

WHAT'S THE DIFFERENCE? DISTINCTIONS, *FURŪQ*, AND DEVELOPMENT IN POST-  
FORMATIVE ISLAMIC LAW

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For my grandparents, Elias Saba, Gabriela Salomon, Luis Giusti, and Paulina Hundskopf,  
who taught me to love life, learning, and teaching.

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## Abstract

### WHAT'S THE DIFFERENCE? DISTINCTIONS, *FURŪQ*, AND DEVELOPMENT IN POST-FORMATIVE ISLAMIC LAW

Elias Gabriel Saba

Joseph E. Lowry

This dissertation is a study of the “legal distinctions” (*al-furūq al-fiqhiyya*) literature and its role in the development of Islamic legal thinking. It reconsiders how linguistics, law, and public performance intersect with knowledge production to develop new packaging of legal information. This study identifies the origins of this tradition in linguistic and medical literature which demonstrated the possibilities of ‘distinctions’ reasoning. The linguistic *furūq* literature is largely a theological endeavor aimed at denying the existence of synonymy in Arabic while the medical literature was interested in diagnosing illnesses. After establishing the trends that led to the writing of this genre, I demonstrate the implications of the legal *furūq* and how changes to this genre reflect shifts in the social consumption of Islamic legal knowledge. The earliest interest in legal distinctions grew out of the performance of knowledge in formalized legal disputation (*jadāl*). Disputation was an important activity for creating and defining tools of legal knowledge and distinction played an important part therein. From here, the genre of legal distinctions adapted to incorporate elements of play and entertainment through interplay with the genre of legal riddles (*al-alghāz al-fiqhiyya*). As play, books of legal distinctions functioned as supplements to performance in literary salons, study circles, and court performances (*majlis*); these books also served

as mimetic objects, allowing the reader to participate in the *majlis* virtually through reading. This study demonstrates the analytical strength of genre as a tool for understanding the history Islamic law and the social and intellectual practices that helped shape its development.

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## Introduction

What is the social history for changes in the aesthetics of Islamic legal literature? The answer to this question remains unclear, even though the history and development of Islamic law have long formed the subject of extensive scholarly study. Modern scholarship has generally divided the history of Islamic law into three broad periods: an early period, a middle period, and the modern. The majority of research into Islamic law has focused on the rise and early development of the Islamic legal tradition or the subsequent transition from an early modern legal system to multiple modern, national ones that selectively incorporate concepts from Islamic law. This division parallels the prevailing periodization of the history of Islamic societies generally. Marshall Hodgson divided that history into three broad periods, which he labeled “the Classical Age,” “the Middle Periods,” and “Gunpowder Empires and Modern Time.”<sup>1</sup> The middle periods have been sorely understudied. Wael Hallaq, arguably the leading Western scholar of Islamic law, has referred to this post-formative period, from approximately 1250 to 1800, as “a virtual *terra incognita*.”<sup>2</sup> This lack of scholarly attention is due to a belief that this period was one of legal and cultural stagnation. The scholars who do study this period, however, have shown that Islamic law underwent remarkable changes.

In part, the misunderstanding about the development of Islamic law during the Middle Period has to do with the way in which Islamic law is conceived. In arguments

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<sup>1</sup> Marshall G.S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization*. 3 vols. (Chicago; London: University of Chicago Press, 1974).

<sup>2</sup> Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press. 2005), 1.



about development or lack thereof, scholars have attempted to look for changes or development in either the substantive rules of Islamic law (*furūʿ al-fiqh*) or in legal theory (*uṣūl al-fiqh*). Since Islamic law is understood as a legal system, it makes sense to look for development to occur in manuals of substantive laws or in the theoretical writings on legal interpretation. *Furūʿ al-fiqh* and *uṣūl al-fiqh* are not the two halves of Islamic law, however; they are two genres of Islamic legal literature.<sup>3</sup> Islamic law can also be understood as a scholarly discipline, concerned with the production and organization of a specific kind of knowledge. According to this understanding, promulgation of new substantive rules and advancements in legal theory are only two possible kinds of development. Change and dynamism in Islamic law can also occur through the ways in which legal knowledge is packaged, organized and presented; in other words, through development and change in genre. A focus on Islamic law as a field of learning rather than as part of a legal system requires a greater focus on the literary characteristics of its literature.

This dissertation presents a detailed history of the genre of legal distinctions, *al-furūq al-fiqhiyya*. I have found thirty-six works that belong to this genre composed over a period of six hundred years. The genre began in the fourth/tenth century, although the first work in this genre cannot yet be determined. The fifth/eleventh century saw a surge in distinctions writing, as did the seventh/thirteenth and eighth/fourteenth

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<sup>3</sup> A legal system, of course, is made up of much more than legal theory and substantive laws. In addition, a legal system would need at least courts, a state, and enforcement mechanics. See Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of Legal System*, 2<sup>nd</sup> ed. (Oxford: Clarendon Press, 1980).

centuries. Books of legal distinctions were written in all four Sunni schools of law, although it found greater currency with the Shāfi‘ī school than it did with others. In general, Shi’i jurists did not compose works of legal distinctions, although an early work is attributed to the Shi’i jurist Aḥmad ibn Muḥammad al-Barqī (d. third/ninth c.) and another work is attributed to the Zaydī author ‘Alī ibn Yaḥyā ibn Rāshid al-Washlī al-Yamanī (d. 777). Unfortunately, neither work is extant. The genre seems to have been particularly popular in large urban centers, with an original point of focus in Abbasid Baghdad and later in Mamluk Cairo. The manuscripts of books of legal distinctions show that these works were copied and recopied often and circulated widely.

This study emphasizes the literary manifestations of Islamic law. In particular, it looks to expand the study of genre within Islamic legal writing by carrying out a history of one genre in particular, that of legal distinctions (*al-furūq al-fiqhiyya*). The genre of legal distinctions has received almost no scholarly attention. Nevertheless, its history is an important part of the development of Islamic law. This study shows genre to be a valuable rubric for locating the relevance of later Islamic legal literature, and in particular highlights the intellectual and social background from which this genre emerged and the specific ways in which the genre of legal distinctions adapted to changing social patterns that affected the consumption of Islamic legal knowledge. *Furūq* literature offered a venue that allowed jurists to adapt the law in new packaging as a response to social demand for new and different forms of legal knowledge.

## Legal Background

The Middle Periods of Islamic history witnessed the downfall of caliphal hegemony as well as the rise of non-Arabic Islamic culture. Scholars of the cultural history of the Central Islamic lands have long held this period to be one of scholarly stasis and cultural decadence. In the realm of Arabic literature, for example, the idea that Arabic entered a period of steep decline around the thirteenth century has been accepted for well over a century. R.A. Nicholson already took this as a given in his *Literary History of the Arabs* published in 1907. He refers to cultural production in Arabic after the Mongol sack of Baghdad in 1258 as “a melancholy conclusion to a glorious history.”<sup>4</sup> Ensuing scholarship has more recently engaged in a great deal of debate concerning the precise moment the age of decline began. In the *Cambridge History of Arabic Literature*, M.M. Badawi argued that the alleged decline began early in the sixteenth century and ended in the late nineteenth, declaring that “[t]he period is no doubt characterized by the absence of creativity and loss of vigour.”<sup>5</sup> While the period of supposed decline is shrinking in size, Badawi does not question the decline narrative. It is only very recently that scholars of Arabic literature have begun to study this period in earnest. Joseph Lowry and Devin Stewart describe the period between 1350 and 1850 as “a period of time almost uniformly dismissed by scholars of Arabic literature as lacking in

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<sup>4</sup> Reynold Nicholson, *A Literary History of the Arabs* (Cambridge: Cambridge University Press, 1907), 442.

<sup>5</sup> Muhammad Badawi, ed., *Modern Arabic Literature: The Cambridge History of Arabic Literature* (Cambridge: Cambridge University Press 1992), 2.

literary achievements.”<sup>6</sup> Their volume, which surveys some major figures of this period, marks a radical shift in the reassessment of cultural production in Arabic.<sup>7</sup>

Reinforcing this broad decline narrative, the dominant conception of Islamic law, as forcefully argued by Joseph Schacht, is that creative development within Islamic law came to an abrupt stop around the middle of the tenth century. At this time, legal creativity ossified into a state of total rigidity, or as he called it, “*ankylose*.”<sup>8</sup> As evidence for the lack of creativity during this period, Schacht has pointed to several factors: the rise of commentary traditions, a decline in innovative legal reasoning, and, most importantly, a discursive commitment to adhering diligently to already-established legal interpretations, known in Arabic as *taqlīd*.<sup>9</sup> Schacht’s interpretation of Islamic law amounts to the dismissal of the majority of Islamic legal history.

Wael Hallaq has challenged Schacht’s ideas by adducing evidence of many legal scholars who, after the tenth century, offered new and inventive legal interpretations. His findings “suggest [that] developments in positive law, legal theory, and the judiciary have indeed taken place.”<sup>10</sup> Hallaq continued his arguments against Schacht in

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<sup>6</sup> Joseph E. Lowry and Devin J. Stewart, eds., *Essays in Arabic Literary Biography 1350-1850* (Wiesbaden: Harrassowitz Verlag, 2009), 1.

<sup>7</sup> Recently, Thomas Bauer has convincingly put forth a convincing case for the centrality of ambiguity as a central aesthetic in Arabic literature. The tolerance for, and even delight in, ambiguity was a central motivator of scholarly writing. See Thomas Bauer, *Die Kultur der Ambiguität: Eine Andere Geschichte des Islams* (Berlin: Verlag der Weltreligionen, 2011).

<sup>8</sup> Joseph Schacht, “Classicisme, traditionalisme et ankylose dans la loi religieuse de l’Islam.” *Classicisme et déclin culturel dans l’histoire de l’Islam*, ed. Robert Brunschvig and G.E. von Grunebaum, 141-61 (Paris: G.P. Maisonneuve et Larose, 1977).

<sup>9</sup> Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 71.

<sup>10</sup> Wael Hallaq, “Was the Gate of Ijtihad Closed?” *International Journal of Middle Eastern Studies* 16 (1984), 33.

a second study, “From Fatwās to *Furūʿ*,” in which he looks at the development of Islamic law through the incorporation of legal responsa, fatwas, into legal compendia. With this work, Hallaq has shown the potential of new kinds of sources for finding development and creativity within the history of Islamic law.<sup>11</sup> Baber Johansen and David Powers have both demonstrated in greater detail how legal change and creativity were expressed through such responsa. Johansen argues that fatwas were not “chiefly responsible,” but rather that commentaries on legal compendia also played a major role in changing legal doctrine.<sup>12</sup> Powers, meanwhile, argues in favor of adhering to already-established legal interpretations, “or, what we might call, adherence to the rule of law.”<sup>13</sup>

Sherman Jackson agrees with Schacht in that jurists from the post-formative period did not break free from the restraints of existing legal interpretations. However, he rejects Schacht’s assertion of ‘creative ossification,’ seeing the constraints of the tradition as an impetus for legal creativity, more so than what was possible without these limitations: “In fact, it may not be at all incorrect to say that *taqlīd* represents a more rather than less advanced phase of legal development.”<sup>14</sup> Jackson interprets this respect for legal tradition as the parameters within and through which later jurists

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<sup>11</sup> Wael Hallaq, “From Fatwās to *Furūʿ*: Growth and Change in Islamic Substantive Law.” *Islamic Law and Society* 1 (1994): 29-65.

<sup>12</sup> Baber Johansen, “Legal Literature and the Problem of Change,” in *Islam and Public Law: Classical and Contemporary Studies*, ed. Chibli Malla (London: Graham and Trotman, 1993), 30-31.

<sup>13</sup> David Powers, *Law, Society, and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002), 94.

<sup>14</sup> Sherman Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfi* (Leiden: Brill, 1996), 227.

display their intellectual creativity. Norman Calder takes this idea to an extreme, arguing that Islamic law is, in fact, not law for this world at all, but rather a “brilliant imitation of reality, sharply characterised, precisely delineated, charmingly evocative.”<sup>15</sup> With this statement, Schacht’s formulation of Islamic legal history has been turned on its head. *Taqlīd* does not mark a nadir of any kind, but rather the beginning of an opening within legal literature for concern with the aesthetics of the law, and of the maturation of the craft of legal writing.

As previously noted, this scholarly debate is incomplete. It deals only with three genres of legal writing: legal theory (*uṣūl al-fiqh*), legal compendia (*fiqh*), and responsa (fatwas). There are other post-formative genres of legal writing that remain almost entirely unexplored. They include works on legal distinctions (*furūq*), cognate and similar legal cases (*al-ashbāh wa-l-nazāʾir*), legal maxims (*qawāʿid*), legal riddles (*al-alghāz al-fiqhiyya*) and more. These genres are, further, interrelated. Many books, such as Jalāl al-Dīn al-Suyūṭī’s (d. 911/1505) *al-Ashbāh wa-l-nazāʾir*, contain extensive sections on all three of these topics. To date, there has been little scholarship dealing with any of these other genres. More significantly, the subject of this dissertation, legal *furūq*, has received almost no scholarly attention in the Western academy.<sup>16</sup>

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<sup>15</sup> Norman Calder, *Islamic Jurisprudence in the Classical Era*, ed. Colin Imber (Cambridge: Cambridge University Press, 2010), 95.

<sup>16</sup> There have been some introductory surveys written in Arabic on legal distinctions, most notably Yaʿqūb ibn ʿAbd al-Wahhāb al-Bāḥusayn, *al-Furūq al-fiqhiyya wa-l-uṣūliyya: muqawwamātuhā shurūṭuhā nashʾatuhā taṭawwuruhā dirāsa naẓariyya waṣfiyya tārikhiyya* (Riyadh: Maktabat al-Rushd; Sharikat al-Riyāḍ li-l-Nashr wa-l-Tawzīʿ, 1419/1998), and Muḥammad Abū al-Ajḡān and Ḥamza Abū al-Fāris, “Introduction,” to Abū al-Faḍl Muslim al-Dimashqī, *Al-Furūq al-fiqhiyya*, ed. Muḥammad Abū al-Ajḡān and Ḥamza Abū Fāris (Beirut: Dār al-Gharb al-Islāmī, 1992).

This genre is, in fact, radically understudied: there are just two articles in European languages dealing specifically with such books and only a handful of mentions of them in other research. The first of the two articles on this subject, by Joseph Schacht, was published in 1926. In this article, Schacht presents two manuscripts within this genre, one attributed to a Najm al-Dīn al-Naysābūrī (d. ?) and another by al-Sāmarrī (d. 545/1150). Schacht alludes to the potential importance of the genre of legal distinctions, but most of his comments are about the condition of the two manuscripts.<sup>17</sup> The next article on this topic was published in 2000 by Wolfhart Heinrichs. Again, rather than analyze *furūq* literature, he primarily provides an annotated bibliography of some *furūq* works. He repeats the call for its study and asserts that legal distinctions should be studied along with two other similar genres: legal maxims and cognate and similar cases. Such research “will lead to a fairer assessment of later Islamic legal culture.”<sup>18</sup> Since Heinrichs wrote his article, there has been work done on the ‘cousins’ of *furūq* literature—cognate and similar legal cases (*al-ashbāh wa-l-nazāʿir*), and legal maxims (*qawāʿid*)—but none on the *furūq* literature itself.

### **The Role of Genre**

Genre has not been a central focus of study by scholars of Islamic law. This lacuna has led to a lack of understanding surrounding the role and function that genre has had in

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<sup>17</sup> Joseph Schacht, “Aus zwei arabischen *Furūq*-Büchern” *Islamica* 2 (1926): 505-537.

<sup>18</sup> Wolfhart Heinrichs, “Structuring the Law: Remarks on the *Furuq* Literature,” in *Studies in Honour of Clifford Edmund Bosworth Volume I: Hunter of the East: Arabic and Semitic Studies* edited by Ian Richard Netton, 332-344 (Leiden: Brill, 2000), 340.

the development of Islamic legal literature. Some scholars have recently attempted to being filling this gap by researching specific genres. These studies have been important in advancing knowledge of Islamic legal genre, although they also show the vastly different approaches that scholars in Islamic studies have taken when approaching genre. This section, which will look at several recent works in an attempt to lay the groundwork for an analysis of genre in Islamic law, shows some of the tensions between current approaches, and discusses the results with previous studies. In particular, I consider work by Ahmad A. Ahmad on the works of *al-takhrīj* and *al-qawā'id*, Ahmed El Shamsy's work on the *ḥāshiya* literature, Intisar Rabb's book on *al-qawā'id al-fiqhiyya*, and Khadiga Musa's study of *al-qawā'id al-fiqhiyya* and *al-ashbāh wa-l-naẓā'ir*.<sup>19</sup>

One issue that immediately arises when attempting to study one particular genre is how to define the criteria for inclusion in and exclusion from the genre, or, in other words, how to recognize works as being part of one genre. Each of these authors takes a different approach to this question. Ahmad Ahmad seems to believe in a general notion of genre in Islamic legal writing, although "focusing on the significance of these different types of Islamic legal writing is more valuable than squeezing them into identifiable genres."<sup>20</sup> In focusing on the significance of writing, he does not tell us how he identifies specific genres; nevertheless, he seems to understand the existence of various discrete genres within Islamic legal literature. He notes, for instance, "[i]n fact,

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<sup>19</sup> These works are not explicit attempts at studying genre, but ideas about genre and its function in Islamic law seem to guide much of the research they undertake.

<sup>20</sup> Ahmad A. Ahmad, *Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Medieval Islamic Jurisprudence* (Leiden; Boston: Brill, 2006), 17.



I am not aware of much treatment by Western scholars of any of the particular juristic genres that make up the corpus of Islamic legal writings as genres in their own right.”<sup>21</sup>

A treatment of particular juristic genres in their own right requires the existence of identifiable genres. Unfortunately, Ahmad does not elaborate on this topic.

Ahmed El Shamsy recently analyzed legal genre in a study of the genre of supercommentary (*ḥāshiyā*). Specifically, he hopes to understand “the emergence of the *ḥāshiyā* genre in Islamic legal literature.”<sup>22</sup> While El Shamsy does not include a theoretical discussion of genre or the role of genre in Islamic law, he attempts to state parameters for the genre of the *ḥāshiyā*. The characteristic features of the genre include “an exercise in a specific kind of erudition,”<sup>23</sup> “a linguistic preoccupation,”<sup>24</sup> “the sheer scholasticism of many of the *ḥāshiyā* authors’ concerns,”<sup>25</sup> and “its [very concise] Arabic style.”<sup>26</sup> The characteristics that El Shamsy describes are useful, but too broad. He also leaves out the most obvious characteristic, a formal consideration, that a *ḥāshiyā* is a commentary on a previous text. This formal characteristic seems to be what El Shamsy is using in designating the works to this genre, even though it is not part of his list of “characteristic features.”

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<sup>21</sup> Ahmad, *Structural Interrelations*, 45.

<sup>22</sup> Ahmed El Shamsy, “The *Ḥāshiyā* in Islamic Law: A Sketch of Shāfi‘ī Literature” *Oriens* 41 (2013), 290.

<sup>23</sup> El Shamsy, “*Ḥāshiyā*” 296-97.

<sup>24</sup> El Shamsy, “*Ḥāshiyā*” 297.

<sup>25</sup> El Shamsy, “*Ḥāshiyā*” 297.

<sup>26</sup> El Shamsy, “*Ḥāshiyā*” 298.

Intisar Rabb took a different approach to legal genres in her dissertation. There, she studied “the genre of legal maxims,”<sup>27</sup> which “emerged as a genre of independent literature”<sup>28</sup> in the seventh/thirteenth – tenth/sixteenth centuries.<sup>29</sup> Rabb understands works of legal maxims to be books wholly or primarily devoted to listing and explaining legal maxims. Although she does not state this explicitly, it is clear looking at her overview of the genre of legal maxims that she classifies works based on content.<sup>30</sup> This contrasts with El Shamsy’s use of form as a guiding principle in determining genre.

More recently, Khadiga Musa also completed a survey of the genre of *al-qawā'id al-fiqhiyya*.<sup>31</sup> While she is interested in genre, her study does not contain a theoretical discussion of the term *genre*; she takes genre’s existence in Islamic legal literature as a given. In analyzing the genre of *al-ashbāh wa-l-naẓā'ir*, Musa bases her understanding of the genre on readings of the extant books of that call themselves *al-Ashbāh wa-l-naẓā'ir*. From these readings, she develops an understanding of the genre and how it developed. This is a useful approach for understanding the make-up of the genre; but her discussion lacks formal parameters of inclusion and exclusion other than self-

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<sup>27</sup> Rabb, “Doubt’s Benefit: Legal Maxims in Islamic Law, 7<sup>th</sup>-16<sup>th</sup> centuries,” PhD Diss., Princeton University, 2009, 2.

<sup>28</sup> Rabb, “Doubt’s Benefit,” 16.

<sup>29</sup> Her dissertation focuses on legal maxims as a genre of Islamic writing. Her dissertation has been published as a monograph, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law*. *Doubt in Islamic Law*, unlike “Doubt’s Benefit,” takes the idea of doubt and uncertainty as the structuring principles of analysis, not genre. Because of the change in focus, I draw my discussion from “Doubt’s Benefit,” and not *Doubt in Islamic Law*.

<sup>30</sup> Rabb, “Doubt’s Benefit,” 458-482.

<sup>31</sup> Khadiga Musa, “Legal Maxims as a Genre of Islamic Law: Origins, Development, and Significance of *al-Qawā'id al-Fiqhiyya*” *Islamic Law and Society* 21 (2014): 325-65.

designation by title.<sup>32</sup> Ahmad, however, believes it is “generally untenable” to use the title of a work to determine its genre.<sup>33</sup> This approach potentially excludes early titles written before the formalization of the genre. Musa’s approach also leaves somewhat uncertain the criteria for excluding books from the *al-ashbāh wa-l-naẓā’ir* genre and including them in the genre *al-qawā’id al-fiqhiyya*. We see in this study, however, a third method for identifying legal genre: by title.<sup>34</sup>

There have been other recent and relevant studies, but they are less explicit about their considerations of genre. For example, in his recent work on genre in Islamic legal literature, Mohammad Hashim Kamali gives no insight into what he considers constitutive or important about genre.<sup>35</sup> He discusses the importance of studying various understudied genres and gives a brief explanation of them. Similarly, Wolfhart Heinrichs leaves the idea of genre underdetermined in his article on legal distinctions and his article on legal maxims.<sup>36</sup> Both of these authors seem to approach genre as something inherently recognizable. They likely use a combination of the approaches described above as their criteria of inclusion and exclusion from particular genres, but the criteria they use are not explicit.

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<sup>32</sup> Musa, “Legal Maxims,” 331-40.

<sup>33</sup> Ahmad A. Ahmad, *Structural Interrelations*, 17.

<sup>34</sup> Devin J. Stewart, “Muḥammad b. Jarīr al-Ṭabarī’s *al-Bayān ‘an uṣūl al-aḥkām* and the Genre of *Uṣūl al-Fiqh* in Ninth-Century Baghdad,” pp. 321-49 in *Abbasid Studies: Occasional Papers of the School of Abbasid Studies, Cambridge 6-10 July 2002*, ed. James Montgomery (Leuven: Peeters, 2004).

<sup>35</sup> Mohammad Hashim Kamali, “Legal Maxims and Other Genres of Literature in Islamic Jurisprudence,” *Arab Law Quarterly* 20 (2006): 77-101.

<sup>36</sup> Wolfhart Heinrichs, “Structuring the Law;” *idem.*, “*Qawā’id* as a Genre of Legal Literature” in Bernard Weiss, ed., *Studies in Islamic Legal Theory* (Leiden; Boston; Köln: Brill, 2002): 365-84.

One of the benefits of studying Islamic law through genre is that jurists seem to have seen themselves participating in established genres, or discursive traditions, through the composition of books. A problem arises, however, since the classical Arabo-Islamic tradition had no term for literary genre. Nevertheless, there are several words in Classical Arabic which can have meanings close to those of genre. The lack of an equivalent term, however, does not necessarily mean the lack of a similar concept, nor that premodern jurists did not have an idea of genre. Although genre has remained a somewhat underdeveloped concept in Islamic legal studies, it has nevertheless proved productive for scholars who used it as an analytical framework. The unstated belief in the existence of genre motivated the above-mentioned studies.

It is helpful to look at the various approaches taken by each of these scholars and see why they think of genre in such different fashions. The disagreements come, in part, from the specific genres chosen as a subject of study. Not all of the genres of Islamic legal literature are commensurate, nor would it make sense to analyze them in a similar fashion. Not all genres function in a similar way. El Shamsy's study of supercommentaries necessitates his focus on the formal features of the work. Rabb, meanwhile, alerts us to the importance of content. It may seem obvious that content plays a role in the determination of genre, yet it is an important point which has been obscured in the study of Islamic law. Musa's focus on titles, meanwhile, reveals yet another way to think of genre. Ahmad's caution against a title-based approach to genre is important, but this approach nevertheless has merit. Title was one of the few straightforward ways that premodern authors had of announcing their participation in

one genre or another. Why and how this was accomplished may not be straightforward, but titles should not be dismissed.

One result that can already be seen from treatments of genre is the overemphasis given to two genres of Islamic law, substantive rules (*furūʿ al-fiqh*) and legal theory (*uṣūl al-fiqh*).<sup>37</sup> It can seem, at times, that all Islamic legal writing can be included in one of these two rubrics. “Most studies of Islamic law tend to portray a bipartite arrangement [of substantive legal rules and formalist jurisprudence]...”<sup>38</sup> The portrayal of a bipartite division of Islamic law does not leave room for legal literature that exists outside of this framework. Ahmad comes to a similar conclusion about the state of Islamic studies, claiming that legal distinctions and maxims “are but two examples of Islamic legal writing that cannot be subsumed under the rubrics of *fiqh* and *uṣūl al-fiqh*.”<sup>39</sup> My dissertation adds to this trend in recent research attempting to overcome the *uṣūl-furūʿ* dichotomy.<sup>40</sup>

As much as these approaches are perhaps at odds with one another, they are nevertheless complementary. Until further research has been done on the genres of Islamic legal literature, such a mix of approaches to understanding genre in premodern Islamic law is perhaps the best way forward. It is not completely clear how and why authors chose to write in one genre instead of another, nor how and why genres were

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<sup>37</sup> See also Ahmad, *Structural Interrelationships*, 16.

<sup>38</sup> Rabb, *Doubt in Islamic Law*, 20.

<sup>39</sup> Ahmad A. Ahmad, *Structural Interrelations*, 29.

<sup>40</sup> Rabb intends to add “legal maxims (*qawāʿid al-fiqh*) as the third major genre of Islamic law.” Rabb, *Doubt in Islamic Law*, 20. It seems to me, however, that assigning certain genres as the major genres or the principle genres before studying the genres of Islamic law as a whole is premature.

created, flourished, or waned. This dissertation attempts to answer some of these questions for legal distinctions, and perhaps shows a way of thinking about genre that can be applied to other types of Islamic legal literature.

### **A Note on Genre in Islamic Legal Literature**

The notion of genre inspired the analysis in this dissertation. It is therefore important to discuss what I mean by the word genre and how I use this idea in my dissertation.

While genres are “groups of works that belong together because they stand in the same tradition,”<sup>41</sup> they are also the products of agency, of those who bring the texts together and those who construct and determine the contours of a tradition. The *Princeton Encyclopedia of Poetry and Poetics* explains that “The practice of grouping individual texts into distinct categories, called *genres*, is common to writers and readers of all periods.”<sup>42</sup> Both authors and audiences play a role in determining the genre of a work with the result that there emerge shifting conceptions of different genres over time.

The understanding of genre relied on in this dissertation draws on formalist understandings. A formalist interpretation of genre, as explained by Tzvetan Todorov, is based on the idea of genre as a category or groupings to which texts can be ascribed. Todorov’s ideas about genre are useful for the study of Islamic law because of the change and dynamism that he reads into literary genres. On the origins of genre, one of the central questions of the first part of this dissertation, Todorov writes, “Where do

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<sup>41</sup> Alastair Fowler, “Genre” in *Encyclopedia of Literature and Criticism*, ed. Martin Coyle et. al. (Detroit: Gale Research, 1990), 151.

<sup>42</sup> *Princeton Encyclopaedia of Poetry and Poetics*, s.v. “Genre” (M. Cavitch).

genres come from? Quite simply from other genres. A new genre is always the transformation of an earlier one, or of several: by inversion, by displacement, by combination.”<sup>43</sup> Genres should not be seen as static or stable, but rather as constantly changing. A genre can undergo change in itself, or it can change into a new genre. Todorov sees the origin of the novel arising from a massive series of generic transformations, arguing, “[t]he difficulty of the study of the ‘origin of the novel...’ arises only from the infinite embedding of speech acts with others.”<sup>44</sup> Only a finite number of transformations, or embedded speech acts, can be accounted for. While it may not be possible to capture all of the transformations that gave way to the creation of a new genre, this methodology for understanding Islamic legal genres is quite useful.

In addition to Todorov’s understanding, genre should also be understood as a Wittgensteinian language game.<sup>45</sup> For Ludwig Wittgenstein, the term language game “suggest[s], first of all, that language was to be understood as an activity,”<sup>46</sup> or as he puts it, language is “recurrent acts of play in time.”<sup>47</sup> There are several benefits to be gained by thinking of genre as a language game. Most importantly, this formulation allows us to think of genre as a continuous activity rather than a rigid category. A continuous activity is always open to change and improvisation. Thus, works belonging to a genre, “[r]ather than [having] defining characteristics...share family

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<sup>43</sup> Tzvetan Todorov, *Genres in Discourse*, trans. Catherine Porter (Cambridge; New York: Cambridge University Press, 1990), 15.

<sup>44</sup> Todorov, *Genres*, 26.

<sup>45</sup> Fowler, “Genre,” 157.

<sup>46</sup> Hans Sluga, *Wittgenstein* (Malden, MA: Wiley-Blackwell, 2011), 60.

<sup>47</sup> Ludwig Wittgenstein, *On Certainty*, ed. G. E. M. Anscombe, trans. Denis Paul and G. E. M. Anscombe (Oxford: Blackwell, 1969), 68e, ¶519.

resemblances.”<sup>48</sup> This formulation is particularly useful for the study of Islamic legal literature; instead of looking for rigid characteristics, one should look for the kinds of rules that each genre *qua* game follows.<sup>49</sup> Each genre is beholden to its particular rules and these rules are liable to change over time, as the game plays out in a series of social and intellectual contexts. Understanding genre as a game is particularly useful when looking at premodern Arabic writers. These writers clearly had ideas of genres, as is evident in the title of works, the ways the introductions contextualized books and in discussions of literature. A flexible understanding of genre is necessary to study the life of any Islamic legal genre, as these were elaborated over centuries, across a wide geography, and by several authors belonging to different schools of thought.

Returning for a moment to the various modern scholarly treatments of genres of Islamic legal writing discussed above, it is clear that a more precise formulation of genre would help organize a discussion around genre. As noted earlier, Ahmad is ambivalent about using genre as a rubric for analyzing Islamic law. “At any rate, an application of the term ‘genre’ to Islamic legal writing may be best attested in later works of law and legal theory rather than presumed to be found throughout Islamic legal literature.”<sup>50</sup> For him, genre should be thought of as a relatively well-defined category. He therefore has difficulty using this term for an early period. If, however, one were to think of genre as a continuous activity, it would not be surprising to find

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<sup>48</sup> Fowler, “Genre,” 157.

<sup>49</sup> Sluga, *Wittgenstein*, 61; Ludwig Wittgenstein, *Preliminary Studies for the “Philosophical Investigations:” Generally known as The Blue and Brown Books*: (New York: Harper & Row, 1965), 25-26.

<sup>50</sup> Ahmad, *Structural Interrelationships*, 16.



one set of genres in an early period that evolves in multiple ways. Genres can splinter off into new genres and genres can change their rules to adapt to new activities.

These articles also provide evidence for the usefulness of thinking about genre as a language-game. Both El Shamsy and Rabb find evidence of legal content being shaped by genre. In other words, they find thought and language conforming to the rules of particular language games. El Shamsy suggests that the *ḥāshiya*'s development was a way for jurists to cope with and comprehend the enormity of the legal literary tradition, "a product of the logical development of a discipline."<sup>51</sup> In seeing *ḥāshiyas* as a sort of end-point for the legal tradition committed to commentary, jurists were free to elaborate on any and all aspects of these texts. It was not simply the legal content that was important, but also the linguistic and scholastic concerns of the authors of these texts. Rabb, meanwhile, finds that the maxim, "Avoid capital punishment in cases of doubt (*adraʿū al-ḥudūd bi-l-shubuhāt*)," underwent change as it transferred genre. She argues that "[t]he sources indicate that the differences in the form of the maxim in the early period were a matter not of sequence, but of genre."<sup>52</sup> The changes inherent in the doubt canon were not due to history, but rather literature. The maxim changed as it played different generic games. This dissertation approaches the genre of legal distinction through the understanding described above.

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<sup>51</sup> El Shamsy, "*Ḥāshiya*" 303.

<sup>52</sup> Rabb, "Doubt's Benefit," 61.

## The Genres of Islamic Law

As shown in this study, Genre is a productive frame through which to study the literature of Islamic law. This dissertation focuses on legal distinctions as a genre in Islamic law. We therefore focus on genre as an important aspect of legal literature, particularly the post-formative genres. Legal distinctions is one of a series of important legal genres that were relevant in this postformative period (after the sixth/twelfth century). Some of the prevalent genres are well known continuations of formative genres, while others gained prominence or began in the post-formative period. It is important, however, to provide a preliminary sketch of the legal genres which appear to have been important during the post-formative period in order to understand the legal-intellectual context in which legal distinctions operated.

During the formation of Islamic law, the primary genres were likely the *mabsūṭ* or *jāmiʿ* (detailed exposition of positive law), the *mukhtaṣar* (handbook of positive law), and *uṣūl al-fiqh*. It does not seem that the *mabsūṭ* continued into the post-formative period, while *mukhtaṣars* were produced at least into the eighth/fourteenth century.<sup>53</sup> Related to the elaboration of positive law are works of legal disagreement, *ikhtilāf*. *Ikhtilāf* works advanced the legal doctrine of one legal school, or of one trend within a legal school and argued for its superiority over other doctrine.<sup>54</sup> Legal theory, *uṣūl al-fiqh*, was also an important genre in the formative period of Islamic law, and seems to

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<sup>53</sup> See the discussion in EI<sup>2</sup> s.v. “*Mukhtaṣar*” (A. Arazi and H. Ben-Shammai).

<sup>54</sup> See the discussion in Chapter Three.

have advanced into the post-formative period.<sup>55</sup> The continuation of two of these genres into the post-formative period signals the continued importance of these genres; their numerical decline during this same period, however, perhaps signals a need for a different periodization of Islamic law.

The genre of fatwas, or legal responsa, have a slightly different history. Fatwas are not only a postclassical legal genre, rather fatwas seem to have existed from the beginning of Islamic law. The anthologizing of fatwas made by important scholars continued through the postclassical period and into the contemporary era. Fatwas have been studied as an institution and as a source for social history, but both the fatwa and the fatwa collection have received little attention as genres.<sup>56</sup>

There are several other genres pertaining to the interactions between individuals and the law. Of these, the most studied is likely the genre of inheritance law, *‘ilm al-farā’id*.<sup>57</sup> These works deal with the calculations of inheritance shares and dividing property in accordance with the quranically prescribed rules. In addition,

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<sup>55</sup> See Hallaq, *Authority*; Atif, 25-37; and Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta: Lockwood Press, 2013).

<sup>56</sup> The best source for understanding fatwas is still Muhammad Khalid Masud, Brinkley Messick, and David Powers, eds. *Islamic Legal Interpretations: Muftis and Their Fatwas* (Cambridge, MA: Harvard University Press, 1996), see also Kamali, *Shari‘ah Law*, 162-178. More recently, however, see Omer Awass, “Fatwa: The Evolution of an Islamic Legal Practice and its Influence on Muslim Society,” Ph.D. Diss., Temple University, 2014. For a worthwhile and alternative approach to the study of fatwas, see Hussein Ali Agrama, “Ethics, tradition, authority: Toward an anthropology of the fatwa” *American Ethnologist* 37.1 (2010): 2-18.

<sup>57</sup> Noel J. Coulson, *Succession in the Muslim Family* (Cambridge, UK: Cambridge University Press, 1971); and David S. Powers, ed. “The Islamic Inheritance System,” special issue, *Islamic Law and Society* 5.3 (1998).

there are form books for various kinds of contracts, *shurūṭ*,<sup>58</sup> guides for market inspection, *ḥisba*,<sup>59</sup> and advice literature for judges, muftis, and those seeking their aid, works of *adab al-qāḍī* and *adab al-muftī*.<sup>60</sup>

Perhaps the most studied genre of the post-classical period is *al-qawā'id al-fiqhiyya*, legal maxims or principles that state general principles of Islamic law.<sup>61</sup> Many scholars, based on a definition by Tāj al-Dīn al-Subkī, understood them to be generally valid; although other jurists hold them only to lesser degrees of validity.<sup>62</sup> This genre is closely related to two other genres of post-formative Islamic law: *al-ashbāh wa-l-naẓā'ir* and *maqāsid al-sharī'a*. It may be the case that *al-ashbāh wa-l-naẓā'ir* is a distinct genre of

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<sup>58</sup> Aḥmad ibn Muḥammad al-Ṭaḥāwī, *The Function of Documents in Islamic Law: The Chapters on Sales from Ṭaḥāwī's Kitāb al-shurūṭ al-kabīr*, ed. Jeanette A. Wakin (Albany, NY: State University of New York Press, 1972); Wael Hallaq, "Model *Shurūṭ* Works and the Dialectic of Doctrine and Practice" *Islamic Law and Society* 2.2 (1994): 109-34.

<sup>59</sup> See Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford; New York: Oxford University Press, 2011); Schacht, *Introduction*, 230-32.

<sup>60</sup> Muhammad Khalid Masud, Rudolph Peters, and David S. Powers, "Qāḍīs and their Courts: An Historical Survey" in *Dispensing Justice in Islam: Qadis and their Judgments*, ed. Muhammad Khalid Masud, Rudolph Peters, and David S. Powers, 1-46 (Leiden, Boston: Brill, 2006); *ibid.*, "Muftis, Fatwas, and Islamic Legal Interpretation" in Muhammad Khalid Masud, Rudolph Peters, and David S. Powers, 3-32 (Cambridge: Harvard University Press, 1996), and al-Qarāfī, *The Criterion for Distinguishing Legal Opinions from Judicial Rulings and the Administrative Acts of Judges and Rulers*, trans. Mohammad H. Fadel (New Haven, CT: Yale University Press, 2017).

<sup>61</sup> Heinrichs, "Qawā'id as a Genre of Legal Literature;" El<sup>2</sup> s.v., "Qawā'id Fiqhiyya" (Heinrichs); Birgit Krawietz, *Hierarchie der Rechtsquellen im tradierten sunnitischen Islam* (Berlin: Duncker & Humblot, 2002); Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld, 2008), 141-61. Intisar Rabb, "Doubt's Benefit." There are many in-depth modern studies written in Arabic. See also Ya'qūb al-Bāḥusayn, *al-Qawā'id al-fiqhiyyah: al-mabādi' al-muqawwimāt, al-maṣādir al-dalīliyya al-taṭawwur, dirāsa nazariyya taḥlīliyya ta'ṣīliyya tārikhiyya* (Riyadh: Maktabat Ibn Rushd, Shirkat al-Riyāḍ, 1418/1998). See, as well, the bibliography in Intisar Rabb, "Doubt's Benefit," 461-82.

<sup>62</sup> Heinrichs, "Qawā'id as a Genre of Legal Literature," 367, quoting Tāj al-Dīn al-Subkī, *al-Ashbāh wa-l-naẓā'ir*, ed. 'Ādil Aḥmad 'Abd al-Mawjūd and 'Alī Muḥammad 'Iwaḍ (Beirut: Dār al-Kutub al-'Ilmiyya, 1411/1991), 1:11

its own but that has yet to be fully understood.<sup>63</sup> *Maqāṣid al-sharīʿa*, the purposes of the law, is perhaps a subset of the legal maxims literature which seeks to understand the primary goals of Islamic law and derive jurisprudence on the basis of attaining these goals.<sup>64</sup>

Of course, legal maxims are not the only post-formative genre. *Furūq*, legal distinctions, are comparisons of laws which apply to apparently similar situations but result in contradictory rulings. Although legal distinctions arose in the fourth/tenth century, the genre blossomed in the postformative period, as discussed in the present study. Additionally, legal riddles, *al-alghāz al-fiqhiyya*, were another prominent form of intellectual play in the post-formative period.<sup>65</sup> Finally, the versification of legal knowledge also deserves mention. Legal treatises of various kinds, written in verse (*manzūma*; *nazm*) are prevalent in manuscript libraries, but have not received serious scholarly attention. The versification of legal knowledge likely occurred with the versification of other scholarly disciplines and was part of a larger aesthetic preference towards intellectual play.<sup>66</sup> In this regard, books on *ḥiyal*, legal strategems, deserve

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<sup>63</sup> Specifically, the genre of *al-ashbāh wa-l-naẓāʾir* is not well understood. While Heinrichs understands *al-ashbāh wa-l-naẓāʾir* to be an extension of *qawāʿid*, Khadiga Musa states that some premodern jurists understood it as an extension of legal distinctions. Khadiga Musa, “Legal Maxims,” 338.

<sup>64</sup> Al-Shāṭibī’s *al-Muwāfaqāt fī uṣūl al-sharīʿa* seems to have been the first text of this kind. See EI<sup>2</sup> s.v. “Maqāṣid al-Sharīʿa” s.v. (Gleave); Krawietz, *Hierarchie*, 223-241; Ibrāhīm ibn Mūsā al-Shāṭibī, *al-Muwāfaqāt*, ed. Abū ʿUbaydah Mashhūr ibn Ḥasan Āl Salmān, 6 vols. (Riyadh: Dār Ibn Qayyim; Cairo: Dār Ibn ʿAffān, 2009); *idem*, *The Reconciliation of the Fundamentals of Islamic Law*, trans. Imran Ahsan Khan Nyazee (Reading, UK: Garnet, 2011); Kamali, *Shariʿah Law*, 123-40.

<sup>65</sup> See Chapter Five of the present study and the references cited therein.

<sup>66</sup> Searching for *nazm* and *manzūm* in GAS, I found only two works of legal versification mentioned in GAS, *Nazm al-durra fī talkhīṣ al-Mudawwana* by al-Sārmāsāhī (d. 669/1271; 1:471) and *Nazm Risālat Ibn Abī Zayd* by Muḥammad ibn Aḥmad al-Miknāsī (d. 919/1513; 1:481). Al-Sārmāsāhī’s seems to be the earliest legal work

special mention.<sup>67</sup> *Ḥiyal* works appear early on Islam, the first such work likely being *Kitāb al-makhārij fī al-ḥiyal* of Muḥammad ibn al-Ḥasan al-Shaybānī, and it seems to have continued as a small but important genre well into the post-formative period.<sup>68</sup> Indeed, the fifth chapter of Ibn Nujaym’s *al-Ashbāh wa-l-naẓā’ir* is on legal stragems.

The post-formative period also saw the rise of *takhrīj al-furū‘ ‘alā al-uṣūl* (elaborating substantive rules on the basis of fundamental legal rules).<sup>69</sup> *Takhrīj* was a “creative activity” undertaken by “jurists of the higher ranks” in which they built on and elaborated the “opinions of the imam and those of his immediate *mujtahid*-followers, not the revealed texts themselves.”<sup>70</sup> It is possible that works of *takhrīj* gained popularity as the *mukhtaṣar* lost popularity, but this needs to be investigated further. In this vein, supercommentaries, *ḥawāshī*, are an interesting genre and sites of legal discussion. Commentaries on commentaries on works of substantive law, *ḥawāshī* are a genre defined in large part by their format rather than by their content.<sup>71</sup>

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that is called a *naẓm* or *manẓūm*. There are many more works of legal versification mentioned in *GAL*, fourteen with the title *manẓūma* and thirteen with the title *naẓm*. All of these are later than al-Sārmāsāhī’s work. There are many more possible titles for legal poems, such as *qaṣīda* or *qaṣā’id*, or titles based on end-rhyming letters, such as *tā’iyya*, *mīmiyya*, etc.

<sup>67</sup> Joseph Schacht, “Die arabische *ḥijal*-Literatur. Ein Beitrag zur Erforschung der islāmischen Rechtspraxis,” *Der Islam* 15 (1926): 211-32; Satoe Horii, “Reconsideration of Legal Devices (*Ḥiyal*) in Islamic Jurisprudence: The Ḥanafis and their ‘Exits’ (*Makhārij*)” *Islamic Law and Society* 9.3 (2002): 312-57.

<sup>68</sup> Muḥammad ibn al-Ḥasan al-Shaybānī, *Makhārij fī al-ḥiyal*, ed. Joseph Schacht (Leipzig: J. C. Hinrichs, 1930).

<sup>69</sup> Hallaq, *Authority*, 43-56;

<sup>70</sup> Hallaq, *Authority*, 22. For a monographic treatment of select works in this genre, see Ahmad A. Atif *Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Medieval Jurisprudence* (Leiden; Boston: Brill, 2007).

<sup>71</sup> See Ahmed El Shamsy, “Ḥāshiya.”

Finally, two tangential genres should be considered. First, the logically-based inquisition known as *ādāb al-baḥth* (methods of argumentation) deserves more scrutiny. This style of argumentation, which began at the end of the seventh/thirteenth century and “owed its genesis to the earlier [... works on *‘ilm al-khilāf* and *jadāl* and] was easy to apply across the disciplines.”<sup>72</sup> The importance of disputation as *jadāl* has been discussed often, but not so in its guise as *ādāb al-baḥth*. Further, legal biographies should also be considered within a discussion of the genres of Islamic Law, a genre that includes biobibliographical writing (*ṭabaqāt*) as well as individual hagiographies of jurists (*manāqib*).<sup>73</sup>

## Chapter Overview

This history of the genre of legal distinctions is composed of six chapters. Chapter One begins by asking what a legal distinction is, and what a book of legal distinction looks

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<sup>72</sup> Karabela, “Development of Dialectic,” 2. Karabela’s recent study on this topic offers many insights into the way in which *ādāb al-baḥth* operated and how it different from previous efforts of formalized disputation such as *‘ilm al-jadal*. Karabela demonstrates as well the ways in which it influenced legal thinking through its incorporation into the Ottoman legal curriculum. See also Larry B. Miller, “Islamic Disputation Theory: A Study in the Development of Dialectic in Islam from the Tenth through Fourteenth Centuries,” (PhD Diss., Princeton University, 1984), 196-239.

<sup>73</sup> On *ṭabaqāt*, see Stephen Humphreys, *Islamic History: A Framework for Inquiry*, Rev. ed. (Princeton: Princeton University Press, 2001), 187-209; Chase F. Robinson, *Islamic Historiography* (Cambridge: Cambridge University Press, 2003), 55-82; and Michael Cooperson, *Classical Arabic Biography: The Heirs of the Prophets in the Age of al-Maʿmūn* (Cambridge; New York: Cambridge University Press, 2000); and R. Kevin Jaques, *Authority, Conflict, and the Transmission of Diversity in Medieval Islamic Law* (Leiden; Boston: Brill, 2006), 10-26. On *manāqib*, see Christopher Melchert, “Marʿī ibn Yūsuf” in *Essays in Arabic Literary Biography II: 1350-1850*, eds. Joseph E. Lowry and Devin J. Stewart, 284-94 (Weisbaden: Harrassowitz Verlag, 2009); and Ibn al-Jawzī, *The Virtues of the Imām Aḥmad ibn Ḥanbal*, 2 vols., ed. and trans. Michael Cooperson (New York; London: New York University Press, 2013).

like. The theoretical question of what a legal distinction ought to be is not one seriously taken up by the classical tradition. I have found only three such discussions, which are described in this chapter. The earliest and most in-depth is found in *al-Farq wa-l-jamʿ*, also known as *Kitāb al-Furūq*, by ʿAbd Allāh al-Juwaynī (d. 438/1046), but there are also brief analyses in *ʿAlam al-jadhal fī ʿilm al-jadal* by Najm al-Dīn al-Ṭūfī (d. 716/1316) and *al-Manthūr fī al-qawāʿid* by Badr al-Dīn al-Zarkashī (d. 794/1392). From this survey, several aspects of legal distinctions emerge: the specific form of the comparison carried out in a legal distinction; its relationship to analogical reasoning; and the importance of formal disputation to the creation of the field of legal distinctions. The chapter then pursues this question from a different angle, by looking at books of legal distinctions themselves. The chapter closes with a look at the justifications given in books of legal distinctions for the composition of such works.

Having established the general outlines of the genre, the second chapter takes a wider view, looking at the field of distinctions writing in the Arabic tradition generally. This chapter focuses primarily on the genres of distinctions in linguistics and in medicine as parallels to the genre of legal distinctions. Distinctions in linguistics focused either on differentiating between letters of the Arabic language, often on phonological grounds, or on lexicographic distinctions as semantic differentiation between near synonyms. This chapter finds that the genre of lexicographic distinctions was an important precursor to legal distinctions; it may perhaps even be said to establish some rules of the language game that is the genre of legal distinctions, regarding the organization and presentation of information. In medicine, differential diagnostics also has a certain resonance with the genre of legal distinctions. This



conclusion is complicated by the fact that although classical biobibliographical works seem to attest to a small but extant genre of distinctions works in medicine, only one work of this genre has survived, in various manuscripts and attributed to a variety of authors. Finally, the chapter closes by discussing other areas of intellectual inquiry which appear to have traditions of distinctions writing, such as ethics and philosophy. These works of distinctions, however, are not genres specific to these disciplines, but rather what I term applied lexicographic distinctions. That is, a work of lexicographic distinctions applied to the technical vocabulary of a specific scholarly discipline; a comparison of words for the soul, for instance, or of admonishing and advising. These works of applied lexicographic distinctions are important since they are found in almost all areas of Arabo-Islamic scholarship, and relevant to this study since they are even found in the field of law, but they are not examples of works of legal distinctions.

With these foundations in place, the third chapter looks for precursors to legal distinctions within other genres within Islamic law. Here, I locate one of the origins of legal distinctions, the discussions in manuals of disputation theory (*‘ilm al-jadal*) on a particular method of objection labeled *farq* (distinction). *Farq*, as a formal technique, is found in manuals of legal disputation, but not in manuals for disputations in philosophy or theology. It is an objection to the applicability of a legal rationale (*‘illa*) of one legal ruling to a second ruling. A *farq*-objection is used to trap a debate opponent into admitting that their statement for the case at hand contradicts a known doctrine held by them or their legal school. Books of legal distinctions, however, can be seen as attempts to categorize possible *farq*-objections and the information necessary to overcome such objections. In this sense, *farq*-objections are used offensively to

demonstrate contradictions while the genre of legal *furūq* contain the information necessary to defend oneself against such objections, thereby presenting a legal school's substantive doctrines as coherent in terms of the rationales that underlie them.<sup>74</sup>

After studying the disputational background of legal distinctions, Chapter Four analyzes the logic of legal distinctions in detail. Specifically, this chapter attempts to define the relationship between lexicographic distinctions and legal distinctions in terms of the analytical framework employed in each genre. The resonances between these two genres are clear, but this chapter finds significant differences in the reasoning employed in each of these two kinds of distinctions and, consequently, in the rules that each genre attempts to follow. In differentiating between near-synonyms, the genre of lexicographical distinctions is based on a fundamental similarity between the two words being compared. Legal distinctions, however, aim to demonstrate the fundamental dissimilarity between the two legal scenarios being compared. This chapter's analysis establishes some of the rules that govern the genre of legal distinctions. Chapter Four then closes by attempting to locate the first work of legal distinctions, defined for these purposes as the first work that adheres to this framework.

Having established some of the parameters of the genre of legal distinctions, Chapter Five turns to works that potentially complicate our understanding of the genre

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<sup>74</sup> Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (New York, Cambridge: Cambridge University Press, 2013); Joseph Lowry, Introduction to *The Epistle on Legal Theory* by Muḥammad ibn Idrīs al-Shāfi'ī, ed. and trans. Joseph E. Lowry (New York and London: New York University Press, 2013), xviii-ix..

of legal distinctions. In particular, this chapter studies the intersection between the genres of legal distinctions and that of legal riddles (*al-aghāz al-fiqhiyya*). The resonances between these two genres are clear, and each genre seems to have affected the other, with some works of legal riddles that are almost indistinguishable from works of legal distinctions and some works of legal distinctions that present distinctions couched in the rhetorical style of riddling. This chapter locates the impetus for this convergence in the proliferation of venues at which legal knowledge could be performed—teaching sessions, literary salons, and the court of the ruler—and a growing taste, particularly in the Mamluk period in Cairo (13<sup>th</sup>-16<sup>th</sup> centuries), for the aesthetics of riddling. The role of performance is also important since it connects changes in literary style with social practice and different reading publics.

Finally, Chapter Six is a narrative bibliography of all works of legal distinctions known to me. The bibliographical work carried out in this chapter builds on and improves previous attempts to catalog this genre. I relied on earlier scholarship and also incorporated information from editorial discussions in all printed editions of texts in this genre, from the biobibliographical tradition, and from my own study of manuscript catalogs and collections. My survey locates thirty-six works that belong to this genre, and identifies the fifth/eleventh century and the seventh/thirteenth through eighth/fourteenth centuries as the peak period of composition in this genre. Chapter Six also discusses two Ḥanafī books of legal distinctions that have various dubious attributions but no known author. In spite of the uncertainty about the authors of these two works, they clearly belong to the genre and were copied and circulated to the same extent as other works in the genre whose authors are more easily identifiable.

The genre of *al-furūq al-fiqhiyya* presents a good subject for a case-study of the emergence and maturation of a new and distinct genre in Islamic legal literature. Through a study of this genre, this dissertation closely ties the intellectual history of Islamic law with the social display and consumption of Islamic legal knowledge, and specifically it demonstrates a close link between legal distinctions and distinctions in other scholarly fields. It also shows that the need for books of legal distinctions arose in part from the popularity of legal disputation and the usefulness of these works in overcoming *farq*-objections, which were common in the context of formal disputations. Additionally, the following study shows how changes in the genre of distinctions, and the genre of riddles, were tied to shifting aesthetic tastes and a changing demand for particular ways of packaging legal knowledge.

## Chapter One: What Is a Legal Distinction?

A book in the genre of legal distinctions is one that consists of a list of legal distinctions (*al-furūq al-fiqhiyya*). A legal distinction (*al-farq al-fiqhī*), according to the most common definition of the concept, explains the difference between “legal problems which are similar in appearance, but contradictory in their ruling (*aḥkām tatashābahu ṣuwaruhā wa-takhtalifu aḥkāmuhā*).”<sup>75</sup> These individual legal distinctions are particular kinds of comparisons. The collections of such legal comparisons first appear around the early fifth/eleventh century in works by Ḥanafī, Mālikī, and Shāfi‘ī scholars.

I begin by discussing what legal distinctions are, as found in books of *furūq al-fiqhiyya*, and how they function generally. In looking at the functioning of legal distinctions, I explain the epistemological difference between legal distinctions and distinctions in lexicography. I conclude with an explanation of the different ways in which the terms *farq* and *furūq* function within the discourses of Islamic law.

### Legal Distinctions Defined

There is a distinct genre of books on legal distinctions, but not much discussion in the premodern tradition about what legal distinctions are. Accordingly, before analyzing the history of the genre of legal distinctions, it will be important to gain an overview of what they are and how they functioned. Premodern theoretical discussions of legal distinctions are few and mostly brief but their similarities suggest a widespread and

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<sup>75</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 14-15.

shared understanding of the topic among both authors and their readers. The works of legal distinctions themselves all share a similar conceptual framework and organization.

The first theoretical discussion of legal distinctions comes in a work of legal distinctions by ‘Abd Allāh al-Juwaynī, the father of the more famous Imām al-Ḥaramayn Abū al-Ma‘ālī al-Juwaynī (d. 478/1085). His work is titled *al-Farq wa-l-jam‘*, and it is alternatively known as *Kitāb al-Furūq*. Al-Juwaynī begins his book with a lengthy introduction detailing his theory of legal distinctions. His discussion of the concept of legal distinctions is unique in its depth and breadth. He gives a typology of legal distinctions which has three categories of distinctions. The first category of distinction is when “one finds two issues on which the legal school does not disagree, which have a similar appearance but a contradictory ruling (*an yuṣādifa mas’alatayn lam yakhtalif al-madhhab fihimā*).”<sup>76</sup> In this category, there is a comparison of different laws that only appear to, but do not actually, contradict. This is the most basic and common kind of legal distinction, both in al-Juwaynī’s book and in the genre of legal distinctions generally.

Al-Juwaynī’s second and third categories are similar to each other. The second category is “when two questions arise which appear to be the same and al-Shāfi‘ī [(d. 204/820)] gave a definitive response to one of the questions and made the other ruling dependant on some factor (*an tajtami‘u mas’alatān al-Shāfi‘ī qaṭa‘a qawlahu bi-jawābihi fī*

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<sup>76</sup> Abū Muḥammad ‘Abd Allāh ibn Yūsuf Al-Juwaynī, *al-Jam‘ wa-l-farq*, ed. ‘Abd al-Raḥmān ibn Salāmah ibn ‘Abd Allāh al-Mazīnī (Beirut: Dār al-Jīl, 1424/2004), 1:39.

*iḥdāhimā wa-‘allaqa qawlahu bi-l-ukhrā).*”<sup>77</sup> The third category is when “two questions come up which appear to be the same and our legal scholars have mentioned two legal positions for one of them but given a definitive response for the other (*tajtami‘u mas’alatān dhakara mashāyikhunā wajhayn fī iḥdāhima wa-qaṭa‘ū al-qawl fī al-ukhra).*”<sup>78</sup> Both of these categories involve an uncertainty regarding which legal position is favored in the *madhhab*. The second category involves understanding the particularities of the substantive law of Muḥammad ibn Idrīs al-Shāfi‘ī, the eponym of the Shāfi‘ī school, while the third category relates to the doctrine of school authorities after al-Shāfi‘ī.

This final category can then be divided into two subcategories: (a) “the two different rulings have equivalent weight (*an yaqwā kull wāḥid min al-wajhayn)*”<sup>79</sup> and (b) “one of the two rulings is weakened by the rationale in the case on which there is no disagreement (*an yaḍ‘ufa aḥad al-wajhayn bi-dalīl al-mas’ala allatī lam takhtalifū fihā).*”<sup>80</sup> Again, these subcategories seem pretty clear. Category 3a involves deciding between two rulings with equal epistemological value, i.e. when there does not seem to be any criterion for preferring one ruling over another. Category 3b, however, involves evaluating two cases with different rulings and different epistemic values. How should a jurist measure a ruling reached by consensus, which applies only indirectly to the case at hand versus a directly relevant ruling on which there is no consensus?

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<sup>77</sup> Al-Juwaynī, *al-Jam‘ wa-l-farq*, 1:39-41.

<sup>78</sup> Al-Juwaynī, *al-Jam‘ wa-l-farq*, 1:41.

<sup>79</sup> Al-Juwaynī, *al-Jam‘ wa-l-farq*, 1:41.

<sup>80</sup> Al-Juwaynī, *al-Jam‘ wa-l-farq*, 1:41.

Al-Juwaynī's typology of legal distinctions is complex and shows that, for him, not only do distinctions offer ways of resolving apparent contradictions, but also a productive method for reasoning through different kinds of seemingly ambiguous legal issues. As he presents distinctions, they are a defensive and pedagogical intellectual maneuver in which the doctrine of a legal school is justified and through which students of Islamic law can learn the rationales for specific points of legal doctrine.

Al-Juwaynī's typology is especially interesting for the hierarchy it seeks to establish. He explains the different kinds of *furūq* that one can encounter and organizes them according to epistemic criteria. The first type involves no epistemic conflict, but rather disambiguating the scope of applicability of two different laws. The second type considers the opinions of al-Shāfi'ī; as the founder of the legal school to which the rest of the Shāfi'ī jurists adhere, his opinions enjoy epistemic authority over those of other jurists. The third type, meanwhile, involves disagreements at the level of individual jurists. These opinions are, epistemically, the weakest. Being able to understand which rule to apply and when, however, is an essential part of the academic formation of a jurist.

One way of understanding *furūq* in his usage is that he is describing the contents of his book, *Kitāb al-Furūq*, i.e. he is giving a typology for the *furūq* that make up the work at hand. His typology does, of course, explain the contents of his work, but to understand it as only pertaining to the contents of his work would be to miss the real importance of this typology. Al-Juwaynī's typology, in fact, conveys the possible kinds of contradictions of which a Shāfi'ī jurist could be accused of making during a disputation (*al-mujādala*; *al-munāẓara*). These are not only hypothetical accusations;



they correspond to various kinds of objections made in the course of formalized disputation, either in a real disputation or in paradigmatic accounts in writing.<sup>81</sup> In al-Juwaynī's presentation a debate opponent could accuse a Shāfi'ī jurist of contradiction because the opponent does not understand (i) the scope of applicability of seemingly overlapping rules, (ii) the nuances of al-Shāfi'ī's vast legal doctrine,<sup>82</sup> or (iii) how to reason through competing statements of substantive law by other major authorities in the Shāfi'ī school. In other words, according to al-Juwaynī, non-Shāfi'īs could accuse a Shāfi'ī of contradiction because the non-Shāfi'ī did not understand how to make the complexity inherent in the substantive doctrine of the Shāfi'ī legal school coherent.

Of course, it should not be surprising for a Shāfi'ī scholar to claim that others do not understand the depth and complexity of Shāfi'ī doctrine. Nevertheless, this claim can help us place this typology outside the narrow confines of al-Juwaynī's book and into the larger world of intra-*madhhab* disputation. His first type of legal distinction (i) is the most straightforward. It involves a simple case of mistaken identity, i.e. two different issues on which there is no disagreement and which have different rulings attached to them that someone wrongly supposes to be the same legal issue. Al-Juwaynī confirms that this is the most common kind of distinction and, indeed, both from the contents of his book and the contents of other books of legal distinctions it does appear

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<sup>81</sup> I discuss the importance of *jadāl* to the genre of legal distinctions in Chapter Three.

<sup>82</sup> The history of al-Shāfi'ī's substantive legal doctrine is complex. Not only was his writing preserved and transmitted in slightly different versions by his students, but he is also said to have produced a version of his legal doctrine in Iraq and a different and revamped version in Egypt, the so-called old (*al-qadīm*) and new (*al-jadīd*) doctrines. For more on this issue, see Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (New York, Cambridge: Cambridge University Press, 2013).

that this is the most common type.<sup>83</sup> Most legal distinctions are straightforward comparisons of laws which have a similar appearance but different outcomes.

Al-Juwaynī gives the following as an example of this type of distinction:

A ritual prayer is invalid if it is begun with a temporally prior intention, unless this intention is coterminous with the beginning of the prayer (*al-ṣalāt lā taṣiḥḥu bi-niyya mutaqaaddima ḥattā takūna al-niyya muqtarana bi-awwalihā*).

A fast, however, is valid even if the intention to fast was made prior to the start of the fast (*wa-yaṣiḥḥu al-ṣawm wa-in kānat niyyatuhu mutaqaaddima ʿala al-ṣawm bi-zamān*).

The distinction between these is the possibility to follow the statement of intention directly by the prayer (*al-tamakkun min ḍamm al-niyya ilā awwal al-ṣalāt*) and the clear inability to follow the statement of intention directly by the fast.<sup>84</sup>

In this example, the doctrinal difference centers on making an intention to perform a ritual act. One can resolve to pray only immediately preceding the prayer, while one can resolve to fast anytime before the start of the fast. These two situations appear similar since they both involve resolving one's intention to perform a ritual duty. The rulings seem contradictory, however, since the time between resolving to perform the duty and performing the duty is different in these two instances. The supposed contradiction, therefore, rests on the incommensurability between the time to resolve

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<sup>83</sup> Al-Juwaynī, *al-Jamʿ wa-l-farq*, 1:39. He says they are “practically infinite (*naẓāʾir hādihā al-qism akthar min an yuḥṣā*).”

<sup>84</sup> Al-Juwaynī, *al-Jamʿ wa-l-farq*, 1:39.

performing one ritual duty and another. This confusion further rests on the assumption that all ritual duties are legally similar; that is, it must assume that the rules regulating ritual prayer are equivalent to those regulating ritual fasting. It is only by first thinking that the acts of prayer and fasting must be alike that their difference leads to an incongruence. The legal distinction, however, shows how these two rulings do not lead to an incongruence.

The next two kinds of distinction proposed by al-Juwaynī are different from the first type, but similar to each other. These two kinds of distinctions do not involve differentiating between different situations, but rather they require determining the correct precedent opinion to rely on for a given case. In these types of distinctions, the two situations really are similar; resolving the incongruity is no longer a matter of correctly understanding the facts of the case, but rather of understanding the precedential opinions established by the school's legal authorities and being able to decide between them. Al-Juwaynī gives the following as an example of the second type of distinction, in which al-Shāfi'ī gives apparently conflicting opinions. First, I translate and discuss al-Juwaynī's presentation of the legal problem and then move on to his solution.

Al-Shāfi'ī, may God be pleased with him, had two rulings in regard to a hired worker (*al-ajir al-mushtarik*) in cases when the capital is destroyed while in his possession.

One ruling is that the worker is liable for the value of the capital (*innahu ḍāmin*).

The other is that he is exempt from any liabilities (*barī' an al-ḍamā'in*).

Thus, if someone hires a man as a worker to perform work in his workshop (*fī ḥānūtihi*) and something is destroyed while in the worker's possession, al-Shāfi'ī has stated definitively (*qad qaṭa'a al-qawl*) that he is not liable, even though both of them are laborers (*kilāhumā ajīr*).<sup>85</sup>

According to al-Juwaynī, al-Shāfi'ī has, in different circumstances, said both that a hired worker is and is not liable for damages to the goods with which he is working. Al-Juwaynī presents these statements without further explanation or information. He does not contextualize this information nor explain where it was that al-Shāfi'ī made these statements, i.e. in what book, on what bases, etc. He simply presents this contradiction as a known fact — although he offers a partial contextualization later. It is likely that al-Juwaynī is addressing an audience expected to be familiar with the Shāfi'ī legal school and its doctrines such that this does not need to be explained in full. This exposition, however, makes clear not only the contradiction inherent in al-Shāfi'ī's doctrine, but also how it manifests itself in an applied setting.

Al-Juwaynī then clears up the confusion and resolves the contradiction between the two rules. He says:

The distinction between them is that an independent laborer (*al-ajīr al-mushtarik*) has possession of the countervalue that corresponds to the price of his labor (*yanfaridu bi-l-yad 'alā mā akhadha al-'iwaḍ fī muqābalati 'amalihi fīhi*).

Thus, he can be held liable for the destruction of the good. A worker in a workshop (*al-ajīr fī al-ḥānūt*), however, is not in sole possession, but rather the

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<sup>85</sup> Al-Juwaynī, *al-Jam' wa-l-farq*, 1:40.

owner of the workshop has possession (*al-yad*) of what is in his workshop. Thus the destruction of something in the possession of the worker (*fi yad al-ajir*) is like the death of a slave in the possession of his owner (*fi yaday sayyidihi*) through phlebotomy (*bi-l-faşd*) or cupping during an operation (*al-jarrāḥa*). The phlebotomist is not liable.<sup>86</sup>

In other words, the distinction between the two cases involves the specific situation of the worker who damaged the goods. An independent laborer is not equivalent to an employee in a workshop (*al-ajir fi al-ḥānūt*) when it comes to damages. The independent laborer is liable for damages because he has the goods in his sole possession (*al-yad lahu*); the employee in a workshop is exempt from these damages since the goods are within the confines of the store and therefore in the possession of the owner of the store (*al-yad li-ṣāhib al-ḥānūt*). Al-Juwaynī resolves the apparent contradiction by explaining that the determinant of liability in these situations is possession, not the legal status of the laborer as a hired worker. In other words, whoever has legal possession of the goods is responsible for any damages, not necessarily the person who committed the damage. The fact that one worker is held liable while another is not has nothing to do with their status as workers but rather where the damages took place.

This point is emphasized through the comparison given in the explanation. Here, al-Juwaynī brings up the non-liability of a doctor when treating someone's slave. In this example, a doctor who goes to someone's house to treat a slave through blood-letting or scarification is not responsible for any damages to the slave. This doctor is

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<sup>86</sup> Al-Juwaynī, *al-Jam' wa-l-farq*, 1:40-41.

not liable because these damages happen while the slave is in the care and custody of his master (*fī yaday sayyidihi*), as al-Juwaynī says when introducing this example. Indeed, a doctor making house calls is a kind of independent laborer and thus offers another equivalent example to those discussed above. The concept of possession (*al-yad*) is an important factor in all three cases. It would seem that a general rule could be established here. Liability for damages due to negligence falls on whoever has possession of the damaged good. Al-Juwaynī, however, does not go so far as to establish this rule.

Although al-Juwaynī clears away the contradiction as a part of the active or authoritative doctrine of the Shāfiʿī legal school, his explanation ignores the potentially contradictory nature of the two statements attributed to al-Shāfiʿī. There are several possibilities for harmonizing al-Shāfiʿī's statements but al-Juwaynī seems uninterested in undertaking this specific task. His concern, rather, is with the coherence of the Shāfiʿī *madhhab* as developed over the centuries by later jurists. He may see the two, Muḥammad ibn Idrīs al-Shāfiʿī's substantive doctrine and the substantive doctrine of the legal school which bears his name, as extensions of each other, such that resolving apparent contradictions found in the doctrine of the Shāfiʿī school implicitly does the same work for the doctrine of its eponym. Nevertheless, it is worth noting that al-Juwaynī's interest lies primarily in the Shāfiʿī *madhhab* as an elaborated scholarly-legal institution rather than in explicitly defending the specific doctrines of Muḥammad ibn Idrīs al-Shāfiʿī. In other words, the authority or validity of the *madhhab* as expressed

here lies in the rationality of its doctrine and is not directly tied to the explicit words and writings of its assumed founder.<sup>87</sup>

The third category in al-Juwaynī's heuristic is similar to the second. Instead of focusing on the teachings and doctrines of al-Shāfi'ī and the interpretations thereof, however, this category is concerned with the teachings and writings of other scholars affiliated with the Shāfi'ī *madhhab*. This category is composed of two subcategories. The first of these, 3a, is analogous to category 2. It continues to elaborate the procedures of accusation and apologetics as found above. For this reason, Juwaynī says that he omits a fuller discussion of it.<sup>88</sup>

Al-Juwaynī's discussion of his second subcategory (3b) is worth quoting in full, especially because al-Juwaynī does not give an example of this kind of legal distinction. It also reveals a great deal about how ramified legal thought had become already by the fifth/eleventh century. It remains unclear whether we can infer from the the lack of examples here that this particular sub-type was more theoretical than practical.

The second subcategory obtains when the applicability of one of the two rulings is weakened by an indicant in the unanimously agreed-upon case (*an yaḍ'ufu aḥad al-wajhyan bi-dalīl al-mas'ala allatī lam yakhtalifū fihā*). Maintaining a clear distinction then becomes impossible (*fa-yata'adhdhur al-farq al-wāḍiḥ*). In such a

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<sup>87</sup> Al-Juwaynī may have seen this distinction as trivial, since a legal school can be seen as a large-scale hermeneutic project to harmonize, expand, and perfect the ideas of its eponym. The way in which the *madhhab* is defended, however, is noteworthy. In other words, al-Shāfi'ī's doctrine and the doctrines of his students as recorded in books seem to have been less important than the interpretations of those doctrines elaborated by the later Shāfi'ī *madhhab*.

<sup>88</sup> Al-Juwaynī, *al-Jam' wa-l-farq*, 1:41. Specifically, he says, "The discouse of this section is similar to that of section two, above (*al-kalām fī hādihā al-qism ka-l-kalām fī al-qism al-thānī qablahu*)."

situation, one should then strive to deem the weaker of the two positions untenable and dismiss it, rather than striving to discover the basis for a distinction and rationalizing it, not even by extrapolating (*takhrīj*) from the two opinions on the basis of the unanimous accepted ruling (*fa-ishtaghil fī mithl hādihā al-mawḍi‘ bi-tazyīf aḍ‘af al-wajhayn wa-isqāṭihi wa-lā tashtaghil bi-iltimās al-farq fa-yata‘adhdharu wa-lā fī-takhrīj al-wajhayn fī al-mas’ala al-mujma‘ ‘alayhā*). Wayward speculation (*al-ta‘assuf*) and farfetched extrapolations (*takhrījāt*) are rampant in this category (*qism*). Expending great energy on invalidating weaker opinions is more important than both wayward speculation and a rampant proliferation in authoritative legal opinions and extrapolating from them (*wa-ṣarf al-‘ināya ilā isqāṭ ba‘ḍ al-wujūh al-ḍa‘īfa awlā min al-ta‘assuf wa-l-wulū‘ bi-istikhār al-wujūh wa-takhrījihā*).<sup>89</sup> When we come across examples of this subcategory (*qism*), we will mention them (*dhakarnāhā*) but we have already explained the reasoning in these cases (*wa-mahhadnā hādhihi al-ṭarīqa fihā*).<sup>90</sup>

Legal distinctions of this kind function as a control on the spread of authoritative legal doctrine. Extrapolation (*takhrīj*) seems to have been one of, if not the, primary method of legal derivation after the onset of the so-called “regime of *taqlīd*.”<sup>91</sup> The formalization

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<sup>89</sup> This statement should be understood as promoting the rigor of the *madhhab* in order to prevail in a legal disputation, not as related to the desirability of *ijmā‘*.

<sup>90</sup> Al-Juwaynī, *al-Jam‘ wa-l-farq*, 1:41.

<sup>91</sup> The idea of *taqlīd* has long been a subject of scholarly attention. *Taqlīd*, in this context, refers to the faithfulness on the part of jurists to the juristic authority of earlier jurists. On *taqlīd*, see Sherman Jackson, “*Taqlīd*, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory Muṭlaq and ‘Āmm in the Jurisprudence of Shihāb al-Dīn al-Qarāfī” *Islamic Law and Society* 3.2 (1996): 165-92; Mohammad Fadel, “The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar*,” *Islamic Law and Society* 3.2



of Islamic law involved the formalization of distinct legal schools following the doctrine of their eponyms, Abū Ḥanīfa al-Nu‘mān ibn Thābit (d. 150/767), Mālik ibn Anas (d. 179/795), Muḥammad ibn Idrīs al-Shāfi‘ī, and Aḥmad ibn Ḥanbal (d. 241/855).<sup>92</sup> *Taqlīd* can perhaps be understood best as a discursive commitment to adhering diligently to already-established legal interpretations set out by the earliest figures in a legal school. Discursive adherence implied a shift away from labeling one’s own juristic techniques as *ijtihād*, independent legal reasoning, since one’s legal reasoning should occur within the established bounds of the legal school.

Operating under the regime of *taqlīd* imposed certain strictures on the reasoning of jurists and on the way they discuss their reasoning. Instead of independent legal reasoning, jurists called their reasoning extrapolation (*takhrīj*), based on the writings of previous authorities.<sup>93</sup> When later jurists based their reasoning and interpretations on the works of earlier master jurists this gave those later jurists a way

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(1996): 193-223; Ahmed Fekry Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, NY: Syracuse University Press, 2015), 1-30. On *takhrīj*, see Wael Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2005), 43-56; *ibid.*, “*Takhrīj* and the Construction of Juristic Authority” in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden; Boston: Brill, 2002), 317-335; and Ahmed A. Ahmed, *Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Medieval Islamic Jurisprudence* (Leiden; Boston: Brill, 2006), 1-4, 49-72.

<sup>92</sup> Christopher Melchert has studied the rise of the legal schools in detail. He locates the emergence of the legal schools to the fourth/tenth century. In his account, Ibn Surayj (d. 306/918) established the Shāfi‘ī school, Abū Bakr al-Khallāl (d. 311/923) established the Ḥanbali school, and Abū Ḥasan al-Karkhī (d. 340/952) established the Ḥanafī school. All three of these figures lived in Baghdad. The Mālikī school had a double history, according to Melchert. In al-Andalus, it was established by ‘Īsā ibn Dīnār (d. 212/827-28) and Yahya ibn Yahya al-Laythī (d. 234/849) in Toledo. The Eastern Mālikī school was established by Abū Bakr al-Abharī (d. 375/986) in Baghdad but only lasted seventy-five years. See Christopher Melchert, *The Formation of the Sunni Schools of Law, 9<sup>th</sup>-10<sup>th</sup> centuries C.E.* (Leiden; New York: Brill, 1997).

<sup>93</sup> Hallaq, *Authority*, 43-56; Ahmed, *Structural Interrelations*, 1-4, 57-59, 189-92.

to elaborate on substantive law and engage in legal reasoning while allowing them to argue that they were remaining within the institutional confines of their various legal schools. Modern Western scholarship has tended to see this legal methodology as a kind of decadence in Islamic law, although recent scholarship has challenged this narrative of *taqlīd* as decay.<sup>94</sup> More productively, *taqlīd* can be understood as a discursive move rather than practical adherence to a state of stability, and further, as David Powers describes it “[*taqlīd* is] what we might call adherence to the rule of law,” or as Ahmed Fekry Ibrahim puts it, “legal conformism.”<sup>95</sup> In using this phrase, Powers is referring to the potential for *taqlīd* to establish known rules with predictable application in a legal system that functions reliably rather than one functioning ad-hoc. In this regard, *taqlīd* contributes to the establishment of fixed norms.

The possibility of extrapolating new opinions based on previous ones, however, poses a problem for the discursive adherence expected in *taqlīd*. The problem is not the

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<sup>94</sup> Joseph Schacht famously referred to Islamic law as being in a state of “*ankylose*,” i.e. a state of rigidity, as a result of the imposition of *taqlīd*. See Joseph Schacht, “Classicisme, traditionalisme et ankylose dans la loi religieuse de l’Islam” in *Classicisme et déclin culturel dans l’histoire de l’Islam*, 141-61, ed. R. Brunschvig and G.E. von Grunebaum « Paris: G.P. Maisonneuve et Larose).

<sup>95</sup> David S. Powers, *Law, Society, and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002), 94 ; Ibrahim, *Pragmatism*, 10. Powers and Ibrahim are by no means the only scholar to have challenged the previously prevailing negative view of *taqlīd*. Wael Hallaq, among other scholars, has also taken issue with that view in various books and articles. The bibliography on this topic is quite vast. see, for example, Wael Hallaq, “From Fatwās to Furū‘: Growth and Change in Islamic Substantive Law.” *Islamic Law and Society* 1 (1994): 29-65; and more recently, *idem.*, *Sharī‘a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009); Sherman Jackson, *Islamic Law and the State The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden; New York: Brill, 1996); and Norman Calder, *Islamic Jurisprudence in the Classical Era*, ed. Colin Imber and Robert Gleave (Cambridge: Cambridge University Press, 2010).

exercise of legal reasoning, but rather the infinite potential that extrapolation holds.<sup>96</sup> In order to impose bounds on the seemingly unrestricted nature of extrapolation, al-Juwaynī calls upon the logic of legal distinctions. This subset of distinctions, rare enough in occurrence for him not to cite an example but discuss only theoretically, exists as a way of limiting the ambit of speculative extrapolation. In order to constrain the scope of such speculation, al-Juwaynī emphasizes the importance of expending energy invalidating weak points of legal doctrine.<sup>97</sup>

Interestingly, the usual logic of legal distinctions involves simultaneously validating two potentially contradictory opinions in order to show the internal consistency within the doctrine of a particular school of Islamic law, yet in this case, category 3b, al-Juwaynī clearly sought to apply the logic of distinctions to invalidate or undermine certain legal opinions. Al-Juwaynī, unlikely later jurists, likely uses distinctions-based argumentation offensively due to the tie between legal distinctions and formal disputation (*jadāl*) and the earliness of his book. Learning about distinctions in the context of preparing for disputations allows al-Juwaynī to present his distinctions both as ways to overcome the accusation of *farq qua* contradiction and potentially to make this charge himself against others.

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<sup>96</sup> Ibrahim, “The Codification Episteme in Islamic Juristic Discourse between Inertia and Change” *Islamic Law and Society* 22 (2015): 257-220.

<sup>97</sup> Al-Juwaynī, *al-Jam‘ wa-l-farq*, 1:41. A concern for controlling the growth of legal doctrine was a recurring topic in post-formative Islamic legal writing. See, Wael Hallaq, *Authority*, 236-41; and Norman Calder, “al-Nawawī’s Typology of Muftis and Its Significance for a General Theory of Islamic Law” *Islamic Law and Society* 3.2 (1996), 137-64, especially 137-43.

Najm al-Dīn al-Ṭūfī includes a discussion of *furūq* in his *‘Alam al-jadhal fī ‘ilm al-jadal*, a manual for legal disputation.<sup>98</sup> This discussion comes under the section titled “Counter-Objections Based on *Qiyās*.” The seventeenth objection based on *qiyās* is distinction (*farq*). This discussion is couched in the terms of legal dialectics and is at the same time a clear discussion of the material found in books of legal distinctions and their underlying logic. In his understanding, *farq* is “discovering the legally relevant and unique characteristic in either the precedent case or the instant case (*ibdā’ waṣf fī al-aṣl aw al-farq yunāsibu mā akhtaṣṣa bihi min al-ḥukm*).”<sup>99</sup> Al-Ṭūfī details how to recognize when a *farq* objection may be lodged in a disputation. “The necessary condition for a distinction is that the two scenarios share multiple legally relevant characteristics, otherwise the difference between the two cases is a fundamental difference and an objection based on distinction would be ineffective (*wa-shartuhu ishtirāk al-ṣūratayn fī ba‘d al-awṣāf wa-illā la-kāna al-farq baynahumā aṣliyyatan fa-lā yu’aththiru farq al-mu’tarid*).”<sup>100</sup> According to this statement, in order to use a *farq* objection, one must compare two situations which share several relevant characteristics. The similarities shared by two scenarios not only invite their comparison, but also allows the possibility that they should be treated the same way legally. If situations are too different, then comparing them in this way would be fruitless. Different situations do not necessarily need to be regulated in similar ways. This information is helpful for a debate

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<sup>98</sup> I discuss the relationship between distinctions and disputation in Chapter Three.

<sup>99</sup> Najm al-Dīn Sulaymān ibn ‘Abd al-Qawī al-Ṭūfī, *‘Alam al-jadhal fī ‘ilm al-jadal*, ed. Wolfhart Heinrichs. (Weisbaden: Franz Steiner Verlag, 1408/1987), 71

<sup>100</sup> Najm al-Dīn al-Ṭūfī, *‘Alam al-jadhal*, 71.

participant to understand how *farq*-objections are made and at the same time to know how to overcome the objection.

Al-Ṭūfī's focus on *farq* in the context of disputation should be unsurprising, given that his book is a disputation manual. Nevertheless, his analysis of legal distinctions is quite similar to that by al-Juwaynī. The shared characteristics that allow legal problems to be compared are the potential legal rationales (*ʿilal*) that would result in similar rulings. The differing characteristic (*al-fāriq*), however, is the actual legal rationale that gives each of the two compared situations different legal outcomes. This is very similar to al-Juwaynī's first type of legal distinction. Further, even though al-Ṭūfī's discussion comes in a heavily disputational context, he follows his description of *farq* with a list of the various books that have been written on this subject. "Scholars have written many books on the distinctions between rulings (*al-furūq bayna al-aḥkām*)."<sup>101</sup> The books he lists are the books of legal distinctions discussed in this dissertation.<sup>102</sup> He seems to understand books of legal distinctions as a pure extension of distinctions *qua* disputational objections.

Finally, the Shāfiʿī scholar Badr al-Dīn al-Zarkashī also includes a short discussion of legal distinctions in the introduction to his *al-Manthūr fī al-qawāʿid*. Al-Zarkashī notes that the "law has many subdisciplines (*ʿilam anna al-fiqh anwāʿ*)."<sup>103</sup> One of the varieties that he mentions is "knowledge of assimilation and distinction (*maʿrifat*

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<sup>101</sup> Najm al-Dīn al-Ṭūfī, *ʿAlam al-jadhal*, 72.

<sup>102</sup> Najm al-Dīn al-Ṭūfī, *ʿAlam al-jadhal*, 72-73.

<sup>103</sup> Badr al-Dīn Muḥammad ibn Bahādur al-Zarkashī, *al-Manthūr fī al-qawāʿid*, ed. Taysīr Fāʿiq Aḥmad Maḥmūd and ʿAbd al-Sattār Abū Ghadda, 1:69.

*al-jam‘ wa-l-farq*” by which he clearly refers to legal distinctions, since he says “among the best books written on this topic is the book by the scholar (*al-shaykh*) Abū Muḥammad [‘Abd Allāh] al-Juwaynī.”<sup>104</sup> This is a telling account, in that two of the three major discussions of legal distinctions come from Shāfi‘ī scholars and that al-Zarkashī cites al-Juwaynī’s book as one of the two principal books of legal distinctions in the course of his discussion.

Al-Zarkashī provides the following account of legal distinctions and its literature:

The second type of knowledge is knowledge of how to assimilate and draw distinctions between cases (*ma‘rifat al-jam‘ wa-l-farq*). This was the basis for most of the disputations (*munāẓarāt*) among the early scholars, so much so that one of them said, “Law is nothing other than distinction and assimilation (*al-fiqh farq wa-jam‘*).”<sup>105</sup> Among the best works written on this topic are the books by the renowned Abū Muḥammad al-Juwaynī and Abū al-Khayr ibn Jamā‘a al-Maqdisī [(d. 480/1086)]. Any distinction that can be drawn between two cases is effective as long as they cannot be conjecturally assimilated to each other (*anna al-jāmi‘ aẓhar*).<sup>106</sup> The Imam [al-Zarkashī] said, “It is not sufficient to draw distinctions merely on the basis of one’s whims. Rather, if two cases can be assimilated to each other in a way that seems more probable than drawing a distinction between them, then one should rule on the basis that they share a similarity

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<sup>104</sup> Al-Zarkashī, *al-Manthūr*, 1:69.

<sup>105</sup> I have been unable to locate a source earlier than al-Zarkashī that uses this phrase to describe the law.

<sup>106</sup> This statement should draw to mind al-Ṭūfī’s insistence on the importance of shared characteristics.

(*wajaba al-qaḍāʾ bi-ijtimāʿihimā*). If the two cases are at odds, however, they should be held to be distinct (*wa-in inqadaḥa faraqa ʿalā buʿd*).<sup>107</sup> The Imam also said, “Understand this well, for it is one of the foundations of the religion (*fainnahū min qawāʿid al-dīn*).<sup>108</sup>

According to this definition, legal distinctions are a core component of the multifaceted complex that is Islamic law. Al-Zarkashī lists *al-farq wa-l-jamʿ* second in his list of components of Islamic law. His components are: (i) “knowledge of the substantive laws, both those mentioned explicitly in revelation and those known through legal reasoning;”<sup>109</sup> (ii) “*al-farq wa-l-jamʿ*,”<sup>110</sup> (iii) “the scaffolding of legal cases, one on the other such that they all result from one underlying principle (*banāʾ al-masāʾil baʿḍahā ʿalā baʿḍ li-ijtimāʿihā fī maʾkhadh wāḥid*);”<sup>111</sup> (iv) “difficult questions (*al-muṭārahāt*), i.e. obscure questions that are used to test one’s intellect (*asʿila ʿawīṣa yuqsad bihā tanqīḥ al-adhhān*);”<sup>112</sup> (v) “sophistical argumentation (? *mughālaṭāt*);”<sup>113</sup> (vi) “examinations (*mumtaḥināt*);”<sup>114</sup> (vii) “riddles (*al-alghāz*);”<sup>115</sup> (viii) “legal strategems (*ḥiyal*);”<sup>116</sup> (ix) “knowledge of individual scholars (*maʿrifat al-afrād*), what specific positions did each

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<sup>107</sup> This statement is quite similar to al-Juwaynī’s discussion of distinction type 3b.

<sup>108</sup> Al-Zarkashī, *al-Manthūr*, 1:69.

<sup>109</sup> Al-Zarkashī, *al-Manthūr*, 1:69.

<sup>110</sup> Al-Zarkashī, *al-Manthūr*, 1:69.

<sup>111</sup> Al-Zarkashī, *al-Manthūr*, 1:69-70. On the concept of legal scaffolding, see Sherman Jackson, “*Taqīd*.”

<sup>112</sup> Al-Zarkashī, *al-Manthūr*, 1:70-71.

<sup>113</sup> Al-Zarkashī, *al-Manthūr*, 1:71.

<sup>114</sup> Al-Zarkashī, *al-Manthūr*, 1:71.

<sup>115</sup> Al-Zarkashī, *al-Manthūr*, 1:71.

<sup>116</sup> Al-Zarkashī, *al-Manthūr*, 1:71.

take on issues of substantive law (*mā li-kull min al-aṣḥāb min al-awjuh al-qarība*);<sup>117</sup> and (x) knowledge of the specific precepts (*ḍawābiṭ*) which assimilate (*tajma‘u jumū‘an*) and the maxims (*qawā‘id*) on which legal theory and substantive law depend (*allatī turaddu ilayhā uṣūlan wa-furu‘an*).<sup>118</sup> This list, which al-Zarkashī uses to situate his work on legal maxims (*qawā‘id*), provides a fascinating insight into the prevailing conceptions of Islamic law in the ninth/fifteenth century.

It is clear from this list not only that al-Zarkashī sees distinctions as a core component of Islamic law, but also that he sees it as an area of knowledge distinct from the knowledge of substantive law, which corresponds to his first category. He refers to substantive law here as *aḥkām al-ḥawādith* (rulings on legal cases). This list is also curious in that it does not use the terms *furū‘* and *uṣūl*, the traditional bipartite division of Islamic law and legal writing, to denote broad categories of legal discourse.<sup>119</sup> It also underscores the importance of al-Juwaynī’s book on legal distinctions to the Shāfi‘ī school and the centrality of disputations in the early rise of legal distinctions, at least for the Shāfi‘ī *madhhab*. Al-Ṭūfī also makes a strong connection between books of legal distinctions and *farq* as a kind of objection made in a legal disputation. Still, al-Zarkashī’s discussion adds little to our understanding of what legal distinctions are. These are the only three theoretical discussions of the genre of legal distinctions of

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<sup>117</sup> Al-Zarkashī, *al-Manthūr*, 1:71.

<sup>118</sup> Al-Zarkashī, *al-Manthūr*, 1:71.

<sup>119</sup> Interestingly, at the end of his entry on *ḍawābiṭ* and *qawā‘id*, al-Zarkashī says “These are the true foundations of the law (*wa-huwa uṣūl al-fiqh ‘alā al-ḥaqīqa*)” (1:71). Dividing Islamic Law into either *furū‘* or *uṣūl* seems to be traditional in the Western study of Islamic law, but it may not be a reflection of the ways in which the Islamic legal tradition has always understood itself.



which I am aware. Al-Juwaynī and al-Zarkashī are interested in discussing legal distinctions as a methodology of legal argumentation and legal reasoning. For them, the focus in this field is on resolving apparent contradictions.

The introductions to premodern works of legal distinctions tend to be quite short and lack such discussions, so these three passages reveal interesting information about the importance and function of such works, which I discuss below, but they do not give us insights into the reasoning that underlies the activity of drawing legal distinctions.

There is a modest amount of secondary literature, in Arabic and European languages, on legal distinctions.<sup>120</sup> The majority of these discussions occur in editors' introductions to printed editions of works of legal distinctions. In such cases, however, most of the discussions list major works of legal distinctions and their authors with a short lexicographical discussion of the trilateral root *f-r-q* and its morphological derivatives. These works, in general, do not include typological or theoretical discussions of legal distinctions beyond what has been discussed above. One major modern study of legal distinctions, however, is Ya'qūb al-Bāḥusayn's *al-Furūq al-fiqhiyya wa-l-uṣūliyya - muqawwimātuhā - shurūtuḥā - taṭawwuruhā - dirāsa nazariyya - waṣfiyya - tārikhiyya*.<sup>121</sup> In

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<sup>120</sup> As I was editing this dissertation for final submission, I became aware of Necmettin Kızılkaya's recent monograph on the topic of legal distinctions, *İslâm hukukunda farklar*. Kızılkaya begins his monograph with a discussion of the concept of *furūq* in various Islamic sciences. He does not discuss differential diagnosis, but he does include an insightful discussion of *furūq* in Quran commentary. The main part of Kızılkaya's study consists of a chronology and description of works of legal distinctions. See Necmettin Kızılkaya, *İslâm hukukunda farklar: Furûk literatürü üzerine bir inceleme* (Istanbul: İz Yayıncılık, 2016). I thank Mariam Sheibani for alerting me to this work.

<sup>121</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*.

this work, al-Bāḥusayn provides a brief theoretical discussion of the kinds of *furūq* writing. His presentation of legal distinctions is quite different from that discussed by al-Juwaynī.

Al-Bāḥusayn finds two different kinds of distinctions in legal writing, legal distinctions (*al-furūq al-fiqhiyya*) and legal-theoretical distinctions (*al-furūq al-uṣūliyya*). In his understanding, legal distinctions focus on correctly determining the legal principles and rationales (*al-ʿilal*) on which rulings are based. By understanding why a legal rationale applies to a given case, a jurist can understand how to correctly derive and then apply this rationale to other cases. In other words, al-Bāḥusayn understands legal distinctions as relating to proper understanding and exercise of legal analogies (*qiyās*). Unlike al-Juwaynī, al-Bāḥusayn does not categorize legal distinctions according to epistemological status, and in fact he disregards epistemology in his categorization of legal distinctions.

Al-Bāḥusayn says that writings on legal distinction “have taken various different forms.”<sup>122</sup> He lists two matters on which all books on legal distinctions agree and a few in which they differ. According to him, all books of legal distinctions discuss individual laws and the distinction(s) between them, sometimes they also discuss shared characteristics (*al-jāmiʿ*), and they all “follow the traditional legal organization.”<sup>123</sup> According to al-Bāḥusayn, however, they differ in their particular content. He sees four kinds of works that address legal distinctions: (i) some works

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<sup>122</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 79-82.

<sup>123</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 79.

discuss only substantive laws that are similar outwardly but have conflicting rulings and the distinctions between them (*dhikr al-furūʿ al-fiqhiyya al-mutashābiha fī al-ṣūra wa-l-mukhtalifa fī al-ḥukm maʿa bayān al-farq baynahumā*);<sup>124</sup> (ii) some discuss maxims (*qawāʿid*) and precepts (*ḍawābiṭ*) in addition to a discussion of legal distinctions;<sup>125</sup> (iii) some address distinctions related to a specific legal issue;<sup>126</sup> and (iv) some larger works devote one section to legal distinctions.<sup>127</sup>

The second section of al-Bāḥusayn’s book is on legal-theoretical distinctions. These distinctions are, according to him, entirely different from substantive legal distinctions. His categorizations parallels one made in the present study, which understands legal distinctions to be different from what I term applied lexicographical

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<sup>124</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 79-81. He gives the following as examples of this kind of work: *Al-Furūq* by Asʿad ibn Muḥammad al-Karābīsī (d. 570/1174-75), *Iddat al-burūq* by Abū al-ʿAbbās al-Wansharīsī (d. 914/1508), *al-Furūq al-fiqhiyya* by Abū al-Faḍl Muslim ibn ʿAlī al-Dimashqī (fl. fifth/eleventh c.), and *Idāḥ al-dalāʾil fī al-farq bayna al-masāʾil* by ʿAbd al-Rahīm al-Zarīrānī (d. 841/1341).

<sup>125</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 81-82. He gives the following as examples of this kind of work: *Kitāb al-Munāqadāt fī al-ḥaṣr wa-l-istithnāʾ* by Muḥammad ibn al-Ḥusayn al-Fattākī (d. 448/1056-57) and *al-Istighnāʾ fī al-farq wa-l-istithnāʾ* by Badr al-Dīn al-Bakrī (d. ninth/fifteenth c.). Al-Bakrī’s book is also known by the title *al-Iʿtināʾ fī al-farq wa-l-istithnāʾ*. It has been published twice, once under each name. Muḥammad ibn Abī Bakr al-Bakrī, *al-Istighnāʾ fī al-farq wa-l-istithnāʾ*, ed. Saʿūd ibn Muṣʿad ibn Musāʿid al-Thubaytī (Mecca: al-Mamlaka al-ʿArabiyya al-Saʿūdiyya, Jāmiʿat Umm al-Qurā, Maʿhad al-Buḥūth al-ʿIlmiyya wa-Iḥyāʾ al-Turāth al-Islāmī, Markaz Iḥyāʾ al-Turāth al-Islāmī, 1988) and *ibid.*, *al-Iʿtināʾ fī al-farq wa-l-istithnāʾ kitāb yabḥathu fī qawāʿid al-fiqh al-islāmī wa-furūʿihi*, ed. ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿawwad (Beirut: Dār al-Kutub al-ʿIlmiyya, 1991).

<sup>126</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 82. Al-Bāḥusayn does not give any examples, but it seems that he is referring to the kinds of books that contain what I term applied linguistic distinctions, see Chapter Two.

<sup>127</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 82. Al-Bāḥusayn also does not give an example of this kind of book, but rather says that it happens in “books on legal maxims (*muʿallafāt fī al-qawāʿid al-fiqhiyya*).” This kind of discussion can be found in books such as *al-Ashbāh wa-l-Nazāʾir* by Jalāl al-Dīn al-Suyūṭī (d. 911/1505) and *al-Ashbāh wa-l-Nazāʾir* of Ibn Nujaym al-Miṣrī (d. 970/1563).

distinctions. Al-Bāḥusayn's legal-theoretical distinctions are roughly equivalent to what I term an applied lexicographical distinction.<sup>128</sup>

Wolfhart Heinrichs sees legal distinctions as being part of a larger complex of various “inductive” reasoning processes in Islamic law, in conjunction with “*qawā'id*, and *asbhāh wa nazā'ir*.”<sup>129</sup> He contrasts these three categories of inductive reasoning based on existing substantive laws with *uṣūl al-fiqh*, which is “a deductive and hermeneutical procedure trying to establish juridical determinations (*aḥkām*) by deducing them from a correct interpretation of the sources (Quran, Sunna, etc.).”<sup>130</sup> More importantly for Heinrichs, however, is the role of *furūq* as a productive area of legal investigation for so-called *muqallids* in that works on *furūq* allow us to see “the *muqallid* as a thinking jurisprudent, not just a parrot.”<sup>131</sup> His understanding of *furūq* as one part of a larger complex of understudied productive areas of Islamic law is useful. While al-Juwaynī discusses the use of distinctions for *limiting* the juristic production of rules, Heinrich's statements nevertheless correspond to how jurists after al-Juwaynī understood the field of distinctions and related activities.

Joseph Schacht also wrote an article on legal distinctions in which he provided an introduction to the genre.<sup>132</sup> Schacht's short article is more concerned with the place of the literature of legal distinctions within Islamic legal writing than an engaged study of the genre or the concept of legal distinctions. In attempting to describe works of

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<sup>128</sup> See Chapter Four, pp. 187-191.

<sup>129</sup> Heinrichs, “Structuring the Law,” 335.

<sup>130</sup> Heinrichs, “Structuring the Law,” 335.

<sup>131</sup> Heinrichs, “Structuring the Law,” 340.

<sup>132</sup> Joseph Schacht, “Aus zwei arabischen *Furūq*-Büchern” *Islamica* 2 (1926): 505-537.

legal distinctions, he only repeats the definition given by the classical tradition, “the outward findings of the cases are similar, but the legal assessments differ.”<sup>133</sup>

Additionally, Schacht dismisses works such as Ibn Taymiyya’s *al-Farq al-mubīn bayn al-ṭalāq wa-l-yamīn*, and works that I have classified as applied linguistic distinctions, as not truly fitting into the genre of legal distinctions.<sup>134</sup> He also provides lengthy excerpts in Arabic from the distinctions books entitled *al-Furūq ‘alā madhhab al-Imām Aḥmad ibn Ḥanbal* by Ibn Sunayna (d. 616/1219) and *Kitāb al-Furūq* attributed to Najm al-Dīn al-Naysābūrī to demonstrate the aesthetics of the genre.<sup>135</sup>

One noteworthy feature of al-Bāḥusayn’s book is his discussion of the function of legal distinctions, in which he explains how books of legal distinctions ought, in theory, to work.<sup>136</sup> His methodology here is interesting. First, he assumes that legal distinctions function in one of two ways. The first is “a distinction between the precedent case and the instant case (*al-aṣl wa-l-far‘*), or between a case resulting from an analogy and the principal case (*al-maqīs wa-l-maqīs ‘alayhi*).”<sup>137</sup> Here, legal distinctions function as a measure to control legal analogy and there is little difference between drawing a legal distinction and analyses of individual exercises of analogical reasoning.

The second way in which al-Bāḥusayn claims that legal distinctions function is by elucidating “a distinction between a descriptive characteristic and a rule (*al-waṣf*

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<sup>133</sup> Schacht, “*Furūq*-Büchern,” 512. He says, “die ihrem äußeren Tatbestande nach gleich, in ihrer juristischen Beurteilung aber verschieden sind.”

<sup>134</sup> Schacht, “*Furūq*-Büchern,” 511. See also, below, Chapter Two, pp. 126-29.

<sup>135</sup> I will discuss the work by al-Naysābūrī in Chapter Six, pp. 341-43.

<sup>136</sup> Al-Bāḥusayn, *al-Furūq al-Fiqhiyya*, 35-58.

<sup>137</sup> Al-Bāḥusayn, *al-Furūq al-Fiqhiyya*, 40.

*wa-l-ḥukm*).”<sup>138</sup> This second category, he says, overlaps with the first, and is related to the applicability of a specific ruling to a particular situation. His discussion, however, focuses only on distinctions as they appear in manuals of legal disputation (*jadāl*), not in books of legal distinctions. He treats both kinds of distinctions as if they were coterminous, even though the purpose of referring to a distinction in disputation is different from doing so in books of distinctions.<sup>139</sup> In disputation, a *farq*-based objection is an attempt to trap one’s debate opponent in a doctrinal contradiction; in books of *furūq*, a series of comparisons are brought forward in order to show the lack of doctrinal contradictions within a particular legal school. Al-Bāḥusayn assimilates a *farq* in the context of disputation and a *farq* in the context of the genre of legal distinctions. His discussion, however, does not quote from any book of legal distinctions, neither to supplement the theoretical component nor to give substantive examples.

We learn from all of the above discussions of distinctions, however, that books of legal distinctions focus on apparently conflicting substantive laws. One implication of this oft-repeated fact is that the concept of legal distinctions, and consequently, books on legal distinctions, concern themselves with the substantive legal rulings of one particular *madhhab*. It is not necessarily problematic that two different legal schools will have different rulings for particular actions. This is a normal feature of the Islamic legal system and in and of itself does not engender the supposed systemic contradictions brought about by conflicting laws within one legal school. Authors of

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<sup>138</sup> Al-Bāḥusayn, *al-Furūq al-Fiqhiyya*, 40.

<sup>139</sup> See Chapter Three.

*furūq* works are concerned with explaining legal distinctions, that is, comparisons of seemingly contradictory laws that arise within a given school's doctrine.

### **Justifications for Legal Distinctions**

In reading the introductions to works of legal distinctions themselves, it becomes apparent that works on legal distinctions have very particular ways of understanding themselves. In these introductions, the study of legal distinctions is portrayed as a way to understand the subtleties of a legal school's doctrine. Al-Juwaynī's introduction is noteworthy in this regard, in that he approaches the topic as if it were a new subject with which the reader is not necessarily familiar. He starts by saying:

Legal problems (*masā'il al-shar'*) can resemble each other outwardly but have contrasting outcomes (*qad tatashābahu ṣuwaruhā wa-takhtalifu aḥkāmuhā*) because of legal rationales (*'ilal*) that require different rulings. Those who seek true answers cannot do so without careful study of these legal rationales which necessitate distinguishing what needs to be distinguished and assimilating what needs to be assimilated (*iftirāq mā aftaraqa minhā wa-ijtimā' mā ijtimā'a minhā*). Thus, through God's will, may He be exalted, and His providence (*tawfīq*), we have collected in this book legal issues and distinctions, some of which are more obscure than others.<sup>140</sup>

He begins his book by introducing the topic of legal distinctions through a definition and an apology. Distinctions are important for understanding legal rules with

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<sup>140</sup> Al-Juwaynī, *al-Jam' wa-l-farq*, 1:37.

precision. It is clear that he sees legal distinctions as a way of understanding the intricacies of the doctrines of the Shāfiʿī school, but cannot take his audience’s knowledge of the concept or genre of distinctions as a given. This implies, for instance, that the Shāfiʿī jurist Ibn Surayj (d. 306/918) did not compose a book of legal distinctions, even though he is occasionally credited with having done so.<sup>141</sup> Al-Juwaynī’s detailed explanation of legal distinctions and lack of reference to similar works is circumstantial evidence of the earliness of his work in the genre of legal distinctions. His view, however, that legal distinctions are a way of understanding the intricacies of Islamic law or of a legal school’s doctrine is echoed in other works of this genre.

Books on legal distinctions do not generally begin with a theoretical discussion of legal distinctions; instead many authors introduce their works by saying that they are writing their book on legal distinctions in response to a request from students or others interested in Islamic law. Such apologetic introductions are, of course, a common literary trope of Arabic writing in general. It was a common trope to begin a book by framing it as a response to the requests of students, friends, and others; doing so gave scholars a pretext for writing a book and sharing their knowledge. The recurrence of this trope, however, in books of legal distinctions, at the expense of other

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<sup>141</sup> It is interesting that Ibn Surayj is remembered in the biographical tradition as being a proponent of the Shāfiʿī school, but not a reliable source of s knowledge. Abū Ḥāmid al-Isfarāʿīnī (d. 406/1026) is remembered as saying “We agree with (*najrī maʿa*) Abū al-ʿAbbās [Ibn Surayj] on the generalities of the law, but not so much on its particulars (*ḡawāhir al-fiqh dūn al-daqaʿiq*).” See Abū Ishāq al-Shīrāzī, *Ṭabaqāt al-fuqahāʿ*, ed. Iḡsān ʿAbbās (Beirut: Dār al-Rāʿid al-ʿArabī, 1970), 1:109; also Chapter Three, pp. 207-209.



introductory formulae is instructive. For example, ‘Abd al-Ḥaqq al-Ṣiqillī (d. 466/1073-74) says:

A student of Mālikī law asked me for help in collecting the particular legal questions from *al-Mudawwana* and *al-Mukhtaliṭa*<sup>142</sup> that novice and beginning students need to learn, together with issues (*min nukta*) that I find important to understand, distinctions between legal issues, and the differences between the rulings that would otherwise would be impossible for students to know (*tafrīq bayna mas’alatayn qad yata’adhdharu ‘alā al-ṭālib ma’rifat ikhtilāf ḥukmihā*).<sup>143</sup>

By introducing his book with this claim, al-Ṣiqillī notes that the intended audience for his book is students still learning the law. This should not necessarily be understood to mean something akin to first-year or introductory students, but rather that the book is not aimed at fully formed jurists and thus it is meant to be a part of legal education whether formally in a madrasa or informally in a study circle.<sup>144</sup>

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<sup>142</sup> *Al-Mudawwana* and *al-Mukhtaliṭa* are two of the foundational texts of the Mālikī legal school. Both texts were compiled by the Mālikī scholar Saḥnūn ibn Sa‘īd (d. 240/855). *Al-Mudawwana* contains legal opinions from the school’s eponym, Mālik ibn Anas, with some additions by Ibn al-Qāsim (d. 191/806) through Saḥnūn. *Al-Mukhtaliṭa* primarily contains opinions going back to Saḥnūn himself. See Miklos Muranyi, *Die Rechtsbücher der Qairawāners Saḥnūn B. Sa‘īd: Entstehungsgeschichte und Werküberlieferung* (Stuttgart: Deutsche Morgenländische Gesellschaft: Kommissionsverlag, F. Steiner, 1999), 1-22.

<sup>143</sup> ‘Abd al-Ḥaqq ibn Muḥammad al-Ṣiqillī, *al-Nukat wa-l-furūq li-masā’il al-mudawwana qism al-‘ibādāt*, ed. Aḥmad ibn Ibrāhīm ibn ‘Abd Allāh al-Ḥabīb, PhD Diss., Jāmi‘at Umm al-Qurā, 1416/1996, 148; *idem.*, *Kitāb al-Nukat wa-l-furūq li-masā’il al-Mudawwana wa-l-Mukhtalaṭa*, ed. Abū Faḍl al-Dimyāṭī Aḥmad ibn ‘Alī (Casablanca: Markaz al-Turāth al-Thaqafī; Beirut: Dār Ibn Ḥazm, 2009), 1:23.

<sup>144</sup> The Mālikī scholar Ibn Farḥūn reiterates the importance of ‘Abd al-Ḥaqq’s work for students. He says that this “is a useful book for developing scholars who show promise (*al-nāshi’in min ḥudhdhāq al-ṭalaba*).” Although this seems to complement ‘Abd al-Ḥaqq’s words, Ibn Farḥūn continues this with the following sentence. “It is said that he later regretted writing this book (*nadama ba‘da dhālika ‘alā ta’lifihī*), and that he withdrew many of the citations and comments he included therein, and corrected much of what he

‘Abd al-Ḥaqq’s *al-Nukat wa-l-furūq* was an early book in the genre of legal distinctions and ‘Abd al-Ḥaqq signals that this is a new form of legal composition. Nevertheless, the existence of distinctions between similar laws has, unsurprisingly, long been a part of Islamic law. “Most of what I discuss,” he continues, “is that which I learned from my own teachers in their study circles (*majālis*).”<sup>145</sup> Again, this statement continues the trope of modesty; al-Ṣiqillī credits the insights of his book to his teachers, not to himself. Nevertheless, we see here that legal distinctions, or rather the comparison of similar yet distinct points of substantive doctrine, formed a part of Mālikī legal study before al-Ṣiqillī. Al-Ṣiqillī was not the first jurist to notice these similar and apparently contradictory laws. Rather, his work marked the beginning of the activity of enumerating, listing, and using them as a way to think through issues in Islamic law.<sup>146</sup>

The desire to write a book of legal distinctions for the benefit of students is not just seen in these two jurists, it is a goal reiterated by many authors of books of legal distinctions. Abū Faḍl Muslim al-Dimashqī (d. fourth/tenth c.) says that he wrote his book of legal distinctions, again after being asked to do so, because “for someone who so wishes, memorizing them is very difficult since they cannot find a treatise dedicated to them but rather have to find them among multitudes of different books (*taḍāʿif al-*

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said. ‘Abd al-Ḥaqq was reported to have said, “were I able to collect the book again and hide it, I would do so (*law qadartu ‘alā jam‘ihi wa-ikhfā’ihi la-fa‘altu*).” Ibn Farḥūn, Ibrāhīm ibn ‘Alī, *al-Dībāj al-mudhahhab fī ma‘rifat a’yān ‘ulamā’ al-madhhab*, no ed. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2004), 1:174.

<sup>145</sup> ‘Abd al-Ḥaqq al-Ṣiqillī, *al-Nukat wa-l-Furūq*, 149; ed. Aḥmad ‘Alī, 1:24.

<sup>146</sup> It could very well be the case that interest in legal distinctions is part of a response to a greater necessity to have ready responses for charges of *farq* in formal disputation, but this is not stated by al-Ṣiqillī.

*kutub*).<sup>147</sup> Here, Muslim al-Dimashqī highlights many of the aforementioned tropes in one sentence. Someone, presumably someone not yet a fully formed jurist, wants to learn about the subtle distinctions between laws but cannot find a book dedicated to this topic. He indicates, further, the relative lack of books on legal distinctions, at least for the Mālikī school, and their usefulness for beginning students.

Much later, al-Sāmarrī (d. 616/1219), who wrote one of the earliest books of legal distinctions for the Ḥanbalī legal school, echoes this theme. He states that he is writing his book in response to “repeated requests from one of his colleagues (*ba‘ḍ aṣḥābinā*).”<sup>148</sup> His book deals not only with the conflicting laws that make up the substance of legal distinctions, but also clarifies “their legal indicants and rationales (*adillatahā wa-‘ilalahā*), to explain to a jurist the derivations of legal rulings (*ṭuruq al-aḥkām*) so that his legal reasoning (*qiyāsuhu*) for substantive rules might be in accordance with legal theoretical principles (*al-uṣūl*) and they so that they might form a coherent system (*muttasiq al-niẓām*).”<sup>149</sup> With these words, he echoes the idea expressed two centuries earlier by al-Juwaynī, that the importance of understanding legal distinctions is not simply about understanding the scope of applicability of individual substantive laws, but also about refining one’s understanding of the legal theoretical underpinnings of Islamic law in general. In other words, books on legal distinctions help jurists to understand how legal rationales (*‘ilal*) and analogical reasoning (*qiyās*)

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<sup>147</sup> Abū al-Faḍl Muslim al-Dimashqī, *al-Furūq al-fiqhiyya*, ed. Muḥammad Abū al-Ajfān and Ḥamza Abū Fāris (Beirut: Dār al-Gharb al-Islāmī, 1992), 62.

<sup>148</sup> Mu‘azzam al-Dīn Abū ‘Abd Allāh ibn Sunayna al-Sāmurrī, *Kitāb al-Furūq ‘alā madhhab al-Imām Aḥmad ibn Ḥanbal*, ed. Muḥammad ibn Ibrāhīm ibn Muḥammad al-Yaḥyā (Riyadh: Dār al-Ṣamī‘ī, 1418/1997), 115.

<sup>149</sup> Al-Sāmarrī, *Kitāb al-Furūq*, 115.

are applied. Legal distinctions provide an opportunity to reason backwards from very specific situations to the rationales behind those rules.

Social demand is not the only reason given, of course, for writing books on legal distinctions. Often authors cite, as another reason for writing these books, the need for a way to learn and understand obscure or difficult points of law. The Ḥanafī jurist As‘ad ibn Muḥammad al-Karābīsī (d. 570/1174-75), for instance, says about his book of legal distinctions:

These are legal issues (*masā’il*) which I collected from books, questions on which the authorities of our *madhhab* have not agreed upon standard rulings and exceptions (*laysa fihā qiyās wa-lā istiḥsān illā khilāf mashhūr bayna aṣḥābinā*)... I intended to single out these cases, to aid in their memorization (*li-yusahhila ḥifẓahā*).<sup>150</sup>

The Shāfi‘ī Jamāl al-Dīn Al-Asnawī (d. 772/1370), takes a similar approach, although he situates his book clearly within an existing and established legal-literary genre. He notes in regard to his book: “I have seen that other Shāfi‘ī scholars have written (*li-aṣḥābinā*) books (*taṣānīf*) in this subject (*ma‘nā*) and I have discovered many tomes by them. Some are written exclusively on this topic, while others encompass a broader focus.”<sup>151</sup> Al-Asnawī, writing within an already well-defined literary tradition, can no longer claim to be writing on legal distinctions because of the lack of such books.

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<sup>150</sup> As‘ad al-Karābīsī, *al-Furūq li-l-Karābīsī*, ed. Muḥammad Ṭammūm and ‘Abd al-Sattār Abū Ghadda, 1402/1982, 1:133.

<sup>151</sup> Jamāl al-Dīn al-Asnawī, *Maṭāli‘ al-daqa‘iq fi tahrīr al-jawāmi‘ wa-l-fawāriq*, ed. Naṣr al-Dīn Farīd Muḥammad Wāṣil (Cairo: Dār al-Shurūq, 200), 2:7.

Instead, al-Asnawī says “This topic (*bāb*) is very wide, encompassing both minimal and maximal discussions of issues (*al-ghathth wa-l-samīn*), so I asked God for guidance (*fa-istakhtartu Allāh*) in writing a book in this subject (*ma‘nā*), following the above-mentioned scholars.”<sup>152</sup> In other words, he is consciously adopting the model set out by his predecessors and participating in this tradition.

Muḥammad al-Baqqūrī (d. 707/1307) is in a position similar to that of al-Asnawī, participating in an extant tradition. The Mālikī tradition of *furūq* is influenced to a great degree by Shihāb al-Dīn al-Qarāfī’s (d. 684/1285) *al-Furūq*. Al-Qarāfī’s book is peculiar, but because of his importance within Mamlūk juristic culture and in the Mālikī legal school, it became the focal point for further writings on legal distinctions among Mālikī scholars. Thus, al-Baqqūrī says the following in introducing his book: “When I studied (*waqaftu ‘alā*) [Qarāfī’s] *al-Furūq*..., it became clear to me that al-Qarāfī, may God have mercy on him, was unable to organize it in a reader-friendly fashion (*rattabahu tartīban yusahhil ‘alā al-nāẓir fī mu‘ṭala‘atihi*) because the book was published while he was still composing it and copies were distributed in this state (*kharaja min yadihi bi-ithr jam‘ihi fa-intasharat minhu nusakh ‘ala mā huwa ‘alayhi*). This stopped him from being able to change the book (*a‘jazahu dhālika wa-‘āqahu an yughayyirahu*).”<sup>153</sup> To solve this problem that Baqqūrī sees in al-Qarāfī’s text, he composed his own work, an abridged and reorganized presentation of al-Qarāfī’s work on legal distinctions. The relative lack of organization and clarity is a problem that other Mālikī scholars also see in al-Qarāfī’s

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<sup>152</sup> Al-Asnawī, *Maṭāli‘ al-daqa’iq*, 2:9.

<sup>153</sup> Muḥammad ibn Ibrāhīm al-Baqqūrī, *Tartīb al-Furūq wa-ikhtisārihā*, ed. ‘Umar ibn ‘Abbād ([Morocco]: al-Mamlakah al-Maghribiyya Wizārat al-Awqāf wa-l-Shu‘ūn al-Islāmiyya, 1414/1994), 1:19.

work, and therefore build their own works on legal distinctions with reference to al-Qarāfi's seminal book.

Interestingly, and finally, in an example from yet another later book, the *furūq* book attributed to a Najm al-Dīn ʿAlī ibn Bakr al-Naysābūrī, we find a new idealized audience.<sup>154</sup> It is not clear exactly who this Najm al-Dīn was nor are there more biographical details evident about the author from manuscripts. Nevertheless, this work on legal distinctions from a later period actively participates in an existing genre. Najm al-Dīn wrote his book, he claims, in response to

a colleague (*baʿḍ ikhwānī*) [who] asked me to write a book on (*an uhadhdhiba*) legal issues that agree in their structure (*tattafiqu mabānīhā*) but differ in their rulings (*takhtalif maʿānīhā*) that is concise but effective in its presentation (*mūjizān iʿtibāratihā muʾaththirān ishāratihā*), easy to understand and hard to disagree with, a book that can be relied on in study circles (*yastadilluhu fī al-majālis*) and from which you can find guidance in schools (*yastaḍīʿ bihi min al-madāris*).<sup>155</sup>

Tellingly, the audience for this book is still students, both in study circles or salons, *majālis*, and formal contexts, law colleges. His book thus helps them prepare for and participate in conversations about Islamic law. One of the things that this

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<sup>154</sup> This work has yet to be edited; I have found eight manuscripts of this work, see Appendix V.

<sup>155</sup> See Najm al-Dīn al-Naysābūrī, *Kitāb al-Furūq*, MS. Suleymaniye Library, Istanbul, Giresun Yazmalar 44, 1b. Other manuscripts of this work have variants here. In Joseph Schacht's article, a transcription of Leiden Or 481, 3a, it reads: "yastahzi'u bihā fī al-majālis wa-yastaḍīʿu bihā fī al-madāris," and in Anon., *Kitāb al-Furūq*, MS. Suleymaniye Library, Istanbul, Halet Efendi 780, 2b, "li-yantafiʿa bihā fī al-majālis wa-yastaghni ʿan al-madāris."

demonstrates, however, is how the genre of legal distinctions could and did respond to a changing reading public. No longer was it only students who desired to read these books, but also interested non-jurists who sought access to highly specialized and erudite legal knowledge.<sup>156</sup>

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<sup>156</sup> I discuss this issue at length in Chapter Five.

## Chapter Two: A General History of Distinctions

This dissertation is a study of the genre I have termed legal distinctions (*al-furūq al-fiqhiyya*). Before analyzing legal distinctions literature in detail, this chapter traces the rise and interest in distinctions (sg. *farq*, pl. *furūq*) in Arabic letters more broadly. The first step in understanding the history of legal distinctions is to understand the contexts from which legal distinctions arose—accordingly, this chapter offers a sort of prehistory of legal distinctions. There is not, of course, a straightforward progression leading to the evolution or development of legal distinctions. There are, however, at least three distinct threads that serve as prehistories to legal distinctions. These three threads are (i) the use of distinctions in non-legal contexts, (ii) the use of *farq* as one kind of objection within formal disputation (*‘ilm al-jadal*), and (iii) the organization and systematization of substantive legal doctrine. This chapter focuses on the first of these threads, the use of distinctions in non-legal contexts.

The most prominent books of *furūq* outside of legal writings dealt primarily with philology (both grammar, *naḥw*, and lexicography, *luḡha*) and medicine. The work that has been done on legal distinctions identifies these earlier writings in other fields as possible sources for the development of the legal genre.<sup>157</sup> Muḥammad Abū al-Ajḡān and Ḥamza Abū Fāris identify additional parallel genres—*furūq* writing in disciplines other

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<sup>157</sup> See Muḥammad Abū al-Ajḡān and Ḥamza Abū Fāris “Introduction” to Abū Faḡl Muslim ibn ‘Alī al-Dimashqī, *al-Furūq al-Fiqhiyya*, ed. Muḥammad Abū al-Ajḡān and Ḥamza Abū Fāris (Beirut: Dār al-Gharb al-Islāmī, 1992), 26-43, and Wolfhart Heinrichs, “Structuring the Law” 1:332-344 (Leiden, Boston: Brill, 2000). Heinrichs’s discussion relies heavily on the introduction by Abū al-Ajḡān and Abū Fāris.



than medicine and linguistics. These further writings are not in themselves independent genres, however, but specific instantiations of what I term applied linguistic distinctions.<sup>158</sup> As will be shown below distinctions in medicine, language, and law all function under their own particular logic. Two studies have mentioned non-*fiqh* precedents for the tradition of legal distinctions, but they only allude to potential connections. Abū al-Ajḡān and Abū Fāris say that “*furūq* appeared in all scholarly disciplines to better distinguish, to classify, and better explain (*li-l-tamyīz wa-l-ḡaṣl wa-mazīd al-bayān*).”<sup>159</sup> They do not, however, provide an in-depth analysis of the connections between *furūq* in various fields. Heinrichs, meanwhile, is forthright in stating that his study “is no more than a preliminary characterisation of the notion and function of *furūq*...”<sup>160</sup> Both studies, therefore, raise similar historical questions but do not attempt to answer them.

This chapter seeks to explicate the concept and function of *furūq* in a more thorough fashion than previous attempts. It explores the various parallels and chronological predecessors to legal *furūq* and sketches out a rough history and categorization of these genres. I focus primarily on the philological genres, with some attention paid to the medical genre of differential diagnostics (*al-furūq bayna al-amrād*).<sup>161</sup> I then take up other fields of study that incorporated writing on distinctions and argue, contrary to Abū al-Ajḡān and Abū Fāris, that these represent an extension of

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<sup>158</sup> See below, as well as Chapter Four.

<sup>159</sup> Abū al-Ajḡān and Abū Fāris, “Introduction,” 28.

<sup>160</sup> Heinrichs, “Structuring the Law,” 340.

<sup>161</sup> The existence of differential diagnostics as a genre of writing is not clear. See below Chapter Two, pp. 69-71.

linguistic *furūq* and not a novel and independent realm of ‘distinctions-thinking,’<sup>162</sup> In discussing these parallel genres, I do not claim that they directly influenced legal thinking. Rather these genres show how the concept of distinctions was being adapted by scholars for a variety of purposes at the time in which legal distinctions rose to prominence in the fourth/tenth century. It seems important, however, that the genres of distinctions writing in linguistics and in law arose simultaneously and for similar reasons; books of distinctions in these two disciplines are similar in terms of organization, presentation, and methodology.<sup>163</sup>

By pursuing a historical epistemology of distinctions-thinking generally, this chapter demonstrates shifting conceptualizations of *farq* and *furūq* as modes of analysis across different disciplines.<sup>164</sup> These two concepts, *farq* and *furūq*, also inspired genres of writing that took on lives of their own. In medicine, books on distinctions were exclusively diagnostic handbooks to be used in differential diagnostics, and all of the

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<sup>162</sup> For a full discussion of the concept of distinctions and what I refer to as ‘distinctions-thinking,’ see Chapter Four.

<sup>163</sup> The similarities between these two genres are clear from an initial reading; further study, however, shows that these two genres are similar only at a surface level.

<sup>164</sup> Historical epistemology, as used in this chapter, refers to the “study of epistemological concepts as objects that evolve and mutate” (Hacking 9). Historical epistemology understands that “fundamental epistemic concepts and standards are subject to historical change” (Feest and Strum 290). In other words, it is a methodology that tries to understanding the historical contingency of knowledge and knowledge standards. I take the drawing of distinctions—comparison—as an epistemic concept that helps to divide objects of knowledge and establish their identities. In part, this chapter attempts to show how the idea of a comparison “evolve[d] and mutate[d]” in response to various social and intellectual currents. Ian Hacking, *Historical Ontology* (Cambridge, MA: Harvard University Press, 2004); Uljana Feest and Thomas Sturm, “What (Good) is Historical Epistemology? Editor’s Introduction” *Erkenntnis* 75 (2011): 285-302. The 75<sup>th</sup> volume of *Erkenntnis* is devoted to historical epistemology. For more on historical epistemology, see Arnold Davidson, *The Emergence of Sexuality: Historical Epistemology and the Formation of Concepts* (Cambridge, MA: Harvard University Press, 2002).

information therein follows this purpose. There is no discussion of medical treatment, nor of theoretical analysis of maladies.<sup>165</sup> Works of linguistic distinctions, however, do not function in the same way. Lexicographic distinctions focus on the subtle distinction in meaning or connotation between apparent synonyms, and they operate on both a practical and theological level.

Practically, they were used as thesauruses. On this level, these works are a kind of reference for chancery secretaries and other writers. They could also, however, function on a theological level making claims about the cultural superiority of Arabs and the ontological superiority of the Arabic language. Here, books of lexicographic distinctions provide a series of examples showing the perfection of the Arabic language and its utter lack of redundancies (i.e. synonyms). In so arguing for these minute distinctions, lexicographers also showed how comparing two similar words can productively lead to the establishment of rigid differences between them. This technique, which I term applied linguistic distinctions, is then used productively, to coin new terms and cement definitions, in almost all scholarly disciplines, including, but not limited to, ethics, philosophy, and law.

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<sup>165</sup> It is possible as well that the discussion in this text of medical diagnosis was also implicitly arguing about the possibility of induction as a tool of diagnosis. Understanding when induction was appropriate in medical reasoning was an important concern of Galen and later taken up by Ḥunayn ibn Ishāq. See Richard Walzer, *Introduction to Galen on medical experience. First Edition of the Arabic Version with English Translation and Notes by R. Walzer*, ed. and trans. Richard Walzer (London; New York: Pub. For the trustees of the late Sir Henry Wellcome by the Oxford University Press, [1947]).

This chapter discusses the three major trends in distinctions literatures. The mainly practical manuals of medical distinctions, the practical and theoretical distinctions of lexicography, and the productive genre of applied linguistic distinctions.

### ***Furūq in Medicine***

The earliest discipline to produce books of *furūq* appears to be medicine, a discipline which, as noted above, dealt with differential diagnostics. These books describe illnesses with similar symptoms and discuss the ways to distinguish between them to diagnose a patient correctly. Few books written in this genre in Arabic can be attested to, and so although it may have been early, it does not seem to have been particularly prominent in the premodern period.<sup>166</sup> Through an expansive search of bibliographical sources and digital databases, I have located only four works on differential diagnostics. These works were written by Abū Bakr al-Rāzī (d. 313/925), Ibn al-Jazzār (d. 369/979), Aḥmad ibn Asʿad Ibn Ḥalwān al-Dimashqī, also known as Ibn al-ʿĀlima (d. 652/1255),<sup>167</sup> and Yūsuf ibn Ismāʿīl Ibn al-Kutubī (d. ca 754/1353).<sup>168</sup> Four of these works are extant, and it is likely that further scholarly attention will yield more. Ibn Ḥalwān's treatise

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<sup>166</sup> Peter E. Pormann and Emilie Savage-Smith state that differential diagnostics was often included in works of medical ethics. See Peter E. Pormann and Emilie Savage-Smith, *Medieval Islamic Medicine* (Edinburgh: Edinburgh University Press, 2007), 86, 89.

<sup>167</sup> See Ibn Abī Uṣaybiʿa, 265-66; Shams al-Dīn Muḥammad ibn Aḥmad al-Dhahabī, *Tārīkh al-islām wa-wafayāt al-mashāhīr wa-l-aʿlām*, ed. ʿUmar ʿAbd al-Salām Tadmurī (Beirut: Dār al-Kitāb al-ʿArabī, 1419/1999), 48:115-16, 224. According to Ibn Abī Uṣaybiʿa, this scholar was unrivalled in formal disputation (*lā yalḥiquhu fī al-jadal*). Ibn Abī Uṣaybiʿa mentions this work with the title *Kitāb al-Tadqīq fī al-jamʿ wa-l-tafrīq* (266).

<sup>168</sup> Al-Ziriklī, *al-Aʿlām*, 8:217; GAS S2:218.

and that of Ibn al-Kutubī survive in manuscript, although both are still unpublished.<sup>169</sup>

One book on differential diagnostics has been published, in two editions, one attributing the work to Abū Bakr al-Rāzī and the other attributing the same work to Ibn al-Jazzār.<sup>170</sup> Interestingly, this is the same text attributed to Ibn Ḥalwān in Ayasofya 4838.<sup>171</sup> My study of medical *furūq* has two important findings: First, the precedence of these works to other writings on distinctions. Second and more importantly, the

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<sup>169</sup> Ibn Ḥalwān’s manuscript survives in a collection (*mujmū‘a*) of medical texts, which includes a *Kitāb al-furūq* by Aḥmad Ibn Ḥalwān al-Ṭabīb. This manuscript is housed in the Suleymaniye Library in Istanbul, Suleymaniye Library Ayasofya 4838; a microfilm of this manuscript can be found at the University of Utah, reel 190 of the Levey microfilm collection. Ibn al-Kutubī’s work is also housed in the Suleymaniye Library, Ahmet III 2120, and at the University of Utah, Levey reel 131. Thus far, I have been unable to consult Ibn al-Kutubī’s work. This is not, however, the *Kitāb Mā lā yasa‘u al-ṭabīb jahluhu*, a treatise on pharmacology. See Ibn al-Kutubī, *Mā lā yasa‘u al-ṭabīb jahluhu*, MS. Library of Congress, Washington DC, Mansuri Collection R128.3.I127 1682, available online <http://lcweb2.loc.gov/service/amed/amed0001/2001/200149140/200149140.pdf> (accessed March 24, 2017).

<sup>170</sup> See Abū Bakr al-Rāzī, *Kitāb Mā al-fāriq aw al-furūq aw kalām fī al-furūq bayna al-amrāḍ*, ed. Salmān Qaṭāya (Aleppo: Jāmi‘at Ḥalab, Ma‘had al-Turāth al-‘ilmī al-‘Arabī, 1398/1978) and Ibn al-Jazzār, *Al-Furūq bayna ishtibāhāt al-‘ilal*, ed. Ramziyya al-Aṭraqjī (Baghdad: Wizārat al-Ta‘līm al-‘Āli wa-al-Baḥth al-‘ilmī, Jāmi‘at Baghdād, Bayt al-Ḥikmah, 1989).

<sup>171</sup> The main difference between the published texts and that found in the Ayasofya manuscript is that the text in Ayasofya 4838 begins with a statement specifically attributing the book to “Abū al-‘Abbās Aḥmad ibn Abū al-Faḍl As‘ad ibn Ḥalwān al-Ṭabīb” (109b). Neither al-Rāzī nor Ibn al-Jazzār are identified as the author in their respective texts. Ibn Ḥalwān’s manuscript is found in a collected volume (*majmū‘a*), the title page of which reads: “This is a collection (*majmū‘a*) of medical texts. The first book is *Tadbīr al-amrāḍ al-ḥādda* by Hippocrates, and also containing the book *Asrār al-nisā’* by Galen and *al-Furūq* by Ibn Ḥalwān Ṭabīb.” This is followed by a table of contents showing the nine books which make up this medical collection. It is striking that Ibn Ḥalwān is identified as the author three times in this manuscript, and that his book was prominent enough to be included in the sentence summarizing the collection. The manuscript is missing a few folios after the introduction. The first page is 109b, which ends in the middle of the introduction, but page 110a is in the middle of chapter one, section one (*al-maqāla al-ūlā al-faṣl al-awwal*). Based on the available evidence, it is difficult to ascertain who the author of this work is. It is clear, however, that this issue needs further research. I am currently working on an article addressing this issue.

earliest works and biobibliographic writing show how *furūq* as a meaningful concept had not yet taken hold in the tenth century; it was not yet a specific concept but rather a word used in its plain-sense meaning. Biobibliographical sources do not consistently refer to al-Rāzī or Ibn al-Jazzār's books as *Kitāb al-Furūq*. These sources use a variety of titles, such as *al-Furūq bayna al-ʿilal* or *al-ʿIlal al-mushkila*. Titles such as these indicate that the term *furūq* had not yet become a stable marker of a literary genre. Consequently, this points to the difficulty in understanding the content of works based on title alone.

Salmān Qaṭāya was the first to edit and publish the work in question in 1978. In his edition, he attributes the text to al-Rāzī on the basis of in-text citations to al-Rāzī's works, the general style of the writing, biobibliographic sources, and the manuscript evidence.<sup>172</sup> Ramziyya al-Aṭraqjī, who edited this work in 1989, attributes it to Ibn al-Jazzār. In a preface to al-Aṭraqjī's edition, ʿĀdil al-Bakrī engages directly with Qaṭāya's earlier attribution. He follows the arguments laid out by al-Aṭraqjī and says the writing style is not necessarily similar to that of al-Rāzī, but rather indicative of medical writing in the ninth and tenth centuries. Further, he argues, the three citations to al-Rāzī do not prove his authorship. In fact, "in these three places, the author of this book [i.e., the author of the *Furūq*] speaks of al-Rāzī in the third person, as a critic of al-Rāzī

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<sup>172</sup> Qaṭāya bases his edition on the manuscript of this work found in the Wellcome Historical Medical Library. Interestingly, Ibn Sīnā is listed as the author of this manuscript on its title page. A.Z. Iskandar, who compiled the catalogue of Arabic works in the Wellcome collection, rejects this attribution and posits instead that this work was written by al-Rāzī. Qaṭāya does not mention this in his introduction. See A.Z. Iskandar, *A Catalogue of Arabic manuscripts on medicine in the Wellcome Historical Medical Library* (London: The Wellcome Historical Medical Library, 1967), 67.

correcting al-Rāzī's views and opinions (*muṣaḥḥiḥan lahu ārā'ahu wa-mustadrikan 'alayhi aqwālahu*).<sup>173</sup> Al-Bakrī assumes that if al-Rāzī were citing himself, he would not take an oppositional approach to his earlier writings. Al-Bakrī continues, “This is not the language of someone speaking about himself, the author says, ‘In his book, al-Rāzī says... but I say.’ (*fa-huwa yaqūlu qāla al-Rāzī fī kitābihi kadhā... wa-aqūlu kadhā*).”<sup>174</sup> Al-Bakrī is content that this argument disproves the attribution to al-Rāzī. He also rejects the possibility that the author of this work is Najm al-Dīn Aḥmad ibn Abī al-Faḍl Ibn al-‘Ālima, since he lived much later than the ninth century.

Al-Bakrī's claim of an early date for the work is based on the author's own claim at the beginning that “my predecessors have not written a book like this one (*lam yasbaq ilā mithlihi man taqaddama*).”<sup>175</sup> Al-Bakrī concludes that, “based on this, what is most probable is that this work was written by Ibn al-Jazzār al-Qayrawānī.”<sup>176</sup> Al-Bakrī credits the editor of this text, Ramziyya al-Aṭraqjī, with this attribution and appears quite convinced. He does not explain why he considers only these three names as possible authors, but to my mind, this appears to be a consequence of the paucity of authors who wrote works on differential diagnostics. This extant early book on differential diagnostics claims it is the first such book ever written. Al-Rāzī and Ibn al-Jazzār are both remembered as having written a book on differential diagnostics. Since more sources point to al-Rāzī as the author of this text, I will discuss in brief his

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<sup>173</sup> ‘Ādil al-Bakrī, “Introduction” to Ibn al-Jazzār, *al-Furūq*, ب.

<sup>174</sup> ‘Ādil al-Bakrī, “Introduction” to Ibn al-Jazzār, *al-Furūq*, ب.

<sup>175</sup> Al-Rāzī, *Mā al-fāriq*, 2; Ibn al-Jazzār, *al-Furūq*, 14.

<sup>176</sup> ‘Ādil al-Bakrī, Introduction to Ibn al-Jazzār, *al-Furūq*, ب - ج.

importance to the history of Islamic medicine; many of the tropes found in biographies of al-Rāzī, however, appear in biographies of Ibn al-Jazzār as well.<sup>177</sup>

As mentioned above, Heinrichs uses this work to typify the case for the importance of medical *furūq* as a parallel genre to works on legal distinctions. He says:

The term *furūq* occurs not only in legal studies, but also in two other fields: lexicography and medicine... The medicinal parallel, embodied in such works as Abū Bakr al-Rāzī's (d. 313/925), seems much more convincing. Here the term *furūq* designates the element or elements which, in a syndrome of mostly similar symptoms, allow the differential diagnostics of the illness at hand. In the way in which two or more cases are similar in appearance but distinguishable by a crucial element of difference, the medicinal and the legal situation have much in common, and the differential diagnostics of the physician would yield a fitting metaphor for the work of the *faqīh* as a *mufarriq*.<sup>178</sup>

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<sup>177</sup> The earliest biography about Ibn al-Jazzār comes from Ibn Juljul. Ibn Juljul's biographical entry does not cite any specific information on Ibn al-Jazzār's writings, although it does mention that Ibn al-Jazzār came from a family of physicians (*ṭabīb ibn ṭabīb wa-ʿammuhu ṭabīb*). As with al-Rāzī, Ibn al-Jazzār's biography reads like a hagiography. The sources tell us that Ibn al-Jazzār abstained from earthly pleasures but occupied himself with intellectual and religious pursuits. "He would participate in funerals and weddings, but would not eat at the receptions." Similarly, Ibn al-Jazzār, we are told, provided treatment for al-Qāḍī al-Nuʿmān's nephew of an unspecified illness. Once he recuperated, al-Qāḍī al-Nuʿmān sent a messenger to Ibn al-Jazzār with "fine clothes and 300 gold coins." Ibn al-Jazzār thanked the messenger, but sent him back with the gifts. Although he was said to live a simple life, he left behind 25 *qinṭars* of books and 24,000 dinars. See Aḥmad ibn al-Qāsim Ibn Abī Uṣaybī'a, *ʿUyūn al-anbāʾ fi ṭabaqāt al-aṭibbāʾ*, ed. Nizār Riḍā (Beirut: Dār Maktabat al-Ḥayāt, [1965]), 481 and Sulaymān ibn Ḥassān Ibn Juljul, *Ṭabaqāt al-aṭibba wa-l-ḥukamāʾ*, ed. Fuʿād Sayyid (Cairo: Imprimerie de l'Institut Français d'Archéologie orientale, 1955), 88.

<sup>178</sup> Heinrichs, "Structuring the Law," 334-35.



Heinrichs claims that the parallel between medicine and law “seems much more convincing [than that between lexicography and law].” However the impact of this “medicinal parallel” on law remains unaddressed by Heinrichs. His claim, which seems to focus on the formal parallels, is credible, although it does not tell us about the history of these genres nor the ways they may have impacted each other. The following section will attempt to address some of these uncertainties, through an analysis of this book of medical distinctions entitled *al-Furūq*.

Qaṭāya emphasizes that diagnosis is the aim of this book. “It is clear that his interest in this field (*ilā hādhihi al-nāhiya*) comes from the difficulty of practicing this craft[, medicine,] daily and his confronting the difficulties and complications of differential diagnostics (*al-tashkhīṣ al-tafriqī*).”<sup>179</sup> Qaṭāya further says this is the first book ever written on differential diagnostics. He bases this conclusion on several things. The first is that al-Rāzī normally cites his sources extensively but does not cite past authorities in this work.<sup>180</sup> Qaṭāya also mentions that his search in biographical and bibliographical sources did not yield anyone before al-Rāzī who wrote such a work, a claim the author also makes explicitly in the introduction.<sup>181</sup>

Abū Bakr Zakariyyā al-Rāzī does appear to have written the first book on differential diagnostics. It is preserved with three titles, *Kitāb Mā al-fāriq*, *al-Furūq*, and

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<sup>179</sup> Salmān Qaṭāya, “Introduction” to Abū Bakr al-Rāzī, *Kitāb Mā al-fāriq aw al-furūq aw kalām fi al-furūq bayna al-amrāḍ*, ed. Salmān Qaṭāya (Aleppo: Jāmi‘at Ḥalab, Ma‘had al-Turāth al-‘ilmī al-‘Arabī, 1398/1978),

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<sup>180</sup> This claim is heard often in the traditional sources on al-Rāzī’s life. Ibn Abī Uṣaybi‘a says that “[h]e attributed everything he cites in [the Ḥāwī] to the person who said it” (*yunsab kull shay’ naqalahu fihi ilā qā’ilīhi*; 1:315).

<sup>181</sup> Al-Rāzī, *Mā al-fāriq*, 2; Ibn al-Jazzār, *al-Furūq*, 14.

*Kalām fī al-furūq bayna al-amrād.*<sup>182</sup> Al-Rāzī was born in Rayy around 251/865. He is said to have traveled to Baghdad in his thirties.<sup>183</sup> The sources tell various stories about his interest in medicine, but they are clear that it was while working in a hospital in Baghdad that he became the most prominent physician of his day.<sup>184</sup> Al-Rāzī was a polymath and in addition to his interest in medicine, he also wrote works in philosophy, mathematics, and alchemy. Reading the medieval sources, one gets a detailed picture of al-Rāzī as a consummate physician. These works, full of stories about his interest in and preternatural skill for medicine, portray his seemingly mythical devotion to his craft. He writes ceaselessly, reads constantly, and is always practicing medicine. Ibn Abī Uṣaybi‘a (d. 668/1270), for instance, relates that al-Rāzī had a friend who “would stay up late with [him] (*yusāmiru[hu]*) reading the books of Hippocrates and Galen.”<sup>185</sup> Ibn al-Nadīm (d. 380/990) reports that al-Rāzī lived in a constant state of writing, always either “composing a draft or completing a work (*yusawwidu aw*

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<sup>182</sup> The printed edition of this work is based on three manuscripts. The first, entitled, *Mā al-fāriq*, is an undated copy found in the Wellcome collection in London likely from the 18<sup>th</sup> century according to Qaṭāya, the second in the Malek National Library in Tehran apparently with no title and also dating from around the 18th century, and finally a version from the Public Awqāf Library in Baghdad with the title *Kitāb al-Furūq bayna al-ishtibāhāt fī al-‘ilal*, which dates from Ramaḍān 1220/1805 (pp. ٥-٦).

<sup>183</sup> Ibn Abī Uṣaybi‘a, ‘*Uyūn al-anbā’*, 1:309.

<sup>184</sup> See Ibn Abī Uṣaybi‘a, ‘*Uyūn al-anbā’*, 1:309-21; Sulaymān ibn Ḥassān Ibn Juljul, *Ṭabaqāt al-aṭibba*, 77-80; ‘Alī ibn Yūsuf Ibn al-Qiftī, *Ibn al-Qiftī’s Ta’rīh al-ḥukamā’*, auf Grund der Vorarbeiten Aug. Müllers, ed. Julius Lippert (Leipzig: Dieterich’sche Verlagsbuchhandlung, 1903), 271-277; and Muḥammad ibn Ishāq Ibn al-Nadīm, *al-Fihrist li-l-Nadīm*, ed. Ayman Fu’ād Sayyid (London: Mu’assasat al-Furqān li-l-Turāth al-‘Arabī, 1340/2009), 2.1:305-313.

<sup>185</sup> Ibn Abī Uṣaybi‘a, ‘*Uyūn al-anbā’*, 1:311.

yubayyidu).”<sup>186</sup> Towards the end of his life, he returned to his native Rayy, where he died around 320/932.<sup>187</sup>

These biographical sources also tell us much about his vast bibliography. The earliest sources on al-Rāzī are Ibn al-Nadīm and Ibn Juljul (d. after 384/994), on which both the later Ibn al-Qiftī (d. 646/1248) and Ibn Abī Uṣaybi‘a rely.<sup>188</sup> Ibn Juljul lists a bibliography of the works written by al-Rāzī but does not mention the *Furūq* nor any work that could be construed as the *Furūq*. Ibn al-Nadīm, however, lists a book entitled *al-Risāla fī al-‘ilal al-mushkila* which very well could refer to this book.<sup>189</sup> This is the only mention of a likely title that is roughly contemporaneous with al-Rāzī’s life. Ibn Abī Uṣaybi‘a also attributes to al-Rāzī a work with a similar title, the *Risāla fī al-‘ilal al-mushkila wa-‘udhr al-ṭabīb wa-ghayr dhālika*,<sup>190</sup> although he additionally ascribes a *Kalām fī al-furūq bayna al-amrāq* to him.<sup>191</sup> Finally, Ibn al-Qiftī also lists the *Risāla fī al-‘ilal al-mushkila*.<sup>192</sup> It is also worth noting that al-Rāzī is credited with another work, on

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<sup>186</sup> Ibn al-Nadīm, *al-Fihrist*, 2.1:306; and Ibn Abī Uṣaybi‘a, ‘*Uyūn al-anbā*’, 1:311.

<sup>187</sup> The date of his death remains unclear. Ibn al-Qiftī, for instance, says that al-Rāzī died around 320/932, according to Qāḍī Ṣā‘id ibn al-Ḥasan al-Andalusī. He also says that according to Ibn Shīrān, al-Rāzī died in 362/972-73 (Ibn al-Qiftī, 277). The printed edition of the *Furūq* lists his death date as 313/925. See also Ibn Abī Uṣaybi‘a, ‘*Uyūn al-anbā*’, 1:314.

<sup>188</sup> Abū al-Rayḥān al-Bīrūnī (d. 973/1048) also wrote a biobibliography of al-Rāzī, but he does not mention this work therein.

<sup>189</sup> Ibn al-Nadīm, *al-Fihrist*, 2.1:312. The title of this book can be translated as *A Treatise on Ambiguous Illnesses*.

<sup>190</sup> Ibn Abī Uṣaybi‘a, ‘*Uyūn al-anbā*’, 1:319. The title of this book can be translated as *A Treatise on Ambiguous Illnesses, an Excuse for the Physician, and More*.

<sup>191</sup> Ibn Abī Uṣaybi‘a, ‘*Uyūn al-anbā*’, 1:321. The title of this book can be translated as *A Work on the Distinctions between Illnesses*.

<sup>192</sup> Ibn al-Qiftī, *Ta‘rīkh al-ḥukamā*, 277.

distinguishing ominous dreams from other kinds of dreams, the *Kitāb al-Farq bayna al-ru'yā al-mundhira wa-sā'ir ḍurūb al-ru'yā*, though it does not appear to have survived.<sup>193</sup>

None of these authors discusses the contents of these works, so only circumstantial evidence links this book to al-Rāzī. If the *Risāla fī al-'ilal al-mushkila* does refer to this work, then it clearly predates the *furūq* tradition in lexicography and law by approximately a century. Its later reception would then perhaps explain why later authors referred to it as *Kitāb al-Furūq*. These later authors were familiar with a formal *furūq* genre and potentially recognized this work as a part of it. Nevertheless, they included the alternate title “*Risāla fī al-'ilal al-mushkila*” in their bibliographies, since it is attested in the earliest bibliographic works in this form.<sup>194</sup> It was only later scholars, familiar with *furūq* as a style of writing, who referred to it as *Kitāb al-Furūq*. One cannot disagree with Heinrichs that differential diagnostics—the topic of *furūq* in medicine—appears “a fitting metaphor” for *furūq* in law, but there is no evidence that the resemblance is more than superficial.

The genre of medical *furūq* is difficult to discuss in detail or with any certainty. The bibliographical tradition lists several works in the genre, although only one or two have survived, attributed to various authors.<sup>195</sup> This work aims to provide a handbook for practicing physicians. The author claims explicitly that his book is to be used in this way, as a diagnostic manual. In describing his approach, he says:

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<sup>193</sup> Ibn Abī Uṣaybi'a, *Uyūn al-anbā'*, 1:315-16; Ibn al-Nadīm, *al-Fihrist*, 2.1:308. The title of this book can be translated as *The Difference between Dreams of Premonition and Other Kinds of Dreams*.

<sup>194</sup> A similar trend is seen with works of linguistic distinction, see below, pp. 96-104.

<sup>195</sup> There are several manuscripts of this work attributed to different authors, but each manuscript is nevertheless a copy of the same work. See above pp. 69-70.

I have seen that the doctors of today (*aṭibbā' al-zamān*) know about maladies (*amrāḍ*) only what they can imagine on the basis of books, and the symptoms and causes (*bi-dalā'ilihi wa-asbābihi*) mentioned therein. These symptoms and causes, may, however, be shared between illnesses (*qad tashtarik*) and illnesses can resemble one another. The aspirations (*al-himam*) of physicians fall short of comprehensive knowledge of how to engage in inductive and deductive thinking using the principles and rules of medicine (*bi-l-qiyās wa-l-istikhrāj min al-uṣūl wa-l-qawā'id*). I have therefore seen a need to compose a book on causes, symptoms, and illnesses that are similar to each other (*fīmā yashtabih min al-asbāb wa-l-dalā'il wa-l-amrāḍ*). I gather here every pair that resemble each other or are shared between illnesses, and then I distinguish (*ufarriqu*) between them.<sup>196</sup>

This work, as he describes in the introduction, is a practical handbook for diagnosis. It is organized as a series of questions and answers. The book itself has five chapters, each with several subsections consisting of numbered pairs of illnesses between which the author distinguishes.<sup>197</sup> Salmān Qaṭāya states that this work is split up, “according to the organization followed at that time (*ḥasab al-ʿāda al-mutbaʿa fī dhālika al-zamān*).”<sup>198</sup>

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<sup>196</sup> Al-Rāzī, *Mā al-fāriq*, 1-2; Ibn al-Jazzār, *al-Furūq*, 14.

<sup>197</sup> The manuscripts of this work were all copied much later than al-Rāzī's life. It is therefore unclear when the numbering system was introduced to this text. It does, however, make consultation easier, suggesting that it was seen as having this use through its life as a text copied and recopied. This numbering is added to the margins of the Ibn Ḥalwān manuscript in the same hand that copied the text. It is included in the main text of the two published editions.

<sup>198</sup> Qaṭāya “Introduction,” ح.

The book's five chapters cover: (1) the parts of the head (*ajzā' al-ra's*);<sup>199</sup> (2) the respiratory system (*ālāt al-tanaffus*);<sup>200</sup> (3) the stomach, the liver, the spleen, the kidneys, the bladder, and the reproductive system (*al-ma'ḍa wa-l-kabd wa-l-ṭihāl wa-l-kulā wa-l-mathāna wa-ālāt al-tanāsul*);<sup>201</sup> (4) the whole body (*al-badan kulluhu*);<sup>202</sup> and (5) pulse and urine (*al-nabaḍ wa-l-bawl*).<sup>203</sup> Each pair of maladies is introduced with the phrase “What is the distinction between [X] and [Y] (*mā al-farq bayna [kadhā] wa-[kadhā]*).” The answer to the question, the elucidation of the distinction, is introduced with “The answer is... (*wa-l-jawāb*).”

In contrast to lexicographical distinctions, which focus exclusively on the differences and take the similarities for granted, the author performs a complete comparison. He begins by explaining the similarities between the comparands and then explains the distinctions in detail.<sup>204</sup> There is often more than one distinction and, consonant with its stated purpose, the explanation is intended solely to help physicians diagnose the illness. The distinction does not cover cures or treatments for different illnesses, is limited to the information needed for performing a diagnosis, and the

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<sup>199</sup> Al-Rāzī, *Mā al-fāriq*, 29-85; Ibn al-Jazzār, *al-Furūq*, 27-45.

<sup>200</sup> Al-Rāzī, *Mā al-fāriq*, 87-128; Ibn al-Jazzār, *al-Furūq*, 45-58.

<sup>201</sup> Al-Rāzī, *Mā al-fāriq*, 129-231; Ibn al-Jazzār, *al-Furūq*, 59-90.

<sup>202</sup> Al-Rāzī, *Mā al-fāriq*, 233-263; Ibn al-Jazzār, *al-Furūq*, 90-99.

<sup>203</sup> Al-Rāzī, *Mā al-fāriq*, 265-299; Ibn al-Jazzār, *al-Furūq*, 99-108.

<sup>204</sup> The printed edition of this text is heavily annotated. Salmān Qaṭāya, notes that he has done so in order to make the text easy to understand by physicians and relatable to contemporary medicine. He starts the edition with a short explanation of Hippocratic medicine. He also includes a glossary of classical Arabic medical terms and contemporary French and Arabic translations. Only the odd pages contain al-Rāzī's text, while the following even page has extensive commentary from Qaṭāya.

author does not elaborate further or give an explanation of the treatments required or the physical description of how such a symptom came about.

The practical purpose of this book is relevant to any assessment of its possible parallels in the legal tradition. First, we can look at this book's own conception of what a distinction is, and the kind of intellectual work that comparison can do. In introducing his work, the author defines what he means by the term. "As for distinction," he says, "it is that by means of which one distinguishes between two things that are easily confused, when affirming or excluding a characteristic after their having been combined in one thing (*ammā al-farq fa-huwa mā bihi al-tamyiz bayna al-dhawāt al-mushtabaha 'inda ilḥāq ḥukm wa-nafyihi 'an al-ākhar ba'd ijtimā'ihī fī amr khāṣṣ*)."<sup>205</sup> A distinction occurs only through the process of comparison between two similar things which are opposed. The distinction relies on the affirmation of one characteristic and the resulting denial of the other characteristic. He continues:

Once you understand the realities of an issue, the question of distinction does not refer to differences in reality. It only refers to them with respect to the fact that there is something shared between the comparands. This is like what the animate and the inanimate have in common that occurs through the medium of the body, since both of these occupy three dimensions. No one would ask about the distinction between the animate and the inanimate unless one had no knowledge of what differentiates the one from the other (*wa-su'āl al-farq lā yaruddu 'alā al-mukhtalifāt bi-l-ḥaqā'iqā ba'd al-'ilm bi-ḥaqā'iqihā illa min wajh waqa'a*

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<sup>205</sup> Al-Rāzī, *Mā al-fāriq*, 23; Ibn al-Jazzār, *al-Furūq*, 26.

*baynahumā fihi min al-ishtrirāk wa-dhālika ka-ishtrirāk al-ḥayawān aw al-jamād bi-tawassuṭ al-jism fi kawn kull wāḥid minhumā dhā ab‘ād thalātha fa-lā yus‘al bimā al-farq bayna al-ḥayawān wa-l-jamād illā ma‘ ‘adam al-‘ilm bi-l-mumayyiz li-kull wāḥid minhumā ‘an al-ākhar.)<sup>206</sup>*

In bringing out the example of the animate and the inanimate, the author resorts to a clear example of predicability. Here, a body serves as a the object on which animacy and inanimacy can be predicated. Animacy and inanimacy are two contradictory predicates, thus they cannot simultaneously be predicated to any one body. Because any one thing cannot be both in motion and at rest at the same time, the distinction between the two qualities is evident. Nevertheless, they share the attribute that they can both be predicated on physically existing bodies. They are distinct—in fact they are opposites—while at the same time they are possible predicates of a physical body. Medical distinctions, the author would have us understand, are conceptually similar to this example, even if they are not as evident or widely known.

This work of medical distinctions follows this framework of comparison. As mentioned above, all of these distinctions are presented in the form of a question. One such question is: “What is the distinction between a stroke occurring from matter blocking the interior of the brain (*al-mādda al-sādda li-buṭūn al-dimāgh*) and that occurring from a tumor (*waram*) therein?”<sup>207</sup> Keeping in mind that this book is a handbook for diagnostics, the distinction given helps to diagnose each ailment,

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<sup>206</sup> Al-Rāzī, *Mā al-fāriq*, 23 Ibn al-Jazzār, *al-Furūq*, 26.

<sup>207</sup> Al-Rāzī, *Mā al-fāriq*, 37; Ibn al-Jazzār, *al-Furūq*, 30,



presumably since they require different treatments. The answer, according to this work, is straightforward. They are indeed alike in the way they “outwardly manifest themselves (*ishtarakā fī al-ḥaqīqa*),” but they are different in the “cause (*sabab*)” and “the manner of removing the illness from it (*kayfiyyat wujūb al-ḥukm ‘anhu*)”.<sup>208</sup> The author then explains each of these two differences in more detail. As for the difference in cause, he says, “It is evident. One is a blockage (*sadda*), while the other a tumor.”<sup>209</sup> The difference in how the illness is cured relates to the symptoms of these two kinds of strokes. A stroke resulting from a blockage to the brain, he says, occurs as this blockage occurs, that is, the symptoms occur suddenly and severely, “in one moment (*takūnu daf‘atan*).” A stroke resulting from a tumor, however, happens “gradually (*qalīlan qalīlan*).” As the tumor grows, we are told, the vital spirit (*al-rūḥ al-nafsāniyya*) is slowly prevented from spreading to the body. It is the blockage of the vital spirit, which, presumably, is the direct cause of the stroke. Lastly, a stroke caused by a tumor is often accompanied by a fever whereas a stroke resulting from sudden a blockage is not. The physician thus has the tools to diagnose these different kinds of strokes, looking at the onset of the stroke and the presence of fever.

Unlike books of law and lexicography, medical distinctions texts do not discuss anything beyond the immediate phenomenon that presents itself. As will be shown below, lexicographic *furūq* books could and did participate in broader theological

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<sup>208</sup> Al-Rāzī, *Mā al-fāriq*, 37; Ibn al-Jazzār, *al-Furūq*, 30.

<sup>209</sup> Al-Rāzī, *Mā al-fāriq*, 37; Ibn al-Jazzār, *al-Furūq*, 30.

debates about the nature of the Arabic language while also engaging in discussions of discrete lexicographic differences.

Consider the way in which the author lays out his explanations in the following example, as well as the kind of information that he includes and what he leaves out.

What is the distinction between the sediment found in urine that is the result of illnesses in the liver (*mā ya'tī fī al-rasūb min 'ilal al-kabad*) and that which is the result of illnesses of the kidneys?

The answer: They are similar in reality (*ishtarakā fī al-ḥaqīqa*), but they differ in what they indicate (*iftaraqā fī madlūlihimā*) and how they are deduced (*kayfiyyat al-istidlāl bihimā*). That which comes from the liver is more red (*ashaddu ḥamratan*) while that which comes from the kidney leans more towards yellow. It is possible that that from the kidneys is black. In the case of the liver, urine is always opaque (*al-bawl lā takūnu ma'a al-awwal naḍījan*), while the kidney ailments can result in clear urine.<sup>210</sup> The distinction is fully realized (*tamām al-farq*) with the other symptoms of liver failure (*āfat al-kabad*) or the symptoms of pain in the kidneys (*a'rāḍ waj' al-kalā*).<sup>211</sup>

The author again gives detailed explanations of the illnesses to aid in diagnosis. His discussion focuses on the specific ways in which liver and kidney ailments manifest

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<sup>210</sup> I am unsure of the precise meaning of *naḍīj* in this context. My understanding is that it means opaque or turbid. This is based on the discussion of Arabic urology in Max Neuberger, "The Early History of Urology" trans., David Riesman, *Bulletin of the Medical Library Association* 25.3 (1937), 156. I thank Dr. Paulina Giusti for this reference.

<sup>211</sup> Al-Rāzī, *Mā al-fāriq*, 293; Ibn al-Jazzār, *al-Furūq*, 106.

themselves in urine. He does not discuss how to treat liver or kidney ailments, but gives the information that is sufficient for a diagnosis.

The author's claim that this work should serve as a diagnostic manual is evident in the distinctions themselves—that claim is no mere trope with which the author begins his book. In general, however, the paucity of books on medical diagnosis generally precludes the conclusion that they had a significant impact on the genre of legal distinctions.

### ***Furūq* in Philology**

To better understand the rise of legal *furūq*, the following section will trace the rise of distinctions-thinking in Arabic linguistic and lexicographic writing prior to the prominence of *furūq* in legal literatures. Linguistic distinctions tracts most often developed from the study of rare and obscure words and focus on language and grammar (*al-lughā wa-l-naḥw*). Writing about distinctions spread into other aspects of language in the form of simple comparison (*farq*). Driven in part by theological concerns, simple comparisons gave way to distinctions-thinking (*furūq*) in discussions of synonyms. Simple comparisons of words gave way to robust explanations of the various differences between them. By tracing the practical and polemical uses of lexicographical distinction literature from the earliest appearance of the notion up through Abū Hilāl al-ʿAskarī's *Kitāb al-Furūq*, it will become possible to see valences that this genre may have offered jurists when they adapted its techniques and procedures for their own purposes.

*Furūq* were a regular part of philology from very early on in the premodern study of the Arabic language. As with the study of origins generally, it is difficult, if not impossible, to date precisely when this linguistic genre began, although a rough lineage of early books of distinctions will be provided below. These works are of two types: distinctions in lexicography, and distinctions between the letters of the Arabic alphabet. The distinctions that concern lexicographers are between different words that appear to have the same meaning, i.e. between synonyms. The task of the scholar is to show the nuances between these words; he looks to identify the different contexts in which each word can best be employed. The premodern Arabic philologists focus on analyzing words (signifiers) and their meanings (signifieds) rather than diagnosing illnesses. The distinctions they make are about the implicit connotation of known words, not the explicit manifestations of unknown illnesses.

In this section on philology I show how the earliest precursors to books on distinctions were writings on *gharīb* and *nawādir*, words with rare or obscure usages. Lexical lists were attempts to delineate the edges of the Arabic lexicon. These works led to books comparing specialized vocabulary for the body parts and for the life-cycles of animals and humans, often titled *Khalq al-insān* (*The Physical Constitution of Humans*). Books on *Khalq al-insān* were also known by the title *Kitāb al-Farq* (*Book of Distinguishing*). These books are direct precursors to those lexical works entitled *Furūq*. Not only is there a direct connection between their titles, the use of a singular and then its plural, but there is a further connection in terms of content. The logic of distinguishing, however, that functions in books of *farq* is quite different from that found in books of *furūq*.

A typical example of a linguistic *furūq* book is Abū Hilāl al-‘Askarī’s (d. ca. 400/1010) *al-Furūq al-lughawiyya*. This book consists of easily recognizable pairs of linguistic *furūq* and is evidence for the existence of a well-developed scholarly tradition in lexicographical distinctions in the fourth/tenth century. This style of work became so characteristic of the genre that much of the same organization, presentation and content remains evident even as late as the 17<sup>th</sup> century *furūq* work written by İsmail Hakkı Bursevi (d. 1137/1725), which was composed to reinforce the knowledge of Arabic among non-Arabophone elites in the Anatolian peninsula at the time.<sup>212</sup> We can infer several things from the example of al-‘Askarī’s *al-Furūq al-lughawiyya* as a “mature” form of the genre. First, by the time of al-‘Askarī, lexicographical *furūq* writing had evolved into a stable literary genre. Earlier works on the topic focused, by contrast, on “distinguishing” i.e. *Kitāb al-Farq*. Second, works in the genre of linguistic *furūq* began to function as a kind of thesaurus. Third, the early examples of these works were motivated in part by theological concerns about the nature of the Arabic language.

The thesauric goal is seen already at work in Ibn Qutayba’s (d. 276/885) manual for chancery secretaries, *Adab al-kātib*.<sup>213</sup> Ibn Qutayba understood the importance of distinctions between near-synonyms. He also suggested that the ability to draw lexicographical distinctions was required knowledge for secretaries writing for the

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<sup>212</sup> There are many surviving manuscripts of this work. It is also available in a lithograph edition, İsmail Hakkı Bursevi, *al-Furūq*, no ed. (Dersa‘ādet: Şirket-i Şahhāfiye-’i ‘Omāniye, 1308/1890/1) which is available online, at <https://archive.org/details/furqbursal00smaiuoft>.

<sup>213</sup> A section in this work is entitled “Chapters on Distinctions (*abwāb al-furūq*).” Ibn Qutayba, *Adab al-kātib*, ed. Muḥammad al-Dālī (Beirut: Mu‘assasat al-Risāla, 1967), 144-162.

state bureaucracy, part of the skill set that they needed in order to craft well-drafted correspondence, whether for communicating with other secretaries or showing off their deep erudition. In addition, the tradition of linguistic *furūq* was an extension of the early lexicographical concern with the study of *aḍḍād* (contronyms, words which can mean one thing and its opposite) and *abdāl* (phonologically or semantically related letter pairs), as well as synonym groupings (*gharīb* and *nawādir*), which were essentially lists of, for example, different words for sword, camel, horse, etc.<sup>214</sup> It is likely that the practical aspect of linguistic *furūq* was one factor that helped it to last over the centuries. The applied aspect is at work in Ibn Qutayba's text, and it is also the motivating factor in Bursevi's text nine centuries later.

While the thesauric works focused on semantic differences of varying degrees, such as those listed above, *furūq* books could also operate on a theological level. In this sense, the possibility for using *furūq* works polemically is also evident in works from around the fourth/tenth century. As represented by al-ʿAskarī, the linguistic *furūq* literature sought to demonstrate the differences between supposed synonyms. The books were not solely discussing lexicography, but also theological doctrine regarding the perfection of the Arabic language. The debate over the existence of synonyms in Arabic went to the heart of contentions about the nature of Arabic, God's language. In establishing such differences the authors of these works sought to disprove the existence of true synonyms in Arabic. By denying the existence of complete synonymy,

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<sup>214</sup> See, for instance, Al-Ḥusayn ibn Aḥmad Ibn Khālawayh, *Names of the Lion*, trans. David Larsen (Seattle: Wave Books, 2017).

such authors also denied the existence of superfluous elements in the language and by extension could deny the existence of superfluous elements in revelation, which is God's speech.

Since Arabic does not contain any redundancies, it is argued, it must be a perfect language employed for a perfect revelation. Abū Hilāl al-ʿAskarī makes this point explicitly as follows:

The proof (*al-shāhid*) that a difference in expressions and words requires a difference in meaning is the following. A noun is a word that refers to a concept denoted. When you indicate a concept one time, it is understood. A second or third indication, therefore, does not convey additional meaning (*ghayr mufīda*). God, who established the Arabic language (*wāḍiʿ al-lughā*), is wise (*ḥakīm*) and did not include that which does not convey any meaning... Every two words that are used for one concept or entity in a given language—each one of these words—requires a difference in meaning that the other does not require. Otherwise, the second word would be redundant and there would be no need for it.<sup>215</sup>

The theological point is clear and it is al-ʿAskarī's explicit purpose for writing the book. The theological and polemical concerns expressed in this lexicographical genre may suggest that a similar set of concerns can be found within the legal tradition.

Not all authors of works of lexicographic distinctions were primarily interested in denying synonymy. Al-ʿAskarī's *al-Furūq*, however was not alone in making theology

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<sup>215</sup> Abū Hilāl al-ʿAskarī, *al-Furūq al-Lughawiyya*, ed. Muḥammad Ibrāhīm Salīm (Cairo: Dār al-ʿIlm wa-l-Thaqāfa li-l-Nashr wa-l-Tawzīʿ, 1998), 22.

primary. There are other works of *furūq* that explicitly reject synonymy, such as, for instance, al-Ḥakīm al-Tirmidhī's (d. 320/932) *al-Furūq wa-man' al-tarāduf* (Distinctions in Meaning and the Impossibility of Synonymy).<sup>216</sup> The author of a work on distinctions did not necessarily deny the existence of synonymy in Arabic, but denial of synonymy was implicit in the literary enterprise in which they engaged.

### Early Lexicographical Activity

The tradition of Arabic philology was one of the first scholarly disciplines undertaken by the early Muslim community. At this time, philology involved the study of grammar, phonology, and lexicography. While each of these areas became a discrete scholastic discipline during the Abbasid era, they began as three “tracks” within a single discipline, known interchangeably as “*naḥw*” or “*luḡha*.” Practitioners of one field could be referred to as taking part in either discipline.<sup>217</sup> It is not straightforward to know in which field a scholar was active. That is to say, a “grammarians (*naḥwī*)” was not necessarily someone involved exclusively or even primarily with grammar but could also practice lexicography. This means, then, that these are not fields that can be easily discussed in isolation—factors driving development in one field must have influenced the other. They were, after all, composed largely of the same individuals working with

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<sup>216</sup> Al-Ḥakīm al-Tirmidhī, *al-Furūq wa-man' al-tarāduf*, ed. Muḥammad Ibrāhīm Juyūshī (Cairo: al-Nahār, 1998).

<sup>217</sup> Monique Bernards “Grammarians’ Circle of Learning: A Social Network Analysis” in *‘Abbasid Studies II: Occasional Papers of the School of ‘Abbasid Studies, Leuven, 28 June – 1 July 2004*. Ed. John Nawas (Leuven; Paris; Walpole, MA: Uitgeverij Peeters en Departement Oosterse Studies, 2010), 144n2. See also Michael Carter, “Arabic Grammar,” in *Cambridge History of Arabic Literature: Religion, Learning and Science in the ‘Abbāsīd Period*, ed. M.J.L. Young et al. (Cambridge, New York: Cambridge University Press, 1990).



similar concerns, even if at different purposes. It was only once these tracks became separate disciplines that differences emerged between a *naḥwī* and a *lughawī*.

Contemporary scholarship has overwhelmingly favored research on the grammatical legacy over the lexicographical. Consequently, there is a shortage of research into Arabic lexicography, particularly in its earliest phase. Moreover, monographs on lexicography tend to look at the tradition of general dictionaries, such as Khalīl ibn Aḥmad's (d. ca. 170/786) *Kitāb al-ʿAyn* or Abū ʿAmr al-Shaybānī's (d. ca. 210/825) *Kitāb al-Jīm*, rather than specialized or narrow dictionaries or lexica, that is dictionaries of plants, lists of arabicized words (*al-muʿarrab*), books of homonyms, and so on.<sup>218</sup> Most of the scholarship comes in the form of articles, which while useful, are necessarily limited in scope. A notable recent exception to this is Ramzi Baalbaki's monograph *The Arabic Lexicographical Tradition: From the 2nd/8th to the 12th/18th century*. Baalbaki has split this book into three sections, (i) an analytical study of early lexicographical efforts, (ii) a historical study on specialized lexica, and (iii) a historical study of general lexica.<sup>219</sup>

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<sup>218</sup> Comprehensive dictionaries in particular have been examined in detail. See especially John Haywood, *Arabic Lexicography: Its History and Its Place in the General History of Lexicography* (Leiden: Brill, 1965); Stefan Wild, *Das Kitāb al-ʿain und die arabische Lexicographie* (Wiesbaden: Harrassowitz, 1965); and Ḥusayn Naṣṣār, *Al-Muʿjam al-ʿarabī: nashʾatuhu wa-taṭawwuruḥu*, expanded edition, 2 vols. (Cairo: Dār Miṣr li-l-Ṭibāʿa, 1408/1988). For further discussion, see Ramzi Baalbaki, *The Arabic Lexicographical Tradition: From the 2nd/8th to the 12th/18th Century* (Leiden: Brill, 2014), vii-x.

<sup>219</sup> The second part of his study is the first major survey of specialized Arabic lexica in a Western language and is a key resource for further lexicographic study.

The early Arabic lexicographical tradition was concerned with gathering the Arabic lexicon and organizing its words into a useable linguistic resource.<sup>220</sup> As part of these efforts towards compilation, lexicographers made explicit efforts to collect and explain very rare or obscure words and usages. Michael Carter has referred to this activity as a forerunner to the large comprehensive dictionaries of the fourth/tenth century.

The results... were entirely secular word-lists, names of animals, meteorological features, near-homonyms, difficult genders and morphologies, etc., more useful to the collector of poetry than the religious scholar, for which reason some philologists shunned the subject.<sup>221</sup>

The statement that specialized lexica were simply “forerunners” to comprehensive dictionaries is, however, not entirely clear and seems also to be based on a model developed by Aḥmad Amīn, who proposes a three-stage process for the development of Arabic lexicography: collection, then classification, then compilation.<sup>222</sup>

Baalbaki argues convincingly that this model, while logical, does not accurately reflect the historical record. “The mere existence of *Kitāb al-ʿAyn* is proof that the chronological order of the three stages is incorrect.”<sup>223</sup> These three phases, he argues, occurred concurrently, not sequentially. That is to say, the “word-lists” were written

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<sup>220</sup> John A. Haywood, *Arabic Lexicography*, 12-19.

<sup>221</sup> Michael Carter, “Lexicography, Medieval,” in *Encyclopedia of Arabic Literature*, ed. Julie Scott Meisami and Paul Starkey (London, New York: Ashgate, 1998), 2:467.

<sup>222</sup> Aḥmad Amīn, *Duḥā al-islām*. 2<sup>nd</sup> ed. 3 vols. (Cairo: Lajnat al-Taʿlif wa-l-Tarjama wa-l-Nashr, 1938). This claim has been repeated often by others, not always with reference to Amīn. Amīn’s contribution is discussed by Baalbaki in *Arabic Lexicographical Tradition*, 46n233.

<sup>223</sup> Baalbaki, *Lexicographical Tradition*, 47.

and compiled contemporaneously with the first comprehensive dictionary—Khalīl ibn Aḥmad’s *Kitāb al-‘Ayn*; it cannot be the case that these specialized lists were simply precursors to larger dictionaries. Scholarly interest in compiling and discussing specialized word-lists expanded well past the time that “the great dictionaries” were compiled. These two lexicographic tracks represent complementary, not competing, approaches to the study of Arabic lexicography. It is in part for this reason that Baalbaki devotes separate sections of his work to each of these—the specialized (*mubawwab*) and the general alphabetically arranged (*mujannas*) lexicographical works. “Yet boundaries between the two types... are not always clear. Other than the fact that they are contemporaneous and do not represent successive stages in lexicographical writing, it is not always easy to determine under which type certain work should be discussed.”<sup>224</sup> This is also true, since production of these shorter works continued after comprehensive dictionaries began to be written.<sup>225</sup>

In the *Encyclopedia of Arabic Literature*, Michael Carter claims that these word-lists were secular, which is why some lexicographers with an interest in the Quran disregarded these works.<sup>226</sup> I will argue below that these works were not “entirely secular,”<sup>227</sup> but rather that many demonstrate certain theological tendencies. It will become quite clear that lexicography as a whole was decidedly not secular. The discipline of lexicography began, at least in part, as an attempt to understand the

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<sup>224</sup> Baalbaki, *Arabic Lexicographical Tradition*, viii-xi.

<sup>225</sup> I discuss the existence of later lexicographic *furūq* works below. For more, see Chapter Two of Baalbaki’s *Arabic Lexicographical Tradition*.

<sup>226</sup> Michael Carter, “Lexicography, Medieval,” 467.

<sup>227</sup> Michael Carter, “Lexicography, Medieval,” 467.

language of the Quran and this religious character never fully left the tradition. This does not mean that lexicography was solely used to advance theological arguments, but that its religious underpinning cannot be ignored. The theological character of specialized word-lists directs us to consider lexicographic *furūq* in a theological context. We will therefore turn to the early history of writing on synonyms as part of our attempt to trace the emergence of *furūq*.

Some of the earliest scholarly lexicographical activity focused on rare words and obscure usages (*al-gharīb wa-l-nawādir*).<sup>228</sup> “Interest in *gharīb* material is often associated in the sources with the very early period of philological activity.”<sup>229</sup> Among the impetuses for collecting *gharīb* material was a concern with understanding and explaining fully the Arabic language as used in the Quran. This concern is found among some scholars who used their scholarship to push for particular quranic interpretations. Not all philologists, however, agreed with the exegetical explorations of their colleagues. “Several of the philologists... also expressed strong reservations against Qur’ānic interpretation by fellow philologists.”<sup>230</sup> The point to note in this discussion is not whether or not any particular strain of lexicography was theological, but that it could be used to serve a theological agenda. Of course not every lexicographer pursued lexicography out of piety or theological commitments to further the understanding of Islam’s sacred text; rather, the theological was one of various

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<sup>228</sup> These two words, *gharīb* and *nawādir*, are often said to refer to different kinds of words, *gharīb* to rare words and *nawādir* to obscure usages of more known words. In reality, however, there is a great deal of overlap in the use of these terms.

<sup>229</sup> Baalbaki, *Arabic Lexicographical Tradition*, 63.

<sup>230</sup> Baalbaki, *Arabic Lexicographical Tradition*, 41.

motives that drove lexicography. The controversy over the legitimacy of lexicographers performing interpretations of the Quran points to the fact that lexicographers were, in fact, involved in religious debates.

Most of the lexical data found in works of distinctions was recorded by philologists performing “fieldwork,” to borrow an expression from the contemporary academy. Lexicographers would go out into the desert and collect linguistic data from nomadic Bedouins. “The data which the philologists recorded on the authority of the Bedouin *fuṣṣḥā*’ provided much of the raw material for the early monographs that dealt with *ġarīb* and *nawādir* or with specific semantic fields...”<sup>231</sup> Nomadic Bedouins were picked for their knowledge of Arabic because they were viewed as pure Arabs, untainted by urban cosmopolitan life. They lived only among and with Arabs, the thinking went, and thus would speak an unadulterated form of the language. Indeed, the amount of linguistic data gathered by the lexicographers is remarkable. We learn from such informants, for example, that the word *shifa* refers to a human’s lips, while *mishfar* to those of a camel, those of hoofed animals are called *jaḥfal* but for animals with cloven-hoofs you should use the term *miqamma* or *miramma*.<sup>232</sup> This is only a

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<sup>231</sup> Baalbaki, *Arabic Lexicographical Tradition*, 20. Monique Bernards, however, has argued strongly against this view. While the Arabic sources are intent on informing us that both lexicographers and grammarians gathered their data through exhaustive travel, she notes that biographical sources do not provide any support for this idea. The idea of travelling for knowledge (*al-ṭalab fi al-‘ilm*) was a literary trope, she argues, and not a lived reality. See Monique Bernards, “Ṭalab al-‘Ilm amongst the Linguist of Arabic during the ‘Abbāsīd Period” in *‘Abbāsīd Studies: Occasional Papers of the School of ‘Abbāsīd Studies, Cambridge, 6-10 July 2002*, ed. J.E. Montgomery: 111-128 (Leuven; Dudley, MA: Uitgeverij Peeters en Departement Oosterse Studies, 2004).

<sup>232</sup> Thābit ibn Abī Thābit, *Kitāb al-Farq*, 3<sup>rd</sup> printing, ed. Ḥātim Ṣaliḥ al-Ḍāmin (Beirut: Mu’assasat al-Risāla, 1408/1988), 18. Some sources record this word as *marimma*, see Lane’s Lexicon s.v. “*marimma*.”

partial listing of the various words for lips adduced by Thābit ibn Abī Thābit (*fl.* third/ninth c.), but it shows the kind of work that early lexicographers were doing, namely the collection of obscure or rare words, from Bedouin informants, in a scientific manner.

The collection of these words was done as a way of recording the scope of the Arabic language. It was not a guide *per se* to correct usage, which was instead the goal pursued by works of *furūq* proper. In fact, Thābit says, “Occasionally, one of these words is used in place of another (*rubbamā uqīma ba‘ḍ hādhihi al-ḥurūf maqām ba‘ḍ*)... for reasons of poetic necessity.”<sup>233</sup> He then cites a poem by Abū Du‘ād al-Iyādī (*fl.* mid-sixth c.), a pre-Islamic poet, wherein he uses the word “*shifa*” to refer to a horse’s lips, even though he should have used the term *jaḥfal*. This concession to poetic license, however, is the exception that proves the rule. Thābit ibn Abī Thābit shows that the occasional misuse of a word only occurs in times of linguistic duress, i.e. when trying to fit a poetic meter. In fact, even the Bedouin poets, the authorities for such usages, do so when they see fit. There is, thus, no reason to criticize the usage found in Abū Du‘ād’s poem.

As collections of *gharīb* material became more prevalent in the third/ninth century, authors found different ways to organize them. *Gharīb* already represents one level of sorting and classifying information. Only particular words are chosen as *gharīb*. Such collections were not attempts to capture the entirety of the Arabic language, nor did they attempt, as other books do, to document solecisms (*laḥn*) or list contronyms

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<sup>233</sup> Thābit ibn Abī Thābit, *Kitāb al-Farq*, 20.

(*aḍḍād*). Even so, these works grew as more and more entries were collected. As they grew, these works required further organizational refinement.

Words identified as *gharīb* and *nawādir* were organized thematically, alphabetically, or sometimes not at all; these organizational rubrics were similar to those employed in other specialized lexica. Books would be alphabetized in a variety of different ways: sometimes according to the first letter of the trilateral root of the term, sometimes according to the final letter within the root, sometimes according to the *abjadī* ordering of the Arabic alphabet, and sometimes according to the *alifbāʾī* sequence.<sup>234</sup> As Tilman Seidensticker writes, “[m]any books on *ʿaḍḍād* did not order the words treated; [Abū Ṭayyib] al-Luḡawī groups them according to the first radical; and aṣ-Ṣaḡānī (d. 650/1252) uses a fully alphabetical arrangement. Books on homonyms were also composed from the beginning of the ninth century,” though they do not have clear discernible ordering patterns.<sup>235</sup> Since it is the books of *farq* that are of primary interest to this study, we will look at the ways in which they were organized in the following section.

### **Books of *Farq***

The thematic organization of books of *farq* is directly relevant to the *furūq* tradition. As *gharīb* works spread, their particular focus and organizing principles narrowed.

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<sup>234</sup> For more on alphabetization, see *Encyclopedia of Arabic Language and Linguistics* s.v. “Lexicography: Classical Arabic” (Tilman Seidensticker), 3:30-37.

<sup>235</sup> *Encyclopedia of Arabic Language and Linguistics* s.v. “Lexicography: Classical Arabic, 7. Specialized Lexica” (Tilman Seidensticker), 3:34.

Thematic works often based themselves on particular areas of the Arabic language. Specifically, *gharīb* works began to draw only from scriptural and related material, as in collections of *gharīb al-ḥadīth* (obscure words found in the hadith) and *gharīb al-Qurʾān* (obscure words found in the Quran). In addition to these religious works, *gharīb* scholarship also grew in another, notably less religious direction. Some books collected all of the words related to discrete topics, such as plants (*nabāt*), horses (*khayl*), insects (*ḥasharāt*) and the physical constitution of humans (*khalq al-insān*). These topical *gharīb* books functioned as repositories of lexical data for particular subject areas. They are attempts to capture all of the Arabic words within a given field as well as to represent the dialectal richness found within the language. “To take the genre of *nabāt* (plants) as an example, one finds in it references to the dialects of Ḥiğaz, Nağd, Madīna, Yamāma, Nağrān, Tihāma, Baḥrayn, Başra, Kūfa, Ḥīra, Şām, Tamīm, Balḥāriṭ b. Kaʿb, etc.”<sup>236</sup> Not only did lexicographers often refer to words found in specific dialects, but in fact, most of the lexical diversity was found across particular dialects.

Early books on “*al-farq*” are not written as direct comparisons of apparent synonyms. In this, *farq* books are quite different from those of *furūq*. They are a sub-genre of works on the body parts and life-stages of animals. The focus of works of *farq* is on explaining the various technical terms for the body and life-cycle, not on clarifying distinctions between pairs of closely related words. As an example, the book written by Abū ʿAlī Muḥammad ibn al-Mustanīr (d. 206), better known as Quṭrub, is divided into the following sections, as given by Khalīl Ibrāhīm al-ʿAṭīyya and Ramaḍān ʿAbd al-

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<sup>236</sup> Baalbaki, *Arabic Lexicographical Tradition*, 133-34.



Tawwāb, the editors of this book. Their edition, from 1987, is based on a manuscript from the early fourth/tenth century manuscript housed in Vienna (a very early date for the manuscript of an Arabic book). While these division titles are not Quṭrub's, they provide insight into the way this work is indeed organized.

- 1) Divisions of the Body (*aqsām al-khalq*)
- 2) Birth, Pregnancy, and Terms for Offspring (*al-walāda ba'd al-ḥaml wa-tasmiyat al-mawālīd*)
- 3) Voices and Cries of Humans, Animals, and Birds (*aswāt al-insān wa-l-bahā'im wa-l-ṭayr*)
- 4) Sounds of Humans, Animals, and Birds (*zajr al-insān wa-l-bahā'im wa-l-ṭayr*)
- 5) Groups of Humans and Animals (*al-jamā'a min al-nās wa-l-bahā'im*)
- 6) Death of Humans and Animals (*al-mawt min al-insān wa-l-bahā'im*)<sup>237</sup>

The division shows the relatively straightforward, but, nevertheless, conscious, organization and grouping that structures the book. The body is divided from head to toe and the rest of the divisions progress from life to death. The lexicographic precursors to *furūq* are not concerned with distinction-making; they take it as a given that distinctions occur. The books on *farq* assume a diversity of terminology within a broad category, while books on *furūq* assume confusion based on a similar specific meaning. The latter confusion is what authors of works on *furūq* want to solve by

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<sup>237</sup> Quṭrub, Abū 'Alī Muḥammad ibn al-Mustanīr, *Kitāb al-Farq*, ed. Khalīl Ibrāhīm al-'Aṭīyya and Ramaḍān 'Abd al-Tawwāb (Maktabat al-Thaqāfa al-Dīniyya, 1987), 28, see pp. 32-34 for a description of the Vienna manuscript.

drawing their distinctions, whereas authors of books on *farq* take distinctions for granted.

Works that focused on humans and animals were often organized according to the body and cycles of life as shown above. These works took on titles of the form “The Physical Constitution of X” (*khalq al-shayʿ*), such as “The Physical Constitution of Humans” (*khalq al-insān*) or “The Physical Constitution of Horses” (*khalq al-fars*). While these topics were of interest to early lexicographers, as were camels and swords, it was insects that seem to have been the subject of the first works. Ḥusayn Naṣṣār writes that “the reason for this could be that the Quran mentions groups of insects, such as ants, bees, flies, scorpions, locusts, and mosquitoes (*buʿūd*), and Quran commentators had studies and discussions about them which drew the attention of the lexicographers.”<sup>238</sup> *Ḥasharāt* in these works refers to insects and reptiles (*zawāḥif wa-hawāmm*).<sup>239</sup> Naṣṣār claims that the first of these authors was Abū Khayra al-ʿArabī (d. early third/ninth c.), then Abū ʿAmr al-Shaybānī (d. ca. 210/825), then Abū ʿUbayda (d. ca. 210/825), al-Aṣmaʿī (d. ca. 213/828), etc.<sup>240</sup> These books were at first written as independent works, but later incorporated as chapters or sections of encyclopedic works like Ibn Qutayba’s *Adab al-kātib* and more integrally al-Thaʿālabī’s (d. 429/1037) *Fiqh al-luġha*, both of which had chapters titled *khalq al-insān*.

There was also extensive writing on horses (*al-khayl*), camels, and other animals, both those used in war and those not used in war. The first book on horses was by Abū

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<sup>238</sup> Naṣṣār, *al-Muʿjam al-ʿArabī*, 100.

<sup>239</sup> Naṣṣār, *al-Muʿjam al-ʿArabī*, 100.

<sup>240</sup> Naṣṣār, *al-Muʿjam al-ʿArabī*, 101.

Mālik ‘Amr ibn Kirkira (fl. second half of the second/eighth c.).<sup>241</sup> Later lexicographers called their books *Kitāb al-khayl* or *Khalq al-faras*. While writing individual treatises on *ḥasharat* seems to have ended, books on horses continued to be composed into the seventh/thirteenth century, such as Muḥammad ibn Raḍwān al-Numayrī’s (d. 657/1257) *Kitāb al-Khayl*. “All of the authors depended on the first books in regard to content and organization.”<sup>242</sup> Abū Mālik ‘Amr ibn Kirkira was also the first to write a book on *Khalq al-insān*, according to Ḥusayn Naṣṣār.<sup>243</sup> This tradition continued for centuries and even the 15<sup>th</sup>-century scholar Jalāl al-Dīn al-Suyūṭī wrote a book in this genre.<sup>244</sup> Naṣṣār implies that Ibn Qutayba, in his *Adab al-kātib*, was the first to include a “a section on some defects of humans and their illnesses as well as distinctions between words that people take to be synonyms regarding the human body. These two sections, however, are short and of negligible value.”<sup>245</sup> The tradition of writings on *farq*, distinguishing, appears to be a precursor to the tradition of writing on *furūq*, which is perhaps not surprising since both deal with roughly the same subject matter, synonymy, and *furūq* is the plural of *farq*.

The first work of lexicographic distinction (*al-farq*) appears to be that of the lexicographer Abū Ziyād al-Kilābī (d. ca. 200/815).<sup>246</sup> Shortly thereafter, Quṭrub wrote

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<sup>241</sup> Naṣṣār, *al-Muʿjam al-ʿArabī*, 102.

<sup>242</sup> Naṣṣār, *al-Muʿjam al-ʿArabī*, 105.

<sup>243</sup> Naṣṣār, *al-Muʿjam al-ʿArabī*, 106.

<sup>244</sup> Jalāl al-Dīn al-Suyūṭī, *Kutub Khalq al-insān Maʿ taḥqīq kitāb Ghayāt al-iḥsān fī khalq al-insān li-l-Suyūṭī*, ed. Nihād Ḥasūbī Ṣāliḥ (Baghdad: Wizārat al-Thaqāfa wa-l-ʿIlām, 1989).

<sup>245</sup> Ḥusayn Naṣṣār, *al-Muʿjam al-ʿArabī*, 107.

<sup>246</sup> Ramaḍān ‘Abd al-Tawwāb, “Introduction” to *Kitāb al-farq*, by Ibn Fāris al-Lughawī, ed. Ramaḍān ‘Abd al-Tawwāb (Cairo: Maktabat al-Khātimī; Riyadh: Dār al-Rifāʿī, 1402/1982), 42. Ibn al-Nadīm also credits

what is the earliest extant work on linguistic distinction, entitled *al-Farq fī al-lughā*.<sup>247</sup> Ramaḍān ‘Abd al-Tawwāb discusses the early history of this genre in the introduction to his edition of Quṭrub’s *al-Farq fī al-lughā*:

In spite of having lost most of the tradition of linguistic distinctions in Arabic, what has come down to us adds up to a small quantity. Absolutely the oldest of what remains is Quṭrub’s book followed by that of Abū Sa‘īd ‘Abd al-Malik ibn Qurayb al-Aṣma‘ī... [The] next is the book by Thābit ibn Abī Thābit, who was a student of Abū ‘Ubayd al-Qāsim ibn Salām [(d. 224/838-39)]... These books are followed by Abū Ḥātim al-Sijistānī’s [(d. 255/869)], and the fifth book in the *farq* tradition to reach us is by Ibn Fāris al-Lughawī [(d. 395/1004)].<sup>248</sup>

Although efforts to reconstruct this early history are hampered by the loss of the earliest works many of the concerns and questions that were important to these early authors in this genre can still be perceived.

The very earliest examples of works on linguistic distinction (*al-farq*) are concerned with distinguishing the words used for the limbs, appendages, and actions of humans versus other animal groups, including livestock, birds, predatory beasts, insects, etc. Quṭrub’s work is quite similar to the works entitled *Kitāb al-Farq* of both al-

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Abū Ziyād as the earliest philologist to write on distinctions, Ibn al-Nadīm, *al-Fihrist*, 1.1:118-90. The entry on Abū Ziyād is on 1.1:121.

<sup>247</sup> This work has been edited and published twice. The first publication, based on an incomplete manuscript was done by Rudolf Geyer in 1888 under the title *Mā khālaḥ fīhi al-insān al-bahīm fī asmā’ al-wuḥūsh wa-ṣifātihi*. More recently, Khalīl Ibrāhīm ‘Aṭīyya and Ramaḍān ‘Abd al-Tawwāb have published a critical edition of this work,.

<sup>248</sup> Quṭrub *Kitāb al-farq*, 6.

Aṣmaʿī and Thābit ibn Thābit, both of which are alternatively titled *Khalq al-insān*.<sup>249</sup> The entries themselves are grouped around body parts so that, for instance, they start with *bāb al-fam* (Chapter on Mouths), followed by *bāb al-anf* (Chapter on Noses), *bāb al-ẓufur* (Chapter on Nails), and so on. Each chapter is arranged such that the different ‘synonyms’ are explained as referring to a distinct kind or class of animal. Thābit ibn Abī Thābit states this in the following way in the introduction to his book.

This is a book on that in which the names of human limbs is not the same as the names of limbs of four-legged domestic animals, wild animals, etc. [This is also a book on] that which al-Aṣmaʿī, Ibn al-Aʿrābī, Abū ʿUbayd, Abū Naṣr and other scholars agree (*wāfaqa ʿan*).<sup>250</sup>

The tradition of *farq* writing was clearly a scholarly tradition, passed down from teacher to student. Thābit ibn Abī Thābit’s book, for example, is almost identical to that of his instructor al-Aṣmaʿī’s. Thābit quotes al-Aṣmaʿī verbatim for long passages—normally with explicit attribution. Quṭrub’s book is arranged in basically the same way as Aṣmaʿī’s.

The organization of Ibn al-Sikkīt’s (d. 244/858) *Kitāb al-Alfāz*, on the other hand is not nearly as straightforward. It appears at times to be organized in a vein similar to that of other early works, but its overall form is neither readily apparent nor explicitly stated. Some individual groupings can be discerned, but the order of these groupings remains elusive. In other words, the comparison in certain entries is quite obvious, but

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<sup>249</sup> Al-Aṣmaʿī, ʿAbd al-Malik ibn Qurayb, *Kitāb al-Farq*, ed. Ṣabīḥ al-Tamīmī (Beirut: Dār Usāmāh, 1987).

<sup>250</sup> Thābit ibn Abī Thābit, *Kitāb al-Farq*, 17.

the ordering of the entries is not. For instance, the first two chapters are on wealth (*al-ghinā wa-l-khiṣb*) and poverty (*al-faqr wa-l-jadb*) respectively while the next two are on groups (*jamā'a*) and on battalions (*katā'ib*). Both of these pairs seem logically related—wealth and poverty are antonyms; groups and battalions are near-synonyms—but the logic that puts wealth and poverty next to groups and battalions is not clear.

Ibn al-Sikkīt accepts that there is synonymy in Arabic. For example, in the section *Bāb mā lā budda minhu* he lists synonyms for the phrase *lā budda minhu*, “there is no way out; one must do something.” It begins, on the authority of al-Aṣma'ī: “There is no *ḥumma* from that nor a *rumma*. That is to say, there is no escape from this (*lā ḥumma min dhālika wa-lā rumma, ayy lā budda minhu*).”<sup>251</sup> His putting the terms *ḥumma* and *rumma* in apposition (*badal*) suggests their semantic equivalence; Ibn al-Sikkīt uses one to stand for the other. While many of the scholars who wrote in the genre of linguistic distinctions were Mu'tazilīs concerned with highlighting the perfection of the Arabic language, this was not the case for all such authors. Quṭrub, who wrote the earliest work on distinctions, for instance, does seem to believe in the existence of synonymy in the Arabic language. He is quoted in al-Suyūṭī's *al-Muzhir fī 'ulūm al-lughā*, for instance, as saying the following. “The Arabs used (*awqa'at*) two words for one meaning to prove the breadth of their language (*kalāmihim*).”<sup>252</sup>

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<sup>251</sup> Ibn Sikkīt, Ya'qūb ibn Ishāq, *Kitāb al-Alfāz: Aqdam Mu'jam fī al-Ma'ānī*, ed. Fakhr al-Dīn Qabbāwa (Beirut: Maktabat Lubnān Nāshirūn, 1998), 183.

<sup>252</sup> Jalāl al-Dīn al-Suyūṭī, *al-Muzhir fī 'ulūm al-lughā wa-anwā'ihā*, vol. 1, ed. Muḥammad Aḥmad Jād al-Mawlā Bek, Muḥammad Abū al-Faḍl Ibrāhīm, and 'Alī Muḥammad al-Bajāwī (Cairo: Maktabat Dār al-Turāth, n.d.), 400.

While the content can tell us about the early transmission of ideas about language, the preserved material might not always tell us about the ways in which authors organized and presented their work. Since the extant manuscripts are usually from centuries after the author's autograph, we cannot know whether the intentional organization of these earliest works is preserved. "The preserved manuscripts may turn out to be half a millennium later than their originals and, though this may not be indicated in the manuscripts themselves, they may have undergone various recensions and redactions during this time."<sup>253</sup> Jaakko Hämeen-Anttila is correct in doubting the provenance of the organization. Not only can works be changed as they undergo copying and recopying, but there is still controversy over the nature of the earliest Arabic books as such. We do not know to what extent they were given a final redaction by the author, to what extent they could be considered authored works and to what extent were they more open and receptive to further change and emendation.<sup>254</sup>

### ***Kutub al-Furūq fi al-Lughā***

In the fourth/tenth century the new concept of *furūq* clearly emerges among lexicographers. The earlier books of *farq* fall within the *nawādir* and *gharīb* frameworks. These works limited themselves, in the style of *Kitāb al-Alfāz*, to singular topics or

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<sup>253</sup> Jaakko Hämeen-Anttila, "Al-Aṣmaʿī, Early Arabic Lexicography, and *Kutub al-Farq*" *Zeitschrift für Geschichte der arabisch-islamischen Wissenschaften* 16 (2005): 141-148, 141.

<sup>254</sup> See Gregor Schoeler, *The Genesis of Literature in Islam: From the Aural to the Read*. trans., Shawkat M. Toorawa (Edinburgh: Edinburgh University Press, 2009). The *Kitāb al-ʿAyn* of Khalil ibn Aḥmad is a great example. Many of the passages in this book seem to have actually been written by Ibn Durayd. See Ramzi Baalbaki, "Kitāb al-ʿAyn and *Jamharat al-Lughā*" in *Early Medieval Arabic: Studies on al-Khalil ibn Aḥmad*, ed. Karin C. Ryding, 44-62 (Washington D.C.: Georgetown University Press, 1998).

themes. By the time that al-Ḥakīm al-Tirmidhī composes his *Furūq wa-manʿ al-tarāduf* in the third/ninth century, the term *furūq* is not simply synonymous with rare or strange usage, but is fundamentally driven by concerns about synonymy. It is important to note that the change in focus towards synonymy came with a change of terminology. The *furūq* works that were composed in this century are, for the first time, given titles using the term *furūq*. This is not the same as the *farq* of Thābit ibn Abī Thābi or al-Aṣmaʿī. While it is a continuation of the tradition in lexicographic scholarship, and in other fields as well, as discussed above, as *furūq*, it represents a separate, more solidified concept and takes on a stronger theological impulse. The next section takes Abū Hilāl al-ʿAskarī’s *Kitāb Furūq* as an example of the genre, since it is among the earliest exemplars and highlights the theological stakes in this genre.

### **Abū Hilāl al-ʿAskarī**

Abū Hilāl al-Ḥasan ibn ʿAbd Allāh al-ʿAskarī seems to have left us a great number of extant works, yet he does not seem to have been a prominent figure in his own time. According to George Kanazi, “[o]ur information about Abū Hilāl is very meagre, uninteresting and lacking in detail, because the early sources mentioning him are very few.”<sup>255</sup> In part, this obscurity is because he has been and still is often confused with his similarly named teacher, Abū Aḥmad al-Ḥasan ibn ʿAbd Allāh al-ʿAskarī (d. 382/993). Biographers did not always distinguish between Abū Hilāl and Abū Aḥmad. This confusion makes reconstructing the biography of the author of *Kitāb al-Furūq*, Abū Hilāl

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<sup>255</sup> George Kanazi, *Studies in the Kitāb aṣ-Ṣināʿatayn of Abū Hilāl al-ʿAskarī* (Brill: Leiden, 1989), 1.



al-‘Askarī, complicated. Because of the confusion surrounding Abū Hilāl and his teacher, a detailed consideration of these two figures is worthwhile.

Abū Hilāl seems to have been less important in the bibliographic sources than his teacher, even though more of his works than of his teacher’s are preserved.<sup>256</sup> “As early as the year 510 A.H. [/1116-17], al-Silafī could point to a confusion between the two ‘Askaris [sic], Abū Aḥmad (293-382 A.H.) and Abū Hilāl (d. after 400 A.H.).”<sup>257</sup> Abū Ṭāhir Aḥmad ibn Muḥammad al-Silafī<sup>258</sup> is quoted in Yāqūt’s *Muʿjam al-udabāʾ* as undersanding the confusion between these two figures as arising from their similar names, stating that “probably one was mentioned when the other was meant (*rubbamā ashtabaha dhikruhu bi-dhikrihi*).”<sup>259</sup> In fact, in order to resolve this misunderstanding, al-Silafī had to consult Abū al-Muẓaffar Muḥammad ibn Abī al-‘Abbās al-Abīwardī (d. 507/1113), the foremost linguist (*al-raʾīs*) in Hamadan.<sup>260</sup>

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<sup>256</sup> See, for example, their respective entries in the *Encyclopaedia of Islam*, Third Edition. Both entries are written by Beatrice Gruendler. While she devotes 1,158 words to Abū Aḥmad, Abū Hilāl received about half that number, 680 words. EI<sup>3</sup> s.v., “al-‘Askarī, Abū Aḥmad” (B. Gruendler) and EI<sup>3</sup> s.v., “al-‘Askarī, Abū Hilāl” (B. Gruendler).

<sup>257</sup> George Kanazi, *Studies in the Kitāb aṣ-Ṣināʾatayn*, 2.

<sup>258</sup> Al-Silafī was a noted hadith scholar and grammarian. He was born in Isfahān, travelled to Baghdad for his education, and then to Tyre and Alexandria where he later settled. He was a noted scholar and teacher there. He was born in 472/1079 or 478/1097 and died in Alexandria on 5 Rabīʿ II, 576/8 August, 1180. Al-Silafī himself merits only a short biography in Ibn Khallikān’s *Wafayāt al-Aʿyān*. See Shams al-Dīn Aḥmad ibn Muḥammad Ibn Khallikān, *Wafayāt al-aʿyān wa-anbāʾ abnāʾ al-zamān*, ed. Iḥsān ‘Abbās (Beirut: Dār Ṣādir, 1398/1978), 1:105-107, no.44, see also Mac-Guckin de Slane, *Ibn Khallikan’s Wafayat al-Aʿyan wa Anbaʾ Abnaʾ al-Zaman (M. de Slane’s English Translation)*, ed. S Moinul Haq vol. 1 (Karachi: Pakistan Historical Society, 1961), 152-156.

<sup>259</sup> Yāqūt al-Ḥamawī al-Rūmī, *Muʿjam al-udabāʾ: irshād al-arīb ilā maʿrifat al-adīb*, ed. Iḥsān ‘Abbās (Beirut: Dār al-Gharb al-Islāmī, 1993), 2:918.

<sup>260</sup> On al-Abīwardī, see EI<sup>3</sup> s.v., “al-Abīwardī, Abū al-Muẓaffar Muḥammad” (Geert Jan van Gelder) and Yāqūt al-Ḥamawī, *Muʿjam al-udabāʾ*, 5:2360-2376.

Although al-Silafī went to great lengths to resolve this confusion, later scholars continued to confuse these two al-‘Askarīs. In fact, Khalīl ibn Aybak al-Ṣafadī (d. 764/1363) uses this case to highlight the importance of ascertaining a scholar’s full name before studying him, in order to distinguish him from others with similar names. After relating a comical story about the puzzlement that arose from using incomplete names during the hajj, al-Ṣafadī cites the example of the two al-‘Askarīs as a real world example of misunderstandings that occur because of similar names, a kind of biographical distinction:

The same confusion about names exists between al-Ḥasan ibn ‘Abd Allāh al-‘Askarī, Abū Aḥmad al-Lughawī, who wrote *Kitāb al-Taṣḥīf* and al-Ḥasan ibn ‘Abd Allāh al-‘Askarī, Abū Hilāl, who wrote *Kitāb al-Awā’il*. Both of them are al-Ḥasan ibn ‘Abd Allāh al-‘Askarī. The former passed away in the year 382 while the latter was still alive in the year 395. They happen to have the same name, as did their fathers, the same *nisba*, and the same scholarly vocation (‘*ilm*). Their death dates are also fairly close (*taqārabā fī al-zamān*). You can only tell them apart by their *kunya*, since the first is Abū Aḥmad and the second Abū Hilāl. The first is Ibn ‘Abd Allāh ibn Sa‘īd ibn Ismā‘īl while the second Ibn ‘Abd Allāh ibn Sahl ibn Sa‘īd. Because of these similarities, many historians did not distinguish between them and assumed (*yazunnūna*) they were the same person.<sup>261</sup>

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<sup>261</sup> Khalīl ibn Aybak al-Ṣafadī, *al-Wāfi bi-l-wafāyāt*, ed. Aḥmad al-Arna’ūṭ and Turkī Muṣṭafā (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī), 1:48.

Al-Şafadī's warning about a careless approach to names, and in particular to the two Ḥasan ibn ʿAbd Allāh al-ʿAskarīs, went unheeded. This confusion has persisted into the 21<sup>st</sup> century. Due to this misperception it is hard to know much about Abū Hilāl or his thought with certainty.

George Kanazi mentions that “[t]he information provided by al-Silafī seems to be inaccurate in one place at least... Though this is by no means a serious inaccuracy, one should perhaps not put too much reliance on this treatise.”<sup>262</sup> The uncertainty over the identity of the two al-ʿAskarīs in the biographical sources prior to Yāqūt complicates our attempt to identify specific ideas as those either of Abū Hilāl al-ʿAskarī or Abū Aḥmad for that matter. Al-Silafī attempted to clear up this confusion which became proverbial when al-Şafadī wrote his *Wāfi bi-l-wafayāt* in the 14<sup>th</sup> century.

However that may be, there is a great deal of circumstantial evidence for the theological ideas of Abū Hilāl al-ʿAskarī that points to his affiliation with Muʿtazilī theology. George Kanazi, who believes “that Abū Hilāl belonged to the Muʿtazilites,”<sup>263</sup> bases this conclusion primarily on three moments in Abū Hilāl's oeuvre. First, Abū Hilāl claims that Wāṣil ibn ʿAṭāʾ (d. 131/748-49) was the first Muslim to write on theology (*kalām*) and offers a long defense of him and his intellectual originality.<sup>264</sup> Second, Abū Hilāl also hints at his Muʿtazilī affiliations in his *Kitāb al-Şināʿatayn*. In a discussion on using proofs in one's thinking (*al-baṣar bi-l-ḥujja*), he brings up the fact of the

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<sup>262</sup> Kanazi, *Studies*, 2n11.

<sup>263</sup> Kanazi, *Studies*, 14.

<sup>264</sup> Abū Hilāl al-ʿAskarī, *Kitāb al-awāʾil*, ed. Muḥammad al-Miṣrī and Walīd Qaṣṣāb, 2 vols. (Damascus: Manshūrāt Wizārat al-Thaqāfa wa-l-Irshād al-Qawmī, 1975), 2:134-138. Wāṣil ibn ʿAṭāʾ was the theologian credited with founding the Muʿtazila school of theology. See EI<sup>2</sup> s.v. “Wāṣil b. ʿAṭāʾ” (J. Van Ess).

createdness of the Quran, one of the central tenets of the Mu‘tazila. “Someone<sup>265</sup> asked Abū ‘Alī Muḥammad ibn ‘Abd al-Wahhāb [d. 303/915-16], ‘What proof is there that the Quran is created?’ ‘God could create something like it (*Allāh qādir ‘alā mithlihi*),’ he answered.”<sup>266</sup> Finally, in the introduction to the same book, al-‘Askarī mentions his commitment to the principle of “the reward and punishment in the afterlife (*al-wa‘d wa-l-wa‘id*),” a central tenet in Mu‘tazilī theology.<sup>267</sup> In a study of his literary theory, Amal al-Mashāyikh also infers from Abū Hilāl’s style of argumentation and his preference for *badi‘* that he was a Mu‘tazilī.<sup>268</sup>

The biographical dictionaries tell us the names of many of Abū Hilāl’s teachers and students but do not provide any substantial information about them, perhaps “due to their Shī‘ite or Mu‘tazilite sympathies.”<sup>269</sup> This lack of information holds true for all of Abū Hilāl’s teachers save the aforementioned, Abū Aḥmad al-‘Askarī, about whom, again, not much can be known with confidence. We do know, however, that:

“Abū Aḥmad al-Ḥasan b. ‘Abd Allāh b. Sa‘īd al-‘Askarī (293–382/906–93) was a prolific

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<sup>265</sup> A supporter of ‘Uthmān ibn ‘Affān.

<sup>266</sup> Abū Hilāl al-‘Askarī, *Kitāb al-Ṣinā‘atayn al-kitāba wa-l-shi‘r*, ed. ‘Alī Muḥammad al-Bajāwī and Muḥammad Abū al-Faḍl Ibrāhīm ([Cairo:] Dār Iḥyā’ al-Kutub al-‘Arabiyya, 1371/1952), 14.

<sup>267</sup> Al-‘Askarī, *al-Ṣinā‘atayn*, 2. For more on the “promised good and the promised evil” see Richard M. Frank, *Beings and Their Attributes: The Teaching of the Basrian School of the Mu‘tazila in the Classical Period* (Albany, NY: State University of New York Press, 1978).

<sup>268</sup> Amal al-Mashāyikh, *Abū Hilāl al-‘Askarī nāqidan*, (Amman: Wizārat al-Thaqāfa, 2002), 72, 296. This claim is somewhat unclear. *Badi‘* refers to the liberal use of figures of speech and paranomasia in writing. It was first espoused by ‘modern’ (*muḥdath*) poets in the third/ninth and fourth/tenth centuries and later adopted by many Arabic writers. See EI<sup>3</sup> s.v. “*badi‘*” (Geert Jan van Gelder) and Suzanne P. Stetkevych, *Abū Tammām and the poetics of the ‘Abbāsīd age* (Leiden; Boston: Brill, 1991).

<sup>269</sup> George Kanazi, *Studies*, 9.

author and the leading scholar of his day in hadith, *lughā*, and *adab*.”<sup>270</sup> Importantly, he was accused of being a Mu‘tazilī.<sup>271</sup> He is included in the modern work, *A‘yān al-shī‘a* “because (a) he was a teacher of the prominent shi‘ite figure, al-Ṣadūq (Muḥammad b. ‘Alī b. Bābawayh, d. 391 A.H.), (b) he was a student of Ibn Durayd, and (c) of Ibn ‘Abbād’s eagerness to meet him.”<sup>272</sup> Ibn Bābawayh in particular, although not a Mu‘tazilī, wrote one of the authoritative books of Imāmī hadith and law, *Man lam yaḥḍuruḥu al-faqīh*.<sup>273</sup> Ṣāḥib ibn ‘Abbād was “a tireless champion of [Basran] Mu‘tazili rationalism.”<sup>274</sup> Abū Aḥmad was one of Abū Hilāl’s main teachers, if not his most important one.<sup>275</sup>

Abū Hilāl produced many students of his own, although, we lack information on the majority of them. One of his students, however, Abū Sa‘d Ismā‘īl ibn ‘Alī al-Rāzī al-Sammām, is mentioned as having been a prominent Mu‘tazilī. “According to Dhahabī, who mentioned him under the year 445 A.H., he studied in Iraq, Mecca, Egypt and Damascus. He was an authority on different readings of the Koran, on *hadīth* [sic] and *fiqh*. He had a deep knowledge of the Ḥanafite and Shafi‘ite schools of law, and was at

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<sup>270</sup> EI3 s.v. “al-‘Askarī, Abū Aḥmad” (B. Gruendler).

<sup>271</sup> Ibn al-Jawzī, *al-Muntazam fī tawārīkh al-mulūk wa-l-umam*, ed. Sabīl Zakkār (Beirut: Dār al-Fikr li-l-Ṭibā‘a wa-l-Nashr wa-l-Tawzī‘, 1415/1995), 4265/9:43. Curiously, Ibn al-Jawzī includes al-Ḥasan’s death notice in the chapter on the year 387/997, and mentions a story told by Abū Zakariyyā Yaḥyā ibn ‘Alī al-Tabrīzī about an encounter al-Tabrīzī had with Abū al-Ḥasan. This story mentions that Abū al-Ḥasan passed away on 8 Dhū al-Ḥijja 379/9 March 990.

<sup>272</sup> George Kanazi, *Studies*, 5. See also, Muḥsin al-Ḥusaynī al-‘Āmilī, *A‘yān al-Shī‘a*, ed. Ḥasan al-Amīn and Muḥsin al-Amīn (Beirut: Dār al-Ta‘āruf li-l-Maṭbū‘āt, 1998) 8:216.

<sup>273</sup> See also Encyclopaedia Iranica, s.v. “Ebn Bābawayh (2)” (M. McDermott).

<sup>274</sup> Encyclopaedia Iranica, s.v. “Ebn ‘Abbād, Esmā‘īl, al-Ṣāheḥ Kāfi al-Kofāt” (M. Pomerantz). According to the entry in EI<sup>2</sup>, “[s]ome Ṣhī‘īs like Ibn Bābūya... claim [Ibn ‘Abbād] as one of them,” and that ‘Abd al-Jabbār accused him of being Shi‘i as well. His Mu‘tazilism, however, does not seem to have been in doubt. EI<sup>2</sup> s.v., “Ibn ‘Abbād” (Cl. Cahen and Ch. Pellat).

<sup>275</sup> George Kanazi, *Studies*, 7.

the same time one of the leading scholars of the Mu‘tazila.”<sup>276</sup> However circumstantial, there is nevertheless a great deal of evidence pointing to Abū Hilāl al-‘Askarī as leaning towards Mu‘tazilī theology.<sup>277</sup>

Regardless of his actual views, his works could be and were interpreted as part of a development within a Mu‘tazilite framework, a view that seems to gain support from the *Kitāb al-Furūq*. His discussion about the absence of complete synonymy in Arabic—a principle that he interestingly and explicitly applies to all languages—must have resonated well with Mu‘tazilī understandings of the language and the divine. Regarding the lack of synonymy in Arabic, he writes:

God... did not include [in the Arabic language] that which does not convey meaning... Every two words which are used for one concept or entity in one language, each one of these words requires a difference in meaning that the first does not entail. Otherwise, the second word would be redundant and there would be no need for it.<sup>278</sup>

In this passage, Abū Hilāl could not be clearer about the complete lack of true synonymy in Arabic. His argument is that God created a perfect language, which, in order to be perfect, cannot have two signifiers for any one signified. In such a case, one

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<sup>276</sup> George Kanazi, *Studies*, 9, citing Shams al-Dīn Muḥammad ibn Aḥmad al-Dhahabī, *Siyar a‘lām al-nubalā’*, ed. Shu‘ayb al-Arnā‘ūṭ and Muḥammad Ta‘yīm al-‘Araqsūsī (Beirut: Mu‘assasat al-Risāla, 1317/1996), 18:55-60.

<sup>277</sup> In addition, ‘Askar Mukram, Abū Hilāl’s hometown, was the center of the “Jubbā‘ī school” of Mu‘tazilī theology, see El<sup>2</sup>, “Mu‘tazila” (D. Gimaret). Josef Van Ess makes this claim as well in his *Theologie und Gesellschaft*, that Abū Hilāl was “vermutlich Mu‘tazilit.” His only citation for this claim, however, is Kanazi’s book cited here. Van Ess, *Theologie und Gesellschaft*, 4:246

<sup>278</sup> Abū Hilāl, *Furūq*, 22.

of these two signifiers would be redundant, i.e. words that could be removed from the language without reducing the language's semantic content. Such a redundancy would be an imperfection, since it would be an unnecessary part.

It is important to note the strong theological overtones that run throughout his biography and works. While it seems likely that Abū Hilāl was a Mu'tazilī, it is equally important to see how his work was theological. It was not explicitly engaged in systematic theological debate, but rather applied theological postulates in order to resolve linguistic questions and to further lexicographical analysis.<sup>279</sup> I will argue that the implicit theological underpinnings of works like Abū Hilāl's are a nexus point, if not a direct influence, on the theological aspects of the *furūq* of the jurists. In this vein, what Abū Hilāl himself says of the ambit of his *Furūq* should be noted. "I turned my discussions in this book towards (*wa-ja'altu kalāmī fihi [hādhā al-kitāb] 'alā*) what is found in God's book, what is common in the words of the jurists and theologians (*al-fuqahā' wa-l-mutakallimīn*), and the rest of the discussions of the learned (*wa-sā'ir miḥwārāt al-nās*)."<sup>280</sup>

### ***Farq* and the Arabic Alphabet**

In related scholarship within the realm of language, there was a great interest among grammarians and lexicographers on writing about phonetic distinctions between

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<sup>279</sup> It should be unsurprising that many intellectual works were making implicit theological or philosophical claims in the context of other discussions. See James E. Montgomery, "Speech and Nature: al-Jāhiz, *Kitāb al-Bayān wa-l-tabyīn*, 2.175–207," Parts 1-4, *Middle Eastern Literatures* 11.2 (2008): 169-91; 12.1 (2009): 1-25; 12.2 (2009): 107-25; 12.3 (2009), 213-32.

<sup>280</sup> Abū Hilāl, *Furūq*, 21.

individual letters, most notably between the letters *ḍād* and *ẓāʾ*. It will be important to our argument to consider the phonetics-based origins of the genre as well as its scope. Similar to what is discussed above in regard to lexicographic distinctions, distinctions between individual letters often had theological implications. The correct spelling and pronunciation of the letters of the Quran had to be ensured in order to safeguard correct religious understanding, i.e. for recitation, for correct exegesis, and for understanding the metaphysics of Arabic as God’s divine language. This work was more than just lexicographical: the *ḍād* was imagined as pivotal to the self-understanding of Arabic as a unique language. As Jonathan Brown notes, “[w]ritings on the difference between *ḍād* and *ẓāʾ* or lists of [ḍ] – [ẓ] minimal pairs<sup>281</sup> constitute a long-lived genre in Arabic philology and belles-lettres.”<sup>282</sup> Although it is impossible in these contexts to discuss one letter without the other, these texts are written explicitly as focused on understanding the *ḍād*, not the *ẓāʾ*. The particular focus on the *ḍād* is due to the centrality of the *ḍād* to early conceptions of the Arabic language. Arabic was believed to be the only language containing the letter *ḍād*. For this reason, Arabic was called the language of the *ḍād* (*luḡhat al-ḍād*). In dictionaries, for instance, the main discussion for the word *ḍād* centers on its place within the Arabic language. The *Tāj al-ʿarūs* says “The *ḍād* is exclusively Arab (*li-l-ʿArab khāṣṣatan*), i.e. it is exclusive to their language and it is

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<sup>281</sup> Minimal pairs refers to words that only differ in one letter. In this case, this refers to words that are spelled the same save for a *ḍād* is being replaced by a *ẓāʾ* or vice-versa.

<sup>282</sup> Jonathan A. C. Brown, “New Data on the Delateralization of *Ḍād* and its Merger with *Ẓāʾ* in Classical Arabic: Contributions from Old South Arabic and the Earliest Islamic Texts on *Ḍ* / *Ẓ* Minimal Pairs” *Journal of Semitic Studies* 52.2 (2007): 335-368; 345.



not found in the languages of non-Arabs (*lughāt al-‘ajam*), this is the truth on which everyone agrees (*aṭbaqa ‘alayhi al-jamāhīr*).<sup>283</sup>

In spite of this identification of the Arabic language with the letter *ḍād*, the pronunciation of this letter has always been a source of doubt and discomfort. Most Arabic letters, it seems, have no stable pronunciation, and the *ḍād* is in fact one of the most often confused letters in the Arabic alphabet. The difficulty in pronouncing this letter was proverbial. There is a spurious hadith report in which Muḥammad states that he is the best to ever pronounce the letter *ḍād*. “I am the most eloquent at enunciating the *ḍād* since I am from Quraysh (*anā afṣaḥ man naṭīqa bi-l-ḍād bayda annī min Quraysh*).”<sup>284</sup> Ibn Kathīr (d. 774/1373) brings up this hadith in his commentary on the Quran, in discussing the last verse of the *Fātiḥa*. The last verse in this sura contains two words with the *ḍād*, *maghḍūb* (angered) and *dāllīn* (those who go astray). Ibn Kathīr therefore includes a discussion on how to pronounce the *ḍād* and its resemblance to the *zā*?. He ends his discussion by saying “As for the hadith ‘I am the most eloquent at pronouncing the *ḍād*,’ there is no basis to believe its authenticity (*lā aṣla lahu*).”<sup>285</sup> Like

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<sup>283</sup> Muḥammad Murtaḍā al-Ḥusaynī al-Zabīdī, *Tāj al-‘arūs min jawāhir al-Qāmūs*, ed. ‘Abd al-Sattār Aḥmad Farrāj, vol. 8 (Kuwait: Maṭba‘at Ḥukūmat al-Kuwayt 1970), 315-16. See, however, Abū al-Faṭḥ ‘Uthmān Ibn Jinnī, *Sirr ṣinā‘at al-i-rāb*, ed. Ḥasan Hindāwī (Damascus: Dār al-Qalam, 1985), 1:214-15, where he says that “The *ḍād* is not found in non-Arabic languages, with minor exceptions (*lā tūjīdu fī kalām al-‘ajam illā fī qalīl*).”

<sup>284</sup> This can also be taken to mean that Muḥammad is saying that he is “the most eloquent person to speak the Arabic language.” Books about the letter *ḍād*, however, take Muḥammad to be making a phonological point.

<sup>285</sup> Ismā‘īl Ibn Kathīr, *Tafsīr al-Qur’ān al-‘azīm*, ed. Muṣṭafā al-Sayyid Muḥammad et al. (Jīza: Mu‘assasat Qurṭubah, 2000), 1:228.

other sources, Ibn Kathīr denies the veracity of the report, but nevertheless affirms the idea it conveys.<sup>286</sup>

Interestingly, it appears that the *ḍād* never had one particular, discrete pronunciation. This was not just a feature of spoken Arabic, but of other Semitic languages that existed in Late Antiquity. Scholars of Old South Arabian, for instance, have stated that the distinction *ḍād/ẓā'* was already fading during the Late Antique period. Stefan Weninger notes occasional free variation between these graphemes: “In the later minuscule script, as here, both phonemes /ḍ/ and /ẓ/ are represented by the letter ḍ.”<sup>287</sup> Christian Julien Robin finds similar evidence in other South Arabian inscriptions: “It is interesting to note for these purposes that the letter ẓ is replaced quite regularly by a ḍ, which implies a probable confusion between these two phonemes.”<sup>288</sup> The merging of these two letters in script from this time period suggests the contemporaneous merging of these two phonemes in speech. This evidence points to at least a partial merging between the two phonemes in the pre-Islamic Arabian Peninsula. These results do not tell us that this was the case for Arabic speakers, nor how exactly this phoneme was pronounced. These were two phonemes that were not stable in Semitic languages, and further, the documented variability between these two phonemes in Arabic is very early and further points to their instability relative to each other. David Cohen lists the “disappearance of the *ḍād*” as a characteristic feature of

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<sup>286</sup> As a non-canonical hadith, it does not appear in the major collections nor in Wensinck’s concordance.

<sup>287</sup> Stefan Weninger, “More Sabaic minuscule texts from Munich” *Proceedings of the Seminar for Arabian Studies* 32 (2002), 218.

<sup>288</sup> Christian Julien Robin, “Les inscriptions de l’arabie antique et les études arabe” *Arabica* 68.4 (2001), 534.

spoken Arabic in the “classical” period.<sup>289</sup> Although he calls it a disappearance, Cohen argues that it is more than this, that “*ḍād* disappeared by fusing with another phoneme[, the *zā*].”<sup>290</sup> In addition to this merger, he notes the lateralization of the *ḍād* in al-Andalus that resulted in, for instance, *al-qāḍī* becoming the Spanish *alcalde*, as yet another pronunciation.<sup>291</sup>

Jonathan Brown, in a 2007 article, divides medieval writings on *ḍād* and *zā* into four groups: (1) “wordsmithing,” that is, a written performance in which you lament the current level of people’s Arabic as a way to launch a discussion of beautiful poetry. This includes a statement such as, “Such a word is written with a *ḍ*, which can be seen from the following poem;”<sup>292</sup> (2) philological, with a focus on teasing out the precise distinction in signification between synonymous words like *‘aḍḍa* and *‘azza* (to grab with the teeth, to bite), which, while likely dialectic variants, convey different connotations. “People say (*yuqāl*), ‘A matter that distresses me has reached me, i.e. it torments me (*warada ‘alayya amr ‘azzanī ya‘nī ‘aḍḍanī*).”<sup>293</sup> This is also evident in the expressions *‘aḍḍathu al-ḥarb* vs. *‘azzathu al-ḥarb*;<sup>294</sup> (3) phonological books that discuss the proper way to pronounce these letters for reciting the Quran,<sup>295</sup> and (4) a category comprised of only one example, the book *al-Rawḥa fī al-zā’ wa-l-ḍād* by al-Jarbādḥqānī

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<sup>289</sup> David Cohen, “Koiné, langues communes et dialectes arabes” *Arabica* 9.2 (1962), 135.

<sup>290</sup> Cohen, “Koiné,” 136.

<sup>291</sup> Cohen, “Koiné,” 136.

<sup>292</sup> Brown, “New Data,” 351-52.

<sup>293</sup> Al-Ṣāḥib Ibn ‘Abbād, Abū al-Qāsim Ismā‘īl, *al-Farq bayna al-ḍād wa-l-zā’*, ed. Muḥammad Ḥasan Āl Yā Sīn (Baghdad: Maktabat al-Nahḍa and al-Maktaba al-‘Ilmiyya, Maṭba‘a al-Ma‘ārif, 1377/1958), 4.

<sup>294</sup> These expressions, which mean “the war seized him,” are both used, although it is said to be more correct to say *‘azzathu al-ḥarb*. See Lane’s *Lexicon*, s.v. “*zz*,” Brown, “New Data,” 352.

<sup>295</sup> Brown, “New Data,” 352

(d. ca. 996), which covers all three of these areas. “The work is exhaustive rather than practical or enjoyable,” says Brown.<sup>296</sup> Brown considers this a separate group, although *al-Rawḥa* can also be seen as an anthology of the three previous groups.

Let us consider an example of this writing. Al-Ṣāhib Ibn ‘Abbād’s discussion of these two letters is about distinguishing *ḍād* from *zā’* both in speaking and spelling. He seems to envision something close to a full confusion, “because of the closeness of these letters for listeners (*taqārub ajnāsihima fī al-masāmi‘*)... and the confusion of the correct way to write them (*iltibās ḥaqīqat kitābatihim*).”<sup>297</sup> In discussing the importance of elucidating and understanding the distinction between the two letters, he says “Do you not understand that if you said, ‘*qarraḏtu al-rajul wa-qarraḏtuhu*’ (I praised the man and denigrated him) that *taqrīz* (eulogizing) is your praise of him and *taqrīḍ* (denigration) is disparagement and faultfinding?”<sup>298</sup> It is curious that al-Ṣāhib Ibn ‘Abbād chooses this distinction, since *qarraḏa* means to praise and *qarraḍa* can mean either to denigrate or to praise.<sup>299</sup> That is to say that *qarraḏa* and *qarraḍa* can mean the same thing, thus rendering the distinction between the *zā’* and *ḍād* in these words negligible, depending on the speaker’s intent.

It is clear that the *ḍād* had a particular importance to early Muslim communities, which led to the interest in writing and discussion about this letter. What

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<sup>296</sup> Brown, “New Data,” 352.

<sup>297</sup> al-Ṣāhib Ibn ‘Abbād, *al-Farq bayna al-ḍād wa-l-zā’*, 3

<sup>298</sup> al-Ṣāhib Ibn ‘Abbād, *al-Farq bayna al-ḍād wa-l-zā’*, 3.

<sup>299</sup> Lane’s Lexicon, s.v. “*qarraḍa*,” *Lisān al-‘Arab*, s.v. “q-r-ḍ.”

was it about this issue that drew the attention of Muslim scholars? Brown sees a strong theological component to this discussion.

Although philologists might have enjoyed such harmless dialectical curiosities, the actual phonological identity of a word was sacrosanct. In the language of God's revelation, each word and the root from which it was formed possessed a specific meaning inherently appropriate for the thing it indicated. As it became widely established in Arabic linguistic theory, 'the assumption in language is the absence of synonymy (*al-aṣl fī al-luġha ʿadam al-tarāduf*);' each root had a unique meaning. After all, for most great Muslim linguistic theorists, language was the result of divine inspiration and not human convention.<sup>300</sup>

Brown distinguishes between two different levels on which these texts are operating. On one level, he finds the medieval philologists "enjoy[ing] dialectical curiosities." Such writing seems to represent a large percentage of the writing on *ḍād-ẓā* pairs. Ṣāḥib Ibn ʿAbbād's discussions of, for instance, *ʿaḍḍa* and *ʿazza* fits this description. Distinguishing between these two words grants an opportunity for such scholars to attempt to control and delineate the parameters of Arabic and affords an opportunity for a creative (re)reading of the poetic tradition.

Brown argues convincingly that this approach has theological goals. Assigning particular meanings to individual words reaffirms the divine nature of the Arabic language as found in the Quran, God's speech. The claim is not that these scholars were motivated exclusively or even primarily by this theological drive, but that this kind of

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<sup>300</sup> Brown, "New Data," 365.

writing about the distinction between the *ḍād* and the *zā'* has a theological component. In particular, the divine nature of Arabic and the associated belief in the absence of synonymy motivates the exploration of distinction in words and letters alike. The search for an underlying consistency is a theme that runs throughout almost all of the literature examined in this study.

### ***Farq and Furūq in Other Fields***

The primary endeavors in distinctions thinking were in medicine and linguistics. There are nevertheless works on distinctions in a myriad of other fields. Abū al-Ajḡān and Abū al-Fāris mention that writings in *furūq* “flourished in all of the sciences.”<sup>301</sup> They mention primarily philology and medicine, citing Abū Hilāl al-‘Askarī’s *Furūq* and Aḡmad ibn Ibrāhīm ibn al-Jazzār’s *al-Farq bayn al-‘ilal*. Additionally, however, they mention: in logic and grammar Abū al-‘Abbās Aḡmad ibn Muḡammad al-Sarakhsī’s (d. 286/899) *Al-Farq bayna al-naḡw wa-l-manḡiq*; in theology, Abū Bakr al-Bāqillānī’s (d. 403/1013) *Taṡarruf al-‘ibād wa-l-farq bayna al-khalq wa-l-iktisāb* and his *al-Farq bayna mu‘jizāt al-anbiyā’ wa-karāmāt al-awliyā’*; in *uṡūl al-fiqh*, ‘Umar ibn Raslān al-Bulqīnī’s (d. 805/1403) *Risālat al-farq bayna al-ḡukm bi-l-ṡiḡḡa wa-l-ḡukm bi-l-mūjjib*.<sup>302</sup> Most of the works they cite are not extant and/or of dubious attribution. For instance, in a footnote to the mention of al-Sarakhsī’s *Farq bayn al-naḡw wa-l-manḡiq*, they cite Ḥājjī Khalīfa’s (d. 1657) *Kashf al-ḡunūn*. They also mention, however, that there is an entry for al-Sarakhsī

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<sup>301</sup> Abū al-Ajḡān and Abū Fāris, “Introduction,” 28.

<sup>302</sup> Abū al-Ajḡān and Abū Fāris, “Introduction,” 29-30.

in al-Ziriklī's *al-A'lam* which does not mention this work.<sup>303</sup> This same situation of dubious attribution holds, in their telling, for Ibn al-Jazzār's *Farq bayna al-ʿilal*, a work attributed to various other scholars.<sup>304</sup> This may say more about how these two sources, *Kashf al-zunūn* and *al-A'lam*, are occasionally unreliable as reference works, than about *furūq* writing itself. There are more examples of scholarly disciplines producing books about distinctions. In Sufism, for example, we find the book *Bayān al-farq bayn al-ṣadr wa-l-qalb wa-l-fuʿād wa-l-lubb*, attributed to al-Ḥakīm al-Tirmidhī. Yusūf Marʿī puts this attribution in question in his recent edition of the text, although he does not expound further on this point.<sup>305</sup>

The present section briefly surveys *furūq* writing in these other fields. I argue that these writings can be analyzed together since they do not represent new forms of distinctions-thinking, but are rather discipline-specific versions of applied linguistic *furūq*. That is to say, they take the logic of lexicographic *furūq*—distinguishing between

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<sup>303</sup> Al-Ziriklī bases his entry on information in Ibn al-Qiftī's *Akhbār al-ḥukamāʾ*, Yāqūt's *Muʿjam al-buldān*, and al-Dhahabī's *Siyar al-nubalāʾ*. Al-Dhahabī does not list any work by this al-Sarakhsī and neither does Yāqūt. Ibn al-Qiftī notes several works by al-Sarakhsī, but not the *al-Farq bayna al-naḥw wa-l-mantiq*. Khayr al-Dīn al-Ziriklī, *al-A'lam qāmūs tarājim li-ashhar al-rijāl wa-l-nisāʾ min al-ʿarab wa-l-mustaʿribīn wa-l-mustashriqīn*, 15<sup>th</sup> printing (Beirut: Dār al-ʿIlm li-l-Malāyīn, 2002), 1:205. See Shams al-Dīn al-Dhahabī, *Siyar al-ʿulam al-nubalāʾ*, ed. Bashshār ʿAwwād Maʿrūf (Beirut: Muʿassasat al-Risāla, 1996-2011), 19:147-48; Yāqūt, *Muʿjam al-Buldān*, 3:210; Ibn al-Qiftī, *Akhbār al-ḥukamāʾ*, 77.

<sup>304</sup> In this instance, Ziriklī bases his entry on Ibn al-Jazzār on Yāqūt's *Irshād al-arīb ilā maʿrifat al-adīb* and Dhahabī's *Siyar al-ʿulam wa-l-nubalāʾ*. There is, as one would expect, no mention of this work neither in either Dhahabī's *Siyar al-ʿulam* nor in Yāqūt's *Irshād*. Al-Ziriklī, *al-A'lam*, 1:85-86; Dhahabī, *Siyar*, 15:561-62; Yāqūt, *Irshād*, 1:187-88.

<sup>305</sup> He does not say that this book was written by al-Ḥakīm al-Tirmidhī, only that it is attributed to him, and does not discuss this uncertainty further. See Yusūf Marʿī, ed., *Bayān al-farq bayn al-ṣadr wa-l-qalb wa-l-fuʿād wa-l-lubb al-mansūb li-Abī ʿAbd Allāh Muḥammad ibn ʿAlī al-Ḥakīm al-Tirmidhī* (Amman: al-Markaz al-Maliki li-l-Buḥūth wa-l-Dirāsāt al-Islāmiyya, 2009).

apparently synonymous words—and apply this to particular concepts within a discipline. These works do not represent new modalities of drawing distinctions or of making comparisons. They are, instead, applied usages of the tool of lexicographic distinctions. Scholars often used applied lexicographic distinction to tease out differences between similar concepts in specific fields of study.

### Philosophy

The philosopher and polymath Qusṭā ibn Lūqā (d. ca. 300/912-13) wrote a work of applied lexicographic distinction within philosophy, the *Risāla fī al-farq bayna al-rūḥ wa-l-nafs*.<sup>306</sup> As its title indicates this short work is focused on the distinction between the two concepts of spirit (*rūḥ*) and soul (*nafs*). Qusṭā ibn Lūqā states at the beginning of his text that it is written in response to a question he received. “You, may God grant you honor, asked about the difference between the spirit and the soul, and what the

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<sup>306</sup> There is a disagreement about the author of this text. According to ‘Alī Muḥammad Isbir, who edited this text in 2006, there is unanimity among the classical sources that Qusṭā ibn Lūqā is its author of (19-20). The other edition of this text, by Louis Cheikho, attributes it to Ḥunayn ibn Ishāq. This is because Cheikho’s edition is a diplomatic transcription of the manuscript in the Khālidiyya Library in Jerusalem, which attributes this text, cautiously, to Ḥunayn ibn Ishāq. Cheikho was the first to publish the Arabic of this text, but he mentions that it has been translated several times into Latin, always with the ascription to Qusṭā ibn Lūqā. The manuscript begins with the title, and then says “composed by Ḥunayn ibn Ishāq al-‘Abbādī for Muḥammad ibn Mūsā al-Munajjim. There has been disagreement regarding this. A group of scholars says that it is by Ḥunayn and another group that says it was written by Qusṭā ibn Lūqā for ‘Isā ibn [Farrukhān Shāh].” (245-46). Ḥunayn ibn Ishāq, *Risāla fī al-farq bayna al-nafs wa-l-rūḥ*, ed. Louis Cheikho, repr. in *Ḥunayn ibn Ishāq: Texts and Studies*, ed. Fuat Sezgin et. al. (Frankfurt am Main: Institute for the History of Arabic-Islamic Science at the Johann Wolfgang Goethe University, 1999), and Qusṭā ibn Lūqā, *Risāla fī al-farq bayna al-rūḥ wa-l-nafs*, ed. ‘Alī Muḥammad Isbir (Damascus: Dār al-Yanābī‘, 2006).



ancients had to say on this.”<sup>307</sup> Qusṭā’s method of analysis in this work is to unpack, define, and then explain the concepts of the spirit and the soul. He starts by discussing the spirit which he understands to be of two kinds, the animal spirit (*al-rūḥ al-ḥayawānī*) and the vital spirit (*al-rūḥ al-nafsānī*).<sup>308</sup> The first section of this epistle is on the animal spirit. He begins with a definition: “Know that the spirit is a subtle substance which spreads throughout the human body.”<sup>309</sup> He continues this section by elaborating on the definition, providing a clear description of the animal spirit and its functions. We learn that the animal spirit resides in the heart, and then in the next section, on the vital spirit, we learn that “it is emitted by the brain (*yanbawa‘ahu al-dimāgh*).”<sup>310</sup> He then continues to describe the vital spirit, its location and its functions. “What we have said is true, namely that the spirit resides in the cavities of the brain (*tajwīfāt al-dimāgh*) and that it performs different actions.”<sup>311</sup> Qusṭā follows with a short section on the soul, wherein he explains that it cannot really be defined. “Describing the soul according to its true nature is difficult, nearly impossible (*mu‘tāṣ jiddan*). The proof of this is the disagreement among the generations of philosophers, i.e. Plato, Aristotle, Thales, and Chrysippus,<sup>312</sup> and likewise philosophers after them.”<sup>313</sup> Qusṭā follows this with three

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<sup>307</sup> Qusṭā ibn Lūqā, *Risāla fī al-farq bayna al-rūḥ wa-l-nafs*, 37; Cheikho, ed., 248.

<sup>308</sup> Cheikho’s introduction to this work says “With *rūḥ*, [the author] means that which the Greeks knew as πνεῦμα and the Byzantines as *spiritus*.” Cheikho also defines *rūḥ ḥayawānī* as “*esprit vital*” and *rūḥ nafsānī* as “*esprit animal*.” See Cheikho, ed. *Risāla fī al-farq bayna al-nafs wa-l-rūḥ*, 245.

<sup>309</sup> Qusṭā ibn Lūqā, *Risāla fī al-farq bayna al-rūḥ wa-l-nafs*, 41; Cheikho, ed., 249.

<sup>310</sup> Qusṭā ibn Lūqā, *Risāla fī al-farq bayna al-rūḥ wa-l-nafs*, 48; Cheikho, ed., 251.

<sup>311</sup> Qusṭā ibn Lūqā, *Risāla fī al-farq bayna al-rūḥ wa-l-nafs*, 55; Cheikho, ed., 253.

<sup>312</sup> In both editions, this name is rendered *Kharūstas*. ‘Alī Muḥammad Isbir explains that this is a mistake, and that the correct Arabic name for this philosopher is either *Kharusibus* or *Karsūbūs*. In modern Arabic, however, Chryssipus is normally given as *Kharisībūs*.

sections on the soul, one on the definition of the soul according to Plato, another on how the soul moves the body and how this occurs (*al-kalām ʿalā taḥrīk al-nafs li-l-badan ʿalā ayy jiha huwa*), and finally one on the faculties of the soul (*quwā al-nafs*). These long discussions serve to establish the concepts being discussed. He wants to explain the nuances behind the two concepts, soul and spirit.

His application of distinctions thinking is entirely lexicographical. In comparing these two concepts, Qusṭā gives a full definition and explanation of each one. From an understanding of these definitions, the distinctions between these two concepts become apparent. Comparison based on comparing definitions is the key feature of lexicographic distinctions. This is why I term this style of distinction an applied linguistic distinction.

### **Ethics**

Applied linguistic distinctions, as a style of analysis, is found throughout Arabic writings. An example from the field of ethics is Ibn Rajab al-Ḥanbalī's (d. 795/1392), *al-Farq bayn al-naṣīḥa wa-l-ta'yīr* (*The Difference between Giving Advice and Admonishing*). Again, I choose this work because it exemplifies the approach of applied linguistic distinctions as a style of analysis found in Arabic letters. "This is a comprehensive yet abridged discussion on the difference between giving advice and admonishing. They both share a meaning in that they both mean to say something to someone that that person does not want said (*kilā minhumā dhihkr li-l-insān bimā yakrahu dhikrahu*). The

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<sup>313</sup> Qusṭā ibn Lūqā, *Risāla fī al-farq bayna al-rūḥ wa-l-nafs*, 57; Cheikho, ed., 254.

distinction between these concepts can be confusing for a lot of people.”<sup>314</sup> He has seen that these two concepts are often confused, and wants to do away with this confusion. The idea underpinning Ibn Rajab’s work is that giving advice is a virtue, but that admonishing others is a vice. In other words, the two concepts are similar in their outward appearance, but near opposites in their intention. For this reason, it is important to clarify the distinction between these two similar concepts, to make sure that people understand what advice is and what admonishment is.

Much as we see with Qusṭā ibn Lūqā, Ibn Rajab begins with definitions. “Know that saying something to someone that they do not want said is prohibited (*dhikr al-insān bimā yakrahu muḥarram*), if the intention behind it is only to disparage, blame, and fault (*al-dhamm wa-l-‘ayb wa-l-naqṣ*).”<sup>315</sup> He does not explicitly tell the reader at the outset what he seeks to define, although contextually it becomes clear from his condemnations that he means to define admonishment, *ta‘yīr*. Ibn Rajab continues with another definition. “If, however, there was a benefit (*maṣlaḥa*) for the majority of Muslims, or even for just one of them (*li-‘āmmat al-muslimīn aw khāṣṣa li-ba‘ḍihim*) and the intention behind talking to this person was to bring about this benefit, then it is not prohibited. Indeed, it is a recommended act.”<sup>316</sup> Again, Ibn Rajab does not explicitly identify this statement with giving advice, but it is clear from context to what he refers. The reader knows that *naṣīḥa* is a virtue and *ta‘yīr* a vice. From this beginning, Ibn Rajab

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<sup>314</sup> Ibn Rajab al-Ḥanbalī, *al-Farq bayna al-naṣīḥa wa-l-ta‘yīr*, 3rd ed. ed. Najam ‘Abd al-Raḥmān (Damascus, Beirut: Dār al-Ma‘mūn li-l-Turāth, 1405[/1980]), 25.

<sup>315</sup> Ibn Rajab, *Farq bayna al-naṣīḥa*, 25.

<sup>316</sup> Ibn Rajab, *Farq bayna al-naṣīḥa*, 25.

makes his argument by showing various examples of others who have said or held that giving advice is a commendable act while admonishing is not. He brings up the example of hadith transmitters inquiring about and ensuring the probity of other transmitters (*al-jarḥ wa-l-taʿdīl*), accepting the reports of worthy transmitters while disavowing reports of less trustworthy authorities. He also cites examples from the hadith reinforcing the idea of giving advice and speaking against admonishment. He closes out his treatise with a warning that God will give everyone a just recompense.

Having described what Ibn Rajab does, it is important to see what he does not do. As with Qusṭā ibn Lūqā, he does not use distinction-thinking as a way of investigating a particular discipline, i.e. ethics. The traditions of writing on distinctions in medicine, philology, and law, are about uncovering minute differences between two specific entities that resemble each other, whether illnesses, words, or substantive laws. Qusṭā ibn Lūqā and Ibn Rajab, however, are not distinguishing philosophical or ethical postulates. Instead, they distinguish between the meanings of related technical coinages in their respective fields.

Like lexicographers, their analysis is based on definitions. The differences they discuss rest on a seemingly minor point, but the thrust of their efforts is toward the large, fundamental difference that exists between the two concepts that outwardly resemble each other. In each of these works, understanding the concepts being distinguished is necessary to begin to understand the topic being discussed. These works focus on two important or potential points of confusion that they seek to elucidate. In the case of Ibn Rajab, he focuses on two concepts which are similar in outward appearance but opposed in their ethico-legal status. In this sense, he is trying

to show why an apparent contradiction in the field of ethics is not a contradiction after all. Qusṭā ibn Lūqā, on the other hand, is clarifying a source of potential confusion—the soul is not the spirit. Soul and spirit are two completely different entities, but they are complementary, not opposed. Both of these works employ the logic of lexicographic distinctions in their analyses to explain philosophical and ethical concepts, respectively.

### ***Farq in Law***

There are many similar legal works that follow this same approach in using applied linguistic distinctions. An example is the work on legal principles called *Furūq al-uṣūl* (Distinctions between Legal Principles) attributed to Kemalpaşazade (Ibn Kamāl Pāsha, d. 940/1534). At first glance, this might seem different than the two works discussed above on philosophy and ethics. The two works discussed earlier in this section revolve around distinguishing between two specific terms or concepts, whereas this work contrasts many pairs of legal concepts. Kemalpaşazade compares a series of pairs of *uṣul*, legal principles or precepts. This may seem to be a work of legal distinctions, since it draws distinctions within a legal context. His distinctions, however, are all drawn between individual items of legal jargon, not between laws or rules (*aḥkām*); they are all applied linguistic distinctions. Among the *uṣūl* he compares, for instance, are the “necessary condition (*al-sharṭ al-lāzim*)” and the “optional condition (*al-sharṭ al-ghayr al-lāzim*);”<sup>317</sup> “restricting the reading of a revealed source (*takhṣiṣ al-naṣṣ*)” and “restricting

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<sup>317</sup> Kemalpaşazade, *Furūq al-uṣūl*, ed. Muḥammad ibn ‘Abd al-‘Azīz al-Mubārak (Beirut: Dār Ibn Ḥazm,

the application of a legal cause (*takhṣiṣ al-‘illa*);<sup>318</sup> and “literal language (*ḥaqīqa*)” and “figurative language (*majāz*),”<sup>319</sup> to give just a few examples. These are concepts central to juristic thought but Kemalpaşazade’s work is one of applied lexicographic distinctions. In this case, the strategy employed in lexicographic distinctions is applied to the technical terms used in the study of Islamic law.

Kemalpaşazade introduces each pair of *uṣūl* being distinguished with the phrase “another distinction, between... (*wa-farq ākhar bayna...*).” He explains the relevant concepts and occasionally gives examples of their applicability. For instance, he says:

Another distinction, between restriction (*al-takhṣiṣ*) and exception (*al-istithnāʿ*):

We say: The indication (*dalīl*) of restriction can either be coupled with the modified phrase or be postponed (*muqtaranan aw mutarākhiyan*) because restriction is understood on its own (*mustaqill bi-dhātihi*). Exception, however, is not understood on its own because it is the completion of a phrase (*min tatimmat al-kalām*). If you said, for instance, “I owe that person ten dinars minus one,” they would be owed nine. If you said, however, “I owe that person ten dinars,” and then paused, and later said “Minus one,” you would owe him ten.<sup>320</sup>

Here, Kemalpaşazade draws a distinction between *takhṣiṣ* and *istithnāʿ*, two concepts used in legal hermeneutics. They both limit the scope of applicability of a revealed source, which is the source of potential confusion. The distinction, he explains, is that a

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2009), 65.

<sup>318</sup> Kemalpaşazade, *Furūq al-uṣūl*, 72.

<sup>319</sup> Kemalpaşazade, *Furūq al-uṣūl*, 91.

<sup>320</sup> Kemalpaşazade, *Furūq al-uṣūl*, 76.

restriction obtains when one clause establishes a fact or rule and then a separate clause restricts the scope of this first clause. Exception, on the other hand, happens when a single clause both establishes a fact or rule and restricts its scope at once.

The phrases given in the above example demonstrate the fact that exception needs to be directly connected to the clause it affects. The first phrase consists of one sentence. The exceptive clause “minus one” is connected to the clause “I owe that person ten dinars.” The exceptive clause gains meaning through its connection to the rest of the sentence. The second phrase, with a pause between the two clauses, is an example of a failed exceptive phrase. The pause indicates the completion of a sentence, and the exceptive phrase “minus one” is therefore understood on its own, unconnected to the statement “I owe that person ten dinars.” This phrase understood on its own bears no meaning, and, more importantly, does not affect the previous clause. The distinction that Kemalpaşazade draws is between these two technical terms in legal theory, which are two terms of art. They are not laws or judgments themselves.

One more example will clarify this point:

Another distinction, between a consensus reached on a revealed text that requires explanation (*al-naşş al-mujmal*) and a consensus reached on a revealed text the meaning of which is self-evident (*al-naşş al-mufassar*), we say: When consensus is reached on a revealed text that requires explanation, the rule is attributed to the consensus (*kāna al-ḥukm muḍāfan ilā al-ijmāʿ*). However, when

consensus is reached on a revealed text that has been explained, the rule is attributed to the text itself, not to the consensus.<sup>321</sup>

With this distinction, Kemalpaşazade distinguishes between the epistemological status of laws that are established by consensus. Specifically, he is describing consensus that forms on the meaning of passages in the Quran. Certain passages are said to be obscure enough as to require additional explanation; their meaning is not self-evident. Because of this, the certainty of the rule that results has a lower epistemological status. That is, it acquires the level of epistemological certainty of consensus. This is not the situation for a quranic passage the meaning of which is self-evident. When there is consensus reached on such verses, the resulting rule acquires the epistemological status of the Quran itself. In the case of self-evident verses, the consensus is *pro forma*, since (in theory) there is no interpretation necessary to understand the divinely intended law. Since there is no interpretation necessary, it is as if the law results directly from the Quran. In the case of verses needing explanation, however, the law is clearly a result of the consensus on the explanation. For this reason, it is attributed to the consensus. Again, Kemalpaşazade uses only applied linguistic distinctions in this discussion. This is not a use of legal distinctions—a comparison of two legal problems and their outcomes.

## Conclusions

This chapter has surveyed the different genres in which distinctions-literature flourished as well as possible motivations and impulses for this kind of writing.

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<sup>321</sup> Kemalpaşazade, *Furūq al-uşūl*, 98.



Although perhaps physicians were writing about differential diagnostics from an early date, it was in lexicography that a genre calling itself *furūq* really flourished. In both of these disciplines the structure and organization of the writing is quite similar. We might consider, on the basis of the potential chronological priority of the medical distinctions literature, that medicine established a path along which lexicography then followed. Perhaps, however, the coincidence of style is due instead to broader factors in the classification of Islamicate varieties of knowledge in the third/ninth and fourth/tenth centuries. These two genres show the potential uses for this kind of writing; the medical example as a manual for practitioners and the lexicographical example shows how a seemingly straightforward practical book—a thesaurus—can be used to explore polemical theological positions.

Medical distinctions involve a general symptom that has two subtypes that each indicate a different underlying disease. Lexicographic distinctions involve a general concept that is thought to be signified equally by two different words, but then it is shown that the two words actually signify two different subtypes of the concept in question. One difference is that a symptom is visible whereas a concept thought to be signified equally by two words is an abstraction. Perhaps the more important difference is that the two differentiated diseases are different diseases whereas the two subtypes of the concept in lexicography are conceptually related in some way. The way in which two illnesses are compared is not easily transferrable between fields of knowledge, as was the comparison between two words or technical terms.

Additionally, as will be made clearer in Chapter Four, legal distinctions are yet a third kind of comparison. The style of reasoning used in works of legal distinctions is

not simply a straightforward comparison, as it is in the works distinguishing letters, i.e. the *ḍād* and *zā'* or in the *farq* works which I have termed applied linguistic distinctions. Rather legal distinctions involve a particular kind of comparison in which laws, that is the judgements applying to actions, are compared. A legal distinction involves not only an understanding of two specific legal problems, but also of the legal reasoning that gives rise to the judgement applied in each of the two legal cases.

### Chapter Three: *Jadal* as a Source for Legal Writings: The Cases of *Khilāf* and *Furūq*

In the previous chapter, we explored the rise of a distinct mode of literary and intellectual production that self-consciously referred to itself as *furūq*. We traced the epistemological history of the concepts of *farq* and *furūq* to see the way in which distinctions-thinking operated in a variety of separate but related scholarly disciplines in the classical Arabic tradition. This chapter will take a different approach by studying the rise of distinctions in explicitly legal contexts. Just as Chapter Two explored the epistemological differences between the ways scholars use the term *farq* (distinction) in the singular and the term *furūq* (distinctions) in the plural, this chapter will study the early usage of these terms in the legal tradition. The two terms emerged in legal discourse as part of the theory of dialectics, also referred to as disputation theory (*ilm al-jadal*), and became transformed in observable ways before the genre of *furūq* came into being as a self-conscious and distinct category of legal writing.<sup>322</sup>

This chapter will begin by looking at the idea of distinction (*farq*) in early discussions of dialectic. Specialists in various disciplines used the the term *farq* (distinction, distinguishing characteristic) in dialectics handbooks. It was often included along with, or subsumed under, the category of counter-objection (*mu'āraḍa*). As discussed below, a questioner used the technique of *farq* during a formal disputation in an attempt to show how the respondent's opinion is contradictory to another

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<sup>322</sup> It was only after formal disputation had become a feature of Islamic intellectual activity that the Hellenic-Aristotelian tradition was elaborated by Muslim scholars. I discuss this influence below.

opinion he held in a closely related case. As Walter E. Young has demonstrated, dialectics was pervasive in the early Muslim scholarly circles and was the arena in which legal thoughts and concepts were “forged.”<sup>323</sup> It was in the course of such formalized disputations that many key concepts and ideas of law were developed and refined. In addition to this technical usage and discussion in theoretical works on dialectics, the concept of distinction played a prominent role in the early Islamic legal discourse on dialectics. After demonstrating the uses of the term distinction and etymologically related words, i.e. derived from the same linguistic root (*f-r-q*), I analyze an early book of legal distinctions, ‘Abd Allāh al-Juwaynī’s *al-Jam‘ wa-l-farq*,<sup>324</sup> which contains repeated and sustained dialectical argumentation and I demonstrate how al-Juwaynī envisioned and wrote his book as part of an existing tradition of juristic dialectic.

### **Disputation and Distinction**

The discourse of dialectics (*jadāl*) in the Arabo-Islamic tradition was a rigorous and formalized “method for attaining truth.”<sup>325</sup> It was a method for finding and establishing

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<sup>323</sup> Walter E. Young, “The Dialectical Forge, Part I: Proto-System Juridical Disputation in the *Kitāb Ikhtilāf al-‘Irāqiyīn*,” 2 vols. (PhD Diss., McGill University, 2012). Young’s dissertation will be published as a book soon, but too late to be consulted for the present study. Walter E. Young, *The Dialectical Forge: Juridical Disputation and the Evolution of Islamic Law* (Cham: Springer, 2017).

<sup>324</sup> There is a book of legal distinctions attributed to Muḥammad ibn Šāliḥ al-Karābīsī (d. 322/933). This is almost a century before the life of ‘Abd Allāh al-Juwaynī. The attribution of Muḥammad al-Karābīsī’s work, however, is tenuous and highly suspect. I address this attribution in Chapter Four.

<sup>325</sup> Miller, “Islamic Disputation Theory,” 24.

the truth through adversarial inquisition, “synonymous with question and answer,”<sup>326</sup> as well as a way to package and manipulate ideas and theories. Young has identified dialectics as a “forge” in which many concepts in many areas of Islamic juristic inquiry were formed, not only the content of legal theory but that of substantive law as well. “The exigencies of dialectical debate provided key motives, and forged key structures, elements, principles, and concepts for... many juristic ‘ulūm (e.g., *furūq*; *ashbāh wa-nazā’ir*; etc.)”<sup>327</sup> Important though it was for law, disputation did not arise in the Islamic world through the field of law.

Larry B. Miller has identified theology as the field in which Arab dialectic began, and he identifies *Adab al-jadal* by Ibn al-Rēwandī (*fl.* fourth/tenth c.) as the first book on the formal science of dialectics.<sup>328</sup> Miller argues that this theological undertaking quickly spread to the study of philosophy and jurisprudence. Young takes issue with Miller’s genealogical model and believes that an interest in dialectics was not, as Miller claims, discipline specific, but rather a broad academic interest among early Muslim scholars. In other words, dialectics was not limited only to the fields of theology, Islamic law, and philosophy, as Miller claims. Rather, dialectics developed non-

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<sup>326</sup> Miller, “Islamic Disputation Theory,” 15. The importance of Muslim dialectics for the sic-et-non method and the connections of Muslim dialectics to medieval European scholastic culture have been noted and discussed in George Makdisi, *Rise of Colleges*, 245-53.

<sup>327</sup> Young, “The Dialectical Forge,” 1:2.

<sup>328</sup> Miller, “Islamic Disputation Theory,” 5. This scholar’s name is given variously as Ibn al-Rāwandī, Ibn al-Rīwandī, or Ibn al-Rēwandī. Miller gives it consistently as Ibn al-Rīwandī, although al-Rāwandī appears to be the more common form. See EI<sup>2</sup> s.v. “Ibn al-Rāwandī or al-Rēwendī,” (P. Kraus and G. Vajda) where he is referred to as Ibn al-Rāwandī throughout. I prefer al-Rēwendī, as in Josef Van Ess, *Theologie und Gesellschaft im 2. und 3. Jahrhundert Hidschra: Eine Geschichte des religiösen Denkens im frühen Islam*, 6 vols. (Berlin: De Gruyter, 1991-97).

linearly.<sup>329</sup> Both agree, however, in the widespread importance of *‘ilm al-jadal* for Islamic knowledge in general and for Islamic law in particular.

Young’s dissertation clearly shows that the commitment to dialectics on the part of Muslim jurists existed quite early in the development of Islamic law, overturning Miller’s genealogical model. Young performs a careful and in-depth study of the use of dialectics in al-Shāfi‘ī’s *Kitāb Ikhtilāf al-‘Irāqīyyīn*, one of the many texts that make up al-Shāfi‘ī’s *al-Umm*. Nevertheless, Miller’s study shows that an explicit theory of dialectics first emerged in theology, even if the legal tradition was already employing dialectical structures and methodologies in earlier writings. That is to say, jurists may have been employing a practiced system of dialectics before they wrote handbooks on the theory of dialectics, but legal handbooks for dialectics came later than those from philosophers or theologians.

This section will first survey theoretical writings on dialectics, to see the ways in which “distinction” was used therein. While the word distinction (*farq*) became a formalized concept in theoretical writings on legal dialectics, my discussion in this chapter considers the various uses of the word *farq* as well as other words derived from the root, i.e. *afraqa*, *iftaraqqa*, *mufāriq*, etc. With this background in mind, this section provides a brief survey of theological writings on dialectics to see the ways that distinction as a broad category was employed. I start with the theological discussions of disputation, since they preceded the legal discussions. I then move to an analysis of legal handbooks and their discussions of *farq*.

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<sup>329</sup> Young, “Dialectical Forge,” 1:24.

Miller argues that dialectical theory emerged at the time of Ibn al-Rēwandī. Ibn al-Rēwandī's book, however, has not survived. Miller identifies the earliest extant works as being continuations or refutations of Ibn al-Rēwandī. Among these early scholars are al-Qirqisānī (*fl.* 4th/10th c), Muṭahhar ibn Ṭāhir al-Maḡdisī (*fl. ca.* 355/966), and Ibn Ḥazm (d. 456/1064). Since Miller has highlighted these early texts as reflective of the state of theological dialectic, our analysis will focus largely on these texts. While Miller believes that these texts reflect an exclusively theological mode of dialectic, Young has shown how many of these works could also be considered juristic. Specifically, he says that al-Maḡdisī's *Bad' fī al-tārīkh* does not describe theological *jadāl*, but *jadāl* generally, which encompasses theological and juridical dialectic.<sup>330</sup> Young also argues against Miller's idea that there was only one theological view of dialectic. He argues that this view simplifies the complexity of the dialectical tradition, presenting a unified understanding of *jadāl* when in reality there was a plurality of understandings of dialectic.<sup>331</sup>

Miller claims that the earliest dialectical discussions were theological in nature. Young, however, argues that the earliest sources for dialectic can already be seen in some of the earliest books devoted to Islamic law. Young gives convincing arguments for some correspondence between the dialectical techniques found in al-Shāfi'ī's *Ikhtilāf al-irāqiyīn* and those recorded in later handbooks. Much of his evidence is compelling, but it shows that formalized conceptions of dialectical techniques existed before

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<sup>330</sup> Young, "Dialectical Forge," 1:23-25.

<sup>331</sup> Young, "Dialectical Forge," 1:23.

written handbooks of these techniques. Miller’s argument that theological discourse was the original site of dialectical practice seems to me the most compelling. In addition to the evidence supplied by Miller, other scholars have also shown a robust tradition of theological disputation in the Eastern Mediterranean in late antiquity. Most notably, Michael A. Cook has shown how Christian Syriac theological texts contain the same general framework as Arabic theological texts, but that these Syriac documents also contain blueprints for disputations with other sects and religions.<sup>332</sup>

Young is correct when he states that medieval Muslim scholars were “polymaths wearing ‘many hats,’” and I recognize the inherent cross-disciplinarity in the work of these early scholars.<sup>333</sup> Still, I use the term “theological” to describe the writings of these early authors for two reasons. First, because this category retains explanatory power for these books, even if the books do aim to cover more than theology. Miller convincingly shows the ways in which these scholars reacted against or were influenced by Ibn al-Rēwandī. These handbooks for disputation were thus also sites of theological disagreement. Second, these theoretical works on disputations were all written in roughly the same time period, in the early fourth/tenth century, before scholars began composing theoretical works on dialectic that were embedded within a juristic context. That is to say, the authors of these works were all involved in theology and in conversation with each other. These authors were important and vibrant

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<sup>332</sup> The general framework is a blueprint structured by a back and forth presented with the terms “if they say..., we reply...” See Michael A. Cook, “The Origins of *Kalām*” *Bulletin of the School of Oriental and African Studies* 43.1 (1980): 32-43. See also C. H. Becker, ‘Christliche Polemik und islamische Dogmenbildung,’ *Zeitschrift für Assyriologie und verwandte Gebiete*, 26 (1912): 171-195.

<sup>333</sup> Young, “Dialectical Forge,” 1:23, quoting a verbal communication with Wael Hallaq.



scholars engaged in the intellectual world of the time, and their works and contributions contain not only detailed expositions of their own views, but rich and sustained engagements with the views of other scholars.<sup>334</sup>

### **Farq in Theological Disputation**

Based on the sources quoted by Miller, the theological tradition uses the term *farq* as a form of *mu‘āraḍa*, counter-objection.<sup>335</sup> Abū Yūsuf Ya‘qūb al-Qirqisānī, a Karaite scholar, discusses dialectical method in his book *Kitāb al-Anwār wa-l-Marāqib*. Al-Qirqisānī’s text repeatedly quotes a certain unnamed Muslim scholar as the authority on dialectical theory. Miller argues that this scholar is Ibn al-Rēwandī: “That al-Qirqisānī’s source was Ibn al-Rīwandī is suggested by the similarity between his reasoning and that of al-Ash‘arī...”<sup>336</sup> Al-Qirqisānī includes a short discussion of the rules for dialectic, going through the kinds of questions one should ask and the correct ordering of the questions. At the end of this short discussion he uses the verb, “draw a distinction

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<sup>334</sup> A striking example of an author fully engaged in a vibrant intellectual context can be seen in the works by al-Qāḍī al-Nu‘mān. Devin Stewart has attempted to reconstruct Muḥammad ibn Dāwūd al-Zāhiri’s *Wuṣūl ilā ma‘rifat al-‘uṣūl* based on al-Qāḍī al-Nu‘mān’s *Ikhtilāf uṣūl al-madhāhib*. See Devin Stewart “Muḥammad b. Dā’ūd al-Zāhiri’s Manual of Jurisprudence: *Al-Wuṣūl ilā ma‘rifat al-‘uṣūl*” in *Studies in Islamic Legal Theory*, ed. Bernard G. Weiss (Leiden; Boston; Köln: Brill, 2002). He discusses the historical value of al-Qāḍī al-Nu‘mān’s text in the introduction to his recent edition and translation. See al-Qāḍī al-Nu‘mān, *The Disagreements of the Jurists: A Manual of Islamic Legal Theory*, ed. and trans. Devin J. Stewart (New York; London: New York University Press, 2015).

<sup>335</sup> Miller uses the term “counter-objection” to translate this word. Young disagrees with this translation, although he prefers to keep the term untranslated (1:xii). I discuss the specific relationship between *farq* and *mu‘āraḍa* below, but some authors explicitly subsume *farq* under *mu‘āraḍa*, while other authors use these two terms refer to separate categories.

<sup>336</sup> Miller, “Islamic Disputation Theory,” 24.

(*faraqa*)”. In describing how to refute someone else’s position, al-Qirqisānī says one ought to say, “I concede that your rationale (*‘illataka*) necessitates this opinion, but it also necessitates that you apply it to something that comes more quickly to mind... Therefore, either show how the two cases are both true or both false, or explain how they differ (*wa-illā fa-friq baynahumā*).”<sup>337</sup> Here, al-Qirqisānī does not define a strategy called *farq*, but nevertheless he describes a particular kind of objection in which the questioner attempts to catch the respondent in a contradiction. The questioner finishes by asking the respondent to “explain how they differ” and uses the verbal form *faraqa*; that is, he wants his interlocutor to explain the distinction between them.

Al-Qirqisānī uses the word *farq* again in discussing the styles of objections (*mu‘āraḍa*) used by some theologians (*qawm min al-mutakallimīn*). Again, distinction is not explicitly identified by al-Qirqisānī as a specific technique, but he nevertheless alludes to an idea strikingly similar to formal disputational *farq*. He explains this with the following contrafactual:

If a Muslim were to say, ‘I affirm the prophecy (*nubuwwa*) of Moses based on the unanimous agreement (*iṭbāq*) of the Jews on the validity of his prophecy,’ then he must necessarily (*lazimahu*) affirm the prophecy of Aaron because of the Jew’s unanimous agreement on his prophecy. If this person were then to deny Aaron’s prophecy while still affirming that of Moses, he would have distinguished between them inconsistently, and thus erroneously, in affirming

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<sup>337</sup> Ya‘qūb ibn Iṣḥāq al-Qirqisānī, *Kitāb al-Anwār wal-marāqib: code of Karaite law*, ed. Leon Nemoy (New York: Alexander Kohut Memorial Foundation, 1939), 1:472, translation based on Miller, “Islamic Disputation Theory,” 23.

Moses while rejecting Aaron, in spite of the equivalent proofs for affirming their prophecies (*qad faraqa baynahumā fi al-iqrār wa-l-inkār ma‘a istiawā’ al-iqrār bihimā*).<sup>338</sup>

In this example, al-Qirqisānī envisions a debate between a Muslim and a Jew. By accepting the agreement of the Jews as a valid indicator of Moses’ prophecy, this Muslim would also have to accept the prophecy of Aaron, since the Jews are also in agreement that Aaron was a prophet. The problem for this hypothetical Muslim is that Aaron is not accepted as a prophet (*nabī*) by Muslims.<sup>339</sup> This example is similar to the one above in that the disputational maneuver employing the term *farq* is an attempt by the questioner to use the respondent’s own reasoning to demonstrate that the respondent’s own rationale contradicts him in another problem.<sup>340</sup>

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<sup>338</sup> Al-Qirqisānī, *al-Anwār wa-l-marāqib*, 1:475.

<sup>339</sup> This seems to be the intent of this passage, although the actual status of Aaron is not clear cut. The Quran names Aaron in its listing of prophets twice, once in al-Nisā’ 4:163 and again in al-An‘ām 6:84. Nevertheless, the relationship between Moses and Aaron was likened to that between Muḥammad and ‘Alī, since Muḥammad said, “‘Alī, you are to me like Aaron to Moses, but there shall be no Prophet after me.” The implication of this hadith is that ‘Alī’s eloquence was helpful in spreading Muḥammad’s message, just as Aaron’s eloquence helped Moses communicate with Pharaoh. See EI<sup>3</sup> s.v. “Aaron” (Andrew Rippin). It may be the case, however, that al-Qirqisānī wants to make a point about contrafactuals, namely that the rules of logic still obtain. In this case, the logical tool used is the *reductio ad absurdum* (*ilzām*). I thank Professor Daniel Frank for help understanding this passage.

<sup>340</sup> Al-Qirqisānī uses this phrase two more times in this discussion with a similar meaning. He continues this discussion by stating, “One must also ask him (*wajaba aydan an yuqāl lahu*), ‘What is the distinction (*mā al-farq*) between you and someone who affirms the prophecy of Aaron while denying that of Moses?’” (1:475). This latter possibility is clearly preposterous, since the prophecy of Moses is widely accepted by the Abrahamic faiths. This question, however, shows the untenable position of the Muslim in attempting to affirm the prophecy of Moses while rejecting that of Aaron. In the example, the inverse opinions of the second scenario rest on the same faulty logic as that of the Muslim and are on their face absurd. Al-Qirqisānī uses the phrase *mā al-farq* (what is the distinction...?) throughout this paragraph. He also uses the term *mufāriq* (distinction), however, to denote the distinguishing trait that follows the verbs *farq* and

In al-Qirḳisānī's discussion, the term *farq* has not yet crystallized into a technical term, and he often uses *faṣl* and *farq* synonymously. Nevertheless, his theory of *farq* and *faṣl* is similar to what is later found in the books of legal disputation regarding *farq*. Al-Qirḳisānī's thirty-third chapter, for example, is “on a question of distinction (*faṣl*) and that it requires that there be two answers (*wa-annahū yaḥtāju an yakūna fihī jawābayn.*)”<sup>341</sup> The thirty-third chapter explicates how questions that elicit distinctions (*faṣl*) work, and how, in order to be a valid disputational technique, such questions must be asked in regard to issues that have two different and contradictory answers. He begins this chapter by saying “Know that when you ask about the distinction between two things (*al-farq bayna shayʿayn*), that you have already distinguished between them as being either affirmed or denied (*fa-qad faraqta baynahumā bi-l-ithbāt wa-bi-l-ibtāl*).” The terms *faṣl* and *farq* are synonymous; the chapter on *faṣl* starts with the verb *faraqa*. Interestingly, al-Qirḳisānī says, “As when you distinguish between two things, you deny one of them and affirm the other (*kamā annaka ḥīna faraqta baynahumā abṭalta aḥadahumā wa-saḥḥaḥta al-ākhar*).”<sup>342</sup> This logic is at work in the example of the prophecy of Aaron and Moses, when the questioner asked *farq*-based contrafactual questions that could only be answered through affirmation or denial. This same logic, however, does not carry over into the later books of legal

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*iftirāq*. He also makes mention of *tafriqa* (distinction) in a similar context. “Whoever rules (*ḥakama*) in disputed issues with a distinction must be asked for proof (*kull man ḥakama fī mawāḍiʿ al-ikhtilāf bi-l-jamʿ [wa-fī mawāḍiʿ al-jamʿ] bi-l-tafriqa fa-l-muṭālaba bi-l-burhān wājib ʿalayhi*).”

<sup>341</sup> Al-Qirḳisānī, *al-Anwār wa-l-marāqib*, 1:480.

<sup>342</sup> Al-Qirḳisānī, *al-Anwār wa-l-marāqib*, 1:481.

distinction, which are not aimed at denying one thing or the other, but denying the very contradiction itself.

### ***Farq* in Legal Disputation**

In handbooks of legal dialectics, discussions of *farq* are more formalized than the discussions of *farq* in theological books of disputation. Discussions of *farq* in legal dialectics follow in large part al-Qirqisānī's understanding of distinction, but the legal works give greater prominence to the word *farq* as a technical term. It loses its plain-sense meaning of a simple “comparison” or “difference,”<sup>343</sup> and refers instead to a particular method of dialectical argumentation.

The process can be best understood through an example. Here the Andalusian Mālikī jurist, Abū al-Walīd al-Bājī (d. 474/1081) explains *farq* in the context of a Mālikī scholar debating a Ḥanafī scholar.

M: “Whoever kills someone with a blunt object shall be punished by retaliation (*al-qīṣāṣ*). This is the case since the killer has unlawfully killed someone who is socially equal with an object that will likely kill him (*bi-mā al-ghālib an ḥatafahu fīhi*), and this deserves retaliatory punishment, just as if the killer has used a sharp object (*muḥaddad*.)”

Ḥ: “A sharp object is something that is used to ritually slaughter animals (*al-dhakāt*). It is because of this that we say that retaliation is required for a crime

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<sup>343</sup> The meanings and applications of this word as a technical term in other fields are discussed in Chapter Two of the present study.

committed using such an object (*inna al-qīṣāṣ yuthbat bihi*). The legal issue at hand, the blunt object, is not comparable (*laysa kadhālika fimā ‘āda ilā mas’alatinā*), since animals cannot be slaughtered with a blunt object. This means that there is no punishment by retaliation (*al-qīṣāṣ*) for a murder committed with a blunt object, such as a small stick.<sup>344</sup>

In this example, the Mālikī has attempted to explain why it is that the Mālikī *madhhab* imposes a retaliatory punishment on murder committed with both a blunt object and a sharp object, for example, a club and a knife. The Mālikī treats both killings as equal; irrespective of the weapon used, both are indicative of intentional homicide, a tort offense warranting *qīṣāṣ*. The club, he argues, is a deadly weapon similar to a knife and thus its wielder is deserving of the same legal treatment as the knife-wielding killer. The Ḥanafī then responds and makes a distinction between these two cases. For him, murder with a knife is the more serious offense, presumably the knife is *prima facie* a deadly weapon, but a club is not. The use of knives to slaughter animals suggests that their primary purpose is killing. This status, in turn, allows the jurist to distinguish between the intent in both cases. For the Ḥanafī, a knife is evidence of clear intent for homicide and therefore leads to a charge of murder. A club, meanwhile, only allows for a charge of unintentional murder, manslaughter, because the intent of murder is not clear. Here, it is the everyday use of these objects which allows the inference that determines the legal consequences of their use in homicide. In other words, the *‘illa* at

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<sup>344</sup> Sulaymān ibn Khalaf al-Bājī, *Kitāb al-Minhāj fī tartīb al-ḥijāj*, ed. ‘Abd al-Majīd Turkī (Beirut: Dār al-Gharb al-Islāmī, 1987), 203, ¶460. This section is also translated in Young, “Disputational Forge,” 1:180-81.

work is the normal use of the object. Knives are used for killing living beings, while clubs are not normally used in this way.

At this point, the Ḥanafī seems to have made a more convincing argument than the Mālikī. In effect, the Mālikī claimed that these cases are similar since striking someone with either a sharp or a blunt object will likely result in their death. In this sense, they are similar and the presumed intent of the killer is equivalent. The Ḥanafī, however, disagrees. According to him, the cases are distinct and not at all similar. The distinction, in his view, lies in the legal rationale that is used to determine intent. In his view, this legal rationale (*illa*) is that since sharp objects are used for the ritual slaughter of animals, that is, to cut their throat such that all of the blood drains out of the animal. Using an object that can be used to kill animals in this way demonstrates the clear intent of the killer and necessitates *qiṣāṣ*, retaliatory killing of the perpetrator. Since a blunt object cannot be used to cut the throat of an animal, the intent of a homicide with such an object cannot clearly be determined. Thus the two kinds of killing are legally distinct, and therefore they occasion different punishments because of the underlying legal rationales.

Several scholars devote a specific chapter to distinction in handbooks of dialectics. Imām al-Ḥaramayn al-Juwaynī, for instance, writes the twelfth chapter of his book entitled *al-Kāfiya fī al-jadal* on “How to Answer a Distinction (*fī al-jawāb ‘an al-farq*).” His discussion of *farq* in this chapter focuses on the use of *farq* as a disputational technique, however, not as a category of legal writing and analysis. *Farq* describes a particular objection to be overcome and the method for doing so. Al-Juwaynī says:

Know that to ask about (*mā yatawajjahu ʿalā*) the first term in an analogy (*mubtadaʿ al-qiyās*) regarding its impossibility or inconsistency (*min al-manʿ wa-l-naqd*),<sup>345</sup> false construction (*fasād al-waḍʿ*),<sup>346</sup> lack of consistent applicability (*ʿadam al-taʿthīr*),<sup>347</sup> inversion of the conclusion (*qalb*),<sup>348</sup> and counter-objection (*muʿāraḍa*),<sup>349</sup> is to ask about distinction (*fa-huwa mutawajjih ʿalā al-farq*). This kind of objection can be responded to using any of the above rubrics.<sup>350</sup>

According to Imām al-Ḥaramayn al-Juwaynī, drawing attention to the non-transferability of a legal rationale, a charge of *farq*, can be responded to by referring to one of various hermeneutic tools. In other words, in order to overcome a question of *farq*, one can use any of the above-mentioned tactics, contradiction, negating the condition, etc.

Interestingly, in his telling, *muʿāraḍa* seems to be a particular kind of *farq*, instead of the other way around, as found in the writings of other theorists. For example, some scholars maintain the conception of *farq* as “a special case of counter-objection, and, thus, they mention it in their chapters on counter-objection.”<sup>351</sup> Abū al-

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<sup>345</sup> For *manʿ*, see Miller, “Islamic Disputation Theory,” 113-118; for *naqd*, see Miller, “Islamic Disputation Theory,” 127-29.

<sup>346</sup> Miller, “Islamic Disputation Theory,” 118-20.

<sup>347</sup> Miller, “Islamic Disputation Theory,” 120-22.

<sup>348</sup> Miller, “Islamic Disputation Theory,” 122-27.

<sup>349</sup> Miller, “Islamic Disputation Theory,” 133-34.

<sup>350</sup> Imām al-Ḥaramayn al-Juwaynī, *al-Kāfiya fī al-jadal*, ed. Fawqīyya Ḥusayn Maḥmūd (Cairo: Maṭbaʿat Īsā al-Bābī al-Ḥalabī wa-Shurakāʾuhu, 1399/1979), 322. The translation of the technical terms is largely adapted from, but not identical to the terms used by Miller. He translates *ʿadam al-taʿthīr* as “ineffective *ratio legis*,” and *qalb* as “*methodos kata peritropēn*” (120, 122). In his discussion of *manʿ*, he does not give a definitive translation of the term (113-16).

<sup>351</sup> Miller, “Islamic Disputation Theory,” 130.



Walīd al-Bājī states that a *farq* is “a counter-objection to the rationale (*‘illa*) of the principal case” and that “it is the most legal kind (*afqah*) of objection that can occur in a debate since the legal issue inherent in the problem becomes known in this way.”<sup>352</sup> In other words, a *farq* is an objection based on a perceived incompatibility between the rationale (*‘illa*) that is (or is implied to be) operative in two legal cases (*ḥukmān*). In fact, all objections based on a rationale are categorized as *farq* by al-Bājī.

Al-Bājī’s comprehensive account of distinction discusses two kinds of *farq* that can be raised. The first type of *farq* claims that the two cases should be treated with reference to two different *‘illas*. The questioner (Q) asserts that the legal rationale (*‘illa*) relied on by the respondent (R) is improper, and he then identifies a different legal rationale that properly pertains to the case at hand. The objection is that the rationale does not work in a second case, thus the comparison based on a similarity is erroneous.

The second type of *farq* claims a mistake regarding the rationale that occasions a judgment. R identifies a legal rationale; Q claims that R’s legal rationale has been derived incorrectly. Q therefore attributes the original judgment to a different rationale than does R. R and Q disagree over the rationale that occasions the judgement. The objection focuses on the correct rationale which applies to a particular case.<sup>353</sup>

These two styles of *farq* operate with a related but distinct form of logic. In each of these, however, the contention of the questioner revolves around the precise

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<sup>352</sup> Al-Bājī, *al-Minhāj*, 201, ¶456. Translation adapted from Miller, “Islamic Disputation Theory,” 130.

<sup>353</sup> Al-Bājī, *Minhāj*, 202, ¶457; see also Miller, “Islamic Disputation Theory,” 147.

relationships between similar cases with similar legal rationales (*‘ilal*). Q aims to show that R’s two proposed rulings (*ḥukmān*) should be treated in distinct ways, even though R has treated them using identical legal rationales. In this sense, these authors consider *farq* to be a kind of counter-objection. *Farq* refers to this particular dialectical method.

Al-Bājī defines a counter-objection as “Q’s opposing the demonstrator (R) with a piece of evidence of similar or greater probative force.”<sup>354</sup> When Q presents a piece of evidence as an objection, the roles of Q and R can switch because R may now argue that Q’s evidence is either lacking or being used incorrectly. *Mu‘āraḍa* refers to this whole procedure. *Farq*, a subset of *mu‘āraḍa*, refers to a particular instantiation of this procedure. A counter-objection can take issue with any aspect of R’s legal reasoning regarding the legal situation in question. A *farq* was a particular kind of counter-objection, as discussed above, because it related specifically to the *‘illa* under consideration. Young discusses why *farq* was seen to be a subset of the broader category of counter-objection, “through the process of making a charge of *farq*, Q has in effect claimed an opposing *‘illa*, which he then links to a different *aṣl* — and in this latter case the counter-*‘illa* occasions the opposite *ḥukm*.”<sup>355</sup> Again, the *farq* is not a simply difference, but rather the assertion of a fundamental distinction in rationale between two cases.

As can be seen from this discussion about *farq*, it was a formalized and highly elaborate disputation technique. Understanding how to use *farq* offensively and how to

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<sup>354</sup> Miller, “Islamic Disputation Theory,” 111; quoting al-Bājī, *Minhāj*, 41 ¶78.

<sup>355</sup> Young, “Dialectical Forge,” 1:181.

overcome this objection required a thorough knowledge of substantive law, legal theory, and the connections between them. The formalization of *farq* required an already elaborated system of legal thought and an established tradition of disputation. In this sense, it is not a surprise to see the term *farq* appear in disputation manuals at the time that the doctrines of the Islamic legal schools were being formalized.

Miller finds that authors incorporated this technique (*farq*) in the dialectical manuals of the fourth/tenth century. He notes, however, that *mu'āraḍa* was an “old technique” that existed prior to the systematization of disputation theory.<sup>356</sup> This is confirmed by Young, who finds dialectical strategies similar not only to *mu'āraḍa*, but also *farq*, and other techniques utilized in early works of Islamic substantive law. “[A]s a dialectical move employing verbs and nouns of root *f-r-q*, it [*farq*] is ubiquitous throughout the *Umm*... Whatever the date we may consider *farq* to have crystallized as a uniform technical term, its practice and teaching as a dialectical move stretch back at least to the second century H.”<sup>357</sup> Although Young does not find explicit discussions of *farq* in the *Umm*, he nevertheless finds instances of disputations within this text in which scholars employ questions and responses in ways that are identical to the formal technique that came to be known as *farq*. It is, indeed, a scholarly practice used in early moments of Islamic law.

The earliest uses of the term *farq* to describe that technique, such as those Young finds in *al-Umm* and even those used in disputation manuals in areas other than

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<sup>356</sup> Miller, “Islamic Disputation Theory,” 33.

<sup>357</sup> Young, “Dialectical Forge,” 1:181.

Islamic law, suggest that the term had not yet taken on a technical meaning. Young finds the technique referred to as *farq*, but this was not the exclusive term for such arguments or objections and it was also referred to by other etymologically related words. While these sources all have ideas of eliciting, or ascribing, distinction and employ such reasoning in their debates, there does not yet seem to be a scholarly consensus on the precise technical definition of this concept nor an agreement on what words should be used to refer to such procedures. It was not until the fourth/tenth century that *farq* emerged as a term that referred specifically to a known disputational technique.

The field of dialectics in Islamic intellectual culture, *jadal*, generally draws heavily from the Greek Aristotelian tradition.<sup>358</sup> While there seems to be a tradition of dialectics before the introduction of Aristotle, *jadal* quickly incorporated many of the formal features of the Aristotelian tradition. Early dialectics both as seen in handbooks and in records of disputation, are fairly free of Aristotelian influences, “But after jurisprudence had assimilated the techniques of theological dialectic, its own theory became influenced by logical terminology and techniques.”<sup>359</sup> Part of this pre-Aristotelian tradition involved some aspects of the counter-objection (*mu‘āraḍa*). Miller

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<sup>358</sup> Young, “Dialectical Forge,” 199-223; George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 107, 264-65; Miller, “Islamic Disputation Theory,” 1-4, 52-77.

<sup>359</sup> Miller, “Islamic Disputation Theory,” iii. Miller's study carefully shows how the Arabo-Islamic tradition of disputation existed independently of Aristotle, adopted Aristotelian techniques and frameworks, and then transformed into a fully formalized system called “methods of investigation (*ādāb al-baḥth*).” See also Mehmet Karabela, “The Development of Dialectic and Argumentation Theory in Post-Classical Islamic Intellectual History” PhD Diss., McGill University, 2011.

argues that there is a general category of *mu‘āraḍa*, which is part of the “native” pre-systematic techniques of disputation.<sup>360</sup> As the existing styles of disputation were being formalized, *mu‘āraḍa*, due to its importance, needed to be incorporated into the formal system. “Everything possible was done to bring it into the new system, even though the arguments brought forth cloud the difference between it and distinction (*faṣl*, *farq*).”<sup>361</sup> Distinction is thus often, but not always, seen as a subset of *mu‘āraḍa*, a tradition that preceded Aristotelian influence. Miller seems to situate distinction as part of the dialectical tradition introduced by Aristotle but he does not elaborate on this point in his discussion of distinction.

The question of the status of *farq* with regard to *mu‘āraḍa* is left in doubt. Miller claims that some of his primary sources portray *mu‘āraḍa* as a broad category under which *farq* can be subsumed, while others see them as two distinct kinds of counter-objection.<sup>362</sup> Young sees *farq* as wholly subsumed under counter-objection. For him *mu‘āraḍa* is part of an older tradition of disputation that pre-dated recorded disputations or manuals of disputation.<sup>363</sup> He argues, based on Abū Ishāq al-Shīrāzī and al-Bājī, that a proper *mu‘āraḍa* entails the construction of a new legal analogy. *Farq* involves the production of a new legal case, related to the case at hand by way of the legal rationale. It is the applicability of this rationale which is at stake in a *farq* objection. Since *farq* is one of the techniques through which a new analogy is

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<sup>360</sup> Miller, “Islamic Disputation Theory,” 38.

<sup>361</sup> Miller, “Islamic Disputation Theory,” 38; Young, “Dialectical Forge,” 31n46.

<sup>362</sup> Miller, “Islamic Disputation Theory,” 130-31.

<sup>363</sup> Both Miller and Young agree that *mu‘āraḍa* was a particularly Arab, pre-*jadāl* technique. Miller, “Islamic Disputation Theory,” 37-38; Young “Dialectical Forge,” 1:31n46.

constructed, it must be subsumed by *mu'āraḍa*, a broader category encompassing all techniques in which a counter-analogy is created.<sup>364</sup>

In other words, Young believes that the *mu'āraḍa* was a disputational technique which existed prior to the creation of *farq* as a technique. He holds, however, that the process of *farq* itself is and only can be a subsection of *mu'āraḍa*. Certainly, the *farq* is, as Young explains, the creation of a different set of comparisons of the legal discussion at hand. To take the above example, the Mālikī scholar compares the blunt object and the sharp object. They are alike in the legal rationale (*'illa*), their predisposition for use as instruments of killing, and they are alike in their legal ruling, the imposition of retaliatory killing. The Ḥanafī scholar, who makes the case for a distinction (*farq*), produces a counter-analogy. For the Mālikī, the two instruments are analogous or comparable; for the Ḥanafī, however, they are incompatible and disanalogous. For the Ḥanafī, this means that there are two legal outcomes in the two cases, one is the imposition of *qiṣāṣ* for the sharp object and lack of *qiṣāṣ* for the blunt object. This result is what Young calls the counter-*ḥukm*. Young claims, therefore, that this is simply one of the many kinds of counter-objection (*mu'āraḍa*), and that *farq* is subsumed within the counter-objection since the counter-objection is both a broader category and an older category. While Young's argument that, logically speaking, *farq* is a subsection of *mu'āraḍa* is convincing on its face, he does not address the scholars who treat *farq* as a separate category. Nevertheless, these two concepts, *mu'āraḍa* and *farq*, are clearly quite closely related.

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<sup>364</sup> Young, "Dialectical Forge," 1:31n46.

Young, however, seems to suggest a parallel between *farq* and one of the refutations offered by Aristotle in his *Sophistical Refutations*, specifically Aristotle's advice to "look for contradictions between the answerers' views and either his own statements or the views of those whose words and actions he admits to be right or those who are generally held to bear a like character and to resemble them."<sup>365</sup> Young explicitly says that we may find parallels between these techniques and inconsistency (*naqd*), contradictions with the Quran, hadith, or scholarly consensus, and "contradiction of one's own doctrinal *madhhab*."<sup>366</sup> While Young does not use the term *farq* in this discussion, the dialectical technique of evaluating Quran, hadith, and legal questions seems to be dialectical *farq*. This interpretation of Young's statement requires understanding Aristotle's statement "those whose works and actions [the questioner] admits to be right" as applying, in legal disputations, to the assumption that the doctrines of a particular legal school are assumed to be correct. Based on this statement by Young, it seems possible that *farq* developed as a formal technique of disputation in connection with the reception of Aristotle's *Sophistical Refutations*. This supposition, however, follows naturally from the understanding that any participant in a legal disputation is an adherent to a particular legal school and defending the view of his school.

According to Young, dialectics was a "forge" in which *fiqh* developed. Through disputation, the earliest Muslim jurists turned the raw materials of Islamic law into a

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<sup>365</sup> Aristotle, *On Sophistical Refutations. On Coming-to-be and Passing Away. On the Cosmos*, trans. by E.S. Forster and D.J. Furley. (Cambridge, MA: Harvard University Press, 1955), 85.

<sup>366</sup> Young, "Dialectical Forge," 222.

complex and refined body of doctrine. In Young's analysis, *farq* was one of the important dialectical maneuvers for the systematization of legal rulings, through what Young has called "*farq*-extension." He defines *farq*-extension as a "dialectical motive: avoiding charges of invalid inference and internal/doctrinal inconsistency; proto-system legal theory."<sup>367</sup> It is a part of what he terms "proto-system legal theory," by which Young seems to mean something like "pre-formative legal theory."<sup>368</sup> What he means, I think, by *farq*-extension is a full-scale review of one's doctrinal consistency so as to avoid being charged with internal inconsistencies.<sup>369</sup> While *farq* was a disputational technique that could occur within a disputation, *farq*-extension was a way of attempting to control for consistency within legal doctrine by spreading the particular applicatory ambit of a legal rationale (*'illa*).

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<sup>367</sup> Young, "Dialectical Forge," 1:544.

<sup>368</sup> Unfortunately, Young does not define this term explicitly. He says: "Moving on to more technical terms, we have already employed 'proto-system' on more than one occasion. This is an important distinction to maintain, and 'proto-system' will only be applied to *jadal* teaching and practice before the appearance of the first, comprehensive 'full-system' theory treatises in the fourth and fifth centuries H. This same important distinction will be maintained with regard to 'proto-system legal-theory' and 'full-system *uṣūl al-fiqh*'" (1:14). It seems that in Young's terminology, a 'proto-system' is defined in large part by the fact of what was to come. In other words, the proto-system dialectic seems to become full-system dialectic when the later tradition wrote manuals of *jadal*. Similarly, proto-system legal theory becomes full-system once works of *uṣūl al-fiqh* are written. Other than this seeming maturation, it is not clear what differentiates the two. Young finds the proto-system dialectics, for instance, to be almost rich, if not richer, than full-system *jadal*. "Even in the small amount of dialectical material I analyzed within this relatively small treatise, I found nearly the full gamut of *istidlālāt* treated by our *jadal* theorists, and a fairly large sampling of their *i'tirāḍāt*, *ajwiba*, and *tarjihāt*. However — and this is important — I also found much more than our *jadal*-theorists discuss" (1:10).

<sup>369</sup> Ahmed El Shamsy has identified the search for analogical consistency as a characteristic feature of early Iraqi-Hanafi reasoning which also influenced the legal thinking of al-Shāfi'ī. See Ahmed El Shamsy, *The Canonization of Early Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 44-68; this is also discussed in Joseph Lowry, Introduction to *The Epistle on Legal Theory*, xviii-ix.



And as for *farq*-extension, to demand that the *farq* between two types of legal entity be observed across relevant genera of substantive rulings is to simultaneously extend two sets of opposing *‘ilal* occasioning opposing *ḥukms* across those genera... [it is] marked by a concern with consistency and an aversion to doctrinal contradiction; and we might claim that [it is] prompted, in the end, by an anticipation of *naqḍ* [contradiction] and its avoidance.<sup>370</sup>

As a component in the dialectical forge, the technique of *farq*-extension was concerned with anticipating and avoiding contradictory legal positions (*naqḍ*). *Farq*-extension starts with the logic of a *farq* objection as discussed by the *jadāl* theorists. It helps to identify these seeming inconsistencies and attempts to harmonize them. Jurists using *farq*-extension extend this reasoning not simply to one dispute as it occurs, but rather to a broad, general, and cohesive system of legal rules.

### **Disputational Theory and Practice (*Khilāf*)**

*Furūq* was not the only genre of legal writing that arose out of the larger world of dialectics; *khilāf* was another, more prominent, genre. Indeed the relationship between these two disciplines, *furūq* and *jadāl*, has gone relatively unnoticed.<sup>371</sup> Young claims that disputation had a profound effect on the entirety of Islamic legal literature. He argues that every genre of pre-modern Islamic legal writing is influenced by the

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<sup>370</sup> Young, “Dialectical Forge,” 1:441.

<sup>371</sup> The only study of which I am aware that mentions such a link is Young’s dissertation. Al-Ḥabīb’s introduction to ‘Abd al-Ḥaqq al-Ṣiqillī’s *al-Nukat wa-l-furūq* hints at such a connection as well. Al-Ḥabīb, “Introduction,” 79-81.

practice of dialectics or its theory, but that of these genres, *khilāf*, has been impacted most clearly.<sup>372</sup> While Young’s dissertation shows how many of the concepts used in Islamic law were elaborated within disputational contexts, the development of legal genres and their particular connections to *jadāl* in legal contexts remain unclear in his presentation. The genre most clearly related to disputation, however, is that of *khilāf*, which is also referred to as *ikhtilāf*.<sup>373</sup> This genre is mentioned by Young: “[a]s regards these latter genres[ *qawā'id fiqhiyya*, *furūq*, *ashbāh wa naẓā'ir*, *maqāṣid al-Sharī'a*, etc.,] the most important for our purposes is that which comprises the categories of *Ikhtilāf* and *ʿIlm al-Khilāf*.”<sup>374</sup> In such contexts, *khilāf* does not refer to a particular technical term of disputation, nor a style thereof. It refers, in a way, to the act of disputation itself, especially when used in the context of a literary genre.

Joseph Schacht describes *ikhtilāf* “as a technical term, the differences of opinion amongst authorities of religious law, both between the several schools and within each of them.”<sup>375</sup> Elsewhere, he describes the compilation of such works: “There are, further, comparative accounts of the doctrines of several schools (*ikhtilāf*, ‘disagreement’); the older ones reflect the discussions between the several schools, the later ones are simple handbooks.”<sup>376</sup> The books reflecting discussions between schools relate to (real or imagined) discussions between schools on particular points of law. In part, their

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<sup>372</sup> Young, “Dialectical Forge,” 1:70.

<sup>373</sup> These two terms seem to be used synonymously in the tradition to refer to contradictory legal opinions which cannot be harmonized.

<sup>374</sup> Young, “Dialectical Forge,” 1:70.

<sup>375</sup> EI2 s.v. “*Ikhtilāf*” (Schacht).

<sup>376</sup> Schacht, *Introduction to Islamic Law*, 114.

purpose was to show which school was superior. Those books that Schacht refers to as “simple handbooks,” are actually *khilāf* books that attempt to establish a particular opinion as prevalent within a school. It was also important to catalog and resolve disagreements in order to “arrive at consensus on any doctrine of practice.”<sup>377</sup> *Khilāf* therefore serves to upset the epistemological certainty that arises from consensus and leads only to probable certainty.<sup>378</sup>

In this respect, *furūq* and *khilāf* are quite different and almost opposite concepts. Works of *khilāf* function offensively. These works seek to establish one school’s opinion as better than another’s, or to establish one opinion as the school’s dominant opinion (*mu‘tamad*) at the expense of minority opinions. They achieve this through dialectical argumentation that leads to one right answer. *Furūq*, on the other hand, are all placed within the legal rulings of one particular school and thus function defensively. Instead of attempting to show which conflicting legal opinion is better, they attempt to show how seemingly contradictory opinions are mutually consistent. Because of this, the laws compared in these books of *khilāf* and *furūq* are presented very differently. *Furūq* works do not necessarily attempt to harmonize laws that are in fact *khilāf*. The laws discussed in works of *khilāf* are actually contradictory while those discussed in works of *furūq* are only apparently, but not actually, contradictory. Works of *furūq* do not contain

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<sup>377</sup> Makdisi, *Rise of College*, 107.

<sup>378</sup> Joseph E. Lowry, “Is There Something Postmodern About *Uṣūl Al-Fiqh? Ijmā‘*, Constraint, and Interpretive Communities” in *Islamic Law in Theory: Studies on Jurisprudence in Honor of Bernard Weiss*, ed. A. Kevin Reinhart and Robert Gleave (Leiden; Boston: Brill, 2014), 285-316.

debates that affirm one thing while denying another; they contain discussions that affirm two things simultaneously.

Looking at this from a dialectical perspective, the “*farq*” of *furūq* is the particular kind of counter-objection discussed above or rather, the way to overcome such objections. The questioner attempts to catch the proponent in a contradiction—upholding a certain *‘illa* in one case, but unable to do so in another—by bringing up a separate legal problem and its ruling. The proponent responds by explaining the subtle distinction between both apparently “contradictory” cases.

The connection between *khilāf* and *jadāl* is readily apparent: works of *khilāf* are works of disputational theory in practice. Young’s analysis of jurists using dialectical method comes from a book attributed to al-Shāfi‘ī, the *Ikhtilāf al-‘iraqiyyīn*. Al-Shāfi‘ī’s *Umm* itself contains many such works exemplifying *khilāf*-dialectics, including the *Risāla* and *Ikhtilāf Mālik wa-l-Shāfi‘ī*, which contains the disputed points of doctrine between Mālik and al-Shāfi‘ī.<sup>379</sup> This genre seems to have been particularly prominent in early periods of Islamic law; Wael Hallaq attributes the presence of many contradictory opinions to the informal institutional context in which early jurists operated. “This individual *ijtihād* — that is, the *ijtihād* of the individual *mujtahid* — explains the plurality of opinion in Islamic law, known as *khilāf* or *ikhtilāf*.”<sup>380</sup> In this context, in which affiliation with a legal school was not yet the norm, a plurality of opinions arose and

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<sup>379</sup> See Ahmed El Shamsy, “Al-Shāfi‘ī’s Written Corpus: A Source-Critical Study” *Journal of the American Oriental Society* 132.2 (2012): 199-210.

<sup>380</sup> Wael Hallaq, *Sharī‘a: Theory, Practices, Transformations* (Cambridge: Cambridge University Press, 2009), 82.

were reflected in writings that sought to bring some order to scholars and their doctrine. “The recording of these differences of opinion has produced a considerable literature since the beginnings of the study of *fiqh*.”<sup>381</sup> When formulated in this manner, legal dialectics seem to be almost identical to the discipline of *khilāf*.<sup>382</sup>

One might then see the works of *khilāf* as records of formal disputation adhering to particular rules and strictures, and works about *‘ilm al-jadal*, the science of disputation, as the theoretical science describing the rules thereof. This seems to be Young’s implicit understanding of the dialectical tradition. His criticism of Miller’s dating of the tradition stems from a belief in *khilāf* works representing a developed and deployed theory of dialectics that is only later canonized by the books that Miller studies. This division between the works of disputation in practice (*khilāf*) and disputation in theory (*jadal*) has a certain resonance with the distinction between legal compendia (*furū‘*) and works of legal theory (*uṣūl al-fiqh*), which describe the procedures for deriving the substantive law found in legal compendia.

This brief survey of *khilāf* and its relationship with disputation shows an intimate connection between the sciences of *khilāf* and *jadal*. While it may be that most, if not all, genres of Islamic legal writing are indebted to an early and vigorous disputational environment, *khilāf* seems particularly tied to disputation. This debt has long been recognized and the two fields of inquiry, *khilāf* and *jadal*, have often been

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<sup>381</sup> EI<sup>2</sup> s.v. “*Ikhtilāf*” (Schacht).

<sup>382</sup> It should be noted, as mentioned above, that the history of formalized disputation also tracks closely with the history of formalized theology, especially the defensive apologetic tradition of *kalām*. See Cook, “Origins of *Kalām*.”

conflated with each other.<sup>383</sup> Although *khilāf* and *jadāl* do have an important connection, *khilāf* also served a purpose beyond that of dialectics—it served as a tool to impede the formation of consensus. As George Makdisi has pointed out:

Ijma', consensus, had its counterpart in khilaf, disagreement, difference of opinion. This situation gave rise, very early in Islam, to the need for codifying all opinion on which there was disagreement among the authoritative doctors.<sup>384</sup>

Since consensus, once formed, conferred a high epistemological status on a given result of legal interpretation, formal expressions of disagreement served as an important means to prevent the formation of a consensus.

Aron Zysow explain the somewhat counterintuitive relationship between consensus and disputation.

Consensus is a substitute for the infallible guidance of the Prophet. It is as close as one can come to the renewal of the Prophetic Mission which has come to an end with Muḥammad... At the same time, however, the uniqueness of the Prophet must be preserved. Through consensus, ordinary Muslims must not gain prerogatives that surpass those of the Prophet.<sup>385</sup>

Both consensus and disputation were methods for generating true doctrine. At the same time, however, one way of stopping the formation of consensus is to voice

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<sup>383</sup> This conflation perhaps signals a need to differentiate legal dialectic from philosophical and theological dialectic.

<sup>384</sup> Makdisi, *Rise of Colleges*, 106.

<sup>385</sup> Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta: Lockwood Press, 2013), 236.

dissent. *Khilāf* thus serves not only as a way to voice such dissent, but also as a kind of forum for structuring and voicing dissent in convincing fashion. Therefore, disputation can also serve to present certainty, since certainty should only be conferred when there is unanimity on an issue. The *khilāf* engenders only probabilistic knowledge instead of certain knowledge. The theological goal is certainty, but at the same time, because certainty is so difficult to achieve, disagreement and probability substitute for certainty. Books on *khilāf* serve this purpose twice, since they also enshrine the disagreement textually.

The strong connection between these two disciplines, *khilāf* and *jadal*, however, has long been noted. George Makdisi mentions this connection in *Rise of Colleges* and quotes Ḥājjī Khalīfa (d. 1068/1657) making exactly this point. “Hajji Khalifa identified ‘ilm al-khilaf, the science of differences of opinion, of controversy, with jadal, dialectic, which was itself a part of mantiq, logic, adding: ‘except that this science (jadal) is applied particularly to religious matters’, —religious, as distinct from ‘foreign sciences.’”<sup>386</sup> Indeed, Ḥājjī Khalīfa’s discussion of ‘ilm al-khilāf reads like a discussion of dialectic itself. He explicitly equates the two, “‘ilm al-khilāf ... is dialectics (wa-huwa al-jadal).”<sup>387</sup> He mentions that the people involved in *khilāf* are either “the respondent” (*al-mujīb*) or questioner (*al-sā’il*),” the two protagonists found in works of disputation.<sup>388</sup> For Ḥājjī Khalīfa, there seems to be no substantial difference between these two fields. Ḥājjī

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<sup>386</sup> Makdisi, *Rise of Colleges*, 110, quoting Ḥājjī Khalīfa, *Kashf al-zunūn fī asāmī al-kutub wa-l-funūn*, ed. Şerefettin Yaltkaya and Kilisli Rifat Bilge (Istanbul: Milli Eğitim Basımevi, 1971), 1:721: “‘ilm al-khilāf wa-huwa al-jadal alladhī huwa qism min al-mantiq illā annahu khuṣṣa bi-l-maqāyīs al-dīniyya.”

<sup>387</sup> Ḥājjī Khalīfa, *Kashf al-zunūn*, 1:721.

<sup>388</sup> Ḥājjī Khalīfa, *Kashf al-zunūn*, 1:721.

Khalīfa’s mention of this science within his biobibliographic work warrants further discussion.

It has been noted that much of his information regarding the various scholarly disciplines comes from the *Miftāḥ al-sa‘āda wa-miṣbāḥ al-siyāda* by ‘Iṣām al-Dīn Ṭaṣkōprüzāde (d. 968/1561), a work that, in turn, owes a debt of gratitude to Ibn al-Akfānī’s (d. 749/1348) *Irshād al-qāṣid ilā asnā al-maqāṣid*. Jan Just Witkam alludes to this connection when he says that Ḥājji Khalīfa “probably did not use the *Irshād al-Qāṣid* (although he was familiar with the text and knew Ṭaṣkōprüzāde’s debt to it), but he was highly dependent on, among other works, Ṭaṣkōprüzāde’s encyclopedia, which he quotes on numerous occasions.”<sup>389</sup> This flow of bibliographic knowledge, from the relatively unknown Ibn al-Akfānī to the monumental work by Ḥājji Khalīfa deserves greater study,<sup>390</sup> given that “[f]rom Kātib Čelebī[i.e. Ḥājji Khalīfa] the line [of knowledge transmission] goes straight to the great bibliographical surveys which are the product of Arabic studies in Western Europe in the 19th and 20th centuries: Ahlwardt’s catalogue of the Berlin MS collection and Brockelmann’s History of Arabic Literature.”<sup>391</sup> These three works—Ibn al-Akfānī, Ṭaṣkōprüzāde, and Ḥājji Khalīfa—should be seen as a cohesive tradition, a multigenerational current in Islamicate bibliographical writing.

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<sup>389</sup> Jan Just Witkam, “Ibn al-Akfānī (d. 749/1348) and his bibliography of the sciences,” *Manuscripts of the Middle East* 2 (1987), 40.

<sup>390</sup> In particular, Witkam’s study shows how Ibn al-Akfānī’s *Irshād al-qāṣid* served as the node of transmission for some of the earlier classifications of the sciences, including works by Ibn Sīnā, al-Farābī, Ibn al-Nadīm and al-Shahrastānī. See Witkam, “Ibn al-Akfānī,” 39.

<sup>391</sup> Jan Just Witkam, “Ibn al-Akfānī,” 40.



The discussion of *khilāf* in this bibliographic tradition is quite interesting, since the authors are not in much agreement among themselves over what, exactly, the discipline of *khilāf* is or what it entails. I have already mentioned Ḥājji Khalīfa’s identification of this science with disputation. In his *Miftāḥ al-sa‘āda*, Ṭaşköprüzāde includes separate discussions of both *jadal* and *khilāf*. The first of these discussions occurs in a section on the “sciences that protect one from error in debate and learning.”<sup>392</sup> The second mention is in his section on the “sciences of legal theory.”<sup>393</sup> His understanding and discussion of both *jadal* and *khilāf* are almost indistinguishable conceptually in both of these sections. In the first discussion, he states that “the principles (*mabādi*) of *khilāf* are derived from the science of *jadal* (*mustanbaṭa min ‘ilm al-jadal*); *jadal* acts as the substance and *khilāf* as the form it takes (*fa-l-jadal bi-manzilat al-mādda wa-l-khilāf bi-manzilat al-ṣūra*).”<sup>394</sup> Ṭaşköprüzāde however, maintains a strict distinction between these two sciences, although he laments the ignorance of scholars of his time, in which this has been largely forgotten, “To the point,” he says, “that students of our time do not comprehend (*ṭalabat zamāninā lā yatafaṭṭanūna*) the difference between *khilāf*, *jadal*, and *munāẓara*.”<sup>395</sup> His understanding of a distinction

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<sup>392</sup> Aḥmad ibn Muṣṭafā Ṭaşköprüzāde, *Miftāḥ al-sa‘āda wa-miṣbāḥ al-siyāda fī mawḍū‘āt al-‘ulūm*, ed. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1405/1985), 1:283. The other disciplines that he lists alongside *khilāf* and *jadal* in this section are Rules for Studying (*‘ilm ādāb al-dars*) and the science of speculation (*‘ilm al-naẓar*).

<sup>393</sup> Ṭaşköprüzāde, *Miftāḥ al-sa‘āda*, 2:556. The other disciplines that he lists alongside *khilāf* and *jadal* in this section are the science of reasoning (*‘ilm al-naẓar*) and the science of debate (*‘ilm al-munāẓara*).

<sup>394</sup> Ṭaşköprüzāde, *Miftāḥ al-sa‘āda*, 1:283. In the previous discussion of *jadal* and *khilāf*, he says, “the distinction between *khilāf* and *jadal* is in the form and substance. *Jadal* investigates the substance of the disputational proofs (*mawādd al-adilla al-khilāfiyya*) while *khilāf* investigates their form (*ṣuwariḥā*)” (2:556).

<sup>395</sup> Ṭaşköprüzāde, *Miftāḥ al-sa‘āda*, 1:283.

between all three of these disciplines is mentioned here, but he repeats this distinction in the section on the sciences of legal theory.

In categorizing *khilāf* alongside *jadal*, Ṭaşköprüzāde suggest that these two disciplines be treated as separate fields. Of disputation, he says:

It is the science that investigates the ways through which one confirms any situation he so wishes (*ibrām ayy waḍʿ urīda*) or attacks any situation that may arise (*hadm ayy waḍʿ kāna*). This is one of the branches of speculation and the foundation of this science is disagreement (*wa-mabnī al-ʿilm al-khilāf*). *Khilāf* is based on disputation, which is one part of the investigations of logic, although it is specific to the religious sciences.<sup>396</sup>

This section on disputation is similar in many ways to Ḥājjī Khalīfa’s discussion of *khilāf*, even though it treats a different discipline. Both authors mention the close connection of *khilāf* to the religious sciences as well as to the field of logic.

What, then, is the science of *khilāf* according to Ṭaşköprüzāde? He provides two definitions. First, he says, “it is the science that investigates the different ways of applying deductive reasoning from particular and general indicants.”<sup>397</sup> *Khilāf* is, therefore, in this definition, not concerned with the technique of defending or attacking particular opinions or viewpoints, but rather directly tied in with differing interpretations of legal indicants. In other words, *khilāf*, according to Ṭaşköprüzāde is

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<sup>396</sup> Ṭaşköprüzāde, *Miftāḥ al-saʿāda*, 1:281. The discussion of *jadal* in legal theory is almost identical. “It is the confirmation of any situation that may arise (*ithbāt ayy waḍʿ kāna*) or an attack against any situation that may arise (*hadm ayy waḍʿ kāna*). It is one of the rational sciences (*al-ʿulūm al-ʿaqliyya*) although it is also a branch of the science of legal theory” (2:555).

<sup>397</sup> Ṭaşköprüzāde, *Miftāḥ al-saʿāda*, 1:283.

inseparable from its legal context. This point is reaffirmed in the second definition, from the chapter on *uṣūl al-fiqh*. “It is the disputation that occurs between the adherents of the legal schools (*bayna aṣḥāb al-madhāhib al-far‘iyya*), such as Abū Ḥanīfa, al-Shāfi‘ī and their peers (*amthālihīmā*).”<sup>398</sup> Not only is *khilāf* intrinsically legal, but it is the disputation that is exclusively based on the extrapolated reasoning of the founders of the legal schools. Ḥājjī Khalīfa, however, thinks of *khilāf* as simply disputation. Ṭaṣkōprüzāde had already dismissed this very definition as misinformed.

Ṭaṣkōprüzāde closes his discussion by stating that “it is possible (*yumkin*) to place the science of disputation and *khilāf* within the branches of the discipline of legal theory.”<sup>399</sup> Ṭaṣkōprüzāde categorizes *khilāf* as falling under the rubric of legal theory (*uṣūl al-fiqh*), while Ḥājjī Khalīfa considers it part of substantive law or law in general. He does not mention that it is part of *uṣūl al-fiqh*, instead referring to the necessity of “knowing the *qawā‘id* by means of which one understands the derivation of positive laws (*yutawaṣṣalu bihā ilā istinbāṭ al-aḥkām*)” and “memorizing those disputed laws.”<sup>400</sup> While *khilāf* requires the knowledge of these things, Ṭaṣkōprüzāde clearly notes that it does not require understanding how to deduce positive laws; that is the work of a *mujtahid*. Someone involved in *khilāf* need only be able to understand the work, teachings, and writings of a *mujtahid*.

Ibn al-Akfānī, the third author of this bibliographic group, offers a third, different approach. He does not consider *khilāf* an independent science and thus has no

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<sup>398</sup> Ṭaṣkōprüzāde, *Miftāḥ al-sa‘āda*, 2:556.

<sup>399</sup> Ṭaṣkōprüzāde, *Miftāḥ al-sa‘āda*, 1:284.

<sup>400</sup> Ḥājjī Khalīfa, *Kashf al-ẓunūn*, 1:721.

entry for *khilāf*. Rather, he sees *khilāf* as a subdiscipline of *jadāl* and mentions this *khilāf* within his entry on disputational theory. Of *‘ilm al-jadāl*, he says:

The Science of Disputation. A science through which the following is known: how to present legal proofs, how to refute doubt, impugn legal proofs (*qawādiḥ al-adilla*), and structure points in a *khilāf* debate. The science of disputation came about from *jadāl* which is a part of logic, but it is restricted to religious investigations. There are many methods of disputation, but the best of them (*ashbahuhā*) is al-‘Amīdī’s method.<sup>401</sup>

For Ibn al-Akfānī, it is not *khilāf* that is a religious science, but rather the science of disputation itself. He makes this point explicit in his entry, but it is also clear from his categorization. Ibn al-Akfānī’s book presents a clear hierarchy of the sciences: for him, *jadāl* belongs to the science of laws (*‘ilm al-nawāmīs*) or the legal sciences (*al-‘ulūm al-shar‘iyya*). These sciences, in turn, fall under what he calls the “the highest order of the religious sciences (*‘ilm a‘lā; al-‘ilm al-ilāhī*),” which itself is a part of “the speculative philosophical sciences (*al-‘ulūm al-ḥikmiyya al-naẓariyya*).” The speculative philosophical sciences themselves are a part of “philosophical sciences, or what is studied for its own sake (*al-‘ulūm al-ḥikmiyya; mā yakūnu maqṣūdān li-dhātihī*),” as opposed to the ancillary sciences.

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<sup>401</sup> Muḥammad ibn Ibrāhīm ibn Sā‘id al-Ansārī, Ibn al-Akfānī al-Ḥakīm al-Mutaṭayyib, *Irshād al-qāṣid ilā asnā al-maqāṣid fī anwā‘ al-‘ulūm*, ed. ‘Abd al-Mun‘im Muḥammad ‘Umar and Aḥmad Ḥilmī ‘Abd al-Raḥmān (Cairo: Dār al-Fikr al-‘Arabī, [1990]), 163; Januarius Justus Witkam, ed., *De Egyptische Arts Ibn al-Akfānī (gest. 749/1348) En Zijn Indeling Van de Wetenschappen* (Leiden: Ter Lugt Pers, 1989), 44, ll.580-83. This is a reference to the work of Rukn al-Dīn Muḥammad ibn Muḥammad al-‘Amīdī (d. 615/1218), a Central Asian scholar who wrote two works on legal disputation, *al-Ṭarīqa al-‘amīdiyyah fī-l-khilāf wa-l-jadāl* and *Irshād al-ṭarīqa*. See also the praise for al-‘Amīdī and his method in Ibn Khaldūn, *al-Muqaddima*, 3:33-34.

These three bibliographers present conceptions of both disputation and *khilāf* that are radically different. They present quite different histories, uses, and identities of both of these sciences. For Ḥājji Khalīfa, the technical term *khilāf* is of great importance. He devotes an entry to this discipline, but the identity of this discipline is interchangeable with that of disputation; they are equivalents to him, and they reside in what he understands as the substantive areas of the law.<sup>402</sup> Here, the legal is given precedence over the philosophical or the speculative. It is purely a branch of legal studies. For Ṭaşköprüzāde, they are distinct sciences, although they are both disciplines concerned with discovering truth. In this sense, they correspond to what both Miller and Young find to be the chief aim of early dialectical theory, a method for attaining and refining knowledge. He would certainly not approve of Ḥājji Khalīfa’s definition. Ṭaşköprüzāde laments the ignorance of those who conflate *khilāf* and *jadal*. As for Ibn al-Akfānī, he presents *jadal* as an important discipline, while *khilāf* is only subsumed by *jadal* entirely. For him, it is only *jadal* that is important, and it is important for its relationship to both law and philosophy.

Modern scholars have drawn connections between the three bibliographical works in large part because of shared passages between them. Witkam says “Ṭaşköprüzāde devised his own division of the sciences, but he incorporated much of Ibn al-Akfānī’s text within the framework of his [*Miftāḥ*].”<sup>403</sup> This statement is paralleled

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<sup>402</sup> This may result from his work’s vision of scholarship and scholarly life as entirely book-centered. *Kashf al-zunūn* focuses almost exclusively on texts as the primary form of intellectual capital, although such a focus is not necessarily indicative of Ottoman views of knowledge more broadly.

<sup>403</sup> Witkam, “Ibn al-Akfānī,” 40.

in Gerhard Endress’s study of encyclopedias in the Arabic tradition. Endress says that Ibn al-Akfānī’s work “became the model” for Ṭaşk pr z de because they “both present the ‘highest aim’, *al-maqşad al-asn *, attained by Muslim scholarship in the later Middle Ages in uniting both traditions, the Islamic and the Hellenistic.”<sup>404</sup> H jj  Khal fa later used Ṭaşk pr z de as a model for his own work. This ‘borrowing’ is detectable even in their discussions of *khil f* and *jadal*, in spite of the distinct approaches taken by each of the three authors. There are verbatim passages that are shared between all three works.

The most straightforward example of this borrowing is in H jj  Khal fa’s discussion of *jadal* which entry begins with a long quotation from Ṭaşk pr z de’s *Mift h al-sa’ da* and ends with the phrase “as in (*kadh  fi*) the *Mift h al-sa’ da*.”<sup>405</sup> H jj  Khal fa adds, however, that it is not far-fetched to say that ‘*ilm al-jadal* is the same thing as ‘*ilm al-mun zara*, the very statement lamented by Ṭaşk pr z de as ignorance in his *Mift h*. Another obvious borrowing is the phrase that disputation is a part of logic, although devoted primarily for religious sciences.<sup>406</sup>

The connection drawn by the bibliographers between *khil f* and *jadal* is framed largely in terms of debating difference between schools, although later books

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<sup>404</sup> Gerhard Endress, “The Cycle of Knowledge: Intellectual Traditions and Encyclopaedias of the Rational Sciences in Arabic Islamic Hellenism” in *Organizing Knowledge: Encyclopaedic Activities in the Pre-Eighteenth Century Islamic World*, ed. Gerhard Endress (Leiden; Boston: Brill, 2006), 133.

<sup>405</sup> H jj  Khal fa, *Kashf al-zun n*, 1:579-80.

<sup>406</sup> The phrase is found in all three texts, but not with identical wording. Ibn al-Akf n  says, “*al-jadal alladh  huwa a had ajz ’ al-mantiq lakinnahu khuşşisa bi-l-mab h th al-d niyya*” (163). In Ṭaşk pr z de, the phrase is “*al-jadal alladh  huwa a had ajz ’ mab h th al-mantiq lakinnahu khuşşisa bi-l-’ul m al-d niyya*” (1:281). H jj  Khal fa quotes this phrase in his entry on *jadal*, on 1:579. In his entry on *khil f*, he says, “*wa-huwa al-jadal alladh  huwa qism min al-mantiq ill  annahu khuşşisa bi-l-maq şid al-diniyya*” (1:721).

sometimes focus on disputed rulings within schools. ‘Alā’ al-Dīn Abū al-Ḥasan ‘Alī ibn Sulaymān al-Mardāwī’s (d. 885/1480-81) *al-Inṣāf fi ma‘rifat al-rājiḥ min al-khilāf ‘alā madhhab al-imām al-mubajjal Aḥmad ibn Ḥanbal* is a prime example of a work of *khilāf* written within a legal school. His book is concerned with explaining and clarifying the *khilāf* found in the *Muqni‘* of Muwaffaq al-Dīn Ibn Qudāmā (d. 620/1223). Al-Mardāwī’s interest lies in clarifying some of the conflicting opinions given by Ibn Qudāmā and explaining which ones are more reliable. He praises the *Muqni‘* as one of the “most useful and greatest” books in the Ḥanbalī school, “however, [Ibn Qudāmā] gives conflicting opinions on some issues without giving preference to either (*aṭlaqa fī ba‘ḍ al-masā’il al-khilāf min ghayr al-tarjīḥ*). Weak and sound opinions thus appear alike to those who contemplate this book (*fa-ashtabaha ‘alā al-nāzīr fīhi al-ḍa‘īf min al-ṣaḥīḥ*).”<sup>407</sup> Al-Mardāwī writes his book to clarify which opinions are dependable (*mu‘tamad, madhhab*) and which are not. Interestingly, in his introduction he gives a detailed explanation of the formulations that Ibn Qudāmā uses that lead to such confusions.<sup>408</sup> While *khilāf* could perhaps be a way of voicing and, through its association with disputation, resolving disagreements, not all disagreements could be resolved.

Thus far, this chapter has shown that the history of *furūq* as a genre seems to be found in *farq*’s past as a disputational technique; *furūq* seems to leave part of this argumentative history behind, something that cannot be said for *khilāf*. Nevertheless,

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<sup>407</sup> Alā’ al-Dīn Abū al-Ḥasan ‘Alī ibn Sulaymān Mardāwī, *al-Inṣāf fi ma‘rifat al-rājiḥ min al-khilāf ‘alā madhhab al-imām al-mubajjal Aḥmad ibn Ḥanbal*, ed. Muḥammad Ḥāmid al-Faḳī (Cairo: Maṭbū‘at al-Sunna al-Muḥammadiyyah, 1374/1955), 1:3.

<sup>408</sup> Mardāwī, *al-Inṣāf*, 1:4-13.

this section shows one way in which the two disciplines of *khilāf* and *jadal* evolved alongside of and by means of interactions with each other and in this regard they provide a useful parallel to the distinctions tradition. The following section will show how the disputational background of *farq* can be understood to be present, even if latent, in works of legal distinctions.

### **Disputation in *Furūq***

The earliest extant work on legal distinctions is likely *al-Farq wa-l-Jamʿ* by ʿAbd Allāh ibn Yūsuf al-Juwaynī, the father of Imām al-Ḥaramayn Abū al-Maʿālī al-Juwaynī. Abū Muḥammad ʿAbd Allāh ibn Yūsuf ibn ʿAbd Allāh al-Juwaynī was, as his name indicates, a scholar from Juwayn, a small town outside of Nishapur. He was born into a family of well-known scholars. His father, Yūsuf ibn ʿAbd Allāh, was a noted litterateur and his brother, Shaykh al-Ḥijāz Abū al-Ḥasan ʿAlī ibn Yūsuf, was a hadith transmitter who also wrote a book on Sufism, *Kitāb al-Salwah*. ʿAbd Allāh al-Juwaynī’s son, Abū al-Maʿālī ʿAbd al-Malik ibn ʿAbd Allāh, was a very well-known Shāfiʿī jurist and Ashʿarī theologian whose tenure living in Mecca and Medina earned him the nickname Imām al-Ḥaramayn (Imam of the Two Holy Cities).

ʿAbd Allāh al-Juwaynī began his education in Juwayn, where he studied *adab* as well as Islamic law (*fiqh*) with his father, and Islamic law with Abū Yaʿqūb al-Abīwardī (d. ca. 400/1010). From there, al-Juwaynī travelled to Nishapur where he continued his study of *fiqh* with Abū Ṭayyib Sahl ibn Muḥammad ibn Sulaymān al-Suʿlūkī (d. 369/980). Finally he went to Marw to finish his studies with Abū Bakr ʿAbd Allāh ibn Aḥmad al-Qaffāl al-Marwazī (d. 417/1026-27). Al-Juwaynī studied with al-Qaffāl until he mastered



the teachings of the Shāfi‘ī school (*al-madhhab*) and the points of disputation with other schools (*al-khilāf*). After this, he returned to Nishapur in 407/1016-17, and “he remained there teaching, giving fatwas and engaging in disputation, educating the general public and the learned (*qa‘ada li-l-tadrīs wa-l-fatwā wa-majlis al-munāzara wa-ta‘līm al-‘āmm wa-l-khāṣṣ*).”<sup>409</sup>

Al-Juwaynī, nicknamed Rukn al-Islām, the Cornerstone of Islam, was known for his great learning and teaching. He had many important students who are recorded in the biographical literature. Tāj al-Dīn al-Subkī (d. 769/1368), for instance, includes entries for ten scholars who studied with al-Juwaynī.<sup>410</sup> His most famous student, of course, was his own son, Abū al-Ma‘ālī al-Juwaynī, who, it turns out, wrote an early and important manual of disputation (*jadāl*).

It was not only in his scholarship and teaching that the elder al-Juwaynī was prominent, but also in his legal opinions. Al-Ḥāfiẓ Abū Ṣāliḥ al-Mu‘adhdhin said: “I washed his corpse, and when I turned him over in the coffin, I saw his right hand up to the armpit shining like the light of the moon. I was amazed (*fa-taḥayyartu*) and I said,

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<sup>409</sup> Muḥyī al-Dīn Zakariyyā’ Yaḥyā ibn Sharaf al-Nawawī, *Mukhtaṣar ṭabaqāt al-fuqahā’*, ed. ‘Adil ‘Abd al-Mawjūd and ‘Alī Mu‘awwiḍ (Beirut: Mu‘assasat al-Kutub al-Thaqāfiyya, 1995), 449. For information on ‘Abd Allāh al-Juwaynī’s biography, see: al-Nawawī, *Mukhtaṣar Ṭabaqāt al-fuqahā’*, 449-50; Tāj al-Dīn Abū Naṣr ‘Abd al-Wahhāb ibn ‘Alī al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubra*, 5:73-93; Jamāl al-Dīn ‘Abd al-Raḥīm ibn ‘Alī Al-Asnawī, *Ṭabaqāt al-shāfi‘iyya*. ed. Kamāl Yūsuf al-Ḥūt (Beirut: Dār al-Kutub al-‘Ilmiyya, 1407/1987), 1:165-67, no.305; and Taqī al-Dīn Abū Bakr ibn Aḥmad Ibn Qāḍī Shuhba, *Ṭabaqāt al-shāfi‘iyya*, ed. al-Ḥāfiẓ ‘Abd al-‘Alīm Khān (Beirut: Dār al-Kutub al-‘Ilmiyya, 1407[1986]), 1:210.

<sup>410</sup> I chose to focus on those scholars who have an entry in this work as a way of demonstrating the importance of al-Juwaynī’s students. For those listed in Ibn Qāḍī Shuhba’s dictionary of Shāfi‘ī jurists, I give the reference to their entries as well. Al-Juwaynī had many other students who are listed in his entry in these dictionaries.

‘This is the blessing (*baraka*) of his fatwas.’<sup>411</sup> In spite of such laurels, however, al-Juwaynī appears, after his death, to have been forgotten after his death outside of Central Asia.

From Abū Ishāq al-Shīrāzī’s (d. 476/1083) *Ṭabaqāt al-fuqahā’* we learn the surprising fact that information on the life and works of Shāfi‘ī jurists from Khurasan and Transoxiana did not travel widely during his lifetime. Al-Shīrāzī reports that “In Khurasan and Transoxiana, there are many scholars in our *madhhab* (*min aṣḥābinā khalq kathīr*), such as...Abū Muḥammad al-Juwaynī and others whose death dates are unknown to me (*lam yaḥḍurnī tārikh mawtihim*).”<sup>412</sup> Al-Shīrāzī, who spent most of life in the caliphal center of Baghdad, was a contemporary to these Central Asian scholars, but he could only conjure up the names of a few of these jurists and did not have much, if any, familiarity with their life and works. In spite of this unfamiliarity, al-Juwaynī and his Central Asian colleagues seem to have become better known in the following centuries.

The information that later sources provide about al-Juwaynī and other Central Asian jurists signals that information about them did become available and more current a few centuries after al-Shīrāzī. Al-Juwaynī came to occupy an important place in the Shāfi‘ī *madhhab*. It was perhaps this initial lack of biographical information about him that led to uncertainty surrounding his works. Although his work on legal distinctions is often mentioned in his biographies, there is a disagreement as to its title.

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<sup>411</sup> Ibn Qadī Shuhba, *Ṭabaqāt al-fuqahā’ al-shāfi‘iyya*, 1:210; al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā*, 5:75.

<sup>412</sup> Tāj al-Dīn al-Subkī, *Ṭabaqāt al-shāfi‘iyyah al-kubrā*, 4:87. Al-Subkī is citing Shīrāzī’s *Ṭabaqāt al-fuqahā’*. The quoted passage can be found in al-Shīrāzī, *Ṭabaqāt*, 132-33.

Biographies refer to it only as *Kitāb al-Furūq*, though the manuscript tradition records its title as *al-Jam‘ wa-l-farq*. It is unclear where this title comes from. Al-Juwaynī does not mention the title of his book in his introduction to this work.<sup>413</sup> Other works from the Shāfi‘ī legal school also refer to this book as *Kitāb al-Furūq*. The Shāfi‘ī jurist Muḥyī al-Dīn al-Nawawī (676/1277), for instance, refers repeatedly to this book in his *Majmū‘* citing it as “*Kitāb al-Furūq*.”<sup>414</sup> Other jurists, such as Badr al-Dīn al-Zarkashī<sup>415</sup> and Jalāl al-Dīn al-Suyūṭī<sup>416</sup> refer to this work as *Kitāb al-Furūq*. In spite of this evidence, however, al-Muzaynī titles his edition of al-Juwaynī’s work *al-Jam‘ wa-l-farq* because this title is given on the majority of the manuscripts. According to ‘Abd al-Raḥmān al-Muzaynī, “What happened with al-Nawawī and others in their citations from this book and their calling it *al-Furūq* is essentially that the subject matter of the book made a greater impression than its title (*min qabil taghlīb mawḍū‘ al-kitāb ‘alā ismihi*).”<sup>417</sup> The tradition rightly considered it a work of *furūq*.

Al-Qaffāl, one of al-Juwaynī’s teachers, is mentioned in Ṭaṣköprüzāde’s *Miftāḥ al-sa‘āda* and Ḥājji Khalifa’s *Kashf al-zunūn*, in their discussions of *jadāl*. Ṭaṣköprüzāde says,

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<sup>413</sup> Al-Juwaynī, *al-Jam‘ wa-l-farq*, 1:37.

<sup>414</sup> Muḥyī al-Dīn al-Nawawī, *al-Majmū‘ Sharḥ al-Muhadhdhab*, no ed. (Beirut: Dār al-Fikr, 1996), 1:58, 1:100, 1:105, 1:164-65, 1:176, 1:193, 1:324, 1:406, 1:441, 1:450, 1:454, 1:466, 1:470, 1:508, 1:518, 1:528, 2:11, 2:38, 2:44, 2:68, 2:96, 2:109, 2:126, 2:145, 2:224-25, 2:236, 2:247, 2:327, 2:358, 2:398, 2:399, 2:425, 2:552, 3:88, 3:100, 5:189, 5:248, 5:261, 5:299, 5:412, 5:490, 7:148, 9:127, 11:259.

<sup>415</sup> Al-Zarkashī, *al-Manthūr*, 1:100, 1:143, 1:210, 1:211, 1:230, 1:244, 1:247, 1:256, 1:277, 2:165, 3:116, 3:198, 3:348-49.

<sup>416</sup> Jalāl al-Dīn al-Suyūṭī, *al-Ashbāḥ wa-l-naẓā‘ir fi qawā‘id wa furū‘ al-shāfi‘iyyah*, ed. ‘Abd al-Karīm al-Faḍīlī (Beirut: Dār al-Kutub al-‘Ilmiyya, 1411/1990), 116, 441.

<sup>417</sup> ‘Abd al-Raḥmān ibn Salāma ibn ‘Abd Allāh al-Muzaynī, “Introduction” to ‘Abd Allāh al-Juwaynī, *al-Jam‘ wa-l-farq*, ed. ‘Abd al-Raḥmān ibn Salāma ibn ‘Abd Allāh al-Muzaynī (Beirut; Cairo; Tunis: Dār al-Jīl, 1424/2004), 1:24.

“The first jurist to write about proper *jadal* (*al-jadal al-ḥasan*) was Abū Bakr Muḥammad ibn ‘Alī ibn Ismā‘īl al-Qaffāl al-Shāshī al-Shāfi‘ī.”<sup>418</sup> Perhaps relying on Ṭaṣköprüzāde, Ḥājjī Khalīfa also mentions al-Qaffāl as the first jurist to write on *jadal*.<sup>419</sup> Al-Juwaynī, then, studied law and *khilāf* with one of the earliest prominent jurists to write on *jadal* and so must have been quite familiar with disputation and its techniques, even though he did not write a book on the subject.<sup>420</sup>

In his explanation of the distinctions between seemingly contradictory laws in his *furūq* work, al-Juwaynī often follows his explanation of the distinction with a blueprint for a disputation. For example, in the fifth distinction in the chapter on purity, he says, “Some of the scholars in our school distinguished (*faṣala*) between mineral salt (*al-milḥ al-jabalī*) and sea salt (*al-milḥ al-mā‘ī*) dissolving in water. They hold that it is permissible to perform ablutions with water that has sea salt dissolved in it but it is not permissible with water that has mineral salt.”<sup>421</sup> Al-Juwaynī explains that the distinction rests on the underlying substance of the salt. Sea salt is coagulated water and is thus equivalent to water (*mā’ fī al-aṣl*). It is, therefore, pure. Mineral salt, however, is not made of water and is thus a polluting substance.<sup>422</sup>

After giving a detailed explanation of this idea and the legal distinction arising from the difference between these two kinds of salt, al-Juwaynī includes a brief example of dialectic, a discussion between someone challenging this view and someone

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<sup>418</sup> Ṭaṣköprüzāde, *Miftāh al-sa‘āda*, 1:282.

<sup>419</sup> Ḥājjī Khalīfa Çelebi, *Kashf al-zunūn*, 1:580.

<sup>420</sup> As noted above, his son did write such a book.

<sup>421</sup> ‘Abd Allāh al-Juwaynī, *al-Jam‘ wa-l-farq*, 1:56-57.

<sup>422</sup> ‘Abd Allāh al-Juwaynī, *al-Jam‘ wa-l-farq*, 1:57.

attempting to support it. “If someone says, ‘But even mineral salt is coagulated water (*māʾ inʿaqada*). All salt is just water in its essence (*mā min milḥ illā wa-l-māʾ aṣluhu*).’ We respond, ‘The matter is not all the same, as you have described it (*laysa al-amr ʿalā hādhihi al-jumla*)...’”<sup>423</sup> Al-Juwaynī thus inscribes dialectical argumentation into his discussion of a distinction. This is a simple argument, with one objection to al-Juwaynī’s claim and a counterobjection, but it nevertheless brings to the fore the disputational framework in which works of legal distinctions could be used. These mini-disputations feature regularly in al-Juwaynī’s book. In al-Juwaynī’s chapter on ritual purity, we find them in twenty-two of the 172 numbered distinctions. If we look closely at this short disputation, we can see that it tracks closely with the *farq* objection of the *jadāl*-theorists.

In the above discussion from the *Furūq*, the first term in the analogy would be the salt water. In terms of building a legal *qiyās*, the situation can be thought of as follows: the precedent (*aṣl*) is sea salt. The ruling (*ḥukm*) is that it is ritually pure. The legal rationale (*ʿilla*) for this ruling is that the sea salt is nothing more than water in a different physical state. In this comparison, then, the instant case (*farʿ*) is that of mountain salt. When one tries to apply the legal rationale (*ʿilla*) of the precedent to the instant case, it turns out to be inappropriate. Salt found in a cave is simply not water in a different physical state; legally speaking it is an entirely different substance. Therefore, the rationale is not found in the second case, the precedent ruling cannot

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<sup>423</sup> ʿAbd Allāh al-Juwaynī, *al-Jamʿ wa-l-farq*, 1:57.

apply to it, and the ruling for mountain salt becomes that it is not ritually pure, since it is not simply coagulated water.

As mentioned above in the discussion of dialectics, Imām al-Ḥaramayn al-Juwaynī stated that “asking about the first term in an analogy... is asking about a distinction,”<sup>424</sup> just as in this example of a distinction and mini-disputation. ‘Abd Allāh al-Juwaynī distinguishes between these two cases by implicitly appealing to a lack of applicability, what Imām al-Ḥaramayn al-Juwaynī refers to as “*‘adam al-ta’thīr*” in his manual of disputation. Similarly, when al-Bājī calls *farq*, “the most legal kind of objection,” he does this because it deals exclusively with the legal rationale (*‘illa*) underlying the legal rulings.<sup>425</sup> A disagreement and ensuing disputation about the lack of applicability of the effective cause in one ruling to another is exactly what is described in al-Juwaynī’s text.

One more example will illustrate the connection between books of *furūq* and dialectic. In this same chapter on purity, al-Juwaynī says, “If a person defecates (*qaḍā ḥājatahu*), then performs an ablution with sand (*tayammama*), then wipes themselves (*istanjā*), their ablution is not valid. Were, however, a person to defecate, perform an ablution with water, and then wipe themselves without touching the anus or vagina (*min ghayr mass al-farj*), their ablution is valid. Al-Shāfi‘ī took an explicit position in favor of both rulings (*al-mas’alatān manṣūṣatān*) in the recension of al-Rabī‘ ibn Sulaymān.”<sup>426</sup> In this situation, the distinction is being drawn between the normal

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<sup>424</sup> Imām al-Ḥaramayn al-Juwaynī, *Kāfiya*, 322, see also above page 136.

<sup>425</sup> Al-Bājī, *Minhāj*, 201, ¶456.

<sup>426</sup> ‘Abd Allāh al-Juwaynī, *al-Jam‘ wa-l-farq* 1:118.

ablutions, *al-wuḍūʿ*, and the special dispensation made for an ablution with sand, *tayammum*. The latter ablution is only allowed when there is not enough pure water available to perform the normal ablution, and, as a special dispensation, is not purifying in the same way that *wuḍūʿ* is. This, therefore, is the “clearest of the distinctions between them” according to al-Juwaynī. “*Wuḍūʿ* is more purifying (*aqwā*) and *tayammum* is less purifying (*aḍʿaf*).”<sup>427</sup> This distinction is clear, ritual purification with water is more purifying than a ritual purification with sand.

There is, however, another distinction between these two situations. *Tayammum* is only permissible where water cannot be found, and searching for water after the *tayammum* renders it ineffective. It can only be done when there is no water to be found, not as a substitute for finding water. Searching for water after the *tayammum* “voids his ablution, whether he finds water or not.” Searching for water does not void an ablution in cases of *wuḍūʿ*, since an ablution with water is routine and a lack of water was not an issue. This issue, however, is not necessarily so simple, and al-Juwaynī mentions a disagreement in this regard and provides the following example of a disputation.

If, however, someone says (*fā-in qāla qāʿil*), ‘Is it not sufficient to use rocks for wiping [i.e., and not have recourse to water]?’

We say, ‘Yes, but there are two kinds of required duties: an actual, required duty (*wājib mutaʿayyan*) and a substitute duty (*wājib mutamaththil*). A required duty, for example, is a rich person freeing a slave as a penance for a

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<sup>427</sup> ʿAbd Allāh al-Juwaynī, *al-Jamʿ wa-l-farq*, 1:18.

*ḡihār* divorce.<sup>428</sup> An example of a substitute duty is a rich person freeing a slave as a penance for breaking an oath. Both of these actions are characterized as required (*mawṣūf bi-l-wujūb*). Similarly, when a man defecates (*qaḡā al-rajul ḡājatahu*), the required duty is that he wipe himself with water, and the substitute duty is to do so with stones. If someone who has performed *tayammum* is then required to search for water because of an external impurity (*li-ḡukm al-najāsa al-khārija*), his *tayammum* becomes void.’

If someone then says, ‘Is it not the case that, were he to have completed his *tayammum* with an impurity on his backside, you would consider his *tayammum* void because of his having to search for water to clean this impurity?’

We reply, ‘This impurity is different than impurity from excrement, because the impurity from excrement is the one that originally necessitated the ablution, either *wuḡū*<sup>c</sup> or *tayammum*. Any impurity which necessitates an ablution is assigned a particular set of legal rules and is unlike any other (*wa-li-makānihā aḡkām makhṣūṣa laysat ka-ghayrihā*). Do you not agree that when he completes his *tayammum*, it is not permissible for him to begin his prayer as long as he does not wipe himself, but that he should begin his prayer with an impurity which was on his backside? This is the case, although many times we

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<sup>428</sup> *ḡihār* refers to a legally valid, but detestable form of divorce. The husband repudiates his wife by comparing her to his mother by uttering the formula “You are to me like my mother’s back (*anti ‘alayya ka-ḡahr ummi*).” With this formula, the husband causes an immediate divorce. Since this is a valid formula, the divorce takes hold, but since according to the jurists it is immoral, the husband is required to make penance.



would prefer he perform the prayer again at a later time (*a-lā tarā annahu idhā farigha min al-tayammum lam yajuz lahu al-shurūʿ fi al-ṣalāt mā lam yastanja wa-yashraʿ fi al-ṣalāt maʿa al-najāsa allatī ʿalā ṣahrihi wa-in kunnā naʿmuruhu fi baʿd al-mawāḍiʿ bi-qaḍāʾ tilka al-ṣalāt*).<sup>429</sup>

This second distinction between *wuḍūʿ* and *tayammum* is much more detailed. Because this distinction rests on a finer point of law than the basic status of these two ablutions, there is greater ground for disagreement. Indeed, the disagreement here rests not on any distinction between *wuḍūʿ* and *tayammum*, but rather on the ancillary issue of the impurities related to defecation and wiping the anus. The first objection reported by al-Juwaynī rests on the requirements for wiping the anus after defecation. Al-Juwaynī’s discussion of the distinction implies that water is required for this, and the objection is that water is not required, as using clean rocks can be sufficient. This would make al-Juwaynī’s distinction meaningless, since wiping does not necessarily require searching for water. Al-Juwaynī counters this objection, however, by creating a hierarchy of distinctions. He introduces the concept of *wājib mutamaththil*, a stand-in/substitute duty. Yes, one can sometimes wipe with rocks instead of water, but that is only when water is not available. This situation still calls for searching for water, which renders the *tayammum* void.

The final objection continues in a similar vein. The questioner notes that if someone performs *tayammum* with an impurity on his body, he would still have to search for water to clean this impurity eventually, but nevertheless the *tayammum* is

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<sup>429</sup> ʿAbd Allāh al-Juwaynī, *al-Jamʿ wa-l-farq*, 1:118-20.

valid. Implicit in this charge is that al-Juwaynī is contradicting himself in the way he treats *tayammum* and the search for water. The questioner has found an example in which the person who performs a valid *tayammum* was and still is in search of water, but it is a situation that does not render void his ablution. Al-Juwaynī responds to this by making a further distinction between these impurities. The impurity on your back can be, for ritual purposes, ignored for prayer if the affected person performs a *tayammum*. In other words, for the purposes at hand, he is considered legally pure in spite of the presence of actual impurity on his person. Therefore, the need to search for water is not urgent and this does not render his *tayammum* void. After defecation, however, the impurity that arises is directly a result of the defecation. It is the same act that both engenders the need for water for purification and, separately, the need for water for wiping. Since one act brings about both circumstances, and both require water, you cannot perform *tayammum* first and search for water later. One should perhaps search for water, use rocks for wiping, and then perform *tayammum*.

Again, connecting the disputation here with the descriptions of *farq* found in manuals of disputation is straightforward. The questioner puts in doubt the situation (*fasād al-waḍʿ*)<sup>430</sup> set up by ʿAbd Allāh al-Juwaynī. That is to say, he disagrees with the way that al-Juwaynī sets up this legal scenario and denies the distinction that al-Juwaynī has established. There is no requirement to search for water when wiping after defecation, he says implicitly. Al-Juwaynī counters this objection by explaining why the situation is, in fact, as he describes. The second objection is an attempt to draw out a

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<sup>430</sup> Imām al-Ḥaramayn al-Juwaynī, *Kāfiya*, 322.

contradiction (*naqḍ*) in al-Juwaynī's reasoning, another strategy found in the manuals of disputation discussed above. The questioner then mentions what he finds to be an equivalent situation with a divergent ruling, to show al-Juwaynī why he is wrong. Al-Juwaynī then distinguishes these two situations and overcomes this objection by showing the coherence in his thought and the lack of commensurability between these two kinds of impurity. This is nothing less than an example of *jadāl* at work, employed in a book of legal distinctions.

This text does not explain what the exact relationship is between actual legal disputations happening in scholastic contexts, manuals of legal disputation explaining the rules for holding and judging disputations, and the list of particular counter-objection *furūq* compiled by al-Juwaynī. Nevertheless, it is clear that he sees his book as contributing to an advanced and highly specialized kind of legal debate, one in which jurists have to defend any and all of the points held by their legal school. Al-Juwaynī even alludes to such a scenario at the beginning of his book. He states, “Legal issues may have similar appearances but different rulings (*masāʾil al-sharʿ rubbamā tatashābahu ṣuwaruhā wa-takhtalifu aḥkāmuhā*) because of legal rationales (*ʿilal*) that require different rulings.”<sup>431</sup> Al-Juwaynī also comments that his predecessors wrote some works “on this topic (*fī hādha al-bāb*)” but that it was restricted to a “very limited number of cases.”<sup>432</sup> This is to say, al-Juwaynī was not the first jurist to put together a book of legal distinctions; others wrote works on this topic as well. It was al-Juwaynī's goal, however,

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<sup>431</sup> ʿAbd Allāh al-Juwaynī, *al-Jamʿ wa-l-farq*, 1:37.

<sup>432</sup> ʿAbd Allāh al-Juwaynī, *al-Jamʿ wa-l-farq*, 1:37.

to be exhaustive, and in this he was most likely successful when one considers the legacy and popularity of his work.

## Conclusion

As seen in this chapter, the dialectical context in which Islamic law arose as a scholastic activity was instrumental in the rise of legal distinctions as a form of legal writing. As dialectic became more and more formalized and institutionalized, new forms and rules of argumentation developed. One such form of argumentation was the distinction (*farq*, *faṣl*). In disputation, positing a distinction was one of several formalized procedures for objecting to an opponent's statement. It was a particular way of locating and utilizing a potential contradiction in an opponent's reasoning, based on their reliance on specific rationales (*ʿilal*) in particular cases. It went right to the heart of the legal matter, and must therefore have proven to be a successful and powerful strategy in disputation. Books of legal distinctions incorporated much of the logic that went into the disputational *farq*. There are two key differences between these understandings of *farq*, however. First, while disputational *farq* was a particular procedure for debating, to be introduced at a certain point in the debate and to be countered in particular ways, works of *furūq* focused solely on the characterization of two laws as apparently contradictory. Secondly, disputational *farq* was a strategy for showing contradiction—a method to show an inconsistency—while books of legal *furūq* are written under the assumption that doctrine is internally consistent. In almost perfect opposition to disputational *farq*, books of *furūq* prove that there is no contradiction in the law, or, more specifically, in the rulings discussed in these works. Legal *furūq* likely arose first

as a blueprint for defending against *farq* in disputation, but quickly took on a literary and aesthetic life of its own.

This impetus for writing works of legal *furūq* stands in stark contrast to that behind another genre that arose from the disputational nature of early Islamic law, that of *khilāf*. *Khilāf* continues the argumentative style of disputation and the genre of *khilāf* is undergirded by the idea that the law, as developed within and between the legal schools, will inevitably lead to disagreement and contradiction. Authors of *khilāf* works might have particular understandings of what is correct and thus privilege one ruling or understanding over others, but those authors also lay bare the potential inconsistencies and disagreements found at the deeper level of legal justifications found in *fiqh*. Those inconsistencies, however, are exactly what legal *furūq* seeks to remedy.

## Chapter Four: The Logic of Legal Distinctions

In Chapter Two, we discussed the rise of distinctions as a concept in the Arabic intellectual tradition. In that chapter, we saw that distinctions arose as a concept based on, but distinct from that of ‘distinction.’ The use of the Arabic term *furūq*, in the plural, signals a different logic from that of *farq* (distinction) in the singular. The change from *farq* to *furūq* was traced in part by looking at the titles of books in various fields, particularly lexicography. Books titled *farq* and *furūq* both dealt with synonyms, but each word signalled a different conceptual approach. *Farq* books were organized around broad conceptual groupings—such as the parts of the body or the stages of the life-cycle. Synonyms in books of *farq* are then distinguished based on their applicability to the conceptual grouping. *Furūq* books, on the other hand, directly compare apparent synonyms to tease out the minute differences between them. The organization of these two styles of books is radically different and this difference in organization results in a different logic for discussing synonymy, or the the lack of synonymy between near-synonyms.

Chapter Two explored the difference between these two approaches and the correlation between the use of *farq* or *furūq* in the title and the organization of a book. The different logic inherent in each approach was mentioned, but discussed only briefly. The present chapter explores the logic particular to books of lexicographical and legal distinctions, to show the conceptual difference between these two applications of distinctions-thinking. *Furūq* as a term for comparison emerged in the fourth/tenth century. This chapter also explores this connection between

lexicographic and legal distinctions further. Here, I interrogate the general logic at work in each of these disciplines and show how these two kinds of distinctions are fundamentally different. While similar motivations may lie behind the emergence of books of *furūq*, the way they emerged involved different kinds of intellectual activities. The logic of legal distinctions, of course, is evidenced almost exclusively in books of legal distinctions. Therefore, this chapter ends by tracing the rise of the legal genre and outlining its contours.

This difference between the singular and plural use of the term ‘distinction’ is all the more relevant for legal distinctions, where the singular, *farq*, is routinely used to signify an applied linguistic distinction while the plural, *furūq*, is used almost exclusively to denote legal distinctions, because legal distinctions, *furūq*, operate with a logic particular to them and distinct from that of distinctions in lexicography. The difference between *farq* and *furūq* is not simply the difference between a word in the singular and a word in the plural, the difference is similar to that between a book of legal theory (*uṣūl al-fiqh*) and a discussion of one specific tool of legal reasoning (*aṣl*).<sup>433</sup> There is, of course, a relationship between legal theory and legal-theoretical tools of reasoning, not only in terms of content, but even, etymologically, just as with distinctions. A work on *uṣūl al-fiqh*, however, treats the subject of legal theory broadly, while a treatment of one precept, such as analogy, looks at the function and operation

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<sup>433</sup> See Devin Stewart, “Muḥammad b. Dāʿūd al-Zāhirī’s Manual of Jurisprudence, *al-Wuṣūl ilā maʿrifat al-uṣūl*” in *Studies in Islamic Legal Theory*, ed. Bernard Weiss, 99-158 (Leiden; Boston: Brill, 2002).

of one such tool for legal thinking. It is therefore worth understanding the difference between a legal distinction (*al-farq al-fiqhī*) and legal distinctions (*al-furūq al-fiqhiyya*).

Chapter Two also contained a discussion of what I term applied linguistic distinctions, that is, a distinction based on the lexicographic model, such as the work by Ibn Rajab al-Ḥanbalī, *al-Farq bayn al-naṣīḥa wa-l-taʿyīr*, or Ibn Taymiyya's (728/1328) *al-Farq bayn al-ḥadd wa-l-taʿzīr*. Works such as these are not actually about laws, they are about legal concepts.<sup>434</sup> As such, they might explain what each of these words means in its plain-sense meaning or normal usage (*fī al-lughā, lughatan*) and in its technical meaning. They can discuss the references in the Quran and the hadith that inform the legal meaning, and the kinds of instances in which those meanings might apply. As such, they do not explain the difference(s) between two laws or *farʿs* or *ḥukms*. Instead, these works seek to distinguish between technical terms within Islamic law; these epistles are applied linguistic *furūq*. They compare and contrast technical vocabulary, and the discussion hinges on meaning, technical and general, and the understanding of specific terms within the realm of law. While these lexical distinctions are preserved within the realm of *fiqh*, the works in question nonetheless explore a difference in terminology and not a distinction drawn between two legal rules.

On the other hand, books on legal *furūq* do not adopt this lexical framework and instead use a legal framework whereby laws take the place of words. It is not that the

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<sup>434</sup> Among the many kinds of treatises devoted to one particular distinction, there are many on the distinction between bribes and gifts. See, for instance, ʿAbd al-Ghanī al-Nābulusī, *Taḥqīq al-qāḍiyya fī al-farq bayn al-riṣwa wa-l-ḥadiya*, eds. ʿAlī Muḥammad Muʿawwaḍ and ʿĀdil Aḥmad ʿAbd al-Mawjūd (Cairo: Maktabat al-Zahrāʾ, 1412/1991).



reasoning of a lexical distinction is applied in a legal realm, but rather that the concept of “distinction” itself is transformed. In a linguistic distinction, two signifiers are juxtaposed and their true signifieds, as opposed to their assumed signifieds, are explained. It is in this explanation of the true signifieds that the distinction between the two signifiers becomes clear. The existence of minute distinctions was easily grasped within the field of Arabic language. It was, after all, God’s perfect creation, and the existence of synonyms therein could be seen as unnecessary redundancies, a blemish on God’s creation. Lexicographic distinctions allowed for the creation of important differentiation in language, such that each supposed synonym complemented and expanded the semantic scope of the language, rather than simply overlapping with other similar words. But Arabic was not God’s *only* perfect creation, so the concept must be translatable to the field of Islamic law, another of God’s perfect creations. Arabic grammar and Islamic law are the two matrices of laws that God created for the world and they should be mutually relatable, even if not entirely equivalent.

A legal distinction does not contrast two signifiers, but rather two legal problems or rulings. They are not signifiers that can refer to a particular signified that can be explained linguistically. The legal rulings themselves have to be unpacked and the particularities of the situations to which they refer have to be explained. The explanation of the situation which gives rise to the legal ruling and of the rationale that connects that situation to that ruling clarifies the distinction between the two rulings. The reasoning used reflects essential differences between legal categories which undergird the two different legal problems. These categories might not be readily

apparent in the ruling itself, but once they are brought to light by the author's explanation, the distinction at issue becomes readily apparent. It is in this sense that I mean that the concept of a distinction is transformed. It is not simply the comparison of two linguistic definitions, but rather the comparison of underlying legal rationales. In lexicography, the distinction involves the relationship between signifier and signified, while in law, the distinction involves a situation, a ruling, and a rationale which connects the ruling to the situation.<sup>435</sup>

### **Understanding Lexicographic Distinctions**

To better understand how a lexicographic distinction works, we first need to understand the components that go into the comparison. A straightforward example of a linguistic distinction comes from Ibn Qutayba's *Adab al-kātib*, his manual for chancery secretaries discussed in Chapter Two. This work covers all of the material considered necessary for being a competent secretary, and much of this work is focused on proper writing. As part of this endeavor, Ibn Qutayba includes a discussion of lexicographic distinctions, the minute differences between supposed synonyms, since a good secretary should always use the precise and correct word for every circumstance. Most

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<sup>435</sup> It is worth explaining, in brief, the logic of a distinction in medicine. In medicine, the surface coherence between the two comparands invites a comparison. The comparison reveals that the underlying cause of the comparands is radically different. Once fully understood, the two symptoms are understood to be caused by different illnesses and share no more than a mere surface coherence. In this regard, they may be seen as somewhat similar to legal distinctions. Our analysis of distinctions in medicine, differential diagnostics, relies entirely on one book with dubious attribution. While intriguing, more evidence of the spread and chronology of differential diagnostics is needed before drawing strong conclusions about its role in the history of legal distinctions.

of the elements of this comparison go unstated by Ibn Qutayba, but they are crucial for understanding the intellectual work lying behind this comparison. In this example, while discussing lexicographic distinctions related to the human body, Ibn Qutayba discusses two words that are apparently widely thought to be synonyms for the word “skin” (*jild*): *adama* and *bashara*.

The visible side of a person’s skin—from his head and the rest of his body—is called *bashara*, and the interior side is called *adama*.<sup>436</sup>

This distinction compares two signifiers, *bashara* and *adama*. The general signified for both of these words is skin (*jild*). Although Ibn Qutayba attempts to show that the two words at issue are not actually synonymous, the comparison depends on a pre-existing idea of complete synonymy. This assumption of equivalence is what suggests comparison. The first component of this analysis rests on the supposed conflation of the terms, that is, as referring to the same referent.

In addition to the general concept being discussed—in this case skin—linguistic distinctions present two near-synonyms that refer to different varieties subsumed under the general concept. The author of a work on lexicographic distinctions clears up the confusion of the referents through exposition. In this case, Ibn Qutayba resolves the confusion between the two words *adama* and *bashara*. He explains exactly what each one means and the reader understands that they in fact refer to different specific

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<sup>436</sup> Abū Muḥammad ‘Abd Allāh ibn Muslim Ibn Qutayba, *Adab al-kātib*, ed. Muḥammad al-Dālī (Beirut: Mu’assasat al-Risāla, 1981), 144.

referents. On understanding this, the total synonymy of these words fades and the reader understands that they are in fact, not true synonyms, only partially so.

The same analysis can be applied to the lexicographic pairs discussed in Abū Hilāl al-ʿAskarī's *al-Furūq al-lughawiyya*. He says:

The distinction between *mithl* and *naẓīr*: Two *mithls* are fully complementary in their essence (*takāfaʿā fī al-dhāt*) as mentioned above.<sup>437</sup> A *naẓīr*, meanwhile, is that which corresponds to another in regards to similar actions of which they are capable (*al-naẓīr mā qābala naẓīrahu fī jins afʿālihi wa-huwa mutamakkin minhā*). For example, a grammarian (*al-naḥwī*) is the *naẓīr* of another grammarian, even if what they say or write about grammar is different (*wa-in lam yakun lahu mithl kalāmihi fī al-naḥw aw kutubihi fīhi*). It is not correct to say, “a grammarian is a *mithl* of another grammarian (*wa-lā yuqāl al-naḥwī mithl al-naḥwī*),” because equivalence (*tamāthul*) refers, in reality, to the most characteristic attributes which are the essence (*li-anna al-tamāthul yakūn ḥaqīqatan fī akḥaṣṣ al-awṣāf wa-huwa al-dhāt*).<sup>438</sup>

In this situation, both the words *mithl* and *naẓīr* are the signifiers. These two words are used to refer to equivalence or interchangeability, which is the general idea signified. This is the overarching concept linking the two words together. The distinction between them is not as straightforward as that between *adama* and *bashara*.

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<sup>437</sup> Here, al-ʿAskarī is referring to his first discussion of the meaning of the word. There, al-ʿAskarī says of *mithl* “Two *mithls* are two things that are equivalent in their essence (*al-mithlayn mā takāfaʿa fī al-dhāt*)” (154).

<sup>438</sup> Abu Hilāl al-ʿAskarī, *al-Furūq*, 155.

Nevertheless, Abū Hilāl says, they are indeed different. *Mithl*, which he describes briefly, refers to an equivalence in the very essence of a thing. In other words, two different oranges can be said to be the *mithl* of each other since they are equivalent in their essence. They are both oranges and equivalent in this regard. They may be different sizes or have ripened to different levels but they are both oranges. A *naẓīr*, however, is a resemblance between two things, one of which can fulfill the function of the other; *naẓīr* refers to a superficial or functional, not essential equivalence.

In Abū Hilāl's example, a grammarian is the *naẓīr* of another grammarian since they have equivalent training and qualifications. One can perform the function of the other, generally speaking; i.e. they are functionally equivalent even if their particular scholarly ideas or output differ. They are not *mithl*, however, since each grammarian is a different soul and a different being; their essences are not interchangeable. Thus, *naẓīr* and *mithl* are quite different words, even if they may appear to mean something similar or refer to the same thing. They are not really synonyms. Linguistic distinctions function through the combination of three signifieds, one general and two specific. Two are expressed explicitly while one is implied through the comparison. With these elements in place, the author then explains each of these items so that the difference between the signifiers is made clear. The close relationship between the three signifieds is real; while they are not identical, the difference between them is subtle.

Resonances of such a framework, in which the structure of linguistic and legal relations are seen to be highly congruent, can also be found in works of *uṣūl al-fiqh*. Éric Chaumont argues that this is one of the foundations upon which Abū Ishāq al-Shīrāzī bases his *al-Luma' fī uṣūl al-fiqh*. "In a word, the language of legal discourse is formally

identical to the language of the Arabs.”<sup>439</sup> The legal *furūq* provide another window into how jurists relate the fields of grammar and Islamic law. Chaumont’s comparison involves discursive similarities between law and grammar. The example of comparative *furūq*, however, allows for a one-to-one comparison of the structure of legal and grammatical tools of reasoning, and it is instructive, in this regard, to compare the assumptions underlying lexicographic and legal distinctions.

I showed in Chapter Three that the genre of legal distinctions arises, in part, as an extension and continuation of the disputational technique of distinction. Distinction as a method for objecting in formal disputations was specific to the field of legal disputation, with al-Bājī going as far as to call it “the most legal of objections.”<sup>440</sup> This might explain the intellectual background behind legal distinctions, but it raises the question of the relationship between legal disputation and distinctions writing in disciplines other than law. Writing about subtle but important distinctions between related elements arose slightly earlier in lexicography than it did in law. The known interrelations between law and lexicography suggest that there were relationships and exchange between these disciplines beyond what appears in the historical record.

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<sup>439</sup> Éric Chaumont, Introduction to *Kitāb al-Luma‘ fī uṣūl al-fiqh; le Livre des Rais illuminant les fondements de la compréhension de la Loi; Traité de théorie légale musulmane*, trans. Éric Chaumont (Berkeley, Robbins Collection, 1999), p. 23

<sup>440</sup> Al-Bājī, *al-Minhāj*, 201 par. 456.

## Understanding Legal Distinctions

These same relationships are not found in the comparisons known as legal distinctions. Legal distinctions function through the comparison of two laws which are, in reality, wholly separate. A legal distinction differentiates two laws that are superficially similar, but actually quite disparate. The potential contradiction is resolved once the reader understands how the contrasted laws are only similar in appearance but apply to completely different situations. Any potential confusion between them is a result of not understanding the reasoning behind the law, which is what the distinction explains. An example from As‘ad al-Karābīsī’s *Kitāb al-Furūq* helps to illustrate this point.

Abū Ḥanīfa says, “If a worm (*dūda*) exits the body through one of the two excretory passages, the anus or the urethra (*aḥad al-sabīlayn*), it nullifies a minor ablution (*yantaqīḍ al-wuḍū‘*). If it exits through a wound, however, it does not.”

The distinction is that the worm is always somewhat moist (*lā yakhlū min qalīl billa takūn ma‘ahā wa-taṣḥabuhā*) and this moisture is slightly impure (*qalīl najāsa*). Slight impurity, if it exits the body through one of the two passages, nullifies a minor ablution. As for a worm exiting through a wound, it is also always somewhat moist. This moisture, too, is slightly impure (*najāsa qalīla*). Slight impurity, if it exits the body through somewhere other than one of two passages, does not nullify impurity. Further, the worm is an animal and is therefore assumed to be pure (*ṭāhir fī al-aṣl*). A pure thing, such as air (*ka-l-rīḥ*), if it exits through one of the two passages, necessarily nullifies a minor ablution (*awjaba naqḍ al-wuḍū‘*). If, however, it exits through somewhere other than one

of the two passages, it does not nullify a minor ablution, such as with tears and sweat (*ka-l-dam<sup>ʿ</sup> wa-l-<sup>ʿ</sup>irq*).

Muḥammad ibn Shujā<sup>ʿ</sup> [(d. 266/880)] distinguished between these cases as follows. The worm that exits through a wound is generated from flesh (*yatawalladu min al-laḥm*). Therefore, it is akin to a piece of flesh separating from the body without bleeding and not through the two passages. If such a thing were to happen, it would not nullify a minor ablution. The worm exiting through a wound is equivalent to a piece of skin detaching from the body without bleeding. As for a worm that exits from one of the two passages, however, it is generated from impurity (*yatawalladu min al-najāsa*). If only this impurity exited the body (*law kharajat bi-infirādhā*), it would invalidate a minor ablution. The same holds for whatever is generated from this impurity whenever it exits the body.<sup>441</sup>

A legal distinction is composed of two (or more) situations and their outcomes. These can be labelled Situation 1, Situation 2, Outcome 1, Outcome 2, and so on for each situation and outcome given. In this example, the two compared laws are about a worm exiting the human body. Situation 1 is a worm exiting the body through one of the two passages, the urethra or the anus; Situation 2 is a worm exiting the body through a wound. These are the situations which resemble each other, what is referred to in Arabic as *tashābaha fī al-ṣūra* (similarity in form), in other words, the similarity that gives rise to comparison. The potential contradiction lies in the outcomes. In Outcome

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<sup>441</sup> As<sup>ʿ</sup>ad al-Karābīsī, *al-Furūq*, 1:34-35.



1, a minor ablution is nullified, but in Outcome 2, a minor ablution is not nullified. In this case, as happens often, the outcomes are opposites. If Situation 1 and Situation 2 are indeed similar, then certainly there is something perplexing about their outcomes being different, or indeed juxtaposed.

The distinction rests on the fact that a worm exiting through the urethra or anus is, legally, in no way comparable to one exiting through a wound. While one might think that these are analogous situations, this could only be the case if one were unaware of the particulars of the reasoning behind the substantive law. Once that reasoning is made clear, any potential confusion between these two laws is resolved. The comparison carried out by As‘ad al-Karābīsī is thus unlike the comparisons seen in lexicographical distinctions in which the compared words are ultimately similar. As‘ad al-Karābīsī includes two different ways of distinguishing between these two cases. In both, however, the lesson to be learned is that these cases are not analogous and cannot be treated in a similar fashion. In some way, the confusion that leads these cases to look the same is the result of a lack of knowledge of the underlying rationale of the two rulings. In order to resolve the confusion, the reader must understand the reasoning that generates the rules. Lexicographic distinctions are grouped together based on a shared general signification between two signifiers. The difference lies in the specific signification between the two. In a sense, however, it is correct to group the two signifiers together. Legal distinctions explain why it is wrong to group two such situations together.

One more example will highlight the kind of reasoning at work in legal distinctions. This distinction also comes from As‘ad al-Karābīsī’s text:

Someone gifts a female slave to someone else, and the donee wishes to return the slave. He says, “You gifted her to me when she was a minor, but now she has come of age and increased in value.” If the donor contradicts him (*kadhhabahu*), the presumption is in favor of the donor (*al-qawl qawl al-wāhib*).

However, had the gift been land the situation would be different. The donee says, “You gifted it to me and it was barren and empty (*ṣahrāʾ*), but I planted in it and built some structures on it (*gharastu fihā wa-banaytu*).” If the donor contradicts him, the presumption is in favor of the donee.<sup>442</sup>

The common legal act that ties both of the situations together is a gift that the donee then wishes to return. To be precise, Situation A involves the court proceeding in which testimony is elicited concerning return of the gift of a female slave, while Situation B is a proceeding eliciting testimony about the return of a gift of land.<sup>443</sup> It appears initially that the two situations are identical, since they both involve testimony concerning the return of a gift. The outcomes nevertheless tell a different story. Outcome A is that the testimony of the donor of the girl should be accepted over that of the donee while Outcome B is that the testimony of the donee of the land should be accepted over that of the donor. Again, as with the example above, each outcome is the mirror opposite of the other. The discussion of the distinction will shed light on why

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<sup>442</sup> Asʿad al-Karābīsī, *al-Furūq*, 2:49.

<sup>443</sup> It seems likely that there is a missing fact here, namely that the donee in each case wants compensation for the return of the gift since he claims that what he is returning is more than what he got.

this seeming contradiction exists. Again, the solution lies in the underlying legal reasoning behind the two situations.

Al-Karābīsī continues:

The distinction is that, in the case of the female slave, the gift itself (*al-ʿayn*) is one thing. The proof of this is that equating the value of the gift (*thaman*) to the gift itself is invalid. He did not claim it was gift of two things, but rather he is claiming that he was gifted one thing, and he is claiming the right to return the goods exchanged in this transaction. The plain-sense meaning of the contract grants him the right to return the good, therefore if he wants to nullify this right, he should not be believed.

Land is not like this, because it constitutes a gift of two things, therefore one of them can be singled out as the gift such that he can claim the gift in regard to two things, but only affirm the gift of one of the two of them. There is no obvious fact that contradicts his testimony in regard to singling out one of the two as the gift, since it was possible to have built and planted there in that time. Because of this, the presumption goes to the donor. It is like the following situation. The donee says, “You have gifted me (*wahabta minnī*) both of these slaves,” but the donor replies, “No, I have gifted you only one of them.” In this situation, the presumption goes to the donor. This situation with the two slaves is like the situation with the gift of land.<sup>444</sup>

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<sup>444</sup> Asʿad al-Karābīsī, *al-Furūq*, 2:49.

Here, we see that the gift contract in each situation is different. There is not simply one law that applies to gifts, but rather the particular thing gifted impacts the way that the contract is construed, even if this contract exists only implicitly. The gift contract for a slave woman is a contract for one thing, the slave. It is therefore clear exactly what the gift was intended to be, even if it was underspecified by the gifter. The integral unity of the slave leaves no room for doubt as to this intention. In the case of land, however, the gift is not quite so simple. A gift of land consists of the land on which structures can be built and the use of the land for agriculture. These can be considered two separate uses such that it introduces a level of ambiguity as to the exact thing intended to be gifted, especially if it is underspecified by the gifter. There is, therefore, a clear distinction between these situation A and B, and they are not similar, legally speaking. If they are not similar, then the contradiction in the outcomes is no longer a real contradiction. Once again, the law has been shown to be consistent.

Resolving seeming incongruities within one legal school was the methodology common to all works of legal distinctions. The resonances between the legal analysis found in these works and the theoretical explanations of *farq*-objections in handbooks of legal disputation are clear. Such resonances perhaps suggest what the inspiration for early books of legal distinctions was. This next section will attempt to explore the issue of the earliest work in the genre of *al-furūq al-fiqhiyya*.

## The Genre of Legal Distinctions<sup>445</sup>

A history of legal distinctions should begin before the development of the genre, looking at developments outside of the law, in lexicography and medicine, and at legal reasoning and legal dialectics into the fifth/eleventh century. It is at this point that legal distinctions clearly emerge. From this period, legal distinctions flourished as a literary genre for 500 years, until the tenth/sixteenth centuries with the works of Jalāl al-Dīn al-Suyūṭī, Ibn Nujaym, and Aḥmad al-Wansharīsī.

The genre of legal distinctions was relatively limited. I have found that only thirty-six works of legal distinctions were composed. All of the Sunni schools of law produced works of legal distinctions, although the Shāfi‘īs seem to have favored this genre compared to the other schools. I find the thirteen for the Shāfi‘ī school, nine Ḥanafī books, eight for the Mālikī, and four Ḥanbalī works. This is a total of thirty-four books. The two remaining works were by Shi‘i authors, one belonging to the Twelver tradition and the other to the Zaydī.

It is difficult to know when exactly the genre of legal distinctions began and what the first book in this genre was. We will attempt to explore this issue in the following section of this chapter. Although the earliest books were written around the third/ninth-fourth/tenth centuries, it was only in the fifth/eleventh century that the first golden age of legal distinctions began; it was the time in which the genre firmly established itself in the repertoire of legal literature. Ten new books were produced and

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<sup>445</sup> A more detailed discussion of this history, with full documentation, can be found in Chapter Six and Appendix I of the present study.

the Shāfi‘ī *madhhab* accounted for five of these. The distinctions books written in this century include *al-Jam‘ wa-l-farq* by ‘Abd Allāh ibn Yūsuf al-Juwaynī, *al-Mu‘āyāt* by Abū al-‘Abbās Aḥmad al-Jurjānī (d. 482/1089-90), *al-Nukat wa-l-furūq li-masā’il al-mudawwana* by ‘Abd al-Ḥaqq al-Ṣiqillī. These works signal their adherence to the genre of distinctions through their titles and introductions. The biobibliographic literature remembers all of these as works of legal distinctions, as does the material record.<sup>446</sup> Moreso, these books in large part resemble later books of legal distinctions; that is to say, the works of the fifth/eleventh century set the norms that later books of legal distinctions were to follow.

After the activity of the fifth/eleventh century, the sixth/twelfth century saw only one book written on legal distinctions, *Kitāb al-Furūq* by Abū al-Muẓaffar As‘ad ibn Muḥammad ibn al-Ḥusayn al-Naysābūrī al-Karābīsī al-Ḥanafī. This was the first cornerstone work of legal distinctions for the Ḥanafī school. As‘ad al-Karābīsī was clearly remembered for having authored this work—indeed this book was the primary reason for which he is mentioned in the biographical literature—and the work appears to have been important and widespread historically.

The seventh/thirteenth century heralded a second peak in the composition of legal *furūq* works that lasted through the eighth/fourteenth century. Of note, it was only in the seventh/thirteenth century that the Ḥanbalī school produced its first works of legal distinctions, *al-Furūq fī al-masā’il al-fiqhiyya* by Ibn Surūr al-Maqdisī and *al-Furūq* by Ibn Sunayna. In fact, all of the Ḥanbalī works of legal distinctions until the twentieth

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<sup>446</sup> In fact, manuscripts of the books by al-Juwaynī and al-Jurjānī often refer to the books as *Kitāb al-Furūq*.

century were written in this two-hundred year period. In addition to the book by Ibn Sunayna, *al-Furūq* by al-Zarīrānī (d. 741/1341) was the most important of the Ḥanbalī works, notwithstanding that fact that it exists only as a unicum. The Mālikī scholar Shihāb al-Dīn al-Qarāfī also wrote his work of legal distinctions, *Anwār al-burūq fī anwāʾ al-furūq*.<sup>447</sup> Al-Qarāfī’s book is probably the most well-known book of this genre, although it does not conform strictly to the strictures of the genre.<sup>448</sup> The Ḥanafī scholar Aḥmad ibn ‘Ubayd Allāh al-Maḥbūbī, also known as Ṣadr al-Sharī‘a al-Awwal, wrote his *Talqīh al-‘uqūl fī furūq al-manqūl* in the seventh/thirteenth century. The *Talqīh* seems to have been the most widely read premodern Ḥanafī work of legal distinctions, directly influencing the chapter on distinctions in Ibn Nujaym’s *al-Ashbāh wa-l-naẓā’ir*. Towards the end of the second peak, the Shāfi‘ī jurist Jamāl al-Dīn al-Asnawī composed his *Maṭāli‘ al-daqa’iq fī tahrīr al-jawāmi‘ wa-l-fawāriq*, the final work devoted exclusively to legal distinctions by a Shāfi‘ī scholar.

On the one hand, Mamluk Cairo emerged as a clear center for distinctions writing during these two centuries. Al-Qarāfī and al-Asnawī both lived in Cairo, as did many other less prominent jurists who composed works of legal distinctions. At the same time, however, the genre of legal distinctions had, by this time, spread across the Muslim world. It was in the eighth/fourteenth century that the Zaydī scholar ‘Alī ibn Yaḥyā ibn Rāshid al-Washlī al-Zaydī al-Yamanī wrote his *al-Jam‘ wa-l-farq*. The Ḥanbalī

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<sup>447</sup> This title can be translated as “The Flashes of Lightning in the Tempest of Distinctions.” The title is sometimes given as *Anwār al-burūq fī anwāʾ al-furūq*, The Flashes of Lightning Regarding the Different Kinds of Distinctions.

<sup>448</sup> Indeed, this work may not actually be a work of legal distinctions, in spite of its title. See the discussion in Chapter Six, pp. 316-17.

works were written by scholars based in Damascus, known as well as a center of Ḥanbalī learning. The writing of distinctions was most prominent in the greatest intellectual centers.

After this peak of activity, the ninth/fifteenth century saw only two new works of legal distinctions, one by the well-known Andalusī jurist al-Mawwāq and another by an otherwise unknown scholar Shaykh Bāyazīd ibn Isrāʾīl ibn Ḥājji Dāwūd Marghāyatī(?). The tenth/sixteenth century saw the end of premodern writing on legal distinctions. In a way, Jalāl al-Dīn al-Suyūṭī's *al-Ashbāh wa-l-naẓāʾir* signalled the transformation of writing on legal distinctions. *Al-Ashbāh wa-l-naẓāʾir* is a work offering a general overview of Islamic law. By dedicating the sixth chapter of this work to legal distinctions, al-Suyūṭī shows legal distinctions as a central component of Islamic legal knowledge. Ibn Nujaym al-Miṣrī followed al-Suyūṭī's model in writing his own book entitled *al-Ashbāh wa-l-naẓāʾir*. In addition to these two works, Aḥmad al-Wansharīsī's composed his *ʿIddat al-burūq* during this century. Al-Wansharīsī's was the last new work dedicated to legal distinctions until ʿAbd al-Raḥmān al-Saʿdī wrote his work on Ḥanbalī distinctions in the early 20th century.<sup>449</sup>

My research has also found three more works of legal distinctions that cannot easily be dated. One of these is a Mālikī work written by Muḥammad ibn Yūsuf al-Andalusī al-Anṣārī al-Mālikī. This author shares a name with al-Mawwāq, but it is not clear that the unicum manuscript of this undated work should actually be attributed to

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<sup>449</sup> ʿAbd al-Raḥmān ibn Nāṣir al-Saʿdī al-Najdī, *Al-Qawāʿid wa-l-uṣūl al-jāmiʿa wa-l-furūq wa-l-taqāsīm al-badīʿa al-nāfiʿa* (Riyad: Maṭbaʿat al-Madanīf, 1956).



al-Mawwāq, in part because there is another Mālikī jurist by the name of Muḥammad ibn Yūsuf who was known to have written a work of legal distinctions.<sup>450</sup> I have also found two Ḥanafī works, both in multiple manuscripts, that have an unclear attribution. Since they are both titled *Kitāb al-Furūq*, I refer to them as *Furūq-A* and *Furūq-B*. The attribution of *Furūq-A* is less clear than that of *Furūq-B*, which is often attributed to a scholar named Najm al-Dīn al-Naysābūrī. The prevalence of both *Furūq-A* and *Furūq-B* in multiple manuscripts and in multiple libraries suggest that they played a role in the history of Islamic legal writing.

### **Early Books of Legal Distinctions**

The earliest history of legal distinctions is, unsurprisingly, complicated. In part, the earliest development of Islamic law was oral and pre-literary, and thus unfolded outside the contexts of books and book-writing. Much of this history remained unrecorded, developing instead as a lived, practiced tradition, the records of which were only written down later, too late to contain the information necessary for detailed historical work. Further, large-scale complex systems, such as Islamic law, undergo complicated processes of formalization. This process of formalization is not necessarily linear. It can feature many simultaneous changes which push or pull in different directions. It is important to keep this in mind to avoid reading tautologies into the sources.

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<sup>450</sup> This scholar is mentioned in Najm al-Dīn al-Ṭūfī, *ʿAlam al-jadhal*, 73.

A search for the development of a concept or a genre can easily fall prey to oversimplifications of discursive traditions. Rather than looking for and finding something resembling the mature tradition and identifying that something as the origin point, this dissertation identifies a confluence of forces that led into what became legal distinctions. By keeping in mind the contingency of discursive traditions, such as Islamic law, we have understood not only how law developed as a discipline, but also its interactions with broader intellectual and social trends. This methodology is inspired in part by Michel Foucault who “accept[s] the groupings that history suggests only to subject them at once to interrogation; to break them up and then to see whether they can be legitimately reformed.”<sup>451</sup> Through such questioning of traditions and their origins, we gain a better sense of what the tradition was, what it is, and how it came to be. Reinhart Koselleck uses a similar method, although for him, the important factor to understand is the temporality inherent in historical categories and events to understand “whatever differentiating conditions must enter so that concrete historical motion might be rendered visible.”<sup>452</sup> We can see this problematic at play in the emergence of legal distinctions as a novel genre in legal literature and the search for its beginnings, i.e. the first book(s) written in the genre of legal distinctions.

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<sup>451</sup> Michel Foucault, *The Archaeology of Knowledge*, trans. A. M. Sheridan Smith (London: Routledge, 2004), 29. Foucault's interrogation and breaking up of historically suggested groupings is an attempt to recover the processes and histories of discursive traditions, such as that of Islamic law and its constituent literary genres.

<sup>452</sup> Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, trans. Keith Tribe (New York: Columbia University Press, 2004), 95.

In the introduction to his edition of the *Kitāb al-Furūq* by As‘ad al-Karābīsī, Muḥammad Ṭammūm claims that the first book on legal distinctions was Muḥammad ibn al-Ḥasan al-Shaybānī’s (d. ca. 189/905) *al-Jāmi‘ al-kabīr*.<sup>453</sup> This claim is difficult to understand. On the one hand, this work is clearly not a work of legal distinctions; its contents do not resemble that of the works that self-identify as belonging to the genre of legal distinctions. On the other hand, we know that As‘ad al-Karābīsī’s text belongs to the distinctions genre in part because it is called “The Book of Legal Distinctions.” The title of al-Shaybānī’s text does not signal its adherence to this genre. Instead, its title, *al-Jāmi‘ al-kabīr*, The Large Comprehensive Book, is a marker of its attempts to cover what were the broad areas of Islamic law in the second/eighth century. In addition, its name is reminiscent of other works that attempt to encompass substantive law, such as *al-Mabsūt* (The Expansive Law Book). The similarity in title likely signals a similarity in content.

If we understand legal distinctions as both a technical term, describing a particular legal reasoning process, and a genre of Islamic legal writing, describing a way of organizing legal knowledge, al-Shaybānī’s text falls short of being a text within the legal distinctions genre. Even though al-Shaybānī includes some general discussion of legal material that made its way into books of legal distinction, such discussions occur as routine parts of detailed discussions of substantive law. In order to clearly explain laws there are times when potential confusion has to be clarified. This does not

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<sup>453</sup> Muḥammad Ṭammūm, “Introduction,” to As‘ad ibn Muḥammad al-Karābīsī, *Kitāb al-Furūq*, ed. Muḥammad Ṭammūm and ‘Abd al-Sattār Abū Ghudda (Kuwait: Wizārat al-Awqāf wa-l-Shu‘ūn al-Islāmiyya, 1402/1982), 1:8.

mean, however, that his book is a book of legal distinctions, *al-furūq al-fiqhiyya*. Al-Shaybānī's treatment of laws that look similar but are in fact distinct differs little from that of other early figures, such as al-Shāfi'ī or Saḥnūn. None of their works, however, are works of legal distinctions, they just happen to contain some discussions which distinguish the applicability of various laws.<sup>454</sup>

In his modern study of legal distinctions, Ya'qūb al-Bāḥusayn remarks that Ṭammūm's comment "contains some exaggeration."<sup>455</sup> This is because a discussion of differences between laws is not enough to qualify as a discussion of legal distinctions. The term 'distinctions,' *al-furūq*, became a term of art in the discipline of Islamic law, even though it remained underexplained in the medieval legal tradition, a peculiar fate for a technical term. Nevertheless, jurists do seem to have a very clear understanding of legal distinctions as a concept, what they are, and as a genre, a way of organizing and structuring books of legal distinctions. This shared understanding is apparent in books that situate themselves within the field of legal distinctions. They all contain direct comparisons of laws as discussed earlier in this chapter. Such works are all easily recognizable as belonging to the genre, although they sometimes fit more or less easily into that genre. Part of what makes a work of legal distinctions belong to this genre, however, is the inclusion of lists of legal distinctions, which, are, in addition to much

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<sup>454</sup> See Muḥammad ibn al-Ḥasan al-Shaybani *al-Jāmi' al-Kabīr*, ed. Abū al-Wafā' al-Afghānī (Hyderabad: Lajnat Iḥyā' al-Ma'ārif al-Nu'māniyyah, 1356[/1936]); Muḥammad ibn Idrīs Shāfi'ī *Kitāb al-Umm*, 11 vols., ed. Rif'at Fawzī 'Abd al-Muṭṭalib (Mansūra: Dar al-Wafā' li-l-Ṭibā'ah wa-l-Nashr wa-l-Tawzī', 2008); and Saḥnūn ibn Sa'īd al-Tanūkhī, *al-Mudawwana al-Kubrā*, ed. Aḥmad 'Abd al-Salām, 5 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 1415/1994).

<sup>455</sup> Al-Bāḥusayn, *al-Furūq al-Fiqhiyya*, 66.

else, direct legal comparisons. Direct comparisons of this kind are missing from al-Shaybānī's *al-Jāmi' al-kabīr*.

Al-Bāḥusayn understands legal distinctions as having developed in the process of formalization of the legal schools.<sup>456</sup> He claims to follow Ibn Khaldūn (d. 808/1406), who says that once “jurists had no way of performing independent judgement or analogy, they needed to compare apparently similar legal issues by assimilating them or differentiating them (*tanzīr al-masā'il fi al-ilḥāq wa-tafriqihā 'ind al-ishtibāh*).”<sup>457</sup> This is all that Ibn Khaldūn says about distinctions. His use of the term *tafriq* to mean distinction is interesting, but his lack of a fuller discussion limits our capacity to understand what exactly he means by it. His statement shares strong resonances with al-Zarkashī's statement that “law is either assimilating or distinguishing (*al-fiqh farq wa-jam'*).”<sup>458</sup> Ibn Khaldūn further seems to relate the occurrence of distinctions-like thinking to the so-called “closing of the gate of *ijtihād*.”<sup>459</sup> In this way, Ibn Khaldūn presents distinctions, and the lack thereof, as a way for jurists to continue legal reasoning in ways other than by means of *ijtihād*.

Relying on Ibn Khaldūn, al-Bāḥusayn identifies a cluster of early jurists as the first authors to write in this genre. These jurists are early, but all come after the legal eponyms and operate within the doctrinal boundaries of established schools of law.

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<sup>456</sup> Al-Bāḥusayn, *al-Furūq al-Fiqhiyya*, 61-67.

<sup>457</sup> Ibn Khaldūn, *Dīwān al-Mubtada' wa-l-khabar fi tārikh al-'arab wa-l-barbar wa-man 'āsharahum min dhawī al-sha'n al-akbar*, ed. Khalīl Shaḥāda (Beirut: Dār al-Fikr, 1408/1988), 1:568. See also Rosenthal's translation, Ibn Khaldun, *The Muqaddimah*, 2<sup>nd</sup> edition, trans by Franz Rosenthal, 3:13.

<sup>458</sup> Zarkashī, *al-Manthūr*, 1:69. It is striking that Ibn Khaldūn and al-Zarkashī, two contemporaries, used such different language to describe Islamic law in a similar way.

<sup>459</sup> See the discussion in the Chapter One, pp. 42-44.

According to al-Bāḥusayn, the tradition of legal distinctions began among Shāfiʿī and Ḥanafī scholars, specifically the Shāfiʿī jurists Ibn Surayj and al-Zubayr ibn Aḥmad al-Zubayrī (d. 317/929-930), as well as the Ḥanafī Abū al-Faḍl Muḥammad ibn Ṣāliḥ al-Karābīsī (d. ca. 322/934) as the authors of the first books of legal distinctions. Al-Bāḥusayn’s identification of these authors as the beginning of distinctions writing aligns with his claim that this genre developed during the formation of the legal schools. Christopher Melchert identified Ibn Surayj as the founder of the the Shāfiʿī legal school, and Abū al-Ḥasan al-Karkhī (d. 340/952) as that of the Ḥanafī school.<sup>460</sup> The earliest works identified by al-Bāḥusayn occur roughly within this period of school formalization identified by Melchert. Al-Bāḥusayn’s attributions also present problems, although different ones than those raised by Ṭammūm’s identification of Muḥammad ibn al-Ḥasan al-Shaybānī’s *al-Jāmiʿ al-kabīr* as the first work on distinctions. The attribution of books of legal distinctions to Ibn Surayj and al-Zubayr ibn Aḥmad is difficult to confirm since these works do not appear to have survived. The attribution of a work of legal distinctions to Muḥammad ibn Ṣāliḥ al-Karābīsī is also problematic, although a work attributed to him has survived. We will first look at the two Shāfiʿī jurists before moving on to the Ḥanafī scholar.<sup>461</sup>

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<sup>460</sup> See Christopher Melchert, *The Formation of the Sunni Schools of Law: 9<sup>th</sup> - 10<sup>th</sup> Centuries C.E.* (Leiden, New York: Brill, 1997).

<sup>461</sup> Abū al-Ḥasan ʿAlī ibn Aḥmad al-Nasawī (d. ca 420/1030) and al-Ḥakīm al-Tirmidhī are also credited with having written works of legal distinctions. The only mention of al-Nasawī is in Ibn al-Nadīm’s *al-Fihrist* (2.1:55); I have not found a mention of it in any book or biographical history of the Shāfiʿī school. Al-Ḥakīm al-Tirmidhī is occasionally credited in secondary literature with having composed a work of legal distinctions, but this is almost certainly a confusion surrounding his work of lexicographic distinctions, *al-Furūq wa-manʿ al-tarāduf*. See also the discussion in Chapter Six, p. 286.

Sources contemporaneous to Ibn Surayj do not mention his having written a book of legal distinctions. Abū Ishāq al-Shīrāzī (d. 476/1083) says that Ibn Surayj “wrote almost four-hundred books.”<sup>462</sup> Al-Shīrāzī’s book contains no discussion of the contents of these works or of Ibn Surayj’s particular legal opinions or contributions to the doctrine of the Shāfi‘ī school. Al-Shīrāzī also mentions that Ibn Surayj was famous for his debates (*munāzarāt*) with the Ṣāhirī jurist Abū Bakr ibn Dāwūd (d. 294/909).<sup>463</sup> This information offers no specific support for the idea that Ibn Surayj wrote a book called *Kitāb al-Furūq*. It is unlikely, of course, to find a source contemporaneous with Ibn Surayj that denies that he wrote a book of legal distinctions. Ibn Surayj was well-remembered for having participated in legal disputations with Abū Bakr ibn Dāwūd and, given the close relationship between *furūq* as a form of comparison within Islamic law and *farq* as a disputational technique in formal legal debates, it seems probable that Ibn Surayj would have utilized this kind of reasoning in his debates and perhaps his teaching.

Later sources do not add much information about his written oeuvre that supports the assertion of his having composed a work of legal distinctions. Tāj al-Dīn al-Subkī, in his biographical dictionary, tells us only that Ibn Surayj wrote two polemics against Ibn Dāwūd al-Ṣāhirī, one on analogical reasoning (*qiyās*) and another on legal positions held by Ibn Dāwūd but reputed by al-Shāfi‘ī.<sup>464</sup> These books on specific topics and possibly in disputational format are emblematic of early legal works. Such early

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<sup>462</sup> Al-Shīrāzī, *Ṭabaqāt al-fuqahā*<sup>2</sup>, 249.

<sup>463</sup> Al-Shīrāzī, *Ṭabaqāt al-fuqahā*<sup>2</sup>, 249

<sup>464</sup> Tāj al-Dīn al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā*, 2:23.

works do not yet evince the highly formal literary structures found in later works of Islamic law.<sup>465</sup> Al-Subkī does cite a lot of Ibn Surayj’s opinions, but nothing indicative of a book on legal distinctions.<sup>466</sup> Ibn Qāḍī Shuhba (d. 851/1448) says that Ibn Surayj’s output consisted of “promoting the *madhhab*, refuting its opponents, and deducing new laws from the books of Muḥammad ibn al-Ḥasan al-Shaybānī (*wa-farra‘a ‘alā kutub Muḥammad ibn al-Ḥasan*).”<sup>467</sup> Jamāl al-Dīn al-Asnawī adds that “I own a copy of his book (*kitābuhu*) entitled *al-Wadā‘i*,<sup>468</sup> as well as his commentary on (*taṣnīf‘alā*) al-Muzani’s *Mukhtaṣar* in which he answered questions that others had posed about this book.”<sup>469</sup> Ibn Kathīr mentions that Ibn Surayj “composed books in the *madhhab* and wrote legal digests (*ṣannafa fī al-madhhab wa-lakhhkhaṣahu*).”<sup>470</sup> Unsurprisingly for such an important figure, these historians all devote lengthy entries to Ibn Surayj, yet none of these sources mentioned attribute to Ibn Surayj a book of legal distinctions. When they give quotations from his work, it does not seem to come from a work recognizably about legal distinctions. From the biographical tradition and what remains of Ibn Surayj’s work, it seems unlikely that he wrote a book on legal distinctions.

There is a similar pattern in the biographies of al-Zubayr ibn Aḥmad. Abū Ishāq al-Shīrāzī mentions that he was blind and that he wrote many books (*lahu muṣannafāt*

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<sup>465</sup> See, for instance, Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993).

<sup>466</sup> Tāj al-Dīn al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā*, 3:21-38.

<sup>467</sup> Ibn Qāḍī Shuhba, *Ṭabaqāt al-Shāfi‘iyya*, 1:90-91.

<sup>468</sup> Aḥmad ibn ‘Umar Ibn Surayj, *al-Wadā‘i‘ li-manṣūṣ al-sharā‘i‘*, 2 vols., ed. Ṣāliḥ ibn ‘Abd Allāh ibn Ibrāhīm al-Duwayh (Saudi Arabic: no pub., 199-).

<sup>469</sup> Al-Asnawī, *Ṭabaqāt al-Shāfi‘iyya*, 1:316, no.593. Ḥājji Khalīfa mentions that Ibn Surayj’s *Kitāb al-Furūq* is his commentary on Muzanī’s *Mukhtaṣar* (2:1258).

<sup>470</sup> Ibn Kathīr, *Ṭabaqāt*, 1:194, the full entry is found in 1:193-196.



*kathira*), including *al-Kāfi*, *Kitāb al-Niyya*, *Kitāb Sitr al-‘awra*, *Kitāb al-Hadiyya*, *Kitāb al-Istishāra wa-l-istikhāra*, *Kitāb Riyādat al-muta‘allim*, and a *Kitāb al-Imāra*. Ibn Khallikān’s (d. 681/1282) entry on al-Zubayr has much of the same information, although he clarifies that *al-Kāfi* is a law book and adds that al-Zubayr ibn Aḥmad had “obscure opinions on legal issues (*wa-lahu fī al-madhhab wujūh gharība*).”<sup>471</sup> None of these works appears to be about legal distinctions.

Other sources, however, such as Ibn Qāḍī Shuhba, Tāj al-Dīn al-Subkī, and Jamāl al-Dīn al-Asnawī also attribute a book, *al-Muskit*, to al-Zubayr ibn Aḥmad.<sup>472</sup> *Al-Muskit*, in spite of its vague title, was considered by these historians to have been a work of legal distinctions, though it appears to be no longer extant and it is unclear whether they knew it first hand. As Ibn Qāḍī Shuhba states, “*al-Muskit*, like *al-Alghāz*, is hard to find (*wa-l- Muskit wa-l-Alghāz qalīl al-wujūd*).”<sup>473</sup> It is unclear whether Ibn Qāḍī Shuhba is also claiming that al-Zubayr ibn Aḥmad wrote a book of legal riddles entitled *al-Alghāz*, but nevertheless this does indicate that al-Zubayr’s *Muskit* was not an easy book to obtain.<sup>474</sup>

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<sup>471</sup> Ibn Khallikān, *Wafayāt al-a‘yān*, 2:313.

<sup>472</sup> The title of this works translates roughly as *The Book Which Silences Others*. It is quite an unusual title for a work. In fact, this is the only work with this title, as far as I am aware. It is likely that this book “silenced others” in formal disputations. There are, however, works with similar titles. See, for instance, the following works found in Ismā‘īl Bāshā al-Baghdādī’s *Hadiyyat al-‘arīfīn*: Muḥammad ibn Ishāq al-Ṣaymarī (d. 275/888)’s *al-Jawābāt al-Muskita* (2:19); Muḥammad ibn Mas‘ūd Ibn ‘Iyāsh (d. 320/932), *al-Ajwiba al-muskita* (2:32); Abū Ishāq Ibrāhīm al-Anbārī (d. 322/933-34) *Kitāb al-Jawābāt al-muskita* (1:5); and Abū Ḥāmid Muḥammad al-Ghazālī (d. 505/1111), *al-Ajwiba al-muskita ‘an al-as‘ila al-mubhita* (2:79); ‘Ubayd Ibn Dhakwān al-Baghdādī’s (d. ?) *al-Jawāb al-muskit* (1:645). Ismā‘īl Bāshā al-Baghdādī’s *Hadiyyat al-‘arīfīn asmā’ al-mu‘allifīn wa-āthār al-muṣannifīn*, 2 vols. (1951-55; repr., Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, n.d.).

<sup>473</sup> Ibn Qāḍī Shuhba, *Ṭabaqāt al-Shāfi‘iyya*, 1:94.

<sup>474</sup> This potential connection between legal distinctions and legal riddles is interesting in light of the partial convergence of these genres, which is discussed in Chapter Four.

Jamāl al-Dīn al-Ansawī, in his own work on legal distinction, *Maṭāli‘ al-daqa’iq*, credits *al-Muskit* as the first Shāfi‘ī work on distinctions.<sup>475</sup> He does not, however, say anything more about the work or its contents.

Tāj al-Dīn al-Subkī includes a small citation from the *Muskit* in a section in al-Zubayr ibn Aḥmad’s biography entitled “Some of His Observations and Peculiar Opinions (*wa-min al-fawā’id ‘anhu wa-l-gharā’ib*).”<sup>476</sup> Al-Subkī says:

In his *Muskit*, he says in regard to someone who swears an oath that they will not eat fruit (*al-fākiha*), “I hold that he breaks his oath if he eats a banana. Also, according to me, the produce of the medlar tree (*za‘rūr*) is also a fruit (*fākiha*).” He also makes a statement in regard to someone against whom a claim for multiple dirhams is made. Al-Zubayr says, “The command “Weigh and take,” is not an affirmation of the debt (*lam yakun iqrār*). If, however, he says, “Weigh and take them,” this is an affirmation of the debt. Our Iraqi colleagues distinguished (*farrāqa*) in this manner. According to me, however, both of these statements are equivalent. This is because when he says, ‘Weigh and take,’ he may mean to weigh for someone else (*attazin min fulān*), and thus there is no distinction between this and between saying, “Weigh and take them” unless he were to say, “Weigh and take them from me.” According to me, this would be an affirmation of a debt.” This is what he says in the *Muskit*.<sup>477</sup>

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<sup>475</sup> Al-Asnawī, *Maṭāli‘ al-daqa’iq*, 2:8.

<sup>476</sup> Tāj al-Dīn al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā*, 3:295-297.

<sup>477</sup> Tāj al-Dīn al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā*, 3:296.

Al-Subkī continues with a discussion of al-Zubayr’s opinion on debts, since it seems he held contradictory opinions. As an early figure, there are many reports about al-Zubayr, his doctrine, and his life which are not easy to make coherent. Nevertheless, even this short passage contains a fascinating look into his *Muskit*.

On the basis of this passage from al-Subkī, it does appear that al-Zubayr ibn Aḥmad discusses something akin to formalized legal distinctions in this book. He discusses specifics of why there may be a difference between the statements “Weigh and take” and “Weigh and take them,” as well as what fruits are encompassed by the unrestricted term “*fākiha*.” This is not, however, a formalized discussion of “cases that resemble each other outwardly, but have contradictory rulings.”<sup>478</sup> It does not compare two laws with different outcomes so that a distinction can be drawn. It is not a formal presentation of legal distinctions. This passage offers a tantalizing view into what could perhaps be seen as a legal prehistory of distinctions. It is an example of a discussion of legal distinctions before the formalization of this kind of thinking and writing. It may, perhaps, be similar to the writings of other scholars such as Muḥammad ibn al-Ḥasan al-Shaybānī and Ibn Surayj, although it is nonetheless alluring that the two short passages remembered from al-Zubayr’s *Muskit* are concerned with drawing distinctions. Without more of this book, however, its contents remain a mystery and it is only in the eighth/fourteenth century that the sources begin to refer to al-Zubayr as the author of a book on legal distinctions.

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<sup>478</sup> This is the most common definition of legal distinctions. See, for instance, al-Bāḥusayn, *al-Furūq al-Fiqhiyya*, 30ff. and 61ff.; Heinrichs, “Structuring the Law,” 332-333.

This situation is very similar to what we saw in Chapter Two. There, it was shown how the early biobibliographical tradition was unconcerned, or even unaware, of the genres of lexicographical and medical distinctions. It was only after these genres became well-established that authors of biobibliographical works identified early texts as being part of the *furūq* genres in both medicine and lexicography. Similarly, the biobibliographical tradition contemporaneous to al-Zubayr does not seem to have been concerned with the idea of legal distinctions as a genre in which al-Zubayr participated or as a concept through which to analyze Islamic law, which perhaps explains the lack of discussion of his authorship of such a book in sources contemporaneous with al-Zubayr.

What, then, to make of the attribution of a book of legal distinctions to Muḥammad ibn Ṣāliḥ al-Karābīsī? The earliest extant *furūq* work, which is from the Ḥanafī tradition, has often been attributed to Muḥammad ibn Ṣāliḥ al-Karābīsī. This attribution is tenuous. It is not clear whether Muḥammad ibn Ṣāliḥ al-Karābīsī even wrote a work of legal distinctions. ‘Abd al-Muḥsin Sa‘īd ibn Aḥmad al-Zahrānī, the modern editor of this work, justifies this attribution by citing the following biobibliographical sources:<sup>479</sup> both Ḥājjī Khalīfa’s (d. 1067/1657) *Kashf al-ẓunūn* and Ismā‘īl al-Baghdādī’s (d. 1340/1922) *Hadiyyat al-‘arīfīn* mention Muḥammad al-Karābīsī as having written a work on legal distinctions, as do the *Geschichte der arabischen Litteratur* by Carl Brockelmann and the *Geschichte des arabischen Schrifttums* by Fuat

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<sup>479</sup> For al-Zahrānī’s explanation about this attribution, see ‘Abd al-Muḥsin Sa‘īd ibn Aḥmad al-Zahrānī, “Introduction” to *Kitāb al-Furūq* by Muḥammad ibn Ṣāliḥ al-Karābīsī, ed. ‘Abd al-Muḥsin Sa‘īd Aḥmad al-Zahrānī (Ph.D Diss., Jāmi‘at Umm al-Qurā, 1418/1997), 47-53.

Sezgin.<sup>480</sup> Similarly, Muḥammad al-Karābīsī appears in both Kaḥḥāla's *Mu'jam al-mu'allifin* and al-Ziriklī's *A'lām* as having written a work on legal distinctions.<sup>481</sup> All three sources mention Muḥammad al-Karābīsī as having written a work on legal distinctions, but the earliest witness for this claim is Ḥājjī Khalīfa, a book that influenced all of the later sources. In other words, the claim that Muḥammad al-Karābīsī wrote a book of legal distinctions is first found approximately 700 years after Muḥammad al-Karābīsī's death. As per his usual practice in this book, Ḥājjī Khalīfa does not cite the source from which he got his information. If this is indeed the first mention of this connection, it seems incredible that Ḥājjī Khalīfa would be the first to commit this to writing after so many other scholars would have failed to do so. If, however, he did not read this in a previous biographical work, it could be the case that Ḥājjī Khalīfa saw this work in manuscript and for that reason cited it in his *Kashf al-zunūn*.

The second factor driving al-Zahrānī's attribution is the manuscript evidence. Five of the six extant manuscripts of this work list Muḥammad ibn Ṣāliḥ al-Karābīsī as its author.<sup>482</sup> Only the Berlin copy of this work does not list Muḥammad al-Karābīsī as its author.<sup>483</sup> However, all of these manuscripts seem to be based on the Feyzullah Efendi manuscript in Turkey, which Fuat Sezgin has dated to the 9th/15th century, approximately 600 years after al-Karābīsī's lifetime.<sup>484</sup> This is a smaller gap than that

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<sup>480</sup> GAL S 1:295; GAS 1:442-43.

<sup>481</sup> Umar Riḍā Kaḥḥāla, *Mu'jam al-mu'allifin tarājim muṣannifi al-kutub al-'arabiyya* (Damascus: Mu'assasat al-Risāla, 1376/1957), 3:355 no.13711; al-Ziriklī, *al-A'lām*, 6:162.

<sup>482</sup> See Appendix III.

<sup>483</sup> See Berlin, Staatsbibliothek zu Berlin, Or. 5013; Zahrānī 48-53; 57-74.

<sup>484</sup> See GAS 1:443.

between al-Karābīsī and Ḥājji Khalīfa, but still large enough to be problematic. Further, these manuscripts all list the author only on the cover page, his name is not found mentioned within the text itself. A mention of the author's name on the title page of a manuscript, in a different script and ink than that of the rest of the manuscript, is weaker evidence for attribution than the name of the author being included within the manuscript. The name could have been added at any point after the copying down of the manuscript and does not necessarily indicate something known by the original scribe or contained in the text that formed the basis of the manuscript.<sup>485</sup> Further, al-Zahrānī speculates the Feyzullah Efendi manuscript to be the basis for the other five manuscript copies of this book.<sup>486</sup> That is to say, the copy of this work in the Feyzullah Efendi collection was the copy-text from which all remaining copies of this work were made.<sup>487</sup> He concludes this because of its date, but also because the readings in the other manuscripts appear traceable to this copy.

Based on the surviving evidence, it is possible that Muḥammad al-Karābīsī wrote this work. It is also possible that the manuscript in Feyzullah Efendi was erroneously attributed to Muḥammad al-Karābīsī, that several copies were then made

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<sup>485</sup> Adam Gacek, *Reading Arabic Manuscripts: A Vademecum for Readers* (Leiden; Boston: Brill, 2009), 277-78.

<sup>486</sup> Al-Zahrānī notes that the Ahmet III copy serves as the direct basis for the Dār al-Kutub al-Miṣriyya copy, which then served as the basis for the copy in the Azhar library. The correspondence between Ahmet III and Dār al-Kutub editions is nearly complete, even the colophons are identical (49).

<sup>487</sup> I draw the term copy-text from the Greg-Bowers-Tanselle tradition. For a general summary, see G. Thomas Tanselle, *A Rationale of Textual Criticism* (Philadelphia: University of Pennsylvania Press, 1989). See also W.W. Greg, "The Rationale of the Copy-Text," *Studies in Bibliography* 3 (1950-51):16-36; Fredson Bowers, "Multiple Authority: New Problems and Concepts of the Copy-Text," *Library* 5<sup>th</sup> ser. 27 (1972): 81-115; and G.T. Tanselle, "Greg's Theory of Copy-Text and the Editing of American Literature," *Studies in Bibliography* 28 (1975): 167-229.

with this mistake, and that Ḥājjī Khalīfa based his information on one of these misleading witnesses.

In describing his methodology for writing the *Kashf al-ẓunūn*, Ḥājjī Khalīfa says he included “the names of many thousands of volumes in the libraries that I personally examined.”<sup>488</sup> The uncertainty surrounding this very early work on legal distinctions is in a way surprising. It is remarkable to consider that so many copies of this peculiar work have survived, all of them from the same manuscript tree, yet this *furūq* work also seems at one point to have been an unknown text. If the attribution of this extant work on legal distinctions to al-Karābīsī was made at or around the time the Feyzallah Efendi manuscript was written, it would have meant that this work survived in one form or another for six hundred years without authorial attribution and without being mentioned in another text.<sup>489</sup> More surprising still is the interest taken in this work in the 16<sup>th</sup> and 17<sup>th</sup> centuries.

There is one final consideration that al-Zahrānī uses to bolster his attribution, that the scholarly content (*al-mādda al-‘ilmiyya*) of this work is that of a scholar living at the turn of the fourth/tenth century.<sup>490</sup> With this statement, al-Zahrānī is referring to the organization of this work, which is not organized according to legal topic (*al-tabwīb*

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<sup>488</sup> Ḥājjī Khalīfa, *Mīzān al-ḥaqq fi ikhtiyār al-aḥaqq* (Istanbul: Maṭba‘a Abū al-Ḍiyā‘, 1306/1889), 142. This translation comes from Eleazar Birnbaum, “Kātib Chelebi (1609-1657) and alphabetization: a methodological investigation of the autographs of his *Kashf al-Ẓunūn* and *Sullam al-Wuṣūl*” in *Scribes et manuscrits du Moyen-Orient*, ed. François Déroche and Francis Richard (Paris: Bibliothèque nationale de France, 1997), 241.

<sup>489</sup> A similar situation, however, holds for the works of legal distinctions that I label *Furūq-A* and *Furūq-B*, see Chapter Six, pp. 329-30, 337-43.

<sup>490</sup> Al-Zahrānī, Introduction, 48.

*al-fiqhī*), a form of organization that quickly dominated most legal writing.<sup>491</sup> This work probably contains no mention of any book or scholar that postdates the life of Muḥammad ibn Ṣāliḥ al-Karābīsī. The latest figure mentioned in the *Furūq* is Abū al-Qāsim al-Ṣaffār, a scholar from Samarqand who died in the year 326/938.<sup>492</sup> This is evidence that the book was written after 326/938, and likely not too long after, but not evidence that al-Karābīsī was the author.

There are only two books mentioned in the text, a *Kitāb al-‘Uyūn* and a *Kitāb al-Iqrār*.<sup>493</sup> The identity of these works is unclear, although al-Zahrānī posits that the *‘Uyūn* must be *‘Uyūn al-masā’il* by Abū al-Qāsim al-Balkhī (d. 319/931) and that the *Kitāb al-Iqrār* is part of al-Shaybānī’s *al-Aṣl*.<sup>494</sup> Al-Zahrānī uses this evidence to argue that this book must have been written in the early part of the fourth/tenth century. Further, he

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<sup>491</sup> This is, at least, what appears to be the case. I am unaware of many efforts to study the manuscript history of specific works of law. Such study may reveal the arrangement and setting of law books to have occurred much later than the lifetime of the author. The obvious exception, of course, is Miklos Muranyi’s study of early Mālikī works. See above, note 140.

<sup>492</sup> Muḥammad ibn Ṣāliḥ al-Karābīsī, *Furūq*, 361. The other figures mentioned in this book are: ‘Umar ibn al-Khaṭṭāb (d. 23/644), al-Ḥasan ibn ‘Alī ibn Abī Ṭālib (d. 50/670), al-Ḥusayn ibn ‘Alī ibn Abī Ṭālib (d. 61/680), Abū ‘Abd al-Raḥmān al-Sulamī (d. ca. 70/690), ‘Abd Allāh ibn ‘Umar ibn al-Khaṭṭāb (d. 73/693), al-Ḥajjāj ibn Yūsuf (d. 95/714), Abū Ḥanīfa (d. 150/767), Abū Yūsuf (d. 182/798), Muḥammad ibn Ḥasan al-Shaybānī (d. 189/804), Muḥammad ibn Idrīs al-Shāfi‘ī (d. 204/819), Muḥammad ibn Samā‘a al-Tamīmī (d. 233/848).

<sup>493</sup> Muḥammad ibn Ṣāliḥ al-Karābīsī, *Furūq*, 120, 394. The *Kitāb al-Iqrār* is cited, but no information about its author is given.

<sup>494</sup> Muḥammad ibn Ṣāliḥ al-Karābīsī, *al-Furūq*, 120, 394. He mentions an *‘Uyūn al-masā’il* by Abū al-Layth Naṣr ibn Muḥammad al-Samarqandī (d. 383/993) as another possibility, see Muḥammad ibn Ṣāliḥ al-Karābīsī, *Furūq*, 120. If the *‘Uyūn* cited in this work were indeed al-Abū Layth al-Samarqandī’s work, then the author of this *Kitāb al-Furūq* cannot be Muḥammad ibn Ṣāliḥ al-Karābīsī.



says, since we know of no Ḥanafī author other than Muḥammad al-Karābīsī to write a book on legal distinctions at this time, it follows that this is his book.<sup>495</sup>

Al-Zahrānī's introduction to Muḥammad ibn Ṣāliḥ al-Karābīsī's work on legal distinctions relates the few biographical details about our author that remain. These details are scarce, since the vast biographical tradition has generally overlooked him. Al-Zahrānī tells us, for example, that his full name was Abū Faḍl Muḥammad ibn Ṣāliḥ ibn Maḥmūd ibn al-Haytham al-Karābīsī al-Ushṭābadīzakī al-Samarqandī and that his date and place of birth are unknown. Al-Zahrānī speculates that al-Karābīsī was born in Ushṭābadīza in Samarqand, presumably based on his *nisba*. Muḥammad al-Karābīsī's *nisba* relates him to this city, but it is also plausible that his father or grandfather was born in Ushṭābadīza. In the *Muʿjam al-buldān*, a geographical reference work, Yāqūt al-Ḥamawī (d. 656/1229) mentions Muḥammad al-Karābīsī within his entry for Ushṭābadīza. Of this town, he says: "A large locality (*maḥalla kabīra*) in Samarqand, connected (*muttaṣila*) to Dastān Gate in Samarqand. A group of scholars (*jamāʿa*) hail from there... Among them was Abū al-Faḍl Muḥammad ibn Ṣāliḥ ibn Muḥammad ibn al-Haytham al-Karābīsī al-Ushṭābadīzakī al-Samarqandī, who had memorized many hadith (*kāna mukthiran fī al-ḥadīth*)."<sup>496</sup> Muḥammad al-Karābīsī is the only scholar associated with this town that Yāqūt mentions by name. He is here remembered for his knowledge

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<sup>495</sup> Whoever the author of this book was, it seems clear that this was a book written by someone belonging to the Ḥanafī *madhhab*. The book explicitly endorses opinions by Abū Ḥanīfa, Abū Yūsuf, and Muḥammad al-Shaybānī, the three early "founders" of the Ḥanafī legal school.

<sup>496</sup> Yāqūt al-Ḥamawī, *Muʿjam al-buldān*, no ed. (Beirut: Dār Ṣādir, 2010), v.1, p.195.

of hadith, not of Islamic law. Curiously, none of the biographical dictionaries before *Kashf al-zunūn* remember Muḥammad al-Karābīsī as a jurist.

The biographical sources do not convey much information about Muḥammad al-Karābīsī. While they remember him as having been a hadith transmitter of some prominence—enough, at least, to warrant mention—he is not remembered as having authored a single work or as having been a jurist. Al-Zahrānī is surprised by this. “In spite of the intellectual prominence that was apparent to me while reading his book, I have not found him mentioned in works of *ṭabaqāt*, *rijāl*, or *tārīkh*, other than in the above mentioned sources [*al-Ansāb*, *al-Qand*, *Muʿjam al-buldān*, *Hadiyyat al-ʿarīfīn*, and *al-Aʿlām*]. Further, I did not find a complete biographical notice for him nor information about his works.”<sup>497</sup> Al-Zahrānī says this is due to his marginal location in Samarqand, and that this lack of attention is common for scholars from the eastern Islamic world

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<sup>497</sup> Muḥammad ibn Ṣāliḥ al-Karābīsī, *al-Furūq*, 23 f.1. Of the five sources that al-Zahrānī cites, three are premodern, the *Kitāb al-Ansāb* by ʿAbd al-Karīm al-Samʿānī (d. 562/1166), *al-Qand fi dhikr ʿulamāʾ Samarqand* by ʿUmar ibn Muḥammad al-Nasafī (d. 537/1142), and *Muʿjam al-buldān* by Yāqūt al-Ḥamawī (d. 626/1229), and the other two are modern sources, *Hadiyyat al-ʿarīfīn* by İsmail Paşa (d. 1399/1920) and *al-Aʿlām* by Khayr al-Dīn al-Ziriklī (d. 1396/1976). It is strange that al-Zahrānī cites *al-Qand* in his discussion since this work does not include an entry for Muḥammad ibn Ṣāliḥ al-Karābīsī. This work is organized alphabetically by name (*ism*) and only the section between *khāʾ* and *kāf* is extant (and published). The entry for Muḥammad ibn Ṣāliḥ, if there is one, is therefore lost, since it would come either in *hijāʾī* alphabetical order and therefore after the *kāf*, or it would come at the very beginning of the book if it began with the section on the name Muḥammad. In either case the section is not extant. There are a few mentions of Muḥammad ibn Ṣāliḥ in the extant portion, as a part of the chain of transmitters in hadith reports. Al-Zahrānī cites page 141 which has an entry on Muḥammad ibn Ṣāliḥ’s father, “Ṣāliḥ ibn Maḥmūd ibn al-Haytham al-Samarqandī.” In this entry, Muḥammad is in the middle of the *isnād* although interestingly, he does not narrate a hadith that he himself knows, but rather one that he “found in [his] father’s book.” Transmitting a hadith from one’s father was a common occurrence and not by itself evidence of scholarly training. ʿUmar ibn Muḥammad al-Nasafī, *al-Qand fi dhikr ʿulamāʾ Samarqand*, ed. Naẓār Muḥammad Fāryābī (Riyadh: Maktabat al-Kawthar, 1991).

during this period. While we did see in the discussion of Abū Muḥammad al-Juwaynī that information on eastern scholars before the fourth/tenth century is scarce, the names and ideas of important scholars still made their way into the historical record. There seems to be something unusual about the late and widespread popularity of Muḥammad al-Karābīsī's work in spite of the almost complete forgetting of his biography and reputation.

### **Conclusion**

Books of legal distinctions retain a cohesive generic identity over a vast chronological and geographical range. Books from the fifth/eleventh century in Baghdad share an understanding of what a legal distinction is with books from North Africa and Cairo in the ninth/fifteenth century. Nevertheless, the classical Islamic tradition lacks any detailed surviving theoretical discussion of legal distinctions, their functions, and their purpose, save that found in Abu Yūsuf al-Juwaynī's *al-Jam' wa-l-farq*, the earliest extant work of legal distinctions. The shared understanding of legal distinctions that can be seen in these texts is generally undetectable in the theoretical writing on Islamic law. There is disconnect between the theory of legal distinctions and the composing books in this genre.

The question of difference between Islamic law in theory and practice is usually studied with an eye towards the theory of Islamic legal literature and the practice of a lived reality on the ground. Leaving aside the question of the historical application of Islamic law, this disconnect between a theory and practice can be seen simply from the

legal-literary record. A seeming divergence between the genres of legal theory and substantive law has been noted previously.<sup>498</sup>

In the case of legal distinctions, however, the divergence comes not from the application or creation of norms, but with regards to a category of analysis. This divergence between a more practical concern with understanding legal distinctions and theoretical explanations of Islamic law and legal writing that overlooks legal distinctions becomes all the more interesting when seen in light of the pervasiveness of legal distinctions throughout the history of Islamic law. Legal distinctions were prominent in early legal disputation, a topic studied above in Chapter Three, and the material history of legal distinctions shows the pervasiveness of the genre lasting until at least the 19<sup>th</sup> century and spreading from the Western Mediterranean into Central Asia and beyond.<sup>499</sup>

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<sup>498</sup> See Sherman Jackson, “Fiction and Formalism: Toward a Functional Analysis of *Uṣūl al-fiqh*” in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden; Boston; Köln: Brill, 2002), 177-204, and more recently Joseph Lowry, “Is There Something Postmodern about *Uṣūl al-Fiqh? Ijmāʿ*, Constraint, and Interpretive Communities” in *Islamic Law in Theory: Studies on Jurisprudence in Honor of Bernard Weiss*, ed. A. Kevin Reinhart and Robert Gleave (Leiden; Boston: Brill, 2014): 285-315.

<sup>499</sup> See Chapter Six, pp. 330-33.

## Chapter Five: Riddles and Entertainment

There are several books that self-identify as something other than works on legal distinctions but read nearly indistinguishably to the books of distinctions examined in earlier chapters. These works fall under the ambit of what is termed legal riddles, *al-alghāz al-fiqhiyya*. The existence of these books shows the elasticity of legal distinctions as a confined genre and challenges our understanding of legal genres, particularly those of legal riddles and legal distinctions. It seems likely to me that this elasticity is also present in some of the other ‘secondary’ genres of Islamic law. By secondary legal genres, I mean all genres except for legal theory, legal compendia, and legal digests.<sup>500</sup> Aside from the two genres listed in this chapter, with the phrase other secondary genres, I am referring to genres such as legal maxims (*al-qawā'id al-fiqhiyya*), purposes of the law (*maqāṣid al-sharī'a*), *al-ashbāh wa-l-naẓā'ir*, among others. This chapter explores the porous boundary between the two genres of legal *furūq* and legal riddles and shows the importance of social practice to the development and partial convergence between legal riddles and legal distinctions. In particular, the performance of legal knowledge in *majālis* created a demand for a particular packaging of this information, and books of riddles and distinctions sometimes converged as a way of creating a supply to satisfy this particular demand.

The modern academic study of Islamic legal riddles is almost entirely nonexistent, as is the study of riddles generally in the Arabo-Islamic tradition. There

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<sup>500</sup> See the discussion in the Introduction, pp. 19-24.

are almost certainly important relationships between riddles and dialectical question and answer. A discussion of *alghāz* likely also relates to the various terms that refer to riddles but perhaps indicate slightly different activities and therefore different kinds of texts. The terms *alghāz*, *mu‘ammayāt*, *aḥājī*, and *imtiḥān*, can all be translated as “riddle,” although there does appear to be a discursive commitment to differentiating between these genres. This issue is discussed briefly below. Further research into legal riddles is a great desideratum.

The previous chapters have demonstrated a certain unity in their understanding of the genre of legal distinctions. One of the assumptions made throughout this study is that unified groups that one can call ‘genres’ exist within Islamic legal literature. I have taken this supposition a step further in assuming that one such genre is that of legal distinctions. This study has been careful to differentiate between the concept of legal distinctions, which refers to a particular way of reasoning within Islamic law, and the genre of legal distinctions, which refers to a particular way of organizing books of law. The previous chapters have attempted to prove the existence of legal distinctions as a concept, with a distinct genealogy, epistemology, and logic. In so doing, they have also demonstrated the existence of the genre of legal distinctions. This chapter shows, however, that the genre of legal distinctions impinged on and was impinged on by other closely related kind of legal writing. It is, in part, an attempt to understand how to discuss this genre in the broader context of Islamic legal literature.

According to one understanding of genre within the classical Arabo-Islamic tradition, authors classify their books within particular genres by stating this explicitly

in their titles.<sup>501</sup> One similarity between almost all of the books of legal distinctions discussed in the previous chapters is that they have some variant of the the Arabic word for distinction (*farq*, pl. *furūq*) in their title; indeed, the most common title by far is *Kitāb al-Furūq* (*The Book of Legal Distinctions*). This way of defining the boundaries of a genre, while perhaps overly simplified, has merit. It was clearly viewed as an effective way for authors to signal their participation in the genre and it was the way books are remembered and discussed in in the biobibliographical tradition. We have also seen that some books of legal distinctions are remembered as “*Book of Legal Distinctions (Kitāb al-Furūq)*” in spite of the actual title given to them by their author. Based on manuscript evidence, for instance, it would appear that al-Juwaynī’s work on legal distinctions is titled *Al-Jam‘ wa-l-Farq*; according to the *ṭabaqāt* literature, however, this book is called *Kitāb al-Furūq*.<sup>502</sup>

The discussion of the histories of legal distinctions in the previous chapters has been, to a certain extent, tautological. I have assumed an outline for the history of legal distinctions and also that there existed prehistories for legal distinctions, i.e. various trends which contributed to the development of the concept of a legal distinction. Allowing for a multiplicity of origins for this concept has granted us insight into the complex intellectual world from which distinctions emerged. There are clear intertextual relationships between books of lexicographic, medical, and legal distinctions, which highlight the shared intellectual world of these scholarly pursuits.

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<sup>501</sup> See, for instance, Devin Stewart, “Muḥammad b. Dāʾūd al-Zāhiri.”

<sup>502</sup> See Chapter Three, pp. 171-172 for a fuller discussion.

At the same time, the connections between legal disputation and the development of legal distinctions has been made clear, both in terms of legal reasoning and in terms of the content of books of distinction.

Further still, books of legal distinction represent the refinement of the science of Islamic law at a certain stage of development in the history of Islamic legal writing. Nevertheless, the previous chapters have focused on books of legal distinctions as an ending point. While that focus is useful for an analysis of legal distinctions, it is nevertheless convenient to claim that a concept I term “legal distinction” terminates in the genre of legal distinctions. It is not necessarily the case that the genre of legal distinctions and the concept of legal distinctions are coterminous. In fact, one of the claims that I have made is that the concept of legal distinctions can be found outside of the context of books of legal distinctions. What makes a book of legal distinctions unique is that it consists almost entirely of these distinctions; this fact has been seen repeatedly in the works examined above. What, however, of works that seemingly fit this criterion in their contents but do not announce themselves as works of legal distinction?

One interesting feature of distinctions writing is the convergence of writing on legal distinctions and legal riddles (*al-alghāz al-fiqhiyya*). Riddles increasingly take on the form of legal distinctions; and second, legal distinctions take on the particular presentation style of riddles. This trend, which can be seen almost from the beginning of the writing of distinctions, reaches its height during the Mamluk period, especially in Cairo. The history of legal riddles has yet to be written, but even a cursory look at



books on legal riddles suffices to show the growing convergence between them and the genre of legal distinctions.

While both genres overlap, as will be shown below, it is not the case that they converged completely. The boundaries between these genres became blurred so that it is sometimes difficult to ascertain whether certain legal books belong to the genre of distinctions or to that of riddles. A case in point is manuscript Esad Efendi 884 in the Suleymaniye Library, which is a collection (*majmūʿ*) of works on legal riddles. The table of contents on the first page states this clearly, “The following books of Ḥanafī legal riddles (*alghāz*) are included in this codex...”<sup>503</sup> Nevertheless, two of the three works in this collection are works of legal distinctions entitled *Kitāb al-Furūq*.<sup>504</sup>

This chapter begins with an overview of the tradition of literary and intellectual salons in Arabo-Islamic culture, with a particular focus on their style and popularity in Mamluk Cairo. In part, the spread of salons went hand-in-hand with the spread of riddles. This chapter therefore continues with a brief introduction to riddles and legal riddling. Due to the paucity of scholarship on legal riddles, this chapter offers a preliminary exploration of this style of writing and begins an analysis of the logic undergirding them. Then, the three main sections of this chapter highlight the convergence between works of riddles and distinctions, a convergence that peaked in Mamluk Cairo, and discusses the implications of this for our understanding of genre. The first part of this chapter explores the history of *majālis*—literary salons, study

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<sup>503</sup> Esad Efendi 884, Suleymaniye Library, Istanbul, 1a.

<sup>504</sup> Esad Efendi 884, 1a. The two works, according to this table of contents, are *Kitāb al-Furūq li-l-Imām al-Farghānī* and *Kitāb al-Furūq*. The first work in this collection is simply entitled *Kitāb al-Tahdhīb*.

circles, and more--in Arabo-Islamic culture. The second part explores the tradition of legal riddles, focusing on the way in which legal riddles package the information of Islamic law. Finally, the third part looks at the convergence of riddles and distinctions of and some of the implications of this convergence.

### **Literary Salons, Learning, and Culture**

Understanding the social context in which legal knowledge was performed is crucial to understanding the motivations for changes in legal literary aesthetics.<sup>505</sup> The social contexts were quite varied and deserve explanation. Almost all of this knowledge performance, however, took place in venues referred to as *majālis*. *Majālis* (sg. *majlis*; teaching sessions, literary gatherings, salons) were a widespread phenomenon in the premodern Islamic world. Undoubtedly, *majālis* took on different forms and functions as they manifested over a broad geographic and chronological scope. George Makdisi suggests that the term *majlis* was used by scholars in almost all fields of learning to refer to scholastic gatherings of different kinds. He thus speaks of “literary clubs” for the “institutionalized learning” of medicine, philosophy, and philosophical theology,<sup>506</sup>

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<sup>505</sup> Links between social realities and the writing of books of Islamic law can yield interesting conclusions in most areas of Islamic law. For instance, David Vishanoff argues that al-Shāfi‘ī’s *Risāla* can be best understood as a composite work made up of three separate treatises combined into one work. The second and third treatises, according to Vishanoff, represent actual dialogues between al-Shāfi‘ī and his critical contemporaries. Importantly, Vishanoff understands from this that the *Risāla* was therefore composed and disseminated over time and in parts. See David R. Vishanoff, “A Reader’s Guide to al-Shāfi‘ī’s *Epistle on Legal Theory (al-Risāla)*.” *Islam and Christian-Muslim Relations*, Published online 2/14/2017, See also <http://david.vishanoff.com/wp-content/uploads/readers-guide.pdf>.

<sup>506</sup> George Makdisi, *The Rise of Humanism in Classical Islam and the Christian West: With Special Reference to Scholasticism* (Edinburgh: Edinburgh University Press, 1990), 60-61.

“humanist circles” for the study of belles-lettres (*adab*),<sup>507</sup> and “academies” attended by grammarians.”<sup>508</sup>

In the *Encyclopaedia of Islam* *majālis* are described as places “where political and judicial decisions were adopted, plaintiffs, panegyrists and other visitors gathered, and questions of literature or law were debated.”<sup>509</sup> Of particular interest for this study are the sessions in which “questions of literature or law were debated.” In order to understand the reasons for which books of legal riddles were produced and the reasons for their merging with books of legal distinctions, it is necessary to understand the contexts in which law was discussed publicly. “In these public audiences, plaintiffs and petitioners were present, but poets and scholars... also participated.”<sup>510</sup> The term *majālis* thus had a very broad semantic range. It could refer to almost any gathering of people, so that the court of a sovereign, a teaching-session, a poetry reading, and a gathering of friends all fall within the scope of the word *majlis*, as could the lesson taught there, or even the people in attendance. In large part, *majlis* was the premier term for scholastic gatherings outside of the madrasa context.<sup>511</sup> Scholarly and literary gatherings, however, are the concern of the following discussions and I use the term *majlis* to discuss only scholarly and literary gatherings.

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<sup>507</sup> Makdisi, *Rise of Humanism*, 61.

<sup>508</sup> Makdisi, *Rise of Humanism*, 61.

<sup>509</sup> EI<sup>2</sup> s.v. “*madjlis*” (ed.), citing R. Brunschvig, *La Berbérie orientale sous les Hāfşides des origines à la fin du XV siècle* (Paris: Adrien-Maisonneuve, 1940-1947), 2:37.

<sup>510</sup> EI<sup>2</sup> s.v. “*madjlis*” (ed.).

<sup>511</sup> It is possible that teaching hospitals as well should be exempted along with madrasas, but the precise terminology associated with the teaching of medicine falls outside the scope of the present study. See as well the detailed discussion of the semantic range of the premodern term *majlis*. George Makdisi, *Rise of Colleges*, 10-12; *idem.*, *Rise of Humanism*, 60-64.

Although *majālis* differed greatly across time and space, there were a few constants about them which demand our attention. The first is the simultaneous existence of courtly *majālis* at the court of the sultan or caliph and non-courtly *majālis* held by private individuals. The difference between these two kinds of *majālis* is not necessarily in the activities conducted therein, but in the stakes of the performance. As will be seen, courtly *majālis* were moments to compete for patronage, either direct patronage to compose works or indirect patronage through lucrative governmental appointments. Non-courtly *majālis* were pivotal moments for the discussion, evaluation, and spread of books, ideas, and scholars. Scholarly circles took place in non-courtly *majālis* while the *majālis* for entertainment encompassed both. In terms of literary salons, it was the goal of those participating in the *majālis* to put the depth and scope of their knowledge on display.<sup>512</sup>

There has been work done on the literary salons during the Abbasid period and scholarly salons in Ottoman urban centers. The *majālis* of the Mamluk era, however, have been studied in a much more cursory fashion.<sup>513</sup> The convergence of riddles and distinctions begins in Abbasid times and then seems to peak during the Mamluk period and continue into the Ottoman era. We will therefore look first at Abbasid-era *majālis* and then at some studies of early Ottoman *majālis*, and in so doing assume continuity with Mamluk-period trends.

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<sup>512</sup> I use the term literary salon to refer to gatherings of intellectuals to discuss intellectual matters, including but not limited to literature (*adab*).

<sup>513</sup> Christian Mauder of the Georg-August-Universität Göttingen is currently writing a dissertation on the *majālis* held at the court of the Mamluk Sultan al-Ghawrī.

According to Samer Ali, literary salons “proliferated in the [third/]ninth century, enabling more *littérateurs* to cultivate the *adab* skills needed to participate, socialize, and gain personal influence.”<sup>514</sup> For him, literary salons, referred to as *mujālasa* rather than *majālis* during this period, were occasions for scholars to embed themselves within literary communities and learn the skills necessary to garner patronage.<sup>515</sup> Régis Blachère likewise characterizes the salon in this period as having “a high standing, no one could hope for public admiration if he were not a man of the world, an agreeable conversationalist, having a sharp mind and quick with wordplay, skilled in creating situations which he could turn to his advantage.”<sup>516</sup> It was the skills cultivated by attending and performing in such salons and the desire “to impress one’s audience, in fidelity to shared standards of competence” that impacted much of how “*adab*-type speaking” was structured.<sup>517</sup>

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<sup>514</sup> Samer Ali, *Arabic Literary Salons in the Islamic Middle Ages* (South Bend, IN.: Notre Dame University Press, 2010), 192.

<sup>515</sup> Ali also argues that literary salons were sites in which a shared historical memory was created and cemented. I do not address this aspect of salons directly in this chapter, but it reaffirms the importance of literary salons as sites of knowledge production, not just sites for the display of knowledge.

<sup>516</sup> Régis Blachère, *Un poète arabe du IV<sup>e</sup> siècle de l’Hégire (X<sup>e</sup> siècle de J.-C.): Abou ṭ-Ṭayyib al-Motanabbî* (Paris: Adrien-Maissonneuve, 1935), 130. Translation based on citation in EI<sup>2</sup> s.v. “*madjlis*” (ed.).

<sup>517</sup> Ali, *Arabic Literary Salons*, 192. The impact that live performance had on the composition and content of *adab* and poetry should not be understated. Performance mattered a great deal in Arabic literature and also, as Dominic P. Brookshaw has shown, for Persian poetry in medieval Iran as well. Joel Blecher has even found references to scenes from *majālis* in Ibn Ḥajar al-‘Asqalānī’s hadith commentary *al-Fath al-bārī fī Ṣaḥīḥ al-Bukhārī*. See Dominic P. Brookshaw, “Palaces, Pavilions, and Pleasure-Gardens: The Context and Setting of the Medieval *Majlis*” *Middle Eastern Literatures* 6.3 (2003): 199-223; and Joel Blecher, “*Ḥadīth* Commentary in the Presence of Students, Patrons, and Rivals: Ibn Ḥajar and *Ṣaḥīḥ al-Bukhārī* in Mamluk Cairo,” *Oriens* 41 (2013): 261-87.

It was not only in courtly contexts that such skills mattered. This pattern of communicating knowledge “[held] good for those who, at an inferior social level, stayed simply in the home of well-to-do poets and writers and even in the shops of merchants who practiced in their own way a form of patronage.”<sup>518</sup> In other words, there was a continuity of sorts in the patterns of knowledge production and display that held currency in intellectual salons frequented by different social groups.<sup>519</sup> The extent and strength of these connections between courtly and private salons suggest the existence of a broad intellectual community which maintained certain standards and expectations for what constituted knowledge or artistic production and for the forms in which it ought to be expressed.

Although these remarks on the nature and importance of *majālis* are based on studies of literary salons, the relevant aspects of such salons seem to extend beyond discussions of language and literature. L.E. Goodman finds that the debate contexts between Muḥammad ibn Zakariyyā’ al-Rāzī (d. ca. 312/925) and Abū Ḥātim Aḥmad al-Rāzī (d. ca. 322/934) are crucial in understanding the ways in which these philosophers understood, presented, and defended their ideas, both in person and in their works. In his study, the context of the *majālis* is instrumental to a correct and full understanding of the works of these authors. The contours of philosophical debates and philosophical writing do not necessarily align in all respects with literary debates. For instance, Goodman finds these philosophical *majālis* to be “informal gatherings,” and “not public

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<sup>518</sup> EI<sup>2</sup> s.v. “*maḍjlis*” (ed.).

<sup>519</sup> The continuities between different kinds of salons, point to shared societal standards of knowledge and knowledge presentation, in spite of potential differences between salons held in various contexts.

performances of a formal nature.”<sup>520</sup> The literary salons discussed by Samer Ali have a much more formal context, particularly those *majālis* that involved the recitation of poetry. Even so, both literary and philosophical sessions were high-level scholarly exchanges between socially significant members of society.

There are several important conclusions that can be drawn about the function and activities of these literary salons. The most important is the parallel between the intellectual activity of the *majlis* and the written intellectual record.<sup>521</sup> Cultural context affects literary production and intellectual production is related to a certain kind of social life. Further, the existence of intellectual *majālis* among various social strata signals the potential relevance of intellectual production to different social groups including merchants, scholars, and political elites. This is particularly important to keep in mind for discussing intellectual trends in the Mamluk Sultanate. These trends include (i) the role of imported Mamluks—primarily Turkic people from Northwest Asia—and their children in seeking education, (ii) the expansion of *majālis* to include a wider spectrum of socioeconomic classes, and (iii) the rising interest in riddling in these *majālis*.

The role of the Mamluks themselves cannot be overlooked for understanding the cultural history of the Mamluk Sultanate. Mamluks were enslaved young boys,

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<sup>520</sup> L.E. Goodmann, “Rāzī vs Rāzī — Philosophy in the *Majlis*” in *The Majlis: Interreligious Encounters in Medieval Islam*, ed. Hava Lazarus-Yafeh, Mark R. Cohen, Sasson Somekh, and Sidney Griffith (Harrassowitz Verlag: 1999), 101.

<sup>521</sup> Goodman says that “[t]he language...of the debate is rapid fire and conversational.” A “rapid fire and conversational” tone is not indicative of most philosophical writing, suggesting certain discontinuities between the presentation of philosophical activity in in-person interactions and writing. Goodman, “Rāzī vs Rāzī,” 101.

primarily Qipchaks and Circassians, brought to Cairo to be trained as part of the ruling military class. As imported youths striving for a career in the military or government bureaucracy, the Mamluks and their children represented a new bloc of people for whom education and learning became an important social goal. Since the children of the Mamluks could not follow in the footsteps of their fathers in the military, Mamluks actively sought out education for their children, focusing primarily on “Arabic, calligraphy, and the fundamentals of religious sciences.”<sup>522</sup> These fundamentals comprised the basis for the education and learning of their children and the cultural lives that they later developed for themselves as adults often reflected this early training. Ulrich Haarman emphasizes the importance of “the cultural life [found] in the houses of the lowly Mamluk private soldiers (*jundi*) who often quite understandably sought and found comfort for a disappointing military and public career in the bliss of piety, poetry, and scholarship.”<sup>523</sup> While many of them may have found only “bliss” in pursuing intellectual activities, others were able to use this to achieve renown. Intellectual and literary interests, of course, were found among more than just the professional scholars. “Several Mamluks are described as authors of good verse and as literary entertainers.”<sup>524</sup> Displays of knowledge could also take the form of book ownership. Indeed, “[b]ook-collecting was an expensive yet widespread hobby of

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<sup>522</sup> Ulrich Haarman, “Arabic in Speech, Turkish in Lineage: Mamluks and Their Sons in the Intellectual Life of Fourteenth-Century Egypt and Syria” *Journal of Semitic Studies*, 33.1 (1988), 86-87.

<sup>523</sup> Haarman, “Arabic in Speech,” 85-86.

<sup>524</sup> Haarman, “Arabic in Speech,” 95.



cultured Mamluks.”<sup>525</sup> These Mamluks and their children were also known for “sponsor[ing] salons that included both Turkish and Arabic entertainment.”<sup>526</sup>

At the same time, the breadth of learning valued at salons was also important for the professional lives of the non-military elite. “The literary skills [a member of the civilian elite] acquired qualified him for a wide range of careers, and one of the characteristic features of the man of learning was his multicompetence—his ability to hold positions in diverse occupational fields at the same time.”<sup>527</sup> These factors led to an expansion of the ways in which socially diverse groups interacted with and consumed knowledge.<sup>528</sup> This expansion can be seen in part, in the participation of a non-scholarly middle class of artisans at the public reading of books. Konrad Hirschler has documented their presence at the readings of Ibn ‘Asākir’s (d. 571/1176) *History of Damascus*. “Considerable numbers of craftsmen, traders and other non-scholars not only interacted...in these readings with the scholarly world, but the various sources show that their participation started to be taken seriously.”<sup>529</sup> The social life of Mamluk

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<sup>525</sup> Haarman, “Arabic in Speech,” 93.

<sup>526</sup> Margaret Larkin, “Popular Poetry in the Post-Classical Period” *Cambridge History of Arabic Literature: Arabic Literature in the Post-Classical Period* ed. Roger Allen and D.S. Richards (Cambridge, UK; New York: Cambridge University Press, 2006), 221.

<sup>527</sup> Carl F. Petry *The Civilian Elite of Cairo in the Later Middle Ages* (Princeton: Princeton University Press, 1981), 312.

<sup>528</sup> It is possible that a similar trend could be found earlier, but it is documented clearly for the first time in the Mamluk Empire. This is due, in part, to the mass-movement of scholars resulting from the Mongol invasions and the rise of Cairo as the major center of Arabic learning.

<sup>529</sup> Konrad Hirschler, *The Written Word in the Medieval Arabic Lands: A Social and Cultural History of Reading Practices* (Edinburgh: Edinburgh University Press, 2012), 69.

Cairo (and Damascus) thus placed a high premium on learning and knowledge.<sup>530</sup> This high value of learning and culture can be seen acutely in the ways that knowledge was performed and in the role of the *majālis*.

Helen Pfeifer has shown the recurrence of *majālis* in accounts of scholarly networks in the 16<sup>th</sup> century, especially in exchanges between scholars from the Mamluk Sultanate and the Ottoman Empire. “In general, these particular *majālis* can be thought of as by-invitation-only gatherings attended by well-to-do Muslim men for the purpose of social and intellectual exchange.”<sup>531</sup> Because of the importance of Mamluk Cairo and Damascus as centers of learning in the period before the sixteenth century, knowledge of Arabic and the Arabic tradition was key to these gatherings, all the more so in light of the prevalence of non-Arab elites among the Mamluks and the Ottomans.<sup>532</sup> These salons “were an integral part of elite travel... and functioned as key venues in which men from different parts of the empire encountered one another.”<sup>533</sup> They served as meeting points for travelling elites, and were also opportunities for local scholarly communities to interact with outside communities, as represented by the scholarly traveler. In addition, salons were important venues for “Rumis [i.e., Anatolians] serving as chief judges in the Arabic provinces... [They] produced high-pressure situations in which judges themselves were judged, both on their intellectual

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<sup>530</sup> The accessibility of learning and the exposure to knowledge production and performance in non-urban areas remains unclear.

<sup>531</sup> Helen Pfeifer, “Encounter after the Conquest: Scholarly Gatherings in 16<sup>th</sup>-Century Ottoman Damascus,” *International Journal of Middle East Studies* 47 (2015), 221.

<sup>532</sup> Pfeifer, “Encounter,” 221.

<sup>533</sup> Pfeifer, “Encounter,” 221

prohess and on their ability to engage in polite conversation.”<sup>534</sup> The social place of these *majālis* in the Ottoman period is reminiscent of that in the Abbasid-period *majālis*: in both cases *majālis* served as venues for the movement of scholars and ideas.

Pfeifer also shows that in late 16th and early 17th centuries, literary salons were venues for book circulation, and thus served as ways for books to acquire positive reviews which could then spread with them, “books rarely traveled without a reputation in tow. Literary salons thus reveal a very dynamic process of Ottoman canon formation.”<sup>535</sup> Salons were an initial venue for book publication, a semi-public way of introducing a book to a scholarly audience to judge its merit. In this way, the stakes of the salon were high, and scholars needed to impress audiences with their knowledge in order to succeed. Poets similarly used literary salons to circulate their poetry. “The *majlis* also played a vital role in the dissemination of poems: scholars commented on them, musicians were inspired by them and listeners spread their renown.”<sup>536</sup>

Due to their high social standing, salons were important for cultivating friends and social networks. The scholar and biographer al-Ḥasan al-Būrīnī (d. 1024/1615) “was widely appreciated for his ability to captivate salon audiences: ‘he was never at a scholarly *majlis* without being its nightingale.”<sup>537</sup> More importantly, biographical

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<sup>534</sup> Pfeifer, “Encounter,” 223.

<sup>535</sup> Pfeifer, “Encounter,” 229.

<sup>536</sup> Brookshaw, “Palaces,” 200.

<sup>537</sup> Pfeifer, “Encounter,” 230, quoting Najm al-Dīn al-Ghazzī, *Luṭf al-samar wa-qaṭf al-thamar min tarājim a’yān al-ṭabaqāt al-ūlā min al-qarn al-ḥādī ‘ashr*, ed. Maḥmūd al-Shaykh (Damascus: Wizārat al-Thaqāfa wa-l-Irshād al-Qawmī, 1981), 359. Ḥasan al-Būrīnī was a Shāfi‘ī jurist, biographer, and poet and studied with Badr al-Dīn al-Ghazzī (d. 984/1577) in Cairo.

dictionaries relied on literary salons for information on contemporaries.<sup>538</sup> That biographical dictionaries could transmit information learned at scholarly salons further confirms their high social and intellectual standing. However, it is hard to know what exactly transpired even at elite salons. While a book may transmit an event from, or a piece of information learned during, a salon, actual transcripts of the exchanges or conversations are rare. It seems likely that civilian, non-scholarly salons functioned within a similar rubric. It has been established that there were literary-intellectual salons held by non-professional scholars and non-scholarly educated elites, and that these people participated, at least as a public, to public readings of books and in this way participated in Mamluk intellectual life.

An important facet of the *majālis* is their often contentious nature; they involved disputations with varying degrees of formality. Inasmuch as salons were venues for the public display of knowledge, they were also opportunities to prove the superiority of one's own knowledge. Indeed, in her study Pfeifer stresses "the competitive nature of salons."<sup>539</sup> This underlying spirit of competition is one of the aspects that sharply distinguished literary salons from other venues for knowledge-performance, such as a study circle. The *Fatḥ al-bārī*, Ibn Ḥajar al-ʿAsqalānī's (d. 852/1449) commentary on al-Bukhārī's (d. 256/870) *al-Ṣaḥīḥ* provides a good example of the importance of social settings for the production and display of knowledge in ninth/fifteenth century Cairo.

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<sup>538</sup> Pfeifer, "Encounter," 230-31.

<sup>539</sup> Pfeifer, "Encounter," 233.

*Al-Fatḥ al-bārī* was a text that took form in study circles and then was used by al-ʿAsqalānī in salons. The history of this particular commentary is well-documented, but its history is in many ways similar to that of other large commentaries. “Commentators not only attacked one another from the safety of their written texts but also face to face during commentary sessions on the *Ṣaḥīḥ* in the presence of the political and judicial élite.”<sup>540</sup> The *Fatḥ* in particular shows this history and demonstrates how important *majālis* were to the study of hadith. This book “emerged amidst the discussion of the *Ṣaḥīḥ* in the live presence of his [Ibn Ḥajar’s] students.”<sup>541</sup> Coming from this background, *al-Fatḥ* was formed through al-ʿAsqalānī’s exchanges with his students. Once parts of this book emerged as a written commentary, these discussions could and did move from oral to written, from the *majlis* to the text. The text, however, was used in later *majlis*es, when the information moved from text back to *majlis*.

Joel Blecher has located a particularly compelling case of this interchange, from *majlis* to text and back, in a series of exchanges between Ibn Ḥajar al-ʿAsqalānī and Shams al-Dīn al-Harawī (d. 829/1426), a rival for the Shāfiʿī judgeship who had recently arrived at the court in Cairo. At a scholarly gathering in the Sultan’s garden, Ibn Ḥajar challenged al-Harawī over who had greater mastery of the hadith. Ibn Ḥajar was able to solve a vexing question related to the nature of the everlasting shade in heaven referred to in the Quran, in Q Raʿd 13:35. With his superior knowledge and understanding of the Quran, Ibn Ḥajar bested al-Harawī in a face-to-face meeting. Not

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<sup>540</sup> Blecher, “Ḥadīth Commentary,” 274.

<sup>541</sup> Blecher, “Ḥadīth Commentary,” 266, see also 265-268.

only did this result in a judgeship for Ibn Ḥajar, but he later recounted this episode in his commentary *Fatḥ al-Bārī*.<sup>542</sup> This episode demonstrates the way in which knowledge could and did move from book to *majlis* and then from *majlis* to book. There could be, and often was, a reciprocal relationship between written knowledge and performed knowledge.<sup>543</sup>

The encounter between Ibn Ḥajar and Shams al-Dīn al-Ḥarawī involved interpretation of the Quran and hadith. Episodes like this dealing with issues in Islamic law are harder to find. The few transcripts of Mamluk-era salons that remain are of the *majālis* at the courts of the Sultans; though almost all of these works are still in manuscript. They nevertheless present interesting records of the proceedings in salons as they unfolded. These are probably sanitized transcripts that only indirectly represent the discussions that took place, rather than verbatim transcripts recording each interaction. Nevertheless, they allow us an interesting glimpse into how knowledge was performed at the court of the Sultan. In salons of the Sultan al-Qanṣūh Ghawrī, Islamic law was one of the topics discussed. We can see here that riddles were a component of their legal discussions, “Question Two: Shaykh Tanum<sup>544</sup> read from the

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<sup>542</sup> This session is remembered in Ibn Ḥajar’s *Fatḥ al-bārī*, ed. ‘Abd al-‘Azīz ibn Bāz (Beirut: Dār al-Ma‘rifā, 1970), 2:143-44, citation from Blecher, “Ḥadīth Commentary,” 278-280, where he translates the relevant passage.

<sup>543</sup> The process through which this book has been described in detail by Joel Blecher. He describes how Ibn Ḥajar would first compose this work in private, but that the final version “emerged amidst the discussion of the *Ṣaḥīḥ* in the live presence of his students,” that is, in a teaching-*majlis*. Joel Blecher, “In the Shade of the *Ṣaḥīḥ*: Politics, Culture and Innovation in an Islamic Commentary Tradition,” Ph.D. Diss., Princeton University, 2013, 18-19.

<sup>544</sup> The identity of this Shaykh Tanum is uncertain.

*Book of [Legal] Riddles...*<sup>545</sup> What follows is a riddle on prayer. While the result of this exchange is unclear, their use of and reliance on books of legal riddles is evident.

In three articles on Mamluk prose, Muhsin al-Musawi has similarly argued for the connection between the active and diverse intellectual culture and the composition of books in the Mamluk Sultanate. “The sheer variety of prose-writing... attests to the existence of a dynamic culture characterized by the active involvement of *littérateurs*, widespread networks and a magnanimous devotion to the world of writing.”<sup>546</sup> The importance of both *littérateurs* and social networks to the production and consumption of knowledge also explains, according to al-Musawi, the prevalence of encyclopedic writing during this period. “Islamic medievalists usually focused on the compendium as a treasury of knowledge; the compiler is thus a producer who aims to provide readers with a reservoir which would otherwise be inaccessible in its original form, found in scattered books.”<sup>547</sup> Al-Musawi here places the author *qua* compiler as the driving force behind book composition; however, it is as likely that competing demands from readers helped shape the texts that were being composed. Given the prominence of *majālis* in Mamluk culture, the role of social networks in the spread and dissemination of books, and the importance of *majālis* towards opinion shaping, however, the possibility of books being written *for* a public, i.e. of demand driving book production, cannot be

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<sup>545</sup> Ḥusayn ibn Muḥammad al-Sharīf, *Nafā'is majālis al-sultāniyya fī ḥaqā'iq asrār al-Qur'āniyya*, MS Topkapı Sarayı Müzesi Kütüphanesi, Ahmet III 2680, Istanbul, 60.

<sup>546</sup> Muhsin al-Musawi, “Pre-Modern Belletristic Prose,” in *Cambridge History of Arabic Literature: Arabic Literature in the Post-Classical Period* ed. Roger Allen and D.S. Richards (Cambridge, UK; New York: Cambridge University Press, 2006), 132.

<sup>547</sup> Muhsin al-Musawi, “The Medieval Islamic Literary World-System: The Lexicographic Turn” *Mamluk Studies Review*, 17 (2013), 52.

overlooked. This is not to say that such supply and demand were the only market forces at play in the production of scholarly works, but rather that they were an important force that should be kept in mind. More importantly, it will be shown below how books of legal distinction in particular, can be seen as responding to this demand from a public interested in consumption of a particular kind of legal knowledge.

The proliferation of these literary salons in Mamluk Egypt was so great that al-Khalil ibn Aybak al-Ṣafadī composed a parodistic commentary that takes place in a fictional literary gathering. This commentary, *Ikhtirāʿ al-khurāʿ*, is a commentary on two nonsense verses of Arabic poetry.<sup>548</sup> For our purposes, however, the frame story into which the *Ikhtirāʿ* is set is of particular importance. “Abū Khurāfah [the protagonist of the story] narrates that he was at a party one night with a number of other people—an evening of the literary folk... They are sitting around chatting about literature, reciting lines for each other.”<sup>549</sup> When the guests hear Abu Khurāfah’s nonsense lines, they struggle to understand the beauty he sees in them and they propose finding a commentary for this poetry in order to better understand it. The commentary in *Ikhtirāʿ al-khurāʿ* is on the nonsense lines provided by Abū Khurāfah. The scene invented by al-Ṣafadī, though a caricature, represents one possible example of the kind of literary salons common in Mamluk Cairo. Here, we see a group of educated elites (*zurafāʾ*) gathered together discussing poetry. These characters are not presented as scholars per se, but nevertheless spend part of their free-time engaged in intellectual

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<sup>548</sup> Kelly Tuttle has studied this work in her dissertation, see Kelly Tuttle “Expansion and Digression: A Study in Mamlūk Literary Commentary,” (PhD Diss. University of Pennsylvania, 2013), 79-108.

<sup>549</sup> Tuttle, “Expansion and Digression,” 85-86.



and literary activities. They vie to impress each other through their knowledge of poetry and seek the aesthetic pleasure of reciting and hearing lines of beautiful poetry, as well as of understanding and explaining these lines. It is from this that the parody of *Ikhtirāʿ* gains its currency.

The role of the *majlis* as a site for knowledge-performance remained even after the end of Mamluk power. As we learn from Nelly Hanna's recent work on Ottoman Cairo, salons continued to be an important part of life in the 16th-18th centuries. She focuses particularly on the importance of the salon as part of a middle-class intellectual exchange, noting that it included, "the diverse forms existing for the transmission of learning and knowledge such as the spread of a book culture, the coffeehouse, the literary salon—and their significance for our understanding of the way that the middle-class culture was shaped during [this] period."<sup>550</sup> By this period, the *majlis* was not the only social venue for knowledge-performance, but it nevertheless remained important.<sup>551</sup> *Majālis* covered a wide variety of topics. The kind of salons that Hanna finds in Ottoman Cairo are Sufi salons that included *dhikr*, literary salons in which "people recited literature, composed poetry, improvised verses, and read books out loud;" arenas for "entertainment, with musical instruments, singing, and games of chess;" and "serious *majalis* focused on scholarly issues, with the participants discussing

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<sup>550</sup> Nelly Hanna, *In Praise of Books: A Cultural History of Cairo's Middle Class, Sixteenth to Eighteenth Century*, (Cairo: The American University in Cairo Press, 2004), 14.

<sup>551</sup> Hanna, *In Praise of Book*, 73.

*fiqh* or *tafsir*.”<sup>552</sup> It is important to note that these salons were an important part of middle-class culture, but were also gatherings held by intellectuals and political elites.

It is likely that the middle-class *majālis* discussed by Hanna are extensions of the ‘popular poetry’ salons prevalent in Mamluk Cairo. Of these, Margaret Larkin says “Much was sung or delivered in informal gatherings.”<sup>553</sup> These salons were attended by “patrons and consumers who hail, if not from the lower classes, at least from what might be considered a kind of petite bourgeoisie.”<sup>554</sup> In speaking of popular scholarly culture, I refer to activities in which the participants were not only observers but had opportunities to be performers as well. It is this potential for participation that allows attendees an opportunity to demonstrate their knowledge. There was, of course, another kind of popular scholarly performance, such as staged readings of poetry, popular preaching, or even the performance of shadow-plays. The popularity of these performances is likely also related to popular interest in knowledge and learning, but the performances are not directly related to the discussion at hand.<sup>555</sup>

However all that may be, modern discussions of ‘middle-class salons’ and ‘the rise of popular poetry’ involving some members of the ‘merchant class’ remain vague due to a lack of information regarding what exactly occurred during these meetings. For instance, it seems likely that someone who could be described as a ‘middle class

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<sup>552</sup> Hanna, *In Praise of Books*, 73.

<sup>553</sup> Larkin, “Popular Poetry,” 194

<sup>554</sup> Larkin, “Popular Poetry,” 193-94.

<sup>555</sup> These broad phenomena have been studied in some detail, but there is still need for study of more specific contexts, see Jonathan P. Berkey “Popular Culture under the Mamluks: A Historiographical Survey” *Mamluk Studies Review* 9.2 (2005): 133-146; and Boaz Shoshan, *Popular Culture in Medieval Cairo* (Cambridge: Cambridge University Press, 1993).

merchant' would have had a lower degree of familiarity with religious sciences than professional scholars, although it seems likely merchants might have been quite familiar with contract law. In other words, any discussion of a specialized intellectual topic such as *fiqh* or hadith criticism that took place at such a salon cannot be expected to have carried the same level of sophistication as in a *majlis* at the court of the Sultan. That does not mean, however, that such topics were not discussed in non-elite or non-courtly salons, in addition to various kinds of poetry and literature.

Other evidence that points to a transference between oral and written exchanges in *majālis* exists, but it is circumstantial. As mentioned in Chapter One, the distinctions book attributed to Najm al-Dīn al-Naysābūrī states explicitly that it is was meant to be used in *majālis*. In one manuscript of this work, the author says: “A colleague (*ba‘ḍ ikhwānī*) asked me to write a book (*an uhaddhība*)... that you can consult during discussions in *majālis* (*yastadilluhu fī al-majālis*) and from which you can find guidance in schools (*yustaḍī‘a bihi min al-madāris*).”<sup>556</sup> This is a strange passage, and it seems to have given copyists trouble as well, as no two manuscript witnesses provide the same reading.<sup>557</sup> The juxtaposition of *majālis* and *madāris* in this context, in addition to providing a rhyme, perhaps indicates that the *majālis* are not study sessions.

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<sup>556</sup> Giresun Yazmalar 44, Suleymaniye Library, Istanbul, 1b.

<sup>557</sup> The Giresun Yazmalar manuscript, in general, is written in an exceptionally clear hand with full diacritical marks, i.e. with both dots and vowels markers (*al-ḥarakāt*). The phrase *yastadilluhu fī al-majālis*, however, has only the consonantal skeleton without any diacritical marks. The other reading of this phrase could be *yasnadu lahu fī al-majālis*.

Of the seven witnesses to this text, four omit this introduction entirely, yet these seven texts are all otherwise remarkably similar.<sup>558</sup> The other three manuscripts of this text with an introduction are Halet Efendi 780, Yazma Bağışlar 1187, and Leiden Or. 481. Here, Halet Efendi 780 and Yazma Bağışlar 1187 read “to benefit from during *majālis* while doing without school training (*li-yantfi‘a bi-hā fi al-majālis wa-yastaghnā ‘an al-madāris*).”<sup>559</sup> The Leiden manuscript has a third reading for this text. This text reads “to entertain with in *majālis* and to learn from in schools (*yastahzi‘u bihā fi al-majālis wa-yastadī‘u bihā fi al-madāris*).”<sup>560</sup> In all three of these text, the text and the meaning of this phrase are different. The second variant presents law colleges as unimportant; instead of offering the book as a sort of cheat-sheet for Islamic law, it obviates the requirement of a complete formal legal education. The Leiden manuscript sees itself as a source of entertainment and a supplement to this education. In all of these readings, however, *majālis* and *madāris* are paralleled, suggesting that they each refer to different venues for the learning and performance of legal knowledge.

### **The Literature of Riddles and Legal Riddling**

The history of legal distinctions cannot be fully explained without understanding their relationship to legal riddles. The tradition of legal riddling serves largely as play and

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<sup>558</sup> I discuss this issue in Chapter Six, see pp. 340-43.

<sup>559</sup> Halet Efendi 780, Suleymaniye Library, Istanbul, 1b; Yazma Bağışlar 1187, Suleymaniye Library, Istanbul, 84b. The YB1187 has a slight variant in the second clause, reading: “*yantafi‘u bihā fi al-majālis wa-yastaghnā bihā ‘an al-madāris*,” “to benefit from this book in salons and not need school training because of it.”

<sup>560</sup> Leiden, Or. 481, 3a.

entertainment, and authors in this tradition justify themselves by claiming their works as worthwhile diversions. In one book of legal riddles, for example, the Mālikī jurist Ibn Farḥūn (d. 799/1397) cites a proverb by ‘Alī ibn Abī Ṭālib as an apology for the practice of riddling. “Divert the soul on occasion, for it rusts just as metal rusts.”<sup>561</sup> A diversion, in this case riddling, serves as a kind of antioxidant to refresh and enliven the soul. Ibn Farḥūn continues his defense of riddling by discussing a prophetic hadith found in al-Bukhārī’s *al-Ṣaḥīḥ* and in Mālik’s *al-Muwaṭṭa’*, among other hadith collections:

Ismā‘īl said: Mālik related to me, on the authority of ‘Abd Allāh ibn ‘Umar, the following.

The Messenger of God, may God’s prayers and peace be upon him, said, “here is a tree whose leaves never fall. It is, indeed, like a Muslim (*wa-hiya mathal al-muslim*). Tell me, what is it?”

The people’s thoughts turned to the desert trees, but it occurred to me that it was the date-palm (*al-nakhla*), but I shied away from responding.

“O, Messenger of God, will you tell us what it is?” we asked.

“It’s the date-palm,” replied the Messenger of God.

I talked to my father [‘Umar ibn al-Khaṭṭāb] about what I had thought and he said, “I would have liked nothing better than for you to have said that to him (*la-an takūna qultahā aḥabbu ilayya min an takūna lī kadhā wa-kadhā*).”<sup>562</sup>

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<sup>561</sup> Burhān al-Dīn Ibrāhīm Ibn Farḥūn al-Mālikī, *Durrat al-ghawāṣṣ fi muḥāḍarat al-khawāṣṣ*, ed. Muḥammad Abū al-Ajfan and ‘Uthmān Baṭīkh (Cairo: Dār al-Turāth; Tunis: al-Maktaba al-‘Atīqa[, 1980]), 62-63.

<sup>562</sup> Saḥīḥ al-Bukhārī, *Kitāb al-‘ilm, Bāb al-ḥayā’ fi al-‘ilm*.

In this example Muḥammad himself participates in the act of riddling. He poses a riddle to a crowd gathered before him. If Muḥammad sanctions this activity, then it must be meritorious. At the same time, the ending of this hadith, with a father’s gentle chiding of his son for not having hazarded a guess, is suggestive. It is not just any father, but the “stern, strong-willed, [and] prone to anger” caliph ‘Umar ibn al-Khaṭṭāb (d. 23/644) reproaching his son, ‘Abd Allāh ibn ‘Umar (d. 73/693) for not participating in this game.<sup>563</sup> While this aspect of the story does not involve Muḥammad directly, it is clear from the way that this tradition is preserved, that riddling is an approved (even edifying) activity and that audience participation is encouraged. The father’s longing for his son to answer correctly was because he saw it as an opportunity to impress Muḥammad and as an opportunity for diversion and play. The activity no longer becomes only a moment for scholars to hone their skills, but rather an activity for people to partake in for entertainment, or as ‘Alī ibn Abī Ṭālib says, to find some entertaining diversion. With the examples of the Prophet and ‘Alī ibn Abī Ṭālib, Ibn Farḥūn situates the legitimacy of scholarly entertainment with several foundational figures from early Islam.

In starting his book in this fashion, Ibn Farḥūn models his book of legal riddles on a longer tradition of books on riddling. Riddles in the Arabo-Islamic tradition, as described in the above hadith, share the main characteristics of riddles as generally understood. The discussion of riddles in the *Princeton Encyclopedia of Poetry and Poetics*

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<sup>563</sup> EI<sup>2</sup> s.v. “‘Umar (I) ibn al-Khaṭṭāb” (G. Levi Della Vida and M. Bonner).

explains the function of riddles clearly. Riddles are exercises in wordplay, punning, or the use of metaphors, imagery, and more.

Typically, an intentionally misleading question presents an enigma that can be resolved only by a clever ‘right’ answer. In a ‘true riddle,’ the question presents a description, which usually describes something in terms of something else, and a ‘block element,’ a contradiction or confusion that disrupts the initial description.<sup>564</sup>

In the question that Muḥammad poses, the comparison between believers and trees supplies the misleading question, and the answer of the palm-tree is the clever solution. This template holds for linguistic riddles as well as for legal riddles. Riddles are either seemingly simple questions with elusive answers or opaque statements that invite the participation of the reader or listener. The purpose of books of riddles is to provoke the curiosity and intellectual engagement of readers or of an audience. Discerning the answer is difficult and a test of skill; falling short, however, still allows readers to contemplate the answer and enjoy the word-play in the riddle that elicits the correct response.

The act of riddling is an inherently social activity. A riddle is posed by one person to another person or to a group of persons. Riddles all involve question and

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<sup>564</sup> *Princeton Encyclopedia of Poetry and Poetics*, s.v. “Riddles.” Interestingly, riddles do not seem to have been a popular genre within Persian writing. In fact, Seyed-Gohrab says that there are “no such collections[of riddles], and riddles are scattered throughout poetic *divāns*” (15). In his study, he finds that riddles as a literary technique were quite important in Persian literature, particularly within the *qaṣīda* form and that it “may, in fact, be regarded as a legacy of Middle Persian literature” (31). It is peculiar that books of riddles were very popular in Arabic but found no real currency in Persian. See A. A. Seyed-Gohrab, “The Art of Riddling in Classical Persian Poetry,” *Edebiyat* 12 (2001), 15-36.

answer, either through the direct posing of a question or through an allusive statement, the interpretation of which needs explanation. Riddles obtain their value by exploiting a knowledge disparity between the one posing the riddle and the audience. This disparity makes them useful for the performance of knowledge as a status-enhancing activity. Nevertheless, riddles also thrived as a textual genre, in which a book's narrator assumes the role of questioner or riddler. Ḥājjī Khalīfa, for example, sees *alghāz* as primarily a textual genre. "It is the science from which the precise and more or less unknown meaning of words are known (*yuta'arrafu minhu dalālat al-alfāz 'alā al-murād dalāla khafiyya fī al-ghāya*)."<sup>565</sup> For him, *alghāz* is a science, i.e. a textual tradition. The very inclusion of *alghāz* as a written genre in its own right in the bibliographic work written by Ḥājjī Khalīfa signals the importance of riddles as a mode of writing in the classical tradition.

In spite of this importance, only recently have scholars begun to analyze riddles as a serious form of Arabo-Islamic literature.<sup>566</sup> Because of this lack of study, there are many important questions still unanswered about the history of Arabic riddling. We have yet to pinpoint major works or authors within this field, let alone define the relationship between riddles and other forms of knowledge and entertainment. As will be discussed below, riddling thrived as a social activity in classical Arabo-Islamic

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<sup>565</sup> Ḥājjī Khalīfa, *Kashf al-zunūn* 1:149.

<sup>566</sup> See, for instance, Thomas Bauer's entry in EI<sup>3</sup> on Khālīd ibn 'Abdallāh al-Azhari, a grammarian from 15th century Egypt. In this entry, Bauer discusses al-Azhari's writings, but his *al-Alghāz al-naḥwiyya*, *The Grammatical Riddles*, are mentioned only in passing in the bibliography. "Several works of al-Azhari were published in early prints that are hardly accessible today or are still in manuscript, among them *al-Alghāz al-naḥwiyya* ("Grammatical riddles"), probably printed in Cairo 1281/1864." In part, the study of riddles is due to the lack of printed editions. EI<sup>3</sup> s.v. "al-Azhari, Khālīd ibn 'Abdallāh" (T. Bauer).



culture, but the relationship between this activity and books of riddles has yet to be established. A brief overview of riddles as both social and textual practices shows their importance to the classical Arabo-Islamic tradition. One of the main findings of my research into riddling as a social practice shows an increasing interest in riddling as a manner of presenting information starting from the 11<sup>th</sup> century and seemingly reaching a plateau in Mamluk Cairo.

As implied by Ḥājji Khalīfa in his definition of *alghāz*, riddles encompass much more than just legal riddles; indeed the most common kind of riddles are linguistic or lexicographic. The most recent study of Arabic riddles is Muḥammad Sālimān's essay, *Fann al-alghāz 'inda al-ʿarab*. Sālimān's study focuses exclusively on linguistic riddles, both grammatical and lexicographic. *Fann al-alghāz* is published together with four works of linguistic riddles, selections from *al-Ifṣāḥ fī sharḥ abyāt mushkilāt al-i'rāb* by al-Ḥasan ibn Asad al-Fāriqī (d. 487/1074), *al-Alghāz al-naḥwiyya* by Khālīd ibn ʿAbd Allāh al-Azharī (d. 905/1499), *al-Ṭāʾir al-maymūn fī ḥall lughz al-kanz al-madfūn* by Jamāl al-Dīn al-Qāsimī (d. 1332/1914), and *al-Lafẓ al-lāʾiq wa-l-maʿnā al-rāʾiq* by Shihāb al-Dīn Aḥmad ibn Hārūn (d. unknown). The fact that Sālimān chose to publish these works in particular alongside his essay underscores the precedence that he sees in linguistic riddles over that of other kinds of riddles.<sup>567</sup>

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<sup>567</sup> Muḥammad Sālimān, *Fann al-alghāz 'inda al-ʿarab wa-maʿhu al-Lafẓ al-lāʾiq wa-l-maʿnā al-rāʾiq. Al-Alghāz al-naḥwiyya. Al-Ṭāʾir al-maymūn fī ḥall lughz al-Kanz al-madfūn*, ed. Muḥammad Sālimān (Cairo: al-Hayʾa al-Miṣriyya al-ʿĀmma li-l-Kitāb, 2012).

There are, however, books of riddles in various scholarly disciplines including law.<sup>568</sup> Indeed, the history of legal riddles in the Arabic tradition incorporates, however, not only works of Islamic law, but also ought to include literary (*adab*) works including the figure of the Jurist of the Arabs (*Faqīh al-‘Arab*).<sup>569</sup> Nevertheless, the specific motives for telling and recording legal riddles remains to be discovered.

Muḥammad Abū al-Ajḡān and ‘Uthmān Baṭīkh, the editors of Ibn Farḡūn’s work on legal riddles, *Durrat al-ghawāṣṣ fi muḡādarat al-khawāṣṣ*, suggest that interest in riddles is a result of jurists’ desire for ever more complete understandings of substantive law.

Perhaps the secret to the profusion of legal riddles is the jurists’ need (*ḡurṣ*) for diversifying their research methods for substantive law (*asālib baḡth al-furū‘ al-*

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<sup>568</sup> See EI<sup>2</sup> s.v. “Lughz” (Bencheheb).

<sup>569</sup> The *Faqīh al-‘Arab* seems to be a trickster figure prominent in early Islamic writings. He makes appearances in the *maqāma* collection of al-Ḥarīrī, particularly the 32nd *maqāma*, *al-maqāma al-ṭibiyya*, but also in such works as *Futyā faqīh al-‘arab* by the lexicographer Aḡmad ibn Fāris (d. 395/1004). Ibn al-Jawzī includes a refutation of fatwas issued by the *faqīh al-‘arab* in his *Tablīs Iblīs*. The existence of this figure signals us towards intersections of intellectual play and Islamic law that seem to prefigure a more formalized genre of riddles within the textual world of Islamic law. This history remains to be written. The existence of a jurist-figure in works of *adab* and the collections of his fatwas may grant us insight into contestations over legal authority and the status required to interpret the Quran and hadith, in a manner similar to Joseph E. Lowry, “The First Islamic Legal Theory: Ibn al-Muqaffa‘ on Interpretation, Authority, and the Structure of the Law” *Journal of the American Oriental Society* 128 (2008): 25-40 and *idem.*, “The Legal Hermeneutics of al-Shāfi‘ī and Ibn Qutayba: A Reconsideration” *Islamic Law and Society* 11 (2004): 1-41. See also, Jaakko Hämeen-Anttila, *Maqama: A History of a Genre* (Weisbaden: Harrassowitz, 2002), 157-58, 269-70, 344. I thank Matthew L. Keegan for alerting me to the importance of the *faqīh al-‘arab* figure for the history of legal riddles and for these references. Abū al-Faraj ‘Abd al-Raḡmān ibn ‘Alī Ibn al-Jawzī, *Talbīs Iblīs*, no ed. (Beirut: Dār al-Qalam, 1403/[1983]), 123; Abū Muḡammad al-Qāsīm ibn ‘Alī al-Ḥarīrī, *Maqāmāt al-Ḥarīrī* (Beirut: Maktabat al-Ma‘ārif, 1873), 325-48; Abū al-Ḥusayn Aḡmad ibn Fāris al-Lughawī, *Kitāb Futyā faqīh al-‘arab*, ed. Ḥusayn ‘Alī Maḡfūz in *Majallat al-Majma‘ al-‘Ilmī al-‘Arabī* 33.3 (1377/1958): 441-466 and *Majallat al-Majma‘ al-‘Ilmī a-‘Arabī* 33.4 (1377/1958): 633-56.

*fiqhiyya*). Riddles also provide opportunities for examining the scope and substance of what is known (*li-ikhtibār madā tarkīz al-ma‘lūmāt*) and help jurists remember the most obscure rulings (*wa-li-da‘m al-‘awīṣ minhā fi al-adhhān*).<sup>570</sup>

The relationships that Abū al-Ajḫān and Baṭīkh establish between riddles, research into substantive law, and debating styles are clear. This claim can be pushed further, however: riddles were also a status-related social practice in which professionals and cultural elites participated. Further, the direction of causality Abū al-Ajḫān and Baṭīkh establish is less clear. It seems more likely that social practices led to the composition of these books rather than the composition of a genre of books altering existing social practices. This is similar to the claim made in Chapter Three of the present study, that the need to overcome *farq* objections in actual disputations provided a major impetus for the composition of books of legal distinctions.

While the word *alghāz* (sg. *lughz*) seems to be the most commonly used word to describe riddling, it also competes with other terms such as *aḥājī* (pl. *uhjiyya*), *mu‘ammayāt* (pl. *mu‘ammā*), *mu‘āyāt* (pl. *mu‘āyat*), *imtiḥānāt* (sg. *imtiḥān*) and even *al-as‘ila wa-l-ajwiba*. Certain authors seem to believe in strong distinctions between these terms. Ibn Farḫūn seems to relate each term to a different branch of learning. “Scholars have written numerous books on this subject.<sup>571</sup> Jurists call this kind of writing ‘riddles’ (*alghāz*), scholars of inheritance call it ‘enigmas’ (*al-mu‘ammiyāt*), grammarians

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<sup>570</sup> Muḥammad Abū al-Ajḫān and ‘Uthmān Baṭīkh, “Introduction” to Ibn Farḫūn, Burhān al-Dīn Ibrāhīm Ibn Farḫūn al-Mālikī, *Durrat al-ghawāṣṣ fi muḥāḍarat al-khawāṣṣ*, ed. Muḥammad Abū al-Ajḫān and ‘Uthmān Baṭīkh (Cairo: Dār al-Turāth; Tunis: al-Maktaba al-‘Atīqa, 1980), 37.

<sup>571</sup> Ibn Farḫūn is specifically discussing the asking and answering of very obscure questions (*al-masā’il al-‘awīṣāt*).

‘puzzlers’ (*al-mu‘ammā*), and lexicographers call it ‘quandaries’ (*aḥājī*).”<sup>572</sup> Ibn Farḥūn claims to write his book because of the importance of this kind of riddling and the lack of such books in the Mālikī school.<sup>573</sup> According to Ibn Farḥūn, the use of *alghāz* to refer to riddles is a usage of the jurists, but in Muḥammad Sālimān’s recent essay on *alghāz*, legal riddles are not even mentioned.

Writing in the *Encyclopaedia of Islam*, however, Bencheheb says “a *lughz* is an ‘enigma’, *mu‘ammā* (pl. *mu‘ammayāt*) ‘word puzzle, verbal charade’, *uḥjiyya* (pl. *aḥājī*) ‘riddle, conundrum’, three Arabic terms often used in a figurative sense, but basically referring to three kinds of literary plays upon words which are fairly close in type to each other.”<sup>574</sup> According to Bencheheb, the *lughz* and *uḥjiyya* are both riddles in the style of question and answer, while the *mu‘ammā* is a riddle without the question and answer. The word *mu‘āmmā*, however, can also be used to mean a code or secret writing.<sup>575</sup> The works discussed by Bencheheb on riddles and puzzles are primarily lexicographical or linguistic. “The enigma [*lughz*] is generally in verse, and characteristically is in an interrogative form.”<sup>576</sup> A riddle demands to be solved, the answer almost certainly involving a play on words or a double-entendre. All three styles are generally, but not always, in verse. In other words, his study of riddles found differences based on the form of these puzzles, not in the fields in which they were applied.

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<sup>572</sup> Ibn Farḥūn, *Durrat al-ghawāṣṣ*, 64-65.

<sup>573</sup> Ibn Farḥūn, *Durrat al-ghawāṣṣ*, 65.

<sup>574</sup> EI<sup>2</sup> s.v. “*Lughz*” (Bencheheb).

<sup>575</sup> See EI<sup>2</sup>, “*Mu‘ammā*” (Bosworth).

<sup>576</sup> EI<sup>2</sup> s.v. “*Lughz*” (Bencheheb).

It does not seem that these three terms for riddles have relevance in the legal realm. Ibrāhīm ibn Nāṣir ibn Ibrāhīm al-Bashar, in his study on Abū al-ʿAbbās al-Jurjānī’s work of legal riddles, finds no difference between the various terms for riddles, *alghāz*, *muʿammā*, *uḥjiyya*, etc. as used in al-Jurjānī’s book. Al-Jurjānī’s book, he says, “is not a book of *alghāz* in the technical meaning of the word (*al-maʿnā al-muṣṭalah ʿalayhi*), even though it is counted among these works and considered one of them. The author, may God have mercy on him, had a different goal with this book.”<sup>577</sup> Further, al-Bashar discounts the idea of riddles as a genre. “It did not become an independent branch of legal studies at all (*lam takun ʿilman qāʿiman bi-dhātihi ʿinda ʿulamāʾ al-sharīʿa*), even if some scholars dedicated books to this topic.”<sup>578</sup> Note the elision of *alghāz*, *aḥājī*, and *muʿāyāt* in this quotation, terms he also refers to as basically synonyms (*alfāz mutaḳāriba*). It is unclear why al-Bashar does not accept this as a branch of legal studies, in spite of the number of books written on legal riddles.

The riddles themselves in such books are generally presented in dialogue form, just as are legal riddles. Ibn Farḥūn’s book is a series of consecutive simulated dialogs. Each riddle is introduced with a conditional protasis, the phrase, “If you were to ask... (*fa-in qulta*),” and the answer provides the apodosis, “I would reply... (*wa-qultu*).” The dialogues are blueprints, similar to the inclusion of diputations in certain books of legal

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<sup>577</sup> Ibrāhīm ibn Nāṣir ibn Ibrāhīm al-Bashar “Introduction” to Abū al-ʿAbbās Aḥmad ibn Muḥammad al-Jurjānī, *Kitāb al-Muʿāyāt fī al-fiqh ʿalā madhhab al-Imām al-Shāfiʿī*, ed. Ibrāhīm ibn Nāṣir ibn Ibrāhīm al-Bashar (PhD. Diss.: Jāmiʿat Umm al-Qurā, 1415[1994]), 37.

<sup>578</sup> Al-Bashar “Introduction” to al-Jurjānī, *Kitāb al-Muʿāyāt*, 37.

distinctions discussed earlier in this dissertation.<sup>579</sup> Given the importance of riddles at *majālis*, it seems likely that the dialogic presentation in these works was a blueprint for performance. Arriving at the solution to a legal riddle involves a high degree of sophisticated legal and linguistic education. Fortunately for the reader, these books not only pose complicated legal riddles but also provide the solution. In this way, not only did a book of riddles potentially prepare one for participation in a *majlis*, but the act of reading a book of riddles could function as a simulation of attending a *majlis*. The book poses questions for the reader to answer. The reader can attempt to solve the riddle and then verify their answer with the one provided in the text. The possibility for enjoyment comes through attempting to solve the puzzle, or failing to solve it, through understanding the solution to the puzzle on reading it.

The Ḥanafī jurist Ibn al-Shiḥna’s (d. 1447-48/1515-16) *al-Dhakhā’ir al-ashrafiyya fī alghāz al-Ḥanafīyya* is also typical of the genre. The majority of the riddles are posed with the conditional “If someone were to say... (*in qīla...*)” and the solution to the riddle is introduced with the formula “the reply is... (*wa-l-jawāb*).”<sup>580</sup> The majority of these riddles come from Ibn al-Shiḥna himself. He also includes riddles from a book entitled *al-Taḥdhīb fī dhihn al-labīb* by a certain Ibn al-‘Izz.<sup>581</sup> The daunting riddles from *al-*

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<sup>579</sup> See Chapter Three.

<sup>580</sup> See ‘Abd al-Birr ibn Muḥammad Ibn al-Shiḥna, *Alghāz al-Ḥanafīyya li-Ibn Shiḥna al-Musammā al-Dhakhā’ir al-ashrafiyya fī alghāz al-Ḥanafīyya*, ed. Fāṭima Shihāb (Cairo: al-Maktaba al-Azhariyya li-l-Turāth, 2014).

<sup>581</sup> I believe this refers to Abū al-Maḥāsīn ‘Alī ibn ‘Alī ibn Muḥammad Ibn Abī al-‘Izz (d. 792/1389). See Mu’assasat Āl al-Bayt, *al-Fihrisal-shāmil li-l-turāth al-‘arabī al-islāmī al-makḥṭūṭ* 2<sup>nd</sup> edition (Amman: Mu’assasat Āl al-Bayt, n.d.), 41:29. See also Markaz al-Malik al-Fayṣal li-l-Buḥūth wa-l-Dirāsāt al-Islāmiyyah, *Khizānat al-turāth: Fihris shāmil li-‘anāwīn al-makḥṭūṭāt wa-amākinihā wa-arqām ḥifẓihā fī maktabāt*

*Tahdhīb* have different phrasing than those in *al-Dhakhāʿir* and are followed by their solutions.<sup>582</sup> Generally, solving the riddles involves either thorough mastery of substantive law, a mastery of the Arabic language and linguistic interpretation, or both.

For instance, Ibn al-Shiḥna asks:

Question (*fa-in qīla*): Which wells (*ayy biʿr*) cannot be used for ablutions until one bucketful of water has been poured out from it?

Answer (*fa-l-jawāb*): A well with a bucket that has previously been used to draw water from a different well which has sufficiently impure water and may not be used for ablutions (*biʿr wajaba nazḥ dalāʾ minhā*). Performing ablutions with the water from such a well is only permitted once one bucketful of water has been poured out from it. This ruling is applied in a proportionally consistent manner; the number of buckets of water poured out should be equivalent to the number of times the impure bucket was used (*yattaridu al-suʿāl fi al-dalwayn wa-thalātha wa-arbaʿa bi-ḥasab al-maṣbūb fihā*).<sup>583</sup>

Here the riddle consists of a difficult legal question and the solution rests in knowing the details of purity law. Water in a well is pure. It can, however, be tainted by the addition of impurities. The riddle posed here asks why or how a well could be purified by extracting exactly one bucket of water, indeed how can removing rather than adding pure water purify the well. In order to solve the riddle, one has to know purity

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*al-ʿālam*, CD-ROM #5919. The *Khizānat al-turāth* catalog is also available online at al-Maktaba al-Shāmila, <http://shamela.ws/browse.php/book-5678>.

<sup>582</sup> He discusses his use of Ibn al-ʿIzz’s work on page 3. For an example, see below.

<sup>583</sup> Ibn al-Shiḥna, *Dhakhāʿir al-ashrafiyya*, 8.

law, the status of water in a well, its potential pollutants, and the remedies for the pollution. In other words, in order to understand and solve this riddle, one must know the intricacies of substantive law.

Other riddles, however, require an exercise in linguistic interpretation, as in a riddle cited from Ibn al-ʿIzz. This riddle is posed to Abū Ḥanīfa, who provides a solution. “It is said that someone asked Abū Ḥanīfa, ‘What do you think about someone who says to his wife, ‘I do not wish for Heaven, nor do I fear Hell. I eat carrion and blood. I take the word of (*uṣaddiqu*) Jews and Christians and I loathe God (*abghuḍu al-ḥaqq*)...’”<sup>584</sup> The man continues in this way making statement after statement that appears to repudiate his Muslim faith. Instead of answering the question, however, Abū Ḥanīfa defers to his companions (*aṣḥābuhu*), in order to gauge their opinions. “They all respond, the one who says this is an infidel!” Upon hearing this, Abū Ḥanīfa smiled and said, ‘No, he is a true believer (*muʾmin*).’”<sup>585</sup> At this point the riddle has been fully sketched out. The anonymous questioner posed a straightforward question about the status of someone who seemingly repudiates Muslim dogma. Abū Ḥanīfa’s companions confirm this repudiation with their opinion that he is an infidel. The case seems clear cut. Abū Ḥanīfa, however, disagrees. He sees this person as a good, believing Muslim. How can this be?

The answer, supplied by Abū Ḥanīfa, involves a prodigious act of linguistic interpretation. His solution involves a linguistic re-interpretation of every single one of

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<sup>584</sup> Ibn al-Shiḥna, *Dhakhāʿir al-ashrafiyya*, 199.

<sup>585</sup> Ibn al-Shiḥna, *Dhakhāʿir al-ashrafiyya*, 199.



the speaker's statements in order to show how each aligns with proper behavior and belief. Further, not only is this person shown to be a Muslim in good standing, but Abū Ḥanīfa's interpretations demonstrate that this speaker has attained a high level of religious knowledge and piety. Abū Ḥanīfa explains each one of the speaker's sentences as having a pious meaning: "When the speaker says, 'I do not wish for Heaven, nor do I fear Hell,' this is only because he wishes for and fears their Creator. When he says, 'I eat carrion and blood,' he means that he eats fish and locusts and liver and spleen."<sup>586</sup> Abū Ḥanīfa continues in this way finding an interpretation for each of the speaker's statements. After reading Abū Ḥanīfa's explanations, the reader is compelled to agree with Abū Ḥanīfa's assessment.<sup>587</sup>

In the example I quoted above, Abū Ḥanīfa interprets the phrase "I do not wish for Heaven..." as implying an elided phrase (*al-ḥadhf*). The speaker's full meaning is, according to this interpretation, "I do not wish for Heaven, I wish for God," but the second clause has been elided by the speaker. In interpreting the second statement, Abū Ḥanīfa interprets it favorably with a presumption of legality. Only animals that have been ritually slaughtered are permissible for eating and consuming blood is never acceptable. In spite of this, Abū Ḥanīfa understands that this statement is not about eating carrion and blood, but rather an allusion a made by the Prophet Muḥammad. "There are two kinds of carrion and two kinds of blood that have been made licit for us.

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<sup>586</sup> Ibn al-Shiḥna, *Dhakhā'ir al-ashrafiyya*, 190.

<sup>587</sup> Ibn al-Shiḥna, *Dhakhā'ir al-ashrafiyya*, 199-200.

The carrion is fish and locust, the blood, liver and spleen.”<sup>588</sup> The statement is therefore to be understood as an allusion to this prophetic hadith and not as a general statement. In making this allusion, the speaker is demonstrating his own knowledge of the Prophetic tradition. His words not only echo those of the Prophet, but this hadith is also used as an authoritative proof-text in legal discussions of what is permissible to eat.<sup>589</sup> He is quoting Muḥammad, and quoting him in a correct context. All of the speaker’s statements are interpreted in this fashion by Abū Ḥanīfa and the deep religious learning of the speaker is brought to the fore.

These are two examples of the kind of reasoning and presentation found in works of legal riddles. A broader survey of riddles would likely expand much more on the style and presentations of riddles and likely find diachronic changes in both the style of these books and the style of individual legal riddles themselves. For the present discussion, however, these examples bring two conclusions to light. The first is the legal content of riddles makes books of riddles serious legal works. One must have a thorough grounding in substantive doctrine, legal theory, and the Arabic language in order to solve the riddles presented in these books. A reader lacking the knowledge to answer a riddle can nevertheless learn about the law by reading these works. He can

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<sup>588</sup> See ‘Alā’ al-Dīn al-Kāsānī, *Badā’i’ al-ṣanā’i’ fi tartīb al-sharā’i’* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1406/1998), 5:58. This hadith appears in Ibn Mājah in his chapter on *ṣayd*, and his chapter on Foods (*aṭ’ima*), in *Sunan Abī Dāwūd* in the chapter on Foods (*aṭ’ima*), in Mālik’s *Muwaṭṭa’* on Descriptions of the Prophet (*ṣifat al-nabī*), and in the *Musnad* of Aḥmad ibn Ḥanbal, see Arent Jan Wensinck, *Concordance et indices de la tradition musulmane: les six livres, le Musnad d’al-Dārimī, le Muwatta’ de Mālik, le Musnad de Aḥmad ibn Ḥanbal* (Leiden: E.J. Brill, 1933-1938), 1:226.

<sup>589</sup> See *Badā’i’ al-ṣanā’i’*, 5:58; al-Ḥasan ibn Manṣūr al-Uzjandī Qāḍikhān, *Sharḥ al-Ziyādāt* (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 2005/1426), 5:2117.

understand the relationship between the question and answer given knowledge of both.

The second point is perhaps more important. These books show the degree to which jurists could indulge in intellectual play within their professional discipline of Islamic law. These books show us moments of sustained enjoyment in the intricacies of Islamic law and legal theory. At the same time, however, they remain serious and valuable works of Islamic law. Moreover, these books show that play was an acceptable way to interact with Islamic legal knowledge. Not only do the author and reader interact in games of riddles, but as the second example shows, Abū Ḥanīfa is given a prominence within this tradition. He himself, the eponym of the legal school, is shown taking part in the tradition of riddling.

My understanding of play in the context of Islamic law is inspired by the work of Norman Calder, particularly his *Islamic Jurisprudence in the Classical Era*.<sup>590</sup> His discussion of play comes largely from his understanding of Islamic law as a more or less stable set of rules and relationships that jurists constantly attempt to reinvent and redescribe. For him, play is in many ways the primary literary feature of Islamic law. “[T]he most characteristic features of development through time are those that reflect, not an interest in new rules, but a self-reflective interest in the tradition itself and in the modes of expressing inherited rules.”<sup>591</sup> Accordingly, any interesting development in Islamic law might occur on a literary – not a legal – level. In this legal context, play

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<sup>590</sup> See also, however, the discussion of Calder’s earlier ideas about play in Islamic law in “Alta Discussion” in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Boston; Leiden, 2006), 413-14.

<sup>591</sup> Calder, *Islamic Jurisprudence*, 71.

involves two activities. The first activity is a richer linguistic analysis and maker more intricate connections between the issues inherent in legal texts—such as grammar and lexicography, but also investigations of passages cited from the Quran and hadith corpus. The second activity involved in this intellectual play is the pursuit of greater stylistic refinement and organizational clarity. “Real measurable development, implying a process that is more or less continuous through time and in a definable direction, can be distinguished only in relation to organisational technique, linguistic presentation, and syntactical virtuosity.”<sup>592</sup> In Calder’s telling, it was this aspect of legal thinking that made the study of law “a joy and delight” for pre-modern jurists.<sup>593</sup> While I do not agree entirely with Calder’s dismissal of substantive developments, his focus on the aesthetic dimensions of legal literature is compelling and worthy of further research.<sup>594</sup>

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<sup>592</sup> Calder, *Islamic Jurisprudence*, 35.

<sup>593</sup> Calder, *Islamic Jurisprudence*, 86.

<sup>594</sup> Calder is convincing in his analysis in terms of the genres that he studies, the *mabsūṭ* and the *mukhtaṣar*. Other scholars, however, have shown doctrinal development in other genres of Islamic legal writing. In particular, Baber Johansen has demonstrated how Ottoman legal commentaries showed important changes in substantive law. Other studies have also shown development occurring in fatwa literature. Wael Hallaq discusses development from a theoretical standpoint and David Powers and Yosef Rappaport have demonstrated this from a social historical perspective. These important studies do not undermine or go against Calder’s conclusions for the two genres he studies nor his general approach to Islamic legal texts. See Baber Johansen, “Legal Literature and the Problem of Change,” *Islam and Public Law: Classical and Contemporary Studies*, ed. Chibli Mallat (London: Graham and Trotman, 29-47; *idem.*, *The Islamic Law on Land Tax and Rent: The Peasants’ Loss of Property Rights under the Hanafite Doctrine* (London; New York: Croom Helm, 1988); Wael Hallaq “From *Fatwās* to *Furū’*: Growth and Change in Islamic Substantive Law,” *Islamic Law and Society* 1 (1994): 29-65; David Powers, *Law, Society, and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002); and Yossef Rapoport, *Marriage, Money, and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2005).

We can see this kind of intellectual play at work in books of legal riddles and we will see that books of legal distinctions employ similar tools. For Calder, play involves ways to improve the presentation of legal information. He discusses how play is used to increase the precision of legal language and clarify the relationship between laws and ideas. In riddles, of course, the play works in an opposite way. The riddle itself makes the law ambiguous or obscure; the answer involves perceiving the straightforward application of law through this obscurity. Both steps involve a high degree of linguistic play and creative exploration of linguistic and legal issues. The intellectual dexterity involved in solving a riddle made this activity not only enjoyable, but also appropriate as a way of honing one's legal mind. Ibn Farḥūn makes a statement to this effect in the introduction to his book on legal riddles. "[I]t is necessary for a scholar to test (*an yumarrina*) his colleagues by asking them the most obscure questions possible (*ilqā' al-masā'il al-awīṣāt 'alayhim*) to test their minds' ability to clarify difficult questions (*mu'aḍḍalāt*) and decipher obscure questions (*iḍāḥ al-mushkilāt*)."<sup>595</sup> Ibn Farḥūn's quotation implies that some of the most obscure questions possible are to be found in the form of legal riddles, and that solving legal riddles was a way of maintaining a sharp legal mind. It was not only legal riddles, however, where some of these obscure questions were to be found.

Many works of legal distinctions packaged the law as riddles or quasi-riddles, comparing laws in ways that seem confusing or unintelligible, but in such a way that the prolonged comparison actually reveals the straightforward distinction, much in the

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<sup>595</sup> Ibn Farḥūn, *Durrat al-ghawāṣṣ*, 64.

way that the question and answer in riddles are packaged. Interestingly, however, the relationship between riddles and distinctions as legal concepts was not a one-way affair. It was not only that riddles led to a newfound sense of play in certain works of legal distinctions, but the reasoning of legal distinctions showed itself to be a compelling way of presenting legal riddles.

### Legal Distinctions as Play

The style of presentation of legal riddles proved useful to authors of works on legal distinctions. The form and logic of works of legal distinctions were equally useful for the presentation of legal riddles and many works of legal distinctions, particularly those written during the Mamluk Sultanate, adopt the rhetorical style of the riddle-form.

Riddle-influenced legal distinctions can be seen clearly in the chapter on legal distinctions in Ibn Nujaym's *al-Ashbāh wa-l-nazā'ir*; I focus in particular on his section on ritual purity.<sup>596</sup> The first distinction in this section says, "If a piece of animal dung (*bu'ra*) falls into a well, it does not render the water impure. However, if half of a piece of animal dung (*naṣfuhā*) falls into a well, it does render the water impure."<sup>597</sup> This

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<sup>596</sup> Ibn Nujaym claims that all of his distinctions come from the "the legal distinction work written by Imām al-Karābīsī titled *Talqīh al-Maḥbūbī*." The first part of this statement likely refers to As'ad ibn Muḥammad al-Karābīsī and his book *al-Furūq*. The *Talqīh al-Maḥbūbī*, however, refers to a different work by a different author, the *Talqīh al-ʿuqūl fī al-furūq* by Aḥmad ibn ʿUbayd Allāh al-Maḥbūbī (d. 640/1243), also known as Ṣadr al-Sharīʿa al-Awwal.

<sup>597</sup> Zayn al-ʿĀbidīn Ibrāhīm Ibn Nujaym al-Miṣrī, *Kitāb al-Ashbāh wa-l-nazā'ir* with Aḥmad ibn Muḥammad al-Ḥamawī *Ghamz ʿuyūn al-baṣā'ir sharḥ Kitāb al-Ashbāh wa-l-nazā'ir*, no ed. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1985/1405), 4:285. This is the first distinction in the sixth chapter.

distinction seems to challenge the most basic laws of logic. How can a greater amount of an impure substance be less impure than a lesser amount? This logical affront prods the reader to reflect, to understand how these two situations can result.

The next distinction is just as confusing. “It is not incumbent on a man to help his sick wife perform her minor ablutions, but it incumbent on him to help his sick slaves, male or female, perform their minor ablutions.”<sup>598</sup> In this instance, a husband has a greater legal obligation to help his slaves perform their religious duties than he has to his wife. Again, this situation seems to defy common sense. Privileging the religious duties of one’s slaves at the expense of one’s wife contravenes the expected social order. Not only would this devalue marriage in relation to slavery and concubinage, but this distinction also seems to place the religious needs of an enslaved person above those of a free person. Again, this distinction stokes a sense of curiosity in the reader, highlighting the allure of what is to come. Because the distinction seems so absurd, the reader expects the author to resolve this uncomfortable state of affairs. The explanation Ibn Nujaym provides has to resolve not only the contradiction between the laws compared, but also the seeming incongruity between these substantive laws and common sense. The anticipation established by the comparison and the resolution thereof through the discussion of the distinction is a clear borrowing of the presentation style of riddles, which functions similarly in order to gain the attention of a reader or an audience. While the claims that Ibn Nujaym makes in his comparisons are provocative, his explanation of the distinction between the compared laws places

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<sup>598</sup> Ibn Nujaym, *Al-Ashbāh wa-l-naẓāʾir*, 4:286. This is the second distinction in the sixth chapter.

them squarely within the normal doctrinal parameters of Islamic law. Further, the reasoning makes the seeming incongruity clear and shows the outcomes to be logical. With the rationale presented, the strange case of the conflicting laws no longer appears absurd, but rather as an anomaly that results from normal processes of legal reasoning.

In the case of animal dung falling into a well, why would a lesser quantity be more polluting than a greater quantity? Ibn Nujaym explains “The distinction is that one piece of animal dung, when it falls into a well, is covered by an outer crust that prevents the pollutants from spreading (*tamna‘u min al-shuyū‘*), whereas this is not the case with half of a piece.”<sup>599</sup> Ibn Nujaym’s explanation functions on two separate levels. The first which functions largely on stylistic grounds explains the absurdity involved in the phrasing. Contrary to the way this distinction was presented, this distinction does not say that less of a pollutant pollutes more, but rather that the two entities compared are not alike. It is only through this highly specific comparison that the lesser quantity can be understood to be more polluting. The second level on which Ibn Nujaym’s explanation functions involves the legal rulings in regard to ritual purity. Here, the idea is that a polluting substance pollutes a pure substance by penetrating the pure substance. The lesser quantity of a pollutant is capable of seeping into the well water, whereas the greater quantity is, in effect, in a sealed container and therefore not polluting. It is a curious situation, but no longer perplexing.

The case of performing ablutions for others resolves itself with a similar logic. Ibn Nujaym explains, “The distinction is that the slave is his property and its upkeep is

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<sup>599</sup> Ibn Nujaym, *Al-Ashbāh wa-l-naẓā’ir*, 4:285. This is the first distinction in the sixth chapter.



incumbent upon him, whereas his wife is not his property.”<sup>600</sup> In the case of a slave, there is no marital obligation, there is not even a religious obligation per se incumbent on the owner. The requirement for helping a slave with her ablution, instead, is part of the requirement for the upkeep (*iṣlāḥ*) of one’s property. Since a slave is human, and in this case Muslim, part of the upkeep of the property is to maintain the Muslim slave’s religious duties. Therefore, it is necessary for the slave’s owner to help the slave in this. Since a man’s wife is not his property, this same obligation does not arise. Once more, this explanation renders the distinction comprehensible. At first, the distinction makes it seem as though a man has a greater religious duty to a slave than to his wife. This is the effect of the linguistic play involved in this legal distinction. The description of the distinction, however, explains that this is actually a case of religio-ethical duties that can arise in certain specific cases of property ownership. A man has ownership of his slaves but he does not own his wife. Still, there may be times when a slave is owed something that a wife is not, but this is due to the conjunction of the slave’s status as both property and a Muslim with religious obligations, not laws of ritual purity.

Of course, Ibn Nujaym was writing these words playfully; his goal was to cement in the mind of the reader why the seemingly outrageous results are not, in fact, outrageous. They come within the context of his *Ashbāh wa-l-naẓā’ir*, a work which in certain ways offers a comprehensive survey of Ḥanafī law as understood by 16<sup>th</sup>-century jurists. In many ways, his book is a snapshot of the then contemporary understandings of *fiqh*. The chapters in his book treat: (i) general principles (*al-qawā’id*

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<sup>600</sup> Ibn Nujaym, *Al-Ashbāh wa-l-naẓā’ir*, 4:286. This is the second distinction in the sixth chapter.

*al-kulliya*), (ii) useful remarks on points of law (*al-fawā'id*), (iii) similar and different cases (*al-jam' wa-l-farq*),<sup>601</sup> (iv) riddles (*al-alghāz*), (v) legal stratagems (*ḥiyal*), (vi) distinctions (*al-furūq*), and (vii) stories and correspondence (*al-ḥikāyāt wa-l-murāsālāt*). Taken together, a reader can see the literary interests of these jurists, but moreso, the prominence that different genres had within the writing of Islamic law and the widespread sense of intellectual play among elite jurists. Ibn Nujaym has a separate chapter on riddles, but the chapters three, five, six, and seven all focus on interesting and peculiar points of law; and instances of stretching and bending of the law in unusual ways. Indeed, only the second chapter on *fawā'id* seems to correspond to a traditional, straightforward approach to Islamic law.

### **The Merging of *Alghāz* and *Furūq***

Ibn Nujaym's legal distinctions seem clearly to be influenced by or responding to the form of legal riddles. The influence, however, went in both directions; the influence of distinctions on riddles is perhaps even more noticeable. Many jurists wrote books that, in terms of content, seem to be books of legal distinctions, but are titled as if they were books of legal riddles. The connection seems to have been widespread; there is much scattered material evidence that these two forms of writing were seen as related.

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<sup>601</sup> This section is not on legal distinctions, even though its title suggests it may be so. It instead consists of broad comparisons of different legal ideas or concepts, rather than specific comparisons of laws and their outcomes. For instance, topics treated include "The Differences between the Minor and Major Ablutions," "The Differences between Wiping over a Shoe (*mash' al-khuff*) and Washing the Foot," and "The Differences between Menstruation and Childbirth (*al-nifās*)." It is more reminiscent of an applied lexicographic distinctions. See Ibn Nujaym, *al-Ashbāh wa-l-naẓā'ir*, 3:287-479, 4:5-286.

Abū al-ʿAbbās Aḥmad al-Jurjānī’s *al-Muʿāyāt fī al-fiqh* is perhaps the best example of this convergence; it is a book ostensibly about legal riddles that has almost always been received as a book of legal distinctions. The term *al-muʿāyāt* (sg. *al-muʿāya*) in the title refers to a particular kind of riddle and should most likely be understood in the context of the title as a synonym for *alghāz*.<sup>602</sup> Nevertheless, when reading through this book, it becomes clear that the majority of it does not consist of riddles per se. Instead, this book is largely a list of legal distinctions. A manuscript of this work in the Egyptian National Library even refers to it as *Kitāb al-Furūq li-l-Jurjānī*.<sup>603</sup>

The work begins with a short introduction in which al-Jurjānī says:

The following are questions fit to be asked as riddles or to test someone’s knowledge (*al-muʿāyāt wa-l-imtiḥān*). I present them organized by legal topic to expand the usefulness of this book and to make consulting the book easier for whoever wishes to reference it.<sup>604</sup>

The book presents a series of legal puzzles, the majority of which juxtapose pairs of seemingly contradictory legal rulings. Ibrāhīm ibn Nāṣir ibn Ibrāhīm al-Bashar, the editor of *al-Muʿāyāt*, mentions in his introduction that this work consists of “legal distinctions, legal maxims and precepts (*al-qawāʿid wa-l-ḍawābiṭ*), and legal riddles, but

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<sup>602</sup> Further research into riddles need to be conducted before this statement can be made with confidence.

<sup>603</sup> This manuscript is catalogued under *Fiqh Shāfiʿī*, *Fiqh Shāfiʿī* 915, I thank Noha Abou Khatwa with helping me identify the accession number of this manuscript. It is also the manuscript used in the Dār al-Kutub al-ʿIlmiyya edition of this work, see Abū al-ʿAbbās Aḥmad ibn Muḥammad al-Jurjānī, *al-Muʿāyāt fī al-ʿaql aw al-Furūq*, ed. Muḥammad Fāris with an introduction by Kamāl al-Dīn al-ʿInānī (Beirut: Dār al-Kutub al-ʿIlmiyya, 1993), 14-15.

<sup>604</sup> Al-Jurjānī, *Kitāb al-Muʿāyāt*, 144.

the primary topic of the book is [legal distinctions].”<sup>605</sup> These three categories which make up the book are all being used as riddles.

Al-Jurjānī’s use of distinctions in this book signals yet another function for legal distinctions. Here, distinctions serve primarily as a vehicle for posing difficult questions that require specific answers. Previously we have seen distinctions function (i) as a specific objection within formalized disputational procedures, (ii) as a concept that shows relationships between substantive laws, and (iii) as a genre through which to organize Islamic legal knowledge. Al-Jurjānī’s statements in his introduction were accepted by other Shāfi‘ī scholars; they too understood his book as being primarily about riddles. Ibn Qāḍī Shuhba says that the *Kitāb al-Mu‘āyāt* “included different kinds of ways to test someone’s knowledge (*al-imtihān*), such as riddles, distinctions, and exceptions from legal precepts (*istithnā’āt min al-ḍawābiṭ*).”<sup>606</sup>

The introduction and title of this book both signal a purpose different from that of the books of legal distinctions discussed in the previous chapters. The ostensible purpose of the distinctions included in this book is to perplex and to provoke the reader into a deeper contemplation. The use of three different legal forms—*furūq*, *qawā‘id*, and *ḍawābiṭ*—to convey this information signals the creative potential of a complex discursive tradition such as that of Islamic law. Further, it points to the way in which different concepts could be employed and combined for the sake of intellectual play. Here, the intellectual play is different from that discussed above. One aspect of al-

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<sup>605</sup> Al-Bashar “Introduction,” 91.

<sup>606</sup> Ibn Qadi Shuhba, *Ṭabaqāt al-fuqahā’*, 1:260.

Jurjānī's play here involves the appropriation of distinctions, maxims, and precepts, all of which belonged to recognizable legal categories, and his repackaging of them as legal riddles. The function of works of legal distinctions may not be straightforward, but the function of these works of riddles seems to revolve around the creative intellectual manipulation of knowledge of Islamic law for purposes of pedagogy and entertainment.

The distinctions themselves that al-Jurjānī provides are in large measure indistinguishable from those found in books that self-identify as books of legal distinctions. Certainly, they would not be out of place in a book of legal distinctions. The following is an example of a legal distinction from his chapter on prayer.

If, while praying, someone decides to stop his prayer, the prayer is nullified, even if he does not actually stop it.

If, however, while reciting the Quran, someone decides to stop his recitation, it is not nullified as long as he does not stop reciting.

The distinction between these two is that prayer requires an intention to pray (*taftaqiru ilā al-niyya*) and becomes void by any action that negates this intention. Thus, a prayer is nullified by the mere intention of stopping it. Reciting the Quran, however, does not require such intention, thus it is not nullified by the intention of stopping.

The hajj pilgrimage is not treated according to this principle (*wa-lā yalzimu 'alā ma'nā al-aṣl al-ḥajj*), for it is not nullified by an action that negates

the intention to perform it. Because of this, a hajj pilgrimage is not voided by an intention of stopping.<sup>607</sup>

This passage first compares the role of intention in two ritual acts, prayer and Quran recitation. The distinction between how intention functions in these two acts lies in the way that each of them requires intention. While prayer is completely invalid without intention, a recitation from the Quran is still ritually valid even without prior intention. This is a relatively straightforward distinction related to the factors underlying the validity of each act. Once the role of intention in regard to these two acts is established, al-Jurjānī brings in a third ritual act, the hajj pilgrimage. The status of the hajj pilgrimage is perplexing, as it seems to fit with both camps. It requires intention to begin, but it does not require a continuous intention throughout.

In many ways, this would be a typical legal distinction if not for its inclusion in a book that presents itself as a book of legal riddles. The book's genre, signaled by the book's title, suggests that we understand this distinction differently. In part, it is no longer a distinction functioning *as* a distinction, but rather a distinction functioning interactively, as a riddle to be solved and a question to be answered. The primary difference is not one of content, but of context, social performance in a *majlis*. The manner in which the discussion of this distinction is packaged emphasizes the seemingly paradoxical nature of ritual intention. Since the book primes the reader to look for moments of contemplation, the riddle inherent in this distinction is readily

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<sup>607</sup> Al-Jurjānī, *al-Mu'āyāt*, 191.

apparent. The use of legal maxims and precepts (*al-qawā'id wa-l-ḍawābiṭ*) in this book should be understood similarly.

Al-Jurjānī's use of maxims and precepts follows a set pattern. He states a broad precept or maxim and then lists the exceptions to it. The fifth legal question in the chapter on ritual purity uses this format. It starts by stating a legal maxim, which, as is typical, comes in the form of a pithy statement. "Water can never remain pure inside of an impure container (*lā yu'rafu mā' ṭāhir fī inā' najas*).” The statement expresses a general truth about Islamic legal doctrine: pure water, placed in an impure container, becomes contaminated and loses its state of purity. As often happens with broad generalizations, “there are, however, two exceptions (*illā fī mas'alatayn*).”<sup>608</sup> It seems as though it is the exception that proves the rule. The knowledge of these two exceptions serves as the solution to the puzzle.

The first exception is a container made from the skin of carrion. When a lot of water is poured into it, the water does not become impure (*jild mayyita ṭuriḥa fīhi mā' kathīr wa-lam yataghayyar*). The second is a pure vessel from which a dog has drunk. When a lot of water has been poured into it, it does not become impure (*wa-lam yakun mutaghayyiran*). The water in these cases is pure, but the vessel is impure.<sup>609</sup>

The underlying rationale for both of these exceptions is that pouring a large quantity of water into these vessels renders them pure. In both exceptions, the vessel is only

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<sup>608</sup> Al-Jurjānī, *al-Mu'āyāt*, 151.

<sup>609</sup> Al-Jurjānī, *al-Mu'āyāt*, 151.

temporarily impure but becomes purified, i.e. they are accidentally, not essentially, impure objects. Because of this, water in them can be pure once the impurity has been removed. This removal, however, can occur in these cases by the very act of filling the vessel.

Finally, al-Jurjānī also includes a relatively small number of *alghāz* in his work. Some of the riddles are presented straightforwardly, while others are only alluded to. A straightforward riddle presents a complex scenario to solve, sometimes in question-and-answer form. There are no riddles in the chapters on prayer and purity, so I will cite an example from the chapter on inheritance: “A deceased person leaves behind a group of heirs that includes men and women. He leaves them 600 gold coins. One of his heirs receives exactly one gold coin. This question (*hādhihi al-mas’ala*) is known as the ‘Question of the Gold Coins (*al-dīnāriyyah*).”<sup>610</sup> This is the extent of the riddle; the solution involves knowing the make up of the heirs such that the quranically prescribed inheritance laws grant one of them exactly one coin, or one six-hundredth of the inheritance. It is, in effect, a math problem and solving it requires a full understanding of the different shares owed to different heirs. Al-Jurjānī continues, providing the solution to the riddle. “The solution is that he leaves behind a wife, a mother, two daughters, twelve brothers, and one sister. His sister gets one gold coin. The remainder (*al-bāqī*), after the required shares to his mother, sister, and daughters, (*ba’d al-furūd*) is twenty-five gold coins. His brothers get twenty-four gold coins, and the

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<sup>610</sup> Al-Jurjānī, *al-Mu‘āyāt*, 560.



sister is left with one.”<sup>611</sup> As can be seen, the solution involves creating just the right group of heirs such that one of them is entitled to exactly one gold coin. This question can also be understood as asking that one devise a situation in which an heir is entitled to receive one six-hundredth of the estate.<sup>612</sup>

The riddles (*alghāz*) in al-Jurjānī’s work function similarly to the distinctions and exceptions. Of course, the different forms he uses allow him to present the information in different ways. In the context of this book, which aims to provoke the reader into contemplating the intricacies of Islamic law, the general rule serves no purpose without enumerating the exceptions to it. The exceptions, as seen above, are the specific situations which simultaneously serve to prove the validity of the rule and establish its limits. In contrast, the riddle is the statement of a highly specific situation, both a set of actions and a set of outcomes. The riddle’s formulation attracts the attention of the reader, who attempts to understand how it is that the situation described can come about. The legal problem in a *lughz* provides the necessary information to solve a legal puzzle, but leaves unstated the particularities which make the outcomes match the situation. The specificity of the situation in the above riddle is a sharp contrast to his statement of a general rule, “water can never remain pure inside

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<sup>611</sup> Al-Jurjānī, *al-Mu‘āyāt*, 560.

<sup>612</sup> See Noel J. Coulson, *Succession in the Muslim Family* (Cambridge, UK: Cambridge University Press, 1971), 35-39. The division of shares is as follows. Since the deceased has children, his wife gets one eighth. Similarly, his mother received one sixth. His daughters each receive one third, since there are multiple daughters and the man had no sons. The sum of the inheritance given to his vertical relations is 23/24 of his wealth, or 575 dinars. The rest of his heirs should then split one twenty-fourth of his inheritance, 25 dinars, with the sister receiving half of a brother’s share. The brothers each receive two gold coins, leaving one gold coin for the sister.

of an impure container.” The latter provides an underdetermined statement that could be used as part of an argument in support of a particular legal ruling. In this sense, distinctions and riddles both serve to elucidate specific situations while the exceptions to general rules reinforce broader legal frameworks. We can see how al-Jurjānī manipulates these legal forms—distinctions, maxims, precepts, and riddles—to highlight both the enigmatic nature of particular legal doctrines and the overall coherence of the law. In his *al-Mu‘āyāt*, the difference between distinctions and riddles is minimized.

### **Separating Riddles and Distinctions: The Case of Jamāl al-Dīn al-Asnawī**

There is a clear convergence between riddling and distinctions writing in this period. This convergence was not, however, complete or ubiquitous. Not all books of legal distinctions adopted the logic of riddling and not all books of riddles adopted the presentation styles of legal distinctions. A particularly interesting figure who seems to only partially embrace the coming together of riddles and distinctions is Jamāl al-Dīn al-Asnawī (d. 772/1370). Al-Asnawī was a Shāfi‘ī jurist who lived in Cairo in the 14<sup>th</sup> century. He was born in the town of Asnā (or Isnā) in Upper Egypt in 704/1305 and moved to Cairo around the age of 17, in the year 721/1321.<sup>613</sup> He moved there to study religious sciences and the biographical dictionaries detail his studies in Islamic law, grammar, and the rational sciences (*al-‘ulūm al-‘aqliyya*), as well as his teachers in those

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<sup>613</sup> The sources differ on the month of his birth. Ibn Qāḍī Shuhba states that he was born in Rajab, but Brockelmann states that Asnawī was born in Dhū al-Ḥijja. See Ibn Qāḍī Shuhba, *Ṭabaqāt al-Shāfi‘iyya*, 3:98.

subjects. He was given the post of lector and recitation (*intaṣaba li-l-iqrāʾ wa-l-ifāda*) in the year 727/1327. He taught at various law-colleges around Cairo and taught *tafsīr* at the Ibn Ṭūlūn Mosque. Eventually, he began working with the Treasury (*wallā wikālat bayt al-māl*) and became a market inspector. He eventually left market inspection, withdrew from the Treasury, and dedicated himself to teaching and writing (*taṣaddā li-l-ishghāl wa-l-taṣnīf*). His scholarly fame in Cairo grew and “he was one of the primary religious authorities there.”<sup>614</sup>

The biographical tradition tells us that al-Asnawī was a tremendously important and influential scholar. Reports refer to him as the leader of the Shāfiʿī scholars of his time (*shaykh al-Shāfiʿiyya*) and the author of some of the most important books of the *madhhab*.<sup>615</sup> Ibn Qāḍī Shuhba says that, “[m]any people studied closely with him; the majority of the scholars from all of Egypt were his students (*akthar ʿulamāʾ al-diyār al-miṣriyya ṭalabatuhu*).”<sup>616</sup> Al-Asnawī here is positioned as the leader of his legal school, its most respected member, the author of some of its most important books, and the teacher of the majority of Egypt’s scholars. It is, of course, possible that all of these claims are exaggerations; they nevertheless paint a picture of al-Asnawī as a leading intellectual figure within 14<sup>th</sup> century Mamluk Cairo. While he is best remembered today for having written a biography of the Shāfiʿī school, *Ṭabaqāt al-Shāfiʿiyya*, al-

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<sup>614</sup> Ibn Qāḍī Shuhba, *Ṭabaqāt al-fuqahāʾ*, 3:98-99.

<sup>615</sup> Ibn Qāḍī Shuhba, *Ṭabaqāt al-fuqahāʾ*, 3:100.

<sup>616</sup> Ibn Qāḍī Shuhba, *Ṭabaqāt al-fuqahāʾ*, 3:100.

Asnawī was a prolific author who wrote approximately thirty-five books.<sup>617</sup> Among these works, he wrote a book of legal distinctions, *Maṭāli‘ al-daqa’iq fi taḥrīr al-jawāmi‘ wa-l-fawāriq*, and a book of legal riddles, *Ṭirāz al-maḥāfil fi alghāz al-masā’il*.

Due both to his prominent status as a Shāfi‘ī and to his involvement in shaping the general intellectual outlook of many of the important scholars in Mamluk Cairo, his views on these two disciplines are of particular interest for the present study. Not only do they represent one way distinctions and riddles could be viewed in the eighth/fourteenth century, but his participation in both genres shows that they had become mainstream vehicles for literary and pedagogical expression, at least for the Shāfi‘ī school.<sup>618</sup> His book on legal distinctions is very much in the model of the work by ‘Abd Allāh al-Juwaynī. Unsurprisingly, al-Asnawī mentions al-Juwaynī’s book in his own introduction, in which al-Asnawī situates his book within the wider Shāfi‘ī legal tradition. His book not only continues the traditional presentation of seemingly contradictory laws established by the first phase of legal distinctions writing, but even reflects the disputational origins of legal distinctions by including, much like ‘Abd Allāh al-Juwaynī, moments of extended discussion apparently designed to counter potential objections. Even so, his blueprints for disputation are in general much more elaborate than those found in al-Juwaynī’s text, as can be seen from the following passage on

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<sup>617</sup> See Naṣr al-Dīn Farīd Muḥammad Wāṣil’s introductory volume to Jamāl al-Dīn al-Asnawī, *Maṭāli‘ al-daqa’iq fi taḥrīr al-jawāmi‘ wa-l-daqa’iq*, 2 vols. ed. Naṣr al-Dīn Farīd Muḥammad Wāṣil (Cairo: Dār al-Shurūq, 2007), esp. 161-194.

<sup>618</sup> Being the head of the Shāfi‘ī school in the capital of the sultanate, however, undoubtedly gave al-Asnawī’s views special importance. The legal system in Mamluk Cairo was complex, but the Mamluk Sultanate privileged the Shāfi‘ī school over the other legal schools. See Joseph H. Escovitz, *The Office of Qāḍī al-Quḍāt in Cairo under the Bahrī Mamlūks* (Berlin: Klaus Schwarz Verlag, 1984).

fasting, which concerns, at least initially, use of the *siwāk*, a particular kind of twig used to clean one’s teeth for ritual purification:

The common ruling in our school (*al-ma‘rūf ‘indanā*) is that it is reprehensible for someone fasting to use a *siwāk* after the sun sets. This is due to the hadith in which Muḥammad says “The scent (*al-khulūf*) of someone’s breath is sweeter to God than the scent of the *siwāk*.” This is told on the authority of Abū Hurayra and is in both the *Ṣaḥīḥ* of Muslim and of al-Bukhārī.<sup>619</sup> *Khulūf*, with a *ḍamma* on the *khā*, means change or alteration (*al-taghayyur*). The legally salient issue (*wajh al-dalāla*), as al-Rāfi‘ī said,<sup>620</sup> is that the evidence of worship is affirmed by the scent (*annahu athr ‘ibāda mashhūd lahu bi-l-ṭīb*).<sup>621</sup> Because of this, getting rid of the scent is reprehensible.

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<sup>619</sup> The hadith is in Bukhārī in two chapters, on Fasting (*ṣawm*), Clothing (*libās*) and in Muslim in his chapter on Fasting (*ṣiyām*). It is also found in Tirmidhī’s *Jāmi‘*, Nisā’ī’s *Sunan*, Ibn Mājah *Sunan*, Dārimī’s *Sunan*, Mālik’s *Muwatta’*, and the *Musnad* of Aḥmad ibn Ḥanbal. See Wensinck, *Concordance*, 2:69.

<sup>620</sup> This refers to the famous Shāfi‘ī jurist, ‘Abd al-Karīm ibn Muḥammad al-Rāfi‘ī (d. 623/1226). Along with Abū Zakariyyā’ al-Nawawī (d. 676/1277), al-Rāfi‘ī was one of the two most important Shāfi‘ī jurists from the Mamlūk period. See El Shamsy, “The *Ḥāshiyā* in Islamic Law: A Sketch of Shāfi‘ī Literature,” *Oriens* 41 (2013); 292-93.

<sup>621</sup> The citation is likely to al-Rāfi‘ī’s *al-Sharḥ al-kabīr*, although there is a verbatim passage found in Abū Ishāq al-Shīrāzī’s *al-Muhadhdhab* as well as al-Nawawī’s commentary *al-Majmū‘ sharḥ al-muhadhdhab* and Shams al-Dīn al-Ramlī’s (d. 1596/1004) *Nihāyat al-muḥtāj*. Abū Ishāq al-Shīrāzī, *al-Muhadhdhab fi fiqh al-Imām al-Shāfi‘ī*, ed. Muḥammad al-Zuḥaylī (Damascus: Dār al-Qalam; Beirut: Al-Dār al-Shāmiyya, 1416/1996), 1:67; Abū Zakariyyā Muḥyī al-Dīn ibn Sharaf, *Kitāb al-Majmū‘ sharḥ al-muhadhdhab li-l-Shīrāzī*, ed. Muḥammad Najīb al-Muṭī‘ī (Jedda: Maktabat al-Irshād, 1992) 1:330-31; Shams al-Dīn Muḥammad ibn Aḥmad al-Ramlī, *Nihāyat al-muḥtāj ilā sharḥ al-Minhāj fi al-fiqh ‘alā madhhab al-Imām al-Shāfi‘ī wa-ma‘ahu Ḥāshiyat Abī al-Ḍiyā’ Nūr al-Dīn ‘Alī al-Shabrāmāllisī al-Qāhirī al-mutawaffī 1087 H [wa-] Ḥāshiyat Aḥmad ibn ‘Abd al-Razzāq ibn Muḥammad ibn Aḥmad al-ma‘rūf bi-l-Maghribī al-Rashīdī*, no ed. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1424/2003), 1:182.

Moreover, we also avoid the *siwāk* before sunset (*wa-innamā aḥtaraznā ʿanhu mā qabl al-zawāl*), because the change in breath most often occurs because of food, not because of fasting (*li-anna al-taghayyur fihi ghāliban yakūnu min athr al-ṭaʿām*), as al-Rāfiʿī says. This necessitates the distinction between someone who has a meal before daybreak (*man yatasahḥaru*) and someone who does not, as well as a distinction between someone who eats something at night (*yatanāwalu bi-l-layl shayʿan*) and someone who, because of a malady or an illness (*li-ʿajz aw maraḍ*), does not. Due to this, al-Ṭabarī,<sup>622</sup> who wrote a commentary on *al-Tanbīh*, says: If the scent of his mouth is altered after sunset because of some other reason, such as sleeping and the like, his use of the *siwāk* is not reprehensible.

It is said, however, that, a *siwāk* is not reprehensible for someone who is fasting until after the afternoon prayer (*al-ʿaṣr*), as the above-mentioned al-Ṭabarī related.

Others, however, hold that it is never reprehensible (*lā yukrahu muṭlaqan*). This was mentioned in al-Nawawī’s *Rawḍa*,<sup>623</sup> and it is mentioned in his commentery on the *Muhadhhab*.

Yet others hold that using a *siwāk* in this fashion is not reprehensible for superogatory prayers but reprehensible for required prayers, to guard against ostentation (*khawfan min al-riyāʿ*). Al-Rāfiʿī mentioned this in his chapter on

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<sup>622</sup> Abū al-ʿAbbās Aḥmad ibn ʿAbd Allāh al-Ṭabarī (d. 694/1295).

<sup>623</sup> See note 612, above. For more on al-Nawawī, see Fachrizal A. Halim, *Legal Authority in Premodern Islam* (Routledge: Abingdon, Oxon ; New York, NY, 2015).

fasting (*kitāb al-ṣiyām*) on the authority of al-Qāḍī al-Ḥusayn.<sup>624</sup> You will learn in the Chapter on Funerals (*Kitāb al-janā'iz*), that cleansing the blood of a martyr (*izālat dam al-shahīd*) is forbidden by the rules laid out therein. The purpose of this (*wa-ḥikmatuhu*) is what the Prophet alluded to: “On the Day of Resurrection, they will come and their jugular veins will spurt liquid (*awdājuhū yashkhubu daman*) the color of blood but with the scent of musk.”<sup>625</sup>

Here, one might ask, “What is the distinction between the prohibition here, in the case of martyrdom, even though the scent of breath is like the scent of musk, and its only being reprehensible there, in the case of prayer, even though it is better smelling than it (*aṭyab minhu*), i.e. better than the scent of musk?”

Perhaps the distinction is the certainty regarding that topic [i.e. martyrdom] and its heightened importance, since it involves them exposing their souls to death because of their glorification of the religion (*i'zāz al-dīn*). Therefore, a prohibition on the removal of all traces of martyrdom serves to help proclaim (*tanbīhan*) the wondrousness of his fate (*‘aẓm qadarihi*). The blood’s remaining on his body is like a banner (*ḥāmīlan*) that demonstrates his

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<sup>624</sup> Al-Ḥusayn ibn Muḥammad ibn Aḥmad al-Marwazī (d. 462/1070-71).

<sup>625</sup> This hadith can be found in the *Sunan* of al-Nisā’ī, in his chapter on *Taḥrīm* and *Qasāma*, in al-Tirmidhī’s *Jāmi’* on his *Tafsīr* of Sura 4, and in the *Musnad* of Aḥmad ibn Ḥanbal. See Wensinck, *Concordance*, 3:73.

true nature for anyone who is unaware or unmindful of it (*li-yakūna baqā'uhu ḥāmīlan 'alā isthḍār ḥaḳīqatihi liman jahalahā aw dhahila 'anhā*).<sup>626</sup>

This is a work that in its contents does not reflect the convergence of the two genres, distinctions and riddles. The presentation of this work is straightforward, clearly explaining contrasting legal rulings and how to defend them. There is not a presentation of a curious or unexpected circumstance requiring a clever interpretation. It is rather a straightforward comparison of substantive laws together with their legal rationales.

Similarly, al-Asnawī's work on legal riddles does not reflect a convergence with works of distinctions. In *Ṭirāz al-maḥāfil*, the reader encounters a work of legal riddles set up very much in the tradition of question and answer writing (*al-as'ila wa-l-ajwiba*). The questions ask about the permissibility of situations that are seemingly impermissible or the identity of a seemingly impossible legal entity. The answer clarifies the obstacles given in the question.

*Mas'ala*: [What is a] prayer that must be performed (*yajib adā'uhā*), but that cannot be made up. Indeed, making it up is not permissible.

*Ṣūratuhu*: The Friday prayer (*al-jum'a*), which is not made up if it is missed.

Rather, you make up the noon prayer (*innamā tuqḍī al-ẓuhr*). The noon prayer is a different prayer, not a replacement for the Friday prayer. However, someone could say (*wa-li-qā'il an yaqūla*): 'Why can it not be made up in a different mosque

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<sup>626</sup> Jamāl al-Dīn al-Asnawī, *Maṭāli' al-daḳā'iḳ*, 2:22-23



(*fī jumʿa ukhrā*) that is not required for him because of travel or another legitimate reason (*bi-sabab safr wa-naḥwihi*)?<sup>627</sup>

This riddle hinges on the peculiar status of the *jumʿa* prayer. It is required at the same time as the noon prayer (*al-zuhr*), but it has an additional requirement that it be performed in a communal mosque with others. Since, in theory, each city has only one communal mosque (*jāmiʿ*), a missed communal prayer cannot be made up because there is only one occasion for prayer per city per week.<sup>628</sup> However, the trick to the riddle is understanding that a communal prayer is an additional requirement added to the Friday noon prayer, such that while the communal prayer can not be made up, the noon prayer still can. Presumably, the audience is aware that missing a *jumʿa* prayer does not excuse a Muslim from performing the noon prayer, but the riddle involves knowledge of the difference between the *jumʿa* and the *zuhr* prayers. It is interesting that this riddle ends with an unanswered question that potentially undermines the solution to the riddle. The riddle should have a clear answers, yet al-Asnawī only provides a provisional answer.

In terms of content, these works do not appear affected by the phenomenon of convergence discussed in this chapter. Yet the activities of riddling and distinctions writing necessarily intersect. Distinctions by their nature seem initially confusing and riddles involve being able to differentiate among confusing legal minutiae.

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<sup>627</sup> ʿAbd al-Raḥīm al-Asnawī, *Al-Alghāz al-fiqhiyya wa-huwa al-kitāb al-musammā ʿIrāz al-mahāfil fī alghāz al-masāʾil*, ed. Muḥammad ʿUthmān and Ṭaha ʿAbd al-Ruʿūf Saʿd (Cairo: Al-Maktaba al-Azhariyya li-l-Turāth, 1433/2012), 109.

<sup>628</sup> For more on the history of communal mosques, see Baber Johansen, “The All-Embracing Town and Its Mosques,” *Revue de l’Occident musulman et de la Méditerranée* 32 (1981): 139-61.

Nevertheless, al-Asnawī's distinctions do not present themselves as intractable problems and his riddles are not given in the form of distinctions. In this regard, his two works are an important reminder that this convergence did not affect all works produced after a certain period. Rather, the convergence of distinctions and riddles signals the beginning of new possibilities within these two legal genres.

A comparison of the introductions to these two works, however, reveals that al-Asnawī nevertheless saw them as belonging to almost identical traditions of legal writing. Al-Asnawī begins each of these works with a discussion that situates each book historically in a preexisting and well-known tradition in order to provide readers a framework through which to read the book. He claims that there are two kinds of works in the Shāfi'ī school that deal with legal distinctions. The first deals directly with the topic. In this, he situates his *Maṭāli' al-daqa'i* as a work of legal distinctions and cites *al-Farq wa-l-jam'* by 'Abd Allāh al-Juwaynī and *al-Wasā'il fī furūq al-masā'il* by Abū al-Khayr Salāma ibn Ismā'il ibn Jamā'a al-Maqdisī (d. 480/1087) as his predecessors.

These are the only two books that directly tackle the subject of legal distinctions in the Shāfi'ī *madhhab*, according to al-Asnawī.<sup>629</sup> The second strand of writing deals with legal distinctions indirectly. This strand encompasses “something broader than legal distinctions *per se* (*mā huwa a'amm minhu*).”<sup>630</sup> In this second vein, he cites *al-Muṭārahāt* by Abū 'Abd Allāh ibn al-Qaṭṭān's (d. 359/970), *al-Muskit* by Abū 'Abd Allāh al-Zubayrī, and *al-Mu'āyāt* by Abū al-'Abbās al-Jurjānī.<sup>631</sup> On the one hand, this discussion

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<sup>629</sup> Jamāl al-Dīn al-Asnawī, *Maṭāli' al-daqa'i*, 2:8.

<sup>630</sup> Jamāl al-Dīn al-Asnawī, *Maṭāli' al-daqa'i*, 2:7.

<sup>631</sup> Jamāl al-Dīn al-Asnawī, *Maṭāli' al-daqa'i*, 2:8-9.

complements and affirms the idea of *furūq* as a genre of Islamic legal writing. Al-Asnawī’s statement highlights the currency that genre had for al-Asnawī and his readers and demonstrates the expectation they had for a genre dealing only with a particular topic, i.e. distinctions. At the same time, however, this discussion shows how permeable genres could be, at least in the case of the legal genres of distinctions and riddles.

When introducing *Ṭirāz al-maḥāfil*, al-Asnawī begins similarly, discussing books that directly deal with the topic of legal riddles and those that tackle the subject only in part or indirectly. He thus places his book on legal riddles within a tradition encompassing *al-Muṭārahāt* by Abū ‘Abd Allāh ibn al-Qaṭṭān, *al-Muskit* by Abū ‘Abd Allāh al-Zubayrī, *al-Ḥiyal* by Abū Ḥātim al-Qazwīnī, *al-Mu‘āyāt* by Abū al-‘Abbās al-Jurjānī, *al-Ijāz fi al-alghāz* by ‘Abd al-‘Azīz al-Jīlī (632/1234), and *Simṭ al-farā'id wa-ghurar al-fawā'id* by Muḥibb al-Dīn al-Ṭabarī (690/1291).<sup>632</sup> Not only does this list include all of the works listed in *Maṭāli‘ al-daqa‘iq*, but further, when mentioning works dealing with legal riddles but not devoted principally or directly to the subject, he expressly includes “works of distinctions, stratagems (*ḥiyal*), and difficult to answer questions (*al-as’ila dhāt al-ajwiba al-‘awīṣa*).”<sup>633</sup> In each of these lists, al-Asnawī brings these two traditions together, even though he does not conflate the two genres. He demonstrates a particular understanding of these two genres. His statements show that scholars in the Mamluk era already saw these two trends as closely interrelated.

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<sup>632</sup> Jamāl al-Dīn al-Asnawī, *Ṭirāz al-maḥāfil*, 32-36.

<sup>633</sup> Jamāl al-Dīn al-Asnawī, *Ṭirāz al-maḥāfil*, 32.

In the introduction to this chapter, I discussed one general idea for the classification of genres in the Arabo-Islamic tradition, namely, an approach to genre through title. This approach is certainly one way to understand genre, and it is even one which the tradition itself embraces.<sup>634</sup> Al-Asnawī, however, is clearly operating with a different approach to the idea of literary genre. First, he seems to understand genre as something porous. For him, books can easily and unproblematically belong to multiple generic traditions. He mentions several of the same works as belonging to both genres. In discussing the literary background to both traditions, al-Asnawī alludes to the permeability of genre in saying that there have been books in “this genre exclusively” (*li-hādhā al-nawʿ bi-khuṣūṣihi*) while others “comprise something broader (*yaṣhtamilu ʿalā mā huwa aʿamm minhu*).”<sup>635</sup>

It is interesting to note that Ibn Farḥūn, al-Asnawī’s approximate contemporary, also uses the word *nawʿ* to refer to “genre” in his book of legal riddles, *Durrat al-ghawāṣṣ fi muḥāḍarat al-khawāṣṣ*. “I have not found a book of this genre within the writings of the Mālikī school (*lam aqif li-l-mālikiyya ʿalā taʾālif min hādhā al-nawʿ*).”<sup>636</sup> Apparently the first Mālikī book on riddles is Ibn Farḥūn’s. His use of the term *nawʿ* to describe his contribution with *Durrat al-ghawāṣṣ* suggests both an awareness of the existence of modalities of writing, of which riddles is one category, something also suggested by al-Asnawī’s comments in his own books. Their use of the same term to

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<sup>634</sup> Not only do biobibliographical sources use something like this as a shorthand when referring to works, but the existence of rhyming titles, both in terms of rhyming with the content and commentaries rhyming with the title of the work on which they are commenting.

<sup>635</sup> Al-Asnawī, *Maṭāliʿ al-daqāʾiq*, 2:7.

<sup>636</sup> Ibn Farḥūn, *Durrat al-ghawāṣṣ*, 65.

describe something akin to literary genre, however, suggests a shared understanding of genres and legal genres between these two authors.

## **Conclusion**

This chapter studied the interactions between styles of legal writing and the social consumption of knowledge from the late Abbasid period into the beginnings of Ottoman control over Egypt, and identified the Mamluk period as the period of greatest importance for the conjunction between interests in riddling as an art form and the proliferation of intellectual *majālis* that served as venues for the performance of knowledge. The spread of literary salons and the attendant growth in a market for riddling as a minor form of social capital are characteristic of cultural life in this period. The effect of such developments on intellectual production can easily be seen in the changes undergone by legal distinctions in this period. These trends affected the writing of works of legal distinctions by promoting their integration with riddles and pushed books of riddles towards greater popularity. These two trends were not, of course, confined to legal writings, nor to the composition of original works. Most, if not all, writing in the Mamluk period was impacted by these trends.

Everett Rowson has addressed some of the conjunctions between *majālis*, and the consumption and production of knowledge during this period in an article on two commentaries on the works of Ibn Zaydūn produced in Mamluk Cairo. He stresses the importance of these commentaries as aiming in part to be encyclopedic. Of their two authors, he says,

[B]oth Ibn Nubātah and al-Ṣafadī were addressing several audiences, and accomplishing several intentions, at once. Their commentaries offered students a panorama of the world of literary learning... At the same time, peers... were expected to congratulate themselves on recognizing, and even anticipating, the information and allusions as they were presented... A broader audience was offered a smorgasbord of *'fawā'id,*' 'useful bits.' which they could savor and incorporate into their dinner conversation.<sup>637</sup>

Rowson's analysis highlights some of the themes discussed in this chapter, namely the important links between social practices relating to the production and manipulation of legal knowledge and the composition of scholarly literature. His work also highlights the reciprocal interactions between socio-cultural developments and writing. Rowson's comments on reading publics resonate in particular with our discussion of legal riddles and their contexts. The rhetorical style of riddles, partially adapted and adopted by books of legal distinctions, also offers various levels of engagement. Riddles can be enjoyed by "peers...recognizing and even anticipating the riddles and their solutions. Riddles can also offer enjoyment for a reader when looking at the answer and working backwards to understand its connection to the riddle. While some *majlis* participants may have been able to recognize the content of these commentaries and solutions to these riddles, others were exposed to and entertained by new information that they could deploy later.

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<sup>637</sup> Everett Rowson, "Alexandrian Age" *Mamluk Studies Review* 8 (2003), 109-110.

More importantly, however, the later history of legal distinctions shows how important social factors could be for long-term changes in the aesthetics of scholarly writing. The convergence of riddles and distinctions was, on the one hand, a minor development in this history of legal writing that started towards the end of the Abbasid period and continued through the Mamluk Sultanate. It is indicative, however, of a larger change in legal writing that occurred during this period. The changes that brought about increased interest in riddling were not simply limited to a narrow corpus of text. Instead, the integration of this corpus into the *fiqh* tradition made the rhetoric of riddling into a new style of legal writing. In other words, the reification of the textual tradition made these works (or at least some of them), a permanent part of the legal tradition, thereby marking a new aesthetic style within the classical *fiqh* tradition. In addition, the reification of such works, as seen in Ibn Nujaym's *al-Ashbāh wa-l-naẓā'ir*, denudes the aesthetics of riddling from particular performance contexts and makes this another aesthetic mode of legal writing.

While these trends impacted legal writing, they did not dominate the production of written legal scholarship during the Mamluk period. Indeed, much of the legal-literary output of this period was driven by the institutional needs of the *madhhabs*, madrasa educational practices, or even the personal interests and concerns of individual scholars.<sup>638</sup> At the same time, the personal needs and interests of individual jurists, or perceived institutional needs of the *madhhab*, created the

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<sup>638</sup> On the institutional background, see Ahmad El Shamsy, "The *Ḥāshiya* in Islamic Law: A Sketch of *Shāfi'ī* Literature" *Oriens* 41 (2013): 289-315, for a discussion of the importance of commentaries, for instance, for Islamic law.

conditions for texts that attempt to rewrite the tradition according to contemporaneous standards of aesthetics.<sup>639</sup> The realities of legal writing involved combinations of all these trends and likely include more yet to be discovered. This chapter showed in particular how the social uses of legal knowledge and its various forms contributed to a convergence between legal riddling and legal distinctions, and how a variety of social and institutional settings contributed to the production of Islamic legal knowledge.

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<sup>639</sup> See, for instance, Norman Calder, *Islamic Jurisprudence*, especially Chapter 2 and Éric Chaumont “L’autorité des textes au sein du šāfi‘isme ancien,” paper presented at the conference “Rethinking Islamic Law: Can *Fiqh* be Applied Law?,” Rabat, Morocco, 13 – 15 November, 2013.



## Chapter Six: A Bibliographic Survey of the Distinctions Genre

The previous chapters of this dissertation studied the history of Islamic legal distinctions by surveying the prehistory and history of the disciplinary scope and generic boundaries of legal distinctions writing. The story of legal distinctions as a scholastic enterprise comes to an end with the sixth chapters (*al-fann al-sādis*) of both Jalāl al-Dīn al-Suyūṭī's (d. 911/1505) *Kitāb al-Ashbāh wa-l-naẓā'ir* and Ibn Nujaym's (d. 970/1563) *Kitāb al-Ashbāh wa-l-naẓā'ir*.<sup>640</sup> This dissertation's earlier chapters also described the various contexts from which the concern with legal distinctions arose and the complications in attempting to establish the limits of legal distinctions as a genre of Islamic legal literature. Although in those previous chapters I traced the history of legal distinctions in detail, I have reserved until the present chapter a comprehensive discussion of the books that make up the genre of legal distinctions. This chapter presents a critical bibliography of primary books of legal distinctions and their known manuscripts.<sup>641</sup> An analysis of the manuscripts of works of legal distinctions, that is, of the material history of legal distinctions writing, adds two separate facets to our understanding of this tradition.<sup>642</sup>

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<sup>640</sup> The sixth section of each work is on legal distinctions.

<sup>641</sup> See Appendix I and II.

<sup>642</sup> I use the term material history broadly, as defined by Ian Woodward. "Objects are the material things that people encounter, interact with and use. Objects are commonly spoken of as material culture... The field of material culture studies... incorporates a range of scholarly inquiry into the uses and meanings of objects." Ian Woodward, *Understanding Material Culture* (London; Thousand Oaks, CA; New Delhi; Singapore: Sage, 2007), 3.

The first is that the manuscript tradition shows just how widespread use of books of legal distinctions was. Their popularity can be seen in the chronological and geographical spread of the copying and production of new manuscripts of extant works of legal distinctions. While the manuscript record does not necessarily tell us the role that these manuscripts had in the societies or specific social or curricular contexts in which they were produced, the continuous production of these works indicates steady interest in these books. Second, a close look at the manuscript evidence reveals a tradition of two anonymous, untitled works of legal distinctions that circulated widely, alongside the better-known works discussed in the previous chapters. The biobibliographical tradition is silent on the date or authorship of the two texts in question. Since the biobibliographical tradition is concerned primarily with original works written by known authors, and not the copying and spread of manuscripts, let alone of anonymous texts, it is not surprising that these two anonymous works are not discussed. However, their existence in numerous manuscript copies shows that we cannot rely solely on the biobibliographical works to reconstruct the history of genres of legal (and probably other kinds of) writing.<sup>643</sup> Equally important, the two anonymous works in question may sound a note of caution in regard to assumptions about authorship and Islamic legal culture.

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<sup>643</sup> The biobibliographical tradition, in particular works of legal *ṭabaqāt*, is concerned with recording the names of those who wrote novel works of legal distinctions, but largely unconcerned with the copying of already existing works. *Ṭabaqāt* works have been discussed in various studies, see, for instance, Chase F. Robinson, *Islamic Historiography* (Cambridge: Cambridge University Press, 2003), 55-82 and Stephen Humphreys, *Islamic History: A Framework for Inquiry*, Rev. ed. (Princeton: Princeton University Press, 2001), 187-209.

Analytic studies of *furūq* works are few; however, there have been several attempts to summary accounts of the literary history of legal distinctions. Almost every modern edition of a book of legal distinctions includes a partial bibliography of such texts. Most of these lists are not comprehensive, but they nevertheless help point to how the works have been received in Arabophone scholarship. The three primary bibliographies are the chapter “Standalone Books of Legal Distinctions” in Ya‘qūb al-Bāḥusayn’s *al-Furūq al-fiqhiyya*;<sup>644</sup> the list compiled by Wolfhart Heinrichs;<sup>645</sup> and ‘Umar al-Sabīl’s introduction to al-Zarīrānī’s book of legal distinctions.<sup>646</sup> These three lists complement each other and each is worth consulting. Al-Bāḥusayn’s bibliography includes brief discussions of the contents of each work, when known, either through his own inspection or through secondary reports from contemporary and post-classical authors. Al-Sabīl’s list of works is also quite extensive. Unfortunately, he seems to have very broad criteria of inclusion and he lists several books that are not really works of legal distinctions.<sup>647</sup> There are, nevertheless, several works that would have remained otherwise unknown if not for his work.<sup>648</sup> Finally, Heinrich’s list is the most preliminary

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<sup>644</sup> Al-Bāḥusayn, *Al-Furūq al-fiqhiyya*: 83-105.

<sup>645</sup> Wolfhart Heinrichs, “Structuring the Law,” 341-44.

<sup>646</sup> ‘Umar ibn Muḥammad ibn ‘Abd Allāh al-Sabīl, “Introduction” to ‘Abd al-Raḥīm ibn ‘Abd Allāh Zarīrānī, *Īdāḥ al-dalā’il fi al-farq bayna al-masā’il*, ed. ‘Umar ibn Muḥammad ibn ‘Abd Allāh Sabīl. (Mecca: al-Mamlaka al-‘Arabiyya al-Sa‘ūdiyya, Wizārat al-Ta‘līm al-‘Āli, Jāmi‘at Umm al-Qurā, Ma‘had al-Buḥūth al-‘Ilmiyya wa-Iḥyā’ al-Turāth al-Islāmī, 1414/1993), 28-41.

<sup>647</sup> He cites, for example, *al-Istighnā’ fi al-farq wa-l-istithnā’* also known as *al-I’tinā’ fi al-farq wa-l-istithnā’* by Muḥammad ibn Abī Bakr ibn Sulaymān al-Bakrī (d. ninth/fifteenth c.), a work on legal maxims, and *Qurrat al-‘ayn wa-l-sam‘ fi bayān al-farq wa-l-jam‘* by Badr al-Dīn ibn ‘Umar ibn Aḥmad ibn Muḥammad al-‘Ādilī al-‘Abbāsī al-Shāfi‘ī (d. ca. 970/1562), a work on Sufism, not Islamic law.

<sup>648</sup> These often appear as well in al-Bāḥusayn, but he his list is based in large part on al-Sabīl’s.

and is in part derived from that provided in the introduction to Muslim al-Dimashqī's *Kitāb al-Furūq*,<sup>649</sup> with additions from the bibliography compiled by Schacht and references to *Geschichte der Arabischen Literatur (GAL)* and *Geschichte des Arabischen Schriftums (GAS)*.<sup>650</sup>

The sixteen years since the publication of Heinrich's article have rendered his list outdated, and needless to say, the list compiled by Joseph Schacht in 1927 should, at this time, not be considered more than a historical artifact. An immense number of manuscripts have been discovered since the publication of Schacht's article and numerous new editions of works of legal distinctions have appeared as well. In addition, the spread and accessibility of digital technologies have shown the deficiencies of these earlier lists. The digitization of manuscript catalogs has made it possible to search more catalogs faster than ever before.<sup>651</sup>

It seems likely that my own efforts will also be superseded once even more catalogs are put online and further collections are digitized. Nevertheless, as will be seen below, I have 'discovered' many manuscripts unattested in other published sources, identified manuscripts of works considered to be no longer extant, and erased some doubts about the identity of several manuscripts. While the critical bibliography I

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<sup>649</sup> See Muḥammad Abū al-Ajḫān and Ḥamza Abū al-Fāris, "Introduction," 37-43.

<sup>650</sup> Joseph Schacht, "Furūq-Büchern," 508-10.

<sup>651</sup> This is particularly true for most manuscript libraries in the United States, Europe, and Turkey. As of the writing of this chapter, however, the already digitized catalog of the Suleymaniye Library is not available online, but only accessible in the reading room at the Suleymaniye library. The other public libraries in Turkey, however, are all available via <http://www.yazmalar.gov.tr>.

present below represents a marked advance over previous efforts, this is in part because it draws heavily from them and in part due to emerging technologies.

There are three works that require a brief preliminary discussion: al-Qarāfi's (d. 684/1285) *Anwār al-burūq fī anwā' al-burūq*, Ibn Nujaym's *al-Ashbāh wa-l-naẓā'ir*, and al-Suyūṭī's *al-Ashbāh wa-l-naẓā'ir*. These works, because they are so important and so successful, were very frequently copied and thus exist in many manuscripts. My attempts at cataloging Ibn Nujaym's *al-Ashbāh wa-l-naẓā'ir*, for example, ended after searching only libraries in Turkey. Through Turkey's digital portal for manuscripts, I found 127 manuscript copies of this work in the cataloged public libraries of Turkey, not including those at the Suleymaniye, the largest collection of manuscripts in the country.<sup>652</sup> After compiling this list, it became apparent that following through with this endeavor would yield minimal benefits for the present study for a number of reasons. First, a comprehensive account of the manuscripts of this work would lead to a seemingly infinite number of copies. Second, and more importantly, a worthwhile survey of the manuscript data cannot rest on manuscript catalogs alone; it requires visual inspection as well. Works are often miscataloged. Since these works are not available freely online, it would require an enormous amount of time, effort, and money for only the manuscripts in Turkey.<sup>653</sup> Similar situations obtain for the works by al-Qarāfi and al-Suyūṭī. Al-Qarāfi's *Furūq* and Ibn Nujaym's *Ashbāh* raise a further difficulty, which is that they were the subject of many, many commentaries. There are

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<sup>652</sup> <https://yazmalar.gov.tr/>, accessed August 26, 2016.

<sup>653</sup> From the list compiled on the manuscripts in Turkey, there are copies of this work in Ankara, Erzurum, Manisa, Konya, Diyarbakır, Çorum, Amasya, Kastamonu, and Istanbul.

dozens commentaries known to me on these works, and doubtless many more of which I am unaware. They, together with their commentaries, have nearly become genres unto themselves and deserve a separate study through their commentary traditions. Additionally, none of these three works fits squarely within the genre of legal distinctions. Including a comprehensive bibliographic account of these three works and their commentaries is not only unfeasible, but would exceed the scope of this study. For this reason, my survey merely acknowledges the existence of these three works and does not treat them as comprehensively as the other works of legal distinctions.

There are several historiographical problems in compiling a bibliography of legal distinctions writing. The first is resisting the temptation of overreliance on Ḥājjī Khalīfa's (d. 1068/1657) *Kashf al-ẓunūn*. This work aimed to provide a complete bibliographical survey, organized alphabetically by title, of the entirety of Islamicate scholarship up to the author's lifetime. Ḥājjī Khalīfa's work, encyclopedic in scope, remains a vital resource and a necessary first step in compiling bibliographies of the earlier Arabo-Islamic tradition. It especially lends itself to a bibliography on a particular genre, since, for example, all of the works titled *Furūq* are listed together. This is a necessary work, of course, but should be used with caution. Judging only by Ḥājjī Khalīfa's work it would seem that both the Mālikī and Ḥanbalī did not participate in composing works of legal distinctions. "Distinctions in the Shāfi'ī School" and "Distinctions in the Ḥanafī School" are the only two *madhhab*-specific titles he

includes.<sup>654</sup> This presents a skewed picture of the field of distinctions literature. More problematic, however, are the several errors and misattributions that are present in his work. Ḥājji Khalīfa does not usually tell us where he got his information. In describing his methodology for writing the *Kashf al-ẓunūn*, he says that he included “the names of many thousands of volumes in the libraries that I personally examined.”<sup>655</sup> From this statement, it seems that *Kashf al-ẓunūn* was not an effort to catalog all works in the manuscript libraries of Turkey, or the Ottoman Empire, but rather all those that Ḥājji Khalīfa himself could inspect.<sup>656</sup> In other words, it was a personal research effort on his part, not a large-scale collaborative project.

I list here a couple of representative problems with the *Kashf* as it relates to the study of distinctions writing. Ḥājji Khalīfa gives *Talqīh al-Maḥbūbī* as an alternate title for As‘ad al-Karābīsī’s book. He says, “*Furūq al-Karābīsī*, also called *Talqīh al-Maḥbūbī*; the author of the *Ashbāh* [i.e. Ibn Nujaym] mentions this at the beginning of his section on

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<sup>654</sup> Ḥājji Khalīfa, *Kashf al-ẓunūn*, 2:1257-58. He does mention, however, al-Qarāfi’s *Furūq* under the title *Anwār al-burūq fī anwā‘ al-furūq* (1:186).

<sup>655</sup> Ḥājji Khalīfa, *Mizān al-ḥaqq fī ikhtiyār al-aḥaqq*, (Istanbul: Maṭba‘a Abū al-Ḍiyā‘, 1306/1889), 142. This translation comes from Eleazar Birnbaum, “Kātib Chelebi (1609-1657) and alphabetization: a methodological investigation of the autographs of his *Kashf al-ẓunūn* and Sullam al-Wuṣūl” in *Scribes et manuscrits du Moyen-Orient*, ed. François Déroche and Francis Richard (Paris: Bibliothèque nationale de France, 1997), 241.

<sup>656</sup> Other authors have noticed specific errata in the *Kashf al-ẓunūn*, but there has not been much scholarship that has explored the limits of this work. Frank Griffel, for instance, notices a “confusion of names” in an entry for a book on arithmetic, but does not extend his observation. Similarly, Jan Just Witkam has noted that “[a] number of doubtful readings and dubious bibliographical references in the *Kashf al-ẓunūn*... can only be explained and corrected by comparison with Ibn al-Akfānī’s [*Irshād al-Qāsid*].” Frank Griffel, “On the Character, Content, and Authorship of *Itmām Tatimmat Ṣiwān al-ḥikma* and the Identity of the Author of *Muntakhab Ṣiwān al-ḥikma*,” *Journal of the American Oriental Society* 133.1 (2013), 11n53; Witkam, “Ibn al-Akfānī (d. 749/1348) and his bibliography of the sciences,” 40. The best study of the reliability of this work is Birnbaum, “Kātib Chelebi (1609-1657) and alphabetization.”

*furūq*.”<sup>657</sup> This information comes from Ibn Nujaym’s *al-Ashbāh wa-l-naẓā’ir*, the sixth chapter of which book has a discussion of *furūq* proper. In introducing that chapter, Ibn Nujaym says, “This is the chapter on *furūq*, and I discuss here something from every legal topic. I selected and compiled this chapter from the *al-Furūq* of [As‘ad?] al-Karābīsī, which is called *Talqīh al-Maḥbūbī* (*dhakartu fihā min kull bāb shay’an, jama‘tu min furūq al-imām al-Karābīsī al-musammā bi-Talqīh al-Maḥbūbī*.)” The identification of al-Karābīsī’s *Furūq* by Ibn Nujaym as the *Talqīh al-Maḥbūbī* is erroneous on two levels. First, as mentioned above, al-Karābīsī’s book is entitled *Kitāb al-Furūq*, and this seems to be the only name this book has in the historical record up to the time of Ibn Nujaym. The alternate title that he gives, however, “*Talqīh al-Maḥbūbī*,” is the title of a wholly other work of legal distinctions. The *Talqīh* is a *furūq* work entitled *Talqīh al-‘uqūl fī furūq al-manqūl*, which is written by Aḥmad ibn ‘Ubayd Allāh al-Maḥbūbī (d. 640/1242), also known as Ṣadr al-Sharī‘a al-Awwal.<sup>658</sup>

This error is repeated in the various editions of Ibn Nujaym’s *al-Ashbāh* that I consulted. It seems, indeed, to be an error made by Ibn al-Nujaym himself, faithfully transmitted across manuscripts. Aḥmad ibn Muḥammad al-Ḥamawī (d. 1099/1687-88) makes a note of this error in his commentary on this work, *Ghamz ‘uyūn al-baṣā’ir*. He says:

The correct thing to say would be al-Maḥbūbī’s book on *furūq*, which is called *Talqīh al-Maḥbūbī*. These are two separate books, not one book. The claim that he

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<sup>657</sup> Ḥājjī Khalīfa, *Kashf al-zunūn*, s.v. “*Furūq al-Karābīsī*,” 2:1258.

<sup>658</sup> There are many alternate titles given as well for this book, see Appendix I.



was confused about these two books (*ishtabaha ‘alayhi aḥad al-kitābayn*) is unlikely to be correct, owing to the contents of this chapter. What probably occurred (*ghāyat mā fī al-bāb*) is that there was a slip of the pen of the original scribe (*al-nāsikh al-awwal*).<sup>659</sup>

Still, the error has been enshrined into the text by later copyists, inscribed into the tradition by Ḥājji Khalīfa, and normalized by Ismail Bāshā al-Baghdādī (d. 1922) in *Hadiyyat al-‘ārifīn*, where, under As‘ad ibn Muḥammad al-Karābīsī, his work of legal distinctions is cited as “*Talqīḥ al-‘uqūd fī al-furūq min al-furū‘ al-ḥanafīyya*.”<sup>660</sup>

It is unclear how exactly this confusion came about. It is intriguing, and merits further research. The origin of the error was perhaps an unwitting mistake from Ibn Nujaym or from the original scribe of this work. It is also possible that Ibn Nujaym and his circle were confused about the identity of these two works. In either case, it is worth noting that later copyists generally refused to correct this error and that the tradition accepted this erroneous identification.

### **Listing of Furūq Works**

In what follows, I describe the record of all the works of legal distinctions of which I am aware. Before describing these works, however, it is important to address some limitations to this survey, in addition to the issues mentioned above. There are several books included in the published bibliographies of legal distinctions that are not, in fact,

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<sup>659</sup> Aḥmad ibn Muḥammad al-Ḥamawī, *Ghamz ‘uyūn al-baṣā’ir Sharḥ Kitāb al-Ashbāh wa-l-nazā’ir* printed with Ibrahīm Ibn Nujaym al-Miṣrī, *al-Ashbāh wa-l-Nazā’ir*, no ed. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1985/1405), 4:284.

<sup>660</sup> Ismā‘īl Bāshā al-Baghdādī, *Hadiyyat al-‘ārifīn*, 1:204.

part of the genre of legal distinctions at all. There are many reasons for the mentions of these works. They all have titles that seemingly indicate their membership in this genre, but other evidence discounts this classification. For instance, some of these works have not survived, but the surviving evidence suggests that they were not works of legal distinctions, but rather works of law in related genres, such as riddles, question and answer, and *ashbāh*. These works include *al-Muskit* by al-Zubayrī (d. 317/929-30),<sup>661</sup> *al-Muṭārahāt* by Ibn al-Qaṭṭān (d. 359/969-70),<sup>662</sup> and *al-Nazā'ir al-fiqhiyya* by Abū 'Imrān al-Qayrawānī (d. ?).<sup>663</sup> Other works are works of distinctions, but not legal distinctions: *al-Furūq* by al-Ḥakīm al-Tirmidhī's (d. ca. 320/932),<sup>664</sup> *Qurrat al-'ayn wa-l-sam' fī bayān al-farq wa-l-jam'* by Badr al-Dīn ibn 'Umar al-Ḥuraythī (d. ca. 970/1562),<sup>665</sup> *Furūq al-uṣūl* by pseudo-Kemalpaşazade,<sup>666</sup> and *al-Furūq* by 'Umar ibn Raslān al-Bulqīnī (d. 805/1403).<sup>667</sup> All of these appear to be works of applied lexicographical distinctions, some regarding Arabic lexicography in general and others dealing with technical vocabulary in Sufism or Islamic law. Several books have also been published recently that attempt to extract the distinctions-like analyses that appear in early works of Islamic law. These books can

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<sup>661</sup> This is likely a work of legal riddles.

<sup>662</sup> This is likely a work of legal riddles.

<sup>663</sup> This is likely a work of legal maxims. See al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 86.

<sup>664</sup> This work is a work of lexicographic distinctions, not legal distinctions.

<sup>665</sup> This is a work of applied lexicographic distinctions about Sufism. See al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 104.

<sup>666</sup> This is a work of applied lexicographic distinctions about legal theory. This attribution is made in the published edition, Kemalpaşazade, *Furūq al-uṣūl*, ed. Muḥammad ibn 'Abd al-'Azīz Mubārak (Beirut: Dār Ibn Ḥazm, 2009). Most manuscripts of this work, however, do not attribute the book to any author.

<sup>667</sup> This is a work of applied lexicographic distinctions about Islamic law. It may refer to his *al-Farq bayna al-ḥukm bi-ṣiḥḥa wa-l-ḥukm bi-l-mūjib*. See al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 160.

appear to be part of the genre of legal distinctions, but are not.<sup>668</sup> They include books such as *al-Furūq al-fiqhiyya li-l-Imām Mālik* edited by Ibrāhīm Ismā‘īl Jalāl and the legal distinctions of Ibn Qayyim al-Jawziyya (d. 751/1350).<sup>669</sup>

Another preliminary remark is necessary, concerning whether there are Shi’i works on distinctions. The following list looks like a list of Sunni works. As mentioned earlier, there does not seem to be a developed Shi’i tradition of works of legal distinctions, or at least I have only been able to find a comparatively tiny number of Shi’i works of legal distinctions. I have, however, identified two works, no longer extant, that may have been works of legal distinctions. The first is in Ibn al-Nadīm’s (d. ca. 388/998) entry for al-Ḥasan ibn Maḥmūd al-Sarrād (or al-Zarrād, fl. mid second/eighth c.), in which Ibn al-Nadīm attributes a *Kitāb al-Furūq* to Aḥmad ibn Muḥammad al-Barqī (d. third/ninth c.).<sup>670</sup> Specifically, in this entry, Ibn al-Nadīm says, “I read in the handwriting of Abū ‘Alī ibn Hammām, ‘The *Kitāb al-Maḥāsin* by al-Barqī comprises some seventy-odd books, maybe even eighty. My father, ‘Alī ibn Hamām, had these books and they included...*Kitāb al-Furūq*.”<sup>671</sup> The *Maḥāsin* is a work of law in the Twelver Shi’i tradition, and this entry on al-Ḥasan ibn Maḥmūd is included within the chapter on “Shi’i Jurists.” While the evidence of the *Fihrist* points to this being a work of

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<sup>668</sup> It is likely, however, that detailed and careful work such as this on the specific doctrine of individual jurists can give us a better understanding of the changes and dynamism inherent in legal compendia.

<sup>669</sup> Ibrāhīm Ismā‘īl Jalāl, *al-Furūq al-fiqhiyya li-l-Imām Mālik* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2007). Ibn Qayyim al-Jawziyya’s legal distinctions have been collected and published twice, Yūsuf al-Ṣāliḥ, *al-Furūq al-fiqhiyya li-Ibn Qayyim al-Jawziyya muntaza‘ min aghlab kutub Ibn Qayyim raḥimahu Allāhu ta‘allā* (Riyadh: Yūsuf al-Ṣāliḥ, 2009) and Abū ‘Umar Sayyid Ḥabīb ibn Aḥmad al-Madanī al-Afghānī, *al-Furūq al-fiqhiyya ‘inda Imām Ibn Qayyim al-Jawziyya jam‘an wa-l-dirāsa*, 3 vols (Riyadh: Maktabat al-Rushd Nāshirūn, 2009).

<sup>670</sup> Ibn al-Nadīm, *Al-Fihrist*, 2.1:73.

<sup>671</sup> Ibn al-Nadīm, *Al-Fihrist*, 2.1:73.

legal distinctions, the work's early date seems at the same time to militate against that conclusion. Unfortunately, the modern published edition of *al-Maḥāsīn* that I consulted did not have a section entitled *Kitāb al-Furūq*.<sup>672</sup>

The other possible Shi'i work of legal distinctions is *al-Jam' wa-l-farq* by 'Alī ibn Yaḥyā ibn Rāshid al-Washlī al-Zaydī al-Yamanī (d. 777/1375-76). As his *nisba* al-Zaydī indicates, 'Alī ibn Yaḥyā was almost certainly a Zaydī Shi'i. Al-Sabīl, however, in his bibliography of legal distinctions, includes 'Alī ibn Yaḥyā as a Shāfi'ī scholar and omits "al-Zaydī" from 'Alī ibn Yaḥyā's name. He also does not cite a death date, but rather states that 'Alī ibn Yaḥyā was born in 662/1264-65.<sup>673</sup> There is very little information recorded about this work. Writing around the turn of the previous century, Muḥammad ibn Zabāra mentions this work in his appendix to Muḥammad al-Shawkānī's *al-Badr al-ṭālī*' and he includes it as one of 'Alī ibn Yaḥyā's works and says, "In his *al-Jam' wa-l-farq*, he wrote things which no one previously has written (*wa-atā bi-l-jam' wa-l-farq bi-mā lam ya'ti bihi aḥad*)."<sup>674</sup> 'Alī ibn Yaḥyā does not seem to be particularly prominent in the historical record but appears primarily as a hadith transmitter.<sup>675</sup> Since I cannot rule

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<sup>672</sup> Aḥmad ibn Muḥammad ibn Khālīd al-Barqī, *al-Maḥāsīn*, 2 vols., ed. Al-Sayyid Jalāl al-Dīn al-Ḥusaynī (Tehran: Dār al-Kutub al-Islāmiyya 1370/1951). There are other editions of this text which I have not been able to consult.

<sup>673</sup> Aḥmad ibn 'Abd Allāh al-Jandārī, *Tarājim al-rijāl al-madhkūra fī Sharḥ al-Azhār* (no place: Maṭba'at al-Tamaddun, 1913/1332), 25. A birth date of 662 makes a death date of 777 unlikely, though by no means impossible.

<sup>674</sup> Muḥammad ibn Muḥammad Ibn Zabāra al-Ḥasanī al-Yamanī, *Mulḥiq al-badr al-ṭālī' bi-maḥāsīn man ba'd al-qarn al-sābi'* (Beirut: Dār al-Ma'rifa, n.d.), 1:183-84.

<sup>675</sup> See, for instance, the citations in Muḥammad ibn Ibrāhīm Ibn al-Wazīr, *al-'Awāṣim wa-l-qawāṣim fī al-dhabb 'an sunnat Abī Qāsim*, ed. Shu'ayb al-Arnā'ūṭ (Beirut: Mu'assasat al-Risāla li-l-Ṭibā'a wa-l-Nashr wa-l-Tawzī', 1415/1994).

out the possibility that either of these two works belongs to the genre of distinctions writing, I include them in my survey. At the same time, the existence of two works that may be part of the genre perhaps prove the rule that there is, generally speaking, no Shi'i tradition of writing books of legal distinctions.

In addition to the following critical bibliographical narrative, I provide two versions of my bibliography in schematic form. The first, Appendix I, is the most detailed and is arranged by legal school (*madhhab*). The second, Appendix II, contains only summary information from Appendix I, arranged by date. Appendix I attempts to categorize every work of legal distinctions according its *madhhab*. The works for which no *madhhab* could be determined are listed as well, and the final category in the appended bibliography includes works that are often listed as being of legal distinctions, but that are not. Some of these are works that certain scholars claim to be works of legal distinctions, but are clearly not, such as al-Ḥakīm al-Tirmidhī's *Kitāb al-Furūq*. This work is extant and clearly deals with lexicography, as suggested by its alternate title, *Kitāb al-Furūq wa-man' al-tarāduf* (Book of Distinctions and the Impossibility of Synonymy). Nevertheless, this work is routinely included in discussions of legal distinctions.<sup>676</sup> Others are works that never existed, but through bibliographic corruption are now cited as having existed, such as *Furūq al-Maḥbūbī* by As'ad al-

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<sup>676</sup> See, for example, Muḥammad Abū al-Ajḫān and Ḥamza Abū Fāris, "Introduction," 40; Aḥmad ibn Ibrāhīm ibn 'Abd Allāh al-Ḥabīb, "Introduction," to 'Abd al-Ḥaqq ibn Muḥammad al-Ṣiqillī, *al-Nukat wa-l-Furūq li-masā'il al-mudawwana qism al-'ibādāt*, ed. Aḥmad ibn Ibrāhīm ibn 'Abd Allāh al-Ḥabīb, PhD Diss., Jāmi'at Umm al-Qurā, 1416/1996, 90.

Karābīsī (d. 570/1174).<sup>677</sup> I decided to include these other works for the sake of completeness. References are often found to them, either in *ṭabaqāt* works or in the introductions to books of legal distinctions, yet their inclusion in lists of works of legal distinctions must be corrected according to the present state of the evidence.

The main difficulty in compiling a list of all works in a genre comes in establishing the boundaries of the genre. The permeability of the genre of legal distinctions is one of the most important observations of this study. As difficult as it is to determine the content and generic identity of earlier works no longer available, the classification of later well-attested and even published works can be difficult. On one end of the spectrum, it is hard to determine the veracity of the claim that Ibn Surayj (d. 306/918) wrote a book of legal distinctions, even though some sources do attribute a work to him entitled *al-Furūq*.<sup>678</sup> At the same time, however, it is not clear whether al-Jurjānī's (d. 482/1089) *al-Mu'āyāt* is, as its title claims, a work of legal riddles, or, if it should be considered, as its content suggests, a work of legal distinctions. In general, I have chosen to be overly inclusive regarding such difficult-to-classify works. For instance, I include both *al-Furūq* by Ibn Surayj and al-Jurjānī's *Mu'āyāt* in my bibliography, even though I refute the classification of these works as works of legal distinctions in Chapters Three and Five.<sup>679</sup> I chose to include both types of dubious works, works no longer extant about which little is known, and works seemingly at the

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<sup>677</sup> I discuss this corruption above.

<sup>678</sup> This is unlikely to be a work of legal distinctions, based on its early date and on the description of it as "A Commentary on al-Muzanī." See Ḥājjī Khalīfa, *Kashf al-ẓunūn*, s.v. "*al-Furūq fī furū' al-al-shāfi'iyya*," 2:1257-58, I discuss this in further detail in Chapter Three, see 195-98.

<sup>679</sup> See Chapter Three, 195-98 and Chapter Five, 253-55.

boundaries of the genre of legal distinctions. Perhaps with further study, these works will be included or excluded from the genre. In particular, until a better understanding of genre within Islamic law is established, it seems best to be inclusive. This reasoning applies as well to works such as Ibn al-Turkumānī's (d. 744/1343) *Kitāb al-Furūq*, which is no longer extant, but was written at a time when *Kitāb al-Furūq* meant, within the legal sphere, a book of legal distinctions.

The following bibliography of works on legal distinctions shows that the genre of *al-furūq al-fiqhiyya* is relatively small. My survey of books of legal distinctions has found only thirty-six works of legal distinctions. The spread of these works among the legal schools is somewhat uneven. I count thirteen for the Shāfi'ī school, nine Ḥanafī books, eight for the Mālikī, and four Ḥanbalī ones. This leaves two texts by scholars who seem to belong to Shi'i schools of law. Chronologically, there were two clear peaks of *furūq*-book production. The first three books of legal distinctions were written in the third/ninth century. The fifth/eleventh century saw a burst of activity, with ten books of legal distinctions produced during this time. The sixth/twelfth century once again only saw two books of legal distinctions. This was followed by the period of highest *furūq* activity, the seventh/thirteenth and eighth/fourteenth centuries each saw eight books produced. After this peak of activity, the ninth/fifteenth century saw only two new works of legal distinctions, the tenth century only al-Wansharīsī's (d. 914/1508) *ʿIddat al-burūq*. Al-Wansharīsī's was the last new work of legal distinctions written until

the modern period when ‘Abd al-Raḥmān ibn Nāṣir al-Sa‘dī wrote his work on Ḥanbalī distinctions in the early 20th century.<sup>680</sup>

### The Fourth/Tenth Century

As discussed in Chapter Four, pinning down the first work of legal distinctions is not easy. There are several contenders: Ibn Surayj (d. 306/918),<sup>681</sup> al-Zubayr ibn Aḥmad al-Zubayrī (d. 317/929-30),<sup>682</sup> al-Ḥakīm al-Tirmidhī (d. 320/932),<sup>683</sup> Abū al-Ḥasan ‘Alī ibn Aḥmad al-Nasawī (d. ca 320/932),<sup>684</sup> and Muḥammad ibn Ṣāliḥ al-Karābīsī (d. ca. 322/934).<sup>685</sup> Identifying the first work in the genre is not only a difficult historical task, it is also complicated by *madhhab* polemics. Did Shāfi‘ī’s first discover the usefulness of thinking through distinctions and therefore write the earliest works in this genre? Or was it Ḥanafī scholars who have pride of place in developing this new style?

None of these works can be clearly seen as an early work of legal distinctions. In spite of its title, Ibn Surayj’s book seems only to be a commentary on al-Muzanī’s *mukhtaṣar*,<sup>686</sup> the surviving selections of al-Zubayrī’s book do not talk about legal

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<sup>680</sup> ‘Abd al-Raḥmān ibn Nāṣir al-Sa‘dī al-Najdī, *Al-Qawā‘id wa-l-uṣūl al-jāmi‘a wa-l-furūq wa-l-taqāsīm al-badī‘a al-nāfi‘a* (Riyad: Maṭba‘at al-Madanīf, 1956).

<sup>681</sup> Heinrichs, “Structuring the Law,” 342; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 68, 72-73, 84; al-Sabil, “Introduction,” 1:34.

<sup>682</sup> Al-Bāḥusayn *al-Furūq al-fiqhiyya*, 68, 73-74; al-Sabil, “Introduction,” 1:35.

<sup>683</sup> Al-Bāḥusayn *al-Furūq al-fiqhiyya*, 69-70.

<sup>684</sup> Heinrichs, “Structuring the Law,” 342; Schacht, “*Furūq*-Büchern,” 509.

<sup>685</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 69, 74, 84; al-Sabil, “Introduction,” 28.

<sup>686</sup> Ḥājji Khalifa, *Kashf al-zunūn*, s.v. “*al-Furūq fi furū‘ al-shāfi‘iyya*,” 2:1257-58.



distinctions,<sup>687</sup> al-Nasawī is mentioned only in the *al-Fihrist* and not remembered by any other author,<sup>688</sup> al-Tirmidhī's book of distinctions is about lexicography,<sup>689</sup> and the book attributed to al-Karābīsī's survives, but this attribution is almost certainly spurious.<sup>690</sup> The question of the origins of this genre really becomes one of the construction of narratives about the past. Why did it become important to claim that so many fourth/tenth-century jurists were the first to have written these works? This question does not concern this early period as much as it concerns the period when most of these attributions were being ascribed and repeated, the Mamluk era (13th-16th centuries). Indeed, it is only in the ninth/sixteenth century that Muḥammad ibn Ṣāliḥ al-Karābīsī becomes credited with his book, an attribution that not only appears suddenly in several bibliographic sources, but also on several manuscripts.

### **The Fifth/Eleventh Century**

This was a momentous century for the history of legal distinctions; during this century the genre of legal distinctions became established and widespread. The Shāfi'ī *madhhab* produced five works of legal distinctions during the fifth/eleventh century: *al-Kifāya fī al-furūq wa-l-laṭā'if* by Abū 'Abd Allāh al-Ḥusayn ibn 'Abd Allāh al-Ṭabarī (d. ca

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<sup>687</sup> See Chapter Four, pp. 209-12 of the present study.

<sup>688</sup> Ibn al-Nadīm, *al-Fihrist*, 302.

<sup>689</sup> Al-Ḥakīm al-Tirmidhī, Muḥammad ibn 'Alī, *al-Furūq wa-man' al-tarāduf*, ed. Muḥammad Ibrāhīm al-Juyūshī (Cairo: al-Nahār, 1998).

<sup>690</sup> See Chapter Four, pp. 213-20 of the present study.

fifth/eleventh c.),<sup>691</sup> *al-Jam‘ wa-l-farq* by Abū Muḥammad ‘Abd Allāh ibn Yūsuf al-Juwaynī al-Shāfi‘ī (d. 438/1046);<sup>692</sup> *al-Wasā’il fi furūq al-masā’il* by Salāma ibn Ismā‘īl ibn Jamā‘a al-Maqdisī al-Shāfi‘ī (d.480/1087);<sup>693</sup> *al-Mu‘āyāt* by Abū al-‘Abbās al-Jurjānī;<sup>694</sup> and *al-Furūq* by Abū al-Maḥāsīn ‘Abd al-Wāḥid ibn Ismā‘īl al-Rūyānī al-Ṭabarī (d. 502/1108).<sup>695</sup>

‘Abd Allāh al-Juwaynī’s book was by far the most important work of legal distinctions ever written in the Shāfi‘ī school.<sup>696</sup> It was also, he claims, one of the first works written on legal distinctions within the Shāfi‘ī school, a claim that gives us circumstantial evidence for concluding that Ibn Surayj did not in fact compose a work in this genre. Al-Zarkashī (d. 794/1392), in his *al-Manthūr fi al-qawā‘id*, lists al-Juwaynī’s work and that by Salāma ibn Ismā‘īl ibn Jamā‘a as the two exemplars of this style of

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<sup>691</sup> The author of this work is Abū ‘Abd Allāh al-Ḥusayn ibn ‘Abd Allāh al-Ṭabarī. This is confirmed by all of the biographies of al-Ḥusayn ibn ‘Abd Allāh, with the exception of that written by al-Shīrāzī, who does not mention this work. See Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 90-91; Ibn Qāḍī Shuhba, *Ṭabaqāt al-shāfi‘iyya*, 1:181 no.142; al-Asnawī, *Ṭabaqāt al-Shāfi‘iyya*, 2:61-62 no.767; al-Shīrāzī, *Ṭabaqāt*, 126. Other sources, however, attribute this work to Abū ‘Abd Allāh al-Ḥusayn ibn Muḥammad ibn al-Ḥasan al-Ḥannāṭī al-Ṭabarī (d. ca 495/1101), see al-Sabīl, “Introduction,” 1:37; Kaḥḥāla, *Mu‘jam*, 1:636 no.4795; Ḥājji Khalīfa, *Kashf al-zunūn*, s.v. “*al-Furūq fi furū‘ al-shāfi‘iyya*,” 2:1499; al-Baghdādī, *Hadiyyat al-‘arīfīn* 1:311. These sources, however, are all late. Earlier biographies of al-Ḥannāṭī do not attribute this work to him. See Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:179-81 no.141; al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā*, 4:367-371 no.397; al-Asnawī, *Ṭabaqāt*, 1:193-94, no.362; al-Shīrāzī, *Ṭabaqāt al-fuqahā’*, 118.

<sup>692</sup> Heinrichs, “Structuring the Law,” 342; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 87; al-Sabīl, “Introduction,” 1:35-36.

<sup>693</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 88-89; al-Sabīl, “Introduction,” 1:36.

<sup>694</sup> Heinrichs, “Structuring the Law,” 342; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 89-90; al-Sabīl, “Introduction,” 36-37.

<sup>695</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 92; al-Sabīl, “Introduction,” 1:37.

<sup>696</sup> I discuss this issue in Chapter Three, pp. 169-172.

writing.<sup>697</sup> Unfortunately, it seems that this latter work has not survived, so it is difficult to ascertain anything about its form or content. The evidence from the bibliographical tradition, however, points toward it being a work of legal distinctions.<sup>698</sup> Similarly, *al-Kifāya fī al-furūq* by Abū ‘Abd Allāh al-Ḥusayn ibn ‘Abd Allāh al-Ṭabarī and the *Kitāb al-Furūq* by al-Rūyānī do not appear to be extant, but I nevertheless include them because the bibliographic traditions consider them part of this genre, and they contain the word *furūq* in their titles.<sup>699</sup> This was also the century in which Abū al-‘Abbās Aḥmad ibn Muḥammad al-Jurjānī wrote his *al-Mu‘āyāt*. While this dissertation has argued that al-Jurjānī’s work is perhaps best understood as a work of legal riddles, it nevertheless consists overwhelmingly of legal distinctions and has been considered part of the genre by recent scholars and is so identified on the cover of a manuscript of this work catalogued as 915 *fiqh shāfi‘ī* in the Dār al-Kutub al-Miṣriyya in Cairo.<sup>700</sup>

There was only one Ḥanafī work of distinctions written in this century: *al-Ajnās wa-l-furūq* by Abū ‘Abbās Aḥmad ibn Muḥammad al-Nāṭifi al-Ṭabarī al-Ḥanafī (d.

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<sup>697</sup> Al-Zarkashi, *al-Manthūr fī al-qawā‘id*, 1:69.

<sup>698</sup> Ḥājjī Khalifa, *Kashf al-ẓunūn*, “*al-Jam‘ wa-l-farq*,” 1:601 and “*al-furūq fī furū‘ al-al-shāfi‘iyya*,” 2:1258; GAL 1:385-86, S1:667; Kaḥḥāla, *Mu‘jam*, 2:307 no.8443; Shihāb al-Dīn ‘Abd al-Ḥayy ibn Aḥmad Ibn al-‘Imād, *Shadharāt al-dhahab fī akhbār man dhahab*, ed. ‘Abd al-Qādir al-Arnā’ūt and Maḥmūd al-Arnā’ūt (Damascus: Dār Ibn Kathīr, 1410/1989), 5:176-77; al-Asnawī, *Ṭabaqāt*, 1:165-66 no.305; Ibn al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā*, 5:73-94 no.439; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:209-11 no.171.

<sup>699</sup> For al-Ḥusayn al-Ṭabarī, see references in note 642 above. For al-Rūyānī, see Ibn al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā* 7:193-204 no.901; al-Asnawī, *Ṭabaqāt*, 1:272 no.518; Kaḥḥāla, *Mu‘jam*, 2:332 no.8626. Ibn al-‘Imād, *Shadharāt al-dhahab*, 6:8; Ziriklī, *al-A‘lām* 4:175; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:287 no.256.

<sup>700</sup> Carl Brockelmann referred to this work as a “*furūq* work in the strictest sense” (GAL S1:505). I discuss this book at length in Chapter Five at pp. 267-75.

446/1054).<sup>701</sup> This work exists in at least two copies at the Suleymaniye Library in Istanbul.<sup>702</sup> It is also remembered in most of the biographical literature, although no information is given as to its contents. Ḥājjī Khalīfa records the alternate title *al-Ajnās fī al-furūʿ*.<sup>703</sup> ʿUmar Riḍā al-Kaḥḥāla’s *Muʿjam al-muʿallifin* seems to suggest that *al-Ajnās* and *al-Furūq* are two separate works, even though most other sources consider this the title of one book.<sup>704</sup> The title, nevertheless, is intriguing. While it does seem to suggest a work of legal distinctions, the phrase *al-ajnās wa-l-furūq* could also mean something like “[Legal] Types and The Differences between Them,” in which case the book might have explained different ways to group and categorize substantive doctrine. While *furūq* can have a very specific technical meaning, it nevertheless retained its general meaning of “differences.”

The Mālikī *madhhab*, meanwhile, produced four works of legal distinctions in this period, only the very earliest of which, by Ibn al-Kātib (d. 408/1017-18), has not survived.<sup>705</sup> Al-Qāḍī ʿIyāḍ (d. 544/1149) describes this as a work of distinctions, and writes that he has heard from Abū al-Qāsim al-Ṭābithī that this book contains forty-one

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<sup>701</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 88; al-Sabil, “Introduction,” 1:28. See also GAL 1:372; GAL S 1:636; Zayn al-Dīn Qāsim Ibn Quṭlūbughā, *Tāj al-tarājim fī ṭabaqāt al-ḥanafīyya, Die Krone der Lebensbeschreibungen enthaltend die Classen der Hanefiten*, ed. Gustav Flügel (Leipzig: In Commission bei F. A. Brockhaus, 1862), 6-7 no.12; Muḥyī al-Dīn Abū Muḥammad ʿAbd al-Qādir ibn Muḥammad al-Qurashī, *al-Jawāhir al-muḍīyya fī ṭabaqāt al-ḥanafīyya*, ed. ʿAbd al-Fattāḥ Muḥammad al-Ḥulw (Giza: Hajr lil-Ṭabāʿah wa-al-Nashr wa-a-Tawzīʿ wa-al-Iʿlān, 1413/1993), 1:297-98 no.221; al-Ziriklī, *al-Aʿlām*, 1:213; Taqī al-Dīn ibn ʿAbd al-Qādir Tamīmī al-Dārī al-Ghazzī, *al-Ṭabaqāt al-saniyya*, 2:71-72, no.343.

<sup>702</sup> See al-Sabil, “Introduction,” 1:28. Suleymaniye Library, Nuruosmaniye 1371; Suleymaniye Library, Esad Efendi 542.

<sup>703</sup> Ḥājjī Khalīfa, *Kashf al-ẓunūn*, s.v. “*al-Ajnās fī al-furūʿ*,” 1:11.

<sup>704</sup> Kaḥḥāla. *Muʿjam*, 1:287 no.2086.

<sup>705</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 84-85.

distinctions.<sup>706</sup> The earliest preserved work is that by al-Qāḍī ‘Abd al-Wahhāb al-Baghdādī (d. 422/1031).<sup>707</sup> One of his students, Abū al-Faḍl Muslim al-Dimashqī (d. 5th c.) also wrote an extant work on legal distinctions.<sup>708</sup> Muslim al-Dimashqī’s book is virtually identical to that of al-Qāḍī ‘Abd al-Wahhāb. Jalāl al-Jihānī, the editor of al-Qāḍī ‘Abd al-Wahhāb’s work, argues that one of the manuscripts thought to be a copy of al-Dimashqī’s *Furūq* is actually a copy of al-Qāḍī ‘Abd al-Wahhāb’s work, even though Abū al-Ajfan and Abū Fāris consider the manuscript in question to be a copy of al-Dimashqī’s *Kitāb al-Furūq* and use it in their edition of al-Dimashqī’s *Kitāb al-Furūq*.<sup>709</sup> This manuscript even preserves the attribution to al-Qāḍī ‘Abd al-Wahhāb.<sup>710</sup> Al-Jihānī presents compelling evidence that this is indeed a copy of al-Qāḍī ‘Abd al-Wahhāb’s work of distinctions. Al-Mawwāq includes a verbatim quotation from al-Qāḍī ‘Abd al-Wahhāb’s *Furūq* in his *al-Tāj wa-l-iklīl*. The passage cited by Al-Mawwāq is found in the manuscript bearing al-Qāḍī ‘Abd al-Wahhāb’s name, but not in the copies attributed to

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<sup>706</sup> See al-Qāḍī ‘Iyāḍ, *Tartīb al-madārik wa-taqrīb al-masālik li-ma‘rifat a‘lām madhhab Mālik*, ed. Sa‘īd Aḥmad A‘rāb ([Rabāt?:] al-Mamlaka al-Maghribiyya Wizārat al-Awqāf wa-l-Shu‘ūn al-Islāmiyya, 1402/1982), 7:253. Other editions, however, refers to Abū al-Qāsim al-Ṭābithī as Abū al-Qāsim al-Ṭā‘ī. According to Ibn Farḥūn’s *al-Dībāj al-mudhahhab*, there was an Abū al-Qāsim al-Ṭābithī, Ṭābith being a village in the province of al-Baṣra, who studied in Egypt and Iraq, although no death date is given. See Ibrāhīm ibn ‘Alī Ibn Farḥūn, *al-Dībāj al-mudhahhab*, 2:103. Heinrich’s claim that al-Qāḍī ‘Iyāḍ knew this “by autopsy” may be a misreading (341).

<sup>707</sup> Heinrichs says that this book is not extant. Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 85-86; al-Sabīl, “Introduction” to *Īḍāḥ al-dalā‘il*, 31

<sup>708</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 86-87; al-Sabīl, “Introduction,” 31.

<sup>709</sup> Jalāl al-Jihānī, “Introduction,” to Abū Muḥammad ‘Abd al-Wahhāb al-Baghdādī ibn ‘Alī al-Qāḍī. *Al-Furūq al-Fiqhiyya*, ed. Jalāl ‘Alī al-Qadhdhāfi al-Jihānī (Dubai: Dār al-Bu‘ūth li-l-Dirāsāt al-Islāmiyya wa-Ihyā’ al-Turāth, 1424/2003), 17-21.

<sup>710</sup> al-Jihānī, “Introduction,” 18. See also the manuscript, Markaz al-Dirāsāt al-Mujāhidīn al-Libiyīn 588.

Muslim al-Dimashqī.<sup>711</sup> Maḥmūd Ghiryānī, who discusses the relationships between these two texts in more detail, also concludes that the Libyan manuscript in question should be correctly attributed to al-Qāḍī ‘Abd al-Wahhāb<sup>712</sup>

At the close of the fifth/eleventh century it seems that the genre of legal distinctions had fully emerged. The literary record gives a picture of the fourth/tenth century as a time when this genre was underdeveloped and perhaps not yet underway. The only supposedly surviving work from the fourth/tenth century is that by Muḥammad ibn Ṣāliḥ al-Karābīsī, and the manuscripts of this work are highly problematic. Not only is the attribution to al-Karābīsī dubious, but the text itself is highly corrupt and riddled with lacunae. In the fifth/eleventh century, however, we see a tremendous burst of activity in the composition of works of legal distinctions. The foundational *furūq* works of the Shāfi‘ī *madhhab* were composed; the Mālikī *madhhab* began to adopt the genre with several important works. The Ḥanafī jurist al-Nāṭifi wrote his work on distinctions in this century.

As with other legal genres, the Ḥanbalī *madhhab* would adopt distinctions later, as will be seen below. Importantly, the *furūq* works of this period start to have the organization and presentation that comes to define the genre. Most of the books in this genre are organized in a traditional legal style (*al-tabwīb al-fiqhī*), with chapters dedicated to particular areas of the law, starting with ritual matters (*‘ibādāt*) and

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<sup>711</sup> Al-Jihānī, “Introduction,” 35.

<sup>712</sup> See Maḥmūd Salāmah Ghiryānī, “Introduction,” to ‘Abd al-Wahhāb al-Baghdādī, *Al-Furūq al-fiqhiyya li-l-Qāḍī ‘Abd al-Wahhāb al-Baghdādī wa-‘alāqatuhā bi-Furūq al-Dimashqī*, ed. Maḥmūd Salāmah Ghiryānī (Dubai: Dār al-Buḥūth li-l-Dirāsāt al-Islāmiyya wa-l-ḥyā’ al-Turāth, 1424/2003).

moving to transactions (*mu‘āmalāt*). In terms of presentation, the characteristic style of books of legal distinctions involves comparing and contrasting two (or more) laws that appear to, but do not actually, contradict each other.

### **The Sixth/Twelfth Century**

The sixth century saw only one book written on legal distinctions, the *Kitāb al-Furūq* by Abū al-Muzaffar As‘ad ibn Muḥammad ibn al-Ḥusayn al-Naysābūrī al-Karābīsī al-Ḥanafī.<sup>713</sup> This work is the first extant work from the Ḥanafī *madhhab* that can be safely attributed to its author and is undoubtedly part of the legal distinctions tradition. In his introduction, As‘ad al-Karābīsī mentions that he came across the distinctions contained in his book through his studies with Abū al-‘Alā’ Ṣā‘id ibn Muḥammad (d. 502/1109).

“These legal cases I gleaned from books...I heard the imam and judge Abū al-‘Alā’...bring out the distinguishing factor (*izhār al-furqān*) between them.”<sup>714</sup> He does not mention, however, his knowledge of this writing style as a genre nor any precedents for distinctions writing within the Ḥanafī school. It is curious that he would be unaware of the books by Muḥammad ibn Ṣāliḥ and al-Nāṭifi, since Muḥammad ibn Ṣāliḥ was a Ḥanafī scholar who lived in Samarqand, the city in which As‘ad al-Karābīsī also lived. As‘ad’s silence on this matter is one piece of evidence that calls into question the authenticity of the attribution of a book of legal distinctions to Muḥammad ibn Ṣāliḥ al-Karābīsī. As‘ad al-Karābīsī’s book became quite important as a work of Ḥanafī

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<sup>713</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 91-92; al-Sabil, “Introduction,” 1:28-29.

<sup>714</sup> As‘ad ibn Muḥammad al-Karābīsī, *Al-Furūq li-l-Karābīsī*, 1:33.

distinctions. Ḥanafī authors used it as a model when writing later works of legal distinctions and it is the main book for which As‘ad al-Karābīsī is remembered. It is mentioned often in the sources and many manuscript witnesses to it exist.<sup>715</sup> It has also been edited and published three times, even though other important Ḥanafī works of legal distinctions continue to exist only in manuscript. The attention paid to editing and publishing this work in the later 20<sup>th</sup> century signals its continued importance today.

### The Seventh/Thirteenth Century

The seventh century constitutes the beginning of a second golden age in the composition of works on legal distinctions. There were two Shāfi‘ī books written in this period, *al-Furūq* by Abū al-‘Abbās Kamāl al-Dīn Aḥmad ibn Kashāsib al-Shāfi‘ī al-Dizmārī (d. 643/1245)<sup>716</sup> and *al-Fuṣūl wa-l-furūq* by Abū al-‘Abbās Najm al-Dīn Aḥmad ibn Muḥammad ibn Khalaf ibn Rājiḥ al-Maqdisī al-Ḥanbalī, al-Shāfi‘ī (d. 638/1241).<sup>717</sup> Neither of these two works is extant. Both authors are, however, mentioned frequently in the biographical literature.

Ibn Kashāsib was a jurist in Damascus who was known for his piety and virtue. More importantly, however, he was also known for travelling often. Specifically, the

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<sup>715</sup> Ḥājji Khalīfa, *Kashf al-zunūn*, s.v. “*furūq fī furū‘ al-Ḥanafīyya*,” 2:1257; GAL 1:375, GAL S 1:642, Kaḥḥāla, *Mu‘jam*, 1:351 no.2603; Schacht, “*Furūq-Büchern*,” 508; al-Qurashī, *al-Jawāhir al-muḍīyya*, 1:386, no.314; Ibn al-‘Imād, *Shadharāt al-dhahab* 4:4; Tamīmī al-Dārī, *al-Ṭabaqāt al-saniyya*, 2:171, no.473; al-Baghdādī, *Hadiyyat al-‘arifin*, 1:204; Ibn Quṭlūbughā, *Tāj al-tarājim*, 12 no.44.

<sup>716</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 95-96; al-Sabīl, “Introduction,” 1:37.

<sup>717</sup> Heinrichs, “Structuring the Law,” 343. Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 95; *Shadharāt al-dhahab*, 7:331; al-Sabīl, “Introduction,” 1:37.



biographical sources quote Abū Shāma’s statement that Ibn Kashāsib “goes on the pilgrimage often and performs many good deeds (*kathīr al-ḥajj wa-l-khayr*).”<sup>718</sup> Ibn Kashāsib’s many pilgrimages likely brought him into contact with scholars and ideas from throughout the Islamic world; it represents both a potential inspiration for his book on legal distinctions and a potential opportunity for Ibn Kashāsib to promote his book and ideas.

Najm al-Dīn al-Ḥanbalī was a Ḥanbalī jurist who lived in Damascus, Baghdad, Hamadan, and Bukhara. The sources indicate that it was in Bukhara, after a thorough education in the Ḥanbalī school, that Najm al-Dīn al-Ḥanbalī transferred to the Shāfi‘ī school. After this ‘conversion,’ he returned to Damascus, where he seems to have enjoyed a successful career as a jurist and teacher. It was after his change in *madhhab*-affiliation and return to Damascus that he began teaching and writing law books, including his *al-Fuṣūl fī al-furūq*. Al-Asnawī mentions that he remained known by his *nisba* al-Ḥanbalī in spite of his later adherence to the Shāfi‘ī school.<sup>719</sup>

There was only one Ḥanafī book of legal distinctions written in the seventh century, *Talqīḥ al-‘uqūl fī furūq al-manqūl* by Aḥmad ibn ‘Ubayd Allāh al-Maḥbūbī al-

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<sup>718</sup> See Shihāb al-Dīn Abū Shāma ‘Abd al-Raḥmān al-Maqdisī, *Tarājim rijāl al-qarnayn al-sādis wa-l-sābi‘ al-ma‘rūf bi-l-dhayl ‘alā al-Rawḍatayn*, ed. Ibrāhīm Shams al-Dīn (Dār al-Kutub al-‘Ilmiyya 1422/2002), 5:270, although in this edition his name is erroneously listed as “Aḥmad ibn Kātib al-Zumārī.” For citations of this phrase, see *Ṭabaqāt al-Shāfi‘iyya al-Kubrā* 8:30 no.1054; al-Asnawī’s *Ṭabaqāt* 1:152 no.289; Ibn Qāḍī Shuhba 2:100 no.401. See also Kaḥḥāla, *Mu‘jam*, 1:232 no.1695; al-Baghdādī, *Hadīyyat al-‘arīfīn*, 1:94.

<sup>719</sup> It is perhaps the repeated references to him as “al-Ḥanbalī,” that led Heinrichs to include Najm al-Dīn as a Ḥanbalī scholar in his bibliography. See, however, al-Asnawī, *Ṭabaqāt* 1:211-12, no.404, and Ibn Qāḍī Shuhba, *Ṭabaqāt* 2:71 no.371. Kaḥḥāla, *Mu‘jam*, 1:262-63 no.1896. For references to this work, see Badr al-Dīn Muḥammad ibn Bahādūr al-Zarkashī, *al-Baḥr al-muḥīṭ fī uṣūl al-fiqh*, no ed. (Cairo: Dār al-Kutubī, 1414/1994), 7:220; 7:245; 7:394; and 8:38.

Ḥanafī, Ṣadr al-Sharīʿa al-Awwal (d. 640/1242).<sup>720</sup> This was likely the most important work of Ḥanafī distinctions in premodern times. A large number of manuscript witnesses for this work are preserved in major manuscript libraries and it is mentioned quite often in the secondary literature though it remains unpublished.<sup>721</sup> Al-Sabīl says that this work was edited as part of an MA thesis in Egypt. Unfortunately, this edition was never published.<sup>722</sup> The lack of a readily-available published edition, however, has meant that Asʿad al-Karābīsī’s text has now become the most popular Ḥanafī work of legal distinctions.<sup>723</sup>

As important as al-Maḥbūbī’s work was, its author seems to have been a relatively obscure figure. Ibn Quṭlūbughā in his *Tāj al-tarājim* tells us that “‘Ubayd Allāh ibn Masʿūd ibn ‘Ubayd Allāh ibn Maḥmūd Ṣadr al-Sharīʿa al-Maḥbūbī was a critical and meticulous scholar...”<sup>724</sup> This is likely a reference to Aḥmad ibn ‘Ubayd Allāh’s father, although here the father is referred to as Ṣadr al-Sharīʿa. This is odd since scholars

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<sup>720</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 94; al-Sabīl, “Introduction,” 1:29.

<sup>721</sup> Ḥājji Khalīfa, *Kashf al-zunūn*, s.v. “*Talqīh al-‘uqūd fī furūq al-manqūl*,” 1:481, “*furūq fī furū‘ al-Ḥanafīyya*,” 2:1257; GAL 1:380; Kaḥḥāla, *Muʿjam*, 1:191 no.1415.

<sup>722</sup> Al-Sabīl and al-Bāḥusayn state that this work was edited as part of an MA thesis at al-Azhar University by ‘Abd al-Hādī Shīr al-Afghānī. Curiously, however, online resources suggest that this edition was completed as an MA thesis at Ain Shams University in 1984, not at al-Azhar University. Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 94; al-Sabīl, “Introduction,” 1:29. See <http://depositary.asu.edu.xmlui/handle/123456789/49817>, accessed August 30, 2016.

<sup>723</sup> It is difficult to understand the causality in this situation. Was al-Karābīsī’s work printed so many times because of its contemporary importance to Ḥanafī scholars? Or, is al-Karābīsī so well-known among Ḥanafī scholars because this work is readily available in a printed edition? A study of this issue would shed much light into the processes by which the classical tradition has been and continues to be received by contemporary Arabophone scholarship.

<sup>724</sup> Ibn Quṭlūbughā, *Tāj al-tarājim*, 29-30 no.118.

make a point of referring to Aḥmad al-Maḥbūbī as Ṣadr al-Sharī‘a al-Awwal, that is, “the first,” in contrast to ‘Ubayd Allāh ibn Mas‘ūd ibn Aḥmad al-Maḥbūbī al-Bukhārī (d. 747/1346), his descendent, who is known as Ṣadr al-Sharī‘a al-Thānī, i.e. “the second.” Ibn Quṭlūbughā also mentions a book entitled *Talqīh al-‘uqūl fī al-furūq*, a title bearing a very close resemblance to that by Aḥmad al-Maḥbūbī. However, this title is attributed by Ibn Quṭlūbughā to Aḥmad ibn Ḥubb Allāh ibn Ibrāhīm and no further information is given about the author.<sup>725</sup> Similarly, Taqī al-Dīn al-Ghazzī’s *al-Ṭabaqāt al-saniyya* has two listings that seem to refer to this author. The first is for “Aḥmad ibn ‘Abd Allāh ibn Ibrāhīm Shihāb al-Dīn al-Ḥanafī” who wrote *Tanqīh al-‘uqūl fī furūq al-manqūl*.<sup>726</sup> We also find, however, a different entry for “Aḥmad ibn ‘Ubayd Allāh ibn Ibrāhīm ibn Aḥmad... al-Maḥbūbī” to whom is attributed a book entitled “*Tanqīh al-‘uqūl fī furūq al-manqūl*.”<sup>727</sup> Unfortunately, al-Ghazzī does not give death dates for either scholar.

It was also in this century that the noted Egyptian jurist Shihāb al-Dīn Aḥmad ibn Idrīs al-Qarāfī wrote his *Anwār al-burūq fī anwā’ al-furūq*, also referred to as *Kitāb al-Furūq*.<sup>728</sup> This is perhaps the most well known work of legal distinctions from any school. Numerous manuscripts of this work survive into the present day together with many commentaries on this work. The number of manuscripts and printed editions of this work dwarfs the combined number of manuscripts and printed editions for almost every other work of legal distinctions. At the same time, however, this is a very peculiar

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<sup>725</sup> Ibn Quṭlūbughā, *Tāj al-tarājim*, 9 no.29.

<sup>726</sup> Tamīmī al-Dārī, *al-Ṭabaqāt al-saniyya*, 1:364, no.208.

<sup>727</sup> Tamīmī al-Dārī, *al-Ṭabaqāt al-saniyya*, 1:376, no.220.

<sup>728</sup> Heinrichs, “Structuring the Law,” 341-2; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 152-154; al-Sabīl, “Introduction,” 1:32-33.

work. While Heinrichs includes this work in his bibliography, along with a brief list of commentaries on it, al-Bāḥusayn omits it from his own survey of works of legal distinctions, considering it instead a work of “*al-furūq al-uṣūliyya*.”<sup>729</sup> This is likely because al-Qarāfi’s work does not fit neatly into the genre of legal distinctions, despite seemingly being its most famous example. Al-Qarāfi’s work is more like a work of legal maxims (*al-qawā‘id al-fiqhiyya*) than it is a work of legal distinctions. Al-Qarāfi himself states that he “made the beginnings of research into legal maxims (*qawā‘id*) by discussing distinctions and asking, in a disputation, for the distinction between two derived cases (*al-furūq wa-l-su’āl ‘anhā bayn far‘ayn*) or two legal maxims.”<sup>730</sup> His work is as concerned with maxims and general principles as it is with minute distinctions between rules of positive law. Indeed, al-Qarāfi’s use of the term *furūq* seems more aligned to the usage of lexicographical distinctions than with legal distinctions.<sup>731</sup> Al-Qarāfi is sometimes credited with a second work on legal distinctions, *al-Iḥkām fī tamyīz al-fatāwā ‘an al-aḥkām wa-taṣarrufāt al-qāḍī ‘ind al-imām*. This work, however, is not a work of legal distinctions, but rather, as its title indicates, a work on judges, muftis, and their procedures and rulings.<sup>732</sup>

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<sup>729</sup> With this term, al-Bāḥusayn means something quite similar to the notion of “applied linguistic distinction” developed in Chapter Four; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 152-154.

<sup>730</sup> Abū al-‘Abbās Aḥmad ibn Idrīs, al-Qarāfi, *Al-Furūq aw Anwār al-burūq fī anwā’ al-furūq*. Printed with *Idrār al-shurūq ‘alā anwā’ al-furūq* by Ibn al-Shāṭṭ; *Tahdhīb al-Furūq*; and *al-Qawā‘id al-sanniyya fī al-asrār al-fiqhiyya* by Muḥammad ‘Alī ibn Ḥusayn al-Makki, ed. Khalīl Mansūr (Beirut: Dār al-Kutub al-‘Ilmiyya, 1418/1998), 1:9.

<sup>731</sup> See the discussion of applied lexicographic distinctions above, Chapter Four, pp. 184-87.

<sup>732</sup> Muhammad Khalid Masud, Brinkley Messick, and David Powers, “Muftis, Fatwas, and Islamic Legal Interpretation,” in *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David Powers (Cambridge, MA; London: Harvard University Press, 1996), 18-19. See

Finally, this was the century in which members of the Ḥanbalī school began writing works of legal distinctions. I have found three Ḥanbalī works composed during this century: *al-Furūq fī al-masā'il al-fiqhiyya* by Ibrāhīm ibn 'Abd al-Wāḥid ibn 'Alī Ibn Surūr al-Maqdisī al-Ḥanbalī (d. 614/1212);<sup>733</sup> *al-Furūq* by Abū 'Abd Allāh Muḥammad ibn 'Abd Allāh al-Sāmarrī al-Ḥanbalī, Ibn Sunayna (d. 616/1219);<sup>734</sup> and *al-Furūq* by Abū 'Abd Allāh Muḥammad ibn 'Abd al-Qawī ibn Badrān al-Maqdisī al-Ḥanbalī (d. 699/1299-1300).<sup>735</sup> The first of these works, by Ibrāhīm Ibn Surūr, is no longer extant. Ibn Surūr, a prominent Ḥanbalī jurist, was born in a small village called Jammā'īl on the West Bank of the Jordan River.<sup>736</sup> He lived most of his life in Damascus, though he also traveled to Ḥarrān, Medina, Baghdad and Mosul. The title of his work, *al-Furūq fī masā'il al-fiqhiyya*, makes it seem likely that his work was indeed on legal distinctions.<sup>737</sup>

The history of Ibn Sunayna's work is more complicated. Joseph Schacht included a short description and transcription of excerpts from this treatise in his 1927 article. According to Schacht, this work was written by Mu'azzam al-Dīn Abū al-Faṭḥ 'Abd Allāh

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also the recent translation of this work, al-Qarāfī, *The Criterion for Distinguishing Legal Opinions from Judicial Rulings and the Administrative Acts of Judges and Rulers*, trans. Mohammad Fadel (New Haven: Yale University Press, 2017).

<sup>733</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 94; al-Sabīl, "Introduction," 1:40.

<sup>734</sup> Heinrichs, "Structuring the Law," 343; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 93-94; al-Sabīl, "Introduction," 1:40.

<sup>735</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 96; al-Sabīl, "Introduction," 1:40.

<sup>736</sup> At present, this village is called Jamma'in.

<sup>737</sup> 'Abd al-Raḥmān Muḥammad ibn Aḥmad Ibn Rajab, *Al-Dhayl 'alā Ṭabaqāt al-Ḥanābila*, ed. 'Abd al-Raḥmān Muḥammad ibn Sulaymān al-'Uthaymīn (Mecca: Maktabat al-'Ubaykān, 1425/2005), 3:198-220, the book itself is mentioned on 3:200; Kaḥḥāla, *Mu'jam*, 1:42 no.312; Mujīr al-Dīn 'Abd al-Raḥmān ibn Muḥammad al-'Ulaymī, *al-Durr al-Munaḍḍad fī dhikr ashāb al-imām Aḥmad*, ed. 'Abd al-Raḥmān ibn Sulaymān al-'Uthaymīn ([Riyadh(?)]: Maktabat al-Tawba; Cairo: Maṭba'at al-Madanī, 1412/1992), 1:339, no.969; Ibn al-'Imād, *Shadharāt al-dhahab*, 7:105-108.

ibn Hibat Allāh al-Sāmarrī (d. 545/1150).<sup>738</sup> Based on Schacht’s attribution, Heinrichs also ascribed this work to Abū al-Faṭḥ al-Sāmarrī.<sup>739</sup> This work was in fact written by Abū ‘Abd Allāh Muḥammad ibn ‘Abd Allāh al-Sāmarrī (d. 616/1219).<sup>740</sup> This is made clear by the manuscript of this work in the Ḍāhiriyya Collection in the Asadiyya Library in Damascus, together with the biographical tradition, which attributes a work of legal distinctions to Abū ‘Abd Allāh Muḥammad al-Sāmarrī, but not to Abū al-Faṭḥ ‘Abd Allāh al-Sāmarrī.<sup>741</sup> This work has been edited in two parts. The first, edited by Muḥammad ibn Ibrāhīm ibn Muḥammad al-Yaḥyā, was published 1418/1997 and contains only the section on ritual duties (*al-‘ibādāt*).<sup>742</sup> The rest of the book was edited by Anas ibn ‘Umar ibn Muḥammad al-Subayyil as a master’s thesis from Umm al-Qurā University in Mecca in 1435/2014.<sup>743</sup> Joseph Schacht also edited and published short selections from this text.<sup>744</sup>

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<sup>738</sup> Schacht, “*Furūq-Büchern*,” 507-508.

<sup>739</sup> Heinrichs, “Structuring the Law,” 343.

<sup>740</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 93-94; al-Sabīl, “Introduction,” 1:40.

<sup>741</sup> Heinrichs lists this work as being written by Abū al-Faṭḥ in his bibliography, even though in his note he admits that it is more likely that it is by Ibn Sunayna. Heinrichs, “Structuring the Law,” 343. For Abū al-Faṭḥ, see Ibn al-‘Imād, *Shadharāt al-dhahab* 7:126-27; Dhayl, *Ṭabaqāt al-Ḥanābila*, 3:249-51. Mu‘azzam al-Dīn’s name is written on the cover page of the manuscript in Damascus; this can be seen on the reproduction printed in al-Yaḥyā’s edition of this text, see al-Yaḥyā, “Introduction,” 112.

<sup>742</sup> Mu‘azzam al-Dīn Abū ‘Abd Allāh al-Sāmarrī, *Kitāb al-Furūq ‘alā madhhab al-Imām Aḥmad ibn Ḥanbal*, ed. Muḥammad ibn Ibrāhīm ibn Muḥammad al-Yaḥyā (Riyadh: Dār al-Ṣumay‘ī, 1997).

<sup>743</sup> Mu‘azzam al-Dīn Abū ‘Abd Allāh Ibn Sunayna al-Sāmarrī, *al-Furūq min awwal kitāb al-jināyāt ilā nihāyat al-kitāban dirāsatan wa-taḥqīqan*, ed. Anas ibn ‘Umar ibn Muḥammad al-Subayyil. MA Thesis, Medina: Umm al-Qurā University, 1435/2014.

<sup>744</sup> Schacht, “*Furūq-Büchern*,” 525-37.

## The Eighth/Fourteenth Century

The eighth century continued to see the production of many works of legal distinctions. The Shāfiʿī *madhhab* saw three works of legal distinctions in the eighth century: *al-Jamʿ wa-l-farq* by Sirāj al-Dīn Yūnus ibn ʿAbd al-Mujīd ibn ʿAlī al-Hudhalī al-Armantī al-Shāfiʿī (d. 725/1325);<sup>745</sup> *al-Furūq* by Abū Umāma Shams al-Dīn Muḥammad ibn ʿAlī ibn ʿAbd al-Wāḥid ibn Yaḥyā al-Dukkālī al-Maghribī al-Miṣrī al-Shāfiʿī, Ibn al-Naqqāsh (d. 763/1361);<sup>746</sup> and *Maṭāliʿ al-daqaʿiq fī taḥrīr al-jawāmiʿ wa-l-fawāriq* by Jamāl al-Dīn ʿAbd al-Raḥīm ibn al-Ḥasan al-Asnawī al-Shāfiʿī (d. 772/1370).<sup>747</sup> Of these, only the work by Jamāl al-Dīn al-Asnawī is extant. Al-Asnawī was the head of the Shāfiʿī school in Cairo and wrote works in nearly all areas of Islamic law.<sup>748</sup> Al-Asnawī’s book on distinctions is particularly interesting since it opens with a brief history of legal distinctions writing. His discussion does not include mention of the other two Shāfiʿī works from the eighth century, even though his book was likely the last of the three to be written.<sup>749</sup>

Sirāj al-Dīn al-Armantī was a Shāfiʿī who held judicial posts throughout Egypt, specifically in Qus (Qūṣ), Cairo, Ikhmīm, al-Bakhnasā,<sup>750</sup> and Bilbeis. His *nisba* Armantī refers to the village of Armant in Upper Egypt where he was born. Al-Armantī’s work is

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<sup>745</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 96-97; al-Sabīl, “Introduction,” 1:37.

<sup>746</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 96-97; al-Sabīl, “Introduction,” 1:37.

<sup>747</sup> Heinrichs, “Structuring the Law,” 343; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 100; al-Sabīl, “Introduction,” 1:38.

<sup>748</sup> I discuss him and his works in more detail above, in Chapter Five, pp. 275-86.

<sup>749</sup> The *Maṭāliʿ* appears to have been written late in al-Asnawī’s life, by which time al-Armantī had already passed. It is less clear that he wrote this work before that by Ibn al-Naqqāsh.

<sup>750</sup> Known also today by its ancient Egyptian name, Oxyrhynchus.

remembered in the bibliographical tradition and appears to be a work of legal distinctions but is no longer extant.<sup>751</sup>

The nature of Ibn al-Naqqāsh's work, on the other hand, is less clear. Ibn al-Naqqāsh was also a Cairene Shāfi'ī who travelled throughout the Levant, with stays in Damascus and Hama. His work is mentioned often in the bibliographical tradition, but is given several names: *al-Furūq*,<sup>752</sup> *al-Farq*,<sup>753</sup> and *al-Nazā'ir wa-l-furūq*.<sup>754</sup> It seems likely that *al-Nazā'ir fi al-furūq* was the title of his book, since the earliest sources mention that as the name.<sup>755</sup> Nevertheless, it seems to me that by this late date, once legal distinctions had become a fully formed and relatively widely recognized genre, calling a book *al-furūq* was a way of signaling that it belonged to this genre.<sup>756</sup> A similar assumption, based on the word *furūq* in the title, may have led Ḥājjī Khalīfa to give *al-Furūq* as the title for this book and drop the word "*al-Nazā'ir*."<sup>757</sup>

As in the previous century, the eighth century saw only one Ḥanafī work of legal distinctions, *al-Furūq* by Tāj al-Dīn Aḥmad ibn 'Uthmān ibn Ibrāhīm ibn Muṣṭafā al-

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<sup>751</sup> See Ibn al-Subkī, *Ṭabaqāt al-shāfi'iyya al-kubrā*, 10:430-33 no.1419; al-Asnawī, *Ṭabaqāt*, 1:85-86 no.149; Ibn al-ʿImād, *Shadharāt al-dhahab*, 8:125-26, Kaḥḥāla, *Muʿjam*, 2:193 no.18608; Ḥājjī Khalīfa, *Kashf al-zunūn*, s.v. "*al-Furūq fi furūʿ al-shāfi'iyya*," 1:601; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 2:301-302 no.574.

<sup>752</sup> Ḥājjī Khalīfa, *Kashf al-zunūn*, s.v. "*al-Furūq fi furūʿ al-shāfi'iyya*," 2:1258.

<sup>753</sup> *Hadiyyat al-ʿarifīn*, 2:162.

<sup>754</sup> Ibn al-ʿImād, *Shadharāt al-dhahab*, 8:339; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 3:132; Kaḥḥāla, *Muʿjam*, 3:521.

<sup>755</sup> Shihāb al-Dīn Aḥmad ibn ʿAlī ibn Muḥammad Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-Kāmina fi aʿyān al-miʿa al-thāmina*, no ed. (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, [197-]), 4:71-74. *Al-Durar al-kāmina* says it is "a book about distinctions (*ṣannaḥa... kitāban fi al-furūq*)."

<sup>756</sup> It is also possible that given this assumption, later authors, in particular Ḥājjī Khalīfa, miscategorized this work as belonging to the genre of legal distinctions and that I am continuing this error by maintaining this assumption.

<sup>757</sup> *Kashf al-zunūn* does not include any books with the title "*al-Nazā'ir wa-l-furūq*," see Ḥājjī Khalīfa, *Kashf al-zunūn*, 2:1920.



Turkumānī al-Mārdīnī al-Ḥanafī, known as Ibn al-Turkumānī (d. 744/1343).<sup>758</sup> This work is likely not extant, although a manuscript on legal distinctions in the Zāhiriyya collection in the Asadiyya library in Damascus is attributed to him.<sup>759</sup> Little is known about Ibn al-Turkumānī. The sources relate only that he was a notable Ḥanafī from a scholarly family who lived in Cairo.<sup>760</sup>

The Ḥanbalī *madhhab* saw one book of legal distinctions written in this century, the *Īdāḥ al-dalā'il fi al-farq bayn al-masā'il* by Abū Muḥammad Sharaf al-Dīn 'Abd al-Raḥīm ibn 'Abd Allāh al-Zarīrānī al-Baghdādī al-Ḥanbalī (d. 741/1341).<sup>761</sup> Al-Zarīrānī was a Baghdadi jurist and hadith scholar who traveled to Damascus and Cairo. There is some uncertainty as to the name of this author. Heinrichs refers to him as al-Zarīrātī and says that in the introduction to al-Dimashqī's book of legal distinctions, this author's "name [is] wrongly given as 'Abd al-Raḥmān al-Zarīrānī."<sup>762</sup> Both *nisbas*, however, are given to this author in the biographical sources. His *nisba* almost certainly connects him to Zarīrān, a small village south of Baghdad.<sup>763</sup> The edition of Ibn Rajab's *Dhayl al-ṭabaqāt* that I cite gives his name as 'Abd al-Raḥīm al-Zarīrānī, but notes that

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<sup>758</sup> Heinrichs, "Structuring the Law," 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 98-99; al-Sabīl, "Introduction," 1:29.

<sup>759</sup> It is unlikely that this work was actually written by Ibn al-Turkumānī. This manuscript is a copy of the work that I call *Furūq-A*, see below pp. 337-39.

<sup>760</sup> Ḥājjī Khalīfa, *Kashf al-zunūn*, s.v. "*furūq fi furū' al-Ḥanafīyya*," 2:1257; al-Qurashī, *al-Jawāhir al-muḍīyya*, 1:197-98 no.139; al-Asqalānī, *al-Durar al-Kāmina*, 1:198; Ibn al-ʿImād, *Shadharāt al-dhahab* 8:243; Tamīmī al-Dārī, *Ṭabaqāt al-saniyya* 1:389 no.240; *GAL* 2:64; *GAL S* 2:67-68; Ibn Quṭlūbughā, *Tāj al-tarājim*, 9, no.30.

<sup>761</sup> Heinrichs, "Structuring the Law," 343; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 97-98; al-Sabīl, "Introduction," 1:28.

<sup>762</sup> Heinrichs, "Structuring the Law," 343. He corrects this statement in Heinrichs, "Qawā'id," 383n37, "The reading 'al-Zarīrātī' is apparently incorrect."

<sup>763</sup> Yāqūt al-Ḥamawī, *Muʿjam al-buldān*, 3:140.

the variant al-Zarīrātī is found on at least some of the manuscripts.<sup>764</sup> Other sources, such as *al-Durar al-kāmina* and *Shadharāt al-dhahab* refer to him as al-Zarīrānī.<sup>765</sup> The unicum manuscript in Princeton gives his name as ‘Abd al-Raḥmān al-Zarīrānī<sup>766</sup> and is likely the source for the name given in the printed edition. Further, this work is sometimes referred to as *Tanqīḥ al-Furūq*. This alternate title, *Refinements on the Furūq*, alludes to the fact that this work is a commentary and expansion of Ibn Sunayna’s *Kitāb al-Furūq*. A work of distinctions that is self-consciously referencing a previous work suggests that distinctions writing had by this time become a part of the Ḥanbalī legal-literary repertoire.

The eighth/fourteenth century represents the high-water mark in the production of works of legal distinctions. Not only were many works written in this century, but it also appears that the legal distinctions literature had spread to many regions in the Islamic cultural landscape. It was at this time that ‘Alī ibn Yaḥyā ibn Rāshid al-Washlī al-Zaydī al-Yamanī wrote *al-Jam‘ wa-l-farq*.<sup>767</sup> This work, discussed above, seems to have dealt with legal distinctions. Its title, *al-Jam‘ wa-l-farq*, is both a direct allusion to the work written by ‘Abd Allāh al-Juwaynī and also seemingly places

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<sup>764</sup> Ibn Rajab, *Dhayl ṭabaqāt al-Ḥanābila*, 5:104. Al-‘Uthaymīn says that this variant appears in the manuscript abbreviated “ṭā,” but in his introduction, does not label any manuscripts with this letter. See ‘Abd al-Raḥmān Muḥammad ibn Sulaymān al-‘Uthaymīn, “Introduction” to *Dhayl ṭabaqāt al-Ḥanābila*, 1:112-35.

<sup>765</sup> Ibn al-‘Imād in *Shadharāt al-dhahab* has his name as ‘Abd al-Raḥīm ibn ‘Abd al-Malik. This spelling likely reflects what was on the manuscripts since the editor notes that this name is unusual (8:228).

<sup>766</sup> Princeton University Library, Garrett 4577Y, 2b.

<sup>767</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 100; al-Sabīl, “Introduction,” 1:38; Kaḥḥāla, 2:543 no.10254.

it in conversation with the Shāfi‘ī tradition.<sup>768</sup> Apart from this work by ‘Alī ibn Yaḥyā, this title appears to be confined to works by Shāfi‘ī authors.<sup>769</sup> Unfortunately, this work has not survived and other sources do not preserve excerpts from it.

### The Ninth/Fifteenth Century

After the boom of works of legal distinctions in the eighth century, we see many fewer works written in the following centuries. The ninth century saw only two works on legal distinctions, one from the Mālikī *madhhab* and one unusual Ḥanafī work. The Mālikī work is *al-Furūq* by Abū ‘Abd Allāh Muḥammad ibn Yūsuf al-‘Abdarī al-Gharnāṭī al-Mālikī, al-Mawwāq (d. 897/1492).<sup>770</sup> This work appears no longer to be extant, although a manuscript of a book of Mālikī distinctions at the Maktabat Āl Ibn ‘Āshūr al-Tūnisī in La Marsa is attributed to an author with a similar name, a Muḥammad ibn Yūsuf al-Andalusī.<sup>771</sup> The manuscript in La Marsa is mentioned by Abū al-Ajḫān and Abū Fāris, the editors of al-Dimashqī’s *Furūq al-Dimashqī*, and consequently by both al-Bāḫusayn and Heinrichs. Abū al-Ajḫān and Abū Fāris believed that this was a separate person because of the slightly different names, or rather because of the missing *nisbas* in the name given in the manuscript.<sup>772</sup> Al-Bāḫusayn agrees that the author of this

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<sup>768</sup> Such a dialogue, between Zaydī scholars and Shāfi‘ī scholars in Yemen in the eighth/fourteenth century, would not be unusual. See Bernard Haykel, *Revival and Reform in Islam: The Legacy of Muhammad al-Shawkānī* (Cambridge; New York, NY: Cambridge University Press), 12-15.

<sup>769</sup> The main source of information on this work is a biographical dictionary by Muḥammad Zabāra.

<sup>770</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḫusayn, *al-Furūq al-fiqhiyya*, 101-102; al-Sabil, “Introduction,” 31.

<sup>771</sup> La Marsa, Maktabat Āl Ibn ‘Āshūr al-Tūnisī, fā’-alif 98-90.

<sup>772</sup> Abū al-Ajḫān and Abū Fāris, “Introduction,” 40.

manuscript is not al-Mawwāq. He mentions it at the end of his survey and treats it as an anonymous work because the name associated with it, Muḥammad ibn Yūsuf, is so common.<sup>773</sup> Heinrichs, meanwhile, finds it “highly unlikely” that the La Marsa manuscript is by someone other than al-Mawwāq, but nevertheless grants both works separate entries in his bibliography.<sup>774</sup>

There is, however, one mention of a Mālikī work of legal distinctions by an otherwise unknown Muḥammad ibn Yūsuf. This comes in Najm al-Dīn al-Ṭūfī’s *‘Alam al-jadhal fi ‘ilm al-jadal*, who attributed a work of Mālikī legal distinctions to “al-Shaykh Abū ‘Abd Allāh Muḥammad ibn Yūsuf al-Andalusī al-Anṣārī al-Mālikī.”<sup>775</sup> At first glance, this may seem to refer to al-Mawwāq, due to his prominence in the late Andalusī Mālikī school and his consistent self-description as “al-Anṣārī.” Al-Ṭūfī, however, died in 716/1316, almost 180 years before the death of al-Mawwāq and so it is impossible that al-Ṭūfī could have known of al-Mawwāq’s work. It must, therefore, be that there were at least two scholars named Abū ‘Abd Allāh Muḥammad ibn Yūsuf who wrote works of Mālikī legal distinctions. Based on this information, it seems likely to me that the La Marsa manuscript is not by al-Mawwāq, but only a study or edition of the text would help to answer this question.

That al-Mawwāq, however, wrote a work of legal distinctions is certain. Ibn Dāwūd al-Balawī (d. 938/1532), in his *Thabat*, mentions that Abū Ja‘far al-Baqanī received from al-Mawwāq himself a general license (*al-ijāza al-‘amma*) to transmit

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<sup>773</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 105.

<sup>774</sup> Heinrichs, “Structuring the Law,” 342.

<sup>775</sup> Najm al-Dīn al-Ṭūfī, *‘Alam al-jadhal*, 73.

several works by al-Mawwāq, including *al-Furūq*.<sup>776</sup> If al-Mawwāq granted a license to teach his *Furūq*, he must have authored such a work, and the fact that the tradition preserves this detail is strong evidence that he wrote this work and that it was well-known by other scholars.

The other work of legal distinctions from this century, entitled simply *al-Furūq*, was written in 802/1399-1400 by the Ḥanafī scholar Shaykh Bāyazīd ibn Isrāʿīl ibn Ḥājji Dāwūd Marghāyatī(?) (d. early ninth/fifteenth c.). This is a peculiar work. Al-Bāḥusayn, consulting a microfilm version of the manuscript, says that it is thirty-two pages long, although the first ten pages of the manuscript are missing.<sup>777</sup> Unfortunately, he does not give any other information about the original manuscript, such as its location or accession number. Al-Sabīl says that Marghāyatī “is a minor figure (*muʿallif ṣaghīr*) who followed the style of Asʿad al-Karābīsī,” and goes on to describe the work as “written by a foreigner with poor style and grammar (*uslūb al-kitāb rakīk wa-fīhi laknat al-aʿājim*).”<sup>778</sup> Al-Sabīl says that a microfilm of this manuscript is found in the King Faisal Center for Research and Islamic Studies in Riyadh, on microfilm 812, without mentioning where the original manuscript is kept. Marghāyatī is unknown aside from this manuscript. I have not been able to consult the manuscript or its microfilm myself, but presumably its colophon mentions that it was finished in 802/1399-1400, a date that both al-

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<sup>776</sup> See also Ibn Dāwūd al-Balawī, Aḥmad, *al-Thabat*, Ed. ʿAbd Allāh al-ʿImrānī. (Beirut: Dār al-Gharb al-Islāmī, 1403/1983), 190. I thank Josef Ženka for this last reference.

<sup>777</sup> “*Wa-huwa kitāb mūjiz yaqaʿa fi 32 waraqa saqāta min al-nuskha allatī aṭṭalaʿnā ʿalayhā ʿasharat awrāq min awwalihā.*” Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 101. It is not clear to me from his statement whether this manuscript was originally 42 pages and only 32 survive, or if it was originally 32 pages and only 22 survive.

<sup>778</sup> Al-Sabīl, “Introduction,” 29.

Bāḥusayn and al-Sabīl mention, and its contents indicate that Marghāyatī was a Ḥanafī scholar.<sup>779</sup>

### The Tenth/Sixteenth Century

*Furūq* writing seems to have come to something of a halt during the tenth/sixteenth century. There were three works written during this century which are part of the tradition of *furūq*-literature: *al-Ashbāh wa-l-naẓāʾir* by Jalāl al-Dīn al-Suyūṭī; *al-Ashbāh wa-l-naẓāʾir* by Ibn Nujaym; and *ʿIddat al-burūq fī jamʿ mā fī al-madhhab min al-furūq* by Abū al-ʿAbbās Aḥmad ibn Yaḥyā al-Wansharīsī al-Mālikī. Of these three works, only the one by al-Wansharīsī can be said to be a book of legal distinctions; the other two have only individual sections devoted to legal distinctions.

Wansharīsī’s *ʿIddat al-burūq*, a massive work of legal distinctions, was written by one of the most celebrated North African Mālikī scholars of the century. While it may not have eclipsed al-Qarāfī’s work, which enjoyed great popularity and exercised tremendous influence, it was a very important work for the Mālikī *madhhab*. The title of al-Wansharīsī’s book rhymes with al-Qarāfī’s book; the rhyme is clearly an allusion to al-Qarāfī’s book, but they are nonetheless fundamentally different. As discussed earlier, al-Qarāfī’s book is not quite a work of legal distinctions, but rather a broader work encompassing applied linguistic distinctions, legal distinctions, legal maxims, and more. While there are traces of al-Qarāfī’s style and presentation in Wansharīsī’s *ʿIdda*,

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<sup>779</sup> Al-Bāḥusayn says that occasionally “he reveals the distinction by way of a question, as though it were a riddle or examination (*lughz wa-imtiḥān*)” (101).

the *ʿIdda* is much more straightforwardly a work of legal distinctions. Stylistically, his work differs slightly from other books in the distinctions tradition, most notably, by omitting the phrase “the distinction between these is...” Nevertheless, *ʿIddat al-burūq* reads much like other works of legal distinctions.<sup>780</sup>

The other two works from this century, by al-Suyūṭī and Ibn Nujaym, are both entitled *al-Ashbāh wa-l-naẓāʾir*. Both can be seen, in a way, as one end-point for the tradition of distinctions writing. Neither of these works is exclusively dedicated to legal distinctions, but both include chapters devoted exclusively to legal distinctions.<sup>781</sup> Each of these chapters is essentially a small work of legal distinctions, not noticeably different from many of the other works on this list. These two works are notable, however, for how their authors fit what are recognizable treatments of legal distinctions into broader conceptual legal organizations.

All three works from this century were written by towering figures who remained highly influential long after their deaths. It is intriguing that a genre so often characterized by little-known authors and texts of uncertain provenance terminates with works by three authors of such renown. Ibn Nujaym’s work in particular became a cornerstone of Ḥanafī legal study in the Ottoman Empire, which officially adopted the

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<sup>780</sup> Interestingly, although the title of his work suggests a relationship between his work and that by al-Qarāfī, the introduction to this book has many resonances with the other Mālikī *furūq* texts, Abū al-ʿAbbās Aḥmad ibn Yaḥyā al-Wansharīsī, *ʿIddat al-furūq fī jamʿ mā fī al-madḥhab min al-jumūʿ wa-l-furūq*, ed. Ḥamza Abū Fāris (Beirut: Dār al-Gharb al-Islāmī, 1990/1410), 79–80.

<sup>781</sup> See the Sixth Section (*al-fann al-sādis*) in each of these works.

Ḥanafī school.<sup>782</sup> Ibn Nujaym’s text, and his chapter on legal distinctions, achieved a level of canonicity within Ottoman legal culture similar to that achieved by al-Qarāfī in North Africa a few centuries earlier. Commentaries on Ibn Nujaym’s text are numerous and continued to be written well into the 19<sup>th</sup> century.

### **Works of Indeterminate Date**

In addition to the above, there are several works of legal distinctions that cannot be securely dated. These works, which exist only in manuscript and are identified in the bibliographies compiled by al-Bāḥusayn and al-Sabīl, are either not attributed to any author or attributed to an otherwise unknown author. Because of the problems of attribution, the time and location from which these works originated is not easily discernable. Further, I have found that the indeterminate Ḥanafī works are all copies of one of two books, which I refer to as *Furūq-A* and *Furūq-B*.<sup>783</sup> The indeterminate Ḥanafī works include the following: *al-Furūq* by Aḥmad ibn Muḥammad al-Arzustānī (d. ?), *al-Furūq* by Aḥmad ibn Muḥammad al-Urdustānī (d. ?); *al-Furūq fī al-furūʿ* by Najm al-Dīn ʿAlī ibn al-Sayyid Abī Bakr al-Naysābūrī al-Ḥanafī (d. ?); and *al-Furūq ʿalā madhhab Abī Ḥanīfa*, which has no attribution.

I have been able to consult all of manuscripts of all of these works except the one attributed to al-Urdustānī (Baghdad, Maktabat al-Awqāf 3677). Al-Sabīl says that

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<sup>782</sup> Samy Ayoub says that “the works, opinions, and *fatāwā* of [Ibn Nujaym] define the discussions of Ḥanafī legal development over the 17<sup>th</sup>-19<sup>th</sup> centuries.” Samy Ayoub, “We’re not in Kufa Anymore: The Construction of Late Ḥanafism in the Early Modern Ottoman Empire, 16<sup>th</sup>-19<sup>th</sup> Centuries CE,” Ph.D. Diss., University of Arizona, 2014, 24.

<sup>783</sup> I discuss these works below.



this work exists in two copies, the manuscript in Baghdad and a manuscript in Berlin, Peterman II Nachtrag 4 at the Staatsbibliothek zu Berlin.<sup>784</sup> The manuscript in Germany is not attributed to any author, so “al-Urdustānī” must be mentioned in the manuscript in Baghdad. This Berlin manuscript, however, is a copy of the work that I have labelled *Furūq-A*.<sup>785</sup> If this Berlin and Baghdad manuscripts are copies of the same work, then the Baghdad manuscript attributed to al-Urdustānī must be a copy of *Furūq-A* as well.

Note, finally, that Chester Beatty 4507, *al-Furūq fī al-aḥkām ‘alā madhhab al-mālikiyya* is not attributed to any author and the Chester Beatty catalog lists no author; al-Bāḥusayn and al-Sabīl treat this as a separate and otherwise unknown work of legal distinctions.<sup>786</sup> This manuscript is, however, a copy of Muslim ibn Dimashqī’s book of legal distinctions.<sup>787</sup>

### Geographical Trends

There do not seem to be particular geographical trends in the composition of works of legal distinctions. It might be said that Baghdad in the fifth/eleventh century seems to have been a center of distinctions writing, but then it was a center for most kinds of legal writing and intellectual production and scholarly activity in general, so this is not surprising. For example, the Mālikī al-Qāḍī ‘Abd al-Wahhāb lived in Baghdad and

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<sup>784</sup> I have been unable to ascertain the current name of the Baghdadi library in question. The Germany manuscript is often referred to as Berlin 4848, its number in the Ahlwardt catalog.

<sup>785</sup> See below for a discussion of *Furūq-A*.

<sup>786</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 103-104; al-Sabīl, “Introduction,” 1:34.

<sup>787</sup> It was used by Abū al-Ajḡān and Abū Fāris in their edition of this work, Abū al-Ajḡān and Abū Fāris, “Introduction,” 49-50.

Muslim al-Dimashqī was his student.<sup>788</sup> Similarly, The Shāfi‘ī scholars al-Ḥusayn al-Ṭabarī and ‘Abd Allāh al-Juwaynī lived in Baghdad.<sup>789</sup> There is even an interesting convergence between the Mālīkī and Shāfi‘ī schools. When ‘Abd al-Ḥaqq al-Ṣiqillī performed his pilgrimage, he is said to have met and had discussions with Imām al-Ḥaramayn al-Juwaynī, the son of ‘Abd Allāh al-Juwaynī.<sup>790</sup> Baghdad was not, however, the only center of legal learning and distinctions writing. Several Ḥanafī and Shāfi‘ī scholars spent time in Khurasan, notably in Nishapur, and Ibn al-Kātib lived in North Africa.<sup>791</sup> Thus, the centers of *furūq*-writing in the fifth century seem to reflect the centers of intellectual production more generally and most new works of legal distinctions came from large, intellectually important urban centers. In the eighth/fourteenth century Cairo emerged as a center of distinctions-writing. Of the six works of legal distinctions composed during this period, four were written in Cairo.<sup>792</sup> The other two works are *Īdāh al-dalā’il* by Sharaf al-Dīn al-Zarīrānī and *al-Jam‘ wa-l-farq*

<sup>788</sup> For al-Qāḍī Ibn ‘Abd al-Wahhāb, see Shams al-Dīn Aḥmad ibn Muḥammad Ibn Khallikān, *Wafāyāt al-a‘yān* 3:219-22 no.400; Ibn al-‘Imād, *Shadharāt al-dhahab* 5:112; Kaḥḥāla, *Mu‘jam*, 2:344 no.8711; Muḥammad ibn Muḥammad Makhlūf, *Shajarat al-nūr al-zakiyya fi ṭabaqāt al-mālīkiyya* (Cairo: al-Maṭba‘a al-Salafiyya wa-Maktabatihā, 1349[1930-31]), 103-104; al-Qāḍī ‘Iyāḍ, *Tartīb al-madārik* 7:220-27. For Muslim al-Dimashqī, see Ibn Farḥūn, *al-Dībāj al-mudhahhab* 2:347; al-Qāḍī ‘Iyāḍ, *Tartīb al-madārik* 8:57.

<sup>789</sup> For al-Ḥusayn al-Ṭabarī, see Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:181 no.142; al-Asnawī, *Ṭabaqāt*, 2:61-62 no.767; al-Shīrāzī, *Ṭabaqāt al-fuqahā’*, 126. For ‘Abd Allāh al-Juwaynī, see Ibn al-‘Imād, *Shadharāt al-dhahab*, 5:176-77; al-Asnawī, *Ṭabaqāt*, 1:165-66 no.305; Ibn al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā* 5:73-94 no.439; al-Zarkashī, *al-Manthūr fi al-qawā‘id*, 69; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:209-11 no.171.

<sup>790</sup> Ibn Farḥūn, *al-Dībāj*, 2:56; Makhlūf, *Shajarat al-nūr al-zakiyya*, 116.

<sup>791</sup> al-Qāḍī ‘Iyāḍ, *Tartīb al-madārik* 7:252; Makhlūf, *Shajarat al-nūr al-zakiyya*, 106.

<sup>792</sup> These works are (i) *al-Jam‘ wa-l-farq* by Sirāj al-Dīn Yūnus ibn ‘Abd al-Mujīd ibn ‘Alī al-Hudhalī al-Armantī al-Shāfi‘ī; (ii) *al-Furūq* by Tāj al-Dīn Aḥmad ibn ‘Uthmān ibn Ibrāhīm ibn Muṣṭafā al-Turkumānī al-Mārdīnī al-Ḥanafī, Ibn al-Turkumānī; (iii) *Al-Furūq* by Abū Umāma Shams al-Dīn Muḥammad ibn ‘Alī ibn ‘Abd al-Wāḥid ibn Yaḥyā al-Dukkālī al-Maghribī al-Miṣrī al-Shāfi‘ī, Ibn al-Naqqāsh; (iv) *Maṭālī‘ al-daqa’iq fi taḥrīr al-jawāmi‘ wa-l-fawāriq* by Jamāl al-Dīn ‘Abd al-Raḥīm ibn al-Ḥasan al-Asnawī.

by ‘Alī ibn Yaḥyā al-Zaydī. Although Sharaf al-Dīn al-Zarīrānī spent the majority of his life in Baghdad, the sources tell us that he travelled to Cairo and Damascus.<sup>793</sup> Little is known about ‘Alī ibn Yaḥyā, aside from the fact that he lived in Yemen and it does not appear that he had any connection to Cairo.<sup>794</sup>

The movement of these texts is not yet clear. The results of my bibliographic survey clearly demonstrate a sustained historical interest in the genre of legal distinctions. They also show a certain amount of geographic spread for individual texts, with a large grouping of Ḥanafī and Shāfi‘ī texts in both Cairo and Istanbul. Owing to the large number of manuscripts surveyed, this study has not taken ownership marks, reading notes, and other marginalia into consideration. This limits, to a great extent, my capacity to discuss geographic spread. The presence of texts in various imperial centers, however, suggests that works of legal distinctions were important enough to preserve in capital cities.

Additionally, the presence of certain works, such as al-Qarāfī’s *al-Furūq* in Istanbul, or al-Jurjānī’s *al-Mu‘āyāt* in Rabat, is worth noting. Istanbul was not known to be a center of Mālikī law, and the Mālikī works there are few. The same can be said for Rabat and Shāfi‘ī law. The preservation of certain works may perhaps be a signal of the importance those works held historically. Al-Qarāfī’s *al-Furūq* was perhaps the most important work of Mālikī law from the post-formative period, so in this sense it is not

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<sup>793</sup> Ibn Rajab, *Dhayl ṭabaqāt al-Ḥanābila*, 5:104-115, no.581; al-‘Asqālānī, *al-Durar al-Kāmina* 2:357, no.2390; Ibn al-‘Imād, *Shadharāt al-dhahab* 8:228-29.

<sup>794</sup> Kaḥḥāla, *Mu‘jam*, 2:543 no.10254; Muḥammad ibn Muḥammad ibn Zabāra al-Ḥasanī al-Yamanī, *Mulḥiq al-badr al-ṭālī‘*, 1:183-84.

surprising to find it in Istanbul, but al-Jurjānī's work has not been understood to have a particularly large impact in the history of the Shāfi'ī school. More research is needed, however, to understand the role of these works and the historical distribution of particular books of legal distinctions.

The lack of a clear early center of distinctions-writing perhaps indicates that the pre-history of legal distinctions was robust and widespread, such that early works emerging from disparate parts of the world were remarkably similar in style and content. However, that may be, distinctions-writing had currency throughout the premodern and Ottoman Muslim world. The reasons for its relevance have shifted over time and across geographies, for instance from use in legal disputation to use as intellectual entertainment in literary salons, but the distinctions genre nevertheless remained enduringly relevant.

### **Manuscripts**

As important as it is to understand the contexts in which new works of distinctions were being written, it is necessary as well to see where these works were being copied and recreated, i.e. their manuscript histories. I was able to conduct research in many manuscript libraries, but unable to visit Egypt or Syria, both of which have significant manuscript collections.<sup>795</sup> Nevertheless, this study offers some preliminary remarks on the spread and rewriting of legal distinctions manuscripts. An analysis of manuscripts,

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<sup>795</sup> Research in Syria was not possible due to the Syrian Civil War. A planned research trip to Cairo was cancelled because of the August 2013 Rabaa massacre, and the resulting temporary closure of the research facilities and the general curfew.

the material record of premodern knowledge-production, can be helpful for reconstructing the use-history of texts. “The reception of a work can be traced indirectly through its transmission and indicates how audiences utilized it, so that the evidence of its transmission documents its circulation and use.”<sup>796</sup> The results of the survey into the material history of legal distinctions are similar to the survey of works and authors above. Among manuscripts, we see a very wide geographic and chronological spread in the reproduction of books of distinctions.

At the outset of this project, I attempted to gain a sense of *furūq* literature by reading the literary histories of Brockelmann (*GAL*) and Sezgin (*GAS*). Perhaps not surprisingly, the contents of *GAL* suggested the Suleymaniye Library in Istanbul as a promising manuscript archive for my research. The discovery of untitled, semi-anonymous manuscripts of legal distinctions made the use of this library much more interesting than I had initially thought. I not only found the manuscripts listed in the catalogs, but I also looked at every manuscript with the word *furūq* in the title, as well as every work cataloged under various transliterations of *risāla fī al-fiqh*. The holdings of the Suleymaniye represent a sample of distinctions manuscripts. It is also worth noting that although I include Ibn al-Nujaym’s *al-Ashbāh wa-l-naẓā’ir* as a work of distinctions in Chapter 4, that chapter ignores the material history of this work. As mentioned previously, *al-Ashbāh* became one of the central Ḥanafī texts in Ottoman legal study, to judge from the many surviving manuscripts of the work. There are 127 manuscripts of

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<sup>796</sup> Dagmar A. Riedel, “Searching for the Islamic Episteme: The Status of Historical Information in Medieval Middle-Eastern Anthological Writing” PhD Diss., Indiana University, 2004, 25.

Ibn Nujaym's *Ashbāh* in the regional libraries of Turkey, that is, public libraries other than the Suleymaniye.<sup>797</sup> Many of these copies are incomplete or only fragments, but they nevertheless reveal the scope of interest in this book within the Ottoman Empire.

According to the catalog, the most popular work of distinctions at the Suleymaniye was al-Qarāfi's *Furūq*, with eight copies.<sup>798</sup> It is closely followed by Shams al-Dīn al-Maḥbūbī's *Talqīh al-ʿuqūl*, which remarkably remains without a modern edition in spite of its status as an important work of legal distinction and an important work within the Ḥanafī school. There are six copies of al-Maḥbūbī's work. This library also has two copies of the *Kitāb al-Furūq* attributed to Muḥammad ibn Ṣāliḥ and of the *Kitāb al-Furūq* by Asʿad al-Karābīsī, and one copy each of the distinctions books of ʿAbd Allāh al-Juwaynī and Jamāl al-Dīn al-Asnawī.

It was easy to identify these works based solely on the manuscript catalog. The catalog, however, also turned up several other Ḥanafī works of legal distinctions. These were six books with no known author, another copy of Asʿad al-Karabīsī's work on legal distinctions,<sup>799</sup> and a book attributed to Ibn Nujaym al-Miṣrī.<sup>800</sup> On closer examination, however, most of these works were actually different copies of the same text.

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<sup>797</sup> The catalogs for these libraries can be accessed online at <https://www.yazmalar.gov.tr>, accessed August 30, 2016.

<sup>798</sup> The results reported in this paragraph rely quite heavily, though not exclusively, on the digitized catalog at the Suleymaniye Library. While visual inspection of manuscripts can help to identify false positives, it is very, very difficult to detect false negatives. In other words, I can see the manuscripts that the catalog believes are works of distinctions by these authors and verify the information provided. It is very likely, however, that there are works of legal distinctions that have been miscataloged and therefore not included in this study.

<sup>799</sup> Suleymaniye Library, Halet Efendi 780.

<sup>800</sup> Suleymaniye Library, Osman Holdi 50.

Specifically, seven manuscripts, five of the anonymous works and both wrongly-attributed works, were all manuscript variants of the same work. This work is usually attributed to Najm al-Dīn al-Naysabūrī; I refer to this work as *Furūq-B*, below. Taking these manuscripts together as one group, this is the second-most represented work of legal distinctions in the Suleymaniye collections. The remaining manuscript was another semi-anonymous work sometimes attributed to al-Urdustānī and other times to al-Arzustānī; I refer to this work as *Furūq-A*.<sup>801</sup>

### **Works with Unknown or Dubious Attribution**

The anonymous untitled manuscripts on the topic of legal distinctions found throughout manuscript archives are intriguing, as their existence has not been studied previously. Ya‘qūb al-Bāḥusayn includes a brief mention of the existence of these works in his survey discussed above. He references them at the end of his overview of distinctions writing: “Finally, we know of no later works [after al-Wansharīsī] other than a few manuscripts with no known author (*mu‘allifāt qalīla majhūlat al-mu‘allaf*). It is unclear when they were written.”<sup>802</sup> This statement establishes the existence of these manuscripts but does little else. Al-Bāḥusayn’s interest is in establishing a chronology of books of distinctions and the uncertain dating and provenance of these manuscripts explains his disinterest in these works. Other

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<sup>801</sup> Al-Sabīl and al-Bāḥusayn attribute this work to al-Urdustānī, presumably based on a manuscript in Baghdad. Princeton University Library, Garrett 4185Y, however, attributes the work to al-Arzustānī (64b). The only trace remaining of these authors is their *nisbas*. I discuss this issue below. Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 103; al-Sabīl, “Introduction,” 1:30.

<sup>802</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 76.

scholars, such as al-Sabīl and Schacht, simply list the works by whatever title and author is given in catalogues, but do not explore further.<sup>803</sup> These manuscripts, however, are much more interesting than they may appear from al-Bāḥusayn’s description. My own manuscript research has revealed copies of these manuscripts in several major manuscript repositories. Moreover, I have discovered at least one anonymous work of legal distinctions in every major repository of Arabic manuscripts that I have consulted.<sup>804</sup> The widespread existence of manuscripts of two anonymous works on distinctions signals that they played an important role in Islamic legal culture.

Even in my limited research, I have found multiple similar manuscripts that are of dubious attribution. Their presence in various manuscript libraries suggests that the manuscripts in question circulated relatively widely and were used for study and teaching. The first composition of these two anonymous works is particularly difficult to date because they were copied and recopied widely both geographically and temporally. I believe that these manuscripts can be divided into two discrete books, which I refer to as *Furūq-A* and *Furūq-B*. It may be the case, however, that the groups that I have identified are two different versions of a similar text. Here, I briefly discuss these two groups, their manuscripts, and their contents, although more research on them is required.

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<sup>803</sup> Al-Sabīl, “Introduction,” 1:30; Schacht “*Furūq-Büchern*,” 510.

<sup>804</sup> I have found such manuscripts at the Bibliotheque Nationale de France, the Staatsbibliothek zu Berlin, the University of Leiden Library, the Suleymaniyye, and the Princeton University Library. Libraries in which I have not found such works are those which have only relatively small collections of Arabic manuscripts, such as the New York Public Library and the Libraries at the University of Pennsylvania.



Because these two works are often catalogued as anonymous, generic works of *fiqh* they works can only be recognized by careful analysis of individual manuscripts. It is possible that a more in-depth search for manuscripts of these two works could lead to more conclusive results than what I am able to provide. At a minimum, the collections in the British Library and the Dār al-Kutub in Cairo would have to be consulted. Nevertheless, even the results from a partial sample tell us a great deal about these two works and alerts us to the importance of the material history of legal distinctions.

I have found six witnesses for the distinctions text that I call *Furūq-A: Halet Efendi 807* (HE 807), in the Suleymaniye Library in Istanbul; Peterman II Nachtrag 4 in the Staatsbibliothek zu Berlin; and Princeton University Library, Garrett 4185Y (G 4185Y); Zāhiriyya 4501 in Damascus; , Maktabat al-Ḥaram al-Makkī in Mecca, *Fiqh Ḥanafī 2089*; Khazā'in Kutub al-Awqāf 3677 in Baghdad.<sup>805</sup> These manuscripts all share a common title, *Kitāb al-Furūq*.<sup>806</sup> Apart from the title, however, these manuscripts show a high degree of variance.<sup>807</sup> These works start with similar chapter divisions, but as the work progresses, the manuscripts disagree on the placement of subdivisions and the ordering of subsections within the text, and even on the number and ordering of distinctions within the text. The Princeton manuscript further includes a section not

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<sup>805</sup> Of these, I have only been unable to consult the copy in Baghdad. I rely on the brief description given by al-Sabīl, "Introduction" 1:30.

<sup>806</sup> The Princeton and Damascus manuscripts have this exact title. The Istanbul and Berlin copies are titled *Kitāb al-Furūq fī al-fiqh*.

<sup>807</sup> Asadiyya Library, Zāhiriyya 4501 is heavily damaged, a fact which partly explains many of its differences from the other MSS.

found in any of the other manuscripts. This suggests that the extant manuscripts are based on different manuscript stems for this work, but a closer examination is necessary in order to understand the relationship between them.

The Istanbul and Berlin manuscripts do not attribute this work to any author. The manuscript in Mecca is attributed to the Ottoman scholar Ismail Hakkı. The Zāhiriyya manuscript is attributed, however, to Ibn al-Turkumānī.<sup>808</sup> Meanwhile, the copy at Princeton is attributed to a certain al-Arzustānī [*sic*], while the Baghdad copy is ascribed to al-Urdustānī. The readings of al-Arzustānī and al-Urdustānī is perhaps explained by a simple scribal error. Identifying an author based only on a *nisba* and *madhhab*-affiliation is nearly impossible, especially with so little knowledge about when and where this work was first composed.

In terms of the legal content, *Furūq-A* is very reminiscent of other works of legal distinctions, particularly As‘ad al-Karābīsī’s *Kitāb al-Furūq*. It is written in a very concise style that quickly presents each legal problem in the legal distinction and minimally explains the distinction between them. There are few references to other books of law and minimal reference to other scholars. Abū Ḥanīfa, Muḥammad al-Shaybānī, and Abū Yūsuf are the three jurists who appear most often. This is unsurprising since they are the three founding figures of the Ḥanafī school. Princeton’s G 4185Y contains no mention of a scholar outside of the three founders, while the Sulaymaniye’s HE 807

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<sup>808</sup> The biographical tradition attributes a work of legal distinctions to Tāj al-Dīn Ibn al-Turkumānī. Tāj al-Dīn is likely the Ibn al-Turkumānī meant here. This is discussed above.

includes a mention of both “Naṣīr ibn Yaḥyā [al-Balkhī (d. ca. 268/881)]”<sup>809</sup> and “Abū al-Layth [al-Samarqandī (d. ca. 383/993) ?].”<sup>810</sup> There are also occasional references to passages from the Quran or to the hadith, as well as statements on the authority of unnamed individuals, “a Ḥanafī scholar said... (*qāla ba‘ḍ ‘ulamā’inā* or *qāla ba‘ḍ aṣḥābinā*).” The different manuscripts of *Furūq-A* also demonstrate the permeability of the genre of legal distinctions, in particular the section on “Miscellaneous Legal Issues (*masā’il mutafarriqa; masā’il mutashābiha*)” contains some distinctions in the form of question and answer, and HE 807 ends with a section on legal strategems, (*ḥīla*).<sup>811</sup> The final sections of HE 807 and G 4185Y are quite different, and seem to be works added appended to the end of each respective manuscript.

*Furūq-B* is work is a book of legal distinctions normally titled *Kitāb al-Furūq* and occasionally attributed to an Abū Bakr Najm al-Dīn al-Naysabūrī.<sup>812</sup> The manuscript of this work in Leiden, Leiden Or. 481 (LO481), is one of the two works that Joseph Schacht relies on in his article on distinctions.<sup>813</sup> Apart from the Leiden copy, I have found seven other copies of this same work, all of which are now at the Süleymaniye Library in Istanbul: Giresun Yazmalar 44 (GY44), Halet Efendi 780 (HE780), Esad Efendi 884 (EE884),

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<sup>809</sup> Istanbul, Suleymaniye Library, Halet Efendi 807, 7b l.16. See also Abū al-Ḥasanāt Muḥammad ibn ‘Abd al-Ḥayy al-Laknawī, *al-Fawā'id al-bahiyya fī tarājim al-Ḥanafīyya*, ed. Muḥammad Badr al-Dīn Abū Firās al-Na‘ṣānī (Cairo: Aḥmad Nājī al-Jamālī wa-Muḥammad Amīn al-Khānjī, 1905), 221.

<sup>810</sup> Istanbul, Suleymaniye Library, Halet Efendi 807, 19b l.3.

<sup>811</sup> Istanbul, Suleymaniye Library, Halet Efendi 807, 30b-33b.

<sup>812</sup> It is most easily recognized from its opening phrase, “Praise be to God, who guides us with Islam and commands us to submit to Him (*al-ḥamd lillāh alladhī hadānā bi-l-islām wa-amaranā bi-l-istislām*),” and the first distinction in the book, which begins, “When a man prays wearing an impure garment that was in his possession... (*rajuḷ ṣallā fī thawb kāna ‘indahū ghayr ṭāhir*).”

<sup>813</sup> See Schacht, “*Furūq-Büchern*.”

Esad Efendi 542 (EE 542), Asir Efendi 453 (AE453), Osman Huldi 50 (OH50),<sup>814</sup> and Yazma Bağışlar 1187 (YB1187). These manuscripts are all in good condition and complete, they start with the *basmala* and seem to end appropriately without any pages missing on either end.<sup>815</sup> The manuscripts in the category of *Furūq-B* exhibit a much higher degree of completeness and similarity than those of *Furūq-A*.<sup>816</sup>

The text itself does not reveal much about its author, other than his having been a Ḥanafī, as can be seen from his *Furūq*. The title pages for these works, similarly, lack information about the author such as a more complete name or a date of death, features commonly found on the title pages of manuscripts. Two of these manuscripts, GY44 and LO481, attribute this work to a certain Najm al-Dīn ‘Alī al-Naysābūrī.<sup>817</sup> It is not been possible to identify such a person with any certainty. The problem lies almost entirely in the insignificance of the name itself. It reveals virtually nothing about the author. Other scholars who have studied this manuscript have also been at a loss when attempting to identify this individual.<sup>818</sup> This name consists of an honorific (*laqab*), a

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<sup>814</sup> This is listed in the catalog as *Furūq Ibn Nujaym*. This title is written on the outer and inner cover of the MS.

<sup>815</sup> The only partial exception is OH50, of which the top of the first page is missing, affecting the first eight lines of the text on the first folio.

<sup>816</sup> See Appendix III and Appendix IV for a table of contents. The three copies of *Furūq-A* show greater variance than the eight copies of *Furūq-B*.

<sup>817</sup> In the bibliographies compiled by al-Bāḥusayn and al-Sabīl, his first name (*ism*) is added, and given as ‘Alī. They do not cite a source for this, but it is likely from Ismā‘īl Pāshā al-Baghdādī, *Kitāb Ḫdāḥ al-maknūn fi al-dhayl ‘alā Kashf al-zunūn* (Istanbul: Millī Eđtim Basımevi, 1972), 1:232 and 2:188.

<sup>818</sup> See Peter Voorhoeve, *Handlist of Arabic Manuscripts in the University of Leiden and other collections in the Netherlands*, 2<sup>nd</sup> ed. (The Hague; Boston: Leiden University Press, 1980), 85; GAL S II, 956; P. De Jong and M.J. De Goeje, *Catalogus Codicum Orientalium Bibliothecae Academiae Luguno Batavae*, vol. 4 (Leiden: Brill, 1861), 155; Schacht “*Furūq-Büchern*,” 506.

patronym, and a geographic marker. Further, while the author's honorific and geographic origin are given in three manuscripts, his patronym is given alternatively as "ibn Abī Bakr" and "ibn Bakr."<sup>819</sup> With such little information, it is almost impossible to track down the identity of this author. It is curious that no patronymic (*kunya*) is given for him since it was a common part of a person's name. Curiously, his death date is never mentioned, even though the author's name is written multiple times on a single manuscript, i.e. on a cover page, a table of contents, and at the beginning of the book's text.<sup>820</sup> It is possible that the author was well-known when these manuscripts were copied, although such a supposition also raises interesting questions about the reliability of the bibliographic sources. It is surprising that a work which is seemingly important has almost entirely escaped notice.

Further complicating the identification of the author is that many of the manuscripts attribute this work to authors other than Najm al-Dīn al-Naysābūrī. As mentioned above, HE 780 (Halet Efendi, Instabul) attributes this work to As'ad al-Karābīsī and OH50 (Osman Huldi, Istanbul), lists the author as Ibn Nujaym. For now, it seems safest to consider the author of this work unknown.

As mentioned above, there is a great deal of overlap between this work and *Furūq-A*. Consequently, the contents of *Furūq-B* are similar to those of *Furūq-A*. The style of *Furūq-B* is similarly terse. *Furūq-B* mentions few jurists, primarily Abū Ḥanīfa (d. 150/767), Abū Yūsuf (d. 182/898), and Muḥammad ibn al-Ḥasan al-Shaybānī (d. ca.

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<sup>819</sup> For ibn Abi Bakr, see Leiden Or. 481; for ibn Bakr, see Suleymaniye Library, Giresun Yazmalar 44.

<sup>820</sup> See Leiden, Or. 481.

189/805), but also Muḥammad ibn Muqātil al-Rāzī (d. 248/862),<sup>821</sup> al-Ṭaḥāwī (d. 321/933),<sup>822</sup> Abū Bakr al-Iskāfī (d. 333/944),<sup>823</sup> and both of the figures cited in Halet Efendi 780, Naṣīr ibn Yaḥyā (d. ca. 250/864)<sup>824</sup> and “al-Faqīh Abū al-Layth,” presumably al-Samarqandī (d. ca. 383/993).<sup>825</sup>

There are several similarities between *Furūq-A* and *Furūq-B*. While they do not seem to have exactly the same content, much of the material they contain overlaps. They both rarely mention Ḥanafī authorities or books. The similarities may be coincidental, and may be due to the fact that they are both short works of Ḥanafī legal distinctions. Alternatively, their similarities may signify that these works were written in a similar cultural context; that is, it may be that the two works were composed around the same time and for similar purposes.

## Conclusion

This chapter has presented an up-to-date, critical bibliography of all known premodern works of legal distinctions, based on textual, material, and manuscript evidence. It has established the corpus of works of legal distinctions, identified the authors of these works, and traced their remaining records, if any. From the results of this survey, it should be clear that while the genre of legal distinctions is relatively limited, it was

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<sup>821</sup> GY 44, 4b, l. 7. Muḥammad ibn Muqātil was a student of Muḥammad al-Shaybānī. See GAS 1:436.

<sup>822</sup> GY 44, 6a, l.13.

<sup>823</sup> GY 44, 10a, ll.3-4. The passage in which Abū Bakr al-Iskāf appears is found in GY 44 and HE 807, although he is not mentioned in HE 807.

<sup>824</sup> GY 44, 10a l.9. The passage in which Naṣīr ibn Yaḥya appears is found in GY 44 and HE 807.

<sup>825</sup> GY 44, 30a l.15. The passage in which Abū al-Layth appears is found in GY 44 and HE 807. See GAS 1:445-50.

nevertheless important, and interest in this genre persevered across time and space. The genre's vitality was reflected in both the composition of new works and the production of manuscripts of existing books. The results of my empirical survey of manuscripts thus tally well with the analytical conclusions of the previous chapters.

Nevertheless, the results of this survey suggest questions for future study. One is why interest in works of legal distinction, perhaps as exemplified in particular by *Furūq-A*, *Furūq-B*, and the *Kitāb al-Furūq* attributed to Muḥammad ibn Ṣāliḥ al-Karābīsī, had such staying power in the Ottoman context. This interest makes the almost complete lack of new works of legal distinction at this time surprising. These texts had been largely unknown before the Ottoman era; the factors behind their popularization could shed light on the role of legal distinctions writing in the legal culture of the Ottoman Empire. Such a study may also yield insights into larger issues pertaining to the role of Islamic law in Ottoman-era intellectual culture.

Ibn Nujaym would seem to be a central figure in the story of legal distinctions in the Ottoman Empire. Ibn Nujaym was an outsider in the Ottoman legal system, having not graduated from the Ottoman madrasa system. Nevertheless, his “*al-Asbāh wa’l-naẓā’ir...*” drew the attention of senior members of the Ottoman learned hierarchy and was eventually incorporated into the imperial jurisprudential canon.”<sup>826</sup> It was eventually sanctioned as a part of the Ottoman canon by the chief mufiti, Ebû-S‘ûd (d. 982/1574). After receiving his blessing, “the text entered circulation, which means that

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<sup>826</sup> Burak, *Second Formation*, 136.

it was taught within in[sic] the imperial madrasa system.”<sup>827</sup> Nevertheless, Ibn Nujaym’s text was not universally admired. Guy Burak notes that “several members of the Ottoman learned hierarchy remained perplexed as to the status of *al-Ashbāh wa’l-naẓā’ir* in the decades following its completion and its approbation by Ebû-S‘ûd.”<sup>828</sup> As a canonical text for the Ottoman educational system, the final work of Ḥanafī legal distinctions was disseminated widely by Ottoman scholars. A look at the reception of and commentaries on the *al-Ashbāh wa-l-naẓā’ir* and particularly the sixth section on distinctions would be worthwhile.

Another line of inquiry, which fell outside the limits of the present study, would be a more intensive analysis of the manuscript record. The present study was only able to touch on these matters briefly. A richer history, however, could perhaps be written of the interest in the knowledge of legal distinctions. Such an analysis could look into the ownership history of several manuscripts, for instance, to see where these manuscripts were kept, who were the people and institutions interested in them, and where and when they moved from one location to another. Combined with the biobibliographical record and the general history of legal distinctions uncovered in the present study, this avenue could yield insights into the later history of Islamic law.

Further, it is clear that *Furūq*-A and *Furūq*-B deserve greater scrutiny. Although the manuscripts categorized as *Furūq*-A vary considerably, it seems clear to me that the manuscripts all represent the same work, but perhaps a closer study will show that

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<sup>827</sup> Burak, *Second Formation*, 138-39.

<sup>828</sup> Burak, *Second Formation*, 136, see also 137-39.



they in fact represent different works or different versions of the same book. Relatedly, there are some similarities as well between *Furūq-A* and *Furūq-B* that should be explored in a future study.

It is clear from this bibliography that legal distinctions were an important part of Islamic legal literature. Although legal distinctions is a small genre, books in this genre were composed throughout the Islamic world for nearly one thousand years, spanning a considerable geographical and chronological breadth. With this in mind, it is possible to claim that legal distinctions became a critical component of later Islamic legal literature.

## Conclusion

This study has focused on the history of the genre of legal distinctions. It has shown that this genre was a small but important component of the literature of Islamic law. It also demonstrates the importance of genre as an important framework for Islamic legal research. Through our analysis of this genre, we gained a great deal of insight into Islamic legal history. Some of the findings of this study reinforce already understood facts about the development of Islamic law, such as the close connections between the disciplines of law and grammar, the importance of the fifth/eleventh century as a turning point in the development of legal literature, and the importance of formalized disputation in advancing legal thought and legal writing. At the same time, however, it has made several new contributions to the study of Islamic legal history and suggested a few lines of future inquiry.

Chapter Two contains a brief survey of lexicographic distinctions. Lexicographic distinctions have not received much scholarly attention, yet they can shed light on many issues important for understanding the development of Arabic philological practices. A more thorough analysis of the *Kitāb al-Furūq al-lughawiyya* by Abū Hilāl al-‘Askarī is desirable. It seems likely that a close reading of al-‘Askarī’s work would help shed light on the important connections between lexicography and theology. Al-‘Askarī is a well-known figure about whom not much is known; a study of his work on lexicographical distinctions could be helpful in further understanding his theological views, which in turn may shed light on his other writings, and grant us new insights

into the linguistic worldview of Mu'tazilite theology at the end of the fourth/tenth century.

Similarly, the history of lexicographical distinctions deserves further scrutiny. As understood in Chapter Two, lexicographical distinctions could be seen in two ways: as theological treatises on synonymy and as thesauruses concerned with proper usage. That chapter speculates that the thesauric aspect gave the genre longevity; nevertheless, it may be that works of lexicographical distinctions retained their theological resonances throughout their history. A study of the lexicographic distinction books by Jalāl al-Dīn al-Suyūfī and İsmail Hakkı Bursevi may help in understanding Sunni theological developments in the early modern period.

In a different vein, Chapter Three looked at the relationship between formalized legal disputation and legal distinctions. This chapter relied, in part, on three Arabic encyclopedias of the sciences: Ibn al-Akfānī's *Irshād al-qāṣid ilā asnā al-maqāṣid*, 'Iṣām al-Dīn Ṭaşköprüzāde's *Miftāḥ al-sa'āda*, and Ḥājjī Khalīfa's *Kashf al-zunūn*. These three works provide a window into the various ways that scholars organized knowledge, with special reference to genres related to the genesis, pre-history, and history of legal distinctions. Given that the connections between these three works are generally understood, a more thorough study of their legal content of these works will help us form a more complete picture of how Islamic law has been understood from the late pre-modern to the early modern period. The works by Ibn al-Akfānī and 'Iṣām al-Dīn, particularly, are arranged by scientific discipline and may prove especially useful. There are likely other encyclopedias that should be consulted as well that I did not include in my discussion.

Finally, Chapter Six raises questions about our understandings of the written traditions of Islamic law. As concerns legal distinctions, the prevalence of works with dubious or unknown authorship is high. It is not clear to me whether the popularity of such works is something particular to the genre of legal distinctions, or if other genres of legal literature also have various popular works with unclear authorship. This is a question that should be pursued as it may help to clarify the role and the relationship between authorship and the possible production of anonymous study texts. Chapter Six showed the importance of claims to authorship in the biobibliographical tradition. Certain claims known to be erroneous, such as the existence of a *Talqīh al-Maḥbūbī* attributed to As‘ad al-Karābīsī, were nevertheless preserved in the bibliographic tradition. It appears that there may be a tension between the importance of authorship and the prevalence of works with no known author.

One particular contribution of this study is its demonstration of the connection between certain changes in the social practices of Islamicate societies and intellectual production among legal scholars. In this regard, our understanding of genre as a kind of Wittgensteinian language game was productive. The idea of genre as a language game takes genre as a recurring activity that is structured by rules but open to change over time.<sup>829</sup> The first chapters of this dissertation attempted to establish some of the rules which govern the game that is the genre of legal distinctions. Some of these rules are readily apparent: organization by legal topic, the comparison of two or more

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<sup>829</sup> I discuss this idea in the Introduction, pp. 16-18. See also Jacques, *Authority*, 17-23.

apparently similar but different legal problems, the disconnected narrative between one comparison and another, and the wording of book titles.

Other rules, however, were more clearly tied to developments in the public demand for particular presentations of knowledge. In part, the legal logic of comparison found in works of legal distinctions is directly tied to the institution of formalized disputation, as shown by the handbooks of disputation studied in Chapter Three. Moreover, the logic of legal distinctions is closely connected to the popularization of formal disputation among Muslim jurists in the fifth/eleventh century and the need for resources to participate successfully in these disputations. Similarly, the convergence between riddles and distinctions was fueled by the popularization and spread of *majālis* and the changing aesthetic preferences that accompanied the spread of *majālis*.

This dissertation demonstrated this change clearly for legal distinctions and for legal riddles. It has been seen in other genres of legal literature as well, such as the supercommentary (*al-ḥāshiya*) studied by El Shamsy, and should be expected in many other genres as well.<sup>830</sup> It should not be surprising to see Islamic legal literature change in response to shifting demands from reading publics. The changes documented in this dissertation, however, are changes in the presentation or packaging of legal information, not necessarily substantive changes to the legal content itself. The changes described here should not be understood as mere aesthetic changes, but rather can inform us about changes regarding the consumption of Islamic legal knowledge. My

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<sup>830</sup> El Shamsy, “*Ḥāshiya*.”

findings suggest that an increased focus on genre would likely contribute greatly to our understanding of Islamic law and legal development. Genre, at least in the post-formative period (after the fifth/eleventh c.), responded to the demand of consumers of legal knowledge and their interests likely contributed to formal innovation of ideas, reasoning strategies, and the organization of knowledge.

At the same time, however, the results of this study also raise several new and important questions about Islamic law. The first involves the identity of a genre. One of the main difficulties encountered in understanding the genre of legal distinctions was in establishing the boundaries of this genre vis-à-vis other genres of Islamic law. The porousness between legal distinctions and legal riddles was established in Chapter Five, but there are other genres with which it seemingly shares overlapping borders. In her study of legal maxims, for instance, Khadiga Musa says some scholars believed that “*al-ashbāh wa’l-naẓā’ir* is actually the science of *furūq*.”<sup>831</sup> There are clear overlaps between these two fields; the *al-Ashbāh wa-l-naẓā’ir* works by both Ibn Nujaym and Jalāl al-Dīn al-Suyūṭī contain important sections dealing with legal distinctions. At the same, time, however, Ibn al-Subkī’s *al-Ashbāh wa-l-naẓā’ir* does not contain a section on legal distinctions at all, perhaps because the “discipline of *al-ashbāh wa-l-naẓā’ir* was not fully developed in Ibn al-Subkī’s time.”<sup>832</sup> *Al-Ashbāh wa-l-naẓā’ir* could also be seen as “the science of *al-qawā’id al-fiqhiyya*.”<sup>833</sup> It is clear that more research is needed to understand the identity, contours, and function of each of these genres. Once

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<sup>831</sup> Musa, “Legal Maxims,” 334.

<sup>832</sup> Musa, “Legal Maxims,” 338.

<sup>833</sup> Musa, “Legal Maxims,” 339.

understood, we are likely to gain new understandings about the nature of Islamic legal thought and its development outside of the two major genres of legal theory and substantive law.

## Appendix I: Bibliography of *Furūq* Works by *Madhhab*.

Below in outline form is a comprehensive list of works on legal distinctions, which is based on my research into the genre of *al-furūq al-fiqhiyya*. It contains all of the published editions and manuscripts known to me. The outline is arranged by legal school (*madhhab*), and then chronologically by author within each school. Authors for whom death dates are unknown are listed last within each legal school. The footnotes for each main entry contain the relevant bibliographical information about the author and/or the work described. If printed editions discuss particular manuscripts, I include a reference to the description for the manuscript in a footnote. For the reasons noted above, this survey includes *al-Furūq* by al-Qarāfi, *al-Ashbāh wa-l-nazā'ir* by al-Suyūṭī, and *al-Ashbāh wa-l-nazā'ir* by Ibn al-Nujaym, but mentions only the most important printings and editions for those works. All other works are treated in detail.

### Shāfi'ī

1. *Al-Furūq* by Abū al-ʿAbbās Aḥmad ibn ʿUmar Ibn Surayj al-Shāfi'ī (d. 306/918).<sup>834</sup>
  - a. Not extant.

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<sup>834</sup> Heinrichs, "Structuring the Law," 342; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 68, 72-73, 84; al-Sabil, "Introduction," 1:34; Hājjī Khalīfa *Kashf al-zunūn*, s.v. "*al-Furūq fī furūʿ al-shāfiʿiyya*," 2:1257-58; Schacht, "*Furūq*-Büchern," 509; Kaḥḥāla, *Muʿjam*, 1:218 no.1596; Ibn al-Subkī, *Ṭabaqāt al-shāfiʿiyya al-kubrā*, 3:21-39 no.85; al-Shīrāzī, *Ṭabaqāt al-fuqahāʾ*, 108-109; al-Asnawī, *Ṭabaqāt*, 1:311 no.593; Ibn al-ʿImād, *Shadharāt al-dhahab*, 4:29-31; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:89-91 no.35. This is unlikely to be a work of legal distinctions. I discuss this in Chapter Three, pp. 207-209.



2. *Kitāb al-masā'il wa-l-'ilal wa-l-furūq* by Abū al-Ḥasan 'Alī ibn Aḥmad al-Nasawī (d. ca 420/1030).<sup>835</sup>
  - a. Not extant.
  
3. *Al-Kifāya fi al-furūq wa-l-laṭā'if* by Abū 'Abd Allāh al-Ḥusayn ibn 'Abd Allāh al-Ṭabarī (d. ca. fifth/eleventh c.).<sup>836</sup>
  - a. Not extant.
  
4. *Al-Furūq* by Abū Muḥammad 'Abd Allāh ibn Yūsuf al-Juwaynī al-Shāfi'ī (d. 438/1046).<sup>837</sup>
  - a. Alternate Titles:
    - i. *Al-Jam' wa-l-Farq*
    - ii. *Al-Wasā'il fi furūq al-masā'il*.<sup>838</sup>

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<sup>835</sup> Heinrichs, "Structuring the Law," 342; Schacht, "*Furūq*-Büchern," 509; Ibn al-Nadīm, *al-Fihrist*, 302.

<sup>836</sup> The author of this work is Abū 'Abd Allāh al-Ḥusayn ibn 'Abd Allāh al-Ṭabarī. This is confirmed by all of the biographies of al-Ḥusayn ibn 'Abd Allāh, with the exception of al-Shirāzī, who does not mention this work. See al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 90-91; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:181 no.142; al-Asnawī, *Ṭabaqāt*, 2:61-62 no.767; al-Shirāzī, *Ṭabaqāt al-fuqahā'*, 126. Other sources, however, attribute this work to Abū 'Abd Allāh al-Ḥusayn ibn Muḥammad ibn al-Ḥasan al-Ḥannāṭī al-Ṭabarī (d. ca 495/1101), see al-Sabīl, "Introduction," 1:37; Kaḥḥāla, *Mu'jam*, 1:636 no.4795; Ḥājjī Khalīfa, *Kashf al-zunūn*, 2:1499; al-Baghdādī, *Hadiyyat al-'arīfīn*, 1:311. These sources are all late, however. Earlier biographies of al-Ḥannāṭī, moreover, do not attribute this work to him, see Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:179-81 no.141; Ibn al-Subkī, *Ṭabaqāt al-shāfi'iyya al-kubrā*, 4:367-371 no.397; al-Asnawī, *Ṭabaqāt*, 1:193-94 no.362; al-Shirāzī, *Ṭabaqāt al-fuqahā'*, 118.

<sup>837</sup> Heinrichs, "Structuring the Law," 342; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 87; al-Sabīl, "Introduction," 1:35-36; Najm al-Dīn al-Ṭūfī, *Alam al-jadhal*, 73; Ḥājjī Khalīfa, *Kashf al-zunūn*, s.v. "*al-Jam' wa-l-farq*," 1:601 and s.v. "*al-Furūq fi furū' al-shāfi'iyya*," 2:1258; GAL 1:385-86 and S1:667; Kaḥḥāla, *Mu'jam*, 2:307 no.8443; Ibn al-'Imād, *Shadharāt al-dhahab*, 5:176-77; al-Asnawī, *Ṭabaqāt*, 1:165-66 no.305; Ibn al-Subkī, *Ṭabaqāt al-shāfi'iyya al-kubrā*, 5:73-94 no.439; al-Zarkashī, *al-Manthūr fi al-qawā'id*, 1:69; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:209-11, no.171.

b. Editions:

- i. *Al-Jam' wa-l-farq*. Edited by 'Abd al-Raḥmān ibn Salāma ibn 'Abd Allāh al-Mazīnī. 3 volumess. Beirut: Dār al-Jīl, 2004.
- ii. Partial edition as MA Thesis by 'Abd al-Raḥmān al-Mazīnī, Sharī'a College, Imām Muḥammad ibn Sa'ūd Islamic University year 1405/1406.<sup>839</sup>

c. MSS:

- i. Cairo, Dār al-Kutub al-Miṣriyya, 1504 *Fiqh Shāfi'ī*, n.d.<sup>840</sup>
- ii. Istanbul, Suleymaniye Kutuphanesi, Turkhān v Sultan 146, 8<sup>th</sup> C/14<sup>th</sup> C.<sup>841</sup>
- iii. Dublin, Chester Beatty 4613, copied 786/1384.<sup>842</sup>
- iv. Cairo, al-Maktaba al-Azhariyya, 890 *fiqh shāfi'ī*, n.d.<sup>843</sup>
- v. Cairo, al-Maktaba al-Azhariyya, 81 *fiqh shāfi'ī*, n.d.<sup>844</sup>
- vi. Istanbul, Süleymaniye Kütüphanesi, Aşir Efendi 146, n.d.<sup>845</sup>
- vii. Princeton, Princeton University Library Garrett 824H, 1099/1687.

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<sup>838</sup> Princeton, Princeton University Library, Garrett 824H.

<sup>839</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 87.

<sup>840</sup> 'Abd al-Raḥmān ibn Salāma ibn 'Abd Allāh al-Mazīnī, "Introduction," to Abū Muḥammad 'Abd Allāh ibn Yūsuf al-Juwaynī, *al-Jam' wa-l-farq*, ed. 'Abd al-Raḥmān ibn Salāma ibn 'Abd Allāh al-Mazīnī (Beirut: Dār al-Jīl, 2004), 1:35.

<sup>841</sup> Al-Mazīnī, "Introduction," 35.

<sup>842</sup> Al-Mazīnī, "Introduction," 35-36.

<sup>843</sup> Al-Mazīnī, "Introduction," 36.

<sup>844</sup> Al-Mazīnī, "Introduction," 36.

<sup>845</sup> In *GAL* S1:673 incorrectly attributed to Imām al-Ḥaramayn al-Juwaynī.

5. *Al-Wasāʾil fī furūq al-masāʾil* by Abū Khayr Salāma ibn Ismāʿīl ibn Jamāʿa al-Maqdisī al-Shāfiʿī (d. 480/1087).<sup>846</sup>
  - a. Not extant.
  
6. *Al-Muʿāyāt* by Abū al-ʿAbbās Aḥmad ibn Muḥammad al-Jurjānī al-Shāfiʿī (d. 482/1089).<sup>847</sup>
  - a. Alternate titles:
    - i. *Al-Furūq*
    - ii. *Al-Muʿāyāt fī al-ʿaql*
    - iii. *Al-Muʿāyāt fī al-fiqh*
    - iv. *Al-Muʿāyāt wa-l-imtiḥān*
  - b. Editions:
    - i. *Kitāb al-Muʿāyāt fī al-fiqh*. Edited by Ibrāhīm ibn Nāṣir al-Bashar. PhD Diss., Umm al-Qurā University, 1415[/1994].
    - ii. *Al-Muʿāyāt fī al-ʿaql aw al-Furūq*. Edited by Muḥammad Fāris. Beirut: Dār al-Kutub al-ʿIlmiyya, 1993.
  - c. MSS:

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<sup>846</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 88-89; al-Sabīl, “Introduction,” 1:36. GAL S1:505; Kaḥḥāla, *Muʿjam*, 1:772 no.5741; al-Asnawī, *Ṭabaqāt*, 2:218 no.1069; al-Zarkashī, *al-Manthūr*, 1:69; al-Ṭūfī, *ʿAlam al-jadhal*, 73; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:245 no.207; Hājjī Khalīfa, *Kashf al-zunūn*, 1:2007-2008; Ibn al-Subkī, *Ṭabaqāt al-shāfiʿiyya al-kubrā*, 7:99 no.794.

<sup>847</sup> Heinrichs, “Structuring the Law,” 342; al-Bāḥusayn, *al-Furūq al-Fiqhiyya*, 89-90; ; al-Sabīl, “Introduction,” 36-37; Kaḥḥāla, *Muʿjam*, 1:241 no.1747; GAL S1:505; Ibn al-Subkī, *Ṭabaqāt al-shāfiʿiyya al-kubrā* 4:74-76 no.271; al-Ziriklī, *Aʿlām* 1:214; Hājjī Khalīfa, *Kashf al-zunūn* s.v. “*al-Muʿāyāt fī al-ʿaql*,” 2:1730; Ibn Qāḍī Shuhba *Ṭabaqāt* 1:260 no.222; al-Asnawī, *Ṭabaqāt*, 1:165 no.306.

- i. Rabat, Khizāna al-Malikiyya 913 *dāl*, n.d.
  - ii. Cairo, Dār al-Kutub al-Miṣriyya 915 *fiqh shāfiʿī*, Shaʿbān 586/ 3 September - 2 October 1190.<sup>848</sup>
  - iii. Cairo, Dār al-Kutub al-Miṣriyya, *Fiqh Shāfiʿī Ṭalaʿat* 112, n.d.<sup>849</sup>
7. *Al-Furūq* by Abū al-Maḥāsīn ʿAbd al-Wāḥid ibn Ismāʿīl al-Rūyānī al-Ṭabarī al-Shāfiʿī (d. 502/1108).<sup>850</sup>
    - a. Not Extant.
  8. *Al-Furūq* by Abū al-ʿAbbās Kamāl al-Dīn Aḥmad ibn Kashāsib al-Shāfiʿī al-Dizmārī (d. 643/1245).<sup>851</sup>
    - a. Not Extant.
  9. *Al-Fuṣūl wa-l-furūq* by Abū al-ʿAbbās Najm al-Dīn Aḥmad ibn Muḥammad ibn Khalaf Ibn Rājih al-Maqdisī al-Ḥanbalī, al-Shāfiʿī (d. 638/1241).<sup>852</sup>

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<sup>848</sup> Ibrāhīm ibn Nāṣir al-Bashar, “Introduction,” to Abū al-ʿAbbās Aḥmad ibn Muḥammad al-Jurjānī, *al-Muʿāyāt fī al-fiqh*, ed. Ibrāhīm Ibn Nāṣir al-Bashar, PhD Diss., Umm al-Qurā University, 1415[/1994], 109. This manuscript was previously cataloged under 1569 *ʿumūmī*, and 915 *khuṣūṣī*.

<sup>849</sup> Al-Bashar, “Introduction,” 110-11.

<sup>850</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 92; al-Sabīl, “Introduction,” 1:37. Al-Bāḥusayn says that this book must be similar to al-Jurjānī’s *al-Muʿāyāt* since al-Subkī cites them together in his *al-Ashbāh w-al-naẓāʾir*. See also Ibn al-Subkī, *Ṭabaqāt al-shāfiʿiyya al-kubrā* 7:193-204 no.901; al-Asnawī *Ṭabaqāt*, 1:272 no.518; Kaḥḥāla, *Muʿjam*, 2:332 no. 8626; Ibn al-ʿImād, *Shadharāt al-dhahab*, 6:8; al-Ziriklī, *al-Aʿlām*, 4:175; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 1:287 no.256.

<sup>851</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 95-96; al-Sabīl, “Introduction,” 1:37; Ibn al-Subkī, *Ṭabaqāt al-shāfiʿiyya al-kubrā* 8:30 no.1054; al-Asnawī, *Ṭabaqāt*, 1:152 no.289; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 2:100 no.401; Kaḥḥāla, *Muʿjam*, 1:232 no.1695.

a. Not Extant.

10. *Al-Jam' wa-l-farq* by Sirāj al-Dīn Yūnus ibn 'Abd al-Majīd ibn 'Alī al-Hudhalī al-Armantī Al-Shāfi'ī (d. 725/1325).<sup>853</sup>

a. Not Extant.

11. *Al-Furūq* by Abū Umāma Shams al-Dīn Muḥammad ibn 'Alī ibn 'Abd al-Wāḥid ibn Yaḥyā al-Dukkālī al-Maghribī al-Miṣrī al-Shāfi'ī, Ibn al-Naqqāsh (d. 763/1361).<sup>854</sup>

a. Not Extant.

b. Alternate Titles:

i. *Kitāb al-Farq*.<sup>855</sup>

ii. *Al-Nazā'ir wa-l-furūq*.<sup>856</sup>

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<sup>852</sup> Heinrichs, "Structuring the Law," 343; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 95; al-Sabīl, "Introduction," 1:37. This scholar was first a Ḥanbalī but later became a Shāfi'ī. This work seems not to be extant, but I believe it is a work in the Shāfi'ī tradition since it is cited by Badr al-Dīn al-Zarkashī. See his *al-Baḥr al-Muḥīṭ* 7:220; 7:245; 7:394; and 8:38; See also al-Asnawī, *Ṭabaqāt*, 1:211-12 no.404; Ibn Qāḍī Shuhba, *Ṭabaqāt* 2:71 no.371 Ibn al-'Imād, *Shadharāt al-dhahab*, 7:331; Kaḥḥāla, *Mu'jam*, 1:262-63 no. 1896.

<sup>853</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 96-97; al-Sabīl, "Introduction," 1:37; Ibn al-Subkī, *Ṭabaqāt al-shāfi'iyya al-kubrā*, 10:430-33 no.1419; al-Asnawī, *Ṭabaqāt* 1:85-86 no.149; Ibn al-'Imād, *Shadharāt al-dhahab*, 8:125-26; Kaḥḥāla, *Mu'jam*, 2:193 no.18608; Ḥājjī Khalīfa, *Kashf al-zunūn* 1:601; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 2:301-302 no.574.

<sup>854</sup> Heinrichs, "Structuring the Law," 342; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 99-100; al-Sabīl, "Introduction," 1:38; Ḥājjī Khalīfa, *Kashf al-zunūn*, s.v. "*al-Furūq fī furū' al-al-shāfi'iyya*," 2:1258; al-'Asqalānī, *al-Durar al-kāmina*, 4:71-74; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 3:131-32 no.670; Ibn al-'Imād, *Shadharāt al-dhahab*, 8:338; Kaḥḥāla, *Mu'jam*, 3:521 no.14780; al-Ziriklī, *al-A'lām*, 6:286; Baghdādī, *Hadiyyat al-'ārifin*, 2:162; GAL S2:348.

<sup>855</sup> al-Baghdādī, *Hadiyyat al-'ārifin*, 2:162; Ibn al-'Imād, *Shadharāt al-dhahab*, 8:338.

<sup>856</sup> Ibn al-'Imād, *Shadharāt al-dhahab*, 8:339; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 3:132; Kaḥḥāla, *Mu'jam*, 3:521.

12. *Maṭāli‘ al-daqa‘i‘q fi tahrīr al-jawāmi‘ wa-l-fawāriq* by Jamāl al-Dīn ‘Abd al-Raḥīm ibn al-Ḥasan al-Asnawī al-Shāfi‘ī (d. 772/1370).<sup>857</sup>

a. Editions:

i. *Maṭāli‘ al-daqa‘i‘q fi tahrīr al-jawāmi‘ wa-l-fawāriq*. Edited by Naṣr Farīd Muḥammad Wāṣil. Cairo: Dār al-Shurūq, 2007.<sup>858</sup>

b. MSS:

- i. Cairo, Dār al-Kutub al-Miṣriyya, 277 Fiḥ Shāfi‘ī, 19 Rabī‘ II 862/6 March 1457.<sup>859</sup>
- ii. Cairo, Dār al-Kutub al-Miṣriyya, 1431 Fiḥ Shāfi‘ī, n.d.<sup>860</sup>
- iii. Cairo, Dār al-Kutub al-Miṣriyya, 372 Uṣūl al-fiḥ, n.d.<sup>861</sup>
- iv. Cairo, Dār al-Kutub al-Miṣriyya 901 Fiḥ Shāfi‘ī, n.d.<sup>862</sup>
- v. Cairo, Khizānat Makhtūṭāt al-Jāmi‘ al-Azhar, 477 Fiḥ Shāfi‘ī, n.d.<sup>863</sup>
- vi. Baghdad, Maktabat al-Awqāf, 3959, n.d.<sup>864</sup>

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<sup>857</sup> Heinrichs, “Structuring the Law,” 343; al-Bāḥusayn, *al-Furūq al-fiḥiyya*, 100; al-Sabil, “Introduction,” 1:38; GAL 2:90-91 and S2:107; Ḥājjī Khalīfa, *Kashf al-zunūn*, s.v. “*al-Furūq fi al-furū‘ al-shāfi‘iyya*,” 2:1258; s.v. “*Maṭāli‘ al-daqa‘i‘q*,” 2:1718; Ibn al-‘Imād, *Shadharāt al-dhahab*, 8:383-84; Schacht, “*Furūq-Büchern*,” 510; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 3:98-101 no.648.

<sup>858</sup> According to al-Bāḥusayn, Naṣr Farīd Muḥammad Wāṣil produced a study and edition of this work as his PhD Dissertation from al-Azhar University in 1392/1972-3 (100). The Dār al-Shurūq printing is likely the publication of his dissertation.

<sup>859</sup> Naṣr Farīd Muḥammad Wāṣil, “Introduction,” to Jamāl al-Dīn ‘Abd al-Raḥīm ibn al-Ḥasan al-Asnawī, *Maṭāli‘ al-daqa‘i‘q fi tahrīr al-jawāmi‘ wa-l-fawāriq*, ed. Naṣr Farīd Muḥammad Wāṣil (Cairo: Dār al-Shurūq, 2007), 1:17-18.

<sup>860</sup> Wāṣil, “Introduction,” 1:18.

<sup>861</sup> Wāṣil, “Introduction,” 1:18-19.

<sup>862</sup> Wāṣil, “Introduction,” 1:19-20.

<sup>863</sup> Wāṣil, “Introduction,” 1:20

vii. Istanbul, Suleymaniye Kutuphanesi, Murat Molla 1054, 874/1469-

70.

13. *Al-Ashbāh wa-l-naẓā'ir* by Jalāl al-Dīn ‘Abd al-Raḥmān al-Suyūṭī (d. 911/1505).<sup>865</sup>

## Ḥanafī

1. *Al-Furūq* by Abū al-Faḍl Muḥammad ibn Ṣāliḥ al-Karābīsī al-Ḥanafī (d.

322/934).<sup>866</sup>

a. Editions:

i. *Kitāb al-Furūq*. Edited by ‘Abd al-Muḥsin Sa‘īd Aḥmad al-Zahrānī.

Ph.D Diss., Jāmi‘at Umm al-Qurā, 1418/1997.

b. MSS:

i. Cairo, Dār al-Kutub al-Miṣriyya; *Fiqh Ḥanafī* 1923, after 1003/1595

ii. Baghdad, Maktabat al-Awqāf, 3533, n.d.<sup>867</sup>

iii. Cairo, Maktabat al-Azhar 2076 Rāfi‘ī 26, *Fiqh Ḥanafī* 915,

1052/1642.

iv. Berlin, Staatsbibliothek zu Berlin, Or. 5013, 1025/1616.

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<sup>864</sup> Abū al-Ajḫān and Abū Fāris, “Introduction,” 41.

<sup>865</sup> Al-Sabīl, “Introduction,” 1:39; GAL 2:144-204 and S1:178-98; Ḥājji Khalīfa, *Kashf al-zunūn*, s.v. “*al-Ashbāh wa-l-naẓā’ir fī al-ashbāh ayḍan*,” 1:100.

<sup>866</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 69, 74, 84; al-Sabīl, “Introduction,” 28; Ḥājji Khalīfa, *Kashf al-zunūn* s.v. “*al-furūq fī furū‘ al-Ḥanafīyya*,” 2:1257; GAL 1:442-43 and S1:295; Kaḥḥāla, *Mu‘jam*, 3:355 no.13711; Schacht, “*Furūq-Büchern*,” 508; al-Ziriklī, *al-A‘lām*, 6:162; al-Baghdādī, *Hadiyyat al-‘arīfīn*, 2:33. I also discuss this work in Chapter Four, pp. 213-20.

<sup>867</sup> Heinrichs, “Structuring the Law,” 341.

- v. Istanbul, Suleymaniye, Feyzullah Efendi, 921, 9th/15th century  
(?).<sup>868</sup>
- vi. Istanbul, Suleymaniye, Ahmet III 1181, 1003/1595.<sup>869</sup>
2. *Al-Ajnās wa-l-furūq* by Abū ‘Abbās Aḥmad ibn Muḥammad ibn ‘Umar al-Nāṭifi al-Ṭabarī al-Ḥanafī (d. 446/1054).<sup>870</sup>
- a. MSS:
- i. Istanbul, Suleymaniye Kutuphanesi, Nuruosmaniye 1372.<sup>871</sup>
- ii. Istanbul, Suleymaniye Kutuphanesi, Esad Efendi 532.<sup>872</sup>
3. *Al-Furūq* by Abū al-Muẓaffar As‘ad ibn Muḥammad ibn al-Ḥusayn al-Naysābūrī al-Karābīsī al-Ḥanafī (d. 570/1174).<sup>873</sup>
- a. Editions:

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<sup>868</sup> Heinrichs, “Structuring the Law,” 341.

<sup>869</sup> Heinrichs, “Structuring the Law,” 341.

<sup>870</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 88; al-Sabīl, “Introduction,” 1:28; al-Laknawī, *al-Fawā'id al-bahiyya*, 36; Kaḥḥāla, *Muʿjam*, 1:287 no.2086; Hājjī Khalīfa, *Kashf al-zunūn*, s.v. “*al-Ajnās fi al-furūʿ*,” 1:11; GAL 1:372; GAL S1:636; Ibn Quṭlūbughā, *Tāj al-tarājim*, 6-7 no.12; al-Qurashī, *al-Jawāhir al-muḍiyya*, 1:297-98 no.221; al-Ziriklī, *al-Aʿlām* 1:213; Tamīmī al-Dārī, *al-Ṭabaqāt al-saniyya*, 2:71-21, no.343.

<sup>871</sup> Al-Sabīl, “Introduction,” 1:28.

<sup>872</sup> Al-Sabīl, “Introduction,” 1:28.

<sup>873</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 91-92; al-Sabīl, “Introduction,” 1:28-29; Hājjī Khalīfa, *Kashf al-zunūn*, s.v. “*furūq fi furūʿ al-Ḥanafīyya*,” 2:1257; GAL 1:375 and S1:642, Kaḥḥāla, *Muʿjam*, 1:351 no.2603; Schacht, “*Furūq-Büchern*,” 505-508; al-Qurashī, *Jawāhir al-muḍiyya*, 1:386 no. 314; Ibn al-‘Imād, *Shadharāt al-dhahab* 4:4; al-Tamīmī al-Dārī, *al-Ṭabaqāt al-saniyya*, 2:181 no.473; al-Baghdādī, *Hadiyyat al-‘arifīn*, 1:204; Ibn Quṭlūbughā, *Tāj al-tarājim*, 12 no.44.



- i. *Al-Furūq li-l-Karābīsī*. Muḥammad Ṭammūm with ‘Abd al-Sattār Abū Ghidda. 2 vols. Kuwait: Wizārat al-Awqāf wa-l-Shu’ūn al-Islāmiyya, 1402/1982.
- ii. *Al-Furūq fī al-furū‘ fī fiqh al-Imām Abī Ḥanīfa al-Nu‘mān Raḍiya Allāhu ‘anhu*. Printed with *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* by Abū Yūsuf Ya‘qūb ibn Ibrāhīm al-Anṣārī and *Tarjamat Abī Ḥanīfa wa-Abī Yūsuf wa-Muḥammad ibn al-Ḥasan al-Shaybānī* by Abū ‘Abd Allāh Muḥammad ibn Aḥmad al-Dhahabī. Edited by Aḥmad Farīd al-Mazīdī. Beirut: Dār al-Kutub al-‘Ilmiyya, 1426/2005.
- iii. *Kitāb al-Furūq*. Edited by Muḥammad Ṭammūm. Cairo: Dār al-Salām, 1433/2012.

b. MSS:

- i. Dār al-Kutub al-Miṣriyya, 292 *fiqh ḥanafī*, Cairo, n.d.<sup>874</sup>
- ii. Dār al-Kutub al-Miṣriyya, 293 *fiqh ḥanafī*, Cairo, dated 622.<sup>875</sup>
- iii. Istanbul, Suleymaniye Kutuphanesi, Carullah 821, 1007/1598-99.<sup>876</sup>
- iv. Istanbul, Suleymaniye Kutuphanesi, Fatih 2039, 776/1374-75.

4. *Talqīh al-‘uqūl fī furūq al-manqūl* by Aḥmad ibn ‘Ubayd Allāh ibn Ibrāhīm al-Maḥbūbī al-Ḥanafī, Ṣadr al-Sharī‘a al-Awwal (d. 640/1243).<sup>877</sup>

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<sup>874</sup> Muḥammad Ṭammūm, “Introduction,” 1:23-24.

<sup>875</sup> Ṭammūm, “Introduction,” 23.

<sup>876</sup> Schacht, “*Furūq*-Büchern,” 508.

a. Alternate titles:

- i. *Kitāb talqīh al-‘uqūl fi al-furūq bayn ahl al-nuqūl.*
- ii. *Talqīh al-‘uqūd fi al-furūq min furū‘ al-ḥanafīyya.*<sup>878</sup>

b. Editions:

- i. *Kitāb Talqīh al-‘uqūl fi furūq al-manqūl li-Shams al-Dīn Aḥmad ibn ‘Ubayd Allāh al-Maḥbūbī Ṣadr al-Sharī‘a al-Awwal dirāsa wa-taḥqīq,* ed. ‘Abd Al-Hādī Shīr al-Afghānī, Masters Thesis, Cairo University, 1984.<sup>879</sup>

c. MSS:

- i. Cairo, Dār al-Kutub al-Miṣriyya Fiḥḥ Ḥanafī 982, n.d.
- ii. Berlin 4505, n.d.
- iii. Istanbul, İstanbul Millet Kütüphanesi, Feyzullah Efendi 920, 1003/1594-95.
- iv. Istanbul, Suleymaniye Kutuphanesi, Beyazid 1903, n.d.

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<sup>877</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 94; al-Sabil, “Introduction,” 1:29; Ḥājjī Khalīfa, *Kashf al-zunūn*, s.v. “*Talqīh al-‘uqūd fi furūq al-manqūl*,” 1:481 and s.v. “*al-Furūq fi furū‘ al-Ḥanafīyya*,” 2:1257; GAL 1:380; Kaḥḥāla, *Mu‘jam*, 1:191 no.1415; Ibn Quṭlūbughā, *Tāj al-tarājim*, 9 no.29; al-Qurashī, *Jawāhir al-muḍīyya* 1:196 no.137; Tamīmī al-Dārī, *al-Ṭabaqāt al-saniyya*, 1:364 no.208; al-Baghdādī, *Hadiyyat al-‘arīfīn* 1:204. Interestingly, *al-Ṭabaqāt al-saniyya* lists two works with this title by two different authors, Aḥmad ibn ‘Abd Allāh ibn Ibrāhīm al-Maḥbūbī, Shihāb al-Dīn (1:364, no.208) and Aḥmad ibn ‘Ubayd Allāh ibn Ibrāhīm ibn Aḥmad ibn ‘Abd al-Malik ibn ‘Umar ibn ‘Abd al-‘Azīz ibn Muḥammad ibn Ja‘far ibn Hārūn ibn Muḥammad ibn Aḥmad ibn Maḥbūb ibn al-Walīd ibn ‘Ibāda, al-Imām Shams al-A‘imma al-Maḥbūbī al-Bukhārī (1:376, no. 220).

<sup>878</sup> Ḥājjī Khalīfa, *Kashf al-zunūn* s.v. “*Talqīh al-‘uqūd fi furūq al-manqūl*,” 1:481; al-Baghdādī, *Hadiyyat al-‘arīfīn* 1:204.

<sup>879</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 94; al-Sabil, “Introduction,” 1:29n2. Both of these sources say that this thesis was submitted to al-Azhar University, but it seems to be from Cairo University. See <http://drepository.asu.edu.eg/xmlui/handle/123456789/49817>, accessed August 27, 2016.

- v. Istanbul, Suleymaniye Kutuphanesi, Carullah 604, n.d.
  - vi. Istanbul, Suleymaniye Kutuphanesi, Hacı Mehmud Efendi 984, 995/1586-87.
  - vii. Istanbul, Suleymaniye Kutuphanesi, Murat Molla 1009.
  - viii. Istanbul, Suleymaniye Kutuphanesi, Şehid Ali Paşa 900.
  - ix. Paris, Bibliothèque nationale de France, Arabe 923, n.d.
  - x. Princeton, Princeton University Library, New Series no. 298, n.d.
5. *Al-Furūq* by Tāj al-Dīn Aḥmad ibn ʿUthmān ibn Ibrāhīm ibn Muṣṭafā al-Turkumānī al-Mārdīnī al-Ḥanafī, Ibn al-Turkumānī (d. 744/1343-44).<sup>880</sup>
- a. Not extant
  - b. MSS:
    - i. Damascus, al-Maktaba al-Asadiyya, Zāhiriyya 4501(?).<sup>881</sup>
6. *Al-Furūq* by Shaykh Bāyazīd ibn Isrāʾīl ibn Ḥājjī Dāwūd Marghāyatī? (d. early ninth/fifteenth c.).<sup>882</sup>
- a. Extant.<sup>883</sup>

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<sup>880</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 98-99; al-Sabīl, “Introduction,” 1:29; Kaḥḥāla, *Muʿjam*, 1:192 no.1420; Ḥājjī Khalīfa, *Kashf al-zunūn* s.v. “*al-Furūq fī furūʿ al-Ḥanafīyya*,” 2:1257; al-Qurashī, *al-Jawāhir al-muḍīyya*, 1:197-98 no.139; al-ʿAsqalānī, *al-Durar al-Kāmina*, 1:198; Ibn al-ʿImād, *Shadharāt al-dhahab* 8:243; Tamīmī al-Dārī, *al-Ṭabaqāt al-saniyya*, 1:389 no.240; GAL 2:64 and S2:67-68; Ibn Quṭlūbughā *Tāj al-tarājim*, 9 no.30.

<sup>881</sup> Although this work is attributed to Ibn al-Turkumānī, this attribution seems erroneous. This is a copy of *Furūq-A*, which has been attributed to many different jurists, see above Chapter Six, pp. 337-40.

<sup>882</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 101; al-Sabīl, “Introduction,” 29.

7. *Al-Ashbāh wa-l-naẓāʾir* by Zayn al-Dīn Ibn Nujaym al-Miṣrī (d. 970/1563).<sup>884</sup>
8. *Furūq-B; al-Furūq fī al-furūʿ* by pseudo-Najm al-Dīn ʿAlī ibn Abī Bakr al-Naysābūrī al-Ḥanafī (d. ?).<sup>885</sup>
- a. Alternate title
    - i. *Taḥrīr al-furūq*.<sup>886</sup>
  - b. MSS:
    - i. Leiden, Leiden University Library, Or. 481
    - ii. Istanbul, Suleymaniye Kutuphanesi, Aşir Efendi 453.
    - iii. Istanbul, Suleymaniye Kutuphanesi, Esad Efendi 542, 1057/1647-48.
    - iv. Istanbul, Suleymaniye Kutuphanesi, Esad Efendi 884, 774/1372-73.
    - v. Istanbul, Suleymaniye Kutuphanesi, Giresun Yazmalar 44.
    - vi. Istanbul, Suleymaniye Kutuphanesi, Halet Efendi 780.
    - vii. Istanbul, Suleymaniye Kutuphanesi, Osman Huldi 50, 1126/1714.<sup>887</sup>

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<sup>883</sup> None of the sources that mention this manuscript relay its location. It is available, however, in microfilm at the King Faisal Center for Research and Islamic Studies in Riyadh, microfilm 812.

<sup>884</sup> Al-Sabīl, "Introduction," 1:30; GAL 2:310-11, GAL S2:425-27; Ḥajjī Khalīfa, *Kashf al-zunūn*, s.v. "*Al-Ashbāh wa-l-naẓāʾir fī al-furūʿ*," 1:99-100; Ibn al-ʿImād, *Shadharāt al-dhahab* 10:523; Tamīmī al-Dārī, *al-Ṭabaqāt al-saniyya*, 3:275, no. 894.

<sup>885</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 103; al-Sabīl, "Introduction," 1:29; al-Baghdādī, *Īdāh al-maknūn*, 1:232 and 2:188. GAL S2:956. See also excerpts in Schacht, "*Furūq-Büchern*," 515-24.

<sup>886</sup> Al-Sabīl, "Introduction," 29.

viii. Istanbul, Suleymaniye Kutuphanesi, Yazma Bağışlar 1187,  
960/1552-53.

9. *Furūq-A; al-Furūq ‘alā madhhab Abī Ḥanīfa.*<sup>888</sup>

a. MSS:

- i. Baghdad, Khazā’in kutub al-awqāf, 3677, n.d.<sup>889</sup>
- ii. Berlin, Staatsbibliothek zu Berlin, Peterman II Nachtag 4 p2.
- iii. Damascus, Asadiyya Library, Ḥāhiriyya 4501, n.d.
- iv. Istanbul, Suleymaniye Kutuphanesi, Halet Efendi 807, n.d.
- v. Mecca, Maktabat al-Ḥaram al-Makkī, Fiqh Ḥanafī 2089, n.d.<sup>890</sup>
- vi. Princeton Garrett 4185Y, n.d.<sup>891</sup>

## Mālikī

1. *Furūq masā’il mushtabiha fī al-madhhab* by Abū al-Qāsim ‘Abd al-Raḥmān ibn ‘Alī  
ibn Muḥammad al-Kanānī al-Mālikī, Ibn al-Kātib (d. 408/1017-18).<sup>892</sup>

a. Not extant.

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<sup>887</sup> This manuscript is attributed to Ibn Nujaym in the catalog.

<sup>888</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 103-104; al-Sabīl, “Introduction,” 1:30.

<sup>889</sup> Attributed to Aḥmad ibn Muḥammad al-Urdustānī.

<sup>890</sup> Attributed to Ismā‘īl Ḥaqqī.

<sup>891</sup> Attributed to al-Arzustānī.

<sup>892</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 84-85; al-Qādī ‘Iyād, *Tartīb al-madārik*, 7:252; Makhlūf, *Shajarat al-nūr al-zakiyya*, 106.

2. *Al-Jumū‘ wa-l-furūq* by al-Qāḍī ‘Abd al-Wahhāb ibn ‘Alī al-Baghdādī al-Mālikī (d. 422/1031).<sup>893</sup>

a. Alternate titles:

i. *Kitāb al-Furūq fī masā’il al-fiqh*;<sup>894</sup>

ii. *Al-Furūq al-fiqhiyya*.

b. Editions:

i. *Al-Furūq al-fiqhiyya*. Edited by Jalāl ‘Alī al-Qadhdhāfi al-Jihānī.

Dubai: Dār al-Buḥūth li-l-Dirāsāt al-Islāmiyya wa-Ihyā’ al-Turāth, 1424/2003.

ii. *Al-Furūq al-fiqhiyya li-l-Qāḍī ‘Abd al-Wahhāb al-Baghdādī wa-*

*‘alāqatuhā bi-Furūq al-Dimashqī*. Edited by Maḥmūd Salāmah Ghiryānī. Beirut: Dār al-Gharb al-Islāmī, 1411/1991.<sup>895</sup>

iii. *Al-Furūq al-fiqhiyya li-l-Qāḍī ‘Abd al-Wahhāb al-Baghdādī wa-*

*‘alāqatuhā bi-Furūq al-Dimashqī*. Dubai: Dār al-Buḥūth li-l-Dirāsāt al-Islāmiyya wa-Ihyā’ al-Turāth, 1424/2003.

c. MSS:

i. Tripoli, Libya, Markaz Dirāsāt al-Mujāhidīn al-Libiyīn 588, n.d.<sup>896</sup>

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<sup>893</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 85-86; al-Sabīl, “Introduction,” 1:31; Ibn Farḥūn, *al-Dībāj*, 2:26-29; al-Mawwāq, *al-Tāj wa-l-iklīl*, 2:7; Ibn Khallikān, *Wafāyāt al-a‘yān*, 2:387; Ibn al-‘Imād, *Shadharāt al-dhahab*, 5:112; Kaḥḥāla, *Mu‘jam*, 2:344 no.8711; Makhlūf, *Shajarat al-nūr al-zakiyya*, 103-104; al-Qāḍī ‘Iyāḍ, *Tartīb al-madārik*, 7:220-27; Najm al-Dīn al-Ṭūfī, *‘Alam al-jadhal*, 73.

<sup>894</sup> Heinrichs, “Structuring the Law,” 341.

<sup>895</sup> Although it appears that this edition is the original of the next edition, the Dubai volume includes numerous citations of works printed after 1991. I have been unable to consult this edition, but see <http://www.aruc.org/en/web/auc/general-search?page=FullDisplay&mId=2765814>. Accessed August 16, 2016.

3. *Al-Nukat wa-l-furūq li-masā'il al-mudawwina* by Abū Muḥammad 'Abd al-Ḥaqq ibn Muḥammad ibn Hārūn al-Qurashī al-Sahmī al-Ṣiqillī al-Mālīkī (d. 466/1074).<sup>897</sup>

a. Editions:

- i. *Al-Nukat wa-l-furūq li-masā'il al-mudawwana*. Edited by Aḥmad ibn Ibrāhīm ibn 'Abd Allāh al-Ḥabīb. Ph.D. Diss., Jāmi'at Umm al-Qurā, 1416/1996.<sup>898</sup>
- ii. *Kitāb al-Nukat wa-l-furūq li-masā'il al-mudawwana wa-l-Mukhtalaṭa*. 2 volumes. Edited by Abū Faḍl al-Dimyāṭī Aḥmad ibn 'Alī. Casablanca: Markaz al-Turāth al-Thaqāfi al-Maghribī; Beirut: Dār Ibn Ḥazm, 2009.

b. MSS:

- i. Rabat, al-Khizāna al-Malakiyya 261, n.d.<sup>899</sup>
- ii. Rabat, al-Khizāna al-Malakiyya 350 *qāf*/2, written 743/1342-43.<sup>900</sup>

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<sup>896</sup> Neither edition of 'Abd al-Wahhāb's *Furūq* gives an accession number, Jihānī, "Introduction," 17-19 and al-Ghiryānī, "Introduction," 19-20. This is the same MS attributed al-Dimashqī by Abū al-Ajfān and Abū Fāris as *Maktabat al-Awqāf bi-Ṭarābulus* 588 (49). It is unclear to me whether the manuscript is now at the Markaz al-Lībī li-l-Maḥfūzāt wa-l-Dirāsāt al-Tārīkhiyya or al-Hay'at al-'Āmma li-l-Awqāf wa-l-Shu'ūn al-Islamiyya.

<sup>897</sup> Heinrichs, "Structuring the Law," 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 88; al-Sabīl, "Introduction," 1:31; GAS 1:471 and S1:661; Kaḥḥāla, *Mu'jam*, 2:6635 no.6635; al-Ziriklī, *al-A'lam* 3:282; Ibn Farḥūn, *al-Dībāj*, 2:56; Makhluḥ, *Shajarat al-nūr al-zakiyya*, 116; al-Qādī 'Iyāḍ, *Tartīb al-madārik*, 8:71-74; Najm al-Dīn al-Ṭūfī, *'Alam al-jadhal*, 73.

<sup>898</sup> See Abū al-Ajfān and Abū Fāris, "Introduction," 38.

<sup>899</sup> Aḥmad ibn Ibrāhīm ibn 'Abd Allāh al-Ḥabīb "Introduction," to 'Abd al-Ḥaqq al-Siqillī, Abū Muḥammad ibn Muḥammad ibn Hārūn al-Sahmī, *Al-Nukat wa-l-Furūq li-Masā'il al-Mudawwina*, ed. Aḥmad ibn Ibrāhīm ibn 'Abd Allāh al-Ḥabīb (Ph.D. Diss., Jāmi'at Umm al-Qurā, 1416/1996), 126.

- iii. Marrakesh, Khizānat Ibn Yūsuf 499, written 740/1339-40.<sup>901</sup>
  - iv. Madrid, Biblioteca Nacional de España 5231 (autograph copy), written 459/1067.<sup>902</sup>
  - v. Cairo, Maktabat al-Azhariyya, Rawwāq al-Maghāriba 3156, n.d.<sup>903</sup>
4. *Al-Furūq al-fiqhiyya* by Abū al-Faḍl Muslim ibn ‘Alī al-Dimashqī al-Mālikī (d. fifth/eleventh c.).<sup>904</sup>
- a. Alternate titles:
    - i. *Furūq muttafiq zāhirihā mukhtalif bāṭinihā*
  - b. Editions:
    - i. *Al-Furūq al-fiqhiyya*. Edited by Muḥammad Abū al-Ajfān and Ḥamza Abū Fāris. Beirut: Dār al-Gharb al-Islāmī, 1992.
  - c. MSS:
    - i. Fez, Khizānat al-Qarawiyīn, 1193, n.d.<sup>905</sup>
    - ii. Tunis, Dār al-Kutub al-Waṭaniyya, 1692, Sha‘bān 1399[sic]/December 1978.<sup>906</sup>

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<sup>900</sup> Aḥmad al-Ḥabīb, “Introduction,” 125.

<sup>901</sup> Aḥmad al-Ḥabīb, “Introduction,” 127-28.

<sup>902</sup> According to *GAL*, this is Madrid 78, but this appears to be an old designation. See Guillén Robles, *Mss. árabes BNM*, p. 38, n. LXXVIII; <http://bdh-rd.bne.es/viewer.vm?id=0000014499&page=1>. Aḥmad ibn Ibrāhīm ibn ‘Abd Allāh al-Ḥabīb gives the new number based on his visit to the library, see Aḥmad al-Ḥabīb, “Introduction,” 124-25.

<sup>903</sup> Aḥmad al-Ḥabīb, “Introduction,” 127-28.

<sup>904</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 86-87; al-Sabīl, “Introduction,” 31. See also *Tartīb al-madārik* 2:765; *Dibāj al-mudhahhab* 2:347; *Tartīb al-madārik* 8:57

<sup>905</sup> Abū al-Ajfān and Abū Fāris, “Introduction,” 47.



- iii. Tunis, Dār al-Kutub al-Waṭaniyya, 14862, 1291/1874-75.<sup>907</sup>
  - iv. Dublin, Chester Beatty 4507, n.d.<sup>908</sup>
  - v. Tunis, Dār al-Kutub al-Waṭaniyya, 1694, n.d.<sup>909</sup>
5. *Al-Furūq aw anwār al-burūq fī anwā' al-furūq* by Abū al-‘Abbās Shihāb al-Dīn Aḥmad ibn Idrīs ibn al-Raḥmān al-Qarāfī (d. 684/1285).<sup>910</sup>
6. *Al-Furūq* by Abū ‘Abd Allāh Muḥammad ibn Yūsuf al-‘Abdarī al-Gharnāṭī al-Mālikī, Al-Mawwāq (d. 897/1492).<sup>911</sup>
- a. MSS:
    - i. La Marsa, Maktabat Āl Ibn ‘Āshūr al-Tūnisī *fā’-alif* 98-90, n.d.(?)<sup>912</sup>

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<sup>906</sup> Abū al-Ajfān and Abū Fāris, “Introduction,” 48.

<sup>907</sup> Abū al-Ajfān and Abū Fāris, “Introduction,” 48-49. According to Abū al-Ajfān and Abū Fāris, it was 3217 in (*min raṣīd*) the Maktabat al-Aḥmadiyya collection.

<sup>908</sup> Abū al-Ajfān and Abū Fāris, “Introduction,” 49-50. This manuscript is identified by al-Bāḥusayn as *al-Furūq fī al-aḥkām ‘alā madhhab al-Mālikiyya* by an anonymous author since this is what appears on the title page of this manuscript (104). However, it is clearly identified by Abū al-Ajfān and Abū Fāris as a copy of Muslim al-Dimashqī’s *Furūq*.

<sup>909</sup> Abū al-Ajfān and Abū Fāris, “Introduction,” 50.

<sup>910</sup> Heinrichs, “Structuring the Law,” 341-2; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 152-154; al-Sabīl, “Introduction,” 1:32-33; GAL 1:385 and S1:665; Kaḥḥāla, *Mu’jam*, 1:100 no.750; Schacht, “*Furūq*-Büchern,” 509; Makhlūf, *Shajarat al-nūr al-zakiyya*, 188-89.

<sup>911</sup> Heinrichs, “Structuring the Law,” 341; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 101-102; al-Sabīl, “Introduction,” 31; GAL S2:375-76; Kaḥḥāla, *Mu’jam*, 3:787 no.16479; *Shajarat al-nūr al-zakiyya*, 262. See also Ibn Dāwūd al-Balawī, Aḥmad, *al-Thabat*, Ed. ‘Abd Allāh al-‘Imrānī. (Beirut: Dār al-Gharb al-Islāmī, 1403/1983), 190. I thank Josef Ženka for this last reference.

<sup>912</sup> Heinrichs, “Structuring the Law,” 342. This manuscript is likely not a copy of the work by al-Mawwāq, but is often attributed to him.

7. *‘Iddat al-burūq fī jam‘ mā fī al-madhhab min al-furūq* by Abū al-‘Abbās Aḥmad ibn Yaḥyā ibn Muḥammad al-Wansharīsī al-Mālikī (d. 914/1508).<sup>913</sup>

a. Editions:

- i. *‘Iddat al-furūq fī jam‘ mā fī al-madhhab min al-jumū‘ wa-l-furūq*. Edited by Ḥamza Abū Fāris. Beirut: Dār al-Gharb al-Islāmī, 1990/1410.
- ii. *‘Iddat al-furūq fī jam‘ mā fī al-madhhab min al-jumū‘ wa-l-furūq fī madhhab al-Imām Mālik wa-yalihi Ḍdāḥ al-masālik ilā qawā‘id al-Imām Mālik kilāhumā ta’lif al-‘Abbās Aḥmad ibn Yaḥyā al-Wansharīsī al-Tilimsānī*. Edited by Aḥmad Farīd al-Mazyadī. Beirut: Dār al-Kutub al-‘Ilmiyya, 2005
- iii. Fez Lithograph edition.<sup>914</sup>

b. MSS:

- i. Tunis, al-Maktaba al-Waṭaniyya 4725, n.d.<sup>915</sup>
- ii. Tunis, al-Maktaba al-Waṭaniyya 15087, n.d.<sup>916</sup>
- iii. Tunis, al-Maktaba al-Waṭaniyya 14889, n.d.<sup>917</sup>

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<sup>913</sup> Heinrichs, “Structuring the Law,” 342; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 102; al-Sabīl, “Introduction,” 1:32; Kaḥḥāla, *Mu‘jam*, 1:325 no.2389; GAL 2:248; GAL S2:348; *Shajarat al-nūr al-zakiyya*, 274-75.

<sup>914</sup> Abū Fāris mentions this edition in his introduction. He claims it is “the famous and widely circulated Fez lithograph edition (*ṭaba‘at Fās al-mashhūra al-mutadāwala*),” but I have not been able to find another reference to this work.

<sup>915</sup> Ḥamza Abū Fāris, “Introduction” to Abū al-‘Abbās Aḥmad ibn Yaḥyā ibn Muḥammad al-Wansharīsī, *‘Iddat al-furūq fī jam‘ mā fī al-madhhab min al-jumū‘ wa-l-furūq*, ed. Ḥamza Abū Fāris (Beirut: Dār al-Gharb al-Islāmī, 1990/1410), 55.

<sup>916</sup> Abū Fāris, “Introduction,” 55-56.

<sup>917</sup> Abū Fāris, “Introduction,” 56.

iv. Tunis, al-Maktaba al-Waṭaniyya 4859, 1288/1872-73.<sup>918</sup>

v. Rabat, al-Khizāna al-Malikiyya 1563, n.d.<sup>919</sup>

8. *Furūq bayna masā'il fiqhiyya mutashābihat al-aḥwāl mutakhālifāt al-i'tibār* by Abū

ʿAbd Allāh Muḥammad ibn Yūsuf (d. ?).<sup>920</sup>

a. MSS:

i. La Marsa, Maktabat Āl Ibn ʿĀshūr al-Tūnisī *fāʿ-alif* 98-90, n.d.<sup>921</sup>

## Ḥanbalī

1. *Al-Furūq fī masā'il al-fiqhiyya* by ʿImād al-Dīn Ibrāhīm ibn ʿAbd al-Wāḥid ibn ʿAlī

Ibn Surūr al-Maqdisī al-Ḥanbalī (d. 614/1212).<sup>922</sup>

a. Not extant.

2. *Al-Furūq* by Muʿazzam al-Dīn Abū ʿAbd Allāh Muḥammad ibn ʿAbd Allāh al-

Sāmarrī al-Ḥanbalī, Ibn Sunayna (d. 616/1219).<sup>923</sup>

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<sup>918</sup> Abū Fāris, "Introduction," 56.

<sup>919</sup> Abū Fāris, "Introduction," 56-57.

<sup>920</sup> This is perhaps the author referred to by al-Ṭūfī as "al-Shaykh Abū ʿAbd Allāh Muḥammad ibn Yūsuf al-Andalusī al-Anṣārī al-Mālikī" (73). Although this may appear at first glance to be a clear reference to al-Mawwāq, al-Ṭūfī died in 716/1316, while al-Mawwāq died almost two hundred years later, in 897/1492.

<sup>921</sup> Heinrichs, "Structuring the Law," 342.

<sup>922</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 94; al-Sabīl, "Introduction," 1:40; Ibn Rajab Dhayl *Ṭabaqāt al-Ḥanābila* 3:198-220; Kaḥḥāla, *Muʿjam*, 1:42 no.312; al-ʿUlaymī, *al-Durr al-Munaḍḍad*, 1:339 no. 969; Ibn al-ʿImād *Shadharāt al-dhahab* 7:105-108.

<sup>923</sup> Heinrichs, "Structuring the Law," 343; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 93-94; al-Sabīl, "Introduction," 1:40; GAL S1:689; Ibn al-ʿImād, *Shadharāt al-dhahab* 7:126-27; Najm al-Dīn al-Ṭūfī, *ʿAlam al-jadhal*, 73; Ibn Rajab, *Dhayl Ṭabaqāt al-Ḥanābila* 3:249-51.

- a. Alternate title:
- i. *Al-Furūq al-mushtabih ṣuwarihā al-mukhtalif aḥkāmihā*.
- b. Editions:
- i. *Kitāb al-Furūq ‘alā madhhab al-Imām Aḥmad ibn Ḥanbal*. Edited by Muḥammad ibn Ibrāhīm ibn Muḥammad al-Yaḥyā. Riyadh: Dār al-Ṣumay‘ī, 1997.
  - ii. *Al-Furūq min awwal kitāb al-jināyāt ilā nihāyat al-kitāban dirāsatan wa-taḥqīqan*. Edited by Anas ibn ‘Umar ibn Muḥammad al-Subayyil. MA Thesis, Medina: Umm al-Qurā University, 1435/2014.
- c. MSS:
- i. Damascus, Asadiyya Library, Zāhiriyyah, 19 Muḥarram 856/February 2, 1452.<sup>924</sup>
  - ii. Baṣra, ‘Abbāsiyya Library, 39 jīm, n.d.<sup>925</sup>
  - iii. Leipzig, Leipzig University Library, Vollers 389, n.d.<sup>926</sup>

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<sup>924</sup> Muḥammad ibn Ibrāhīm ibn Muḥammad al-Yaḥyā “Introduction” to Mu‘azzam al-Dīn Abū ‘Abd Allāh Muḥammad ibn ‘Abd Allāh al-Sāmarrī, *Kitāb al-Furūq ‘alā madhhab al-Imām Aḥmad ibn Ḥanbal*, ed. Muḥammad ibn Ibrāhīm ibn Muḥammad al-Yaḥyā (Riyadh: Dār al-Ṣumay‘ī), 99. The editions of this book cite this manuscript but do not give its accession number.

<sup>925</sup> al-Yaḥyā “Introduction,” 99; Anas ibn ‘Umar ibn Muḥammad al-Subayyil, “Introduction” to Mu‘azzam al-Dīn Abū ‘Abd Allāh Muḥammad ibn ‘Abd Allāh al-Sāmarrī, *al-Furūq min awwal kitāb al-jināyāt ilā nihāyat al-kitāban dirāsatan wa-taḥqīqan*, ed. Anas ibn ‘Umar ibn Muḥammad al-Subayyil, MA Thesis (Medina: Umm al-Qurā University, 1435/2014), 90.

<sup>926</sup> Schacht, “*Furūq-Büchern*,” 507-508; al-Subayyil, “Introduction,” 89. This manuscript is available digitally, [http://www.refaiya.uni-leipzig.de/receive/RefaiyaBook\\_islamhs\\_00000858](http://www.refaiya.uni-leipzig.de/receive/RefaiyaBook_islamhs_00000858). Accessed August 22, 2016.

3. *Al-Furūq* by Abū ‘Abd Allāh Muḥammad ibn ‘Abd al-Qawī ibn Badrān al-Mardāwī al-Maqdisī al-Ḥanbalī (d. 699/1299-300).<sup>927</sup>
  - a. Not extant.
  
4. *Īdāḥ al-dalā’il fī al-farq bayn al-masā’il* by Abū Muḥammad Sharaf al-Dīn ‘Abd al-Raḥīm ibn ‘Abd Allāh al-Zarīrānī al-Baghdādī al-Ḥanbalī (d. 741/1341).<sup>928</sup>
  - a. Alternate title:
    - i. *Tanqīḥ al-furūq*.<sup>929</sup>
  - b. Editions:
    - i. *Īdāḥ al-dalā’il fī al-farq bayna al-masā’il*. Edited by ‘Umar ibn Muḥammad ibn ‘Abd Allāh al-Sabīl. 2 volumes. Mecca: Al-Mamlaka al-‘Arabiyya al-Sa‘ūdiyya, Wizārat al-Ta‘līm al-‘Ālī, Jāmi‘at Umm al-Qurā, Ma‘had al-Buḥūth al-‘Ilmiyya wa-Iḥyā’ al-Turāth al-Islāmī, Markaz Iḥyā’ al-Turāth al-Islāmī, 1414[/1993-94].

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<sup>927</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 96; al-Sabīl, “Introduction,” 1:40; Ibn Rajab, *Dhayl ṭabaqāt al-Ḥanābila*, 2:343; Ibn al-‘Imād, *Shadharāt al-dhahab* 7:789-90; al-Ziriklī, *al-A‘lām*, 6:214; al-‘Ulaymī, *al-Durr al-Munaḍḍad*, 442 no.1176; al-Baghdādī, *Hadiyyat al-‘Ārifin*, 2:139.

<sup>928</sup> Heinrichs, “Structuring the Law,” 343; al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 97-98; al-Sabīl, “Introduction,” 1:28; Kaḥḥāla, *Mu‘jam*, 2:132 no.7117; Ibn Rajab, *Dhayl*, 5:104-115 no.581; al-‘Asqalānī, *al-Durar al-Kāmina* 2:357 no.2390; Ibn al-‘Imād, *Shadharāt al-dhahab*, 8:228-29.

<sup>929</sup> This title is given on the cover page of Princeton University Library, Garrett 4577Y.

- ii. *Īdāḥ al-dalā'il fi al-farq bayna al-masā'il*. Edited by Muḥammad Ḥasan Muḥammad Ḥasan Ismā'īl. Beirut: Dār al-Kutub al-ʿilmiyya, 1424/2003.
  - iii. *Īdāḥ al-dalā'il fi al-farq bayna al-masā'il*. Edited by ʿUmar ibn Muḥammad al-Sabīl. Dammam, Saudi Arabia: Dār Ibn al-Jawzī, 1431[/2009-2010].
- c. MSS:
- i. Princeton, Princeton University Library, Garrett 4577Y, n.d.<sup>930</sup>

### Shi'i Works

- 1. *Kitāb al-Furūq* by Aḥmad ibn Muḥammad al-Barqī (d. third/ninth c.).<sup>931</sup>
  - a. Not extant.
- 2. *Al-Jam' wa-l-farq* by ʿAlī ibn Yaḥyā ibn Rāshid al-Washlī al-Zaydī al-Yamanī (d. 777/1375-76).<sup>932</sup>
  - a. Not extant.

### Works Incorrectly Said to Be of Legal Distinctions:

- 1. *Al-Muskit* by al-Zubayr ibn Aḥmad ibn Sulaymān ibn ʿAbd Allāh al-Zubayrī (d. 317/929-30).<sup>933</sup>

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<sup>930</sup> This is likely a unicum, as implied by the printed editions. See al-Sabīl, "Introduction," 1:126-27; Muḥammad Ḥasan Muḥammad Ḥasan Ismā'īl, "Introduction" to Sharaf al-Dīn ʿAbd al-Raḥīm ibn ʿAbd Allāh al-Zarīrānī, *Īdāḥ al-dalā'il fi al-farq bayna al-masā'il*, ed. Muḥammad Ḥasan Muḥammad Ḥasan Ismā'īl (Beirut: Dār al-Kutub al-ʿilmiyya, 1424/2003), 9.

<sup>931</sup> Ibn al-Nadīm, *al-Fihrist*, 309-310.

<sup>932</sup> Al-Bāḥūsayn, *al-Furūq al-fiqhiyya*, 100; al-Sabīl, "Introduction," 1:38; Kaḥḥāla, *Muʿjam*, 2:543 no.10254.

- a. There is not enough information to classify this work.<sup>934</sup>
2. *Al-Furūq* by Abū ‘Abd Allāh Muḥammad ibn ‘Alī al-Ḥakīm al-Tirmidhī (d. ca. 320/932).<sup>935</sup>
    - a. This work is on lexicographic distinctions.
  3. *Al-Muṭārahāt* by Aḥmad ibn Muḥammad ibn Aḥmad al-Baghdādī, Ibn al-Qaṭṭān (d. 359/969-70).<sup>936</sup>
    - a. This is a work of law, but not on distinctions.
  4. *Al-Iḥkām fī tamyīz al-fatāwā ‘an al-aḥkām wa-taṣarrufāt al-qāḍī wa-l-imām* by Abū al-‘Abbās Aḥmad ibn Idrīs al-Qarāfī (d. 684/1285).<sup>937</sup>

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<sup>933</sup> Al-Bāḥusayn *al-Furūq al-fiqhiyya*, 68, 73-74; al-Sabīl, “Introduction,” 1:35; Shīrāzī, *Ṭabaqāt al-fuqahā’*, 108; Ibn Khallikān, *Wafāyāt al-a’yān*, 2:69; Ḥājji Khalīfa, *Kashf al-ẓunūn*, 2:1626; Ibn al-Subkī, *al-Ṭabaqāt al-shāfi‘iyya al-kubrā*, 3:295; al-Asnawī, *Ṭabaqāt*, 1:606

<sup>934</sup> See Chapter Four, pp. 209-12.

<sup>935</sup> Al-Bāḥusayn *al-Furūq al-fiqhiyya*, 69-70; Ibn al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā*, 2:20; GAL S1:356; al-Ziriklī, *al-A‘lām*, 6:272; ; Kaḥḥāla, *Mu‘jam*, 3:502 no.14648; Ḥājji Khalīfa, *Kashf al-ẓunūn*, s.v. “*al-furūq fī furū‘ al-al-shāfi‘iyya*,” 2:1258; al-Bāḥusayn also claims that the attribution of a book of legal distinctions to Tirmidhī is doubtful, but most likely a confusion stemming from his having written a book of lexicographic distinctions and having been a Shāfi‘ī.

<sup>936</sup> Al-Bāḥusayn *al-Furūq al-fiqhiyya*, 69, 71-72; al-Sabīl, “Introduction,” 1:35; al-Ṭabaqāt al-Shāfi‘iyya al-Kubrā 3:295; *Shadharāt al-dhahab* 4:306; Ḥājji Khalīfa, *Kashf al-ẓunūn* 2:1714. But also see al-Zarkashī, *al-Manthūr*, 1:70., also al-Bāḥusayn says that it is erroneously attributed to this Ibn al-Qaṭṭān, but instead was by Abū ‘Abd ‘Allāh al-Ḥusayn ibn Muḥammad al-Qaṭṭān who died between the fifth and sixth centuries. See al-Subkī, *Ṭabaqāt al-shāfi‘iyya al-kubrā*, 3:163, and that it is not really about *furūq*, but rather question and answer, citing Asnawī, *Ṭabaqāt*, 2:146.

<sup>937</sup> Al-Sabīl, “Introduction,” 1:34; Abū al-Ajḥān and Abū Fāris, “Introduction,” 39; Ḥājji Khalīfa, *Kashf al-ẓunūn*, s.v. “*al-Iḥkām fī tamyīz al-fatāwā ‘an al-aḥkām wa-taṣarrufāt al-qāḍī ‘and al-imām*,” 1:21.

- a. This is a work on fatwas and legal rulings.
5. *Al-Furūq* by al-Qāḍī Muḥammad ibn Kāmil ibn Muḥammad ibn Tammām al-Tadmurī al-Shāfi‘ī (d. after 741/1340).<sup>938</sup>
- a. It is not clear that this work was composed.
6. *Al-Furūq*. ‘Umar ibn Raslān al-Bulqīnī (d. 805/1403).<sup>939</sup>
- a. This is a work on Sufism.
7. *Furūq al-uṣūl* by pseudo-Kemalpaşazade (d. 940/1534).<sup>940</sup>
- a. This work is on applied linguistic distinctions in law.
8. *Qurrat al-‘ayn wa-l-sam‘ fī bayān al-farq wa-l-jam‘* by Badr al-Dīn ibn ‘Umar ibn Aḥmad ibn Muḥammad al-‘Ādilī al-‘Abbāsī al-Ḥuraythī(?) al-Shāfi‘ī (d. ca. 970/1562).<sup>941</sup>
- a. This is a work on Sufism.

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<sup>938</sup> This work is only mentioned in Kaḥḥāla, *Mu‘jam*, 3:606 no.15326. This scholar has entries in al-‘Asqalānī, *al-Durar al-Kāmina* 5:411; and al-‘Ulaymī, *al-Uns al-Jalīl bi-ta’rīkh al-Quds wa-l-Jalīl*, 2:140, but they do not mention this book.

<sup>939</sup> Ibn al-‘Imād, *Shadharāt al-dhahab* 9:80-81.

<sup>940</sup> Ḥājji Khalifa, *Kashf al-zunūn* s.v. “*Furūq al-uṣūl*,” 2:1257. He describes this work as “a useful (*mufida*) treatise by a later jurist (*ba‘ḍ al-muta’akhhirīn*).”

<sup>941</sup> Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 104; al-Sabil, “Introduction,” 1:39; *Fihrist Makḥṭūṭāt al-baḥrayn* 1:99; Kaḥḥāla, *Mu‘jam*, 3:557 no.14995. Al-Bāḥusayn says this is actually a work of sufism, not a legal work and therefore is not a work of legal distinctions. I have not been able to examine this work itself.



9. *Talqīḥ al-Karābīsī*.<sup>942</sup>

- a. This work does not exist, but was erroneously cited by Ibn Nujaym in his *al-Ashbāḥ wa-l-naẓā'ir*, at the beginning of section six.

10. *Muwaddīḥ Awhām al-Jam' wa-l-Tafrīq* by al-Khaṭīb al-Baghdādī, Abū Bakr Aḥmad ibn 'Alī ibn Thābit

- a. This is a work of hadith criticism.

11. *Al-Furūq al-Fiḥiyya li-l-Imām Mālik* by Ibrāhīm Ismā'īl Jalāl

- a. This is a work of legal distinctions, but compiled recently.

12. *Al-Furūq li-Ibn Qayyim al-Jawziyya: Muntaza' min Aghlab Kutub Ibn Qayyim Raḥimahu Allāhu Ta'ālā* by Yūsuf al-Ṣāliḥ

- a. This is a work of legal distinctions, but compiled recently.

13. *Al-Nazā'ir al-fiḥiyya* by Abū 'Imrān Mūsā ibn 'Īsā al-Fāsī al-Ṣanhājī al-Qayrawānī

(d. ?).<sup>943</sup>

- a. This is a work of legal maxims.

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<sup>942</sup> Ḥājjī Khalīfa, *Kashf al-zunūn*, s.v. "Furūq al-Karābīsī," 2:1258.

<sup>943</sup> Al-Bāḥusayn, *al-Furūq al-fiḥiyya*, 86.

## Appendix II: Chronological *Furūq* Bibliography.

This appendix includes a bibliography of all known works of legal distinctions, arranged chronologically. For more information on a specific work or its author, refer to Appendix I.

### Third Century

1. *Kitāb al-Furūq* by Aḥmad ibn Muḥammad al-Barqī (Shiʿī, d. third/ninth c.).

### Fourth Century

1. *Al-Furūq* by Abū al-ʿAbbās Aḥmad ibn ʿUmar Ibn Surayj (Shāfiʿī, d.306/918).
2. *Al-Furūq* by Abū al-Faḍl Muḥammad ibn Ṣāliḥ al-Karābīsī (Ḥanafī, d. 322/934).
3. *Kitāb al-masāʾil wa-l-ʿilal wa-l-furūq* by Abū al-Ḥasan ʿAlī ibn Aḥmad al-Nasawī (Shāfiʿī, d. ca. 420/1030).

### Fifth Century

1. *Al-Kifāya fi al-furūq* by Abū ʿAbd Allāh al-Ḥusayn ibn ʿAbd Allāh al-Ṭabarī (Shāfiʿī, d. ca. fifth/eleventh c.).
2. *Al-Furūq al-fiqhiyya* by Abū al-Faḍl Muslim ibn ʿAlī al-Dimashqī (Mālikī, d. fifth/eleventh c.).

3. *Furūq masā'il mushtabiha fī al-madhhab* by Abū al-Qāsim 'Abd al-Raḥmān ibn Muḥammad al-Kanānī, Ibn al-Kātib (Mālikī, d. 408/1017-18).
4. *Al-Jumū' wa-l-furūq* by al-Qāḍī 'Abd al-Wahhāb ibn 'Alī al-Baghdādī (Mālikī, d. 422/1031).
5. *Al-Furūq* by Abū Muḥammad 'Abd Allāh ibn Yūsuf al-Juwaynī (Shāfi'ī, d. 438/1046).
6. *Al-Ajnās wa-l-furūq* by Abū 'Abbās Aḥmad ibn Muḥammad al-Nāṭifi al-Ṭabarī (Ḥanafī, d. 446/1054).
7. *Al-Nukat wa-l-furūq li-masā'il al-mudawwina* by Abū Muḥammad 'Abd al-Ḥaqq ibn Muḥammad ibn Hārūn al-Qurashī al-Ṣiqillī al-Mālikī (Mālikī, d. 466/1074).
8. *Al-Wasā'il fī furūq al-masā'il* by Abū Khayr Salāma ibn Ismā'īl ibn Jamā'a al-Maqdisī (Shāfi'ī, d. 480/1087).
9. *Al-Mu'āyāt* by Abū 'Abbās Aḥmad ibn Muḥammad al-Jurjānī (Shāfi'ī, d. 482/1089).

## Sixth Century

1. *Al-Furūq* by Abū al-Maḥāsin ‘Abd al-Wāḥid ibn Ismā‘īl al-Rūyānī al-Ṭabarī (Shāfi‘ī, d. 502/1108).
2. *Al-Furūq* by Abū al-Muẓaffar As‘ad ibn Muḥammad ibn al-Ḥusayn al-Naysābūrī al-Karābīsī (Ḥanafī, d. 570/1174).

### **Seventh Century**

1. *Al-Furūq fī masā’il al-fiqhiyya* by ‘Imād al-Dīn Ibrāhīm ibn ‘Abd al-Wāḥid ibn ‘Alī ibn Surūr al-Maqdisī (Ḥanbalī, d. 614/1212).
2. *Al-Furūq* by Abū ‘Abd Allāh Muḥammad ibn ‘Abd Allāh al-Sāmarri, Ibn Sunayna (Ḥanbalī, d. 616/1219).
3. *Al-Furūq* by Abū al-‘Abbās Kamāl al-Dīn Aḥmad ibn Kashāsib al-Shāfi‘ī al-Duzmārī (Shāfi‘ī, d. 634/1245).
4. *Al-Fuṣūl wa-l-furūq* by Abū al-‘Abbās Aḥmad ibn Muḥammad ibn Khalaf Najm al-Dīn Ibn Rājih al-Maqdisī (Shāfi‘ī, d. 638/1241).
5. *Talqīh al-‘uqūl fī furūq al-manqūl* by Aḥmad ibn ‘Ubayd Allāh al-Maḥbūbī, Ṣadr al-Sharī‘a al-Awwal (Ḥanafī, d. 640/1243).

6. *Al-Furūq aw Anwār al-Burūq fī Anwā' al-Furūq* by Abū al-‘Abbās Aḥmad ibn Idrīs al-Qarāfi (Mālikī, d. 684/1285).
7. *Al-Furūq* by Abū ‘Abd Allāh Muḥammad ibn ‘Abd al-Qawī ibn Badrān al-Maqdisī (Ḥanbalī, d. 699/1299-1300).

### **Eighth Century**

1. *Al-Jam‘ wa-l-farq* by Sirāj al-Dīn Yūnus ibn ‘Abd al-Mujīd ibn ‘Alī al-Hudhalī al-Armantī (Shāfi‘ī, d. 725/1325).
2. *Īdāḥ al-dalā’il fī al-farq bayn al-masā’il* by Abū Muḥammad Sharaf al-Dīn ‘Abd al-Raḥīm ibn ‘Abd Allāh al-Zarīrānī al-Baghdādī (Ḥanbalī, d. 741/1341).
3. *Al-Furūq* by Tāj al-Dīn Aḥmad ibn ‘Uthmān ibn Ibrāhīm ibn Muṣṭafā al-Turkumānī al-Mārdīnī, Ibn al-Turkumānī (Ḥanafī, d. 744/1343-44).
4. *Al-Furūq* by Abū Umāma Shams al-Dīn Muḥammad ibn ‘Alī ibn ‘Abd al-Wāḥid ibn Yaḥyā al-Dukkālī al-Maghribī al-Miṣrī al-Shāfi‘ī, Ibn al-Naqqāsh (d. 763/1361).
5. *Maṭāli‘ al-daqa’iq fī taḥrīr al-jawāmi‘ wa-l-fawāriq* by Jamāl al-Dīn ‘Abd al-Raḥīm ibn al-Ḥasan al-Asnawī (Shāfi‘ī, d. 772/1370).

6. *Al-Jam' wa-l-farq* by 'Alī ibn Yaḥyā ibn Rāshid al-Washlī al-Zaydī al-Yamanī (Zaydī, d. 777).

### **Ninth Century**

1. *Al-Furūq* by Shaykh Bāyazīd ibn Isrā'īl ibn Ḥājji Dāwūd Marghāyatī? (Ḥanafī, d. early ninth/fifteenth c.).
2. *Al-Furūq* by Abū 'Abd Allāh Muḥammad ibn Yūsuf al-'Abdarī Al-Mawwāq al-Gharnāṭī (Mālikī, d. 897/1492).

### **Tenth Century**

1. *Al-Ashbāh wa-l-naẓā'ir* by Jalāl al-Dīn 'Abd al-Raḥmān al-Suyūṭī (Shāfi'ī, d. 911/1505).
2. *'Iddat al-burūq fī jam' mā fī al-madhhab min al-furūq* by Abū al-'Abbās Aḥmad ibn Yaḥyā al-Wansharīsī (Mālikī, d. 914/1508).
3. *Al-Ashbāh wa-l-naẓā'ir* by Zayn al-Dīn Ibn Nujaym al-Miṣrī (Ḥanafī, d. 970/1563)

### **Unknown**

1. *Furūq-A* or *Al-Furūq 'alā madhhab Abī Ḥanīfa* by Anonymous (Ḥanafī).

2. *Furūq-B* or *Al-Furūq fī al-furū'* attributed to Najm al-Dīn 'Alī ibn al-Sayyid Abī Bakr al-Naysābūrī al-Ḥanafī (Ḥanafī, d. ?).
  
3. *Al-Furūq* by Muḥammad ibn Yūsuf al-Andalusī al-Anṣārī (Mālīkī, d. ?).

**Appendix III: The Six Manuscripts of the *Furūq* text attributed to Muḥammad ibn Ṣāliḥ al-Karābīsī**

<b>Library, City</b>	<b>MS Number</b>	<b>Date of Copy</b>
Dār al-Kutub al-Miṣriyya, Cairo	Fiqh Ḥanafī 1923	After 1003/1595
Maktabat al-Awqāf, Baghdad	3533	undated
Maktabat al-Azhar, Cairo	2076 Rāfi‘ī 26, Fiqh Ḥanafī 915	1052/1642
Staatsbibliothek zu Berlin	Or. 5013	1025/1616
Suleymaniye, Istanbul	Feyzullah Efendi 921/1	9th/15th century (?)
Suleymaniye, Istanbul	Ahmet III 1181/1	1003/1595



### Appendix III: The Manuscripts of *Furūq A*

Garrett 4185Y, Princeton University Library	Peterman II Nachtrag 4, Staatsbibliothek zu Berlin	Halet Efendi 807, Suleymaniye Library, Istanbul	Fiqh Ḥanafī 2089, Maktabat al- Haram al-Makki, Mecca	Ẓāhiriyya 4501, Damascus <sup>944</sup>
Introduction	Introduction	Introduction	Introduction	Introduction
Kitāb al-Ṭahāra	Kitāb al-Ṭahāra	Kitāb al-Ṭahāra	Kitāb al-Ṭahāra	Kitāb al-Ṭahāra
Kitāb al-Ṣalāt	Kitāb al-Ṣalāt	Kitāb al-Ṣalāt	Kitāb al-Ṣalāt	Kitāb al-Ṣalāt
Kitāb al-Zakāt	Kitāb al-Zakāt	Kitāb al-Zakāt	Kitāb al-Zakāt	Kitāb al-Zakāt
Kitāb al-Ṣawm	Kitāb al-Ṣawm	Kitāb al-Ṣawm	Kitāb al-Ṣawm	Kitāb al-Ṣawm
Kitāb al-Ḥajj	Kitāb al-Ḥajj	Kitāb al-Ḥajj	Kitāb al-Ḥajj	Kitāb al-Ḥajj
Kitāb al-Nikāḥ	Kitāb al-Nikāḥ	Kitāb al-Nikāḥ	Kitāb al-Nikāḥ	Kitāb al-Nikāḥ
Kitāb al-Ṭalāq	Kitāb al-Ṭalāq	Kitāb al-Ṭalāq	Kitāb al-Ṭalāq	Kitāb al-Ṭalāq
Kitāb al-ʿItāq	Kitāb al-ʿItāq	Kitāb al-ʿItāq	Kitāb al-ʿItāq	Kitāb al-ʿItāq
Kitāb al-Aymān	Kitāb al-Aymān	Kitāb al-Aymān	Kitāb al-Aymān	Kitāb al-Ṣayd
Kitāb al-Buyūʿ	Kitāb al-Buyūʿ	Kitāb al-Buyūʿ	Kitāb al-Buyūʿ	Kitāb al-Buyūʿ
Kitāb al-Shufaʿa	Kitāb al-Shufaʿa	Kitāb al-Shufaʿa	Kitāb al-Shufaʿa	Kitāb al-Shufaʿa
Kitāb al-Rahn	Kitāb al-Rahn	Kitāb al-Rahn	Kitāb al-Rahn	Kitāb al-Rahn
Kitāb al-Ijāra	Kitāb al-Ijāra	Kitāb al-Ijāra	Kitāb al-Ijāra	Kitāb al-Ijāra
Kitāb al-Ṣayd	Kitāb al-Ṣayd	Kitāb al-Ṣayd	Kitāb al-Ṣayd	Kitāb al-Hiba
Kitāb al-Hiba	Kitāb al-Hiba	Kitāb al-Hiba	Kitāb al-Hiba	Kitāb al-Waṣāyā
Kitāb al-Waṣāyā	Kitāb al-Waṣāyā	Kitāb al-Waṣāyā	Kitāb al-Waṣāyā	

<sup>944</sup> This manuscript has been heavily damaged. It has significant wear around the binding, the pages are out of order, and the end is missing.

Kitāb al-Ḥudūd wa-l-saraqa	Kitāb al-Ḥudūd wa-l-saraqa	Kitāb al-Ḥudūd	Kitāb al-Ḥudūd wa-l-saraqa	
Kitāb al-Wikāla	Kitāb al-Wikāla	Kitāb al-Wikāla	Kitāb al-Wikāla	
Kitāb al-Ma'dhūn	Kitāb al-Ma'dhūn	Kitāb al-Ma'dhūn	Kitāb al-Ma'dhūn	
Kitāb al-Ḥawāla wa-l-kafāla	Kitāb al-Ḥawāla wa-l-kafāla	Kitāb al-Ḥawāla wa-l-kafāla	Kitāb al-Ḥawāla	
Masā'il mutafarriqa	Masā'il mutafarriqa	Kitāb al-Da'wā	Masā'il mutafarriqa	
Kitāb al-Iqrār		Kitāb al-Shahāda		
Kitāb al-Diyāt		Kitāb al-Iqrār		
Masā'il shattā		Kitāb al-Diyāt		
Masā'il mutashābiha		Masā'il shattā		
Masā'il farqiyah fihiyya		Kitāb al-Muḍāraba		
		Masā'il mutashābiha		
		Masā'il al-ḥīla		

**Appendix V: The Manuscripts of *Furūq-B* (Najm al-Dīn Naysābūrī, *attrib.*)**

Giresun Yazmalar 44, Suleymaniye Library, Istanbul	Halet Efendi 780, Suleymaniye Library, Istanbul	Leiden Or. 481, Leiden University Library	Esad Efendi 884 Suleymaniye, Library, Istanbul	Esad Efendi 542 Suleymaniye, Library, Istanbul	Aşir Efendi 453 Suleymaniye, Library, Istanbul	Osman Huldi 50 Suleymaniye, Library, Istanbul	Yazma Bağışlar 1187, Suleymaniye Library, Istanbul
Introduction	Introduction	Introduction	Introduction	Introduction	Introduction	[missing]	Introduction
Şalāt	[Bāb al-Şalāt]	Şalāt	Masā'il al-şalāt wa- l-zakāt	[Şalāt]	[Şalāt]	[title, if any, missing]	[şalāt]
Zakāt	Zakāt	Zakāt			Kitāb al-zakāt	Kitāb masā'il al- şawm	Kitāb al-zakāt
Şawm	Şawm	Masā'il al-şawm	Kitāb masā'il al- şawm <sup>945</sup>	Kitāb masā'il al- şawm	Kitāb al-şawm	Kitāb al-ḥajj	Kitāb al-şawm
Ḥajj	Ḥajj	Masā'il al-ḥajj	Kitāb al-ḥajj	Kitāb masā'il al- şawm	Kitāb al-ḥajj	Kitāb al-nikāḥ	Kitāb al-ḥajj
Nikāḥ	Masā'il al-nikāḥ	Masā'il al-nikāḥ	Kitāb masā'il al-	Kitāb masā'il al-	Kitāb al-nikāḥ	Kitāb al-ṭalāq	Kitāb al-nikāḥ

			nikāḥ	nikāḥ			
Ṭalāq	Masāʾil al-ṭalāq	Masāʾil al-ṭalāq	Kitāb al-ṭalāq	Kitāb masāʾil al-ṭalāq	Kitāb al-ṭalāq	Kitāb masāʾil al-ʿitāq	
ʿItāq	Masāʾil al-ʿitāq	Masāʾil al-ʿitāq	Kitāb masāʾil al-ʿitāq	Kitāb masāʾil al-ʿitāq	Kitāb al-ʿitāq	Kitāb al-buyūʿ	
Aymān	Masāʾil al-aymān	Masāʾil al-aymān	Kitāb al-aymān	Kitāb masāʾil al-aymān	Kitāb al-aymān	Kitāb al-shufaʿa	
Buyūʿ	Buyūʿ	Buyūʿ	Kitāb masāʾil al-buyūʿ	Kitāb masāʾil al-buyūʿ	Kitāb al-buyūʿ	Kitāb masāʾil al-rahn	
Shufaʿa	Masāʾil al-shufaʿa	Masāʾil al-shufaʿa	Kitāb al-shufaʿa	Kitāb masāʾil al-shufaʿa	Kitāb al-shufaʿa	Kitāb masāʾil al-ijāra	
Rahn	Masāʾil al-rahn	Masāʾil al-rahn	Kitāb masāʾil al-rahn	Kitāb masāʾil al-rahn	Kitāb al-rahn	Kitāb masāʾil al-ṣayd	
Ijārāt	Masāʾil al-ijāra	Masāʾil al-ijāra	Kitāb masāʾil al-ijāra	Kitāb masāʾil al-rahn	Kitāb al-ijāra	Kitāb masāʾil al-hiba	
Ṣayd	Masāʾil al-ṣayd	Masāʾil al-ṣayd	Kitāb masāʾil al-ṣayd	Kitāb masāʾil al-ṣayd	Kitāb al-ṣayd	Kitāb masāʾil al-waṣāyā	

Hiba	Masā'il al-hiba	Masā'il al-hiba	Kitāb masā'il al-hiba	Kitāb masā'il al-hiba	Kitāb al-hiba	Kitāb masā'il al-ḥudūd	
Waṣāyā	Masā'il al-waṣāyā	Masā'il al-waṣāyā	Kitāb masā'il al-waṣāyā	Kitāb masā'il al-waṣāyā	Kitāb al-waṣāyā	Kitāb al-wakāla	
Ḥudūd	Masā'il al-ḥudūd wa-l-saraqa	Masā'il al-ḥudūd wa-l-saraqa	Kitāb masā'il al-ḥudūd	Kitāb masā'il al-ḥudūd wa-l-saraqa	Kitāb al-ḥudūd	Kitāb masā'il al-ma'dhūn	
Wakāla	Masā'il al-wakāla	Masā'il al-wakāla	Kitāb al-wakāla	Kitāb masā'il al-wakāla	Kitāb al-wakāla	Kitāb al-ḥawāla wa-l-kafāla	
Ma'dhūn	Masā'il al-ma'dhūn	Masā'il al-ma'dhūn	Kitāb masā'il al-ma'dhūn	Kitāb masā'il al-ma'dhūn	Kitāb al-ma'dhūn	Kitāb masā'il al-da'wā	
Ḥawāla wa-l-Kafāla	Masā'il al-ḥawāla	Masā'il al-kafāla wa-l-ḥawāla	Kitāb al-ḥawāla wa-l-kafāla	Kitāb masā'il al-ḥawāla wa-l-kafāla	Kitāb al-ḥawāla	Kitāb masā'il al-iqrār	
Da'wā	Masā'il al-da'wā	Masā'il al-da'wā	Kitāb masā'il al-da'wā	Kitāb masā'il al-da'wā	Kitāb al-da'wā	Kitāb masā'il al-diyāt	
Iqrār	Masā'il al-iqrār	Masā'il al-iqrār	Kitāb masā'il al-iqrār	Kitāb masā'il al-iqrār	Kitāb al-iqrār	Kitāb masā'il shattā	
Diyāt	Masā'il al-diyāt	Masā'il al-diyāt	Kitāb masā'il al-	Kitāb masā'il al-	Kitāb al-jināyāt	Kitāb masā'il al-	

			diyāt	diyāt		muḍāraba	
Masāʾil	Masāʾil shattā	Masāʾil shattā	Kitāb masāʾil shattā	Kitāb masāʾil al- muḍāraba	Kitāb al-muzāraʿa	Kitāb masāʾil mutashābiha	
Masāʾil ukhrā	Masāʾil al- muḍāraba <sup>946</sup>	Al-Masāʾil al- mutāshabiha	Kitāb masāʾil al- muḍāraba	Kitāb masāʾil mutashābiha	Kitāb al-muḍāraba		
	Masāʾil al- mutāshabiha	Masāʾil al-ḥiyal	Kitāb masāʾil mutashābiha		Kitāb al-mushābiha		
					Kitāb al-ḥīla		
					Kitāb al-ḥiyal		

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