Reformulation and Hermeneutics: Researching the History of Islamic Legal Theory, Istanbul University 21st-24th February 2016.

Supported by
Faculty of Theology, Istanbul University
Islamic Reformulations project,
Institute of Arab and Islamic Studies,
University of Exeter
The Islamic Reformulations Project:

Islamic Reformulations is a three-year Global Uncertainties Leadership Fellowship (GULF), funded by Research Councils UK and administered by the Economic and Social Research Council. The Fellowship, awarded to Professor Robert Gleave of the Institute of Arab and Islamic Studies, University of Exeter, aims to explore how Muslim thought has developed in the modern period, and how these modern developments relate to the pre-modern tradition of Islamic thought. The project focuses on the interlinked themes of belief, governance and violence.

Beginning in September 2012, Islamic Reformulations runs until February 2016. The project is led by Robert Gleave; the project's full-time research fellow was Dr Mustafa Baig. The project continues and develops the LIVIT Project (Legitimate and illegitimate Violence in Islamic Thought), which ran from 2010 to 2013, and was also funded under the RCUK Global Uncertainties programme.

This conference, a collaboration with Istanbul University, forms the last of its major activities.

For more information see www.islamicformulations.net
The faculty of theology of Istanbul University is located in Saraçhane which is one of the most central districts of Istanbul in terms of its historical heritage and the cultural environment. It is a walking distance to the great libraries which attract many researchers from various countries of the world, such as the central library and rare books, library of Istanbul University, Suleymaniye library, Beyazit state library and millet library. Besides, the faculty is very close to many historical, cultural and arts centers such as Suleymaniye Mosque and complex, Sehzadebasi mosque, blue mosque, Fatih mosque and comple, Atif efendi library, Ragip Pasa library, Ottoman archives of the prime ministry, Grand Bazaar, Topkapi Palace museum, Istanbul Archeology Museum and Hagia Sophia.

The faculty intertwined with the history, culture and nature in such a valuable area, welcomes its students with the modern social facilities that were prepared scrupulously. The main campus consists of two buildings, one of them is reserved for the administrative and academic staff, there are conference hall, office of students representative, students clubs, study room for turkish religious music branch, office of guidance and psychological counseling, a snack bar with sea view and prayer rooms in that building. The other building consists of the office of student affairs, lecture halls, classrooms, library, study hall and a conference hall for 300 people. As a requisite of modern and academic life, internet facilities and center of informatics are always served. See for more info http://ilahiyat.istanbul.edu.tr
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Conference Programme

Sunday 21st February 2016
19.00 Welcome and Evening Meal
Daruzziyafe Restaurant, Suleymaniye

Monday 22nd February 2016
Day 1:

09.00: Opening Remarks: Professors Mahmut Ak (Rector of Istanbul University), Murteza Bedir (Dean of the Faculty of Theology, Istanbul University) and Robert Gleave (Director of the Islamic Reformulations project, University of Exeter)

09.30: Panel A: Situating Uṣūl
Reinhart, Kevin (Dartmouth) "Punctuality and Laxity: Deferred Performance of Ritual Obligations in Uṣūlī theory"
11.10: Coffee/tea

**11.40 Panel B: The science of *uṣūl***
Opwis, Felicitas (Georgetown): Between *Maqāṣid al-Sharī‘a* and *Tashrī‘ Islāmī*: Ibn ‘Āshūr’s Navigation of the Secondary Rules of Law,
Fatemi, Seyed Mohammed (Shahid Beheshti University, Tehran): “Conjectural Certainty: Shiite Epistemic Theory of *Insidād revisited*”

13.20 Lunch
Afternoon: Suleymaniye Manuscript Library Tour

**16.30 Panel C: The emergence of *uṣūl***
Stewart, Devin (Emory): “Hadith Reports that Present Ordered Lists of *Uṣūl* and Their Implications for the Early History of *Uṣūl al-Fiqh*”

18.10 Concluding remarks, Day 1 (Robert Gleave): Close
20.00 Aziyade Restaurant, Pierre Loti Hill

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**Tuesday 23rd February 2016**
Day 2:

**09.30: Panel D: Maturing *uṣūl***
Morvarid, Mahmoud (IPM, Tehran): "Rational Exemption vs. Rational Caution: On a Contemporary Debate in Shiite *Uṣūl*”

11.10-11.40: Coffee/tea
Bedir, Murteza (Istanbul): “Overemphasizing the role of *uṣūl al-fiqh: Ijtihād* debates and *uṣūl al-fiqh*”

12.30 Lunch

14.00 Panel E: Contested modern *uṣūl al-fiqh*

Ozen, Sukru (Istanbul University): “Abū Mansūr al-Māturīdī's Concept of the *Bayān*”

El-Shamsy, Ahmed (Chicago): "Continuity and rupture in fourth/tenth-century legal theory”

15.40 Tea/Coffee

16.10 Panel F: Language


Qazwini, Sayed Hossein (Islamic Seminary, Karbala): "Did Ibn Idrīs al-Hillī end the era of *taqlīd* after al-Shaykh al-Ṭūsī?"

1750 Concluding remarks, Day 2 (Robert Gleave): Close

1900 Evening Meal: Baltalimani Restaurant, Bosphorus

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**Wednesday 24th February 2016**

**Day 3**

0930 Panel G: Reason

Gleave, Robert (Exeter): “Something and Nothing: Assuming No-assessment and/or Licitness in classical Shīʿī *uṣūl al-fiqh*”

Schwarb, Gregor (Berlin): “Muʿtazīlī *uṣūl al-fiqh* at the service of inner-Jewish polemics.”

11.10 Museum Tour (including lunch)

14.30 Panel H: Language

Adang, Camilla (Tel Aviv): “Ibn Ḥazm's discussion of *Dalīl al-khitāb* in *al-Iḥkām fī uṣūl al-aḥkām*”

Cohen, Mordechay (Yeshiva University, New York):
“Adaptations of *uṣūl al-fiqh* by two Rabbanite Jewish thinkers in al-Andalus, Moses Ibn Ezra (Abū Hārūn Mūsā bin Yaʿaqūb ibn Ezra) and Moses Maimonides (Mūsā ibn Maymūn)”

**1610: Closing remarks:** Robert Gleave and Murteza Bedir
16.20 Tea/Coffee

**17.00 Public Session: The future study of Islamic Legal Theory**
18.30 Close

19.30 Conference Dinner
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ABSTRACTS
(In alphabetical order)

NB: No attempt has been made to standardise the transliteration in these abstracts.
Adang, Camilla

Ibn Ḥazm's discussion of Dalīl al-khiṭāb in al-Īḥkām fī uṣūl al-aḥkām

In his major work of uṣūl al-fiqh, al-Īḥkām fī uṣūl al-aḥkām—which so far has not received the scholarly attention it deserves—the well-known Zāhirī legal scholar and theologian Ibn Ḥazm of Cordoba (d. 456/1064) presents a detailed refutation of hermeneutic mechanisms like qiyās, ra'y, istiḥsān, ta'līl and taqlīd, all of which he rejects as arbitrary methods that cannot lead to certain knowledge of God's law. A substantial section of the work is devoted to a critique of dalīl al-khiṭāb, also known as mafhūm al-mukhālafa or counterimplication, which can be defined as "the implication of a meaning that represents the converse of an explicit meaning" (Weiss 2010:482). Regarded as a kind of qiyās, it is easy to see why this method would be unacceptable to Ibn Ḥazm, whose main guiding principle was his commitment, wherever possible, to the external sense of the Bedirirhe revealed text. The paper will discuss a number of examples of dalīl al-khiṭāb and highlight Ibn Ḥazm's method of invalidating it.

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Bedir, Mürteza

Over-Emphasizing the Role of Usul al-fiqh: A New Usul al-fiqh?

19th Century Reforms in Muslim Societies transformed the method of fiqh in a radical way. Beginning with Mecelle the method of fiqh increasingly put the emphasis on changing circumstances and exigencies of modern age. On participar the challenges of modernity altered the way the Muslim jurists deal with the opinions of past masters. The thousand year-old madhhhab-based approach was abandoned for a broader and more inclusive approach that used the opinions of the past masters as an open source for solving
contemporary problems. Usul al-fiqh responding to this change in legal practice has been conceived as a forward-looking methodological discipline that would enable anew ijtihad in order to meet the challenges of modernity, just as it did in the formative period of fiqh.

This paper shall highlight the changes in the way the new usul al-fiqh is perceived by the modern Muslim legal thought. More specifically it is argued new usul al-fiqh is designed to provide a basis for the new fiqh by shifting the emphasis from the hukm-part of a mas’alah ash-shar’iyya to its dalil-part.

Cohen, Mordechai

Adaptations of usūl al-fiqh by two Rabbanite Jewish thinkers in al-Andalus, Moses Ibn Ezra (Abū Hārūn Mūsā bin Yaʿaqūb ibn Ezra) and Moses Maimonides (Mūsā ibn Maymūn)

Recent scholarship reveals the extent to which Moses Maimonides (1138-1204) drew upon Muslim jurisprudence (usūl al-fiqh) to develop his bold halakhic hermeneutical model that integrates Bible exegesis and talmudic halakhah. Given its sophistication, it is not unreasonable to suppose that precedents for Maimonides’ hermeneutical system had been circulating among earlier Andalusian Jewish scholars who adapted Muslim theoretical legal terms and concepts to describe the halakhic process. To date, brief discussions of this nature have been identified in the writings of Bahya Ibn Paquda, Judah ha-Levi and, most recently, in the newly discovered fragmentary writings of the eleventh-century Granada dayyan David ben Saadia ha-Ger. In this paper I would like to bring to light some relevant remarks by the poet and literary critic Moses
Ibn Ezra (c. 1055-1138). In his Poetics, *The Book of Discussion and Conversation*, Ibn Ezra compares the intellectual creativity of prophets and legal scholars. While the prophets employ their ingenuity to render God’s message in the most excellent poetic and rhetorical format, the legal scholars actually augment the Law by extrapolating new conclusions from what is stated explicitly in scripture—a concept he describes in terms borrow from Islamic legal theory. In my paper I aim to explore the unique literary perspective on this subject brought to bear by Moses Ibn Ezra by contrast with the legal-philosophical vantage point of Maimonides and his halakhically-oriented Andalusian predecessors.

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El Shamsy, Ahmed

**Continuity and rupture in fourth/tenth-century legal theory**

This paper seeks to make a concrete contribution to bridging the gap between formative era legal theory and classical uṣūl al-fiqh by presenting two hitherto little known, very early treatises on legal theory written by Ibn Surayj (d. 306/918) and al-Khaffāf (fl. fourth/tenth century), respectively. An examination of their contents—the topics they cover and the terminology they use—sheds new light on the continuities and discontinuities in the discipline of legal theory in its earliest stages.

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Fatemi, Sayed

Conjectural certainty: Shiite Epistemic theory of Insidād revisited

Introducing insidād argument as an original epistemic theory in Shiite usul, as well as its hermeneutical implications is the main task of this article. My starting point in its examination is Abulqasem al-Qummi’s proposal, who argues that since epistemic certainty cannot be obtained to justify Shariah norms, jurists are left with no alternative but to rely upon epistemic conjecture. Ansaari is the most distinguished post Qummi opponent of the insidād argument; who believes in existence of sufficient quantity of reliable textual evidences, some of which enjoys status of epistemic certainty, and the rest enjoy support of certainty for their validity. Qummi’s ultimate aim is to offer an epistemic justification for reliability of such Shariah sources as khabar al-wahid, as he seems not to be convinced with other arguments. Yet, the hermeneutical potentials of his theory for reconstruction of Islamic thought seem to be much more appealing to be ignored by contemporary Shiite reformist thinkers.

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Gleave, Robert

Something and Nothing: Assuming No-assessment and/or Licitness in classical Shīʿī uṣūl al-fiqh

1 S. Mohammad Ghari S. Fatemi, professor of comparative human rights and Islamic legal theory, faculty of Law, Shahid Beheshti university, Tehran, Iran, m-fatemi@sbu.ac.ir
The notion that any action is permitted until here is an indication (dalîl) indicating it is forbidden, or that a object is pure until there is indication that it is ritually impure, has been a canonical element of usūl discussion. In late Shīʿī usūl there was extensive debate as to whether this principle, known as al-barâʾa al-asliyya, constituted an indication in itself. The famous division was between Akhbârî scholars who rejected the principle, and Uṣūlîs who promoted it. This paper will examine some of the salient themes in these discussions up to, and perhaps including, the thought of Muḥammad Bāqir al-Bihbîhānî.

Morvarid, Mahmoud

Rational Exemption vs. Rational Caution: On a Contemporary Debate in Shiite Usūl al-Fiqh

The idea of procedural principles (al-usūl al-ʿamaliyya) has been considerably developed in the contemporary Shiite usūl. After explaining the idea itself, I shall proceed to introduce a well-known distinction between the primary (or rational) procedural principles, on the one hand, and the secondary (or sharī) procedural principles, on the other. In this presentation, I am only concerned with the former, that is, primary or rational procedural principles. The question such principles are concerned with is that, in the absence of any relevant ʿhojja, which practical stance should an agent adopt vis-a-vis a given action. Two main answers have been offered to this question. Most contemporary uṣūlîs advocate the so-called principle of rational exemption (al-barâʾat al-ʿaqliyya) according to which the agent is exempted from complying with a divine obligation when he has no ʿhojja for that obligation. The other answer, given by Muḥammad Bāqir Ṣadr, appeals to the idea that God’s rightful claim
to obedience is extremely extensive. Consequently, Ṣadr arrives at the so-called principle of rational caution (al-iḥtiyāṭ al-ʿaqlī) according to which whenever an agent lacks any relevant ḥojja, he ought to exercise caution with respect to possible obligations. Recently, Ṣādiq Lārījānī has criticized Ṣadr's view on the ground that it suffers from an internal inconsistency. I shall argue that Lārījānī's criticism fails, although his observations might provide another basis for criticizing Ṣadr's argument.

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Opwis, Felicitas


The rapidly changing modern environment challenges Islamic law to incorporate legal change without losing the Islamic character of the law. This challenge involves ensuring that the Islamic principles and methods of law-finding are able to address unprecedented situations on a larger scale than previously. Furthermore, jurisprudents face the question of integrating Islamic law into the legal system of the modern nation-state in order to retain its relevance. The 20th century Tunisian scholar-jurist Ibn ʿĀshūr addresses these challenges by re-interpreting the secondary rules of law, particularly those that determine the correct procedures of law-finding (rules of recognition). He turns to the ‘Purposes of the Law’, the maqāṣid al-sharīʿa, to address both challenges. By subsuming the principles of law-finding (uṣūl al-fiqh) under the Purposes of the Law, he alters the epistemological status of rulings (aḥkām) and objectives (maqāṣid) and expands the acceptable modes of analogical reasoning. Importantly, he re-defines the scope of human legal responsibility to exclude the moral dimension from the legal, thereby envisioning Islamic law to
function akin to a positivist legal system. The result is a system of ‘Islamic legislation’ that employs traditional modes of Islamic law-finding in a fashion that embraces the values of modernity.

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Özen, Şükrü
Abū Maṣūr al-Māturīdī’s Concept of Bayān

al-Māturīdī (d. 333/944) has come into prominence in recent times more often in respect to his works and thoughts on theology (kalām) and Quranic exegesis (tafsīr), and in that his ideas were elaborated in many works. However, he was also well-known in his time as al-faqīh, and later on referred to as ra‘īs mashāikh Samarkand, i.e. the leader of the scholars in Samarkand, a phrase that expresses the community of local jurists from Samarkand. Furthermore, al-Māturīdī’s tafsīr, Ta‘wīlāt al-Qur‘ān, serves as an important source for his legal and methodological thoughts as well as his theological ideas. Thus it would be misleading to perceive him only as a prominent theologian (mutakallim) or mufassir. One of the purposes of this study is to correct this common misperception.

Since during the al-Māturīdī’s era, lots of concepts were not defined as in the later periods, he touched upon most of them in the conceptual level in a descriptive manner some of which can be restated with the terms emerged later. Actually, he was one of the pioneers who paved the way for the following Hanafi scholars to systematize the School’s perception of jurisprudential methodology in general, and the concept of bayān in particular.

We can find al-Māturīdī’s views and discussions about the concept of bayān disseminated in his tafsīr especially during his commentary on the verse 89 of al-Nahl, the sixteenth chapter of Quran. al-Māturīdī deals with the concept of bayān from different aspects. He defines and categorizes it as well as criticizes some views of earlier scholars such as Imām al-Shāfī ī and the Zāhirī
School. He also deals with the problems that emerged from his theory of bayān. Nevertheless, we can not say that these passages represent all his views on the subject, but comparing to the al-Shāfīī's accounts in the al-Risāla, we can safely argue that al-Māturīdī's accounts are richer in their content.

In this paper, I will try to shed light on the al-Māturīdī's concept of bayān analyzing his views in the historical context of Islamic jurisprudential methodology especially within the limits of his polemics with al-Shāfīī and the Zāhirī School.

Qazwini, Sayed Hossein

Did Ibn Idris Al Hilli end the era of taqlid after Shaykh Al Tusi?

The hundred years after the death of Shaykh Mohammad Ibn Al Hassan Al Tusi is commonly known as the era of taqlid, the reason being that this era did not produce innovative mujtahids; rather they were all emulators of Tusi's usuli opinions.

Several reasons have been stated for the academic stagnation in this period. Was it the authoritative persona of Tusi that caused this decline in scholarship, or was it political tensions and unrest? Were there other reasons? Or is the notion of taqlid in this period exaggerated, and that there were, indeed, innovative mujtahids in this period? Our paper examines this aspect.

Furthermore, why is Ibn Idris Al Hilli considered a mujadid and why is the honor of ending the era of taqlid ascribed to him? Did he introduce new usuli theories? Or was he simply outspoken but not innovative? Perhaps Ibn Idris's role has also been exaggerated? Our paper examines this aspect as well.

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Schwarb, Gregor

**Mu’tazilī ʿusūl al-fiḥḥ at the service of inner-Jewish polemics**

In the late 10th and throughout the eleventh centuries Mu’tazilī kalām provided the common conceptual and terminological framework for major exponents of Jewish and Samaritan religious thought. Given their intimate acquaintance with Mu’tazilite works, doctrines and nomenclature, it is perfectly appropriate to relate to these figures as representatives of a ‘Jewish/Samaritan Mu’tazilism’. Their extant works cover a much wider spectrum of genres and disciplines than those by their Muslim peers and allow us to explore the application of Mu’tazilite thought in settings which are less familiar from extant Muslim source texts.

In the present paper I will allege a few examples of how Rabbanite and Qaraite Jews and Samaritans employed terms and concepts of Mu’tazilī ʿusūl al-fiḥḥ in internal controversies to buttress their particular theological and legal views or to undermine those of the opposing camp. The main texts to be considered are an anonymous Qaraite polemic against the Samaritans (al-Naqḍ ʿalā al-Sāmira) and a refutation by the Qaraite Yūsuf al-Bāṣîr of a work by Samuel ben Ḥofnī Gaon (al-Naqḍ ʿalā Še muʾel, raʾs al-maṭība).

Stewart, Devin

**Ḥadīth Reports That Present Ordered Lists of ʿUṣūl and Their Implications for the Early History of ʿUṣūl al-Fiḥḥ**

A well-known ḥadīth report that portrays the Prophet commissioning the Companion Muʿādh b. Jabal to serve as a judge in Yemen is cited frequently in manuals of ʿusūl al-fiḥḥ and other works as a prooftext for ijtihād or qiyās. In the account, the Prophet asks Muʿādh on what basis he will judge, and Muʿādh replies by the
Book, meaning the Qur’an. The Prophet then asks on what basis he will judge if he does not find the answer in the Qur’an, and Mu‘ādh replies by the Sunnah. The prophet then asks on what basis he will judge if he does not find the answer in the Qur’an or in the Sunnah, and he replies, *ajtahidu ra’yī wa-lā ālū* “I will exert my opinion and spare no effort.” Despite wide awareness that the chain of transmission of this report is suspect, for the transmitters from Mu‘ādh are simply termed “men from Homs,” the report is cited widely with approval by legal theorists. Ibn al-Jawzī (d. 597/1201) writes in *al-ʿIlal al-mutanāhiyah: hādhā ḥadīth lā yaʾiḥh wa-in kāna al-fuqahāʾ yadhkurūnahu fī kutubihim wa-yaʾtamidūna ʿalayhi wa-laʾamrī in kāna maʾnāhu sahīhan innama thubūtuhu lā yuʿraf.“*

“This is an unsound ḥadīth, even though the jurists mention it in their books and depend on it. For the life of me, even if its sense is correct, there is no way to establish its soundness.”

This *ḥadīth* was fabricated, as many medieval scholars and as Joseph Schacht realized. It appears widely in works of the 3rd/9th century, and was probably fabricated in the late 2nd/8th century. It was fabricated specifically to make a point about legal hermeneutics, and was intended to present and sanction an ordered list of *uṣūl*. Because of later developments in jurisprudence and because of shared assumptions on the part of later legal theorists, the implications of the report have often not been fully realized. The report presents an ordered list of three *uṣūl*: 1) the Qur’an; 2) the Sunnah of the Prophet; and 3) *Raʾy* “sound judgment” or “considered opinion.” The report thus remarkably omits *ijmāʿ* “consensus.” The original focus was on *raʿy*, and not on *ijtihād*, something that indicates it was fabricated to support the views of *ahl al-raʿy*, something that is obscured by later interpretation. As *raʿy* became less popular as an independent hermeneutical principle, the emphasis shifted: *raʿy* became softened to *ijtihād al-raʿy* [perhaps because of the wording of the report itself], and further to *ijtihād tout court*, and then al-Shāfi‘ī and *ahl al-ḥadīth* weakened it further by equating *ijtihād* with *qiyās*. Such ordered
lists of ṣūl were an important foundation for the genre of manuals on ṣūl al-fiqh, and the beginnings of genre may go back to the late 2nd/8th century, when this report was forged. Al-Shāfi‘ī’s Risālah did not inaugurate the genre of ṣūl al-fiqh but rather argued against an already existing genre, written by members of the ahl al-ra’y camp, that was based on a conception of ṣūl similar to that which is evident in the report of Muʿādh. His work should be seen as an effort to restrict the sources of the law to two “scriptural” sources, the Qurʾān and ḥadīth, arguing against hermeneutic approaches that admitted extra-textual principles.

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Temel, Ahmet


This paper explores the role of school affiliation and the ways of identifying it in ṣūl al-fiqh by offering a method to follow in correctly assigning a school affiliation to particular scholars. It begins with deconstructing the hitherto known division of mutakallimūn, fuqahā, and mamzūj by arguing that the division of mutakallimūn and fuqahā existed but just as an arbitrary grouping of multiple groups and that mamzūj is far from a reconciliation of these two groups. Then it provides a model for identifying school affiliation in the texts of ṣūl al-fiqh through analysis on the network of authoritative scholars in the texts. It uses the text of al-Mujzī to demonstrate different steps of this method and concludes that this text was actually produced according to the established school of Muʿtazī ṣūl al-fiqh despite written by a Zaydī imām, rather than a Zaydī ṣūl al-fiqh as argued by contemporary Zaydīs and those who follow them in this regard.
The puzzling style and structure of al-Shāfiʿī’s famous Epistle on Legal Theory, al-Risāla, have elicited clarificatory glosses and headings ever since the work was copied in the ninth century. Scholars are still proposing widely divergent readings, outlines, and even reorderings of the text. This paper argues that the Risāla is best read as a sequence of three distinct but related compositions, each with its own thesis, argument, and outline. Book One was written to show that the Qur’ān, when understood in light of natural evidence and the Prophet’s Sunna, is a clear statement of the entire law. Following discussions with opponents, al-Shāfiʿī appended Book Two to refute the objection that he had used ḥadīth capriciously in Book One, and then added Book Three to justify the subjectivity and uncertainty of his interpretive methods. This paper points out stylistic traces of this compositional process; it notes how copyists, editors, and modern scholars have attempted to squeeze the work into a single outline of legal theory topics; and it demonstrates that the work’s legal case studies and theoretical statements are more readily understandable and more compelling when read as steps in a sequence of three distinct but related arguments.

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Zysow, Aron

Causal analogy (qiyāṣ al-ʿilla): a historical overview

The analysis of analogy (qiyāṣ) in terms of four elements, aşl, far`, ʿilla, and hukm, is among the most familiar features of uṣūl
*al-fiqh*, so familiar as to seem virtually inevitable. But there is, of course, no inevitability here. This paper seeks to sketch the early development of causal analogy as well as to touch upon a few representative controversies that illustrate its subsequent history. The resources for writing an account of the beginnings of causal analogy are briefly surveyed and some of the problems attending the use of these sources are addressed.
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