

ALTA DISCUSSION

NOTE: What follows is a synthesis of discussions of the various papers presented at the Alta Symposium and the general discussion that took place during the last afternoon of the symposium.

BERNARD WEISS: I suggest that we begin with the subject of the early development of Muslim legal theory. Jon Brockopp has proposed, on the basis of his work on early Mālikī texts, that there were in the Mālikī school two competing theories of authority, one which anticipated classical *uṣūl* by locating authority in divine revelation as transmitted from the Prophet, and another which vested authority in a “Great Shaykh”. Does anyone wish to comment on this idea or raise a question?

SHERMAN JACKSON: I think there’s something intuitively powerful about the way Jon has dealt with the issue of authority. The question that comes to my mind is: What kinds of factors should we see as operative in the choice of an authority figure? For example, what would lead Ibn ‘Abd al-Ḥakam to embrace Mālik’s authority and not Shāfi‘ī’s. What might Ibn ‘Abd al-Ḥakam have seen Mālik as possessing in the way of special powers that would establish his authority?

JONATHAN BROCKOPP: The link between Shāfi‘ī and Ibn ‘Abd al-Ḥakam is very interesting and not yet fully known. Shāfi‘ī lived in Ibn ‘Abd al-Ḥakam’s house apparently while writing the *Risālah*. Why Mālik instead of Shāfi‘ī? It’s hard to say. The problem is that we don’t have explicit disquisitions on the “Great Shaykh” theory of authority that might indicate what factors were operative in such choices. Why is this so? That’s really my question. Why is the “Great Shaykh” theory so evidently there without being formally articulated?

KEVIN REINHART: I have a couple of points. Regarding the “Great Shaykh” concept, I think it is a very powerful explanation for the formation of the *madhāhib*. But as a theory of authority that is supposed to be implicit in *mukhtaṣarāt* and accounts for the absence of references to the Qur’ān and Sunnah and so on, it’s got some problems. Let me offer an analogy. If you read a book of popular science that explains chaos theory you will find that the explanation will contain no mathematical equations. Is this because chaos theory does not depend on mathematical equations? No. It is due to the nature of popular science. People think that if you’re going to sell a book on chaos theory to the unwashed masses you’d better not have any sigmas in it. So I think there may be a disciplining that goes on within the genre of popular science that dictates a lot of what we see in it. The same may be true of the *mukhtaṣar* genre. You don’t quote the Qur’ān and Sunnah extensively because this is not what’s done in this particular genre, but it *is* done in other kinds of writing. Now if you were to find actual contradictions, that would change the picture considerably—if, for example, a *mukhtaṣar* says the

rule is such and such and another work which cites the sources more extensively has a different answer. However, it seems to me that the differences you are pointing to here—citations in the *Muwattaʿ*, none in the *mukhtaṣarāt*—can be explained in terms of differences in what is expected to go on in these genres so that you'll have to make a good argument that in the case of the *mukhtaṣarāt* it is not the genre and its own disciplining of its contents that accounts for the absence of citations. The second point is this. In my mind it's pretty clear that, even if the distinction is not yet formulated in the period you are dealing with, the reality of a difference between *ʿibādāt* and *muʿāmalāt* is there and is significant. It's significant for various reasons, one of which is that the natural organizing principle for discussions of *ʿibādāt* is narrative, owing to the fact that the *ʿibādāt* are about *tartīb*, a sequence of things: first you do this, then you do that. In dealing with the complexities of a slave contract there is no obvious narrative. Therefore in comparing *ḥajj* and the matter of the *mukātab* it seems to me you are comparing apples and oranges, a comparison that will not necessarily bear the weight that you want to assign to it. So if you're going to compare things, you might want to compare *ḥajj* and, for example, *ṣalāh*. Finally, I think your general point about using the evidence of a multilinear development of theory as a critique of Wansbrough is perfectly correct. Your argument that a theologically coherent and inclusive account, a master account, of the era of revelation—what Wansbrough calls salvation history—was not immediately accepted and that there were alternatives and that you can show this from your texts is a very powerful one and one that needs to get out there. I do find your paper very stimulating, though I still have some problems with it due to the complexity of the material. I could be convinced.

BROCKOPP: I agree that genre is an important factor. If there is a genre of *mukhtaṣarāt*—I'm not sure there is but let's say there is as a starting point—then it seems to me that an analysis of this genre will have to take into account what I consider to be an explicit lack of reference to authority. That is definitely there in the genre, and it needs explanation; and I don't think that genre as such, or audience, provide the explanation.

REINHART: Tell me why that is so, to counter my example of the popular science books.

BROCKOPP: Let's start with the *Muwattaʿ*. If we are going to be able to say something about the theoretical concepts behind the arguments in the *Muwattaʿ*, then we have to look for the explicit formulation of those arguments. So we talk about the sorts of things that Joe mentioned in his paper with reference to Shāfiʿī. We talk about references to different authorities, and we talk about the order in which those authorities are referred to. Does all this cease—this looking for argument and for the theory behind it—when we switch genres, when we move from the *Muwattaʿ* to the *mukhtaṣarāt*? I don't think so. What is there in the *mukhtaṣarāt*—this lack of reference to authorities—must mean something with respect to theory. I don't think we can explain it in terms of a change of audience. You say that popular science books are directed to the unwashed masses as

opposed to the scientific community. I don't think an audience contrast of that magnitude is involved in the *mukhtaṣarāt* genre.

ARON ZYSOW: It seems to me that a lot of the material from eighteenth century works could be organized in columns like the ones you've constructed for the early Mālikī works. I don't think there's anything particularly characteristic of the early period that isn't also found much later. That being the case, the notion of a "Great Shaykh" theory as something that existed exclusively in the early period becomes problematic if based on this kind of data. In any case, I would hesitate to speak of a "Great Shaykh" theory—"Great Shaykh" attitude, perhaps, but not theory; because I don't think the concept belongs in the realm of theory. If indeed it was a social reality rooted in popular culture, this doesn't in itself show that there was not an accepted revelation-based kind of theory behind all of the texts we've been talking about. Clearly there was in the later period and yet we find writings similar to your early Mālikī *mukhtaṣarāt* in which there is no mention for each case who the ultimate authorities were. There is also a point relating to genre within *madhhabs*. There are reasons why these texts have been preserved in certain environments. As you note with regard to Mālikī texts, it is the Mālikīs who care about those texts and protect them. There is a sense of Mālik being behind them, apparently. So one is not, in using the *mukhtaṣarāt*, placing oneself under the authority of Ibn 'Abd al-Ḥakam. There is always the presence of Mālik behind these texts.

BROCKOPP: No, not of Mālik, for Ibn 'Abd al-Ḥakam.

ZYSOW: Well, of Medina.

BROCKOPP: Yes, of Medina.

REINHART: That's an important theoretical point: Medina versus Mālik. Medina is not Mālik.

BROCKOPP: Right, and when you consult 'Abd al-Razzāq al-San'ānī, who covers a lot of these early disputes, you see a lot of agreement, in spite of those disputes, on certain more simplified areas of law, showing evidence of a Medinan tradition.

MOHAMMAD FADEL: My question has to do with the functionality of the text. I think that one of the functions of the *Muwaṭṭa'* is to establish Mālik as an authority, as someone who is a master of the theological sources of law, whereas the *Mudawwanah* is establishing Mālik's authority as a master of *ijtihād*. The *mukhtaṣarāt* are only authoritative for those who believe that Mālik is a *mujtahid*, who care about him. The texts are doing three different types of things. I don't think they represent three different types of authority, three competing paradigms of authority.

BROCKOPP: How is the *Mudawwanah* representing Mālik as a *mujtahid*?

FADEL: It represents his responses to very particular problems, hard cases—it's all about hard cases.

BROCKOPP: That's not entirely so. In the *Mudawwanah* you find placed into Mālik's mouth what are in the *Muwaṭṭa'* prophetic *ḥadīth*. So it's not as though we have in the *Mudawwanah* a distilled version of the *aqāwīl Mālik*.

FADEL: But the problems have to do with particulars. Someone's property

is destroyed, for example, and he wants to know what sort of compensation he's entitled to. That's the kind of problem that comes up again and again in the *Mudawwanah*—very particularized hypotheticals.

BROCKOPP: But the *Muwatta'* is not a general introduction to law either. Look at the chapter on *hajj*. It doesn't bother to tell which of the relevant sources are involved, e.g. Qur'ān. It doesn't even start out by asking whether *hajj* is *wājib* or not. It just goes right in and deals with details.

FADEL: The *Muwatta'* is at a much, much higher level of generality and abstraction than the *Mudawwanah*.

ZYSOW: The Ḥanafis study the *Muwatta'*, not the *Mudawwanah*. That's the point.

INGRID MATTSO: To get back to Saḥnūn and the *Mudawwanah*. Are you saying that for Saḥnūn Mālik is authoritative as a source of Sunnah or as himself by virtue of his being a charismatic leader?

BROCKOPP: The point about the charismatic leader is that he can better mediate divine authority; so Mālik is authoritative as a transmitter of Sunnah.

MATTSO: Charisma suggests to me things like people coming to Shāfi'ī's tomb. It is effective within the general populace but perhaps less so among scholars. Saḥnūn sees Mālik as an authoritative source of the Sunnah. This view of Mālik would be very different from that of the popular audience. This Great Shaykh idea, which I gather comes from popular society, Saḥnūn may draw upon, because of its effectiveness in getting people to accept what is being declared; with such audiences it would be pointless to go into all the arguments. So he is perhaps himself looking at Mālik in one way and presenting him to others in another way.

BROCKOPP: I think we are in agreement. I brought in the notion of charisma as a way of describing individuals who transmit divine powers but not authority. They possess authority by virtue of these divine powers, but what they transmit is not the authority but the divine powers. So what I'm talking about with this "Great Shaykh" theory is something between the two, something between the purely charismatic figure who transmits divine powers and the more juristic master who transmits authority. In other words, the "Great Shaykh" theory draws upon popular religion, makes use of it, but not explicitly or in an obvious way.

WOLFHART HEINRICH: Your "Great Shaykh" theory—does it stop at a certain point or does it continue in some way? Does it perhaps move into *madhhab* theory? What is your view on that question?

BROCKOPP: Your question takes me back to a point that Kevin made earlier, about which I was very pleased. He said he found the concept of "Great Shaykh" to be informative for our understanding of the formation of the *madhhabs*. This is a point that certainly could be discussed at greater length. I raised the question of popular culture versus high culture precisely because I haven't quite come to any firm conclusions about it yet and wanted input. I do intuit that there is some kind of connection here, that there were these individuals who had tremendous charisma

(in a sense not quite the same as *baraka*) and were able through that personal authority to change the direction of legal thinking. And, yes, I think it does continue.

WEISS: The “Great Shaykh” theory, you have said, was never explicitly articulated. It can be said to be really there only insofar as we are able to infer its presence. In the *Risālah* of Shāfi‘ī we have theory that is much more articulated, but now the focus is on the revelatory texts and human authority seems to recede to the background. But can we say that Shāfi‘ī takes us all the way to a theory of four sources? That is the question Joe has addressed. He has argued that what may appear to some at first glance to be lists of hierarchically arranged sources of law in the *Risālah* prove under analysis to be nothing of the kind in Shāfi‘ī’s mind? Any comments?

REINHART: As I look at the lists Joe has located in the *Risālah*, they, if anything, suggest that there *is* in Shāfi‘ī’s thinking a hierarchy of sources. One sees in the *Risālah* a remarkable stability in the order in which the sources are placed: the Qur’ān comes first, then the Sunnah, *āthār*, and so on. *Qiyās* tends to come at the end. One needs to think about the force of the conjunction *wa*. Although *wa* is not a sequential marker in the way *fa* and *thumma* are, yet if I say, “I went to the store *wa* to the University *wa* to Alta and so on”, the logical inference from this use of *wa* is that this is a sequential presentation. On the other hand, you do demolish the simplistic idea that you’re supposed to start with the Qur’ān, then say, “What am I supposed to do now?”, then proceed to other sources. On the other hand, it seems clear from your presentation and from reading the *Risālah* that *kutāb* counts for more than, say, *qiyās*.

JOSEPH LOWRY: It is true that when Shāfi‘ī does think, “What are the sources?”, he conceives of them as standing in an order in a loose way: first the Qur’ān, second the Sunnah. The question is: what role do statements to this effect really have in Shāfi‘ī’s legal thought? Are these simply incidental remarks that he makes from time to time in an off-hand way or are they central? You could be right in saying that he works with the same order of sources throughout the *Risālah*, although I think he has a more fluid approach. But how meaningful is this hierarchy for him, really?

ZYSOW: It seems to me that the very need to decide what is revealed and what is not entails a hierarchy of some sort. The Qur’ān is of course, as revelation, a given, and a few *hadīth* are given. The rest is at a lower level.

LOWRY: Your point I take to be an epistemological point. Shāfi‘ī is certain about the revealed character of the Qur’ān. Concerning this he has no doubt whatsoever. Epistemological problems arise with regard to the other sources because their provenance is not obvious. Now if you subtract Shāfi‘ī’s epistemology—which Norman Calder has described so well—from the *Risālah*, the idea of *bayān*, it seems to me, remains, since it does not depend on an epistemologically driven approach to the sources. If you subtract all the passages in the *Risālah* that suggest a hierarchy, the

Risālah remains essentially the same book with *bayān* as its central concern. And *bayān* entails the notion of Qurʾān and Sunnah as co-equal sources which interact with each other in a variety of ways.

ZYSOW: It is clear from his sections on abrogation that he wants the Qurʾān and the Sunnah to work separately because of his fear that the Qurʾān can be used to undermine the Sunnah. So he at least has to be thinking, with regard to the relation between the two, that we have to draw a line and compartmentalize.

LOWRY: I don't disagree with that. Shāfiʿī in fact says just that. But what does he do in actual examples of his legal reasoning in which he employs the technique of abrogation? Especially in examples like the adultery problem there is a very complex Qurʾān-Sunnah interaction. When he discusses abrogation as it occurs in the Sunnah alone, he says in fact that you usually know when abrogation occurs within the Qurʾān because there is a *dalīl* in the Sunnah, which means that he has struggled very much with the distinction as part of his method. He has created a theory to explain why what he looks like he's doing is not what he's doing.

JOHN MAKDISI: I'm interested in your definition of "source". You would or would not call *qiyās* a source?

LOWRY: This is a problem. What does "source" mean? Does it mean what *asl* means? Are all these things to be identified as sources? Actually, I'd like not to have to define "source". What can be said is this: Shāfiʿī has two bodies of texts from which he feels you should in theory be able to derive every single rule. To that extent, he considers these two things sources of law. I should not like to characterize the other things as sources.

MAKDISI: Would you then call the other things techniques?

LOWRY: *Qiyās* is clearly a technique for relating a result of legal reasoning to a revealed text.

MAKDISI: There are techniques that are acceptable and techniques that are not. *Istihṣān*, as defined by Shāfiʿī, is certainly not a source but a technique for deriving rules of law from revealed sources.

LOWRY: All of Shāfiʿī's techniques are ways of linking rules to the revealed texts. The problem with *istihṣān* as defined by Shāfiʿī is that it rests on no source.

MAKDISI: We must keep in mind that you can't change the Sunnah. There is no methodology for changing it, even though its authority may have derived from the Qurʾān. That is why it must be treated as one of two original sources, the other being the Qurʾān. But what about *ijmāʿ*? What role does it play in Shāfiʿī's thinking?

LOWRY: For Shāfiʿī, *ijmāʿ* is always a past interpretation of a revealed source by the *ahl al-ʿilm*. I think Shāfiʿī would probably say that it too cannot change.

MAKDISI: If that is true, then why would *ijmāʿ* not be a third original source (even though derivative like the Sunnah).

LOWRY: For Shāfiʿī *ijmāʿ* is not terribly important. It doesn't help him with his characterization of the law as a series of source interactions, interactions, that is, between Qurʾān and Sunnah. When you see how he

uses *ijmāʿ*, it is at the same level of abstraction as another hermeneutical technique like *ʿamm* and *khass*, except less formal. He only appeals to *ijmāʿ* to interpret an underlying revealed text. And even when he affirms the existence of an *ijmāʿ*, it is clear that not everyone shares his view.

WÆL HALLAQ: When you compare Shāfiʿī with later generations, it becomes clear that he had no hierarchy, and your point is proven. Shāfiʿī was quite often puzzled as to which comes first; he did not have any clear order of sources in mind. This is my footnote to your paper. Now a more general comment. We need to situate Shāfiʿī in a historical process or context so as to give him and the *Risālah* a meaningful role. If you look carefully at developments going on in the late second and the third century, you will find that what you have discovered with respect to the *Risālah* applies also to other things going on in that period. Therefore I am not surprised at what you are saying. The so-called “four *uṣūl*” of Shāfiʿī are really the product of the following three to five generations.

LOWRY: My interpretation—which does not deal with issues as specific as who wrote the *Risālah* and precisely when was it written—is that it is a response to the question of why the law seems to be in such bad alignment with the Qurʾān, especially the Qurʾān, and to a lesser extent with the bewildering array of *ḥadīth*. I have deliberately looked at the *Risālah* outside its historical context simply in order to dismiss from my study the interpretations coming from Coulson and others. Taking the context more into account might oblige me to revise some elements in my study. But I still think it’s useful to look at it in the abstract, in a vacuum.

WEISS: I suggest we now turn to developments in the ninth century after Shāfiʿī. Christopher Melchert has looked at three authors in particular who lived and flourished in sequence across that century, concentrating on their views of abrogation, and finds that their treatments of the subject represent stages of increasing sophistication and maturity, and because the *Risālah* seems to reflect the most advanced stage, which he places near the end of the ninth century, he proposes to date it in that period. Does this approach work?

REINHART: I think a point Jon made in his paper might be made again here. There’s no reason to suppose that ideas progress linearly. I often find Goldziher more sophisticated than Coulson. Again, genre may have something to do with the difference between the sorts of texts Calder purports to describe—dialogic as opposed to composed works—and on the basis of which he postulates a similar linear development. Where texts differ as to genre, there is no need to arrange them chronologically into stages of development. The data you bring together, Chris, is all very interesting but to the extent your account rests on the notion of a linear theory of intellectual development I think it becomes problematic. Any study of any intellectual development will show that that’s not how ideas work.

CHRISTOPHER MELCHERT: Your point about Goldziher and Coulson is a very good one. But do we find Goldziher having ideas that are rediscovered years later? Was Goldziher ignored for 75 years and then suddenly everybody rediscovered him?

REINHART: I don't know about Goldziher, but there are plenty of other examples.

BROCKOPP: Shāfi'ī himself is a good example. He was almost *persona non grata* at the end of his life, and it seems that at first only a very small group of people passed down his teaching or even cared about his work.

ZYSOW: A point I would like to make is that one needs to examine as large a body of material as possible before making conclusions as to what terminology was possible or not at a given period. Abū 'Ubayd, for example, wrote other works. These and other things need to be studied. I have come across evidence that the terminology of the *Risālah* is contemporary with that of certain Ḥanafī writings and that it is not a terminology that appears later, as your study claims. It seems to me that the study of views of abrogation as a sample of the development of theoretical thought needs to be done quite delicately with a lot of evidence.

FADEL: Just as a sort of follow-up. Abū 'Ubayd, Muḥāsibī, and Ibn Qutaybah—I don't mean to attack their credentials—are not central figures in the traditional narrative of legal development. So would it be that surprising that they may be behind the curve?

MELCHERT: Muḥāsibī is mentioned in biographical sources as one of the first Shāfi'iyah. The fact that he doesn't get quoted a lot in later books doesn't mean that he should be ignored.

FADEL: My point is that he is not a central figure in the traditional accounts of legal development.

MELCHERT: Who were the Shāfi'īs in Baghdad in his time that were really important? Abū Thawr? What do we have from him to show that he was more important than Muḥāsibī? Nothing. Now does that show that Abū Thawr is to be discounted as an inconsiderable figure—that he was behind the curve also, in fact even more so, since we have nothing on him?

FADEL: I'm not trying to say that Abū 'Ubayd, Muḥāsibī and Ibn Qutaybah were incompetent or unimportant in their time. I'm only trying to say that they were not recognized by later generations as specialists in *uṣūl* or *fiqh*.

ZYSOW: In some areas they were important. The *Kūṭāb al-amwāl*, which was not mentioned, is a very important source, very powerful. It's not from a weak mind at all. It's a classic in a very complicated area of Islamic law.

FADEL: But as a traditionist the author doesn't know very much about *uṣūl*.

ZYSOW: It's a question of terminology. He's obviously using *naskh* in a very broad and unhelpful way that has to be explained.

LOWRY: I would like to address the question of genre. I'm not sure that Ibn Qutaybah's *Ta'wīl mukhtalif al-ḥadīth* is a law book in any relevant sense. Against Calder, I don't think that a discussion of *'amm/khaṣṣ* occurs in more than one or two places in it. I haven't read Muḥāsibī, but as far as Abū 'Ubayd and Ibn Qutaybah are concerned it seems that comparing them is like comparing apples and oranges. I have one more point relating to Shāfi'ī and that is that Shāfi'ī's *Risālah*, in its treatment of *amr* and *nahy*, shows itself quite clearly to be a work that comes before the work of his student Muzanī on *amr* and *nahy*. The concepts are pretty much the same but Muzanī's presentation of them is much more fluid

and easy and his prose style is much simpler. And I have no idea whether Muzani's work is authentic but it seems to me that if it is those two writings do fit pretty well into a sequence.

RICHARD LUX: I think we should bear in mind that *naskh* is a terribly complex and frustrating subject, especially when one is looking for consistency. One of the things that Ibn Ḥazm says on the subject is: Well, whatever the instances of *naskh* are, they must be concrete; otherwise we would have to say that when the Prophet died he left the religion ambiguous and incomplete, which for Ibn Ḥazm is impossible. As for Abū 'Ubayd, it is certainly true that he has no technical lexicon for abrogation. His examples are random. He would in a later context come across as a novice inasmuch as the terminology that comes later is so obviously absent from his treatment.

ZYSOW: That true of a lot of the literature on *naskh*. Ibn Ḥazm's book on *naskh* just gives cases of *naskh*. It doesn't explain what's going on. You can't judge Ibn Ḥazm's *uṣūl al-fiqh* from his book on *naskh*.

MELCHERT: Abū 'Ubayd does, however, try to give us a theoretical overview of the subject.

WEISS: Perhaps this is a good point at which to shift our attention over to Devin Stewart's findings concerning the ninth century, especially his argument for the existence in that century, possibly on a relatively wide scale, of *uṣūl al-fiqh* as a genre of scholarly writing. The problem, of course, is, as Devin has pointed out, that we have no extant works of *uṣūl al-fiqh* from the ninth century, so that the best we can do is to glean what we can of these works from later sources. And that is what Devin has done.

HALLAQ: Devin, let me just note that what you have presented regarding Ibn Dā'ūd al-Zāhirī does not surprise me very much and does not defeat the argument you've been criticizing, whose author will remain nameless. The crucial question is: what do you mean by *uṣūl al-fiqh*? If you mean THE *uṣūl al-fiqh* and not simply AN *uṣūl al-fiqh*, then the argument you are criticizing is unaffected. The *uṣūl al-fiqh* whose origin and development we have been talking about here has a special characteristic, which is that it strikes a certain well-defined synthesis between the traditionalists and rationalists, between the traditions and reason. It is therefore not the *uṣūl al-fiqh* of the Zāhirīs. It is not the *uṣūl al-fiqh* of the Mu'tazilīs. We are talking about the *uṣūl al-fiqh* that emerged as a product of the four schools. If one school moved ahead of the others, that is something we have to deal with. The Mālikīs may have been the last. But the point is that we are talking about a specific *uṣūl al-fiqh*. And once you bear that in mind, I don't think anything you have said about the ninth century has a bearing upon the question of when that *uṣūl al-fiqh* began.

STEWART: I can say a number of things. One: I don't think you need to associate the compromise between traditionalism and rationalism with the genre itself. Maybe from later times that is evident, but I don't think it was evident say around 900. You yourself have said elsewhere that the Zāhirīs died out because they didn't use *qiyās* or that a sacred epistemology that doesn't use *qiyās* is not an acceptable Islamic epistemology

after a certain point and that that's characteristic of the *uṣūl al-fiqh* genre. I don't think it is in earlier times, and even in some later times we see vestiges of the older positions. Al-Khaṭīb al-Baghdādī has three sources, he doesn't have *qiyās* as a source, and that is a much, much later work. Until we have Ibn Dā'ūd's book in front of us we really can't say anything with complete certainty, but if the book is described in the literature as a book about *uṣūl* in a context that implies that it's really about *uṣūl al-fiqh* then I think the burden of proof lies with those who deny that it is.

HALLAQ: I know the context, Devin, and it doesn't strike me as carrying the kind of weight that puts burden on the other side of the debate. I can cite a case in which the context has the opposite effect. Abū Yūsuf is supposed to have written books about *uṣūl al-fiqh*. Now once we look into later literature we find that these *uṣūl al-fiqh* works were about the principles of the *furū'* rather than the *uṣūl al-fiqh* we are talking about. This other *uṣūl* is something I haven't seen people paying attention to. It's underresearched even though it is extremely important and is the link between *furū'* and *uṣūl al-fiqh*. When you come across *wa-allāfa kitāban 'alā aṣl Abī Ḥanīfah* or *'alā uṣūl Abī Ḥanīfah* in the context of the early period, there is no doubt that this is a reference to the *uṣūl* of the *furū'*, not the *uṣūl al-fiqh*.

STEWART: It is clear, however, that that is not what Ibn Dā'ūd al-Zāhirī's work is doing. That's something you can definitely say.

HALLAQ: I agree with you.

STEWART: So if you agree, then what about my argument that if Ibn Dā'ūd a-Zāhirī wrote a work on *uṣūl al-fiqh* it should be very likely that Ibn Surayj also wrote a work on *uṣūl al-fiqh*?

ZYSOW: Even the title of that work, *al-wuṣūl ilā ma'rifaṭ al-uṣūl*, indicates a pre-existing *uṣūl al-fiqh* literature. The work is already of the primer type: *al-Wuṣūl ilā . . .*

HALLAQ: I think I need to explain my position a little more fully. I have developed in certain of my studies an argument concerning the relationship between the formation of Sunnism as a synthesis of rationality and traditionalism and the formation of *uṣūl al-fiqh*. They are intimately connected. One could not have occurred without the other; they were two processes in one. Some scholars would prefer to expand the definition of *uṣūl al-fiqh* to include developments among Shī'īs and Zāhirīs but these have not been my concern. I am interested in the formation of Sunnism and in the formation of *uṣūl al-fiqh* as the Sunnīs developed it, although I am perfectly aware of the impact of "sectarian" elements on the shaping of Sunnism. When we talk about *uṣūl al-fiqh*, I prefer that we do so with a very specific entity in mind, namely, the synthesis I just mentioned between traditionalism and rationalism. When, for example, it is said of Ibn Shujā' al-Thaljī that he *fataḡa fiqh abū ḥanīfah*, it is clear what this means. It means that he turned Abū Ḥanīfah's *fiqh* upside down, not in terms of conclusions and positive legal rulings, but in terms of methodology for reaching the conclusions. What was he doing? During his time (he died in 266/880) the first Ḥanafī attempts were made to

bring Ḥanafism closer to that synthesis about which I have been speaking. This endeavor involved a significant increase in the use of *ḥadīth*. Thaljī wanted to join in this synthesis. The traditionalists, on the other end of the spectrum, tried but did not manage to join and therefore ended up extinct or outside the pale of Sunnism. The Zāhirīs and the Ḥashwīyah are two examples. The Ḥanafīs managed to do this and that was part of the success that they had achieved. So it is in these terms that I would like to define *uṣūl al-fiqh*—in a specifically Sunnī context of rationality and traditionalism coming together.

STEWART: You're defining *uṣūl al-fiqh* as what was the result of a battle. And I think that *uṣūl al-fiqh* preceded the battle or was the battlefield itself. It ended up looking a certain way, and then you say, *uṣūl al-fiqh* is what looks like this. Well, it looked like that later. But during the early time when you have someone like al-Zāhirī writing a book on *uṣūl al-fiqh*, that was *uṣūl al-fiqh*, even though according to the later standards it doesn't fit any more; but during the earlier time it fit.

HALLAQ: Fine. Dā'ūd's work dealt with issues of *uṣūl* but I still do not consider it an *uṣūl* work, strictly speaking. *Uṣūl al-fiqh* is not simply a body of writings. It is, first and foremost, a methodology, a theory of law. It is a highly structured theory that consists of the total sum of its elements. And however legal theoreticians may differ about these constitutive elements, the desiderata of their discourse remains one and the same. One of the cardinal features of Sunnī *uṣūl* is the synthesis I have already spoken about. Dā'ūd was writing outside this synthesis, and this is in good part why his school never managed to survive.

STEWART: We're in a box. All that we have to go on is backward projection. There's a basic problem here. We have a hole. There are a lot of books that were written but have not survived. Until you find the book you are making a case for you can't say anything with one hundred per cent certainty. But I think you can go ahead and make arguments.

REINHART: This discussion has brought into sharper focus a question that has been in the back of my mind. Let's say that Ibn Surayj didn't write a work of the sort we are talking about, a comprehensive work. How much does that matter? There's no doubt from the way he is cited in later sources that he is crucial to the development of a body of thought—which is later embodied in a genre of literature—called *uṣūl al-fiqh*. So it may be worth thinking about the extent to which our question as to what went on in the ninth century is a question about books we can point to that can be called *uṣūl al-fiqh* or about nascent ideas that come to constitute *uṣūl al-fiqh* as such.

STEWART: I agree with you entirely. The only thing I would say is that the sources are heavily skewed toward Shāfi'īs because of Shirāzī's work, because of Subkī's work; so we know a lot more about people in the Shāfi'ī tradition than we know about people in the Zāhirī tradition who may have been extremely important in the third century or early fourth century, but who, because their opinions were not so popular later on, have fallen out of the discussion to a greater extent. Of that I'm pretty