agrees that the imām must be rational but disputes that he must be a Fāṭimī-ʿAlawī, arguing that no proof exists for such specification because of the Tradition which states that "Imāms are from Quraysh". Furthermore, obedience to a sultan is mandatory even if he were a slave because of the Traditions which state, "Obey and be obedient even if he is an Ethiopian slave whose head is like a raisin", and "obedience is incumbent upon you even if he is an Ethiopian slave, because the believer is like a camel, if he is fettered, he is led".[50]

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[49] Cf. Majd al-Dīn al-Mu'ayyidī, *al-Tuḥaf sharḥ al-zalaf* (n.p., n.d.), 161.

[50] Versions of these *ḥadīth*s can be found in Bukhārī, *Ṣaḥīḥ: al-Adhān* and *Aḥkām*, 4, 5, 156; Ibn Mājah, *Sunan: Jihād*, 29; Aḥmad, *Musnad*, 3:114, 171.

The clearest elaboration of Shawkānī's vision of the separation between truth and order is when he discusses the Hādawī condition that the imām must be a *mujtahid*. In disputing this, he says instead that the ignorant sultan

> must employ a religious scholar who is a *mujtahid* and who will undertake to run the affairs of the pure Sharīʿah, after determining that the latter is knowledgeable, just and well informed in matters of religion. . . . For me [Shawkānī], the most important conditions and foundations which the imām or sultan must fulfill are: that he be able to safeguard the roads, bring justice to the oppressed, defend the Muslims in the event of a surprise attack by an infidel army or a rebel. . . . It does not harm an imām if he should fall short of a condition or more of those mentioned by the [Zaydī] author, so long as he fulfills what we have mentioned. Muslims do not need an imām who sits in his prayer chamber (*fī muṣallāh*), holding his prayer beads, devoting himself to reading religious books, teaching these to the students of his age, and commenting on the problems therein while ignoring the shedding of blood and property, Muslims plundering each other, and the strong oppressing the weak. In this case none of the [stipulations] of the imāmate or the sultanate are being enforced because the more important matters, which I have already mentioned, are not being fulfilled [i.e., safety, justice and defense].[51]

The image Shawkānī portrays of a learned but inactive imām is hardly the model posited in Hādawī manuals of law or depicted in their historical sources. The early Qāsimī imāms had embodied the ideal of men of both the sword and the pen, and they were not beyond recent historical memory. Was this other model not sustainable or even relevant by Shawkānī's time? It is clear that the frame of reference had shifted away from the political doctrines and moral order envisioned in Hādawī teachings. This is further confirmed when Shawkānī asserts that Muslims are forbidden to rise (*khurūj*) against an unjust Imām (*zālim*) so long as he prays and commits no public act of unbelief (*lam yazhar minhu al-kufr al-bawwāḥ*).[52]

Shawkānī's vision of a political order described the state of affairs in his day to a remarkable extent. The imāms who ruled were not scholars or *mujtahids*. They were variously accused of imposing noncanonical taxes and their personal behavior left them far from the ideal. Furthermore, Shawkānī was the *mujtahid* to whom the Imāms

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[51] *Wabl al-ghamām*, 3:500–501.
[52] *Al-Sayl al-jarrār*, 4:505–515.

referred. The shift from Zaydī-Hādawī forms of rule and authority to Sunnī Traditionist ones under Shawkānī's aegis was challenged by more traditional Zaydī-Hādawī scholars; the intensity of the reaction of the latter to Shawkānī exposes the extent to which the changes engendered by Shawkānī and his Qāsimī patrons in the period of the late eighteenth and early nineteenth century were successful.

Zaydī-Hādawī Opposition

The most serious attempt to take Shawkānī to task for his Traditionist views came from the aforementioned Hādawī scholar Muḥammad b. Ṣāliḥ al-Samāwī (d. 1825), who was nicknamed Ibn Ḥarīwah. Ibn Ḥarīwah regarded Shawkānī's ideas on *ijtihād*, when combined with the power he wielded as chief judge, as a threat to the Hādawī school and a means of empowering himself as the supreme legal authority in Yemen. The scholarly clash came with Shawkānī's writing in 1235/1820 of *al-Sayl al-jarrār* (The Raging Torrent). In it he provides a line by line critique and refutation of the principal legal manual used by the Zaydīs in Yemen, the *Kitāb al-Azhār* (The Book of Flowers). In writing the *Sayl*, Shawkānī was building on an existing Yemeni tradition of commentaries on *Kitāb al-Azhār*. Before him, the Traditionists al-Ḥasan al-Jalāl and Ibn al-Amīr wrote similar works, and Shawkānī drew on these, especially al-Jalāl's *Ḍaw' al-nahār*.[53] It would seem, however, that Shawkānī's criticism was more vehement and thorough than that of his predecessors.

Ibn Ḥarīwah responded to the *Sayl al-jarrār* in a work entitled *al-Ghaṭamṭam al-zakhkhār al-muṭahhir min rijs al-sayl al-jarrār* (The Vast Ocean which Purifies the Filth of the Raging Torrent). In it he accuses Shawkānī of plagiarizing in all his writings from others, such as from al-Jalāl and, more specifically, from Ibn Ḥajar's *Talkhīṣ al-ḥabīr* and *al-Fatḥ al-bārī*.[54] Ibn Ḥarīwah further claims that Shawkānī is a deviant from the teachings of the Ahl al-Bayt who hates the Prophet's family (*al-ʿiṭrah*) and suffers from compounded ignorance (*jahl murakkab*).[55] Moreover, in a view shared by some contemporary

[53] Cf. Shawkānī's *al-Badr al-ṭāliʿ*, 2:223. Al-Ḥasan al-Jalāl's *Ḍaw' al-nahār* and Ibn al-Amīr's *Minḥat al-ghaffār* have been edited and published in 4 volumes by the Higher Judiciary Council of Yemen; see the bibliography.

[54] *Ghaṭamṭam*, Introduction, 1:65–74, 132–133.

[55] *Ghaṭamṭam*, Introduction, 1:53.

Hādawīs, Ibn Ḥarīwah holds that Shawkānī was out to undermine the Hādawī school by supplanting the *Kitāb al-Azhār* with his own *fiqh* work, *al-Durar al-bahīyah*, on which he also penned a commentary called *al-Darārī al-muḍīyah* (= *al-muḍī'a*).[56] Ibn Ḥarīwah ends by claiming that Shawkānī properly belongs to the school of Muḥammad b. ʿAbd al-Wahhāb. Here is what he says in this regard:

> And after you have claimed absolute *ijtihād* (*al-ijtihād al-muṭlaq*) and to be competent in all its areas, what is your objective from all the opinions and preferences which you have substantiated in your works? If it is that the people should refer to these for the knowledge which you have and which they do not, then this is the *taqlīd* which you forbade! The *muqallid* is free to choose; if he prefers your opinion then he must accept it, and if he prefers the opinion of Ahl al-Bayt then he must abide by theirs. So what does your *ijtihād* amount to—assuming it is correct—except the *ijtihād* of one among the *mujtahids*? We have not known a single *mujtahid* from this community who claimed that it is incumbent [on others to] accept his opinion or his *ijtihād*, and that it is forbidden to accept the *ijtihād* of anyone else, except those whose school you have joined, by whom I mean the Najdī [Muḥammad b. ʿAbd al-Wahhāb] and Ḥasan b. Khālid . . . . Among the things that the Najdī has said is that he is right in matters of dispute (*masā'il al-khilāf*) and that the others are in error. With this he made licit the shedding of the blood of Muslims and the taking of their wealth. You belong to this school in claiming that you are right in disputed matters and that others are in error. Because of this you wish to defile the opinions of Ahl al-Bayt by attributing these to error and you take it upon yourself to circulate your works and opinions and claim that these are the truth.[57]

Ibn Ḥarīwah is clearly trying to slot Shawkānī in a tradition that is both alien and antagonistic to Zaydīsm, and in so doing is discrediting him in the eyes of fellow Zaydīs. As with many of Shawkānī's adversaries, the most important of Ibn Ḥarīwah's claims for the superiority of his school was to re-emphasize the special role played by the Ahl al-Bayt in the Muslim community—legal details, though

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[56] *Ghaṭamṭam*, Introduction, 1:50.

[57] *Ghaṭamṭam*, 1:128–129. Al-Ḥasan b. Khālid (d. 1234/1819) was a Traditionist sayyid from Hijrat Ḍamad in ʿAsīr. He appears to have shared Traditionist views, comparable to those of the Wahhābīyah, and was the main advisor to and judge under Sharīf Ḥamūd, who ruled much of the Tihāmah until Muḥammad ʿAlī's troops finally defeated him. Cf. Muḥammad Zabārah, *Nayl al-waṭar min tarājim rijāl al-Yaman fī al-qarn al-thālith ʿashar* (Ṣanʿā': Markaz al-Dirāsāt wa 'l-Abḥāth al-Yamanīyah, n.d.), 1:323–327.

important, were ultimately secondary to the political and eschatological dimensions of Zaydīsm. Ibn Ḥarīwah did not live long enough to complete *al-Ghaṭamṭam*. He was executed on the orders of the Qāsimī Imam al-Mahdī ʿAbd Allāh (r. 1816–1835) for his excessive criticism of the regime in power. In his final testament Shawkānī warns those who would accuse him of having had a hand in Ibn Ḥarīwah's death; nonetheless, contemporary Zaydīs consider Ibn Ḥarīwah a martyr and have no doubt that Shawkānī played a role in his demise.[58]

Conclusion

Shawkānī vision of order clearly involved a rejection of the Zaydī-Hādawī *madhhab*, and this entailed a multi-faceted attack aimed at undermining the integrity of the school. One of the most important aspects of this assault was the necessity to revamp and redefine certain principles in *uṣūl al-fiqh*. Among a number of elements in this process was Shawkānī's attempt to confine the *Sunnah* exclusively to the standard Sunnī *ḥadīth* sources, to reject *ijmāʿ* and *taqlīd* (upon which the authority of all the schools of law rests), all the while stressing his own conception of *ijtihād*. This process is related clearly to the formation of new authority structures in the Yemeni highlands in the eighteenth century. Shawkānī's vision was implemented only when the Qāsimī state decided to adopt it as its own and to place Shawkānī in a position of authority as chief judge. The effects of this alliance, which involved shifts in religious identity, away from Zaydī-Hādawism, as well as ones in judicial and political structures of authority, have ultimately been part of the dynamic which has led to the decline of Zaydīsm, a phenomenon which is in clear evidence in contemporary Yemen.[59] It is no accident that the present chief judge of Yemen, Qāḍī Muḥammad al-Ḥajjī, describes himself as belonging to "Shawkānī's *madhhab*".

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[58] Cf. Zabārah, *Nayl al-watar*, 2:274–279; Ḥusayn al-ʿAmrī, *al-Imām al-shawkānī rāʾid ʿaṣrih* (Damascus: Dār al-Fikr, 1990), 269–272; Aḥmad al-Shāmī, *Nafaḥāt wa lafaḥāt min al-yaman* (Beirut: Dār al-Nadwah al-Jadīdah, 1988), 401–405.

[59] Cf. Bernard Haykel, "Rebellion, Migration or Consultative Democracy? The Zaydīs and their detractors in Yemen", in *Le Yémen contemporain* (Paris: Karthala, 1999).

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QAWĀʿID AS A GENRE OF LEGAL LITERATURE

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Traditional works devoted to *qawāʿid fiqhīyah*, "legal maxims/principles", usually have the term *qawāʿid* in their titles, but legal works having this term in their titles do not necessarily deal with "legal principles" (see below). In the later period (8th/13th–10th/15th centuries) a popular name for "true" *qawāʿid* works is *al-Ashbāh wa 'l-naẓā'ir*.[1] Related genres are the works on *furūq* ("significant differences of similar cases yielding different legal determinations"), *takhrīj al-furūʿ ʿalā 'l-uṣūl* ("deriving specific cases from general rules"),[2] and *maqāṣid al-Sharīʿah* ("the intentions of the Law"). The last two are predominantly theoretical exercises, but in their contents all of these genres overlap and blend into each other. It is surprising that this whole complex of legal literature with its attendant terms and concepts, which has spawned a not inconsiderable literary output throughout the centuries, has so far found little attention in the Western Islamicist discourse. But then the same was true, until recently, for the whole area of legal thought, *uṣūl al-fiqh*. The reason is presumably to be sought in the fact that, of the two groups of people who studied Islamic law, the philologists and the lawyers, neither was much interested in the indigenous meta-discourse. The philologists were largely positivists with little interest in post-hoc constructions, as they thought, while the lawyers brought their own, Western, meta-discourse with them.

Be that as it may, there is certainly a lacuna here which cries to be filled. This first attempt must needs be survey-like and descriptive,

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[1] Most famously, the works of the Shāfiʿīs Ibn al-Wakīl (d. 716/1317), Tāj al-Dīn al-Subkī (d. 771/1370), and al-Suyūṭī (d. 911/1505), as well as that of the Ḥanafī Ibn Nujaym (d. 970/1563). See the A bibliography. These works usually go beyond a mere enumeration of *qawāʿid*. E.g., the *Ashbāh* of al-Suyūṭī consists of the following "books": (1) on the Five Legal Principles (see below); (2) on [other] generally valid legal principles (*qawāʿid kullīyah*); (3) on disputed legal principles (*qawāʿid mukhtalaf fihā*); (4) ubiquitous legal rulings; (5) similar cases within the same field of the law (*naẓā'ir al-abwāb*); (6) in similar fields; (7) various similar cases.

[2] *Uṣūl* here is close to *qawāʿid* in meaning, in the sense of *madhhab*-specific general rules that are often opposed by the rules of a rival *madhhab*.