

STRUCTURAL INTERRELATIONS OF THEORY AND PRACTICE IN ISLAMIC LAW: A STUDY OF SIX WORKS OF MEDIEVAL ISLAMIC JURISPRUDENCE. By Ahmad Atif Ahmad. Brill 2006. Pp. 232. \$133.00. ISBN: 9-004-15031-5.

Ahmad's study tackles a genre of legal works concerning the derivation of rules from sources or principles: *takhrīj al-furū' 'alā-'l-uṣūl*. Using six medieval Sunnī works, Ahmad argues that Islamic law, like any complex legal system, results from the mutually informing relationship of practical legal reasoning and theoretical legal principles. The "organic" and "structural interrelations" between theory and practice are addressed in a prologue, an introduction, eight chapters of varying length, a brief conclusion, and an epilogue. The work also includes a glossary, helpfully placed at the beginning rather than the end of the book; a bibliography; and an index.

Ahmad defines *takhrīj* as "extraction of a practical legal decision from other practical legal decisions through the inevitable mediation of theoretical legal principles." (2) He considers its place within decision making in Muslim legal thought. *Takhrīj* usually refers to the process whereby a jurist derives a ruling for a case on which a master jurist's view is unknown by applying the underlying theoretical principle(s) governing a similar case, resulting in a ruling that is consonant with and may even be attributed to the master jurist.¹ Ahmad's concern in this study is broader than this specific legal technique, though, encompassing facets of Islamic law as a legal system regulating all human actions. The study's objectives include "[i]ntroducing cases which demonstrate the teleological interdependence of Islamic law and legal theory . . . through presentation of legal debates on legal theory and practice within the works of *takhrīj al-furū' 'alā-'l-uṣūl*." (8)

This is a particularly important task because, Ahmad argues, of the persistently ahistorical ways in which Islamic law is usually studied. Chapter Two, "Impressions and Misconceptions in the Study of Islamic Legal History," tackles both "The *Muslim Perspective*" and "Western Academia" and terms them "Two Inadequate Perspectives." The former is concerned with the practical dimensions of *uṣūl al-fiqh* and largely avoids historical investigation proper, content instead with "inherited

1. See WAEL B. HALLAQ, *AUTHORITY, CONTINUITY, AND CHANGE IN ISLAMIC LAW* 44 *passim* (2001).

theories about the history of Islamic law.” (23) The sins here are of omission. By contrast, the latter’s sins are of commission. Western scholars’ work distorts Islamic law because of “fascination with *the origins of Islamic law* at the expense of studying the full extent of its development” and “emphasis on the notion of a *divergence between theory and practice in Islamic law*.” (20) Correcting the failings of these two bodies of literature is Ahmad’s implicit goal: Islamic law is to be taken seriously as a legal system with both a history and a future. Islamic legal decision-making processes—and differences of opinion within the corpus of Islamic legal rulings—are not arbitrary but rather grounded in theory. He acknowledges that “perfect consistency” (xix) between principle and practice is never possible. Yet, he makes a case for the basic and ongoing interrelationship between these two elements in a functional legal system, one that does not collapse from the irrelevance of its theory to its substantive law, or fail to function because its practical legal determinations are unpredictable, as they would be unless they were linked to underlying principles. Islamic law is no more inconsistent than other systems, and it has developed over the centuries rather than stagnated. Its “complexity” and “nuance” are repeatedly affirmed. (e.g., 189)

Chapter Three gives an overview of the six authors and works that Ahmad analyzes. They include the Ḥanafī Dabbūsī (d. 1036), *Ta’sīs al-Nazar* and al-Timurtāshī (d. after 1599), *al-Wuṣūl ilā Qawā’id al-Uṣūl*; the Shāfi’ī al-Zanjānī (d. 1258), *Takhrīj al-Furū’ alā al-Uṣūl* and al-Isnawī (d. 1370), *al-Tamhīd fī Takhrīj al-Furū’ alā al-Uṣūl*. The others are the Mālikī al-Tilimsānī (d. 1359), *Miftāḥ al-Wuṣūl ilā Binā’ al-Furū’ alā al-Uṣūl*; and the Ḥanbalī Ibn al-Laḥḥām (d. 1402), *al-Qawā’id wa-l-Fawā’id al-Uṣūliyya wa mā yata’allaq bihā min al-Aḥkām al-Shar’iyya*. These works—spread over five centuries, four legal schools, and a good portion of the Muslim world, from Algeria to Uzbekistan—approach *takhrīj* in a variety of ways. Dabbūsī aims “to show how juristic disagreement on matters of the practical law is explicable in terms of juristic disagreement on theoretical legal principles.” (49) Zanjānī, Tilimsānī and Ibn al-Laḥḥām try “to explain the relationship between already existing theoretical legal principles . . . and practical legal decisions.” (49) Isnawī and, following him, Timurtāshī, intend “to show how principles of legal hermeneutics and other principles of theoretical legal reasoning . . . can be applied to actual real-life questions as well as to hypothetical cases.” (50)

The remaining chapters describe specific elements of legal principles and their relationship to law-making as a practical activity,

using examples drawn from a wide range of subject areas. “Agency, Responsibility, and Rights” are the topics of Chapter Four. Ahmad distinguishes what he terms Grand Legal Theory *uṣūl al-fiqh* (GLT), that is, a genre of legal-theoretical writings, from the *uṣūl al-fiqh* or “sources (or principles) of law” themselves, those things that the theorists treat as sources of law. He also touches here on the jurists’ classification of legal acts along an axis of responsibility as well as “grades of desirability and undesirability for actions.” (76) Ahmad frames these issues as a prelude to considering how they are treated in his sources, using examples including the duty of prayer and when it becomes due.

The next three chapters focus on the sources and principles of law. Chapter Five, “The *Uṣūl* of Legal Hermeneutics,” focuses on the textual sources of the law, asking how the application of particular hermeneutical principles results in divergent rulings. Examples address the strength of imperative language and ambiguity in legal language. Chapter Six treats “Extra-Textual Sources of the Law,” including consensus (for which he provides a long quotation from Isnawī and a quick mention of Tilimsānī, and no discussion of the other four authors) and analogy as well as disputed supplementary principles including utility and custom. Chapter Seven, “Unclassifiable *Uṣūl*,” enumerates and then briefly discusses miscellaneous types of “theoretical legal principles” followed by concrete examples. These include the authority of a judge’s verdict (155-58) in the face of disagreement. Sizeable extracts (159-61) from Dabbūsī and Zanjānī on the jurisdiction of Islamic law over non-Muslim subjects in Muslim territory and over Muslims in non-Muslim territory illustrate again that divergent rules result from divergent “underlying legal theoretical principle[s].” (162)

Chapter Eight treats “The *Furū‘* and their Interrelation with the *Uṣūl*.” Here Ahmad argues for a fuller understanding of how theory and practice (one might use root and branch) are connected, and suggests a model where basic “core” or “paradigm” cases apply, rely on, or perhaps exemplify “a minimum number of legal principles,” (174) while penumbra or “gray-area” cases are complicated and thus can be explained only in terms of “a larger number of theoretical principles.” (175) There needn’t be “a one-to-one correspondence between a single theoretical principle and a single practical decision” (187) for there to be a productive interrelationship between theory and practice in Islamic legal thinking.

Ahmad’s study raises a number of intriguing issues, including the relevance of coherence and consistency to a legal system. As noted, one of his major criticisms of Western scholarship on Islamic law is its focus

on perceived and real inconsistencies between theory and practice, or broad principles and specific rules. The value of consistency between theoretical principles and specific rules, and the usefulness of explanation of rules in terms of principles, depends at least in part on the exigencies of legal disagreement (*ikhtilāf*) discussed in some of these texts. Historically, it seems intuitive that inter-school debate would have led to emphasis among groups of jurists on constructing logically defensible because internally consistent positions. Ahmad raises the relationship of principles (or perhaps “*ex post* abstractions”) to debates among jurists as discussed by Dabbūsī (53) and again to Ḥanafī and Shāfi‘ī debates over the duty of prayer in Zanjānī. (82-83) These fascinating hints suggest that future scholarship might find merit in a systematic exploration of a range of *ikhtilāf* texts.

Structural Interrelations appears to have been published very soon after its completion as the author’s 2005 Harvard doctoral dissertation. It would have benefited from a more thorough revision process. There are dozens of minor typographical and other errors in this volume, making this reviewer hope that Brill reconsiders its reliance on author-provided camera-ready copy. Some proofreading mistakes are easy to overlook: to give just one instance, a lengthy footnote on intertextuality referencing Kristeva misspells her name. (70, n. 24) Harder to ignore, a passing reference to Derrida (107) misquotes his famous pronouncement “il n’ya pas de hors-texte,” ‘there is no outside-the-text,’ as “il n’est pas de text,” ‘there is no text.’ Additionally, neither reference cites publications by these scholars. Indeed, inconsistent and sparse footnoting of both secondary and primary sources throughout this study hinders its utility as a scholarly resource. Most significantly, these and numerous other tangential asides take glancing note of comparative or theoretical points while avoiding substantial engagement with the literatures from which they are drawn. This is the case not only for critical theory and comparative legal studies but also for the vast secondary literature on Islamic legal theory and substantive law. The disappointingly brief bibliography graphically reflects this short shrift paid to extant scholarship. The omission of Hallaq’s *Authority, Continuity, and Change*, which devotes substantial attention to *takhrīj*, is notable.

Overall, this work proves not only that Islamic legal thought displays a dynamic process of balanced interaction between principles and substantive rulings but also that there is a flourishing tradition of thinking about these interrelationships. It will be of interest to specialists as a spur for investigating diverse topics such as the role of

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customary versus technical language usage and the relationship between theology and legal theory.

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