

THE SIGNIFICANCE OF *AL-ASHBĀH WA'L-NAZĀ'IR* OF IBN NUJAYM

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Abstract:

Al-Ashbāh wa'l-Nazā'ir 'alā Madhhab Abī Ḥanīfa al-Nu'mān is a seminal text in the field of legal maxims/principles (*al-qawā'id al-fiqhiyyah*) compiled by the *Ḥanafī* scholar Zayn al-Dīn b. Ibrāhīm b. Muḥammad, known as Ibn Nujaym.

Compiling on *al-qawā'id al-fiqhiyyah* under the title *al-ashbāh wa'l-nazā'ir* started in the 8th/14th century by the *Shāfi'īs*. In fact, nearly all compilations in the genre by this title are by *Shāfi'īs*, with the exception of Ibn Nujaym, who states in the introduction to his book that he was inspired by a *Shāfi'ī* work. After a brief introduction to Ibn Nujaym and the genre of *al-qawā'id al-fiqhiyyah*, this article offers a critical view of Ibn Nujaym's book, with attention to the subjects it discusses, to what extent, if any, he follows *Shāfi'ī* legal opinions, what distinguishes his writing from theirs, and the importance of the book within the *Ḥanafī* school context. The author argues that the *al-Ashbāh wa'l-Nazā'ir* of Ibn Nujaym was the first text compiled in the field of legal maxims/principles within the *Ḥanafī* school after a period of neglect that had lasted about five centuries.

Keywords: *Al-qawā'id al-fiqhiyyah*, *al-Ashbāh wa'l-nazā'ir*, *Fiqh*, *Juz'iyāt*, *Masā'il*.

1. Introduction

The *Ḥanafī* scholar Zayn al-Dīn b. Ibrāhīm b. Muḥammad, known as Ibn Nujaym, was born in 926/1519 in Egypt and died there in 970/1562,¹ at the age of forty-four; he must have devoted considerable time to studying and writing *fiqh* (substantive law) and *uṣūl al-fiqh* (origins of jurisprudence). This appears from the large number of compilations he left.² Two of his works are of particular significance: *al-Ashbāh wa'l-Nazā'ir* (see below) and a book on substantive law entitled *al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqā'iq*, a commentary on a seminal work, *Kanz al-Daqā'iq*, compiled by Abū'l-Barakāt 'Abd Allāh b. Aḥmad al-Nasafī (d. 710/1310). *Fiqh* was Ibn Nujaym's forte, but he was also educated in other disciplines; in his introduction to *al-Ashbāh*, Ibn Nujaym says: "*Fiqh* is the first of my disciplines (*funūn*)."³ He also confirms our conclusion that he dedicated most of his time to studying, as he continues:

I have passed many sleepless nights and worked my eyes, hands and mind to exhaustion [researching *fiqh*]. From the beginning of my studies I always took care of old and recent books, making efforts to obtain those texts that have been abandoned, and I acquired a great number of them. I collected and studied most of that which is available in our city, Cairo, reading and speculating, with the result that only a very few of these materials have escaped my attention.⁴

Ibn Nujaym's two most important works – *al-Baḥr* and *al-Ashbāh* – attest to his erudition and skills as a compiler. In the introduction to each work he lists the *Ḥanafī* texts from which he gathered his information. These lists contain well-known *Ḥanafī* legal texts. In *al-Baḥr* he starts every chapter by explaining the semantic, technical and, in some cases, philosophical meanings of relevant words.⁵ His commentary is vast and comprehensive (the 1997 edition is printed in nine volumes), and *al-Baḥr* is widely regarded as one of the essential manuals of the *Ḥanafī* school.

2. Objectives

Ibn Nujaym lived in Egypt in the tenth century, when the country was changing to the *Ḥanafī* school of law after following the *Shāfi'ī* school for about four centuries while it was ruled by the Ayyubids and the Mamluks. As Ibn Nujaym states in the introduction to his *al-Ashbāh wa'l-Nazā'ir* that he was inspired by *Shāfi'ī* work (as discussed in detail in the section 4 of this article), this study aims to demonstrate that this inspiration did not affect his loyalty to his school. The study also explores Ibn Nujaym's writing and how he defends his school's position when

there are differences between *Hanafī* and *Shāfi'ī* doctrines, and show the importance of his *al-Ashbāh* within the context of the *Hanafī* school. The study also introduces the genre of *al-qawā'id al-fiqhiyyah* (legal maxims/principles) and shows the relationship between this genre and *al-ashbāh wa'l-naẓā'ir*.

3. *Al-Qawā'id Al-Fiqhiyyah* (Legal Maxims)

Al-qawā'id al-fiqhiyyah, are legal maxims or principles expressed as short statements, such as: Acts are [judged according] to their objectives (*al-umūr bi-maqāṣidihā*); and, prescribed punishments are [to be] dropped when there are doubts (*al-ḥudūd tasquṭ bi'l-shubuhāt*). Most of the *qawā'id* (sg. *qā'idah*, principle) are specific to individual schools of law (*madhāhib*, sg. *madhhab*), although some of them are acknowledged by all schools.

The *Shāfi'ī* scholar Ibn al-Subkī (d. 771/1369) defines *al-qā'idah al-fiqhiyyah* as: "*al-amr al-Kullī al-ladhī yanṭabiq 'alayhi juz' ṭyāt kathīra yufhamu aḥkāmihā minhā*." (A universal rule with which many particular cases agree whose legal determinations can be understood from it).⁶ The schools of law agree on two types of *qawā'id fiqhiyyah*: general principles that apply to all or most fields of law, which are therefore known as universal (*qawā'id kulliyyah*), and specific principles (*qawā'id khāṣṣah*) that apply to one or more, but not all, fields of law. The typical format in works on *al-qawā'id al-fiqhiyyah* is that the heading for each chapter states a *qā'idah*, and the discussion includes juridical cases (*juz' ṭyāt, masā'il*) that agree with the rule embodied in the *qā'idah*; these are followed by cases that are exempt from the rule and are therefore called *istithnā'āt* (exceptions). The discussion is pure legal; it does not include any dialectical or theological arguments. The genre was introduced by the *Hanafīs* in the 4th/10th century. The beginning of the genre is attributed to the *Hanafī* imam Abū Ṭāhir al-Dabbās (4th/10th century) in a story mentioned by prominent compilers of the genre, such as the two *Shāfi'ī* scholars Ṣalāḥ al-Dīn al-'Alā'ī (d. 761/1317) and Jalāl al-Dīn 'Abd al-Raḥmān al-Suyūṭī (d. 911/1505).⁷ Some researchers doubt the authenticity of the story.⁸ According to author, the fact that the story was related by the *Shāfi'īs* bestows credibility; it is unlikely that they would invent a story that gives the credit of starting such a vital genre to another *madhhab*.

The earliest extant work on *al-qawā'id al-fiqhiyyah* is an epistle entitled *al-Uṣūl* (another Arabic term that signifies 'principles'), written by 'Ubayd Allāh b. al-Ḥasan al-Karkhī (d. 340/951).⁹ The *Mālikīs* also

contributed to the genre in this early period, as evidenced by the extant *Uṣūl al-Futūyā fī 'l-fiqh 'alā Madhhab al-Imām Mālik* by Abū 'Abd Allāh Muḥammad b. al-Ḥārith al-Khushanī (d. 361/981).¹⁰ The *Hanaḥīs* produced two additional works in this early period: *Ta'sīs al-Nazā'ir*, compiled by Abū 'l-Layth al-Samarqandī (d. 373/983), which, according to *al-Bāḥusayn*, was edited by an al-Azhar University M.A. student;¹¹ and *Ta'sīs al-Nazā'ir*, compiled by Abū Zayd al-Dabbūsī (d. 430/1039). These rudimentary works do not seem to have attracted much attention from fellow *Hanaḥīs* or scholars of other schools for at least two centuries, until the revival of the genre in the eighth/fourteenth century. This gap may cause some to doubt that early *Hanaḥī* texts are authentic texts of *al-qawā'id al-fiqhiyyah*. However, a perusal of *al-Karkhī's Uṣūl* and al-Dabbūsī's *Ta'sīs al-Nazā'ir* suggests that they are, for three reasons:

The first reason is that the discussion is arranged in the same format as works on *al-qawā'id al-fiqhiyyah*, i.e. they state a *qā'idah*, followed by the specific cases that pertain to it, and they do not include any theological or dialectical discussions. Al-Dabbūsī arranges his principles according to the scholarly disagreement (*khilāf*) about them; this seems to have been the main reason for his compilation, as he states in the introduction. The work includes nine chapters, four of which treat *uṣūl* that are the subject of disagreement among the three founders of the *madhhab*, Abū Hanīfa, Abū Yūsuf and al-Shaybānī. Four other chapters treat *uṣūl* that are the subject of disagreement among these three scholars, on the one hand, and Zufar (d. 158/775), Mālik (d. 179/795), Abū Laylā (d. 148/765) and al-Shāfi'ī (d. 204/820), on the other. Although the work is mainly about *khilāf*, the subjects of the disagreements are formulated as principles, each one introduced by the term *al-aṣl* (pl. *uṣūl*); hence *Ta'sīs al-Nazā'ir* is included in lists of works on *al-qawā'id al-fiqhiyyah* by modern researchers.¹² One of al-Dabbūsī's *uṣūl*, for example, is the *aṣl* that is the subject of disagreement between Abū Hanīfa and his disciples, Abū Yūsuf and Muḥammad al-Shaybānī. It states: The *aṣl* (principle) is that, whenever [the existence of] anything is confirmed by full knowledge and certainty, it remains as it is unless the contrary becomes certain. After the 8th/14th century, the disagreement disappeared and this *aṣl* became one of the five major principles (mentioned below), namely, certainty is not removed by doubt (*al-yaqīn lā yuzāl bi'l-shakk*).

The second reason to suggest that early *Hanaḥī* texts are authentic texts of *al-qawā'id al-fiqhiyyah* is that each principle is introduced by the term *aṣl* (a synonym of *qā'idah*).

The third reason is that some of the principles in these compilations

appear in later works of *al-qawā'id al-fiqhiyyah*, although formulated differently. The following are three examples from al-Karkhī's *uṣūl* that appear in later works formulated in shorter statements: (1) *Al-aṣl anna umūr al-Muslimīn maḥmūla 'alā al-sadād wa'l-ṣalāḥ ḥattā yazhar ghayruhu*, i.e. the principle is: the affairs of Muslims are assumed to be upright and good unless the opposite emerges. This *aṣl* is similar to the *qā'idah*: *al-aṣl barā'at al-dhimma*, i.e. the norm [of the *Sharī'ah*] is that of non-liability. (2) *Al-aṣl anna al-su'āl wa'l-khiṭāb yumqā 'alā mā 'amma wa'ghalab lā 'alā mā shadhdhda wa nadar*, i.e. the principle is: a question or address should be understood according to that which is general and preponderant, not according to that which is far-fetched and rare. In other words, this *aṣl* means: *al-'āda muḥakkamah*, i.e. custom is the arbiter, one of the five major *qawā'id* that are accepted by all schools of law (see below). (3) *Al-aṣl annahu idhā maqā bi'l-ijtihād lā yuṣṣakh bi-ijtihād mithlih wa-yuṣṣakh bi'l-naṣṣ*, i.e. the principle is: [a legal ruling] based on *ijtihād* (personal legal reasoning) may not be abrogated by a similar *ijtihād* [but] can be abrogated by textual evidence. In later works this principle became: *al-ijtihād lā yunqad bi-mithlih*, i.e. [a ruling based on] *ijtihād* may not be canceled by another [ruling based on *ijtihād*]).¹³

In the eighth/fourteenth century the *Shāfi'īs* took a great interest in the genre, naming it "*al-ashbāh wa'l-naẓā'ir*." The term *al-ashbāh wa'l-naẓā'ir*, literally 'the identical and the similar,' refers to the legal cases included in the discussions of the principles. Discussion of each principle (*qā'idah*) includes *ashbāh* (identical cases) that are governed by the rule embodied in the *qā'idah*, in contrast, the *naẓā'ir* (similar) are the *istiṭhnā'āt* (exceptions), i.e. cases that may at first appear as being governed by the rule embodied in the *qā'idah* but, upon consideration, do not. So, both terms refer to the same genre. Scholars who use the term *al-qawā'id al-fiqhiyyah* refer to the principles, whereas scholars who use the term *al-ashbāh wa'l-naẓā'ir* refer to the specific cases discussed within the principles. It is noteworthy that the *al-Ashbāh wa'l-Naẓā'ir* title is also attributed to other disciplines, including Quranic exegesis: *al-Ashbāh wa'l-Naẓā'ir fī al-Qur'ān al-Karīm*, by Muqātil b. Sulaymān (d. 150/767) and grammar: *al-Ashbāh wa'l-Naẓā'ir fī al-Naḥw* by al-Suyūfī (d. 911/1505).¹⁴

4. The Significance of *al-Ashbāh wa'l-Naẓā'ir* of Ibn Nujaym

Al-ashbāh wa'l-naẓā'ir texts were all compiled by *Shāfi'ī* scholars, except for the *Ḥanafī* Ibn Nujaym, who states in the introduction to his

book that he was inspired to compile his book by a *Shāfi'ī* text.¹⁵ One of the earliest compilations is a text by Ibn al-Wakīl (d. 716/1316), which seems to have served as a model for later *Shāfi'ī* scholars who wrote on *al-ashbāh wa'l-nazā'ir* / *al-qawā'id al-fiqhiyyah*.¹⁶ Among the seminal texts written in the field of *al-ashbāh wa'l-nazā'ir* are those compiled by Ibn al-Subkī and Jalāl al-Dīn al-Suyūṭī.

After introducing the genre of *al-qawā'id al-fiqhiyyah*, the *Ḥanafīs* disappeared from the field of legal principles for about five centuries until the appearance of Ibn Nujaym's book.¹⁷ From the fifth/eleventh to the tenth/sixteenth century, the *Ḥanafīs* were very active in other law fields, such as *fatwās* (legal opinions). Most of the *fatwā* compilations produced between the fifth/eleventh and eighth/fourteenth centuries were compiled by *Ḥanafī* scholars.¹⁸ In the introduction to his book, Ibn Nujaym states that he compiled his work because there was no such work at that time in the *Ḥanafī* school; therefore he decided to compile a book of the same type as that of the *Shāfi'ī* Ibn al-Subkī, which includes many of the disciplines of *fiqh*.¹⁹ Although Ibn Nujaym acknowledges his debt to Ibn al-Subkī, a long section of his introduction and many sentences in other chapters of the book were copied verbatim from al-Suyūṭī's *Ashbāh*. He also copied sentences from the *Shāfi'ī* scholar Badr al-Dīn al-Zarkashī (d. 794/1392) written in the introduction to his *al-Manthūr fī al-Qawā'id*, another *qawā'id fiqhiyyah* text. He was influenced by other *Shāfi'īs* as well. This raises a question: Why was Ibn Nujaym motivated to compile his work on legal principles by the *Shāfi'īs*, when scholars of his school, the *Ḥanafīs*, had pioneered the genre? The answer is that Ibn Nujaym was not aware of *Ḥanafī* writings on the subject. Indeed, he did not include any of the above-mentioned *Ḥanafī* compilations in the long list of texts in his introduction to either *al-Ashbāh* or *al-Baḥr*.

One of the aspects of Ibn Nujaym's influence by *Shāfi'ī al-ashbāh wa'l-nazā'ir* texts, is that all the principles he discusses appear in al-Suyūṭī's *Ashbāh* and in the same order. However, within the discussion of each principle, Ibn Nujaym sites only opinions of *Ḥanafī* scholars. Throughout the book, he refers not only to the three founders of the *Ḥanafī* school, Abū Ḥanīfah (d. 150/767), Abū Yūsuf (d. 182/798) and Muḥammad al-Shaybānī (d. 189/805) but also to distinguished *Ḥanafī* jurists such as al-Khaṣṣāf (d. 261/874), Qāḍī Khān (d. 592/1196), al-Zayla'ī (d. 743/1343) and others, in addition to the *Ḥanafī* books he listed in his introduction. In a principle where there is difference between the *Shāfi'īs* and *Ḥanafīs* regarding its application, namely, al-Suyūṭī's principle: *al-aṣl fī al-ashyā' al-ibāḥa ḥattā yadul al-dalīl 'alā al-taḥrīm* (the norm of things is permissibility unless prohibition is proved by

textual evidence), Ibn Nujaym mentions it differently. It appears that some *Ḥanafī* scholars do not agree to this principle; hence Ibn Nujaym mentions it in a form of question: Is the norm of things permissibility unless prohibition is proved by textual evidence; or prohibition unless permissibility is proved by textual evidence? In some cases he adduces passages from Ibn al-Subkī's and al-Suyūṭī's books in order to compare *Shāfi'ī* and *Ḥanafī* opinions on the subject.²⁰ Only in rare cases does he copy or quote from the *Shāfi'īs* without mentioning the opinion of the *Ḥanafīs*. The author's assumption is that Ibn Nujaym did not have access to any written opinions from the *Ḥanafīs*, regarding these cases, when he compiled his book.

Ibn Nujaym even criticizes the *Shāfi'īs* at some points. His criticism of the *Shāfi'īs*, expressed as: "One wonders at the *Shāfi'īs* ... (*wa min al-'ajabi anna al- Shāfi'iyyah* ...)", seems harsh. This, however, might be because the *Shāfi'īs* state that they are contradicting Abū Ḥanīfah's opinion on the following issue: Abū Ḥanīfah held that a Muslim who consumes *nabīdh* (an intoxicating drink made of either dates, raisins, honey, wheat or barley) should not be subject to *ḥadd* (prescribed punishment, in this case flogging) unless he becomes intoxicated. (This is the opinion of both Abū Ḥanīfa and Abū Yūsuf, whereas the third founder of the school, Muḥammad al-Shaybānī, disagrees with them. It should be noted that jurists of the school follow al-Shaybānī's opinion.). On the other hand, al-Suyūṭī states: "He who consumes wine should be subject to *ḥadd* [regardless of whether he becomes intoxicated or not] without consideration for Abū Ḥanīfa's disagreement (*wa-lā yurā 'ā khilāf Abī Ḥanīfa*)" (emphasis mine).²¹

The three *al-Ashbāh wa'l-Nazā'ir* texts (i.e., these by Ibn al-Subkī, al-Suyūṭī and Ibn Nujaym, respectively) are similar in so far as they all include discussions of *al-qawā'id al-fiqhiyyah*, starting with the five that are said to encompass all or most juridical cases (*masā'il al-fiqh*),²² followed by universal principles, followed by principles that are specific to each field of *fiqh*; the latter are also known as *qawā'id al-fiqh* (sg., *qā'id*, literally controller). In the introduction to his *Ashbāh*, Ibn al-Subkī explains: "A principle specific to a field of *fiqh* is usually called *qā'id*."²³ Another similarity between Ibn Nujaym's and Ibn al-Subkī's books is that they include a section on *alghāz* (riddles). Ibn Nujaym even departed from the other two scholars, Ibn al-Subkī and al-Suyūṭī, in the first section, by adding a sixth *qā'id* to the five major *qawā'id* (see below).

The five principles that are said to govern all or most juridical cases are accepted by all the law schools and came to be known as the five major principles (*al-qawā'id al-khams al-kubrā*).²⁴ These are: Acts are

[judged according] to their objective (*al-umūr bi-maqāṣidihā*); certainty is not removed by doubt (*al-yaqīn lā yazūl bi'l-shakk*); hardship brings about facilitation (*al-mashaqqā tajlub al-taysīr*); harm is to be removed (*al-ḍarar yuzāl*); and custom is determinative (*al-'āda muḥakkama*). To these Ibn Nujaym added a sixth principle: No reward unless [the act is carried out] with intent (*lā thawāb illā bi'l-niyyah*). It should be noted that each of these five principle includes other *qawā'id* that are subsumed under its rubric. An example is *al-ḍarar yuzāl* (harm is to be removed), under whose rubric many other *qawā'id* are subsumed, including *al-ḍarūrāt tubīḥ al-maḥẓūrāt* (necessities render forbidden things [legally] harmless).²⁵

In the first instance, Ibn Nujaym's additional principle – no reward unless [the act is carried out] with intent – may seem unnecessary, because other writers usually discuss the *thawāb* (rewards) topic in connection with the first principle, namely, acts are [judged according to] their objectives (*al-umūr bi-maqāṣidihā*). After consideration, however, it appears that *Ḥanafīs* and *Shāfi'īs* differ over whether or not the performance of certain ritual acts, such as ablution, requires intent. *Ḥanafīs* argue that because water is a cleansing substance, when a person performs an act that produces a state of ritual purity (*ṭahārah*), whether minor ablution (*wuḍū'*) or major ablution (*ghusl*), intent (*niyyah*) is not required; in other words, if a person washes, albeit without intent, those parts of his body that must be washed in order for him to become ritually pure, he nevertheless becomes ritually pure, so long as water is the sole agent used for washing; intent is required only for a believer who wishes to be rewarded for performing his ablution, not for the validity of his *ṭahārah*. However, if there is no water, and sand (*tayammum*) is used as a substitute for either *wuḍū'* or *ghusl*, intent becomes obligatory. This is because sand is not a cleansing substance and its use, instead of water, is a purely devotional act (*ḥukm ta'abbudī*); the validity of a devotional act is conditional upon intent. *Shāfi'īs* hold that intent is also a requirement for the validity of the minor ablution and major ablution.²⁶

The message is clear: By adding the principle: No reward unless [the act is carried out] with intent, Ibn Nujaym is signalling to the *Shāfi'īs* that although the *Ḥanafīs* agree with them concerning the general principle (Acts are [judged according] to their objectives) they hold firm that intention, for some acts, is a requirement for reward (*thawāb*) only, not for validity. So vehement is he in defending his school's position that he places his additional *qā'idah* as the first in his hierarchy of maxims, relegating the first *qā'idah* of the *Shāfi'ī* school to second place.

The influence of the *Shāfi'ī* school on Ibn Nujaym may be attributed

to its pre-eminence in Egypt between the sixth/twelfth century and the 10th/16th century, at this time it was gradually superseded by the *Ḥanafī* school, which was favoured by the Ottomans. When he compiled his *Ashbāh*, Ibn Nujaym must have had access to a wealth of *Shāfiʿī* material from which he could draw when producing his synthesis of *al-qawāʿid al-fiqhiyyah* according to his school. He also compares *Ḥanafī* and *Shāfiʿī* doctrines in *al-Baḥr*.²⁷

Many scholars regard texts written under the rubric of *al-ashbāh waʾl-nazāʾir* to be the genuine works of *al-qawāʿid al-fiqhiyyah*.²⁸ Most likely because these are the first books that differentiate between *al-qawāʿid al-fiqhiyyah* in a technical sense and other *fiqh*-related *qawāʿid* – such as *al-qawāʿid al-uṣūliyyah* – and separate them in different chapters. However, in his *al-ashbāh waʾl-nazāʾir* compilation, Ibn Nujaym includes topics that are not related to *al-qawāʿid al-fiqhiyyah*, such as *al-alghāz* (riddles), *al-ḥiyal* (legal stratagems) and *al-ḥikāyāt waʾl-murāsālāt* (anecdotes and written exchanges). His fourth section is about *al-alghāz*. In the introduction to this section, Ibn Nujaym explains the original, rather than the technical, meaning of the word *lughz* and *laghz* (pl. *alghāz*). Technically, the word signifies a discipline in which the *faqīh* (jurist) is asked a question that seems more like a riddle. The technical meaning is further clarified by the seventeenth-century *Ḥanafī* scholar Shihāb al-Dīn al-Ḥamawī, who states: “[the discipline of *al-alghāz* includes] cases in which the underlying reason of the ruling is intentionally hidden as a test.”²⁹

Ibn Nujaym presents at least one *lughz* from each chapter of books of *fiqh*, including both *ʿibādāt* (religious observances) and *muʿāmalāt* (civil transactions/law proper). In more extensive chapters, such as prayer and divorce, Ibn Nujaym includes more than ten *alghāz* in each chapter. The following is an example of the *alghāz* Ibn Nujaym presents in the chapter on prayer: Which prescribed prayer must be performed on time (*adāʾ*), but [if its time has lapsed] must not be performed as a missed prayer (*qaḍāʾ*)? (It is well known that when a Muslim omits performing a prayer at its prescribed time, he or she must perform it as soon as possible, and precisely in the manner he would have performed it in its time, in which case it is called *qaḍāʾ*, prescribed prayer performed after its time has passed, in contrast to *adāʾ*, prescribed prayer performed on time). The answer to the riddle is: *al-Jumuʿah* (Friday noon) prayer. Friday noon prayer (which consists of two cycles (*rakʿahs*) – unlike the noon prayer on other days, which is four cycles – and must be performed in congregation) cannot be performed as *qaḍāʾ*; a Muslim who misses it must perform four cycles, as during the normal noon prayer.³⁰

The fifth section is concerned with *al-ḥiyal* (legal stratagems). This discipline is acknowledged only by the *Ḥanafīs*, starting with Abū Yūsuf and al-Shaybānī, who are reported to have compiled texts devoted to the subject. Ibn Nujaym defines *al-ḥiyal* as “intelligence in managing matters; and manipulating ideas to conform to what is intended.”³¹ The discipline is criticised by some scholars of the other schools who consider *al-ḥiyal* to be ruses used to circumvent the law.³² To this critique, Ibn Nujaym responds that this discipline helps to avoid wrongdoing; hence some *Ḥanafī* scholars refer to *al-ḥiyal* as *makhārij* (ways out). Ibn Nujaym adduces a proof from *The Holy Qur’ān* to justify the use of *al-ḥiyal*. The Quranic verse adduced by Ibn Nujaym is 38: 44, where Allah Almighty advises the prophet Ayyūb (*‘Alaiḥ As-Salām*) as follows:

“And (We said to him,) “Take (a bundle of) thin twigs in your hand, and strike with it, and do not violate your oath.”

According to Ibn Kathīr, during his eighteen-year illness, the prophet Ayyūb (*‘Alaiḥim As-Salam*) got angry with his wife and was upset about something she had done. He therefore swore an oath that if Allah Almighty healed him, he would strike her with 100 blows (although she had been very compassionate and kind to him during his illness). When Allah healed him, how could her service, mercy and kindness be repaid with a beating? Allah Almighty extricated him from the difficult situation using the command: Take a bundle of thin twigs, with 100 stems, and hit her with it once. Thus he fulfilled his oath and avoided breaking his vow.³³ However, one wonders if the *Ḥanafī* claim to be using *al-ḥiyal* to avoid wrongdoing is valid when they use it to avoid observing an obligatory and fundamental act of worship, such as paying the obligatory charity (*zakāt*). Ibn Nujaym states:

“[A person] who owns a *niṣāb* (a minimum amount of money) and would like to avoid the obligation [of paying *zakāt*], may bestow the *niṣāb* upon his minor child one day before the completion [of the lunar year, and retrieve it afterwards].”

One of the stipulated conditions of giving *zakāt* is that the person should have the money for a full uninterrupted lunar year. Given the importance of *zakāt* in Islam, this stratagem is not justified. Some of the Quranic verses about *al-zakāt* describe it as a share due (*ḥaqq*) to the poor.³⁴ In a *ḥadīth* cited by both *Bukhārī* and *Muslim*, and mentioned in

most of the canonical *ḥadīth* books, the Prophet (*Sal Allāh-u-‘alaihe wa sallam*) says that Islam is built on five pillars, mentioning *zakāt* as the third pillar. Ibn Nujaym seems to be embarrassed by this stratagem, as he continues:

“They [viz. the founders of the school] disagree on whether [this act of avoidance] is reprehensible (*ikhtalafū fī al-karāha*). [Other] *Ḥanafī* masters [however] follow Muḥammad [al-Shaybānī’s] opinion [that this act of avoidance is reprehensible], to avoid inflicting harm on the poor.”³⁵

The seventh section, “*al-ḥikāyāt wa’l-murāsālāt*” (anecdotes and written exchanges), is not truly a *fiqh* topic, as Ibn Nujaym knows. In the introduction to this section, Ibn Nujaym states that he mentions mostly material from anecdotes and written exchanges that include legal rulings.³⁶

Approximately two-thirds of the book, the first two sections, are devoted to *al-qawā’id al-fiqhiyyah*. The first section is divided into two. The first sub-section discusses the six major principles. The second sub-section discusses nineteen universal principles, which Ibn Nujaym describes as *qawā’id kullīyyah* under which an unlimited (*lā yanḥaṣiru*) number of specific cases are included.” It is noteworthy that all nineteen principles discussed by Ibn Nujaym as universal principles of the *Ḥanafī* school are discussed by al-Suyūṭī as universal principles of the *Shāfi’ī* school. However, al-Suyūṭī does not discuss only these nineteen; he discusses forty *qawā’id* in his section on universal principles. It appears that the rest do not apply to the *Ḥanafī* school, Ibn Nujaym discusses only those that are agreed upon by both the *Ḥanafī* and the *Shāfi’ī* schools.

The second section discusses *al-fawā’id* (sg. *Fā’idah*, literally benefit), as the title of the section states, or *al-ḍawābiṭ*, as referred to in the introduction to the book. Ibn Nujaym clarifies the relation between *al-fawā’id* and *al-ḍawābiṭ* in the introduction to this section, stating that the *fawā’id* are the *ḍawābiṭ* together with the exceptions “*[al-fawā’id] fī al-ḥaqīqah hiya al-ḍawābiṭ wa’l-istithnā’āt*”. In other words, the *fawā’id* are statements including the word *illā* (except/with the exception of). An example of *al-fawā’id* presented by Ibn Nujaym in the prayer chapter is the following: “*The mu’adhdhin* (the person who performs the call to the prayer) and the *imām* (prayer leader) should not wait for any person except (*illā*) if he is [known to be] an aggressive person.”³⁷ Ibn Nujaym also clarifies the difference between a *qā’idah* and a *ḍābiṭ*, explaining that a *qā’idah* includes specific cases from all topics of *fiqh* books,

whereas a *ḍābiṭ* includes specific cases from one topic of *fiqh* books. However, Ibn Nujaym does not use any of these terms in this section, although he does use the term *fā'idah* in other sections (see below). Instead of using principles as the headings of the chapters in this section, he uses the names of fields of *fiqh*.

The chapters are arranged according to the conventional order of *fiqh* manuals, starting with ritual purity followed by other chapters on ritual observance before turning to social issues, starting with marriage. The discussions in most of the chapters are not exclusive to *fawā'id*; other legal discussions are included. For example, the first chapter, which discusses *ṭahārah* (purification), begins with conditions of purification followed by substances that may be used for *ṭahārah*, after which Ibn Nujaym mentions statements such as, “all [types of] urine are impure, except for bat urine, which is pure. All [types of] blood are impure, except for martyr’s blood, blood remaining on pieces of meat... (etc.).” These statements, according to Ibn Nujaym’s definition, must be *fawā'id*; however, he does not mention the word *fā'idah* as a heading of any of them.

In the third section Ibn Nujaym discusses *al-jam' wa'l-farq* (subsuming [identical cases] and separating [different cases]), a discipline that is closely connected to *al-ashbāh wa'l-nazā'ir*. We have reasons to believe that it is a synonym of *al-ashbāh wa'l-nazā'ir*. In the introduction to his *al-Ashbāh wa'l-Nazā'ir*, *al-Suyūṭī* states, “*Al-ashbāh wa'l-nazā'ir* is a great discipline (*fann 'azīm*), through which it is possible to subsume [similar legal cases under principles], and to derive and acquire knowledge of legal assessments for unwritten cases and new legal cases, which do not cease to occur (*lā tanqaḍī*) throughout the ages. Hence, some of our predecessors said: *fiqh* is knowledge of the *naẓā'ir* (*al-fiqh ma'rifat al-naẓā'ir*).” The last sentence of this statement is mentioned by the *Ḥanbalī* jurist Najm al-Dīn al-Ṭūfī (d. 716/1316) concerning *al-jam' wa'l-farq*: “Some people even say that jurisprudence is nothing but the knowledge of subsuming and separating (*al-fiqh ma'rifat al-jam' wa'l-farq*).”³⁸ In Ibn Nujaym’s book, however, the greater part of this section includes the legal assessment (*aḥkām*) of specific cases. In the introduction to this section, Ibn Nujaym states that he will be drawing attention to “*aḥkām yakthur dawruhā wa yaqbuḥ bi'l-faqīh juhluhā* (Frequently circulated legal assessments, ignorance of which disgraces the jurist)”. He discusses legal assessments relating to many subjects, including *al-nāsī* (the forgetful), *al-jāhil* (the ignorant), *al-mukrah* ([a person who is] forced [to do something illegal]), *al-ṣibyān* (minor children), *al-'abīd* (slaves), *al-sukārā* (intoxicated persons) and

al-a'āma (the blind). Only seven pages are devoted to differences between similar topics – such as minor and major ablutions, and between *al-adhān* (call to prayer) and *al-iqāmah* (call to commence).

In the rest of this section, Ibn Nujaym discusses random issues, not necessarily legal, represented as *fawā'id*, although they do not conform to his technical definition of the term *fawā'id* mentioned above; i.e. the discussion is not in the form of *ḍawābiṭ* together with the exceptions". Some of the *fawā'id* in this section include theological discussions. For example, Ibn Nujaym's discussion of plague (*al-ṭā'ūn*), under the heading *Fā'idah* consists of types of prayer that may protect from plague, and methods of treatment if a person becomes infected.³⁹ Other discussions under the term *fā'idah* in this section include anecdotes. The following anecdote is presented under the heading of *Fā'idah*, and introduced as *mustatraf* (curious): "Only five animals will enter paradise: The dog of the People of the Cave, the ram [that was sacrificed instead] of Ismā'īl, the she-camel of Ṣāliḥ, the donkey of 'Uzayr, and al-Burāq of the Prophet (*Sal Allah-u- 'alaihe wa sallam*)".⁴⁰ It appears that Ibn Nujaym is using the word *fā'idah* here in its linguistic meaning, i.e. benefit, rather than in its technical meaning.

The sixth section is about *al-furūq* (distinctions [between similar cases]), a term used by other *Ḥanafīs* as a synonym for *al-jam' wa'l-farq*. The term is also used by some scholars as a synonym for *al-ashbāh wa'l-naẓā'ir*, the term that signifies works on legal maxims/principles (*al-qawā'id al-fiqhiyyah*). Shihāb al-Dīn al-Qarāfī (d. 684/1285) entitled his work on *al-qawā'id al-fiqhiyyah: al-Furūq*. When explaining the term *al-ashbāh wa'l-naẓā'ir* in his commentary on Ibn Nujaym's book, Shihāb al-Dīn Ḥamawī (d. 1098/1687) gives examples of other books in the genre; all the books he mentions have the word *al-furūq* in their titles.⁴¹

In this section, Ibn Nujaym mentions one difference leading to differing legal assessments of similar cases or topics. In both cases, he mentions the different legal assessments followed by the word *al-farq* (pl. *al-furūq*) before stating the difference. The following is an example of the *furūq* Ibn Nujaym presents in the chapter on fasting:

"[If a person] makes two [different] vows to fast for one day [designating the same day for each of the two vows], he does not need to fast more than the day he designates. [On the other hand], if a person makes two [different] vows to perform a pilgrimage [designating the same year for each of the two vows], he must perform two pilgrimages [in the same year]; the difference (*al-farq*) is that it is possible to perform two pilgrimages [in the same year], one by himself and another by a

proxy, in contrast to fasting, [which is not allowed by a proxy].”⁴²

At the start of this section, Ibn Nujaym states: “This is the sixth discipline of the book of *al-ashbāh wa'l-nazā'ir*, namely *al-furūq*”; in the introduction to the book, however, he refers to the title of the sixth section as *al-ashbāh wa'l-nazā'ir*. Ibn Nujaym’s using both terms, *al-furūq* and *al-ashbāh wa'l-nazā'ir*, to refer to his sixth section is another indication that the terms are synonymous.

Ibn Nujaym’s book includes fewer principles than the *al-ashbāh wa'l-nazā'ir* of al-Suyūṭī and Ibn al-Subkī, whether universal or specific to each field of *fiqh*. It appears that Ibn Nujaym did not compile his book solely in order to collate *qawā'id fiqhiyyah*. In the introduction he explains that he called the book *al-Ashbāh wa'l-Nazā'ir* in accordance with some (*ba'd*) of the disciplines it includes. Since the word *ba'd* in Arabic may also mean ‘one’, it is not clear if Ibn Nujaym intended to name his book after section six – the title of which is either *al-furūq* or *al-ashbāh wa'l-nazā'ir* – or after several sections of the book, which, he thinks, relate to the genre of *al-ashbāh wa'l-nazā'ir*, such as the first, second and third sections, along with section six.

At the end of the book Ibn Nujaym states that he finished it on 27 *Jumādā al-Ākhirah* of 969 [4 March 1562]. The structure of the book indicates that Ibn Nujaym was a well-organised and professional compiler. He begins his book with a summary of the contents, followed by the introduction, and then the first section. Except for the first section, he begins all the sections with a brief introduction. As noted, discussions within each section are arranged according to the conventional order of books of substantive law, starting with cases concerned with chapters of religious observances, then moving to cases concerned with social issues. However, on some points the reader may wonder if the book might have been better organised. For example, the third section, although called *al-jam' wa'l-farq* (combining and separating), focuses mainly on the legal assessment of specific cases. Also, Ibn Nujaym provides two separate sections, one on *al-furūq* and another on *al-jam' wa'l-farq*, although the terms are synonyms (see above). In addition, Ibn Nujaym adds many topics that are not related to any of the disciplines that normally are included under *al-ashbāh wa'l-nazā'ir*, such as “riddles,” “legal stratagems,” and “anecdotes and written exchanges;” these might have been included in a separate compilation.

Moreover, Ibn Nujaym uses very concise expressions. Most of his phrases need to be expanded and explicated to properly comprehend the full import of his argument; also, he mentions technical terms without

explaining them, some of which are from the subject of *uṣūl al-fiqh*. The book is so concise that it took Shihāb al-Dīn al-Ḥamawī (d. 1098/1687), one of the most celebrated scholars of the *Ḥanafī* school, five volumes to write a commentary for it. In many cases Ibn Nujaym refers the reader to one of his other books, especially *al-Bahr*, for more explanations. It seems that Ibn Nujaym meant his book to be an aide memoire for scholars rather than an introduction for those who are approaching the subject for the first time.

The *Ashbāh* by Ibn Nujaym must have been very popular in the centuries following its writing. This appears in the fact that nearly all of the principles in the book are included in *Majallat al-Aḥkām al-‘Adliyyah*, the civil code of the Ottoman Empire produced in the late 19th and early 20th centuries, mainly with the same expression used by Ibn Nujaym, although few of the them have been modified. Examples of these are the sixth major principle and principle number twelve of the universal principles. In discussion of the sixth major principle, custom is determinative, Ibn Nujaym states that many religious scholars issue *fatwas* in accordance with private custom, i.e. a custom that is specific to a tribe or a town, although the official opinion of the *madhhab* (i.e., *Ḥanafī* school) is that private custom should not be followed;⁴³ whereas the *Majallat* states: custom is determinative whether it is public or private.⁴⁴

The other example is the universal principle: No opinion is to be attributed to a silent person; the *Majallat* qualifies this by adding: However, silence, when there is need [for a statement] is [to be considered] a statement (*wa lākin al-sukūt fī ma‘riḍ al-ḥājah bayān*). Scholars who composed the *Majallat* might have found this addition necessary to accommodate for thirty-seven particular cases listed by Ibn Nujaym as exceptions from the principle, in contrast to twelve cases pertaining to it. For example, one of the cases mentioned by Ibn Nujaym as an exception is: If a person were to see his wife, or any of his relatives, selling his house and does not object, his silence would be considered an acknowledgement that the house does not belong to him.⁴⁵ Whereas the example given by the *Majallat* for the cases that pertain to the principle states: If you see a person managing your property as if he owns it, albeit he does not have permission from you, and you do not object, your silence is to be considered an acknowledgment that you do not own this property.⁴⁶ This indicates that Ibn Nujaym treated the *qawā‘id* as rigid rules. In my opinion if Ibn Nujaym reflected upon the cases he considered exceptions, he would have come to this qualifying addition to the principle. It undermines the authority of the principle if the exempt cases

are more than those which are applicable to it.

5. Conclusion

Ibn Nujaym was a prominent jurist. He had encompassing knowledge of both the practical and theoretical sides of his school, and he showed that he could defend his school's position when there was disagreement. However, in *al-qawā'id al-fiqhiyyah* domain, although he came with the sixth major *qā'idah* to show his school's opinion, he did not maintain the same spirit with regards to other *qawā'id*. In the second sub-section of the first section he limited himself to discussing the nineteen *qawā'id* that are shared between the *Ḥanafī* and *Shāfi'ī* schools, which are discussed by Suyūṭī in his *ashbāh* and the same order. He did not try to formulate new *qawā'id*, as did Suyūṭī,⁴⁷ to accommodate for cases that are not mentioned under the rubric of the *qawā'id* that are shared between the *Ḥanafīs* and the *Shāfi'īs*; nor did he try to modify some of the *qawā'id* of the *Shāfi'ī* school in order to make them more suitable to the *Ḥanafī* school discussions, as we have seen in the example of the principle of “No opinion is to be attributed to a silent person” above.

However, Ibn Nujaym revived the genre of *al-qawā'id al-fiqhiyyah* among *Ḥanafīs* after it had been neglected for about five centuries. His *al-Ashbāh wa'l-Nazā'ir* has been received with great excitement that is reflected in the number of commentaries it attracted. Al-Bāḥusayn lists forty-four commentaries on Ibn Nujaym's *Ashbāh*;⁴⁸ these range from writing long and brief commentaries on all or some sections of the book, arranging some of the sections according to the conventional order of substantive law books, and rendering the contents of the book into poetic verse.

Notes and References

¹ Najm al-Dīn Muḥammad al-Ghazzī, *Al-Kawākib al-Sā'ira bi-A'yān al-Mi'a al-Āshira*, ed. Jibrā'il Jābbūr (Beirut: Dār al-Āfāq al-Jadīdah, 1979), 3: 154.

² Carl Brockelmann, *Tarīkh al-Adab al-'Arabī* (Egypt: al-Hay'a al-Miṣrīya al-Āmma li'l-Kitāb, 1999), 8: 142-149; Ismā'il Muḥammad Amīn al-Baghdādī, *Hadiyat al-Ārifin* (Istanbul: Milli Egitim Basimevi, 1951), 1: 378.

³ Zayn al-Dīn b. Ibrāhīm Ibn Nujaym, *al-Ashbāh wa'l-Nazā'ir*, ed. Zakarīyā 'Umayrāt (Beirut: Dār al-Kutub al-Ilmiya, 1999), 14.

⁴ *Ibid.*

⁵ Zayn al-Dīn b. Ibrāhīm Ibn Nujaym, *al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqa'iq*, ed. Zakarīyā 'Umayrāt (Beirut: Dār al-Kutub al-Ilmiya, 1997), 1: 20-21, *passim*.

⁶ Tāj al-Dīn ‘Abd al-Wahhāb Ibn al-Subkī, *al-Ashbāh wa’l-Nazā’ir*, ed. A. A. ‘Abd al-Mawjūd (Beirut: Dār al-Kutub al-‘Ilmiyya, 2001), 1: 11; cf. Wolfhart Heinrichs, “*Qawā’id* as a Genre of Legal Literature,” *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002) 367.

⁷ Al-Ḥāfiẓ Ṣalāḥ ‘l-Dīn Khalīl al-‘Alā’ī, *al-Majmū‘ al-Mudhhab fī qawā’id al-Madhhab*, ed. M. ‘A. al-‘Ubaidī, 2 vols. (Mecca: al-Maktaba al-Makkīya, 2004) 1: 34-35; Jalāl al-Dīn ‘Abd al-Raḥmān al-Suyūṭī, *al-Ashbāh wa’l-Nazā’ir fī Qawā’id wa Furū‘ al-Shāfi‘iyya*, ed. M. Tāmir and Ḥ. Ḥāfiẓ, 2 vols. (Cairo: Dār al-Salām, 1998), 1: 61-62.

⁸ Ya‘qūb b. ‘Abd al-Wahhāb al-Bāḥusayn, *al-Qawā’id al-Fiqhiyyah* (Riyadh: Maktabat al-Rushd, 1999), 321-2; Heinrichs, “*Qawā’id*,” 371.

⁹ Abū Zayd ‘Ubayd Allāh b. ‘Umar al-Dabbūsī, *Ta’sīs al-Nazar* (Egypt: n. p., 1902), 80. cf. Brockelmann, *Tārīkhī*, 3: 267; Mohammed Khaleel, “The Islamic Law Maxims,” *Islamic Studies*, 44: 2 (Islamabad, 2005), 196; Mohammad Hashim Kamali, “Legal Maxims and Other Genres of Literature in Islamic Jurisprudence,” *Arab Law Quarterly*, 20: 1 (2006), 91.

¹⁰ Alī al-Nadwī, *al-Qawā’id al-Fiqhiyyah* (Damascus: Dār al-Qalam, 1998), 189; Heinrichs, “*Qawā’id*,” 377.

¹¹ Al-Bāḥusayn, *al-Qawā’id al-Fiqhiyyah*, 329.

¹² Al-Bāḥusayn, *al-Qawā’id al-Fiqhiyyah*, 329-330; Muḥammad Ṣidqī al-Būrnū, *al-Wajīz fī ‘Idāḥ Qawā’id al-Fiqh al-Kulliyya* (Beirut: Mu’assasat al-Risāla, 2002), 63; al-Nadwī, *al-Qawā’id al-Fiqhiyyah*, 165-9; Heinrichs, “*Qawā’id*,” 378.

¹³ Al-Dabbūsī, *Ta’sīs al-Nazar*, 81, 85; Ibn Nujaym, *al-Ashbāh wa’l-Nazā’ir*, 50, 79, 89; al-Subkī, *al-Ashbāh wa’l-Nazā’ir*, 1: 50, 218; al-Būrnū, *al-Wajīz fī ‘Idāḥ Qawā’id al-Fiqh*, 179, 270.

¹⁴ Al-Bāḥusayn, *al-Qawā’id al-Fiqhiyyah*, 95-7; al-Nadwī, *al-Qawā’id al-Fiqhiyyah*, 78.

¹⁵ Ibn Nujaym, *al-Ashbāh wa’l-Nazā’ir*, 14.

¹⁶ Al-Subkī, *al-Ashbāh wa’l-Nazā’ir*, 1: 7; al-‘Alā’ī, *al-Majmū‘ al-Mudhhab*, 1: 11-12; cf. al-Bāḥusayn, *al-Qawā’id al-Fiqhiyyah*, 335-337.

¹⁷ Al-Bāḥusayn, *al-Qawā’id al-Fiqhiyyah*, 327-59; Heinrichs, “*Qawā’id*,” 378; al-Nadwī, *al-Qawā’id al-Fiqhiyyah*, 162-172.

¹⁸ Khadiga Musa “Legal Maxims as a Genre of Islamic Law: Origins, Development and Significance of *al-Qawā’id al-Fiqhiyya*,” *Islamic Law and Society*, 21 (2014), 364.

¹⁹ Ibn Nujaym, *al-Ashbāh wa’l-Nazā’ir*, 14.

²⁰ Ibn Nujaym, *al-Ashbāh wa’l-Nazā’ir*, 122.

²¹ ‘Abd al-Ghanī al-Ghunaymī al-Dimashqī al-Ḥanafī, *al-Lubāb fī Sharḥ al-Kitāb*, ed. M. M. ‘Abd al-Ḥamīd, 2 vols. (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, n.d.), 2: 193, 214-216 (part 3); al-Suyūṭī, *al-Ashbāh wa’l-Nazā’ir*, 124.

²² Al-‘Alā’ī, *al-Majmū‘ al-Mudhhab*, 1:14; al-Suyūṭī, *al-Ashbāh wa’l-Nazā’ir*, 1:61.

²³ Al-Subkī, *al-Ashbāh wa’l-Nazā’ir*, 1: 11

²⁴ Al-‘Alā’ī, *al-Majmū‘ al-Mudhhab*, 1:14; al-Būrnū, *al-Wajīz fī ‘Idāḥ Qawā’id al-*

Fiqh, 26; al-Suyūṭī, *al-Ashbāh wa'l-Nazā'ir*, 1:61

²⁵ Ibn Nujaym, *al-Ashbāh wa'l-Nazā'ir*, 73.

²⁶ Ibn Nujaym, *al-Ashbāh wa'l-Nazā'ir*, 18; Abū Bakr Muḥammad al-Sarakhsī, *Uṣūl al-Sarakhsī*, ed. Abū'l-Wafā al-Afghānī (Beirut: Dār al-Kutub al-ʿIlmīya, 1993), 1: 62, 2: 283-4; al-Subkī, *al-Ashbāh wa'l-Nazā'ir*, 1: 57

²⁷ Ibn Nujaym, *al-Baḥr*, 1: 42.

²⁸ Al-Bāḥusayn, *al-Qawā'id al-Fiqhiyyah*, 90–99, esp. 90, 99; Heinrichs, *Qawā'id*,” 365; Ṣāliḥ b. Ghānimal-Sadlān, *al-Qawā'id al-Fiqhiyyah al-Kubrā wa mā Tafarra'a 'anhā* (Riyadh: Dār Balansiyyah li'l-Nashr wa'l-Tawzī', 1999), 27.

²⁹ Khadiga Musa, *A Critical Edition of 'Umdat al-Nāẓir 'alā al-Ashbāh wa'l-Nazā'ir* (Sheffield: Equinox Publishing Ltd, 2018), 110.

³⁰ Ibn Nujaym, *al-Ashbāh wa'l-Nazā'ir*, 342.

³¹ *Ibid.* 350.

³² Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 139–41; Muḥammad Rawās, *Mu'jam Lughat al-Fuqahā'* (Beirut: Dār al-Nafā'is, 1996), 168; Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1982), 8.

³³ Ismā'īl b. Kathīr al-Dimashqī, *Mukhtaṣar Tafsīr Ibn Kathīr*, ed. M. 'A. al-Ṣābūnī (Cairo: Dār al-Ṣābūnī, n.d.), 3: 200-201.

³⁴ *The Meanings of the Noble Qur'an*, 51:19; 7:24, Translated by Mufti Muhammad Taqi Usmani (Karachi: Maktaba Ma'ariful Quran, 2010)

³⁵ Ibn Nujaym, *al-Ashbāh wa'l-Nazā'ir*, 35.

³⁶ *Ibid.* 364-365.

³⁷ *Ibid.* 140.

³⁸ Al-Suyūṭī, *al-Ashbāh wa'l-Nazā'ir*, 1: 56-57; Wolfhart Heinrichs, “Structuring the Law: Remarks on the *Furūq* Literature,” *Studies in Honour of Clifford Edmund Bosworth*, ed. Ian Richard Netton, (Leiden: Brill, 2000), 333.

³⁹ Ibn Nujaym, *al-Ashbāh wa'l-Nazā'ir*, 331-334.

⁴⁰ *Ibid.* 331.

⁴¹ Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī, *Anwār al-Burūq fī Anwā' al-Furūq* (Cairo: Dār al-Salām li'l-Ṭibā'a wa'l-Nashr, 2001), 1: 70-1; Musa, *A Critical Edition*, 110-111; cf. Heinrichs, “Structuring the Law,” 333, 338.

⁴² Ibn Nujaym, *al-Ashbāh wa'l-Nazā'ir*, 361.

⁴³ *Ibid.* 89.

⁴⁴ Ahmet Cevdet Pasha, *Al-Majallah Al-Ahkam Al-Adaliyah*, (Beirut: al-Maṭba'a al-Adabiya, 1302/1885), article 36, 28.

⁴⁵ Ibn Nujaym, *al-Ashbāh wa'l-Nazā'ir*, 130.

⁴⁶ *Al-Majallah*, 30, article 67.

⁴⁷ Musa “Legal Maxims...,” 352.

⁴⁸ Al-Bāḥusayn, *al-Qawā'id al-Fiqhiyyah*, 371-383.