1-1-2016

From Text to Law: Islamic Legal Theory and the Practical Hermeneutics of Abū Jaʿfar Aḥmad Al-Ṭaḥāwī (d. 321/933)

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Abstract
Scholars of Islamic law point to the absence of any extant work of legal theory between the Risāla of al-Shāfiʿī and the Fuṣūl of al-Jaṣṣāṣ as a major barrier to reconstructing the history of Islamic legal thought. However, careful analysis of three major works of the Ḥanafī jurist al-Ṭahāwī, Aḥkām al-Qurʾān, Sharḥ maṣāniʿ al-āthār and Sharḥ mushkil al-āthār, reveals the existence of myriad brief passages elaborating questions of legal theory scattered throughout their many volumes. This study reconstructs the legal thought of al-Ṭahāwī as a window onto legal theory in the late 3rd/9th and early 4th/10th centuries, a crucial period of transformation between late formative and post-formative Islamic law. It argues that al-Ṭahāwī’s works are not direct precursors to the genre of uṣūl al-fiqh, but instead represent a different, previously unrecognized, type of intellectual and literary activity. This activity, here termed practical hermeneutics, is concerned with demonstrating in detail how individually coherent rules of law may be derived from the often messy texts of revelation. The integrated reading of al-Ṭahāwī’s entire hermeneutical corpus uncovers several areas in which his legal thought departs quite notably from that of other jurists, suggesting that al-Ṭahāwī was neither as dependent on al-Shāfiʿī nor as closely related to mature uṣūl al-fiqh as has been suggested in previous studies. Most crucially, al-Ṭahāwī’s works unsettle accepted accounts of Islamic legal theory which assign varying levels of authority to a series of clearly distinguished legal sources—Qurʾān, Sunna, consensus, etc. This study demonstrates that, in contrast to both al-Shāfiʿī and later uṣūlis, al-Ṭahāwī’s legal thought blurs boundaries between these categories and instead rests upon an underlying binary concept of legal authority which draws a crucial distinction between knowledge that might permissibly be reached by inference, and knowledge that can only have come from revelation. The authority that al-Ṭahāwī grants any given source is therefore not a function of its formal characteristics, but rather the result of his own judgment about content and origins.

Degree Type
Dissertation

Degree Name
Doctor of Philosophy (PhD)

Graduate Group
Near Eastern Languages & Civilizations

First Advisor
Joseph E. Lowry

Keywords
Companions, Hermeneutics, Islamic law, Legal theory, Tahawi, Usul al-fiqh

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FROM TEXT TO LAW: ISLAMIC LEGAL THEORY AND THE PRACTICAL HERMENEUTICS OF ABŪ JAʿFAR AHMAD AL-ŢAḤĀWĪ (D. 321/933)

Carolyn Anne Brunelle

A DISSERTATION

in

Near Eastern Languages and Civilizations

Presented to the Faculties of the University of Pennsylvania

in

Partial Fulfillment of the Requirements for the

Degree of Doctor of Philosophy

2016

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Dedication

For my parents, Aimée and Roger Brunelle
Acknowledgements

This dissertation represents a culmination of many years’ study of Arabic and Islamic Studies under many inspiring teachers. Special thanks are due to Rachid Aadnani at Wellesley College, who first sparked my interest in the field, and to Roger Allen, who helped me delve into Arabic literature at the MA level. I owe a great debt of gratitude to my advisor Joseph Lowry for deeply engaging with my work and for the encouragement and guidance that helped me keep going, even when the path to completion seemed unclear. I wish also to thank my committee members, Paul M. Cobb and Jamal Elias, for their investment in my work, Linda Greene, for easing many paths, and my colleagues Raha Rafii, Amanda Hannoosh Steinberg, Elias G. Saba and Alon Tam, for their essential role in my graduate education, and for being good friends. Finally, I give tremendous thanks to my family, Roger, Aimée, Kim and Gertrude Brunelle, for the unwavering support and love which have made this dissertation, and what comes afterward, possible.
ABSTRACT

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Scholars of Islamic law point to the absence of any extant work of legal theory between the Risāla of al-Shāfīʿī and the Fuṣūl of al-Jaṣṣāṣ as a major barrier to reconstructing the history of Islamic legal thought. However, careful analysis of three major works of the Ḥanafī jurist al-Ṭaḥāwī, Aḥkām al-Qurʿān, Sharḥ maʿānī al-āthār and Sharḥ mushkil al-āthār, reveals the existence of myriad brief passages elaborating questions of legal theory scattered throughout their many volumes. This study reconstructs the legal thought of al-Ṭaḥāwī as a window onto legal theory in the late 3rd/9th and early 4th/10th centuries, a crucial period of transformation between late formative and post-formative Islamic law. It argues that al-Ṭaḥāwī’s works are not direct precursors to the genre of uṣūl al-fiqh, but instead represent a different, previously unrecognized, type of intellectual and literary activity. This activity, here termed practical hermeneutics, is concerned with demonstrating in detail how individually coherent rules of law may be derived from the often messy texts of revelation. The integrated reading of al-Ṭaḥāwī’s entire hermeneutical corpus uncovers several areas in which his legal thought departs quite notably from that of other jurists, suggesting that al-Ṭaḥāwī was neither as dependent on al-Shāfīʿī nor as closely related to mature uṣūl al-fiqh as has been suggested in previous
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**Introduction**

**Background and Objectives**

By the middle of the 4th/10th century, Muslim jurists who engaged in theorizing about the divine law were composing systematic texts of legal theory in the genre of *uṣūl al-fiqh* (lit., “the bases of law”). Works of the *uṣūl al-fiqh* genre identify the sources of the law, argue for a theory of textual interpretation permitting the law to be derived from its sources, and establish the theological, epistemological, linguistic and, at a later period, logical presuppositions on which those theories of interpretation and derivation rest.\(^1\) The earliest extant *uṣūl* work, *al-Fuṣūl fi al-uṣūl* by the Ḥanafī al-Jaṣṣāṣ (d. 370/980-981), already displays the characteristic literary form and array of topics of the mature genre.\(^2\) The maturity of *al-Fuṣūl* suggests that it represents the culmination of a process of development whose earlier stages are largely unknown, although some evidence for this development is available in the form of passages from early theory works preserved in later *uṣūl* texts. One possible approach to studying Islamic legal theory in the period

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\(^2\) Earlier works entitled “*Uṣūl*” are either unrelated to legal theory or are interested in questions of theory without yet belonging to the genre of *uṣūl al-fiqh*. Although Norman Calder and Wael Hallaq have cited *Uṣūl al-Shāshī* as a work in the genre of *uṣūl al-fiqh* predating the *Fuṣūl* of al-Jaṣṣāṣ, Murteza Bedir has shown that it has been incorrectly attributed to two different 4th/10th-century jurists named al-Shāshī, and is in fact the work of the 7th/13th-century Niẓām al-Dīn al-Shāshī (Murteza Bedir, “The Problem of *Uṣūl al-Shāshī*,” *Islamic Studies* 42, no. 3 (2003): 417; Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-fiqh* (Cambridge: Cambridge University Press, 1997), 33; *The Encyclopaedia of Islam*, New Edition, s.v. “Fiḳh,” by Norman Calder).
before al-Jaṣṣāṣ is thus to attempt to reconstruct the earliest works of the *uṣūl* genre by identifying these surviving passages.³

Other studies of early Islamic legal theory focus instead on the activity of theorizing about the law, in whatever form that theorizing might take. Only a single work explicitly devoted to legal theory has been preserved from the formative period. That work, the well-studied *Risāla* of al-Shāfīʿī (d. 204/820), shares with the mature *uṣūl* tradition the goal of giving a complete account of the structure and derivation of the divine law, although its literary form and theological concerns are otherwise quite different from those of the *uṣūl* genre.⁴ Other extant texts before al-Jaṣṣāṣ are not primarily motivated by or structured around questions of legal theory.⁵ Nonetheless, many non-theory oriented works are important sources for the study of early Islamic legal theory, either because they employ hermeneutical techniques in ways that allow researchers to reconstruct the theory behind them, or because they contain occasional

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⁵ By ‘legal theory,’ I intend to signal all questions regarding the origins, justification for and force of a body of laws as well as the institutions and interrelationships between the laws that make up a particular legal system.
explicit discussions of legal theory. To date, a number of articles have analyzed aspects of the legal theory of early jurists based on their non-theory oriented writings.

This study similarly employs the explicitly theoretical passages contained in non-theory oriented texts to shed light on legal theory during the late 3rd/9th and early 4th/10th centuries, a critical transitional period in the history of Islamic law during which āṣāl al-fiqh and the madhhabāts (schools of legal thought) were both maturing. Specifically, I examine the legal thought of Abū Jaʿfar Aḥmad al-Ṭāḥāwī (d. 321/933), a major Egyptian Ḥanafī jurist, traditionist and theologian, many of whose works have been preserved and edited. Where this study departs from earlier studies of the type referred to above is in its depth and comprehensiveness. While most studies seeking to reconstruct

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6 I employ the term ‘non-theory oriented works’ to point to texts whose literary form is not primarily structured around questions of legal theory, even though some (like the works of al-Ṭāḥāwī analyzed in this study) can be considered works of theory in the sense that they treat questions of legal sources or textual hermeneutics in the course of their arguments. I make the distinction between theory-oriented and non-theory oriented works in order to highlight the way in which historians of Islamic law have generally privileged theory-oriented works in their narratives of Islamic legal theory.

early legal theory from non-theoretical texts inquire only into specific topics,\(^8\) this study
surveys and analyzes al-Ṭāḥāwī’s legal theory as a whole as expressed across three major
extant works,\(^9\) *Aḥkām al-Qurʾān* (Legal Rulings of the Qurʾān), *Sharḥ maʿānī al-āthār*
(An Elucidation of the Meaning of Reports) and *Sharḥ mushkil al-āthār* (An Elucidation
of Problematic Reports), each of which contains numerous, if brief, discussions of
theoretical topics.\(^{10}\)

The conclusions that this approach produces differ substantially from those
reached by earlier, preliminary analyses of al-Ṭāḥāwī’s legal thought. Previous studies
have generally relied on the very brief theoretical introductions to al-Ṭāḥāwī’s works or
on a necessarily limited selection of chapters within his many extant texts. While no
independent article or book has yet been published on al-Ṭāḥāwī’s legal theory, the most
frequent arguments concerning him are that he brought a ‘Shāfiʿī’ attitude toward *ḥadīth*
and legal hermeneutics to the Ḥanafī school, and that he was the jurist most responsible
for the initial effort to justify Ḥanafī law through Prophetic *ḥadīths*.\(^{11}\) While strongly

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\(^8\) Several of the articles cited above very usefully survey the entire known legal theory of particular jurists
of the formative period; however, none are in-depth studies.

\(^9\) I am mindful of the dangers of reconstructing a general theory from context-specific texts, and in
consequence I have not attempted to impose any structure or draw any connections between different
aspects of al-Ṭāḥāwī’s legal thought except where he himself suggests such a structure or connection.
Nonetheless, the great majority of al-Ṭāḥāwī’s statements on questions of theory appear repeatedly across
his works, suggesting that they constitute a separable body of thought, even if not a highly organized theory
such as that described by al-Shāfīʿī in the *Risāla*.

\(^{10}\) Al-Ṭāḥāwī, *Aḥkām al-Qurʾān al-karīm*, ed. Saʿd al-Dīn Ünāl (Istanbul: Türkiye Diyanet Vakfı, İslām
Ḥaqq; Muḥammad Zuhrī al-Najjār and Yūsuf ʿAbd al-Raḥmān al-Maʿāshī (Beirut: Ḥālam al-Kutub,
While al-Ṭāḥāwī’s other legal works, including *Mukhtasar Ikhtilāf al-ʿulamāʿ* (Disagreements of the
Jurists), *al-Shurūṭ al-kabīr* (Comprehensive Contract Formulary), *al-Shurūṭ al-saghīr* (Concise Contract
Formulary), and *al-Mukhtasar fi al-fiqh* (Concise Manual of Positive Law), sometimes mention legal
sources or hermeneutical techniques in the course of justifying a rule of positive law, no attempt is made to
explain or elaborate upon them.

\(^{11}\) Specific arguments made in earlier studies regarding al-Ṭāḥāwī’s legal theory will be treated in the
relevant chapters of this study. Studies making one or both of the arguments above include Norman Calder,
affirming al-Ṭahāwī’s importance in fitting out Ḥanafi law with a basis in ḥadīth, this study transforms our understanding of al-Ṭahāwī’s legal theory—and, by extension, the legal field of the late 3rd/9th and early 4th/10th centuries—by moving beyond labeling the ‘Shāfī’ī’ and ‘Ḥanafi’ elements of al-Ṭahāwī’s thought to argue that his theory of the structure of the law was distinct from those of both al-Shāfī’ī and the later Ḥanafi legal theorists, although it had important ties to both. That this work has not been done until now is doubtless due at least in part to the difficulty of locating isolated theoretical discussions scattered across many volumes. Nonetheless, a number of the most important features of al-Ṭahāwī’s legal thought become visible only when far-flung passages of multiple works are put into dialogue with each other.

In particular, my analysis challenges a narrative of Islamic legal history which holds that the exclusive identification of Prophetic authority with Prophetic ḥadīth—one of the most important arguments in the Risāla of al-Shāfī’ī—was settled by the late 3rd/9th century. Instead, I argue, al-Ṭahāwī’s continued appeal to a wide spectrum of legal sources that he understands to represent Prophetic authority suggests that we need a more complex model for thinking about the intricate relationship between Prophetic authority, Prophetic practice and Prophetic text. Further, while the mature uṣūl tradition would posit

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12 In this study, I employ ‘ḥadīth’ to signify both individual prophetic reports and the wider genre.
a hierarchy of legal authority based upon the literary form of legal sources—Qurʾānic verses, Prophetic *ḥadīths*, juristic consensus and analogical reasoning as well as other, more minor sources—al-Ṭāḥāwī’s understanding of legal authority rests instead upon an underlying binary division of all Prophetic and post-Prophetic statements of the law into those which individuals might permissibly have arrived at by employing legal reasoning, and those which can only have been the result of revelatory instruction. Where al-Ṭāḥāwī understands a certain post-Prophetic *ḥadīth* or instance of consensus to represent revelatory instruction, he holds its authority sufficient to challenge and often override that of established Prophetic *ḥadīths*. Al-Ṭāḥāwī’s vision of the structure of the law, then, transcends traditional hierarchies and categories of legal sources in order to assert a system of legal authority based not on form, but instead on judgments about content and origins.

What emerges from this study’s work of reconstruction, then, is a portrait of a jurist whose legal thought differs in important ways from the *uṣūl al-fiqh* tradition that would mature perhaps within half a century of his death. That some of the more surprising features of al-Ṭāḥāwī’s thought have been overlooked or smoothed away in studies seeking to place him within a historical trajectory of the development of legal thought is testament to the urgent and ongoing need for in-depth studies of the legal thought of individual jurists, a type of work that has become too rare in our field. Where monographs do exist, they investigate jurists of the post-formative period, with the exception of several studies on al-Shāfiʿī.13 Existing studies also often draw primarily on

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13 Gérard Lecomte’s study of Ibn Qutayba presents a comprehensive sketch of an ‘Abbāsid intellectual, including Ibn Qutayba’s activities as a jurist, but does not go into great detail concerning his legal thought.
a single major work rather than a jurist’s larger output. While the overall goals of the study of Islamic legal theory are rightly to discern ideas and types of development that transcend any one jurist, we risk glossing over crucial debates and anomalies when we relegate the investigation of individual jurists to article-length studies. Where the sources permit them, in-depth studies are particularly needed for jurists of the formative period like al-Ṭahāwī, whose works contain a rich trove of statements on a wide variety of theoretical topics without yet being organized to allow researchers easy access to specific topics of interest. One outcome of this study, therefore, is to provide future researchers with a firmer foundation on which to build arguments about the development of Islamic legal thought from the late formative into the post-formative periods.

Practical Hermeneutics

This study does not seek to portray al-Ṭahāwī’s works as precursors to the emerging genre of usūl al-fiqh or to suggest that al-Ṭahāwī’s legal thought directly influenced later debates in usūl al-fiqh works. Although al-Ṭahāwī considered himself

(Ibn Qutayba (mort en 276/889): l’homme, son œuvre, ses idées (Damascus: Institut Français de Damas, 1965), 215-273). Joseph Lowry’s Early Islamic Legal Theory analyzes the legal thought of al-Shāfī‘ī as expressed in his Risāla; Ahmed El Shamsy also incorporates other texts by al-Shāfī‘ī in his Canonization of Islamic Law. For post-formative jurists, George Makdisi uses Ibn ʿAqīl (d. 513/1119) as a window onto 5th/11th-century Baghdad in Ibn ʿAqīl et la résurgence de l’islam traditionaliste au Xle siècle, Ve siècle de l’Hégire (Damascus: Institut Français de Damas, 1963). In his magisterial Search for God’s Law, Bernard Weiss has given a detailed, synchronic exposition of the legal thought of Sayf al-Dīn al-Āmidī (d. 631/1233), based primarily upon al-Āmidī’s usūl work, al-ʿIḥkām fī usūl al-akhām (Salt Lake City: University of Utah Press, 2010). Sherman Jackson analyzes certain aspects of the legal thought of al-Qarāfī (d. 684/1285) in his Islamic Law and the State, although he is primarily interested in the power relationship between jurists and the state as discussed in al-Qarāfī’s al-ʿIḥkām fī tamyīz al-fatāwā ʿan al-akhām (Leiden: Brill, 1996). Muhammad Khalid Masud analyzes the Muwāfaqāt of al-Shāṭibī (d. 790/1388) with a particular focus on maṣlaḥa in Shāṭibī’s Philosophy of Islamic Law (Islamabad: The Islamic Research Institute, 1995). For a much later period, Bernard Haykel has analyzed the legal thought of al-Shawkānī (d. 1250/1834) in the context of reform in 18th-century Yemen in his Revival and Reform in Islam (Cambridge: Cambridge University Press, 2003).
and was considered by his biographers to be a mujtahid, or jurist capable of independently deriving the law from its sources, he is not said to have written a work of uṣūl al-fiqh, nor is he reported to have been an uṣūlī (legal theorist). The earliest Ḥanafī uṣūl works do not cite his positions on questions of theory, and later uṣūl works note him only as a rare Ḥanafī who rejected istiḥsān (juristic preference).

Instead, al-Ṭahāwī’s discussions of legal theory emerge as part of a very different kind of intellectual activity. Where the uṣūlīs probe complex and even hypothetical questions of theology, epistemology and linguistics in their quest to elaborate a comprehensive system of textual interpretation, al-Ṭahāwī’s statements on legal theory appear only when required to support his interpretations of specific revealed texts, with the exception of the theory-driven introduction to Aḥkām al-Qurʿān. Rather than being organized by topics of legal theory, his works are structured with the objective of demonstrating concretely how scholars may interpret revealed texts, individually and in combination with other legal sources, in order to discover a single, coherent Divine Message and to produce individually coherent rules. I label this work of demonstration ‘practical hermeneutics.’


After a brief introduction ranging from a single paragraph in *Sharḥ maʿānī al-āthār* to seven pages in *Ahkām al-Qurʾān*, each chapter in al-Ṭahāwī’s works of practical hermeneutics takes the same basic literary form: al-Ṭahāwī first adduces one or more revealed texts in apparent conflict or whose import is unclear, and then shows in detail how the uncertainty can be removed or the apparent contradiction resolved in order to arrive at God’s intent, usually in the form of a rule of positive law. While the specific methods al-Ṭahāwī uses to reach his conclusions vary in frequency between different works, his overall catalog of techniques is notably stable. These include *isnād* and *matn* criticism; invoking consensus or the authority of the Companions and Successors; abrogation; hermeneutical principles such as the primacy of the unrestricted (ʿāmm) and apparent (zāhir) meanings; *ijtihād*; descriptions of the range of existing opinions and the subsequent discrediting of all but one; and limited appeals to communal practice (ʿamal). Occasionally, al-Ṭahāwī pauses to justify or explain his use of these or other techniques and principles; these explicit discussions of theory constitute the major material for this study. While each chapter generally employs only a small selection of these techniques, al-Ṭahāwī’s arguments consistently move from text to meaning. The literary form of al-Ṭahāwī’s hermeneutical works thus stands in clear contrast to both the theory-driven discussions of the *uṣūl al-fiqh* genre and to the earlier *Risāla* of al-Shāfiʿī, in which practical examples illustrate al-Shāfiʿī’s theoretical claims, rather than the other way around.

In the legal sphere, al-Ṭahāwī’s hermeneutical writing functions to affirm the relationship between texts of revelation and the rules of positive law by showing in detail
how specific rules may be derived from revealed texts. Al-Ṭaḥāwī’s hermeneutics-driven approach is not limited to the field of law, however. While Ḥākām al-Qur‘ān and Sharḥ ma‘ānī al-āthār are exclusively concerned with demonstrating the relationship between revelation and positive law, his third major hermeneutical text, Sharḥ mushkil al-āthār, demonstrates the interpretation and harmonization of both legal and non-legal hadīths. Al-Ṭaḥāwī applies many of the same hermeneutical techniques to non-legal hadīths that he uses in legal derivation. However, because this study is concerned with the legal theory underlying al-Ṭaḥāwī’s arguments, I will from this point on be focusing on practical hermeneutics as a form of legal writing.

Although ‘practical hermeneutics’ is not a term in general use in the field of Islamic intellectual history, a small number of scholars in other fields have invoked this term in their descriptions of modern Christian interpretive practices. In “Practical Hermeneutics: Noticing in Bible Study Interaction,” Esa Lehtinen frames practical hermeneutics as the way in which the interpretation of sacred texts is shaped by the daily, local context of the interpreters, such that they produce a “reading that is morally relevant to the participants.”16 In contrast, in Practical Hermeneutics: A Revised Agenda for Ministry, Charles Winquist is concerned with the interpretation of revelation as word-event rather than as text, but similarly emphasizes how interpretation is bound to the “situational presence of a new consciousness in the world of historical experience.”17

Both Lehtinen and Winquist, then, appeal to the phrase ‘practical hermeneutics’ to evoke

the way in which interpretation is inevitably (and, for them, usefully) responsive to the needs and contexts of interpreters. Further, they employ the term ‘practical’ in order to highlight a perceived divide between the theoretical discussions of hermeneutics among academics and the applied interpretive practices of believers and clergy in a pastoral context.

In contrast, al-Ṭahāwī’s theory of hermeneutics is firmly intentionalist—like the legal theorists of the mature uṣūl tradition, he holds that the goal of scriptural interpretation is to discover God’s intent as encoded in revealed texts. Although al-Ṭahāwī and other Muslim jurists recognize that the interpretive process may be impeded by questions surrounding source preservation and interaction or the sheer complexity of human language, they nonetheless view the meaning of revelation as unchanging and independent of the perspective of the interpreter.\(^{18}\) The questions concerning the role of the interpreter in creating meaning that arose in discussions of hermeneutics among European philosophers and theologians beginning in the 18\(^{th}\) century (and which shape the thought of Lehtinen and Winquist above) are thus entirely absent from medieval Muslim jurists’ approach to textual interpretation.\(^{19}\) Nor, when I term al-Ṭahāwī’s hermeneutical writings ‘practical,’ do I mean to suggest an activity of laypeople as opposed to that of scholars. Al-Ṭahāwī’s works of practical hermeneutics were composed

\(^{18}\) On the intentionalism of the classical uṣūl tradition, see Bernard Weiss, *The Spirit of Islamic Law* (Athens, Georgia: University of Georgia Press, 1998), 52-65. In the modern period, some Muslim intellectuals have sought to develop a hermeneutic that is responsive to what they identify as the changing needs of interpreters in the modern world, drawing in particular on an expanded role for the legal theory concept of *maslahah* (public interest). For an overview of these efforts, see Wael Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 500-550.

by a scholar for a scholarly audience, and he, like other Muslim jurists, would deny that non-experts have any role in deriving the law from revelation.

Instead, by the phrase ‘practical hermeneutics,’ I propose to signal, first, al-Ṭahāwī’s practical aim of producing individual rules of positive law from the canon of revealed sources and, second, the way in which al-Ṭahāwī’s works serve as extended illustrations of his fundamental claim that a single, coherent Divine Message underlies the sometimes conflicting texts of revelation. Although al-Ṭahāwī never states this second claim directly, his project is implicit in the anxieties he expresses in the introductions to *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār* concerning those who see contradictions or absurdities in the corpus of Prophetic *ḥadīths*.20 Each chapter of his hermeneutical works then shows in detail how God’s intent may be derived from one or more revealed texts by means of a correct application of hermeneutical procedures. Al-Ṭahāwī does not portray the interpretive process as simple or mechanical; nonetheless, across many hundreds of chapters, al-Ṭahāwī concretely demonstrates the derivation of meaning from text according to hermeneutical principles both implicit and explicit.

In one sense, al-Ṭahāwī’s works of practical hermeneutics can be understood as a response to a specifically Ḥanafī crisis: as the authority of Prophetic *ḥadīth* grew over the 3rd/9th century, the Ḥanafīs came to be widely criticized as *ahl al-raʿy* (the partisans of mere opinion), with the implication that Ḥanafī positive law was insufficiently tethered to revelation.21 In the late 3rd/9th century, al-Ṭahāwī’s Ḥanafī predecessor, Muḥammad ibn Shujāʿ al-Thaljī (d. 266/880), is reported to have responded to these criticisms by

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21 On the *ahl al-raʿy* and *ahl al-ḥadīth*, see Chapter One, “Qurʾān and Sunna,” pp. 56-60.
providing Abū Ḥanīfa’s legal doctrine with a basis in *ḥadīth*, and to have composed a work entitled *Taṣḥīḥ al-āthār*. However, with only the title of Ibn Shujāʿ’s work surviving, the literary form of his arguments remains unknown. Later, when al-Ṭaḥāwī took up the task of tethering Ḥanafī *fiqh* to revelation, we know that he chose to do so by painstakingly demonstrating chapter by chapter how the correct interpretation of revealed texts produces established rules of Ḥanafī positive law.

In a larger sense, al-Ṭaḥāwī’s works of practical hermeneutics should be understood not only as a Ḥanafī phenomenon, but also as part of the broader evolution of Islamic law and Islamic legal writing from the formative into the post-formative periods. The earliest decades of the formative period of Islamic law, through most of the 2nd/8th century, were characterized by great diversity of doctrine, but have left little literary trace. The end of the 2nd/8th century and first half of the 3rd/9th century then witness a flowering of authoritative *fiqh* literature, including the appearance of major compendia associated with the jurists who would later come to be considered the eponymous founders of the mature madhhab. Al-Ṭaḥāwī represents the late formative period of Islamic law, a period stretching from the establishment of *fiqh* handbooks until the maturation of the madhhab and of *uṣūl al-fiqh* in the mid-4th/10th century. With the rules of positive law already set down, the jurists of the late formative period grappled with

23 While the overall function of al-Ṭaḥāwī’s works of practical hermeneutics may be to provide Ḥanafī *fiqh* with a basis in revelation, al-Ṭaḥāwī’s legal reasoning is not exclusively instrumental. In the course of this study, we will see that al-Ṭaḥāwī’s fidelity to a set of hermeneutical principles sometimes leads him to depart from established Ḥanafī legal positions, suggesting that legal theory plays both justificatory and productive roles in al-Ṭaḥāwī’s thought. On instrumental and philosophical reasoning in al-Ṭaḥāwī’s works, see Chapter Two, “Companion and Successor Ḥadīths,” pp. 125-129.
two major, closely-related challenges: 1) to explain the relationship of established laws to revelation, including the increasingly-revered corpus of Prophetic ḥadīth; and 2) to explain the great diversity of legal doctrine. The second challenge is reflected in the growth of ikhtilāf al-fuqahāʾ literature, a genre in which al-Ṭahāwī composed one of the earliest substantial works.

Practical hermeneutics, in contrast, can be understood as the response to the challenge of articulating the relationship of the doctrine found in the major compendia to the corpus of revealed texts. It is possible to identify a number of texts structured similarly to the hermeneutical works of al-Ṭahāwī, and I suggest that these may usefully be considered together under the umbrella of practical hermeneutics. For example, al-Ṭahāwī’s Ahkām al-Qurʾān forms part of a minor genre of aḥkām al-Qurʾān works expounding the rules of positive law that may be derived from Qurʾānic verses. In Kashf al-ẓunūn, Kātib Çelebi (d. 1068/1657) states that al-Shāfīʿī was the first to compose a work of aḥkām al-Qurʾān.24 Although al-Shāfīʿī’s text is no longer extant, it is unsurprising that a figure so strongly associated with the effort to insist that all law be grounded in revelation should also be the first author in the aḥkām al-Qurʾān genre.

Kātib Çelebi lists a total of four aḥkām al-Qurʾān works preceding that of al-Ṭahāwī: those of al-Shāfīʿī, Abū al-Ḥasan ‘Alī ibn Ḥajar al-Saʿdī (d. 244/858-859), the Qāḍī Abū Isḥāq Ismāʿīl ibn Isḥāq al-Azdī al-Baṣrī (d. 282/895-896) and Abū al-Ḥasan ‘Alī ibn Mūsā ibn Yazdād al-Qummī al-Ḥanafī (d. 305/917-918).25 None of the four is extant. Ibn al-Naḍīm also attributes an aḥkām al-Qurʾān work to the Başran traditionist-

25 Kātib Çelebi, Kashf al-ẓunūn, 1.20.
jurist Ḥafṣ al-Ḍarīr (d. 246/861). The author of one *ahkām* work, the Ḥanafī Abū al-Ḥasan ‘Alī ibn Mūsā al-Qummī, is reported by Ibn al-Nadīm to have composed both a work of *ahkām al-Qurʾān* and a refutation of the aspects of al-Shāfi‘ī’s *Aḥkām al-Qurʾān* which contradicted the Iraqi jurists (*Kitāb naqḍ mā khālafa fihi al-Shāfi‘ī i al-‘Irāqiyyīn fī Aḥkām al-Qurʾān*). It therefore appears that al-Qummī, like al-Ṭāḥāwī, employed the *ahkām al-Qurʾān* genre to defend Ḥanafī positive law and assert its origins in revelation.

Although *ahkām al-Qurʾān* works are ostensibly concerned only with Qur’ānic law, the complex interaction of legal sources within Islamic hermeneutics means that these works must inevitably address other legal sources, especially Prophetic *ḥadīths*. Indeed, very few chapters in al-Ṭāḥāwī’s *Aḥkām al-Qurʾān* treat the Qurʾān only. Rather, Qurʾānic verses serve as the starting point for hermeneutical discussions that often devote more space to addressing issues related to *ḥadīth* and other sources than to the Qurʾān itself. Although we cannot know the literary form of works in the *ahkām* genre before al-Ṭāḥāwī, it is notable that the chapters of later surviving works are structured similarly to the chapters of al-Ṭāḥāwī’s *Aḥkām al-Qurʾān.* For example, the Ḥanafī al-Jaṣṣāṣ (d. 370/980-981) and the Shāfi‘ī al-Kiyā al-Harāsī (d. 504/1110-1111) begin each chapter or subsection of a chapter of their extant *Aḥkām al-Qurʾān* works by citing a Qurʾānic verse and then describing the hermeneutical issues involved in deriving

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27 Ibn al-Nadīm, *Fihrist*, vol. 2, pt. 2.32. Although Ibn al-Nadīm clearly lists these as two separate works, it seems possible that they represent a single text.
28 To give an approximation of the prevalence of *ḥadīths* in *Aḥkām al-Qurʾān*, within the 21 chapters that comprise *Kitāb al-Ṣalāt*, only 3 chapters do not contain Prophetic *ḥadīths*. Of those 3 chapters, 2 contain Companion *ḥadīths*. Only 1 chapter contains no *ḥadīths* at all.
29 It appears, however, that al-Ṭāḥāwī was unusual in the overall structure of his *Aḥkām al-Qurʾān*; where he organizes the book according to the normal chapters of a work of *fiqh* and then addresses the Qurʾānic verses relevant to each topic, later authors of *Aḥkām al-Qurʾān* texts generally follow the tafsīr genre by organizing their works according to the chapter of the Qurʾān.
the associated rules of positive law.\textsuperscript{30} Like al-Ṭahāwī, they acknowledge the conflicting interpretations of other jurists while still asserting the positive law of their own madhab. The attention devoted in these works to hermeneutical issues that transcend the Qurʾān itself suggests that the common classification of \textit{ahkām al-Qurʾān} works as a subgenre of \textit{tafsīr} (Qurʾānic exegesis) fails to capture the scope and purpose of \textit{ahkām al-Qurʾān} as an intellectual project.\textsuperscript{31} By labeling the \textit{ahkām al-Qurʾān} genre as part of a broader category of practical hermeneutical writing, I hope to draw attention to the way in which these works may share more in common with works of \textit{ḥadīth} hermeneutics than they do with most \textit{tafsīr}.

Al-Ṭahāwī’s other two works of practical hermeneutics, \textit{Sharḥ mushkil al-āthār} and \textit{Sharh maʿānī al-āthār}, belong to a second genre closely associated with the late formative period: \textit{mukhtalif al-ḥadīth} (the harmonization of Prophetic reports). Once again, Kātip Çelebi attributes the first work of this genre to al-Shāfīʿī.\textsuperscript{32} In the introduction to his \textit{Ikhtilāf al-ḥadīth}, al-Shāfīʿī emphasizes that the Qurʾān and Sunna function together to express the law.\textsuperscript{33} Each chapter of al-Shāfīʿī’s work then adduces one


\textsuperscript{31} Al-Ṭahāwī’s \textit{Aḥkām al-Qurʾān} is categorized as a work of \textit{tafsīr} in Miṣbaḥ Allāh ‘Abd al-Bāqī, \textit{al-Imām Abū Jaʿfar al-Ṭahāwī wa-atharuhu fī naqṣ al-ḥadīth} (Cairo: Dār al-Salām, 2010), 64 and ‘Abd al-Majīd Maḥmūd ‘Abd al-Majīd, \textit{al-Imām al-Ṭahāwī muḥaddithan} (Cairo: Dār al-Muḥaddithīn, 2008), 139. Hussein Abdul-Raof describes \textit{ahkām al-Qurʾān} works in general as a variety of \textit{tafsīr} in \textit{Schools of Qurʾānic Exegesis: Genesis and Development} (New York: Routledge, 2010), 140. The \textit{tafsīr} of al-Qurṭubī (d. 671/1273), entitled \textit{al-Jāmīʿ li-ahkām al-Qurʾān}, appears to be an intermediate case (ed. Aḥmad al-Burdiṇī and Ibrāhīm ʿAṭīṣḥ (Cairo: Dār al-Kutub al-Miṣṣīṭa, 1964)). Although it gives special attention to the rules of \textit{fiqh} contained in the Qurʾān and draws upon other legal sources in doing so, it does not contain the complex hermeneutical arguments found in the works of al-Ṭahāwī and al-Jaṣṣās, for example.

\textsuperscript{32} Kātip Çelebi, \textit{Kashf al-ẓunūn}, 1.32.

\textsuperscript{33} Al-Shāfīʿī, \textit{Ikhtilāf al-ḥadīth}, vol. 10 of \textit{Kitāb al-Umm}, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib (al-Manṣūra, Egypt: Dār al-Wafāʾ, 2005), 5-6. For a discussion of and translated excerpts from al-Shāfīʿī’s \textit{Ikhtilāf al-
or more ḥadīths and resolves the attendant hermeneutical issues in order to derive a related law; the organization of the work seems to be influenced loosely by the chapter organization of fiqh works. In contrast, while the next known work in the genre, the Taʾwil mukhtalif al-ḥadīth of Ibn Qutayba (d. 276/889), likewise begins each chapter by adducing one or more problematic ḥadīths and then resolving the apparent difficulties, Ibn Qutayba devotes most of his chapters to theological, rather than legal, topics. Kâtip Çelebi lists a third work of this title by the Shāfiʿī Zakaʾīya ibn Yahyā al-Sājī (d. 307/919-920), now lost.

Although al-Ṭahāwī’s Sharḥ mushkil al-āthār and Sharḥ maʿānī al-āthār do not employ a term linguistically related to ‘ikhtilāf’ in their titles, they share the literary form and objectives of al-Shāfiʿī and Ibn Qutayba’s earlier mukhtalif al-ḥadīth works. Like al-Shāfiʿī’s Ikhtilāf al-ḥadīth, al-Ṭahāwī’s Sharḥ maʿānī al-āthār is exclusively concerned with the derivation of law from revealed sources. Al-Ṭahāwī’s work represents an advance over al-Shāfiʿī’s earlier work in several respects, however; it is both a much more substantial work—four volumes compared to the hundred or so pages of al-Shāfiʿī’s Ikhtilāf—and also more rigorously organized according to the topics of fiqh. In contrast, al-Ṭahāwī’s Sharḥ mushkil al-āthār more closely resembles Ibn Qutayba’s Taʾwil mukhtalif al-ḥadīth in its apparent lack of an overall organizing principle and its attention

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35 Kâtip Çelebi, Kashf al-zunūn, 1.32.
to both legal and non-legal topics. Once again, al-Ṭaḥāwī’s 15-volume work is considerably more substantial than Ibn Qutayba’s single volume.

Traditionally, al-Ṭaḥāwī’s Aḥkām al-Qur’ān, Sharḥ mushkil al-āthār and Sharḥ maʿānī al-āthār have been analyzed separately as belonging to either the aḥkām al-Qur’ān or the mukhtalif al-ḥadīth genres. By applying the label of ‘practical hermeneutics’ to all three of al-Ṭaḥāwī’s works, I hope to draw attention to the way in which, despite their surface differences, they all share a literary form that moves from revealed text to law (or, sometimes in Sharḥ mushkil al-āthār, to non-legal meanings derived from revelation). This shared literary form points to a common project underlying all three of al-Ṭaḥāwī’s works, and indeed all the works of practical hermeneutics that I have described above: the assertion that the revealed texts of Qur’ān and Sunna form a single, coherent Divine Message from which a coherent Divine Law may be derived. Nor is the concept of practical hermeneutics limited to works traditionally ascribed to the genres of aḥkām al-Qur’ān or mukhtalif al-ḥadīth; the Tahdhīb al-āthār and Tafsīr of al-Ṭaḥāwī’s contemporary al-Ṭabarī (d. 310/923) both devote considerable attention to determining the legal implications of the revealed texts he adduces, even though they are not exclusively works of practical hermeneutics as described above.

‘Practical hermeneutics,’ then, is a label that transcends traditional notions of generic boundaries by pointing to a larger intellectual project among jurists of the late

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formative period of Islamic law. It cannot be coincidental that al-Shāfiʿī, who strongly argued for the basis of law in revelation, is identified as the author of the earliest works in both the mukhtalif al-ḥadīth and the aḥkām al-Qurʾān genres. His project was, in a sense, completed by al-Ṭahāwī, who made the same argument on behalf of the Ḥanafīs, who had until then been criticized as ahl al-raʿy, implying that their fiqh was not based in revelation. That is not to say that jurists after al-Ṭahāwī ceased to compose works of mukhtalif al-ḥadīth or aḥkām al-Qurʾān; genres, once established, often develop in ways that are not determined by the needs that originally inspired them. However, while a few Ḥanafīs before al-Ṭahāwī may have begun the project of grounding Ḥanafī fiqh in revelation as noted above, it is al-Ṭahāwī whose works were preserved and extensively commented upon by Ḥanafīs and others.37 His lifetime therefore seems to represent a crucial moment in the process by which the basis of law in revelation—at least in theory, if not as an obvious characteristic of specific rules of positive law—ceased to be an issue dividing jurists of the emerging madhhab, and became unquestioned doctrine.38

In fact, it seems likely that the more pressing task for jurists of the post-formative period would be to tether the principles of usūl al-fiqh, rather than the texts of revelation, to established rules of positive law. In his Structural Interrelations of Theory and Practice in Islamic Law, Ahmad Atif Ahmad identifies a genre of legal writing which he labels takhrīj al-furūʿ ‘alā al-usūl, or ‘deriving the rules of positive law from the bases of the law.’ Works of this genre, which appear first at the turn of the 5th/11th century but

37 See below, p. 41.
38 Hallaq labels this process the rationalist-traditionalist synthesis. He likewise locates it in the first half of the 4th/10th century, although he associates the full articulation of this synthesis with the Shāfiʿī Ibn Surayj (d. 306/918) (Hallaq, History of Islamic Legal Theories, 33).
become more common in the 6th/12th century, demonstrate how legal rules can be established on the basis of known principles of *uṣūl* in much the same way that works of practical hermeneutics demonstrate the derivation of law from text. Both genres respond to the anxieties of their own periods by asserting a connection between bodies of texts and ideas that had come to be perceived as insufficiently connected.

The close analysis of the legal theory contained in the works of practical hermeneutics listed above and other, yet-to-be-identified works is beyond the scope of this study. However, it is reasonable to assume that, like al-Ṭaḥāwī’s works, other surviving early texts that we may label ‘practical hermeneutics’ may also prove to be particularly rich sources for reconstructing legal theory in the late formative period. Where early *fiqh* or *khilāf* (juristic disagreement) works, for example, often provide no justification at all for the rules they expound or only a kind of shorthand explanation, the nature of practical hermeneutics is to demonstrate the relationship between text and rule. Within al-Ṭaḥāwī’s own corpus, for example, one could learn from the *Mukhtašar* or *Ikhtilāf al-‘ulamā* that he was familiar with concepts such as *ijmā’, *qiyyās, ‘āmm:khāṣṣ* and *istihsān*, but only the detailed legal derivations of his works of practical hermeneutics reveal the nuances of how he understood these concepts, and the ways in which his understandings differ sometimes quite dramatically from how they were understood by most theorists of the mature *uṣūl* tradition.

To some degree, the differences between the legal theories of al-Ṭaḥāwī and later jurists are attributable to the different periods in which they lived; al-Ṭaḥāwī’s

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hermeneutical works are particularly valuable to researchers because they represent rare survivals from the transitional period between late formative and post-formative Islamic law. However, in the course of this study, I will indicate a number of places where the differences between al-Ṭahāwī’s theories and those of the ʿusūlis seem to be due not to the passage of time, but rather to the different imperatives of the genres of practical hermeneutics and ʿusūl al-fiqh. While ʿusūlis sought elegance and consistency in their descriptions of the workings of the law, al-Ṭahāwī’s legal theories require great flexibility in order to be useful tools for the practical business of interpreting revealed texts.

It is possible, therefore, that our current narrative of the history of Islamic legal theory is in need of revision. Instead of a single trajectory of development from the first theoretical statements of the early jurists to the canonization of ʿusūl al-fiqh as a genre, we might instead trace two literary forms addressing questions of legal theory: one in close contact with the practical interpretation of texts, and another in which the elaboration of theory became an end in itself.  

Much work remains to be done on the legal theory contained in works of practical hermeneutics before this possibility can be confirmed or refuted. This study contributes to that work by offering the first full-length analysis of one jurist’s legal theory as reflected in his practical works of legal interpretation.

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40 Norman Calder terms this function of ʿusūl al-fiqh “virtuoso patterning” (Calder, Studies in Early Muslim Jurisprudence, 1999).
41 A careful comparison of al-Shāfiʿī’s legal theory in the theory-driven Risāla and in the works I have here labeled practical hermeneutics might be particularly instructive.
Approach and Structure

This study reconstructs al-Ṭahāwī’s legal theory from the many scattered discussions of theoretical topics found in his works of practical hermeneutics, with occasional reference to his other extant legal texts. Wherever possible, I place al-Ṭahāwī’s ideas in the context of other jurists of the formative and early classical periods. In particular, I compare al-Ṭahāwī’s positions to those of al-Shāfi‘ī as well as earlier and later Ḥanafīs in order to evaluate claims regarding his intellectual debt to jurists of those schools. Because of the difficulty of locating theoretical passages in works of practical hermeneutics and of understanding the relationship of those passages to a jurist’s overall legal theory, my comparisons between al-Ṭahāwī and other jurists are of necessity primarily drawn from works of usūl al-fiqh rather than works that might be labeled practical hermeneutics. It is the difficulty of determining the details of a jurist’s legal theory from the brief, isolated passages in works of practical hermeneutics that makes the present study vital. As mentioned above, much important work remains to be done identifying and analyzing hermeneutical texts before we will be in a position to characterize the relationship among texts of practical hermeneutics or that between practical hermeneutics and usūl al-fiqh. As a result, my suggestions regarding al-Ṭahāwī’s place in a narrative of the development of Islamic legal thought of the late 3rd/9th and early 4th/10th centuries are necessarily tentative.

In my selection of topics I have been guided by the frequency and urgency with which al-Ṭahāwī returns to each issue of legal theory in the course of his works. Passages on legal theory in al-Ṭahāwī’s works can be divided into two categories: discussions of
the authority and relative status of legal sources, and discussions of interpretive paradigms for understanding revealed texts. Because al-Ṭahāwī’s discussions of legal sources are more complex and detailed than his discussions of hermeneutical techniques, I devote individual chapters to Qurʾān and Sunna (Chapter One), Companion and Successor Hadīths (Chapter Two), and Consensus and the Practice of the Community (Chapter Three).

Although al-Ṭahāwī does not set out an overarching theory of legal sources, I base my chapter order loosely on a list that appears repeatedly across his hermeneutical works: Qurʾān, Sunna and Consensus. Al-Ṭahāwī adduces this list, always in the same order, whenever he wishes to assert that an interpretive move requires evidence to support it. For instance, in Sharḥ mushkil al-āthār he refutes an interlocutor’s argument on the grounds that no one may depart from a certain established opinion supported by most of the Companions without evidence from Qurʾān, Sunna or Consensus, while in Sharḥ maʾānī al-āthār he asserts that it is impermissible to choose between two possible interpretations of a certain hadīth without evidence from the Qurʾān, Sunna or Consensus. This list thus in some sense stands in for the idea of authoritative legal sources.

42 Al-Ṭahāwī, Maʾānī, 1.416, 1.453, 3.10, 3.176, 4.98, 4.144; Ahkām, 2.335; Mushkil, 8.294-295, 9.205-206, 9.209, 10.16, 10.108. The same list appears in al-Ṭahāwī’s Ḥaqīda in an article stating that Muslims must renounce anyone who does not believe in these three sources (al-Ḥaqīda al-Ṭahāwīya, ed. ʿAbd Allāh Hajjāj (Cairo: Sharikat al-Salām al-ʿĀlamīya, 1980), 101).

43 Al-Shāfiʿī employs similar lists of authorities in the same contexts (Joseph Lowry, “Does Shāfiʿī Have a Theory of “Four Sources” of Law?,” in Studies in Islamic Legal Theory, ed. Bernard Weiss (Leiden: Brill, 2002), 35), although his lists are considerably less stable than al-Ṭahāwī’s list of Qurʾān, Sunna and Consensus.

44 Al-Ṭahāwī, Mushkil, 10:16-20; Maʾānī, 1.453f.
Occasionally, other elements appear in these lists. Although Companion opinions appear only twice in al-Ṭahāwī’s list of authoritative sources,\(^45\) they play a far larger role in al-Ṭahāwī’s hermeneutical arguments in practice than these lists would seem to suggest. I therefore devote a chapter to exploring the role of the Companions and Successors in al-Ṭahāwī’s legal thought. Communal practice (ʿamal) does not appear at all in al-Ṭahāwī’s lists of sources and plays only a small role in his works; nonetheless, I include a discussion of it in my chapter on Consensus because of al-Ṭahāwī’s unusual statements concerning it and its complicated relationship with his concept of Consensus. Finally, al-Ṭahāwī sometimes mentions qiyāṣ, naẓar or raʿy along with other sources of legal authority;\(^46\) however, several passages clarify that al-Ṭahāwī does not consider these to be legal sources in themselves, but rather a hermeneutical method to resort to in the absence of evidence from the authoritative sources of Qurʿān, Sunna and Consensus.\(^47\) I therefore discuss rational methods of legal derivation in Chapter Four, “Hermeneutics.”

The remainder of that chapter takes its structure from the only extended theory-driven discussion in all of al-Ṭahāwī’s extant works, the introduction to Aḥkām al-Qurʿān. Within the seven pages of the introduction, al-Ṭahāwī establishes a hierarchical relationship between three sets of hermeneutical terms: muḥkam:mutashābih (unequivocal:equivocal), zāhir:bāṭin (apparent:non-apparent) and ʿāmm:khāṣṣ (unrestricted:restricted), and I have made an exploration of the relationship among these

\(^{45}\) Al-Ṭahāwī, Aḥkām, 1.475-6 (Companions only); Maʿānī, 1.11 (Companions and Successors). The opinions of the Companions are also discussed as a source of law in a passage of al-Mukhtāsar in which al-Ṭahāwī describes the method and sources that judges should use to derive the law (Mukhtāsar al-Ṭahāwī, ed. Abū al-Wafāʾ al-Afghānī (Hyderabad: Lajnat Iḥyāʾ al-Maʿārif al-Nuʿmānīya, 1951), 327).

\(^{46}\) Al-Ṭahāwī, Aḥkām, 1.416, 1.475-6, 2.20; Maʿānī, 3.246.

\(^{47}\) Al-Ṭahāwī, Mushkil, 10.108, 10.141-142, 13.40-41 and 15.230. The final example states that qiyāṣ is used in cases where there is no evidence from Qurʿān or Sunna. All other examples mention Qurʿān, Sunna and Consensus.
the subject of the first half of that chapter.\footnote{Al-Ṭahāwī, Abhām, 1.59-66.} In the remainder of this introductory chapter, I provide an overview of al-Ṭahāwī’s life and works before addressing questions related to the authorship and composition of the three works used as the major sources of this study.

Life

Abū Jaʿfar Aḥmad ibn Muḥammad ibn Salāma al-Ṭahāwī was born in Ṭahā or the nearby village of Ṭahṭūṭ in Upper Egypt,\footnote{Al-Samʿānī lists al-Ṭahāwī among the notable residents of Ṭahā in al-Ansāb, ed. Muḥammad ʿAwāma (Beirut: Muḥammad Amīn Damaj, 1970), 8.217. Ibn Yūnus al-Ṣadafī reports that al-Ṭahāwī was not, in fact, from Ṭahā, but from the nearby village of Ṭahṭūṭ; he preferred not to be called al-Ṭahṭūṭī because of the nisba’s resemblance to an unpleasant word (Tārīkh Ibn Yūnus al-Miṣrī, ed. ʿAbd al-Fattāḥ Fathī (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000), 1.21). See also Yāqūt al-Ḥamawī, Muḥaqaṣ al-buldān (Beirut: Dār Ṣādir, 1995), 4.22.} most probably in 239/853,\footnote{Ibn Yūnus, Tārīkh, 1.22; al-Samʿānī, al-Ansāb, 8.218; al-Ṣayyārī, Akhbār Abī Ḥanīfa wa-ṣuṣṭābihi (Beirut: ʿĀlam al-Kutub, 1995), 168.} although some biographers give birth dates as early as 229/843.\footnote{Ibn Yūnus, Tārīkh, 1.22; al-Samʿānī, al-Ansāb, 8.218; al-Ṣayyārī, Akhbār Abī Ḥanīfa wa-ṣuṣṭābihi (Beirut: ʿĀlam al-Kutub, 1995), 168.} His ancestors, members of the Ḥajr branch of the Azd tribe, were likely among the earliest Arab settlers in Egypt, almost all of whom came from South Arabian or Yemeni tribes, including Azd.\footnote{Al-Laknawī gives al-Ṭahāwī’s birth year as 229, 230 or 238 (al-Fawāʾid al-bahīya fi tarājim al-Hanafīya, ed. Ahmad al-Zuʾbī (Beirut: Dār al-Arqām, 1998), 59, 62); al-Suyūṭī gives the year as 237 (Ṭabaqāt al-ḥuffaz, ed. ʿAlī Muḥammad ʿUmar (Cairo: Maktabat Wahba, 1973), 337).} His grandfather Salāma was one of the army notables (wujūh al-jund) who responded to a missive from the anti-caliph Ibrāhīm ibn al-Mahdī calling the Egyptian jund to renounce the ʿAbbāsid caliph al-Maʾmūn (r. 198-218/813-833) and the Egyptian governor al-Sarī ibn al-Ḥakam (r. 200-201/816, 201-205/817-820) upon al-Maʾmūn’s controversial naming of ʿAlī al-Riḍā (d. 203/818) as his heir in 202/817. After leading his troops in support of al-Sarī’s
rival in the complicated internal power struggles in Egypt at that time, Salāma and his son Ibrāhīm were eventually captured, brought to Fustāṭ and executed on al-Sarī’s command in 204/819.\footnote{Al-Kindī, *The Governors and Judges of Egypt*: or, *Kitāb el ʿumāra* (al-wulāh) wa Kitāb el quḍāh of El Kindī, Together with an Appendix Derived Mostly from Rafʾ al-ʾisr by Ibn Ḥajar (Baghdad: Maktabat al-Muthannā, 1964), 168-171. On the struggle for political control of Egypt in the first decade of the 3\textsuperscript{rd}/9\textsuperscript{th} century, see Kennedy, “Egypt as a Province in the Islamic Caliphate,” 81-82.}

Considerably less is known about al-Ṭāḥāwī’s parents. In his entry for al-Ṭāḥāwī, Ibn Khallikān reports that al-Ṭāḥāwī’s father died in 264/877-8.\footnote{Ibn Ḥajar al-Asqalānī, *Maʿrifa, 1986*, 354; al-Ṭāḥāwī also transmitted *ḥadīth* from his father, although the absence of any *ṭabaqāt* entries on Muḥammad suggests that he was not an important traditionist. A few passages of al-Ṭāḥāwī’s own works indicate that his father was an expert on poetry. In *Sharḥ mushkil al-āthār*, al-Ṭāḥāwī adduces a variant of a poem on his father’s authority, and in his transmission of al-Shāfīʿī’s *al-Sunan*, he gives his father as the source for two additional lines of a poem transmitted by al-Shāfīʿī to al-Muzanī.\footnote{Ibn Abī al-Wafāʾ al-Qurashī, *al-Jawāhir al-mudīya fi ṭabaqāt al-Ḥanafīya*, ed. Sayyida Mahr al-Nisāʾ (Hyderabad: Maṭbaʿat Majlis Dāʾ irat al-Maʿārif al-ʿUthmānīya, 1988), 1.165. Modern studies of al-Ṭāḥāwī generally identify his mother as a sister of al-Muzanī, who was one of the most important students of al-Shāfīʿī.\footnote{E.g., Nurit Tsafrir, “Abū Jaʿfar al-Ṭāḥāwī (d. 321/933),” in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. Oussama Arābi, David Powers and Susan Spectoršky (Leiden: Brill, 2013), 123; *The Encyclopaedia of Islam*, New Edition, s.v. “al-Ṭāḥāwī” by Norman Calder; Melchert, *Formation of the Sunni Schools of Law*, 117. Some Arabic-language studies of al-Ṭāḥāwī extrapolate further and suggest that al-Ṭāḥāwī’s mother was the sister of al-Muzanī whom al-Ṣuyūṭī lists among the Shāfīʿī jurists (*fuqahāʾ*) of Egypt in *Ḥusn al-muhāḍara fi akhbār Mīr wa-l-Qāhira* (ed. Muḥammad ibn Ṭāḥāwī al-ṣalāḥiyya, 1967), 1.399), and speculate that she may therefore have been her son’s first teacher (e.g., ’Abd al-Majīd, *al-Īmām al-Ṭāḥāwī muḥaddithan*, 75; Ḥūn, “Muqaddimah al-taḥqīq,” 15; Ahmad, *Abū Jaʿfar al-Ṭāḥāwī al-imām al-muhaddith al-ṣalāḥiyya*, 73).} However, the earliest biographies indicate only that al-Ṭāḥāwī was a student of al-Muzanī.\footnote{Ibn Yūnus, *Ṭārikh*, 1.21; al-Ṣaymārī, *Akhbār Abī Ḥanīfā*, 168.} The first mention of a familial relationship between the two...
jurists appears in the entry on al-Muzanī in al-Kalīlī’s (d. 446/1054) al-Irshād fī ma ‘rifat ‘ulamā’ al-ḥadīth.59 Two centuries later, Ibn Khallikān (d. 681/1282) again describes al-Ṭaḥāwī as the nephew of al-Muzanī, citing al-Kalīlī as his source.60 From that time, their familial relationship becomes an important part of the biographical tradition.61

It is certainly possible that al-Ṭaḥāwī was the nephew of al-Muzanī and earlier biographers simply omitted to mention their relationship. However, it is perhaps more probable that the familial relationship between the two jurists was a detail added later to heighten the narrative drama of al-Ṭaḥāwī’s decision to affiliate with the Ḥanafīs after his early study of Shāfī‘ī doctrine under al-Muzanī. Biographers give various accounts of al-Ṭaḥāwī’s transfer to Ḥanafism. Ibn Yūnus (d. 347/958) states only that al-Ṭaḥāwī began to study Ḥanafī doctrine when the Ḥanafī ‘Aḥmad ibn Abī ‘Imrān came to Egypt, and that al-Muzanī reproached al-Ṭaḥāwī in a dream for his abandonment of him.62 Al-Ṣaymarī (d. 436/1044) reports that al-Ṭaḥāwī joined the Ḥanafīs in anger at an insult from al-Muzanī.63 Al-Kalīlī, however, portrays al-Ṭaḥāwī’s decision as an oblique act of deference to al-Muzanī, writing that al-Ṭaḥāwī frequently observed his uncle studying the books of Abū Ḥanīfa and was inspired to study them himself.64 Later biographers would adduce and reframe these three basic narratives in various combinations in their attempts

60 Ibn Khallikān, Wafayāt al-aʿyān, 1.71.
62 Ibn Yūnus, Tārīkh, 1.21.
63 Al-Ṣaymarī, Akhbār Abī Ḥanīfa, 168. While al-Ṣaymarī gives no context for al-Muzanī’s insulting comment, some later biographers report that al-Muzanī denigrated al-Ṭaḥāwī’s abilities when the latter had difficulty understanding a legal question (e.g., Ibn Ḥajar, Lisān al-mīzān, 1.417). That is, the man who became the head of the Ḥanafīs in Egypt was incapable of understanding a Shāfī‘ī legal point.
64 Al-Kalīlī, al-Irshād, 1.431.
to explain a shift in madhhab affiliation that was, from the viewpoint of the mature legal
tradition, very much in need of explanation.65

It is less clear that al-Ṭahāwī’s shift in affiliation was a noteworthy event by the
standards of his own time. Although Monique Bernards and John Nawas have found that
only about 5% of jurists who died before the year 250/864 are recorded by the
biographical literature as having changed madhhab{s, they also found that 54% of jurists
of the same period are not reported to have belonged to any established Sunni madhhab.66
Further, Nurit Tsafrir has demonstrated that later biographers sometimes claimed as
members of their own madhhab jurists and traditionists who may have had only weak ties
to the school.67 The biographical literature suggests that al-Ṭahāwī’s change of madhhab
occurred less than a decade after the end of the period under consideration by Nawas and
Bernards.68 Given the wide variation in what it meant for an individual to be claimed as a
member of a madhhab in the biographical tradition, Bernards and Nawas may be too
quick in their conclusion that changing madhhab{s has always been a “marginal and
unique” practice.69

Al-Ṭahāwī lived during an important transitional period during which the
madhhab{s were developing into their mature form. Eyyup Said Kaya points to the

65 Jaques analyzes depictions of the relationship between al-Ṭahāwī and al-Muzanî in the biographical
tradition in his article “The Contestation and Resolution of Inter- and Intra-School Conflicts through
Biography.” He argues convincingly that the evolving and competing narratives of al-Ṭahāwī’s move to
Hanafism reflect his biographers’ need to define, first, the inter-madhhab relationship between the Ḥanafīs
and Shāfi‘īs and, later, internal relationships within the Shāfi‘ī madhhab (“Contestation and Resolution,”
133).
66 Monique Bernards and John Nawas, “The Geographic Distribution of Muslim Jurists during the First
68 See p. 30 below.
69 Bernards and Nawas, “Geographic Distribution,” 171n5.
appearance of legal handbooks (*mukhtaṣars*) and commentaries, the compilation of Prophetic traditions, the first works of legal theory, and the labeling of some jurists as heads of the Ḥanafī school, as evidence for the maturation of the Ḥanafī *madhhab* in the 4th/10th century. Al-Ṭahāwī’s career exemplifies many of these developments: he composed a *Mukhtaṣar* as well as commentaries on the works of his Ḥanafī predecessor al-Shaybānī; gathered Prophetic *ḥadīths* in his works of practical hermeneutics and perhaps in a *ḥadīth* compilation; and was considered by later biographers to have been the head of the Ḥanafīs in Egypt for his time. He is also reported to have written a work on the virtues of Abū Ḥanīfa, another indication of the development of *madhhab* identity.

However, the Ḥanafī and Shāfiʿī *madhhab* s of al-Ṭahāwī’s time in Egypt had not yet developed what Melchert terms their “guild” nature; that is, they did not yet constitute “a body of jurisprudents with a regular method of reproducing itself” and

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72 Although *Sharḥ maʿāni al-āthār*, *Sharḥ mushkil al-āthār* and *Akhkām al-Qurʾān* are not primarily *ḥadīth* compilations, al-Ṭahāwī devotes considerable space to gathering and evaluating the different *insnāds* for the traditions he adduces. On *Ṣaḥīḥ al-āthār*, a manuscript held by the Khuda Baksh library in Patna, India and attributed to al-Ṭahāwī, see p. 42.
73 Al-Laknawī, *al-Fawāʾid al-bahiya*, 62; al-Šaymaḵī, *Akhbār Abī Ḥanīfa*, 168; al-Šīrāzī, *Ṭabaqāt al-fuqahāʾ*, ed. Iḥšān ʿAbbās (Beirut: Dār al-Rāʾ al-ʿArabī, 1970), 142; al-Suṣūṭī, *Ṭabaqāt al-huffāz*, 337; Ibn ʿAsākir, *Tārīkh Dimashq*, ed. ʿUmar ibn Gharāma al-ʿAmrawī (Beirut: Dār al-Fikr, 1995-2000), 5.369. It is difficult to know from these reports whether al-Ṭahāwī was acknowledged as the head of the Ḥanafīs by his contemporaries, or only recognized as such posthumously by biographers working with the mature *madhhab* tradition. The latter seems more likely, given the immature state of Ḥanafism in Egypt during al-Ṭahāwī’s lifetime.
“distinguishing those qualified from those not qualified.”

Al-Ṭahāwī’s study under al-Muzanī and later under Ḥanafīs including Ibn Abī Ṭīmān, Bakkār ibn Qutayba and others, was not undertaken as part of the transmission of a set canon, and his relationships with his Shāfiʿī and Ḥanafī teachers seem to have been personal rather than institutional. In this context, a student’s decision to change madhhab affiliation is unlikely to have had the meaning that it would within the mature guild system. For al-Ṭahāwī, affiliation with a madhhab appears to have signified a personal loyalty to the doctrine of Abū Ḥanīfa, Abū Yūsuf and al-Shaybānī, albeit one that did not constrain him from expressing his opposition to their opinions in cases where his own legal reasoning led him to a different result.

Nor was al-Ṭahāwī, at the time of his affiliation with the Ḥanafīs, a major jurist whose change in loyalties would have represented a recanting of an established career and body of work. None of his own works are said to date from his time as a Shāfiʿī, although he did transmit al-Shāfiʿī’s al-Sunan al-maʿthūra from al-Muzanī. If we accept accounts that al-Ṭahāwī’s affiliation followed swiftly upon the arrival of Aḥmad ibn Abī Ṭīmān in Egypt in 258/871-2, then al-Ṭahāwī was probably not yet twenty years old when he began to study with the Ḥanafīs. At the very latest, al-Ṭahāwī’s study with Ibn Abī Ṭīmān predates his journey to Syria in 268-9/881-2, where he studied with the Ḥanafī judge Abū Khāzim (d. 292/904). It is therefore difficult to agree with Tsafrir that

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75 Melchert, *Formation of the Sunni Schools of Law*, xvi. Other criteria that Melchert applies to determine the maturation of the madhhab include the recognition of particular jurists as heads of the school in their time and the appearance of a commentary literature which served as a curriculum for transmitting the school’s doctrine (xvi, 60).
“al-Ṭahāwī’s transfer to the Ḥanafī school must have shocked his contemporaries, particularly his family,” although it certainly was shocking to later biographers.

It is probably only in hindsight, from the perspective of a mature madhhab tradition which viewed al-Ṭahāwī as having been the head of the Ḥanafīs in Egypt, that one young man’s decision to study with the Ḥanafīs after having studied with the Shāfīʿīs appears particularly noteworthy. It may also be that the biographical tradition’s enduring interest in al-Ṭahāwī’s change of madhab is due to the way in which these ‘conversion’ narratives dramatize al-Ṭahāwī’s complex relationship with both madhhab. Far from completely abandoning Shāfīʿī thought upon his move to Ḥanafism, al-Ṭahāwī justified Ḥanafī law using many of the elements of al-Shāfīʿī’s traditionalism. An evaluation of al-Ṭahāwī’s relationship with both Shāfīʿī and Ḥanafī thought is one of the major tasks of this study.

Although it is not possible to reconstruct al-Ṭahāwī’s motivation in affiliating with the Ḥanafīs with any certainty from the biographical literature, we can draw some conclusions about the probable effects of his decision. While the majority of Egyptian Muslims of al-Ṭahāwī’s time were Mālikīs and Shāfīʿīs, the qāḍīs appointed by the ʿAbbāsids were usually Ḥanafīs, and Egyptian Ḥanafism in general was closely associated with the central ʿAbbāsid government in Iraq. When Aḥmad ibn Ṭūlūn (r. 254-70/868-84) established autonomous Ṭūlūnid rule in Egypt, he allowed the ʿAbbāsid-

appointed Ḥanafī judge Bakkār ibn Qutayba (d. 270/884) to remain in his post. The next Ṭūlūnid qāḍī was likewise an Iraqi Ḥanafī, and the first Shāfiʿī qāḍī of Egypt, Abū Zurʿa, was not appointed until 284/897.

In becoming a Ḥanafī, al-Ṭaḥāwī therefore aligned himself with the Egyptian judiciary, which was in turn closely aligned with the ‘Abbāsid governors of Egypt and, later, the Ṭūlūnids. His change in madḥhab thus may have restored some of the access to power that his family had lost after his grandfather’s execution and the caliph al-Mu’taṣim’s (r. 218-227/833-842) later abolishment of the ‘atāʾ (military salary) of the Egyptian jund, a move that put a final end to the already declining power of the jund families. That al-Ṭaḥāwī may have had a political motive in becoming a Ḥanafī is suggested by his earliest biographer, Ibn Yūnus, who quotes al-Ṭaḥāwī as saying that, “when Aḥmad ibn Abī ʿImrān came to us as a qāḍī over Egypt, I became his disciple and adopted his doctrine.” In fact, Ibn Abī ʿImrān appears to have served briefly as a judge in Egypt only after the death of Bakkār ibn Qutayba in 270/884, more than a decade after Ibn Abī ʿImrān’s probable arrival in Egypt, if he ever was in fact a judge at all. By noting Ibn Abī ʿImrān’s role as qāḍī, Ibn Yūnus draws a connection between the judiciary and al-Ṭaḥāwī’s affiliation with the Ḥanafīs.

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82 Kennedy, “Egypt as a Province in the Islamic Caliphate,” 84.
83 Ibn Yūnus, Tārīkh, 1.21.
84 For the timing of Ibn Abī ʿImrān’s judgeship, see al-Dhahabī, Siyar aʿlām al-nubalāʾ, ed. Shu’ayb Arnāʾūṭ and Ḥusayn al-Asad (Beirut: Mu’assasat al-Risāla, 1981), 13.335. On his arrival in Egypt, see Melchert, Formation of the Sunni Schools of Law, 117-118.
The little we know of al-Ṭahāwī’s subsequent career suggests that he succeeded in forging close ties with the Ḥanafī qādīs of Egypt and, through them, the Egyptian court. We have already observed that al-Ṭahāwī’s first Ḥanafī teacher was Aḥmad ibn Abī ‘Imrān, a Baghdādī Ḥanafī who came to Egypt in the company of a tax collector for the ‘Abbāsids and later may have served briefly as qādī.\(^{85}\) In 268-9/881-2, al-Ṭahāwī traveled to Syria, where he studied with the Baghdādī Ḥanafī Abū Khāzim ‘Abd al-Ḥamīd ibn ‘Abd al-ʿAzīz (d. 292/904), who was then qādī of Damascus.\(^{86}\) Another Ḥanafī qādī of Egypt, the Başran Bakkār ibn Qutayba (d. 270/883), also served as al-Ṭahāwī’s teacher in ḥadīth and perhaps in fiqh.\(^{87}\) In his professional life, al-Ṭahāwī served as kātib (secretary) for both Bakkār ibn Qutayba and for his successor, the Ḥanafī qādī Muḥammad ibn ‘Abda ibn Ḥarb (277 or 278/890 or 891-283/896). He was also the latter’s deputy (nāʾib).\(^{88}\)

In addition, various literary sources portray al-Ṭahāwī as closely connected with Aḥmad ibn Ṭūlūn: one anecdote shows al-Ṭahāwī convincing Ibn Ṭūlūn to restore to him the title on one of his grandfather’s seized estates in Upper Egypt,\(^{89}\) while another suggests that al-Ṭahāwī’s journey to Damascus was undertaken at Ibn Ṭūlūn’s behest in order to confirm a technical detail of a charitable trust (waqf) for a hospital.\(^{90}\) Elsewhere,

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\(^{86}\) Ibn ʿAsākir, Tārīkh Dimashq, 5.367; al-Ṣaymarī, Akhbār Abī Ḥanīfa, 168; al-Kindī, Governors and Judges of Egypt, 505.

\(^{87}\) Ibn Abī al-Wafā’, al-Jawāhir al-mudīyya, 1.165;


\(^{89}\) Abī Sālim Muḥammad ibn Ṭalḥa, al-ʿIqd al-farīd lil-malik al-saʿīd (Cairo: al-Maṭbaʿa al-Wahbiyya, 1866), 57-8.

\(^{90}\) Al-Mustaʿṣimī, Majmūʿat ḥikam wa ʿādāb, in Thalāth rasāʾil (Istanbul: Maṭbaʿa al-Jawāʿib, 1881), 74.
al-Ṭaḥāwī is described as part of Ibn Ṭūlūn’s retinue (*min khāṣṣatihi*).\(^91\) Al-Ṭaḥāwī’s close ties to the Ṭūlūnids also caused him to be suspected of corruption: in the *Fihrist*, Ibn al-Nadīm reports al-Ṭaḥāwī composed a work at Ibn Ṭūlūn’s behest justifying the latter’s improper marriage to a slave girl.\(^92\) Al-Ṭaḥāwī’s ties to the judiciary also made him vulnerable to court politics. Ibn Zūlāq reports that when the qādī Muḥammad ibn Ṭāba hid in his home for ten years in order to avoid persecution from the new Ṭūlūnid ruler, Ḥārūn (r. 283/896-292/904), the governor instead pursued Ibn Ṭāba’s associates, imprisoning al-Ṭaḥāwī for a time.\(^93\)

After the restoration of Ḥabīsid rule in Egypt in 292/905, al-Ṭaḥāwī appears to have retained his close ties to the judiciary, even as the qādīs sent from Baghdad began to represent a wider range of madhhab. The Shāfiʿī qādī Abū Ṭālib al-Ḥusayn ibn Ḥarb (293/906-311/24) was so eager to appoint al-Ṭaḥāwī as a court witness (*shāhid*) that he took advantage of the absence of other court witnesses on the Hajj in 306/919 to make the appointment over their objections.\(^94\) When the Ḥabīsid ruler replaced Abū Ṭālib with the Baghdadī Abū Allāh ibn Ibrāhīm ibn Mukram, the latter wrote to al-Ṭaḥāwī and three other important Egyptians, asking them to select a deputy so that he would not need to come to Egypt himself.\(^95\) Ibn Zūlāq reports anecdotes about the deference shown to al-Ṭaḥāwī by a number of qādīs including the Ḥanafī Abū al-

\[^91\] Khayr al-Dīn al-Ziriklī, *al-ʿlām gāmūs tarājum* (Beirut: 1969), 197. Ibn Ḥajar also transmits an anecdote from Ibn Zūlāq in which al-Ṭaḥāwī gains the attention of Khumārawayh (r. 270-282/884-896), the second Ṭūlūnid ruler, by adding a prayer for the ruler’s strength and longevity to a document he was writing. As a result of this attention, al-Ṭaḥāwī claims, his colleagues became jealous of him (Ibn Ḥajar, *Lisān al-mızān*, 1.420).


\[^93\] Al-Kindī, *Governors and Judges of Egypt*, 517-518.

\[^94\] Ibn Ḥajar, *Lisān al-mızān*, 1.421. Ibn Ḥajar reports that al-Ṭaḥāwī’s rivals objected to his being appointed court witness because it would add to his already considerable influence as a leading scholar.

\[^95\] Al-Kindī, *Governors and Judges of Egypt*, 532.
Raḥmān ibn Isḥāq al-Jawharī (313/925-314/926), the Shāfiʿī ‘Abd Allāh ibn Aḥmad ibn Zabr (317/929), and the Mālikī Aḥmad ibn Ibrāhīm ibn Ḥammād (321/933-322/934). 96

In addition to his activities as a jurist, al-Ṭahāwī was also an active traditionist who both collected ḥadīths and practiced isnād criticism. 97 As the Tūlūnid court became a major cultural center in the second half of the 3rd/9th century, Egypt drew traditionists from across the Islamic world. As a result, al-Ṭahāwī was able to collect ḥadīths from important traditionists without making the multiple study journeys typical of many of the ahl al-hadīth. 98 Al-Ṭahāwī was also unusual for a Ḥanafī of his time in that he consistently adduced the ḥadīths he collected in support of his legal positions in works including Aḥkām al-Qurʿān, Sharḥ maʿānī al-āthār and Sharḥ mushkil al-āthār. 99 Indeed,

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96 Ibn Ḥajar, Lisān al-miẓān, 1.422.
97 Scholars including al-Bayhaqī (d. 458/1066) and Ibn Taymīya (d. 728/1328) would later question al-Ṭahāwī’s skill and sincerity in rijāl criticism, suggesting that he was unscrupulous in accepting the isnād of reports that supported his own opinions, while finding ways to reject any that disproved his legal conclusions (al-Bayhaqī, Ma rifat al-sunan wa-l-āthār, ed. ‘Abd al-Mu ṭī Amīn Qal’ājī (Cairo: Dār al-Waṭā‘, 1991), 1.219; Ibn Taymīya, Minhāj al-sumn al-nabawīyya fi naqḍ kalām al-Shī‘a al-Qudariyya, ed. Muḥammad Rashād Sālim (Riyadh: Jāma‘a Muḥammad ibn Sa‘ūd, 1986), 8.195). The evaluation of these claims is beyond the scope of this study; recent Arabic-language studies of al-Ṭahāwī devote considerable energy to refuting all aspersions on al-Ṭahāwī’s character or skill as a ḥadīth critic (e.g., ‘Abd al-Bāqī, al-Imām Abū Ja‘far al-Ṭahāwī wa-atharuhu fī naqḍ al-ḥadīth, 90ff; Ahmad, Abū Ja‘far al-Ṭahāwī al-imām al-muhaddith al-faqīḥ, 141ff; ‘Abd al-Majīd, al-Imām al-Ṭahāwī muhaddithan, 193ff).
99 In contrast, al-Ṭahāwī rarely adds ḥadīths or provides other explanations of his reasoning in his epitome of Ḥanafi fiqh, al-Mukhtaṣar. The stylistic contrast between al-Mukhtaṣar and al-Ṭahāwī’s works of practical hermeneutics named above suggests that Ya’akov Meron drew too strong a conclusion when he pointed to al-Ṭahāwī’s Mukhtaṣar as evidence that “Ḥanafi law in its Ancient period does not offer examples of highly developed legal thought similar to that apparent in contemporary Jewish law” (“The Development of Legal Thought in Hanafi Texts,” 77). Although Meron is correct in observing that al-Ṭahāwī’s Mukhtaṣar does not display the detailed legal reasoning characteristic of later Islamic legal handbooks, the briefest perusal of al-Ṭahāwī’s works of practical hermeneutics demonstrates that the
al-Ṭahāwī’s most significant and lasting contribution to Ḥanafism was to provide established Ḥanafi fiqh with a foundation in Prophetic hadīth. The biographical tradition dramatizes al-Ṭahāwī’s unusual joining of Ḥanafi fiqh and hadīth study in the form of an anecdote that Ibn Ḥajar transmits from Ibn Zūlāq (d. 387/997). After attending the study circle of the qāḍī Muḥammad ibn ‘Abda, a mysterious but important stranger asks al-Ṭahāwī and a Shāfī jurist, Abū Saʿīd al-Fāryābī, to remain behind. When the stranger tests the two jurists by asking about an obscure isnād, al-Fāryābī is reduced to silence, while al-Ṭahāwī recites the isnād and accompanying hadīth flawlessly. In response, the mysterious stranger exclaims, “Don’t you know what you have just said? …This evening I have seen you among the jurists (fuqahā’) acting in their sphere, and now I see you acting in the sphere of the traditionists (ahl al-ḥadīth). How few are those who combine the two!”

Although later biographers would consider al-Ṭahāwī the head of the Egyptian Ḥanafīs of his day, he had no important students in law, perhaps reflecting the weak roots of Ḥanafism in Egypt at the time. Very few jurists are reported to have studied under him, although biographers record a number of those who transmitted hadīth from absence of explanation is a characteristic of the Muktaṣar genre in al-Ṭahāwī’s time, not a characteristic of his style of legal thought.

I discuss this point in detail in Chapter One, “Qurʾān and Sunna.” See also Melchert, “Traditionist-Jurisprudents,” 397-398, for the roles of both al-Ṭahāwī and Ibn Shujāʿ al-Thaljī (d. 266/880) in this process.

Ibn Ḥajar, Lisān al-mīzan, 1.419. For a shortened version of the same anecdote, see al-Dahhabī, Tadhkiraṭ al-ḥuffāẓ, 3.22.

101 Al-Laknawi, al-Fawāʾid al-bahīya, 62; al-Ṣaymarī, Akhbār Abī Ḥanīfa, 168; al-Shirāzī, Ṭabaqāt al-fuqahā’, 142; al-Suyūṭī, Ṭabaqāt al-ḥuffāẓ, 337; Ibn ‘Asākir, Tārīkh Dimashq, 5.369. Given the incomplete institutionalization of Ḥanafism during al-Ṭahāwī’s lifetime, it is likely only in retrospect, taking into account his stature and intellectual output, that he could be considered the head of the Egyptian Ḥanafīs.
him.\textsuperscript{103} His few students in law include his own son, Abū al-Ḥasan ʿAlī ibn Aḥmad al-Ṭahāwī (fl. 350/961-2).\textsuperscript{104} The only other jurists reported to be al-Ṭahāwī’s students in law in Ibn Abī al-Wafā’ī’s al-Jawāhir al-muḍīya are the qāḍī Muḥammad ibn Badr ibn ʿAbd al-ʿAzīz al-Ṣayrafi (d. 330/941), Abū Bakr Aḥmad ibn Muḥammad al-Damaghānī (n.d.) and Saʿīd ibn Muḥammad al-Bardaʿī (n.d.).\textsuperscript{105} Al-Ṭahāwī’s importance within the Ḥanafī madhhab instead derives from his works, a number of which attracted commentary traditions, discussed below. Al-Ṭahāwī died in Egypt in Dhū al-Qaʿda 321/933, most likely in his early eighties.\textsuperscript{106} He is buried in a mausoleum in the Qarāfa cemetery of present-day Cairo.\textsuperscript{107}

\textbf{An Overview of al-Ṭahāwī’s Works}

The substantial body of extant works available to scholars studying al-Ṭahāwī distinguishes him from other late 3\textsuperscript{rd}/9\textsuperscript{th} and early 4\textsuperscript{th}/10\textsuperscript{th}-century jurists, as the briefest perusal of Sezgin’s \textit{Geschichte des arabischen Schrifttums} will confirm.\textsuperscript{108} The most complete catalog of al-Ṭahāwī’s works in the biographical tradition is found in \textit{al-Jawāhir al-muḍīya} of Ibn Abī al-Wafā’ī (d. 775/1373), which is the source for titles listed

\begin{itemize}
\item \textsuperscript{103} See p. 35n98 above.
\item \textsuperscript{104} Ibn Ḥajar, \textit{Lisān al-mīzān}, 1.418; Ibn Abī al-Wafā’ī, \textit{al-Jawāhir al-muḍīya}, 1.166, 2.156.
\item \textsuperscript{105} Ibn Abī al-Wafā’ī, \textit{al-Jawāhir al-muḍīya}, 2.320, 2.193, 1.401. The latter is reported to be one of the disciples (aṣḥāb) of al-Ṭahāwī; it is not entirely clear whether he studied law or only ḥadīth with him.
\item \textsuperscript{108} Sezgin’s entry on al-Ṭahāwī can be found in \textit{Geschichte des arabischen Schrifttums} (Leiden: Brill, 1967-1994), 1.439-442; for other jurists of the late 3\textsuperscript{rd}/9\textsuperscript{th} and early 4\textsuperscript{th}/10\textsuperscript{th} centuries, see 1.433ff.
\end{itemize}
below except where otherwise indicated.\footnote{Ibn Abī al-Wafā’ \textit{al-Jawāhir al-mudīya}, 1.165-7. The earliest substantial list of al-Ṭahhāwī’s works is found in Ibn al-Nadīm’s \textit{Fihrist}, vol. 2, pt. 1.31-2; it contains all of al-Ṭahhāwī’s authenticated works that are extant today, as well as some lost works. Ibn Abī al-Wafā’ s list contains almost all of the works found in Ibn al-Nadīm and includes approximately ten additional titles. These appear to be minor works, except for \textit{al-Tārīkh al-kabīr} and \textit{al-Tafsīr}; both of which the biographical tradition suggests were major compendiums. I have not identified Ibn Abī al-Wafā’ s source for these additional titles. Other extensive lists of al-Ṭahhāwī’s works can be found in al-Laknawī, \textit{al-Fawā'id al-bahiyya}, 60 and Qīnālīzādah, \textit{Ṭabaqāt al-Ḥanafīya}, 2.26, but these appear to be derivative of Ibn Abī al-Wafā’.} In the following pages I give a brief overview of all of the works attributed to al-Ṭahhāwī, both lost and extant, in order to suggest the wide scope of his intellectual activity in the fields of theology, exegesis, history/biography, hadīth and law. The three works that are the subject of this study, however, transcend individual categories such as law, hadīth or exegesis. \textit{Sharḥ maʿānī al-āthār} and \textit{Sharḥ mushkil al-āthār} can be considered works on both law and hadīth, while \textit{Akkām al-Qurʾān} has been described as a specialized form of exegesis. What unites all three works and distinguishes them from al-Ṭahhāwī’s other extant compositions is the kind of intellectual activity they represent—an activity that I have termed practical hermeneutics.

\textit{Theology}

Al-Ṭahhāwī’s well-known \textit{ʿAqīda (Creed)}, along with that of his contemporary al-Ashʿarī (d. 324/935-6), represents one of the earliest statements of Sunni belief of undoubted authenticity.\footnote{On both, see W. Montgomery Watt, \textit{Islamic Creeds: A Selection} (Edinburgh: Edinburgh University Press, 1994), 41-56. Curiously, Ibn Abī al-Wafā’ does not include the \textit{ʿAqīda} in his list of al-Ṭahhāwī’s works; however, it is mentioned by Ibn al-Nadīm, \textit{Fihrist}, vol. 2, pt. 1.32.} The \textit{ʿAqīda} remains the focus of an active commentary tradition today.\footnote{The commentaries on the \textit{ʿAqīda} are too numerous to list here; the most important of them is that of Ibn Abī al-ʿIzz al-Ḥanafi (d. 792/1390), \textit{Sharḥ al-ʿAqīda al-Ṭahhāwīya}, ed. ʿAbd Allāh ibn ʿAbd al-Muḥsin al-Turkī and Shuʿayb al-Arnāʿūṯ (Beirut: Muʿassasat al-Risāla, 1987). A number of medieval and modern}
treatise) bound together and attributed to al-Ṭahāwī are held by the Princeton University Libraries, although they remain unauthenticated and are not reported in the biographical tradition.112 Al-Ṭahāwī may also have written a heresiography entitled *Kitāb al-nihal wa-aḥkāmihā wa-sifātihā wa-ajnāsihā* (Religious Sects: Their Laws, Characteristics and Types).113

**Biography/History**

Al-Ṭahāwī’s major historical and biographical work, *al-Tārīkh al-kabīr* (The Comprehensive Chronicle), is no longer extant, but was a source (perhaps indirectly) for Ibn Abī al-Wafāʾ’s *al-Jawāhir al-muḍīya*.114 Also lost are al-Ṭahāwī’s *Manāqib Abī Ḥanīfa* (Virtues of Abū Ḥanīfa) and his *Radd ʿalā Abī ʿUbayd fī āhā wa-ajnāsihā* (A Refutation of Abū ʿUbayd’s Errors), which is about the *Kitāb al-nasab* (Genealogy) of Abū ʿUbayd al-Qāsim ibn Sallām (d. ca. 224/838).115

**Exegesis**

Al-Ṭahāwī is reported to have written one thousand pages on the Qurʾān. That work may be identical to the unauthenticated manuscript entitled *Tafsīr al-Qurʾān*.
(Exegesis of the Qurʾān) discovered at the Jāmiʿ al-Shaykh in Alexandria bearing al-Ṭahāwī’s name and beginning with Q 8/al-Anfāl.116 The partially extant Aḥkām al-Qurʾān (The Legal Rulings of the Qurʾān) has been described in other studies as a specialized form of Qurʾānic exegesis, because it systematically expounds the legal rulings that can be derived from each legal verse in conjunction with other sources of the law.117 As I have argued above,118 however, labeling al-Ṭahāwī’s Aḥkām al-Qurʾān a work of tafsīr does not do justice to its hermeneutical ambitions, and I treat it in this study as a work of practical hermeneutics.

Hadīth

Three of al-Ṭahāwī’s major works, Sharḥ maʿānī al-āthār (An Elucidation of the Meaning of Reports), Sharḥ mushkil al-āthār (An Elucidation of Problematic Reports) and Aḥkām al-Qurʾān (The Legal Rulings of the Qurʾān), all contain substantial discussion of the authority of Prophetic hadīth and varying degrees of discussion of the reliability of particular hadīths and transmitters. The first two are fully extant and have been published in multiple editions;119 the latter has been described above under

117 The first two of the original four volumes of this work are extant in unicum. Sa’d al-Dīn Ūnāl, the text’s modern editor, notes that the final two volumes appear to have been lost or stolen from the library in the Amasya province of northeastern Turkey where the manuscript was found, based on the fact that the catalog numbers indicate four volumes (Űnāl, “Muqaddimat al-taḥqīq,” 11). Unlike a traditional exegesis, however, it is organized according to the chapters of a fiqh work, not the chapters of the Qurʾān. The first volume contains chapters on ṣalāt (prayer) to ḥiṭaf (seclusion in a mosque), while the second volume begins with the Hajj (pilgrimage) and ends with mukātaba (contract of manumission). I have not found mention of a commentary tradition for Aḥkām al-Qurʾān, although the work is widely reported in the biographical tradition.
118 See above, p. 16.
119 Sharḥ maʿānī al-āthār was first published in two volumes in India in the late 19th century (Lucknow: Al-Maṭbaʿa al-Muṣṭafāʾī, 1882-1883). This study uses the indexed edition, al-Ṭahāwī, Sharḥ maʿānī al-āthār,
“Exegesis.” Sharḥ maʿānī al-āthār and Sharḥ mushkil al-āthār were influential within the Ḥanafī tradition for their justification of Ḥanafī law on the basis of Prophetic ḥadīth.

Sharḥ maʿānī al-āthār in particular attracted a number of commentaries and abridgements. The Mamluk Sulṭān al-Muʿayyad (r. 815/1412-824/1421) created a chair dedicated to teaching Sharḥ maʿānī al-āthār upon building the Muʿayyadīya Mosque in Cairo.120 The chair was given to the Ḥanafī Badr al-Dīn alʿ Aynī (d. 855/1451), who composed two commentaries on the book.121 Other scholars who wrote commentaries on or abridgements of Sharḥ maʿānī al-āthār include Ibn Rushd al-Jadd (d. 520/1126) and al-Ṭaḥāwī’s biographer, the Ḥanafī Ibn Abī al-Wafā’.122 While Sharḥ mushkil al-āthār did not attract a similar commentary tradition, it was abridged by the Andalusian Mālikī jurist Abū al-Walīd al-Bājī (d. 474/1081) and then further abridged by Yūsuf ibn Mūsā ibn Muḥammad al-Malāṭī (d. 803/1400),123 a Ḥanafī judge active in Cairo and one of the teachers of Badr al-Dīn al-ʿAynī. Another abridgement is attributed to Ibn Rushd al-Jadd.124

A very short treatise on ḥadīth terminology by al-Ṭaḥāwī, al-Taswiyya bayn ḥaddathanā wa akhbaranā (The Equivalence of “He Transmitted [Directly] to Us” and
“He Informed Us”), is also extant.\(^{125}\) In it, al-Ṭahāwī argues against traditionists who hold that ‘ḥaddathanā’ exclusively indicates a ḥadīth recited by the transmitter, while ‘akhbaranā’ should be used for cases in which the recipient of a ḥadīth recites it to its original transmitter, who then confirms that the recitation was correct. Instead, he argues, the Qurʾān and Sunna use the verbs akhbara and ḥadatha interchangeably, and so too may ḥadīth transmitters.

In Sharḥ mushkil al-āthār, al-Ṭahāwī also references another work on ḥadīth criticism, now lost, entitled Naqd al-Mudallisīn lil-Karabīṣī (Refutation of the Book Entitled Those Who Conceal Defects in the Transmission of Prophetic Reports by al-Karabīṣī).\(^{126}\) We have also already had occasion above to note that al-Ṭahāwī is the transmitter of al-Shāfī‘ī’s al-Sunan through al-Muzanī. Finally, the Khuda Baksh Library in Patna, India holds a manuscript attributed to al-Ṭahāwī entitled Ṣaḥīḥ al-āthār;\(^{127}\) however, no biographer attributes such a work to al-Ṭahāwī. To the best of my knowledge, no one has yet authenticated the manuscript or described its contents.

Law

A number of al-Ṭahāwī’s major legal works are both extant and published. The three works that form the subject of this study, Sharḥ ma‘ānī al-āthār, Sharḥ mushkil al-

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\(^{126}\) Al-Ṭahāwī, Mushkil, 6.382. In Sharḥ mushkil al-āthār, al-Ṭahāwī merely indicates that he wrote a book on al-Karabīṣī; the longer title given above is taken from the biographical tradition. Al-Karabīṣī (d. 245/859 or 248/862) was a traditionist and jurist initially associated with the Ḥanafīs who later became associated with the Shāfī‘īs. His book al-Mudallisūn is reported to criticize the traditionist and Qurʾān reader al-Aʿmash (d. 148/765).

āthār and Aḥkām al-Qurʿān, treat law as well as ḥadīth. Al-Ṭahāwī’s al-Muktaṣar fī-l-fiqh (Concise Manual of Legal Doctrine) represents the first Ḥanafī muktaṣar, and it attracted numerous commentaries from later Ḥanafīs including al-Jaṣṣāṣ (d. 370/980-981) and al-Sarakhsī (d. ca. 483/1090).\(^{128}\) In al-Muktaṣar, al-Ṭahāwī sets out the rules of Ḥanafī positive law almost entirely without justification or explanation, although he does state his own opinion on many of the legal questions disagreed upon by earlier Ḥanafīs.\(^{129}\) His lengthy Ikhtilāf al-ʿulamāʾ (Disagreements of the Jurists), extant only in an abridgement by al-Jaṣṣāṣ, records controversies among Sunni jurists of all schools and preserves important opinions of early jurists.\(^{130}\) Although al-Jaṣṣāṣ’s abridgement contains occasional justifications of legal positions by al-Ṭahāwī, it, too, primarily catalogs rules of positive law propounded by different jurists and schools. Because al-Muktaṣar and Ikhtilāf al-ʿulamāʾ are concerned with legal rules rather than how those rules were reached, they feature only rarely in this study.

Al-Ṭahāwī is also important as the author of an early Ḥanafī Shurūṭ (Contract Formulary) work. Jeanette Wakin has edited, analyzed and translated the chapters on sales of al-Ṭahāwī’s partially extant al-Shurūṭ al-kabīr (Comprehensive Contract

\(^{128}\) A list of commentaries is found in Kātip Çelebi, Kashf al-zunūn, 2.1627. Al-Jaṣṣāṣ’s commentary has been published as Sharḥ Muktaṣar al-Ṭahāwī fī al-fiqh al-Ḥanafī, ed. ʿIṣmat Allāh ʿInāyat Allāh Muḥammad et al. (Beirut: Dār al-Bashāʾ ir al-Islāmīya, 2010). Kātip Çelebi reports that al-Ṭahāwī composed both extended and concise versions of this work (Kashf al-zunūn, 2.1627); the one-volume extant work is the concise Muktaṣar.

\(^{129}\) Al-Ṭahāwī’s disinterest in resolving differences of opinion or establishing a hierarchy of authority among early Hanafī figures may be contrasted with the later Muktaṣar genre of the 7\(^{th}/13\(^{th}\) century, which Mohammad Fadel describes as working to classify systematically the authoritative opinions of the school (“The Social Logic of Taqlīd and the Rise of the Muktaṣar,” Islamic Law and Society 3, no. 2 (1996): 215-219).

\(^{130}\) Al-Jaṣṣāṣ, Muktaṣar Ikhtilāf al-ʿulamāʾ, ed. ʿAbd Allāh Nadhīr Aḥmad (Beirut: Dār al-Bashāʾ ir al-Islāmīya, 1995).
Formulary) in her *Function of Documents in Islamic Law*;\(^{131}\) two additional fragments of the work have been edited by Schacht.\(^{132}\) In contrast, *al-Shurūṭ al-ṣagḥīr* (Concise Contract Formulary) is fully extant and has been published with footnotes incorporating the existing fragments of *al-Shurūṭ al-kabīr*.\(^{133}\) The *Shurūṭ al-awsaṭ* (Medium Contract Formulary) mentioned by Ibn Abī al-Wafāʾ and others is now lost.

The biographical tradition also attributes many other legal works to al-Ṭaḥāwī that are no longer extant. His *Sharḥ al-Jāmiʾ al-kabīr* (Commentary on the Major Compendium) and *Sharḥ al-Jāmiʾ al-ṣagḥīr* (Commentary on the Minor Compendium) refer to two of the major works of Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/805). Ibn al-Nadīm lists works entitled *al-Maḥādīr wa-l-sijjilāt* (Minutes of the Court and Records of the Qāḍī’s Judgments), *al-Waṣāya* (Bequests) and *al-Farāʾiḍ* (Inheritance Shares) in his entry on al-Ṭaḥāwī. However, these are most likely identical to chapters with those titles found within al-Ṭaḥāwī’s larger compendiums.\(^{134}\) Ibn Abī al-Wafāʾ also reports that al-Ṭaḥāwī wrote “a book based upon the “Chapter on Coitus Interruptus as a Technique of Birth Control” (kitāb aṣluhu kitāb al-‘azl). Other lost legal works include *al-Nawādir al-fiqhīya* (Legal Rarities), *Ḥukm arāḍī Makka* (The Legal Status of the Lands Surrounding Mecca), *Qasm al-fayʿ wa-l-ghanāʾim* (The Division of Spoils and Booty), *Ikhtilāf al-riwāyah al-madhhab al-Kūfīyīn* (Divergent Legal Opinions of Kūfan


\(^{134}\) The first three are chapters in *al-Shurūṭ al-ṣagḥīr*; the latter two are found in *al-Mukhtaṣar*.
School), *al-Ashriba* (Alcoholic Beverages)\(^{135}\) and *Radd ʿalā ʿĪsā ibn Abān* (Refutation of ʿĪsā ibn Abān).\(^{136}\)

Lost Works of Undetermined Subject

Ibn Abī al-Wafā’ reports that al-Ṭāḥawī wrote a work called *al-Nawādir wa-l-hikāyāt* (Rarities and Recountings). In *al-Ḥawī fī sīrat al-Imām al-Ṭāḥawī*, al-Kawtharī mentions a work by al-Ṭāḥawī on *rizziya* (calamities) for which he gives no source.\(^{137}\) Ismāʿīl Pāshā also attributes works entitled *al-Khiṭābāt* (Discourses) and *al-Mishkāt* (The Lamp) to al-Ṭāḥawī, likewise giving no indication of the source for his citations.\(^{138}\)

Authorship and Composition

In the course of this study I reconstruct al-Ṭāḥawī’s legal thought by bringing together passages from his three hermeneutical works. My approach rests upon the assumption that all of these texts can meaningfully be said to be the work of a single jurist, an assumption that Norman Calder has questioned by labeling *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār* as “school texts, accumulating over time, and subject

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\(^{135}\) Al-Kawtharī mentions Kitāb al-ashriba in *al-Ḥawī*, 38, saying that it was one of al-Ṭāḥawī’s books brought to the Maghrib by Abū al-Qāsim Hishām al-Ruʿaynī. Al-Kawtharī appears to have concluded that al-Ruʿaynī brought al-Ṭāḥawī’s works to North Africa based on al-Ruʿaynī’s status as transmitter of all three of al-Ṭāḥawī’s works listed in Ibn Khayr al-Ishbīlī’s (d. 575/1179 or 80) *Fihrisa*, an important catalog of texts written in or transmitted to al-Andalus by the late 6th/12th century (*Fihrisat Ibn Khayr al-Ishbīlī*, ed. Muḥammad Fuʿād Maṣūr (Beirut: Dār al-Kutub al-ʿIlmiyya, 1998), 168, 229). However, Arnāʾūṭ notes that the next transmitter in the isnād of *Sharḥ mushkil al-āthār*, Muḥammad ibn Yaḥyā ibn Aḥmad al-Tamīmī al-Qurṭubī (d. 416/1025), traveled to Egypt, where he met al-Ruʿaynī, so it may be the al-Ruʿaynī did not personally transmit these works to North Africa (Shuʿayb Arnāʾūṭ, “Muqaddimat al-taḥqīq,” Introduction to *Sharḥ mushkil al-āthār* (Beirut: Muʿassasat al-Risāla, 2010), 18).

\(^{136}\) ʿĪsā ibn Abān (d. 189/804) was a proto-Ḥanafī. Apart from *Kitāb al-ashriba*, the works mentioned in this paragraph are all found in Ibn Abī al-Wafā’.

\(^{137}\) Al-Kawtharī, *al-Ḥawī*, 38.

perhaps to redactional supervision by Ṭaḥāwī.‘139 That is, although Calder accepts that
the works attributed to al-Ṭaḥāwī likely date from his lifetime, he does not view them as
reflecting a single, unified authorial voice. My own more extensive analysis of al-
Ṭaḥāwī’s hermeneutical works does not support this conclusion. When Calder composed
his Studies in Islamic Jurisprudence, al-Ṭaḥāwī’s Aḥkām al-Qurʾān had yet to be
discovered, and the only printed edition of Sharḥ mushkil al-āthār contained about half of
the full text. My analysis of al-Ṭaḥāwī’s hermeneutical writing is therefore based on a
larger body of textual evidence than was available to Calder as well as a closer study of
that material.

By tracing several important markers across the twenty-one total volumes of al-
Ṭaḥāwī’s extant hermeneutical works, I have found strong evidence that they represent a
single authorial voice. The three works employ a consistent range of hermeneutical
techniques and a stable technical vocabulary. The same phrases and sentences often
reappear across works in association with particular theoretical topics. They also appeal
to a consistent set of legal authorities: if a jurist is of sufficient importance to al-Ṭaḥāwī
that he cites his legal opinions at least five times in the course of his works, then that
jurist will almost certainly be mentioned in all three texts.140 In addition, al-Ṭaḥāwī’s
positions on questions of legal theory are consistent across works with only one
exception: Sharḥ maʿānī al-āthār appears in several places to permit the abrogation of

139 Calder, Studies in Early Muslim Jurisprudence, 229.
140 The major apparent exception to this rule is the absence from Sharḥ maʿānī al-āthār of any explicit
mention of al-Shāfiʿī, who appears regularly in al-Ṭaḥāwī’s other works. This absence is stylistic rather
than substantive, however; although al-Ṭaḥāwī does not refer to al-Shāfiʿī by name, he cites al-Shāfiʿī’s
ideas anonymously. In general, Sharḥ maʿānī al-āthār contains fewer named references to jurists than al-
Ṭaḥāwī’s other hermeneutical works.
Prophetic *ḥadīth* by Companion consensus, while *Sharḥ mushkil al-āthār* vehemently denies the possibility.\(^{141}\)

The observations above suggest that it is justifiable to reconstruct al-Ṭahlāwī’s legal theory by combining statements from these three works. Questions remain, however, concerning how these texts were composed and consumed. Many of the *muṣannafāt* (textual compilations) of 3\(^{rd}\)/9\(^{th}\)-century scholars cannot be considered true books; that is, they are not systematic works composed in writing and intended for written publication.\(^{142}\) Al-Ṭahlāwī’s hermeneutical works bear many of the features associated with true books, however. They begin with introductions, however brief, describing the author’s goals and approach. Although the introductions do not contain a list of each book’s contents, al-Ṭahlāwī often signals the transition between chapters in *Aḥkām al-Qur’ān* by announcing that a certain chapter has concluded.\(^{143}\) In the introduction to each work, al-Ṭahlāwī also refers to himself as composing a book (*kitāb*); the introduction to *Sharḥ ma‘ānī al-āthār* contains the conventional claim that he is writing at the request of an unnamed colleague.\(^{144}\)

Each of al-Ṭahlāwī’s hermeneutical works also contains internal cross-references to discussions that have appeared in earlier chapters or will appear in later chapters. Such references are strongly associated with books and written composition, because they

\(^{141}\) I suggest a possible explanation of this discrepancy in Chapter Three, “Consensus and the Practice of the Community,” pp. 197-207.


\(^{143}\) E.g., al-Ṭahlāwī, *Aḥkām*, 1.66, 1.457. 1.485, 2.315. *Sharḥ ma‘ānī al-āthār* likewise contains statements signaling transitions, but it is not clear to me whether these are from al-Ṭahlāwī or are the addition of the editor.

reveal that the author has a mental conception of his work as a sequential whole.\textsuperscript{145}

Examining a selection of internal references within \textit{Aḥkām al-Quṭrān}, I had no difficulty in locating the passages referred to for extant parts of the work.\textsuperscript{146} Perhaps more telling are the internal references within \textit{Sharḥ mushkil al-āthār}, a text with no apparent overall structure, although chapters in close proximity with each other often treat similar issues.\textsuperscript{147} To test the accuracy of these references, I examined Volume 7, in which I identified 11 mentions of earlier passages and 8 mentions of upcoming passages, for a total of 19 internal references.\textsuperscript{148} Of these, I was able to identify 14 of the passages referred to, although one passage stated that a certain topic would be discussed in a future chapter, when in fact I located the discussion in an earlier chapter.\textsuperscript{149} Although most references were to passages that were no more than 20 pages away, 4 references concerned passages in other volumes.\textsuperscript{150} I was unable to identify the passages referred to in 5 references;\textsuperscript{151} however, it is possible that the \textit{hadīths} mentioned appear as support for an argument without being clearly connected to the subject of the chapter, which would make them nearly impossible to locate in the absence of a word-searchable text. The frequency and overall accuracy of the internal references with \textit{Sharḥ mushkil al-āthār}

\textsuperscript{145} Schoeler, \textit{The Genesis of Literature in Islam}, 88.
\textsuperscript{146} E.g., al-Ṭābāwī, \textit{Aḥkām}, 1.398, 1.411, 1.424, 2.302.
\textsuperscript{147} For example, Chapters 114-116 all deal with \textit{hadīths} mentioning the supernatural, while Chapters 710-714 treat the adultery of non-Muslims. I also have the impression that chapters in close proximity to each other often are linked by similar hermeneutical or linguistic issues, even when their subject matter is otherwise quite different. I would tentatively describe the structure of \textit{Sharḥ mushkil al-āthār} as associational, although further study is needed to identify patterns of relationships between chapters.
\textsuperscript{148} I selected Volume 7 because of its position midway through the fifteen-volume work, so that I could determine whether al-Ṭābāwī’s internal references ever refer to distant volumes.
\textsuperscript{149} I was able to identify the passages in question for the following internal references: 7.51, 7.81, 7.95, 7.98, 7.101, 7.230, 7.250, 7.273, 7.287, 7.297, 7.310, 7.388, 7.422 and 7.454. The reference on 7.287 is to a future passage, but I located the passage in question earlier in the work.
\textsuperscript{150} Al-Ṭabawi, \textit{Mushkil}, 7.81 refers to 12.70; 7.250 refers to 5.97-98; 7.273 refers to 11.214; and 7.287 refers to 2.215-218.
\textsuperscript{151} Al-Ṭabawi, \textit{Mushkil}, 7.38, 7.165, 7.400, 7.434, and 7.453.
suggests that, despite the apparent disorganization of the text, it was composed as a book, perhaps intended to be edited later.

Al-Ṭahāwī’s hermeneutical works also show evidence of belonging to a fledging world of books making intertextual reference to each other. Although his works do not quote or reference other books on the same scale that would become common in later centuries, he refers to a number of works by title. In law, he cites titles from each of the three major madhhabs of his day as well as the Kitāb al-amwāl of the early jurist Abū ʿUbayd al-Qāsim ibn Sallām (d. 224/838). The Ḥanafī works quoted are Abū Yūsuf’s (d. 182/798) Kitāb al-imlāʾ and al-Shaybānī’s (d. 189/805) al-Siyar al-kabīr, al-Ziyādāt and al-Nawādir; he also draws upon Mālik’s (d. 179/795) al-Muwaṭṭaʾ, the Mālikī Ibn ʿAbd al-Ḥakam’s (d. 214/829) al-Mukhtaṣar al-ṣaghīr, al-Shāfiʿī’s al-Waṣāyā, and al-Muzanī’s (d. 264/868) al-Mukhtaṣar. In the fields of biography and history, he cites al-Magḥāʾī by Ibn Isḥāq (d. 150/767), al-Siyar by al-Wāqidī (d. 207/822), al-Nasab by Abū ʿUbayd, al-Ṭabaqāt by Ibn Saʿd (d. 230/845) and al-Tārīkh al-kabīr by al-Bukhārī (d. 256/870). In hadīth, linguistics, and Qurʾān, he refers

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152 Al-Ṭahāwī, Mushkil, 5.231.
153 Al-Ṭahāwī, Muʿānī, 2.11, 3.125, 3.210, 4.143.
155 Al-Ṭahāwī, Mushkil, 1.146; Aḥkām, 2.279; 2.373.
156 Al-Ṭahāwī, Mushkil, 1.90, 15.246; Aḥkām, 1.423, 1.447.
157 Al-Ṭahāwī, Mushkil, 7.228.
158 Al-Ṭahāwī, Mushkil, 11.447; Aḥkām, 2.279.
159 Al-Ṭahāwī, Mushkil, 8.250, 11.309.
160 Al-Ṭahāwī, Mushkil, 6.151. Al-Ṭahāwī also quotes an unnamed work by al-Waqiḍī, most likely al-Siyar, at Mushkil, 5.441.
161 Al-Ṭahāwī, Mushkil, 5.429, 12.199.
162 Al-Ṭahāwī, Mushkil, 1.25, 1.244, 4.131, 10.172, 12.392. Mushkil, 9.70, also most likely refers to al-Ṭabaqāt, but does not name the work by title.
163 Al-Ṭahāwī, Mushkil, 2.108, 2.109, 3.114. Al-Ṭahāwī does not mention the title of work from al-Bukhārī that he quotes in the following passages, but Arnāʿūṭ, the editor of Sharḥ mushkil al-āthār, has located the
to Gharīb al-hadīth and al-Qirāʿāt by Abū ʿUbayd,\textsuperscript{164} an unnamed Kitāb on ḥadīth by Yaḥyā ibn Maʿīn (d. 233/847),\textsuperscript{165} Maʿānī al-Qurʾān by al-Farrāʿ (d. 207/833),\textsuperscript{166} and the Islāh al-manṭiq by Ibn al-Sikkīt (d. 244/858).\textsuperscript{167}

Most importantly, however, al-Ṭaḥāwī’s hermeneutical works accurately cross-reference each other, confirming that they should be considered books representing the corpus of a single jurist. In Sharḥ mushkil al-āthār, al-Ṭaḥāwī accurately refers the reader to discussions in his earlier works of Aḥkām al-Qurʾān and Sharḥ maʿānī al-āthār.\textsuperscript{168} Aḥkām al-Qurʾān in turn makes reference to Sharḥ maʿānī al-āthār.\textsuperscript{169} The latter contains no references to earlier or later works. These internal references suggest a composition order of (1) Sharḥ maʿānī al-āthār, (2) Aḥkām al-Qurʾān and, finally, (3) Sharḥ mushkil al-āthār. The biographical tradition likewise identifies Sharḥ maʿānī al-āthār as al-Ṭaḥāwī’s first work and Sharḥ mushkil al-āthār as his last work;\textsuperscript{170} however, this information may well have been extracted from these same internal references and so cannot necessarily be taken as independent confirmation.

While there is strong evidence for considering Aḥkām al-Qurʾān, Sharḥ maʿānī al-āthār and Sharḥ mushkil al-āthār to be the written compositions of al-Ṭaḥāwī, Sharḥ

\textsuperscript{165} Al-Ṭaḥāwī, Maʿānī, 1.259.
\textsuperscript{166} Al-Ṭaḥāwī, Mushkil, 12.12, 13.384, 14.96, 15.75.
\textsuperscript{167} Al-Ṭaḥāwī, Mushkil, 12.193.
\textsuperscript{168} The passage of Sharḥ maʿānī al-āthār referenced in Mushkil, 7.175 can be found in Maʿānī, 4,395-404; the reference to Aḥkām al-Qurʾān on the same page is unidentifiable because the chapter in question is no longer extant. The passage referenced in Mushkil, 9,413 can be found in Maʿānī, 1,261-266.
\textsuperscript{169} The passage referenced in Aḥkām, 1,111 can be found in Maʿānī, 1,79-85; the passage mentioned in Aḥkām, 1,211 can be found in Maʿānī, 1,167-76.
\textsuperscript{170} Ibn Abī al-Wafāʾ, al-Jawāhir al-muḍīya, 166.
mushkil al-āthār contains some evidence of subsequent oral transmission in the form of statements at the beginning of a number of chapters indicating that Abū al-Qāsim Hishām al-Ruʿaynī (d. 376/986) transmitted the ensuing material from al-Ṭahāwī. Given the independence of individual chapters within these works, they also lend themselves to being taught orally. While the length and complexity of some individual chapters would seem to require written consumption, many other chapters are brief and suitable for oral publication. Further, it is possible that Calder is correct that some of the material for al-Ṭahāwī’s works came from earlier texts, oral or written. However, any such earlier material has been brought so thoroughly under the control of al-Ṭahāwī’s distinctive authorial voice that it is reasonable to consider all material in these works to be his. In consequence, I treat al-Ṭahāwī’s authorship of Sharḥ maʿānī al-āthār, Aḥkām al-Qurʾān and Sharḥ mushkil al-āthār as unproblematic in the chapters that follow.

171 E.g., al-Ṭahāwī, Mushkil, 7.63, 8.71, 9.126, 9.267, 12.218, 12.350, 12.473, 13.170, 13.297, 13.403. The title page of the manuscript on which Arnāʿūṭ’s edition of Sharḥ mushkil al-āthār is based also contains the statement that it is the work of al-Ṭahāwī, transmitted by (riwāya) al-Ruʿaynī (Arnāʿūṭ, “Muqaddimat al-taḥqīq,” 21).

172 In addition, given that al-Ṭahāwī’s hermeneutical works largely concern the status and interpretation of hadīth, to accept that these works were school texts accumulating over time would require a drastic reconsideration of the role of hadīth in the early Hanafī school, a proposition for which Calder provides no support. Likewise, as the first Egyptian-born Ḥanafī, al-Ṭahāwī worked in relative isolation from most Ḥanafīs of the time, and so it is not clear where such a ‘school text’ would have come from.
Chapter One: Qurʾān and Sunna

The mature ḥiṣn al-fiqh tradition understood Islamic law to be grounded in two textual sources, the Qurʾān and Sunna, both of which were revealed through the Prophet Muḥammad gradually over the course of about twenty years, from 610 CE until his death in 632 CE. While Muḥammad served as God’s conduit for both kinds of revelation, legal theorists carefully distinguished between them. The Qurʾān was wahy matlû (recited revelation), a miraculous text recording God’s direct speech. The Sunna, in contrast, was wahy ghayr matlû (non-recited revelation), a collection of reports about the statements and actions of Muḥammad that only over time came to be viewed as revelation.

Jurists distinguished between the Qurʾān and Sunna in other ways as well. While the Qurʾān was a single, well-defined text whose authenticity and accuracy were held to be epistemologically certain, the Sunna was an amorphous body of reports whose epistemological status individually and collectively was subject to debate. In order to assure the status of the Sunna as revelation, jurists developed theories of the immunity of Muḥammad to disobedience against God and to many kinds of error.

This chapter examines the Qurʾān and Sunna in al-Ṭaḥawī’s thought as expressed across his hermeneutical works of ʾAḥkām al-Qurʾān, ʾSharḥ maʿānī al-ʾaṭhār and ʾSharḥ mushkil al-ʾaṭhār. In addition to comparing his theories to those of the mature ḥiṣn al-fiqh tradition, I will consider his ideas against those of other early jurists, with special

173 Weiss, Spirit of Islamic Law, 45; Musa, Hadith as Scripture, 5.
emphasis on al-Shāfiʿī, whom one recent study has portrayed as the major source for al-Ṭaḥāwī’s discussion of the Sunna.\footnote{El Shamsy, Canonization of Islamic Law, 205-207.} After examining al-Ṭaḥāwī’s arguments for the revelatory status of Qurʾān and Sunna, I will argue that, in contrast to both al-Shāfiʿī and the mature usūl al-fiqh tradition, al-Ṭaḥāwī did not draw an absolute ontological distinction between Qurʾān and Sunna.

I will then turn to issues affecting only the Sunna, including hadīth epistemology and terminology, to argue that al-Ṭaḥāwī also does not draw a strong distinction between Prophetic and post-Prophetic hadīth, a theme which will be further explored in the next chapter. Finally, I will look at al-Ṭaḥāwī’s discussions of Muḥammad’s ijtihād (legal reasoning) to show that, while al-Ṭaḥāwī and later jurists both use discussions of Muḥammad’s infallibility to support the status of the Sunna as revelation, they do so in very different ways. While many later jurists would claim that Muḥammad is infallible even in his ijtihād, since God would not permit him to continue in an error, al-Ṭaḥāwī uses Muḥammad’s ijtihād as a kind of safety valve to explain potentially embarrassing hadīths which might cast doubt on the status of Muḥammad’s words as revelation.

Qurʾān

Unsurprisingly, al-Ṭaḥāwī’s extant legal works largely take for granted the Qurʾān as a source of law. Like the authors of later usūl al-fiqh texts, al-Ṭaḥāwī feels it unnecessary to argue in his legal works for the Qurʾān’s status as revelation.\footnote{Like other theologians, al-Ṭaḥāwī does address the status of the Qurʾān as God’s speech in his creed (al-Ṭaḥāwī, al-ʿAqīda, 8).} The only question related to the legal standing of the Qurʾān that al-Ṭaḥāwī addresses concerns the
persistence of the Qurʾān’s legal provisions after Muḥammad’s death. In response to Abū Yūsuf’s (d. 182/798) claim that certain legal verses (here, the command in Q 4/al-Nisāʾ:102 to undertake the prayer of fear) are addressed specifically to Muḥammad and therefore cease to apply after his death, al-Ṭahāwī argues that the verse in question is an example of a text that has a specific (khāṣṣ) addressee without intending to exclude other addressees. While there are indeed some (unspecified) legal verses which require Muḥammad’s physical presence for their application, this verse is not one of them. Here, the caliphs may fill Muḥammad’s role. There are also other verses in the Qurʾān which address some or all of Muḥammad’s contemporaries which nonetheless extend to all legally competent Muslims in perpetuity. For example, Q 2/al-Baqara:185 states that “all of you” who witness the new month of Ramadan should fast, yet does not intend only those who were legally competent Muslims at the time of revelation. The legal obligations (farāʾid) in these verses are not abolished with the death of the Qurʾān’s original audience; rather, all those acquiring the legal status of the original addressees become addressees as well.

It is important to note that al-Ṭahāwī is not arguing here for the general persistence of Qurʾānic obligations after the death of Muḥammad, a principle he takes for granted. Instead, he is considering a more limited subset of legal verses—those addressed specifically to Muḥammad or to a restricted set of his contemporaries—in order to

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179 Other Qurʾānic legal verses with specific addressees that al-Ṭahāwī adduces in this passage are Q 60/al-Mumtaḥana:12 (“O prophet, when believing women come to you, offering allegiance to you on the basis that they will not associate anything with God”); Q 2/al-Baqara:183 (“O you who believe, fasting is prescribed for you”); Q 2/al-Baqara:196 (“Those of you who are sick or suffering from an injury to the head—there may be a redemption”); Q 4/al-Nisāʾ:101 (“When you travel in the land, it is no sin for you to curtail your prayer”); and Q 4/al-Nisāʾ:25 (“That is for those among you who fear sin”).
determine which verses are temporally bound to his lifetime and which have more general application. The unusual length of al-Ṭahāwī’s response, at six paragraphs, suggests that he found Abū Yūsuf’s claim particularly threatening to his understanding of the Qurʾān as a stable and persistent source of law—in fact, the source that guarantees the authority of all other legal sources. In addition, the atypically large number of Qurʾānic examples adduced serves to preemptively protect other Qurʾānic verses from this kind of restrictive reading, which, if taken seriously, could disrupt such foundational legal matters as the Ramadan fast and the permission to shorten prayer while traveling. Despite the anxieties in this passage, however, al-Ṭahāwī generally considers the status of the Qurʾān as a source of law unproblematic, and I have located no other similar discussions in his extant works.

**Sunna**

*Historical Development*

The same cannot be said for the status of the Sunna as a source of law. While classical and modern Islamic legal theorists overwhelmingly recognize the Sunna as a second form of revelation on par with the Qurʾān, early Islamic legal thought was much more diverse in its understanding of the status accorded to Muḥammad’s words and actions. This diversity reflects the fact that Islamic law emerged only gradually in the first two centuries of Islamic history as a result of the efforts of private individuals seeking to understand how God wished them to act in different situations. Over time, recognizable trends emerged in how these pious individuals approached legal problems,
and jurists collectively achieved a religious authority within Muslim societies—an authority that both guaranteed and stood apart from the authority of the state.

Nonetheless, the legal field as a whole remained quite diverse until the maturation of the madhhab (schools of legal thought) in the second half of the 4th/10th century.

One thing that appears to be true of all these proto-jurists is that they considered the Qurʾān, which had been canonized during the 1st/7th century, to be legally authoritative in a general sense, even if a small number of rules of positive law seem to have developed independently of the relevant Qurʾānic material. However, the Qurʾān is not primarily a legal document, and it contains no guidance for many situations in which one might wish to know the law. To compensate for this paucity of legal guidance, pious individuals sought legal rulings for the young Muslim community through a variety of methods, including looking to raʿy (discretionary reasoning) and sunna (a pre-Islamic concept indicating the practice of the community or of important individuals within it).

Throughout most of the 1st/7th century, the term sunna did not refer primarily to the Prophet’s example, as it would later come to do. Instead, the term embraced both the exemplary actions of individuals and the customary behavior of the community as a whole.

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182 Against Schacht, however, Bravmann argues that references to the Prophet’s practice (sunna, sīra) appear from the earliest decades of Islam, even if they have not yet taken on the doctrinal character that they would later hold (Spiritual Background of Early Islam, 123-139).

It is at the end of the 1st/7th century and the beginning of the 2nd/8th century that Muḥammad’s Sunna (sunnat rasūl Allāh) appears alongside and then eventually overtakes the more general concept of sunna. The interest in Muḥammad’s Sunna indicates the growing importance attached to basing the law on specifically Islamic sources. Concurrent with the rise of interest in Muḥammad’s Sunna among legal specialists, another, partially overlapping group of pious individuals became particularly interested in the transmission and, eventually, the recording of hadīths, which concretize Muḥammad’s Sunna in the form of reports in the voices of those who witnessed his words and actions. The traditionists, or scholars interested in the collection and recording of hadīths, produced several important early hadīth collections in the 2nd/8th century, including the Muṣannaf of Ibn Jurayj (d. 150/767), the Jāmi` al-kabīr and al-Jāmi` al-ṣaghīr of Sufyān al-Thawrī (d. 161/778) and, slightly later, the Musnad of al-Ṭayālisī (d. 204/819). Although these collections do not exclusively contain Prophetic hadīths, they indicate a growing interest in preserving the Sunna of Muḥammad as text.

In the second half of the 2nd/8th century, jurists began to justify their legal doctrines with reference to Prophetic hadīth. As this practice took hold, some jurists started to perceive the legal field as divided into two camps: the ahl al-hadīth, or those

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184 Schacht discusses jurists’ Islamization and systematization of existing legal material in his Introduction to Islamic Law, 200-202.


187 Hallaq, History of Islamic Legal Theories, 18.
who relied on traditions to support their legal opinions, and the *ahl al-raʾy*, or those who held that they could use their considered opinion to answer legal questions. As the 2nd/8th and 3rd/9th centuries progressed, the term *ahl al-raʾy*, most associated with the proto-Ḥanafīs, acquired an increasingly negative connotation. The polemical language of *ahl al-ḥadīth/ahl al-raʾy*, however, obscures considerable diversity and complexity in how early jurists engaged with Prophetic reports. For example, the proto-Ḥanafī jurists, accused of being *ahl al-raʾy*, acknowledged the legal force of the Sunna just as the traditionists did. Where they differed from the traditionists was in their method of legal writing, which did not frequently cite *ḥadīth*, even while acknowledging their authority. The proto-Ḥanafīs also demanded a higher standard of evidence than the traditionalists for recognizing the authenticity of individual *ḥadīths*, a requirement which radically reduced the number of *ḥadīths* available to support a given legal argument.\(^\text{188}\)

Neither were the *ahl al-ḥadīth* a monolithic group. Some scholars were motivated by their pious desire for closeness with the Prophet to devote their energies to preserving and transmitting *ḥadīth*, while others, whom Christopher Melchert has labeled “traditionist-jurisprudents” and who were often associated with the proto-Ḥanafī school, wrote about legal questions by adducing large numbers of *ḥadīth*, usually without offering further argument.\(^\text{189}\) Instead, the form of argumentation relied upon by both traditionists and traditionist-jurisprudents concerned the authentification of *ḥadīth* by means of *rijāl* (transmitter) criticism, which inquired into the moral probity of each link


\(^{189}\) Melchert, “Traditionist-Jurisprudents,” 388.
in the chain of authorities who transmitted a *ḥadīth* from generation to generation. Even among traditionists, Prophetic *ḥadīth* was far from established as the exclusive extra-Qur’ānic source of the law; through much of the 3rd/9th century, traditionists cited mostly Companion and Successor *ḥadīths* in their collections except when engaging polemically with the *ahl al-raʾy*.  

Other jurists combined elements of the two approaches, contributing to a process that over time would lead to the disappearance of the *ahl al-ḥadīth* and *ahl al-raʾy* as opposing groups in favor of a shared understanding of the role of Prophetic Sunna among jurists. The best known of these “compromisers” is, of course, al-Shāfiʿī (d. 204/820), who reasoned about the law and its structure, but who understood legal reasoning primarily as textual hermeneutics and thus, like traditionalists, accorded great importance to *ḥadīth*. Unlike the traditionists, however, he does not engage in significant *isnād* criticism. Among the proto-Ḥanafīs, ʿĪsā b. Abān (d. 221/836) exemplifies a growing interest in *ḥadīth*; he is the first proto-Ḥanafī to write systematically about *ḥadīth* epistemology, although he does not consistently incorporate *ḥadīths* into his legal arguments. Likewise, the Iraqi Ḥanafī Ibn Shujāʿ al-Thaljī (d. 266/880) is reported to have strengthened Abū Ḥanīfa’s jurisprudence by means of *ḥadīth*, although he is also said to have had a higher allegiance to the doctrine of Abū Ḥanīfa than to Prophetic *ḥadīth*.

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190 Scott Lucas, “Principles of Traditionist Jurisprudence Reconsidered,” *The Muslim World* 100, no. 1 (2010): 152. Al-Ṭaḥāwī’s continued reliance on Companion and Successor *ḥadīth* is the subject of Chapter Two of this study.
The growth of a shared understanding of the role of Sunna is strongly evident in the works of al-Ṭahāwī. Although he still deems it necessary to argue explicitly for the authority of Prophetic hadīth, I have identified only one direct reference in his works to the divide between ahl al-hadīth and ahl al-raʾy. In the Mukhtaṣar, al-Ṭahāwī declares that a judgeship may be given “neither to a proponent of raʾy (ṣāḥib al-raʾy), who has no knowledge of Sunna and hadīth, nor to a proponent of ḥadīth (ṣāḥib al-ḥadīth), who has no knowledge of jurisprudence (fiqh).”195 Further, it was al-Ṭahāwī who would engage systematically in the work of supporting Ḥanafi fiqh with reference to the Sunna. Unlike earlier Ḥanafis, he provides full isnāds for the hadīths he adduces and sometimes practices isnād criticism. Both are characteristics of traditionist jurisprudence.196

Al-Ṭahāwī’s central role in the systematic justification of Ḥanafi positive law through Prophetic hadīth is widely acknowledged by those who have written on al-Ṭahāwī’s legal thought, including Joseph Schacht, Norman Calder, Behnam Sadeghi and Ahmed El Shamsy.197 What has received less attention is al-Ṭahāwī’s thought regarding the Sunna and its relationship to the Qurʾān. A careful study of his statements on this topic reveals that al-Ṭahāwī was not, as is often stated or implied by those writing about his role justifying Ḥanafi law through hadīth, merely continuing a project begun by al-Shāfīʿī after his change of allegiance from Shāfīʿism to Ḥanafism. Instead, al-Ṭahāwī has a theory of the relationship between Qurʾān and Sunna that is distinct from both that of al-Shāfīʿī and later jurists.

195 Al-Ṭahāwī, al-Mukhtaṣar, 332.
197 Schacht, Origins of Islamic Law, 30; Calder, Studies in Muslim Jurisprudence, 66; Sadeghi, Logic of Law Making in Islam, 131n12; El Shamsy, Canonization of Islamic Law, 205.
The Authority of the Sunna

Al-Ṭahāwī argues for the authority of Prophetic Sunna in the introductions to two of his works, *Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār*. The relevant passage in *Aḥkām al-Qurʾān* follows a discussion of the equivocal (*mutashābih*) verses of the Qurʾān.¹⁹⁸ *Mutashābih* verses, he tells us, are clarified either in another, unequivocal (*muḥkam*) Qurʾānic verse or by a rule expressed in the Prophet’s Sunna. Having established that the Sunna can explain the Qurʾān, al-Ṭahāwī pauses to state his argument for the authority of the Prophetic word in general. He writes that “God has commanded us to accept what comes from His Messenger orally (*qawlan*), just as He has commanded us to accept from him His Book as a recitation (*qabūl itābihi minhu qurʾānan*).”¹⁹⁹

Al-Ṭahāwī adduces three kinds of evidence in support of this claim. First, he cites three Qurʾānic proof texts: (1) Q 59/al-Ḥashr:7 (“Whatever the messenger gives you, take it. Whatever he forbids you to have, leave it alone”); (2) Q 4/al-Nisāʾ:64 (“We did not send any messenger except that he might be obeyed by God’s permission”); and (3) Q 14/Ibrāhīm:4 (“We never sent any messenger except using the language of his people, for him to make [the message] clear to them”). The only comment he offers on these verses is that they affirm our obligation to accept what God sends us through the Prophet [i.e., the Sunna], which is like our obligation to accept his recitation of the Qurʾān.²⁰⁰ Beyond this commentary, we may note that the first two verses concern the command to obey

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²⁰⁰ Al-Ṭahāwī, *Aḥkām*, 59-60. I use ‘Sunna’ in my discussion as a shorthand for al-Ṭahāwī’s longer “what God brought to us on the tongue of the Prophet.” For al-Ṭahāwī’s use of the term ‘Sunna,’ see below pp. 91-93.
Muḥammad, while the third defines Muḥammad’s role as clarifying God’s message. Al-Ṭaḥāwī next supports the authority of ḥadīth with ḥadīth by citing several versions of a report in which the Prophet condemns those who, after receiving an order from him, continue to laze about, saying that they only follow the Qurʾān. Finally, he argues that the confirmed historical occurrence of abrogation between the Qurʾān and Sunna demonstrates that the Sunna must be from God, because otherwise it could not have abrogated the Qurʾān.

Al-Ṭaḥāwī’s argument for the authority of the Sunna in the introduction to Sharḥ mushkil al-āthār is considerably less detailed. After stating that God sent Muḥammad as the seal of the prophets and the Qurʾān as the seal of the scriptures, al-Ṭaḥāwī observes that Muḥammad is different from other Muslims. They owe him special deference because he speaks revelation:

God commanded the Believers not to raise their voices above that of the Prophet or to place themselves ahead of him. In Q 53/al-Najm:3-4 (“Nor does he speak out of caprice. This is simply a revelation that is being revealed”), He informed them that He had entrusted [Muḥammad with authority] in his speech.

His next statement, again supported by a Qurʾānic proof text, concerns the obligation to obey Muḥammad:

In Q 59/al-Ḥashr:7 (“Whatever the messenger gives you, take it. Whatever he forbids you to have, leave it alone”), He commanded them to accept what He sent them through the Prophet, and to refrain from what He prohibited through him.

The last two proof texts contain warnings for those who fail to heed this obligation:

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201 Al-Ṭaḥāwī, Ahkām, 60-61.
202 Al-Ṭaḥāwī, Ahkām, 61-64. This argument is discussed in detail below.
203 Al-Ṭaḥāwī, Mushkil, 1.5.
204 Al-Ṭaḥāwī, Mushkil, 1.5.
In Q 49/al-Ḥujurāt:2 (“Do not raise your voices above that of the prophet, and do not speak loudly to him, as you do to one another”) He prohibited them from acting toward him as they act toward each other. He warned them “lest their works fail while they were unaware.”

In Q 24/al-Nūr:63 (“Let those who dissent from His command beware lest a trial or a painful punishment befall them”), He likewise warned those who disobey the Prophet’s command.

These verses conclude al-Ṭaḥāwī’s argument for the authority of the Sunna in Sharḥ mushkil al-āthār. We may note that all of his evidence comes from Qur’ānic proof texts, and that only one of those proof texts (Q 59/al-Ḥāshr:7) also appears in the introduction to Aḥkām al-Qurʾān. His argument in Sharḥ mushkil al-āthār is immediately followed by a description of the difficulty some jurists have in understanding hadīth correctly, which leads them to the dangerous delusion that hadīths contradict one another. His purpose in writing this book is to clarify the meanings of difficult hadīths for such people. The authority of the Sunna and jurists’ misapprehensions concerning the coherence of hadīth thus appear to be related issues for al-Ṭaḥāwī.

On the basis of these outlines of al-Ṭaḥāwī’s arguments for the authority of the Sunna, we may evaluate a comment by Ahmed El Shamsy that al-Ṭaḥāwī “adopted al-Shāfiʿī’s justification for the systematic incorporation of Hadith into jurisprudence.” Three successive chapters of al-Shāfiʿī’s Risāla argue for the authority of Prophetic

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205 Al-Ṭaḥāwī, Mushkil, 1.5. This threat paraphrases the remainder of the verse just discussed.
206 Al-Ṭaḥāwī, Mushkil, 1.5.
207 Al-Ṭaḥāwī, Mushkil, 1.6.
208 This same concern for how the appearance of contradiction among hadīths might call their authority into question motivates a passage of al-Risāla, where al-Shāfiʿī’s interlocutor suggests that contradictions among hadīths weakens their standing as a source of law (al-Risāla, vol. 1 of Kitāb al-Umm, ed. Rif’at Fawzī ʿAbd al-Muṭṭalib (al-Manṣūra: Dār al-Wafā’, 2005), 90-91).
209 El Shamsy, Canonization of Islamic Law, 205.
Lowry usefully summarizes their argument as follows: “Shāfiʿī first shows that the Qurʾān has required faith in God and faith in Muḥammad. He next argues that the Qurʾān refers to itself and the Sunna whenever it uses the pair kitāb and ĥikma, respectively. Finally, God, in the Qurʾān, has specifically required obedience to Muḥammad.”

Al-Shāfiʿī’s first point concerns faith: Muslims are required to believe in God’s Messenger as well as God Himself. This argument does not appear in either of the passages from al-Ṭaḥāwī discussed above, although he does cite belief in Muḥammad as an obligation in his ʿAqīda (Creed). It appears that, for al-Ṭaḥāwī, faith in Muḥammad is a theological principle, but not an argument for the authority of Prophetic ḥadīth. Al-Shāfiʿī’s second argument equates the ĥikma (wisdom) mentioned in the Qurʾān with the Sunna, a claim not found in any of al-Ṭaḥāwī’s works. Al-Shāfiʿī’s final point, that God commanded us to obey Muḥammad, is the only argument that the two jurists share in common. Even here, however, only one of the proof texts adduced by al-Shāfiʿī (Q 24/al-Nūr:63, “Let those who dissent from His command beware lest a trial or a painful punishment befall them”), is also adduced by al-Ṭaḥāwī.

Further, al-Ṭaḥāwī makes arguments not found in the Risāla: that the authority of the Sunna is supported by ḥadīth and that it is supported by the confirmed occurrence of abrogation between the Qurʾān

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210 Al-Shāfiʿī, ʿ, 33-35.
211 Lowry, Early Islamic Legal Theory, 174.
212 Al-Shāfiʿī, al-Risāla, 33.
213 Al-Ṭaḥāwī, ʿAqīda, 21.
215 Al-Ṭaḥāwī, Mushkil, 1.5; Al-Shāfiʿī, al-Risāla, 37.
and Sunna. In light of these substantial differences, it is difficult to accept the claim that al-Ṭahāwī was employing al-Shāfiʿī’s justifications.

A second claim concerning the relationship between the two jurists’ arguments appears in Aisha Musa’s *Ḥadīth as Scripture*, where she argues that “unlike the works of al-Shāfiʿī and Ibn Qutayba, al-Ṭahāwī’s work is not a direct response to any outright denial or criticism of the *Ḥadīth* that he has encountered; rather it addresses what he sees in the *Ḥadīth* that others may perceive as problematic because of their lack of knowledge or understanding.”216 Later she writes that “his change from the defensive, adversarial tone that characterizes the works of al-Shāfiʿī and Ibn Qutayba is an indication of the relative success of the concept of the duality of revelation and the increasing confidence of its adherents.”217

Musa is correct in observing that al-Ṭahāwī never accuses any individual or group of denying the legal force of the Sunna. She is surely also correct in noting the more widespread acceptance of the authority of the Sunna by the time of al-Ṭahāwī, which must be a factor contributing to his less adversarial language. However, Musa’s analysis overstates al-Ṭahāwī’s confidence in the general acceptance of the Sunna, because it fails to take into account his intended audience. While Ibn Qutayba might write a long diatribe against those who deny the Sunna,218 al-Ṭahāwī could not, because he identified himself with the very proto-Ḥanafis who were accused of not relying sufficiently on *ḥadīth* in their legal arguments. Al-Ṭahāwī’s works are not polemical condemnations of a

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216 Musa, *Ḥadīth as Scripture*, 70.
217 Musa, *Ḥadīth as Scripture*, 70.
villainized Other, but are rather intended to convince the jurists of his own proto-Ḥanafī school that all of their laws are justifiable by *ḥadīth* and that they should engage in the work of that justification.

That al-Ṭahāwī still perceived the Sunna to require justification is demonstrated by the introductions to *Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār*. Very little of al-Ṭahāwī’s writing consists of extended arguments; the fact that he dedicates much of two of the only overtly theoretical passages in his works to this argument suggests that he was not confident that the authority of the Sunna was self-evident. Further, in a number of passages within the body of his works, al-Ṭahāwī asserts that Prophetic *ḥadīth* may not be ignored in favor of *nazār* (juristic speculation) or any other non-revelatory source of the law.\(^{219}\) These assertions appear in response to discrete legal opinions of other jurists that are in conflict with *ḥadīth*. That al-Ṭahāwī does not label as *ḥadīth* deniers these jurists whose opinions conflict with *ḥadīth* must be a function of their mutual identification with the proto-Ḥanafī school.

Likewise, al-Ṭahāwī’s sustained attention to “what he sees in the *ḥadīth* that others may perceive as problematic” is not separate from his need to justify the authority of the Sunna.\(^{220}\) Rather, his underlying argument appears to be that some jurists have not been properly relying on *ḥadīth* because they do not fully understand them.\(^{221}\) In both *Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār*, after arguing for the authority of the

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\(^{219}\) E.g., al-Ṭahāwī, *Mushkil*, 5.10, 7.275, 9.125, 10.303, 11.434, 12.21; *Aḥkām*, 1.300, 2.97, 2.100.  
\(^{220}\) Musa, *Ḥadīth as Scripture*, 69.  
\(^{221}\) Ibn Qutayba’s *Taʾwil mukhtalif al-ḥadīth* expresses this anxiety more strongly: in addition to the concern that Muslims who perceive contradictions in the *ḥadīth* will not rely on *ḥadīth* as they should, Ibn Qutayba fears that the apparent contradictions and initially problematic meanings will make Islam an object of ridicule (In Qutayba, *Taʾwil*, 13ff).
Sunna, al-Ṭahāwī devotes the remainder of the text to demonstrating that hadīths do not conflict with each other and that they underlie the rules of Ḥanafī fiqh. In this sense, these works are extended arguments for the authority of the Sunna, and they betray an underlying anxiety that this authority is not universally acknowledged. Were it so, then al-Ṭahāwī would no more have needed to write three lengthy works demonstrating the coherence of the Sunna than he needed to demonstrate the authority and coherence of the Qurʾān. While Musa is doubtless correct about the overall movement toward universal acceptance of the Sunna as a source of law, al-Ṭahāwī’s concerns about the authority of the Sunna are still surprisingly close to those of al-Shāfiʿī. Although al-Shāfiʿī and al-Ṭahāwī employ quite different sets of arguments to justify the authority of the Sunna and to deny that the appearance of contradiction among hadīths casts that authority into doubt, notably little change has occurred in the central questions about the authority of the Sunna during the intervening two generations.

The Relationship between the Qurʾān and Sunna

Bayān

Al-Ṭahāwī thus takes the authority of the Qurʾān for granted while devoting two of the very rare theory-driven discussions within his surviving works of practical hermeneutics to the authority of Prophetic hadīth. To understand al-Ṭahāwī’s concept of revelation, however, we must also consider how he perceives the Qurʾān and Sunna in relation to each other. Here, again, El Shamsy sees al-Ṭahāwī’s “indebtedness” to al-Shāfiʿī, writing that the introduction to Ahkām al-Qurʾān “mirrors closely al-Shāfiʿī’s
discussion of the issue of bayān in the Risāla.” To evaluate this claim, we must first briefly discuss the concept of bayān (clearness; legislative statement) in the Risāla.

Immediately following his introductory chapter, al-Shāfiʿī sets out four modes of bayān: (1) rules which appear in an explicit text (naṣṣ) of the Qurʾān; (2) rules which appear in the Qurʾān and are explained in the Sunna; (3) rules which appear only in the Sunna; and (4) rules which must be derived by ijtihād, because they do not appear in the Qurʾān or Sunna. Lowry observes that al-Shāfiʿī employs the term bayān to “denote a mechanical or architectural feature of the divine law, specifically the finite number of ways that God uses the two revealed legal source texts—the Qurʾān and the Sunna—to express rules of law.” The key points here are that bayān refers to a “catalog” of ways in which the law is expressed, and that this catalog is both finite and comprehensive. Elsewhere, Lowry has demonstrated that al-Shāfiʿī’s theory of bayān is driven by his overriding concern with establishing that the Qurʾān and Sunna do not contradict one another, but rather function together to form a single, coherent expression of the law.

Returning to the introduction of Aḥkām al-Qurʾān, we may summarize the relevant points of al-Ṭahāwī’s argument as follows: God informed us in His Book (Q 3/Āl ʿImrān:7) that the Qurʾān contains both muhkam (unequivocal) and mutashābih (equivocal) verses. The ruling contained in the equivocal verses should be sought first in

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222 El Shamsy, Canonization of Islamic Law, 205.
223 Al-Shāfiʿī, al-Risāla, 7-9. In a series of chapters in which al-Shāfiʿī offers examples of each type of bayān, he expands his list to five modes by distinguishing between two varieties of the earlier second mode (rules which appear in the Qurʾān and are explained in the Sunna). In the first, the Sunna echoes the rule already stated in the Qurʾān, while in the second the Sunna adds significant information to the Qurʾānic rule (al-Shāfiʿī, al-Risāla, 10-12).
224 Lowry, Early Islamic Legal Theory, 24-25.
225 Lowry, Early Islamic Legal Theory, 24.
the unequivocal verses, then in the rulings that God promulgated through the Prophet in order to illustrate what was ambiguous in the Book.\textsuperscript{227} El Shamsy identifies the \textit{muḥkam} verses as those in which the Qurʿān is sufficient to state a rule, while the \textit{mutashābih} verses require the Qurʿān to be supplemented by the Sunna; both situations are encompassed by al-Shāfiʿī’s theory of \textit{bayān}.\textsuperscript{228} El Shamsy’s summary overlooks an important aspect of al-Ṭahāwī’s argument, however, which is that the meaning of the equivocal verses must first be sought in the unequivocal verses of the Qurʿān, before it is then (\textit{thumma}) sought in the Sunna. That is, al-Ṭahāwī is describing a methodology for determining the meaning of equivocal verses rather than setting out a catalog of the ways in which God expresses the law.

That al-Ṭahāwī’s purpose in the introduction to \textit{Ahkām al-Qurʿān} is different than al-Shāfiʿī’s purpose in the \textit{Risāla} is confirmed by the fact that al-Ṭahāwī mentions no further modes for expressing legal rules in this passage. Indeed, nowhere in any of his extant works does al-Ṭahāwī set out a catalog of the ways in which Qurʿān and Sunna may combine to express the law. In this he resembles later legal theorists, who were not concerned with presenting a unified theory of the “law’s architecture” as was al-Shāfiʿī.\textsuperscript{229} All this is not to say that al-Ṭahāwī would not have recognized and approved of al-Shāfiʿī’s modes of \textit{bayān}; in the course of his works he discusses rules promulgated through Qurʿān alone, Qurʿān explained by Sunna, Sunna alone, and \textit{ijtihād}. If he were to create a catalog of these modes, however, al-Ṭahāwī would need to add a possibility not discussed by al-Shāfiʿī: a rule which appears in the Sunna and is explained by the Qurʿān.

\textsuperscript{227} Al-Ṭahāwī, \textit{Ahkām}, 1.59.

\textsuperscript{228} El Shamsy, \textit{Canonization of Islamic Law}, 206.

\textsuperscript{229} Lowry, \textit{Early Islamic Legal Theory}, 58.
In a variety of situations al-Ṭahāwī observes that a certain *ḥadīth* cannot be interpreted or is otherwise not adequate to establish the law. In such cases, an indication must be sought from the Qurʾān, Sunna, or Consensus.\(^\text{230}\) It is important to note that al-Ṭahāwī does not use terms from the root *b-y-n* while discussing the elucidation of the Sunna by the Qurʾān as he often does when referring to the clarification of the Qurʾān by the Sunna; nonetheless, his understanding of the relationship between Qurʾān and Sunna displays a symmetry missing from al-Shāfiʿī, who does not envision the Qurʾān supplementing the Sunna.\(^\text{231}\)

While al-Ṭahāwī frequently uses words from the root *b-y-n* to discuss rules in the Qurʾān or rules expressed by the Qurʾān and supplemented by the Sunna, his understanding of *bayān* is distinct from that of al-Shāfiʿī. Al-Shāfiʿī employs *bayān* as a technical term referring to a “statement’ of the law.”\(^\text{232}\) Al-Ṭahāwī, in contrast, uses words from this root to signify a communicative process in which something is made clear, such as God making a ruling clear in the Qurʾān, or clarifying the Qurʾān by means of the Sunna. Al-Ṭahāwī’s association of *bayān* with a language-based process of clarification is in accord with the later *uṣūl* tradition.\(^\text{233}\) Al-Jaṣṣāṣ, for instance, describes several types of *bayān*, including the restriction of an unrestricted expression (*takhṣīṣ al-ʿumūm*), the transfer of meaning from the literal to the figurative (*ṣarf al-kalām ʿan al-haqqīqa ilā al-majāz*), the explanation of the intent of a statement that cannot provide a

\(^{231}\) See below, pp. 72-76 on al-Ṭahāwī’s theory of abrogation, which permits reciprocal abrogation between Qurʾān and Sunna.
ruling on its own, or abrogation. All of these are processes in which one text bears on another in order to bring out or clarify a meaning that was not available from the original text. Likewise, al-Ṭahāwī’s most frequent use of a term from the root *b-y-n* is the statement that the Sunna clarifies the Qurʾān on a certain question. In other cases, a Qurʾānic verse is clarified (*yubayyan*) by another Qurʾānic verse.

Al-Ṭahāwī almost never uses the noun *bayān*, preferring instead the verb *bayyana* to refer to clarification as an action or process, in contrast to al-Shāfiʿī’s more static characterization of *bayān* as the architecture of the law. Perhaps what is most notable about al-Ṭahāwī’s departure from al-Shāfiʿī’s conception of *bayān* is that al-Ṭahāwī, too, is overwhelmingly concerned in his works with demonstrating the consistency of Qurʾān and Sunna. We therefore might have expected him to employ *bayān* to support that argument, as does al-Shāfiʿī. However, it appears that, for al-Ṭahāwī, *bayān* has become firmly associated with communicative clarity, a concern that anticipates later jurists’ conviction of the centrality of linguistic interpretation to *uṣūl al-fiqh*. While al-Ṭahāwī still shares many of al-Shāfiʿī’s concerns about the authority and status of ḥadīth, his arguments nonetheless draw on the tools and concepts of his own time.

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236 E.g., al-Ṭahāwī, *Aḥkām*, 1.87.
Abrogation between the Qurʾān and Sunna

Al-Ṭahāwī’s theory of abrogation (naskh) provides further evidence for his understanding of the relationship between the Qurʾān and Sunna. None of his extant works contains a definition of abrogation, but we may piece one together from relevant discussions: abrogation is a process in which the revelation of a new rule in the Qurʾān or Sunna lifts (rafʿ) the obligation to apply an earlier rule established in either of the two sources. What concerns us here is the interaction of Qurʾān and Sunna within this theory. Like most authors of later uṣūl al-fiqh texts, al-Ṭahāwī holds that there are four possible modes of abrogation: (1) the Qurʾān abrogating the Qurʾān; (2) the Qurʾān abrogating the Sunna; (3) the Sunna abrogating the Qurʾān, and (4) the Sunna abrogating the Sunna.

In contrast, al-Shāfiʿī famously held that only the Qurʾān could abrogate the Qurʾān and the Sunna abrogate the Sunna. He writes in the Risāla that “God stated to them [in the Qurʾān] that He only abrogates things in the Book by means of the Book, and that the Prophetic Practice does not abrogate the Book. It is instead subordinate to the

238 Al-Ṭahāwī, Mushkil, 4.364-365, 12.518. Al-Ṭahāwī’s assertion that God may abrogate rules (akhām) but not reports describing events that have happened or will happen (akhbār) is the established position among later theorists, although it was a subject of debate earlier in the 3rd/9th century. Jurists including Muḥāsibī presented arguments against the possibility of abrogating reports. Their discussions are motivated by the theological question of whether God may change his mind (Melchert, “Qurʾānic Abrogation,” 88-89). Although the restriction of abrogation to legal matters was established by al-Ṭahāwī’s time, his explicit assertion of the impossibility of abrogating reports preserves a memory of an older debate.

239 Al-Ṭahāwī, Mushkil, 5.261. Al-Ṭahāwī’s assertion that the earlier rule is lifted is at odds with al-Jaṣṣāṣ and many other later jurists who held that abrogation does not eliminate an earlier ruling, but only restricts its application to a specified time period (Al-Jaṣṣāṣ, al-Fuṣūl, 1.355; Weiss, Search for God’s Law, 498).

240 Al-Ṭahāwī, Maʿāni, 3.139.

241 Al-Ṭahāwī, Mushkil, 1.221-222, 2.294-295; Aḥkām, 1.63.

242 Al-Ṭahāwī, Maʿāni, 3.139; Mushkil, 1.221-222, 2.294-295; Aḥkām, 1.63. Al-Jaṣṣāṣ, al-Fuṣūl, 1.449.
Al-Shāfīʿī thus claims that his theory of abrogation is that of the Qurʿān itself. Lowry further argues that al-Shāfīʿī’s theory of abrogation rests on his belief that the Qurʿān and Sunna are “ontologically distinct” as well as on anxieties that the Qurʿān would “overwhelm the Sunna in all cases of asserted conflict between the two” as a result of the Qurʿān’s superior epistemological status.  

Al-Ṭahāwī, in contrast, employs his discussions of abrogation to assert the ontological similarity of Qurʿān and Sunna. In one passage he states that “it is our position that the Sunna can abrogate the Qurʿān, because each one of them is from God. He may abrogate what He wishes of them using what He wishes of them.” Here his emphasis is on the similarity of Qurʿān and Sunna in terms of their shared status as revelation. Likewise, in the introduction to Aḥkām al-Qurʿān, al-Ṭahāwī explicitly states that the Sunna is of the same ‘form’ as the Qurʿān. He writes:  

The legal rulings (aḥkām) preceding the revelation of a [certain] Qurʿānic verse in Islam [that is, legal rulings derived from the Sunna] were legally effective and were not invalidated (yanquḍ) by the revelation of a Qurʿānic verse conflicting with them. Instead, they were abrogated (yansakh) by it, because they were of the same form (shakl). Therefore, when something appears from the Prophet after the revelation of a Qurʿānic verse it likewise abrogates that verse in cases where they conflict.  

This statement may be contrasted with al-Shāfīʿī’s argument that “the Sunna may only be abrogated by its like (mithl), and it has no like except the Sunna.” Although al-Shāfīʿī uses the term ‘mithl’ while al-Ṭahāwī uses ‘shakl,’ these statements reveal the quite

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244 Lowry, Early Islamic Legal Theory, 90-91.  
245 Al-Ṭahāwī, Mushkil, 1.221.  
246 Al-Ṭahāwī, Aḥkām, 1.62. Emphasis mine.  
247 Al-Shāfīʿī, al-Risāla, 45. Translation mine.
different stances of al-Ṭahāwī and al-Shāfiʿī on the ontological relationship between Qurʾān and Sunna.

To support his argument that the Qurʾān may abrogate the Sunna and the Sunna the Qurʾān, al-Ṭahāwī appeals to historical evidence, giving examples of known laws which can only be justified by positing that the Qurʾān was abrogated by the Sunna. In both passages mentioned above al-Ṭahāwī discusses Q 4/al-Nisāʾ:15 (“Those of your women who commit indecency – call four of you as witnesses against them. If [the four] give their testimony, confine them in their houses until death takes them or God appoints a way for them”), arguing that ‘the way’ referred to in the verse was indicated in a Prophetic hadīth. The hadīth constituted an abrogation of the verse because it changed the prescribed punishment.248

Although al-Ṭahāwī does not say so directly, his second example of the Qurʾān being abrogated by the Sunna demonstrates that he held that khabar al-wāhid (a report transmitted by fewer than the number required to achieve epistemological certainty) also had the power to abrogate the Qurʾān, a position which elevates the khabar al-wāhid to the epistemological status of the Qurʾān and the khabar al-mutawāṭir (a report transmitted by sufficient numbers to assure its authenticity).249 In an example commonly adduced by other jurists espousing this opinion, al-Ṭahāwī argues that Q 2/al-Baqara:180 (“Prescribed for you, when death comes to one of you, if he leaves goods, are bequests for parents and kinsmen according to what is recognized as proper, as a duty to those who

248 Al-Ṭahāwī, Ahkām, 1.62; Mushkil, 1.221-222. In contrast, al-Shāfiʿī’s rejection of the abrogation of the Qurʾān by the Sunna causes him considerable difficulty in explaining the origin of the punishment for adultery (al-Shāfiʿī, Risāla, 107-110). Burton analyzes al-Shāfiʿī’s explanation at length in Sources of Islamic Law, 136-157.
249 Hallaq, History of Islamic Legal Theories, 73-74.
protect themselves”) was abrogated by the Prophetic hadith “There is no bequest in favor of a Qur’ānic heir.” For al-Ṭahāwī, the two examples he adduces constitute self-evident proof that abrogation of the Qurʾān by the Sunna has actually occurred, and therefore must be possible. After each, he cites the objections of an unnamed interlocutor, whom we may assume to be al-Shāfiʿī, claiming that in each case the verse in question was in fact abrogated by another Qurʾānic verse. In both cases, al-Ṭahāwī responds by demonstrating how the Qurʾānic verse his interlocutor adduces is insufficient to explain the law as it stands, and therefore abrogation of the Qurʾān by the Sunna must have occurred.

The self-evidence of the occurrence of Qurʾān-Sunna and Sunna-Qurʾān abrogation for al-Ṭahāwī is crucial for understanding the function of this passage within the introduction to Ahkām al-Qurʾān. Al-Ṭahāwī’s purpose is not to make an argument for the various possible modes of abrogation; he does not even mention the possibility of Qurʾān-Qurʾān or Sunna-Sunna abrogation here, aside from criticizing those who say that only the Qurʾān can abrogate the Qurʾān. Instead, he introduces the topic of Qurʾān-Sunna and Sunna-Qurʾān abrogation in order to provide evidence for his central argument that the Sunna is revelation and has legal force. After a two and a half page discussion of

250 Al-Ṭahāwī, Ahkām, 1.63. Al-Ṭahāwī also cites historical evidence for the possibility of the Sunna being abrogated by the Qurʾān, although, given how little time he spends on the question, it is apparently much less controversial for him. The same was generally true for other jurists as well (see Hallaq, History of Islamic Legal Theories, 72-73). Al-Ṭahāwī’s historical examples include the abrogation of the hadith prohibiting inheritance between Muslims and non-Muslims by Q 33/Al-Ahzāb:6; the abrogation of the hadith ordering Muslims to pray toward Jerusalem by Q 2/Al-Baqara:144; and the abrogation of the hadith saying that free Muslims may be sold to pay for their debts by the revelation of Q 2/Al-Baqara:28. Although al-Ṭahāwī gives more examples of the Qurʾān abrogating the Sunna than the Sunna abrogating the Qurʾān, he merely cites them without pausing to argue them.

251 On the close relationship between the discussions of abrogation in al-Ṭahāwī and al-Shāfiʿī, see El Shamsy, Canonization of Islamic Law, 207.

252 Al-Ṭahāwī, Ahkām, 1.62-63.
the necessity of obeying the Sunna, al-Ṭaḥāwī introduces the topic of abrogation by saying:

God’s Messenger, from whom we received the Qurʾān, informed us that we must accept what he says to us, what he commands, and what he prohibits, even if it is not a Qurʾānic verse, just as we must accept the Qurʾānic verses he recites to us. We also find things practiced as an obligation in Islam that are not mentioned in the Qurʾān…which God then abrogated by what He revealed in the Book.253

The argument that follows is that if the Qurʾān can abrogate the Sunna (and the Sunna the Qurʾān), that is because they are of the same form (shakl)—i.e., the Sunna is revelation.254

That al-Ṭaḥāwī’s purpose in discussing abrogation is to assert the ontological equivalence of Qurʾān and Sunna is again reinforced at the end of this passage, when al-Ṭaḥāwī’s interlocutor suggests that the meaning of Q 10/Yūnus:15 (“Say, ‘It is not for me to change it of my own accord. I follow only what is revealed to me’”) is that only something from God, that is, the Qurʾān, may change the Qurʾān. Al-Ṭaḥāwī responds, “And who told you that the rule which abrogated the Qurʾānic verses is not from God, or that the Sunna is not from God? Rather, they are both from Him, and He abrogates the Qurʾān with whichever of them He wishes, just as He abrogates the Sunna with whichever of them He wishes.”255 Al-Ṭaḥāwī’s entire discussion of abrogation is thus an argument for the status of the Sunna: the Sunna must be obeyed because it is like the Qurʾān—it is of its shakl. We know that because the Qurʾān and Sunna can and do abrogate each other.

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253 Al-Ṭaḥāwī, Aḥkām, 1.61.
254 Al-Ṭaḥāwī, Aḥkām, 1.61-62.
255 Al-Ṭaḥāwī, Aḥkām, 63-64.
Abrogation of the Qurʾān

Al-Ṭahāwī’s theory of abrogation provides one further piece of evidence concerning the relationship between the Qurʾān and Sunna, related specifically to the abrogation of the Qurʾān. John Burton identifies three modes of Qurʾānic abrogation discussed in mature ʿusūl texts:

1) The abrogation of both the verse and the ruling (naskh al-ḥukm wa-l-tilāwa)
2) The abrogation of the ruling but not the verse (naskh al-ḥukm dūn al-tilāwa)
3) The abrogation of the verse but not the ruling (naskh al-tilāwa dūn al-ḥukm)

The most controversial of these is the third mode, the abrogation of the verse but not the ruling. Burton argues that this mode was only necessary for jurists like al-Shāfiʿī, who denied the possibility of the Sunna abrogating the Qurʾān, but who still needed to explain how certain rules (i.e., stoning for adultery) were justified.

We may compare with Burton’s model of Qurʾānic abrogation al-Ṭahāwī’s discussion in a very unusual chapter of Sharḥ mushkil al-āthār. While most chapters in this book set out one or more contradictory or otherwise problematic ḥadīths and then resolve the apparent difficulties, this chapter cites Q 2/al-Baqara:106 (“Whatever signs we annul or cause to be forgotten, We bring better or the like”) and then proceeds to set out a typology of Qurʾānic abrogation with examples of each type. He states that there are two kinds of abrogation of the Qurʾān:

1) The abrogation of the practices in the abrogated verses while the verses remain part of the Qurʾān (nusikha al-ʿamal bi-mā fī al-āy al-mansūkha, wa-in kānat al-āy al-mansūkha qurʾānan kamā hiya)

256 Burton, Sources of Islamic Law, 41.
257 Burton, Sources of Islamic Law, 162-163.
2) The removal of the verse from the Qurʿān (ikhrājuhā min al-Qurʿān)
   a. preserved in memory (mahfūza fi al-qulūb)
   or
   b. not preserved in memory (khārija min al-qulūb, ghayr mahfūza)\textsuperscript{258}

Although al-Ṭaḥāwī does not use the language of the later \textit{usūl} scholars, his first category is clearly equivalent to Burton’s second mode (abrogation of the rule but not the verse), and Category 2b is equivalent to Burton’s first mode (abrogation of both the rule and the verse).

Al-Ṭaḥāwī’s Category 2a (abrogation of the verse but not the memory), however, is not quite the same as Burton’s third mode (abrogation of the verse but not the rule). The importance of the third mode for the jurists who subscribe to it is the continuance of the ruling—they need to explain how a law that does not appear to be Qurʿānic actually is based on a Qurʿānic verse.\textsuperscript{259} Al-Ṭaḥāwī would not disagree that the ruling remains in effect, as evidenced by his citation of the stoning verse and the verse concerning the number of breastfeedings necessary to establish a blood relationship as examples of this category of abrogation.\textsuperscript{260} However, he never states that the ruling remains in effect, and

\textsuperscript{258} Al-Ṭaḥāwī, \textit{Mushkil}, 5.270.

\textsuperscript{259} Al-Ṭaḥāwī, in contrast, needs the category of ‘abrogated from the Qurʿān but preserved in memory’ not in order to justify why rules are the way they are, but to explain \textit{ḥadīth}s which appear to suggest that material might be missing from the Qurʿān. In all of his examples, an important Companion suggests that a certain verse is in the Qurʿān when in fact it is not in the canonized text. Al-Ṭaḥāwī’s solution is to say that the verse was indeed in the Qurʿān, but it was then abrogated. This category is thus a consequence of the seriousness with which al-Ṭaḥāwī approaches \textit{ḥadīth}s. In this seriousness he is similar to Ibn Qutayba, who Burton argues accepted the \textit{ḥadīth} about the earlier existence of a stoning verse in the Qurʿān not because he needed to justify the law (he, like al-Ṭaḥāwī, accepted that the Sunna may be abrogated by the Qurʿān), but because he was committed to \textit{ḥadīth} (Burton, \textit{Sources of Islamic Law}, 162). Hossein Modarresi suggests that Burton’s third mode (abrogation of the verse but not the rule) was in fact developed for the purpose of explaining \textit{ḥadīth}s that appear to question the completeness of the Qurʿānic corpus (“Early Debates on the Integrity of the Qurʿān: A Brief Survey,” \textit{Studia Islamica} 77 (1993): 24).

\textsuperscript{260} Al-Ṭaḥāwī, \textit{Mushkil}, 5.302, 5.311. Al-Shāfīʿī uses the same verses as examples of the third mode of Qurʿānic abrogation (Burton, \textit{Sources of Islamic Law}, 156).
that is not the crucial point for him. Instead, he is concerned with the preservation of the verse in memory.

What al-Ṭahāwī means by ‘preservation’ is revealed in three chapters appearing shortly after his typology of abrogation. In each chapter he argues that, after a certain verse was abrogated from the Qurʾān, it became part of the Sunna.\footnote{Al-Ṭahāwī, \textit{Mushkil}, 5.304, 5.306, 5.313, 5.315, 5.319, 5.320.} At the end of the last of these chapters, he concludes that

It is the same for everything which is reported as being part of the Qurʾān, but which we do not find in our physical Qurʾāns (\textit{maṣāḥifunā}). All such verses were part of the Qurʾān, but were abrogated and removed from it, then returned to the Sunna and made part of it.\footnote{Al-Ṭahāwī, \textit{Mushkil}, 5.320.}

This claim is important for what it says about al-Ṭahāwī’s understanding of the relationship between Qurʾān and Sunna. Other jurists discussing the third mode content themselves with stating that the ruling remains while the verse is abrogated, without getting into the details of the form in which it remains.\footnote{Weiss, \textit{Search for God’s Law}, 515-518.} Al-Taftazānī, for instance, still considers an abrogated verse part of the Qurʾān.\footnote{Burton, \textit{Sources of Islamic Law}, 161.} Al-Ṭahāwī asserts clearly and repeatedly that the verse is transformed into a Sunna, thus implying that the boundary between Qurʾān and Sunna is, at least in some cases, permeable.

\textit{The Permeability of the Boundary between Qurʾān and Sunna}

In the section above we established that al-Ṭahāwī’s understanding of the relationship between Qurʾān and Sunna is radically different from that of al-Shāfīʿī.
Where al-Shāfiʿī views the two as “ontologically distinct,”265 al-Ṭahāwī argues that they are of the same form (shakl)266 and that in certain cases Qur’ānic verses may be transformed into Sunna, apparently without needing to be revealed a second time.267 In another passage Al-Ṭahāwī further blurs the boundaries between Qur’ān and Sunna by arguing that “What is in God’s Book is what is textually stipulated (manṣūṣ) in it or what God’s Messenger said.” 268 This rather startling statement defines the Sunna as part of the Qur’ān. It appears in response to the Prophetic hadīth “Every condition (shart) that is not in God’s Book is invalid” as a way of accepting the hadīth while still preserving for Muslims the right to make contract stipulations not mentioned in the Qur’ān. Al-Ṭahāwī then goes on to explain why the Sunna may be considered part of the Kitāb: it is because the acceptance of the Sunna is mandated by the Kitāb in Q 59/al-Ḥashr:7 (“Whatever the messenger gives you, take it. Whatever he forbids you to have, leave it alone”).

Almost the same argument appears as in al-Ṭahāwī’s discussion of the Companion hadīth “there is no revelation but the Qur’ān.” Al-Ṭahāwī argues that by the Qur’ān, Ibn ʿAbbās meant “the Qur’ān and what the Qur’ān commands that is accepted only because of Q 59/al-Ḥashr:7.” Shortly afterward he states that the Sunna is included within the scope of the Qur’ān (dākhilan fī al-Qurʾān) because of that verse.269 While al-Ṭahāwī generally makes a firm distinction between the Qur’ān and the Sunna, it is

265 Lowry, Early Islamic Legal Theory, 90.
266 Al-Ṭahāwī, Aḥkām, 1.62.
267 Al-Ṭahāwī, Mushkil, 5.320.
268 Al-Ṭahāwī, Maʿānī, 4.90.
269 Al-Ṭahāwī, Mushkil, 14.468-471.
striking that he is willing to include one within the scope of the other for the purposes of making his argument in these two passages.270

*The Epistemological Status of Qurʾān and Sunna*

Al-Ṭahāwī’s portrayal of the relationship between the Qurʾān and Sunna is unusual in one further sense. For most legal theorists, a major distinction between the two kinds of revelation is that the entirety of the Qurʾānic text is epistemologically certain while the authenticity of individual *hadīths* is open to doubt.271 For the most part, al-Ṭahāwī concurs, objecting to *hadīths* suggesting that certain verses might be missing from the canonized Qurʾānic text. He argues that, if that were the case, it would be possible that something missing from the canonized Qurʾān would abrogate something currently within it, and the obligation to act would be lifted.272 However, a number of chapters in *Sharḥ mushkil al-āthār* blur the distinction in epistemological status between the Qurʾān and Sunna. Some examples suggest insecurity in the bounds of the Qurʾānic corpus by recounting the Companions’ confusion regarding what belongs within the Qurʾān, while others point to that same insecurity by describing the somewhat messy process of compiling the Qurʾān.273

Undoubtedly, the reason that al-Ṭahāwī adduces so many *hadīths* suggesting insecurity in the text of the Qurʾān while other legal theorists do not is that *Sharḥ mushkil al-āthār* is primarily a work on problematic *hadīths*, to which category the traditions in

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270 In contrast, al-Āmidī’s (d. 631/1233) definition of *al-Kitāb* explicitly defines the Sunna as outside of it (Weiss, *Search for God’s Law*, 155).
question certainly belong. The effect is somewhat jarring in a work which also treats a
great deal of legal theory, however—so much so that the modern editor of *Sharḥ mushkil
al-āthār* felt moved to quote Aḥmad Shākir on the necessity of rejecting one of the
hadiths in question, because it casts doubt on our knowledge of the chapters of the
Qurʾān, which knowledge is epistemologically certain (*qaṭʿī*) by means of multiple
transmission (*tawātur*).274

Al-Ṭahāwī appears to have no such qualms about transmitting material that casts
doubt on the text of the Qurʾān, as is evident from a discussion of the meaning of the verb
‘istaʾnasa’ in Q 24/ al- Nūr: 27 (“Do not enter houses other than your own until you have
tastaʾnisū”). In explanation, al-Ṭahāwī adduces a tradition from Ibn ʿAbbās saying that
the copyist of the Qurʾān made a mistake (*akhṭaʾat al-ātib*), and the verb should be
‘tastaʾdhinū’ (to ask permission).275 Al-Ṭahāwī concludes his chapter by citing several
versions of this tradition, content to record without comment the suggestion that there is a
mistake in the text of the Qurʾān as we know it.276 While al-Ṭahāwī clearly did not
adduce these hadiths with the explicit intent to assert the epistemological equivalence of
the Qurʾān and Sunna, their presence contributes to the impression that al-Ṭahāwī’s
theory of the sources of revelation does not depend on an ontological distinction between
Qurʾān and Sunna.

276 Once again, al-Arnaʿūṭ, the modern editor of *Sharḥ mushkil al- āthār*, is not so sanguine. In this instance
he cites a variety of premodern scholars, including Ibn Kathīr, al-Qurṭubī and Fakhr al-Dīn al- Rāzī who
concur with him in rejecting the hadīth from Ibn ʿAbbās on grounds of the impossibility of Ibn ʿAbbās
The Hierarchy of Qurʾān and Sunna

Despite the occasional blurring of the boundaries between the two, we may ask whether al-Ṭaḥāwī viewed the Qurʾān and Sunna as forming a hierarchy. The mature usūl al-fiqh tradition, while fully embracing the Sunna as a form of revelation, nonetheless held that the Qurʾān is a higher source of law. This claim is made especially strongly by the mature Ḣanafī school. For a much earlier period Lowry finds this same attitude implicit in al-Shāfiʿī’s Risāla. Like al-Shāfiʿī, al-Ṭaḥāwī is not generally explicit about the relative status of the Qurʾān and Sunna, although he, like al-Shāfiʿī, does consistently list the Qurʾān before Sunna in the thirty or so lists of legal sources scattered throughout his books, which suggests its primacy. Few passages explicitly indicate the relationship between the two sources, however. In one, after discussing a hadīth on how to give witness, al-Ṭaḥāwī states that he will turn to “something higher (mā huwa aʿlā), which is what God said in His Book.” This example is inconclusive, because it is not clear whether al-Ṭaḥāwī is suggesting that the Qurʾān is a higher source than Sunna in general, or if that is merely true of their relative usefulness for settling the question at hand.

The only unambiguous statement of the superiority of the Qurʾān that I have been able to locate in al-Ṭaḥāwī’s extant works appears in his discussion of a Companion report in which Ibn ʿAbbās states that “there is no revelation except for the Qurʾān (lā wahy illā al-Qurʾān).” This claim appears to be in serious contradiction with other hadīths asserting that Muḥammad’s Sunna is also revelation. We have already

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278 Lowry, Early Islamic Legal Theory, 211.
280 Al-Ṭaḥāwī, Mushkil, 12.293.
281 Al-Ṭaḥāwī, Mushkil, 14.466.
encountered above one of the solutions which al-Ṭaḥāwī offers for this embarrassment: he argues that the Sunna is within the scope of the Qurʾān. Al-Ṭaḥāwī also offers a second explanation, however, appealing to a linguistic principle which appears many times in his works: statements in the form ‘there is no X but Y’ mean that other things than Y can also be X, but not the very highest form of X. In this case, Muḥammad’s Sunna can also be revelation, but not the very highest form of revelation.282 By invoking this principle al-Ṭaḥāwī has explained how Ibn ʿAbbās’s statement does not preclude Sunna being revelation, but he has also conceded the inferiority of Sunna to the Qurʾān. While it may appear that it was only al-Ṭaḥāwī’s consistent application of his linguistic principle that led him to this conclusion, it also seems clear that he need not have made this argument at all, since he had already resolved the difficulty by claiming the Sunna as within the scope of the Qurʾān. His willingness to apply his linguistic principle in this case suggests that al-Ṭaḥāwī does indeed at some level consider the Qurʾān a higher source of law, even if statements to that effect are extremely rare in his works.

It appears, then, that for al-Ṭaḥāwī the relationship between the Qurʾān and the Sunna was more complex than it was for either al-Shāfīʿī or for the later tradition. While the Qurʾān and Sunna on the whole constitute two separate and identifiable bodies of revelation and relate to each other hierarchically, they are nonetheless neither epistemologically nor ontologically completely separate from each other. In asking why al-Ṭaḥāwī’s understanding of their relationship is so distinct from that of al-Shāfīʿī or the later tradition, we may observe that al-Ṭaḥāwī was writing with quite different goals and constraints than either al-Shāfīʿī or later theorists. In the case of later usūl al-fiqh,

282 Al-Ṭaḥāwī, Mushkil, 14.471.
theorists were writing at a remove from the actual texts of the Qurʾān and Sunna, and therefore may have been able to create neat, clearly defined categories with considerably more freedom than that afforded al-Ṭāḥāwī, whose theoretical discussions almost without exception arise in response to issues within the sources. His theories are not driven by theological concerns (although he is sensitive to these) or by a desire to create order, but rather by the need to make sense of texts. Although it is true that most of al-Shāfiʿī’s Risāla is taken up with example problems, and that these examples do not always neatly illustrate his theories, it is nonetheless also the case that it is theory that controls the Risāla’s structure. Al-Ṭāḥāwī, in contrast, is engaged in practical hermeneutics, the messy business of deriving meaning from revelation. Neat, clearly differentiated categories may only have been possible for jurists who formulated their theories in conversation with, but nonetheless slightly removed from, the raw material of revelation.

Ḥadīth Epistemology

Beyond the question of the relative epistemological statuses of Qurʾān and Sunna, Muslim jurists devoted significant attention to the question of the epistemological certainty engendered by different types of ḥadīth. Considering the central role that evaluating the soundness of individual ḥadīths plays in al-Ṭāḥāwī’s arguments, it is noteworthy that this type of discussion is almost entirely absent from his extant works. In this sense his approach is akin to that of the ḥadīth scholars, who tend to be more interested in individual ḥadīth transmitters and less in epistemological questions related
to transmission than the *uṣūl* scholars.\(^{283}\) From various passing mentions, we may glean that al-Ṭaḥāwī posited two grades of *ḥadīth* corresponding to the *uṣūl* scholars’ *khabar mutawātīr* (a report transmitted by a number so large as to engender epistemological certainty) and *khabar al-wāḥid* (a report transmitted by fewer than the number required to engender epistemological certainty). Unlike his Ḥanafī predecessor ‘Īsā b. Abān as well as later Ḥanafīs including al-Jaṣṣāṣ, al-Ṭaḥāwī does not appear to recognize a third, intermediate category, the *mashhūr* tradition (a report which began as a *khabar wāḥid* but then became widespread among the early generations of Muslims).\(^{284}\) In at least some cases, he describes as *mutawātīr* traditions that later Ḥanafīs would call *mashhūr.*\(^{285}\)

Al-Ṭaḥāwī’s terminology for discussing the two grades of *ḥadīth* is not entirely stable. He does employ *khabar al-wāḥid* and *al-āḥād* as technical terms,\(^{286}\) although the rarity with which he does so is notable considering how frequently his arguments consist of preferring one *ḥadīth* over another due to a greater number of transmitters. More often, he simply states that someone was alone (*tafarrada bi-*, etc.) in transmitting a certain *ḥadīth.*\(^{287}\) While ‘*tawātur*’ and ‘*mutawātīr*’ appear more frequently than *khabar al-wāḥid*

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\(^{284}\) On the Hanafi concept of the *mashhūr* tradition, see Zysow, *Economy of Certainty*, 17-22; Kamali, *Textbook of Ḥadīth Studies*, 123; Ahmed, *Narratives of Islamic Legal Theory*, 82-84; Brown, *Canonization of al-Bukhārī and Muslim*, 184-186. In one passage in *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī does touch upon one of the central issues of the *mashhūr* tradition. He claims that a certain *ḥadīth* is sound despite its faulty chain of transmitters because scholars have accepted it and acted upon it. He then gives several other examples of *ḥadīths* which scholars have accepted despite their weak chains of transmission (6.162-163). Although al-Ṭaḥāwī does point to a group of *ḥadīths*, however, they do not appear to rise to the level of a third category, both because no effort is made to give a label to them, and because they are not discussed as being in any relation to his other categories of *ḥadīth*. Beyond this, their relationship to the Ḥanafi *mashhūr* category may be tenuous, as al-Ṭaḥāwī says only that the ‘scholars’ (*ahl al-ʿilm*) have accepted the *ḥadīth*, while the *mashhūr* tradition relies on the widespread acceptance of the earliest generations of Muslims.


\(^{287}\) Al-Ṭaḥāwī, *Mushkil*, 4.70.
it is not clear if they are technical terms for al-Ṭaḥāwī. Like other 3rd/9th century scholars including al-Shāfiʿī, he uses words derived from the *w-t-r* root to indicate widespread transmission, but not obviously in the technical sense of later theorists.  

Nowhere in his extant works does he explain what constitutes *mutawātir* transmission, although we do learn that he is in agreement with the later tradition that the transmission of a ḥadīth may still be considered *mutawātir* even if certain individuals in their chains of transmission are suspect.  

Concerning the level of certainty engendered by each grade of ḥadīth and the connection between a ḥadīth’s epistemological status and the requirement to act upon it, al-Ṭaḥāwī is oblique. In one passage he argues that a certain ḥadīth has been transmitted in a *mutawātir* fashion, and so it is obligatory (*wajiba*) to adopt the position outlined in it.  

Although al-Ṭaḥāwī does not state explicitly here or elsewhere that *mutawātir* reports engender epistemological certainty, that seems to be the implication. Similarly, in another passage we learn that *naql al-jamāʿa* (group transmission) is exempt (*barīʿ*) from the possibility of omitting part of Muḥammad’s message on a certain topic, unlike *naql al-āḥād*.  

Again, the implication is that *mutawātir* transmission leads to certainty. Finally, in the most important passage concerning the distinction between the two grades of transmission, al-Ṭaḥāwī argues that transmission by consensus (*al-naql bi-l-ijmāʿ*) has legal force (*hujja*) such that anyone who disbelieves (*kafara*) in the smallest part of it is an infidel who may be killed unless he repents. This ruling does not apply, however, to

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those who disbelieve in something transmitted by *al-akhbār al-āhād*, only to transmission by *al-jamā’a*. The attribution of unbelief to those who reject a *mutawātir* transmission is a feature of later *uṣūl* discussions.

While many of al-Ṭahāwī’s arguments rest on the acceptance or rejection of individual *akhbār āhād*, he makes few general statements concerning the conditions under which they should be acted upon. In one chapter, he argues that a *khabar wāḥid* (although he does not use the term) from ‘Alī should be accepted, although he knows of no one else who accepts it, because the opinions is a sound one (*qawl ḥasan*) and putting the *ḥadīth* into practice revives a *sunna* of the Prophet. This appears to be an argument in favor of acting upon *khabar al-wāḥid* even in the absence of epistemological certainty. His optimism concerning *khabar al-wāḥid* aligns with that of his later Ḥanafi colleague al-Sarakhsī, who argued for the presumption of trustworthiness on the part of traditions and transmitters; the Ḥanafi al-Dabūsī, on the other hand, was hesitant to act upon *khabar al-wāḥid* in the absence of firm evidence for fear of improperly attributing words to the Prophet.

In other places al-Ṭahāwī refers obliquely to the controversies surrounding the *khabar al-wāḥid* by mentioning ‘those who accept the legal force (*ḥujja*) of the *khabar al-wāḥid*. This may be a reference to the Shāfiʿīs, whom the later Ḥanafīs portrayed as elevating the *khabar al-wāḥid* almost to the level of the Qurʾān. His point in these

296 Al-Ṭahāwī, *Maʿānī*, 1.95, 1.449.
passages is not to support or refute their position, however, but rather to make an argument concerning what that position commits them to regarding a certain legal question. One such passage contains the clearest evidence in al-Ṭahāwī’s extent works that he understood al-khabar al-mutawātir and khabar al-wāḥid as opposing categories. While arguing that a certain hadīth from Ibn Masʿūd should be discarded, al-Ṭahāwī states that its transmission is such that it has legal force (hujja) neither for those who accept the khabar al-wāḥid nor for those who [only] act upon reports whose transmission is plural (tawātara). 298

Ḥadīth Terminology

In addition to the epistemological terms khabar al-āḥād and tawātur/mutawātir, al-Ṭahāwī employs a range of terminology related to ḥadīth and Sunna. At the most general level, he opposes revelation in the form of the Kitāb (Book) to revelation through the words (ʿalā lisān) of Muḥammad. This pairing, found also in al-Shāfiʿī’s exposition of his concept of bayān in the Risāla, 299 is used to introduce the discussion of non-Qur’ānic revelation in al-Ṭahāwī’s introduction to Aḥkām al-Qurʾān. 300 The same pairing serves as a structuring device in many chapters of Aḥkām al-Qurʾān: after quoting a Qur’ānic verse, al-Ṭahāwī states that a certain part of the verse was not explained (lam yubayyan) in the Kitāb, but it was explained (yubayyan) in the words of the Prophet. 301 This transitional statement then allows him to enter into the main work of most chapters

298 Al-Ṭahāwī, Ma’āni, 1.95.
299 Al-Shāfiʿī, al-Risāla, 7.
300 Al-Ṭahāwī, Aḥkām, 1.59.
301 E.g., al-Ṭahāwī, Aḥkām, 1.74, 1.87, 1.119.
of *Aḥkām al-Qurʾān*, which is in fact to discuss the Sunna, not the Qurʾān. Most of al-Ṭahlāwī’s language, however, does not so clearly distinguish between Prophetic and post-Prophetic material.

The word ‘ḥadīth,’ for instance, invariably refers to a specific report consisting of an *isnād* (chain of authorities) and *matn* (stable verbal form of a report).\(^302\) Similar to Abū Yūsuf in his *al-Radd ‘alā Siyar al-Awzā‘i*,\(^303\) al-Ṭahlāwī usually but not exclusively applies the term ‘ḥadīth’ to Prophetic reports; at other times he cites a “ḥadīth of ʿAlī” or a “ḥadīth of Salmān.”\(^304\) This usage stands in contrast with that of later jurists, among whom ‘ḥadīth’ would come to be exclusively associated with Prophetic reports.\(^305\) Apparently synonymous with ‘ḥadīth’ is the rarer ‘khabar.’\(^306\) More than once al-Ṭahlāwī successively labels the same Prophetic report “ḥadīth” and “khabar,” demonstrating that he, like Ibn Qutayba, does not make a distinction between ‘ḥadīth’ as religious reports and ‘khabar’ as secular reports.\(^307\) Like ‘ḥadīth,’ ‘khabar’ can refer to Companion as well as Prophetic reports.\(^308\)

Where later jurists would come to use ‘ḥadīth’ as a collective term for Prophetic reports, al-Ṭahlāwī only employs ‘ḥadīth’ to designate the specific report under discussion. Very rarely, he uses the plural ‘aḥādīth’ to refer to multiple reports, but even

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\(^{302}\) E.g., al-Ṭahlāwī, *Aḥkām*, 1.72, 1.75, 1.84.
\(^{303}\) Ansari, “Islamic Juristic Terminology,” 2-4.
\(^{305}\) Ansari, “Islamic Juristic Terminology,” 2; Kamali, *Textbook of Ḥadīth Studies*, 57.
\(^{306}\) In contrast, the authors of the first Ḥanafi *uṣūl al-fiqh* works, al-Jaṣṣāṣ, al-Dabūsī, and al-Sarakhsī, tend to use the term *khabar* rather than *ḥadīth* (Murteza Bedir, “The Early Development of Ḥanafi *Uṣūl al-fiqh*” (PhD diss., University of Manchester, 1999), 126).
\(^{308}\) Al-Ṭahlāwī, *Aḥkām*, 1.191.
then he intends only a few specific reports.\textsuperscript{309} To refer to a larger body of reports relevant to a legal topic or to the phenomenon of reports in general, he uses ‘āthār.’\textsuperscript{310} This abstract usage of ‘āthār’ to refer to the general phenomenon of reports appears as a structuring device in many chapters of \textit{Sharḥ maʿānī al-āthār}. After weighing the \textit{ḥadīth} evidence for different positions on a legal question and stating his conclusion, al-Ṭāḥāwī frequently states that “this is the ruling (ḥukm) on this topic according to the method (ṭarīq) of āthār.” He almost invariably then goes on to discuss what the ruling on the same question would be according to naẓar (reasoned speculation).\textsuperscript{311} While āthār sometimes refers to post-Prophetic reports,\textsuperscript{312} it more often refers to Prophetic material. Al-Ṭāḥāwī’s definition of ‘āthār’ contrasts sharply with that of both al-Shāfiʿī and later jurists, for most of whom ‘āthār’ refers to non-Prophetic reports. For al-Shāfiʿī, ‘āthār’ were generally post-Companion reports which fell outside of the bounds of revelation.\textsuperscript{313} For other jurists āthār was either a wider category including Prophetic and non-Prophetic reports or else a term restricted to Companion reports.\textsuperscript{314} Al-Ṭāḥāwī’s equation of āthār with \textit{ḥadīth} is therefore unusual.

While ‘ḥadīth’, ‘khabar’ and ‘āthār’ refer to verbal reports, al-Ṭāḥāwī employs ‘sunna’ more generally to encompass the practices concretized in those reports.\textsuperscript{315}

\begin{itemize}
\item \textsuperscript{309} E.g., al-Ṭāḥāwī, \textit{Aḥkām}, 1.75, 1.21.
\item \textsuperscript{310} E.g., al-Ṭāḥāwī, \textit{Aḥkām}, 1.77, 1.81, 1.85.
\item \textsuperscript{311} E.g., al-Ṭāḥāwī, \textit{Maʿānī}, 1.31, 1.33.
\item \textsuperscript{312} E.g., al-Ṭāḥāwī, \textit{Aḥkām}, 1.159, 1.185.
\item \textsuperscript{313} Lowry, \textit{Early Islamic Legal Theory}, 204; Schacht, \textit{Origins of Islamic Law}, 16.
\item \textsuperscript{314} Kamali, \textit{Textbook of Hadith Studies}, 60; Ansari, “Islamic Juristic Terminology,” 2.
\item \textsuperscript{315} This distinction is common among later jurists: “Ḥadīth as such is the verbal embodiment and vehicle of the Sunna” (Kamali, \textit{Textbook of Hadith Studies}, 57). Not discussed here is the use of \textit{sunna} as an equivalent of \textit{mandūb} (recommended), one of the categories of legal obligations (e.g., al-Ṭāḥāwī, \textit{Aḥkām}, 1.243).
\end{itemize}
Frequently, the term appears as a pair with ‘Qurʾān’ or ‘Kitāb’, and in one instance al-Ṭahāwī explicitly contrasts them by asserting that a *sunna* is something that was not revealed in the Kitāb. In the overwhelming majority of cases al-Ṭahāwī implicitly or explicitly uses the term ‘*sunna*’ to refer to the exemplary practice of the Prophet (*sunnat rasūl Allāh*). Al-Ṭahāwī’s habitual association of *sunna* with the Prophet represents a late stage in the evolution of this pre-Islamic term, which originally seems to have referred to the practice or traditions of the community or of individuals. While the Prophet’s practice gained a special status early in Islamic history, it is not until the beginning of the 3rd/9th century that the association with Muḥammad became predominant. The *Risāla* of al-Shāfīʿī, for example, strongly associates *sunna* with the Prophet and argues for its authority.

Al-Ṭahāwī follows al-Shāfīʿī in his overwhelming association of *sunna* with Muḥammad, and yet he occasionally refers to the *sunna* of ʿUmar, the Companions, or the first four caliphs (*al-rāshidūn*). Very rarely, he employs *sunna* without reference to a person to mean the legal practice concerning a certain thing, i.e., the *sunna* of the call to prayer (*adhān*). One passage in *Sharḥ maʿānī al-āthār* captures this controversy: a group of jurists claims that the reference to *sunna* in a *ḥadīth* means that the *ḥadīth* must

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316 E.g., al-Ṭahāwī, *Aḥkām*, 1.63, 1.65, 1.70, 1.90, 1.98.
318 E.g., al-Ṭahāwī, *Aḥkām*, 1.147, 1.149, 1.176, 1.192.
320 Lowry, *Early Islamic Legal Theory*, 166, 169.
321 Al-Ṭahāwī, *Aḥkām*, 1.389; *Maʿānī*, 1.80, 1.142. The degree to which al-Ṭahāwī still diverges from the later tradition’s exclusive association of the *sunna* with the Prophet can be judged by the fact that the modern editor of *Sharḥ maʿānī al-āthār* dedicates a lengthy footnote (in an edition containing very few and very terse notes) to expressing his discomfort with al-Ṭahāwī’s assertion that *sunna* can come from the first four caliphs (*Maʿānī*, 1.80n.4).
322 Al-Ṭahāwī, *Aḥkām*, 1.142; see also *Maʿānī*, 1.188.
be Prophetic, even though it does not appear to be, because *sunna* only comes from the Prophet. Their opponents, with whom al-Ṭahāwī implicitly agrees, argues that the term *sunna* can also indicate that person’s opinion (*raʾy*) or something they took from someone after the time of the Prophet. It is notable that, while al-Shāfīʿī argues for the exclusive association of *sunna* with the Prophet, al-Ṭahāwī argues that that need not always be the case.

The pattern that emerges from al-Ṭahāwī’s use of all of these terms is that they usually, but not exclusively, refer to Prophetic reports. This pattern indicates the central importance of Prophetic material to al-Ṭahāwī’s conception of the law and its sources. At the same time, however, al-Ṭahāwī does not feel the need to make the absolute distinction between Prophetic and post-Prophetic material that would be indicated by separate technical terms. His disinterest in doing so suggests that, as we will see in the following chapter, Prophetic and post-Prophetic materials do not fall into two epistemologically distinct categories for al-Ṭahāwī representing revelation and non-revelation.

**The Status of Muḥammad’s Words and Actions**

While al-Ṭahāwī gives little attention to describing the varieties of *ḥadīth* and their respective levels of epistemological certainty, he is considerably more concerned with another issue related to the authoritativeness of *ḥadīth* as a source of law, and that is determining which kinds of reports about Muḥammad’s words and actions establish legal obligations. Like al-Shāfīʿī as well as authors of mature *uşūl al-fiqh* works, al-Ṭahāwī

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held that Muḥammad could not act against God’s commands. However, where both al-Shāfiʿī and later authors use the root ′-ṣ-m (maʿṣūm, Ḱisma) to indicate Muḥammad’s infallibility, al-Ṭaḥāwī simply states that it is impossible (muḥāl) that Muḥammad do something that God had prohibited. Al-Ṭaḥāwī’s statement is categorical in a way that many other jurists’ discussions of infallibility are not. He does not entertain the possibility of Muḥammad temporarily disobeying God, although already in his time many jurists held that the concept of Muḥammad’s infallibility prevented only his persisting in error. For all of these jurists, the claim of prophetic infallibility is fundamental to assuring the status of ḥadīth as a source of law; if Muḥammad could disobey God, then his actions would not be a reliable means of discovering the law.

Prophetic infallibility does not imply that all of Muḥammad’s actions represent legal obligations, however. Al-Ṭaḥāwī, like later jurists, denies evidentiary value to anything Muḥammad did or said while asleep. In al-Fuṣūl, al-Jaṣṣāṣ considers whether the presumptive approach to Muḥammad’s actions should be to consider those actions obligatory, recommended or merely permitted. He concludes that they are merely

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324 Al-Shāfiʿī, al-Risāla, 38; Ahmed, Narratives of Islamic Legal Theory, 74.

325 Al-Ṭaḥāwī, Mushkil, 1.73. Elsewhere, al-Ṭaḥāwī also quotes Q 53/ al-Najm:3-5 (“Nor does he speak out of caprice (wahm). This is simply a revelation (wahy) that is being revealed, Taught to him by one great in power”), one of the primary verses used by later jurists to support claims of Prophetic infallibility. Al-Ṭaḥāwī adduces the verse as evidence for his claim that Prophetic hadīths cannot contradict one another (Mushkil, 4.10). While not explicitly about Prophetic infallibility, this passage suggests that the idea of infallibility underlies al-Ṭaḥāwī’s concept of the internal coherence of the corpus of ḥadīth.

326 Shahab Ahmed, “Ibn Taymiyyah and the Satanic Verses,” Studia Islamica 87 (1998): 90; Rumees Ahmed, “The Ethics of Prophetic Disobedience: Qur’ān 8:67 at the Crossroads of Islamic Sciences,” Journal of Religious Ethics 39, no. 3 (2011): 441. For most jurists, the errors which Muḥammad might commit and then be corrected in were errors of ijtihād, or reasoned opinion, on matters not addressed in revelation. Much less common was the view held by Ibn Taymiyya that Muḥammad could err in transmitting revelation itself and later be corrected (Ahmed, “Ibn Taymiyyah,” 78). Chaumont notes al-Shirāzī’s statement that Muḥammad may commit errors in his ijtihād like all humans, but will always then be corrected by subsequent revelation (Chaumont, “La problématique classique de l’iṭṭihād,” 130-133).

permitted in the absence of an indication (dalīl) to the contrary.\textsuperscript{328} Al-Ṭahāwī does not explicitly discuss any of these possibilities in his extant works. Nonetheless, we can surmise that he, like his fellow Ḥanafi al-Jaṣṣāṣ, held that Muḥammad’s actions indicate the mere permissibility of performing that action in the absence of a further indication. At several points in \textit{Sharḥ maʿānī al-āthār} he argues that his opponents have no evidence for holding that a certain ḥadīth entails obligation, since there is nothing in that ḥadīth that indicates (yadull) that Muḥammad’s action is not simply showing his personal inclination or establishing a preferred, but not obligatory, course of action.\textsuperscript{329}

Where al-Ṭahāwī diverges most from his Ḥanafi successors is in his discussion of Muḥammad’s words and actions that are not inspired by God. Al-Ṭahāwī, al-Jaṣṣāṣ and al-Sarakhsī all affirm that Muḥammad could and did sometimes speak from \textit{ijtihād al-raʿy} (the exertion of effort to come to a correct reasoned opinion) in situations where there was no revealed text to provide guidance.\textsuperscript{330} Al-Ṭahāwī’s motivations for making this claim differ significantly from those of al-Jaṣṣāṣ and al-Sarakhsī, however. The latter two jurists are interested in explaining, first, why Muḥammad sometimes consulted (\textit{mushāwara}) with his Companions and took their advice when his status as a prophet might seem to preclude that\textsuperscript{331} and, second, how it is that Muḥammad was permitted to use his reasoning to make statements concerning rules of positive law (aḥkām) that were

\textsuperscript{328} Al-Jaṣṣāṣ, \textit{al-Fuṣūl}, 2.76-88. Al-Sarakhsī states that he agrees with al-Jaṣṣāṣ while expanding the range of possible options to include both \textit{fard} and \textit{wājib}, reflecting the distinction made between them in the Ḥanafi school by his time (\textit{al-Muḥarrar}, 2.67).

\textsuperscript{329} Eg., al-Ṭahāwī, \textit{Maʿānī}, 1.30, 1.120, 1.178.

\textsuperscript{330} Al-Ṭahāwī, \textit{Maʿānī}, 4.270; al-Jaṣṣāṣ, \textit{al-Fuṣūl}, 2.93-98; al-Sarakhsī, \textit{al-Muḥarrar}, 2.70-71. For an overview of later legal theorists who accepted or rejected the possibility of Muḥammad’s \textit{ijtihād}, see Chaumont, “La problématique classique de l’Ijtihād,” 114-137.

\textsuperscript{331} Al-Jaṣṣāṣ, \textit{al-Fuṣūl}, 2.95-96; al-Sarakhsī, \textit{al-Muḥarrar}, 2.73.
later changed by revelation. The crucial point for both jurists is that, although Muḥammad may have employed *ijtihād*, his *ijtihād* was not really like that of other people, since God would not allow him to continue in an error. Given that his *ijtihād* must either be correct to begin with or would be corrected by God, it is in effect not *ijtihād* at all, but in fact something akin to revelation. Thus, no one may act against Muḥammad’s *ijtihād*.

Al-Ṭaḥāwī’s understanding of Muḥammad’s *ijtihād* is largely the opposite. He writes that “God’s messenger informed us that he is like the rest of humanity in what he says by way of reasoned speculation (*ẓaann*). It is what he says from God that does not permit opposition.” In other words, Muḥammad’s *ijtihād* is entirely unlike revelation and creates no legal obligations for other Muslims. The discussions of Muḥammad’s *ijtihād* in al-Ṭaḥāwī’s works fall into two related categories. In the first, al-Ṭaḥāwī appeals to Muḥammad’s *ijtihād* in order to explain away a potentially embarrassing hadīth, such as a report in which Muḥammad expresses doubt about the benefit of pollinating date palms. When the Muslims heed him and cease to pollinate them, the dates do not grow properly. Confronted with this result, Muḥammad’s response is that he is no farmer, and the Muslims should go ahead and pollinate their trees. In his discussion of this hadīth, al-Ṭaḥāwī proposes that Muḥammad probably thought that non-human females do not require anything from the male in order to be fertile. In this he spoke from speculation (*ẓaann*), in which he is equal to other humans. In this kind of

335 Al-Ṭaḥāwī, *Maʿānī*, 4.270.
statement people may disagree, and it will become clear who is knowledgeable and who is not. Here, the Prophet was not one of those who are knowledgeable, since he came from Mecca, a city with no date palms at that time.\footnote{Al-Ṭahāwī, \textit{Mushkil}, 4.426.}

In another \textit{ḥadīth} Muḥammad warns men not to have sexual intercourse with their pregnant wives (lit., to kill their children secretly) lest they be overtaken by the dead fetus while they are on horseback and be thrown from their horses.\footnote{Al-Ṭahāwī, \textit{Maʿānī}, 3.46. Another version of the same discussion is found in \textit{Mushkil}, 9.284-294. The wording of this \textit{ḥadīth} is somewhat opaque: “\textit{lā taqtal awlāda u sirraṇ, fa-inna qatl al-
ghayl yudriku al-fāris alā zuhr farasihī, fa-yad’atharu.” Avner Giladi reads ‘\textit{ghayl}’ as intercourse with a nursing, rather than pregnant, wife, but al-Ṭahāwī clearly states in his discussion that the women are pregnant (\textit{Infants, Parents and Wet Nurses: Medieval Islamic Views on Breastfeeding and Their Social Implications} (Leiden: Brill, 1999), 31-32.} A separate \textit{ḥadīth} revokes the warning, saying that the Persians and Anatolians (\textit{al-Rūm}) come to no harm from the practice, and therefore Muslims will not either.\footnote{Al-Ṭahāwī, \textit{Maʿānī}, 3.47.} Al-Ṭahāwī comments that Muḥammad stated the original prohibition on intercourse during pregnancy out of fear of the harm it could cause, but this was not a prohibition like that found in revelation or law. Rather, it was based on what was in Muḥammad’s heart and was merely a warning.\footnote{Al-Ṭahāwī, \textit{Maʿānī}, 3.47-48; \textit{Mushkil}, 9.285.} Al-Ṭahāwī suspects that Muḥammad took his original view from what was commonly held among the Arabs, a claim he also makes in other cases where Muḥammad’s statement or action is not meant to set a precedent.\footnote{Al-Ṭahāwī, \textit{Mushkil}, 9.285, 5.340-341.} Both of the above examples show Muḥammad giving orders unsupported by fact. Al-Ṭahāwī neutralizes these potentially embarrassing reports by appealing to Muḥammad’s \textit{ijtihād} and by portraying that \textit{ijtihād} as radically opposed to revelation, and therefore non-threatening to the status of the \textit{ḥadīth} as a source of law.
Al-Ṭahāwī also appeals to Muḥammad’s ījtiḥād as a technique to neutralize apparently contradictory ḥadīths. When confronted with a ḥadīth in which Muḥammad gives the command not to take oaths (qasam), al-Ṭahāwī argues that this case is like the one in which Muḥammad ordered men not to have intercourse with their pregnant wives: he was speaking out of concern for his addressee, not establishing a legal standard. Other ḥadīths establish the permissibility of taking oaths.342 Similarly, concerning a ḥadīth which appears to set a legal obligation concerning what a man owes to his divorced wife during her waiting period (ʿidda), al-Ṭahāwī argues that Muḥammad was not making a legal ruling (yaḥkum) but rather giving a legal opinion (futyā). The ruling concerning divorced women comes from other, revelatory ḥadīth.343

While revelation does establish a correct answer in the above questions, al-Ṭahāwī does not suggest that God revealed new ḥadīths in order to correct any erroneous ījtiḥād on the part of Muḥammad; in fact, al-Ṭahāwī never states that God must correct Muḥammad’s errant opinions, indicating that he considers them ontologically distinct from revelation. Returning to the idea of prophetic infallibility, we might say that al-Ṭahāwī’s categorical tone in stating that it is impossible for Muḥammad to disobey God or to be in error comes from his conviction that incorrect ījtiḥād is not error.344 Humans, including Muḥammad, are tasked with undertaking ījtiḥād in the absence of revelation, but they are not tasked with arriving at the objectively correct answer.345 In contrast, al-

342 Al-Ṭahāwī, Maʿānī, 4.269-271.
343 Al-Ṭahāwī, Aḥkām, 2.370. For a similar example see Mushkil, 13.145.
344 Al-Ṭahāwī, Mushkil, 1.73.
345 Al-Āmidī, likewise, held that every mujtahid is correct, and therefore Muḥammad, like other mujtahids, cannot be said to be incorrect in his ījtiḥād (Chaumont, “La problématique classique de l’Ijtihād,” 129).
Jaṣṣāṣ and al-Sarakhşī have Muḥammad’s *ijtihād* in mind when they state that the Prophet cannot continue in an error, but will instead be corrected by God. The differences in these two positions suggest a significant difference in how these jurists view Muḥammad’s prophethood. Al-Ţahawī understands Muḥammad as being both a prophet, who infallibly conveys God’s speech and follows God’s commands, and an ordinary human, who can make mistakes and speak contrary to fact just like anyone else. Al-Jaṣṣāṣ and al-Sarakhşī, in contrast, seek to erase the fallible, ordinary side of Muḥammad by arguing that his *ijtihād* amounts to a form of revelation. Changing perceptions of Muḥammad no doubt contribute to this disparity in views; the section on the revelatory status of Muḥammad’s *ijtihād* is much more extensive and strongly stated in al-Sarakhşī (d. ca. 483/1090) than in al-Jaṣṣāṣ (d. 370/980-981).

It is also likely, however, that the difference is due in part to the different genres in which these jurists are writing. Al-Jaṣṣāṣ and al-Sarakhşī are composing manuals of legal theory. While they do adduce *hadīths* in support of and as examples of their claims, the power of selection is in their own hands. In contrast, al-Ţahawī has set out in his works of practical hermeneutics to tackle a very large body of problematic *hadīth* in order to demonstrate that apparent conflicts among them are not real. His materials are not selected to support elegant theoretical discussions; rather, his theories are constantly forced to grapple with the raw material of revelation. It is questionable whether the elegant, comprehensive theories of Islamic law characteristic of the later legal theorists could have coexisted in the same texts with such a diverse body of material. There may be something necessary about the fact that legal theory was written in a genre of texts
separate from, though closely related to, the messy business of confronting the raw material of revelation.

Here, in order to accommodate certain problematic Prophetic *hadīths* without calling the authority of all Prophetic *hadīths* into question, al-Ṭahāwī has posited a fundamental distinction between *hadīths* that result from revelatory instruction and those that represent the Prophet’s personal inference. In asserting this instruction/inference divide, al-Ṭahāwī has effectively created a two-tiered system: Prophetic *hadīths* which represent revelation are authoritative legal sources, while those which record the Prophet’s own legal reasoning have no special authority. There is, then, no single degree of legal authority that can be assigned *a priori* to Prophetic *hadīth* as a category. Of course, legal theorists also recognized different degrees of authority in *hadīth* based upon epistemological certainty, as we have seen above. However, when legal theorists claim that a *khabar wāhid* does not possess the same authority as a *khabar mutawātir*, they are concerned only with how the report was transmitted after Muḥammad’s death; both singly and widely transmitted *hadīths* originally represented the same kind of authority.\(^{346}\)

In contrast, al-Ṭahāwī’s typology of Prophetic *hadīths* is based upon content. Some *hadīths*, from the moment of their inception, cannot serve as the basis for deriving the law, because they merely preserve Muḥammad’s own inference. In his discussion of Prophetic *hadīths*, then, al-Ṭahāwī employs an instruction/inference binary as a kind of safety valve that allows him to downplay the authority of a certain set of problematic

\(^{346}\) We have seen above that later legal theorists’ discussions of the Prophet’s *ijtihād* are designed to assert the functional equivalence of Muḥammad’s *ijtihād* to revelation.
hadīths. In the following chapter, we will see that he draws upon the very same binary to augment the authority of certain Companion and Successor hadīths such that they represent revelatory authority. Al-Ṭaḥāwī’s repeated invocations of the instruction/inference divide in different contexts suggest that this binary is fundamental to al-Ṭaḥāwī’s vision of the structure of the Divine Law.
Chapter Two: Companion and Successor Ḥadīths

Al-Ṭahāwī’s hermeneutical works are overwhelmingly concerned with demonstrating the mechanics of how Prophetic ḥadīths may be interpreted in light of other Prophetic ḥadīths and the Qurʾān in order to reveal coherent rules of positive law.

347 Despite the centrality of Prophetic ḥadīth to al-Ṭahāwī’s project, however, Companion and Successor ḥadīths appear in the great majority of his arguments in Ḥākīm al-Qurʾān and Sharḥ maʿānī al-āṯār.348 They play a lesser but still notable role in his third hermeneutical work, Sharḥ mushkil al-āṯār.349 In the course of these three texts, al-Ṭahāwī cites ḥadīths from well over a hundred different Companions and Successors, many of whom feature habitually in his arguments.350 In most chapters, Companion and

347 On this project, see p. 12 of this study.
348 To give an approximation of their prevalence, within the 21 chapters that comprise Kitāb al-Ṣalāt in Ḥākīm al-Qurʾān, 18 contain both Prophetic and Companion/Successor ḥadīths, 2 contain only Companion ḥadīths, and 1 contains no ḥadīths of any variety. Within the 22 chapters of Kitāb al-Nikāḥ and Kitāb al-Ṭalāq in Sharḥ maʿānī al-āṯār, in contrast, 16 contain both Prophetic and Companion/Successor ḥadīths, while 4 chapters contain only Prophetic ḥadīths.
349 Appeals to authorities play a far smaller role in Sharḥ mushkil al-āṯār than in al-Ṭahāwī’s other hermeneutical works; most chapters reference no authorities at all, but rather offer al-Ṭahāwī’s own harmonization of conflicting Prophetic ḥadīths. In chapters that do mention authorities, the Companions and Successors play a major role, although a smaller one than in al-Ṭahāwī’s other major works. Out of the approximately 50 chapters in the first 5 volumes of Sharḥ mushkil al-āṯār that make reference to authorities, about half mention Companions and Successors, while a larger number include later jurists. Sometimes al-Ṭahāwī cites Companion and Successor ḥadīths when he appeals to them as authorities in Sharḥ mushkil al-āṯār, while at other times he simply mentions their opinions without providing a formal ḥadīth. As a result, Companion and Successor ḥadīths are much rarer in Sharḥ mushkil al-āṯār than in al-Ṭahāwī’s other works; a sampling shows that Chapters 25-45 of Sharḥ mushkil al-āṯār (a total of 20 chapters) all include Prophetic ḥadīths, while only Chapter 35 also includes a Companion ḥadīth. Despite the relative paucity of Companion and Successor ḥadīths in Sharḥ mushkil al-āṯār, al-Ṭahāwī employs the same arguments concerning their status as a legal source that he uses in his other hermeneutical works, and therefore Sharḥ mushkil al-āṯār still serves as a major source for this chapter.
350 Most are cited no more than a few times. A smaller number of Companions and Successors represent major legal authorities for al-Ṭahāwī and are cited repeatedly, sometimes several hundred times in the course of his hermeneutical works. The most frequently cited Companions are ʿUmar ibn al-Khaṭṭāb, Ibn Masʿūd, ʿAlī ibn Abī Tālib, Abū Hurayra, ʿĀʾisha, Ibn ʿAbbās, Ibn ʿUmar and Anas ibn Mālik; the most frequently appearing Successors are Saʿīd ibn al-Jubayr, Saʿīd ibn al-Musayyab, Ibrāhīm al-Nakhaʾī, Mujāhid, al-Ḥasan al-Baṣrī, ʿAtāʾ ibn Abī Rabāḥ and Ibn Shihāb al-Zuhārī.
Successor hadīths serve simply as evidence for those individuals’ legal opinions on a similar level of authority to the opinions of later jurists. In other chapters, however, Companion and Successor hadīths stand in for legally authoritative Prophetic hadīths in a way that suggests that al-Ṭāḥāwī’s willingness to blur boundaries between categories of legal sources extends beyond the revealed sources of Qurʾān and Sunna.

This chapter examines the nature of Companion and Successor authority and the function of Companion and Successor hadīths in al-Ṭāḥāwī’s hermeneutical works. It argues that al-Ṭāḥāwī almost always understands the special authority of the Companions and Successors to derive from their role in mimetically preserving knowledge of Prophetic practice. Crucially, this function points to his assumption of the failure of the corpus of Prophetic hadīths to adequately capture Prophetic practice. In cases where al-Ṭāḥāwī does hold that the Companions or Successors are mimetically preserving Prophetic practice, he invokes the instruction/inference divide described in the previous chapter in order to claim revelatory authority for the hadīths in question. In a very few places, al-Ṭāḥāwī’s thought also preserves traces of an older conception of religious authority which places the Companions in competition with the Prophet. Al-Ṭāḥāwī’s ambivalent approach to the Companions and his heavy reliance on post-Prophetic hadīth, after the time when established narratives of Islamic legal history report that juristic dependence on Companion reports had ceased,351 suggests that existing accounts of the triumph of Prophetic hadīth in the later 3rd/9th century give too neat a picture of this

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351 Hallaq argues that it took more than fifty years after al-Shāfiʿī’s death in 204/820 for Prophetic hadīth to be accepted exclusively over practice-based sunna (Origins and Evolution of Islamic Law, 109). Melchert similarly dates the exclusive reliance on Prophetic hadīth to about the third quarter of the 3rd/9th century (“Traditionist-Jurisprudents,” 404). Vishanoff points to the late 3rd/9th century as the period when jurists ceased to rely on non-Prophetic hadīths (Formation of Islamic Hermeneutics, 64-65).
period. This chapter adds complexity to our understanding of this pivotal time by suggesting the ways in which the question of the authority of post-Prophetic hadīths was tied to changing conceptions of what it meant to preserve Prophetic practice.

**Historical Background**

By al-Ṭaḥāwī’s lifetime, both jurists and traditionists had come to perceive a clear distinction between Prophetic and post-Prophetic hadīths and to accord the former the status of revelation. As discussed in the previous chapter, during the 1st/7th and 2nd/8th centuries the sunna of Muḥammad was in competition with the sunan of other exemplary individuals and previous generations as a model for the Muslim community.\(^{352}\) Although the sunna of the Companions, the first caliphs or the Muslims of a particular locale was generally understood to be an extension of the Prophet’s practice, this early concept of sunna valorized the continuous yet evolving practice of the Muslim Community in a way that the later concept of Prophetic Sunna as an unchanging and mimetic textual record of Muḥammad’s practice would not. The growth of the concept of Prophetic authority can be traced to the late 2nd/8th and early 3rd/9th centuries, when jurists began more systematically to justify their legal doctrines on the basis of Prophetic hadīth.\(^{353}\)

Nonetheless, jurists of that period still had relatively few Prophetic hadīths available to them and continued to rely heavily upon Companion and Successors hadīths.\(^{354}\) As a corollary to the rise in Prophetic authority, many opinions and statements which had

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previously been associated with the Companions, Successors and others began to be attributed to the Prophet in the form of Prophetic hadīths, thus preserving the authority of material which had not previously needed to be labeled Prophetic in order to be normative.

Although the growth of Prophetic authority and the appeal to Prophetic hadīth were related processes, it is important to distinguish between the Prophet as sole locus of authority and Prophetic hadīth as the form in which that authority was transmitted. A jurist might, for example, subscribe to a Prophetic model of authority while holding that the Prophet’s words and actions are known not only through Prophetic hadīths, but also through Companion or Successor hadīths, consensus or the practice of the community. Indeed, it was deference to Prophetic authority without a concomitant exclusive devotion to Prophetic hadīths that characterized what Hallaq labels the “practice-based sunna” of the jurists of the 1st/7th and 2nd/8th centuries. While these jurists looked to Companion practice as a source of law, Companion practice in turn preserved Prophetic practice. Thus, the authority underlying “practice-based sunna” was ultimately understood to be Prophetic, even if, for them, Companion practice was an evolving extension of Prophetic practice rather than a stable record of it. Even when jurists began to articulate more forcefully the idea of an exclusively Prophetic authority at the end of the 2nd/8th century, that authority was not necessarily embodied only in Prophetic hadīth form. As Schacht and Hallaq have noted, al-Shaybānī held that the Qurʾān and the Prophet were the sole

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356 Hallaq, Origins and Evolution of Islamic Law, 201.
357 That is, the sunna of the Companions represents not only what the Prophet did, but also what he would have done in a novel situation (Hallaq, Origins and Evolution of Islamic Law, 70).
legal authorities, yet he employed a significant number of Companion *hadiths* in his legal arguments.\(^{358}\)

In the early 3\(^{rd}/9\(^{th}\) century, al-Shāfiʿī’s theory of *bayān* for the first time asserted that Prophetic authority and Prophetic *hadīth* were necessarily linked. All law, he argued, was revealed by God to humans through Muḥammad in the form of recited revelation or in the speech and actions of the Prophet. Al-Shāfiʿī held that Qurʾān and Prophetic *hadīth* are the complete and exclusive sources through which later generations may come to know revelation and the law, although he did struggle to account for apparently extra-revelatory sources such as Companion reports and consensus within his account of the structure of the law.\(^{359}\)

Reliance upon Companion and Successor reports did not immediately cease, however. Until the appearance of al-Bukhārī’s (d. 256/870) *Ṣaḥīḥ* in the late 3\(^{rd}/9\(^{th}\) century, even traditionists freely mingled Companion and Successor reports with Prophetic material in their *hadīth* compilations.\(^{360}\) While al-Bukhārī, too, included Companion and Successor reports in his *Ṣaḥīḥ*, for him their authority was clearly

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\(^{358}\) Schacht, * Origins of Muhammadan Jurisprudence*, 29. See also Hallaq, *History of Islamic Legal Theories*, 18. Hallaq understands Companion reports to have played a smaller role in al-Shaybānī’s arguments than does Schacht.

\(^{359}\) Schacht, * Origins of Muhammadan Jurisprudence*, 16; Lowry, *Early Islamic Legal Theory*, 33, 203; El Shamsy, *Canonization of Islamic Law*, 70; Hallaq, *History of Islamic Legal Theories*, 18. Al-Shāfiʿī’s early doctrine appears to have given authority to Companion *hadiths*; however, his mature thought excludes non-Prophetic material from his theory of the structure of revelation, the *bayān*. Later Shāfiʿī jurists would experience similar difficulties in accounting for existing positive law without acknowledging the authoritativeness of Companion reports; Chaumont has shown that jurists circumvented this difficulty by assimilating Companion reports under theoretical discussions of *ījmāʿ* (“Le «dire d’un Compagnon unique» (qawl al-wāhid min l-saḥāba) entre la sunna et l’ījmāʿ dans les *uṣūl al-fiqh* šāfiʿites classiques,” *Studia Islamica* 93 (2001): 62-66).

distinguished from and secondary to that of the Prophet’s Sunna. Hallaq and Melchert identify this same period, the second half of the 3rd/9th century, as the time when jurists abandoned Companion ḥadīths in favor of exclusively citing Prophetic ḥadīths.361 Vishanoff largely agrees, although he characterizes the late 3rd/9th century as the time when jurists ceased to “rely heavily” on post-Prophetic reports, leaving open the possibility of some degree of reliance.362

Post-Prophetic Ḥadīths in al-Ṭaḥāwī’s Works

Writing in the early 4th/10th century, al-Ṭaḥāwī understood Prophetic ḥadīth as revelation and a source of law equal to the Qurʾān. Despite his acceptance of the superior status of Prophetic ḥadīth, however, post-Prophetic ḥadīths appear with great frequency in his works. He habitually cites Companion and Successor opinions along with those of later jurists as corroborating authority for his own position or as evidence of opposing positions.363 While the later jurists are simply listed, he provides at least one ḥadīth with a full isnād for each Companion or Successor opinion he cites, meaning that the Companions and Successors occupy a physical space on the pages of his works far greater than that of later jurists, including the jurists of his own school.364

361 Hallaq, Origins and Evolution of Islamic Law, 109; Melchert, “Traditionist-Jurisprudents,” 401-404. Melchert identifies two reasons that jurists may have distanced themselves from Companion ḥadīths at that time. First, given that the superior authority of Prophetic ḥadīths was already widely conceded, jurists would claim Prophetic origin for their ḥadīths in polemical arguments against jurists of other locales in order to give their arguments greater authority. Second, the process of elevating the Prophet’s Sunna to an authority equal to that of the Qurʾān necessitated the concession that Companion ḥadīth were not of similar authority (“Traditionist-Jurisprudents,” 402-404).
362 Vishanoff, Formation of Islamic Hermeneutics, 64-65.
363 E.g., al-Ṭaḥāwī, Maʿānī, 1.26, 1.31-2, 1.34.
364 E.g., al-Ṭaḥāwī, Maʿānī, 1.17-18.
Further, al-Ṭaḥāwī frames many chapters of his hermeneutical works as disagreements among Companions and Successors, citing them at the outset of the chapter as proponents of the various opinions he will evaluate. Only after resolving the disagreement among the Companions and Successors in such chapters does he conclude by mentioning the later jurists who are in agreement with him. While there certainly are plenty of chapters in his hermeneutical works which frame debates as conflicts between legal schools, the presence of so many chapters in which the narrative drama is based upon the conflicts among Companions and Successors indicates their centrality to al-Ṭaḥāwī’s vision of the field of juristic debate.

The preceding observations concern the juxtaposition of Companion or Successor hadīths with the opinions of later jurists and the way in which the Companions and Successors often appear to physically crowd out later jurists within the pages of al-Ṭaḥāwī’s hermeneutical works. The primary interest of this chapter, however, is the juxtaposition of Prophetic and post-Prophetic hadīths in these same works. On the whole, the relative authority of Prophetic and post-Prophetic hadīths appears to be a settled issue for al-Ṭaḥāwī, in keeping with the narrative presented above. Neither he nor his interlocutors suggest that individual Companions or Successors possess authority independent from or in competition with that of the Prophet, although, as we will see below, he is less categorical about the collective authority of the Companions.

Al-Ṭaḥāwī refers to the superior authority of Prophetic over post-Prophetic hadīths in the course of a number of discussions of discrete legal issues. In one, an unnamed interlocutor argues that a report from Ibn ʿUmar provides the best practice for

365 E.g., al-Ṭaḥāwī, Maʿānī, 1.45, 1.48, 1.53; Aḥkām, 1.81, 1.96, 1.113.
supererogatory prayer. Al-Ṭahāwī responds that, first, his interlocutor has misinterpreted Ibn ʿUmar’s report and, second, what has been transmitted from the Prophet is better (awlā) than the report from Ibn ʿUmar. In several other passages detailing Companion disagreement on legal questions, al-Ṭahāwī adopts the Companion opinion that is in agreement with a Prophetic hadīth. In two of these passages, he cites the conflicting Companion hadīths before stating that “since they disagreed” (lammā ikhtalafū) he will look to what has been transmitted from the Prophet. In another, he writes that “this is one of the things on which disagreement occurred among the Companions of God’s Messenger. The best of what they said is that which is in agreement with what we have transmitted from the Prophet.” In a different example concerning disagreement among later jurists rather than among the Companions, al-Ṭahāwī concludes that the best opinion is that which is supported by what has been transmitted from the Prophet, and then what has been transmitted from the Companions.

In all of these discussions al-Ṭahāwī asserts the authority of Prophetic hadīths over post-Prophetic hadīths in cases where they conflict. What is notable, however, is the degree to which these passages also emphasize the importance that al-Ṭahāwī grants Companion hadīths. In the first example, al-Ṭahāwī could merely have stated that the Prophetic hadīth is more authoritative than the opinion of Ibn ʿUmar. Instead, he pauses to argue that his interlocutor has misinterpreted Ibn ʿUmar’s hadīth, and it is in fact in agreement with his own opinion. In other examples, al-Ṭahāwī has Prophetic hadīth

366 Al-Ṭahāwī, Maʿānī, 1.477.
367 Al-Ṭahāwī, Ahkām, 1.108-109; Mushkil, 5.199-211, 10.213; Maʿānī, 1.383.
368 Al-Ṭahāwī, Ahkām, 1.109; Mushkil, 5.211.
369 Al-Ṭahāwī, Mushkil, 10.213.
370 Al-Ṭahāwī, Mushkil, 11.172.
available to settle an issue, yet he takes the time to adduce Companion opinions and only looks to the Prophetic example “since they disagreed.” Although the final example asserts the priority of Prophetic hadīth, it also instructs jurists to look to Companion hadīths to settle their disagreements.

Likewise, in a chapter of Sharḥ mushkil al-āthār, al-Ṭahāwī presents Companion hadīths apparently in conflict with a Prophetic hadīth. Rather than simply dismissing the Companion hadīths as inferior to the Prophetic hadīth and therefore irrelevant to determining the law, al-Ṭahāwī applies the harmonization techniques to them that he generally uses on apparently conflicting Prophetic hadīths. His application of harmonization techniques to apparent conflicts between Companion and Prophetic hadīths stands in stark contrast to the position of al-Shāfiʿī, who held that Companion hadīths could not be harmonized with Prophetic hadīths because the latter were revelation while the former were not. Al-Ṭahāwī concludes the chapter by stating that, “Thanks be to God, what we have transmitted from the Companions of God’s Messenger emerges as being in agreement with what we have transmitted from God’s Messenger.” In this example and those previous, al-Ṭahāwī evinces a notable concern for Companion hadīths and their agreement with Prophetic hadīths even while assuming the superior authority of Prophetic material.

In a striking example of al-Ṭahāwī’s deference to Companion hadīths, he devotes a chapter of Sharḥ mushkil al-āthār to explaining Ibn ʿAbbās’s statement that “there is no revelation except for the Qurʾān.” As discussed in the previous chapter of this study, al-

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371 El Shamsy, Canonization of Islamic Law, 80.
372 Al-Ṭahāwī, Mushkil, 9.15.
Ṭaḥāwī harmonizes Ibn ʿAbbās’s assertion with Prophetic hadīths stating that the Prophet’s Sunna is also revelation by arguing that the Sunna falls within the scope of the Qurʾān. The fact that al-Ṭaḥāwī elected to dedicate a chapter to harmonizing Ibn ʿAbbās’s statement with Prophetic hadīth, as well as the unusual argument he employs to do so, suggests that he does not understand Companion hadīths as being so ontologically distinct from Prophetic hadīths that they can simply be dismissed when they contradict established Prophetic hadīths. Further, by framing the chapter as one about Ibn ʿAbbās’s hadīth, rather than the Prophetic hadīths with which it is apparently in conflict, al-Ṭaḥāwī makes a Companion report his central concern.

The Relative Status of the Companions and the Successors

We will see in this chapter that al-Ṭaḥāwī claims special authority for both Companion and Successor hadīths, although Successors represent Prophetic authority much less frequently than do the Companions. In the authority he grants to Successor hadīths, al-Ṭaḥāwī departs from the later tradition; while the earliest Ḥanafī usūl works contain chapters on aspects of the authority of the Companions, the Successors appear to hold no special status. Al-Ṭaḥāwī’s elevation of Successor hadīths does appear to have at least some elements in common with the thought of one of his contemporaries, the

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373 Al-Ṭaḥāwī, Mushkil, 14.466-471. For a discussion of this argument, see p. 80 of this study.
374 It is worth considering whether al-Ṭaḥāwī grants Ibn ʿAbbās authority as a member of the ahl al-bayt rather than as a Companion; however, the large number of cases in which al-Ṭaḥāwī grants Prophetic status to hadīths by Companions who are not ahl al-bayt suggests that it is Ibn ʿAbbās’s status as Companion that is relevant here.
375 A few other chapters of Sharḥ mushkil al-āthār are likewise framed as explaining Companion, rather than Prophetic hadīth. See, for example, Mushkil, 14.465.
traditionist Ibn Abī Ḥātim al-Rāzī (d. 327/939), however. In his introduction to *Kitāb al-Jarḥ wa-l-taʿdīl* Ibn Abī Ḥātim argues for the probity of both the Companions and the Successors. As is the case with the Companions, he states, there is no distinction among the Successors, for they are all imams. Although Ibn Abī Ḥātim was concerned with asserting the soundness of the corpus of Prophetic hadīths while al-Ṭāḥwī sought to expand the corpus of available hadīths by labeling post-Prophetic hadīths as Prophetic, both argued for the authority of the Successors in a way that was not continued by the later tradition.

In his introduction to *Kitāb al-Jarḥ wa-l-taʿdīl* Ibn Abī Ḥātim argues for the probity of both the Companions and the Successors. As is the case with the Companions, he states, there is no distinction among the Successors, for they are all imams. Although Ibn Abī Ḥātim was concerned with asserting the soundness of the corpus of Prophetic hadīths while al-Ṭāḥwī sought to expand the corpus of available hadīths by labeling post-Prophetic hadīths as Prophetic, both argued for the authority of the Successors in a way that was not continued by the later tradition.

In addition to elevating the status of the Successors, al-Ṭāḥwī and Ibn Abī Ḥātim are also alike in using the term qudwa (model, exemplar) exclusively in connection with the Companions. Ibn Abī Ḥātim writes that God “made [the Companions] signs (*aʾlām*) and an exemplar (qudwa) for us,” a claim he does not make in his discussion of the Successors, despite his general elevation of their status as transmitters. Al-Ṭāḥwī, too, appears to restrict the status of qudwa to the Companions, although his usage is somewhat more ambiguous. In a chapter of *Sharḥ mushkil al-āthār* concerning Q 54/al-Qamar:1 (“The Hour has drawn near—the moon has been split”), al-Ṭāḥwī criticizes

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376 It is possible that Ibn Abī Ḥātim and al-Ṭāḥwī met during Ibn Abī Ḥātim’s journey to Egypt in 262/875 to collect hadīth. Although I have not located any reports connecting the two scholars directly, Ibn Abī Ḥātim was the first known biographer of al-Ṭāḥwī’s first teacher, al-Muzanī—indeed, R. Kevin Jaques describes Ibn Abī Ḥātim as a student of al-Muzanī (“The Contestation and Resolution of Inner and Inter-School Conflicts,” 115). Both scholars also transmitted from Muḥammad ibn Ḥātím ibn-al-Ḥakam (d. 799/882), the son of the famous jurist Ḥādīth. Ibn Abī Ḥātim places the Successors “on the same plane as the Companions” (*Development of Early Sunnite Hadīth Criticism*, 23; al-Dhahabī, *Tadhkirat*, 3.21).


those who claim that the moon will split on Judgment Day rather than relying on Companion āthār from ʿAlī, Ibn Masʿūd, Ḥudhayfā, Ibn ʿUmar, Ibn ʿAbbās and Anas establishing that it had already split during the lifetime of the Prophet. He writes that “we know of nothing else transmitted from other scholars on this matter. They are the exemplars (qudwa) and the authorities (ḥujja) whom only an ignoramus would oppose, and only a profligate would despise.” Here the term qudwa appears to be restricted to the Companions he has just listed, although in the next paragraph he condemns those who rely on their own raʾy over what has been transmitted from the Companions and their Successors without indicating why the Successors are now being mentioned along with the Companions.

A similar ambivalence concerning the relative status of the Companions and the Successors appears later in the same chapter, where al-Ṭahāwī writes that:

We seek refuge in God from opposition to the Companions of God’s Messenger and deviation from their doctrines (madhāhib). [Such deviation] is like holding oneself above (al-isti bār ʿan) God’s Book. Whoever holds himself above God’s Book and the doctrines of the Companions of God’s Messenger and their Successors is deserving of God denying him understanding.

Here, as above, al-Ṭahāwī first refers only to the Companions, but then apparently expands the scope of his claim to include the Successors. Thus, it appears that neither for Ibn Abī Ḥātim nor for al-Ṭahāwī does the claim that Successor transmission can fulfill the same functions as Companion transmission necessarily indicate that the two groups are precisely equivalent in status.

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380 Al-Ṭahāwī, Mushkil, 2.182.
381 Al-Ṭahāwī, Mushkil, 2.184. Al-Ṭahāwī then cites a report in which the exegete Sufyān ibn ʿUyayna (d. 198/814) explains that Q 7/1-al-Aʾraf:146 (“I shall turn away from My signs those who are unjustly haughty in the land”) means ‘I shall prevent them from understanding My Book,’ thus claiming Qurʾānic support for the duty of following the Companions.
The passage translated above makes a strong claim for the authority of Companion—and to a lesser degree, Successor—doctrines. The Companions’ status as qudwa in both al-Ṭahāwī and Ibn Abī Ḥātim might also appear to indicate that the Companions held a normative authority of their own. A close study of the relevant passages, however, indicates that the status of qudwa claimed by both scholars and the authority al-Ṭahāwī envisions for the Companions’ doctrines is not any sort of independent authority, but rather derives directly from their status as witnesses to revelation. In both passages from the chapter on the splitting of the moon citing above, what al-Ṭahāwī criticizes is later scholars’ rejection of Companion reports confirming a historical event—the splitting of the moon. Thus, when he speaks of their doctrines (madhāhib), he is not referring to their legal opinions, but rather to their recounting of events they witnessed, a recounting which serves as exegesis for the Qur’ān. Likewise, in the earlier passage the Companions are exemplars only in the sense that they preserve knowledge of the meaning of the Qur’ānic verse in question. Wheeler observes that Ibn Abī Ḥātim’s understanding of the authority of the Companions’ practice (and thus their role as qudwa) is also based on their status as witnesses to revelation and to the Prophet’s practice. Thus, the authority that both al-Ṭahāwī and Ibn Abī Ḥātim attribute to the Companions in labeling them qudwa is merely the faithful transmission of knowledge of Prophetic practice.

A hierarchy of the Companions and Successors is also indicated elsewhere in al-Ṭahāwī’s thought. Below, we will see that al-Ṭahāwī claims Prophetic authority for far

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more Companion hadīths than Successor hadīths and that the Successors appear in only one of the three lists of legal sources mentioning Companion opinions. Additionally, we will observe that he holds the mere fact of being a Companion sufficient to allay fears of that person’s contravening Prophetic practice, while no such claims are made about the Successors. Instead, he points to the personal qualities of individual Successors to explain their authority. A hierarchy of Companion and Successor authority—at least in the area of Qur’ānic exegesis—is established in a chapter of Sharḥ mushkil al-āthār in which the Successor Mujāhid’s exegesis of a Qur’ānic verse differs from that of the Companion Ibn Masʿūd. Al-Ṭaḥāwī argues that Ibn Masʿūd’s exegesis receives precedence over Mujāhid’s because of Ibn Masʿūd’s position (mawḍī) relative to the Prophet.383 That is, Ibn Masʿūd witnessed revelation and is therefore better qualified to interpret it than Mujāhid.

That al-Ṭaḥāwī gave precedence to the Companions over the Successors may be understood as reflecting an ongoing process of defining the boundaries and nature of Companionship. This process is evident as early as the beginning of the 3rd/9th century with al-Wāqidi’s (d. 207/822) definition of a Companion384 and continues through the final crystallization of the doctrine of the collective probity of the Companions (ʿadālat al-ṣaḥāba) in the 5th/11th century.385 Al-Ṭaḥāwī’s ʿAqīda is one of the earliest statements of the theological requirement to revere all of the Companions,386 and a number of chapters in Sharḥ mushkil al-āthār are concerned with working out the collective status

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383 Al-Ṭaḥāwī, Mushkil, 6.117.  
384 Lucas, Constructive Critics, 20.  
of the Companions by addressing hadīths that appear to suggest that only some Companions possessed important virtues\textsuperscript{387} or imply that Companions acted wrongly in a certain case.\textsuperscript{388} Other chapters argue for the superiority of the Companions over all later Muslims while recognizing the possibility that some Companions may be superior to others in certain areas.\textsuperscript{389}

Al-Ṭahāwī thus theorizes about the status of the Companions in a way that he does not do with the Successors, even though the Successors perform all the same functions in his legal arguments as the Companions. In this approach, al-Ṭahāwī appears to represent an intermediary stage between a time when the earliest generations of Muslims were vested with the authority to extend and develop Prophetic practice and the later concept of ʿadālat al-ṣaḥaba, which served primarily to guarantee the corpus of Prophetic hadīth by precluding criticism of any of its original transmitters.

**The Prophetic Authority of Post-Prophetic Ḥadīths**

*Claims of Prophetic Status for Post-Prophetic Ḥadīths*

Al-Ṭahāwī understood only the Prophet’s Sunna as revelation and thus in theory made a firm distinction between the status of Prophetic and post-Prophetic hadīths. However, as we saw in the previous chapter, al-Ṭahāwī does not distinguish between Prophetic and post-Prophetic reports in his terminology; khabar, ḥadīth, āthār and sunna are all used in reference to both Prophetic and post-Prophetic material, while many later

\textsuperscript{387} Al-Ṭahāwī, Mushkīl, 2.12, 2.280-288, 3.260, 7.200, 9.178-198. Al-Ṭahāwī’s argument in such chapters is linguistic; the statement that a certain person possessed a certain quality does not entail that others did not possess it as well.

\textsuperscript{388} Al-Ṭahāwī, Mushkīl, 5.381-382, 13.12.

\textsuperscript{389} Al-Ṭahāwī, Mushkīl, 6.265-6, 9.178-198, 13.207.
jurists would carefully distinguish between Prophetic ḥadīth and post-Prophetic āthār in their terminology.\textsuperscript{390} Further, in approximately fifty passages in \textit{Ahkām al-Qurʾān} and \textit{Sharḥ mushkil al-āthār}, al-Ṭahāwī blurs the boundaries between Prophetic and non-Prophetic material by claiming Prophetic status for a post-Prophetic ḥadīth.\textsuperscript{391}

For example, no Prophetic ḥadīth indicates any limit to when it is permissible to perform the ʿUmra (minor pilgrimage). According to qiyyās, al-Ṭahāwī writes, it should be permissible on any day of the year. However, he has discovered a statement from ʿĀʾisha that there are four days of the year when the ʿUmra may not be performed. Al-Ṭahāwī argues that:

\begin{quote}
We know that [ʿĀʾisha] did not speak based upon her own legal reasoning (raʾy), but rather spoke what had been confirmed by the Prophet’s instruction (tawqīf), because this kind of thing cannot be based upon legal reasoning. Therefore we hold that her statement on this is like a continuously attested Prophetic ḥadīth (ḥadīth muttaṣif).\textsuperscript{392}
\end{quote}

By deeming ʿĀʾisha’s statement evidence of revelation, al-Ṭahāwī has in effect elevated a post-Prophetic ḥadīth to the status of a revealed text. Crucially, al-Ṭahāwī’s argument in support of ʿĀʾisha’s position depends on the instruction/inference binary we have already encountered in the previous chapter, although here that binary is expressed using the language of raʾy (legal reasoning) and tawqīf (Prophetic instruction). While a Companion or Successor’s legal reasoning—most commonly termed raʾy, but also

\textsuperscript{390} I have chosen to refer to Companion and Successor “ḥadīths” rather than “reports” throughout this chapter in order to emphasize that al-Ṭahāwī does not draw a firm distinction in his theory or in his terminology between Prophetic and non-Prophetic transmissions.

\textsuperscript{391} Notably, this argument appears only a few times in \textit{Sharḥ maʾānī al-āthār}. Given that Maʿānī is reported to be al-Ṭahāwī’s earliest work, it is possible that he developed this argument later in his legal career.

\textsuperscript{392} Al-Ṭahāwī, \textit{Ahkām}, 2.226.
occasionally *istinbāṭ, istikhrāj* or *qiyās*—can justifiably serve as the basis for some kinds of statements regarding the law, other types of legislative statements can only be based upon instruction from the Prophet (*tawqīf* or, occasionally, *akhḍh*). Precisely which types of statements require *tawqīf* is never explicitly and comprehensively stated, although I suggest some parameters later in this section, abstracted from passages in which al-Ṭahāwī employs this argument. In addition to this binary, al-Ṭahāwī’s argument in this passage assumes a second major premise: that a Companion or Successor would never make a statement concerning the law for which they did not possess the necessary authority. In effect, the *tawqīf:raʾy* binary transforms a pious optimism about the trustworthiness of the Companions and Successors into the basis for an inference

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393 Al-Ṭahāwī uses a variety of terms to refer to Companion and Successor legal reasoning as reflected in some post-Prophetic *hadīths*. His most frequent claim is that a Companion could not have spoken from *raʾy* (opinion) (e.g., *Mushkil*, 3.188, 4.232, 4.384, 6.64), but he also often mentions the inadequacy of *istinbāṭ* (deduction/inference) or *istikhrāj* (deduction/inference) as the basis of a statement, singly or in combination with each other and with *raʾy* (e.g., *Mushkil*, 1.67, 2.284, 2.248, 6.331). On fewer occasions, he mentions *qiyās* (analogy) or *darb al-amthāl* (arguing from a series of graded cases) as other procedures of insufficient authority to support a Companion’s statement (*ā*, 1.191, 2.135, 2.153-154, 2.167). I will reserve discussion of the distinctions between these procedures for a later chapter. However, we may note here that the lack of any clear connection between the content of a chapter and the combination of these terms that appears there, suggests that he is listing them merely as examples of the kinds of procedures which cannot support a Companion’s authority in a specific kind of statement. The mention of a particular procedure—*raʾy, istikhrāj, istinbāṭ, qiyās, darb al-amthāl*—is therefore less important than the general assertion that a Companion did not have necessary authority to derive an opinion on his own, and therefore its origin must be Prophetic. As *raʾy* is the term most commonly opposed to *tawqīf* in al-Ṭahāwī’s arguments, I use it in this chapter as a shorthand for all the terms listed here.

394 In general, al-Ṭahāwī uses the word ‘*tawqīf*’ to refer to the Prophetic origins of a Companion report (*Mushkil*, 1.67, 3.188, 4.248). *Tawqīf* is generally understood to mean instruction through revelation in the form of the Qurʾān and Sunna (e.g., Stewart, “Muḥammad b. Dāʾūd al-Ẓāhirī’s Manual of Jurisprudence,” 144; Lange, “Sins, Expiation and Non-Rationality in Ḥanafi and Shāfiʿī *fiqh,*” in *Islamic Law in Theory*, ed. A. Kevin Reinhart and Robert Gleave (Leiden: Brill, 2014), 154). In most other passages asserting the authority of Companion reports, al-Ṭahāwī employs the term ‘*akhḍh*’ (reception) to indicate that the Companion in question must have taken a statement directly from the Prophet (e.g., *Mushkil*, 1.68, 2.284, 3.107). The fact that al-Ṭahāwī uses both of these terms successively to refer to a single Companion report from Ḥāfiẓ suggests that there is no significant difference between them (*Mushkil*, 1.67-168).

395 Al-Ṭahāwī’s arguments concerning the trustworthiness of the Companions and Successors are discussed later in this chapter, pp. 134-139.
concerning the origins of their legal doctrines. By appealing to this binary, al-Ṭahāwī is able to claim revelatory status for many apparently non-Prophetic statements of the law.

Al-Ṭahāwī similarly elevates post-Prophetic hadīths to Prophetic status in many other passages of his hermeneutical works. In a chapter containing both Prophetic and Companion versions of an exegesis of a Qur'ānic verse, al-Ṭahāwī states that, even if not a single transmitter had elevated (raf’) a certain hadīth from Ibn ʿAbbās to the Prophet, we would know that Ibn ʿAbbās must have received this statement from the Prophet.396

On another occasion, when faced with an ambiguous report in which it is not clear whether a certain phrase is quoting the speech of Abū Hurayra or the Prophet, al-Ṭahāwī concludes that, in either case, the speech is originally that of the Prophet. That is true even if Abū Hurayra did not receive it directly from the Prophet, but instead reported it indirectly from someone else who had received it from the Prophet.397

Once al-Ṭahāwī has claimed Prophetic status for a Companion hadīth, he holds that hadīth equal to other Prophetic hadīths in every way. Concerning one report from the wives of the Prophet, al-Ṭahāwī says that he “includes it among the Prophetic hadīths” (adkhalnā hādhihi al-ḥadīth fī ahādīth rasūl Allāh’).398 In another place, he argues that a hadīth from ʿAlī falls under the ruling (ḥukm) of something transmitted from the Prophet.399 After elevating Companion reports from ʿAlī and Abū Hurayra to Prophetic status, al-Ṭahāwī uses the term mukāfi’ (equivalent) to describe their relationship to another relevant Prophetic hadīth, the same term he uses when two Prophetic hadīths

396 Al-Ṭahāwī, Mushkil, 3.107.
397 Al-Ṭahāwī, Mushkil, 6.64.
398 Al-Ṭahāwī, Mushkil, 6.331.
399 Al-Ṭahāwī, Mushkil, 11.378.
cannot be harmonized and therefore must both be discarded.\textsuperscript{400} Finally, in a chapter where al-Ṭahāwī has claimed Prophetic status for a report from Abū Hurayra, he proceeds to harmonize that report with both the Qurʾān and Prophetic \textit{hadīths} on the grounds that they are equally authoritative sources.\textsuperscript{401} In a strong sense, then, the reports in question are no longer truly Companion \textit{hadīths} at all, but have fully entered the realm of Prophetic revelation.

Only rarely does al-Ṭahāwī elevate a post-Companion \textit{hadīth} to Prophetic status. One passage identified concerns the Successor Tāwūs, while another concerns the jurist al-Awzāʿī (d.158/774). In the chapter on the ʿUmra discussed above, shortly after claiming for ʿĀʾisha’s report the status of a \textit{hadīth muttaṣil}, al-Ṭahāwī cites a \textit{hadīth} from Tāwūs. He writes that Tāwūs “must have had tawqīf from someone who came before him, because this is the kind of thing not taken from \textit{raʾy}, istihraj or istinbāṭ.”\textsuperscript{402} That is, Tāwūs must have heard it from a Companion, who must have heard it from the Prophet. The other example concerns a Prophetic \textit{hadīth} in which it is unclear whether a certain addition to the \textit{hadīth} by al-Awzāʿī was intended to be part of the Prophet’s speech or was al-Awzāʿī’s own speech. Al-Ṭahāwī concludes that the question is unimportant, because someone as knowledgeable and virtuous as al-Awzāʿī would not inappropriately add his own interpretation to the \textit{hadīth}, and what he said could not be based upon \textit{raʾy}, istihraj or istinbāṭ.\textsuperscript{403} Al-Ṭahāwī’s arguments concerning these post-Companion reports thus follow the same pattern and use the same language as many of his arguments.

\textsuperscript{400} Al-Ṭahāwī, \textit{Aḥkām}, 1.186.
\textsuperscript{401} Al-Ṭahāwī, \textit{Mushkil}, 4.232ff.
\textsuperscript{402} Al-Ṭahāwī, \textit{Aḥkām}, 2.227.
\textsuperscript{403} Al-Ṭahāwī, \textit{Mushkil}, 8.347.
concerning the Prophetic status of Companion hadiths; however, his stronger claims discussed above, such as that a post-Prophetic hadith should be counted among the Prophetic hadiths, are limited to the Companions.

In many cases, al-Ṭahāwī’s claims of authority for post-Prophetic hadiths are in agreement with principles described by other jurists and traditionists. For instance, al-Ṭahāwī accepts a hadith from Abū Mulayḥ concerning the amount of the damages (diya) for the killing of a viable fetus on the grounds that the hadith mentions a specific sum for the damages, and such a sum can only be known through Prophetic instruction.404 In their chapters on taqlīd al-Ṣaḥābī,405 al-Jaṣṣāṣ and al-Sarakhsī similarly note that even those jurists who deny the precedence of a Companion report over qiyās accept the legal authority of a single Companion report on issues related to quantity. Like al-Ṭahāwī, they take the Ḥanafī principle that enumerated quantities and defined amounts cannot be the outcome of analogy and make that principle the basis for an inference about the provenance of a Companion hadith. That is, because quantities cannot be known through qiyās, a Companion hadith establishing such a rule must have been based upon Prophetic instruction (tawqīf).406 Nyazee observes that the Ḥanafis apply the same rule to time periods.407 We have already seen al-Ṭahāwī claiming Prophetic status for ‘Ā’isha’s hadith about the time period during which Muslims may perform the ‘Umra, and al-Ṭahāwī states explicitly elsewhere that the defining of time periods (tawqīt) requires

404 Al-Ṭahāwī, Mushkil, 11.420.
405 This principle is discussed below.
406 Al-Sarakhsī, al-Muharrar, 2.85; al-Jaṣṣāṣ, al-Fuṣūl, 2.174-5. Al-Jaṣṣāṣ is quoting his Ḥanafi predecessor al-Karkhī (d. 340/951) in this passage. This argument appears to have a long history among the Hanafis; al-Tilimsānī attributes it to Abū Ḥanīfah himself (Ahmad, Structural Interrelations of Theory and Practice, 134).
instruction (tawqīf) from the Prophet. However, while later Ḣanafī jurists may accept the legal authority of such Companion ḥadīths, they do not appear to reclassify Companion ḥadīths as Prophetic or discuss the authority of post-Companion ḥadīths in the manner of al-Ṭaḥāwī.

Nor does al-Ṭaḥāwī limit his use of this argument to cases involving numbers or time periods. In a few cases, he establishes principles concerning other kinds of legislative statements that require tawqīf. For instance, we learn that statements in the grammatical form of a threat and statements which particularize (khāṣṣ) the general (ʿāmm) must have been the result of Prophetic instruction. In most cases, however, al-Ṭaḥāwī merely states that a certain legislative statement in a post-Prophetic ḥadīth could not be based upon legal reasoning without explaining what it is about the statement that precludes that possibility. The rules that al-Ṭaḥāwī supports on the basis of this argument include, for example, the impermissibility of performing Congregational prayer on Fridays and the three days of Īd al-Adḥā outside of a garrison town or Friday mosque (jāmiʿ); the permissibility of wearing a garment embroidered in silk; the

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408 Al-Ṭaḥāwī, Mushkil, 12.429: “Al-tawqīf lā yuʾkhadh illā bi-t-tawqīf.” See Aḥkām, 1.175 for another example of this argument applied to a Companion statement about the time period for a prayer. Because Sharḥ mushkil al-ʿāthār does not exclusively concern legal topics, we also witness al-Ṭaḥāwī asserting that Companion statements concerning the exegesis of Qurʾānic verses must necessarily have come from the Prophet (Mushkil, 1.55, 1.68, 2.354, 3.107, 5.383, 6.115, 8.445, 10.89). In this assertion he is in agreement with the traditionalists, who define as automatically marfūʿ (elevated to the Prophet) any Companion report on the interpretation of Qurʾānic verses or the circumstances in response to which they were revealed (Kamali, Textbook of Ḥadīth Studies, 156). While al-Ṭaḥāwī agrees that Companion reports containing Qurʾānic exegesis must have come from the Prophet, he does not join the traditionalists in applying the label marfūʿ to them.

409 Al-Ṭaḥāwī, Mushkil, 4.411-412, 5.181.

410 Al-Sarakhshī also asserts Prophetic origins for Companion reports beyond those concerned with quantities. However, where al-Ṭaḥāwī makes this argument for rules that could not be based upon rational procedures, al-Sarakhshī argues that Companion reports stating rules which conflict with qiyās must have Prophetic origins (al-Muharrar, 2.85).

411 Al-Ṭaḥāwī, Mushkil, 3.188; Aḥkām, 1.145.
impermissibility of slaves calling their masters ‘rabbī’ (my lord); the practice of calling out a greeting before asking permission to enter a house; the permissibility of interceding for someone who has committed a hadd crime before the charge is brought to the ruler; and the impermissibility of two people conferring secretly together while traveling with a third person. Surveying other cases in which he employs this argument, we may surmise that al-Ṭahāwī also holds that Companion opinions establishing ritual practices must have originated with the Prophet, since a number of his examples involve prayer and pilgrimage practices.

On the whole, however, while it is possible to abstract from al-Ṭahāwī’s discussions some limited set of principles concerning the kind of legislative statement that requires tawqīf, in practice, these principles cannot account for nearly all of al-Ṭahāwī’s appeals to the idea of an underlying instance of tawqīf. Indeed, it appears that any legislative statement by a Companion that is not explicitly labeled an instance of qiyyās may be subsumed under this argument and reclassified as Prophetic, a move which permits al-Ṭahāwī wide latitude in claiming divine origins for practices not recorded in the Qur’ān and Prophetic Sunna. The question arises, then, on what basis does al-Ṭahāwī identify particular Companion and Successor hadiths as representing Prophetic authority, and to what end?

412 Al-Ṭahāwī, Mushkil, 4.48.
413 Al-Ṭahāwī, Mushkil, 4.232.
414 Al-Ṭahāwī, Mushkil, 4.248.
415 Al-Ṭahāwī, Mushkil, 4.386.
416 Al-Ṭahāwī, Mushkil, 5.43.
417 E.g., al-Ṭahāwī, Mushkil, 11.374, 12.57; Aḥkām, 1.186.
418 E.g., al-Ṭahāwī, Aḥkām, 2.96, 2.135, 2.153-154, 2.167, 2.208, 2.226.
In many cases, al-Ṭahāwī asserts the Prophetic status of Companion hadīths in order to justify established rules of Ḥanafī positive law that cannot be accounted for under the source rubric of Qurʾān, Sunna and consensus. Such cases reveal that al-Ṭahāwī’s hermeneutical project is at least to some extent instrumental, serving the ultimate purpose of tethering Ḥanafī fiqh to revelation. For example, in a discussion defining the area of ʿArafat within which pilgrims must halt, al-Ṭahāwī first cites a Prophetic hadīth saying that all of ʿArafat is a halting place (mawqif). He next notes that scholars including Abū Ḥanīfa, Abū Yūsuf and Muḥammad ibn al-Ḥasan al-Shaybānī exclude a certain area from the permissible halting place for the pilgrimage, but that he has not found a continuously attested Prophetic hadīth giving that exception. He has, however, identified a Companion hadīth from Ibn ʿAbbās, supported by other reports from ʿAbd Allāh ibn al-Zubayr and ʿUrwa, stating the exception. Because we know that they would not have spoken from raʾy, istinbāt, maqāyīs, or ḍarb al-amthāl, they must have taken this exception from the Prophet. Al-Ṭahāwī goes on to state that he later found a version of the hadīth from Ibn ʿAbbās which was elevated to the Prophet (marfūʿ); however, even before discovering the Prophetic hadīth stating the exception, al-Ṭahāwī was willing to base his opinion on the authority of the presumed Prophetic origins of Companion hadīths. Significantly, the authority that al-Ṭahāwī grants these Companion hadīths outweighs the authority of the original Prophetic hadīth stating that all of ʿArafat is the halting place. The argument for the Prophetic status of Companion hadīth thus

419 Al-Ṭahāwī, Aḥkām, 2.134-135. A very similar argument concerning the portion of Muzdalifa which may be used as a halting place for the Hajj can be found at Aḥkām, 2.165-168.
allows al-Ṭahāwī to claim a basis in revelation even for rules which conflict with Prophetic hadīth.

It would be a mistake, however, to assume that al-Ṭahāwī’s elevation of Companion hadīths to Prophetic status is merely a tool in the service of justifying Ḥanafī fiqh. While the majority of such arguments do serve to support an established rule of Ḥanafī positive law, at other times al-Ṭahāwī’s deference to Companion hadīths leads him to oppose established Ḥanafī positions, revealing a fundamental struggle in al-Ṭahāwī’s works between instrumental and philosophical reasoning.\(^{420}\) For instance, in a chapter concerning someone who had the opportunity to make up missed fast days from a previous Ramadan but failed to do so before the arrival of a new Ramadan, al-Ṭahāwī spends most of the chapter arguing in support of Abū Ḥanīfah, Abū Yūsuf and al-Shaybānī, who hold that nothing more is required of the person than that he or she should make up the missed fast days. In response to the claim of Mālik, al-Shāfi‘ī, Ibn ʿAbbās and Abū Hurayra that the individual must also feed a poor person for every day of fasting missed, al-Ṭahāwī argues that nothing more than making up the missed obligation is required of someone who misses a prayer. By analogy, nothing more should be required of someone who misses a fast day. Further, the Qurʾān does not mention feeding the poor in its discussion of making up missed fast days. Al-Ṭahāwī counters several more arguments from an unnamed interlocutor representing the position of Mālik, al-Shāfi‘ī, Ibn ʿAbbās and Abū Hurayra.\(^{421}\)

\(^{420}\) In al-Ṭahāwī wa manhajuhu fī l-fiqh al-islāmī, Sa’d Bashīr Sharaf has compiled a list of legal questions in Sharh maʿānī al-āthār on which al-Ṭahāwī disagrees with established Ḥanafī fiqh (Amman: Dār al-Nafāʾis, 1998), 79-186). Twelve of the chapters in question he paraphrases at length (79-173).

\(^{421}\) Al-Ṭahāwī, Aḥkām, 1.411-416.
To this point in the argument, al-Ṭahāwī appears to agree with the Ḥanafī position. At the very end of the discussion, however, al-Ṭahāwī states that he could not find support for the legislative content of the hadīths from Ibn ʿAbbās and Abū Hurayra in the Qurʾān, the Sunna, or qiyās. They could not have spoken from raʾy or istinbāṭ, but only on the basis of tawqīf from the Prophet. No other Companion is known to disagree with them. Therefore, he will oppose Abū Ḥanīfa, Abū Yūsuf and al-Shaybānī and adopt the opinion of Ibn ʿAbbās and Abū Hurayra, even though analogy and the apparent meaning of the Qurʾān are in conflict with their position.422 Although he does not say so directly, he is also now in agreement with Mālik and al-Shāfīʿī over the members of his own legal school.

We see here that al-Ṭahāwī’s deference to Companion reports goes considerably deeper than a mere need to justify Ḥanafī positive law on the basis of revealed texts. Instead, he elevates the Companions’ status such that any discrepancy between certain Companion hadīths and the Qurʾān or Sunna indicates special knowledge on the part of the Companions. In effect, it is the apparent baselessness of the Companion reports which al-Ṭahāwī asserts as his justification for accepting them as Prophetic, a procedure which relies upon the underlying premise that it is impossible that the Companions would ever knowingly depart from correct legal practice or speak on matters for which they do not have the necessary authority, such as basic ritual matters. Thus, within the instruction/inference divide which makes up the tawqīf:raʾy binary, all that is necessary to confirm the presence of tawqīf is the absence of an undisputed instance of raʾy. That is, the affirmation of tawqīf is the result of a lack of evidence (or permission) for raʾy, rather

422 Al-Ṭahāwī, Ahkām, 1.416.
than any positive indication that *tawqīf* actually occurred. Nonetheless, in the example above, al-Ṭahāwī considers his inference of an original *tawqīf* strong enough to outweigh the apparent evidence of Qurʾān and Sunna as well as established Ḥanafī law.

Al-Ṭahāwī also sometimes defers to Companion *ḥadīths* over Ḥanafī doctrine in cases where he does not argue that those Companion *ḥadīths* have Prophetic status. For example, in a chapter of *Sharḥ mushkil al-āthār* concerning the requirements of *ihrām* (a prolonged state of ritual purification for the Pilgrimage), al-Ṭahāwī proposes an interpretation of apparently contradictory Prophetic *ḥadīths* such that they refer to different situations, and are thus in harmony with each other. He asserts that his harmonization is supported by *ḥadīths* showing the Companions acting in accordance with his interpretation. He concludes the chapter by noting that his position opposes that of the Ḥanafīs and the Mālikīs.\(^{423}\)

In another chapter of *Sharḥ mushkil al-āthār* on whether Q 5/al-Māʾida:106 (“[let there be] witnessing between you when death comes to one of you”) was abrogated, al-Ṭahāwī adduces several Companion reports indicating that the verse was not abrogated and then writes that he knows of no Companion who opposed them. He likewise cites a large number of Successors who held that the verse was not abrogated, while conceding that at least one Successor, al-Ḥasan al-Baṣrī, held that it was abrogated. Although the later Ḥanafīs, Mālikīs and Shāfiʿīs held that the verse was indeed abrogated, al-Ṭahāwī argues that their argument does not provide certainty of the abrogation of what was in the Qurʾān and then was practiced by the Prophet and many of his Companions.\(^{424}\) In each of


the examples above, al-Ṭahāwī appeals to Companion *hadīths* to support an argument against the jurists of his own legal school.

In light of these passages, we may evaluate Schacht’s characterization of al-Ṭahāwī’s use of Companion *hadīths* as merely instrumental. In a discussion of Companion *hadīths* in *The Origins of Muhammadan Jurisprudence*, Schacht comments that the early Iraqi jurists “usually chose seemingly arbitrarily one out of several contradictory traditions,” depending on which best supported their school tradition. He continues, “This acceptance or rejection of traditions, according to whether they agree or disagree with the previously established doctrine of the school, was later developed into a fine art by Ṭahāwī whose efforts at harmonizing are overshadowed by his tendency to find contradictions, so that he can eliminate those traditions which do not agree with the doctrine of the Ḥanafī school, by assuming their repeal.”

It is quite true that in the majority of cases al-Ṭahāwī harmonizes Prophetic and Companion *hadīths* or dismisses them as weak in ways that support established Ḥanafī doctrine. That is, his legal arguments throughout all of his works of practical hermeneutics are most often based on instrumental reasoning, meant to achieve a specific, predetermined end. However, the existence of passages like those cited above, as well as others we have encountered or will encounter in which al-Ṭahāwī departs from accepted Ḥanafī positions in order to follow Prophetic or Companion practice, suggests that Schacht’s portrayal of al-Ṭahāwī is overly simplistic and perhaps overly cynical. Certainly, al-Ṭahāwī understood himself to participate in a Ḥanafī tradition—indicated by

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425 Schacht, *Origins of Muhammadan Jurisprudence*, 30. It is unclear whether Schacht means to continue to discuss only Companion reports in this passage, or whether he is now including Prophetic reports as well. My comments above apply in either case.
his frequent reference to Abū Ḥanīfa, Abū Yūsuf and al-Shaybānī as aṣḥābunā (our colleagues)—which subscribed to a particular body of positive law, albeit a nebulous one. However, to dismiss al-Ṭahāwī’s efforts at harmonization as the mere justification of Ḥanafī positive law is to ignore the way in which his works of practical hermeneutics embody a very real struggle to reconcile his commitment to a body of positive law with his apparently sincere ascription to relatively newly-developed ideas about the sources of the law and legal authority. While al-Ṭahāwī is often able to martial his theories of legal sources and legal hermeneutics in ways that support Ḥanafī doctrine, he is not invariably successful. In cases where his commitment to Prophetic and Companion hadiths are irreconcilable with Ḥanafī doctrine, he evinces a willingness to depart from that doctrine in a way not admitted by Schacht. In addition to reflecting al-Ṭahāwī’s commitment to hadīth, his departures from Ḥanafī doctrine in favor of Prophetic or Companion hadīth may also be a consequence of a more expansive understanding of what it means to belong to a madhhab than Schacht envisions. While Schacht portrays al-Ṭahāwī as callously dismissing revealed texts in order to protect Ḥanafī doctrine, al-Ṭahāwī does not appear to feel that his not infrequent departures from Ḥanafī doctrine make him any less Ḥanafī.

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426 The degree to which this struggle is characteristic of a wider genre of practical hermeneutics is a question in need of a future study.

427 The same criticism may be leveled at Norman Calder’s assertion that al-Ṭahāwī’s arguments in Sharḥ mushkil al-āthār are “intended to demonstrate that the principles of Ḥanafī law can be established by reference to Prophetic hadīth and, conversely, that, whatever the appearances to the contrary, there are no reliable Prophetic hadīth that contradict Ḥanafī law” (Studies in Early Muslim Jurisprudence, 235). While al-Ṭahāwī’s overall goal is indeed to demonstrate the compatibility of Ḥanafī law and Prophetic hadīth, Calder’s statement overstates al-Ṭahāwī’s commitment to the Ḥanafī madhhab at the cost of portraying his commitment to hadīth as merely instrumental or strategic.
Abrogation Known through Post-Prophetic Ḥadīths

In addition to claiming Prophetic status for certain post-Prophetic ḥadīth, al-Ṭaḥāwī also relies on post-Prophetic ḥadīth as the sole evidence for instances of abrogation not preserved in the corpus of Prophetic ḥadīth. His argument is that the existence of a post-Prophetic opinion in conflict with a Prophetic ḥadīth transmitted by the same individual is sound evidence that that individual knew of the ḥadīth’s abrogation. As was the case with the elevation of post-Prophetic ḥadīths to Prophetic status, Companion ḥadīths are the basis for his argument in the great majority of the approximately twenty passages in question. Nonetheless, this argument appears twice in connection with the Successor ʿUrwa ibn al-Zubayr and once concerning the Successor al-Shaʿbī.428

In one example, al-Ṭaḥāwī reports that Ibn ʿAbbās transmitted a Prophet ḥadīth saying that a man who commits bestiality should be killed, as should the animal involved. However, Ibn ʿAbbās later stated that there is no hadd punishment for bestiality.429 In response, al-Ṭaḥāwī writes that “Ibn ʿAbbās would not have said anything after the [time of the] Prophet that contradicted what he had received from the Prophet unless he had Prophetic instruction (tawqīf) that it was abrogated.” Shortly afterward he affirms that this argument is sufficient (kifāya) and authoritative (hujja) for refuting the legal effectiveness of the original Prophetic ḥadīth.430 In other passages al-Ṭaḥāwī claims the actions of ʿAlī431 and Ibn ʿUmar432 as evidence for the abrogation of aspects of ritual

428 Al-Ṭaḥāwī, Mushkil, 7.426, 11.486; Maʿānī, 4.100.
429 Al-Ṭaḥāwī, Mushkil, 9.437-441.
430 Al-Ṭaḥāwī, Mushkil, 9.442.
431 Al-Ṭaḥāwī, Mushkil, 15.34.
prayer; the opinions of ʿĀʾisha and Ibn ʿAbbās as evidence for the abrogation of fasting on behalf of the deceased;\footnote{Al-Ṭahāwī, Mushkil, 15.50.} another report from Ibn ʿUmar as evidence for the abrogation of the permissibility of seclusion in a mosque (iʿtikāf) without an accompanying fast,\footnote{Al-Ṭahāwī, Ahkām, 1.428-429.} and the actions of Abū Ṭalḥa and Abū Ayyūb al-Anṣārī as evidence of the abrogation of the requirement to renew ablutions after eating.\footnote{Al-Ṭahāwī, Ahkām, 1.472.} From these examples we may observe that Companion actions and opinions provide al-Ṭahāwī’s evidence for a number of major ritual practices.

Al-Ṭahāwī thus considers that the actions and opinions of individual Companions and Successors preserve a memory of instances of abrogation that are not reflected in the canon of Prophetic hadīth. The significance of their role in preserving knowledge of abrogation becomes apparent if we recall from the previous chapter al-Ṭahāwī’s anxieties related to the loss of the text of the Qurʾān.\footnote{Al-Ṭahāwī, Mushkil, 5.313, 11.491.} His primary argument against reports that verses are missing from the canonized text of the Qurʾān is that, if that were the case, it would be possible that the missing verses would abrogate verses preserved in the canonized text, and the requirement to perform certain duties would be lifted.\footnote{See p. 81.} Despite his anxiety about losing abrogating texts, al-Ṭahāwī is willing to relegate to the Companions and Successors the function of preserving knowledge of the abrogation of the Sunna.\footnote{Interestingly, one of al-Ṭahāwī’s arguments for a Companion preserving knowledge of an abrogating Prophetic hadīth appears in the very same chapter as the above argument against the possibility of missing abrogating texts in the Qurʾān (Mushkil, 11.486, 11.491.)}
Al-Ṭahāwī’s acceptance that some instances of abrogation can be known only through post-Prophetic ḥadīths amounts to an admission that the corpus of Prophetic ḥadīths does not adequately convey Prophetic practice to later generations. It is for this reason that Sa‘d Bashīr As‘ad Sharaf, the author of Abū Ja‘far al-Ṭahāwī wa manhajuhu fī al-fiqh al-Islāmī, condemns al-Ṭahāwī’s preference for a Companion action over a Prophetic ḥadīth narrated by the same Companion, despite Sharaf’s generally positive stance toward al-Ṭahāwī. He argues that for a Companion to suppress an abrogating Prophetic ḥadīth would be a form of unbelief (kufr).⁴³⁹ This view seems to be a distortion of al-Ṭahāwī’s position, however; presumably al-Ṭahāwī would argue that the abrogating ḥadīth is not suppressed, but is instead adequately preserved in post-Prophetic ḥadīth form.

Explanations for Companion and Successor Authority

Al-Ṭahāwī’s argument for abrogation based on post-Prophetic ḥadīth maps onto a larger debate among legal theorists about conflicts between a Companion’s action and his or her transmission from the Prophet.⁴⁴⁰ As in al-Ṭahāwī’s discussion of abrogation, one question at stake in this debate is whether the Companions can be trusted invariably to follow the Prophet’s practice. Al-Ṭahāwī, as we shall see below, holds that they can be. Equally importantly, the debate is one about whether Prophetic authority is adequately

⁴³⁹ Sharaf, Abū Ja‘far al-Ṭahāwī, 75.
⁴⁴⁰ Although al-Ṭahāwī for the most part envisions the conflict between a Companion’s transmission from the Prophet and his action as a question of abrogation, he does very rarely apply this argument to other ends discussed by later jurists. For example, in a chapter on whether women are permitted to wear wool extensions to their hair, al-Ṭahāwī argues that ‘Ā’ishah’s failure in a Companion ḥadīth to condemn a woman for wearing hair extensions, despite her transmission of the Prophetic ḥadīth apparently prohibiting it, indicates that she knew that the Prophet did not intend a prohibition (Mushkil, 3.163).
and exclusively conveyed by Prophetic hadīths. Al-Shāfīʿī, who attempted fully to identify Prophetic authority with Prophetic hadīth, characteristically gives priority to the Prophetic hadīth transmitted by a Companion over that same Companion’s action.\footnote{Schacht, \textit{Origins of Muhammadan Jurisprudence}, 18.}\footnote{Sharaf, \textit{Abū Jaʿfar al-Taḥāwī}, 72.} Later Mālikīs and Ḥanbalīs would do the same.\footnote{Al-Jaṣṣāṣ, \textit{al-Fuṣūl}, 2.68ff. Cf. Kamali, who states that the Ḥanafīs considered that a Companion’s failure to act upon a hadīth he transmitted indicated that the hadīth was unreliable (rather than abrogated) (\textit{Textbook of Hadīth Studies}, 174).} \footnote{Al-Jaṣṣāṣ, \textit{al-Fuṣūl}, 2.68.}

Al-Ṭaḥāwī’s position is largely in agreement with both earlier and later Ḥanafīs, however, including 'Īsā ibn Abān and al-Jaṣṣāṣ.\footnote{Al-Ṭaḥāwī, \textit{Mushkil}, 13.304; \textit{Maʿānī}, 4.100.} The latter adds a caveat: the Prophetic hadīth must not be open to interpretation (\textit{taʾwīl}). If it is, then the Companion action, representing his taʾwīl, has no special interpretive authority.\footnote{Al-Ṭaḥāwī, \textit{Mushkil}, 13.304.} Although al-Ṭaḥāwī does not address this issue in his discussions of the conflict between a Companion’s transmission and his action, he holds as a general principle that the person who transmits a hadīth is the most qualified to interpret it—that is, the transmitter of a hadīth has a special insight into its meaning—and would therefore most likely disagree with al-Jaṣṣāṣ.\footnote{Al-Ṭaḥāwī, \textit{Mushkil}, 13.304.} As we have seen, al-Ṭaḥāwī also departs from al-Jaṣṣāṣ by looking to Successor hadīths for evidence of abrogation, a situation not envisioned in later usūl al-fīqh discussions.

Al-Jaṣṣāṣ’s initial description of the cases in which a Companion’s action takes precedence over a Prophetic hadīth contains no explanation of why it should do so. However, in a later discussion of a specific example of abrogation known by a Companion’s action, he explains that it is inconceivable (\textit{ghayr jāʾīz}) that Ibn ʿUmar
would contravene the *sunna* he had transmitted from the Prophet in a case where that particular *sunna* left no room for interpretation.\(^{446}\) In contrast, al-Ṭaḥāwī is consistently concerned with explaining why a post-Prophetic *ḥadīth* can be trusted as evidence for the abrogation of a Prophetic *ḥadīth*. His explanations fall into several categories, some of which provide important insights into his understanding of the status of the Companions and Successors and the nature of probity (‘*adl*). Because al-Ṭaḥāwī relies upon the same set of explanations for both abrogation known by post-Prophetic *ḥadīth* and the elevation of post-Prophetic *ḥadīth* to Prophetic status, I have included examples from both types of argument below. Rather than justifying a single function of Companion and Successor *ḥadīths*, this range of arguments appears to constitute al-Ṭaḥāwī’s general justification for his heavy reliance on post-Prophetic *ḥadīths* in his hermeneutical works.

In the first type of explanation, al-Ṭaḥāwī attributes his confidence in the trustworthiness of a post-Prophetic *ḥadīth* to his knowledge of an individual transmitter’s character: Ibn ʿUmar’s virtue (*fadl*), piety (*warāʾ*) and knowledge (*ʿilm*) would prevent him from particularizing (*takhṣīṣ*) what the Prophet had made general (*ʿāmm*) without Prophetic authority,\(^{447}\) and individuals of ʿAlī’s stature (*mithluhu*) do not speak on certain matters based merely on their own opinion.\(^{448}\) Similarly, in al-Ṭaḥāwī’s discussion of two of the four Successor *ḥadīths* mentioned above and the single *ḥadīth* from a later jurist, we learn that it was those individuals’ great knowledge or other personal qualities that would not permit them to act in a certain way without certainty of the abrogation of an

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\(^{446}\) Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.69.  
\(^{448}\) Al-Ṭaḥāwī, *Aḥkām*, 1.145.
earlier rule.\textsuperscript{449} This first category of explanation is thus restricted to the qualities of individuals and may apply to members of any group: Companions, Successors or later jurists.

Another category of explanation anticipates al-Jaṣṣāṣ’s discussion by emphasizing the sheer inconceivability of an individual abandoning Prophetic practice or speaking without Prophetic authority, using phrases such as \textit{muḥāl/istahāla} (it is impossible or inconceivable) or \textit{lā yajūz} (it is inconceivable).\textsuperscript{450} Unlike the previous category, the argument from inconceivability is exclusively connected with Companions. In most examples, al-Ṭahāwī simply states that it is inconceivable that a particular Companion would undertake a certain action or make a certain statement in the absence of Prophetic authority, thus leaving open the possibility that the impossibility stems from the personal qualities of that Companion.\textsuperscript{451}

In two cases, however, al-Ṭahāwī reveals that it is the very fact of being a Companion that prevents individuals from abandoning Prophetic practice.\textsuperscript{452} Given his

\textsuperscript{449} Al-Ṭahāwī, \textit{Mushkil}, 7.426, 8.347, 11.486.
\textsuperscript{450} Al-Jaṣṣāṣ, \textit{al-Fuṣūl}, 2.68ff. In addition to establishing an otherwise unknown abrogation, al-Ṭahāwī employs the argument from inconceivability to discredit as unsound versions of Prophetic \textit{ḥadīths} transmitted by Companions in cases where those Companions are known to have acted contrary to those \textit{ḥadīths}. He argues that it is not possible that a certain Companion would abandon the \textit{ḥadīth} he or she had transmitted, and therefore the \textit{ḥadīth} must not be authentic (\textit{Maʿānī}, 1.126; \textit{Aḥkām}, 1.411).
\textsuperscript{451} E.g., al-Ṭahāwī, \textit{Maʿānī}, 1.126, 1.262, 1.289, 1.291, 2.215, 2.267-268; \textit{Mushkil}, 5.181: \textit{Aḥkām}, 2.153.
\textsuperscript{452} As a corollary to the principle that it is inconceivable that a Companion would knowingly contravene Prophetic practice, al-Ṭahāwī must sometimes explain how particular Companions continued to profess doctrine that he considers to have been abrogated. His solution is to argue that it may be impossible for Companions to knowingly contravene Prophetic practice, but they may do so unknowingly in cases where knowledge of the abrogation of a practice did not reach them (e.g., \textit{Mushkil}, 7.391, 14.121; \textit{Maʿānī}, 1.248, 1.316, 3.147). In one passage we learn that we may determine which Companions—those claiming abrogation or those adhering to the earlier ruling—are correct by applying al-Ṭahāwī’s frequently-cited principle that “someone who knows something take precedence over those who have failed to reach that knowledge,” i.e., a Companion who claims abrogation is always believed (\textit{Mushkil}, 14.121). Al-Ṭahāwī’s assertions that knowledge of an abrogation failed to reach someone occur only in connection with Companions, indicating that a Companion contravening Prophetic practice is in need of explanation in a way that a later scholar’s holding a view in conflict with Prophetic practice is not.
companionship (ṣuḥba) with the Prophet, al-Ṭḥāwī writes, it is unimaginable that Salama ibn Ṣakhir would pronounce a ẓihār divorce in a certain way unless he knew an earlier ruling on the practice had been abrogated. Likewise, concerning Companion hadiths on turning a Greater Pilgrimage into a Lesser Pilgrimage (faskh al-ḥajj bi-ʿumra), al-Ṭḥāwī argues that it is inconceivable that anyone who experienced companionship with the Prophet would make such a statement based merely on opinion. Al-Ṭḥāwī’s argument from inconceivability forms an interesting parallel with the doctrine of the collective probity of the Companions (taʿdīl al-Ṣaḥāba), to which al-Ṭḥāwī also subscribed. While the doctrine of taʿdīl al-Ṣaḥāba functioned to preserve the maximum amount of Prophetic material that could be used to justify the law by refraining from discrediting the transmission of any Companion, al-Ṭḥāwī’s argument from inconceivability functions effectively to expand the Prophetic corpus by granting Prophetic authority to any Companion material whose contradiction with Prophetic material cannot otherwise be explained.

Al-Ṭḥāwī’s third and final category of explanation for the authority of post-Prophetic hadiths likewise centers on notions of probity and transmission. These explanations are characterized by a shifting constellation of statements and terms related to the ideas of amn (trustworthiness, reliability) and ʿadl (probity). Unlike the previous category, however, these statements do not concern only the Companions. The same

453 Al-Ṭḥāwī, Aḥkām, 2.393-394.
454 Al-Ṭḥāwī, Aḥkām, 2.92.
455 Although al-Ṭḥāwī does not explicitly discuss taʿdīl al-Ṣaḥāba, his acceptance of the doctrine is indicated by his argument that Prophetic hadiths transmitted from unnamed Companions are reliable (Mushkiil, 6.317). The implication of this statement is that it is unnecessary to know the identity of a particular Companion transmitter, because all Companions are reliable transmitters.
456 Lucas, Constructive Critics, 237-238.
language is used to describe the authority of Successor reports and, as we will discuss in the next chapter, the collective opinion of later jurists.\footnote{While al-Ṭahāwī uses the language of amn and ʿadl to describe the Companions and Successors individually, it is only in the collective that later jurists can be so characterized.} That being the case, the statements on the Companions analyzed below are best understood not as part of a conception of taʿdīl al-Ṣaḥāba, but rather as part of a wider theory of the relationship between probity, transmission and legal reasoning.

The explanations in this category are comprised of two basic building blocks appearing separately or in combination. The first, most frequently-appearing building block consists of the statement that someone is maʾmūn (trustworthy). Individual Companions are described as maʾmūn in their transmission from the Prophet\footnote{Al-Ṭahāwī, \textit{Mushkil}, 6.176, 12.481.} and in what they opine (qāla) that is in conflict with Prophetic ḥadīth.\footnote{Al-Ṭahāwī, \textit{Mushkil}, 9.485, 11.446-447.} Collectively, the Companions are described as “trusted in what they do (faʿalū), just as they are trusted in what they transmit,”\footnote{Al-Ṭahāwī, \textit{Mushkil}, 7.345.} a formulation also used to describe later jurists as a group.\footnote{Al-Ṭahāwī, \textit{Mushkil}, 15.167.} In these and other passages, al-Ṭahāwī describes Companions, Successors or later jurists as maʾmūn in some combination of transmission, legal opinion, action and knowledge of abrogation.\footnote{For other examples, see al-Ṭahāwī, \textit{Mushkil}, 2.407, 3.178, 7.405, 12.288, 15.455; \textit{Maʿānī}, 1.496.} In many passages, statements concerning amn are immediately followed by the assertion that a loss of probity (ʿadl) entails the loss of reliability in transmission\footnote{Al-Ṭahāwī, \textit{Mushkil}, 3.163, 3.178, 6.176, 11.486, 15.455.} or, in one case, the loss of reliability in transmission and legal opinions.\footnote{Al-Ṭahāwī, \textit{Maʿānī}, 1.23.}
Two passages explicitly connect the threat of a loss of probity not only to a loss of someone’s reliability as a transmitter of ḥadīth, but also to a loss of trust in his legal opinions. In one, al-Ṭaḥāwī says that, if al-Sha'bī had given an opinion in conflict with a Prophetic ḥadīth he transmitted without knowing it to be abrogated, then his legal opinions (raʾy) would become suspect (muttaham). If his legal opinions were suspect, then his transmission of ḥadīth (riwāya) would also be suspect. Because his probity (ʿadāla) in transmission is confirmed, his probity in avoiding contravening those transmissions is also confirmed. If one supposes (in wuhiba) the voiding of one of these matters, one must suppose the voiding of the other as well.\textsuperscript{[465]} That is to say, probity in transmitting ḥadīth and probity in acting in accordance with ḥadīth are inseparable; you cannot have one without the other. In the other passage, al-Ṭaḥāwī states that, if Abū Hurayra contravened what he had transmitted from the Prophet, then his probity would be voided such that neither his legal opinion (qawl) nor his transmission (riwāya) would be accepted.\textsuperscript{[466]}

Probity (ʿadl, ʿadāla) for al-Ṭaḥāwī thus consists of three inseparable factors. The first is reliability in the transmission of ḥadīth, alternatively expressed as ‘probity in transmission’ (al-ʿadāla fī al-riwāya)\textsuperscript{[467]} or more commonly simply as ‘transmission’ (riwāya).\textsuperscript{[468]} The second factor is authority in legal opinions (qawl, raʾy), and the final factor, termed ‘ʿadl’ or ‘ʿadāla,’ is the uprightnes that precludes abandonment of a Prophetic ḥadīth without just cause. In all of the passages about the conflict between a

\textsuperscript{[465]} Al-Ṭaḥāwī, Maʿānī, 4.100.
\textsuperscript{[466]} Al-Ṭaḥāwī, Maʿānī, 1.23.
\textsuperscript{[467]} Al-Ṭaḥāwī, Maʿānī, 4.100.
\textsuperscript{[468]} E.g., al-Ṭaḥāwī, Maʿānī, 1.23.
Companion’s opinion and his transmission from the Prophet, al-Ṭaḥāwī takes for granted that the Companions’ transmission of ḥadīth—their riwāya—is beyond suspicion. It is in fact their riwāya which he uses as evidence that they would not have contravened a Prophetic ḥadīth unless they knew it to be abrogated. If they had done so, then their riwāya would be voided, and “God forbid that such should be the case.” Because we are confident in the Companions’ riwāya, al-Ṭaḥāwī insists that we may also have confidence in the ḍāl, the uprightness, which guarantees that riwāya. Likewise, we may have confidence in the Companion’s legal opinions, because a lack of probity there would void their probity in riwāya, and we know that their probity in riwāya is unquestioned. For al-Ṭaḥāwī, then, the trustworthiness of the Companions as transmitters is assumed. Far from arguing to establish the principle of taʿdīl al-Ṣaḥāba, al-Ṭaḥāwī points to scholars’ confidence in the Companions’ and other figures’ probity as transmitters to establish their probity in other matters. The precedence of a Companion or Successor action over their transmission from the Prophet is thus guaranteed by our knowledge of their probity as transmitters.

The Relative Authority of Post-Prophetic Ḥadīths and Later Jurists’ Qiyās

While the superior authority of Prophetic over post-Prophetic ḥadīth was asserted as part of the elevation of Prophetic authority in the 2nd/8th and 3rd/9th centuries, some questions remained concerning the relative status of Companion or Successor ḥadīths and later jurists’ legal opinions. In this section I assess the degree to which al-Ṭaḥāwī’s understanding of their relative authority aligns with discussions among legal theorists.
The later uṣūl tradition would frame the issue primarily in terms of the competition between the qiyās (analogy) of later jurists and a Companion opinion in cases where no opposition from other Companions is reported and no relevant Prophetic hadīth is known.\textsuperscript{469} According to the Shāfiʿīs and to the Ḥanafī al-Karkhī, jurists need not give preference to a Companion report over their own qiyās. Mālik and the majority of Ḥanafīs, in contrast, held that later jurists must adopt the Companion report, a process they labeled taqlīd al-Ṣaḥābī (following the precedent of a Companion).\textsuperscript{470}

In their discussions of taqlīd al-Ṣaḥābī, both al-Jaṣṣāṣ and al-Sarakhsī concur with the argument of Abū Saʿīd al-Bardaʿī (d. 317/929-930), a Ḥanafī jurist active in Baghdad.\textsuperscript{471} Abū Saʿīd asserts that the unopposed opinion of a Companion is a hujja (proof) because it might have been based on a revealed text that was otherwise lost. Something that might have been revealed (a Companion report) is superior to something which certainly was not revealed (the qiyās of a later jurist). Further, even if the Companion’s opinion were not based on revelation, the ijtihād of a Companion is superior to the ijtihād of a later jurist, and therefore the Companion opinion must be adopted. The central issues for Abū Saʿīd, al-Jaṣṣāṣ and al-Sarakhsī are thus the possibility that a Companion report may preserve Prophetic material and the relative value of the ijtihād of the Companions and later jurists.


\textsuperscript{470} Nyazee, \textit{Islamic Jurisprudence}, 253-254; al-Sarakhsī, \textit{al-Muḥarrar}, 2.82. Al-Shāfiʿī i’s early doctrine was that a Companion opinion is to be preferred to qiyās. Kamali attributes the preference for Companion hadīth to Abū Ḥanīfa himself (\textit{Principles of Islamic Jurisprudence}, 320), although al-Jaṣṣāṣ states that he knows of no statement from Abū Ḥanīfa on this matter and instead traces the opinion to Abū Yūsuf (\textit{al-Fuṣūl}, 2.172).

\textsuperscript{471} Al-Jaṣṣāṣ, \textit{al-Fuṣūl}, 2.172ff; al-Sarakhsī, \textit{al-Muḥarrar}, 2.84.
Although al-Ṭaḥāwī was a close contemporary of Abū Saʿīd al-Bardaʿī, he does not replicate his fellow Ḥanafī’s arguments for the superiority of the Companions’ *qiyās* as the basis for the authority of their opinions. Instances in which he explicitly opposes opinions of the Companions and later jurists are rare. In one passage concerning the status of the marriage of a woman who converts to Islam while outside of Islamic lands, he demonstrates an awareness of the doctrine that Companion *ḥadīths* may be preferred over later jurists’ analogy by noting that Abū Ḥanīfa, Abū Yūsuf and Muḥammad follow (*qalladū*) a Companion *ḥadīth* from ʿUmar over *nazar* (reasoned argument) in their opinion that irrevocable divorce does not take effect immediately upon her conversion.472 Al-Ṭaḥāwī’s own opinion is in agreement with *nazar* as well as another Companion opinion, that of Ibn ʿAbbās.473 However, the authority he claims for his position is neither that of *nazar* nor of the opinion of Ibn ʿAbbās, but is instead Prophetic. Here, as in other passages we have encountered, al-Ṭaḥāwī argues that Ibn ʿAbbās’s position in the Companion *ḥadīth* is in conflict with a Prophetic *ḥadīth* that Ibn ʿAbbās himself transmitted, thereby demonstrating that he knew the *ḥadīth* to be abrogated and his own position to be affirmed. Where al-Ṭaḥāwī’s Ḥanafī predecessors argue this question on the basis of the inherent authority of a Companion opinion, al-Ṭaḥāwī claims as Prophetic the authority of the Companion *ḥadīth* he adduces.

A similar tendency is apparent in other passages relevant to the *uṣūl* debate over Companion reports and later jurists’ reasoning. In a discussion of whether it is

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473 Given that this case in fact involves two conflicting Companion opinions, it is not a perfect example of the later doctrine, which requires that the Companion opinion be unopposed in order to be authoritative. Presumably, the earlier Ḥanafīs either did not know the opinion from Ibn ʿAbbās, or were following an earlier version of the doctrine with less stringent criteria.
permissible to take back a gift, al-Ṭaḥāwī states that he knows of no reports contradicting those he adduces from Companions and Successors including ʿUmar, Shurayḥ and Ibrāhīm al-Nakhaʿī, each of whom serves as the authority for a different aspect of his argument. Therefore he will abandon nazar and follow (qallada) their āthār. He admits that nazar would lead to a different result than the one found in āthār, but “following (ittibāʿ) āthār and following the precedent of (taqlīd) the foremost scholars (aʾimmāt ahl al-ʿilm) is better [than nazar].

The final example we will consider is one we have already encountered above concerning ʿĀʾisha’s statement about when it is permissible to perform the ʿUmra (lesser pilgrimage). According to qiyās, al-Ṭaḥāwī writes, it should be permissible on every day of the year. However, he has discovered an athr from ʿĀʾisha which states that there are four days of the year when the ʿUmra may not be performed. The hadīth of ʿĀʾisha is the only statement he has found from the Companions on this issue. Concerning ʿĀʾisha’s hadīth, he argues that:

We know that she did not merely opine on her own (raʾy), but rather spoke what had been confirmed (tawqīf), because this kind of thing cannot be based upon raʾy. Therefore we hold that her statement on this is like hadīth with a continuous chain of transmitters reaching back to the Prophet (ḥadīth muttaṣīl).

In both of these examples, al-Ṭaḥāwī follows Abū Saʿīd al-Bardaʿī and later jurists in emphasizing that these reports were unopposed by other Companions and therefore authoritative. Al-Ṭaḥāwī departs from the later Ḥanafī tradition, however, in his willingness to grant the same precedence to Successor hadīths as he does to Companion

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474 Al-Ṭaḥāwī, Maʿānī, 4.84.
475 Al-Ṭaḥāwī, Aḥkām, 2.226.
hadīths.\textsuperscript{476} Al-Ṭahāwī further diverges from Abū Sa‘īd al-Barda‘ī and later Ḥanafīs in his understanding of why post-Prophetic hadīth take precedence over later jurists’ qiyās.

Where his fellow Ḥanafīs are concerned with the status of the Companions’ ījtihād versus the ījtihād of later jurists,\textsuperscript{477} al-Ṭahāwī does not portray the Companion or Successor reports as examples of their ījtihād, with the exception of a single report from Shurayḥ in a chapter on gifts.\textsuperscript{478} This difference is emphasized by the language employed by each: Abū Sa‘īd al-Barda‘ī frames the issue as one concerning the opinion (qawl) of a Companion,\textsuperscript{479} while al-Ṭahāwī mentions following āthār or hadīth, thus connecting this issue to the general duty of obeying transmitted reports.\textsuperscript{480} Further, he portrays the Companion hadīths as faithful reflections of Prophetic practice, rather than as examples of the superiority of Companion legal reasoning.\textsuperscript{481}

The Companions and Successors in al-Ṭahāwī’s Lists of Legal Sources

Another place we might look for evidence of al-Ṭahāwī’s understanding of the authority of Companion and Successor hadīths in relation to the legal opinions of later jurists.

\textsuperscript{476} Cf. al-Sarakhsī, \textit{al-Muharrar}, 2.86. The chapter on gifts cited above includes a report from Ibrāhīm al-Nakha‘ī uncorroborated by any Companion, so it is not the case that the Successor reports are merely incidental and do not add anything to the authority of the Companions.

\textsuperscript{477} It may be that later Ḥanafīs reinterpreted such Companion hadīths as examples of Companion legal reasoning in order to give themselves greater flexibility in producing rules of law as well as to emphasize that all juristic reasoning is simultaneously authoritative and contestable.

\textsuperscript{478} Al-Ṭahāwī, \textit{Ma‘ānī}, 4.84. Here al-Ṭahāwī notes that part of Shurayḥ’s statement is his “ra ’y” and then states that he adopts Shurayḥ’s opinion.

\textsuperscript{479} Al-Jaṣṣāṣ, \textit{al-Fuṣūl}, 2.172; al-Sarakhsī, \textit{al-Muharrar}, 2.81.

\textsuperscript{480} Al-Ṭahāwī, \textit{Aḥkām}, 2.226; \textit{Ma‘ānī}, 3.259, 4.84.

\textsuperscript{481} This same tendency can also be observed in a passage which discusses a Companion opinion without opposing it to later jurists’ legal reasoning. In one of the chapters elevating a Companion hadīth to Prophetic status, al-Ṭahāwī argues that it is immaterial whether the report is the speech of the Prophet, the speech of Ibn Mas‘ūd with the \textit{tawqīf} of the Prophet, or even the \textit{istikhrāj} (deduction/inference) of Ibn Mas‘ūd. Even in the last case, it is “as if he received it from the Prophet by way of \textit{tawqīf}” (\textit{Mushkil}, 9.485-486). Rather than arguing for the independent authority of a Companion’s legal reasoning, he equates it with Prophetic authority.
jurists is in the lists of legal sources which appear across his hermeneutical works and *al-Mukhtaṣar* (The Concise Manual of Legal Doctrine).\(^{482}\) Notably, the Companions or Successors are mentioned in only three of the approximately thirty lists found in these four works. Lists which do mention the Companions or Successors provide somewhat ambiguous evidence for the nature of the Companions’ and Successors’ authority. The first list, which appears in the two-paragraph introduction to *Sharḥ maʿānī al-āthār*, describes the sources that al-Ṭaḥāwī will use to establish which of scholars’ proposed interpretations of apparently conflicting *hadīths* is correct: the Qurʾān, Sunna, consensus, and widely transmitted opinions of the Companions or Successors (*tawātur min aqāwīl al-ṣaḥāba aw tābiʿī hi*).\(^{483}\) We learn from this passage that widely-held opinions of the Companions and Successors may support an interpretation, but the passage provides no clear indication of whether these opinions preserve otherwise unknown Prophetic material—as is so often the function of Companion and Successor *hadīths* in al-Ṭaḥāwī’s works—or whether they represent those individuals’ legal reasoning. The mention of widespread transmission (*tawātur*) also raises interesting questions about the individual or collective nature of Companion and Successor authority as well as the boundary between widespread transmission and consensus.

The Companions also appear in a list of sources in a chapter of *Aḥkām al-Qurʾān* on whether seclusion in a mosque (*iʿti āf*) must be accompanied by fasting. Here al-Ṭaḥāwī argues against those who claim that fasting is not required by stating that evidence for their view is not found in the Book, the Prophet’s Sunna, the doctrines

\(^{482}\) On these lists, see p. 23 of this study.

\(^{483}\) Al-Ṭaḥāwī, *Maʿānī*, 1.11.
(aqwāl) of the Companions, speculative legal reasoning (naẓar) or analogy (qiyyās). In support of his own view, he adduces a Companion ḥadīth reporting the legal opinion of Ibn ʿUmar. Earlier in the chapter, he had argued that Ibn ʿUmar’s opinion can only have been based on knowledge from the Prophet. From this equating of the qawl of Ibn ʿUmar with knowledge taken from the Prophet, we may conclude that what al-Ṭahāwī intends by the aqwāl of the Companions in the list of sources in this chapter is not the superior legal reasoning of the Companions, but rather their special knowledge of the Prophet’s practice as preserved in Companion ḥadīths.

In contrast, the final list of sources we will consider does portray Companion legal opinions as more authoritative than the legal reasoning of later jurists. In a significant passage in al-Mukhtaṣar, al-Ṭahāwī describes the methodology which judges should follow in determining a ruling:

[...]

Al-Ṭahāwī’s insistence that jurists must look to Companion reports before engaging in their own legal reasoning reveals that he does indeed give precedence to Companion...
legal opinions over those of later jurists, although it is not the way in which he generally frames the question of Companion authority.

The debate over the relative authority of Companion hadīths and later jurists’ qiyyās may be understood as one manifestation of a wider debate over the nature of Companion authority. Al-Shāfīʿī favored later jurists’ legal reasoning because he understood all revelatory authority to reside in the Qurʾān and Prophetic Sunna and sought fully to identify the Prophetic Sunna with the body of Prophetic hadīth. In contrast, both the Mālikī and Ḥanafī schools understood Prophetic authority to reside not only in Prophetic hadīth but also in the continuing practice of the Companions, which both preserved Prophetic practice and served as its natural extension, a topic I will discuss in the next chapter. Given their understanding of Prophetic practice as embodied in the Companions’ applications of that practice to new situations, it is reasonable that the Mālikīs and many Ḥanafīs should prefer Companion reports based in Companion legal reasoning to later jurists’ qiyyās.

Al-Ṭaḥāwī, however, understood Companion practice and, indeed, the idea of practice in general, differently than the other Ḥanafīs we have discussed. For him, in almost all cases the Companion practice which is authoritative over later jurists’ legal reasoning is an exact record of Prophetic practice. Like al-Shāfīʿī, al-Ṭaḥāwī emphasizes an exclusively Prophetic authority in most of his writing. However, unlike al-Shāfīʿī, he does not seek to identify Prophetic authority only with Prophetic hadīth. Instead, al-Ṭaḥāwī understands Prophetic practice to be preserved faithfully in a spectrum of forms ranging from the directly textual (Prophetic hadīth) to the progressively more ephemeral
(Companion and Successor \( \text{ḥadīth} \), the practice of the jurists or the Community, and certain forms of consensus).\(^{488}\) While Prophetic \( \text{ḥadīths} \) by definition represent Prophetic authority, the other sources on this spectrum are only held to stand in for Prophetic authority in certain cases. Nonetheless, in those cases where al-Ṭaḥāwī does claim Prophetic authority for other sources, their epistemological status is equal to that of Prophetic \( \text{ḥadīths} \) themselves—an equivalence that we have already observed in the ability of Companion \( \text{ḥadīths} \) to indicate the abrogation of Prophetic \( \text{ḥadīths} \).\(^{489}\)

The result of al-Ṭaḥāwī’s elevation of some, but not all, Companion and Successor \( \text{ḥadīths} \) to Prophetic status is a disjunction between the surface rhetoric of his lists of legal sources and the actual functioning of his hermeneutical arguments. While al-Ṭaḥāwī repeatedly appeals to the list ‘Qurʾān, Sunna, consensus’ as the prototypical sources required to justify interpretive moves,\(^{490}\) the passages that I analyze in this chapter concerning Companion and Successor \( \text{ḥadīths} \) reveal that al-Ṭaḥāwī’s legal reasoning often rests instead upon a deeper distinction between what post-Prophetic figures must have known from the Prophet and what they could have worked out for themselves by inference—that is, the \( \text{tawqīf:ra} \) ’y binary.

As a result, the Companion and Successor \( \text{ḥadīths} \) that should be a marginal source of law according to al-Ṭaḥāwī’s own rhetoric sometimes overpower in practice the sources of Qurʾān, Sunna and consensus that al-Ṭaḥāwī’s explicit theorizing favors. In fact, it is the ‘sometimes’ nature of the Prophetic authority of Companion \( \text{ḥadīths} \) that

\(^{488}\) The latter two sources are the topic of the next chapter.
\(^{489}\) In the next chapter, we will see that al-Ṭaḥāwī similar attributes the ability to indicate abrogation of Prophetic \( \text{ḥadīths} \) to certain kinds of consensus. See below, pp. 181-187.
\(^{490}\) See p. 23n42.
reveals the fundamental gulf between the surface rhetoric of al-Ṭahāwī’s conception of the structure of the law and its functioning in practice. Al-Ṭahāwī—and, indeed, later legal theorists—outwardly describe a hierarchy of sources of legal authority based on form: Prophetic ḥadīth represents a certain level of authority, while consensus represents another, lesser level of authority, as suggested by the fact that consensus always comes after Prophetic ḥadīth in al-Ṭahāwī’s list of legal sources, etc.

However, in his actual legal arguments al-Ṭahāwī assigns authority to sources based not on their form, but rather on their function. Thus, Companion ḥadīths have a certain authority when they represent ra’y, but a much higher level of authority when they represent tawqīf. There is, then, no single type of authority that can be assigned to post-Prophetic ḥadīths in al-Ṭahāwī’s works. Further, al-Ṭahāwī’s binary view of what is generally thought of as a single ‘source’ of law is not limited to post-Prophetic ḥadīths. Although the technical term ‘tawqīf’ is almost exclusively associated with post-Prophetic ḥadīths, the instruction/inference binary that tawqīf evokes is latent in al-Ṭahāwī’s discussion of other sources of legal authority. In the following chapter, we will see that al-Ṭahāwī holds that the authority of jurists’ consensus is dependent on whether a particular case of consensus represents inference or instruction.491 Like Companion ḥadīths based upon tawqīf, instances of instruction-based consensus have the authority to abrogate Prophetic ḥadīths. Indeed, as we have already seen in the previous chapter, the concept, if not the language, of the instruction/inference binary extends even to the authority of Prophetic ḥadīths themselves; al-Ṭahāwī grants no special authority to

Prophetic *hadīths* he deems to be based upon the Prophet’s own inference.\(^{492}\) Al-Ṭahāwī’s vision of the structure of the law, then, is based upon a binary division between what may be known through inference and what must be known through instruction, a division that transcends traditional categories and hierarchies of legal sources.

**Competing Conceptions of Religious Authority**

This chapter has argued that al-Ṭahāwī understands Companion and Successor *hadīths* to provide stronger evidence of Prophetic practice than Prophetic *hadīths* themselves in some cases, and that the special authority of this subset of post-Prophetic *hadīths* is grounded in the Companions and Successors’ role as mimetic preservers of the Prophet’s words and actions. That is, although the practices they transmit may not be preserved in the form of Prophetic *hadīth*, the Companions and Successors nonetheless are merely transmitting the Prophet’s practice by means of their own practice in the *hadīths* we have discussed, without adding anything to it or further developing it. Individual Companions and Successors do, of course, engage in legal reasoning to produce new rulings for novel situations, but in this area their authority is portrayed as being largely of the same type as that of other jurists; al-Ṭahāwī is in any case not greatly interested in the authority of the legal reasoning of individual Companions and Successors in relation to that of later jurists.

In several passages, however, al-Ṭahāwī’s thought preserves lingering traces of an earlier conception of religious authority which holds that the earliest generations of Muslims represent a natural and evolving extension of the Prophet’s authority that is

\(^{492}\) See Chapter One, “Qurʾān and Sunna,” pp. 93-100.
sometimes even in competition with Prophetic practice. This tendency is evident in al-Ṭahāwī’s occasional use of the term *sunna* in connection with the Companions individually and collectively, as well as in reference to the first four caliphs.⁴⁹³ His willingness to associate *sunna* with figures other than the Prophet is suggestive of what Hallaq labels the “practice-based *sunna*” of earlier centuries, in which post-Prophetic figures both preserved and extended Prophetic practice by applying Prophetic precepts to new situations.⁴⁹⁴ The degree to which the association of the term *sunna* with post-Prophetic figures would become unacceptable in the later tradition may be judged by the lengthy footnote that the modern editor of *Sharḥ maʿānī al-āthār*, Muḥammad Zuhrī al-Najjār, dedicates to condemning al-Ṭahāwī’s usage of it in connection with the first four caliphs.⁴⁹⁵

Despite his occasional mentions of the *sunna* of Companions, however, al-Ṭahāwī nowhere suggests that a post-Prophetic *sunna* is in conflict with a Prophetic *sunna*. Instead, the post-Prophetic *sunnas* he appeals to either give evidence of the Prophet’s own *sunna*⁴⁹⁶ or are dismissed as less authoritative than Prophetic practice. Indeed, in one passage al-Ṭahāwī agrees with those who argue against a ḥadīth’s claim that a certain practice is a *sunna* by stating that it is merely the *sunna* of ʿUmar, not that of the Prophet,
and is therefore not authoritative in the face of conflicting evidence.\textsuperscript{497} Thus, while al-Ṭaḥāwī, like the jurists of the 1\textsuperscript{st}/7\textsuperscript{th} and 2\textsuperscript{nd}/8\textsuperscript{th} centuries, occasionally uses the term \textit{sunna} in association with non-Prophetic figures, he does not claim for these figures the kind of authority indicated by earlier jurists’ references to non-Prophetic \textit{sunna}. Instead, his works appear to represent a transitional phase in which the term \textit{sunna} could still be used in connection with the Companions, but did not imply that their practice had a normative status of its own.

More strikingly, al-Ṭaḥāwī claims in several passages of \textit{Sharḥ maʿānī al-āthār} that the consensus of the Companions has the power to abrogate Prophetic practice and to establish a new practice different from the Prophet’s practice.\textsuperscript{498} These passages, which I analyze in the following chapter, appear to portray the Companions not merely as mimetic preservers of the Prophet’s practice, but as possessing an authority in legal reasoning that allows them to alter established Prophetic practices—an authority which goes beyond merely establishing what the Prophet might have done in a novel situation. That al-Ṭaḥāwī could make such a claim must be attributed at least in part to lingering ideas of normative authority vested in figures others than the Prophet. The passages arguing for abrogation by Companion consensus thus emerge as relatively isolated examples of an older conception of what it means to preserve Prophetic practice and serve as further evidence that al-Ṭaḥāwī’s thought represents a transitional stage in the development of the idea of Prophetic authority during which the meaning of Prophetic practice was changing. Al-Ṭaḥāwī’s ability to defend abrogation of Prophetic \textit{hadīth} by

\textsuperscript{497} Al-Ṭaḥāwī, \textit{Maʿānī}, 1.80-81.
\textsuperscript{498} Al-Ṭaḥāwī, \textit{Maʿānī}, 1.496, 3.56-57, 3.158.
Companion consensus as late as the early 4th/10th century suggests that the field of Islamic law is in need of a more complicated model of the evolving relationship between Prophetic text, Prophetic practice and Prophetic authority.
Chapter Three: Consensus and the Practice of the Community

The *uṣūl al-fiqh* doctrine of consensus (*ijmāʾ*) holds that the unanimous agreement of the jurists of an era on a legal question constitutes an infallible and binding proof for all future Muslims.

This definition portrays consensus first and foremost as a practical tool for generating law and confirming the permanence of legal doctrine. Indeed, consensus is often described in modern discussions as the “third source” of the law after the Qurʾān and Sunna. However, the doctrine also served a number of theological and ideological ends for the legal theorists who elaborated the requirements of consensus in their works of *uṣūl al-fiqh*. By asserting the infallibility of the Muslim Community as a whole and then deeming both existing legal doctrine and the corpus of Prophetic texts to have been confirmed by that infallible community, theorists both affirmed the saved character of the Muslim Community and projected backwards an image of a united ur-Community that had never existed historically.

At the same time, the doctrine of consensus guarantees the unity of the Community in ages to come by guarding against the possibility of dissent. The doctrine

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of consensus thus serves the theological purpose of affirming the nature of the Muslim Community both historically and in the future. Ideologically, the doctrine of consensus also justifies the authority of the jurists, for it is they—not the caliphs, the members of the Prophet’s family, or the Muslim Community as a whole—who speak in unison on behalf of the Community. The doctrine of consensus therefore supports a particular power relationship among jurists, Muslim rulers and the Muslim Community. ⁵⁰²

These ideological and theological functions of consensus generated their own doctrinal imperatives that shaped and constrained jurists’ discussions of consensus in works of ṣaḥīḥ. In particular, the centrality of the concept of unanimity to the theological aspirations of consensus led to a situation in which consensus became difficult to achieve or prove in practice. To a large extent, the elaboration of a theory of consensus able to support a certain theological view of the Muslim Community and the role of jurists within it, led to a doctrine that existed in tension with consensus as a practical tool for discovering the law. This tension becomes clear when comparing appeals to consensus in the practical hermeneutics of al-Ṭaḥāwī with the theoretical discussions of the doctrine found in works of ṣaḥīḥ. ⁵⁰³ Like the authors of ṣaḥīḥ texts, al-Ṭaḥāwī understood consensus as an authoritative and binding source of law, ⁵⁰⁴ and yet he was largely unencumbered by many of the theological and ideological

⁵⁰³ The field is still in need of a systematic study comparing assertions of ijmāʿ in support of individual rules in fiqh works with the theoretical principles asserted in ṣaḥīḥ texts. The present study suggests some of the tensions that are liable to be uncovered by such an investigation.
⁵⁰⁴ Al-Ṭaḥāwī’s reification of consensus is apparent in the way that the list “Qurʾān, Sunna, Consensus” regularly stands in for the idea of authoritative legal sources across his hermeneutical works (see “Introduction,” p. 23).
concerns surrounding the doctrine which would cause legal theorists to restrict its practice. As a result, consensus becomes in al-Ṭahāwī’s hands a powerful tool for advancing legal arguments and formulating new rules of law.

This chapter first reconstructs al-Ṭahāwī’s theory of consensus and the circumstances under which it may be claimed, arguing that it was the flexibility of al-Ṭahāwī’s approach to consensus which made it so useful in his legal arguments. In the second half of the chapter, I examine three of the many functions that consensus fills in al-Ṭahāwī’s works. In the first, which treats the resolution of juristic disagreements, I demonstrate how al-Ṭahāwī relies on a principle of inferred or implicit consensus to claim agreement on apparently disputed questions and thus advance his own positions. In the second, I explore the relationship between al-Ṭahāwī’s understandings of consensus and ‘amal (practice) in the context of the abrogation of Prophetic hadīths and conclude that both ‘amal and ijmā’ in this context represent for al-Ṭahāwī an exclusively Prophetic, though non-textual, authority. Notably, al-Ṭahāwī asserts the Prophetic authority of juristic ‘amal and ijmā’ by invoking the instruction/inference binary that we have already encountered in his discussions of the Prophet’s ijtihād and of the authority of post-Prophetic hadīths. Finally, I suggest the ways in which conceptions of religious authority were in flux during the late 3rd/9th and early 4th/10th centuries by analyzing a number of passages in which al-Ṭahāwī argues that Companion consensus may directly abrogate Prophetic practice.
Although al-Ṭahāwī frequently appeals to consensus in his legal arguments, his surviving works contain almost no theoretical discussion of the doctrine, and certainly none of the elaborate detail that serves in *uṣūl* works to anchor the theological and ideological implications of consensus. Abstract statements on consensus are considerably less frequent in al-Ṭahāwī’s works than those on Sunna or *ijtihād* (legal reasoning), for example. Presumably, al-Ṭahāwī considered his use of consensus unproblematic and therefore not in need of discussion. Nonetheless, we can infer much of his theory of consensus from references to particular instances of it as well as from the few theoretical statements on the doctrine preserved in *Sharḥ maʿānī al-āthār*, *Aḥkām al-Qurʾān*, and *Sharḥ mushkil al-āthār*.

Al-Ṭahāwī knows the verb ‘*ajmaʿ*’ and the noun ‘*ijmāʿ*’ as technical terms for consensus and employs them regularly; they appear about two hundred times in *Sharḥ maʿānī al-āthār* alone. His rare statements on the theoretical basis of consensus consistently use the term *ijmāʿ*. However, like the jurists of earlier centuries, he also employs non-technical phrases to indicate consensus, including *ittafaqū* (they agreed) and *lā yakhtalifūn* (they do not disagree). Nowhere does al-Ṭahāwī suggest that these non-technical phrases indicate a different grade of consensus than that of *ijmāʿ*. Indeed,

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505 The major exceptions to this generalization are the brief passages justifying his argument that jurists’ consensus can indicate prior abrogation of a Prophetic *ḥadīth* in cases where no abrogating text is preserved, and other, lengthier passages in support of his claim that Companion consensus can abrogate Prophetic practice (both are discussed below). The attention he gives to justifying these claims suggests that he perceives them as the most controversial aspects of his theory of consensus.

506 E.g., al-Ṭahāwī, *Maʿānī*, 1.11, 1.12, 1.18, 1.31, 1.33, 1.44, 1.45.

507 E.g., al-Ṭahāwī, *Aḥkām*, 2.371; *Maʿānī*, 1.34.

508 E.g., al-Ṭahāwī, *Aḥkām*, 1.152; *Maʿānī*, 1.33; *Mushkil*, 2.188. For earlier jurists’ terminology for consensus, see Ansari, “Islamic Juristic Terminology,” 28-33.
he sometimes uses both ajmaʿū and either ittafaqū or bilā ikhilāf to refer to the same instance of consensus.\textsuperscript{509} It seems probable that al-Ṭahāwī’s retention of some of the terminological diversity of an earlier period reflects his practical, almost casual approach to consensus, which is not particularly concerned with defining what does and does not constitute ijmāʾ in a technical sense.\textsuperscript{510}

The Authority of Consensus

For al-Ṭahāwī, consensus is an independent source of law which can provide legal rulings for cases in which nothing relevant is found in the Qurʾān or Sunna. In this claim he agrees with most of the later uṣūl al-fiqh tradition, but differs from al-Shāfiʿī, who held that consensus is a tool for interpreting the Qurʾān and Sunna, but not an independent source of law.\textsuperscript{511} Concerning the types of property on which alms must be paid, al-Ṭahāwī argues that a certain rule “is one of those for which we find no mention in the Book or the Sunna, but rather we found an indication of it in consensus alone.”\textsuperscript{512} His statement implies that there exists a whole class of rules known only through consensus. The basis for such rules is scholars’ raʿy (legal opinion), upon which they eventually reach consensus. This process is suggested in a chapter in which al-Ṭahāwī

\textsuperscript{509} Al-Ṭahāwī, \textit{Maʿānī}, 2.24; \textit{Aḥkām}, 1.152.

\textsuperscript{510} After analyzing a passage in which al-Ṭahāwī states that “there is no disagreement” regarding a doctrine for which Ibn al-Mundhir actively asserts agreement, Carolyn Baugh cautiously hypothesizes that “it could well be that [al-Ṭahāwī’s] approach to consensus is considerably more pessimistic than that of his contemporary Ibn al-Mundhir” (“Compulsion in Minor Marriages” (PhD diss., University of Pennsylvania, 2011), 174). While it may be true that al-Ṭahāwī’s claims to consensus were stated less forcefully than those of Ibn al-Mundhir in this particular case, a global reading of al-Ṭahāwī’s works suggests that he is in fact highly optimistic about the possibility of consensus and makes regular claims of its occurrence.


\textsuperscript{512} Al-Ṭahāwī, \textit{Mushkil}, 6.35.
details jurists’ initial disagreement concerning what should be done with Muḥammad’s rightful share of the spoils of war after his death. He describes jurists’ later agreement by stating that “then they reached consensus on their opinion” (thumma ajmaʿū raʿyahum), indicating that their consensus was based upon raʿy.513

Al- Таḥāwī’s assertions of the authority of consensus anticipate the language that would later be used by the mature usūl al-fiqh tradition. In several passages he labels consensus a “ḥujja,” or authoritative proof, a characterization which appears in the very first sentence of al-Jaṣṣāṣ’s definition of consensus in al-Fuṣūl.514 In one discussion al- Таḥāwī labels a particular instance of consensus a ḥujja qāṭiʿa, or certain proof.515 Later theorists would understand the term qāṭiʿ to indicate epistemologically certain knowledge. For instance, al-Jaṣṣāṣ would hold that the achievement of consensus after disagreement produced epistemologically certain (qāṭiʿ) knowledge, and al-Sarakhsī defines consensus in general as producing qat̲.516 However, as we have already seen in our discussion of varieties of ḥadīth,517 al- Таḥāwī is not interested in defining degrees of certainty in the same way that later jurists would be, and I therefore have chosen here to translate “ḥujja qāṭiʿa” conservatively as ‘certain proof.’ In either case, al- Таḥāwī’s language regarding consensus is closely related to that of the later tradition.

Al- Таḥāwī further holds that consensus has the power to elevate a ruling to the status of a revealed text. He states that the scholars’ consensus upon considering a certain

513 Al- Таḥāwī, Maʿānī, 3.235; the same passage is repeated verbatim at Maʿānī, 3.277. On al- Таḥāwī’s understanding of raʿy, see Chapter Four, “Hermeneutics,” pp. 257-260.
514 Al- Таḥāwī, Maʿānī, 2.227, 3.309; al-Jaṣṣāṣ, al-Fuṣūl, 2.107.
516 Al-Jaṣṣāṣ, al-Fuṣūl, 2.161; al-Sarakhsī, al-Muharrar, 1.221.
case an exception to a rule constitutes an authoritative proof (*hujja*), just as the Prophet’s own exception to the rule would.\(^{518}\) The equivalence of consensus to a text of revelation is confirmed in al-Ṭahāwī’s observation that “opinion (*raʾy*) is employed in cases for which the rulings are not found to be textually stipulated (*mansūṣ*) in the Book, the Sunna or in the consensus of the Community.”\(^{519}\) Al-Ṭahāwī here includes consensus within the definition of textual stipulation (*naṣṣ*), effectively making it a third source of law. Lists containing the same sequence—Book, Sunna, consensus—appear approximately twenty times across *Sharḥ maʾānī al-āthār, Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār*.\(^{520}\) The stability of these lists suggests that al-Ṭahāwī does indeed view consensus as a third source of law equivalent in status to the Qurʾān and Sunna.\(^{521}\)

Although most later jurists would, like al-Ṭahāwī, acknowledge consensus as an independent source of law, they would not find it easy to establish its authority on the basis of other revealed texts, as no Qurʾānic verse or widely transmitted (*mutawātir*) Prophetic *hadīth* makes a clear statement on the issue. The earliest known attempt to justify consensus is that of al-Shaybānī, who claimed support from the unitary Prophetic *hadīth*, “Whatever the Muslims see as good is good (*ḥasan*) in the eyes of God, and whatever they see as bad is bad in the eyes of God.”\(^{522}\) Al-Ṭahāwī does not follow his Ḥanafī predecessor in his justification of consensus, however. The only justification he offers is a variation on a principle earlier stated by al-Shāfīʿī: that the Muslim

\(^{518}\) Al-Ṭahāwī, *Mushkil*, 6.34.


\(^{521}\) In her discussion of al-Ṭahāwī’s treatment of a particular instance of consensus in *Sharḥ maʾānī al-āthār* and *Ikhtilāf al-fuqahāʾ*, Carolyn Baugh also recognizes the equality of consensus to the Qurʾān and Sunna in al-Ṭahāwī’s thought (“Compulsion in Minor Marriages,” 178).

Community as a whole could not be in error. Significantly, neither al-Shāfiʿī nor al-Ṭahāwī provides this justification in the form of a Prophetic hadīth in Muḥammad’s voice, although al-Shāfiʿī adduces other hadīths in support of consensus, and al-Ṭahāwī consistently provides chains of authority for hadīths.\footnote{On the debate concerning whether this hadīth was an “invention” to justify consensus, see Ahmad Hasan, “Ijmāʿ in the Early Schools,” \textit{Islamic Studies} 6, no. 4 (1977): 123-124.} Thus, al-Ṭahāwī’s failure to provide an isnād for the statement that the Muslim community cannot agree upon an error, suggests that he did not understand the principle to have been spoken by the Prophet.

It is unlikely that al-Ṭahāwī took his justification of consensus from al-Shāfiʿī, however. In the \textit{Risāla}, al-Shāfiʿī asserts that “the entirety of them (ʿāmmatuhum) will not agree (tajtami) upon an error (khaṭaʾ).”\footnote{Al-Shāfiʿī, \textit{al-Risāla}, 220.} Al-Ṭahāwī, in contrast, consistently states some variation on the idea that God would not unite Muslims upon an error (\textit{Allāh lam yakun la-yajmaʿuhum `alā dalāl}).\footnote{Al-Ṭahāwī, \textit{Maʿānī}, 1.292. The three other passages read: “God does not cause them to agree upon an error” (\textit{Allāh lā yajmaʿuhum `alā dalāla}) (\textit{Mushkil}, 9.206); “God does not cause the Community of His Prophet to agree upon an error” (\textit{Allāh lā yajmaʿa rummat nabihi `alā dalāla}) (\textit{Mushkil}, 15.159); and “God did not cause the Community of Muḥammad to agree upon an error” (\textit{lam yakun Allāh yajmaʿa rummat Muḥammad `alā dalāl}) (\textit{Mushkil}, 15.170).} Al-Shāfiʿī and al-Ṭahāwī thus differ concerning the subject of the sentence (the Community or God) and the term for ‘error’ (khaṭaʾ or dalāl).\footnote{Schacht, \textit{Origins of Muhammadian Jurisprudence}, 91.} While this principle may not have been canonized as a Prophetic hadīth by the time of al-Shāfiʿī,\footnote{During al-Ṭahāwī’s lifetime it was recorded as a Prophetic hadīth with slight linguistic variations in the \textit{Musnad} of Aḥmad ibn Ḥanbal (d. 241/855), the \textit{Sunan} of al-Dārimī (d. 255/869), the \textit{Sunan} of Ibn Mājah (d. 273/887), and the \textit{Sunan} of al-Tirmidhī (d. 279/892); it was also cited by Ibn Qutayba in Prophetic hadīth form as a...} during al-Ṭahāwī’s lifetime it was recorded as a Prophetic hadīth with slight linguistic variations in the \textit{Musnad} of Aḥmad ibn Ḥanbal (d. 241/855), the \textit{Sunan} of al-Dārimī (d. 255/869), the \textit{Sunan} of Ibn Mājah (d. 273/887), and the \textit{Sunan} of al-Tirmidhī (d. 279/892); it was also cited by Ibn Qutayba in Prophetic hadīth form as a...
justification for consensus.\(^{527}\) Notably, Ibn Qutayba’s \textit{hadîth} is linguistically similar to that of al-Shâfi‘î, making the Muslims the subject of the sentence and employing the term ‘\textit{khaṭa}’ for ‘error.’ Al-Tîrmdhi, al-Dârimi and Ibn \ Hanbal, in contrast, use the same linguistic markers as al-Ţaḥâwî. That al-Ţaḥâwî would cite as a principle a text which had already been canonized as a \textit{hadîth} suggests that the process of canonization was gradual, and that both the abstract principle and the Prophetic \textit{hadîth} were in general circulation at the time.

Al-Jaṣṣâṣ represents the culmination of the process in which the principle of communal infallibility was canonized in \textit{hadîth} form and made a standard justification for consensus. In a chapter of \textit{al-Fuṣūl} arguing for the Qur’ānic and Sunnaic roots of consensus, he provides the Prophetic \textit{hadîth} in question with the wording it was to retain in most later \textit{usûl al-fiqh} discussions and classical \textit{hadîth} compilations: “My Community (\textit{ummatî}) will not agree (\textit{tajtamí}) upon an error (\textit{dalâl}).”\(^{528}\) We see here that the typical form of the classical \textit{hadîth} combines the linguistic markers in the al-Shâfi‘î/Ibn Qutayba tradition and the al-Tîrmdhi/al-Ţaḥâwî tradition. Al-Ţaḥâwî’s works thus represent a transitional stage in the justification of the authority of consensus on the basis of revelation. Within fifty years of his death, the primary \textit{hadîth} that jurists cite to support consensus would have taken its characteristic linguistic form and be fully understood as Prophetic. In the early 4\(^{th}/10\(^{th}\) century, however, it was still possible to cite this \textit{hadîth} as


\(^{528}\) Al-Jaṣṣâṣ, \textit{al-Fuṣūl}, 2.113. On the classical form of the \textit{hadîth}, see Kamali, \textit{Principles of Islamic Jurisprudence}, 240. The earlier formulation given by al-Tîrmdhi did not disappear; it can still be found in al-Sarakhsî (\textit{al-Muḥarrar}, 1.225). However, most later theorists would cite the \textit{hadîth} in the form given by al-Jaṣṣâṣ.
a non-Prophetic principle and to assert the authority of consensus without rooting that authority in a text of revelation.\textsuperscript{529}

\section*{The Participants in Forming Consensus}

In many cases, al-Ṭahāwī does not specify whose agreement is considered in establishing consensus: he frequently employs the anonymous “ajmaʿī” (they reached consensus)\textsuperscript{530} or the passive “ajmīʿa” (consensus was reached).\textsuperscript{531} In other cases, he refers to the consensus of the Companions,\textsuperscript{532} the scholars (ahl al-ʿilm, ʿulamāʾ, fuqahāʾ),\textsuperscript{533} the ḥadīth scholars (ahl al-ḥadīth),\textsuperscript{534} the Muslims (al-Muslimūn),\textsuperscript{535} the Community (al-ʿumma),\textsuperscript{536} everyone (kull)\textsuperscript{537} or the people (al-nās).\textsuperscript{538} Even when al-Ṭahāwī refers to ‘the people,’ ‘the Community,’ or ‘the Muslims,’ however, it appears that in the overwhelming majority of cases he intends only jurists, a phenomenon that is also characteristic of al-Shāfiʿī’s discussions of consensus.\textsuperscript{539}

\begin{footnotesize}
\textsuperscript{529} Hallaq has expressed regret that there are no extant works from the 3\textsuperscript{rd}/9\textsuperscript{th} and early 4\textsuperscript{th}/10\textsuperscript{th} centuries justifying consensus on the basis of revelation (“On the Authoritativeness of Sunni Consensus,” 433). However, al-Ṭahāwī’s very disinterest in justifying consensus on the basis of revelation, viewed in comparison to the much greater attention he gives to justifying the authority of, for example, Sunna and \textit{i}j\textit{ṭ}iḥād, is itself significant. The fact that al-Ṭahāwī does offer the non-Prophetic principle discussed above as justification in four places, but nowhere provides a basis in revelation for consensus, indicates that it was probably not one of the pressing issues that every scholar of the day need address.

\textsuperscript{530} E.g., al-Ṭahāwī, \textit{Mushkil}, 1.232, 3.234.

\textsuperscript{531} E.g., al-Ṭahāwī, \textit{Maʿānī}, 1.443.

\textsuperscript{532} E.g., al-Ṭahāwī, \textit{Maʿānī}, 1.443.

\textsuperscript{533} E.g., al-Ṭahāwī, \textit{Mushkil}, 6.34, 8.295, 10.17, 11.420.

\textsuperscript{534} E.g., al-Ṭahāwī, \textit{Mushkil}, 5.381.

\textsuperscript{535} E.g., al-Ṭahāwī, \textit{Mushkil}, 2.114, 13.352.

\textsuperscript{536} E.g., al-Ṭahāwī, \textit{Mushkil}, 9.117, 9.206.

\textsuperscript{537} E.g., al-Ṭahāwī, \textit{Maʿānī}, 2.41.

\textsuperscript{538} E.g., al-Ṭahāwī, \textit{Mushkil}, 14.477.

That al-Ṭahāwī intends jurists when he mentions the groups listed above is suggested by the fact that in similar statements about consensus, he sometimes refers to jurists and sometimes to other groups. For example, in a chapter concerning the permissibility of riding seated upon the hide of a predatory animal, al-Ṭahāwī states that no one may exclude anything from the scope of what God has made general (ʿāmm) except on the basis of evidence from the Qurʾān, Sunna, or the consensus of the scholars (ahl al-ʿilm). In another chapter in the same book concerning hunting during the pilgrimage, al-Ṭahāwī states the same principle, but specifies the consensus of the Community (umma), rather than that of scholars. Likewise, in some chapters al-Ṭahāwī writes that the “consensus of the Muslims” has established a technical legal rule of the sort that he usually attributes to the consensus of the scholars. In these and many similar cases we may safely conclude that al-Ṭahāwī envisions the consensus of the jurists only.

In a few, ambiguous cases, al-Ṭahāwī may in fact have in mind a consensus which includes all Muslims, in keeping with the Ḥanafī principle that all Muslims participate in the consensus on foundational matters like the obligation to perform the Ramadan fast and the pilgrimage. Specifically, in several passages asserting that ijtiḥād is used in cases where nothing is found in the Qurʾān, Sunna or consensus, the consensus he

540 Al-Ṭahāwī, Mushkil, 8.295. Predatory animals are categorized as unclean in Islamic law; the question in this chapter is whether a tanned hide constitutes an exception to the general rule.
541 Al-Ṭahāwī, Mushkil, 9.117.
542 E.g., al-Ṭahāwī, Mushkil, 14.410, 14.458.
543 For the later Ḥanafī position, see al-Jassāṣ, al-Fuṣūl, 2.127. Hallaq reports that this distinction was also characteristic of the earliest discussions of consensus (History of Islamic Legal Theories, 20).
mentions is that of the Community (umma). It may be that he has in mind the basic obligations which have been established on the authority of the Muslim community as a whole. Similarly, when al-Ṭaḥāwī states that “the people” (al-nās) have reached consensus that the occasion of revelation for a certain Qur’ānic verse was a specific battle, he may be referring to a collective memory of the Community.

In almost every case, al-Ṭaḥāwī portrays his claims of consensus as geographically universal, rather than restricted to the scholars of a particular locale. When he mentions the fuqahāʾ al-amsār (jurists of the garrison towns), he often takes care to specify that he includes the Ḥaramayn (Mecca and Medina), as well as the garrison towns in all other countries (sāʾ ir al-buldān). Intriguingly, the single example that I was able to identify in which al-Ṭaḥāwī could be interpreted as favoring the consensus of the scholars of a certain region concerns the ahl al-madīna (people of Medina), a group for whom some jurists claimed special authority on the grounds that they preserved the continuous and authentic practice of Muslim Community from the time of the Prophet. In a chapter concerning whether a matter that has already been decided by a judge or arbitrator (ḥakam) may then be referred to the ruler for a de novo ruling, al-Ṭaḥāwī describes the opposition between Abū Ḥanīfa and his disciples on the

544 Al-Ṭaḥāwī, Mushkil, 9.210, 10.108. The other passages about the permission for ijtihād in cases where nothing is found in the Qurʾān, Sunna or consensus simply refer to ijmāʿ without indicating who participates in the process of consensus.
545 Al-Ṭaḥāwī, Mushkil, 14.477.
546 For the regionalism of earlier views of consensus, see Hallaq, History of Islamic Legal Theories, 20; Hasan, “Ijmāʿ in the Early Schools,” 129; Ansari, “Islamic Juristic Terminology,” 31. While al-Ṭaḥāwī portrays his claims to consensus as common to scholars of all regions, it would be necessary to compare specific instances of consensus in al-Ṭaḥāwī to those cited by other Ḥanafi and non-Ḥanafi scholars in order to determine whether they perceived his examples of consensus to be as universal as he implies.
547 Al-Ṭaḥāwī, Mushkil, 12.288. Other passages in which al-Ṭaḥāwī takes care to indicate that a consensus is common to the jurists of all the garrison towns include Mushkil, 10.15 and 15.159.
548 The concept of consensus of ʿamal (practice) of the Medinese is discussed below.
one hand and Ibn Abī Laylā and the jurists (fuqahāʾ) of Medina on the other. He holds that the best opinion is that of Ibn Abī Laylā and the ahl al-madīna “because of their consensus.” He concludes the chapter with an analogical argument refuting the opinion of the Ḥanafīs.549

While this passage might seem to suggest that al-Ṭaḥāwī privileges the consensus of the ahl al-madīna over the opinion of the Ḥanafīs, in the context of al-Ṭaḥāwī’s thought as a whole, it seems considerably more likely that he is using the term ‘consensus’ to refer to the agreement between the ahl al-madīna and Ibn Abī Laylā, a Kūfan, rather than to the simple consensus of the Medinese. Given that no other passage in al-Ṭaḥāwī’s extant works favors the consensus or legal opinions of the Medinese, this discussion is best understood in the context of al-Ṭaḥāwī’s willingness to apply the term ‘consensus’ to an agreement that is not entirely unanimous, a topic I will discuss in more detail below.

The Boundaries of Consensus

Many of the questions that preoccupied legal theorists about the circumstances under which consensus may be said to have been reached are entirely absent from al-Ṭaḥāwī’s extant works. Al-Jaṣṣāṣ devotes individual chapters to issues including the moral qualities required to participate in forming a consensus;550 whether a consensus becomes effective immediately or only upon the death of the generation of scholars that

549 Al-Ṭaḥāwī, Mushkil, 12.39-40.
550 Al-Ṭaḥāwī, Mushkil, 2.132.
formed it;\textsuperscript{551} whether a Successor who became a jurist during the time of the Companions must be counted as part of Companion consensus;\textsuperscript{552} and whether it is possible for a later generation to reach consensus on a question on which the Companions held several known opinions.\textsuperscript{553} None of these questions are raised in al-Ṭahāwī’s extant works.

A crucial question debated during al-Ṭahāwī’s time asks whether scholars must actively state their consent to a position, or whether a tacit consensus may be claimed based on an absence of explicit disagreement. The Ḥanafīs ʿĪsā ibn Abān and al-Karkhī rejected tacit consensus, as did al-Shāfīʿī.\textsuperscript{554} Al-Jaṣṣāṣ and the later Ḥanafī tradition would largely accept it as necessary, given the difficulty of determining the active assent to a doctrine of every scholar alive during a certain time.\textsuperscript{555} Al-Ṭahāwī claims a tacit consensus on several occasions by noting that a Companion indicated a ruling by speech or action in the presence of other Companions, and they did not object.\textsuperscript{556}

In fact, al-Ṭahāwī appears to discuss tacit consensus exclusively in connection with the Companions, a type of tacit consensus which some later jurists would consider a special case because the Companions represented a fairly small community with better knowledge of each other’s opinions than would be possible as the Muslim community grew in size and geographical extent.\textsuperscript{557} Considerations such as the relative degrees of certainty inspired by active and tacit consensus are not addressed in his extant works.

\begin{footnotes}
\item[551] Al-Ṭahāwī, Mushkil, 2.142.
\item[552] Al-Ṭahāwī, Mushkil, 2.156.
\item[553] Al-Ṭahāwī, Mushkil, 2.159. For a discussion of the requirements for consensus debated by later jurists, see Hallaq, History of Islamic Legal Theories, 78ff; Kamali, Principles of Islamic Jurisprudence, 229ff; Weiss, Search for God’s Law, 174ff.
\item[554] Zysow, Economy of Certainty, 125-131; Hasan, “Ijmāʿ in the Early Schools,” 128.
\item[555] Al-Jaṣṣāṣ, al-Fuṣūl, 2.140-141.
\item[556] E.g., al-Ṭahāwī, Maʿānī, 1.118, 2.29, 3.234.
\item[557] Zysow, Economy of Certainty, 128-130.
\end{footnotes}
Although it seems probable that al-Ṭāḥāwī would accept the tacit consensus of post-Companion generations given his consistently optimistic approach to consensus, the absence of any explicit discussion of the matter relieves al-Ṭāḥāwī of having to justify specific claims of consensus in later generations on the basis of active or tacit assent.\footnote{558}

Al-Ṭāḥāwī’s expansive definition of consensus is also apparent in passages which indicate that he agreed with the view that consensus need not be unanimous in order to be valid.\footnote{559} In a discussion of the Pilgrimage rites, he claims that “the Muslims have reached consensus” and that “they all participate in the consensus” (\textit{innāhum jamī’an mujmi‘īn}) while acknowledging in the very same paragraph the disagreement of Ibn ʿAbbās.\footnote{560} Shortly afterward, he acknowledges that some other scholars followed the opinion of Ibn ʿAbbās.\footnote{561} He thus applies the term \textit{ijmā‘} to a non-unanimous consensus, a phenomenon we also saw above when al-Ṭāḥāwī claimed the consensus of the Medinese and Ibn Abī Laylā against the Ḥanafī opinion. Similarly, he states elsewhere that “a group” (\textit{jamā‘a}) of Companions reached consensus on a question.\footnote{562} He uses this restricted consensus as evidence in favor of his position.

On the other hand, al-Ṭāḥāwī does know the principle of unanimous consensus and employs it himself on at least one occasion. In a chapter in \textit{Mukhtaṣar Ikhtilāf al-ʿulamā‘} on whether a Muslim may be killed in recompense for the killing of an infidel,\footnote{558 One indication that al-Ṭāḥāwī accepted tacit consensus is his frequent observation that Abū Ḥanīfa, Abū Yūsuf and/or al-Shaybānī held a certain position, and that no disagreement is reported from the other(s) (E.g., \textit{Mushkil}, 14.123). The implication is that they agreed and formed a sort of tacit consensus of the early Ḥanafī authorities.}
al-Shāfiʿī says that there is “no disagreement” (lā khilāf) on a certain principle. Al-Ṭahāwī’s response as reported by al-Jaṣṣāṣ is that what al-Shāfiʿī transmits is not consensus (ijmāʾ), because Abū Yūsuf disagreed. While this polemical passage demonstrates al-Ṭahāwī’s awareness of the argument that consensus must be unanimous, the claim is not typical of al-Ṭahāwī and appears nowhere else in his extant works that I was able to locate. In general, his acceptance of non-unanimous ijmāʾ permits him to claim consensus in the maximum number of cases.

The principle of majority consensus is most famously associated with al-Ṭabarî, although al-Shāfiʿī’s understanding of consensus also did not require unanimity. Al-Jaṣṣāṣ accepted majority consensus, but the opinion died out among most later Ḥanafīs. Given that the understanding of consensus among jurists of the first two centuries of Islamic history likewise did not rely upon unanimity, it seems plausible that al-Ṭabarî and al-Ṭahāwī were not expressing an unusual view in accepting the consensus of the majority. Rather, al-Ṭabarî is remembered for a doctrine which was for a long time the most widespread, until the increasing emphasis on the communal unity implied by the doctrine of consensus made the concept of a non-unanimous consensus untenable.

In contrast, al-Ṭahāwī sharply diverges from the later uṣūl al-fiqh tradition in his willingness to accept that consensus may be abrogated. In general, the term naskh

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563 Al-Jaṣṣāṣ, Muktaṣar Ikhtilāf al-ʿulamāʾ, 5.159. This passage also serves as further evidence that al-Ṭahāwī understood consensus to be indicated by phrases such as “lā khilāf” as well as by the term ijmāʾ.
565 Lowry, Early Islamic Legal Theory, 319.
566 Zysow, Economy of Certainty, 132-133.
(abrogation) is reserved for the temporal and legislative supersession of a Qur’ānic verse or ḥadīth; ordinarily, later jurists would speak of a change in ījmāʾ, or a new ījmāʾ, rather than its abrogation. Indeed, among later jurists it was widely held that consensus could neither abrogate nor be abrogated, because abrogation was only possible during the lifetime of Muḥammad, and consensus was only effective after it.568 Al-Ṭaḥāwī, however, twice entertains the possibility of the abrogation of a consensus, although he denies that abrogation actually occurred in either case. In the first example, the Ḥanafīs, Mālikīs and Shāfiʿīs569 claim that Q 5/al-Māʾida:106 (“O you who believe, [let there be] witnessing between you when death comes to one of you”) was abrogated by Q 65/al-Ṭalāq:2 (“Call as witnesses two just men”). Al-Ṭaḥāwī’s response is that “it is not permissible (lā yajūz) to abrogate something upon whose certainty (thubūt) consensus has been reached unless there exists an authoritative proof (ḥujja) requiring that.”570 In other words, jurists have reached consensus on the effectiveness of the rule stated in Q 5/al-Māʾida:106. It is possible for such a consensus to be abrogated, but only in cases where there is a new, authoritative proof (ḥujja). In this case, he finds no such authoritative proof, and so he follows the consensus of the Companions and Successors over the opinion of most later jurists. Neither here nor elsewhere does al-Ṭaḥāwī specify what sort of authoritative proof could abrogate consensus, but the fact that he understands such abrogation to be possible places him at odds with the later tradition.

The second example is similar. It concerns a claim that Q 5/al-Māʾida:6 (“your feet up to the ankles”) abrogated the earlier permission to wipe the feet that had been

569 Al-Ṭaḥāwī refers to these groups as ‘Abū Ḥanīfa and his disciples,’ ‘al-Shāfiʿī and his disciples,’ etc.
570 Al-Ṭaḥāwī, Mushkil, 11.469.
established by a Prophetic *hadīth*. Jurists who hold that the Qurʾān abrogated the earlier *hadīth* argue that this verse replaces washing the feet with wiping the feet. Al-Ṭāḥāwī responds that “the necessary course of action is that we adhere to that upon whose obligation consensus has been reached until its abrogation is known (*yuʿla*).” Once again, his argument is that there is consensus upon the effectiveness of the wiping rule as established in the Prophetic *hadīth*. Although that consensus may be abrogated, such abrogation has to be known through some other (unspecified) proof. Since no such proof is known, the permission to wipe the feet stands.

Although al-Ṭāḥāwī denies that abrogation has actually occurred in either case, he leaves open the possibility that consensus could be abrogated if an authoritative proof is found, or if it is “known.” At the same time, he confirms the authority of consensus by requiring proof in order to set it aside. Al-Ṭāḥāwī’s claim that consensus may be abrogated reflects a general approach which seeks to establish the occurrence of consensus in the maximum number of cases by refraining from setting up any unnecessary barriers to attaining it. Al-Ṭāḥāwī appears to feel confident in claiming the authority of consensus for cases in which later jurists would hesitate for fear of falling into inconsistencies or of undermining the theological claims that the doctrine of a unanimous and unalterable consensus supported.

Another passage demonstrates how al-Ṭāḥāwī gains flexibility in the application of consensus by avoiding a definitive statement concerning when it becomes binding. In a discussion of whether the relatives of the Prophet receive a share of the *khums* tax, al-

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571 Al-Ṭāḥāwī, *Aḥkām*, 1.112.
Ṭahāwī states that Abū Bakr and 'Umar did not distribute the *khums* to the Prophet’s relatives after his death. He first writes:

This confirms that this is the rule in our opinion. Since none of the other Companions of God’s Messenger opposed them, it confirms that it was [the other Companions’] opinion as well. Since consensus has been confirmed (*thabata*) in this from Abū Bakr, 'Umar and all the Companions of God’s Messenger, the doctrine (*al-qawl bihi*) has been confirmed. It is obligatory to practice it and to abandon what opposes it.⁵⁷²

To this point in the passage al-Ṭahāwī has strongly affirmed the obligation to act upon the Companions’ tacit consensus on this matter. He continues: “Then, when ‘Alī came to power, he similarly confirmed this ruling.” He is now discussing a period after the consensus had already been established. After adducing a Companion report from ‘Alī, al-Ṭahāwī observes that “had his opinion been different, he would have restored [the matter] (*raddahu ilā*) to what he opined, given his knowledge, his piety and his virtue.”⁵⁷³

What is notable about this passage is that al-Ṭahāwī contemplates with equanimity the possibility that ‘Alī could oppose a consensus that had already been formed (*thabata*). What is more, had ‘Alī opposed the confirmed consensus of the Companions, his action would have been the praiseworthy result of his knowledge, his piety and his virtue. From this discussion, it appears that the prior consensus was not binding on ‘Alī, perhaps because of his role as an early caliph or the rough equivalence of his stature with that of Abū Bakr and ‘Umar. Nonetheless, in this passage al-Ṭahāwī both states that a consensus had already been formed (*thabata*) and that it might permissibly later have been challenged.

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Similar situations in which a Companion is reported to have opposed a consensus led other jurists to develop the doctrine of *inqirāḍ al-ʿaṣr*, which held that a consensus does not become effective until all of the jurists involved in forming it have passed away. Under this theory 'Alī would be permitted to give a share of *khums* to the Prophet’s relatives because the earlier consensus had not yet become binding. This doctrine, which was in effect a way of excusing an otherwise impermissible breach of consensus, was held by Ḩanbalīs, Shāfiʿīs, Muʿtazilīs and Ashʿarīs, and was already known in al-Ṭaḥāwī’s time and attributed to Aḥmad ibn Ḥanbal. This principle cannot be what al-Ṭaḥāwī was envisioning, however, because he states clearly that the consensus was confirmed by the actions of Abū Bakr, 'Umar and the other Companions, and that it was obligatory to act upon it. Further, he is not excusing a breach of consensus by 'Alī, but is instead portraying his potential opposition in a positive light. Nor is there any indication in al-Ṭaḥāwī’s discussion that he considered the original consensus to be provisional, such that the objection of 'Alī would have revealed that there was in fact no consensus. Notions of provisional instances of consensus, or discussions of the point where instances of consensus become irrevocable, are simply absent from al-Ṭaḥāwī’s work.

Other jurists, including most Ḥanafīs, would deny the doctrine of *inqirāḍ al-ʿaṣr* and would hold that a consensus becomes binding in the moment that it occurs. They recognized that, by trying to solve the problem of the existence of reports of Companions acting in opposition to established consensus, the proponents of *inqirāḍ al-ʿaṣr* had created other problems. When new individuals were constantly joining the ranks of the jurists, what would it mean for a generation to pass away? The opponents of *inqirāḍ al-

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ʿaṣr would reject the idea that ʿAlī’s piety could cause him to oppose a confirmed consensus. Confronted with a similar situation in which ʿUmar is said to have opposed a consensus established under Abū Bakr, al-Jaṣṣāṣ denies that there was any valid consensus in the first place, such that ʿUmar could have opposed it.575

The Ḥanafī denial of the doctrine of *inqirāḍ al-ʿaṣr*, however, also does not adequately account for the passage under discussion. Al-Ṭaḥāwī clearly states that a consensus had occurred under Abū Bakr and ʿUmar. By declining to recognize a conflict between his initial assertion that the consensus of Abū Bakr, ʿUmar and the other Companions is binding and his later assertion that ʿAlī could have acted upon his own raʿy, al-Ṭaḥāwī claims the authority of consensus while still permitting a kind of dynamism that the *uṣūl* tradition excluded by its insistence upon the binding nature of consensus and the impossibility of its abrogation. It may well be that al-Ṭaḥāwī often has in mind something less than a permanently binding, unanimous agreement when he claims consensus. Nonetheless, by using the term *ijmāʿ* both when making possibly casual claims of consensus and while asserting the status of consensus as a certain proof (*ḥujja qāṭiʿa*), al-Ṭaḥāwī elevates the status of all of his other claims of consensus.

One result of al-Ṭaḥāwī’s comparative disinterest in many of the questions that later theorists considered integral to a discussion of consensus is that he is not burdened by a detailed set of requirements when making his own claims of consensus. While al-Ṭaḥāwī does address various theoretical issues related to consensus, he also makes claims of consensus without rigorous justification, sometimes in ways that later theorists would find unacceptable. Consensus is a powerful tool for al-Ṭaḥāwī because he is able to use

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the language of *uşūl al-fiqh* to claim *ijmā‘* as a certain and authoritative proof, and yet he
does not feel constrained to take positions on the entire “checklist” of questions that
would characterize discussions of the doctrine in later *uşūl al-fiqh* works.

In part, al-Ṭahāwī’s approach must be understood as reflecting the historical
development of the doctrine of consensus. As we have seen above, al-Ṭahāwī wrote
before many aspects of the classical doctrine on consensus had crystallized. He also
shares in a general Ḥanafī optimism concerning consensus, expressed in a tendency to
“consistently [adopt] those positions that were felt to facilitate the application of the
document.”576 His approach to consensus also reflects the genre in which he worked,
however. His goal as the author of works of practical hermeneutics was to establish and
justify the law on discrete issues. In contrast, we may understand the complexity of later
theorists’ discussions of consensus as the product of their attempts to extrapolate a
rigorous and coherent theory from the Qur’ānic verses and Prophetic *ḥadīths* that had
come to be understood as underpinning the authority of consensus as a source of law. As
we have seen above, this theory of consensus was also employed to uphold ideological
and theological claims. The overtly theoretical aspirations of the *uşūl* genre thus
generated their own imperatives of systematicity that are entirely absent from al-
Ṭahāwī’s practical approach to consensus.

as a means of preserving school doctrine in the face of an increasing deference to Qur’ān and Prophetic
Sunna by elevating analogy and isolated *ḥadīths* to the status of revealed sources (Economy of Certainty,
114-115). In contrast, consensus plays a relatively minor role in the legal thought of al-Shāfi‘ī, who sought
to show how all law is contained in the Qur’ān and Prophetic Sunna (Lowry, *Early Islamic Legal Theory*,
319).
While jurists in al-Ṭahāwī’s time and before did also develop doctrines like \textit{inqirāḍ al-ʾāṣr}, it was only the \textit{uṣūl al-fiqh} genre which sought to bring all aspects of consensus together into a single, coherent whole. The result of legal theorists’ efforts to produce a coherent account of the doctrine was a definition of consensus of such specificity and rigor that theorists came to question whether consensus had ever actually occurred in practice.\footnote{Kamali, \textit{Principles of Islamic Jurisprudence}, 229; Nyazee, \textit{Islamic Jurisprudence}, 192.} Indeed, Bernard Weiss writes that, “on the whole, I think it is fair to say that the actual impact of consensus on the formulation of the law was seen by the classical jurists as rather minimal.”\footnote{Weiss, \textit{Spirit of Islamic Law}, 125.} In contrast, al-Ṭahāwī understands consensus to be a routine occurrence and integral to the process of formulating the law, as we shall see below.

The disparate goals of practical hermeneutics and legal theory may then be identified as the reason for the gap which Kamali and others have noted between the theory and practice of consensus.\footnote{Kamali, \textit{Principles of Islamic Jurisprudence}, 228-229.} Ahmad Hasan has suggested that the existence of claims of non-unanimous consensus demonstrates that “either the classical definition of \textit{Ijmāʿ} is defective, or \textit{Ijmāʿ} is only a theoretical concept.”\footnote{Hasan, “\textit{Ijmāʿ} in the Early Schools,” 121.} In response, we may suggest from our reading of al-Ṭahāwī and later works of theory that the classical definition of consensus in \textit{uṣūl al-fiqh} works reflects one set of theological and ideological goals, while the operation of consensus in al-Ṭahāwī’s works of practical hermeneutics reflects the imperatives of law creation in practice. The question of the relationship between the genres of legal theory and practical hermeneutics requires further study, however. In
particular, it would be instructive to examine whether and how the use of consensus in works of practical hermeneutics changed in response to the maturation of the doctrine in usūl al-fiqh works. While the maturity of al-Jaṣṣāṣ’s *Fuṣūl* certainly suggests that there were earlier works in the genre which have been lost, it is nonetheless fair to say that al-Ṭahāwī lived before the genre became canonized to the extent it would later. It seems possible that authors of works of practical hermeneutics a few centuries after al-Ṭahāwī would need to engage with usūl al-fiqh approaches to consensus to a degree that al-Ṭahāwī did not. A chronological survey of approaches to consensus in works of practical hermeneutics could thus provide us with important insights on the relationship between that genre and usūl al-fiqh.

**Function**

*Consensus as a Tool for Resolving Disagreement*

As stated above, consensus is not merely discussed as a theoretical possibility in al-Ṭahāwī’s works, but instead plays a major, practical role in his legal arguments. Far from doubting the possibility of obtaining consensus in real-life situations, al-Ṭahāwī claims consensus as the basis for establishing the occasion of revelation for a Qurʾānic verse; restricting an apparently general (ʿāmm) meaning to a specific (khāṣṣ) meaning; affirming the authenticity of an apparently weak ḥadīth; providing the explanation (taʾwīl) of the intent of a Qurʾānic verse or ḥadīth; setting out a rule of

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positive law; and many other kinds of claims. Often, consensus on one question becomes the basis for an analogy by which another rule is derived.

The flexible quality of consensus in al-Ṭañāwī’s thought is perhaps most apparent in his use of it as a technique for resolving reported disagreements (ikhtilāf) among jurists. The impression gained from usūl al-fiqh discussions of consensus, which are largely concerned with determining when and how consensus may be said to have been reached, is that jurists either have reached consensus on a certain question or they have not. The existence of disagreement (ikhtilāf) on an issue would therefore seem to preclude any claim of consensus. Al-Ṭañāwī, however, frequently appeals to an inferred consensus when identifying points of agreement within a larger debate.

For example, in a chapter concerning how many extra takbīrs (that declaration that ‘God is great’) should be said during prayers for the two major festival days, al-Ṭañāwī first sets out conflicting opinions from various Companions and Successors. One major faction holds that there should be nine takbīrs, while the other argues that it should be twelve; both claim support from ḥadīths. After listing the proponents of each opinion, al-Ṭañāwī signals the transition to the discussion portion of his chapter in his usual way. He writes, “Because they disagreed on takbīr for the two festival prayers, we wanted to examine it (nanẓur fīhi) in order to derive (nastakhrij) the correct opinion

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586 E.g., al-Ṭañāwī, Ahkām, 1.175, 1.434; Mushkil, 2.140-142.
587 See Zysow, Economy of Certainty, 122.
588 Many premodern theorists do recognize that consensus can encompass situations in which jurists have a known disagreement—there is consensus that the positions taken in that disagreement are the only permissible positions (see, e.g., Lowry, “Is There Something Postmodern about Usūl al-Fiqh?,” 287). This consensus-upon-disagreement is a different process than the kind of consensus discussed in this section, however.
589 Al-Ṭañāwī, Maʿānī, 4.343-350.
(qawl ṣaḥīḥ) from their various opinions." After resolving a side issue, he returns to the question of the number of takbīrīs in the two festival prayers. Although he has previously acknowledged that scholars disagree on the issue, he now claims that within their disagreement they have reached consensus that there are indeed additional takbīrīs for the festival prayers in comparison with non-festival prayers. He further argues that the two groups have reached consensus on nine additional takbīrīs, since that is a number on which all groups agree, i.e., nine takbīrīs are included within the twelve takbīrīs of the second group. He affirms that he will adopt the additional takbīrīs that everyone agrees on and deny those on which there is disagreement. Thus, although the stated opinions of the Companions and Successors express disagreement on this question, al-Ṭahāwī infers a consensus which serves as an authoritative proof and resolves the dispute.

Likewise, in a chapter on shortening prayers while traveling al-Ṭahāwī first describes scholars’ various opinions on how long someone must travel in order to qualify for the reduced obligation. He next infers that the proponents of all of these positions have reached consensus that the relevant Qur’ānic verse intends only a specific (khāṣṣ) kind of traveler, despite the apparently general (ʿāmm) meaning of the verse, since no jurist holds that all travelers may shorten their prayers. Within this consensus, some say that three days is the minimum length of travel which merits shortened prayers, while others name shorter travel times. Since they would all agree that someone traveling for

591 Al-Ṭahāwī, Maʿānī, 4.350.
592 Al-Shāfiʿī employs this same ‘lowest common denominator’ approach to consensus in the Risāla where he argues that despite their disagreements over the proper inheritance share for a grandfather, all parties have reached consensus (muḫjīm īʿān) that he should receive at least as big a share as a brother (Risāla, 274).
three days may shorten his or her prayer, that is what they have reached consensus upon.593

As in the previous example, al-Ṭaḥāwī first infers the existence of consensus on a larger scale—here, that the meaning of the Qurʾānic verse is *khāṣṣ*—and then identifies a point of commonality among the competing opinions. Al-Ṭaḥāwī similarly resolves disagreements by identifying an implicit consensus on questions such as the disagreement over the minimum amount a thief must steal before he is subject to the punishment of amputation, how many people may share in the sacrifice of a single animal during the Pilgrimage and the maximum time that may pass between the minor and major Pilgrimage such that one may still be considered to be doing *tamattuʿ* (a way of combining the minor and major Pilgrimages).594 In all of these cases, al-Ṭaḥāwī validates one opinion over another by arguing that it represents a sort of ‘lowest common denominator’ of consensus.

In other chapters, al-Ṭaḥāwī resolves juristic disagreement not by claiming that a consensus already exists among apparently contradictory opinions, but by appealing to another issue on which scholars have already reached consensus for a solution to the current problem.595 In a chapter on the legal effectiveness of sales concluded during the Friday prayer, a time when commerce is ostensibly prohibited, al-Ṭaḥāwī first describes the opposition between Abū Ḥanīfa, Abū Yūsuf, al-Shaybānī and al-Shāfiʿī, who validate

595 The process by which rulings reached by *raʾy* are elevated to epistemological certainty and are then used as the basis for further analogy is described in Hallaq, “On the Authoritativeness of Sunni Consensus,” 427, and Hasan, “*Ifmāʿ* in the Early Schools,” 126.
such a sale, and Mālik ibn Anas, who rejects it.\footnote{The prohibition in question is found in Q 62/al-Jumʿa:9 (“O you who believe, when proclamation is made for prayer on the day of assembly, hasten to remembrance of God and leave [your] trading”).} Al-Ṭahāwī then observes that “because they disagreed, we looked to what they had reached consensus upon that was of the same type as what they disagreed upon, in order that the disagreement be brought into alignment (\textit{li-tu taf ʿalayhi}) with it.”\footnote{Al-Ṭahāwī, \textit{Akhām}, 1.152. ʿUnālʾ’s edition of \textit{Akhām al-Qurʾān} incorrectly gives “al-taʾātuf” instead of “\textit{li-tu taf}.” This reading must be wrong, because it leaves the next phrase, “mā ikhtalaṣfū fīhi,” without any grammatical relationship to what precedes it.} He finds that scholars have reached consensus that sales made during other prayer periods when commerce is prohibited are still legally effective, and so therefore should the sale in question be. Here al-Ṭahāwī is relying on analogical reasoning to resolve the disagreement; however, his language is that of consensus, not analogy.

The principle at work here is stated most clearly in a chapter on prayer under circumstances in which worshippers fear for their safety (\textit{ṣalāt al-khāwif}). There, al-Ṭahāwī refutes the opinion (\textit{raʾy}) of Yaḥyā ibn Saʿīd on how this prayer should be performed on the grounds that there is no parallel for his opinion in any other kind of prayer. His opinion is therefore without basis, because “knowledge (ʿilm) of [the resolution of] disagreements is sought from [questions] on which consensus has been reached.”\footnote{Al-Ṭahāwī, \textit{Maʿānī}, 1.313. Shortly afterwards, al-Ṭahāwī establishes the correct practice for this kind of prayer by looking to scholarly consensus on a similar question. In his discussion he twice uses the same language about “bringing the question into alignment” (\textit{ʿatafnā ʿalayhi, na ṭifuhū ʿalayhi}) that appeared in the previous example (\textit{Maʿānī}, 1.314).} Similarly, we learn in another chapter that “[the resolutions to] disputed issues are confirmed if they resemble issues on which consensus has been reached. If they do not resemble them, they are not confirmed except by means of the establishment
of a limit in another revealed text (tawqīt) that serves an authoritative proof (ḥujja).”

Like the example above, both of these passages are discussing the use of a kind of qiyās to resolve juristic disagreements, but they do so using the language of consensus.

Above we have considered two ways in which al-Ṭaḥāwī employs consensus to resolve disagreements among jurists. What these passages highlight is the way in which al-Ṭaḥāwī appeals to consensus to advance his legal arguments, even in cases in which it might have seemed that no consensus could exist. Reading manuals of uṣūl al-fiqh, one gains the impression that theorists primarily envisioned consensus as an end point, the conclusion of a process. This impression is supported by the fact that the chapters on consensus in legal theory manuals are dedicated to defining the circumstances under which consensus may said to have been attained and to emphasizing the permanence of consensus once achieved. In contrast, for al-Ṭaḥāwī as a writer engaged in the work of practical hermeneutics, the establishment of consensus is rarely an ending or an end in itself, but instead only a stage in a larger argument. As we have seen, consensus in al-Ṭaḥāwī’s works does not have the same universal, immutable qualities that are envisioned in the uṣūl al-fiqh tradition. As a result, it is a much more useful tool for demonstrating the relationship between text and law.

Consensus Indicating Abrogation

To this point, we have been discussing a kind of consensus that allows jurists to discover the law in cases where nothing relevant is found in the Qurʾān or Sunna—that is, consensus that ‘fills in the gaps’ of revelation. Some jurists also discussed another kind of

599 Al-Ṭaḥāwī, Maʿānī, 2.267.
consensus, however, a consensus that had the potential to compete for authority with accepted Prophetic hadīths. Discussions of this type of consensus are framed in legal theory works in terms of whether consensus may abrogate (al-naskh bi-l-ijmāʾ). In al-Ṭahāwī’s works, the issue of abrogation by the consensus of the jurists arises in seven chapters in Sharḥ maʿānī al-āthār and Sharḥ mushkil al-āthār. We may assume that this topic is absent from Aḥkām al-Qurʾān because al-Ṭahāwī, like other jurists, never contemplates the possibility that consensus could abrogate the Qurʾān.

Six of the seven passages in question concern cases in which al-Ṭahāwī is faced with conflicting Prophetic hadīths containing no reference to the order in which they were revealed. In each case, he argues that the consensus against following the practice detailed in one of the hadīths indicates that that hadīth is abrogated. In the final passage, al-Ṭahāwī argues that scholars’ consensus against practicing the rule contained in a hadīth indicates its abrogation, even though no other Prophetic hadīth on the topic is known. In the first group of passages, consensus confirms one Prophetic hadīth even while overriding another; in this last passage, consensus functions to negate the authority of a Prophetic hadīth without appealing to any other Prophetic or Qurʾānic text.

Perhaps surprisingly, discussions of abrogation by consensus in later usūl works do not appear to be concerned with the distinction between cases in which consensus

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600 Earlier in this chapter, I discussed the possibility that consensus may be abrogated—a possibility which al-Ṭahāwī affirms but the later tradition would reject.
601 I am excluding from this count the chapters concerning abrogation by the consensus of the Companions; they will be discussed below. In some of the passages under discussion in this section, al-Ṭahāwī specifies the consensus of the Community or everyone (kull). As argued previously, these passages are in fact discussing scholars (e.g., Maʿānī, 1.291, 1.449, 3.78).
602 In his discussion of abrogation by consensus, al-Jaṣṣāṣ does include the observation that the abrogation of Q 60/al-Mumtaḥana:11 by another Qurʾānic verse is known only through consensus (al-Fuṣūl, 1.417).
603 Al-Ṭahāwī, Maʿānī, 1.291, 1.448-449, 3.78; Mushkil, 15.158-159, 15.167-170, 15.465.
604 Al-Ṭahāwī, Mushkil, 12.288.
affirms one Prophetic hadīth over another as opposed to times when the consensus reached has no obvious basis in a revealed text. Instead, these discussions are focused almost entirely on whether consensus has the power to abrogate revealed texts at all. The nearly universal answer is that it does not. Al-Jaṣṣāṣ and al-Zarkashī report that the Ḥanafī ʿĪsā ibn Abān held that consensus may abrogate (“al-ījmāʿ nāsikh”), and al-Sarakhsī refers to unnamed Ḥanafīs who held the same view. However, al-Jaṣṣāṣ and al-Sarakhsī themselves are categorical in their assertion that consensus may not abrogate, as is al-Zarkashī and the many other scholars he cites in al-Bahr al-muḥīṭ.

The major argument against abrogation by consensus adduced by al-Jaṣṣāṣ, al-Sarakhsī, al-Zarkashī and many of the scholars he discusses is that abrogation only occurred during the Prophet’s lifetime and consensus only became operative after it, so therefore consensus may neither abrogate nor be abrogated; the two processes have no interaction with each other. Al-Jaṣṣāṣ also argues that abrogation requires revelatory instruction (tawqīf), which cannot be obtained after the death of the Prophet. Al-Sarakhsī, on the other hand, emphasizes that consensus is not based in revelation; he writes that “consensus consists of (ʿibāra ʿan) the confluence of opinions (arāʾ) on a topic, and we have shown that there is no place for mere opinion in knowing the time

605 Al-Jaṣṣāṣ, al-Fuṣūl, 2.417; the quotation is from al-Zarkashī, al-Bahr al-muḥīṭ, 4.129.
606 Al-Jaṣṣāṣ, al-Fuṣūl, 2.417; al-Sarakhsī, al-Muharrar, 2.52; al-Zarkashī, al-Bahr al-muḥīṭ, 4.129-132. Al-Zarkashī also cites al-Khaṭṭīb al-Baghdādī as holding that consensus abrogates (al-ījmāʿ nāsikh), although he is careful to argue that in al-Khaṭṭīb al-Baghdādī’s example, the abrogation is in fact inferred from the consensus, rather than caused by it (al-Bahr al-muḥīṭ, 4.130). The title of the chapter of al-Fiqīh wa-l-mutafaqqih from which al-Zarkashī’s example is drawn suggests that al-Khaṭṭīb al-Baghdādī himself understands the abrogation as an inference from consensus; the title states that, when the Community reaches consensus against something in a report, it is inferred (istadalla) that the report was abrogated (al-Faqīh wa-l-mutafaqqih, ed. ʿĀdil ibn Yūsuf al-ʿIzāzī (Dammām, Saudi Arabia: Dār Ibn al-Jawzī, 1996), 1.339). It is thus not clear that al-Zarkashī is correct in identifying al-Khaṭṭīb al-Baghdādī as one who holds that consensus itself may abrogate.
607 Al-Jaṣṣāṣ, al-Fuṣūl, 2.417; al-Sarakhsī, al-Muharrar, 2.52; al-Zarkashī, al-Bahr al-muḥīṭ, 4.128-129.
608 Al-Jaṣṣāṣ, al-Fuṣūl, 2.417.
after which doing a thing becomes good or bad according to God,” that is, there is no place for mere opinion in knowing when a text is abrogating or abrogated.609

While it was widely held that consensus could not itself abrogate a text of revelation, many jurists did accept that consensus may indicate (yadull ‘alā/dalīl) that abrogation had already occurred. In this case, consensus effectively preserves revelation that has not come down in the form of a Prophetic hadīth.610 Al-Jaṣṣāṣ accepts this form of consensus. He writes that “we do not say that consensus causes (awjaba) abrogation.” However, he affirms that “consensus indicates to us that [a hadīth] is abrogated by revelatory confirmation (tawqīf), even if the abrogating text (lafz nāsikh) has not been transmitted to us.”611 This function of consensus is accepted by a variety of non-Ḥanafī jurists as well, including Shāfī’īs and Ḥanbalīs listed in al-Bahr al-muḥīṭ, the Mālikī jurist al-Tilimsānī (d. 771/1369) and the Zāhirī Ibn Ḥazm (d. 456/1064).612 Al-Sarakhsī rejects even this limited definition of abrogation by consensus.613

It is this consensus that merely indicates a previous abrogation that al-Ṭaḥāwī has in mind in the passages mentioned above. In none of them does he refer to consensus as itself abrogating (nāsikh). Instead, he writes that scholars reached consensus that a hadīth

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609 Al-Sarakhsī, al-Muḥarrar, 2.52.
610 Ahmad labels this type of ijma “text-recovering consensus” (Structural Interrelations of Theory and Practice, 131).
611 Al-Jaṣṣāṣ, al-Fuṣūl, 2.417.
613 Al-Sarakhsī, al-Muḥarrar, 2.52. Al-Shāfī’ī originally held that consensus may preserve a memory of an otherwise lost hadīth, but later asserted that no Prophetic hadīth could ever completely disappear from the Community (Calder, “Ikhtilāf,” 75). While al-Ṭaḥāwī might well agree with al-Shāfī’ī that Prophetic material could never be entirely lost, he held that consensus adequately preserved that material.
was abrogated (mansūkh)\textsuperscript{614} or that “we reason” (ʿaqalnā) from their consensus that the ḥadīth was abrogated, implying that the abrogation had occurred before their consensus upon it was reached.\textsuperscript{615} In other cases, he uses derivations from the root d-l-l also used by later jurists to claim that consensus indicates (yadull ʿalā, dalīl) a ḥadīth’s abrogation.\textsuperscript{616} That al-Ṭahāwī rejected the possibility that scholars’ consensus could itself abrogate revealed texts is emphasized by the justifications he gives for his claims of consensus in four of the seven passages under discussion. In one he writes that:

They would not reach consensus against what the Prophet did without confirmation (thubūt) of its abrogation. That is because they are trustworthy (maʿmūnūn) in what they do (jāʿalū) just as they are trustworthy in what they transmit.\textsuperscript{617}

In another passage, al-Ṭahāwī makes a very similar argument and then adds that:

The opinions (qawl) and transmission (riwāya) of anyone who abandons what the Prophet said or ruled can no longer be accepted, and God forbid that such should be the case for [the jurists of the garrison towns].\textsuperscript{618}

Al-Ṭahāwī’s argument is that it is inconceivable that scholars would reach consensus inappropriately, and therefore their consensus against a ḥadīth must be based upon other revelatory authority. They cannot all abandon what the Prophet commanded, because their trustworthiness in following the Prophet is inextricably linked to their trustworthiness in transmitting the texts of revelation. Because it is unthinkable that scholars could be collectively untrustworthy as transmitters, it is impossible to suppose that they would collectively and knowingly contravene a Prophetic ḥadīth that was still in

\textsuperscript{614} Al-Ṭahāwī, Maʿānī, 3.78.
\textsuperscript{615} Al-Ṭahāwī, Mushkil, 12.288, 15.167, 15.465.
\textsuperscript{616} Al-Ṭahāwī, Mushkil, 15.170; Maʿānī, 1.291, 1.449.
\textsuperscript{617} Al-Ṭahāwī, Mushkil, 15.167.
\textsuperscript{618} Al-Ṭahāwī, Mushkil, 12.288.
effect. The categorical impossibility of scholars reaching consensus inappropriately is further emphasized in three other passages where al-Ṭahāwī justifies his claim of abrogation by saying that God would not cause His Community to agree upon an error, a statement of principle which we have already discussed above, and one which suggests a form of communal infallibility. Indeed, three of the four assertions of this principle in al-Ṭahāwī’s works occur in the context of justifying an abrogation known only through consensus, suggesting that al-Ṭahāwī feels that this is an area of his theory of consensus strongly in need of justification.

Although al-Ṭahāwī does not directly argue in these passages that consensus cannot itself abrogate, that is the unspoken premise underlying his argument that scholars must have had confirmation from revelation before reaching consensus. Comparing al-Ṭahāwī’s discussions of abrogation by consensus with those of later legal theorists, we can see that he does not share in their widespread assertion that abrogation only occurred during the life of the Prophet and consensus only became operative after it. Indeed, we have already seen in a previous section that al-Ṭahāwī accepts that consensus may be abrogated by an (unspecified) authoritative proof, thus negating the firm boundary that other jurists erect between abrogation and consensus. Nor does he state his objections in terms of al-Sarakhsī’s concern that consensus is based on a confluence of opinion, and therefore has no place abrogating a text of revelation. Instead, al-Ṭahāwī’s primary concern with abrogation by consensus alone is that it means abandoning the Prophet’s practice, a consideration not directly addressed by other theorists we have mentioned. Because he links scholars’ trustworthiness as transmitters to their trustworthiness in

619 Al-Ṭahāwī, Mushkil, 15.158-159, 15.170; Maʿānī, 1.291.
following the Prophet’s practice, the entire edifice of revelation and the law is dependent upon the upright conduct of those who transmit religious texts.

In claiming that some instances of consensus have a special authority to indicate the abrogation of Prophetic hadiths, al-Ṭaḥāwī is applying the same instruction/inference distinction that we have encountered in previous chapters: in cases where consensus must represent a memory about revelatory instruction that has not otherwise been preserved, it has the special authority to indicate the abrogation of Prophetic hadiths. On the other hand, where consensus might permissibly be based upon scholars’ collective legal reasoning, it cannot impinge upon the application of revealed texts. In contrast to his discussions of post-Prophetic hadith, al-Ṭaḥāwī does not use the term ‘tawqīf’ to describe the revelatory instruction that must underlie such instances of consensus, although he does employ the related term ‘wuqūf’ in one passage. Nevertheless, consensus represents a third legal source for which al-Ṭaḥāwī posits a two-tiered system of authority on the basis of what may be discovered by reasoning and what may only be known through revelation.

The Practice (ʿAmal/Istiʿmāl) of the Scholars and the Muslims

In the passages analyzed above, it is the consensus (ijmāʿ) of the scholars that indicates that a Prophetic hadith has been abrogated. In a strikingly similar set of passages, however, al-Ṭaḥāwī claims that abrogation is indicated not by scholars’ ijmāʿ, but by the fact that the rule scholars or Muslims actually put into practice

620 Al-Ṭaḥāwī, Mushkil, 12.288. Interestingly, al-Jaṣṣāṣ employs the term tawqīf in his own argument that some instances of consensus represent a memory of abrogation (al-Fuṣūl, 2.417).
('amila/ista'mala) is in conflict with the rule indicated by a Prophetic hadith. In such cases, that hadith is known to have been abrogated by another Prophetic hadith, even when the abrogating hadith has not been preserved. For example, in a chapter on whether women may wear kohl during their 'idda (waiting period after a divorce or bereavement) in cases of medical necessity, al-Ṭahāwī cites a Prophetic hadith prohibiting the custom. He then observes that:

This hadith has been transmitted from God’s Messenger through multiple pathways (mutawātir) of the kind which scholars accept as sound (wujūh šiḥāḥ). Their abandonment (tark) of it after it had reached them and their putting into practice (istiʿāl) something else is an indication of its abrogation. This is because they are trustworthy (ma mūn) in regard to its abrogation just as they are trustworthy in regard to what they transmit. That being the case, they could only have abandoned something whose manner of transmission they approved because something caused them to abandon it in favor of what they held was better than it—that is, something that had abrogated it. If that were not the case, then their probity ('adl) would be voided. In the voiding of their probity would be the voiding of their status as transmitters, and God forbid that such should be the true state of their affairs.

If we compare this passage with al-Ṭahāwī’s justification for consensus indicating abrogation in the passages above, we see that they contain the same argument: scholars must have known that the abandoned hadith had been abrogated, because they are trustworthy. If they did abandon the rule expressed in a Prophetic practice without cause, they would no longer be trustworthy transmitters of revelation, an unthinkable occurrence.

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621 The terms 'amal and isti‘māl may be translated as ‘practice’ and ‘putting into practice,’ respectively. The term 'amal in particular is generally assumed in discussions of legal theory to refer to the continuous, living practice of the Muslim community, which is based upon but not limited to Prophetic practice. However, as we shall see below, al-Ṭahāwī has a very different concept in mind when he invokes 'amal, and he in fact uses the terms 'amal and isti‘māl interchangeably in his arguments. I therefore discuss them together in this section.

622 Al-Ṭahāwī, Mushkil, 3.178.
The major difference between this passage and passages discussed in the previous section is that earlier al-Ṭahāwī was speaking of consensus (ijmā’), whereas here he is interested in whether scholars put a rule expressed in a Prophetic hadīth into practice (ʿamal/istiʿmāl) or refrain from putting that rule into practice (tark). That is, for al-Ṭahāwī, ‘practice’ concerns the application or non-application of a certain rule. In most cases, what al-Ṭahāwī seems to be envisioning when he speaks of ‘putting [the rule contained in] a Prophetic hadīth into practice’ is, in fact, whether that rule is reflected in the positive law applied by jurists as legal practitioners. In a smaller number of cases, discussed below, al-Ṭahāwī employs the term ʿamal to refer to what Muslims actually do in their daily lives—that is, to lived practice rather than doctrine.

In other examples of al-Ṭahāwī’s understanding of the link between ʿamal and abrogation, we learn that scholars are trustworthy (maʿmūn) in what they practice (ʿamilū), thus indicating a hadīth’s abrogation, or that they are trustworthy in their abandonment of one rule instituted by a hadīth and their practice (ʿamal) of another, again indicating abrogation. Elsewhere, al-Ṭahāwī argues that, in cases where Prophetic hadīths conflict, we should look to the practice (ʿamal) of the Muslims. The hadīth they follow is confirmed and abrogates the hadīth they abandoned. That ʿamal is the application of Prophetic practice is emphasized in other chapters which invoke the ʿamal of the scholars or Muslims, usually in order to support a Prophetic hadīth. In one chapter, al-Ṭahāwī writes that Abū Bakr and ʿUmar practiced (ʿamila) this hadīth after the Prophet, and its practice (ʿamal) has continued uninterruptedly (tawātara) to this

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623 Al-Ṭahāwī, Mushkil, 15.454-455, 2.407.
624 Al-Ṭahāwī, Maʿānī, 1.509.
In another chapter, he criticizes those who would abandon Qur’ānic verses and widely attested Prophetic ḥadīths which the Community has accepted and practiced (ʿamilat) to this day in favor of another ḥadīth which might be abrogated. Similarly, in a chapter concerning how the imam should stand in relationship to those he leads in prayer for different numbers of worshippers, al-Ṭaḥāwī argues that the Prophet acted in a certain way, and that practice (ʿamal) proceeded in the same way after him. ʿAmal thus represents for al-Ṭaḥāwī the application of a Prophetic practice as preserved either in a Prophetic ḥadīth or in communal memory.

With this definition in mind, we may compare al-Ṭaḥāwī’s concept of ʿamal to those of the Medinese and early Iraqi jurists. The use of ʿamal as an indicator of the law is, of course, most famously associated with Mālik’s reliance on the practice of the ahl al-madīna, or people of Medina. Early Mālikī jurists claim authority for Medinese ʿamal on the basis that the local practice of the Medinese represents a continuous practice going back to the time of the Prophet and his Companions in Medina, the seat of government of the early caliphate. While some Companions settled in each garrison town, only in Medina was there a large number of Companions able authentically to preserve Prophetic practice. A major difference between al-Ṭaḥāwī’s concept of ʿamal and that of the Medinese is thus that Medinese ʿamal is geographically limited to the inhabitants of a certain city, and it is their tie to this city itself which gives their ʿamal its

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625 Al-Ṭaḥāwī, Maʿānī, 1.222.
626 Al-Ṭaḥāwī, Maʿānī, 2.54.
627 Al-Ṭaḥāwī, Aḥkām, 1.156.
authority. In contrast, al-Ṭaḥāwī portrays his claims to ʿamal as universal. None of his references to ʿamal concern a local tradition; rather, it is the very fact that the practice is common to all scholars or to all Muslims that gives it its authority.

While Medinese ʿamal claims continuity of practice from the time of Muḥammad, Prophetic practice is not its only component. As El Shamsy observes, ʿamal is “always bigger and always more” than Prophetic reports, and even than the reports and practices of the Companions and Successors.\(^{629}\) In addition to these sources, Medinese ʿamal incorporates the legal opinions (raʾy) of later Medinese jurists.\(^{630}\) Medinese ʿamal is thus continuous, but not static. In contrast, the ʿamal to which al-Ṭaḥāwī appeals in order to claim support for some ḥadīths and the abrogation of others is a simple preservation of Prophetic practice, unaltered by the raʾy of later jurists and unconnected to the reports or opinions of the generations after Muḥammad.

Also, where Medinese ʿamal understands practice to be embodied by the people of Medina (ahl al-madīna) as interpreted by scholars,\(^{631}\) al-Ṭaḥāwī distinguishes between the ʿamal of the scholars and the ʿamal of the Muslim Community as a whole. In some of the passages discussed earlier, al-Ṭaḥāwī explicitly refers to the practice of the scholars. It is they who are “trustworthy in their practice.”\(^{632}\) Here, the preservation of Prophetic practice forms part of the specialized knowledge of the scholars. A few passages, however, indicate a more generalized collective memory of Prophetic practice that is

\(^{629}\) El Shamsy, Canonization of Islamic Law, 38.
\(^{630}\) Yasin Dutton, The Origins of Islamic Law: The Qurʾān, the Muwaṭṭaʾ and Medinan ʿAmal (Surrey: Curzon, 1999), 35; Abd-Allah, Māliḳ and Medina, 194.
\(^{631}\) On the role of scholars as guardians of Medinese practice, see Abd-Allah, Māliḳ and Medina, 238-242.
\(^{632}\) E.g., al-Ṭaḥāwī, Mushkil, 2.407, 15.454. The discussion on Mushkil, 3.178 is also explicitly about the practice of the scholars.
common to all Muslims. In one such passage, al-Ṭahāwī is confronted with conflicting Prophetic hadīths concerning whether Muslims should pray at the burial of a child. In response, he argues that when hadīths conflict, we should look to the practice of the Muslims. We find that Muslims do pray at the burial of their children. The hadīths permitting prayer thus abrogate those prohibiting it. In this passage al-Ṭahāwī is discussing a widespread practice within the Muslim Community. Similarly, in arguing that a hadīth concerning a certain prayer ritual has been abrogated, al-Ṭahāwī separately appeals to what the scholars do (ʿalā) and to the practice (ʿamal) in the mosques. Again, the practice intended here goes beyond that of the scholars.

Finally, Medinese jurists understood the practice of the ahl al-madīna to be in some senses separate from and in competition with Prophetic hadīths. Ibn al-Qāsim (d. 191/806) wrote that when hadīths are not supported by Medinese practice, they remain “neither discredited nor adopted in practice (ghayr mukadhdhab bihi wa-lā maʾmūl bihi).” In contrast, for al-Ṭahāwī hadīths that are neither discredited nor abrogated cannot simply be set aside as Ibn al-Qāsim envisions; the function of ʿamal is to indicate that one hadīth has abrogated another or that the Muslim community or scholars retain a memory of a lost hadīth that abrogates another. That is, ʿamal always bears upon hadīth for al-Ṭahāwī and always preserves a memory of a lost Prophetic text. That is, within the instruction/inference binary underlying al-Ṭahāwī’s understanding of the structure of the

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633 Al-Ṭahāwī, Maʿānī, 1.509.
634 Al-Ṭahāwī, Mushkil, 14.123.
635 Cited in Schacht, Origins of Muhammadan Jurisprudence, 63 and Hallaq, Origins and Evolution of Islamic Law, 105. See also Dutton, Origins of Islamic Law, 45.
law, ‘amal and isti’māl exclusively represent Prophetic instruction; al-Ṭahāwī never appeals to an ‘amal that reflects scholars’ own inferences.

Although early Ḥanafīs including Abū Yūsuf and al-Shaybānī criticized Medinese ‘amal as unreliable when not verified by authentic texts, they, too, had a concept of communal practice, albeit one not based on the special claim to authority of a specific locale. Hallaq finds that the early Kūfan jurists almost never expressed the concept of practice using the term ‘amal, but the language of ‘amal is well attested in extant fragments from al-Shaybānī’s pupil, ‘Īsā ibn Abān. As we have seen above, al-Ṭahāwī, too, uses the term ‘amal as well as the related terms isti’māl and tark when discussing practice. Like the Medinese, the early Ḥanafīs weighed Prophetic hadīths against local Community or scholarly practice and rejected some hadīths that were not supported by continual practice. El Shamsy explains this reliance on practice as a means to defend established Ḥanafī legal practice against the growing authority of Prophetic hadīth in the late 2nd/8th century. When newly circulating hadīths conflicted with established Ḥanafī doctrine, jurists could point to their absence from communal practice as evidence that they were shādhdh, or irregular. The early Ḥanafī concept of communal practice, like

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637 Hallaq, Origins and Evolution of Islamic Law, 106.
638 ‘Īsā ibn Abān’s discussions of ‘amal can be found in al-Jaṣṣāṣ, al-Fuṣūl, 1.225-227, 1.418, 2.10, 2.43, 2.52. Indeed, all of the discussions of ‘amal in the sense of communal practice in al-Jaṣṣāṣ’s al-Fuṣūl appear to rely primarily on ‘Īsā ibn Abān.
639 El Shamsy, Canonization of Islamic Law, 51; Hallaq, Origins and Evolution of Islamic Law, 106-107; Wheeler, Applying the Canon, 40-41.
640 El Shamsy, Canonization of Islamic Law, 52-53.
641 El Shamsy, Canonization of Islamic Law, 51; Abd-Allah, Mālik and Medina, 196.
Medinese ʿamal, also incorporated some Companion practice, an aspect which appears to be absent from al-Ṭahāwī’s discussions of ʿamal.\footnote{Hallaq, Origins and Evolution of Islamic Law, 106.}

El Shamsy and Hallaq frame their discussions of the concept of communal practice among early Ḥanafī jurists as being a characteristic of the late 2\textsuperscript{nd}/8\textsuperscript{th} century,\footnote{El Shamsy, Canonization of Islamic Law, 52; Hallaq, Origins and Evolution of Islamic Law, 107.} a time when religious authority was not yet understood to be as exclusively textual in nature as it would be by later jurists. By looking to communal practice as an indicator of whether a hadīth should be acted upon, jurists essentially implied that the texts of revelation were not adequate in and of themselves to provide all necessary information concerning the law. Some information had failed to be captured in textual form, and existed only as a communal memory, preserved in communal practice. Further, the status of some revealed texts could only be known by looking outside the text, to practice.

Dutton, too, understands the reliance on ʿamal as an early stage of jurisprudence that was later replaced by a “ḥadīth-based, i.e. text-based, religion.”\footnote{Dutton, Origins of Islamic Law, 4. See also Abd-Allah, Mālik and Medina, 197.} He identifies the early stages of the process of textualization with the early Ḥanafīs, progressing to al-Shāfīʿī’s assertion of the exclusive authority of the Qur’ān and Sunna. The process was completed, he writes, in the works of Aḥmad ibn Ḥanbal (d. 241/855) and Dāwūd al-Ẓāhirī (d. 270/883).

What we learn from the works of al-Ṭahāwī is that the process of the ‘textualization’ of Islamic law was not as neat or as linear as the presentation above would suggest. Almost half a century after the death of Dāwūd al-Ẓāhirī, al-Ṭahāwī struggled with the question of whether authority resided in revealed texts themselves or
in the community’s memory of their status and meaning. We have seen a number of examples in which al-Ṭaḥāwī argues that ʿamal indicates that a certain hadīth must have been abrogated, even though neither the abrogating hadīth nor any textual evidence of the order in which they were revealed has been preserved.645 At the same time, we saw in a previous chapter al-Ṭaḥāwī’s insistence on the duty of following Prophetic hadīths.646 Further, in at least one passage, al-Ṭaḥāwī criticizes scholars for abandoning the practice of a sound Prophetic hadīth.647 Nor was al-Ṭaḥāwī the last Ḥanafī to look to ʿamal as an indicator of the law; al-Jaṣṣāṣ, citing ʿĪsā ibn Abān, likewise holds that ʿamal can reveal which of two conflicting hadīths is abrogated.648

From the passages in which al-Ṭaḥāwī supplants Prophetic authority by reference to communal practice, we may conclude that al-Ṭaḥāwī’s understanding of religious authority is not exclusively textual. However, we must also note that the number of cases in which he appeals to the authority of communal practice across all his extant works is extremely small in comparison with his explicit assertions of textual authority and his appeals to such authority in his legal arguments. Further, where the Medinese and even the early Ḥanafīs sometimes let a contradiction between their doctrine and a Prophetic hadīth stand without attempting to justify the disparity, for al-Ṭaḥāwī any departure from Prophetic hadīths requires justification. All of his discussions of communal practice are concerned with explaining why certain Prophetic hadīths should or should not be put into action and with rooting that practice in Prophetic authority. We might therefore say that

646 Al-Ṭaḥāwī, Ṣabāḥ, 1.59; Mushkil, 1.5.
647 Al-Ṭaḥāwī, Mushkil, 7.97.
648 Al-Jaṣṣāṣ, al-Fuṣūl, 1.226.
al-Ṭāḥāwī’s understanding of legal authority is not exclusively textual—though it is largely so—but that it is exclusively Prophetic and Qur’ānic. ‘Amal for al-Ṭāḥāwī preserves Prophetic material in an unadulterated but non-textual form.

With this observation in mind, we may return to the striking similarity mentioned above between the passages in which al-Ṭāḥāwī argues that the abrogation of a hadīth is indicated by ‘amal and those in which he says that it is indicated by ijmā’. The relationship between the two processes is further complicated by the fact that, in two passages arguing that consensus indicates that a hadīth was abrogated, al-Ṭāḥāwī explains that that consensus is known from practice.\(^\text{649}\) That is, practice indicates consensus, which in turn indicates abrogation. In other passages we have discussed, however, consensus is left out of this equation, and it is simply practice which indicates abrogation.

In the context of determining the abrogation of a hadīth, then, ‘amal and consensus are not clearly distinguished in al-Ṭāḥāwī’s thought and appear interchangeable. Further, both consensus and ‘amal preserve Prophetic practice in non-textual form, where Prophetic hadīth preserves that practice in textual form. Lowry has observed that, “among Shāfīʿī’s predecessors and colleagues, it would be fair to say that the dividing lines between the normative concepts of sunna (the general concept of tradition, sometimes stretching back to the Prophet), ijmā (what people think), and even ‘amal (what people do), remained hazy.”\(^\text{650}\) It is equally fair to say that, in the context of knowing whether hadīths have been abrogated, the dividing lines between ijmā and

\(^{649}\) Al-Ṭāḥāwī, Mushkil, 15.158-159; Maʿānī, 3.78.

\(^{650}\) Lowry, Early Islamic Legal Theory, 322.
‘amal are still hazy for al-Ṫaḥāwī a century later. What has changed is that all three—sunna, ijmā‘ and ‘amal—are entirely Prophetic in origin.

The equation of ijmā‘ and ‘amal is restricted in al-Ṫaḥāwī’s thought to the single function of determining the status of ḥadīths. Consensus, however, is a much wider concept than ‘amal in his works, and, unlike ‘amal, is not always based on a memory of Prophetic practice. Instead, as we have seen above, consensus can be based upon ra’y, and therefore represent a variety of qiyās. That is, while ‘amal always takes its authority from an assumed instance of Prophetic instruction, ijmā‘ can represent either side of the instruction/inference binary. What is always true of the consensus of the jurists, however, is that it cannot challenge Prophetic practice, but only ‘fill in the gaps’ where that practice is unknown or provide further information about the status of a particular ḥadīth. Such restrictions, however, do not appear to apply to the consensus of the Companions.

**Abrogation of Prophetic Ḥadīth by Companion Consensus**

On the consensus of the Companions al-Ṫaḥāwī makes a number of highly idiosyncratic statements by the standards of the usūl tradition. In several passages in Sharḥ ma‘ānī al-āthār, he ascribes to the Companions the authority to abrogate by consensus what they know to have been the practice of the Prophet during his lifetime. The first passage in which al-Ṫaḥāwī makes this claim concerns a debate over how many times one should say takbīr (‘God is great’) during a funeral prayer. Al-Ṫaḥāwī reports that, after the Prophet’s death, Muslims spoke four, five or seven takbīrs, and each group claimed Prophetic authority for their practice. In response, the caliph ‘Umar consulted
with other Companions, and they reached consensus that the funeral prayer should be brought into alignment with the prayers for the major feasts, each of which contained four takbîrs. Al-Ṭahâwî writes:

ʿUmar thus restored the matter to four takbîrs upon consultation (mushâwara) with the Companions of God’s Messenger. They were present when His Messenger did what was reported by Ḥudhayfa [i.e., five takbîrs] and Zayd ibn Arqam [i.e., four takbîrs], but they held that what they did (faʿalū) was better than what they had previously known the law to be (ʿalimū).

[Their action] is an abrogation of what they knew, because they are trustworthy (maʿmûnūn) in what they do (faʿalū) just as they are trustworthy in what they transmit. This is like their consensus after [the death of] God’s Messenger on the scope (tawqīṭ) of the hadd punishment for drinking wine, and on ending [permission for] the sale of slave women who bear children to their masters (ummahāt al-awlād). Their consensus is a conclusive proof (hujiya), even if they did something different (khilâfuha) during the era of the Prophet.

Their consensus on the number of takbîrs at a funeral prayer after [the death of] God’s Messenger likewise is a conclusive proof (hujiya), even if they knew something different from him. What they did and reached consensus upon after God’s Messenger abrogates (nâsikh) what God’s Messenger did.651

Al-Ṭahâwî also adduces versions of this argument as evidence for the legal effectiveness of a triple statement of divorce and setting the hadd punishment for drinking wine at eighty lashes.652 In each of these chapters, al-Ṭahâwî cites other instances of abrogation by Companion consensus, usually those listed above. In addition, he also mentions as examples two instances of abrogation by Companion consensus that are never discussed at length in Sharh maʿānī al-āthâr: the withdrawal of permission to sell slave women who have borne children to their master653 and ʿUmar’s creation of the dîwān, the register establishing how income would be distributed to Muslims who

651 Al-Ṭahâwî, Maʿānī, 1.496.
652 Al-Ṭahâwî, Maʿānī, 3.56-57, 3.158.
653 Al-Ṭahâwî, Maʿānī, 1.496, 3.56, 3.158.
participated in the conquests. The fact that al-Ṭahāwī consistently cites additional examples of abrogation by Companion consensus suggests that he considered its actual occurrence to be self-evident as well as one of the best arguments for its permissibility. As we saw in the previous chapter, a similar phenomenon occurs in al-Ṭahāwī’s discussions of the permissibility of the Qur’ān abrogating the Sunna and vice versa, where his argument consists largely of listing examples of its known occurrence.

The authority granted to Companion consensus in these passages is much more powerful than the mere preservation of the knowledge of an earlier instance of abrogation. Where al-Jaṣṣāṣ demurs with his statement that “we do not say that consensus causes abrogation,” al-Ṭahāwī affirms clearly that “what [the Companions] did and reached consensus upon after God’s Messenger abrogates (nāsiḥ) what God’s Messenger did.” Their consensus is not a confirmation of an underlying Prophetic action, but rather privileges what the Companions do (faʿalū) over what they know (ʿalima) from the Prophet. A comparison of the chapter on the funeral prayer cited above with the chapter on triple divorce can help us determine what al-Ṭahāwī means by his reference in the earlier chapter to what the Companions ‘do’ (faʿalū). He writes:

‘Umar addressed all the people, among them Companions of God’s Messenger who knew what had preceded during the time of God’s Messenger, and none of

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654 Al-Ṭahāwī, Maʿānī, 3.56. These two events are later mentioned together as examples of times when ‘Alī disagreed with ‘Umar, who oversaw both the prohibition on selling ummahāt al-awlād and the establishment of the diwān with shares assigned according to precedence in Islam (Maʿānī, 3.309). Once again, we see that al-Ṭahāwī’s understanding of consensus does not require complete unanimity.

655 There is a certain circularity in al-Ṭahāwī’s argument that the best proof that abrogation by Companion consensus can happen is that it actually has happened, but al-Ṭahāwī does not address this tension.

656 Pace Sharaf, who seeks to assert al-Ṭahāwī’s innocence of what he considers grave error by arguing that al-Ṭahāwī always envisioned consensus being based upon a Prophetic text, and therefore it was in fact the Prophetic text, not the consensus, which abrogated (Abū Jaʿfar al-Ṭahāwī, 54-55).

657 Al-Jaṣṣāṣ, al-Fusūl, 1.417.

658 Al-Ṭahāwī, Maʿānī, 1.496.
them denied or refuted him. That is the greatest proof (ḥujja) of the abrogation of what had preceded.

Just as the collective transmissions⁶⁵⁹ of the Companions of God’s Messenger constitute legal proof, so their consensus upon an opinion (qawl) constitutes legal proof. And just as their consensus upon transmission (naqal) is exempt from errors and lapses (barīʿ min al-wahm wa-l-zalal), likewise their consensus upon a legal opinion (raʿy) is exempt from errors and lapses.

We have seen matters that were a certain way (ʿalā maʿānī) during the era of God’s Messenger, which his Companions made a different way (jaʿalū ʿalā khilāf tilk al-maʿānī) after him. This is because they saw (raʿaw) in it that which was hidden from those who came after them, and it was an abrogating proof (ḥujja nāsi ha) over what preceded it.⁶⁶⁰

From this passage we learn that what al-Ṭaḥāwī means in the earlier passage by what the Companions ‘do’ is not related to any concept of the continuous practice of the Community (ʿamal). Indeed, al-Ṭaḥāwī’s choice to employ ‘faʿalū’ rather than ‘ʿamilū’ appears deliberate, especially given how rhetorically elegant the contrast between ‘ʿamilū’ (what the Companions practice) and ‘ʿalīmū’ (what the Companions know) would have been.

Instead, the ‘doing’ referenced in the earlier passage on funeral prayers is here glossed as the activity of propounding legal opinions (qawl, raʿy) and reaching consensus upon them. Upon reaching that consensus, the legal thinking of the Companions is as exempt from error as is their transmission of Prophetic ḥadīth. The concept of the Companions’ legal reasoning also appears in the earlier passage, when the Companions reach consensus that the rule for the number of takbīrs should be brought into alignment with the number of takbīrs for the festival prayers. Analogy is the basis for the new rule.

⁶⁵⁹ Al-Najjār’s edition of Maʿānī has ‘faʿalū’ (‘did’) instead of ‘naqalū’ (‘transmitted’) here, while mentioning in a footnote that a different manuscript has ‘naqala.’ I have replaced ‘faʿalū’ with ‘naqalū’ because it makes more sense within the parallel structure of the passage.

⁶⁶⁰ Al-Ṭaḥāwī, Maʿānī, 3.56.
In his discussions of abrogation by Companion consensus, then, al-Ṭaḥāwī subverts the instruction/inference binary that underlies his general conception of the structure of the law. Here, Companion inference is granted a higher authority than direct Prophetic instruction preserved in ḥadīth form.

The chapter on triple divorce further explains why this type of abrogation is associated with the Companions: they saw what was hidden from those who came after them. The term used for ‘seeing’ (ra‘aw) connotes both observation and the act of propounding a legal opinion, and it appears that both of those meanings are intended here. The Companions observed the Prophet as later Muslims would not, and as a result their legal opinions (raʾy) are superior to those of later Muslims. In this sense, al-Ṭaḥāwī’s understanding of the ability of Companion consensus to abrogate Prophetic practice is still connected, if tenuously, to the idea of Prophetic instruction. Here, preserving Prophetic practice can mean extrapolating from or even altering earlier rulings. The concept in this passage of what it means to preserve Prophetic practice is thus quite different from al-Ṭaḥāwī’s usual argument that the Companions preserve Prophetic practice by transmitting it mimetically, even if not in the form of Prophetic hadīth. This form of consensus is not merely the preservation of Prophetic practice, but has the authority to exceed and replace that practice. These passages thus preserve an older concept of religious and Prophetic authority, one that al-Ṭaḥāwī has largely moved away from in most of his arguments.
Abrogation by consensus was widely rejected by jurists of all major schools, although Īsā ibn Abān and other unspecified Ḥanafīs are reported to have accepted it.⁶⁶¹ In *al-Muharrar* al-Sarakhsī rejects abrogation by consensus but describes the arguments some Ḥanafīs make in favor of it. They consider that consensus leads to epistemologically certain knowledge (*ʿilm yaqīn*) like that contained in a text of revelation (*naṣṣ*), and therefore consensus may abrogate. They further argue that consensus is a stronger legal proof (*ḥujja*) than *al-khabar al-mashhūr*.⁶⁶² Since *al-khabar al-mashhūr* may abrogate, even more so can consensus abrogate.⁶⁶³ In al-Sarakhsī’s understanding, the Ḥanafī argument is based upon relative degrees of epistemological certainty. In contrast, none of al-Ṭaḥāwī’s arguments for abrogation by consensus identify epistemological certainty as the basis for this doctrine. Nor have I been able to identify other references by earlier or later jurists to the special ability of the Companions’ consensus to abrogate Prophetic practice.

Significantly, while al-Ṭaḥāwī describes all of the passages under discussion as examples of abrogation by the consensus of the Companions, he also intimates that they were all undertaken at the initiative of ʿUmar ibn Abī Khaṭṭāb, the second caliph. In the chapter on the funeral prayer, we learn in a *ḥadīth* that the disagreement over the number of *takbīr* weighed upon ʿUmar, and so he wrote to the Companions asking them to reach consensus upon the matter. Their initial response was to ask ʿUmar to decide for them. He responded that he is only a man (*anā bashar mithlukum*) and therefore wished to

⁶⁶² A category of *ḥadīth* specific to the Ḥanafīs whose certainty is between that of *al-khabar al-wāḥid* and *al-mutawātir*. Al-Ṭaḥāwī does not know this distinction.
⁶⁶³ Al-Sarakhsī, *al-Muharrar*, 2.52.
consult together on the matter. The chapter on triple divorce similarly reports a speech given by ʿUmar during his caliphate (lit. the time of ʿUmar, zamān ʿUmar) as the basis for the Companion consensus on the permissibility of a pronouncement of triple divorce, on the grounds that other Companions were present and did not refute him. In the chapter on the punishment for drinking wine, al-Ṭaḥāwī reports that when ʿUmar came to power (lammā kāna ʿUmar), he consulted with the people in order to establish the punishment at eighty lashes. Despite the fact that al-Ṭaḥāwī only mentions in passing the end of the selling of ummahāt al-awlād and the establishment of the dīwān, these events, too, are associated with ʿUmar.

A survey of premodern and modern sources suggests that many of these events are generally understood to have been undertaken on ʿUmar’s initiative and authority as a caliph. In the 740s, the Khārijite Abū Ḥamza listed the establishment of the dīwān and the punishment for drinking wine among ʿUmar’s major accomplishments. Modern scholars similarly credit to ʿUmar the establishment of the dīwān, the prohibition on selling ummahāt al-awlād and the permission for a triple pronouncement of divorce.

We might therefore posit that abrogation by Companion consensus functions in Sharḥ maʿānī al-āthār, at least de facto, to legitimize the legislative role of ʿUmar, although al-

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664 Al-Ṭaḥāwī, Maʿānī, 1.496.
665 Al-Ṭaḥāwī, Maʿānī, 3.56.
666 Al-Ṭaḥāwī, Maʿānī, 3.158.
667 Al-Ṭaḥāwī, Maʿānī, 3.309.
668 Crone and Hinds, God’s Caliph, 130.
Ṭaḥāwī never explicitly theorizes about ‘Umar’s special authority. By al-Ṭaḥāwī’s time, caliphs were no longer seen to possess sufficient legislative authority to promulgate law independently, much less law in conflict with the Prophet’s practice. By portraying ‘Umar’s initiatives as functioning within the framework of Companion consensus, al-Ṭaḥāwī transforms the problem from a historical memory of the independent legislative authority of an early caliph to the authority of the Companions in general.

Al-Ṭaḥāwī’s theory of abrogation by Companion consensus as detailed in Sharḥ maʾānī al-athār effectively grants a higher authority to collective Companion legal reasoning than to Prophetic ḥadīths for the few questions on which he invokes this authority, even if the Companions’ authority is rooted in their observation of the Prophet.

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670 Ahmad Hasan has also recognized that “the personal opinions of the Companions, especially of ‘Umar, in many legal problems, were accepted later as Ijmā’ of the Companions” (‘Ijmā’ in the Early Schools,” 122). The conclusion he draws from this, however, is that consensus “begins with the personal judgment of individuals and culminates in the universal acceptance of a certain opinion by the Community in the long run. Ijmā’ emerges by itself and is not imposed upon the ʿUmmah” (‘Ijmā’ in the Early Schools,” 122). Thus, rather than seeing reports of Umar’s legislation as threatening Prophetic authority, he portrays them as evidence of the natural process of reaching consensus and refrains from mentioning any conflict between it and Prophetic practice.

671 In contrast, al-Ṭaḥāwī accounts for the prohibition on mutʿa (temporary marriage), another piece of legislation sometimes attributed to ‘Umar, by claiming that the consensus of the Companions is an indicator (dalīl) of its abrogation, the same argument we saw above in connection with the consensus of the jurists and Community. While some sources identify a sermon from ‘Umar during his caliphate as the origin of the prohibition (Shahla Haeri, “Power of Ambiguity: Cultural Improvisations on the Theme of Temporary Marriage,” Iranian Studies 19, no. 2 (1986): 124; Fakhr al-Dīn al-Rāzī, al-Tafsīr al-ḥayb, aw, Majāṭīh al-ghayb, ed. Ibrāhīm Shams al-Dīn and Aḥmad Shams al-Dīn (Beirut: Dār al-Kutub al-ʾIlmiya), 10.40-41), al-Ṭaḥāwī adduces Prophetic ḥadīths both permitting and prohibiting mutʿa, and then argues that the Prophetic ḥadīths themselves contain evidence that permission for mutʿa was abrogated (Maʿānī, 3.24-27). Only after establishing the abrogation does al-Ṭaḥāwī cite reports stating that ‘Umar was the source of the prohibition. He says that the tacit assent of the Companions shows their consensus, and that their consensus is an indication of its abrogation (Maʿānī, 3.27). Nowhere does he address the tension between his argument that the abrogation was indicated in the Prophetic ḥadīths and the other reports stating that it was ‘Umar who prohibited mutʿa. We may assume that al-Ṭaḥāwī portrays Companion consensus as the indicator rather than the cause of abrogation in this case because he is relying on their consensus only as additional source of support for his basic argument, which is about Prophetic ḥadīths. For Schacht’s doubts concerning the authenticity of the tradition concerning ‘Umar’s prohibition of mutʿa, see Schacht, Origins of Muhammadan Jurisprudence, 267.
In his later work of *Aḥkām al-Qur‘ān*,\(^{672}\) however, al-Ṭahāwī appears to have reversed his earlier position by affirming that it is “impossible that [the Muslims] would reach consensus in contradiction with what God’s Messenger did on a matter that was not later particularized (*takhṣīṣ*) or abrogated.”\(^{673}\) While it is possible that he intended to exclude Companion consensus from that declaration, in his final work, *Sharḥ mushkil al-āthār*, al-Ṭahāwī states that the Companions “would not reach consensus in contradiction with what God’s Messenger did unless they had confirmation that it had been abrogated and the matter had become as they asserted, because they are trustworthy in what they do, just as they are trustworthy in what they transmit.”\(^{674}\)

In this passage al-Ṭahāwī restricts the power of Companion consensus to merely affirming an earlier abrogation, in agreement with many other jurists. He has also effectively redefined what it means for the Companions to be “trustworthy in what they do” (*ma’mūnūn ‘alā mā fa‘alū*). Where in *Sharḥ ma‘ānī al-āthār* the same phrase was used to argue for the authority of collective Companion legal reasoning over Prophetic practice, here al-Ṭahāwī employs it to assert that the Companions could never knowingly depart from Prophetic practice. That is, he once again confirms the superior authority of Prophetic instruction to inference. Although, given our imperfect knowledge of the history of al-Ṭahāwī’s works as texts, it is impossible to state with certainty that he did in fact intend to retract his earlier arguments about abrogation by Companion consensus, it is certainly plausible that he might find such a position uncomfortable in an atmosphere

\(^{672}\) The order of composition of *Sharḥ ma‘ānī al-āthār*, *Aḥkām al-Qur‘ān* and *Sharḥ mushkil al-āthār* is reported in the biographical tradition (e.g., Ibn Abī al-Wafā’, *al-Jawāhir al-muḍīya*, 166) and confirmed by internal textual evidence.

\(^{673}\) Al-Ṭahāwī, *Aḥkām*, 2.86.

which increasingly privileged Prophetic authority over all other forms of religious authority.

Within the context of al-Ṭahāwī’s thought as a whole, the abrogation of Prophetic hadīths by Companion consensus is best understood as the extreme end of a spectrum for preserving Prophetic practice that ranges from the purely textual to the more ephemeral. At the other end of that spectrum lies Prophetic hadīth, in which an obviously Prophetic practice is preserved in a purportedly stable textual form. Next on that spectrum appear Companion and Successor hadīths, which al-Ṭahāwī understands in many cases to provide a textual record of Prophetic practice, albeit not in the Prophet’s voice. With the next group of sources, juristic consensus and the practice (ʿamal) of the jurists and the Community, we move away from textual sources, although al-Ṭahāwī still understands these sources to derive their authority from the fact that they mimetically preserve Prophetic practice without adding anything to it.

Finally, abrogation by Companion consensus represents a non-textual source that only obliquely preserves Prophetic practice—while the authority of Companion consensus derives from the Companions’ observation of the Prophet, this form of consensus grants them the power to override Prophetic practice known through Prophetic hadīth. The uncomfortable fit of abrogation by Companion consensus within a scale that otherwise envisions a purely Prophetic, if not always textual, authority, suggests the reason for al-Ṭahāwī’s rejection of this form of consensus in his later two works. Although the passages in Sharḥ maʿānī al-ʿāthār on abrogation by Companion consensus preserve an older concept of religious authority after the Prophet’s death, on the whole,
al-Ṭaḥāwī is firmly committed to an exclusively Prophetic authority, in what whatever form that authority might be preserved.
Within al-Ṭahāwī’s extant works, the seven-page introduction to *Aḥkām al-Qurʿān* represents the only sustained, theory-driven discussion of how jurists may discover the meaning of the revealed texts of Qurʿān and Sunna in their work of determining the law. Although al-Ṭahāwī comments briefly on questions of hermeneutics whenever they arise in the course of analyzing discrete texts and legal issues, the introduction to *Aḥkām al-Qurʿān* is unique in suggesting how al-Ṭahāwī understands his most important hermeneutical principles to relate to each other. In the course of the introduction, al-Ṭahāwī establishes three key pairs of terms: *muhkam:* *mutashābih* (unequivocal:equivocal), *zāhir:* *bāṭin* (apparent:non-apparent) and *ʿāmm:* *khāṣṣ* (unrestricted:restricted). Without explicitly describing a hierarchy among these terms, the structure of the introduction suggests that al-Ṭahāwī’s discussion of the latter two pairs of terms serves as a set of tools for reading *mutashābih* (equivocal) texts. By locating the Qurʿānic dichotomy of *muḥkam* and *mutashābih* at the center of his theory of legal interpretation, al-Ṭahāwī implies that his hermeneutics is itself Qurʿānic and, therefore, authoritative.

In this chapter I take as my framework these three pairs of terms and analyze the role each plays within the introduction to *Aḥkām al-Qurʿān*. In addition, I look to the body chapters of *Aḥkām al-Qurʿān* as well as to al-Ṭahāwī’s other hermeneutical works to determine more fully both how al-Ṭahāwī understands these concepts and the work they do within his legal arguments. In the remainder of the chapter, I turn to two
additional issues raised by these terms: first, hints of a formalist approach to language and law in al-Ṭahāwī’s works and, second, al-Ṭahāwī’s understanding of the role of ʿijtihād (legal reasoning) in determining the law.\(^{675}\)

Previous analyses of al-Ṭahāwī’s hermeneutics have offered descriptions of his hermeneutical approach to specific legal questions or his intellectual relationship with other jurists.\(^{676}\) While these provide valuable insights into al-Ṭahāwī’s thought, this chapter represents the first study to bring together al-Ṭahāwī’s most important hermeneutical principles into a coherent structure. As such, I do not attempt to catalog every hermeneutical procedure employed in the course of al-Ṭahāwī’s extant works. Nor am I concerned here with how al-Ṭahāwī combines different hermeneutical techniques within his arguments. Instead, this chapter demonstrates how al-Ṭahāwī draws a direct

\(^{675}\) The first topic, legal formalism, is raised in response to hints of a formalist understanding of ʿāmm and khasṣ in some passages of al-Ṭahāwī’s works; the second, ʿijtihād, is important as one of the means al-Ṭahāwī suggests for approaching mutashābih texts.

\(^{676}\) Both Vishanoff and El Shamsy are concerned with the relationship between al-Ṭahāwī and al-Shāfī. In his Formation of Islamic Hermeneutics, Vishanoff observes briefly that al-Ṭahāwī “inclined toward the Shāfī ʿī’s hermeneutic of ambiguity” and “employed al-Shāfī ʿī’s distinction between general and particular texts” (214). El Shamsy, too, emphasizes al-Ṭahāwī’s “strikingly close intellectual relationship with Shāfī ʿīsm” and al-Ṭahāwī’s use of many of al-Shāfī ʿī’s hermeneutical terms and concepts (Canonization of Islamic Law, 205-207). I will have occasion to comment on both scholars’ analyses below. Najam Haider analyzes al-Ṭahāwī’s discussion of the qunūt prayer and the prohibition of intoxicants in al-Mukhtaṣar and Sharḥ maʿānī al-ʾāthār, comparing al-Ṭahāwī’s hermeneutical approach with that of earlier and later Hanafīs (The Origins of the Shiʿa: Identity, Ritual and Sacred Space in Eighth-Century Kūfa (Cambridge: Cambridge University Press, 2011), 96-100, 142-145). Calder favorably compares al-Ṭahāwī’s discussion of the cancellation of wuḍūʾ in Sharḥ mushkil al-ʾāthār to that of Ibn Qutayba in Tāʾw’il mukhtalif al-ḥadīth and affirms that al-Ṭahāwī employs the hermeneutical concepts of ʿāmm and khasṣ in his arguments (Studies in Early Muslim Jurisprudence, 228-233). He also accuses al-Ṭahāwī of “arbitrary and irresponsible manipulation of Prophetic and Companion dicta,” however, an accusation which Calder illustrates by analyzing al-Ṭahāwī’s use of isnād criticism in his discussion of touching the penis (mass al-dhakar) in Sharḥ maʿānī al-ʾāthār (Studies in Early Muslim Jurisprudence, 235-241). Schacht, too, portrays al-Ṭahāwī as unscrupulous in his acceptance or rejection of Prophetic ḥadīths in the course of his legal arguments, depending on whether they support established Ḥanafī law (Origins of Muhammadan Jurisprudence, 30-31, 47-48). Sadeghi describes al-Ṭahāwī’s hermeneutical approach to a variety of questions related to women’s prayer in order to demonstrate how al-Ṭahāwī balanced his commitment to Prophetic ḥadīth with his commitment to established Ḥanafī law; he emphasizes the role the concepts of ʿāmm and khasṣ played in reconciling these commitments (Logic of Law-Making, 108-112, 130-137). Wheeler is interested not in how al-Ṭahāwī interprets revelation, but in how his arguments construct Ḥanafī authority (Applying the Canon, 100-109).
connection between how God communicates with humans and the approach jurists must take to correctly interpret His message.

**Muḥkam and Mutashābih (Unequivocal and Equivocal Texts)**

Al-Ṭahāwī begins the introduction to *Aḥkām al-Qurʾān* by establishing the division of the Qurʾān into *muḥkam* and *mutashābih* verses. In *Sharḥ mushkil al-āthār*, he expands the scope of application of these terms to encompass Prophetic *hadīths* as well. Although the *muḥkam*: *mutashābih* dichotomy appears far less frequently in his arguments than *ʿāmm*: *khāṣṣ* and *ẓāhir*: *bāṭīn*, the other pairs of terms treated in the introduction to *Aḥkām al-Qurʾān*, its centrality to al-Ṭahāwī’s understanding of the nature of God’s communication through revelation is suggested by its prominent placement here as well as further substantial discussion of the pair in two chapters of *Sharḥ mushkil al-āthār*.

After a brief pious invocation, al-Ṭahāwī opens the introduction to *Aḥkām al-Qurʾān* by adducing Q 3/Āl ʿImrān:7:

> It is He who has sent down to you the Scripture, in which are the *muḥkamāt* which are the matrix of the Scripture, whilst there are others that are *mutashābihāt*. As for those in whose hearts is deviation, they follow the *mutashābihāt*. Only God knows their interpretation, and those who are well-grounded in knowledge.

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680 Al-Ṭahāwī, *Aḥkām*, 1.59. Al-Ṭahāwī initially only adduces the opening of the verse, but he references it in its entirety both later in the passage and in the chapters of *Sharḥ mushkil al-āthār*, and so I quote it here in full. (Translation adapted from Jones, trans., *The Qurʾān* (Cambridge: Gibb Memorial Trust, 2007)).
Exegetes disputed the intent of *muhkamāt* and *mutashābihāt* in this verse.\(^681\) In his *Jāmiʿ al-bayān* al-Ṭabarī identified five meanings exegetes assigned to the pair, including that the terms indicate the abrogating and abrogated verses; the legal verses and the verses which merely resemble one another; verses permitting only one interpretation and those permitting multiple interpretations; stories about earlier prophets and communities given in clear detail and those repeated across chapters without detail; and verses which can be understood by scholars and those which cannot.\(^682\)

In the mature *usūl al-fiqh* tradition, the terms *muhkam* and *mutashābih* were severed from their Qur’ānic roots and made technical terms designating the clarity or obscurity of individual words within revealed texts. In particular, the Ḥanafīs employed them as the extreme ends of an eight-part scale in which *muhkam* represents absolutely clear discourse permitting neither interpretation nor abrogation, and *mutashābih* represents unintelligible discourse from which God’s intention cannot be determined.\(^683\)


\(^{682}\) Al-Ṭabarī, *Tafsīr al-Ṭabarī*: *Jāmiʿ al-bayān ‘an taʿwil al-Qurʾān*, ed. Mahmūd Muḥammad Shākir (Cairo: Dār al-Maʿārif, 1969), 6.169-182. Al-Ṭabarī holds the last of these positions, that *muhkam* verses can be understood by scholars, while *mutashābih* verses may not. In addition to the positions catalogued by al-Ṭabarī, al-Māturīdī (d. 333/934) preserves the following views: 1) that the *muhkamāt* are Q 6/Al-Anʿām:151-153 and Q 17/al-Isrāʾ:23 onwards, while the rest of the Qurʾān is *mutashābih*; 2) that the *muhkamāt* are understood by everyone, while the *mutashābihāt* require study and inquiry; 3) that the *muhkamāt* are verses whose intention may be understood while the *mutashābihāt* are a test of faith; 4) that the *muhkamāt* are verses [whose meaning] is apparent to all Muslims, such that they do not disagree concerning them, while the *mutashābihāt* cause doubt and disagreement because of differences in language or because of a conflict between the apparent and inner meaning; and 5) that the *muhkamāt* are verses that may be understood by the intellect while the *mutashābihāt* require revelation to be understood (al-Māturīdī, *Tafsīr al-Qurʾān al-ʿaẓīm, al-musammā Taʾwilāt ahl al-Sunna*, ed. Fāṭima Yūsuf al-Khaymī (Beirut: Muʾassasat al-Risāla, 2004), 1.246-248).

\(^{683}\) The eight-part scale designates language as *muhkam* (unequivocal), *mufassar* (explained), *naṣṣ* (explicit), *zāhir* (apparent), *khaḍī* (hidden), *mushkil* (problematic), *mujmal* (concise) and *mutashābih*
This recontextualization of \textit{muḥkam:mutashābih} appears already in al-Sarakhsī’s \textit{Muḥarrar}, in which the full eight-part scale is described in a chapter on “Terms for the Forms of Divine Address” (\textit{asmāʾ šīghat al-khiṭāb}). Although al-Sarakhsī refers briefly to phrases from Q 3/Āl ʿImrān:7 within his discussion, his arguments are primarily etymological and hermeneutical rather than exegetical.\footnote{Al-Sarakhsī, \textit{al-Muḥarrar}, 1.123-4, 126-7.}

Al-Ṭahāwī does not know \textit{muḥkam} and \textit{mutashābih} as part of a formal scale for describing the clarity of terms, but neither does he conform to any of the exegetical explanations of Q 3/Āl ʿImrān:7 offered by al-Ṭabarī or al-Māturīdī. In both the introduction to \textit{Aḥkām al-Qurʾān} and the two chapters of \textit{Sharḥ mushkil al-āthār}, al-Ṭahāwī’s approach is initially exegetical, adducing Q 3/Āl ʿImrān:7 or a related Prophetic \textit{ḥadīth} before glossing the obscure terms \textit{muḥkam} and \textit{mutashābih}.\footnote{Al-Ṭahāwī, \textit{Aḥkām}, 1.59; \textit{Mushkil}, 2.219-221, 6.334-337. Although most chapters of \textit{Sharḥ mushkil al-āthār} resolve apparent conflicts between Prophetic \textit{ḥadīths} or between the Qurʾān and \textit{ḥadīths}, some chapters, including the two under discussion here, offer an exegesis of obscure or potentially problematic (\textit{mushkil}) revealed texts.} However, in all three cases he then makes his exegesis the foundation for a theory of hermeneutics that draws a direct connection between the role of jurists, their methodology, and God’s use of language in revelation.\footnote{I have not identified any jurists preceding al-Ṭahāwī who incorporated \textit{muḥkam} and \textit{mutashābih} into a theory of hermeneutics, rather than treating it as an exegetical matter.}

After citing Q 3/Āl ʿImrān:7 in the introduction to \textit{Aḥkām al-Qurʾān}, al-Ṭahāwī continues:

God informed us by means of [this verse] that in His Scripture there are unequivocal (\textit{muḥkam}) verses, which He has made secure in terms of their

interpretation (taʿwīl) and the reason (ḥikma) for their revelation. These are the foundation of the Scripture. [He also informed us] that there are equivocal (mutashābih) verses, and he criticized those who seek them out, saying “As for those in whose hearts is deviation, they follow the equivocal verses.”

[The reason for His criticism] is that the valuation (ḥukm) of the equivocal verses must be sought from the unequivocal verses which God made the foundation of His Scripture, and then from the rules which He promulgated through the speech of His Messenger in order to illustrate what He revealed in an equivocal manner in His Scripture.687

The crucial features of the muḥkam:mutashābih dichotomy as presented in Aḥkām al-Qurʿān are thus that the interpretation of muḥkam verses is certain and the reason for their revelation—that is, God’s intent in revealing them—is known. In contrast, the valuation of mutashābih verses must be sought first in muḥkam verses of the Qurʿān and then from Prophetic hadīth. Interpretations of mutashābih verses that do not rest on these two foundations are baseless and therefore blameworthy. The role of jurists is thus to determine the valuation of mutashābih verses using the methodology outlined in this passage.688

Two chapters of Sharḥ mushkil al-āthār add further details concerning al-Ṭaḥāwī’s concept of muḥkam and mutashābih. As noted above, al-Ṭaḥāwī argues in one that the dichotomy can be applied not only to Qurʿānic verses, but also to Prophetic hadīths. After listing examples of both unequivocal and equivocal verses of the Qurʿān, al-Ṭaḥāwī writes:

Among [the prescriptions of religious law that God has imposed] are those that were promulgated through the speech of the Prophet for this purpose. He made

687 Al-Ṭaḥāwī, Aḥkām, 1.59.
688 See also Chapter One, “Qurʿān and Sunna,” pp. 67-71, where I argue against El Shamsy’s claim that al-Ṭaḥāwī’s discussion in this passage aligns with al-Shāfīʿi’s notion of the bayān.
some of what was conveyed through his speech \textit{muḥkam} and laid bare in meaning \textit{(makshūf al-maʿnā)}.\footnote{Al-Ṭahāwī, 	extit{Mushkil}, 2.221.}

He lists examples of rules established through unequivocal Prophetic \textit{ḥadīths}, including the five prayers of the day and night and the manner in which travelers shorten them. In contrast, al-Ṭahāwī adduces quotations from \textit{ḥadīths}, rather than the rules derived from those \textit{ḥadīths}, when giving examples of equivocal Prophetic speech, presumably because the rules are disputed. He concludes the discussion by noting that scholars must seek the true meaning \textit{(haqāʾiq)} of equivocal Prophetic \textit{ḥadīths}, and that all equivocal texts, whether found in Qurʿān or Sunna, belong to a single category \textit{(jins)}, while all unequivocal texts belong to a separate category.\footnote{Al-Ṭahāwī, 	extit{Mushkil}, 2.221-222.}

Apart from the discussion in this chapter, al-Ṭahāwī never classifies a Prophetic \textit{ḥadīth} as equivocal or unequivocal in any of his extant works. Nonetheless, this passage is significant for two reasons. First, al-Ṭahāwī’s application of the \textit{muḥkam}:\textit{mutashābih} dichotomy to Prophetic \textit{ḥadīths} appears to be highly unusual among exegetical discussions of Q 3/Āl ʿImrān:7. While later theorists would employ the pair as abstract technical terms designating the clarity of revealed language in both the Qurʿān and Sunna, I have not been able to identify other exegetical discussions of Q 3/Āl ʿImrān:7 that explicitly expand the scope of \textit{muḥkam} and \textit{mutashābih} to encompass non-Qurʿānic revelation. We might tentatively suggest that al-Ṭahāwī represents a transitional stage between exegetical discussions focused on identifying the meaning of obscure words...
within the Qurʾān and a later effort to apply consistent analytical categories to language in all revealed texts.\footnote{Further evidence suggesting this transitional stage is found in the Kitāb al-Radd ʿalā al-bidʿa of al-Ṭahāwī’s contemporary Abū Muṭīʿ al-Nasafi (d. 318/930). In the course of criticizing a group of extreme traditionists whom he calls the hashwīya, al-Nasafi asserts that the Muslim community holds that ḥadīths may be either muḥkam or mutashābih (Mari Bernand, “Le Kitāb al-radd ʿalā l-bidʿa d’Abū Muṭīʿ Makḥūl al-Nasafi,” Annales Islamologiques 16 (1980): 121). Although the context is not exegetical, al-Nasafi, like al-Ṭahāwī, applies the terms muḥkam and mutashābih to ḥadīths themselves rather than to revealed language.}

The second reason for the significance of al-Ṭahāwī’s application of muḥkam and mutashābih to Prophetic ḥadīths is related to his overall hermeneutical project. While al-Ṭahāwī does not have a system of technical terms for assessing the clarity of revealed texts, his discussion of muḥkam and mutashābih, and in particular his extension of the terms muḥkam and mutashābih to Prophetic ḥadīths, reveals that his goals in the introduction to Aḥkām al-Qurʾān and the chapters of Sharḥ mushkil al-āthār extend beyond the exegetical. Instead, he argues in these passages that revelation is fundamentally divided into two categories—the unequivocal and the equivocal—and that the mission and methodology of jurists rests upon this division. That is, Q 3/Āl ʿImrān:7 serves as the point of departure for al-Ṭahāwī’s concept of the structure of revelation.

Sharḥ mushkil al-āthār clarifies how al-Ṭahāwī understands the relationship between the role of jurists and the division of revelation into the equivocal and the unequivocal. In one chapter, al-Ṭahāwī begins by citing Prophetic ḥadīths concerning the occasion of revelation for Q 3/Āl ʿImrān:7. He then writes:

God informed us that in His Scripture there are verses that are unequivocal in their interpretation (taʾwil). They are the verses whose interpretation is agreed upon and whose intention is intelligible (maʿqūl). [He also informed us that] there are equivocal (mutashābih) verses whose interpretation is sought from the
unequivocal verses, which are the matrix of the Scripture. *(The equivocal verses)* are those whose interpretation is disputed.\(^\text{692}\)

This passage is significant because it draws a direct line between the occurrence of scholarly agreement or disagreement and the degree to which God has made His intent manifest in a particular revealed text: unequivocal verses are those “whose interpretation is agreed upon and whose intention is intelligible,” while equivocal verses are those “whose intention is disputed.” In other words, scholarly disagreement is the result of God’s rhetorical choices. This point is confirmed in another chapter of *Sharḥ mushkil al-āthār*, in which al-Ṭahāwī writes that “the unequivocal verses are those in which God revealed His meaning *(ma’nā)* to them… and the equivocal verses are those in which he did not reveal His intent *(murād)* to them.”\(^\text{693}\)

For al-Ṭahāwī, then, *muḥkam* and *mutashābih* designate the degree to which God as a speaker fully expresses His intent in a discrete text such that that intent can be understood without reference to other revealed texts. This claim bears some similarity to one of the exegetical explanations of *muḥkam* and *mutashābih* cited from al-Ṭabarī above: namely, that *muḥkam* verses permit only one interpretation while *mutashābih* verses permit multiple interpretations.\(^\text{694}\) Proponents of this explanation include Abū Jaʿfar al-Iskāfī (d. 240/854), al-Ashʿarī (d. 324/935), al-Karkhī (d. 340/952) and al-Jaṣṣāṣ.


\(^{693}\) Al-Ṭahāwī, *Mushkil*, 2.221.

\(^{694}\) Al-Ṭahāwī’s understanding of *muḥkam* and *mutashābih* also bears some similarity to al-Ṭabarī’s own position: that *muḥkam* verses can be understood by scholars while *mutashābih* verses cannot. However, al-Ṭabarī classifies as *muḥkam* both verses whose intent is immediately understood and those which can be understood through recourse to other texts. The category of *mutashābih* is limited to texts which cannot be understood at all.
Both al-Ṭahāwī and the proponents of this explanation understand muḥkam and mutashābih to be related to clarity and ambiguity; however, while al-Ṭahāwī views ambiguity as a result of the speaker’s rhetorical choices in expressing his intent, the scholars cited above view ambiguity as a purely lexical matter. In Aḥkām al-Qurʾān, al-Jaṣṣāṣ defines muḥkam as “an expression containing no homonymy,” while a mutashābih verse may be interpreted in multiple ways. In al-Fuṣūl, al-Jaṣṣāṣ’s examples of mutashābih verses are limited to cases in which ambiguity concerning the voweling of a verse leads to uncertainty over its meaning.

In contrast, al-Ṭahāwī’s examples of mutashābih texts do not concern homonymy. Instead, they address cases in which God did not provide sufficient detail in a statement for scholars to adequately understand His intent without reference to other sources. His examples of equivocal verses include Q 5/al-Māʾīda:38 (“The thief, male and female: cut off their hands”), Q 4/al-Nisāʾ:23 (“[It is also forbidden] that you should have two sisters together, except for cases that have happened in the past”) and Q 4/al-Nisāʾ:24 (“[Also forbidden] are married women, except what your right hand possesses”). Although he does not explicitly state here or in other examples what makes these verses equivocal, these verses he cites all lack specific, detailed information that would permit the hearer to understand or act upon the verse without further instruction.

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696 Al-Jaṣṣāṣ, Aḥkām al-Qurʾān, 2.280.
697 Al-Jaṣṣāṣ, al-Fuṣūl, 1.205-207.
698 Al-Ṭahāwī, Mushkil, 2.221.
699 Notably, the equivocality of Q 5/al-Māʾīda:38 (“The thief, male and female: cut off their hands”) is apparent only in hindsight, with knowledge of later hadīths that constrained the meaning of “thief” and “hand” in this verse. That al-Ṭahāwī gives this verse as an example of a mutashābih text affirms that, for
While al-Ṭahāwī departs from other exegetes in his emphasis on God’s intent in his definition of *muhkam* and *mutashābih*, his assertion that the meaning of equivocal verses must be sought from unequivocal verses was shared by a number of later jurists, including al-Jaṣṣāṣ, al-Zamakhsharī, al-Ṭūsī, Ibn Kathīr and others. Kinberg portrays al-Jaṣṣāṣ as a very early advocate of this procedure and notes that its other known proponents lived considerably later. Although there is no evidence to suggest either that al-Jaṣṣāṣ took this concept from al-Ṭahāwī or that al-Ṭahāwī was the first to make this claim, we may at least conclude that the argument was known a half century before al-Jaṣṣāṣ.

The conflict between some scholars’ definition of *mutashābih* as “unintelligible” and others’ claim that the meaning of *mutashābih* verses may be understood from *muhkam* verses rests on a disagreement about the best reading of an ambiguous section of Q 3/Āl ʿImrān:7. Depending on whether one reads a particular “wa” (and) as introducing a second subject to the previous sentence or beginning a new sentence, the verse can be understood either to mean that only God knows the interpretation of the *mutashābih* verses, or that only God and the scholars know their interpretation. The second reading makes a powerful claim for the authority of scholars to interpret the texts of revelation.

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700 Syamsuddin, “*Muhkam* and *Mutashābih,*” 69-70; Lagarde, “De l’Ambiguïté (mutašābih) dans le Coran,” 52.
701 Kinberg, “*Muhkamāt* and *Mutashābihāt,*” 161-162.
702 The Arabic reads, “mā ya’lamu ta’wilahu illā Allāh wa-l-rāsiḥūn fi al-’ilm yaqūluna amannā bihi.” It may be translated in two ways: 1) “No one knows its interpretation but God. Those who are firm in knowledge say, “We believe in it’; or 2) “No one knows its interpretation but God and those firm in knowledge. They say, “We believe in it.”
although neither al-Ṭahāwī nor al-Jaṣṣāṣ claimed that scholars would be able to interpret every equivocal verse.

Where al-Ṭahāwī departs from al-Jaṣṣāṣ’s discussion is in his explicit linking of the discovery of the meaning of equivocal texts from unequivocal texts to the process of *ijtihād* (legal interpretation). In one of the chapters of *Sharḥ mushkil al-āthār* discussed above, al-Ṭahāwī is asked by an interlocutor if the existence of equivocal texts means that we cannot make judgments concerning those matters. Al-Ṭahāwī replies that we can, and that the proper way to do so is through *ijtihād al-raʾy* (legal reasoning), a process which may or may not lead to an objectively correct answer, but which is always praiseworthy when undertaken in the right way.703 The division of revelation into *muḥkam* and *mutashābih* thus divides God’s speech into the interpretable and that which is not in need of interpretation, and links this division to the juristic process of *ijtihād*.

**Muḥkam and Mutashābih in al-Ṭahāwī’s Hermeneutical Arguments**

Given the importance of the *muḥkam:mutashābih* dichotomy in al-Ṭahāwī’s understanding of the nature of God’s revelation and the role of jurists in interpreting it, it is notable how rarely he appeals to these concepts in his hermeneutical arguments. Their application is most noteworthy in the opening paragraph of a number of chapters of *Aḥkām al-Qurʾān*. In one, he adduces a section of Q 5/ al-Māʿida:6 (“wipe your faces and your hands with it (*minhu*)”). He then states that “wipe your faces” is unequivocal and self-explanatory (*qāʾ im bi-nafšīhī*); however, the phrase “and your hands with it” is

equivocal and its intent is debated.\textsuperscript{704} Here and in similar passages,\textsuperscript{705} al-Ṭahāwī identifies different sections in a given verse as equivocal or unequivocal. More importantly, he explicitly connects the phenomenon of juristic disagreement to equivocal verses, confirming the relationship between \textit{muḥkam} and \textit{mutashābih} and the role of jurists outlined above.

Perhaps the paucity of appeals to the \textit{muḥkam}:\textit{mutashābih} dichotomy in al-Ṭahāwī’s hermeneutical arguments is best explained by the observation that, in general, \textit{muḥkam} and \textit{mutashābih} do not constitute an interpretive technique for al-Ṭahāwī, but instead provide the conceptual framework for the fundamental division that underlies multiple layers of al-Ṭahāwī’s legal thought, that is, the division between that which jurists may interpret and that for which God has already adequately conveyed His intent. In previous chapters, we have seen this dichotomy in the form of \textit{tawqīf} and \textit{raʾy}, ideas very closely aligned to \textit{muḥkam} and \textit{mutashābih}. I will return to the relationship between \textit{muḥkam}:\textit{mutashābih} and \textit{tawqīf}:\textit{raʾy} in the final section of this chapter.

\textbf{Ẓāhir and Bāṭin (Apparent and Non-Apparent Meaning)}

Al-Ṭahāwī concludes his discussion of \textit{muḥkam} and \textit{mutashābih} in the introduction to \textit{Aḥkām al-Qurʾān} with a lengthy, four-page justification for his argument that the Sunna has the authority to explain the \textit{mutashābih} verses of the Qurʾān. He points to the observed occurrence of abrogation between the Qurʾān and Sunna as evidence that the Qurʾān and Sunna are of the same type (\textit{shakhl})—that is, they are ontologically

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\item \textsuperscript{704} Al-Ṭahāwī, \textit{Aḥkām}, 1.103.
\item \textsuperscript{705} E.g., al-Ṭahāwī, \textit{Aḥkām}, 1.102, 1.118.
\end{itemize}
\end{footnotesize}
This argument, in turn, provides the justification for his claim that jurists may seek the meaning of equivocal Qur'ānic verses in the Sunna. Although the authority of the Sunna and the occurrence of abrogation between the Qur'ān and Sunna are crucial concepts within al-Ṭahāwī's hermeneutics, he does not introduce them as independent topics here, but only as evidence for his other claims. In analyzing the structure of al-Ṭahāwī's introduction to *Aḥkām al-Qur'ān*, we should therefore consider this lengthy passage on abrogation and the authority of the Sunna to form part of his discussion of *muḥkam* and *mutashābih*.

After concluding his comments on abrogation, al-Ṭahāwī returns to the major work of the introduction of *Aḥkām al-Qur'ān*, which is to introduce a set of hermeneutical principles for jurists based on his theory of divine-human communication. The next pair of technical terms he addresses is *ẓāhir:bāṭin*, in most cases best translated in al-Ṭahāwī's works as apparent and non-apparent meaning. Although he does not say

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706 I analyze this passage as well as other evidence for al-Ṭahāwī's understanding of the Qur'ān and Sunna as ontologically equivalent in Chapter One, “Qur'ān and Sunna,” pp. 73-85.
707 Al-Ṭahāwī, *Aḥkām*, 1.59-64.
708 It is evident that al-Ṭahāwī did not intend to introduce abrogation as an independent hermeneutical technique equivalent to his discussions of *muḥkam*:mutashābih, *ẓāhir:bāṭin* or *ʿāmm:khāṣṣ* from the fact that he provides no prescription for jurists concerning its use. While al-Ṭahāwī frames the other hermeneutical topics in the introduction to *Aḥkām al-Qur'ān* as guidelines for jurists, the passage on abrogation is focused exclusively on demonstrating that Islamic law as it stands cannot be explained without accepting that abrogation between Qur'ān and Sunna has actually occurred on many occasions, something which can only happen if the Qur'ān and Sunna are ontologically equivalent. That al-Ṭahāwī does not treat abrogation on par with *muḥkam*:mutashābih, *ẓāhir:bāṭin* and *ʿāmm:khāṣṣ* within the introduction to *Aḥkām al-Qur'ān* can be explained by the fact that his goal in discussing these three pairs of terms is to introduce the model of divine-human communication that is the subject of this chapter, and the technique of abrogation does not form part of that model.
709 For an overview of how scholars studying Islamic law have translated *ẓāhir*, see Robert Gleave, *Islam and Literalism: Literal Meaning and Interpretation in Islamic Legal Theory* (Edinburgh: Edinburgh University Press, 2012), 55-60. I have selected ‘apparent’ and ‘non-apparent’ to capture al-Ṭahāwī’s usage of *ẓāhir* and *bāṭin* for two reasons. First, the terms capture al-Ṭahāwī’s orientation toward the perspective of the addressee in his discussions of *ẓāhir* and *bāṭin*; meanings are *ẓāhir* from the perspective of an individual, as we shall see below. Second, although there are cases in which al-Ṭahāwī considers the *bāṭin*
so explicitly, al-Ţaḥāwī must understand the diversion from ẓāhir to bāṭin meaning as a feature of mutashābih texts, because muḥkam texts reveal their intent immediately and unequivocally. The final section of the introduction to Aḥkām al-Qurʿān likewise treats a topic that must fall under the category of mutashābih texts: unrestricted and restricted meanings of texts (al-ʿāmm wa-l-khāṣṣ). We can therefore describe the overall structure of the introduction to Aḥkām al-Qurʿān as establishing first the dichotomy between revelation in which God has clearly revealed His intent and that in which He has not and, second, stating two principles for jurists to observe when determining the meaning of texts in which God has not revealed His intent. Al-Ţaḥāwī’s overall purpose in the introduction, therefore, is not primarily to describe the structure of revelation, but instead to provide a set of instructions for jurists based on what we know about the nature of God’s communication with us.

Al-Ţaḥāwī opens his discussion of ẓāhir and bāṭin by affirming that the true meaning of texts may not be in alignment with their apparent meaning, while establishing jurists’ duty nonetheless to act upon the apparent meaning of revelation:

Within the Qurʾān is that which may be expressed such that its apparent meaning differs from its true meaning (mā qad yakhruj ʿalā al-maʾnā allādhi yakūn ẓāhiran li-maʾnā, wa-yakūn bāṭinuhu maʾnā ākhar). Our duty is to employ its apparent meaning, even if the true meaning could be something else, because we were addressed in order to receive clarification (khūṭibnā li-yubayyan lanā), and we were not addressed for any other purpose.\(^\text{710}\)

Al-Ţaḥāwī’s first argument for the primacy of the apparent meaning rests on his understanding of the nature of God’s revelation: God addresses us in order to provide

\(^{710}\) Al-Ţaḥāwī, Aḥkām, 1.64. In this particular passage ‘true meaning’ seems more apposite than ‘non-apparent meaning.’
While acknowledging that the true meaning of a text is not always the apparent meaning, al-Ṭaḥāwī argues that it is in God’s nature to clarify His intent through revelation, and therefore jurists should act upon the assumption that apparent meaning is the true meaning. The hermeneutical principle of the primacy of the apparent meaning thus amounts to an optimism about God’s likeliness to express His intent straightforwardly.

In contrast, al-Ṭaḥāwī’s second and lengthier argument concerns not the nature of revelation, but the evidence of the precedent of the Companions. He writes:

[The apparent meaning takes precedence] even if some scholars have opposed us in this and held that the apparent meaning does not take precedence over the non-

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711 El Shamsy views this passage as evidence that “the way in which al-Ṭaḥāwī conceptualizes revelation as a whole closely parallels al-Shāfiʿī’s understanding of revelation as a communicative act taking place through the medium of human language” (Canonization of Islamic Law, 206). My reading of the introduction to Ahkām al-Qurʾān broadly confirms this analysis: a jurist’s job is to understand how God has expressed His intent in language and to apply the correct procedures in cases where He has not made His intent immediately clear. El Shamsy has a second purpose in discussing the introduction to Ahkām al-Qurʾān, however, which is to emphasize al-Ṭaḥāwī’s “indebtedness to al-Shāfiʿī” (205). By indebtedness, El Shamsy seems to mean not only a general similarity of views, but also relatively specific (though unattributed) borrowings from al-Shāfiʿī’s Risāla. In Chapter One, “Qurʾān and Sunna,” I questioned El Shamsy’s characterization of al-Ṭaḥāwī’s discussion of muḥkam and mutashābih as mirroring al-Shāfiʿī’s theory of the bayān. El Shamsy likewise suggests a close parallel between al-Ṭaḥāwī’s statement that “we were addressed in order to receive clarification” (hūtibnā li-yubayyan lanā) and the phrase “bayān li-man khūṭiba bihi” in al-Shāfiʿī’s Risāla (206). Observing the striking similarities of language between these two passages, El Shamsy translates the phrase as “clarification for those addressed by it”; however, the phrase has quite a different meaning in context, where it refers to the definition of a bayān, or legislative statement. Al-Shāfiʿī writes that “the lowest common denominator among those convergent and yet divergent meanings is that such a statement is directed to whoever is addressed by it among those in whose language the Qurʾān was revealed” (I have taken this translation from Lowry, trans., The Epistle on Legal Theory, 15). Al-Shāfiʿī is not describing God’s purpose in revelation, but rather establishing the addressees of God’s legislative statements. Although El Shamsy is undoubtedly correct in emphasizing the close relationship between the thought of al-Shāfiʿī and al-Ṭaḥāwī, his eagerness to demonstrate direct borrowing has led him to disregard important differences in how and why the two jurists employ language and concepts that may initially seem quite similar. Because of the differences in how the two jurists employ similar concepts, as well as the absence of evidence for any direct textual borrowing, I am by no means convinced, as El Shamsy appears to be, that al-Ṭaḥāwī knew the text of the Risāla, although he clearly had great familiarity with al-Shāfiʿī’s thought.

712 Despite al-Ṭaḥāwī’s insistence that the nature of revelation is to clarify, al-Ṭaḥāwī never explains why all Qurʾānic verses should not be muḥkam; that is, why God did not choose to reveal His intent immediately, relieving the need for jurists’ interpretations.
apparent meaning. We have reached our opinion on this matter because of
evidence we observed indicating that and obligating its use.\textsuperscript{713}

Al-Ţaḥāwī cites the example of the revelation of Q 2/al-Baqara:187 ("Eat and drink until
the white thread is distinct to you from the black thread at dawn"). Upon receiving this
revelation, al-Ţaḥāwī writes, a number of Companions began to examine white and black
threads to determine when to resume the Ramadan fast each morning. When the Prophet
heard of their actions, he clarified that the white and black threads refer to the darkness of
night and the lightness of day. However, al-Ţaḥāwī emphasizes, Muḥammad did not
scold them for acting upon the apparent meaning.

[The Companions’] acting upon [the apparent meaning] before receiving
instruction (\textit{tawqīf}) from God’s Messenger about [the verse’s] intent is an
indication that [Muslims] are to act upon the Qurʾān according to its apparent
meaning. [This is so] even if they have not been apprised of its true interpretation
in the way that they have been apprised of the mere text. The affirmation [of their
actions] entails the affirmation of acting upon the apparent meaning, and that it
takes precedence over interpreting verses for their non-apparent meaning.\textsuperscript{714}

Here al-Ţaḥāwī portrays the Companions as the models upon whose actions jurists should
base their hermeneutical principles. He further establishes that jurists may act upon the
apparent meaning of a revealed text in the absence of instruction from the Prophet
\textit{(tawqīf)}.\textsuperscript{715} Although he does not say so in the introduction to \textit{Aḥkām al-Qurʾān}, it is also
\textit{tawqīf} that is required in most cases in order to divert from the apparent meaning to the
true meaning of a text. It is notable that in this example al-Ţaḥāwī holds up the
Companions as a model for emulation in a case in which their privileging of the \textit{ẓāhir}
meaning led them to an objectively incorrect understanding, albeit one promptly

\textsuperscript{713} Al-Ţaḥāwī, \textit{Aḥkām}, 1.64.
\textsuperscript{714} Al-Ţaḥāwī, \textit{Aḥkām}, 1.64.
\textsuperscript{715} For another example of the role of \textit{tawqīf} in signaling that the apparent meaning is not the intended
meaning, see \textit{Aḥkām}, 1.106.
corrected by the Prophet. What al-Ṭahāwī offers in the introduction to *Aḥkām al-Qurʿān* is not a complete set of instructions to jurists on how to derive a correct understanding of the law from its sources, but rather an argument for how jurists should approach revealed texts given certain facts about God’s habits in communicating with humans.

That al-Ṭahāwī is more interested in the assumptions jurists should make about God’s speech than in guaranteeing correct answers is confirmed by his final argument for the primacy of the apparent meaning. Here again, al-Ṭahāwī looks to the example of the Companions, this time examining their responses to the revelation of the prohibition on wine (*khamr*). In contrast to the earlier example in which the *ẓāhir* meaning of the text was self-evident, here the Companions disagree on what the apparent meaning of the prohibition on wine might be. Al-Ṭahāwī identifies five different understandings of the prohibition among the Companions and reports that each faction acted upon their understanding by destroying the kinds of wine that they held to be included within the scope of the prohibition. Al-Ṭahāwī observes that:

>This indicates that they acted upon the verse according to their immediate understanding of its intent (*ʿalā mā waqāʿa fī qulūbihi annahu ʿurāduhu*), based on what was apparent to them concerning its ruling (*ʿalā mā zahara lahum min ḥukmihā*). [It indicates] that they were not obligated to do anything more. Later, the Prophet did not scold them or say to them, “you should not have rushed to destroy your property until you knew what God had prohibited with no possibility of incorrect knowledge.”

In this passage al-Ṭahāwī claims support for the primacy of the *ẓāhir* both from the fact of the Companions’ having acted upon what they held to be the apparent meaning and

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from the Prophet’s tacit acceptance of their actions. Although al-Ṭahāwī’s optimism concerning God’s likeliness to express His intent would seem to conflict with the panoply of apparent meanings that Companions identified for the prohibition on wine, this tension remains unacknowledged.

Zāhir and Bāṭın in al-Ṭahāwī’s Hermeneutical Arguments

We saw above that al-Ṭahāwī’s discussion of zāhir and bāṭın in the introduction to Aḥkām al-Qurʾān focuses exclusively on jurists’ duty to privilege the apparent meaning of revealed texts while avoiding any consideration of the circumstances warranting a departure to a non-apparent meaning. Within the body of al-Ṭahāwī’s hermeneutical works, the claim that jurists may not depart from the zāhir to the bāṭın without evidence (hujja, dalîl, tawqīf) allows al-Ṭahāwī to portray his interlocutors’ interpretation of revealed texts as straying from a foundational hermeneutical principle. For example, in a chapter on whether neighbors receive the right of preemption (shufʿa) when a house is being sold, al-Ṭahāwī’s interlocutors suggest that the word “neighbor” (jār) actually means “partner” in Prophetic hadīths apparently permitting shufʿa for neighbors. Al-Ṭahāwī retorts:

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717 In contrast, al-Shāfīʿī employs the same anecdote in the Risāla as evidence for the authority of the uncorroborated report (khabar al-wāhid) (al-Risāla, 187-188). That is, al-Shāfīʿī frames this anecdote as bearing on questions of epistemological certainty in transmission, while al-Ṭahāwī understands it as a matter pertaining to the interpretation of meaning.

718 Al-Shāfīʿī makes the same argument concerning the need for evidence to justify departing from a zāhir meaning, but he does not use the term tawqīf (e.g., al-Shāfīʿī, Risāla, 146, 156, 268). For discussions of al-Shāfīʿī’s understanding of the evidence required to permit diverging from the apparent meaning, see Vishanoff, Formation of Islamic Hermeneutics, 44; Lowry, Early Islamic Legal Theory, 117, 247-248; Gleave, Islam and Literalism, 99-112.
You claim that reports should be interpreted according to their apparent meaning, so how have you abandoned the apparent meaning, which is supported by evidence, and clung to something else with no evidence to support it?\footnote{Al-Ṭahāwī, \textit{Maʿānī}, 4.124. For other examples of al-Ṭahāwī refuting his interlocutors’ positions on the grounds that they abandon the apparent meaning without evidence, see \textit{Ahkām}, 2.335; Mushkil, 14.115; \textit{Maʿānī}, 3.17, 3.249.}

In other cases, the mere claim that a certain rule is supported by the apparent meaning of a Qurʾānic verse or Prophetic \textit{ḥadīth} serves as sufficient evidence for al-Ṭahāwī’s position.\footnote{E.g., al-Ṭahāwī, \textit{Mushkil}, 3.337, 7.205, 9.107-108, 9.319, 11.322; \textit{Ahkām}, 1.112, 1.124.}

Frequently al-Ṭahāwī argues that evidence does exist to depart from the apparent meaning in cases where the \textit{ẓāhir} of a revealed text is in conflict with another revealed text or a position to which al-Ṭahāwī is committed. For example, although some versions of a Prophetic \textit{ḥadīth} apparently indicate that it is permissible to free a slave on someone’s behalf as expiation (\textit{kaffāra}), al-Ṭahāwī argues that Qurʾānic verses clarify that individuals must undertake their own \textit{kaffāra}.\footnote{Al-Ṭahāwī, \textit{Mushkil}, 2.205-206. For other examples of the diversion of a \textit{ẓāhir} reading on the basis of another revealed text, see \textit{Mushkil}, 1.131-132, 1.348, 5.56-61, 5.111-113, 8.356-358, 12.160-162; \textit{Ahkām}, 1.147, 1.200.} Although other revealed texts often serve as al-Ṭahāwī’s evidence for a non-apparent reading, he also claims support for non-\textit{ẓāhir} readings on the basis of consensus, the opinion of a Companion or the flexibility of the Arabic language.\footnote{E.g., Al-Ṭahāwī, \textit{Mushkil}, 2.113-115, 3.163, 3.320-322, 4.106-7, 13.9-10; 15.465; \textit{Ahkām}, 1.191. For al-Shāfi`ī’s criticism of the idea that consensus can indicate a non-\textit{ẓāhir} meaning, see El Shamsy, \textit{Canonization of Islamic Law}, 59-60.}

In his argument that jurists should rely on the apparent meaning of texts in the absence of evidence indicating otherwise, al-Ṭahāwī is in agreement both with earlier jurists of the formative period and with the mature \textit{uṣūl} tradition, including the Ḥanafī
Although several passages in al-Ṭahāwī’s works, including the introduction to Aḥkām al-Qurʾān, suggest the existence of jurists who did not privilege the ẓāhir, theirs was never a widely-held position.²²⁴ Within the mature Ḥanafī tradition, the term ẓāhir would also take on an additional meaning as part of the eight-part scale designating the clarity and ambiguity of terms, already discussed above.²²⁵ Of the four terms indicating degrees of clarity, ẓāhir represents the weakest claim: a ẓāhir term has a meaning that is immediately grasped by the hearer, but is nonetheless subject to diversion from that meaning if other evidence so indicates.²²⁶

While this definition bears an obvious similarity to al-Ṭahāwī’s claim that jurists must not depart from the ẓāhir without evidence, later legal theorists understand ẓāhir as a quality of clarity present in some, but not all, words. In contrast, al-Ṭahāwī frames ẓāhir as part of an interpretive practice—jurists should choose to privilege the ẓāhir meaning of a text because of what we know about the nature of God’s communication with humans and because of the example of the Companions. For al-Ṭahāwī, all revealed texts can be

²²³ Al-Shāfīʿī’s argument of this point is discussed on p. 225n718 above. Al-Ṭahāwī’s contemporary al-Ashʿarī (d. 324/935) also asserted the requirement for evidence to justify any departure from the apparent meaning of a text (al-Ashʿarī, al-Ibāna ‘an usūl al-diyāna, ed. Fawqīya Husayn Mahmūd (Cairo: Dār al-Anṣār, 1977), 139). On the Ḥanafī preference for the ẓāhir, see Zysow, Economy of Certainty, 59.

²²⁴ Al-Ṭahāwī, Aḥkām, 1.64; Maʿānī, 3.17, 4.124.

²²⁵ See p. 210 above for a discussion of muhkam and mutashābih within this scale.

²²⁶ Kamali, Principles of Islamic Jurisprudence, 118-124; Nyazee, Islamic Jurisprudence, 299; Zysow, Economy of Certainty, 55-56; Weiss, Search for God’s Law, 136; Vishanoff, Formation of Islamic Hermeneutics, 4, 194-5; Ramić, Language and the Interpretation of Islamic Law, 69-72; Mohamed M. Yunis Ali, Medieval Islamic Pragmatics: Sunni Legal Theorists’ Models of Textual Communication (Richmond, Surrey: Curzon, 2000), 127-133. Al-Jaṣṣāṣ reports that already al-Karkhī distinguished between speech possessing an apparent meaning and ambiguous speech (muṣmaḥ) (al-Fuṣūl, 1.259-60). Al-Sarakhsī diverges from the mainstream Ḥanafī tradition by defining ẓāhir as “that whose intention is known immediately upon hearing, without contemplation; the meaning that rushes to the mind” (al-Muḥarrar, 1.122). Nowhere in his discussion of ẓāhir does al-Sarakhsī mention the possibility that the ẓāhir meaning might not be the true intent, or that the true intent might be revealed through other evidence. This omission disturbs the modern editor of al-Muḥarrar sufficiently that he has added a note explaining what al-Sarakhsī “meant” to say (al-Muḥarrar, 1.122n3).
read according to their zāhir, although not every text has a bātin. In his understanding of zāhir and bātin, al-Ṭahāwī shows no hints of moving toward later uṣūl theories, unlike some other areas of his hermeneutics addressed in this chapter.

‘Āmm and Khāṣṣ (Unrestricted and Restricted Meaning)

In the final and shortest section of the introduction to Aḥkām al-Qurʾān, al-Ṭahāwī argues for the obligation to interpret Qurʾānic verses according to their broadest meaning (ḥamluhā ‘alā ‘umūmihā) and establishes the opposition between unrestricted (‘āmm) and restricted (khāṣṣ) readings of texts. In mature legal theory, ‘āmm and khāṣṣ would be understood as properties inhering in words by virtue of their linguistic form. For instance, nouns prefaced by the definite article were held to be ‘āmm, that is, to designate all members of their class in the absence of other evidence restricting their application.727 This linguistic understanding of ‘āmm and khāṣṣ is found already in al-Jaṣṣāṣ’s Fuṣūl, which dedicates nearly one hundred pages to detailing the linguistic forms of ‘āmm and khāṣṣ, establishing the types of contextual evidence that may cause an apparently ‘āmm term to have a khāṣṣ meaning, and exploring various epistemological and theological questions related to reliance on ‘āmm and khāṣṣ in formulating the law.728

Al-Ṭahāwī does not share later theorists’ understanding of the terms ‘āmm and khāṣṣ as linguistic features of words, however. Nor does his usage of the terms ‘āmm and

727 On the classical theorists’ understanding of ‘āmm and khāṣṣ, see Zysow, Economy of Certainty, 76-92; Kamali, Principles of Islamic Jurisprudence, 40-55; Hallaq, History of Islamic Legal Theories, 45-47; Weiss, Search for God’s Law, 382-449.
khāṣṣ resemble that of Abū Ḥanīfa and other early Ḥanafīs, who employed the term to designate the closeness of the match between a word and its intended referent. 

Instead, al-Ṭaḥāwī’s theory of ‘āmm and khāṣṣ most closely resembles that of al-Shāfī‘ī and his student al-Muṣanṭ. For them, all legal texts are originally unrestricted, and some are then shown to be restricted by virtue of another text indicating that the original, unrestricted meaning is not the intended one. Vishanoff has noted the similarity between al-Shāfī‘ī’s and al-Ṭaḥāwī’s use of ‘āmm and khāṣṣ, arguing that al-Ṭaḥāwī “employed al-Shāfī‘ī’s distinction between general and particular texts.”

While al-Shāfī‘ī and al-Ṭaḥāwī both understand ‘āmm and khāṣṣ as terms designating how legal sources act upon each other, however, the concepts do subtly different work in al-Shāfī‘ī’s Risāla and in the introduction to al-Ṭaḥāwī’s Aḥkām al-Qur‘ān. In the Risāla, al-Shāfī‘ī writes that it is “in the nature of God’s language that it can be used to address people in a way that seems unrestricted with a readily apparent meaning that is in fact intended as unrestricted and in its apparent sense.” He goes on to list three more varieties of divine speech: language that seems unrestricted but combines restricted and unrestricted elements; language that seems unrestricted but is actually intended as restricted; and language whose actual meaning is shown by context.

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729 Vishanoff, Formation of Islamic Hermeneutics, 28.
730 Lowry, Early Islamic Legal Theory, 78; Lowry, “Reception of al-Shāfī‘ī’s Concept of Amr and Nahy in the Thought of His Student al-Muṣanṭ,” 144; Vishanoff, Formation of Islamic Hermeneutics, 57-58.
731 Vishanoff, Formation of Islamic Hermeneutics, 214. Calder, too, observes that “Ṭaḥāwī knew the ‘āmm:khāṣṣ distinction and used it in a fairly systematic manner.” He continues, however, that “it is still difficult to imagine that he knew the Risāla of Shāfī‘ī” (Studies in Muslim Jurisprudence, 229). While the close relationship between al-Shāfī‘ī and al-Ṭaḥāwī’s understanding of ‘āmm and khāṣṣ does not necessarily indicate that al-Ṭaḥāwī knew the text of the Risāla, Vishanoff’s observation that al-Ṭaḥāwī is far more closely aligned with al-Shāfī‘ī than with early Ḥanafīs or later theorists is nonetheless very important.
to be completely different from its apparent meaning. Al-Shāfiʿī’s argument that all legal texts initially appear unrestricted is thus a linguistic claim based on the observable features of “the nature of God’s language.” That al-Shāfiʿī considers unrestrictedness a natural and obvious feature of divine language is confirmed in the following chapters, where he illustrates each type of divine speech listed above by citing relevant Qur’ānic verses. Although he explains the way in which restrictedness enters into some categories, he accepts as obvious that the apparent meaning of each verse is unrestricted.

In contrast, al-Ṭaḥāwī dedicates the two paragraphs on ‘āmm and khāṣṣ in the introduction to Aḥkām al-Qur’ān to arguing for the priority of unrestricted readings, not as a natural feature of the language, but instead as a hermeneutical claim about the role of the jurist in interpreting divine communication. He writes:

The obligation to construe these verses according to their apparent meaning (ẓāhir) entails the obligation to construe them according to their broadest meaning (ʿala ʿumūmihā). This is so even if some scholars have held that the unrestricted (al-ʿāmm) does not hold priority over the restricted (al-khāṣṣ) except by means of an indication from the Book, the Sunna or consensus. We do not say that, but instead hold that the unrestricted does have priority over the restricted.

That is because some verses are intended as unrestricted and some as restricted, but they [i.e., the Companions] used to act upon the intention that was apparent to them concerning the unrestricted and the restricted before they had received instruction (tawqīf). Restricted meaning (khuṣūṣ) is not known (yūqaf ʿalayhi) by the apparent meaning of revelation (ẓāhir al-tanzil), but is rather known by a secondary act of instruction (tawqīf thānī) from the Prophet or from another revealed verse indicating that.

What we have said proves that the duty in this is to employ verses according to their unrestricted meaning. That is better than employing them according to their restricted meaning, until it is known that God intended something else. 733

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733 Al-Ṭaḥāwī, Aḥkām, 1.65.
For al-Ṭahāwī, it is not immediately obvious that all legal texts are unrestricted in the absence of other evidence. He recognizes that texts may be read in a restricted or unrestricted manner independent of other texts, and he alludes to other jurists who give priority to a restricted reading. To support his argument that jurists should favor the unrestricted meaning, he makes three interconnected claims. First, the priority of the ʿāmm is entailed by the priority of the ẓāhir. Second, the Companions used to act upon the ʿāmm meaning before receiving instruction from the Prophet (tawqīf), implying that acting upon the ʿāmm does not require tawqīf. Third, restricted meaning can only be known through an act of tawqīf.

In claiming that khāṣṣ readings require tawqīf while ʿāmm readings do not, al-Ṭahāwī is not arguing that divine language naturally appears unrestricted. Instead, he is looking to the example of the Companions to determine the best hermeneutical approach to language that might be read as either ʿāmm or khāṣṣ. By using the example of the Companions’ actions previous to receiving tawqīf, al-Ṭahāwī again emphasizes his concept of divine-human communication as an unfolding process in which God does not always choose to reveal His intent immediately. As we saw in the earlier discussions of muḥkam:mutashābih and ẓāhir:bāṭin, al-Ṭahāwī is primarily concerned in the introduction to Aḥkām al-Qurʿān with portraying jurists as the successors to the Companions, tasked with knowing how to act upon texts that do not always reveal their own intent.

Read in context, al-Ṭahāwī’s claim that the priority of the ẓāhir entails the priority of the ʿāmm is also an argument about following the example of the Companions rather
than a claim about the nature of divine speech.\textsuperscript{734} Immediately prior to his discussion of \textit{ʿāmm} and \textit{khaṣṣ}, al-Ṭahāwī gives the example of how a number of Companions reacted to the prohibition on grape wine (\textit{khamr}) by destroying all varieties of wine before they had received instruction from the Prophet (\textit{tawqīf}) concerning what was meant by \textit{khamr}. Al-Ṭahāwī argues that the Prophet’s failure to chastise them for acting upon what they perceived as the apparent meaning of the verse indicates that it is correct to act upon an apparent meaning, even though the true meaning (\textit{bātin}) might be different.\textsuperscript{735} He then immediately observes that the priority of the \textit{zāhir} indicates the priority of the \textit{ʿāmm}, apparently referring to the fact that many Companions perceived the prohibition on \textit{khamr} as a broad prohibition on all wine; that is, they understood the \textit{zāhir} meaning of \textit{khamr} to be \textit{ʿāmm}.\textsuperscript{736} In both his discussion of \textit{zāhir:bātin} and his discussion of \textit{ʿāmm:khaṣṣ}, then, al-Ṭahāwī is concerned not with describing the natural features of language, but with establishing hermeneutical approaches based on following the example of the Companions.

\textit{ʿĀmm and Khāṣṣ in al-Ṭahāwī’s Hermeneutical Arguments}

We have seen above that al-Ṭahāwī’s discussion of \textit{ʿāmm} and \textit{khaṣṣ} in the introduction to \textit{Aḥkām al-Qurʾān} is first and foremost an argument for the duty to

\textsuperscript{734} See Chapter Two, “Companion and Successor \textit{Hadīth},” pp. 134-139 for a discussion of how al-Ṭahāwī establishes the obligation to follow the Companions on the grounds both of their proximity to the Prophet and their personal qualities.

\textsuperscript{735} Al-Ṭahāwī, \textit{Aḥkām}, 1.65.

\textsuperscript{736} Although al-Ṭahāwī does not say so directly, there may be an element of pious caution in these Companions’ interpretation of the prohibition on \textit{khamr}—in the absence of a clear communication of divine intent, better to be safe by destroying all wine than to risk disobeying by construing the prohibition narrowly. For this reason, it is possible that a better translation for the beginning of the passage on \textit{ʿāmm} and \textit{khaṣṣ} would be “the obligation to construe verses according to their apparent meaning entails the obligation to construe them broadly (\textit{ʿalā ʿumūmihā})” (\textit{Aḥkām}, 1.65).
construe revealed texts broadly in cases in which they do not unambiguously convey God’s intent. The concept of restricted and unrestricted meaning likewise plays a major role within the body of al-Ṭahāwī’s hermeneutical works, where terms from the roots ‘-m-m and kh-ṣ-ṣ—including ‘āmma, ‘ūmm, ‘umūm, khasṣa, khasṣ and khusūṣ—appear hundreds of times. Although al-Ṭahāwī clearly uses ‘āmm and khasṣ as technical terms in the introduction to Aḥkām al-Qurʾān, his usage of them elsewhere is somewhat inconsistent. When discussing whether a rule applies to an entire class, al-Ṭahāwī sometimes replaces the terms ‘āmm and khasṣ with the pair kull (all) and baʿḍ (some). In other cases, he pairs the terms ‘āmm: baʿḍ and kull:khāṣṣ or shifts between terms within a single passage.  Furthermore, this linguistic variability, al-Ṭahāwī consistently employs derivatives of the roots ‘-m-m and kh-ṣ-ṣ within the body of his hermeneutical works when making abstract theoretical statements about restricted and unrestricted meanings, confirming that ‘āmm and khasṣ do represent technical terms for him.

Appeals to ‘āmm and khasṣ take two major forms within the body of al-Ṭahāwī’s hermeneutical works. In the first, al-Ṭahāwī reasserts the rule established in the introduction to Aḥkām al-Qurʾān: jurists should construe texts broadly in the absence of evidence indicating that their true meaning is restricted (khasṣ). This assertion appears in polemical contexts where al-Ṭahāwī disagrees with another jurist’s restricted reading of a text, such as Mālik and al-Shaybānī’s claim that a rule about leading congregational

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737 E.g., al-Ṭahāwī, Mushkil, 5.105, 5.254, 12.156, 13.207; Aḥkām, 1.79.
738 E.g., al-Ṭahāwī, Mushkil, 8.295, 14.331, 15.339.
prayer while sitting applies only to Muḥammad, or the claim that the hides of predatory animals represent an exception to the rule that all tanned hides are ritually pure.\footnote{Al-Ṭahāwī, Mushkil, 14.331, 8.294-295. Al-Ṭahāwī does not name a specific jurist in connection with this second passage.}

In these and other passages, al-Ṭahāwī goes beyond merely asserting that a text is 'āmm where others have interpreted it as khāṣṣ; instead, he portrays his opponents as dangerously violating a foundational hermeneutical principle, and thus mistaking God’s law. Concerning Mālik and al-Shaybānī’s stance on seated prayer leaders, al-Ṭahāwī writes, “no one may restrict (yakhuṣṣ) anything from the Prophet except when it is required by an act of instruction (tawqīf) from the Prophet to the people.”\footnote{Al-Ṭahāwī, Mushkil, 14.331.} Similarly, he writes concerning the hide of predatory animals that “no one may exclude anything from what God’s Messenger has generalized (‘amma) except in response to that which requires its exclusion: a Qur’ānic verse, a transmitted Sunna or the consensus of the scholars.”\footnote{Al-Ṭahāwī, Mushkil, 8.295. Similar statements can be found in Mushkil, 10.136, 15.339.}

Al-Ṭahāwī thus portrays his opponents as departing from the hermeneutical model established in the introduction to Aḥkām al-Qur’ān and as setting themselves up as lawmakers in opposition to the intentions of God and His Prophet.\footnote{Lowry, Early Islamic Legal Theory, 85.}

In the second and far more prevalent type of appeal to 'āmm and khāṣṣ, al-Ṭahāwī claims that evidence does exist to support a restricted (khāṣṣ) reading of an apparently unrestricted ('āmm) text. Like al-Shāfi‘ī, al-Ṭahāwī regularly argues that an apparently unrestricted legal rule established in the Qur’ān is in fact shown to be restricted by a Prophetic Sunna.\footnote{Lowry, Early Islamic Legal Theory, 85.} For example, al-Ṭahāwī notes that Q 62/Al-Jumʿa:9 (“O you who believe, when proclamation is made for prayer on the day of assembly, hasten to
remembrance of God and leave [your] trading”) is apparently unrestricted in its wording (ẓāhir [al-khiṭāb] ʿalā al-ʿumām), such that all believers are included within the scope of the verse. However, a Prophetic Sunna clarified that women, slaves, travelers and certain other groups are not required to attend congregational prayer. Therefore, they are not among those addressed in the verse.743

For both al-Ṭaḥāwī and al-Shāfiʿī, the ʿāmm:khāṣṣ rubric serves as a crucial tool for harmonizing apparently contradictory revealed texts. In claiming that the true scope of reference of one text is revealed by means of another text, they affirm that both texts remain fully legally effective—God has merely chosen to make His intent clear through the interaction of two texts, rather than through a single act of revelation. It is in this sense that Vishanoff is correct in arguing that al-Ṭaḥāwī “employed al-Shāfiʿī’ī’s distinction between general and particular texts.”744 Vishanoff rightly places al-Ṭaḥāwī in a scholarly genealogy with al-Shāfiʿī in his treatment of ʿāmm and khāṣṣ, a genealogy to which we must add al-Ṭaḥāwī’s teacher al-Muzanī.

In contrast, the classical Ḥanafi understanding of ʿāmm and khāṣṣ developed as part of a competing scholarly genealogy originating in the opposition of the proto-Ḥanafi ʿĪsā ibn Abān (d. 221/836) to al-Shāfiʿī’ī’s approach to ʿāmm and khāṣṣ. Where al-Shāfiʿī’ī used the ʿāmm:khāṣṣ rubric to preserve the legal effectiveness of both texts in cases of apparent contradiction, Ibn Abān set stringent limits on particularization and instead often resorted to discarding Prophetic hadīths in apparent conflict with other revealed texts. He

743 Al-Ṭaḥāwī, Aḥkām, 1.147. For another example of an apparently unrestricted Qurʾānic verse which the Sunna revealed in fact to be restricted, see Aḥkām, 1.256, concerning the property on which alms must be paid.
was later followed by al-Karkhī (d. 340/952) and al-Jaṣṣāṣ (d. 370/981), although al-
Jaṣṣāṣ modified the earlier Ḥanafīs’ restrictions on particularization to such an extent that it functioned almost as flexibly as al-Shāfiʿī’s model.\footnote{Vishanoff, \textit{Formation of Islamic Hermeneutics}, 65, 215-220.} That al-Ṭaḥāwī followed al-Shāfiʿī in his liberal use of particularization as a harmonization tool, rather than the more restrictive approach of his Ḥanafī predecessor ʿĪsā Ibn Abān, is fully consistent with his role as the first major Ḥanafī \textit{hadith} harmonizer.

While Vishanoff is thus correct in identifying the crucial link between harmonization and the ‘āmm:khāṣṣ rubric for both al-Shāfiʿī and al-Ṭaḥāwī, the two jurists differ substantially in other aspects of their approach to ‘āmm and khāṣṣ. As discussed above, al-Shāfiʿī understands the presumptive unrestricted nature of revealed texts as a natural feature of Arabic, while al-Ṭaḥāwī portrays it as a hermeneutical principle known from the actions of the Companions. Further, al-Shāfiʿī’s law-related examples of the ‘āmm:khāṣṣ rubric all concern the interaction of multiple texts, almost always a Prophetic Sunna that indicates a restricted meaning for an apparently unrestricted Qur’ānic verse.\footnote{Lowry, \textit{Early Islamic Legal Theory}, 79.} For al-Shāfiʿī, particularization is one manifestation of the Sunna’s role in explaining the Qur’ān.

In contrast, while al-Ṭaḥāwī often invokes the ‘āmm:khāṣṣ rubric to address Qur’ān-Sunna interactions, he equally envisions particularization between two Qur’ānic texts or two Prophetic \textit{hadiths}.\footnote{Al-Ṭaḥāwī, \textit{Aḥkām}, 1.65; \textit{Mushkil}, 8.294-295.} Here, as in all other areas of his hermeneutics, al-Ṭaḥāwī’s theory of how revealed texts act upon each other is source-neutral: none of al-Ṭaḥāwī’s harmonization techniques distinguish between the functions of Qur’ān and Qur’ān-Sunna interactions.
Sunna, in keeping with his understanding of the Qurʾān and Sunna as nearly equal and not always entirely ontologically distinct sources. Further, the range of hermeneutical procedures that al-Ṭahāwī invokes using the language of ʿāmm and khāṣṣ is much broader than that envisioned by al-Shāfiʿī, for whom law-related examples of ʿāmm and khāṣṣ exclusively relate to the interaction between two revealed texts. At different times, al-Ṭahāwī argues that an apparently unrestricted text may be known to be restricted through consensus, analogy or the practice of a Companion.

Hints of a Formalist Understanding of ʿĀmm and Khāṣṣ

Among the most crucial developments marking the transition from the formative period of Islamic legal theory to the mature uṣūl tradition was a movement toward legal formalism, the claim that language fully encodes meaning. Although the uṣūl tradition never committed itself to an exclusively formalist hermeneutic, even the earliest preserved uṣūl works from the second half of the 4th/10th century display a concern with establishing the meaning and legal force of certain particles and grammatical forms. The identification of linguistic forms associated with general and particular meaning

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748 See Chapter One, “Qurʾān and Sunna,” pp. 73-85. Although I have not located any passages in which al-Ṭahāwī argues that a Qurʾānic verse particularized a Prophetic ḥadīth, his hermeneutics as a whole strongly suggests that he would accept it at least as a theoretical possibility.

749 Al-Ṭahāwī, Ahkām, 1.65, 1.78, 1.191, 1.294; Mushkil, 5.181, 8.295, 15.339.


751 See Lowry, Early Islamic Legal Theory, 366; Weiss, Spirit of Islamic Law, 64; and Paul Powers, “Finding God and Humanity in Language: Islamic Legal Assessments as the Meeting Point of the Divine and Human,” in Islamic Law in Theory, ed. A. Kevin Reinhart and Robert Gleave (Leiden: Brill, 2014), 207 on the recognition among legal theorists that the law could not always be discovered in practice simply through the words of revelation.
(ṣiyagh al-ʿumūm wa-l-khuṣūṣ) represents one of the major areas in which legal theorists sought to correlate meaning to grammatical form.

We have seen above that al-Ṭahāwī overwhelmingly portrays the presumption of unrestricted meaning as a hermeneutical principle based on Companion precedent, rather than as a linguistic feature of particular words. Three passages of Sharḥ mushkil al-āthār, however, discuss the scope of terms in ways that prefigure the mature ʿuşūl tradition’s understanding of ʿāmm and khāṣṣ. In the first example, al-Ṭahāwī analyzes a Qurʾānic verse implying that apes and pigs are the descendants of Jews whom God transfigured into animals as a punishment for their disobedience. The verse is in apparent contradiction with a Prophetic ḥadīth stating that transfigured animals do not reproduce. Al-Ṭahāwī’s unnamed interlocutor argues that the use of the definite (maʿrīfa) in connection Q 5/al-Mā`ida:60 (“He made of them apes (al-qirada) and pigs (al-khanāzīr)”) indicates that the verse is talking about the apes and pigs known in his day—that is, the entire class of apes and pigs. If the verse were discussing a limited set of apes and pigs, it would have used the indefinite (nakira).

Al-Ṭahāwī’s response does not directly engage with his interlocutor’s linguistic argument. Instead, he argues that the apparently conflicting texts can be harmonized by positing that God first created apes and pigs (al-qirada wa-l-khanāzīr) when He created other creatures, then later transfigured a disobedient Jewish community into apes and pigs (al-qirada wa-l-khanāzīr). As indicated by the Prophetic ḥadīth, the transfigured animals did not reproduce; the apes and pigs known in al-Ṭahāwī’s day are the

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752 Al-Ṭahāwī, Mushkil, 8.323.
descendants of non-transfigured animals. Although al-Ṭaḥāwī does not comment on his opponent’s assertion that the presence of the definite article indicates all apes and pigs, his own use of the definite article in referring both to the apes and pigs present in his own day and to the subset of transfigured animals suggests that he does not accept his interlocutor’s identification of definite plural nouns with general reference.

The second example explains the obscure Prophetic hadith, “The infidel eats into seven guts, while the believer eats into a single gut.” Al-Ṭaḥāwī understands this hadith as an observation about the behavior of a single individual, rather than a commentary on believers and infidels in general. He offers three arguments in support of his position. First, we know that some believers eat a great deal, while some infidels eat very little, and so this hadith is not an accurate description of reality if construed to refer to all infidels and all believers. Second, more extended versions of the hadith clarify that the Prophet was speaking about a certain gluttonous infidel who began to eat more moderately after converting to Islam.

As his final argument, al-Ṭaḥāwī observes that the expression used to refer to the believer and infidel is grammatically definite (al-makhraj makhraj al-maʿrifa), indicating that only a single individual was intended. In support he adduces Q 94/Al-Sharḥ:5 (“With the hardship there is ease”) as an example of another verse in which a singular definite noun refers to a single instance of the noun. He continues

What we said above holds true for everything whose expression is definite, unless it contains some indication (dalāla) that the intended meaning is more than one
individual. In that case it is diverted to that [intent], and its value (*ḥukm*) is that of the indefinite (*nakira*). An example of this is Q 103/1-3 ("By the afternoon, man (*al-insān*) is indeed in a state of loss – Though that will not be the case with those who believe and do good works"). It is known by this that the class (*al-jins*), not the individual (*al-insān al-wāḥid*), was intended.\(^{757}\)

Al-Ṭahāwī argues here that, as a general rule, a singular definite noun should be understood as referring to a single individual. However, the presence of the relative pronoun "those" (*alladhīna*) within the same verse referring back to *al-insān* makes it clear that the intent here is the entire class of humans. At the same time, he intimates in his passing reference to the "value of the indefinite" (*ḥukm al-nakira*) that plural indefinite nouns refer generally to all members of their class.

This chapter thus contains two prescriptive interpretive rules based on the grammatical properties of nouns, while the previous example implied al-Ṭahāwī’s rejection of another grammar-based interpretive rule suggested by his interlocutor.

Although al-Ṭahāwī does not employ any terms derived from the roots ‘-m-m or kh-ṣ-ṣ when stating these interpretive rules, his discussions of the relationship between the use of the definite article and the scope of reference of a noun clearly map onto mature *uşūl* debates identifying the linguistic forms that indicate general and restricted meanings (*ṣiyagh al-ʾumūm wa-l-khuṣūṣ*).

In contrast, in the third and final example al-Ṭahāwī does employ a derivative of the root ‘-m-m when discussing the relationship between the definite article and the scope of reference of a noun. In this passage al-Ṭahāwī rejects Saʿīd ibn al-Musayyab’s claim that *hiba*, a form of marriage in which a woman offers herself to a man, was permissible only for the Prophet. As evidence, he examines the language of a Companion *ḥadīth* in

\(^{757}\) Al-Ṭahāwī, *Mushkil*, 5.258.
which ʿĀʾishah exclaims, “doesn’t a woman feel ashamed to present herself to a man
without a dowry?” Al-Ṭaḥāwī argues that

[ʿĀʾishah] did not intend that man to be the Prophet, but rather included (ʿammat
bihi) all men (al-rijāl). That is because her expression was grammatically
indefinite (kharaja min-hā makhraj al-nakira), and the indefinite includes
everyone in its scope (al-nakira taʿammu al-nās jamīʿan).758

Here al-Ṭaḥāwī reaffirms the prescriptive interpretive rule established in the previous
example: indefinite nouns include all members of their class. He states this rule using the
verb ʿamma (to include, comprise). This usage appears non-technical, in contrast to al-
Ṭaḥāwī’s fairly consistent use of ʿāmm and khāṣṣ as technical terms referring to the
meaning, rather than the grammatical form, of a revealed text, as discussed in the
previous section of this chapter.

Nonetheless, the appearance of these linguistic discussions in Sharḥ mushkil al-
āthār represents a significant departure from al-Shāfiʿī and al-Ṭaḥāwī’s teacher al-
Muzanī, who did not employ technical terminology from the field of Arabic grammar in
their discussions of hermeneutics. Further, these chapters may reveal an important stage
in the transition between the formative understanding of ʿāmm and khāṣṣ as a
hermeneutical procedure in which texts act upon each other, and the mature ʿusūl
conception of ʿāmm and khāṣṣ as linguistic properties of words. Given that al-Ṭaḥāwī
introduces these grammar-based interpretive principles without using the technical terms
ʿāmm and khāṣṣ, and further that his own conception of ʿāmm and khāṣṣ is not based on
linguistic form, it seems plausible that the linguistic forms theorists label ʿāmm and khāṣṣ
were in fact originally debated independently of the ʿāmm:khāṣṣ umbrella, and only later

758 Al-Ṭaḥāwī, Mushkil, 15.340-341.
subsumed under it. That is, al-Ṭahāwī may represent a period in which jurists were debating implications of linguistic form for determining meaning, but the rules they proposed were not yet firmly associated with the grammatical language of ʿāmm and khāşṣ.

Further, in affirming the unrestrictedness of indefinite nouns, al-Ṭahāwī is in agreement with the later usūl tradition. However, he opposes later jurists both in his rejection of the claim that definite plural nouns refer to all members of their class and in his own assertion that definite singular nouns refer to a single individual. The explanation for these discrepancies may lie in the diverging goals of al-Ṭahāwī and later theorists. For legal theorists, the assertion that many linguistic forms indicate generality in the absence of other evidence functions to maximize the legal effects of revealed texts. Further, usūl texts are more interested in showing that language has a systematic structure than in individual problems of legal interpretation. In contrast, al-Ṭahāwī’s task in Sharḥ mushkil al-āthār is the harmonization of specific texts, which he often achieves by restricting the meaning of a problematic term to a single individual. For his purposes, it is not useful a priori to assign unrestricted meaning to the maximum number of classes of nouns, because his harmonization efforts require considerable interpretive flexibility.

Other Evidence for Legal Formalism: Amr and Nahy (Command and Prohibition)

Al-Ṭahāwī’s argument for the priority of unrestricted meaning concludes his presentation of a hermeneutical framework for jurists in the introduction to Aḥkām al-Qurʾān. In what remains of this chapter, I will further address two issues raised by my

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759 Kamali, Principles of Islamic Jurisprudence, 146; Hallaq, History of Islamic Legal Theories, 45.
discussion above: 1) evidence for legal formalism in al-Ṭaḥāwī’s thought beyond the examples considered already concerning the scope of nouns; and 2) the relationship between equivocal (mutashābih) texts, Prophetic tawqīf (instruction) and ijtihād (legal interpretation).

I observed above that a movement toward legal formalism was one of the most crucial developments marking the transition between formative and post-formative legal theory. Authors of mature uṣūl works dedicate considerable space to determining the relationship between different types of linguistic forms (ṣiyagh, sing. sīgha) and meaning. Above, we considered evidence for al-Ṭaḥāwī’s early movement toward a linguistic understanding of ʿāmm and khāṣṣ, a major topic of formalist debate in later theory works. In addition, legal theorists devoted particular attention to the imperative as the sole or most characteristic grammatical form encoding the divine commands and prohibitions that constitute Islamic law. Because of the importance of command and prohibition in later uṣūl works, I examine al-Ṭaḥāwī’s approach to this topic to determine the extent to which he is moving toward the formalist conception characteristic of later theorists.

Already in al-Jaṣṣāṣ’s Fuṣūl we find an extended theoretical consideration of the imperative. There is a useful ambiguity for jurists in the Arabic terms related to command and prohibition; amr can mean both command and imperative, while nahy means both prohibition and negative imperative. Like later theorists, al-Jaṣṣāṣ addresses a variety of issues arising from the identification of God’s commands with the imperative form, including the range of observed meanings of the imperative; its literal meaning; whether the term amr can properly be applied to an inferior speaking to a superior; whether a
command must be performed immediately or may be delayed; whether the commanded action must be performed repeatedly; what is required when a command suggests a choice of actions; whether a repeated command must be performed repeatedly; whether non-believers are legally responsible for performing commanded actions; and whether prohibited actions may still be legally effective.\footnote{Al-Jaṣṣāṣ, al-Fuṣūl, 1.280-348. For the full range of topics discussed under the heading of amr in mature usūl works, see Weiss, Search for God’s Law, 322-381; Zysow, Economy of Certainty, 60-75; Kamali, Principles of Islamic Jurisprudence, 187-201; Hallaq, History of Islamic Legal Theories, 47-58; and Ahmad, Structural Interrelations of Theory and Practice, 108-114. Bedir (“Early Development of Ḣanafī Usūl al-Fiqh,” 53-102) discusses at length the definition of amr, its legal consequences, and the question of repeated performance as addressed in the earliest Ḣanafī usūl al-fiqh works.}

In contrast, while jurists of the formative period understood scriptural commands and prohibitions to be the foundation of the law, they were concerned with the meaning rather than the grammatical form of God’s commands. In the Risāla, al-Shāfi’ī sets out a two-part theory of nahy that distinguishes between broad prohibitions which may have narrow exceptions indicated elsewhere in revelation, and more limited prohibitions establishing restrictions on otherwise permitted activities.\footnote{Lowry, “Reception of al-Shāfi’ī’s Concept of Amr and Nahy in the Thought of His Student al-Muzanī,” 132-140; Lowry, Early Islamic Legal Theory, 134-142. Al-Shāfi’ī does not offer a theory of amr. Jackson concurs that al-Shāfi’ī is not formalist in his treatment of command, prohibition and other topics, and further makes the important argument that formalism devalues the linguistic insights of native Arabic speakers, a move at odds with al-Shāfi’ī’s defense of the special interpretive powers of the Arabs at a time when Islam was losing its exclusively Arab character (“Fiction and Formalism,” 186-190).} The discussion of nahy is framed as a problem specific to interpreting hadīth; Lowry argues that al-Shāfi’ī’s major concern is harmonizing apparently conflicting divine commands.\footnote{Lowry, “Reception of al-Shāfi’ī’s Concept of Amr and Nahy in the Thought of His Student al-Muzanī,” 133.} His student al-Muzanī offers a considerably more complex categorization of both amr and nahy in his Kitāb al-Amr wa-l-nahy. In addition to arguing that commands and prohibitions may be
restricted or unrestricted in both Qurʾān and Sunna, he also notes that commands may indicate mere permission, while prohibitions may signify discouragement.\(^\text{763}\)

Although al-Ṭahāwī was the student of al-Muzanī before he affiliated himself with the Ḥanafīs, he neither addresses *amr* and *nahy* in the theoretical introductions to his extant works nor offers anything approaching the complex interaction of sources and hermeneutical rubrics envisioned by al-Muzanī. Where al-Ṭahāwī does offer brief theoretical statements about *amr* and *nahy* in the course of discussing discrete legal questions, his ideas anticipate the treatment of *amr* and *nahy* in mature legal theory much more than they resemble those of his predecessors al-Muzanī or al-Shāfīʿī. While I will argue that al-Ṭahāwī is not committed to a formalist understanding of *amr* and *nahy* in which meaning is determined by grammar, his discussion suggests that formalist ideas were in circulation in his time.

Perhaps the most important difference between al-Muzanī and al-Ṭahāwī is that al-Ṭahāwī explicitly identifies commands and prohibitions with the grammatical imperative. In two chapters of *Sharḥ mushkil al-āthār* and one chapter of *Aḥkām al-Qurʾān*, he argues that a dispute over the meaning of a Qurʾānic verse or a ḥadīth hinges on whether a certain verb is understood as a divine command or a simple declaration, a distinction which is known through the use of the jussive (*majzūm*) to indicate an imperative or the indicative (*marfūʿ*) to show predication.\(^\text{764}\) The apparent meaning (*zāhir*) of a jussive verb, we learn, is a command, an argument al-Ṭahāwī supports by citing two Qurʾānic verses employing the imperative: Q 96/ al-ʿAlaq:19 (“Do not obey

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\(^{763}\) Lowry, “Reception of al-Shāfīʿī’s Concept of *Amr* and *Nahy* in the Thought of His Student al-Muzanī,” 140-146.

him (lā tuṭiʿhu), but prostrate yourself and draw near”) and Q 76/al-Insāna:24 (“Do not obey (lā tuṭi`) any ungrateful one or any sinner among them”).

Interestingly, both verses in fact concern negative imperatives, or prohibitions, and yet al-Ṭahāwī labels them amr, a term generally translated as command. Likewise, the disputed hadīths and Qur’ānic verse in the chapters under discussion also concern negative imperatives, which al-Ṭahāwī again labels amr. Al-Ṭahāwī’s consistent use of the term amr to indicate imperatives and negative imperatives as well as commands and prohibitions in these passages suggests that he is using the term to designate the grammatical category of jussive verbs, rather than simply referring to the functions of commanding and prohibiting. That is, for al-Ṭahāwī, meaning has become linked to grammatical form.

However, while al-Ṭahāwī may conceive of divine commands and prohibitions in terms of their grammatical form, grammar does not provide sufficient information to determine meaning. Like al-Muzanī, al-Ṭahāwī recognizes that amr does not always indicate absolute obligation. In Aḥkām al-Qur’ān, al-Ṭahāwī presents a tripartite typology of amr, observing that God’s commands may indicate obligation (ījāb), the recommendation and urging of pious acts (al-nadīb wa-l-ḥadd ʿalā al-khayr) or the permissibility of something that had previously been prohibited (ibāḥat mā qad kāna hazarahu qabla dhālika). Each of the three possibilities is followed by two Qur’ānic proof texts illustrating the relevant use of the imperative. In other chapters, al-Ṭahāwī

\[\text{765} \text{ Al-Ṭahāwī, Mushkil, 4.97.} \]

\[\text{766} \text{ To illustrate the imperative meaning obligation, al-Ṭahāwī adduces Q 5/āl-Māʾīda:92 (“Obey (aṭīʿū) God and obey (aṭīʿū) the messenger”) and Q 2:110 (“Perform prayer (aǧīmū al-salāt) and pay alms (āṭū al-zakāt”)}; for the imperative indicating the recommendation of pious acts, he adduces Q 24/al-Nūr:33.}\]
discusses an additional possible meaning of the imperative: the threat whose apparent meaning (ẓāhir) is a command (amr) and whose true meaning (bāṭin) is a prohibition (nahy). Similarly, he analyzes Q 17/al-Isrā':64 (“And startle with your voice any of them you can”) by stating that “its linguistic form (lafẓ) is the form of a command, and its true meaning is a prohibition and a threat.”

Al-Ṭahāwī’s use of the term lafẓ (linguistic form) in this passage anticipates later theorists’ emphasis on the lafẓ or ṣīgha (wording) of particular grammatical forms and provides further evidence that al-Ṭahāwī understands amr to be a grammatical, and not a purely semantic, phenomenon.

Like al-Ṭahāwī, theorists of the mature uṣūl tradition would discuss a range of possible meanings of the imperative. In addition to the four possibilities envisioned by al-Ṭahāwī in his hermeneutical works, al-Jaṣṣāṣ argues that the imperative can express guidance (irshād) or a rebuke and assertion of powerlessness (al-taqrīʿ wa-l-taʿjī).

Unlike al-Ṭahāwī, however, jurists of the mature uṣūl tradition were concerned with establishing a baseline meaning of amr in a way that would allow them confidently to

767 Al-Ṭahāwī, Maʿānī, 4.320; Mushkil, 11.218. Al-Ṭahāwī employs this formulation to explain Qurʾānic statements such as “do what you wish” (e.g., Q 41/Fuṣṣilat:40).
768 Al-Ṭahāwī, Mushkil, 4.198. See also Mushkil, 13.71-72 on a ḥadīth whose apparent meaning is a command and whose true meaning is a rebuke.
769 In many passages, it is difficult to tell whether al-Ṭahāwī uses amr to mean a command or an imperative. However, the fact that he very clearly links amr to jussive verbs in some passages indicates that it is reasonable to think that his discussion of ṣīgha concerns amr as an imperative, and not merely a command. Further, as argued above, his use of the term amr to refer to both imperatives and negative imperatives indicates that he has a grammatical function in mind.
770 Al-Jaṣṣāṣ, al-Fuṣūl, 1.280-281. The latter type explains God’s use of the imperative to express the inimitability of the Qurʾān in Q 10/Yūnis:38 (“Then bring a sūra like it; and call on those you can apart from God, if you are truthful”). Al-Ṭahāwī also mentions amr as guidance (irshād) in the introduction to his contract formulary (al-Ṭahāwī, Function of Documents in Islamic Law, 1).
derive law from scripture. Al-Jaṣṣāṣ, citing al-Karkhī, argues that the literal meaning of amr is obligation, and other meanings are figurative (majāz). His argument is based on linguistic and rational considerations: every language must have a linguistic form (ṣīgha) originally coined for designating obligation, just as it must have forms to designate predication (khabar), interrogatives (istiḥbār), and generality (ʿumūm). His claim that the only literal meaning of amr is obligation would become the majority position of the Ḥanafī school. Other jurists argued that recommendation or permission was the primary meaning of amr, that amr had multiple primary meanings, or that it was not possible to know the primary meaning of amr, a position labeled waqf (hesitation).

Like later theorists who held that it is not possible to know the primary meaning of amr, al-Ṭaḥāwī does not indicate a literal meaning for the imperative in his extant works. However, where jurists of the mature usūl tradition arrived at waqf as the result of theological, pragmatic or linguistic considerations that prevented them from assigning a primary meaning, al-Ṭaḥāwī does not attempt to establish one. The question does not appear to be pressing for him in the way it would be for later jurists, suggesting that for al-Ṭaḥāwī, the association of the imperative with a command had not yet resulted in the formalist conviction that grammar should be fully determinative of meaning.

Al-Ṭaḥāwī does appear to be familiar with the concept of exclusively associating amr with obligation, however; in several passages he feels it necessary to state that amr can have meanings other than obligation. In these passages, as in those discussed above,

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771 Al-Jaṣṣāṣ, al-Fuṣūl, 1.281.
772 Zysow, Economy of Certainty, 63-64.
773 Zysow provides an excellent overview of the various paths by which different jurists and theologians arrived at the waqf position (Economy of Certainty, 60-74).
al-Ṭahāwī’s evidence consists solely of Qur’ānic verses which he holds self-evidently use amr to express a meaning other than obligation. However, it is not clear whether he is countering other jurists who were already arguing in his time that the primary meaning of amr is obligation, or whether he is merely addressing general perceptions about the use of amr that do not yet rise to the level of a clearly articulated legal formalism. In either case, it is clear that al-Ṭahāwī was not constrained by the formalist assumption that grammar should or could be fully determinative of meaning, an assumption that underlies discussions of the meaning of amr in mature usūl works, whether jurists were able to arrive at a primary meaning for the term or not.

Beyond considering the range of possible meanings of the grammatical amr, al-Ṭahāwī does not address any of the other issues concerning amr that were so pressing for later theorists. The only related theoretical questions he treats concern the relationship between commands, legal responsibility and the consequences of actions: he argues that it is permitted to disobey God’s command if obeying will lead to doing something prohibited, and that, while God’s prohibitions are absolute, His commands are dependent on the capacity of legal actors to obey. These questions concern theology rather than the derivation of law from language.

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774 E.g., al-Ṭahāwī, Aḥkām, 1.152-153, 1.181; Mushkil, 6.206.
775 See p. 243 above for the topics covered in the chapter on amr in al-Jaṣṣāṣ’s al-Fuṣūl.
776 Al-Ṭahāwī, Mushkil, 2.25-26, 13.247. He also argues in Aḥkām, 2.53-54 that the revelation of a prohibition does not imply that the thing prohibited was previously permitted, but this is an argument about the nature of revelation, rather than about prohibitions themselves.
777 Al-Ṭahāwī neither offers a typology of nahy nor explicitly states as a general principle that not all uses of the nahy mean absolute prohibition. He does, however, argue in a number of chapters that a particular nahy from the Prophet was not meant as a total prohibition. Examples include hadīths disapproving of going to a mosque smelling of onions or garlic, having sexual intercourse with a pregnant woman, selling dogs, giving unequal gifts to one’s children, or breeding donkeys with horses (Maʿānī, 3.271, 4.89, 4.238; Mushkil, 9.284-286, 12.77-83). These chapters bear some resemblance to al-Shāfiʿī’s second category of
To some extent, al-Ṭahāwī’s disinterest in establishing formalist rules for the legal
effects of the imperative must be understood as a consequence of his orientation toward
practical hermeneutics. Like al-Shāfiʿī, al-Ṭahāwī is primarily concerned with
demonstrating that texts of revelation, including those containing commands and
prohibitions, are not in conflict with each other. While formalist discussions of
grammatical forms and particles in legal theory texts make a strong theological claim that
God’s will is knowable through the medium of language, such rules are likely to be less
useful for a jurist engaged in removing apparent contradictions from texts, an enterprise
where considerable interpretive flexibility is called for. The theory construction of the
legal theorists has different requirements than practical exercises in interpretation, even if
exercises such as those of al-Ṭahāwī reveal an underlying theory. It is thus important to
note that in every case cited above in which al-Ṭahāwī discusses the possible meanings of
the imperative, he does so not in order to establish a primary meaning, as would later
jurists, but in order to claim interpretive flexibility. Al-Ṭahāwī argues that the imperative
has more meanings than simply obligation, and so his interpretation of the text is not in
fact constrained by grammar.

nahy (narrow prohibitions on generally permissible activities) in that they tend to concern matters of
etiquette. Al-Shāfiʿī views the contravention of such prohibitions as a lesser transgression than violating the
first category of prohibition, but still a sin (see Lowry, Early Islamic Legal Theory, 136). In contrast, al-
Ṭahāwī appears to categorize such prohibitions as forming part of the body of Prophetic statements that do
not constitute revelation, a topic discussed in Chapter One, “Qurʾān and Sunna.” Concerning the selling of
dogs, he suggests that the Prophet’s prohibition may not mean that this action is prohibited in the way that
things are prohibited in the Shariʿa (ḥarām ka-l-ashyāʾ al-muḥrama bi-l-sharīʿa), suggesting that not all of
the Prophet’s prohibitions fall within the scope of religious law (Mushkil, 12.77). In another chapter, he
argues that the Prophet’s nahi on giving unequal gifts to one’s children was merely by way of advice
(mashwara). Thus, al-Ṭahāwī appears to classify this form of nahi as falling outside the scope of
revelation, where al-Shāfiʿī views it as fully within religious law.
Ijtihād (Legal Reasoning)

In the preceding sections we have been concerned with unrestricted and restricted meaning (ʿamm:khāṣṣ) as well as apparent and non-apparent meaning (zāhir:bāṭin), two rubrics which the introduction to Aḥkām al-Qurʾān portrays as crucial for understanding equivocal (mutashābih) texts. As mentioned previously, however, a chapter of Sharḥ mushkil al-āthār also explicitly connects the interpretation of equivocal texts to a third hermeneutical procedure: ijtihād raʾyihi (legal reasoning). In this chapter, al-Ṭāḥāwī is asked by an unnamed interlocutor whether the existence of mutashābih texts prevents judges from ruling on the matters contained in them. Al-Ṭāḥāwī replies:

Our answer is that it is incumbent upon judges to engage in legal reasoning (ijtihād raʾyihi) and then to rule based on the results of that reasoning, as God’s Messenger commanded them.

In illustration of this command, al-Ṭāḥāwī adduces a Prophetic hadīth stating that judges receive two rewards if they reach the objectively correct answer (ṣawāb) through their ijtihād, but still receive one reward if they engage in legal reasoning but fail to reach the objectively correct answer. Al-Ṭāḥāwī continues:

This indicates that judges have a duty to use legal reasoning in their rulings, and that legal reasoning might reach either an objectively correct answer (ṣawāb) or an objectively incorrect answer (khaṭaʿ). They are not charged (yukallafū) with reaching an objectively correct answer, but are rather charged with engaging in legal reasoning.778

The effect of this discussion is to draw a direct connection between the role of jurists and God’s division of revelation into the equivocal and unequivocal. In addition, it limits the scope of a jurist’s legal reasoning to a subset of revealed texts—those that are equivocal.

778 Al-Ṭāḥāwī, Mushkil, 2.224.
Al-Ṭahāwī also addresses *ijtihād* in a number of other passages of *Sharḥ mushkil al-āthār* and *Sharḥ maʿānī al-āthār*, albeit without using the language of *muḥkam* and *mutashābih*. Instead, he frequently sets up a dichotomy between *ijtihād* and *tawqīf* (instruction). This term, which we have already encountered in Chapter Two, “Companion and Successor Ḥadīths,” is closely related to the *muḥkam:mutashābih* dichotomy. When God expresses His intention fully in a revealed text, it is *muḥkam*; all other revealed texts are *mutashābih*. *Mutashābih* texts may then be further subdivided into two categories: those in which God’s intentions can only be known through a subsequent *tawqīf*, and those concerning which jurists may exercise their *ijtihād*. As we saw above, al-Ṭahāwī holds that an occurrence of *tawqīf* may be known or inferred from a variety of sources, including a Qur’ānic verse, a Prophetic Ḥadīth, scholarly consensus, scholarly practice, or the opinion of a Companion or Successor on matters where *ijtihād* would be inappropriate.

Al-Ṭahāwī argues that *ijtihād* is permissible not only in cases where no *tawqīf* exists, but also when an individual jurist is simply unaware of its existence, usually because he does not know of a certain Prophetic Ḥadīth. He emphasizes, however, that *tawqīf* is superior to *ijtihād*, and that the results of *ijtihād* must be abandoned if its practitioner subsequently learns of a relevant instance of *tawqīf*. While *muḥkam* and *tawqīf* are closely related ideas, they are also distinct in an important way. As we saw in

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780 Al-Ṭahāwī, *Mushkil*, 10.278, 8.266. *Mushkil* 13.58 describes the same situation without using the term *tawqīf*. See also *Mushkil*, 9.209 for the dichotomy between instruction (in this case using the active Form I verb, *waqafaʿ alā*) and *ijtihād*.
781 Al-Ṭahāwī holds up the examples of Companions engaging in *ijtihād* before subsequently learning of a relevant *tawqīf* as evidence for the general permissibility of *ijtihād*, in keeping with his tendency to look to the Companions as the model for later jurists.
the first section of this chapter, al-Ṭahāwī understands *muḥkam* as a description of God’s use of language, and whether or not that language conveys God’s intent. In contrast, *tawqīf* refers merely to the act of instruction—that is, to the existence of revelation concerning a certain matter—without making any claims about language, signification, or intent. In addition, there is an important structural difference between *muḥkam* and *tawqīf*: *muḥkam* implies a single text, while *tawqīf* requires one text (or other form of revelational authority) to act upon another.

Despite these differences, al-Ṭahāwī’s division of Qur’ānic verses and Prophetic ḥadīths into *muḥkam* texts whose meaning God has made clear and *mutashābih* texts which must be interpreted through legal reasoning, is echoed by his two-tiered system of authority for Prophetic ḥadīths, post-Prophetic ḥadīths, and consensus based upon whether he holds them to represent revelatory instruction or juristic legal reasoning. Together, these two dichotomies form a binary structure of the law that cuts across traditional categories of legal sources. At its heart, al-Ṭahāwī’s binary vision of the law is concerned with defining the role of jurists and delimiting the permissible scope of legal reasoning by claiming that some areas of the law and texts of revelation simply are not subject to juristic reasoning.

In all of his discussions of *ijtihād*, al-Ṭahāwī consistently emphasizes the same ideas that we have already encountered in the passage from *al-Mukhtaṣar* analyzed above concerning judges’ use of *ijtihād*. There, he asserted both that there is an objectively correct answer to every legal question, and that jurists’ *ijtihād* is praiseworthy regardless
of whether they reach that objectively correct answer.\textsuperscript{782} Versions of this argument appear in every passage in which al-Ṭahāwī addresses *ijtihād*, suggesting that it represents an important polemical concern for him.\textsuperscript{783} Indeed, this dispute gives rise to one of the very few occasions on which al-Ṭahāwī directly names an opponent on a question of legal theory. After stating his own theory of *ijtihād*, al-Ṭahāwī writes:

> Others have exceeded the proper bounds and claimed that anyone who possesses the tools of *ijtihād* and rules according to them will reach the truth that would have been stated by the Qurʾān, were there a revelation on this matter. The proponents of this argument are refuted by undeniable evidence. One of those who went too far in this was Ibrāhīm ibn Ismāʿīl ibn ʿUlayya.

Ibn ʿUlayya (d. 218/834) supports a strong version of juristic infallibilism—the idea that every mujtahid is correct (*kull mujtahid muṣīb*).\textsuperscript{784} In Ibn ʿUlayya’s view, this principle means that every jurist will reach the objectively correct answer. Conversely, advocates of the strongest versions of juristic fallibilism held that jurists are not rewarded for or justified in undertaking *ijtihād* when that *ijtihād* does not reach the objectively correct answer. In his more moderate claim that an objectively correct answer exists, but the

\textsuperscript{782} Questions concerning who is authorized to undertake *ijtihād* are almost entirely absent from al-Ṭahāwī’s hermeneutical works; in two passages of *Sharḥ mushkil al-āthār*, he mentions that *ijtihād* is always praiseworthy when undertaken by those who possess its tools (*ālāt*) without further specifying the nature of those tools (*Mushkil*, 9.207, 13.40). In *Sharḥ maʿānī al-āthār* he asserts that “*ijtihād* is permissible to everyone” (*al-ijtihād lil-nās jamīʿan*), although he would presumably qualify this statement by limiting it to those possessing the tools mentioned above (*Maʿānī*, 3.237).

Likewise, al-Ṭahāwī does not know the division of jurists into the ranks of mujtahids and mugallids which function to maintain school authority in the later madhhab tradition and to project that authority back onto earlier centuries. For al-Ṭahāwī, anyone may perform *ijtihād* as long as he possesses the correct tools, and his understanding of himself as a follower of Abū Ḥanīfa and all other Ḥanafis on questions where his *ijtihād* leads him to a different conclusion. Al-Ṭahāwī would not recognize himself in later Ḥanafi biographers’ assignment of him to the third rank of mujtahids, qualified to exercise *ijtihād* in questions not addressed by the Ḥanafi founders (e.g., Qinālīzādah, *Tabaqāt al-Ḥanafiya*, 1.148-149). Like the jurists of the 2nd/8th century, al-Ṭahāwī understands *taqlīd* as the imitation of the Companions only.


\textsuperscript{784} Al-Ṭahāwī, *Mushkil*, 13.40. Ibrāhīm ibn ʿUlayya was a Baṣrī jurist and theologian who settled in Egypt, where his ideas were influential. On the debates between Ibn ʿUlayya and al-Shāfiʿī, see El Shamsy, *Canonization of Islamic Law*, 55-57.
jurist is not tasked with finding it, al-Ṭaḥāwī upholds a doctrine associated with both al-Shāfiʿī and early and later Ḥanafīs.  

Surveying the discussions of *ijtihād* that appear in many chapters across al-Ṭaḥāwī’s hermeneutical works, we may observe that they fall into two categories. In one group of chapters, a Prophetic *ḥadīth* bearing some connection to the concept of legal reasoning leads al-Ṭaḥāwī to justify the practice of *ijtihād*. His discussion of *ijtihād* in response to the Prophetic *ḥadīth* about muḥkam and mutashābih, already discussed above, is one example of this type of chapter. A similar discussion appears in response to a Prophetic *ḥadīth* stating that judges who judge based on ignorance will go to hell. An unnamed interlocutor suggests that this *ḥadīth* refutes the validity of *ijtihād*, but al-Ṭaḥāwī responds that humans are not charged with more than they can achieve (*lam yukallifnā mā lā nutīq*), and it is not possible for humans to be certain of achieving an objectively correct answer through *ijtihād*. Therefore, this *ḥadīth* does not threaten hellfire for judges who employ *ijtihād* appropriately but fail to reach the objectively correct answer. In the course of refuting his interlocutor, al-Ṭaḥāwī once again reiterates the major points of his theory of *ijtihād* already encountered in the previous example.

In contrast, in the second type of chapter on *ijtihād* al-Ṭaḥāwī asserts its praiseworthiness in order to account for the actions of one or more Companions. Two such chapters concern occasions on which Companion committed violence in apparent direct violation of a Prophetic *ḥadīth*. Al-Ṭaḥāwī does not argue that no rule existed on

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the matter, but rather that the Companions understood themselves to be employing an appropriate form of *ijtihād*. Their actions should therefore be considered praiseworthy, even though they were in fact in error.\(^{788}\) In the first such chapter, the Companion Usāma ibn Zayd kills an infidel combatant despite the man’s profession of the *shahāda*, on the grounds that his last-minute conversion to Islam does not lift the punishment already due to him. The Prophet clarifies that Usāma was incorrect in his legal reasoning; however, al-Ṭahāwī notes, Usāma was permitted to use his *raʾy* on this matter, and therefore the Prophet did not blame him for the unjust killing.\(^{789}\) In the second chapter, al-Ṭahāwī appeals to *ijtihād* in order to reconcile the intra-Muslim violence of the Battle of the Camel with a Prophetic *hadīth* stating that whenever one believer takes up arms against another, both will be condemned to Hell.\(^{790}\) In a related example, al-Ṭahāwī argues that the actions of Abū Bakr and ʿUmar in a certain Companion *hadīth* should not be taken as binding upon later scholars, because they were merely employing *ijtihād*. In the absence of a confirmatory *tawqīf*, their *ijtihād* is no more binding than that of anyone else, and so al-Ṭahāwī feels himself justified in reaching a different conclusion.\(^{791}\)

This second category of chapter on *ijtihād* represents a variation on al-Ṭahāwī’s treatment of the Prophet’s *ijtihād*, analyzed at length in Chapter One, “Qurʾān and Sunna.”\(^{792}\) His discussions of the *ijtihād* of both the Prophet and his Companions serve two functions within his works: first, to account for otherwise inexplicable behavior (readers will recall the Prophet’s prohibition on pollinating date palms, a predictably ill-

^{792}\) E.g., al-Ṭahāwī, *Maʿānī*, 4.270.
advised order which he later excused by observing that he is no farmer—al-Ṭahāwī explains this episode as an example of the Prophet’s permissible but ultimately unsuccessful use of *ijtihād*; and second, to deny that a certain action constitutes a legally binding example. In the latter case, appeals to *ijtihād* effectively serve as a mechanism for harmonizing a Prophetic or Companion *ḥadīth* with another revealed source or with al-Ṭahāwī’s own understanding of the law. Although al-Ṭahāwī does state more than once that *ijtihād* is employed in cases where nothing is found in the Qurʾān, Sunna or consensus, it is notable that none of his examples of *ijtihād* are particularly concerned with filling legal gaps. Instead, his appeals to *ijtihād* serve a primarily harmonizing function.

**Raʾy, Istikhrāj and Istinbāṭ (Legal Reasoning; Derivation)**

The remarks above all pertain to passages in which al-Ṭahāwī explicitly discusses *ijtihād* or *ijtihād al-raʾy*. I now turn to some of the more important terms and techniques which fall under the umbrella of al-Ṭahāwī’s concept of *ijtihād*. *Raʾy, istikhrāj* and *istinbāṭ* are three of al-Ṭahāwī’s most common terms for legal reasoning. In the discussion of post-Prophetic reports in Chapter Two, “Companion and Successor Ḥadīths,” we encountered many examples of an argument that al-Ṭahāwī relies upon to expand the corpus of texts for which he may claim Prophetic authority: a certain

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794 That al-Ṭahāwī considers it necessary to deny the binding authority of Companion *ijtihād* in the same way he denies the binding authority of Prophetic *ijtihād* is testament to the importance of the Companions within his hermeneutics.
796 Modern overviews of *ijtihād* often portray the primary purpose of legal reasoning as filling in gaps in the law as new cases and circumstances arise; e.g., Vikør, *Between God and the Sultan*, 53; Hallaq, *History of Islamic Legal Theories*, 82; Kamali, *Principles of Islamic Jurisprudence*, 468.
apparently non-Prophetic statement—almost always from a Companion—must in fact have been made on the basis of the Prophet’s *tawqīf* (instruction), because the statement is not of a type that may be supported by *raʾ y, istikhrāj* or *istinbāṭ*. This argument contrasts instruction from the Prophet—a form of revelation—with human legal interpretation. Despite his use of multiple terms for legal reasoning, however, what concerns al-Ṭaḥāwī in this argument is not a precise technique represented by each term, but rather the general concept of legal reasoning. This point is confirmed by the fact that al-Ṭaḥāwī uses the three terms singly and in combination when making this argument, in ways that are unrelated to the legal issue at hand.\(^{797}\)

To determine the kind of legal reasoning indicated by each of these terms, then, we must look to passages that show each functioning in context. *Raʾ y* (legal reasoning, a legal opinion) is by far the most common of the three terms, appearing over 150 times in al-Ṭaḥāwī’s hermeneutical works.\(^{798}\) Al-Ṭaḥāwī uses the term to denote both the act and the end result of engaging in *ijtihād*.\(^{799}\) Its distinguishing characteristic is that its results may be opposed by any jurist whose *ijtihād* leads him to a different conclusion.\(^{800}\) Indeed, individual references to *raʾ y* within al-Ṭaḥāwī’s hermeneutical works most often serve the purpose of denying any binding authority to a report containing a legal rule by

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\(^{797}\) For different combinations of *raʾ y, istikhrāj* and *istinbāṭ* in the context of this argument, see *Aḥkām*, 1.186, 1.191, 1.338–339, 1.416, 2.91, 2.135, 2.167, 2.208, 2.227; *Mushkil*, 1.55, 2.284, 3.71, 4.248, 5.426, 6.331, 7.233, 8.347, 9.485, 10.181, 11.374, 12.57, 13.222 and 15.407. Readers will notice that several of these lists contain additional terms related to legal reasoning, such as *qiyās* (analogy), *nazar* (examination) or *darb al-amthāl* (identifying another case as a model); however, these are quite rare in comparison to *raʾ y, istikhrāj* and *istinbāṭ*.

\(^{798}\) This number represents only the noun form, *raʾ y*; just as common is the verb *raʾ ā* in the sense of ‘holding a legal opinion.’

\(^{799}\) For an example of *raʾ y* meaning the process of reasoning, see *Mushkil*, 13.40; for an example of *raʾ y* indicating the result of legal reasoning, see *Aḥkām*, 1.99.

\(^{800}\) Al-Ṭaḥāwī, *Mushkil*, 4.411.
labeling it as merely one person’s conclusion. For example, al-Ṭahāwī regularly follows Companion hadīths with the observation that the rule stated therein is the Companion’s raʾy. 801 This claim permits al-Ṭahāwī to harmonize reports containing contradictory rules by stating that one or both represent raʾy.

Although al-Ṭahāwī denies binding authority to earlier jurists’ raʾy, these denials are not meant to suggest criticism of raʾy or its practitioners. During the 2nd/8th and 3rd/9th centuries, the term raʾy had acquired increasingly negatively connotations among the ahl al-hadīth, traditionists who accused the proponents of raʾy (ahl al-raʾy) of abandoning Prophetic traditions in favor of their own reasoning. 802 Although reliance on raʾy was primarily associated with the proto-Ḥanafī school, al-Ṭahāwī shared with the ahl al-hadīth a commitment to legal argument based on hadīth; he is widely acknowledged as having provided Ḥanafī positive law a basis in hadīth. 803 Despite his commitment to hadīth, however, al-Ṭahāwī does not share in the ahl al-hadīth’s attacks on raʾy as unregulated human reason. Instead, he fully identifies raʾy with ijtihād, an authorized and, indeed, commendable process in which legal reasoning is employed not in competition with revelation, but rather in service to it. Al-Ṭahāwī’s rare criticisms of raʾy

801 Al-Ṭahāwī, Maʿānī, 1.153, 4.122.
802 This accusation is somewhat misleading: like the ahl al-hadīth, the ahl al-raʾy did acknowledge the authority of Prophetic traditions, even if they did not consistently cite them in their legal arguments. However, the ahl al-raʾy also imposed high standards of authenticity on Prophetic reports which led them to reject traditions that the ahl al-hadīth considered valid, and therefore use legal reasoning in cases where the traditionists would not admit it. For a fuller discussion of ahl al-hadīth and ahl al-ray, see Chapter One, “Qurʾān and Sunna,” pp. 56-60.
803 Schacht, Origins of Muhammadan Jurisprudence, 30; Calder, Studies in Muslim Jurisprudence, 66; Sadeghi, Logic of Law Making in Islam, 131n12; El Shamsy, Canonization of Islamic Law, 205.
therefore attack jurists who rely on *raʾy* in situations where it is not authorized, rather than rejecting *raʾy* itself.\footnote{E.g., al-Ṭahāwī, *Mushkil*, 2.182.}

In contrast to *raʾy*, the terms *istikhrāj* (extraction) and *istinbāṭ* (derivation) appear most frequently when al-Ṭahāwī is expressing a binary opposition between *tawqīf* and legal reasoning, as discussed above. Like *raʾy*, *istikhrāj* and *istinbāṭ* are closely related to *ijtihād*; they describe the process of a jurist deriving positive legal rules from revealed sources or from other known rules. In the introduction to *Sharḥ mushkil al-āthār*, for example, al-Ṭahāwī states that one of his objectives is to derive (*istakhraja*) rules of law from Prophetic *ḥadīth*.\footnote{E.g., al-Ṭahāwī, *Mushkil*, 2.182.} When he approves of the results of someone’s legal reasoning, al-Ṭahāwī sometimes praises it as a good (*ḥasan, laṭīf*) *istikhrāj* from a particular source.\footnote{Al-Ṭahāwī, *Mushkil*, 1.6.} Al-Ṭahāwī uses *istikhrāj* and *istinbāṭ* synonymously, sometimes switching between them when describing a single act of derivation.\footnote{Al-Ṭahāwī, *Mushkil*, 8.358, 9.415, 12.371, 14.99.} Broadly speaking, al-Ṭahāwī employs the terms *istikhrāj* or *istinbāṭ* in cases where he explicitly discusses the text or rule upon which a process of legal reasoning is based; if he is merely conveying the result of legal reasoning, he prefers the term *raʾy*. *Iistikhrāj* and *istinbāṭ* are thus not technical terms indicating a specific variety of legal reasoning, but are rather general labels for the process by which jurists derive the law from its sources in the absence of Prophetic *tawqīf*.

\footnote{E.g., al-Ṭahāwī, *Maʿānī*, 3.154. In *Mushkil*, 12.114 he uses them as synonyms.}
Naẓar and Qiyās

While al-Ṭahāwī uses the terms raʿy, istikhrāj and istinbāṭ primarily in reference to others’ acts of legal reasoning, he largely reserves naẓar and qiyās to label his own interpretive endeavors. Naẓar, which had served among early jurists as a general term for systematic reasoning, had already by the time of Ibn Qutayba come to be associated specifically with the systematic reasoning of the speculative theologians (mutakallīmūn) and of the Muʿtazilīs in particular.808 Naẓar in the sense of systematic reasoning was later adopted into the mature uṣūl al-fiqh tradition; al-Jaṣṣāṣ argues in al-Fuṣūl for the obligation to use naẓar to establish matters such as the unity of God and the existence of a wise creator (ṣāniʿ hakīm).809 For al-Ṭahāwī, in contrast, naẓar is always directed toward deriving a legal rule or interpreting a revealed text on the basis of other texts and previously established rules.810 Indeed, naẓar is distinguishable from ijtihād in al-Ṭahāwī’s thought only by the context in which he employs each term: he appeals to ijtihād in all of his theoretical discussions establishing the permissibility of legal reasoning, but he labels his own acts of reasoning naẓar.811

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809 Al-Jaṣṣāṣ, al-Fuṣūl, 2.177-186.
810 Al-Ṭahāwī provides neither a definition nor a theoretical discussion of naẓar in his extant works. My comments here are based on my analysis of the arguments to which he applies the term naẓar.
811 Perhaps the relationship between al-Ṭahāwī’s use of the term naẓar and that of al-Jaṣṣāṣ and other legal theorists is suggested by the connection between naẓar and qiyās in al-Jaṣṣāṣ’s Fuṣūl. In addition to the kind of systematic reasoning that establishes knowledge of the existence of God, al-Jaṣṣāṣ says that naẓar is necessary for jurists to determine the ʿilla (motivating cause) shared by two cases in order to analogize from one to the other in qiyās (Nabil Sheheby, “ʿILLA And QIYĀS In Early Islamic Legal Theory,” Journal of the American Oriental Society 102, no. 1 (1982): 34). The work of determining the ʿilla is thus naẓar. As we will see below, naẓar and qiyās are largely synonymous for al-Ṭahāwī; it is possible that al-Ṭahāwī, too, understands naẓar specifically as the search for the motivating cause behind legal rulings and is applying the term to the whole process of legal reasoning.
Naẓar plays a major role in al-Ṭahāwī’s hermeneutical works; in Sharḥ maʿānī al-āthār, almost every chapter contains a section in which al-Ṭahāwī supports his conclusions by appealing to naẓar. Within the chapters of Sharḥ maʿānī al-āthār and elsewhere in al-Ṭahāwī’s works, naẓar has two major functions. First, it provides a resolution when al-Ṭahāwī is otherwise unable to resolve a conflict between revealed texts or between competing opinions on how a text should be interpreted.\textsuperscript{812} Second, even when al-Ṭahāwī is able to resolve a conflict satisfactorily by other means, he routinely demonstrates that naẓar would have led him to reach the same conclusion.\textsuperscript{813} That is not to say that al-Ṭahāwī claims that the results of legal reasoning are identical to revelation in every case; in a small number of chapters, he notes the conflict between the rule stated in a Prophetic hadīth and the results of legal reasoning, while affirming his own commitment to hadīth.\textsuperscript{814} Nonetheless, the preponderance of chapters in which al-Ṭahāwī confirms a rule found in revelation by appealing to legal reasoning suggests that, overall, al-Ṭahāwī understands the law as a coherent, internally consistent system.

In most passages mentioning naẓar, al-Ṭahāwī simply makes an argument based on legal reasoning without labeling his techniques further.\textsuperscript{815} In other passages, however,

\textsuperscript{812} E.g., al-Ṭahāwī, Mushkil, 4.412, 8.73, 10.108; Maʿānī, 1.113. In this type of chapter, al-Ṭahāwī often introduces his naẓar argument with some variation on the following formula: “since they disagreed on this matter and the reports differ, we resorted to naẓar in order to determine which is the correct opinion” (e.g., Maʿānī, 1.113).

\textsuperscript{813} E.g., al-Ṭahāwī, Mushkil, 2.191, 10.59, 10.118, 10.427, 11.372-373, 12.531. In many chapters, al-Ṭahāwī signals the transition to naẓar by stating that “This is the ruling on this matter by means of āthār. As for naẓar...” (e.g., Maʿānī, 1.31).

\textsuperscript{814} E.g., al-Ṭahāwī, Mushkil, 6.97, 10.15, 11.209; Maʿānī, 1.53. In most of these chapters al-Ṭahāwī refers specifically to the conflict between hadīth and qiyās; for the equivalence of qiyās and naẓar, see below.

\textsuperscript{815} E.g., al-Ṭahāwī, Mushkil, 4.407, 7.162, 8.73, 10.108, 11.195.
he calls his reasoning qiyās. Al-Ṭahāwī does not define qiyās in his extant works, and he makes only a few comments on its proper use: qiyās must be used when no evidence for a question is found in the Qurʾān, Sunna or consensus; qiyās is obligatory for matters on which we do not have tawqīf (instruction); punishments cannot be determined through qiyās, only through tawqīf; linguistic knowledge is not subject to analogy.

These few theoretical statements place some limits on the use of qiyās and affirm that it is to be used in the situations in which al-Ṭahāwī also affirms the use of raʿy and ījīhād.

In the absence of any definition or classification of qiyās, however, we must look to its use in context in order to compare al-Ṭahāwī’s understanding of qiyās to that of other jurists. For this purpose, al-Shāfīʾi’s typology of qiyās serves as a useful starting point. In the Risāla, al-Shāfīʾi identifies three kinds of qiyās: causal analogy, the analogy of resemblance and the a fortiori argument. My analysis of the arguments that al-Ṭahāwī labels qiyās shows that he concurs with al-Shāfīʾi in labeling all of the above arguments qiyās, and also adds a fourth type: the disjunctive syllogism. My analysis further shows that naẓar is functionally equivalent to qiyās for al-Ṭahāwī; every kind of argument that he labels naẓar is also sometimes called qiyās, and vice versa.

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816 The term qiyās is often translated as ‘analogy’ (e.g., Kamali, Principles of Islamic Jurisprudence, 2). However, for many jurists, including al-Ṭahāwī, qiyās encompassed a number of non-analogical arguments, and only certain types of analogy constituted permissible qiyās. For that reason, I leave the term untranslated here. On the meaning of qiyās, see Wael Hallaq, “Non-Analogical Arguments in Sunni Juridical Qiyās,” Arabica 36, no. 3 (1989): 286-289.
817 Al-Ṭahāwī, Mushkil, 10.142; Mushkil, 15.230 mentions Qurʾān and Sunna only.
818 Al-Ṭahāwī, Mushkil, 8.427.
819 Al-Ṭahāwī, Maʿānī, 3.152. It is generally held among jurists that punishments, enumerations of quantities and basic ritual matters cannot be the basis of analogy.
820 Al-Ṭahāwī, Ahkām, 1.240.
821 Al-Shāfīʾi, Risāla, 16, 238. On al-Shāfīʾi’s discussion of qiyās, see Lowry, Early Islamic Legal Theory, 149-163; Schacht, Origins of Muhammadan Jurisprudence, 122-126; Hallaq, History of Islamic Legal Theories, 29.
In some passages, al-Ţahāwī’s appeals to *qiyās* and *naẓar* take the form of causal analogy (*qiyās al-*ma’nā, *qiyās al-* ‘illa), a type of argument in which jurists identify the reason (*ma’nā, ‘illa) behind a legal injunction and then apply that injunction in a new case. For instance, jurists debate the case of a man who has entered into a state of *ihrām* (ritual purification) while wearing a *qamīṣ*, a garment prohibited during *ihrām*. Some jurists hold that he must cut off the *qamīṣ*, because removing the garment in the normal way means briefly covering the head, another action prohibited during *ihrām*. By examining the known rules for a variety of situations involving covering the head during *ihrām*, al-Ţahāwī determines that the prohibition falls only on garments specifically worn on the head, such as a turban. Since the head is not ‘wearing’ (*lābis*) the *qamīṣ* during its removal, there is no prohibition.822 In this example, al-Ţahāwī explicitly identifies the cause of the prohibition—donning an item of clothing meant to be worn on the head—and determines that it does not apply to the new case. Therefore, the prohibition of one does not entail the prohibition of the other.

Al-Ţahāwī makes the above argument without employing any of the technical terms—*aṣl* (the original case), *far’* (the new case), ‘illa/ma’nā (the cause of the ruling) or *hukm* (the ruling)—that mature legal theorists would rely upon to describe formally the structure of causal analogies. Most of al-Ţahāwī’s other appeals to causal analogy are similarly non-technical, although he uses the term *hukm* regularly, both in the context of *qiyās* and more generally. In a limited number of passages, al-Ţahāwī does employ the terms *aṣl* and ‘illa in the context of *qiyās* although their usage seems still to be informal.

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822 al-Ţahāwī, *Maʾānī*, 2.138-139. Other examples of causal analogy in al-Ţahāwī’s hermeneutical works include *Maʾānī*, 1.26, 3.73; *Aḥkām*, 1.264.
and so they may not yet represent technical terms specific to *qiyās* in his usage. More frequently, al-Ṭaḥāwī introduces *qiyās* using non-technical terms to suggest equivalence between two cases. These terms include *mithl* (the like of something), *ka/kamā* (like, as) and *istawā* (to be equivalent to).

Further, in many, if not most examples of causal analogies, al-Ṭaḥāwī does not explicitly state the shared rationale that allows him to transfer a rule to the new case. For instance, al-Ṭaḥāwī analogizes concerning whether a Muslim must make the same recompense for causing bodily harm to a non-Muslim who has concluded a treaty with the Muslims, as he would to a Muslim. He observes that Muslims are forbidden to harm either the body or the property of such a person, but that harm to both was permitted to Muslims before the non-Muslim concluded his treaty. We know that a Muslim who steals the property of someone with such a treaty is subject to the *haadd* punishment for theft. Therefore, someone who causes bodily harm to such a person should also be subject to the same punishments as if they had harmed a Muslim. From this passage, we may infer that the concluding of a treaty is the cause of being protected by the law in the same way that Muslims are protected, although al-Ṭaḥāwī never states that cause directly. Instead, here and in most of his analogical arguments, al-Ṭaḥāwī emphasizes the multiple legal effects common to two cases as a reason for bringing all of the rulings related to

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them into alignment. That is, his analogical arguments rely on the identification of consistency of legal effects more than they emphasize the rationale of a specific ruling.\textsuperscript{826}

In addition to causal analogy, al-Ṭaḥāwī also labels other types of argument qiyās. In this, al-Ṭaḥāwī is at odds with the mature legal theory tradition, in which causal analogy was the predominant form of qiyās.\textsuperscript{827} More importantly, the mature Ḥanafī tradition would insist that causal analogy was the only valid form of qiyās; although Ḥanafī theorists accepted some of the other forms of argument that al-Ṭaḥāwī labeled qiyās, they classified them as linguistic or rational inferences (istidlāl).\textsuperscript{828} In addition to causal analogy, al-Ṭaḥāwī relies on the analogy of resemblance (qiyās al-shabah), a type of argument identified and defended by al-Shāfiʿī and later disputed within the Shāfiʿī school.\textsuperscript{829} As al-Shāfiʿī describes it, the analogy of resemblance consists of determining which of two known cases a new case more closely resembles in order to apply the ruling from the most relevant case to the new case.\textsuperscript{830} Whereas causal analogy relates two cases in terms of the reason behind the ruling in each, the analogy of similarity is concerned with the likeness of the things to which the rule is applied.

In a clear example of the analogy of similarity, al-Ṭaḥāwī describes how the dispute between scholars concerning the amount and timing of zakāt (alms) due on waraq

\textsuperscript{826} Al-Ṭaḥāwī’s appeals to consistency should not be confused with the doctrine of ṭārd/ṭṭirād (consistency) propounded by some 4\textsuperscript{th}/10\textsuperscript{th} century jurists, including Abū Bakr al-Ṣayrafi (d. 330/941) and Ibn Surayj (d. 306/918), and vigorously rejected by most later Ḥanafīs (Zysow, The Economy of Certainty, 215-222). Ṭārd is a formal method for identifying the cause of a legal ruling by determining that a certain cause is consistently present when a particular legal effect is produced. Al-Ṭaḥāwī, in contrast, is simply uninterested in explicitly identifying the effective cause in many of his analogies.

\textsuperscript{827} Zysow, Economy of Certainty, 159.

\textsuperscript{828} Zysow, Economy of Certainty, 192ff. On al-Jaṣṣāṣ’s theory of qiyās, see Shehaby, “ʾIlla and Qiyās in Early Islamic Legal Theory,” esp. 30ff.

\textsuperscript{829} Zysow, Economy of Certainty, 194-195.

\textsuperscript{830} Al-Shāfiʿī, Risāla, 16. For a discussion of al-Shāfiʿī’s use of qiyās al-shabah, see Lowry, Early Islamic Legal Theory, 150-155, 157-158.
(coined silver, sheets of metal) hinges upon whether waraq is more similar (ashbah) to herds of animals or to agricultural produce. Proponents of analogizing waraq to agricultural produce point out that both produce and waraq are weighed in determining zakāt, while animals are counted. Their opponents retort that a minor or a mentally incompetent person is required to pay zakāt on agricultural produce from land they own, just as if they were a legally competent adult. However, such individuals are exempted from the normal alms requirement for both waraq and livestock. Therefore, waraq is more similar to livestock for the purposes of determining zakāt. 831

Less frequently, al-Ṭahāwī’s appeals to qiyās take the form a fortiori arguments. 832 Jurists as early as Abū Ḥanīfa argued that the prohibition of a small degree of something entails the prohibition of a larger degree of it, just as permission for a large degree of something entails permission for a smaller degree of it. In considering the a fortiori argument a form of qiyās, 833 however, al-Ṭahāwī stands apart from later Ḥanafīs, most of whom classified it as a language-based inference. 834 Al-Jaṣṣāṣ treats a fortiori arguments in his chapter on textual implications (dalīl al-khiṭāb), while al-Sarakhsi emphasizes that no rational inference is needed to understand this kind of meaning from a

831 Al-Ṭahāwī, Aḥkām, 1.267-268.
832 As with the forms of argument treated above, al-Ṭahāwī’s extant works include no formal discussion or classification of the a fortiori argument; it is recognizable in context from his consistent use of the terms awlā and ahrā to indicate that what follows is even more suitable or more appropriate than what preceded.
833 E.g., al-Ṭahāwī, Mushkil, 8.411; Maʿānī, 3.117.
In contrast, al-Ṭahāwī is in agreement with both early Ḥanafīs and al-Shāfīʿī in treating *a fortiori* claims as a form of rational argument. In the course of his hermeneutical works, al-Ṭahāwī employs the *a fortiori* argument in both its *a minore ad maius* and *a maiore ad minus* forms. In one example of the former, al-Ṭahāwī argues that if clasping the hands in front of oneself is praiseworthy in supererogatory prayers as a posture of humility (*khushū‘*), it is likewise praiseworthy during obligatory prayers, because humility is even more appropriate (*awlā*) there. An example of the latter is found in al-Ṭahāwī’s response to al-Shāfīʿī’s claim that fasting during seclusion in a mosque (*iʿtāf*) is optional. Al-Shāfīʿī argues that scholars’ agreement that the *muʿtakīf* (a person in a state of *iʿtāf*) does not fast at night, and yet remains in *iʿtāf*, indicates that fasting is not necessary to enter into *iʿtāf*. Al-Ṭahāwī retorts that the *muʿtakīf* may leave the mosque to relieve himself without canceling his *iʿtāf*, although he may not enter into *iʿtāf* while outside a mosque. If exiting the mosque does not cancel *iʿtāf*, then even more so (*ahrā*) should the arrival of night (and the concomitant end to fasting) not affect his *iʿtāf*, because the first is an action taken by him while the second is not of his own volition. Therefore, the permissibility of certain events or actions during *iʿtāf* cannot serve as evidence for what is required to enter into the state initially.

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836 Al-Shāfīʿī in fact considers the *a fortiori* argument the strongest or clearest form of *qiyās* (*Risāla*, 238), a valuation which cannot be determined for al-Ṭahāwī on the basis of his extant works. For discussions of al-Shāfīʿī’s use of *a fortiori* arguments, see Lowry, *Early Islamic Legal Theory*, 153-154, 158-163; Schacht, *Origins of Islamic Jurisprudence*, 124-125.
837 Al-Ṭahāwī, *Ahkām*, 1.189. For another example of the *argumentum a minore ad maius*, see *Mushkil*, 1.81.
838 Al-Ṭahāwī, *Mushkil*, 10-351-352. For other examples of the *argumentum a maiore ad minus*, see *Mushkil*, 11.303; *Maʿāni*, 1.18.
Although the passages above do not fully conform to the *a fortiori* argument as described by legal theorists in that they do not involve different degrees of a single permitted or prohibited action, they are nonetheless closely related to classical descriptions of the *a fortiori* argument in that they concern the permissibility of actions. In other passages, however, al-Ṭahāwī employs the same language (*awlā, ahrā*) to determine not the permissibility of actions but the applicability of a rule to a group. For example, al-Ṭahāwī observes that a man who acknowledges having had sexual intercourse with his wife may still deny paternity of her child. Therefore, it is even more so the case (*ahrā*) that a man who acknowledges having had sexual intercourse with his slave may deny paternity of his slave’s child. That is, the rule for husbands also applies to men owning concubines. In this passage, as in most *a fortiori* arguments of this type, al-Ṭahāwī does not state explicitly what it is about the new group that makes the rule even more appropriate than in its original application, although the connection between the two cases is generally simple to work out. In this case, for instance, al-Ṭahāwī’s argument hinges on the relative statuses of wives and concubines. In contrast, al-Ṭahāwī states his reasoning explicitly when arguing that men may not cover their faces while in a state of *ihrām* (ritual consecration). He observes that women are not permitted to cover their faces during *ihrām*, even though women are permitted to cover more than men while in that state. Therefore, it is even more so that case that men may not cover their faces. Here, al-Ṭahāwī reasons that, given what we know about

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839 I have not identified any discussions of the *a fortiori* argument by legal theorists envisioning this possibility.
women’s wider latitude to cover themselves in *ihram*, a rule that prohibits a particular garment to women is even more appropriately applied to men.

To this point, the arguments that al-Ṭahāwī has labeled *qiyās* have followed the division proposed by al-Shāfi‘ī in the *Risāla*. However, al-Ṭahāwī also employs a fourth form of argument under the heading of *qiyās*: the disjunctive syllogism. In one example, al-Ṭahāwī argues that, although Muḥammad, Abū Bakr and ʿUmar all shortened their prayers during the Hajj while halting at Minā, residents and imams of Mecca do not shorten their prayers, because their travel does not meet the length requirement for shortening prayer. *Qiyās* requires this conclusion, al-Ṭahāwī writes, because Muḥammad, Abū Bakr and ʿUmar can only have shortened their prayer for one of three reasons (*lā yakhlū min maʾnā min thalāthat maʾānin*): the length of their travel, their participation in the Hajj or the place they were in (i.e., Minā). There is no other possibility. He continues:

> We considered whether the shortening might be because of the place itself, but found that scholars agree that non-pilgrims do not shorten their prayers [at Minā], and so we knew that God’s Messenger and his Companions cannot have shortened their prayer for that reason. Then we considered whether the shortening was due to the pilgrimage. However, we found that pilgrims from Minā do not shorten their prayers at Minā during the pilgrimage, and so we knew that they cannot have shortened their prayers because of the pilgrimage. Because those two reasons have been eliminated as the cause for their shortening their prayers and only one other reason—travel—remains, we know that they shortened their prayers because of the length of their travel.⁸⁴²

This argument follows the form of a disjunctive syllogism. First, al-Ṭahāwī establishes a list of possible causes for the Prophet’s actions and claims exhaustiveness for it. Next, he excludes all but one possibility. Finally, he affirms that the remaining possibility must be

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true, without needing to provide any other evidence to support his claim. Arguments of this form appear regularly in al-Ṭahāwī’s hermeneutic works.\textsuperscript{843}

To date, little has been written on disjunctive syllogisms within Islamic legal thought before al-Ghazālī. Among later theorists, the disjunctive syllogism would come to be known as \textit{al-sabr wa-l-taqsīm} (“probing and division”), and its validity as a method for determining the ‘illa (effective cause) of an analogy would be accepted by many jurists, although it was rejected except in a very limited form by almost all Ḥanafīs.\textsuperscript{844} Hallaq suggests that this form of argument was assimilated into legal thought in the 4\textsuperscript{th}/10\textsuperscript{th} and 5\textsuperscript{th}/11\textsuperscript{th} centuries from Greek logic, although most jurists did not label it a form of \textit{qiyās}.\textsuperscript{845} Larry Miller, in contrast, associates the disjunctive syllogism and other techniques from the Greek logical tradition with 6\textsuperscript{th}/12\textsuperscript{th}-century jurists beginning with al-Ghazālī.\textsuperscript{846}

It is unlikely, however, that the regular appearance of arguments in the form of the disjunctive syllogism in al-Ṭahāwī’s hermeneutical works is evidence of an earlier incorporation of Greek logic into jurisprudence than has until now been assumed. Indeed, there are important differences between al-Ṭahāwī’s use of the disjunctive syllogism and the way it in which it is discussed by later jurists. For example, Miller has analyzed a manuscript of the \textit{Muqaddima} of Burhān al-Dīn al-Nasafī (d. 684/1286) in which the disjunctive syllogism is described in terms of the logical incompatibility of P and Q.\textsuperscript{847} In

\begin{itemize}
  \item \textsuperscript{843} E.g., al-Ṭahāwī, \textit{Mushkil}, 2.75-77, 3.157, 10.59; \textit{Aḥkām}, 1.180, 1.194.
  \item \textsuperscript{844} Zysow, \textit{Economy of Certainty}, 217.
  \item \textsuperscript{845} Hallaq, “Logic, Formal Arguments, and the Formalization of Arguments,” 316-317. I have found no other evidence of the influence of Greek logic in al-Ṭahāwī’s works.
  \item \textsuperscript{846} Larry Miller, “Islamic Disputation Theory: A Summary of the Development of Dialectic in Islam from the Tenth through Fourteenth Centuries” (PhD diss., Princeton University, 1984), 146-169.
  \item \textsuperscript{847} Miller, “Islamic Disputation Theory,” 156-157.
\end{itemize}
contrast, in the example concerning shortening prayers during the Hajj discussed above and in other passages employing disjunctive syllogisms, al-Ṭahāwī is not arguing based on the logical incompatibility of the premises, but rather on the fact that they are premises that the community has agreed upon. That is, there are three reasons that jurists have identified as possible explanations for why Muḥammad, Abū Bakr and ʿUmar shortened their prayers, and al-Ṭahāwī’s argument rests on the assumption that one of those explanations must be correct. That assumption in turn appears closely connected to notions of a kind of consensus (ijmāʾ) that encompasses known juristic disagreements, and to the insistence of many jurists that, once established, such disagreements cannot be expanded to permit new opinions. While the formal features of al-Ṭahāwī’s arguments may thus closely resemble those of later scholars who embraced Greek logic, the assumptions underlying his arguments are quite different. Al-Ṭahāwī’s use of the disjunctive argument is therefore probably best understood within the context of the pre-Aristotelian logic juristic dialectical movement identified by Walter Young and embracing jurists including al-Shāfīʿī.

In total, then, al-Ṭahāwī employs four clearly identifiable types of argument under the heading of qiyās, only one of which would be recognized as qiyās by later members of his legal school. Rather than concluding that al-Ṭahāwī conceives of qiyās as consisting of four types of argument, however, it would be more accurate to say that he uses the term qiyās as a general label for the kind of rational argument that he believed God had licensed jurists to employ in determining the law. It is not apparent from al-

848 See, e.g., Lowry, “Is There Something Postmodern about Uṣūl al-Fiqḥ?,” 287, 301ff.
Tāḥāwī’s extant works that he clearly differentiates between different types of arguments; indeed, it is frequently difficult to assign particular examples of his qiyās to one of the four categories mentioned above. Where both al-Shāfiʿī and later jurists are concerned with classifying and defining qiyās, al-Tāḥāwī’s primary concern is the harmony between qiyās and legal rulings found in revealed texts.

*İstiḥsān (Departure from Qiyās)*

In *al-Iḥkām fī ʾusūl al-aḥkām*, Ibn Ḥazm names al-Tāḥāwī as his only example of a Ḥanafī jurist who rejected istiḥsān, a hermeneutical procedure closely associated with the Ḥanafīs in which jurists depart from the results of their qiyās because they consider another position better (*istaḥsana*, lit., to deem good). Ibn Ḥazm denounces istiḥsān as a practice devoid of any proof from revelation (*burhān*) and one that allows jurists to follow their own whims in rejecting any inconvenient or undesirable results of qiyās. The critique of istiḥsān was first articulated by al-Shāfiʿī in *al-Risāla* and *Iḥṭāl al-istiḥsān*. Al-Shāfiʿī emphasizes that qiyās is a procedure based upon evidence from revelation; istiḥsān, in contrast, is simply an invention by the jurist without any basis in revelation. If jurists may depart from divinely-sanctioned qiyās, then they may as well devise their own legal rulings in cases where no text has been revealed. For al-Shāfiʿī, then, istiḥsān represents a rejection of the authority of revelation. This understanding of

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850 Ibn Ḥazm, *Iḥkām*, 2.992. Although istiḥsān is most famously associated with the Ḥanafīs, it was also employed by jurists of other schools; on these, see Zysow, *Economy of Certainty*, 241.
istihšān is in turn the consequence of al-Shāfiʿī’s larger project of anchoring all law in revelation. For the early Iraqi jurists among whom istihšān first become a technical term denoting departure from qiyās on the basis of some other important consideration, however, it was not yet apparent that qiyās was binding to the exclusion of other kinds of authority.

Like al-Shāfiʿī, al-Ṭaḥāwī is committed to the idea that all law must be derived from revelation and, further, that no true conflict can exist between sources of legal authority. It is therefore instructive to examine how he treats istihšān, a procedure condemned by al-Shāfiʿī but closely associated with al-Ṭaḥāwī’s fellow Ḥanafī jurists. In fact, none of al-Ṭaḥāwī’s extant works contain any statement of principle in support or rejection of istihšān; if Ibn Ḥazm based his report on al-Ṭaḥāwī’s own statement, then the work in which that statement appeared is presumably lost to us. It is also possible that Ibn Ḥazm (or his source) based his conclusions on the almost total absence of any mention of istihšān in al-Ṭaḥāwī’s hermeneutical works. I have identified only a single passage in which al-Ṭaḥāwī uses the term istihšān in a technical sense. In a chapter of Sharḥ mushkil al-āthār on whether the qārin (a pilgrim combining the Hajj and ʿUmra) must perform

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854 Schacht identifies al-Shāfiʿī’s limitation of legal reasoning to methods authorized by revelation as “one of the important innovations by which his legal theory became utterly different from that of the ancient schools” (Introduction to Islamic Law, 46).
855 Ansari, “Islamic Juristic Terminology,” 292. Ahmad Hasan defines istihšān as a means “developed by the Ḥanafīs to remove the rigidity of law in certain situations,” and goes on define those situations as the natural changes in human society over time (“The Principle of Istihšān in Islamic Jurisprudence,” Islamic Studies 16, no. 4 (1977): 348). This understanding of istihšān as a sort of safety valve for accommodating the law to social change, however, represents a modern reinterpretation of the aims of early jurists, which were simply to accommodate competing sources of legal authority. For an overview and refutation of other modern scholars who have understood istihšān as way to accommodate social change, see John Makdisi, “Legal Logic and Equity in Islamic Law,” American Journal of Comparative Law 33, no. 1 (1985): 66-85.
856 Hallaq, History of Islamic Legal Theories, 107.
857 Some other early jurists rejected istihšān for other reasons; for example, the Murjiʿī theologian Bishr al-Maršī (d. 218/833) held the results of qiyās to be certain, and therefore discounted istihšān, which often constitutes a departure from qiyās (Zysow, Economy of Certainty, 241n490).
the required circumambulations of the Kaaba for each type of pilgrimage individually, al-Ṭahāwī writes that Abū Ḫanīfa, Abū Yūsuf and al-Shaybānī held that *qiyās* led to a certain conclusion, but they professed a different position on the basis of *istiḥsān*. Al-Ṭahāwī’s response is telling:

We do not agree with them; rather, we hold that *qiyās* obligates what they held to be *istiḥsān.*

Al-Ṭahāwī here avoids either accepting or condemning *istiḥsān* by arguing instead that the position of his Ḥanafi predecessors is, in fact, supported by *qiyās*.

Mentions of *istiḥsān* appear considerably more frequently in al-Ṭahāwī’s *Mukhtaṣar*, an epitome of Ḥanafi positive law. The *Mukhtaṣar*, like al-Ṭahāwī’s hermeneutical works, contains no statement of principle accepting or rejecting *istiḥsān*. A similar reticence is apparent here, however. When al-Ṭahāwī’s Ḥanafi predecessors disagree on whether to follow the results of *qiyās* or to base their position on *istiḥsān*, al-Ṭahāwī habitually states his agreement with the position based on *qiyās*. In cases where his Ḥanafi predecessors unanimously agree that the ruling should be based on *istiḥsān* rather than *qiyās*, he refrains from adding the affirmation “[I] adopt this position” (*wa-bihi naʾkhudh*), so common within the pages of the *Mukhtaṣar*.

Al-Ṭahāwī’s treatment (or absence of treatment) of *istiḥsān* both in *Sharḥ maʿānī al-āthār* and in his *Mukhtaṣar* suggests considerable discomfort with the procedure, but also an unwillingness to publicly oppose a technique so closely associated with the Ḥanafis. Later Ḥanafīs, too, would become subject to pressure from the criticism of

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859 The work contains approximately twenty-five mentions of *istiḥsān*.
861 E.g., al-Ṭahāwī, *Mukhtaṣar*, 210, 303.
istiḥsān when the principle that law must be based in revelation came to be widely accepted, including by the Ḥanafīs themselves. In contrast to al-Ṭaḥāwī, Ḥanafī legal theorists of the mature usūl al-fiqh tradition would respond to criticism of istiḥsān not by silence but rather by reimagining istiḥsān to conform to mature usūl expectations about revelation as the basis for all law. Ḥanafīs including al-Jaṣṣāṣ and al-Sarakhsī would vehemently deny that istiḥsān is based on the jurist’s whim; instead, they argued, it is a divinely-sanctioned method for determining the correct solution when the initial results of qiyāṣ do not produce the objectively correct answer, or else for determining the correct way to proceed when a question can be approached through competing analogies.

Despite the differences between their approaches, both al-Ṭaḥāwī and later Ḥanafī jurists share the objective of accommodating their hermeneutics to changing conceptions of legal authority without directly criticizing the Ḥanafī tradition.

In this chapter I have examined a number of key hermeneutical topics discussed theoretically or put into practice in al-Ṭaḥāwī’s works. The list of topics covered is far from exhaustive, however; much work remains to be done on subjects including al-Ṭaḥāwī’s isnād and matn criticism, his analysis of figurative language, and his overall approach to ḥadīth harmonization, among others. In selecting the topics that I have, I have tried to suggest how al-Ṭaḥāwī draws connections between the different aspects of his hermeneutics such that every idea is bound to one fundamental, underlying binary: that between muḥkam/mutashābih and tawqīf/ray. In analyzing each topic, I have also

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862 Zysow notes that jurists of the Mālikī, Ḥanbalī and Shāfiʿī schools were also forced to explain statements concerning istiḥsān from earlier jurists of their schools, although they were not as closely associated with istiḥsān as were the Ḥanafīs (Economy of Certainty, 241).

noted where al-Ṭaḥāwī’s thought most closely resembles that of earlier jurists during the formative period, and where it anticipates the mature *uṣūl* tradition that would be firmly established within fifty years of his death. Writing at the very end of the formative period, al-Ṭaḥāwī is a transitional figure, and a close examination of how he defines hermeneutical concepts and employs them in context provides important information about how legal thought changed during this critical period. Notably, although al-Ṭaḥāwī anticipates the mature *uṣūl* tradition in important ways, we have seen in this chapter that al-Ṭaḥāwī’s thought is more often closest to that of al-Shāfiʿī, even if not to the extent or in the same way that previous analyses have suggested.
Conclusion

When I embarked upon this study, I hoped to piece together the usūl al-fīqh work that the Egyptian Ḥanafī jurist, traditionist and theologian Abū Jaʿfar Aḥmad al-Ṭahāwī (d. 321/933) would have written, had he composed a work in that genre. During the year that I spent reading al-Ṭahāwī’s extant oeuvre, I had been struck by the wide range of discussions on the interpretation and relative authority of legal sources in three of al-Ṭahāwī’s major works, Aḥkām al-Qurʾān, Sharḥ maʿānī al-āthār and Sharḥ mushkil al-āthār. Although the discussions in question were scattered and brief, ranging from a sentence to a few paragraphs in most cases, they encompassed almost all of the major topics of a mature usūl al-fīqh work. By analyzing these passages and bringing them into dialogue with each other, it seemed, I could shed light on the development of usūl al-fīqh in the late 3rd/9th and early 4th/10th centuries, a crucial period of transformation from formative to post-formative Islamic law, but one that remains largely opaque to researchers due to the paucity of surviving sources.

It quickly became apparent, however, that what I was piecing together was not an usūl work. Instead, these passages in Aḥkām al-Qurʾān, Sharḥ maʿānī al-āthār and Sharḥ mushkil al-āthār represented a different kind of intellectual activity. Where works of the usūl al-fīqh genre are primarily interested in elaborating an elegant system by bringing principles of legal theory into relationship with each other, al-Ṭahāwī’s three works are concerned with the relationship between individual revealed texts and specific theoretical principles. In all of al-Ṭahāwī’s extant oeuvre, only the seven-page introduction to Aḥkām
*al-Qurʾān* makes any attempt to bring a coherent structure to a set of theoretical principles, and even there al-Ṭḥāwī does not aim at a complete account of legal theory. That is not to say that al-Ṭḥāwī’s legal theory lacks coherence; he invokes the same concepts and principles repeatedly across his works, often using the same language, and these concepts and principles are not in conflict with each other. However, the drive to identify or elaborate an overarching, complete system characteristic of mature *usūl al-fiqh* works as well as the earlier *Risāla* of al-Shāfiʿī, is simply not a major feature of al-Ṭḥāwī’s interest in legal theory. Neither are al-Ṭḥāwī’s three works comparable to earlier or later works of *fiqh*, which cite principles of legal theory in the course of setting out the rules of positive law, but without explaining or justifying those principles.

Instead, al-Ṭḥāwī’s discussions of legal theory appear in the context of an intellectual project and form of writing that I have termed ‘practical hermeneutics,’ whose major theological concern is to affirm the essential coherence and comprehensibility of the Divine Message by demonstrating how God’s intent may be derived from revealed sources. In the field of law, which is the exclusive topic of *Sharḥ maʿānī al-āthār* and *Aḥkām al-Qurʾān* and a major topic in *Sharḥ mushkil al-āthār*, practical hermeneutics additionally affirms that God’s intent in fact *has* been derived from revelation by showing how established rules of positive law are grounded in revealed sources. In terms of their literary form, al-Ṭḥāwī’s texts of practical hermeneutics consist of a series of chapters in which he first adduces one or more revealed texts and then resolves the necessary interpretive issues in order to produce a statement of God’s intent, usually in the form of a rule of positive law. Discussions of
legal theory appear where al-Ṭaḥāwī needs to justify particular, perhaps controversial, interpretive moves.

Al-Ṭaḥāwī was not unique in composing texts of practical hermeneutics. Surviving works by al-Shāfīʿī, Ibn Qutayba and al-Ṭabarī serve a similar function and take a similar literary form, and it is likely that other 3rd/9th-century aḥkām al-Qurʾān works, all of which are now lost, also belong to practical hermeneutics, as may other, yet-to-be-identified works. Indeed, the emergence of practical hermeneutics is best understood as a response to the particular challenges jurists faced in the late formative period of Islamic law. By the turn of the 3rd/9th century, the rules of fiqh had been articulated in the first major compendia, even if they were not yet stated as systematically as they would be in later centuries. Those compendia, along with the major late 2nd/8th- and early 3rd/9th-century jurists to whom they were attributed, would become associated with the emerging madhhabs a century later, around the lifetime of al-Ṭaḥāwī.

Also in the 3rd/9th century, the rising authority of Prophetic hadith and the growing conviction, most famously associated with al-Shāfīʿī, that all law must be based in revealed texts, created an imperative to demonstrate that Islamic law had in fact been derived exclusively from revelation, even if those connections had not previously been explicitly articulated. When al-Ṭaḥāwī wrote his works of practical hermeneutics asserting the connection between Ḥanafi fiqh and revelation at the turn of the 4th/10th century, the Ḥanafīs were widely perceived as ahl al-raʿy, jurists whose positive law was based on mere opinion rather than revelation. Al-Ṭaḥāwī’s works of practical hermeneutics thus in some sense represent the culmination of a project first clearly
articulated by al-Shāfiʿī. By tethering the *fiqh* of the first major Ḥanafī compendia to revelation, al-Ṭahāwī’s works also pave the way for the consolidation of the *madhhab* in the mid-4th/10th century.

The legal theory that emerges from al-Ṭahāwī’s works of practical hermeneutics is closely related to, and yet distinct from, the legal theory of the *uṣūlīs*. While he addresses most of the major topics of *uṣūl al-fiqh* works—legal sources such as the Qurʾān, ḥadīth and consensus, and concepts including *ijtihād*, abrogation, ʿāmm:khāṣṣ, ṣāhir:bāṭin and others—his approach to most topics is less detailed and more flexible than that of the *uṣūlīs*. Where the *uṣūlīs*’ theological pre-commitments and desire for comprehensiveness and elegance drive them to explore a range of subsidiary questions for most topics, al-Ṭahāwī only addresses concrete interpretive problems where led to by his sources, and then only explores topics in sufficient detail to produce a resolution of the interpretive difficulty at hand. Indeed, the flexibility of al-Ṭahāwī’s legal theory appears to be required by the project of practical hermeneutics; the corpus of revealed sources that al-Ṭahāwī treats is messy and sometimes apparently conflicting. His theory, therefore, must in some sense be responsive to the sources in front of him.

On its surface, al-Ṭahāwī’s legal theory assigns varying levels of authority to a series of clearly distinguished sources of the law in the same manner as the mature *uṣūl al-fiqh* tradition. Both his hermeneutical discussions and his repeated appeals to the list ‘Qurʾān, Sunna, consensus’ imply a hierarchy among three major sources of interpretive authority. In cases where no guidance is found in these three sources, al-Ṭahāwī tells us, we must look to *ijtihād* or *qiyyās*. Although they do not generally appear in his lists of
legal sources, post-Prophetic hadīths and ‘amal also constitute sources of law. For al-Ṭaḥāwī then, the relative authority of sources ostensibly depends on their formal characteristics. Degrees of legal authority are assigned to entire categories of sources. In this way, al-Ṭaḥāwī’s rhetoric concerning the sources of the law anticipates that of the mature ʿusūl al-ḥīth tradition.

A closer examination of his hermeneutical arguments, however, reveals that al-Ṭaḥāwī attributes authority to individual textual and non-textual sources in ways that cannot be predicted based upon this hierarchy. Companion hadīths and instances of consensus are frequently claimed to represent revelational authority sufficient to compete with that of an established Prophetic hadīth, while at other times a Prophetic hadīth is deemed merely to convey Muḥammad’s personal opinion and is thereby stripped entirely of its authority as a binding legal source. Each of these interpretive moves rests upon an underlying binary concept of legal authority which draws a crucial distinction between knowledge that might permissibly be reached by inference, and knowledge that can only have come from revelation. Where a Companion states an opinion or jurists reach consensus on a rule that al-Ṭaḥāwī claims may not permissibly be based upon inference, he accepts implicitly that the rule must originally have been based upon revelational instruction, even if that instruction is not indicated in the source. This binary is often made explicit in al-Ṭaḥāwī’s arguments about the status of post-Prophetic hadīths, where he appeals to the terms tawqīf (Prophetic instruction) and raʿy (inference). In other areas, such as the status of consensus and some Prophetic hadīths, the same binary is latent in his arguments.
The authority that al-Ṭahāwī grants any given source, then, is not a function of its formal characteristics, but rather the result of a judgment about content and origins. In the body of this study I have noted places where al-Ṭahāwī offers rules concerning the types of legal rulings that require revelational instruction. However, the rules he enumerates are far from adequate to account for all the cases in which al-Ṭahāwī claims Prophetic authority for non-Prophetic legal sources. I have further argued that al-Ṭahāwī’s elevation of non-Prophetic sources to Prophetic status appears to stem from a sincere deference to the special knowledge of the Companions and the Successors, as evidenced by his willingness to depart from Ḥanafi law in order to comply with Companion legislative statements. Nonetheless, in the absence of a comprehensive set of principles defining exactly which types of Companion legislative statements or juristic consensus require *tawqīṭ*, the declaration that any particular statement must be based on an original *tawqīṭ* is, at its core, arbitrary.

Al-Ṭahāwī’s legal theory does not aspire to the same type of formalism as that aspired to by later *uṣūlīs*; as I have demonstrated, only hints of a linguistic formalism appear in his arguments. Nonetheless, the literary form of al-Ṭahāwī’s works of hermeneutics, moving inexorably from text to law, is designed to imply that a known hierarchy of sources and a predictable set of hermeneutical principles allow jurists to derive the law from revelation. Yet, within his arguments, al-Ṭahāwī sometimes invokes the instruction/inference binary in ways that reveal that those hermeneutical principles are in fact malleable and dependent on his determination of whether a particular legislative statement represents instruction or inference.
Al-Ṭaḥāwī’s works of practical hermeneutics thus represent crucial sources for conceptualizing the relationship between legal theory and positive law in the Islamic legal tradition. While works of *usūl al-fiqh* and *fiqh* largely separate legal theory and positive law into distinct genres, al-Ṭaḥāwī’s works of practical hermeneutics represent a separate, hybrid genre that portrays legal theory in action, if not precisely the legal theory of the later *usūl* tradition. Taken at face value, his works show that the Ḥanafīs are not, in fact, *ahl al-raʿy*, and that their *fiqh* is grounded in revelation. The idea of ‘portrayal’ is, however, fundamental to al-Ṭaḥāwī’s project. Although his works purport to show how law *was* derived from revelation, they are in fact *ex post facto* recreations of a process whose historicity cannot be proven by his works alone. There is thus an unresolved tension between the literary form of al-Ṭaḥāwī’s works and their function in providing a retrospective justification of Ḥanafī *fiqh*.

The evidence that al-Ṭaḥāwī’s works offer concerning the relationship between legal theory and positive law is, therefore, ambiguous. At multiple points in his works, al-Ṭaḥāwī adheres to his stated hermeneutical principles at the cost of failing to support an established rule of Ḥanafī *fiqh*. However, the flexibility of his legal theory in most cases allows him to claim support from his hermeneutics for Ḥanafī law. It is neither the case that his legal theory fully determines his positions on positive law, nor that his positive law is always advanced at the cost of his hermeneutical principles. In the end, perhaps texts of practical hermeneutics are best understood as a meeting point in which revealed text and law are brought together by means of a hermeneutic of sufficient flexibility to accommodate them both.
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