Ibn al-Qāṣṣ too exercised *takhrīj*, harvesting for his school the fruits cultivated by the Ḥanafites and other jurists, including Shaybānī and Mālik.[19] His *takhrīj* is more often than not based on Shāfiʿī's doctrine along with Ḥanafite opinion, but he frequently relies on Abū Ḥanīfah's opinions exclusively[20] and comes up with derivative opinions that he and his successors considered to be of Shāfiʿite pedigree. This practise of borrowing from the doctrinal tradition of another school and attributing the confiscated opinion to one's own school and its founder was by no means limited to the Shāfiʿites. It is not uncommon, for instance, to find Ḥanbalite opinions that have been derived through *takhrīj* from exclusively Ḥanafite, Mālikite and/or other sources.[21] But if the activity of *takhrīj* routinely involved dipping into the doctrinal reservoir of other schools, the Shāfiʿites could be considered the prime innovators, for, as Ṭūfī testifies, they were particularly given to this activity.[22]

But the Ḥanafites were not far behind. In the hierarchical taxonomy of Ḥanafite law, there exist three levels of doctrine, each level consisting of one or more categories. The highest level of authoritative doctrine, known as *ẓāhir al-riwāyah* or *masāʾil al-uṣūl*, is found in the works of the three early masters, Abū Ḥanīfah, Abū Yūsuf and Shaybānī.[23] What gives these works the authority they enjoy is

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[19] Ibn al-Qāṣṣ, *Adab al-qāḍī*, 1:105, 106, 109–10, 112, 114, 136, 146, 195, 198, 213, 251, 253–54, 255; 2:359, 423, and passim.

[20] Ibn al-Qāṣṣ, *Adab*, 1:112, 213; 2:359, 420, 447 and passim. See, for instance, *Adab*, 1:251; 2:417, for exclusive reliance on Abū Ḥanīfah and his two students.

[21] ʿAlāʾ al-Dīn ʿAlī b. Muḥammad b. ʿAbbās al-Baʿlī, *al-Ikhtiyārāt al-fiqhīyah min fatāwā shaykh al-islām ibn Taymīyah* (Beirut: Dār al-Fikr, 1369/1949), 15. Ibn al-Mundhir (d. 318/930) is frequently cited in Ḥanbalite works as an authority, although he was not a Ḥanbalite. In fact, he was said by biographers to have been an independent *mujtahid*, although he is also said to have been a distinguished member of the Shāfiʿite school and heavily involved in *takhrīj* according to Shāfiʿism. On Ibn al-Mundhir, see Sharaf al-Dīn al-Nawawī, *al-Majmūʿ: Sharḥ al-Muhadhdhab*, 12 vols. (Cairo: Maṭbaʿat al-Taḍāmun, 1344/1925), 1:72; Subkī, *Ṭabaqāt*, 2:126–29.

[22] Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍah*, 3:642. Ṭūfī's explanation is that Shāfiʿī's doctrine, having often included more than one opinion for each case, gave rise to a rich activity of *takhrīj*.

[23] The works embodying the doctrines of the three masters are six, all compiled by Shaybānī. They are *al-Mabsūṭ*, *al-Ziyādāt*, *al-Jāmiʿ al-kabīr*, *al-Jāmiʿ al-ṣaghīr*, *al-Siyar al-kabīr*, and *al-Siyar al-ṣaghīr*. See Ibn ʿĀbidīn, *Ḥāshiya*, I, 69. However, in his *Sharḥ al-Manẓūmah*, Ibn ʿAbidīn introduces Ibn al-Kamāl's distinction between *ẓāhir al-riwāyah* and *masāʾil al-uṣūl*, a distinction which he draws in turn on Sarakhsī's differentiation. The former, according to Ibn al-Kamāl, is limited to the six works enumerated. The latter, on the other hand, may include cases belonging to *nawādir*, which constitutes the second category of doctrine. See his *Sharḥ al-Manẓūma al-musammāt bi-ʿUqūd rasm al-muftī*, in Ibn ʿĀbidīn, *Majmūʿat Rasāʾil*, 2 vols. (n.p., 1970), 1:17–18.

the perception that they were transmitted through a large number of channels by trustworthy and highly qualified jurists. A marginal number of cases belonging to this category of doctrine are attributed to Zufar and al-Ḥasan b. Ziyād. The second level is termed *masā'il al-nawādir*, a body of doctrine also attributed to the three masters but without the sanctioning authority either of highly qualified transmitters or a large number of channels of transmission.[24] The third level consists of what is termed *wāqi'āt* or *nawāzil*, cases that were not addressed by the early masters and that were solved by later jurists. These cases were new and the jurists who were "asked about them" and who provided solutions for them "were many".[25] Of particular significance here is the fact that the great majority of these cases were solved by means of *takhrīj*.[26] Among the names associated with this category of Ḥanafite doctrine are 'Iṣām b. Yūsuf (d. 210/825), Ibrāhīm Ibn Rustam (d. 211/826), Muḥammad b. Samā'ah (d. 233/848), Abū Sulaymān al-Jūzajānī (d. after 200/815), Aḥmad Abū Ḥafṣ al-Bukhārī al-Kabīr (d. 217/832), Muḥammad b. Salamah (d. 278/891), Muḥammad b. Muqātil (d. 248/862 ?), Naṣīr b. Yaḥyā (d. 268/881), and al-Qāsim b. Sallām (d. 223/837).[27]

That *takhrīj* was extensively practised over the course of several centuries is a fact confirmed by the activities and writings of jurists who flourished as late as the seventh/thirteenth century.[28] Although the activity itself was known as *takhrīj*, its practitioners in the Shāfi'ite school became known as *aṣḥāb al-wujūh*.[29] In the Ḥanafite,

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[24] These works include Shaybānī's *Kaysānīyāt, Hārūnīyāt*, and *Jurjānīyāt*; Ibn Ziyād's *Muḥarrar*; and Abū Yūsuf's *Kitāb al-Amālī*.

[25] Muḥammad Amīn Ibn 'Abidīn, *Hāshiyat Radd al-muḥtār*, 8 vols. (Beirut: Dār al-Fikr, 1979), 1:69. See also Ḥājjī Khalīfah, *Kashf al-ẓunūn 'an asāmī al-kutub wal-funūn*, 2 vols. (Istanbul: Maṭba'at Wakālat al-Ma'ārif al-Jalīlah, 1941–43), 2:1281.

[26] Ibn 'Abidīn, *Ḥāshiyah*, 1:50; idem, *Sharḥ al-Manẓūmah*, 25; Shāh Walī Allāh, *'Iqd al-jīd fī aḥkām al-ijtihād wal-taqlīd* (Cairo: al-Maṭba'ah al-Salafīyah, 1385/1965), 19.

[27] Ibn 'Abidīn, *Ḥāshiya*, 1:69.

[28] Ibn Abī al-'Izz al-Ḥanafī, *al-Ittibā'*, ed. Muḥammad 'Atā' Allāh Ḥanīf and 'Āṣim al-Qaryūtī (Amman: n.p., 1405/1984), 62. For a general history of *takhrīj*—to be used with caution—see Ya'qūb b. 'Abd al-Wahhāb Bāḥusayn, *al-Takhrīj 'inda al-fuqahā' wal-uṣūlīyūn* (Riyad: Maktabat al-Rushd, 1414/1993). Ibn al-Ṣalāḥ, who died in 643/1245, asserts that the practise of *takhrīj*, when an already established opinion is nowhere to be found, "has been prevalent for ages" (*yajūzu lil-muftī al-muntasib an yufti fi-mā lā yajiduhu min aḥkāmī al-waqā'i'i manṣūṣan 'alayhi li-imāmihi bimā yukharrijuhu 'alā madhhabihi, wa-hādhā huwa al-ṣaḥīḥ al-ladhī 'alayhi al-'amal ilayhi mafza' al-muftīn min mudadin madīdah*". See his *Adab al-muftī*, 96.

[29] Ibn al-Ṣalāḥ, *Adab al-muftī*, 97.

Mālikite and Ḥanbalite schools, however, the designation *aṣḥāb al-takhrīj* persisted, as attested in the terminological usages of biographical dictionaries and law manuals. In addition to the names we have already mentioned, the following is a list of jurists who are described in these dictionaries as having seriously engaged in *takhrīj*:

1. The Shāfi'ite Ibrāhīm al-Muzanī, whose *takhrīj* was so extensive that the later Shāfi'ite jurists distinguished between those of his opinions that conformed to the school's hermeneutic (and were thus accepted as an important part of the school's doctrine), and those which were not.[30] These latter, however, were still significant enough to be considered by some jurists sufficient, on their own, to form the basis of an independent *madhhab*.[31]

2. 'Alī Ibn al-Ḥusayn Ibn Ḥarbawayh (d. 319/931), claimed by the Shāfi'ites, but a student of Abū Thawr and Dāwūd Ibn Khalaf al-Ẓāhirī.[32]

3. Muḥammad b. al-Mufaḍḍal Abū al-Ṭayyib al-Ḍabbī (d. 308/920), a student of Ibn Surayj and a distinguished Shāfi'ite.[33]

4. Abū Sa'īd al-Iṣṭakhrī (d. 328/939), a major jurist of *aṣḥāb al-wujūh*.[34]

5. Zakarīyā b. Aḥmad Abū Yaḥyā al-Balkhī (d. 330/941), "one of the distinguished Shāfi'ites and of the *aṣḥāb al-wujūh*".[35]

6. The Ḥanbalite 'Umar b. al-Ḥusayn al-Khiraqī (d. 334/945), who engaged extensively in *takhrīj* but whose writings containing his most creative reasoning were destroyed when his house was reportedly consumed by fire.[36] His *Mukhtaṣar*, however, which survived him long enough to have an influence, contained many cases of his *takhrīj* which he nonetheless attributed to Ibn Ḥanbal.[37]

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[30] Muḥyī al-Dīn Sharaf al-Dīn al-Nawawī, *Tahdhīb al-asmā' wal-lughāt*, 3 vols. (Cairo: Idārat al-Ṭibā'a al-Munīrīyah, 1927), 1:285; Ibn Qāḍī Shuhbah, *Ṭabaqāt*, 1:8; Subkī, *Ṭabaqāt*, 1:243–44.

[31] Nawawī, *Tahdhīb*, 1:285; Ibn Qāḍī Shuhbah, *Ṭabaqāt*, 1:8.

[32] Subkī, *Ṭabaqāt*, 2:301–02.

[33] Ibn Qāḍī Shuhbah, *Ṭabaqāt*, 1:66.

[34] Ibn Qāḍī Shuhbah, 1:75.

[35] Ibn Qāḍī Shuhbah, 1:76.

[36] Ismā'īl b. 'Umar Ibn Kathīr, *al-Bidāyah wal-Nihāyah*, 14 vols. (Beirut: Dār al-Kutub al-'Ilmīyah, 1985–88), 11:228.

[37] See the editor's introduction to Shams al-Dīn Muḥammad b. 'Abd Allāh al-Miṣrī al-Zarkashī, *Sharḥ al-Ẓarkashī 'alā Mukhtaṣar al-Khiraqī*, ed. 'Abd Allāh b. 'Abd al-Raḥmān al-Jabrīn, 7 vols. (Riyāḍ: Maktabat al-'Ubaykān, 1413/1993), 1:47–48.

7. The Shāfiʿite ʿAlī b. Ḥusayn Abū al-Ḥasan al-Jūrī (d. *ca.* 330/941), considered one of the *aṣḥāb al-wujūh*.[38]

8. Ẓāhir al-Sarakhsī (d. 389/998), a major Shāfiʿitejurist. Yet, despite being one of the *aṣḥāb wujūh*, little of his doctrine, according to Nawawī, was transmitted.[39]

9. The Ḥanafite Muḥammad b. Yaḥyā b. Mahdī Abū ʿAbd Allāh al-Jurjānī (d. 398/1007), the teacher of Qudūrī and Nāṭifī, who was deemed one of the *aṣḥāb al-takhrīj*.[40]

10. ʿAbd Allāh b. Muḥammad al-Khawārizmī (d. 398/1007), one of the *aṣḥāb al-wujūh* and considered a leading jurist of the Shāfiʿite school.[41]

11. Yūsuf b. Aḥmad Ibn Kajj (d. 405/1014), a prominent Shāfiʿite jurist who is considered one of the most exacting of the *aṣḥāb al-wujūh* (*min aṣḥāb al-wujūh al-mutqinīn*).[42]

12. ʿAbd al-Raḥmān Muḥammad al-Fūrānī Abū al-Qāsim al-Marwazī (d. 461/1068), who is described as having articulated "good *wujūh*" in the Shāfiʿite *madhhab* (*wa-lahu wujūh jayyidah fī al-madhhab*).[43]

13. al-Qāḍī Ḥusayn b. Muḥammad al-Marwazī (d. 462/1069), a major figure in the Shāfiʿite school and one of *aṣḥāb al-wujūh*.[44]

14. ʿAbd al-Raḥmān Ibn Baṭṭah al-Fayrazān (d. 470/1077), a Ḥanbalite jurist who is said to have engaged in *takhrīj* in a variety of ways (*kharraja al-takhārīj*).[45]

15. Abū Naṣr Muḥammad Ibn al-Ṣabbāgh (d. 477/1084), considered by some as an absolute *mujtahid* and a towering figure of *aṣḥāb al-wujūh* in the Shāfiʿite school.[46]

16. The Mālikite Abū Ṭahir b. Bashīr al-Tanūkhī (d. after 526/1131), whose *takhrīj* was said by Ibn Daqīq al-ʿĪd to be methodologically deficient.[47]

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[38] Subkī, *Ṭabaqāt*, 2:307.

[39] Nawawī, *Tahdhīb*, 1:192.

[40] ʿAbd al-Ḥayy al-Laknawī, *al-Fawā'id al-bahīyah fī tarājim al-Ḥanafīyah* (Benares: Maktabat Nadwat al-Maʿārif, 1967), 202.

[41] Ibn Qāḍī Shuhbah, *Ṭabaqāt*, 1:144.

[42] Ibn Qāḍī Shuhbah, 1:197.

[43] Ibn Qāḍī Shuhbah, 1:266–67.

[44] Nawawī, *Tahdhīb*, 1:164–65.

[45] Ibn Rajab, *Dhayl*, 1:26–27.

[46] Ibn Qāḍī Shuhbah, *Ṭabaqāt*, 1:269–70.

[47] Shams al-Dīn Muḥammad Ibn Farḥūn, *al-Dībāj al-mudhahhab fī maʿrifat aʿyān al-madhhab* (Beirut: Dār al-Kutub al-ʿIlmīyah, 1417/1996), 87.

17. The famous Ḥanafite jurist and author Burhān al-Dīn al-Marghīnānī (d. 593/1196), the author of the widely known *al-Hidāyah* and one of the *aṣḥāb al-takhrīj*.[48]

The biographical works took special notice not only of those who engaged in *takhrīj*, but also of those who specialized in or made it their concern to study and transmit the doctrines and legal opinions derived through this particular juristic activity. We thus find that Aḥmad b. ʿAlī al-Arānī (d. 643/1245), a distinguished Shāfiʿite, excelled in the transmission of the *wujūh* that had been elaborated in his school.[49] Similarly, the biographers describe the Shāfiʿite ʿUthmān b. ʿAbd al-Raḥmān al-Naṣrī (d. 643/1245) as having had penetrating knowledge (*baṣīran*) of the doctrines elaborated through *takhrīj*.[50]

Ṭūfī's remark that the Shāfiʿites engaged in *takhrīj* more than did the other schools is confirmed by our general survey of biographical works. In Ibn Qāḍī Shuhbah's *Ṭabaqāt*, for instance, there appear some two dozen major jurists who engaged in this activity, only a few of whom we have listed above.[51] Our survey of the biographical dictionaries of the four schools also shows that the Shāfiʿites and Ḥanbalites could each boast a larger number of jurists who engaged in this activity than the other two schools combined.[52] On the other hand, of all four schools, the Mālikites are said to have engaged in this activity the least.[53]

The Shāfiʿite involvement in *takhrīj* seems to have reached its zenith in the fourth/tenth and fifth/eleventh centuries, the last jurists associated with it, according to Ibn Abī al-Damm, having been Maḥāmilī

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[48] Ibn ʿĀbidīn, *Sharḥ al-Manẓūmah*, 49; Abū al-Wafāʾ al-Qurashī, *al-Jawāhir al-muḍīʾah fī ṭabaqāt al-Ḥanafiyah*, 2 vols. (Haydarabad: Maṭbaʿat Majlis Dāʾirat al-Maʿārif, 1332/1913), 2:559.

[49] Ibn Qāḍī Shuhbah, *Ṭabaqāt*, 2:125.

[50] Ibn Qāḍī Shuhbah, 2:145.

[51] Ibn Qāḍī Shuhbah, 1:99–100 (Ibn Abī Hurayra), 149 (Muḥammad b. al-Ḥasan al-Astrabādhī), 152 (Muḥammad Abū Bakr al-Udanī), 154 (Muḥammad b. ʿAlī al-Māsarujsī), 177 (Abū al-Qāsim al-Ṣaymarī), 207 (al-Ḥasan Abū ʿAlī al-Bandanījī), 221 (Muḥammad b. ʿAbd al-Malik al-Marwazī), 233 (al-Ḥusayn b. Muḥammad al-Qaṭṭān), 241 (Abū al-Ḥasan al-Māwardī), 262 (Abū al-Rabīʿ Ṭāhir b. ʿAbd Allāh al-Ṭurkī), 264–65 (Abū Saʿd al-Nīsābūrī), 266–67 (ʿAbd al-Raḥmān al-Fūrānī al-Marwazī).

[52] In addition to those listed by Ibn Qāḍī Shuhbah (previous note), see Nawawī, *Tahdhīb*, 1:92–94, 113, 164, 238. For the Ḥanbalites, see Zarkashī, *Sharḥ*, 1:28ff.

[53] This is the claim of Qarāfī. See Rāʿī, *Intiṣār al-Faqīr*, 169. Qarāfī's claim, it must be noted, does find initial support in the sources, notably in Ibn Farḥūn's *Dībāj*.

(d. 415/1024), Māwardī (d. 450/1058), and Abū al-Ṭayyib al-Ṭabarī (d. 450/1058).[54] But Ibn Abī al-Damm's claim cannot be fully or even substantially confirmed by data from either biographical dictionaries or works of positive law. During the later centuries—especially after the fourth/tenth—the activity in the Shāfi'ite school continued, albeit with somewhat diminished vigour.[55] In the other schools, it also found expression in later doctrines, as attested in the juristic production of the two towering Ḥanbalite figures, Ibn Qudāma (d. 620/1223) and Taqī al-Dīn Ibn Taymīyah (d. 728/1327),[56] as well as in the writings of a number of Ḥanafite and Mālikite jurists.[57]

III

Be that as it may, there is no doubt that *takhrīj* constituted, in the authoritative doctrinal structure of the four schools, the second most important body of legal subject matter—second, that is, to the actual doctrines of the eponyms, and second only when disentangled from the eponym's *corpus juris*. For it was often the case that attributions to the Imām became indistinguishably blended with their own doctrine or at least with what was thought to be their own doctrine (a qualification that has been established in the previous section). We

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[54] Ibrāhīm b. 'Abd Allāh Ibn Abī al-Damm, *Adab al-qaḍā' aw al-durar al-manẓūmāt fī al-aqḍiyah wal-ḥukūmāt*, ed. Muḥammad 'Aṭā' (Beirut: Dār al-Kutub al-'Ilmīyah, 1987), 40.

[55] See, for example, Taqī al-Dīn 'Alī al-Subkī, *Fatāwā al-Subkī*, 2 vols. (Cairo: Maktabat al-Qudsī, 1937), 1:324; 2:468, 525; Subkī, *Ṭabaqāt*, 6:186ff., 193. Sharaf al-Dīn al-Nawawī, who died in 676/1277, is still speaking of *takhrīj*. See his *al-Majmū'*, 1:68.

[56] See Nawawī, *al-Majmū'*, 1:68; Bāḥusayn, *Takhrīj*, 266 (quoted from Ibn Qudāmah's *Mughnī*, 9:131); Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍah*, 3:628; Ibn al-Ṣalāḥ, *Adab al-muftī*, 126, is still speaking of *takhrīj*. So is 'Alī b. Sulaymān b. Muḥammad al-Mirdāwī, *Taṣḥīḥ al-furū'*, printed with Shams al-Dīn Muḥammad Ibn Mufliḥ, *Kitāb al-furū'*, ed. 'Abd al-Sattār Farrāj, 6 vols. (Beirut: 'Ālam al-Kutub, 1405/1985), 1:51.

[57] 'Alā' al-Dīn Abū Bakr Ibn Mas'ūd al-Kāsānī, *Badā'i' al-ṣanā'i' fī tartīb al-sharā'i'*, 7 vols. (Beirut: Dār al-Kitāb al-'Arabī, 1982), 1:2, where he makes a preliminary remark to the effect that his book examines legal cases and the modes of their *takhrīj* according to the principles and general precepts laid down presumably by the founding fathers (*yataṣaffaḥ . . . aqsām al-masā'il wa-fuṣūlahā wa-takhrījahā 'alā qawā'idihā wa-uṣūlihā*); W. Hallaq, "A Prelude to Ottoman Reform: Ibn 'Abidīn on Custom and Legal Change", (forthcoming). See also the Mālikite Ḥaṭṭāb, *Mawāhib al-Jalīl*, 1:41. On the discourse of the Mālikite Qarāfī concerning the theory of *takhrīj*, see Jackson, *Islamic Law and the State*, 91–96. Jackson remarks that "Qarāfī himself engages in this practice on occasion" (p. 96).

have thus far seen a number of examples which make it demonstrably clear that the *takhrīj* of later authorities becomes the property of the eponyms. This process of attribution, it is important to stress, did not go unnoticed by the jurists themselves. They were acutely aware of it not only as a matter of practise, but also as a matter of theory. Abū Isḥāq al-Shīrāzī, a Shāfiʿite jurist and legal theoretician, devotes to this issue what is for us a significant chapter in his monumental *uṣūl* work *Sharḥ al-Lumaʿ*. The chapter's title speaks volumes: "Concerning the Matter that it is not Permissible to Attribute to Shāfiʿī what his Followers have Established Through *takhrīj*".[58]

Shīrāzī observes that some of the Shāfiʿites did allow such attributions, a significant admission which goes to show that this process was recognized as a conscious act,[59] unlike that of attributing to the eponyms the opinions of their predecessors.[60] Shīrāzī reports furthermore that proponents of the doctrine defended their position by adducing the following argument: The conclusions of *qiyās* are considered part of the Sharīʿah, and they are thus attributed to God and the Prophet. Just as this is true, it is also true that the conclusions of *qiyās* drawn by other jurists on the basis of Shāfiʿī's opinions may and should be attributed to Shāfiʿī himself. Shīrāzī rejects this argument, saying that the conclusions of *qiyās* are never considered statements by God or the Prophet himself. Rather, they are considered part of the religion of God and the Prophet (*dīn allāh wadīn rasūlihi*).[61] Besides, Shīrāzī continues, even this attribution in terms of religion is inadmissible, for neither Shāfiʿī nor any of the other founding *mujtahids* have their own religion.

Shīrāzī then cites another argument advanced by his interlocutor: If the eponym holds a certain opinion with regard to one case, say, the proprietorship of a garden, then his opinion about another case, such as the proprietorship of land surrounding a house, would be analogous. The implication here, in line with the first argument, is that an analogous opinion not necessarily derived by the eponym belongs nonetheless to him, since the principles of reasoning involved

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[58] Abū Isḥāq Ibrāhīm b. ʿAlī al-Shīrāzī, *Sharḥ al-Lumaʿ*, ed. ʿAbd al-Majīd Turkī, 2 vols. (Beirut: Dār al-Gharb al-Islāmī, 1988), 2:1084–85; "*Fī annahu lā yajūz an yunsab ilā al-Shāfiʿī mā kharrajahu aḥad aṣḥābihi ʿalā qawlihi*".

[59] The controversy and its relevance are still obvious at least two centuries after Shīrāzī wrote. See Ibn al-Ṣalāḥ, *Adab al-muftī*, 96–97.

[60] See n. 3, above.

[61] Shīrāzī, *Sharḥ al-Lumaʿ*, 2:1084.

in the case dictate identical conclusions. Shīrāzī counters by arguing that there is in effect a qualitative difference between the interlocutor's example, which is analogical, and *takhrīj*, which always involves two different, not similar, cases. Analogical cases, Shīrāzī argues, may be attributed to the eponym despite the fact that one of them was not solved by him. But when the two cases are different, and when one of them was solved by another jurist, no attribution of the latter to the eponym should be considered permissible.[62]

Ṭūfī provides further clarification of Shīrāzī's argument. If the eponym established a certain legal norm for a particular case, and also explicated the *ratio legis* (*ʿillah*) which led him to that norm, then all other cases possessing this identifiable *ʿillah* should have the same norm. In this sense, the eponym's doctrine, used to solve the first case, can be said to have provided the solution of the latter ones, even though the eponym may not have even known of their existence. In other words, the latter cases can be attributed to him.[63] On the other hand, should he solve a case without articulating the *ʿillah* behind it, and should he not predicate the same legal norm he derived for this case upon what appears to be an analogous case, then his doctrines (*madhhab*) in both cases must be seen as unrelated. The disparity is assumed because of the distinct possibility that he would have *articulated* a different *ʿillah* for each case or set of cases. But, Ṭūfī adds, many jurists (*al-kathīr min al-fuqahāʾ*) disregarded such distinctions and permitted the activity of *takhrīj* nonetheless.[64]

Ṭūfī's testimony, coupled with that of Shīrāzī, is revealing. It not only tells of the presence of a significant juristic-interpretive activity that dominated legal history for a considerable period, but also discloses the methodological issues that such activity involved. The penchant to attribute doctrines to the eponym constituted ultimately the crux of the controversy between the two sides. Curiously, the theoretical exposition of *takhrīj* did not account for the contributions of authorities external to the school of the founder. The recruitment of Ḥanafite doctrine and its assimilation into the Shāfiʿite school was not, for instance, given any due notice. In fact, because the theo-

[62] Shīrāzī, 2:1085.

[63] Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍah*, 3:638; "*idhā naṣṣa al-mujtahid ʿalā ḥukm fī masʾalah li-ʿillah bayyanahā fa-madhhabuhu fī kulli masʾalah wujidat fī-hā tilka al-ʿillah ka-madhhabihi fī hādhihi al-masʾalah*". See also the introduction to Zarkashī, *Sharḥ*, 1:28ff.

[64] Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍah*, 3:639.

retical elaboration of *takhrīj* appeared at a time when the schools had already reached their full development, it must not have been in the best interest of the affiliated jurists to expose their debt to other schools. We might conjecture that the debt was to a large extent reciprocal among all the schools, which explains why no jurist found it opportune or wise to expose the other schools' debt to his own. His own school, one suspects, would have been equally vulnerable to the same charge.

IV

It is therefore clear that *ijtihād* through *takhrīj* was a dominant interpretive activity for several centuries and that at least a fair number of jurists were in the habit of attributing the results of their juristic endeavour to the founders.[65] This process of attribution, which is one of back-projection, both complemented and enhanced the other process of attribution by which the founder-Imāms were themselves credited with a body of doctrines that their predecessors had elaborated. This is not to say, however, that both processes were of the same nature, for one was a self-conscious act while the other was not. The process of crediting the presumed founders with doctrines which had been constructed by their predecessors was never acknowledged, whether by legal practitioners or theoreticians. Islamic legal discourse is simply silent on this point. Attributions through *takhrīj*, on the other hand, was widely acknowledged.

The explanation for this phenomenon is not difficult: The attribution of later opinions to a founder can be and indeed was justified by the supposed fact that these opinions were reached on the basis of a methodology of legal reasoning constructed in its entirety by the presumed founder. The assumption underlying this justification is that the founder would have himself reached these same opinions

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[65] See the statement of the Ḥanbalite Ibn Qāsim in this regard, quoted in Zarkashī, *Sharḥ*, 1:31–32. This process of attribution gave rise to an operative terminology which required distinctions to be made between the actual opinions of the Imāms and those which were placed in their mouth. Ibn ʿĀbidīn, for instance, argues that it is improper to use the formula "Abū Ḥanīfah said" (*qāla Abū Ḥanīfah*) if Abū Ḥanīfah himself had not held the opinion. The *takhrījāt* (pl. of *takhrīj*) of the major jurists, he asserts, must be stated with the formula "Abū Ḥanīfah's *madhhab* dictates that . . ." (*muqtaḍā madhhab Abī Ḥanīfah kadhā*). See his *Sharḥ al-Manẓūmah*, 25.

had he addressed the cases which his later followers encountered. But he did not, for the cases (*nawāzil*) befalling Muslims were deemed to be infinite. Here, there are two distinct elements which further enhance the authority of the presumed founder at the expense of his followers. First, it makes their interpretive activity, or *ijtihād*, seem derivative but above all mechanical: All they need to do is to follow the methodological blue-print of the Imām. This conception of methodological subservience permeates not only the juristic typologies but also all structures of positive law and biographical narrative; that is, the doctrinal, hermeneutical, and sociological make-up of the law. Positive law depended, to a good extent, on the identification of the Imām's principles that underlie individual legal norms just as much as it depended on a variety of other considerations emanating from, and imposed upon them by, their own social exigencies. Similarly, the biographical narrative, a central feature of Islamic law, was thoroughly driven by hierarchical structures which would have no meaning without the juristic foundations laid down by the arch-figure of the Imām. The second element is the wholesale attribution to the founder-Imām of creating an entire system of legal methodology that constitutes in effect the juridical basis of the school. I have shown elsewhere that legal theory and the methodology of the law emerged as an organic and systematic entity nearly one century after the death of Shāfi'ī and a good half-century after the death of the last of the eponyms whose school has survived, namely, Aḥmad Ibn Ḥanbal.[66] The fact of the matter is that both legal theory (*uṣūl al-fiqh*) and the principles of positive law (also known as *uṣūl*)[67] were gradual developments that began before the presumed Imāms lived and came to full maturity long after they perished.

Given the prestige and authority attached to the figure of the founder-Imāms, it was self-defeating to acknowledge their debt to their immediate predecessors who were jurists like themselves,[68] and

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[66] W. Hallaq, "Was al-Shafi'i the Master Architect of Islamic Jurisprudence?", *International Journal of Middle East Studies*, 4 (1993): 587ff.

[67] For *uṣūl* as principles of positive law (but not of legal theory), see Hallaq, *Continuity and Change*, 88–120.

[68] Abū Ḥanīfah, for example, was associated with the highly authorized statement that "I refuse to follow (*uqallidu*) the Followers because they were men who practised *ijtihād* and I am a man who practises *ijtihād*". This statement, especially in light of the authoritative status it acquired in the school, must have been intended to defy any admission of debt.

whose legal doctrine was never admitted as part of the school's authoritative *corpus juris*. That link had to be suppressed and severed at any expense. It had to be replaced by another link in which the great Imāms[69] confronted the revealed texts, either on their own or through their followers who functioned, insofar as *takhrīj* was concerned, as their hermeneutical agents.[70]

[69] One implication of our finding here pertains to the controversy among modern scholars over the issue of the gate of *ijtihād*. Against the age-long notion that the gate of *ijtihād* was closed—a notion advocated and indeed articulated by Schacht—, it has been argued that this creative activity continued at least till late medieval times. See Wael B. Hallaq, "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies*, 16 (1984): 3–41. Norman Calder has argued that "Schacht will be correct in asserting that the gate of *ijtihād* closed about 900 [A.D.] if he means that about then the Muslim community embraced the principle of *intisāb* or school affiliation. Hallaq will be correct in asserting that the gate of *ijtihād* did not close, if he distinguishes clearly the two types of *ijtihād*—independent and affiliated". See Norman Calder, "Al-Nawawī's Typology of *Muftī*s and its Significance for a General Theory of Law", *Islamic Law and Society*, 4 (1996), 157. Now, if our findings are accepted, then Calder's distinction—previously suggested by others—becomes entirely meaningless, for it never existed in the first place. If there was ever a claim in favour of closing the gate of *ijtihād*, it could have meant one thing and one thing only, i.e., precluding the possibility of a new school, headed, of course, by an Imām who would have to offer a legal methodology and a set of positive legal principles qualitatively different from those advocated by the established schools.

[70] Our findings in this article find corroboration in several quarters, each approaching the same general theme from a completely different angle. See Hallaq, "Was al-Shafi'i the Master Architect?", reprinted in Wael Hallaq, *Law and Legal Theory in Classical and Medieval Islam* (Variorum: Aldershot, 1995), VII, including the addenda; Melchert, *Formation of the Sunni Schools*; and Jonathan E. Brockopp, "Early Islamic Jurisprudence in Egypt: Two Scholars and their *Mukhtaṣar*s", *International Journal of Middle East Studies*, 30 (1998), 167ff. To these writings one may cautiously add Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993). Cautiously, because Calder makes too much of the evidence available to him. For critiques of this work, see the sources cited in Harald Motzki, "The Prophet and the Cat: On Dating Mālik's *Muwaṭṭa'* and Legal Traditions", *Jerusalem Studies in Arabic and Islam*, 22 (1998), 18–83, at 19, n. 3; and Wael B. Hallaq, "On Dating Mālik's *Muwaṭṭa'* (forthcoming).

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REFORMING ISLAM BY DISSOLVING THE *MADHĀHIB*: SHAWKĀNĪ AND HIS ZAYDĪ DETRACTORS IN YEMEN

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Muḥammad b. ʿAlī al-Shawkānī, the famous eighteenth century Yemeni jurist, had a well-defined reformist vision of social, political and juridical order. At the center of this vision lies the jurist, a *mujtahid muṭlaq*, someone very much like the real-life Shawkānī, who does not subscribe or adhere to any of the established legal schools (*madhāhib*). This study will argue that Shawkānī's teachings in the field of *uṣūl al-fiqh*, as established in his work entitled *Irshād al-fuḥūl* (but also in a number of smaller treatises), are intimately articulated within his vision of order. They entailed not only an attack on the four Sunnī legal schools, but targeted, more specifically, the Zaydī-Hādawī *madhhab* which dominated highland Yemen and into which Shawkānī himself was born.

A Brief Sketch of the History of Zaydī-Hādawī *Madhhab*

Zaydī-Hādawīs are Shīʿī Muslims who follow the teachings of al-Hādī ilā al-Ḥaqq Yaḥyā b. al-Ḥusayn (d. 911), the first Imām to establish a Zaydī Imāmate in Yemen.[1] Al-Hādī's legal opinions are set forth in a number of works, the main ones being his *Kitāb al-Aḥkām* and *Kitāb al-Muntakhab*. In legal matters, al-Hādī adopted many of the views of his grandfather al-Qāsim al-Rassī (d. 860), who followed a Medinan legal tradition. Al-Hādī, however, also upheld more robust Shīʿī teachings (such as the *ḥayya ʿalā khayr al-ʿamal*), and in matters pertaining to the Imāmate was a Jārūdī Shīʿī, rejecting the caliphs Abū Bakr and ʿUmar as infidels.[2] As with al-Qāsim al-Rassī, the *ijmāʿ* of Ahl al-Bayt was an important principle in al-Hādī's teachings. In his legal argumentation al-Hādī never cites *ḥadīth* from the

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[1] Cf. C. Van Arendonk, *Les Debuts de l'Imāmat Zaidite au Yemen* (Leiden: E. J. Brill, 1960).

[2] For a comprehensive history of Zaydī thought from its earliest times and until the sixteenth century see Wilferd Madelung, *Der Imam al-Qāsim ibn Ibrāhīm und die Glaubenslehre der Zaiditen* (Berlin: Walter De Gruyter, 1965).

canonical Sunnī collections, whose authors he condemned as members of the *Ḥashwīyah* (Sunnī traditionalists). Whatever *ḥadīth*s al-Hādī does cite are derived from an chain of transmitters going back through his ʿAlid forefathers.

All later Yemeni Zaydīs, some of whom followed the theological teachings of the Baṣran Muʿtazila, remained faithful to al-Hādī's legal teachings. These were systematically set-forth in the work of Aḥmad b. Yaḥyā al-Murtaḍā (d. 1436), in a work entitled *Kītāb al-Azhār* which remains until today the most authoritative legal reference for the Zaydīs of Yemen. By Ibn al-Murtaḍā's time, however, he and his peers were citing liberally from the standard Sunnī *ḥadīth* collections, such as the *Ṣaḥīḥayn* amongst others.[3] Such citation is indicative of an opening to Sunnī teachings and source texts amongst the Zaydīs of the fourteenth century.

In the fourteenth century Muḥammad b. Ibrāhīm al-Wazīr (d. 1436) was greatly influenced by the Sunnī *ḥadīth* sciences and propagated these in Yemen. Without formally declaring an affiliation to any of the Sunnī schools, Ibn al-Wazīr abandoned the Zaydī-Hādawī school, preferring the path of the Sunnī Traditionists and declaring the Sunnī canonical collections as unconditionally authoritative in religion.[4] The appearance of Ibn al-Wazīr signals the start of a Sunnī Traditionist tendency amongst Zaydī-born scholars, one that would come to dominate the circles of power and learning in Sanaa in the mid-eighteenth century.

In the seventeenth century, a Zaydī dynasty rose to power, founded by the charismatic Imām al-Manṣūr al-Qāsim b. Muḥammad (d. 1620). As Madelung has pointed out, al-Qāsim al-Manṣūr rejected the Muʿtazilī legacy which was so much part of medieval Zaydī Yemeni thought, and maintained a staunchly Hādawī posture in his teachings.[5] Al-Qāsim al-Manṣūr was a Jārūdī with respect to the question of the Imāmate, and though he cited in his work from the Sunnī

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[3] Al-Muʾayyad Yaḥyā b. Ḥamza (d. 1347) was greatly influenced by such works as Ghazzālī's *Iḥyaʾ ʿulūm al-dīn*, for example.

[4] Cf. Muḥammad b. Ibrāhīm al-Wazīr, *al-ʿAwāṣim wa ʾl-qawāṣim fī al-dhabb ʿan sunnat Abī al-Qāsim*, 9 vols., ed. Shuʿayb al-Arnaʾūṭ (Beirut: Muʾassasat al-Risālah, 1992) and his abridgment of this work, *al-Rawḍ al-bāsim fī al-dhabbi ʿan sunnati abī al-qāsim* (Ṣanʿā': al-Maktabah al-Yamanīyah li l-Nashir wa l-Tawzīʿ, 1985). The openness to Sunnīsm amongst Zaydī-born scholars in this period is probably related to the increased contacts Zaydīs now had with Shāfiʿī scholars, in particular those living in Rasūlid Lower Yemen, but also others in Mecca.

[5] Madelung, *Der Imam*, 220ff.

ḥadīth collections, his stance was hostile to Sunnīsm. Shawkānī's teachings must be understood in the context of the strict adherence to the Hādawī school of the first Qāsimī Imāms, i.e., those who ruled in the seventeenth century. Their successors, the eighteenth-century Imāms, were different, they progressively distanced themselves from Hādawī teachings and promoted and patronized Sunnī Traditionist scholars. Some of the reasons for the shift in *madhhab* orientation (never formally declared however) are the following: accommodating the sentiments of a large number of Sunnī Shāfiʿī subjects in the tax-generating areas of Lower Yemen; legitimizing the dynastic ambitions of the eighteenth-century Qāsimī Imāms who did not live up to the ideal posited in Zaydī political doctrine; and deligitimizing Zaydīsm, in particular its political doctrine advocating the rejection of oppressive rule in the form of armed rebellion (*khurūj*) or migration (*hijra*).[6]

Situating Shawkānī Intellectually

Partly because Shawkānī was widely read and educated in both the Zaydī and the various Sunnī traditions, it is difficult to situate him entirely within one of the schools of law. Indeed, to do so would be in some sense to contravene the very claim he made to be a *mujtahid* who was above all schools. However, it can be said that he was a Sunnī Traditionist; that is, his scholarly attention was directed at the canonical *ḥadīth* collections and the *ḥadīth* sciences, which he considered the most authoritative, and he therefore drew mostly on these in elaborating his opinions.[7] As a Traditionists he had rejected the practice of adhering to one school of law and condemned *taqlīd* while advocating *ijtihād*. He also rejected the rational sciences which were mainly associated with the Muʿtazila among the Zaydīs in Yemen. The influence of the Shāfiʿī scholars of Egypt, *ḥadīth* scholars and jurists, such as Ibn Ḥajar (d. 1448) and al-Suyūṭī (d. 1505), and

[6] For a detailed history of the political and intellectual history of the Qāsimī Imāmate see Bernard Haykel, "Order and Righteousness: Muhammad b. ʿAlī al-Shawkānī and the Nature of the Islamic State in Yemen (D.Phil. thesis, University of Oxford, 1997).

[7] In doing so, he was an heir to the tradition in the Zaydī highlands of Yemen which produced such scholars as Muḥammad b. Ibrāhīm al-Wazīr (d. 840/1436), al-Ḥasan b. Aḥmad al-Jalāl (d. 1084/1673), Ṣāliḥ b. Mahdī al-Maqbalī (d. 1108/1696), Muḥammad b. Ismāʿīl al-Amīr (d. 1182 / 1769) and the lesser known ʿAbd al-Qādir b. Aḥmad al-Kawkabānī (d. 1207 / 1792), who was Shawkānī's most illustrious teacher.

that of Ḥanbalī scholars like Ibn Taymīyah (d. 1328) and his disciple Ibn Qayyim al-Jawzīyah (d. 1350), is also very important for understanding Shawkānī. In fact, the argument can be made that Shawkānī modeled himself on such scholars as Ibn Taymīyah and al-Suyūṭī, seeking to emulate the polymathic nature of their works, and perhaps wanted to be considered as having their stature as first-rank scholars and "renovators" (*mujaddidūn*).

The parallel between Shawkānī's situation, where the opponents of the Sunnah-oriented scholars were the Zaydī-Hādawīs, and that of the Sunnī *mujaddids*, like al-Suyūṭī, who were combating *bid'a* in the name of orthodoxy, did not escape the attention of Yemeni scholars on both sides of the divide. Shawkānī, and Muḥammad b. Ismā'īl al-Amīr (d. 1769) before him, wished to rid Yemen of the pervasive influence of the Hādawī teachings and all forms of *taqlīd*, of which Hādawism was a manifestation; the Hādawīs wished to protect their school, and consequently their identity, from the attacks of the Sunnah-oriented scholars. The attack that "reformist" scholars like Shawkānī undertook against what they termed the opponents of the Sunnah entailed an elucidation and re-emphasis of certain sources of law—the field of *uṣūl al-fiqh*—and a purging of all substantive rulings—the field of *furū'*—from opinions which were not consistent with their *uṣūl al-fiqh*.

Shawkānī and *Uṣūl al-Fiqh*

In all of Shawkānī's works a constant refrain is sounded: the absolute necessity of applying *ijtihād* as a means of combating the sectarian and antagonistic tendencies amongst different schools of law, "factionalism" (*madhhabīyah*), which has resulted from the practice of *taqlīd*, the blind imitation of past rulings and opinions. This, according to Shawkānī, has resulted in rulings being based on the mere opinion (*ra'y*) of scholars and lack of knowledge of the textual evidence (*dalīl*) for any given opinion. The practice of *taqlīd* was a reprehensible innovation which had been developed by the followers of the various schools of law, many of whom argued that *ijtihād* was no longer possible for later generations of Muslims—the door of *ijtihād* was closed (*insidād bāb al-ijtihād*).[8]

[8] Cf. Shawkānī, *al-Qawl al-mufīd fī adillat al-ijtihād wa 'l-taqlīd*, in his *al-Rasā'il al-salafiyah fī ihyā' sunnat khayr al-barīyah* (Beirut: Dār al-Kitāb al-'Arabī, 1991), 191ff.

Because of his reformist message, Shawkānī has been slotted in many contemporary writings into the Muslim modernist and even nationalist traditions which equate *ijtihād* with liberating thought, and attributes to it an instrumental role in Arab and Muslim renaissance.[9] In our study of Shawkānī's own writings and the historical sources of the period, a more complex picture emerges. His concerns lie with problems he regards as intrinsic to Islamic history and tradition, and which are summed up in the practice of *taqlīd*. This, he says, has divided Muslims into mutually opposing sects and has, more perniciously, led them away from the principal sources. Second, the solution he proposes makes appeal to the pristine past of the time of the Rightly Guided Caliphs, but also offers practical guidelines which can bring about a virtuous order similar to it. The solution lies in allowing jurists like himself to practice *ijtihād*, to reproduce themselves pedagogically and to administer the interpretation and application of the Sharīʿah.

A Literalist Bent

A literalist bent permeates all of Shawkānī's writings. He constantly urges a return to the principal sources—the Qur'ān and the Sunnah—which must be literally understood; any interpretation that draws one away from the texts is forbidden. The ethos in all his works is the undermining of the sciences which have created conceptual and methodological terminology that has drawn Muslims away from the

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It is interesting to note that the controversy over the "closure of the gate of *ijtihād*" has also been of great interest to Western academics of Islamic law. Wael Hallaq, for example, argues against Joseph Schacht's contention that the practice of *ijtihād* was discontinued after the fourth/tenth century. See Wael B. Hallaq, "On the Origins of the Controversy about the Existence of Mujtahids and the Gate of Ijtihad", *Studia Islamica* 63 (1986): 129–141, and "Was the Gate of Ijtihad Closed?" *International Journal of Middle Eastern Studies* 16.1 (1984): 3–41; also, J. Schacht, *An Introduction to Islamic Law* (Oxford: The Clarendon Press, 1964), 69–71. It seems to me that the question as posed is misguided (i.e., is the door of *ijtihād* closed or was it left open?). The debate over the closure was certainly a concern of Muslim jurists from medieval times. The majority saw it as being closed, whereas others, notably Shawkānī argued the opposite. To argue the case one way or the other is to fall within the rhetorical terms of the Muslim discursive tradition itself and misses the point. What is of greater interest in this matter are the strategies employed, and the aims of those jurists who debated the matter, not whether it had actually been closed or left open.

[9] For example see the works mentioned in the bibliography by Qāsim Aḥmad, Ḥusayn al-ʿAmrī, Muḥammad al-Ghamārī, Ibrāhīm Hilāl, Shaʿbān Ismāʿīl, ʿAbd al-ʿAzīz al-Maqāliḥ, Ṣāliḥ Muqbil, ʿAbd Allāh Nūmsūk, ʿAbd al-Ghanī al-Sharjī, and Aḥmad Ṣubḥī.

original texts. On the level of *uṣūl* he aimed at more certainty than the standard model. With his insistence on the study of and almost exclusive dependence on *ḥadīth* works—notably the *Ṣaḥīḥayn* of Bukhārī and Muslim—this would add up to a legal system for which greater certainty could be claimed.

In elaborating his legal theory, Shawkānī's basic premise is that the Qur'ān and the Sunnah are sufficient and comprehensive sources for the elaboration of all legal rulings for all time. The *mujtahid* can find in these evidence or proof to substantiate his legal decisions without recourse to any other source, be it consensus (*ijmāʿ*), most forms of analogical reasoning (*qiyās*), or independent reasoning (*raʾy*). In order to bolster this argument he makes claims for the indubitable authenticity of the *ḥadīth*s in the canonical collections, in particular the *Ṣaḥīḥayn*. His main claim here is that the Muslim *ummah* has accepted universally the *Ṣaḥīḥayn* as the soundest works after the Qur'ān. This argument is based on a broad consensus (*ijmāʿ*) and has a long pedigree, with various forms, in Islamic legal thought.[10] The *locus classicus* for this claim is Ibn al-Ṣalāḥ's *Maʿrifat anwāʿ ʿilm al-ḥadīth*, known in English as the *Introduction to the Ḥadīth Sciences*.

From the perspective of the Hādawīs, Shawkānī's claim is problematic because many of the Traditions contained in these works are *āḥād* Traditions, i.e., Traditions that fall short of the *tawātur* category because they have been transmitted by fewer reporters. The problem lies in the fact that the Hādawīs do not credit some of these Companions with probity (*ʿadālah*), because they had opposed ʿAlī or the Ahl al-Bayt in some way and therefore are not considered trustworthy. The argument revolves around which of the Companions had probity. Shawkānī takes a maximal position that they all had *ʿadālah*, whereas the Hādawīs are more selective on this issue, leading many of the stricter among them to reject the *Ṣaḥīḥayn* altogether.[11] Here is what one traditional Hādawī has to say:

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[10] Muḥammad al-Shawkānī, *Irshād al-fuḥūl ilā taḥqīq al-ḥaqq min ʿilm al-uṣūl* (Beirut: Dār al-Maʿrifa, n.d.), 44. See also Shawkānī, *Tuḥfat al-dhākirīn* (Beirut: Dār al-Fikr, n.d.), 4. It is noteworthy that Ibn al-Amīr does not concur with this view but still grants the *Ṣaḥīḥayn* great authoritative status. See his *Irshād al-nuqqād ilā taysīr al-ǧtihād*, ed. Muḥammad Ṣubḥī Ḥallāq (Beirut: Mu'assasat al-Rayyān li 'l-Ṭibāʿa, 1992), 45–50.

[11] Cf. Ismāʿīl al-Nuʿmī, *Kitāb al-Sayf al-bātir*, ms. in the Gharbīyah Library, Ṣanʿā', *Majmūʿ* No. 188, fols. 1–36 and *Majmūʿ* No. 91, fols. 55–77; Muḥammad b. Ṣāliḥ al-Samāwī, *al-Ghaṭamṭam al-zakhkhār al-muṭahhir li-riyāḍ al-azhār min āthār al-sayl al-jarrār*, 6 vols., ed. Muḥammad ʿIzzān (Amman: Maṭābiʿ Sharikat al-Mawārid al-Ṣināʿīyah, 1994), 1:3–157.

> If one of the people of Truth [*ahl al-haqq*, i.e., a Zaydī] presents to them [i.e. Sunnīs] a verse from the Book or a Sunnah which accords with [Zaydī teachings], they cite in opposition a fabricated Tradition [*ḥadīth mawdūʿ*], and they say: 'we are the Ahl al-Sunnah, we use the *ḥadīth*s which we consider sound.' And in completion of their corrupt intentions, they [the Sunnīs] have committed themselves to declaring the probity of all the Companions, despite what is manifested in their *āḥād* Traditions [i.e., that which contradicts the Qurʾān and the teachings of Ahl al-Bayt].[12]

In *ḥadīth* terms, the classic retort that Shawkānī, and Yemeni Traditionists generally, made to the Zaydīs was that in elaborating judgements and rules the Zaydīs either relied on textually unfounded opinions (*raʾy*), or if they relied on Traditions at all, these were of dubious authenticity as many were of the *mursal* category.[13] In other words, Zaydīs did not adhere to the strict methods of *ḥadīth* authentication, with the result that many of their opinions and views were based either on weak or false Traditions or on no textual authority whatsoever and were therefore not correct. And with regard to the *āḥād* Traditions, Shawkānī bolsters their authoritative status by reverting to an *ijmāʿ* argument similar to the one mentioned above. Here is what he has to say:

> There is no conflict [amongst the jurists] over the fact that if a consensus exist about the usage for legal purposes of an *āḥād* Tradition then that Tradition provides certain knowledge (*ʿilm*) [i.e., not probability] because the consensus regarding it has rendered its truthfulness certain (*al-ijmāʿ qad ṣayyarahu min al-maʿlūm ṣidqih*). And such is the case if the community of Muslims has accepted an *āḥād* Tradition, either by accepting it or by interpreting it away. The Traditions of the *Ṣaḥīḥayn* of Bukhārī and Muslim fall in this category since they have been accepted by the umma. . . .[14]

Shawkānī's Views on *Ijmāʿ* and *Qiyās*

Let us now turn to Shawkānī's opinion on *ijmāʿ* and *qiyās*. Shawkānī does not consider *ijmāʿ* (i.e., the consensus of *mujtahids* after the death of the Prophet in a given age on a given matter) to be a source of law. For one thing, he says, there is no textual proof for it being a

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[12] *Ghaṭamṭam*, 1:13.
[13] Ḥadīths that have interrupted chains of transmission.
[14] *Irshād al-fuḥūl*, 44.

principle at all. Furthermore, it would be impossible to ascertain the opinion of all Muslims because of the vastness of the Islamic lands and the multitude of scholars who lived throughout the ages. Few among them left written evidence of their opinions and even among those who did it remains an impossible task to adduce their opinions on a given matter. Finally, because of the dominance of the established schools of law, which were controlled by *muqallidūn*, many scholars did not dare express their true opinion for fear of retaliation.[15] Here is what he has to say on the matter:

> Whoever claims to have the *ijmāʿ* of the Muslim scholars of his age on a given religious issue has made a gross claim (*aʿzama al-daʿwā*) and asserted its existence with something which does not obtain. The feasibility of this is impossible, even if one assumes that it is possible to have such agreement, without investigation and knowledge of the opinions of each man or group of men. The truth is that this is impossible (*mamnūʿ*). This is because the consensus of all the scholars of all the regions on an issue is impossible given the [existence of] different schools, temperaments, differences in understanding, contradictory dispositions and the love of contradiction. This is with regards to a scholar speaking about the consensus of his generation. If he is claiming an *ijmāʿ* about a generation which he did not know after the age of the Companions then the claim, too, is impossible. . . . The one who claims that *ijmāʿ* constitutes proof is not correct, for such [a claim] constitutes mere conjecture (*ẓann*) on the part of an individual from the community of Muslims. No believer can worship God on the basis of this. . . . In my works, when I report a consensus from others I do this in order to prove my point to the one who accepts that *ijmāʿ* constitutes proof.[16]

The significance of Shawkānī's rejection of this type of *ijmāʿ* comes out in his critique of Hādawī legal opinions. Hādawīs consider the *ijmāʿ* of the Ahl al-Bayt (*ʿiṭrah*), by which they mean their Imāms, to constitute an authoritative source (*ḥujjah*) for their legal opinions.[17] Many of their distinctive and identifying legal teachings are based on this type of consensus. For example, Hādawīs insist on making the call to prayer in a twofold form (*al-adhān muthannā*), i.e., saying "Allāhu Akbar" only twice, and saying "Come to the best of works" (*ḥayya ʿalā khayr al-ʿamal*). They base these practices, in part, on the

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[15] See Ibn Ḥazm's comparable views on *ijmāʿ* in his *al-Iḥkām fi uṣūl al-aḥkām*, 2 vols. (Beirut: Dār al-Kutub al-ʿIlmīyah, n.d.), 1:546ff.

[16] Muḥammad al-Shawkānī, *Wabl al-ghamām ʿalā shifāʾ al-uwām*, in *Kītāb Shifāʾ al-uwām*, 3 vols. (n.p.: Jamʿīyat ʿUlamāʾ al-Yaman, 1996), 1:26–29, fn. 1.

[17] Al-Ḥusayn b. al-Qāsim, *Kītāb Hidāyat al-ʿuqūl*, 2 vols. (n.p.: al-Maktaba al-Islāmīyah, 1401/1981), 1:509ff. Also cf. Al-Qāsim b. Muḥammad, *al-Irshād ilā sabīl al-rashād* (Ṣanʿāʾ: Dār al-Ḥikma al-Yamānīyah, 1996).

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.