2017

What’s The Difference? Distinctions, Furūq, And Development In Post-Formative Islamic Law

Elias Gabriel Saba
University of Pennsylvania, esaba@sas.upenn.edu

Follow this and additional works at: https://repository.upenn.edu/edissertations

Part of the Islamic Studies Commons, Near Eastern Languages and Societies Commons, and the Other International and Area Studies Commons

Recommended Citation
https://repository.upenn.edu/edissertations/2560

This paper is posted at ScholarlyCommons. https://repository.upenn.edu/edissertations/2560
For more information, please contact repository@pobox.upenn.edu.
What’s The Difference? Distinctions, Furūq, And Development In Post-Formative Islamic Law

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

Degree Type
Dissertation

Degree Name
Doctor of Philosophy (PhD)

Graduate Group
Near Eastern Languages & Civilizations

First Advisor
Joseph E. Lowry

Keywords
Dialectics, Genre, Islamic Law, Legal Distinctions, Riddles

Subject Categories
Islamic Studies | Near Eastern Languages and Societies | Other International and Area Studies | Religion

This dissertation is available at ScholarlyCommons: https://repository.upenn.edu/edissertations/2560
WHAT'S THE DIFFERENCE? DISTINCTIONS, FURūQ, AND DEVELOPMENT IN POST-FORMATIVE ISLAMIC LAW

Elias Gabriel Saba

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

2017

Supervisor of Dissertation

________________________
Joseph E. Lowry, Associate Professor of Medieval Islam and Islamic Law

Graduate Group Chairperson

________________________
Grant Frame. Associate Professor of Assyriology

Dissertation Committee

Paul M. Cobb  Professor of Medieval Islamic History
Jamal J. Elias  Walter H. Annenberg Professor in the Humanities
WHAT’S THE DIFFERENCE? DISTINCTIONS, FURŪQ, AND DEVELOPMENT IN POST-FORMATIVE ISLAMIC LAW

COPYRIGHT

2017

Elias Gabriel Saba

This work is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 3.0 License

To view a copy of this license, visit http://creativecommons.org/sample
For my grandparents, Elias Saba, Gabriela Salomon, Luis Giusti, and Paulina Hundskopf, who taught me to love life, learning, and teaching.
Acknowledgements

The process of writing this dissertation has been long, arduous and fulfilling. Along the way, I have accrued a tremendous series of debts to friends, colleagues, and institutions that made this process not only possibly but enjoyable. First and foremost, I thank my committee for their help and guidance during the dissertation process. Jamal J. Elias provided me with much needed focus on broader questions and spent time helping me navigate the Suleymaniye Library reading room and the Fatih district in Istanbul. Paul M. Cobb was instrumental in guiding me during the project’s early stages and helped me ask better questions about social practice. Without the guidance and support of Joseph E. Lowry, however, this dissertation would still be little more than a few scattered ideas in my head. Joe constantly pushed me to ask more of my sources, to refine my methodological assumptions, and to expand my intellectual horizons. His advice and comments always led me to new and interesting discoveries. More importantly, however, he let me make this dissertation my own.

I owe my first teachers in Islamic Studies a particular debt of gratitude for sparking my interest in Islamic studies and encouraging me throughout my graduate career. Specifically, I want to thank Deborah A. Starr, Munther Younes, and Kim Haines-Eitzen. A special debt of gratitude is due to Ross Brann for mentoring my senior project and helping me navigating the field of Islamic Studies. David Powers introduced me to the field of Islamic Studies and has continued to provide help and encouragement during my time at Penn. Finally, I cannot express my gratitude to Shawkat M. Toorawa, my first teacher of Islamic Studies and undergraduate advisor,
without whom I would never have pursued the scholarly interests behind this dissertation.

My debts, of course, only increased during my time in graduate school. First, I would like to thank all of my colleagues who helped me develop and elaborate the ideas in this dissertation: Kameliya Atanasova, Carolyn Baugh, Jeremy Dell, Omar Foda, Marc Herman, Amanda Hanoosh, Rose Muravchik, Ali Karjoo-Ravari, Raha Rafii, Chip Rosetti, Alon Tam, Thomas Levi Thompson, Kelly Tuttle, Ted Van Loan, and Adnan Zulfiqar. In addition, I give special thanks to Jeffery Arsenault, Carolyn Brunelle, Nicholas Harris, Murad Idris and Ryan Rittenberg for looking at sketch early drafts of much of this dissertation. I was also fortunate to encounter many great mentors at Penn including Roger M.A. Allen, Huda Fakhreddine, Talya Fishman, Renata Holod, and Heather Sharkey.

Outside the confines of the University of Pennsylvania, I was privileged to have encountered many people who contributed to my dissertation. Tilman Neuschild helped me organize a panel on concepts at the Middle Eastern Studies Associations and introduced me to Begriffsgeschichte. Felicitas Opwis offered us insightful feedback on our papers. Christian Müller invited me to participate in the Islamic Law Materialized conference in Rabat in November 2013. Frederic Bauden, Antonella Ghersetti, and Marlis Saleh deserve special mention for the wonderful collegial atmosphere they have created at the School of Mamluk Studies, where I have been able to explore my ideas the past two years. I am also especially grateful for the friendship and constant intellectual companionship of Matthew Keegan, Christian Mauder, and Mariam Sheibani. I also want to thank Cameron Hu for continuously challenging and taking
apart my theoretical understandings of just about everything. There are many more friends whom I should acknowledge for their support, such as Allison Ancel, Joel Blecher, Liora Halperin, Nicole Oidick, Zainab Mahmood, Mostafa Najafi, Carey Neill, S.J. Pearce, Erin Pettigrew, Matthew Sharp, and Brian Vivier. I also thank Ari Gordon, Cameron Hu, Matthew Keegan, Susan MacDougall, and Eiren Shea, all of whom gave me substantial feedback on different chapters of this dissertation in its later stages.

I also owe a tremendous debt to the various organizations that helped me finance the research and writing of this dissertation. First and foremost, in this regard, the Mellon-Mays Undergraduate Fellowship and the Social Science Research Council. Maria Davidis and Eric Cheyfitz guided me through the program at Cornell and the MMUF has helped fund trips for language study and research in Yemen, Syria, Turkey, France, and Germany. MMUF has also provided guidance and support in conceptualizing much of this dissertation. In particular, thanks to Elise LaRose for organizing a summer research bootcamp at the University of Chicago and Callie Waite for the innumerable graduate initiatives she has organized at the MMUF. It was in 2007 during this bootcamp at the University of Chicago that Sheldon Bernard Lyke taught me how to ask research questions and how to try to answer them.

I was able to thrive at Penn thanks to a Benjamin Franklin Fellowship, a summer and academic year Foreign Language and Area Studies grant, and the Janet Lee Stevens Fellowship from the Middle East Center. The Digital Humanities Forum supported me with a training grant to learn about digital humanities at the University of Victoria. Finally, a year-long fellowship with Communication Within the Curriculum program
run by Sue Weber was an essential support at a pivotal time in the writing of this
dissertation.

I spent eleven months in Damascus, from May 2010 through April 2011, thanks
to a Center for Arabic Study Abroad Full-Year Fellowship. I could not have asked for
better teachers than Hasan al-Ahmad, Rami al-Farah, Shadi al-Hayouk, Ghada Hussein,
and Rana al-Nasr. It was a privilege to participate in the CASA – Damascus program and
I am grateful for the other fellows there with me. In particular, Susan MacDougall, Amir
Naim, Noel Rivera, and Alexander Winder have provided me with friendship and
encouragement with my dissertation and every other thing I have been doing since. I
should also acknowledge Ross Burns and his Monuments of Syria: A Guide. Were it not for
this book that I purchased on a whim, I would not have spent my months there
travelling everywhere I could in Syria. I could not have known how lucky I was to
experience Syria and be afforded the privilege of leaving on my own terms.

I also enjoyed a four-month research residency at the American Center for
Oriental Research in Jordan through a Council of American Overseas Research Centers
Predoctoral Fellowship. My stay in at ACOR was very productive thanks to the
directors, Barbara Porter, Chris Tuttle, and Sarah Harpending, as well as the various
fellows and scholars I met there including Humi Ayoubi, Nora Barakat, Emanuela
Bocancea, Theresa Dazey, Jason Dazey, Morag Kersel, Kathryn A. Miller, Julie Peteet,
Gary Rollefson, Robert Schick, Sarah Tobin, and Yael Zeira. I was also able to devote
considerable time reading Asʿad al-Karābīsī’s Kitāb al-Furūq with Dr. Salāḥ Abū al-Ḥajj,
who introduced me to the various complexities of this text.
My research also took me to many new locations and manuscript libraries. I want to thank Adrián Saba for orienting me during my first stay in Paris, Antonio Morales for sharing his apartment with me in Berlin, Aytun Çelebi for hosting me in Istanbul, Andy Leifer and Franziska Graf for providing me a home in Princeton, and Tomás Málaga for giving me a place to stay in New York City. I also thank the helpful and accommodating staffs at the Bibliothèque nationale de France, the Staatsbibliothek zu Berlin, the Suleymaniye Library in Istanbul, the Garrett Library at Princeton University, and the staff at the New York Public Library, particularly Thomas Lannon. In addition, the staff at Leiden University Library made every effort to help me see manuscripts and Jan Just Witkam introduced me to the collection there. My interest in the world of codicology and manuscript studies began in a seminar I took on a Quran manuscript with Renata Holod. Short courses taught by Frederic Bauden at the University of Liege, François Déroche at Princeton University, and David Vander Meulen at the Rare Book School.

I am eternally grateful for the help of the administrative assistants at the Department of Near Eastern Languages and Civilizations at the University of Pennsylvania, Peggy Guinan, Diane Moderski, Jackie Rios and, always, graduate coordinator Linda Greene. Without them, nothing could have been accomplished.

I also want to thank Angela Giordani for inviting me to participate in the “Beyond Circulation: Non-Western Universalisms and Global Histories of Science” workshop at Columbia University in October 2016. It proved an excellent venue to get feedback on my fifth chapter and Brinkley Messick was an ideal respondent. Similarly, Jamal Abd Rabbih invited me to participate in the Middle Eastern History and Theory
Workshop at the University of Chicago in March 2015, where I presented some of the overarching themes of this study. His comments, along with those of Mariam Sheibani and Amir Toft were invaluable.

I also want to thank my mother and father, Flor Giusti and Walter Saba for their unwavering support during my graduate studies. From as far back as I can remember, they stressed the importance of intellectual inquiry. They instilled in me a passion for learning and analysis for which I am eternally grateful. My sister, Paulina Saba, has also been a friend and confidant during the whole dissertation process, in the way that only a sibling can. Finally, I want to thank Eiren Shea for living with me with this project for the past four years. Her love and companionship have been the only constant in my life during this project; I cannot thank her enough for everything she has done to help me finish this dissertation.

In spite of all of the help I have received, I alone remain responsible for the errors and shortcomings of this study.
Abstract

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

Elias Gabriel Saba
Joseph E. Lowry

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

Introduction .................................................................................................................................................. 1

Legal Background ........................................................................................................................................ 4

The Role of Genre ....................................................................................................................................... 8

A Note on Genre In Islamic Legal Literature ................................................................................................. 15

The Genres of Islamic Law ............................................................................................................................. 19

Chapter Overview ....................................................................................................................................... 24

Chapter One: What is a Legal Distinction? ................................................................................................... 30

Legal Distinctions Defined ............................................................................................................................. 30

Justifications for Legal Distinctions ............................................................................................................. 56

Chapter Two: A General History of Distinctions ......................................................................................... 65

*Furūq* in Medicine .................................................................................................................................. 69

*Furūq* in Philology ..................................................................................................................................... 84

  Early Lexicographic Activity ....................................................................................................................... 89

  Books of *Faq* ............................................................................................................................................. 96

  *Kutub al-Furūq fī al-Lugha* ...................................................................................................................... 104

    Abū Hilāl al-ʿAskarī .................................................................................................................................. 105

  *Faq* and the Arabic Alphabet ................................................................................................................... 112

*Faq* and *Furūq* in Other Fields ............................................................................................................... 119

  Philosophy .................................................................................................................................................. 121

  Ethics ......................................................................................................................................................... 123

  *Faq* in Law ............................................................................................................................................... 126

Conclusions .................................................................................................................................................. 129
Chapter Three: Jadal as a Source for Legal Writings: The Cases of Khilaf and Furūq

Disputation and Distinction ................................................................. 133

Farq in Theological Disputation .......................................................... 138

Farq in Legal Disputation .................................................................. 142

Disputational Theory and Practice (Khilaf) ........................................... 154

Disputation in Furūq .......................................................................... 169

Conclusion ......................................................................................... 181

Chapter Four: The Logic of Legal Distinctions ...................................... 183

Understanding Lexicographic Distinctions ............................................ 187

Understanding Legal Distinctions ........................................................ 192

The Genre of Legal Distinctions .......................................................... 198

Early Books of Legal Distinctions ....................................................... 202

Conclusion ......................................................................................... 220

Chapter Five: Riddles and Entertainment ............................................ 222

Literary Salons, Learning, and Culture ............................................... 227

The Literature of Riddles and Legal Riddling ...................................... 245

Legal Distinctions as Play ................................................................... 263

The Merging of Alghāz and Furūq ....................................................... 267

Separating Riddles and Distinctions: The Case of Jamāl al-Dīn al-Asnawi 275

Conclusion ......................................................................................... 286

Chapter Six: A Bibliographic Survey of the Distinctions Genre ............ 290

Listing of Furūq Works ....................................................................... 298

The Fourth/Tenth Century .................................................................. 305

The Fifth/Eleventh Century ................................................................. 306

The Sixth/Twelfth Century ................................................................. 312
Introduction

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

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

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

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

---

A legal system, of course, is made up of much more than legal theory and substantive laws. In addition, a legal system would need at least courts, a state, and enforcement mechanics. See Joseph Raz, The Concept of a Legal System: An Introduction to the Theory of Legal System, 2nd ed. (Oxford: Clarendon Press, 1980).
centuries. Books of legal distinctions were written in all four Sunni schools of law, although it found greater currency with the Shāfiʿī school than it did with others. In general, Shiʿi jurists did not compose works of legal distinctions, although an early work is attributed to the Shiʿi jurist Aḥmad ibn Muḥammad al-Barqī (d. third/ninth c.) and another work is attributed to the Zaydi author ʿAlī ibn Yaḥyā ibn Rāshid al-Washlī al-Yamanī (d. 777). Unfortunately, neither work is extant. The genre seems to have been particularly popular in large urban centers, with an original point of focus in Abbasid Baghdad and later in Mamluk Cairo. The manuscripts of books of legal distinctions show that these works were copied and recopied often and circulated widely.

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

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

---

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

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

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

---

7 Recently, Thomas Bauer has convincingly put forth a convincing case for the centrality of ambiguity as a central aesthetic in Arabic literature. The tolerance for, and even delight in, ambiguity was a central motivator of scholarly writing. See Thomas Bauer, Die Kultur der Ambiguität: Eine Andere Geschichte des Islams (Berlin: Verlag der Weltreligionen, 2011).
a second study, “From Fatwās to Furūʿ,” in which he looks at the development of Islamic law through the incorporation of legal responsa, fatwas, into legal compendia. With this work, Hallaq has shown the potential of new kinds of sources for finding development and creativity within the history of Islamic law. Baber Johansen and David Powers have both demonstrated in greater detail how legal change and creativity were expressed through such responsa. Johansen argues that fatwas were not “chiefly responsible,” but rather that commentaries on legal compendia also played a major role in changing legal doctrine. Powers, meanwhile, argues in favor of adhering to already-established legal interpretations, “or, what we might call, adherence to the rule of law.”

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

---

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

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

---

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

The Role of Genre

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

---

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

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

---

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

I am not aware of much treatment by Western scholars of any of the particular juristic
genres that make up the corpus of Islamic legal writings as genres in their own right.”\textsuperscript{21}
A treatment of particular juristic genres in their own right requires the existence of
identifiable genres. Unfortunately, Ahmad does not elaborate on this topic.

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

\textsuperscript{21} Ahmad, \textit{Structural Interrelations}, 45.
\textsuperscript{23} El Shamsy, “Ḥāshiya” 296-97.
\textsuperscript{24} El Shamsy, “Ḥāshiya” 297.
\textsuperscript{25} El Shamsy, “Ḥāshiya” 297.
\textsuperscript{26} El Shamsy, “Ḥāshiya” 298.
Intisar Rabb took a different approach to legal genres in her dissertation. There, she studied “the genre of legal maxims,”27 which “emerged as a genre of independent literature”28 in the seventh/thirteenth – tenth/sixteenth centuries.29 Rabb understands works of legal maxims to be books wholly or primarily devoted to listing and explaining legal maxims. Although she does not state this explicitly, it is clear looking at her overview of the genre of legal maxims that she classifies works based on content.30 This contrasts with El Shamsy’s use of form as a guiding principle in determining genre.

More recently, Khadiga Musa also completed a survey of the genre of al-qawāʿid al-fiqhiyya.31 While she is interested in genre, her study does not contain a theoretical discussion of the term genre; she takes genre’s existence in Islamic legal literature as a given. In analyzing the genre of al-ashbāh wa-l-naẓāʾir, Musa bases her understanding of the genre on readings of the extant books of that call themselves al-Ashbāh wa-l-naẓāʾir. From these readings, she develops an understanding of the genre and how it developed. This is a useful approach for understanding the make-up of the genre; but her discussion lacks formal parameters of inclusion and exclusion other than self-
designation by title. Ahmad, however, believes it is “generally untenable” to use the title of a work to determine its genre. This approach potentially excludes early titles written before the formalization of the genre. Musa’s approach also leaves somewhat uncertain the criteria for excluding books from the al-ashbāh wa-l-naẓāʿīr genre and including them in the genre al-qawāʿid al-fiṣḥiyya. We see in this study, however, a third method for identifying legal genre: by title.

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

---

33 Ahmad A. Ahmad, Structural Interrelations, 17.
One of the benefits of studying Islamic law through genre is that jurists seem to have seen themselves participating in established genres, or discursive traditions, through the composition of books. A problem arises, however, since the classical Arabo-Islamic tradition had no term for literary genre. Nevertheless, there are several words in Classical Arabic which can have meanings close to those of genre. The lack of an equivalent term, however, does not necessarily mean the lack of a similar concept, nor that premodern jurists did not have an idea of genre. Although genre has remained a somewhat underdeveloped concept in Islamic legal studies, it has nevertheless proved productive for scholars who used it as an analytical framework. The unstated belief in the existence of genre motivated the above-mentioned studies.

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

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

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

\textsuperscript{37} See also Ahmad, \textit{Structural Interrelationships}, 16.
\textsuperscript{38} Rabb, \textit{Doubt in Islamic Law}, 20.
\textsuperscript{39} Ahmad A. Ahmad, \textit{Structural Interrelations}, 29.
\textsuperscript{40} Rabb intends to add “legal maxims (qawāʿid al-fiqh) as the third major genre of Islamic law.” Rabb, \textit{Doubt in Islamic Law}, 20. It seems to me, however, that assigning certain genres as the major genres or the principle genres before studying the genres of Islamic law as a whole is premature.
created, flourished, or waned. This dissertation attempts to answer some of these questions for legal distinctions, and perhaps shows a way of thinking about genre that can be applied to other types of Islamic legal literature.

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

The notion of genre inspired the analysis in this dissertation. It is therefore important to discuss what I mean by the word genre and how I use this idea in my dissertation. While genres are “groups of works that belong together because they stand in the same tradition,” they are also the products of agency, of those who bring the texts together and those who construct and determine the contours of a tradition. The *Princeton Encyclopedia of Poetry and Poetics* explains that “The practice of grouping individual texts into distinct categories, called *genres*, is common to writers and readers of all periods.”

Both authors and audiences play a role in determining the genre of a work with the result that there emerge shifting conceptions of different genres over time.

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

---

42 *Princeton Encyclopaedia of Poetry and Poetics*, s.v. “Genre” (M. Cavitch).
genres come from? Quite simply from other genres. A new genre is always the transformation of an earlier one, or of several: by inversion, by displacement, by combination.”

Genres should not be seen as static or stable, but rather as constantly changing. A genre can undergo change in itself, or it can change into a new genre. Todorov sees the origin of the novel arising from a massive series of generic transformations, arguing, “[t]he difficulty of the study of the ‘origin of the novel...’ arises only from the infinite embedding of speech acts with others.”

Only a finite number of transformations, or embedded speech acts, can be accounted for. While it may not be possible to capture all of the transformations that gave way to the creation of a new genre, this methodology for understanding Islamic legal genres is quite useful.

In addition to Todorov’s understanding, genre should also be understood as a Wittgensteinian language game. For Ludwig Wittgenstein, the term language game “suggest[s], first of all, that language was to be understood as an activity,” or as he puts it, language is “recurrent acts of play in time.”

There are several benefits to be gained by thinking of genre as a language game. Most importantly, this formulation allows us to think of genre as a continuous activity rather than a rigid category. A continuous activity is always open to change and improvisation. Thus, works belonging to a genre, “[r]ather than [having] defining characteristics...share family

---

resemblances.”  

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

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

---

50 Ahmad, Structural Interrelationships, 16.
one set of genres in an early period that evolves in multiple ways. Genres can splinter off into new genres and genres can change their rules to adapt to new activities.

These articles also provide evidence for the usefulness of thinking about genre as a language-game. Both El Shamsy and Rabb find evidence of legal content being shaped by genre. In other words, they find thought and language conforming to the rules of particular language games. El Shamsy suggests that the ḥāshiya’s development was a way for jurists to cope with and comprehend the enormity of the legal literary tradition, “a product of the logical development of a discipline.”

In seeing ḥāshiya as a sort of end-point for the legal tradition committed to commentary, jurists were free to elaborate on any and all aspects of these texts. It was not simply the legal content that was important, but also the linguistic and scholastic concerns of the authors of these texts. Rabb, meanwhile, finds that the maxim, “Avoid capital punishment in cases of doubt (adraʿū al-ḥudūd bi-l-shubuhāt),” underwent change as it transferred genre. She argues that “[t]he sources indicate that the differences in the form of the maxim in the early period were a matter not of sequence, but of genre.”

The changes inherent in the doubt canon were not due to history, but rather literature. The maxim changed as it played different generic games. This dissertation approaches the genre of legal distinction through the understanding described above.

---

51 El Shamsy, “Ḥāshiya” 303.
The Genres of Islamic Law

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

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

---

53 See the discussion in Eṣ2 s.v. “Mukhtaṣar” (A. Arazi and H. Ben-Shammay).
54 See the discussion in Chapter Three.
have advanced into the post-formative period. The continuation of two of these genres into the post-formative period signals the continued importance of these genres; their numerical decline during this same period, however, perhaps signals a need for a different periodization of Islamic law.

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

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

---


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

Perhaps the most studied genre of the post-classical period is *al-qawā’id al-fiṣḥiyya,* legal maxims or principles that state general principles of Islamic law. Many scholars, based on a definition by Tāj al-Ḏīn al-Subkī, understood them to be generally valid; although other jurists hold them only to lesser degrees of validity. This genre is closely related to two other genres of post-formative Islamic law: *al-ashbāḥ wa-l-naḥāʾir* and *maqāṣid al-sharīʿa.* It may be the case that *al-ashbāḥ wa-l-naḥāʾir* is a distinct genre of

---


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

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

\textsuperscript{63} Specifically, the genre of \textit{al-ashbāh wa-l-nazāʾir} is not well understood. While Heinrichs understands \textit{al-ashbāh wa-l-nazāʾir} to be an extension of \textit{qawāʾid}, Khadiga Musa states that some premodern jurists understood it as an extension of legal distinctions. Khadiga Musa, “Legal Maxims,” 338.

\textsuperscript{64} Al-Shāṭibī’s \textit{al-Muwāfaqāt fī usl al-sharīʿa} seems to have been the first text of this kind. See EI\textsuperscript{2} s.v. “Maḳṣid al-Shariʿa” s.v. (Gleave); Krawietz, \textit{Hierarchie}, 223-241; Ibrāhīm ibn Mūṣā al-Shāṭibī, \textit{al-Muwāfaqāt}, ed. Abū ʿUbaydah Mashhūr ʿibn Ḥasan Āl Salmān, 6 vols. (Riyadh: Dār Ibn Qayyim; Cairo: Dār Ibn ʿAffān, 2009); \textit{idem}, The Reconciliation of the Fundamentals of Islamic Law, trans. Imran Ahsan Khan Nyazee (Reading, UK: Garnet, 2011); Kamali, \textit{Shariʿah Law}, 123-40.

\textsuperscript{65} See Chapter Five of the present study and the references cited therein.

\textsuperscript{66} Searching for \textit{nazm} and \textit{manẓūm} in GAS, I found only two works of legal versification mentioned in GAS, \textit{Nazm al-durra fī talkhīṣ al-Mudawwana} by al-Sārmasāḥī (d. 669/1271; 1:471) and \textit{Naẓm Risālat Ibn Abī Zayd} by Muḥammad ibn ʿAbīm al-Miknāsī (d. 919/1513; 1:481). Al-Sārmasāḥī’s seems to be the earliest legal work
special mention. Ḥiyal works appear early on Islam, the first such work likely being Kitāb al-makhārij fī al-ḥiyal of Muḥammad ibn al-Ḥasan al-Shaybānī, and it seems to have continued as a small but important genre well into the post-formative period. Indeed, the fifth chapter of Ibn Nujaym’s al-Ashbāh wa-l-naẓāʾir is on legal stragems.

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

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


69 Hallaq, Authority, 43-56;

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

71 See Ahmed El Shamsy, “Ḥāshiya.”
Finally, two tangential genres should be considered. First, the logically-based inquisition known as ādāb al-baḥth (methods of argumentation) deserves more scrutiny. This style of argumentation, which began at the end of the seventh/thirteenth century and “owed its genesis to the earlier [... works on ʿilm al-khīlāf and jadal and] was easy to apply across the disciplines.”

The importance of disputation as jadal has been discussed often, but not so in its guise as ādāb al-baḥth. Further, legal biographies should also be considered within a discussion of the genres of Islamic Law, a genre that includes biobibliographical writing (ṭabaqāt) as well as individual hagiographies of jurists (manāqīb).

Chapter Overview

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

Having established the general outlines of the genre, the second chapter takes a wider view, looking at the field of distinctions writing in the Arabic tradition generally. This chapter focuses primarily on the genres of distinctions in linguistics and in medicine as parallels to the genre of legal distinctions. Distinctions in linguistics focused either on differentiating between letters of the Arabic language, often on phonological grounds, or on lexicographic distinctions as semantic differentiation between near synonyms. This chapter finds that the genre of lexicographic distinctions was an important precursor to legal distinctions; it may perhaps even be said to establish some rules of the language game that is the genre of legal distinctions, regarding the organization and presentation of information. In medicine, differential diagnostics also has a certain resonance with the genre of legal distinctions. This
conclusion is complicated by the fact that although classical biobibliographical works seem to attest to a small but extant genre of distinctions works in medicine, only one work of this genre has survived, in various manuscripts and attributed to a variety of authors. Finally, the chapter closes by discussing other areas of intellectual inquiry which appear to have traditions of distinctions writing, such as ethics and philosophy. These works of distinctions, however, are not genres specific to these disciplines, but rather what I term applied lexicographic distinctions. That is, a work of lexicographic distinctions applied to the technical vocabulary of a specific scholarly discipline; a comparison of words for the soul, for instance, or of admonishing and advising. These works of applied lexicographic distinctions are important since they are found in almost all areas of Arabo-Islamic scholarship, and relevant to this study since they are even found in the field of law, but they are not examples of works of legal distinctions.

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

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

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

Finally, Chapter Six is a narrative bibliography of all works of legal distinctions
known to me. The bibliographical work carried out in this chapter builds on and
improves previous attempts to catalog this genre. I relied on earlier scholarship and
also incorporated information from editorial discussions in all printed editions of texts
in this genre, from the biobibliographical tradition, and from my own study of
manuscript catalogs and collections. My survey locates thirty-six works that belong to
this genre, and identifies the fifth/eleventh century and the seventh/thirteenth
through eighth/fourteenth centuries as the peak period of composition in this genre.
Chapter Six also discusses two Ḥanafī books of legal distinctions that have various
dubious attributions but no known author. In spite of the uncertainty about the authors
of these two works, they clearly belong to the genre and were copied and circulated to
the same extent as other works in the genre whose authors are more easily identifiable.
The genre of *al-furūq al-fiqhiyya* presents a good subject for a case-study of the emergence and maturation of a new and distinct genre in Islamic legal literature. Through a study of this genre, this dissertation closely ties the intellectual history of Islamic law with the social display and consumption of Islamic legal knowledge, and specifically it demonstrates a close link between legal distinctions and distinctions in other scholarly fields. It also shows that the need for books of legal distinctions arose in part from the popularity of legal disputation and the usefulness of these works in overcoming *farq*-objections, which were common in the context of formal disputations. Additionally, the following study shows how changes in the genre of distinctions, and the genre of riddles, were tied to shifting aesthetic tastes and a changing demand for particular ways of packaging legal knowledge.
Chapter One: What Is a Legal Distinction?

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

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

**Legal Distinctions Defined**

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

75 Al-Bāḥusayn, al-Furūq al-fiqhiyya, 14-15.
shared understanding of the topic among both authors and their readers. The works of legal distinctions themselves all share a similar conceptual framework and organization.

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

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

---

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

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

77 Al-Juwaynī, al-Jam‘ wa-l-farq, 1:39-41.
78 Al-Juwaynī, al-Jam‘ wa-l-farq, 1:41.
79 Al-Juwaynī, al-Jam‘ wa-l-farq, 1:41.
80 Al-Juwaynī, al-Jam‘ wa-l-farq, 1:41.
Al-Juwaynī’s typology of legal distinctions is complex and shows that, for him, not only do distinctions offer ways of resolving apparent contradictions, but also a productive method for reasoning through different kinds of seemingly ambiguous legal issues. As he presents distinctions, they are a defensive and pedagogical intellectual maneuver in which the doctrine of a legal school is justified and through which students of Islamic law can learn the rationales for specific points of legal doctrine.

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

One way of understanding furūq in his usage is that he is describing the contents of his book, Kitāb al-Furūq, i.e. he is giving a typology for the furūq that make up the work at hand. His typology does, of course, explain the contents of his work, but to understand it as only pertaining to the contents of his work would be to miss the real importance of this typology. Al-Juwaynī’s typology, in fact, conveys the possible kinds of contradictions of which a Shāfiʿī jurist could be accused of making during a disputation (al-mujādala; al-munāẓara). These are not only hypothetical accusations;
they correspond to various kinds of objections made in the course of formalized disputation, either in a real disputation or in paradigmatic accounts in writing. In al-Juwaynī’s presentation a debate opponent could accuse a Shāfiʿī jurist of contradiction because the opponent does not understand (i) the scope of applicability of seemingly overlapping rules, (ii) the nuances of al-Shāfiʿī’s vast legal doctrine, or (iii) how to reason through competing statements of substantive law by other major authorities in the Shāfiʿī school. In other words, according to al-Juwaynī, non-Shāfiʿī’s could accuse a Shāfiʿī of contradiction because the non-Shāfiʿī did not understand how to make the complexity inherent in the substantive doctrine of the Shāfiʿī legal school coherent.

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

---

81 I discuss the importance of jadal to the genre of legal distinctions in Chapter Three.
82 The history of al-Shāfiʿī’s substantive legal doctrine is complex. Not only was his writing preserved and transmitted in slightly different versions by his students, but he is also said to have produced a version of his legal doctrine in Iraq and a different and revamped version in Egypt, the so-called old (al-qadīm) and new (al-jadīd) doctrines. For more on this issue, see Ahmed El Shamsy, The Canonization of Islamic Law: A Social and Intellectual History (New York, Cambridge: Cambridge University Press, 2013).
that this is the most common type. Most legal distinctions are straightforward comparisons of laws which have a similar appearance but different outcomes.

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

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

A fast, however, is valid even if the intention to fast was made prior to the start of the fast (wa-yāṣīḥḥu al-ṣawm wa-in kānat niyyatu hu mutaqqaddima ‘ala al-ṣawm bi-zamān).

The distinction between these is the possibility to follow the statement of intention directly by the prayer (al-tamakkun min ẓamm al-niyya ilā awwal al-ṣalāt) and the clear inability to follow the statement of intention directly by the fast.

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

---

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

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

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

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

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

The other is that he is exempt from any liabilities (barīʿ an al-ḍamāʿin).
Thus, if someone hires a man as a worker to perform work in his workshop (fi ḥānūtihi) and something is destroyed while in the worker’s possession, al-Shāfi‘ī has stated definitively (qad qaṭa‘a al-qawl) that he is not liable, even though both of them are laborers (kilāhumā ajīr).  

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

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

The distinction between them is that an independent laborer (al-ajīr al-mushtārik) has possession of the countervalue that corresponds to the price of his labor (yanfaridu bi-l-yad ‘alā mā akhadha al-‘iwaḍ fī muqābalati ‘amalihi fīhi). Thus, he can be held liable for the destruction of the good. A worker in a workshop (al-ajīr fī al-ḥānūt), however, is is not in sole possession, but rather the

---

85 Al-Juwaynī, al-Jam‘ wa-l-farq, 1:40.
owner of the workshop has possession (al-yad) of what is in his workshop. Thus the destruction of something in the possession of the worker (fi yad al-ajîr) is like the death of a slave in the possession of his owner (fi yaday sayyidihî) through phlebotomy (bi-l-fâsd) or cupping during an operation (al-jarrâḥa). The phlebotomist is not liable.\textsuperscript{86}

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

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

\textsuperscript{86} Al-Juwaynî, \textit{al-Jam‘ wa-l-farq}, 1:40-41.
not liable because these damages happen while the slave is in the care and custody of his master (fi yaday sayyidihi), as al-Juwaynī says when introducing this example. Indeed, a doctor making house calls is a kind of independent laborer and thus offers another equivalent example to those discussed above. The concept of possession (al-yad) is an important factor in all three cases. It would seem that a general rule could be established here. Liability for damages due to negligence falls on whoever has possession of the damaged good. Al-Juwaynī, however, does not go so far as to establish this rule.

Although al-Juwaynī clears away the contradiction as a part of the active or authoritative doctrine of the Shāfi‘ī legal school, his explanation ignores the potentially contradictory nature of the two statements attributed to al-Shāfi‘ī. There are several possibilities for harmonizing al-Shāfi‘ī’s statements but al-Juwaynī seems uninterested in undertaking this specific task. His concern, rather, is with the coherence of the Shāfi‘ī madhhab as developed over the centuries by later jurists. He may see the two, Muḥammad ibn Idrīs al-Shāfi‘ī’s substantive doctrine and the substantive doctrine of the legal school which bears his name, as extensions of each other, such that resolving apparent contradictions found in the doctrine of the Shāfi‘ī school implicitly does the same work for the doctrine of its eponym. Nevertheless, it is worth noting that al-Juwaynī’s interest lies primarily in the Shāfi‘ī madhhab as an elaborated scholarly-legal institution rather than in explicitly defending the specific doctrines of Muḥammad ibn Idrīs al-Shāfi‘ī. In other words, the authority or validity of the madhhab as expressed
here lies in the rationality of its doctrine and is not directly tied to the explicit words and writings of its assumed founder.\textsuperscript{87}

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

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

The second subcategory obtains when the applicability of one of the two rulings is weakened by an indicant in the unanimously agreed-upon case (\textit{an yaḍ‘ufu aḥad al-wajhyan bi-dalīl al-mas‘ala allati lam yakhtalifū fīhā}). Maintaining a clear distinction then becomes impossible (\textit{fa-yata‘adhdhur al-faq al-wāḍīhi}). In such a

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

\textsuperscript{88} Al-Juwaynī, \textit{al-Jam‘ wa-l-faqr}, 1:41. Specifically, he says, “The discourse of this section is similar to that of section two, above (\textit{al-kalām fī hādhā al-qism ka-l-kalām fī al-qism al-thānī qablahu}).”
situation, one should then strive to deem the weaker of the two positions untenable and dismiss it, rather than striving to discover the basis for a distinction and rationalizing it, not even by extrapolating (takhrij) from the two opinions on the basis of the unanimous accepted ruling (fa-ishtaghil fi mithl hādhā al-mawdī bi-tazyif adʿaf al-wajhayn wa-isaqātihi wa-lā tashtaghil bi-iltimās al-farq fa-yataʿadhdharu wa-lā fi-takhrij al-wajhayn fi al-masʿala al-mujmaʿ (alayhā). Wayward speculation (al-taʿassuf) and farfetched extrapolations (takhrijāt) are rampant in this category (qism). Expending great energy on invalidating weaker opinions is more important than both wayward speculation and a rampant proliferation in authoritative legal opinions and extrapolating from them (wa-ṣarf al-ʿināya ilā isqāṭ baʿd al-wujūh al-daʿīfa awlā min al-taʿassuf wa-l-wulūʾ bi-istikthār al-wujūh wa-takhrijihā). When we come across examples of this subcategory (qism), we will mention them (dhakarnāhā) but we have already explained the reasoning in these cases (wa-mahhadnā hādhīhi al-ṭariqa fihā).

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

89 This statement should be understood as promoting the rigor of the madhhab in order to prevail in a legal disputation, not as related to the desirability of ijmāʿ.
90 Al-Juwaynī, al-Jamʿ wa-l-farq, 1:41.
91 The idea of taqlid has long been a subject of scholarly attention. Taqlid, in this context, refers to the faithfulness on the part of jurists to the juristic authority of earlier jurists. On taqlid, see Sherman Jackson, “Taqlid, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory Muṭlaq and ʿĀmm in the Jurisprudence of Shihāb al-Dīn al-Qarāfī” Islamic Law and Society 3.2 (1996): 165-92; Mohammad Fadel, “The Social Logic of Taqlid and the Rise of the Mukhtaṣar,” Islamic Law and Society 3.2
of Islamic law involved the formalization of distinct legal schools following the doctrine of their eponyms, Abū Ḥanīfa al-Nuʿmān ibn Thābit (d. 150/767), Mālik ibn Anas (d. 179/795), Muḥammad ibn Idrīs al-Shāfiʿī, and Aḥmad ibn Ḥanbal (d. 241/855). Taqlīd can perhaps be understood best as a discursive commitment to adhering diligently to already-established legal interpretations set out by the earliest figures in a legal school. Discursive adherence implied a shift away from labeling one’s own juristic techniques as ijtihād, independent legal reasoning, since one’s legal reasoning should occur within the established bounds of the legal school.

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

---


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

Hallaq, Authority, 43-56; Ahmed, Structural Interrelations, 1-4, 57-59, 189-92.
to elaborate on substantive law and engage in legal reasoning while allowing them to argue that they were remaining within the institutional confines of their various legal schools. Modern Western scholarship has tended to see this legal methodology as a kind of decadence in Islamic law, although recent scholarship has challenged this narrative of taqlīd as decay. More productively, taqlīd can be understood as a discursive move rather than practical adherence to a state of stability, and further, as David Powers describes it “[taqlīd is] what we might call adherence to the rule of law,” or as Ahmed Fekry Ibrahim puts it, “legal conformism.” In using this phrase, Powers is referring to the potential for taqlīd to establish known rules with predictable application in a legal system that functions reliably rather than one functioning ad-hoc. In this regard, taqlīd contributes to the establishment of fixed norms.

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

---


95 David S. Powers, Law, Society, and Culture in the Maghrib, 1300-1500 (Cambridge: Cambridge University Press, 2002), 94; Ibrahim, Pragmatism, 10. Powers and Ibrahim are by no means the only scholar to have challenged the previously prevailing negative view of taqlīd. Wael Hallaq, among other scholars, has also taken issue with that view in various books and articles. The bibliography on this topic is quite vast. see, for example, Wael Hallaq, “From Fatwās to Furūʿ: Growth and Change in Islamic Substantive Law.” Islamic Law and Society 1 (1994): 29-65; and more recently, idem., Sharīʿa: Theory, Practice, Transformations (Cambridge: Cambridge University Press, 2009); Sherman Jackson, Islamic Law and the State The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī (Leiden; New York: Brill, 1996); and Norman Calder, Islamic Jurisprudence in the Classical Era, ed. Colin Imber and Robert Gleave (Cambridge: Cambridge University Press, 2010).
exercise of legal reasoning, but rather the infinite potential that extrapolation holds.\textsuperscript{96} In order to impose bounds on the seemingly unrestricted nature of extrapolation, al-Juwaynī calls upon the logic of legal distinctions. This subset of distinctions, rare enough in occurrence for him not to cite an example but discuss only theoretically, exists as a way of limiting the ambit of speculative extrapolation. In order to constrain the scope of such speculation, al-Juwaynī emphasizes the importance of expending energy invalidating weak points of legal doctrine.\textsuperscript{97}

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


\textsuperscript{97} Al-Juwaynī, \textit{al-Jam‘ wa-l-farq}, 1:41. A concern for controlling the growth of legal doctrine was a recurring topic in post-formative Islamic legal writing. See, Wael Hallaq, \textit{Authority}, 236-41; and Norman Calder, “al-Nawawī’s Typology of Muftis and Its Significance for a General Theory of Islamic Law” \textit{Islamic Law and Society} 3.2 (1996), 137-64, especially 137-43.
Najm al-Dīn al-Ṭūfī includes a discussion of furūq in his ʿAlam al-jadhal fī ʿilm al-jadal, a manual for legal disputation. This discussion comes under the section titled “Counter-Objections Based on Qiyās.” The seventeenth objection based on qiyās is distinction (farq). This discussion is couched in the terms of legal dialectics and is at the same time a clear discussion of the material found in books of legal distinctions and their underlying logic. In his understanding, farq is “discovering the legally relevant and unique characteristic in either the precedent case or the instant case (ibdāʾ waṣf fī al-aṣl aw al-farʾ yunāsibu mā akhtaṣṣa bihi min al-ḥukm).” Al-Ṭūfī details how to recognize when a farq objection may be lodged in a disputation. “The necessary condition for a distinction is that the two scenarios share multiple legally relevant characteristics, otherwise the difference between the two cases is a fundamental difference and an objection based on distinction would be ineffective (wa-sharṭuḥu ishtirāk al-ṣūratayn fī baʿd al-aṣwāf wa-illā la-kāna al-farq baynahumā aṣliyyatan fa-lā yuʿathṭiru farq al-muʿtarid).” According to this statement, in order to use a farq objection, one must compare two situations which share several relevant characteristics. The similarities shared by two scenarios not only invite their comparison, but also allows the possibility that they should be treated the same way legally. If situations are too different, then comparing them in this way would be fruitless. Different situations do not necessarily need to be regulated in similar ways. This information is helpful for a debate.

98 I discuss the relationship between distinctions and disputation in Chapter Three.
100 Najm al-Dīn al-Ṭūfī, ʿAlam al-jadhal, 71.
participant to understand how farq-objections are made and at the same time to know how to overcome the objection.

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

Finally, the Shāfiʿī scholar Badr al-Dīn al-Zarkashī also includes a short discussion of legal distinctions in the introduction to his al-Manthūr fī al-qawāʿid. Al-Zarkashī notes that the “law has many subdisciplines (iʿlam anna al-fiṣḥ anwāʾ).” One of the varieties that he mentions is “knowledge of assimilation and distinction (maʿrifat

---

“al-jamʿ wa-l-faq)” by which he clearly refers to legal distinctions, since he says “among the best books written on this topic is the book by the scholar (al-shaykh) Abū Muḥammad [ʿAbd Allāh] al-Juwaynī.” This is a telling account, in that two of the three major discussions of legal distinctions come from Shāfiʿī scholars and that al-Zarkashī cites al-Juwaynī’s book as one of the two principal books of legal distinctions in the course of his discussion.

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

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

---

104 Al-Zarkashī, al-Manthūr, 1:69.
105 I have been unable to locate a source earlier than al-Zarkashī that uses this phrase to describe the law.
106 This statement should draw to mind al-Ṭūfī’s insistence on the importance of shared characteristics.
(wajaba al-qadā' bi-ijtima'ihimā). If the two cases are at odds, however, they should be held to be distinct (wa-in inqādaḥā faraqa ‘alā bu‘d). The Imam also said, “Understand this well, for it is one of the foundations of the religion (fa-innahu min qawā'id al-dīn).

According to this definition, legal distinctions are a core component of the multifaceted complex that is Islamic law. Al-Zarkashī lists al-farq wa-l-jamʿ second in his list of components of Islamic law. His components are: (i) “knowledge of the substantive laws, both those mentioned explicitly in revelation and those known through legal reasoning;” (ii) “al-farq wa-l-jamʿ”; (iii) “the scaffolding of legal cases, one on the other such that they all result from one underlying principle (banā' al-masā'il ba‘dahā ‘alā ba‘d li-ijtima'iḥā fī ma‘khadh wāḥid);” (iv) “difficult questions (al-muṭāraḥāt), i.e. obscure questions that are used to test one’s intellect (as‘ila ‘awīṣa yuqṣad bihā tanqīḥ al-adhān);” (v) “sophistical argumentation (? mughālaṭāt);” (vi) “examinations (mumtaḥināt);” (vii) “riddles (al-alghāz);” (viii) “legal strategems (hiyal);” “knowledge of individual scholars (ma‘rifat al-afrāḍ), what specific positions did each

---

107 This statement is quite similar to al-Juwayni’s discussion of distinction type 3b.
110 Al-Zarkashī, al-Manthūr, 1:69.
113 Al-Zarkashī, al-Manthūr, 1:71.
114 Al-Zarkashī, al-Manthūr, 1:71.
take on issues of substantive law (mā li-kull min al-aṣḥāb min al-awjūh al-qarība);”\textsuperscript{117} and (x) knowledge of the specific precepts (dawābiṣṭ) which assimilate (tajmaʿu jumūʿan) and the maxims (qawāʿid) on which legal theory and substantive law depend (allatī turaddu ilayhā uṣūlan wa-furuʿan).”\textsuperscript{118} This list, which al-Zarkashī uses to situate his work on legal maxims (qawāʿid), provides a fascinating insight into the prevailing conceptions of Islamic law in the ninth/fifteenth century.

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

\textsuperscript{117} Al-Zarkashi, al-Manthūr, 1:71.
\textsuperscript{118} Al-Zarkashi, al-Manthūr, 1:71.
\textsuperscript{119} Interestingly, at the end of his entry on dawābiṣṭ and qawāʿid, al-Zarkashī says “These are the true foundations of the law (wa-huwa uṣūl al-fiqh ‘alā al-ḥaqiqā)” (1:71). Dividing Islamic Law into either furūʾ or uṣūl seems to be traditional in the Western study of Islamic law, but it may not be a reflection of the ways in which the Islamic legal tradition has always understood itself.
which I am aware. Al-Juwaynī and al-Zarkashī are interested in discussing legal distinctions as a methodology of legal argumentation and legal reasoning. For them, the focus in this field is on resolving apparent contradictions.

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

There is a modest amount of secondary literature, in Arabic and European languages, on legal distinctions.¹²⁰ The majority of these discussions occur in editors’ introductions to printed editions of works of legal distinctions. In such cases, however, most of the discussions list major works of legal distinctions and their authors with a short lexicographical discussion of the triliteral root $f-r-q$ and its morphological derivates. These works, in general, do not include typological or theoretical discussions of legal distinctions beyond what has been discussed above. One major modern study of legal distinctions, however, is Ya’qūb al-Bāḥusayn’s *al-Furūq al-fiḥiyya wa-l-uṣūliyya - muqawwimātuḥā - shurūṭuḥā - taťawwuruḥā - dirāṣa naẓariyya - wasfiyya - tārīkhiyya*.¹²¹

---

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

¹²¹ Al-Bāḥusayn, *al-Furūq al-fiḥiyya*. 
this work, al-Bāḥusayn provides a brief theoretical discussion of the kinds offurūq writing. His presentation of legal distinctions is quite different from that discussed by al-Juwaynī.

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

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

122 Al-Bāḥusayn, al-Furūq al-fiṣḥiyya, 79-82.
123 Al-Bāḥusayn, al-Furūq al-fiṣḥiyya, 79.
discuss only substantive laws that are similar outwardly but have conflicting rulings and the distinctions between them (dhikr al-furāʾ al-fiqhyya al-mutashābiha fī al-ṣūra wa-l-mukhtalifa fī al-ḥukm maʿa bayān al-faqr baynahumā); the second section of al-Bāhūsain’s book is on legal-theoretical distinctions. These distinctions are, according to him, entirely different from substantive legal distinctions. His categorizations parallels one made in the present study, which understands legal distinctions to be different from what I term applied lexicographical


126 Al-Bāhūsain, al-Furāq al-Fiqhiyya, 82. Al-Bāhūsain does not give any examples, but it seems that he is referring to the books of ashābiha that contain what I term applied linguistic distinctions, see Chapter Two.

127 Al-Bāhūsain, al-Furāq al-Fiqhiyya, 82. Al-Bāhūsain also does not give an example of this kind of book, but rather says that it happens in “books on legal maxims (muʾallaṭūt fī al-qawāʿid al-fiqhyya).” This kind of discussion can be found in books such as al-ʿAshbāḥ wa-l-Naẓāʿīr by Jalāl al-Dīn al-Suyūṭī (d. 911/1505) and al-ʿAshbāḥ wa-l-Naẓāʿīr by Ibn Nujaym al-Miṣrī (d. 970/1563).
distinctions. Al-Bāḥusayn’s legal-theoretical distinctions are roughly equivalent to what I term an applied lexicographical distinction.128

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

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

130 Heinrichs, “Structuring the Law,” 335.
legal distinctions, he only repeats the definition given by the classical tradition, “the outward findings of the cases are similar, but the legal assessments differ.”

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

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

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

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

¹³⁸ Al-Bāḥusayn, al-Furūq al-Fiqhiyya, 40.
¹³⁹ See Chapter Three.
furūq works are concerned with explaining legal distinctions, that is, comparisons of seemingly contradictory laws that arise within a given school’s doctrine.

**Justifications for Legal Distinctions**

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

Legal problems (masā’il al-shar‘) can resemble each other outwardly but have contrasting outcomes (qad tatashābahu ṣuwaruhā wa-takhtalifu aḥkāmhuḥā) because of legal rationales (‘ilal) that require different rulings. Those who seek true answers cannot do so without careful study of these legal rationales which necessitate distinguishing what needs to be distinguished and assimilating what needs to be assimilated (iftirāq mā aftaraqa minhā wa-ijtimāʿ mā ijtamaʿa minhā).

Thus, through God’s will, may He be exalted, and His providence (tawfiq), we have collected in this book legal issues and distinctions, some of which are more obscure than others.¹⁴⁰

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

---

¹⁴⁰ Al-Juwaynī, al-Jam‘ wa-l-farq, 1:37.
precision. It is clear that he sees legal distinctions as a way of understanding the intricacies of the doctrines of the Shāfi‘ī school, but cannot take his audience’s knowledge of the concept or genre of distinctions as a given. This implies, for instance, that the Shāfi‘ī jurist Ibn Surayj (d. 306/918) did not compose a book of legal distinctions, even though he is occasionally credited with having done so.\footnote{It is interesting that Ibn Surayj is remembered in the biographical tradition as being a proponent of the Shāfi‘ī school, but not a reliable source of such knowledge. Abū Ḥāmid al-Isfarā‘īnī (d. 406/1026) is remembered as saying “We agree with (najrī ma‘ā) Abū al-‘Abbās [Ibn Surayj] on the generalities of the law, but not so much on its particulars (ẓawāhir al-fiqh dān al-daqā‘īq).” See Abū Iṣḥāq al-Shirāzī, Ṭabaqāt al-fiqahā’, ed. Ḩāsān ‘Abbās (Beirut: Dār al-Rā‘īd al-‘Arabī, 1970), 1:109; also Chapter Three, pp. 207-209.} Al-Juwaynī’s detailed explanation of legal distinctions and lack of reference to similar works is circumstantial evidence of the earliness of his work in the genre of legal distinctions. His view, however, that legal distinctions are a way of understanding the intricacies of Islamic law or of a legal school’s doctrine is echoed in other works of this genre.

Books on legal distinctions do not generally begin with a theoretical discussion of legal distinctions; instead many authors introduce their works by saying that they are writing their book on legal distinctions in response to a request from students or others interested in Islamic law. Such apologetic introductions are, of course, a common literary trope of Arabic writing in general. It was a common trope to begin a book by framing it as a response to the requests of students, friends, and others; doing so gave scholars a pretext for writing a book and sharing their knowledge. The recurrence of this trope, however, in books of legal distinctions, at the expense of other
introductory formulae is instructive. For example, ʿAbd al-Ḥaqq al-Ṣiqillī (d. 466/1073-74) says:

A student of Mālikī law asked me for help in collecting the particular legal questions from *al-Mudawwana* and *al-Mukhtaliṭa*\(^{142}\) that novice and beginning students need to learn, together with issues (*min nukta*) that I find important to understand, distinctions between legal issues, and the differences between the rulings that would otherwise would be impossible for students to know (*tafrīq bayna masʾalatayn qad yataʿadhdharu ʿalā al-ṭālib maʿrifat ikhtilāf ḥukmihā*).\(^{143}\)

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

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


\(^{144}\) The Mālikī scholar Ibn Farḥūn reiterates the importance of ‘Abd al-Ḥaqq’s work for students. He says that this “is a useful book for developing scholars who show promise (*al-nāshiʾīn min ḥudhdhāq al-ṭalaba*).” Although this seems to complement ‘Abd al-Ḥaqq’s words, Ibn Farḥūn continues this with the following sentence. “It is said that he later regretted writing this book (*nadama baʿda dhālika ʿalā taʾlīfihi*), and that he withdrew many of the citations and comments he included therein, and corrected much of what he
ʿAbd al-Ḥaqq’s *al-Nukat wa-l-furūq* was an early book in the genre of legal distinctions and ʿAbd al-Ḥaqq signals that this is a new form of legal composition. Nevertheless, the existence of distinctions between similar laws has, unsurprisingly, long been a part of Islamic law. “Most of what I discuss,” he continues, “is that which I learned from my own teachers in their study circles (*majālis*).”145 Again, this statement continues the trope of modesty; al-Ṣiqillī credits the insights of his book to his teachers, not to himself. Nevertheless, we see here that legal distinctions, or rather the comparison of similar yet distinct points of substantive doctrine, formed a part of Mālikī legal study before al-Ṣiqillī. Al-Ṣiqillī was not the first jurist to notice these similar and apparently contradictory laws. Rather, his work marked the beginning of the activity of enumerating, listing, and using them as a way to think through issues in Islamic law.146

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

---

146 It could very well be the case that interest in legal distinctions is part of a response to a greater necessity to have ready responses for charges of *farq* in formal disputation, but this is not stated by al-Ṣiqillī.
Here, Muslim al-Dimashqī highlights many of the aforementioned tropes in one sentence. Someone, presumably someone not yet a fully formed jurist, wants to learn about the subtle distinctions between laws but cannot find a book dedicated to this topic. He indicates, further, the relative lack of books on legal distinctions, at least for the Mālikī school, and their usefulness for beginning students.

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

149 Al-Sāmarrī, Kitāb al-Furūq, 115.
are applied. Legal distinctions provide an opportunity to reason backwards from very specific situations to the rationales behind those rules.

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

These are legal issues (masāʾil) which I collected from books, questions on which the authorities of our madhhāb have not agreed upon standard rulings and exceptions (layṣa fīhā aqīsā wa-lā istiḥsān illā khilāf mashhūr bayna ašḥābinā)… I intended to single out these cases, to aid in their memorization (li-yusahhila hifẓahā).

The Shāfiʿī Jamāl al-Dīn Al-Asnawī (d. 772/1370), takes a similar approach, although he situates his book clearly within an existing and established legal-literary genre. He notes in regard to his book: “I have seen that other Shāfiʿī scholars have written (li-ašḥābinā) books (taṣānīf) in this subject (maʿnā) and I have discovered many tomes by them. Some are written exclusively on this topic, while others encompass a broader focus.”

Al-Asnawī, writing within an already well-defined literary tradition, can no longer claim to be writing on legal distinctions because of the lack of such books.

---

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

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

152 Al-Asnawi, Maṭāliʿ al-daqaʾiq, 2:9.

62
work, and therefore build their own works on legal distinctions with reference to al-Qarāfī’s seminal book.

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

a colleague (baʿḍ ikhwānī) [who] asked me to write a book on (an uhadhdhiba) legal issues that agree in their structure (tattafīqu mabānīhā) but differ in their rulings (takhtalif maʿānīhā) that is concise but effective in its presentation (mūjizan iʿtibāratihā muʾaththirān ishāratihā), easy to understand and hard to disagree with, a book that can be relied on in study circles (yastadillu hu fī al-majālis) and from which you can find guidance in schools (yastaḍīʾ bihi min al-madāris). Tellingly, the audience for this book is still students, both in study circles or salons, majālis, and formal contexts, law colleges. His book thus helps them prepare for and participate in conversations about Islamic law. One of the things that this

154 This work has yet to be edited; I have found eight manuscripts of this work, see Appendix V.
demonstrates, however, is how the genre of legal distinctions could and did respond to a changing reading public. No longer was it only students who desired to read these books, but also interested non-jurists who sought access to highly specialized and erudite legal knowledge.\footnote{I discuss this issue at length in Chapter Five.}
Chapter Two: A General History of Distinctions

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

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

---

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

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

\(^{158}\) See below, as well as Chapter Four.
\(^{161}\) The existence of differential diagnostics as a genre of writing is not clear. See below Chapter Two, pp. 69-71.
linguistic *furūq* and not a novel and independent realm of ‘distinctions-thinking.’\textsuperscript{162} In discussing these parallel genres, I do not claim that they directly influenced legal thinking. Rather these genres show how the concept of distinctions was being adapted by scholars for a variety of purposes at the time in which legal distinctions rose to prominence in the fourth/tenth century. It seems important, however, that the genres of distinctions writing in linguistics and in law arose simultaneously and for similar reasons; books of distinctions in these two disciplines are similar in terms of organization, presentation, and methodology.\textsuperscript{163}

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

\textsuperscript{162} For a full discussion of the concept of distinctions and what I refer to as ‘distinctions-thinking,’ see Chapter Four.

\textsuperscript{163} The similarities between these two genres are clear from an initial reading; further study, however, shows that these two genres are similar only at a surface level.

\textsuperscript{164} Historical epistemology, as used in this chapter, refers to the “study of epistemological concepts as objects that evolve and mutate” (Hacking 9). Historical epistemology understands that “fundamental epistemic concepts and standards are subject to historical change” (Feest and Strum 290). In other words, it is a methodology that tries to understand the historical contingency of knowledge and knowledge standards. I take the drawing of distinctions—comparison—as an epistemic concept that helps to divide objects of knowledge and establish their identities. In part, this chapter attempts to show how the idea of a comparison “evolve[d] and mutate[d]” in response to various social and intellectual currents. Ian Hacking, *Historical Ontology* (Cambridge, MA: Harvard University Press, 2004); Uljana Feest and Thomas Sturm, “What (Good) is Historical Epistemology? Editor’s Introduction” *Erkenntnis* 75 (2011): 285-302. The 75\textsuperscript{th} volume of *Erkenntnis* is devoted to historical epistemology. For more on historical epistemology, see Arnold Davidson, *The Emergence of Sexuality: Historical Epistemology and the Formation of Concepts* (Cambridge, MA: Harvard University Press, 2002).
information therein follows this purpose. There is no discussion of medical treatment, nor of theoretical analysis of maladies.\textsuperscript{165} Works of linguistic distinctions, however, do not function in the same way. Lexicographic distinctions focus on the subtle distinction in meaning or connotation between apparent synonyms, and they operate on both a practical and theological level.

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

\textsuperscript{165} It is possible as well that the discussion in this text of medical diagnosis was also implicitly arguing about the possibility of induction as a tool of diagnosis. Understanding when induction was appropriate in medical reasoning was an important concern of Galen and later taken up by Ḥunayn ibn Ishāq. See Richard Walzer, Introduction to *Galen on medical experience. First Edition of the Arabic Version with English Translation and Notes by R. Walzer*, ed. and trans. Richard Walzer (London; New York: Pub. For the trustees of the late Sir Henry Wellcome by the Oxford University Press, [1947]).
This chapter discusses the three major trends in distinctions literatures. The mainly practical manuals of medical distinctions, the practical and theoretical distinctions of lexicography, and the productive genre of applied linguistic distinctions.

**Furūq in Medicine**

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

---

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


and that of Ibn al-Kutubī survive in manuscript, although both are still unpublished. One book on differential diagnostics has been published, in two editions, one attributing the work to Abū Bakr al-Rāzī and the other attributing the same work to Ibn al-Jazzār. Interestingly, this is the same text attributed to Ibn Ḥalwān in Ayasofya 4838. My study of medical furūq has two important findings: First, the precedence of these works to other writings on distinctions. Second and more importantly, the

---

169 Ibn Ḥalwān’s manuscript survives in a collection (majmūʿa) of medical texts, which includes a Kitāb al-furūq by Aḥmad Ibn Ḥalwān al-Ṭābīb. This manuscript is housed in the Suleymaniye Library in Istanbul, Suleymaniye Library Ayasofya 4838; a microfilm of this manuscript can be found at the University of Utah, reel 190 of the Levey microfilm collection. Ibn al-Kutubī’s work is also housed in the Suleymaniye Library, Ahmet III 2120, and at the University of Utah, Levey reel 131. Thus far, I have been unable to consult Ibn al-Kutubī’s work. This is not, however, the Kitāb Mā lā yasaʿu al-ṭabīb jahluhu, a treatise on pharmacology. See Ibn al-Kutubī, Mā lā yasaʿu al-ṭabīb jahluhu, MS. Library of Congress, Washington DC, Mansuri Collection R128.3.1127 1682, available online http://lcweb2.loc.gov/service/amed/amed0001/2001/200149140/200149140.pdf (accessed March 24, 2017).


171 The main difference between the published texts and that found in the Ayasofya manuscript is that the text in Ayasofya 4838 begins with a statement specifically attributing the book to “Abū al-ʿAbbās Aḥmad ibn Abū al-Faḍl Asʿād ibn Ḥalwān al-Ṭābīb” (109b). Neither al-Rāzī nor Ibn al-Jazzār are identified as the author in their respective texts. Ibn Ḥalwān’s manuscript is found in a collected volume (majmūʿ), the title page of which reads: “This is a collection (majmūʿ) of medical texts. The first book is Tadbīr al-amrāḍ al-hāddā by Hippocrates, and also containing the book Asrār al-nisāʿ by Galen and al-Furūq by Ibn Ḥalwān Ṭabīb.” This is followed by a table of contents showing the nine books which make up this medical collection. It is striking that Ibn Ḥalwān is identified as the author three times in this manuscript, and that his book was prominent enough to be included in the sentence summarizing the collection. The manuscript is missing a few folios after the introduction. The first page is 109b, which ends in the middle of the introduction, but page 110a is in the middle of chapter one, section one (al-maqāla al-ālā al-fāṣl al-āwwal). Based on the available evidence, it is difficult to ascertain who the author of this work is. It is clear, however, that this issue needs further research. I am currently working on an article addressing this issue.
earliest works and biobibliographic writing show how *furūq* as a meaningful concept had not yet taken hold in the tenth century; it was not yet a specific concept but rather a word used in its plain-sense meaning. Biobibliographical sources do not consistently refer to al-Rāzī or Ibn al-Jazzār’s books as *Kitāb al-Furūq*. These sources use a variety of titles, such as *al-Furūq bayna al-ʿilal* or *al-ʿIlal al-mushkila*. Titles such as these indicate that the term *furūq* had not yet become a stable marker of a literary genre. Consequently, this points to the difficulty in understanding the content of works based on title alone.

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

\(^{172}\) Qaṭāya bases his edition on the manuscript of this work found in the Wellcome Historical Medical Library. Interestingly, Ibn Sīnā is listed as the author of this manuscript on its title page. A.Z. Iskandar, who compiled the catalogue of Arabic works in the Wellcome collection, rejects this attribution and posits instead that this work was written by al-Rāzī. Qaṭāya does not mention this in his introduction. See A.Z. Iskandar, *A Catalogue of Arabic manuscripts on medicine in the Wellcome Historical Medical Library* (London: The Wellcome Historical Medical Library, 1967), 67.
correcting al-Rāzī’s views and opinions (muṣahhiḥan lahu ārā’ahu wa-mustadrikan ‘alayhi aqwālahu”).”  

Al-Bakrī assumes that if al-Rāzī were citing himself, he would not take an oppositional approach to his earlier writings. Al-Bakrī continues, “This is not the language of someone speaking about himself, the author says, ‘In his book, al-Rāzī says... but I say.’ (fa-huwa yaqūlu qāla al-Rāzī fī kitābihi kadhā... wa-aqūlu kadhā).”  

Al-Bakrī is content that this argument disproves the attribution to al-Rāzī. He also rejects the possibility that the author of this work is Najm al-Dīn Ahmād ibn Abī al-ʿAḍīl Ibn al-ʿĀlima, since he lived much later than the ninth century.

Al-Bakrī’s claim of an early date for the work is based on the author’s own claim at the beginning that “my predecessors have not written a book like this one (lam yasbaq ilā mithlihi man taqaddama).”  

Al-Bakrī concludes that, “based on this, what is most probable is that this work was written by Ibn al-Jazzār al-Qayrawānī.”  

Al-Bakrī credits the editor of this text, Ramziyya al-ʿAṭrāqī, with this attribution and appears quite convinced. He does not explain why he considers only these three names as possible authors, but to my mind, this appears to be a consequence of the paucity of authors who wrote works on differential diagnostics. This extant early book on differential diagnostics claims it is the first such book ever written. Al-Rāzī and Ibn al-Jazzār are both remembered as having written a book on differential diagnostics. Since more sources point to al-Rāzī as the author of this text, I will discuss in brief his

175 Al-Rāzī, Mā al-fāriq, 2; Ibn al-Jazzār, al-Furūq, 14.
importance to the history of Islamic medicine; many of the tropes found in biographies of al-Rāzī, however, appear in biographies of Ibn al-Jazzār as well.\(^{177}\)

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

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

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

\(^{178}\) Heinrichs, “Structuring the Law,” 334-35.
Heinrichs claims that the parallel between medicine and law “seems much more convincing [than that between lexicography and law].” However the impact of this “medicinal parallel” on law remains unaddressed by Heinrichs. His claim, which seems to focus on the formal parallels, is credible, although it does not tell us about the history of these genres nor the ways they may have impacted each other. The following section will attempt to address some of these uncertainties, through an analysis of this book of medical distinctions entitled *al-Furūq*.

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

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

---


\(^{180}\) This claim is heard often in the traditional sources on al-Rāzī’s life. Ibn Abī Uṣaybī’a says that “[h]e attributed everything he cites in [the Ḥāwī] to the person who said it” (*yunsab kull shay’ naqalahu fihi ilā qāʾilihi*; 1:315).

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

---

182 The printed edition of this work is based on three manuscripts. The first, entitled, *Mā al-fāriq*, is an undated copy found in the Wellcome collection in London likely from the 18th century according to Qaṭāya, the second in the Malek National Library in Tehran apparently with no title and also dating from around the 18th century, and finally a version from the Public Awqāf Library in Baghdad with the title *Kitāb al-Furūq bayna al-ishtibāhāt fī al-ʿīlal*, which dates from Ramaḍān 1220/1805 (pp. 5-7).  
Towards the end of his life, he returned to his native Rayy, where he died around 320/932.¹⁸⁷

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

---

¹⁸⁷ The date of his death remains unclear. Ibn al-Qīṭī, for instance, says that al-Rāzī died around 320/932, according to Qādī ʿṢāʿīd ibn al-Ḥasan al-Andalusī. He also says that according to Ibn Shīrān, al-Rāzī died in 362/972-73 (Ibn al-Qīṭī, 277). The printed edition of the *Furūq* lists his death date as 313/925. See also Ibn Abī Usaybiʿa, *ʿUyūn al-anbāʾ*, 1:314.
¹⁸⁸ Abū al-Rayḥān al-Bīrūnī (d. 973/1048) also wrote a biobibliography of al-Rāzī, but he does not mention this work therein.
distinguishing ominous dreams from other kinds of dreams, the *Kitāb al-Farq bayna al-ruʿyā al-mundhira wa-sāʾir ḍurūb al-ruʿyā*, though it does not appear to have survived.\(^{193}\)

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

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

---


\(^ {194}\) A similar trend is seen with works of linguistic distinction, see below, pp. 96-104.

\(^ {195}\) There are several manuscripts of this work attributed to different authors, but each manuscript is nevertheless a copy of the same work. See above pp. 69-70.
I have seen that the doctors of today (aṭibbaʾ al-zamān) know about maladies (amrāḍ) only what they can imagine on the basis of books, and the symptoms and causes (bi-dalāʾilihi wa-asbābihi) mentioned therein. These symptoms and causes, may, however, be shared between illnesses (qad tashtarki) and illnesses can resemble one another. The aspirations (al-himam) of physicians fall short of comprehensive knowledge of how to engage in inductive and deductive thinking using the principles and rules of medicine (bi-l-qiyās wa-l-istikhrāj min al-uṣūl wa-l-qawāʿid). I have therefore seen a need to compose a book on causes, symptoms, and illnesses that are similar to each other (fīmā yashtabih min al-asbāb wa-l-dalāʾil wa-l-amrāḍ). I gather here every pair that resemble each other or are shared between illnesses, and then I distinguish (ufarriq) between them.¹⁹⁶

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

¹⁹⁶ Al-Rāzī, Mā al-fāriq, 1-2; Ibn al-Jazzār, al-Furūq, 14.
¹⁹⁷ The manuscripts of this work were all copied much later than al-Rāzī’s life. It is therefore unclear when the numbering system was introduced to this text. It does, however, make consultation easier, suggesting that it was seen as having this use through its life as a text copied and recopied. This numbering is added to the margins of the Ibn Ḥalwān manuscript in the same hand that copied the text. It is included in the main text of the two published editions.
¹⁹⁸ Qaṭāya “Introduction,” ʿīṣa.
The book’s five chapters cover: (1) the parts of the head (ajzāʾ al-raʾs); 199 (2) the respiratory system (ālāt al-tanaffus); 200 (3) the stomach, the liver, the spleen, the kidneys, the bladder, and the reproductive system (al-maʿda wa-l-kabd wa-l-ṭīḥāl wa-l-kulā wa-l-mathāna wa-ālāt al-tanāsul); 201 (4) the whole body (al-badan kulluhu); 202 and (5) pulse and urine (al-nabaḍ wa-l-bawl). 203 Each pair of maladies is introduced with the phrase “What is the distinction between [X] and [Y] (mā al farq bayna [kadhā] wa-[kadhā]).” The answer to the question, the elucidation of the distinction, is introduced with “The answer is... (wa-l-jawāb).”

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

204 The printed edition of this text is heavily annotated. Salmān Qaṭāya, notes that he has done so in order to make the text easy to understand by physicians and relatable to contemporary medicine. He starts the edition with a short explanation of Hippocratic medicine. He also includes a glossary of classical Arabic medical terms and contemporary French and Arabic translations. Only the odd pages contain al-Rāzī’s text, while the following even page has extensive commentary from Qaṭāya.
author does not elaborate further or give an explanation of the treatments required or the physical description of how such a symptom came about.

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

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

---

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

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

207 Al-Rāzī, Mā al-fāriq, 37; Ibn al-Jazzār, al-Furūq, 30,
presumably since they require different treatments. The answer, according to this work, is straightforward. They are indeed alike in the way they “outwardly manifest themselves (ishtarakā fi al-ḥaqīqa),” but they are different in the “cause (sabab)” and “the manner of removing the illness from it (kayfiyyat wujūb al-ḥukm ‘anhu”).208 The author then explains each of these two differences in more detail. As for the difference in cause, he says, “It is evident. One is a blockage (sadda), while the other a tumor.”209 The difference in how the illness is cured relates to the symptoms of these two kinds of strokes. A stroke resulting from a blockage to the brain, he says, occurs as this blockage occurs, that is, the symptoms occur suddenly and severely, “in one moment (takūnu dafʿatan).” A stroke resulting from a tumor, however, happens “gradually (qalīlan qalīlan).” As the tumor grows, we are told, the vital spirit (al-rūḥ al-nafsāniyya) is slowly prevented from spreading to the body. It is the blockage of the vital spirit, which, presumably, is the direct cause of the stroke. Lastly, a stroke caused by a tumor is often accompanied by a fever whereas a stroke resulting from sudden a blockage is not. The physician thus has the tools to diagnose these different kinds of strokes, looking at the onset of the stroke and the presence of fever.

Unlike books of law and lexicography, medical distinctions texts do not discuss anything beyond the immediate phenomenon that presents itself. As will be shown below, lexicographic furūq books could and did participate in broader theological
debates about the nature of the Arabic language while also engaging in discussions of discrete lexicographic differences.

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

What is the distinction between the sediment found in urine that is the result of illnesses in the liver (mā yaʾtī fī al-rasūb min ʿilal al-kabād) and that which is the result of illnesses of the kidneys?

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

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

---

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

211 Al-Řāzī, Mā al-fāriq, 293; Ibn al-Jazzār, al-Furūq, 106.
themselves in urine. He does not discuss how to treat liver or kidney ailments, but gives the information that is sufficient for a diagnosis.

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

**Furūq in Philology**

To better understand the rise of legal furūq, the following section will trace the rise of distinctions-thinking in Arabic linguistic and lexicographic writing prior to the prominence of furūq in legal literatures. Linguistic distinctions tracts most often developed from the study of rare and obscure words and focus on language and grammar (*al-lugha wa-l-naḥw*). Writing about distinctions spread into other aspects of language in the form of simple comparison (*farq*). Driven in part by theological concerns, simple comparisons gave way to distinctions-thinking (*furūq*) in discussions of synonyms. Simple comparisons of words gave way to robust explanations of the various differences between them. By tracing the practical and polemical uses of lexicographical distinction literature from the earliest appearance of the notion up through Abū Hilāl al-ʿAskarī’s *Kitāb al-Furūq*, it will become possible to see valences that this genre may have offered jurists when they adapted its techniques and procedures for their own purposes.
**Furūq** were a regular part of philology from very early on in the premodern study of the Arabic language. As with the study of origins generally, it is difficult, if not impossible, to date precisely when this linguistic genre began, although a rough lineage of early books of distinctions will be provided below. These works are of two types: distinctions in lexicography, and distinctions between the letters of the Arabic alphabet. The distinctions that concern lexicographers are between different words that appear to have the same meaning, i.e. between synonyms. The task of the scholar is to show the nuances between these words; he looks to identify the different contexts in which each word can best be employed. The premodern Arabic philologists focus on analyzing words (signifiers) and their meanings (signifieds) rather than diagnosing illnesses. The distinctions they make are about the implicit connotation of known words, not the explicit manifestations of unknown illnesses.

In this section on philology I show how the earliest precursors to books on distinctions were writings on *gharib* and *nawādir*, words with rare or obscure usages. Lexical lists were attempts to delineate the edges of the Arabic lexicon. These works led to books comparing specialized vocabulary for the body parts and for the life-cycles of animals and humans, often titled *Khalq al-insān* (The Physical Constitution of Humans). Books on *Khalq al-insān* were also known by the title *Kitāb al-Farq* (Book of Distinguishing). These books are direct precursors to those lexical works entitled *Furūq*. Not only is there a direct connection between their titles, the use of a singlar and then its plural, but there is a further connection in terms of content. The logic of distinguishing, however, that functions in books of *farq* is quite different from that found in books of *furūq*.
A typical example of a linguistic furūq book is Abū Hilāl al-ʿAskarī’s (d. ca. 400/1010) al-Furūq al-lughawiyya. This book consists of easily recognizable pairs of linguistic furūq and is evidence for the existence of a well-developed scholarly tradition in lexicographical distinctions in the fourth/tenth century. This style of work became so characteristic of the genre that much of the same organization, presentation and content remains evident even as late as the 17th century furūq work written by İsmail Hakkı Bursevi (d. 1137/1725), which was composed to reinforce the knowledge of Arabic among non-Arabophone elites in the Anatolian peninsula at the time. We can infer several things from the example of al-ʿAskarī’s al-Furūq al-lughawiyya as a “mature” form of the genre. First, by the time of al-ʿAskarī, lexicographical furūq writing had evolved into a stable literary genre. Earlier works on the topic focused, by contrast, on “distinguishing” i.e. Kitāb al-Farq. Second, works in the genre of linguistic furūq began to function as a kind of thesaurus. Third, the early examples of these works were motivated in part by theological concerns about the nature of the Arabic language.

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

---

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

213 A section in this work is entitled “Chapters on Distinctions (abwāb al-furūq).” Ibn Qutayba, Adab al-kātib, ed. Muḥammad al-Dālî (Beirut: Mu‘assasat al-Risâlā, 1967), 144-162.
state bureaucracy, part of the skill set that they needed in order to craft well-drafted correspondence, whether for communicating with other secretaries or showing off their deep erudition. In addition, the tradition of linguistic furūq was an extension of the early lexicographical concern with the study of addād (conronyms, words which can mean one thing and its opposite) and abdāl (phonologically or semantically related letter pairs), as well as synonym groupings (gharīb and nawādir), which were essentially lists of, for example, different words for sword, camel, horse, etc. It is likely that the practical aspect of linguistic furūq was on factor that helped it to last over the centuries. The applied aspect is at work in Ibn Qutayba’s text, and it is also the motivating factor in Bursevi’s text nine centuries later.

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

---

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

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

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

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

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

---

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

**Early Lexicographical Activity**

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

---


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

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

---


219 The second part of his study is the first major survey of specialized Arabic lexica in a Western language and is a key resource for further lexicographic study.
The early Arabic lexicographical tradition was concerned with gathering the Arabic lexicon and organizing its words into a useable linguistic resource. As part of these efforts towards compilation, lexicographers made explicit efforts to collect and explain very rare or obscure words and usages. Michael Carter has referred to this activity as a forerunner to the large comprehensive dictionaries of the fourth/tenth century.

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

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

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

222 Āḥmad Amīn, Duḥā al-islām. 2nd ed. 3 vols. (Cairo: Lajnat al-Taʿlīf wa-l-Tarjama wa-l-Nashr, 1938). This claim has been repeated often by others, not always with reference to Amīn. Amīn’s contribution is discussed by Baalbaki in Arabic Lexicographical Tradition, 46n233.
223 Baalbaki, Lexicographical Tradition, 47.
and compiled contemporaneously with the first comprehensive dictionary—Khalil ibn Ahmad’s *Kitāb al-ʿAyn*; it cannot be the case that these specialized lists were simply precursors to larger dictionaries. Scholarly interest in compiling and discussing specialized word-lists expanded well past the time that “the great dictionaries” were compiled. These two lexicographic tracks represent complementary, not competing, approaches to the study of Arabic lexicography. It is in part for this reason that Baalbaki devotes separate sections of his work to each of these—the specialized (*mubawwab*) and the general alphabetically arranged (*mujannas*) lexicographical works. “Yet boundaries between the two types... are not always clear. Other than the fact that they are contemporaneous and do not represent successive stages in lexicographical writing, it is not always easy to determine under which type certain work should be discussed.”

This is also true, since production of these shorter works continued after comprehensive dictionaries began to be written.

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

---

225 I discuss the existence of later lexicographic *furūq* works below. For more, see Chapter Two of Baalbaki’s *Arabic Lexicographical Tradition*.
language of the Quran and this religious character never fully left the tradition. This does not mean that lexicography was solely used to advance theological arguments, but that its religious underpinning cannot be ignored. The theological character of specialized word-lists directs us to consider lexicographic furūq in a theological context. We will therefore turn to the early history of writing on synonyms as part of our attempt to trace the emergence of furūq.

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

---

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

229 Baalbaki, Arabic Lexicographical Tradition, 63.

230 Baalbaki, Arabic Lexicographical Tradition, 41.
motives that drove lexicography. The controversy over the legitimacy of lexicographers performing interpretations of the Quran points to the fact that lexicographers were, in fact, involved in religious debates.

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

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

232 Thābit ibn Abī Thābit, Kitāb al-Farq, 3rd printing, ed. Ḥātim Şaliḥ al-Ḍāmin (Beirut: Mu’assasat al-Risāla, 1408/1988), 18. Some sources record this word as marimma, see Lane’s Lexicon s.v. “marimma.”
partial listing of the various words for lips adduced by Thābit ibn Abī Thābit (fl.
third/ninth c.), but it shows the kind of work that early lexicographers were doing,
namely the collection of obscure or rare words, from Bedouin informants, in a scientific
manner.

The collection of these words was done as a way of recording the scope of the
Arabic language. It was not a guide per se to correct usage, which was instead the goal
pursued by works of furūq proper. In fact, Thābit says, “Occasionally, one of these words
is used in place of another (rubbamā uqīma baʿḍ hādhihi al-ḥurūf maqām baʿḍ)... for
reasons of poetic necessity.”

He then cites a poem by Abū Duʿād al-Iyādī (fl. mid-sixth
c.), a pre-Islamic poet, wherein he uses the word “shifa” to refer to a horse’s lips, even
though he should have used the term jahfal. This concession to poetic license, however,
is the exception that proves the rule. Thābit ibn Abī Thābit shows that the occasional
misuse of a word only occurs in times of linguistic duress, i.e. when trying to fit a poetic
meter. In fact, even the Bedouin poets, the authorities for such usages, do so when they
see fit. There is, thus, no reason to criticize the usage found in Abū Duʿād’s poem.

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

233 Thābit ibn Abī Thābit, Kitāb al-Farq, 20.
(addād). Even so, these works grew as more and more entries were collected. As they grew, these works required further organizational refinement.

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

**Books of Farq**

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

\textsuperscript{234} For more on alphabetization, see *Encyclopedia of Arabic Language and Linguistics* s.v. “Lexicography: Classical Arabic” (Tilman Seidensticker), 3:30-37.

\textsuperscript{235} *Encyclopedia of Arabic Language and Linguistics* s.v. “Lexicography: Classical Arabic, 7. Specialized Lexica” (Tilman Seidensticker), 3:34.
Thematic works often based themselves on particular areas of the Arabic language. Specifically, *gharīb* works began to draw only from scriptural and related material, as in collections of *gharīb al-ḥadīth* (obscure words found in the hadith) and *gharīb al-Qurʾān* (obscure words found in the Quran). In addition to these religious works, *gharīb* scholarship also grew in another, notably less religious direction. Some books collected all of the words related to discrete topics, such as plants (*nabāt*), horses (*khayl*), insects (*ḥasharāt*) and the physical constitution of humans (*khalq al-insān*). These topical *gharīb* books functioned as repositories of lexical data for particular subject areas. They are attempts to capture all of the Arabic words within a given field as well as to represent the dialectal richness found within the language. “To take the genre of *nabāt* (plants) as an example, one finds in it references to the dialects of Ḥiḡaz, Naḡd, Madīna, Yamāma, Naḡrān, Tihāma, Baḥrayn, Baṣra, Kūfa, Ḥīra, Šām, Tamīm, Balḥārīṭ b. Kaʻb, etc.”

Not only did lexicographers often refer to words found in specific dialects, but in fact, most of the lexical diversity was found across particular dialects.

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

---

236 Baalbaki, *Arabic Lexicographical Tradition*, 133-34.
Tawwāb, the editors of this book. Their edition, from 1987, is based on a manuscript from the early fourth/tenth century manuscript housed in Vienna (a very early date for the manuscript of an Arabic book). While these division titles are not Quṭrub’s, they provide insight into the way this work is indeed organized.

1) Divisions of the Body (aqsām al-khalq)
2) Birth, Pregnancy, and Terms for Offspring (al-walāda baʿd al-ḥaml wa-tasmiyat al-mawālid)
3) Voices and Cries of Humans, Animals, and Birds (aswāt al-insān wa-l-bahāʾim wa-l-ṭayr)
4) Sounds of Humans, Animals, and Birds (zajr al-insān wa-l-bahāʾim wa-l-ṭayr)
5) Groups of Humans and Animals (al-jamāʿa min al-nās wa-l-bahāʾim)
6) Death of Humans and Animals (al-mawt min al-insān wa-l-bahāʾim) 237

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

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

Works that focused on humans and animals were often organized according to the body and cycles of life as shown above. These works took on titles of the form “The Physical Constitution of X” (khalq al-shay’), such as “The Physical Constitution of Humans” (khalq al-insān) or “The Physical Constitution of Horses” (khalq al-fars). While these topics were of interest to early lexicographers, as were camels and swords, it was insects that seem to have been the subject of the first works. Ḫusayn Naṣṣār writes that “the reason for this could be that the Quran mentions groups of insects, such as ants, bees, flies, scorpions, locusts, and mosquitoes (buʿūd), and Quran commentators had studies and discussions about them which drew the attention of the lexicographers.”

Hasharāt in these works refers to insects and reptiles (zawāḥif wa-hawāmm). Naṣṣār claims that the first of these authors was Abū Khayra al-Aʿrābī (d. early third/ninth c.), then Abū ʿAmr al-Shaybānī (d. ca. 210/825), then Abū ʿUbayda (d. ca. 210/825), al-ʿAṣmaʿī (d. ca. 213/828), etc. These books were at first written as independent works, but later incorporated as chapters or sections of encyclopedic works like Ibn Qutayba’s Adab al-kātib and more integrally al-Thaʿālabi’s (d. 429/1037) Fiqh al-lughā, both of which had chapters titled khalq al-insān.

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

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

---

241 Naṣṣār, al-Muʿjam al-ʿArabī, 102.
242 Naṣṣār, al-Muʿjam al-ʿArabī, 105.
243 Naṣṣār, al-Muʿjam al-ʿArabī, 106.
what is the earliest extant work on linguistic distinction, entitled *al-Farq fi al-lugha*.247 Ramaḍān ʿAbd al-Tawwāb discusses the early history of this genre in the introduction to his edition of Quṭrub’s *al-Farq fi al-lugha*:

In spite of having lost most of the tradition of linguistic distinctions in Arabic, what has come down to us adds up to a small quantity. Absolutely the oldest of what remains is Quṭrub’s book followed by that of Abū Saʿīd ʿAbd al-Malik ibn Qurayb al-ʿAṣmaʿī... [The] next is the book by Thābit ibn Abī Thābit, who was a student of Abū ʿUbayd al-Qāsim ibn Salām [(d. 224/838-39)]... These books are followed by Abū Ḥātim al-Sijistānī’s [(d. 255/869)], and the fifth book in the *farq* tradition to reach us is by Ibn Fāris al-Lughawī [(d. 395/1004)].248 Although efforts to reconstruct this early history are hampered by the loss of the earliest works many of the concerns and questions that were important to these early authors in this genre can still be perceived.

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

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

247 This work has been edited and published twice. The first publication, based on an incomplete manuscript was done by Rudolf Geyer in 1888 under the title _Mā khālafa fī hi al-insān al-bahīm fī asmāʾ al-wuḥūsh wa-sfāāthī_. More recently, Khalīl Ibrāhīm ʿAṭiyya and Ramaḍān ʿAbd al-Tawwāb have published a critical edition of this work._

248 Quṭrub _Kitāb al-farq_, 6.
Aṣmaʿī and Thābit ibn Thābit, both of which are alternatively titled *Khalq al-insān*.249 The entries themselves are grouped around body parts so that, for instance, they start with *bāb al-fam* (Chapter on Mouths), followed by *bāb al-anf* (Chapter on Noses), *bāb al-ẓufur* (Chapter on Nails), and so on. Each chapter is arranged such that the different ‘synonyms’ are explained as referring to a distinct kind or class of animal. Thābit ibn Abī Thābit states this in the following way in the introduction to his book.

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

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

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

---

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

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

While the content can tell us about the early transmission of ideas about language, the preserved material might not always tell us about the ways in which authors organized and presented their work. Since the extant manuscripts are usually from centuries after the author’s autograph, we cannot know whether the intentional organization of these earliest works is preserved. “The preserved manuscripts may turn out to be half a millennium later than their originals and, though this may not be indicated in the manuscripts themselves, they may have undergone various recensions and redactions during this time.”  

Jaakko Hämeen-Anttila is correct in doubting the provenance of the organization. Not only can works be changed as they undergo copying and recopying, but there is still controversy over the nature of the earliest Arabic books as such. We do not know to what extent they were given a final redaction by the author, to what extent they could be considered authored works and to what extent were they more open and receptive to further change and emendation.

*Kutub al-Furūq fī al-Lughā*

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

---


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

**Abū Hilāl al-ʿAskarī**

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

---

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

Abū Hilāl seems to have been less important in the bibliographic sources than his teacher, even though more of his works than of his teacher’s are preserved.256 “As early as the year 510 A.H.[/1116-17], al-Silafī could point to a confusion between the two ʿAskaris [sic], Abū Aḥmad (293-382 A.H.) and Abū Hilāl (d. after 400 A.H.).”257 Abū Ṭāhir Aḥmad ibn Muḥammad al-Silafī258 is quoted in Yāqūt’s Muʿjam al-udabāʾ as understanding the confusion between these two figures as arising from their similar names, stating that “probably one was mentioned when the other was meant (rubbmā ashtabaha dhikruhu bi-dhikrihi).”259 In fact, in order to resolve this misunderstanding, al-Silafī had to consult Abū al-Muẓaffar Muḥammad ibn Abī al-ʿAbbās al-Abīwardī (d. 507/1113), the foremost linguist (al-raʾīs) in Hamadan.260

---

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

257 George Kanazi, Studies in the Kitāb aṣ-Ṣināʿatayn, 2.

258 Al-Silafī was a noted hadith scholar and grammarian. He was born in Isfahān, travelled to Baghdad for his education, and then to Tyre and Alexandria where he later settled. He was a noted scholar and teacher there. He was born in 472/1079 or 478/1097 and died in Alexandria on 5 Rabīʿ II, 576/8 August, 1180. Al-Silafī himself merits only a short biography in Ibn Khallikān’s Wafayāt al-Aʿyān. See Shams al-Dīn Aḥmad ibn Muḥammad Ibn Khallikān, Wafayāt al-aʿyān wa-anbāʾ abnāʾ al-zamān, ed. Ḩūsān ʿAbbās (Beirut: Dār Ṣādir, 1998/1978), 1:105-107, no.44, see also Mac-Guckin de Slane, Ibn Khallikan’s Wafayat al-A’yan wa Anba’ Abna’ al-Zaman (M. de Slane’s English Translation), ed. S Moinul Haq vol. 1 (Karachi: Pakistan Historical Society, 1961), 152-156.


260 On al-Abīwardī, see EI3 s.v., “al-Abīwardī, Abū al-Muẓaffar Muḥammad” (Geert Jan van Gelder) and Yāqūt al-Ḥamawī, Muʿjam al-udabāʾ, 5:2360-2376.
Although al-Silafi went to great lengths to resolve this confusion, later scholars continued to confuse these two al-ʿAskarīs. In fact, Khalīl ibn Aybak al-Ṣafadī (d. 764/1363) uses this case to highlight the importance of ascertaining a scholar’s full name before studying him, in order to distinguish him from others with similar names. After relating a comical story about the puzzlement that arose from using incomplete names during the hajj, al-Ṣafadī cites the example of the two al-ʿAskarīs as a real world example of misunderstandings that occur because of similar names, a kind of biographical distinction:

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

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

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

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

---

262 Kanazi, Studies, 2n11.
263 Kanazi, Studies, 14.
createdness of the Quran, one of the central tenets of the Muʿtazila. “Someone asked Abū ʿAlī Muḥammad ibn ʿAbd al-Wahhāb [d. 303/915-16], ‘What proof is there that the Quran is created?’ ‘God could create something like it (Allāh qādir ʿalā mithlihi),’ he answered.” Finally, in the introduction to the same book, al-ʿAskarī mentions his commitment to the principle of “the reward and punishment in the afterlife (al-waʿid),” a central tenet in Muʿtazilī theology. In a study of his literary theory, Amal al-Mashāyikh also infers from Abū Hilāl’s style of argumentation and his preference for badīʿ that he was a Muʿtazilī.

The biographical dictionaries tell us the names of many of Abū Hilāl’s teachers and students but do not provide any substantial information about them, perhaps “due to their Shiʿite or Muʿtazilite sympathies.” This lack of information holds true for all of Abū Hilāl’s teachers save the aforementioned, Abū Aḥmad al-ʿAskarī, about whom, again, not much can be known with confidence. We do know, however, that: “Abū Aḥmad al-Ḥasan b. ʿAbd Allāh b. Saʿīd al-ʿAskarī (293–382/906–93) was a prolific

---

265 A supporter of ʿUthmān ibn ʿAffān.
268 Amal al-Mashāyikh, Abū Hilāl al-ʿAskarī nāqidan, (Amman: Wizārat al-Thaqāfa, 2002), 72, 296. This claim is somewhat unclear. Badīʿ refers to the liberal use of figures of speech and paranomasia in writing. It was first espoused by ‘modern’ (muḥdath) poets in the third/ninth and fourth/tenth centuries and later adopted by many Arabic writers. See EI ʿ s.v. “badīʿ” (Geert Jan van Gelder) and Suzanne P. Stetkevych, Abū Tammām and the poetics of the ʿAbbāsid age (Leiden; Boston: Brill, 1991).
269 George Kanazi, Studies, 9.
author and the leading scholar of his day in hadith, lugha, and adab. Importantly, he was accused of being a Muʿtazili. He is included in the modern work, Aʿyān al-shīʿa because (a) he was a teacher of the prominent shiʿite figure, al-Ṣadūq (Muḥammad b. ‘Alī b. Bābawayh, d. 391 A.H.), (b) he was a student of Ibn Durayd, and (c) of Ibn ʿAbbād’s eagerness to meet him. Ibn Bābawayh in particular, although not a Muʿtazili, wrote one of the authoritative books of Imāmī hadith and law, Man lam yaḥḍuruhu al-faqīh. Şāḥib ibn ʿAbbād was “a tireless champion of [Basran] Muʿtazili rationalism.” Abū Aḥmad was one of Abū Hilāl’s main teachers, if not his most important one.

Abū Hilāl produced many students of his own, although, we lack information on the majority of them. One of his students, however, Abū Saʿd Ismāʿīl ibn Ṭālib ibn ʿAbbād al-Sammām, is mentioned as having been a prominent Muʿtazili. “According to Dhahabī, who mentioned him under the year 445 A.H., he studied in Iraq, Mecca, Egypt and Damascus. He was an authority on different readings of the Koran, on hadīth [sic] and fiqh. He had a deep knowledge of the Ḥanafite and Shafiʿite schools of law, and was at

270 EI3 s.v. “al-ʿAskarī, Abū Aḥmad” (B. Gruendler).
273 See also Encyclopaedia Iranica, s.v. “Ebn Bābawayh (2)” (M. McDermott).
274 Encyclopaedia Iranica, s.v. “Ebn ʿAbbād, Esmāʿīl, al-Ṣāheb Kāfī al-Kofāt” (M. Pomerantz). According to the entry in EI, “[s]ome Shiʿis like Ibn Bābūya... claim [Ibn ʿAbbād] as one of them,” and that ʿAbd al-Jabbār accused him of being Shiʿi as well. His Muʿtazilism, however, does not seem to have been in doubt. EI s.v., “Ibn ʿAbbād” (Cl. Cahen and Ch. Pellat).
275 George Kanazi, Studies, 7.
the same time one of the leading scholars of the Muʿtazila.” However circumstantial, there is nevertheless a great deal of evidence pointing to Abū Hilāl al-ʿAskarī as leaning towards Muʿtazilī theology.

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

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

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

---


277 In addition, ‘Askar Mukram, Abū Hilāl’s hometown, was the center of the “Jubbāʾī school” of Muʿtazilī theology, see Eī, “Muʿtazila” (D. Gimaret). Josef Van Ess makes this claim as well in his Theologie und Gesellschaft, that Abū Hilāl was “vermutlich Muʿtazilī.” His only citation for this claim, however, is Kanazi’s book cited here. Van Ess, Theologie und Gesellschaft, 4:246.

278 Abū Hilāl, Furūq, 22.
of these two signifiers would be redundant, i.e. words that could be removed from the language without reducing the language’s semantic content. Such a redundancy would be an imperfection, since it would be an unnecessary part.

It is important to note the strong theological overtones that run throughout his biography and works. While it seems likely that Abū Hilāl was a Muʿtazilī, it is equally important to see how his work was theological. It was not explicitly engaged in systematic theological debate, but rather applied theological postulates in order to resolve linguistic questions and to further lexicographical analysis.279 I will argue that the implicit theological underpinnings of works like Abū Hillāl’s are a nexus point, if not a direct influence, on the theological aspects of the furūq of the jurists. In this vein, what Abū Hilāl himself says of the ambit of his Furūq should be noted. “I turned my discussions in this book towards (wa-jaʿaltu kalāmi fīhi [hādhā al-kitāb] ʿalā) what is found in God’s book, what is common in the words of the jurists and theologians (al-fuqahāʾ wa-l-mutakallimīn), and the rest of the discussions of the learned (wa-sāʾir miḥwārāt al-nās).”280

Farq and the Arabic Alphabet

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


280 Abū Hilāl, Furūq, 21.
individual letters, most notably between the letters ḍād and ẓāʾ. It will be important to our argument to consider the phonetics-based origins of the genre as well as its scope. Similar to what is discussed above in regard to lexicographic distinctions, distinctions between individual letters often had theological implications. The correct spelling and pronunciation of the letters of the Quran had to be ensured in order to safeguard correct religious understanding, i.e. for recitation, for correct exegesis, and for understanding the metaphysics of Arabic as God’s divine language. This work was more than just lexicographical: the ḍād was imagined as pivotal to the self-understanding of Arabic as a unique language. As Jonathan Brown notes, “[w]ritings on the difference between ḍād and ẓāʾ or lists of [d] – [z] minimal pairs constitute a long-lived genre in Arabic philology and belles-lettres.” Although it is impossible in these contexts to discuss one letter without the other, these texts are written explicitly as focused on understanding the ḍād, not the ẓāʾ. The particular focus on the ḍād is due to the centrality of the ḍād to early conceptions of the Arabic language. Arabic was believed to be the only language containing the letter ḍād. For this reason, Arabic was called the language of the ḍād (lughat al-ḍād). In dictionaries, for instance, the main discussion for the word ḍād centers on its place within the Arabic language. The Tāj al-ʿarūs says “The ḍād is exclusively Arab (li-l-ʿArab khāṣṣatan), i.e. it is exclusive to their language and it is

---

281 Minimal pairs refers to words that only differ in one letter. In this case, this refers to words that are spelled the same save for a ḍād is being replaced by a ẓāʾ or vice-versa.
not found in the languages of non-Arabs (lughāt al-ʿajam), this is the truth on which everyone agrees (aṭbaqaʿ alayhi al-jamāḥīr)." 

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

---


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

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

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

286 As a non-canonical hadith, it does not appear in the major collections nor in Wensinck’s concordance.
spoken Arabic in the “classical” period. Although he calls it a disappearance, Cohen argues that it is more than this, that “ḍād disappeared by fusing with another phoneme[, the ẓā’].” In addition to this merger, he notes the lateralization of the ḍād in al-Andalus that resulted in, for instance, al-qādī becoming the Spanish alcalde, as yet another pronunciation.

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

---

294 These expressions, which mean “the war seized him,” are both used, although it is said to be more correct to say ʿaẓẓathu al-ḥarb. See Lane’s Lexicon, s.v. “ẓẓ;” Brown, “New Data,” 352.
295 Brown, “New Data,” 352
(d. ca. 996), which covers all three of these areas. “The work is exhaustive rather than practical or enjoyable,” says Brown. Brown considers this a separate group, although al-Rawḥa can also been seen as an anthology of the three previous groups.

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

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

---

297 al-Ṣāhib Ibn ‘Abbād, al-Faqr bayna al-ḍād wa-l-ṣā’, 3
299 Lane’s Lexicon, s.v. “qarraḍa;” Listān al-ʿarab, s.v. “q-r-ḍ.”
was it about this issue that drew the attention of Muslim scholars? Brown sees a strong theological component to this discussion.

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

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

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

---

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

**Farq and Furūq in Other Fields**

The primary endeavors in distinction thinking were in medicine and linguistics. There are nevertheless works on distinctions in a myriad of other fields. Abū al-Ajfān and Abū al-Fāris mention that writings in furūq “flourished in all of the sciences.” They mention primarily philology and medicine, citing Abū Hilāl al-ʿAskarī’s Furūq and Aḥmad ibn Ibrāhīm ibn al-Jazzār’s al-Farq bayn al-ʿilal. Additionally, however, they mention: in logic and grammar Abū al-ʿAbbās Aḥmad ibn Muḥammad al-Sarakhsī’s (d. 286/899) Al-Farq bayn al-nahw wa-l-mantiq; in theology, Abū Bakr al-Bāqillānī’s (d. 403/1013) Taṣarruf al-ʿibād wa-l-farq bayna al-khalq wa-l-iktisāb and his al-Farq bayna muʾjizāt al-anbiyāʾ wa-karāmāt al-awliyāʾ; in usūl al-fiqh, Ṭāhir ibn Raslān al-Bulqīnī’s (d. 805/1403) Risālat al-farq bayna al-ḥukm bi-l-ṣiḥḥa wa-l-ḥukm bi-l-mūjib. Most of the works they cite are not extant and/or of dubious attribution. For instance, in a footnote to the mention of al-Sarakhsī’s Farq bayn al-nahw wa-l-mantiq, they cite Ḥājjī Khalīfa’s (d. 1657) Kashf al-ẓunūn. They also mention, however, that there is an entry for al-Sarakhsī

---

in al-Zirikli’s al-‘A‘lām which does not mention this work. This same situation of dubious attribution holds, in their telling, for Ibn al-Jazzār’s Farq bayna al-‘īlal, a work attributed to various other scholars. This may say more about how these two sources, Kashf al-zunān and al-‘A‘lām, are occasionally unreliable as reference works, than about furūq writing itself. There are more examples of scholarly disciplines producing books about distinctions. In Sufism, for example, we find the book Bayān al-farq bayn al-ṣadr wa-l-qalb wa-l-ṭubba, attributed to al-Ḥakīm al-Tirmidhī. Yusuf Mar’i puts this attribution in question in his recent edition of the text, although he does not expound further on this point.

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

---


304 In this instance, Zirikli bases his entry on Ibn al-Jazzār on Yāqūt’s Irshād al-arīb ilā ma‘rifat al-adīb and Dhahabī’s Siyar al-‘A‘lām wa-l-nubalā’. There is, as one would expect, no mention of this work neither in either Dhahabī’s Siyar al-‘A‘lām nor in Yāqūt’s Irshād. Al-Zirikli, al-‘A‘lām, 1:85-86; Dhahabī, Siyar, 15:561-62; Yāqūt, Irshād, 1:187-88.

305 He does not say that this book was written by al-Ḥakīm al-Tirmidhī, only that it is attributed to him, and does not discuss this uncertainty further. See Yusuf Mar’ī, ed., Bayān al-farq bayna al-ṣadr wa-l-qalb wa-l-fu‘ād wa-l-lubb al-mansūb li-Abī ‘Abd Allāh Muḥammad ibn ʿAlī al-Ḥakīm al-Tirmidhī (Amman: al-Markaz al-Maliki li-l-Buḥūth wa-l-Dirāsāt al-Islāmiyya, 2009).
apparently synonymous words—and apply this to particular concepts within a discipline. These works do not represent new modalities of drawing distinctions or of making comparisons. They are, instead, applied usages of the tool of lexicographic distinctions. Scholars often used applied lexicographic distinction to tease out differences between similar concepts in specific fields of study.

**Philosophy**

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

306 There is a disagreement about the author of this text. According to ʿAlī Muḥammad Isbir, who edited this text in 2006, there is unanimity among the classical sources that Qusṭā ibn Lūqā is its author of (19-20). The other edition of this text, by Louis Cheikho, attributes it to Ḥunayn ibn Ishāq. This is because Cheikho’s edition is a diplomatic transcription of the manuscript in the Khālidiyya Library in Jerusalem, which attributes this text, cautiously, to Ḥunayn ibn Ishāq. Cheikho was the first to publish the Arabic of this text, but he mentions that it has been translated several times into Latin, always with the ascription to Qusṭā ibn Lūqā. The manuscript begins with the title, and then says “composed by Ḥunayn ibn Ishāq al-ʿAbbādī for Muḥammad ibn Mūsā al-Munajjim. There has been disagreement regarding this. A group of scholars says that it is by Ḥunayn and another group that says it was written by Qusṭā ibn Lūqā for ʿĪsā ibn [Farrukhān Shāh].” (245-46). Ḥunayn ibn Ishāq, *Risāla fī al-farq bayna al-nafs wa-l-rūḥ*, ed. Louis Cheikho, repr. in Ḥunain ibn Ishāq: Texts and Studies, ed. Fuat Sezgin et. al. (Frankfurt am Main: Institute for the History of Arabic-Islamic Science at the Johann Wolfgang Goethe University, 1999), and Qusṭā ibn Lūqā, *Risāla fī al-farq bayna al-rūḥ wa-l-nafs*, ed. ʿAlī Muḥammad Isbir (Damascus: Dār al-Yanābīʿ, 2006).
ancients had to say on this.” Qustā’s method of analysis in this work is to unpack, define, and then explain the concepts of the spirit and the soul. He starts by discussing the spirit which he understands to be of two kinds, the animal spirit (al-rūḥ al-ḥayawānī) and the vital spirit (al-rūḥ al-nafsānī). The first section of this epistle is on the animal spirit. He begins with a definition: “Know that the spirit is a subtle substance which spreads throughout the human body.” He continues this section by elaborating on the definition, providing a clear description of the animal spirit and its functions. We learn that the animal spirit resides in the heart, and then in the next section, on the vital spirit, we learn that “it is emitted by the brain (yanbawa’ahu al-dimāgh).” He then continues to describe the vital spirit, its location and its functions. “What we have said is true, namely that the spirit resides in the cavities of the brain (tajwīfāt al-dimāgh) and that it performs different actions.” Qustā follows with a short section on the soul, wherein he explains that it cannot really be defined. “Describing the soul according to its true nature is difficult, nearly impossible (muʿtāṣ jiddan). The proof of this is the disagreement among the generations of philosophers, i.e. Plato, Aristotle, Thales, and Chrysippus, and likewise philosophers after them.” Qustā follows this with three

---

308 Cheikho’s introduction to this work says “With rūḥ, [the author] means that which the Greeks knew as πνεῦμα and the Byzantines as spiritus.” Cheikho also defines rūḥ ḥayawānī as “esprit vital” and rūḥ nafsānī as “esprit animal.” See Cheikho, ed. Risāla fī al-farq bayna al-nafs wa-l-rūḥ, 245.
309 Qustā ibn Lūqā, Risāla fī al-farq bayna al-rūḥ wa-l-nafs, 41; Cheikho, ed., 249.
310 Qustā ibn Lūqā, Risāla fī al-farq bayna al-rūḥ wa-l-nafs, 48; Cheikho, ed., 251.
311 Qustā ibn Lūqā, Risāla fī al-farq bayna al-rūḥ wa-l-nafs, 55; Cheikho, ed., 253.
312 In both editions, this name is rendered Kharūstas. Ṭ Ali Muḥammad Isbir explains that this is a mistake, and that the correct Arabic name for this philosopher is either Kharusibus or Karsūbūs. In modern Arabic, however, Chryssipus is normally given as Kharīsībūs.
sections on the soul, one on the definition of the soul according to Plato, another on how the soul moves the body and how this occurs (al-kalām ʿalā taḥrīk al-nafs li-l-badan ʿalā ayy jiha huwa), and finally one on the faculties of the soul (quwā al-nafs). These long discussions serve to establish the concepts being discussed. He wants to explain the nuances behind the two concepts, soul and spirit.

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

Ethics

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

313 Qusṭā ibn Lūqā, Risāla fi al-farq bayna al-rūḥ wa-l-nafs, 57; Cheikho, ed., 254.
distinction between these concepts can be confusing for a lot of people.”314 He has seen that these two concepts are often confused, and wants to do away with this confusion. The idea underpinning Ibn Rajab’s work is that giving advice is a virtue, but that admonishing others is a vice. In other words, the two concepts are similar in their outward appearance, but near opposites in their intention. For this reason, it is important to clarify the distinction between these two similar concepts, to make sure that people understand what advice is and what admonishment is.

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

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

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

Like lexicographers, their analysis is based on definitions. The differences they discuss rest on a seemingly minor point, but the thrust of their efforts is toward the large, fundamental difference that exists between the two concepts that outwardly resemble each other. In each of these works, understanding the concepts being distinguished is necessary to begin to understand the topic being discussed. These works focus on two important or potential points of confusion that they seek to elucidate. In the case of Ibn Rajab, he focuses on two concepts which are similar in outward appearance but opposed in their ethico-legal status. In this sense, he is trying
to show why an apparent contradiction in the field of ethics is not a contradiction after all. Qusṭā ibn Lūqā, on the other hand, is clarifying a source of potential confusion—the soul is not the spirit. Soul and spirit are two completely different entities, but they are complementary, not opposed. Both of these works employ the logic of lexicographic distinctions in their analyses to explain philosophical and ethical concepts, respectively.

**Farq in Law**

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

---

the application of a legal cause (takhṣīṣ al-ʾilla);”⁵¹⁸ and “literal language (ḥaqīqa)” and “figurative language (majāz),”⁵¹⁹ to give just a few examples. These are concepts central to juristic thought but Kemalpaşazade’s work is one of applied lexicographic distinctions. In this case, the strategy employed in lexicographic distinctions is applied to the technical terms used in the study of Islamic law.

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

Another distinction, between restriction (al-takhṣīṣ) and exception (al-istithnāʾ):

We say: The indication (dalīl) of restriction can either be coupled with the modified phrase or be postponed (muqtaranan aw mutarākhiyan) because restriction is understood on its own (mustaqill bi-dhātihi). Exception, however, is not understood on its own because it is the completion of a phrase (min tatimmat al-kalām). If you said, for instance, “I owe that person ten dinars minus one,” they would be owed nine. If you said, however, “I owe that person ten dinars,” and then paused, and later said “Minus one,” you would owe him ten.⁵²⁰

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

---

⁵¹⁸ Kemalpaşazade, Furūq al-uṣūl, 72.
⁵¹⁹ Kemalpaşazade, Furūq al-uṣūl, 91.
⁵²⁰ Kemalpaşazade, Furūq al-uṣūl, 76.
restriction obtains when one clause establishes a fact or rule and then a separate clause restricts the scope of this first clause. Exception, on the other hand, happens when a single clause both establishes a fact or rule and restricts its scope at once.

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

One more example will clarify this point:

Another distinction, between a consensus reached on a revealed text that requires explanation (al-naṣṣ al-mujmal) and a consensus reached on a revealed text the meaning of which is self-evident (al-naṣṣ al-mufassar), we say: When consensus is reached on a revealed text that requires explanation, the rule is attributed to the consensus (kāna al-ḥukm muḍāfan ilā al-ījmā’). However, when
consensus is reached on a revealed text that has been explained, the rule is attributed to the text itself, not to the consensus.\textsuperscript{321}

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

Again, Kemalpaşazade uses only applied linguistic distinctions in this discussion. This is not a use of legal distinctions—a comparison of two legal problems and their outcomes.

**Conclusions**

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

\textsuperscript{321} Kemalpaşazade, \textit{Furūq al-ṣūl}, 98.
Although perhaps physicians were writing about differential diagnostics from an early date, it was in lexicography that a genre calling itself *furūq* really flourished. In both of these disciplines the structure and organization of the writing is quite similar. We might consider, on the basis of the potential chronological priority of the medical distinctions literature, that medicine established a path along which lexicography then followed. Perhaps, however, the coincidence of style is due instead to broader factors in the classification of Islamicate varieties of knowledge in the third/ninth and fourth/tenth centuries. These two genres show the potential uses for this kind of writing; the medical example as a manual for practitioners and the lexicographical example shows how a seemingly straightforward practical book—a thesaurus—can be used to explore polemical theological positions.

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

Additionally, as will be made clearer in Chapter Four, legal distinctions are yet a third kind of comparison. The style of reasoning used in works of legal distinctions is
not simply a straightforward comparison, as it is in the works distinguishing letters, i.e. the ǧād and ẓāʾ or in the farq works which I have termed applied linguistic distinctions. Rather legal distinctions involve a particular kind of comparison in which laws, that is the judgements applying to actions, are compared. A legal distinction involves not only an understanding of two specific legal problems, but also of the legal reasoning that gives rise to the judgement applied in each of the two legal cases.
In the previous chapter, we explored the rise of a distinct mode of literary and intellectual production that self-consciously referred to itself as *furūq*. We traced the epistemological history of the concepts of *farq* and *furūq* to see the way in which distinctions-thinking operated in a variety of separate but related scholarly disciplines in the classical Arabic tradition. This chapter will take a different approach by studying the rise of distinctions in explicitly legal contexts. Just as Chapter Two explored the epistemological differences between the ways scholars use the term *farq* (distinction) in the singular and the term *furūq* (distinctions) in the plural, this chapter will study the early usage of these terms in the legal tradition. The two terms emerged in legal discourse as part of the theory of dialectics, also referred to as disputation theory (*ʿilm al-jadal*), and became transformed in observable ways before the genre of *furūq* came into being as a self-conscious and distinct category of legal writing.\(^3\)

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

---

\(^3\) It was only after formal disputation had become a feature of Islamic intellectual activity that the Hellenic-Aristotelian tradition was elaborated by Muslim scholars. I discuss this influence below.
opinion he held in a closely related case. As Walter E. Young has demonstrated, dialectics was pervasive in the early Muslim scholarly circles and was the arena in which legal thoughts and concepts were “forged.” It was in the course of such formalized disquisitions that many key concepts and ideas of law were developed and refined. In addition to this technical usage and discussion in theoretical works on dialectics, the concept of distinction played a prominent role in the early Islamic legal discourse on dialectics. After demonstrating the uses of the term distinction and etymologically related words, i.e. derived from the same linguistic root (f-r-q), I analyze an early book of legal distinctions, ‘Abd Allāh al-Juwaynī’s al-Jam‘ wa-l-farq, which contains repeated and sustained dialectical argumentation and I demonstrate how al-Juwaynī envisioned and wrote his book as part of an existing tradition of juristic dialectic.

**Disputation and Distinction**

The discourse of dialectics (jadal) in the Arabo-Islamic tradition was a rigorous and formalized “method for attaining truth.” It was a method for finding and establishing

---


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

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

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

---

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

327 Young, “The Dialectical Forge,” 1:2.

Both agree, however, in the widespread importance of ʿilm al-jadal for Islamic knowledge in general and for Islamic law in particular.

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

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

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

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

---

331 Young, “Dialectical Forge,” 1:23.
written handbooks of these techniques. Miller’s argument that theological discourse was the original site of dialectical practice seems to me the most compelling. In addition to the evidence supplied by Miller, other scholars have also shown a robust tradition of theological disputation in the Eastern Mediterranean in late antiquity. Most notably, Michael A. Cook has shown how Christian Syriac theological texts contain the same general framework as Arabic theological texts, but that these Syriac documents also contain blueprints for disputations with other sects and religions.332

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

333 Young, "Dialectical Forge," 1:23, quoting a verbal communication with Wael Hallaq.
scholars engaged in the intellectual world of the time, and their works and contributions contain not only detailed expositions of their own views, but rich and sustained engagements with the views of other scholars.\textsuperscript{334}

\textbf{Farq in Theological Disputation}

Based on the sources quoted by Miller, the theological tradition uses the term \textit{farq} as a form of \textit{muʿāraḍa}, counter-objection.\textsuperscript{335} Abū Yūsuf Yaʿqūb al-Qirqisānī, a Karaite scholar, discusses dialectical method in his book \textit{Kitāb al-Anwār wa-l-Marāqib}. Al-Qirqisānī’s text repeatedly quotes a certain unnamed Muslim scholar as the authority on dialectical theory. Miller argues that this scholar is Ibn al-Rwānidī: “That al-Qirqisānī’s source was Ibn al-Rwānidī is suggested by the similarity between his reasoning and that of al-Ashʿārī…”\textsuperscript{336} Al-Qirqisānī includes a short discussion of the rules for dialectic, going through the kinds of questions one should ask and the correct ordering of the questions. At the end of this short discussion he uses the verb, “draw a distinction


\textsuperscript{335} Miller uses the term “counter-objection” to translate this word. Young disagrees with this translation, although he prefers to keep the term untranslated (1:xii). I discuss the specific relationship between \textit{farq} and \textit{muʿāraḍa} below, but some authors explicitly subsume \textit{farq} under \textit{muʿāraḍa}, while other authors use these two terms refer to separate categories.

\textsuperscript{336} Miller, “Islamic Disputation Theory,” 24.
(faraqa)”. In describing how to refute someone else’s position, al-Qirqisānī says one ought to say, “I concede that your rationale (ʿillataka) necessitates this opinion, but it also necessitates that you apply it to something that comes more quickly to mind... Therefore, either show how the two cases are both true or both false, or explain how they differ (wa-illā fa-friq baynahumā).” Here, al-Qirqisānī does not define a strategy called farq, but nevertheless he describes a particular kind of objection in which the questioner attempts to catch the respondent in a contradiction. The questioner finishes by asking the respondent to “explain how they differ” and uses the verbal form farqa; that is, he wants his interlocutor to explain the distinction between them.

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

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

---

Moses while rejecting Aaron, in spite of the equivalent proofs for affirming their prophecies (qad farqa baynahumā fi al-iqrār wa-l-inkār ma’a istiwā’ al-iqrār bihimā).\textsuperscript{338}

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

\textsuperscript{338} Al-Qirqisānī, al-Anwār wa-l-marāqib, 1:475.

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

\textsuperscript{340} Al-Qirqisānī uses this phrase two more times in this discussion with a similar meaning. He continues this discussion by stating, “One must also ask him (wajaba aydān an yuqūl lāhu), ‘What is the distinction (mā al-farq) between you and someone who affirms the prophecy of Aaron while denying that of Moses?’” (1:475). This latter possibility is clearly preposterous, since the prophecy of Moses is widely accepted by the Abrahamic faiths. This question, however, shows the untenable position of the Muslim in attempting to affirm the prophecy of Moses while rejecting that of Aaron. In the example, the inverse opinions of the second scenario rest on the same faulty logic as that of the Muslim and are on their face absurd. Al-Qirqisānī uses the phrases mā al-farq (what is the distinction...?) throughout this paragraph. He also uses the term mufāriq (distinction), however, to denote the distinguishing trait that follows the verbs farq and
In al-Qirqisānī’s discussion, the term farq has not yet crystallized into a technical term, and he often uses faṣl and farq synonymously. Nevertheless, his theory of farq and faṣl is similar to what is later found in the books of legal disputation regarding farq. Al-Qirqisānī’s thirty-third chapter, for example, is “on a question of distinction (faṣl) and that it requires that there be two answers (wa-annahu yaḥṭāju an yakūna fihi jawābayn).” The thirty-third chapter explicates how questions that elicit distinctions (faṣl) work, and how, in order to be a valid disputational technique, such questions must be asked in regard to issues that have two different and contradictory answers. He begins this chapter by saying “Know that when you ask about the distinction between two things (al-farq bayna shay’ayn), that you have already distinguished between them as being either affirmed or denied (fa-qad faraqta baynahumā bi-l-ithbāt wa-bi-l-ibṭāl).” The terms faṣl and farq are synonymous; the chapter on faṣl starts with the verb faraqa. Interestingly, al-Qirqisānī says, “As when you distinguish between two things, you deny one of them and affirm the other (kamā annaka ḥīna faraqta baynahumā abṭalta aḥadahumā wa-saḥḥahta al-ākhar).” This logic is at work in the example of the prophecy of Aaron and Moses, when the questioner asked farq-based contrafactual questions that could only be answered through affirmation or denial. This same logic, however, does not carry over into the later books of legal

---

\(^{341}\) Al-Qirqisānī, al-Anwār wa-l-marāqib, 1:480.

\(^{342}\) Al-Qirqisānī, al-Anwār wa-l-marāqib, 1:481.
distinction, which are not aimed at denying one thing or the other, but denying the very contradiction itself.

**Farq in Legal Disputation**

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

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

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

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

---

343 The meanings and applications of this word as a technical term in other fields are discussed in Chapter Two of the present study.
committed using such an object (inna al-qisāṣ yuthbat bihi). The legal issue at hand, the blunt object, is not comparable (laysa kadhlāka fīmā ʿāda ilā masʿalatinā), since animals cannot be slaughtered with a blunt object. This means that there is no punishment by retaliation (al-qisāṣ) for a murder committed with a blunt object, such as a small stick.\textsuperscript{344}

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

\textsuperscript{344} Sulaymān ibn Khalaf al-Bājī, Kitāb al-Minhāj fī tartīb al-ḥijāj, ed. ʿAbd al-Majīd Turkī (Beirut: Dār al-Gharb al-Islāmī, 1987), 203, ¶460. This section is also translated in Young, “Disputational Forge,” 1:180-81.
work is the normal use of the object. Knives are used for killing living beings, while clubs are not normally used in this way.

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

Several scholars devote a specific chapter to distinction in handbooks of dialectics. Imām al-Ḥaramayn al-Juwaynī, for instance, writes the twelfth chapter of his book entitled al-Kāfiya fī al-jadal on “How to Answer a Distinction (fī al-jawāb ‘an al-farq).” His discussion of farq in this chapter focuses on the use of farq as a disputational technique, however, not as a category of legal writing and analysis. Farq describes a particular objection to be overcome and the method for doing so. Al-Juwaynī says:
Know that to ask about (mā yatawajjahu ʿalā) the first term in an analogy (mubtadaʿ al-qiyās) regarding its impossibility or inconsistency (min al-manʿ wa-l-naqḍ), false construction (fasāḍ al-wadʿ), lack of consistent applicability (ʿadam al-taʾthīr), inversion of the conclusion (qalb), and counter-objection (muʿāraḍa), is to ask about distinction (fa-huwa mutawajjih ʿalā al-faq). This kind of objection can be responded to using any of the above rubrics.

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

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

---

345 For manʿ, see Miller, “Islamic Disputation Theory,” 113-118; for naqḍ, see Miller, “Islamic Disputation Theory,” 127-29.
349 Miller, “Islamic Disputation Theory,” 133-34.
350 Imām al-Ḥaramayn al-Juwaynī, al-Kāfiya fī al-jadal, ed. Fawqiyya Husayn Mahmūd (Cairo: Matbaʿat Īsā al-Bābī al-Ḥalabī wa-Shurakāʾuhu, 1399/1979), 322. The translation of the technical terms is largely adapted from, but not identical to the terms used by Miller. He translates ʿadam al-taʾthīr as “ineffective ratio legis,” and qalb as “methodos kata peritropēn” (120, 122). In his discussion of manʿ, he does not give a definitive translation of the term (113-16).
351 Miller, “Islamic Disputation Theory,” 130.
Walīd al-Bājī states that a farq is “a counter-objection to the rationale (ʿilla) of the principal case” and that “it is the most legal kind (afqah) of objection that can occur in a debate since the legal issue inherent in the problem becomes known in this way.”\(^{352}\) In other words, a farq is an objection based on a perceived incompatibility between the rationale (ʿilla) that is (or is implied to be) operative in two legal cases (ḥukmān). In fact, all objections based on a rationale are categorized as farq by al-Bājī.

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

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

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

\(^{352}\) Al-Bājī, al-Minhāj, 201, ¶456. Translation adapted from Miller, “Islamic Disputation Theory,” 130.

\(^{353}\) Al-Bājī, Minhāj, 202, ¶457; see also Miller, “Islamic Disputation Theory,” 147.
relationships between similar cases with similar legal rationales (ʿilal). Q aims to show that R’s two proposed rulings (ḥukmān) should be treated in distinct ways, even though R has treated them using identical legal rationales. In this sense, these authors consider farq to be a kind of counter-objection. Farq refers to this particular dialectical method.

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

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

354 Miller, “Islamic Disputation Theory,” 111; quoting al-Bājī, Minhāj, 41 ¶78.
overcome this objection required a thorough knowledge of substantive law, legal theory, and the connections between them. The formalization of *farq* required an already elaborated system of legal thought and an established tradition of disputation. In this sense, it is not a surprise to see the term *farq* appear in disputation manuals at the time that the doctrines of the Islamic legal schools were being formalized.

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

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

---

357 Young, “Dialectical Forge,” 1:181.
Islamic law, suggest that the term had not yet taken on a technical meaning. Young finds the technique referred to as farq, but this was not the exclusive term for such arguments or objections and it was also referred to by other etymologically related words. While these sources all have ideas of eliciting, or ascribing, distinction and employ such reasoning in their debates, there does not yet seem to be a scholarly consensus on the precise technical definition of this concept nor an agreement on what words should be used to refer to such procedures. It was not until the fourth/tenth century that farq emerged as a term that referred specifically to a known disputational technique.

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

---


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

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

\textsuperscript{360} Miller, “Islamic Disputation Theory,” 38.
\textsuperscript{361} Miller, “Islamic Disputation Theory,” 38; Young, “Dialectical Forge,” 31n46.
\textsuperscript{362} Miller, “Islamic Disputation Theory,” 130-31.
\textsuperscript{363} Both Miller and Young agree that muʿaraḍa was a particularly Arab, pre-jadal technique. Miller, “Islamic Disputation Theory,” 37-38; Young “Dialectical Forge,” 1:31n46.
constructed, it must be subsumed by *muʿāraḍa*, a broader category encompassing all techniques in which a counter-analogy is created.\textsuperscript{364}

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

\textsuperscript{364} Young, “Dialectical Forge,” 1:31n46.
Young, however, seems to suggest a parallel between farq and one of the refutations offered by Aristotle in his *Sophistical Refutations*, specifically Aristotle's advice to “look for contradictions between the answerers’ views and either his own statements or the views of those whose words and actions he admits to be right or those who are generally held to bear a like character and to resemble them.” Young explicitly says that we may find parallels between these techniques and inconsistency (naqd), contradictions with the Quran, hadith, or scholarly consensus, and “contradiction of one’s own doctrinal madhhab.” While Young does not use the term farq in this discussion, the dialectical technique of evaluating Quran, hadith, and legal questions seems to be dialectical farq. This interpretation of Young’s statement requires understanding Aristotle’s statement “those whose works and actions [the questioner] admits to be right” as applying, in legal disputation, to the assumption that the doctrines of a particular legal school are assumed to be correct. Based on this statement by Young, it seems possible that farq developed as a formal technique of disputation in connection with the reception of Aristotle’s *Sophistical Refutations*. This supposition, however, follows naturally from the understanding that any participant in a legal disputation is an adherent to a particular legal school and defending the view of his school.

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

---

366 Young, “Dialectical Forge,” 222.
complex and refined body of doctrine. In Young’s analysis, *farq* was one of the important dialectical maneuvers for the systematization of legal rulings, through what Young has called “*farq*-extension.” He defines *farq*-extension as a “dialectical motive: avoiding charges of invalid inference and internal/doctrinal inconsistency; proto-system legal theory.”\(^{367}\) It is a part of what he terms “proto-system legal theory,” by which Young seems to mean something like “pre-formative legal theory.”\(^{368}\) What he means, I think, by *farq*-extension is a full-scale review of one’s doctrinal consistency so as to avoid being charged with internal inconsistencies.\(^{369}\) While *farq* was a disputational technique that could occur within a disputation, *farq*-extension was a way of attempting to control for consistency within legal doctrine by spreading the particular applicatory ambit of a legal rationale (*illa*).

\(^{367}\) Young, “Dialectical Forge,” 1:544.

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

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

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

Disputational Theory and Practice (Khilāf)

Furūq was not the only genre of legal writing that arose out of the larger world of dialectics; khilāf was another, more prominent, genre. Indeed the relationship between these two disciplines, furūq and jadal, has gone relatively unnoticed.  

Young claims that disputation had a profound effect on the entirety of Islamic legal literature. He argues that every genre of pre-modern Islamic legal writing is influenced by the

---

370 Young, “Dialectical Forge,” 1:441.
371 The only study of which I am aware that mentions such a link is Young’s dissertation. Al-Ḥabib’s introduction to ʿAbd al-Ḥaqq al-Ṣiqillī’s al-Nukat wa-l-furūq hints at such a connection as well. Al-Ḥabib, “Introduction,” 79-81.
practice of dialectics or its theory, but that of these genres, khilāf, has been impacted most clearly.\(^{372}\) While Young’s dissertation shows how many of the concepts used in Islamic law were elaborated within disputational contexts, the development of legal genres and their particular connections to jadal in legal contexts remain unclear in his presentation. The genre most clearly related to disputation, however, is that of khilāf, which is also referred to as ikhtilāf.\(^ {373}\) This genre is mentioned by Young: “[a]s regards these latter genres[ qawā‘id fiqhiyya, furūq, ashbāh wa nażā‘ir, maqāṣid al-Shari‘a, etc..] the most important for our purposes is that which comprises the categories of Ikhtilāf and ‘Ilm al-Khilāf.”\(^ {374}\) In such contexts, khilāf does not refer to a particular technical term of disputation, nor a style thereof. It refers, in a way, to the act of disputation itself, especially when used in the context of a literary genre.

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

\(^{372}\) Young, “Dialectical Forge,” 1:70.
\(^{373}\) These two terms seem to be used synonymously in the tradition to refer to contradictory legal opinions which cannot be harmonized.
\(^{374}\) Young, “Dialectical Forge,” 1:70.
\(^{375}\) EI2 s.v. “Ikhtilāf” (Schacht).
\(^{376}\) Schacht, Introduction to Islamic Law, 114.
purpose was to show which school was superior. Those books that Schacht refers to as “simple handbooks,” are actually khilāf books that attempt to establish a particular opinion as prevalent within a school. It was also important to catalog and resolve disagreements in order to “arrive at consensus on any doctrine of practice.” Khilāf therefore serves to upset the epistemological certainty that arises from consensus and leads only to probable certainty.

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

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

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

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

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

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

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

381 EI² s.v. “Iktīlāf” (Schacht).
382 It should be noted, as mentioned above, that the history of formalized disputation also tracks closely
with the history of formalized theology, especially the defensive apologetic tradition of *kalām.* See Cook,
“Origins of Kalām.”
conflated with each other. Although *khilāf* and *jadal* do have an important connection, *khilāf* also served a purpose beyond that of dialectics—it served as a tool to impede the formation of consensus. As George Makdisi has pointed out:

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

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

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

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

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

---

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

The strong connection between these two disciplines, *khilaf* and *jadal*, however, has long been noted. George Makdisi mentions this connection in *Rise of Colleges* and quotes Ḥājjī Khalīfa (d. 1068/1657) making exactly this point. “Ḥajji Khalifa identified ‘ilm al-*khilaf*, the science of differences of opinion, of controversy, with *jadal*, dialectic, which was itself a part of *mantiq*, logic, adding: ‘except that this science (*jadal*) is applied particularly to religious matters’, —religious, as distinct from ‘foreign sciences.’”

Indeed, Ḥājjī Khalīfa’s discussion of ‘ilm al-*khilaf* reads like a discussion of dialectic itself. He explicitly equates the two, “‘ilm al-*khilaf* ... is dialectics (wa-*huwa al-*jadal*).” He mentions that the people involved in *khilaf* are either “the respondent” (*al-mujīb*) or questioner (*al-sāʾil*),” the two protagonists found in works of disputation. For Ḥājjī Khalīfa, there seems to be no substantial difference between these two fields. Ḥājjī

---


Khalīfa’s mention of this science within his biobibliographic work warrants further discussion.

It has been noted that much of his information regarding the various scholarly disciplines comes from the Miftāḥ al-saʿāda wa-miṣbāḥ al-siyāda by ʿIṣām al-Dīn Taşköprüzāde (d. 968/1561), a work that, in turn, owes a debt of gratitude to Ibn al-Akfānī’s (d. 749/1348) Irshād al-qāṣid ilā asnā al-maqāṣid. Jan Just Witkam alludes to this connection when he says that Ḥājjī Khalīfa “probably did not use the Irshād al-Qāṣid (although he was familiar with the text and knew Taşköprüzāde’s debt to it), but he was highly dependent on, among other works, Taşköprüzāde’s encyclopedia, which he quotes on numerous occasions.”

This flow of bibliographic knowledge, from the relatively unknown Ibn al-Akfānī to the monumental work by Ḥājjī Khalīfa deserves greater study, given that “[f]rom Kātib Čelebi[i.e. Ḥājjī Khalīfa] the line [of knowledge transmission] goes straight to the great bibliographical surveys which are the product of Arabic studies in Western Europe in the 19th and 20th centuries: Ahlwardt’s catalogue of the Berlin MS collection and Brockelmann’s History of Arabic Literature.” These three works—Ibn al-Akfānī, Taşköprüzāde, and Ḥājjī Khalīfa—should be seen as a cohesive tradition, a multigenerational current in Islamicate bibliographical writing.

389 Jan Just Witkam, “Ibn al-Akfānī (d. 749/1348) and his bibliography of the sciences,” Manuscripts of the Middle East 2 (1987), 40.
390 In particular, Witkam’s study shows how Ibn al-Akfānī’s Irshād al-qāṣid served as the node of transmission for some of the earlier classifications of the sciences, including works by Ibn Sīnā, al-Farābī, Ibn al-Nadim and al-Shahrastānī. See Witkam, “Ibn al-Akfānī,” 39.
The discussion of *khilāf* in this bibliographic tradition is quite interesting, since the authors are not in much agreement among themselves over what, exactly, the discipline of *khilāf* is or what it entails. I have already mentioned Ḥājjī Khalīfa’s identification of this science with disputation. In his *Miftāḥ al-saʿāda*, Taşköprüzāde includes separate discussions of both *jadal* and *khilāf*. The first of these discussions occurs in a section on the “sciences that protect one from error in debate and learning.” The second mention is in his section on the “sciences of legal theory.” His understanding and discussion of both *jadal* and *khilāf* are almost indistinguishable conceptually in both of these sections. In the first discussion, he states that “the principles (*mabādiʾ*) of *khilāf* are derived from the science of *jadal* (*mustanbatα min ‘ilm al-jadal*); *jadal* acts as the substance and *khilāf* as the form it takes (*fa-l-jadal bi-manzilat al-mādda wa-l-khilāf bi-manzilat al-ṣūra*).” Taşköprüzāde however, maintains a strict distinction between these two sciences, although he laments the ignorance of scholars of his time, in which this has been largely forgotten, “To the point,” he says, “that students of our time do not comprehend (*talabat zamāninā lā yatafaṭṭanūna*) the difference between *khilāf*, *jadal*, and *munāẓara*.” His understanding of a distinction

---

392 Ahmad ibn Muṣṭafā Taşköprüzāde, *Miftāḥ al-saʿāda wa-miṣbāḥ al-siyāda fi mawḍūʿāt al-ʿulūm*, ed. (Beirut: Dār al-Kutub al-ʿilmiyya, 1405/1985), 1:283. The other disciplines that he lists alongside *khilāf* and *jadal* in this section are Rules for Studying (ʿilm ādāb al-dars) and the science of speculation (ʿilm al-nazar).
393 Taşköprüzāde, *Miftāḥ al-saʿāda*, 2:556. The other disciplines that he lists alongside *khilāf* and *jadal* in this section are the science of reasoning (ʿilm al-nazar) and the science of debate (ʿilm al-munāẓara).
394 Taşköprüzāde, *Miftāḥ al-saʿāda*, 1:283. In the previous discussion of *jadal* and *khilāf*, he says, “the distinction between *khilāf* and *jadal* is in the form and substance. *Jadal* investigates the substance of the disputational proofs (mawāḍḍ al-adilla al-khilāfiyya) while *khilāf* investigates their form (*suwarihā*)” (2:556).
between all three of these disciplines is mentioned here, but he repeats this distinction in the section on the sciences of legal theory.

In categorizing *khilāf* alongside *jadal*, Tašköprüzāde suggest that these two disciplines be treated as separate fields. Of disputation, he says:

It is the science that investigates the ways through which one confirms any situation he so wishes (*ibrām ayy waḍʿ urīda*) or attacks any situation that may arise (*hadm ayy waḍʿ kāna*). This is one of the branches of speculation and the foundation of this science is disagreement (*wa-mabnī al-ʿilm al-khilāf*). *Khilāf* is based on disputation, which is one part of the investigations of logic, although it is specific to the religious sciences.  

This section on disputation is similar in many ways to Ḥājjī Khalīfa’s discussion of *khilāf*, even though it treats a different discipline. Both authors mention the close connection of *khilāf* to the religious sciences as well as to the field of logic.

What, then, is the science of *khilāf* according to Tašköprüzāde? He provides two definitions. First, he says, “it is the science that investigates the different ways of applying deductive reasoning from particular and general indicants.”  

Khilāf is, therefore, in this definition, not concerned with the technique of defending or attacking particular opinions or viewpoints, but rather directly tied in with differing interpretations of legal indicants. In other words, *khilāf*, according to Tašköprüzāde is

---

396 Tašköprüzāde, Miftāḥ al-saʿāda, 1:281. The discussion of *jadal* in legal theory is almost identical. “It is the confirmation of any situation that may arise (*ithbāt ayy waḍʿ kāna*) or an attack against any situation that may arise (*hadm ayy waḍʿ kāna*). It is one of the rational sciences (*al-ʿulūm al-ʿaqliyya*) although it is also a branch of the science of legal theory” (2:555).

397 Tašköprüzāde, Miftāḥ al-saʿāda, 1:283.
inseparable from its legal context. This point is reaffirmed in the second definition, from the chapter on *usūl al-fiqh*. “It is the disputation that occurs between the adherents of the legal schools (*bayna aṣḥāb al-madhāhib al-far‘iyya*), such as Abū Ḥanīfa, al-Shāfi‘ī and their peers (*amthālihimā*).”\(^{398}\) Not only is *khilāf* intrinsically legal, but it is the disputation that is exclusively based on the extrapolated reasoning of the founders of the legal schools. Ḥājjī Khalīfa, however, thinks of *khilāf* as simply disputation. Ṭaşköprüzāde had already dismissed this very definition as misinformed.

Ṭaşköprüzāde closes his discussion by stating that “it is possible (*yumkin*) to place the science of disputation and *khilāf* within the branches of the discipline of legal theory.”\(^{399}\) Ṭaşköprüzāde categorizes *khilāf* as falling under the rubric of legal theory (*usūl al-fiqh*), while Ḥājjī Khalīfa considers it part of substantive law or law in general. He does not mention that it is part of *usūl al-fiqh*, instead referring to the necessity of “knowing the *qawā‘id* by means of which one understands the derivation of positive laws (*yutawāṣṣalu bihā ilā istinbāt al-aḥkām*)” and “memorizing those disputed laws.”\(^{400}\) While *khilāf* requires the knowledge of these things, Ṭaşköprüzāde clearly notes that it does not require understanding how to deduce positive laws; that is the work of a *mujtahid*. Someone involved in *khilāf* need only be able to understand the work, teachings, and writings of a *mujtahid*.

Ibn al-Akfānī, the third author of this bibliographic group, offers a third, different approach. He does not consider *khilāf* an independent science and thus has no


entry for \textit{khilāf}. Rather, he sees \textit{khilāf} as a subdiscipline of \textit{jadal} and mentions this \textit{khilāf} within his entry on disputational theory. Of \textit{ʿilm al-jadal}, he says:

The Science of Disputation. A science through which the following is known: how to present legal proofs, how to refute doubt, impugn legal proofs (\textit{qawādiḥ al-adilla}), and structure points in a \textit{khilāf} debate. The science of disputation came about from \textit{jadal} which is a part of logic, but it is restricted to religious investigations. There are many methods of disputation, but the best of them (\textit{ashbuhūhā}) is \textit{al-ʿAmīdī}’s method.\footnote{ Muḥammad ibn ʿIbrāhīm ibn Sāʾid al-Anṣārī, Ibn al-Akfānī al-Ḥakīm al-Mutaṭayyib, \textit{Irshād al-qāṣid ilā asnā al-maqāṣid fi anwāʾ al-ʿulūm}, ed. ‘ʿAbd al-Munʿim Muḥammad ʿUmar and Ahmad Ḥilmī ʿAbd al-Raḥmān (Cairo: Dār al-Fikr al-ʿArabī, [1990]), 163; Januarius Justus Witkam, ed., \textit{De Egyptische Arts Ibn al-Akfānī (gest. 749/1348) En Zijn Indeling Van de Wetenschappen} (Leiden: Ter Lugt Pers, 1989), 44, ll.580–83. This is a reference to the work of Rukn al-Dīn Muḥammad ibn Muḥammad al-ʿAmīdī (d. 615/1218), a Central Asian scholar who wrote two works on legal disputation, \textit{al-Ṭarīqa al-ʿamīdīyyah fi l-khilāf wa-l-jadal} and \textit{Irshād al-ṭarīqa}. See also the praise for \textit{al-ʿAmīdī} and his method in Ibn Khaldūn, \textit{al-Muqaddima}, 3:33-34.}

For Ibn al-Akfānī, it is not \textit{khilāf} that is a religious science, but rather the science of disputation itself. He makes this point explicit in his entry, but it is also clear from his categorization. Ibn al-Akfānī’s book presents a clear hierarchy of the sciences: for him, \textit{jadal} belongs to the science of laws (\textit{ʿilm al-nawāmīs}) or the legal sciences (\textit{al-ʿulūm al-sharʿiyya}). These sciences, in turn, fall under what he calls the “the highest order of the religious sciences (\textit{ʿilm aʿlā; al-ʿilm al-ilāhī}),” which itself is a part of “the speculative philosophical sciences (\textit{al-ʿulūm al-ḥikmiyya al-naẓariyya}).” The speculative philosophical sciences themselves are a part of “philosophical sciences, or what is studied for its own sake (\textit{al-ʿulūm al-ḥikmiyya; mā yakūnu maqṣūdan li-dhātihi}),” as opposed to the ancillary sciences.
These three bibliographers present conceptions of both disputation and *khilāf* that are radically different. They present quite different histories, uses, and identities of both of these sciences. For Ḥājjī Khalīfa, the technical term *khilāf* is of great importance. He devotes an entry to this discipline, but the identity of this discipline is interchangeable with that of disputation; they are equivalents to him, and they reside in what he understands as the substantive areas of the law.402 Here, the legal is given precedence over the philosophical or the speculative. It is purely a branch of legal studies. For Ṭaṣköprüzāde, they are distinct sciences, although they are both disciplines concerned with discovering truth. In this sense, they correspond to what both Miller and Young find to be the chief aim of early dialectical theory, a method for attaining and refining knowledge. He would certainly not approve of Ḥājjī Khalīfa’s definition. Ṭaṣköprüzāde laments the ignorance of those who conflate *khilāf* and *jadal*. As for Ibn al-Akfānī, he presents *jadal* as an important discipline, while *khilāf* is only subsumed by *jadal* entirely. For him, it is only *jadal* that is important, and it is important for its relationship to both law and philosophy.

Modern scholars have drawn connections between the three bibliographical works in large part because of shared passages between them. Witkam says “Ṭaṣköprüzāde devised his own division of the sciences, but he incorporated much of Ibn al-Akfānī’s text within the framework of his [*Miftāḥ*].”403 This statement is paralleled

402 This may result from his work’s vision of scholarship and scholarly life as entirely book-centered. *Kashf al-ẓunūn* focuses almost exclusively on texts as the primary form of intellectual capital, although such a focus is not necessarily indicative of Ottoman views of knowledge more broadly.

in Gerhard Endress’s study of encyclopedias in the Arabic tradition. Endress says that Ibn al-Akfānī’s work “became the model” for Tašköprüzāde because they “both present the ‘highest aim’, al-maşad al-asnā, attained by Muslim scholarship in the later Middle Ages in uniting both traditions, the Islamic and the Hellenistic.” Ḥājjī Khalīfa later used Tašköprüzāde as a model for his own work. This ‘borrowing’ is detectable even in their discussions of khilāf and jadal, in spite of the distinct approaches taken by each of the three authors. There are verbatim passages that are shared between all three works.

The most straightforward example of this borrowing is in Ḥājjī Khalīfa’s discussion of jadal which entry begins with a long quotation from Tašköprüzāde’s Miftāḥ al-saʿāda and ends with the phrase “as in (kadhā fi) the Miftāḥ al-saʿāda.” Ḥājjī Khalīfa adds, however, that it is not far-fetched to say that ‘ilm al-jadal is the same thing as ‘ilm al-munāẓara, the very statement lamented by Tašköprüzāde as ignorance in his Miftāḥ. Another obvious borrowing is the phrase that disputation is a part of logic, although devoted primarily for religious sciences.

The connection drawn by the bibliographers between khilāf and jadal is framed largely in terms of debating difference between schools, although later books

---

405 Ḥājjī Khalīfa, Kashf al-ẓunūn, 1:579-80.
406 The phrase is found in all three texts, but not with identical wording. Ibn al-Akfānī says, “al-jadal alladhī huwa aḥad ajzāʾ al-manṭiq lakinnahu khusṣaṣa bi-l-mabāḥith al-diniyya” (163). In Tašköprüzāde, the phrase is “al-jadal alladhī huwa aḥad ajzāʾ mabāḥith al-manṭiq lakinnahu khusṣa bi-l-ʿulūm al-diniyya” (1:281). Ḥājjī Khalīfa quotes this phrase in his entry on jadal, on 1:579. In his entry on khilāf, he says, “wa-huwa al-jadal alladhī huwa qism min al-manṭiq illā annahu khusṣa bi-l-maqāṣid al-diniyya” (1:721).
sometimes focus on disputed rulings within schools. ʿAlāʾ al-Dīn Abū al-Ḥasan ʿAlī ibn Sulaymān al-Mardāwī’s (d. 885/1480-81) al-Inṣāf fi maʿrifat al-rājīḥ min al-khilāf ʿalā madhhab al-imām al-mubajjal Aḥmad ibn Ḥanbal is a prime example of a work of khilāf written within a legal school. His book is concerned with explaining and clarifying the khilāf found in the Muqniʿ of Muwaffaq al-Dīn Ibn Qudāmā (d. 620/1223). Al-Mardāwī’s interest lies in clarifying some of the conflicting opinions given by Ibn Qudāmā and explaining which ones are more reliable. He praises the Muqniʿ as one of the “most useful and greatest” books in the Ḥanbalī school, “however, [Ibn Qudāmā] gives conflicting opinions on some issues without giving preference to either (atlaqa fi baʾd al-masāʾil al-khilāf min ghayr al-tarjih). Weak and sound opinions thus appear alike to those who contemplate this book (fa-ashtabaha ‘alā al-nāẓir fīhi al-daʾīf min al-ṣāḥih).”

Al-Mardāwī writes his book to clarify which opinions are dependable (muʿtamad, madhhab) and which are not. Interestingly, in his introduction he gives a detailed explanation of the formulations that Ibn Qudāmā uses that lead to such confusions. While khilāf could perhaps be a way of voicing and, through its association with disputation, resolving disagreements, not all disagreements could be resolved.

Thus far, this chapter has shown that the history of furūq as a genre seems to be found in farq’s past as a disputational technique; furūq seems to leave part of this argumentative history behind, something that cannot be said for khilāf. Nevertheless,

---


408 Mardāwī, al-Inṣāf, 1:4-13.
this section shows one way in which the two disciplines of *khilāf* and *jadal* evolved alongside of and by means of interactions with each other and in this regard they provide a useful parallel to the distinctions tradition. The following section will show how the disputational background of *farq* can be understood to be present, even if latent, in works of legal distinctions.

**Disputation in *Furūq***

The earliest extant work on legal distinctions is likely *al-Farq wa-l-Jamʿ* by ʿAbd Allāh ibn Yūsuf al-Juwaynī, the father of Imām al-Ḥaramayn Abū al-Maʿālī al-Juwaynī. Abū Muḥammad ʿAbd Allāh ibn Yūsuf ibn ʿAbd Allāh al-Juwaynī was, as his name indicates, a scholar from Juwayn, a small town outside of Nishapur. He was born into a family of well-known scholars. His father, Yūsuf ibn ʿAbd Allāh, was a noted litterateur and his brother, Shaykh al-Ḥijāz Abū al-Ḥasan ʿAlī ibn Yūsuf, was a hadith transmitter who also wrote a book on Sufism, *Kitāb al-Salwah*. ʿAbd Allāh al-Juwaynī’s son, Abū al-Maʿālī ʿAbd al-Malik ibn ʿAbd Allāh, was a very well-known Shāfiʿī jurist and Ashʿarī theologian whose tenure living in Mecca and Medina earned him the nickname Imām al-Ḥaramayn (Imam of the Two Holy Cities).

ʿAbd Allāh al-Juwaynī began his education in Juwayn, where he studied *adab* as well as Islamic law (*fiqh*) with his father, and Islamic law with Abū Yaʿqūb al-Abīwardī (d. ca. 400/1010). From there, al-Juwaynī travelled to Nishapur where he continued his study of *fiqh* with Abū Ṭāyyib Sahl ibn Muḥammad ibn Sulaymān al-Suʿlūkī (d. 369/980). Finally he went to Marw to finish his studies with Abū Bakr ʿAbd Allāh ibn Aḥmad al-Qaffāl al-Marwazī (d. 417/1026-27). Al-Juwaynī studied with al-Qaffāl until he mastered
the teachings of the Shāfiʿī school (al-madhhab) and the points of disputation with other schools (al-khilāf). After this, he returned to Nishapur in 407/1016-17, and “he remained there teaching, giving fatwas and engaging in disputation, educating the general public and the learned (qaʿada li-l-tadris wa-l-fatwā wa-majlis al-munāzara wa-taʿlīm al-ċāmm wa-l-khāṣṣ).”

Al-Juwaynī, nicknamed Rukn al-Islām, the Cornerstone of Islam, was known for his great learning and teaching. He had many important students who are recorded in the biographical literature. Tāj al-Dīn al-Subkī (d. 769/1368), for instance, includes entries for ten scholars who studied with al-Juwaynī. His most famous student, of course, was his own son, Abū al-Maʿālī al-Juwaynī, who, it turns out, wrote an early and important manual of disputation (jadal).

It was not only in his scholarship and teaching that the elder al-Juwaynī was prominent, but also in his legal opinions. Al-Ḥāfiẓ Abū Ṣāliḥ al-Muʿadhdhin said: “I washed his corpse, and when I turned him over in the coffin, I saw his right hand up to the armpit shining like the light of the moon. I was amazed (fa-tahayyartu) and I said,

---


410 I chose to focus on those scholars who have an entry in this work as a way of demonstrating the importance of al-Juwaynī’s students. For those listed in Ibn Qāḍī Shuhba’s dictionary of Shāfiʿī jurists, I give the reference to their entries as well. Al-Juwaynī had many other students who are listed in his entry in these dictionaries.
“This is the blessing (baraka) of his fatwas.” In spite of such laurels, however, al-Juwaynī appears, after his death, to have been forgotten after his death outside of Central Asia.

From Abū Ishāq al-Shirāzi’s (d. 476/1083) Ṭabaqāt al-fuqahā‘ we learn the surprising fact that information on the life and works of Shāfi‘i jurists from Khurasan and Transoxiana did not travel widely during his lifetime. Al-Shirāzi reports that “In Khurasan and Transoxiana, there are many scholars in our madhab (min aṣḥābinā khalq kathīr), such as...Abū Muḥammad al-Juwaynī and others whose death dates are unknown to me (lam yaḥdurnī tārīkh mawtihim).” Al-Shirāzi, who spent most of his life in the caliphal center of Baghdad, was a contemporary to these Central Asian scholars, but he could only conjure up the names of a few of these jurists and did not have much, if any, familiarity with their life and works. In spite of this unfamiliarity, al-Juwaynī and his Central Asian colleagues seem to have become better known in the following centuries.

The information that later sources provide about al-Juwaynī and other Central Asian jurists signals that information about them did become available and more current a few centuries after al-Shirāzi. Al-Juwaynī came to occupy an important place in the Shāfi‘ī madhhab. It was perhaps this initial lack of biographical information about him that led to uncertainty surrounding his works. Although his work on legal distinctions is often mentioned in his biographies, there is a disagreement as to its title.

412 Tāj al-Dīn al-Subkī, Ṭabaqāt al-shāfi‘iyah al-kubrā, 4:87. Al-Subkī is citing Shirāzi‘ī’s Ṭabaqāt al-fuqahā‘. The quoted passage can be found in al-Shirāzi, Ṭabaqāt, 132-33.
Biographies refer to it only as *Kitāb al-Furūq*, though the manuscript tradition records its title as *al-Jamʿ wa-l-farq*. It is unclear where this title comes from. Al-Juwaynī does not mention the title of his book in his introduction to this work. Other works from the Shāfi‘ī legal school also refer to this book as *Kitāb al-Furūq*. The Shāfi‘ī jurist Muḥyī al-Dīn al-Nawawī (676/1277), for instance, refers repeatedly to this book in his *Majmūʿ* citing it as “Kitāb al-Furūq.” Other jurists, such as Badr al-Dīn al-Zarkashi and Jalāl al-Dīn al-Suyūṭī refer to this work as *Kitāb al-Furūq*. In spite of this evidence, however, al-Muzaynī titles his edition of al-Juwaynī’s work *al-Jamʿ wa-l-farq* because this title is given on the majority of the manuscripts. According to ʿAbd al-Raḥmān ibn Salāma ibn ʿAbd Allāh al-Muzaynī, “What happened with al-Nawawī and others in their citations from this book and their calling it *al-Furūq* is essentially that the subject matter of the book made a greater impression than its title (*min qabil taghlib mawḍūʿ al-kitāb ‘alā ismihi.*)” The tradition rightly considered it a work of furūq.

Al-Qaffāl, one of al-Juwaynī’s teachers, is mentioned in Taşköprüzāde’s *Miftāḥ al-saʿāda* and Ḥājjī Khalīfa’s *Kashf al-ẓunūn*, in their discussions of *jadal*. Taşköprüzāde says,

---


“The first jurist to write about proper jadal (al-jadal al-ḥasan) was Abū Bakr Muḥammad ibn ʿAlī ibn Ismāʿīl al-Qaffāl al-Shāshī al-Shāfiʿī.”\(^{418}\) Perhaps relying on Taşköprüfāde, Ḥājjī Khalīfa also mentions al-Qaffāl as the first jurist to write on jadal.\(^{419}\) Al-Juwaynī, then, studied law and khilāf with one of the earliest prominent jurists to write on jadal and so must have been quite familiar with disputation and its techniques, even though he did not write a book on the subject.\(^{420}\)

In his explanation of the distinctions between seemingly contradictory laws in his furūq work, al-Juwaynī often follows his explanation of the distinction with a blueprint for a disputation. For example, in the fifth distinction in the chapter on purity, he says, “Some of the scholars in our school distinguished (faṣala) between mineral salt (al-milḥ al-jabalī) and sea salt (al-milḥ al-māʾī) dissolving in water. They hold that it is permissible to perform ablutions with water that has sea salt dissolved in it but it is not permissible with water that has mineral salt.”\(^{421}\) Al-Juwaynī explains that the distinction rests on the underlying substance of the salt. Sea salt is coagulated water and is thus equivalent to water (māʾ fī al-aṣl). It is, therefore, pure. Mineral salt, however, is not made of water and is thus a polluting substance.\(^{422}\)

After giving a detailed explanation of this idea and the legal distinction arising from the difference between these two kinds of salt, al-Juwaynī includes a brief example of dialectic, a discussion between someone challenging this view and someone

\(^{418}\) Taşköprüfāde, Miṣṭāḥ al-saʿāda, 1:282.

\(^{419}\) Ḥājjī Khalīfa Çelebi, Kashf al-zunūn, 1:580.

\(^{420}\) As noted above, his son did write such a book.

\(^{421}\) ʿAbd Allāh al-Juwaynī, al-Jamʿ wa-l-farq, 1:56-57.

\(^{422}\) ʿAbd Allāh al-Juwaynī, al-Jamʿ wa-l-farq, 1:57.
attempting to support it. “If someone says, ‘But even mineral salt is coagulated water (māʾ inʿaqada). All salt is just water in its essence (mā min milḥ illā wa-l-māʾ ašluhu).’ We respond, ‘The matter is not all the same, as you have described it (laysa al-amr ʿalā hādhihi al-jumla)....”⁴²³ Al-Juwaynī thus inscribes dialectical argumentation into his discussion of a distinction. This is a simple argument, with one objection to al-Juwaynī’s claim and a counterobjection, but it nevertheless brings to the fore the disputational framework in which works of legal distinctions could be used. These mini-disputations feature regularly in al-Juwaynī’s book. In al-Juwaynī’s chapter on ritual purity, we find them in twenty-two of the 172 numbered distinctions. If we look closely as this short disputation, we can see that it tracks closely with the farq objection of the jadal-theorists.

In the above discussion from the Furūq, the first term in the analogy would be the salt water. In terms of building a legal qiyās, the situation can be thought of as follows: the precedent (aṣl) is sea salt. The ruling (ḥukm) is that it is ritually pure. The legal rationale (ʿilla) for this ruling is that the sea salt is nothing more than water in a different physical state. In this comparison, then, the instant case (farʿ) is that of mountain salt. When one tries to apply the legal rationale (ʿilla) of the precedent to the instant case, it turns out to be inappropriate. Salt found in a cave is simply not water in a different physical state; legally speaking it is an entirely different substance. Therefore, the rationale is not found in the second case, the precedent ruling cannot

⁴²³ ʿAbd Allāh al-Juwaynī, al-Jamʿ wa-l-farq, 1:57.
apply to it, and the ruling for mountain salt becomes that it is not ritually pure, since it is not simply coagulated water.

As mentioned above in the discussion of dialectics, Imām al-Ḥaramayn al-Juwaynī stated that “asking about the first term in an analogy... is asking about a distinction,” just as in this example of a distinction and mini-disputation. ʿAbd Allāh al-Juwaynī distinguishes between these two cases by implicitly appealing to a lack of applicability, what Imām al-Ḥaramayn al-Juwaynī refers to as “ʿadam al-taʾthīr” in his manual of disputation. Similarly, when al-Bājī calls farq, “the most legal kind of objection,” he does this because it deals exclusively with the legal rationale (ʿilla) underlying the legal rulings. A disagreement and ensuing disputation about the lack of applicability of the effective cause in one ruling to another is exactly what is described in al-Juwaynī’s text.

One more example will illustrate the connection between books of furūq and dialectic. In this same chapter on purity, al-Juwaynī says, “If a person defecates (qadā hājatahu), then performs an ablution with sand (tayammama), then wipes themself (istanjā), their ablution is not valid. Were, however, a person to defecate, perform an ablution with water, and then wipe themselves without touching the anus or vagina (min ghayr mass al-farj), their ablution is valid. Al-Shāfīʿī took an explicit position in favor of both rulings (al-masʿalatān manṣūṣatān) in the recension of al-Rabīʿ ibn Sulaymān.”

---

424 Imām al-Ḥaramayn al-Juwaynī, Kāfiya, 322, see also above page 136.
425 Al-Bājī, Minhāj, 201, ¶456.
426 ʿAbd Allāh al-Juwaynī, al-Jamʿ wa-l-farq 1:118.
ablutions, *al-wuḍūʿ*, and the special dispensation made for an ablution with sand, *tayammum*. The latter ablution is only allowed when there is not enough pure water available to perform the normal ablution, and, as a special dispensation, is not purifying in the same way that *wuḍūʿ* is. This, therefore, is the “clearest of the distinctions between them” according to al-Juwaynī. “*Wuḍūʿ* is more purifying (*aqwā*) and *tayammum* is less purifying (*adʿāf*).” This distinction is clear, ritual purification with water is more purifying than a ritual purification with sand.

There is, however, another distinction between these two situations. *Tayammum* is only permissible where water cannot be found, and searching for water after the *tayammum* renders it ineffective. It can only be done when there is no water to be found, not as a substitute for finding water. Searching for water after the *tayammum* “voids his ablution, whether he finds water or not.” Searching for water does not void an ablution in cases of *wuḍūʿ*, since an ablution with water is routine and a lack of water was not an issue. This issue, however, is not necessarily so simple, and al-Juwaynī mentions a disagreement in this regard and provides the following example of a disputation.

If, however, someone says (*fa-in qāla qāʾil*), ‘Is it not sufficient to use rocks for wiping [i.e., and not have recourse to water]?’

We say, ‘Yes, but there are two kinds of required duties: an actual, required duty (*wājib muta‘ayyan*) and a substitute duty (*wājib mutamaththil*). A required duty, for example, is a rich person freeing a slave as a penance for a

---

Ẓihār divorce. An example of a substitute duty is a rich person freeing a slave as a penance for breaking an oath. Both of these actions are characterized as required (mawṣūf bi-l-wujūb). Similarly, when a man defecates (qaḍā al-rajul ḥājatahu), the required duty is that he wipe himself with water, and the substitute duty is to do so with stones. If someone who has performed tayammum is then required to search for water because of an external impurity (li-ḥukm al-najāsa al-khārija), his tayammum becomes void.

If someone then says, ‘Is it not the case that, were he to have completed his tayammum with an impurity on his backside, you would consider his tayammum void because of his having to search for water to clean this impurity?’

We reply, ‘This impurity is different than impurity from excrement, because the impurity from excrement is the one that originally necessitated the ablution, either wuḍū’ or tayammum. Any impurity which necessitates an ablution is assigned a particular set of legal rules and is unlike any other (wa-li-makānihā aḥkām makḥṣūṣa laysat ka- ghayrihā). Do you not agree that when he completes his tayammum, it is not permissible for him to begin his prayer as long as he does not wipe himself, but that he should begin his prayer with an impurity which was on his backside? This is the case, although many times we

---

428 Ẓihār refers to a legally valid, but detestable form of divorce. The husband repudiates his wife by comparing her to his mother by uttering the formula “You are to me like my mother’s back (anti ‘alayya ka-zahr ummī).” With this formula, the husband causes an immediate divorce. Since this is a valid formula, the divorce takes hold, but since according to the jurists it is immoral, the husband is required to make penance.
would prefer he perform the prayer again at a later time (a-lā tarā annahu idhā farigha min al-tayammum lam yajuz lahu al-shurūʿ fī al-ṣalāt mā lam yastanja wa-yashraʿ fī al-ṣalāt maʿa al-najāsa allātī ʿalā ẓahrihi wa-in kunnā naʿmuruhu fī baʿd al-mawāḍiʿ bi-qaḍāʾ tilka al-ṣalāt).

This second distinction between wuḍūʿ and tayammum is much more detailed. Because this distinction rests on a finer point of law than the basic status of these two ablutions, there is greater ground for disagreement. Indeed, the disagreement here rests not on any distinction between wuḍūʿ and tayammum, but rather on the ancillary issue of the impurities related to defecation and wiping the anus. The first objection reported by al-Juwaynī rests on the requirements for wiping the anus after defecation. Al-Juwaynīʾs discussion of the distinction implies that water is required for this, and the objection is that water is not required, as using clean rocks can be sufficient. This would make al-Juwaynīʾs distinction meaningless, since wiping does not necessarily require searching for water. Al-Juwaynī counters this objection, however, by creating a hierarchy of distinctions. He introduces the concept of wājib mutamaththil, a stand-in/substitute duty. Yes, one can sometimes wipe with rocks instead of water, but that is only when water is not available. This situation still calls for searching for water, which renders the tayammum void.

The final objection continues in a similar vein. The questioner notes that if someone performs tayammum with an impurity on his body, he would still have to search for water to clean this impurity eventually, but nevertheless the tayammum is

---

valid. Implicit in this charge is that al-Juwaynī is contradicting himself in the way he treats *tayammum* and the search for water. The questioner has found an example in which the person who performs a valid *tayammum* was and still is in search of water, but it is a situation that does not render void his ablution. Al-Juwaynī responds to this by making a further distinction between these impurities. The impurity on your back can be, for ritual purposes, ignored for prayer if the affected person performs a *tayammum*. In other words, for the purposes at hand, he is considered legally pure in spite of the presence of actual impurity on his person. Therefore, the need to search for water is not urgent and this does not render his *tayammum* void. After defecation, however, the impurity that arises is directly a result of the defecation. It is the same act that both engenders the need for water for purification and, separately, the need for water for wiping. Since one act brings about both circumstances, and both require water, you cannot perform *tayammum* first and search for water later. One should perhaps search for water, use rocks for wiping, and then perform *tayammum*.

Again, connecting the disputation here with the descriptions of *farq* found in manuals of disputation is straightforward. The questioner puts in doubt the situation (*fasād al-wādʿ*)¹⁴³⁰ set up by ‘Abd Allāh al-Juwaynī. That is to say, he disagrees with the way that al-Juwaynī sets up this legal scenario and denies the distinction that al-Juwaynī has established. There is no requirement to search for water when wiping after defecation, he says implicitly. Al-Juwaynī counters this objection by explaining why the situation is, in fact, as he describes. The second objection is an attempt to draw out a

contradiction (naqḍ) in al-Juwaynī’s reasoning, another strategy found in the manuals of disputation discussed above. The questioner then mentions what he finds to be an equivalent situation with a divergent ruling, to show al-Juwaynī why he is wrong. Al-Juwaynī then distinguishes these two situations and overcomes this objection by showing the coherence in his thought and the lack of commensurability between these two kinds of impurity. This is nothing less than an example of jadal at work, employed in a book of legal distinctions.

This text does not explain what the exact relationship is between actual legal disputations happening in scholastic contexts, manuals of legal disputation explaining the rules for holding and judging disputation, and the list of particular counter-objection furūq compiled by al-Juwaynī. Nevertheless, it is clear that he sees his book as contributing to an advanced and highly specialized kind of legal debate, one in which jurists have to defend any and all of the points held by their legal school. Al-Juwaynī even alludes to such a scenario at the beginning of his book. He states, “Legal issues may have similar appearances but different rulings (masā’il al-shar‘ rubbamā tatashābahu ṣuwaruhā wa-takhtalifu ahkāmuḥā) because of legal rationales (‘ilal) that require different rulings.”431 Al-Juwaynī also comments that his predecessors wrote some works “on this topic (fī hādha al-bāb)” but that it was restricted to a “very limited number of cases.”432 This is to say, al-Juwaynī was not the first jurist to put together a book of legal distinctions; others wrote works on this topic as well. It was al-Juwaynī’s goal, however,

---

to be exhaustive, and in this he was most likely successful when one considers the legacy and popularity of his work.

Conclusion

As seen in this chapter, the dialectical context in which Islamic law arose as a scholastic activity was instrumental in the rise of legal distinctions as a form of legal writing. As dialectic became more and more formalized and institutionalized, new forms and rules of argumentation developed. One such form of argumentation was the distinction (farq, faṣl). In disputation, positing a distinction was one of several formalized procedures for objecting to an opponent’s statement. It was a particular way of locating and utilizing a potential contradiction in an opponent’s reasoning, based on their reliance on specific rationales (ʿilal) in particular cases. It went right to the heart of the legal matter, and must therefore have proven to be a successful and powerful strategy in disputation. Books of legal distinctions incorporated much of the logic that went into the disputational farq. There are two key differences between these understandings of farq, however. First, while disputational farq was a particular procedure for debating, to be introduced at a certain point in the debate and to be countered in particular ways, works of furūq focused solely on the characterization of two laws as apparently contradictory. Secondly, disputational farq was a strategy for showing contradiction—a method to show an inconsistency—while books of legal furūq are written under the assumption that doctrine is internally consistent. In almost perfect opposition to disputational farq, books of furūq prove that there is no contradiction in the law, or, more specifically, in the rulings discussed in these works. Legal furūq likely arose first
as a blueprint for defending against *farq* in disputation, but quickly took on a literary and aesthetic life of its own.

This impetus for writing works of legal *furūq* stands in stark contrast to that behind another genre that arose from the disputational nature of early Islamic law, that of *khilāf*. *Khilāf* continues the argumentative style of disputation and the genre of *khilāf* is undergirded by the idea that the law, as developed within and between the legal schools, will inevitably lead to disagreement and contradiction. Authors of *khilāf* works might have particular understandings of what is correct and thus privilege one ruling or understanding over others, but those authors also lay bare the potential inconsistencies and disagreements found at the deeper level of legal justifications found in *fiqh*. Those inconsistencies, however, are exactly what legal *furūq* seeks to remedy.
Chapter Four: The Logic of Legal Distinctions

In Chapter Two, we discussed the rise of distinctions as a concept in the Arabic intellectual tradition. In that chapter, we saw that distinctions arose as a concept based on, but distinct from that of ‘distinction.’ The use of the Arabic term furūq, in the plural, signals a different logic from that of farq (distinction) in the singular. The change from farq to furūq was traced in part by looking at the titles of books in various fields, particularly lexicography. Books titled farq and furūq both dealt with synonyms, but each word signalled a different conceptual approach. Farq books were organized around broad conceptual groupings—such as the parts of the body or the stages of the life-cycle. Synonyms in books of farq are then distinguished based on their applicability to the conceptual grouping. Furūq books, on the other hand, directly compare apparent synonyms to tease out the minute differences between them. The organization of these two styles of books is radically different and this difference in organization results in a different logic for discussing synonymy, or the the lack of synonymy between near-synonyms.

Chapter Two explored the difference between these two approaches and the correlation between the use of farq or furūq in the title and the organization of a book. The different logic inherent in each approach was mentioned, but discussed only briefly. The present chapter explores the logic particular to books of lexicographical and legal distinctions, to show the conceptual difference between these two applications of distinctions-thinking. Furūq as a term for comparison emerged in the fourth/tenth century. This chapter also explores this connection between
lexicographic and legal distinctions further. Here, I interrogate the general logic at work in each of these disciplines and show how these two kinds of distinctions are fundamentally different. While similar motivations may lie behind the emergence of books of furūq, the way they emerged involved different kinds of intellectual activities. The logic of legal distinctions, of course, is evidenced almost exclusively in books of legal distinctions. Therefore, this chapter ends by tracing the rise of the legal genre and outlining its contours.

This difference between the singular and plural use of the term ‘distinction’ is all the more relevant for legal distinctions, where the singular, farq, is routinely used to signify an applied linguistic distinction while the plural, furūq, is used almost exclusively to denote legal distinctions, because legal distinctions, furūq, operate with a logic particular to them and distinct from that of distinctions in lexicography. The difference between farq and furūq is not simply the difference between a word in the singular and a word in the plural, the difference is similar to that between a book of legal theory (uṣūl al-fiqh) and a discussion of one specific tool of legal reasoning (ašl).433 There is, of course, a relationship between legal theory and legal-theoretical tools of reasoning, not only in terms of content, but even, etymologically, just as with distinctions. A work on uṣūl al-fiqh, however, treats the subject of legal theory broadly, while a treatment of one precept, such as analogy, looks at the function and operation

of one such tool for legal thinking. It is therefore worth understanding the difference between a legal distinction (al-farq al-fiqhī) and legal distinctions (al-furūq al-fiqhiyya).

Chapter Two also contained a discussion of what I term applied linguistic distinctions, that is, a distinction based on the lexicographic model, such as the work by Ibn Rajab al-Ḥanbali, al-Farq bayn al-naṣīḥa wa-l-taʿyīr, or Ibn Taymiyya’s (728/1328) al-Farq bayn al-ḥadd wa-l-taʿzīr. Works such as these are not actually about laws, they are about legal concepts. As such, they might explain what each of these words means in its plain-sense meaning or normal usage (fī al-lugha, lughatan) and in its technical meaning. They can discuss the references in the Quran and the hadith that inform the legal meaning, and the kinds of instances in which those meanings might apply. As such, they do not explain the difference(s) between two laws or farʿs or ḥukms. Instead, these works seeks to distinguish between technical terms within Islamic law; these epistles are applied linguistic furūq. They compare and contrast technical vocabulary, and the discussion hinges on meaning, technical and general, and the understanding of specific terms within the realm of law. While these lexical distinctions are preserved within the realm of fiqh, the works in question nonetheless explore a difference in terminology and not a distinction drawn between two legal rules.

On the other hand, books on legal furūq do not adopt this lexical framework and instead use a legal framework whereby laws take the place of words. It is not that the

---

434 Among the many kinds of treatises devoted to one particular distinction, there are many on the distinction between bribes and gifts. See, for instance, ʿAbd al-Ghanī al-Nābulusī, Taḥqīq al-qaḍiyya fī al-farq bayn al-rishwa wa-l-hadiya, eds. ʿAlī Muḥammad Muʿawwad and ʿĀdil Aḥmad ʿAbd al-Mawjūd (Cairo: Maktabat al-Zahrāʾ, 1412/1991).
reasoning of a lexical distinction is applied in a legal realm, but rather that the concept of “distinction” itself is transformed. In a linguistic distinction, two signifiers are juxtaposed and their true signifieds, as opposed to their assumed signifieds, are explained. It is in this explanation of the true signifieds that the distinction between the two signifiers becomes clear. The existence of minute distinctions was easily grasped within the field of Arabic language. It was, after all, God’s perfect creation, and the existence of synonyms therein could be seen as unnecessary redundancies, a blemish on God’s creation. Lexicographic distinctions allowed for the creation of important differentiation in language, such that each supposed synonym complemented and expanded the semantic scope of the language, rather than simply overlapping with other similar words. But Arabic was not God’s only perfect creation, so the concept must be translatable to the field of Islamic law, another of God’s perfect creations. Arabic grammar and Islamic law are the two matrices of laws that God created for the world and they should be mutually relatable, even if not entirely equivalent.

A legal distinction does not contrast two signifiers, but rather two legal problems or rulings. They are not signifiers that can refer to a particular signified that can be explained linguistically. The legal rulings themselves have to be unpacked and the particularities of the situations to which they refer have to be explained. The explanation of the situation which gives rise to the legal ruling and of the rationale that connects that situation to that ruling clarifies the distinction between the two rulings. The reasoning used reflects essential differences between legal categories which undergird the two different legal problems. These categories might not be readily
apparent in the ruling itself, but once they are brought to light by the author’s explanation, the distinction at issue becomes readily apparent. It is in this sense that I mean that the concept of a distinction is transformed. It is not simply the comparison of two linguistic definitions, but rather the comparison of underlying legal rationales. In lexicography, the distinction involves the relationship between signifier and signified, while in law, the distinction involves a situation, a ruling, and a rationale which connects the ruling to the situation.435

**Understanding Lexicographic Distinctions**

To better understand how a lexicographic distinction works, we first need to understand the components that go into the comparison. A straightforward example of a linguistic distinction comes from Ibn Qutayba’s *Adab al-kātib*, his manual for chancery secretaries discussed in Chapter Two. This work covers all of the material considered necessary for being a competent secretary, and much of this work is focused on proper writing. As part of this endeavor, Ibn Qutayba includes a discussion of lexicographic distinctions, the minute differences between supposed synonyms, since a good secretary should always use the precise and correct word for every circumstance. Most

435 It is worth explaining, in brief, the logic of a distinction in medicine. In medicine, the surface coherence between the two comparands invites a comparison. The comparison reveals that the underlying cause of the comparands is radically different. Once fully understood, the two symptoms are understood to be caused by different illnesses and share no more than a mere surface coherence. In this regard, they may be seen as somewhat similar to legal distinctions. Our analysis of distinctions in medicine, differential diagnostics, relies entirely on one book with dubious attribution. While intriguing, more evidence of the spread and chronology of differential diagnostics is needed before drawing strong conclusions about its role in the history of legal distinctions.
of the elements of this comparison go unstated by Ibn Qutayba, but they are crucial for understanding the intellectual work lying behind this comparison. In this example, while discussing lexicographic distinctions related to the human body, Ibn Qutayba discusses two words that are apparently widely thought to be synonyms for the word “skin” (jild): adama and bashara.

The visible side of a person’s skin—from his head and the rest of his body—is called bashara, and the interior side is called adama.\(^436\)

This distinction compares two signifiers, bashara and adama. The general signified for both of these words is skin (jild). Although Ibn Qutayba attempts to show that the two words at issue are not actually synonymous, the comparison depends on a pre-existing idea of complete synonymity. This assumption of equivalence is what suggests comparison. The first component of this analysis rests on the supposed conflation of the terms, that is, as referring to the same referent.

In addition to the general concept being discussed—in this case skin—linguistic distinctions present two near-synonyms that refer to different varieties subsumed under the general concept. The author of a work on lexicographic distinctions clears up the confusion of the referents through exposition. In this case, Ibn Qutayba resolves the confusion between the two words adama and bashara. He explains exactly what each one means and the reader understands that they in fact refer to different specific

referents. On understanding this, the total synonymy of these words fades and the reader understands that they are in fact, not true synonyms, only partially so.

The same analysis can be applied to the lexicographic pairs discussed in Abū Hilāl al-ʿAskarī’s al-Furūq al-lughawīyya. He says:

The distinction between mithl and naẓīr: Two mithls are fully complementary in their essence (takāfaʿā fi al-dhāt) as mentioned above. A naẓīr, meanwhile, is that which corresponds to another in regards to similar actions of which they are capable (al-naẓīr mā qābala naẓīraḥu fi jins afʿālihi wa-huwa mutamakkin minhā). For example, a grammarian (al-naḥwī) is the naẓīr of another grammarian, even if what they say or write about grammar is different (wa-in lam yakun lahu mithl kalāmihi fi al-naḥw aw kutubihi fihi). It is not correct to say, “a grammarian is a mithl of another grammarian (wa-lā yuqāl al-naḥwī mithl al-naḥwī),” because equivalence (tamāthul) refers, in reality, to the most characteristic attributes which are the essence (li-anna al-tamāthul yakūn ḥaqīqatan fi akhasṣ al-awṣāf wa-huwa al-dhāt).

In this situation, both the words mithl and naẓīr are the signifiers. These two words are used to refer to equivalence or interchangeability, which is the general idea signified. This is the overarching concept linking the two words together. The distinction between them is not as straightforward as that between adama and bashara.

---

437 Here, al-ʿAskarī is referring to his first discussion of the meaning of the word. There, al-ʿAskarī says of mithl “Two mithls are two things that are equivalent in their essence (al-mithlayn mā takāfaʿā fi al-dhāt)” (154).

438 Abu Hilāl al-ʿAskarī, al-Furūq, 155.
Nevertheless, Abū Hilāl says, they are indeed different. Mithl, which he describes briefly, refers to an equivalence in the very essence of a thing. In other words, two different oranges can be said to be the mithl of each other since they are equivalent in their essence. They are both oranges and equivalent in this regard. They may be different sizes or have ripened to different levels but they are both oranges. A naẓīr, however, is a resemblance between two things, one of which can fulfill the function of the other; naẓīr refers to a superficial or functional, not essential equivalence.

In Abū Hilāl’s example, a grammarian is the naẓīr of another grammarian since they have equivalent training and qualifications. One can perform the function of the other, generally speaking; i.e. they are functionally equivalent even if their particular scholarly ideas or output differ. They are not mithl, however, since each grammarian is a different soul and a different being; their essences are not interchangeable. Thus, naẓīr and mithl are quite different words, even if they may appear to mean something similar or refer to the same thing. They are not really synonyms. Linguistic distinctions function through the combination of three signifieds, one general and two specific. Two are expressed explicitly while one is implied through the comparison. With these elements in place, the author then explains each of these items so that the difference between the signifiers is made clear. The close relationship between the three signifieds is real; while they are not identical, the difference between them is subtle.

Resonances of such a framework, in which the structure of linguistic and legal relations are seen to be highly congruent, can also be found in works of ʿusūl al-fiqh. Éric Chaumont argues that this is one of the foundations upon which Abū ʿIshāq al-Shirāzī bases his al-Lumaʿī ʿusūl al-fiqh. “In a word, the language of legal discourse is formally
identical to the language of the Arabs.” The legal *furūq* provide another window into how jurists relate the fields of grammar and Islamic law. Chaumont’s comparison involves discursive similarities between law and grammar. The example of comparative *furūq*, however, allows for a one-to-one comparison of the structure of legal and grammatical tools of reasoning, and it is instructive, in this regard, to compare the assumptions underlying lexicographic and legal distinctions.

I showed in Chapter Three that the genre of legal distinctions arises, in part, as an extension and continuation of the disputational technique of distinction. Distinction as a method for objecting in formal disputations was specific to the field of legal disputation, with al-Bājī going as far as to call it “the most legal of objections.” This might explain the intellectual background behind legal distinctions, but it raises the question of the relationship between legal disputation and distinctions writing in disciplines other than law. Writing about subtle but important distinctions between related elements arose slightly earlier in lexicography than it did in law. The known interrelations between law and lexicography suggest that there were relationships and exchange between these disciplines beyond what appears in the historical record.

---


Understanding Legal Distinctions

These same relationships are not found in the comparisons known as legal distinctions. Legal distinctions function through the comparison of two laws which are, in reality, wholly separate. A legal distinction differentiates two laws that are superficially similar, but actually quite disparate. The potential contradiction is resolved once the reader understands how the contrasted laws are only similar in appearance but apply to completely different situations. Any potential confusion between them is a result of not understanding the reasoning behind the law, which is what the distinction explains. An example from As‘ad al-Karabīsī’s Kitāb al-Furūq helps to illustrate this point.

Abū Ḥanīfa says, “If a worm (dūda) exits the body through one of the two excretory passages, the anus or the urethra (ahad al-sabilayn), it nullifies a minor ablution (yantaqīd al-wuḍū’). If it exits through a wound, however, it does not.”

The distinction is that the worm is always somewhat moist (lā yakhlū min qalīl billa takūn maʿahā wa-taṣḥabuhā) and this moisture is slightly impure (qalīl najāsa). Slight impurity, if it exits the body through one of the two passages, nullifies a minor ablution. As for a worm exiting through a wound, it is also always somewhat moist. This moisture, too, is slightly impure (najāsa qalīla). Slight impurity, if it exits the body through somewhere other than one of two passages, does not nullify impurity. Further, the worm is an animal and is therefore assumed to be pure (ṭāhir fī al-aṣl). A pure thing, such as air (ka-l-rīḥ), if it exits through one of the two passages, necessarily nullifies a minor ablution (awjaba naqḍ al-wuḍū’). If, however, it exits through somewhere other than one
of the two passages, it does not nullify a minor ablution, such as with tears and sweat (ka-l-damʿ wa-l-ʿirq).

Muḥammad ibn Shujāʿ [(d. 266/880)] distinguished between these cases as follows. The worm that exits through a wound is generated from flesh (yatawalladu min al-laḥm). Therefore, it is akin to a piece of flesh separating from the body without bleeding and not through the two passages. If such a thing were to happen, it would not nullify a minor ablution. The worm exiting through a wound is equivalent to a piece of skin detaching from the body without bleeding. As for a worm that exits from one of the two passages, however, it is generated from impurity (yatawalladu min al-najāsa). If only this impurity exited the body (law kharajat bi-infirādihā), it would invalidate a minor ablution. The same holds for whatever is generated from this impurity whenever it exits the body.⁴⁴¹

A legal distinction is composed of two (or more) situations and their outcomes. These can be labelled Situation 1, Situation 2, Outcome 1, Outcome 2, and so on for each situation and outcome given. In this example, the two compared laws are about a worm exiting the human body. Situation 1 is a worm exiting the body through one of the two passages, the urethra or the anus; Situation 2 is a worm exiting the body through a wound. These are the situations which resemble each other, what is referred to in Arabic as tashābaha fī al-ṣūra (similarity in form), in other words, the similarity that gives rise to comparison. The potential contradiction lies in the outcomes. In Outcome

⁴⁴¹ Asʿad al-Karābīsī, al-Furūq, 1:34-35.
1, a minor ablution is nullified, but in Outcome 2, a minor ablution is not nullified. In this case, as happens often, the outcomes are opposites. If Situation 1 and Situation 2 are indeed similar, then certainly there is something perplexing about their outcomes being different, or indeed juxtaposed.

The distinction rests on the fact that a worm exiting through the urethra or anus is, legally, in no way comparable to one exiting through a wound. While one might think that these are analogous situations, this could only be the case if one were unaware of the particulars of the reasoning behind the substantive law. Once that reasoning is made clear, any potential confusion between these two laws is resolved. The comparison carried out by Asʿad al-Karābīsī is thus unlike the comparisons seen in lexicographical distinctions in which the compared words are ultimately similar. Asʿad al-Karābīsī includes two different ways of distinguishing between these two cases. In both, however, the lesson to be learned is that these cases are not analogous and cannot be treated in a similar fashion. In some way, the confusion that leads these cases to look the same is the result of a lack of knowledge of the underlying rationale of the two rulings. In order to resolve the confusion, the reader must understand the reasoning that generates the rules. Lexicographic distinctions are grouped together based on a shared general signification between two signifiers. The difference lies in the specific signification between the two. In a sense, however, it is correct to group the two signifiers together. Legal distinctions explain why it is wrong to group two such situations together.

One more example will highlight the kind of reasoning at work in legal distinctions. This distinction also comes from Asʿad al-Karābīsī’s text:
Someone gifts a female slave to someone else, and the donee wishes to return the slave. He says, “You gifted her to me when she was a minor, but now she has come of age and increased in value.” If the donor contradicts him (kadhdhabahu), the presumption is in favor of the donor (al-qawl qawl al-wāhib).

However, had the gift been land the situation would be different. The donee says, “You gifted it to me and it was barren and empty (ṣahrā’), but I planted in it and built some structures on it (gharastu fīhā wa-banaytu).” If the donor contradicts him, the presumption is in favor of the donee.⁴⁴²

The common legal act that ties both of the situations together is a gift that the donee then wishes to return. To be precise, Situation A involves the court proceeding in which testimony is elicited concerning return of the gift of a female slave, while Situation B is a proceeding eliciting testimony about the return of a gift of land.⁴⁴³ It appears initially that the two situations are identical, since they both involve testimony concerning the return of a gift. The outcomes nevertheless tell a different story. Outcome A is that the testimony of the donor of the girl should be accepted over that of the donee while Outcome B is that the testimony of the donee of the land should be accepted over that of the donor. Again, as with the example above, each outcome is the mirror opposite of the other. The discussion of the distinction will shed light on why

⁴⁴² Asʿad al-Karābīsī, al-Furūq, 2:49.
⁴⁴³ It seems likely that there is a missing fact here, namely that the donee in each case wants compensation for the return of the gift since he claims that what he is returning is more than what he got.
this seeming contradiction exists. Again, the solution lies in the underlying legal reasoning behind the two situations.

Al-Karābīsī continues:

The distinction is that, in the case of the female slave, the gift itself (al-ʿayn) is one thing. The proof of this is that equating the value of the gift (thaman) to the gift itself is invalid. He did not claim it was gift of two things, but rather he is claiming that he was gifted one thing, and he is claiming the right to return the goods exchanged in this transaction. The plain-sense meaning of the contract grants him the right to return the good, therefore if he wants to nullify this right, he should not be believed.

Land is not like this, because it constitutes a gift of two things, therefore one of them can be singled out as the gift such that he can claim the gift in regard to two things, but only affirm the gift of one of the two of them. There is no obvious fact that contradicts his testimony in regard to singling out one of the two as the gift, since it was possible to have built and planted there in that time. Because of this, the presumption goes to the donor. It is like the following situation. The donee says, “You have gifted me (wahabta minni) both of these slaves,” but the donor replies, “No, I have gifted you only one of them.” In this situation, the presumption goes to the donor. This situation with the two slaves is like the situation with the gift of land.\textsuperscript{444}

\textsuperscript{444} Asʿad al-Karābīsī, al-Furūq, 2:49.
Here, we see that the gift contract in each situation is different. There is not simply one law that applies to gifts, but rather the particular thing gifted impacts the way that the contract is construed, even if this contract exists only implicitly. The gift contract for a slave woman is a contract for one thing, the slave. It is therefore clear exactly what the gift was intended to be, even if it was underspecified by the gifter. The integral unity of the slave leaves no room for doubt as to this intention. In the case of land, however, the gift is not quite so simple. A gift of land consists of the land on which structures can be built and the use of the land for agriculture. These can be considered two separate uses such that it introduces a level of ambiguity as to the exact thing intended to be gifted, especially if it is underspecified by the gifter. There is, therefore, a clear distinction between these situation A and B, and they are not similar, legally speaking. If they are not similar, then the contradiction in the outcomes is no longer a real contradiction.

Once again, the law has been shown to be consistent.

Resolving seeming incongruities within one legal school was the methodology common to all works of legal distinctions. The resonances between the legal analysis found in these works and the theoretical explanations of farq-objections in handbooks of legal disputation are clear. Such resonances perhaps suggest what the inspiration for early books of legal distinctions was. This next section will attempt to explore the issue of the earliest work in the genre of al-furūq al-fiṣḥiyya.
The Genre of Legal Distinctions

A history of legal distinctions should begin before the development of the genre, looking at developments outside of the law, in lexicography and medicine, and at legal reasoning and legal dialectics into the fifth/eleventh century. It is at this point that legal distinctions clearly emerge. From this period, legal distinctions flourished as a literary genre for 500 years, until the tenth/sixteenth centuries with the works of Jalāl al-Dīn al-Suyūṭī, Ibn Nujaym, and Aḥmad al-Wansharīsī.

The genre of legal distinctions was relatively limited. I have found that only thirty-six works of legal distinctions were composed. All of the Sunni schools of law produced works of legal distinctions, although the Shāfiʿīs seem to have favored this genre compared to the other schools. I find the thirteen for the Shāfiʿī school, nine Ḥanafī books, eight for the Mālikī, and four Ḥanbalī works. This is a total of thirty-four books. The two remaining works were by Shiʿi authors, one belonging to the Twelver tradition and the other to the Zaydī.

It is difficult to know when exactly the genre of legal distinctions began and what the first book in this genre was. We will attempt to explore this issue in the following section of this chapter. Although the earliest books were written around the third/ninth-fourth/tenth centuries, it was only in the fifth/eleventh century that the first golden age of legal distinctions began; it was the time in which the genre firmly established itself in the repertoire of legal literature. Ten new books were produced and

---

A more detailed discussion of this history, with full documentation, can be found in Chapter Six and Appendix I of the present study.
the Shāfiʿī madhhab accounted for five of these. The distinctions books written in this century include al-Jamʿ wa-l-farq by ʿAbd Allāh ibn Yūsuf al-Juwaynī, al-Muʿāyāt by Abū al-ʿAbbās Aḥmad al-Jurjānī (d. 482/1089-90), al-Nukat wa-l-furūq li-masāʿil al-mudawwana by ʿAbd al-Haqq al-Ṣiqillī. These works signal their adherence to the genre of distinctions through their titles and introductions. The biobibliographic literature remembers all of these as works of legal distinctions, as does the material record. Moreso, these books in large part resemble later books of legal distinctions; that is to say, the works of the fifth/eleventh century set the norms that later books of legal distinctions were to follow.

After the activity of the fifth/eleventh century, the sixth/twelfth century saw only one book written on legal distinctions, Kitāb al-Furūq by Abū al-Muẓaffar Asʿad ibn Muḥammad ibn al-Ḥusayn al-Naysābūrī al-Karābīṣī al-Ḥanafī. This was the first cornerstone work of legal distinctions for the Ḥanafī school. Asʿad al-Karābīṣī was clearly remembered for having authored this work—indeed this book was the primary reason for which he is mentioned in the biographical literature—and the work appears to have been important and widespread historically.

The seventh/thirteenth century heralded a second peak in the composition of legal furūq works that lasted through the eighth/fourteenth century. Of note, it was only in the seventh/thirteenth century that the Ḥanbalī school produced its first works of legal distinctions, al-Furūq fī al-masāʿil al-fiṣḥiyyya by Ibn Surūr al-Maqdīṣī and al-Furūq by Ibn Sunayna. In fact, all of the Ḥanbalī works of legal distinctions until the twentieth

446 In fact, manuscripts of the books by al-Juwaynī and al-Jurjānī often refer to the books as Kitāb al-Furūq.
century were written in this two-hundred year period. In addition to the book by Ibn Sunayna, *al-Furūq* by al-Zarīrānī (d. 741/1341) was the most important of the Ḥanbali works, notwithstanding that face that its exists only as a unicum. The Mālikī scholar Shīhāb al-Dīn al-Qarāfī also wrote his work of legal distinctions, *Anwār al-burūq fī anwāʾ al-furūq*. Al-Qarāfī’s book is probably the most well-known book of this genre, although it does not conform strictly to the strictures of the genre. The Ḥanafī scholar Aḥmad ibn ʿUbayd Allāh al-Maḥbūbī, also known as Ṣadr al-Shariʿa al-Awwal, wrote his *Talqīḥ al-ʿuqūl fī furūq al-manqūl* in the seventh/thirteenth century. The *Talqīḥ* seems to have been the most widely read premodern Ḥanafī work of legal distinctions, directly influencing the chapter on distinctions in Ibn Nujaym’s *al-Ashbāḥ wa-l-naẓāʾir*.

Towards the end of the second peak, the Shāfiʿī jurist Jamāl al-Dīn al-Asnāwī composed his *Maṭāliʿ al-daqāʾiq fī tahār al-jawāmiʿ wa-l-fawāriq*, the final work devoted exclusively to legal distinctions by a Shāfiʿī scholar.

On the one hand, Mamluk Cairo emerged as a clear center for distinctions writing during these two centuries. Al-Qarāfī and al-Asnawī both lived in Cairo, as did many other less prominent jurists who composed works of legal distinctions. At the same time, however, the genre of legal distinctions had, by this time, spread across the Muslim world. It was in the eighth/fourteenth century that the Zaydī scholar ʿAlī ibn Yahyā ibn Rāshid al-Washlī al-Zaydī al-Yamanī wrote his *al-Jamʿ wa-l-farq*. The Ḥanbali

---

447 This title can be translated as “The Flashes of Lightning in the Tempest of Distinctions.” The title is sometimes given as *Anwār al-burūq fī anwāʾ al-furūq*, The Flashes of Lightning Regarding the Different Kinds of Distinctions.

448 Indeed, this work may not actually be a work of legal distinctions, in spite of its title. See the discussion in Chapter Six, pp. 316-17.
works were written by scholars based in Damascus, known as well as a center of Ḥanbalī learning. The writing of distinctions was most prominent in the greatest intellectual centers.

After this peak of activity, the ninth/fifteenth century saw only two new works of legal distinctions, one by the well-known Andalusi jurist al-Mawwāq and another by an otherwise unknown scholar Shaykh Bāyazīd ibn Isrā’īl ibn Ḥājjī Dāwūd Marghāyatī(?). The tenth/sixteenth century saw the end of premodern writing on legal distinctions. In a way, Jalāl al-Dīn al-Suyūṭī’s al-Ashbāh wa-l-naẓāʾir signalled the transformation of writing on legal distinctions. Al-Ashbāh wa-l-naẓāʾir is a work offering a general overview of Islamic law. By dedicating the sixth chapter of this work to legal distinctions, al-Suyūṭī shows legal distinctions as a central component of Islamic legal knowledge. Ibn Nujaym al-Miṣrī followed al-Suyūṭī’s model in writing his own book entitled al-Ashbāh wa-l-naẓāʾir. In addition to these two works, Aḥmad al-Wansharīsī’s composed his ʿIddat al-burūq during this century. Al-Wansharīsī’s was the last new work dedicated to legal distinctions until ‘Abd al-Raḥmān al-Saʿdī wrote his work on Ḥanbalī distinctions in the early 20th century.\footnote{‘Abd al-Raḥmān ibn Nāṣir al-Saʿdī al-Najdī, Al-Qawā’id wa-l-uṣūl al-jāmiʿa wa-l-furūq wa-l-taqāsīm al-badīʿa al-nāfīʿa (Riyad: Maṭbaʿat al-Madanif, 1956).}

My research has also found three more works of legal distinctions that cannot easily be dated. One of these is a Mālikī work written by Muḥammad ibn Yūsuf al-Andalusī al-Anṣārī al-Mālikī. This author shares a name with al-Mawwāq, but it is not clear that the unicum manuscript of this undated work should actually be attributed to
al-Mawwāq, in part because there is another Mālikī jurist by the name of Muḥammad ibn Yūsuf who was known to have written a work of legal distinctions.\footnote{\textsuperscript{450} This scholar is mentioned in Najm al-Dīn al-Ṭūfī, \textit{ʿAlam al-jadhal}, 73.} I have also found two Ḥanafī works, both in multiple manuscripts, that have an unclear attribution. Since they are both titled \textit{Kitāb al-Furūq}, I refer to them as \textit{Furūq}-A and \textit{Furūq}-B. The attribution of \textit{Furūq}-A is less clear than that of \textit{Furūq}-B, which is often attributed to a scholar named Najm al-Dīn al-Naysābūrī. The prevalence of both \textit{Furūq}-A and \textit{Furūq}-B in multiple manuscripts and in multiple libraries suggest that they played a role in the history of Islamic legal writing.

**Early Books of Legal Distinctions**

The earliest history of legal distinctions is, unsurprisingly, complicated. In part, the earliest development of Islamic law was oral and pre-literary, and thus unfolded outside the contexts of books and book-writing. Much of this history remained unrecorded, developing instead as a lived, practiced tradition, the records of which were only written down later, too late to contain the information necessary for detailed historical work. Further, large-scale complex systems, such as Islamic law, undergo complicated processes of formalization. This process of formalization is not necessarily linear. It can feature many simultaneous changes which push or pull in different directions. It is important to keep this in mind to avoid reading tautologies into the sources.
A search for the development of a concept or a genre can easily fall prey to oversimplifications of discursive traditions. Rather than looking for and finding something resembling the mature tradition and identifying that something as the origin point, this dissertation identifies a confluence of forces that led into what became legal distinctions. By keeping in mind the contingency of discursive traditions, such as Islamic law, we have understood not only how law developed as a discipline, but also its interactions with broader intellectual and social trends. This methodology is inspired in part by Michel Foucault who “accept[s] the groupings that history suggests only to subject them at once to interrogation; to break them up and then to see whether they can be legitimately reformed.”\(^{451}\) Through such questioning of traditions and their origins, we gain a better sense of what the tradition was, what it is, and how it came to be. Reinhart Kosselleck uses a similar method, although for him, the important factor to understand is the temporality inherent in historical categories and events to understand “whatever differentiating conditions must enter so that concrete historical motion might be rendered visible.”\(^{452}\) We can see this problematic at play in the emergence of legal distinctions as a novel genre in legal literature and the search for its beginnings, i.e. the first book(s) written in the genre of legal distinctions.

\(^{451}\) Michel Foucault, *The Archaeology of Knowledge*, trans. A. M. Sheridan Smith (London: Routledge, 2004), 29. Foucault's interrogation and breaking up of historically suggested groupings is an attempt to recover the processes and histories of discursive traditions, such as that of Islamic law and its constituent literary genres.

In the introduction to his edition of the *Kitāb al-Furūq* by Asʿad al-Karābīsī, Muḥammad Ṭammūm claims that the first book on legal distinctions was Muḥammad ibn al-Ḥasan al-Shaybānī’s (d. ca. 189/905) *al-Jāmīʿ al-kabīr*. This claim is difficult to understand. On the one hand, this work is clearly not a work of legal distinctions; its contents do not resemble that of the works that self-identify as belonging to the genre of legal distinctions. On the other hand, we know that Asʿad al-Karābīsī’s text belongs to the distinctions genre in part because it is called “The Book of Legal Distinctions.” The title of al-Shaybānī’s text does not signal its adherence to this genre. Instead, its title, *al-Jāmīʿ al-kabīr*, The Large Comprehensive Book, is a marker of its attempts to cover what were the broad areas of Islamic law in the second/eighth century. In addition, its name is reminiscent of other works that attempt to encompass substantive law, such as *al-Mabsūt* (The Expansive Law Book). The similarity in title likely signals a similarity in content.

If we understand legal distinctions as both a technical term, describing a particular legal reasoning process, and a genre of Islamic legal writing, describing a way of organizing legal knowledge, al-Shaybānī’s text falls short of being a text within the legal distinctions genre. Even though al-Shaybānī includes some general discussion of legal material that made its way into books of legal distinction, such discussions occur as routine parts of detailed discussions of substantive law. In order to clearly explain laws there are times when potential confusion has to be clarified. This does not

---

mean, however, that his book is a book of legal distinctions, *al-furūq al-fiqhīyya*. Al-Shaybānī’s treatment of laws that look similar but are in fact distinct differs little from that of other early figures, such as al-Shāfi‘ī or Saḥnūn. None of their works, however, are works of legal distinctions, they just happen to contain some discussions which distinguish the applicability of various laws.\(^454\)

In his modern study of legal distinctions, Ya‘qūb al-Bāḥusayn remarks that Ṭammūm’s comment “contains some exaggeration.”\(^455\) This is because a discussion of differences between laws is not enough to qualify as a discussion of legal distinctions. The term ‘distinctions,’ *al-furūq*, became a term of art in the discipline of Islamic law, even though it remained underexplained in the medieval legal tradition, a peculiar fate for a technical term. Nevertheless, jurists do seem to have a very clear understanding of legal distinctions as a concept, what they are, and as a genre, a way of organizing and structuring books of legal distinctions. This shared understanding is apparent in books that situate themselves within the field of legal distinctions. They all contain direct comparisons of laws as discussed earlier in this chapter. Such works are all easily recognizable as belonging to the genre, although they sometimes fit more or less easily into that genre. Part of what makes a work of legal distinctions belong to this genre, however, is the inclusion of lists of legal distinctions, which, are, in addition to much


\(^{455}\) Al-Bāḥusayn, *al-Furūq al-Fiqhīyya*, 66.
else, direct legal comparisons. Direct comparisons of this kind are missing from al-Shaybānī’s al-Jāmiʿ al-kabīr.

Al-Bāḥusayn understands legal distinctions as having developed in the process of formalization of the legal schools.⁴⁵⁶ He claims to follow Ibn Khaldūn (d. 808/1406), who says that once “jurists had no way of performing independent judgement or analogy, they needed to compare apparently similar legal issues by assimilating them or differentiating them (tanẓir al-masāʾil fī al-ilḥāq wa-tafrīqihā ‘ind al-ishtibāh).”⁴⁵⁷ This is all that Ibn Khaldūn says about distinctions. His use of the term tafrīq to mean distinction is interesting, but his lack of a fuller discussion limits our capacity to understand what exactly he means by it. His statement shares strong resonances with al-Zarkashi’s statement that “law is either assimilating or distinguishing (al-fiqh farq wa-jam’).”⁴⁵⁸ Ibn Khaldūn further seems to relate the occurrence of distinctions-like thinking to the so-called “closing of the gate of ijtihād.”⁴⁵⁹ In this way, Ibn Khaldūn presents distinctions, and the lack thereof, as a way for jurists to continue legal reasoning in ways other than by means of ijtihād.

Relying on Ibn Khaldūn, al-Bāḥusayn identifies a cluster of early jurists as the first authors to write in this genre. These jurists are early, but all come after the legal eponyms and operate within the doctrinal boundaries of established schools of law.

---

⁴⁵⁸ Zarkashi, al-Manthūr, 1:69. It is striking that Ibn Khaldūn and al-Zarkashi, two contemporaries, used such different language to describe Islamic law in a similar way.
⁴⁵⁹ See the discussion in the Chapter One, pp. 42-44.
According to al-Bāḥusayn, the tradition of legal distinctions began among Shāfiʿī and Ḥanafi scholars, specifically the Shāfiʿī jurists Ibn Surayj and al-Zubayr ibn Aḥmad al-Zubayrī (d. 317/929-930), as well as the Ḥanafi Abū al-Ḥaḍīr Muḥammad ibn Ṣāliḥ al-Karābīsī (d. ca. 322/934) as the authors of the first books of legal distinctions. Al-Bāḥusayn’s identification of these authors as the beginning of distinctions writing aligns with his claim that this genre developed during the formation of the legal schools. Christopher Melchert identified Ibn Surayj as the founder of the the Shāfiʿī legal school, and Abū al-Ḥasan al-Karkhī (d. 340/952) as that of the Ḥanafi school. The earliest works identified by al-Bāḥusayn occur roughly within this period of school formalization identified by Melchert. Al-Bāḥusayn’s attributions also present problems, although different ones than those raised by Ṭammūm’s identification of Muḥammad ibn al-Ḥasan al-Shaybānī’s al-Jāmiʿ al-kabīr as the first work on distinctions. The attribution of books of legal distinctions to Ibn Surayj and al-Zubayr ibn Aḥmad is difficult to confirm since these works do not appear to have survived. The attribution of a work of legal distinctions to Muḥammad ibn Ṣāliḥ al-Karābīsī is also problematic, although a work attributed to him has survived. We will first look at the two Shāfiʿī jurists before moving on the the Ḥanafi scholar.


461 Abū al-Ḥasan ʿAlī ibn Aḥmad al-Nasawī (d. ca 420/1030) and al-Ḥakīm al-Tirmidhī are also credited with having written works of legal distinctions. The only mention of al-Nasawī is in Ibn al-Nadīm’s al-Fihrist (2.1:55); I have not found a mention of it in any book or biographical history of the Shāfiʿī school. Al-Ḥakīm al-Tirmidhī is occasionally credited in secondary literature with having composed a work of legal distinctions, but this is almost certain a confusion surrounding his work of lexicographic distinctions, al-Furūq wa-manʿ al-tarāduf. See also the discussion in Chapter Six, p. 286.
Sources contemporaneous to Ibn Surayj do not mention his having written a book of legal distinctions. Abū Ishāq al-Shīrāzī (d. 476/1083) says that Ibn Surayj “wrote almost four-hundred books.”\textsuperscript{462} Al-Shīrāzī’s book contains no discussion of the contents of these works or of Ibn Surayj’s particular legal opinions or contributions to the doctrine of the Shāfiʿī school. Al-Shīrāzī also mentions that Ibn Surayj was famous for his debates (munāẓarāt) with the Ẓāhirī jurist Abū Bakr ibn Dāwūd (d. 294/909).\textsuperscript{463} This information offers no specific support for the idea that Ibn Surayj wrote a book called Kitāb al-Furūq. It is unlikely, of course, to find a source contemporaneous with Ibn Surayj that denies that he wrote a book of legal distinctions. Ibn Surayj was well-remembered for having participated in legal disputation with Abū Bakr ibn Dāwūd and, given the close relationship between furūq as a form of comparison within Islamic law and farq as a disputational technique in formal legal debates, it seems probable that Ibn Surayj would have utilized this kind of reasoning in his debates and perhaps his teaching.

Later sources do not add much information about his written ouevre that supports the assertion of his having composed a work of legal distinctions. Tāj al-Dīn al-Subkī, in his biographical dictionary, tells us only that Ibn Surayj wrote two polemics against Ibn Dāwūd al-Ẓāhirī, one on analogical reasoning (qiyās) and another on legal positions held by Ibn Dāwūd but reputed by al-Shāfiʿī.\textsuperscript{464} These books on specific topics and possibly in disputational format are emblematic of early legal works. Such early

\textsuperscript{462} Al-Shīrāzī, Ṭabaqāt al-fuqahāʾ, 249.
\textsuperscript{463} Al-Shīrāzī, Ṭabaqāt al-fuqahāʾ, 249.
\textsuperscript{464} Tāj al-Dīn al-Subkī, Ṭabaqāt al-shāfiʿiyya al-kubrā, 2:23.
works do not yet evince the highly formal literary structures found in later works of Islamic law.\footnote{See, for instance, Norman Calder, \textit{Studies in Early Muslim Jurisprudence} (Oxford: Clarendon Press, 1993).} Al-Subkī does cite a lot of Ibn Surayj’s opinions, but nothing indicative of a book on legal distinctions.\footnote{Tāj al-Dīn al-Subkī, \textit{Ṭabaqāt al-shāfi‘iyya al-kubrā}, 3:21-38.} Ibn Qāḍī Shuhba (d. 851/1448) says that Ibn Surayj’s output consisted of “promoting the madhhab, refuting its opponents, and deducing new laws from the books of Muhammad ibn al-Ḥasan al-Shaybānī (\textit{wa-farra’a ʿalā kutub Muḥammad ibn al-Ḥasan}).”\footnote{Ibn Qāḍī Shuhba, \textit{Ṭabaqāt al-Shāfi‘iyya}, 1:90-91.} Jamāl al-Dīn al-Asnawī adds that “I own a copy of his book (\textit{kitābuhu}) entitled \textit{al-Wadāʾī},\footnote{Aḥmad ibn ‘Umar Ibn Surayj, \textit{al-Wadāʾī li-manṣūṣ al-sharāʿī}, 2 vols., ed. Șāliḥ ibn ‘Abd Allāh ibn Ibrāhīm al-Duwayh (Saudi Arabic: no pub., 199-).} as well as his commentary on (\textit{taṣnīf ʿalā}) al-Muzani’s \textit{Mukhtaṣar} in which he answered questions that others had posed about this book.’’\footnote{Al-Asnawī, \textit{Ṭabaqāt al-Shāfi‘iyya}, 1:316, no.593.} Ibn Kathīr mentions that Ibn Surayj “composed books in the madhhab and wrote legal digests (\textit{sannafa fī al-madhhab wa-lakhkhasahu}).”\footnote{Ḥājjī Khalīfa mentions that Ibn Surayj’s \textit{Kitāb al-Furūq} is his commentary on Muzani’s \textit{Mukhtaṣar} (2:1258).} Unsurprisingly for such an important figure, these historians all devote lengthy entries to Ibn Surayj, yet none of these sources mentioned attribute to Ibn Surayj a book on legal distinctions. When they give quotations from his work, it does not seem to come from a work recognizably about legal distinctions. From the biographical tradition and what remains of Ibn Surayj’s work, it seems unlikely that he wrote a book on legal distinctions.

There is a similar pattern in the biographies of al-Zubayr ibn Aḥmad. Abū Ḫishāq al-Shīrāzī mentions that he was blind and that he wrote many books (\textit{lahu muṣannafāt}
kathira), including al-Kāfī, Kitāb al-Niyya, Kitāb Sitr al-ʿawra, Kitāb al-Hadiyya, Kitāb al-Istishāra wa-l-istikhāra, Kitāb Riyāḍat al-mutaʿallim, and a Kitāb al-Imāra. Ibn Khallikān’s (d. 681/1282) entry on al-Zubayr has much of the same information, although he clarifies that al-Kāfī is a law book and adds that al-Zubayr ibn Aḥmad had “obscure opinions on legal issues (wa-lahu fī al-madhhab wujūh gharība).” None of these works appears to be about legal distinctions.

Other sources, however, such as Ibn Qāḍī Shuhba, Tāj al-Dīn al-Subki, and Jamāl al-Dīn al-Asnawī also attribute a book, al-Muskit, to al-Zubayr ibn Aḥmad. Al-Muskit, in spite of its vague title, was considered by these historians to have been a work of legal distinctions, though it appears to be no longer extant and it is unclear whether they knew it first hand. As Ibn Qāḍī Shuhba states, “al-Muskit, like al-Alghāz, is hard to find (wa-l-Muskit wa-l-Alghāz qalīl al-wujūd).” It is unclear whether Ibn Qāḍī Shuhba is also claiming that al-Zubayr ibn Aḥmad wrote a book of legal riddles entitled al-Alghāz, but nevertheless this does indicate that al-Zubayr’s Muskit was not an easy book to obtain.

---

472 The title of this works translates roughly as The Book Which Silences Others. It is quite an unusual title for a work. In fact, this is the only work with this title, as far as I am aware. It is likely that this book “silenced others” in formal disputations. There are, however, works with similar titles. See, for instance, the following works found in Ismāʿīl Bāshā al-Baghdādī’s Hadiyyat al-ʿārifīn: Muḥammad ibn ʾIshaq al-Šaymārī (d. 275/888)’s al-Jawābāt al-Muskita (2:19); Muhammad ibn Masʿūd Ibn Ṭiyāsh (d. 320/932), al-Awjiba al-muskita (2:32); Abū Ṭiyāsh Ibrāhīm al-Anbārī (d. 322/933-34) Kitāb al-Jawābāt al-muskita (1:5); and Abū Ḥāmid Muḥammad al-Ghazālī (d. 505/1111), al-Awjiba al-muskita ‘an al-as’ila al-mubhita (2:79); ‘Ubayd Ibn Dhakwān al-Baghdādī’s (d. ?) al-Jawāb al-muskit (1:645). Ismāʿīl Bāshā al-Baghdādī’s Hadiyyat al-ʿārifīn asmāʾ al-muʿallifīn wa-ʿathār al-musannifīn, 2 vols. (1951-55; repr., Beirut: Dār Iḥyāʾ al-ʿArabī, n.d.).
473 Ibn Qāḍī Shuhba, Ṭabaqāt al-Shāfīʿyya, 1:94.
474 This potential connection between legal distinctions and legal riddles is interesting in light of the partial convergence of these genres, which is discussed in Chapter Four.
Jamāl al-Dīn al-Ansawī, in his own work on legal distinction, Maṭālīʿ al-daqāʾiq, credits al-Muskit as the first Shāfiʿī work on distinctions. He does not, however, say anything more about the work or its contents.

Tāj al-Dīn al-Subkī includes a small citation from the Muskit in a section in al-Zubayr ibn Ḥmad’s biography entitled “Some of His Observations and Peculiar Opinions (wa-min al-fawāʾid ʿanhu wa-l-gharāʾib).” Al-Subkī says:

> In his Muskit, he says in regard to someone who swears an oath that they will not eat fruit (al-fākiha), “I hold that he breaks his oath if he eats a banana. Also, according to me, the produce of the medlar tree (zaʿrūr) is also a fruit (fākiha).” He also makes a statement in regard to someone against whom a claim for multiple dirhams is made. Al-Zubayr says, “The command “Weigh and take,” is not an affirmation of the debt (lam yakun iqrāʾ). If, however, he says, “Weigh and take them,” this is an affirmation of the debt. Our Iraqi colleagues distinguished (farraqa) in this manner. According to me, however, both of these statements are equivalent. This is because when he says, ‘Weigh and take,’ he may mean to weigh for someone else (attazin min fulān), and thus there is no distinction between this and between saying, “Weigh and take them” unless he were to say, “Weigh and take them from me.” According to me, this would be an affirmation of a debt.” This is what he says in the Muskit.

---

475 Al-Asnawī, Maṭālīʿ al-daqāʾiq, 2:8.
Al-Subkī continues with a discussion of al-Zubayr’s opinion on debts, since it seems he held contradictory opinions. As an early figure, there are many reports about al-Zubayr, his doctrine, and his life which are not easy to make coherent. Nevertheless, even this short passage contains a fascinating look into his Muskit.

On the basis of this passage from al-Subkī, it does appear that al-Zubayr ibn Aḥmad discusses something akin to formalized legal distinctions in this book. He discusses specifics of why there may be a difference between the statements “Weigh and take” and “Weigh and take them,” as well as what fruits are encompassed by the unrestricted term “fākiha.” This is not, however, a formalized discussion of “cases that resemble each other outwardly, but have contradictory rulings.”478 It does not compare two laws with different outcomes so that a distinction can be drawn. It is not a formal presentation of legal distinctions. This passage offers a tantalizing view into what could perhaps be seen as a legal prehistory of distinctions. It is an example of a discussion of legal distinctions before the formalization of this kind of thinking and writing. It may, perhaps, be similar to the writings of other scholars such as Muḥammad ibn al-Ḥasan al-Shaybānī and Ibn Surayj, although it is nonetheless alluring that the two short passages remembered from al-Zubayr’s Muskit are concerned with drawing distinctions. Without more of this book, however, its contents remain a mystery and it is only in the eighth/fourteenth century that the sources begin to refer to al-Zubayr as the author of a book on legal distinctions.

478 This is the most common definition of legal distinctions. See, for instance, al-Bāḥusayn, al-Furūq al-Fiṣḥiyya, 30ff. and 61ff.; Heinrichs, “Structuring the Law,” 332-333.
This situation is very similar to what we saw in Chapter Two. There, it was shown how the early biobibliographical tradition was unconcerned, or even unaware, of the genres of lexicographical and medical distinctions. It was only after these genres became well-established that authors of biobibliographical works identified early texts as being part of the furūq genres in both medicine and lexicography. Similarly, the biobibliographical tradition contemporaneous to al-Zubayr does not seem to have been concerned with the idea of legal distinctions as a genre in which al-Zubayr participated or as a concept through which to analyze Islamic law, which perhaps explains the lack of discussion of his authorship of such a book in sources contemporaneous with al-Zubayr.

What, then, to make of the attribution of a book of legal distinctions to Muḥammad ibn Ṣāliḥ al-Karābīsī? The earliest extant furūq work, which is from the Ḥanafi tradition, has often been attributed to Muḥammad ibn Ṣāliḥ al-Karābīsī. This attribution is tenuous. It is not clear whether Muḥammad ibn Ṣāliḥ al-Karābīsī even wrote a work of legal distinctions. ʿAbd al-Muḥsin Saʿīd ibn Aḥmad al-Zahrānī, the modern editor of this work, justifies this attribution by citing the following biobibliographical sources: both Ḥājjī Khalīfa’s (d. 1067/1657) Kashf al-ẓunūn and Ismāʿīl al-Baghdādi’s (d. 1340/1922) Hadiyyat al-ʿārifīn mention Muḥammad al-Karābīsī as having written a work on legal distinctions, as do the Geschichte der arabischen Litteratur by Carl Brockelmann and the Geschichte des arabischen Schriftums by Fuat

\footnote{For al-Zahrānī’s explanation about this attribution, see ‘Abd al-Muḥsin Saʿīd ibn Aḥmad al-Zahrānī, “Introduction” to Kitāb al-Furūq by Muḥammad ibn Ṣāliḥ al-Karābīsī, ed. ‘Abd al-Muḥsin Saʿīd Aḥmad al-Zahrānī (Ph.D Diss., Jāmiʿat Umm al-Qurā, 1418/1997), 47-53.}
Similarly, Muḥammad al-Karābīsī appears in both Kaḥḥāla’s Muʿjam al-muʿallifīn and al-Ziriklī’s Aʿlām as having written a work on legal distinctions. All three sources mention Muḥammad al-Karābīsī as having written a work on legal distinctions, but the earliest witness for this claim is Ḥājjī Khalīfa, a book that influenced all of the later sources. In other words, the claim that Muḥammad al-Karābīsī wrote a book of legal distinctions is first found approximately 700 years after Muḥammad al-Karābīsī’s death. As per his usual practice in this book, Ḥājjī Khalīfa does not cite the source from which he got his information. If this is indeed the first mention of this connection, it seems incredible that Ḥājjī Khalīfa would be the first to commit this to writing after so many other scholars would have failed to do so. If, however, he did not read this in a previous biographical work, it could be the case that Ḥājjī Khalīfa saw this work in manuscript and for that reason cited it in his Kashf al-zunūn.

The second factor driving al-Zahrānī’s attribution is the manuscript evidence. Five of the six extant manuscripts of this work list Muḥammad ibn Ṣāliḥ al-Karābīsī as its author. Only the Berlin copy of this work does not list Muḥammad al-Karābīsī as its author. However, all of these manuscripts seem to be based on the Feyzullah Efendi manuscript in Turkey, which Fuat Sezgin has dated to the 9th/15th century, approximately 600 years after al-Karābīsī’s lifetime. This is a smaller gap than that

---

480 GAL S 1:295; GAS 1:442-43.
482 See Appendix III.
483 See Berlin, Staatsbibliothek zu Berlin, Or. 5013; Zahrānī 48-53; 57-74.
484 See GAS 1:443.
between al-Karābīsī and Ḥājjī Khalīfa, but still large enough to be problematic. Further, these manuscripts all list the author only on the cover page, his name is not found mentioned within the text itself. A mention of the author’s name on the title page of a manuscript, in a different script and ink than that of the rest of the manuscript, is weaker evidence for attribution than the name of the author being included within the manuscript. The name could have been added at any point after the copying down of the manuscript and does not necessarily indicate something known by the original scribe or contained in the text that formed the basis of the manuscript.\footnote{Adam Gacek, \textit{Reading Arabic Manuscripts: A Vademecum for Readers} (Leiden; Boston: Brill, 2009), 277-78.} Further, al-Zahrānī speculates the Feyzullah Efendi manuscript to be the basis for the other five manuscript copies of this book.\footnote{Al-Zahrānī notes that the Ahmet III copy serves as the direct basis for the Dār al-Kutub al-Miṣriyya copy, which then served as the basis for the copy in the Azhar library. The correspondence between Ahmet III and Dār al-Kutub editions is nearly complete, even the colophons are identical (49).} That is to say, the copy of this work in the Feyzullah Efendi collection was the copy-text from which all remaining copies of this work were made.\footnote{I draw the term copy-text from the Greg-Bowers-Tanselle tradition. For a general summary, see G. Thomas Tanselle, \textit{A Rationale of Textual Criticism} (Philadelphia: University of Pennsylvania Press, 1989). See also W.W. Greg, “The Rationale of the Copy-Text,” \textit{Studies in Bibliography} 3 (1950-51):16-36; Fredson Bowers, “Multiple Authority: New Problems and Concepts of the Copy-Text,” \textit{Library} 5th ser. 27 (1972): 81-115; and G.T. Tanselle, “Greg’s Theory of Copy-Text and the Editing of American Literature,” \textit{Studies in Bibliography} 28 (1975): 167-229.} He concludes this because of its date, but also because the readings in the other manuscripts appear traceable to this copy.

Based on the surviving evidence, it is possible that Muḥammad al-Karābīsī wrote this work. It is also possible that the manuscript in Feyzullah Efendi was erroneously attributed to Muḥammad al-Karābīsī, that several copies were then made
with this mistake, and that Ḥājjī Khalīfa based his information on one of these misleading witnesses.

In describing his methodology for writing the *Kashf al-ẓunūn*, Ḥājjī Khalīfa says he included “the names of many thousands of volumes in the libraries that I personally examined.”\(^{488}\) The uncertainty surrounding this very early work on legal distinctions is in a way surprising. It is remarkable to consider that so many copies of this peculiar work have survived, all of them from the same manuscript tree, yet this *furūq* work also seems at one point to have been an unknown text. If the attribution of this extant work on legal distinctions to al-Karābīsī was made at or around the time the Feyzallah Efendi manuscript was written, it would have meant that this work survived in one form or another for six hundred years without authorial attribution and without being mentioned in another text.\(^{489}\) More surprising still is the interest taken in this work in the 16\(^{th}\) and 17\(^{th}\) centuries.

There is one final consideration that al-Zahrānī uses to bolster his attribution, that the scholarly content (*al-mādda al-ʿilmiyya*) of this work is that of a scholar living at the turn of the fourth/tenth century.\(^{490}\) With this statement, al-Zahrānī is referring to the organization of this work, which is not organized according to legal topic (*al-tabwīb*

---


\(^{489}\) A similar situation, however, holds for the works of legal distinctions that I label *Furūq*-A and *Furūq*-B, see Chapter Six, pp. 329-30, 337-43.

al-fiqhi), a form of organization that quickly dominated most legal writing. This work probably contains no mention of any book or scholar that postdates the life of Muḥammad ibn Ṣāliḥ al-Karābīsī. The latest figure mentioned in the Furūq is Abū al-Qāsim al-Ṣaffār, a scholar from Samarqand who died in the year 326/938. This is evidence that the book was written after 326/938, and likely not too long after, but not evidence that al-Karābīsī was the author.

There are only two books mentioned in the text, a Kitāb al-ʿUyūn and a Kitāb al-Iqrār. The identity of these works is unclear, although al-Zahrānī posits that the ʿUyūn must be ʿUyūn al-masāʾil by Abū al-Qāsim al-Balkhī (d. 319/931) and that the Kitāb al-Iqrār is part of al-Shaybānī’s al-Aṣl. Al-Zahrānī uses this evidence to argue that this book must have been written in the early part of the fourth/tenth century. Further, he

---

491 This is, at least, what appears to be the case. I am unaware of many efforts to study the manuscript history of specific works of law. Such study may reveal the arrangement and setting of law books to have occurred much later than the lifetime of the author. The obvious exception, of course, is Miklos Muranyi’s study of early Mālikī works. See above, note 140.

492 Muḥammad ibn Ṣāliḥ al-Karābīsī, Furūq, 361. The other figures mentioned in this book are: ʿUmar ibn al-Khaṭṭāb (d. 23/644), al-Ḥasan ibn ʿAli ibn Abī Ṭālib (d. 50/670), al-Ḥusayn ibn ʿAli ibn Abī Ṭālib (d. 61/680), Abū ʿAbd al-Rahmān al-Sulami (d. ca. 70/690), ʿAbd Allāh ibn ʿAlī ibn Abī Ṭālib (d. 73/693), al-Ḥajjāj ibn Yūsuf (d. 95/714), Ṣafī ibn ʿAbd Allāh (d. 150/767), Abū Yūsuf (d. 182/798), Muḥammad ibn Ṣafī ibn Abī Ṭālib (d. 189/804), Abū ʿAbd Allāh ibn ʿAlī ibn Abī Ṭālib (d. 233/848).

493 Muḥammad ibn Ṣāliḥ al-Karābīsī, Furūq, 120, 394. The Kitāb al-Iqrār is cited, but no information about its author is given.

494 Muḥammad ibn Ṣāliḥ al-Karābīsī, al-Furūq, 120, 394. He mentions an ʿUyūn al-masāʾil by Abū al-Layth Naṣr ibn Muḥammad al-Samarqandi (d. 383/993) as another possibility, see Muḥammad ibn Ṣāliḥ al-Karābīsī, Furūq, 120. If the ʿUyūn cited in this work were indeed al-Abū Layth al-Samarqandi’s work, then the author of this Kitāb al-Furūq cannot be Muḥammad ibn Ṣāliḥ al-Karābīsī.

217
says, since we know of no Ḥanafī author other than Muḥammad al-Karābīsī to write a book on legal distinctions at this time, it follows that this is his book.495

Al-Zahrānī’s introduction to Muḥammad ibn Ṣāliḥ al-Karābīsī’s work on legal distinctions relates the few biographical details about our author that remain. These details are scarce, since the vast biographical tradition has generally overlooked him. Al-Zahrānī tells us, for example, that his full name was Abū Faḍl Muḥammad ibn Ṣāliḥ ibn Maḥmūd ibn al-Haytham al-Karābīsī al-Ushtābadīzakī al-Samarqandī and that his date and place of birth are unknown. Al-Zahrānī speculates that al-Karābīsī was born in Ushtābadīza in Samarqand, presumably based on his nisba. Muḥammad al-Karābīsī’s nisba relates him to this city, but it is also plausible that his father or grandfather was born in Ushtābadīza. In the Muʿjam al-buldān, a geographical reference work, Yāqūt al-Ḥamawī (d. 656/1229) mentions Muḥammad al-Karābīsī within his entry for Ushtābadīza. Of this town, he says: “A large locality (maḥalla kābīra) in Samarqand, connected (muttaṣila) to Dastān Gate in Samarqand. A group of scholars (jamāʿa) hail from there… Among them was Abū al-Faḍl Muḥammad ibn Ṣāliḥ ibn Muḥammad ibn al-Haytham al-Karābīsī al-Ushtābadīzakī al-Samarqandī, who had memorized many hadith (kāna mukthiran fī al-ḥadīth).”496 Muḥammad al-Karābīsī is the only scholar associated with this town that Yāqūt mentions by name. He is here remembered for his knowledge

495 Whoever the author of this book was, it seems clear that this was a book written by someone belonging to the Ḥanafī madhhab. The book explicitly endorses opinions by Abū Ḥanīfa, Abū Yūsuf, and Muḥammad al-Shaybānī, the three early “founders” of the Ḥanafī legal school.

496 Yāqūt al-Ḥamawī, Muʿjam al-buldān, no ed. (Beirut: Dār Ṣādir, 2010), v.1, p.195.
of hadith, not of Islamic law. Curiously, none of the biographical dictionaries before Kashf al-ẓunūn remember Muḥammad al-Karābīsī as a jurist.

The biographical sources do not convey much information about Muḥammad al-Karābīsī. While they remember him as having been a hadith transmitter of some prominence—enough, at least, to warrant mention—he is not remembered as having authored a single work or as having been a jurist. Al-Zahrānī is surprised by this. “In spite of the intellectual prominence that was apparent to me while reading his book, I have not found him mentioned in works of ṭabaqāt, rijāl, or tārīkh, other than in the above mentioned sources [al-Ansāb, al-Qand, Muʿjam al-buldān, Ḥadiyyat al-ʿārifin, and al-Aʿlām]. Further, I did not find a complete biographical notice for him nor information about his works.”

Al-Zahrānī says this is due to his marginal location in Samarqand, and that this lack of attention is common for scholars from the eastern Islamic world.

---

497 Muḥammad ibn Šāliḥ al-Karābīsī, al-Furūq, 23 f.1. Of the five sources that al-Zahrānī cites, three are premodern, the Kitāb al-Ansāb by ʿAbd al-Karīm al-Samʿānī (d. 562/1166), al-Qand fī dhikr ʿulamāʾ Samarqand by ʿUmar ibn Muḥammad al-Nasafi (d. 537/1142), and Muʿjām al-buldān by Yāqūt al-Ḥamawī (d. 626/1229), and the other two are modern sources, Ḥadiyyat al-ʿārifin by Isma'il Paşa (d. 1399/1920) and al-Aʿlām by Khayr al-Dīn al-Ziriklī (d. 1396/1976). It is strange that al-Zahrānī cites al-Qand in his discussion since this work does not include an entry for Muḥammad ibn Šāliḥ al-Karābīsī. This work is organized alphabetically by name (ism) and only the section between khāʾ and kāf is extant (and published). The entry for Muḥammad ibn Šāliḥ, if there is one, is therefore lost, since it would come either in hijāʾī alphabetical order and therefore after the kāf, or it would come at the very beginning of the book if it began with the section on the name Muhammad. In either case the section is not extant. There are a few mentions of Muḥammad ibn Šāliḥ in the extant portion, as a part of the chain of transmitters in hadith reports. Al-Zahrānī cites page 141 which has an entry on Muḥammad ibn Šāliḥ’s father, “Šāliḥ ibn Maḥmūd ibn al-Haytham al-Samarqandī.” In this entry, Muḥammad is in the middle of the isnād although interestingly, he does not narrate a hadith that he himself knows, but rather one that he “found in [his] father’s book.” Transmitting a hadith from one’s father was a common occurrence and not by itself evidence of scholarly training. ʿUmar ibn Muḥammad al-Nasafi, al-Qand fī dhikr ʿulamāʾ Samarqand, ed. Nazar Muḥammad Fāryābī (Riyadh: Maktabat al-Kawthar, 1991).
during this period. While we did see in the discussion of Abū Muḥammad al-Juwaynī that information on eastern scholars before the fourth/tenth century is scarce, the names and ideas of important scholars still made their way into the historical record. There seems to be something unusual about the late and widespread popularity of Muḥammad al-Karābīsī’s work in spite of the almost complete forgetting of his biography and reputation.

**Conclusion**

Books of legal distinctions retain a cohesive generic identity over a vast chronological and geographical range. Books from the fifth/eleventh century in Baghdad share an understanding of what a legal distinction is with books from North Africa and Cairo in the ninth/fifteenth century. Nevertheless, the classical Islamic tradition lacks any detailed surviving theoretical discussion of legal distinctions, their functions, and their purpose, save that found in Abu Yūsuf al-Juwaynī’s *al-Jamʿ wa-l-farq*, the earliest extant work of legal distinctions. The shared understanding of legal distinctions that can be seen in these texts is generally undetectable in the theoretical writing on Islamic law. There is disconnect between the theory of legal distinctions and the composing books in this genre.

The question of difference between Islamic law in theory and practice is usually studied with an eye towards the theory of Islamic legal literature and the practice of a lived reality on the ground. Leaving aside the question of the historical application of Islamic law, this disconnect between a theory and practice can be seen simply from the
legal-literary record. A seeming divergence between the genres of legal theory and substantive law has been noted previously.498

In the case of legal distinctions, however, the divergence comes not from the application or creation of norms, but with regards to a category of analysis. This divergence between a more practical concern with understanding legal distinctions and theoretical explanations of Islamic law and legal writing that overlooks legal distinctions becomes all the more interesting when seen in light of the pervasiveness of legal distinctions throughout the history of Islamic law. Legal distinctions were prominent in early legal disputation, a topic studied above in Chapter Three, and the material history of legal distinctions shows the pervasiveness of the genre lasting until at least the 19th century and spreading from the Western Mediterranean into Central Asia and beyond.499

499 See Chapter Six, pp. 330–33.
There are several books that self-identify as something other than works on legal distinctions but read nearly indentically to the books of distinctions examined in earlier chapters. These works fall under the ambit of what is termed legal riddles, *al-alghāz al-fiṣḥiyya*. The existence of these books shows the elasticity of legal distinctions as a confined genre and challenges our understanding of legal genres, particularly those of legal riddles and legal distinctions. It seems likely to me that this elasticity is also present in some of the other ‘secondary’ genres of Islamic law. By secondary legal genres, I mean all genres except for legal theory, legal compendia, and legal digests. 500

Aside from the two genres listed in this chapter, with the phrase other secondary genres, I am referring to genres such as legal maxims (*al-qawāʿid al-fiṣḥiyya*), purposes of the law (*maqāṣid al-sharīʿa*), *al-ashbāh wa-l-naẓāʾir*, among others. This chapter explores the porous boundary between the two genres of legal *furūq* and legal riddles and shows the importance of social practice to the development and partial convergence between legal riddles and legal distinctions. In particular, the performance of legal knowledge in majāls created a demand for a particular packaging of this information, and books of riddles and distinctions sometimes converged as a way of creating a supply to satisfy this particular demand.

The modern academic study of Islamic legal riddles is almost entirely nonexistent, as is the study of riddles generally in the Arabo-Islamic tradition. There

500 See the discussion in the Introduction, pp. 19-24.
are almost certainly important relationships between riddles and dialectical question and answer. A discussion of alghāz likely also relates to the various terms that refer to riddles but perhaps indicate slightly different activities and therefore different kinds of texts. The terms alghāz, mu‘ammayāt, aḥāji, and intiḥān, can all be translated as “riddle,” although there does appear to be a discursive commitment to differentiating between these genres. This issue is discussed briefly below. Further research into legal riddles is a great desideratum.

The previous chapters have demonstrated a certain unity in their understanding of the genre of legal distinctions. One of the assumptions made throughout this study is that unified groups that one can call 'genres' exist within Islamic legal literature. I have taken this supposition a step further in assuming that one such genre is that of legal distinctions. This study has been careful to differentiate between the concept of legal distinctions, which refers to a particular way of reasoning within Islamic law, and the genre of legal distinctions, which refers to a particular way of organizing books of law. The previous chapters have attempted to prove the existence of legal distinctions as a concept, with a distinct genealogy, epistemology, and logic. In so doing, they have also demonstrated the existence of the genre of legal distinctions. This chapter shows, however, that the genre of legal distinctions impinged on and was impinged on by other closely related kind of legal writing. It is, in part, an attempt to understand how to discuss this genre in the broader context of Islamic legal literature.

According to one understanding of genre within the classical Arabo-Islamic tradition, authors classify their books within particular genres by stating this explicitly
in their titles. One similarity between almost all of the books of legal distinctions discussed in the previous chapters is that they have some variant of the Arabic word for distinction (farq, pl. furūq) in their title; indeed, the most common title by far is Kitāb al-Furūq (The Book of Legal Distinctions). This way of defining the boundaries of a genre, while perhaps overly simplified, has merit. It was clearly viewed as an effective way for authors to signal their participation in the genre and it was the way books are remembered and discussed in the biobibliographical tradition. We have also seen that some books of legal distinctions are remembered as “Book of Legal Distinctions (Kitāb al-Furūq)” in spite of the actual title given to them by their author. Based on manuscript evidence, for instance, it would appear that al-Juwaynī’s work on legal distinctions is titled Al-Jamʿ wa-l-Farq; according to the ṭabaqāt literature, however, this book is called Kitāb al-Furūq.

The discussion of the histories of legal distinctions in the previous chapters has been, to a certain extent, tautological. I have assumed an outline for the history of legal distinctions and also that there existed prehistories for legal distinctions, i.e. various trends which contributed to the development of the concept of a legal distinction. Allowing for a multiplicity of origins for this concept has granted us insight into the complex intellectual world from which distinctions emerged. There are clear intertextual relationships between books of lexicographic, medical, and legal distinctions, which highlight the shared intellectual world of these scholarly pursuits.

---

501 See, for instance, Devin Stewart, “Muḥammad b. Dāʿūd al-Ẓāhirī.”
502 See Chapter Three, pp. 171-172 for a fuller discussion.
At the same time, the connections between legal disputation and the development of legal distinctions has been made clear, both in terms of legal reasoning and in terms of the content of books of distinction.

Further still, books of legal distinction represent the refinement of the science of Islamic law at a certain stage of development in the history of Islamic legal writing. Nevertheless, the previous chapters have focused on books of legal distinctions as an ending point. While that focus is useful for an analysis of legal distinctions, it is nevertheless convenient to claim that a concept I term “legal distinction” terminates in the genre of legal distinctions. It is not necessarily the case that the genre of legal distinctions and the concept of legal distinctions are coterminous. In fact, one of the claims that I have made is that the concept of legal distinctions can be found outside of the context of books of legal distinctions. What makes a book of legal distinctions unique is that it consists almost entirely of these distinctions; this fact has been seen repeatedly in the works examined above. What, however, of works that seemingly fit this criterion in their contents but do not announce themselves as works of legal distinction?

One interesting feature of distinctions writing is the convergence of writing on legal distinctions and legal riddles (al-alghâz al-fiqhiyya). Riddles increasingly take on the form of legal distinctions; and second, legal distinctions take on the particular presentation style of riddles. This trend, which can be seen almost from the beginning of the writing of distinctions, reaches its height during the Mamluk period, especially in Cairo. The history of legal riddles has yet to be written, but even a cursory look at
books on legal riddles suffices to show the growing convergence between them and the genre of legal distinctions.

While both genres overlap, as will be shown below, it is not the case that they converged completely. The boundaries between these genres became blurred so that it is sometimes difficult to ascertain whether certain legal books belong to the genre of distinctions or to that of riddles. A case in point is manuscript Esad Efendi 884 in the Suleymaniye Library, which is a collection (majmū) of works on legal riddles. The table of contents on the first page states this clearly, “The following books of Ḥanafi legal riddles (alghāz) are included in this codex...”\textsuperscript{503} Nevertheless, two of the three works in this collection are works of legal distinctions entitled Kitāb al-Furūq.\textsuperscript{504}

This chapter begins with an overview of the tradition of literary and intellectual salons in Arabo-Islamic culture, with a particular focus on their style and popularity in Mamluk Cairo. In part, the spread of salons went hand-in-hand with the spread of riddles. This chapter therefore continues with a brief introduction to riddles and legal riddling. Due to the paucity of scholarship on legal riddles, this chapter offers a preliminary exploration of this style of writing and begins an analysis of the logic undergirding them. Then, the three main sections of this chapter highlight the convergence between works of riddles and distinctions, a convergence that peaked in Mamluk Cairo, and discusses the implications of this for our understanding of genre. The first part of this chapter explores the history of majālis—literary salons, study

\textsuperscript{503} Esad Efendi 884, Suleymaniye Library, Istanbul, 1a.
\textsuperscript{504} Esad Efendi 884, 1a. The two works, according to this table of contents, are Kitāb al-Furūq li-l-Imām al-Farghānī and Kitāb al-Furūq. The first work in this collection is simply entitled Kitāb al-Tahdhib.
circles, and more—in Arabo-Islamic culture. The second part explores the tradition of legal riddles, focusing on the way in which legal riddles package the information of Islamic law. Finally, the third part looks at the convergence of riddles and distinctions of and some of the implications of this convergence.

Literary Salons, Learning, and Culture

Understanding the social context in which legal knowledge was performed is crucial to understanding the motivations for changes in legal literary aesthetics. The social contexts were quite varied and deserve explanation. Almost all of this knowledge performance, however, took place in venues referred to as majālis. Majālis (sg. majlis; teaching sessions, literary gatherings, salons) were a widespread phenomenon in the premodern Islamic world. Undoubtedly, majālis took on different forms and functions as they manifested over a broad geographic and chronological scope. George Makdisi suggests that the term majlis was used by scholars in almost all fields of learning to refer to scholastic gatherings of different kinds. He thus speaks of “literary clubs” for the “institutionalized learning” of medicine, philosophy, and philosophical theology.

---

505 Links between social realities and the writing of books of Islamic law can yield interesting conclusions in most areas of Islamic law. For instance, David Vishanoff argues that al-Shāfi‘ī’s Risāla can be best understood as a composite work made up of three separate treatises combined into one work. The second and third treatises, according to Vishanoff, represent actual dialogues between al-Shāfi‘ī and his critical contemporaries. Importantly, Vishanoff understands from this that the Risāla was therefore composed and disseminated over time and in parts. See David R. Vishanoff, “A Reader’s Guide to al-Shāfi‘ī’s Epistle on Legal Theory (al-Risāla).” Islam and Christian-Muslim Relations, Published online 2/14/2017, See also http://david.vishanoff.com/wp-content/uploads/readers-guide.pdf.

“humanist circles” for the study of belles-lettres (adab);\textsuperscript{507} and “academies” attended by grammarians.”\textsuperscript{508}

In the Encyclopaedia of Islam majālis are described as places “where political and judicial decisions were adopted, plaintiffs, panegyrists and other visitors gathered, and questions of literature or law were debated.”\textsuperscript{509} Of particular interest for this study are the sessions in which “questions of literature or law were debated.” In order to understand the reasons for which books of legal riddles were produced and the reasons for their merging with books of legal distinctions, it is necessary to understand the contexts in which law was discussed publicly. “In these public audiences, plaintiffs and petitioners were present, but poets and scholars... also participated.”\textsuperscript{510} The term majālis thus had a very broad semantic range. It could refer to almost any gathering of people, so that the court of a sovereign, a teaching-session, a poetry reading, and a gathering of friends all fall within the scope of the word majlis, as could the lesson taught there, or even the people in attendance. In large part, majlis was the premier term for scholastic gatherings outside of the madrasa context.\textsuperscript{511} Scholarly and literary gatherings, however, are the concern of the following discussions and I use the term majlis to discuss only scholarly and literary gatherings.

\textsuperscript{507} Makdisi, Rise of Humanism, 61.
\textsuperscript{508} Makdisi, Rise of Humanism, 61.
\textsuperscript{509} EI\textsuperscript{2} s.v. “majālis” (ed.), citing R. Brunschvig, La Berbérie orientale sous les Ḥafṣides des origines à la fin du XV siècle (Paris: Adrien-Maisonneuve, 1940-1947), 2:37.
\textsuperscript{510} EI\textsuperscript{2} s.v. “majālis” (ed.).
\textsuperscript{511} It is possible that teaching hospitals as well should be exempted along with madrasas, but the precise terminology associated with the teaching of medicine falls outside the scope of the present study. See as well the detailed discussion of the semantic range of the premodern term majlis. George Makdisi, Rise of Colleges, 10-12; idem., Rise of Humanism, 60-64.
Although majālis differed greatly across time and space, there were a few constants about them which demand our attention. The first is the simultaneous existence of courtly majālis at the court of the sultan or caliph and non-courtly majālis held by private individuals. The difference between these two kinds of majālis is not necessarily in the activities conducted therein, but in the stakes of the performance. As will be seen, courtly majālis were moments to compete for patronage, either direct patronage to compose works or indirect patronage through lucrative governmental appointments. Non-courtly majālis were pivotal moments for the discussion, evaluation, and spread of books, ideas, and scholars. Scholarly circles took place in non-courtly majālis while the majālis for entertainment encompassed both. In terms of literary salons, it was the goal of those participating in the majālis to put the depth and scope of their knowledge on display.\footnote{I use the term literary salon to refer to gatherings of intellectuals to discuss intellectual matters, including but not limited to literature (adab).}

There has been work done on the literary salons during the Abbasid period and scholarly salons in Ottoman urban centers. The majālis of the Mamluk era, however, have been studied in a much more cursory fashion.\footnote{Christian Mauder of the Georg-August-Universität Göttingen is currently writing a dissertation on the majālis held at the court of the Mamluk Sultan al-Ghawri.} The convergence of riddles and distinctions begins in Abbasid times and then seems to peak during the Mamluk period and continue into the Ottoman era. We will therefore look first at Abbasid-era majālis and then at some studies of early Ottoman majālis, and in so doing assume continuity with Mamluk-period trends.
According to Samer Ali, literary salons “proliferated in the [third/]ninth century, enabling more littérateurs to cultivate the adab skills needed to participate, socialize, and gain personal influence.”514 For him, literary salons, referred to as mujālasa rather than majālis during this period, were occasions for scholars to embed themselves within literary communities and learn the skills necessary to garner patronage.515 Régis Blachère likewise characterizes the salon in this period as having “a high standing, no one could hope for public admiration if he were not a man of the world, an agreeable conversationalist, having a sharp mind and quick with wordplay, skilled in creating situations which he could turn to his advantage.”516 It was the skills cultivated by attending and performing in such salons and the desire “to impress one’s audience, in fidelity to shared standards of competence” that impacted much of how “adab-type speaking” was structured.517

---

514 Samer Ali, *Arabic Literary Salons in the Islamic Middle Ages* (South Bend, IN.: Notre Dame University Press, 2010), 192.

515 Ali also argues that literary salons were sites in which a shared historical memory was created and cemented. I do not address this aspect of salons directly in this chapter, but it reaffirms the importance of literary salons as sites of knowledge production, not just sites for the display of knowledge.


It was not only in courtly contexts that such skills mattered. This pattern of communicating knowledge “[held] good for those who, at an inferior social level, stayed simply in the home of well-to-do poets and writers and even in the shops of merchants who practiced in their own way a form of patronage.” In other words, there was a continuity of sorts in the patterns of knowledge production and display that held currency in intellectual salons frequented by different social groups. The extent and strength of these connections between courtly and private salons suggest the existence of a broad intellectual community which maintained certain standards and expectations for what constituted knowledge or artistic production and for the forms in which it ought to be expressed.

Although these remarks on the nature and importance of majālis are based on studies of literary salons, the relevant aspects of such salons seem to extend beyond discussions of language and literature. L.E. Goodman finds that the debate contexts between Muḥammad ibn Zakariyyāʾ al-Rāzī (d. ca. 312/925) and Abū Ḥātim Aḥmad al-Rāzī (d. ca. 322/934) are crucial in understanding the ways in which these philosophers understood, presented, and defended their ideas, both in person and in their works. In his study, the context of the majālis is instrumental to a correct and full understanding of the works of these authors. The contours of philosophical debates and philosophical writing do not necessarily align in all respects with literary debates. For instance, Goodman finds these philosophical majālis to be “informal gatherings,” and “not public

---

518 EI 2 s.v. “madżlis” (ed.).
519 The continuities between different kinds of salons, point to shared societal standards of knowledge and knowledge presentation, in spite of potential differences between salons held in various contexts.
performances of a formal nature." The literary salons discussed by Samer Ali have a much more formal context, particularly those majālis that involved the recitation of poetry. Even so, both literary and philosophical sessions were high-level scholarly exchanges between socially significant members of society.

There are several important conclusions that can be drawn about the function and activities of these literary salons. The most important is the parallel between the intellectual activity of the majlis and the written intellectual record. Cultural context affects literary production and intellectual production is related to a certain kind of social life. Further, the existence of intellectual majālis among various social strata signals the potential relevance of intellectual production to different social groups including merchants, scholars, and political elites. This is particularly important to keep in mind for discussing intellectual trends in the Mamluk Sultanate. These trends include (i) the role of imported Mamluks—primarily Turkic people from Northwest Asia—and their children in seeking education, (ii) the expansion of majālis to include a wider spectrum of socioeconomic classes, and (iii) the rising interest in riddling in these majālis.

The role of the Mamluks themselves cannot be overlooked for understanding the cultural history of the Mamluk Sultanate. Mamluks were enslaved young boys,

---


521 Goodman says that “[t]he language...of the debate is rapid fire and conversational.” A “rapid fire and conversational” tone is not indicative of most philosophical writing, suggesting certain discontinuities between the presentation of philosophical activity in in-person interactions and writing. Goodman, “Rāzī vs Rāzī,” 101.
primarily Qipchaks and Circassians, brought to Cairo to be trained as part of the ruling military class. As imported youths striving for a career in the military or government bureaucracy, the Mamluks and their children represented a new bloc of people for whom education and learning became an important social goal. Since the children of the Mamluks could not follow in the footsteps of their fathers in the military, Mamluks actively sought out education for their children, focusing primarily on “Arabic, calligraphy, and the fundamentals of religious sciences.” These fundamentals comprised the basis for the education and learning of their children and the cultural lives that they later developed for themselves as adults often reflected this early training. Ulrich Haarman emphasizes the importance of “the cultural life [found] in the houses of the lowly Mamluk private soldiers (jundī) who often quite understandably sought and found comfort for a disappointing military and public career in the bliss of piety, poetry, and scholarship.” While many of them may have found only “bliss” in pursuing intellectual activities, others were able to use this to achieve renown. Intellectual and literary interests, of course, were found among more than just the professional scholars. “Several Mamluks are described as authors of good verse and as literary entertainers.” Displays of knowledge could also take the form of book ownership. Indeed, “[b]ook-collecting was an expensive yet widespread hobby of

cultured Mamluks.”\textsuperscript{525} These Mamluks and their children were also known for “sponsor[ing] salons that included both Turkish and Arabic entertainment.”\textsuperscript{526}

At the same time, the breadth of learning valued at salons was also important for the professional lives of the non-military elite. “The literary skills [a member of the civilian elite] acquired qualified him for a wide range of careers, and one of the characteristic features of the man of learning was his multicompetence—his ability to hold positions in diverse occupational fields at the same time.”\textsuperscript{527} These factors led to an expansion of the ways in which socially diverse groups interacted with and consumed knowledge.\textsuperscript{528} This expansion can be seen in part, in the participation of a non-scholarly middle class of artisans at the public reading of books. Konrad Hirschler has documented their presence at the readings of Ibn ʿAsākir’s (d. 571/1176) \textit{History of Damascus}. “Considerable numbers of craftsmen, traders and other non-scholars not only interacted...in these readings with the scholarly world, but the various sources show that their participation started to be taken seriously.”\textsuperscript{529} The social life of Mamluk

\textsuperscript{525} Haarman, “Arabic in Speech,” 93.
\textsuperscript{528} It is possible that a similar trend could be found earlier, but it is documented clearly for the first time in the Mamluk Empire. This is due, in part, to the mass-movement of scholars resulting from the Mongol invasions and the rise of Cairo as the major center of Arabic learning.
Cairo (and Damascus) thus placed a high premium on learning and knowledge.\textsuperscript{530} This high value of learning and culture can be seen acutely in the ways that knowledge was performed and in the role of the majālis.

Helen Pfeifer has shown the recurrence of majālis in accounts of scholarly networks in the 16\textsuperscript{th} century, especially in exchanges between scholars from the Mamluk Sultanate and the Ottoman Empire. “In general, these particular majālis can be thought of as by-invitation-only gatherings attended by well-to-do Muslim men for the purpose of social and intellectual exchange.”\textsuperscript{531} Because of the importance of Mamluk Cairo and Damascus as centers of learning in the period before the sixteenth century, knowledge of Arabic and the Arabic tradition was key to these gatherings, all the more so in light of the prevalence of non-Arab elites among the Mamluks and the Ottomans.\textsuperscript{532} These salons “were an integral part of elite travel... and functioned as key venues in which men from different parts of the empire encountered one another.”\textsuperscript{533} They served as meeting points for travelling elites, and were also opportunities for local scholarly communities to interact with outside communities, as represented by the scholarly traveler. In addition, salons were important venues for “Rumis [i.e., Anatolians] serving as chief judges in the Arabic provinces... [They] produced high-pressure situations in which judges themselves were judged, both on their intellectual

\textsuperscript{530} The accessibility of learning and the exposure to knowledge production and performance in non-urban areas remains unclear.

\textsuperscript{531} Helen Pfeifer, “Encounter after the Conquest: Scholarly Gatherings in 16\textsuperscript{th}-Century Ottoman Damascus,” \textit{International Journal of Middle East Studies} 47 (2015), 221.

\textsuperscript{532} Pfeifer, “Encounter,” 221.

\textsuperscript{533} Pfeifer, “Encounter,” 221
prowess and on their ability to engage in polite conversation.”\textsuperscript{534} The social place of these majālis in the Ottoman period is reminiscent of that in the Abbasid-period majālis: in both cases majālis served as venues for the movement of scholars and ideas.

Pfeifer also shows that in late 16th and early 17th centuries, literary salons were venues for book circulation, and thus served as ways for books to acquire positive reviews which could then spread with them, “books rarely traveled without a reputation in tow. Literary salons thus reveal a very dynamic process of Ottoman canon formation.”\textsuperscript{535} Salons were an initial venue for book publication, a semi-public way of introducing a book to a scholarly audience to judge its merit. In this way, the stakes of the salon were high, and scholars needed to impress audiences with their knowledge in order to succeed. Poets similarly used literary salons to circulate their poetry. “The majlis also played a vital role in the dissemination of poems: scholars commented on them, musicians were inspired by them and listeners spread their renown.”\textsuperscript{536}

Due to their high social standing, salons were important for cultivating friends and social networks. The scholar and biographer al-Ḥasan al-Būrīnī (d. 1024/1615) “was widely appreciated for his ability to captivate salon audiences: 'he was never at a scholarly majlis without being its nightingale.’”\textsuperscript{537} More importantly, biographical

\textsuperscript{534} Pfeifer, “Encounter,” 223.
\textsuperscript{535} Pfeifer, “Encounter,” 229.
\textsuperscript{536} Brookshaw, “Palaces,” 200.
dictionaries relied on literary salons for information on contemporaries.\footnote{Pfeifer, “Encounter,” 230-31.} That biographical dictionaries could transmit information learned at scholarly salons further confirms their high social and intellectual standing. However, it is hard to know what exactly transpired even at elite salons. While a book may transmit an event from, or a piece of information learned during, a salon, actual transcripts of the exchanges or conversations are rare. It seems likely that civilian, non-scholarly salons functioned within a similar rubric. It has been established that there were literary-intellectual salons held by non-professional scholars and non-scholarly educated elites, and that these people participated, at least as a public, to public readings of books and in this way participated in Mamluk intellectual life.

An important facet of the majālis is their often contentious nature; they involved disputations with varying degrees of formality. Inasmuch as salons were venues for the public display of knowledge, they were also opportunities to prove the superiority of one’s own knowledge. Indeed, in her study Pfeifer stresses “the competitive nature of salons.”\footnote{Pfeifer, “Encounter,” 233.} This underlying spirit of competition is one of the aspects that sharply distinguished literary salons from other venues for knowledge-performance, such as a study circle. The Fath al-bārī, Ibn Ḥajar al-ʿAsqalānī’s (d. 852/1449) commentary on al-Bukhārī’s (d. 256/870) al-ṣāḥīḥ provides a good example of the importance of social settings for the production and display of knowledge in ninth/fifteenth century Cairo.
Al-Fath al-bārī was a text that took form in study circles and then was used by al-ʿAsqalānī in salons. The history of this particular commentary is well-documented, but its history is in many ways similar to that of other large commentaries. “Commentators not only attacked one another from the safety of their written texts but also face to face during commentary sessions on the Sahīḥ in the presence of the political and judicial élite.”

Coming from this background, al-Fath was formed through al-ʿAsqalānī’s exchanges with his students. Once parts of this book emerged as a written commentary, these discussions could and did move from oral to written, from the majlis to the text. The text, however, was used in later majlises, when the information moved from text back to majlis.

Joel Blecher has located a particularly compelling case of this interchange, from majlis to text and back, in a series of exchanges between Ibn Ḥajar al-ʿAsqalānī and Shams al-Dīn al-Harawī (d. 829/1426), a rival for the Shāfiʿī judgeship who had recently arrived at the court in Cairo. At a scholarly gathering in the Sultan’s garden, Ibn Ḥajar challenged al-Harawī over who had greater mastery of the hadith. Ibn Ḥajar was able to solve a vexing question related to the nature of the everlasting shade in heaven referred to in the Quran, in Q Raʾd 13:35. With his superior knowledge and understanding of the Quran, Ibn Ḥajar bested al-Harawī in a face-to-face meeting. Not

---

540 Blecher, “Ḥadīth Commentary,” 274.
541 Blecher, “Ḥadīth Commentary,” 266, see also 265-268.
only did this result in a judgeship for Ibn Ḥajar, but he later recounted this episode in his commentary *Fath al-Bārī*. This episode demonstrates the way in which knowledge could and did move from book to *majlis* and then from *majlis* to book. There could be, and often was, a reciprocal relationship between written knowledge and performed knowledge.

The encounter between Ibn Ḥajar and Shams al-Dīn al-Ḥarawī involved interpretation of the Quran and hadith. Episodes like this dealing with issues in Islamic law are harder to find. The few transcripts of Mamluk-era salons that remain are of the *majālis* at the courts of the Sultans; though almost all of these works are still in manuscript. They nevertheless present interesting records of the proceedings in salons as they unfolded. These are probably sanitized transcripts that only indirectly represent the discussions that took place, rather than verbatim transcripts recording each interaction. Nevertheless, they allow us an interesting glimpse into how knowledge was performed at the court of the Sultan. In salons of the Sultan al-Qaṣṣūh Ghawrī, Islamic law was one of the topics discussed. We can see here that riddles were a component of their legal discussions, “Question Two: Shaykh Tanum” read from the

542 This session is remembered in Ibn Ḥajar’s *Fath al-bārī*, ed. ‘Abd al-ʿAzīz ibn Bāz (Beirut: Dār al-Maʿrifa, 1970), 2:143-44, citation from Blecher, “Ḥadith Commentary,” 278-280, where he translates the relevant passage.

543 The process through which this book has been described in detail by Joel Blecher. He describes how Ibn Ḥajar would first compose this work in private, but that the final version “emerged amidst the discussion of the *Ṣaḥih* in the live presence of his students,” that is, in a teaching-majlis. Joel Blecher, “In the Shade of the *Ṣaḥih*: Politics, Culture and Innovation in an Islamic Commentary Tradition,” Ph.D. Diss., Princeton University, 2013, 18-19.

544 The identity of this Shaykh Tanum is uncertain.
What follows is a riddle on prayer. While the result of this exchange is unclear, their use of and reliance on books of legal riddles is evident.

In three articles on Mamluk prose, Muhsin al-Musawi has similarly argued for the connection between the active and diverse intellectual culture and the composition of books in the Mamluk Sultanate. “The sheer variety of prose-writing... attests to the existence of a dynamic culture characterized by the active involvement of littérateurs, widespread networks and a magnanimous devotion to the world of writing.” The importance of both littérateurs and social networks to the production and consumption of knowledge also explains, according to al-Musawi, the prevalence of encyclopedic writing during this period. “Islamic medievalists usually focused on the compendium as a treasury of knowledge; the compiler is thus a producer who aims to provide readers with a reservoir which would otherwise be inaccessible in its original form, found in scattered books.” Al-Musawi here places the author qua compiler as the driving force behind book composition; however, it is as likely that competing demands from readers helped shape the texts that were being composed. Given the prominence of majālis in Mamluk culture, the role of social networks in the spread and dissemination of books, and the importance of majālis towards opinion shaping, however, the possibility of books being written for a public, i.e. of demand driving book production, cannot be

545 Ḥusayn ibn Muḥammad al-Sharīf, Nafāʾis majālis al-sulṭāniyya fī ḥaqāʾiq asrār al-Qurʿāniyya, MS Topkapı Sarayi Müzesi Kütüphanesi, Ahmet III 2680, Istanbul, 60.
overlooked. This is not to say that such supply and demand were the only market forces at play in the production of scholarly works, but rather that they were an important force that should be kept in mind. More importantly, it will be shown below how books of legal distinction in particular, can be seen as responding to this demand from a public interested in consumption of a particular kind of legal knowledge.

The proliferation of these literary salons in Mamluk Egypt was so great that al-Khalil ibn Aybak al-Ṣafadī composed a parodistic commentary that takes place in a fictional literary gathering. This commentary, *Ikhtiraʿ al-khurāʾ*, is a commentary on two nonsense verses of Arabic poetry.\(^{548}\) For our purposes, however, the frame story into which the *Ikhtiraʿ* is set is of particular importance. “Abū Khurāfah [the protagonist of the story] narrates that he was at a party one night with a number of other people—an evening of the literary folk... They are sitting around chatting about literature, reciting lines for each other.”\(^{549}\) When the guests hear Abu Khurāfah’s nonsense lines, they struggle to understand the beauty he sees in them and they propose finding a commentary for this poetry in order to better understand it. The commentary in *Ikhtiraʿ al-khurāʾ* is on the nonsense lines provided by Abū Khurāfah. The scene invented by al-Ṣafadī, though a caricature, represents one possible example of the kind of literary salons common in Mamluk Cairo. Here, we see a group of educated elites (ṣurafāʾ) gathered together discussing poetry. These characters are not presented as scholars per se, but nevertheless spend part of their free-time engaged in intellectual

---

\(^{548}\) Kelly Tuttle has studied this work in her dissertation, see Kelly Tuttle “Expansion and Digression: A Study in Mamlûk Literary Commentary,” (PhD Diss. University of Pennsylvania, 2013), 79-108.

\(^{549}\) Tuttle, “Expansion and Digression,” 85-86.
and literary activities. They vie to impress each other through their knowledge of poetry and seek the aesthetic pleasure of reciting and hearing lines of beautiful poetry, as well as of understanding and explaining these lines. It is from this that the parody of Ikhtirāʾ gains its currency.

The role of the majlis as a site for knowledge-performance remained even after the end of Mamluk power. As we learn from Nelly Hanna’s recent work on Ottoman Cairo, salons continued to be an important part of life in the 16th-18th centuries. She focuses particularly on the importance of the salon as part of a middle-class intellectual exchange, noting that it included, “the diverse forms existing for the transmission of learning and knowledge such as the spread of a book culture, the coffeehouse, the literary salon—and their significance for our understanding of the way that the middle-class culture was shaped during [this] period.” By this period, the majlis was not the only social venue for knowledge-performance, but it nevertheless remained important. Majālis covered a wide variety of topics. The kind of salons that Hanna finds in Ottoman Cairo are Sufi salons that included dhikr, literary salons in which “people recited literature, composed poetry, improvised verses, and read books out loud;” arenas for “entertainment, with musical instruments, singing, and games of chess;” and “serious majalis focused on scholarly issues, with the participants discussing

---

fiqh or tafsir.”552 It is important to note that these salons were an important part of middle-class culture, but were also gatherings held by intellectuals and political elites.

It is likely that the middle-class majālis discussed by Hanna are extensions of the ‘popular poetry’ salons prevalent in Mamluk Cairo. Of these, Margaret Larkin says “Much was sung or delivered in informal gatherings.”553 These salons were attended by “patrons and consumers who hail, if not from the lower classes, at least from what might be considered a kind of petite bourgeoisie.”554 In speaking of popular scholarly culture, I refer to activities in which the participants were not only observers but had opportunities to be performers as well. It is this potential for participation that allows attendees an opportunity to demonstrate their knowledge. There was, of course, another kind of popular scholarly performance, such as staged readings of poetry, popular preaching, or even the performance of shadow-plays. The popularity of these performances is likely also related to popular interest in knowledge and learning, but the performances are not directly related to the discussion at hand.555

However all that may be, modern discussions of ‘middle-class salons’ and ‘the rise of popular poetry’ involving some members of the ‘merchant class’ remain vague due to a lack of information regarding what exactly occurred during these meetings. For instance, it seems likely that someone who could be described as a ‘middle class

---

552 Hanna, In Praise of Books, 73.
553 Larkin, “Popular Poetry,” 194
555 These broad phenomena have been studied in some detail, but there is still need for study of more specific contexts, see Jonathan P. Berkey “Popular Culture under the Mamluks: A Historiographical Survey” Mamluk Studies Review 9.2 (2005): 133-146; and Boaz Shoshan, Popular Culture in Medieval Cairo (Cambridge: Cambridge University Press, 1993).
merchant’ would have had a lower degree of familiarity with religious sciences than professional scholars, although it seems likely merchants might have been quite familiar with contract law. In other words, any discussion of a specialized intellectual topic such as fiqh or hadith criticism that took place at such a salon cannot be expected to have carried the same level of sophistication as in a majlis at the court of the Sultan. That does not mean, however, that such topics were not discussed in non-elite or non-courtly salons, in addition to various kinds of poetry and literature.

Other evidence that points to a transference between oral and written exchanges in majālis exists, but it is circumstantial. As mentioned in Chapter One, the distinctions book attributed to Najm al-Dīn al-Naysābūrī states explicitly that it is was meant to be used in majālis. In one manuscript of this work, the author says: “A colleague (baʿḍ ikhwānī) asked me to write a book (an uhadddhiba)... that you can consult during discussions in majālis (yastadillu fī al-majālis) and from which you can find guidance in schools (yustadīʾa bīhi min al-madāris).”\(^{556}\) This is a strange passage, and it seems to have given copyists trouble as well, as no two manuscript witnesses provide the same reading.\(^{557}\) The juxtaposition of majālis and madāris in this context, in addition to providing a rhyme, perhaps indicates that the majālis are not study sessions.

\(^{556}\) Giresun Yazmalar 44, Suleymaniye Library, Istanbul, 1b.  
\(^{557}\) The Giresun Yazmalar manuscript, in general, is written in an exceptionally clear hand with full diacritical marks, i.e. with both dots and vowels markers (al-ḥarakāt). The phrase yastadillu fī al-majālis, however, has only the consonantal skeleton without any diacritical marks. The other reading of this phrase could be yasnadu lahu fī al-majālis.
Of the seven witnesses to this text, four omit this introduction entirely, yet these seven texts are all otherwise remarkably similar.\(^{558}\) The other three manuscripts of this text with an introduction are Halet Efendi 780, Yazma Bağışlar 1187, and Leiden Or. 481. Here, Halet Efendi 780 and Yazma Bağışlar 1187 read “to benefit from during majālis while doing without school training (li-yantfī’a bi-hā fī al-majālis wa-yastaghnā ‘an al-madāris).”\(^{559}\) The Leiden manuscript has a third reading for this text. This text reads “to entertain with in majālis and to learn from in schools (yastahzi’u bihā fī al-majālis wa-yastaḍī’u bihā fī al-madāris).”\(^{560}\) In all three of these text, the text and the meaning of this phrase are different. The second variant presents law colleges as unimportant; instead of offering the book as a sort of cheat-sheet for Islamic law, it obviates the requirement of a complete formal legal education. The Leiden manuscript sees itself as a source of entertainment and a supplement to this education. In all of these readings, however, majālis and madāris are paralleled, suggesting that they each refer to different venues for the learning and performance of legal knowledge.

The Literature of Riddles and Legal Riddling

The history of legal distinctions cannot be fully explained without understanding their relationship to legal riddles. The tradition of legal riddling serves largely as play and

---

\(^{558}\) I discuss this issue in Chapter Six, see pp. 340-43.

\(^{559}\) Halet Efendi 780, Suleymaniye Library, Istanbul, 1b; Yazma Bağışlar 1187, Suleymaniye Library, Istanbul, 84b. The YB1187 has a slight variant in the second clause, reading: “yantafī’u bihā fī al-majālis wa-yastaghnā bihā ‘an al-madāris,” “to benefit from this book in salons and not need school training because of it.”

\(^{560}\) Leiden, Or. 481, 3a.
entertainment, and authors in this tradition justify themselves by claiming their works as worthwhile diversions. In one book of legal riddles, for example, the Mālikī jurist Ibn Farḥūn (d. 799/1397) cites a proverb by ʿAlī ibn Abī Ṭālib as an apology for the practice of riddling. “Divert the soul on occasion, for it rusts just as metal rusts.” A diversion, in this case riddling, serves as a kind of antioxidant to refresh and enliven the soul. Ibn Farḥūn continues his defense of riddling by discussing a prophetic hadith found in al-Bukhārī’s al-Ṣaḥīḥ and in Mālik’s al-Muwaṭṭa’, among other hadith collections:

Ismāʿīl said: Mālik related to me, on the authority of ʿAbd Allāh ibn ʿUmar, the following.

The Messenger of God, may God’s prayers and peace be upon him, said, “here is a tree whose leaves never fall. It is, indeed, like a Muslim (wa-hiya mathal al-muslim). Tell me, what is it?”

The people’s thoughts turned to the desert trees, but it occurred to me that it was the date-palm (al-nakhla), but I shied away from responding.

“O, Messenger of God, will you tell us what it is?” we asked.

“It’s the date-palm,” replied the Messenger of God.

I talked to my father [ʿUmar ibn al-Khaṭṭāb] about what I had thought and he said, “I would have liked nothing better than for you to have said that to him (la-an takūna qultahā aḥabbu ilayya min an takūna lī kadhā wa-kadhā).”

---


562 Saḥīḥ al-Bukhārī, Kitāb al-ʿIlm, Bāb al-ḥayāt fī al-ʿilm.
In this example Muḥammad himself participates in the act of riddling. He poses a riddle to a crowd gathered before him. If Muḥammad sanctions this activity, then it must be meritorious. At the same time, the ending of this hadith, with a father’s gentle chiding of his son for not having hazarded a guess, is suggestive. It is not just any father, but the “stern, strong-willed, [and] prone to anger” caliph ʿUmar ibn al-Khaṭṭāb (d. 23/644) reproaching his son, ʿAbd Allāh ibn ʿUmar (d. 73/693) for not participating in this game.563 While this aspect of the story does not involve Muḥammad directly, it is clear from the way that this tradition is preserved, that riddling is an approved (even edifying) activity and that audience participation is encouraged. The father’s longing for his son to answer correctly was because he saw it as an opportunity to impress Muḥammad and as an opportunity for diversion and play. The activity no longer becomes only a moment for scholars to hone their skills, but rather an activity for people to partake in for entertainment, or as ʿAlī ibn Abī Ṭālib says, to find some entertaining diversion. With the examples of the Prophet and ʿAlī ibn Abī Ṭālib, Ibn Farḥūn situates the legitimacy of scholarly entertainment with several foundational figures from early Islam.

In starting his book in this fashion, Ibn Farḥūn models his book of legal riddles on a longer tradition of books on riddling. Riddles in the Arabo-Islamic tradition, as described in the above hadith, share the main characteristics of riddles as generally understood. The discussion of riddles in the Princeton Encyclopedia of Poetry and Poetics

563 EI² s.v. “ʿUmar (I) ibn al-Khaṭṭāb” (G. Levi Della Vida and M. Bonner).
explains the function of riddles clearly. Riddles are exercises in wordplay, punning, or the use of metaphors, imagery, and more.

Typically, an intentionally misleading question presents an enigma that can be resolved only by a clever ‘right’ answer. In a ‘true riddle,’ the question presents a description, which usually describes something in terms of something else, and a ‘block element,’ a contradiction or confusion that disrupts the initial description.564

In the question that Muḥammad poses, the comparison between believers and trees supplies the misleading question, and the answer of the palm-tree is the clever solution. This template holds for linguistic riddles as well as for legal riddles. Riddles are either seemingly simple questions with elusive answers or opaque statements that invite the participation of the reader or listener. The purpose of books of riddles is to provoke the curiosity and intellectual engagement of readers or of an audience. Discerning the answer is difficult and a test of skill; falling short, however, still allows readers to contemplate the answer and enjoy the word-play in the riddle that elicits the correct response.

The act of riddling is an inherently social activity. A riddle is posed by one person to another person or to a group of persons. Riddles all involve question and

564 Princeton Encyclopedia of Poetry and Poetics, s.v. “Riddles.” Interestingly, riddles do not seem to have been a popular genre within Persian writing. In fact, Seyed-Gohrab says that there are “no such collections[of riddles], and riddles are scattered throughout poetic dīvāns” (15). In his study, he finds that riddles as a literary technique were quite important in Persian literature, particularly within the qaṣīda form and that it “may, in fact, be regarded as a legacy of Middle Persian literature” (31). It is peculiar that books of riddles were very popular in Arabic but found no real currency in Persian. See A. A. Seyed-Gohrab, “The Art of Riddling in Classical Persian Poetry,” Edebiyat 12 (2001), 15–36.
answer, either through the direct positing of a question or through an allusive statement, the interpretation of which needs explanation. Riddles obtain their value by exploiting a knowledge disparity between the one posing the riddle and the audience. This disparity makes them useful for the performance of knowledge as a status-enhancing activity. Nevertheless, riddles also thrived as a textual genre, in which a book’s narrator assumes the role of questioner or riddler. Ḥājjī Khalīfa, for example, sees alghāz as primarily a textual genre. “It is the science from which the precise and more or less unknown meaning of words are known (yutā’arrafu minhu dalālat al-alfāz ‘alā al-murād dalāla khafīyya fī al-ghāya).” For him, alghāz is a science, i.e. a textual tradition. The very inclusion of alghāz as a written genre in its own right in the bibliographic work written by Ḥājjī Khalīfa signals the importance of riddles as a mode of writing in the classical tradition.

In spite of this importance, only recently have scholars begun to analyze riddles as a serious form of Arabo-Islamic literature. Because of this lack of study, there are many important questions still unanswered about the history of Arabic riddling. We have yet to pinpoint major works or authors within this field, let alone define the relationship between riddles and other forms of knowledge and entertainment. As will be discussed below, riddling thrived as a social activity in classical Arabo-Islamic

---

565 Ḥājjī Khalīfa, Kashf al-zunūn 1:149.
566 See, for instance, Thomas Bauer’s entry in EI’ on Khālid ibn ‘Abdallāh al-Azharī, a grammarian from 15th century Egypt. In this entry, Bauer discusses al-Azharī’s writings, but his al-Alghāz al-nahwiyya, The Grammatical Riddles, are mentioned only in passing in the bibliography. “Several works of al-Azharī were published in early prints that are hardly accessible today or are still in manuscript, among them al-Alghāz al-nahwiyya (“Grammatical riddles”), probably printed in Cairo 1281/1864.” In part, the study of riddles is due to the lack of printed editions. EI’ s.v. “al-Azharī, Khālid ibn ‘Abdallāh” (T. Bauer).
culture, but the relationship between this activity and books of riddles has yet to be established. A brief overview of riddles as both social and textual practices shows their importance to the classical Arabo-Islamic tradition. One of the main findings of my research into riddling as a social practice shows an increasing interest in riddling as a manner of presenting information starting from the 11th century and seemingly reaching a plateau in Mamluk Cairo.

As implied by Ḥājjī Khalīfa in his definition of alghāz, riddles encompass much more than just legal riddles; indeed the most common kind of riddles are linguistic or lexicographic. The most recent study of Arabic riddles is Muḥammad Sālimān’s essay, Fann al-alghāz ʿinda al-ʿarab. Sālimān’s study focuses exclusively on linguistic riddles, both grammatical and lexicographic. Fann al-alghāz is published together with four works of linguistic riddles, selections from al-Ifṣāḥ fī sharḥ ayyāt mushkilât al-iʿrāb by al-Ḥasan ibn Asad al-Fāriqī (d. 487/1074), al-Alghāz al-nahwiyya by Khālid ibn ʿAbd Allāh al-Azharī (d. 905/1499), al-Ṭāʾir al-maymūn fī ḥall lughz al-kanz al-madfūn by Jamāl al-Dīn al-Qāsimī (d. 1332/1914), and al-Lafẓ al-lāʾiq wa-l-maʾnā al-rāʾiq by Shihāb al-Dīn ʿAlḥmad ibn Hārūn (d. unknown). The fact that Sālimān chose to publish these works in particular alongside his essay underscores the precedence that he sees in linguistic riddles over that of other kinds of riddles.⁵⁶⁷

There are, however, books of riddles in various scholarly disciplines including law.\textsuperscript{568} Indeed, the history of legal riddles in the Arabic tradition incorporates, however, not only works of Islamic law, but also ought to include literary (\textit{adab}) works including the figure of the Jurist of the Arabs (\textit{Faqīh al-ʿArab}).\textsuperscript{569} Nevertheless, the specific motives for telling and recording legal riddles remains to be discovered.

Muḥammad Abū al-Ajfān and ‘Uṭhmān Baṭīkh, the editors of Ibn Farḥūn’s work on legal riddles, \textit{Durrait al-ghawāṣṣ fi muḥāḍarat al-khawāṣṣ}, suggest that interest in riddles is a result of jurists’ desire for ever more complete understandings of substantive law.

Perhaps the secret to the profusion of legal riddles is the jurists’ need (ḥurs) for diversifying their research methods for substantive law (\textit{asālīb baḥth al-furūʿ al-}

\begin{footnotesize}
\textsuperscript{568} See EI\textsuperscript{3} s.v. “\textit{Lughz}” (Bencheheb).
\end{footnotesize}
fiqhiyya). Riddles also provide opportunities for examining the scope and substance of what is known (li-ikhtibār madā tarkīz al-maʿlūmāt) and help jurists remember the most obscure rulings (wa-li-daʿm al-ʿawiṣ minhā fī al-adhhān). The relationships that Abū al-Ajfān and Baṭīk̂h establish between riddles, research into substantive law, and debating styles are clear. This claim can be pushed further, however: riddles were also a status-related social practice in which professionals and cultural elites participated. Further, the direction of causality Abū al-Ajfān and Baṭīk̂h establish is less clear. It seems more likely that social practices led to the composition of these books rather than the composition of a genre of books altering existing social practices. This is similar to the claim made in Chapter Three of the present study, that the need to overcome farq objections in actual disputations provided a major impetus for the composition of books of legal distinctions.

While the word alghāz (sg. lughz) seems to be the most commonly used word to describe riddling, it also competes with other terms such as aḥāji (pl. uhjiyya), muʿammayāt (pl. muʿammā), muʿāyāt (pl. muʿāyat), imtiḥānāt (sg. imtiḥān) and even al-asʿila wa-l-ajwiba. Certain authors seem to believe in strong distinctions between these terms. Ibn Farḥūn seems to relate each term to a different branch of learning. “Scholars have written numerous books on this subject. Jurists call this kind of writing ‘riddles’ (alghāz), scholars of inheritance call it ‘enigmas’ (al-muʿammiyāt), grammarians


571 Ibn Farḥūn is specifically discussing the asking and answering of very obscure questions (al-masāʾil al-ʿawiṣāt).
‘puzzlers’ (al-muʿammā), and lexicographers call it ‘quandaries’ (aḥāji).” Ibn Farḥūn claims to write his book because of the importance of this kind of riddling and the lack of such books in the Mālikī school. According to Ibn Farḥūn, the use of alghāz to refer to riddles is a usage of the jurists, but in Muḥammad Sālimān’s recent essay on alghāz, legal riddles are not even mentioned.

Writing in the Encyclopaedia of Islam, however, Bencheheb says “a lughz is an ‘enigma’, muʿammā (pl. muʿammayāt) ‘word puzzle, verbal charade’, uḥjiyya (pl. aḥāji) ‘riddle, conundrum’, three Arabic terms often used in a figurative sense, but basically referring to three kinds of literary plays upon words which are fairly close in type to each other.” According to Bencheheb, the lughz and uḥjiyya are both riddles in the style of question and answer, while the muʿammā is a riddle without the question and answer. The word muʿāmmā, however, can also be used to mean a code or secret writing. The works discussed by Bencheheb on riddles and puzzles are primarily lexicographical or linguistic. “The enigma [(lughz)] is generally in verse, and characteristically is in an interrogative form.” A riddle demands to be solved, the answer almost certainly involving a play on words or a double-entendre. All three styles are generally, but not always, in verse. In other words, his study of riddles found differences based on the form of these puzzles, not in the fields in which they were applied.

572 Ibn Farḥūn, Durrat al-ghawāss, 64-65.
573 Ibn Farḥūn, Durrat al-ghawāss, 65.
574 EI s.v. “Lughz” (Bencheheb).
575 See EI, “Muʿammā” (Bosworth).
576 EI s.v. “Lughz” (Bencheheb).
It does not seem that these three terms for riddles have relevance in the legal realm. Ibrāhīm ibn Nāṣir ibn Ibrāhīm al-Bashar, in his study on Abū al-‘Abbās al-Jurjānī’s work of legal riddles, finds no difference between the various terms for riddles, *alghāz*, *muʿammā*, *uhjiyya*, etc. as used in al-Jurjānī’s book. Al-Jurjānī’s book, he says, “is not a book of *alghāz* in the technical meaning of the word (*al-ma’nā al-muṣṭalaḥ ‘alayhi*), even though it is counted among these works and considered one of them. The author, may God have mercy on him, had a different goal with this book.” Further, al-Bashar discounts the idea of riddles as a genre. “It did not become an independent branch of legal studies at all (*lam takun ‘ilman qā’iman bi-dhātihi ‘inda ‘ulamā’ al-sharī’a*), even if some scholars dedicated books to this topic.” Note the elision of *alghāz*, *aḥājī*, and *muʿāyāt* in this quotation, terms he also refers to as basically synonyms (*alfāz mutaqāriba*). It is unclear why al-Bashar does not accept this as a branch of legal studies, in spite of the number of books written on legal riddles.

The riddles themselves in such books are generally presented in dialogue form, just as are legal riddles. Ibn Farḫūn’s book is a series of consecutive simulated dialogs. Each riddle is introduced with a conditional protasis, the phrase, “If you were to ask... (*fa-in qulta*),” and the answer provides the apodosis, “I would reply... (*wa-qultu*).” The dialogues are blueprints, similar to the inclusion of diputations in certain books of legal

---

distinctions discussed earlier in this dissertation.\footnote{See Chapter Three.} Given the importance of riddles at 
*majālis*, it seems likely that the dialogic presentation in these works was a blueprint for 
performance. Arriving at the solution to a legal riddle involves a high degree of 
sophisticated legal and linguistic education. Fortunately for the reader, these books not 
only pose complicated legal riddles but also provide the solution. In this way, not only 
did a book of riddles potentially prepare one for participation in a *majlis*, but the act of 
reading a book of riddles could function as a simulation of attending a *majlis*. The book 
poses questions for the reader to answer. The reader can attempt to solve the riddle 
and then verify their answer with the one provided in the text. The possibility for 
enjoyment comes through attempting to solve the puzzle, or failing to solve it, through 
understanding the solution to the puzzle on reading it.

The Ḥanafi jurist Ibn al-Shīḥna’s (d. 1447-48/1515-16) *al-Dhakhā’ir al-ashrafiyya fi 
alghāz al-Ḥanafiyya* is also typical of the genre. The majority of the riddles are posed 
with the conditional “If someone were to say... (*in qīla...*)” and the solution to the riddle 
is introduced with the formula “the reply is... (*wa-l-jawāb.*)”\footnote{See ‘Abd al-Birr ibn Muḥammad ibn al-Shīḥna, *Alghāz al-Ḥanafiyya li-ībīn Shihna al-Musammā al-Dhakhā’ir al-ashrafiyya fi alghāz al-Ḥanafiyya*, ed. Fāṭima Shihāb (Cairo: al-Maktaba al-Azhariyya li-l-Turāth, 2014).} The majority of these 
riddles come from Ibn al-Shīḥna himself. He also includes riddles from a book entitled 
Tahdhīb have different phrasing than those in al-Dhakhāʾir and are followed by their solutions. Generally, solving the riddles involves either thorough mastery of substantive law, a mastery of the Arabic language and linguistic interpretation, or both. For instance, Ibn al-Shihna asks:

Question (fa-in qīla): Which wells (ayy biʾr) cannot be used for ablutions until one bucketful of water has been poured out from it?

Answer (fa-l-jawāb): A well with a bucket that has previously been used to draw water from a different well which has sufficiently impure water and may not be used for ablutions (biʾr wajaba nazḥ dalāʾ minhā). Performing ablutions with the water from such a well is only permitted once one bucketful of water has been poured out from it. This ruling is applied in a proportionally consistent manner; the number of buckets of water poured out should be equivalent to the number of times the impure bucket was used (yaṭṭaridu al-suʿāl fī al-dalwayn wa-thalātha wa-arbaʿa bi-ḥasab al-maṣbūb fihā).

Here the riddle consists of a difficult legal question and the solution rests in knowing the details of purity law. Water in a well is pure. It can, however, be tainted by the addition of impurities. The riddle posed here asks why or how a well could be purified by extracting exactly one bucket of water, indeed how can removing rather than adding pure water purify the well. In order to solve the riddle, one has to know purity

---

582 He discusses his use of Ibn al-ʿIzz’s work on page 3. For an example, see below.
583 Ibn al-Shihna, Dhakhāʾir al-ashrafīyya, 8.
law, the status of water in a well, its potential pollutants, and the remedies for the pollution. In other words, in order to understand and solve this riddle, one must know the intricacies of substantive law.

Other riddles, however, require an exercise in linguistic interpretation, as in a riddle cited from Ibn al-ʿIzz. This riddle is posed to Abū Ḥanīfa, who provides a solution. “It is said that someone asked Abū Ḥanīfa, ‘What do you think about someone who says to his wife, ‘I do not wish for Heaven, nor do I fear Hell. I eat carrion and blood. I take the word of (uṣaddiqu) Jews and Christians and I loathe God (abghuḍu al-ḥaqq)...”584 The man continues in this way making statement after statement that appears to repudiate his Muslim faith. Instead of answering the question, however, Abū Ḥanīfa defers to his companions (aṣḥābuhu), in order to gauge their opinions. “They all respond, the one who says this is an infidel!” Upon hearing this, Abū Ḥanīfa smiled and said, ‘No, he is a true believer (muʾmin).”585 At this point the riddle has been fully sketched out. The anonymous questioner posed a straightforward question about the status of someone who seemingly repudiates Muslim dogma. Abū Ḥanīfa’s companions confirm this repudiation with their opinion that he is an infidel. The case seems clear cut. Abū Ḥanīfa, however, disagrees. He sees this person as a good, believing Muslim. How can this be?

The answer, supplied by Abū Ḥanīfa, involves a prodigious act of linguistic interpretation. His solution involves a linguistic re-interpretation of every single one of

584 Ibn al-Ṣḥīḥa, Dhakhāʾir al-ashrafīyya, 199.
585 Ibn al-Ṣḥīḥa, Dhakhāʾir al-ashrafīyya, 199.
the speaker’s statements in order to show how each aligns with proper behavior and belief. Further, not only is this person shown to be a Muslim in good standing, but Abū Ḥanīfa’s interpretations demonstrate that this speaker has attained a high level of religious knowledge and piety. Abū Ḥanīfa explains each one of the speaker’s sentences as having a pious meaning: “When the speaker says, ‘I do not wish for Heaven, nor do I fear Hell,’ this is only because he wishes for and fears their Creator. When he says, ‘I eat carrion and blood,’ he means that he eats fish and locusts and liver and spleen.” Abū Ḥanīfa continues in this way finding an interpretation for each of the speaker’s statements. After reading Abū Ḥanīfa’s explanations, the reader is compelled to agree with Abū Ḥanīfa’s assessment.

In the example I quoted above, Abū Ḥanīfa interprets the phrase “‘I do not wish for Heaven...” as implying an elided phrase (al-ḥadhf). The speaker’s full meaning is, according to this interpretation, “I do not wish for Heaven, I wish for God,” but the second clause has been elided by the speaker. In interpreting the second statement, Abū Ḥanīfa interprets it favorably with a presumption of legality. Only animals that have been ritually slaughtered are permissible for eating and consuming blood is never acceptable. In spite of this, Abū Ḥanīfa understands that this statement is not about eating carrion and blood, but rather an allusion a made by the Prophet Muḥammad.

“There are two kinds of carrion and two kinds of blood that have been made licit for us.

---

586 Ibn al-Shiḥna, Dhakhāʾir al-ashrafiyya, 190.
587 Ibn al-Shihna, Dhakhāʾir al-ashrafiyya, 199-200.
The carrion is fish and locust, the blood, liver and spleen.”\(^{588}\) The statement is therefore to be understood as an allusion to this prophetic hadith and not as a general statement. In making this allusion, the speaker is demonstrating his own knowledge of the Prophetic tradition. His words not only echo those of the Prophet, but this hadith is also used as an authoritative prooftext in legal discussions of what is permissible to eat.\(^{589}\) He is quoting Muḥammad, and quoting him in a correct context. All of the speaker’s statements are interpreted in this fashion by Abū Ḥanīfa and the deep religious learning of the speaker is brought to the fore.

These are two examples of the kind of reasoning and presentation found in works of legal riddles. A broader survey of riddles would likely expand much more on the style and presentations of riddles and likely find diachronic changes in both the style of these books and the style of individual legal riddles themselves. For the present discussion, however, these examples bring two conclusions to light. The first is the legal content of riddles makes books of riddles serious legal works. One must have a thorough grounding in substantive doctrine, legal theory, and the Arabic language in order to solve the riddles presented in these books. A reader lacking the knowledge to answer a riddle can nevertheless learn about the law by reading these works. He can

---


understand the relationship between the question and answer given knowledge of both.

The second point is perhaps more important. These books show the degree to which jurists could indulge in intellectual play within their professional discipline of Islamic law. These books show us moments of sustained enjoyment in the intricacies of Islamic law and legal theory. At the same time, however, they remain serious and valuable works of Islamic law. Moreover, these books show that play was an acceptable way to interact with Islamic legal knowledge. Not only do the author and reader interact in games of riddles, but as the second example shows, Abū Ḥanīfa is given a prominence within this tradition. He himself, the eponym of the legal school, is shown taking part in the tradition of riddling.

My understanding of play in the context of Islamic law is inspired by the work of Norman Calder, particularly his *Islamic Jurisprudence in the Classical Era*. His discussion of play comes largely from his understanding of Islamic law as a more or less stable set of rules and relationships that jurists constantly attempt to reinvent and redescribe. For him, play is in many ways the primary literary feature of Islamic law. “[T]he most characteristic features of development through time are those that reflect, not an interest in new rules, but a self-reflective interest in the tradition itself and in the modes of expressing inherited rules.” Accordingly, any interesting development in Islamic law might occur on a literary – not a legal – level. In this legal context, play

---

590 See also, however, the discussion of Calder’s earlier ideas about play in Islamic law in “Alta Discussion” in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Boston; Leiden, 2006), 413–14.
involves two activities. The first activity is a richer linguistic analysis and maker more intricate connections between the issues inherent in legal texts—such as grammar and lexicography, but also investigations of passages cited from the Quran and hadith corpus. The second activity involved in this intellectual play is the pursuit of greater stylistic refinement and organizational clarity. “Real measurable development, implying a process that is more or less continuous through time and in a definable direction, can be distinguished only in relation to organisational technique, linguistic presentation, and syntactical virtuosity.”  

In Calder’s telling, it was this aspect of legal thinking that made the study of law “a joy and delight” for pre-modern jurists. While I do not agree entirely with Calder’s dismissal of substantive developments, his focus on the aesthetic dimensions of legal literature is compelling and worthy of further research.

593 Calder, *Islamic Jurisprudence*, 86.
594 Calder is convincing in his analysis in terms of the genres that he studies, the *mabsūṭ* and the *mukhtāṣar*. Other scholars, however, have shown doctrinal development in other genres of Islamic legal writing. In particular, Baber Johansen has demonstrated how Ottoman legal commentaries showed important changes in substantive law. Other studies have also shown development occurring in fatwa literature. Wael Hallaq discusses development from a theoretical standpoint and David Powers and Yosef Rappaport have demonstrated this from a social historical perspective. These important studies do not undermine or go against Calder’s conclusions for the two genres he studies nor his general approach to Islamic legal texts. See Baber Johansen, “Legal Literature and the Problem of Change,” *Islam and Public Law: Classical and Contemporary Studies*, ed. Chibli Mallat (London: Graham and Trotman, 29–47; idem., *The Islamic Law on Land Tax and Rent: The Peasants’ Loss of Property Rights under the Hanafite Doctrine* (London; New York: Croom Helm, 1988); Wael Hallaq ”From Fatwās to Furūʿ: Growth and Change in Islamic Substantive Law,” *Islamic Law and Society* 1 (1994): 29–65; David Powers, *Law, Society, and Culture in the Maghrib*, 1300-1500 (Cambridge: Cambridge University Press, 2002); and Yossef Rapoport, *Marriage, Money, and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2005).
We can see this kind of intellectual play at work in books of legal riddles and we will see that books of legal distinctions employ similar tools. For Calder, play involves ways to improve the presentation of legal information. He discusses how play is used to increase the precision of legal language and clarify the relationship between laws and ideas. In riddles, of course, the play works in an opposite way. The riddle itself makes the law ambiguous or obscure; the answer involves perceiving the straightforward application of law through this obscurity. Both steps involve a high degree of linguistic play and creative exploration of linguistic and legal issues. The intellectual dexterity involved in solving a riddle made this activity not only enjoyable, but also appropriate as a way of honing one’s legal mind. Ibn Farḥūn makes a statement to this effect in the introduction to his book on legal riddles. “[I]t is necessary for a scholar to test (an yumarrina) his colleagues by asking them the most obscure questions possible (ilqāʿ al-masāʿil al-ʿawīṣāt ‘alayhim) to test their minds’ ability to clarify difficult questions (muʿaddalāt) and decipher obscure questions (īḏāḥ al-mushkilāt).”

Ibn Farḥūn’s quotation implies that some of the most obscure questions possible are to be found in the form of legal riddles, and that solving legal riddles was a way of maintaining a sharp legal mind. It was not only legal riddles, however, where some of these obscure questions were to be found.

Many works of legal distinctions packaged the law as riddles or quasi-riddles, comparing laws in ways that seem confusing or unintelligible, but in such a way that the prolonged comparison actually reveals the straightforward distinction, much in the

---

595 Ibn Farḥūn, Durrat al-ghawāṣṣ, 64.
way that the question and answer in riddles are packaged. Interestingly, however, the relationship between riddles and distinctions as legal concepts was not a one-way affair. It was not only that riddles led to a newfound sense of play in certain works of legal distinctions, but the reasoning of legal distinctions showed itself to be a compelling way of presenting legal riddles.

Legal Distinctions as Play

The style of presentation of legal riddles proved useful to authors of works on legal distinctions. The form and logic of works of legal distinctions were equally useful for the presentation of legal riddles and many works of legal distinctions, particularly those written during the Mamluk Sultanate, adopt the rhetorical style of the riddle-form.

Riddle-influenced legal distinctions can be seen clearly in the chapter on legal distinctions in Ibn Nujaym’s *al-Ashbāh wa-l-naẓā’ir*; I focus in particular on his section on ritual purity.\(^{596}\) The first distinction in this section says, “If a piece of animal dung (buʿra) falls into a well, it does not render the water impure. However, if half of a piece of animal dung (nasfuhā) falls into a well, it does render the water impure.”\(^{597}\)

\(^{596}\) Ibn Nujaym claims that all of his distinctions come from the “the legal distinction work written by Imām al-Karābīsī titled *Talqīḥ al-Maḥbūbī*.” The first part of this statement likely refers to Asʿad ibn Muhammad al-Karābīsī and his book *al-Furūq*. The *Talqīḥ al-Maḥbūbī*, however, refers to a different work by a different author, the *Talqīḥ al-ʿuqūl fī al-furūq* by Aḥmad ibn ʿUbayd Allāh al-Maḥbūbī (d. 640/1243), also known as Sadr al-Sharīʿa al-Awwal.

distinction seems to challenge the most basic laws of logic. How can a greater amount of an impure substance be less impure than a lesser amount? This logical affront prods the reader to reflect, to understand how these two situations can result.

The next distinction is just as confusing. “It is not incumbent on a man to help his sick wife perform her minor ablutions, but it incumbent on him to help his sick slaves, male or female, perform their minor ablutions.” In this instance, a husband has a greater legal obligation to help his slaves perform their religious duties than he has to his wife. Again, this situation seems to defy common sense. Privileging the religious duties of one’s slaves at the expense of one’s wife contravenes the expected social order. Not only would this devalue marriage in relation to slavery and concubinage, but this distinction also seems to place the religious needs of an enslaved person above those of a free person. Again, this distinction stokes a sense of curiosity in the reader, highlighting the allure of what is to come. Because the distinction seems so absurd, the reader expects the author to resolve this uncomfortable state of affairs. The explanation Ibn Nujaym provides has to resolve not only the contradiction between the laws compared, but also the seeming incongruity between these substantive laws and common sense. The anticipation established by the comparison and the resolution thereof through the discussion of the distinction is a clear borrowing of the presentation style of riddles, which functions similarly in order to gain the attention of a reader or an audience. While the claims that Ibn Nujaym makes in his comparisons are provocative, his explanation of the distinction between the compared laws places

---

598 Ibn Nujaym, Al-Ashbāh wa-l-naẓāʾir, 4:286. This is the second distinction in the sixth chapter.
them squarely within the normal doctrinal parameters of Islamic law. Further, the reasoning makes the seeming incongruity clear and shows the outcomes to be logical. With the rationale presented, the strange case of the conflicting laws no longer appears absurd, but rather as an anomaly that results from normal processes of legal reasoning.

In the case of animal dung falling into a well, why would a lesser quantity be more polluting than a greater quantity? Ibn Nujaym explains “The distinction is that one piece of animal dung, when it falls into a well, is covered by an outer crust that prevents the pollutants from spreading (tamna‘u min al-shuyū’), whereas this is not the case with half of a piece.”

Ibn Nujaym’s explanation functions on two separate levels. The first which functions largely on stylistic grounds explains the absurdity involved in the phrasing. Contrary to the way this distinction was presented, this distinction does not say that less of a pollutant pollutes more, but rather that the two entities compared are not alike. It is only through this highly specific comparison that the lesser quantity can be understood to be more polluting. The second level on which Ibn Nujaym’s explanation functions involves the legal rulings in regard to ritual purity. Here, the idea is that a polluting substance pollutes a pure substance by penetrating the pure substance. The lesser quantity of a pollutant is capable of seeping into the well water, whereas the greater quantity is, in effect, in a sealed container and therefore not polluting. It is a curious situation, but no longer perplexing.

The case of performing ablutions for others resolves itself with a similar logic. Ibn Nujaym explains, “The distinction is that the slave is his property and its upkeep is

599 Ibn Nujaym, Al-Ashbāh wa-l-naẓāʾīr, 4:285. This is the first distinction in the sixth chapter.
incumbent upon him, whereas his wife is not his property.”\textsuperscript{600} In the case of a slave, there is no marital obligation, there is not even a religious obligation per se incumbent on the owner. The requirement for helping a slave with her ablution, instead, is part of the requirement for the upkeep (\textit{islāh}) of one’s property. Since a slave is human, and in this case Muslim, part of the upkeep of the property is to maintain the Muslim slave’s religious duties. Therefore, it is necessary for the slave’s owner to help the slave in this. Since a man’s wife is not his property, this same obligation does not arise. Once more, this explanation renders the distinction comprehensible. At first, the distinction makes it seem as though a man has a greater religious duty to a slave than to his wife. This is the effect of the linguistic play involved in this legal distinction. The description of the distinction, however, explains that this is actually a case of religio-ethical duties that can arise in certain specific cases of property ownership. A man has ownership of his slaves but he does not own his wife. Still, there may be times when a slave is owed something that a wife is not, but this is due to the conjunction of the slave’s status as both property and a Muslim with religious obligations, not laws of ritual purity.

Of course, Ibn Nujaym was writing these words playfully; his goal was to cement in the mind of the reader why the seemingly outrageous results are not, in fact, outrageous. They come within the context of his \textit{Ashbāḥ wa-l-naẓāʿir}, a work which in certain ways offers a comprehensive survey of Ḥanafī law as understood by 16\textsuperscript{th}-century jurists. In many ways, his book is a snapshot of the then contemporary understandings of \textit{fiqh}. The chapters in his book treat: (i) general principles (\textit{al-qawāʿid}

\textsuperscript{600} Ibn Nujaym, \textit{Al-Ashbāḥ wa-l-naẓāʿir}, 4:286. This is the second distinction in the sixth chapter.
al-kulliya), (ii) useful remarks on points of law (al-fawāʾid), (iii) similar and different cases (al-jamʿ wa-l-farq), (iv) riddles (al-alghāz), (v) legal stratagems (hiyal), (vi) distinctions (al-furūq), and (vii) stories and correspondence (al-ḥikāyāt wa-l-murāsālat).

Taken together, a reader can see the literary interests of these jurists, but moreso, the prominence that different genres had within the writing of Islamic law and the widespread sense of intellectual play among elite jurists. Ibn Nujaym has a separate chapter on riddles, but the chapters three, five, six, and seven all focus on interesting and peculiar points of law; and instances of stretching and bending of the law in unusual ways. Indeed, only the second chapter on fawāʾid seems to correspond to a traditional, straightforward approach to Islamic law.

The Merging of Alghāz and Furūq

Ibn Nujaym’s legal distinctions seem clearly to be influenced by or responding to the form of legal riddles. The influence, however, went in both directions; the influence of distinctions on riddles is perhaps even more noticeable. Many jurists wrote books that, in terms of content, seem to be books of legal distinctions, but are titled as if they were books of legal riddles. The connection seems to have been widespread; there is much scattered material evidence that these two forms of writing were seen as related.

---

601 This section is not on legal distinctions, even though its title suggests it may be so. It instead consists of broad comparisons of different legal ideas or concepts, rather than specific comparisons of laws and their outcomes. For instance, topics treated include “The Differences between the Minor and Major Ablutions,” “The Differences between Wiping over a Shoe (mash al-khuff) and Washing the Foot,” and “The Differences between Menstruation and Childbirth (al-nifās).” It is more reminiscent of a applied lexicographic distinctions. See Ibn Nujaym, al-Ashbāh wa-l-naẓāʾir, 3:287-479, 4:5-286.
Abū al-ʿAbbās Aḥmad al-Jurjānī’s *al-Muʿāyāt fi al-fiqh* is perhaps the best example of this convergence; it is a book ostensibly about legal riddles that has almost always been received as a book of legal distinctions. The term *al-muʿāyāt* (sg. *al-muʿāya*) in the title refers to a particular kind of riddle and should most likely be understood in the context of the title as a synonym for *alghāz*. Nevertheless, when reading through this book, it becomes clear that the majority of it does not consist of riddles per se. Instead, this book is largely a list of legal distinctions. A manuscript of this work in the Egyptian National Library even refers to it as *Kitāb al-Furūq li-l-Jurjānī*. The work begins with a short introduction in which al-Jurjānī says:

The following are questions fit to be asked as riddles or to test someone’s knowledge (*al-muʿāyāt wa-l-imtiḥān*). I present them organized by legal topic to expand the usefulness of this book and to make consulting the book easier for whoever wishes to reference it.

The book presents a series of legal puzzles, the majority of which juxtapose pairs of seemingly contradictory legal rulings. Ibrāhīm ibn Nāṣir ibn Ibrāhīm al-Bashar, the editor of *al-Muʿāyāt*, mentions in his introduction that this work consists of “legal distinctions, legal maxims and precepts (*al-qawāʿid wa-l-ḍawābiṭ*), and legal riddles, but

---

602 Further research into riddles need to be conducted before this statement can be made with confidence.

603 This manuscript is catalogued under *Fiqh Shāfiʿi*, *Fiqh Shāfiʿi* 915, I thank Noha Abou Khatwa with helping me identify the accession number of this manuscript. It is also the manuscript used in the Dār al-Kutub al-ʿIlmiyya edition of this work, see Abū al-ʿAbbās Aḥmad ibn Muḥammad al-Jurjānī, *al-Muʿāyāt fi al-ʿaql aw al-Furūq*, ed. Muḥammad Fāris with an introduction by Kamāl al-Dīn al-ʿInānī (Beirut: Dār al-Kutub al-ʿIlmiyya, 1993), 14-15.

the primary topic of the book is [legal distinctions]. These three categories which make up the book are all being used as riddles.

Al-Jurjānī’s use of distinctions in this book signals yet another function for legal distinctions. Here, distinctions serve primarily as a vehicle for posing difficult questions that require specific answers. Previously we have seen distinctions function (i) as a specific objection within formalized disputational procedures, (ii) as a concept that shows relationships between substantive laws, and (iii) as a genre through which to organize Islamic legal knowledge. Al-Jurjānī’s statements in his introduction were accepted by other Shāfiʿī scholars; they too understood his book as being primarily about riddles. Ibn Qāḍi Shuhba says that the Kitāb al-Muʿāyāt “included different kinds of ways to test someone’s knowledge (al-imtihān), such as riddles, distinctions, and exceptions from legal precepts (istithnāʾāt min al-ḍawābiṭ).”

The introduction and title of this book both signal a purpose different from that of the books of legal distinctions discussed in the previous chapters. The ostensible purpose of the distinctions included in this book is to perplex and to provoke the reader into a deeper contemplation. The use of three different legal forms—furūq, qawāʿid, and ḍawābiṭ—to convey this information signals the creative potential of a complex discursive tradition such as that of Islamic law. Further, it points to the way in which different concepts could be employed and combined for the sake of intellectual play. Here, the intellectual play is different from that discussed above. One aspect of al-

---

605 Al-Bashar “Introduction,” 91.
606 Ibn Qadi Shuhba, Ṭabaqāt al-fuqahāʾ, 1:260.
Jurjānī’s play here involves the appropriation of distinctions, maxims, and precepts, all of which belonged to recognizable legal categories, and his repackaging of them as legal riddles. The function of works of legal distinctions may not be straightforward, but the function of these works of riddles seems to revolve around the creative intellectual manipulation of knowledge of Islamic law for purposes of pedagogy and entertainment.

The distinctions themselves that al-Jurjānī provides are in large measure indistinguishable from those found in books that self-identify as books of legal distinctions. Certainly, they would not be out of place in a book of legal distinctions. The following is an example of a legal distinction from his chapter on prayer.

If, while praying, someone decides to stop his prayer, the prayer is nullified, even if he does not actually stop it.

If, however, while reciting the Quran, someone decides to stop his recitation, it is not nullified as long as he does not stop reciting.

The distinction between these two is that prayer requires an intention to pray (taftaqiru ilā al-niyya) and becomes void by any action that negates this intention. Thus, a prayer is nullified by the mere intention of stopping it. Reciting the Quran, however, does not require such intention, thus it is not nullified by the intention of stopping.

The hajj pilgrimage is not treated according to this principle (wa-lā yalzimu ‘alā ma’nā al-aṣl al-ḥajj), for it is not nullified by an action that negates
the intention to perform it. Because of this, a hajj pilgrimage is not voided by an intention of stopping.\textsuperscript{607}

This passage first compares the role of intention in two ritual acts, prayer and Quran recitation. The distinction between how intention functions in these two acts lies in the way that each of them requires intention. While prayer is completely invalid without intention, a recitation from the Quran is still ritualy valid even without prior intention.

This is a relatively straightforward distinction related to the factors underlying the validity of each act. Once the role of intention in regard to these two acts is established, al-Jurjānī brings in a third ritual act, the hajj pilgrimage. The status of the hajj pilgrimage is perplexing, as it seems to fit with both camps. It requires intention to begin, but it does not require a continuous intention throughout.

In many ways, this would be a typical legal distinction if not for its inclusion in a book that presents itself as a book of legal riddles. The book’s genre, signaled by the book’s title, suggests that we understand this distinction differently. In part, it is no longer a distinction functioning as as a distinction, but rather a distinction functioning interactively, as a riddle to be solved and a question to be answered. The primary difference is not one of content, but of context, social performance in a majlis. The manner in which the discussion of this distinction is packaged emphasizes the seemingly paradoxical nature of ritual intention. Since the book primes the reader to look for moments of contemplation, the riddle inherent in this distinction is readily

\textsuperscript{607} Al-Jurjānī, al-\textit{Mu‘āyat}, 191.
The use of legal maxims and precepts (al-qawāʿid wa-ḥadīṯ) in this book should be understood similarly.

Al-Jurjānī’s use of maxims and precepts follows a set pattern. He states a broad precept or maxim and then lists the exceptions to it. The fifth legal question in the chapter on ritual purity uses this format. It starts by stating a legal maxim, which, as is typical, comes in the form of a pithy statement. “Water can never remain pure inside of an impure container (lā yuʿrafū māʾ ṭāhir fī ināʾ najas).” The statement expresses a general truth about Islamic legal doctrine: pure water, placed in an impure container, becomes contaminated and loses its state of purity. As often happens with broad generalizations, “there are, however, two exceptions (illā fī masʾalatayn).” It seems as though it is the exception that proves the rule. The knowledge of these two exceptions serves as the solution to the puzzle.

The first exception is a container made from the skin of carrion. When a lot of water is poured into it, the water does not become impure (jīld mayyita ṭurna fī māʾ kathīr wa-ḥan yataghayyar). The second is a pure vessel from which a dog has drunk. When a lot of water has been poured into it, it does not become impure (wa-ḥan yūṣūk mutaghayyir). The water in these cases is pure, but the vessel is impure.

The underlying rationale for both of these exceptions is that pouring a large quantity of water into these vessels renders them pure. In both exceptions, the vessel is only

\[608\] Al-Jurjānī, al-Muʿāyāt, 151.

\[609\] Al-Jurjānī, al-Muʿāyāt, 151.
temporarily impure but becomes purified, i.e. they are accidentally, not essentially, impure objects. Because of this, water in them can be pure once the impurity has been removed. This removal, however, can occur in these cases by the very act of filling the vessel.

Finally, al-Jurjānī also includes a relatively small number of alghāz in his work. Some of the riddles are presented straightforwardly, while others are only alluded to. A straightforward riddle presents a complex scenario to solve, sometimes in question-and-answer form. There are no riddles in the chapters on prayer and purity, so I will cite an example from the chapter on inheritance: “A deceased person leaves behind a group of heirs that includes men and women. He leaves them 600 gold coins. One of his heirs receives exactly one gold coin. This question (ḥādhihi al-masʿala) is known as the ‘Question of the Gold Coins (al-dīnāriyyah).’” This is the extent of the riddle; the solution involves knowing the make up of the heirs such that the quranically prescribed inheritance laws grant one of them exactly one coin, or one six-hundredth of the inheritance. It is, in effect, a math problem and solving it requires a full understanding of the different shares owed to different heirs. Al-Jurjānī continues, providing the solution to the riddle. “The solution is that he leaves behind a wife, a mother, two daughters, twelve brothers, and one sister. His sister gets one gold coin. The remainder (al-bāqi), after the required shares to his mother, sister, and daughters, (baʿd al-furūd) is twenty-five gold coins. His brothers get twenty-four gold coins, and the

---

610 Al-Jurjānī, al-Muʿāyāt, 560.
sister is left with one.” As can be seen, the solution involves creating just the right group of heirs such that one of them is entitled to exactly one gold coin. This question can also be understood as asking that one devise a situation in which an heir is entitled to receive one six-hundredth of the estate.

The riddles (alghāz) in al-Jurjānī’s work function similarly to the distinctions and exceptions. Of course, the different forms he uses allow him to present the information in different ways. In the context of this book, which aims to provoke the reader into contemplating the intricacies of Islamic law, the general rule serves no purpose without enumerating the exceptions to it. The exceptions, as seen above, are the specific situations which simultaneously serve to prove the validity of the rule and establish its limits. In contrast, the riddle is the statement of a highly specific situation, both a set of actions and a set of outcomes. The riddle’s formulation attracts the attention of the reader, who attempts to understand how it is that the situation described can come about. The legal problem in a lughz provides the necessary information to solve a legal puzzle, but leaves unstated the particularities which make the outcomes match the situation. The specificity of the situation in the above riddle is a sharp contrast to his statement of a general rule, “water can never remain pure inside

---

611 Al-Jurjānī, al-Muʿāyāt, 560.
612 See Noel J. Coulson, Succession in the Muslim Family (Cambridge, UK: Cambridge University Press, 1971), 35–39. The division of shares is as follows. Since the deceased has children, his wife gets one eighth. Similarly, his mother received one sixth. His daughters each receive one third, since there are multiple daughters and the man had no sons. The sum of the inheritance given to his vertical relations is 23/24 of his wealth, or 575 dinars. The rest of his heirs should then split one twenty-fourth of his inheritance, 25 dinars, with the sister receiving half of a brother’s share. The brothers each receive two gold coins, leaving one gold coin for the sister.
of an impure container.” The latter provides an underdetermined statement that could be used as part of an argument in support of a particular legal ruling. In this sense, distinctions and riddles both serve to elucidate specific situations while the exceptions to general rules reinforce broader legal frameworks. We can see how al-Jurjānī manipulates these legal forms—distinctions, maxims, precepts, and riddles—to highlight both the enigmatic nature of particular legal doctrines and the overall coherence of the law. In his *al-Mu‘āyāt*, the difference between distinctions and riddles is minimized.

**Separating Riddles and Distinctions: The Case of Jamāl al-Dīn al-Asnawī**

There is a clear convergence between riddling and distinctions writing in this period. This convergence was not, however, complete or ubiquitous. Not all books of legal distinctions adopted the logic of riddling and not all books of riddles adopted the presentation styles of legal distinctions. A particularly interesting figure who seems to only partially embrace the coming together of riddles and distinctions is Jamāl al-Dīn al-Asnawī (d. 772/1370). Al-Asnawī was a Shāfi‘ī jurist who lived in Cairo in the 14th century. He was born in the town of Asnā (or Isnā) in Upper Egypt in 704/1305 and moved to Cairo around the age of 17, in the year 721/1321. He moved there to study religious sciences and the biographical dictionaries detail his studies in Islamic law, grammar, and the rational sciences (*al-‘ulūm al-‘aqliyya*), as well as his teachers in those

---

613 The sources differ on the month of his birth. Ibn Qāḍī Shuhba states that he was born in Rajab, but Brockelmann states that Asnawī was born in Dhū al-Ḥijja. See Ibn Qāḍī Shuhba, *Ṭabaqāt al-Shāfi‘iyya*, 3:98.
subjects. He was given the post of lector and recitation (\textit{intaṣaba li-l-iqrā' wa-l-ifāda}) in the year 727/1327. He taught at various law-colleges around Cairo and taught \textit{tafsīr} at the Ibn Ṭūlūn Mosque. Eventually, he began working with the Treasury (\textit{wallā wikālat bayt al-māl}) and became a market inspector. He eventually left market inspection, withdrew from the Treasury, and dedicated himself to teaching and writing (\textit{tašaddā li-l-ishghāl wa-l-taṣnīf}). His scholarly fame in Cairo grew and “he was one of the primary religious authorities there.”\footnote{Ibn Qāḍī Shuhba, \textit{Ṭabaqāt al-fuqahā'}, 3:98-99.}

The biographical tradition tells us that al-Asnawī was a tremendously important and influential scholar. Reports refer to him as the leader of the Shāfiʿī scholars of his time (\textit{shaykh al-Shāfiʿiyya}) and the author of the some of the most important books of the the \textit{madhhab}.\footnote{Ibn Qāḍī Shuhba, \textit{Ṭabaqāt al-fuqahā'}, 3:100.} Ibn Qāḍī Shuhba says that, “[m]any people studied closely with him; the majority of the scholars from all of Egypt were his students (\textit{akthar ʿulamāʾ al-diyār al-miṣriyya ṭalabatuḥu}).”\footnote{Ibn Qāḍī Shuhba, \textit{Ṭabaqāt al-fuqahā'}, 3:100.} Al-Asnawī here is positioned as the leader of his legal school, its most respected member, the author of some of its most important books, and the teacher of the majority of Egypt’s scholars. It is, of course, possible that all of these claims are exaggerations; they nevertheless paint a picture of al-Asnawī as a leading intellectual figure within 14\textsuperscript{th} century Mamluk Cairo. While he is best remembered today for having written a biography of the Shāfiʿī school, \textit{Ṭabaqāt al-Shāfiʿiyya}, al-

\begin{footnotes}
\item[615] Ibn Qāḍī Shuhba, \textit{Ṭabaqāt al-fuqahā'}, 3:100.
\item[616] Ibn Qāḍī Shuhba, \textit{Ṭabaqāt al-fuqahā'}, 3:100.
\end{footnotes}

Due both to his prominent status as a Shāfiʿī and to his involvement in shaping the general intellectual outlook of many of the important scholars in Mamluk Cairo, his views on these two disciplines are of particular interest for the present study. Not only do they represent one way distinctions and riddles could be viewed in the eighth/fourteenth century, but his participation in both genres shows that they had become mainstream vehicles for literary and pedagogical expression, at least for the Shāfiʿī school. His book on legal distinctions is very much in the model of the work by ʿAbd Allāh al-Juwaynī. Unsurprisingly, al-Asnawī mentions al-Juwaynī’s book in his own introduction, in which al-Asnawī situates his book within the wider Shāfiʿī legal tradition. His book not only continues the traditional presentation of seemingly contradictory laws established by the first phase of legal distinctions writing, but even reflects the disputational origins of legal distinctions by including, much like ʿAbd Allāh al-Juwaynī, moments of extended discussion apparently designed to counter potential objections. Even so, his blueprints for disputation are in general much more elaborate than those found in al-Juwaynī’s text, as can be seen from the following passage on

---


618 Being the head of the Shāfiʿī school in the capital of the sultanate, however, undoubtedly gave al-Asnawī’s views special importance. The legal system in Mamluk Cairo was complex, but the Mamluk Sultanate priviledged the Shāfiʿī school over the other legal schools. See Joseph H. Escovitz, *The Office of Qāḍī al-Quḍāt in Cairo under the Bahrī Mamlūks* (Berlin: Klaus Schwarz Verlag, 1984).
fasting, which concerns, at least initially, use of the siwāk, a particular kind of twig used to clean one’s teeth for ritual purification:

The common ruling in our school (al-ma’rūf ‘indanā) is that it is reprehensible for someone fasting to use a siwāk after the sun sets. This is due to the hadith in which Muḥammad says “The scent (al-khulūf) of someone’s breath is sweeter to God than the scent of the siwāk.” This is told on the authority of Abū Hurayra and is in both the Sahih of Muslim and of al-Bukhārī.619 Khulūf, with a ḍamma on the khāʾ, means change or alteration (al-taghayyur). The legally salient issue (wajh al-dalāla), as al-Rāfiʿī said,620 is that the evidence of worship is affirmed by the scent (annahu athr ʿibāda mashhūd lahu bi-l-ṭīb).621 Because of this, getting rid of the scent is reprehensible.

619 The hadith is in Bukhārī in two chapters, on Fasting (ṣawm), Clothing (libās) and in Muslim in his chapter on Fasting (ṣiyām). It is also found in Tirmidhī’s Jāmiʿ, Nisāʾi’s Sunan, Ibn Mājah Sunan, Dārimi’s Sunan, Mālik’s Muwatta’, and the Musnad of Ahmad ibn Ḥanbal. See Wensinck, Concordance, 2:69.

620 This refers to the famous Shāfiʿī jurist, ʿAbd al-Karīm ibn Muḥammad al-Rāfiʿī (d. 623/1226). Along with Abū Zakariyyā al-Nawawī (d. 676/1277), al-Rāfiʿī was one of the two most important Shāfiʿī jurists from the Mamlūk period. See El Shamsy, “The Ḥāshiya in Islamic Law: A Sketch of Shāfiʿī Literature,” Oriens 41 (2013); 292-93.

Moreover, we also avoid the siwāk before sunset (wa-innamā aḥtaraznā ‘anhu mā qabl al-zawāl), because the change in breath most often occurs because of food, not because of fasting (li-anna al-taghayyur fihi ghāliban yakūnu min athr al-ṭaʿām), as al-Rāfiʿī says. This necessitates the distinction between someone who has a meal before daybreak (man yatasahharu) and someone who does not, as well as a distinction between someone who eats something at night (yatanāwalu bi-l-layl shayʿan) and someone who, because of a malady or an illness (li-ʿajz aw maraḍ), does not. Due to this, al-Ṭabarî,622 who wrote a commentary on al-Tanbih, says: If the scent of his mouth is altered after sunset because of some other reason, such as sleeping and the like, his use of the siwāk is not reprehensible.

It is said, however, that, a siwāk is not reprehensible for someone who is fasting until after the afternoon prayer (al-ʿaṣr), as the above-mentioned al-Ṭabarî related.

Others, however, hold that it is never reprehensible (lā yukrahu muṭlaqan). This was mentioned in al-Nawawī’s Rawḍa,623 and it is mentioned in his commenteray on the Muhadhdbab.

Yet others hold that using a siwāk in this fashion is not reprehensible for superogatory prayers but reprehensible for required prayers, to guard against ostentation (khawfān min al-riyā). Al-Rāfiʿī mentioned this in his chapter on

---

622 Abū al-ʿAbbās Ahmad ibn ʿAbd Allāh al-Ṭabarî (d. 694/1295).
623 See note 612, above. For more on al-Nawawī, see Fachrizal A. Halim, Legal Authority in Premodern Islam (Routledge: Abingdon, Oxon ; New York, NY, 2015).
fasting (kitāb al-ṣiyām) on the authority of al-Qādī al-Ḥusayn. You will learn in the Chapter on Funerals (Kitāb al-janāʾīz), that cleansing the blood of a martyr (izālat dam al-shahīd) is forbidden by the rules laid out therein. The purpose of this (wa-ḥikmatuhu) is what the Prophet alluded to: “On the Day of Resurrection, they will come and their jugular veins will spurt liquid (awdājuhum yashkhubu daman) the color of blood but with the scent of musk.”

Here, one might ask, “What is the distinction between the prohibition here, in the case of martyrdom, even though the scent of breath is like the scent of musk, and its only being reprehensible there, in the case of prayer, even though it is better smelling than it (at yab minhu), i.e. better than the scent of musk?”

Perhaps the distinction is the certainty regarding that topic [i.e. martyrdom] and its heightened importance, since it involves them exposing their souls to death because of their glorification of the religion (iʿzāz al-dīn). Therefore, a prohibition on the removal of all traces of martyrdom serves to help proclaim (tanbīhan) the wondrousness of his fate (ʿazm qadarihi). The blood’s remaining on his body is like a banner (ḥāmilan) that demonstrates his

---

624 Al-Ḥusayn ibn Muḥammad ibn Aḥmad al-Marwazī (d. 462/1070–71).
625 This hadith can be found in the Sunan of al-Nisāʾī, in his chapter on Tahrīm and Qasāma, in al-Tirmidhī’s Jāmiʿ on his Tafsīr of Sura 4, and in the Musnad of Aḥmad ibn Ḥanbal. See Wensinck, Concordance, 3:73.
true nature for anyone who is unaware or unmindful of it (li-yakûna baqāʾuhu ḥāmilan ʿalā istḍār ḥaqīqatihi liman jahalahā aw dhahila ʿanhā).

This is a work that in its contents does not reflect the convergence of the two genres, distinctions and riddles. The presentation of this work is straightforward, clearly explaining contrasting legal rulings and how to defend them. There is not a presentation of a curious or unexpected circumstance requiring a clever interpretation. It is rather a straightforward comparison of substantive laws together with their legal rationales.

Similarly, al-Asnawī’s work on legal riddles does not reflect a convergence with works of distinctions. In Ṭirāz al-mahāfil, the reader encounters a work of legal riddles set up very much in the tradition of question and answer writing (al-asʾila wa-l-ajwiba). The questions ask about the permissibility of situations that are seemingly impermissible or the identity of a seemingly impossible legal entity. The answer clarifies the obstacles given in the question.

Mašʿala: [What is a] prayer that must be performed (yajib adāʾuhā), but that cannot be made up. Indeed, making it up is not permissible.

Ṣūratuhu: The Friday prayer (al-jumʿa), which is not made up if it is missed. Rather, you make up the noon prayer (innamā tuqḍī al-ẓuhr). The noon prayer is a different prayer, not a replacement for the Friday prayer. However, someone could say (wa-li-qāʾil an yaqūla): ‘Why can it not be made up in a different mosque?

---

626 Jamāl al-Dīn al-Asnawī, Maṭāliʿ al-daqāʾiq, 2:22-23
(fi jum‘a ukhrā) that is not required for him because of travel or another legitimate reason (bi-sabab safr wa-nahwihi)?

This riddle hinges on the peculiar status of the jum‘a prayer. It is required at the same time as the noon prayer (al-ẓuhr), but it has an additional requirement that it be performed in a communal mosque with others. Since, in theory, each city has only one communal mosque (jāmi‘), a missed communal prayer cannot be made up because there is only one occasion for prayer per city per week. However, the trick to the riddle is understanding that a communal prayer is an additional requirement added to the Friday noon prayer, such that while the communal prayer can not be made up, the noon prayer still can. Presumably, the audience is aware that missing a jum‘a prayer does not excuse a Muslim from performing the noon prayer, but the riddle involves knowledge of the difference between the jum‘a and the ẓuhr prayers. It is interesting that this riddle ends with an unanswered question that potentially undermines the solution to the riddle. The riddle should have a clear answers, yet al-Asnawi only provides a provisional answer.

In terms of content, these works do not appear affected by the phenomenon of convergence discussed in this chapter. Yet the activities of riddling and distinctions writing necessarily intersect. Distinctions by their nature seem initially confusing and riddles involve being able to differentiate among confusing legal minutiae.


Nevertheless, al-Asnawī’s distinctions do not present themselves as intractable problems and his riddles are not given in the form of distinctions. In this regard, his two works are an important reminder that this convergence did not affect all works produced after a certain period. Rather, the convergence of distinctions and riddles signals the beginning of new possibilities within these two legal genres.

A comparison of the introductions to these two works, however, reveals that al-Asnawī nevertheless saw them as belonging to almost identical traditions of legal writing. Al-Asnawī begins each of these works with a discussion that situates each book historically in a preexisting and well-known tradition in order to provide readers a framework through which to read the book. He claims that there are two kinds of works in the Shāfiʿī school that deal with legal distinctions. The first deals directly with the topic. In this, he situates his Matāliʿ al-daqāʾiq as a work of legal distinctions and cites al-Farq wa-l-jamʿ by ʿAbd Allāh al-Juwaynī and al-Wasāʾil fi furūq al-masāʾil by Abū al-Khayr Salāma ibn Ismāʿīl ibn Jamāʿa al-Maqdisī (d. 480/1087) as his predecessors.

These are the only two books that directly tackle the subject of legal distinctions in the Shāfiʿī madhhab, according to al-Asnawī.\(^{629}\) The second strand of writing deals with legal distinctions indirectly. This strand encompasses “something broader than legal distinctions per se (mā huwa aʿamm minhu).”\(^{630}\) In this second vein, he cites al-Muṭāraḥāt by Abū ʿAbd Allāh ibn al-Qaṭṭān’s (d. 359/970), al-Muskit by Abū ʿAbd Allāh al-Zubayrī, and al-Muʿāyāt by Abū al-ʿAbbās al-Jurjānī.\(^{631}\) On the one hand, this discussion

\(^{629}\) Jamāl al-Dīn al-Asnawī, Matāliʿ al-daqāʾiq, 2:8.
\(^{631}\) Jamāl al-Dīn al-Asnawī, Matāliʿ al-daqāʾiq, 2:8–9.
complements and affirms the idea of *furūq* as a genre of Islamic legal writing. Al-Asnawi’s statement highlights the currency that genre had for al-Asnawi and his readers and demonstrates the expectation they had for a genre dealing only with a particular topic, i.e. distinctions. At the same time, however, this discussion shows how permeable genres could be, at least in the case of the legal genres of distinctions and riddles.

When introducing *Ṭirāz al-maḥāfil*, al-Asnawi begins similarly, discussing books that directly deal with the topic of legal riddles and those that tackle the subject only in part or indirectly. He thus places his book on legal riddles within a tradition encompassing *al-Muṭārahāt* by Abū ʿAbd Allāh ibn al-Qaṭṭān, *al-Muskīt* by Abū ʿAbd Allāh al-Zubayrī, *al-Hiyal* by Abū Ḥātim al-Qazwīnī, *al-Muʿāyāt* by Abū al-ʿAbbās al-Jurjānī, *al-Ijāz fī al-alghāz* by ʿAbd al-ʿAzīz al-Jīlī (632/1234), and *Simṭ al-farāʾīd wa-ghurar al-fawâʾid* by Muḥibb al-Dīn al-Ṭabarī (690/1291). Not only does this list include all of the works listed in *Maṭāliʿ al-daqāʾiq*, but further, when mentioning works dealing with legal riddles but not devoted principally or directly to the subject, he expressly includes “works of distinctions, stratagems (*hiyal*), and difficult to answer questions (*al-asʿīla dhāt al-ajwība al-ʿawīsa*)”. In each of these lists, al-Asnawi brings these two traditions together, even though he does not conflate the two genres. He demonstrates a particular understanding of these two genres. His statements show that scholars in the Mamluk era already saw these two trends as closely interrelated.

---

In the introduction to this chapter, I discussed one general idea for the classification of genres in the Arabo-Islamic tradition, namely, an approach to genre through title. This approach is certainly one way to understand genre, and it is even one which the tradition itself embraces.\(^{634}\) Al-Asnawi, however, is clearly operating with a different approach to the idea of literary genre. First, he seems to understand genre as something porous. For him, books can easily and unproblematically belong to multiple generic traditions. He mentions several of the same works as belonging to both genres. In discussing the literary background to both traditions, al-Asnawi alludes to the permeability of genre in saying that there have been books in “this genre exclusively” (\(li\-hādhā al-naw\(^{c}\) bi-khuṣūṣihi\)) while others “comprise something broader (\(yashtamīlu ʿalā mā huwa aʿamm minhu\)).”\(^{635}\)

It is interesting to note that Ibn Farḥūn, al-Asnawi’s approximate contemporary, also uses the word \(naw\(^{c}\)\) to refer to “genre” in his book of legal riddles, \(Durrat al-ghawāṣ\)\(f\) \(muhādarat al-khawāṣ\). “I have not found a book of this genre within the writings of the Mālikī school (\(lam aqif li-l-mālikīyya ʿalā taʿalīf min hādhā al-naw\(^{c}\)).”\(^{636}\) Apparently the first Mālikī book on riddles is Ibn Farḥūn’s. His use of the term \(naw\(^{c}\)\) to describe his contribution with \(Durrat al-ghawāṣ\) suggests both an awareness of the existence of modalities of writing, of which riddles is one category, something also suggested by al-Asnawi’s comments in his own books. Their use of the same term to

\(^{634}\) Not only do biobibliographical sources use something like this as a shorthand when referring to works, but the existence of rhyming titles, both in terms of rhyming with the content and commentaries rhyming with the title of the work on which they are commenting.

\(^{635}\) Al-Asnawi, \(Maṭāliʿ al-daqaqīq\), 2:7.

\(^{636}\) Ibn Farḥūn, \(Durrat al-ghawāṣ\), 65.
describe something akin to literary genre, however, suggests a shared understanding of genres and legal genres between these two authors.

**Conclusion**

This chapter studied the interactions between styles of legal writing and the social consumption of knowledge from the late Abbasid period into the beginnings of Ottoman control over Egypt, and identified the Mamluk period as the period of greatest importance for the conjunction between interests in riddling as an art form and the proliferation of intellectual majālis that served as venues for the performance of knowledge. The spread of literary salons and the attendant growth in a market for riddling as a minor form of social capital are characteristic of cultural life in this period. The effect of such developments on intellectual production can easily be seen in the changes undergone by legal distinctions in this period. These trends affected the writing of works of legal distinctions by promoting their integration with riddles and pushed books of riddles towards greater popularity. These two trends were not, of course, confined to legal writings, nor to the composition of original works. Most, if not all, writing in the Mamluk period was impacted by these trends.

Everett Rowson has addressed some of the conjunctions between majālis, and the consumption and production of knowledge during this period in an article on two commentaries on the works of Ibn Zaydūn produced in Mamluk Cairo. He stresses the importance of these commentaries as aiming in part to be encyclopedic. Of their two authors, he says,
Both Ibn Nubātah and al-Ṣafadī were addressing several audiences, and accomplishing several intentions, at once. Their commentaries offered students a panorama of the world of literary learning... At the same time, peers... were expected to congratulate themselves on recognizing, and even anticipating, the information and allusions as they were presented... A broader audience was offered a smorgasbord of ‘fawā’id,’ ‘useful bits.’ which they could savor and incorporate into their dinner conversation.637

Rowson’s analysis highlights some of the themes discussed in this chapter, namely the important links between social practices relating to the production and manipulation of legal knowledge and the composition of scholarly literature. His work also highlights the reciprocal interactions between socio-cultural developments and writing. Rowson’s comments on reading publics resonate in particular with our discussion of legal riddles and their contexts. The rhetorical style of riddles, partially adapted and adopted by books of legal distinctions, also offers various levels of engagement. Riddles can be enjoyed by “peers...recognizing and even anticipating the riddles and their solutions. Riddles can also offer enjoyment for a reader when looking at the answer and working backwards to understand its connection to the riddle. While some majlis participants may have been able to recognize the content of these commentaries and solutions to these riddles, others were exposed to and entertained by new information that they could deploy later.

More importantly, however, the later history of legal distinctions shows how important social factors could be for long-term changes in the aesthetics of scholarly writing. The convergence of riddles and distinctions was, on the one hand, a minor development in this history of legal writing that started towards the end of the Abbasid period and continued through the Mamluk Sultanate. It is indicative, however, of a larger change in legal writing that occurred during this period. The changes that brought about increased interest in riddling were not simply limited to a narrow corpus of text. Instead, the integration of this corpus into the fiqh tradition made the rhetoric of riddling into a new style of legal writing. In other words, the reification of the textual tradition made these works (or at least some of them), a permanent part of the legal tradition, thereby marking a new aesthetic style within the classical fiqh tradition. In addition, the reification of such works, as seen in Ibn Nujaym’s *al-Asbāh wa-l-naẓāʾir*, denudes the aesthetics of riddling from particular performance contexts and makes this another aesthetic mode of legal writing.

While these trends impacted legal writing, they did not dominate the production of written legal scholarship during the Mamluk period. Indeed, much of the legal-literary output of this period was driven by the institutional needs of the madhhabs, madrasa educational practices, or even the personal interests and concerns of individual scholars.638 At the same time, the personal needs and interests of individual jurists, or perceived institutional needs of the madhhab, created the

638 On the institutional background, see Ahmad El Shamsy, “The Ḥāshiya in Islamic Law: A Sketch of Shāfiʿī Literature” *Oriens* 41 (2013): 289-315, for a discussion of the importance of commentaries, for instance, for Islamic law.
conditions for texts that attempt to rewrite the tradition according to contemporaneous standards of aesthetics. The realities of legal writing involved combinations of all these trends and likely include more yet to be discovered. This chapter showed in particular how the social uses of legal knowledge and its various forms contributed to a convergence between legal riddling and legal distinctions, and how a variety of social and institutional settings contributed to the production of Islamic legal knowledge.

---

Chapter Six: A Bibliographic Survey of the Distinctions Genre

The previous chapters of this dissertation studied the history of Islamic legal distinctions by surveying the prehistory and history of the disciplinary scope and generic boundaries of legal distinctions writing. The story of legal distinctions as a scholastic enterprise comes to an end with the sixth chapters (al-fann al-sādis) of both Jalāl al-Dīn al-Suyūṭī’s (d. 911/1505) Kitāb al-Ashbāh wa-l-naẓāʾir and Ibn Nujaym’s (d. 970/1563) Kitāb al-Ashbāh wa-l-naẓāʾir. This dissertation’s earlier chapters also described the various contexts from which the concern with legal distinctions arose and the complications in attempting to establish the limits of legal distinctions as a genre of Islamic legal literature. Although in those previous chapters I traced the history of legal distinctions in detail, I have reserved until the present chapter a comprehensive discussion of the books that make up the genre of legal distinctions. This chapter presents a critical bibliography of primary books of legal distinctions and their known manuscripts. An analysis of the manuscripts of works of legal distinctions, that is, of the material history of legal distinctions writing, adds two separate facets to our understanding of this tradition.

---

640 The sixth section of each work is on legal distinctions.
641 See Appendix I and II.
642 I use the term material history broadly, as defined by Ian Woodward. “Objects are the material things that people encounter, interact with and use. Objects are commonly spoken of as material culture... The field of material culture studies... incorporates a range of scholarly inquiry into the uses and meanings of objects.” Ian Woodward, Understanding Material Culture (London; Thousand Oaks, CA; New Delhi; Singapore: Sage, 2007), 3.
The first is that the manuscript tradition shows just how widespread use of books of legal distinctions was. Their popularity can be seen in the chronological and geographical spread of the copying and production of new manuscripts of extant works of legal distinctions. While the manuscript record does not necessarily tell us the role that these manuscripts had in the societies or specific social or curricular contexts in which they were produced, the continuous production of these works indicates steady interest in these books. Second, a close look at the manuscript evidence reveals a tradition of two anonymous, untitled works of legal distinctions that circulated widely, alongside the better-known works discussed in the previous chapters. The biobibliographical tradition is silent on the date or authorship of the two texts in question. Since the biobibliographical tradition is concerned primarily with original works written by known authors, and not the copying and spread of manuscripts, let alone of anonymous texts, it is not surprising that these two anonymous works are not discussed. However, their existence in numerous manuscript copies shows that we cannot rely solely on the biobibliographical works to reconstruct the history of genres of legal (and probably other kinds of) writing. Equally important, the two anonymous works in question may sound a note of caution in regard to assumptions about authorship and Islamic legal culture.

643 The biobibliographical tradition, in particular works of legal ṭabaqāt, is concerned with recording the names of those who wrote novel works of legal distinctions, but largely unconcerned with the copying of already existing works. Ṭabaqāt works have been discussed in various studies, see, for instance, Chase F. Robinson, Islamic Historiography (Cambridge: Cambridge University Press, 2003), 55-82 and Stephen Humphreys, Islamic History: A Framework for Inquiry, Rev. ed. (Princeton: Princeton University Press, 2001), 187-209.
Analytic studies of furūq works are few; however, there have been several attempts to summary accounts of the literary history of legal distinctions. Almost every modern edition of a book of legal distinctions includes a partial bibliography of such texts. Most of these lists are not comprehensive, but they nevertheless help point to how the works have been received in Arabophone scholarship. The three primary bibliographies are the chapter “Standalone Books of Legal Distinctions” in Yaʿqūb al-Bāḥusayn’s al-Furūq al-fiṣḥiyya;644 the list compiled by Wolfhart Heinrichs;645 and ‘Umar al-Sabil’s introduction to al-Zarīrāni’s book of legal distinctions.646 These three lists complement each other and each is worth consulting. Al-Bāḥusayn’s bibliography includes brief discussions of the contents of each work, when known, either through his own inspection or through secondary reports from contemporary and post-classical authors. Al-Sabil’s list of works is also quite extensive. Unfortunately, he seems to have very broad criteria of inclusion and he lists several books that are not really works of legal distinctions.647 There are, nevertheless, several works that would have remained otherwise unknown if not for his work.648 Finally, Heinrich’s list is the most preliminary

645 Wolfhart Heinrichs, “Structuring the Law,” 341-44.
647 He cites, for example, al-ʿIṣṭighnāʾ fi al-faʿrāq wa-l-istithnāʾ also known as al-ʿIṭināʾ fi al-faʿrāq wa-l-istithnāʾ by Muḥammad ibn Abī Bakr ibn Sulaymān al-Bakrī (d. ninth/fifteenth c.), a work on legal maxims, and Qurrat al-ʿaʿyn wa-l-samiʿ fi bayān al-faʿrāq wa-l-jamʿ by Badr al-Dīn ibn ‘Umar ibn Abī Ḥamid ibn Muḥammad al-ʿĀdilī al-ʿAbbāsī al-Shāfīʿī (d. ca. 970/1562), a work on Sufism, not Islamic law.
648 These often appear as well in al-Bāḥusayn, but he his list is based in large part on al-Sabil’s.
and is in part derived from that provided in the introduction to Muslim al-Dimashqi’s *Kitāb al-Furūq*, with additions from the bibliography compiled by Schacht and references to *Geschichte der Arabischen Literatur* (GAL) and *Geschichte des Arabischen Schriftums* (GAS).

The sixteen years since the publication of Heinrichs’s article have rendered his list outdated, and needless to say, the list compiled by Joseph Schacht in 1927 should, at this time, not be considered more than a historical artifact. An immense number of manuscripts have been discovered since the publication of Schacht’s article and numerous new editions of works of legal distinctions have appeared as well. In addition, the spread and accessibility of digital technologies have shown the deficiencies of these earlier lists. The digitization of manuscript catalogs has made it possible to search more catalogs faster than ever before.

It seems likely that my own efforts will also be superseded once even more catalogs are put online and further collections are digitized. Nevertheless, as will be seen below, I have ‘discovered’ many manuscripts unattested in other published sources, identified manuscripts of works considered to be no longer extant, and erased some doubts about the identity of several manuscripts. While the critical bibliography I

---

651 This is particularly true for most manuscript libraries in the United States, Europe, and Turkey. As of the writing of this chapter, however, the already digitized catalog of the Suleymaniye Library is not available online, but only accessible in the reading room at the Suleymaniye Library. The other public libraries in Turkey, however, are all available via http://www.yazmalar.gov.tr.
present below represents a marked advance over previous efforts, this is in part because it draws heavily from them and in part due to emerging technologies.

There are three works that require a brief preliminary discussion: al-Qarāfī’s (d. 684/1285) Anwār al-burūq fī anwā’ al-burūq, Ibn Nujaym’s al-Ashbāh wa-l-naẓāʾir, and al-Suyūṭī’s al-Ashbāh wa-l-naẓāʾir. These works, because they are so important and so successful, were very frequently copied and thus exist in many manuscripts. My attempts at cataloging Ibn Nujaym’s al-Ashbāh wa-l-naẓāʾir, for example, ended after searching only libraries in Turkey. Through Turkey’s digital portal for manuscripts, I found 127 manuscript copies of this work in the cataloged public libraries of Turkey, not including those at the Suleymaniye, the largest collection of manuscripts in the country. After compiling this list, it became apparent that following through with this endeavor would yield minimal benefits for the present study for a number of reasons. First, a comprehensive account of the manuscripts of this work would lead to a seemingly infinite number of copies. Second, and more importantly, a worthwhile survey of the manuscript data cannot rest on manuscript catalogs alone; it requires visual inspection as well. Works are often miscataloged. Since these works are not available freely online, it would require an enormous amount of time, effort, and money for only the manuscripts in Turkey. Similar situations obtain for the works by al-Qarāfī and al-Suyūṭī. Al-Qarāfī’s Furūq and Ibn Nujaym’s Ashbāh raise a further difficulty, which is that they were the subject of many, many commentaries. There are

653 From the list compiled on the manuscripts in Turkey, there are copies of this work in Ankara, Erzurum, Manisa, Konya, Diyarbakır, Çorum, Amasya, Kastamonu, and Istanbul.
dozens commentaries known to me on these works, and doubtless many more of which I am unaware. They, together with their commentaries, have nearly become genres unto themselves and deserve a separate study through their commentary traditions. Additionally, none of these three works fits squarely within the genre of legal distinctions. Including a comprehensive bibliographic account of these three works and their commentaries is not only unfeasible, but would exceed the scope of this study. For this reason, my survey merely acknowledges the existence of these three works and does not treat them as comprehensively as the other works of legal distinctions.

There are several historiographical problems in compiling a bibliography of legal distinctions writing. The first is resisting the temptation of overreliance on Ḥājjī Khalīfa’s (d. 1068/1657) Ḥājjī Khalīfa’s (d. 1068/1657) Kasīf al-żunūn. This work aimed to provide a complete bibliographical survey, organized alphabetically by title, of the entirety of Islamicate scholarship up to the author’s lifetime. Ḥājjī Khalīfa’s work, encyclopedic in scope, remains a vital resource and a necessary first step in compiling bibliographies of the earlier Arabo-Islamic tradition. It especially lends itself to a bibliography on a particular genre, since, for example, all of the works titled Furūq are listed together. This is a necessary work, of course, but should be used with caution. Judging only by Ḥājjī Khalīfa’s work it would seem that both the Mālikī and Ḥanbalī did not participate in composing works of legal distinctions. “Distinctions in the Shāfi‘ī School” and “Distinctions in the Ḥanafī School” are the only two madhab-specific titles he
includes. This presents a skewed picture of the field of distinctions literature. More problematic, however, are the several errors and misattributions that are present in his work. Ḥājjī Khalīfa does not usually tell us where he got his information. In describing his methodology for writing the Kashf al-Ẓunūn, he says that he included “the names of many thousands of volumes in the libraries that I personally examined.” From this statement, it seems that Kashf al-Ẓunūn was not an effort to catalog all works in the manuscript libraries of Turkey, or the Ottoman Empire, but rather all those that Ḥājjī Khalīfa himself could inspect. In other words, it was a personal research effort on his part, not a large-scale collaborative project.

I list here a couple of representative problems with the Kashf as it relates to the study of distinctions writing. Ḥājjī Khalīfa gives Talqīḥ al-Maḥbūbī as an alternate title for Asʿad al-Karābīsī’s book. He says, “Furūq al-Karābīsī, also called Talqīḥ al-Maḥbūbī; the author of the Ashbāh [i.e. Ibn Nujaym] mentions this at the beginning of his section on

---

656 Other authors have noticed specific errata in the Kashf al-Ẓunūn, but there has not been much scholarship that has explored the limits of this work. Frank Griffel, for instance, notices a “confusion of names” in an entry for a book on arithmetic, but does not extend his observation. Similarly, Jan Just Witkam has noted that “[a] number of doubtful readings and dubious bibliographical references in the Kashf al-Ẓunūn... can only be explained and corrected by comparison with Ibn al-Akfānī’s [Irshād al-Qāṣid].” Frank Griffel, “On the Character, Content, and Authorship of Itmām Tatimmat Shiwaṭ al-ḥikma and the Identity of the Author of Muntahab Shiwaṭ al-ḥikma,” Journal of the American Oriental Society 133.1 (2013), 11n53; Witkam, “Ibn al-Akfanī (d. 749/1348) and his bibliography of the sciences,” 40. The best study of the reliability of this work is Birnbaum, “Kātib Chelebi (1609-1657) and alphabetization.”
furūq.”657 This information comes from Ibn Nujaym’s al-Ashbāh wa-l-naẓāʾir, the sixth chapter of which book has a discussion of furūq proper. In introducing that chapter, Ibn Nujaym says, “This is the chapter on furūq, and I discuss here something from every legal topic. I selected and compiled this chapter from the al-Furūq of [Asʿad?] al-Karābīsī, which is called Talqīḥ al-Maḥbūbī (dhakartu fīhā min kull bāb shayʾan, jamaʿtu min furūq al-imām al-Karābīsī al-musammā bi-Talqīḥ al-Maḥbūbī).” The identification of al-Karābīsī’s Furūq by Ibn Nujaym as the Talqīḥ al-Maḥbūbī is erroneous on two levels. First, as mentioned above, al-Karābīsī’s book is entitled Kitāb al-Furūq, and this seems to be the only name this book has in the historical record up to the time of Ibn Nujaym. The alternate title that he gives, however, “Talqīḥ al-Maḥbūbī,” is the title of a wholly other work of legal distinctions. The Talqīḥ is a furūq work entitled Talqīḥ al-ʿuqūl fī furūq al-manqūl, which is written by Aḥmad ibn ʿUbayd Allāh al-Maḥbūbī (d. 640/1242), also known as Ṣadr al-Sharīʿa al-Awwal.658

This error is repeated in the various editions of Ibn Nujaym’s al-Ashbāh that I consulted. It seems, indeed, to be an error made by Ibn al-Nujaym himself, faithfully transmitted across manuscripts. Aḥmad ibn Muḥammad al-Ḥamawī (d. 1099/1687-88) makes a note of this error in his commentary on this work, Ghamz ʿuyūn al-baṣāʾir. He says:

The correct thing to say would be al-Maḥbūbī’s book on furūq, which is called Talqīḥ al-Maḥbūbī. These are two separate books, not one book. The claim that he

---

658 There are many alternate titles given as well for this book, see Appendix I.
was confused about these two books (ishtabaha ‘alayhi aḥad al-kitābayn) is unlikely to be correct, owing to the contents of this chapter. What probably occurred (ghāyat mā fī al-bāb) is that there was a slip of the pen of the original scribe (al-nāsikh al-awwal).  

Still, the error has been enshrined into the text by later copyists, inscribed into the tradition by Ḥājjī Khalīfa, and normalized by Ismail Bāshā al-Baghdādī (d. 1922) in Hadiyyat al-ʿārifīn, where, under Asʿad ibn Muḥammad al-Karābīsī, his work of legal distinctions is cited as “Talqīḥ al-ʿuqūd fī al-furūq min al-furūʿ al-ḥanafiyya.”

It is unclear how exactly this confusion came about. It is intriguing, and merits further research. The origin of the error was perhaps an unwitting mistake from Ibn Nujaym or from the original scribe of this work. It is also possible that Ibn Nujaym and his circle were confused about the identity of these two works. In either case, it is worth noting that later copyists generally refused to correct this error and that the tradition accepted this erroneous identification.

**Listing of Furūq Works**

In what follows, I describe the record of all the works of legal distinctions of which I am aware. Before describing these works, however, it is important to address some limitations to this survey, in addition to the issues mentioned above. There are several books included in the published bibliographies of legal distinctions that are not, in fact,
part of the genre of legal distinctions at all. There are many reasons for the mentions of these works. They all have titles that seemingly indicate their membership in this genre, but other evidence discounts this classification. For instance, some of these works have not survived, but the surviving evidence suggests that they were not works of legal distinctions, but rather works of law in related genres, such as riddles, question and answer, and ashābāḥ. These works include *al-Muskit* by al-Zubayrī (d. 317/929-30),661 *al-Muṭārahāt* by Ibn al-Qaṭṭān (d. 359/969-70),662 and *al-Naẓāʾir al-fiqhīyya* by Abū ʿImrān al-Qayrawānī (d. ?).663 Other works are works of distinctions, but not legal distinctions: *al-Furūq* by al-Ḥakim al-Tirmīdhi’s (d. ca. 320/932),664 *Qurrat al-ʿayn wa-l-samʿ fi bayān al-faq wa-l-jamʿ* by Badr al-Dīn ibn ʿUmar al-Ḥuraythī (d. ca. 970/1562),665 *Furūq al-uṣūl* by pseudo-Kemalpașazade,666 and *al-Furūq* by ʿUmar ibn Raslān al-Bulqīnī (d. 805/1403).667 All of these appear to be works of applied lexicographical distinctions, some regarding Arabic lexicography in general and others dealing with technical vocabulary in Sufism or Islamic law. Several books have also been published recently that attempt to extract the distinctions-like analyses that appear in early works of Islamic law. These books can

661 This is likely a work of legal riddles.
662 This is likely a work of legal riddles.
663 This is likely a work of legal maxims. See al-Bāḥusayn, *al-Furūq al-fiqhīyya*, 86.
664 This work is a work of lexicographic distinctions, not legal distinctions.
665 This is a work of applied lexicographic distinctions about Sufism. See al-Bāḥusayn, *al-Furūq al-fiqhīyya*, 104.
666 This is a work of applied lexicographic distinctions about legal theory. This attribution is made in the published edition, Kemalpașazade, *Furūq al-uṣūl*, ed. Muḥammad ibn ʿAbd al-ʿAzīz Mubārak (Beirut: Dār Ibn Ḥazm, 2009). Most manuscripts of this work, however, do not attribute the book to any author.
667 This is a work of applied lexicographic distinctions about Islamic law. It may refer to his *al-Faq wa-l-ḥukm bi-sīḥa wa-l-ḥukm bi-l-mājīb*. See al-Bāḥusayn, *al-Furūq al-fiqhīyya*, 160.
appear to be part of the genre of legal distinctions, but are not. They include books such as *al-Furūq al-fiqhīyya li-l-Imām Mālik* edited by Ḫabīrām Ismāʿīl Jalāl and the legal distinctions of Ibn Qayyim al-Jawziyya (d. 751/1350).

Another preliminary remark is necessary, concerning whether there are Shiʿi works on distinctions. The following list looks like a list of Sunni works. As mentioned earlier, there does not seem to be a developed Shiʿi tradition of works of legal distinctions, or at least I have only been able to find a comparatively tiny number of Shiʿi works of legal distinctions. I have, however, identified two works, no longer extant, that may have been works of legal distinctions. The first is in Ibn al-Nadīm’s (d. ca. 388/998) entry for al-Ḥasan ibn Maḥmūd al-Sarrād (or al-Zarrād, fl. mid second/eighth c.), in which Ibn al-Nadīm attributes a *Kitāb al-Furūq* to Aḥmad ibn Muḥammad al-Barqī (d. third/ninth c.). Specifically, in this entry, Ibn al-Nadīm says, “I read in the handwriting of Abū ʿAlī ibn Hammām, ‘The *Kitāb al-Maḥāsin* by al-Barqī comprises some seventy-odd books, maybe even eighty. My father, ʿAlī ibn Hammām, had these books and they included...Kitāb al-Furūq.’” The *Maḥāsin* is a work of law in the Twelver Shiʿi tradition, and this entry on al-Ḥasan ibn Maḥmūd is included within the chapter on “Shiʿi Jurists.” While the evidence of the *Fihrist* points to this being a work of

---

668 It is likely, however, that detailed and careful work such as this on the specific doctrine of individual jurists can give us a better understanding of the changes and dynamism inherent in legal compendia.


legal distinctions, the work’s early date seems at the same time to militate against that conclusion. Unfortunately, the modern published edition of *al-Maḥāsin* that I consulted did not have a section entitled *Kitāb al-Furūq.*

The other possible Shi‘i work of legal distinctions is *al-Jam‘ wa-l-farq* by ‘Alī ibn Yahyā ibn Rāshid al-Washlī al-Zaydī al-Yamanī (d. 777/1375-76). As his *nisba* al-Zaydī indicates, ‘Alī ibn Yahyā was almost certainly a Zaydī Shi‘i. Al-Sabil, however, in his bibliography of legal distinctions, includes ‘Alī ibn Yahyā as a Shāfi‘ī scholar and omits “al-Zaydī” from ‘Alī ibn Yahyā’s name. He also does not cite a death date, but rather states that ‘Alī ibn Yahyā was born in 662/1264-65. There is very little information recorded about this work. Writing around the turn of the previous century, Muḥammad ibn Zabāra mentions this work in his appendix to Muḥammad al-Shawkānī’s *al-Badr al-ṭāli‘* and he includes it as one of ‘Alī ibn Yahyā’s works and says, “In his *al-Jam‘ wa-l-farq,* he wrote things which no one previously has written (*wa-atā bi-l-jam‘ wa-l-farq bi-mā lam ya’ti bihi aḥad*).” ‘Alī ibn Yahyā does not seem to be particularly prominent in the historical record but appears primarily as a hadith transmitter. Since I cannot rule

---

672 Aḥmad ibn Muḥammad ibn Khālid al-Barqī, *al-Maḥāsin,* 2 vols., ed. Al-Sayyid Jalāl al-Dīn al-Ḥusaynī (Tehran: Dār al-Kutub al-Islāmiyya 1370/1951). There are other editions of this text which I have not been able to consult.


out the possibility that either of these two works belongs to the genre of distinctions writing, I include them in my survey. At the same time, the existence of two works that may be part of the genre perhaps prove the rule that there is, generally speaking, no Shi’i tradition of writing books of legal distinctions.

In addition to the following critical bibliographical narrative, I provide two versions of my bibliography in schematic form. The first, Appendix I, is the most detailed and is arranged by legal school (madhhab). The second, Appendix II, contains only summary information from Appendix I, arranged by date. Appendix I attempts to categorize every work of legal distinctions according its madhhab. The works for which no madhhab could be determined are listed as well, and the final category in the appended bibliography includes works that are often listed as being of legal distinctions, but that are not. Some of these are works that certain scholars claim to be works of legal distinctions, but are clearly not, such as al-Ḥakīm al-Tirmidhī’s Kitāb al-Furūq. This work is extant and clearly deals with lexicography, as suggested by its alternate title, Kitāb al-Furūq wa-manʿ al-tarāduf (Book of Distinctions and the Impossibility of Synonymy). Nevertheless, this work is routinely included in discussions of legal distinctions. Others are works that never existed, but through bibliographic corruption are now cited as having existed, such as Furūq al-Maḥbūbī by Asʿad al-

Karābīsī (d. 570/1174). I decided to include these other works for the sake of completeness. References are often found to them, either in ṭabaqāt works or in the introductions to books of legal distinctions, yet their inclusion in lists of works of legal distinctions must be corrected according to the present state of the evidence.

The main difficulty in compiling a list of all works in a genre comes in establishing the boundaries of the genre. The permeability of the genre of legal distinctions is one of the most important observations of this study. As difficult as it is to determine the content and generic identity of earlier works no longer available, the classification of later well-attested and even published works can be difficult. On one end of the spectrum, it is hard to determine the veracity of the claim that Ibn Surayj (d. 306/918) wrote a book of legal distinctions, even though some sources do attribute a work to him entitled al-Furūq. At the same time, however, it is not clear whether al-Jurjānī’s (d. 482/1089) al-Muʿāyāt is, as its title claims, a work of legal riddles, or, if it should be considered, as its content suggests, a work of legal distinctions. In general, I have chosen to be overly inclusive regarding such difficult-to-classify works. For instance, I include both al-Furūq by Ibn Surayj and al-Jurjānī’s Muʿāyāt in my bibliography, even though I refute the classification of these works as works of legal distinctions in Chapters Three and Five.

677 I discuss this corruption above.
678 This is unlikely to be a work of legal distinctions, based on its early date and on the description of it as “A Commentary on al-Muzanī.” See Ḥājjī Khalīfa, Kashf al-ẓunūn, s.v. “al-Furūq fī furūʿ al-shāfiʿīyya,” 2:1257–58, I discuss this in further detail in Chapter Three, see 195–98.
boundaries of the genre of legal distinctions. Perhaps with further study, these works will be included or excluded from the genre. In particular, until a better understanding of genre within Islamic law is established, it seems best to be inclusive. This reasoning applies as well to works such as Ibn al-Turkumānī’s (d. 744/1343) Kitāb al-Furūq, which is no longer extant, but was written at a time when Kitāb al-Furūq meant, within the legal sphere, a book of legal distinctions.

The following bibliography of works on legal distinctions shows that the genre of al-furūq al-fiqhīyya is relatively small. My survey of books of legal distinctions has found only thirty-six works of legal distinctions. The spread of these works among the legal schools is somewhat uneven. I count thirteen for the Shāfiʿī school, nine Ḥanafī books, eight for the Mālikī, and four Ḥanbalī ones. This leaves two texts by scholars who seem to belong to Shiʿi schools of law. Chronologically, there were two clear peaks of furūq-book production. The first three books of legal distinctions were written in the third/ninth century. The fifth/eleventh century saw a burst of activity, with ten books of legal distinctions produced during this time. The sixth/twelfth century once again only saw two books of legal distinctions. This was followed by the period of highest furūq activity, the seventh/thirteenth and eighth/fourteenth centuries each saw eight books produced. After this peak of activity, the ninth/fifteenth century saw only two new works of legal distinctions, the tenth century only al-Wansharīsī’s (d. 914/1508) ʿiddat al-burūq. Al-Wansharīsī’s was the last new work of legal distinctions written until...
the modern period when ʿAbd al-Raḥmān ibn Nāṣir al-Saʿdī wrote his work on Ḥanbalī distinctions in the early 20th century.680

**The Fourth/Tenth Century**

As discussed in Chapter Four, pinning down the first work of legal distinctions is not easy. There are several contenders: Ibn Surayj (d. 306/918),681 al-Zubayr ibn Aḥmad al-Zubayrī (d. 317/929-30),682 al-Ḥakīm al-Tirmidhī (d. 320/932),683 Abū al-Ḥasan ʿAlī ibn Aḥmad al-Nasawi (d. 320/932),684 and Muḥammad ibn Ṣāliḥ al-Karābīsī (d. ca. 322/934).685 Identifying the first work in the genre is not only a difficult historical task, it is also complicated by madhhab polemics. Did Shāfiʿīs first discover the usefulness of thinking through distinctions and therefore write the earliest works in this genre? Or was it Ḥanafī scholars who have pride of place in developing this new style?

None of these works can be clearly seen as an early work of legal distinctions. In spite of its title, Ibn Surayj’s book seems only to be a commentary on al-Muzanī’s *mukhtašar,*686 the surviving selections of al-Zubayrī’s book do not talk about legal

---

distinctions,\textsuperscript{687} al-Nasawī is mentioned only in the \textit{al-Fihrist} and not remembered by any other author,\textsuperscript{688} al-Tirmidhī’s book of distinctions is about lexicography,\textsuperscript{689} and the book attributed to al-Karābīsī’s survives, but this attribution is almost certainly spurious.\textsuperscript{690} The question of the origins of this genre really becomes one of the construction of narratives about the past. Why did it become important to claim that so many fourth/tenth-century jurists were the first to have written these works? This question does not concern this early period as much as it concerns the period when most of these attributions were being ascribed and repeated, the Mamluk era (13th-16th centuries). Indeed, it is only in the ninth/sixteenth century that Muḥammad ibn Śāliḥ al-Karābīsī becomes credited with his book, an attribution that not only appears suddenly in several bibliographic sources, but also on several manuscripts.

**The Fifth/Eleventh Century**

This was a momentous century for the history of legal distinctions; during this century the genre of legal distinctions became established and widespread. The Shāfiʿī \textit{madhhab} produced five works of legal distinctions during the fifth/eleventh century: \textit{al-Kifāya fī al-furūq wa-l-laṭāʾif} by Abū ʿAbd Allāh al-Ḥusayn ibn ʿAbd Allāh al-Ṭabarī (d. ca

\textsuperscript{687} See Chapter Four, pp. 209-12 of the present study.
\textsuperscript{688} Ibn al-Nadīm, \textit{al-Fihrist}, 302.
\textsuperscript{690} See Chapter Four, pp. 213-20 of the present study.
fifth/eleventh c.),

al-Jamʿ wa-l-farq by Abū Muḥammad Ṭūl al-Juwaynī al-Shafiʿī (d. 438/1046),
al-Wasāʾil fī furūq al-masāʾil by Salāma ibn Ismāʿīl ibn Jamāʿa al-Maqdisī al-Shafiʿī (d.480/1087),
al-Muʿāyat by Abū al-ʿAbbās al-Jurjānī; and

ʿAbd Allāh al-Juwaynī’s book was by far the most important work of legal
distinctions ever written in the Shafiʿī school. It was also, he claims, one of the first
works written on legal distinctions within the Shafiʿī school, a claim that
gives us circumstantial evidence for concluding that Ibn Surayj did not in fact compose a work
in this genre. Al-Zarkashī (d. 794/1392), in his al-Manthūr fī al-qawāʿid, lists al-Juwaynī’s
work and that by Salāma ibn Ismāʿīl ibn Jamāʿa as the two exemplars of this style of

---

691 The author of this work is Abū ʿAbd Allāh al-Ḥusayn ibn ʿAbd Allāh al-Ṭabarī. This is confirmed by all
of the biographies of al-Ḥusayn ibn ʿAbd Allāh, with the exception of that written by al-Shirāzī, who does
not mention this work. See Al-Bāḥusayn, al-Furūq al-fiqhiyya, 90-91; ibn Qāḍī Shuhba, Ṭabaqāt al-shafiʿiyya,
1:181 no.142; al-Asnawi, Ṭabaqāt al-Shafiʿiyya, 2:61-62 no.767; al-Shirāzī, Ṭabaqāt, 126. Other sources,
however, attribute this work to Abū ʿAbd Allāh al-Ḥusayn ibn Muḥammad ibn al-Ḥasan ibn al-Ḥannāṭi al-
Ṭabarī (d. ca 495/1101), see al-Sabil, “Introduction,” 1:37; Kaḥḥāla, Muʿjam, 1:636 no.4795; Ḥājjī Khalīfa,
Kashf al-zunūn, s.v. “al-Furūq fī furūʿ al-shafiʿiyya,” 2:1499; al-Baghdādī, Ḥadiyyat al-ʿarifīn 1:311. These
sources, however, are all late. Earlier biographies of al-Ḥannāṭi do not attribute this work to him. See Ibn
Qāḍī Shuhba, Ṭabaqāt, 1:179-81 no.141; al-Subki, Ṭabaqāt al-shafiʿiyya al-kubrā, 4:367-371 no.397; al-Asnawi,

1:35-36.


36-37.


696 I discuss this issue in Chapter Three, pp. 169-172.
writing. Unfortunately, it seems that this latter work has not survived, so it is
difficult to ascertain anything about its form or content. The evidence from the
bibliographical tradition, however, points toward it being a work of legal distinctions.

Similarly, *al-Kifāya fī al-furūq* by Abū ‘Abd Allāh al-Ḥusayn ibn ‘Abd Allāh al-Ṭabarī and
the *Kitāb al-Furūq* by al-Rūyānī do not appear to be extant, but I nevertheless include
them because the bibliographic traditions consider them part of this genre, and they
contain the word *furūq* in their titles. This was also the century in which Abū al-
‘Abbās Ahmad ibn Muḥammad al-Jurjānī wrote his *al-Muʿāyāt*. While this dissertation
has argued that al-Jurjānī’s work is perhaps best understood as a work of legal riddles,
it nevertheless consists overwhelmingly of legal distinctions and has been considered
part of the genre by recent scholars and is so identified on the cover of a manuscript of
this work catalogued as 915 *fiqh shāfiʿī* in the Dār al-Kutub al-Miṣriyya in Cairo.

There was only one Ḥanafī work of distinctions written in this century: *al-Ajnās
wa-l-furūq* by Abū ‘Abbās Ahmad ibn Muḥammad al-Nāṭifī al-Ṭabarī al-Ḥanafī (d.

---


1:385-86, S1:667; Kahḥāla, *Mu'jam*, 2:307 no.8443; Shihāb al-Dīn ʿAbd al-Ḥayy ibn Aḥmad Ibn al-ʿImād,
*Shadharāt al-dhahab ṭī akhbār man dhahab*, ed. ʿAbd al-Qādir al-Arna‘ūṭ and Maḥmūd al-Arna‘ūṭ (Damascus:

699 For al-Ḥusayn al-Ṭabarī, see references in note 642 above. For al-Rūyānī, see Ibn al-Subkī, *Ṭabaqāt al-

700 Carl Brockelmann referred to this work as a “*furūq* work in the strictest sense” (*GAL* S1:505). I discuss
this book at length in Chapter Five at pp. 267-75.
This work is exists in at least two copies at the Suleymaniye Library in Istanbul. It is also remembered in most of the biographical literature, although no information is given as to its contents. Ḥājjī Khalīfa records the alternate title al-Ajnās fī al-furūq. ‘Umar Riḍā al-Kaḥhāla’s Mu‘jam al-mu‘allifīn seems to suggest that al-Ajnās and al-Furūq are two separate works, even though most other sources consider this the title of one book. The title, nevertheless, is intriguing. While it does seem to suggest a work of legal distinctions, the phrase al-ajnās wa-l-furūq could also mean something like “[Legal] Types and The Differences between Them,” in which case the book might have explained different ways to group and categorize substantive doctrine. While furūq can have a very specific technical meaning, it nevertheless retained its general meaning of “differences.”

The Mālikī madhhab, meanwhile, produced four works of legal distinctions in this period, only the very earliest of which, by Ibn al-Kātib (d. 408/1017-18), has not survived. Al-Qāḍī ʿIyāḍ (d. 544/1149) describes this as a work of distinctions, and writes that he has heard from Abū al-Qāsim al-Ṭābithī that this book contains forty-one

---


distinctions. The earliest preserved work is that by al-Qāḍī ʿAbd al-Wahhāb al-Baghdādī (d. 422/1031). One of his students, Abū al-Zaqlal Muslim al-Dimashqī (d. 5th c.) also wrote an extant work on legal distinctions. Muslim al-Dimashqī’s book is virtually identical to that of al-Qāḍī ʿAbd al-Wahhāb. Jalāl al-Jihānī, the editor of al-Qāḍī ʿAbd al-Wahhāb’s work, argues that one of the manuscripts thought to be a copy of al-Dimashqī’s Furūq is actually a copy of al-Qāḍī ʿAbd al-Wahhāb’s work, even though Abū al-Ajfān and Abū Fāris consider the manuscript in question to be a copy of al-Dimashqī’s Kitāb al-Furūq and use it in their edition of al-Dimashqī’s Kitāb al-Furūq. This manuscript even preserves the attribution to al-Qāḍī ʿAbd al-Wahhāb. Jalāl al-Jihānī presents compelling evidence that this is indeed a copy of al-Qāḍī ʿAbd al-Wahhāb’s work of distinctions. Al-Mawwāq includes a verbatim quotation from al-Qāḍī ʿAbd al-Wahhāb’s Furūq in his al-Tāj wa-l-iklīl. The passage cited by Al-Mawwāq is found in the manuscript bearing al-Qāḍī ʿAbd al-Wahhāb’s name, but not in the copies attributed to

706 See al-Qāḍī ʿIyāḍ, Tartīb al-madārik wa-taqrīb al-masālik li-maʿrīfat aʿlām madḥhab Mālik, ed. Saʿīd Ahmad Aʿrāb (Rabāt?: al-Mamlaka al-Maghrībiyya Wizārat al-Awqāf wa-l-Shuʿūn al-Islāmiyya, 1402/1982), 7:253. Other editions, however, refer to Abū al-Qāsim al-Ṭābīthī as Abū al-Qāsim al-Ṭāʿī. According to Ibn Farḥūn’s al-Dībāj al-mudhahhab, there was an Abū al-Qāsim al-Ṭābīthī, Ṭābīth being a village in the province of al-Baṣra, who studied in Egypt and Iraq, although no death date is given. See Ibrāhīm ibn ʿAlī Ibn Farḥūn, al-Dībāj al-mudhahhab, 2:103. Heinrich’s claim that al-Qāḍī ʿIyāḍ knew this “by autopsy” may be a misreading (341).


710 al-Jihānī, “Introduction,” 18. See also the manuscript, Markaz al-Dirāsāt al-Mujāhidīn al-Libiyīn 588.
Muslim al-Dimashqī.\textsuperscript{711} Maḥmūd Ghiryānī, who discusses the relationships between these two texts in more detail, also concludes that the Libyan manuscript in question should be correctly attributed to al-Qāḍī ʿAbd al-Wahhāb\textsuperscript{712}

At the close of the fifth/eleventh century it seems that the genre of legal distinctions had fully emerged. The literary record gives a picture of the fourth/tenth century as a time when this genre was underdeveloped and perhaps not yet underway. The only supposedly surviving work from the fourth/tenth century is that by Muḥammad ibn Ṣāliḥ al-Karābīsī, and the manuscripts of this work are highly problematic. Not only is the attribution to al-Karābīsī dubious, but the text itself is highly corrupt and riddled with lacunae. In the fifth/eleventh century, however, we see a tremendous burst of activity in the composition of works of legal distinctions. The foundational furūq works of the Shāfiʿī madhhab were composed; the Mālikī madhhab began to adopt the genre with several important works. The Ḥanafī jurist al-Nāṭifī wrote his work on distinctions in this century.

As with other legal genres, the Ḥanbalī madhhab would adopt distinctions later, as will be seen below. Importantly, the furūq works of this period start to have the organization and presentation that comes to define the genre. Most of the books in this genre are organized in a traditional legal style (al-tabwīb al-fiqhī), with chapters dedicated to particular areas of the law, starting with ritual matters (ʿibādāt) and

\textsuperscript{711} Al-Jihānī, “Introduction,” 35.

moving to transactions (muʿāmalāt). In terms of presentation, the characteristic style of books of legal distinctions involves comparing and contrasting two (or more) laws that appear to, but do not actually, contradict each other.

**The Sixth/Twelfth Century**

The sixth century saw only one book written on legal distinctions, the *Kitāb al-Furūq* by Abū al-Muẓaffar Asʿad ibn Muḥammad ibn al-Ḥusayn al-Naysābūrī al-Karābīsī al-Ḥanafi. This work is the first extant work from the Ḥanafi *madhhab* that can be safely attributed to its author and is undoubtedly part of the legal distinctions tradition. In his introduction, Asʿad al-Karābīsī mentions that he came across the distinctions contained in his book through his studies with Abū al-ʿAlāʾ Ṣāʿid ibn Muḥammad (d. 502/1109).

“These legal cases I gleaned from books...I heard the imam and judge Abū al-ʿAlāʾ...bring out the distinguishing factor (*iẓhār al-furqān*) between them.” He does not mention, however, his knowledge of this writing style as a genre nor any precedents for distinctions writing within the Ḥanafi school. It is curious that he would be unaware of the books by Muḥammad ibn Ṣāliḥ and al-Nāṭifī, since Muḥammad ibn Ṣāliḥ was a Ḥanafi scholar who lived in Samarkand, the city in which Asʿad al-Karābīsī also lived. Asʿad’s silence on this matter is one piece of evidence that calls into question the authenticity of the attribution of a book of legal distinctions to Muḥammad ibn Ṣāliḥ al-Karābīsī. Asʿad al-Karābīsī’s book became quite important as a work of Ḥanafi

---

distinctions. Ḥanafi authors used it as a model when writing later works of legal distinctions and it is the main book for which Asʿad al-Karabīsī is remembered. It is mentioned often in the sources and many manuscript witnesses to it exist.\footnote{Hājjī Khalīfa, *Kashf al-zunūn*, s.v. “furūq fī furūʿ al-Ḥanafīyya,” 2:1257; GAL 1:375, GAL S 1:642, Kaḥhāla, *Muṣjam*, 1:351 no.2603; Schacht, “*Furūq*-Büchern,” 508; al-Qurashi, *al-Jawāhir al-mudiyya*, 1:386, no.314; Ibn al-ʿImād, *Shadharāt al-dhahab* 4:4; Tāmīmī al-Dārī, *al-Ṭabaqāt al-saniyya*, 2:171, no.473; al-Baghdādī, *Hadiyyat al-ʿārifīn*, 1:204; Ibn Qutlūbughā, *Ṭāj al-tarājim*, 12 no.44.} It has also been edited and published three times, even though other important Ḥanafi works of legal distinctions continue to exist only in manuscript. The attention paid to editing and publishing this work in the later 20th century signals its continued importance today.

The Seventh/Thirteenth Century


Ibn Kashāsib was a jurist in Damascus who was known for his piety and virtue. More importantly, however, he was also known for travelling often. Specifically, the
biographical sources quote Abū Shāma’s statement that Ibn Kashāsib “goes on the pilgrimage often and performs many good deeds (kathīr al-ḥajj wa-l-khayr).”\(^{718}\) Ibn Kashāsib’s many pilgrimages likely brought him into contact with scholars and ideas from throughout the Islamic world; it represents both a potential inspiration for his book on legal distinctions and a potential opportunity for Ibn Kashāsib to promote his book and ideas.

Najm al-Dīn al-Ḥanbalī was a Ḥanbalī jurist who lived in Damascus, Baghdad, Hamadan, and Bukhara. The sources indicate that it was in Bukhara, after a thorough education in the Ḥanbalī school, that Najm al-Dīn al-Ḥanbalī transferred to the Shāfiʿī school. After this ‘conversion,’ he returned to Damascus, where he seems to have enjoyed a successful career as a jurist and teacher. It was after his change in madḥhab-affiliation and return to Damascus that he began teaching and writing law books, including his al-Fuṣūl fī al-furūq. Al-Asnawī mentions that he remained known by his nisba al-Ḥanbalī in spite of his later adherence to the Shāfiʿī school.\(^{719}\)

There was only one Ḥanafi book of legal distinctions written in the seventh century, Talqīḥ al-ʿuqūl fī furūq al-manqūl by Aḥmad ibn ʿUbayd Allāh al-Maḥbūbī al-

---

\(^{718}\) See Shihāb al-Dīn Abū Shāma ʿAbd al-Rahmān al-Maqdisī, Tarājim rijāl al-qarnayn al-sādis wa-l-sābiʿ al-maʿraṭ bi-l-dhayl ʿalā al-Rawdatayn, ed. Ibrāhīm Shams al-Dīn (Dār al-Kutub al-ʿIlmiyya 1422/2002), 5:270, although in this edition his name is erroneously listed as “Aḥmad ibn Kātib al-Zumārī.” For citations of this phrase, see Ṭabaqāt al-Shāfiʿiyya al-Kubrā 8:30 no.1054; al-Asnawī’s Ṭabaqāt 1:152 no.289; Ibn Qāḍī Shuhba 2:100 no.401. See also Kahhāla, Muʿjam, 1:232 no.1695; al-Baghdaḍī, Ḥadiyyat al-ʿārifīn, 1:14.\(^{719}\) It is perhaps the repeated references to him as “al-Ḥanbalī,” that led Heinrichs to include Najm al-Dīn as a Ḥanbalī scholar in his bibliography. See, however, al-Asnawī, Ṭabaqāt 1:211-12, no.404, and Ibn Qāḍī Shuhba, Ṭabaqāt 2:71 no.371. Kahhāla, Muʿjam, 1:262-63 no.1896. For references to this work, see Badr al-Dīn Muḥammad ibn Bahādur al-Zarkashi, al-Bahr al-muḥīṭ fī usūl al-fiqh, no ed. (Cairo: Dār al-Kutubī, 1414/1994), 7:220; 7:245; 7:394; and 8:38.
Ḥanafi, Ṣadr al-Sharīʿa al-Awwal (d. 640/1242). This was likely the most important work of Ḥanafi distinctions in premodern times. A large number of manuscript witnesses for this work are preserved in major manuscript libraries and it is mentioned quite often in the secondary literature though it remains unpublished. Al-Sabil says that this work was edited as part of an MA thesis in Egypt. Unfortunately, this edition was never published. The lack of a readily-available published edition, however, has meant that Asʿad al-Karabisi’s text has now become the most popular Ḥanafi work of legal distinctions.

As important as al-Maḥbūbī’s work was, its author seems to have been a relatively obscure figure. Ibn Qutlubughā in his Tāj al-tarājim tells us that “ʿUbayd Allāh ibn Masʿūd ibn ʿUbayd Allāh ibn Ṣadr al-Sharīʿa al-Maḥbūbī was a critical and meticulous scholar...” This is likely a reference to Aḥmad ibn ʿUbayd Allāh’s father, although here the father is referred to as Ṣadr al-Sharīʿa. This is odd since scholars

---

722 Al-Sabil and al-Bāḥusayn state that this work was edited as part of an MA thesis at al-Azhar University by ʿAbd al-Hādī Shir al-Afghānī. Curiously, however, online resources suggest that this edition was completed as an MA thesis at Ain Shams University in 1984, not at al-Azhar University. Al-Bāḥusayn, al-Furūq al-fiṣḥiyā, 94; al-Sabil, “Introduction,” 1:29. See http://drepository.asu.edu/eg/xmlui/handle/123456789/49817, accessed August 30, 2016.
723 It is difficult to understand the causality in this situation. Was al-Karabisi’s work printed so many times because of its contemporary importance to Ḥanafi scholars? Or, is al-Karabisi so well-known among Ḥanafi scholars because this work is readily available in a printed edition? A study of this issue would shed much light into the processes by which the classical tradition has been and continues to be received by contemporary Arabophone scholarship.
724 Ibn Qutlubughā, Tāj al-tarājim, 29-30 no.118.
make a point of referring to Aḥmad al-Maḥbūbī as Ṣadr al-Sharī‘a al-Awwal, that is, “the first,” in contrast to ʿUbayd Allāh ibn Masʿūd ibn Aḥmad al-Maḥbūbī al-Bukhārī (d. 747/1346), his descendent, who is known as Ṣadr al-Sharī‘a al-Thānī, i.e. “the second.” Ibn Quṭlūbughā also mentions a book entitled Talaqīḥ al-ʿuqūl fī al-furūq, a title bearing a very close resemblance to that by Aḥmad al-Maḥbūbī. However, this title is attributed by Ibn Quṭlūbughā to Aḥmad ibn Ḥubb Allāh ibn Ibrāhīm and no further information is given about the author.\footnote{Ibn Quṭlūbughā, Tāj al-tarājim, 9 no.29.}

Similarly, Taqī al-Dīn al-Ghazzī’s al-Ṭabaqāt al-saniyya has two listings that seem to refer to this author. The first is for “Aḥmad ibn ʿAbd Allāh ibn Ibrāhīm Shihāb al-Dīn al-Ḥanafi” who wrote Talaqīḥ al-ʿuqūl fī furūq al-manqūl.\footnote{Tamīmī al-Dārī, al-Ṭabaqat al-saniyya, 1:364, no.208.} We also find, however, a different entry for “Aḥmad ibn ʿUbayd Allāh ibn Ibrāhīm ibn Aḥmad... al-Maḥbūbī” to whom is attributed a book entitled “Talaqīḥ al-ʿuqūl fī furūq al-manqūl.”\footnote{Tamīmī al-Dārī, al-Ṭabaqat al-saniyya, 1:376, no.220.}

Unfortunately, al-Ghazzī does not give death dates for either scholar.

It was also in this century that the noted Egyptian jurist Shihāb al-Dīn Aḥmad ibn Idrīs al-Qarāfī wrote his Anwār al-burūq fī anwā’ al-furūq, also referred to as Kitāb al-Furūq.\footnote{Heinrichs, “Structuring the Law,” 341-2; al-Bāḥṣusayn, al-Furūq al-fiqhīyya, 152-154; al-Sabil, “Introduction,” 1:32-33.} This is perhaps the most well known work of legal distinctions from any school. Numerous manuscripts of this work survive into the present day together with many commentaries on this work. The number of manuscripts and printed editions of this work dwarfs the combined number of manuscripts and printed editions for almost every other work of legal distinctions. At the same time, however, this is a very peculiar
work. While Heinrichs includes this work in his bibliography, along with a brief list of commentaries on it, al-Bāhusayn omits it from his own survey of works of legal distinctions, considering it instead a work of “al-furūq al-usāliyya.” This is likely because al-Qarāfi’s work does not fit neatly into the genre of legal distinctions, despite seemingly being its most famous example. Al-Qarāfi’s work is more like a work of legal maxims (al-qawā‘id al-fiqhīyya) than it is a work of legal distinctions. Al-Qarāfi himself states that he “made the beginnings of research into legal maxims (qawā‘id) by discussing distinctions and asking, in a disputation, for the distinction between two derived cases (al-furūq wa-l-su‘āl ‘anṭahā bayn far‘ayn) or two legal maxims.” His work is as concerned with maxims and general principles as it is with minute distinctions between rules of positive law. Indeed, al-Qarāfi’s use of the term furūq seems more aligned to the usage of lexicographical distinctions than with legal distinctions. Al-Qarāfi is sometimes credited with a second work on legal distinctions, al-Ihkām fī tamyīz al-fatāwā ‘an al-aḥkām wa-taṣarrufāt al-qāḍi ‘ind al-imām. This work, however, is not a work of legal distinctions, but rather, as its title indicates, a work on judges, muftis, and their procedures and rulings.

729 With this term, al-Bāhusayn means something quite similar to the notion of “applied linguistic distinction” developed in Chapter Four; al-Bāhusayn, al-Furūq al-fiqhīyya, 152-154.
731 See the discussion of applied lexicographic distinctions above, Chapter Four, pp. 184-87.
Finally, this was the century in which members of the Ḥanbalī school began writing works of legal distinctions. I have found three Ḥanbalī works composed during this century: *al-Furūq fī al-masāʾil al-fiṣḥiyya* by Ibrāhīm ibn ʿAbd al-Wāḥid ibn ʿAlī ibn Surūr al-Maqdisī al-Ḥanbalī (d. 614/1212);* al-Furūq* by Abū ʿAbd Allāh Muḥammad ibn ʿAbd Allāh al-Sāmarrī al-Ḥanbalī, Ibn Sunayna (d. 616/1219); and* al-Furūq* by Abū ʿAbd Allāh Muḥammad ibn ʿAbd Allāh Qawī ibn Badrān al-Maqdisī al-Ḥanbalī (d. 699/1299-1300). The first of these works, by Ibrāhīm Ibn Surūr, is no longer extant. Ibn Surūr, a prominent Ḥanbalī jurist, was born in a small village called Jammāʿīl on the West Bank of the Jordan River. He lived most of his life in Damascus, though he also traveled to Ḥarrān, Medina, Baghdad and Mosul. The title of his work, *al-Furūq fī masāʾil al-fiṣḥiyya*, makes it seem likely that his work was indeed on legal distinctions.

The history of Ibn Sunayna’s work is more complicated. Joseph Schacht included a short description and transcription of excerpts from this treatise in his 1927 article. According to Schacht, this work was written by Muʿāẓẓam al-Dīn Abū al-Fath ʿAbd Allāh...
ibn Hibat Allāh al-Sāmarrī (d. 545/1150). Based on Schacht’s attribution, Heinrichs also ascribed this work to Abū al-Faṭḥ al-Sāmarrī. This work was in fact written by Abū ʿAbd Allāh Muḥammad ibn ʿAbd Allāh al-Sāmarrī (d. 616/1219). This is made clear by the manuscript of this work in the Zaḥiriyya Collection in the Asadiyya Library in Damascus, together with the biographical tradition, which attributes a work of legal distinctions to Abū ʿAbd Allāh Muḥammad al-Sāmarrī, but not to Abū al-Faṭḥ ʿAbd Allāh al-Sāmarrī. This work has been edited in two parts. The first, edited by Muḥammad ibn Ibrāhīm ibn Muḥammad al-Yahyā, was published 1418/1997 and contains only the section on ritual duties (al-ʿibādāt). The rest of the book was edited by Anas ibn ʿUmar ibn Muḥammad al-Subayyil as a master’s thesis from Umm al-Qurā University in Mecca in 1435/2014. Joseph Schacht also edited and published short selections from this text.

---

741 Heinrichs lists this work as being written by Abū al-Faṭḥ in his bibliography, even though in his note he admits that it is more likely that it is by Ibn Sunayna. Heinrichs, “Structuring the Law,” 343. For Abū al-Faṭḥ, see Ibn al-ʿImād, Shadharāt al-dhahab 7:126-27; Dhayl, Ṭabaqāt al-Ḥanābila, 3:249-51. Muʿāẓẓam al-Dīn’s name is written on the cover page of the manuscript in Damascus; this can be seen on the reproduction printed in al-Yahyā’s edition of this text, see al-Yahyā, “Introduction,” 112.
The Eighth/Fourteenth Century

The eighth century continued to see the production of many works of legal distinctions. The Shāfiʿī madhhab saw three works of legal distinctions in the eighth century: al-Jamʿ wa-l-farq by Sirāj al-Dīn Yūnus ibn ʿAbd al-Mujīd ibn ʿAlī al-Hudhālī al-Armaṇṭī al-Shāfiʿī (d. 725/1325);745 al-Furūq by Abū Umāma Shams al-Dīn Muḥammad ibn ʿAlī ibn ʿAbd al-Wāḥid ibn Yahyā al-Dukkanī al-Maghrībī al-Miṣrī al-Shāfiʿī, Ibn al-Naqqāsh (d. 763/1361);746 and Maṭāliʿ al-daqaʾiq fi taḥrīr al-jawāmiʿ wa-l-fawāriq by Jamāl al-Dīn ʿAbd al-Raḥīm ibn al-Ḥasan al-Asnawī al-Shāfiʿī (d. 772/1370).747 Of these, only the work by Jamāl al-Dīn al-Asnawī is extant. Al-Asnawī was the head of the Shāfiʿī school in Cairo and wrote works in nearly all areas of Islamic law.748 Al-Asnawī’s book on distinctions is particularly interesting since it opens with a brief history of legal distinctions writing. His discussion does not include mention of the other two Shāfiʿī works from the eighth century, even though his book was likely the last of the three to be written.749

Sirāj al-Dīn al-Armaṇṭī was a Shāfiʿī who held judicial posts throughout Egypt, specifically in Qus (Qūṣ), Cairo, Ikhmīm, al-Bakhnāsă,750 and Bilbeis. His nisba Armaṇṭī refers to the village of Armant in Upper Egypt where he was born. Al-Armaṇṭī’s work is

---

748 I discuss him and his works in more detail above, in Chapter Five, pp. 275-86.
749 The Maṭāliʿ appears to have been written late in al-Asnawī’s life, by which time al-Armaṇṭī had already passed. It is less clear that he wrote this work before that by Ibn al-Naqqāsh.
750 Known also today by its ancient Egyptian name, Oxyrhynchus.
remembered in the bibliographical tradition and appears to be a work of legal

The nature of Ibn al-Naqqāsh’s work, on the other hand, is less clear. Ibn al-
Naqqāsh was also a Cairene Shāfiʿī who travelled throughout the Levant, with stays in
Damascus and Hama. His work is mentioned often in the bibliographical tradition, but
that \textit{al-Naẓāʾir fī al-furūq} was the title of his book, since the earliest sources mention that
as the name.\footnote{Shihāb al-Dīn Aḥmad ibn ʿAlī ibn Muḥammad Ibn Ḥajar al-ʿAsqalānī, \textit{al-Durar al-kāmina fī aʿyān al-miʿā al-thāmina}, no ed. (Beirut: Dār Iḥyāʾ al-‘Arabī, [197-]), 4:71-74. \textit{Al-Durar al-kāmina} says it is “a book about distinctions (ṣannafa... kitāban fī al-furūq).”} Nevertheless, it seems to me that by this late date, once legal
distinctions had become a fully formed and relatively widely recognized genre, calling
a book \textit{al-furūq} was a way of signaling that it belonged to this genre.\footnote{It is also possible that given this assumption, later authors, in particular Ḥājjī Khalīfa, miscategorized this work as belonging to the genre of legal distinctions and that I am continuing this error by maintaining this assumption.} A similar
assumption, based on the word \textit{furūq} in the title, may have led Ḥājjī Khalīfa to give \textit{al-Furūq} as the title for this book and drop the word “\textit{al-Naẓāʾir}.”\footnote{Kashf al-ẓunūn does not include any books with the title “\textit{al-Naẓāʾir wa-l-furūq},” see Ḥājjī Khalīfa, Kashf al-ẓunūn, 2:1920.}

As in the previous century, the eighth century saw only one Ḥanafī work of legal
distinctions, \textit{al-Furūq} by Tāj al-Dīn Aḥmad ibn ʿUthmān ibn Ibrāhīm ibn Muṣṭafā al-
Turkumānī al-Mārdīnī al-Ḥanafi, known as Ibn al-Turkumānī (d. 744/1343). This work is likely not extant, although a manuscript on legal distinctions in the Žāhiriyā collection in the Asadiyya library in Damascus is attributed to him. Little is known about Ibn al-Turkumānī. The sources relate only that he was a notable Ḥanafi from a scholarly family who lived in Cairo.

The Ḥanbalī madhab saw one book of legal distinctions written in this century, the ʿĪḍāḥ al-dalāʿil fī al-farq bayn al-masāʾil by Abū Muḥammad Sharaf al-Dīn ʿAbd al-Raḥīm ibn ʿAbd Allāh al-Zarīrānī al-Baghdādī al-Ḥanbalī (d. 741/1341). Al-Zarīrānī was a Baghdadi jurist and hadith scholar who traveled to Damascus and Cairo. There is some uncertainty as to the name of this author. Heinrichs refers to him as al-Zarīrātī and says that in the introduction to al-Dimashqī’s book of legal distinctions, this author’s “name [is] wrongly given as ʿAbd al-Raḥmān al-Zarīrānī.” Both nisbas, however, are given to this author in the biographical sources. His nisba almost certainly connects him to Zarīrān, a small village south of Baghdad. The edition of Ibn Rajab’s Dhayl al-ṭabaqāt that I cite gives his name as ʿAbd al-Raḥīm al-Zarīrānī, but notes that

---

759 It is unlikely that this work was actually written by Ibn al-Turkumānī. This manuscript is a copy of the work that I call Furūq-A, see below pp. 337-39.
763 Yāqūt al-Ḥamawī, Muʿjam al-buldān, 3:140.
the variant al-Zarīrātī is found on at least some of the manuscripts. The other sources, such as al-Durar al-kāmina and Shadharat al-dhahab refer to him as al-Zarīrānī. The unicum manuscript in Princeton gives his name as ʿAbd al-Raḥmān al-Zarīrānī and is likely the source for the name given in the printed edition. Further, this work is sometimes referred to as Tanqīḥ al-Furūq. This alternate title, Refinements on the Furūq, alludes to the fact that this work is a commentary and expansion of Ibn Sunayna’s Kitāb al-Furūq. A work of distinctions that is self-consciously referencing a previous work suggests that distinctions writing had by this time become a part of the Ḥanbali legal-literary repertoire.

The eighth/fourteenth century represents the high-water mark in the production of works of legal distinctions. Not only were many works written in this century, but it also appears that the legal distinctions literature had spread to many regions in the Islamic cultural landscape. It was at this time that ʿAlī ibn Yaḥyā ibn Rāshid al-Washlī al-Zaydī al-Yamanī wrote al-Jamʿ wa-l-farq. This work, discussed above, seems to have dealt with legal distinctions. Its title, al-Jamʿ wa-l-farq, is both a direct allusion to the work written by ʿAbd Allāh al-Juwaynī and also seemingly places

---

764 Ibn Rajab, Dhayl ṭabaqāt al-Ḥanābila, 5:104. Al-ʿUthaymīn says that this variant appears in the manuscript abbreviated “ţāʾ,” but in his introduction, does not label any manuscripts with this letter. See ʿAbd al-Rahmān Muḥammad ibn Sulaymān al-ʿUthaymīn, “Introduction” to Dhayl ṭabaqāt al-Ḥanābila, 1:112-35.

765 Ibn al-ʿImād in Shadharat al-dhahab has his name as ʿAbd al-Raḥīm ibn ʿAbd al-Malik. This spelling likely reflects what was on the manuscripts since the editor notes that this name is unusual (8:228).

766 Princeton University Library, Garrett 4577Y, 2b.

it in conversation with the Shāfīʿī tradition. Apart from this work by ʿAlī ibn Yaḥyā, this title appears to be confined to works by Shāfīʿī authors. Unfortunately, this work has not survived and other sources do not preserve excerpts from it.

The Ninth/Fifteenth Century

After the boom of works of legal distinctions in the eighth century, we see many fewer works written in the following centuries. The ninth century saw only two works on legal distinctions, one from the Mālikī madhhab and one unusual Ḥanafī work. The Mālikī work is al-Furūq by Abū ʿAbd Allāh Muḥammad ibn Yūsuf al-ʿAbdarī al-Gharnāṭī al-Mālikī, al-Mawwāq (d. 897/1492). This work appears no longer to be extant, although a manuscript of a book of Mālikī distinctions at the Maktabat Āl Ibn ʿĀshūr al-Tūnisī in La Marsa is attributed to an author with a similar name, a Muḥammad ibn Yūsuf al-Andalusī. The manuscript in La Marsa is mentioned by Abū al- Ajfān and Abū Fāris, the editors of al-Dimashqī’s Furūq al-fiqhiyya, and consequently by both al-Baḥṣusayn and Heinrichs. Abū al-Ajfān and Abū Fāris believed that this was a separate person because of the slightly different names, or rather because of the missing nisbas in the name given in the manuscript. Al-Baḥṣusayn agrees that the author of this

---

768 Such a dialogue, between Zaydī scholars and Shāfīʿī scholars in Yemen in the eighth/fourteenth century, would not be unusual. See Bernard Haykel, Revival and Reform in Islam: The Legacy of Muḥammad al-Shawkānī (Cambridge; New York, NY: Cambridge University Press), 12-15.
769 The main source of information on this work is a biographical dictionary by Muḥammad Zabāra.
manuscript is not al-Mawwāq. He mentions it at the end of his survey and treats it as an anonymous work because the name associated with it, Muḥammad ibn Yūsuf, is so common.\footnote{Al-Bāḥusayn, \textit{al-Furāq al-fiqiyya}, 105.} Heinrichs, meanwhile, finds it “highly unlikely” that the La Marsa manuscript is by someone other than al-Mawwāq, but nevertheless grants both works separate entries in his bibliography.\footnote{Heinrichs, “Structuring the Law,” 342.}

There is, however, one mention of a Mālikī work of legal distinctions by an otherwise unknown Muḥammad ibn Yūsuf. This comes in Najm al-Dīn al-Ṭūfī’s \textit{ʿAlam al-jadhal fī ʿilm al-jadal}, who attributed a work of Mālikī legal distinctions to “al-Shaykh Abū ʿAbd Allāh Muḥammad ibn Yūsuf al-Andalusī al-Anṣārī al-Mālikī.”\footnote{Najm al-Dīn al-Ṭūfī, \textit{ʿAlam al-jadhal}, 73.} At first glance, this may seem to refer to al-Mawwāq, due to his prominence in the late Andalusī Mālikī school and his consistent self-description as “al-Anṣārī.” Al-Ṭūfī, however, died in 716/1316, almost 180 years before the death of al-Mawwāq and so it is impossible that al-Ṭūfī could have known of al-Mawwāq’s work. It must, therefore, be that there were at least two scholars named Abū ʿAbd Allāh Muḥammad ibn Yūsuf who wrote works of Mālikī legal distinctions. Based on this information, it seems likely to me that the La Marsa manuscript is not by al-Mawwāq, but only a study or edition of the text would help to answer this question.

That al-Mawwāq, however, wrote a work of legal distinctions is certain. Ibn Dāwūd al-Balawī (d. 938/1532), in his \textit{Thabat}, mentions that Abū Jaʿfar al-Baqanī received from al-Mawwāq himself a general license (\textit{al-ʾijāza al-ʿāmma}) to transmit

several works by al-Mawwāq, including *al-Furūq*. If al-Mawwāq granted a license to teach his *Furūq*, he must have authored such a work, and the fact that the tradition preserves this detail is strong evidence that he wrote this work and that it was well-known by other scholars.

The other work of legal distinctions from this century, entitled simply *al-Furūq*, was written in 802/1399-1400 by the Ḥanafī scholar Shaykh Bāyazīd ibn Isrāʾīl ibn ἃjjī Dāwūd Marghāyatī(?) (d. early ninth/fifteenth c.). This is a peculiar work. Al-Bāḥusayn, consulting a microfilm version of the manuscript, says that it is thirty-two pages long, although the first ten pages of the manuscript are missing. Unfortunately, he does not give any other information about the original manuscript, such as its location or accession number. Al-Sabīl says that Marghāyatī “is a minor figure (muʾallif ṣaghīr) who followed the style of Asʿad al-Karābīsī,“ and goes on to describe the work as “written by a foreigner with poor style and grammar (ḥusūb al-kitāb rakīk wa-fīhi laknat al-aʿajīm).” Al-Sabīl says that a microfilm of this manuscript is found in the King Faisal Center for Research and Islamic Studies in Riyadh, on microfilm 812, without mentioning where the original manuscript is kept. Marghāyatī is unknown aside from this manuscript. I have not been able to consult the manuscript or its microfilm myself, but presumably its colophon mentions that it was finished in 802/1399-1400, a date that both al-

---


777 “Wa-huwa kitāb mūjiz yaqa’a fī 32 waraqa saqṭa min al-nuskha allatī âṭṭala’nā ʿalayhā ʿasharat awrāq min alwalihā.” Al-Bāḥusayn, *al-Furūq al-fiqhīyya*, 101. It is not clear to me from his statement whether this manuscript was originally 42 pages and only 32 survive, or if it was originally 32 pages and only 22 survive.

Bāḥusayn and al-Sābil mention, and its contents indicate that Marghāyatī was a Ḥanafī scholar.\textsuperscript{779}

**The Tenth/Sixteenth Century**

Furūq writing seems to have come to something of a halt during the tenth/sixteenth century. There were three works written during this century which are part of the tradition of furūq-literature: al-Ashbāḥ wa-l-naẓāʿir by Jalāl al-Dīn al-Suyūṭī; al-Ashbāḥ wa-l-naẓāʿir by Ibn Nujaym; and ‘Īdat al-burūq fi jamʿ mā fi al-madhhab min al-furūq by Abū al-‘Abbās Aḥmad ibn Yahyā al-Wansharīsī al-Mālikī. Of these three works, only the one by al-Wansharīsī can be said to be a book of legal distinctions; the other two have only individual sections devoted to legal distinctions.

Wansharīsī’s ‘Īdat al-burūq, a massive work of legal distinctions, was written by one of the most celebrated North African Mālikī scholars of the century. While it may not have eclipsed al-Qarāfī’s work, which enjoyed great popularity and exercised tremendous influence, it was a very important work for the Mālikī madhhab. The title of al-Wansharīsī’s book rhymes with al-Qarāfī’s book; the rhyme is clearly an allusion to al-Qarāfī’s book, but they are nonetheless fundamentally different. As discussed earlier, al-Qarāfī’s book is not quite a work of legal distinctions, but rather a broader work encompassing applied linguistic distinctions, legal distinctions, legal maxims, and more. While there are traces of al-Qarāfī’s style and presentation in Wansharīsī’s ‘Īdda,

\textsuperscript{779} Al-Bāḥusayn says that occasionally “he reveals the distinction by way of a question, as though it were a riddle or examination (lughz wa-imtiḥān)” (101).
the ʿidda is much more straightforwardly a work of legal distinctions. Stylistically, his work differs slightly from other books in the distinctions tradition, most notably, by omitting the phrase “the distinction between these is...” Nevertheless, ʿIddat al-burūq reads much like other works of legal distinctions.⁷⁸⁰

The other two works from this century, by al-Suyūṭī and Ibn Nujaym, are both entitled al-Asbāḥ wa-l-naẓāʾir. Both can be seen, in a way, as one end-point for the tradition of distinctions writing. Neither of these works is exclusively dedicated to legal distinctions, but both include chapters devoted exclusively to legal distinctions.⁷⁸¹ Each of these chapters is essentially a small work of legal distinctions, not noticeably different from many of the other works on this list. These two works are notable, however, for how their authors fit what are recognizable treatments of legal distinctions into broader conceptual legal organizations.

All three works from this century were written by towering figures who remained highly influential long after their deaths. It is intriguing that a genre so often characterized by little-known authors and texts of uncertain provenance terminates with works by three authors of such renown. Ibn Nujaym’s work in particular became a cornerstone of Ḥanafi legal study in the Ottoman Empire, which officially adopted the

---

⁷⁸⁰ Interestingly, although the title of his work suggests a relationship between his work and that by al-Qarāfī, the introduction to this book has many resonances with the other Mālikī furūq texts, Abū al-ʿAbbās Aḥmad ibn Yahyā al-Wansharisī, ʿIddat al-furūq fī jamʿ mā fī al-madhhab min al-jumā wa-l-furūq, ed. Ḥamza Abū Fāris (Beirut: Dār al-Gharb al-Islāmī, 1990/1410), 79-80.

⁷⁸¹ See the Sixth Section (al-fann al-sādis) in each of these works.
Hanafi school. Ibn Nujaym’s text, and his chapter on legal distinctions, achieved a level of canonicity within Ottoman legal culture similar to that achieved by al-Qarāfī in North Africa a few centuries earlier. Commentaries on Ibn Nujaym’s text are numerous and continued to be written well into the 19th century.

Works of Indeterminate Date

In addition to the above, there are several works of legal distinctions that cannot be securely dated. These works, which exist only in manuscript and are identified in the bibliographies complied by al-Bāḥusayn and al-Sabil, are either not attributed to any author or attributed to an otherwise unknown author. Because of the problems of attribution, the time and location from which these works originated is not easily discernable. Further, I have found that the indeterminate Hanafi works are all copies of one of two books, which I refer to as Furūq-A and Furūq-B. The indeterminate Hanafi works include the following: al-Furūq by Aḥmad ibn Muḥammad al-Arzustānī (d. ?), al-Furūq by Aḥmad ibn Muḥammad al-Urdustānī (d. ?); al-Furūq fi al-furūʿ by Najm al-Dīn ‘Alī ibn al-Sayyid Abī Bakr al-Naysābūrī al-Ḥanafī (d. ?); and al-Furūq ‘alā madhhab Abī Ḥanīfa, which has no attribution.

I have been able to consult all of manuscripts of all of these works except the one attributed to al-Urdustānī (Baghdad, Maktabat al-Awqāf 3677). Al-Sabil says that

---


783 I discuss these works below.
this work exists in two copies, the manuscript in Baghdad and a manuscript in Berlin, Peterman II Nachtrag 4 at the Staatsbibliothek zu Berlin. The manuscript in Germany is not attributed to any author, so “al-Urdustānī” must be mentioned in the manuscript in Baghdad. This Berlin manuscript, however, is a copy of the work that I have labelled Furūq-A. If this Berlin and Baghdad manuscripts are copies of the same work, then the Baghdad manuscript attributed to al-Urdustānī must be a copy of Furūq-A as well.

Note, finally, that Chester Beatty 4507, al-Furūq fī al-ahkām ʿalā madhhab al-mālikiyā is not attributed to any author and the Chester Beatty catalog lists no author; al-Bāhusayn and al-Sabīl treat this as a separate and otherwise unknown work of legal distinctions. This manuscript is, however, a copy of Muslim ibn Dimashqī’s book of legal distinctions.

Geographical Trends

There do not seem to be particular geographical trends in the composition of works of legal distinctions. It might be said that Baghdad in the fifth/eleventh century seems to have been a center of distinctions writing, but then it was a center for most kinds of legal writing and intellectual production and scholarly activity in general, so this is not surprising. For example, the Mālikī al-Qādī ʿAbd al-Wahhāb lived in Baghdad and

---

784 I have been unable to ascertain the current name of the Baghdadi library in question. The Germany manuscript is often referred to as Berlin 4848, its number in the Ahlwardt catalog.

785 See below for a discussion of Furūq-A.

786 Al-Bāhusayn, al-Furūq al-fiqhiyya, 103-104; al-Sabīl, “Introduction,” 1:34.

787 It was used by Abū al-Ajfān and Abū Fāris in their edition of this work, Abū al-Ajfān and Abū Fāris, “Introduction,” 49-50.
Muslim al-Dimashqī was his student.\(^{788}\) Similarly, The Shāfiʿī scholars al-Ḥusayn al-Ṭabarī and ‘Abd Allāh al-Juwaynī lived in Baghdad.\(^{789}\) There is even an interesting convergence between the Mālikī and Shāfiʿī schools. When ‘Abd al-Ḥaqq al-Ṣiqillī performed his pilgrimage, he is said to have met and had discussions with Imām al-Ḥaramayn al-Juwaynī, the son of ‘Abd Allāh al-Juwaynī.\(^{790}\) Baghdad was not, however, the only center of legal learning and distinctions writing. Several Ḥanafī and Shāfiʿī scholars spent time in Khurasan, notably in Nishapur, and Ibn al-Kātib lived in North Africa.\(^{791}\) Thus, the centers of *furūq*-writing in the fifth century seem to reflect the centers of intellectual production more generally and most new works of legal distinctions came from large, intellectually important urban centers. In the eighth/fourteenth century Cairo emerged as a center of distinctions-writing. Of the six works of legal distinctions composed during this period, four were written in Cairo.\(^{792}\)

The other two works are *Īdāh al-dalāʿīl* by Sharaf al-Dīn al-Zarīrānī and *al-Jamʿ wa-l-farq*

---


by ʿAlī ibn Yahyā al-Zaydī. Although Sharaf al-Dīn al-Zarīrānī spent the majority of his life in Baghdad, the sources tell us that he travelled to Cairo and Damascus. Little is known about ʿAli ibn Yahyā, aside from the fact that he lived in Yemen and it does not appear that he had any connection to Cairo.

The movement of these texts is not yet clear. The results of my bibliographic survey clearly demonstrate a sustained historical interest in the genre of legal distinctions. They also show a certain amount of geographic spread for individual texts, with a large grouping of Ḥanafī and Shāfiʿī texts in both Cairo and Istanbul. Owing to the large number of manuscripts surveyed, this study has not taken ownership marks, reading notes, and other marginalia into consideration. This limits, to a great extent, my capacity to discuss geographic spread. The presence of texts in various imperial centers, however, suggests that works of legal distinctions were important enough to preserve in capital cities.

Additionally, the presence of certain works, such as al-Qarāfī’s al-Furūq in Istanbul, or al-Jurjānī’s al-Muʿāyat in Rabat, is worth noting. Istanbul was not known to be a center of Mālikī law, and the Mālikī works there are few. The same can be said for Rabat and Shāfiʿī law. The preservation of certain works may perhaps be a signal of the importance those works held historically. Al-Qarāfī’s al-Furūq was perhaps the most important work of Mālikī law from the post-formative period, so in this sense it is not

---

794 Kahḥāla, Muʿjam, 2:543 no.10254; Muḥammad ibn Muḥammad ibn Zaḥāra al-Ḥasanī al-Yamanī, Mulḥiq al-badr al-ṭāliʿ, 1:183-84.
surprising to find it in Istanbul, but al-Jurjānī’s work has not been understood to have a particularly large impact in the history of the Shāfiʿī school. More research is needed, however, to understand the role of these works and the historical distribution of particular books of legal distinctions.

The lack of a clear early center of distinctions-writing perhaps indicates that the pre-history of legal distinctions was robust and widespread, such that early works emerging from disparate parts of the world were remarkably similar in style and content. However, that may be, distinctions-writing had currency throughout the premodern and Ottoman Muslim world. The reasons for its relevance have shifted over time and across geographies, for instance from use in legal disputation to use as intellectual entertainment in literary salons, but the distinctions genre nevertheless remained enduringly relevant.

**Manuscripts**

As important as it is to understand the contexts in which new works of distinctions were being written, it is necessary as well to see where these works were being copied and recreated, i.e. their manuscript histories. I was able to conduct research in many manuscript libraries, but unable to visit Egypt or Syria, both of which have significant manuscript collections. Nevertheless, this study offers some preliminary remarks on the spread and rewriting of legal distinctions manuscripts. An analysis of manuscripts,

---

795 Research in Syria was not possible due to the Syrian Civil War. A planned research trip to Cairo was cancelled because of the August 2013 Rabaa massacre, and the resulting temporary closure of the research facilities and the general curfew.
the material record of premodern knowledge-production, can be helpful for
reconstructing the use-history of texts. “The reception of a work can be traced
indirectly through its transmission and indicates how audiences utilized it, so that the
evidence of its transmission documents its circulation and use.”796 The results of the
survey into the material history of legal distinctions are similar to the survey of works
and authors above. Among manuscripts, we see a very wide geographic and
chronological spread in the reproduction of books of distinctions.

At the outset of this project, I attempted to gain a sense of furūq literature by
reading the literary histories of Brockelmann (GAL) and Sezgin (GAS). Perhaps not
surprisingly, the contents of GAL suggested the Suleymaniye Library in Istanbul as a
promising manuscript archive for my research. The discovery of untitled, semi-
anonymous manuscripts of legal distinctions made the use of this library much more
interesting than I had initially thought. I not only found the manuscripts listed in the
catalogs, but I also looked at every manuscript with the word furūq in the title, as well
as every work cataloged under various transliterations of risāla fī al-fiqh. The holdings of
the Suleymaniye represent a sample of distinctions manuscripts. It is also worth noting
that although I include Ibn al-Nujaym’s al-Ashbāh wa-l-nażāʾir as a work of distinctions
in Chapter 4, that chapter ignores the material history of this work. As mentioned
previously, al-Ashbāh became one of the central Ḥanafī texts in Ottoman legal study, to
judge from the many surviving manuscripts of the work. There are 127 manuscripts of

796 Dagmar A. Riedel, “Searching for the Islamic Episteme: The Status of Historical Information in
Medieval Middle-Eastern Anthological Writing” PhD Diss., Indiana University, 2004, 25.
Ibn Nujaym’s Ashbāh in the regional libraries of Turkey, that is, public libraries other than the Suleymaniye. Many of these copies are incomplete or only fragments, but they nevertheless reveal the scope of interest in this book within the Ottoman Empire.

According to the catalog, the most popular work of distinctions at the Suleymaniye was al-Qarāfī’s Furūq, with eight copies. It is closely followed by Shams al-Dīn al-Maḥbūbī’s Tālqīḥ al-ʿuqūl, which remarkably remains without a modern edition in spite of its status as an important work of legal distinction and an important work within the Ḥanafī school. There are six copies of al-Maḥbūbī’s work. This library also has two copies of the Kitāb al-Furūq attributed to Muḥammad ibn Ṣāliḥ and of the Kitāb al-Furūq by Asʿad al-Karābīsī, and one copy each of the distinctions books of ʿAbd Allāh al-Juwaynī and Jamāl al-Dīn al-Asnawī.

It was easy to identify these works based solely on the manuscript catalog. The catalog, however, also turned up several other Ḥanafī works of legal distinctions. These were six books with no known author, another copy of Asʿad al-Karābīsī’s work on legal distinctions, and a book attributed to Ibn Nujaym al-Miṣrī. On closer, examination, however, most of these works were actually different copies of the same text.

---

797 The catalogs for these libraries can be accessed online at https://www.yazmalar.gov.tr, accessed August 30, 2016.
798 The results reported in this paragraph rely quite heavily, though not exclusively, on the digitized catalog at the Suleymaniye Library. While visual inspection of manuscripts can help to identify false positives, it is very, very difficult to detect false negatives. In other words, I can see the manuscripts that the catalog believes are works of distinctions by these authors and verify the information provided. It is very likely, however, that there are works of legal distinctions that have been miscataloged and therefore not included in this study.
799 Suleymaniye Library, Halet Efendi 780.
800 Suleymaniye Library, Osman Holdi 50.
Specifically, seven manuscripts, five of the anonymous works and both wrongly-attributed works, were all manuscript variants of the same work. This work is usually attributed to Najm al-Dīn al-Naysabūrī; I refer to this work as *Furūq*-B, below. Taking these manuscripts together as one group, this is the second-most represented work of legal distinctions in the Suleymaniye collections. The remaining manuscript was another semi-anonymous work sometimes attributed to al-Urdustānī and other times to al-Arzustānī; I refer to this work as *Furūq*-A.\textsuperscript{801}

**Works with Unknown or Dubious Attribution**

The anonymous untitled manuscripts on the topic of legal distinctions found throughout manuscript archives are intriguing, as their existence has not been studied previously. Yaʻqūb al-Bāḥusayn includes a brief mention of the existence of these works in his survey discussed above. He references them at the end of his overview of distinctions writing: “Finally, we know of no later works works [after al-Wansharīsī] other than a few manuscripts with no known author (*muʾallifāt qalīla majhūlat al-muʾallaf*). It is unclear when they were written.”\textsuperscript{802} This statement establishes the existence of these manuscripts but does little else. Al-Bāḥusayn’s interest is in establishing a chronology of books of distinctions and the uncertain dating and provenance of these manuscripts explains his disinterest in these works. Other

\textsuperscript{801} Al-Sabil and al-Bāḥusayn attribute this work to al-Urdustānī, presumably based on a manuscript in Baghdad. Princeton University Library, Garrett 4185Y, however, attributes the work to al-Arzustānī (64b). The only trace remaining of these authors is their nisbas. I discuss this issue below. Al-Bāḥusayn, *al-Furūq al-fiṣḥīyya*, 103; al-Sabil, “Introduction,” 1:30.

\textsuperscript{802} Al-Bāḥusayn, *al-Furūq al-fiṣḥīyya*, 76.
scholars, such as al-Sabil and Schacht, simply list the works by whatever title and author is given in catalogues, but do not explore further.\footnote{Al-Sabil, “Introduction,” 1:30; Schacht “Furūq-Büchern,” 510.} These manuscripts, however, are much more interesting than they may appear from al-Bāḥṣayn’s description. My own manuscript research has revealed copies of these manuscripts in several major manuscript repositories. Moreover, I have discovered at least one anonymous work of legal distinctions in every major repository of Arabic manuscripts that I have consulted.\footnote{I have found such manuscripts at the Bibliothèque Nationale de France, the Staatsbibliothek zu Berlin, the University of Leiden Library, the Suleymaniyye, and the Princeton University Library. Libraries in which I have not found such works are those which have only relatively small collections of Arabic manuscripts, such as the New York Public Library and the Libraries at the University of Pennsylvania.} The widespread existence of manuscripts of two anonymous works on distinctions signals that they played an important role in Islamic legal culture.

Even in my limited research, I have found multiple similar manuscripts that are of dubious attribution. Their presence in various manuscript libraries suggests that the manuscripts in question circulated relatively widely and were used for study and teaching. The first composition of these two anonymous works is particularly difficult to date because they were copied and recopied widely both geographically and temporally. I believe that these manuscripts can be divided into two discrete books, which I refer to as Furūq-A and Furūq-B. It may be the case, however, that the groups that I have identified are two different versions of a similar text. Here, I briefly discuss these two groups, their manuscripts, and their contents, although more research on them is required.
Because these two works are often catalogued as anonymous, generic works of *fiqh* they works can only be recognized by careful analysis of individual manuscripts. It is possible that a more in-depth search for manuscripts of these two works could lead to more conclusive results than what I am able to provide. At a minimum, the collections in the British Library and the Dār al-Kutub in Cairo would have to be consulted. Nevertheless, even the results from a partial sample tell us a great deal about these two works and alerts us to the importance of the material history of legal distinctions.

I have found six witnesses for the distinctions text that I call *Furūq*-A: Halet Efendi 807 (HE 807), in the Suleymaniye Library in Istanbul; Peterman II Nachtrag 4 in the Staatsbibliothek zu Berlin; and Princeton University Library, Garrett 4185Y (G 4185Y); Žāhiriyā 4501 in Damascus; , Maktabat al-Ḥaram al-Makkī in Mecca, Fiqh Ḥanafi 2089; Khazāʾin Kutub al-Awqāf 3677 in Baghdad. These manuscripts all share a common title, *Kitāb al-Furūq*. Apart from the title, however, these manuscripts show a high degree of variance. These works start with similar chapter divisions, but as the work progresses, the manuscripts disagree on the placement of subdivisions and the ordering of subsections within the text, and even on the number and ordering of distinctions within the text. The Princeton manuscript further includes a section not

---

805 Of these, I have only been unable to consult the copy in Baghdad. I rely on the brief description given by al-Sabil, “Introduction” 1:30.

806 The Princeton and Damascus manuscripts have this exact title. The Istanbul and Berlin copies are titled *Kitāb al-Furūq fī al-fiqh*.

807 Asadiyya Library, Žāhiriyā 4501 is heavily damaged, a fact which partly explains many of its differences from the other MSS.
found in any of the other manuscripts. This suggests that the extant manuscripts are based on different manuscript stems for this work, but a closer examination is necessary in order to understand the relationship between them.

The Istanbul and Berlin manuscripts do not attribute this work to any author. The manuscript in Mecca is attributed to the Ottoman scholar Ismail Hakkı. The Zāhiriyya manuscript is attributed, however, to Ibn al-Turkumānī. Meanwhile, the copy at Princeton is attributed to a certain al-Arzustānī [sic], while the Baghdad copy is ascribed to al-Urdustānī. The readings of al-Arzustānī and al-Urdustānī is perhaps explained by a simple scribal error. Identifying an author based only on a nisba and madhhab-affiliation is nearly impossible, especially with so little knowledge about when and where this work was first composed.

In terms of the legal content, Furūq-A is very reminiscent of other works of legal distinctions, particularly Asʿad al-Karābīsī’s Kitāb al-Furūq. It is written in a very concise style that quickly presents each legal problem in the legal distinction and minimally explains the distinction between them. There are few references to other books of law and minimal reference to other scholars. Abū Ḥanīfa, Muḥammad al-Shaybānī, and Abū Yūsuf are the three jurists who appear most often. This is unsurprising since they are the three founding figures of the Ḥanafī school. Princeton’s G 4185Y contains no mention of a scholar outside of the three founders, while the Sulaymaniye’s HE 807

808 The biographical tradition attributes a work of legal distinctions to Tāj al-Dīn Ibn al-Turkumānī. Tāj al-Dīn is likely the Ibn al-Turkumānī meant here. This is discussed above.
includes a mention of both “Naṣīr ibn Yaḥyā [al-Balkhī (d. ca. 268/881)]” and “Abū al-Layth [al-Samarqandi (d. ca. 383/993)].” There are also occasional references to passages from the Quran or to the hadith, as well as statements on the authority of unnamed individuals, “a Ḥanafi scholar said... (qāla baʾḍ ʿulamāʾinā or qāla baʾḍ ašḥābinā).” The different manuscripts of Furūq-A also demonstrate the permeability of the genre of legal distinctions, in particular the section on “Miscellaneous Legal Issues (masāʾil mutafarriqa; masāʾil mutashābiha)” contains some distinctions in the form of question and answer, and HE 807 ends with a section on legal strategems, (ḥīla). The final sections of HE 807 and G 4185Y are quite different, and seem to be works added appended to the end of each respective manuscript.

Furūq-B is work is a book of legal distinctions normally titled Kitāb al-Furūq and occasionally attributed to an Abū Bakr Najm al-Dīn al-Naysabūrī. The manuscript of this work in Leiden, Leiden Or. 481 (LO481), is one of the two works that Joseph Schacht relies on in his article on distinctions. Apart from the Leiden copy, I have found seven other copies of this same work, all of which are now at the Süleymaniye Library in Istanbul: Giresun Yazmalar 44 (GY44), Halet Efendi 780 (HE780), Esad Efendi 884 (EE884),

810 Istanbul, Suleymaniye Library, Halet Efendi 807, 19b l.3.
811 Istanbul, Suleymaniye Library, Halet Efendi 807, 30b-33b.
812 It is most easily recognized from its opening phrase, “Praise be to God, who guides us with Islam and commands us to submit to Him (al-ḥamd lillāh alladhī hadānā bi-l-islām wa-amaranā bi-l-istislām),” and the first distinction in the book, which begins, “When a man prays wearing an impure garment that was in his possession... (rajul ṣallā fi thawb kāna ʿindahu ghayr tāhir).”
813 See Schacht, “Furūq-Büchern.”
Esad Efendi 542 (EE 542), Asir Efendi 453 (AE453), Osman Huldi 50 (OH50), and Yazma Bağışlar 1187 (YB1187). These manuscripts are all in good condition and complete, they start with the basmala and seem to end appropriately without any pages missing on either end. The manuscripts in the category of Furūq-B exhibit a much higher degree of completeness and similarity than those of Furūq-A.

The text itself does not reveal much about its author, other than his having been a Ḥanafī, as can be seen from his Furūq. The title pages for these works, similarly, lack information about the author such as a more complete name or a date of death, features commonly found on the title pages of manuscripts. Two of these manuscripts, GY44 and LO481, attribute this work to a certain Najm al-Dīn ʿAlī al-Naysābūrī. It is not been possible to identify such a person with any certainty. The problem lies almost entirely in the insignificance of the name itself. It reveals virtually nothing about the author. Other scholars who have studied this manuscript have also been at a loss when attempting to identify this individual. This name consists of an honorific (laqab), a

---

814 This is listed in the catalog as Furūq Ibn Nujaym. This title is written on the outer and inner cover of the MS.
815 The only partial exception is OH50, of which the top of the first page is missing, affecting the first eight lines of the text on the first folio.
816 See Appendix III and Appendix IV for a table of contents. The three copies of Furūq-A show greater variance than the eight copies of Furūq-B.
817 In the bibliographies compiled by al-Bāḥusayn and al-Sabil, his first name (ism) is added, and given as ʿAlī. They do not cite a source for this, but it is likely from Ismāʿīl Pāshā al-Baghdādī, Kitāb ʿIdāh al-maknūn fī al-dhayl ʿalā Kashf al-ẓunūn (Istanbul: Millî Eğitim Basımevi, 1972), 1:232 and 2:188.
patronym, and a geographic marker. Further, while the author’s honorific and geographic origin are given in three manuscripts, his patronym is given alternatively as “ibn Abī Bakr” and “ibn Bakr.” With such little information, it is almost impossible to track down the identity of this author. It is curious that no patronymic (kunya) is given for him since it was a common part of a person’s name. Curiously, his death date is never mentioned, even though the author’s name is written multiple times on a single manuscript, i.e. on a cover page, a table of contents, and at the beginning of the book’s text. It is possible that the author was well-known when these manuscripts were copied, although such a supposition also raises interesting questions about the reliability of the bibliographic sources. It is surprising that a work which is seemingly important has almost entirely escaped notice.

Further complicating the identification of the author is that many of the manuscripts attribute this work to authors other than Najm al-Dīn al-Naysābūrī. As mentioned above, HE 780 (Halet Efendi, Instabul) attributes this work to Asʿad al-Karābīsī and OH50 (Osman Huldi, Istanbul), lists the author as Ibn Nujaym. For now, it seems safest to consider the author of this work unknown.

As mentioned above, there is a great deal of overlap between this work and Furūq-A. Consequently, the contents of Furūq-B are similar to those of Furūq-A. The style of Furūq-B is similarly terse. Furūq-B mentions few jurists, primarily Abū Ḥanīfa (d. 150/767), Abū Yūsuf (d. 182/898), and Muḥammad ibn al-Ḥasan al-Shaybānī (d. ca. 819/1419).

---

819 For ibn Abi Bakr, see Leiden Or. 481; for ibn Bakr, see Suleymaniye Library, Giresun Yazmalar 44.
820 See Leiden, Or. 481.
189/805), but also Muḥammad ibn Muqātil al-Rāzī (d. 248/862), \(^{821}\) al-Ţaḥāwī (d. 321/933), \(^{822}\) Abū Bakr al-Iskāfī (d. 333/944), \(^{823}\) and both of the figures cited in Halet Efendi 780, Naṣīr ibn Yaḥyā (d. ca. 250/864) \(^{824}\) and “al-Faqīh Abū al-Layth,” presumably al-Samarqandi (d. ca. 383/993). \(^{825}\)

There are several similarities between \textit{Furūq-A} and \textit{Furūq-B}. While they do not seem to have exactly the same content, much of the material they contain overlaps. They both rarely mention Ḥanafi authorities or books. The similarities may be coincidental, and may be due to the fact that they are both short works of Ḥanafi legal distinctions. Alternatively, their similarities may signify that these works were written in a similar cultural context; that is, it may be that the two works were composed around the same time and for similar purposes.

**Conclusion**

This chapter has presented an up-to-date, critical bibliography of all known premodern works of legal distinctions, based on textual, material, and manuscript evidence. It has established the corpus of works of legal distinctions, identified the authors of these works, and traced their remaining records, if any. From the results of this survey, it should be clear that while the genre of legal distinctions is relatively limited, it was

\(^{821}\) \textit{GY} 44, 4b, l. 7. Muḥammad ibn Muqātil was a student of Muḥammad al-Shaybānī. See \textit{GAS} 1:436.

\(^{822}\) \textit{GY} 44, 6a, l.13.

\(^{823}\) \textit{GY} 44, 10a, ll.3-4. The passage in which Abū Bakr al-Iskāf appears is found in \textit{GY} 44 and \textit{HE} 807, although he is not mentioned in \textit{HE} 807.

\(^{824}\) \textit{GY} 44, 10a l.9. The passage in which Naṣīr ibn Yahya appears is found in \textit{GY} 44 and \textit{HE} 807.

\(^{825}\) \textit{GY} 44, 30a l.15. The passage in which Abū al-Layth appears is found in \textit{GY} 44 and \textit{HE} 807. See \textit{GAS} 1:445-50.
nevertheless important, and interest in this genre perservered across time and space. The genre’s vitality was reflected in both the composition of new works and the production of manuscripts of existing books. The results of my empirical survey of manuscripts thus tally well with the analytical conclusions of the previous chapters.

Nevertheless, the results of this survey suggest questions for future study. One is why interest in works of legal distinction, perhaps as exemplified in particular by Furūq-A, Furūq-B, and the Kitāb al-Furūq attributed to Muḥammad ibn Ṣāliḥ al-Karābīsī, had such staying power in the Ottoman context. This interest makes the almost complete lack of new works of legal distinction at this time surprising. These texts had been largely unknown before the Ottoman era; the factors behind their popularization could shed light on the role of legal distinctions writing in the legal culture of the Ottoman Empire. Such a study may also yield insights into larger issues pertaining to the role of Islamic law in Ottoman-era intellectual culture.

Ibn Nujaym would seem to be a central figure in the story of legal distinctions in the Ottoman Empire. Ibn Nujaym was an outsider in the Ottoman legal system, having not graduated from the Ottoman madrasa system. Nevertheless, his “al-Asbāḥ wa'l-naẓāʾīr... drew the attention of senior members of the Ottoman learned hierarchy and was eventually incorporated into the imperial jurisprudential canon.”826 It was eventually sanctioned as a part of the Ottoman canon by the chief mufiti, Ebû-Sʿūd (d. 982/1574). After receiving his blessing, “the text entered circulation, which means that

---

826 Burak, Second Formation, 136.
it was taught within in[sic] the imperial madrasa system.” Nevertheless, Ibn Nujaym’s text was not universally admired. Guy Burak notes that “several members of the Ottoman learned hierarchy remained perplexed as to the status of al-Ashbāh wa’l-nazāʾir in the decades following its completion and its approbation by Ebû-Sʿûd.” As a canonical text for the Ottoman educational system, the final work of Ḥanafī legal distinctions was disseminated widely by Ottoman scholars. A look at the reception of and commentaries on the al-Ashbāh wa-l-nazāʾir and particularly the sixth section on distinctions would be worthwhile.

Another line of inquiry, which fell outside the limits of the present study, would be a more intensive analysis of the manuscript record. The present study was only able to touch on these matters briefly. A richer history, however, could perhaps be written of the interest in the knowledge of legal distinctions. Such an analysis could look into the ownership history of several manuscripts, for instance, to see where these manuscripts were kept, who were the people and institutions interested in them, and where and when they moved from one location to another. Combined with the biobibliographical record and the general history of legal distinctions uncovered in the present study, this avenue could yield insights into the later history of Islamic law.

Further, it is clear that Furūq-A and Furūq-B deserve greater scrutiny. Although the manuscripts categorized as Furūq-A vary considerably, it seems clear to me that the manuscripts all represent the same work, but perhaps a closer study will show that

---

828 Burak, Second Formation, 136, see also 137–39.
they in fact represent different works or different versions of the same book. Relatedly, there are some similarities as well between Furūq-A and Furūq-B that should be explored in a future study.

It is clear from this bibliography that legal distinctions were an important part of Islamic legal literature. Although legal distinctions is a small genre, books in this genre were composed throughout the Islamic world for nearly one thousand years, spanning a considerable geographical and chronological breadth. With this in mind, it is possible to claim that legal distinctions became a critical component of later Islamic legal literature.
Conclusion

This study has focused on the history of the genre of legal distinctions. It has shown that this genre was a small but important component of the literature of Islamic law. It also demonstrates the importance of genre as an important framework for Islamic legal research. Through our analysis of this genre, we gained a great deal of insight into Islamic legal history. Some of the findings of this study reinforce already understood facts about the development of Islamic law, such as the close connections between the disciplines of law and grammar, the importance of the fifth/eleventh century as a turning point in the development of legal literature, and the importance of formalized disputation in advancing legal thought and legal writing. At the same time, however, it has made several new contributions to the study of Islamic legal history and suggested a few lines of future inquiry.

Chapter Two contains a brief survey of lexicographic distinctions. Lexicographic distinctions have not received much scholarly attention, yet they can shed light on many issues important for understanding the development of Arabic philological practices. A more thorough analysis of the Kitāb al-Furūq al-lughawiyya by Abū Hilāl al-ʿAskarī is desirable. It seems likely that a close reading of al-ʿAskarī’s work would help shed light on the important connections between lexicography and theology. Al-ʿAskarī is a well-known figure about whom not much is known; a study of his work on lexicographical distinctions could be helpful in further understanding his theological views, which in turn may shed light on his other writings, and grant us new insights.
into the linguistic worldview of Muʿtazilite theology at the end of the fourth/tenth century.

Similarly, the history of lexicographical distinctions deserves further scrutiny. As understood in Chapter Two, lexicographical distinctions could be seen in two ways: as theological treatises on synonymy and as thesauruses concerned with proper usage. That chapter speculates that the thesauric aspect gave the genre longevity; nevertheless, it may be that works of lexicographical distinctions retained their theological resonances throughout their history. A study of the lexicographic distinction books by Jalāl al-Dīn al-Suyūṭī and İsmail Hakkı Bursevi may help in understanding Sunni theological developments in the early modern period.

In a different vein, Chapter Three looked at the relationship between formalized legal disputation and legal distinctions. This chapter relied, in part, on three Arabic encyclopedias of the sciences: Ibn al-Akfānī’s Irshād al-qāṣid ilā asnā al-maqāṣid, ʿIṣām al-Dīn Ṭaşkōprüzāde’s Miftāḥ al-saʿāda, and Ḥājjī Khalīfa’s Kashf al-ẓunūn. These three works provide a window into the various ways that scholars organized knowledge, with special reference to genres related to the genesis, pre-history, and history of legal distinctions. Given that the connections between these three works are generally understood, a more thorough study of their legal content of these works will help us form a more complete picture of how Islamic law has been understood from the late pre-modern to the early modern period. The works by Ibn al-Akfānī and ʿIṣām al-Dīn, particularly, are arranged by scientific discipline and may prove especially useful. There are likely other encyclopedias that should be consulted as well that I did not include in my discussion.
Finally, Chapter Six raises questions about our understandings of the written traditions of Islamic law. As concerns legal distinctions, the prevalence of works with dubious or unknown authorship is high. It is not clear to me whether the popularity of such works is something particular to the genre of legal distinctions, or if other genres of legal literature also have various popular works with unclear authorship. This is a question that should be pursued as it may help to clarify the role and the relationship between authorship and the possible production of anonymous study texts. Chapter Six showed the importance of claims to authorship in the biobibliographical tradition. Certain claims known to be erroneous, such as the existence of a *Talqīḥ al-Maḥbūbī* attributed to Asʿad al-Karābīsī, were nevertheless preserved in the bibliographic tradition. It appears that there may be a tension between the importance of authorship and the prevalence of works with no known author.

One particular contribution of this study is its demonstration of the connection between certain changes in the social practices of Islamicate societies and intellectual production among legal scholars. In this regard, our understanding of genre as a kind of Wittgensteinian language game was productive. The idea of genre as a language game takes genre as a recurring activity that is structured by rules but open to change over time.\(^{829}\) The first chapters of this dissertation attempted to establish some of the rules which govern the game that is the genre of legal distinctions. Some of these rules are readily apparent: organization by legal topic, the comparison of two or more

\[^{829}\] I discuss this idea in the Introduction, pp. 16-18. See also Jacques, *Authority*, 17-23.
apparently similar but different legal problems, the disconnected narrative between one comparison and another, and the wording of book titles.

Other rules, however, were more clearly tied to developments in the public demand for particular presentations of knowledge. In part, the legal logic of comparison found in works of legal distinctions is directly tied to the institution of formalized disputation, as shown by the handbooks of disputation studied in Chapter Three. Moreover, the logic of legal distinctions is closely connected to the popularization of formal disputation among Muslim jurists in the fifth/eleventh century and the need for resources to participate successfully in these disputations. Similarly, the convergence between riddles and distinctions was fueled by the popularization and spread of majālis and the changing aesthetic preferences that accompanied the spread of majālis.

This dissertation demonstrated this change clearly for legal distinctions and for legal riddles. It has been seen in other genres of legal literature as well, such as the supercommentary (al-ḥāshiya) studied by El Shamsy, and should be expected in many other genres as well.830 It should not be surprising to see Islamic legal literature change in response to shifting demands from reading publics. The changes documented in this dissertation, however, are changes in the presentation or packaging of legal information, not necessarily substantive changes to the legal content itself. The changes described here should not be understood as mere aesthetic changes, but rather can inform us about changes regarding the consumption of Islamic legal knowledge. My

---
830 El Shamsy, “Ḥāshiya.”
findings suggest that an increased focus on genre would likely contribute greatly to our understanding of Islamic law and legal development. Genre, at least in the post-formative period (after the fifth/eleventh c.), responded to the demand of consumers of legal knowledge and their interests likely contributed to formal innovation of ideas, reasoning strategies, and the organization of knowledge.

At the same time, however, the results of this study also raise several new and important questions about Islamic law. The first involves the identity of a genre. One of the main difficulties encountered in understanding the genre of legal distinctions was in establishing the boundaries of this genre vis-à-vis other genres of Islamic law. The porousness between legal distinctions and legal riddles was established in Chapter Five, but there are other genres with which it seemingly shares overlapping borders. In her study of legal maxims, for instance, Khadiga Musa says some scholars believed that “al-ashbāh wa’l-naẓāʾir is actually the science of furūq.”831 There are clear overlaps between these two fields; the al-Ashbāh wa-l-naẓāʾir works by both Ibn Nujaym and Jalāl al-Dīn al-Suyūṭī contain important sections dealing with legal distinctions. At the same time, however, Ibn al-Subkī’s al-Ashbāh wa-l-naẓāʾir does not contain a section on legal distinctions at all, perhaps because the “discipline of al-ashbāh wa-l-naẓāʾir was not fully developed in Ibn al-Subkī’s time.”832 Al-Ashbāh wa-l-naẓāʾir could also be seen as “the science of al-qawāḍid al-fiqhīyya.”833 It is clear that more research is needed to understand the identity, contours, and function of each of these genres.

831 Musa, “Legal Maxims,” 334.
832 Musa, “Legal Maxims,” 338.
833 Musa, “Legal Maxims,” 339.
understood, we are likely to gain new understandings about the nature of Islamic legal thought and its development outside of the two major genres of legal theory and substantive law.
Appendix I: Bibliography of Furūq Works by Madhhab.

Below in outline form is a comprehensive list of works on legal distinctions, which is based on my research into the genre of al-furūq al-fiqhiyya. It contains all of the published editions and manuscripts known to me. The outline is arranged by legal school (madhhab), and then chronologically by author within each school. Authors for whom death dates are unknown are listed last within each legal school. The footnotes for each main entry contain the relevant bibliographical information about the author and/or the work described. If printed editions discuss particular manuscripts, I include a reference to the description for the manuscript in a footnote. For the reasons noted above, this survey includes al-Furūq by al-Qarāfī, al-Ashbāh wa-l-naẓāʾir by al-Suyūṭī, and al-Ashbāh wa-l-naẓāʾir by Ibn al-Nujaym, but mentions only the most important printings and editions for those works. All other works are treated in detail.

Shāfiʿī

   a. Not extant.
   a. Not extant.

3. Al-Kifāya fi al-furūq wa-l-latāʿijf by Abū ʿAbd Allāh al-Ḥusayn ibn ʿAbd Allāh al-Ṭabarī (d. ca. fifth/eleventh c.).
   a. Not extant.

   a. Alternate Titles:
      i. Al-Jamʿ wa-l-Farq
      ii. Al-Wasāʾīl fī furūq al-masāʾīl.

---

836 The author of this work is Abū ʿAbd Allāh al-Ḥusayn ibn ʿAbd Allāh al-Ṭabarī. This is confirmed by all of the biographies of al-Ḥusayn ibn ʿAbd Allāh, with the exception of al-Ṭīrāzī, who does not mention this work. See al-Bāḥūsayn, al-Furūq al-fiḥīyya, 90–91; Ibn Qāḍī Shuhba, Ṭabaqāt, 1:181 no.142; al-Asnawī, Ṭabqāt, 2:61-62 no.767; al-Ṣhirāzī, Ṭabqāt al-fuqahāʾ, 126. Other sources, however, attribute this work to Abū ʿAbd Allāh al-Ḥusayn ibn Muḥammad ibn al-Ḥasan al-Ḥannāṭī al-Ṭabarī (d. ca 495/1101), see al-Sābīl, “Introduction,” 1:37; Ḥājjī Khalīfa, Kashf al-ẓūnūn, 2:1499; al-Baghdādī, Ḥadiyyat al-ʿārifīn, 1:311. These sources are all late, however. Earlier biographies of al-Ḥannāṭī, moreover, do not attribute this work to him, see Ibn Qāḍī Shuhba, Ṭabqāt, 1:179-81 no.141; Ibn al-Ṣūbūkī, Ṭabqāt al-shāfiʿīyya al-kubrā, 4:367-371 no.397; al-Asnawī, Ṭabqāt, 1:193-94 no.362; al-Ṣhirāzī, Ṭabqāt al-fuqahāʾ, 118.
b. Editions:
   
   
ii. Partial edition as MA Thesis by ʿAbd al-Raḥmān al-Mazīnī, Sharīʿa College, Imām Muḥammad ibn Saʿūd Islamic University year 1405/1406.839
   
c. MSS:
   
i. Cairo, Dār al-Kutub al-Miṣriyya, 1504 Fiqh Shāfiʿī, n.d.840
   
ii. Istanbul, Suleymaniye Kutuphanesi, Turkhān v Sultan 146, 8th C/14th C.841
   
iii. Dublin, Chester Beatty 4613, copied 786/1384.842
   
iv. Cairo, al-Maktaba al-Azhariyya, 890 fiqh shāfiʿī, n.d.843
   
v. Cairo, al-Maktaba al-Azhariyya, 81 fiqh shāfiʿī, n.d.844
   
vi. Istanbul, Süleymaniye Kütüphanesi, Aṣir Efendi 146, n.d.845
   

---

838 Princeton, Princeton University Library, Garrett 824H.
845 In GAL S1:673 incorrectly attributed to Imām al-Haramayn al-Juwaynī.
5. *Al-Wasāʾil fī furūq al-masāʾil* by Abū Khayr Salāma ibn Ismāʿīl ibn Jamāʿa al-Maqdisī al-Shāfiʿī (d. 480/1087).\(^{846}\)
   a. Not extant.

6. *Al-Muʿāyāt* by Abū al-ʿAbbās Aḥmad ibn Muḥammad al-Jurjānī al-Shāfiʿī (d. 482/1089).\(^{847}\)
   a. Alternate titles:
      i. *Al-Furūq*
      ii. *Al-Muʿāyāt fī al-ʿaqīl*
      iii. *Al-Muʿāyāt fī al-fiqh*
      iv. *Al-Muʿāyāt wa-l-imtiḥān*
   b. Editions:
   c. MSS:


i. Rabat, Khizāna al-Malikiyya 913 dāl, n.d.

ii. Cairo, Dār al-Kutub al-Miṣriyya 915 fiqh shāfiʿī, Shaʿbān 586/ 3 September - 2 October 1190.\(^\text{848}\)

iii. Cairo, Dār al-Kutub al-Miṣriyya, Fiqh Shāfiʿī Ṭalaʿat 112, n.d.\(^\text{849}\)

7. *Al-Furūq* by Abū al-Maḥāsin ʿAbd al-Wāḥid ibn Ismāʿīl al-Rūyānī al-Ṭabarī al-Shāfiʿī (d. 502/1108).\(^\text{850}\)

   a. Not Extant.

8. *Al-Furūq* by Abū al-ʿAbbās Kamāl al-Dīn Aḥmad ibn Kashāsib al-Shāfiʿī al-Dizmārī (d. 643/1245).\(^\text{851}\)

   a. Not Extant.

9. *Al-Fuṣūl wa-l-furūq* by Abū al-ʿAbbās Najm al-Dīn Aḥmad ibn Muḥammad ibn Khalaf Ibn Ṭalḥ al-Maqdisī al-Ḥanbalī, al-Shāfiʿī (d. 638/1241).\(^\text{852}\)

---


a. Not Extant.

10. *Al-Jamʿ wa-l-farq* by Sirāj al-Dīn Yūnus ibn ʿAbd al-Majīd ibn ʿAlī al-Hudhālī al-Armantī Al-Shāfiʿī (d. 725/1325).\(^{853}\)
   
   a. Not Extant.

   
   a. Not Extant.
   
   b. Alternate Titles:
      
   i. *Kitāb al-Farq*.\(^{855}\)
      
   ii. *Al-Naẓāʿir wa-l-furūq*.\(^{856}\)

---

\(^{852}\) Heinrichs, “Structuring the Law,” 343; al-Bāḥusayn, *al-Furūq al-fiẓḥīyya*, 95; al-Sabil, “Introduction,” 1:37. This scholar was first a Ḥanbalī but later became a Shāfiʿī. This work seems not to be extant, but I believe it is a work in the Shāfiʿī tradition since it is cited by Badr al-Dīn al-Zarkashi. See his *al-Bahr al-Muḥīṭ* 7:220; 7:245; 7:394; and 8:38; See also al-Asnawi, Ṭabaqāt, 1:121-11 no.404; Ibn Qādī Shuhba, Ṭabaqāt 2:71 no.371 ibn al-ʿImād, *Shadharāt al-dhahab*, 7:331; Kahḥūla, Muʿjam, 1:262-63 no. 1896.


a. Editions:

b. MSS:
   i. Cairo, Dār al-Kutub al-Miṣriyya, 277 Fiqh Shāfiʿī, 19 Rabīʿ II 862/6 March 1457.

---


858 According to al-Bāḥusayn, Naṣr Farīd Muḥammad Wāṣil produced a study and edition of this work as his PhD Dissertation from al-Azhar University in 1392/1972-3 (100). The Dār al-Shurūq printing is likely the publication of his dissertation.


863 Wāṣil, “Introduction,” 1:20
vii. İstanbul, Suleymaniye Kutuphanesi, Murat Molla 1054, 874/1469-70.


**Ḥanafi**

1. *Al-Furūq* by Abū al-Faḍl Muḥammad ibn Ṣāliḥ al-Karābīsī al-Ḥanafī (d. 322/934).866

   a. Editions:


   b. MSS:

   i. Cairo, Dār al-Kutub al-Miṣriyya; Fiqh Ḥanafī 1923, after 1003/1595
   
   ii. Baghdad, Maktabat al-Awqāf, 3533, n.d.867
   
   iii. Cairo, Maktabat al-Azhar 2076 Rāfiʿī 26, Fiqḥ Ḥanafī 915, 1052/1642.
   
   iv. Berlin, Staatsbibliothek zu Berlin, Or. 5013, 1025/1616.

---

v. Istanbul, Suleymaniye, Feyzullah Efendi, 921, 9th/15th century (?).


   a. MSS:  
      i. Istanbul, Suleymaniye Kutuphanesi, Nuruosmaniye 1372.  
      ii. Istanbul, Suleymaniye Kutuphanesi, Esad Efendi 532.

   a. Editions:

---


---

361


b. MSS:


ii. Dār al-Kutub al-Miṣriyya, 293 *fiqh ḥanafi*, Cairo, dated 622.875

iii. Istanbul, Suleymanie Kutuphanesi, Carullah 821, 1007/1598-99,876


---

a. Alternate titles:
   ii. Talqīḥ al-ʿuqūd fī al-furūq min furūʿ al-ḥanafiyya.878

b. Editions:

c. MSS:
   ii. Berlin 4505, n.d.


879 Al-Bāḥusayn, al-Furūq al-fiṣḥiyā, 94; al-Sabil, “Introduction,” 1:29n2. Both of these sources say that this thesis was submitted to al-Azhar University, but it seems to be from Cairo University. See http://drepository.asu.edu.eg/xmlui/handle/123456789/49817, accessed August 27, 2016.
   a. Not extant
   b. MSS:
      i. Damascus, al-Maktaba al-Asadiyya, Zāhiriyya 4501(?).

6. *Al-Furūq* by Shaykh Bāyazīd ibn Isrāʾīl ibn Ḥājjī Dāwūd Marghāyatī? (d. early ninth/fifteenth c.).
   a. Extant.

---

5. Although this work is attributed to Ibn al-Turkumānī, this attribution seems erroneous. This is a copy of *Furūq*-A, which has been attributed to many different jurists, see above Chapter Six, pp. 337-40.
7. *Al-Ashbāh wa-l-naẓāʾir* by Zayn al-Dīn Ibn Nujaym al-Miṣrī (d. 970/1563).\(^{884}\)

8. *Furūq-B; al-Furūq fī al-furūʿ* by pseudo-Najm al-Dīn ‘Alī ibn Abī Bakr al-Naysābūrī al-Ḥanafī (d. ?).\(^{885}\)
   a. Alternate title
      i. *Taḥrīr al-furūq*.\(^{886}\)
   b. MSS:
      i. Leiden, Leiden University Library, Or. 481
      v. Istanbul, Suleymaniye Kutuphanesi, Giresun Yazmalar 44.
      vii. Istanbul, Suleymaniye Kutuphanesi, Osman Huldi 50, 1126/1714.\(^{887}\)

\(^{883}\) None of the sources that mention this manuscript relay its location. It is available, however, in microfilm at the King Faisal Center for Research and Islamic Studies in Riyadh, microfilm 812.


9. *Furūq-A; al-Furūq ʿalā madhhab Abī Ḥanīfa.*

   a. MSS:
      i. Baghdad, Khazāʾin kutub al-awqāf, 3677, n.d.
      iii. Damascus, Asadiyya Library, Zāhiriyya 4501, n.d.

Mālikī


   a. Not extant.

---

887 This manuscript is attributed to Ibn Nujaym in the catalog.
889 Attributed to Aḥmad ibn Muḥammad al-Urdustānī.
890 Attributed to Ismāʿīl Ḥaqqī.
891 Attributed to al-Arzustānī.

   a. Alternate titles:

      i. Kitāb al-Furūq fi masāʾil al-fiqh;

      ii. Al-Furūq al-fiqhiyya.

   b. Editions:


   c. MSS:

      i. Tripoli, Libya, Markaz Dirāsāt al-Mujāhidīn al-Lībiyīn 588, n.d.


895 Although it appears that this edition is the original of the next edition, the Dubai volume includes numerous citations of works printed after 1991. I have been unable to consult this edition, but see http://www.aruc.org/en/web/auc/general-search?page=FullDisplay&mId=2765814. Accessed August 16, 2016.

a. Editions:


b. MSS:

i. Rabat, al-Khizāna al-Malakiyya 261, n.d. 899

ii. Rabat, al-Khizāna al-Malakiyya 350 qāf/2, written 743/1342-43. 900

---

896 Neither edition of ʿAbd al-Wahhāb’s *Furūq* gives an accession number, Jihānī, “Introduction,” 17-19 and al-Ghīrīyānī, “Introduction,” 19-20. This is the same MS attributed al-Dīmashqī by Abū al-ʿAjfān and Abū Fāris as *Maktabat al-Awqāf bi-Ṭarābulus* 588 (49). It is unclear to me whether the manuscript is now at the Markaz al-Lībi li-l-Maḥfūzāt wa-l-Dirāsāt al-Tārikhiyya or al-Hay’at al-ʿĀmma li-l-Awqāf wa-l-Shuʿūn al-Islamiyya.


4. *Al-Furūq al-fiqhīyya* by Abū al-Faḍl Muslim ibn ʿAlī al-Dimashqī al-Mālikī (d. fifth/eleventh c.).

   a. Alternate titles:
      i. *Furūq muttafiq zāhirihā mukhtalif bāṭinihā*

   b. Editions:

   c. MSS:
      i. Fez, Khizānat al-Qarawiyīn, 1193, n.d.

---

902 According to GAL, this is Madrid 78, but this appears to be an old designation. See Guillén Robles, Mss. árabes BNM, p. 38, n. LXXVIII; [http://bdh-rd.bne.es/viewer.vm?id=0000014499&page=1](http://bdh-rd.bne.es/viewer.vm?id=0000014499&page=1). ʿAḥmad ibn Ibrāhīm ibn ʿAbd Allāh al-Ḥabīb gives the new number based on his visit to the library, see ʿAḥmad al-Ḥabīb, “Introduction,” 124-25.
iii. Tunis, Dār al-Kutub al-Waṭaniyya, 14862, 1291/1874-75.\textsuperscript{907}

iv. Dublin, Chester Beatty 4507, n.d.\textsuperscript{908}

v. Tunis, Dār al-Kutub al-Waṭaniyya, 1694, n.d.\textsuperscript{909}

5. \textit{Al-Furāq aw anwār al-burūq fī anwā' al-furūq} by Abū al-ʿAbbās Shihāb al-Dīn Aḥmad ibn Idrīs ibn al-Raḥmān al-Qarāfī (d. 684/1285).\textsuperscript{910}

6. \textit{Al-Furūq} by Abū ʿAbd Allāh Muḥammad ibn ʿAbdarī al-Gharnāṭī al-Mālikī, Al-Mawwāq (d. 897/1492).\textsuperscript{911}

   a. MSS:

      i. La Marsa, Maktabat Āl Ibn ʿĀshūr al-Ṭūnisī fāʾ-ḥafl fāʾ-ḥafl 98-99, n.d.(?)\textsuperscript{912}

---

\textsuperscript{907} Abū al-Ajfān and Abū Fāris, “Introduction,” 48-49. According to Abū al-Ajfān and Abū Fāris, it was 3217 in (min raṣīd) the Maktabat al-Aḥmadiyya collection.
\textsuperscript{908} Abū al-Ajfān and Abū Fāris, “Introduction,” 49-50. This manuscript is identified by al-Bāhusayn as \textit{al-Furūq fī al-ahkām ʿalā madhhab al-Mālikīyya} by an anonymous author since this is what appears on the title page of this manuscript (104). However, it is clearly identified by Abū al-Ajfān and Abū Fāris as a copy of Muslim al-Dimashqi’s \textit{Furūq}.
\textsuperscript{909} Abū al-Ajfān and Abū Fāris, “Introduction,” 50.
\textsuperscript{912} Heinrichs, “Structuring the Law,” 342. This manuscript is likely not a copy of the work by al-Mawwāq, but is often attributed to him.

a. Editions:

i. ‘Iddat al-furūq fī jam‘ mā fī al-madhhab min al-jumā‘ wa-l-furūq.


iii. Fez Lithograph edition.914

b. MSS:

i. Tunis, al-Maktaba al-Waṭaniyya 4725, n.d.915

ii. Tunis, al-Maktaba al-Waṭaniyya 15087, n.d.916

iii. Tunis, al-Maktaba al-Waṭaniyya 14889, n.d.917


914 Abū Fāris mentions this edition in his introduction. He claims it is “the famous and widely circulated Fez lithograph edition (ṭaba‘at Fās al-mashhūra al-mutadāwala),” but I have not been able to find another reference to this work.


8. *Furūq bayna masā’il fiqhiyya mutashābihat al-ahwāl mutakhālifat al-i‘tibār* by Abū Ṭālib ʿAbd Allāh Muḥammad ibn Yūsuf (d. ?).  

a. MSS:  
   i. La Marsa, Maktabat Āl Ibn ʿĀshūr al-Tūnisī 98-90, n.d.  

**Ḥanbalī**  


a. Not extant.  


---  

918 Abū Fāris, “Introduction,” 56.  
920 This is perhaps the author referred to by al-Ṭūfī as “al-Shaykh Abū ʿAbd Allāh Muḥammad ibn Yūsuf al-Andalusī al-Anṣārī al-Mālikī” (73). Although this may appear at first glance to be a clear reference to al-Mawwāq, al-Ṭūfī died in 716/1316, while al-Mawwāq died almost two hundred years later, in 897/1492.  
a. Alternate title:
   i. Al-Furūq al-mushtabih ṣuwarīḥa al-mukhtalīf aḥkāmīḥa.

b. Editions:


c. MSS:
   i. Damascus, Asadiyya Library, Zāhiriyah, 19 Muḥarram 856/February 2, 1452.\(^{924}\)

   ii. Baṣra, ʿAbbāsiyya Library, 39 jīm, n.d.\(^{925}\)

   iii. Leipzig, Leipzig University Library, Vollers 389, n.d.\(^{926}\)

\(^{924}\) Muḥammad ibn ʿAbd Allāh Muḥammad al-Yahyā “Introduction” to Muʿazzam al-Dīn Abū ʿAbd Allāh Muḥammad ibn ʿAbd Allāh al-Sāmarrī, Kitāb al-Furūq ʿalā madhhab al-Imām Aḥmad ibn Ḥanbal, ed. Muḥammad ibn ʿAbd Allāh Muḥammad al-Yahyā (Riyadh: Dār al-Ṣumayʿī), 99. The editions of this book cite this manuscript but do not give its accession number.


   a. Not extant.

   a. Alternate title:
      i. *Tanqīḥ al-furūq.*929
   b. Editions:

---


929 This title is given on the cover page of Princeton University Library, Garrett 4577Y.


c.  Mss:

i. Princeton, Princeton University Library, Garrett 4577Y, n.d.930

Shiʿi Works

1. َكِتَاب َال-فُرُوعِ by Aḥmad ibn Muḥammad al-Barqī (d. third/ninth c.).931
   a. Not extant.

2. َال-جمُع َوَال-فَارِقِ by ʿAlī ibn Yaḥyā ibn Rāshid al-Washlī al-Zaydī al-Yamanī (d. 777/1375-76).932
   a. Not extant.

Works Incorrectly Said to Be of Legal Distinctions:

1. َال-مُسْكِتِ by al-Zubayr ibn Aḥmad ibn Sulaymān ibn ʿAbd Allāh al-Zubayrī (d. 317/929-30).933

There is not enough information to classify this work.\textsuperscript{934}

2. \textit{Al-Furāq} by Abū ʿAbd Allāh Muḥammad ibn ʿAlī al-Ḥakīm al-Tirmidhī (d. ca. 320/932).\textsuperscript{935}
   a. This work is on lexicographic distinctions.

3. \textit{Al-Muṭāraḥāt} by Aḥmad ibn Muḥammad ibn Aḥmad al-Baghdādī, Ibn al-Qaṭṭān (d. 359/969-70).\textsuperscript{936}
   a. This is a work of law, but not on distinctions.

4. \textit{Al-Īḥkām fi tamyīz al-aḥkām wa-taṣārrufāt al-qāḍī wa-l-imām} by Abū al-ʿAbbās Aḥmad ibn Idrīs al-Qarāfī (d. 684/1285).\textsuperscript{937}

\textsuperscript{934} See Chapter Four, pp. 209-12.
a. This is a work on fatwas and legal rulings.

5. *Al-Furūq* by al-Qāḍī Muḥammad ibn Kāmil ibn Muḥammad ibn Tammām al-Tadmurī al-Shāfīʿī (d. after 741/1340).938
   a. It is not clear that this work was composed.

   a. This is a work on Sufism.

7. *Furūq al-uṣūl* by pseudo-Kemalpaṣazade (d. 940/1534).940
   a. This work is on applied linguistic distinctions in law.

8. *Qurrat al-ʿayn wa-l-samʿ fi bayān al-farq wa-l-jamʿ* by Badr al-Dīn ibn ʿUmar ibn Ahmad ibn Muḥammad al-ʿĀdilī al-ʿAbbāsī al-Ḥuraythi(?). al-Shāfīʿī (d. ca. 970/1562).941
   a. This is a work on Sufism.

938 This work is only mentioned in Kāḥḥāla, Muʿjam, 3:606 no.15326. This scholar has entries in al-ʿAsqalānī, al-Durar al-Kāmina 5:411; and al-ʿUlaymī, al-ʿUns al-Jalīl bi-taʿrīkh al-Quds wa-l-Jalīl, 2:140, but they do not mention this book.
940 Ḥājjī Khalīfa, Kashf al-zunūn s.v. “Furūq al-uṣūl,” 2:1257. He describes this work as “a useful (muṣida) treatise by a later jurist (baʿḍ al-mutaʿakhkhirīn).”
941 Al-Bāḥṣasayn, al-Furūq al-fiḥiyya, 104; al-Sabil, “Introduction,” 1:39; Fīhrīst Makhṭūṭāt al-bahrāyn 1:99; Kāḥḥāla, Muʿjam, 3:557 no.14995. Al-Bāḥṣasayn says this is actually a work of sufism, not a legal work and therefore is not a work of legal distinctions. I have not been able to examine this work itself.
9. *Talqīḥ al-Karābīsī*.\(^{942}\)

a. This work does not exist, but was erroneously cited by Ibn Nujaym in his *al-Ashbāh wa-l-naẓā′īr*, at the beginning of section six.


a. This is a work of hadith criticism.

11. *Al-Furūq al-Fiqhiyya li-l-Imām Mālik* by Ibrāhīm Ismāʿīl Jalāl

a. This is a work of legal distinctions, but compiled recently.


a. This is a work of legal distinctions, but compiled recently.

13. *Al-Naẓāʾir al-fiqhiyya* by Abū ʿImrān Mūsā ibn ʿĪsā al-Ṣanhājī al-Qayrawānī (d. ?).\(^{943}\)

a. This is a work of legal maxims.

---


\(^{943}\) Al-Bāḥusayn, *al-Furūq al-fiqhiyya*, 86.
Appendix II: Chronological Furūq Bibliography.

This appendix includes a bibliography of all known works of legal distinctions, arranged chronologically. For more information on a specific work or its author, refer to Appendix I.

Third Century

1. *Kitāb al-Furūq* by Aḥmad ibn Muḥammad al-Barqī (Shiʿī, d. third/ninth c.).

Fourth Century


Fifth Century

1. *Al-Kifāya fī al-furūq* by Abū ʿAbd Allāh al-Ḥusayn ibn ʿAbd Allāh al-Ṭabarī (Shāfiʿī, d. ca. fifth/eleventh c.).

2. *Al-Furūq al-fiqhīyya* by Abū al-Faḍl Muslim ibn ʿAlī al-Dīmashqī (Mālikī, d. fifth/eleventh c.).


5. *Al-Furūq* by Abū Muḥammad ʿAbd Allāh ibn Yūsf al-Juwaynī (Shāfiʿī, d. 438/1046).


**Sixth Century**


**Seventh Century**


2. *Al-Furūq* by Abū ʿAbd Allāh Muḥammad ibn ʿAbd Allāh al-Sāmarrī, Ibn Sunayna (Ḥanbalī, d. 616/1219).


**Eighth Century**


**Ninth Century**

1. *Al-Furūq* by Shaykh Bāyazīd ibn Isrāʾīl ibn Ḥājjī Dāwūd Marghāyati? (Ḥanafi, d. early ninth/fifteenth c.).


**Tenth Century**

1. *Al-Ashbāh wa-l-nazāʾir* by Jalāl al-Dīn ʿAbd al-Raḥmān al-Suyūṭī (Shāfīʿī, d. 911/1505).


3. *Al-Ashbāh wa-l-nazāʾir* by Zayn al-Dīn Ibn Nujaym al-Miṣrī (Ḥanafi, d. 970/1563)

**Unknown**

1. *Furūq*A or *Al-Furūq ṣalā madhhab Abī Ḥanīfa* by Anonymous (Ḥanafi).
2. *Furūq*-B or *Al-Furūq fī al-furūʿ* attributed to Najm al-Dīn ‘Alī ibn al-Sayyid Abī Bakr al-Naysābūrī al-Ḥanafī (Ḥanafī, d. ?).

3. *Al-Furūq* by Muḥammad ibn Yūsuf al-Andalusī al-Anṣārī (Mālikī, d. ?).
Appendix III: The Six Manuscripts of the *Furūq* text attributed to Muḥammad ibn Ṣāliḥ al-Karābīsī

<table>
<thead>
<tr>
<th>Library, City</th>
<th>MS Number</th>
<th>Date of Copy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dār al-Kutub al-Miṣriyya, Cairo</td>
<td>Fiqh Ḥanafi 1923</td>
<td>After 1003/1595</td>
</tr>
<tr>
<td>Maktabat al-Awqāf, Baghdad</td>
<td>3533</td>
<td>undated</td>
</tr>
<tr>
<td>Maktabat al-Azhar, Cairo</td>
<td>2076 Rāfiʿī 26,Fiqh Ḥanafi 915</td>
<td>1052/1642</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td>Or. 5013</td>
<td>1025/1616</td>
</tr>
<tr>
<td>Suleymaniye, Istanbul</td>
<td>Feyzullah Efendi 921/1</td>
<td>9th/15th century (?)</td>
</tr>
<tr>
<td>Suleymaniye, Istanbul</td>
<td>Ahmet III 1181/1</td>
<td>1003/1595</td>
</tr>
</tbody>
</table>
Appendix III: The Manuscripts of *Furūq A*

<table>
<thead>
<tr>
<th>Location</th>
<th>Manuscript Title</th>
<th>Location</th>
<th>Manuscript Title</th>
<th>Location</th>
<th>Manuscript Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garrett 4185Y, Princeton</td>
<td>Kitāb al-Ṭahāra</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ṭahāra</td>
<td>Fiqh Ḥanafi 2089, Maktabat</td>
<td>Kitāb al-Ṭahāra</td>
</tr>
<tr>
<td>University Library</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>al-Haram al-Makki, Mecca</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Halet Efendi 807, Suleymaniye</td>
<td>Kitāb al-Ṣalāt</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ṣalāt</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Ṣalāt</td>
</tr>
<tr>
<td>Library, Istanbul</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Halet Efendi 807, Suleymaniye</td>
<td>Kitāb al-Zakāt</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Zakāt</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Zakāt</td>
</tr>
<tr>
<td>Library, Istanbul</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ṣawm</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ṣawm</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Ṣawm</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ḥajj</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ḥajj</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Ḥajj</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Nikāḥ</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Nikāḥ</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Nikāḥ</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ṭalāq</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ṭalāq</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Ṭalāq</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-ʿItāq</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-ʿItāq</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-ʿItāq</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Aymān</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Aymān</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Aymān</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Buyūʾ</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Buyūʾ</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Buyūʾ</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Shufaʾa</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Shufaʾa</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Shufaʾa</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Rahn</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Rahn</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Rahn</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ijāra</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ijāra</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Ijāra</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ṣayd</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Ṣayd</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Ṣayd</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Hiba</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Hiba</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Hiba</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Waṣāyā</td>
<td>Peterman II Nachtrag 4,</td>
<td>Kitāb al-Waṣāyā</td>
<td>Zāhiriyya 4501, Damascus</td>
<td>Kitāb al-Waṣāyā</td>
</tr>
<tr>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td>Staatsbibliothek zu Berlin</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This manuscript has been heavily damaged. It has significant wear around the binding, the pages are out of order, and the end is missing.
<table>
<thead>
<tr>
<th>Title</th>
<th>Title</th>
<th>Title</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kitāb al-Ḥudūd wa-l-saraqa</td>
<td>Kitāb al-Ḥudūd wa-l-saraqa</td>
<td>Kitāb al-Ḥudūd wa-l-saraqa</td>
<td>Kitāb al-Ḥudūd wa-l-saraqa</td>
</tr>
<tr>
<td>Kitāb al-Wikāla</td>
<td>Kitāb al-Wikāla</td>
<td>Kitāb al-Wikāla</td>
<td>Kitāb al-Wikāla</td>
</tr>
<tr>
<td>Kitāb al-Maʾdhūn</td>
<td>Kitāb al-Maʾdhūn</td>
<td>Kitāb al-Maʾdhūn</td>
<td>Kitāb al-Maʾdhūn</td>
</tr>
<tr>
<td>Kitāb al-Ḥawāla wa-l-kafāla</td>
<td>Kitāb al-Ḥawāla wa-l-kafāla</td>
<td>Kitāb al-Ḥawāla wa-l-kafāla</td>
<td>Kitāb al-Ḥawāla</td>
</tr>
<tr>
<td>Masāʾil mutafarriqa</td>
<td>Masāʾil mutafarriqa</td>
<td>Kitāb al-Daʿwā</td>
<td>Masāʾil mutafarriqa</td>
</tr>
<tr>
<td>Kitāb al-Iqrār</td>
<td>Kitāb al-Iqrār</td>
<td>Kitāb al-Shahāda</td>
<td></td>
</tr>
<tr>
<td>Kitāb al-Diyāt</td>
<td>Kitāb al-Diyāt</td>
<td>Kitāb al-Diyāt</td>
<td></td>
</tr>
<tr>
<td>Masāʾil shattā</td>
<td>Masāʾil shattā</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Masāʾil mutashābiha</td>
<td>Masāʾil mutashābiha</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Masāʾil farqīyyah fiqhiyya</td>
<td>Kitāb al-Mudāraba</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Masāʾil mutashābiha</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Masāʾil al-ḥila</td>
</tr>
</tbody>
</table>
Appendix V: The Manuscripts of Furūq-B (Najm al-Dīn Naysābūrī, attrib.)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>Introduction</td>
<td>Introduction</td>
<td>Introduction</td>
<td>Introduction</td>
<td>[missing]</td>
<td>Introduction</td>
<td>[missing]</td>
</tr>
<tr>
<td>Şalāt</td>
<td>[Bāb al-Şalāt]</td>
<td>Şalāt</td>
<td>Masā’il al-ṣalāt wa-l-zakāt</td>
<td>[Şalāt]</td>
<td>[Şalāt]</td>
<td>[title, if any, missing]</td>
<td>[şalāt]</td>
</tr>
<tr>
<td>Zakāt</td>
<td>Zakāt</td>
<td>Zakāt</td>
<td></td>
<td>Kitāb al-zakāt</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Şawm</td>
<td>Şawm</td>
<td>Masā’il al-ṣawm</td>
<td>Kitāb masā’il al-ṣawm</td>
<td>Kitāb masā’il al-ṣawm</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hajj</td>
<td>Hajj</td>
<td>Masā’il al-ḥajj</td>
<td>Kitāb al-ḥajj</td>
<td>Kitāb al-ḥajj</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nikāḥ</td>
<td>Masā’il al-nikāḥ</td>
<td>Masā’il al-nikāḥ</td>
<td>Kitāb masā’il al-ṣawm</td>
<td>Kitāb masā’il al-ṣawm</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

388
| \( 
\text{تَلَاق} \) | \( 
\text{مَسَاءِل} \text{ال-تَّلَاق} \) | \( 
\text{مَسَاءِل} \text{ال-تَّلَاق} \) | \( 
\text{كِتَاب} \text{ال-تَّلَاق} \) | \( 
\text{كِتَاب} \text{ال-تَّلَاق} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-تَّلَاق} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-تَّلَاق} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-تَّلَاق} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-تَّلَاق} \) |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| \( 
\text{إِتَّاق} \) | \( 
\text{مَسَاءِل} \text{ال-إِتَّاق} \) | \( 
\text{مَسَاءِل} \text{ال-إِتَّاق} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-إِتَّاق} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-إِتَّاق} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-إِتَّاق} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-إِتَّاق} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-إِتَّاق} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-إِتَّاق} \) |
| \( 
\text{عَمَان} \) | \( 
\text{مَسَاءِل} \text{ال-عَمَان} \) | \( 
\text{مَسَاءِل} \text{ال-عَمَان} \) | \( 
\text{كِتَاب} \text{ال-عَمَان} \) | \( 
\text{كِتَاب} \text{ال-عَمَان} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-عَمَان} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-عَمَان} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-عَمَان} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-عَمَان} \) |
| \( 
\text{بِعُو} \) | \( 
\text{مَسَاءِل} \text{ال-بِعُو} \) | \( 
\text{مَسَاءِل} \text{ال-بِعُو} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-بِعُو} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-بِعُو} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-بِعُو} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-بِعُو} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-بِعُو} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-بِعُو} \) |
| \( 
\text{شُفَاة} \) | \( 
\text{مَسَاءِل} \text{ال-شُفَاة} \) | \( 
\text{مَسَاءِل} \text{ال-شُفَاة} \) | \( 
\text{كِتَاب} \text{ال-شُفَاة} \) | \( 
\text{كِتَاب} \text{ال-شُفَاة} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-شُفَاة} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-شُفَاة} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-شُفَاة} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-شُفَاة} \) |
| \( 
\text{رَحْن} \) | \( 
\text{مَسَاءِل} \text{ال-رَحْن} \) | \( 
\text{مَسَاءِل} \text{ال-رَحْن} \) | \( 
\text{كِتَاب} \text{ال-رَحْن} \) | \( 
\text{كِتَاب} \text{ال-رَحْن} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-رَحْن} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-رَحْن} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-رَحْن} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-رَحْن} \) |
| \( 
\text{يُجُرَّت} \) | \( 
\text{مَسَاءِل} \text{ال-يُجُرَّت} \) | \( 
\text{مَسَاءِل} \text{ال-يُجُرَّت} \) | \( 
\text{كِتَاب} \text{ال-يُجُرَّت} \) | \( 
\text{كِتَاب} \text{ال-يُجُرَّت} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-يُجُرَّت} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-يُجُرَّت} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-يُجُرَّت} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-يُجُرَّت} \) |
| \( 
\text{شَايْد} \) | \( 
\text{مَسَاءِل} \text{ال-شَايْد} \) | \( 
\text{مَسَاءِل} \text{ال-شَايْد} \) | \( 
\text{كِتَاب} \text{ال-شَايْد} \) | \( 
\text{كِتَاب} \text{ال-شَايْد} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-شَايْد} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-شَايْد} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-شَايْد} \) | \( 
\text{كِتَاب} \text{مَسَاءِل} \text{ال-شَايْد} \) |
<table>
<thead>
<tr>
<th>بیبا</th>
<th>مسائل الہیبا</th>
<th>مسائل الہیبا</th>
<th>کتاب مسائل الہیبا</th>
<th>کتاب مسائل الہیبا</th>
<th>کتاب الہیبا</th>
<th>کتاب مسائل الہیبا</th>
<th>کتاب الہیبا</th>
<th>کتاب ہعدود</th>
</tr>
</thead>
<tbody>
<tr>
<td>واشایا</td>
<td>مسائل الواشایا</td>
<td>مسائل الواشایا</td>
<td>کتاب مسائل الواشایا</td>
<td>کتاب مسائل الواشایا</td>
<td>کتاب الواشایا</td>
<td>کتاب الواشایا</td>
<td>کتاب الواشایا</td>
<td>کتاب الواکالا</td>
</tr>
<tr>
<td>ہعدود</td>
<td>مسائل الہعدود</td>
<td>مسائل الہعدود</td>
<td>کتاب مسائل الہعدود</td>
<td>کتاب مسائل الہعدود</td>
<td>کتاب الہعدود</td>
<td>کتاب مسائل الہعدود</td>
<td>کتاب الہعدود</td>
<td>کتاب مسائل الہمدون</td>
</tr>
<tr>
<td>واکالا</td>
<td>مسائل الواکالا</td>
<td>مسائل الواکالا</td>
<td>کتاب الواکالا</td>
<td>کتاب الواکالا</td>
<td>کتاب الواکالا</td>
<td>کتاب الواکالا</td>
<td>کتاب الواکالا</td>
<td>کتاب الواکالا</td>
</tr>
<tr>
<td>مہدون</td>
<td>مسائل الہمدون</td>
<td>مسائل الہمدون</td>
<td>کتاب مسائل الہمدون</td>
<td>کتاب مسائل الہمدون</td>
<td>کتاب الہمدون</td>
<td>کتاب مسائل الہمدون</td>
<td>کتاب الہمدون</td>
<td>کتاب مسائل الہمدون</td>
</tr>
<tr>
<td>حوالا وا-کافلا</td>
<td>مسائل الحوالا وا-کافلا</td>
<td>مسائل الحوالا وا-کافلا</td>
<td>کتاب مسائل الحوالا وا-کافلا</td>
<td>کتاب مسائل الحوالا وا-کافلا</td>
<td>کتاب الحوالا وا-کافلا</td>
<td>کتاب الحوالا وا-کافلا</td>
<td>کتاب الحوالا وا-کافلا</td>
<td>کتاب مسائل الحوالا وا-کافلا</td>
</tr>
<tr>
<td>داور</td>
<td>مسائل الداور</td>
<td>مسائل الداور</td>
<td>کتاب مسائل الداور</td>
<td>کتاب مسائل الداور</td>
<td>کتاب الداور</td>
<td>کتاب مسائل الداور</td>
<td>کتاب الداور</td>
<td>کتاب مسائل الداور</td>
</tr>
<tr>
<td>اقرار</td>
<td>مسائل الإقرار</td>
<td>مسائل الإقرار</td>
<td>کتاب مسائل الإقرار</td>
<td>کتاب مسائل الإقرار</td>
<td>کتاب الإقرار</td>
<td>کتاب مسائل الإقرار</td>
<td>کتاب الإقرار</td>
<td>کتاب مسائل الشتات</td>
</tr>
<tr>
<td>دیوان</td>
<td>مسائل الیومن</td>
<td>مسائل الیومن</td>
<td>کتاب مسائل الیومن</td>
<td>کتاب مسائل الیومن</td>
<td>کتاب الیومن</td>
<td>کتاب مسائل الیومن</td>
<td>کتاب الیومن</td>
<td>کتاب مسائل الیومن</td>
</tr>
</tbody>
</table>

390
<table>
<thead>
<tr>
<th></th>
<th>diyāt</th>
<th>diyāt</th>
<th>muḍārabā</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Masā’il</strong></td>
<td>Masā’il shattā</td>
<td>Masā’il shattā</td>
<td>Kitāb masā’il al-μuḍārabā</td>
</tr>
<tr>
<td></td>
<td>Kitāb masā’il al-μuḍārabā</td>
<td>Kitāb al-muzāra‘a</td>
<td>Kitāb masā’il mutashābiha</td>
</tr>
<tr>
<td><strong>Masā’il ukhrā</strong></td>
<td>Masā’il al-μuḍārabā</td>
<td>Al-Masā’il al-mutāshabiha</td>
<td>Kitāb masā’il al-μuḍārabā</td>
</tr>
<tr>
<td></td>
<td>Kitāb masā’il al-μuḍārabā</td>
<td>Kitāb masā’il mutashābiha</td>
<td>Kitāb al-μuḍārabā</td>
</tr>
<tr>
<td><strong>Masā’il al-mutāshabiha</strong></td>
<td>Masā’il al-ḥiyal</td>
<td>Kitāb masā’il mutashābiha</td>
<td>Kitāb al-μushābiha</td>
</tr>
<tr>
<td></td>
<td>Kitāb al-ḥila</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kitāb al-ḥiyal</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

391
Bibliography

Manuscripts


Al-Nāṭifi, Abū ‘Abbās Aḥmad ibn Muḥammad. *Al-Ajnās wa-l-furūq* MS Suleymaniye Library, Nuruosmaniye 1371, Istanbul


**Printed Sources**


403


Rowson, Everett. “Alexandrian Age” Mamluk Studies Review, 8 (2003), 97-110.


Richard Walzer. London; New York: Pub. For the trustees of the late Sir Henry
Wellcome by the Oxford University Press, [1947].

Al-Wansharīsī, Abū al-ʿAbbās Aḥmad ibn Yaḥyā. Ḥiddat al-furūq fī jamʿ mā fī al-madhhab
min al-jumūʿ wa-l-furūq. Edited by Ḥamza Abū Fāris. Beirut: Dār al-Gharb al-
Islāmī, 1990/1410.

Wāṣil, Naṣr al-Dīn Farīd Muḥammad, Introduction to Jamāl al-Dīn al-Asnawī, Matāliʿ al-
daqāʾiq fī taḥrīr al-jawāmiʿ wa-l-daqāʾiq, vol. 1. Edited by Naṣr al-Dīn Farīd

Weninger, Stefan. “More Sabaic minuscule texts from Munich.” Proceedings of the

Wensinck, Arent Jan. Concordance et indices de la tradition musulmane: les six livres, le
Musnad d’al-Dārimī, le Muwatta’ de Mālik, le Musnad de Aḥmad ibn Ḥanbal. 8 vols.

Wild, Stefan. Das Kitāb al-ʿain und die arabische Lexicographie. Wiesbaden: Harrassowitz,
1965.

Witkam, Januarius Justus. De Egyptische Arts Ibn al-Akfānī (gest. 749/1348) En Zijn Indeling

———. “Ibn al-Akfānī (d. 749/1348) and his bibliography of the sciences.” Manuscripts of
the Middle East 2 (1987), 37-41.

Wittgenstein, Ludwig. Preliminary Studies for the “Philosophical Investigations:” Generally


Index

Aaron, 139-41
Abbasid, 3, 89, 229, 236, 286, 288
ʿAbd Allāh ibn ʿUmar, 217n492, 246-47
ʿAbd al-Tawwāb, Ramaḍān, 101
al-Abīwardī, Abū al-Muẓaffar Muḥammad ibn Abī al-ʿAbbās, 106
al-Abīwardī, Abū Yaʿqūb, 169
Abū al-Ajfān, Muḥammad, 65-66, 119, 251-52, 310, 324
Abū al-ʿAlāʾ ʾṢāʿid ibn Muḥammad, 312
Abū ʿAlī ibn Hammām, 300
Abū ʿAlī Muḥammad ibn ʿAbd al-Wahhāb, 109
Abū ʿAlī Muḥammad ibn al-Mustanīr, see Quṭrub
Abū Bakr al-Abharī, 42n92
Abū Bakr al-Iskāfī, 343
Abū Bakr al-Khallāl, 42n92
Abū Fāris, Ḥamza, 65-66, 310, 324
Abū Ḥanīfa al-Nuʿmān ibn Thābit, 42, 164, 192, 217n492, 218n495, 257-60, 339, 342
Abū Hurayra, 278
Abū ʿImrān al-Qayrawānī, 299
Abū Jaʿfar al-Baqānī, 325
Abū Khayra al-Aʿrābī, 99, 102
Abū al-Qāsim al-Ṭābithī, 309, 310n706
Abū al-Qāsim al-Ṣaffār, 217
Abū Naṣr, 102
Abū Shāma, 314
Abū Ṭayyib al-Lughawī, 96
Abū Ṭayyib Sahl ibn Muḥammad ibn Sulaymān al-Suʿlūkī, 169
Abū ʿUbayd al-Qāsim ibn Salām, 101-102
Abū ʿUbayda, 99
Abū Yūsuf Yaʿqūb ibn Ibrāhīm, 217-18, 339, 342
Abū Ziyād al-Kilābī, 100

422
adab, 110, 169, 228, 229n512, 230, 251
ādāb al-baḥth, 24, 149
adab al-muftī, 21
adab al-qāḍī, 21
al-Afghānī, ʿAbd al-Hādi Shīr, 315n722
Ahlwardt, Wilhelm, 161
Ahmad, Ahmad A., 9-10, 12-14, 17
Aḥmad ibn Hanbal, 42
Aḥmad ibn Ḥubb Allāh, 316
Alexandria, 106n258
ʿAlī ibn Abī Ṭālib, 246-47
ʿAlī ibn Hammām, 300
ʿAlī ibn Yahyā ibn Rāshid al-Yamanī, 3, 200, 301, 323-24, 332
Ali, Samer, 230, 232
Amīn, Aḥmad, 91
ʿAmr ibn Kirkira, Abū Mālik, 100
analogy, 25, 45, 51, 54, 60-61, 78, 145, 150-51, 153n369, 174-75, 184, 194, 206, 208
Anatolia, 86, 235
Andalus, 42n92, 116, 142, 201, 325
al-ʿAsqalānī, Ibn Ḥajar, 230n517, 237-39
Arabian Peninsula, 115
Aristotle, 122, 149-50, 152
Armant, 320
al-Armāntī, Sirāj al-Dīn Yūnus ibn ʿAbd al-Mujīd ibn ʿAlī al-Hudhalī, 320-21, 331n792
al-Arzustānī, Aḥmad ibn Muḥammad, 329, 336, 339
al-ashbāh wa-l-naẓāʾir, 7-9, 11-12, 21, 22n63, 23, 52n127, 200-201, 222, 263, 288, 290, 294, 297, 327-28, 334, 345, 351
al-ʿAskarī, Abū Hilāl al-Ḥasan ibn ʿAbd Allāh, 84, 86-88, 105-11, 119, 189, 347
al-ʿAskarī, Abū Aḥmad al-Ḥasan ibn ʿAbd Allāh, 105-10
al-APSHOTI, 99, 101-103, 105
al-Asnawi, Jamal al-Din, 61-62, 200, 209-10, 275-77, 281-85, 314, 320, 335
al-Atiyya, Khalil Ibrahim, 97, 101n247
al-Atraqii, Ramziyya, 71-72
al-Azhari, Khalid ibn `Abd Allah, 249n566, 250

Baalbaki, Ramzi, 90-92
Badawi, M.M., 4
Badr al-Din ibn `Umar al-Huraythi, 292n647, 299
Baghdad, 3-4, 42n92, 75, 106n258, 171, 220, 314, 318, 322, 329-32, 336n801, 338-39
al-Baghdadi, Ismail Bashah, 213, 298
al-Bakhnasa, 320
al-Bakri, `Adil, 71-72
al-Bakri, Badr al-Din, 52n125, 292n647
al-Balkhi, Abu al-Qasim, 217
al-Baqillani, Abu Bakr, 119
al-Baqquiri, Muhammad, 62
al-Barqi, Ahmad ibn Muhammad, 3, 300-301
al-Bashar, Ibrahim ibn Nasir ibn Ibrahim, 254, 268
Basra, 97, 110, 310n706
Bauer, Thomas, 5n7, 249n566
Berlin, 161, 214, 330, 338-39
Bilbeis, 320
biobibliographic writing, see tabaqat
Blachere, Regis, 230
Blecher, Joel, 230n517, 238, 239n543
Brockelmann, Carl, 23n66, 161, 213, 275, 308n700, 334
Brown, Jonathan, 113, 116-18
al-Bukhari, 237, 246, 278
al-Bulqini, `Umar ibn Raslan, 119, 299
Burak, Guy, 345
Bursevi, İsmail Hakki, 86-87, 348

Calder, Norman, 7, 260-62
Carter, Michael, 91-92
Chaumont, Éric, 190-91
Cheikho, Louis, 121n306, 122n208
Chrysippus, 122
Circassian, 233
Cohen, David, 115-16
Cook, Michael A., 137

dābiṭ, dawābiṭ (precepts), 49, 52, 268-70, 272, 275
Damascus, 110, 201, 235, 313-14, 318-19, 321-22, 332, 338
al-Dhabībī, Shams al-Dīn, 120n303
diagnostics, see distinctions, differential diagnostics
dialectics, see disputation
al-Dimashqī, Abū al-Faḍl Muslim ibn ʿAlī, 52n124, 59-60, 293, 310-11, 322, 324, 330-31
al-Dimashqī, Aḥmad ibn Asʿad Ibn Ḥalwān, 69, 70n169, 70n171, 72
distinctions
  applied lexicographic distinctions, 26, 52-53, 121, 127, 267n601, 299
differential diagnostics, 25, 50n120, 66-85, 130, 187n435, see also medicine

Ebû-Sʿûd, 344-45
Egyt, 34n82, 110, 241, 249n566, 268, 275-76, 286, 310n706, 315-16, 320, 333
Endress, Gerhard, 167
El Shamsy, Ahmed, 9-11, 13, 18, 153n369, 350
epistemology, 51, 223, historical, 67
ethics, 26, 68, 69n166, 123-26, 266

al-Farābī, 161n390
al-Fāriqī, al-Ḥasan ibn Asad, 250
al-Fattākī, Muḥammad ibn al-Ḥusayn, 52n125
fatwa, 6-7, 20, 170-71, 251n569, 261n594, 317
Foucault, Michel, 203
Galen, 68n165, 70n171, 75
Ghiryānī, Mahmūd, 311
Goodman, L.E., 231, 232n521
grammar (nahw), 65, 84, 89-90, 94n231, 106n258, 112, 119, 186, 189-91, 228, 249n566, 250, 252, 261, 275, 326, 347
Griffel, Frank, 296n656

Haarman, Ulrich, 233
hadith, 53, 97, 106n258, 110, 114, 115n286, 125, 140n339, 152, 169, 185, 218-19, 230n517, 238-39, 244, 246-47, 251, 259, 261, 278, 280n625, 301, 322, 340
hajj, 107, 270-71, 314
al-Ḥakīm al-Tirmīdī, 89, 105, 120, 207n461, 299, 302, 305
Hallaq, Wael, 1, 5-6, 43n95, 157, 261n594

426
Hama, 321
Hamadān, 106, 314
al-Ḥamawī, 297
Hämeen-Anttila, Jaakko, 104
Hanna, Nelly, 242-43
al-Harawī, 238-39
al-Ḥarīrī, 251n569
Ḥarrān, 318
al-Ḥasan ibn ʿAlī ibn Abī Ṭālib, 217n492
al-Ḥasan al-Būrīnī, 236
al-Ḥasan ibn Maḥmūd al-Sarrād (or al-Zarrād), 300
ḥashiya, 9-10, 13, 18, 23, 350
Heinrichs, Wolfhart, 8, 12, 22n63, 53, 66, 73-74, 77, 292-93, 310n707, 317, 319, 322, 324-25
ḥila (legal strategem), 22-23, 48, 267, 284, 340
Hirschler, Konrad, 234
Hodgson, Marshall, 1
Ḥunayn ibn Ishāq, 68n165, 121n306
Ibrahim, Ahmed Fekry, 43
Ibn Abī Uṣaybiʿa, 69n167, 74n180, 75-76
Ibn al-Akfānī, 161, 164-67, 348
Ibn al-ʿĀlima, see al-Dimashqī, 234
Ibn ʿAsākir, 234
Ibn Bābawayh Muḥammad ibn ʿAlī, 110
Ibn Badrān, Abū ʿAbd Allāh Muḥammad ibn ʿAbd al-Qawi al-Maqdisī, 318
Ibn Dāwūd al-Ẓāhirī, 138n334, 208
Ibn Dāwūd al-Balawi, 325
Ibn Farḥūn, 58n144, 246-47, 251-54, 262, 285, 310n706
Ibn Fāris al-Lughawī, 101, 251n569
Ibn Ḥazm, 136
Ibn al-ʿIzz, 255, 256n582, 257
Ibn al-Jazzār, 69-73, 119-20
Ibn al-Jawzī, 110n271, 251n569
Ibn Juljul, 73n177, 76
Ibn Kamāl Pāsha, see Kemalpaşazade
Ibn Kashāsib, Abū al-ʿAbbās Kamāl al-Dīn Aḥmad al-Dizmārī, 313-14
Ibn Kathīr, 114-15, 209
Ibn al-Kātib, 309, 331
Ibn Khalīd, 206
Ibn Khallikān, 210
Ibn al-Kutubi, Yūsuf ibn Ismāʿīl, 69-70
Ibn al-Nadīm, 75-76, 100n246, 207n461, 300
Ibn al-Naqqāsh, Shams al-Dīn Muḥammad ibn ʿAlī, 320-21, 331n792
Ibn Qāḍī Shuhba, 170n430, 209-10, 269, 275n613, 276
Ibn al-Qāsim, 58n142
Ibn al-Qatṭān, Abū ʿAbd Allāh, 283-84, 299
Ibn Qayyim al-Jawziyya, 300
Ibn al-Qiftī, 76, 120n303
Ibn Qudāmā, Muwaffaq al-Dīn, 168
Ibn Qutayba, 86-87, 99-100, 187-88
Ibn Quṭlūbughā, 315-16
Ibn Rajab al-Ḥanbālī, 123-26, 185, 322
Ibn al-Rēwandī, 134, 136-38
Ibn al-Shiḥna, 255-56
Ibn Shujāʿ, Muḥammad, 193
Ibn Sinā, 71n172, 161n390
Ibn al-Sikkīt, 102-103
Ibn Surayj, 42n92, 57, 207-209, 212, 303, 305, 307
Ibn Surūr, Ibrāhīm ibn ʿAbd al-Wāḥid al-Maqdisī, 199, 318
Ibn Sunayna, Muḥammad ibn ʿAbd Allāh al-Sāmarrī, 8, 54, 60, 199-200, 318-19, 323

428
Ibn Taymiyya, 54, 185
Ibn Ṭūlūn Mosque, 276
Ibn al-Turkumānī, Tāj al-Dīn Aḥmad ibn ʿUthmān, 304, 321-22, 331n792, 339
Ibn Zaydūn, 286
*ikhtilāf*, see *khilāf*
Ikhmīm, 320
ʿilla (rationale), 26-27, 32-33, 46, 51, 56, 60-61, 127, 139-40, 143-47, 150-51, 153, 157, 174-75, 180-81, 186-87, 194, 265, 272, 281
inheritance, 20, 253, 273-74
Iraq, 34, 110, 153n369, 211, 310n706
ʿĪsā ibn Dīnār, 42n92
Isbir, ʿAlī Muḥammad, 121n306, 122n312
Isfahan, 106n258
al-Isfarāʾīnī, Abū Ḥāmid, 57n141
Istanbul, 70n169, 294n653, 309, 332-34, 338-40, 342
al-Iyādī, Abū Duʿād, 95
Jackson, Sherman, 6
*jadal*, see disputation
Jalāl, ʿIbrāhīm Ismāʿīl, 300
Jammāʿīl, 318
Jammaʿīn, 318n736
al-Jarbādhqānī, 116
Jerusalem, 121n306
al-Jihānī, Jalāl, 310
al-Jīlī, ʿAbd al-ʿAzīz, 284
Johansen, Baber, 6, 261n594
Juwayn, 169
al-Juwaynī, Imām al-Ḥaramayn Abū al-Maʿālī, 31, 144-45, 169-70, 175

429
Kaḥḥāla, ʿUmar Ridā, 214, 309
Kamali, Mohammad Hashim, 12
Kanazi, George, 105, 108
al-Karābīsī, Asʿad ibn Muḥammad, 52n124, 61, 192, 194-96, 199, 204, 263n596, 296-98, 302-303, 312-13, 315, 326, 335, 339, 342, 349
al-Karābīsī, Muḥammad ibn Ṣāliḥ, 133n324, 207, 213-20, 305-306, 311, 344
al-Karkhi, Abū al-Ḥasan, 42n92, 207
Keegan, Matthew L., 251n569
Kemalpaşazade, 126-29, 299
Khalil ibn Aḥmad, 90, 92, 104n254
khilāf, 19, 24, 58, 61, 154-60, 162-70, 173, 182
Khurasan, 171, 331
Kosselleck, Reinhart, 203
La Marsa, 324-25
Larkin, Margaret, 243
Leiden, 63n155, 245, 337n804, 340
legal stratagem, see ḥila
the Levant, 321
Lowry, Joseph, 4
mabsūṭ (book of positive law), 19, 204, 261n594
madrasa, 58, 228, 288, 344-45
al-Maḥbūbī, Aḥmad ibn ʿUbayd Allāh, 200, 263n596, 296-97, 314-16, 335
al-Maḥbūbī, ʿUbayd Allāh ibn Masʿūd ibn Aḥmad, 315-16
Makdisi, George, 159-60
Mālik ibn Anas, 42, 58n142, 157, 246, 300

430
Mālikī school, 30, 42n92, 58-60, 62, 142-44, 151, 198, 201-202, 253, 285, 295, 304, 309, 311, 324-25, 327, 331-32
manāqib (hagiography), 24
maqāsid al-sharīʿa (purposes of the law), 21-22, 155, 222
al-Maqdisī, Abū al-Khayr ibn Jamāʿa, 47, 283, 307
al-Maqdisī, Muṭahhar ibn Ṭāhir, 136
al-Mardāwī, Abū al-Ḥasan ʿAlī ibn Sulaymān, 168
Marghāyatī(?), Bāyazīd ibn Isrāʾīl ibn Ḥājjī Dāwūd, 201, 326-27
Marʿī, Yusūf, 120
al-Marwazī, al-Ḥusayn ibn Muḥammad ibn Aḥmad, 280
al-Mashāyikh, Amal, 109
Mauder, Christian, 229
al-Mawwāq, 201-202, 310, 324-26
Mecca, 110, 169, 319, 338-39
medicine, 25-26, 65-67, 69, 73-75, 77-78, 79n204, 119, 125, 130, 187n345, 198, 213, 227, 228n511,
see also differential diagnostics
Medina, 169, 318
Melchert, Christopher, 42n92, 207
al-Miknāsī, Muḥammad ibn Aḥmad, 22n66
Miller, Larry B., 134-38, 148-50, 158, 166
Mongol, 4, 234n528
Moses, 139-41
Mosul, 318
mukhtaṣar (legal handbook), 19, 23, 209, 261n594, 305
Muḥammad (the Prophet), 114, 140n339, 159, 246-48, 258-59, 278, 280
Muḥammad ibn Muqāṭṭal al-Rāzī, 343
Muḥammad ibn Raḍwān al-Numayrī, 100
Muḥammad ibn Yusuf al-Andalusi al-Anṣārī al-Mālikī, 201-202, 324-25
Muḥammad ibn Yusuf al-Andalusī al-Anṣārī al-Mālikī al-Mawwāq, see al-Mawwāq
Muḥammad ibn Zabāra, 301
Muḥammad al-Shawkānī, 301
Musa, Khadiga, 9, 11-13, 351
al-Musawi, Muhsin, 240
Muslim, 278
Muʿtazila, 103, 108-12, 348
al-Muzani, Ismāʿīl ibn Yaḥyā, 209, 303n678, 305

Najm al-Dīn Aḥmad ibn Muḥammad ibn Khalaf ibn Rājiḥ al-Maqdisī, 313
al-Nasawi, Abū al-Ḥasan ʿAlī ibn Aḥmad, 207n461, 305-306
Naṣīr ibn Yaḥyā al-Balkhī, 340, 343
Naṣṣār, Ḥusayn, 99-100
al-Nāṭifī, Abū ʿAbbās Aḥmad ibn Muḥammad al-Ṭabarī, 308, 311-12
al-Nawawi, Muḥyī al-Dīn ibn Sharaf, 172, 278n620, 278n621, 279
al-Naysābūrī, Najm al-Dīn ʿAlī ibn Bakr, 8, 54, 63, 199, 202, 244, 312, 329, 336, 340-42
Nicholson, R.A., 4
Nishapur, 169-70, 331
North Africa, 220, 327, 329, 331

Ottoman, 24n72, 166n402, 229, 235-36, 242, 261n594, 286, 296, 328-29, 333-35, 339, 344-45
Oxyrhynchus, see al-Bakhnasā

Pfeifer, Helen, 235-37
philosophy, 26, 68, 75, 112n279, 121-26, 134-35, 159n383, 165-66, 227, 231-32
Plato, 122-23
Powers, David, 6, 43, 261n594

al-Qāḍī ʿAbd al-Wahhāb al-Baghdādī, 310-11, 330
al-Qāḍī al-Nuʿmān, 73n177, 138n334
al-Qāḍī ʿIyāḍ, 309, 310n706
al-Qaffāl, Abū Bakr ʿAbd Allāh ibn Aḥmad, 169, 172-73
al-Qansūḥ Ghawrī, 239
al-Qarāfī, Shihāb al-Dīn, 62-63, 200, 294, 296n654, 316-17, 327, 328n780, 329, 332, 335
al-Qāsimī, Jamāl al-Dīn, 250

432
Qaṭāya, Salmān, 71, 74, 75n182, 78, 79n204
al-gawāʾid al-fiqhiyya (legal maxims), 7-9, 11-12, 14, 18, 21-22, 48-49, 52-53, 155, 164, 222, 266, 268-69, 270, 272, 275, 292n647, 299n663, 317, 327, 351
al-Qazwīnī, Abū Ḥātim, 284
Qipchak, 233
al-Qirqisānī, Abū Yūsuf Yaʿqūb, 136, 138-42
qiyyās, see analogy
Quraysh, 114
Qus, 320
Qustā ibn Lūqā, 121-26
Quṭrub, 97-98, 100-103
Rabat, 332
Rabb, Intisar, 9, 11, 13, 14n40, 18
al-Rabīʾ ibn Sulaymān, 175
al-Rāfīʿī, ʿAbd al-Karīm ibn Muḥammad, 278-79
Rappaport, Yosef, 261n594
Rayy, 75-76
al-Rāzī, Abū Bakr Zakariyyā, 69-77, 78n197, 79n204
al-Rāzī, Muḥammad ibn Zakariyyāʾ, 231
al-Rāzī, Abū Ḥātim Aḥmad, 231
riddles, see alghāz (riddles)
Riyadh, 326, 364n883
Robin, Christian Julien, 115
Rowson, Everett, 286-87
al-Rūyānī, Abū al-Maḥāsin ʿAbd al-Wāḥid ibn Ismāʿīl al-Ṭabarī, 307-308
al-Sabil, ʿUmar, 292, 301, 315, 326-27, 329-30, 336n801, 337, 341n817
al-Saʿdī, ʿAbd al-Raḥmān ibn Nāṣir, 201, 305
al-Ṣadūq. See Ibn Bābawayh
al-Ṣafadī, Khalīl ibn Aybak, 107-108, 241, 287
al-Ṣāhib ibn ‘Abbād, 110, 117-18
Saḥnūn ibn Saʿīd, 58n142, 205
Sālimān, Muḥammad, 250, 253
Samarqand, 217-19, 312
al-Samarqandi, Abū al-Layth, 217n494, 340, 343
al-Sāmarrī, Abū ʿAbd Allāh Muḥammad ibn ʿAbd Allāh, see Ibn Sunayna,
al-Sāmarrī, Muʿazzam al-Dīn Abū al-Fath ʿAbd Allāh ibn Hibat Allāh, 318-19
al-Sarakhshī, Abū al-ʿAbbās Aḥmad ibn Muḥammad, 119-20
al-Sāmarrī, Muʿazzam al-Dīn Abū al-Fath ʿAbd Allāh ibn Hibat Allāh, 318-19
al-Sāmarrī, Muʿazzam al-Dīn Abū al-Fath ʿAbd Allāh ibn Hibat Allāh, 318-19
al-Sīrākhsī, Abū ʿAbbās Aḥmad ibn Muḥammad, 119-20
al-Sāmarrī, Muʿazzam al-Dīn Abū al-Fath ʿAbd Allāh ibn Hibat Allāh, 318-19
al-Sāmarrī, Muʿazzam al-Dīn Abū al-Fath ʿAbd Allāh ibn Hibat Allāh, 318-19
Schacht, Joseph, 5-8, 43n94, 53-54, 155-56, 293, 318-19, 337, 340
Sezgin, Fuat, 213-14, 334
al-Shāfiʿī, Muḥammad ibn Idrīs, 31-34, 36-37, 39-40, 42, 135-36, 153n369, 157, 164, 175, 205, 207-208, 217n492, 227n505
Shāfiʿī school, 3, 30, 32-34, 37, 39-40, 42n92, 47, 49, 57, 61, 110, 170-72, 198-200, 207-208, 211, 238, 269, 276-77, 278n620, 283, 295, 304-307, 311, 313-14, 320, 324, 331-33
Shahrastānī, 161n390
al-Shaybānī, Abū ʿAmr, 90, 99
al-Shaybānī, Muḥammad ibn al-Ḥasan, 23, 204-207, 209, 212, 217, 218n495, 339, 342, 343n821
Shaykh Tanum, 239
Shihāb al-Dīn Aḥmad ibn Hārūn, 250
al-Shirāzī, Abū Ishāq, 150, 171, 190, 208-209, 307n691
al-Sijistānī, Abū Ḥātim, 101
al-Sīlāfī, Abū Ṭāhir Aḥmad ibn Muḥammad, 106-108
Seidensticker, Tilman, 96
Shīʿi, 3, 110n274, 198, 300-302, 304
al-Ṣiqillī, ʿAbd al-Ḥaqq, 58-59, 199, 331
Stewart, Devin, 4, 138n334
al-Subayyil, Anas ibn ʿUmar ibn Muḥammad, 319
al-Subkī, Tāj al-Dīn, 21, 170, 208-12, 351
Sufism, 120, 169, 242, 292, 299
sunna, see hadith
al-Suyūṭī, Jalāl al-Dīn, 7, 52n127, 100, 103, 172, 198, 201, 290, 294, 327-28, 348, 351
synonyms and synonymy, 25, 27, 68, 84-89, 93, 97, 100, 102-103, 105, 111, 116, 118-19, 121, 141, 183, 186-90, 254, 268, 302, 348
ṭabaqāt, 24, 26, 28, 71, 76n188, 199, 213, 219, 224, 285n634, 291, 345, 349
al-Ṭabarī, Abū al-ʿAbbās Aḥmad ibn ʿAbd Allāh, 279
al-Ṭahāwī, 343
takhrīj (extrapolation), 9, 23, 41-44, 164
Ṭammūm, Muḥammad, 204-205, 207
taqlīd, 5-7, 41-43
Taqi al-Dīn al-Ghazzi, 316
Taşköprüzāde, ʿĪṣām al-Dīn, 161-64, 166-67, 172-73, 348
al-Thaʿalabī, 99
Thābit ibn Abī Thābit, 95, 101-102, 105
Thales, 122
Transoxiana, 171
Todorov, Tzvetan, 15-16
Toledo, 42n92
al-Ṭūfī, Najm al-Dīn, 25, 45-46, 47n106, 49, 325
Tyre, 106n258
ʿUmar ibn al-Khaṭṭāb, 217n492, 246-47
al-Urdustānī, Aḥmad ibn Muḥammad, 329-30, 336, 339
uṣūl al-fiqh, 2, 5, 7, 14, 17, 19, 23, 49, 53, 60, 78, 119, 126-28, 134, 148, 153, 158, 162-64, 184, 190, 221, 222, 259-60, 299n666, 352
ʿUthmān ibn ʿAffān, 124n265
Van Ess, Josef, 111n277
Vishanoff, David, 227n505
al-Wansharisī, Abū al-ʿAbbās Aḥmad, 52n124, 198, 201, 304, 327, 336
435
Wāṣil ibn ‘Aṭā’, 108
Witkam, Jan Just, 161, 166, 296n656
Wittgenstein, Ludwig, 16, 349

Yahya ibn Yahya al-Laythī, 42n92
al-Yaḥyā, Muḥammad ibn Ḳibrīḥīm ibn Muḥammad, 319
Yaḥṣūb al-Ḥamawī, 106, 108, 218, 219n497
Yemen, 324n768, 332
Young, Walter E., 133-37, 138n335, 147-55, 157-58, 166

Zarīrān, 322
al-Zarihānī, Sharaf al-Dīn ‘Abd al-Rahīm ibn ‘Abd Allāh, 52n124, 200, 292, 322-23, 331-32
al-Zarkashī, Badr al-Dīn, 25, 46-50, 172, 206, 307
Zaydi, 3, 198, 200, 301, 324n768
al-Ziriklī, Khayr al-Dīn, 120, 214, 219n497
al-Zubayrī, al-Zubayr ibn Aḥmad, 207, 283-84, 299, 305
Zysow, Aron, 159