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[12] *Jurisprudence and its subdivision, inheritance laws.* III, 1

Jurisprudence is the knowledge of the classification of the laws of God, which concern the actions of all responsible Muslims, as obligatory, forbidden, recommendable, disliked, or permissible. These (laws) are derived from the Qur'ân and the Sunnah (traditions), and from the evidence the Lawgiver (Muḥammad) has established for knowledge of (the laws). The laws evolved from the (whole) of this evidence are called "jurisprudence" (*fiqh*).

The early Muslims evolved the laws from that evidence, though, unavoidably, they differed in (the interpretation of) it. The evidence is mainly derived from texts. The texts are in Arabic. In many instances, and especially with regard to legal concepts,[167] there are celebrated differences among them as to the meaning implicit in the words. Furthermore, the III, 2 traditions (Sunnah) differ widely in respect of the reliability of the recensions. Their legal contents, as a rule, are contradictory. Therefore, a decision is needed. This makes for differences of opinion. Furthermore, evidence not derived from texts causes (still other) differences of opinion. Then, there are new cases which arise and are not covered by the texts. They are referred by analogy to things that are covered by the texts. All of this serves to stir up unavoidable differences of opinion, and this is why differences of opinion occurred among the early Muslims and the religious leaders after them.

Moreover, not all of the men around Muḥammad were qualified to give legal decisions. Not all of them could serve as sources for religious (practice). That was restricted to men who knew the Qur'ân and were acquainted with the abrogating and abrogated, the ambiguous and unambiguous verses,[168] and with all the rest of the evidence that can be

[167] "And especially . . . concepts" added in D, while the whole sentence is a marginal addition in C.

[168] Cf. as-Suyûṭî, *Itqân* (Cairo, 1317/1899), II, 2 ff. (Ch. XLIII), and below, pp. 55 ff.

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derived from the Qur'ân, since they had learned (these matters) from the Prophet directly or from their higher ranking colleagues who had learned it from him. These men, therefore, were called "readers," that is, men who (were able to) read the Qur'ân. Because the Arabs were an illiterate nation, those who were able to read the Qur'ân were distinguished by the name of "readers." Their ability to read was a remarkable thing in those days.

It continued to be that way at the beginning of Islam. Then, the cities of Islam grew, and illiteracy disappeared from among the Arabs because of their constant occupation with the Qur'ân. Now the development (of jurisprudence from its sources) took place. Jurisprudence was perfected and came to be a craft and science. The Qur'ân readers were no longer called Qur'ân readers but jurists and religious scholars.

The jurists developed two different approaches to jurisprudence. One was the use of opinion (reasoning) and analogy. It was represented by the 'Irâqîs. The other was the use of traditions. It was represented by the Ḥijâzîs.

As we have stated before,[169] few traditions circulated
III, 3 among the 'Irâqîs. Therefore, they made much use of analogy and became skilled in it. That gave them the name of the representatives of opinion (reasoning). Their chief, around whom and whose followers their school centered, was the imam Abû Ḥanîfah. The leader of the Ḥijâzîs was Mâlik b. Anas and, after him, ash-Shâfi'î.

Later on, a group of religious scholars disapproved of analogy and rejected its use. They were the Ẓâhirites. They restricted the sources of the law to the texts and the general consensus. They considered obvious analogy and causality suggested by the texts as resting in the texts themselves, because a text that indicates a *ratio legis* [170] permits legal decision for all the cases covered by (such a kind of reason-

[169] Cf. 2:461, above.

[170] *An-naṣṣ 'alâ l-'illah* occurs again below, p. 27.

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ing).[171] The leaders of this school were Dâwûd b. ʿAlî [172] and his son and their followers.

These were the three schools famous among the great mass of Muslims. The ʿAlids invented their own school and had their own jurisprudence. They based it upon their dogma requiring abuse of some of the men around Muḥammad, and upon their stated opinion concerning the infallibility of the imams and the inadmissibility of differences in their statements. All these are futile principles. The Khârijites similarly had their own school. The great mass did not care for these (unorthodox) schools, but greatly disapproved of them and abused them. Nothing is known of the opinions of these schools. Their books are not being transmitted. No trace of them can be found except in regions inhabited (by these sectarians). The (legal text) books of the Shîʿah are thus found in Shîʿah countries and wherever Shîʿah dynasties exist, in the West, the East, and in the Yemen. The same applies to the Khârijites. All of them have (legal) writings and books and hold strange opinions on jurisprudence.

The Ẓâhirite school has become extinct today as the result of the extinction of their religious leaders and disapproval of their adherents by the great mass of Muslims. It

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[171] As de Slane suspected in his note to this passage, the purpose of the sentence is to show that the Ẓâhirites used analogy in a certain sense, but only in cases where the texts of the Qur'ân and the Sunnah seem to imply its use.

A translation of the sentence is given by I. Goldziher, *Die Ẓâhiriten* (Leipzig, 1884), p. 30. If I understand his translation correctly, the main difference between it and the translation above is at the end, where Goldziher says, ". . . because causality [*Gesetzesursache*] mentioned in the text, *wherever it occurs*, is but the determination of a concrete law (not the determination of a legal principle)."

Bombaci, p. 454, translates, "They considered 'evident' analogy and the *ratio legis* resulting from a text in the same way as the (explicit) norms of the texts, in that a text indicating the determining motive is *in each case* equivalent to a text establishing a norm." (Thus, they completely excluded analogy from the sources.)

My italics indicate where I believe Goldziher and Bombaci to have gone wrong, by misunderstanding *maḥâllihâ*.

[172] For Dâwûd b. ʿAlî, 202–270 [817/18–884], and his son Muḥammad, 255–297 [869–910], cf. *GAL*, I, 183 f.; *Suppl.*, I, 312 and 249 f.

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III, 4 has survived only in books, which have eternal life.[173] Worthless persons occasionally feel obliged to follow this school and study these books in the desire to learn the (Ẓâhirite) system of jurisprudence from them, but they get nowhere and encounter the opposition and disapproval of the great mass of Muslims. In doing so, they often are considered innovators, as they accept knowledge from books for which no key is provided by teachers.[174] That was done by Ibn Ḥazm al-Andalusî,[175] although he occupies a high rank in the expert knowledge of traditions. He turned to the Ẓâhirite school and became skilled in it. He gave his own independent interpretation of their stated opinions. He opposed their leader Dâwûd and attacked most of the Muslim religious leaders. For that, the scholars took their revenge on him. They greatly vilified his school and completely disregarded his books. It went so far that sale of his books on the market was prohibited. At certain times, they were (even) torn up.

Nothing has remained except the schools of the representatives of opinion (reasoning) in the ʿIrâq and of the representatives of traditions in the Ḥijâz.

The leading authority of the ʿIrâqîs, around whom their school centered, was Abû Ḥanîfah an-Nuʿmân b. Thâbit. His place in jurisprudence is unrivaled. This has been attested by persons of his own caliber, in particular, Mâlik and ash-Shâfiʿî.

The leading authority of the Ḥijâzîs was Mâlik b. Anas al-Aṣbaḥî, who held the leading position in Medina. He is distinguished by the fact that he added another source of law to those known to other scholars, namely, the practice of the
III, 5 Medinese. He was of the opinion that by virtue of their religion and traditionalism, the Medinese always neces-

[173] Cf. p. 115, below, where the MSS clearly favor *mukhalladah*, and not *mujalladah* "bound." *Mukhalladah* "eternal" is a common epithet of books.

[174] I. Goldziher, *Die Ẓâhiriten*, pp. 193 f., suggests that Ibn Khaldûn was thinking of a contemporary revival of Ẓâhirism in Syria and Egypt. This seems rather improbable.

[175] Cf. 1:414, above.

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sarily followed each immediately preceding generation of Medinese, in respect of what they cared [176] to do or not to do. The (process would have gone back) to the generation that was in contact with the actions of the Prophet, and they would have learned from him (what to do and not to do). In (Mâlik's) opinion, the practice of the Medinese, thus, is basic legal evidence.

Many scholars have thought that the (practice of the Medinese) is (rather) one of the problems of the general consensus. Therefore, they have disapproved of (Mâlik's use of) it, because use of the general consensus as a source of law is not restricted to the inhabitants of Medina to the exclusion of other (Muslims), but extends to all Muslims. However, it should be known that general consensus means agreement concerning a religious matter on the strength of independent judgment. Mâlik did not consider the practice of the Medinese in this light. He considered it in the light of the continuity of personal observation over successive generations, (going) back to the time of the Lawgiver (Muḥammad). The necessity of the traditionalism of the Medinese (caused by the fact that they have such excellent models to follow), supports that (attitude). It is true that the problem (of the practice of the Medinese) has been mentioned in the chapter (of legal works) dealing with the general consensus. This is the most appropriate place for it, because both the (practice of the Medinese) and the general consensus are concerned with agreement. However, the agreement of general consensus is the result of independent judgment and opinion (reasoning), in view of the (available) evidence. The agreement of the Medinese, on the other hand, affects their practice in as much as it involves reliance upon personal observation of (the practice of) their predecessors. It would, indeed, have been more appropriate if the problem (of the practice of the

[176] *Ɣataqayyadûna:* B. The reading *yattafiqûna* "they agreed upon," in A, C, and D, seems to be a simplification. In C it appears to be a correction, though the photostat is not clear enough to say so definitely.

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Medinese) were mentioned in the chapter on the actions [177] of the Prophet, or in connection with (the topic of) evidence concerning which there are differences of opinion—as, for example, (the use as legal evidence) of the law of the religions preceding us (Islam), the (legal) opinions of men around Muḥammad, and (the problems of) *praesumptio legis* (*istiṣḥâb*).[178]

God gives success.

Mâlik b. Anas was followed by Muḥammad b. Idrîs al-Muṭṭalibî ash-Shâfi'î. He traveled to the 'Irâq after
III, 6 Mâlik's time. He met the followers of the imam Abû Ḥanîfah and learned from them. He combined the approach of the Ḥijâzîs with those of the 'Irâqîs. He founded his own school and opposed Mâlik on many points.

Mâlik and ash-Shâfi'î were followed by Aḥmad b. Ḥanbal. He was one of the highest-ranking *ḥadîth* scholars.[179] His followers studied with those of Abû Ḥanîfah, notwithstanding the abundant knowledge of traditions they themselves possessed. They founded another school.

These four authorities are the ones recognized by tradition in the (Muslim) cities. Tradition-bound people obliterated all other (authorities), and scholars no longer admit any differences of opinion. The technical terminology of the sciences has become very diversified, and there are obstacles preventing people from attaining the level of independent judgment. It is also feared that (the existence of differences of opinion) might affect unqualified people whose

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[177] Bulaq adds: "and assent by silence . . ." The passage appears in the margin of C, and it seems that *wa-taqrîrihî* appears there but has been deleted. Cf. D. Santillana, *Istituzioni di diritto musulmano malichita* (Rome, [1926]–38), I, 36 f.

[178] For *istiṣḥâb*, cf. I. Goldziher in *Wiener Zeitschrift für die Kunde des Morgenlandes*, I (1887), 228–36; D. Santillana, *op. cit.*, II, 621–23.

The Muslim definition of this legal concept runs as follows: "It is the attempt to associate the present (legal situation) with the past by judging the present in the same way as the past is judged, with the result that (the legal situation) is left as it had been, for the reason that no evidence to change it has been found." Cf. at-Tahânawî, *Kashshâf iṣṭilâḥât al-funûn* (Bibliotheca Indica) (Calcutta, 1862), I, 809 f.

[179] Instead of *ḥadîth* scholars, D has "independent scholars."

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opinion (reasoning) and religion could not be trusted. Thus, (scholars) came to profess their inability (to apply independent judgment), and had the people adopt the tradition of the (authorities) mentioned and of the respective group of adherents of each. They forbade one to modify his traditional (allegiance), because that would imply frivolity. All that remained after basic textbooks had been produced in the correct manner, and the continuity of their transmission had been established, was to hand down the respective school traditions and, for each individual adherent, to act in accordance with the traditions of his school. Today, jurisprudence means this, and nothing else.[180] The person who would claim independent judgment nowadays would be frustrated and have no adherents.

The Muslims today follow the tradition of one of the four (authorities). The adherents of Ibn Ḥanbal are few in number.[181] Most of them are in Syria and in the 'Irâq, that is,[182] in Baghdad and environs. They are the people who have the best knowledge of the Sunnah and of the transmission of traditions and [183] prefer them to analogical reasoning as a source of law, as far as possible. They [184] were strong and III, 7
numerous in Baghdad, until they clashed with the Shî'ah in the territory of (Baghdad). That caused much unrest in Baghdad. It stopped when the Tatars took possession of Baghdad, and was never resumed later on. The majority of Ḥanbalites are now to be found in Syria.

Abû Ḥanîfah's adherents today are the 'Irâqîs and the Muslims of India, China, Transoxania, and all the non-Arab (Persian-Turkish) countries. His school had formerly been restricted rather to Baghdad and the 'Irâq. There had been

---

[180] Cf. Bombaci, p. 454.

[181] Bulaq adds: "because his school makes little use of independent judgment and is so greatly predicated upon the support of transmission and traditions."

[182] C and D: "and."

[183] The rest of the paragraph is not found in A and Bulaq.

[184] The rest of the paragraph is not found in B. It appears in the margin of C, and in the text of D.

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pupils of his at the court of the ʿAbbâsid caliphs. Their writings were numerous and their disputations with the Shâfiʿites were frequent. Their ways of dealing with controversial questions [185] were excellent. They made a nice discipline out of (the subject of controversial questions) and developed remarkable ideas in this connection. All that is in the hands of scholars. The Maghrib has some knowledge of it. It was brought there by Judge Ibn al-ʿArabî [186] and Abû l-Walîd al-Bâjî [187] from their travels.

Ash-Shâfiʿî has more adherents in Egypt than anywhere else. His school had formerly spread through the ʿIrâq, Khurâsân, and Transoxania. The Shâfiʿites had shared with the Ḥanafites the task of giving legal decisions and teaching in all (Muslim) cities. They had many discussion meetings, and the books on controversial questions are full of the various kinds of (Shâfiʿite) argumentation. Later on, all this stopped when the eastern countries were wiped out.

When the imam Muḥammad b. Idrîs ash-Shâfiʿî took up his residence with the ʿAbd-al-Ḥakam family [188] in Egypt, a number of them [189] studied with him. His pupils in Egypt included al-Buwayṭî,[190] al-Muzanî,[191] and others. Mâlikites [192]

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[185] Cf. pp. 23 ff., below.

[186] Muḥammad b. ʿAbdallâh al-Ishbîlî, d. 543 [1148]. Cf. *GAL*, *Suppl.*, I, 732 f., where his work on controversial questions, and his *Travels*, are mentioned.

[187] Sulaymân b. Khalaf, eleventh century. Cf. *GAL*, I, 419; *Suppl.*, I, 743 f. In MS. D, the order of the names Ibn al-ʿArabî and al-Bâjî is reversed.

[188] ʿAbdallâh b. ʿAbd-al-Ḥakam, d. 214 [830], and his sons ʿAbd-ar-Raḥmân, d. 257 [871], ʿAbd-al-Ḥakam, d. 851/52, and Muḥammad, 182–268 [798–882]. The last named was a student of ash-Shâfiʿî who, after ash-Shâfiʿî's death, switched to Mâlikism. Cf. *GAL*, I, 148; *Suppl.*, I, 227 f.; as-Suyûṭî, *Ḥusn al-muḥâḍarah* (Cairo, 1299/1881–82), I, 166 f., 169, 254.

[189] One would expect "a number of Egyptians," but the text hardly permits such an interpretation.

[190] Yûsuf b. Yaḥyâ, d. 231 or 232 [845–47]. Cf. al-Khaṭîb al-Baghdâdî, *Taʾrîkh Baghdâd* (Cairo, 1349/1931), XIV, 299 ff.

[191] Ismâʿîl b. Yaḥyâ, d. 264 [878]. Cf. *GAL*, I, 180; *Suppl.*, I, 305.

[192] The reference to Mâlikites is out of place here, being induced by the preceding reference to the ʿAbd-al-Ḥakam family, who wavered between Shâfiʿism and Mâlikism.

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in Egypt were certain members of the 'Abd-al-Ḥakam family,[193] Ashhab,[194] Ibn al-Qâsim,[195] Ibn al-Mawwâz,[196] and, further, al-Ḥârith b. Miskîn [197] and his family; then, Judge III, 8
Abû Isḥâq b. Sha'bân [198] and his followers. Orthodox jurisprudence was then cut off from Egypt by the appearance of the Shî'ah dynasty. 'Alid jurisprudence came into use there. All the other (schools with their) scholars were on the point of complete disappearance, when [199] Judge 'Abd-al-Wahhâb [200] came to Egypt from Baghdad at the end of the fourth [tenth] century, because he was in need and had to seek a livelihood. The 'Ubaydid(-Fâṭimid) caliphs proceeded [201] to honor him. They advertised his great qualifications, in order to be able to blame the 'Abbâsids for driving out such a religious leader, and showed satisfaction with him. As a result, the Mâlikite school saw some flourishing in Egypt, until the extremist [202] Shî'ah 'Ubaydid(-Fâṭimid) dynasty was wiped out by Ṣalâḥ-ad-dîn b. Ayyûb. That meant the end of 'Alid jurisprudence in Egypt and the return of orthodox jurisprudence among the Egyptians. The jurisprudence of ash-Shâfi'î and his 'Irâqî followers now flourished (in Egypt). It turned out to be in a better position than before,

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[193] The beginning of this sentence is not found in Bulaq.

[194] Ashab b. 'Abd-al-'Azîz, 140–204 [757/58–820]. Cf. as-Suyûṭî, *Ḥusn al-muḥâḍarah*, I, 166.

[195] 'Abd-ar-Raḥmân b. al-Qâsim, 132–191 [719–806]. Cf. *GAL*, I, 176 f.; *Suppl.*, I, 299.

[196] Muḥammad b. Ibrâhîm, d. 281 [894]. Cf. *GAL*, I, 177; *Suppl.*, I, 300.

[197] 154–250 [771–864]. Cf. as-Suyûṭî, *op. cit.*, I, 168. His son Aḥmad, 239–311 [853/54–923/24], is mentioned by as-Suyûṭi, I, 255.

[198] Muḥammad b. al-Qâsim, d. 355 [966]. Cf. Ibn Farḥûn, *Dîbâj* (Fez, 1316/1898–99), pp. 231 f.; as-Suyûṭî, *op. cit.*, I, 172. The reference to Ibn Sha'bân is not found in Bulaq. "Abû Isḥâq" is omitted in D.

[199] The text from here to l. 15 (Egypt) is not found in Bulaq. Cf. pp. 17 f., below.

[200] 'Abd-al-Wahhâb b. 'Alî, 362–422 [973–1031]. Cf. *GAL*, *Suppl.*, I, 660. Ibn Bassâm mentions 'Abd-al-Wahhâb's lack of success in Baghdad in the *Dhakhîrah*. Cf. Ibn al-'Imâd, *Shadharât adh-dhahab* (Cairo, 1350–51/1931–33), III, 223 f.; Ibn Farḥûn, *Dîbâj* (Cairo, 1351/1932), p. 159.

[201] *Fa-bâdara*, as in B. The wrong reading *fa-ta'adhdhana* in C and D entered Dozy's *Supplément aux dictionnaires arabes*, I, 15.

[202] "Extremist" is not found in D.

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and was greatly cultivated.[203] The book of ar-Râfi'î [204] was imported from the 'Irâq into Syria and Egypt. Among famous Shâfi'ites were Muḥyî-ad-dîn an-Nawawî, one of the champions who had grown up in the shadow of the Ayyûbid dynasty in Syria, further, 'Izz-ad-dîn b. 'Abd-as-Salâm,[205] then, Ibn ar-Raf'ah [206] in Egypt, and Taqî-ad-dîn b. Daqîq-al-'îd.[207] After the latter two, there was Taqî-ad-dîn as-Subkî.[208] Finally, (Shâfi'ite leadership) was assumed by the present *Shaykh* of Islam in Egypt, Sirâj-ad-dîn al-Bulqînî.[209] He is the greatest Shâfi'ite in Egypt today and, indeed, the greatest Egyptian religious scholar.

Mâlik's school was restricted to Maghribîs and Spaniards, even though it was also found among other peoples.
III, 9 However, (Maghribîs and Spaniards) very rarely follow other schools. (This situation is explained by the fact that) they mostly traveled to the Ḥijâz. There, their journey ended. Medina, at that time, was the home of religious scholarship, which spread to the 'Irâq from there. The 'Irâq did not lie in the way of (the travels of the Maghribîs and the Spaniards). Thus, they restricted themselves to studying with the scholars of Medina, that is, with Mâlik, the leading Medinese scholar at that time, as with his teachers before him and with his pupils after him. Thus, Maghribîs and Spaniards (always) referred to (Mâlik) and became his adherents and nobody else's, as the methods of other (authorities) did not reach

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[203] This sentence follows in B the sentence that is here next.

[204] 'Abd-al-Karîm b. Muḥammad, d. 623 [1226]. Cf. *GAL*, I, 393; *Suppl.*, I, 678. The "book" is the *Kitâb al-Muḥarrar*. The 'Irâq is evidently "the non-Arab 'Irâq."

[205] 'Abd-al-'Azîz b. 'Abd-as-Salâm, 577–660 [1181/82–1262]. Cf. *GAL*, I, 430 f.; *Suppl.*, I, 766 ff.

[206] Aḥmad b. Muḥammad, 645–710 [1247/48–1310]. Cf. *GAL*, II, 133 f.; *Suppl.*, II, 164.

[207] Muḥammad b. 'Alî, 625–702 [1228–1302]. Cf. *GAL*, II, 63; *Suppl.*, II, 66.

[208] 'Alî b. 'Abd-al-Kâfî, 683 [1284] to 755 or 756 [1354/55]. Cf. *GAL*, II, 86 ff.; *Suppl.*, II, 102 ff.

[209] 'Umar b. Raslân, 724–805 [1324–1403]. Cf. *GAL*, II, 93; *Suppl.*, II, 110.

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them. Furthermore, the desert attitude was predominant among Maghribîs and Spaniards. They did not care for sedentary culture, such as existed among the 'Irâqîs. Therefore, they were more inclined toward the Ḥijâzîs, because the Ḥijâzîs also had the desert attitude. Thus, the Mâlikite school among them always retained its simplicity and was not affected by the refinement and improvement of sedentary culture that took effect in other schools.

The school doctrine of each authority became, among his adherents, a scholarly discipline in its own right. They were no longer in a position to apply independent judgment and analogy. Therefore, they had to make reference to the established principles from the school doctrine of their authority, in order to be able to analyze problems in their context and disentangle them when they got confused. A firmly rooted habit was required to enable a person to undertake such analysis and disentanglement and to apply the school doctrine of his particular authority to those (processes) according to the best of his ability. This habit is (what is meant) at this time by the science of jurisprudence.

All Maghribîs are adherents of Mâlik. His pupils were formerly spread over Egypt and the 'Irâq. In the 'Irâq, they were represented by Judge Ismâ'îl [210] and his contemporaries, such as Ibn Khuwâzmandâd,[211] Ibn al-Muntâb,[212] Judge Abû III, *10*

[210] Ismâ'îl b. Isḥâq, 199 or 200 [814–16] to 282 [896]. Cf. *GAL*, *Suppl.*, I, 273, and above, 1:38. The "men of his class" ("his contemporaries"), however, lived a century after him.

[211] Abû 'Abdallâh (Bakr) Muḥammad b. Aḥmad, a pupil of al-Abharî. Cf. I. Goldziher in *Zeitschrift der Deutschen Morgenländischen Gesellschaft*, LVIII (1904), 582–85; Ibn Farḥûn, *Dîbâj* (Cairo ed.), p. 268. According to Goldziher, the correct form of his name would be Ibn Khuwayrmandâd, and that is precisely what we find in Bulaq. The existence of both forms is acknowledged by Ibn Ḥajar, *Lisân al-Mîzân* (Hyderabad, 1329–31/1911–13), V, 291 f. Cf. also aṣ-Ṣafadî, *Wâfî*, ed. S. Dedering (Istanbul, 1949), II, 52.

[212] Ibn al-Muntâb is not identical with either of the two brothers of this name, 'Abdallâh and 'Uthmân b. 'Amr, who lived in the tenth century. He figures as a pupil of Judge Ismâ'îl, teacher of al-Abharî, and contemporary of a man who died in 303 [915/16]. Cf. Ibn Farḥûn, *Dîbâj* (Cairo ed.), pp. *93*, *156*, *255*.

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Bakr al-Abharî,[213] Judge Abû l-Ḥasan b. al-Qaṣṣâr,[214] Judge ʿAbd-al-Wahhâb,[215] and their successors. In Egypt, there was Ibn al-Qâsim, Ashhab, Ibn ʿAbd-al-Ḥakam, al-Ḥârith b. Miskîn, and their contemporaries. Yaḥyâ b. Yaḥyâ al-Laythî [216] traveled from Spain (to the East) and met Mâlik and transmitted the *Muwaṭṭaʾ* on his authority. He was an important pupil of Mâlik. Also, ʿAbd-al-Malik b. Ḥabîb [217] traveled from Spain (to the East) and studied with Ibn al-Qâsim and his contemporaries. He spread the school of Mâlik in Spain. He wrote a systematic work on it, in the *Kitâb al-Wâḍiḥah*. A pupil of his, al-ʿUtbî,[218] wrote the *ʿUtbîyah*.

Asad b. al-Furât [219] traveled from Ifrîqiyah (to the East) and studied first with the followers of Abû Ḥanîfah, but then changed over to the school of Mâlik. He studied with Ibn al-Qâsim all the chapters of jurisprudence and wrote down what he learned. He brought his book back to al-Qayrawân. It was called *al-Asadîyah*, after Asad b. al-Furât. Saḥnûn [220] studied it with Asad (himself). He, then, traveled to the East and met Ibn al-Qâsim. He studied with him and confronted him with the problems of the *Asadîyah*. He reconsidered many of them, and Saḥnûn wrote down his own [221] problems in a systematic work, and stated which of the problems of

[213] Muḥammad b. ʿAbdallâh, 289–375 [902–986]. Cf. al-Khaṭîb al-Baghdâdî, *Taʾrîkh Baghdâd*, V, 462 f.; Ibn al-Jawzî, *Muntaẓam* (Hyderabad, 1357——/1938——), VII, 131.

[214] ʿAlî b. Aḥmad, d. 398 [1007/1008]. Cf. Ibn Farḥûn, *Dîbâj* (Cairo ed.), p. 199; *GAL, Suppl.*, I, 660 (No. 1[5]); II, 963 (No. 49). Cf. also below, p. 32.

[215] Not in D. For ʿAbd-al-Wahhâb and the following four men, cf. p. 11, above.

[216] Died 234 or 236 [848–851]. Cf. *GAL, Suppl.*, I, 297; Ibn Ḥajar, *Tahdhîb* (Hyderabad, 1325–27/1907–9), XI, 300 f. The passage concerning Yaḥyâ is found only in C (in the margin) and D.

[217] Died 238 or 239 [853/54]. Cf. *GAL*, I, 149 f.; *Suppl.*, I, 231.

[218] Muḥammad b. Aḥmad, d. 235 [869]. Cf. *GAL*, I, 177; *Suppl.*, I, 300 f. Cf. also below, p. 286.

[219] Born between 142 and 145 [759–63], died in 213 or 214 [828–30]. Cf. Ibn Farḥûn, *Dîbâj* (Cairo ed.), p. 98.

[220] ʿAbd-as-Salâm b. Saʿîd, Saḥnûn or Suḥnûn, 160–240 [776/77–854]. Cf. *GAL, Suppl.*, I, 299 f.

[221] Or Ibn al-Qâsim's problems.

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the *Asadîyah* he had reconsidered. Ibn al-Qâsim and he together wrote to Asad and asked him to delete from the *Asadîyah* the problems that had been reconsidered (by Ibn al-Qâsim and Saḥnûn) and to accept the book of Saḥnûn. Asad, however, refused to do that. As a result, people disregarded Asad's book and followed the *Mudawwanah* of Saḥnûn, despite the fact that (in the *Mudawwanah*) different problems were (confusingly) lumped together in the various chapters. Therefore, the *Mudawwanah* was called *Mudawwanah*-and-*Mukhtaliṭah* (the "mixed up, confused one"). The inhabitants of al-Qayrawân concentrated upon the *Mudawwanah*, whereas the Spaniards concentrated upon the *Wâḍiḥah* and the *'Utbîyah*. III, *11*

Ibn Abî Zayd,[222] then, made a compendium of the *Mudawwanah*-and-*Mukhtaliṭah* in a book entitled *al-Mukhtaṣar*. One of the jurists of al-Qayrawân, Abû Sa'îd al-Barâdhi'î,[223] also made a compendium of it in a book entitled *at-Ṯahdhîb*. The *shaykh*s of Ifrîqiyah used the *Ṯahdhîb* as their textbook. They accepted it and disregarded all other works. In the same way, the Spaniards used the *'Utbîyah* as their textbook and kept away from the *Wâḍiḥah* and other works.

Mâlikite scholars have never ceased writing commentaries, explanations, and synopses of these main works. The people of Ifrîqiyah wrote a good deal on the *Mudawwanah*. Scholars such as Ibn Yûnus,[224] al-Lakhmî,[225] Ibn Muḥriz,[226] at-Tûnisî,[227] Ibn Bashîr,[228] and others, wrote on it. The

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[222] Cf. 1:223, above.

[223] Khalaf b. Abî l-Qâsim (wrote in 372 [982]). Cf. *GAL*, I, 178; *Suppl.*, I, 302. The reading Barâdhi'î, and not Barâdi'î, is indicated in B and C in this case, though not in the later occurrence of the name, below, p. 286.

[224] Abû 'Abdallâh b. Yûnus, *ca.* 1100. Cf. *GAL*, *Suppl.*, I, 663; II, 963 (No. 53). D. Santillana, *Istituzioni di diritto musulmano malichita*, II, 651, has Abû Bakr Muḥammad b. 'Abdallâh b. Yûnus, d. 451 [1059].

[225] 'Alî b. 'Abdallâh, d. 478 [1085]. Cf. *GAL*, I, 383; *Suppl.*, 300, 661. D. Santillana, *op. cit.*, II, 651, has 'Alî b. Muḥammad.

[226] Abû l-Qâsim, a contemporary of the following Tûnisî. Cf. Ibn Farḥûn, *Dîbâj* (Cairo ed.), pp. 39, 120.

[227] Abû Isḥâq Ibrâhîm b. Ḥasan, died "at the beginning of the disturbances in al-Qayrawân," i.e., during the Arab attacks against the city in the 1050's—possibly in 447 [1055/56] when al-Mu'izz withdrew, or 449

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Spaniards wrote a good deal on the *'Utbîyah*. Scholars such as Ibn Rushd [229] and others wrote on it.

Ibn Abî Zayd collected all the problems, contradictions, and statements from the main works in the *Kitâb an-Nawâdir*. He dealt with all the stated opinions of the school and listed in detail in that book the contents of all the main works. Most of it was taken over by Ibn Yûnus into his book on the *Mudawwanah*.

The Mâlikite school was very actively cultivated in the two countries (Spain and northwestern Africa), until the dynasties of Córdoba and al-Qayrawân were destroyed. Later on, the Maghribîs held on to the (Mâlikite tradition of the) two (cities).

III, *12* * There [230] are three different schools within the Mâlikite school:

(1) That of the Qayrawânians. Its founder was Saḥnûn, who studied with Ibn al-Qâsim.

(2) That of the Cordovans. Its founder was Ibn Ḥabîb, who studied with Mâlik, Muṭarrif,[231] Ibn al-Mâjishûn,[232] and Aṣbagh.[233]

Eventually, there appeared the book of Abû 'Amr b. al-Ḥâjib, in which he summarized the various approaches of the Mâlikite (authorities) to every subject and enumerated their

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[1057/58] when the Arabs sacked it. Cf. Ibn Farḥûn, *Dîbâj* (Cairo ed.), pp. 88 f.

[228] He apparently is identical with Ibrâhîm b. 'Abd-aṣ-Ṣamad, who lived *ca.* 1100. Cf. Ibn Farḥûn, *op. cit.*, p. 87, who does not, however, mention his work on the *Mudawwanah*. Cf. *GAL*, *Suppl.*, I, 300; II, 960 (No. 22). For this passage, see also below, p. 288.

[229] Muḥammad b. Aḥmad, 450–520 [1058–1126], the philosopher's grandfather. Cf. *GAL*, I, 384; *Suppl.*, I, 300, 662.

[230] The lower text (in italics) is that of Bulaq and A, the upper (between asterisks) that of B, C, and D.

[231] Muṭarrif b. 'Alî, 128 [745/46] to *ca.* 214 [829], son of one of Mâlik's sisters. Cf. Ibn Ḥajar, *Tahdhîb*, X, 175 f.

[232] 'Abd-al-Malik b. 'Abd-al-'Azîz, d. 212 or 214 [827–29]. Cf. Ibn Ḥajar, *Tahdhîb*, VI, 407–409, where 'Abd-al-Malik b. Ḥabîb is mentioned as one of Ibn al-Mâjishûn's students.

[233] Aṣbagh b. al-Faraj, d. 225 [840]. Cf. Ibn Ḥajar, *Tahdhîb*, I, 361 f.

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(3) That of the 'Irâqîs. Its founder was Judge Ismâ'îl and his companions.

The Egyptian school followed that of the 'Irâqîs. Judge 'Abd-al-Wahhâb moved from Baghdad to Egypt at the end of the fourth [tenth] century, and the Egyptians studied with him. The Mâlikite school in Egypt had started with al-Ḥârith b. Miskîn, Ibn Muyassar,[234] Ibn al-Lahîb,[235] and Ibn Rashîq.[236] It had remained under cover because of the appearance of the extremist Shî'ah and 'Alid jurisprudence.[237]

The 'Irâqî school was shunned by the inhabitants of al-Qayrawân and Spain, because it was far away, its ways of reaching conclusions were obscure, and they knew little about the sources that (the 'Irâqîs) used. Scholars are (basically) men of independent judgment, even when (their opinion) stands apart (and does not agree with the general opinion), and they do not blindly believe in tradition, nor do they like to use it as (their) method. Therefore, we find that the Maghribîs and Spaniards do not accept the opinion of the 'Irâqîs, whenever they cannot find a tradition of the imam Mâlik or one of his companions to support it.

Later on, the various schools merged with each other. In the sixth [twelfth] century, Abû Bakr aṭ-Ṭurṭûshî [238] traveled from Spain (to the East). He stopped and settled in Jerusalem. The Egyptians and Alexandrians studied with him and took over from him elements of the Spanish school into their own Egyptian school. One of his most important followers was III, *13*

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statements on every individual problem. Thus, his work came to be a kind of synopsis of the school.

The Mâlikite school had been in Egypt since the times of al-Ḥârith b. Miskîn, Ibn al-Muyassar, Ibn al-Lahîb, Ibn

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[234] Aḥmad b. Muḥammad, d. 309 [921/22]. Cf. as-Suyûṭî, *Ḥusn al-muḥâḍarah*, I, 255. C vocalizes Ibn Muyassir.

[235] B has Ibn al-Labîb. No information on him is available to me.

[236] Al-Ḥasan b. 'Atîq, 547–632 [1152/53–1234/35]. Cf. as-Suyûṭî, *op. cit.*, I, 259.

[237] Cf. p. 11, above.

[238] Cf. 1:83, above.

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the jurist Sanad, the author of the *Ṭirâz*,[239] and his companions. A number of people studied with them. They included the ʿAwf family [240] and their followers. Abû ʿAmr b. al-Ḥâjib studied with them. He was followed by Shihâb-ad-dîn al-Qarâfî.[241] In this way, there was a continuity (of Mâlikî teaching) in those times.

The Shâfiʿite school had also been destroyed in Egypt at the time of the ʿAlid ʿUbaydid(-Fâṭimid) [242] dynasty. Later on, the work of the Khurâsânian Shâfiʿite ar-Râfiʿî [243] made its appearance with the jurists who renewed the Shâfiʿite school. In Syria, one of the Shâfiʿite champions, Muḥyî-ad-dîn an-Nawawî, made his appearance.

Later on, the western school of Mâlikites also took over elements of the ʿIrâqî school through ash-Shârimsâḥî.[244] He was outstanding in Alexandria as representative of the Western and Egyptian school. When the ʿAbbâsid al-Mustanṣir, the father of al-Mustaʿṣim and son of aẓ-Ẓâhir, built his

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Rashîq, and Ibn Shâs.[245] *In Alexandria, it was cultivated by the ʿAwf and Sanad families, and by Ibn ʿAṭâ'llâh.*[246] *I do not know from whom Abû ʿAmr b. al-Ḥâjib* [247] *got his knowledge*

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[239] Sanad b. ʿInân, d. 541 [1146/47]. Cf. Ibn Farḥûn, *Dîbâj* (Cairo ed.), pp. 126 f.; as-Suyûṭî, *op. cit.*, I, 257. The *Ṭirâz* was a commentary on the *Mudawwanah* in thirty volumes, which he did not live to complete.

[240] Ismâʿîl b. Makkî, 485–581 [1092–1185]. Cf. as-Suyûṭî, *op. cit.*, I, 257 f.; Ibn al-ʿImâd, *Shadharât*, IV, 268. This member of the ʿAwf family, however, died too early for Ibn al-Ḥâjib to have been his student.

[241] Cf. 2:429 (n. 49), above.

[242] " ʿUbaydid (-Fâṭimid)" added by C (in the margin) and D.

[243] Cf. p. 12, above.

[244] ʿAbdallâh b. ʿAbd-ar-Raḥmân, 589–669 [1193–1270/71]. Cf. *GAL, Suppl.*, I, 300; as-Suyûṭî, *Ḥusn al-muḥâḍarah*, I, 260. Ibn Khaldûn writes Shârimsâḥî without the long vowel in the first syllable. There existed a place name Shirmasâḥ in Arabia (cf. Yâqût, *Muʿjam al-buldân*, ed. Wüstenfeld [Göttingen, 1866–73], III, 280), but the one to which the *nisbah* here refers is the large village Shârimsâḥ, so vocalized in the Wüstenfeld edition of Yâqût, III, 232. Cf. also Ibn Farḥûn, *Dîbâj* (Cairo ed.), pp. 142 f.

[245] ʿAbdallâh b. Najm, d. 616 [1219]. Cf. *GAL, Suppl.*, I, 538; Ibn Kathîr, *Bidâyah* (Cairo, 1351–58/1932–40), XIII, 86; as-Suyûṭî, *op. cit.*, I, 258.

[246] ʿAbd-al-Karîm b. ʿAṭâ'llâh, d. 612 [end of 1265 or beginning of 1266]. Cf. as-Suyûṭî, *op. cit.*, I, 260.

[247] ʿUthmân b. ʿUmar, d. 646 [1249]. Cf. *GAL*, I, 303 ff.; *Suppl.*, I, 531 ff.

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college in Baghdad, he asked the 'Ubaydid(-Fâṭimid) caliphs, who at that time were in Cairo, to send him ash-Shârimsâḥî. They permitted him to go to (al-Mustanṣir). When he arrived in Baghdad, (al-Mustanṣir) appointed him professor in the Mustanṣirîyah College. He remained there until Hûlâgû took possession of Baghdad in *656* [1258]. He escaped the fury of the catastrophe and went free. He remained living there until he died in the days of Hûlâgû's son, Aḥmad Abaghâ.

A compendium of the Egyptian school that had taken over elements of the Western school, was made, as we have mentioned,[248] in the *Mukhtaṣar* of Abû 'Amr b. al-Ḥâjib, which mentions the different problems of every juridical subject and enumerates the various statements on each individual problem. Thus, it came to be a kind of synopsis of the school.*

When his work reached the Maghrib at the end of the seventh [thirteenth] century, the majority of Maghribî students, and especially the inhabitants of Bougie, concentrated upon it. The chief teacher of the people of Bougie, Abû 'Alî Nâṣir-ad-dîn az-Zawâwî,[249] had been the one who brought the work of Ibn al-Ḥâjib to the Maghrib. He had studied with (Ibn al-Ḥâjib's) followers in Egypt, had copied his *Mukhtaṣar*, and brought it (to the West). It spread among his pupils in the region of Bougie and was introduced by them into all the other cities of the Maghrib. Contemporary Maghribî students of jurisprudence use and study it, because of the interest the *shaykh* Nâṣir-ad-dîn is said to have aroused in it. A number of Maghribî *shaykh*s, such as Ibn 'Abd-as- III, *14*

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of the Mâlikite school, but he lived after the destruction of the 'Ubaydid(-Fâṭimid) dynasty and the disappearance of 'Alid jurisprudence and after the orthodox Shâfi'ite and Mâlikite jurisprudence had reappeared (in Egypt).

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[248] Possibly referring back to 2:429? The *Mukhtaṣar* is mentioned in the *Autobiography*, pp. 16 f., 59. Cf. below, pp. 29 f. and 396.

[249] Cf. 2:428 f., above.

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Salâm, Ibn Râshid,[250] and Ibn Hârûn,[251] commented on it. All of them are *shaykhs* of Tunis. Their principal champion in this respect is Ibn 'Abd-as-Salâm. In addition, they use the *Kitâb at-Tahdhîb* as textbook in their teaching.

"God guides whomever He wants to guide." [252]

The science of inheritance laws [253]

The science of inheritance laws is the knowledge of estate division and the correct determination of the proper shares in an estate with regard to the relation of the individual shares to the basic divisions. It also includes (the knowledge of) the readjustment of shares (*munâsakhah*). (Such readjustment) is necessary when one of the (original) heirs dies and his portion is to be distributed among his heirs. This requires a calculation to adjust the first division of the estate, so that all the heirs who are entitled to shares in the estate get (to know) their shares without an (actual) distribution (taking
III, *15* place[?]). Such readjustments may have to be undertaken more than once or twice. Thus, there may be a greater number of them. Every time, a (new) calculation is needed.

Also, the division of an estate may have to consider two possibilities, in that, for instance, one heir may acknowledge an(other) heir, while a (third) heir does not acknowledge (that second heir). Then, the division of the estate is adjusted (and figured out) according to the two possibilities, and the amount of the shares is considered. Then, the estate is divided among the heirs in shares proportionate to the basic fractions.[254] All this requires calculation. Therefore,

[250] Muḥammad b. 'Abdallâh al-Qafṣî, d. 736 [1335/36]. Cf. Aḥmad Bâbâ, *Nayl* (Cairo, 1329/1911), pp. 235 f., as quoted by D. Santillana, *Istituzioni di diritto musulmano malichita*, II, 650; *GAL*, *Suppl.*, II, 963 (No. 50); II, 1041 (No. 45).

[251] 'Abdallâh b. Muḥammad, 603–702 [1207–1303]. Cf. *Autobiography*, pp. 19, 306.

[252] Qur'ân 2.142 (136), etc.

[253] Treated again among the intellectual sciences as a part of arithmetic, pp. 127 ff., below.

[254] De Slane explains the situation as follows: A and B are heirs. A acknowledges a third heir, C; B does not. The estate is distributed between

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jurists made of it a separate subject, because, in addition to jurisprudence, it requires calculation as the predominant element in it. They considered it a discipline in its own right.

Scholars have written many works on it. The most famous work on the subject among the more recent Spanish Mâlikites is the work of Ibn Thâbit [255] and the *Mukhtaṣar* of Judge Abû l-Qâsim al-Ḥawfî,[256] and then (the one by) al-Ja'dî.[257] Among the more recent Africans who wrote on the subject, there is Ibn al-Munammar aṭ-Ṭarâbulusî,[258] and others.[259]

The Shâfi'ites, Ḥanafites, and Ḥanbalites have (also) written many works on the subject. They have given important and difficult practical instances showing their competence in jurisprudence and calculation. There is, especially, Abû l-Ma'âlî (Imâm al-Ḥaramayn),[260] and similar jurists.

This is a noble discipline. It combines intellectual and traditional knowledge. It figures the claims in inheritance matters in a sound and definite way, whenever those who are charged with the division of an estate do not know the portion (of the estate that should go to each heir) and have difficulties with it.

Religious scholars in the Muslim cities have paid much attention to it. Some authors are inclined to exaggerate the mathematical side of the discipline and to pose problems requiring for their solution various branches of arithmetic, such as algebra, the use of roots, and similar things. They III, *16*

A and B, as if they were the only heirs. Then, the individual shares are figured for A, B, and C as heirs, and C receives his share from A's original share.

[255] His identity is not clear to me. Perhaps, he is Aḥmad b. 'Abdallâh, who died in 447 [1055/56]?

[256] Aḥmad b. Muḥammad b. Khalaf, d. 588 [1192]. Cf. *GAL*, I, 384; *Suppl.*, I, 663. Cf. also H. P. J. Renaud in *Hespéris*, XXV (1938), 39.

[257] There is a well-known work that would fit the description, the *Ja'dîyah* by Abû Muḥammad al-Ḥasan b. 'Alî b. Ja'd aṣ-Ṣiqillî, mentioned by Ḥâjjî Khalîfah. However, Ibn Khaldûn would not have quoted an incorrect title, and his al-Ja'dî still remains unidentified. He is mentioned again p. 129, below.

[258] He lived in the first half of the eleventh century. Cf. *'Ibar*, VII, 43; de Slane (tr.), III, 267.

[259] For these men cf. again pp. 128 f., below.

[260] Cf. n. 225 to Ch. III, above.

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fill their works with such matters. It is not something that is much used by the people, and it is of no practical use for them in their inheritance matters, because it deals with unusual and rare cases. However, it is useful for practice and offers the best opportunity for acquiring the proper habit, (which can then be) applied to actual cases.

Most of the scholars who are concerned with this discipline refer, in order to prove its excellence, to the following tradition, which is transmitted on the authority of Abû Hurayrah: "The *farâ'iḍ* (inheritance laws) constitute one-third of (religious) scholarship, and they are the first (discipline) to be forgotten." [261] Another recension has: "One-half of (religious) scholarship." The tradition was published by the *ḥadîth* expert Abû Nu'aym.[262] People who are concerned with inheritance laws use it as an argument (in favor of the importance of their science), because they think that *farâ'iḍ* in the tradition quoted refers to estate division (*furûḍ*). However, it is obvious that such an interpretation is farfetched. *Farâ'iḍ* here is intended to mean "obligations" (*furûḍ*) imposed upon Muslims in connection with religious worship, customs, matters of inheritance, and other things. If understood in this sense, it is correct to state that (the *farâ'iḍ*) constitute one-half or one-third of scholarship. The inheritance laws (by themselves) constitute a much lesser portion of religious scholarship as a whole.

This interpretation of the meaning of *farâ'iḍ* in the tradition quoted, is supported by the fact that the application of the word *farâ'iḍ* to a particular discipline, or its restriction to estate division, is part of the technical terminology the jurists created when the various disciplines and terminologies came into existence. At the beginning of Islam, the word (*farâ'iḍ*) was used only in a general way. It was derived from *farḍ*, which means "to determine" or "to cut." [262a] It

[261] Cf. D. Santillana, *op. cit.*, II, 497. Cf. also p. 128, below.

[262] Aḥmad b. 'Abdallâh, 336–430 [948–1038]. Cf. *GAL*, I, 362; *Suppl.*, I, 616 f. His *Musnad* is preserved in MS, but was not available.

[262a] "To determine," rather than "to apportion," is the intended meaning of *taqdîr*, according to Ibn al-Athîr, *Nihâyah* (Cairo, 1322/1904), III, 210;

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was intended to be used for all the *furûḍ* "obligations," as we have stated. Such was its actual use in the religious law. (In interpreting the tradition quoted,) the word must not III, 17
be taken to mean anything but what it meant at the time of the (early Muslims). That indicates most correctly what they meant by it.

And God knows better.

[13] *The science of the principles of jurisprudence and its subdivisions, dialectics and controversial questions.*[263]

It should be known that the science of the principles of jurisprudence is one of the greatest, most important, and most useful disciplines of the religious law. It is concerned with the evidence of the religious law from which the laws and legal obligations of the Muslims are derived.

The basic sources of legal evidence are the Book—that is, the Qur'ân—and, then, the Sunnah, which clarifies the Qur'ân. At the time of the Prophet, the laws were received (directly) from him. He possessed the Qur'ânic revelation, and he explained it directly by his words and deeds. No transmission, speculation, or analogical reasoning was needed. After the Prophet's death, direct (explanation of the Qur'ân's legal significance) was no longer possible. The Qur'ân was preserved through a general and continuous transmission. As to the Sunnah, the men around Muḥammad all agreed that it is necessary for us to act in accordance with whatever of it has reached us, as statement or practice, through a sound tradition that can be assumed to be truthful. It is in this sense that legal evidence is determined by Qur'ân and Sunnah.

Then, general consensus (*ijmâ'*) took its place next to

Lisân al-'Arab (Bulaq, 1300–1308/1882–90), IX, 67. *Qaṭ'* is to be understood in its literal meaning, "to cut, to cut off." Cf. the Arabic and general Semitic root *p/f-r-ṣ*.

[263] The section on the principles of jurisprudence has been translated by J.-D. Luciani, "La Théorie du droit musulman (Ouçoul el fiqh) d'après Ibn Khaldûn" in *Revue africaine*, LXIX (1928), 49–64.

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(Qur'ân and Sunnah). The men around Muḥammad agreed to disapprove of those who held opinions different from theirs. They would not have done that without some basis for doing so, because people like the men around Muḥammad do not agree upon something without a valid argument. In addition, the evidence attests the infallibility of the whole group. Thus, general consensus became a valid proof in legal matters.

III, *18* Then, we looked into the methods according to which the men around Muḥammad and the early generations made their deductions from Qur'ân and Sunnah. It was found that they compared similar (cases) and drew conclusions from analogy, in that they either all agreed or some of them made concessions in this connection to others. Many of the things that happened after the Prophet are not included in the established texts.[264] Therefore, they compared and combined them with the established indications that are found in the texts, (and drew their conclusions from analogy) according to certain rules that governed their combinations. This assured the soundness of their comparison of two similar (cases), so that it could be assumed that one and the same divine law covered both cases. This became (another kind of) legal evidence, because the (early Muslims) all agreed upon it. This is analogy (*qiyâs*), the fourth kind of evidence.

The great mass of religious scholars is agreed that these are the four basic kinds of evidence. Some scholars differed on the matters of general consensus and analogy. But this is exceptional. Others added further kinds of evidence to the four.[265] We do not have to mention them here, because the basis (upon which they rest) is weak, and they are rarely referred to.

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[264] Luciani suggests "les dispositions déjà consacrées" = "precedent cases," but *nuṣûṣ* "texts" evidently refers here to the established texts of the Qur'ân and the Sunnah.

[265] As, for instance, *'urf* "common usage," or some subdivisions of the use of opinion, such as *istiṣlâḥ* "considerations of the general welfare." Cf. I. Goldziher, *Die Ẓâhiriten*, pp. 204–6; J. Schacht in *EI*, *s.v.* "Uṣûl."

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The first task of this discipline is to study the (right of) existence of the four kinds of evidence.

(1) Proofs for the Qur'ân are the decisively miraculous, (inimitable) character of its text, and the general continuity of its transmission. This leaves no room for any doubt.

(2) The Sunnah, as it has been transmitted to us, is justified [266] by the general consensus (to the effect) that Muslims must act in accordance with traditions that are sound, as we have mentioned before. This is supported by Muḥammad's practice, during his lifetime, of sending letters and messengers to the various regions with legal and religious commands and prohibitions.

(3) The general consensus is justified by the fact that the men around Muḥammad had agreed to disapprove of III, *19* those who held opinions different from theirs. In addition, there is the established infallibility of the Muslim nation (as a whole).

(4) Analogy is justified by the general consensus of the men around Muḥammad concerning its (admissibility), as we have mentioned before.

These are the basic kinds of evidence.

The transmitted traditions of the Sunnah need verification through an investigation of the ways of transmission and the probity (*'adâlah*) of transmitters, so that the likelihood of the truthfulness of the transmitted information, which is the basis for the necessity to act in accordance with it, becomes clear. This also is one of the basic subjects of the discipline. Added to this is the knowledge of abrogating and abrogated traditions, when two traditions are mutually contradictory and the earlier one of the two is sought.[267] This, too, is another subject of the discipline.

After that, there comes the study of the meaning of words. This is because one depends upon knowledge of the conventional meanings of single or composite utterances, for

[266] *Leg. fa-li-l-ijmâ'?*

[267] Cf. 2:447 f., above.

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deriving ideas in general from word combinations in general. The philological norms needed in this connection are found in the sciences of grammar, inflection, and syntax and style.[268] Now, when speech was a habit of those who used it, these (linguistic matters) were neither sciences nor norms. At that time, jurists did not need them, because linguistic matters were familiar to them by natural habit. But when the habit of the Arabic language was lost,[269] the experts who made it their specialty determined it once and for all with the help of a sound tradition and of sound rules of analogy they evolved. (Linguistic matters,) thus, became sciences the jurists had to know, in order to know the divine laws.

Then, there is certain other, special information to be derived from word combinations. One must derive what constitutes law, among the various ideas, from special indications in word combinations that have a bearing upon law. This is jurisprudence.[270] Knowledge of the conventional
III, 20 meanings in general is not sufficient for that. A knowledge of certain other things on which that special information depends, is needed. The laws can be derived from (those things) in accordance with the principles evolved by expert scholars in the religious disciplines, who established those things as norms for the purpose. Among such norms, for instance, are:

The word meaning is not established by analogy.[271]

A word of two meanings cannot be used to mean both things at the same time.

The use of *wa-* "and" does not imply an order (in time, or classification).[272]

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[268] For *bayân*, cf. pp. 332 ff., below.

[269] Cf., for instance, p. 346, below.

[270] Cf. Bombaci, p. 454.

[271] Cf. p. 331, below. The statement means what it says, even though in jurisprudence, analogical reasoning occasionally leads to deducing some particular meaning for a word that it is not otherwise known to have.

[272] Cf. Ibn Ḥazm, *al-Iḥkâm fî uṣûl al-aḥkâm* (Cairo, 1345–48/1926–30), I, 51. "Zayd and 'Amr came" may mean that they came together, or that the one came earlier or later—by some indefinite measure of time—than the other. The *Maḥṣûl* of Fakhr-ad-dîn ar-Râzî, with which Ibn Khaldûn was well acquainted, contains lengthy discussions of this and the other principles mentioned.

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If certain special particulars are taken out of some general (term), does it remain proof for the rest?

Does a command imply necessary or voluntary (action),[273] immediate or delayed (action)? Does a prohibition imply corruption or soundness (in an action)?

Is something general applicable to something circumscribed?

Is a text indicating the *ratio legis* [274] sufficient or not for extension (of a rule to other cases)?

There are other such things. All of them are basic in this discipline, but since they are semantic problems, they have to do with philology.

Next, the study of analogy is a very important basis of this discipline. It helps to ascertain the correctness of both principal and special aspects of laws depending on reasoning and analogy; to examine the particular characteristic of a case on which the law is considered probably to depend, as to whether it (exists) in the principle; and to find out whether that characteristic exists in the special case without anything contradicting (it), which would make it impossible to base the law upon it. There are other problems that belong together with this one. All of them are basic in this discipline.

It should be known that this discipline is of recent origin in Islam. The early Muslims could dispense with it. Nothing more than the linguistic habit they possessed was needed for deriving ideas from words. The (early Muslims themselves also) were the source for most of the norms needed in special cases for deriving laws. They had no need to study the chains of transmitters, because they were close to the (transmitters) in time and had personal knowledge and experience of them. Then the early Muslims died, and the first period of Islam was over. All the sciences became technical, as we established earlier.[275] Jurists and religious scholars of independent judg- III, *21*

[273] Cf., for instance, I. Goldziher, *Die Ẓâhiriten*, pp. 71 ff.

[274] Cf. p. 4, above. Luciani, *op. cit.*, p. 59 (n. 9), translates the Arabic term as "disposition formelle indiquant la raison d'une qualification."

[275] Cf., for instance, 2:444, above.

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ment now had to acquire these norms and basic rules, in order to be able to derive the laws from the evidence. They wrote them down as a discipline in its own right and called it "principles of jurisprudence." The first scholar to write on the subject was ash-Shâfi'î. He dictated his famous *Risâlah* on the subject. In it, he discussed commands and prohibitions, syntax and style, traditions, abrogations, and the position of *ratio legis* indicated in a text in relation to analogy.[276]

Later on, Ḥanafite jurists wrote on the subject. They verified the basic rules and discussed them extensively. The speculative theologians also wrote on the subject. However, treatment by jurists is more germane to jurisprudence and more suited for (practical application to) special cases, (than treatment of the subject by speculative theologians), because (juridical works) mention many examples and cases and base their problems on legal points. The theologians, on the other hand, present these problems in their bare outlines, without reference to jurisprudence, and are inclined to use (abstract) logical deduction as much as possible, since that is their scholarly approach and required by their method.

Ḥanafite jurists were especially accomplished in extensive use of legal points and in derivation of the norms from the (actual) problems of jurisprudence, as far as possible. One of their leading scholars, Abû Zayd ad-Dabûsî,[277] wrote more widely on analogical reasoning than any other (Ḥanafite). He completed the research methods and conditions governing this discipline. Thus, the technique of the principles of juris-
III, 22 prudence was perfected. The problems were refined and the basic rules were laid down.

Scholars also occupied themselves with the methods of speculative theologians in connection with this discipline. The best books written by theologians on this subject were the *Kitâb al-Burhân*, by the Imâm al-Ḥaramayn, and the *Mus-*

[276] This refers to the principle mentioned on p. 27.

[277] 'Abdallâh ('Ubaydallâh) b. 'Umar, d. 430 [1038/39]. Cf. *GAL*, I, 175; *Suppl.*, I, 296 f.

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taṣfâ, by al-Ghazzâlî. Both authors were Ash'arites. There were two more books, the *Kitâb al-'Umad* by 'Abd-al-Jabbâr,[278] and the commentary on it, entitled *al-Mu'tamad*, by Abû l-Ḥusayn al-Baṣrî.[279] Both authors were Mu'tazilah. These four books were the basic works and pillars of this discipline. They were later on abridged by two excellent recent theologians, the imam Fakhr-ad-dîn Ibn al-Khaṭîb, in the *Kitâb al-Maḥṣûl*,[280] and Sayf-ad-dîn al-Âmidî, in the *Kitâb al-Iḥkâm*.[281] Their approaches to the discipline differed in (the degree of emphasis they placed upon) verification and argumentation. Ibn al-Khaṭîb was more inclined to present many proofs and arguments, while al-Âmidî was eager to verify the views of the schools and to present the problems in detail.

The *Kitâb al-Maḥṣûl* was abridged by such pupils of the imam (Fakhr-ad-dîn) as Sirâj-ad-dîn al-Urmawî,[282] in the *Kitâb at-Ṭaḥṣîl*, and Tâj-ad-dîn al-Urmawî,[283] in the *Kitâb al-Ḥâṣil*. Shihâb-ad-dîn al-Qarâfî [284] selected certain propositions and basic points from these works in a small book which he entitled *at-Ṭanqîḥât*. The same was done by al-Bayḍâwî in the *Kitâb al-Minhâj*.[285] Beginners occupied themselves with these two books, and many people wrote commentaries on them.

The *Kitâb al-Iḥkâm* by al-Âmidî is more concerned with verifying the problems. It was abridged by Abû 'Amr b. al-Ḥâjib, in the work of his known as the large *Mukhtaṣar*.

[278] 'Abd-al-Jabbâr b. Aḥmad al-Asadâbâdî, d. 415 [1025]. Cf. *GAL*, *Suppl.*, I, 343 f. The title of the work is given as above in A, B, C, and D, with A, C, and D also indicating the vocalization. Bulaq reads *al-'Ahd*.

[279] Muḥammad b. 'Alî, d. 436 [1044]. Cf., for instance, al-Khaṭîb al-Baghdâdî, *Ṭa'rîkh Baghdâd*, III, 100; Ibn al-Jawzî, *Muntaẓam*, VIII, 126 f.; Ibn Ḥajar, *Lisân al-Mîzân*, V, 298; Ibn al-'Imâd, *Shadharât*, III, 259.

[280] Cf. *GAL*, I, 506 (No. 3), and above, 1:402.

[281] 'Alî b. Abî 'Alî, d. 631 [1233]. Cf. *GAL*, I, 393; *Suppl.*, I, 678. Cf. p. 148, below.

[282] Maḥmûd b. Abî Bakr, 594–682 [1197/98–1283]. Cf. *GAL*, I, 467; *Suppl.*, I, 848 f., 921.

[283] Muḥammad b. al-Ḥasan, d. 656 [1258]. Cf. *GAL*, *Suppl.*, I, 921.

[284] Cf. 2:429 (n. 49), above.

[285] 'Abdallâh b. 'Umar, thirteenth century. Cf. *GAL*, I, 416 ff.; *Suppl.*, I, 738 ff.

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Ibn al-Ḥâjib then made another compendium of it, which
III, 23 is used by students.[286] People both in the East and the West studied it and wrote commentaries on it. These compendia represent at its best the approach of the theologians to this discipline.

The Ḥanafites have written a great deal on their approach (to the discipline). The best writings on it by an early scholar are the works of Abû Zayd ad-Dabûsî. The best works on it by a recent scholar are those by Sayf-al-Islâm al-Bazdawî,[287] a leading Ḥanafite. They exhaust the subject. Later on, the Ḥanafite jurist Ibn as-Sâʿâtî [288] combined the approaches of the *Kitâb al-Iḥkâm* and the work of al-Bazdawî in a book entitled *Kitâb al-Badîʿ*. The *Kitâb al-Badîʿ* turned out to be a very well-written and original work. Leading contemporary religious scholars use it for teaching and research. Many non-Arab scholars have been eager to write commentaries on it, and the situation is (still) the same at the present time.

The (foregoing remarks) have explained the real meaning of this discipline, described the subjects with which it deals, and enumerated the works on it known at the present time.

May God let us profit from scholarship and make us scholars through His kindness and generosity.

The controversial questions [289]

It should be known that the jurisprudence described, which is based upon religious evidence, involves many differences of opinion among scholars of independent judgment. Differences of opinion result from the different sources they use and their different outlooks, and are unavoidable, as we have stated before.[290]

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[286] Cf. p. 19, above.

[287] ʿAlî b. Muḥammad, d. 482 [1089]. Cf. *GAL*, I, 373; *Suppl.*, I, 637f. He is usually called Fakhr-al-Islâm.

[288] Aḥmad b. ʿAlî, d. after 1291. Cf. *GAL*, I, 382 f.; *Suppl.*, I, 658.

[289] I. Goldziher's suggestion, *Die Ẓâhiriten*, p. 37 (n. 1), that the subject be investigated in its bibliographical aspect, has not yet been followed up.

[290] Cf. p. 3, above.

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(These differences) occupied a very large space in Islam. (Originally,) people could adhere to any (juridical authority) they wished. Later on, the matter was in the hands of the four leading authorities in the Muslim cities. They enjoyed a very high prestige. Adherence was restricted to them, and III, *24* people were thus prevented from adhering to anyone else. This situation was the result of the disappearance of independent judgment, because (the exercise of independent judgment) was too difficult a matter and because, in the course of time, the scholarly disciplines constituting material for independent judgment had multiplied. Also, there existed nobody who might have organized a school in addition to the existing four. Thus, they were set up as the basic schools of Islam.

Differences of opinion among their adherents and the followers of their laws received equal status with differences of opinion concerning religious texts and legal principles (in general). The adherents of the four schools held disputations, in order to prove the correctness of their respective founders. These disputations took place according to sound principles and fast rules. Everyone argued in favor of the correctness of the school to which he adhered and which he followed. The disputations concerned all the problems of religious law and every subject of jurisprudence. The difference of opinion was on occasion between ash-Shâfi'î and Mâlik, with Abû Ḥanîfah agreeing with one of them. Or it was between Mâlik and Abû Ḥanîfah, with ash-Shâfi'î agreeing with one of them. Or it was between ash-Shâfi'î and Abû Ḥanîfah, with Mâlik agreeing with one of them. The disputations clarified the sources of the authorities as well as the motives of their differences and the occasions when they exercised independent judgment.

This kind of scholarship was called "controversial questions." The persons who cultivate it must know the basic rules through which laws can be evolved, just as they are known to scholars of independent judgment. However, the latter need those basic rules in order to find the law, while

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the former need them in order to guard the legal problems that have been evolved against destruction by the arguments of an opponent. It is, indeed, a very useful discipline. It affords acquaintance with the sources and evidence of the
III, 25 authorities, and gives students practice in arguing whatever they wish to prove. Works by Ḥanafites and Shâfi'ites are more numerous on the subject than those by Mâlikites. As one knows, analogy is for the Ḥanafites a principle on which many details of their school depend. Therefore, they are the people who speculate and investigate. The Mâlikites, on the other hand, mostly rely on tradition. They do not speculate. Furthermore, most of them are Maghribîs who are Bedouins, who care only a little for the crafts.[291]

There are the following works on the subject: the *Kitâb al-Ma'âkhidh* [292] by al-Ghazzâlî, the *Kitâb at-Talkhîṣ* by the Mâlikite Abû Bakr b. al-'Arabî,[293] who imported (the subject) from the East, the *Kitâb at-Ta'lîqah* by Abû Zayd ad-Dabûsî, and the *'Uyûn al-adillah* by the Mâlikite *shaykh* Ibn al-Qaṣṣâr.[294] In his *Mukhtaṣar* on the principles of jurisprudence, Ibn as-Sâ'âtî has collected all the controversial law that is based on the principles of jurisprudence.[295] In connection with every problem, he noted the controversial questions that are based on it.

Dialectics

"Dialectics" involves knowledge of the proper behavior in disputations among the adherents of the legal schools and others. The choices of rejection and acceptance in disputations are numerous. In arguing and answering, each disputant lets himself go in his argumentation. Some of it is correct.

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[291] Cf., for instance, 2:433, above.

[292] Cf. al-Murtaḍâ, *Itḥâf as-sâdah* (Cairo, 1311/1893–94), I, 43: ". . . *al-Ma'âkhidh* on controversial questions existing between Ḥanafites and Shâfi'ites." C and D seem to suggest the reading *al-Ma'khadh* (?).

[293] Cf. p. 10 (n. 186), above.

[294] Cf. p. 14 (n. 214), above.

[295] Cf. Bombaci, p. 454. It does not seem quite certain whether *Mukhtaṣar* is a title or just refers to a "brief" work on the subject.

(continued...)

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INDEX OF ARABIC TERMS

The entries are arranged according to the Latin alphabet. Some Persian, Turkish, Kurdish, and South Arabic words are included. For Berber words, see the General Index *s.v.* Berbers. The strange, supposedly Arabic words from poems in the Northwest African dialect are listed here in part. Homonyms, such as *maḥall, musnad*, etc., have not been distinguished in this index.

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GENERAL INDEX

The proper names were carefully indexed by David Horne, whose help is gratefully acknowledged, and completeness has been the aim in compiling them. The subject entries were indexed by myself, and they are highly selective. Combining in one list subject entries, names of persons mentioned in the text, authorities cited in the notes, geographical names, etc. has been my express intention. Multiple indexes are increasingly the fashion, and much can be said in their favor; however, the net result is that the user has to look in several places for what he can find at once in a large comprehensive index.

In alphabetizing, the Arabic article has been disregarded. Also, a personal name not followed immediately by an indication of the father's name is given precedence, regardless of the qualifications that may go with it, and it is followed directly by any other occurrences of the name with "b." For instance, "Muḥammad at-Taqî" precedes "Muḥammad b. ʿAbd-al-ʿAẓîm"; ʿAlî Zayn-al-ʿâbidîn b. al-Ḥusayn" (where "b." does not *immediately* follow upon ʿAlî) precedes "ʿAlî b. . . ."

The various small inconsistencies in transliteration to which I have succumbed (cf. 1:cxv), stand out starkly in the index. Another inconsistency appears here for the first time. It concerns the Arabic article in names of cities, where it was retained, and in names of countries, where it was translated. Thus we have al-Baṣrah and al-Kûfah in both the text and the index, but it is "the Ḥijâz" and "the Jarîd" in the text, with the result that these names of countries appear in the index without an article.

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