

hab, although the *uṣūl* which they subscribe to is quite different from standard Ḥanafī *uṣūl* and has the potential for a revolutionary change in whole areas of *furūʿ*—that step was not taken. And, they knew it could be taken, but they didn't take it.

HALLAQ: I would like first to take issue with what Kevin said on the question of what *uṣūl al-fiqh* means for education. I don't think the function of *uṣūl al-fiqh* should be stated in terms of education. *Furūʿ* was also taught in the *madrasah*, as well as many other things. So are we going to say that the function of *uṣūl al-fiqh* is to be taught? I don't think so. That begs the question. I don't think it contributes in any way toward answering the question of the relationship between *uṣūl* and *furūʿ* or the question of the function of *uṣūl* in relation to *furūʿ*. As for Aron's comparison with the relationship between the philosophy of science and science, I find it appealing, although I don't agree with it. To be a scientist, you don't need to know about the philosophy of science—you could be a good scientist and be completely ignorant of the philosophy of science. Now, that is not the case with *uṣūl al-fiqh* and *furūʿ*. And that's where I will also disagree with you, Mohammad, because you mentioned just one instance where, clearly, theory was in one place and practice was in another, but you have not taken into consideration points of real connection between *uṣūl* and *furūʿ*. We can find such a point of connection in what I have called "operative terminology", something both Sherman and Mohammad have discussed to some extent. I have in mind especially the terms *ṣaḥīḥ* and *taṣḥīḥ*, *mashhūr* and *tashhīr*. By "operative terminology" I mean the terminology that determines the supremacy of the dominant doctrine of a school. It was one of the most important factors in the constancy, determinacy and operation of the law, and without it I think the legal system in Islam would have been in chaos. But the application of operative terminology to any doctrine required training in *uṣūl al-fiqh*; otherwise, adequate justification would be lacking and the doctrine would not survive. True, many scholars of the law were not authors or specialists in *uṣūl al-fiqh*, but in order to be a *faqīh* you had to deal head on with *uṣūl al-fiqh* issues. One you arose to some level of competency, you would engage—and every one of the major jurists did engage—in *taṣwīb* or *tashhīr* or whatever. The set of terms employed in such operations entailed certain hermeneutical processes and activities that involved *uṣūl al-fiqh*. Nawawī is as good example as any of what I am talking about. Nawawī would address an opinion and say, "Well, that opinion is considered *ṣaḥīḥ* in the *madhhab*"—which means that it is the dominant opinion in the *madhhab*—"but I disagree with it and think there is an *aṣaḥḥ*". Now, once he makes this claim, he cannot just say, "This is an *aṣaḥḥ*", and close the book and go home. He has to justify why he considers it *aṣaḥḥ*. Now what kind of reasoning are we to suppose that he uses in order to do this. *Uṣūl al-fiqh*, of course; *uṣūl al-fiqh* in its very practical manifestations. All the intricacies of *nāsikh* and *mansūkh*, *bayān* and *qiyās*, come in. All you have to do is study five or six randomly

selected cases of the application of operative terminology, and I'll bet you will find much *uṣūl al-fiqh* in these cases. Remember, we are talking about the heart and core of the functioning, operating legal system.

REINHART: I'll not take the time here to respond to the point about education. Instead, I want to point out that it remains a problem that if *furū'* works represent the heart and soul of the legal system, why don't we find more *furū'* works that go step by step, telling us, "Here's this rule and here's the *dalīl* and here's the argument, and here's this rule and here's the *dalīl* for it". There seems to be an authenticating function inherent in the very fact of a rule's being already in a *furū'* work. And that, it seems to me, is something we have to think about when we think about the academic discipline of *uṣūl al-fiqh* and the relationship it has towards its putative end, a subject that is not unproblematic.

HALLAQ: Why is there not more attention to *uṣūl*-related matters in *furū'* works? Because *furū'* works are not the place to discuss these matters. However, my argument has to do specifically with the operative terms I mentioned. Insofar as the *fiqh* discussion is concerned with *taṣḥūh*, *tash-hīr* and so on, *uṣūl al-fiqh* enters in, especially in the larger *fiqh* works. You'll find it there. All you have to do is take a close look. But there is another genre in which *uṣūl al-fiqh* appears frequently, and that is the literature called *rasā'il*. The *risālah* has a completely different function than the *furū'* works. A jurist sitting and writing a work on law as a reference for the judges and jurists and for students doesn't have to justify everything he says because, as is said in the beginning of most of these works, "we cannot go into these matters". Nawawī, by the way, when he started writing his commentary on the *Muhadhdhab* of Shīrāzī, said, "I'm going to produce the most massive work ever to have been produced" and so on. So, he proceeded to write the commentary. He got to the third volume and do you know what he said? He said, "Well, I think this is taking too long, and I'm not going to do it anymore. I'm going to abridge it and produce something in between what I originally intended to do and the average works in the field". He couldn't do it, and we are talking about al-Nawawī. Now, the *risā'il* of what is called the *muṣannif*, which is a category that has been completely neglected in our field, is responsible for this very thing, namely, providing *uṣūl al-fiqh* arguments. What you find in the *rasā'il*—not always but commonly—is a lot of reasoning that connects *uṣūl al-fiqh* with positive law—for example, Ibn Nujaym's *rasā'il*, Ibn 'Ābidīn's *rasā'il* and so on and so forth.

REINHART: I want to make just one remark, and that is that it is a constant problem in this field and in the publications in this field that people commit the fundamental historiographical error of Whig history, which is to say that things are the way they are because they couldn't have been any other way. And, it seems to me that as scholars our job is to say, "How is it that they came to be this way when, in fact, we know they could have been any number of other ways?" So, the fact remains that *uṣūlīs* claim a certain relationship to *furū'*, and yet the *furū'* works do not regularly engage that material. Now, you say, "Well it's too much

and so and so forth,' and that's simply saying they didn't and they shouldn't have. And that, it seems to me, is a historiographical error.

STEWART: I have to agree with what Wael has said about how *uṣūl al-fiqh* functions in *furū'* works, how it is used in connection with arguments for *aṣāhh*. However, I can't accept what you said, Wael, in response to Aron's point about the philosophy of science because we know that a number of *uṣūlīs* complain about *faqīhs* who don't know *uṣūl* and are obviously acting as *faqīhs* and that would make it perfectly analogous to the philosophy of science. The chemist in his lab who knows nothing about the history of science or the philosophy of science is very much like the *faqīh* working on a legal case who knows nothing about *uṣūl*. I would also like to say that I agree with Kevin's point about how *uṣūl al-fiqh* functions in legal education. I think this is an important function of the *uṣūl* works. And you can say that it's an additional function, but it's nonetheless a function. When *uṣūl* books talk about, for instance, the requirements to be a *mujtahid*, they're talking about a real curriculum issue. When *uṣūl* books talk about *ijmā'*, they're often talking about whose opinions are acceptable and whose are not, with an eye on the people in their town who are teaching various subjects. Also, when the *uṣūl* books talk about *istiftā'*, they're in essence talking about how the commoner is supposed to deal with the legal establishment, how he establishes a kind of hierarchy of legal consultants in the town. So, I think all these issues have great importance in *uṣūl al-fiqh* works, and relate to one of their major functions, something you might be neglecting unduly if you say it's just about how to come up with *furū'*.

FADEL: I think something Ghazālī says, when he's talking about the issue of *taṣwīb*, might be of interest here. After he concludes that every *mujtahid* is correct, and it's all sort of nonsense in a way because all the *fuqahā'* don't even understand that what they call *dalīls* aren't really *dalīls* but are sort of *pseudodalīls* that don't have any essential ability to indicate anything. So, then the last argument of the interlocutor is, "Well then, why do we have debates? I mean, debates would be useless if every position is right". Al-Ghazali says, "No, no, no. Only naive people think the purpose of debate is to convince somebody of your opinion. The purpose of a debate, and hence, I think, *uṣūl al-fiqh*, is to sharpen your mind—to teach you how to think analytically". And then he goes on to say, "And the purpose of that, ultimately, is to assure that there are people around who understand rational argumentation and recognize that *fiqh* is rational argumentation". But, at the same time, if you don't go through the process of *uṣūl al-fiqh*, you don't develop the analytical skills that you really need for more serious endeavors. And that's something, again, that's stressed even in law schools in this country. Law school doesn't teach you rules—it teaches you arguments and tools that you can use, gives you a sort of toolbox. *Uṣūl al-fiqh* can be thought of that way. It's a toolbox. It tells you these are the kind of arguments you can make: if you make this kind of argument, then these are the kind of objections that might come out. I don't want to reduce it to something

quite that utilitarian, but it is, I think, a sort of very efficacious way of teaching people how to think critically, and that becomes very important when you want to argue against the rules of your *madhhab*. If you haven't been trained to think critically, you're probably not going to do as good of a job, and so *uṣūl al-fiqh* and the training it gives you might give you a very good rhetorical ability to press your claims.

MAKDISI: I'm not surprised at all that *furū'* works do not make constant reference to *uṣūl* principles. In American law, we have several movements today—law and economics, the feminist movement, postmodernism and so forth—that seek to explain what the origin of our legal system is, how law develops and why it works the way it does, and when certain people who have been thoroughly ensconced in one of those movements, such as Frank Easterbrook or Posner, become judges, we see references to where they think the law comes from in their opinions from time to time. But most judges do not get into that. Nevertheless, it doesn't mean that judges aren't thinking about it when they write their opinions. What I am surprised at—if it is true that *furū'* is not constituted according to the methodological principles of *uṣūl al-fiqh*—is that we don't find people in *uṣūl al-fiqh* works saying, "The principles of law that are in the *furū'* works don't have a connection with the sources that we think should exist because of our theory in *uṣūl*". I mean, where do we see anyone in the *uṣūl* literature going into a *fiqh* work such as Kāsānī's *Kitāb al-buyū'* and taking the scores of legal principles that are found there and say, "This doesn't belong here because we can't attach it to a *dalīl*."?

ZYSOW: Well, we have that in different traditions. We heard about it in Shawkānī; the Akhbārī movement is doing that to the whole scope of *uṣūl*, a tremendous endeavor—.

MAKDISI: Yes, but someone within the Ḥanafī school—have they been able to go and take one of the major authors of the *furū'* works and—?

ZYSOW: Well, someone who's capable of that is going to write his own *fiqh* book. He's going to be an Ibn al-Humām, a master who does more than just write a commentary, someone who . . .

MAKDISI: Oh, I'm sure that he's capable of it, but has he gone and said, "This doesn't work for others."?

ZYSOW: I think it's been done. It's being done all the time in commentaries and so forth. It's not in one easy-to-find place. The comment I was going to make is that I think we're going to have to admit—to me it's inescapable—that there is this tremendous overkill in *uṣūl al-fiqh* if it's going to be seen simply as connected with *furū'*. Clearly, it's around—it's studied, but I don't think there's any way you could take statements Nawawī, in those texts, even in the full *sharḥ* that we have, and compose out of them an *uṣūl al-fiqh* treatise of Nawawī. I challenge you to write a full treatise of *uṣūl al-fiqh* from those scattered quotations—you can't do it because there are just too many questions of *uṣūl al-fiqh* that may not be addressed.

HALLAQ: You take what you need.

ZYSOW: A minimum is all that's needed for a lot of what you're talking about . . .

HALLAQ: May I just add a short remark? I think we're forgetting an important genre, one that has not been mentioned so far in a two-day conference. I'm thinking of works by such authors as Zinjānī and Tilimsānī on *takhrīj al-furū' 'alā 'l-uṣūl*. Their function, as you will see if you look at them, is precisely to show the connection between *uṣūl al-fiqh* principles and the *furū'*.

ZYSOW: Have you read those carefully? Did you notice how forced the arguments are? Besides, these works represent a very small field. There are only a couple of texts.

HALLAQ: But at least we have in them a real connection between *uṣūl* and *furū'*.

STEWART: If I may, I would like to bring into this discussion a point that relates somewhat to the question of *uṣūl al-fiqh's* function in relation to legal education and the legal establishment, and that is that *uṣūl al-fiqh* had a major role to play in the process of defining the community of interpretation, of determining whose opinion counts and whose does not. This should be counted among its functions. When Jaṣṣāṣ says in his work on *uṣūl al-fiqh* that you don't take into account the opinion of people who don't know how to use *qiyās*, he throwing out the *Zāhirīs* and saying they don't belong in our club. And when he says similar things about the *mutakallimūn*, he's again setting the boundaries of the community of interpretation.

WEISS: Judging from the *uṣūl al-fiqh* works I'm familiar with, especially Āmidī's *Ihkām*, I am wondering how the writers of these works would themselves respond to this notion that *uṣūl al-fiqh* defines the interpreting community. I don't think they were very anxious to exclude anyone. The *Ihkām*, for example, is a dialectical masterpiece. As Āmidī moves from *mas'alah* to *mas'alah*, he wants to include the entire dialectical family that is interested in a given issue, and I don't see him being particularly exclusivist—he brings all kinds of people together in dialectic.

STEWART: The fact that he doesn't seem to be exclusive doesn't really go against what I'm saying. By writing a work on *uṣūl al-fiqh* he's arguing that people like him need to be included in the club, and I think that that's what a lot of works of the *mutakallimūn* were doing. One of the points I made earlier is that when al-Qāḍī al-Nu'mān wrote his *Ikhtilāf uṣūl al-madhāhib*, which definitely belongs to the *uṣūl al-fiqh* genre, he was demonstrating that he belonged to the club of acceptable legal scholars.

GLEAVE: What I understand him to be saying in effect is that he's not writing the book to be included in the club. He's writing the book to say the club's a waste of time, and don't even think about joining it. I think that the fact that he described it as an anti-*uṣūl* work doesn't just mean "I'm against this genre of writing"; it means "I'm against being included among the people who write this genre of writing".

STEWART: Yes and no. Yes and no. The work ends up looking so much like what the Sunnīs are doing, he is claiming in a way to have a certain authority *among them*, among the Sunnīs who don't accept the Imām, that he can in their language convince them that they are wrong. It's a claim to being able to speak their language.

ZYSOW: It's interesting that it is not followed by any other books of *uṣūl al-fiqh* in that Ismā'īlī tradition. It ends the tradition.

STEWART: As far as we know. It probably has a lot to do with the demise of the Fatimid state.

HALLAQ: I'd like to raise a slightly different matter, if I may. We have been spending quite a bit of time on the function of *uṣūl al-fiqh*. What we have not given attention to is the matter of typology. It seems to me that one of the first things we should be doing here is to break down the works on *uṣūl al-fiqh* into types, into a comprehensive typology. We cannot talk, for example, about Sarakhsī's *Uṣūl* in the same fashion as Āmidī's *Ihkām* or any other work. They do fit, however roughly, into certain types. We may not be able to talk about the function of one type in the way we talk about the function of another type. Each type will have its own agenda, and the agenda defines the function, or is defined by the function. That's why I would refuse to talk about Sarakhsī's *Uṣūl* and Āmidī's *Ihkām* in the same way. It's not that they are as different as, say, German philosophy and British empiricism are from each other. They do belong to a certain common field. Yet they are nonetheless very different. So if we were to shift our focus to typology, we may be able to end up with a collection of functions culled from our examination of the various types, which then might enable us to generalize with reference to the whole field.

GLEAVE: I would like to know more about these types. Could we have a couple of examples?

HALLAQ: You have the Ash'arī-Shāfi'ī type. Then you have works such as Zarkashī's *al-Baḥr al-muhīt* that are clearly of quite a different type, works that Aron and Kevin in particular have worked on. You also have what might be called a crossbreed type, which developed a bit later, reflected for example in Ibn Amīr al-Hajj in his *al-Taqrīr*. It, too, is different, from the other types.

GLEAVE: In terms of the positions it takes up?

HALLAQ: Precisely.

GLEAVE: My reason for inquiring is that if we're going to work out a typology we must ask ourselves: is this typology going to be worked out in terms of the formats of the different books or the conclusions which the people reach? Or is it going to be in terms of how the relationship of *uṣūl* to *furū'* is worked out? This is certainly one way of classifying a text. On the other hand, if we are treating *uṣūl al-fiqh* as a genre, or rather as a collection of genres, and at the same time make Ash'arī-Shāfi'ī one of our categories, we are classifying a work in terms of the conclusions it reached, not necessarily in terms of generic characteristics.

HALLAQ: There is of course Ibn Khaldūn's classification into jurists and theologians, which is fairly acceptable. These two types help us understand, in part, what the function of *uṣūl al-fiqh* since each has definitely a different function.

GLEAVE: Ibn Khaldūn's discussion is certainly a place to start. One of the things which Bernie's paper hinted at was that it's not easy to sort into types along *madhhab* lines.

HALLAQ: Classification according to *madhhab* definitely doesn't work—that is for sure. But, it can be done, for example, with reference to the profile of the author—who he was, his position or function. We know that Sarakhsī was more heavily involved in *fiqh* than, for example, Āmidī. Āmidī was not a *faqih*. He was a *mutakallim*. He knew about law, he studied law, but he didn't practice law. He was not a jurist in the way Rāfi'ī and Bulqīnī were. He didn't function as a *muftī* or a *qādī*, which are two important roles defining the truly legal profession.

ZYSOW: On the other hand, Bāqillānī is very theological and he's a *qādī*.

HALLAQ: And I could mention five others just like him, but the issue is one of orientation, of emphasis. My point is that had Āmidī been involved in the legal profession as Taqī al-Dīn al-Subkī was, this would have shown in his *uṣūl* works.

MUHAMMAD EISSA: I've been greatly impressed by this discussion. Everyone here has had good points to contribute. This group of scholars is definitely a club of intellectual practitioners of a very specialist field known as *uṣūl*. But I would like to make an observation that relates to the study of *uṣūl* and *furū'* at al-Azhar. There students always study *furū'* first, not *uṣūl*. Only students who have shown themselves to be sharp in the study of *furū'* will go on to study *uṣūl*. By that time, they can really make connections between *uṣūl* and *furū'*. In the West the curriculum of Islamic studies at the university level is quite different: it produces scholars in *uṣūl* who don't go through the study of *furū'*. I'm truly impressed by the knowledge and erudition that people who come out of this system possess. However, I must ask: do they really have enough knowledge of *furū'* to make connections. How can we produce members of this club who not only have a knowledge of *uṣūl* but who can also be competent in the knowledge of *furū'*?

HAYKEL: In a way it's a follow-up on your comment. *Uṣūl* can be described as a discursive tradition. It makes certain rhetorical claims for itself and justificatory claims that go back to what Sherman was talking about. It justifies itself, in part, by making claims about links to the *furū'*. We don't have to necessarily accept that at face value. In fact, to accept that at face value is not think historically or critically, and I think the broadest possible definition would be to say it's a discursive tradition—it's a way of talking about certain issues which is immediately recognizable to its members and to outsiders. Right? But, then the issue having to do with *furū'* in fact has to do with the claims *uṣūl al-fiqh* makes about itself, which we can take or leave, depending upon the scholar—how much into *furū'* he was or wasn't. It depends on individual scholars.

MAKDISI: I think Muhammad Eissa has given us a real challenge but one we may not be capable of doing much about just yet. I think we have been in the process of understanding what *uṣūl al-fiqh* is all about, and we're still delving into works, and we're still trying to get them edited and published and so forth. What you've suggested is that students of *uṣūl* in the West should acquire an insider's view of *uṣūl* by going through the training that traditionally makes one an *uṣūlī*. If they do that, they'll

understand *uṣūl al-fiqh* so much better than they would looking at it from the outside. But, can we do that? We don't have the tools here, and we don't have the resources, and that's why we don't do it, but you're absolutely right. That's the only way. In law school, you would be laughed out of the place if you tried to do real jurisprudence without understanding how to be a lawyer to begin with.

REINHART: But we are not *fuqahā'*. I'm not a *faqīh*, and I don't want to be a *faqīh*.

HALLAQ: Why not?

REINHART: Because I don't teach *fiqh*; That's not what I do. I'm not trying to make people better Muslims. I'm interested in looking at *uṣūl* from the outside, as an anthropologist, for example, might look at it. This is an approach that follows from the obligation to be critical.

JACKSON: That's not Muhammad's point. His point is that this involvement in *fiqh* is necessary in order to get an understanding of *uṣūl*.

REINHART: But, I don't think that's true. The point I hear in what Muhammad said is that extensive study of *furū'* before studying *uṣūl*, as at al-Azhar, makes you an *'ālim*. It puts you into that world-view. What I'm saying that it's perfectly reasonable to look at these texts, look at the claims that are being made, from the perspectives we've acquired as persons trained in the various Western disciplines, such as sociology and anthropology. Muhammad wants to know how we can produce more people with the kind of competence in *uṣūl* that Azhar students get. That would require that law schools in America would have faculty who do Islamic law and can provide the training requisite as a preparation for studying *uṣūl*. Let's remember that what produced *uṣūlīs* is, first of all, a kind of leisure class, and secondly, then, the creation of the *madrasah* as the institutional setting for the training and study we are talking about. And so, we can't lose sight of those facts either in trying to do what has been suggested in the way of training people for the study of *uṣūl*.

HALLAQ: But, if I may, I took Muhammad's remark to be saying something slightly different. I think that what he said could be taken to mean—and I'm thinking of John's remark, too, which I think is one of the best statements made today—that if we had a genuine knowledge of *furū'* we would see the connection with *uṣūl* much better. A fundamental problem of our discussion is that while we do know something about *uṣūl* we know much less about *furū'*. That is the question.

WEISS: Wael, in your paper you seemed to take us beyond the realm of *uṣūl* altogether and into a rather different realm of construction of eponymic authority, which after all is a kind of human authority, albeit an authority that is restricted to a very few persons and is based theoretically on the eponym's *ijtihād*. I have the impression that *takhrīj* sets up a structure for determining the law that presupposes *uṣūl al-fiqh* but is essentially distinct from it. *Uṣūl al-fiqh* may account for how the law originally came into being but the real source of the law throughout subsequent generations is the Imām together perhaps with his inner circle of associates.

HAYKEL: I'd like to add that I wonder, from listening to Wael's paper and, earlier, to Joe's paper and from my own work on Shawkānī, is there a

paradigm in the whole system that accounts for the need to create eponyms, to go back to earlier authorities, whether a Shāfi‘ī or a Shawkānī? Why is it that constellations of students seem to keep coalescing around the same individual, and why is that individual always such a special person and stands out above the others?

WEISS: Are we again revisiting the “Great Shaykh” concept?

HAYKEL: I don’t necessarily want to use that term. My question has to do with the notion of paradigm. Is the need for having this authoritative figure to be attributed to a paradigm? And why? That’s what I’m asking.

WEISS: There certainly seems to be some sort of paradigm at work in the process of construction of authority Wael was talking about. The very concept of *takhrīj* has something of the character of a paradigm. What struck me was the way people who were in their time one among others within a circle of peers were elevated to the position of one-time-only larger than life figures. This is certainly something like the phenomenon Jon was talking about, although I believe he was attributing the stature of these figures to a charisma that they actually possessed while Wael is saying that the stature was largely a retrojection, a construct of later generations.

REINHART: Wael, let me be sure about something relating to your explanation of *takhrīj*. In let’s say the fourth, fifth and sixth centuries, Shāfi‘īs, for example, are partaking of Ḥanafī legal doctrine and then fathering it on to Shāfi‘ī or saying it is the work of their *madhhab*. Is that correct?

HALLAQ: No, that was true of the earlier centuries. In the later centuries, that part of the activity disappeared. That’s what I tried to say—maybe not clearly—because a fuller discussion of the matter I have conducted elsewhere. After the formation of the schools, that activity ceased. Ibn Surayj, who died in 306, was not yet beyond the formation of the schools. He contributed to the formation of the Shāfi‘ī school. So Ibn Surayj and Ibn al-Qāṣṣ who came immediately after him—remember that Ibn al-Qāṣṣ died in 335, fairly soon after Ibn Surayj—were not within that realm. Once we reach the end of the fourth century, in terms of juristic activity the *madhhabs* were much better defined and therefore these cross-references ceased. I don’t see any trace of it. But the early ones, including Muzanī, engaged in it extensively and it continued until later on. And Muzanī, by the way, is even more heavily involved in Shaybānī’s and Abū Yūsuf’s doctrines than any other, even more than Ibn Surayj and Ibn Qāṣṣ. The more developed the *madhhab*, the less this activity occurs.

REINHART: What I was going to say is that it seems to me that what you have been able to trace is the actual nature of *madhhab* boundary-making, that you can talk about the existence of the *madhhab* as an institutional entity and precisely the point at which this kind of cross-pollination, or at least the overt cross-pollination, ceases. Which is an interesting point if we’re trying to date this—.

HALLAQ: I must say that there are several indicators of the final formation of the *madhhabs*—I say final because their formation was a long process. There are several indicators to measure and gauge the formation of the *madhhabs* besides the teaching method, for example, or any other thing in particular. One of these indicators is the doctrinal attributions to the

Imam. The more extensive the attribution that took place, the more shape the *madhhab* had. That's one indicator.

BROCKOPP: You mentioned Muzanī. There are many examples of persons in that period who trained under several different *madhhabs*. So—

HALLAQ: Under different masters, if I may correct you, because the *madhhab* as a doctrinal, authoritative structure had not existed yet.

BROCKOPP: I agree. I just don't know what to call them. What is striking in my mind is not that all this borrowing is going on but that there are in fact separate groups, that even though at some level we have borrowing going on we also have a great deal of commonality within particular groups—the old *ahl al-madinah* or *ahl al-hijāz* and the *ahl al-irāq*. I was just talking with Miklos Muranyi last week, and he has documented cases somewhere between Saḥnūn and Qayrawānī where there were a number of Ḥanafī legal opinions that found their way into Mālikī law and were projected backward to Mālik. My last point is: I suppose you know Schacht's article on roughly the same thing.

HALLAQ: Yes, I read it some time ago. I'm sorry to say that I did not read it for the purpose of this study. Because Schacht makes certain assumptions, I am not especially interested in what he says. He does not see that formation of the *madhhabs* as Chris and I see it. So as far as I can recall it, Schacht's article would have provided me only with certain details and information I can myself get directly from the sources, and frankly I would rather go to the heart of the matter as I see it. Schacht did not understand the significance of *takhrīj* in the formation of the schools. He argued that the personal schools evolved immediately after Shāfi'ī. I assign this development to the first half of the fourth century A.H. As for legal opinions of one jurist finding their way into the doctrines of others, I cannot agree more. This is precisely the point I am making.

FADEL: It strikes me that an important purpose of *takhrīj*, at least for the upper echelons of a *madhhab*, is to make possible some sort of discretion in applying rules to particular situations they are dealing with. So I think that one of the functions of *takhrīj* is to draw out the types of implications of the eponym's doctrines that you can derive from his various works. In the Mālikī school, for example, you can say, we can derive this opinion based on what Mālik says here, but it seems to contradict what he explicitly says over here. If you were an Ibn Rushd (the Elder) you were entitled to evaluate all these different *aqwāl*—whether they were *ṣarīḥah* or *mukharrajah*—on your own. So *takhrīj* was a very important tool in giving flexibility to the application of the eponym's doctrine. One of the main ways this was done was to search through all the material attributed to the eponym or his students in an attempt to manufacture, in a sense, this type of contradiction, so that one could say *hādḥā yukharraj 'alā khilāf kadhā*, and often when you go back and retrace it you discover that that *khilāf* is really only implicit. That is, you find that he has an explicit statement covering this case but then you can derive from an analogous case an opposite ruling, which you want to do because that

gives you greater flexibility, and to a certain extent the followers want to do that just to empower themselves.

HALLAQ: You can look at the function of *uṣūl al-fiqh* from five or six angles.

What you said is perfectly true, and I'm interested in that particular aspect in another part of a larger study I have just completed. But here I'm interested in attributions to an Imām, not in self-empowerment. I'm interested in the augmenting and constructing of the authority of the Imām through two processes, one of them being *takhrīj*.

ZYSOW: I have a question about the part of the argument you didn't present, which relates to the jurists who preceded the Imāms. If you look at Ibn 'Ābidīn, a Hanafī, you will find that he begins his major treatise with an *isnād* that runs backward through Abū Ḥanīfah all the way to the Angel Gabriel through Abū Ḥanīfah.

HALLAQ: I see what you're getting at. My answer requires us to take into consideration a subtle distinction. What you say is true. There is indeed a pedigree, also mentioned in the *Hāshiyah* of Ibn 'Ābidīn, about *fiqh* being planted by Ibn Mas'ūd, irrigated by 'Alqamah, harvested by Nakhā'ī, threshed by Ḥammād, and so on and so forth until we reach Abū Ḥanīfah and finally Shaybānī. This is the pedigree of *fiqh*, not the authority of *fiqh*. There is a difference between pedigree and authority. After all, the *fiqh* has to go back to the Prophet or ultimately to God. If you put the emphasis entirely on pedigree you wouldn't have an Imām, but we know that in actual history the Imām is the central figure of the school, the focal point of its doctrine. Why not attribute everything to the Prophet? You don't do that because the Prophet was not viewed as a jurist. Everyone acknowledged this much. Even Ibn Mas'ūd was not deemed a jurist in the later technical sense. Ḥammād and Nakhā'ī, to whom Abū Ḥanīfah is indebted to a considerable extent, are also not considered lawyers. They presumably did not confront the revealed texts, hermeneutically speaking, in the way Abū Ḥanīfah did. I think Ḥammād and Nakhā'ī were excellent lawyers, but they're not considered lawyers in terms of authority. They are merely transmitters in a link that begins with God, the Prophet, the Qur'ān and so on.

JACKSON: Wael, are you saying that the function of these attributions is to create or to augment the authority of the Imām? Which is it?

HALLAQ: The function is both to create and augment the authority of the Imam, because you just can't create it and leave it there at a certain elementary and primitive level. At an elementary level, authority was there anyway, at least in the case of most of the so-called founding Imāms. For example—and I was just talking outside with a group of people about this—I think the difference between the *Muwatta'* and the *Mudawwanah* in terms of Mālik's image and authority is the difference between a jurist—one of many distinguished jurists—and an Imām/Founder rising to the full stature of an Imam, something like a quasi-Imam.

JACKSON: So you're saying that before these attributions the Imāms are quasi-Imāms and that now they're being elevated to—

HALLAQ: No, I'm saying that they—the leaders of the juristic communities—were jurists like all major jurists, and these were many. We have them in the *ṭabaqāt* works. For example, Abū Thawr—why don't we mention him as one of the Imāms. He was no less of a qualified jurist than the four eponyms. In fact, in terms of technical juristic knowledge I think Aḥmad ibn Ḥanbal and Mālik were not of the same stature as Abū Ḥanīfah and Shāfi'ī. There are levels of knowledge here—epistemological authority—that are being transformed into something big: all of them come to be on a par with each other, equal to each other, when in reality they were not. In the first part of my study, I take them one by one and try to show that they were not only indebted to their predecessors, but also that opinions from earlier and later generations were attributed to them. For example, Mālik says in the *Muwatta' aḥsan mā samī't* or *balaghanā 'an* or whatever. Later on Saḥnūn says *qāla Mālik* and the same opinion follows, but now it becomes exclusively Mālik's. The most flagrant case, in my opinion, is the case of Ibn Ḥanbal. Even the *Musnad* is not by Ibn Ḥanbal—or only a fraction of it is. And if most of this *ḥadīth* collection is not by Ibn Ḥanbal, imagine the *fiqh*. There is no question that Ibn Ḥanbal, in terms of legal skills, lagged very far behind most other jurists, even the run-of-the-mill jurists. The elevation of Ibn Ḥanbal to the level of Shāfi'ī and Abū Ḥanīfah is the most eloquent testimony to this process of authority construction.

WEISS: Well, if we may turn now to the remarkable figure of Shawkānī: it seems that Shawkānī aspired to reverse the process of construction of eponymic authority, judging from Bernard Haykel's study, and do away with *madhhabs* altogether—as Bernard has said, sweeping the decks clean. This is why he was so inimical toward the idea of *taqlīd*.

HALLAQ: I have a comment on that very subject. The condemnation of *taqlīd* has as a long history in Islam, and we can't always sure which kind of *taqlīd* is being condemned, especially in this case. I'm not sure what sort of *taqlīd* Shawkānī's condemning. If he's condemning *taqlīd* categorically, then how can he ask anybody to follow him?

HAYKEL: Well, he advocates the immediate and direct interface with a revealed text by a mujtahid, no matter what. However, there is some casuistry in his thinking. Basically what he says is that if an 'ammī asks for an opinion and is given the *dalīl*, then that's not *taqlīd*. A Zaydi would say, what does an 'ammī know anyway—give him any *dalīl*. For Shawkānī, as long as he has the *dalīl*, that's fine; there is no *taqlīd*. Presumably this is because he can go to another mujtahid and ask, 'Is this *dalīl* valid?' There is behind this a system of checks and balances amongst mujtahids.

HALLAQ: But my question is, what did he want to do? Is this another Suyūfī we're talking about here who simply wanted to claim *ijtihād mutlaq* and prove it, or are we dealing with some sort of an ego trip? Or is there something more fundamental that drove him to do what you have related to us?

HAYKEL: I have been very hesitant to psychoanalyze him. I think that he simply didn't think that it was very difficult to become *mujtahid mutlaq*.

He felt that every *qāḍī* and *muftī* had to be *mujtahid* and that it was possible to do this. Don't refer to anybody, just go directly to the texts, he was saying.

HALLAQ: What does he do with the legal system?

HAYKEL: That's a very good question because I looked at his works thinking, is this a radically new departure from what we know? I don't think so. It's not as though he comes up with new principles in *uṣūl*; and as far as his *furū'* is concerned, this, as far as I can tell from my survey, seems to be close to Shāfi'ī *furū'* in many ways—not in everything, but in most things. And this is what certain top scholars in Ṣan'ā' today are saying about him. His ideas are in a sense a radical departure on paper; in actual *furū'* and *uṣūl* terms, I don't think he represents that major a departure—it's just an eclectic re-mixing of what is already there.

HALLAQ: What is it all about?

HAYKEL: Well, look, he can't be a Shāfi'ī. Zaydīs cannot become Shāfi'īs because the Shāfi'īs are from the Zaydī perspective the people of the lowlands, peasants. But you're not happy with the Zaydīs, so you rise above the whole scene. It's wonderful for Yemeni nationalism because when you have two *madhhabs*, Zaydī and Shāfi'ī, the Republican state is able to say, and has now essentially said, 'Well, we're above this. We're just Muslims, and we subscribe to this *mujtahid mutlaq* attitude—this *ijtihād* methodology of Shawkānī.' But, it's largely a rhetorical argument. I don't know how much substance there is in it.

FADEL: I would like to go back to the matter of *ḥadīth*. It surprised me that he said that *ḥadīth*, at least for *muftīs* and *qāḍīs*, can give 'ilm because he explicitly rejects that in his introduction to *Nayl al-awṭār*.

HAYKEL: Well, *Nayl al-awṭār* was written in his early life when he was still quite young, and in fact, it was written for his teachers as a kind of test to prove that he was now a great scholar. It can therefore be fairly precisely dated. But we can also know it to be one of his early works from the fact that in it he still cites the opinions of the Hadāwī-Zaydī scholars. In that stage of his career he always had to make mention of the Zaydīs. In his later works, that stops. He's no longer interested in Zaydīs. I think the *Irshād* was written in this later period.

STEWART: I'm curious about his Sunnī education. Where did he get it? Just from reading Sunnī books, or did he study with the Shāfi'īs in Yemen or go to Mecca and study with the Shāfi'īs ther.

HAYKEL: The teachers Shawkānī studied with were mainly Zaydī from the highlands. But many Zaydīs studied with Shāfi'īs, especially in Mecca. Shawkānī himself never went to Mecca, because his father never permitted him. A good thing about the Zaydīs is that, except for the Imāms themselves, they are really open to everyone.

MAKDISI: How do Shawkānī's *fiqh* works read? They can hardly take every legal principle and trace it back to a revelatory source, so how does he justify his *fiqh*?

HAYKEL: In his writings on the *furū'* he will cite as many *ḥadīths* as possible, or Qur'ān or *ḥadīth*, to prove every single point.

MAKDISI: So, every single rule of law has some connection.

HAYKEL: That's why in his *Nayl al-awṭār* or his *Subul al-salām* by far the greatest amount of space is given to the *'ibādāt* and very little to the *mu'āmalāt*. Issues in *'ibādāt* tend to be better covered by *ḥadīth* than issues in *mu'āmalāt*.

MAKDISI: So, what does he do in the tough cases, especially *mu'āmalāt* cases, if he can't tie them to the revelatory sources?

HAYKEL: In cases like *ribā* he operates according to the theory that if you don't have a *dalīl* then it's allowed, *mubāḥ*.

FADEL: I thought he had as one of his principles the notion of *al-ḥazr muqaddam 'alā 'l-mubāḥ* to deal with cases where you have some sort of conflicting *dalīls*—one *dalīl* telling you it's *maḥzūr* and the other telling you it's *mubāḥ*.

HAYKEL: I'm talking about cases where there's no *dalīl* at all.

ZYSOW: Another example would be *al-ṭjāb wa'l-qabūl*. He comes to this topic and says, "There's no *ḥadīth* on this. It's been made up by jurists. It's nonsense".

MAKDISI: So, how do they form a contract?

ZYSOW: In the old way—it's an agreement. We go for the facts of the case. It's case by case.

MAKDISI: Pre-Islamic?

ZYSOW: It's factual. How do we decide in the U.S.? It's not formalized in American life.

HAYKEL: Well, except it's always been factual.

ZYSOW: I know, but in certain *madhhabs* you have to make the proper declaration or *lafz* in classical Arabic.

HAYKEL: You had to have a formula. Shawkānī says that the formulae are nonsense. There's no basis for them.

HEINRICH: There has been a lot of talk in recent years about the pre-Modern Islamic renaissance, and Shawkānī figures prominently in that. How do you feel about this?

HAYKEL: I don't accept it. I don't buy it. Let me put it this way. I think that people who argue that there was a renaissance in Islam in the eighteenth century like that which took place in Europe are arguing in a polemical fashion vis-a-vis the West. Shawkānī would probably see Islam as too great to even bother with the West. I see his concerns as completely internal to Islam. He saw that the Muslim community had a problem and he was offering a solution. What he did in the eighteenth century was very similar to what others had done in previous centuries. I don't see anything in the eighteenth century—at least in the Yemen—that makes it a special moment in the history of Islam.

WEISS: As I understand it, Shawkānī wanted judges and muftis to be *mujtahids* but he didn't want to proliferate *mujtahids* within the society.

HAYKEL: Oh, he did. He wanted as many *mujtahids* as possible.

ZYSOW: Every man should be a *mujtahid*.

HAYKEL: That's not theoretically possible.

ZYSOW: But it would be the ideal.

WEISS: He surely didn't envision a society in which everybody was *mujtahid*.

HAYKEL: That would be impossible because of people who have a certain character and traits, like the people of the lowly occupations.

WEISS: Illiteracy was no doubt an obstacle.

HAYKEL: But it was more than that. If you were a barber, you could not be a *mujtahid*. There was something about being a barber—

FADEL: About this period of Shawkānī's slowly becoming Sunnī, meaning that you've got to accept Sunnī *ḥadīth*, you've got to accept that they are *'adl*, and that in turn would assume some sort of change in theology: why didn't the Imāms stamp this out?

HAYKEL: Because the later Imāms basically liked the system. They had an ideology that enabled them to legitimize what was going on. By Shawkānī's time the Shāfi'īs were no longer treated as outsiders. And part of the Shawkānī revolution, if you will, was to change the nature of the state's treatment of the Shāfi'īs. As far as theology is concerned, he hated it. He said you only study theology in order to rebuff arguments in theological terms. Theology gave him a headache. Initially he thought he would be an Ash'arī. But he was not. He embraced *al-tamrīr 'alā'l-awsāf*, acceptance without discussion of the descriptions of God in the revealed texts.

WEISS: I'm sure we could continue this discussion into the evening hours. More could be said on the topics we have discussed and we could go on to other topics that were dealt with in the papers but have not been discussed. But the day has been long, and the time has come to bring this last session in the symposium to a close. The entire symposium—papers together with discussion—has been very fruitful. Thanks to each one of you for coming to Alta and contributing to what I'm sure has been a rewarding experience for all of us.

This page intentionally left blank

INDEX

- ‘Abd al-Jabbār b. Aḥmad
 al-Asadābādī, al-Qāḍī, 102, 103
- ‘Abd al-Rāḥmān b. Maḥdī, 76
- ‘Abd al-Razzāq al-Ṣan‘ānī, 53, 57, 60, 67, 95
- Abū ‘Abd Allāh al-Baṣrī, 109, 126
- Abū Ḥanīfah al-Nu‘mān, 96, 117, 125, 225, 370, 394, 425–26; on the *‘iddah* of an *umm al-walad*, 58; on neglect of the *witr* prayer, 211; association of, with the early Murji‘ah, 217–18; on the nature of faith (*īmān*), 222; act classification of, 223; as an authority figure in the context of intra-Ḥanafī theological-legal debates, 237, 241, 253, 263, 265; as participant in inter-*madhhab* disputation, 298–99, 301–04; doctrines of, given a Shāfi‘ī pedigree, 323–25
- Abu’l-Hudhayl al-‘Allāf, 261
- Abu’l-Hudhayl Muḥammad b. al-‘Abdī, 111
- Abu’l-Ḥusayn al-Baṣrī, 189
- Abū Marwān ‘Abd al-Malik al-Sulamī al-Qurṭubī, 105
- Abū Muṣ‘ab Aḥmad b. Abī Bakr, 10.
See also Mukhtaṣarāt of
- Abū Ṭālib Yaḥyā b. al-Ḥusayn, 108
- Abū Thawr, 76, 327
- Abū ‘Ubayd al-Qāsim b. Sallām, 104, 105, 392, 393; biographical sketch of, 77–78; his views on aspects of abrogation, 81–91
- Abū Yūsuf, 54, 58, 60, 96, 241, 325
- Ājurri, Muḥammad b. al-Ḥusayn al-, 110
- Akhbār*, Shī‘ī, 267–73
- ‘Allāmah Ḥasan b. Yūsuf al-Ḥillī, 288–90
- Āmidī, Sayf al-Dīn, 15, 164, 179, 193, 212, 293–97, 300, 306–09, 311–12, 396, 398, 411, 414, 419, 420, 421
- Anṣārī, Niẓām al-Dīn Muḥammad al-, 206
- Arānī, Aḥmad b. ‘Alī al-, 329
- Āthar*: in Shāfi‘ī’s *Risālah*, 31, 32, 38–40
- Bahrānī, Yūsuf b. Aḥmad al-, 290–91
- Bāḥusayn, Ya‘qūb b. ‘Abd al-Wahhāb al-, 366
- Bājī, Abu’l-Walīd Sulaymān b. Khalaf al-, 126, 162, 164, 227
- Balkhī, Abū Muṭī‘ al-, 222
- Balkhī, Zakarīyā’ b. Aḥmad Abū Yaḥyā, 327
- Bāqillānī, al-Qāḍī Abū Bakr, 101, 104, 126, 247, 425
- Bayhaqī, Abū Bakr Aḥmad al-, 76
- Bayān*: as a central concept in Shāfi‘ī’s legal theory, 47–50, 129, 389–90, 415
- Bazdawī, Abu’l-Yusr Muḥammad b. Muḥammad, 217(?), 237, 238, 239, 243, 250, 255
- Bazdawī, Abu’l-‘Uṣr ‘Alī b. Muḥammad al-, 237, 238, 239, 244, 245, 246, 247
- Bukhārī, ‘Abd al-‘Azīz b. Aḥmad al-, 247, 250, 262
- Bravmann, M., 70–71
- Burnu, Muḥammad Ṣidqī b. Aḥmad al-, 366
- Burton, John, 75, 77
- Calder, Norman, 391, 392, 413; on the dating of early Mālikī texts, 4–5, 16, 53–54; on the epistemology of the *Risālah*, 27, 43–44, 389; on the dating of the *Risālah*, 76–77, 93, 97
- Coulson, Noel, 26, 391
- Critical Legal Studies (CLS)
 movement: historical sketch of, 181–85; application to Islamic law, 185–94
- Crone, Patricia, 4, 5, 28
- Dabbās, Abū Ṭāhir al-, 370–71
- Ḍabbī, Muḥammad b. al-Mufaḍḍal Abu’l-Fayyib al-, 327
- Dabūsī, Abū Zayd al-, 224, 239, 245, 249, 259–60
- Dardīr, Abu’l-Barakāt Aḥmad al-, 173
- Dā’ūd b. Khalaf al-Zāhirī, 100, 114, 132, 279, 327, 393, 397; probable author of an *uṣūl al-fiqh* work, 109–12

- Fard* and *wājib*: Ḥanafī and Shāfiʿī positions on, 207–11; Shāfiʿī critique of the Ḥanafī position and Ḥanafī defense, 212–14; Murjiʿī roots of Ḥanafī position, 214–16; *fard* as cultic praxis linked to faith, 216–23
- Fish, Stanley, 180, 181, 410; *see* New Legal Formalism
- “Four Sources” Theory of Law: as a standard interpretation of Shāfiʿī’s *Risālah*, 25–30; lack of evidence for, in the *Risālah*, 31–40
- Frank, Jerome, 181
- Graf, L. I., 25
- “Grand Shaykh” Theory of Authority, 17, 19–22, 385–89
- Ghazālī, Abū Ḥamid Muḥammad al-, 210, 247, 257, 258
- Ghaznawī, Sirāj al-Dīn Abū Ḥafṣ ‘Umar al-, 262
- Hādī ila’l-Ḥaqq Yaḥyā b. al-Ḥusayn, al-, 337–38
- Hadīth*, companion, 6, 11–14, 95
- Hadīth*, Prophetic: in early Mālikī works, 6–7, 12–16, 18–21; in Shāfiʿī’s *Risālah*, 94–95; as a late ninth century phenomenon, 97; role of, in Mālikī thinking about *rahn*, 168–70; issues pertaining to, in Āmidī’s *Ihkām*, 302, 306; in the legal theory and program of Shawkānī, 339, 342–43, 345, 349, 352. *See also akhbār*, Shīʿī; Sunnah
- Hallaq, Wael B., 15, 27, 110; conclusions of, regarding dating of the *Risālah* reinforced, 55, 72; questioned, 76, 92–93; conclusions of, regarding the emergence of *uṣūl al-fiqh* examined, 102–03, 130, 133–35
- Ḥamawī, Shihāb al-Dīn al-, 367
- Ḥanafīs, Ḥanafī school (*madhhab*), 179–80, 194, 205–06, 366, 369, 371; arguments of, for the distinction between *fard* and *wājib*, 207–11, 214–23; act classification of, 223–25; association of, with *istiḥsān*, 134–35; positions of, on *rahn*, 169–70; division of, into opposing theological-legal positions (Central Asian *vs.* Baghdadi Ḥanafīs), 235–65; *qawāʿid* literature of, 378–79; *takhrīj* of, 325–26
- Ḥanbalīs, Ḥanbalī school (*madhhab*): views of, regarding *fard* and *wājib*, 228–30; influence on Shawkānī, 340, 346; contributions of, to *qawāʿid* literature, 373; works of, on *qawāʿid*, 381–82
- Harawī, Abū Saʿd al-, 370–71
- Ḥattāb, Muḥammad b. Muḥammad al-, 174
- Ibn ‘Abd al-Barr, 9, 10
- Ibn ‘Abd al-Hādī, Yūsuf, 373
- Ibn ‘Abd al-Hakam, ‘Abd Allāh, 10; *see also Mukhtasarāt* of
- Ibn ‘Abd al-Salām, ‘Izz al-Dīn, 372
- Ibn ‘Abd al-Shakūr, Muḥibb b. Allāh al-Bihārī, 251
- Ibn Abī Dūʿād al-ʿIyādī, 106
- Ibn Abī Ḥātim, 76–77, 96
- Ibn Abī Laylā, Muḥammad b. ‘Abd al-Rahmān, 67, 69
- Ibn Abī’l-Damm, Ibrāhīm b. ‘Abd Allāh, 329–30
- Ibn Abī Shaybah, Abū Bakr, 53, 58, 60, 67
- Ibn Abī Yaʿlā, Abū’l-Ḥusayn Muḥammad, 51
- Ibn al-Amīr (Muḥammad b. Ismāʿīl al-Amīr), 345, 347, 348
- Ibn al-Ḥājib, Abū ‘Amr ‘Uthmān, 101, 162, 164, 179
- Ibn al-Ḥumām, Muḥammad b. ‘Abd al-Wāḥid, 251
- Ibn al-Ikshīd, Abū Bakr Aḥmad b. ‘Alī, 118
- Ibn al-Laḥḥām, Abū’l-Ḥasan ‘Alī b. ‘Abbās, 373
- Ibn al-Nadīm, Muḥammad b. Ishāq, 51, 109, 110
- Ibn al-Qāsim, ‘Abd al-Rahmān Abū ‘Abd Allāh, 16, 20, 175
- Ibn al-Qaṣṣ, Aḥmad b. Aḥmad, 102, 423
- Ibn al-Qaṣṣār al-Baghdādī, 101, 189
- Ibn al-Ṣabbāgh, Abū Naṣr, 328
- Ibn al-Ṣalāḥ al-Shahrazūrī, 321, 342
- Ibn al-Sarrāj, Abū Bakr Muḥammad, 105
- Ibn Baṭṭah, ‘Abd al-Rahmān al-Fayrazān, 328
- Ibn Daqīq al-ʿĪd, 209, 328
- Ibn Dāʿūd, Abū Bakr Muḥammad, al-Zāhirī, 100, 113–37, 393–94, 397; biographical sketch, 113–14
- Ibn Hajar al-ʿAsqālānī, 74, 339, 359

- Ibn Ḥanbal, Aḥmad, 52, 54, 77;
 opinions of, compared with those of
 other contemporary jurists, 57–60;
 relationship of, to Ibn Rāhwayh,
 73–74; as a figure in inter-*madhhab*
 disputations, 298–99; *see also masā'il*
- Ibn Harbawayh, 'Alī b. al-Ḥusayn, 327
- Ibn Ḥarīwah (Muḥammad b. Šāliḥ
 al-Samāwī), 359–60
- Ibn Hazm, Abū Muḥammad 'Alī b.
 Aḥmad, 134, 227
- Ibn Kajj, Yūsuf b. Aḥmad, 328
- Ibn Khaldūn, 99, 426
- Ibn Khallād al-Baṣrī, 105
- Ibn Nujaym, Zayn al-'Ābidīn b.
 Ibrāhīm, 367–68
- Ibn Qāḍī'l-Jabal, 373
- Ibn Qāḍī Shuhbah, Taqī al-Dīn b.
 Aḥmad, 329
- Ibn Qutaybah, 'Abd Allāh b. Muslim;
 229, 392; biographical sketch, 80–81;
 views on aspects of abrogation, 81–91
- Ibn Rāhwayh, Ishāq b. Ibrāhīm,
 51–74 *passim*
- Ibn Rajab, 'Abd al-Raḥmān b. Aḥmad
 Zayn al-Dīn, 367
- Ibn Rushd, Muḥammad b. Aḥmad,
 163, 165–76, 177, 224, 399, 400,
 404, 406–07, 424
- Ibn Shabīb, Muḥammad, 219
- Ibn Surayj, Abu'l-'Abbās, 423; role of,
 in the development of *uṣūl al-fiqh*,
 102, 134–37, 394–95; as exponent
 of unlimited *ḥadīth*, 112; relationship
 of, with Ibn Dā'ūd al-Zāhirī, 114–33
- Ibn Taymiyah, Taqī al-Dīn, 228, 330,
 340
- Ibn Taymīyah, Majd al-Dīn, 322
- Ibn Wahb, 'Abd Allāh al-Fihrī, 20
- Ikhtilāf uṣūl al-madhāhib* (by al-Qāḍī
 al-Nu'mān); translation of passages
 attributable to Muhammad b.
 Dā'ūd, 138–58
- Ijmā'* (consensus), 310, 370, 390–91,
 411, 417; as a topic of controversy
 in ninth century works, 117–19,
 127, 129, 131–33, 138; as a source
 of law in standard theory, 161, 163,
 166; in Imāmī-Shī'ī thought, 281,
 283–84, 288–89; in Shawkānī's
 thought, 337, 342–43, 346–47; in
 Shāfi'ī's *Risālah*, 25, 30, 31–33,
 37–38, 40–41, 44–45
- Ijtihād*, 368–74 *passim*, 387, 401, 422,
 426–27; as a topic of controversy
 discussed by Ibn Dā'ūd al-Zāhirī
 and other ninth century writers,
 100, 103, 105, 108–09, 112–13,
 117–20, 123–25, 127–28, 131–33,
 135, 154–58; as the basis of *wājib*,
 213, 229; evaluation of, in Ḥanafī
 thought (*ḥukm al-ijtihād*), 239–47; in
 Imāmī-Shī'ī thought, 267, 274, 282,
 289; in relation to *takhrīj*, 318,
 320–21, 333–34; in the reformist
 thinking of Shawkānī, 339–41,
 348–50, 361
- 'Isā b. Abān, 136, 236, 241, 263
- Istakhrī, Abū Sa'īd al-, 327
- Istihṣān*, 100, 113, 117, 118, 119, 120,
 122, 123, 124, 126, 132–35, 163, 164,
 171, 176, 195, 248, 249, 251, 311,
 312, 390, 399–400, 402, 406, 407
- Jāḥiẓ, 'Amr b. Baḥr al-, 132, 135, 136;
 place of, in the development of *uṣūl*
al-fiqh
- Jaṣṣāṣ, Abū Bakr al-, 101, 104, 116, 134
- Jubbā'ī, Abū 'Alī al-, 136
- Jūrī, 'Alī b. Ḥusayn al-, 328
- Jurjānī, Abū 'Abd Allāh Muḥammad
 al-, 241, 328
- Juwaynī, Imām al-Haramayn al-,
 128–29, 189, 191, 193, 196–99, 414
- Juynboll, G. H. A., 71, 88
- Karābisī, al-, 102, 136, 137
- Karājikī, Abu'l-Faṭḥ al-, 272–73
- Karkhī, Abū al-Ḥasan al-, 104, 109,
 135, 236, 241, 253, 265
- Kāsānī, 'Alā' al-Dīn Abū Bakr
 Muḥammad al-, 238, 246
- Kawsaj, Ishāq b. Maṣṣūr al-: compiler
 of *Masā'il Aḥmad b. Ḥanbal* and
 interlocutor, 52–68 *passim*
- Khaṭīb al-Baghdādī, al-, 134
- Khiraqī, 'Umar b. al-Ḥusayn al-, 327
- Khwārizmī, 'Abd Allāh b. Muḥammad
 al-, 328
- Lāmishī, Muḥammad b. Zayd al-, 246
- Lecomte, Gérard, 80
- Legal formalism: as characteristic of later
 classical *uṣūl al-fiqh*, 190–92; as a
 perspective rejected by Shāfi'ī, 186–89

- Legal maxims of the Prophet: in the responses of Ibn Rahwayh, 68–70
- Lowry, Joseph, 76, 77, 103
- Madhāhib* (law schools): *fiqh*-related differences between, 168–70; differences relating to *farḍ* and *wājib*, 220–30. *See also farḍ* and *wājib*
- Madelung, Wilfred, 236
- Madinah, people of (*ahl al-madīnah*), 17–18
- Mahbūbī, Šadr al-Shar‘ah ‘Ubayd Allāh al-, 238, 260
- Mājīshūn, ‘Abd al-‘Azīz b. ‘Abd Allāh, al-: legal writings of recently discovered, 9; his organization of arguments compared to that of others, 12–14
- Makdisi, George, 100, 101, 103, 187, 296, 411
- Mālik b. Anas, 54, 125, 385, 387–88, 400–01; various views of, compared with view of Ibn Rāhwayn and other early scholars, 47–61, 67, 69; believed by Aḥmad ibn Ḥanbal to have based views on *ra’y*, 96; views of, on issues related to *rahn*, 166, 168, 171, 175; arbitrariness of, in setting up taxonomies, 177–78; dicta and authority of, 6–8, 14, 15–17; *see also Muwaṭṭa’*
- Mālikī, Mālikī school (*madhhab*), 56–57, 162–65, 167, 169–70, 174–77, 179–80, 227–28, 244, 305, 312, 327, 329, 369, 377–78, 385, 393, 399, 400, 401, 404, 406
- Maqqarī, Abū ‘Abd Allāh al-, 369
- Marghīnānī, Burhān al-Dīn al-, 329
- Marwazī, Abū Ishāq Ibrāhīm al-, 102, 116
- Marwazī, ‘Abd al-Rahmān Muḥammad Abū’l-Qāsim al-, 328
- Marwazī, Husayn b. Muḥammad, 328
- Masā’ul Aḥmad b. Ḥanbal*: as a source for Ibn Rahwayh’s responses, 52
- Mas‘ūdī, Abū’l-Ḥasan al-, 114, 115, 116
- Māturīdī, Abū Maṣṣūr Muḥammad al-, 237, 242, 249, 254–55, 256, 261–62, 263, 264
- Māturīdism, 242–43, 249, 254–57, 264–65; spread of, among Central Asian Ḥanafīs, 236–38
- Meron, Ya‘akov, 205
- Mirdār, Abū Mūsā ‘Īsā al-, 105
- Mudawwanah*, al-, 175, 387–88, 425; the problem of its dating in relation to the *Muwaṭṭa’*, 4–5, 16, 21–22
- Mufīd, al-Shaykh al-, 134, 272–73
- Muḥammad b. Ibrāhīm al-Wazīr, 338
- Muḥaqqiq al-Hillī Ja‘far b. al-Ḥasan al-, 287–89, 291
- Muḥāsibī, al-Ḥārith b. Asad al-, 392; biographical sketch, 79–80; views on aspects of abrogation, 81–91
- Mukhtaṣarāt*, 385–87
- Mukhtaṣarāt* of Abū Muṣ‘ab and Ibn ‘Abd al-Ḥakam: their organization of arguments compared with that of other early Mālikīs, 12–14
- Mullā Khusrū, Muḥammad b. Qarāmūz, 210
- Murtaḍā, Aḥmad b. Yahyā al-, 338
- Murtaḍā, al-Sharīf (or al-Sayyid) al-, 134, 273–88
- Mu‘tazilism: influence of, among Ḥanafīs at Baghdad, 235; association of infallibilism with, 239–47; association of *takḥyīs al-‘illah* with, 248–51; association of generalizing interpretation with, 252–57; association of the theory of occasions with, 257–67
- Muwaṭṭa’*, al-, 3, 10, 58, 60, 67, 69, 164, 168, 405; dating of, in relation to the *Mudawwanah*, 4–5, 16, 21–22; different styles of legal argument in, 6–8; organization of arguments compared to other early Mālikī works, 11–13; known to Ibn Rāhwayh, 54; in the early development of Mālikī legal theory, 386–88, 425. *See also* Mālik b. Anas
- Muzani, Ibrāhīm b. Yahyā al-, 97, 102, 327, 392, 425, 427
- Nadwī, ‘Alī Aḥmad al-, 366
- Nasafī, Abū’l-Barakāt ‘Abd Allāh al-, 238, 246
- Nasafī, Abū’l-Mu‘īn Maymūn b. Muḥammad al-, 237, 255, 260–61, 262, 263, 264
- Nasafī, Abū Muṭṭir Makḥūl b. al-Faḍl al-, 242
- Nasafī, Muḥammad b. Aḥmad al-, 116, 223
- Nasafī, Naṣīm al-Dīn Abū Ḥafṣ al-, 243, 247

- Naṣrī, ʿUthman b. ʿAbd al-Raḥmān al-, 329
- Nazzām, Abū Ishāq Ibrāhīm al-, 107, 109, 136
- New Legal Formalism: description of, 194–96; as a way of understanding the role of *uṣūl al-fiqh*, 196–200
- Pellat, Charles, 106–07
- Practical reasoning: as a determinant of the law, 178
- Qaʿānī, Maṣṣūr b. Aḥmad al-, 251
- Qādī al-Ḥusayn al-Marwarrūdhī al-, 371–72
- Qādī al-Nuʿmān, al-, 116, 117, 118, 119, 120, 121, 122, 124, 125, 127, 130, 131, 133, 134, 135; *see also* *Ikhtilāf uṣūl al-madhāhib*
- Qaffāl al-Shāshī, al-, 102
- Qarafi, Shihāb al-Dīn al-, 162, 164, 179, 194, 372
- Qāsim al-Manṣūr b. Muḥammad al-, 338
- Qāsim al-Rassī, al-, 337
- Qawāʿid fiqhīyah*: definition and scope of, 366–68; *madhhab*-specific *vis-à-vis* universal *qawāʿid fiqhīyah*, 368–72; sometimes referred to as *uṣūl al-fiqh*, 368, 376
- Qawāʿid* literature: considered as a genre, 372–74; aspects of, 374, 76; bibliography of, 377–84
- Qawāʿid uṣūlīyah*, 372, 376
- Qiyās*: in Shāfiʿī’s *Risālah*, 25, 30, 31–33, 36–38, 40, 44–45; Ibn Dāʿūd’s view of, 111, 117, 118, 119, 120, 122, 127, 129, 131–33; diverse meanings of, 267–71; rejected by Twelver Imāms, 269; rejection by al-Shaykh al-Mufid, 272–73, by Sayyid Murtaḍā, 273–86, by Jaʿfar al-Muḥaqqiq, 187–88; position of ʿAllāmah on, 288–90.
- Qurʾān, 5; place of, in early Mālikī legal argumentation, 7, 11, 16–18; authority of in Shāfiʿī’s *Risālah*, 25–28, 31–39, 43–49; examples from, used in discussion of abrogation issues, 81–91
- Rasāʾil*: as a type of legal literature, 416.
- Rāzī, Fakhr al-Dīn al-, 100, 164, 179, 409
- Risālah*, al-: lists of authorities in, 31–40; principles set forth in, applied in *Kutāb al-umm*, 72; most plausibly dated in the late ninth century, 75–78, 82, 91–97; role of, in the development of *uṣūl al-fiqh* as a problem, 101–05; mentioned by al-Qādī al-Nuʿmān, 118; Juwaynī’s treatment of, 128–30; not the beginning of the *uṣūl al-fiqh* genre, 137; conventional view of, 161; considered as a non-formalist work, 186–91, 409–10; two types of duty in, 226. *See also* “Four Sources” Theory of Law
- Rudolph, Ulrich, 236.
- Rustughfānī, Abūʾl-Ḥasan ʿAlī al-, 243
- Sadlān, Ṣāliḥ b. Ghānim al-, 366
- Ṣaḥnūn b. Saʿīd, 9, 16, 18, 175, 388, 424, 426
- “Salvation History” theory of authority: 4–6, 8, 11, 15–21, 386
- Samʿānī, Abūʾl-Muzzafar al-, 259
- Samarqandī, Abūʾl-Layth Naṣr b. Muḥammad al-, 242
- Samarqandī, ʿAlāʾ al-Dīn Muḥammad b. Aḥmad al-, 238, 242, 246, 265
- Sarakhsī, Abū Bakr Muḥammad al-, 208, 214, 239, 249
- Saymarī, Abū ʿAbd Allāh Ḥusayn b. ʿAlī, 241
- Ṣayrafi, Abū Bakr al-, 101, 102, 130, 296
- Schacht, Joseph, 51, 76, 187, 366, 424; and the “Four Sources” theory, 25–26; on the early uses of *sunnah*, 54, 70–71, 73; as representing Shāfiʿī as champion of Prophetic *ḥadīth*
- Shāfiʿī, al-, 60, 385, 386, 392, 396, 414, 423, 426; influence of, on the use of *sunnah*, 70–74; biographical sketch of, 76–77; views of on aspects of abrogation, 81–91; relationship of, to the Muʿtazilah in regard to the general term, 254–55; doctrines of, attributed to others or vice versa, 323–25; whether a proponent of a hierarchy of sources, 388–91; *see also* “Four Sources” Theory; *Risālah*; *Bayān*.
- Shāfiʿīs, Shāfiʿī school (*madhhab*), 244, 262; compared with Mālikīs with respect to interest of *uṣūl al-fiqh* works in *furūʿ*, 164; positions of, concerning aspects of *raḥm*, 167, 169–71, 173, 175; disputes of, with

- Ḥanafīs regarding the distinction between *farḍ* and *wājib*, 206, 209–13, 226; *uṣūl*-related disagreements of, with the Ḥanafīs and other schools, 296–307; special interest in, reflected in Āmidī's *Ihkām*, 309–10; as practitioners of *takhrīj*, 323–25, 329–30; works of, on *qawā'id*, 379–81; influence of, on Shawkānī, 340
- Shātibī, Abū Ishāq Ibrāhīm al-, 368
- Shawkānī, Muḥammad b. 'Alī al-: intellectual formation of, 339, 340; traditionalist-literalist bent of, 340–43; view of on *īmān* abd *qiyās*, 343–46; insistence of, upon basing *furū'* on *uṣūl*, 346–48; views of, on the renewal of *ijtihād* and rejection of *taqlīd*, 348–53; educational program of, 353–59; clash with Zaydī-Ḥadawī school, 359–61
- Shaybānī, Muḥammad al-, 54, 57, 62, 110, 134, 236, 241, 325
- Shirāzī, Abū Ishāq al-, 331–2, 395
- Subkī, Taj al-Dīn al-, 51, 101, 367
- Sunnah of the Prophet: in early Mālikī works, 11, 17, 21; authority of, in Shāfi'ī's *Risālah*, 25–28, 31–39, 43–49; in the responses of Ibn Rahwayh, 59–62, 68–70; in relation to the Qur'ān as a basis for abrogation, 84–88
- Sunnah of the Companions: in the responses of Ibn Rahwayh, 62–68
- Sunnah* (the term): diverse usages of, in the responses of Ibn Rahwayh, 55–70
- Suyūfī, Jalāl al-Dīn al-, 369
- Ṭabarī, Abū Ja'far Muḥammad al-, 116, 123–24, 132–37; place of, in the history of *uṣūl al-fiqh*, 112–13
- Taftāzānī, Sa'd al-Dīn Mas'ūd b. 'Umar al-, 179
- Tahāwī, Aḥmad b. Muḥammad al-, 110
- Takhrīj*: defined, 320; two types of, 321–23; as practiced by Ibn al-Qāṣṣ and Ibn Surayj, 323–25; major practitioners of, 326–29; the Shāfi'ī school as the most prolific in, 329–30; rationalization of, 330–33; as part of *madhhab* formation, 422–26
- Tanūkhī, Abū Tahir b. Bashīr, 328
- Ṭūfī, Najm al-Dīn al-, 332–33, 329, 373
- Tūmanī, Abū Mu'adh al-, 219
- Tūnī, Mullā 'Abd Allāh al-, 290
- Ṭūsī, al-Shaykh al-, 134, 273–74, 286
- Uṣūl al-fiqh*, 79, 115, 121, 131, 221, 235, 240, 241, 244, 250, 251, 255, 257, 259, 262, 365, 367, 369; considered as a post-formative genre, 3–4; Shāfi'ī not the inventor of, 23–24, 76; importance of, 99–100; the beginning and early development of, 100–04; character of, as a literary genre, 104–06, 396–98; ninth century works in, 106–13; al-Qādī al-Nu'mān's *Ikhtilāf uṣūl al-madhāhib* as a response to Sunnī works on, 116–18; Shāfi'ī's *Risālah* in relation to, 128–30; structure of ninth century works in, 132–33; whether founded in the ninth or tenth century A.H., 134–37, 393–96; irrelevance of, to *fiqh* issues pertaining to *rahn*, 165–75; conventional view regarding development and role of, 161–64; as seen from the standpoint of contemporary critical theory, 177–181; considered as a kind of Legal Formalism, 182–86, 191–94 as a means of validating rather than determining the law, 196–200; New Legal Formalism as a new way of looking at, 194–96; and *qawā'id*, 368, 372, 376; research on, dominated by interest in Shāfi'ī and Ḥanbalī works, 205–06, 231; close relationship of, to theology, 238, 263–65; *qiyās* as a topic in Shī'ī works in, 267–90; *madhhab* differences on issues in, 293–313; as an activity of the *mujtahid*, 318, 334; in the reformist program of Shawkānī, 337, 340, 348, 361; function of, especially in relation to *furū'*, 398–420; typology of, 420–21; study of after study of *furū'* at al-Azhar, 421
- Van Ess, Josef, 107, 236
- Wājib* and *farḍ*: see *Farḍ* and *wājib*
- Wansbrough, John, 4, 5, 6–8, 15, 19
- Wansharīsi, Abū'l-'Abbās Aḥmad b. Yaḥyā al-, 367

- Wuṣūl ilā maʿrifat al-uṣūl, al-*: mentioned by Masʿūdī and Yāqūt as a work of Ibn Dāʿūd, 115–16; excerpts from, found in *Ikhtilāf uṣūl al-madhāhib*, 117–21; abridged vs. verbatim excerpts, 121–22; probable content of introduction to, 123; references to, in various works, 124–26; criticisms of Shāfiʿī in, 128–30.
- Zahirīs, Zahirī school (*madhhab*), 100, 109, 120, 123, 127, 128, 133, 279–80, 311, 347, 393, 394, 395, 401, 419
- Zarkashī, Badr al-Dīn al-, 101
- Zaydī-Hādawī school (*madhhab*): historical sketch of, 337–39; opposition of, to Shawkānī’s reformism, 359–61
- Zurqānī, ‘Abd al-Bāqī al-, 367

STUDIES IN ISLAMIC LAW AND SOCIETY

Edited by

RUUD PETERS and BERNARD WEISS

ISSN 1384–1130

1. Jackson, S.A. *Islamic Law and the State. The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfi*. 1996. ISBN 90 04 10458 5
2. Saeed, A. *Islamic Banking and Interest. A Study of the Prohibition of Riba and its Contemporary Interpretation*. 1996. ISBN 90 04 10565 4
3. Shaham, R. *Family and the Courts in Modern Egypt. A Study Based on Decisions by the Sharī'a Courts 1990-1955*. 1997. ISBN 90 04 10742 8
4. Melchert, C. *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* 1997. ISBN 90 04 10952 8
5. Khalilieh, H.S. *Islamic Maritime Law. An Introduction*. 1998. ISBN 90 04 10955 2
6. Hoexter, M. *Endowments, Rulers and Community. Waqf al Ḥaramayn in Ottoman Algiers*. 1998. ISBN 90 04 10964 1
7. Johansen, B. *Contingency in a Sacred Law. Legal and Ethical Norms in the Muslim Fiqh*. 1999. ISBN 90 04 10603 0
8. Vogel, F. *Islamic Law in the Modern World. The Legal System of Saudi Arabia*. ISBN 90 04 11062 3 (*In preparation*)
9. Gerber, H. *Islamic Law and Culture 1600-1840*. 1999. ISBN 90 04 11939 3
10. Müller, C. *Gerichtspraxis im Stadtstaat Córdoba. Zum Recht der Gesellschaft in einer mālikitisch-islamischen Rechtstradition des 5./11. Jahrhunderts*. 1999. ISBN 90 04 11354 1
11. Leeuwen, R. van. *Waqfs and Urban Structures. The Case of Ottoman Damascus*. 1999. ISBN 90 04 112995
12. Gleave, R. *Inevitable Doubt. Two Theories of Shī'ī Jurisprudence*. 2000. ISBN 90 04 115951

13. Donaldson, W.J. *Sharecropping in the Yemen. A study in Islamic Theory, Custom and Pragmatism*. 2000. ISBN 90 04 11490 4
14. Brockopp, J.E. *Early Mālikī Law. Ibn ‘Abd al-Ḥakam and his Major Compendium of Jurisprudence*. 2000. ISBN 90 04 11628 1
15. Weiss, B.G. (ed.) *Studies in Islamic Legal Theory*. 2002. ISBN 90 04 12066 1

